

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**NOTICE OF FILING AND SERVICE**

To: ALL PERSONS ON THE ATTACHED CERTIFICATE OF SERVICE

Please take note that today, July 18, 2017, I have filed with the Clerk of the Pollution Control IDOT's "Motion to Require Johns Manville to Produce Frederick Scott Myers for Second Deposition" and have served each person listed on the attached service list with a copy of the same.

Respectfully Submitted,

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**MOTION TO REQUIRE JOHNS MANVILLE TO PRODUCE FREDERICK SCOTT MYERS FOR SECOND DEPOSITION**

NOW COMES Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”) who hereby moves the Hearing Officer pursuant to Rule 101.616(d) of the Pollution Control Board’s (“Board”) Procedural Rules, 35 Ill. Adm. Code 101.616(d) for an order requiring Johns Manville to produce Frederick Scott Myers, Complainant’s employee and Director of Environmental Programs, to appear for a second deposition in this matter. In support of its motion, IDOT states as follows:

**I. INTRODUCTION**

On June 29, 2017, IDOT’s counsel took the deposition of Frederick Scott Myers, Johns Manville’s Director of Environmental Programs. During that deposition, Johns Manville’s counsel, Susan Brice, objected almost 50 times to various questions put to Mr. Myers, based on claims of privilege to the underlying questions. Almost all of the questions that elicited counsel’s objections were factual in nature and under well-recognized law, such objections were therefore improper. Her repeated speaking objections (many of which were, again, based on

claims of privilege) had the effect of impeding IDOT counsel's examination of Mr. Myers, by, in many instances, effectively coaching him in his testimony.

Mr. Myers appears to have information that is critical to an understanding of how Johns Manville has undertaken the cleanup of the Southwestern Sites Area, including the relevant portions of Sites 3 and 6, as well as the costs which Johns Manville has incurred in the course of undertaking this work. Unfortunately, IDOT was unable to completely understand just what Mr. Myers knew about these matters, due to his attorney's defense of his deposition. Accordingly, IDOT requests that the Hearing Officer order Johns Manville to produce Mr. Myers for a second deposition and that Johns Manville's counsel be ordered to conduct their defense of this second deposition in a manner that does not impede IDOT's ability to question him.

## II. STATEMENT OF FACTS

On June 29, 2017, IDOT took the deposition of Frederick Scott Myers, Complainant's Director of Environmental Programs, by agreement and pursuant to notice. During the course of his June 29<sup>th</sup> deposition, Complainant's counsel, Susan Brice, objected almost 50 times to questions which IDOT's counsel posed to Mr. Myers, on privilege grounds.<sup>1</sup> The vast majority of the questions posed by IDOT's counsel that were objected to by Ms. Brice on grounds of privilege concerned factual matters. *See e.g.*, Myers Dep., pp. 22:4-25:9, 93:10-22, 94:2-24, and 95:13-22.

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<sup>1</sup> See transcript of Mr. Myers' deposition, at pages 17 (one time), 20 (one time), 21 (two times), 22 (one time), 23 (two times), 26 (one time), 27 (one time), 28 (one time), 93 (two times), 95 (three times), 96 (two times), 96 (three times), 97 (two times), 98 (one time), 99 (two times), 100 (one time), 105 (one time), 106 (two times), 107 (two times), 109 (two times), 110 (two times), 111 (four times), 114 (two times), 117 (four times), 142 (one time) and 146 (one time). A fully and complete copy of the transcript of Mr. Myers' deposition is attached hereto as Exhibit A.

For example, IDOT's counsel attempted to ask Mr. Myers whether he was aware of the existence of any agreement between Johns Manville and Commonwealth Edison, eliciting the following questions and objections:

Q Let me ask you this: To the best of your knowledge is there any agreement between Commonwealth Edison and Johns Manville with respect to reimbursement of costs?

MS. BRICE: Objection, I'm instructing you not to answer on the basis of privilege.

MR. MCGINLEY: Q Are aware of any agreement between Commonwealth Edison and Johns Manville with respect to the site? I'm not asking about the substance. Do you have awareness of that?

MS. BRICE: I completely instruct you not to answer.

(Myers Dep., pp. 116:22-117:9.)

IDOT's counsel also attempted to ask Mr. Myers about whether he had ever met with anyone from Commonwealth Edison, which resulted in the following exchange:

Mr. MCGINLEY: Okay. Have you ever met anybody from Commonwealth Edison with respect to any of the times that you've been out to the site?

MS. BRICE: Objection to the extent it calls for any privileged information.

MR. MCGINLEY: I'm asking if he's ever met -- I'm not talking about lawyers. So I'll clarify. Have you ever met any technical -- have you met somebody who is say your counterpart at Commonwealth Edison with respect to the Southwestern Sites?

THE WITNESS: Yes.

MS. BRICE: Same objection.

(Myers Dep. p.93:10-22.)

Ms. Brice even went so far as to object to questions posed by IDOT's counsel based on assertions of privilege without even knowing whether the privilege even applied, as evidenced by the following exchange:

Q Do you know somebody by the name of John Dennison?

MS. BRICE: I don't know who that is. So objection to the extent that it requires to divulge confidential information.

(Myers Dep., p.99:19-23.)

Another example of Ms. Brice's making objections based on privilege without any basis for asserting such an objection came later during Mr. Myers' deposition, when IDOT's counsel sought to ask Mr. Myers about a spreadsheet that he had earlier testified about and the following discussion ensued:

Q: Okay. I'd like to go back to something you were testifying about earlier about this spread sheet that you maintain about site costs that you've maintained for your own personal purposes, correct? Do you share that with other people –

A: What –

Q: -- besides Mr. Tracy?

MS. BRICE: Okay, one second, I just want to 11 object for one reason, to the extent this is being shared with Mr. Tracy it **arguably could be privileged material**. So I don't, to the extent you were sharing information with him and he is an attorney, it could be subject to the attorney-client privilege; and, to the extent that it is, I need to object and instruct you not to answer.

(Myers Dep. p.142:2-18.) (Emphasis added.)

### III. ARGUMENT

#### A. Relevant Legal Standards for Assertion of Claims of Privilege

As the court in *Computer Teaching Corp. v. Courseware Applications, Inc.*, 199 Ill.App.3d 154, 157 (4<sup>th</sup> Dist. 1990), noted, broad discovery is authorized “‘regarding any matter relevant to the subject matter involved in the pending action.’ Discovery is to be a mechanism

for the ascertainment of truth and for the purpose of promoting either a fair settlement or a fair trial.” *Id.* at 157.

Claims of privilege based on either assertion of attorney client communication or attorney work product stand as exceptions to this general rule. *Timber Creek Homes, Inc. v. Village of Round Lake Park*, PCB 14-99 (May 12, 2014), \*2. This exception, though, is to be “interpreted narrowly.” *Id.* The Board has established an eight factor test that is to be applied, when analyzing claims attorney client communication. *Id.* Moreover, “the ‘mere assertion that a matter is protected by the attorney-client privilege is insufficient to prove the existence of that privilege.” *Id.* The same eight factor test applies in board cases analyzing claims regarding attorney work product. *See Fox Moraine, LLC v. United City of Yorkville City Council*, PCB 07-146 (March 27, 2008), \*4.

**B. During IDOT’s Deposition of Scott Myers, Johns Manville’s Counsel Made Repeated Improper Objections Based on Unsubstantiated Claims of Privilege to Strictly Factual Questions**

During his deposition, IDOT’s counsel attempted to ask Mr. Myers a number of strictly factual questions, which elicited repeated objections from Ms. Brice based on claims of privilege, oftentimes also including her instruction to Mr. Myers not to answer a given question. *See, e.g., Myers Dep.*, pp. 104:22-105:2; and, 109:1-7. Ms. Brice’s assertions of privileges such as attorney client communication or attorney work product, in response to questions that sought only factual answers were improper, because neither privilege can be asserted to prevent the disclosure of facts. *Specht v. Google, Inc.*, 268 F.R.D. 596, 601 (N.D. Il. 2010).

Additionally, Ms. Brice’s objections based on privilege – where it was apparent that she was unsure that any privilege was even at issue – were obviously improper. (*Myers Dep.* pp. 99:19-23; and, 142:2-18.)

C. **Johns Manville's Counsel's Repeated and Improper Objections Had the Effect of Impermissibly Coaching and Guiding Mr. Myers' Testimony**

On several occasions during Mr. Myers's deposition, Ms. Brice raised improper objections to questions posed by IDOT's counsel, thereby coaching his testimony and impeding IDOT's ability to depose the witness. *See e.g.*, Myers Dep. pp. 89:19-90:7; 104:4:18; and 109:1-11. Some of the most egregious examples of this coaching occurred when Ms. Brice instructed Mr. Myers not to answer what were entirely proper questions which had been put to him by IDOT. *See e.g.*, Myers Dep., pp. 94:2-15; 95:11-22; and, 109:1-7 (Q. "Have you ever discussed with an environmental or technical person at Commonwealth Edison the site cleanup, any of the site remediation work that's taking place?" Ms. Brice: "Objection to the extent it requires the divulgence of privileged information, I instruct you not to answer.")

As the *Specht* court noted, such repeated objections, which "derail the questioning by claiming an untenable and overly broad definition of attorney-client privilege and work product" are "improper." *Specht*, at 599. The same concerns about "improper" objections that were at issue in *Specht* are also at issue in this case, as well. It follows that that the same relief should also be available to IDOT, as was the case for the defendant in *Specht*; namely, that IDOT should be allowed to retake the deposition of Scott Myers. *Id.* at 603.

**PRAYER FOR RELIEF**

WHEREFORE, Respondent, the Illinois Department of Transportation, requests that the Hearing Officer issue an order:

- 1) Requiring Complainant to produce Frederick Scott Myers for a second deposition at IDOT's counsel's offices;

- 2) Requiring Complainant to pay IDOT's court reporter and other related costs incurred as the result of taking a second deposition of Mr. Myers;
- 3) Requiring Johns Manville's attorneys to refrain from making improper speaking objections during Mr. Myers' second deposition; and,
- 4) Granting such other relief as the Hearing Officer may find to be appropriate.

Respectfully Submitted,

By: s/ Evan J. McGinley  
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MOTION TO REQUIRE JOHNS MANVILLE TO PRODUCE FREDERICK SCOTT MEYERS  
FOR SECOND DEPOSITION

EXHIBIT A  
TRANSCRIPT OF DEPOSITION

Transcript of the Testimony of  
**SCOTT MYERS**

Date: June 29, 2017

Case: JOHNS MANVILLE VS. ILLINOIS DEPARTMENT OF  
TRANSPORTATION

**TOOMEY REPORTING**  
312-853-0648  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
JOHNS MANVILLE, A DELAWARE )  
CORPORATION, )  
Complainant, )  
-vs- ) PCB No. 14-3  
) (Citizen Suit)  
ILLINOIS DEPARTMENT OF )  
TRANSPORTATION, )  
Respondent. )

Deposition of SCOTT MYERS, taken  
before NANCY K. SPEARE, C.S.R. and Notary Public,  
pertaining to the taking of deposition pursuant  
to all applicable rules of the Illinois Pollution  
Control Board, taken at 161 North Clark Street,  
Suite 4300, Chicago, Illinois, commencing at 1:00  
o'clock p.m. on the 29th day of June, A.D. 2017.

There were present at the taking of  
this deposition the following counsel:

**TOOMEY REPORTING**  
312-853-0648

BRYAN CAVE, LLC by  
MS. SUSAN E. BRICE  
MS. LAUREN CAISMAN  
161 North Clark Street  
Suite 4300  
Chicago, Illinois 60601-3315  
(312) 602-5124  
susan.brice@bryancave.com  
lauren.caisman@bryancave.com,  
on behalf of the Complainant;  
MR. EVAN J. MCGINLEY and  
MS. ELLEN O'LAUGHLIN,  
Assistant Attorneys General  
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emcginley@atg.state.il.us  
eolaughlin@atg.state.il.us,

on behalf of the Respondent;

ALSO PRESENT: MS. DEMETRIA HAMILTON  
(for a portion of deposition)

**TOOMEY REPORTING**  
312-853-0648

DEPOSITION OF  
SCOTT MYERS  
Taken: June 29, 2017

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**TOOMEY REPORTING**  
312-853-0648

1 MR. MCGINLEY: Could you swear in our  
2 deponent, please.

3 SCOTT MYERS,  
4 called as a witness herein, having been first  
5 duly sworn, was examined upon oral  
6 interrogatories and testified as follows:

7 EXAMINATION

8 by Mr. McGinley:

9 Q Good afternoon, Mr. Myers. Could you  
10 spell and state your name for the record, please,  
11 just to get it started.

12 A **Frederick Scott Myers, F-R-E-D-E-R-I-C-K,**  
13 **S-C-O-T-T, M-Y-E-R-S.**

14 Q Mr. Myers, have you ever been deposed  
15 before?

16 A **I don't think so. It's possible --**

17 Q Okay.

18 A **-- earlier in my career but --**

19 Q Okay. And have you ever testified in  
20 court before?

21 A **In 1982 or '83 when my washing machine**  
22 **leaked.**

23 Q Okay, and other than 1982 or 1983 that's  
24 probably the only time that you've ever testified

1 that should make it easier to get through the  
2 whole process. Okay?

3 A **(Indicating).**

4 Q Is there any reason why you can't give  
5 your full testimony today, are you sick, under  
6 any medication or anything like that?

7 A **Just blood pressure medicine.**

8 Q Okay, but that's not the type of thing  
9 that's going to affect how you're able to give  
10 testimony today, right?

11 A **I'm not a doctor. I wouldn't know.**

12 Q Okay. Again, it doesn't, generally,  
13 impede your ability to carry on with your  
14 day-to-day life or your job or things like that,  
15 right?

16 A **Again, I'm not a doctor. I feel fine.**

17 Q Okay, that's -- I think we can work with  
18 that as an answer.

19 If I ask you a question, you answer it,  
20 the assumption is going to be that you've  
21 understood the question, okay. And, also, if you  
22 I ask a question and you're not sure of what I'm  
23 trying to get at, please let me know; and I'll  
24 try and do my best to rephrase the question.

1 in court, is that right?

2 A **I believe so.**

3 Q Okay. You understand that the testimony  
4 that you're giving here today is being taken down  
5 by a court reporter. You've been sworn to give,  
6 sworn an oath, that the testimony is as if you  
7 were before a judge in a courtroom, okay. So it  
8 proceeds exactly the same. There are certain  
9 kind of like basic rules that helps to keep in  
10 mind when you're going through a deposition. One  
11 is the court reporter is writing down words, the  
12 things that I ask you, the responses that you  
13 give to me. It helps if you want to respond to a  
14 question that's posed to you to answer with words  
15 and not with gestures because it just makes it  
16 harder for the court reporter.

17 Also, it's helpful to, if you let me  
18 have the chance to finish the question I'm going  
19 to ask you and then I'll give you the chance to  
20 answer, it makes it easier for the court reporter  
21 because that way she doesn't have to figure out  
22 who's talking over who and what she needs to be  
23 writing down, so just to kind of make the record  
24 clean and even, just if we can do it that way

1 Okay?

2 A **Yeah.**

3 Q I thought it might help, because this is  
4 a case that involves lots of terms that we toss  
5 around on a regular basis, just to make sure that  
6 we all understand the terms the same way. So  
7 the -- Are you familiar with the term  
8 administrative order on consent, do you have an  
9 understanding of that term?

10 A **No.**

11 Q You don't. Do you know what the -- are  
12 you aware that Johns Manville is responsible for  
13 doing work at the Johns Manville site in Waukegan  
14 pursuant to a settlement agreed with US-EPA?

15 A **Yes.**

16 Q Okay, that sometimes is referred to as  
17 the administrative order on consent, or the  
18 A-O-C. So if I use the word administrative order  
19 on consent, or AOC today, that's what I'm going  
20 to be referring to. Okay?

21 A **I'll try to keep that in mind.**

22 Q Okay. Site three, if I refer to site  
23 three do you know what that refers to?

24 A **Yes.**

Q And what's your understanding of that term?

A It's a parcel of property to south of Greenville -- Greenwich -- it is a, it's a parcel of property south of the Johns Manville site.

Q Okay. Same question for site six, if I refer to site six today do you have an understanding of what that term refers to?

A Yes.

Q Okay, and what's your understanding?

A It's also a parcel of property to the south of the Johns Manville site.

Q Okay. And the term southwestern site area or site, southwestern site areas, do you -- is that term something you're familiar with?

A Yes.

Q Okay, and what's your understanding of that term?

A That includes site one, site two, site three, site four/five, and site six.

Q Okay. And if I refer to Commonwealth Edison or Com Ed does that have any meaning to you?

A I'm familiar with the term. I don't know

site investigations with respect to site three or site six would that term have any particular meaning to you?

A I think what I know what you're looking for, but I'm not certain.

Q Well, what do you think I mean; what's your understanding?

A A site characterization.

Q I'm sorry?

A A site characterization -- is that what you're reaching for?

Q Well, no. I'm thinking just the actual process of investigating a site, doing field work, that sort of thing.

A That's like a site characterization.

Q So you'd refer to it as a site characterization?

A I would, yes.

Q Okay, that's fine, that helps me because I want to make sure that I'm asking questions in a way that makes sense for how you look at the world.

How about a removal action, if I refer to, make reference to a removal action does that

anything about the company.

Q Okay. Are you aware that Commonwealth Edison is a co-signatory shall we say under the administrative order on consent?

A I'm not sure about their involvement. I know that they own site three.

Q Okay. In your line of work when you're referring to somebody like a company like AECOM that's doing work at the site, what do you -- how do you refer to them, are they outside contractors, outside consultants, environmental consultants, what's the term that you use for that?

A A consultant or an agent.

Q A consultant or agent?

A Um-hum.

Q Okay. Site investigation is that a term that has any particular meaning to you?

A "Site investigation", could you be more specific?

Q Well, I mean --

A It could mean a lot of things.

Q Okay, within the context of the administrative order on consent, if I refer to

-- is that a term that would have --

A No.

Q -- understanding to you?

Okay, are you aware that under the administrative order on consent Johns Manville is required to undertake the removal of asbestos debris that's located at various portions of the southwestern site area?

A I believe we're required to remediate. It doesn't always mean remove.

Q Okay, okay, so in your mind this is a remediation, the work that's taking place is a remediation --

A Yes.

Q -- is that right?

A Yes.

Q Okay.

A Sorry, we don't seem to speak the same language.

Q Well, that's why I want to define terms now just because I think it makes things easier as we go forth.

What have you done to prepare for your deposition here today?

1 MS. BRICE: Objection, to the extent that it  
2 calls for the nature of our discussion as  
3 privileged.

4 THE WITNESS: A Quite frankly, I took a  
5 shower and put a suit on.

6 MR. MCGINLEY: Q So --

7 A That's the extent of my preparation.

8 Q -- that's the extent of your preparation,  
9 okay. So you haven't met with counsel before  
10 coming here today?

11 MS. BRICE: You can say that you met with  
12 me --

13 THE WITNESS: Yes.

14 MS. BRICE: -- just not what we talked about.

15 THE WITNESS: A Yes.

16 MR. MCGINLEY: Q Okay, yes, you did meet  
17 with counsel today?

18 A Yes.

19 Q Okay, and without going into the  
20 substance of what you might have discussed with  
21 Miss Brice or Miss Caisman, you've -- you did  
22 have discussions today about your deposition, is  
23 that a fair assumption on my part?

24 A Explain what a deposition is.

1 last Thursday or Monday by phone, correct? I  
2 mean you weren't having this discussion  
3 face-to-face?

4 A No, no.

5 Q Okay, you were in Colorado or someplace  
6 else?

7 A I think I was in Colorado at the time.

8 Q Okay. Besides Miss Brice was there  
9 anybody else present when this phone conversation  
10 took place?

11 A No.

12 Q Okay, just you and Miss Brice?

13 A And the office plants.

14 Q And the office plants, okay.

15 Have you spoken with, besides Miss  
16 Brice, have you spoken with anybody else about  
17 your deposition today?

18 A My supervisor.

19 Q Who's your supervisor?

20 A Brent Tracy.

21 Q Brent Tracy, okay.

22 Just as an aside, so help me  
23 understand, I work in an organization. You work  
24 in an organization. I have a chain of command.

1 Q Okay.

2 A I'm a geologist.

3 Q Was that the only time that you talked  
4 with Miss Brice about your deposition today?

5 A I had a phone conversation letting me  
6 know that I was going to have a deposition.

7 Q Okay.

8 A And what time to be here.

9 Q And when did that take place?

10 A Monday?

11 MR. MCGINLEY: I can't answer for you.

12 THE WITNESS: A I'm not certain; but it was  
13 probably either Monday, I would think Monday. I  
14 was planning on being up here anyway.

15 MR. MCGINLEY: Q Okay, so you talked to  
16 Miss Brice this week, right?

17 A I think it was this week. It might have  
18 been either last Thursday or Monday. I couldn't  
19 tell you for certain.

20 Q Okay, all right, but last Thursday or  
21 this Monday, right, that's as best you can  
22 recall?

23 A As best that I can recall, yes.

24 Q Okay. And you spoke to Miss Brice either

1 You have a chain of command. So what's your  
2 chain of command?

3 A I report to Brent Tracy.

4 Q And Brent Tracy's title is what?

5 A Corporate attorney, I'm --

6 Q Something attorney, is that a fair way to  
7 put it?

8 A He is an attorney, yes. He works in the  
9 Legal Department.

10 Q Okay. Okay, so you report to Brent. Do  
11 you have people that report to you?

12 A I do.

13 Q Have you spoken to any of the people who  
14 report to you about your deposition here today?

15 A I think when I had my staff meeting I  
16 told them I was going to be out of the office. I  
17 don't know that I told them I was going to be at  
18 a deposition.

19 Q Okay.

20 A I think I just told them I was going to  
21 be in Waukegan.

22 Q And who would you have, who was this  
23 conversation with?

24 A My direct reports during the staff

1 meeting.

2 Q Oh, okay. And when was that staff

3 meeting?

4 A That was Monday.

5 Q Have you ever spoken with Tat Ebihara?

6 Do you know who Tat Ebihara is?

7 A Yes.

8 Q Okay. Did you speak with Mr. Ebihara

9 about your deposition today?

10 A He's on vacation.

11 Q So I take that as a no, that you didn't

12 have a chance to speak to him about it?

13 A No, we didn't speak.

14 Q Okay, Shannon Flanagan, do you know

15 Miss Flanagan?

16 A No.

17 Q You don't, okay.

18 Douglas Dorgan, do you know Douglas

19 Dorgan?

20 A No.

21 Q You don't.

22 David Peterson?

23 A Yes.

24 Q Did you speak with Mr. Peterson about

1 Q Okay, and the deposition today?

2 A That I was going to be here for a

3 deposition.

4 Q Okay. Who's Marci Letofsky?

5 A Corporate legal finance, or an admin I

6 think you would call her.

7 Q So somebody in administration but --

8 A Corporate legal.

9 Q Corporate legal, okay.

10 A Her function is admin.

11 Q Meaning administration of some sort?

12 A Yes.

13 Q Have you spoken with Miss Letofsky about

14 your deposition today?

15 A No.

16 Q Okay. Grant Tracy did you talk to him at

17 all about coming here for your deposition?

18 MS. BRICE: Asked and answered. You can

19 respond.

20 THE WITNESS: Oh, sorry. I don't know what

21 that means.

22 A I told him I was going to be here for a

23 deposition.

24 MR. MCGINLEY: Q Okay. Besides speaking

1 being -- coming in for a deposition today?

2 A I told him I was coming in for a

3 deposition.

4 Q Okay, and when did that take place?

5 A Yesterday afternoon at the site.

6 Q Who else was with you when you were at

7 the site yesterday besides Mr. Peterson?

8 A During my conversation with Dave nobody

9 else was there.

10 Q Okay, but there were other people

11 there --

12 A I had a meeting with someone interested

13 in leasing a portion of the site at 2:00; and

14 then they were gone at 3:00 and I checked in with

15 Dave.

16 Q Okay, and so what did you talk about with

17 Mr. Peterson yesterday afternoon?

18 MS. BRICE: Objection to the extent you're

19 going to be disclosing anything that's privileged

20 information.

21 THE WITNESS: A We talked about mowing.

22 MR. MCGINLEY: Q Is that it, or just

23 mowing?

24 A Replacing a fence and mowing.

1 with Dave Peterson -- Dave Peterson and with

2 Mr. Tracy and advising your direct reports during

3 your staff meeting about being here for a

4 deposition have you -- did you tell anybody else

5 that you were going to be here for a deposition?

6 A Yes.

7 Q Who else did you tell?

8 A My wife.

9 Q Okay, you told your wife. Besides your

10 wife anybody else?

11 A Yes.

12 Q Who else besides --

13 A Boo.

14 THE COURT REPORTER: I'm sorry?

15 THE WITNESS: Boo.

16 MR. MCGINLEY: Q Who is Boo?

17 THE WITNESS: A My dog.

18 Q You told your dog, okay.

19 A We're very close.

20 Q Okay.

21 A I'm sorry, it's the truth. You told me

22 to tell the truth as best I can. I'm trying to

23 remember everything.

24 Q Okay.

1 A And, I'm sorry, my memory is not terribly  
2 good.

3 Q That's fine.

4 Did you review any documents before  
5 your deposition?

6 MS. BRICE: Objection to the extent you're  
7 asking questions with respect to what documents.  
8 We talked about with respect to various  
9 documents.

10 MR. MCGINLEY: Q Did you review any  
11 documents before your deposition?

12 THE WITNESS: A No. I didn't know about it  
13 earlier enough to review. So, I'm sorry, I'm not  
14 terribly well prepared.

15 Q Okay. You understand that this is,  
16 there's currently a pending case between Johns  
17 Manville and the Illinois Department of Public  
18 Transportation, correct?

19 A Yes.

20 Q Okay. Do you understand, do you have any  
21 understanding of the term discovery when it's  
22 used in the context of legal cases?

23 A No.

24 Q Okay. The discovery process is,

1 essentially, where parties are exchanging  
2 information between -- information that may have  
3 something to do with the issues that are in play  
4 in the case. Have you ever been asked to review  
5 any of your files or records concerning this case  
6 as part of the discovery process as I've  
7 described it?

8 MS. BRICE: Objection to the extent you're  
9 getting into privileged communications between  
10 Mr. Tracy and myself and Mr. Myers.

11 So I'm instructing you not to answer to  
12 the extent you have to get into communications  
13 with respect to Mr. Tracy or with me.

14 MR. MCGINLEY: Q But you still have to  
15 answer, with the recognition of the exception  
16 that Miss Brice has identified for you, you still  
17 have to answer the question.

18 MS. BRICE: But I'm instructing -- right.

19 MR. MCGINLEY: Q I mean do you understand  
20 the question?

21 THE WITNESS: A No and no.

22 MS. BRICE: Okay. Can I try and help? If  
23 you can answer the question without referring to  
24 a conversation you had with me or Brent or anyone

1 else in legal, then answer it. If you can't,  
2 then say you can't.

3 THE WITNESS: A I can't answer it.

4 MR. MCGINLEY: Q Okay, So let me try and  
5 approach it from a different angle. Have you  
6 ever been asked to review any documents that  
7 might be in your possession that are related to  
8 this case?

9 MS. BRICE: Same objection, meaning if you  
10 can't answer it because of communication, it's  
11 related to communications with me or Brent then,  
12 or anyone else in legal, then --

13 MR. MCGINLEY: I'm not asking -- I want to  
14 make clear for the record, I am not asking the  
15 witness what the substance of the documents is.  
16 I'm asking him simply if he's ever reviewed  
17 documents as part of, has he ever been asked to  
18 locate documents or find documents that might be  
19 related to this case.

20 MS. BRICE: Sure, but understanding to the  
21 extent an attorney asked him that that should be  
22 privileged. So if he can't answer that within  
23 the context of a response coming from an  
24 attorney, then I think --

1 THE WITNESS: A To the best of my  
2 knowledge, no.

3 MR. MCGINLEY: Q To the best of your  
4 knowledge, no. Okay.

5 A This feels like Watergate.  
6 (Whereupon a whispered discussion was  
7 held off the record between  
8 Mr. McGinley and Ms. O'Laughlin.)

9 MR. MCGINLEY: I think, just so that we're  
10 clear, it appears, Susan, you're saying that  
11 anything, if he's been asked to do it, then it's  
12 covered by a privilege.

13 MS. BRICE: No, if he's been asked to do it  
14 by an attorney.

15 MR. MCGINLEY: I think that that's an  
16 improper and it goes beyond what's actually  
17 proper as an assertion of privilege.

18 MS. BRICE: Okay.

19 MR. MCGINLEY: And what privilege are we  
20 actually talking about, first of all?

21 MS. BRICE: Attorney-client and work product.

22 MR. MCGINLEY: Okay. I think the fact that  
23 someone's been asked to simply review something  
24 or like take the steps to find something doesn't

1 necessarily impede with that privilege or intrude  
2 into that privilege; but, if you're going -- I  
3 mean is that, basically, how you're going to  
4 instruct the witness going forward?

5 MS. BRICE: With respect to communications  
6 with attorneys, yes. If he was asked outside of  
7 communications with attorneys then I don't have a  
8 problem; but I think the question goes to what he  
9 was asked by an attorney, which goes into mental  
10 impressions, et cetera, which falls within the  
11 work product if an attorney asked him to look for  
12 specific things or what he asked him to look for,  
13 he or she.

14 MR. MCGINLEY: Well, I think we're entitled  
15 to find out whether he has had to look through  
16 his files and obtain information pursuant to  
17 discovery requests that we have made.

18 MS. BRICE: If he can answer that without  
19 having -- without reference to a discussion with  
20 an attorney, that's fine.

21 MR. MCGINLEY: Q Have you ever at any point  
22 in time gone through your files -- Let me just  
23 ask you this first: I assume that you keep files  
24 relating to Johns Manville's site?

1 three years ever looked through any of your files  
2 related to the Johns Manville site in Waukegan?

3 A Yes.

4 Q Okay. Have you ever instructed any of  
5 your staff to look through the files as well?

6 A No.

7 Q Okay. Have you ever made copies of those  
8 files for anybody when you viewed them?

9 A Not to my knowledge. I don't think so.

10 Q Okay. What was your purpose in reviewing  
11 the files when you have during the course of the  
12 past three years let's say?

13 MS. BRICE: Objection to the extent it  
14 requires you to respond with reference to a  
15 communication with an attorney. Otherwise, you  
16 can answer the question.

17 THE WITNESS: A Yes, to answer questions  
18 posed to me which -- and, I'm sorry, I don't mean  
19 to be difficult -- the Johns Manville site is  
20 composed of the SRP site, the southwest sites,  
21 settling base, the industrial canal, the pumping  
22 lagoon, the borrow pit, and the  
23 roads --

24 THE COURT REPORTER: Wait, the industrial

1 THE WITNESS: A Which site?

2 Q Any or all of them.

3 A Okay.

4 Q The Johns Manville site in Waukegan.

5 A Have I ever gone through my files?

6 Q Yes.

7 MS. BRICE: No. Do you have files?

8 THE WITNESS: Or do I have files?

9 A Yes, I have files.

10 MR. MCGINLEY: Q Okay, so you have files.

11 Have you ever been asked at any point in the  
12 recent past have you actually looked through your  
13 files pertaining to the Johns Manville sites in  
14 Waukegan at any point let's say in the past three  
15 years, you know, for documents that might be  
16 produced by Johns Manville to the Department of  
17 Transportation?

18 MS. BRICE: Okay, objection, compound, vague.

19 MR. MCGINLEY: Q Do you understand the  
20 question, sir?

21 THE WITNESS: A No, I don't.

22 Q Okay.

23 A I'm sorry.

24 Q Have you during the course of the past

1 canal --

2 THE WITNESS: Yes, the industrial canal --

3 THE COURT REPORTER: -- and --

4 THE WITNESS: -- the pumping lagoon, the  
5 borrow pits, and the roads. And the SRP sites is  
6 composed of I think 39 sub-sites.

7 MR. MCGINLEY: Q Okay.

8 THE WITNESS: A So there's a lot of files;  
9 and I look through them for different things --  
10 Q Okay.

11 A -- in order to negotiate closure with the  
12 federal government and with the state government.  
13 So I guess I'm having trouble, I don't understand  
14 your question.

15 Q Let me limit it. Have you had reason to  
16 look through your files at any point during the  
17 past three years as they pertain to site three?

18 A Yes.

19 Q Okay, and what was your purpose in  
20 looking through your files with respect to site  
21 three; what were you trying to answer with  
22 respect to that review?

23 MS. BRICE: Objection to the extent the  
24 question requires you to answer with respect to a

1 conversation with an attorney. Otherwise, you  
2 can answer the question.

3 THE WITNESS: Right.

4 **A To develop a remedial action plan that**  
5 **satisfied the federal government.**

6 MR. MCGINLEY: Q Okay, so that -- was there  
7 any other reason besides reviewing the files,  
8 such that you could put together this remedial  
9 action plan that you were reviewing your files?

10 MS. BRICE: Same objection and instruction  
11 that I just gave you.

12 THE WITNESS: A Yes.

13 MR. MCGINLEY: Q What other reasons were --  
14 caused you to go review your files?

15 **A To execute the remedial action plan.**

16 Q Okay, and when you say "remedial action  
17 plan" I want to make that sure we're defining  
18 terms again because what I think what you may  
19 mean is the remediation action work plan, is  
20 that --

21 **A Yes, yes --**

22 Q -- the correct term for it?

23 **A -- yes. I'm sorry.**

24 Q No, no, I just want to make sure that, I

1 want to make sure that we're referring to the  
2 same thing the proper way.

3 **A It's good, because we don't seem to speak**  
4 **the same language.**

5 Q Well I mean --

6 **A They're English words, but they just**  
7 **don't make sense in that order.**

8 Q Okay. Well, I mean it helps I think,  
9 obviously, to get the terms out so that that way  
10 we have at least some, the beginning of a shared  
11 understanding.

12 **A We have very different frames of**  
13 **reference.**

14 Q Well, you're probably coming at it from  
15 the scientific-engineering world. We're coming  
16 from the legal world and that is true --

17 **A There's a bridge somewhere, I feel**  
18 **certain.**

19 Q You haven't found it yet. I'm not sure I  
20 have either.

21 Okay, let me ask you: So you've looked  
22 at these documents in your files pertaining to  
23 site three for the purposes of working on -- or  
24 what with respect to the remedial action work

1 plan what was your specific purpose, to help and  
2 form the development of the remedial action work  
3 plan? Were you writing the remedial action work  
4 plan or was somebody else doing it?

5 MS. BRICE: Objection, compound question.

6 MR. MCGINLEY: Q Do you understand the  
7 question?

8 THE WITNESS: A No. Break it down for me,  
9 please.

10 Q Sure.

11 **A And I'm not being difficult.**

12 Q I don't believe that you are.

13 The remedial action work plan did you  
14 write it or did someone else write it?

15 **A It was a collaboration.**

16 Q It was a collaboration, okay. So when  
17 you're looking at your files to help inform  
18 yourself about the remedial, with respect to  
19 producing this remedial action work plan, were  
20 you just -- what were you trying to find from  
21 your files that helped you with respect to  
22 putting together the remedial action work plan?

23 **A One must understand what's there.**

24 Q And when you say "one must understand

1 what's there" what do you mean exactly? It's a  
2 nice phrase, but I mean break it down for me. I  
3 mean, specifically, what are you trying to figure  
4 out?

5 **A Geology, hydrogeology characterization.**

6 Q Okay, and when you say "characterization"  
7 do you mean characterization of what  
8 specifically?

9 **A Extent of constituents of concern.**

10 Q Okay, which is another way of saying  
11 contaminants perhaps, right, "constituents of  
12 concern"?

13 **A Not really.**

14 Q Okay.

15 **A There are a myriad of contaminants in**  
16 **this world. A constituent of concern is a**  
17 **chemical or a substance that we've been asked to**  
18 **remediate.**

19 Q Okay.

20 **A It's going to be a long afternoon.**

21 Q Let me ask you this: I'm going to, we're  
22 going to give you this. This is going to be  
23 Exhibit Number 1, please.

24 (document marked as requested)

1 MR. MCGINLEY: Q Sir, the document that's  
2 just been handed to you as Exhibit Number 1, this  
3 is a Notice of Deposition; and it's a notice of  
4 deposition for your deposition here today. Have  
5 you seen this document before?

6 THE WITNESS: A And, I'm sorry, I don't  
7 have my reading glasses.

8 MS. O'LAUGHLIN: Come on --

9 THE WITNESS: They're on the airplane.

10 **A But, yes.**

11 MR. MCGINLEY: Hold on. Can we go off the  
12 record for one second here.

13 (WHEREUPON, a discussion was  
14 held off the record)

15 MR. MCGINLEY: Back on the record.

16 Q Yes, could you please familiarize  
17 yourself with the document; and after you've done  
18 that let me know.

19 THE WITNESS: A Yes.

20 Q Okay. My question to you, sir, is have  
21 you seen this document, Exhibit 1, deposition --  
22 Notice of Deposition for you here today, have you  
23 seen it before?

24 **A Yes, I've seen this.**

1 Q It is a good word. I happen to like that  
2 word.

3 **A I'm rather proud of it.**

4 Q The -- have you actually -- So this is  
5 actually page 5 of Exhibit 1. Have you seen this  
6 page 5 and --

7 **A Yes.**

8 Q -- previously? You have, okay.  
9 Did you see this last night?

10 **A Yes.**

11 Q Okay. Do you know, in looking through  
12 this, are there any of these documents that you  
13 would have? I mean did you look at this with an  
14 eye towards trying to determine whether or not  
15 you would have any of the documents that are  
16 referenced here?

17 **A I considered it.**

18 Q What do you mean by "considered it"?

19 **A I thought about it.**

20 Q Okay. What did your thoughts consist of  
21 with respect to the documents that are listed  
22 here, the categories?

23 **A It's a heck of a lot of documents to ask  
24 on short notice.**

1 Q Okay, when did you see it?

2 **A Yesterday afternoon.**

3 Q Yesterday afternoon, okay.

4 And this would have been, was this when  
5 you were out at the site in Waukegan?

6 **A No.**

7 Q Okay. Where were you when this was taken  
8 -- when you saw this document?

9 **A I was in my hotel.**

10 Q Okay. And what were -- did you have a  
11 paper copy or were you looking at it on a  
12 computer?

13 **A On a computer.**

14 Q Okay. So yesterday was the first time  
15 you saw this, is that --

16 **A I believe so, yes.**

17 Q Okay. Did you make any -- did you review  
18 the document rider to this deposition that was --  
19 the document rider is the description of the  
20 documents, it's a list of documents that --

21 **A I perused this yesterday afternoon or  
22 yesterday evening.**

23 Q Okay, so in perusing it did you --

24 **A It's a great word -- isn't it?**

1 Q Understood. But I mean, besides that,  
2 what else might you have thought about this?

3 **A That's about it.**

4 Q Okay. If you were going to attempt to  
5 find any of these documents, how would you go  
6 about it?

7 **A I would probably start by talking to  
8 Tat and to Dave.**

9 Q To Tat and Dave. And why would you talk  
10 to Tat and Dave?

11 **A Because they're mentioned.**

12 Q Okay. Would that also be true with  
13 respect to William Bow? Do you know William Bow?

14 **A Yes, I do.**

15 Q Okay. So would you have to talk with  
16 Mr. Bow as well to help get an understanding  
17 what's here?

18 **A Possibly. Although, I might be able to  
19 get some of that information from Tat.**

20 Q Okay, let me ask you this: Some of  
21 what's referenced here concern things such as  
22 e-mails, e-mails you might have received or what  
23 you might have sent.

24 **A Yes.**

1 Q To the extent that we're talking about  
2 e-mails, would you have access to those e-mails  
3 yourself? Do you save your e-mails?  
4 **A I do.**  
5 Q Okay. Do you -- how do you save your  
6 e-mails, do you have one massive in-box; or do  
7 you have discreet, sub-folders for -- in the  
8 former category?  
9 **A I have a mega, mega box.**  
10 Q Do you have 50,000 e-mails in your in-box  
11 or something --  
12 **A Yes.**  
13 Q -- like that?  
14 **A I-T is very upset with me.**  
15 Q So if you needed to locate a specific  
16 e-mail, understanding the fact that you have one  
17 gigantic in-box, how would you go about trying to  
18 track them down? Let's say there's an e-mail  
19 that's really super critical about some issue  
20 regarding how a contractor's going to perform  
21 work for Johns Manville at one of the Johns  
22 Manville sites up in Waukegan, how are you going  
23 to track that down if you absolutely have to have  
24 it today?

1 **A I would call Tat.**  
2 Q Okay, you would call Tat. So, in  
3 essence, you would not -- there would be no way  
4 of ever relying on your own e-mail to try and  
5 find information that you're looking for?  
6 **A It depends on the urgency.**  
7 Q So --  
8 **A If I had a month I could probably work my  
9 way through them.**  
10 Q Do you have -- do you have a, do you have  
11 an assistant or a secretary or somebody like that  
12 that works for you?  
13 **A No.**  
14 Q Just yourself and all of your reports?  
15 **A We don't really have admins. I have no  
16 admin.**  
17 Q Okay. If you needed to find any  
18 documents pertaining to -- You understand that  
19 Commonwealth Edison is also a signatory, shall we  
20 say, a party with responsibilities underneath the  
21 administrative order on consent, are you aware of  
22 that?  
23 MS. BRICE: Objection, asked and answered,  
24 and mischaracterizes prior testimony.

1 THE WITNESS: A I know that Commonwealth  
2 Edison owns a parcel of property.  
3 MR. MCGINLEY: Q Have you ever actually  
4 looked at the --  
5 **A I believe they do.**  
6 Q Have you ever actually looked at the  
7 administrative order on consent?  
8 **A No.**  
9 Q You've never seen it?  
10 **A I've seen I think two paragraphs from it.**  
11 Q Out of that entire document only two  
12 paragraphs?  
13 **A Yes.**  
14 Q Let me ask you this -- We're going to  
15 mark this as Exhibit 2.  
16 (document marked as requested)  
17 MR. MCGINLEY: Q The document I've just  
18 handed to you, which is marked Exhibit 2, this is  
19 Complainant's Second Supplemental Responses to  
20 Respondent's Fourth Set of Interrogatories.  
21 That's a legal way of saying these are answers  
22 that Johns Manville provided to IDOT with respect  
23 to questions that we had posed to Johns Manville.  
24 Now, I'm not asking you if you have ever seen

1 this document before; but I wanted to read  
2 something to you and get your take on something,  
3 okay, if I could. Interrogatory Number 8 says,  
4 "Identify each and every person with knowledge of  
5 any costs you", which would be Johns Manville --  
6 **A What page are you on?**  
7 Q I'm sorry, page 12, yes. It says,  
8 "Identify each and every person with knowledge of  
9 any costs you have incurred and for which you  
10 contend IDOT is responsible for". Now, if you  
11 turn to page 16, you'll see this is a paragraph,  
12 the top of the page continues over from the prior  
13 page, but you'll see if you look, there's a  
14 series of numbers and after each number is a  
15 name. You are at number four, "Frederick Scott  
16 Myers, Director of Environmental Programs for  
17 JM".  
18 **A I'm pretty far down on the food chain,  
19 aren't I?**  
20 Q Well, there's others that are further  
21 down. So I mean I think, yeah, you're actually  
22 towards the top of the pecking order. It says  
23 "Frederick Scott Meyers, Director of  
24 Environmental Programs for JM, paren, (all costs

1 incurred relating to the sites)", close paren.  
2 Would you agree that that is something that is  
3 within your knowledge? Do you have knowledge  
4 about all costs incurred relating to the sites?

5 **A I know it's kind of out of context here.**

6 Q Well, you can go back and -- I mean this  
7 is an answer that pertains back to the question I  
8 read before.

9 **A Okay, I'm sorry.**

10 Q Okay.

11 **A Please reask that question --**

12 Q Sure.

13 **A -- using different words.**

14 Q Well, I'm just going to read it again  
15 with the interrogatories. It says, "Identify  
16 each and every person with knowledge of any costs  
17 you have incurred" -- and "you" of course means  
18 Johns Manville -- "incurred and for which you  
19 contend IDOT is responsible for"; and here it  
20 lists, number four, "Frederick Scott Myers,  
21 Director of Environmental Programs for JM",  
22 again, "all costs incurred relating to the  
23 sites". Would you agree with that statement,  
24 you've been identified as having information

1 Is there any other way that you would  
2 obtain information relating to costs incurred at  
3 the sites -- just from the invoices; or is there  
4 any other way?

5 **A I may ask Tat or Dave.**

6 Q Okay, Tat or -- and that would be Tat  
7 Ebihara --

8 **A Yes.**

9 Q -- or Dave Peterson?

10 **A Yes.**

11 Q Okay.

12 **A And in the future when I say Tat, it's**  
13 **Tat Ebihara. It's too tough a name to pronounce.**

14 Q Ebihara?

15 **A Yeah. I'm from the south -- come on.**  
16 **And I've got braces on. So it's difficult.**

17 Q Let me just, I'm sorry, while you have  
18 that out --

19 **A And I'm not being difficult. I'm really**  
20 **trying to help.**

21 Q No, I'm not thinking you're being  
22 difficult at all.

23 Number 11 here, "Marci Letofsky, Legal  
24 Financial Coordinator for Johns Manville, (all

1 about all costs incurred relating to the sites,  
2 do you agree with that statement? I understand  
3 that you didn't write it, but I'm just asking if  
4 you agree with it.

5 **A I'm thinking. Patience.**

6 MS. BRICE: I believe if you define sites for  
7 him that might be helpful.

8 MR. MCGINLEY: Q Well, the sites in this  
9 case refers to -- unfortunately, I don't have the  
10 original -- but it would refer to sites three and  
11 site six certainly. It could refer to the  
12 southwestern sites as well.

13 THE WITNESS: A I approve invoices for  
14 those sites.

15 Q Okay, but that's -- but what it says here  
16 is that you have knowledge of all costs incurred  
17 relating to the sites; and my question to you is  
18 not whether you approve invoices but my question  
19 to you is whether this, you would agree with this  
20 statement, do you have knowledge of all costs  
21 incurred relating to the sites?

22 **A If they were, if they came across my desk**  
23 **as an invoice, I would say yes.**

24 Q Okay, okay, that's helpful.

1 costs incurred relating to the sites), same  
2 description as what's been, same  
3 characterization, basically, as with respect to  
4 what your knowledge is. Do you have any  
5 understanding of what knowledge she might possess  
6 with respect to costs incurred relating to the  
7 sites?

8 **A No, I don't.**

9 Q Okay. Do you ever talk with

10 Miss Letofsky about the costs that have been  
11 incurred for the sites, for sites three, for site  
12 six, or the southwestern site areas, generally?

13 **A I don't recall ever having a conversation**  
14 **with her about it.**

15 Q Okay, about the -- about costs generally?

16 **A I don't recall having a conversation with**  
17 **her about costs related to Waukegan.**

18 Q Okay. Would you ever talk to

19 Miss Letofsky about the implementation of the  
20 work that's being done at the Waukegan sites?

21 **A No.**

22 Q Okay, which -- to the extent that you  
23 would talk with her, would I be correct in  
24 assuming that you would talk to her simply about

1 financial issues?

2 **A I talked to her about my budget.**

3 Q About your budget, okay. And when you  
4 say you talked to her about your budget, what  
5 kinds of budgets are we talking about here?

6 **A Environmental.**

7 Q When you do, when you do budgets just  
8 talk me through, what's your budgeting process.  
9 I mean you're coming up on the start of a new  
10 fiscal year. I don't know is that a calendar  
11 year or does your fiscal follow the calendar or a  
12 different period of time?

13 **A We establish or start working our budgets  
14 in June or July.**

15 Q Okay. And they go into effect beginning  
16 what?

17 **A December -- or, actually, January.**

18 Q January, okay. So your year follows the  
19 calendar, your fiscal year follows the calendar?

20 **A Yes.**

21 Q So when you're doing budgets what's  
22 involved in that process? How do you -- do you  
23 come up with a budget for everything that you're  
24 doing under the rubric of environmental programs;

1 situation like the Waukegan sites, I mean is that  
2 part -- that sits outside of the budgeting  
3 process?

4 **A Yes.**

5 Q Okay. What's -- what's your highest  
6 level of education that you've completed, sir?

7 **A I have a B.S., Bachelor of Science.**

8 Q In what discipline?

9 **A Geology.**

10 Q Okay, did you ever get -- and that's the  
11 highest level of education, formal education,  
12 that you received?

13 **A This is all in my resume. You've read  
14 it.**

15 Q I don't think we actually have a copy of  
16 your resume so --

17 **A You pulled it 17 hours ago.**

18 Q Well, I looked at your Linked In; but I  
19 don't know that that's your full resume.

20 **A I did some post-graduate work in geology.**

21 Q Okay. Are you, are you a professional  
22 geologist; or do you have any licensing or  
23 certifications?

24 **A I'm a certified professional geologist.**

1 or are we just talking about the budgets that  
2 you're doing for a specific site or --

3 **A I'm the Director of Environmental  
4 Programs for Johns Manville and I'm responsible  
5 for the budget of my group.**

6 Q So when you're doing that do you have to,  
7 let's say with respect to the Johns Manville site  
8 in Waukegan, do you every year have to determine  
9 how much money you're going to need to set aside  
10 to meet the work that would be projected to be  
11 performed during that fiscal year?

12 **A That's not part of the AOP.**

13 Q I'm sorry?

14 **A That's not part of the Annual Operating  
15 Budget --**

16 Q Okay.

17 **A -- Program.**

18 Q Okay. Well, so what are you doing with  
19 the budgets then? I mean what do the budgets  
20 actually go towards?

21 **A The budget's -- is for manpower, for  
22 computers, for telephones, for travel, business  
23 meetings, that sort of thing.**

24 Q Okay. So how do you account for a

1 Q Okay, and how long -- is that something  
2 you currently have, a certification for --

3 **A Yes.**

4 Q And how long have you had that?

5 **A Wow --**

6 Q Just best guess I mean.

7 **A I was one of the first in the state to  
8 get it -- gosh, 20, 25 years ago. I don't --**

9 Q And when you say "the state" is this  
10 Colorado or --

11 **A The state -- the State of Kentucky and  
12 State of Wyoming.**

13 Q Okay. Your resume lists or your Linked  
14 In profile lists three places that you've worked:  
15 Valvoline in 1990 to 1999, Raytheon Polar  
16 Services from October of 2004 through June of  
17 2009, and then your current position, which is  
18 from 2010 to the present I believe. Were those  
19 the only positions that you've had?

20 **A I was a permit writer with the State of  
21 Kentucky.**

22 Q Okay.

23 **A When I was in college I sold insurance.  
24 When I was high school I was a manager at a**

1 **Burger Queen. I'm very proud of that as well. I**  
 2 **don't put it on my Linked In profile though.**  
 3 Q What did you do between Valvoline and  
 4 Raytheon Polar Services?  
 5 A **Oh, I'm sorry. I was with the ASF.**  
 6 Q Okay.  
 7 A **I'm sorry, I forgot about that.**  
 8 Q And what did you do with the ASF?  
 9 A **I was an environmental manager and I was**  
 10 **also an operations manager.**  
 11 Q Okay. Raytheon Polar Services what did  
 12 you do there?  
 13 A **I was Director of the Environmental**  
 14 **Health and Safety.**  
 15 Q Okay, and you were there for, looks like  
 16 five years or just shy of five years, right?  
 17 A **I don't have the dates in front of me.**  
 18 Q Um --  
 19 A **It sounds about right.**  
 20 Q Okay, so since you started working for  
 21 Johns Manville in 2010 is the position that you  
 22 have right now has that that always been the  
 23 position that you've held with Johns Manville?  
 24 A **No.**

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312-853-0648

SCOTT MYERS  
June 29, 2017

1 what are your duties? How long have you been the  
 2 Director of Environmental Programs?  
 3 A **Oh, gosh --**  
 4 MS. BRICE: I'm sorry, that's two questions  
 5 at once. You asked two questions.  
 6 MR. MCGINLEY: Well, let's just go with how  
 7 long he's been in his current position.  
 8 THE WITNESS: A I believe about five years.  
 9 Q Okay. So that would put it back to about  
 10 2012 or so, does that sound about right?  
 11 A **That sounds right; but I, again, I**  
 12 **couldn't tell you the exact dates.**  
 13 Q Well, I'm just asking you to give your  
 14 best guess under the circumstances.  
 15 A **I would say about 2012.**  
 16 Q Okay, okay. So your duties as the  
 17 Director of Environmental Programs what does that  
 18 include?  
 19 A **Ensuring environmental compliance across**  
 20 **JM.**  
 21 Q Does that also have to do with, when you  
 22 say "compliance", what about cleaning up or site  
 23 remediation work is that part of your current set  
 24 of duties?

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312-853-0648

1 Q Okay, when you first started working for  
 2 Johns Manville what were you doing?  
 3 A **Environmental Manager.**  
 4 Q And what did you do as an environmental  
 5 manager?  
 6 A **I managed compliance for the RS Division.**  
 7 Q I'm sorry, which division?  
 8 A **Roofing Services.**  
 9 Q Okay. Okay, and when you say compliance  
 10 with, for the roofing services division what  
 11 would that have entailed?  
 12 A **Environmental compliance.**  
 13 Q So for permitting and things like that,  
 14 so that I mean for the facilities that Johns  
 15 Manville has that produce roofing materials?  
 16 A **Ensuring compliance for all of the plants**  
 17 **in the Roofing Services Division.**  
 18 Q Okay. So that would pertain to things  
 19 like permitting issues, I take it; would you have  
 20 done things like develop environmental health and  
 21 safety training programs or things of that  
 22 nature?  
 23 A **I didn't do health and safety.**  
 24 Q Okay. In your current position right now

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312-853-0648

SCOTT MYERS  
June 29, 2017

1 A **I oversee all of the site remediations.**  
 2 Q You receive all the site remediations?  
 3 A **I oversee them.**  
 4 Q Oversee them, okay.  
 5 A **Sorry -- the braces.**  
 6 Q About how many site remediations do you  
 7 currently oversee?  
 8 A **I think we have probably maybe seven**  
 9 **active sites.**  
 10 Q And you're including the site in Waukegan  
 11 as being one of that seven --  
 12 A **Yes.**  
 13 Q -- would that be right? Okay.  
 14 A **Although, it was composed of many parts.**  
 15 Q Understood.  
 16 I assume that as the Director of  
 17 Environmental Programs you deal with regulatory  
 18 agencies either at the state, local, or federal  
 19 level, would that a correct assumption on my  
 20 part?  
 21 A **I deal with federal, state, and local**  
 22 **environmental agencies.**  
 23 Q Okay, and just environmental, nothing  
 24 besides that?

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1     **A No.**

2     Q So just state, local, and federal

3 environmental agencies of one sort or another?

4     **A I deal with federal, state, and local**

5 **environmental agencies.**

6     Q Okay. Have you, I assume that in the

7 time that you've been Director of Environmental

8 Programs you have had responsibility then for the

9 Waukegan sites, is that right?

10    **A No.**

11    Q You have not -- you haven't had

12 responsibility for that? You just said --

13    **A Not since 2012.**

14    Q Not since 2012. So when you became the

15 Director of Environmental Programs in 2012 you

16 were or were not dealing with the Waukegan sites?

17    **A I was not.**

18    Q Okay, who was dealing with the Waukegan

19 sites at that point?

20    **A I believe it was Brent Tracy.**

21    Q Brent Tracy was dealing with them.

22 What's your understanding of what capacity he

23 would have been dealing with those sites?

24    **A Honestly, you'd have to ask him.**

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1 question.

2     MR. MCGINLEY: Q Is there a memo issued

3 saying from this date forward January twenty --

4     THE WITNESS: A No.

5     Q Okay, it was just sort of informally

6 handed off to you?

7     **A There was no christening or no champagne,**

8 **nothing. I just became more and more active in**

9 **it.**

10    Q Okay. Had you been active in it to some

11 extent before January of 2013?

12    **A No.**

13    Q Okay. Were you ever jointly responsible

14 for the Johns Manville sites with anybody else at

15 Johns Manville? And when I say Johns Manville

16 sites I am talking about the ones in Waukegan.

17    MS. BRICE: Object to the form of the

18 question.

19    THE WITNESS: A I'm not sure -- I really

20 don't understand what you're asking me.

21    MR. MCGINLEY: Q Sure. So I think I heard

22 you say before that you just began to acquire

23 more responsibility for the Johns Manville sites.

24 I think that's what I understood you to say. Is

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1     Q Okay.

2     **A I was assigned that responsibility in**

3 **2013.**

4     Q Okay. So from 2013 to the present today

5 though have you been the person at Johns Manville

6 who has been responsible for overseeing the

7 remedial work, the site investigation work at the

8 Johns Manville sites in Waukegan?

9     **A I have been responsible since I believe**

10 **it was January of 2013.**

11    Q And do you think prior to that it was

12 Brent Tracy?

13    **A You're going to have to ask Brent.**

14    Q Okay.

15    **A I can only tell you what I --**

16    Q But that's your understanding though that

17 Brent was responsible, is that right?

18    **A Honestly, you're going to have to ask**

19 **Brent.**

20    Q Okay. Was there, at the time that you

21 took this over, I mean was there anything that

22 memorialized that assumption assuming

23 responsibility for the Johns Manville sites?

24    MS. BRICE: Objection to the form of the

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1 that correct on my part?

2     **A Yes.**

3     Q So you were gradually taking on more

4 responsibility for oversight of the sites, is

5 that right?

6     **A They needed someone with more of a**

7 **geological background.**

8     Q Okay.

9     **A So I advised, you know, starting in**

10 **January I started sitting in on some of the**

11 **meetings and helped with my opinions.**

12    Q Okay, so at the time that you were

13 beginning to sit in on those meetings who else

14 from Johns Manville would have been participating

15 in them?

16    **A Brent Tracy, Denny Clinton.**

17    Q And who else would have been sitting on

18 these meetings, were these just internal meetings

19 at Johns Manville; or were these meetings with

20 yourself, Mr. Tracy, Mr. Clinton, and other, some

21 of your outside consultants?

22    **A It would have been both.**

23    Q Okay, so both internal and sort of

24 external meetings?

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1 **A Correct.**

2 Q Okay. From 2013 to the present day have

3 you ever had any discussions with anybody at

4 US-EPA about the costs of the work that Johns

5 Manville is being required to conduct at the

6 southwestern site area?

7 **A I don't know if we discussed costs other**

8 **than -- if I had it would have been with Matt Ohl**

9 **who's --**

10 THE COURT REPORTER: Matt?

11 THE WITNESS: Matt, M-A-T-T, who is the

12 federal manager for this project.

13 MR. MCGINLEY: Q And I think, just so we're

14 making the record clear and helping the court

15 reporter, Ohl is O-H-L, Matt Ohl?

16 THE WITNESS: A Yes.

17 Q Okay.

18 THE COURT REPORTER: Thank you.

19 MR. MCGINLEY: Let me ask you this, when --

20 MS. BRICE: Well, before you go anywhere --

21 MR. MCGINLEY: Yes.

22 MS. BRICE: -- just one question. We've

23 almost been going about an hour. You want to

24 take a break before you dive into something new?

1 **them for references.**

2 Q Do you ever do -- are you familiar with

3 the term like request for a proposal or something

4 like that?

5 **A Yes.**

6 Q Do you ever do request for proposals, put

7 them out to get bids for work that Johns Manville

8 might want done?

9 **A Yes.**

10 Q Okay, who would draft up those requests

11 for proposals for that kind of work?

12 **A It would depend on the work being done.**

13 Q Okay, let's say we're talking about

14 something akin to what's at issue in this case,

15 environmental remediation work, was that

16 something that a request for a proposal would be

17 created for?

18 **A Yes.**

19 Q Okay, was a request for proposal ever

20 created for doing the work that's actually being

21 done in Waukegan?

22 **A Again, which site?**

23 Q How about the southwestern site area.

24 **A Yes.**

1 MR. MCGINLEY: Sure, we can take a break.

2 MS. BRICE: I would like to go to the

3 bathroom, so if you wouldn't mind.

4 MR. MCGINLEY: That's fine.

5 (WHEREUPON, a break was held

6 from 1:58 to 2:08 p.m.)

7 MR. MCGINLEY: Back on the record.

8 Q Mr. Myers, I'd like to turn to a few

9 questions about how you go through, how you as

10 the Director of Environmental Programs hire

11 outside consultants to do work for Johns

12 Manville, you know, environmental types of work.

13 So tell me what the process is, just generally

14 speaking. You have a project, let's say

15 something like a removal action or a remedial

16 action takes place, you know you need a

17 contractor, what do you do to go out and get that

18 person into position so they can start doing the

19 work that needs to be done?

20 **A There's a number of things. I'll look at**

21 **Johns Manville's approved vendor list. I'll look**

22 **at national companies. I'll look at local**

23 **companies. If it's a company I don't know well**

24 **I'll interview them, look at some of their, ask**

1 Q Okay, and what do you recall -- what

2 was -- are we talking about one request for

3 proposal or more than one request for proposal?

4 **A More than one.**

5 Q Okay, what's your best guess as to how

6 many request for proposals have been prepared for

7 work at the southwestern site areas?

8 **A Oh, I can't even guess.**

9 MS. BRICE: Don't speculate.

10 THE WITNESS: A Yeah, I can't.

11 MR. MCGINLEY: Q Is it ten, I mean do you

12 think at least ten have been done?

13 **A Probably not that many.**

14 Q Okay, would it be between five and ten?

15 **A Probably.**

16 Q Okay.

17 **A And, again, I'm just --**

18 Q I understand. But would you be

19 comfortable saying at least five have been done?

20 **A I think so; but, again, I -- this**

21 **is something I wasn't prepared to --**

22 Q Well, certainly more than one, right?

23 **A Yes, yes.**

24 Q Okay, so what did those requests for

1 proposal actually entail, what kind of services  
2 are you seeking when you're issuing these  
3 requests for proposals for the southwestern site  
4 area?

5 **A I would -- I looked at a request for**  
6 **proposal for say the work Tat's doing; and I bid**  
7 **that against, or I think it was three companies,**  
8 **and then the actual physical piece of the work,**  
9 **the -- when we drag out the yellow iron.**

10 Q I'm sorry, drag out the -- oh, you mean  
11 the construction equipment?

12 **A Yes, I'm sorry, the dozers and trucks.**

13 Q Okay, sure.

14 **A That piece is bid out. And, again, it,**  
15 **you know, you divide the product up into two or**  
16 **three sections and you bid each of those out.**

17 Q When you say "sections" are you talking  
18 about like geographic sections, I mean --

19 **A It doesn't have to be geographic --**  
20 **phases of the project.**

21 Q Phases, okay.

22 Does -- So when you were with AECOM,  
23 AECOM actually responded to a request for  
24 proposal --

1 Q Okay, so as far as you know there is no  
2 guidelines that say what information needs to be  
3 included in an invoice? I mean, clearly,  
4 contractors are going to end up --

5 **A Not to my knowledge --**

6 Q -- submitting invoices --

7 **A -- not to my knowledge.**

8 Q Not to your knowledge, okay.

9 **A Invoices can take many shapes.**

10 Q Okay, fair enough.

11 So there's really no, there's no formal  
12 cost documentation procedures that Johns Manville  
13 would require a contractor to follow when they're  
14 doing work and billing for that work?

15 **A As I said, I haven't --**

16 MS. BRICE: Can I do my objection?  
17 Objection, asked and answered.

18 Now you can say what you were about to  
19 say.

20 THE WITNESS: A As I said before, I -- I  
21 haven't seen it if it exists.

22 MR. MCGINLEY: Q Okay. If it did exist is  
23 that something that you think you would know  
24 about in your capacity as the Director of

1 **A Yes.**

2 Q -- for work that was done at the  
3 southwestern site area?

4 And when those requests, when the --  
5 how do you refer to that that document they're  
6 submitting or documents that they're submitting  
7 in response to request for proposal, is it --  
8 what term would you use to describe that?

9 **A A proposal.**

10 Q Okay, so when they submit the proposal  
11 who's reviewing that proposal, are you doing  
12 that; or is somebody that's on your staff doing  
13 that?

14 **A No, I review it.**

15 Q Okay. When the request for proposal goes  
16 out does it specify anything with respect to how  
17 the party that would be hired would have to go  
18 about documenting their costs or anything like  
19 that?

20 **A I don't think so.**

21 Q Okay. Does -- does Johns Manville have  
22 any sort of internal procedures regarding how  
23 costs to contractors are to be documented?

24 **A If they do, I haven't seen them.**

1 Environmental Programs?

2 **A Probably. But, again, I don't know; I**  
3 **can't answer that question.**

4 Q Do you ever deal with -- so you're --  
5 ever been familiar with the issues about possible  
6 overcharges to the company for work done by any  
7 of your environmental consultants?

8 **A I believe AECOM on site four-five made an**  
9 **error I picked up on and we had them correct it;**  
10 **and I think we were charged \$40 on a UPS charge**  
11 **that was supposed to have been four or something**  
12 **like that, I don't know. Again, that was**  
13 **associated with site four-five.**

14 Q So it sounds like you're reviewing every  
15 invoice that comes in, is that a fair statement?

16 **A Yes, I do.**

17 Q Okay, so and is that true for -- you  
18 mentioned earlier that there are seven  
19 remediation-type projects that are currently  
20 ongoing for Johns Manville throughout I guess the  
21 country.

22 **A Approximately, seven.**

23 Q Okay, but among those seven projects that  
24 are currently ongoing, do you review the invoices

1 and the bills that come from all of the work of  
2 all seven of those sites?

3 **A All but one site. And I'm training one**  
4 **of our junior people to do that, I'm overseeing**  
5 **their work but --**

6 Q Do you ever deal with your outside  
7 environmental consultants directly, I mean do  
8 you, do you oversee their work on a day-to-day  
9 basis; or do you have somebody on your staff sort  
10 of maintaining day-to-day contact with your  
11 outside consultants?

12 **A I don't have anyone on my staff doing it**  
13 **other than Jennifer on that one site that I have**  
14 **her on.**

15 Q Okay, so you're kind of a hands-on guy it  
16 sounds like, is that a fair statement?

17 **A I oversee their activities, if that's**  
18 **what you're indicating.**

19 Q Well, what I'm trying to get at is I mean  
20 are you the chief point of contact, if there's a  
21 question that comes up with one of your  
22 contractors at one of these seven sites, are they  
23 calling you; or are they calling somebody else?

24 **A No, they'll call me.**

1 **A I don't know what each of those letters**  
2 **stands for. It's a German accounting system.**

3 Q Okay, so it's -- that's the gist of it  
4 though, it's an accounting type of system?

5 **A Yes.**

6 Q Do you ever get invoices sent to you  
7 directly?

8 **A I have to request it. So I request to be**  
9 **copied on it.**

10 Q I see.

11 **A So I get a copy, and then it goes**  
12 **directly to our A-PAY System.**

13 Q Okay. So by going into this accounting  
14 system does that, do you have any role in  
15 reviewing and approving that? I mean do you have  
16 to look at the invoice and go, yes, it all checks  
17 out --

18 **A Yes.**

19 Q -- approve for payment?

20 **A Yes.**

21 Q Each and every instance?

22 **A Yes.**

23 Q Okay. Do you know if there's ever any  
24 auditing of the project -- I mean costs, not

1 Q Okay. And is that true across the board?

2 **A Again, there's one site that I'm training**  
3 **someone to work on.**

4 Q Okay, but with the exception of that one  
5 site that you're trying to get somebody else into  
6 that position, with all the other six sites it  
7 sounds like you're the main point of contact for  
8 any of your companies --

9 **A I believe so, yes.**

10 Q -- for your outside contractors?

11 **A Yeah. I mean we have one site that's**  
12 **Innisfail that's up in Alberta, that I have a**  
13 **site environmental person that takes a fairly**  
14 **active role.**

15 Q Okay. Okay, as the Director of  
16 Environmental Programs do you approve payments to  
17 your outside contractors when they come in?

18 **A Yes.**

19 Q Okay, so you get the invoice -- let me  
20 just make sure I understand this correctly --  
21 Would the process be that the invoices are sent  
22 to you directly from your contractors?

23 **A Our invoices go through the SAP System.**

24 Q Okay, which is what exactly?

1 environmental -- is there ever any kind of like  
2 financial auditing that's done with respect to  
3 these kinds of remediation projects?

4 **A Yes.**

5 Q Okay, can you describe that process as  
6 best you understand it, just help me understand  
7 what that involves.

8 **A There's an audit team that reviews to**  
9 **make sure that I put things out for bid and that**  
10 **we do an evaluation and get the right contractor**  
11 **in. They make sure I review the invoices. I --**  
12 **and, again, I'm not part of that team -- so I**  
13 **don't know the details of how they do their job**  
14 **but --**

15 Q Okay, is it through the, is the audit  
16 team Johns Manville's employees; or is it an  
17 outside auditor?

18 **A Johns Manville's employees.**

19 Q Are these -- and so their job is to,  
20 basically, make sure, if I understand what you're  
21 saying correctly, to -- that you're putting these  
22 projects out for bid properly, right?

23 **A Yes.**

24 Q So to make sure that it's put out to bid

1 properly, to -- and to what else, what else do  
2 they look at, what else are they making sure that  
3 you're doing?

4 MS. BRICE: Objection, asked and answered.

5 THE WITNESS: A That the invoices are  
6 reviewed. And, again, I can't tell you how their  
7 process works, I'm not on the team, and I've  
8 never been part of that team so --

9 MR. MCGINLEY: Q Understood. But it does  
10 sound like you do understand what's required of  
11 you as part of the auditing process, is that a  
12 fair statement?

13 A Yes.

14 Q Okay, so you have to, you have to review  
15 the invoices, you have to make sure that the  
16 request for proposal -- and I guess the proposals  
17 that come in are properly put together, is that  
18 right?

19 A Right.

20 Q Is there anything else that you need to  
21 do to kind of help satisfy your auditing team?

22 A I can't think of anything else.

23 Q Okay, whose -- who are the people, I mean  
24 do you know any of the names of the people that

1 A Yeah.

2 Q Have you -- is this something, the  
3 auditing for the work for the southwestern sites,  
4 is this something that's occurred one time, has  
5 it been subject to audit more than one time?

6 A It occurred last year, I think it ended  
7 early summer -- very, very detailed.

8 Q How long would you say this lasted for?

9 A Three months.

10 Q Do you -- I assume that you've been  
11 through the auditing process on other projects  
12 that you've overseen, is that a fair assumption?

13 A No, just this one.

14 Q This is the only time you've ever gone  
15 through an audit for any of the projects that you  
16 oversee?

17 A Just this one.

18 Q So this is the only time, is that right?

19 MS. BRICE: Asked and answered.

20 THE WITNESS: I've answered it twice.

21 THE COURT REPORTER: I'm sorry?

22 THE WITNESS: A I've answered that question  
23 twice.

24 MR. MCGINLEY: Q Okay. Now, earlier you

1 are on your auditing team?

2 A No, they were -- there were three people  
3 that audited; but it's -- the leader of that team  
4 his last name is Casey; but I couldn't tell you  
5 the other auditors.

6 Q Okay, Casey is that a man or a woman?

7 A No, that's the last name. It's a man.

8 Q Okay.

9 A I think it was Casey. I'm just not that  
10 familiar with those guys.

11 Q Okay. Do you know if there's any written  
12 procedures that Johns Manville has adopted for  
13 conducting these kinds of audits?

14 A I don't know anything about how that team  
15 works.

16 Q Okay. Do you ever receive the results of  
17 any of the auditing work that they do? Do they  
18 ever tell you you're doing a fine job or --

19 A I'm sure they were very happy with it,  
20 but I didn't get a written document.

21 Q So they just tell you that you've been  
22 told orally what the results of these audits are,  
23 but you've never actually gotten anything in  
24 writing about them?

1 testified that you have only, your familiarity  
2 with the administrative order on consent is  
3 limited to two paragraphs, is that correct?

4 A Yes.

5 Q Okay. Did you actually read them? I  
6 mean when you say you're familiar with only two,  
7 you've only read two paragraphs out of the entire  
8 document, is that right?

9 A Yes.

10 Q Okay, do you recall what two paragraphs  
11 those were?

12 A I couldn't find -- I guess if I had the  
13 document maybe I could find them, maybe.

14 Q Oh, well --

15 A Maybe.

16 Q -- I would be remiss if I didn't come  
17 with a copy of the administrative order on  
18 consent. So this would be 3.

19 (document marked as requested)

20 MR. MCGINLEY: Q Mr. Myers, what has just  
21 been handed to you, which is Exhibit 3, is the  
22 Administrative Settlement Agreement and Order on  
23 Consent for removal action, or as we sometimes  
24 refer to it as the administrative order on

1 consent. I take it from your testimony now that  
2 you have seen this document, at least to some  
3 extent?

4 THE WITNESS: A I've seen two paragraphs,  
5 and I think it's from this document; but, to be  
6 honest with you, I never looked at the whole  
7 thing. So I can't tell you for sure.

8 Q Off the top of your head would you know  
9 which paragraph, what the subject matter of the  
10 paragraphs --

11 A I'm going to see if I can find it. And I  
12 saw it once in like 2013. It's just not  
13 something that really -- I'll start reading this  
14 stuff the best I can.

15 Q Just let me ask you this: Do you recall  
16 what the subject matter of these paragraphs might  
17 have been?

18 A Like I say, it's been, what, four years.  
19 Give me a sec here. I'll find it.

20 Q Okay, that's fine.

21 A Not being snarky, I'm just --

22 Q I'm not taking it as snarky, sir. It  
23 sounds like an honest answer to me.

24 A At least, I think it was from this

1 agreement". Let me ask you this, sir: Has the  
2 work at the site been completed at this point?

3 A We're still repairing erosion and things  
4 like that trying to get the vegetation to  
5 stabilize. That takes a while.

6 Q Right, so --

7 A So I would say no.

8 Q So, no, okay.

9 Do you know are there any plans to  
10 issue a final report?

11 A Well, we have to.

12 Q I understand that, but has anyone began  
13 drafting a final report or --

14 A No. I don't want to do that until we're  
15 done.

16 Q Okay.

17 A Because we still had to make sure the cap  
18 is stabilized and that we had the proper  
19 vegetation.

20 Q Okay, when do you think that the work  
21 would actually be finalized? I mean if you have  
22 to deal with those kinds of stabilization issues  
23 and making sure the vegetation has fully taken  
24 place, taken root, is that something that you

1 document. I don't know.

2 Q Let me ask you this: Could I just direct  
3 your attention to one portion of this, 62 -- this  
4 is page 62-13 of the exhibit.

5 A 62, all right.

6 MS. BRICE: Oh, here. Yeah.

7 THE WITNESS: I'm sorry.

8 MR. MCGINLEY: Q Calling your attention to  
9 paragraph 21, which is at the top of the page, it  
10 says --

11 MS. BRICE: One more page.

12 THE WITNESS: Oh, I'm sorry.

13 MS. BRICE: We're trying to find the page.

14 MR. MCGINLEY: I'm sorry, I thought you were  
15 there.

16 MS. BRICE: Oh, here.

17 MR. MCGINLEY: Q Do you see paragraph 21,  
18 sir?

19 THE WITNESS: A Final report?

20 Q Yes. It says "Within 60 days after  
21 completion of all work required by the settlement  
22 agreement, Respondents shall submit for EPA  
23 review and approval a final report summarizing  
24 the actions taken to comply with this settlement

1 think will happen this year or is that something  
2 that might take longer than --

3 A That's in God's hands. Weather like we  
4 had last night causes a lot of erosion and makes  
5 it difficult for a vegetation to thrive.

6 Q Um-hum, okay. So is it possible that the  
7 work is going to be done this year?

8 A Possible. I hope so. I'd like to get it  
9 done.

10 Q If you had to give a proper, realistic  
11 assessment what would you say percentage-wise the  
12 chance of it being done this year?

13 A Again, it's in God's hands. I can't  
14 predict the weather.

15 Q I understand you can't predict the  
16 weather --

17 A If we have great weather and the storm we  
18 had last night didn't wash out too much of our  
19 vegetation or our cap, I would hope to get -- get  
20 finalized in the fourth quarter of this year.

21 Q Okay, okay --

22 A I'm sorry --

23 Q That's fine.

24 A -- that's the best I can do.

1 Q How many times have you been out to the  
2 southwestern site area?  
3 A I don't know.  
4 Q What's your best guess?  
5 A It would be a guess. I hate to give you  
6 that.  
7 Q I'm perfectly comfortable with a guess.  
8 A I was out a lot more in the last summer  
9 while we were, we had the heavy equipment out.  
10 Yesterday was the first time I've been out since  
11 last December when we shut down operations.  
12 Q So yesterday was the first time this  
13 year?  
14 A Yes.  
15 Q Okay. And when you say you were out  
16 several times last year when the heavy equipment  
17 was out there, how many times do you think that  
18 was?  
19 A Oh gosh, it's a guess.  
20 MS. BRICE: Objection, calls for speculation.  
21 MR. MCGINLEY: Q You can guess.  
22 THE WITNESS: A Let's say ten times.  
23 Q Okay. When you're going out I mean,  
24 typically, how long would you go out for, go out

1 Q Okay. So you just go out, observe, meet  
2 with people, talk to your consultants and that's  
3 it?  
4 A Make sure that the work's being done,  
5 that they're following the remedial action work  
6 plan, and everyone's performing up to my  
7 expectations.  
8 Q Okay. Frequently do you communicate with  
9 Mr. Ebihara about the work that's being done by  
10 AECOM?  
11 A Gosh, it depends on what's going on at  
12 the time.  
13 Q Okay, when is -- I mean do you  
14 communicate with him at least on a monthly basis?  
15 A Oh, yes.  
16 Q Do you communicate with him at least on a  
17 weekly basis?  
18 A Yes, yes. For instance, last summer I  
19 was probably, you know, I'd get daily  
20 communications from Dave; and I'd talk to Tat  
21 probably two, three times a week.  
22 Q I'm sorry, it's -- sorry to interrupt --  
23 but, just for the purposes of the record, when  
24 you say "Dave" you're talking about --

1 for a day, a couple days?  
2 A A couple days.  
3 Q What else are you doing when you're out  
4 there, you're observing the work being done; are  
5 you meeting with other people while you're out  
6 there too?  
7 A Sometimes I'll meet with the local  
8 citizens action group. I might meet with the  
9 EPA. I might meet with Corps of Engineers. I'll  
10 definitely meet with my consultants.  
11 Q When you go out and do these site visits,  
12 after you're finished do you do, do you take any  
13 notes while you're out there in the course of  
14 your site visits?  
15 A Typically, no.  
16 Q Do you write up anything about your site  
17 visit --  
18 A Nah --  
19 Q -- afterwards?  
20 A -- no, I don't do any type of post visit  
21 report.  
22 Q Okay. Do you take any photographs or  
23 anything like that while you're out there?  
24 A No.

1 A Dave Peterson, yeah. I'm sorry.  
2 Q That's fine, no, I just -- again, just  
3 for the sake of making the record.  
4 So when you're communicating let's say  
5 with Tat is that being done on -- by phone; or  
6 are you doing it by e-mail? I mean when you're  
7 not at the site that is.  
8 A It could be either. We talk on the phone  
9 a lot.  
10 Q Okay. The e-mails that you exchange with  
11 Mr. Ebihara do you save all of those?  
12 A I can't say that I've saved them all.  
13 Those that I do save I put in my big e-mail file.  
14 Q Have you ever discussed the, with  
15 Mr. Ebihara, any issues related to the costs of  
16 the work at site three?  
17 A We discuss it.  
18 Q Okay, so what do you talk about?  
19 A How -- we discuss, you know, are they on  
20 budget, are they not on budget -- they've done a  
21 real good job of staying on budget -- where we  
22 are with respect to completing the work plan,  
23 those types of things.  
24 Q And these are, when you're talking with

1 Mr. Ebihara on the phone, let's say it's just you  
2 and Mr. Ebihara, is that -- would that be correct  
3 in assuming that?

4 **A It depends on the meeting that we're**  
5 **having.**

6 Q Okay, but there would be instances where  
7 it's just you and Mr. Ebihara, right?

8 **A Yes, yes.**

9 Q And when you say it depends on the  
10 meeting you're having, were you ever doing  
11 conference calls, I mean multiple-person  
12 conference calls to talk about things?

13 **A Right, when the site work -- and I'm not**  
14 **just talking about site three but the whole**  
15 **site -- we had weekly meetings with the EPA that**  
16 **included me and Tat and Dave and several people**  
17 **from the state, and I couldn't even tell you, but**  
18 **it was a cast of thousands it seemed.**

19 Q And when you say weekly meetings, these  
20 are actual conference calls, right?

21 **A Yes.**

22 Q Okay. Have you ever actually had  
23 meetings at the site with people from US-EPA,  
24 from Illinois EPA --

1 **A Yes.**

2 Q -- the Corps -- I mean --

3 **A I don't know that we've had them**  
4 **specifically related to site three, the southwest**  
5 **sites as a whole, because sometimes you need to**  
6 **lay eyes on it and discuss the details and**  
7 **workability, feasibility of the plans.**

8 Q Okay.

9 (attorney sneezed)

10 THE WITNESS: Bless you.

11 MR. MCGINLEY: Gesundheit.

12 THE WITNESS: Did you get that?

13 MR. MCGINLEY: Q So you talked about costs  
14 related to site three. Would it be fair to  
15 assume that you've talked with Mr. Ebihara about  
16 costs related to site six as well?

17 **A Yes.**

18 Q And same sort of topics of discussions,  
19 where they are, you know, where they are in terms  
20 of their costs, how the costs are relating to the  
21 work to be done, that type of thing?

22 **A Where we can save and whatever.**

23 Q Okay, and when you say where we can save,  
24 what are you trying to, what do you mean exactly?

1 **A Any time you have a project like this you**  
2 **always try to be as cost effective as you can.**  
3 **If we get in and find that, you know, the extent**  
4 **doesn't cover a whole area, you might take an**  
5 **extra couple samples to document that it's clean**  
6 **so you don't have to keep digging, we try to find**  
7 **ways to lower costs on management of the ground**  
8 **water, just anything we can. Because I'm**  
9 **responsible for the budget and any place I can**  
10 **save I got to save.**

11 Q Okay, so you said earlier that the annual  
12 budget and process that you go through doesn't  
13 really deal with the money that's being, would be  
14 allocated for doing the work at a site like the  
15 southwestern site, right?

16 **A Um-hum.**

17 Q So how do you actually, how does John  
18 Manville actually allocate money for doing that  
19 work at the southwestern site?

20 **A I base it on the bids as they come in and**  
21 **give Johns Manville a projection and, you know,**  
22 **update quarterly as to how we're doing on those**  
23 **projections.**

24 Q Okay. So you're doing these kinds of

1 calculations, projections about where the work  
2 is, what the costs are, whether the work's on  
3 track or not, right, that's a part of what you're  
4 doing?

5 **A Yes.**

6 Q Okay, where does that money actually come  
7 from within the company though? It's not part of  
8 your budget. It must be from a separate pot of  
9 money.

10 **A You'll have to ask somebody in Finance or**  
11 **something like that. That's beyond my scope of**  
12 **knowledge.**

13 Q You just tell somebody we're going to  
14 need, let's say, hypothetically, two million  
15 dollars to do the work at Johns Manville for this  
16 project for the next three months, I mean what do  
17 you --

18 **A I project it out for, I look at the whole**  
19 **site, what's -- what do I think it's going to**  
20 **cost based on the bids we've gotten to remediate**  
21 **the site; and that's all -- all -- the whole**  
22 **site.**

23 Q And you're looking at it almost it sounds  
24 like from where the life cycle of the project,

1 right, you're not just saying like for the next  
2 six months or year or something like that but --

3 **A I project quarterly spending for the next**  
4 **year, and then I project what the whole project**  
5 **should cost to bring to a close.**

6 Q Okay, so you're kind of moving ahead on  
7 two tracks, if you will, what are we spending for  
8 the year ahead, as well as what you think will --

9 **A Right --**

10 Q -- be the lump sum by --

11 **A -- long-term and short-term expenditures.**

12 Q Okay. So when you make those kind of  
13 projections who are you communicating that  
14 information to?

15 **A The Director of Finance and CEO of the**  
16 **company, the CFO of the company, to Brent Tracy,**  
17 **and to chief counsel.**

18 Q Is that -- it sounds like you just said  
19 five different people that you're communicating  
20 to, Director of Finance, the CEO for the company,  
21 the CFO of the company, Mr. Tracy, and the chief  
22 counsel as well, is that right?

23 **A Yes.**

24 Q Okay.

1 as well?

2 **A No.**

3 Q Okay. So day-to-day work for the  
4 construction work?

5 **A Yes.**

6 Q I've seen reference to a company called  
7 Campanella. Is that -- and it sounds, from what  
8 I understand in reading the bills, it looks like  
9 Campanella is the one that's actually getting the  
10 construction equipment out, the labor force out  
11 there to do the work, right -- so David Peterson  
12 would be the person who's overseeing Campanella's  
13 work and the people --

14 **A Day-to-day.**

15 Q -- Campanella employs, right?

16 **A Um-hum.**

17 Q Okay --

18 THE COURT REPORTER: Yes?

19 THE WITNESS: Yes. Sorry.

20 MR. MCGINLEY: Q And just that  
21 day-to-day --

22 THE WITNESS: Can't type "uh-hum", can you?

23 THE COURT REPORTER: I could, but not a nod.

24 MR. MCGINLEY: Q So that's what

1 **A I think it's called -- I don't know what**  
2 **her title is -- chief in charge of all the**  
3 **lawyers.**

4 Q Okay, that would be Brent's boss then,  
5 right?

6 **A Yeah.**

7 Q Okay.

8 **A Some part of her crew.**

9 Q Okay. But you don't know where the  
10 money's actually coming from, you're just telling  
11 them how much it's going to cost and then  
12 somebody else is actually allocating the money?

13 **A I --**

14 MS. BRICE: Objection, asked and answered.

15 MR. MCGINLEY: Q David Peterson, what's his  
16 role at the site?

17 THE WITNESS: A He's my resident site  
18 engineer.

19 Q And what is that, I mean what do the  
20 duties of the resident site engineer entail?

21 **A To oversee day-to-day execution by the**  
22 **subcontractor or by the contractor that manages**  
23 **all of the heavy equipment.**

24 Q Okay. Is he also overseeing AECOM's work

1 Mr. Peterson's doing, he's just overseeing that  
2 kind of work, right?

3 THE WITNESS: A He is.

4 Q Okay. And Mr. Peterson's work, when he's  
5 billing for it he's not saying this is site  
6 three, this is site six, he's just billing a flat  
7 number per day, is that a correct understanding  
8 of how he bills?

9 THE WITNESS: A No --

10 Q Okay.

11 **A -- not exactly. SAP has line items for**  
12 **the various tasks; and when we bid the project**  
13 **out we might have, you know, a line item for say**  
14 **the cost of disposing of the water pumped out,**  
15 **we'll have a line item for fencing, we'll have a**  
16 **line item for all these things, and that's how we**  
17 **track it through SAP.**

18 Q Okay, but that wouldn't -- so would the  
19 line items all designate things in terms of David  
20 Peterson, site three, David Peterson, site six,  
21 or is it just David Peterson?

22 **A It could be either. Sometimes we'll have**  
23 **two things going on and he'll have to split his**  
24 **team between those two things.**

1 Q Okay. Is Mr. Peterson's work done under  
2 a contract --

3 A Yes.

4 Q -- is there a written contract?

5 A Yes.

6 Q And how long -- how long has he been  
7 providing these resident site engineer services?

8 A I can't answer that. Certainly since  
9 I've been --

10 Q So sometime in 2013, at least?

11 A Yeah, you're going to have to get that  
12 from somebody else. Maybe Dave can answer that.

13 Q Well, but --

14 A But he's been my resident site engineer  
15 since I've been responsible for the project.

16 Q And it sounds like he predates you?

17 A He does.

18 Q Okay. Has the contract, is it something  
19 that's renewed annually; or is it just an ongoing  
20 contract?

21 A It, again, it's by, you know, phase of  
22 the project.

23 Q Okay. So when you move, when the project  
24 moves from one phase into another there's a new

1 A I would -- I would -- We may have to  
2 renew this fall. I'm not sure. Honestly, I  
3 don't know.

4 MS. BRICE: Objection, calls for speculation.  
5 You don't need to, if you don't know something  
6 please say you don't know.

7 THE WITNESS: Yeah, I don't know.

8 MR. MCGINLEY: Q Let me ask you this  
9 because I imagine this might be something that's  
10 more in your core competency: Mr. Peterson is  
11 the resident site engineer. How often is he at  
12 the site, is he out there every day?

13 THE WITNESS: A It depends what we have  
14 going on.

15 Q Is he --

16 A Last year when we had activity on the  
17 site he was out there all summer. This year  
18 mostly what we're doing is establishing  
19 vegetation. So he won't be out there every day.  
20 If we get a lot of erosion, he'll be out to  
21 oversee that.

22 Q Okay. He was out yesterday. Is he out  
23 there today, as best you know?

24 A Yes.

1 contract that's negotiated, worked out between  
2 Mr. Peterson and the company?

3 A Well, not exactly. The way it works is  
4 Johns Manville has approved vendors and they sign  
5 a contract with Johns Manville, and then I  
6 believe each of the proposals becomes part of  
7 that contract as they come in. But you would  
8 have to check with someone in Purchasing to get a  
9 better answer on that.

10 Q Okay, and that would be through  
11 Purchasing?

12 A Yes.

13 Q Is the Purchasing Department located in  
14 Denver, along with yourself?

15 A Yes, sir.

16 Q Obviously, Mr. Peterson's still under  
17 contract today, correct?

18 A Yes.

19 Q Do you know how long his current contract  
20 goes?

21 A I couldn't tell you how much is left on  
22 the P-O.

23 Q Is it likely that it goes to the end of  
24 the year?

1 Q Do you expect him to be out there next  
2 week?

3 A I can't say because I don't know what  
4 damage we received from the rain so --

5 Q How -- do you communicate with, I mean do  
6 you make arrangements with Dave to be out there  
7 to deal with damage after rainfall; or does he  
8 just know that he needs to be out there?

9 A No, there's someone that comes by and  
10 checks on the site for me a couple times a week.

11 Q Okay, and so they tell you that there's  
12 problems and then you --

13 A They call Dave directly.

14 Q They call him directly?

15 A Right. And he'll let me know if  
16 something needs to be done.

17 Q But it's fair to say that Mr. Peterson,  
18 you expect Mr. Peterson to be out there at least  
19 some point in time during the remainder of July,  
20 during August?

21 A Yes, he'll be out probably quite a bit in  
22 July, August, September.

23 Q Okay, which is kind of the time of year  
24 that you want to be out there to get the

1 vegetation in place and growing, right?

2 **A He's out there as needed, if --**

3 Q But, basically, as I understand it, right

4 now the last sort of major task that remains for

5 the work to be completed at the site really has

6 to do with making sure that the vegetation is

7 taking hold?

8 **A And stabilizing.**

9 Q Okay. And Mr. Peterson reports to you or

10 does he report to you --

11 **A No --**

12 Q -- or does he report to somebody else?

13 **A -- he reports to me.**

14 Q He reports to you, okay.

15 **A I don't know if you'd really call it**

16 **reports but --**

17 Q He picks up the phone and you talk?

18 **A Yeah.**

19 Q Okay. You testified earlier you're

20 familiar with who Marci Letofsky is, but it

21 sounds like you don't really interact with her

22 all that often?

23 **A No.**

24 Q When's the last time you had a meeting or

1 THE WITNESS: A Mark Castro.

2 Q Mark Castro. And what's Mark Castro's

3 job, as best you understand?

4 MS. BRICE: Objection, I'm going to -- it

5 calls for privileged information; and I'm

6 instructing him not to answer.

7 THE WITNESS: Okay.

8 MS. O'LAUGHLIN: What?

9 MR. MCGINLEY: And what's the basis of

10 privilege? Is Mr. Castro a lawyer?

11 MS. BRICE: Attorney-client privilege and

12 work product.

13 MR. MCGINLEY: Q Is Mr. Castro a lawyer?

14 MS. BRICE: Objection, same instruction not

15 to answer.

16 MR. MCGINLEY: It's a fact question. You can

17 answer that.

18 MS. BRICE: No, it's not.

19 MR. MCGINLEY: The question of whether Mark

20 Castro happens to be a lawyer or not?

21 MS. BRICE: I don't know if he knows or not;

22 but, to the extent it requires divulgence of any

23 privileged information, I'm instructing him not

24 to answer.

1 a discussion with her?

2 **A It would be last Friday.**

3 Q What was that about?

4 **A There was a retirement luncheon.**

5 Q Douglas Dorgan you said that you -- do

6 you know who Douglas Dorgan is?

7 **A No, I don't.**

8 Q You've never met Douglas Dorgan?

9 **A I've not.**

10 Q Okay. Have you ever met anybody from

11 Commonwealth Edison with respect to any of the

12 times that you've been out to the site?

13 MS. BRICE: Objection to the extent it calls

14 for any privileged information.

15 MR. MCGINLEY: I'm asking if he's ever met --

16 I'm not talking about lawyers. So I'll clarify.

17 Q Have you ever met any technical -- have

18 you met somebody who is say your counterpart at

19 Commonwealth Edison with respect to the

20 Southwestern Sites?

21 THE WITNESS: A Yes.

22 MS. BRICE: Same objection.

23 MR. MCGINLEY: Okay.

24 Q And who is that person?

1 MR. MCGINLEY: I'm just asking whether he

2 knows if the man's a lawyer or not.

3 MS. BRICE: I'm -- fine.

4 MR. MCGINLEY: Q As best you know is Mark

5 Castro --

6 THE WITNESS: A I don't know --

7 Q -- have a position that's, roughly,

8 equivalent with your to Commonwealth Edison.

9 **A -- I don't know anything about Mark,**

10 **other than I met him.**

11 Q How many times have you met Mr. Castro?

12 **A Once.**

13 Q What were the circumstances of that

14 meeting?

15 MS. BRICE: Objection to the extent it calls

16 for any privileged information, I'm going to

17 instruct you not to answer.

18 MR. MCGINLEY: Q But that does not absolve

19 you of having to answer the question about the

20 circumstances under which he was --

21 MS. BRICE: Yes, it does. I am objecting and

22 I'm instructing him not to answer.

23 MR. MCGINLEY: Q Who else was present when

24 you met with Mr. Castro?

1 THE WITNESS: A Dave Peterson.  
 2 Q Okay, who else besides Dave Peterson?  
 3 A **Tat Ebihara.**  
 4 Q As best you know, were any attorneys  
 5 present when you were meeting, in this meeting  
 6 with Mr. Castro present?  
 7 A **I have no idea.**  
 8 MS. BRICE: Same objection.  
 9 MR. MCGINLEY: Then he's not in a position --  
 10 I mean --  
 11 MS. BRICE: I'm instructing --  
 12 MR. MCGINLEY: That's totally speculative.  
 13 MS. BRICE: -- him not to answer. You can  
 14 make a motion.  
 15 MR. MCGINLEY: We will.  
 16 Q When did this meeting take place?  
 17 MS. BRICE: Same objection.  
 18 MR. MCGINLEY: No, that's not -- when, the  
 19 question of when it took place --  
 20 MS. BRICE: Fine, you can answer when the  
 21 meeting took place.  
 22 MR. MCGINLEY: -- the question of when it  
 23 took place is not privileged. The fact that  
 24 something has occurred --

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1 THE WITNESS: A Yes.  
 2 Q Okay. How many times have you spoken  
 3 with Mr. Castro on the phone?  
 4 A **I don't know.**  
 5 Q Is it more than one time?  
 6 A **Yes.**  
 7 Q Okay, when's the most recent time you  
 8 spoke with Mr. Castro?  
 9 A **A month ago.**  
 10 Q Did you call Mr. Castro or did Mr. Castro  
 11 call you?  
 12 A **He called me.**  
 13 Q Was there anybody else on the call  
 14 between you and Mr. Castro --  
 15 A **No.**  
 16 Q -- when he called a month ago?  
 17 A **No.**  
 18 Q What did he ask you?  
 19 MS. BRICE: Objection, instruct you not to  
 20 answer. It calls for privileged communication,  
 21 attorney-client privilege work product.  
 22 MR. MCGINLEY: We're going to make a motion  
 23 on that.  
 24 MS. BRICE: That's fine.

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1 MS. BRICE: I just said he could answer that  
 2 question.  
 3 THE WITNESS: A Last summer.  
 4 MR. MCGINLEY: Q Was this meeting, did this  
 5 meeting take place in Waukegan at the site?  
 6 A **Yes.**  
 7 Q How long did this meeting last?  
 8 A **Half an hour.**  
 9 Q Were you in one location during this  
 10 meeting or did you move around the site?  
 11 A **We moved around.**  
 12 Q Have you ever spoken with Mr. -- have you  
 13 ever had any phone conversations with Mark  
 14 Castro --  
 15 MS. BRICE: Objection.  
 16 MR. MCGINLEY: Q -- just between the two of  
 17 you?  
 18 MS. BRICE: Objection, same instruction not  
 19 to answer to the extent it calls for privileged  
 20 information.  
 21 MR. MCGINLEY: Q I am simply asking the  
 22 question of whether you have ever had a phone  
 23 conversation with Mark Castro, that's it. Can  
 24 you answer that question?

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June 29, 2017

1 MR. MCGINLEY: Because I think the fact that  
 2 he is talking to somebody who is not an  
 3 attorney --  
 4 MS. BRICE: He did not say he was not an  
 5 attorney. He said he did not know.  
 6 MR. MCGINLEY: Well, because you won't let  
 7 him actually answer that question.  
 8 MS. BRICE: No, he answered that question.  
 9 You asked, and he said I don't know.  
 10 THE WITNESS: I haven't seen your  
 11 credentials. I don't know if you're an attorney.  
 12 MR. MCGINLEY: Well, I wouldn't be sitting  
 13 here if I wasn't an attorney --  
 14 MS. BRICE: Let's not get into that. I'm  
 15 instructing him not to answer the question.  
 16 MR. MCGINLEY: Okay.  
 17 MS. BRICE: You can make a motion.  
 18 MR. MCGINLEY: Okay.  
 19 Q Do you know somebody by the name of John  
 20 Dennison?  
 21 MS. BRICE: I don't know who that is. So  
 22 objection to the extent that it requires to  
 23 divulge confidential information.  
 24 MR. MCGINLEY: This is going to be Exhibit 4.

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(document marked as requested)

MR. MCGINLEY: Q Sir, Exhibit 4 is an e-mail from Tat Ebihara. I believe you're listed as one of the addressees on this e-mail. It's dated May 11th of last year, 2016. Have you seen this e-mail before, sir?

THE WITNESS: A I -- My name's on it. I don't --

Q It's actually on it in two places because you're listed as an addressee and you're also listed as an attendee down below. Do you see where your name is listed?

A Yes.

Q Okay.

A Yes --

Q And do you see the name John Dennison right after yours or after Jeff Heath?

A Yes.

Q Okay. So John Dennison do you know who he is?

MS. BRICE: Object to the extent it calls for disclosure of confidential, privileged information.

MR. MCGINLEY: Well, this is a meeting in

THE WITNESS: A Yes, yes.

Q Okay. Do you have an understanding of why somebody from Com Ed would be attending a meeting that has to do with something that only deals with property that is Johns Manville's?

A When we had our weekly meetings Com Ed would usually have somebody listening in; and he might be an attorney, I don't know. And the reason that he would be involved at all is because site six abuts to the SRP site. I think that's what this is about. When is it -- It be about right when we were getting started on all of this. I'm sorry, I don't -- that's the best I can give you.

Q Okay. But, insofar as John Dennison is concerned, is it your testimony that you don't know what his role within Com Ed would be?

MS. BRICE: Objection, asked and answered.

THE WITNESS: A I'm sorry, I honestly can't remember.

MR. MCGINLEY: Q Erin Rednour, do you know if Erin Rednour is an attorney?

A She is with the Illinois EPA.

Q That's correct. Do you know what her

which individuals, including your client witness, attended one with representatives of the federal government, the state, and various other private parties.

MS. BRICE: I honestly don't --

MR. MCGINLEY: I see no attorneys here. So I would have to imagine that a meeting that took place at which somebody from Illinois EPA and somebody from the Corps of Engineers was present there cannot be a claim of privilege that attaches to that. I'm asking him if he knows John Dennison in the context of this apparent meeting.

MS. BRICE: You can answer the question, if you know.

THE WITNESS: A I'm trying to remember. And, I'm sorry, I'm terrible with names. I'm trying to remember the meeting, it might help me.

If I recall, this meeting was more related to the SRP site. That's what I'm thinking of.

MR. MCGINLEY: Q Does Commonwealth Edison have any -- the SRP site takes place within former Johns Manville property, is that correct?

role within Illinois EPA is?

A I don't know what her title is; but she works on, I think she's some kind of inspector, works with, I don't know if it's the voluntary remediation section or --

Q Okay.

A -- solid -- yeah --

Q That's fine, you think she's some sort of inspector?

A I think so.

Q Okay.

A It might be. She may be, she might be higher on the food chain. I don't want to insult.

Q Jeff Heath from the U.S. Army Corps of Engineers, do you know what Mr. Heath's job is?

A They're the eyes and ears for the federal government.

Q Okay. But I mean he's a technical person, right?

A Yes.

Q Okay, not an attorney, as best you know?

A Wow, like --

MS. BRICE: Objection, calls for speculation.

1 THE WITNESS: Q Yeah, actually, I don't  
 2 know -- I don't know what his credentials are. I  
 3 haven't seen them. So I --  
 4 MR. MCGINLEY: Q But, insofar as you were  
 5 dealing with him you were talking about technical  
 6 issues, correct?  
 7 **A Yes.**  
 8 Q And, obviously, Mr. Peterson is there in  
 9 a technical capacity?  
 10 **A Yes.**  
 11 Q As is Mr. Ebihara, right?  
 12 **A Yes.**  
 13 Q So it stands to reason, wouldn't you  
 14 agree, that John Dennison is probably there in a  
 15 technical capacity?  
 16 MS. BRICE: Objection, that calls for  
 17 speculation.  
 18 THE WITNESS: A Not necessarily.  
 19 MR. MCGINLEY: Q Do you have meetings with  
 20 attorneys without having your attorneys present?  
 21 **A It's happened.**  
 22 Q Okay. Let me ask you this: Do you know  
 23 a gentleman by the name of Peter McCauley?  
 24 MS. BRICE: Once again, objection to the

1 **A Yes.**  
 2 Q And he's a CC, as are you, correct?  
 3 **A Yes.**  
 4 Q Okay, so what's -- what's your best  
 5 recollection of who Peter McCauley is?  
 6 MS. BRICE: Again, objection to the extent it  
 7 calls for privileged information.  
 8 MR. MCGINLEY: Q You can answer the  
 9 questions without having to go into the question  
 10 of privilege. I'm just asking if you know who  
 11 this gentleman is. You've indicated that you  
 12 think you may?  
 13 THE WITNESS: A I might.  
 14 Q Okay, so what do you, based on what you  
 15 think you might recall, what do you recall about  
 16 it?  
 17 MS. BRICE: Objection to the extent it calls  
 18 for privileged information. If your knowledge of  
 19 who Peter McCauley is comes from another  
 20 attorney, such as Brent Tracy or someone else,  
 21 then you can't answer the question.  
 22 MR. MCGINLEY: For the record, I'm going to  
 23 object to the, take issue with the objection that  
 24 you just raised because, essentially, you're

1 extent it calls for confidential information or  
 2 privileged information. I just don't know.  
 3 MR. MCGINLEY: Q Do you?  
 4 THE WITNESS: A I don't -- I don't recall.  
 5 Q Make this -- what are we up to -- 5,  
 6 okay, I ask you to mark that, please. That's for  
 7 you.  
 8 (document marked as requested)  
 9 MS. BRICE: John, you want me to get you more  
 10 coffee?  
 11 THE WITNESS: Yeah, this blood pressure  
 12 medicine dries me out.  
 13 Same thing.  
 14 MR. MCGINLEY: Q Different thing, different  
 15 e-mail.  
 16 THE WITNESS: A I think I know who he is.  
 17 THE COURT REPORTER: I'm sorry?  
 18 MR. MCGINLEY: Q What's that?  
 19 THE WITNESS: A I think I remember who he  
 20 is.  
 21 Q Okay.  
 22 **A I've never met him but --**  
 23 Q But he's listed as one of the people on  
 24 this e-mail, correct?

1 coaching the witness I think. I don't think  
 2 that's fair. The question is simply whether or  
 3 not he knows who this person is. He indicated  
 4 that he believes he may recall who Peter  
 5 McCauley.  
 6 MS. BRICE: Okay, objection, work product;  
 7 objection, attorney-client, to the extent that it  
 8 applies. But if he's learned something from an  
 9 attorney, he's not allowed to talk about it; and  
 10 I'm certainly allowed to advise him on that.  
 11 You're interfering with my ability to protect the  
 12 attorney-client work product privilege.  
 13 MR. MCGINLEY: I don't think that I am. I'm  
 14 simply asking a question about what his knowledge  
 15 of Peter McCauley is, given the fact that he  
 16 happens to be on the same e-mail as him.  
 17 MS. BRICE: Understood, but same objection.  
 18 Maybe he can answer it without that. I have no  
 19 earthly idea.  
 20 THE WITNESS: A I think I can.  
 21 MR. MCGINLEY: Q Okay, so what's your  
 22 understanding of who Peter McCauley is?  
 23 **A I'm just looking at the e-mail. If you**  
 24 **look at bullet number one, you'll see "Exelon**

1 five optic lines"; and if you look at Pete  
2 McCauley's e-mail address, it looks like he  
3 worked with Exelon.

4 Q Okay, that's right. So is it your --

5 A I couldn't tell what he does.

6 Q But you think, you think he might have  
7 been included on this because of the reference to  
8 the Exelon fiber optic lines?

9 A Yeah -- my speculation.

10 Q Okay.

11 A See, I've got a new word now.

12 Thank you for the coffee.

13 MS. BRICE: You're welcome.

14 MR. MCGINLEY: Q So you've never spoken  
15 with Mr. McCauley, is that --

16 THE WITNESS: A I didn't say that.

17 Q Have you spoken to Mr. McCauley?

18 A I don't know. I don't recall.

19 Q Do you keep logs of the people, I mean do  
20 you --

21 A No.

22 Q You just have phone calls, you don't keep  
23 records of any phone calls that you have?

24 A Correct.

1 Q Okay.

2 A -- for sure.

3 Q And are you suggesting that there could  
4 be others but you can't recall?

5 A It's not impossible. Again, I don't  
6 remember every conversation I've had --

7 Q Okay.

8 A -- and who was on meetings and --

9 Q Okay. When do you think this  
10 conversation might have occurred?

11 A Probably last year.

12 Q Okay. Do you recall where this  
13 conversation would have taken place?

14 A At site three.

15 Q And do you recall who the person from  
16 Commonwealth Edison would have been?

17 MS. BRICE: Objection, to the extent it calls  
18 for privileged, confidential information.

19 MR. MCGINLEY: Q I'm just asking if you  
20 remember the name of the person.

21 THE WITNESS: A Yes.

22 Q Who was -- what's the name of the person?

23 MS. BRICE: Objection, instructing you not to  
24 answer to the extent that it calls for privileged

1 Q Have you ever discussed with an  
2 environmental or a technical person at  
3 Commonwealth Edison the site cleanup, any of the  
4 site remediation work that's taking place?

5 MS. BRICE: Objection, to the extent it  
6 requires the divulgence of privileged  
7 information, I instruct you not to answer.

8 MR. MCGINLEY: Q Can you answer that  
9 question without divulging sensitive or  
10 confidential information?

11 THE WITNESS: A I have no idea.

12 Q Okay. Have you ever spoken, have you  
13 ever had a conversation about, with anybody at  
14 Commonwealth Edison, concerning the site  
15 remediation work?

16 MS. BRICE: Same --

17 MR. MCGINLEY: I'm not asking for the  
18 substance. I'm simply asking if such a  
19 conversation has ever been held.

20 THE WITNESS: A Yes.

21 Q You have, okay. How many times do you  
22 think you've spoken with somebody at Commonwealth  
23 Edison about that subject matter?

24 A I can remember one conversation --

1 information.

2 MR. MCGINLEY: Q I'm allowed to ask if  
3 you've met with your attorney today in preparing  
4 for your deposition. That's isn't something that  
5 you can just keep from disclosure. I'm simply  
6 asking the name of the individual.

7 MS. BRICE: Same objection.

8 MR. MCGINLEY: Q Can you answer that  
9 question without revealing any sensitive  
10 information, can you simply say the name and  
11 nothing more?

12 THE WITNESS: A I have no idea. I'm sorry,  
13 I don't -- I'm not an attorney. I'm a geologist.

14 Q Do you think you would have spoken to  
15 Mark Castro out at site three last year?

16 MS. BRICE: Same objection.

17 MR. MCGINLEY: Q Can you answer -- Mark  
18 Castro, just I'm simply asking if you've spoken  
19 to the man. Does Mark Castro represent you?

20 MS. BRICE: Objection.

21 MR. MCGINLEY: Is he your attorney?

22 MS. BRICE: Same objection.

23 MR. MCGINLEY: I am entitled to know if --  
24 I'm entitled to ask questions about who he may

1 have met with. If it's privileged, that's a  
 2 different, if the substance of the meeting is  
 3 privileged, that's a different story; but there's  
 4 no earthly reason why he should not be permitted  
 5 to answer the question of whether he met with a  
 6 given individual. If that's the extent of it,  
 7 it's improper to impose an objection --  
 8 MS. BRICE: It's not, to the extent that the  
 9 person is an attorney or engaged in a  
 10 confidential communication. I just don't know.  
 11 I'm just trying to not waive any privilege here.  
 12 MR. MCGINLEY: Q Mark Castro does not --  
 13 does Mark Castro work for Johns Manville, as best  
 14 you know?  
 15 THE WITNESS: A He doesn't work for me.  
 16 Q Okay. Does he work for Brent Tracy?  
 17 A I don't know.  
 18 Q You've --  
 19 A I don't know their relationship. You  
 20 would probably have to ask Brent.  
 21 Q So you're unable to say whether or not  
 22 somebody -- Mark Castro is -- I think you said  
 23 earlier that you thought he worked for  
 24 Commonwealth Edison.

1 THE WITNESS: Like Fidel. They're not  
 2 related -- I don't think.  
 3 MS. BRICE: I hope not.  
 4 MR. MCGINLEY: Q Was it just you and  
 5 Mr. Castro at site three when you were meeting  
 6 last year?  
 7 THE WITNESS: A Dave Peterson was there.  
 8 Tat Ebihara was there.  
 9 Q Anybody else, or just the four of you?  
 10 A They were the only ones that I can recall  
 11 that we were talking to.  
 12 Q Okay. Can you recall what you spoke  
 13 about?  
 14 MS. BRICE: Objection, to the extent that you  
 15 can answer it without divulging confidential  
 16 information or privileged information you can  
 17 answer the question.  
 18 THE WITNESS: A Yes.  
 19 MR. MCGINLEY: Q So what do you recall  
 20 having spoken about?  
 21 MS. BRICE: Same objection.  
 22 THE WITNESS: A In the course of removing  
 23 soil we came across a big glob of road tar.  
 24 MR. MCGINLEY: Q Road tar?

1 THE WITNESS: I don't recall saying that.  
 2 MR. MCGINLEY: Okay, I'm going to take a  
 3 break.  
 4 (break held 3:13 to 3:21 p.m.)  
 5 THE COURT REPORTER: Are we back on the  
 6 record?  
 7 MS. BRICE: I just said that I believe that  
 8 Mr. Myers can answer the question about who he  
 9 met with without divulging confidential  
 10 information.  
 11 MS. CAISMAN: Privileged.  
 12 MS. BRICE: Privileged. Sorry.  
 13 MR. MCGINLEY: Back on the record.  
 14 Q Mr. Myers, your counsel informs me that  
 15 you are in a position to answer the question as  
 16 to who you would have met with at the site last  
 17 year, site three, is that correct?  
 18 THE WITNESS: A Correct.  
 19 Q Okay. Can you tell me who you would have  
 20 met with at site three last year?  
 21 A Mark Castro.  
 22 THE COURT REPORTER: Mark Kestro?  
 23 THE WITNESS: Castro.  
 24 MS. BRICE: Castro.

1 A Road tar. It looked like it was probably  
 2 a couple hundred gallons worth.  
 3 Q Okay. And what did you end up talking  
 4 about with respect to the road tar?  
 5 A Since it's their property, I wanted to  
 6 make sure they were aware of it, they could see  
 7 what it was.  
 8 Q And by "their property", you mean  
 9 Commonwealth Edison's property?  
 10 A Yes.  
 11 Q Okay. So you were sort of pointing this  
 12 out to Mr. Castro?  
 13 A Yes.  
 14 Q You said you thought that you had, you  
 15 spoke to Mr. Castro last year; and this would  
 16 have taken place, roughly, when; do you know?  
 17 MS. BRICE: Objection, asked and answered.  
 18 MR. MCGINLEY: Q I'm -- just more  
 19 specifically than 2016, do you recall when in  
 20 2016 this might have taken place?  
 21 THE WITNESS: A When we found the road tar.  
 22 Q So when did that take place?  
 23 A Oh, I'm sorry. It was during the summer  
 24 of 2016.

1 Q There we go. Thank you.

2 A I'm sorry.

3 Q Besides this instance with Mr. Castro, do  
4 you recall having spoken with him on any other  
5 occasions?

6 A Yes.

7 Q Have you spoken with him more recently  
8 than this meeting last summer 2016?

9 A I think I already answered that question.

10 Q Okay. So you've spoken with him more  
11 recently, that would have been about a month ago,  
12 correct?

13 A I think so, yes.

14 Q Is that the only time since last year  
15 that you've spoken to him?

16 A I don't know. I don't recall.

17 Q Okay.

18 A I may have. I don't know.

19 Q And prior to December of last year would  
20 you have spoken to Mark Castro previously?

21 A I may have.

22 Q Let me ask you this: To the best of your  
23 knowledge is there any agreement between  
24 Commonwealth Edison and Johns Manville with

1 ability to take the discovery that we believe  
2 we're entitled to take, particularly because we  
3 have questions about whether or not Commonwealth  
4 Edison is possibly compensating or reimbursing  
5 some of Johns Manville's costs; and so that's  
6 what we want to, one of the things that we're  
7 trying to get at with taking the deposition of  
8 Commonwealth Edison in person and to subpoena  
9 documents.

10 MS. BRICE: Understood. And that's exactly  
11 why I am objecting on the basis of privilege --

12 MR. MCGINLEY: Okay.

13 MS. BRICE: -- work product, and  
14 attorney-client privilege, and instructing the  
15 witness not to answer.

16 MR. MCGINLEY: But understand that that also  
17 has ramifications for it being able, for IDOT  
18 being able to complete the discovery that it  
19 needs to complete and for the ability to move the  
20 case on down the line that much faster.

21 MS. BRICE: I am under an obligation to  
22 instruct the witness not to answer based upon  
23 privilege grounds, work product, and  
24 attorney-client privilege and, frankly,

1 respect to reimbursement of costs?

2 MS. BRICE: Objection, I'm instructing you  
3 not to answer on the basis of privilege.

4 MR. MCGINLEY: Q Are aware of any agreement  
5 between Commonwealth Edison and Johns Manville  
6 with respect to the site? I'm not asking about  
7 the substance. Do you have awareness of that?

8 MS. BRICE: I completely instruct you not to  
9 answer.

10 MR. MCGINLEY: Q Have you ever seen such an  
11 agreement between yourself --

12 MS. BRICE: Instruct you not to answer.

13 MR. MCGINLEY: -- with Commonwealth Edison?  
14 I'm not asking what you learned from it. I'm  
15 just asking if you've ever seen it.

16 MS. BRICE: Instruction -- within the context  
17 of the question you're asking the question of  
18 whether or not there was an agreement; and so I'm  
19 instructing you not to answer.

20 MR. MCGINLEY: Okay. I want to certify that  
21 question. We'll want to ask Mister -- put that  
22 in a motion to compel as well.

23 You know, to the extent that you're  
24 interposing these objections, it only impedes our

1 relevance.

2 MR. MCGINLEY: Okay. I am going to the -- I  
3 believe we're up to 6 -- so there you go.  
4 (document marked as requested)

5 THE WITNESS: You're really challenging me  
6 with this one.

7 MR. MCGINLEY: Well, that's why I asked  
8 earlier about the reading glasses because the  
9 type is only getting smaller, unfortunately.

10 MS. BRICE: I'm happy to read it to him if  
11 you point us to a particular phrase or --

12 THE WITNESS: Thank you.

13 MS. BRICE: -- sentence or word.

14 MR. MCGINLEY: Well --

15 THE WITNESS: We'll be all right --

16 MR. MCGINLEY: Q -- I think there's a  
17 couple of things that we need to establish.  
18 First of all, I'm just going to ask you if you've  
19 seen this document before.

20 THE WITNESS: A I don't know.

21 Q Let me point your attention to the first  
22 page of Exhibit 6; and if you look in the upper  
23 left-hand corner you'll see "Attention: Scott  
24 Myers". Do you see where that is, sir?

1     **A Yes.**

2     Q    Okay, so would it be fair of me to assume

3     that, since it's directed to your attention and

4     that you've previously testified that you review

5     invoices when they come in, that you've seen this

6     invoice? You may not recall that, but it would

7     be fair to assume that you have seen this at some

8     point in time?

9     **A Yes -- But dated August 2013, I can't**

10    **remember this document.**

11    Q    Okay, but --

12    **A It would be a stretch for me to remember**

13    **this.**

14    Q    Okay, but it's directed "attention to";

15    and I think you testified earlier that invoices,

16    generally, are going to the SAP system but that

17    sometimes you ask for copies of invoices to be

18    sent to you directly, correct?

19    **A Yes.**

20    Q    And so I assume that it's fair to

21    understand that, based on the fact that your name

22    is on this invoice, that you would have received

23    is this invoice; and isn't that fair to assume?

24    **A It's not out of the realm of possibility.**

1     please, to this is -- if you look in the lower

2     right-hand corner you'll see a Bates number

3     "JM 0038551". Do you see that in the lower right

4     hand corner?

5     **A I do.**

6     Q    Okay. This page might also stick out

7     because it happens to be colored in a few places.

8     Do you see that?

9     **A Yes.**

10    Q    Okay. Did you do the coloring on this?

11    **A No.**

12    Q    Did you color this portion of the

13    invoice?

14    **A No.**

15    Q    I see margin -- some notes in the margin,

16    right-hand margin. Are those your notes?

17    **A I don't think so, no.**

18    Q    Is that your handwriting?

19    **A No.**

20    Q    Okay, it's not your handwriting?

21    **A No.**

22    Q    So somebody else did this?

23    **A Yes.**

24    Q    Do you know who might have done this?

1     Q    Didn't you testify earlier that you

2     review every invoice that comes --

3     **A Yes.**

4     Q    -- through? Yes, okay. So I assume then

5     it's fair to understand that you have actually

6     reviewed this invoice at some point in the past,

7     even if you don't recall that today?

8     **A I'd say it's possible.**

9     Q    Okay.

10    **A I'm sorry, I can't give you a better**

11    **answer than that.**

12    Q    Well --

13    **A It's too long ago.**

14    Q    Well, I'm going to ask you a few

15    questions about it anyhow. I'll try my luck, as

16    it were. This is an invoice from AECOM, correct?

17    **A Yes.**

18    Q    And I assume that this exhibit, Exhibit

19    6, looks like many other invoices that you have

20    received from AECOM relative to the Johns

21    Manville project, would that be a fair

22    understanding?

23    **A Yes.**

24    Q    Okay. If I could turn your attention,

1     MS. BRICE: Objection, calls for speculation.

2     THE WITNESS: A No.

3     MR. MCGINLEY: Q You --

4     **A Honestly, I don't.**

5     Q    Do you think it's somebody at Johns

6     Manville?

7     MS. BRICE: Objection, calls for speculation.

8     THE WITNESS: A I don't know where you got

9     this.

10    MR. MCGINLEY: Q Well, it was produced by

11    your counsel.

12    **A Okay. He didn't, he didn't consult with**

13    **me on it. So I don't know.**

14    Q    Let me -- Would Brent Tracy routinely

15    consult with you about invoices?

16    **A No --**

17    Q    And I'm not asking about substance. I'm

18    just asking if that --

19    **A No.**

20    Q    -- ever happened.

21    **A No.**

22    Q    So the fact that Brent Tracy didn't ask

23    you about this wouldn't be out of the ordinary

24    then?

1 A I'm sorry, what?

2 Q The fact -- you said earlier Brent Tracy

3 didn't consult with you about this invoice,

4 right?

5 A I don't believe he did.

6 Q Okay, but -- and then I asked you whether

7 or not Brent Tracy ever consults with you about

8 the invoices generally; and you said no, correct?

9 A Correct.

10 Q Okay, so it wouldn't be out of the

11 ordinary for him not to have consulted with you

12 about this invoice?

13 A I'm sorry, you're losing me with the

14 double negatives. Can you just reword it in a

15 way you only use one negative.

16 Q Okay. So Mr. Tracy, you said Mr. Tracy

17 didn't consult with you about this invoice,

18 right?

19 A Not to my knowledge.

20 Q Okay. And, generally, Brent, what you

21 said as well, what you testified to is that Brent

22 Tracy, generally, doesn't consult with you about

23 the invoices --

24 A Correct.

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SCOTT MYERS  
June 29, 2017

1 Would you agree with that, is that a fair

2 characterization of what this document, this page

3 of the exhibit is?

4 A It's the SAP element.

5 Q The SAP element?

6 A Um-hum.

7 Q Okay. It says, do you see in the far

8 left-hand corner where it says "element"?

9 A Yes, the SAP element.

10 Q Okay. I notice that there are numbers

11 under each of those columns, is that right? See,

12 there's numbers like 5400, which in turn is

13 described as being settling basin closure.

14 THE COURT REPORTER: "Which in turn is", I'm

15 sorry?

16 MR. MCGINLEY: Settling basin closure.

17 THE COURT REPORTER: Thank you.

18 MR. MCGINLEY: Q Do you see that?

19 THE WITNESS: A I see that, yes.

20 Q Okay, so if you look a little bit further

21 down you'll see "5454". Do you see that, sir?

22 A Um-hum.

23 Q Okay, and it would appear at this point

24 in time that that element, that code, is being

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1 Q -- correct?

2 Okay, so then it's probably fair to say

3 that's the reason why he didn't consult with you

4 about this one too, 'cause it's not --

5 MS. BRICE: Objection, calls for speculation.

6 MR. MCGINLEY: Q He doesn't do that

7 generally, right?

8 THE WITNESS: A He, generally -- we,

9 generally, don't discuss the details of an

10 invoice.

11 Q Okay. Let me turn your attention please

12 to JM 38556. This is the last page of the

13 exhibit. Just let me know when you have that.

14 A Okay.

15 Q Now, I notice that in the upper left-hand

16 corner it says "attention: Scott Myers". So

17 fair to say that you have seen this document

18 before, or documents like this before?

19 A It's -- I've seen documents like this;

20 and it's addressed to me.

21 Q So let me ask you this: Under -- in the

22 left-hand column -- and this is, basically, a

23 chart that kind of summarizes what appears to be

24 the costs, the work items for the billing period.

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312-853-0648

SCOTT MYERS  
June 29, 2017

1 used as a description for work on the

2 southwestern sites, both site three work, as well

3 as site four and five -- four, five, and six

4 work, is that correct?

5 A An element can mean a lot of different

6 things. It could mean like type of work. It

7 could be like trucking or bulldozing.

8 Q Okay --

9 A It's not necessarily specific to in an

10 area always.

11 Q Okay, from looking at this, this table

12 right now --

13 A Um-huh.

14 Q -- okay, with respect to the description

15 for southwest sites four, five, and six work

16 would you have any way of telling, telling from

17 looking at this what of these dollar amounts that

18 are listed here were for work that was actually

19 done at site six as opposed to sites four or

20 five?

21 A I would have Dave make that, make that

22 breakdown.

23 Q You'd have Dave make --

24 A Dave Peterson, I'm sorry, yeah.

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1 Q Okay. But you wouldn't be in a position  
2 to do that yourself?

3 A No.

4 Q Okay.

5 A No, I wasn't there the whole time.

6 Q Okay. What do you mean you weren't there  
7 the whole time?

8 A As I've said, I went out probably ten  
9 times over the course of the summer; and I didn't  
10 observe which pieces of equipment were assigned  
11 to which tasks.

12 Q Okay. And so there would be times when  
13 you would know specifically what maybe a  
14 bulldozer is only going to be used for site  
15 three, there are times that a backhoe's only  
16 being used for site six, is that what you mean?

17 A Well, you could have an activity, let's  
18 call, say the activity is truck transport, and on  
19 that day you might have three trucks transporting  
20 on site three and three or four transporting on  
21 site four, five; and David would track and make  
22 sure that those trucks were there doing -- I'm  
23 sorry -- doing that task, that element.

24 Q And what would he use to actually keep

1 Q Okay, do you actually have, I mean do you  
2 maintain some sort of like spread sheet that  
3 helps you keep those costs separated and tallied  
4 up?

5 A Yes.

6 Q Okay. Do you currently have that spread  
7 sheet now?

8 A I gave it to Brent. I have a copy of it.

9 Q Okay. And where does that -- I mean is  
10 that spread sheet -- what point in time does that  
11 spread sheet begin?

12 A What point in time does it begin?

13 Q When does it start? I mean --

14 A I started this project by degrees in  
15 2013. I couldn't tell you what month in 2013.

16 Q Okay, but so at some point in 2013 you  
17 thought it made sense for you to start tracking  
18 this cost information, is that right?

19 A Well, I was the project manager.

20 Q Okay, so you have, so you had a spread  
21 sheet, you created a spread sheet so that you  
22 could track this, right?

23 A Yes.

24 Q Is that still something that you're

1 records of what --

2 A You'd have to ask David that --

3 Q -- what equipment were --

4 A You're going to have to ask David that.  
5 I couldn't --

6 Q Okay. Would you ever ask Dave about  
7 that?

8 A I don't recall having that conversation.

9 Q Would you have ever asked him what  
10 portion of this, this description item is being  
11 southwest sites four, five, and six what's  
12 related, what portion of this is for site six  
13 versus site four and five?

14 A No. He would be tracking that  
15 information.

16 Q At this point in time, so we're talking  
17 this is an invoice dated August 20th 2013, would  
18 you have been tracking work for site six  
19 separately; or would it have all been lumped  
20 together with four and five?

21 A It would be -- I would track the cost on  
22 site four, five; I would track the cost on site  
23 six; I would track the cost on settling basin,  
24 each of those separate buckets.

1 keeping up to date and using today?

2 A Yes.

3 Q Okay. Do you know if you've -- have  
4 you provided -- you provided that to Brent Tracy,  
5 is that correct?

6 A Yes.

7 Q Do you know when you provided that to  
8 Brent Tracy?

9 A I give it to him quarterly.

10 Q You give it to him quarterly?

11 A Yes.

12 Q Oh, so on a regular basis every quarter  
13 you're giving him a copy of the spread sheet?

14 A Yes.

15 Q Okay, thank you.

16 Okay, we're going to mark this next 7.  
17 (document marked as requested)

18 MR. MCGINLEY: Q Why don't you look that  
19 over. Once you've had a chance to see it please  
20 let me know.

21 THE WITNESS: A Okay.

22 Q I notice that on the third page of this  
23 document, JM 0038679, you're listed as being the  
24 recipient of this. Do you see where that is?

1     **A Yes.**

2     Q    Okay, so this is an invoice it appears to

3    be for the period -- invoice dated March 25th of

4    2015. Have you seen this document before, sir?

5     **A Just like the other document, I couldn't**

6    **say for sure.**

7     Q    Okay, let me call your attention to the

8    first page because it would appear that you now

9    have on this invoice something called a monthly

10   invoicing progress report. Do you see that at

11   the top, towards the top of the page?

12    **A Um-hum.**

13    Q    Okay, and this includes what appears to

14    be a summary of the work conducted. Do you see

15    that?

16    **A Yes.**

17    Q    Okay, let me ask you this: This is

18    something that wasn't included on Exhibit 6, this

19    2013 invoice. Do you know why information

20    concerning the work conducted began to be added

21    to the invoices?

22    **A I wanted more detail.**

23    Q    You wanted more detail. So this was

24    something that you requested to be done --

1     **A Just for more detail.**

2     Q    More detail, okay. And who did that,

3    who's -- Was this done at your behest?

4     **A Yes, I've asked for more detail to make**

5    **sure that the elements were easy to keep track**

6    **of.**

7     Q    Okay, and why were you asking for more

8    detail to be included in the invoices in the

9    reports?

10    **A Because I'm responsible for the project.**

11    Q    Okay. At what point did you start moving

12    to this model from the, this invoice format?

13    **A I couldn't tell you the date. Sometime**

14    **between that last invoice and this invoice, I can**

15    **tell you that much.**

16    Q    Okay. Would you have gone through and

17    reviewed this as well, the invoice and the costs

18    that are contained in it?

19    **A Yes, um-hum.**

20    Q    You would have, okay. And you would

21    review the costs in every invoice, correct?

22    **A Yes, every invoice I saw.**

23    Q    So what would you do to ensure that the

24    costs that are being billed for are accurate and

1    okay --

2     **A Um-hum.**

3    THE COURT REPORTER: Is that yes?

4    THE WITNESS: Yes, um-hum.

5    MR. MCGINLEY: Q Can I turn your attention

6    then back to the third page of this invoice.

7    It's a chart somewhat like the chart we were just

8    talking about. There's one thing that I notice

9    that's different here, and it's also true I think

10   in terms of the work conducted statement. It

11   looks as if now the costs are being broken out

12   between sites four and five on the one hand and

13   site six on the other hand. Do you see that?

14    **A We have site three, site four, five and**

15    **site six.**

16    Q    But remember with Exhibit 6 the

17    information is listed as for site three on the

18    one hand and four, five, and six on the other

19    hand.

20    **A Um-hum.**

21    Q    But now it appears sites four and five

22    are broken out as one category and site six is

23    another category. Do you know why that began to

24    be presented in that way?

1    fairly billed?

2     **A When I would make my site visits I would**

3    **make sure that the work that was performed**

4    **matches the work in the remedial action work plan**

5    **and count on Dave to do the day-to-day oversight.**

6    Q    Okay, if I can turn your attention please

7    to page -- this is JM 0038682. It's towards the

8    back.

9     **A Um-hum.**

10    Q    And, unfortunately, I don't have a color

11    copy of this; but if I can call your attention to

12    Task 030 site name Site Three Engineering; and it

13    appears that information under this task item,

14    some of it seems to be highlighted. Do you see

15    what I'm talking about?

16    **A Um-hum.**

17    Q    Okay, and next to that there seems to be

18    notations in the right-hand margin. Do you see

19    those?

20    **A I do.**

21    Q    Okay. And NSG is one of the notations,

22    CWW, NSG again. Can you tell me what NSG stands

23    for, assuming that you know?

24    **A I'm guessing it's North Shore Gas.**

1 Q Okay, and what about CWW do you know what  
2 that stands for?  
3 A I'm trying to think. If there was a --  
4 No, I'm sorry, I don't.  
5 Q What if I said City of Waukegan Water,  
6 would that sound like a --  
7 A That's a possibility. The letters match  
8 up.  
9 Q Okay. But you don't know who actually  
10 wrote this or highlighted this --  
11 A No --  
12 Q -- on 38682?  
13 A -- I don't.  
14 Q And turning your attention to the next  
15 page, this would be JM 0038683, calling your  
16 attention to task, the box that's marked off as  
17 Task 050, Task Name Site Six Engineering.  
18 A Um-hum.  
19 Q Same thing again, I see highlighting and  
20 also notations written in the margin.  
21 A Yes.  
22 Q Do you see those?  
23 A I do.  
24 Q Okay. If you look down below, there's

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1 know who did it.  
2 MR. MCGINLEY: Q And when you saw -- I mean  
3 at the time that you actually saw this invoice  
4 back in 2015 this information would have been  
5 included; but the highlighting and the notes in  
6 the margin would --  
7 A No, that wouldn't have been.  
8 Q So this took place at some point  
9 afterwards?  
10 A Yes.  
11 Q And it's your testimony that you don't  
12 know when that highlighting or that, the  
13 notations in the margin, would have been added?  
14 A Yes.  
15 MS. BRICE: Objection, asked and answered.  
16 Just wait for my objection.  
17 THE WITNESS: I'm sorry.  
18 MR. MCGINLEY: You might need really good  
19 glasses for this.  
20 MS. BRICE: We've been doing pretty good so  
21 far.  
22 MR. MCGINLEY: Yeah, make sure you get your  
23 glasses back.  
24 THE WITNESS: Can I send them to you? Can I

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1 first there's NSG?  
2 A Um-hum.  
3 Q Then there's CWW again; and then there's  
4 a bracketed what appears to be 50% NSG, 40%  
5 AT & T, and 10 percent CWW, do you see that?  
6 A I do.  
7 Q Okay, do you know what this refers to,  
8 what --  
9 A This is speculation; but we had utilities  
10 that ran across site three, some that ran across  
11 site six. So we had to have engineering  
12 performed on each of those. So -- and, again,  
13 this is purely speculation -- I would say that  
14 these are the people that did the work on these  
15 various utilities.  
16 Q Okay, do you know who would have -- I  
17 mean would Tat Ebihara have made this percentage  
18 breakdown?  
19 MS. BRICE: Objection, calls for speculation.  
20 THE WITNESS: A I don't know.  
21 MR. MCGINLEY: Q Would David Peterson have  
22 done this percentage breakdown?  
23 MS. BRICE: Objection, calls for speculation.  
24 THE WITNESS: A I didn't do it. So I don't

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1 use them until I get home?  
2 THE COURT REPORTER: Sure.  
3 (document marked as requested)  
4 MR. MCGINLEY: Q Now, for the record, I  
5 will say that Exhibit 8 in many respects looks a  
6 lot like Exhibit 7 that came before it. If you  
7 notice that one of the things that might be a bit  
8 different about this is that there are many pages  
9 of receipts and sub-invoices and things like that  
10 that have been attached. Do you see what I'm  
11 referring to?  
12 THE WITNESS: A Yes.  
13 Q Okay, so let me ask you this: You've got  
14 Exhibit 8, which contains at least the first few  
15 pages contain essentially the same information as  
16 what we saw earlier in Exhibit 7, it lists, I'm  
17 sorry, work conducted by a sort of summary  
18 description of what was taking place during the  
19 period of time, there's a table showing the costs  
20 that were accrued during this billing period,  
21 which the invoice date here is appears to be 9th  
22 of January 2015. Do you see that?  
23 A Um-hum.  
24 Q Okay, so was it more typical to get

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1 invoices sent to you with supporting  
2 documentation like what we have here in Exhibit 8  
3 or to get the more streamlined version of the  
4 invoice, what we have in Exhibit 7?

5 **A I couldn't answer -- I, typically, look**  
6 **at the information up front here. I don't dive**  
7 **into the each of the discreet receipts and**  
8 **things.**

9 Q But my question to you is is it more  
10 typical to get this Exhibit 7 as an invoice,  
11 something like this where it's just the printout,  
12 the summary of the work done, the breakdown of  
13 the costs incurred; or is it more typical to get  
14 something like Exhibit 8, that same information  
15 that's in Exhibit 7, plus all of the receipts and  
16 the copies of them?

17 MS. BRICE: Objection as to timing.

18 MR. MCGINLEY: Well --

19 MS. BRICE: -- it might be helpful to --  
20 that's all I'm saying. It might be different.

21 THE WITNESS: A You know, I don't know. I,  
22 like I say, I only -- I get them electronic and  
23 I'll go through this section here; but I don't  
24 try to match up each of the receipts. So I stop

1 **A No, sir, I don't.**

2 Q Okay. I'd like to go back to something  
3 you were testifying about earlier about this  
4 spread sheet that you maintain about site costs  
5 that you've maintained for your own personal  
6 purposes, correct? Do you share that with other  
7 people --

8 **A What --**

9 Q -- besides Mr. Tracy?

10 MS. BRICE: Okay, one second, I just want to  
11 object for one reason, to the extent this is  
12 being shared with Mr. Tracy it arguably could be  
13 privileged material. So I don't, to the extent  
14 you were sharing information with him and he is  
15 an attorney, it could be subject to the  
16 attorney-client privilege; and, to the extent  
17 that it is, I need to object and instruct you not  
18 to answer.

19 MR. MCGINLEY: Q Did you create this for  
20 your own -- let me ask you this, is the reason --  
21 I thought I understood what you said earlier that  
22 you created this because you needed to be able to  
23 track the costs for the work that was being done  
24 at the site, correct?

1 at this point, and I couldn't tell you whether  
2 they always did this or whether they started  
3 doing this as a change in their procedure.

4 MR. MCGINLEY: Q Well, for the record I'll  
5 note that Exhibit 7 comes immediately after  
6 Exhibit 8 because this is monthly invoicing,  
7 Exhibit 7 is Monthly Invoicing Progress Report  
8 Number Four; Exhibit 8 is Monthly Invoicing  
9 Progress Report Number Three.

10 THE WITNESS: A Yeah.

11 Q So --

12 **A There's a big gap in there. They, you**  
13 **know, this is December, November -- November**  
14 **through January -- it's like a full quarter. So**  
15 **I, honestly, I don't know. I just -- I don't go**  
16 **past the summary and the breakdown of the work.**

17 Q So, again, I mean was that during the  
18 period of time that you'd been responsible for  
19 overseeing the site, from 2013 to the present,  
20 how common was it for you to get an invoice with  
21 all of the supporting receipts attached to it?

22 MS. BRICE: Objection, asked and answered.

23 THE WITNESS: A I don't know.

24 MR. MCGINLEY: Q You don't know at all?

1 THE WITNESS: A My supervisor expects it.

2 Q Did your -- Your supervisor expects it;  
3 but did your supervisor -- and you're saying  
4 supervisor Brent Tracy, I assume?

5 **A I'm required to track this by my**  
6 **supervisor.**

7 Q Okay.

8 MS. BRICE: Who is an attorney, for the  
9 record.

10 MR. MCGINLEY: Q But you're required to do  
11 this for each and every site, correct? Do you  
12 maintain a spread sheet like this for every site  
13 that you oversee?

14 THE WITNESS: A Not to this detail.

15 Q Okay.

16 **A This is a much more complex site.**  
17 **There's lot of different pieces.**

18 Q So has Mr. Tracy specifically told you  
19 what elements to capture in your spread sheet?

20 **A I don't understand that.**

21 Q You're saying that this is a more complex  
22 spread sheet than the ones that you maintain  
23 apparently for other sites; is that a fair  
24 understanding of what you're testifying to?

1 A There's more pieces to it.

2 Q Okay.

3 A But on each of my sites, at least each of

4 the sites with more than a \$500,000 expected

5 expenditure, I track it by each and every little

6 element.

7 Q Okay.

8 A The smaller ones -- and it's tracked in

9 SAP -- the smaller ones where I'm only going to

10 be spending like forty, you know, up to five

11 hundred thousand I just keep it in one big

12 bucket.

13 Q Okay. So when you said elements

14 before --

15 A Um-hum -- and that's because all the

16 projects over \$500,000 I track in SAP. So

17 there's going to be elements. You know, those

18 under I don't enter them in SAP; and I just have

19 one big bucket.

20 Q Okay, when you say "elements" though are

21 you referring to something like what's on

22 JM 0038679?

23 A The highlighted breaks it down by

24 element.

1 this spread sheet, correct?

2 A Yes.

3 Q Okay. Is this -- but are you doing this

4 because you're required to; or are you doing it

5 because you're doing it for your own personal --

6 MS. BRICE: Objection, mischaracterizes the

7 testimony.

8 MR. MCGINLEY: Q Are you required to

9 maintain it or do you do it for your own --

10 THE WITNESS: A I'm required to maintain

11 it.

12 Q Okay. And that's been specifically

13 communicated --

14 A Yes.

15 Q -- to you?

16 Have you ever added, changed, or

17 modified the spread sheet in any way?

18 MS. BRICE: Objection, to the extent that it

19 requires you to answer something that you've done

20 -- pardon me -- let me start over.

21 Objection, privileged to the extent it

22 involves conversations with Legal -- Brent Tracy,

23 anyone in the Legal Department.

24 MR. MCGINLEY: Well, I'll change the question

1 Q Okay.

2 A Right.

3 Q So where it says element, that column

4 that says element and the information underneath

5 there, is that right?

6 A Yes. I think I understand what you're

7 saying.

8 Q Okay, so you've created a more -- this is

9 a more complex spread sheet for what you have for

10 the Johns Manville site than what you have for

11 your other sites -- yes, no?

12 A Yes and no, I'm sorry. Again, I track

13 the same information, but on John -- or the

14 Waukegan I break it down by task --

15 Q Okay.

16 A -- by element; and the smaller ones it's

17 all in one big bucket. I don't know how else to

18 say that.

19 Q Well, I think I understand what you're

20 saying, the smaller ones it's just a lump sum

21 dollar number, right? I mean you're not breaking

22 it out into discreet tasks, right?

23 A Yes.

24 Q Okay. So you're required to maintain

1 then.

2 Q On your own, of your own volition, have

3 you ever changed any aspect of the information

4 that's in the spread sheet?

5 THE WITNESS: A If I can find a way to save

6 money, let's say like we did with the water, I

7 will reduce what I project to be spent, if that's

8 what you mean. If I run into a situation like I

9 did with site four, five where the EPA requires

10 us to do more than we had originally projected to

11 do, I'll have to increase the expected spend.

12 Does that answer --

13 Q Well, I think you're answering it

14 different, a slightly different question.

15 A Okay. Sorry.

16 Q What I was trying to get at was have you

17 ever -- So you have information that you're

18 tracking on the spread sheet, correct?

19 A Yes.

20 Q Okay, have you ever of your own volition

21 without being directed by anybody changed or

22 added any of the elements or the information

23 that's being tracked in the spread sheet? That's

24 what I'm asking.

1 A I guess I'm not sure I understand. When  
2 we send it up in SAP we assign elements. If  
3 there's something extra the EPA asks us to do, we  
4 may have to add an element.

5 Q Okay.

6 A Does that makes sense? Is that what  
7 you're asking?

8 Q Well, that's kind of what I'm getting at;  
9 but I'm wondering if you've ever said, oh, here's  
10 something that -- let's just say, hypothetically,  
11 have you ever been in a situation where you've  
12 looked at the spread sheet and said, you know  
13 what, this isn't tracking all of the cost, the  
14 cost items that we're incurring, I need to add  
15 some other cost items, other elements in the  
16 spread sheet. Have you ever actually done that  
17 yourself?

18 MS. BRICE: Without being directed.

19 THE WITNESS: A Well, I'm directed to track  
20 it; and in order to do that I may have to add --  
21 and if -- let's say we got permission to say go  
22 to the black ditch material, and that's a  
23 different area of the site, or when we were  
24 working on the settling basin and had to cut

1 through the old dam, that wasn't in our original  
2 plan. So I would have to add an element --

3 Q Okay.

4 A -- to address that.

5 Q Okay.

6 A But, again, I was expected or instructed  
7 that, you know, I had to track what these costs  
8 are. Did I goes to Brent and say, Brent, I need  
9 to add an element -- no, it's just, it's  
10 expected.

11 Q Okay.

12 A Because I need to track all those costs.  
13 Am I answering your question?

14 Q Um-hum. Do you have, I mean are there  
15 any written guidelines that say what --

16 A No.

17 Q -- how you're supposed to go about  
18 tracking costs?

19 A No, there aren't.

20 Q Okay. No written policies about that  
21 whatsoever?

22 A No, sir.

23 MS. BRICE: Objection, asked and answered.

24 MR. MCGINLEY: All right. Let's take a quick

1 break here.

2 (break 4:02 p.m. to 4:13 p.m.)

3 MS. BRICE: Can we go back on the record?

4 I think Scott wanted to add to one of  
5 his answers about the invoices on the back, the  
6 receipts. Why don't you tell them what you  
7 think --

8 THE WITNESS: Yeah, the only thing I could  
9 think of --

10 MR. MCGINLEY: I think it would help if we'd  
11 actually refer --

12 MS. BRICE: Okay.

13 MR. MCGINLEY: Q So you're referring to  
14 Exhibit 8, so you have additional testimony  
15 pursuant, regarding Exhibit 8?

16 THE WITNESS: A I'm going to give you what  
17 I think happened.

18 Q Okay.

19 A And, I'm sorry, it's been a couple of  
20 years. If you notice, this is a big gap between  
21 January -- or November and January; and I got on  
22 Tat about not giving me the monthly billing.

23 Q Um-hum.

24 A And I told him that I think you may have

1 over spent your PO, but I don't know because I  
2 haven't gotten an invoice. So I want you to get  
3 me it and then I want it to be solid because I'm  
4 going to have to go defend it to -- because I've  
5 overspent probably. But I don't know, it's --  
6 it's too long ago for me to remember the details.  
7 That's my guess.

8 Q Okay. Well, that's helpful. Thank you.

9 This is going to be Exhibit Number 9.

10 It may be the shortest invoice I'm going to ask  
11 you to look at -- It is.

12 (document marked as requested)

13 MR. MCGINLEY: Q This is an invoice dated  
14 April 20th of 2015 and lists you as the contact,  
15 Mr. Myers.

16 THE WITNESS: A Um-hum.

17 Q Have you seen this before?

18 A Just like all the others, it's addressed  
19 to me. I can't tell you for sure.

20 Q Okay, is this how Mr. Peterson would have  
21 billed for his costs, invoice in a format like  
22 this? Is this a typical invoice from David  
23 Peterson?

24 A I think it may have changed a little bit

1 over the years. I couldn't tell you for certain.

2 Q How might it have changed?

3 A I don't know. It may have been in a  
4 different format. But I like this format.

5 Q You could use it -- it's clear, easy to  
6 read, right. Okay, so then you're saying that  
7 you can't recall having seen this, correct?

8 A I can't absolutely sit here and say I  
9 definitely saw this one.

10 Q Okay. Do you know if in listing, let's  
11 say there seems to be, if you look at the bottom  
12 of the first page, southwest site three, do you  
13 see where I'm referring to?

14 A Yes.

15 Q Okay, it lists dates underneath that, 19  
16 March, which I assume is 19th of March, 23, 24,  
17 et cetera?

18 A Um-hum.

19 Q Do you know how Mr. Peterson would have  
20 tracked the time that he spent on these  
21 particular work items on those dates?

22 A I don't know those details of his.

23 Q Did you, at any point have you ever asked  
24 him how he would have reported this information?

1 that --

2 MS. BRICE: Objection --

3 MR. MCGINLEY: -- is that a fair  
4 characterization?

5 MS. BRICE: -- mischaracterizes his  
6 testimony.

7 THE WITNESS: A I did not ask for their  
8 time logs is what I'm saying.

9 MR. MCGINLEY: Q And you've never asked,  
10 for any of the contractors that have worked with  
11 JM, you've never asked for any of their time  
12 logs?

13 A I have not.

14 Q And that's not, you're not saying 'I  
15 guess' or 'I think'; but you're saying that sort  
16 of categorically, would you agree?

17 A I've never requested time logs.

18 Q Just a few last things. The audit that  
19 you referred to earlier, the audit that pertained  
20 to the southwestern sites work, all right, you've  
21 never seen -- you've heard the results of that  
22 but you've never seen any written test -- any  
23 written report concerning that?

24 MS. BRICE: Objection, asked and answered.

1 A I've never asked for logs or anything  
2 like that. I don't know how he tracks his time.

3 Q Okay. Would that be the same case with  
4 respect to the AECOM invoices, have you ever  
5 asked anybody how they track their time with  
6 respect to let's say Exhibit 7? If you go back  
7 to that you'll see on the say fourth page, let's  
8 say beginning JM 0038680, you see the page I'm  
9 referring to?

10 A Yes.

11 Q And if you look under task number 010 --  
12 and for the record I'll state that this doesn't  
13 pertain to site three and site six; but it's  
14 typical of how they billed throughout the  
15 invoices. Did you ever ask how they documented  
16 their time for any of these work items --

17 A No.

18 Q -- that are being billed for here?

19 A And, as long as they were within their  
20 bid or their proposal, I didn't ask for logs.

21 Q So, roughly speaking, as long as the  
22 invoice appears to be within the parameters of  
23 what the bid is, what the purchase order is for  
24 that job you're, basically, okay with it, is

1 MR. MCGINLEY: Q But you can answer anyhow.

2 THE WITNESS: A Let me clarify something  
3 there. The audit was not specifically on the  
4 southwest sites.

5 Q Okay.

6 A The audit include all of the Waukegan  
7 project. I have not received any written report.

8 Q Okay. And one other point of  
9 clarification, you have the sole responsibility  
10 for reviewing the invoices that come in, correct,  
11 you don't delegate that work to anybody that  
12 works for you, correct?

13 A No, I review them and approve them.

14 Q Okay, each and every invoice that comes  
15 through?

16 A Yes, sir.

17 Q Okay. Even though you may not  
18 necessarily do the deep dive and look at every  
19 piece of paper that's attached, correct?

20 MS. BRICE: Objection, mischaracterizes the  
21 testimony, argumentative.

22 MR. MCGINLEY: Q You testified earlier that  
23 you might not read every piece of paper that's  
24 attached to the invoices, correct, or try and

1 match up the numbers --

2 THE WITNESS: A I do not match the specific

3 receipts in the back on this --

4 Q Okay.

5 A -- with each of the tasks.

6 Q Okay, and --

7 MS. BRICE: And you're referring to Exhibit?

8 THE WITNESS: Exhibit 8.

9 MS. BRICE: 8.

10 MR. MCGINLEY: 8, yes, okay.

11 I have -- Thank you for your time, I

12 appreciate.

13 MS. O'LAUGHLIN: Wait.

14 MR. MCGINLEY: Oh.

15 Q Is there a key in the SAP System for all

16 of these task elements? I mean is that something

17 that's maintained separately? I mean you have --

18 there's -- Let's just go back to Exhibit 7. You

19 said that each of these elements that are on

20 listed on JM 0038679 -- you see that. That's the

21 page, right. Do you see what I'm referring to?

22 THE WITNESS: A I'm sorry.

23 Q It's JM 0038679.

24 A Oh, okay, yes, I thought you were talking

1 MS. BRICE: Objection, calls for speculation.

2 THE WITNESS: A You know, I'm not an SAP

3 person; but what S-A -- the screen in SAP will

4 have, you know, an element and then it will have

5 this description next to it.

6 Q Um-hum.

7 A Does that make sense?

8 Q Yes, it does.

9 A Did I answer your question?

10 Q What I'm trying to understand is, if

11 there is a separate, if the elements

12 themselves -- I mean how would you figure out

13 what the elements are? If you're putting

14 together this invoice, if AECOM's putting

15 together this invoice, how would they find out

16 what the elements are so that they know that

17 they're properly billing for the work that

18 they're doing --

19 A When AECOM, or David Peterson, provide me

20 with a bid or a proposal they'll break it out by

21 job task.

22 Q Um-hum.

23 A And then we enter those job tasks into

24 SAP, and it assigns an element number.

1 about -- Yeah, um-hum.

2 Q Okay.

3 A What about it?

4 Q So the element, in the right hand, or the

5 far left-hand column that says "element", these

6 are all, if I understand what you testified to

7 earlier about, you're saying that these are

8 elements that correspond to how information is

9 maintained in the SAP System --

10 A Yes.

11 Q -- that Johns Manville uses, right?

12 A Yes.

13 Q Okay. So then my question for you is

14 this: Is there actually like a list someplace of

15 all of these elements that just sets out --

16 A You're looking at it. See that

17 description column?

18 Q Okay, right, but I mean --

19 A That's how we describe --

20 Q But is there a separate list of, apart

21 from what's actually in this chart, that says,

22 okay, for SAP, you know, for billing purposes

23 here are the elements that we currently have for

24 this project?

1 Q Okay.

2 A So when they invoice us, it's broken down

3 by those elements; and we enter those numbers in

4 there and we track what's in each of those

5 buckets.

6 Q Okay.

7 A Whether we're over, under, whatever.

8 Q Okay, so then it's just a matter of when

9 you're entering the information you would just --

10 what -- I mean how does this end up being

11 produced?

12 MS. BRICE: Objection, asked and answered.

13 MR. MCGINLEY: Q What has to be entered to

14 get to this? How is this information, how does

15 this information end up on this page?

16 MS. BRICE: Objection, asked and answered,

17 calls for speculation.

18 THE WITNESS: A I guess -- I don't know how

19 AECOM sets up their accounting.

20 MR. MCGINLEY: Q Okay.

21 A All I ask is that they include the

22 description and it match what was in the

23 proposal. So I guess I'm not understanding your

24 question.

1 Q Okay, I'm just trying to figure out  
2 how --  
3 A I'm sorry, I'm a little bit slow.  
4 Q Well, I -- no, I don't know --  
5 A It's the head shake that --  
6 Q All I'm trying to figure out is this is a  
7 pre-agreed set of element numbers, right? I mean  
8 they've been told that this is what they need to  
9 use?  
10 A Yes.  
11 Q Okay.  
12 A Yes, they provide me with, you know, the  
13 breakdown, the tasks.  
14 Q Okay.  
15 A And then we enter it in SAP and it  
16 generates an element number. We provide them  
17 those element numbers.  
18 Q Okay --  
19 A And then they --  
20 Q Is there just a separate list of element  
21 numbers?  
22 MS. BRICE: Objection, asked and answered.  
23 THE WITNESS: A Just on a screen in SAP.  
24 MR. MCGINLEY: Q Okay, see, that's

1 us?  
2 MS. BRICE: I have no earthly idea, and I  
3 think that I need to go back and look.  
4 MR. MCGINLEY: Okay.  
5 MS. BRICE: And I don't know if they're  
6 privileged or whatever. I think he's providing  
7 them to Brent. So I think they're probably  
8 privileged, but I don't know.  
9 MR. MCGINLEY: Okay. I would like to know  
10 about that because it's something that we have  
11 not seen that.  
12 MS. BRICE: Okay.  
13 MR. MCGINLEY: So I think --  
14 MS. BRICE: I'll find out.  
15 MR. MCGINLEY: Okay.  
16 And then the other thing I'd like to  
17 know about is if there is actually an audit  
18 report, some actual written report regarding the  
19 Johns Manville site in Waukegan, we would like to  
20 have a copy of that as well.  
21 MS. BRICE: Okay, I don't know if that that's  
22 within the --  
23 THE WITNESS: There is not.  
24 MS. BRICE: Oh, so there's not. But I don't

1 something we didn't know before. So it's on the  
2 screen in SAP, you just look for it and you just  
3 plug it in?  
4 A Yes.  
5 Q Okay, that's very helpful, thank you.  
6 That's all, thank you. I appreciate  
7 your time.  
8 A It was a wonderful day.  
9 Q Thank you for that.  
10 A I've never had my credibility questioned  
11 so often or my competence.  
12 Q Well, it's --  
13 THE COURT REPORTER: Are we off?  
14 THE WITNESS: I know it's not personal.  
15 MS. O'LAUGHLIN: No, it's not.  
16 THE WITNESS: But it is.  
17 MS. O'LAUGHLIN: Well --  
18 MR. MCGINLEY: Well --  
19 THE WITNESS: I take a great deal of pride in  
20 my work.  
21 MR. MCGINLEY: Glad to hear that.  
22 I'm -- I am going to ask on the record  
23 though: The quarterly reports that Mr. Myers was  
24 referring to, have those ever been produced to

1 know if its within the context of things that you  
2 previously asked for, so --  
3 THE WITNESS: Just so you know --  
4 MS. BRICE: I'm not expanding the document  
5 request in a deposition request.  
6 THE WITNESS: I have asked for it, and they  
7 haven't written one. I got the gist of the  
8 report standing in the urinal, at the urinal next  
9 to the guy that is responsible for that --  
10 MR. MCGINLEY: That happens in a urinal.  
11 THE WITNESS: We get a lot of business done  
12 in there.  
13 MR. MCGINLEY: Well, again, thank you for  
14 your time.  
15 MS. BRICE: I have no questions.  
16 THE COURT REPORTER: Is there signature?  
17 MS. BRICE: Yes.  
18 THE COURT REPORTER: I mean is it reserved or  
19 waived?  
20 MS. BRICE: You want to -- We want to  
21 reserve, yes, right, yes.  
22  
23  
24

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF COOK )

The within and foregoing deposition of the aforementioned witness was taken before NANCY K. SPEARE, C.S.R., and Notary Public, at the place, date and time aforementioned.

There were present during the taking of the deposition the previously named counsel. The said witness was first duly sworn and was then examined upon oral interrogatories; the questions and answers were taken down in shorthand by the undersigned, acting as stenographer and Notary Public; and the within and foregoing is a true, accurate and complete record of all of the questions asked of and answers made by the aforementioned witness, at the time and place hereinabove referred to.

The signature of the witness was not waived, and the deposition was submitted, pursuant to Rules 207 and 211 (d) of the Rules of the Supreme Court of Illinois, to the deponent per copy of the attached letter.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature and seal as Notary Public in and for Cook County, Illinois on this 7th day of July, A.D., 2017.

NANCY K. SPEARE, C.S.R.,  
Notary Public  
License No. 084-001584

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205 West Randolph Street  
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Chicago, IL 60606

WITNESS CERTIFICATION

I hereby certify that I have read the foregoing transcript of my deposition consisting of pages 1 through 166 inclusive. Subject to the changes set forth on the preceding pages, the foregoing is a true and correct transcript of my deposition taken on 6-29-17.

(Signed)  
SCOTT MYERS

SUBSCRIBED AND SWORN TO  
Before me this day of  
A.D. 2017.

Notary Public



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**CERTIFICATE OF SERVICE**

***Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)***

I, EVAN J. MCGINLEY, do hereby certify that, today, July 18, 2017, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's "Motion to Require Johns Manville to Produce Frederick Scott Myers for Second Deposition" on each of the parties listed below:

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s/Evan J. McGinley  
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