

ORIGINAL

1 ILLINOIS POLLUTION CONTROL BOARD

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5 PEOPLE OF THE STATE OF ILLINOIS vs.

6 GENERAL WASTE SERVICES, INC.

7 No. PCB 07-45

8 (Enforcement-Air)

9

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11 TRANSCRIPT OF PROCEEDINGS

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15 St. Clair County Courthouse

16 10 Public Square, Room 402

17 Belleville, Illinois 62220

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20 Thursday, October 29, 2009

21 1:30 p.m.

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APPEARANCES

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TRANSCRIPT OF PROCEEDINGS

HEARING OFFICER: Good afternoon.
My name is Carol Webb. I'm a hearing officer with
the Pollution Control Board. This is the hearing
for PCB 07-45, People versus General Waste
Services, Inc. It is October 29th, and we are
beginning at 1:30 p.m.

I will note for the record that
there are no members of the public present.

At issue in this case are
allegations regarding Respondent's asbestos
abatement project at an apartment building located
at 3701 Memorial Drive in Belleville, St. Clair
County.

The Pollution Control Board members
will make the final decision in this case. My
purpose is to conduct the hearing in a neutral and
orderly manner so that we have a clear record of
the proceedings.

This hearing was noticed pursuant to
the Act and the Board's rules and will be
conducted pursuant to Sections 101.600 through
101.632 of the Board's procedural rules.

1 At this time I would like to ask the
2 parties to please make their appearances on the
3 record.

4 MR. MANKOWSKI: My name is Michael
5 Mankowski, and I represent the State of Illinois.

6 MR. CALLERY: Raymond Callery for
7 the State of Illinois.

8 MR. IMMEL: Thomas J. Immel,
9 Springfield, for the Respondent, General Waste
10 Services.

11 HEARING OFFICER: If I may just make
12 one clarification. Mr. Callery, you've not filed
13 an appearance in this matter and you're not --
14 you're just here to assist Mr. Mankowski? You're
15 not going to be taking part in the examinations?

16 MR. CALLERY: That is correct, Madam
17 Hearing Officer.

18 HEARING OFFICER: Are there any
19 preliminary matters to discuss on the record?

20 MR. MANKOWSKI: Yes, Madam Hearing
21 Officer. The parties would like to stipulate to
22 the People's five exhibits.

23 HEARING OFFICER: Okay. And Mr.
24 Immel, you confirm that you are in agreement with

1 admitting the People's five exhibits?

2 MR. IMMEL: Yeah. Noting in
3 particular that item -- Exhibit No. 4 is a group
4 exhibit, a bulky pack of pictures.

5 But yes, counsel and I have agreed
6 that those may be admitted into evidence without
7 objection.

8 HEARING OFFICER: Okay. The
9 People's Exhibits 1 through 5 are admitted into
10 the record.

11 Would the People like to make any
12 opening statement?

13 MR. MANKOWSKI: Yes, Madam Hearing
14 Officer. The State is here today on a one count
15 complaint that it filed back in December of 2006
16 alleging two violations. Both of those violations
17 are related to the failure to wet regulated
18 asbestos containing material while it was being
19 removed at an apartment at 3701 Memorial Drive in
20 Belleville, Illinois.

21 Today the State has testifying
22 Mr. Joseph Zappa from the Illinois Environmental
23 Protection Agency. He was the inspector that did
24 an inspection of the site on August 4th, 2005, and

1 he witnessed these violations. He's going to
2 describe what he saw that day, that material was
3 being removed without being kept wet after it was
4 removed. It was not kept wet in its storage
5 container. He's going to testify today as to what
6 he saw.

7 HEARING OFFICER: Thank you.
8 Mr. Immel, would you like to make any opening
9 statement?

10 MR. IMMEL: If I may, Madam Hearing
11 Officer, I would prefer to reserve my opening
12 statement to the commencement of my case.

13 HEARING OFFICER: Okay.
14 Mr. Mankowski, you may call your first witness.

15 MR. MANKOWSKI: The State calls
16 Joseph Zappa.

17 HEARING OFFICER: Mr. Zappa, if
18 you'd please have a seat up here. The court
19 reporter will swear you in.

20 JOSEPH ZAPPA,
21 of lawful age, having been produced, sworn, and
22 examined on the part of the Complainant, testified
23 as follows:

24 DIRECT EXAMINATION

1 QUESTIONS BY MR. MANKOWSKI:

2 Q. Mr. Zappa, could you please state
3 and spell your name for the record.

4 A. Joseph, J-O-S-E-P-H, W, Zappa,
5 Z-A-P-P-A.

6 Q. Mr. Zappa, where are you currently
7 employed?

8 A. I am currently employed with the
9 Illinois EPA.

10 Q. Are you in a specific bureau with
11 the Illinois E --

12 A. I'm with the Bureau of Land as an
13 Environmental Specialist III.

14 Q. How long have you been employed by
15 the Illinois EPA?

16 A. June 1999.

17 Q. And do you maintain and update a
18 resume of your education and experience?

19 A. Yes.

20 MR. MANKOWSKI: Permission to
21 approach the witness.

22 HEARING OFFICER: Yes.

23 Q. (By Mr. Mankowski) Mr. Zappa, I'm
24 showing you what has been entered as People's

1 **Exhibit No. 1. Could you tell me what that is?**

2 A. Exhibit No. 1 is my resume of
3 education and work experience.

4 Q. And you created that document?

5 A. Yes.

6 Q. Now, I'd like to discuss some of
7 your employment background at this time. Feel
8 free to use the resume if you need to to recall
9 anything.

10 You said you've been with the
11 **Illinois EPA since 1999?**

12 A. Correct.

13 Q. While you were employed with the
14 agency, have you always been with the Bureau of
15 Land?

16 A. No. I started my career with the
17 agency in June 1999 with the Bureau of Air as an
18 Environmental Associate.

19 Q. And as an Environmental Associate,
20 what were your duties?

21 A. I was considered an asbestos
22 inspector.

23 Q. Prior to working for the Illinois
24 EPA, did you have any other work experience?

1 A. Yes. I worked for the Laborers
2 International 477 in Springfield, Illinois as an
3 Asbestos Worker.

4 **Q. How long did you -- were you an**
5 **Asbestos Worker?**

6 A. From November '95 to June of '99.

7 **Q. What did you do as an Asbestos**
8 **Worker?**

9 A. We worked -- I worked for
10 contractors out of the local hall, and we removed
11 asbestos on various amount of different jobs.

12 **Q. Did you have any special**
13 **certification or training in order to do asbestos**
14 **abatement work?**

15 A. Yes. I held an asbestos worker's
16 license during that time.

17 **Q. What did you have to do to get that**
18 **worker's license?**

19 A. I had to take a 40 hour course to
20 obtain the asbestos worker's license.

21 **Q. What did that 40 hour class entail?**

22 A. Actually the 40 hour course in
23 detail goes over the NESHAP regulations, all the
24 IDPH regarding for schools and commercial

1 buildings, and it also teaches the proper
2 procedures in abating -- proper procedure in
3 abating asbestos.

4 **Q. When did you first take that class?**

5 A. First took that test in November of
6 '95.

7 **Q. And you just said test. Was there a**
8 **test involved with that 40 hour class?**

9 A. There is.

10 **Q. What did that test cover?**

11 A. It covered all of the materials that
12 you learned during the 40 hour work week.

13 **Q. Did you pass that test?**

14 A. Yes, I did.

15 **Q. Other than the 40 hour class, did**
16 **you have to take any other training while you were**
17 **an asbestos worker?**

18 A. We continued training classes as far
19 as PPA and proper training on the proper
20 equipment, training equipment, and that's about
21 all.

22 **Q. Were there any other formal classes**
23 **that you had to take during that time as an**
24 **asbestos worker?**

1 A. No.

2 Q. Were there any refresher classes or
3 anything you had to take?

4 A. Yearly you have to take an eight
5 hour refresher course for asbestos worker's
6 license.

7 Q. Did you take that every year you
8 were an asbestos worker?

9 A. Yes.

10 Q. Were there any tests involved with
11 that training?

12 A. Yes.

13 Q. And did you pass all of those tests?

14 A. Yes.

15 Q. So you were -- you said you were an
16 asbestos worker from '95 until 1999. 1999 is when
17 you started working with the agency; is that
18 correct?

19 A. Correct.

20 Q. Did you have to take any
21 certification or training once you began working
22 with the Illinois EPA?

23 A. The requirement to get the job
24 classification was to obtain -- to obtain and

1 carry an asbestos worker's license. Once being
2 hired upon the -- with the agency, we was required
3 to take an asbestos inspectors course.

4 **Q. And what did the asbestos inspectors**
5 **class entail?**

6 A. The inspectors course was -- teaches
7 you how to take proper samples, how to observe
8 compliance or noncompliance of federal and state
9 regulations.

10 **Q. Was there any other training that**
11 **you took when you first started with the agency?**

12 A. Yes. I took a National Enforcement
13 of Training Institution for a basic inspectors
14 course through the United States EPA.

15 **Q. What did that course entail?**

16 A. That was a little broader than just
17 asbestos. It also talked about land issues and
18 things to look for in the field as an inspector.

19 **Q. Did you have any other asbestos**
20 **related training while working with the Illinois**
21 **EPA?**

22 A. No -- oh, yes, I did. Correct. I
23 obtained an asbestos supervisor's license while I
24 was with the Illinois EPA, also.

1 **Q. How did you get the asbestos**
2 **supervisor's license?**

3 A. First, there's a 2,000 hour
4 requirement to obtain that license, and then you
5 have to take a course, a basic course, just like
6 the asbestos worker's course and then be tested
7 for it, also.

8 **Q. Were there any refresher courses**
9 **related to the supervisor license?**

10 A. Every year.

11 **Q. You said there was a 2,000 hour**
12 **requirement. What was that?**

13 A. That's hours that's -- that you need
14 to have in the field for knowledge of the asbestos
15 field itself.

16 **Q. Besides the formal classes that you**
17 **took, did you have any kind of on the job**
18 **training?**

19 A. Yes. Mr. Alan Grimmit (phonetic),
20 who is an Environmental Associate with the
21 Illinois Environmental Protection Agency, gave me
22 a two week training course in the field on the job
23 training.

24 **Q. And what did that two week course**

1 **cover?**

2 A. He actually took us in the field,
3 and we actually did compliance inspections. We
4 followed up with the actual reports, the actual
5 taking samples, actually taking photographs, and
6 following up with the compliance office.

7 **Q. Now, after you took that training,**
8 **what were your duties and responsibilities as an**
9 **inspector with the Illinois EPA Bureau of Air?**

10 A. My job was to -- I was in the Des
11 Plains area -- actually, I was in the Maywood area
12 when I first went to Chicago. I was responsible
13 for the whole district, whole Cook County and Lake
14 County and Kaskaskia County.

15 **Q. But what did you do as an inspector**
16 **in that area?**

17 A. As an inspector in that area I went
18 out to commercial buildings, I went to anything
19 that fit the NESHAP requirements. NESHAP stands
20 for National Emission Standards for Hazardous Air
21 Pollutions.

22 **Q. And what did you do at those sites?**

23 A. Usually -- protocol for going on an
24 inspection was -- usually how I found out about a

1 lot of jobs was usually two tier. Either off of a
2 -- excuse me -- off of a complaint that was called
3 into the agency or a notification which is
4 required for demolition or renovation.

5 **Q. Why did the Bureau of Air conduct**
6 **inspections of asbestos projects?**

7 A. They conducted these inspections to
8 find out if companies who were removing the
9 asbestos were in compliance of the NESHAP
10 regulations.

11 **Q. While you were a Bureau of Air**
12 **Inspector, about how many inspections did you**
13 **conduct in a year?**

14 A. About 120 a year.

15 **Q. Were there any -- did the Bureau of**
16 **Air itself put any restrictions on how many you**
17 **needed to do a year?**

18 A. They requested that we did ten a
19 month.

20 **Q. Just to reiterate, what kind of**
21 **projects did you inspect while you were a Bureau**
22 **of Air Inspector?**

23 A. Mostly commercial buildings.
24 Commercial buildings or apartment complexes that

1 were considered four or more units.

2 **Q. And I understand those are the kinds**
3 **of buildings that you inspected. What kind of**
4 **projects at those buildings did you inspect?**

5 A. I've done inspections from
6 variations of basic tile removal, 12-by-12 tile --
7 9-by-9 tile removal, 12-by-12 tile removal to
8 spray-on acoustical ceilings.

9 **Q. You used the term earlier**
10 **renovation, is that a type of project?**

11 A. Yes, it is.

12 **Q. Were there any other like name type**
13 **of projects that you would inspect?**

14 A. Demolitions.

15 **Q. So was that it, demolitions and**
16 **renovations?**

17 A. Correct.

18 **Q. Now, because this case is focussed**
19 **around a renovation, I would like to ask you some**
20 **questions about asbestos related renovation**
21 **projects.**

22 A. Correct.

23 **Q. You talked about earlier the NESHAP.**
24 **How does the NESHAP apply to renovation projects?**

1 A. Upon -- before a NESHAP job, it is a
2 requirement to have the building inspected prior
3 to the renovation. Then also there is a notice
4 requirement, also, a 10-day notice requirement by
5 the company to the agency.

6 **Q. Is there a need for a notice for all**
7 **renovation projects?**

8 A. No.

9 **Q. What renovation projects require a**
10 **notification?**

11 A. Ones that require 280 linear or 160
12 square foot.

13 **Q. So then that's square foot of what?**

14 A. Usually of -- basically floor tile
15 or anything that may be nonfriable.

16 **Q. Is there any specific name for that**
17 **material that you're referring to?**

18 A. The nonfriable is nonregulated
19 material.

20 **Q. What does friable mean?**

21 A. Friable is anything that's
22 pulverized or that could be crushed or crushed by
23 hand pressure.

24 **Q. And is this -- this is asbestos**

1 **containing material?**

2 A. This is regulated asbestos
3 containing material, yes.

4 **Q. You just used the term regulated**
5 **asbestos containing material?**

6 A. Yes.

7 **Q. What does that mean?**

8 A. That is material that is usually
9 friable material that has to be notified by the
10 companies prior to a renovation or demolition.

11 **Q. Is there a limit for how much**
12 **asbestos is in that material?**

13 A. It has to be greater than 1 percent.

14 **Q. And why is friable material**
15 **regulated versus nonfriable?**

16 A. It's cancer causing, causing
17 cancers.

18 **Q. Getting back to your actual**
19 **inspections, how would you conduct an inspection?**
20 **Could you walk us through the typical procedure**
21 **for an inspection.**

22 A. Yes. I would usually arrive at a
23 site. Sometimes I would find a supervisor who was
24 on the site and let them know who I am. There are

1 times where, you know, I'd have an inkling of
2 knowing that something isn't right inside or
3 something like that and I would just go inside the
4 containment without notifying anyone.

5 What I would do usually is I would
6 enter the buildings usually with a suit and mask
7 on already because sometimes it was better if I
8 was kind of there on surprise inspections because
9 a lot of times in the asbestos world if --

10 MR. IMMEL: Madam Hearing Officer, I
11 want to object to the asbestos world. The
12 Pollution Control Board has adopted regulations.
13 They're set forth right in the complaint. We know
14 what they are. I don't care what his suspicions
15 are about the asbestos world.

16 We have a case at a place.
17 Basically it sounds like from the remarks he's
18 made so far, he's apparently got a dirty view of
19 the industry as a whole. This is a soap box to
20 discuss people who don't have anything to do with
21 this case where he's got a bad feeling about
22 something or because he wants to take --

23 HEARING OFFICER: Mr. Immel, I get
24 your point. Are you almost done with this line?

1 I mean, are we going to get to the actual --

2 MR. MANKOWSKI: Yes. I was trying
3 to for the Board's edification go through what a
4 regular inspection is. I can go straight to the
5 inspection at hand.

6 HEARING OFFICER: Well, you can
7 finish if you're almost done, but yeah, I'd like
8 to get to the actual case at hand.

9 Q. (By Mr. Mankowski) Mr. Zappa, we
10 were going through what you normally do at an
11 inspection. I guess what are you normally looking
12 for when you would inspect an asbestos project?

13 A. Dry removal or any type of
14 regulation that is being -- not in compliance.

15 Q. So you're looking for noncompliance?

16 A. Correct.

17 Q. You just said dry removal, what is
18 dry removal?

19 A. Dry removal is the removal of
20 asbestos without adequately wetting material.

21 Q. What does adequately wet mean?

22 A. Adequately wetting a material is
23 bringing -- adequately wetting a material is
24 wetting a material that is penetrating a material

1 to -- I've lost my mind. Adequately wetting a
2 material is that of penetrating waters or some
3 other substrate to show that the material isn't
4 releasing fibers.

5 Q. Is that a requirement of the NESHAP?

6 A. Yes.

7 Q. Why does the NESHAP require that
8 asbestos containing material is kept wet?

9 A. When it's adequately wet, it keeps
10 the fibers from releasing into the environment.

11 Q. After you complete an inspection,
12 was there anything that you generate after that to
13 memorialize the inspection?

14 A. A report.

15 Q. Did you do a report for every
16 inspection?

17 A. Yes.

18 Q. Was this a Bureau of Air policy to
19 create an inspection report?

20 A. Yes.

21 Q. Okay. I think we can move forward
22 to the matter at hand today, you know, the reason
23 why we're here.

24 Mr. Zappa, are you familiar with the

1 **State's complaint against General Waste Services,**
2 **Incorporated?**

3 A. Yes.

4 Q. **So you're familiar with General**
5 **Waste Services, Incorporated?**

6 A. Yes.

7 Q. **How are you familiar with General**
8 **Waste Services?**

9 A. At first just by seeing a name on
10 notifications as a contractor for removing
11 asbestos containing materials.

12 Q. **And related to the State's case that**
13 **we're here on today, how did you come in contact**
14 **with General Waste Services?**

15 A. It was through the notification
16 process that I had seen the job actually for 3701
17 Memorial Drive and that the contractor was General
18 Waste.

19 Q. **So that notification came to your**
20 **office?**

21 A. Correct.

22 Q. **I'm going to hand you --**

23 MR. MANKOWSKI: Permission to
24 approach the witness.

1 HEARING OFFICER: (Nods).

2 Q. (By Mr. Mankowski) I'm going to
3 hand you what has been marked or what has been
4 entered as People's Exhibit No. 2. What is
5 People's Exhibit No. 2?

6 A. This is the notification renovation
7 or demolition.

8 Q. And what is that notification for?

9 A. This is a -- first of all, it gives
10 you different types of notification which is
11 either original or revised or cancelled. It also
12 gives the facility description. It tells you
13 exactly how much asbestos is being removed, and it
14 gives the asbestos contractor name. Also, in this
15 case, it was the owner of the building's name.

16 Q. Who's named in that notification?

17 A. General Waste Services,
18 Incorporated.

19 Q. What project was that notification
20 submitted for?

21 A. 3701 Memorial Drive, Belleville, St.
22 Clair, Illinois.

23 Q. Did that notification state how much
24 regulated asbestos containing material was

1 **supposed to be removed during that project?**

2 A. That was 6,714 square foot.

3 Q. **Is that the notification that you**
4 **saw before you went to the site?**

5 A. Yes.

6 Q. **When did you observe the project at**
7 **3701 Memorial Drive?**

8 A. That was August 4th.

9 Q. **And what year was that?**

10 A. That was 2005.

11 Q. **And what time did you arrive on**
12 **site?**

13 A. 9:30 or ten o'clock.

14 Q. **And I'm going to hand you what has**
15 **been entered as People's Exhibit No. 3. What is**
16 **People's Exhibit No. 3?**

17 A. The asbestos report or known as
18 memorandum.

19 Q. **Did you generate that report?**

20 A. Yes, sir.

21 Q. **Is that report related to the**
22 **renovation project at 3701 Memorial Drive?**

23 A. Correct.

24 Q. **When you arrived at the site on**

1 **August 4th, 2005, what did you do?**

2 A. Got out of the vehicle. Went to the
3 west side of the building at 3701 West -- 3701
4 Memorial Drive. I saw Mr. Calvin Johnson exiting
5 a building. Then I displayed or told him who I
6 was, told him what I was there for. I entered the
7 building. Put on my PPE.

8 **Q. What's the PPE?**

9 A. Protective equipment, Personal
10 Protective Equipment.

11 **Q. Also, to clarify the record, who is**
12 **Calvin Johnson?**

13 A. Calvin Johnson was the supervisor on
14 the job site that day.

15 **Q. When you spoke with Calvin Johnson,**
16 **did he say anything to you when you first met him**
17 **at the site?**

18 A. He granted me permission to go
19 inside and then -- no, not at that time.

20 **Q. After you spoke with Mr. Johnson,**
21 **you put on your protective gear?**

22 A. Yes.

23 **Q. And then what did you do next?**

24 A. I entered into the contained area.

1 **Q. Okay. What -- maybe to clarify the**
2 **record, what kind of building is 3701 Memorial**
3 **Drive?**

4 A. It's a rectangular building with two
5 floors with approximately 10,000 square foot,
6 5,000 on each floor. Rooms to the west and to the
7 east with a hallway on the second floor with an
8 exit to the north of the building.

9 **Q. And this was an apartment building?**

10 A. Yes.

11 **Q. Where did you enter the building?**

12 A. There was an entrance on the west
13 side of the building.

14 **Q. And what kind of room did you enter**
15 **when you entered the building?**

16 A. Right inside -- immediately inside
17 the building is the clean room, shower and then an
18 equipment room.

19 **Q. Okay. And could you clarify what a**
20 **clean room is?**

21 A. A clean room is where an asbestos
22 worker would take off his street clothes and put
23 on his Personal Protective Equipment to enter into
24 the containment.

1 **Q. You said the next room was a shower**
2 **room?**

3 A. Shower room.

4 **Q. What is a shower room?**

5 A. Basically it's just a little 3-by-3
6 little shower that separates the clean room and an
7 equipment room.

8 **Q. And what's the purpose of the**
9 **shower?**

10 A. To be able to decontaminate on the
11 way out of the containment.

12 **Q. Did you observe anything about the**
13 **shower room that day?**

14 A. The shower was dry.

15 **Q. Did you use the shower that day?**

16 A. No.

17 **Q. So from the shower you went to the**
18 **-- what did you call the next room after the**
19 **shower?**

20 A. Equipment room.

21 **Q. What's the equipment room?**

22 A. Equipment room is usually where they
23 would store their equipment, some of their
24 equipment, as the day is over. At the end of the

1 day this is also a room that they enter and derobe
2 their personal equipment before they enter into
3 the shower.

4 **Q. Then you said you entered the**
5 **containment. What kind of containment was present**
6 **at 3701 Memorial Drive on August 4th, 2005?**

7 A. They had the whole two -- two
8 floors, two story building, contained in plastic
9 sheeting.

10 **Q. How was that sheeting attached?**

11 A. On the floors, on the walls and
12 around any critical points around windows or
13 electrical outlets or anything like that. It's
14 usually attached either by glues or staples.

15 **Q. What's the purpose of that plastic**
16 **sheeting?**

17 A. To keep the emissions from entering
18 the environment on the outside.

19 **Q. Was there any other parts of the**
20 **containment used other than just the plastic**
21 **sheeting?**

22 A. Again please.

23 **Q. Other than the plastic sheeting,**
24 **were there any other parts to this containment**

1 **used by General Waste?**

2 A. No.

3 **Q. There was no -- there's no machines**
4 **or anything that they use?**

5 A. There's negative air machines.
6 Presently in this containment there was four
7 negative air machines, two on each floor.

8 **Q. What's a negative air machine?**

9 A. A negative air machine is a big
10 vacuum that sucks the air inside through HEPA
11 filters that are placed inside of the vacuum
12 cleaner in order to not let the contaminated air
13 escape into the environment on the outside.

14 **Q. Did you have any opinion of the**
15 **containment that General Waste used for this**
16 **project?**

17 A. It was in good condition.

18 **Q. After you entered the containment,**
19 **what did you do next?**

20 A. The first thing that I had observed
21 was in the southwest room on the first floor there
22 was regulated asbestos containing material that
23 was a spray-on acoustical material attached to the
24 ceiling had been on the floor. It had been torn

1 down and it was on the floor in various sizes.

2 This material was completely dry.

3 **Q. Okay. How did you know it was**
4 **regulated asbestos containing material?**

5 A. The notification tells me that there
6 was 6,714 square foot of material that was going
7 to be removed as regulated asbestos containing
8 material.

9 **Q. So prior to entering the building,**
10 **did you know what General Waste was there to**
11 **remove?**

12 A. No.

13 **Q. So how did you know that the ceiling**
14 **material was the material listed in the**
15 **notification?**

16 A. From my professional experience.

17 **Q. And you said this material was dry?**

18 A. Dry.

19 **Q. Was anybody else on the first floor**
20 **with you when you saw this?**

21 A. No.

22 **Q. And this material was laying on the**
23 **floor in a room?**

24 A. Correct. It was laying on the

1 floor. There was -- on a ladder inside this room,
2 there was material that was still on the rungs of
3 the ladder that was completely dry, also. At this
4 time I went to the second floor using the north
5 stairwell to examine the area where the removal
6 was taking place.

7 As I come up the stairs, I observed
8 the laborers. One laborer with a broom in his
9 hand and a metal shovel, which is not required in
10 an asbestos containment, and I also saw --
11 observed a laborer tearing down the regulated
12 asbestos contained material that was completely
13 dry letting it drop to the floor, and then as he
14 was letting it drop to the floor, another laborer
15 was placing it into a 55 gallon drum with a
16 plastic container inside that 55 gallon drum.

17 As they saw me approach, they
18 grabbed a hose with -- they grabbed a hose and
19 water started to be sprayed around very
20 vigorously.

21 **Q. Just to clarify a little more, what**
22 **was the material that they were removing?**

23 A. The material was a spray-on
24 acoustical ceiling material that could have been

1 sprayed on or troweled on.

2 **Q. What was it sprayed on to?**

3 A. It was dry wall.

4 **Q. Okay. You said when you got to the**
5 **top of the stairs you saw the workers removing**
6 **this material and they weren't applying water when**
7 **they removed it?**

8 A. Correct.

9 **Q. How did you know that the material**
10 **was dry when you got up there?**

11 A. Because there was no moisture on the
12 plastic around them. There was no moisture on the
13 material itself. The material hadn't turned any
14 color as far as it usually has a gray or a tan
15 backing. Usually water that penetrates that type
16 of material will color when it's moist or wet.

17 **Q. After you saw the employee use the**
18 **hose, what did you do next?**

19 A. I immediately stopped them and asked
20 them not to apply any water to the area because I
21 needed to get into that area and finish with my
22 inspection.

23 **Q. What did you do after that?**

24 A. I took a sample of the material in

1 the hallway on the floor of this regulated
2 asbestos containing material --

3 MR. IMMEL: Objection to his
4 continuing using the term regulated. There's no
5 foundation yet been laid for proof that this
6 particular material was indeed asbestos containing
7 material.

8 HEARING OFFICER: Do you want to
9 clarify that in your questioning?

10 MR. MANKOWSKI: We can do that,
11 Madam Hearing Officer.

12 MR. IMMEL: There's a notice I
13 understand that for a building, but that -- that's
14 because it says there's asbestos in the building.
15 It doesn't say exactly what is or what is not.

16 HEARING OFFICER: You want him to
17 just explain it?

18 MR. IMMEL: I just want to lay the
19 foundation for my objection properly.

20 Q. (By Mr. Mankowski) Mr. Zappa, how
21 do you know the material that the employees were
22 removing was regulated asbestos containing
23 material?

24 A. From my personal experience I saw

1 that all the ceilings in all of the rooms had been
2 torn down except for a small area that they hadn't
3 completed yet on the second floor. I realized in
4 my professional experience that this ceiling
5 material, which was a spray-on acoustical, had to
6 fit the surface area of 6,714 square foot.

7 **Q. Was that material tested at all?**

8 A. That material was tested.

9 **Q. Who tested the ceiling material in**
10 **this building?**

11 A. Farmers Environmental.

12 **Q. How do you know that Farmers tested**
13 **this material?**

14 A. Upon the -- after my inspection, I
15 had contacted Mr. Knobloch from the -- he was the
16 contact for the owner which was from Belleville
17 Memorial Hospital. He gave me the information and
18 the contact with Farmers Environmental and I was
19 able to obtain -- actually he got the inspection
20 from Farmers Environmental and e-mailed me the
21 copy of the inspection.

22 **Q. I'm going to hand you what's been**
23 **marked as People's Exhibit No. 5. What is**
24 **People's Exhibit No. 5?**

1 A. This is the asbestos inspection
2 reported by Farmers Environmental.

3 **Q. Okay. What materials did Farmers**
4 **test in 3701 Memorial Drive?**

5 A. There was several different
6 materials that was tested in this area. There was
7 9-by-9 tile floor, 12-by-12 tile floor, there was
8 sheet flooring, there was sheet rock, there was
9 transite siding, exterior gray, window caulk,
10 mortar, ceramic tile adhesive, textured ceiling
11 plaster throughout was a white/tan color.

12 **Q. The textured ceiling plaster, is**
13 **that what you saw being removed in the building?**

14 A. Correct.

15 **Q. You said Farmers tested the textured**
16 **ceiling plaster?**

17 A. Correct.

18 **Q. What were the results of their test?**

19 A. Positive for Chrysotile which is a
20 form of asbestos.

21 **Q. And how many samples of the ceiling**
22 **plaster did they take?**

23 A. Seven.

24 **Q. And what were the results of those**

1 **seven samples that they tested?**

2 A. 20 to 25 percent.

3 **Q. Was that on all seven?**

4 A. Yes.

5 **Q. So all seven samples of the ceiling**
6 **plaster that Farmers took all came up positive for**
7 **containing asbestos?**

8 A. Yes.

9 **Q. Did you sample any of the ceiling**
10 **material?**

11 A. Yes, I did.

12 **Q. How many samples did you take?**

13 A. Three samples.

14 **Q. Where did you take those three**
15 **samples?**

16 A. I took one sample second floor
17 hallway, I took one sample on the southwest room
18 on the first floor, and I took a sample out of one
19 of the 55 gallon drums inside a bag out area where
20 drums were stored from material previously
21 removed.

22 **Q. And what were the results of the**
23 **three samples that you took or did you have those**
24 **three samples tested?**

1 A. Yes, I did. I had three samples
2 tested by Stat (phonetic) Laboratories. The first
3 two samples came back negative, and the third
4 sample came back positive for 5 percent.

5 **Q. Where was the third sample taken**
6 **from just to clarify?**

7 A. In the bag out room where they have
8 some 55 gallon storage -- 55 gallon drums stored
9 in a storage area.

10 **Q. Do you have any explanation why the**
11 **samples that Farmer took all came back positive**
12 **and two out of the three you took --**

13 MR. IMMEL: I'm going to object to
14 any of the sampling. He's not qualified to answer
15 the question. The samples are what they are.

16 HEARING OFFICER: He just asked him
17 if he knew why.

18 MR. IMMEL: As soon as he answers,
19 he's going to be answering outside the area of
20 expertise, and he's going to be giving an answer
21 that should not go into the record because there's
22 no foundation whatsoever for him to give the
23 answer.

24 HEARING OFFICER: I'll allow him to

1 give his professional opinion.

2 MR. IMMEL: How could he -- Madam
3 Hearing Officer, I'd like to be heard on this. We
4 know what his professional qualifications are.
5 He's an asbestos inspector. We're now talking
6 chemistry lab. He has no expertise whatsoever
7 listed in his resume or his testimony that would
8 qualify him to testifying on why a laboratory
9 result would turn out the way that it did done by
10 a chemist in a laboratory. He has no -- he's not
11 qualified to answer that question, and he's just
12 been asked that very question.

13 MR. MANKOWSKI: I think that Mr.
14 Zappa is -- through his professional experience
15 can give us his opinion as to why the samples that
16 he took, why one came back positive and two came
17 back nondetect --

18 HEARING OFFICER: Well, Mr. Immel,
19 the Board does have Mr. Zappa's resume. I'm going
20 to allow him to give his opinion on this matter,
21 and we'll let the Board decide whether he's
22 qualified or how much weight it should carry.

23 THE WITNESS: Okay. The ceiling of
24 course is a homogenous material which is all

1 alike. The material that I took from the hallway
2 and from the southwest hallway that are or
3 southwest room that came back negative was taken.
4 The reason why it did not -- why I feel the reason
5 that it didn't come back is because the ceiling is
6 very old, at least 50 years old as the building
7 states it's a 50-year-old building. During the
8 time of age, there could be water leaks or
9 anything where they have to scratch those surfaces
10 or because I didn't take a core sample is another
11 reason why I could have got the wrong layer of
12 material.

13 **Q. (By Mr. Mankowski) Had you ever**
14 **seen this happen in other inspections you'd done?**

15 A. Yes.

16 **Q. But you did have one sample that**
17 **came up positive?**

18 A. Correct.

19 **Q. Just to clarify could you explain**
20 **what kind of sample you took?**

21 A. I took a bulk material sample which
22 is just a piece of the material from the ground
23 versus what a core sample would be would be the
24 Farmers Environmental used a coring tool that

1 actually goes through the surfacing material and
2 takes the whole core all the way from the
3 beginning to the end for analysis.

4 MR. IMMEL: I'm going to object to
5 that testimony on the ground that I've been
6 through this Farmers report. If he can show us
7 where it says they did that because there's no --

8 THE WITNESS: That's just my
9 opinion.

10 MR. IMMEL: Now, he's expressing his
11 opinion as to how somebody else took a sample. I
12 definitely object and ask that that be stricken.
13 He has no way of knowing how far --

14 HEARING OFFICER: I don't remember
15 the question. Did you ask him how the sample was
16 taken?

17 MR. IMMEL: He asked how Farmers
18 collected their samples.

19 MR. MANKOWSKI: I asked how Mr.
20 Zappa took his sample, and he also stated how he
21 thought Farmers took the sample. I --

22 Q. (By Mr. Mankowski) Mr. Zappa, you
23 don't know how Farmers took the sample?

24 A. Correct.

1 Q. But just for clarification what is a
2 core sample?

3 A. A core sample is a core -- it's a
4 tool that they inject into the surfacing material
5 and takes various amount of layers of the material
6 for analysis.

7 Q. You 'didn't do a core sample?

8 A. No, I didn't.

9 Q. Now, after you read the -- after
10 your sample results came back and after you read
11 the Farmer report, you thought that the ceiling
12 material was regulated asbestos containing
13 material?

14 A. Correct.

15 Q. Getting back to the events of August
16 4th, 2005, when you were doing your inspection,
17 when we left off you had -- you were on the second
18 floor, you had an interaction with employees and
19 at that point you had seen them or you told them
20 to stop working and you took a sample. What
21 happened after that?

22 A. After I had gained my sample, I told
23 the guys they could continue watering down the
24 material, and I continued my inspection by going

1 back downstairs into an area underneath the --
2 actually it's in the storage area where they were
3 storing 55 gallon drums and took another sample
4 there.

5 **Q. That was the third sample?**

6 A. Yeah. I opened one of the leak
7 tight containers. This one itself was not sealed.
8 They usually seal these containers with duct tape
9 around the edges of the metal rings on these
10 containers before they are entered into the
11 container that's usually stored outside. But the
12 dumpster had not arrived yet so they were storing
13 them in this room.

14 **Q. What was the condition of the --**
15 **what material was inside of that 55 gallon drum in**
16 **the bag out area?**

17 A. This was alleged suspect or
18 regulated material that was completely dry.

19 **Q. Was this the ceiling material?**

20 A. Yes.

21 **Q. And you said it was dry?**

22 A. I thought it was dry.

23 **Q. Was there any moisture in the bag?**

24 A. None whatsoever.

1 **Q. What did you do after you took that**
2 **sample?**

3 A. At that time I went through the
4 equipment room and I took off my protective --
5 Personal Protective Equipment, first layer of
6 suit. I put it into a bag that is required that
7 you off your equipment into before entering into
8 the shower. I went through the shower and took
9 off my second suit before I exited the building.

10 **Q. You said you were wearing two suits.**
11 **Is that -- was that common practice?**

12 A. That is common practice for an
13 asbestos inspector just because of the simple fact
14 a lot of times you go into areas that are
15 contaminated areas that you just do not have the
16 facilities in order to take a shower with.

17 **Q. So that was standard practice for**
18 **you?**

19 A. Standard practice for me.

20 **Q. What did you do after you left the**
21 **containment?**

22 A. Actually, I spoke with Mr. Calvin
23 Johnson, and I instructed him about the violations
24 that I had noticed inside of the building. At

1 first he had given me some excuses, but then he
2 was apologetic at the end. At the end of the
3 thing the guys had taken their lunch. They all
4 came out of the containment, and I was able to
5 explain to them that, you know, that we don't take
6 dry removal lightly. They are licensed asbestos
7 abatement workers and they should follow all of
8 the regulations provided for them.

9 **Q. Did Mr. Johnson say anything**
10 **specifically to you?**

11 A. Yeah. He became honest with me and
12 he acknowledged he had messed up.

13 **Q. Did he explain at all why they**
14 **weren't using water?**

15 A. Yes, he did. He had told me they
16 were having some problems with the electrical
17 inside of the breakers that were going off and
18 that he was having problems keeping electric
19 inside the building.

20 **Q. Did he explain why he was outside**
21 **the building when you first arrived at the**
22 **building?**

23 A. Not at first.

24 **Q. When you spoke with him after you**

1 **had exited the building?**

2 A. Yes. He explained to me that he was
3 trying to -- he had problems with the breaker and
4 that he was trying to get the situation right.

5 **Q. Did you do anything to memorialize**
6 **your inspection that day? Did you take any**
7 **pictures?**

8 A. I took photographs, about 33 or 34
9 photos, while I was inside the containment,
10 samples and then generated a week or so later a
11 report.

12 **Q. That's the report that's been**
13 **entered as People's Exhibit No. 3?**

14 A. Correct.

15 **Q. I'm going to hand you what has been**
16 **marked or what has been entered as People's**
17 **Exhibit No. 4. It's a group exhibit and it**
18 **contains photographs. They're marked from 4a to**
19 **4gg. What is People's Exhibit No. 4 or Group**
20 **Exhibit No. 4?**

21 A. Photographs that I had taken while I
22 was inside the containment of the first and second
23 floor.

24 **Q. And do those photos fairly and**

1 **accurately show the site as you saw it that day?**

2 A. Very good.

3 **Q. I'd like to call your attention to**
4 **Exhibit 4a. They're marked on the back for**
5 **everybody's -- so they can follow along. What is**
6 **depicted in Exhibit 4 -- People's Exhibit 4a?**

7 A. This was the southwest room of where
8 they had torn down the ceiling with the sprayed on
9 acoustical material. It shows that its -- in its
10 stage after it's been torn down and several
11 different sizes and pieces and in dry condition
12 with no moisture anywhere to be seen.

13 **Q. In your professional opinion, is**
14 **that the proper way to remove ceiling that has**
15 **spray-on acoustical material on it?**

16 A. No. They should have removed this
17 -- prior to removing this ceiling down with water
18 and they should have kept the material wet prior
19 and to disposal of it in these 55 gallon drums,
20 leak tight containers.

21 **Q. Just maybe to actually describe the**
22 **picture itself, what's in the -- like the front of**
23 **the picture? Could you kind of describe the**
24 **picture within itself as to what we're looking at**

1 **here.**

2 A. The big piece that's in the middle
3 of the picture is the backing of the dry wall.
4 The white material that we are looking at also is
5 the spray-on acoustical material that allegedly
6 was the asbestos containing -- regulated asbestos
7 containing material that's in question here.

8 **Q. The plastic in the picture, is that**
9 **the containment?**

10 A. Yes, that is.

11 **Q. The whole building was covered on**
12 **the inside with that plastic sheeting?**

13 A. Correct.

14 **Q. Then I'm going to direct your**
15 **attention to -- it's 4e. What is depicted in**
16 **Exhibit 4e?**

17 A. This is more of the alleged
18 regulated asbestos containing material that is
19 dry. Of course inside there is also some of the
20 insulation that was behind it also inside this
21 container with a lined plastic sheeting in it.

22 **Q. Where was this picture taken?**

23 A. This picture was taken inside of the
24 bag out where they were storing the material.

1 They were storing it there for it to be exited out
2 of the building to the dumpster when the dumpster
3 arrived.

4 **Q. What condition was this ceiling**
5 **material in when you took this picture?**

6 A. Dry, friable material.

7 **Q. Is there any evidence of water or**
8 **moisture in this picture?**

9 A. None.

10 **Q. Then direct your attention to the**
11 **next picture in order, it's 4f. Where was picture**
12 **4f taken?**

13 A. The southwest room.

14 **Q. What's depicted in 4f?**

15 A. This is just small various pieces of
16 the material that had been torn from the ceiling,
17 torn down from the ceiling, with the insulation
18 that's behind it also on top of the containment
19 that is in this room, plastic sheeting.

20 **Q. What condition is the ceiling**
21 **material in in this photo?**

22 A. This material is in friable, dry
23 condition.

24 **Q. Is there anywhere in this picture**

1 **that's -- that you can point to within the picture**
2 **to show like where it's friable?**

3 A. Yes. All of the dust on the plastic
4 sheeting itself and all of the small pieces that
5 could be pulverized by hand pressure.

6 **Q. Is there any evidence of water or**
7 **moisture in this picture?**

8 A. None.

9 **Q. How would this picture be different**
10 **if it had been wet?**

11 A. The backing of course on the dry
12 wall there in the picture would have also changed
13 color, and on the plastic sheeting there would
14 have been moisture leaflets or droplets --
15 moisture droplets.

16 **Q. I'm going to direct your attention**
17 **to Photograph 4i. What is depicted in Photograph**
18 **4i?**

19 A. This is again more material that has
20 been torn down from the ceiling in a contained
21 area.

22 **Q. And which area of the building was**
23 **this taken in?**

24 A. Southwest area.

1 **Q. First or second floor?**

2 A. This would be the first floor.

3 **Q. And once again, is there any**

4 **evidence of water or moisture in this picture?**

5 A. None whatsoever.

6 **Q. I'd like to move on to 4g. Oh, that**

7 **is 4g. Sorry, it would be 4l. Sorry about that.**

8 A. Okay.

9 **Q. What's depicted in Photograph 4l?**

10 A. This is the ceiling which they would

11 have torn the ceiling down from from the rafters.

12 You can still see little pieces hanging from the

13 rafters where they've missed that they hadn't gone

14 back and cleaned up yet inside the containment.

15 **Q. What's that between the rafters?**

16 A. That is insulation.

17 **Q. And which room was this picture**

18 **taken in?**

19 A. Southwest room in the first floor.

20 **Q. Is there any evidence of water or**

21 **moisture present in this picture?**

22 A. None.

23 **Q. If the material had been adequately**

24 **wet, what should this picture look like?**

1 A. There would have been droplets on
2 the rafters and even the material that was still
3 left hanging there by the nails, some of that
4 material -- that material would still be wet,
5 also. The plastic would have had moisture on it
6 around, evidence of wetting the material.

7 **Q. How can you tell the remnants of**
8 **material attached to the rafters, how can you tell**
9 **that's not wet in this picture?**

10 A. Because it's a bright white in the
11 original state that it is before they tear the
12 material off the rafters.

13 **Q. How would that look if it were wet?**

14 A. That would turn a color of a grayish
15 color, and along with the insulation, that
16 insulation if it was wet, it would be soggy.

17 **Q. I'd like to move on to Exhibit 4o.**
18 **What is depicted in 4o?**

19 A. This is a piece of material inside
20 an asbestos bag that is plastic that is dry
21 asbestos containing material.

22 **Q. Where was this picture taken?**

23 A. This would have been taken inside
24 one of the containers.

1 **Q. Do you know which part of the**
2 **building that container was in?**

3 A. That would have been the bag out.

4 **Q. And once again, how do you know that**
5 **this material is dry?**

6 A. Just by the evidence of the white
7 color of the spray-on acoustical material, and
8 plus the insulation is still in the original state
9 of color.

10 **Q. Is there any evidence of water or**
11 **moisture in this picture?**

12 A. Absolutely not.

13 **Q. That's the state you saw this**
14 **material in on the day you took the picture?**

15 A. Correct.

16 **Q. To move on to it's 4v.**

17 MR. IMMEL: Is it Z or V?

18 MR. MANKOWSKI: V as in Victor.

19 MR. IMMEL: The picture of the
20 hammer?

21 THE WITNESS: No, that's U. With
22 the pry bar.

23 MR. MANKOWSKI: Yep.

24 MR. IMMEL: Excuse me, can I get

1 clear, 4u?

2 MR. MANKOWSKI: It is a U on that
3 one, right?

4 THE WITNESS: Yes.

5 MR. IMMEL: Is that the one we're
6 looking at, Mike, 4u?

7 MR. MANKOWSKI: Yeah, with the pry
8 bar. Sorry about that. My writing is not
9 perfect.

10 Q. (By Mr. Mankowski) What's depicted
11 in 4u?

12 A. This is the pry bar on top of the
13 material that they had torn down from the ceiling.
14 This would be the tool that they would use to help
15 tear down the ceiling with.

16 Q. Where was this picture taken?

17 A. This was taken in the hallway on the
18 second floor.

19 Q. Can you describe the picture, what
20 exactly is in this picture, where it was taken on
21 the second floor?

22 A. Yes. This is actually in one of the
23 entrances to the rooms to the left and the hallway
24 would have been to the right in the area where

1 they were removing the material.

2 **Q. What's directly above the pry bar?**

3 A. Directly above the pry bar is --

4 **Q. Is that a wall?**

5 A. That's a wall, yes.

6 **Q. And what's underneath the pry bar**
7 **and the ceiling material?**

8 A. That is a piece of plastic material.

9 **Q. Is there anything else present in**
10 **the picture?**

11 A. Yes, there is.

12 **Q. What else is present?**

13 A. Droplets of water.

14 **Q. Where did that water come from?**

15 A. This was the water that was sprayed
16 while I was noticed or observed in the hallway
17 watching the laborers tear down the ceiling.

18 **Q. That water being present on the**
19 **plastic sheet, the ceiling material around that**
20 **water, is that adequately wet?**

21 A. No. The material itself are you
22 talking about?

23 **Q. Yes. The ceiling material itself.**

24 A. No, it's not.

1 **Q. How do you know that material is not**
2 **adequately wet?**

3 A. By eye it's dry to touch. By eye
4 it's dry. It's crumbly. The material around it
5 is crumbly and it's still bright white.

6 **Q. Even though there's water present,**
7 **that material is not adequately wet?**

8 A. Right.

9 **Q. To move on to 4z -- sorry 4y. What**
10 **is depicted in 4y?**

11 A. These are the 55 gallon drums that
12 are storing the alleged spray-on acoustical
13 ceiling.

14 **Q. Where were those drums located?**

15 A. This was located to the west of the
16 building right outside the containment and to the
17 north of the southwest room.

18 **Q. Those are the drums that you**
19 **referred to in your -- the rest of your testimony?**

20 A. Yes.

21 **Q. Move on to the next picture, it's**
22 **4z. What is shown in 4z?**

23 A. This is of the sprayed-on acoustical
24 ceiling that they have removed from the ceiling

1 inside of an asbestos bag.

2 **Q. Where was that bag located?**

3 A. Inside of one of the 55 gallon drums
4 in the holding area.

5 **Q. What's the condition of that ceiling**
6 **material?**

7 A. It's dry.

8 **Q. Is there any evidence of moisture or**
9 **water in that picture?**

10 A. None.

11 **Q. Call your attention to the next**
12 **exhibit, it's 4aa. What's depicted in 4aa? It's**
13 **a bit fuzzy.**

14 A. This is out of one of the 55 gallon
15 drums. This was my third sample that was taken
16 out of the 55 gallon drum that tested positive for
17 asbestos containing material.

18 **Q. Is that the same drum that was**
19 **depicted in Exhibit 4z?**

20 A. Correct.

21 **Q. That's the same material?**

22 A. Yes.

23 **Q. That material, there's no -- there's**
24 **no water or moisture present in 4a either?**

1 A. Correct.

2 Q. Just a couple more. I think next

3 picture in line which is Exhibit 4b.

4 MR. IMMEL: I'm sorry, 4d?

5 MR. MANKOWSKI: 4bb.

6 MR. IMMEL: Bb as in boy?

7 MR. MANKOWSKI: Yeah, B as in boy.

8 Q. (By Mr. Mankowski) What's the

9 proper orientation for this photo?

10 A. This would have been card board

11 placed over a stairwell. At first I didn't

12 realize what they had used the card board for, but

13 it enabled them to get the 55 gallon drums down

14 from the second floor onto the first floor a

15 little easier.

16 Q. The orientation of the picture,

17 should it be profile or landscape?

18 A. Explain a little.

19 Q. Profile meaning up and down. Are we

20 looking up the stairs in this picture?

21 A. No. That would be up and down.

22 Q. Profile would be up and down?

23 A. Profile.

24 Q. That's the orientation that you took

1 **the picture in?**

2 A. Correct.

3 Q. **So that's looking going up the**

4 **stairs?**

5 A. Correct.

6 Q. **Is there any moisture on this card**

7 **board?**

8 A. Completely none.

9 Q. **Card board normally absorbs water?**

10 A. Correct.

11 Q. **And what's the white powder that's**

12 **all over the stairs?**

13 A. This would have been powder that was

14 torn down with the ceiling when they brought down

15 the ceiling.

16 Q. **Is that powder -- is there any**

17 **moisture present on that powder?**

18 A. None.

19 Q. **The next picture I'd like to direct**

20 **everyone's attention to is 4dd. D as in David.**

21 **Once again, Mr. Zappa, what's the correct**

22 **orientation for this picture?**

23 A. Profile.

24 Q. **And what's depicted in Exhibit 4dd?**

1 A. These were 55 gallon drums that were
2 in the hallway on the second floor with the dry
3 asbestos containing material in it. And it was
4 wetted down by the laborers when I was observed.

5 **Q. So is there water present in this**
6 **picture?**

7 A. There is moisture in these bags.

8 **Q. Could you describe what that looks**
9 **like in the picture?**

10 MR. IMMEL: Excuse me.

11 **Q. (By Mr. Mankowski) Could you**
12 **describe what the moisture looks like in this**
13 **particular picture?**

14 A. Like beads, beads of moisture.

15 **Q. On the plastic?**

16 A. On the plastic.

17 **Q. The material inside of these**
18 **containers, is that adequately wet?**

19 A. No.

20 **Q. So there is water present though?**

21 A. There is water present.

22 **Q. But that's not adequately wet?**

23 A. No.

24 **Q. Once again, how do you know that**

1 **that isn't adequately wet?**

2 A. I observed them previous to this
3 bringing down the ceiling in the hall in a dry
4 state, and I watched one of the laborers filling
5 the barrels with the material off the floor while
6 it was still in dry condition.

7 **Q. In this particular picture how do**
8 **you know looking at this picture that this**
9 **material isn't adequately wet?**

10 A. The bright white on the acoustical
11 spray-on and the backing of the dry wall is still
12 bright tan.

13 **Q. I'd like to move on to 4ee. It's**
14 **the next picture in line. Does this picture go**
15 **back to the landscape view --**

16 A. Yes.

17 **Q. What's depicted in this picture?**

18 A. This is again just more of the
19 ceiling that has been torn down that has spray-on
20 acoustical material on it that has been left on
21 the floor for them to gather or dispose of at a
22 later time in a contained area.

23 **Q. Do you know which area of the**
24 **building this was taken in?**

1 A. It was the first floor.

2 **Q. Is there any evidence of moisture on**
3 **that material?**

4 A. Absolutely not.

5 **Q. That's how it looked the day that**
6 **you took the picture?**

7 A. Correct.

8 **Q. After going through the pictures and**
9 **your testimony, what was the proper way to remove**
10 **this ceiling material?**

11 A. The proper way to remove the
12 material is taught in the training required for
13 asbestos containing workers is to remove the
14 material -- while removing the material, to wet
15 the material, wet the material while removing
16 material and keep the material wet upon disposal.

17 **Q. How wet does it have to be?**

18 A. At least enough to where it's moist
19 enough to touch that you can feel the moisture in
20 the material.

21 **Q. Is there any problem with the**
22 **acoustic spray-on material, is there any problem**
23 **with wetting that material?**

24 A. Not one so bit. The Amosite

1 asbestos, which is not in this case, it doesn't
2 permeate water. And if they were having -- if
3 there is a problem with wetting this type of
4 material, they should have had another plan to wet
5 this material with another agent.

6 **Q. What would have the -- what would**
7 **have the material looked like if they had done it**
8 **properly?**

9 A. It wouldn't have been such a bright
10 white. The backing of the material -- the color
11 would have been colored and the chalky material in
12 the middle would have been a little mushy.

13 **Q. Does the fact that the building was**
14 **under containment and negative air, does that**
15 **excuse the failure to wet?**

16 A. No, it doesn't. In fact, when they
17 were having power trouble, they should have
18 stopped the work or they could have had a backup
19 water source such as a Hudson sprayer which is a
20 container used for another way of dispersing
21 water.

22 **Q. Is there any time during a**
23 **renovation that you don't wet the material?**

24 A. Yes. In some areas where the water

1 could cause damage to something inside the
2 building but they still have to have permission
3 from the Environmental Protection Agency to not
4 wet the material if that's the case.

5 Q. Did General Waste request permission
6 to not wet?

7 A. No, sir.

8 Q. Is there any other reasons why they
9 wouldn't wet?

10 A. Not that I can think of right now,
11 sir.

12 Q. Okay. When you were on the second
13 floor and saw the employees removing material, was
14 Mr. Johnson present at that time?

15 A. No.

16 Q. Was Mr. Johnson present when you
17 were in the building at all?

18 A. I don't recall.

19 Q. Mr. Zappa, I'd like to just clear up
20 the record a bit. Go back to the Farmer
21 Environmental Report which was marked as People's
22 Exhibit No. 5.

23 A. Correct.

24 Q. You spoke a little bit about a

1 **homogeneous area. What is a homogeneous area?**

2 A. Homogeneous area would have been the
3 textured ceiling plaster throughout which was
4 removed from the ceiling.

5 **Q. Just in general, not talking about**
6 **the ceiling, what is a homogeneous area?**

7 A. It would be like for instance a
8 whole area of the same type of material.

9 **Q. How many homogeneous areas of**
10 **ceiling material did Farmer find present at this**
11 **site?**

12 A. One.

13 **Q. What does that mean?**

14 A. There was all of the same -- all of
15 the same type of asbestos which is Chrysotile.

16 **Q. So the whole ceiling was a**
17 **homogeneous area?**

18 A. Correct.

19 **Q. And the whole ceiling was considered**
20 **asbestos containing?**

21 A. Correct.

22 **Q. Also, just to be clear, when was**
23 **that report -- when was that done?**

24 A. The report was done May 11, 2005.

1 Q. And you were at the site on August
2 4th, 2005?

3 A. Correct.

4 Q. Do you know when General Waste began
5 removing the ceiling material at the site?

6 A. August 1st, I believe.

7 Q. Was that the day that they started
8 removing --

9 A. That was the day that they arrived
10 on site and started building the containment. I
11 do believe they started the actual removal on
12 August 2nd or August 3rd even maybe.

13 Q. Do you think it was the 2nd or the
14 3rd?

15 A. The 3rd.

16 Q. So that was the day before you
17 arrived at the site?

18 A. Correct.

19 Q. How much of the ceiling material was
20 remaining to be removed when you got to the site
21 at 9:30 on August 4th?

22 A. Maybe a quarter of the material
23 left.

24 Q. Okay. That was out of?

1 A. 6,714 square foot just of the
2 ceiling material. They probably had other
3 nonfriable materials that they had to remove.

4 MR. MANKOWSKI: No further
5 questions, Madam Hearing Officer.

6 HEARING OFFICER: Thank you.
7 Mr. Immel.

8 MR. IMMEL: I have a number of
9 questions. I was wondering if we could take a
10 break.

11 HEARING OFFICER: Yeah. Okay.
12 We'll take a five minute break.

13 (Wherein, a short break was taken.)

14 HEARING OFFICER: Mr. Zappa, I will
15 remind you that you are still under oath.

16 THE WITNESS: Correct.

17 CROSS-EXAMINATION

18 QUESTIONS BY MR. IMMEL:

19 **Q. Mr. Zappa, I got a couple things I**
20 **want to go through. I want to go through first**
21 **some of the testimony you just offered. With**
22 **respect to the training you received way back when**
23 **you started in this work, you indicated you'd been**
24 **through a 40-hour training course and then some**

1 **refreshers. Then you got a supervisors license**
2 **later that probably required another test,**
3 **correct?**

4 A. Correct.

5 Q. And there was some training for
6 **that, too?**

7 A. Correct.

8 Q. These various trainings, the term
9 **adequately wet came up in those trainings?**

10 A. Yes.

11 Q. You were given to understand if I
12 **heard your testimony correctly that adequately**
13 **wet, that term meant that water had penetrated the**
14 **material sufficient to show that the material was**
15 **not releasing fiber. I wrote that down as you**
16 **were speaking. Did I get that right?**

17 A. So it wouldn't release fibers, yes.

18 Q. So that it wouldn't release fiber
19 **when?**

20 A. Asbestos fibers during the removal
21 of the asbestos containing material and also as
22 instructed in the training to keep the wet
23 material -- the material wet while putting it into
24 containers, also, prior to disposal.

1 **Q. How does one test in an area to**
2 **determine whether fibers are releasing?**

3 A. Basically there's usually air
4 sampling techniques, air sampler on site that
5 takes air sampling samples during the removal
6 normally. A lot of times the samples can be
7 determined if there's any disturbance that would
8 have released fibers in the air during the
9 removal.

10 **Q. And the agency received a full set**
11 **of those samples during the course of this**
12 **project, didn't they?**

13 A. Yes, they did.

14 **Q. And results of those samples were**
15 **negative for asbestos found in the sampling?**

16 A. Found on that day in the asbestos
17 final report, there were no samples taken as of
18 that day that came back at all because something
19 was going on that day with the air sampler. I
20 have no idea, but he was not able to take those
21 samples to the lab and have them analyzed on that
22 day. I do believe it had something to do with the
23 -- nevermind. That's just opinion.

24 **Q. Excuse me. I'm looking for**

1 something and I don't know where it went. The
2 date you were there was August 4, 2005?

3 A. Correct. The air sampler didn't
4 have his air sampling machine on during the time
5 of my arrival.

6 Q. But there was a report on August 3
7 and August 5; is that right?

8 A. Correct.

9 Q. And those were all shown to be below
10 required standards; isn't that right?

11 A. Yes, sir.

12 Q. So the air sampling that we have
13 from the day before when the material was being
14 removed which was placed in a drum which you felt
15 was inadequately wetted and the day after your
16 visit, both of those dates there was no air
17 sampling that reflected the presence of released
18 fibers in the air; isn't that right?

19 A. Correct.

20 Q. Now, you indicated there were two
21 ways that you might be provoked let's say or
22 called upon to go to a site to inspect it. One
23 would be a complaint from a citizen or somebody to
24 the agency?

1 A. Yes.

2 Q. The other would be in response just
3 to receiving a notification that there was a job,
4 right?

5 A. Yes, sir.

6 Q. And in this instance there was no
7 complaint that brought you there, right?

8 A. No, sir.

9 Q. It was only the notification?

10 A. Yes, sir.

11 Q. You indicated when you arrived that
12 you were -- you put on two layers of protective
13 clothing?

14 A. Correct.

15 Q. And I think in another part of your
16 testimony you indicated that you had a reason for
17 using two layers. It sounded like it was for your
18 own ease of movement and convenience. Could you
19 describe why it is you wore two layers of
20 protective clothing?

21 A. In case there's no water present,
22 and plus sometimes I may be in buildings that does
23 not give the allowance of having a clean room,
24 equipment room and a shower.

1 Q. Okay. You indicated that you put
2 your clothing on and you went through the shower
3 to enter the building; is that right?

4 A. Correct.

5 Q. And the shower was you said was dry,
6 did you mean the floor was dry?

7 A. The floor was dry.

8 Q. That would indicate that nobody had
9 taken a shower?

10 A. Correct.

11 Q. Did you stop and check whether there
12 was water supply to that shower?

13 A. No, sir.

14 Q. Or attempt to turn it on --

15 A. No, sir.

16 Q. (continuing) -- to see if it would
17 work? You just didn't know at that point whether
18 the shower was functioning?

19 A. Correct.

20 Q. Did you assume that it wasn't?

21 A. No.

22 Q. But when you left you didn't use the
23 shower?

24 A. No.

1 Q. Is there a regulatory requirement
2 concerning the workers about use of the shower?

3 A. There is an OSHA requirement, yes.

4 Q. So that the people in the
5 containment are to -- when leaving are to remove
6 their protective clothing, place it in the dirty
7 room shall we say?

8 A. Yes.

9 Q. In the bag that was provided?

10 A. Yes.

11 Q. And then go through the shower,
12 shower and then leave?

13 A. Yes.

14 Q. You did not do that?

15 A. I used -- I did take one layer of
16 clothing off and left it behind in the equipment
17 room and left my second outer layer or inner layer
18 of equipment in the clean room before I exited the
19 building.

20 Q. But you didn't shower or rinse off
21 that clothing, you just went out and took the
22 second layer off?

23 A. In the room, yes.

24 Q. In the clean room?

1 A. In the clean room.

2 Q. And did not utilize the shower in
3 any way, didn't turn it on, didn't shower?

4 A. I didn't think that -- no.

5 Q. So your second layer that you kept
6 on was exposed to the environment of the dirty
7 room before you went through the shower?

8 A. That would have been correct.

9 Q. Okay. Now, you indicated that the
10 -- there were how many negative air machines
11 serving the building?

12 A. Two on each floor.

13 Q. Could you be wrong about that?

14 A. Yes.

15 Q. Why do you say that?

16 A. I just briefly read that from a
17 report and I could be wrong.

18 Q. Could it be that there had been in
19 fact eight machines, four per floor?

20 A. It's possible, yes.

21 Q. In the course of inspecting the
22 building you were looking at the quality and
23 configuration of the containment to make sure that
24 it was there and that it was proper, yes?

1 A. Yes.

2 Q. Because to be working in a poorly
3 constructed or an inadequate containment would
4 also be a regulatory violation; isn't that right?

5 A. Repeat yourself, sir.

6 Q. For this work to proceed in a poor
7 quality or inadequate containment would also be a
8 regulatory violation?

9 A. (No response).

10 Q. Let me back up and make it easier
11 for you.

12 MR. IMMEL: Strike that last
13 question.

14 Q. (By Mr. Immel) Is a containment
15 required by regulation?

16 A. Yes. With regulated asbestos
17 containing material great than -- yeah.

18 Q. For an asbestos abatement job which
19 this was being treated as --

20 A. Yes.

21 Q. (continuing) -- a containment is
22 required by regulation?

23 A. Correct.

24 Q. The containment must meet certain

1 standards to meet the regulatory requirements;
2 isn't that right?

3 A. Yes.

4 Q. And in the event that the standards
5 had not been met for the construction of this
6 containment, that would -- and these men were
7 working anyway, that would have been a violation
8 of regulations, yes?

9 A. According to the NESHAP, I don't
10 believe that is a NESHAP regulation.

11 Q. So if the containment is no good or
12 if there's none at all and the men are working,
13 that's not a violation of regulations?

14 A. I don't recall, sir -- I mean, I
15 know a containment is required, but I don't
16 believe by NESHAP regulations.

17 Q. What's it required by?

18 A. I do believe that's under IDPH or
19 OSHA regulations, one of the two.

20 Q. Okay. The negative air machines,
21 are they required to be there?

22 A. For -- yes.

23 Q. By NESHAP regulations?

24 A. No.

1 **Q. Or by OSHA?**

2 MR. MANKOWSKI: Madam Hearing
3 Officer, I'd like to object. This is getting into
4 regulations that are not related to the NESHAP
5 which is -- there -- this is covered under the
6 Illinois Department of Health Regulations which
7 Mr. Zappa did not enforce while he was a Bureau of
8 Air Inspector with the Illinois EPA so he doesn't
9 know anything about the Department of Health
10 Regulations.

11 MR. IMMEL: I'm trying to follow his
12 testimony, and he seems to speak with some degree
13 or attempts to speak with authority and competence
14 as to which regulations apply and which don't,
15 when certain regulations don't. I'm trying to
16 find out what his state of knowledge is as to --
17 for example, he commented earlier that the
18 containment was -- it was a very good containment,
19 and he commented that it had negative air and that
20 it had a certain number of machines. He obviously
21 was taking note of these things. I'm trying to
22 determine his understanding of his job and what it
23 is he's inspecting and why.

24 HEARING OFFICER: Can you ask him

1 more specific questions about his direct
2 testimony? I think that would help move things
3 along rather than abstract questions about the
4 rules.

5 THE WITNESS: Correct.

6 HEARING OFFICER: Where he derived
7 his direct testimony from. Something more --

8 Q. (By Mr. Immel) When you said the
9 containment was a good containment, what did you
10 mean by that?

11 A. That it was intact, there was no
12 visible holes. It had -- the containment itself,
13 the plastic from the walls was leaning in telling
14 me it was getting a good draw from the negative
15 air machine.

16 Q. Okay. If you had observed big holes
17 in plastic in the containment and plastic flapping
18 and hither and yon and the ability to get a clear
19 view of the outside world through big, gaping
20 holes in the building, would you have deemed that
21 to be a violation of the regulations that you
22 administered?

23 A. That would have been a 9A of the
24 NESHAP regulation, exposing the environment to the

1 air.

2 Q. Okay. So good containment is
3 required to avoid violating 9A?

4 A. Correct.

5 Q. Okay. So that is within the area
6 that you would pay attention to?

7 A. Yes.

8 Q. The quality of the containment?

9 A. Yes.

10 Q. And as an inspector, would you have
11 recommended that they cease working had there been
12 that kind of a condition when you arrived there on
13 the 4th?

14 A. Not necessarily ceased work. It
15 depended on how bad the containment was. In some
16 situations they could just patch up very quickly,
17 you know, at certain times.

18 Q. But fix it, right?

19 A. Fix it.

20 Q. You wouldn't want them removing
21 asbestos with big, gaping holes in the
22 containment, would you?

23 A. Correct.

24 Q. In the course of looking at this job

1 and looking at the containment, you noted the
2 presence of the negative air machines?

3 A. Yes.

4 Q. But at this point in time you can't
5 remember exactly how many there were?

6 A. I never inspected the negative air
7 machines themselves, no.

8 Q. These negative air machines are
9 connected to the containment through apertures
10 that permit them to work and those have to be
11 sealed up so that there's a nice tight seal much
12 like you stick a vacuum hose in a vacuum cleaner,
13 right?

14 Q. Not the machines themselves, just
15 the tubing.

16 Q. Yeah.

17 A. Where it exits. It's sealed by duct
18 tape and stuff like that so it won't let the air
19 out.

20 Q. Did you look at the apertures to see
21 that that was the case?

22 A. No.

23 Q. Because why?

24 A. That wasn't my concern at the time.

1 My concern at the time was from my first
2 inspection by seeing the type of material that was
3 on the ground and my other concern was how they
4 was removing that type of material.

5 **Q. Okay. You said from your first**
6 **inspection. Are you saying you've been there more**
7 **than once?**

8 A. No. I'm talking about the first
9 time I saw that material in that southwest room
10 from Exhibit 4a.

11 **Q. The photograph?**

12 A. By seeing that type of material
13 right there in Photograph 4a, that put me up in a
14 hurried up mode because I wanted to get upstairs
15 to check out how they were removing it physically.

16 **Q. Speaking of hurry up, how long were**
17 **you in the building?**

18 A. Approximately a half hour, 40
19 minutes.

20 **Q. Now, you were mentioning Exhibit 4.**
21 **Oh, good, you still have that in front of you.**
22 **Let me call your attention I might -- I want to**
23 **get the right photo. 4s, which is the one that's**
24 **got a picture of a plastic bag on top of some**

1 material with some sample bag, I think.

2 A. Correct.

3 Q. You got it in front of you?

4 A. Yes.

5 Q. There's a plastic bag depicted

6 clearly in there and got some writing in it.

7 Would that be a -- I think I see JZ would be your

8 initials?

9 A. Correct.

10 Q. And then the date August 4, '05.

11 Then there's an '01?

12 A. Correct.

13 Q. That would be, what, Sample

14 No. 1?

15 A. Correct.

16 Q. Okay. This would be Sample 1 of 3,

17 correct?

18 A. Correct.

19 Q. And just jumping ahead for a moment.

20 It was Sample No. 3 that came from the drum of

21 material and Samples No. 1 and 2, which were taken

22 -- I'm sorry, let's back up.

23 Sample No. 3 was taken from the drum

24 of material in the load out room, and the other, 1

1 **and 2, were taken elsewhere in the building in the**
2 **active work area, correct?**

3 A. Correct.

4 **Q. Where was Sample No. 1 collected?**

5 A. This is from material on the floor
6 in the southwest room.

7 **Q. Southwest room, that's where you**
8 **walked in initially?**

9 A. The first room, yes. The first
10 actual apartment room.

11 **Q. There's material inside the bag?**

12 A. Correct.

13 **Q. How did it get there?**

14 A. By me sampling by placing plastic
15 gloves on and taking a piece by hand and placing
16 it into the plastic bag and sealing it. And
17 placing it down from the area where I had sampled
18 from and took a photograph of it.

19 **Q. This material looks to have been --**
20 **it's obviously broken up in a little bit inside**
21 **the bag. How did it get that way? Is that the**
22 **way you pick it up off the floor or did you**
23 **crumble -- break something off a larger piece?**

24 A. No. That's the material I picked up

1 off the floor.

2 Q. Your purpose in lying it on top of
3 the other material to depict the kind of material
4 it is?

5 A. Yes, sir.

6 Q. Now, I'm looking now underneath that
7 bag there's a piece of material and it looks like
8 it has this textured sprayed white stuff or gray
9 stuff or whatever you want to call the color in
10 the picture over some other substance; is that
11 right?

12 A. Correct.

13 Q. Is it the thin coating of textured
14 material that what's being referred to as the
15 sprayed-on material?

16 A. Correct.

17 Q. Is the material underneath basically
18 dry wall?

19 A. Correct.

20 Q. The material that you characterized
21 in your report as suspected regulated material,
22 that would be the sprayed-on portion, right?

23 A. Correct.

24 Q. If there was to be any RACM found,

1 it would be contained within that sprayed-on
2 layer, right?

3 A. Yes.

4 Q. Okay. And so if you wanted to find
5 out whether there was any RACM in that sprayed-on
6 layer, you could go pick some off and test it;
7 isn't that right?

8 A. Correct.

9 Q. Because the wall board is irrelevant
10 for those purposes, right?

11 A. Except for the tape. Sometimes it
12 comes back as asbestos, also.

13 Q. Okay. And to -- did you believe
14 that the material you collected for purposes of
15 the sample as depicted in this Photograph 4 --
16 what's the number again -- 4s, did you believe you
17 had collected an adequate enough sample to run the
18 test?

19 A. Yes.

20 Q. Okay. And you did that without
21 taking what you referred to earlier as a core
22 sample?

23 A. Correct.

24 Q. Because there really was no need to

1 take such a sample. This was the layer you were
2 after, the top layer with the sprayed-on material?

3 A. If I would have had a coring tool, I
4 would have used it, yes.

5 Q. Do you have one of those?

6 A. No, I did not have one.

7 Q. Have you ever had one while you've
8 been an inspector -- well, you're not an inspector
9 anymore in this division.

10 A. Right.

11 Q. In those days did you ever have one
12 of those tools?

13 A. I did not, no.

14 Q. But that's the way to take a sample,
15 right, use a core?

16 A. Not always, sir, no.

17 Q. You seem to think --

18 A. In my -- go ahead.

19 Q. (continuing) -- it would have been a
20 really good idea to do it here and that maybe
21 there was something wrong with your sample because
22 you hadn't done a core sample, but I'm hearing
23 you've never done it. Please explain to me what
24 the importance of this core sample was you were

1 **talking about before.**

2 A. Generally core sampling is usually
3 normally used by the consultants prior to
4 renovation or demolitions. As an asbestos
5 inspector, I primarily just took bulk samples and
6 usually the sample was taken by hand of whatever
7 material that appeared to be suspect material.

8 Q. Okay. And knowing that the
9 consultants and the experts use core sampling, you
10 still elected not to use the same sampling method?

11 A. I was never trained that way.

12 Q. Okay. I think we already
13 established we don't know how the samples were
14 collected that were reported in the Farmer's
15 report?

16 A. No, I do not.

17 Q. Is it fair to say for purposes of
18 this case we can forget about the subject of core
19 sampling, we don't know anybody that did it in
20 this case?

21 A. Yes.

22 Q. Okay. Thanks. By the way, Sample
23 No. 1 was the one -- was one of two that you
24 caused to be submitted to the EPA contract

1 **laboratory for analysis, right?**

2 A. Correct.

3 Q. **A laboratory that the agency**

4 **routinely uses, correct?**

5 A. Correct.

6 Q. **And continued to use even after this**

7 **case started, right?**

8 A. Yes.

9 Q. **And they told you there wasn't any**

10 **asbestos in that sample, didn't they?**

11 A. Nondetect, sir, yes.

12 Q. **Nondetect means that they couldn't**

13 **find any?**

14 A. Correct.

15 Q. **Any?**

16 A. Correct.

17 Q. **Okay. And a similar sample marked**

18 **as No. 2, where was it collected, No. 2?**

19 A. May I regard my sampling? Sample 2

20 was taken from the hallway of the second floor.

21 Q. **Hallway of the second floor, would**

22 **that be pretty much right above this area where**

23 **this one was in?**

24 A. Close to, yes.

1 Q. Close to it, pretty much the same
2 end of the building?

3 A. No. The southwest room was
4 basically on that west wall and the hallway ran
5 down the middle of the building itself.

6 Q. Okay. But it would have been above
7 this area at the same general end of the building?

8 A. No.

9 Q. Okay. I'm confused for a second,
10 but I'm sure it's my fault. The southwest room is
11 a room that you almost immediately encountered --

12 A. Correct.

13 Q. (continuing) -- when first going in?

14 A. Correct.

15 Q. This area in the hallway, was this
16 at the opposite end of the building?

17 A. The southwest room is more to the
18 southwest end of the building, and where I was in
19 the second floor was more in the middle of the
20 building.

21 Q. More toward the middle of the
22 building and upstairs?

23 A. Yes.

24 Q. Out in that hallway you collected

1 Sample No. 2?

2 A. Correct.

3 Q. Once again, we're looking at
4 determining whether or not there's any RACM within
5 this sprayed-on layer of material that's over the
6 dry wall which we otherwise don't care about,
7 right?

8 A. Correct.

9 Q. And Sample No. 2 you collected in
10 the same way?

11 A. Yes.

12 Q. Got what you thought was a fair
13 representation of the material that had been taken
14 down from above?

15 A. Yes.

16 Q. And sent it to the same contract
17 laboratory that the agency used?

18 A. Correct.

19 Q. And got back an answer that there
20 was no asbestos detected in that sample?

21 A. Correct.

22 Q. I want to call your attention if I
23 may to Photograph 4y. 4y being a room -- a pretty
24 quiet place filled with drums?

1 A. Correct.

2 Q. In the middle of the room -- well,
3 the drums are stacked double high except for a
4 couple that are sort of in the middle of the
5 picture. One of them is almost smack dab in the
6 middle. It appears to have what I believe is a
7 roll of duct tape sitting on top of a drum. Is
8 that what it is?

9 A. Yes, sir.

10 Q. And it looks if I'm not mistaken
11 like these drums have been sealed up with this
12 duct tape and have rings on them, retaining rings
13 on them; am I right?

14 A. They have rings on them but I don't
15 think all them had been actually duct taped yet.

16 Q. Oh, okay. Is the duct tape that you
17 observed around the place in the drum area, is it
18 being used to put a final seal on the drum before
19 it goes out to the dumpster for disposition off
20 site?

21 A. Correct.

22 Q. That's the last step in the process.
23 Once they've taped up a drum, it's done?

24 A. That and demarking it by putting the

1 identification on the --

2 Q. But the physical things, the taping
3 and then the label and then it's gone?

4 A. Then it goes.

5 Q. I want to get that clear. This drum
6 that you said that you took a sample out of it is
7 marked No. 3. That drum hadn't been sealed up
8 yet, right?

9 A. Correct.

10 Q. So it wasn't ready to go anywhere
11 yet?

12 A. Correct. Physically none of these
13 were ready to go yet because none of them had been
14 tagged.

15 Q. Tagged.

16 A. Right. And also the dumpster wasn't
17 on site yet.

18 Q. Right. I understand. They were
19 sort of stockpiling drums and getting them ready
20 but they had no dumpster to put them in at that
21 moment?

22 A. Correct.

23 Q. If I'm correct in my notes, Picture
24 No. 4aa being the one that's a little out of

1 focus, the sample bag.

2 A. Yes.

3 Q. That's the picture of Sample No. 3
4 sitting on top of the open drum from which the
5 sample was collected; is that right?

6 A. Correct.

7 Q. Just for reference purposes the
8 immediately preceding picture 4z, as in zebra, is
9 a picture of that drum taken from looking down
10 into it?

11 A. Correct.

12 Q. Without the sample bag being in the
13 picture?

14 A. Correct.

15 Q. That is also ceiling material,
16 correct?

17 A. Correct.

18 Q. It came back from your lab noting
19 the presence of asbestos in a range of 1 to 5
20 percent?

21 A. Correct.

22 Q. And the report that had been
23 submitted -- that had been submitted to the agency
24 but you didn't actually see till a little bit

1 later from Farmers Environmental Service had said
2 that the material they had sampled of ceiling
3 material, textured ceiling plaster, their bulk
4 sample -- it says here bulk sample by the way,
5 they come back at 25 percent, hadn't they?

6 A. Correct. 20 to 25 percent, correct.

7 Q. On an average of seven bulk samples,
8 right?

9 A. I'm getting to there.

10 Q. I'm sorry that's not paginated, but
11 that's the way it goes. I'm at the page that
12 has --

13 A. Yes.

14 Q. 25 percent?

15 A. Correct.

16 Q. So it appears that with two samples
17 coming back zero and one sample coming back
18 between 1 and 5 percent, the samples that you
19 collected were of material that appears to be
20 quite different in asbestos content from the
21 material that is reported in the Farmer's report;
22 isn't that right?

23 A. No, sir.

24 Q. Well, their average is five times

1 higher than the very highest reading your lab
2 could find in only one sample, and you're
3 testifying that that's not a substantial
4 difference?

5 A. Anything greater than 1 percent is
6 asbestos containing material --

7 Q. I got that part. I know that. I'm
8 talking about --

9 A. (continuing) -- according to --

10 Q. (continuing) -- the difference
11 between 5 and 25?

12 A. That would be something that I'm not
13 a laboratory analysis guy.

14 Q. But it's a 500 percent difference?

15 A. But I don't think that's out of the
16 ordinary. I've seen that before.

17 Q. You have?

18 A. Yes.

19 Q. Anyway, you went out there to the
20 site, did your job, collected three samples and
21 didn't mention anywhere in your report or in your
22 testimony and I need to ask you whether or not the
23 sprayed-on material had -- we don't know when it
24 was sprayed on. All we know is the building is 50

1 **years old.**

2 A. Correct.

3 Q. **This sprayed-on material had been**
4 **subsequently or at any time painted?**

5 A. Unknown, sir.

6 Q. **You didn't notice?**

7 A. When and how many times, I couldn't
8 tell you, sir.

9 Q. **Did it ever -- did it have any paint**
10 **on it?**

11 A. It appeared painted at one time,
12 yes.

13 Q. **So it appeared that this material**
14 **had been painted after it had been applied at some**
15 **later date God knows when, right?**

16 A. Yes, sir.

17 Q. **And whether it was painted more than**
18 **once, we have no idea; isn't that right?**

19 A. Correct.

20 Q. **In fact, we don't even know exactly**
21 **when it was sprayed on, we just know the building**
22 **was 50 years old, right?**

23 A. We just know asbestos was present,
24 and we don't know when it was sprayed on, no.

1 Q. And we don't know where exactly in
2 the building Farmers collected their samples
3 either, they didn't tell us that?

4 A. No.

5 Q. Okay. And you didn't know it of
6 course when you were there on August 4th, you
7 didn't know it when you received the Farmer's
8 report later, and today you don't know exactly
9 where they collected their samples?

10 A. Exactly in that room --

11 Q. Or in that building --

12 A. In that building, excuse me, where
13 they took samples, no. Just we know it was of the
14 ceiling material.

15 Q. Okay. And how many rooms in this
16 whole building did you collect samples in? Sounds
17 like three but --

18 A. Three different areas.

19 Q. Three different areas, yeah.
20 Because the hallway you call an area rather than a
21 room?

22 A. Correct.

23 Q. Downstairs southeast that was one
24 room though?

1 A. Southwest.

2 Q. Southwest was one room?

3 A. Yes.

4 Q. And the load out room --

5 A. Would have been their area.

6 Q. Two rooms and a hallway area?

7 A. Correct.

8 Q. The photographs you took of ceiling

9 material on the floor, how many different rooms or

10 areas if they were hallways are depicted in your

11 photographs?

12 A. Three areas.

13 Q. Three.

14 A. Three areas.

15 Q. Two rooms and a hallway?

16 A. Correct.

17 Q. Same two rooms and a hallway in

18 which you collected your samples?

19 A. No.

20 Q. I wasn't trying to confuse you. I

21 suddenly realized that I agreed with you before

22 you answered the question because you didn't

23 collect a sample. The ceiling wasn't an issue in

24 the load out room. That's not where you collected

1 **one of those?**

2 A. Well, the ceiling probably had been
3 removed from that area.

4 **Q. You didn't take pictures of ceiling**
5 **laying on floor in that room?**

6 A. Not in that area because ceiling had
7 already been removed and everything was cleared
8 off the floor.

9 **Q. So you took ceiling pictures on the**
10 **floor in two rooms and in one hallway?**

11 A. Correct.

12 **Q. And out of a total of how many**
13 **rooms?**

14 A. I do believe there was eight
15 apartments in there.

16 **Q. With multiple rooms in each?**

17 A. Yes.

18 **Q. At least --**

19 A. No, no, they don't have multiple
20 rooms in them.

21 **Q. Didn't they have like a bathroom and**
22 **a kitchen and a living room?**

23 A. These rooms were wide open rooms,
24 no. These were like square -- there's a picture

1 that depicts what the rooms looked like I do
2 believe.

3 Q. Maybe fixtures and things -- well,
4 fixtures and things had been removed, right?
5 There were no sinks and stoves and toilets and
6 things like that in these rooms, were there?

7 A. No, sir.

8 Q. So that had already been done by
9 somebody else?

10 A. Yes.

11 Q. And then they brought in the
12 asbestos contractor to take down the suspect
13 material?

14 A. Yes.

15 Q. And you refer to it as suspect
16 material when you walked into the building and
17 when you wrote your report, didn't you?

18 A. Suspect material, yes.

19 Q. Because you're not positive what it
20 is when you go in there?

21 A. Absolutely not.

22 Q. In fact, during your deposition you
23 testified that the reason you took the samples was
24 to figure out for sure?

1 A. To identify presence of asbestos.

2 Q. For certain rather than to be
3 calling it suspect, right?

4 A. Correct.

5 MR. IMMEL: Okay. Madam Hearing
6 Officer, let me say I believe I can be finished
7 with the witness in about another 20 minutes. I'm
8 just telling you if that --

9 HEARING OFFICER: Let's go off the
10 record a minute.

11 (Wherein, discussion was held off
12 the record.)

13 Q. (By Mr. Immel) You had not had
14 occasion to inspect the General Waste Services job
15 prior to your first -- your visit to this site on
16 August 4; is that right?

17 A. Correct.

18 Q. August 4, 2005. But you knew who
19 they were?

20 A. Indirectly.

21 Q. And I believe you understood that
22 they had a good reputation in their field; isn't
23 that right?

24 A. Yes.

1 Q. And they also had never had any
2 violation with your agency; isn't that right?

3 THE WITNESS: May I expound on that?

4 HEARING OFFICER: Yeah.

5 THE WITNESS: I was new to the area
6 so there had not been an asbestos inspector in
7 this district forever and so there were not very
8 many inspections conducted, if a lot -- if any.
9 When I came down in this area, I was doing a lot
10 of inspections. It didn't matter who it was. I
11 was just inspecting a lot of different --

12 Q. (By Mr. Immel) I'm not suggesting
13 it did matter who it was. I understand you were
14 doing your --

15 A. And I never did get to General
16 Waste. I have not been to General Waste yet.

17 Q. Until this day you finally got to
18 visit one of their jobs?

19 A. Correct.

20 Q. But you'd already heard they had a
21 pretty good reputation in the industry, and you
22 would have known from your own agency records that
23 they had not had any prior citations or violation
24 notices or anything from your agency? You would

1 have known that, right?

2 A. Yes.

3 Q. Okay. That's what I was asking.

4 A. All right.

5 Q. If you knew whether they had prior
6 notices or violations.

7 A. I think what I'm trying to get at is
8 probably General Waste was never inspected by an
9 EPA inspector before.

10 Q. Well, I'm not going to get into
11 discussion with you. That's not true but we'll
12 have our own on that. They had no violations?

13 A. No violations.

14 Q. Okay. Now, let me just double check
15 one thing. You said you did not have a
16 recollection of a containment with -- a
17 recollection of having had a conversation with
18 Mr. Calvin Johnson, the supervisor on the job,
19 inside the containment area, right?

20 A. No.

21 Q. But you did encounter him outside?

22 A. Correct.

23 Q. And didn't he -- that's where you
24 introduced yourself and showed your credentials

1 **and such?**

2 A. No. That was before I went into the
3 building. I encountered --

4 **Q. Outside?**

5 A. (continuing) -- I encountered him at
6 a second, different time outside. There was two
7 times that I -- I saw him going in and I saw him
8 when I came out of the building.

9 **Q. Okay. You physically saw**
10 **Mr. Johnson going into the building ahead of you?**

11 A. No.

12 **Q. Okay. Then let me ask you to just**
13 **help me out here because I think I'm either**
14 **confused by your prior testimony or what you**
15 **testified to in your deposition. When did you**
16 **first encounter Mr. Johnson?**

17 A. As I approached the building.

18 **Q. On foot having parked your vehicle?**

19 A. On foot.

20 **Q. And you're heading for the building.**
21 **Where do you see Mr. Johnson?**

22 A. He was coming -- he was kind of
23 already out the door walking kind of a northbound,
24 and I was going southeast bound.

1 **Q. Okay. Did you have any conversation**
2 **with him at all at that point?**

3 A. I let him know who I was and told
4 him I was going to go in and inspect the building.

5 **Q. Okay. And you don't remember having**
6 **a conversation with him about the fact that he was**
7 **outside resetting a breaker?**

8 A. I knew something about he had said
9 going by something about breakers going off or
10 something like that, but it was just a passing by
11 as I told him I was going in checking to see what
12 was going on. It wasn't face to face, hey, this
13 is what's going on inside. After I had come out
14 of a building at a later time, then he discussed
15 to me the whole problem situation that he was
16 having. Even prior to that day, he told me what
17 kind of problem.

18 **Q. So you got a quickie thumbnail on**
19 **the way in and more details later?**

20 A. Absolutely.

21 **Q. I had to wonder if you wouldn't**
22 **wonder why the supervisor for the job is outside**
23 **when you got there. I would have thought to find**
24 **him inside and here he is outside, and I thought**

1 you'd ask him or have a conversation about what's
2 up. You don't remember the details of that other
3 than he mentioned something about an electric
4 problem?

5 A. Inside of my mind after I heard
6 about electric problem, my thoughts was are they
7 still removing asbestos inside.

8 Q. Or even are they removing asbestos
9 inside?

10 A. Exactly.

11 Q. You didn't know what they were doing
12 inside, you'd never been inside the building?

13 A. No. I could only assume.

14 Q. Okay. So that's when you went
15 through and went through, walked through the
16 shower and did all the things you talked about
17 before. You had your clothes on, go inside and
18 find this first hallway where you take some
19 pictures and whatnot.

20 Now, the sprayers they use and there
21 was a picture of them in one of your photographs.
22 I believe we can jump to that real quick. The
23 picture of the airless sprayer laying on the floor
24 that had -- it seemed like it was in the middle of

1 the batch here. I'm not finding it but I know
2 I'll get to it. Anyway, they're using an airless
3 sprayer system, right?

4 A. Last page, sir, 4gg.

5 Q. Yeah. It's the last one. That's
6 the spray head from the airless sprayer?

7 A. That's the spray head that's
8 connected to a hose, yeah.

9 Q. Their airless sprayer, that's a
10 system you've seen used at various jobs, correct?

11 A. Yes.

12 Q. The airless sprayer gets its power
13 from electricity?

14 A. Yes.

15 Q. And when it's working properly and
16 the electricity is making it go, it essentially
17 sucks water out of a bucket and sprays it out
18 through a spray head, right?

19 A. In this case I do believe it was the
20 pump out of a water truck. Once the pump is
21 running properly, it was pumping water from the
22 water truck directly I do believe.

23 Q. Then there's another hose up there
24 that's not -- I don't see it in your picture but

1 **there's another hose that's a water hose that you**
2 **describe in your testimony. You said there was a**
3 **hose being used to spray water.**

4 A. And I said I wasn't too sure of
5 that. I just know that they had -- by the time I
6 had got there, they had pressure. At the time
7 that I arrived on how they got pressure, I don't
8 know.

9 **Q. You didn't see evidence of what's**
10 **referred to as a finger hose which looks like an**
11 **air hose with a little plug in the end and you**
12 **just push it with your thumb and it releases the**
13 **water --**

14 A. No.

15 **Q. You didn't see that?**

16 A. No.

17 **Q. You didn't see the men squirting**
18 **water with that then obviously --**

19 A. I was not sure of what water source
20 he used at that time because at that time that
21 water pressure was pretty significant. It wasn't
22 like an airless sprayer would be like. If the
23 direct pressure came -- I don't know how they got
24 that pressure.

1 **Q.** Okay. Now, this white pebbled
2 **surface, this sprayed-on material, did you check**
3 **to see if water would permeate the sprayed-on**
4 **material?**

5 A. Yes, it would. I could tell that in
6 the containers that the water did get into that
7 were in the hallway.

8 **Q.** Why don't you direct me to the
9 **picture you seem to be looking for that would**
10 **depict it penetrating the --**

11 A. I don't think the picture itself is
12 going to show how the water was penetrating it.
13 In 4dd as you notice there's a part of the first
14 barrel and then you see the second barrel and then
15 you see the beads of water inside of the barrel.
16 Then in some of this material you can see where it
17 had penetrated -- where water had penetrated
18 because of the two different shades of color of
19 material in there. You got the light tan and you
20 got the dark tan in there. That was the same
21 backing of that material so it permeated the water
22 once they sprayed down that hallway with that
23 hose.

24 **Q.** I'm asking you about the reverse

1 **side of that material which would be the beaded**
2 **side.**

3 A. There would be moisture on it, sir,
4 beads of moisture.

5 Q. **Aren't we looking at the backside of**
6 **the dry wall in those pictures?**

7 A. You can see some. You can see one
8 piece. Yes, you're looking at mostly the backside
9 but there's one piece I can see that is of the
10 sprayed-on acoustical type ceiling.

11 Q. **And you can see it but I can't see**
12 **where it's been altered in any way?**

13 A. Sir, from that view you would not be
14 able to see. You'd have to be up close to be able
15 to see if that had permeated that piece of
16 material.

17 Q. **Okay. So this picture doesn't help**
18 **us in that regard?**

19 A. It only helps to show that the
20 material wet you can tell the difference in that
21 barrel on the backside at least.

22 Q. **On the backside which is not the**
23 **sprayed side?**

24 A. Not the sprayed side.

1 Q. That's not the side I was asking you
2 about. By the way, I've been prompted to ask if
3 you haven't -- when you went down to your new
4 assignment in Southern Illinois and became an
5 inspector down there where there'd been a dearth
6 of inspectors you said in the past, did you have
7 occasion to be familiar with an asbestos abatement
8 job at a place called S -- Southwestern Illinois
9 College in Belleville. Do you remember going to
10 an inspection at that site as an inspector?

11 A. Yeah. I remember visiting that
12 site, yes.

13 Q. Do you happen to know who the
14 asbestos abatement contractor was on that site?

15 A. I wouldn't remember, no.

16 Q. How about the Feed Store in
17 Waterloo, does that ring a bell with you?

18 A. No.

19 Q. A site that was inspected by you,
20 asbestos abatement job?

21 A. In Watt -- no, I don't recall. Not
22 saying I was there, but I don't recall that
23 inspection, no.

24 Q. Okay. Those were two General Waste

1 **Servives jobs that you inspected prior to this one**
2 **and that's why we were wondering maybe you had**
3 **remembered them --**

4 A. No.

5 Q. **(continuing) -- more specifically?**

6 A. No.

7 Q. **All right. In the course of your --**
8 **what was your purpose in collecting samples, the**
9 **three samples you did collect, what was your**
10 **specific purpose?**

11 A. To identify asbestos.

12 Q. **And this asbestos up until the time**
13 **you got a positive identification was -- you were**
14 **referring to it as suspect material; is that**
15 **right?**

16 A. Correct. Because of the
17 identification notice telling me that there was
18 6,700 square foot of suspected regulated asbestos
19 containing material.

20 Q. **And the building was being treated**
21 **as an asbestos laden building that had to be**
22 **treated as an asbestos abatement site and that was**
23 **being done?**

24 A. Correct.

1 Q. And you wanted to make sure that as
2 to the particular material you were dealing with
3 and collecting samples of that they were in fact
4 dealing with asbestos?

5 A. Correct.

6 Q. And so you took these samples to
7 determine if you were dealing with RACM, and in
8 the case of two of the samples, it came back --
9 you proved to yourself that that was a RACM in
10 those two instances?

11 A. Just in those two samples, sir.

12 Q. Okay. And these three samples you
13 collected in the aggregate are all the samples you
14 collected, there were no more?

15 A. Correct.

16 Q. And you weren't -- were you at all
17 troubled to receive a third sample back that said
18 the level of asbestos found in that sample was
19 between 1 and 5 percent?

20 A. No.

21 Q. And even if that means that the
22 possibility of error is anywhere between 1 and --
23 or the range is between 1 and 500 percent chance
24 of being wrong, you still didn't attach any

1 **significance to that?**

2 A. No. I'm looking for greater than 1
3 percent. Don't matter if it's 1 percent or 75
4 percent.

5 Q. And it wouldn't suggest anything to
6 you about the integrity of the sample result
7 itself if it was -- if it could be off by a factor
8 of 500 percent?

9 A. No.

10 Q. Much as if a police officer stops
11 you and says Mr. Zappa, I'm giving you a ticket,
12 you were going anywhere between 30 and 90 miles an
13 hour here and you would say thank you, officer,
14 and pay the fine?

15 A. (Laughing).

16 Q. Nevermind. Just to amplify a
17 picture you didn't discuss, but I know you took it
18 and will recognize it. It's the picture of the
19 pick-up truck with the water tank in the back.
20 I'm looking for it.

21 MR. MANKOWSKI: To speed things up
22 it's 4q.

23 MR. IMMEL: Thanks. The Secretary
24 of State would never give you that license plate.

1 THE WITNESS: I have it.

2 Q. (By Mr. Immel) Just for the record,
3 that's the truck that contained the water supply
4 that these people were using at this job, they had
5 no running water in the building, correct?

6 A. Correct.

7 Q. And that water tank on there -- and
8 there's two hoses coming out of there?

9 A. Correct.

10 Q. You can see one draped down the left
11 side of the truck?

12 A. Uh-huh.

13 Q. And those run over to the building
14 and feed the shower and the upstairs part or
15 wherever they go, but that's where the water
16 source is, right?

17 A. Correct.

18 Q. Right next to the building?

19 A. Correct.

20 Q. I was hoping but I don't know -- it
21 does not. The breaker boxes aren't visible in
22 this picture.

23 The preceding picture, 4p, just
24 being a side long shot of the building?

1 A. Correct.

2 Q. You can still see the same pick-up
3 truck over in the far right-hand side of the
4 picture and that's probably General Waste
5 Services, one of their work trailers?

6 A. Correct.

7 Q. That's just a side view of the
8 building. What side of that building are we
9 looking at?

10 A. That's the west side, sir.

11 Q. So one of the rooms that you had
12 inspected would have been -- would it have been
13 visible in this picture from the outside?

14 A. Yeah. Right where that pink door is
15 with the sign identified, that would have been the
16 first room that the material I observed was in.

17 Q. Up at the far right-hand --

18 A. Yeah. The immediate door is the
19 entrance into the actual -- the containment
20 itself.

21 Q. Okay. And that doorway into that
22 little -- what apparently was once an apartment,
23 that's the actual doorway then into the
24 containment area?

1 A. Correct. Into the clean room.

2 Q. So that that second -- that first
3 sample was collected down in that area. The
4 second sample if we went sort of in the middle of
5 this picture on the second floor, it's kind of in
6 the middle of the building up in a hallway --

7 A. In the middle and in the back, yes,
8 you're right.

9 Q. Yeah. Then that load out room where
10 you took the third sample, that room wouldn't be
11 -- that would be not in this picture. That part
12 of the building is not in this picture, is it?

13 A. No.

14 Q. You'd have to keep going to your
15 left to get to that part of the building, correct?

16 A. Straight -- through the door and
17 continue straight I would say.

18 Q. All right.

19 A. They had a couple storage areas.

20 Q. I've got one more area that I never
21 like. Mr. Zappa, have you ever been convicted of
22 a felony?

23 MR. MANKOWSKI: Your Honor I --
24 sorry. I object strenuously to that line of

1 questioning. I don't know if we need a side bar
2 on that or what. I don't know how we handle that.
3 Mr. Immel should know rules.

4 MR. IMMEL: I do.

5 MR. MANKOWSKI: This does not apply
6 at all in this matter.

7 HEARING OFFICER: I don't understand
8 the relevance myself. We never do this at the
9 board.

10 MR. IMMEL: Credibility of a
11 witness. He's under oath. The question is
12 whether or not --

13 MR. MANKOWSKI: Can we go off the
14 record on this or how do we discuss this --

15 MR. IMMEL: Oh, I definitely don't
16 want to go off the record.

17 HEARING OFFICER: Nevermind. I'm
18 just not -- we've never done that before. I'm
19 just going to -- I'm not going to -- you don't
20 have to answer the question.

21 MR. IMMEL: Excuse me, can you
22 refresh -- I've done this many times over the
23 years and been in board hearings since 1970 and
24 never had this come up before where anybody said

1 you couldn't. Any time the credibility of a
2 witness could possibly be in question, whether or
3 not that person has ever been convicted of a
4 felony is not only appropriate but absolutely
5 necessary. It'd be declared malpractice if I
6 didn't ask the question and you're entitled to
7 answer. I've never heard anybody --

8 HEARING OFFICER: Let me ask you
9 this, Mr. Zappa, do you object to answering to the
10 question?

11 MR. CALLERY: It's not relevant.

12 MR. MANKOWSKI: It's been more than
13 ten years and it wasn't a crime of dishonesty so
14 there's really no reason we should be discussing
15 this, Madam Hearing Officer. It has nothing to do
16 with credibility of this witness.

17 HEARING OFFICER: Let's go off the
18 record a minute.

19 (Wherein, discussion was held off
20 the record.)

21 HEARING OFFICER: We've just had an
22 off the record discussion wherein it was decided
23 that Mr. Immel is going to make an offer of proof
24 to the Board regarding the credibility of this

1 witness. I'll go ahead and allow you to do that
2 now.

3 MR. IMMEL: Thank you. If permitted
4 to ask the witness questions and receive answers
5 to the following questions, I believe the witness,
6 if he answered truthfully would testify that in
7 1995, he was convicted of a felony for drug
8 conspiracy. There had been a four count
9 indictment against him, four different charges,
10 and he had been -- he entered a plea of guilty.
11 Three of them were dropped.

12 This involved a -- his involvement
13 in the transportation of cocaine through the U.S.
14 Mails, and that thereafter he had been -- he was
15 sentenced to prison. That thereafter he had been
16 in he identified four -- by name -- four different
17 drug rehabilitations programs. He believed his
18 life had straightened out thereafter.

19 But those are the facts and as a
20 matter of law, a felony conviction for those kinds
21 of drugs leaves his credibility open to question.
22 It doesn't mean anything other than that, but you
23 know, I'm obligated to inquire into that once I
24 know about it. I do so with no intent to do any

1 harm to Mr. Zappa. I'd rather not get into it at
2 all.

3 HEARING OFFICER: Okay. I will
4 defer the matter for the Board's determination as
5 to whether this witness is credible.

6 MR. MANKOWSKI: Can I still get my
7 objections on the record that this is not a crime
8 of dishonesty and it was -- the ten years have
9 elapsed and this is highly improper.

10 HEARING OFFICER: Yes. Dually
11 noted. Do you have anything further for this
12 witness?

13 MR. IMMEL: I don't think so. I'm
14 double checking my notes.

15 Oh, yeah, there is one thing. I
16 just wanted to make sure we got this clear. I
17 think he might have testified to this, but I'm not
18 positive.

19 Q. (By Mr. Immel) Mr. Zappa, Sample
20 No. 3 taken from the drum in the load out room,
21 that drum had been loaded the day before your
22 inspection; is that right?

23 A. I'm unaware of, you know, what day
24 that material in that barrel was removed and put

1 in there. I could assume yes, but for sure, I
2 couldn't say that, no. I don't know how -- yeah,
3 I can only assume it was done prior because that
4 was the only day they removed I do believe.

5 **Q. They had just started the day you**
6 **got there?**

7 A. No. They had started I think the
8 3rd.

9 **Q. No, no, for the day. They had just**
10 **started the day --**

11 A. I don't know their work hours for
12 sure so I can't -- maybe seven o'clock, but I
13 don't know.

14 **Q. Did anybody from General Waste tell**
15 **you that that material had been placed in the drum**
16 **the day before?**

17 A. No.

18 **Q. Did you know where it had come from**
19 **in the building?**

20 A. No.

21 **Q. Okay. I've got one more question on**
22 **this. Do you recall ever using the term -- do you**
23 **ever recall stating whether or not the term**
24 **adequately wet was a subjective term?**

1 A. No, I don't remember saying it.

2 Q. Okay.

3 A. Not without, you know, me looking,
4 no, I don't remember.

5 Q. Do you --

6 A. I remember you telling me that
7 that's a gray area.

8 Q. Well, do you remember -- do you
9 think it's a subjective term?

10 A. No.

11 Q. Then in that case let me call your
12 attention to your deposition of March 24, 2009,
13 Page 67. I'll wait till Mr. Mankowski gets there.

14 MR. MANKOWSKI: I'm there.

15 MR. IMMEL: Wherein I asked you at
16 Page 67, Line 19, Mike:

17 QUESTION: Is there any specific
18 standard you can point me to that would define
19 what is meant by the term "adequately wet"? I
20 hear that used a lot, but I -- it sounds like a
21 pretty -- a pretty fairly subjective.

22 Line 23: ANSWER: Yes, it is
23 subjective.

24 Do you recall that --

1 THE WITNESS: I just didn't recall
2 it without going back to it.

3 Q. (By Mr. Immel) Were you asked that
4 question and did you give that answer?

5 A. Yes.

6 MR. IMMEL: Okay. At that point I
7 have no further hearings -- further questions of
8 the witness.

9 HEARING OFFICER: Mr. Mankowski.

10 REDIRECT EXAMINATION

11 QUESTIONS BY MR. MANKOWSKI:

12 Q. Just to clarify a few things that
13 you've talked about. Did you count the negative
14 air machines in the building when you arrived
15 there?

16 A. No.

17 Q. Do you normally count the number of
18 negative air machines?

19 A. No.

20 Q. Did it seem to you that the building
21 was under negative air?

22 A. Yes.

23 Q. Is that why you didn't investigate
24 any further?

1 A. Yes.

2 Q. How did you know the building was
3 under negative air?

4 A. By the pressure that was putting on
5 the walls.

6 Q. Is that where you talked about
7 the --

8 A. The plastic leaning in --

9 Q. (continuing) -- sheeting being
10 pulled in?

11 A. Yeah, being pulled in.

12 Q. You talked a lot with Mr. Immel
13 about the sampling that you took of the spray on.
14 I was hoping you could kind of describe to us how
15 spray on is applied. How is that material applied
16 to a ceiling?

17 A. With a sprayer. It's usually just
18 sprayed across the ceiling just like a paint would
19 be sprayed.

20 Q. Is it an even coat?

21 A. Yes.

22 Q. You had said in other inspections
23 you had seen samples of spray on have varying
24 degrees of asbestos in them; is that correct?

1 A. Yes.

2 Q. So you weren't surprised with these
3 sample results?

4 A. No.

5 Q. You weren't surprised that the
6 Farmer results came up 20 to 25 percent?

7 A. No.

8 Q. And you also stated you don't know
9 where Farmers took the sample, any of their
10 samples?

11 A. Not specifically, no.

12 Q. But they did call it a homogenous
13 area?

14 A. Correct.

15 Q. We discussed what had a homogeneous
16 area is. It means that everything is the same.
17 You testified to that on Direct.

18 MR. IMMEL: I'm going to object if
19 he's going to get into a discussion what the
20 dictionary says or something if that's what
21 he's --

22 MR. MANKOWSKI: No.

23 MR. IMMEL: -- after. We've got the
24 Farmer's report. It says what it says. If he's

1 trying to get another definition of homogeneous
2 other than one -- I didn't go into that on Cross.
3 This is Redirect.

4 HEARING OFFICER: I think you
5 already asked for -- he gave a definition on
6 Direct Examination of homogeneous, right?

7 MR. MANKOWSKI: I would like to get
8 to why they used the term homogeneous -- why did
9 Farmer -- why in the asbestos industry do they use
10 homogeneous area to describe a ceiling.

11 MR. IMMEL: There's no testimony
12 even that it's used in the asbestos industry.
13 There's a word in the Farmer's report that now
14 he's asking him why Farmers used that word --

15 MR. MANKOWSKI: I didn't ask that.

16 MR. IMMEL: He clearly --

17 MR. MANKOWSKI: I didn't ask that --
18 I didn't ask that question.

19 MR. IMMEL: Okay. But he was
20 getting to that question and he's trying --

21 MR. MANKOWSKI: I struck myself.

22 MR. IMMEL: He struck himself
23 because Farmer -- we don't know --

24 MR. MANKOWSKI: That's why I didn't

1 ask the question --

2 THE REPORTER: Hold on.

3 HEARING OFFICER: Please speak one
4 at a time. Start over.

5 MR. MANKOWSKI: Okay.

6 Q. (By Mr. Mankowski) The Farmer's
7 report says that the ceiling was a homogeneous
8 area; is that correct?

9 A. Yes.

10 Q. Your samples came from the ceiling?

11 A. Correct.

12 Q. Your ceilings came from the home --
13 your samples of the ceiling came from the
14 homogeneous area?

15 A. Correct.

16 Q. So there were ten samples of the
17 homogeneous area taken?

18 A. Correct.

19 Q. Eight of those samples came up
20 positive for asbestos?

21 A. Correct.

22 Q. Regulated asbestos containing
23 material is anything greater than 1 percent
24 asbestos?

1 A. Correct.

2 Q. And eight of those sample came up
3 between 1 and 25 percent asbestos?

4 A. Correct.

5 Q. I wanted to go back to a picture
6 that you also discussed with Mr. Immel. It is
7 4dd. It's the one with the barrels in it.

8 A. Correct.

9 Q. Okay. If you look at the front
10 barrel in the picture.

11 A. Correct.

12 Q. That we've already discussed that's
13 ceiling material in it. To the left of the
14 picture.

15 A. Yes.

16 Q. Is that the spray-on material on --
17 it's like spray-on material and then the brown
18 card board behind it?

19 A. Correct.

20 Q. Is that a different color than the
21 spray-on to the right of that barrel?

22 A. Correct.

23 Q. Is that piece of spray-on darker
24 because it absorbed water?

1 A. Correct.

2 Q. So this picture does depict spray on
3 that has absorbed water?

4 A. Yes.

5 Q. Okay. The barrels that you saw in
6 the load out, the one that you opened up and took
7 Sample No. 3 from, had those been filled the day
8 before and properly wetted, would there have been
9 evidence of water on the 4th?

10 A. Yes.

11 Q. Those are airtight containers,
12 correct?

13 A. Yes.

14 Q. So there would have been some
15 evidence of water had that ceiling material been
16 wetted the day before?

17 A. Correct.

18 Q. If General Waste had tried to wet
19 this ceiling material and just regular water
20 hadn't permeated it, what could have they done to
21 adequately wet it?

22 A. By using another agent, another
23 soluble agent. I do believe -- I don't know what
24 the agent is, specifically what they can use, but

1 there's another agent. If it's not permeating,
2 they should find another solution of maintaining
3 this material.

4 **Q. Something other than water?**

5 A. Correct.

6 **Q. That is available?**

7 A. Yes.

8 **Q. What do you mean by agent or soluble**
9 **material? Can you clarify that at all?**

10 A. No.

11 **Q. Is it a soap or --**

12 A. I do believe it's a soap that they
13 can use that will help, you know, permeate the
14 material. As I said before, I do believe the only
15 material as in -- Amosite is the only material
16 that really doesn't permeate water.

17 **Q. And the -- both your sample result**
18 **that came up positive and the Farmer samples that**
19 **came up positive, that was Chrysotile?**

20 A. That was Chrysotile.

21 **Q. So there really is no reason that**
22 **water shouldn't have permeated this?**

23 A. Correct.

24 MR. MANKOWSKI: No further

1 questions.

2 HEARING OFFICER: Anything further
3 for you?

4 MR. IMMEL: No.

5 HEARING OFFICER: Thank you, Mr.
6 Zappa.

7 THE WITNESS: Oh, God bless.

8 HEARING OFFICER: Let's go off the
9 record for a minute.

10 (Wherein, discussion was held off
11 the record).

12 HEARING OFFICER: It is 4:35. We
13 were not sure what time the courthouse closes. I
14 would imagine at five o'clock.

15 The parties and I have discussed the
16 situation, and we have decided to continue the
17 hearing until December 2nd at 10 a.m. That will
18 be in Springfield at the Illinois Protection
19 Control Board Hearing Room. I will send out a
20 Hearing Officer Order with that date and time and
21 location included. We will finish with the
22 Respondent's witness. The Respondent's witness
23 has agreed to come to Springfield that day.

24 If we need to change that date, we

1 can do so later on. Does anyone have anything
2 further before we go off the record today?

3 MR. MANKOWSKI: Are we leaving the
4 exhibits with you?

5 HEARING OFFICER: Yeah, you can.

6 MR. MANKOWSKI: Okay.

7 HEARING OFFICER: If no one has
8 anything further, this hearing is continued.
9 Thank you.

10 MR. IMMEL: Thank you.

11 (Deposition concluded at 4:36.)

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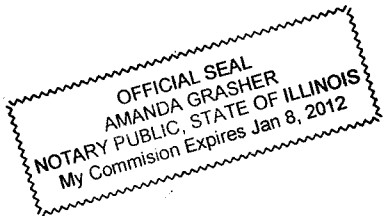
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NOTARIAL CERTIFICATE

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR)

I, AMANDA GRASHER, a Notary Public
and Shorthand Reporter, do hereby certify that I
appeared at the time and place first hereinbefore
set forth; that I took down in shorthand the
entire proceedings had at said time and place, and
that the foregoing pages constitute the complete
and correct transcript of my said shorthand notes.



Amanda Grasher

Notary Public in and for
The State of Illinois

My commission expires January 8, 2012

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