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ILLINOIS POLLUTION CONTROL BOARD

WEEKE OIL COMPANY,)
Petitioner)
vs.) Cause No. PCB 10-01
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

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STATE OF ILLINOIS
Pollution Control Board

THE HEARING BEFORE THE ILLINOIS POLLUTION CONTROL BOARD was held and taken in the above-entitled matter before Ann Marie Hollo, CSR, RPR, RMR, and Notary Public, State of Illinois, at 9:30 o'clock A.M., on January 20, 2010, at the Illinois Pollution Control Board Hearing Room, 1021 North Grand Avenue East, Springfield, Illinois 62794, pursuant to notice.

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On behalf of the Respondent

11
12 ALSO PRESENT: Bryan Williams, Donald Grammer
and Trent Benanti

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1 HEARING OFFICER WEBB: Good morning. My
2 name is Carol Webb. This is the hearing for
3 PCB 10-1, Weeke Oil Company versus IEPA. It is
4 January 20, 2010, and we are beginning at
5 9:30 a.m.

6 For the record, although Petitioner is
7 located in Washington County, there was no
8 known public interest in this case, and the
9 parties agreed to hold the hearing in
10 Springfield. There are no members of the
11 public present.

12 At issue in this case is the Agency's
13 denial of Petitioner's request for
14 reimbursement at a site located at 422 West
15 St. Louis Street in Nashville. The decision
16 deadline in this case is May 20, 2010.

17 The Pollution Control Board members will
18 make the final decision. My purpose is to
19 conduct the hearing in a neutral and orderly
20 manner so that we have a clear record of the
21 proceedings. I will also assess credibility of
22 any witnesses on the record at the end of the
23 hearing. This hearing was noticed pursuant to
24 the Act and the Board's rules, and will be
25 conducted pursuant to Sections 101.600 through

1 101.632 of the Board's procedural rules.

2 At this time, I will ask the parties to
3 please make their appearances on the record.

4 MR. SHAW: Patrick Shaw is entering his
5 appearance for Weeke Oil.

6 HEARING OFFICER WEBB: Thank you.

7 MR. RICHARDSON: Greg Richardson for the
8 IEPA.

9 HEARING OFFICER WEBB: Thank you.

10 Are there any preliminary matters to
11 discuss on the record? Okay.

12 MR. SHAW: I don't think so, no.

13 MR. RICHARDSON: No.

14 HEARING OFFICER WEBB: Would you like to
15 make an opening statement?

16 MR. SHAW: I was going to make some
17 opening remarks, yes.

18 HEARING OFFICER WEBB: Okay.

19 MR. SHAW: Proceed?

20 HEARING OFFICER WEBB: Please.

21 MR. SHAW: I usually don't do this, but
22 since there may be some evidentiary issues and
23 because of the way some of the evidence is in
24 documents, and we don't have time to review it,
25 I kind of just want to lay out the chronology

1 of the events for the hearing officer and at
2 least identify one of the issues that we intend
3 to brief in our briefs.

4 The basic chronology of the events here
5 was in October 30, 2008, a release was reported
6 from the Weeke Oil Service Station that
7 alternatively goes by -- I believe the
8 name -- I don't have it.

9 MR. WILLIAMS: Tim's Tire Time.

10 MR. SHAW: Tim's Tire Time? I'm off to a
11 good start here.

12 Following that, there was the traditional
13 20-day reports, the 45-day reports. The 45-day
14 addendum was received by the Agency
15 January 14th of 2009.

16 After these reports in May 26th of 2009,
17 Weeke received and the consultant received a
18 non-LUST letter determination, and this was
19 about a hundred thirty-two days after the last
20 report was filed. This document purported to
21 state that this was not a LUST incident and
22 that the reporting requirements for this site
23 are not applicable. This was the first time
24 this issue was drawn to our attention. And
25 shortly after that, the early action billing

1 application was denied for similar reasons.

2 The reason I'm giving a little bit of this
3 background is one of the concerns I have in
4 this case and will be presenting in the
5 briefing is that this case does not follow the
6 traditional Section 40 procedure for permit
7 applications because the determination made by
8 the Agency was on its own. Traditionally an
9 application permitting process involves an
10 obligation on the permit, or the applicant, to
11 gather their information, fill out the forms,
12 put it all together, and provide a basis of
13 knowledge for the Agency to operate on. The
14 courts have said that this process is
15 appropriate and complies with due process
16 because they've had their say. And acting upon
17 that sum of documents, the Agency then issues
18 its determination, and it is had its say. And
19 there has been at least a framing of the issues
20 in these cases.

21 Because the decision made here to
22 determine that this was not in the program and
23 was not made in the context of a denial of a
24 request for affirmative relief, the process
25 does not follow what traditionally you would

1 see in an application process. And
2 specifically it raises questions that have been
3 identified in some of the appellate court
4 decisions about whether or not the totality of
5 the proceeding complies with due process,
6 whether or not it has the fundamental fairness
7 aspects to which the party has been given
8 notice and a reasonable opportunity to respond.

9 With that background here, some of what
10 we're going to present today is our response to
11 the non-LUST determination letter. And I would
12 expect, and if I was sitting on the other side,
13 I would object to things that happened after
14 the decisions were made, but in this context,
15 this was not a situation in which there was an
16 application prepared and acted upon by the
17 Agency.

18 And in saying this, I'm not trying to
19 provoke an argument from counsel. This will
20 probably be briefed out. And I don't expect
21 him to want to respond and need to respond, but
22 I felt like I needed to lay out a little bit of
23 chronology of the events to facilitate perhaps
24 any objections that might occur, and I would
25 expect to occur.

1 But primarily we believe we can win the
2 case based upon what is in the Agency's record
3 because we think it supports our position, but
4 we're not holding anything to chance. We're
5 going to explain what happened and why it
6 happened. And we will hope the Board will
7 agree with us. And thank you.

8 HEARING OFFICER WEBB: Mr. Richardson,
9 would you like to make any opening statement?

10 MR. RICHARDSON: I have no opening
11 remarks.

12 HEARING OFFICER WEBB: Okay. Petitioner,
13 you may call your first witness.

14 MR. SHAW: I would like to call Mr. Bryan
15 Williams to the stand.

16 HEARING OFFICER WEBB: Mr. Williams, would
17 you please come have a seat over here. The
18 court reporter will swear you in.

19 [WHEREUPON THE WITNESS WAS SWORN
20 BY THE NOTARY PUBLIC.]

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1 A Yes, sir.

2 **Q What is the nature of that background and**
3 **experience?**

4 A Since approximately right around somewhere
5 around 1992, I started working for an environmental
6 company and practicing and learning underground
7 storage tank closure practices under a larger
8 company.

9 **Q Okay. Do you have any idea how many**
10 **underground storage tank cleanups or tank pulls**
11 **you've been involved with?**

12 A I'm going to estimate since I started in
13 the business, we have probably removed over 300
14 tanks. I'm satisfied we've obtained somewhere close
15 to 100 NFRs. We also do a lot of work on
16 consulting work and cleanup work for spills and
17 leaks of various types, petroleum products
18 primarily.

19 **Q Are you familiar with the incident number**
20 **2008 1597 that is the subject of this proceeding?**

21 A Yes, sir. I believe I reported that
22 incident.

23 **Q I'm going to describe that in the future**
24 **as the 2008 release. Would that be clear enough?**

25 A Yes, sir.

1 **Q Instead of using the numbers.**

2 A Yes, sir.

3 **Q What were the circumstances in which you**
4 **called in the 2008 release?**

5 A Performed some soil borings and saw
6 evidence of a release. And anytime you identify,
7 suspect a release has occurred, by law you're
8 required to -- the owner operator or the consultant
9 is required to report that release to the Illinois
10 Emergency Management Agency within 24 hours.

11 **Q Was the Illinois Emergency Management**
12 **Agency called within 24 hours?**

13 A Yes, sir. And they assigned the site the
14 incident number you referenced.

15 **Q Were any other steps taken in that first**
16 **24 hours or so besides calling?**

17 A Mr. Weeke had -- and we double-checked.
18 He had removed the fuel from the tanks to eliminate
19 any ongoing release.

20 **Q And what is your relationship with**
21 **Mr. Weeke at this time in 2008?**

22 A I had worked as an environmental
23 consultant on a previous release for Mr. Weeke, and
24 I had also worked and cleaned up a couple of other
25 significant releases that his clients had.

1 Mr. Weeke was a fuel distributor. He was also a
2 principal owner in a truck stop called Little
3 Nashville. So I've done some, various projects for
4 Mr. Weeke.

5 **Q What did he request that you do with**
6 **respect to this property in 2008?**

7 A Proceed with cleanup, remediation. And we
8 discussed it, and he wanted his tanks removed and
9 the incident closed out.

10 **Q Do you have an idea when the fuel was**
11 **removed from the tanks? Was that before or -- at**
12 **what time period in relationship to the release**
13 **being reported?**

14 A I believe Mr. Weeke removed the fuel from
15 them. And I can't remember the exact day, but prior
16 to the reporting of the release just a few weeks or
17 a month as the system was taken out of service. I
18 really don't remember exactly -- so much time has
19 passed -- when he did remove the fuel. I know we
20 checked the tanks for product when we found and
21 reported the release.

22 **Q Do you recall whether or not there was**
23 **product in the tanks?**

24 A The tanks were emptied at that time when
25 we reported the leaks.

1 Q What were your observations at the time
2 the release was reported of the condition of the
3 ground and the soils around the tank pit?

4 A The soil was obviously impacted. It was
5 discolored and odorous, but there had been a
6 previous release at the site, so it really didn't
7 surprise me. I was aware that the site was
8 previously closed with contamination in place.

9 Q What was the next step that was taken that
10 you were involved in after the report was released,
11 the release was reported to IEMA?

12 A We negotiated the removal of the tanks
13 with a contractor and obtained a permit to remove
14 the tanks from the offices of the state fire
15 marshal.

16 Q And then following the permission from the
17 state fire marshal, what happened next?

18 A The contractor -- Jeff Guisewite, Inc.,
19 was the contractor -- elected or hired to remove the
20 tanks. He received the permit, contacted myself,
21 and we scheduled a date for the removal of the
22 tanks.

23 Q Okay. On the date the tanks were
24 removed -- between the date the tanks were removed
25 and the release was reported, did you do any other

1 **investigation at the property?**

2 A No, sir.

3 **Q Okay. Were you there present when the**
4 **tanks were removed?**

5 A Yes, sir.

6 **Q What happened the day the tanks were**
7 **removed?**

8 A The tanks were uncovered, and they were
9 buried in a sand backfill. The tanks were -- the
10 material over the tanks was removed, and it was
11 uncovered. The sides of the tanks, the backfill
12 around the tanks was excavated back to the sides. I
13 think the removal occurred in December. I can't
14 remember the exact day. There was a considerable
15 amount of water in the tank pit, around the tanks,
16 that had a heavy sheen, and it had a layer of fuel
17 on it.

18 **Q What did this tell you with respect to the**
19 **issue of contamination at the property?**

20 A To me, it's -- I've done so many of these,
21 it is obvious when you encounter product on a tank
22 pit, you clean it up. You don't take a sample; you
23 don't wait. So we mixed the water and the fuel with
24 the backfill and clay from the side walls and dried
25 up the tank pit and manifested the

1 petroleum-impacted backfill to a special waste
2 landfill for disposal.

3 **Q Who else was present on the day that the**
4 **tank was pulled?**

5 A Mr. John Marx (sp), a civil engineer
6 geologist that works for me, in Carmi, and Mr. Don
7 Grammer, who is our civil engineer P.E. that
8 certifies and provides consulting and assistance to
9 me in performing our work. Jim Weeke, the owner
10 operator of the tanks, was there, and Mr. Terry
11 Wiedemann (sp), the Illinois Office of the State
12 Fire Marshal field representative was on site.

13 **Q Okay. Were any of those gentlemen that**
14 **you just mentioned here in the room today?**

15 A Mr. Don Grammer is in the room.

16 **Q You indicated that no test or samples were**
17 **taken of the material that was removed and**
18 **landfilled. Were there any other tests or samples**
19 **taken around this time?**

20 A Following the removal of the impacted
21 backfill and the water in the fuel, closure samples
22 or confirmation samples were taken from the
23 excavation. Mr. Weeke had concrete over the other
24 area. And we pulled the lines from the dispenser
25 back, and I did not break through the concrete to

1 take confirmation samples along the lines or below
2 the dispensers. Because by law, when you confirm a
3 release, you will drill at locations anyway. So I
4 did not bust up the concrete for that. I elected
5 just to collect those through borings.

6 **Q Did you receive any directions from the**
7 **representative from the state fire marshal during**
8 **the tank pull?**

9 A Mr. Wiedemann looked at our permit and the
10 incident number that we had reported prior to the
11 removal. He indicated that it was a recent number,
12 and it had been reported within about 30 days of
13 when the tanks were removed. So he indicated, "I
14 will not make you get a new incident number." But
15 he did indicate that he would be referencing some
16 significant impaction on his removal log.

17 Mr. Wiedemann witnessed everything on site as well.

18 MR. SHAW: I'm going to approach the
19 witness and see if I can have an item marked as
20 an exhibit. I had premarked a number of
21 exhibits, so I probably am going to request an
22 odd number here.

23 [WHEREBY, PETITIONER'S EXHIBIT
24 NUMBER 11 WAS MARKED FOR
25 IDENTIFICATION.]

1 MR. SHAW: I'm approaching the witness
2 with Exhibit Number 11.

3 Q Can you look that exhibit for me
4 please.

5 A Yes, sir.

6 Q Can you identify that for me please.

7 A Yes, sir. That is a log of the
8 underground storage tank removal prepared by
9 Mr. Terry Wiedemann for the Tim's Tire Time site.

10 Q And do you know the circumstances under
11 which you received that exhibit?

12 A I ordered or requested this exhibit
13 through the Freedom of Information Act in the office
14 of the state fire marshal because the work I
15 did -- we did was contested by the LUST section, and
16 I wanted to see what the fire marshal reported
17 regarding this release.

18 Q Is the fire marshal's log something that
19 you rely upon somewhat regularly in your business?

20 A No, because it's usually not contested
21 when there's a release like this.

22 MR. SHAW: I'm going to ask to offer
23 Exhibit 11 into evidence.

24 Is there any objection?

25 MR. RICHARDSON: I'm going to show an

1 objection to that document as it was not
2 provided to the Agency prior to its May 26,
3 2009 non-LUST decision in this case.

4 HEARING OFFICER WEBB: It's not part of
5 the record?

6 MR. RICHARDSON: That is correct, and
7 that's the reason why.

8 HEARING OFFICER WEBB: Well, since it was
9 not part of the record, I'm not going to admit
10 it, but I will allow you to make an offer of
11 proof.

12 MR. SHAW: Well, if I understand the
13 objection, the reason I offered it was to make
14 sure there wasn't some evidentiary foundation
15 that I could provide here, but the nature of
16 the objection is also the nature of my issue.
17 So I will just ask to make an offer of proof
18 for Exhibit 11 and based upon the testimony
19 we've already provided.

20 HEARING OFFICER WEBB: Okay.

21 MR. SHAW: Let me see where we are.

22 **Q Did you take any photographs during**
23 **the tank pull?**

24 A Yes, sir.

25 **Q And we brought those, copies of those with**

1 **us today; is that correct?**

2 A Yes. I took several photographs during
3 the tank removal and the cleanup. And I
4 inadvertently left out some of the more evidencing
5 and documenting photographs that showed the fuel on
6 the tank pit.

7 Again, I'm working fast. I
8 didn't -- I didn't anticipate having to thoroughly
9 document what we did there and the reason we
10 remediated the tank pit. And I forgot to put the
11 worst pictures showing the product in that report.

12 And following denial of the billing
13 package for this site, I contacted Mr. Hernando
14 Albarracin, head of the LUST section. And
15 Mr. Albarracin --

16 **Q Well, let me just stop you there.**

17 A Okay.

18 **Q You're answering about five or six**
19 **questions.**

20 A Okay.

21 **Q We'll get to those.**

22 **The answer, though, is you did take**
23 **pictures that day?**

24 A Yes, sir.

25 **Q Did you provide any of those pictures as**

1 part of your 45-day report documents?

2 A Yes, sir.

3 Q So there are pictures in the Agency
4 record?

5 A Yes, sir.

6 Q Okay. Following the 45-day -- or
7 following the tank pull, what was the next activity
8 you were involved in?

9 A We removed the tanks, took the
10 confirmation samples and backfilled the excavation.
11 Upon receipt of the analytical results, we prepared
12 and submitted a 45-day addendum report presenting
13 the information from the tank removal.

14 Q Do those confirmation samples indicate
15 exceedances of any standard?

16 A Yes. There were, I believe, two samples
17 above the IEPA TACO tier 1 remediation objectives.

18 Q Did you, in your 45-day report addendum,
19 indicate that the property was clean and certified
20 as clean as necessary for the NFR letter? Or did
21 you -- let's strike that question.

22 In the 45-day report addendum, there
23 was a certification that the site is clean or not
24 clean; is that correct?

25 A Yes, sir.

1 **Q** What did you certify it as?

2 A That it was not clean.

3 **Q** And that's probably simplification for
4 clean or not clean, but there is essentially
5 somewhere in that document a choice to be made
6 between seeking an NFR letter or going on with
7 investigation; is that correct?

8 A Yes, sir.

9 **Q** And, again, why did you indicate that
10 further investigation was necessary?

11 A There were two samples, I believe, above
12 objectives. We had cleaned up and remediated a very
13 nasty tank pit that was saturated with free-product
14 petroleum. It was cleaned up. The product did not
15 come back. But based on the way the LUST program
16 proceeds with exceedances like that, I was not at
17 liberty to request an NFR, a no further remediation
18 letter, at that point.

19 **Q** Following that 45-day report addendum, did
20 you ever receive any indication that the Agency
21 agreed or didn't agree with your conclusion?

22 A Yes. At some point, a few weeks after the
23 submittal of the 45-day addendum, I received a
24 letter from the EPA stating that this 45-day report
25 will be subject to a full review at some point. And

1 it references for me to proceed with stage 1 site
2 investigation.

3 **Q I'm going to hand what you I've personally**
4 **marked as Exhibit 10. Could you look at Exhibit 10**
5 **for me please.**

6 A Yes, sir.

7 **Q Do you recognize that document?**

8 A Yes, sir.

9 **Q Could you describe it for me.**

10 A That's the copy of the letter I received
11 from the EPA sometime around December 8th, 10th,
12 within a few days of when it was dated, advising me
13 to proceed with stage 1 site investigation.

14 **Q Did you proceed with stage 1 site**
15 **investigation?**

16 A Yes, yes.

17 **Q Did you submit a plan of budget?**

18 A Yes, I submitted a site investigation
19 stage 2/3 plan and budget, because there were
20 exceedances at the property line requiring
21 additional testing to delineate the area of
22 contamination.

23 **Q Was that approved or denied?**

24 A It was denied.

25 **Q Okay. Following the 45-day addendum, did**

1 you submit for reimbursement for the LUST fund for
2 any of the work that you'd done at that point in
3 time?

4 A An early action billing package was
5 submitted for reimbursement to the IEPA after
6 receipt of all the bills and invoices from the early
7 action activities.

8 Q What activities -- just as a general
9 description, what were the activities that you were
10 seeking reimbursement for?

11 A Tank removal, cleanup of the tank pit
12 backfill, trucking, excavation, landfill costs,
13 disposal, sampling and project oversight.

14 MR. SHAW: We have that document in the
15 record, so I won't -- let me just back up.

16 Exhibit 10, we would like to offer it into
17 evidence. I do not believe it was with the
18 Agency record, but I do believe it was prior
19 to --

20 MR. RICHARDSON: And Exhibit 10, was that
21 early action?

22 HEARING OFFICER WEBB: Do you want to see
23 it again?

24 MR. SHAW: What's the date of the letter?

25 MR. RICHARDSON: December 8th; is that

1 correct?

2 THE WITNESS: The December 8th letter,
3 yes, regarding site investigation.

4 MR. RICHARDSON: I don't object to that.

5 HEARING OFFICER WEBB: Did you just offer
6 it?

7 MR. SHAW: Yes.

8 HEARING OFFICER WEBB: And you do not
9 object?

10 MR. RICHARDSON: Correct.

11 HEARING OFFICER WEBB: Then I'll go ahead
12 and admit Exhibit 10 into the record.

13 [WHEREBY, PETITIONER'S EXHIBIT
14 NUMBER 10 WAS ADMITTED INTO THE
15 RECORD.]

16 BY MR. SHAW:

17 Q From what I can see and at least from my
18 notes, the next thing I see in the file is a letter
19 that was sent out May 26, 2009. I can hand you a
20 copy, but it's in the record, but it's the non-LUST
21 determination letter. Do you recall receiving that?

22 A Yes, sir.

23 Q Had you been given any communications
24 about the issues in that letter prior to receiving
25 that letter?

1 A No, sir.

2 Q You did not receive any phone calls from
3 the Agency asking for more information?

4 A Not to my knowledge.

5 Q What was your response in receiving that
6 non-LUST letter?

7 A I was very surprised.

8 Q Okay.

9 A And I called the project manager, Trent,
10 and he gave me his reasons for denying those
11 payments and his justification for that.

12 Q What was your understanding of his
13 reasons?

14 A That he believed it was a re-reporting of
15 a previous release that was reported in
16 approximately 1998 and was issued no further
17 remediation letter in 2006.

18 Q You had previously indicated that was
19 something that you had flagged on your first
20 encounter with the site. Am I recalling that
21 correctly? That you knew there was -- you may
22 expect to see some soil staining at the site? Is
23 that --

24 A Yes, sir. Our company, and our engineer,
25 Mr. Grammer, performed closure for the first

1 incident at that site.

2 Q Are you familiar with the first incident
3 at the site?

4 A Very much so.

5 Q Okay. I'm going to refer to it as the
6 1998 incident. I think that's the --

7 A Yes, sir.

8 Q The two incidents that are about the same
9 time. What was your involvement with the 1998
10 incident?

11 A I was notified by Mr. Cliff Manis (sp).
12 He was the field representative for the Illinois
13 Office of the State Fire Marshal. I told him I
14 worked for Mr. Weeke. And Mr. Manis had been on
15 site at Tim's Tire Time supervising the upgrade,
16 the '98 upgrade, to meet the federal standards of
17 those tanks.

18 And when those tanks were exposed, he
19 encountered what he deemed as contamination. And he
20 called me and asked that I discuss with Mr. Weeke,
21 and or we report those tanks as leaking. He said
22 the backfill and material over the tanks that was
23 excavated was saturated with fuel, and he wanted an
24 incident reported, and it was.

25 Q Were you involved in the subsequent

1 **response activities for that incident?**

2 A Yes, sir. The tanks were upgraded. The
3 impacted material that was excavated was disposed at
4 a landfill. And then the site was closed, and a no
5 further remediation letter was obtained through the
6 former method or standards of the EPA called site
7 classification.

8 Q **Let me just make sure we stop and get**
9 **that. What was the type of site classification that**
10 **was used at this property?**

11 A There was -- I can't remember a hundred
12 percent. There was pathway exclusion. Basically
13 you perform borings around the perimeter of the
14 property and or down gradient of your tank pits.
15 And if you had an exceedance of contaminants at the
16 property line, you did additional investigation.
17 And as part of this site classification, the tank
18 pit that was remediated was never investigated.

19 Q **What kind of analytical analysis was taken**
20 **on the property during 1998? Where were the samples**
21 **taken?**

22 A One was taken down gradient of the tank
23 pit, and then they were taken around the property
24 lines to determine if there was an exceedance of an
25 indicator contaminant at the property lines.

1 Q And was there an exceedance?

2 A Yes, sir.

3 Q And if I understand correctly, it was
4 largely cleaned up by use of TACO type controls? Is
5 that what you were indicating?

6 A It was closed out and managed in place
7 through TACO. It was not cleaned up.

8 Q You're disagreeing with my use of the word
9 "remediating"?

10 A Sure, sure.

11 Q I take the point.

12 And your point that you had made
13 earlier was that there were no samples taken from
14 the tank pit regarding the 1998 incident?

15 A That's correct. And closure was made, as
16 it was pointed out to me by the director of the EPA
17 during previous hearings, that it is a closure in
18 place, management of contamination in place.

19 Q This incident was reported in 1998. Do
20 you remember what year the soil borings or other
21 analyticals would have been taken?

22 A I believe, to the best of my knowledge,
23 that on-site soil borings were performed in 1999.

24 Q Okay. Do you recall when maybe the no
25 further remediation letter would have been issued on

1 the property?

2 A Approximately 2006.

3 Q What activities took place on the property
4 between 1998 and 2009? Was it vacant? Was it in
5 use? What was the nature of the --

6 A It was an active service station with fuel
7 sales. He sold gasoline and diesel.

8 Q You removed two tanks, though, in 1998?
9 Is that what you had --

10 A Yes, a heating oil tank and a used oil
11 tank.

12 Q Were those ever replaced or put back into
13 service?

14 A No, sir.

15 Q So between 1998 and 2009, there continued
16 to be a number of tanks that were being used to
17 store and dispense?

18 A Yes, there were three tanks in active use
19 at the site.

20 Q You had indicated that after receiving the
21 non-LUST letter, you contacted the project manager.
22 Did you ever speak to anybody else from the Agency
23 about the non-LUST determination?

24 A I contacted the project manager, Trent,
25 and he indicated that this was a non-LUST issue, and

1 I disagreed. And I called Hernando Albarracin, head
2 of the leaking underground storage tank section,
3 which I'm familiar with Hernando and have worked on
4 projects with him for a number of years.

5 **Q And what did he indicate? What did he**
6 **state in response to your concerns?**

7 A Hernando asked me if I had any additional
8 supporting information, to please send it up to him,
9 and he would review it and see if they could justify
10 a re-review and a reversal of Trent's decision. And
11 I forwarded Hernando an explanation of what I found
12 there and photographs that had been inadvertently
13 left out of the 45-day addendum, and the photographs
14 plainly exhibit fuel on the water in the tank pit.

15 MR. SHAW: Let me approach the witness
16 with -- these are your copies -- Exhibits 6, 7,
17 8, 9.

18 **Q Could you please review those**
19 **exhibits.**

20 MR. RICHARDSON: Can I interrupt real
21 quick?

22 MR. SHAW: Sure.

23 HEARING OFFICER WEBB: Go ahead.

24 MR. RICHARDSON: Are these in the record?

25 MR. SHAW: These are.

1 MR. RICHARDSON: Sort of blowups?

2 MR. SHAW: Yes.

3 MR. RICHARDSON: Thank you.

4 HEARING OFFICER WEBB: These are in the
5 record, you say?

6 MR. RICHARDSON: No.

7 HEARING OFFICER WEBB: Okay.

8 MR. RICHARDSON: But I'll --

9 THE WITNESS: I mailed these to Hernando
10 certified mail. I've got documentation that
11 the Agency received my letter of explanation
12 and these photographs, and I never heard back
13 from the Agency. I asked for a re-decision,
14 and basically I didn't have any phone calls
15 returned. And I filed an appeal.

16 BY MR. SHAW:

17 Q Well, let me just back up. I'd like you
18 to look at Exhibit 6 for me.

19 A Yes, sir.

20 Q Can you identify that for me and tell me
21 what that is.

22 A Yes, sir. That is a picture of the tank
23 pit at Weeke Oil. It easily confirmed the presence
24 of that building. And it is a photograph of the
25 tank pit looking from north to south with the oil on

1 the hole.

2 Q And I believe there might be some writing
3 on the document or maybe the portion of it. Do you
4 know what the source of that writing is?

5 A Yes. It's a word called "product" and an
6 arrow drawn pointing to it.

7 Q I'm trying to make the record here. We
8 know what it is. We want to make sure that
9 everybody understands what it is.

10 A Yes.

11 Q Who put that there?

12 A I did.

13 Q Okay. Why did you put it there?

14 A To illustrate to Hernando why I cleaned up
15 this tank pit.

16 Q Thank you. That's what I was asking.

17 Would you look at Exhibit 7 for me
18 please.

19 A Yes, sir.

20 Q Could you identify that for me please.

21 A Yes, sir. That is a picture of the
22 fuel-saturated backfill scraped up before it's
23 loaded. It was right at the end of the cleanup
24 before it's going to be loaded out and sent to the
25 landfill.

1 **Q Could you look at Exhibit 8 and identify**
2 **it for me please.**

3 A 8 is a picture of product on the tank pit,
4 that it does not -- that the definition and clarity
5 of the picture is a little vague, but that's a
6 picture of the fuel beside that tank.

7 **Q Can you identify picture 9 or Exhibit 9**
8 **for me please.**

9 A Exhibit 9 is a hand -- a laborer working
10 to uncover the tanks during the removal. The
11 original pictures show a little more of the
12 discoloration and the heavy impaction of the tank
13 pit.

14 **Q Okay. The four exhibits we just looked**
15 **at, who took those pictures?**

16 A Either myself or the civil engineer
17 working on the job with me. I can't remember
18 exactly who snapped each photograph.

19 **Q Okay. And you indicated that you**
20 **presented those to or mailed those to Hernando at**
21 **some point in time?**

22 A Yes, sir.

23 MR. SHAW: Could we go off the record here
24 for a minute?

25 HEARING OFFICER WEBB: Yes.

1 [WHEREUPON THERE WAS A SHORT
2 DISCUSSION OFF THE RECORD.]

3 MR. SHAW: I'm going to go ahead and mark
4 this as the next exhibit.

5 HEARING OFFICER WEBB: Would you like
6 Exhibit 12?

7 MR. SHAW: Yeah.

8 [WHEREBY, PETITIONER'S EXHIBIT
9 NUMBER 12 WAS MARKED FOR
10 IDENTIFICATION.]

11 HEARING OFFICER WEBB: We're back on the
12 record. I'm sorry.

13 BY MR. SHAW:

14 Q I'm handing to the witness a document that
15 was previously -- or has just been marked as
16 Exhibit 12. Would you please review that for me.

17 A Yes, sir.

18 Q Do you recognize that exhibit?

19 A Yes, sir.

20 Q Could you describe it for me.

21 A This exhibit is a two-page letter I sent
22 to Hernando explaining why I cleaned up the tank
23 pit. And it is further documented with photographs,
24 digital photographs printed at our office, two of
25 which illustrate product on the water in the tank

1 pit and two of them that show the heavily impacted
2 backfill material.

3 **Q And is it your understanding that that**
4 **document was received by the Agency?**

5 A Yes, sir. It was mailed certified mail,
6 return receipt, and we have documentation the Agency
7 received that as requested by Hernando.

8 MR. SHAW: At this time, we would like to
9 move to enter into evidence Exhibit 12 as a
10 letter that was sent to Hernando following the
11 non-LUST determination.

12 MR. RICHARDSON: Are you also going to
13 move for 6, 7, 8, 9 since --

14 MR. SHAW: Yeah.

15 MR. RICHARDSON: Well, I don't want to try
16 your case. I don't know if those were going
17 now, too, or not.

18 MR. SHAW: I was, but I was going to make
19 an additional caveat that these are simply
20 blowups of those documents, and these actual
21 blowups were not delivered. They're just --

22 MR. RICHARDSON: Okay.

23 MR. SHAW: They're additional copies for
24 demonstrative purposes.

25 MR. RICHARDSON: Okay.

1 MR. SHAW: So that's why I was going to
2 move for that one first.

3 MR. RICHARDSON: Well, sorry.

4 MR. SHAW: That's okay.

5 MR. RICHARDSON: I'll respond to that on
6 Exhibit 12. I would object again because they
7 were not in the Agency's possession prior to
8 the May 26, 2009 determination letter. I also
9 object to some of the contents of the letter.
10 It makes assumptions about actions that
11 Illinois EPA employees would have taken.
12 There's no basis for those, and I would just
13 ask that those not be considered. I can argue
14 it in my brief if the letter gets there.

15 HEARING OFFICER WEBB: Well, any exhibit
16 that is not part of the record I'm not going to
17 admit, unless Mr. Richardson has no objection,
18 but I will allow you to continue to use these
19 as offers of proof. I will take them and
20 submit them to the Board for you.

21 MR. RICHARDSON: I do acknowledge that we
22 received the letter, the pictures. I mean, we
23 did receive those. It was just after the
24 May 26th date.

25 MR. SHAW: Well, as I understand, the

1 objection isn't to the foundation of the
2 document, what it purports to be. It's to the
3 scope of the evidence to be reviewed at this
4 hearing. It's a legal letter. I guess I'm
5 just making sure it's clarified. Sometimes if
6 there's an evidentiary issue, maybe I can
7 provide further foundation to establish what it
8 is, but that's not going to happen here. So we
9 just ask that those documents -- well, I just
10 admitted 12, right?

11 MR. RICHARDSON: Yes.

12 MR. SHAW: We would ask that 12 be
13 accepted as an offer of proof.

14 HEARING OFFICER WEBB: Okay. Yes.

15 MR. SHAW: And I think similar issues are
16 going to have to pertain to the photographs.
17 The 6, 7, 8 and 9? I've got that, yeah.

18 Those actual documents were not -- I'm
19 offering them as just sort of a demonstrative
20 exhibit to have the copies of the pictures for
21 discussion purposes. I guess I don't really
22 need to offer them into evidence, unless they
23 are -- they are intended to be helpful.

24 HEARING OFFICER WEBB: Okay.

25 MR. SHAW: The specific copies themselves

1 were not --

2 HEARING OFFICER WEBB: To be honest, I
3 think the smaller ones are actually a little
4 clearer. I think the photos in Exhibit 12 are
5 a little --

6 MR. SHAW: I'm not going to offer -- the
7 more I think about it, I'm not going to offer
8 that into evidence as an exhibit.

9 HEARING OFFICER WEBB: Okay.

10 MR. RICHARDSON: But I would ask that it
11 be kept with the file because we were
12 discussing the pictures by use of Exhibit 6,
13 Exhibit 7. So that discussion relates to that
14 document. It would help understand the
15 documents.

16 HEARING OFFICER WEBB: Okay. I will do
17 that.

18 MR. SHAW: I'll just ask that it be
19 treated as a demonstrative exhibit, and not as
20 substantive evidence.

21 HEARING OFFICER WEBB: Yes.

22 BY MR. SHAW:

23 **Q In response to the letter that you sent to**
24 **Hernando that I believe is marked as Exhibit 12, did**
25 **you receive any further response from the Agency?**

1 A No, sir, not to my knowledge.

2 Q Do you have any recollection of the cost
3 or scope of the cleanup from 1998? And just give me
4 a ballpark, if you think you can. I don't want to
5 hold you to a number.

6 A The site was closed under TACO with, I
7 think, engineer barrier -- groundwater restriction
8 usage approved by the city and a street agreement
9 from Nashville and a street agreement from IDOT.
10 The exact cost, of which I am not sure, but I
11 believe all drilling testing reports and final
12 closure was probably achieved for \$25,000 or less,
13 maybe 20,000 or less.

14 Q Okay. And that would have
15 been -- reimbursement would have been sought from
16 the Leaking Underground Storage Tank Fund at that
17 time?

18 A Yes. It was a reimbursable closure, minus
19 the \$10,000 deductible.

20 Q And just to make sure we're relating the
21 numbers together, when you said it's 25 -- less than
22 25,000, maybe less than 20,000, that's not
23 considering the deductible? Am I understanding that
24 correctly?

25 A That's correct. The deductible would come

1 out of that amount.

2 MR. SHAW: I don't think I have any
3 further questions at this time.

4 HEARING OFFICER WEBB: Mr. Richardson?

5 EXAMINATION

6 BY MR. RICHARDSON:

7 Q Mr. Williams, I believe it was the 45-day
8 report addendum stated that the UST system was taken
9 out of service in September of 2008?

10 A I don't remember exact dates. If that was
11 in the report, that would be the best information I
12 had.

13 Q And that would have been about a month
14 before you were out there and pulled that single
15 boring; is that right?

16 A That sounds right, yes, sir.

17 Q And what was -- the site, the status,
18 there was no business activities going on there at
19 that time in September and October of 2008?

20 A I believe that's correct. I believe
21 Mr. Weeke had shut down the station.

22 Q Is the property for sale?

23 A Yes, sir.

24 Q And has it been sold?

25 A They're in negotiations, it's my

1 understanding, for redevelopment of the property.

2 **Q Now, the petition for review in this case,**
3 **which was filed by your attorney, it's made a**
4 **reference to during recent on-site construction**
5 **activities. Do you know what that reference talked**
6 **about?**

7 A No, sir. Off the top of my head, I do
8 not.

9 **Q Okay. Okay. So the property is for sale,**
10 **and they're looking for potential buyers for it?**

11 A The property is for sale. I don't know
12 that they're aggressively looking for buyers.

13 **Q And am I not correct --**

14 MR. SHAW: Can I just object to this line
15 of questioning? I've just had a number of
16 documents that were not allowed in the evidence
17 on grounds that it wasn't in the Agency record,
18 and you're asking questions, I don't think,
19 that are -- about the nature of the property
20 transactions? I'm not seeing how that's
21 relevant or even relevant to the frame that my
22 case had to push through.

23 MR. RICHARDSON: Well, we're saying it's a
24 non-LUST incident. And I'm trying to establish
25 the fact that if this property is up for sale,

1 obviously it would probably be reasonable to
2 assume that the property is more valuable
3 without gas tanks underneath it. So that's
4 where I'm going with this.

5 MR. SHAW: Well, it doesn't sound like
6 there's a lot of foundation for the non-owner
7 operator to be discussing this, but go ahead
8 and ask your questions, if he can answer them.

9 MR. RICHARDSON: Yeah, exactly. I mean,
10 if he knows, he knows.

11 HEARING OFFICER WEBB: All right. Go
12 ahead.

13 BY MR. RICHARDSON:

14 Q I mean, am I not correct that this
15 property would probably be more valuable to a future
16 owner without these gas tanks in place?

17 A It would depend on the type of business he
18 wanted to conduct there.

19 Q If he wasn't going to operate a gas
20 station, wouldn't it be more valuable to them?

21 A Yes.

22 Q And who owns that site? Is it --

23 A Mr. Jim Weeke.

24 Q Mr. Jim Weeke. Okay.

25 And now you said that you are a

1 principal owner of Applied Environmental
2 Technologies, Inc.?

3 A Yes, sir.

4 Q And by principal, does that mean a hundred
5 percent owner, or is that some portion thereof?

6 A Applied Environmental Technologies is a
7 Subchapter S. I believe I own 51 percent of that
8 stock, and my wife 49 percent, and that's the best
9 of my memory.

10 Q Sure. And, now, you said that at the time
11 of the pull, which I think was on December the
12 8th of 2008, according to the fire marshal's
13 report, there was some discussion with the fire
14 marshal personnel on site about whether a new
15 release should be reported or not?

16 A The fire marshal discussed it with me,
17 yes, sir.

18 Q Okay. And was that based upon the water
19 that shows up in these pictures, which I think it's
20 People's Exhibit Number 12, or, I mean, was there
21 some other basis for this conversation?

22 A There was fuel on the water in the tank
23 pit, and it was heavily impacted backfill throughout
24 the tank pit that was fuel saturated. And he can
25 see that; you can see it, and you could really smell

1 it. So it was apparent that a release there had
2 occurred.

3 Q And when you say heavily impacted soil,
4 what would I be looking at if I was looking at
5 heavily impacted soil?

6 A Totally discolored or saturated with fuel.
7 In this case, it was sand that had petroleum in it
8 where you could see a sheen and discoloration and
9 odor.

10 Q And you said while you were there that the
11 area was saturated with free product? Am I correct?

12 A The free product was floating on the
13 water, and it looked like it did extend through the
14 backfill, yes.

15 Q Now, do you recall, I believe, either in
16 the 45-day report or the 45-day report addendum,
17 there's a box to check concerning free product
18 encountered?

19 A Yes, sir.

20 Q And do you recall what was checked in that
21 box in those two reports?

22 A Yes, sir.

23 Q What was checked?

24 A It was checked that no product was
25 encountered because the Agency's instructed us if we

1 clean up a tank pit that's got product on it and it
2 does not come back, you do not have to file a free
3 product report.

4 **Q Okay.**

5 A It just happened to me on two or three
6 jobs.

7 **Q Okay.**

8 A The very same thing.

9 **Q So as far as the Agency knew, there was no**
10 **free product on that date?**

11 A Right. It was cleaned up, and it was
12 gone, and didn't come back.

13 **Q It did not come back?**

14 A That's correct.

15 MR. RICHARDSON: Okay. I have no further
16 questions.

17 HEARING OFFICER WEBB: Okay. Mr. Shaw?

18 MR. SHAW: One follow-up. I'm going to
19 give the -- approach the witness with what I
20 previously marked as Exhibit 2. And let the
21 record reflect that this is an exhibit that I
22 took out of the Agency record for convenience
23 purposes.

24 MR. RICHARDSON: Okay.

25 MR. SHAW: I broke up some of the

1 documents that there should be in the Agency
2 record.

3 FURTHER EXAMINATION

4 BY MR. SHAW:

5 Q I'm going to approach you with Exhibit 2,
6 and I am going to direct your attention to this
7 document that's titled at the top, "Straight Bill of
8 Lading." Could you review that for me please.

9 A Yes. It's a bill of lading from Gateway
10 Petroleum Company referencing the removal or
11 disposal, I believe, of a hundred and fifty gallons.

12 Q We've been talking about when -- do you
13 recognize that bill of lading, the document itself?

14 A In all honesty, I forgot this document
15 even existed.

16 Q That's why I brought the document here.

17 A Yes, sir.

18 Q Does that refresh your memory about the
19 sequence of events involving the service station and
20 being taken out of service and etcetera, etcetera?

21 A Yes, sir. It's reflecting the removal and
22 disposal of combustible liquids.

23 Q And by combustible liquids, what is that
24 specifically?

25 A This is referencing number 2, fuel oil. I

1 believe that's diesel fuel.

2 Q Where would that have come from?

3 A The diesel tank in that tank pit.

4 Q Okay. When was that removal undertaken
5 with respect to the incident reporting?

6 A This was taken out, it says, on 10-31-08.

7 Q So that sounds like the day after the
8 release was reported?

9 A Okay, yes.

10 Q We'll have the documents to make sure
11 we're right with the date, but it looks like it's
12 following the report of the release.

13 A Yes, sir.

14 Q Where would that material have been taken
15 to?

16 A That was taken to St. Louis by Gateway
17 Petroleum, and they also removed 350 gallons of
18 gasoline at that time.

19 Q Okay. Does that suggest that at the time
20 of reporting, there was product inside the tanks?

21 A Yes, sir, it does. And if I'm misstating
22 any dates, I apologize.

23 Q I want it to be correct, but I sometimes
24 don't use the right terminology, and I'm not
25 following the answers correctly myself.

1 MR. SHAW: That's all my questions.

2 HEARING OFFICER WEBB: Anything?

3 MR. RICHARDSON: If I could just ask, is
4 this the entire 45-day report, or is this just
5 some pages?

6 MR. SHAW: This is my understanding, the
7 45-day report from what you gave me.

8 MR. RICHARDSON: It should be the same?

9 MR. SHAW: It should be the same. Yeah,
10 I'm not going to offer that into evidence,
11 unless you feel like it should be.

12 MR. RICHARDSON: I have no questions on
13 that.

14 HEARING OFFICER WEBB: Okay. Well, if
15 there's no further questions for Mr. Williams,
16 you may take your seat. Thank you.

17 And, Mr. Shaw, you may call your next
18 witness. Oh, well, hang on a second.

19 Would you like a break?

20 THE REPORTER: No. That's okay.

21 MR. RICHARDSON: I would like a
22 five-minute break.

23 HEARING OFFICER WEBB: Okay. Let's take a
24 five-minute recess.

25

1 [WHEREBY A SHORT BREAK WAS
2 TAKEN.]

3 HEARING OFFICER WEBB: We'll go back on
4 the record.

5 We have Mr. Donald Grammer on the witness
6 stand, and he would like to take an affirmation
7 instead of an oath.

8 If you would please administer that.

9 [WHEREUPON THE WITNESS AFFIRMED
10 HIS TESTIMONY.]

11 DONALD GRAMMER,
12 having affirmed his testimony, testifies and saith as
13 follows:

14 EXAMINATION

15 BY MR. SHAW:

16 Q Could the witness please state his name
17 for the record.

18 A Donald Grammer.

19 Q And, Mr. Grammer, what is your current
20 employment?

21 A Currently I'm -- well, I'm a retired IDOT
22 employee, but I'm serving as a full-time pastor of a
23 Baptist church in Herrin, Illinois.

24 Q When did you retire from IDOT?

25 A 1991.

1 **Q Have you been engaged in any other work**
2 **besides 1991?**

3 A Yes. In 1992, I started doing -- I was
4 pastor at the time, and I started working part-time
5 for a contractor doing estimating and underground
6 tank work. At that time, installation and removal
7 only. I was not into the remediation cleanup
8 business. I didn't start that for, oh, another
9 three or four years before I actually got in to
10 working with the Agency in doing cleanups.

11 **Q Have you been self-employed involving UST**
12 **work? Or have you worked for another company?**

13 A Both. I've done -- some small amount I've
14 done on my own. I'm a professional engineer, but
15 I've worked primarily -- at least since Bryan
16 started his company, I worked exclusively for him.
17 He's the only client I have, and that's only on a
18 part-time basis.

19 **Q Okay. And you indicated you're a licensed**
20 **P.E. Do you recall when you got your license?**

21 A Yes, sir. I got it in 1974.

22 **Q 1974.**

23 **And what's your highest education**
24 **that you attained?**

25 A I have a Bachelor's of science degree from

1 SIU in Carbondale.

2 Q Do you have any recollection of how many
3 underground storage tank sites you've been involved
4 in, in a professional capacity?

5 A No, sir, I don't. Like Bryan, I suspect
6 it's probably in the range of 250 to 300, but I've
7 not kept a record of every site that I've seen over
8 the last 20 years.

9 Q When you say "Bryan," you're referring to
10 the previous witness, Bryan Williams; is that
11 correct?

12 A Yes.

13 Q What is the nature of your relationship
14 with Applied Environmental on an average underground
15 storage tank issue?

16 A You mean as far as hours?

17 Q What is your role?

18 A Bryan, when he started his business, asked
19 me if I would consent to be his professional
20 engineer, the person who would review, supervise his
21 underground tanks and do the necessary
22 certifications on them. I told him that I would,
23 that I would work only the time that I needed to
24 work to be able to certify them legitimately. I
25 wouldn't sign them without having seen the site. I

1 wouldn't sign them without knowing what was going on
2 there, and that's been my role with him since. And
3 since that time, I've probably worked for him on
4 average, less than 10 hours a month.

5 **Q You indicated that having gone to the**
6 **site. Have you ever been to the Weeke site or the**
7 **Tim Tire site, whatever it's called here?**

8 A Tim's Tire Time.

9 **Q Tim's Tire Time.**

10 A Yes, I have.

11 **Q Have you been there once, twice? How many**
12 **times?**

13 A Oh, I know I've been there at least twice.
14 I can specify what those times were.

15 **Q Well, let's --**

16 A I may have been there another time or two
17 with him to look at those sites when he was -- or at
18 that site when he was considering tank removal. I
19 can't recall that.

20 **Q Have you been to the site since 2008?**

21 A No.

22 **Q No?**

23 A I don't believe.

24 **Q Were you present at the tank pull?**

25 A Yes, I was.

1 **Q The 2008 tank pull or the previous tank**
2 **pulls?**

3 **A I wasn't aware there was a previous tank**
4 **pull.**

5 **Q Well --**

6 **A A cleanup. I was there for the**
7 **classification work that was done back in --**

8 **Q Okay.**

9 **A -- '91. I was there for that, and I was**
10 **back there again for the tank pull.**

11 **Q Okay. Well, let's break those down.**
12 **We'll do the first one. Were you involved in the**
13 **cleanup?**

14 **A Yes, I was.**

15 **Q Of the 1998 incident? Or I should say**
16 **1998 incident. Were you involved in that work?**

17 **A Yes. I'm getting my dates -- I said '91,**
18 **didn't I? I'm sorry.**

19 **Q I'm switching back and forth on you, too.**
20 **I apologize.**

21 **A The 1990 -- when it was -- the original**
22 **NFR letter was given, I was there for that site**
23 **classification work.**

24 **Q Did you certify any of the documents for**
25 **that work?**

1 A Yes, I did. I'm not sure what they were,
2 but I think I certified maybe a site classification
3 completion report back at that time. That was
4 under -- that was under old rules.

5 **Q Okay. What was the nature of the site**
6 **classification work done on that site in 1998?**

7 A As best as I recall, we simply -- the day
8 I was there -- and I usually go on these sites for
9 only three or four hours. I don't stay around and
10 watch guys drill holes in the ground. No use to
11 bill somebody for that.

12 But as I remember, he was in the
13 process of drilling holes around the property and on
14 the down gradient side of the tank to determine if
15 the contamination had flowed in that direction.

16 **Q And that was acceptable under the program**
17 **at that time in means of responding to an incident?**

18 A Yes, it was.

19 **Q And is it your understanding that no**
20 **samples or analyticals were taken of the tank pit?**

21 A Not that I'm aware of.

22 **Q Now, in terms of the prep, the older law,**
23 **was the owner operator required at that time to**
24 **clean it up by basically checking the borders and**
25 **down gradient? Or was that just an option you could**

1 use?

2 A At that time, the owner could if he chose
3 to do so. When I first started getting involved in
4 this, an engineer could make a determination that
5 you could go out there and you could dig a hole,
6 stretch all over the block. You could run up a
7 tremendous bill hauling off contaminated soil and
8 physically take it away. You could do that if you
9 wanted to under that law at that time, but then
10 that's changed shortly after I got into the
11 business. They started having us doing more
12 reasonable ways.

13 Q You had indicated that you were present at
14 the site for the more recent tank pull; is that
15 correct?

16 A Yes, sir.

17 Q Were you there on the day of the tank
18 pull?

19 A Yes, sir.

20 Q What was your role at that time?

21 A I was there as an inspector, as an
22 observer simply to -- Bryan also asked me to come.
23 I serve as his safety officer. "Come up here and
24 tell me if anything is wrong. Help me get these
25 tanks out of the ground." I worked three or four

1 hours for him. He may or may not ask me to certify
2 off at that time, but that was my role there.

3 **Q What do you mean "certify off"?**

4 A To put my stamp on there as a professional
5 engineer to say that I know that that work was done
6 according to what's in that report.

7 **Q Okay. So you have not certified anything**
8 **yet in response to the 2008 incident?**

9 A I don't believe I did. Now, I'm not
10 certain, because like I said, I've seen a lot of
11 these things since, and I haven't read them all, and
12 I haven't re-read this one.

13 **Q Is it possible that at some point in time**
14 **you will be requested to sign off on technical**
15 **documents at that property, or do you know?**

16 A You mean from this point forward?

17 **Q Yeah.**

18 A Not unless someone goes back in there and
19 does some more work and wants me to certify it,
20 which in that case I would.

21 **Q What were your observations of the**
22 **conditions of the soil around the tank pit on the**
23 **day that the tanks were pulled?**

24 A It was extremely contaminated. It stunk
25 to high heaven. There was petroleum -- the ground

1 was petroleum saturated. There was free products
2 floating on the water in the hole, and it was a
3 royal mess.

4 **Q Based upon your professional background,**
5 **would you expect that to be considered a situation**
6 **that is environmentally safe and sound?**

7 A Absolutely not, absolutely not. That's
8 something that we've never had any problem with the
9 Agency. If we pumped free product and just took it
10 away, the Agency never even questioned that. That
11 has to be taken care of. That's a hazard to human
12 health and safety. I honestly believe that
13 underground contaminant -- tank sites I've seen in
14 the years I've been doing this, that was one of the
15 worst contaminated that I've seen.

16 **Q Are you familiar with the process by which**
17 **shortly through the process, the owner and operator**
18 **and professional engineer can certify that the site**
19 **meets environmental standards, and no further**
20 **remediation letter can be issued? Are you familiar**
21 **with that process?**

22 A I'm sorry. I don't -- I'm not sure I
23 understand what you're asking.

24 **Q Are you familiar with the process by which**
25 **the owner and operator can request that the site be**

1 closed, and a no further remediation letter be
2 issued upon the certification of the owner and
3 operator and a professional engineer? Are you
4 familiar with that process?

5 A Yes, I am. Yes.

6 Q Based upon your knowledge of what you saw
7 on that day of the tank pull, would you be
8 comfortable certifying that the site meets
9 environmental standards and no further remediation?

10 A You're mixing apples and oranges.

11 Q Please correct me.

12 A Okay. It's possible under present laws,
13 under present rules, to get a no further action
14 letter with that contamination still on site. I
15 wouldn't have any problem certifying it if the
16 contamination were cleaned up.

17 Any tanks I've ever worked on where
18 we set out to clean it up, I've always been there to
19 see that the samples were taken and properly checked
20 and that they met Agency standards, but it's no
21 longer necessary to do all that. Under Agency rules
22 now, it's possible to leave contamination there.
23 You do things like checking at the property lines.
24 And if it's on IDOT, you get an agreement with them
25 to leave it in place. If it's on the city, you get

1 an agreement with them to leave it in place. And
2 basically you may come back and say, well, you've
3 got to put an engineered barrier over it. You've
4 got to put some concrete or asphalt over it to
5 protect the public from it, but you can leave it
6 right there.

7 Q But those activities weren't present on
8 the day you were there for the tank pull?

9 A No.

10 Q So additional work or documentation would
11 be required for something like that to happen? Am I
12 correct?

13 A Yes.

14 MR. SHAW: I have no further questions at
15 this time.

16 HEARING OFFICER WEBB: Okay.

17 Mr. Richardson?

18 MR. RICHARDSON: I have no questions.

19 HEARING OFFICER WEBB: Thank you very
20 much, Mr. Grammer.

21 Mr. Shaw, you may call your next witness.

22 MR. SHAW: That is the end of my
23 witnesses.

24 HEARING OFFICER WEBB: Okay.

25 MR. SHAW: And just to be sure about the

1 exhibits that were offered, to make sure I
2 offered them all, I think the only one that I
3 offered that was accepted was Exhibit 10, and
4 the other exhibits were presented under an
5 offer of proof, and including the pictures that
6 were also offered as an offer of proof as a
7 demonstrative exhibit. Have I got that right?

8 HEARING OFFICER WEBB: Yes.

9 MR. SHAW: With that, we rest our case.

10 HEARING OFFICER WEBB: Thank you very
11 much.

12 Mr. Richardson?

13 MR. RICHARDSON: If I could ask Mr. Shaw
14 something off the record real quick.

15 HEARING OFFICER WEBB: Okay. We'll go off
16 the record for a minute.

17 [WHEREUPON THERE WAS A SHORT
18 DISCUSSION OFF THE RECORD.]

19 HEARING OFFICER WEBB: We will go back on
20 the record, and the EPA may present its case.

21 MR. RICHARDSON: I would call Trent
22 Benanti to the stand.

23 HEARING OFFICER WEBB: Mr. Benanti, you
24 may have a seat up here.

25 And will the court reporter please swear

1 in the witness.

2 [WHEREUPON THE WITNESS WAS SWORN

3 BY THE NOTARY PUBLIC.]

4 TRENT BENANTI,

5 having been first duly sworn by the Notary Public, testifies

6 and saith as follows:

7 EXAMINATION

8 BY MR. RICHARDSON:

9 Q Would you please state your name.

10 A Trent Benanti.

11 Q And what's your occupation?

12 A Environmental Protection Engineer III.

13 Q And you're a project manager in the

14 Illinois EPA LUST Program; is that correct?

15 A Yes.

16 Q And how long have you been in that

17 position?

18 A Since May 1, 1998.

19 Q And, now, am I correct that you were the

20 project manager for incident 2008 1597 concerning

21 Tim's Tire Time in Nashville, Illinois?

22 A Yes.

23 Q And do you recall what first brought your

24 attention to any submittal related to this incident?

25 A Yes.

1 **Q** And could you just describe the
2 **circumstances of that.**

3 A The early action claim is what -- the
4 early action claim is what tipped me off that there
5 was another incident reported for this site.

6 **Q** And that was brought to you by the person
7 **who handles the claims?**

8 A Yes.

9 **Q** Okay. And so at that time, what did you
10 **review concerning the early action documents?**

11 A I reviewed the 45-day report and the
12 45-day report addendum.

13 **Q** Okay. And what were your findings from
14 **your review of those two documents?**

15 A My findings were that of the samples that
16 were collected. They were below the objectives, and
17 that there was no evidence to indicate that a new
18 release had occurred.

19 **Q** Now, when you say the samples that were
20 **collected, are you talking about the samples from**
21 **the floor and the walls of the excavation of the**
22 **tank pit?**

23 A Yes.

24 **Q** Okay. And you were in the room when
25 **Mr. Williams, who is Mr. Weeke's consultant, said**

1 that two samples were above the objectives. Were
2 you here when he said that?

3 A I was here.

4 Q And why are you saying that there were
5 none above the objectives?

6 A Well, none of the samples did actually, in
7 fact, exceed the tier 1 objectives. The tier 1
8 objectives are listed to two decimal points. And if
9 you take the laboratory results and round them to
10 the decimal points, you have no exceedances.

11 Q And that's what you're basing your
12 statement on here; is that correct?

13 A Correct.

14 Q And from the time of the releasing the
15 initial boring that occurred at the site, I
16 think -- I think it's been referred to as
17 October 30th, but I think the record shows it's
18 October 29th of 2008, was there any lab sample
19 from that boring?

20 A No.

21 Q And do you recall what if anything the
22 report said about whether there were any holes in
23 the USTs that were pulled?

24 A No holes.

25 Q Okay. And also were there any statements

1 **concerning groundwater in the area of the tank pit?**

2 A The 45-day report and or addendum
3 indicated that groundwater was not encountered.

4 Q Now, am I correct that you were also the
5 project manager for the 1998 incident that arose at
6 the same site?

7 A Yes.

8 Q And were the -- how many tanks were
9 involved in the 2008 incident?

10 A Three tanks.

11 Q Okay. And were those tanks at the site in
12 the 1998 incident?

13 A Yes.

14 Q And am I correct that an NFR letter was
15 issued concerning the -- that closed out the 1998
16 incident?

17 A Yes.

18 Q And do you recall what procedures or what
19 activities were done to get that NFR letter from the
20 Agency?

21 A The extent of contamination was
22 investigated, and tier 2 calculations were performed
23 under TACO. And a no further remediation letter was
24 issued with the highway authority agreement or
25 highway authority agreements and the groundwater use

1 restriction.

2 MR. RICHARDSON: Now, there's also -- I
3 forget what exhibit that is. I guess it's
4 Exhibit 10? The December 8, 2008 early action
5 letter? Do we have that?

6 HEARING OFFICER WEBB: Yeah.

7 BY MR. RICHARDSON:

8 Q Could you just take a look at that real
9 quick.

10 A Yes.

11 Q And do you recognize that type of letter
12 the Agency issues?

13 A Yes.

14 Q And concerning early action, what does
15 that letter say?

16 A It simply indicates that the full
17 technical review of the 45-day report will not be
18 conducted at this time, but that it may be conducted
19 in conjunction with any other plan or reports
20 selected for review.

21 Q Now, is this an unusual letter, or is it a
22 standard Agency letter?

23 A Standard.

24 Q And why does the Agency issue letters like
25 that?

1 A The 45-day reports are typically screened
2 to make sure that responses are provided to the
3 items on the 45-day report form. No real
4 determination is made as to whether or not those
5 responses are 100 percent acceptable.

6 **Q Okay. So just because you submit an early**
7 **action report doesn't mean you're going to get a**
8 **quick review of it?**

9 A Correct.

10 **Q Now, based upon your review of the early**
11 **action report and the early action report -- well,**
12 **excuse me. The 45-day report and the 45-day report**
13 **addendum, you concluded that a non-LUST**
14 **determination letter would be issued?**

15 A Correct.

16 **Q And what were your bases for that?**

17 A The main basis for the determination was
18 that there was no evidence demonstrating that a new
19 release had occurred.

20 **Q And that was based upon -- well, just tell**
21 **us what that was based upon.**

22 A That was based upon the soil samples
23 collected, the fact that no samples were collected
24 prior to removal of the tank, and based on the fact
25 that the wall and floor of the tank pit were clean

1 upon removal of the tank -- tanks.

2 **Q And what role do the fact that there had**
3 **been an earlier NFR letter issued to the site play**
4 **into your analysis?**

5 A Generally if there is an NFR in place, we
6 do go back and take a look at, you know, how any
7 current concentrations compared to the
8 concentrations that were present at the time of
9 issuance of the NFR letter.

10 **Q And did you reach any conclusions while**
11 **you were reviewing this matter?**

12 A It wasn't really necessary to go back,
13 given the fact that groundwater had not been
14 encountered according to the 45-day report. Free
15 products had not been encountered according to the
16 45-day report. And the soil samples collected were
17 below the tier 1 objectives.

18 **Q Okay. And even though the pictures in**
19 **Exhibit 12 may not be admitted and may not be a part**
20 **of the hearing, just to get your take on those**
21 **pictures, you did see those after you'd issued the**
22 **May 26, 2009 non-LUST letter, correct?**

23 A Yes.

24 **Q And you did see the water in the area**
25 **there?**

1 A Yes.

2 Q And what is your -- I mean, we've heard
3 that it stunk, that there was free product
4 everywhere. What if anything did you review in the
5 45-day reports, looking at those pictures? Did
6 those pictures change your mind?

7 A No.

8 Q And why is that?

9 A I wouldn't be surprised that there would
10 be some burst water there due to the fact that when
11 the 1998 incident was being -- when the tanks
12 associated with the 1998 incident were removed,
13 there was water encountered in that excavation, and
14 that water did have a bit of a sheen on it.

15 Q And as we heard here today, even though
16 that water was present in those pictures, apparently
17 did not return after it was removed, correct?

18 A Correct.

19 Q And is that consistent with your position
20 that that is perched water rather than anything
21 coming from groundwater?

22 A Correct.

23 MR. RICHARDSON: I have no further
24 questions of this witness.

25 MR. SHAW: I apologize if I walk back. I

1 you?

2 A Yes.

3 Q Am I correct in characterizing that is
4 your memorandum that you prepared?

5 A Correct.

6 Q What is the date of that memorandum?

7 A May 21, 2009.

8 Q And do you know how many days
9 approximately after the 45-day report addendum that
10 was prepared?

11 A I do not.

12 Q Would it sound like maybe over a hundred
13 and twenty days seem reasonable? We'll do the math
14 later. I'll retract that question.

15 This is the -- this document, am I
16 correct in understanding this document is the first
17 time you reviewed this issue as a project manager
18 for this incident?

19 A Correct.

20 Q When were you first assigned to this
21 incident?

22 A I'm not a hundred percent sure.

23 Q Would you be assigned in conjunction with
24 certain documents typically?

25 A Typically.

1 Q Like a 20-day report or 45-day report or
2 the IEMA notification?

3 A It varies.

4 Q Okay. Would you say normally within the
5 first few weeks, few months, few years of a
6 notification?

7 A Once something that requires substantial
8 review is received.

9 Q Okay. And are 45-day reports something
10 that typically require substantial review or not?

11 A No.

12 Q What is your explanation for indicating
13 that the exceedance of BETEX indicated in your
14 memorandum does not exceed tier 1 standards?

15 A The tier 1 standards --

16 Q Excuse me. I said BETEX, didn't I? I
17 meant benzene.

18 A The tier 1 standard for benzene is 0.03
19 milligrams per kilogram.

20 Q So it's a rounding issue?

21 A Yes.

22 Q Okay. You had indicated that in testimony
23 that I know -- well, before I go on further with
24 this, in preparing this memorandum, did I understand
25 your testimony correct that what you relied upon was

1 the 45-day report and 45-day addendum?

2 A Yes.

3 Q Did you review the file from the 1998
4 release at that time?

5 A I may have for the background information.

6 Q The reason I ask is that the information
7 on there referencing that no further remediation
8 letter appears to me to be information that could
9 just be contained from looking at the IEPA's
10 database website without actually pulling out the
11 file. So I don't know if you looked at the file or
12 didn't look at the file.

13 A I may briefly have looked at the file. I
14 don't remember how extensively.

15 Q Okay. You've looked at the file more
16 extensively at least since then?

17 A Yes.

18 Q Were you involved in any approval of
19 investigation? Stage 1, stage 2 or stage 3
20 investigation on this property?

21 A No.

22 Q No? Is there another consultant involved
23 or another Agency employee involved with that?

24 A Typically, no.

25 Q Isn't it true that the owner operator was

1 directed to proceed with stage 1 investigation in
2 one of the Agency's letters that was previously
3 submitted as evidence?

4 A I'd have to look at the letter.

5 [DOCUMENT TENDERED.]

6 BY MR. SHAW:

7 Q Okay. I believe it's Exhibit 10. You can
8 take a moment and look at it. Have you familiarized
9 yourself with Exhibit 10?

10 A Yes.

11 Q Does it indicate that the owner operator
12 should proceed with the stage 1 investigation?

13 A It does indicate that the stage 1
14 investigation plan is approved.

15 Q What is the effect of the non-LUST
16 determination on that?

17 A Once a non-LUST determination is issued,
18 then we have no further requirements.

19 Q So the stage 1 investigation has been
20 reversed on its approval?

21 A Yes.

22 Q Is there any Agency policies or documents
23 explaining the intricacies of this non-LUST
24 determination? Because I'm going to ask you a
25 series of questions.

1 A I don't understand that question.

2 Q Let me ask you this. What is the effect
3 of a non-LUST determination on a 20-day report? Did
4 it exist or not exist?

5 A Did the 20-day report exist?

6 Q Yes. Did it exist?

7 A Yes.

8 Q Does it have any legal effect after the
9 non-LUST determination is made?

10 MR. RICHARDSON: I'm going to object.
11 He's not a legal expert.

12 MR. SHAW: He signed the letter. Why
13 can't I ask him about it?

14 MR. RICHARDSON: Well, I don't know what
15 you're asking. I mean, these documents have
16 been submitted.

17 MR. SHAW: The Agency needs to start
18 answering these questions, I believe, but I
19 will ask the question in a different way.

20 MR. RICHARDSON: I don't think this is a
21 forum for that.

22 HEARING OFFICER WEBB: I'm not sure where
23 you're going either, but I'll give you some
24 leeway.

25

1 BY MR. SHAW:

2 Q There's a statement; I'm going to point it
3 out to you. This is also from the record. It's the
4 non-LUST determination letter. I'm referring you to
5 this statement.

6 "Therefore the Illinois EPA Leaking
7 Underground Storage Tank Program has no reporting
8 requirements regarding this incident."

9 I'm asking you whether or not that is
10 intended to mean the 20-day reporting requirements
11 existed, didn't exist, or retroactively undone, or
12 what? Because I don't understand that sentence.

13 A We have no reporting requirements. In
14 other words, there's no need to do any additional
15 reporting.

16 Q But it is affected backwards because the
17 earlier action request is -- the early action
18 reimbursement materials are seeking reimbursement
19 for the work done at the 20-day report. So it is
20 retroactive determination, is it not, that the
21 reporting requirements didn't exist at the time?

22 A You can't make a determination as to
23 whether or not it is non-LUST without some
24 reporting.

25 Q So for a while, these people were required

1 to comply with the 20-day, 45-day requirements and
2 held to the rule of the law, but on subsequent
3 determination, your opinion was they didn't have to
4 do it? Let me ask this question another way because
5 I think you're not going to answer it.

6 You've already offered your opinion
7 upon these pictures of the sheen on the water. Are
8 you indicating to me that there are no requirements
9 under the underground storage tank program to
10 respond to the scenes in those pictures?

11 A No.

12 Q They are not obligated to remove the water
13 or move any of the impacted soil?

14 A They were obligated.

15 Q Under what provision?

16 A Under the terms of the NFR letter.

17 Q Under the terms of the NFR letter?

18 A Yes.

19 Q They're also obligated to do that under
20 any early action regulation, are they not?

21 A The early action regulations do say that
22 you may remove contaminated soil and or free
23 product.

24 Q It's your understanding that the no
25 further action letter requires further action

1 whenever contamination is encountered?

2 A Yes.

3 Q But the Agency has already agreed and has
4 been held by the terms of no further re -- no
5 further action law, that they can't enforce these
6 provisions? So it's not a legal requirement, is it?

7 MR. RICHARDSON: I'm going to object. I
8 mean, what's the foundation there?

9 MR. SHAW: Let me back up. That is a
10 legal question.

11 Q You had indicated you had some
12 understanding of the 1998 investigation and
13 activities. Was it your understanding, by
14 looking at the file, that the tank pit was ever
15 investigated as a result of the 1998 incident?

16 A Yes.

17 Q You believe it was investigated?

18 A Yes.

19 Q And when did you make that determination?

20 A When did I make that determination?

21 Q Yes. Did you make it before or after the
22 new further -- the no-LUST determination letter was
23 sent?

24 A I would say after.

25 Q And why did you look at it after?

1 A Because of the time that I reviewed the
2 45-day report addendum, I had all the information I
3 needed to make my determination.

4 Q I'm trying to figure out when you were
5 doing this, this work. Was it -- I mean, to be
6 blunt, was it in preparation for this trial? Or was
7 it in response to some other investigations going on
8 inside the storage tank program?

9 A I made the determination of non-LUST based
10 upon the 45-day report and addendum because it
11 contained enough information to make that
12 determination.

13 Q I think I understand you. I just want to
14 make sure I do, because you've said this a few
15 times. The non-LUST determination letter is based
16 upon a 45-day report, 45-day addendum. You feel
17 comfortable with that?

18 A Yes.

19 Q You're also saying some additional things
20 today. I'm trying to figure out when these
21 considerations are or investigations and further
22 review took place. Did they take place in response
23 to perhaps the correspondence with Hernando? Did
24 that trigger anything? Or is it part of preparation
25 for this hearing? -- which I do not want to go into

1 **any further.**

2 MR. RICHARDSON: I'm going to object. I
3 think we are getting into attorney-client
4 areas, and I don't know what the relevance of
5 this is.

6 MR. SHAW: I think I have an opportunity
7 to ask -- to probe if it is part of
8 attorney-client. If you're saying this was
9 preparation done for this case, I'm done with
10 it. But there's a period of time here in the
11 LUST determination, the denial of the early
12 action letter and then the appeal, which I
13 don't think that there is some sort of
14 attorney-client privilege.

15 MR. RICHARDSON: But I don't know what the
16 relevance is.

17 HEARING OFFICER WEBB: Well, I sort of see
18 where you're going a little bit, but, you know,
19 you're right. Depending -- like he said, I
20 mean, if it fell under the scope of preparing
21 for this hearing, we'll stop the questioning
22 right now. But if it's during the portion that
23 he's appealing, I'll let you go ahead and
24 answer it.

25 MR. SHAW: And I'll even say further that

1 I don't think it was preparation for this
2 hearing, but once an appeal is filed, I would
3 assume a number of activities that may not
4 necessarily be related preparing for this exact
5 day will take place that I think are also
6 privileged. I'm just trying to figure out what
7 activities took place before the appeal was
8 taken.

9 HEARING OFFICER WEBB: But the question
10 is, did he make the determination before you
11 filed your appeal or after you filed your
12 appeal? Is that the question?

13 BY MR. SHAW:

14 Q I'm asking whether or not you reviewed the
15 file with respect to the location of the drillings
16 from the 1998 release before or after the appeal was
17 filed.

18 A I don't know because I'm not a hundred
19 percent sure what the appeal day was. It was after
20 the non-LUST was issued.

21 Q After the non-LUST was issued, were you
22 also involved in the denial of the early action
23 reimbursement application?

24 A Yes.

25 Q And was that essentially your decision as

1 well?

2 A Yes.

3 Q Isn't it true that the non-LUST
4 determination was made in anticipation of the early
5 action application denial?

6 A The non-LUST determination was made as a
7 result of the early action claim.

8 Q During early action -- or if you prefer
9 the LUST term, but during the initial phases of the
10 site investigation, just responding to a release or
11 a situation, isn't it true that removal of saturated
12 soils in and around tanks or lines are going to
13 resolve a substantial amount of environmental
14 problems at a tank site?

15 A Conceivably.

16 Q The statement was used earlier about
17 confirmatory sampling of the tank walls and pit.
18 Have you heard of that phrase before?

19 A Confirmatory sampling, yes.

20 Q What does that refer to?

21 A Confirmatory sampling, as it is under the
22 current -- the newest regulations, as prescribed in
23 734, that you will collect a certain number of
24 samples from the walls and floor of the tank pit.

25 Q What is your understanding is being

1 **confirmed by that?**

2 A What is being confirmed --

3 **Q Yes.**

4 A -- is whether or not there is
5 contamination remaining after removal of the tanks.

6 **Q When you say removal of the tanks, does
7 that also include impacted soil?**

8 A You are allowed to remove a certain amount
9 of impacted soil with the tanks, yes.

10 **Q And are there limits to how much soil you
11 can remove?**

12 A Yes.

13 **Q And those limits are dependent upon
14 whether or not you're seeking reimbursement from the
15 Underground Storage Tank Fund?**

16 A The limits aren't dependent, but if you
17 are -- you know, if you're not seeking
18 reimbursement, then you can remove obviously more
19 than limits. Those limits are tied to -- they're
20 reimbursable limits.

21 **Q Under the early action program, is the
22 owner operator directed to remove groundwater in the
23 excavation of a pit that contains a sheen?**

24 A Anything more than a sheen would be
25 defined as free product, and you are instructed to

1 remove free product.

2 Q You're not directed to remove liquid
3 containing sheen?

4 A Not necessarily.

5 Q Is it my understanding that your view of
6 those pictures indicated that the appropriate
7 response was for the owner operator to either
8 dig -- bury the liquid in place or seek an amendment
9 to the no further action letter? Let me back this
10 up. I'll ask a simple question.

11 Would it have been appropriate, given
12 the pictures that you looked at, for the owner
13 operator to close the hole without removing any of
14 the impacted soil or water containing the sheen?

15 A No.

16 Q No?

17 Have you ever been to an underground
18 storage tank removal?

19 A Yes.

20 Q On how many times?

21 A Less than a half a dozen.

22 Q And just to be clear; we're talking about
23 tank pulls less than a half dozen?

24 A Yes.

25 Q The Agency traditionally doesn't go to

1 tank pulls?

2 A Correct.

3 Q Is that the responsibility and the role of
4 another agency?

5 A The fire marshal is responsible for
6 overseeing tank pulls and permitting of removal of
7 tanks.

8 Q And we had heard testimony earlier, I
9 believe, that indicated the belief that the water
10 with the sheen and the impacted soil was not an
11 environmentally safe condition. Regardless of
12 whether or not that complies with the rules and
13 regulations or your interpretation of them, would
14 you agree with that sentiment?

15 A I was not surprised that there would be
16 contamination present, given the previous releases,
17 and the previous releases were determined to be
18 closed under the premise to protect the human health
19 and the environment.

20 Q Given that there was some questions about
21 the development of this property, would you consider
22 it advisable for someone to build, occupy their work
23 over the excavation if it was left untreated? What
24 I mean by "treated," removal of the impacted soil
25 and water with the sheen.

1 MR. RICHARDSON: Objection. I don't know
2 what the foundation is for that.

3 MR. SHAW: The foundation was the line of
4 questions that you opened up, I believe.

5 MR. RICHARDSON: But I didn't go -- I was
6 just asking what the current use of the
7 property was. I mean, I wasn't asking about
8 public health and safety at the site.

9 MR. SHAW: I'm moving into a different
10 question, which is what you were getting to,
11 which was the market value of the property. I
12 want to know about the market value of the
13 property in relationship to leaving impacted
14 soil and water with the sheen in a gasoline
15 station would mean, if he has any idea.

16 HEARING OFFICER WEBB: I'll allow it.

17 THE WITNESS: The market value would be
18 less.

19 MR. SHAW: I have no further questions.

20 Wait a minute. I guess I'm being told I
21 may have.

22 We're done. Thank you.

23 HEARING OFFICER WEBB: Mr. Richardson?

24 MR. RICHARDSON: I think without
25 objection, we had no problem with the NFR

1 letter, correct?

2 MR. SHAW: Correct.

3 MR. RICHARDSON: So I would ask that that
4 be marked as Respondent's Exhibit Number 1.

5 [WHEREBY, RESPONDENT'S EXHIBIT
6 NUMBER 1 WAS MARKED FOR
7 IDENTIFICATION.]

8 HEARING OFFICER WEBB: Is this part of the
9 record? Was this the report that he --

10 MR. RICHARDSON: No, no. This is the NFR
11 from the 1998 incident, from the previous
12 incident, so.

13 HEARING OFFICER WEBB: So this is not in
14 here?

15 MR. RICHARDSON: It's not in the record.

16 HEARING OFFICER WEBB: Okay.

17 MR. RICHARDSON: But I don't believe
18 there's any objection to that document.

19 HEARING OFFICER WEBB: There's no
20 objection?

21 MR. RICHARDSON: And I'd like to show this
22 to --

23 MR. SHAW: No objection.

24 MR. RICHARDSON: -- Mr. Benanti, a copy of
25 that.

1 FURTHER EXAMINATION

2 BY MR. RICHARDSON:

3 Q Mr. Benanti, I think you made a couple of
4 references to the NFR. One was something about they
5 were required by the NFR to pump that water off the
6 excavation. Do you recall that?

7 A I do recall that.

8 Q And what part of the NFR are you referring
9 to when you make that reference?

10 A Item number 6 under "other terms."

11 Q Okay. And also I think there was some
12 question if there had been a boring into the tank
13 pit in the 1998 investigation. Is there any
14 indication in this NFR about any borings that were
15 done?

16 A Yes.

17 Q And where do you find that at?

18 A There are exhibits attached to the NFR
19 letter, which identify the locations of the borings
20 done.

21 Q Okay. And is that in the first exhibit?
22 That's the first site map that's attached to the NFR
23 letter?

24 A The first or second.

25 Q Okay.

1 MR. SHAW: Can we pause a minute just a
2 second?

3 MR. RICHARDSON: Sure.

4 MR. SHAW: Did you give me a copy of that?

5 MR. RICHARDSON: I don't think I did.
6 Here's your copy. I'm sorry.

7 MR. SHAW: Thank you. Go ahead and
8 proceed.

9 BY MR. RICHARDSON:

10 Q I think is it indicated it is B5A or
11 something like that?

12 A Yes.

13 Q Okay. And, now, Mr. Benanti, I think this
14 is just a summary of what you've said. Just because
15 there's water with a sheen in a hole where there's
16 saturated soil, does that automatically make a site
17 a LUST incident that gets it into the LUST program?

18 A No.

19 Q And I'm just saying in and of it itself,
20 those two factors, that's not enough; is that
21 correct?

22 A Correct. There are other factors to
23 consider.

24 Q Okay. And when we were discussing the
25 basis for your non-LUST letter, some of those other

1 factors you discussed, and that is what kept this
2 site out of the -- in your opinion, out of the LUST
3 program?

4 A Correct.

5 MR. RICHARDSON: I have no further
6 questions.

7 HEARING OFFICER WEBB: Mr. Shaw?

8 MR. SHAW: I don't have any further
9 questions.

10 HEARING OFFICER WEBB: Okay. Did I admit
11 this? Was this offered?

12 MR. RICHARDSON: I moved to admit it.

13 HEARING OFFICER WEBB: There's no
14 objection?

15 MR. SHAW: No.

16 HEARING OFFICER WEBB: Okay. Exhibit 1 is
17 admitted.

18 [WHEREBY, RESPONDENT'S EXHIBIT
19 NUMBER 1 WAS ADMITTED INTO THE
20 RECORD.]

21 HEARING OFFICER WEBB: Mr. Richardson, do
22 you have anything further to present?

23 MR. RICHARDSON: No.

24 Mr. Benanti, thank you.

25 HEARING OFFICER WEBB: You may step down,

1 Mr. Benanti. Thank you very much.

2 Mr. Shaw, would you like to make any
3 closing arguments?

4 MR. SHAW: Can I just go in the hallway
5 with my client for just a minute?

6 HEARING OFFICER WEBB: Do you want to take
7 a five-minute recess?

8 MR. SHAW: Five-minute, yeah.

9 [WHEREBY A SHORT BREAK WAS
10 TAKEN.]

11 HEARING OFFICER WEBB: Mr. Shaw, would you
12 just like to reiterate what we discussed off
13 the record?

14 MR. SHAW: Yeah. I'd ask that we be given
15 the opportunity to go on to rebuttal evidence
16 relating to an exhibit that was admitted during
17 the Agency's case, and it was not in the
18 administrative record that we received. And we
19 would just like to offer our own testimony
20 concerning its nature and context.

21 HEARING OFFICER WEBB: Okay.
22 Mr. Williams, I'll remind you, you are still
23 under oath.

24 THE WITNESS: Yes, ma'am.

25 MR. SHAW: I'm approaching the witness

1 with the NFR letter. I don't know if it's been
2 given an exhibit number.

3 HEARING OFFICER WEBB: Exhibit 1.

4 MR. SHAW: Exhibit 1?

5 BRYAN WILLIAMS,

6 having been already sworn by the Notary Public, testifies
7 and saith as follows:

8 EXAMINATION

9 BY MR. SHAW:

10 Q Mr. Williams, are you familiar with that
11 exhibit?

12 A Yes, sir.

13 Q You just heard some testimony concerning
14 soil borings in the vicinity of the tank pit. You
15 were present for that testimony; is that correct?

16 A Yes, sir.

17 Q I would like you to look at the picture,
18 or pictures, I guess, of the site that are
19 accompanying the NFR letter. I believe, and it's my
20 understanding, that the witness probably was
21 referring to soil boring -- I'm not sure which one.
22 B5A? Is that correct? Is that your understanding
23 also?

24 A Yes. The one he was referencing as being
25 part of the investigation of the tank pit?

1 **Q How would you reconcile your previous**
2 **testimony that there was no analyticals taken in the**
3 **tank pit with the pictures and diagrams accompanying**
4 **the NFR letter?**

5 A This boring was advanced outside the edge
6 of the tank pit. I mean, the diagram may be off a
7 little bit, but if you'll look at the boring log,
8 there was -- there wasn't sand below the concrete in
9 the boring log. It was native swell and clay. So I
10 stick with what I said before. This tank pit was
11 never investigated.

12 **Q And, again, to be clear, what is the**
13 **significance of the sand that you're referring to?**

14 A The tanks were buried in a pit of sand.
15 The backfill around the tanks was pure sand, and the
16 edges of that tank pit were a very stiff, low
17 permeability clay. We did permeability tests on the
18 site, and it had a very low permeability, somewhere
19 in the neighborhood of a 10 to the minus 6 is the
20 terminology, or the -- how this was the permeability
21 of this soil, and it is a very, very stiff, tight
22 clay soil. It does retard the migration of these
23 contaminants.

24 **Q So it would be your testimony that this**
25 **diagram doesn't change anything that you would have**

1 **testified to earlier?**

2 A No. What I said is the truth and the
3 whole truth. And the boring was done outside of the
4 tank pit. Two, if we had done the boring in the
5 tank pit and found the product, we'd report it. We
6 had no reason not to.

7 MR. SHAW: I have no further questions.

8 MR. RICHARDSON: I have no questions.

9 HEARING OFFICER WEBB: Okay. Thank you,
10 Mr. Williams.

11 THE WITNESS: Thank you.

12 HEARING OFFICER WEBB: Mr. Shaw, would you
13 care to make any closing argument?

14 MR. SHAW: I will waive closing arguments.

15 HEARING OFFICER WEBB: Mr. Richardson?

16 MR. RICHARDSON: I will waive them also.

17 HEARING OFFICER WEBB: The transcript for
18 this hearing is due by February 1st and will
19 be posted on the Board's website. The public
20 comment deadline is February 3rd. Public
21 comment must be filed in accordance with
22 Section 101.628 of the Board's procedural
23 rules.

24 As previously agreed to by the parties,
25 the Petitioner's brief is due by February 22nd

1 and Respondent's brief is due by March 15th.
2 Petitioner's reply is due by April 1st.

3 The Mailbox Rule will not apply. And if
4 the parties file electronically, the briefs
5 must be filed by 4:30 p.m. on the due date. If
6 there is any problem with electronic filing, I
7 authorize the briefs to be filed by fax.

8 I will again note that there are no
9 members of the public present to make any
10 statements on the record. And I find all of
11 the witnesses testifying today to be credible.

12 At this time, I'll conclude the
13 proceedings. We stand adjourned, and I thank
14 everybody for their participation.

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[END OF HEARING.]

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NOTARIAL CERTIFICATE

I, ANN MARIE HOLLO, a Certified Shorthand Reporter for the State of Illinois, CSR# 084-003476, and a duly commissioned Notary Public within and for the State of Illinois, do hereby certify that a hearing was held in the aforementioned matter at the Illinois Pollution Control Board Hearing Room, 1021 North Grand Avenue East, Springfield, Illinois 62794.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this hearing is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on January 25, 2010.

My commission expires April 5, 2010.

Ann Marie Hullo
Notary Public

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