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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs)
GENERAL WASTE SERVICES,)
INC.,)
Respondent.)

PCB 07-45
(Enforcement - Air)

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STATE OF ILLINOIS
Pollution Control Board

Proceedings held on May 11, 2010, at 10:07 a.m., at the office of the Illinois Pollution Control Board, 1021 North Grand Avenue East, Springfield, Illinois, before Carol Webb, Hearing Officer.

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21
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23
24

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Calvin Johnson	12	61	88	91
Kenneth Stevens	95	117	130	

	EXHIBITS	
1		
2	NUMBER	PAGE ENTERED
3	People's Exhibit No. 6:	93
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

1
2
3
4
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6
7
8
9
10
11
12
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PROCEEDINGS

(May 11, 2010; 10:07 a.m.)

HEARING OFFICER WEBB: Good morning. My name is Carol Webb. I'm a hearing officer with the Pollution Control Board. This is the continued hearing for PCB 07-45, People versus General Waste Services, Inc. It is May 11 and we are beginning at 10 a.m.

This hearing began on October 29, 2009, in Belleville, St. Clair County. No members of the public were in attendance then and no members of the public are present today. Mr. Mankowski and Mr. Callery are here on behalf of the Attorney General's Office. Mr. Immel is here for the Respondent. On October 29, Mr. Zappa was questioned by both parties and all exhibits were admitted into the record, so today we will begin by asking the State if they have anything further to present.

MR. MANKOWSKI: No. No, Madam Hearing Officer.

HEARING OFFICER WEBB: Thank you. Mr. Immel, you may call your first witness.

MR. IMMEL: Madam Hearing Officer, if I recall correctly or do recall, what I recall, at the commencement of the proceeding, Mr. Mankowski made a brief opening statement, and when it came my turn, I

1 reserved my opening statement to the opening of my case.

2 HEARING OFFICER WEBB: Okay.

3 MR. IMMEL: So that if I may be permitted, I
4 would do that briefly before I call my first witness, who
5 will be Mr. Calvin Johnson.

6 HEARING OFFICER WEBB: Yes, go ahead.

7 MR. IMMEL: Okay. I will keep it short.
8 We've had a considerable amount of testimony already from
9 Mr. Zappa, and exhibits, which I will not be discussing
10 at any length now, but I would just say on behalf of
11 General Waste Services, an Illinois corporation in good
12 standing since 1985, which is currently experiencing the
13 first violation of any kind that's ever been lodged
14 against them, that we contest the allegations of the
15 complaint that was filed by the Agency on a date that I
16 don't exactly recall at the present, but point out that
17 there's in fact two particular regulatory items cited in
18 the complaint at page 5, paragraph sub 6 toward the top
19 of the page, which allege that my client did not
20 adequately wet material that contained asbestos in the
21 process of removing it and did not keep it in an
22 adequately wet condition until it was packaged up for
23 disposal. That is the gravamen of their complaint, that
24 has been the subject of all of Mr. Zappa's testimony when

1 he testified in their case, and there are two points to
2 be made about that at the present time.

3 First of all -- and Mr. Zappa acknowledged in his
4 testimony what I think all of us necessarily have to
5 confront as a fact, and that is, the concept of what is
6 adequately wet is a subjective term, just as the term
7 adequately in and of itself could be subject to differing
8 opinions among us humans.

9 The second thing that comes up in this case and
10 probably hasn't come up in any others that the Attorney
11 General's elected to prosecute is the fact that specific
12 testing -- laboratory testing of samples collected by
13 Mr. Zappa and sent to the EPA's contract laboratory of
14 material that was being removed in his presence, or at
15 least upon his arrival at the site in question, that such
16 testing showed that the material being removed was
17 negative for the presence of asbestos-containing
18 material, and that's what this case is about, was
19 asbestos-containing material removed without being
20 adequately wet. It is a foregone legal and factual
21 conclusion that if the material is not asbestos, it's not
22 even covered by that regulation. You don't have to
23 adequately wet plywood or an automobile or anything else
24 that's removed from the premises. This is simply not

1 regulated material, as verified by the Agency's own tests
2 conducted on the material contemporaneously with its
3 being removed.

4 The issue of adequacy will be covered by the
5 witnesses. We believe that the material was wet enough
6 for removal given the nature of the job that was to be
7 conducted. The evidence is going to show that this was
8 a -- this was not a pre-demolition removal of asbestos.
9 This was asbestos being removed from a building that was
10 going to be rehabilitated, that had intact
11 tongue-and-groove wooden floors that were going to be
12 returned to their original use, and that in such
13 circumstances, one proceeds differently with their
14 asbestos removal than they do in a building that's going
15 to be demolished, and the amount of water one uses has to
16 be adjusted to take into account the intended future use
17 of the building. You can't simply destroy it. A fire
18 hose, for example, would have been a thoroughly
19 inappropriate way to apply water in a building like this
20 because it would have destroyed or at least severely
21 damaged flooring and walls that could not begin to be
22 adequately protected with a layer of plastic.

23 So there are fine points that have to be
24 considered in this. The evidence is going to show that

1 the rooms were fogged -- and I mean that term as it
2 sounds, fogged -- with an airless sprayer and that the
3 materials being removed were fogged with an airless
4 sprayer with water in sufficient quantity to conduct safe
5 removal. And I'm going to take this opportunity to
6 emphasize what Mr. Zappa has already testified to, and
7 that is that the containment that was erected to control
8 emissions from this building itself were very, very good.
9 Indeed, Mr. Zappa complimented Special Waste -- General
10 Waste Services for the quality of the containment both in
11 his testimony as a live witness and in his memoranda,
12 which has been previously admitted into evidence as
13 People's Exhibit No. 3.

14 So this was a tight, secure -- from an air
15 standpoint -- building that was being evacuated with
16 four -- I'm sorry -- eight air handling units, four on
17 each floor. It was tight, sealed, and all the people
18 involved in the building were adequately suited up with
19 the protective clothing they're required to wear in the
20 normal course of their business, as was Mr. Zappa when he
21 entered the building. He found no fault with any of
22 that. And we have come down to a judgment issue as to
23 whether Mr. Zappa or the experienced workers who did this
24 work is a better judge of whether or not the material

1 they were moving -- removing was adequately wet, and I'm
2 going to again remind myself and all who would read this
3 transcript that this -- one of the things Mr. Zappa
4 testified to, that I agreed with, was that one of the
5 reasons for this wetting process is to prevent asbestos
6 fibers from escaping either from the building or into the
7 containment area itself where they might create trouble,
8 and remind everyone what Mr. Zappa has again testified to
9 already on direct, in his direct testimony, that air
10 sampling was conducted while this work was going on and
11 that the air sampling results, which were on file with
12 the Illinois Environmental Protection Agency, reflected
13 that no asbestos fibers were found in the air inside the
14 building, inside the containment, while the work was
15 going on, thus suggesting that the degree of wetting was
16 adequate to meet the regulatory goal that fibers not be
17 released into the air.

18 So it's a pretty straightforward case involving
19 no new or arcane legal principles, but rather some
20 straightforward fact questions as to how the work was
21 conducted and whether the material we were dealing with
22 was, in the case of two out of the three samples that
23 Mr. Zappa collected, asbestos at all, and the
24 uncontroverted evidence that the State presented -- that

1 I don't disagree with -- that the material -- that two of
2 the three samples he collected showed no asbestos
3 whatsoever, which I would argue and will argue and have
4 been arguing makes that whole wetting issue moot as to
5 the areas that Mr. Zappa was testifying of the building
6 where he collected these samples, because he was
7 collecting the material that was being removed in a
8 fashion he said was inadequately wet. What he didn't
9 know was that it wasn't asbestos. He didn't find that
10 out until later when his samples came back from the lab,
11 but notwithstanding, this case went forward. That's not
12 my call. I just take them the way I receive them.

13 Mr. Johnson will be called. He was the
14 supervisor on the project. He will be called to describe
15 the project and his role and his brief interaction with
16 Mr. Zappa. And thereafter Mr. Stevens will be called as
17 a witness. He was a laborer on the project on the day
18 that Mr. Zappa conducted his inspection, which again was
19 August 4 of 2005, and Mr. Stevens will testify about what
20 he was doing, what his duties were and the interaction
21 that he had with Mr. Zappa, and I expect their testimony,
22 at least as far as direct testimony goes, to be
23 relatively short.

24 At the conclusion of all this, we, I presume,

1 will address the issue of final arguments. I am content
2 with the notion of making a final argument on the record,
3 but I understand from talking to my colleague,
4 Mr. Mankowski, that he may very well wish to file a
5 written closing brief. If he chooses to do so, of course
6 I would reserve the right to respond to that, but I'm not
7 encouraging it. We'll see what they decide. And other
8 than that, I'm ready to proceed with my first witness.
9 Thank you very much.

10 HEARING OFFICER WEBB: Thank you. You may
11 call your first witness.

12 MR. IMMEL: Mr. Calvin Johnson will be
13 called to the stand, if someone can direct him where he's
14 to go.

15 HEARING OFFICER WEBB: Could you sit right
16 next to the court reporter, and if the court reporter
17 would please swear in the witness?

18 (Witness sworn.)

19 CALVIN JOHNSON, produced, sworn and examined on
20 behalf of the Respondent, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. IMMEL:

23 Q. Now, you've been identified for the record
24 as Calvin Johnson. Does the reporter have the spelling

1 of his name and all that? Let's put that on the record.

2 A. It's C-A-L-V-I-N, then Johnson,
3 J-O-H-N-S-O-N.

4 Q. And, Calvin, are you an Illinois resident?

5 A. Yes.

6 Q. And do you work for General Waste Services?

7 A. Yes.

8 Q. How long have you been with the company,
9 roughly?

10 A. Oh, I started I think it was late '87, first
11 of '88.

12 Q. So the company was pretty new then.

13 A. Right.

14 Q. Just a couple years from the time it was
15 formed, right?

16 A. Yes.

17 Q. Have you -- You currently hold the position
18 of supervisor; is that right?

19 A. Yes.

20 Q. Did you have some previous positions with
21 the company, just laborer?

22 A. Yes. I pretty much -- There are some jobs
23 where I do just laborer and some jobs I'm supervisor, but
24 mostly supervisor here of late.

1 Q. Okay. You went through a training program
2 as required by the State of Illinois to get a license
3 first as a laborer --

4 A. Yes.

5 Q. -- and then later as a supervisor?

6 A. Yes, sir.

7 Q. And you successfully completed both of those
8 programs, did you?

9 A. Yes.

10 Q. And you currently hold both licenses, right,
11 as --

12 A. Yeah.

13 Q. One as laborer and one as a supervisor?

14 A. I think the supervisor license covers
15 supervisor and laborer.

16 Q. Okay. So it's not two licenses.

17 A. Right.

18 Q. One includes the other.

19 A. Right.

20 Q. Okay. There has been a job that's the
21 subject of this proceeding that Special -- that General
22 Waste was contracted to perform at Belleville Memorial
23 Hospital at 3701 Memorial Drive according to the
24 notification that was filed and is in the record as

1 **People's Exhibit No. 2. Are you familiar with that job?**

2 A. Yes.

3 Q. Were you the supervisor on that job for
4 **General Waste Services?**

5 A. Yes.

6 MR. IMMEL: Henceforth, if it's okay, I'm
7 just going to refer to General as being General Waste
8 Services.

9 HEARING OFFICER WEBB: That's fine.

10 Q. (By Mr. Immel) You have a process that you
11 go through as the supervisor of filling out daily log
12 sheets for your work and everything. That's a normal
13 process in your work, isn't it?

14 A. Yes.

15 Q. Okay. And your company keeps daily records
16 of who comes and goes from the building, from a building,
17 and this one in particular; isn't that right?

18 A. Yeah. Pretty much, yes.

19 Q. That is, people who enter the containment
20 area have to go through a decontamination procedure, and
21 they --

22 A. They're supposed to sign in.

23 Q. And they're supposed to sign in. And your
24 company maintains a sign-in, sign-out sheet and visitors'

1 log for that purposes, and that was done; is that right?

2 A. Yes.

3 Q. All of your daily logs and your sign-in
4 sheets and licenses for all the people who worked there,
5 the waste shipment records for the material that leaves
6 the site and goes off site, the air sampling reports that
7 are generated while the project is going on, all of that
8 goes into a logbook, which is then submitted to the
9 Illinois EPA at the conclusion of the project; is that
10 right?

11 A. As far as I know, because that's the
12 office's -- I turn in the paperwork I'm supposed to turn
13 in and they take care of the rest.

14 Q. Okay. But you're familiar with the process
15 of the air sampling and air clearances that --

16 A. Yeah.

17 Q. -- have been done at the site? You've seen
18 the men there doing that work?

19 A. Yes.

20 Q. And you have your own paperwork to put
21 together as the supervisor's paperwork, right?

22 A. Yes.

23 Q. The logs and the daily report that we were
24 just --

1 A. Yes.

2 Q. And your understanding is then that the
3 front office at the conclusion of the job assembles that
4 into a book and submits it to the EPA; am I right?

5 A. Yes.

6 Q. Now, the job at Memorial Drive was a
7 rehabilitation or a demolition job? Which kind?

8 A. It was a renovation job.

9 Q. Okay. So General's job was to get all the
10 asbestos that had been identified by the architect or
11 whoever out of the building per their specifications and
12 then to return the premises to the owner ready to be
13 rehabbed or remodeled; is that right?

14 A. Yes. We do the removal, then they run
15 clearance tests on the building, then they -- after they
16 pass, we tear down or take down our stuff, then they give
17 it back to the owner.

18 Q. By your stuff, you're referring to the
19 containment, all your equipment?

20 A. Right.

21 Q. It's all removed, all the plastic that
22 you've been using?

23 A. Right.

24 Q. All that -- The plastic all gets bundled up

1 and disposed of as asbestos waste.

2 A. Yes.

3 Q. It goes out to the landfill along with all
4 the asbestos that you've removed; is that right?

5 A. Yes.

6 Q. Okay. Now, in a rehab job like this one --
7 I don't want to jump ahead of myself. We have all seen
8 at various times in the proceeding photographs of the
9 interior of the building while the work was going on, and
10 a group of them have been admitted into evidence here as
11 People's Exhibit No. 4, quite a number of pictures.
12 You've seen those pictures from time to time, right?

13 A. Yes.

14 Q. Some of them depict what appears to be
15 wooden floors in various rooms that have a layer of
16 plastic over them. Is that --

17 A. Yes.

18 Q. Is that your recollection? Your
19 understanding was that you were to protect the wooden
20 floors because they would be used down the road --

21 A. Right.

22 Q. -- by the new -- in the new use of the
23 building, right?

24 A. Yes.

1 **Q. Would that knowledge have an impact on**
2 **the -- on how you were going about removing the asbestos?**

3 A. Well, we tried to be extremely careful with
4 things like flooring. We've had to do jobs before where,
5 like, a computer system was inside the place, and with
6 water, you got to be really careful. You can't ruin
7 that, because we're the ones that pays for it if you
8 damage the owner's floors, anything of the owner's, so we
9 try to, you know, common sense be a little bit more
10 careful around them areas.

11 **Q. Okay. Would that -- Would the knowledge**
12 **that the facility is being rehabilitated instead of being**
13 **demolished have any impact on the way you would apply**
14 **water to asbestos -- presumably asbestos-containing**
15 **material prior to the time you removed it?**

16 A. Probably so. We probably would have used
17 more like a garden hose in -- where we would use a lot
18 more water, but still, the ceiling was not taking water
19 because it was painted so many times. It would have
20 been -- have to have been still using airless, then wet
21 more on the floor, because it was not soaking the water
22 in because it was -- the paint was repelling it from
23 soaking in.

24 **Q. Now, what's an airless sprayer?**

1 A. It's -- Some painters use it to paint with.
2 We use it -- It's a -- It's got a hydraulic cylinder and
3 it forces air, and it comes out into a fine mist instead
4 of a straight line of water like out of a garden hose.
5 It disperses air or water or paint, whatever you're
6 spraying through it, more in a wider spray, puts out
7 smaller particles of water so you're not using as much
8 water and --

9 **Q. Okay. Well, in this instance, you were**
10 **using this device to disperse water, not paint or**
11 **anything else.**

12 A. No.

13 **Q. Just water.**

14 A. Right.

15 **Q. If -- Is it accurate to describe what comes**
16 **out as a mist or a fog rather than a spray?**

17 A. Yes.

18 **Q. And is this the device, this airless**
19 **sprayer, that you were using throughout this building?**

20 A. Yes.

21 **Q. And am I correct in assuming that it was**
22 **being -- it was also being used on the day that Mr. Zappa**
23 **came to visit you, on August 4 of 2005?**

24 A. Yes.

1 Q. If your records have refreshed my
2 recollection, August 4 would have been the second day
3 that you were removing material from the inside of that
4 building; am I right?

5 A. Yes.

6 Q. Now, let's go to the first day, which would
7 have been August 3, the day prior to Mr. Zappa's visit.
8 What part of the building -- well, let me stop. I don't
9 know how many of these matters the Board has heard or how
10 familiar they are with the process of getting a building
11 ready to start removal, so I'm going to just back up a
12 day or two. You and other people from General got the
13 building ready to start the removal, which removal
14 started on the 3rd of August, yes?

15 A. Yes.

16 Q. Do you recall when that preparation activity
17 started?

18 A. I think it was August the 1st.

19 Q. Okay. Would that have involved the building
20 of this containment that we have heard reference to
21 before?

22 A. Yes.

23 Q. Can you describe very generally and not in
24 enormous detail what it is that you do in putting up a

1 **containment to prepare a building for abatement to start?**

2 A. Yeah. You -- We put up criticals first over
3 the windows and doorways that they're not being -- going
4 to be used, even criticals on the door -- on the windows
5 that we're going to vent our neg air systems out. Then
6 we put layers of poly on the walls and flooring, unless
7 the flooring or the walls get removed. Then you hook --
8 set up your neg air units and your decon system and a
9 loadout, and you just make sure you get your water set up
10 and everything before starting.

11 **Q. Okay. Let's cover a couple of terms. A**
12 **critical, you said you put those over doorways and**
13 **windows. What's a critical?**

14 A. It's a separate layer of plastic that you
15 put over just the window or the doorway, anything that's
16 leading outside or something else. Like in here, they
17 wanted to leave the pictures, you probably put one around
18 them if you couldn't take the pictures off the wall.
19 Just another way to keep from damaging something, trying
20 to keep from damaging something.

21 **Q. Am I correct in assuming that when you use**
22 **the term neg air, you're referring to what's called a**
23 **negative air machine?**

24 A. Yes.

1 **Q. What is the function of that machine?**

2 A. It's to change the air, circulate it. It
3 draws -- supposed to draw air out of the containment at
4 least four times an hour to make -- to try to drag
5 filters -- or not filters -- asbestos particles or any
6 other particles, dirt particles, whatever, into the
7 filters to clean the air; scrub the air, they call it.

8 **Q. Okay. And these machines are located**
9 **outside the building?**

10 A. No. They're inside and vented to the
11 outside.

12 **Q. Okay. And how are -- then are they like a**
13 **vacuum cleaner with a giant hose, more or less, to use**
14 **one's imagination?**

15 A. More or less, yeah. They're -- But they got
16 HEPA filters in them, which is supposed to -- I think
17 it's 99.9 particles it's supposed to keep from going
18 through the HEPA filter instead of a regular filter,
19 and --

20 **Q. And do you use more than one of these**
21 **machines on this project?**

22 A. Oh, we used eight.

23 **Q. Eight. And this building was two stories.**
24 **How were those eight machines divided?**

1 A. One in each apartment. Well, I'm sorry.
2 It's every two apartments, I guess it was, four on
3 upstairs and four downstairs.

4 Q. So four on each floor.

5 A. Yeah.

6 Q. Okay. Of the two-story building. And then
7 all of this containment that you build is meant to be
8 airtight so that all of the air within the building stays
9 within the building and goes through these negative air
10 machines and is filtered while the work is going on; is
11 that right?

12 A. Yeah.

13 Q. Okay. So the preparation of the building
14 went on for two days. You also built something you
15 referred to as a decon? Can you explain what the decon
16 is?

17 A. A decon is either a five -- well, it's a --
18 either a three- or five-chambered shower system in the
19 middle with flaps where you got to go through to take a
20 shower coming out of the containment, so you're deconning
21 yourself off. You take a shower to make sure you're not
22 bringing anything to the outside.

23 Q. So the ingress and egress to and from the
24 building goes through this decon area?

1 A. Yes.

2 Q. And then you have referred to something
3 called loadout area?

4 A. Yes.

5 Q. And what's -- can you describe what that is?

6 A. It's a two-stage area where you wipe down
7 either your bags or barrels, whatever you're taking out
8 to put in your Dumpster, your waste, distribute it
9 through there to the outside.

10 Q. Okay. Now, what did you have to do to
11 prepare -- what, if anything, did you have to do to
12 prepare the rooms that you were going to use for decon,
13 equipment storage and loadout before you could use them
14 for that purpose?

15 A. Well, nothing, really. We prepped them just
16 like the rest of the building, but then we did remove
17 those areas first, the ceilings, so they could -- the
18 ceiling would be out of their way and we wouldn't be --
19 you know, they wouldn't be above our areas where we
20 stored our drums and stuff.

21 Q. So you removed what was supposed to be
22 asbestos-containing material from the ceilings of those
23 rooms before you turned them into the decon room, the
24 loadout room or your equipment storage room.

1 A. No. Actually, we -- you got to have your
2 decon set up first.

3 **Q. Okay.**

4 A. Then we removed it. See, we -- you don't do
5 any removal till you get your decon set up.

6 **Q. Okay.**

7 A. Then after we had -- We had them finished,
8 but we removed those areas first because we was going to
9 store barrels in the one room and we didn't want -- they
10 was going to be full of barrels and we wouldn't be able
11 to get to the ceiling, wouldn't want to work over and get
12 debris on the barrels, and also, you know, the shower, we
13 didn't want to -- we did that first so we could make a
14 little bit more room there.

15 **Q. Okay. And then there -- was there a**
16 **separate room that you would use to store equipment and**
17 **supplies that you needed on the job, or was that part of**
18 **your --**

19 A. Basically in the same room where the barrels
20 were stored.

21 **Q. The loadout room? Okay. Now, just to**
22 **understand the way you folks sequenced your work, if**
23 **you're doing a multi-story building, in this case a**
24 **two-story building, do you have a preference for which**

1 **floor you start on?**

2 A. Yeah. Our preference is usually to work
3 from top to bottom.

4 **Q. And that would be because?**

5 A. Because we don't -- you know, like anything
6 else, you don't want to get something dirty if you're
7 done cleaning.

8 **Q. All right.**

9 A. If you start on the bottom, which we have
10 once in a while because there's things you got to do,
11 but, you know, you don't want to get those areas dirty
12 again, so if we don't have to start on the bottom, we
13 start on the top and then work our way down.

14 **Q. Okay. But in this case, you had to do a
15 little bit of removal on the first floor --**

16 A. Right.

17 **Q. -- before you could even start on the second
18 floor; is that right?**

19 A. Right.

20 **Q. And that was because of this need to have
21 your loadout room and your decon area and equipment
22 storage --**

23 A. Right.

24 **Q. -- area all finished so you wouldn't have to**

1 back into it while it was full of waste or something.

2 A. Right.

3 Q. Okay. Now, we'll come back to this later,
4 but this loadout room is where the waste material that's
5 being removed from the building is stockpiled before it
6 gets completely off the site; is that right?

7 A. Yes.

8 Q. Okay. In this instance -- we've all seen,
9 again, the photographs that are in evidence -- there
10 appear to be a substantial number of -- they're -- they
11 look like 55-gallon in size but they appear to be
12 cardboard or some kind of a fibreboard drum. Is that
13 what you use to load the material off the site?

14 A. Yes. We -- All depends on what material.
15 See, the drywall ceiling had some drywall screws and
16 stuff like that in it, so as a precaution, we put them in
17 lined fiber drums.

18 Q. Because if you just put them in plastic
19 bags, they might get torn or damaged.

20 A. Yeah, sometimes, yeah, because it depends on
21 the material. It had screws and stuff in it, so -- and
22 screws -- you know, it's just plastic to where it could
23 poke through the plastic.

24 Q. Okay. The -- Again, the -- referring to

1 pictures that are just generally scattered throughout
2 People's Exhibit 4, the pictures suggest that there's --
3 these drums have some kind of a lining material in them.
4 Is that a bag?

5 A. Yes. It's a six-mil bag.

6 Q. So it's a bag that's inserted in the drum,
7 folded over the sides while the drum is being filled, and
8 when the drum is full, then what happens to it?

9 A. We -- Well, after it gets completely wetted
10 down, then the bag is taped up and the top put on, and if
11 we're finished with it, we tape it up and move it to the
12 storage area near the loadout.

13 Q. How is the material inside the drums wetted
14 down before it's sealed up for off-site disposal?

15 A. Well, on that job we was using finger
16 wetters, which are --

17 Q. There will be subsequent testimony from
18 Mr. Stevens, who was actually doing that work, but can
19 you tell us quickly what a finger wetter is?

20 A. It's like a small garden hose, but it's got
21 a small end on it. You break it over with your thumb to
22 get the water to spray out it, then you let the pressure
23 off of it with your finger and it won't spray.

24 Q. Okay. So the -- it's basically a function

1 of bending over the end of the hose with your finger to
2 cause water to be released --

3 A. Right.

4 Q. -- and as soon as you release your finger,
5 it shuts itself off automatically.

6 A. Right.

7 Q. Okay. And that's how you wet the material
8 in the drum.

9 A. Yes.

10 Q. Okay. But on a job like this, you wouldn't
11 use it to spray water on the floor or anything because
12 you're trying to avoid wetting the floor, right?

13 A. Yeah. While we -- That's what we was using
14 airless for, the air and the mist and the --

15 Q. Okay. Now, these drums get stockpiled in
16 this loadout area, sealed up with tape; is that right?

17 A. Yes.

18 Q. But they seem to also have some kind of a
19 metal retaining ring in the photographs that I've seen
20 and that are part of Exhibit No. 4. Is that standard?

21 A. Yes. To hold the lid on, they come with a
22 ring and a lid.

23 Q. And is it, like, a snap ring?

24 A. Yes.

1 Q. Okay. It snaps tight, and then looks like
2 duct tape goes around that?

3 A. Yes.

4 Q. To cover the whole thing up? And then that
5 drum is now ready to go to the disposal site, landfill;
6 is that right?

7 A. Yeah, after it's loaded out.

8 Q. Okay. And when your people load it out of
9 the building, where do they put it?

10 A. It goes into a lined, enclosed Dumpster.

11 Q. An enclosed Dumpster that's already been
12 lined with the same kind of plastic material we've been
13 hearing about?

14 A. Yeah, a single layer of six-mil poly.

15 Q. Okay. And then a waste disposal company
16 takes it away.

17 A. Yes.

18 Q. Okay. I'm envisioning a Dumpster coming and
19 going, then? You're constantly putting material in a
20 Dumpster and --

21 A. Pretty much.

22 Q. Does it take more than one?

23 A. Till -- All depends on the size of the job.

24 Q. Do you recall on this job whether or not it

1 **took more than one Dumpster to --**

2 A. I'd say it probably did, at least two.

3 Q. **Okay. And all of the waste material that**
4 **you took out of the building was disposed of in this way,**
5 **what you've just described.**

6 A. Yes.

7 Q. **Okay. Just out of curiosity, if you get a**
8 **piece of material that's too big to readily fit in the**
9 **Dumpster -- I mean in the drums, do you guys have to just**
10 **cut it up to fit?**

11 A. We usually try to wrap it with poly if it
12 can be handled by a man or two or on a cart. We wrap it
13 in two layers of six-mil if it's something that we can't
14 get in the -- put in the barrel.

15 Q. **Do you recall if you ran into any material**
16 **like that on this job, or was everything drummed out?**

17 A. I don't recall, but I don't think so. I
18 think everything was pretty much barreled.

19 Q. **Okay. So as I'm understanding it, the**
20 **preparation for the site was done on the 1st and 2nd of**
21 **August, to your recollection, and on the 3rd of August,**
22 **the day prior to Mr. Zappa's visit, you did some partial**
23 **removal of material thought to be asbestos from the first**
24 **floor of the building in preparing these areas you're**

1 talking about, and then what did you do for the rest of
2 the day? Move to the second floor?

3 A. We might have removed a small -- some small
4 area upstairs too.

5 Q. But your idea was to get to the second floor
6 because you --

7 A. Right.

8 Q. -- wanted to focus there --

9 A. Yes.

10 Q. -- in keeping with your practice of working
11 from the top down.

12 A. Yes.

13 Q. Okay. So you might have done some of the
14 second floor on August 3, the day prior to Mr. Zappa's
15 visit.

16 A. Yes.

17 Q. On August 4, the day of his visit, were you
18 working exclusively, then, on the second floor?

19 A. Yes.

20 Q. Okay. Now, you've already testified about
21 this fogging or misting the room and the materials, the
22 ceiling. You were pulling down the ceilings on the
23 second floor. That's -- That was principally what you
24 were trying to accomplish, taking down these ceilings

1 that had this sprayed coating on them?

2 A. Yes.

3 Q. Which coating had been painted throughout
4 the building?

5 A. Yes.

6 Q. And as I'm understanding, then, what you're
7 saying is that even when you mist it, you -- the water
8 will not penetrate this material?

9 A. No. It was running off. See, there's a
10 thing called, like, end capping too. It's something like
11 we have that's also a paint that you paint -- it was
12 almost like it was end cap which had soaked into the
13 material that was on the ceiling, and it was just running
14 off of it.

15 Q. So the surface of the ceilings was
16 essentially impermeable for your purposes of spraying
17 water, misting, fogging, whatever.

18 A. Yes.

19 Q. Is there -- Have you ever encountered a
20 situation where you could get above the ceiling through
21 an access way of some kind and spray it on the back side?

22 A. Yeah. That's a pretty common practice with
23 our work.

24 Q. Okay. Is it something you could do at this

1 **site?**

2 A. No.

3 **Q. Why not?**

4 A. It had the ceiling joists too close
5 together, and the ceiling joists were filled with
6 fiberglass material, so if you open the ceiling up, you
7 still couldn't get to it because all the fiberglass that
8 was above the ceiling.

9 **Q. So the ceiling was literally right up
10 against this fiberglass; is that right?**

11 A. Yes, yes.

12 **Q. And it was packed in between the floor
13 joists --**

14 A. Yes.

15 **Q. -- for -- this is fiberglass insulation; am
16 I right?**

17 A. Yes.

18 **Q. It appears to be what's in the pictures. So
19 that you couldn't wet it from the back side because you
20 couldn't get at it.**

21 A. No.

22 **Q. And the only way to get at it was to tear
23 the ceiling down.**

24 A. Right.

1 Q. Of the -- On the second floor of this
2 building, were you just tearing down ceilings?

3 A. Yes.

4 Q. Walls were to be left intact?

5 A. Yes.

6 Q. And they were covered with the poly.

7 A. Yes.

8 Q. And it wasn't your job to remove windows, is
9 that right, or had they been --

10 A. No.

11 Q. -- removed?

12 A. No, the windows were intact, as I remember.

13 Q. Okay. The floors, of course, were being
14 left alone and were -- had been covered; is that right?

15 A. Yes.

16 Q. Now, there is some reference -- in the
17 asbestos report that was filed prior to the project
18 starting, as People's Exhibit No. 5, there's some
19 reference to floor tile and the glue for floor tile, the
20 mastic, that was going to be removed, but that floor tile
21 was only found in, like, kitchens and things like that;
22 is that right?

23 A. I believe so.

24 Q. It wasn't in the main rooms. Was it --

1 A. No.

2 Q. -- kitchens and bathrooms? Is that -- Does
3 that refresh your recollection?

4 A. Not really.

5 Q. Or in hallways?

6 A. I remember, I think, down on the first floor
7 in the hallway, maybe the steps. I can't -- or the --
8 maybe there was carpet on the steps that got removed.

9 Q. Okay. In looking at Exhibit No. 5, which
10 has been introduced into evidence, I'm seeing a reference
11 to floor tile under carpet in various locations, so you
12 may -- that may be what you encountered; is that right?

13 A. Probably.

14 Q. The carpeting would have been removed by
15 your people as well and treated as if it were asbestos --

16 A. Yeah.

17 Q. -- waste?

18 A. Yes.

19 Q. And it would go in these drums and out to
20 the Dumpster, right?

21 A. Yes.

22 Q. Okay. But the work you were doing the day
23 that Mr. Zappa came to visit, on the 4th of August, 2005,
24 involved the removal of the ceilings in the second floor

1 of the building.

2 A. Yes.

3 Q. And you did not have a crew working in the
4 first floor.

5 A. No.

6 Q. The work that had been done down there had
7 been done the previous day.

8 A. Yes.

9 Q. Okay. So the airless sprayer putting out
10 its mist or fog is used in each room as the ceilings are
11 being pulled down?

12 A. Yes.

13 Q. Now, to your recollection, had some of those
14 ceilings in any of those rooms on the second floor
15 sustained prior damage that made them kind of unstable so
16 that, like, when you pull on them, a big section of them
17 would fall down?

18 A. As I recall, because there was some damaged
19 ceiling from water damage in some of the rooms --

20 Q. Yeah.

21 A. -- but I don't remember which ones.

22 Q. Okay. When one encounters that in your
23 business, a ceiling that's already been compromised by
24 water or something, when you start pulling it down, does

1 it tend to come down somewhat all at once?

2 A. Probably pretty much, because the screws are
3 loose in the drywall and it's not holding it very well
4 anymore.

5 Q. Okay. So you've experienced that --

6 A. Yes.

7 Q. -- in various jobs that you've been on?

8 A. Yes.

9 Q. And do you recall that it happened on this
10 job from -- in various places?

11 A. In various places.

12 Q. Okay. So now the material is on the floor.
13 What would be done with respect to wetting it at that
14 point, if anything?

15 A. We was wetting it with the airless sprayer,
16 then putting it in the drum and wetting it with the
17 finger wetters.

18 Q. Okay. When you use an airless sprayer on
19 material that's already, say in this case, fallen from
20 the ceiling down to the floor, does it leave a lot of
21 water behind?

22 A. No.

23 Q. In fact, it's designed not to do that; isn't
24 that right?

1 A. Yes.

2 Q. Okay.

3 A. It's designed to put a fog in the air more
4 or less to catch fibers. I mean, it's not made for
5 that -- you know, they didn't make an airless sprayer
6 exactly for that, but when you put moisture in the air,
7 you know, it drags fibers down.

8 Q. Okay. And then it lands on the material
9 that's down on the floor and that's the end of it, and
10 you don't want to overdo the water because you're trying
11 not to damage this floor.

12 A. Yes.

13 Q. Okay. We've now reached the point where
14 we've got material off the ceiling down on the floor,
15 it's been hit with the airless sprayer twice, actually,
16 once before it came down and once after it came down, and
17 it now is -- can be loaded into these drums; isn't that
18 right?

19 A. Yes.

20 Q. Now, once again, referring -- and I'm not
21 going to burden the witness with this back and forth with
22 the pictures, because he's seen them all, but there are
23 pictures contained within Group Exhibit No. 4 that show
24 what appears to be a line -- lines of drums in the

1 hallway up on the second floor of the building. Does
2 that refresh your recollection as to what --

3 A. Yes.

4 Q. Those drums were put up there by your
5 people?

6 A. Yes.

7 Q. They were put up there empty prior to the
8 time you started tearing down the ceilings?

9 A. Yes.

10 Q. This is part of your preparation for doing
11 the second floor, right?

12 A. Yes.

13 Q. And these drums then have to be filled with
14 the material that's come down from the ceilings, right?

15 A. Yes.

16 Q. Now, would you work in more than one room at
17 a time on -- for example, on the 4th day of August, when
18 your logs indicate the presence of six workers, how many
19 rooms at a time could they attack?

20 A. Probably the most, two.

21 Q. Okay. So they would knock the plaster
22 material or the ceiling material down to the floor, and
23 at that point it gets loaded into the drums.

24 A. Yes.

1 **Q. Manually with shovels, or how do they do**
2 **that?**

3 A. They -- We was mostly using -- by hand, the
4 bigger pieces, and when you get down to the smaller
5 pieces, use a plastic shovel.

6 **Q. I saw a photograph in the Group Exhibit 4**
7 **that depicted a broom, and I didn't know that brooms got**
8 **used on jobs like this, but there was a broom. You saw**
9 **the picture too, didn't you?**

10 A. Yes.

11 **Q. Any idea where that broom came from?**

12 A. That's -- There's a lot of jobs where they
13 got old brooms and that that got left in the containment,
14 but we was not using it.

15 **Q. Okay. But you don't use brooms.**

16 A. No.

17 **Q. Why not?**

18 A. We use usually squeegees, soft-headed
19 squeegees.

20 **Q. Why don't you use brooms?**

21 A. Because it's not allowed by the regs.

22 **Q. Okay. And you use squeegees?**

23 A. Yes.

24 **Q. Because you're dealing with a**

1 plastic-covered floor, right?

2 A. Yeah.

3 Q. And you're trying not to rip it or tear it.

4 A. True.

5 Q. So anyway, this stuff gets picked up and put
6 in these drums, and then those drums have to be
7 physically carried from the second floor down to the
8 first floor. There's no working elevator in this
9 building, is there?

10 A. No.

11 Q. Okay. So it's foot traffic down the
12 stairway.

13 A. Yes.

14 Q. There's a picture of carpeting -- a carpeted
15 stairway apparently covered with cardboard over the
16 carpeting in one photograph in Exhibit No. 4. Is that a
17 traffic area or traffic way for the drums to go down?

18 A. Yes.

19 Q. And what's the cardboard for?

20 A. To make it less so the -- To kind of keep
21 the stairs clean and make it less of a hazard for the
22 workers coming down the stairs.

23 Q. Because they could slip on --

24 A. Yes.

1 Q. -- on the stairs?

2 A. Yes.

3 Q. Okay. These drums pretty heavy when they're

4 filled up?

5 A. Sometimes. It depends on what's in them.

6 Q. Well, I mean, if it was a liquid, fifty-five

7 gallons times, what, eight pounds per gallon -- isn't

8 that right -- that would be one heavy drum. These don't

9 weigh that much.

10 A. No.

11 Q. But would it take one or two men to wrestle

12 them down the stairs?

13 A. Usually one man could do it.

14 Q. Okay. But it -- he's just dealing with a

15 drum. You're not using loading equipment or anything

16 like that, are you, or are you?

17 A. As far as what do you mean, loading

18 equipment?

19 Q. I mean, like, the hand --

20 A. Not down the stairs, because there's

21 nothing -- you know, they might have used one down the

22 stairs once it got to the bottom, used a hand cart.

23 Q. A hand truck to move it to the --

24 A. Right.

1 Q. -- loadout room, but just wrestling it down
2 the stairs is just man versus drum. Is that what you're
3 saying?

4 A. Yeah. Usually the drywall is not as heavy
5 as when we fill them with floor tile and stuff.

6 Q. Okay. These ceilings upstairs were in fact
7 made of drywall.

8 A. Yes.

9 Q. And this material which was thought to
10 contain asbestos was in fact a spray that had been
11 sprayed onto the ceiling over the drywall after the
12 drywall was up some years ago; is that right?

13 A. Yes.

14 Q. And then that in turn had been painted on
15 one or more occasions for decorating purposes at a later
16 time, right?

17 A. Yes.

18 Q. It was the -- And again, if I'm recalling
19 what you're saying, it was the painting process that made
20 it impermeable.

21 A. Right.

22 Q. Up until then, you could have saturated it
23 with something, but once it got painted a couple of
24 times, it was over.

1 A. Yes. Whenever we -- We've had ceilings
2 before with it on there. Usually if they're
3 hard-to-reach ceilings, like in a big building or
4 something, a lot of times they haven't been painted over
5 once, and most of the time -- a lot of times none, and
6 the water -- it soaks up the water, which this has been
7 painted, I don't know, one or more times, because it
8 was -- seemed really coated with paint. In fact, it was
9 peeling -- almost peeling off the drywall. Whenever you
10 would remove it, some of it would peel off.

11 **Q. Okay. On the second day of your work, or**
12 **August 4, the day of Mr. Zappa's visit, Mr. Kenneth**
13 **Stevens will be testifying he was working the hallway**
14 **drums and the finger hose. Is that right?**

15 A. I was not inside whenever Mr. Zappa went in,
16 so I can't say anything about that.

17 **Q. Fine. We'll -- Just wanted to know what you**
18 **knew. Now, turning your attention to the arrival of**
19 **Mr. Zappa, where were you when you first encountered him**
20 **or when you first saw him?**

21 A. I had just deconned out, put my clothes on,
22 because we've had some electrical breakers that went off
23 that was controlling our airless sprayer and stuff, and I
24 was heading out to that, and I do not recall what kind of

1 vehicle he was in, but he pulled up in the parking lot
2 when I come out the door, and so I went over to see who
3 it was, because that's kind of our territory since we're
4 the only company working there, and I was just seeing
5 what they was doing there, you know, because we have
6 stuff outside that I don't -- the truck and stuff, and I
7 didn't want, you know, nobody messing with anything.

8 Q. Okay. Well, so you were just taking a
9 reasonable security precaution to see who it was who was
10 pulling up.

11 A. Right, on my way to go throw the -- or trip
12 the breakers back on.

13 Q. Okay. Let's talk about what you were doing
14 there. I don't know the exact photograph in Exhibit
15 No. 4, but it -- there's one photograph in particular,
16 again that you've seen, that depicts a pickup truck with
17 a large tank in the back that appears to be filled with
18 water with some hoses leading out of it. Is that a piece
19 of equipment that was brought to the site by General?

20 A. Yes.

21 Q. Okay. That was General's truck?

22 A. Yes.

23 Q. Okay. Could you just describe what the
24 water supply for this project was given that you were

1 rehabbing a building that had -- was vacant, getting
2 ready for rehab of a building that was vacant?

3 A. The building -- The water and electric had
4 been shut off to the building, so we had no water system,
5 so we had to bring our own and run a pump into the water
6 to pump water in for us.

7 Q. Okay. And this is the water that you're
8 using to -- for your finger hose in the drums and this is
9 also the water that you're using for your airless
10 sprayer; is that right?

11 A. Yes.

12 Q. Okay. Now, was one pump feeding water to
13 both the finger hose and the airless sprayer or were
14 there separate pumps?

15 A. They're -- It's the same pump, but the
16 airless sprayer works out of a -- you set the end in a
17 five-gallon bucket and fill the bucket up with water to
18 spray. It draws its water out of the bucket.

19 Q. Okay. Whereas the finger hose is directly
20 fed from the --

21 A. By the water hose.

22 Q. -- tank in the back of the truck.

23 A. Yes.

24 Q. Okay. And the airless sprayer bucket, it

1 was a five-gallon bucket, you said?

2 A. Yes.

3 Q. It gets its water from the finger hose as
4 well?

5 A. Yes.

6 Q. Okay. So basically, there's one source of
7 running water, shall we say, which is the finger hose,
8 and it's serving two purposes. It's being used to wet
9 down the material in the drums and to refill the
10 five-gallon buckets as needed to run the airless sprayer.

11 A. Yeah. There's two or three finger hoses,
12 not just one.

13 Q. All right. But all the finger hoses have
14 one thing in common. They're getting their water
15 directly from the pickup truck --

16 A. Yes.

17 Q. -- tank.

18 A. Yes.

19 Q. Whereas the airless sprayers are getting
20 their water from five-gallon buckets within the
21 containment that are being refilled by the use of a
22 finger hose.

23 A. Yes.

24 Q. Okay. The airless sprayer, then, is an

1 entirely electric device which is just sucking water out
2 of a bucket.

3 A. Yes.

4 Q. And converting it into a mist or a fog, as
5 you described it.

6 A. Yes.

7 Q. Did I understand you to say that you were
8 having some difficulty with the electrical supply?

9 A. Yes.

10 Q. Now, describe this electrical supply. You
11 said the building had no power of its own?

12 A. No.

13 Q. So where do you get power to run an airless
14 sprayer?

15 A. We had an electric panel out of ours. We
16 put it in a small trailer outside the building and they
17 fed the electric, the electrician did, off the pole from
18 the outside to our electric panel, and we ran our cords
19 out the windows into this trailer and plugged them into
20 the GFI electric panel.

21 Q. Okay. So basically, you became an
22 independent power supply for the building with the use of
23 your equipment, circuit breakers and whatnot, which are
24 in turn fed from the power company's supply that an

1 **electrician hooked up for you; is that right?**

2 A. Yes.

3 **Q. Okay. You didn't do the hookup to the power**
4 **company. That was done by somebody else.**

5 A. Yes.

6 **Q. On August 4, what problems were you**
7 **encountering with your electrical panel, if you were?**

8 A. Well, we had two or three drop cords trip a
9 breaker inside the trailer, and the workers told me that
10 the -- you know, about it, so I dress out and went to go
11 retrip them back.

12 **Q. I'm thinking, like, if you look at one's**
13 **house panel, you've got multiple breakers that feed**
14 **different parts of the house.**

15 A. Yes.

16 **Q. Is your machine and breaker panel like that?**

17 A. Yes.

18 **Q. So you have multiple circuits, shall we say,**
19 **going into the building?**

20 A. Yes.

21 **Q. Do you recall how many?**

22 A. Probably around ten.

23 **Q. Okay.**

24 A. Ten, twelve, something like that.

1 **Q. And some breakers would shut off or trip and**
2 **have to be reset, but not others?**

3 A. Yes.

4 **Q. And I know this is five years ago almost,**
5 **but do you recall if the breaker that was tripping or**
6 **breakers that were tripping were the same ones over and**
7 **over again, or was it different ones?**

8 A. It was usually -- What I remember -- Well,
9 it was the rooms where we was working in, because it
10 wasn't the neg air. It was the -- usually the -- We had
11 two or three spare cords that we plugged in our airless,
12 and it was those drop cords that was throwing the
13 breaker, and that was the rooms that, you know -- where
14 we was spraying the water --

15 **Q. Yeah.**

16 A. -- and that's a common thing if you get
17 cords wet. They'll throw breakers.

18 **Q. So then you would go outside and turn them**
19 **back on.**

20 A. Yes. I went -- I had to do it I think once
21 or twice that day, once when Mr. Zappa showed up, and I
22 don't know if I had to do it again or not.

23 **Q. How long an interruption of power did you**
24 **have while you corrected this problem, in minutes?**

1 A. Maybe ten, something like that, because
2 when I -- I had to shower out and get redressed, then
3 when I come out, I talked to Mr. Zappa before I went to
4 the -- to our -- the board to reflip it, and whenever he
5 finished talking with me, I went and hit them.

6 **Q. Okay.**

7 A. Retripped them.

8 **Q. So -- But by and large, your recollection is**
9 **that maybe ten minutes? Took you about ten minutes or**
10 **so?**

11 A. Approximately, yes.

12 **Q. Okay. And once you trip the breaker, it's**
13 **back on and everybody's back in business.**

14 A. Right.

15 **Q. Okay. Now, let's turn your attention to**
16 **Mr. Zappa. You're outside, you're getting ready to go**
17 **back inside but you haven't yet, and you encounter him,**
18 **and does he identify himself?**

19 A. No, I just come out the door --

20 **Q. Oh, okay.**

21 A. -- then I seen him pull up and I went over
22 and talked to him. Then I reset the breakers, then I
23 never went back in with him.

24 **Q. Okay.**

1 A. He went in himself. He asked where the
2 decon was and he made a beeline -- after he showed me his
3 credentials, he made a beeline that way, and I think he
4 come back and got a suit of his own. I'm not sure if he
5 didn't like our suits or what, but I remember him coming
6 back out then going back in, I'm pretty sure, and that's
7 all I know. I didn't go into the decon area with him.

8 **Q. Okay. You remained outside and took care of**
9 **the breaker problem --**

10 A. Yes.

11 **Q. -- and did other chores; is that right?**

12 A. Yes.

13 **Q. Okay.**

14 A. Called my company and let them know that he
15 was on site.

16 **Q. Okay. So the -- any interaction that**
17 **Mr. Zappa would have had with your people inside the**
18 **building while you were outside you obviously didn't see**
19 **or hear. You weren't there.**

20 A. No.

21 **Q. You were outside. Did you go back into the**
22 **building to be with Mr. Zappa then when you were finished**
23 **doing your chores or --**

24 A. No.

1 Q. Did he come back out?

2 A. He came back out -- I don't know what the
3 time period was -- and I talked to him then and asked him
4 what he wanted me to do, and he asked me if it was close
5 to our lunch or something like that, into that effect,
6 and he asked me to get the workers -- get in touch with
7 the workers and have them come out and we'd have a talk.

8 Q. Okay. So how did you communicate with the
9 workers from outside?

10 A. To be honest, I don't remember if I went
11 in -- dressed down, went in and got them or I hollered at
12 them through the decon.

13 Q. Okay. But one way or another, the rest of
14 your men who were inside and who had -- who Mr. Zappa had
15 seen outside of your presence, they eventually came out;
16 is that right?

17 A. Yes.

18 Q. Now, did Mr. Zappa tell you or your group of
19 people -- there were six of you, I believe, there that
20 day, including yourself, according to the log sheet?

21 A. I think so.

22 Q. Did he want to have a meeting or did he just
23 want to chat with the group as a whole or with
24 individuals? What did he do?

1 A. As I can remember, I think he just wanted to
2 talk to us all together. I did not know what about, but
3 he wanted to talk to us all together.

4 **Q. Okay. Were you in attendance then when he**
5 **talked to you -- Did that happen?**

6 A. Yes.

7 **Q. And what did he want to say?**

8 A. Kind of out of memory, but basically, I
9 think he just -- he kept telling us, you guys know better
10 than that, it's not wet enough, and I don't remember the
11 conversation altogether, you know, every word he said,
12 but I remember asking him after he got done talking
13 whether -- what he wanted me to do, did he want me to
14 shut it down or what, and he said, no, you're fine, just,
15 you know, get better work practices.

16 **Q. Now, Mr. Zappa prepared a memo, which has**
17 **been introduced into exhibit as People's Exhibit No. 3 --**
18 **and you've read this, you've seen this document --**
19 **wherein he quotes you and says that you told him that**
20 **you, Calvin Johnson, had -- his term is "messed up," in**
21 **quoting from his report. Did you ever tell him anything**
22 **like that?**

23 A. No, sir.

24 **Q. What did Mr. Zappa do after he had his**

1 **little discussion with your assembled group?**

2 A. Well, we took lunch, and he said something
3 about gathering samples and he walked towards the decon.
4 I did not follow him and see what he was doing, but he
5 was there for a while. I don't know if he went inside.
6 I don't know if he had his samples already in the clean
7 room and he was just getting them together, but that's
8 what he did. He went there and he was gone for 15
9 minutes or so then come back, and he left.

10 **Q. And so he went back to his vehicle. Did he**
11 **say goodbye or tell you that he was leaving or --**
12 **officially so you'd know that he was no longer on**
13 **premises?**

14 A. I was there whenever he -- I think I was
15 outside. I don't know if he said bye or not, but -- I
16 really don't remember what he said when he left.

17 **Q. But you do recall that he got in his vehicle**
18 **and departed?**

19 A. Yes, because I was on site.

20 **Q. All right. Did you -- Upon hearing him tell**
21 **your assembled group that they needed to have more water**
22 **on the material, did you -- was it your opinion at the**
23 **time that there had been enough wetting of the material**
24 **to meet your -- the needs of the regulations and the**

1 **environment?**

2 A. Well, as -- airless is a good progress -- or
3 what we use to do our work, to keep the fibers down and
4 all, and the way that the spray-on was painted so
5 thoroughly and stuff, plus not wanting to ruin the floors
6 and all, we wet it down more as we put it in the drums.
7 Yeah, it -- I think it was.

8 Q. Okay. And you've been a supervisor for --
9 how long since you got your supervisor --

10 A. Been running jobs -- Somewhere around '89.

11 Q. So you've been running these jobs for about
12 16 years and have been working at it for about 20.

13 A. Yeah.

14 Q. Including your time as a laborer.

15 A. Right.

16 Q. And based on that time and experience, you
17 felt that this material was adequately wet for the
18 purposes of disposal if it were in fact asbestos.

19 A. Yeah.

20 Q. Now, later on you found out that -- and this
21 is already in evidence -- that Mr. Zappa had his samples
22 analyzed and that the material that he collected up from
23 the work area on the second floor and from the floor of
24 the first floor, that those had come back negative for

1 asbestos; isn't that right?

2 A. Yes.

3 Q. You're aware of the fact that he also
4 collected a sample from a drum -- he opened up a drum
5 that had been filled the day before, on August 3, with
6 material that you had gathered up while getting the first
7 floor decon area and whatnot ready, and he'd opened up a
8 drum and taken a sample from there. Are you aware of
9 that?

10 A. I did not know where he took his samples
11 besides the reports.

12 Q. Okay. From what you -- the report and the
13 pictures you saw --

14 A. Right.

15 Q. -- he collected it from a drum and said the
16 material in there wasn't wet enough to suit him, but you
17 didn't see that at the time he collected his sample; is
18 that right?

19 A. No, I did not see that.

20 Q. When the drums were assembled and packaged
21 up on August 3, the day before, had finger wetting hoses
22 been used to put water in all those drums?

23 A. Yes.

24 Q. But no one from General was present when

1 Mr. Zappa went into that drum and collected his sample,
2 was there?

3 A. I was not inside the containment. I don't
4 know if one of the workers were near him or not, but I
5 doubt it.

6 Q. Okay. Let me just ask a wrap-up question.

7 Mr. Zappa shows up at -- before the noon hour, late
8 morning on the 4th of August. You've been working there
9 that day and you've been doing some removal work the day
10 before. Addressing the first floor, how much of the
11 first floor as a percentage or fraction still had to be
12 done by you folks as of the morning of the 4th?

13 A. Probably half of it or maybe a little bit
14 more.

15 Q. Okay. And with regard to the second floor
16 where your folks were working when Mr. Zappa arrived on
17 the 4th, how much of the second floor had been done by
18 your people when he arrived?

19 A. Again, probably over half to three-quarters.

20 Q. Half to three-quarters had been completed or
21 still was --

22 A. Oh, it wasn't completed, no. By the end of
23 the day.

24 Q. Okay. So by the time -- when he got there,

1 **about how much was still to be done on the second floor?**

2 A. Probably half or a little over still left to
3 be done.

4 **Q. So basically, between the first floor and**
5 **the second floor, considerably more than half the**
6 **building still had to be done.**

7 A. Right.

8 MR. IMMEL: Okay. I don't have anything
9 further, and I would request a short break for both the
10 witness and I before we resume.

11 HEARING OFFICER WEBB: All right. We'll
12 take a short break.

13 MR. IMMEL: Thank you.

14 (Brief recess taken.)

15 HEARING OFFICER WEBB: We're back on the
16 record with the People's cross examination of
17 Mr. Johnson.

18 CROSS EXAMINATION

19 BY MR. MANKOWSKI:

20 **Q. You said that you started the removal on**
21 **August 3.**

22 A. Yes.

23 **Q. And Mr. Zappa showed up on August 4.**

24 A. Yes.

1 Q. Okay. On August 4 you were only working on
2 the second floor?

3 A. Yes.

4 Q. There was -- No one was working on the first
5 floor.

6 A. No.

7 Q. And just want to clear up, how many airless
8 sprayers did you guys have on the site?

9 A. One.

10 Q. Just the one? And --

11 A. Well, we had one that day. We had two the
12 day before when we had more people.

13 Q. Okay. So on the 4th, you only had one
14 airless sprayer.

15 A. Yeah.

16 Q. Now, in your direct testimony a couple
17 minutes ago, you said that the workers were sometimes
18 working in two rooms at once; is that --

19 A. No, I said depends on how many workers we
20 had. I said that in that day, we loaded barrels, drums
21 in the first thing that morning, then we started removal,
22 and everybody was in the same area.

23 Q. Okay. So when you were working on the
24 second floor, no one was down on the first floor?

1 A. No.

2 Q. Okay. Now, we talked some about the
3 procedure for removing this ceiling material. When you
4 remove it, the proper procedure is to try and bring it
5 down in as good of a piece as you can; is that correct?

6 A. I guess. Usually you try to pull it down
7 the best you can. It's hard. You don't -- You try not
8 to cut into it or nothing. You try to pull it down by
9 hand.

10 Q. Try and bring it down by hand --

11 A. Right.

12 Q. -- carefully.

13 A. Right.

14 Q. Because you don't want to dislodge any more
15 fibers than you need to; is that correct?

16 A. Right. That's -- I mean, yeah.

17 Q. You're supposed to bring it down and then
18 put it into the containers.

19 A. Well, a lot of times it don't automatically
20 get put into the containers because it goes -- it'll fall
21 onto the ground. I mean, in the perfect world, every
22 hand by hand would be, you know, set there in the drum,
23 but it's not the perfect world. Things don't get put in
24 the drum right away, so, no, it never got -- some of it

1 didn't get put into the drum right away, right, you know,
2 as soon as it got pulled down, you know.

3 **Q. Now, when you're bringing it down, when is**
4 **the material supposed to be wet?**

5 A. Well, you're supposed to -- you try to wet
6 it as it's sitting, then you -- well, we use an airless
7 sprayer, which is a good practice that a lot of companies
8 use to fog the air to keep the fibers down, you know,
9 during the removal.

10 **Q. Okay. So yes or no, do you wet it when it's**
11 **on the ceiling?**

12 A. Yeah, you -- right.

13 **Q. When -- Yes or no, when it's coming down,**
14 **you wet it as it's coming down?**

15 A. Yeah, with the airless sprayer. You can't
16 hit it with the garden hose, you know, as it's coming
17 down.

18 **Q. And then another yes or no question. You**
19 **wet it in this case when it's on the floor.**

20 A. Yes.

21 **Q. And then, yes or no question, you wet it**
22 **when it's in the barrel.**

23 A. Yes.

24 **Q. And you're supposed to keep it wet until**

1 **it's disposed of at the landfill.**

2 A. Well, once you put it in your containers,
3 you can't open your containers back up and wet it down
4 again.

5 Q. **The material's supposed to be wet enough**
6 **inside the container so that it doesn't dry out --**

7 A. Right.

8 Q. **-- before it makes it to the landfill.**

9 A. Right, but it's not going to get out of the
10 container.

11 Q. **But you have to make sure that it's wet**
12 **enough inside the container.**

13 A. Right. Yes.

14 Q. **So that when it gets to the landfill, if one**
15 **of those containers breaks open, the material's still**
16 **wet.**

17 A. Yes, sir.

18 Q. **Okay. So you have to make sure there's**
19 **enough water inside the container.**

20 A. Yes, sir.

21 Q. **And you said the water can't get out of that**
22 **container.**

23 A. Yes, sir.

24 Q. **It's an airtight container.**

1 A. Yes, sir.

2 Q. So if you -- say you remove material the day
3 before, that the next day, that material should still be
4 wet inside of that container.

5 A. I guess it should be. I've never opened one
6 back up to look at it.

7 Q. If the material had dried out overnight
8 inside of an airtight container, would you have -- would
9 you say that that material was adequately wet before it
10 went in -- or when it first went in the container?

11 A. Well, as we go again for adequately wet,
12 everybody's got their own version of adequately wet.

13 Q. Well, what is your version of adequately
14 wet?

15 A. Well, my version of adequately wet is it
16 being wet, not swimming. You know what I'm -- Not
17 floating in water. You just wet down and then put in
18 containers.

19 Q. But how wet? Do you have any way of
20 describing how wet that should be?

21 A. There's no measurements to show how wet.

22 Q. Is there -- Like, can you test it by feeling
23 the material?

24 A. Well, you can usually feel if it's wet, yes.

1 Q. If you, like, grabbed it and crushed it in
2 your hand and it was still dry and brittle, would that be
3 wet enough?

4 A. Well, I don't know what dry and brittle with
5 the ceiling -- I really don't know what you mean by --

6 Q. If the material was dry and brittle in your
7 hand, would you say that's adequately wet?

8 A. It depends on if it's -- I'm trying to run
9 it through my mind here -- I'm sorry -- how it would --
10 because I've never put it in my hand and, you know, did
11 that before to see. If it's dry -- If you know it's dry
12 and brittle, then, no, it's probably not wet enough.

13 Q. Now, you spoke a little bit about wetting
14 the back of the drywall.

15 A. Yes.

16 Q. You couldn't do that in this instance.

17 A. No.

18 Q. Why would you normally wet the back of the
19 drywall?

20 A. Because the material on the bottom will not
21 soak the water up.

22 Q. So you would want the drywall to soak the
23 water up to keep --

24 A. Right.

1 Q. -- the facing material wet.

2 A. Yeah, so it would soak down through the
3 drywall, yes.

4 Q. Drywall, is that pretty absorbent?

5 A. Pretty much, yeah, drywall is.

6 Q. It soaks up the water?

7 A. Yeah, if it's not coated with anything.

8 Q. So the backs of this drywall would readily
9 accept water?

10 A. Pretty much.

11 Q. Okay. Now, have you ever worked on any
12 other jobs where water wouldn't stick to the material you
13 were wetting?

14 A. Yes.

15 Q. Is there anything you can do to -- in that
16 situation?

17 A. Well, like I said, we try to do the back,
18 you know, get to the back side of it and wet it down
19 through that way, soak it down.

20 Q. Is there anything else that you can do to
21 make it -- make the material wetter?

22 A. I don't know about making the material
23 wetter. Just spraying it more.

24 Q. In any of the jobs you've worked, have you

1 ever used -- or are you familiar with the term amended
2 water?

3 A. Yes.

4 Q. What is amended water?

5 A. It's a soap.

6 Q. And why is that used?

7 A. It makes the water stick to the outside.

8 Q. Did you guys use --

9 A. And supposedly, if it -- yeah, but it
10 don't -- it didn't -- it was hard shell and it don't soak
11 through paint.

12 Q. Did you try using amended water in this
13 project?

14 A. Yeah.

15 Q. You did?

16 A. Yes.

17 Q. Okay. When was that used?

18 A. It's TSP, comes in a five-gallon bucket.

19 Q. Okay. And that was used on this project?

20 A. Yeah.

21 Q. Okay. Was that used both on the 3rd and the
22 4th?

23 A. As far as I know, yes.

24 Q. Okay. How does that -- Do you have to mix

1 that in the bucket?

2 A. You just pour it in the water in the airless
3 sprayer bucket that we was using.

4 Q. Okay. Now, typically, how long -- after you
5 remove the material from the ceiling, how long would it
6 stay on the floor?

7 A. Oh, they might stay on there 15, 20 minutes.

8 Q. Was any of the material left on the floor
9 for longer than that?

10 A. There might have been pieces here and there,
11 yes.

12 Q. Okay. Was any of that material -- or sorry.
13 So you think just a few pieces here and there were left
14 on the floor?

15 A. Pretty much as -- yeah.

16 Q. Will that material sitting on the floor --
17 can it dry out?

18 A. I'm sure it can, because the neg air is
19 moving.

20 Q. So if you leave it on the floor too long,
21 it's going to dry out.

22 A. Probably.

23 Q. So the whole point of this operation is to
24 get it in the barrels with water before it dries out.

1 A. Yeah, or wetting it as you put it in the
2 barrel.

3 Q. Okay. You don't want the material to dry
4 out at all.

5 A. Well, you really don't, no.

6 Q. Okay. Even though you're in negative air,
7 you still have to wet the material.

8 A. Yeah, you're supposed to wet the material.

9 Q. That's what the regulations say. It's got
10 to stay wet.

11 A. Yeah.

12 Q. Okay. So if you let it dry out, it's no
13 longer adequately wet.

14 A. If it's dried out, no, it's not.

15 Q. Okay. I'm going to move ahead and --
16 Mr. Immel referred to a lot of the pictures just
17 generally. I'm going to go through the pictures -- some
18 of these pictures individually, have you take a look at
19 the pictures that were in Exhibit -- Plaintiff's -- or
20 People's Exhibit No. 4. Have you seen these pictures
21 before?

22 A. I've seen most of them, yes, I think.

23 MR. MANKOWSKI: I've got an extra set that's
24 not as clean, so can I use those for the witness?

1 HEARING OFFICER WEBB: Yes.

2 MR. MANKOWSKI: Okay. Just bear with me for
3 one second so I have the right pictures. Permission to
4 approach the witness?

5 HEARING OFFICER WEBB: Yes.

6 Q. (By Mr. Mankowski) I'm going to show you
7 what's been marked as People's Exhibit No. 4A. Have you
8 seen that picture before?

9 A. I probably have. Like I said, I've seen
10 most of the pictures.

11 Q. Okay. Can you tell where -- or does that
12 picture look like it was taken at 3701 Memorial Drive?

13 A. No idea. Couldn't --

14 Q. Okay. If I were to tell you that was from
15 the first floor, is there any way -- can you tell from
16 the pictures that that came from the first floor of --

17 A. No.

18 Q. Okay. Well, what do you see in that
19 picture?

20 A. Well, looks like drywall ceiling.

21 Q. Okay. Is that the same material that you
22 were removing at 3701 Memorial Drive?

23 A. Yes.

24 Q. Okay. What's the condition of that ceiling

1 **material?**

2 A. Well, it's broken up, looks like got mold
3 all over the back side of it, or water. Can't tell
4 which.

5 Q. Okay. Do you see any evidence of moisture
6 in this picture?

7 A. I really can't tell. As I say, it looks
8 like maybe a little bit moisture on some of it.

9 Q. Okay. Where in the picture --

10 A. The darker areas.

11 Q. Okay. Could you describe one of those for
12 me, like, in relation to the picture, like to the left,
13 right, top, bottom, something like that?

14 A. Well, center and the top and maybe a little
15 bit to the left bottom. I really can't tell.

16 Q. Okay. You can't tell from this picture?
17 I'm going to move on to what's been marked as People's
18 Exhibit No. 4B.

19 MR. IMMEL: B as in boy?

20 MR. MANKOWSKI: Yes, B as in boy.

21 Q. (By Mr. Mankowski) What do you see in this
22 picture?

23 A. Drywall ceiling.

24 Q. Okay. Can you tell at all if that's from

1 3701 Memorial Drive?

2 A. No.

3 Q. And what's the condition of this ceiling
4 material?

5 A. It's broken down in pieces.

6 Q. The -- I see some, like, white stuff on the
7 drywall. What is that?

8 A. Some white stuff.

9 Q. Like, white popcorn material.

10 A. Oh. It's the ceiling spray-on.

11 Q. Is that the material that you were removing
12 from 3701 Memorial Drive?

13 A. Yes.

14 Q. Okay. And I'm looking at a large piece of
15 dry -- or drywall ceiling broken off on the left side of
16 the picture.

17 A. Right.

18 Q. Does that look dusty to you?

19 A. I guess.

20 Q. Does it look wet?

21 A. I really can't tell.

22 Q. There's a -- looks to be a ladder on the
23 right side of the photograph?

24 A. Yeah.

1 Q. Do you see material on the rungs of that
2 ladder?

3 A. Yes.

4 Q. Does that look dry?

5 A. I'll say again, I really can't tell.

6 Q. Do you know if that's the ladder that you
7 guys used on this project?

8 A. I'm sure it is. I guess, if it's our -- you
9 know, again, at our project.

10 Q. I'm going to move on to what's been marked
11 as People's 4C. Does that picture show a close-up of the
12 ladder?

13 A. Yes.

14 Q. Do you see material on that ladder?

15 A. Yes.

16 Q. Does that material look dry or wet?

17 A. Cannot tell. Looks like maybe it's wet.
18 Looks like there's some stains on the rung that's ran
19 down.

20 Q. Okay. Does that look like wet stains or dry
21 stains, like some type of --

22 A. I don't know.

23 Q. You can't tell?

24 A. No.

1 Q. Okay.

2 A. I don't know if dry stains -- how would dry
3 stains leave --

4 Q. Well, if it's material left after the water
5 evaporates.

6 A. Oh. I don't know.

7 Q. Okay. Well, then we'll move on.

8 A. I'm sorry. I just --

9 Q. Oh, it's okay. You didn't -- That's okay.
10 We're going to move on to what's been marked as 4D. What
11 do you see in 4D?

12 A. Looks like ceiling.

13 Q. Okay. Does that look like it's in one of
14 the lined barrels?

15 A. Really can't tell.

16 Q. Okay. Now, this --

17 A. Might be in the corner of the room. It
18 could be in a barrel.

19 Q. Okay. Because there's the plastic behind
20 it?

21 A. Looks like plastic.

22 MR. IMMEL: Excuse me, Mike. Are you
23 referring to Z as in --

24 MR. MANKOWSKI: D as in David.

1 MR. IMMEL: Give me a second, if you don't
2 mind.

3 MR. MANKOWSKI: Okay. Oh, no problem.

4 MR. IMMEL: Okay. I'm with you now. Sorry.

5 MR. MANKOWSKI: Okay.

6 Q. (By Mr. Mankowski) But this is the ceiling
7 material, again, in this picture, and is the -- there's a
8 big piece of looks like cardboard in the middle of the
9 picture?

10 A. Yes.

11 Q. Is that the backing of the drywall?

12 A. It looks like it, yes.

13 Q. And we spoke earlier and said that readily
14 absorbs water.

15 A. Yes.

16 Q. Okay. Does this material look wet?

17 A. It looks kind of dry.

18 Q. Okay. Looks like maybe a couple of dots on
19 it of water?

20 A. Maybe.

21 Q. And then there's some white drywall dust on
22 it?

23 A. Again, the drywall was not the asbestos.

24 Q. Well, no, but if the asbestos -- if the

1 coating was wet, wouldn't the drywall get wet too?

2 A. Not on the back side.

3 Q. Okay. If you had added water with a finger
4 wetter, the back side wouldn't get wet if it was all in a
5 pile?

6 A. It should be.

7 Q. If it was in a pile and you sprayed it with
8 an airless sprayer, would it --

9 A. It should be.

10 Q. It should be wet? Okay. So this looks like
11 a dry pile of asbestos. Or a dry -- not -- sorry. Let
12 me rephrase it. I don't want to mischaracterize it.
13 This looks like a dry pile of ceiling material.

14 A. Maybe, yes.

15 Q. I'm going to move on to what's been marked
16 as 4E. In this picture, can you tell if that's in a
17 fiber drum?

18 A. It looks like it, maybe.

19 Q. Okay. You see the metal ring? Is that,
20 like, a metal lip around the top of the drum that --

21 A. Maybe, yes.

22 Q. Okay. And there's a plastic lining? Does
23 that look like a plastic lining inside?

24 A. It looks like it, yes, sir.

1 Q. Okay. And is this more ceiling material in
2 here?

3 A. Yes, it looks like it.

4 Q. And then there's some of the fiberglass
5 insulation that you spoke about earlier?

6 A. It looks like it.

7 Q. Okay. Do you see any evidence of wetness in
8 this picture?

9 A. Can't really tell.

10 Q. Okay. You can't tell from this picture?

11 A. No, I can't.

12 Q. Okay.

13 A. And plus it was open. It might have been
14 being wetted when he got there and he stopped them.

15 Q. Okay. But I thought the material was
16 supposed to be wet when it goes into the drum.

17 A. Well, it's -- yes, it's supposed to be wet,
18 and we was re-wetting it as we was putting it in the drum
19 to be careful with the flooring in the building.

20 Q. Does the asbestos NESHAP say anything about
21 flooring or anything in it?

22 A. As far as?

23 Q. Having to protect the flooring?

24 A. No, but our company pays for the damages to

1 the building.

2 Q. I know, but the requirement is adequately
3 wet so as not to release fibers.

4 A. It's adequately wet when it -- It's supposed
5 to be adequately wet when it goes to landfill.

6 Q. It's not supposed to be adequately wet as
7 it's removed?

8 A. Yeah, but that -- as again, we was using an
9 airless sprayer.

10 Q. Going to now direct your attention to what
11 has been marked as People's 4F. What do you see in that
12 picture?

13 A. Looks like insulation and drywall ceiling.

14 Q. Okay. Do you see any evidence of water in
15 this picture?

16 A. Again, I can't really tell by just looking
17 at the picture.

18 Q. Do you see any water droplets on the
19 plastic?

20 A. Big ones, no.

21 Q. Okay. Do you see -- Looks like middle
22 top -- or middle bottom there's a small pile of material?
23 Is that crumbled surfacing material, popcorn in it?

24 A. It may be.

1 Q. Okay.

2 A. I can't tell whether it's drywall or --

3 Q. And you don't see any water droplets. Does
4 the drywall at all look wet?

5 A. I'd say it looks darker in some of the areas
6 than the other.

7 Q. All right. But you can't tell if it's wet.

8 A. No.

9 Q. Okay. Now, from just -- if you saw material
10 in this condition, would you say that that's adequately
11 wet?

12 A. If I seen these -- well, I -- I'd have to be
13 there. You know what I mean? I'm sorry to talk like
14 that, but to see how it's being done and the -- and do
15 like you did, maybe test the material.

16 Q. Okay. So if you walked into one of the
17 rooms where you guys were doing a job and you saw
18 material that looked like this, would you consider that
19 adequately wet?

20 A. If that's dry, no.

21 Q. Okay. So if this material was dry, then you
22 would make them wet it more.

23 A. Probably so.

24 Q. Okay. But you can't tell from this

1 particular picture if this material's wet or dry.

2 A. No.

3 Q. If on the job on August 3 -- in August of
4 2005, if there was material left on the first floor and
5 not disposed -- or not put into a container overnight,
6 would that material have dried out?

7 A. Good possibility that it might.

8 Q. What did you -- What would you have done if
9 you had walked in on August 4 and saw that material on
10 the floor that was left overnight?

11 A. Well, if I'd seen it, we'd have probably
12 cleaned it up and barreled it or drummed it.

13 Q. But to your knowledge, nothing was left on
14 the floor overnight.

15 A. I'd say as far as I know, there might have
16 been some, but I really don't know. I wasn't -- I didn't
17 leave, you know, at the -- I wasn't the last person out,
18 because I went out to do paperwork towards the end of the
19 shift, so I didn't see then what was left.

20 Q. Okay. So you didn't check the building
21 after everybody else left at the end of the night on
22 August 3.

23 A. No, because it was in a full containment
24 with neg airs going.

1 Q. Okay. You didn't inspect the building the
2 morning of August 4 when you showed up.

3 A. Like I say, we was -- unloaded drums, then
4 I -- we kind of looked at it whenever we got started and
5 we started cleaning up, you know, what was removed.

6 Q. And you didn't see large piles of ceiling
7 material on the floor on the first floor when you were
8 loading out drums?

9 A. No, I didn't see it.

10 Q. Okay. I've got a question about that broom.
11 I'm just kind of confused. So if the broom was in the
12 building when -- before you guys put it all under
13 containment, you would have left the -- that in there
14 even though you have to put plastic on all the floors?

15 A. Well, it just got left in. It wasn't on
16 purpose getting left in, and afterwards we disposed of it
17 as asbestos waste.

18 Q. Okay. I'm -- So no one used that broom at
19 all.

20 A. As far as I know, no.

21 MR. IMMEL: Are you referring to a specific
22 picture, Mike?

23 MR. MANKOWSKI: I was going to, but I was
24 talking about the broom.

1 MR. IMMEL: Okay. Well, I'm just looking at
2 a broom in picture 4M. Is that the -- That's the broom,
3 yes?

4 MR. MANKOWSKI: Yeah. We're -- We'll get
5 there.

6 Q. (By Mr. Mankowski) Or actually, I'm not
7 going to refer to that photo, because you said to your
8 knowledge, no one used the broom.

9 A. No, to my knowledge, no. I never seen
10 anyone use it.

11 Q. And just get your opinion on this. The --
12 If material had been left overnight on the first floor,
13 no one -- or do you think that would be against the
14 NESHAP rules, to let that material dry out overnight?

15 A. Well, whenever -- it's not our practice to
16 leave, you know, material. It's to bag it all up or
17 barrel it, whatever you do, and like I say, it's not like
18 it was one big area where you could see it, where it was
19 different apartments or rooms or whatever, so we might
20 have missed some laying down. I really didn't see it.

21 Q. Yeah, but my question was, would that be --
22 do you think that would be -- after all your training,
23 after all your experience, would that be a violation to
24 leave that material to dry out overnight?

1 A. Well, it's a practice, no, not to.

2 Q. You're not supposed to do that.

3 A. No.

4 Q. You're supposed to keep it wet.

5 A. No. I mean yes.

6 Q. Okay.

7 A. I'm sorry.

8 Q. So if your guys did that, they'd be breaking

9 your own work practices.

10 A. Yes.

11 Q. Okay. And you weren't in the building at

12 all when Mr. Zappa was inspecting.

13 A. No. No, sir, I wasn't.

14 Q. Now, do you know, the material in the -- or

15 you spoke about the loadout room. Were all the drums

16 stored in the loadout room or were they stored in the

17 room next to it?

18 A. They were inside the loadout room and there

19 were some upstairs that we were using to put material in.

20 Q. Okay. So they were either -- the full drums

21 were stored in the loadout --

22 A. Yeah, most of them was all in there, yes.

23 Q. Okay. Do you know, at the time that

24 Mr. Zappa arrived on August 4, were -- had -- at that

1 point had any of the drums from the second floor been
2 brought down to the first floor?

3 A. I really couldn't tell you.

4 Q. Okay. You weren't loading them out?

5 A. No.

6 Q. Okay.

7 A. Our Dumpster showed up when Mr. Zappa was
8 there, but we done it -- nothing was loaded out of the
9 building.

10 Q. Okay. So anything that had been removed
11 before Mr. Zappa showed up would be in a drum either on
12 the second floor or in the loadout room on the first
13 floor.

14 A. Yes.

15 Q. Okay. And there -- to be clear, there
16 weren't any drums from any other project or anything at
17 this site.

18 A. No, no.

19 Q. It was just material that you removed from
20 that ceiling.

21 A. Yes.

22 Q. Okay. Just to be clear, I know you've said
23 that you didn't see any material left on the first floor
24 when you came in on August 4.

1 A. Yes.

2 Q. But any material that would be on the floor
3 from August 4, that would have been removed on August 3.

4 A. Probably, yes.

5 Q. You didn't do any removal of the first floor
6 on August 4.

7 A. No.

8 MR. MANKOWSKI: Okay. I'm just going to
9 double-check my notes.

10 HEARING OFFICER WEBB: Okay.

11 Q. (By Mr. Mankowski) I think you spoke a
12 little bit about the project log early on. Have you seen
13 the actual project log for this project?

14 A. The one I filled out?

15 Q. The whole -- Like, the whole packet that
16 your company created with the air sampling data, your
17 daily logs.

18 A. I've never seen the air sampling. I seen
19 what I made, and that's probably it.

20 Q. Okay.

21 A. What I wrote.

22 Q. So that would be the -- like, the daily
23 project logs for each day?

24 A. Yes, sir.

1 Q. Okay. You didn't have anything to do with
2 the air sampling that's --

3 A. No, sir.

4 MR. MANKOWSKI: Okay. No further questions.

5 HEARING OFFICER WEBB: Thank you.

6 Mr. Immel, do you have any redirect?

7 MR. IMMEL: I'm thinking about that.

8 REDIRECT EXAMINATION

9 BY MR. IMMEL:

10 Q. Mr. Johnson, Counsel asked you about a
11 number of photographs, specifically six, and in each
12 instance he asked you if you could tell whether the
13 material in the photograph was wet or it had been wetted,
14 adequately wet, and in each instance you said it was
15 really hard for you to tell just looking at a picture.
16 Nobody from General took any of these pictures, right?
17 These are all Mr. Zappa's pictures.

18 A. Yes.

19 Q. Do you know if anyone from General was even
20 present when he took some of these pictures?

21 A. I don't know if anybody was around him or
22 not.

23 Q. You weren't with him when he took these
24 pictures, were you?

1 A. No.

2 Q. Nor were you with him when he collected his
3 samples, correct?

4 A. Correct. I was not there.

5 Q. As I'm understanding your testimony in
6 response to his -- to Mike's questions -- I'm sorry --
7 Mr. Mankowski's questions, you're seeing dark spots in
8 various places in the photographs as suggesting to you
9 that there is water present. Did I understand that
10 right?

11 A. I said that.

12 Q. Okay. If I may, for example, in that
13 connection call your attention -- do you still have those
14 pictures up there?

15 MR. MANKOWSKI: You want me to hand them to
16 him?

17 MR. IMMEL: Yeah, if you wouldn't mind
18 giving the witness back 4DD, 4DD as in dog.

19 MR. MANKOWSKI: I believe that's 4DD. Is
20 that with the --

21 MR. IMMEL: Yes.

22 MR. MANKOWSKI: Okay.

23 Q. (By Mr. Immel) In Mr. Zappa's testimony, he
24 identified this as a picture of a row of drums from the

1 **upstairs hallway. Is that -- You agree with that?**

2 A. I guess that's where they're from.

3 Q. It looks like a row of drums.

4 A. Yes.

5 Q. And that's -- And the first three that you
6 see starting from the bottom of the picture and going up
7 all appear to have water present in the picture,
8 droplets? You can see it in the -- on the plastic?

9 A. Appears to be, I guess.

10 Q. And what you can see of the contents of
11 these drums appears to be some dark staining in all three
12 of the drums that are depicted in the foreground of the
13 picture. Do you see that?

14 A. Yes.

15 Q. What do you take that staining to be from?

16 A. It's probably wetter than the rest.

17 Q. Okay. So that staining would be caused by
18 water, right?

19 A. Yes.

20 Q. And so as you look at these other
21 photographs that have been shown to you, in many
22 instances where you're seeing dark staining, you're
23 likewise concluding the same thing, that it's probably
24 from water, right?

1 A. Probably, yes.

2 MR. IMMEL: That's all I have.

3 HEARING OFFICER WEBB: Mr. Mankowski, do you
4 have anything further?

5 RE CROSS EXAMINATION

6 BY MR. MANKOWSKI:

7 Q. Just one quick question. If the material in
8 the drums on the second floor was wet, does that excuse
9 dry material on the first floor?

10 A. What do you mean, excuse?

11 Q. By adequately wetting material on the second
12 floor, that doesn't fulfill the requirement of adequately
13 wet for any material that was dry on the first floor?

14 A. No. If it wasn't adequately wet, no.

15 Q. Okay. So if the material on the first floor
16 is adequately wet -- or is dry, it doesn't matter if
17 material in drums on the second floor is adequately wet.

18 A. No.

19 MR. MANKOWSKI: Okay. No further questions.

20 MR. IMMEL: I haven't been objecting because
21 I don't want to clutter things up, but I'd just like to
22 make a general suggestion that the material on the first
23 floor is what Mr. Zappa tested and it came back negative,
24 so it might just as well be kleenex for legal purposes.

1 MR. MANKOWSKI: I object to that --

2 HEARING OFFICER WEBB: Well --

3 MR. MANKOWSKI: -- because the samples came
4 from a drum on the first floor, and those drums were full
5 of material that was either removed on the first or
6 second floor, and that sample came up positive, so I
7 think that's a mischaracterization of the evidence.

8 MR. IMMEL: Well, he testified that he
9 collected his sample in the southwest room, and you've
10 shown this man pictures of stuff from the southwest room
11 where he took his sample, and the only sample on God's
12 earth that anybody has that's specific to that room is
13 the one that Joe Zappa collected and came back negative
14 from the lab, and I can only go by that. I didn't choose
15 to take samples --

16 HEARING OFFICER WEBB: Well, unless there
17 are any more facts this witness can put in the record,
18 that's probably better reserved for your post-hearing
19 brief. I'm sorry. Are we finished with this witness?

20 MR. IMMEL: Yes, we are.

21 HEARING OFFICER WEBB: Okay. Thank you,
22 Mr. Johnson.

23 MR. JOHNSON: Thank you, ma'am.

24 MR. IMMEL: You want to take our lunch break

1 now and then resume? This next witness will be
2 considerably shorter, but --

3 MR. MANKOWSKI: It's up to you.

4 MR. IMMEL: -- but he does have --

5 HEARING OFFICER WEBB: Your witnesses are
6 the ones traveling today, so I'll let -- if you want to
7 take a lunch, we can. If you want to push through --

8 MR. IMMEL: Well, what do you think?

9 MR. MANKOWSKI: It's up to you. We can take
10 a lunch now. I mean, that's --

11 HEARING OFFICER WEBB: Okay. We'll go off
12 the record, and I guess we'll go ahead and take a lunch
13 break, if that's consensus.

14 (Lunch recess taken.)

15 HEARING OFFICER WEBB: We are back on the
16 record. Before we begin with the Respondent's second
17 witness, I understand that the parties wish to move to
18 enter another exhibit into the record. Mr. Mankowski,
19 would you like to describe that?

20 MR. MANKOWSKI: Yes. The People would like
21 to enter -- it's titled "The Asbestos Abatement,
22 Belleville Memorial Hospital Apartments, 8-01 through
23 8-17-05," and we want to enter that as People's Exhibit
24 No. 6.

1 HEARING OFFICER WEBB: And the Respondents
2 do not object?

3 MR. IMMEL: Do not object. I'd like to
4 supplement what Mike said to this extent. I'm informed
5 that the term of art for this kind of a document, which
6 is generated in each project, is called a close-out
7 report. It's generated by General Waste Services and it
8 is supplied to the owner of the project, in this case
9 Belleville hospital, but the relevance of this particular
10 document for our respective purposes is that multiple
11 witnesses have referred to it, and Mr. Johnson, who just
12 left the stand a short time ago, was testifying to his
13 logs, his daily logs and his -- the attendance reports.
14 There was reference in his testimony and in Mr. Zappa's
15 to air sampling analysis that was done on site during the
16 project. All of those documents are contained within
17 this report as well as other paperwork relevant to the
18 project, and with this in hand, the Board has a little
19 bit more complete record of the project.

20 HEARING OFFICER WEBB: Okay. And it's my
21 understanding that you do not have a copy for me to file,
22 but you will submit a copy directly to the Board's clerk?

23 MR. MANKOWSKI: Yes, Madam Hearing Officer.

24 HEARING OFFICER WEBB: Okay. Thank you.

1 Okay. Mr. Immel, you may call your second witness.

2 MR. IMMEL: Thank you. My next witness is
3 Ken Stevens, who I refer to as Kenny.

4 HEARING OFFICER WEBB: Okay. Would the
5 court reporter please swear in the witness?

6 (Witness sworn.)

7 KENNETH STEVENS, produced, sworn and examined on
8 behalf of the Respondent, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. IMMEL:

11 Q. Would you please give the reporter your --
12 the correct spelling of your first and last name, full
13 name?

14 A. Kenneth, K-E-N-N-E-T-H; Stevens,
15 S-T-E-V-E-N-S.

16 Q. Kenny, you've -- you're employed by General
17 Waste Services; is that right?

18 A. Yes, sir.

19 Q. And how long have you been so employed?

20 A. Just a little over nine years, sir.

21 Q. Okay. You have a license from the Illinois
22 Department of Public Health --

23 A. Yes, sir.

24 Q. -- in asbestos abatement?

1 A. Yes, sir.

2 Q. What license is it that you hold? Laborer?

3 A. Oh. Supervisor.

4 Q. You have a --

5 A. Yes, sir.

6 Q. -- supervisor's license. Did you work on
7 the Belleville job that we've been hearing testimony
8 about?

9 A. Yes, sir.

10 Q. Did you work as a supervisor on that
11 particular job?

12 A. No, sir.

13 Q. Did you -- Were you limited to the position
14 of laborer on that particular job?

15 A. Yes, sir.

16 Q. Okay. Were you on that job site on
17 August 4, 2005?

18 A. Yes, sir.

19 Q. And what was -- what labor were you
20 performing on that day? Did you have an assigned task?

21 A. Not necessarily an assigned task, but we
22 kind of work our way into a task, and I was helping with
23 the watering of the material in the barrels.

24 Q. Okay. Now, there's been previous testimony

1 about the fact that there were barrels that were lined up
2 in the second-floor hallway of the facility, and I'm
3 given to understand that you were taking care of those
4 particular barrels and getting them filled, etc.?

5 A. Yes, sir.

6 Q. Okay. Tell us a little bit about the
7 process that you went through. I know Calvin Johnson
8 testified in general about it, but tell us about the
9 barrels in the upstairs hallway, first of all starting
10 with how they got there.

11 A. Well, first of all, the -- we brought in
12 empty barrels and took some upstairs, and we would open
13 them up and line them, and then as the material would
14 come down, we would fill the barrels up and we'd bring
15 them out so I could reach them with the hose and water
16 the material that was inside.

17 Q. Okay. So let's start with -- the barrels
18 are more or less stockpiled in the hallway for use on the
19 second floor, correct?

20 A. Yes, sir.

21 Q. As material is being brought down from the
22 ceiling, are the barrels taken into the room then to load
23 them or is the material brought out to the hallway? How
24 does that work?

1 A. They're loading them in the room.

2 Q. Okay. Now, besides handling the barrels,
3 you've done some of this removal work yourself that we're
4 talking about. You're fully licensed to do that, right?

5 A. Yes, sir.

6 Q. Has it ever been your practice or was it the
7 practice on this job to have the barrel directly
8 underneath the portion of the ceiling that was coming
9 down, letting it just fall into the barrel, or is that
10 something you want to avoid?

11 A. No. You -- Sometimes it falls on the floor.
12 If it falls in the barrel, you're better off, you don't
13 have to pick it up, but, yeah, it's -- when you're taking
14 the ceiling down, it falls --

15 Q. There's some risk, I suppose, if a
16 particularly large piece of ceiling let loose, it could
17 come down with enough weight and force to actually damage
18 a barrel, couldn't it, or --

19 A. It could, yes, sir.

20 Q. That doesn't happen very often?

21 A. Not very often, no, sir.

22 Q. Did it happen on this job as far as you
23 know?

24 A. Not that I recall, sir. No, sir.

1 Q. So barrel was taken into the room, it's
2 loaded up with material and then it's brought back out to
3 the hallway.

4 A. Yes, sir.

5 Q. Now, specifically, while the removal's going
6 on and the barrels are going in and out of rooms,
7 returning always to the hallway where they started, what
8 was your job -- what were you doing while this was going
9 on? What was your specific role?

10 A. Well, like I said, you kind of work your way
11 into a job, I guess, sometimes, but I would help bring
12 the barrels out or set a barrel into a room or something,
13 but -- you know, just in and out like that, but mostly I
14 was keeping the water bucket full for the airless sprayer
15 and I was watering the barrels --

16 Q. Okay. Well, first let's --

17 A. -- after they were full of material.

18 Q. Let's stick with the movement of the barrels
19 before we move on to water.

20 A. Okay.

21 Q. Am I to assume that as an empty barrel with
22 a liner in it, that's -- it's already been lined, it's
23 ready to go, right?

24 A. Yes, sir.

1 Q. At this point, one guy, you, can handle
2 getting the barrel into the room. You can just --

3 A. Yes, sir.

4 Q. -- zip it right in there, empty barrel.
5 Getting it out might involve more than one person, right?

6 A. Possibly, but usually I did it by myself.

7 Q. But at some point you probably -- the
8 barrel's no longer handy to just pick it up off the
9 floor.

10 A. Oh, no, sir. You got to wrestle it out.

11 Q. You have to sort of roll it out.

12 A. Yes, sir.

13 Q. Get it out on an edge and just sort of walk
14 it out; is that right?

15 A. Yes.

16 Q. So now the barrel's been returned to the
17 hallway with as much material that's going to be put in
18 it, correct?

19 A. Yes, sir.

20 Q. And so there you are in the hallway, and
21 you're kind of doing multiple jobs then. You're --
22 Somebody yells, we need a barrel, you're moving a barrel
23 in, then you're back out dealing with water --

24 A. Yes, sir.

1 Q. -- is that right?

2 A. Yes, sir.

3 Q. Now, tell us about this finger hose that
4 Mr. Johnson's already testified about. We know how it
5 works. Is this a hose that's just laying out in the hall
6 there ready to be used anywhere you can reach with it?

7 A. Yes, sir. It comes up the steps or to the
8 side or whatever so we can reach the barrels upstairs,
9 yes, sir.

10 Q. Okay. And you're looking at these different
11 barrels, and if I may, could I call the witness'
12 attention to People's Exhibit 4, photograph DD? There
13 you go. Let the record reflect that the witness has been
14 tendered a copy of a photograph marked 4DD. You've seen
15 this picture before, haven't you, Mr. Stevens?

16 A. Yes, sir.

17 Q. Does this photograph depict a row of barrels
18 sitting out in the second floor?

19 A. Yes, sir.

20 Q. They stretch off into the distance beyond
21 which I can see, but it looks like there's got to be six,
22 seven of them. Is there that many of them lined up out
23 there?

24 A. At least seven or eight, six or seven or

1 eight, something like that.

2 Q. And the three particular ones in the
3 foreground that I want to call your attention to appear
4 to be filled with material. This would be ceiling
5 material that came down from one of the adjoining rooms;
6 is that right?

7 A. Yes, sir.

8 Q. They appear to be -- That appears to be
9 water drops in the first three barrels that I'm looking
10 at; is that right?

11 A. Yes, sir.

12 Q. And the material inside the barrel, has that
13 been wetted down already?

14 A. Obviously, yes. If the barrels have water
15 on the plastic, then they've been sprayed with water,
16 yes.

17 Q. Is one of the ways to tell whether or not --
18 just from looking at a photograph whether or not the
19 material has been wetted any change in the coloration of
20 the material?

21 A. It -- Yes, you can tell that the backing of
22 the Sheetrock is probably darker from the wetness.

23 Q. It does appear that some of this backing
24 material, as you described it, is darker in these

1 pictures; is that right?

2 A. It appears that way, yes, sir.

3 Q. Now, you're the person who was actually
4 putting the water in these barrels, right?

5 A. Yes, sir.

6 Q. It was you and no one else. That was what
7 you were doing at that time, right?

8 A. Yes, sir.

9 Q. Now, there's been testimony about the
10 function of the airless sprayer, and I believe you heard
11 the testimony of Mr. Johnson. These sprayers are
12 supplied with water by a five-gallon bucket.

13 A. Yes, sir.

14 Q. And, like, a little hose runs into there and
15 sucks water out of the bucket up into the sprayer and
16 goes into the air to make this mist or haze or whatever
17 you want to call it.

18 A. Yes, sir.

19 Q. Fog. You're familiar with that operation?

20 A. Yes, sir.

21 Q. You've done that as a worker, correct?

22 A. Yes, sir.

23 Q. Was it being done in those rooms adjacent to
24 the hallway the day you were there on the 4th?

1 A. Yes, sir.

2 Q. When someone ran low on water in their
3 bucket for the airless sprayer, what did they do?

4 A. They didn't have to do anything. I was
5 available right there with the hose. The bucket was
6 close to the barrels. When the water would get down in
7 the bucket, I would just fill it --

8 Q. Top it --

9 A. -- top it off, fill it up and then do
10 whatever --

11 Q. So basically, you were just keeping track of
12 that --

13 A. Yes, sir.

14 Q. -- and keeping track of getting water going
15 into these buckets -- these barrels in the hall --

16 A. Yes, sir.

17 Q. -- and, when needed, either zipping a
18 barrel, an empty, into a room or rolling a full one out
19 of a room.

20 A. Yes, sir.

21 Q. You were sort of the barrel guy that day,
22 then.

23 A. Yes, sir. I guess that's what you'd call
24 me.

1 Q. Okay. And did you do that throughout your
2 working day there on August the 4th?

3 A. Pretty well, yes, sir.

4 Q. Okay. Now, at some point in the mid
5 morning, shall we say, on that date, Inspector Joe Zappa
6 of EPA came on the premises, according to his testimony.
7 Were you there when that happened?

8 A. I was inside, yes, sir, when he --

9 Q. Inside.

10 A. Yes, sir.

11 Q. Now, in -- did you know who Mr. Zappa was
12 prior to this all happening?

13 A. No, sir.

14 Q. You'd never seen him before?

15 A. No, sir.

16 Q. When did you first become aware of his
17 presence in the building?

18 A. He come up the steps and walked by me. I
19 was watering the barrels, and --

20 Q. Did Mr. Zappa identify himself to you or
21 show you an ID or say good morning or anything of that
22 nature?

23 A. He didn't identify himself, but he spoke to
24 me.

1 Q. What words did he speak?

2 A. He said there -- something to the effect
3 that it's a little late for that.

4 Q. Do you know what he was referring to?

5 A. I just -- I can't read his mind, but I
6 assume he meant to water the barrels. That's all I know.

7 Q. Well, what had you been doing before he came
8 up the stairs?

9 A. Watering the barrels.

10 Q. And what were you doing when he spoke those
11 words to you?

12 A. Watering the barrels and filling the bucket,
13 both.

14 Q. Okay.

15 A. Whatever it needed.

16 Q. And he said, to the best of your
17 recollection, it's a little bit late for that.

18 A. Something to that effect, yes, sir.

19 Q. What did you say in response to that?

20 A. I just said, "What'd you say," and he walked
21 on past me and went on into the rooms then.

22 Q. So he didn't respond to your question.

23 A. No, sir.

24 Q. And he still hadn't identified himself in

1 any way to you.

2 A. No, sir, not to me.

3 Q. How was he dressed?

4 A. Had a suit on, respirator.

5 Q. He had a face mask respirator?

6 A. Yes, sir.

7 Q. So his -- your view of his face was obscured
8 by this respirator.

9 A. Yes, sir.

10 Q. He didn't tell you he was from the EPA?

11 A. No, sir.

12 Q. And this is how he got up to the second
13 floor, walked right up and past you.

14 A. Yes, sir.

15 Q. And he'd not been up there before that day,
16 because you were up there, right?

17 A. As far as I know, he'd never been in there.

18 I --

19 Q. Well, the whole time you were working up
20 there --

21 A. No.

22 Q. -- which was the whole day --

23 A. Yes.

24 Q. -- he hadn't come up there.

1 A. No, not on that morning.

2 Q. Okay. Now, I want to -- just for the
3 benefit of everybody who's just reading a transcript
4 here, I want to try and see if you can help us. You're
5 familiar with the inside of that building and, you know,
6 its --

7 A. To what I can remember.

8 Q. Yeah. It's a stairway --

9 A. Yes.

10 Q. -- that leads up to the second floor.

11 A. Yes, sir.

12 Q. And a person coming up that stairway, as
13 they're going -- and you yourself went up and down that
14 stairway many times, correct?

15 A. Yes, sir.

16 Q. As you go up and down the stairway -- let's
17 stick with coming up the stairway. Within your field of
18 vision as you go up the stairway, you begin to see the
19 hallway and then finally can see down the hallway the
20 higher you get on the stairs; is that right?

21 A. Yes, sir.

22 Q. Can you see while on the stairway into the
23 rooms that are off the hallway?

24 A. I would say no because of the barrels

1 blocking the view partly, and there's doorways and walls
2 and -- but I'd say no.

3 Q. So to get a look inside of a room and to see
4 what people may or may not be doing in there, you needed
5 to get up past the stairway but actually into the hallway
6 so you can get adjacent to a room and look inside of the
7 room, right?

8 A. Yes, sir.

9 Q. As Mr. Zappa would -- sharing that same
10 vantage point coming up the stairs, what would have been
11 the first thing he would have seen from that vantage
12 point as he went up the stairs?

13 A. Well, it's hard to explain, but if you go up
14 the steps, first thing you'd see is a wall, and to the
15 left -- you'd have to turn to your left to go back down
16 into the hall part, and then the rooms are on that side.

17 Q. Okay. Would he have been able to see you
18 from the stairway?

19 A. Yes, I would think so. He could see me,
20 because I was standing in the hall between the rail and
21 the barrels, watering.

22 Q. All right. So he could see you and he could
23 probably see some of the barrels; is that right?

24 A. Yes, sir.

1 Q. Would he be able to see any of the people
2 who were working -- From his vantage point on the
3 stairway, would he have been able to see any of the
4 people working in any room up there?

5 A. I don't see how, because the stairs come up
6 like -- I don't know if you can -- but, like, this is the
7 hall here. The stairs come up like this and the rooms
8 are over here.

9 Q. Okay. So you have to get up in the
10 hallway --

11 A. Yes.

12 Q. -- to get a view of --

13 A. Yes.

14 Q. -- what's going on inside the rooms.

15 A. Yes, sir.

16 Q. And on the morning of August 4, when he went
17 up the stairway, the first human being that he would have
18 encountered would have been you standing there with the
19 hose.

20 A. It's possible, unless there was somebody
21 going up and down the steps, but, yes, upstairs, it would
22 have been me, yes, sir.

23 Q. Did anybody go down the stairs --

24 A. I couldn't -- I'm just saying that --

1 Q. -- about the same time that you recall?

2 A. Yeah, I don't know. I'm just saying that
3 I'm not sure I would be the first person he'd saw,
4 because somebody might have been going up and down the
5 steps, I don't know, for tools or whatever. I'm just
6 saying that upstairs, I would have been the first person
7 he would see, yes.

8 Q. Now, you -- each of these barrels that's in
9 that hallway that was placed out there with material in
10 it, you put water using the finger hose in each and every
11 one of them; is that right?

12 A. Yes, sir.

13 Q. And of course you're familiar with the
14 regulation about making the material adequately wet.

15 A. Yes, sir.

16 Q. Yes?

17 A. Yes, sir.

18 Q. You've been tested on all that when you got
19 your license, right?

20 A. Yes, sir.

21 Q. And in your opinion, based on your, what,
22 nine years of doing this work --

23 A. Yes, sir.

24 Q. -- did you believe -- do you believe that

1 the material in each of those barrels was adequately wet?

2 A. What I took care of was, yes, sir.

3 Q. Okay. Now, there were also some barrels
4 down in what we've been referring to as the loadout area
5 that had been placed there containing material that had
6 been collected the previous day, the 3rd.

7 A. Yes, sir.

8 Q. And you've consulted the records of the
9 company and -- to refresh your recollection and determine
10 that you were there at least part of that day too,
11 weren't you?

12 A. I found out that I was, yes, sir.

13 Q. Yeah. At the time you gave your deposition
14 some months ago, you didn't recall being there that day.

15 A. No, sir, I did not.

16 Q. And your memory's now been refreshed, and
17 you were there that day.

18 A. Yes, sir.

19 Q. The 3rd.

20 A. Yes, sir.

21 Q. Do you recall what your job was that day?

22 A. No, sir.

23 Q. Okay.

24 A. May I make a statement?

1 **Q. Is it responsive to the last question I was**
2 **making or --**

3 A. Yes, yes.

4 **Q. What did you want to say?**

5 A. The only reason I remember about that day is
6 because of when he walked by me and spoke to me, and it
7 kind of --

8 **Q. So the date August 4 stands out -- his visit**
9 **that workday stands out because an EPA inspector came up**
10 **the stairs and said to you, it's a little late for that.**

11 A. Yeah, and then no response, and so it just
12 kind of stuck in my craw, as the old saying goes, that I
13 just, you know -- and that's why it stuck in my mind, and
14 I hadn't thought any more about it until this come up,
15 so --

16 **Q. Did it stick in your craw because you were a**
17 **little bit miffed about what he'd said or maybe his tone**
18 **of voice or something?**

19 A. It wasn't tone of voice. I mean, it was
20 just -- I was standing there watering barrels. There was
21 no reason to ask me a question like that, why did I start
22 doing it now or something like that, there was no use
23 doing it now or something, because I'd been doing it all
24 morning --

1 Q. So it bothered you.

2 A. -- for the last -- yes, sir, and that's why
3 I remembered it.

4 Q. Okay. And nobody made any remark like that
5 to you the day before, so the day before doesn't stand
6 out in your mind. This one does.

7 A. Well, I didn't -- as far as I know, I don't
8 remember what I did the day before. I mean, jobs kind of
9 run into each other and --

10 Q. Yeah.

11 A. -- you know, you don't remember, but that
12 kind of stood out to me.

13 Q. Well, this was five years ago.

14 A. Yes, sir.

15 Q. And you've done a whole bunch of jobs before
16 and since then.

17 A. Yes, sir.

18 Q. On this job, you were there as a laborer.

19 A. Yes, sir.

20 Q. Throughout, you never worked on the
21 Belleville project as a supervisor on this job, right?

22 A. No, sir. No, sir.

23 Q. That's something that happens from time to
24 time. One job you might be a supervisor, another job you

1 might be a laborer, just depending on what's --
2 A. Yes, sir.
3 Q. -- needed?
4 A. Yes, sir.
5 Q. Okay. Mr. Zappa had no other conversation
6 with you that day; is that right?
7 A. Well, other than, like --
8 Q. I mean --
9 A. Yeah, outside of -- inside, no, no.
10 Q. Okay. Direct conversation --
11 A. No, sir.
12 Q. -- with you, one on one. He didn't ask you
13 any questions.
14 A. No, sir.
15 Q. Did you observe him collect any samples?
16 A. No, sir, I didn't.
17 Q. Okay. Later that same morning, you were
18 part of the assembled group that went outside.
19 A. Yes, sir.
20 Q. And Calvin Johnson asked that everybody be
21 outside, right?
22 A. Yes.
23 Q. And at that point there was a discussion --
24 Mr. Zappa had some words to say to the group; is that

1 right?

2 A. Yes, sir.

3 Q. And you were standing there.

4 A. Yes, sir.

5 Q. Okay. Do you have any particular
6 recollection of what he said to the group?

7 A. No, sir.

8 Q. And you didn't have -- you didn't say
9 anything to him during that group discussion.

10 A. No, sir.

11 Q. Okay. Do you have any recollection, when
12 that group discussion broke up, did you all continue to
13 take, then, your lunch hour?

14 A. Yes, sir. The nearest I remember, we went
15 over to lunch.

16 Q. Do you recall if at that time Mr. Zappa went
17 back inside the building unaccompanied by anyone?

18 A. I didn't see him, sir.

19 Q. Okay. Did you see him leave the area in his
20 vehicle?

21 A. No, sir. I didn't -- We went to lunch,
22 so --

23 Q. You just never -- okay.

24 I have no further questions.

1 HEARING OFFICER WEBB: Mr. Mankowski?

2 CROSS EXAMINATION

3 BY MR. MANKOWSKI:

4 Q. Mr. Stevens, your job was to add water to
5 the bucket; is that correct?

6 A. Yes, sir.

7 Q. And you got that from a hose that was
8 attached to a tank outside the building.

9 A. Yes.

10 Q. Did you add anything else to the bucket
11 other than the water?

12 A. We added the amendance [phonetic], but not
13 every time I filled the bucket.

14 Q. Okay. So when you say amendance, what is
15 that?

16 A. The surfactant, the amended -- to make it
17 amended water.

18 Q. Okay. And you said you didn't add that
19 every time you --

20 A. No, because the bucket would get half full
21 and I'd fill it up, or, you know, when I could I'd add
22 it, because you just didn't need it every time. It was
23 always available.

24 Q. And what do you believe is the purpose of

1 using water during an asbestos removal?

2 A. Keep the material wet.

3 Q. And when is the material supposed to be wet?

4 A. Before, during and after.

5 Q. Okay. So before, that would be -- like, in
6 this case it was ceiling material, so before would be
7 while it's on the ceiling?

8 A. Yes, sir.

9 Q. Okay. So you're supposed to wet it while
10 it's on the ceiling.

11 A. Yes, sir.

12 Q. Then you're supposed to wet it while you're
13 bringing it down.

14 A. Yes, sir.

15 Q. And then you're supposed to make sure it
16 stays wet after you remove it.

17 A. Yes, sir.

18 Q. Okay. And that includes keeping it wet in
19 the barrels.

20 A. Yes, sir.

21 Q. Okay. And if it's on the floor, you're
22 supposed to keep it wet there too.

23 A. Yes, sir.

24 Q. And how long is it supposed to stay wet?

1 A. Till somebody pops a barrel open and it
2 dries up, which it probably never would in the ground.

3 Q. Okay. Well, that's -- if I could be more
4 specific, after it's removed at the site, where does that
5 material go?

6 A. To the dump.

7 Q. And is that material supposed to stay wet
8 until it gets to the dump?

9 A. Yes.

10 Q. So you have to make sure that --

11 MR. IMMEL: Not to be an obstructionist, but
12 he's going very, very far afield from my direct. This is
13 not within the scope of direct. Cross examination is
14 about the matters that I asked him on direct, and I
15 certainly didn't ask him any of this stuff, so I wish
16 he'd stick with the rules on that one.

17 HEARING OFFICER WEBB: I don't think it's
18 that far beyond the scope. I mean, I'm going to let you
19 go ahead.

20 MR. MANKOWSKI: Mr. Stevens was asked if he
21 knows what adequately wet means, if he was familiar with
22 those regulations, and it was also his job to make sure
23 that the material in these barrels were adequately wet,
24 so I think this is well within the scope.

1 HEARING OFFICER WEBB: Go ahead.

2 MR. MANKOWSKI: Thank you.

3 Q. (By Mr. Mankowski) Okay. So the material
4 is supposed to stay wet until it makes it to the
5 landfill.

6 A. Yes.

7 Q. You have to make sure there's enough
8 water -- or your job was to make sure there's enough
9 water in that barrel to keep the material wet until it's
10 disposed of at the landfill.

11 A. Here's the whole idea of keeping it wet.
12 When you spray it coming down, or before, during and
13 after, it -- if it was wet enough to begin with, when you
14 sprayed it the first time, there would be no reason to do
15 the during and after, so you keep doing it to make sure
16 that it's wet enough when you close the barrel.

17 Q. Okay. Technically, it should be wet enough
18 while it's on the ceiling that you don't have to add
19 water to the barrel.

20 A. Not necessarily, no.

21 Q. I believe that's what you just said.

22 A. No, I said if it was wet enough to begin
23 with, then you wouldn't have to keep spraying it, so --
24 and the regs say before, during and after, so in our

1 case, well, we couldn't damage the floor. You can't soak
2 it where it's going to run off into the floor, so we got
3 to keep adding water to it as we go through the steps.
4 It's not necessarily a soaking the first time. If it was
5 soaked the first time, we wouldn't have to keep adding
6 water to it, so that's why we were doing it in that
7 process.

8 **Q. Okay. Now, if that material was left out to**
9 **dry out, is that an improper practice?**

10 A. I suppose so.

11 **Q. So it should be in the barrel before it**
12 **dries out.**

13 A. Yes.

14 **Q. You shouldn't leave it laying around to dry**
15 **out.**

16 A. No.

17 **Q. Okay. And that's even if the building's**
18 **under negative air.**

19 A. That's what I'm not so sure about, because
20 regs vary. Well, should I put it this way. The regs
21 don't vary, but some of the people that interpret the
22 regs vary, so it's possible to let it sit for a little
23 while before you put it in a barrel, you know. It don't
24 always go directly into the barrel is the whole point, so

1 anyway --

2 Q. Now, you said that you were a laborer on
3 this project.

4 A. Yes, sir.

5 Q. You weren't a supervisor?

6 A. No, sir.

7 Q. So if somebody happened to visit the site,
8 they didn't have to report to you.

9 A. No, sir.

10 Q. Okay. So when Mr. Zappa showed up on site,
11 he didn't have to stop with you first.

12 A. No, sir.

13 Q. And you weren't doing any removal in the
14 hallway.

15 A. No.

16 Q. You were adding water to barrels.

17 A. Right. Yes, sir.

18 Q. So if Mr. Zappa wanted to see removal, he
19 didn't have to spend any time -- he wouldn't spend any
20 time in the hallway.

21 A. No, sir, unless he stood outside and looked
22 into the doorway, but he went on into the rooms, yes.

23 Q. And that's where people were actually --

24 A. Yes.

1 Q. -- removing material. Just to be clear, on
2 August 4, you worked upstairs; is that correct?

3 A. Yes, sir.

4 Q. Did you work on the first floor at all?

5 A. Like I said, I can't -- I'm sure I did. If
6 I was there two or three days, I'm sure I did at one
7 time.

8 Q. But just specifically on August 4, was there
9 any removal done on the first floor?

10 A. Oh, on that day. Not that I recall,
11 because -- no. We were always upstairs, I'm sure.

12 Q. The airless sprayer was never used on the
13 first floor that day?

14 A. Not that day, sir.

15 Q. Okay.

16 A. Not that I know of.

17 Q. Okay. The airless sprayer was only --

18 A. Because I kept the bucket up there so they
19 could have it in the rooms they were tearing down.

20 Q. Okay. And you were there from seven o'clock
21 to three o'clock that day?

22 A. Yes, sir.

23 Q. Okay. And you never used the finger wetter
24 on the first floor at all that day.

1 A. Well, I can't swear to that, but as Calvin
2 pointed out, there was other finger wetters. There's,
3 like, a manifold where you can plug this hose in and this
4 hose in, and I had one upstairs. There could have been
5 one downstairs. I don't know. I'm just saying I don't
6 know if it was -- if there was any used down there or
7 not.

8 Q. Okay. Did you personally --

9 A. I didn't, no.

10 Q. Okay. You personally did not use --

11 A. No, sir.

12 Q. -- any finger wetter on the first floor?

13 A. No, sir.

14 Q. Now, you spoke earlier about -- well, you
15 looked at a picture that was Exhibit 4DD.

16 A. With the barrels?

17 Q. Yes. And that you said from that picture
18 you could see that the material in those barrels -- that
19 there was moisture.

20 A. It looks that way, yes, sir.

21 Q. Okay. And that was because there's water
22 droplets on the plastic?

23 A. Yes, sir.

24 Q. And the darker color of the backing?

1 A. That's the way it looks, yes, sir.

2 Q. So to you, that one looks like it was wet.

3 A. Yes, sir.

4 Q. I'm going to direct your attention to
5 another photo, which is People's Exhibit 4D. What do you
6 see in that photo?

7 A. Torn-up ceiling.

8 Q. And can you see where that material is?

9 A. No, sir.

10 Q. It doesn't look like it's in a barrel?

11 A. I can't tell that. I can see the plastic,
12 but I can't tell -- it don't look like it's in a barrel,
13 but I can't tell for sure.

14 Q. You can tell that there's plastic behind it,
15 though.

16 A. Yes.

17 Q. Okay. And do you see any evidence of
18 moisture in that picture?

19 A. Well, this -- to the right there is a little
20 darker and up to the top there, but that main piece there
21 in front doesn't look like it.

22 Q. Do you see any water on the plastic?

23 A. I can't tell if there is.

24 Q. Okay. You don't see any in that picture?

1 A. I can't tell if there is.

2 Q. And if you were adding water to a barrel and
3 the material looked like that, would you consider that to
4 be adequately wet?

5 A. No. I would soak that piece. I mean, I'd
6 wet it, yes.

7 Q. Okay. So that piece --

8 A. That's not.

9 Q. -- that piece doesn't look adequately wet to
10 you.

11 A. No, but it's not determined if it was in a
12 barrel or not, so --

13 Q. Okay. I'm going to direct your attention to
14 another photo, and that is photo 4E. Could you describe
15 that photo?

16 A. That looks like material, torn-up material,
17 ceiling material, and it looks like it's in a barrel.

18 Q. Okay. You can tell that one's in a barrel.

19 A. Yes.

20 Q. And what's the condition of that material?

21 A. It don't look real wet, does it?

22 Q. Do you see any water on the plastic?

23 A. No, sir.

24 Q. So if that barrel had come in front of you,

1 **would you have added more water to it?**

2 A. Yes. And I may not have got to that barrel
3 yet either, so --

4 **Q. Okay. And that barrel -- So you wouldn't**
5 **think that that material was adequately wet at that**
6 **point.**

7 A. No, not for sealing up.

8 **Q. Direct your attention to 4Z as in zebra.**
9 **Once again, could you describe that picture for us?**

10 A. Torn-up pieces of ceiling surrounded by
11 plastic.

12 **Q. Can you tell if that one's in a barrel?**

13 A. No, sir, I can't.

14 **Q. What's the condition of that material?**

15 A. It's hard to say, because that stuff on top
16 there is the part that we've been talking about that
17 doesn't absorb the water, so it's hard to tell if it's
18 wet or not. Underneath, it's hard to tell. Looks like
19 it might be wet, but I don't see no reason to call it
20 either way, so I don't know.

21 **Q. Do you see any water on the plastic at all?**

22 A. No, sir, I sure don't.

23 **Q. If you sealed up the -- If the material was**
24 **wet inside one of these drums and you sealed up the**

1 plastic, you open it up the next day, would you still see
2 evidence of water in that barrel?

3 A. More than likely.

4 Q. Because this is supposed to be an airtight
5 system.

6 A. Yeah. Well, it's supposed to be.

7 Q. But the water doesn't evaporate very quickly
8 in there.

9 A. No, sir. No, sir, it does not.

10 Q. So if, say, in this picture in 4Z, if this
11 material had been put in on August 3 -- if it was wet on
12 August 3, it should still look wet on August 4.

13 A. Has it been determined that that is out of a
14 barrel?

15 Q. Let's assume that it is.

16 A. I can't do that.

17 Q. Well, that's -- it's a hypothetical
18 question. Let's say this was in a barrel. If this
19 material was wet on August 3 --

20 A. It would be wet the next day, yes.

21 Q. Okay. It should be wet the next day. Okay.

22 A. If that was in a barrel.

23 Q. When Mr. Zappa entered the building, could
24 he have searched the first floor before he met you on the

1 **staircase?**

2 A. I'm sure he could have, because I have no
3 idea of the time span between the time he came in and the
4 time he come upstairs.

5 Q. Okay. So you don't know if he spoke with
6 anybody before he walked by you?

7 A. No, I don't know that, no, sir.

8 Q. You don't know if he looked at the first
9 floor?

10 A. I have no idea. I didn't even know he was
11 here until he walked beside me.

12 Q. So if he saw violations on the first
13 floor --

14 MR. IMMEL: Objection.

15 MR. MANKOWSKI: Well, never mind. I will
16 withdraw that question.

17 MR. IMMEL: Thanks.

18 Q. (By Mr. Mankowski) Earlier you said that
19 you were there on August 3, correct?

20 A. According to the books, yes, sir.

21 Q. You don't remember what you did on August 3?

22 A. No, sir, I sure don't.

23 Q. Do you remember if you moved any of the
24 barrels from the second floor down to the first floor

1 **before Mr. Zappa arrived that morning?**

2 A. I don't think so. I couldn't swear to it,
3 but he probably didn't get there till I assume probably 9
4 or 9:30 or something like that, and that's -- that time
5 span is probably just about enough time to fill six or
6 seven barrels or something like that, so I couldn't swear
7 to it, but I don't know.

8 MR. MANKOWSKI: Okay. No further questions.

9 HEARING OFFICER WEBB: Okay. Mr. Immel?

10 REDIRECT EXAMINATION

11 BY MR. IMMEL:

12 Q. Just a couple small quickies on redirect.

13 **When Mr. Zappa came up on the second floor, after he made**
14 **this unusual remark to you about a little late for that**
15 **now, whatever he meant, did he thereafter ask that**
16 **everyone stop using any water up on the second floor,**
17 **stop spraying?**

18 A. Yeah, I think he stopped us from working,
19 so -- and something like that. Like I said, I --

20 Q. He said he had something to do? He took
21 some pictures then; is that right?

22 A. I didn't see him take any pictures, but I
23 assume he did --

24 Q. And --

1 A. -- at that time.

2 Q. -- he said something about wanting to
3 collect a sample? Did you hear him say that?

4 A. No, sir. I didn't hear him say anything.

5 Q. But he did ask the people to stop using the
6 water they were using in the room and you.

7 A. He asked us to stop work, yes, sir.

8 Q. And then after he left the upstairs, did you
9 then resume what you were doing?

10 A. Yes, sir. Well, I continued to water the
11 barrels anyway.

12 Q. Anyway. Okay.

13 A. But, yes, he --

14 Q. The other guys stopped using their
15 sprayer --

16 A. Yes, sir. Yes.

17 Q. -- at his request.

18 A. Yes.

19 MR. IMMEL: That's all.

20 HEARING OFFICER WEBB: Anything further,
21 Mike?

22 MR. MANKOWSKI: No questions.

23 HEARING OFFICER WEBB: All right. Thank you
24 very much, Mr. Stevens.

1 MR. STEVENS: Yes, ma'am.

2 HEARING OFFICER WEBB: We have already
3 discussed off the record a schedule for post-hearing
4 briefs. The transcript will be available from the court
5 reporter by May 21, and we'll get that up on the Board's
6 web site. The public comment deadline is May 25. Public
7 comment must be filed in accordance with Section 101.628
8 of the Board's procedural rules. Complainant's brief is
9 due by August 2 and Respondent's brief is due by
10 September 7, and Complainant's reply brief, if any, is
11 due by September 21. Mr. Mankowski, would you care to
12 make any closing arguments?

13 MR. MANKOWSKI: I'd like to save those for
14 the closing brief.

15 HEARING OFFICER WEBB: Okay. Mr. Immel,
16 would you care to make any closing statement?

17 MR. IMMEL: Only very briefly, that this
18 case has not gone anywhere on the issue of adequate
19 wetting of ACM material; that the uncontroverted proof
20 already in the record, acknowledged by Mr. Zappa in his
21 direct testimony and his cross examination at the last
22 hearing, is that the sample he collected on the first
23 floor in the area that's been shown in these photographs
24 proved to be negative for asbestos and that the sample he

1 collected on the second floor in the area where the men
2 were working on that day likewise proved to be negative
3 for asbestos. This was covered in the motion for summary
4 judgment that I previously filed. The Board noted in its
5 order in that case that, well, there still seem to be
6 some material issues of fact, but if the hearing
7 discloses what General Waste is contending, then they
8 seem to have the argument on that, and that's exactly
9 what the hearing has disclosed. There's no asbestos in
10 the samples that were collected on the first and second
11 floor on August 4, and so therefore, on that day they
12 were not inadequately wetting asbestos-laden material
13 because it didn't have any asbestos in it. I'll go into
14 the rest of it in the brief, but I think this hearing has
15 turned out exactly as I thought it would, and I'm not
16 surprised. Other than that --

17 HEARING OFFICER WEBB: Is that it?

18 MR. IMMEL: That's it. I said I'd keep it
19 brief.

20 HEARING OFFICER WEBB: Well, if no one has
21 anything further, we will go ahead and adjourn this
22 hearing. We are adjourned. I thank all of you for your
23 participation.

24 (Hearing adjourned at 2:17 p.m.)

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF BOND)
3

4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at
7 office of the Illinois Pollution Control Board,
8 Springfield, Illinois, on May 11, 2010, and did record
9 the aforesaid Hearing; that same was taken down in
10 shorthand by me and afterwards transcribed, and that the
11 above and foregoing is a true and correct transcript of
12 said Hearing.

13 IN WITNESS WHEREOF I have hereunto set my hand
14 and affixed my Notarial Seal this 18th day of May, 2010.
15

16 *Karen Waugh*
17

18 _____
19 Notary Public--CSR
20 #084-003688
21
22
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A	80:5,6 81:10,19 88:14 91:11,12,14 91:16,17 111:14 112:1 119:21,23 126:4,9 127:5	38:9 39:15,18 40:5 40:15 46:23 48:9 48:13,16,24 49:10 49:19,24 50:13 52:11 58:2 62:7,14 64:6,15 70:2 78:8 80:9 99:14 103:10 104:3 123:12,17	apartments 24:2 84:19 93:22 apparently 43:15 appear 28:10,11 90:7 102:3,8,23 APPEARANCES 2:1 appears 18:14 35:18 40:24 47:17 90:9 90:11 102:8 103:2 apply 8:19 19:13 approach 72:4 Approximately 53:11 arcane 10:19 architect 17:10 area 10:7 15:20 24:24 25:3,6 27:21 27:24 29:12 30:16 33:4 43:17 54:7 58:23 59:7 62:22 84:18 112:4 116:19 132:23 133:1	119:14,20 131:7 asking 5:15 56:12 assembled 57:1,21 59:20 115:18 assembles 17:3 assigned 96:20,21 Assistant 2:3,7 assume 99:21 106:6 128:15 130:3,23 assuming 20:21 22:21 attached 117:8 attack 41:19 attendance 5:10 56:4 94:13 attention 46:18 53:15 80:10 89:13 101:12 102:3 125:4 126:13 127:8 Attorney 2:2,3,6,7 2:13 5:12 7:10 August 11:19 20:23 21:2,7,14,18 32:21 32:21 33:14,17 37:23 41:17 46:12 51:6 59:5,21 60:8 61:21,23 62:1 82:3 82:3,9,22 83:2 85:24 86:24 87:3,3 87:6 96:17 105:2 110:16 113:8 123:2,8 128:11,12 128:12,19 129:19 129:21 132:9 133:11 automatically 30:5 63:19 automobile 7:23 available 104:5 117:23 132:4 Avenue 1:11 avoid 30:12 98:10 aware 59:3,8 105:16 away 31:16 63:24 64:1 a.m 1:10 5:2,7
abatement 22:1 93:21 95:24 able 26:10 109:17 110:1,3 about 7:2,18 11:19 19:2 31:13 33:1,20 46:16 47:13 51:10 53:9 56:2 57:3 58:11,12 61:1 63:2 67:13 68:22 79:5 79:20 83:10,24 85:15 87:12 88:7 88:10 96:8 97:1,6 97:8,8 98:4 101:3 101:4 103:9 111:1 111:14 113:5,14 113:17 119:14 121:19 124:14 127:16 130:5,14 131:2 above 25:19 34:20 35:8 134:11 absorb 127:17 absorbent 68:4 absorbs 77:14 accept 68:9 access 34:21 accomplish 33:24 accordance 132:7 according 14:23 55:20 105:6 129:20 account 8:16 accurate 20:15 acknowledged 7:3 132:20 ACM 132:19 activity 21:16 actual 87:13 actually 26:1 29:18 40:15 84:6 98:17 103:3 109:5 122:23 add 117:4,10,18,21 120:18 added 78:3 117:12 127:1 adding 121:3,5 122:16 126:2 address 12:1 Addressing 60:10 adequacy 8:4 adequate 10:16 132:18 adequately 6:20,22 7:6,7,20,23 8:22 9:18 10:1 58:17 66:9,11,12,13,15 67:7 71:13 80:2,4	adjacent 103:23 109:6 adjoining 102:5 adjourn 133:21 adjourned 133:22 133:24 adjusted 8:16 admitted 5:14 9:12 18:10 affixed 134:14 afield 119:12 aforesaid 134:9 after 17:15 26:7 29:9 31:7 40:16 45:11 54:2 56:12 56:24 70:4 76:4 82:21 84:22,23 99:17 118:4,16 119:4 120:13,15 120:24 130:13 131:8 afterwards 83:16 134:10 again 10:2,8 11:18 27:12 28:9,24 40:20 45:18 47:16 52:7,22 60:19 65:4 66:11 75:5,9 77:7 77:23 80:8,16 127:9 against 6:14 35:10 84:13 Agency 6:15 10:12 Agency's 8:1 ago 45:12 52:4 62:17 94:12 112:14 114:13 agree 90:1 agreed 10:4 ahead 6:6 18:7 71:15 93:12 119:19 120:1 133:21 air 1:5 9:14,16 10:9 10:11,13,17 16:6 16:15,15 20:3,5 22:5,8,22,23 23:2 23:3,7,7 24:8,9 30:14 40:3,6 52:10 64:8 70:18 71:6 87:16,18 88:2 94:15 103:16 121:18 airless 9:2,3 19:20 19:24 20:18 30:14	airs 82:24 airtight 24:8 65:24 66:8 128:4 allegations 6:14 allege 6:19 allowed 42:21 almost 34:12 46:9 52:4 alone 36:14 along 18:3 already 6:8 9:6 10:9 31:11 33:20 38:23 39:19 57:6 58:21 99:22 101:4 102:13 132:2,20 altogether 56:11 always 99:7 117:23 121:24 123:11 amendace 117:12 117:14 amended 69:1,4,12 117:16,17 among 7:8 amount 6:8 8:15 analysis 94:15 analyzed 58:22 another 22:19 55:13 64:18 93:18 114:24 125:5 126:14 anybody 88:21 92:12 110:23 129:6 anymore 39:4 anyone 84:10 88:19 116:17 anything 5:16 7:23 19:8 20:11 22:15 24:22 25:11 27:5 30:11 39:14 44:15 46:16 47:7 56:21 61:8 68:7,15,20 79:20,21 86:10,16 88:1 91:4 104:4 105:21 116:9 117:10 131:4,20 133:21 anyway 43:5 122:1 131:11,12 anywhere 101:6 132:18 apartment 24:1	around 19:10 22:17 31:2 51:22 58:10 78:20 88:21 121:14 arrival 7:15 46:18 arrived 60:16,18 85:24 130:1 art 94:5 asbestos 2:8 6:20 7:21 8:8,9,14 10:5 10:13,23 11:2,9 17:10 18:1,4 19:2 19:14 23:5 32:23 36:17 37:15 45:10 58:18 59:1 77:23 77:24 78:11 79:20 83:17 93:21 95:24 118:1 132:24 133:3,9,13 asbestos-containing 7:17,19 19:14 25:22 asbestos-laden 133:12 asked 54:1 55:3,4,6 88:10,12 115:20	attaching 117:8 attack 41:19 attendance 5:10 56:4 94:13 attention 46:18 53:15 80:10 89:13 101:12 102:3 125:4 126:13 127:8 Attorney 2:2,3,6,7 2:13 5:12 7:10 August 11:19 20:23 21:2,7,14,18 32:21 32:21 33:14,17 37:23 41:17 46:12 51:6 59:5,21 60:8 61:21,23 62:1 82:3 82:3,9,22 83:2 85:24 86:24 87:3,3 87:6 96:17 105:2 110:16 113:8 123:2,8 128:11,12 128:12,19 129:19 129:21 132:9 133:11 automatically 30:5 63:19 automobile 7:23 available 104:5 117:23 132:4 Avenue 1:11 avoid 30:12 98:10 aware 59:3,8 105:16 away 31:16 63:24 64:1 a.m 1:10 5:2,7
B				B
				B 73:19,20 back 11:10 17:17 21:11 28:1,3 34:21 35:19 40:21 47:12 47:17 48:22 51:11 52:19 53:13,13,17 53:23 54:4,6,6,21 55:1,2 57:9,10 58:24 61:15 65:3 66:6 67:14,18 68:17,18 73:3 78:2

<p>78:4 89:18 91:23 92:13 93:15 99:2 100:23 109:15 116:17 backing 77:11 102:21,23 124:24 backs 68:8 bag 29:4,5,6,10 84:16 bags 25:7 28:19 barrel 32:14 64:22 71:2 76:18 84:17 98:7,9,12,18 99:1 99:12,21 100:2,4 100:22,22 102:12 104:18,21 119:1 120:9,16,19 121:11,23,24 125:10,12 126:2 126:12,17,18,24 127:2,4,12 128:2 128:14,18,22 barreled 32:18 82:12 barrels 25:7 26:9,10 26:12,19 62:20 70:24 76:14 96:23 97:1,4,9,12,14,17 97:22 98:2 99:6,12 99:15,18 101:8,11 101:17 102:9,14 103:4 104:6,15 105:19 106:6,9,12 108:24 109:21,23 111:8 112:1,3 113:20 118:19 119:23 122:16 124:16,18 129:24 130:6 131:11 barrel's 100:8,16 based 58:16 111:21 basically 26:19 29:24 49:6 50:21 56:8 61:4 104:11 bathrooms 37:2 bear 72:2 became 50:21 become 105:16 beeline 54:2,3 before 1:1,11 6:4 19:4 21:21 22:10 25:13,23 27:17 28:5 29:14 40:16 46:2 53:3 59:5,21 60:7,10 61:10 62:12 65:8 66:3,9 67:11 70:24 71:21 72:8 83:12 86:11 93:16 99:19 101:15 105:14</p>	<p>106:7 107:15 114:5,5,8,15 118:4 118:5,6 120:12,24 121:11,23 128:24 129:6 130:1 began 5:8 begin 5:15 8:21 93:16 108:18 120:13,22 beginning 5:7 behalf 2:5,9,14 5:12 6:10 12:20 95:8 behind 39:21 76:19 125:14 being 7:14,16,19 8:3 8:9 9:3,15 11:7 15:7 19:12,12 20:22,22 22:3 28:5 29:7 36:13 38:11 49:8,21 66:16 79:14 81:14 97:21 103:23 110:17 112:14 believe 8:5 36:23 55:19 89:19 103:10 111:24,24 117:24 120:21 Belleville 1:18 5:9 14:22 93:22 94:9 96:7 114:21 bending 30:1 benefit 108:3 beside 129:11 besides 59:11 98:2 best 63:7 106:16 better 9:24 56:9,15 92:18 98:12 between 35:12 61:4 109:20 129:3 beyond 101:20 119:18 big 32:8 38:16 46:3 77:8 80:20 84:18 bigger 42:4 bit 19:9 26:14 27:15 60:13 67:13 73:8 73:15 87:12 94:19 97:6 106:17 113:17 blocking 109:1 board 1:1,10 5:5 21:9 53:4 94:18 133:4 134:7 Board's 94:22 132:5 132:8 Bond 134:2,5 book 17:4 books 129:20 both 5:14 9:10 14:7 14:10 48:13 61:9</p>	<p>69:21 106:13 bothered 114:1 bottom 27:3,9,12 44:22 67:20 73:13 73:15 80:22 90:6 boy 73:19,20 break 29:21 61:9,12 92:24 93:13 breaker 51:9,16 52:5,13 53:12 54:9 breakers 46:22 47:12 50:23 51:13 52:1,6,17 53:22 breaking 85:8 breaks 65:15 brief 5:24 11:15 12:5 61:14 92:19 132:8,9,10,14 133:14,19 briefly 6:4 132:17 briefs 132:4 bring 48:5 63:4,10 63:17 97:14 99:11 bringing 24:22 64:3 118:13 brittle 67:2,4,6,12 broke 116:12 broken 73:2 74:5,15 broom 42:7,8,11 83:10,11,18,24 84:2,2,8 brooms 42:7,13,15 42:20 brought 47:19 86:2 97:11,21,23 99:2 bucket 48:17,17,18 48:24 49:1 50:2 69:18 70:1,3 99:14 103:12,15 104:3,5 104:7 106:12 117:5,10,13,20 123:18 buckets 49:10,20 104:15 build 24:7 building 8:9,14,17 8:19 9:8,15,18,21 10:6,14 11:5 15:16 15:16 17:11,15 18:9,23 20:19 21:4 21:8,10,13,19 22:1 23:9,23 24:6,8,9 24:13,24 25:16 26:23,24 28:5 31:9 32:4,24 34:4 36:2 38:1 41:1 43:9 46:3 48:1,2,3,4 50:11,16,22 51:19 54:18,22 61:6 79:19 80:1 82:20</p>	<p>83:1,12 85:11 86:9 105:17 108:5 116:17 117:8 128:23 building's 121:17 built 24:14 bunch 114:15 bundled 17:24 burden 40:21 Bureau 2:4 business 9:20 38:23 53:13 bye 57:15</p> <hr/> <p style="text-align: center;">C</p> <p>call 5:20 6:4 11:12 12:11 23:7 89:13 95:1 101:11 102:3 103:17 104:23 127:19 called 11:13,14,16 12:13 22:22 25:3 34:10 54:14 94:6 Callery 2:7 5:11 Calvin 3:3 6:5 12:12 12:19,24 13:4 56:20 97:7 115:20 124:1 came 5:24 11:10 20:23 37:23 40:16 40:16 42:11 55:2 55:15 72:16 86:24 91:23 92:3,6,13 102:5 105:6 106:7 113:9 129:3 130:13 cap 34:12 capping 34:10 cardboard 28:12 43:15,19 77:8 care 16:13 54:8 97:3 112:2 132:11,16 careful 19:3,6,10 79:19 carefully 63:12 Carol 1:11 5:4 carpet 37:8,11 carpeted 43:14 carpeting 37:14 43:14,16 carried 43:7 cart 32:12 44:22 case 6:1 7:1,9,18 10:18,22 11:11 26:23 27:14 39:19 64:19 94:8 118:6 121:1 132:18 133:5 catch 40:4 cause 30:2</p>	<p>caused 90:17 ceiling 19:18 25:18 26:11 28:15 33:22 34:13,20 35:4,5,6 35:8,9,23 38:19,23 39:20 40:14 41:22 45:11 63:3 64:11 67:5 70:5 72:20,24 73:23 74:3,10,15 76:12 77:6 78:13 79:1 80:13 83:6 86:20 97:22 98:8 98:14,16 102:4 118:6,7,10 120:18 125:7 126:17 127:10 ceilings 25:17,22 33:22,24 34:15 36:2 37:24 38:10 38:14 41:8,14 45:6 46:1,3 center 73:14 certainly 119:15 Certified 134:4 CERTIFY 134:6 change 23:2 102:19 chat 55:23 check 82:20 choose 92:14 chooses 12:5 chores 54:11,23 circuit 50:23 circuits 51:18 circulate 23:2 circumstances 8:13 cited 6:17 Clair 5:9 clean 23:7 43:21 57:6 71:24 cleaned 82:12 cleaner 23:13 cleaning 27:7 83:5 clear 62:7 86:15,22 123:1 clearance 17:15 clearances 16:15 clerk 94:22 client 6:19 close 35:4 55:4 104:6 120:16 close-out 94:6 close-up 75:11 closing 12:5 132:12 132:14,16 clothes 46:21 clothing 9:19 clutter 91:21 coated 46:8 68:7 coating 34:1,3 78:1 colleague 12:3</p>
--	--	--	---	---

<p>collect 115:15 131:3 collected 7:12 10:23 11:2,6 58:22 59:4 59:15,17 60:1 89:2 92:9,13 112:6 132:22 133:1,10 collecting 11:7 color 124:24 coloration 102:19 come 7:10 9:22 28:3 30:21 39:1 41:14 47:2 53:3,19 54:4 55:1,7 57:9 58:24 97:14 98:17 105:18 107:24 110:5,7 113:14 126:24 129:4 comes 7:9 15:16 20:3,15 69:18 101:7 coming 24:20 31:18 43:22 54:5 64:13 64:14,16 98:8 108:12,17 109:10 120:12 commencement 5:23 comment 132:6,7 common 19:9 34:22 49:14 52:16 communicate 55:8 companies 64:7 company 1:17 13:8 13:12,21 15:15,24 31:15 47:4 51:4 54:14 79:24 87:16 112:9 company's 50:24 Complainant 1:4 2:5,9 Complainant's 132:8,10 complaint 6:15,18 6:23 complete 94:19 completed 14:7 60:20,22 completely 28:6 29:9 complimented 9:9 compromised 38:23 computer 19:5 concept 7:5 concluding 90:23 conclusion 7:21 11:24 16:9 17:3 condition 6:22 72:24 74:3 81:10 126:20 127:14 conduct 9:4</p>	<p>conducted 8:2,7 10:10,21 11:18 confront 7:5 confused 83:11 connection 89:13 consensus 93:13 consider 81:18 126:3 considerable 6:8 considerably 61:5 93:2 considered 8:24 constantly 31:19 consulted 112:8 contain 45:10 contained 6:20 40:23 94:16 container 65:6,10 65:12,19,22,24 66:4,8,10 82:5 containers 63:18,20 65:2,3,15 66:18 containing 112:5 containment 9:7,10 10:7,14 15:19 17:19 21:20 22:1 23:3 24:7,20 42:13 49:21 60:3 82:23 83:13 contemporaneously 8:2 contending 133:7 content 12:1 contents 90:10 contest 6:14 continue 116:12 continued 5:5 131:10 contract 7:13 contracted 14:22 control 1:1,10 5:5 9:7 134:7 controlling 46:23 conversation 56:11 115:5,10 converting 50:4 copy 94:21,22 101:14 cords 50:18 51:8 52:11,12,17 corner 76:17 corporation 6:11 correct 20:21 22:21 63:5,15 89:3,4 95:12 97:19 100:18 103:21 108:14 117:5 123:2 129:19 134:11 corrected 52:24</p>	<p>correctly 5:22 Counsel 88:10 County 5:9 134:2,5 couple 13:14 22:11 45:23 62:16 77:18 130:12 course 9:20 12:5 36:13 111:13 court 12:16,16 95:5 132:4 cover 22:11 31:4 covered 7:22 8:4 36:6,14 43:15 133:3 covers 14:14 COX 2:12 craw 113:12,16 create 10:7 created 87:16 credentials 54:3 crew 38:3 critical 22:12,13 criticals 22:2,4 cross 3:2 61:16,18 117:2 119:13 132:21 crumbled 80:23 crushed 67:1 CSR 1:15,16 134:18 curiosity 32:7 currently 6:12 13:17 14:10 cut 32:10 63:8 cylinder 20:2 C-A-L-V-I-N 13:2</p> <hr/> <p style="text-align: center;">D</p> <p>D 2:3 76:24 daily 15:11,15 16:3 16:23 87:17,22 94:13 damage 19:8 38:15 38:19 40:11 98:17 121:1 damaged 8:21 28:19 38:18 damages 79:24 damaging 22:19,20 dark 89:7 90:11,22 darker 73:10 81:5 102:22,24 124:24 125:20 data 87:16 date 6:15 105:5 113:8 David 76:24 day 11:17 20:22 21:2,6,7,12 32:22 33:2,14,17 37:22 38:7 41:17 46:11</p>	<p>46:12 52:21 55:20 59:5,21 60:9,9,23 62:11,12,20 66:2,3 87:23 96:20 103:24 104:21 105:2 107:15,22 112:6,10,14,17,21 113:5 114:5,5,8 115:6 123:10,13 123:14,21,24 128:1,20,21 133:2 133:11 134:14 days 24:14 123:6 DD 101:12 deadline 132:6 dealing 10:21 42:24 44:14 100:23 debris 26:12 decide 12:7 decon 22:8 24:15,15 24:17,24 25:12,23 26:2,5 27:21 54:2 54:7 55:12 57:3 59:7 deconned 46:21 deconning 24:20 decontamination 15:20 decorating 45:15 degree 10:15 demolished 8:15 19:13 demolition 17:7 departed 57:18 Department 95:22 depending 115:1 depends 28:14,20 31:23 44:5 62:19 67:8 depict 18:14 101:17 depicted 42:7 90:12 depicts 47:16 deposition 112:13 describe 11:14 20:15 21:23 25:5 47:23 50:10 73:11 93:19 126:14 127:9 described 32:5 50:5 102:24 describing 66:20 designed 39:23 40:3 destroy 8:17 destroyed 8:20 detail 21:24 determine 112:9 determined 126:11 128:13 device 20:10,18 50:1 different 51:14 52:7</p>	<p>84:19 101:10 differently 8:13 differing 7:7 difficulty 50:8 direct 3:2 10:9,9 11:22 12:13,21 62:16 80:10 95:9 115:10 119:12,13 119:14 125:4 126:13 127:8 132:21 directly 48:19 49:15 94:22 98:7 121:24 dirt 23:6 dirty 27:6,11 disagree 11:1 disclosed 133:9 discloses 133:7 discussed 132:3 discussing 6:9 discussion 57:1 115:23 116:9,12 dislodge 63:14 disperse 20:10 disperses 20:5 disposal 6:23 29:14 31:5,15 58:18 disposed 18:1 32:4 65:1 82:5 83:16 120:10 distance 101:20 distribute 25:8 divided 23:24 document 56:18 94:5,10 documents 94:16 dog 89:18 doing 11:20 16:18 26:23 29:18 37:22 41:10 47:5,13 54:23 57:4 60:9 81:17 99:8 100:21 103:7 106:7,10 109:4 111:22 113:22,23,23 120:15 121:6 122:13 131:9 done 16:1,17 27:7 32:20 33:13 38:6,7 39:13 51:4 56:12 60:12,17 61:1,3,6 81:14 82:8 86:8 94:15 98:3 103:21 103:23 114:15 123:9 door 22:4 47:2 53:19 doorway 22:15 122:22 doorways 22:3,12</p>
---	--	--	--	--

109:1 dots 77:18 double-check 87:9 doubt 60:5 down 9:22 17:16,16 18:20 25:6 27:13 29:10,14 33:11,22 33:24 35:23 36:2 37:6 38:6,11,17,24 39:1,20 40:7,9,14 40:16,16 41:8,14 41:22 42:4 43:7,11 43:17,22 44:12,20 44:21 45:1 49:9 55:11 56:14 58:3,6 62:24 63:5,6,8,10 63:17 64:2,3,8,13 64:14,17 65:3 66:17 68:2,18,19 74:5 75:19 84:20 86:2 97:14,21 98:9 98:14,17 102:5,13 104:6 108:13,16 108:19 109:15 110:21,23 111:4 112:4 118:13 120:12 123:19 124:6 129:24 134:9 downstairs 24:3 124:5 drag 23:4 drags 40:7 DRAPER 2:12 draw 23:3 draws 23:3 48:18 dress 51:10 dressed 55:11 107:3 dried 66:7 71:14 82:6 dries 70:24 119:2 121:12 Drive 14:23 17:6 72:12,22 74:1,12 drop 51:8 52:12 droplets 80:18 81:3 90:8 124:22 drops 102:9 drum 28:12 29:6,7,8 30:8 31:5 39:16 44:8,15 45:2 59:4 59:4,8,15 60:1 63:22,24 64:1 78:17,20 79:16,18 86:11 92:4 drummed 32:16 82:12 drums 25:20 28:17 29:3,13 30:15 32:9 37:19 40:17,24	41:4,13,23 43:6,6 43:17 44:3 46:14 48:8 49:9 58:6 59:20,22 62:20 83:3,8 85:15,20 86:1,16 89:24 90:3 90:11,12 91:8,17 92:4 127:24 dry 65:6 67:2,4,6,11 67:11 70:17,21 71:3,12 74:15 75:4 75:16,20 76:2,2 77:17 78:11,11,13 81:20,21 82:1 84:14,24 91:9,13 91:16 121:9,14 drywall 28:15,15 39:3 45:4,7,11,12 46:9 67:14,19,22 68:3,4,5,8 72:20 73:23 74:7,15 77:11,21,23 78:1 80:13 81:2,4 duct 31:2 due 132:9,9,11 dump 119:6,8 Dumpster 25:8 31:10,11,18,20 32:1,9 37:20 86:7 during 64:9 94:15 116:9 118:1,4 120:12,15,24 dust 77:21 dusty 74:18 duties 11:20	electrical 46:22 50:8 50:10 51:7 electrician 50:17 51:1 elevator 43:8 emissions 9:8 emphasize 9:6 employed 95:16,19 empty 41:7 97:12 99:21 100:4 104:18 enclosed 31:10,11 encounter 53:17 encountered 34:19 37:12 46:19 110:18 encountering 51:7 encounters 38:22 encouraging 12:7 end 29:21 30:1 34:10,12 40:9 48:16 60:22 82:18 82:21 Enforcement 1:5 enormous 21:24 enough 8:5 56:10 57:23 59:16 65:5 65:12,19 67:3,12 98:17 120:7,8,13 120:16,17,22 130:5 enter 15:19 93:18,21 93:23 entered 4:2 9:21 128:23 entirely 50:1 environment 58:1 Environmental 2:4 10:12 envisioning 31:18 EPA 16:9 17:4 105:6 107:10 113:9 EPA's 7:13 equipment 17:19 25:13,24 26:16 27:21 44:15,18 47:19 50:23 erected 9:7 escaping 10:6 essentially 34:16 etc 97:4 evacuated 9:15 evaporate 128:7 evaporates 76:5 even 7:22 22:4 27:17 34:7 71:6 83:14 88:19 121:17 129:10 eventually 55:15	ever 6:13 34:19 56:21 68:11 69:1 98:6 every 24:2 56:11 63:21 111:10 117:13,19,22 everybody 62:22 82:21 108:3 115:20 everybody's 53:13 66:12 everyone 10:8 130:16 everything 15:12 22:10 32:16,18 evidence 8:7,24 9:12 10:24 18:10 28:9 37:10 58:21 73:5 79:7 80:14 92:7 125:17 128:2 exact 47:14 exactly 6:16 40:6 133:8,15 examination 12:21 61:16,18 88:8 91:5 95:9 117:2 119:13 130:10 132:21 examined 12:19 95:7 example 8:18 41:17 89:12 exclusively 33:18 excuse 76:22 91:8 91:10 exhibit 4:3 9:13 15:1 18:11 29:2 30:20 36:18 37:9 40:23 42:6 43:16 47:14 56:17,17 71:19,20 72:7 73:18 93:18 93:23 101:12 124:15 125:5 exhibits 4:1 5:14 6:9 expect 11:21 experience 58:16 84:23 experienced 9:23 39:5 experiencing 6:12 explain 24:15 109:13 extent 94:4 extra 71:23 extremely 19:3	10:20 39:23 45:6 45:10 46:8 58:18 59:3 97:1 133:6 facts 92:17 factual 7:20 fall 38:17 63:20 98:9 fallen 39:19 falls 98:11,12,14 familiar 15:1 16:14 21:10 69:1 103:19 108:5 111:13 119:21 far 11:22 16:11 44:17 69:23 79:22 82:15 83:20 98:22 107:17 114:7 119:12,18 fashion 11:8 fault 9:21 fed 48:20 50:17,24 feed 51:13 feeding 48:12 feel 66:24 feeling 66:22 FELDMAN 2:12 felt 58:17 few 70:13 fiber 28:17 78:17 fiberglass 35:6,7,10 35:15 79:4 fibers 10:6,13,16 40:4,7 58:3 63:15 64:8 80:3 fibreboard 28:12 field 108:17 fifty-five 44:6 file 10:11 12:4 94:21 filed 6:15 14:24 36:17 132:7 133:4 fill 45:5 48:17 97:14 104:7,9 117:21 130:5 filled 29:7 35:5 41:13 44:4 47:17 59:5 87:14 97:4 102:4 117:13 filling 15:11 106:12 filter 23:18,18 filtered 24:10 filters 23:5,5,7,16 final 12:1,2 finally 108:19 find 11:9 fine 8:23 15:9 20:3 46:17 56:14 finger 29:15,19,23 30:1,4 39:17 46:14 48:8,13,19 49:3,7 49:11,13,22 59:21 78:3 101:3 111:10
	E			
	each 9:17 24:1,4 38:10 87:23 88:11 88:14 94:6 111:8 111:10 112:1 114:9 earlier 77:13 79:5 124:14 129:18 early 87:12 earth 92:12 East 1:11 edge 100:13 effect 55:5 106:2,18 egress 24:23 eight 9:16 23:22,23 23:24 44:7 101:24 102:1 either 10:6 24:17,18 25:7 85:20 86:11 92:5 104:17 127:3 127:20 elected 7:11 electric 48:3 50:1,15 50:17,18,20			
	F			

<p>hoses 47:18 49:11 49:13 59:21 hospital 14:23 93:22 94:9 hour 23:4 60:7 116:13 house 51:13,14 human 110:17 humans 7:8 hydraulic 20:2 hypothetical 128:17</p> <hr/> <p style="text-align: center;">I</p> <p>ID 105:21 idea 33:5 42:11 72:13 120:11 129:3,10 identified 12:23 17:10 89:24 106:24 identify 53:18 105:20,23 IL 1:18 Illinois 1:1,3,10,11 2:5,9,14 6:11 10:12 13:4 14:2 16:9 95:21 134:1,6 134:7,8 imagination 23:14 Immel 2:12 5:12,20 5:21 6:3,7 12:12 12:22 15:6,10 61:8 61:13 71:16 73:19 76:22 77:1,4 83:21 84:1 88:6,7,9 89:17,21,23 91:2 91:20 92:8,20,24 93:4,8 94:3 95:1,2 95:10 119:11 129:14,17 130:9 130:11 131:19 132:15,17 133:18 impact 19:1,13 impermeable 34:16 45:20 improper 121:9 inadequately 11:8 133:12 inappropriate 8:19 Inc 1:7 5:6 includes 14:18 118:18 including 55:20 58:14 Indeed 9:9 independent 50:22 INDEX 3:1 indicate 41:18 individually 71:18 individuals 55:24</p>	<p>informed 94:4 ingress 24:23 inserted 29:6 inside 10:13,14 19:5 21:3 23:10 29:13 46:15 51:9 53:17 54:17 55:14 57:5 60:3 65:6,12,19 66:4,8 78:23 85:18 97:16 102:12 105:8,9 108:5 109:3,6 110:14 115:9 116:17 127:24 inspect 83:1 inspecting 85:12 inspection 11:18 inspector 105:5 113:9 instance 20:9 28:8 67:16 88:12,14 instances 90:22 instead 19:12 20:3 23:18 insulation 35:15 79:5 80:13 intact 8:10 36:4,12 intended 8:16 interaction 11:15,20 54:16 interior 18:9 interpret 121:21 interruption 52:23 introduced 37:10 56:17 involve 100:5 involved 9:18 21:19 37:24 involving 10:18 issue 8:4 9:22 11:4 12:1 132:18 issues 133:6 items 6:17 it'll 63:20</p> <hr/> <p style="text-align: center;">J</p> <p>J 2:7,12 job 8:6 14:20 15:1,3 17:3,6,7,8,9 18:6 26:17 29:15 30:10 31:23,24 32:16 36:8 39:10 81:17 82:3 96:7,11,14,16 98:7,22 99:8,11 112:21 114:18,21 114:24,24 117:4 119:22 120:8 jobs 13:22,23 19:4 39:7 42:8,12 58:10 58:11 68:12,24</p>	<p>100:21 114:8,15 Joe 92:13 105:5 Johnson 3:3 6:5 11:13 12:12,19,24 13:2 56:20 61:17 88:10 92:22,23 94:11 97:7 103:11 115:20 Johnson's 101:4 joists 35:4,5,13 judge 9:24 judgment 9:22 133:4 jump 18:7 just 6:10 7:6 11:12 13:14,21,23 15:7 16:24 20:13 21:11 22:9,15,19 25:15 26:21 28:18,22 29:1 32:5,7,9 34:13 36:2 44:14 45:1,2 46:17,21 47:4,8,23 49:12 50:1 53:19 55:22 56:1,9,14 57:7 60:6 62:7,10 66:17 68:23 70:2,13 71:16 72:2 76:8 80:16 81:9 83:11 83:15 84:1,11 86:19,22 87:8 88:15 91:7,21,24 94:11 95:20 98:9 99:13 100:2,8,13 101:5 102:18 104:7,11 106:5,20 108:2,3 110:24 111:2,5 113:11,13 113:20 115:1 116:23 117:22 120:21 123:1,8 124:5 130:5,12 J-O-H-N-S-O-N 13:3</p> <hr/> <p style="text-align: center;">K</p> <p>Karen 1:15 134:4 KEEFE 1:17 keep 6:7,21 22:19 22:20 23:17 43:20 58:3 64:8,24 67:23 85:4 118:2,22 120:9,15,23 121:3 121:5 133:18 keeping 33:10 99:14 104:11,14 118:18 120:11 keeps 15:15 Ken 95:3 Kenneth 3:4 46:12</p>	<p>95:7,14 Kenny 95:3,16 kept 56:9 123:18 kind 6:13 17:7 28:12 29:3 30:18 31:12 34:21 38:15 43:20 46:24 47:3 56:8 77:17 83:4,11 94:5 96:22 99:10 100:21 113:7,12 114:8,12 kitchens 36:21 37:2 kleenex 91:24 knew 46:18 knock 41:21 know 11:9 16:11 19:9 21:9 25:19 26:12 27:5,11 28:22 40:5,7 42:7 44:21 46:7,17 47:5 47:7,14 51:10 52:4 52:13,22 54:7,14 55:2 56:2,9,11,15 57:5,6,12,15 59:10 60:4 63:22 64:1,2 64:8,16 66:16 67:4 67:5,10,11 68:18 68:22 69:23 75:6,9 75:22 76:2,6 80:2 81:13 82:15,16,17 83:5,20 84:16 85:14,23 86:22 88:19,21 97:7 98:23 99:13 101:4 105:11 106:4,6 107:17 108:5 110:6 111:2,5 113:13 114:7,11 117:21 121:23 123:16 124:5,6 127:20 129:5,7,8 129:10 130:7 knowledge 19:1,11 82:13 84:8,9 knows 119:21 K-E-N-N-E-T-H 95:14</p> <hr/> <p style="text-align: center;">L</p> <p>lab 11:10 92:14 labor 96:19 laboratory 7:12,13 laborer 11:17 13:21 13:23 14:3,13,15 58:14 96:2,14 114:18 115:1 122:2 ladder 74:22 75:2,6 75:12,14 landfill 18:3 31:5</p>	<p>65:1,8,14 80:5 120:5,10 lands 40:8 large 47:17 53:8 74:14 83:6 98:16 last 82:17 95:12 113:1 114:2 132:21 late 13:10,24 60:7 106:3,17 113:10 130:14 later 11:10 14:5 28:3 45:15 58:20 115:17 Law 2:13 layer 8:22 18:15 22:14 31:14 layers 22:6 32:13 laying 84:20 101:5 121:14 leading 22:16 47:18 leads 108:10 least 7:15 8:20 11:22 23:4 32:2 101:24 112:10 leave 22:17 39:20 70:20 76:3 82:17 84:16,24 116:19 121:14 leaves 16:5 leaving 57:11 left 36:4,14 42:13 57:9,16 61:2 70:8 70:13 73:12,15 74:15 76:4 82:4,10 82:13,19,21 83:13 83:15,16 84:12 86:23 94:12 109:15,15 121:8 131:8 legal 7:20 10:19 91:24 length 6:10 less 23:13,15 40:4 43:20,21 97:18 let 21:8 29:22 54:14 60:6 71:12 78:11 84:14 93:6 98:16 101:13 119:18 121:22 letting 98:9 let's 13:1 21:6 22:11 47:13 53:15 97:17 99:16,18 108:16 128:15,18 license 1:16 14:2,14 95:21 96:2,6 111:19 licensed 98:4 licenses 14:10,16</p>
--	--	--	---	--

16:4 lid 30:21,22 likely 128:3 likewise 90:23 133:2 limited 96:13 line 20:4 40:24 97:13 lined 28:17 31:10,12 76:14 97:1 99:22 101:22 liner 99:22 lines 40:24 lining 29:3 78:22,23 lip 78:20 liquid 44:6 literally 35:9 Litigation 2:8 little 19:9 26:14 27:15 57:1 60:13 61:2 67:13 73:8,14 87:12 94:18 95:20 97:6 103:14 106:3 106:17 113:10,17 121:22 125:19 130:14 live 9:11 load 28:13 31:8 97:22 loaded 31:7 40:17 41:23 62:20 86:8 99:2 loading 44:15,17 83:8 86:4 98:1 loadout 22:9 25:3,13 25:24 26:21 27:21 28:4 29:12 30:16 45:1 85:15,16,18 85:21 86:12 112:4 located 23:8 locations 37:11 lodged 6:13 log 15:11 16:1 55:20 87:12,13 logbook 16:8 logs 16:3,23 41:18 87:17,23 94:13,13 long 13:8 52:23 58:9 70:4,5,20 95:19 118:24 longer 57:12 70:9 71:13 100:8 look 28:11 51:12 66:6 71:18 72:12 74:18,20 75:4,16 75:20 76:13 77:16 78:23 81:4 90:20 109:3,6 125:10,12 125:21 126:9,21 128:12 looked 81:18 83:4	122:21 124:15 126:3 129:8 looking 37:9 74:14 80:16 84:1 88:15 101:10 102:9,18 looks 31:1 72:20 73:2,7 74:22 75:17 75:18 76:12,21 77:8,12,17,18 78:10,13,18,24 79:3,6 80:13,21 81:5 90:3 101:21 124:20 125:1,2 126:16,17 127:18 loose 39:3 98:16 lot 19:17 39:20 42:12 46:4,5 47:1 63:19 64:7 71:16 low 104:2 lunch 55:5 57:2 92:24 93:7,10,12 93:14 116:13,15 116:21 <hr/> M <hr/> machine 22:23 23:1 51:16 machines 23:8,21,24 24:10 Madam 5:17,21 94:23 made 5:23 7:2 38:15 40:4 45:7,19 54:2 54:3 87:19 114:4 130:13 main 36:24 125:20 maintains 15:24 make 22:9 23:4 24:21 26:13 40:5 43:20,21 65:11,18 68:21,21 81:22 91:22 103:16 112:24 117:16 118:15 119:10,22 120:7,8,15 132:12 132:16 makes 11:4 65:8 69:7 120:4 making 12:2 68:22 111:14 113:2 man 32:12 44:13 45:2 92:10 manifold 124:3 Mankowski 2:3 5:11 5:17,23 12:4 61:19 71:23 72:2,6 73:20 73:21 76:24 77:3,5 77:6 83:23 84:4,6 87:8,11 88:4 89:15 89:19,22 91:3,6,19	92:1,3 93:3,9,18 93:20 94:23 117:1 117:3 119:20 120:2,3 129:15,18 130:8 131:22 132:11,13 Mankowski's 89:7 Manually 42:1 many 19:19 21:9 41:18 51:21 62:7 62:19 90:21 101:22 108:14 marked 72:7 73:17 75:10 76:10 78:15 80:11 101:14 mask 107:5 mastic 36:20 materials 9:3 33:21 material's 65:5,15 82:1 matter 91:16 matters 21:9 119:14 may 1:10 5:2,7,20 6:3 12:4,10 37:12 37:12 80:24 89:12 95:1 101:11 109:4 109:4 112:24 127:2 132:5,6 134:8,14 maybe 37:7,8 53:1,9 60:13 73:8,14 75:17 77:18,20 78:14,18,21 81:15 113:17 ma'am 92:23 132:1 mean 9:1 32:9 40:4 44:6,17,19 63:16 63:21 67:5 81:13 85:5 91:10 93:10 113:19 114:8 115:8 119:18 126:5 means 119:21 meant 24:7 106:6 130:15 measurements 66:21 meet 10:16 57:24 meeting 55:22 members 5:9,10 memo 56:16 memoranda 9:11 Memorial 14:22,23 17:6 72:12,22 74:1 74:12 93:22 memory 56:8 memory's 112:16 men 16:18 44:11 55:14 133:1 messed 56:20	messing 47:7 met 128:24 metal 30:19 78:19 78:20 Michael 2:3 mid 105:4 middle 24:19 77:8 80:21,22 miffed 113:17 might 10:7 28:19 33:3,13 44:21 70:7 70:10 76:17 79:13 82:7,15 84:19 91:24 100:5 111:4 114:24 115:1 127:19 Mike 76:22 83:22 94:4 131:21 Mike's 89:6 mind 67:9 77:2 89:17 106:5 113:13 114:6 129:15 minutes 52:24 53:9 53:9 57:9 62:17 70:7 mischaracterization 92:7 mischaracterize 78:12 missed 84:20 mist 20:3,16 30:14 34:7 38:10 50:4 103:16 misting 33:21 34:17 mix 69:24 moisture 40:6 73:5 73:8 124:19 125:18 mold 73:2 months 112:14 moot 11:4 more 19:9,17,18,21 20:6 23:13,15,20 26:14 31:22 32:1 40:3 41:16 45:15 46:7 57:21 58:6 60:14 61:5 62:12 63:14 68:23 79:1 81:22 92:17 94:19 97:18 100:5 113:14 119:3 127:1 128:3 morning 5:3 60:8,12 62:21 83:2 105:5 105:21 108:1 110:16 113:24 115:17 130:1 most 41:20 46:5 71:22 72:10 85:22	mostly 13:24 42:3 99:13 motion 133:3 move 29:11 33:2 44:23 71:15 73:17 75:10 76:7,10 78:15 93:17 99:19 moved 129:23 movement 99:18 moving 10:1 70:19 100:22 much 12:9 13:22 15:18 20:7 31:21 32:18 39:2 44:9 60:10,17 61:1 68:5 68:10 70:15 100:17 131:24 multiple 51:13,18 94:10 100:21 multi-story 26:23 must 132:7 myself 10:2 18:7 100:6 <hr/> N <hr/> name 5:4 13:1 95:12 95:13 nature 8:6 105:22 near 29:12 60:4 nearest 116:14 necessarily 7:4 96:21 120:20 121:4 need 27:20 63:15 100:22 117:22 needed 26:17 49:10 57:21 104:17 106:15 109:4 115:3 needs 57:24 neg 22:5,8,22 52:10 70:18 82:24 negative 7:17 22:23 24:9 58:24 71:6 91:23 92:13 121:18 132:24 133:2 NESHAP 79:20 84:14 never 53:23 63:24 66:5 67:10 84:9 87:18 105:14 107:17 114:20 116:23 119:2 123:12,23 129:15 new 10:19 13:12 18:22,22 next 12:16 66:3 85:17 93:1 95:2 128:1,20,21
---	---	---	---	---

<p>night 82:21 nine 95:20 111:22 nobody 47:7 88:16 114:4 none 46:5 noon 60:7 normal 9:20 15:12 normally 67:18 North 1:11,17 Notarial 134:14 Notary 134:4,18 noted 133:4 notes 87:9 nothing 25:15 44:21 63:8 82:13 86:8 notification 14:24 notion 12:2 notwithstanding 11:11 number 4:2 18:11 28:10 88:11</p> <hr/> <p style="text-align: center;">O</p> <p>object 92:1 94:2,3 objecting 91:20 Objection 129:14 obscured 107:7 observe 115:15 obstructionist 119:11 obviously 54:18 102:14 occasions 45:15 October 5:8,13 off 16:6 22:18 24:21 28:6,13 29:23 30:5 34:9,14 40:14 46:9 46:10,22 48:4 50:17 52:1 74:15 93:11 98:12 100:8 101:20 104:9 108:23 121:2 132:3 office 1:10 2:2,6 5:12 17:3 134:7 officer 1:11 5:3,4,18 5:19,21 6:2,6 12:10,15 15:9 61:11,15 72:1,5 87:10 88:5 91:3 92:2,16,21 93:5,11 93:15 94:1,20,23 94:24 95:4 117:1 119:17 120:1 130:9 131:20,23 132:2,15 133:17 133:20 office's 16:12 officially 57:12 off-site 29:14</p>	<p>often 98:20,21 Oh 13:10 23:22 53:20 60:22 70:7 74:10 76:6,9 77:3 96:3 100:10 123:10 old 42:13 113:12 once 27:10 39:1 40:16,16,20 44:22 45:23 46:5 52:20 52:21 53:12 62:18 65:2 127:9 one 8:13,15 10:3,4 14:13,13,18 15:17 18:6 22:17 23:20 24:1 26:9 31:22 32:1 38:22 41:16 43:16 44:8,11,13 44:21 45:15 46:7 47:15 48:12 49:6 49:12,14 55:13 59:24 60:4 62:4,9 62:10,11,13,24 65:14 66:5 72:3 73:11 76:13 81:16 83:18 84:8,13,18 87:14 91:7 92:13 100:1,5 102:5,17 103:6 104:18 111:11 114:6,24 115:12,12 119:16 123:6 124:4,5 125:2 127:24 133:20 ones 19:7 38:21 52:6 52:7 80:20 93:6 102:2 one's 23:14 51:12 126:18 127:12 only 35:22 36:21 47:4 62:1,13 92:11 92:14 113:5 123:17 132:17 onto 45:11 63:21 open 35:6 65:3,15 79:13 97:12 119:1 128:1 opened 59:4,7 66:5 opening 5:24 6:1,1 operation 70:23 103:19 opinion 57:22 84:11 111:21 opinions 7:8 opportunity 9:5 order 133:5 original 8:12 other 12:7 14:18 21:12 23:6 54:11 68:12 81:6 86:16</p>	<p>90:20 94:17 114:9 115:5,7 117:11 124:2 131:14 133:16 others 7:10 52:2 out 6:16 10:22 11:10 15:11 17:11 18:3 20:3,4,6,16 22:5 23:3 24:20 25:7,18 29:22 31:7,8 32:4 32:7,16 37:19 38:9 46:21,24 47:2,18 48:16,18 50:1,15 50:19 51:10 53:2,3 53:19 54:6 55:1,2 55:7,15 56:8 58:20 65:6,9,21 66:7 70:17,21,24 71:4 71:12,14 82:6,17 82:18 83:8 84:14 84:24 86:4,8 87:14 97:15,23 99:2,6,12 99:13 100:5,10,11 100:13 101:4,23 101:5,18,22 103:15 104:18 111:9 112:12 113:8,9 114:6,12 121:8,9,12,15 124:2 128:13 133:15 outside 22:16 23:9 23:11 24:22 25:9 47:6 50:16,18 52:18 53:16 54:8 54:18,21 55:9,15 57:15 69:7 115:9 115:18,21 117:8 122:21 over 18:16 22:2,12 22:15 26:11 29:7 29:21 30:1 43:15 45:11,24 46:4 47:2 52:6,7 53:21 60:19 61:2 73:3 95:20 110:8 116:15 overdo 40:10 overnight 66:7 82:5 82:10,14 84:12,14 84:24 own 8:1 16:20 48:5 50:11 54:4 66:12 85:9 owner 17:12,17 94:8 owner's 19:8,8 o'clock 123:20,21</p> <hr/> <p style="text-align: center;">P</p> <p>packaged 6:22 59:20</p>	<p>packed 35:12 packet 87:15 page 4:2 6:18,19 paint 19:22 20:1,5 20:10 34:11,11 46:8 69:11 painted 19:19 34:3 45:14,23 46:4,7 58:4 painters 20:1 painting 45:19 panel 50:15,18,20 51:7,13,16 paperwork 16:12,20 16:21 82:18 94:17 paragraph 6:18 parking 47:1 part 21:8 26:17 30:20 41:10 109:16 112:10 115:18 127:16 partial 32:22 participation 133:23 particles 20:7 23:5,6 23:6,17 particular 6:17 15:17 47:15 82:1 94:9 96:11,14 97:4 102:2 116:5 particularly 98:16 parties 5:14 93:17 partly 109:1 parts 51:14 pass 17:16 past 106:21 107:13 109:5 pays 19:7 79:24 PCB 1:5 5:6 peel 46:10 peeling 46:9,9 penetrate 34:8 people 1:3 5:6 9:17 15:19 16:4 21:12 31:8 37:15 41:5 54:17 55:19 60:18 62:12 93:20 109:4 110:1,4 121:21 122:23 131:5 People's 4:3 9:13 15:1 18:11 29:2 36:18 56:17 61:16 71:20 72:7 73:17 75:11 80:11 93:23 101:12 125:5 per 17:11 44:7 percentage 60:11 perfect 63:21,23 perform 14:22 performing 96:20</p>	<p>period 55:3 Permission 72:3 permitted 6:3 person 82:17 100:5 103:3 108:12 111:3,6 personally 124:8,10 phonetic 117:12 photo 84:7 125:5,6 126:14,14,15 photograph 42:6 43:16 47:14,15 74:23 88:13 101:12,14,17 102:18 photographs 18:8 28:9 30:19 88:11 89:8 90:21 132:23 physically 43:7 pick 98:13 100:8 picked 43:5 pickup 47:16 49:15 picture 42:9 43:14 72:8,12,19 73:6,9 73:12,16,22 74:16 75:11 77:7,9 78:16 79:8,10 80:12,15 80:17 82:1 83:22 84:2 88:15 89:24 90:6,7,13 101:15 124:15,17 125:18 125:24 127:9 128:10 pictures 18:11,12 22:17,18 29:1,2 35:18 40:22,23 59:13 71:16,17,18 71:19,20 72:3,10 72:16 88:16,17,20 88:24 89:14 92:10 103:1 130:21,22 piece 32:8 47:18 63:5 74:14 77:8 98:16 125:20 126:5,7,9 pieces 42:4,5 70:10 70:13 74:5 127:10 pile 78:5,7,11,13 80:22 piles 83:6 place 19:5 placed 111:9 112:5 places 39:10,11 89:8 Plaintiff's 71:19 plaster 41:21 plastic 8:22 17:21 17:24 18:16 22:14 28:18,22,23 31:12 42:5 76:19,21 78:22,23 80:19</p>
---	--	--	--	--

83:14 90:8 102:15 124:22 125:11,14 125:22 126:22 127:11,21 128:1 plastic-covered 43:1 please 12:17 95:5,11 plug 124:3 plugged 50:19 52:11 plus 58:5 79:13 plywood 7:23 point 6:16 39:14 40:13 41:23 70:23 86:1 100:1,7 105:4 109:10,12 110:2 115:23 121:24 127:6 pointed 124:2 points 7:1 8:23 poke 28:23 pole 50:17 Pollution 1:1,10 5:5 134:7 poly 22:6 31:14 32:11 36:6 popcorn 74:9 80:23 pops 119:1 portion 98:8 position 13:17 96:13 positions 13:20 positive 92:6 possibility 82:7 possible 110:20 121:22 Possibly 100:6 post-hearing 92:18 132:3 pounds 44:7 pour 70:2 power 50:11,13,22 50:24 51:3 52:23 practice 33:10 34:22 64:7 84:15 85:1 98:6,7 121:9 practices 56:15 85:9 precaution 28:16 47:9 preference 26:24 27:2 premises 7:24 17:12 57:13 105:6 preparation 21:16 24:13 32:20 41:10 prepare 22:1 25:11 25:12 prepared 56:16 preparing 32:24 prepped 25:15 presence 7:14,17 41:18 55:15 105:17	present 5:11,16 6:16 7:2 59:24 88:20 89:9 90:7 134:6 presented 10:24 pressure 29:22 presumably 19:14 presume 11:24 pretty 10:18 13:12 13:22 15:18 31:21 32:18 34:22 39:2 44:3 54:6 68:4,5 68:10 70:15 105:3 prevent 10:5 previous 13:20 38:7 96:24 112:6 previously 9:12 133:4 pre-demolition 8:8 principally 33:23 principles 10:19 prior 19:15 21:7 32:22 33:14 36:17 38:15 41:7 105:12 probably 7:10 19:16 19:16 22:17 32:2 37:13 39:2 41:20 51:22 60:13,19 61:2 67:12 70:22 72:9 81:23 82:11 87:4,19 90:16,23 91:1 92:18 100:7 102:22 109:23 119:2 130:3,3,5 problem 52:24 54:9 77:3 problems 51:6 procedural 132:8 procedure 15:20 63:3,4 proceed 12:8 proceeding 5:23 14:21 18:8 Proceedings 1:10 5:1 proceeds 8:13 process 6:21 10:5 15:10,13 16:14 21:10 45:19 97:7 121:7 produced 12:19 95:7 program 14:1 programs 14:8 progress 58:2 project 11:14,15,17 16:7,9 23:21 36:17 47:24 69:13,19 75:7,9 86:16 87:12 87:13,13,23 94:6,8 94:16,18,19	114:21 122:3 proof 132:19 proper 63:4 prosecute 7:11 protect 18:19 79:23 protected 8:22 Protection 10:12 protective 9:19 proved 132:24 133:2 public 5:9,10 95:22 132:6,6 134:4,18 pull 38:16 53:21 63:6,8 pulled 38:11 47:1 64:2 pulling 33:22 38:24 47:10 pump 48:5,6,12,15 pumps 48:14 purpose 25:14 83:16 117:24 purposes 16:1 34:16 45:15 49:8 58:18 91:24 94:10 push 93:7 put 13:1 16:20 22:2 22:6,12,15,17 25:8 28:16,18 29:10 31:9 32:14 40:3,6 41:4,7 43:5 46:21 50:16 58:6 59:22 63:18,20,23 64:1 65:2 66:17 67:10 71:1 82:5 83:12,14 85:19 92:17 100:17 111:10 121:20,23 128:11 puts 20:6 putting 21:24 31:19 38:9 39:16 79:18 103:4 p.m 133:24	quite 18:11 quotes 56:19 quoting 56:21	36:16,19 37:10 94:14 referred 24:15 25:2 71:16 94:11 referring 17:18 22:22 28:24 40:20 76:23 83:21 106:4 112:4 refill 49:9 refilled 49:21 reflect 101:13 reflected 10:12 reflip 53:4 refresh 37:3 41:2 112:9 refreshed 21:1 112:16 regard 60:15 regs 42:21 120:24 121:20,20,22 regular 23:18 regulated 8:1 regulation 7:22 111:14 regulations 57:24 71:9 119:22 regulatory 6:17 10:16 rehab 18:6 48:2 rehabbed 17:13 rehabbing 48:1 rehabilitated 8:10 19:12 rehabilitation 17:7 relation 73:12 relatively 11:23 release 30:4 80:3 released 10:17 30:2 relevance 94:9 relevant 94:17 remained 54:8 remark 114:4 130:14 remember 36:12 37:6 38:21 52:8 54:5 55:10 56:1,10 56:12 57:16 108:7 113:5 114:8,11 116:14 129:21,23 remembered 114:3 remind 10:2,8 remodeled 17:13 removal 8:6,8,14 9:5 17:14 21:11,13,13 26:5 27:15 32:23 37:24 60:9 61:20 62:21 64:9 87:5 98:3 118:1 122:13 122:18 123:9 removal's 99:5
			R	
			rail 109:20 ran 32:15 50:18 75:18 104:2 rather 10:19 20:16 Raymond 2:7 reach 97:15 101:6,8 reached 40:13 read 10:2 56:18 106:5 readily 32:8 68:8 77:13 reading 108:3 ready 12:8 17:12 21:11,13 31:5 48:2 53:16 59:7 99:23 101:6 real 126:21 really 19:6 25:15 37:4 46:8 57:16 67:5 71:5 73:7,15 74:21 75:5 76:15 79:9 80:16 82:16 84:20 86:3 88:15 reason 113:5,21 120:14 127:19 reasonable 47:9 reasons 10:5 recall 5:22,22,22 6:16 21:16 31:24 32:15,17 38:18 39:9 46:24 51:21 52:5 57:17 98:24 111:1 112:14,21 116:16 123:10 recalling 45:18 receive 11:12 recess 61:14 93:14 recollection 18:18 21:2 32:21 37:3 38:13 41:2 53:8 106:17 112:9 116:6,11 record 5:15 12:2,23 13:1 14:24 61:16 92:17 93:12,16,18 94:19 101:13 132:3,20 134:8 records 15:15 16:5 21:1 112:8 RECROSS 3:2 91:5 redirect 3:2 88:6,8 130:10,12 redressed 53:2 refer 15:7 84:7 95:3 reference 21:20	
			Q	
		quality 9:10 quantity 9:4 question 7:15 60:6 64:18,21 83:10 84:21 91:7 106:22 113:1,21 128:18 129:16 questioned 5:14 questions 10:20 88:4 89:6,7 91:19 115:13 116:24 130:8 131:22 quick 91:7 quickies 130:12 quickly 29:19 128:7		

<p>remove 25:16 36:8 46:10 63:4 66:2 70:5 118:16 removed 7:14,16,19 7:24 8:3,9 9:3 11:7 17:21 18:4 19:15 22:7 25:21 26:4,8 28:5 33:3 36:11,20 37:8,14 80:7 83:5 86:10,19 87:3 92:5 119:4 removing 6:21 10:1 19:2 21:3 63:3 72:22 74:11 123:1 renovation 17:8 repelling 19:22 rephrase 78:12 reply 132:10 report 16:23 36:17 56:21 59:12 94:7 94:17 122:8 Reported 1:15 reporter 12:16,16 12:24 95:5,11 132:5 134:5 REPORTING 1:17 reports 16:6 59:11 94:13 request 61:9 131:17 required 9:19 14:2 requirement 80:2 91:12 reserve 12:6 reserved 6:1 92:18 reset 52:2 53:22 resident 13:4 respect 39:13 respective 94:10 respirator 107:4,5,8 respond 12:6 106:22 Respondent 1:8 2:14 5:13 12:20 95:8 Respondents 94:1 Respondent's 93:16 132:9 response 89:6 106:19 113:11 responsive 113:1 rest 16:13 25:16 33:1 55:13 90:16 133:14 results 10:11 resume 61:10 93:1 131:9 retaining 30:19 retrip 51:11 Retripped 53:7 return 17:12 returned 8:12</p>	<p>100:16 returning 99:7 re-wetting 79:18 ring 30:19,22,23 78:19 rip 43:3 risk 98:15 road 18:20 role 11:15 99:9 roll 100:11 rolling 104:18 room 25:23,24,24 26:9,14,16,19,21 27:21 28:4 33:21 38:10 41:16 45:1 57:7 76:17 85:15 85:16,17,18 86:12 92:9,10,12 97:22 98:1 99:1,12 100:2 104:18,19 109:3,6 109:7 110:4 131:6 rooms 9:1 18:15 25:12,23 36:24 38:14,19 41:19 52:9,13 62:18 81:17 84:19 99:6 102:5 103:23 106:21 108:23 109:16 110:7,14 122:22 123:19 roughly 13:9 row 89:24 90:3 101:17 RPR 1:15 ruin 19:6 58:5 rules 84:14 119:16 132:8 run 17:14 48:5 49:10 50:13 67:8 114:9 121:2 rung 75:18 rungs 75:1 running 34:9,13 49:7 58:10,11 runs 103:14</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe 9:4 same 26:19 31:12 48:15 52:6 62:22 72:21 90:23 109:9 111:1 115:17 134:9 sample 59:4,8,17 60:1 92:6,9,11,11 131:3 132:22,24 samples 7:12 10:22 11:2,6,10 57:3,6 58:21 59:10 89:3 92:3,15 115:15</p>	<p>133:10 sampling 10:10,11 16:6,15 87:16,18 88:2 94:15 saturated 45:22 save 132:13 saw 42:6,8 46:20 59:13 81:9,17 82:9 111:3 129:12 saying 34:7 45:3,19 110:24 111:2,6 113:12 124:5 says 56:19 scattered 29:1 schedule 132:3 scope 119:13,18,24 screws 28:15,21,22 39:2 scrub 23:7 Seal 134:14 sealed 9:17 29:14 30:16 127:23,24 sealing 127:7 searched 128:24 second 2:4,8 7:9 21:2 27:17 33:2,5 33:14,18,23 36:1 37:24 38:14 41:1 41:11 43:7 46:11 58:23 60:15,17 61:1,5 62:2,24 72:3 77:1 86:1,12 91:8,11,17 92:6 93:16 95:1 97:19 101:18 107:12 108:10 129:24 130:13,16 133:1 133:10 second-floor 97:2 section 38:16 132:7 secure 9:14 security 47:9 see 12:7 26:4 28:15 34:9 47:2,9 54:18 57:4 59:17,19 67:11 72:18 73:5 73:21 74:6 75:1,14 76:11 78:19 79:7 80:11,14,18,21 81:3,14 82:19 83:6 83:9 84:18,20 86:23 90:6,8,10,13 101:21 108:4,18 108:19,22 109:3 109:14,17,19,22 109:23 110:1,3,5 111:7 116:18,19 122:18 124:18 125:6,8,11,17,22 125:24 126:22</p>	<p>127:19,21 128:1 130:22 seeing 37:10 47:4 89:7 90:22 seem 30:18 133:5,8 seemed 46:8 seen 16:17 18:7,12 28:8 30:19 40:22 47:16 53:21 55:15 56:18 71:20,22 72:8,9 81:12 82:11 84:9 87:12,18,18 101:14 105:14 109:11 sense 19:9 sent 7:13 separate 22:14 26:16 48:14 September 132:10 132:11 sequenced 26:22 Services 1:6 5:6 6:11 9:10 13:6 15:4,8 94:7 95:17 serving 49:8 set 22:8,9 26:2,5 48:16 63:22 71:23 99:12 134:13 seven 101:22,24,24 123:20 130:6 Seventh 2:13 severely 8:20 sharing 109:9 sheet 15:24 55:20 Sheetrock 102:22 sheets 15:12 16:4 shell 69:10 shift 82:19 shipment 16:5 short 6:7 11:23 61:9 61:12 94:12 shorter 93:2 shorthand 134:5,10 shovel 42:5 shovels 42:1 show 8:7,24 40:23 66:21 72:6 75:11 105:21 showed 7:16 11:2 52:21 54:2 61:23 83:2 86:7,11 122:10 shower 24:18,20,21 26:12 53:2 shown 90:21 92:10 132:23 shows 60:7 shut 48:4 52:1 56:14 shuts 30:5 side 34:21 35:19</p>	<p>68:18 73:3 74:15 74:23 78:2,4 101:8 109:16 sides 29:7 sign 15:22,23 sign-in 15:24 16:3 sign-out 15:24 simply 7:24 8:17 since 6:12 47:3 58:9 114:16 single 31:14 sit 12:15 121:22 site 7:15 16:6,6,17 28:6,13 31:5 32:20 35:1 47:19 54:15 57:19 62:8 86:17 94:15 96:16 119:4 122:7,10 132:6 sitting 64:6 70:16 101:18 situation 34:20 68:16 six 41:18 55:19 88:11 101:21,24 130:5 six-mil 29:5 31:14 32:13 size 28:11 31:23 slip 43:23 small 29:20,21 33:3 33:3 50:16 80:22 130:12 smaller 20:7 42:4 snap 30:23 snaps 31:1 soak 67:21,22 68:2 68:19 69:10 121:1 126:5 soaked 34:12 121:5 soaking 19:21,23 121:4 soaks 46:6 68:6 soap 69:5 soft-headed 42:18 some 10:19 13:20,22 13:23 18:14 20:1 28:12,15 29:3 30:18 32:22 33:3 33:13 34:21 36:16 36:18 38:13,18,19 45:12 46:10,22 47:18 50:8 52:1 60:9 63:2,24 71:17 73:8 74:6,8 75:18 75:21 77:21 79:4 81:5 82:16 84:20 85:19 88:20 90:11 97:12 98:3,15 100:7 102:23 105:4 109:23</p>
---	---	---	--	---

112:3,14 115:24 121:21 130:21 133:6 somebody 51:4 100:22 110:20 111:4 119:1 122:7 someone 12:13 104:2 something 22:16,19 22:20 24:14 25:2 27:6 28:1 32:13 34:10,24 38:24 45:23 46:4 51:24 53:1 55:5 57:2 73:13 98:10 99:12 102:1 106:2,18 113:18,22,23 114:23 130:4,6,19 130:20 131:2 sometimes 28:20 44:5 62:17 98:11 99:11 somewhat 39:1 Somewhere 58:10 soon 30:4 64:2 sorry 9:16 24:1 67:9 70:12 76:8 77:4 78:11 81:13 85:7 89:6 92:19 sort 100:11,13 104:21 sounds 9:2 source 49:6 South 2:4,8,13 southwest 92:9,10 span 129:3 130:5 spare 52:11 speak 106:1 Special 9:9 14:21 specific 7:11 83:21 92:12 99:9 119:4 specifically 88:11 99:5 123:8 specifications 17:11 spelling 12:24 95:12 spend 122:19,19 spoke 67:13 77:13 79:5 85:15 87:11 105:23 106:10 113:6 124:14 129:5 spots 89:7 spray 20:6,16 29:22 29:23 30:11 34:21 45:10 48:18 120:12 sprayed 34:1 45:11 78:7 102:15 120:14 sprayer 9:2,4 19:24	20:19 38:9 39:15 39:18 40:5,15 46:23 48:10,13,16 48:24 49:10,24 50:14 62:14 64:7 64:15 70:3 78:8 80:9 99:14 103:10 103:15 104:3 123:12,17 131:15 sprayers 49:19 62:8 103:11 spraying 20:6 34:16 52:14 68:23 120:23 130:17 spray-on 58:4 74:10 Springfield 1:11 2:5 2:9,14 134:8 squeegees 42:18,19 42:22 SS 134:1 St 5:9 staining 90:11,15,17 90:22 stains 75:18,20,21 76:2,3 staircase 129:1 stairs 43:21,22 44:1 44:12,20,22 45:2 106:8 108:20 109:10,12 110:5,7 110:23 113:10 stairway 43:12,15 108:8,12,14,16,17 108:18,22 109:5 109:18 110:3,17 stand 12:13 94:12 114:5 standard 30:20 standing 6:12 109:20 110:18 113:20 116:3 standpoint 9:15 stands 113:8,9 start 21:11,13 22:1 27:1,9,12,13,17 38:24 97:17 113:21 started 13:10 21:14 21:17 41:8 61:20 62:21 83:4,5 99:7 starting 22:10 36:18 90:6 97:9 State 1:3 5:16 10:24 14:2 134:1,5 statement 5:24 6:1 112:24 132:16 stay 70:6,7 71:10 118:24 119:7 120:4 stays 24:8 118:16	steps 37:7,8 101:7 105:18 109:14 110:21 111:5 121:3 Stevens 3:4 11:16,19 29:18 46:13 95:3,7 95:14 101:15 117:4 119:20 131:24 132:1 stick 68:12 69:7 99:18 108:17 113:16 119:16 still 19:18,20 35:7 60:11,21 61:1,2,6 65:15 66:3 67:2 71:7 89:13 106:24 128:1,12 133:5 stockpiled 28:5 30:15 97:18 stood 114:12 122:21 stop 21:8 122:11 130:16,17 131:5,7 stopped 79:14 130:18 131:14 storage 25:13,24 27:22 29:12 store 26:9,16 stored 25:20 26:20 85:16,16,21 stories 23:23 straight 20:4 straightforward 10:18,20 Street 1:17 2:4,8,13 stretch 101:20 stuck 113:12,13 stuff 17:16,18 25:20 28:16,21 43:5 45:5 46:23 47:6,6 58:5 74:6,8 92:10 119:15 127:15 sub 6:18 subject 6:24 7:7 14:21 subjective 7:6 submit 94:22 submits 17:4 submitted 16:8 subsequent 29:17 substantial 28:10 successfully 14:7 sucking 50:1 sucks 103:15 sufficient 9:4 suggest 29:2 suggesting 10:15 89:8 suggestion 91:22 suit 54:4 59:16 107:4	suited 9:18 suits 54:5 summary 133:3 supervisor 11:14 13:18,23,24 14:5 14:13,14,15 15:3 15:11 58:8,9 96:3 96:10 114:21,24 122:5 supervisor's 16:21 96:6 supplement 94:4 supplied 94:8 103:12 supplies 26:17 supply 47:24 50:8 50:10,22,24 suppose 98:15 121:10 supposed 15:22,23 16:12 23:3,16,17 25:21 63:17 64:4,5 64:24 65:5 71:8 79:16,17 80:4,6 85:2,4 118:3,9,12 118:15,22,24 119:7 120:4 128:4 128:6 supposedly 69:9 sure 22:9 24:21 54:4 54:6 65:11,18 70:18 75:8 111:3 118:15 119:10,22 120:7,8,15 121:19 123:5,6,11 125:13 127:22 129:2,22 surface 34:15 surfacing 80:23 surfactant 117:16 surprised 133:16 surrounded 127:10 sustained 38:15 swear 12:17 95:5 124:1 130:2,6 swimming 66:16 sworn 12:18,19 95:6 95:7 system 19:5 22:8 24:18 48:4 128:5 systems 22:5 S-T-E-V-E-N-S 95:15	130:22 taken 59:8 61:14 72:12 93:14 97:22 99:1 134:9 takes 31:16 taking 19:18 25:7 33:24 47:8 97:3 98:13 talk 47:13 55:7 56:2 56:3 81:13 talked 53:3,22 55:3 56:5 63:2 talking 12:3 33:1 53:5 56:12 83:24 98:4 127:16 tank 47:17 48:22 49:17 117:8 tape 29:11 30:16 31:2 taped 29:10 task 96:20,21,22 tear 17:16 35:22 43:3 tearing 36:2 41:8 123:19 Technically 120:17 tell 29:19 55:18 56:21 57:11,20 72:11,14,15 73:3,7 73:15,16,24 74:21 75:5,17,23 76:15 78:16 79:9,10 80:16 81:2,7,24 86:3 88:12,15 97:6 97:8 101:3 102:17 102:21 107:10 125:11,12,13,14 125:23 126:1,18 127:12,17,18 telling 56:9 ten 51:22,24 53:1,9 53:9 tend 39:1 tendered 101:14 term 7:6,6 9:1 22:22 56:20 69:1 94:5 terms 22:11 territory 47:3 test 66:22 81:15 tested 91:23 111:18 testified 7:1 9:6 10:4 10:8 12:20 33:20 92:8 95:8 97:8 101:4 testify 11:19 testifying 11:5 46:13 94:12 testimony 6:8,24 7:4 9:11 10:9 11:21,22 29:17 62:16 89:5
T				
take 8:16 9:5 11:12 16:13 17:16 22:18 24:19,21 31:22 44:11 61:12 71:18 90:15 92:15,24 93:7,9,12 116:13				

89:23 94:14 96:7 96:24 103:9,11 105:6 132:21 testing 7:12,12,16 tests 8:1 17:15 thank 5:19 12:9,10 61:13 88:5 92:21 92:23 94:24 95:2 120:2 131:23 133:22 Thanks 129:17 their 6:23 7:1 8:12 8:13 9:20 11:21 17:11 25:18 49:14 49:20 66:12 104:2 131:14 they'd 85:8 thing 7:9 31:4 34:10 49:14 52:16 62:21 90:23 109:11,14 things 10:3 19:4 27:10 36:21 63:23 91:21 think 7:4 13:10 14:14 21:18 23:16 32:17,18 37:6 52:20 54:3 55:21 56:1,9 57:14 58:7 70:13 71:22 84:13 84:22 87:11 92:7 93:8 109:19 119:17,24 127:5 130:2,18 133:14 thinking 51:12 88:7 Thomas 2:12 thoroughly 8:18 58:5 though 71:6 83:14 125:15 thought 32:23 45:9 79:15 113:14 133:15 three 10:22 11:2 24:18 49:11 51:8 52:11 90:5,11 102:2,9 123:6,21 three-quarters 60:19,20 through 14:1 15:11 15:20 20:6 23:18 24:9,19,24 25:9 28:23 34:20 55:12 67:9 68:2,19 69:11 71:17 93:7,22 97:7 121:3 throughout 20:19 29:1 34:3 105:1 114:20 throw 47:11 52:17 throwing 52:12	thumb 29:21 tight 9:14,17 31:1 tile 36:19,19,20 37:11 45:5 till 26:5 31:23 119:1 130:3 time 7:2 13:14 18:12 18:12 19:15 41:8 41:17,19 45:16 46:5 55:3 57:23 58:14,16 59:17 60:24 85:23 94:12 103:7 107:19 111:1 112:13 114:23,24 116:16 117:13,19,22 120:14 121:4,5 122:19,20 123:7 129:3,3,4 130:4,5 131:1 times 18:8 19:19 23:4 44:7 45:24 46:4,5,7 63:19 108:14 titled 93:21 today 5:11,15 93:6 together 16:21 35:5 56:2,3 57:7 told 51:9 56:19 tone 113:17,19 tongue-and-groove 8:11 tools 111:5 top 6:18 27:3,13 29:10 33:11 73:13 73:14 78:20 80:22 104:8,9 125:20 127:15 torn 28:19 torn-up 125:7 126:16 127:10 touch 55:6 toward 6:18 towards 57:3 82:18 track 104:11,14 traffic 43:11,17,17 trailer 50:16,19 51:9 training 14:1 84:22 transcribed 134:10 transcript 10:3 108:3 132:4 134:11 traveling 93:6 treated 37:15 tried 19:3 trip 47:11 51:8 52:1 53:12 tripping 52:5,6 trouble 10:7 truck 44:23 47:6,16	47:21 48:22 49:15 true 43:4 134:11 try 19:9 23:4 32:11 63:4,6,7,8,10 64:5 68:17 69:12 108:4 trying 22:19 30:12 33:24 40:10 43:3 67:8 TSP 69:18 turn 5:24 16:12,12 45:14 50:24 52:18 53:15 109:15 turned 25:23 133:15 turning 46:18 twelve 51:24 twice 40:15 52:21 two 6:17 7:1 10:22 11:1 14:16 21:12 23:23 24:2,14 32:2 32:12,13 41:20 44:11 49:8,11 51:8 52:11 62:11,18 123:6 two-stage 25:6 two-story 24:6 26:24 type 75:21 typically 70:4	use 8:12,16 18:22 19:17 20:1,2 22:21 23:13,20 25:12,13 26:16 28:13 30:11 39:18 42:5,15,18 42:20,22 49:21 50:22 58:3 64:6,8 69:8 71:24 84:10 97:18 113:22 124:10 used 18:20 19:16 20:22 22:4 23:22 38:10 42:8 44:21 44:22 49:8 59:22 69:1,6,17,19,21 75:7 83:18 84:8 101:6 123:12,23 124:6 uses 8:15 using 17:22 19:20 20:7,10,19 29:15 30:13 42:3,14 44:15 48:8,9 69:12 70:3 80:8 85:19 111:10 118:1 130:16 131:5,6,14 usually 27:2 32:11 42:18 44:13 45:4 46:2 52:8,10 63:6 66:24 100:6	122:7 visitors 15:24 voice 113:18,19 vs 1:5
W				
walk 100:13 walked 57:3 81:16 82:9 105:18 106:20 107:13 113:6 129:6,11 wall 22:18 109:14 walls 8:21 22:6,7 36:4 109:1 want 18:7 26:9,11 26:13 27:6,11 40:10 47:7 55:22 55:23 56:7,13 62:7 63:14 67:22 71:3 78:12 89:15 91:21 92:24 93:6,7,23 98:10 102:3 103:17 108:2,4 113:4 wanted 22:17 33:8 46:17 55:4 56:1,3 56:13 122:18 wanting 58:5 131:2 wasn't 11:9 36:8,24 52:10 59:16 60:22 82:16,17 83:15 85:13 91:14 113:19 WASSER 2:12 waste 1:6 5:6 6:11 9:9,10 13:6 14:22 15:4,7 16:5 18:1 25:8 28:1,4 31:15 32:3 37:17 83:17 94:7 95:17 133:7 watering 96:23 99:15 105:19 106:9,12 109:21 113:20 Waugh 1:15 134:4 way 8:19 11:12 19:13 22:19 25:18 26:22 27:13 32:4 34:21 35:22 43:17 47:11 54:3 55:13 58:4 66:19 68:19 72:15 96:22 99:10 103:2 107:1 121:20 124:20 125:1 127:20 ways 102:17 wear 9:19 web 132:6 Webb 1:11 5:3,4,19 6:2,6 12:10,15				
V				
vacant 48:1,2 vacuum 23:13 vantage 109:10,11 110:2 various 18:8,15 37:11 39:7,10,11 89:8 vary 121:20,21,22 vehicle 47:1 57:10 57:17 116:20 vent 22:5 vented 23:10 verified 8:1 version 66:12,13,15 versus 5:6 45:2 very 9:8,8 12:4,9 21:23 39:3 98:20 98:21 119:12,12 128:7 131:24 132:17 view 107:7 109:1 110:12 violation 6:13 84:23 violations 129:12 vision 108:18 visit 20:23 21:7 32:22 33:15,17 37:23 46:12 113:8				
U				
unaccompanied 116:17 uncontroverted 10:24 132:19 under 37:11 83:12 121:18 underneath 98:8 127:18 understand 12:3 26:22 50:7 89:9 93:17 97:3 understanding 17:2 18:19 32:19 34:6 89:5 94:21 units 9:16 22:8 unless 22:6 92:16 110:20 122:21 unloaded 83:3 unstable 38:15 until 6:22 11:10 45:22 64:24 113:14 119:8 120:4,9 129:11 unusual 130:14 upstairs 24:3 33:4 45:6 85:19 90:1 97:9,12 101:8 110:21 111:6 123:2,11 124:4 129:4 131:8				

15:9 61:11,15 72:1 72:5 87:10 88:5 91:3 92:2,16,21 93:5,11,15 94:1,20 94:24 95:4 117:1 119:17 120:1 130:9 131:20,23 132:2,15 133:17 133:20 weigh 44:9 weight 98:17 well 12:4 19:3 20:9 21:8 24:1,17 25:15 29:9,15 37:15 39:3 44:6 47:8 49:4 51:8 52:8 57:2 58:2 62:11 63:19 64:5,6 65:2 66:11 66:13,15,24 67:4 68:17 71:5 72:18 72:20 73:2,14 76:4 76:7 77:24 79:17 81:12 82:11 83:15 84:1,15 85:1 91:24 92:2,8,16 93:8 94:17 97:11 99:10 99:16 105:3 106:7 107:19 109:13 114:7,13 115:7 119:3,24 121:1,20 124:1,14 125:19 128:6,17 129:15 131:10 133:5,20 went 11:11 14:1 24:14 46:15,22 47:2 51:10 52:20 53:3,5,21,23 54:1 55:10,11 57:5,8,10 60:1 66:10,10 82:18 97:7 106:21 108:13 109:12 110:16 115:18 116:14,16,21 122:22 weren't 54:19 85:11 86:4,16 88:23 112:11 122:5,13 wetness 79:7 102:22 wetted 29:9,13 79:14 88:13 102:13,19 wetter 29:19 68:21 68:23 78:4 90:16 123:23 124:12 wetters 29:16 39:17 124:2 wetting 10:5,15 11:4 30:12 39:13,15,16 57:23 59:21 67:13 68:13 71:1 91:11	132:19 133:12 we'll 12:7 28:3 46:17 61:11 76:7 84:4 93:11,12 132:5 we're 19:7 22:5 29:11 47:3 61:15 76:10 84:4 98:3 we've 6:8 19:4 28:8 31:12 40:13,14 46:1,22 96:7 112:4 127:16 whatnot 50:23 59:7 whatsoever 11:3 What'd 106:20 WHEREOF 134:13 while 10:10,14 16:7 18:9 24:10 27:10 28:1 29:7 30:13 52:24 54:18 57:5 59:6 99:5,8 108:22 118:7,9,12 120:18 121:23 white 74:6,8,9 77:21 whole 11:4 31:4 55:23 70:23 87:15 87:15 107:19,22 114:15 120:11 121:24 wider 20:6 window 22:15 windows 22:3,4,13 36:8,12 50:19 wipe 25:6 wish 12:4 93:17 119:15 withdraw 129:16 witness 3:2 5:20 6:4 9:11 11:17 12:8,11 12:17,18 40:21 61:10 71:24 72:4 89:18 92:17,19 93:1,17 95:1,2,5,6 101:11,13 134:13 witnesses 8:5 93:5 94:11 wooden 8:11 18:15 18:19 word 56:11 words 106:1,11 115:24 work 9:24 10:10,14 10:20 13:6 15:12 15:13 16:18 18:9 24:10 26:11,22 27:2,13 29:18 34:23 37:22 38:6 41:16 46:11 56:15 58:3,23 60:9 85:9 96:6,10,22 97:24	98:3 99:10 111:22 123:4 131:7 workday 113:9 worked 16:4 68:11 68:24 114:20 123:2 worker 103:21 workers 9:23 41:18 43:22 51:9 55:6,7 55:9 60:4 62:17,19 working 33:10,18 38:3 43:8 46:13 47:4 52:9 58:12 60:8,16 62:1,4,18 62:23 105:2 107:19 110:2,4 130:18 133:2 works 48:16 101:5 world 63:21,23 wouldn't 25:18,19 26:10,11 27:24 30:10 68:12 78:1,4 89:17 120:23 121:5 122:19 127:4 wrap 32:11,12 wrap-up 60:6 wrestle 44:11 100:10 wrestling 45:1 written 12:5 wrote 87:21	7:13 9:6,9,20,23 10:3,8,23 11:5,16 11:18,21 20:22 37:23 46:15,19 52:21 53:3,16 54:17,22 55:14,18 56:16,24 58:21 60:1,7,16 61:23 85:12,24 86:7,11 91:23 92:13 105:5 105:11,20 109:9 115:5,24 116:16 122:10,18 128:23 130:1,13 132:20 Zappa's 6:24 21:7 32:22 33:14 46:12 88:17 89:23 94:14 zebra 127:8 zip 100:4 zipping 104:17	<hr/> 3 <hr/> 3 9:13 21:7 33:14 56:17 59:5,21 61:21 82:3,22 87:3 128:11,12,19 129:19,21 3rd 21:14 32:21 69:21 112:6,19 3701 14:23 72:12,22 74:1,12 <hr/> 4 <hr/> 4 11:19 18:11 20:23 21:2 29:2 30:20 33:17 40:23 42:6 43:16 46:12 47:15 51:6 61:23 62:1 71:20 82:9 83:2 85:24 86:24 87:3,6 96:17 101:12 110:16 113:8 123:2,8 128:12 133:11 4A 72:7 4B 73:18 4C 75:11 4D 76:10,11 125:5 4DD 89:18,18,19 101:14 124:15 4E 78:16 126:14 4F 80:11 4M 84:2 4th 37:23 41:17 60:8 60:12,17 62:13 69:22 103:24 105:2 4Z 127:8 128:10 44th 1:17 <hr/> 5 <hr/> 5 6:18 36:18 37:9 500 2:4,8 55-gallon 28:11 <hr/> 6 <hr/> 6 4:3 6:18 93:24 61 3:3 618 1:18 62226 1:18 62705 2:14 62706 2:5,9 <hr/> 7 <hr/> 7 132:10 <hr/> 8 <hr/> 8-01 93:22 8-17-05 93:23 87 13:10 88 3:3 13:11
				<hr/> # <hr/> #084-003688 134:19 <hr/> 0 <hr/> 07-45 1:5 5:6 084-003688 1:16 <hr/> 1 <hr/> 1st 21:18 32:20 10 5:7 10:07 1:10 5:2 101.628 132:7 1021 1:10 11 1:10,17 5:2,7 134:8 117 3:4 12 3:3 130 3:4 1307 2:13 15 57:8 70:7 16 58:12 18th 134:14 1985 6:12 <hr/> 2 <hr/> 2 15:1 132:9 2nd 32:20 2:17 133:24 20 58:12 70:7 2005 11:19 20:23 37:23 82:4 96:17 2009 5:8 2010 1:10 5:2 134:8 134:14 21 132:5,11 25 132:6 277-0190 1:18 29 5:8,13
		<hr/> Y <hr/> yeah 14:12 15:18 16:16 22:2 23:15 24:5,12 27:2 28:20 28:20 30:13 31:7 31:14 34:22 37:16 38:20 43:2 45:4 49:11 52:15 58:7 58:13,19 62:15 63:16 64:12,15 68:2,5,7 69:9,14 69:20 70:15 71:1,8 71:11 74:24 80:8 84:4,21 85:22 89:17 98:13 108:8 111:2 112:13 113:11 114:10 115:9 128:6 130:18 years 13:14 45:12 52:4 58:12 95:20 111:22 114:13 yells 100:22 <hr/> Z <hr/> Z 76:23 Zappa 5:13 6:9 7:3		

89 58:10

9

9 130:3

9:30 130:4

91 3:3

93 4:3

95 3:4

99.9 23:17