

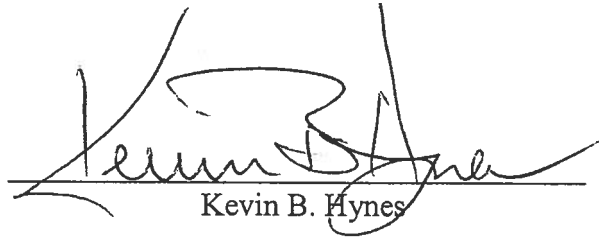
**STATE OF ILLINOIS**  
**Pollution Control Board**

No. PCB No. 04-192  
(Enforcement – Land &  
Water)

**CERTIFICATE OF SERVICE**

I, Kevin B. Hynes, an attorney, certify that on February 9, 2011, I caused the foregoing Notice of Filing and Motion to be served by First Class, postage prepaid, U.S. Mail on the following:

Zemeheret Bereket-Ab  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-2347

  
Kevin B. Hynes

RECEIVED  
CLERK'S OFFICE  
FEB 09 2011  
STATE OF ILLINOIS  
Pollution Control Board

No. PCB No. 04-192  
(Enforcement – Land &  
Water)

3. In Counts I-VI and Count VIII, the Plaintiff alleges that Wooton was the owner and/or operator of the underground storage tank. *See, Complaint* at Count I, ¶31; Count II, ¶¶28-30; Count III, ¶¶28-30; Count IV, ¶¶28-30; Count V, ¶¶28-30; Count VI, ¶¶28-30; Count VIII, ¶¶28-30.

4. There is no allegation in the Complaint that Wooton owned or operated the Site at which the tank was located.

5. In Counts I-VI and Count VIII liability can only be found if the Respondent was the “owner” or “operator” of the underground storage tank at issue. The terms “owner” and “operator” are defined in the Complaint. *See, Complaint* at Count I, ¶24.

6. On December 14, 2010, the parties deposed the Plaintiff’s expert witness, Illinois EPA employee Carol Hawbaker. Exhibit B.

7. Ms. Hawbaker testified that: (1) she is familiar with the Complaint in this matter; (2) she is the Illinois EPA employee the most familiar with this case; and (3) she testified at her deposition on the Illinois EPA’s behalf. *Id.* at p. 7, LL. 5-11; p. 11, LL. 9-12; p. 21, LL. 17-20.

8. Ms. Hawbaker testified that in her opinion Wooton was not the owner of the underground storage tank at issue in this case. *Id.* at p. 17, LL. 16-23.

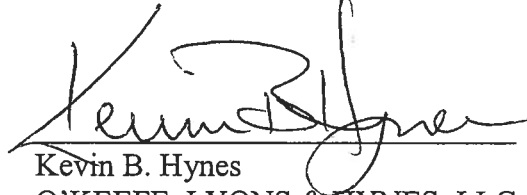
9. Ms. Hawbaker also testified that Wooton was not the operator of the underground storage tank at issue in this case. *Id.* at pp. 23, LL. 22-24; p. 24, LL. 1-2.

10. Ms. Hawbaker is the only Illinois EPA employee or other expert identified by the Plaintiff for purposes of trial.

11. Based on Ms. Hawbaker’s testimony, which is the Illinois EPA’s testimony, the Plaintiff cannot prove its case against Wooton in Counts I-VI or Count VIII.

**WHEREFORE**, the Respondent, Wooton Construction, Ltd., respectfully requests that the Board dismiss with prejudice or enter an order granting summary judgment as to Counts I-VI and Count VIII in favor of Wooton and grant such other relief as the Board deems appropriate and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin B. Hynes", written over a horizontal line.

Kevin B. Hynes  
O'KEEFE, LYONS & HYNES, LLC  
30 N. LaSalle Street, Suite 4100  
Chicago, Illinois 60602  
(312) 621-0400  
Attorney for the Respondent

# **EXHIBIT**

## **A**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
General of the State of Illinois, )

Complainant, )

vs. )

No. PCB No. 04-192  
(Enforcement – Land & Water)

SMITHFIELD PROPERTIES, L.L.C., )  
an Illinois Limited Liability company, )  
WOOTON CONSTRUCTION, LTD., )  
an Illinois corporation, and CHICAGO )  
SUN-TIMES, INC., a Delaware )  
corporation )

Respondents. )

**NOTICE OF FILING**

TO: See attached service list

Please take notice that I have today, December 13, 2010, have filed with the Office of the Clerk of the Illinois Pollution Control Board via electronic filing the Parties' Stipulation of Fact, along with Notice of Filing and Certificate of Service, a copy of which is attached hereto and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN, Attorney General  
of the State of Illinois

BY: 

STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
69 W. Washington St., Ste. 1800  
Chicago, Illinois 60602  
Tel: (312) 814-2087  
[ssylvester@atg.state.il.us](mailto:ssylvester@atg.state.il.us)

**EXHIBIT**

**2**

**12-14-10**

### SERVICE LIST


John Therriault  
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30 North LaSalle Street, Suite 4100  
Chicago, Illinois 60602

Bradley P. Halloran  
Hearing Officer  
James R. Thompson Center  
100 W. Randolph Street - Suite 11-500  
Chicago, Illinois 60601

**CERTIFICATE OF SERVICE**

I, Stephen J. Sylvester, do hereby certify that I served the Parties' Stipulation of Fact, on the persons on the service list by depositing the same in the U.S. Mail, postage prepaid, on December 13, 2010 at 100 W. Randolph, Chicago, Illinois.

  
Stephen J. Sylvester

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
Office of the Attorney General  
69 W. Washington Street, 18<sup>th</sup> Fl.  
Chicago, IL 60602  
312-814-2087  
[ssylvester@atg.state.il.us](mailto:ssylvester@atg.state.il.us)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
General of the State of Illinois, )

Complainant, )

vs. )

No. PCB No. 04-192  
(Enforcement – Land & Water)

SMITHFIELD PROPERTIES, L.L.C., )  
an Illinois Limited Liability company, )  
WOOTON CONSTRUCTION, LTD., )  
an Illinois corporation, and CHICAGO )  
SUN-TIMES, INC., a Delaware )  
corporation )

Respondents. )

**STIPULATION OF FACT**

The Complainant and the Respondents, Smithfield Properties, LLC and Wooton Construction, Ltd., stipulate to the following facts for purposes of expediting these proceeding and narrowing the issues that will be presented at hearing in this matter.

**SITE OWNERSHIP**

1. The Site is located at 222 South Racine, Chicago, Illinois.
2. From 1917 until December 1998, the Chicago Sun-Times, Inc. or its predecessor(s) in interest owned the Site.
3. In December 1998, the Sun-Times entered into an agreement with Kenard Investments, Inc. for the purchase of the Site.
4. In January 1999, Kenard assigned its interest in the Site to The Clare Group, Ltd.
5. In October 1999, The Clare Group, Ltd. assigned its interest in the Site to Smithfield Properties, LLC ("Smithfield").

6. Smithfield acquired the Site and contracted with Wooton for purposes of building residential townhomes and condominiums.

### **SITE OPERATIONS**

7. Until the Site was sold in 1998, the Sun-Times utilized the Site for its fleet maintenance garage.

8. As a result of its operations, the Sun-Times left-in place soil contaminated with gasoline and/or diesel fuel from either leaking underground storage tanks, piping and/or surface spills.

9. During the time the Sun-Times operated the Site, the Sun-Times owned and operated 12 underground storage tanks identified in documents produced in discovery by Smithfield as Tanks 1-12. There are OSFM registration records only for tanks 1-8. Tanks 9-12 are too old to have been registered. Tanks 9-12 appear on Old Sanborne Fire Insurance Maps.

10. Based on information produced in discovery, by Smithfield, at the time of the sale to Kenard in 1998, the tanks were described as follows in the following chart:

<b>Tank</b>	<b>Year Installed</b>	<b>Capacity (gal)</b>	<b>Product Stored</b>	<b>Tank Status</b>
<b>1</b>	1968	1,000	motor oil	abandoned in place 1994
<b>2</b>	1968	1,000	motor oil	abandoned in place 1994
<b>3</b>	1968	1,000	used oil	abandoned in place 1994
<b>4</b>	1968	2,000	ethylene glycol	abandoned in place 1992
<b>5</b>	1986	10,000	diesel	in use
<b>6</b>	1980	10,000	gasoline	in use
<b>7</b>	1966	8,000	gasoline	abandoned in place 1988
<b>8</b>	1968	10,000	gasoline	abandoned in place 1988
<b>9</b>	before 1917	250	gasoline	unknown
<b>10</b>	before 1917	1,000	gasoline	unknown
<b>11</b>	before 1950	unknown	gasoline	unknown
<b>12</b>	before 1950	unknown	gasoline	unknown

11. According to OSFM registration records, tanks 6, 7, and 8 were registered as gasoline tanks. Tank 5 is the only tank registered as diesel tank.

### **1999 TANK REMOVALS**

12. In 1999, Tanks 5 and 6 were removed from the Site.

13. In April 1999, the Sun-Times removed Tank 6, a 10,000-gallon gasoline UST.

14. The removal of Tank 6 was done pursuant to removal permit 104558 issued by the City of Chicago.

15. During the tank removal, which was conducted under the direction and supervision of City of Chicago Department of the Environment and pursuant to 41 Illinois Administrative Code, Part 170, the Sun-Times confirmed a release of gasoline from Tank 6 and reported the release to the Illinois Emergency Management Agency ("IEMA"). IEMA assigned the release Incident No. 99-1013.

16. Sun-Times excavated 30 cubic yards of impacted soil from the tank excavation and manifested it for disposal. Soil samples taken by the Sun-Times confirmed the presence of benzene, toluene, ethyl benzene, and total xylene ("BTEX") in the soil surrounding Tank 6.

17. The Sun-Times was not required by law to and did not analyze the soil for any other constituents.

18. The Sun-Times did not analyze groundwater at the Site or confirm the presence of groundwater at the Site.

19. The Sun-Times removed the soil immediately surrounding Tank 6 and was issued a No Further Remediation Letter for the gasoline release that was reported to IEMA in 1999.

20. In approximately November 1999, Wooton contracted with Speedway Wrecking Co. to remove Tank 5, a 10,000-gallon diesel fuel tank.

21. Tank 5 was located adjacent to Tank 6 at the Site.

22. Speedway subcontracted the tank removal to Omega Environmental Services, Inc. ("Omega").

23. On November 29, 1999, Omega removed Tank 5 and disposed of the tank off-site.

24. Omega prepared a report of the tank removal and submitted the report to Speedway.

25. If called to testify, the City of Chicago would testify that a permit to remove Tank 5 was not applied for nor issued and there were no representatives from the City of Chicago present for the removal of Tank 5.

26. If called to testify, the Illinois State Fire Marshal would testify that Omega did not receive the Fire Marshal's approval to remove Tank 5.

27. Sometime after the removal of Tank 5, Smithfield and Wooton constructed the townhomes and condominiums at the Site.

### **2001 RELEASE REPORT**

28. On or about March 12, 2001, a resident of one of the townhomes within the Site noticed an odor in his drinking water. If called to testify, the resident would testify consistent with this statement.

29. Drinking water samples were taken on April 3, 2001. Sample results indicated that the water was fit for human consumption with the exception of sample number SLI #06B, which was noted in the Project Specific comments as, "PNAs test not run due to contamination."

30. On March 30, 2001, Smithfield and Wooton's consultant, Patrick Engineering, Inc., reported to the Site and found that:

- a. a plumbing contractor may have ruptured a water line at the Site;

- b. in order to uncover the water main and service line, the contractor excavated the area surrounding the line to a depth of 5 feet;
- c. the plumbing contractor noticed what he believed was a diesel odor in the excavation;
- d. perched water filled the excavation;
- e. a petroleum sheen was observed on the water;
- f. the contractor dewatered the excavation and pumped the water into a nearby storm sewer; and
- g. a City of Chicago inspector on-site to inspect the repairs observed the sheen and instructed the contractor to report a release to IEMA.

31. On March 30, 2001, Wooton reported a 5-gallon release of diesel fuel to IEMA, which issued Incident No. H2001-0544. The incident report states that the incident occurred at an unknown time on March 28, 2001.

32. Prior to March 30, 2001, Smithfield and Wooton did not report any release(s) to IEMA or Illinois EPA at the Site.

33. On April 16, 2001, Patrick Engineering submitted to the Illinois EPA Patrick's *Report of Environmental Investigation*, which detailed Patrick's April 5, 2001 on-site sampling activities.

34. On May 18, 2001, Patrick Engineering submitted to Illinois EPA various documents and information requested by Illinois EPA.

35. On May 24, 2001, Patrick Engineering submitted to the Illinois EPA its *Remedial Action Completion Report* ("RACR") for the Site.

36. The RACR stated, among other things, that Patrick removed 425 tons of soil from the Site between what are known as Units 23-42.

37. On July 27, 2001, the Illinois EPA rejected the RACR.

38. On July 13, 2001, Patrick Engineering submitted to the Illinois EPA Patrick's *Report of Additional Environmental Investigations*.

39. On September 11, 2001, Patrick Engineering submitted to the Illinois EPA an *Addendum to Remedial Action Completion Report*, in response to the Illinois EPA's July 27, 2001 rejection of the RACR.

40. The *Addendum to Remedial Action Completion Report* states, among other things, that Wooton intends to utilize the clean soil barrier, the building foundations, and the concrete pavements as engineered barriers.

41. The *Addendum to Remedial Action Completion Report* contains an Illinois EPA Property Owner Summary form signed by Joe Oshinski as agent for Smithfield Properties, dated September 11, 2001.

42. In January 2002, Patrick submitted to the Illinois EPA a *Groundwater Classification Study and Tier 2 Evaluation*.

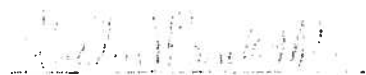
43. On March 20, 2002, the Illinois EPA rejected the *Groundwater Classification Study and Tier 2 Evaluation*.

44. On August 2, 2006, Patrick prepared a report for Smithfield documenting additional soil sampling conducted in the former location of the Sun-Times Section B building on July 12, 2006.

45. Petroleum-related constituents remain in the soil at the Site, including under the residences.

4c. Groundwater has been identified at the Site.

For the Complainant:



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For the Respondents:



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# **EXHIBIT**

## **B**

<p style="text-align: center;">BEFORE THE ILLINOIS POLLUTION CONTROL BOARD</p> <p>PEOPLE OF THE STATE OF ILLINOIS, )  ) )  Complainant, ) )  ) )  vs. ) PCB No.04-192  ) (Enforcement -  SMITHFIELD PROPERTIES, L.L.C., ) Land &amp; Water)  an Illinois Limited Liability )  Company, WOOTON CONSTRUCTION, )  LTD., an Illinois Corporation, )  and CHICAGO SUN-TIMES, INC., a )  Delaware Corporation, )  ) )  Respondents. ) )</p> <p>Discovery Deposition of CAROL HAWBAKER taken at  the instance of the Respondents, on the 14th day of  December, 2010, at 11:00 a.m. at 1 West Old State  Capitol Plaza, Suite 600, Springfield, Illinois,  pursuant to notice.</p> <p style="text-align: center;">SANDRA K. HAINES, CSR  2601 South Spresser Street  Taylorville, Illinois 62568  Phone (217)824-8558</p> <p>Reported by:  Carla J. Boehl, Reporter  CSR No. 084-002710</p> <p style="text-align: right;">Page 1</p>	<p>1 APPEARANCES:  2 OFFICE OF THE ATTORNEY GENERAL  Environmental Bureau North  3 69 West Washington Street  Suite 1800  4 Chicago, Illinois 60602  Ph. (312) 814-2087  5  6 BY: MR. STEPHEN J. SYLVESTER  Appearing on behalf of the Complainant  7 OFFICE OF THE ATTORNEY GENERAL  Environmental Bureau North  8 69 West Washington Street  Suite 1800  9 Chicago, Illinois 60602  Ph. (312) 814-3816  10  11 BY: MR. ZEMEHERET BEREKET-AB  Appearing on behalf of the Complainant  12 O'KEEFE, LYONS &amp; HYNES, LLC  Attorneys at Law  13 30 North LaSalle Street  Suite 4100  14 Chicago, Illinois 60602  Ph. (312) 621-0400  15  16 BY: MR. KEVIN B. HYNES  Appearing on behalf of the Respondents  17  18  19  20  21  22  23  24</p> <p style="text-align: right;">Page 2</p>
<p>1 INDEX  2 PAGE  3 CAROL HAWBAKER  4 Examination by Mr. Hynes 4  5  6  7  8  9  10  11  12 EXHIBITS IDENTIFIED  13 Exhibit 1 (Complaint) 6  Exhibit 2 (Stipulation) 8  14 Exhibit 3 (6-15-10 Memorandum) 25  Exhibit 4 (Technical Review Notes) 25  15 Exhibit 5 (OSFM Request Form) 28  Exhibit 6 (Expert Opinion Report) 29  16 Exhibit 7 (Phase I Report) 32  Exhibit 8 (Site Blueprint) 37  17  18  19  20  21  22  23  24</p> <p style="text-align: right;">Page 3</p>	<p>1 (Whereupon the witness was duly  2 sworn by the Notary Public.)  3 CAROL HAWBAKER  4 having been first duly sworn, was examined and  5 testified as follows:  6 EXAMINATION  7 BY MR. HYNES: This is the deposition of  8 Carol Hawlbaker... Am I pronouncing that correct?  9 THE DEPONENT: Hawbaker.  10 BY MR. HYNES: Excuse me. ..pursuant to  11 agreement and pursuant to the rules of the Illinois  12 Supreme Court.  13 Q. Would you state your first name and spell  14 your last for the record.  15 A. Carol, C-A-R-O-L. Last name is Hawbaker,  16 H-A-W-B-A-K-E-R.  17 Q. Where are you currently employed?  18 A. The Illinois EPA.  19 Q. And what is your title?  20 A. Environmental Protection Specialist  21 Number III.  22 Q. And are you in a particular division  23 within the EPA?  24 A. Leaking Underground Storage Tank Bureau</p> <p style="text-align: right;">Page 4</p>

1 of Lands.  
2 Q. How long have you been with the Illinois  
3 EPA?  
4 A. Ten years.  
5 Q. How long have you been in the Leaking  
6 Underground Storage Tank program?  
7 A. The full time, ten years.  
8 Q. In 2001 what was your title?  
9 A. Environmental Protection Specialist.  
10 Q. Is there a three grade or --  
11 A. Yeah, at that point I may have been a one  
12 because I think that was my first year.  
13 Q. Is a designation of three just a  
14 seniority pay grade type issue?  
15 A. Yes.  
16 Q. Have you ever been deposed before?  
17 A. Yes.  
18 Q. How many times?  
19 A. Three.  
20 Q. In what type of cases?  
21 A. All appeals.  
22 Q. Appeals of what?  
23 A. Leaking underground storage tank  
24 decisions.

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1 complaint?  
2 Q. Yes, it is.  
3 A. It's been awhile since I have seen it,  
4 but I have seen it before.  
5 Q. At the time the complaint was filed were  
6 you familiar with the terms of the complaint?  
7 A. Yes.  
8 Q. Did you agree with the allegations in the  
9 complaint?  
10 A. Yes, they were based on the violation  
11 notice.  
12 Q. Which violation notice?  
13 A. I would have to take a look and see what  
14 the violation notice number was.  
15 Q. But it was the violation notice to the  
16 parties in this case?  
17 A. Yes.  
18 Q. Today we are really only here to talk  
19 about what we are identifying as the Smithfield site  
20 or 222 South Racine. What is your understanding of  
21 the history of the site prior to the time Smithfield  
22 purchased the property?  
23 A. The Chicago Sun-Times operated it as a  
24 fleet maintenance garage.

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1 Q. So you are familiar with the process; I  
2 am sure your attorneys have explained all the rules  
3 and you understand?  
4 A. Right.  
5 Q. I apologize for the cold. If you can't  
6 understand a question, just ask me to repeat it. I  
7 am going to have marked as Exhibit 1 the complaint  
8 that has been filed in this matter. We are going to  
9 get the clean one later.  
10 Have you ever read the complaint?  
11 A. I have. It's been some time, years.  
12 Q. I am going to give you a copy. Did you  
13 participate in the drafting of the complaint at all?  
14 A. I don't recall if I participated actively  
15 or if it was given to me. I believe what I did was I  
16 set the requirements that were violated on a  
17 worksheet, which is our standard procedure, and then  
18 a complaint was drafted from that.  
19 (Whereupon Exhibit 1 was  
20 presented for purposes of  
21 identification as of this date.)  
22 Q. And you are familiar with the document  
23 that's in front of you?  
24 A. I haven't seen it. Is this the

Page 6

1 Q. Do you recall for how long?  
2 A. Many years, as early as possibly 1917.  
3 Q. Do you recall when Smithfield purchased  
4 the property?  
5 A. I believe it was in October of 1999.  
6 MR. HYNES: I am going to have this marked as  
7 Exhibit 2. This is the stipulation that was filed in  
8 the case.  
9 (Whereupon Exhibit 2 was  
10 presented for purposes of  
11 identification as of this date.)  
12 Q. There you go. You just keep that with  
13 you. As we discussed earlier, Exhibit 2 is a  
14 stipulation of the facts that the parties have agreed  
15 to in this matter. So I am going to read from this  
16 periodically just to have the statements in the  
17 record. Paragraph 2 from the stipulation says, "From  
18 1917 until December 1998 the Chicago Sun-Times, Inc.  
19 or its predecessors in interest owned this site."  
20 Paragraph 3, "In December 1998 the  
21 Sun-Times entered into an agreement with Kenard  
22 Investments, Inc., for the purchase of the site."  
23 Four, "In January 1999 Kenard assigned  
24 its interest in the site to The Clare Group,"

Page 8

<p>1 C-L-A-R-E, Ltd.</p> <p>2 And, five, "In October 1999 The Clare</p> <p>3 Group, Ltd., assigned its interest in the site to</p> <p>4 Smithfield Properties, LLC (Smithfield)."</p> <p>5 Is there any statements that I have</p> <p>6 read that you disagree with?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Are you familiar with who Kenard</p> <p>9 Investments, Inc., is?</p> <p>10 A. No, I am not.</p> <p>11 Q. Are you familiar with The Clare Group?</p> <p>12 A. No, I am not, but I believe The Clare</p> <p>13 Group and Smithfield had the same principal which</p> <p>14 would be William Harris Smith. But I do not know</p> <p>15 their association.</p> <p>16 Q. What do you base that statement on?</p> <p>17 A. There were purchase agreements that were</p> <p>18 submitted for review.</p> <p>19 Q. Your conclusion is based on your review</p> <p>20 or did somebody else --</p> <p>21 A. They were both signed by William Harris</p> <p>22 Smith, one as a principal for The Clare Group, one as</p> <p>23 a principal for Smithfield.</p> <p>24 Q. I am going to ask you to turn to page 4</p> <p style="text-align: right;">Page 9</p>	<p>1 of the complaint, paragraph 13.</p> <p>2 A. Page 4?</p> <p>3 Q. Yes, paragraph 13 at the top. Would you</p> <p>4 read that out loud?</p> <p>5 A. "Prior to the sale of the site, Sun-Times</p> <p>6 did not remediate the soil at the site, with the</p> <p>7 exception of the small area impacted with gasoline</p> <p>8 under LUST Incident Number 991013. Sun-Times left in</p> <p>9 place soil contaminated with either gasoline or</p> <p>10 diesel fuel from either leaking USTs or surface</p> <p>11 spills when the Sun-Times was using the site for a</p> <p>12 number of years as a fleet vehicle maintenance and</p> <p>13 refueling facility."</p> <p>14 Q. At the time the complaint was filed did</p> <p>15 you agree with that statement?</p> <p>16 A. At the time the complaint was filed, I</p> <p>17 believe we were still trying to determine whose</p> <p>18 responsibility it was.</p> <p>19 Q. By responsibility, you mean</p> <p>20 responsibility for the clean-up or who was</p> <p>21 responsible left the contamination there?</p> <p>22 A. Who was responsible for the clean-up.</p> <p>23 Q. But do you still agree with the statement</p> <p>24 that the Sun-Times, prior to the sale of the site,</p> <p style="text-align: right;">Page 10</p>
<p>1 the Sun-Times left in place soil contaminated with</p> <p>2 either gasoline and/or diesel fuel from either</p> <p>3 leaking USTs and/or surface spills?</p> <p>4 A. That is what Patrick Engineering told me.</p> <p>5 Q. I am asking what your opinion is.</p> <p>6 A. What my opinion is, at the time this was</p> <p>7 drafted, I was basing it on Patrick Engineering's</p> <p>8 basis that that was what the Sun-Times left in place.</p> <p>9 Q. Based on your experience with this case,</p> <p>10 are you the employee at the IEPA most familiar with</p> <p>11 this case?</p> <p>12 A. Yes, I believe so.</p> <p>13 Q. Now, this is an allegation and complaint</p> <p>14 being made by the People of the State of Illinois.</p> <p>15 Is it still the State of Illinois's position in</p> <p>16 paragraph 13 that the Sun-Times left in place</p> <p>17 contamination?</p> <p>18 A. The Sun-Times may have left in place</p> <p>19 contamination.</p> <p>20 Q. But you don't know either way?</p> <p>21 A. I don't know either way.</p> <p>22 Q. If we back up, Smithfield -- and, again,</p> <p>23 we have stipulated to other facts; the entity that</p> <p>24 owns the property we will continuously refer to as</p> <p style="text-align: right;">Page 11</p>	<p>1 Smithfield, which Smithfield entity, that's another</p> <p>2 matter.</p> <p>3 Smithfield took title to the property in</p> <p>4 October of 1999. Based on your understanding of the</p> <p>5 case, was the soil contaminated with diesel fuel</p> <p>6 prior to 1999?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you have any knowledge of when the</p> <p>9 soil became contaminated with diesel fuel?</p> <p>10 A. No, I don't.</p> <p>11 Q. Based on your understanding of this case,</p> <p>12 is the soil contaminated with anything other than</p> <p>13 diesel fuel?</p> <p>14 A. It may be contaminated with gasoline as</p> <p>15 well.</p> <p>16 Q. And what do you make that statement --</p> <p>17 what is your statement based on?</p> <p>18 A. A 2000 report that was done in discovery</p> <p>19 that was submitted that indicated that there was also</p> <p>20 benzene contamination in another area of the property</p> <p>21 which is not the result of the violation notice.</p> <p>22 Q. I am going to ask you to turn to page 5</p> <p>23 of the complaint, paragraph 18. Would you read that</p> <p>24 statement out loud?</p> <p style="text-align: right;">Page 12</p>

<p>1 A. "Complainant alleges that the source of 2 the soil contamination in the area where the water 3 main ruptured was from one or more USTs owned and 4 operated by Sun-Times and/or surface spills of 5 petroleum products over a number of years when the 6 Sun-Times used the site as a fleet vehicle 7 maintenance and refueling facility." 8 Q. Based on your understanding of the case 9 today, do you agree with that statement? 10 A. Based on my understanding of the case 11 today, I am not sure. 12 Q. Is it fair to say that the Illinois EPA 13 has no evidence of when the soil became contaminated? 14 A. No. It may have been in the past. It 15 may have been the rupture during the tank removal. 16 Q. But there is no evidence to indicate 17 either way? 18 A. There is no evidence one way or the 19 other. 20 Q. So then I think I may have already asked 21 this. In October 1999 when Smithfield took title to 22 the property, you have no idea whether the property 23 was already contaminated with gasoline or diesel? 24 A. I know in 1999 they reported a release</p> <p style="text-align: right;">Page 13</p>	<p>1 from their gasoline tank and they remediated their 2 gasoline release. In 1999 prior to that I believe 3 that was the only sampling that was ever done on the 4 property. 5 Q. It is your position that they reported a 6 release in 1999? 7 A. Chicago Sun-Times from the gasoline tank 8 removal. 9 Q. Okay. You said Smithfield. 10 A. Oh, I am sorry, Chicago Sun-Times. 11 Q. Okay. The history of this property, it 12 was a maintenance facility for the Sun-Times and 13 whoever owned it prior to them? 14 A. Yes. 15 Q. How many sites like this have you worked 16 on? 17 A. I am not sure what the question is. What 18 kind of site are you referring to? 19 Q. Maintenance facilities, garages. 20 A. I have worked on bus facilities, gas 21 stations with maintenance type activities going on, 22 things like that. Again, I am not quite sure what 23 you are asking. 24 Q. I just wanted to know that you have</p> <p style="text-align: right;">Page 14</p>
<p>1 worked on similar types of sites. 2 A. Yes. 3 Q. Would you agree with that? 4 A. Yes. 5 Q. Is it your experience that sites of this 6 type which are contaminated are contaminated over the 7 course of their operation or a single incident? 8 A. It is hard to say. It is really hard to 9 say. It depends on -- each site is different. 10 Q. But you would need evidence to establish 11 when the release actually occurred? 12 A. I don't know what evidence -- it would 13 depend on the evidence. What sort of evidence would 14 you be referring to? 15 Q. Well, I am asking you. I mean, what type 16 of evidence would you need, to establish when a 17 release occurred? 18 A. I don't know if you can establish when a 19 release occurred unless you -- I guess there is 20 something called fingerprint analysis of 21 contaminants. 22 Q. Has the Illinois EPA performed 23 fingerprint analysis? 24 A. No, we don't. We don't perform any</p> <p style="text-align: right;">Page 15</p>	<p>1 analysis. 2 Q. As you sit here -- just for the purpose 3 of going forward, the tank we are talking about is 4 Tank Number 5? 5 A. Yes. 6 MR. SYLVESTER: I will stipulate to that. 7 Q. At the time the complaint was filed, was 8 it the Illinois EPA's position that Smithfield was 9 the owner of Tank Number 5? 10 A. It was the Illinois EPA's position that 11 Smithfield removed Tank Number 5. 12 Q. Okay. Was it the Illinois EPA's position 13 that the defendant Wooton, W-O-O-T-O-N, Construction 14 owned the tank, owned Tank Number 5? 15 A. We were told that Wooton was the owner of 16 the tank. 17 Q. Who told you that? 18 A. Jerry Bowden from Patrick Engineering 19 when he called into the IEMA. 20 Q. Who is Jerry Bowden, again? 21 A. He is the project manager with Patrick 22 Engineering. 23 Q. It's B-O-W-D-E-N? 24 A. D-E-N.</p> <p style="text-align: right;">Page 16</p>

<p>1 Q. So if there is an allegation in the 2 complaint that states that Smithfield was the owner 3 of the tank, you wouldn't agree with that?</p> <p>4 A. We learned at a later time that Wooton 5 actually was contracted by Smithfield. And when we 6 determined that Smithfield was the owner of the 7 property and Smithfield was the one who had 8 contracted to remove the tank, then that was when the 9 question came up as to whether Smithfield owned the 10 tank.</p> <p>11 Q. Okay. So as you sit here today, what is 12 your opinion who owned the tank in 2001?</p> <p>13 A. It would be Smithfield. They were the 14 ones who requested that Wooton procure all the proper 15 permits.</p> <p>16 Q. So Wooton was not the owner of the tank?</p> <p>17 A. No, it should not, no.</p> <p>18 Q. So if there was an allegation in this 19 complaint that Wooton owned the tank, you would 20 disagree with that?</p> <p>21 A. Yeah. At the time we were still trying 22 to figure out what the relationship was between 23 Wooton and Smithfield.</p> <p>24 Q. I am going to ask you to turn to page 7</p> <p style="text-align: right;">Page 17</p>	<p>1 of the complaint. And in the middle in parentheses, 2 and this is a quote from the complaint in the 3 Definitions, it is 35 Illinois Administrative Code 4 732.103. Would you read the definition of "Owner" on 5 page 7?</p> <p>6 A. "OWNER, in the case of an underground 7 storage tank in use on November 8, 1984, or brought 8 into use after that date, any person who owns an 9 underground storage tank used for the storage, use or 10 dispensing of regulated substances."</p> <p>11 Q. And it is the Illinois EPA's position 12 that Smithfield owned Tank Number 5?</p> <p>13 A. Smithfield took ownership of the tank 14 when they removed it.</p> <p>15 Q. If the tank is removed, disposed of and 16 is no longer on the site, who owns it at that point?</p> <p>17 A. Who owns it at that point. When is the 18 tank removed?</p> <p>19 Q. When a tank is removed from a site, cut 20 up and disposed of, taken off the site and put 21 somewhere else, who owns the tank at that point?</p> <p>22 MR. SYLVESTER: I am going to object to that. 23 It calls for a legal conclusion. If you are 24 comfortable answering it, you can.</p> <p style="text-align: right;">Page 18</p>
<p>1 A. I am still not clear. It would be 2 recycled; it would no longer be a tank.</p> <p>3 Q. Does anybody own that tank at that point?</p> <p>4 A. I don't think so because it is not a tank 5 any more. Perhaps the scrap yard.</p> <p>6 Q. So it is your testimony that when 7 Smithfield removed the tank, Tank 5, that's when they 8 became the owner?</p> <p>9 A. Smithfield was required in order to 10 remove the tank to obtain permits to remove the tank. 11 By submitting -- had they followed the procedures by 12 submitting an application for removal, they would 13 have had to be the owner because they were the 14 persons removing the tank. The application to remove 15 can only be submitted and requested by the owner.</p> <p>16 Because they simply did not follow that 17 rule does not mean that they are no longer the owner. 18 Had they submitted all their permits and 19 applications, then they would have been the owner of 20 the tank. By them simply not following that 21 procedure does not negate them from being responsible 22 for the release.</p> <p>23 Q. Okay. I don't know if you answered my 24 question, though. But at the time the tank was</p> <p style="text-align: right;">Page 19</p>	<p>1 removed, it is the EPA's position that Smithfield 2 owned Tank 5?</p> <p>3 MR. SYLVESTER: Once again I am going to 4 object to that because it calls for a legal 5 conclusion. The whole line of question whether 6 Smithfield was an owner of the tank is a legal 7 conclusion, issue, in this case.</p> <p>8 Q. She has testified already. It is your 9 opinion that Smithfield owned the tank?</p> <p>10 A. Yes.</p> <p>11 Q. Prior to Smithfield's ownership of the 12 property who owned the tank?</p> <p>13 A. Chicago Sun-Times.</p> <p>14 Q. Did the Kenard group at any time own the 15 tank?</p> <p>16 A. The Kenard group did not apply to remove 17 the tank.</p> <p>18 Q. But neither did the Sun-Times?</p> <p>19 A. No, but Smithfield did not -- Smithfield 20 did remove the tank.</p> <p>21 Q. Okay. But why is the Sun-Times the owner 22 of the tank; they didn't seek permission to remove 23 it?</p> <p>24 A. Because it was registered by them.</p> <p style="text-align: right;">Page 20</p>

1 Q. So ownership isn't determined merely by  
2 owning a piece of property where a tank is located?  
3 A. No, it is by owning the tank.  
4 Q. But ownership occurs either by  
5 registration or removal?  
6 A. Yes.  
7 Q. Thank you. Just above the word "Owner"  
8 is the word "Operator." Would you read that  
9 definition?  
10 A. "OPERATOR, means any person in control of  
11 or having responsibility for the daily operation of  
12 the underground storage tank, 42 U.S.C. Section 6991,  
13 parentheses, sorry.  
14 Q. Was Smithfield the operator of the tank?  
15 MR. SYLVESTER: I object to that. It calls  
16 for a legal conclusion.  
17 Q. Well, let's just get something clear.  
18 Are you here testifying on behalf of the Illinois  
19 EPA?  
20 A. Yes.  
21 MR. HYNES: She can answer those questions.  
22 These are allegations made by the Illinois EPA. They  
23 should answer the questions, without objection.  
24 MR. SYLVESTER: I'm making the objection to

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1 A. I'm not quite sure, but for some reason I  
2 believe it may be 30 days.  
3 Q. Thirty days from what?  
4 A. From the date the tank was last used.  
5 Q. Do you have any idea when this tank was  
6 last used?  
7 A. No, I don't. According to Omega  
8 Environmental Report it was last used eight weeks  
9 prior to removal. Then again, nothing has been filed  
10 officially with the State Fire Marshal as to when it  
11 was taken out of use.  
12 Q. So we have no idea?  
13 A. No. In fact, it is still considered  
14 active and in use as we speak.  
15 MR. HYNES: I am going to object to her legal  
16 conclusions now.  
17 A. I am simply stating what the registration  
18 states.  
19 Q. I am just playing with him.  
20 A. Yes. I am simply stating what the  
21 registration states at this time.  
22 Q. As we sit here today, was Wooton an  
23 operator of the tank?  
24 A. Wooton I do not believe probably was an

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1 preserve the record.  
2 MR. HYNES: Okay. No problem.  
3 MR. SYLVESTER: If she can answer the  
4 question, so be it.  
5 BY MR. HYNES: No problem.  
6 Q. Do you believe -- does the EPA maintain  
7 that Smithfield was the operator of the tank?  
8 A. I believe Chicago Sun-Times would have  
9 been considered the operator.  
10 Q. At all times?  
11 A. To the best of my knowledge. It is hard  
12 to say what sort of activities went on after the  
13 Sun-Times sold the property. It was still considered  
14 in use.  
15 Q. Why was it still considered in use?  
16 A. Because no one had taken it out of use  
17 pursuant to the State Fire Marshal, and they require  
18 that.  
19 Q. And how is it that they would have taken  
20 it out of use?  
21 A. They need to amend their tank  
22 registration information and state that their tank is  
23 taken out of use.  
24 Q. When do they have to do that?

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1 operator because they were acting under the direction  
2 of Smithfield.  
3 Q. A lot of this case stems from a release  
4 that was identified in March of 2001?  
5 A. Yes.  
6 Q. At that point you would agree that Tank 5  
7 was no longer at the site?  
8 A. No, it had been removed prior to that,  
9 but we don't know when because there were no permits.  
10 Q. My question is simply the tank wasn't on  
11 the site in March of 2001?  
12 A. No.  
13 Q. Based on your testimony earlier,  
14 Smithfield wouldn't be considered an owner at that  
15 point because the tank was gone?  
16 A. Yes, that is correct.  
17 Q. Thank you. And neither would Wooton?  
18 A. No.  
19 Q. I am going to ask you to look at page 20  
20 -- or, excuse me, 31. It is paragraph 29. It says,  
21 "In November 1999 when Smithfield and Wooton removed  
22 the active 10,000 gallon diesel UST from the site,  
23 Sun-Times was still the registered owner of the UST."  
24 Is that just some semantics issue that they were the

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<p>1 registered owner?</p> <p>2 A. Yes, Smithfield would have been required</p> <p>3 to register the UST in their name had they gotten the</p> <p>4 permit to remove it.</p> <p>5 Q. So in November 1999 who was the legal</p> <p>6 owner of the tank, the Sun-Times or Smithfield?</p> <p>7 A. According to the OSFM records, the</p> <p>8 Sun-Times.</p> <p>9 Q. Sun-Times. In the EPA's opinion who was</p> <p>10 the owner?</p> <p>11 MR. SYLVESTER: Asked and answered.</p> <p>12 Objection.</p> <p>13 Q. You can still answer the question.</p> <p>14 A. I can still answer the question?</p> <p>15 MR. SYLVESTER: Yeah.</p> <p>16 A. Okay. Well, Smithfield was because they</p> <p>17 were the ones who removed it.</p> <p>18 MR. HYNES: Okay. I am going to have these</p> <p>19 -- and I am just trying to clear up my own confusion.</p> <p>20 These are Exhibits 3 and 4.</p> <p>21 (Whereupon Exhibits 3 and 4 were</p> <p>22 presented for purposes of</p> <p>23 identification as of this date.)</p> <p>24 Q. I am going to have you look at Exhibits 3</p> <p style="text-align: right;">Page 25</p>	<p>1 and 4. Do you recognize those documents?</p> <p>2 A. Yes.</p> <p>3 Q. What are they?</p> <p>4 A. Exhibit 3 is a memorandum that I wrote to</p> <p>5 Doug Clay which was the section manager at the time.</p> <p>6 Exhibit 4 are my own technical review notes from July</p> <p>7 of 2001.</p> <p>8 Q. There has been a lot of discussion of how</p> <p>9 many diesel tanks were at this property.</p> <p>10 A. Yes.</p> <p>11 Q. If you look on -- it's the first page of</p> <p>12 the June 15 memorandum, SFP 328, Exhibit 3. The</p> <p>13 second paragraph, it discusses two tanks that were</p> <p>14 abandoned in place between 1988 and 1994. First of</p> <p>15 all, what does "abandoned in place" mean?</p> <p>16 A. That means they were -- "abandoned in</p> <p>17 place" is a Chicago regulation that they allow for</p> <p>18 tanks to be abandoned in place. If there is a</p> <p>19 structural issue with their removal, then they can be</p> <p>20 cleaned, cut and have procedures placed where they</p> <p>21 are not actually removed from the ground.</p> <p>22 Q. In that same paragraph you note that one</p> <p>23 of those tanks that was abandoned in place was a</p> <p>24 diesel tank?</p> <p style="text-align: right;">Page 26</p>
<p>1 A. Yes. I was told that actually by Patrick</p> <p>2 Engineering at that time. They are the ones who gave</p> <p>3 me the list of the tanks. Unfortunately, the OSFM</p> <p>4 records, once I determined them, they did not</p> <p>5 correspond with what Patrick Engineering told me.</p> <p>6 Q. And then I am going to ask you to look at</p> <p>7 Exhibit 4 on page SFP 351. There is an asterisk note</p> <p>8 and it says, "Permit Number 694934 in 1989 abandons</p> <p>9 in place one 10,000 gallon diesel and one 10,000</p> <p>10 gallon gasoline tank."</p> <p>11 A. Yeah, that was information again that</p> <p>12 Patrick gave me. There was nothing in the OSFM</p> <p>13 registration information that stated that that was a</p> <p>14 diesel tank.</p> <p>15 Q. Is the OSFM registration the only source</p> <p>16 of information that would have indicated that the</p> <p>17 tank was either diesel or gasoline?</p> <p>18 A. Yes, they are required to report them.</p> <p>19 Q. Is it possible they made a mistake on the</p> <p>20 registration?</p> <p>21 A. I guess it is possible. They should know</p> <p>22 what they have in their tanks.</p> <p>23 MR. HYNES: I am going to have this marked as</p> <p>24 Exhibit 5.</p> <p style="text-align: right;">Page 27</p>	<p>1 (Whereupon Exhibit 5 was</p> <p>2 presented for purposes of</p> <p>3 identification as of this date.)</p> <p>4 Q. Showing you what's been marked as Exhibit</p> <p>5 5. Are you familiar with that document?</p> <p>6 A. Yes, it was my Request Form to the State</p> <p>7 Fire Marshal.</p> <p>8 Q. I am going to ask you to look at page SFP</p> <p>9 142.</p> <p>10 A. 142.</p> <p>11 Q. And 143.</p> <p>12 A. Okay.</p> <p>13 Q. Is this a State Fire Marshal record?</p> <p>14 A. This is a City of Chicago record.</p> <p>15 Q. Did you submit a FOIA request to the City</p> <p>16 of Chicago as well?</p> <p>17 A. I believe they sent it to me. Eric</p> <p>18 Soriano from the City of Chicago sent it to me.</p> <p>19 Q. I am sorry, would you look at SFP 141?</p> <p>20 A. SFP 141?</p> <p>21 Q. It's the prior page.</p> <p>22 A. Yeah, that's the City of Chicago.</p> <p>23 Q. Would that be the cover page?</p> <p>24 A. Yeah.</p> <p style="text-align: right;">Page 28</p>

1 Q. If you look at SFP 143, it says, "The  
2 following lists are old building department permits  
3 issued for underground storage tank work prior to  
4 1/1/1993, at 222 South Racine." 222 South Racine is  
5 the site we are talking about?  
6 A. Yes.  
7 Q. If you would look under the entry of  
8 April 20, 1989?  
9 A. Yes.  
10 Q. Does this indicate that there was a  
11 10,000 gallon diesel tank filled in with pea gravel?  
12 A. It indicates that there may have been.  
13 However, that's not how they registered their tank.  
14 Q. But I just want your testimony. That's  
15 what this thing means here, though?  
16 A. That's what it states.  
17 MR. HYNES: Okay. You can put that aside.  
18 May I have this marked as Exhibit 6?  
19 (Whereupon Exhibit 6 was  
20 presented for purposes of  
21 identification as of this date.)  
22 Q. It is your opinion today that there was  
23 only one diesel tank?  
24 A. I only have information supporting one

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1 BY MR. HYNES:  
2 Q. All right. So this is your expert  
3 opinion report, is that correct?  
4 A. That is correct.  
5 Q. And you reviewed a host of documents that  
6 have been produced in this matter?  
7 A. Yes, the administrative record and I  
8 believe information from the discovery.  
9 Q. Okay. On page 4, Footnotes 30, 31 and  
10 32.  
11 A. Page 4, I am missing page 4.  
12 Q. Interesting.  
13 A. Oh, wait, here it is in the back. What  
14 footnotes?  
15 Q. 30, 31 and 32.  
16 A. 30, 31 and 32. The Phase I?  
17 Q. Yes. Do you recall reviewing that Phase  
18 I?  
19 A. Yes, I do.  
20 Q. And that was a Phase I prepared in 1994?  
21 A. Yes.  
22 Q. And do you recall in that Phase I a  
23 discussion of two tanks being abandoned in place at  
24 the site in the late '80s because they were leaking?

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1 diesel tank that was registered.  
2 Q. And the basis of that is strictly the  
3 State Fire Marshal registration records?  
4 A. Yes.  
5 Q. I am going to have you look at Exhibit 6.  
6 Are you familiar with that document?  
7 A. Yes, this is the Expert Witness  
8 Disclosure.  
9 Q. Did you draft this?  
10 A. Yes.  
11 Q. Did anybody assist you in drafting it?  
12 A. My attorneys did.  
13 Q. Do you have any drafts of this document  
14 in your files?  
15 A. I am not sure. In my files with me? In  
16 my files at the office?  
17 Q. Anywhere.  
18 A. I probably submitted drafts prior to  
19 this. I am sure I have submitted drafts to you prior  
20 to this.  
21 MR. HYNES: What do you want to do about  
22 those? Go off the record.  
23 (Whereupon there was then had an  
24 off-the-record discussion.)

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1 A. I believe there was a discussion.  
2 However, there was no supporting documentation.  
3 MR. HYNES: May I have this marked as Exhibit  
4 7?  
5 (Whereupon Exhibit 7 was  
6 presented for purposes of  
7 identification as of this date.)  
8 Q. Is that the Phase I report you were just  
9 discussing?  
10 A. It looks like it. For some reason I  
11 thought it may have been larger, but it could be  
12 that.  
13 Q. Are these the pages you identify in your  
14 expert report? This is pages SO582 to SO814.  
15 A. Yeah, I assume that's it then.  
16 Q. And you relied on this document in  
17 forming your opinions in this expert report?  
18 A. Yes.  
19 Q. And you believe that document to be true?  
20 A. I don't know.  
21 Q. So if the document is false or incorrect,  
22 then your opinions are incorrect?  
23 A. If the document is false, yes, my  
24 opinions would be incorrect for some of the items

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1 that I relied on.  
2 Q. But you don't know the truth or the  
3 veracity of the document?  
4 A. No, it was submitted by Smithfield, so I  
5 am assuming it is a true document.  
6 Q. Okay, thank you. You can put that aside.  
7 Let's just skip right to Opinion 2. Would you read  
8 that for the record?  
9 A. Can I get a copy that doesn't have the  
10 pages backwards? Is that okay?  
11 Q. Yeah, why don't we just take the staple  
12 off, fix it.  
13 A. Yeah, this one is okay. Opinion 2.  
14 MR. HYNES: Wait, let's go off the record.  
15 (Whereupon there was then had an  
16 off-the-record discussion.)  
17 BY MR. HYNES:  
18 Q. Could you read Opinion 2?  
19 A. Opinion 2. "Smithfield is responsible  
20 for addressing the contamination found at the site in  
21 2001, as it was caused by a release of diesel fuel  
22 from a 10,000 gallon diesel UST that was registered  
23 with the OSFM as Tank 5."  
24 Q. In your own words why is Smithfield

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1 Q. Wooton did not own the property?  
2 A. In 2001?  
3 Q. Correct.  
4 A. Well, at first, I guess at the time --  
5 oh, I am sorry, could you ask that question again?  
6 Q. In 2001 is it the EPA's position that  
7 Wooton owned the property?  
8 A. No, no, Wooton we discovered was a  
9 contractor who was working for Smithfield.  
10 Q. In 2001 when the release was reported is  
11 it your position that the owner of the tank is  
12 responsible for addressing the contamination or the  
13 owner of the property?  
14 A. It's the owner of the tank.  
15 Q. Okay. The second bullet under Opinion 2,  
16 it says, "During the Sun-Times' ownership of the  
17 site, all UST activities were conducted in accordance  
18 with the applicable regulations." What is the basis  
19 of that statement?  
20 A. I have no information that indicates that  
21 they were not.  
22 Q. But you have no information to indicate  
23 that they were, do you?  
24 A. No, I have not indication one way or the

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1 responsible for addressing the contamination?  
2 A. The contamination that was caused by the  
3 release of diesel fuel is what it is responsible for  
4 addressing. And the reason why is because the most  
5 likely culprit of diesel fuel at the site is the tank  
6 that they removed.  
7 Q. Why wasn't the Sun-Times responsible for  
8 it?  
9 A. Because the Sun-Times, had they removed  
10 the tank, they would have been responsible for it.  
11 Q. Would they have been responsible for it  
12 regardless of the tank removal if the EPA was aware  
13 of the contamination?  
14 A. If the EPA was aware of the  
15 contamination. It is the onus of the owner to report  
16 it.  
17 Q. The release was reported in 2001,  
18 correct?  
19 A. That is correct.  
20 Q. And in 2001 what is the EPA's position as  
21 to who owned the site?  
22 A. Who owned the site, the property?  
23 Q. Uh-huh.  
24 A. That would be Smithfield.

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1 other.  
2 Q. So then really that statement is not  
3 true?  
4 A. Well, according to the OSFM and the  
5 Illinois EPA, they were.  
6 Q. That's identified in Footnote 13?  
7 A. Yes.  
8 Q. So based on that information alone you  
9 concluded over the course of 80 years the Sun-Times  
10 didn't violate any UST regulations?  
11 A. I have no information one way or the  
12 other.  
13 Q. Okay. If it was determined that the  
14 contamination existed prior to Smithfield purchasing  
15 the property, would that statement still be true?  
16 A. What statement?  
17 Q. The one you just made regarding the  
18 Sun-Times' UST activities.  
19 A. I haven't been presented with any  
20 information indicating that the contamination was  
21 present. Essentially, the way the Illinois EPA works  
22 with releases is the person who is the owner of the  
23 tank is the person responsible for the contamination  
24 resulting from the release. This answer -- this

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1 whole issue could have been resolved had they had the  
 2 inspector on site to determine there was no release.  
 3 Q. But you don't know that there was a  
 4 release during Smithfield's ownership?  
 5 A. I don't know. I just know that they  
 6 pulled a tank illegally, and this seems to be a  
 7 diesel fuel release.  
 8 Q. I am going to ask you to turn to page 5  
 9 of your expert report, the first bullet. Would you  
 10 read that?  
 11 A. "The pattern of the soil contamination at  
 12 the site identified in several report figures  
 13 submitted to the Illinois EPA on behalf of the  
 14 respondents is consistent with a release of diesel  
 15 fuel from piping lines that led from the 10,000  
 16 gallon diesel fuel UST registered as Tank 5 to the  
 17 location of the former fuel dispenser inside the  
 18 Section A building."  
 19 MR. HYNES: I am going to have this marked as  
 20 Exhibit 8.  
 21 (Whereupon Exhibit 8 was  
 22 presented for purposes of  
 23 identification as of this date.)  
 24 Q. Are you familiar what what we have marked

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1 A. I was told that the piping line attached  
 2 this tank to this building.  
 3 Q. Was it a direct route?  
 4 A. I assume it would be.  
 5 Q. Okay. What is the pattern of  
 6 contamination that you have identified at the site?  
 7 Of diesel contamination, excuse me.  
 8 A. The pattern of contamination, it stems  
 9 from the tank to the underground storage or, yeah, to  
 10 Section A, I should say, the former Section A. And  
 11 the contamination is running all along this whole  
 12 area and migrating outward from the piping.  
 13 Q. Do you recall what was done in the  
 14 Section A building?  
 15 A. I think they used it for maintenance.  
 16 Q. Okay. Based on your experience would the  
 17 pattern of contamination from the piping line, would  
 18 that be a one-time event or would that occur over  
 19 time?  
 20 A. It's hard to say.  
 21 Q. What information would you need to make a  
 22 decision either way?  
 23 A. At this point I am not sure a decision  
 24 could be made either way. A fingerprint analysis,

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1 as Exhibit 8?  
 2 A. Yes.  
 3 Q. Now, we are going to all stipulate  
 4 tank -- which one was Tank 5, E or F?  
 5 A. E.  
 6 Q. Would you put your initials on that?  
 7 (Witness marked exhibit.)  
 8 Now, based on what I understand in that  
 9 bullet you just read on page 5 of your statement, the  
 10 contamination is consistent with the release of  
 11 diesel fuel from the piping lines, not the tank but  
 12 the piping lines that led from Tank 5 inside the  
 13 Section A building.  
 14 A. Uh-huh.  
 15 Q. Which is the Section A building?  
 16 A. The existing six-story loft.  
 17 Q. Could you right your initials there and  
 18 put the letter A?  
 19 (Witness marked exhibit.)  
 20 Is that an A?  
 21 A. Yeah, I am sorry.  
 22 Q. Thanks. So based on your understanding  
 23 of the property, in which direction do the piping  
 24 lines go?

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1 perhaps, to demonstrate that it is old contamination.  
 2 Q. But as we sit here today you have no idea  
 3 whether the contamination occurred over a period of  
 4 time or a one-time event?  
 5 A. No, I can't say.  
 6 Q. Okay. Thanks.  
 7 MR. SYLVESTER: Could we go off the record a  
 8 second?  
 9 (Whereupon there was then had an  
 10 off-the-record discussion.)  
 11 MR. SYLVESTER: Back on the record.  
 12 BY MR. HYNES:  
 13 Q. Okay. The third bullet on page 5 of your  
 14 statement says, "OSFM." That's the Office of State  
 15 Fire Marshal?  
 16 A. Oh, the third -- I'm sorry, go ahead.  
 17 Q. OSFM is the Office of State Fire Marshal,  
 18 correct?  
 19 A. Uh-huh.  
 20 Q. "Regulations require that when there is  
 21 any change in information, including removal,  
 22 abandonment-in-place, temporary out-of-service status  
 23 of a UST or change in ownership of a UST, the owner  
 24 or the operator of the UST must notify the OSFM

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<p>1 within 30 days of the change." Who was required --</p> <p>2 are you saying that somebody in this case was</p> <p>3 required to make that notification?</p> <p>4 A. Yes.</p> <p>5 Q. Who?</p> <p>6 A. Actually, it is the new owner of the tank</p> <p>7 is required to do so. So it would have been</p> <p>8 Smithfield.</p> <p>9 Q. The Sun-Times in October or late 1998</p> <p>10 sold the property to Kenard. Shouldn't have Kenard</p> <p>11 made that notification as well?</p> <p>12 A. I guess it is possible maybe they should</p> <p>13 have.</p> <p>14 Q. They were the owner of the site until</p> <p>15 October of 1999. Shouldn't have Kenard made the</p> <p>16 notification?</p> <p>17 A. It is possible maybe they should have.</p> <p>18 Did they intend to utilize or pull the tank?</p> <p>19 Q. I am not here to testify.</p> <p>20 A. Well, then I can't state one way or the</p> <p>21 other.</p> <p>22 Q. But they may have?</p> <p>23 A. They may have, had they intended to</p> <p>24 utilize or pull the tank.</p> <p style="text-align: right;">Page 41</p>	<p>1 Q. Then the same answer would apply to The</p> <p>2 Clare Group?</p> <p>3 A. Had they intended to utilize or pull the</p> <p>4 tank.</p> <p>5 Q. The next bullet says, "The OSFM requires</p> <p>6 written request for an out-of-service status within</p> <p>7 30 days after a UST was last used." Of all the</p> <p>8 entities that have been identified in this case, who</p> <p>9 should have done that in your opinion?</p> <p>10 A. I am not sure when the tank was taken out</p> <p>11 of service.</p> <p>12 Q. So if the tank was taken out of service</p> <p>13 prior to the Sun-Times selling it to Kenard -- or,</p> <p>14 excuse me, if it was last used prior to the time the</p> <p>15 Sun-Times sold it to Kenard, the Sun-Times should</p> <p>16 have done it?</p> <p>17 A. If it was last used, yes, then they</p> <p>18 should have applied for an out-of-service status.</p> <p>19 Q. Do you have any knowledge that the tank</p> <p>20 was used between late 1998 and October 27, 1999?</p> <p>21 A. No, I don't have any information aside</p> <p>22 from the fact that it was pulled.</p> <p>23 Q. But you have no evidence suggesting that</p> <p>24 the tank was actually used?</p> <p style="text-align: right;">Page 42</p>
<p>1 A. Operated?</p> <p>2 Q. Operated.</p> <p>3 A. No.</p> <p>4 Q. Okay, thank you. Is an out-of-service</p> <p>5 status required if the tank is going to be pulled?</p> <p>6 A. No, a request for removal is required.</p> <p>7 Q. Okay. Smithfield took title to the</p> <p>8 property in late October of '99, correct?</p> <p>9 A. Yes.</p> <p>10 Q. They pulled the tank in November of 1999,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Back up. They didn't pull the tank; they</p> <p>14 contracted to have the tank pulled, correct?</p> <p>15 A. Yes. They contracted with someone.</p> <p>16 Q. So do you believe they should have filed</p> <p>17 an out-of-service status in that time period, knowing</p> <p>18 that they were going to pull the tank anyway?</p> <p>19 A. I don't know if they would have needed to</p> <p>20 have done an out-of-service, but they should have</p> <p>21 done a change of ownership in order to have a permit</p> <p>22 issued to them.</p> <p>23 Q. Then why is it you cite this</p> <p>24 out-of-service status issue in your report?</p> <p style="text-align: right;">Page 43</p>	<p>1 A. Because the tank is still listed as</p> <p>2 current and in use.</p> <p>3 Q. Okay. I am going to ask you to go to</p> <p>4 Opinion 3. Would you read that out loud?</p> <p>5 A. "Smithfield and Wooton, by their acts and</p> <p>6 omissions, have allowed contamination to remain at</p> <p>7 the site in such a place and manner so as to, at a</p> <p>8 minimum, threaten water pollution."</p> <p>9 Q. Which acts have allowed contamination to</p> <p>10 remain at the site?</p> <p>11 A. Which acts? At this point it is by not</p> <p>12 addressing -- not by excluding the exposure route.</p> <p>13 So their acts would be to leave that soil in place</p> <p>14 and not obtain an NFR.</p> <p>15 Q. Would that be an act or an omission?</p> <p>16 A. I believe that would be both.</p> <p>17 Q. What about Wooton?</p> <p>18 A. Wooton, again, I am not sure what their</p> <p>19 responsibility is, although I think Wooton does bear</p> <p>20 some responsibility on Opinion 3 because they are the</p> <p>21 ones who claimed that they moved the soil around and</p> <p>22 displaced it.</p> <p>23 Q. At this point in this case is it your</p> <p>24 understanding that the soil that remains at the site</p> <p style="text-align: right;">Page 44</p>

<p>1 -- let's back up.</p> <p>2 Smithfield already removed a substantial</p> <p>3 amount of soil, correct?</p> <p>4 A. They have removed some soil, yes.</p> <p>5 Q. And it is your understanding -- the</p> <p>6 townhomes and the sidewalks at the property, in your</p> <p>7 opinion are those adequate engineered barriers?</p> <p>8 A. For which exposure route?</p> <p>9 Q. For ingestion.</p> <p>10 A. For ingestion, yes, they are. Three feet</p> <p>11 of clean soil and a concrete foundation is adequate</p> <p>12 for an engineered barrier.</p> <p>13 Q. Are they inadequate for any of these</p> <p>14 exposure routes?</p> <p>15 A. Soil component of ground water ingestion.</p> <p>16 Q. Why is that?</p> <p>17 A. Because soil component of ground water</p> <p>18 ingestion is also for leachate. And what you need to</p> <p>19 do is you need to assess the contamination that is</p> <p>20 already there so it doesn't migrate.</p> <p>21 Q. Okay. And I think we have all stipulated</p> <p>22 that the ground water is contaminated?</p> <p>23 A. The ground water is contaminated. We</p> <p>24 have one, I believe, exceedence. However, they have</p> <p style="text-align: right;">Page 45</p>	<p>1 not actually investigated the ground water impact</p> <p>2 from the source, which is the highest level of soil</p> <p>3 impact.</p> <p>4 Q. In your opinion what is it that they need</p> <p>5 to do to satisfy...</p> <p>6 A. That stipulation --</p> <p>7 Q. Let me finish. ..to satisfy the Illinois</p> <p>8 EPA?</p> <p>9 A. They need to determine -- their original</p> <p>10 plan was to conduct a ground water study to determine</p> <p>11 ground water concentration from the source, and then</p> <p>12 conduct R26 modeling to exclude the pathways in the</p> <p>13 ground water ordinance.</p> <p>14 Q. So you would be comfortable using Chicago</p> <p>15 ground water ordinances for purposes of an NFR or</p> <p>16 closing this site?</p> <p>17 A. Yes. However, we did speak with the</p> <p>18 Daily News Township -- not Township, the condominium</p> <p>19 association, and we indicated that they would need to</p> <p>20 do a notification, Smithfield would have to notify</p> <p>21 properties that there was ground water impact. And</p> <p>22 they indicated that they did not want that. So we</p> <p>23 have not done anything.</p> <p>24 Q. The homeowners have indicated they didn't</p> <p style="text-align: right;">Page 46</p>
<p>1 want to do that?</p> <p>2 A. Yes, and Smithfield has not done it.</p> <p>3 Q. Nobody is drinking this ground water?</p> <p>4 A. No.</p> <p>5 Q. Nobody is using this ground water?</p> <p>6 A. No, not that I am aware of.</p> <p>7 Q. Is the only issue remaining to bring this</p> <p>8 site to closure the ground water?</p> <p>9 A. To bring it to closure?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. What else needs to be done?</p> <p>13 A. Smithfield originally proposed the using</p> <p>14 of engineered barriers by way of the townhomes and</p> <p>15 the yards. Smithfield actually went so far as to</p> <p>16 sign a Property Owner Summary Form stating they were</p> <p>17 the owners of those properties to receive the NFR,</p> <p>18 but it was determined that we needed to get land use</p> <p>19 controls from each property owner to exclude the</p> <p>20 ingestion.</p> <p>21 Q. So they have proposed to do things; we</p> <p>22 are just at this point at a stalemate as to what to</p> <p>23 do?</p> <p>24 A. Well, the last thing they proposed was to</p> <p style="text-align: right;">Page 47</p>	<p>1 sign off on other people's property, and that was</p> <p>2 denied.</p> <p>3 Q. Why was it denied?</p> <p>4 A. Because you cannot put a property control</p> <p>5 on someone else's property. If you do not own the</p> <p>6 property, you cannot place a restriction on the deed.</p> <p>7 Q. All this back and forth, that was solved</p> <p>8 during settlement negotiations, correct?</p> <p>9 A. All this back and forth?</p> <p>10 Q. Regarding what to do on the property,</p> <p>11 what was needed to be done?</p> <p>12 A. I am not sure what you are -- could you</p> <p>13 clarify? I am not sure.</p> <p>14 Q. When was that proposal made?</p> <p>15 A. That was made immediately in 2001.</p> <p>16 Q. Okay. Well, I am going to ask you to</p> <p>17 pull the complaint out again. On page 21, Count VII,</p> <p>18 Causing or Intending to Cause Water Pollution, I will</p> <p>19 read this. Paragraph 23 cites Section 12(a) of the</p> <p>20 Illinois Environmental Protection Act. It says, "No</p> <p>21 person shall cause or threaten or allow the discharge</p> <p>22 of a contaminant into the environment in any state so</p> <p>23 as to cause or tend to cause water pollution in</p> <p>24 Illinois, either alone or in combination with matter</p> <p style="text-align: right;">Page 48</p>

<p>1 from other sources, or so as to violate regulations 2 or standards adopted by the Pollution Control Board 3 under this Act."</p> <p>4 Is your Opinion 3 intended to support 5 Count VII?</p> <p>6 A. Yeah. Essentially what it is, is we 7 cannot exclude the ground water exposure route until 8 they rely on the ground water ordinance, and they 9 have not done so yet.</p> <p>10 Q. I am going to go through this. I think 11 we all agree there has been a discharge of a 12 contaminant into the environment, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And has the discharge been to the soil?</p> <p>15 A. Yes.</p> <p>16 Q. And the discharge has been to the ground 17 water?</p> <p>18 A. Yes.</p> <p>19 Q. Does the EPA contend that Smithfield 20 caused the discharge?</p> <p>21 A. I believe they allowed the discharge by 22 not doing anything to address it.</p> <p>23 Q. Okay. So they didn't cause it.</p> <p>24 Smithfield, I am referring to Smithfield right now.</p> <p style="text-align: right;">Page 49</p>	<p>1 A. Smithfield, again, so far as the leaking 2 underground storage tank section goes, yes, by 3 causing it.</p> <p>4 Q. Let me just ask my questions. I just 5 need to break this down, so when these guys file this 6 motion, I have got your testimony clean. Smithfield 7 didn't cause the discharge?</p> <p>8 A. I don't know if they did.</p> <p>9 Q. They didn't threaten the discharge?</p> <p>10 A. Threatening, I am not sure exactly what 11 the semantic would be, threatening. Would 12 threatening be allowing it or creating it? I am not 13 sure.</p> <p>14 Q. Well, it couldn't be allowed because they 15 are two different words.</p> <p>16 A. Right. I am not sure exactly how 17 "threatened" is perceived in that regulation, 18 actually.</p> <p>19 Q. Okay. But it is your opinion they may 20 have allowed the discharge?</p> <p>21 A. Yes, and they may have caused it.</p> <p>22 Q. They may have caused it. You just don't 23 have any evidence to prove that they caused it or 24 not?</p> <p style="text-align: right;">Page 50</p>
<p>1 A. I have no evidence one way or the other.</p> <p>2 Q. What about Wooton? Did they cause the 3 discharge?</p> <p>4 A. No, because Wooton would not be 5 responsible for the tank.</p> <p>6 Q. Did they threaten the discharge?</p> <p>7 A. Again, threaten, I am not too sure 8 exactly what the semantic is for threaten.</p> <p>9 Q. What about allow the discharge?</p> <p>10 A. Wooton, I would say, yeah, by rearranging 11 the soil on the site, would have allowed.</p> <p>12 Q. If it was established that the 13 contamination existed prior to Smithfield owning the 14 property, could Smithfield have caused, threatened or 15 allowed the discharge?</p> <p>16 A. It is possible, because I don't know what 17 happened with the tank removal.</p> <p>18 Q. Let me clarify. If contamination exists 19 at a property, would you agree that a discharge has 20 occurred?</p> <p>21 A. A release has occurred.</p> <p>22 Q. What's the difference between a discharge 23 and a release?</p> <p>24 A. I am not sure what a discharge</p> <p style="text-align: right;">Page 51</p>	<p>1 necessarily is. Leaking Underground Storage Tank 2 addresses releases.</p> <p>3 Q. Can we stipulate discharge means release?</p> <p>4 A. In our text it doesn't.</p> <p>5 MR. SYLVESTER: Hold on a second. Discharge 6 means release? I would stipulate that a release 7 could be a discharge, yeah.</p> <p>8 Q. Okay. What's your definition of 9 discharge?</p> <p>10 A. Again, I am not sure what a definition of 11 a discharge necessarily would be. So far as Leaking 12 Underground Storage Tanks go, it is releases and 13 that's moving of contaminants in the environment as a 14 result of something happening with the tank.</p> <p>15 Q. If the contamination that we have been 16 talking about existed at the time Smithfield took 17 title to the property, would a release have occurred 18 prior to the time they took title?</p> <p>19 A. I don't have any evidence that that 20 happened.</p> <p>21 Q. I am asking you to assume. If the 22 contamination -- assume the contamination existed at 23 the time Smithfield took title.</p> <p>24 A. Okay.</p> <p style="text-align: right;">Page 52</p>

<p>1 Q. Did the release occur prior to the time 2 they took title? 3 A. One of the releases could have. However, 4 Smithfield, whoever pulled that tank, would be 5 responsible. 6 Q. That's not the question I asked you. 7 A. Then I am not understanding. 8 Q. My question is simply, did the release 9 occur prior to the time -- assuming that information, 10 assuming that a contamination was in existence at the 11 time they took title, did the release occur prior? I 12 am not asking you about who is responsible. Did the 13 release occur? 14 A. If contamination was there prior to 15 Smithfield purchasing the property, then possibly it 16 would not be Smithfield's responsibility. 17 Q. I am not asking you about responsibility. 18 I am asking you did the release occur. When in your 19 opinion did the release occur? 20 A. I don't know when the release occurred. 21 Q. But if it was determined that the 22 contamination was there just prior to Smithfield 23 taking title to the property, I want to know who is 24 responsible for it. Would that suggest to you the</p> <p style="text-align: right;">Page 53</p>	<p>1 release had occurred already? 2 A. Had previously occurred prior to 3 Smithfield purchasing? 4 Q. Yeah. 5 A. Again, there is no evidence that supports 6 that one way or the other. You are asking me to make 7 an assumption. 8 Q. I am asking you to assume. I am giving 9 you a hypothetical. 10 A. Yeah, it is so hard to say. I mean, 11 there are so many different factors that it could be. 12 I have no evidence that a release of PNAs has 13 occurred any time prior. 14 Q. This isn't that difficult of a question. 15 If you show up at a piece of property and you take a 16 soil sample the day before Smithfield purchased the 17 property and you find diesel, has there been a 18 release of diesel in the soil? 19 A. Yes. 20 Q. Thank you. Okay. It says, "No person 21 shall cause or threaten or allow the discharge of a 22 contaminant into the environment in any state so as 23 to cause or tend to cause water pollution." Did 24 Smithfield cause water pollution?</p> <p style="text-align: right;">Page 54</p>
<p>1 A. Depending on what happened when the tank 2 was removed, I don't know. 3 Q. So you have no evidence either way? 4 A. No, because there was no one there to 5 report. 6 Q. Did Smithfield tend to cause water 7 pollution? 8 A. Well, they haven't addressed the 9 contamination, so it is still out there. 10 Q. What does "tend to cause" mean in your 11 opinion? 12 A. "Tend to cause" means having the basis of 13 allowing it to cause. "Tend to cause" to me would be 14 not addressing it. 15 Q. "Tend to cause" means simply not 16 addressing it? 17 A. Again, "tend to cause" would be, I think, 18 by allowing it to happen. I am not sure if "allowed 19 to cause" would be the same thing. 20 Q. In your opinion did Wooton cause water 21 pollution at the site? 22 A. It is hard to say. I believe they may 23 have by moving the soil around. 24 Q. What soil?</p> <p style="text-align: right;">Page 55</p>	<p>1 A. The contaminated soil. 2 Q. But you don't know when the water 3 pollution occurred? 4 A. No, I don't. 5 Q. Do you believe -- is it your opinion that 6 Wooton tended to cause or has tended to cause water 7 pollution at the site? 8 A. There is water pollution at the site that 9 I believe is the result of this underground storage 10 tank and it has not been addressed. I don't know if 11 it would be Wooton's responsibility, although Wooton 12 has submitted that they moved contamination around at 13 the site. 14 Q. Let me back up. Your testimony earlier 15 is it is your opinion that the contamination came 16 from the piping? 17 A. The underground storage tank system. 18 Q. But you don't know -- can you establish 19 that it came from the tank? 20 A. We refer to it as an underground storage 21 tank system. 22 Q. I understand what the definition of an 23 underground storage tank system is. Can the EPA 24 establish that it came from the tank?</p> <p style="text-align: right;">Page 56</p>

<p>1 A. We don't make any differentiation between 2 tank and piping. 3 Q. So the answer is no? 4 A. No. 5 Q. And you can't make any determination that 6 it came from the piping? 7 A. No, because the system, the entire 8 system, is what's covered. 9 Q. Okay. There has been some discussion 10 over the years of indicated parameters for diesel 11 versus gasoline. How do you differentiate -- what 12 indicator parameters would indicate diesel 13 contamination? 14 A. Diesel gasoline -- or, I am sorry, diesel 15 indicator contaminants are BTEX and PNAs. Gasoline 16 indicator contaminants are BTEX and MTBE. 17 Q. Say that again, MTBE? 18 A. Yes. 19 Q. In 2001 was MTBE an indicator parameter 20 for gasoline? 21 A. Oh, in 2001 it would not have been. It 22 was added. 23 Q. So it would only have been BTEX? 24 A. Yes, it was added in 2002.</p> <p style="text-align: right;">Page 57</p>	<p>1 Q. And it is your opinion that what you 2 found out there at the site today is BTEX and PNAs? 3 A. Well, it is PNAs primarily which is one 4 of the components of diesel fuel. 5 Q. But you have found BTEX as well? 6 A. Yeah, there was a little bit of BTEX 7 there. 8 Q. But not exceedences of the TACO Tier 1 9 Residential Standards? 10 A. Not in exceedence of the Tier 1 11 inhalation standards. 12 Q. But in soil injection? 13 A. Yeah, well, soil component. 14 Q. That suggests that there is gasoline 15 contamination up there as well? 16 A. There may be. Again, it is an indicator 17 contaminate for both the BTEX. Having the PNAs there 18 eliminates the gasoline so far as we are going, so 19 far as the Illinois EPA is concerned. 20 Q. The Illinois EPA is focusing on diesel? 21 A. Yeah, because that's what we were told 22 the release was. 23 Q. If we had to prioritize the issues that 24 remain at the site in terms of remediation, what</p> <p style="text-align: right;">Page 58</p>
<p>1 would be the most significant issue? 2 A. Well, what they have to do is they have 3 to exclude their exposure routes. That's how they 4 get an NFR. And the last thing that was proposed was 5 using the engineered barriers and obtaining a ground 6 water ordinance and utilizing the ground water 7 ordinance. 8 Q. So really the ground water ordinance or 9 the ground water issue is really the one that remains 10 open? 11 A. Well, yes, except for the fact that they 12 have to have environmental land use controls if they 13 want to use those properties as engineered barriers. 14 They have to have the property owners agree to that. 15 Q. Is it your opinion that the only source 16 of contamination at the site was Tank 5 and its 17 piping? 18 A. I don't have any information indicating 19 there was anything else. 20 MR. HYNES: Okay. Just give me a minute. I 21 think I am done. 22 (Pause.) 23 Q. Oh. Were you involved at all when the 24 Sun-Times was in the case?</p> <p style="text-align: right;">Page 59</p>	<p>1 A. Yes, I was the project manager at that 2 time. 3 Q. So your opinion is Sun-Times has no 4 responsibility for doing any of the remediation at 5 this property? 6 A. The Sun-Times was not the owner when the 7 tank was pulled. I have no evidence that indicates a 8 release occurred prior to the pulling of the tank. 9 Q. But you have no evidence that it occurred 10 after the tank was pulled or as a result of the tank 11 pull, do you? 12 A. No, I do not. 13 MR. HYNES: Okay. That's all I have got. 14 You guys have any? 15 MR. SYLVESTER: No. 16 MR. HYNES: Do you want to waive signature? 17 MR. SYLVESTER: Reserve. 18 DEPOSITION CONCLUDED 19 20 21 22 23 24</p> <p style="text-align: right;">Page 60</p>

2 I, Carol Hawbaker, do hereby certify that I have  
3 read the foregoing deposition and that it is a true  
4 and accurate translation of the questions asked of me  
and the answers given by me, with the following  
change(s):

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