

May 23, 2016

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
 JOHNS MANVILLE, a Delaware)
 corporation,)
)
 Complainant,)
)
 vs)
)
 ILLINOIS DEPARTMENT OF)
 TRANSPORTATION,)
)
 Respondent.)

PCB 14-3

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STATE OF ILLINOIS
Pollution Control Board

TRANSCRIPT FROM THE PROCEEDINGS
 taken before HEARING OFFICER BRADLEY HALLORAN
 by LORI ANN ASAUSKAS, CSR, RPR, a notary public
 within and for the County of Cook and State of
 Illinois, in Room 9-031 at the James Thompson
 Center, 100 West Randolph Street, Illinois,
 on the 23rd day of May, 2016, A.D., at 9:00
 o'clock a.m.



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BY: MR. BRADLEY HALLORAN,

6 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

7 Ms. Jennifer A. Burke, Board Member

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BY: MS. SUSAN BRICE and
13 MS. LAUREN J. CAISMAN,

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15 Appeared on behalf of the Complainant;

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MS. ELLEN F. O'LAUGHLIN,

21
22 Appeared on behalf of the Respondent.
23
24

1 A P P E A R A N C E S: (Continued)

2

ALSO PRESENT:

3

Mr. William Clinton, Johns Manville

4

Mr. Douglas G. Dorgan, Jr., Weaver Consultants Group

Mr. Matt Dougherty, IDOT

5

Mr. Tatsuji Ebihara, AECOM

Mr. Joseph R. Fortunato, Jr., Momkus, McCluskey, LLC

6

Mr. Steven Gobelman, P.E., Andrews Engineering, Inc.

Mr. Jonathan Huff, Extern

7

Mr. Duncan Lampfear, Extern

Mr. Daniel May, Illinois Pollution Control Board

8

Mr. Matt Powell, Illinois Pollution Control Board

Ms. Marie Tipsord, Illinois Pollution Control Board

9

Mr. Brent A. Tracy, Johns Manville

Ms. Susan Watkins, Bryan Cave

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Ms. Amy Zayez, Extern

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1 HEARING OFFICER ROBERTSON: Good
2 morning everyone. My name is Brad Halloran.
3 I'm a hearing officer with the Illinois Pollution
4 Control Board. I'm also assigned in this case
5 entitled Johns Manville, Complainant versus
6 Illinois Department of Transportation, Respondent.
7 Our docket number is PCB No. 14-3.

8 Today is May 23, 2016. It
9 is 9:00 a.m. This case was noticed up properly
10 and commenced on May 10, 2013, where it
11 was continued to today on record due to some
12 discovery issues.

13 The hearing will be conducted
14 pursuant to Sections 101 and 103 of the Board's
15 procedural rules.

16 In a nutshell, this case
17 involves what happened approximately 46 years
18 ago on Site 3 and Site 6 regarding an IDOT
19 highway project and IDOT's ownership or control,
20 if any, of Site 3 and Site 6.

21 I'm here to rule on any
22 evidentiary matters after the hearing. I'll
23 take the record transcripts and any post-hearing
24 briefs and the five capable members of the

1 Board will then decide.

2 Quickly, I'm pleased to
3 announce that we have Member Burke with us
4 today, we have her staff attorney, Daniel
5 Robertson, Senior Attorney Mark Powell and
6 I think we have Marie Tipsord, staff attorney,
7 and three externs.

8 With that, counsel, would you
9 like to introduce yourself?

10 MS. BRICE: Sure. My name is
11 Susan Brice. I represent Johns Manville and
12 I'm from the law firm of Bryan Cave.

13 MS. CAISMAN: Good morning. I'm
14 Lauren Caisman appearing on behalf of Johns
15 Manville. I'm with Bryan Cave.

16 MR MCGINLEY: Evan McGinley,
17 Attorney General's Office on behalf of the
18 respondent, Illinois Department of Transportation.

19 MS. O'LAUGHLIN: Ellen O'Laughlin,
20 also from the Attorney General's Office on
21 behalf of the respondent, Illinois Department
22 of Transportation.

23 HEARING OFFICER HALLORAN: Okay.
24 Thank you. And before we go on to openings, if

1 any, there might be some exhibit issues that
2 may arose on -- arisen on Thursday or this
3 Friday of last week. I don't know.

4 Ms. Brice, do you want to
5 start?

6 MS. BRICE: Sure. I think
7 Ms. Caisman will speak to that.

8 HEARING OFFICER HALLORAN: Oh,
9 Ms. Caisman?

10 MS. CAISMAN: Yes.

11 Mr. Hearing Officer, I believe
12 it was Friday, I got filed a revised exhibit list.
13 Many of the documents included on that exhibit
14 list had not been previously been produced during
15 the discovery period. In fact, it had only been
16 turned over by IDOT just a couple of days before
17 they actually filed their exhibit list.

18 Specifically, it's Exhibits 162,
19 163 and 167 on their revised exhibit list. Exhibit
20 167 was also not included on any previous iteration
21 of IDOT's exhibit list and because the documents
22 weren't timely produced.

23 I guess we move at the outset to
24 have them excluded.

1 HEARING OFFICER HALLORAN: Okay.
2 Exhibit 167 is a right-of-way notice letter
3 formerly 61?

4 MS. CAISMAN: That's correct, but
5 there was no 61 on any previous list.

6 HEARING OFFICER HALLORAN: Thank
7 you. I'm sorry. Ms. Caisman, that concludes
8 your discussions on this?

9 MS. CAISMAN: Yes. Just know we
10 deposed both of IDOT's experts, neither of which
11 included in their reports that they had relied
12 on those three documents and neither testified
13 that they had relied on those documents.

14 So to the extent that IDOT is
15 now claiming that any of those three documents
16 are somehow one of the bases or their expert
17 opinions, the proper disclosure wasn't made under
18 the Illinois rules. So for that additional reason,
19 we move that those also be excluded.

20 HEARING OFFICER HALLORAN: Okay.
21 And 162 and 163 looks like it's an April 18, 1895,
22 quitclaim deed and they have former Exhibit 56,
23 but that's not correct?

24 MS. CAISMAN: It wasn't listed as

1 former Exhibit 56 --

2 HEARING OFFICER HALLORAN: Oh, okay.

3 MS. CAISMAN: -- but it hadn't been
4 produced until a few two days ago.

5 HEARING OFFICER HALLORAN: Okay. And
6 Exhibit 163 is the January 20, 1815, quitclaim deed
7 as well?

8 MS. CAISMAN: Correct.

9 HEARING OFFICER HALLORAN: IDOT
10 counsel, Mr. McGinley and Ms. O'Laughlin?

11 MR MCGINLEY: Yes. Well, with
12 respect to the two quitclaim deeds, these are
13 actually documents that are referenced in a
14 document that was produced to us by Johns Manville
15 as a title commitment that was done, I believe,
16 last year, the early part of this year for this --
17 it relates to the subject property in the case.

18 The documents were looked at
19 by our expert, Keith Stoddard. When he took a
20 look, he pulled the actual quitclaim deeds himself
21 after he saw the title commitment and we would
22 argue that that's really -- essentially, it only
23 is an enhancement of his opinion. His opinion
24 is hand Johns Man- -- that the city of Waukegan

1 owns the relevant piece of Greenwood Avenue in
2 Waukegan as well as Sand Street in Waukegan.

3 All this does is show that
4 there is additional support for what is already
5 his opinion. We produced the documents. They were
6 listed in their -- in Johns Manville's title
7 commitment.

8 We actually called Mr. Fortuato
9 during his deposition, showed him the title
10 commitment that had been produced by Johns Manville,
11 asked him based upon his knowledge and expertise
12 if he could opine as to whether or not the city of
13 Waukegan had actually ever acquired the right to
14 Greenwood Avenue as well as to Sand Street.

15 Mr. Fortuato had offered an
16 opinion at that point and so we felt it necessary
17 to acquire the deeds in order to be able to try
18 and get some clarification and finality as to the
19 issue as to who, in fact, actually owns and has
20 jurisdiction over Greenwood Avenue and Sand Street
21 in the vicinity of Site 3 and Site 6.

22 HEARING OFFICER HALLORAN: Could
23 this have been disclosed on or before May 17th,
24 these three exhibits, and why weren't they, if

1 they could have been?

2 MS. O'LAUGHLIN: May 9th?

3 HEARING OFFICER HALLORAN: Well,
4 the expert -- I think your expert list was sent
5 out -- your exhibit list was May 17th?

6 MR MCGINLEY: It was May 17th and
7 it was included on the original.

8 MS. O'LAUGHLIN: I believe so, but --
9 I don't mean to take the lead. I mean, one of the
10 things was the deposition of Mr. Fortuato occurred
11 after discovery, quote, unquote, closed, which the
12 parties had agreed that it was -- as Mr. McGinley
13 said it was the subject of our -- it was included
14 in the subject of the deposition.

15 So Mr. Fortuato actually listed
16 that title commitment as one of the documents that
17 he received.

18 HEARING OFFICER HALLORAN: Well, I
19 know, but it's literally like a day before the
20 hearing.

21 MS. O'LAUGHLIN: Right. But I guess
22 the point is that it was in play well before -- it
23 was in play well during depositions and discovery
24 and they know about it. They listed it in their

1 title commitment. There's no surprise. There's
2 no unfair, you know, issue. It's a -- it's real
3 estate documents from a long time ago. They list
4 it in their title commitment. They should've
5 looked them up themselves, but that's up to them.

6 HEARING OFFICER HALLORAN: Any
7 response, Ms. Caisman?

8 MS. CAISMAN: Yes. Mr. Fortuato's
9 deposition took place on May 9th, which was the
10 close of discovery, not after the close of
11 discovery.

12 JM had done a title -- had
13 issued -- sorry -- a title commitment prepared
14 earlier, although it was with respect to the wrong
15 property.

16 The underlying documents were
17 not produced because they weren't reviewed by JM
18 or obtained by JM in any way, but that title
19 commitment was produced weeks -- weeks earlier
20 to IDOT. So to the extent they wanted to explore
21 and full prep the documents referenced in that
22 title commitment, they could have done so much
23 earlier.

24 Under Illinois Supreme Court Rule

1 213(g), the information disclosed in 213(f)(3)
2 disclosure, which is what IDOT provided for
3 Mr. Stoddard -- is required to provide all the
4 bases of an opinion even if enhances the opinion,
5 IDOT never supplemented that disclosure.

6 Mr. Stoddard testified on numerous
7 occasions that he had not looked at nor reviewed
8 other documents other than those listed in his
9 disclosure. In fact, in the case of IDOT versus
10 Crull in the Fourth District of Illinois, IDOT
11 argued exactly the opposite position that it's
12 taking now in that certain documents and opinions
13 should be excluded because the bases therefore
14 were not previously disclosed. So we believe that
15 should -- for that same reason should control here.

16 HEARING OFFICER HALLORAN: When are
17 we going to deal with these exhibits, 162, 163 and
18 167?

19 MS. BRICE: Not today.

20 MR McGINLEY: Not today.

21 HEARING OFFICER HALLORAN: You know
22 what, I'll take that under advisement.

23 I do want to note for the court
24 reporter that I don't think any members of the

1 public are here, just the parties and the
2 witnesses affiliated with the respective
3 parties.

4 With that said, do we need
5 to address anything else or can we move on to
6 openings?

7 Okay. Terrific. Thank you.

8 MS. CAISMAN: Actually, one more
9 thing. I don't know if you guys are amenable,
10 but the parties have stipulated to a number of
11 exhibits as being admissible and authentic. So
12 I think it would be more expeditious to kind
13 of move all of the stipulated exhibits into
14 evidence at the outset to speed things up.

15 MR MCGINLEY: We are amenable.

16 HEARING OFFICER HALLORAN: Okay.
17 Yes. I mean, I -- if you want to do, that the
18 filings I've got --

19 MS. BRICE: We have a -- we have
20 a list of what's not stipulated to --

21 HEARING OFFICER HALLORAN: Okay.

22 MS. BRICE: -- that we can provide
23 and show you and make sure you agree with it.

24 MR MCGINLEY: Sure.

1 MS. CAISMAN: We can clean up,
2 you know, whatever stipulations and put that
3 into --

4 HEARING OFFICER HALLORAN: You
5 know what, let's -- I could kick myself. Let's
6 address it as the exhibits come up and say this
7 exhibit is stipulated to because there's kind
8 of a lot of ifs, ands and buts in here.

9 MS. BRICE: Okay.

10 HEARING OFFICER HALLORAN: I think
11 it might be cleaner for the record and for the
12 Board, but thank you for bringing that up.

13 MS. BRICE: Do you guys want to -- I
14 think your exhibits are over there.

15 HEARING OFFICER HALLORAN: Oh, okay.

16 MS. O'LAUGHLIN: Okay.

17 MS. BRICE: So why don't we pass
18 those out at least.

19 HEARING OFFICER HALLORAN: Sure.
20 Let's go off the record, please.

21 (Whereupon, a discussion
22 was had off the record.)

23 HEARING OFFICER HALLORAN: You may
24 proceed.

1 MS. BRICE: Thank you.

2 O P E N I N G S T A T E M E N T S

3 by Ms. Brice

4 Good morning, Mr. Halloran and
5 Board members, everyone else. I would like to start
6 this morning by quoting the Illinois Supreme Court
7 with respect to the Environmental Protection Act.
8 Quote: The primary purpose of the Act is to assure
9 that the adverse effects upon the environment are
10 fully considered and borne by those who cause them,
11 National Marine versus Illinois EPA.

12 This case is about doing the
13 right thing and taking responsibility for who
14 caused the problem. The question here is who
15 caused the disposal of waste in the form of
16 asbestos-containing materials on two properties?
17 JM, or Johns Manville, or JM for short, admits
18 that it bears some of the responsibility, but
19 IDOT refuses to do so.

20 In a nutshell, this case
21 involves two pieces of property adjacent to JM's
22 manufacturing facility in Waukegan, Illinois. The
23 first piece of property is on the northwest corner
24 of property owned by ComEd and that is what you

1 see here as Site 3.

2 Site 3 is right next to an
3 intersection that's going to be important in
4 this case, which is the intersection of
5 Greenwood and Sand Street or Pershing. Let
6 me go over here. So Pershing is -- it used
7 to be called Sand Street. It's now called
8 Pershing.

9 JM's manufacturing facility
10 is right up here to the north (indicating) and
11 obviously, for the record, no one is going to
12 be able to know what I'm pointing to, but as we
13 get further into it, we will have people circle
14 things in color so that it will be more obvious.
15 But for purposes of people in the room, I thought
16 I would get everyone oriented.

17 The second piece of property
18 abuts Site 3 to the north. So it's Site 6, which
19 you see here. It's essentially the shoulders of
20 Greenwood Avenue and an embankment that was built --
21 part of an embankment that was built in 1970. We
22 refer to this as Site 6, as I said, and the two
23 sites are here on the map.

24 The evidence will show the

1 state, acting through IDOT, hold a permanent
2 easement that runs through portions of both of
3 these sites. This is the easement, the dotted
4 line here (indicating), as you will see. It
5 goes up here to the north right along here
6 (indicating). We will refer to that as Parcel
7 0393 in this case or the right-of-way.

8 The evidence will show that
9 asbestos-containing materials have been found on
10 both Site 3 and Site 6. The US EPA has determined
11 that the sites were in imminent and substantial
12 endangerment because of this asbestos-containing
13 material that is buried on Site 3 and Site 6 and
14 that US EPA has ordered Johns Manville to remediate
15 Site 3 and Site 6 pursuant to a Removal Action Work
16 Plan under CERCLA.

17 The current cleanup involves
18 digging out buried ACM on both Site 3 and Site 6
19 and creating clean corridors for a number of
20 utilities that run through this area.

21 The history of Site 3 and Site 6
22 is critical to this case. I'm going to touch on it
23 very briefly. First, let's discuss Site 3, which
24 is this larger, sort of square, but it's sorts of

1 a funnel-type shape over here (indicating). JM
2 concedes that it used Site 3 as a makeshift
3 parking lot in the 1950s and 1960s pursuant to
4 an agreement Commonwealth Edison had when JM was
5 running out of parking space up on the property
6 to the north.

7 The evidence will show that
8 ComEd required JM to delineate the boundaries
9 of the former parking lot area, which is right
10 here (indicating), this square area within
11 Site 3, and to install wheel stops so the parking
12 would be more orderly.

13 It will also show that JM used
14 concrete Transite pipes split in two to delineate
15 the barriers around Site 3 and to create the
16 various wheel stops within the property and
17 concrete Transite pipe contains asbestos.

18 The evidence will show that
19 the parking lot structure existed until at least
20 1970 when IDOT constructed a temporary bypass
21 road, which you see right here and this is from
22 IDOT's construction drawings, a temporary bypass
23 road through the former parking lot area. The
24 road was removed by IDOT at the end of the

1 construction process.

2 As to Site 6, the evidence
3 will show that as part of the construction, IDOT
4 built an embankment here (indicating) on -- when
5 the embankment is partially on Site 3 and partially
6 on Site 6, which elevated Greenwood Avenue to be
7 able to connect to an expressway project, the
8 Amstutz Expressway Project, which was slightly
9 over there to the west.

10 The engineering drawings
11 will show that fill was used to create this
12 embankment, which is 20 feet high in some places.
13 The embankment is still there. The central
14 fact in dispute is how did IDOT build that detour
15 road and how did IDOT build that embankment?

16 JM alleges, and IDOT denies,
17 that IDOT crushed and buried the concrete JM
18 placed on top of its former parking lot when
19 it built the detour road and embankment during
20 the Amstutz Project. JM alleges, and IDOT,
21 denies that IDOT used other types of
22 asbestos-containing fill material on Sites 3
23 and 6 especially with respect to the construction
24 of the embankment.

1 JM alleges, and IDOT denies,
2 that IDOT continues to use and control the
3 embankment that it fills with ACM.

4 IDOT plans to rebut most of
5 JM's claims through expert testimony. Their
6 primary Steven Gobelman, a former IDOT employee.
7 Mr. Gobelan will testify that while he was not
8 involved in the IDOT project and while he has
9 spoken to no one who was ever involved in the
10 IDOT project, he is 100 percent certain that
11 IDOT did not bury any concrete Transite pipe
12 during the Amstutz Project.

13 He maintains this 100 percent
14 certainty despite three facts. First, the data
15 will show that pieces of Transite pipe, other ACM
16 waste are buried within the fill material placed
17 by IDOT during construction projects determined
18 from the engineering drawings.

19 Second, the evidence will show
20 that IDOT's contractor was not only committed to,
21 but encouraged to use concrete that it found on
22 the project site and to bury it in embankments.

23 Third, the evidence will show
24 that IDOT's resident engineer, who's name is Duane

1 Mapes on the Amstutz Project, admitted that IDOT
2 dealt with asbestos pipe during the project and
3 buried some of it.

4 In the end, JM believes that
5 the evidence will show that JM is being required
6 to remove waste that IDOT has stored, buried and
7 disposed of in violation of the Act.

8 As a result, JM is asking the
9 Board find that IDOT has violated the Act and
10 that the Board fashion a remedy that not only
11 includes ordering IDOT come into compliance,
12 but also includes in the words of National Marine
13 and the Illinois Supreme Court requiring IDOT to
14 bear responsibility for the environmental damage
15 it has caused.

16 Thank you.

17 HEARING OFFICER HALLORAN: Thank
18 you, Ms. Brice.

19 Mr. McGinley and Ms. O'Laughlin?

20 MR. MCGINLEY: Yes.

21 O P E N I N G S T A T E M E N T

22 by Mr. McGinley

23 Good morning. My name is Evan
24 McGinley. I'm the Assistant Attorney General with

1 the state of Illinois. We represent IDOT in this
2 matter.

3 I think Mr. Halloran at the
4 outset noted this case involves some issues that
5 took place many, many years ago.

6 One of the central problems with
7 this case -- for Johns Manville's case is the fact
8 that no one alive today was around when certain
9 key events took place in this case. Nobody was
10 alive and can testify today as to how the parking
11 lot was constructed.

12 IDOT contends that the parking
13 lot was constructed with asbestos-containing
14 material, not just as bumpers on the surface
15 of the parking lot, but also as part of the
16 substructure of the parking lot. We believe
17 that the testimony that will be elicited during
18 the course of this hearing will show that that's
19 the case.

20 During the course of the
21 construction project that was related to the
22 Amstutz expressway construction back in the
23 early 1970s, there's a lot of things that took
24 place, a lot of technical issues related to the

1 construction of the road. Unfortunately, there
2 is no one alive today that can tell us what took
3 place 40 years ago.

4 What we're left with and the
5 challenge the Board will have in trying to
6 understand and evaluate Johns Manville's claims
7 is what does the record show? Well, this case
8 will, in fact, turn on expert opinion.

9 The only way that we can
10 figure out what is in all of the voluminous
11 documents that you see before you, which includes
12 not only
13 the construction plan, but also all of the
14 environmental studies and investigations, which
15 have been done after the end of the construction
16 of the road took place is through expert testimony.

17 The reason why Steven Gobelman's
18 testimony is valid and important is because only
19 Mr. Gobelman has the expertise necessary to be
20 able to interpret what is actually in those
21 construction documents. The entire -- as best
22 we know, a fairly substantial portion of the actual
23 documents that were created during the course of
24 this project, before the project was done, the

1 plans, the schematics for the construction of the
2 road, the documentation that was generated during
3 the course of the actual construction project,
4 all of that documentation still largely exists.
5 Needless to say with the passage of time, the
6 entire record isn't present, but there's enough
7 of the record that allows for Mr. Gobelman to
8 make what we believe are very informed and
9 authoritative comments and opinions about what
10 took place.

11 Mr. Gobelman has over 20 years
12 of experience working for IDOT and in that
13 experience, he has spent years of looking at
14 historic aerial photographs and reviewing old
15 construction records and trying to ascertain
16 in sort of a forensic fashion what took place
17 with a given construction project at a point in
18 time.

19 So Mr. Gobelman is uniquely
20 qualified to actually opine and provide guidance
21 to the Board about what took place. We believe
22 by comparison Mr. Dorgan's theories fall flat for
23 one simple reason. Mr. Dorgan's theories do not
24 take into account all of the asbestos that's at

1 the site.

2 There's a lot of asbestos and
3 there's asbestos that's -- you will see later
4 during the presentation of evidence that there's
5 asbestos that's out on here (indicating) that's
6 well past the IDOT limits of easement.

7 There is also asbestos that
8 happens to have been found over here (indicating)
9 also outside the limits of construction. So the
10 question you have to confront is whether or not
11 Mr. Dorgan's theory adequately accounts for all
12 of the data, all of the instances of asbestos.

13 That's what you need to have
14 for a robust theory. If you're going to offer
15 a theory about a case, it needs to take into
16 account all of the data, all of the observed
17 observations that's taken place at the site. The
18 record will show that there was a -- this site has
19 been fairly well documented in terms of soil borings
20 and site investigation.

21 What the data shows is that
22 there's really only sporadic instances of asbestos,
23 that the asbestos that is observed has by Johns
24 Manville's own consultants been shown to be the

1 local agencies PRPs at sites all across the country.
2 This could have been no different. The fact that
3 IDOT has not been made a PRP in this case should
4 be telling to the Board.

5 We think that at the end of
6 the evidence and after you've seen post-trial
7 briefs that will be filed in this matter, we are
8 confident that you will have to find in IDOT's
9 favor and not Johns Manville. Thank you.

10 HEARING OFFICER HALLORAN: Thank
11 you, Mr. McGinley.

12 Ms. Brice, Ms. Caisman, first
13 witness?

14 MS. BRICE: Yes. Johns Manville
15 would like to call Mr. Dennis Clinton.

16 HEARING OFFICER HALLORAN: Okay.
17 Mr. Clinton, I think we're going to have you sit
18 over here.

19 MS. BRICE: And for ease of dealing
20 with the exhibits, I've got hopefully an exhibit
21 binder up there that has the exhibits. I plan to
22 use that so he doesn't have to fish through the 11
23 different exhibit notebooks.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 Raise your right hand and Lori
3 will swear you in, please.

4 THE COURT REPORTER: Do you swear the
5 testimony you are about to give is the truth, the
6 whole truth and nothing but the truth, so help you
7 God?

8 MR. CLINTON: I do.

9 (Witness sworn.)

10 HEARING OFFICER HALLORAN: You may
11 proceed.

12 WHEREUPON:

13 W I L L I A M D E N N I S C L I N T O N
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 D I R E C T E X A M I N A T I O N
17 by Ms. Brice

18 Q. Good morning. Could you please state
19 your name for the record?

20 A. William Dennis Clinton.

21 Q. Who is your employer?

22 A. Johns Manville.

23 Q. How long have you worked for Johns
24 Manville?

1 A. Forty-five years.

2 Q. Mr. Clinton, what is your current
3 title?

4 A. Senior manager project engineering.

5 Q. And what is your undergrad degree
6 in?

7 A. Civil engineering.

8 Q. Now, are you familiar with the JM
9 Waukegan Superfund Site? I'm talking about the
10 larger site.

11 A. Yes, I am.

12 Q. And when did you become familiar with
13 the site?

14 A. Beginning about 1998.

15 Q. What is the JM Superfund Site, the
16 larger site?

17 A. It's about a 130-acre landfill area
18 that was used in conjunction with the manufacturing
19 process at the Johns Manville site.

20 Q. And that's on the Johns Manville
21 property?

22 A. On the JM property, yes.

23 Q. Is a regulatory agency overseeing that
24 cleanup?

1 A. The US EPA.

2 Q. Are you familiar with what's being
3 referred here in this case as the southwest sites?

4 A. Yes.

5 Q. That includes Sites 3 and 6, correct?

6 A. I'm sorry?

7 Q. The southwest sites include Sites 3
8 and 6?

9 A. Yes, it does.

10 Q. And were these part of the original
11 Superfund site?

12 A. No.

13 Q. As you know, this case is about
14 Site 3 and Site 6. I'm going to ask you questions
15 about Site 3 as we referred to in the opening and
16 part of Site 6. When I'm talking about Site 6,
17 I'm talking about certain western portions of Site
18 6. Okay?

19 A. Yes. Okay.

20 Q. I'd like to direct your attention to
21 Exhibit 53-3. We will pull it up so everyone can
22 see it.

23 A. Okay.

24 Q. Mr. Clinton, are you familiar with

1 the viewing aerial photos?

2 A. Yes.

3 Q. And why is that?

4 A. That's part of my job when I was
5 managing the Johns Manville site in Waukegan to
6 review the --

7 Q. What is this --

8 A. To review the --

9 Q. I'm sorry. Go ahead.

10 A. To review the aerial photographs.

11 Q. What is this a photo of?

12 A. That's an aerial photograph primarily
13 of the Johns Manville site with the Illinois Beach
14 State Park to the north and the power plant and the
15 Commonwealth Edison power distribution to the south.

16 MS. BRICE: And just for the
17 record, Mr. Halloran, there's a stipulation
18 on this document.

19 HEARING OFFICER HALLORAN: Okay.

20 Thank you.

21 BY MS. BRICE:

22 Q. And could you read for me the date
23 on this aerial photo?

24 A. I'm sorry. I do not see that.

1 Q. I think it's up in the upper
2 right-hand corner.

3 Do you see up to the right,
4 it says 2014? Does that appear to be the date?

5 A. Oh, yes. Sorry.

6 Q. Sorry. I'm going to hand you
7 a board that has a copy of this exact exhibit on
8 it so you can do some markings for us.

9 What is the road just south
10 of the JM facility?

11 A. That is Greenwood Avenue.

12 Q. Okay. And could you please highlight
13 that on the exhibit in yellow?

14 A. Greenwood Avenue comes from the
15 east/west and ends just about that spot
16 (indicating).

17 Q. And what is the road just west of
18 the JM facility?

19 A. That's Pershing Avenue.

20 Q. Okay. Could you mark that in blue,
21 please?

22 A. (Witness complied.)

23 Q. Did this road previously have a
24 different name?

1 A. It used to be Sand Street.

2 Q. Just for orientation purposes, where
3 is Lake Michigan on this map?

4 A. Lake Michigan is to the east.

5 Q. Where is Site 3? Could you circle
6 Site 3 generally in pink for us?

7 A. Site 3 is generally in this area
8 (indicating).

9 MR. MCGINLEY: Excuse me,
10 Mr. Halloran. Could I ask you -- yes.

11 You point it in this direction too?

12 THE WITNESS: I'm sorry.

13 BY MS. BRICE:

14 Q. And what are the contaminants located
15 at Site 3?

16 A. Asbestos-containing products.

17 Q. And what is Site 3 physically?

18 A. It's a property owned by Commonwealth
19 Edison. Johns Manville utilized part of that
20 property from the late '50s -- beginning in the
21 late '50s as a parking lot for access to our
22 office space just north of Greenwood.

23 Q. Where is Site 6 on that map? Can
24 you do that -- do you have a green marker up there?

1 A. Nope.

2 Q. Okay. Let's just use yellow again.

3 A. Site 6 is the right-of-way along
4 the north side of Greenwood Avenue and the south
5 side of Greenwood Avenue.

6 HEARING OFFICER HALLORAN: If
7 you could keep your voice up, Mr. Clinton.

8 THE WITNESS: I'm sorry.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 BY MS. BRICE:

12 Q. And what are the contaminants located
13 on Site 6?

14 A. Primarily asbestos-containing
15 materials.

16 MR. MCGINLEY: Excuse me,
17 Mr. Halloran. Could we ask the witness --
18 we're having difficulty seeing what he's
19 just marked. Is there some way that you
20 could just -- can I -- do you mind if I
21 just --

22 HEARING OFFICER HALLORAN: Sure.
23 You may approach.

24 MR. MCGINLEY: Thank you.

1 BY THE WITNESS:

2 A. It's hard to see the marking, but
3 somewhere in this area along the north side and the
4 south side of...

5 THE COURT REPORTER: You will
6 need to keep your voice up, sir.

7 MR. MCGINLEY: And are you
8 saying --

9 HEARING OFFICER HALLORAN: Excuse
10 me. Mr. Clinton and Mr. McGinley, just
11 keep your voices up for the court reporter,
12 please.

13 THE WITNESS: Yeah. Parts of it
14 go to the end of the Greenwood Avenue on
15 the right-of-way.

16 MR. MCGINLEY: Okay. Great. Thank
17 you.

18 Thank you, Mr. Halloran.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 BY MS. BRICE:

22 Q. Mr. Clinton, I was saying earlier
23 that we were going to be focusing on the western
24 portion of Site 6. So could you describe for the

1 Board the western portion of Site 6?

2 A. The western portion of Site 6
3 begins about half to a third of the way west of
4 the Green- -- the end of the Greenwood ramp to
5 the Pershing and Greenwood intersection.

6 Q. And where are the contaminants
7 located in Site 6?

8 A. Asbestos-containing materials.

9 Q. And physically, what is Site 6?

10 A. Site 6 is --

11 Q. That portion of Site 6?

12 A. -- the right-of-way for Greenwood
13 Avenue.

14 Q. Okay.

15 A. Yes.

16 Q. What has your role been with respect
17 to Sites 3 and 6 for Johns Manville?

18 A. I was the project manager for the
19 entire Johns Manville site, which included the
20 activities on Site 3 and Site 6.

21 Q. Now, has Johns Manville ever owned
22 any part of Site 3?

23 A. No, it has not.

24 Q. Has Johns Manville ever owned any

1 part of the southern part of Site 6?

2 A. No, it has not.

3 Q. Okay. I'd like you to turn to
4 Exhibit 63.

5 MS. BRICE: Which was also
6 admitted through stipulation, Mr. Halloran.

7 HEARING OFFICER HALLORAN: Thank
8 you, Ms. Brice.

9 MR. MCGINLEY: Excuse me. If I
10 could just ask of counsel, Mr. Halloran,
11 what binder are you working from?

12 MS. BRICE: I'm working on my own
13 binder.

14 MR. MCGINLEY: Okay. Thank you.

15 MS. BRICE: I'm sorry. Sixty-three.
16 It's the EECA.

17 MS. CAISMAN: It's probably four
18 or five.

19 MR. MCGINLEY: I'm sorry. Thank
20 you.

21 BY MS. BRICE:

22 Q. Mr. Clinton, have you seen this
23 document before?

24 A. Yes.

1 Q. And what is it?

2 A. It's an engineering evaluation
3 and cost analysis for the characterization of
4 Sites 3, 4 and 6 surrounding the JM property.

5 Q. And what was the purpose of this
6 document?

7 A. It was to confirm the presence of
8 asbestos-containing material on the site and its
9 locations and then recommend several alternatives
10 for remediation of the sites.

11 Q. What remedy was recommended in this
12 document for Site 3?

13 A. For Site 3, it was Alternative 2.

14 Q. Which was?

15 A. Primarily, a cap and vegetative
16 cover on the majority of Site 3 with about 700
17 cubic yards of excavation and capping of that
18 excavated area in the northeast corner of the
19 site.

20 Q. What was the remedy recommended
21 for the southern portion of Site 6?

22 A. It was an Alternative 3, which
23 is hybrid, but again basically excavation,
24 backfilling with clean fill, putting a vegetative

1 cap and ongoing O & M.

2 Q. I would like to mark for the record
3 and if you would. Please turn in your exhibit book
4 to the next document, which is Exhibit 65.

5 MS. BRICE: This document is
6 also admitted, Mr. Halloran.

7 HEARING OFFICER HALLORAN: Thank
8 you. Stipulated.

9 BY MS. BRICE:

10 Q. Mr. Clinton, have you seen this
11 document before?

12 A. Yes.

13 Q. What is this document?

14 A. This is the enforcement action
15 memorandum from the US EPA related to Site 3 and
16 Site 6.

17 Q. When was it issued?

18 A. November 30, 2012.

19 Q. In general, what did this document
20 require of Johns Manville?

21 A. It required a remediation activity
22 as modified and changed from the recommended EECA
23 remediation alternative that was presented by Johns
24 Manville.

1 Q. And how did it differ from the EECA
2 alternative presented by Johns Manville?

3 A. The main difference generally is
4 much more excavation to deeper depths to create
5 clean corridors around all of the utilities
6 and/or remove and replace utilities in other
7 areas of the surrounding area. So it was a
8 much more in-depth, no pun intended, remediation.
9 Also, a cap and cover after that.

10 Q. What did JM do in response to
11 this document?

12 A. We filed a dispute under the AOC
13 for this document for the -- for the orders that
14 were in this action.

15 Q. And what happened?

16 A. That was denied.

17 Q. If you could, please turn to your
18 next document. This is Exhibit 73.

19 MS. BRICE: And this is also
20 stipulated, Mr. Halloran.

21 HEARING OFFICER HALLORAN: Thank
22 you.

23 BY MS. BRICE:

24 Q. Mr. Clinton, have you seen this

1 document before?

2 A. Yes.

3 Q. Okay. And what is the date on this
4 document?

5 A. September 26, 2014.

6 Q. And what is this document?

7 A. It's an approval of the Remedial
8 Action Work Plan with modifications.

9 Q. What is the significance of this
10 document for the removal process?

11 A. This is a trigger to begin the work
12 on Site 3 and Site 6.

13 Q. All right. I'd like to switch back
14 now and go into a little bit of history and talk
15 a little bit about JM. When was the JM facility
16 opened?

17 A. They began manufacturing somewhere
18 around 1922.

19 Q. And what did JM manufacture in
20 Waukegan?

21 A. Various types of products from
22 roofing materials, pipe insulation, Transite pipe,
23 packing and friction materials, gaskets, brake
24 shoes, that type of thing.

1 Q. And did some of these products
2 contain asbestos?

3 A. Yes, they did.

4 Q. Why was asbestos used in these
5 products to the extent that you know?

6 A. Usually, for two -- one of two
7 different reasons. Asbestos was used either
8 as a fire resistant ingredient in the products
9 to make it temperature resistant and/or it was
10 used as a reinforcement in the product, for
11 example, in the Transite pipe.

12 Q. And what is concrete Transite pipe?

13 A. It's basically the same shape and
14 appearance as the pipe that you see in pipe today
15 on road construction jobs. It's made basically
16 of concrete matrix, but it is -- it also includes
17 asbestos fiber and it's autoclaved or heat cured
18 as part of the manufacturing process to make it
19 stronger.

20 Q. Do you know how much asbestos was
21 generally put in concrete Transite pipe?

22 A. Typically, 20 to 30 percent.

23 Q. And what does it look like?

24 A. The pipe itself?

1 Q. Yes.

2 A. As I mentioned, very similar to
3 the pipe that you see today although it might be
4 a darker grey color because of the autoclaving
5 process. You might also see some modeling
6 variations in color on the surface due to the
7 asbestos that's in the matrix.

8 Q. Do you believe a lay person would
9 be able to tell the difference?

10 A. It would be difficult.

11 Q. What about the dimensions of this
12 Transite pipe manufactured at Johns Manville?

13 A. I wasn't involved in the actual
14 manufacturing, but as I recall the pipe diameters
15 range from a two-inch to maybe 48-inch diameter.

16 Q. How long?

17 A. Typically, ten to 12 feet long.

18 Q. When did the JM facility close down?

19 A. The facility?

20 Q. Yes.

21 A. 1998 was the last manufacturing
22 operation.

23 Q. I'm going to talk a little bit about
24 Site 3. To your knowledge, when was Site 3

1 identified?

2 A. 1998.

3 Q. What was identified on Site 3?

4 A. Surficial asbestos material.

5 Q. And you were in charge of the
6 project at this time, right?

7 A. Yes.

8 Q. At that time in 1998, what did JM
9 know about the history of Site 3?

10 A. Nothing.

11 Q. What did you do to learn about
12 the history of Site 3?

13 A. After the ACM was discovered, I
14 began a review of the aerial photographs that
15 were in Johns Manville's possession and realized
16 that there was a parking lot being used on the
17 site. Others within JM did discover a license
18 agreement between Johns Manville and Commonwealth
19 Edison to utilize that property as a parking lot
20 for our office complex.

21 Q. What did you use to investigate the
22 parking lot?

23 A. After I noticed the -- saw the
24 parking lot on the aerial photographs, I spoke

1 with a gentleman who is a maintenance employee
2 at the Johns Manville site at that time and
3 asked him if he was aware of any of the construction
4 for that parking lot. He mentioned that he knew
5 that they used Transite pipe as wheel bumpers for
6 the parking lot.

7 Q. In 1998, did you know anything about
8 IDOT's connection to Site 3?

9 A. Not at all, no.

10 Q. Okay. I'd like to mark Exhibit 50,
11 which is not stipulated to.

12 MS. O'LAUGHLIN: Fifty?

13 MS. BRICE: Yes. It's the
14 license agreement.

15 BY MS. BRICE:

16 Q. Mr. Clinton, I'm providing to you
17 what's been marked as Trial Exhibit 50 and it
18 has -- it's JM 0007094 through JM 007104 and an
19 affidavit of Brent Tracy attached at the end.

20 MR. MCGINLEY: I'm going to
21 object to this document, Mr. Halloran.
22 There is no authentication of the document
23 and if counsel wants to offer -- attempt
24 to authenticate it, that's fine. But

1 as far as we are concerned, it is not
2 authenticated.

3 HEARING OFFICER HALLORAN: And
4 Ms. Brice?

5 MS. BRICE: I'd like to lay the
6 foundation.

7 HEARING OFFICER HALLORAN: Proceed.
8 I'll reserve ruling.

9 BY MS. BRICE:

10 Q. Mr. Clinton, have you seen this
11 before?

12 A. Yes.

13 Q. And what is this?

14 A. This is a license agreement between
15 Johns Manville and Commonwealth Edison Company for
16 Johns Manville's use of a portion of Site 3 as a
17 parking lot.

18 Q. And what is the date on this document?

19 A. November 16, 1956.

20 Q. And is this the document you were
21 referring to previously, the license agreement?

22 A. Yes.

23 Q. Do you know where this document was
24 recently located?

1 A. It was in the Johns Manville archives.

2 Q. Would you generally expect such a
3 document to be in the Johns Manville archives?

4 A. Yes.

5 MR. MCGINLEY: Objection, basis.

6 HEARING OFFICER HALLORAN: I'm
7 sorry, Mr. McGinley.

8 MR. MCGINLEY: I'm objecting. I
9 mean, I think they need to -- I think they
10 need to show why the archives have any
11 validity to being reliable.

12 HEARING OFFICER HALLORAN: Ms. Brice?

13 BY MS. BRICE:

14 Q. Mr. Clinton, do you have familiarity
15 with JM's archives?

16 A. Yes. It's a corporate system that
17 we have for keeping old documents -- important
18 documents that must be maintained based in Denver,
19 Colorado.

20 Q. And have you had to access documents
21 from this archive system?

22 A. Yes.

23 Q. And would you consider this archive
24 system to be a reliable source of historical

1 information relating to Johns Manville?

2 A. Yes.

3 HEARING OFFICER HALLORAN: Yes.

4 I think the evidence is sufficient. I mean,
5 I'm looking at the Illinois Rules of
6 Evidence 901. So the objection is
7 overruled. You may proceed.

8 MS. BRICE: So we have
9 admitted this into evidence. So we
10 can put this up on the screen.

11 BY MS. BRICE:

12 Q. Mr. Clinton, do you have an
13 understanding why JM was entering into this
14 agreement with Commonwealth Edison?

15 A. Generally, in the mid-'50s, the
16 plant was in the very high operating level. Many
17 employees and the parking situation on the west
18 lot was full. So I'm sure they used that parking
19 lot in order to relieve some of the parking
20 congestion.

21 Q. And how do you know that?

22 A. A photograph that we have, an aerial
23 photograph of the site.

24 Q. Okay. I'd like to direct your

1 attention to Paragraph 7. What does Paragraph 7
2 say about the perimeter of the parking lot?

3 A. It says, the licensee, Johns Manville,
4 must install and maintain suitable barriers on the
5 perimeter of the lot to confine the licensee's
6 use to the area signified -- specified.

7 Q. Let's look at the ninth paragraph.
8 What does it say about wheel stops in the ninth
9 paragraph?

10 A. It says the licensee at its cost
11 and expense shall install and maintain wheel
12 stops to provide an orderly alignment of the
13 rows of cars.

14 Q. What was your reaction when you
15 saw this document?

16 A. It really confirms the conversation
17 that I had with the JM employee about the wheel
18 stops.

19 Q. To your knowledge, did US EPA do
20 anything to investigate the history of the southwest
21 sites?

22 A. I had general knowledge that the
23 EPA had investigators working on southwest sites.

24 Q. And has US EPA described the

1 history of Site 3 anywhere in the record to your
2 knowledge?

3 A. Yes. In the action memo.

4 Q. And what did they say in the action
5 memo?

6 A. They indicated that the parking
7 lot included the installation of Transite pipe
8 sawed or cut longitudinally and placed for use
9 as wheel stops.

10 Q. If I could direct your attention
11 to Exhibit 53 A, which is an aerial photograph
12 that has been stipulated to, Mr. Clinton, have
13 you seen this before?

14 A. Yes.

15 Q. What is this?

16 A. This is an aerial photograph of
17 the west end of the Johns Manville site depicting
18 the production buildings and parking area and it
19 also indicates a parking lot on Site 3 -- what is
20 now Site 3.

21 Q. So can you point out for us where
22 this parking lot is that we have been discussing
23 on Site 3?

24 A. This is the general Site 3 area and

1 this is the parking lot (indicating).

2 Q. Can you describe what you are seeing
3 with respect to the configuration of the parking
4 lot in this photo? The parking lot that I'm
5 talking about is the one on Site 3.

6 A. I'm sorry.

7 Q. Can you describe the configuration
8 for the record since --

9 A. The lot is a rectangular shape.
10 It's located directly south of Greenwood Avenue.
11 It has a long dimension of the east/west direction
12 and it appears from the photograph that there
13 was a fairly well delineated border between the
14 parking lot and the balance of the property on
15 what is now called Site 3.

16 As well, you can notice that
17 the cars seem to be parked in a fairly orderly
18 manner on the lot.

19 Q. Do you know the date on this aerial
20 photograph?

21 A. I think that is in the '60s.

22 Q. I'd like to turn to Trial Exhibit 57,
23 please.

24 MS. BRICE: For the record,

1 Mr. Halloran, this document is admitted
2 for authenticity and for many purposes,
3 except JM is not stipulating some of the
4 hearsay statements in offer for the truth
5 of the matter asserted in this document
6 by IDOT.

7 HEARING OFFICER HALLORAN: Okay.
8 We can proceed and see what happens. You
9 can object at the appropriate time.

10 MS. BRICE: It's actually JM
11 that is not -- that's objecting to IDOT's
12 use and characterization of this.

13 HEARING OFFICER HALLORAN: Okay.
14 What exhibit is it? I'm sorry.

15 MS. BRICE: It's Exhibit 57. And
16 I'm just going to ask him about it generally.

17 HEARING OFFICER HALLORAN: You
18 may proceed.

19 BY MS. BRICE:

20 Q. Okay. Mr. Clinton, I have before
21 you Trial Exhibit 57. Have you seen this before?

22 A. Yes.

23 Q. And what is this?

24 A. This is a report produced by ELM

1 Consulting documenting the surface and subsurface
2 characterization that they performed on Sites 2
3 and 3.

4 Q. And what was your role with respect
5 to Site 3 in 1999, which is -- the date on the
6 document is 1999, correct?

7 A. December 1999, yes.

8 Q. What was your role with respect to
9 the site in 1999?

10 A. I was the project manager at the JM
11 Waukegan site in 1999.

12 Q. And were you the person that
13 communicated with ELM?

14 A. Yes.

15 Q. Did you discuss with ELM the history
16 of the Site 3 parking lot?

17 A. Yes.

18 Q. What did you tell them?

19 A. I told them that I had a discussion
20 with one of our employees and that the parking lot
21 had the asbestos-containing Transite as wheel
22 bumpers.

23 Q. And where was that on the parking
24 lot?

1 A. On the surface.

2 Q. Did you ever tell ELM that Site 3
3 area had been filled with ACM prior to being used
4 by Johns Manville as a parking lot?

5 A. No, I did not.

6 Q. Did you ever tell ELM that the
7 Site 3 area had been filled at all by anyone
8 prior to being used by JM as a parking lot?

9 A. No, I did not.

10 Q. Why is that?

11 A. I had no evidence or knowledge of
12 that.

13 MS. BRICE: I have no further
14 questions.

15 HEARING OFFICER HALLORAN: Thank
16 you, Ms. Brice.

17 Mr. McGinley?

18 MR. MCGINLEY: Thank you.

19 C R O S S - E X A M I N A T I O N
20 by Mr. McGinley

21 Q. Mr. Clinton, you say that you
22 oversaw the site investigation response activity
23 at the Johns Manville site -- the whole Johns
24 Manville for a number of years, correct?

1 A. Yes.

2 Q. How many years?

3 A. From 1998 through 2011/2012.

4 Q. 1998. Thank you.

5 Now, you testified earlier
6 that after you learned in your capacity as --
7 I'm sorry. Your exact role was project manager?

8 A. Yes.

9 Q. Project manager. Thank you.

10 So as project manager back in
11 1998 when surficial ACM was discovered as what
12 is now what is understood to be Site 3, but was
13 not called Site 3 at that time, correct?

14 A. Yes.

15 Q. You set about trying to understand
16 the history of that piece of property on the south
17 side of Greenwood Avenue office at Johns Manville
18 facility, correct?

19 A. Uh-huh.

20 Q. And you testified that you ended
21 up trying to get records. You looked at aerial
22 photos first and were able to ascertain that at
23 some point, there was a parking lot on the south
24 side of Greenwood Avenue, correct?

1 A. Yes.

2 Q. Okay. It's your testimony that
3 you attempted to look into the historical
4 records of Johns Manville to try and find further
5 information about what might have taken place
6 in this piece of property south of Greenwood
7 Avenue, correct?

8 A. I did not. I reviewed aerial
9 photographs. Others within JM did a search
10 for the license agreement.

11 Q. Okay. And it's your testimony
12 that this would have been housed in Johns Manville's
13 corporate archives in Denver; is that correct?

14 A. Yes.

15 Q. Okay. And is it your understanding
16 that the archive maintains records about things
17 such as historical activities of Johns Manville?
18 I mean, that's the central repository for that
19 information?

20 A. Yes.

21 Q. Okay. And has that always been the
22 case as best you know?

23 A. Yes.

24 Q. If you wanted to look for something

1 today pertaining to work that had been done at
2 another Johns Manville manufacturing facility
3 at some point in the past, would you go to the
4 historical archive to find that information or
5 ask somebody to look at information for you in
6 the archives?

7 A. Yes.

8 Q. The study that was done -- let me
9 ask you something.

10 Last year, when I asked you --
11 you were deposed in this case last year, do you
12 recall that?

13 A. Yes.

14 Q. You testified that you had never
15 seen any documents that were related to the
16 construction of the parking lot. Is that still
17 your testimony here today?

18 A. I had never seen any documents
19 related to the construction of the parking lot?

20 Q. That's correct. You testified to
21 that last year, sir.

22 A. I saw this document whenever we were
23 preparing for the trial.

24 Q. When you were preparing for the

1 trial -- I'm sorry. Which document are you
2 referring to?

3 A. The license agreement.

4 Q. The license agreement?

5 A. Yes.

6 Q. And when you say you were preparing
7 for the trial, are you talking about just in the
8 recent past or --

9 A. Recent, yes.

10 Q. How recent, sir?

11 A. Weeks.

12 Q. Within the past few weeks.

13 Is that the first time that you
14 had ever seen the license agreement?

15 A. Yes.

16 Q. So the only way that you knew about
17 the license agreement back in 1998 was by asking
18 people to find it for you, correct?

19 A. I didn't know about the license
20 agreement in 1998. They -- other people were
21 looking for that within Johns Manville.

22 Q. And other people communicated to
23 you something along the lines of we found this
24 licensing agreement from back in the 1950s?

1 A. No. I don't recall that.

2 Q. You don't recall that?

3 A. My focus was on aerial photographs
4 and based on the aerial photographs.

5 Q. Okay.

6 A. That's when I identified the
7 parking lot.

8 MR. MCGINLEY: I have no further
9 questions.

10 MS. O'LAUGHLIN: Wait.

11 BY MR. MCGINLEY:

12 Q. The actual parking lot itself, do
13 you have any knowledge about how it was constructed
14 other than having looked at aerial photographs of
15 the parking lot?

16 A. The only knowledge is discussion I
17 had with a JM employee who said that Transite
18 pipe was used as the parking lot bumpers for the
19 cars.

20 Q. Okay. But Mr. Taylor -- Gene Taylor
21 is who you're referring to, correct?

22 A. Yes.

23 Q. Mr. Taylor never told you --
24 Mr. Taylor's role was a maintenance employee,

1 correct?

2 A. Yes.

3 Q. So as a maintenance employee, I
4 assume that he would not have been involved in
5 any of the construction of the parking lot back
6 at the time it was built, right?

7 A. I don't know what his involvement
8 was. All he said was he was aware that parking
9 lot bumpers were used -- Transite was used for
10 parking lot bumpers.

11 Q. And you'd admit that the area in
12 which the parking lot was constructed was generally
13 speaking below Greenwood Avenue, correct?

14 A. I really don't have any knowledge
15 of what the relationship between that surface and
16 Greenwood Avenue was in the late '50s.

17 Q. Okay. But you've seen aerial
18 photographs of the parking lot as it existed after
19 it was constructed? We looked at one just earlier
20 today, right?

21 A. Yes, uh-huh.

22 Q. And you've looked at aerial
23 photographs in the course of your work as a project
24 manager, correct?

1 A. Uh-huh.

2 Q. So wouldn't you have to admit then
3 that the area that's around -- the parking lot
4 itself appears to be raised up from the surrounding
5 area?

6 A. Those aerial photographs are not
7 clear enough or of enough detail to show elevations
8 from that height.

9 Q. And do you have --

10 A. So basically, it's a surficial area.

11 Q. So other than talking to Mr. Taylor,
12 though, and having seen the lease agreement, which
13 we will note for the record has a diagram on
14 the back of it showing the exterior dimensions
15 of the parking lot, you have seen that, correct?

16 A. Yes.

17 Q. And that's the last page on the
18 lease agreement; is that right?

19 A. Yes.

20 Q. You haven't actually seen anything --
21 when the term construction specifications is used,
22 does that have any particular meaning to you?

23 MS. BRICE: Objection, lack
24 of foundation.

1 THE WITNESS: I'm sorry.

2 MS. BRICE: Vague.

3 HEARING OFFICER HALLORAN: And
4 Mr. McGinley --

5 HEARING OFFICER HALLORAN: I'm
6 sorry. Foundation was your objection?

7 MS. BRICE: Vague.

8 HEARING OFFICER HALLORAN: Would
9 you rephrase?

10 MR. MCGINLEY: Sure.

11 HEARING OFFICER HALLORAN: Thanks.

12 BY MR. MCGINLEY:

13 Q. Have you seen any documents that --
14 other than the diagram that's attached to the back
15 of the lease agreement that I believe is Exhibit 50,
16 have you seen any documents that document how the
17 parking lot was actually constructed?

18 A. No, I have not.

19 MR. MCGINLEY: No further
20 questions.

21 HEARING OFFICER HALLORAN: Thank
22 you.

23 Any redirect, Ms. Brice?

24 MS. BRICE: No redirect.

1 HEARING OFFICER HALLORAN: Okay.

2 Thank you.

3 Mr. McGinley, what exactly
4 is your objection regarding hearsay if you
5 could be more specific regarding Exhibit 57?

6 And, Ms. Brice, I guess
7 it's 57, correct?

8 MS. BRICE: I don't know that
9 he objected.

10 HEARING OFFICER HALLORAN: Oh,
11 I thought you said --

12 MR. BRICE: It was authenticity,
13 that I know of. Exhibit 57 is my objection.

14 HEARING OFFICER HALLORAN: Oh,
15 okay.

16 MS. BRICE: Fifty-seven is my
17 objection. There is a statement in
18 Exhibit 57 that is attributed. It says,
19 "according to Johns Manville," and it
20 contains more official that IDOT has
21 tried to use in this case. That's my
22 objection.

23 HEARING OFFICER HALLORAN: Okay.
24 Could you point me to that, please?

1 MS. BRICE: Sure. It is on
2 Exhibit 57 and --

3 HEARING OFFICER HALLORAN: Well,
4 I know that. There's about 600 page.

5 MR. MCGINLEY: Mr. Halloran, I
6 believe if you looked at Page 14JM000040,
7 that's four zeros and a 40, if you look
8 at the second full paragraph at the top,
9 I think you'll see the statement that
10 counsel is referencing that they object
11 to the authenticity.

12 MS. BRICE: Correct.

13 HEARING OFFICER HALLORAN: Page 48?

14 MR. MCGINLEY: No, no. One-four.

15 HEARING OFFICER HALLORAN: Oh,
16 one-four.

17 MR. MCGINLEY: It's JM. If you
18 look on the bottom, I'm just going by the
19 Bates number.

20 HEARING OFFICER HALLORAN: Okay.

21 MR. MCGINLEY: It's 5711.

22 HEARING OFFICER HALLORAN: Yes.
23 That's what I have. Right. JM000040?

24 MS. BRICE: Correct.

1 HEARING OFFICER HALLORAN: First
2 paragraph? Second paragraph?

3 MS. BRICE: First paragraph, the
4 sentence that says, "According to JM."

5 HEARING OFFICER HALLORAN: I'm
6 going to overrule that. Thank you. It's
7 not to least based on Section 101.626, the
8 Board's procedural rules.

9 MS. BRICE: Sure. I'm not
10 objecting to it at the moment.

11 HEARING OFFICER HALLORAN: Okay.

12 MS. BRICE: When they are trying
13 to use it, I can flesh out the objections
14 at that time.

15 HEARING OFFICER HALLORAN: Okay.
16 That's good. You can proceed. I'm a little
17 unclear.

18 MS. BRICE: Sorry.

19 HEARING OFFICER HALLORAN: No.
20 It's not your fault. I guess we should
21 have addressed it when the time came as
22 far as when you're moving into -- trying
23 to move it into evidence.

24 MS. BRICE: Okay. Thank you,

1 Mr. Clinton.

2 HEARING OFFICER HALLORAN: Thank
3 you, Mr. Clinton.

4 THE WITNESS: Yes.

5 HEARING OFFICER HALLORAN: You
6 may step down.

7 (Witness excused.)

8 MS. BRICE: I would like to call
9 Tat Ebihara, please.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 Raise your right hand and Lori
13 will swear you in. Thank you.

14 THE COURT REPORTER: Do you swear
15 the testimony you are about to give is the
16 truth, the whole truth and nothing but the
17 truth, so help you God?

18 MR. EBIHARA: I do.

19 (Witness sworn.)

20 HEARING OFFICER HALLORAN: You may
21 proceed.

22 WHEREUPON:

23 T A T S U J I E B I H A R A

24 called as a witness herein, having been first duly

1 sworn, depose and saith as follows:

2 DIRECT EXAMINATION

3 by Ms. Brice

4 Q. Could you please state your name for
5 the record?

6 A. Tatsuji Ebihara.

7 Q. And do you generally go by Tat?

8 A. I do.

9 HEARING OFFICER HALLORAN: Could
10 you spell that, please?

11 THE WITNESS: T-A-T -- -S- -- as
12 in Sam -- -U-J-I, last name is E-B-I-H-A-R-A.

13 HEARING OFFICER HALLORAN: Thank
14 you.

15 BY MS. BRICE:

16 Q. And Mr. Ebihara, who is your employer?

17 A. AECOM Technical Services.

18 Q. And how long have you worked for
19 AECOM?

20 A. Approximately four years.

21 Q. What is your current title?

22 A. Project manager.

23 Q. And with respect to your education,
24 what is -- what kind of degrees do you have?

1 A. I have an undergraduate degree in
2 chemical engineering and a masters and Ph.D. in
3 environmental engineering.

4 Q. What is your involvement with the
5 JM Waukegan Superfund site area known as the
6 southwest sites?

7 A. I've been a project manager
8 involved since 2004 and it's been regarding
9 development of remedial -- remediation work
10 plans and reports and investigation reports.

11 Q. Okay. Can you explain to me --
12 I know there's kind of a complicated history
13 with AECOM and prior consulting firms. Can
14 you explain that?

15 You just said you've been
16 involved since 2004, but you've been at AECOM
17 for four years.

18 A. Right.

19 Q. Could you please explain for us
20 what you mean by that?

21 A. The primary consultant for a Waukegan
22 site, engineering consultant, has been -- was in
23 2004, LFR. That company was purchased by Arcadis
24 U.S., Incorporated approximately in 2009. I was

1 employed by both of those firms. The main members
2 of the team -- consulting team moved to AECOM in
3 2012.

4 Q. Okay. So you've been involved in
5 this site working with LFR, Arcadis and AECOM,
6 correct?

7 A. That's correct.

8 Q. When did you first become involved
9 with their site?

10 A. 2004.

11 Q. And are you familiar with Sites 3
12 and 6 that we've been discussing?

13 A. Yes.

14 Q. And there has been a settlement
15 agreement administrative order and consent in
16 this case; is that correct?

17 A. That's correct.

18 Q. And when was that issued?

19 A. In 2007.

20 Q. And does that govern Sites 3 and 6?

21 A. Yes.

22 Q. And what work have you done regarding
23 Site 3 and the western portion of Site 6?

24 A. I was involved in the planning of

1 the investigation activities and the engineering
2 evaluation and costs analysis.

3 Q. What part of this work did LFR do?
4 We're talking about three different consulting
5 firms. So I'm going to try and break it up.

6 A. Yes.

7 Q. What part did LFR do?

8 A. LFR did primarily the investigation
9 activities and executing an investigation work plan.

10 Q. What did Arcadis, what did they do
11 in general?

12 A. They completed the EECA report
13 that was referred to earlier, their Engineering
14 Evaluation and Cost Analysis. Earlier versions
15 were completed by LFR.

16 Q. And in general, what has AECOM done
17 on these sites?

18 A. Preparation of the Removal Action
19 Work Plan and agreements with utilities owners
20 and coordination.

21 Q. Were you present when LFR did some
22 of its sampling in 2008?

23 A. Yes.

24 Q. And at the time of that sampling in

1 2008, did you have an understanding of IDOT's
2 prior construction activity on Site 3?

3 A. I did not.

4 Q. What was your understanding of how
5 the ACM came to be located on Site 3 at that
6 time in 2008?

7 A. From Johns Manville, I understood
8 that Transite pipe was used as parking lot bumpers.

9 Q. Have you seen pieces of Transite
10 pipe on Sites 3 and 6?

11 A. I have.

12 Q. And what do they look like?

13 A. It's like concrete-like material
14 with a fiber structure within it.

15 Q. How big are the pieces that you have
16 seen?

17 A. The pieces that I've personally seen
18 are two to four inches in size, maybe a little bit
19 larger.

20 Q. Can you tell the difference between
21 regular pipe and concrete Transite pipe?

22 A. I can.

23 Q. And how is that?

24 A. There is a darker color to it. You

1 can see a fiber structure within a broken edge
2 and you can see a pattern for a press or mold
3 off and on a surface -- on the surfaces.

4 Q. Is it your belief that people who
5 conducted work for LFR and AECOM were able to do
6 so as well, to tell the difference between regular
7 pipe and concrete Transite pipe?

8 A. Yes.

9 Q. I'd like to have you turn to Trial
10 Exhibit 74.

11 MS. BRICE: This is a stipulated
12 exhibit.

13 HEARING OFFICER HALLORAN: Thank
14 you.

15 BY MS. BRICE:

16 Q. Mr. Ebihara, have you seen this
17 document before?

18 A. I have.

19 Q. And what is it?

20 A. It is a letter communication from
21 LFR to Commonwealth or Exelon Corporation, also
22 a part of Commonwealth Edison.

23 Q. Okay. And what is the date on this
24 document?

1 A. It is July 8, 2008.

2 Q. Okay. Can you turn to the bottom
3 of Page 1 and the top of Page 2 and read for me
4 into the record the language that says, "Based
5 upon the surface"?

6 A. "Based upon the surface elevations
7 and visual observation, the excavation falls
8 clearly within the Greenwood Avenue ramp
9 construction for the Amstutz Expressway."

10 Q. Can you turn to Photo 5 of this
11 document? It is at 74-8. Can you tell me what
12 Photo 5 is a photo of?

13 A. There is a photograph of and
14 excavation pit and protruding from the lower
15 right side of the pit is a piece of Transite
16 material.

17 Q. Okay. Thank you. I'd like to
18 talk to you -- to switch gears a little bit and
19 talk about the remedy. Are you the person at
20 AECOM responsible for implementing the Remedial
21 Action Work Plan at Sites 3 and 6?

22 A. I'm responsible for the plan
23 development as well as part of the team that
24 implements the construction.

1 Q. Are you US EPA's contact with respect
2 to the southwest sites?

3 A. I am.

4 Q. When was it that JM first understood
5 the nature and scope that the remedy US EPA would
6 be requiring?

7 A. The action memorandum of November
8 of 2012 was the -- outlined the requirements of
9 the remedial action.

10 Q. Is there any reason why IDOT cannot
11 participate in the work at the site as long as you
12 do not deviate from the remedies set forth in the
13 Removal Action Work Plan?

14 MS. O'LAUGHLIN: Objection. Calls
15 for speculation and asks about knowledge about
16 things that he does not have.

17 HEARING OFFICER HALLORAN: Would you
18 read that back, Lori, please?

19 (Whereupon, the requested
20 portion of the record was
21 read accordingly.)

22 HEARING OFFICER HALLORAN: Rephrase.

23 BY MS. BRICE:

24 Q. Is there any reason why IDOT could

1 not participate in your work at the site as long
2 as you do not deviate from the remedies set forth
3 in the Removal Action Work Plan?

4 MS. O'LAUGHLIN: Same objection.

5 HEARING OFFICER HALLORAN: Yes.

6 He can answer if he is able. You may
7 proceed.

8 BY THE WITNESS:

9 A. If there's no restriction on the
10 involvement implementing for another party to
11 participate in implementation.

12 BY MS. BRICE:

13 Q. Have you engaged third parties to
14 assist in the work that you have done under the
15 administrative order?

16 A. We have.

17 Q. And who are some of them?

18 A. Utility companies, AT&T, North Shore
19 Gas Company.

20 Q. What about drilling contractors?

21 A. CS Drilling.

22 Q. Did you have to get them approve by
23 US EPA?

24 A. I did not.

1 Q. Would you need to deviate from
2 their approved work plan or scheduling order
3 for IDOT to assist you with the implementation
4 of Removal Action Work Plan?

5 A. No.

6 Q. Has IDOT contributed in any way to
7 the investigation to Sites 3 or 6?

8 A. No.

9 Q. Has IDOT offered to assist in the
10 work that now needs to be done on Sites 3 or 6?

11 A. No.

12 Q. How much money has JM paid your
13 employers and contractors for investigation work
14 done on Site 3 since the 2012 enforcement action
15 memorandum?

16 A. Since 2012, approximately \$571,000.

17 Q. How do you know that?

18 A. From invoices related to the projects.

19 Q. How about Site 6, how much -- the
20 western part of Site 6, how much money has JM
21 paid your companies and contractors to do the
22 investigative portion of the work on Site 6 since
23 the Removal Action Work Plan in 2012?

24 A. Approximately \$114,000.

1 Q. How about since we filed this
2 complaint in July -- on July 8, 2013, do you know
3 how much money JM has paid you and your contractors
4 with respect to the investigative work on Site 3?

5 A. Since what time period?

6 Q. Since July 8, 2013.

7 A. It's approximately 80 percent of
8 the value.

9 Q. Would there be something that might
10 refresh your recollection?

11 A. Yes. Some notes.

12 Q. Notes?

13 A. Yes.

14 Q. Okay. I have a note.

15 A. Okay.

16 MS. BRICE: Can I refresh his
17 recollection?

18 MS. O'LAUGHLIN: Can we see it?

19 MR. MCGINLEY: This is not
20 an exhibit.

21 HEARING OFFICER HALLORAN: Yes.

22 MS. BRICE: Okay. Fine. We
23 won't use it. I'm not trying to use it
24 as an exhibit.

1 HEARING OFFICER HALLORAN: I know,
2 but can you --

3 THE WITNESS: Yeah. It's 80 or
4 90 percent of the -- that effort that was
5 expended since then.

6 HEARING OFFICER HALLORAN: Thank
7 you.

8 BY MS. BRICE:

9 Q. Okay. Same question for the western
10 portions of Site 6, do you know how much has been
11 paid since July 8, 2013, on the investigative costs?

12 A. Approximately \$80,000.

13 Q. If you could, please turn to Trial
14 Exhibit 69.

15 MS. BRICE: There is not a
16 stipulation on this document or at least
17 that's my understanding. Oh, maybe
18 that's not correct. I think one is
19 stipulated to, isn't it?

20 MR. MCGINLEY: We don't have
21 a problem. That's fine. That's fine.

22 MS. BRICE: Thank you.

23 BY MS. BRICE:

24 Q. Mr. Ebihara, do you recognize Exhibit

1 69?

2 A. I do.

3 Q. And what is this document?

4 A. This was a communication that I sent
5 on March 12, 2015, to you, to Katherine Hannah and
6 Doug Dorgan.

7 Q. Okay. And did you prepare this
8 document?

9 A. I did.

10 Q. What are these -- what is this
11 document exactly?

12 A. This is a probable cost estimate
13 for remediation work -- removal action work on
14 Site 3 and Site 6.

15 Q. And what are these cost estimates
16 based upon?

17 A. They are based upon the approximate
18 scope of work of the removal action work outlined in
19 the removal action work.

20 Q. And how do you know of tasks that are
21 to be completed?

22 A. They are described in the Removal
23 Action Work Plan and in the enforcement action
24 memorandum issued by US EPA.

1 Q. And what does the document say
2 about the overall costs for implementing the
3 Removal Action Work Plan with respect to Site 3?

4 A. Site 3.

5 Q. Yes.

6 A. The approximate cost \$3.3 million.

7 Q. What does it say about the cost
8 associated with Site 6?

9 A. It is approximately \$4.07 million.

10 Q. Okay. I would like for you to turn
11 to Trial Exhibit 71, please.

12 MS. BRICE: This is stipulated to.

13 HEARING OFFICER HALLORAN: Thank
14 you.

15 BY MS. BRICE:

16 Q. Mr. Ebihara, do you recognize this
17 document?

18 A. I do.

19 Q. What is it?

20 A. It's a document that I prepared
21 to update the cost projections for Site 3 and
22 Site 6.

23 Q. Okay. And what is the date on this
24 document?

1 A. January 25, 2016.

2 Q. And what are these cost estimates
3 based upon?

4 A. Based upon the Removal Action Work
5 Plan, but also new information that was obtained
6 since the prior estimate.

7 Q. How did that affect your earlier
8 numbers?

9 A. The cost estimate projections
10 decreased.

11 Q. And are these changes that you are
12 talking about leading to the decrease in the cost
13 estimates memorialized in the most recent Removal
14 Action Work Plan?

15 A. Yes.

16 Q. And when was that document submitted?
17 Actually, why don't you just turn to Exhibit 67,
18 which is stipulated.

19 Do you -- is this the Removal
20 Action Work Plan you are referring to?

21 A. That's correct.

22 Q. Okay. And what is the date on this
23 document?

24 A. February 2016.

1 Q. And what does Exhibit 71 say about
2 the costs associated with Site 3?

3 A. The estimated costs for the Site 3
4 remediation is \$1.9 million.

5 Q. What does Exhibit 71 say about
6 costs associated with Site 6?

7 A. It's approximately \$3.1 million.

8 MS. BRICE: All right. I'd
9 like to turn to trial Exhibit 68, which
10 there is not a stipulation on.

11 HEARING OFFICER HALLORAN: Thank
12 you.

13 BY MS. BRICE:

14 Q. Mr. Ebihara, do you recognize this
15 document?

16 A. I do.

17 Q. What is this?

18 A. This is a work order invoice for
19 work to be performed by AT&T to relocate
20 telecommunication utilities.

21 Q. And which areas in the southwest site
22 does this work involve?

23 A. This involves Site 3 and Site 6.

24 Q. Did you request this document be

1 sent to you?

2 A. I did.

3 Q. And was it provided to you?

4 A. Yes.

5 Q. When did you receive it?

6 A. It's dated April 15, 2015.

7 Q. And has it been kept in the
8 regular course of business?

9 A. Yes.

10 Q. Is it in your files?

11 A. Yes.

12 Q. Has this work been done?

13 A. Most of the work has been done. The
14 last phase of the work has not been completed.

15 Q. But has it been paid?

16 A. It's been paid. It was prepaid.

17 Q. Who paid it and how much?

18 A. Johns Manville paid the total amount
19 of this work order. It's \$320,000, \$320,288.66.

20 MS. BRICE: I'd like to move
21 the document into evidence.

22 HEARING OFFICER HALLORAN: IDOT?

23 MS. O'LAUGHLIN: Would it be
24 possible to get evidence of the payment

1 that was made from Johns Manville? We're
2 curious about that.

3 THE WITNESS: There is documentation
4 for that.

5 MS. O'LAUGHLIN: If we could
6 just follow-up and see that documentation,
7 assuming that what you say is true, we
8 have no objection.

9 HEARING OFFICER HALLORAN: Okay.
10 So we'll just reserve ruling.

11 MS. O'LAUGHLIN: Yes. We just --
12 to follow-up to make sure. Thank you.

13 BY MS. BRICE:

14 Q. Has there been any changes to
15 the proposed work necessary implemented in the
16 Removal Action Work Plan since February 2016,
17 which is the date of that Removal Action Work
18 Plan?

19 A. There's been one change regarding
20 the investigation effort.

21 Q. Okay. Can you please explain that
22 for us?

23 A. To better define the construction
24 requirements for replacement of the water main

1 within Site 6, we are planning to undergo, an
2 EPA is reviewing plans for additional soil
3 investigation to determine the scope of the
4 effort, the amount of soil that needs to be
5 removed.

6 Q. The water main is also on Site 3,
7 isn't it?

8 A. Site 3, yes.

9 Q. And what is the cost estimate to
10 do this work?

11 A. Approximately \$70,000.

12 Q. What is that \$70,000 based upon?

13 A. It's a drilling contractor,
14 laboratory fee and personnel to implement the
15 sampling.

16 Q. And in your mind, how could this
17 investigation impact the remedy cost for Sites 3
18 and 6?

19 A. It could potentially increase it
20 if the volume of soil removal is greater than
21 what's identified in the Removal Action Work Plan.

22 Q. What is the current schedule
23 implementing the removal action on Sites 3 and 6?

24 A. We're currently planning for and

1 preparing for gas main abandonment work that's
2 already underway and has been underway for the
3 last two months. The actual removal actions could
4 start when that activity is completed likely the
5 beginning of July this year.

6 Q. The Removal Action Work Plan
7 requires clean corridors utilities on Sites 3
8 and 6; is that correct?

9 A. That's correct.

10 Q. How large are these clean corridors
11 that are being required?

12 A. They are 25 feet wide centered on
13 the utility and two feet below the elevation --
14 the lowest elevation of the utility.

15 Q. What is US EPA's justification for
16 such large corridors?

17 A. It's to allow a utility company to
18 perform maintenance on their infrastructure without
19 encountering asbestos.

20 Q. When you create a sampling plan,
21 how do you account for the presence of utilities?

22 A. We perform all of our sampling
23 utilities from the investigation to avoid
24 encountering utilities.

1 Q. I'm sorry. I didn't hear you.

2 A. We perform our sampling investigation
3 plan and execution to avoid encountering utilities.

4 Q. Why is that?

5 A. It's a safety reason. These are
6 gas mains, telecommunication lines. So we plan
7 to not damage them.

8 Q. And what if one was encountered, what
9 would happen?

10 A. We would immediately shut down work
11 and notify the utility and prepare for any repairs
12 or assist with any repairs if we were able.

13 Q. What's been your experience trying
14 to find the exact location of utilities on Sites 3
15 and 6?

16 A. We employ multiple methods to
17 locate the utilities, surveys, drawings and direct
18 communications with the utility company, but the
19 accuracy of all of that evidence is not 100 percent
20 accurate.

21 Q. Have you found utilities where they
22 were not supposed to be located on Sites 3 and 6?

23 A. Right. We have one example of
24 finding an AT&T telecommunication line approximately

1 20 feet from where it was marked on Site 3.

2 MS. BRICE: No further questions.

3 HEARING OFFICER HALLORAN: Thank
4 you, Ms. Brice.

5 Mr. McGinley and Ms. O'Laughlin?

6 MS. O'LAUGHLIN: Can we just take
7 a moment to respond?

8 HEARING OFFICER HALLORAN: We can
9 off the record for a second.

10 (Whereupon, a discussion
11 was had off the record.)

12 (Whereupon, after a short
13 break was had, the following
14 proceedings were held
15 accordingly.)

16 HEARING OFFICER HALLORAN: We're
17 back on the record.

18 C R O S S - E X A M I N A T I O N

19 by Mr. McGinley

20 Q. Mr. Ebihara, it sounds like you
21 have a tremendous amount of experience with
22 Sites 3 and 6, correct, having done environmental
23 investigations at this site?

24 A. Sure. Yes, yes.

1 Q. You spoke -- you testified earlier
2 about the costs that have been incurred particularly
3 with respect to Site 6, correct?

4 A. The investigation costs?

5 Q. Yes.

6 A. Uh-huh.

7 Q. Site 6, as we're describing it,
8 is actually -- I think goes quite some distance.
9 It's not just the area that's immediately adjacent
10 to the northern side of Site 3, but it actually
11 goes quite further to the east; isn't that right?

12 A. That's correct.

13 Q. Okay. And it more or less goes
14 well east on Greenwood Avenue down towards
15 almost the entrance to the Midwest Generation
16 Plant, correct?

17 A. That's correct.

18 Q. Is any of the work that is being --
19 that IDOT is being required to do in terms of
20 creating a clean corridor, is any of that related
21 to an eastern edge of Site 6?

22 A. Can you repeat the question again?

23 Q. Sure. Is any of the cost that you
24 just testified to about Site 6, is any of that

1 related to that eastern portion of Site 6 that
2 goes well past where the northern edge of Site 3
3 is?

4 A. No, no.

5 Q. It's only --

6 A. The limit -- the limit is really
7 that northeast corner of Site 3. It truncates
8 the eastern boundary of what we talked about.
9 So just the -- yes, just that western end.

10 Q. I'd like to turn your attention,
11 please, to Exhibit 66. This is actually two
12 separate binders. It looks like we are talking
13 about Binder 8 and Binder 9.

14 Sir, can I call your attention
15 to that first page of Exhibit 66, 66-1. Do you
16 have that in front of you yet? Just let me know
17 when you do.

18 A. Yes, I have it.

19 Q. Okay. In the lower left-hand corner,
20 this is a letter dated March 31, 2014, Removal
21 Action Work Plan, Revision 2. Is that your
22 signature down in the lower left-hand corner, Tat
23 Ebihara?

24 A. Yes.

1 Q. Could you I then turn your attention,
2 please, to one of the appendices within this
3 document, that being Appendix H, and here we would
4 be looking at -- I have a cross-reference here --
5 5420. If you bear with me a second, I could give
6 you the exact exhibit page number. This would
7 be Exhibit 66, Page 766 in that second binder,
8 sir.

9 A. 766, Page 766?

10 Q. Yes. Page 766 of Exhibit 66.

11 A. Okay. Go ahead.

12 Q. You have it in front of you?

13 A. Yes.

14 Q. Okay. And this is the executive
15 summary, sir, to Appendix H, the Site 3 soil
16 investigation results and this -- I assume in
17 actually having signed off on the Removal Action
18 Work Plan that you reviewed all of the data that
19 went into the creation of this work plan; is
20 that correct?

21 A. That's correct. I'm a cosigner.
22 There's two signatures on it. There's myself and
23 Mr. William Bow.

24 Q. You're a project manager. You

1 testified that you've overseen the design and the
2 implementation of the work that's been done at the
3 site; is that correct?

4 A. That's correct.

5 Q. Okay. Calling your attention, please,
6 to the second full paragraph of the executive
7 summary, again this is on Page 766, there is
8 a sentence that begins in the middle of that
9 paragraph. It says, "According to Nicor, the
10 20-inch natural gas line that was installed
11 in 1948, which predates the construction of
12 the site free former parking lot, mid 1950s.
13 Consequently, ACM will not be present below the
14 gas, but potentially adjacent to and/or above the
15 line."

16 If you could go down to the
17 next paragraph, "To date, a total of 66 soil
18 borings, 32 test pits and nine hydraulic excavation
19 locations have been installed at the site by ELM,
20 LFR and AECOM."

21 Do you see that sentence, sir?

22 A. I do.

23 Q. Okay. And that total number of
24 soil borings, test pits and hydraulic excavations,

1 is that the total number of soil sample
2 investigations -- does that represent the entire
3 amount of investigation that's been done at the
4 site to date in terms of soil sampling?

5 A. Yes.

6 Q. Okay. There is nothing -- and
7 nothing further has been done since this was
8 done, correct?

9 A. That's correct.

10 Q. The next sentence says, "The
11 results from the multiple investigations reveal
12 that ACM occurrences are sporadic across the
13 site and typically coincide with the location
14 of utilities or other structures installed after
15 the mid-1950s."

16 Do you still accept -- is that
17 still an accurate statement today?

18 A. It's an accurate statement with
19 regard to disturbance activities at the site.

20 Q. Okay.

21 A. Not to reflect any known activities
22 that could have disturbed soils -- turned over
23 soils at the site.

24 Q. Let me ask you this; you're saying

1 that sporadic -- that the occurrences of ACM are
2 sporadic across the site. What, to your mind, is
3 the meaning of the word "sporadic"? How would
4 you define sporadic?

5 A. They're discreet pieces of asbestos
6 material encountered.

7 Q. When you say "discreet," if you had
8 to -- would it be fair to say from saying sporadic
9 it isn't across -- basically, ACM is not found
10 throughout the side, would you agree with that?

11 MS. BRICE: Objection, vague.

12 HEARING OFFICER HALLORAN: Could
13 you rephrase that?

14 BY MR. MCGINLEY:

15 Q. When you're saying sporadic, in your
16 mind, it means isolated or discreet, correct?

17 A. Discreet means it could be separated
18 by two feet, it could be separated by -- that there
19 are discreet pieces of Transite that occur around
20 the site. It's not a continuous layer.

21 Q. Continuous layer.

22 Okay. So in essence, would you
23 agree that sporadic means isolated? Would that be
24 a fair way of characterizing sporadic, to say

1 isolated?

2 MS. BRICE: Objection, asked
3 and answered.

4 HEARING OFFICER HALLORAN: Overruled.
5 You may answer.

6 BY THE WITNESS:

7 A. Discreet pieces of Transite are
8 encountered on the site.

9 BY MR. MCGINLEY:

10 Q. I'd like to turn your attention
11 to the last sentence of the -- this would be the
12 fourth paragraph down. It says, "The origin of
13 the ACM in Site 6 is not known or presumed to
14 be debris that fell from trucks while driving
15 on Greenwood Avenue."

16 Is there anything today as
17 you sit here that causes you to reevaluate this
18 statement?

19 A. No. The origin is really unknown.
20 There is no knowledge of what the origin of the
21 material is.

22 Q. But that's not what this says,
23 sir.

24 A. It's a conjecture regarding the

1 origin. I think my recollection is we were
2 asked by the EPA to provide some understanding
3 of the origin of the materials.

4 Q. Okay.

5 A. We don't have any documents or
6 records that indicate what the actual process
7 of origin was.

8 Q. Okay.

9 MR. MCGINLEY: No further
10 questions.

11 HEARING OFFICER HALLORAN: Thank
12 you.

13 Ms. Brice?

14 MS. BRICE: Yes.

15 R E D I R E C T E X A M I N A T I O N
16 by Ms. Brice

17 Q. Mr. Ebihara, have you reviewed
18 Mr. Dorgan's reports in this case?

19 A. I have.

20 Q. And when you wrote this document
21 or were participating in this document,
22 Deposition Exhibit 66, had you reviewed those
23 reports?

24 A. I did not.

1 Q. And had you studied in any way
2 the exact location of the ACM and its distribution?

3 A. With regards to?

4 Q. With regard to Sites 3 and 6, had
5 you actually studied the distribution of the ACM
6 with respect to the work that IDOT had done in
7 the 1970s?

8 A. I had not.

9 Q. And going back to 66-766, the
10 statement about the results from the multiple
11 investigations revealed that the ACM occurrences
12 are sporadic across the site and typically
13 coincide with the location of the utilities.
14 I believe you said you were talking about
15 disturbance activities, right?

16 A. That's correct.

17 Q. Okay. And so can you explain --
18 because after reading Mr. Dorgan's report, is
19 that your view that the ACM is located near
20 the utility lines in all instances?

21 A. No.

22 Q. What is your view of it at this
23 point?

24 A. That there appears to be another

1 disturbance activity for the path of the access
2 road and construction for the IDOT activities.
3 So the description provided here was the sole --
4 the purpose of this whole study was -- the
5 supplemental study was for the Nicor gas line
6 in particular.

7 Q. Right. Explain that to me. So
8 what was going on that required this study?

9 A. The EPA action memorandum required
10 the creation of a utility -- clean utility
11 corridor and the purpose of this investigation
12 was that this 20-inch high pressure gas main
13 goes across Site 3 and there was enormous
14 expense with potentially having to remove soils
15 on the sides or underneath this high pressure gas
16 main.

17 So the activity that we
18 undertook for this detailed investigation was,
19 one, to establish that the path of the gas main
20 in particular wouldn't have been disturbed, the
21 level of the pipe, and below would not have
22 been disturbed because it predated the work
23 of the parking lot activity.

24 Q. Okay.

1 A. With regard to above the pipe,
2 I did work to characterize what that activity
3 may have been.

4 Q. Okay. I'd like to go back to the
5 sentence we were looking at a moment ago in the
6 middle of 66-766 and it says the occurrences
7 are sporadic and typically coincide with the
8 location of utilities or other structures
9 installed after the mid-1950s." What other
10 structures were you referring to?

11 A. There was a Commonwealth Edison
12 lattice tower on the east side of this gas main.

13 Q. Okay. And did you know anything
14 about the IDOT construction project at this
15 point in time?

16 A. Not at the time of writing this.

17 Q. You didn't know anything about
18 the IDOT construction project when you wrote
19 this document?

20 A. No, or its exact location and
21 nature.

22 Q. Okay. So you -- but you know now
23 after reading Mr. Dorgan's reports, is that your
24 testimony?

1 A. That's correct.

2 Q. And you mentioned a few minutes
3 ago about Transite pipe being isolated. There's
4 instances where there's Transite pipe grouped
5 together, correct, several pieces together in
6 one --

7 A. That's correct.

8 Q. -- location?

9 A. That's correct.

10 MS. BRICE: Okay. No further
11 questions.

12 HEARING OFFICER HALLORAN: Thank
13 you.

14 Mr. McGinley?

15 MR. MCGINLEY: Yes, just briefly.
16 Thank you.

17 R E C R O S S - E X A M I N A T I O N

18 by Mr. McGinley

19 Q. Mr. Ebihara, or I should say
20 Dr. Ebihara, you testified earlier that you
21 weren't aware of IDOT's construction activities
22 related to this site and how that might have
23 impacted the site until, I guess, just recently
24 or certainly not at the time that you prepared

1 Exhibit 66, is that your testimony?

2 A. That's correct.

3 Q. Now, you've been involved with
4 the site since -- what was the date that you
5 gave, 2004?

6 A. 2007 for the southwest site.

7 Q. For the southwest sites.

8 Have you ever seen the
9 administrative order on consent, which was
10 entered into between Johns Manville and the
11 US EPA?

12 A. Yes.

13 Q. And that document happened to
14 mention the fact that IDOT actually constructed
15 detour roads through the parking lot?

16 MS. BRICE: Objection, best
17 evidence rule. I don't know that he's --
18 if you recall.

19 HEARING OFFICER HALLORAN: Can
20 you --

21 BY MR. MCGINLEY:

22 Q. Have you read through -- have you
23 read through the administrative role on consent
24 is my question to you, sir?

1 A. I have read it.

2 Q. Okay. And yet you're not aware
3 of the fact -- you are not of aware of the fact
4 that IDOT is specifically named within the
5 administrative program, is that your testimony
6 here today?

7 A. I recall that there was detour
8 roads, but I didn't know the location of them
9 because that that refers -- I thought referred
10 to broadly southwest sites and so there was --
11 that order at site 4/5. So my understanding
12 is that IDOT was responsible for construction
13 of the earth and ramp that I see, the elevated
14 ramp of Greenwood and Pershing. That was my
15 focus as I read the document.

16 Q. So when you're in the process of
17 writing something like this, the Removal Action
18 Work Plan, that you have to submit to the US EPA,
19 I would assume that you need to be as accurate
20 as possible in the presentation in the information
21 that you are submitting to the agency; is that
22 correct?

23 A. That's correct.

24 Q. Okay. And yet it's still your

1 testimony that you were unaware that IDOT had
2 any activity involved with this site when you
3 wrote what you did in the appendix page on
4 Page 766?

5 MS. BRICE: Objection. That
6 mischaracterizes his testimony.

7 HEARING OFFICER HALLORAN: You
8 will have your chance. Overruled. You
9 may proceed.

10 BY THE WITNESS:

11 A. My understanding was Commonwealth
12 Edison was responsible for -- at the time was
13 that Commonwealth Edison was responsible, was
14 the land owner and responsible for that parcel,
15 that Greenwood Avenue was a city right-of-way
16 for Site 6, and the focus of my work is to
17 investigate what's present and rely upon that
18 data to determine what the remediation plan
19 ought to be.

20 So I don't delve into origins
21 and sources if I don't have detailed evidence
22 or documents.

23 BY MR. MCGINLEY:

24 Q. You just said that it was your

1 understanding that Site 6 constituted the city
2 of Waukegan right-of-way, did I understand your
3 testimony correctly?

4 A. That's correct.

5 Q. Okay. How did you come by that
6 understanding about Site 6 being within the city
7 of Waukegan's right-of-way?

8 A. We have taken two access agreements
9 for this work. One was from Commonwealth Edison
10 to access and do sampling work within Site 3 and
11 we also obtained an access agreement from city of
12 Waukegan to do the work on Site 6.

13 So that was my operative
14 understanding of who the land owners were for
15 which we needed to get permission to perform
16 work.

17 Q. Were you involved in the negotiation
18 of the site access agreement?

19 A. No.

20 MR. MCGINLEY: No further
21 questions. Thank you.

22 HEARING OFFICER HALLORAN: Thank
23 you.

24 Ms. Brice?

1 RE - R E D I R E C T - E X A M I N A T I O N

2 by Ms. Brice

3 Q. Mr. Ebihara, with respect the access
4 agreements and with respect to -- do you know what
5 I mean when I say Parcel 0393 or when I say the
6 IDOT right-of-way, do you know what I'm talking
7 about, the beginning?

8 A. Yes.

9 Q. Yes. Okay. And is Parcel 0393 part
10 of Greenwood Avenue? Is it part of the street or
11 is it on the Commonwealth Edison property?

12 A. On the Commonwealth Edison property.

13 Q. And what is your understanding of
14 whether or not the city of Waukegan currently has
15 an interest in that right-of-way?

16 A. My current understanding?

17 Q. Your current understanding.

18 A. My understanding is a portion of
19 the portion of the eastern part of Site 6 is
20 also part of this IDOT parcel.

21 Q. When you say "IDOT parcel," do you
22 mean Parcel 0393?

23 A. Yes.

24 Q. And when did you come to learn that?

1 A. Just recently, within the last few
2 weeks.

3 Q. So is it your testimony that when
4 you were -- obtained the access of agreements,
5 that you had a misunderstanding as to who had that
6 right-of-way?

7 A. When I was utilizing the access
8 agreements, I did not have an understanding of
9 IDOT's ownership of the land.

10 Q. All right. And so, I think, just
11 as a clarification, we're talking about the
12 right-of-way on the western side of Greenwood
13 Avenue, correct?

14 A. That's correct.

15 Q. Okay. It's the intersection that's
16 the southeast intersection of Greenwood and Sand?

17 A. That's right.

18 MS. BRICE: Thank you. No
19 further questions.

20 HEARING OFFICER HALLORAN: Thank
21 you, Ms. Brice.

22 Mr. McGinley?

23 MR. MCGINLEY: No. We're fine.

24 Thank you.

1 HEARING OFFICER HALLORAN: Thank
2 you. You may step down, sir.

3 (Witness excused.)

4 HEARING OFFICER HALLORAN: Do you
5 want to take a 15-minute break? I'll see
6 you at 11:15. Thank you.

7 (Whereupon, after a short
8 break was had, the following
9 proceedings were held
10 accordingly.)

11 HEARING OFFICER HALLORAN: All
12 right. We are going to go back on the
13 record. Thanks for being prompt. It is
14 approximately 11:15 a.m. on May 23rd.

15 Ms. Brice is going to call
16 JM's next witness.

17 MS. BRICE: Yes. I would like
18 to call Mr. Dorgan, please.

19 HEARING OFFICER HALLORAN: Raise
20 your right hand and the court reporter will
21 swear you in, please.

22 THE COURT REPORTER: Do you swear
23 the testimony are about to give is the
24 truth, the whole truth and nothing but

1 the truth, so help you God?

2 MR. DORGAN: I do.

3 (Witness sworn.)

4 HEARING OFFICER HALLORAN: You may
5 proceed.

6 MS. BRICE: Thank you.

7 WHEREUPON:

8 D O U G L A S D O R G A N

9 called as a witness herein, having been first duly
10 sworn, deposeth and saith as follows:

11 D I R E C T E X A M I N A T I O N

12 by Ms. Brice

13 Q. Could you please state your name
14 for the record?

15 A. Douglas G. Dorgan, Jr.

16 Q. And you are being offered as an
17 expert in this case; is that correct?

18 A. That's correct.

19 Q. Are you prepared to offer expert
20 opinions?

21 A. I am.

22 Q. Let's take a look at Exhibit 6,
23 if you will, which is a copy of a March 16, 2015,
24 expert report of Douglas G. Dorgan, Jr.

1 HEARING OFFICER HALLORAN: I'm
2 sorry. What exhibit is that?

3 MS. BRICE: Six, and it's
4 stipulated to.

5 HEARING OFFICER HALLORAN: Thank
6 you.

7 BY MS. BRICE:

8 Q. Okay. Mr. Dorgan, what is this
9 document?

10 A. This is the expert report that I
11 prepared in March of 2015.

12 Q. Does this expert report contain in
13 part a description your expertise?

14 A. It does.

15 Q. Can you please point us to that
16 section?

17 A. Section 1.2 appearing on Page 1.

18 Q. And can you please summarize for
19 me your expertise in this matter as it's reflected
20 here in the qualifications and as reflected in
21 the subsequent affidavit that you provided?

22 A. Yes. I received my Bachelor's of
23 Science in earth science with a minor in geology
24 in 1986 in Eastern Illinois University. I took

1 graduate coursework for a period of time at
2 Sangamon State University in an environmental
3 studies program that later became the University
4 of Illinois-Springfield. I attended Northern
5 Illinois University where I obtained my master's
6 of science in geography with a concentration in
7 environmental science in 1994.

8 In 1986, I began working
9 for Eldridge Engineering Associates. At the
10 time I was doing quite a bit of fieldwork and
11 doing a lot of engineering support, drafting,
12 groundwater monitoring and surveying. That
13 work progressed over time.

14 I began doing more focusing
15 on environmental projects, site investigations,
16 due diligence as part of property transactions,
17 permitting and compliance work, development
18 of compliance plans, and I was with -- Eldridge
19 Engineering was acquired a couple of separate
20 times, once by Warren Engineering and then
21 subsequently by MCON.

22 I left there in 1995 and joined
23 at the time what was Weaver Boos Consultants and
24 Weaver Boos Consultants has subsequently gone

1 through a name change and is now known as Weaver
2 Consultants Group. I have been with Weaver
3 Consultants Group since 1995. Again, at Weaver
4 Consultants Group, my early engagements tended
5 to be more project management focused. I was
6 implementing projects, managing teams of other
7 technical professionals doing project assignments
8 for clients.

9 Over time, I began assuming
10 more managerial responsibilities to the point
11 where I became responsible for managing our
12 environmental practice group and then a few
13 years later, I assumed responsibility for our
14 site, building and infrastructure consulting
15 group, which concentrates on civil engineering
16 projects.

17 Q. Okay. Are you a licensed geologist?

18 A. I am, in both Illinois and Indiana.

19 Q. Okay. And how is that relevant to
20 your expertise in this case?

21 A. I'm certainly used to looking at
22 and considering information regarding subsurface
23 conditions, looking at geologic profiles, boring
24 logs, cross-sections, plans and profiles, many

1 of which were key elements of some of the
2 documentation that was reviewed as part of my
3 engagement.

4 Q. And when you worked at Warren
5 Engineering, did you do any engineering design
6 work yourself?

7 A. Yes, I did.

8 Q. And what was that?

9 A. In fact, my first desk at Eldridge
10 Engineering was a drafting table and it was
11 provided with what back then was known as a
12 drafting machine. This was before CAD became
13 something that greatly improved the way that
14 work got done.

15 Early in my time there, I
16 was doing engineering work in support of the
17 company's projects. I was doing grading plans,
18 designing storm water structures, doing plans
19 and profiles for storm water structures. I was
20 developing final -- final cover systems and,
21 of course, then I was doing surveying for some
22 of these projects.

23 I was also actively involved
24 in doing construction quality assurance, which

1 would be the field testing on some of the
2 construction projects that our firm was designing
3 and permitting.

4 Q. What is your experience with looking
5 at construction drawings?

6 A. I have extensive experience
7 reviewing construction drawings certainly both
8 design as-built sets of plans. My experience
9 really comes at it from two angles; one, where
10 we're being given a set of plans and having to
11 impose on implementing them. So that helps you
12 understand your scope of work, the technical
13 specifications of what has to be build and then
14 you end up putting estimates together in a plan
15 for how to implement that work and when you're
16 submitting your bids.

17 I've also been involved
18 in developing bid specifications, technical
19 specifications, detailed drawings where we
20 were acting as designer or engineer or the
21 owners representative preparing the documents
22 and then having those reviewed by other third
23 parties for purposes of them bidding on the
24 construction work and submitting their own

1 bids and cost estimates and proposals.

2 Q. And do you have any specific
3 experience with respect to roadway -- construction
4 of roadways?

5 A. Yes. We -- I've been involved in
6 roadway design. I've been involved with roadway
7 construction and, of course, our firm is actively
8 engaged in doing roadway design, construction
9 quality assurance on many different projects at
10 many different times.

11 Q. What experience do you have with
12 sites contaminated with asbestos-containing
13 material?

14 A. I've worked on many sites that in
15 some way involved asbestos-containing materials,
16 not always just asbestos-containing materials.
17 Oftentimes there are other constituents as well,
18 but certainly asbestos-containing materials is
19 something you encounter quite frequently on many
20 industrial sites that I've been involved with.

21 Q. What experience do you have with
22 investigating the source of contamination?

23 A. Certainly there are times when we
24 attempt to look at the source and the sources are

1 relatively identifiable. There are other instances
2 where we're not able to identify the source. So we
3 oftentimes will look in an effort
4 to try to identify what the source was and we
5 do have some success at that at times, but there
6 are other times when past history of the site
7 or the conditions don't allow you to identify
8 the source of the material.

9 Q. And what are assumes of the types
10 of documents you look in terms of trying to
11 determine the source?

12 A. You would certainly look at, you
13 know, previous uses and history of the property.
14 You would like at aerial photos if there's any
15 historic site plans or site documentation that
16 might tell you what took place at the property.

17 You may look at construction
18 records in terms of -- I've have been involved
19 in clean-ups where Transite was one of the
20 materials that we were cleaning up and it
21 happened to be that the building had been
22 skinned with Transite and the demo had been
23 done the years previous and so the Transite
24 that we were cleaning up could fairly readily

1 be tied back to the demolition of the structure
2 that had been on the site at the time.

3 Q. What experience do you have with
4 working with IEPA?

5 A. You know, we've worked with IEPA
6 really since the beginning of my career. I've
7 certainly been heavily involved in going through
8 their various permitting and regulatory programs.
9 There's also been instances where we represented
10 clients that found themselves in situations where
11 IEPA would come in and issue violations for certain
12 conditions that were present on their properties
13 and we would help them identify what subsequent
14 steps might be needed in order to take care of NOB
15 and close that out.

16 Q. How CERCLA? About what experience do
17 you have with CERCLA?

18 A. I've been involved in any CERCLA
19 projects as well pretty much across the board
20 usually involving clean-up and clean-up design.
21 I've been involved in projects where we're looking
22 at issues of allocation, looking at issues of NCP
23 compliance, going through anywhere from remedial
24 investigation through the feasibility studies

1 designing and implementing the record and decision
2 in many instances.

3 Q. I'd like you to turn to Exhibit No. 7,
4 please.

5 MS. BRICE: This is stipulated to.

6 HEARING OFFICER HALLORAN: Thank
7 you.

8 BY MS. BRICE:

9 Q. Exhibit No. 7 is an affidavit of
10 Douglas G. Dorgan that you prepared. Can you
11 please explain what this exhibit is?

12 A. This was generated in order to
13 emphasize my background and my experience
14 particularly with respect to some of the more
15 engineering-oriented aspects of this case in
16 particular that had not been something that was
17 emphasized in the short qualification section
18 in my original report. I believe this was
19 generated to supplement that.

20 Q. Okay. And is this your signature
21 on Exhibit 7-68?

22 A. Yes, it is.

23 Q. And to your knowledge, is everything
24 in this affidavit accurate?

1 A. Yes.

2 Q. You also provided a rebuttal report
3 in this matter, correct?

4 A. Yes, I did.

5 Q. Okay. Could you please turn to
6 Exhibit 17, which I believe helpfully should be
7 your rebuttal report.

8 MS. BRICE: And this exhibit
9 is admitted.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 BY MS. BRICE:

13 Q. Mr. Dorgan, can you please identify
14 this document for us?

15 A. They this is my expert rebuttal
16 report, which was prepared in July of 2015.

17 Q. Does Exhibit 6, which is the expert
18 report dated March 16, 2015, and Exhibit 16, dated
19 July 27, 2015, contain opinions that you have
20 reached in this case?

21 A. Yes, it does.

22 Q. Have you reached all of these
23 opinions to a reasonable degree of scientific
24 certainty?

1 A. I believe so.

2 Q. In general, can you give us sort
3 of a preview of the thrust of your opinions?

4 A. I would say that the thrust of my
5 opinions started with basic understanding of the
6 site background, based upon my understanding
7 of the information I've reviewed, the first
8 developed use occurred in the mid-'50s when
9 Johns Manville began using property -- part
10 of Site 3 as a parking lot.

11 I believe that the act of
12 IDOT's actions during the Amstutz construction
13 project where what is known to have been concrete
14 Transite pipe that had been present on the parking
15 lot, I believe that had been crushed and buried
16 and disbursed around the property as part of that
17 construction effort and in large measures, it
18 remains there today.

19 I believe that because of that
20 occurrence that the remedial effort being required
21 by EPA is more expansive than it might have been
22 otherwise and as a result, increased costs are
23 being incurred to deal with that more expansive
24 scope.

1 I think that finally, the
2 conditions that exist at the site today in terms
3 of the Transite pipe having been buried at the
4 site and allowed to remain in place would be
5 considered a violation of the Illinois Environmental
6 Protection Act.

7 Q. And what about the rebuttal report,
8 what was the point of the rebuttal report?

9 A. The rebuttal report was really
10 looking at specific arguments or opinions that
11 had been expressed by Mr. Gobelman and his
12 rebuttal report to my original expert report
13 and I was attempting to evaluate those opinions
14 that he had expressed and analyze them further.

15 Q. And what opinions did you make?

16 A. That there are many instances where
17 I felt the opinions that Mr. Gobelman had expressed
18 were not accurate or were relying upon information
19 that was misinterpreted.

20 Q. What did you do to reach your opinions
21 in this case?

22 A. I started with the review of the
23 record that had been disclosed at the outset of
24 the effort. It was fairly voluminous. I had

1 gone through the documents that had been produced
2 up until that point in time. I certainly reviewed
3 a number of the aerial photographs and site plans
4 that were available for the property, some of which
5 had been in the record and some of which we had
6 obtained independently.

7 I did perform a site visit, I
8 believe, in February of '15 in order to just
9 acclimate myself to the conditions that existed
10 at the site at the time that the site was
11 performed.

12 Then I had at least once
13 instance where a conversation took place between
14 me and representatives of Johns Manville concerning
15 a couple of the technical issues that were being
16 raised in the engagement.

17 Q. And did you ever have a chance to
18 speak with Mr. Clinton?

19 A. I did.

20 Q. And what was the subject matter of
21 that discussion?

22 A. It was focusing on his understanding
23 of the nature of the use of Transite pipe on the
24 Johns Manville parking lot on Site 3 and any

1 information he may have had concerning the overall
2 construction and the construction conditions of
3 the parking lot.

4 Q. And is the -- did you describe that
5 conversation in your -- one of your expert reports?

6 A. I did.

7 Q. And what was it that was stated to
8 you?

9 A. That Mr. Clinton was aware that
10 Transite pipe had been used as parking stops and
11 to delineate the boundary of the parking lot and
12 that to the best of his knowledge and understanding,
13 there had been no other asbestos materials that
14 were used in the construction of the parking lot.

15 Q. Are the documents you reviewed in
16 this case the type of documents experts in your
17 field reasonably rely upon in reaching their
18 opinions?

19 A. I believe so.

20 Q. Okay. I'd like to focus on the
21 March 16th report first. I think you talked
22 about four different categories of opinions, one
23 being site history, right?

24 A. Correct.

1 Q. Another one being distribution and
2 source of asbestos-containing material.

3 The third being opinions regarding
4 how the burial of ACM by IDOT has increased the
5 scope and cost of the remedy.

6 Fourth is how the burial of
7 the ACM would be considered a violation?

8 Is that a somewhat accurate
9 assessment?

10 A. Yes. That generally describes it.

11 Q. I'd like to go through each of those.
12 Before we do that, I want to get our bearings a
13 little bit as far as geography and things along
14 these lines.

15 If you could turn to Figure 1
16 in this March reports, which is Exhibit 6. I
17 believe Figure 1 is 06-24. Do you have it?

18 A. Yes.

19 Q. And just briefly, and I think we
20 did end up talking about this earlier in the
21 opening statements, but for purposes of the
22 record, if you could just for us describe the
23 location of Site 3 and Site 6 as depicted on
24 this document.

1 A. Yes. So Sites 3 and 6 abut the
2 southern boundary of the former Johns Manville
3 plant. Site 3 is generally a rectangular parcel
4 located at the southwest -- excuse me -- southeast
5 intersection of Greenwood and Sand.

6 Site 6 is more linear feature
7 that runs the length of Greenwood Avenue from
8 approximately the midpoint of the northern limit
9 of Site 3 to the east. I'm not as sure of the
10 exact distance, but towards the end of Lake
11 Michigan and Greenwood Avenue.

12 Q. Okay. And for purposes of this
13 case, we're talking about the western side of
14 Site 6. You understand that, correct?

15 A. Yes.

16 Q. And that part that is north of
17 Site 3; is that correct?

18 A. That's correct.

19 Q. Can we turn to Figure 1 of your
20 rebuttal report, please? I believe this is the
21 document that I used in the opening statement.

22 MS. BRICE: This is stipulated
23 to, as is the rebuttal report, if I did
24 not say so earlier.

1 HEARING OFFICER HALLORAN: Okay.

2 BY MS. BRICE:

3 Q. Can you -- what does this document
4 depict? Oh, sorry. It's Exhibit 16-17.

5 A. This exhibit depicts the general
6 configuration of Site 3 and the western limit
7 of Site 6 that's adjacent to Site 3. It attempts
8 to superimpose the geography of those two sites
9 with some of the -- with the location of the
10 parking lot and where at that parking lot had
11 been located as well as the IDOT easement limits,
12 right-of-way limits and construction limits for
13 the Amstutz project.

14 Q. Okay. And how do you know the
15 locations of the construction limits, let cetera,
16 and all of those various items with respect to
17 the Amstutz project?

18 A. These were features that had been
19 pulled off the design drawings for the Amstutz
20 project.

21 Q. And what were those design drawings
22 dated?

23 A. 1970, I believe.

24 Q. And do you believe this figure

1 accurately represents the different features that
2 you had drawn in on this figure?

3 A. I believe so.

4 Q. I see some red lines in there, red
5 sort of arrow lines. What are those?

6 A. Those would have been ditches.

7 Q. And how did those ditches come to
8 be there to the extent that you know?

9 A. I understand they would have been
10 installed during the construction in order to
11 manage storm water flow at the site.

12 Q. Are those ditches depicted in the
13 record?

14 A. Yes.

15 Q. How do you know the location of this
16 right-of-way? So you've got up here this black
17 line, this dash black line, and it is up on the
18 north part of Site 3. How do you know the location
19 of that?

20 A. That was pulled from those same design
21 drawings.

22 Q. What is the difference between an
23 easement area and a limit of construction?

24 MR. MCGINLEY: Objection, calls

1 for speculation on the part of the witness.

2 He has offered no opinions about that.

3 HEARING OFFICER HALLORAN: Ms. Brice?

4 MS. BRICE: He's testified that he
5 has all sorts of expertise in construction
6 drawings.

7 HEARING OFFICER HALLORAN: Yes.

8 I agree. Overruled. You can answer if
9 you're able.

10 BY THE WITNESS:

11 A. My understanding is the easement
12 establishes certain access rights that IDOT to
13 have to that report in order to maintain structures
14 that might be built within the easement whereas
15 the construction limits would be specific to a
16 particular project that would define the area
17 in which the construction activities would be
18 expected to take place.

19 BY MS. BRICE:

20 Q. In your experience, do contractors
21 on construction projects often work outside the
22 limits of construction?

23 A. Yes, they can.

24 Q. And how do you know that?

1 A. Both from specifications that give
2 them that ability and leeway plus my own personal
3 experience on certain construction projects.

4 Q. Okay. I would like to direct your
5 attention to Trial Exhibit 19.

6 MS. BRICE: Exhibit 19 has
7 been stipulated to.

8 HEARING OFFICER HALLORAN: Thank
9 you.

10 BY MS. BRICE:

11 Q. Mr. Dorgan, could you please identify
12 for us what Trial Exhibit 19 is?

13 A. This appears to be pages from IDOT
14 standard specifications.

15 Q. And how do you know that?

16 A. I have reviewed and looked at the
17 entire document and then, of course, reviewed
18 certain elements of it.

19 Q. Were there documents in the initial
20 Amstutz project file that called for these
21 specifications to be used?

22 A. Yes.

23 Q. Is there any dispute as far as you
24 know that these are the applicable standard

1 specifications that apply to the Amstutz project?

2 A. Not that I'm aware of.

3 Q. Under these standard specifications,
4 are IDOT's contractors allowed to bury material
5 outside of the right-of-way?

6 A. Yes.

7 Q. Let's take a look at Section 202.03
8 for a moment, which is on 19-5. Do you see that?

9 A. Yes, I do.

10 Q. Can you please direct your attention
11 to the second full paragraph on the right-hand side.
12 Do you see that?

13 A. Yes.

14 Q. It starts with "wherever possible."
15 Can you read that paragraph into the record please?

16 A. Yes. "Wherever possible, stones
17 and boulders occurring within the right-of-way
18 shall be placed in embankments in layers and
19 compacted, in accordance with Section 207. All
20 stones, stumps, boulders, broken rock, broken
21 concrete and related materials that cannot be
22 placed in the embankment shall be disposed of
23 at locations designated by the engineer within
24 the right-of-way in borrow sites on or adjacent

1 to the right-of-way or at other locations outside
2 of the right-of-way. These materials shall be
3 buried under a minimum of two feet of earth cover.
4 These materials shall be disposed of in a neat,
5 orderly manner and shall not create an unsightly
6 condition. Disposal methods shall not change
7 or alter the natural topographic features of
8 an area without written permission from the
9 engineer.

10 Q. Thank you. I want to go back to
11 this figure here. It's -- is it your -- well,
12 actually let me -- I'm going to come back to
13 that.

14 You state here on Page 6 --
15 Page 11 of your expert report -- sorry -- that
16 the first developed use of site occurred in the
17 late 1950s. Do you see that?

18 A. I do.

19 Q. How do you know that?

20 A. At the time the document was
21 generated, I was relying primarily on information
22 presented in the record and a review of the aerial
23 photographs.

24 Q. What can you tell me about its first

1 use?

2 A. It appears from the aerial
3 photographs that prior this Johns Manville having
4 constructed the parking lot on Site 3 that there
5 had been no previous uses on the property.

6 Q. I'd like to mark deposition -- not
7 deposition -- sorry -- Trial Exhibit 52, please.
8 I believe this is stipulated too. Doug, right
9 behind you, there is an aerial photograph, a larger
10 version of it. If you wouldn't mind, put that on
11 the easel.

12 Mr. Dorgan, what is this
13 photograph?

14 A. My understanding is this is a
15 photograph of a photograph that had been in
16 Johns Manville's possession that shows what
17 would be the southwestern area of their main
18 manufacturing facility with Greenwood Avenue
19 running diagonally through the right side of
20 the photograph with the Site 3 Johns Manville
21 parking lot in the background.

22 Q. Okay. Just for the people in the
23 room, can you point out where the Johns Manville
24 parking lot that we have been discussing in this

1 case is located?

2 A. It would be that area right here
3 (indicating).

4 Q. Is there anything about the photo
5 that you find important?

6 A. In addition to verifying that cars
7 were using it to park on it, it does appear that
8 we have --

9 MR. MCGINLEY: Excuse me,
10 Mr. Halloran. Could we ask the witness --
11 I can't see because his body is blocking --

12 HEARING OFFICER HALLORAN: Yes.
13 Mr. Dorgan, could you do your best?

14 THE WITNESS: Certainly.

15 HEARING OFFICER HALLORAN: We
16 have limited space here.

17 MR. MCGINLEY: Thank you.

18 BY THE WITNESS:

19 A. So again, this being the parking
20 lot and what you can see are these linear features
21 that demarcate the outer boundary of the parking
22 lot and then you can see these other linear
23 features where the cars are fully pulled up to,
24 which I believe are indicative of the concrete

1 Transite pipe that was being used to define the
2 perimeter of the parking lot and to act as wheel
3 stops for the cars.

4 BY MS. BRICE:

5 Q. And what is the date of this aerial
6 photographs?

7 A. Late 1950s.

8 Q. What is your understanding how the
9 parking lot was put together in the 1950s?

10 A. My understanding is that there was
11 an area that was along Greenwood Avenue that cars
12 had been parking along the shoulder, it looked like,
13 at one time and they expanded that to encompass
14 this area of relatively level ground, that they
15 could then lay out with both perimeter and wheel
16 stops and then accommodate more cars.

17 Q. We talked a moment ago about your
18 conversation with Mr. Clinton about the history
19 of the parking lot. What other information do
20 you have about the history of the parking lot
21 that confirms your understanding of how it was
22 constructed?

23 A. Well, I guess a significant piece
24 of information were the IDOT specifications for

1 the Amstutz project which shows the conditions
2 that existed at Site 3 at the time the design
3 work had been done or construction of the detour
4 roads, both Detour Road A and Detour Road B. That
5 would be another source of information.

6 Q. Okay. If you look behind you, there
7 are blown up copies of the plans. I think you will
8 find in there one that might be referencing. It's
9 one of the smaller ones.

10 A. This would be one.

11 Q. Okay. Could you identify that
12 document for the record?

13 A. It's referenced as JM 001154.

14 MS. BRICE: That has been
15 stipulated to.

16 HEARING OFFICER HALLORAN: That's
17 part of Exhibit 52?

18 MS. BRICE: What is the exhibit
19 number? Is it not on there?

20 THE WITNESS: No, I'm sorry.

21 MS. CAISMAN: PI think it's 19.

22 Oh, no. It's Exhibit 21.

23 HEARING OFFICER HALLORAN: Thank
24 you.

1 BY MS. BRICE:

2 Q. That's Exhibit 21. On Exhibit 21,
3 Mr. Dorgan, what is it about Exhibit 21 you were
4 just referring to?

5 A. This is both a cross section and a
6 plan view of the proposed location of Detour
7 Road A that transects Site 3 in the Johns Manville
8 parking lot.

9 Q. What about that figure is significant
10 to your opinion with respect to the construction of
11 the parking lot?

12 A. Yes. It doesn't -- where the profile
13 goes across the parking lot, it doesn't reference
14 any existing construction conditions of the parking
15 lot. It simply shows where it was located.

16 Q. I would like to mark Deposition
17 Exhibit 50, which we have already admitted into
18 evidence. It's not deposition exhibit. It's
19 Trial Exhibit. I apologize again.

20 HEARING OFFICER HALLORAN: Thank
21 you.

22 BY MS. BRICE:

23 Q. It's in your book.

24 A. Fifty?

1 Q. Fifty.

2 A. Yes.

3 Q. Mr. Dorgan, have you seen this
4 document?

5 A. Yes.

6 Q. And when did you see this document?

7 A. Relatively recently within the last
8 couple of weeks.

9 Q. Okay. And what is this document?

10 A. It appears to be a contract between
11 Commonwealth Edison and Johns Manville.

12 Q. And how does this document impact
13 your opinion?

14 A. This document establishes that there
15 was a license agreement between the two parties
16 allowing Johns Manville to utilize a portion of
17 their property to operate the parking lot that we
18 have been discussing.

19 Q. What is your understanding of
20 Mr. Gobelman's opinion with respect to the
21 construction of the parking lot?

22 A. I believe he's testified that
23 the parking lot was an asphalt parking lot that
24 then used Transite bumpers -- Transite pipe as

1 wheel stops on top of the asphalt.

2 Q. Okay. What about the material?
3 Does he have an opinion as to subsurface of the
4 parking lot?

5 A. I believe he had indicated that
6 there was a subbase underneath the parking lot
7 and he had opined concerning certain changes
8 that were contemplated based upon site conditions
9 that the contractor had acknowledged during the
10 construction effort.

11 Q. Right. But does he believe that
12 there's fill material underneath the parking lot
13 at the time it was constructed?

14 A. Yes.

15 Q. Can you elaborate, please?

16 A. Yes. He, I believe, testified that
17 there had been some cinder material that were
18 present in some of the boring logs that would
19 have been fill material underneath the parking
20 lot.

21 Q. Okay. Does this license agreement
22 authorized Johns Manville to report fill onto
23 ComEd's property?

24 A. No.

1 Q. Is there any evidence in the record
2 that JM used asphalt on the surface of the parking
3 area to create the parking?

4 A. No.

5 Q. And is there any evidence that it did
6 not?

7 A. Yes.

8 Q. And where is that in general?

9 A. I would say it's on the -- again,
10 on the specifications for the construction project,
11 its absence in any of the investigations that have
12 been done across Site 3. That would be another
13 piece of evidence.

14 Q. When you say it's absence, can you
15 elaborate on that?

16 A. The argument had been that the
17 Detour Road A had been installed and actually
18 utilized the asphalt from the Johns Manville
19 parking lot in place of having to bring asphalt
20 in since it was already there.

21 Then there was an argument
22 that the parking lot would have remained in
23 place after the construction effort was over.
24 We certainly have not seen that in that an asphalt

1 layer or even any meaningful fragments of asphalt
2 have shown up in any of the investigation work
3 that's been completed at the site.

4 Q. During your site visit, did you
5 observe any asphalt on Site 3?

6 A. No.

7 Q. Let's go to Page 50-5, please,
8 which is Exhibit A of Trial Exhibit 50. Do you
9 see that?

10 A. I do.

11 Q. Does this map align with your
12 understanding of the location of the former
13 parking lot as depicted with your figures?

14 A. It does.

15 Q. What are those angles and lines
16 as far as you can tell? They are hard to see on
17 that picture.

18 A. It's a little difficult to see,
19 but where you can see them, it would look like
20 your fairly typical parking stall demarcations.

21 Q. Okay. Let's go back to Exhibit 6,
22 your expert report on Page 11, please. You
23 state that "The parking lot operated from its
24 date of construction in the late 1950s through

1 to approximately 1970."

2 How are you able to identify
3 as 1970 as the approximate date upon which the
4 parking lot ceased to be used?

5 A. The aerial photos.

6 Q. Let's take Exhibit 67, please. I'm
7 sorry. No. This is a 1967 aerial photo, which
8 is Exhibit 53. Let me give you the Bates number.
9 This is 53 L and it's JM 0005836. Do you see
10 that?

11 A. Yes, I do.

12 Q. And what is this document?

13 MS. BRICE: This has been
14 stipulated to.

15 HEARING OFFICER HALLORAN: I'm
16 sorry. This is exhibit?

17 MS. BRICE: It's 53 L.

18 HEARING OFFICER HALLORAN: Thank
19 you.

20 BY THE WITNESS:

21 A. This is an aerial photograph from
22 1967 of the Johns Manville facility and the
23 immediately surrounding area.

24

1 BY MS. BRICE:

2 Q. Can you please explain to me what
3 is important about this aerial photo to your
4 opinion?

5 A. In the aerial photo, the parking lot
6 on Site 3 is readily discernible.

7 Q. And let's then go to Exhibit 54S-1
8 and there is a blowup right behind you, Mr. Dorgan.
9 If you could please place that on the easel, I
10 would greatly appreciate it.

11 MS. BRICE: This has been
12 stipulated to, Mr. Halloran.

13 HEARING OFFICER HALLORAN: Thank
14 you.

15 BY MS. BRICE:

16 Q. Mr. Dorgan, what is this document?

17 A. It's an aerial photo from 1970,
18 June 11th.

19 Q. And how is the parking lot area
20 different in this photo when compared to the
21 1967 one that we were just looking at, if at all?

22 A. You can see evidence of the parking
23 lot. However, it doesn't appear to be in use and
24 some of the features appear to be absent. You can

1 still make out faintly some of the perimeter
2 demarcations, but otherwise, it looks like the
3 parking lot has been abandoned at this point.

4 Q. Thank you. Turning back now to
5 Exhibit 6 on Page 11, you said the lot was used
6 until approximately 1970 when the parking lot
7 was destroyed under contract to IDOT to accommodate
8 construction of the Amstutz project. Can you tell
9 me what the Amstutz project is?

10 A. As it's been described earlier,
11 it was a project to create an embankment and an
12 overpass from Greenwood Avenue as part of the
13 adjacent freeway redevelopment project.

14 Q. Okay. And who was in charge of that
15 project?

16 A. I understand IDOT was in charge of
17 it.

18 Q. How long did that project take?

19 A. I believe it would have started
20 roughly 1969 and I believe it ended in the mid-'70s,
21 '75 or '76.

22 Q. What documents have you reviewed
23 with respect to the IDOT project in 1970s in
24 general?

1 A. Primarily, the original technical
2 specifications, which we understand to have been
3 marked up representing the as-built drawings for
4 the project. Then, of course, we looked at a
5 number of contract documents that were included
6 in the record, some of the original contract
7 documents between the various contractors doing
8 work on the site. There were change orders that
9 were technical deviations, notices and then, of
10 course, there's the standard specifications that
11 controlled the project as a whole.

12 Q. Whose responsibility was it to
13 determine how material was managed during the
14 project?

15 A. It's my understanding it would have
16 been the IDOT resident engineer.

17 Q. And does that apply to fill or borrow
18 material as well?

19 A. I believe so, yes.

20 Q. What is a resident engineer?

21 A. The resident engineer would normally
22 be a representative of IDOT that would be onsite.
23 They may be there full-time. They may be there
24 paying periodic visits. Their responsibility would

1 be to assure that construction that's being
2 performed by the contractors are actually being
3 done in a way that meet with the -- both the
4 general and the technical specifications for the
5 project.

6 Q. Based upon your review, for the
7 record, who was the resident for this site?

8 A. I understand it was a gentleman
9 named Duane Mapes.

10 Q. And do you know whether or not he
11 is still alive?

12 A. I don't believe so.

13 Q. Let's go back to Exhibit 19, the
14 specifications. Just to elaborate a bit on the
15 points you made earlier, if you could look at
16 Exhibit 19-2 and could you read into the record
17 the first sentence of 106.05?

18 A. 106.05?

19 Q. Yes, please.

20 A. This is titled, "Source of Materials."
21 "The source of supply of each material used shall
22 be approved by the engineer before delivery is
23 started."

24 Q. Okay. When did IDOT first come to

1 start work on the Amstutz project as far as you can
2 tell from the record?

3 A. Roughly 1969.

4 MR. MCGINLEY: Objection, vague
5 and ambiguous.

6 HEARING OFFICER HALLORAN: I'm
7 sorry, Mr. McGinley. Vague and ambiguous?

8 MR. MCGINLEY: Objection, vague
9 and ambiguous, yes.

10 HEARING OFFICER HALLORAN: Could
11 you rephrase, please?

12 MS. BRICE: Sure.

13 BY MS. BRICE:

14 Q. As far as you know, when did IDOT
15 first begin to do work on the Amstutz project?

16 A. 1969.

17 Q. How do you know that?

18 A. Based upon the specifications and
19 Mr. Gobelman's testimony.

20 Q. Let's go back to the engineering
21 drawings that we were looking at. I believe it's
22 Exhibit 21. It's 21 A, please. Do you have those
23 in front of you?

24 A. I do.

1 Q. What are these documents?

2 A. These would be the design drawings
3 that would have been developed to guide the
4 construction effort itself and then based upon
5 a notation on this cover page, it appears as
6 though the design drawings become as-built
7 drawings to document the completed conditions
8 at the conclusion of the project.

9 Q. Okay. So explain that a little
10 more. What are as-built drawings as far as you
11 know?

12 A. Typically, you will have your
13 design set, which lays out what's supposed to be
14 built. Occasionally, there will be modifications
15 during the actual project and those modifications
16 would typically be captured and represented in
17 the as-built drawings so that you have a complete
18 record of what actually was built and not just
19 relying on what the design drawings showed.

20 Q. Thank you.

21 MS. BRICE: Mr. Halloran, I
22 believe I said it earlier but we did
23 stipulate --

24 HEARING OFFICER HALLORAN: So

1 Exhibit 21 was stipulated to?

2 MS. BRICE: Yes.

3 HEARING OFFICER HALLORAN: Thank
4 you.

5 BY MS. BRICE:

6 Q. If you could, look in the lower
7 right-hand corner there, the document in front
8 of you is fine. What do you see there?

9 A. A hand notation on the first page
10 of the document set.

11 Q. I'm talking about the lower right
12 corner where there's signature lines.

13 A. Oh, yes.

14 Q. Could you just explain the
15 significance of that and the dates on there for
16 everyone in the room?

17 A. Yes. So the -- in most -- many
18 construction projects when you develop a set of
19 design drawings, there is a review process that
20 they go through and each step in that review
21 process, there is usually somebody responsible
22 for signing off that they have reviewed it and
23 that the design -- they are in agreement with the
24 design and there's a whole series of signatures

1 here, many of which are dated -- it appears to
2 be as early as September 1970 and as late as
3 December of 1970.

4 Q. All right. You testified a moment
5 ago that something that Mr. Gobelman said that
6 led you to believe that there was work done on
7 the Amstutz in 1969. Can you please elaborate?

8 A. Well, in most projects like this,
9 there is a lot of background work that needs to
10 be done before you move to the design phase and
11 in a significant construction project like this,
12 there would have been a number of tasks implemented
13 prior to the design moving forward including
14 oftentimes surveying some geotechnical engineering
15 work that would have been done that would have
16 supported the design effort itself and that work
17 would have had to have been completed before they
18 could move forward with the design so they knew
19 what conditions they were designing to.

20 MR. MCGINLEY: Mr. Halloran, I'm
21 going to object. This is not -- everything
22 that Mr. Dorgan is testifying to now is
23 outside the scope of his opinion as set
24 forth in his report and his rebuttal

1 report.

2 MS. BRICE: No. It's in his
3 rebuttal report. He talks about the 1970
4 photo and the date of construction.

5 HEARING OFFICER HALLORAN: I
6 think I recall that, Mr. McGinley.

7 Ms. Brice, if you could,
8 point that to me.

9 MS. BRICE: Sure. 16.4, 2.2.1A.

10 HEARING OFFICER HALLORAN: I'm
11 looking at his report.

12 MS. BRICE: This is the rebuttal
13 report, Mr. Halloran.

14 HEARING OFFICER HALLORAN: Right.

15 MS. BRICE: I can read it to you
16 if you would like.

17 HEARING OFFICER HALLORAN: What
18 page --

19 MS. BRICE: 16-4. If you don't
20 mind, I could approach.

21 HEARING OFFICER HALLORAN: Sure,
22 you may.

23 MS. BRICE: Thank you.

24 HEARING OFFICER HALLORAN: I --

1 MR. MCGINLEY: I'll withdraw
2 the objection. I'm sorry.

3 MS. BRICE: Pardon?

4 MR. MCGINLEY: I'll withdraw
5 the objection.

6 HEARING OFFICER HALLORAN: Thank
7 you, Mr. McGinley.

8 You may proceed, Ms. Brice.

9 MS. BRICE: Sure. Sorry. I
10 don't remember where I was.

11 Ms. Reporter, could you
12 please read back where we were?

13 (Whereupon, the requested
14 portion of the record was
15 read accordingly.)

16 BY THE WITNESS:

17 A. And I believe I indicated that
18 surveying work, geotechnical engineering work
19 would have been completed prior to advancing
20 to the design phase and that was generally
21 consistent with testimony from Mr. Gobelan in
22 his deposition.

23 BY MS. BRICE:

24 Q. All right. And on these drawings

1 back on Exhibit 21 in the lower left-hand corner,
2 it talks about -- in red -- something in red.
3 Have you seen a color copy of these engineering
4 drawings?

5 A. No, I have not.

6 Q. And do you know why you have not seen
7 a color copy?

8 A. My understanding is they are not
9 available.

10 Q. Did IDOT have to do soil borings
11 in order to understand whether there was unsuitable
12 material present underneath the embankment area?

13 A. Yes.

14 Q. Have you seen any soil boring blocks
15 for Sites 3 or 6?

16 A. No.

17 Q. Have you seen soil boring blocks for
18 other portions of the property?

19 A. Yes.

20 Q. And where are those?

21 A. Primarily, along the abutment at the
22 overpass itself.

23 Q. And physically, where are those
24 descriptions of the soil boring logs.

1 A. West of Site 3.

2 Q. I'm sorry. I mean, in the documents.

3 A. Oh, they are in the specifications.

4 Q. And just so we're clear, they are
5 standard specifications and then they are
6 construction drawings and I don't want to get
7 confused. So are you talking about the construction
8 drawings?

9 A. Yes.

10 Q. Could you possibly show us where
11 those might be located?

12 A. An example would be on Sheet 49.

13 Q. What's the trial exhibit number?

14 A. 1180.

15 Q. No. That's the Bates number. What's
16 the trial exhibit number?

17 A. I'm sorry. That's 21A-49.

18 Q. All right. And what are the soil
19 boring numbers that are depicted on that document?

20 A. B15, 16, 17 and 18.

21 Q. Okay. Have you seen any soil borings
22 for one through 14?

23 A. No, I have not.

24 Q. Okay. Have you seen any soil boring

1 logs for numbers after what's depicted on this page?

2 A. No, I have not.

3 Q. How do you know that IDOT removed
4 the parking structure as part of the Amstutz
5 Project?

6 A. I believe there's references in the
7 record to -- reference to the fact that IDOT was
8 responsible for -- I believe the term used was
9 obliterating the road at the conclusion of the
10 project.

11 Q. Right. But I'm talking about the
12 parking lot. Let's go to Exhibit 21.

13 A. Twenty-one.

14 Q. I believe you had that earlier. It
15 was the blowup that you were looking at.

16 A. This one here (indicating)?

17 Q. Yes. And what is the -- I think
18 that was 21L. Is that what we said? It's part
19 of the construction drawings. It's JM 001154,
20 I believe.

21 Do you see -- and this is an
22 engineering drawing for IDOT, correct?

23 A. Correct.

24 Q. Okay. Do you see the outline of

1 the parking lot on that drawing?

2 A. I do.

3 Q. Okay. And where is the parking lot
4 depicted on that drawing?

5 A. It would be on the right side of the
6 figure towards the top.

7 Q. Okay. Could you take a pink
8 highlighter and on that document, please outline
9 it.

10 A. (Witness complied.)

11 Q. Thank you. Do you see in that
12 document Detour Road A?

13 A. Yes.

14 Q. Okay. And there were three detour
15 roads that were built as part of the Amstutz
16 project, correct?

17 A. That's correct.

18 Q. Okay. And can you, in green, outline
19 Detour Road A for us?

20 A. How about blue?

21 Q. Blue is perfect.

22 A. (Witness complied.)

23 Q. Thank you. And where is the IDOT --
24 where is the detour road in relation to the parking

1 lot?

2 A. It transects it.

3 Q. So what does that tell you?

4 A. They would have built the detour
5 road through what would have been the parking lot.

6 Q. Why did IDOT need a detour road?

7 A. It would have been used to manage
8 alternate routing for traffic that would have
9 needed access to the area once they began the
10 construction project and took the existing
11 roads out of service to accommodate the
12 construction project.

13 Q. Do you have an idea when IDOT actually
14 built Detour Road A?

15 A. If I recall correctly, it would have
16 been fairly early in the project. It would have
17 been in roughly '71.

18 Q. Okay. Great. If you could take the
19 blowup that is right behind you, which is IDOT
20 002649. That's the Bates number. It's part of
21 Exhibit 53. I'm sorry I do not have -- it's 54R.
22 I'm sorry. It's not 54R. Do we have the Bates
23 number on it?

24 MS. O'LAUGHLIN: What's the

1 Bates number again?

2 MS. BRICE: I have IDOT 002649.

3 MR. MCGINLEY: 2649? We have a
4 blank copy in our binder.

5 MS. BRICE: Oh, that's not good.
6 What's behind it?

7 MR. MCGINLEY: 45S.

8 MS. BRICE: Okay. Hold on.

9 Sorry. If you would, give us a moment.
10 It's Exhibit 53B. I apologize.

11 BY MS. BRICE:

12 Q. What's on the screen.

13 A. This is a blowup of what's on the
14 screen.

15 Q. When you say "this is a blowup,"
16 what are referring to?

17 A. The scale has -- in order to be
18 able to see the Detour Road A, Detour Road B
19 and the intersection with Greenwood, they took
20 this scale and scaled is up so that we could
21 see those particular features a little more
22 effectively.

23 Q. Okay. Thank you.

24 MS. BRICE: And this aerial has

1 been stipulated to.

2 HEARING OFFICER HALLORAN: Thank
3 you.

4 BY MS. BRICE:

5 Q. Can you please highlight in yellow
6 on that aerial photograph where Detour Road A is?

7 A. (Witness complied.)

8 Q. Thank you. Can you highlight in
9 pink where the parking lot had been?

10 A. It's right here (indicating).

11 Q. Thank you. What about this aerial
12 photograph is significant to your opinion?

13 A. It just confirms our general
14 understanding of the construction phasing. This
15 picture shows the detour road having already been
16 constructed. As you see from this photo, it's
17 difficult to even discern any longer the former
18 Johns Manville parking lot and get a rough idea
19 of where it had been located, but most of the
20 features had been removed.

21 Q. And what does this photo tell you
22 about the disturbance area with respect to Site 3?

23 A. Well, you can see quite a bit of
24 disturbance that we understand would have been

1 related to the construction itself. You can see
2 the work around the edges of the bypass road.
3 You can see the work done down here at the
4 intersection where they tied Detour Road A in
5 with Greenwood. You've clearly got some sort
6 of -- this appears to be some sort of stockpiled
7 material that exists on what would have --

8 Q. When you say this appears to be --
9 sorry. I don't want to interrupt you, but when
10 you say this appears to, for the record, no one
11 is going to be able to know what you're saying.
12 So if you want to circle something --

13 A. Yes. There's an area -- I'll use
14 green or -- excuse me -- blue. There's an area
15 that would have been on kind of a western part
16 of the parking lot right all through here. You
17 can see quite a bit of a disturbance in what
18 potentially could be stock piles of material.

19 Q. Okay. Going back to your Figure 1
20 from your rebuttal report, which is sitting down
21 there behind you, I believe, maybe not. Nope.
22 Sorry. Scratch that.

23 Figure 1 from your rebuttal
24 report -- if I may approach, please -- does the

1 disturbance that you see on the aerial photo in
2 1972, how does that compare to the construction
3 limits -- the limits of construction that you
4 have there on Figure 1?

5 A. Again, just orienting what we have
6 Detour Road A and Greenwood, that says Detour Road
7 A from Greenwood. This was the former parking lot
8 through this area right here. These features would
9 have been --

10 Q. Try and describe it in words, please.

11 A. These features would have been
12 located on the western part of the former parking
13 lot within that triangular area that was created
14 by the Greenwood Avenue embankment construction,
15 Detour Road B construction and Detour Road A
16 construction.

17 Q. Does it appear to be within the
18 limits of construction, the disturbance area?

19 A. Part of the disturbance area does.

20 Q. How about the rest?

21 A. Parts of the area of disturbance
22 appear to be outside of those construction limits.

23 Q. Thank you. Let's stick with this
24 aerial photo, please, the 1972 aerial photo. That's

1 your understanding of the date, correct?

2 A. Yes.

3 Q. You mentioned Detour Road B. Could
4 you outline that in a different color, please?

5 A. This is blue and this is Detour Road
6 B (indicating).

7 Q. So Detour Road B is going north/south;
8 is that correct?

9 A. North/south along the western side
10 of B, Site 3 area and north across Greenwood
11 abutting the western side of Johns Manville's
12 main parking lot.

13 Q. And when you say Johns Manville's
14 main parking lot, is that parking lot on Johns
15 Manville's property?

16 A. Yes.

17 Q. Okay. So that's not the same parking
18 lot that had been on Site 3; is that correct?

19 A. That's correct.

20 Q. Do you see asphalt on that Johns
21 Manville parking lot?

22 A. It's difficult to make it out as
23 asphalt just from looking at this photo, but it
24 certainly appears to be some sort of paved

1 structure.

2 Q. Does there appear to be any asphalt
3 in the area of the former Site 3 parking lot?

4 A. No.

5 Q. How far east does Detour Road A go?

6 A. To this point where it intersects
7 back into Greenwood Avenue.

8 Q. Is that consistent with the plans?

9 A. It would appear to generally be,
10 yes. This area is perhaps a little -- the radius
11 on this intersection is perhaps a little bit larger
12 than what the plans show, but not substantially so.

13 Q. Whether I say "this area," would you
14 please describe it in words?

15 A. Yes. I'd be describing the eastern
16 terminus of Greenwood or of Detour Road A at the
17 intersection with Greenwood Avenue.

18 Q. Thank you. I'd like to turn to
19 Trial Exhibit 35, please.

20 MS. BRICE: This document is
21 stipulated to.

22 HEARING OFFICER HALLORAN: Thank
23 you.

24

1 BY MS. BRICE:

2 Q. Trial Exhibit 35 is IDOT 000329.

3 Mr. Dorgan, what is this document?

4 A. This document was an authorization
5 for a contract change that would have been submitted
6 by the contractor to IDOT.

7 Q. And what does this document say about
8 the detour roads?

9 A. It adjusts quantities as part of their
10 pay items based upon changes that they made to
11 take advantage of existing site features that
12 they encountered when they did the construction.

13 Q. Okay. And it says, does it not,
14 that the additional special excavation was used
15 to remove and obliterate the detour roadways,
16 correct?

17 A. Correct.

18 Q. What significance does that have
19 to your opinion?

20 A. I believe it supports the opinion
21 that IDOT had been responsible for removing the
22 detour roads.

23 Q. Let's go to the 1974 aerial
24 photograph, which is 53K.

1 A. I'm sorry. 53?

2 Q. 53K. I believe, Doug, there is a
3 blowup of that, too, but you might want to
4 double-check.

5 A. No.

6 Q. No? There should be, but we'll
7 just keep going.

8 All right. Could you please
9 tell me the date on this document and what you
10 see in this document? Could you blow that up?

11 A. This is an aerial photograph dated
12 1974 showing again the main Johns Manville facility
13 centered in the center of the image with some of
14 the surrounding properties shown as well.

15 Q. Okay. Do you see the Detour Road A
16 any longer?

17 A. You can see a remnant of where Detour
18 Road A had been, but it doesn't appear that the
19 detour road is still in operation.

20 Q. How about Detour Road B?

21 A. The same is true of Detour Road B.

22 Q. Based upon review of the record,
23 is there any evidence that any development has
24 occurred on Site 3 since 1977?

1 A. Not that I'm aware of.

2 Q. Let's talk about Site 6. What can
3 you tell me about the -- I'm not taking about the
4 western side of Site 6. Okay? What can you tell
5 me about the early history of Site 6?

6 A. Well, as far as I understand, Site 6
7 utilized as a roadway for some time dating back to
8 at least the '30s.

9 Q. How did the Amstutz project impact
10 what is now Site 6?

11 A. Part of the very western end of
12 Site 6 would have been used as part of the
13 embankment construction to bring Greenwood
14 Avenue up and over the railroad tracks.

15 Q. Can you explain what an embankment
16 is?

17 A. An embankment is simply an earthing
18 structure that allows you to raise the road
19 elevation to get it up to some height where --
20 and it usually intersects with a bridge to carry
21 traffic over another type of structure.

22 Q. And what purpose did this embankment
23 serve?

24 A. It raised Greenwood Avenue by roughly

1 20 feet.

2 Q. And to do what?

3 A. To allow traffic then to go over the
4 railroad tracks and then ultimately tie into the
5 freeway project.

6 Q. And where is the freeway project, if
7 you could just point it out for the people in the
8 room on Aerial Photograph 72? I don't think we've
9 done that yet.

10 A. It would be over here and here
11 (indicating).

12 Q. So that would be to the west --

13 A. Yes.

14 Q. -- of Pershing, correct?

15 A. Correct. Right here (indicating).

16 Q. How high was this embankment?

17 A. Approximately 20 feet.

18 Q. It wasn't 20 feet all the way across,
19 right?

20 A. Not. It would have started at grade
21 at the eastern end and then it went up from the east
22 to the west.

23 Q. It went up from the east to the west?

24 A. Yes.

1 Q. Okay. How do you know that?

2 A. From the design drawings and the
3 existing topography.

4 Q. Was there a twin embankment on the
5 other side?

6 A. I believe there was, yes.

7 Q. Is this embankment still there?

8 A. Yes.

9 Q. Okay. I'm going to fastforward a
10 bit here. Your report goes into detail about
11 the environmental conditions on Sites 3 and 6.
12 I'm just trying to move through this so that we
13 don't keep repeating everything.

14 It discusses initial sampling
15 done by ALM Site 3 in 1999, right?

16 A. Yes.

17 Q. And what kind of sampling is that?

18 A. They had initially undertaken some
19 surficial debris or removal and then initiated an
20 investigation of the site conditions.

21 Q. Did that sampling include Site 6?

22 A. I don't believe it did.

23 Q. Your chronology on Page 6 notes
24 little happened between '99 and 2007. Do you know

1 why?

2 A. Not particularly.

3 Q. You state again then on Page 6 that
4 on June 11, 2007, JM, ComEd and US EPA signed an
5 administrative settlement agreement ordering consent
6 or removal action. Do you see that?

7 A. Yes.

8 Q. Okay. Are you familiar with such
9 administrative settlement agreements and order of
10 consent?

11 A. Yes.

12 Q. And how are you familiar with that?

13 A. I have been involved in both
14 negotiating them and then implementing the work
15 required by them.

16 Q. Okay. And for purposes of this trial,
17 I'm going to refer to this as an AOC. Okay? What
18 is an AOC?

19 A. Typically, it's an agreement between
20 the regulatory authority and some party that lays
21 out the -- both regulatory background and then
22 the specific obligations and commitments of both
23 parties in terms of work that will be done at a
24 site to investigate and then to the extent necessary

1 to clean up a property. Then oftentimes, it will
2 provide certain legal protections and
3 indemnifications to parties for completing the work
4 that's been required.

5 Q. Was the first step in this AOC to do
6 an investigation nature and extent of contamination?

7 A. Yes.

8 Q. Okay. Is that generally required
9 when contamination is found on the surface of the
10 land?

11 A. Yes.

12 Q. After that work was complete, what
13 was required under the AOC?

14 A. That they would have to evaluate --
15 based upon what they found in their nature and
16 extent investigation, they'd have to evaluate
17 alternate ways of addressing the site conditions
18 that were encountered and eventually submit a
19 proposal that would present what Johns Manville's
20 intentions were in terms of addressing the
21 conditions that would be encountered.

22 Q. And I believe that previous witnesses
23 testified about an EECA. Is that the culmination
24 of the investigation?

1 A. Yes.

2 Q. And what does the EECA propose?

3 A. The EECA considered a number of
4 alternatives, but eventually proposed certain
5 of the alternatives as being the preferred
6 approach to address the conditions at both Site 3
7 and Site 6.

8 Q. Okay. And I believe we looked at
9 EECA Version 4 here. What happened after --
10 in the chronology after EECA Version 4 was
11 submitted to the extent you recall?

12 A. Oh, I believe that there was an
13 enforcement action memorandum. Well, first there
14 was -- the EPA came back seeking very specific
15 modifications to the EECA. Then there was an
16 enforcement action memorandum that was issued
17 and then a number of back and forth attempting
18 to negotiate modifications to what was being
19 required by the enforcement action memorandum.

20 Q. Did the AOC itself require any
21 specific remedy?

22 A. No.

23 Q. Why is that?

24 A. It wouldn't have required a remedy

1 before understanding what the site conditions
2 were.

3 Q. Can there be instances when you
4 are required to do the nature and extent of the
5 evaluation investigation, but not required to
6 implement an extensive remedy?

7 A. That's possible.

8 Q. Have you also been involved in sites
9 where you had an investigation, but no extensive
10 remedy?

11 A. I have.

12 Q. Let's talk about the EECA. I
13 think you have a demonstrative on this or at
14 least a partial one.

15 A. Are you talking about this one
16 (indicating)?

17 Q. Yes. I think at least it's a partial.
18 Maybe we will -- it will -- we'll come to it later,
19 but it does describe the EECA documentation and
20 this is also described at length in your report,
21 correct?

22 A. Correct.

23 Q. What was the selected remedy under
24 EECA Version 4?

1 A. The -- for Site 3, there had been --
2 of the alternates that had been proposed, Johns
3 Manville, through the EECA, had proposed Alternate
4 2, which involved some excavation of
5 soils and then placement of a vegetative soil
6 barrier over the entire site and then obviously
7 because of that, there had been some ongoing
8 operations and maintenance obligations.

9 Q. Okay. What about on Site 6, the
10 western portion?

11 A. The western portion of Site 6
12 proposed something similar in the original EECA.

13 Q. When did JM know the actual scope
14 of the remedy for Sites 3 and 6? You talked
15 about an enforcement action in the memorandums
16 at the time.

17 A. I believe at the time the EAM came
18 out.

19 Q. Okay. And on Page 16 of your report,
20 I think it's actually maybe -- on Page 16 of your
21 report, the first full paragraph, you said that
22 "The EAM marked a significant expansion of the scope
23 of the remedy when compared to AECOM's EECA Version
24 4." Do you see that?

1 A. I do.

2 Q. Okay. Can you explain to us how it
3 was a significant expansion of the scope?

4 A. I think the primary -- there were
5 still some elements of what had been proposed
6 earlier, but they then took it a step further
7 in terms of asking that the concept of the clean
8 soil corridor be installed around certain of the
9 utilities on-site.

10 Q. And if you go to Page 1 of -- let's
11 go to Exhibit 65, which is the enforcement action
12 memorandum, which has already been stipulated into
13 evidence here.

14 HEARING OFFICER HALLORAN: Is that
15 Exhibit 65, Ms. Brice?

16 MS. BRICE: Correct.

17 BY MS. BRICE:

18 Q. On the first page, it talks about
19 the purpose of the action. Can you read that
20 into the record, please, just the first sentence
21 or so.

22 A. "The purpose of this memorandum is
23 to document the determination of an imminent and
24 substantial threat to public health, welfare or

1 the environment posed by contaminated soils at
2 the southwestern site area including Sites 3, 4,
3 5 and 6 in Waukegan, Lake County, Illinois and
4 to document approval of the proposed non-time
5 critical removal action for the site."

6 Q. Thank you. Page 1 also talks
7 about the action is the necessary, quote, to abate
8 or mitigate releases of hazardous substances
9 that may prevent an imminent substantial
10 endangerment to public health in the environment
11 posed by the presence of soils that were
12 contaminated with hazardous substances. Do
13 you see that?

14 A. Yes, I do.

15 Q. What does that mean to you?

16 A. That is a result of the culmination
17 of investigations that had been performed, the
18 risk evaluation that had been done, that in EPA's
19 determination that the conditions did represent an
20 imminent and substantial endangerment and that
21 further work to mitigate the conditions that had
22 been identified would be required.

23 Q. Thank you. Let's get a little more
24 granular and let's look at Page 65-8.

1 HEARING OFFICER HALLORAN: Before
2 we get real granular, how long do we have
3 on direct because I -- we mentioned before --

4 MS. BRICE: We have -- we have
5 a while.

6 HEARING OFFICER HALLORAN: Okay.

7 MS. BRICE: So I'm happy to stop
8 for lunch if you'd like to.

9 HEARING OFFICER HALLORAN: Would
10 that be everybody's preference and take an
11 hour and then -- because I didn't want to
12 break up Mr. Dorgan's testimony, but...

13 MS. BRICE: This would be a good
14 time to stop for that.

15 HEARING OFFICER HALLORAN: All
16 right. I will see everybody back here,
17 say, at 1:35. Thank you.

18 (Whereupon, after a short
19 break was had, the following
20 proceedings were held
21 accordingly.)

22 HEARING OFFICER HALLORAN: All
23 right. We are going back on the record.
24 We are back from lunch. It is approximately

1 1:40.

2 This is PCB 14-3 and we have
3 Mr. Dorgan still on the stand. He is still
4 under oath. It is Ms. Brice's direct
5 testimony.

6 You may proceed --

7 MS. BRICE: Thank you, Mr. Halloran.

8 HEARING OFFICER HALLORAN: -- on
9 your direct questions.

10 BY MS. BRICE:

11 Q. I'd like to turn to your report,
12 Exhibit 6, Page 6-11, which is actually Page 8
13 of your report. Let me know when you are there,
14 please.

15 A. Okay.

16 Q. There is a sentence here at the bottom
17 of the first paragraph that says, "For both Sites 3
18 and 6, US EPA generally required the removal of all
19 asbestos-impacted soils and the creation of clean
20 corridors for all utilities running through the
21 sites." What's the significance of that statement?

22 A. That's just summarizing the scope of
23 the remedies proposed by EPA in their enforcement
24 action memorandum.

1 Q. Let's take a look then at the
2 enforcement action memorandum and I would like
3 to turn to -- it's Exhibit 65. It's been
4 stipulated. It's 65-4.

5 The enforcement action memorandum
6 conducts a -- what is called a streamline risk
7 assessment. Can you tell me what they did and
8 what they concluded?

9 A. Yes. So part of the evaluation is
10 after you complete your investigation report on
11 your findings and then you subject your findings
12 to a risk evaluation, which is what the EPA had
13 done, and this summarizes their risk evaluation
14 and it's through this process that they identified
15 those old pathways and receptors that were of
16 concern to them and establish the idea that there
17 was an imminent hazard to human health and the
18 environment.

19 Q. Okay. And you have -- in the middle
20 of that page, it says exposure route. What was the
21 primary exposure route?

22 A. Primarily, primary exposure route
23 would be inhalation.

24 Q. Can you elaborate what you mean by

1 that for those that don't understand what risk
2 assessment is?

3 A. Typically, when you have contaminant,
4 the issue becomes a source coming in contact with
5 a receptor and the way in which the contrasts may
6 enter into the receptor. In this particular case,
7 the concern with inhalation, which is basically
8 breathing and the idea of breathing in air that
9 could be contaminated.

10 Q. And what was the health risk with
11 breathing in air that could be contaminated?

12 A. There were --

13 Q. As stated by the US EPA.

14 A. Let's see here.

15 Q. Page 6 might be of help.

16 A. Yeah. Well, the bottom line that
17 they were concerned with was the idea that asbestos
18 fibers could be breathed in and then present various
19 risks from exposure through the lungs.

20 Q. Okay. And I'd like to turn back to
21 Page 16 of your report. If you could, read into
22 the record the first sentence of the last paragraph.

23 A. Beginning with "It is apparent"?

24 Q. Correct.

1 A. "It is apparent that the primary
2 concern expressed by US EPA was buried ACM that
3 could either impact workers servicing utilities
4 or could reach the surface as a result of the
5 upward thrust of additional fragments or 'broken
6 scraps of asbestos'."

7 Q. Why is that significant?

8 A. The concern that EPA had expressed
9 was there was buried ACM that was present on the
10 site and that through various physical mechanisms,
11 that buried material could eventually work its way
12 to the surface where further discernments could
13 result in release of additional fibers exacerbating
14 the inhalation hazard.

15 Q. Let's turn to Page 6, which is
16 65-6 of the enforcement action memorandum, and
17 am I correct there's a paragraph in here that's
18 about one, two, three, four down and it talks
19 about in frost susceptible areas. Do you see
20 that?

21 A. Yes.

22 Q. Is this paragraph stated numerous
23 times in this document?

24 A. It is.

1 Q. Okay. Can you please read that
2 into the record and then tell us what that means
3 to you?

4 A. "In frost susceptible areas like
5 Waukegan, stones and other large particles, such
6 as broken scraps of asbestos, tend to move
7 differentially upward through the soil with each
8 freeze/thaw cycle. Thus, ACM and/or asbestos
9 fibers currently covered with soil can over time
10 reach the soil surface and become readily
11 releasable through the air."

12 Q. And what is the freeze/thaw cycle?

13 A. Freeze/thaw is the physical mechanism
14 whereas frost depth penetrates into the soil on an
15 annual basis, solid fragments like rocks and stones
16 will actually with time creep their way to the
17 surface through that freeze/thaw cycle. Each time
18 it freezes, they come up a little bit. Then it
19 thaws out and freezes again. It comes up a little
20 bit eventually and it will be exposed at the
21 surface. So the idea is that there could be
22 asbestos within the subsurface. The concern would
23 be that over time, that material could work its
24 way to the surface.

1 Q. After issuing the enforcement
2 action memorandum, did US EPA require JM to do any
3 additional investigation?

4 A. Yes.

5 Q. And what did they do?

6 A. They required further evaluation of
7 some of the utility corridors with respect to the
8 evaluation of the proposed remedy that would involve
9 utility access.

10 Q. And when was that done?

11 A. That would have been in the late
12 2000s.

13 Q. Late 2000s meaning?

14 A. It was roughly 2010.

15 Q. Well, the enforcement memorandum was
16 2012.

17 A. Okay.

18 Q. So would 2015 make sense?

19 A. It would have been right after the
20 enforcement action memorandum.

21 Q. I would like for you to turn to
22 Trial Exhibit 67, which I believe we already
23 admitted. It's Exhibit 67-1, Removal Action Work
24 Plan, Provision 4.

1 HEARING OFFICER HALLORAN: Just
2 for the record, Ms. Brice, none of them
3 have really been admitted, but we will
4 take it all at once when the time comes.

5 MS. BRICE: Okay.

6 HEARING OFFICER HALLORAN: But
7 they have all been stipulated to, the
8 ones you've pointed out.

9 MS. BRICE: Yes. Sorry. I
10 apologize.

11 HEARING OFFICER HALLORAN: No,
12 apology needed. Exhibit what?

13 MS. BRICE: Exhibit 67.

14 HEARING OFFICER HALLORAN: Thank
15 you.

16 BY MS. BRICE:

17 Q. Mr. Doran, what is Exhibit 67?

18 A. It's the current version of the
19 Removal Action Work Plan.

20 Q. And to your knowledge, is this
21 the version that currently applies?

22 A. I believe so with one amendment
23 that was required for it after it had been
24 submitted.

1 Q. Okay. And what was the one
2 amendment?

3 A. The amendment again had to do
4 with the additional investigation of one of
5 the utility corridors.

6 Q. And was that the Nicor line that
7 Mr. Ebihara was discussing?

8 A. I believe so, yes.

9 Q. What is the current remedy for
10 Site 3 under the Removal Action Work Plan?

11 A. Currently, which is what I have
12 demonstrated here on this demonstrative, there
13 are several elements to the Removal Action Work
14 Plan that are being required, including the --
15 in some cases relocation and abandonment of
16 several utilities.

17 The North Shore gas line
18 is to have a clean soil corridor completed around
19 it. There's approximately 900 cubic yards of
20 soil that's being excavated and removed from the
21 northeast corner of the site.

22 The remainder of the site will
23 receive an engineered barrier involving basically
24 a vegetative soil cover. Of course, with that

1 will come certain environmental controls and
2 covenants and then the site has to be fenced.

3 Q. And what about the western portion
4 of Site 6?

5 A. In that particular case, there's
6 again relocation and abandonment of several of
7 the utilities and also some soil excavation
8 occurring along the western end of the site.

9 Q. Thank you. Let's go back to your
10 report and we're going to go to Page 11.

11 On Page 11, we are moving
12 to Opinion 3.2, "IDOT Construction Activities
13 Responsible For ACM Waste." Can you read that
14 bolded section into the record?

15 A. It is my opinion that IDOT is
16 responsible for the placement and dispersion
17 of ACM waste currently found at the site. IDOT
18 used, spread, buried, placed and disposed ACM
19 waste, including Transite pipe, throughout
20 Site 3 and portions of Site 6 during construction
21 of the Greenwood Avenue ramp and expressway bypass
22 from 1971 to 1976. These construction activities
23 associated with the Amstutz Project resulted in
24 crushed Transite pipe and asbestos material being

1 spread across and buried at Site 3 and the western
2 end of Site 6. IDOT never removed the Transite
3 pipe and asbestos materials it spread across and
4 buried at the site."

5 Q. Is this still your opinion?

6 A. Yes, it is.

7 Q. Before we discuss this in detail,
8 let's take a look at some of your figures and
9 visualize the sampling.

10 If we could, turn to Figure 2
11 of this document, which is 06-25. Thank you.

12 MS. BRICE: For the record,
13 these have all been stipulated to, all
14 the exhibits to Mr. Dorgan's report.

15 HEARING OFFICER HALLORAN: Thank
16 you.

17 BY MS. BRICE:

18 Q. Mr. Dorgan, what is Figure 2?

19 A. Figure 2 considered the analytical
20 data that had been collected as part of the
21 various investigations that had previously been
22 completed at the site and attempted to provide
23 a visual representation of where asbestos fibers
24 had been detected and samples that had been

1 collected as part of those investigations.

2 Q. Explain this to me because we have
3 been talking about Transite pipe and we have been
4 talking -- and now you're talking about asbestos
5 fibers. Can you please differentiate for me?

6 A. Yes. So the Transite pipe is
7 actually in a solid form. It does -- as was
8 testified to earlier, the Transite pipe does
9 contain asbestos in its fibrous form. When
10 the asbestos pipe breaks down or is crushed or
11 pulverized, it can give off asbestos fibers.

12 This particular figure,
13 however, is not looking so much at the physical
14 material as much as when a soil sample was
15 collected and then subject to analysis, it's
16 looking at those samples where asbestos fibers
17 were identified in that soil sample matrix.

18 Q. And on here, we have delineated
19 Site 3, Site 6, Greenwood Avenue road/parking
20 lot. Are these all in the appropriate location
21 and accurately depicted where you believe they
22 were located at the time?

23 A. Yes, I believe so.

24 Q. There's some hatch areas up there

1 at the top. Could you explain what those are?

2 A. Yes. Those were areas that had
3 been intended to be excavated as part of the
4 Removal Action Work Plan.

5 Q. How big are asbestos fibers?

6 A. They can be microscopic up to thin --
7 very thin strands. They are just like they are
8 described, fiber.

9 Q. How deep are these asbestos fibers
10 that are being depicted on Figure 2?

11 A. Between the ground surface and
12 three feet below the ground surface.

13 Q. So what does that tell you about
14 this case?

15 A. That the fibers were largely
16 detected within close proximity of the ground
17 surface.

18 Q. And how do you believe the fibers
19 came to be located on Site 3 and Site 6?

20 A. I believe a contributing factor
21 certainly was a disturbance to the concrete
22 Transite pipe that had been present on the
23 parking lot. We acknowledge the possibility
24 of other sources for fiber, but the Transite

1 pipe represented the vast majority of the ACM
2 debris that was located on the site and we
3 know that it was disturbed from its original
4 form. So it certainly was a significant
5 contributor to the asbestos presence on the
6 property.

7 Q. Thank you. If you could, please
8 turn the page to Figure 3. What is this figure
9 detecting, Mr. Dorgan?

10 A. This particular figure took the
11 visual evaluation to the next step, which
12 was to look at where Transite pipe had been
13 identified in the various locations that
14 had been tested as part of the previous
15 investigations.

16 Q. And how is this different from
17 Figure 2?

18 A. Figure 2 again was only looking
19 at the laboratory analysis of samples that
20 were submitted whereas this was based upon
21 visual observations from the samples that were
22 collected in the field at the time the samples
23 were being collected.

24 Q. And what do these locations tell

1 you with respect to their correlation with the
2 road and the embankment?

3 A. Well, as I indicated in my report,
4 I believe you can see a general alignment that
5 tracks with both the location and Detour Road A
6 and to a certain and large degree the alignment
7 with Greenwood Avenue and the embankment that
8 was constructed as part of the Amstutz project.

9 Q. Let's go back to that opinion
10 that IDOT is responsible for the placement and
11 dispersion of the ACM waste. Let's go to
12 Page 11 of your report.

13 You note here on the bottom
14 of Page 11 that this opinion is supported by
15 multiple -- by the following -- sorry -- multiple
16 lines of evidence. Do you see that?

17 A. Yes.

18 Q. And what are your different lines
19 of evidence that you are referring to that support
20 this opinion?

21 A. Well, I started with what was
22 provided in the record and looked to see locations
23 where there were discussions about asbestos cement
24 pipe used on the property, what its purpose was

1 for, provided some basic background information
2 about the presence of asbestos in Transite pipe
3 and why it was there, relied upon the various
4 aerial photographs that were looked at that were
5 in the record in terms of the timing and pattern
6 of parking lot uses versus the construction
7 project.

8 We looked at the locations and
9 the order of construction of the detour roads
10 that transverse both Site 3 and Site 6. Of
11 course, we considered the technical specifications
12 for the project, the design plans, and some of
13 the expectations with respect to cut and fill
14 volumes.

15 We certainly took into account
16 the standard specifications which we read into
17 the record previously in terms of how these
18 particular types of materials were intended to
19 be managed.

20 Q. Thank you. Let's talk about a
21 few of these in some more detail. You talked
22 about cut and fill material. How do you know
23 that IDOT used fill material on Sites 3 and 6?

24 A. There's a couple of locations

1 where that's discussed in terms of projections
2 of fill volumes that were needed as part of
3 the project. Plus, there are engineering
4 drawings that were part of the technical
5 specifications which show the current conditions
6 and then the proposed conditions and then with
7 that, how much soil had to be removed from
8 underneath where the road was going to be located
9 to take out what is considered unsuitable material,
10 material that would have been a problem for
11 future construction in terms of building on top
12 of it.

13 So there was an initial
14 excavation that had to take place to remove
15 the unsuitable materials. Then there was a
16 backfilling process that took place to raise
17 it back up to grade. Then there was an
18 additional filling process that would actually
19 create the embankment and bring the embankment
20 up to the design elevations that were called
21 for in the specifications.

22 Q. Thank you. And if you turn to
23 Page 12 of your report, which is Exhibit 16-6-15 --
24 excuse me -- second to the last paragraph, it

1 has a -- it talks about borrow excavation and
2 262,540 cubic yards. Can you explain this to
3 me and what the significance of that is?

4 A. Yeah. That was material that
5 would have been needed to basically raise the
6 Greenwood Avenue embankment and to provide
7 fill for those areas where soils had been
8 cut as part of the unsuitable material removal
9 process.

10 Q. Okay. Where did you get that? You
11 said on Shee5 5, Schedule of Quantities. Is this in
12 the engineering drawings?

13 A. That's correct.

14 Q. Did the plan specify where this
15 borrow or fill material was supposed to come
16 from?

17 A. No.

18 Q. Okay. I'd like to have you turn,
19 if you would, to Exhibit 58.

20 MS. BRICE: I believe there
21 is an objection as to a portion of
22 Exhibit 60 that we can --

23 HEARING OFFICER HALLORAN: Wait.
24 We're on Exhibit 58?

1 MS. BRICE: We're on 58 -- I'm
2 sorry. Yes. We are on 58, correct. There
3 is no -- 58 is stipulated.

4 HEARING OFFICER HALLORAN: Okay.
5 Thank you.

6 BY MS. BRICE:

7 Q. Mr. Dorgan, have you seen Exhibit 58
8 before?

9 A. Yes, I have.

10 Q. And what is this document?

11 A. This is the document that when EPA
12 began investigating this site, they would have
13 it sent to a number of parties seeking to provide
14 information what they knew concerning the site
15 conditions and their possible involvement in the
16 site conditions.

17 Q. And who is this letter addressed to?

18 A. The secretary of the Illinois
19 Department of Transportation.

20 Q. And if you could, please turn to
21 Page 58-6. If you could, read that into the record
22 for me, please?

23 A. The entire page.

24 Q. No, no. I'm sorry. Question 10.

1 A. Question 10: "Describe all
2 arrangements for the transportation, movement
3 or placement of ACM that was in situ at area
4 of concern number three that the Illinois
5 Department of Transportation carried out in
6 the construction of F.A. Route 42 Section 8-HB
7 and 8-VB, particularly Bypass A and the
8 post-construction phase of this project."

9 Q. Thank you. And as part of your
10 expert report, you relied on IDOT's response
11 to this question; isn't that true?

12 A. Yes.

13 Q. And what is your understanding of
14 IDOT's response to this question?

15 A. That there was an acknowledgement
16 that as part of their construction efforts, there
17 was Transite pipe buried on the site.

18 Q. Okay.

19 MR. MCGINLEY: Objection. It's
20 hearsay, calls for speculation on the part
21 of the witness.

22 MS. BRICE: Sure. Hearsay, he's
23 allowed to rely on his testimony and we
24 also moved -- they moved in limine to exclude

1 this document and you ruled it was not --

2 HEARING OFFICER HALLORAN: That
3 was the document regarding Duane Mapes?

4 MS. BRICE: Yes.

5 MR. MCGINLEY: And also for the
6 record, I'd note that it's more prejudicial
7 and probative. I mean, it really is --
8 it's double hearsay. It comes from -- it
9 was given by Duane Mapes after he was no
10 longer in the employ of IDOT. I mean, he's
11 not -- it's not a party admission.

12 HEARING OFFICER HALLORAN: Well,
13 it is. I mean, it's under their rules, is
14 it?

15 MS. BRICE: Yes, it is.

16 HEARING OFFICER HALLORAN: Yes.

17 At the --

18 MS. BRICE: It's an admission of --

19 HEARING OFFICER HALLORAN: --- time
20 he was a party opponent.

21 MS. BRICE: -- a party opponent
22 adopting --

23 HEARING OFFICER HALLORAN: Secondly --

24 MR. MCGINLEY: Not --

1 HEARING OFFICER HALLORAN: -- I
2 think -- I'm sorry?

3 MR. MCGINLEY: Not at the time that
4 he made the statement.

5 HEARING OFFICER HALLORAN: Well,
6 it -- as I said in my April 26th order,
7 which I still rely on, I mean, it's a matter
8 of public record. I think I'm a prudent guy
9 and I would rely on it in the course of serious
10 business.

11 Yeah. I think they're
12 trustworthy and material. I don't think
13 the prejudice outweighs the probative value.
14 So your objection is noted and overruled,
15 but thank you for raising it again.

16 MR. MCGINLEY: Sure. Thank you.

17 BY MS. BRICE:

18 Q. Mr. Dorgan, would you please turn
19 to Exhibit 60?

20 A. Yes.

21 Q. Could you please identify this
22 document for me?

23 A. It's a correspondence dated
24 November 27th of 2000, addressed to Mike Rafati

1 U.S. Environmental Protection Agency and it
2 provides IDOT's response to 106 E request that
3 they received.

4 Q. 104 E?

5 A. 104 E. Excuse me.

6 Q. Is this the document that you were
7 referencing a moment ago?

8 A. Yes.

9 Q. And would you please turn to
10 Page 60-4 and read into the record IDOT's response
11 on No. 10?

12 A. Response No. 10 reads, "J. Randall
13 Schick reviewed the documents in the possession
14 of the department and attached hereto and none
15 of them appear to discuss any arrangements for
16 ACM that was in situ at area concern number three.
17 The retired resident engineer, Duane Mapes, for
18 this construction project during a telephone with
19 J. Randall Schick, assistant chief counsel, in
20 October 2000, recalled dealing with asbestos pipe
21 during the project and burying some of it. As the
22 department does not have information about where
23 ACM was located at the start of the project and
24 where it is alleged to have been disposed, he was

1 unable to ask Mr. Mapes to provide more information.
2 The department has no other information responsive
3 to this question."

4 HEARING OFFICER HALLORAN: Which
5 exhibit is this, Ms. Brice?

6 MS. BRICE: Sixty.

7 HEARING OFFICER HALLORAN: Thank
8 you.

9 BY MS. BRICE:

10 Q. What is your understanding of this
11 reference to area concern number three?

12 A. I had understood that this would be
13 referencing to Site 3.

14 Q. Thank you. Let's go back to your
15 figures in your expert report. Let's take a look
16 at Figure 4, please, which is 06-27. I believe
17 that I mentioned to counsel that you had made a
18 correction to this document and that we had a copy
19 of it and we would then have you explain that in
20 the record.

21 A. Would you like me to explain the
22 figure first or the revision?

23 Q. Please explain the figure significance
24 and then the revision.

1 A. The figure was prepared again.
2 Part of the effort here was to try and understand
3 where these materials are located. This particular
4 figure, when it was generated, looked at the ACM
5 that was noted in subsurface logs and it also
6 captured the results of a set of the analysis
7 that had been done on samples collected during
8 the investigation and then creates a cross-section
9 that runs the length of Detour Road A to provide
10 a visual representation of where the ACM is in
11 respect to various conditions, both pre-existing,
12 existing and then the elevation that the road
13 had been proposed to be at as well and then
14 the final piece of information was the fill
15 depths that were encountered as part of the
16 investigatory work.

17 Q. Okay. So bottom line, what does
18 this document show you?

19 A. It basically shows again as
20 represented in one of the earlier figures that
21 the ACM that's been depicted both in lab analyses
22 and as in its own physical form is mainly at the
23 ground service.

24 Q. Okay. But is it above the level

1 of the fill that IDOT --

2 A. Yes, yes.

3 Q. -- placed?

4 A. It's above the fill depths and at
5 near and close to the existing ground surface.

6 Q. And how did you know that?

7 A. The design drawings that were
8 provided for the Amstutz project in some cases
9 show the proposed depth of excavation that was
10 needed in order to remove unsuitable materials.
11 Then in other locations, it's predicated on
12 interpretation of the boring logs that were
13 generated through the investigation work.

14 Q. Okay. So based upon this figure,
15 what -- are you saying that the asbestos had
16 been detected along the detour road is within
17 the fill material placed by IDOT?

18 A. That's correct.

19 Q. Okay. Can you please explain your
20 correction to this figure?

21 A. Yes. We basically made two fairly
22 minor changes. One, we had not represented in
23 one of the locations where Transite had been
24 encountered. HYD-05 appears right in the very

1 middle of the cross-section and that lines up
2 with the location on the plan view itself.

3 Then the second modification
4 was to extend across the depth of the fill material
5 based upon further evaluation of the engineering
6 record.

7 You can see that this original
8 fill line on the original figure stopped be here
9 (indicating). It's been extended all the way
10 through the profile in this revision.

11 HEARING OFFICER HALLORAN: What
12 exhibit number is this, this revision?
13 Is it six?

14 MS. BRICE: We haven't -- we
15 just brought this today as a demonstrative
16 to fix Exhibit 06-27. So 06-27 was in
17 the record, but we wanted to lay the
18 foundation for it first to see if there
19 was an objection to amending it.

20 MR. MCGINLEY: Well, there is
21 an objection to amending it because, I
22 mean, Mr. Dorgan had produced the original
23 version of this figure over 11 months --
24 more than 11 months ago. It was back in

1 March of last year.

2 Here we are 14 months later
3 and he is now providing a revision to this
4 document and wants to testify about it.

5 The revisions being provided
6 today, I think that's extraordinarily
7 prejudicial. I mean, if Mr. Dorgan is
8 going to be the expert and speak in any
9 sort of authoritative fashion, I think
10 it's incumbent upon him to have done the
11 work in the initial going and not to be
12 springing something that's new and a
13 revision to his opinion however he may
14 want to characterize it as being minor
15 on the very day of the hearing in this
16 matter.

17 HEARING OFFICER HALLORAN: Okay.
18 Ms. Brice?

19 MS. BRICE: Sure. Can I ask the
20 witness a couple of questions?

21 HEARING OFFICER HALLORAN: You may.

22 BY MS. BRICE:

23 Q. What was the reason why you wanted
24 to make the revision?

1 A. Just to accurately represent the
2 actual findings of the investigation.

3 Q. All right. And does this figure
4 change your opinion in any way from the opinion
5 that you were relying on in the original version
6 6-27?

7 A. Not at all.

8 Q. So there's nothing about this new
9 figure that alters your opinion; is that correct?

10 A. That's correct.

11 MS. BRICE: So my response would
12 be this one is more accurate. It's the
13 only way it's being -- the only reason
14 it's being produced is in an effort to
15 be accurate, but it doesn't change the
16 opinions.

17 So I would think it would
18 be nice to have the expert be able to
19 correct something for accuracy purposes.

20 HEARING OFFICER HALLORAN: All
21 right. Mr. McGinley, now is it prejudicial
22 to you?

23 MR. MCGINLEY: Well, I mean, again
24 the original source document, the original

1 Figure 4 was produced to us 14 months ago.
2 This is a new version. We haven't had a
3 chance to, you know, think about it, look
4 at it. We haven't had a chance to discuss
5 it with our expert.

6 I mean, it seems prejudicial
7 on its face to be allowed to have Mr. Dorgan
8 go forth with this and when, you know, he
9 had -- certainly if he wanted to be accurate
10 about this, he's had 14 months to do that.
11 It doesn't have to be the day of the hearing.

12 HEARING OFFICER HALLORAN: Well,
13 I mean, both sides are kind of guilty of
14 that. I mean, IDOT sent something in
15 technically the day before the hearing,
16 Exhibits 162, 163 and 167. What's good
17 for the goose is good for the gander. I
18 don't mean to --

19 MR. MCGINLEY: The difference,
20 of course, with respect to 162 and 163
21 is that those are -- again, those are
22 documents that are referenced in the
23 document that --

24 HEARING OFFICER HALLORAN: But

1 they shouldn't have to dig for them, you
2 know?

3 MR. MCGINLEY: Well, they --
4 again, I would have to imagine if it's
5 your decision to let this in go forth
6 with it, then I would assume it applies
7 the three exhibits that Johns Manville
8 has objected to as well.

9 HEARING OFFICER HALLORAN: Well,
10 I'll address that when the time comes. I
11 think I'm going to allow it over objection.
12 So you may proceed.

13 MS. BRICE: Thank you.

14 BY MS. BRICE:

15 Q. I would like to turn to Figure 5,
16 please, on the next page.

17 Mr. Dorgan, can you please explain
18 to us what this is?

19 A. This is very similar to Figure 4,
20 except in this particular instance, the plan and
21 profile is aligning with Greenwood Avenue and is
22 representing the embankment work that was
23 undertaken.

24 It also shows the unsuitable

1 materials that had been removed as part of
2 the design specifications for the project and
3 represents the location from the samples that
4 had been collected as to where ACM was located
5 in both visual and via certain lab analysis.

6 Again, it's demonstrating
7 that the materials that were identified are
8 located within the fill placed as part of the
9 Greenwood construction project.

10 Q. Thank you. I have handed you a
11 board demonstrative that is part of Exhibit 21
12 and this is -- can you explain to me what that
13 is?

14 A. This is -- these are taken out of
15 the specifications -- the design specifications
16 for the project and this was showing what the
17 proposed final grade lines would be and it was
18 showing the subsurface conditions --

19 MR. MCGINLEY: Excuse me. I
20 object. Can we just know what exhibit
21 he is referring?

22 MS. BRICE: It's 21.

23 MR. MCGINLEY: What page?

24 HEARING OFFICER HALLORAN: And,

1 you know, for the record, before we leave
2 this hearing, we are going to -- the number
3 of exhibits is unwielding and they are not
4 clearly distinguished between one and the
5 other. You have like exhibits with 63 and
6 42 subparts. I think I'm just pulling a
7 number out, but I think we are going to
8 go through it and take a half a day to
9 figure out what all of these exhibits are
10 and all the numbers because -- yeah. I
11 just look at these exhibits here and today,
12 I get in and they're all kind of subparts.
13 I'm not privy to that.

14 MS. BRICE: Here, we have it
15 here.

16 HEARING OFFICER HALLORAN: Thank
17 you.

18 MS. O'LAUGHLIN: Thank you.

19 HEARING OFFICER HALLORAN: I mean,
20 do you understand where I'm coming from?

21 MS. BRICE: Sure.

22 HEARING OFFICER HALLORAN: It's
23 really difficult for me to follow it.

24 MS. BRICE: Understood. We do

1 apologize. As you know, there was discovery
2 going on at the last minute. So it got a
3 little crazy.

4 HEARING OFFICER HALLORAN: You
5 can proceed.

6 MS. BRICE: Thank you. I'm just
7 trying to be exact with the Bates numbers
8 for you.

9 MR. MCGINLEY: Mr. Halloran,
10 can we get from counsel an explanation
11 as to how this differs from what they
12 filed because, I mean, we haven't seen
13 what the subparts are for -- I mean, is
14 this the final, ultimate exhibit list?
15 We're seeing this for the first time.

16 HEARING OFFICER HALLORAN: One
17 at a time. We're still on the record or
18 I would like for it to be on the record.
19 Go ahead, Mr. McGinley.

20 MR. MCGINLEY: I'm just asking --
21 I mean --

22 MS. BRICE: I can explain.

23 MR. MCGINLEY: Well, I mean, I
24 just want to point out for the record,

1 I mean, we have various sub exhibits that
2 are listed in here. This is completely
3 different from -- I mean, it was numbers
4 without subparts to it. Now, we have an
5 exhibit list that we're seeing for the
6 first time that has numbers with subparts.
7 I mean, this is --

8 HEARING OFFICER HALLORAN: Well,
9 that's what I brought out earlier.

10 MR. MCGINLEY: Yes.

11 HEARING OFFICER HALLORAN: I'm
12 having a really hard time figuring out what
13 this is.

14 MS. BRICE: Sure. Honestly, I had
15 thought that those subparts of this -- this
16 was put together at the last minute. The
17 documents are identified within the numbers.
18 Subparts were in an effort to try and make
19 it more clear because sometimes the documents
20 had Bates ranges of, you know, 20 different
21 pages. So we were trying to do subparts to
22 make it clearer. There's nothing new on that
23 exhibit list that was not on the original
24 exhibit list.

1 MS. CAISMAN: So I'll clarify.
2 As an example, Exhibit 3 was on the list.
3 We filed it as IDOT's discovery responses.
4 Obviously, we're there are many of those.
5 So since there are so many of those, so
6 just broke those out A, B, C by individual
7 documents.

8 MS. O'LAUGHLIN: And those are
9 broken out in the binders as well?

10 MS. BRICE: Yes. You have the
11 binders the way they are broken out.

12 MS. CAISMAN: That's really the
13 only difference between the two lists.

14 HEARING OFFICER HALLORAN: And
15 Ms. Brice, is there a table of contents
16 for all of these binders? Is that what
17 this is?

18 MS. BRICE: Yes, yes.

19 HEARING OFFICER HALLORAN: All
20 right. Thank you. I just thought it was
21 me having a difficult time, but I mean,
22 if everybody is fine with it now, I mean,
23 if we need to address it later on, which
24 I think we will --

1 MS. O'LAUGHLIN: Yeah. I mean,
2 we will make our objections. We'll reserve
3 it. Obviously, we need to look at it and
4 do our best to sort this all through.

5 HEARING OFFICER HALLORAN: Well,
6 I do note the Bates stamps are down here.

7 MS. O'LAUGHLIN: Yeah. Well, we
8 haven't seen this before. Okay? We just
9 saw this just now.

10 HEARING OFFICER HALLORAN: This
11 one sheet?

12 MS. O'LAUGHLIN: Yeah, this
13 collection of --

14 HEARING OFFICER HALLORAN: On
15 May 17th?

16 MS. O'LAUGHLIN: Yeah. This is
17 the first time -- we were just tendered this.

18 HEARING OFFICER HALLORAN: So was
19 I. I'm talking about May 17th.

20 MS. O'LAUGHLIN: Right. No. The
21 exhibit list previously filed, we have that,
22 yes.

23 HEARING OFFICER HALLORAN: Right.
24 And behind that in parens, they have Bates

1 stamps.

2 MS. O'LAUGHLIN: Right.

3 HEARING OFFICER HALLORAN: 8137
4 to 8138 and I think those correlate to the
5 subsections here.

6 MS. O'LAUGHLIN: I hope so.

7 HEARING OFFICER HALLORAN: Yes, so
8 do it.

9 MS. BRICE: That was the intent.
10 There's no exhibits on there. There's
11 nothing we're trying to hide. We were
12 trying to simplify it at the last minute.

13 HEARING OFFICER HALLORAN: Oh,
14 no. Yeah. I'm not insinuating that. Fair
15 enough. We can proceed. Again, we will
16 take a look later on in the next day
17 or two and go through this to make sure
18 we're all onboard.

19 MS. BRICE: Okay.

20 HEARING OFFICER HALLORAN: Thank
21 you. Sorry to interrupt.

22 MS. BRICE: No problem.

23 BY MS. BRICE:

24 Q. So Mr. Dorgan, this document that

1 you are looking at is JM 001157, which is 21 in
2 your binder, A-26.

3 Mr. Dorgan, did you use this
4 document to create Figure 5?

5 A. Yes.

6 Q. How so, please?

7 A. We used it to replicate the profile
8 and the subsurface conditions that were identified
9 on their drawing and in particular to demonstrate
10 the materials that were deemed to be unsuitable
11 that were required to be removed as part of the
12 project and then backfilled.

13 Q. Okay. Thank you. So when you
14 look at Exhibit 5 -- Figure 5 -- I'm sorry --
15 and you go down to the level that's 585 and
16 you see peat soft written there, what is this
17 depicting and how does it relate to 21A-26?

18 A. That's matching up with the
19 unsuitable fill or -- excuse me -- unsuitable
20 materials that's been identified on IDOT's
21 engineering drawings that had to be removed.

22 Q. Okay. So the point is IDOT had
23 to dig down to that level in order to install
24 the embankment?

1 A. Yes.

2 Q. What is your overall opinion about
3 this document, Figure 5?

4 A. That when you look at the presence
5 of the ACM that was identified during the
6 investigation for those borings done along that
7 part of Greenwood Avenue that the ACM being
8 identified in the fill material placed by IDOT
9 as part of the project.

10 Q. I would like to draw your attention
11 to the top of Figure 5 and there is a -- right
12 underneath the road, there is something LFR
13 excavation. Do you see that?

14 A. I do.

15 Q. What is that?

16 A. There was a point in 2008 when
17 there was some work being done for ComEd within
18 the Greenwood Avenue right-of-way and that
19 excavation was advanced at that location as
20 part of that effort and during that excavation,
21 Transite pipe was encountered in the excavation.

22 Q. And what was the conclusion?

23 A. That the Transite pipe and the
24 material that it was located in were part of

1 the material placed for the embankment construction
2 of the Greenwood Avenue overpass.

3 Q. Does Figure 5 confirm that?

4 A. Yes.

5 Q. Now, I would like to go to Figure 2
6 of your rebuttal report, please. We have seen
7 a lot of figures that look similar. How is this
8 one different from the ones we've just looked at?

9 A. The previous one we were looking at,
10 any concerns of ACM debris -- visual ACM. This
11 one took it a step further and broke it down to
12 just those locations where Transite pipe was
13 described by the sampler as being present in the
14 samples being collected.

15 Q. And does this figure in your mind
16 actively depict where those sample locations were
17 detected -- where the ACM was detected in the
18 sample located?

19 A. Where the Transite pipe was detected
20 in the sampling that was done, yes.

21 Q. Thank you. Pardon me. How does this
22 document impact your opinion?

23 A. Consistent with my previous
24 observations, I believe it generally shows the

1 alignment between buried Transite pipe and the
2 Detour Road A and Greenwood Avenue construction
3 efforts.

4 Q. If we could, please go to Exhibit 84,
5 please.

6 A. Do I have 84?

7 Q. I don't know. You should, but if
8 you don't I will bring it to you or you can look
9 up on the screen. I think you will recognize
10 this.

11 MR. MCGINLEY: No. We don't
12 have Exhibit 84 in our binders. Sorry.
13 Just for the record, our exhibits end
14 with --

15 HEARING OFFICER HALLORAN: So
16 Mr. McGinley, for the record, your exhibits --

17 MS. O'LAUGHLIN: Wait, wait.

18 MR. MCGINLEY: In all of the
19 boxes, we missed one.

20 HEARING OFFICER HALLORAN: Thank
21 you.

22 BY MS. BRICE:

23 Q. Mr. Dorgan, can you please identify
24 Exhibit 84 for us?

1 A. Yes. This is a cross-section that
2 was created that looks at two sections, A to A
3 prime, B to B prime, which run parallel with and
4 immediately south of Greenwood Avenue through the
5 embankment area.

6 Q. And could you please go up to the
7 screen for the people in the room, point out the
8 area you are talking about?

9 A. The two cross-sections run along
10 the north side of Site 3. The one that transects
11 A to A prime runs along the Greenwood Avenue road
12 from west to east from the embankment down to the
13 terminus end where Detour Road A and Greenwood
14 Avenue intersect.

15 The second cross-section
16 B to B prime runs along and parallel with the
17 north boundary of Site 3 immediately to its
18 south and again runs west to east starting near
19 the western edge of Site 3 again along and through
20 Detour Road A and ends slightly east of Detour
21 Road A immediately south of the intersection of
22 Greenwood Avenue and Detour Road A.

23 Q. Thank you. And if you could then
24 go down slightly to cross-section A-A and then

1 there's sort of a dotted line at the bottom there,
2 what is that dotted line?

3 A. This dotted line is taking the
4 elevation from the IDOT design drawings showing
5 the depth of unsuitable material removal that
6 was needed as part of embankment construction
7 effort.

8 Q. Okay. So what are you showing above
9 that unsuitable material level?

10 A. Basically, everything above that
11 would have been material that would have been
12 brought in as part of the construction effort
13 after the unsuitable materials were removed.

14 Q. Okay. And what are you depicting
15 in that drawing?

16 A. This is showing -- as keyed into
17 the key, this is looking at the various types of
18 asbestos materials that were identified during
19 the investigations and within the specific borings
20 that were advanced through that film material as
21 part of the characterization of the site.

22 Q. Okay. And what are you seeing there?

23 A. I'm seeing different described
24 types of asbestos material located throughout

1 the fill materials that are in that embankment.

2 Q. Such as? What are the different
3 types of asbestos-containing materials depicted
4 on your figure?

5 A. You have asbestos sludges that
6 were identified, you have Transite pipe that
7 was identified and other asbestos debris that
8 was located in those samples.

9 Q. And are those all depicted on this
10 figure, all of the different types of asbestos
11 that were depicted in each of those borings
12 represented on Figure 5?

13 A. Yes.

14 Q. If you could, please turn to the
15 page or actually the next page, please.

16 A. Okay.

17 Q. And this is Figure No. 2 and this
18 is obviously very similar, but can you explain
19 to us what you're showing here and why -- how
20 this is different from the previous figure?

21 A. Again, these are a series of
22 cross-sections. Rather than running parallel
23 with the Greenwood road and the Site 3 boundary,
24 these actually intersect and run perpendicular

1 to those previous cross-sections.

2 As you can see from -- an
3 example is C to C prime, this runs from just
4 south of the center line of Greenwood Avenue
5 through the embankment to C prime and this
6 corresponding cross-section, this is actually
7 here corresponding to that. That is represented
8 on the cross-section itself. So you can see
9 there's one, two, three, four, five, six, seven
10 cross-sections that were created.

11 Q. Is there any asbestos-containing
12 material found below the line that you have
13 depicted on here as base elevation of fill
14 material?

15 A. No.

16 Q. And so what does this document
17 tell you?

18 A. Again, it demonstrates that of
19 the asbestos materials that are located in this
20 area of the site, the materials are located
21 within the IDOT fill material above the limits
22 where the excavation occurred.

23 Q. And have you depicted on this
24 figure every piece of ACM that was detected

1 in those borings that are along these two
2 stretches?

3 A. Yes.

4 Q. Now, if you were to look at this
5 document in 3D -- I'm sorry. That's not a good
6 question.

7 If you were to look in 3D at
8 this embankment, what would you see? How would
9 you describe that? It's awfully hard to see in
10 this sort of 2D dimension. Is there a better
11 way to describe it?

12 A. Oh, I think what you would find is
13 that within the embankment materials, you're
14 going to find occurrences of different types
15 of asbestos materials at different locations
16 within that embankment.

17 Q. Is there any evidence in the
18 record that JM buried this non-Transite ACM on
19 top of -- on Site 3 or Site 6?

20 A. Not that I'm aware of.

21 Q. Can you please go to Exhibit 57?
22 Thank you.

23 A. Exhibit 57?

24 Q. Yes. It is the ELM report. We're

1 bringing it up to you in a moment.

2 MS. BRICE: May I approach?

3 HEARING OFFICER HALLORAN: You
4 may.

5 BY MS. BRICE:

6 Q. Can you turn to Figure 14 on that
7 document and let us now for the record what the
8 actual page number is, please? Oh, it's at
9 JM 000564, Exhibit 57-535.

10 Have you seen this document
11 before?

12 A. I have.

13 Q. And what is this depicting?

14 A. This is a representation that
15 ELM included in their report of locations
16 where ACM was located at the ground surface
17 when they did a visual reconnaissance of the
18 property.

19 Q. And did you discuss this in your
20 expert report?

21 A. I did.

22 Q. What was your conclusion?

23 A. That there were -- obviously, there
24 was various types of ACM encountered across the

1 site. When I looked at their detailed sheets --
2 worksheets where they tabulated the materials
3 found, the overwhelming majority was Transite pipe
4 fragments.

5 Q. And did you have an occasion to
6 try and compare this to your figures that you
7 had put together to see how this matched up
8 with the location of the roadway and the site?

9 A. We did.

10 Q. What did you discover?

11 A. We found that again similar to the
12 results of the subsequent investigations that were
13 presented that there was a strong correlation
14 of Transite pipe located aligned with Greenwood
15 Avenue and the Detour Road A.

16 Q. Thank you. I would like to turn
17 to Page 6 of your rebuttal report. Actually, I
18 apologize, 16-5.

19 Here, you are talking about
20 the standard specifications that we reviewed
21 earlier and you say that they encourage the use
22 of materials found on the project site, including
23 concrete pipe, and indicate that such concrete
24 pipe shall not be wasted and can be buried in

1 embankments, within the right-of-way or outside
2 the rights-of-way with permission of the resident
3 engineer and you're citing to Section 202.03,
4 correct?

5 A. That's correct.

6 Q. And is that language contained in
7 the specifications applicable to this project?

8 A. Yes, it is.

9 Q. Let's go to the specifications for a
10 moment. That is 19, please. We already discussed
11 some aspects of this previously. Mr. Gobelman
12 testified, did he not, that concrete Transite pipe
13 would be treated as an obstruction under these
14 specifications; is that correct?

15 A. Yes.

16 Q. Do you agree with him?

17 A. Yes.

18 Q. How are obstructions handled under
19 these specifications?

20 A. They are encouraged to be used on
21 the site and treated as a source of fill material
22 or otherwise as an opportunity to use the materials
23 within fill material if they are processed to a
24 certain dimension that wouldn't compromise the

1 structural integrity of the fill.

2 Q. Now, we discussed a moment ago the
3 concept of not wasting material. Can you look at
4 Section 202.04, please? Can you read that first
5 part into the record, "Excavated Materials"?

6 A. At 202.04?

7 Q. Correct.

8 A. "Grading the Roadway, Intersection
9 and Entrances," is the title. It says, "Excavated
10 materials that are suitable shall be used in the
11 construction of the roadway as far as practicable
12 and no such materials shall be wasted without
13 permission of the engineer."

14 Q. Okay. I would like to turn you
15 back again to 202.03 and look one second, if
16 you could, and read into the record the provision
17 about surplus excavated material. It is the
18 second full paragraph. If you could, read the
19 first sentence, please.

20 A. "Surplus excavated material,
21 including excavated material from sewer trenches,
22 catch basins or other underground construction,
23 shall be used to widen embankments, flatten slopes
24 or be disposed of otherwise within the right-of-way

1 as the engineer may direct."

2 Q. And can you read the next two
3 sentences, please?

4 A. "It shall in no case be deposited
5 at an elevation higher than that of the adjacent
6 roadway without permission from the engineer. If
7 it cannot be used or disposed of within the limits
8 of the right-of-way, it shall be disposed of by
9 the contractor at his expense outside the limits
10 of the right-of-way.

11 Q. Okay. What is that telling you?

12 A. It suggests to me that there's a
13 strong economic driver on the contractor's part
14 to be sure that any of these types of materials
15 that are encountered on the site get used in a
16 way that avoids having to haul them from the
17 site.

18 Q. And what happens if he has to remove
19 it?

20 A. It pays for it.

21 Q. I'm sorry?

22 A. He pays for it.

23 Q. To close the loop here on this
24 opinion on causation, did you consider the

1 possibility that JM bury the ACM found or Sites
2 3 and 6?

3 A. Yes.

4 Q. And how did you exclude that?

5 A. I felt that the preponderance of
6 the evidence in terms of the record, the
7 investigation work that had been done, what was
8 known and understood about the parking lot, that
9 what we were finding predominantly was crushed
10 and buried Transite pipe and there was nothing
11 else in the record that suggested that there was
12 another source of that Transite pipe than the
13 parking bumpers that had been used on the
14 parking lot.

15 Q. Thank you. I'd like to turn to
16 Page 15 of your expert report. We're going to
17 move onto another opinion. This is on 6-18,
18 for the record.

19 You mentioned this earlier,
20 but why don't you just read the bolded line
21 into the record, please, the one that starts
22 "it is my opinion."

23 A. "It is my opinion that in the
24 absence of the buried and dispersed Transite

1 pipe on the site, it is unlikely that any response
2 action would have been necessary at the site
3 other than surface ACM removal efforts."

4 Q. And can you please explain that to
5 us?

6 A. Well, as I was reviewing the record,
7 what I found fairly consistently was that EPA,
8 starting with their requested modifications to
9 the EECA and then reinforced with the issue of
10 their enforcement action memorandum references
11 to the freeze/thaw cycle and concerns with scraps
12 of asbestos waste through that freeze/thaw cycle.

13 Even though they were buried
14 at the time, there was the potential that they
15 could become exposed at the ground surface at
16 a later date. Once exposed at the ground surface,
17 they then could be subject to further degradation
18 resulting in release of additional asbestos fibers
19 and that was very specifically added to the EECA
20 and then it was very specifically referenced in
21 the enforcement action memorandum.

22 I believe that was their
23 primary concern with conditions that existed at
24 the site. As I indicated earlier that while

1 there were some limited presence of other ACM-type
2 materials, the vast majority of what was identified
3 was the crushed Transite pipe.

4 So again, I believe that
5 their concern with Transite pipe having the
6 potential of working its way to the ground surface
7 over some extended period of time drove the type of
8 remedy that we ended up with.

9 Q. Thank you. I'd like to turn to
10 that demonstrative you have to your right entitled,
11 "Remedial Scope and Cost Analysis Comparisons."
12 You had an opinion in your original expert report
13 on this topic; isn't that correct?

14 A. Yes.

15 Q. Okay. And what is this depicting?

16 A. Well, what I have here are a
17 comparison of the -- for Site 3 the EECA
18 Revision 4, which is what had been proposed, and
19 then what we ended up with in terms of the scope
20 of what the EECA Version 4, Alternate 2 would have
21 looked like for Site 3 versus where we're at
22 currently with the Removal Action Work Plan.

23 As you can see then, I have
24 tabulated the costs for each. Under the estimate

1 that had been provided in the EECA for Alternate 2
2 for Site 3, I suggested a range of costs between
3 \$595,000 and \$630,000 and the current Removal
4 Action Work Plan estimate is running at just over
5 \$1.9 million and then, of course, we have some
6 O & M costs as well of roughly \$140,000.

7 Q. And that's for Site 3, correct?

8 A. That's for Site 3.

9 Q. Okay. And what are you basing these
10 numbers on? We can just quickly -- I'm trying to
11 go fast here. Exhibit 71 in your book is a January
12 25, 2016, letter to you from Mr. Ebihara, correct,
13 Exhibit 71-1?

14 A. Yes, that's correct.

15 Q. Is this the basis for your cost
16 projections?

17 A. Yes. This was an update to the
18 cost projections that had been provided as the
19 scope continued to be refined for the Removal
20 Action Work Plan.

21 Q. Okay. And these cost projections
22 are lower, are they not, than the ones that were
23 in your original report?

24 A. Yes, they are.

1 Q. Okay. So these are based upon new,
2 more accurate numbers, in your opinion?

3 A. That's correct.

4 Q. And you used Exhibit 71 to create
5 your demonstrative; is that correct?

6 A. For the Site 3 Removal Action Work
7 Plan, yes.

8 Q. Can you now explain to us what you
9 have on your demonstrative with respect to Site 6?

10 A. Yes. Site 6, in my original expert
11 report, I had suggested the -- as I just mentioned
12 that, in the absence of the buried Transite pipe
13 in section -- on Site 6 that I wasn't -- I was
14 of the opinion that it was unlikely we would
15 have done anything there.

16 So from that perspective,
17 the remedy cost would have been at zero. I did
18 take a more conservative approach in my expert
19 report and at least look at the alternate that
20 was being provided for under the EECA Revision 4
21 for comparative purposes, but at the end of the
22 day, my opinion had been that we would not have
23 been doing anything.

24 By contrast, we're now at

1 Version 4 of the Removal Action Work Plan and
2 for Site 6, the current estimate based upon
3 the information that was provided in
4 Mr. Ebihara's updated cost projections is that
5 the construction cost on Site 6 will be a range
6 with an upper bound number of somewhere around
7 \$787,000.

8 Q. And did the embankment on Site 6
9 exist before 1970?

10 A. No.

11 Q. Did the detour road on Site 3 exist
12 before 1970?

13 A. No.

14 Q. And when you're talking about
15 these costs on Site 6, you're talking about
16 the west end of Site 6; is that correct?

17 A. That's correct.

18 Q. And are the -- is there a breakdown
19 of these costs contained in Exhibit No. 71, a
20 breakdown of some sort of the tasks involved?

21 A. Yes, yes. As they were working
22 with contractors and obtaining contractor estimates
23 and applying knowledge of work that had already
24 been completed, they relied upon that to further

1 refine their estimate.

2 Q. I'd like to turn -- and I'm almost
3 done -- to your opinion in Section 3.4, which
4 is at Exhibit 6-22. Can you please read the last
5 paragraph of this opinion into the record?

6 A. "Based upon my experience in the
7 foregoing, it is my opinion that IEPA would more
8 likely than not view IDOT's conduct during the
9 Amstutz project involving asbestos as violating
10 Section 21 of the Act. We believe that a client
11 engaged in similar activities would be subject
12 to potential enforcement action."

13 Q. What is this opinion based upon?

14 A. Primarily on what I have seen IEPA
15 do in other circumstances of a similar nature.

16 Q. Thank you. And if you go up to the
17 second paragraph, you're talking about it's your
18 opinion that the regulators would treat the ACM
19 material as discarded material that would qualify
20 as waste for the definition under the Environmental
21 Protection Act; is that correct?

22 A. That's correct.

23 Q. What is that opinion based upon?

24 A. Again, my experience with responding

1 to violations where Section 21 was leveraged by
2 the IEPA for similar circumstances.

3 Q. You also say here that Site 3 would
4 not be landfill under Illinois law. Why not?

5 A. It doesn't have a permit.

6 Q. To your knowledge, does IDOT have
7 a permit at all with respect to Site 3 or Site 6?

8 A. Not that I'm aware.

9 Q. Does anyone have a permit from IEPA
10 with respect to Sites 3 or 6?

11 A. Not at that time.

12 MS. BRICE: Could you give me
13 one moment, sir? I just want to review
14 and make sure I'm done.

15 HEARING OFFICER HALLORAN: Yes.

16 BY MS. BRICE:

17 Q. I do have one other thing to ask.
18 If you could turn to -- I believe it is in the
19 Binder No. 1 -- Exhibit 31, please.

20 MS. BRICE: There is a stipulation
21 on this, Mr. Halloran.

22 HEARING OFFICER HALLORAN: Thank
23 you.

24

1 BY MS. BRICE:

2 Q. This is IDOT 000294 through 300.

3 Do you recognize this document?

4 A. Yes, I do.

5 Q. And can you please turn to the
6 page to -- the second page, which is IDOT 000295
7 and there is a third paragraph that starts with
8 junction. Can you read that, please?

9 A. Yes. It says the junction of
10 detour roads A and B with Greenwood and Sand
11 resulted in two triangular areas of undrained
12 land immediately adjacent to these roadway. It
13 was necessary to grade and shape ditches and to
14 install temporary culverts under detour A and B
15 in order to provide a stable roadway.

16 Q. Okay. And what did they do? What
17 does this document show you?

18 A. If you refer back to the figure
19 that's attached to it, IDOT 000297, it shows
20 the location of the detour roads and it shows
21 the location where culverts were installed in
22 order to provide more positive drainage under
23 the roadway.

24 Q. And would this have likely have

1 been in red? Would this have been discussed
2 earlier to the extent that you know?

3 A. I'm not sure. This, I believe,
4 is an attachment to a change order. So it may
5 not have been.

6 Q. Okay. And when you installed a
7 culvert such as this -- and is that culvert on
8 Site 3?

9 A. Yes. Although this particular
10 reproduction of this figure doesn't represent
11 that location very well, but yes, there was one
12 on Site 3.

13 Q. And is it in the area of the parking
14 lots?

15 A. Yes.

16 Q. Could you please describe that for us
17 in words?

18 A. It looks like what you ended up
19 with is when you construct Detour Road A and
20 Detour Road B and you had the existing Greenwood,
21 you basically created a triangle that the water
22 that was in that triangle had nowhere to go. So
23 in order to dry the site conditions up to be able
24 to work in the area, they would have had to try

1 to move that water away and a fairly typical
2 process for doing that would be to construct some
3 ditches and then because they had to move the water
4 from one side of Detour Road A to the other, it
5 looks like they put a culvert in underneath the
6 detour road to allow the water to flow.

7 Q. And does the document indicate where
8 they found these culverts?

9 A. Yes. There's a notation. Again,
10 that's difficult to read, but as I recall, it
11 said that they -- at least for two of them, they
12 reused abandoned pipe that had been taken from
13 the site, I believe, abandoned gas main.

14 Q. Thank you. How big of an area
15 would they have disturbed in order to install
16 such a culvert?

17 A. Well, I'm not sure I could say
18 specifically how many square feet of disturbance,
19 but obviously they would have had to take a pipe
20 and extend it across the detour road from the
21 area where water was standing to an area where
22 that water can discharge.

23 The drawings show, you know,
24 the approximate length of each of the pipes.

1 That's about what I know in terms of the extent
2 of that particular effort.

3 Q. And do you have any idea how deep
4 they would have dug below the area? Does it show
5 that? There is a drawing of the culvert.

6 A. Yes. There's a figure for it. They
7 really show the dimensions of the culvert itself,
8 but obviously they would have had to put the --
9 it would have been underlying the pavement, but
10 at a shallow enough depth that they could actually
11 daylight from where the water was standing inside
12 that little triangular area to the other side of
13 Detour Road A so again the water could flow.

14 MR. MCGINLEY: Excuse me,
15 Mr. Halloran. Could we just find out
16 if the witness is actually looking at
17 a particular exhibit? I mean, he seems
18 to be making reference to some --

19 HEARING OFFICER HALLORAN: Yes.
20 Fair enough. Ms. Brice?

21 MS. BRICE: It's Exhibit 31-4.
22 It's up there on the --

23 MR. MCGINLEY: It still looks
24 like -- it looked like he was looking at

1 a different page. I'm sorry.

2 MS. BRICE: Oh, are you looking
3 at a different page?

4 THE WITNESS: Oh, I'm sorry. I
5 had flipped to 296, the preceding page.

6 HEARING OFFICER HALLORAN: Still
7 on Exhibit 31?

8 THE WITNESS: Yes.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 MS. BRICE: I have no further
12 questions.

13 HEARING OFFICER HALLORAN: All
14 right. Thank you.

15 We're going to take a
16 ten-minute break before you start your
17 cross.

18 MR. MCGINLEY: Yes. Thank you.

19 (Whereupon, after a short
20 break was had, the following
21 proceedings were held
22 accordingly.)

23 HEARING OFFICER HALLORAN: Let
24 me know when you are ready and we can

1 start.

2 MR. MCGINLEY: One minute.

3 HEARING OFFICER HALLORAN: All
4 right. We are back on the record at
5 approximately 3:08. We took about a
6 12-minute break. We have Mr. Dorgan on
7 the stand, which is JM's witness. They
8 just finished their direct and we have
9 cross, I believe.

10 Mr. McGinley, just to remind
11 everybody, keep your voices up. Thank
12 you.

13 You may begin.

14 MR. MCGINLEY: Thank you.

15 C R O S S - E X A M I N A T I O N

16 by Mr. McGinley

17 Q. Mr. Dorgan, I would like to ask you
18 a few preliminary questions. What are you being --
19 what are you charging per hour for your work on
20 this matter?

21 A. I believe \$260 an hour.

22 Q. Okay. And how many hours
23 approximately, I mean, to the best of your
24 knowledge, have you spent so far working on this

1 matter?

2 A. Oh, an estimate would be couple
3 hundred.

4 Q. A couple hundred hours?

5 A. Yes.

6 Q. How many others working for you?

7 A. Probably something similar in the
8 aggregate.

9 Q. Okay. And are you responsible for
10 when invoices go out from Weaver Consulting to
11 Johns Manville work, Bryan Cave, whomever you're
12 actually billing for your work, do you review
13 those invoices before they go out and make sure
14 they're accurate?

15 A. I do.

16 Q. Just roughly speaking, how much
17 money to date has Weaver billed the complainant
18 in this matter?

19 A. Aggregate, I guess, it's \$80,000
20 to \$100,000.

21 Q. Okay. Thank you. I know it seems
22 that you're, rightfully so, concerned about being
23 accurate in your work, correct?

24 A. Yes.

1 Q. I'd like to ask you a few things
2 about your opinions that you've prepared in this
3 matter. Last year, do you recall when you were
4 deposed in this matter?

5 A. I do.

6 Q. Do you recall during the course of
7 your deposition it became apparent there were a
8 few, shall we say, citation errors in your report?

9 A. Yes.

10 Q. Okay. Since the date of your
11 deposition last year on May the 6th to the
12 present date, so almost a year, besides the
13 reversion to Figure 2 that you were using
14 earlier in your response to counsel's questions,
15 have you discovered any other errors or any
16 other things that needed to be corrected within
17 your original report?

18 A. Not that I'm aware of.

19 Q. How many times since the deposition
20 last year have you actually reviewed your report?

21 A. At least several.

22 Q. So you're confident that the report
23 itself is otherwise accurate besides the errors
24 that were noted last year and the revisions that

1 you're making here today?

2 A. I believe so.

3 Q. I want to turn actually to -- this
4 would be back to Joint Exhibit 6. This would be
5 your expert report, if you have that in front of
6 you. I'd like to turn first to Section 1.2 and
7 this is regarding your qualifications. Are you
8 there?

9 A. Yes.

10 Q. Okay. You say you have over 25
11 years experience working as an environmental
12 consultant; is that correct?

13 A. That's correct, yes.

14 Q. And you have been qualified
15 as an expert witness in support of litigation
16 associated with projects involving environmental
17 assessment, design, permitting and
18 construction-related issues. Do you see that,
19 sir?

20 A. That is in the second paragraph?

21 Q. That's right. It's more or less
22 in the middle --

23 A. Yes.

24 Q. -- of that paragraph?

1 A. Yes.

2 Q. Okay. With respect to being an
3 expert witness, have you ever been -- is it
4 your testimony that you have been named as an
5 expert with respect to construction-related
6 issues?

7 A. I have testified as an expert
8 relative to construction projects involving --
9 I can think of at least one transfer station
10 that was being permitted and I testified in
11 the hearing for that -- for that particular
12 construction project.

13 Q. Okay. And when you say transfer
14 station, you're talking about a waste -- a
15 hazardous waste transfer station, correct?

16 A. Correct.

17 Q. Okay. Have you ever been an expert
18 witness in a case involving construction of a
19 highway?

20 A. No.

21 Q. Okay. Have you ever given any
22 sort of expert opinion in support of -- other
23 than in this case -- where you were asked to
24 give or provide consulting services regarding

1 a highway construction project?

2 A. No.

3 Q. Okay. So I want to turn to your
4 deposition, please. This would be Exhibit 4. Do
5 you have that in front of you, sir?

6 A. I don't believe so.

7 MS. O'LAUGHLIN: It's in the
8 binder.

9 MS. BRICE: Which deposition
10 are you using?

11 MR. MCGINLEY: His initial
12 deposition -- I'm sorry -- the May 6th
13 deposition.

14 BY THE WITNESS:

15 A. Great. I have it.

16 BY MR. MCGINLEY:

17 Q. Do you have it in front of you,
18 sir?

19 A. I do.

20 Q. Okay. Do you recall last year
21 having testified that the projects that I've
22 had suggestions as to origin of waste materials
23 having originated with road construction projects.
24 Do you recall having testified to that last year?

1 A. Yes.

2 Q. And when you say origin of
3 waste materials having originated with road
4 construction projects, did any of those road
5 construction projects that you were referring
6 to during your deposition involve asbestos?

7 A. Yes.

8 Q. They did?

9 A. Yes.

10 Q. Which ones?

11 A. I can think of one that we did
12 just recently where there was debris on a site.
13 It was a large debris pile some of which
14 originated from road demolition, but there
15 was asbestos fragments mixed with a large debris
16 pile.

17 Q. And when exactly did you do that
18 work?

19 A. Two years ago.

20 Q. Two years ago.

21 Is that listed in the CV that's
22 attached to your expert report?

23 A. I don't recall.

24 Q. Well, why don't we turn actually

1 to your CV, which I believe towards the end of
2 your work before the figures. Your CV is, I
3 believe, at the end of your expert report. You're
4 familiar with your CV obviously?

5 A. Yes.

6 Q. Which of the projects involving
7 removal of asbestos from a road construction
8 situation referenced here in your select project
9 experience?

10 A. I don't know that I have any
11 specifically. This is obviously just a
12 representation of select project experience.
13 It certainly doesn't capture everything I
14 have been involved with.

15 Q. Can you show me in your Section 1.2
16 of your expert report where you referenced the
17 project that you were just describing to us about
18 having removed -- the construction project where
19 asbestos particles were involved?

20 A. I haven't.

21 Q. It's not in 1.2 of your report?

22 A. I don't reference any specific
23 projects in Section 1.2 of my report.

24 Q. You didn't feel it necessary with

1 respect to a discussion in your expert report
2 about your qualifications to actually talk about
3 something that was directly relevant to the
4 issues which you were presenting an opinion in
5 this case?

6 A. I believe that the way in which I
7 represented my credentials in my qualifications
8 section spoke to my capacity to opine on the
9 matters that were subject in this particular
10 matter.

11 Q. I note that you have worked on
12 some Superfund cases including -- I believe
13 Pines Superfund site in Pines, Indiana; is that
14 correct?

15 A. That's correct.

16 Q. The issue in this case does not
17 involve asbestos, does it?

18 A. No.

19 Q. It involves fly ash and groundwater
20 contamination if I'm correct; is that right?

21 A. Yes.

22 Q. Have any -- have you worked on any
23 other Superfund sites?

24 A. Yes.

1 Q. Have any of those Superfund sites
2 also contained asbestos?

3 HEARING OFFICER HALLORAN: Could
4 you keep your voice up, please?

5 MR. MCGINLEY: I'm sorry.

6 BY MR. MCGINLEY:

7 Q. Have any of the Superfund cases --
8 sites that you've worked on also involved asbestos?

9 A. I don't recall whether the Superfund
10 sites specifically involve asbestos. They may
11 have because there were several sites that were
12 waste sites that included all sorts of different
13 types of wastes. Asbestos could have been it,
14 but were they specifically addressing asbestos?
15 No, probably not.

16 Q. Okay. So your answer then would be
17 you haven't actually worked on other Superfund
18 sites that involved asbestos?

19 A. Correct.

20 Q. Thank you. In your affidavit that
21 you filed in support of Johns Manville's response
22 to our motion in limine to strike your opinion, you
23 provided an affidavit and counsel talked about that
24 affidavit earlier; is that correct?

1 A. That's correct.

2 Q. If memory serves me right, in that
3 affidavit you talk about the time that you spent
4 at Warren Engineering -- well, I guess initially
5 it was called Eldridge Engineering and subsequently
6 it was acquired by Warren Engineering Corporation;
7 is that right?

8 A. That's correct.

9 Q. Okay. Paragraph 4 of your affidavit
10 states, "My project responsibilities included,
11 but were not limited to design of grading plans,
12 stone water conveyance systems including plans
13 and profiles, roadways, environmental control
14 systems, and end use plans."

15 Now, the reference here in
16 Paragraph 4 of your affidavit, I guess this would
17 have been dated February 15th, does the reference
18 here to roadways refer to highway construction
19 projects at all?

20 A. No.

21 Q. What sort of roadway are you referring
22 to or making reference to?

23 A. These were primarily roadways that
24 would have been part of other site development

1 plans. They would have either been on-site
2 roadways or access roadways.

3 Q. Okay. When you say other site
4 development plans, what are you referring to
5 specifically? What kinds of site development
6 plans?

7 A. Well, at the time that I was
8 doing that kind of work, I was doing a lot of
9 landfill work. So we were doing a lot of
10 landfill permitting, a lot of landfill design.
11 We did have other -- we were doing transfer
12 stations, material recovery facilities. So
13 the roadway work that I would have done would
14 have been on-site roads and it would have been
15 access roads to those sites.

16 Q. Okay. Have you ever designed an
17 embankment for a roadway?

18 A. I've designed embankments, but not
19 specifically for a roadway.

20 Q. Okay. So your answer to the question
21 is no, you've never designed an embankment for a
22 roadway?

23 A. No.

24 Q. I would like to turn your attention

1 back to the initial report. Here, I'd like to
2 talk to you about some of the statements that
3 you had made at Section 2.2.1. This would be on
4 Page 4 of your report.

5 It states under the very first
6 sentence, "Site 3 is owned by ComEd and is located
7 south of the Greenwood Avenue right-of-way near
8 the southern property line of the former JM
9 manufacturing facility." How did you learn that
10 Site 3 is owned by ComEd?

11 A. I believe from multiple references
12 within the record.

13 Q. Okay. And the very next sentence
14 says, "According to Nicor Gas Company, a 20-inch
15 natural gas line was installed six to eight feet
16 below ground surface beneath Site 3 in 1948." Do
17 you see that reference?

18 A. I do.

19 Q. Now, earlier during counsel's
20 questioning of you on direct, you stated that the
21 very first developed use of Site 3 was the building
22 of a parking lot in the mid-1950s. Wouldn't you
23 consider the laying of utility pipeline through
24 Site 3 to be a developed use of the property?

1 A. No.

2 Q. What about the transmission towers
3 on the property?

4 A. No.

5 Q. Why don't they, in your mind,
6 constitute developed uses?

7 A. When I consider developed use, we're
8 typically looking at where the property was actually
9 being used for something other than -- and there's
10 lots of vacant parcels that have easements and
11 transmission lines that run across them. I'm
12 looking for when somebody began using the property
13 for some sort of productive purpose.

14 Q. And a utility line, in your mind,
15 is not a productive purpose?

16 A. I think it's certainly a productive
17 purpose, but it's not developed for the purpose
18 of using the property. It's an access. It's a
19 line that runs through the property, but the site
20 itself hasn't been developed.

21 Q. Okay. Do you recall earlier when
22 counsel was asking you about the parking lot and
23 the lease agreement, correct?

24 A. Uh-huh.

1 Q. The first time that you saw the lease
2 agreement was when?

3 A. Within the last several weeks.

4 Q. Prior to -- in the course of trying
5 to develop the opinions that are in your expert
6 report from last year, did you attempt to find
7 or ask for any information related to the
8 construction of the parking lot?

9 A. Yes.

10 Q. And you conveyed that request to
11 counsel, I take it?

12 A. Yes.

13 Q. And you were -- during the course
14 of your preparation of this report, you weren't
15 able to -- nobody provided you with any information
16 regarding the construction of the parking lot?

17 A. The information that I had regarding
18 the construction of the parking lot came from the
19 information that was reviewed in the record.

20 Then as I've already stipulated,
21 there was a conversation that took place between
22 me and Denny Clinton with regard to the reference
23 in one of the earlier reports to his understanding
24 of the parking lot construction and I was attempting

1 to understand the information that he conveyed to
2 ELM when ELM wrote their report.

3 Q. But you haven't actually ever seen --
4 with the exception of the exhibit that's attached --
5 the diagram that's attached to the back of the
6 lease agreement, which by now you have seen,
7 correct, the license agreement?

8 A. That's correct.

9 Q. And that was just within the past few
10 weeks, correct?

11 A. That's correct.

12 Q. So prior to having seen that
13 document, that diagram, within the past few weeks,
14 you've never seen any other diagram done by Johns
15 Manville regarding the construction or the designed
16 layout of the parking lot?

17 A. That's correct.

18 Q. And you asked for information if such
19 was available, I assume, correct?

20 A. Yes.

21 Q. In the course of preparing your
22 opinions, did you ever investigate what Johns
23 Manville's waste management practices might have
24 done?

1 A. I did not.

2 Q. You never sought to try and figure
3 out how -- I assume in the manufacturing process,
4 and you seem to have -- is it fair to say you have
5 at least some familiarity with the manufacturing
6 process?

7 A. Some.

8 Q. Okay. Would it be fair to say --
9 and as an expert, I mean certainly speculate
10 about this -- in the manufacturing process
11 sometimes things are going to be manufactured
12 not to specification, don't meet the needs of the
13 end project, would that be a fair statement?

14 A. I think that would be a fair
15 statement.

16 Q. So what then -- did you not think
17 it was necessary to figure out what might have
18 been done with that waste material, how that
19 might have been removed from the site?

20 A. I was not in a position to
21 speculate as to what might have been done with
22 off spec product that was generated at the Johns
23 Manville site.

24 Q. I understand that you were not in

1 a position to speculate, but did you make any
2 inquiries to try to understand how waste material
3 might have been handled during the period of time
4 that the Johns Manville facility was in operation
5 manufacturing projects?

6 A. No.

7 Q. In the course of researching your
8 opinions that led to your initial report, did you
9 ever attempt to understand -- other than the use
10 of the parking lot, did you have any other
11 understanding about what the prior site history
12 of Site 3 might have been, what the prior use
13 of the site might have been?

14 A. Prior uses of Site 3 prior to the
15 parking lot?

16 Q. That's correct.

17 A. I was not aware that there had
18 been prior uses of Site 3 prior to the parking
19 lot.

20 Q. To your knowledge, was Site 3 ever
21 fenced off or enclosed in any fashion or was it
22 open?

23 A. I'm not aware of it being fenced off
24 or if it had always been open.

1 Q. From your review of aerial
2 photographs, do you have -- I mean, would you be
3 able to speculate as to whether it was fenced off
4 or open?

5 A. No.

6 Q. You have looked at several aerial
7 photographs at this point, correct?

8 A. Yes.

9 Q. I would assume that if a fence had
10 been in place, you could see the embankment --
11 the perimeter of the parking lot in those aerial
12 photographs when they existed; right?

13 A. Correct.

14 Q. And so wouldn't it be fair to assume
15 that if there had been fences around the property
16 of Site 3 that those would also be visible?

17 A. It's possible that you may be able
18 to view a fence. It would depend on how it was
19 constructed and where it was located and the
20 quality of the aerial.

21 Q. Let me ask you something about
22 your viewing of the aerial photographs. It's
23 my understanding that when professionals are
24 looking at aerial photographs, it's not unusual

1 to look at aerial photographs with what's called
2 stereoscopic technology, double glasses where you
3 put the -- you impose the photographs. There is
4 an overlapping area and you have essentially what
5 are 3D glasses and you looking at the photograph
6 and it's able to sort of pop up with what would
7 otherwise be a two dimensional representation
8 into a simulated three dimensional representation.
9 Are you familiar with that?

10 A. I am.

11 Q. When you were look be at aerial
12 photographs, were you using similar methodology
13 for looking at those photographs?

14 A. No, I did not.

15 Q. And you were aware of that before
16 you actually got the aerial photographs before
17 this case, correct?

18 A. Was I aware of the technique?

19 Q. Were you aware of that technology,
20 that stereoscopic technology?

21 A. Yes.

22 Q. And you chose -- and for some reason,
23 you did not look at these photographs with
24 stereoscopic technology?

1 A. No.

2 Q. Okay. Doesn't stereoscopic technology
3 produce a better visual image of what's on the
4 photograph than just by looking at it with the naked
5 eye?

6 A. The only thing that the stereoscopic
7 does is it gives you the sense of depth and
8 dimension and relief. It doesn't necessarily make
9 the aerial anymore clear or doesn't improve the
10 quality of the aerial.

11 Q. Your knowledge about the parking
12 lot is that split Transite pipe was used as --
13 used to demarcate the perimeter of the parking lot,
14 correct?

15 A. Correct.

16 Q. And also, it's used to delineate
17 parking spots in the parking lot, correct?

18 A. That's my understanding.

19 Q. As an expert, can you speculate
20 for us whether it's possible for that asbestos
21 pipe, that Transite pipe to break down and degrade?
22 I mean, the parking lot was in use for 15 years,
23 correct, more or less?

24 A. Yes.

1 Q. Okay. During the course of that 15
2 years, isn't it possible that some of the Transite
3 pipe that might have been on-site could have broken
4 down or been replaced?

5 A. It's possible.

6 Q. Okay. Now, did you ever seek to
7 understand whether, in fact, any of the Transite
8 pipe that had been on the parking lot initially
9 had ever been replaced during the course of the
10 15 years the parking lot was in operation?

11 A. I'm not aware whether that any
12 Transite pipe had been replaced during that
13 period.

14 Q. But did you look? Did you attempt
15 to ascertain that or you just don't have any
16 information that tells you that?

17 A. I have no information that tells
18 me that.

19 Q. So it's fair to say you can't rule
20 out as testified here today that the Transite pipe
21 that was in place at the time the parking lot
22 ceased operation might have been replaced by
23 different Transite pipe than was initially placed
24 in the parking lot?

1 A. I have no information to know whether
2 it was or was not.

3 Q. But you can't rule out that
4 possibility?

5 A. No, I can't rule it out.

6 Q. Thank you. I'd like to turn your
7 attention, please, to -- this would be joint
8 Exhibit 57 and this is the ELM report that we've
9 talked about today.

10 You are familiar with this
11 report -- I'm sorry. You don't have it.

12 MS. BRICE: What are you
13 looking at?

14 MR. MCGINLEY: This is Joint
15 Exhibit 59. I believe it's 59, the ELM
16 report.

17 MS. BRICE: Exhibit 59?

18 MR. MCGINLEY: It's 57, 57.
19 I'm sorry.

20 MS. BRICE: Mr. Halloran, this
21 is the exhibit we have the weird stipulation
22 on.

23 HEARING OFFICER HALLORAN: Okay.
24 With the hearsay.

1 MR. MCGINLEY: The stipulation
2 is that we agree that it's an authentic
3 document. They don't agree as to the
4 admissibility with all of the statements.

5 MS. BRICE: Correct.

6 HEARING OFFICER HALLORAN: And
7 that is 57?

8 MS. BRICE: Correct.

9 HEARING OFFICER HALLORAN: It's
10 on what page? What's the Bates stamp?

11 MR. MCGINLEY: I can give you
12 the Bates stamp. It's JM 000030 through
13 580. That's Exhibit 57, one through 570.

14 HEARING OFFICER HALLORAN: I'm
15 sorry, Mr. McGinley. What is that again?

16 MR. MCGINLEY: It's 57, one
17 through 570.

18 HEARING OFFICER HALLORAN: Okay.

19 MR. MCGINLEY: Do you have that
20 in front of you, sir?

21 Yes, I do. I guess is that
22 a number of pages? I have Exhibit 57 in
23 front of me. I thought earlier this morning
24 I was directed to one page.

1 MR. MCGINLEY: Yes. It's the
2 executive summary. I believe it's Page --
3 I'm sorry. Let me turn -- it's 57-11.

4 HEARING OFFICER HALLORAN: Okay.
5 I'm there.

6 MR. MCGINLEY: I'm trying to
7 cross-reference a few different numbers.
8 I'm sorry.

9 BY MR. MCGINLEY:

10 Q. Mr. Dorgan, you have seen this report
11 before correct?

12 A. That's correct.

13 Q. And this is actually included as one
14 of the items in the bibliography that you attached
15 to your expert report; is that correct?

16 A. That's correct.

17 Q. You recall last year in the deposition
18 we discussed certain language that's on 1-4? This
19 is JM 00040. Do you recall that?

20 A. I need to be referenced to the
21 specific language and the specific discussion.

22 Q. Certainly. It says, "According
23 to JM, the parking lot was constructed with
24 materials containing ACM. Over a period of

1 years during the use of the lot and during and
2 after its demolition, ACM was distributed
3 throughout the surrounding area." Do you see
4 that language, sir?

5 A. Yes.

6 MS. BRICE: And that's the
7 language.

8 HEARING OFFICER HALLORAN: Yes.
9 You know, as before, I'm going to overrule
10 and allow it. I just -- again, I think
11 reasonable and prudent people rely on it.
12 It's from ELM for -- prepared for Johns
13 Manville. So, yes, it's allowed.

14 MS. BRICE: Okay.

15 HEARING OFFICER HALLORAN: Thank
16 you.

17 BY MR. MCGINLEY:

18 Q. So over a period of years during
19 the use of a lot and after its demolition --
20 and during and after its demolition, ACM was
21 distributed throughout the surrounding area.
22 So this report, if I understand this correctly,
23 is saying that the asbestos-containing material
24 could have been distributed from the parking

1 lot while it was in use, wouldn't you agree
2 with that statement? That's what that says
3 correct?

4 A. It could be inferred that that's
5 what it's suggesting.

6 Q. Well, I mean, it says it in plain
7 English, but if you want to suggest it's just
8 an inference, that's fine. ACM was distributed
9 throughout the surrounding areas. Isn't that --
10 I mean, that's -- you're suggesting in your
11 earlier testimony that the reason why the
12 asbestos that might be seen in the surrounding
13 area was caused only by IDOT's construction
14 work, correct? Isn't that, in essence, the sum
15 of your opinion?

16 A. I believe my opinion is placing
17 a greater degree of the responsibility for the
18 dispersed and buried ACM on the site on IDOT's
19 activities, but I don't believe I ever suggested
20 that's the only origin. In fact, I believe I
21 recognized that there were other ACM materials
22 on the site besides just Transite pipe.

23 As I testified earlier, the
24 frequency of Transite pipe was much greater

1 than any other material that was identified
2 at the site.

3 Q. I'd like to turn to Page 2 and
4 this is in the executive summary and scope of
5 work of your initial expert report. This is
6 item two. This is on the top of Page 2. So
7 that would be -- I'm sorry. I'm looking at
8 Exhibit 06-5, Paragraph 2 at the top.

9 A. Yes.

10 Q. It says, "IDOT is responsible for
11 the placement and dispersion of ACM waste
12 currently found at this site. IDOT, at a minimum,
13 used, spread, buried, placed and disposed of ACM
14 waste, including Transite pipe, throughout Site 3
15 and portions of Site 6 during its work on the
16 Amstutz project from 1971 to 1976." Do you see
17 that, sir?

18 A. Yes, I do.

19 Q. And that's still your opinion today,
20 correct?

21 A. Yes.

22 Q. That IDOT's work resulted in asbestos
23 waste being spread throughout Site 3 and a portion
24 of Site 6?

1 A. Yes.

2 Q. Okay. I'd like to go back to the
3 OEM report, please. Again, we're talking about
4 JM 00040, Exhibit 7-11, second full paragraph on
5 the page reads -- could you read that for us?

6 A. Second full paragraph?

7 Q. Yes, the one that starts "There is
8 little."

9 A. "There is little ACM at zero to
10 three feet below ground surface when the size
11 of Site 3 and the number of soil sampling
12 locations are taken into account. ACM and the
13 subsurface was mostly concentrated in the area
14 of the former parking lot. This is to be
15 expected since the materials used to build
16 former parking lot contained ACM."

17 Q. As I understand it, the subsurface
18 soil sampling that was done in conjunction with
19 the ELM report probably constituted the largest
20 sampling exercise that's taken place to date at
21 this site. Would you agree with that
22 characterization?

23 A. Yes. It was certainly one of the
24 more comprehensive investigations.

1 Q. One of the more comprehensive --
2 is the most comprehensive, wouldn't you agree with
3 that?

4 A. It was certainly very comprehensive,
5 whether -- it's the most comprehensive of those that
6 have been done, yes.

7 Q. Okay. When it says that there is
8 little ACM at zero to three feet below ground
9 surface, when you consider the size of the site
10 and the number of soil sample locations that
11 are taken into account, doesn't that directly
12 controvert what you're saying in your report
13 that asbestos is found and distributed throughout
14 Site 3?

15 A. I would have difficulty really
16 even understanding what that sentence says and
17 I also know from evaluating the actual results
18 of this and other investigations that there was
19 very little asbestos found below three feet.
20 Most of it was found within zero to three feet
21 of the ground surface. That's been represented
22 on a number of the figures that had been produced
23 that we've discussed today already.

24 Q. So you take issue with the results

1 of the most comprehensive subsurface investigation
2 that's been done to date; is that right? Your
3 opinion, you believe, is right and the information
4 that's being conveyed, the characterization of the
5 subsurface investigation at Site 3 that's set forth
6 in the ELM report, you disagree with that, is that
7 a fair statement?

8 A. Yes. I have to rely on the analysis
9 of the results that were presented, both in this
10 investigation and others in order to form my
11 opinion and certainly that sentence, which I'm
12 not sure how the size and number of locations,
13 I'm just not sure what they're suggesting in
14 this -- in that particular sentence.

15 Q. And yet you used this report in
16 your bibliography, you make reference to this
17 in your report?

18 A. Yes.

19 Q. You testified earlier regarding
20 the 104(e) response that IDOT gave back in 2002
21 to the US EPA?

22 A. Yes.

23 Q. You testified this statement made by
24 Duane Mapes who was the resident engineer for this

1 project, correct?

2 A. Yes.

3 Q. Okay. What's your understanding
4 about the scope of the project?

5 A. Of which project?

6 Q. Of the project that's at issue here,
7 the project that's documented that you made
8 reference to earlier.

9 A. The Amstutz project?

10 Q. Well, I'm not talking about the
11 Amstutz. I mean, this is a separate project. This
12 is a subsidiary project, if you will, with respect
13 to the Amstutz.

14 MR. MCGINLEY: May I approach
15 and pull out an exhibit?

16 HEARING OFFICER HALLORAN: Yes.

17 BY MR. MCGINLEY:

18 Q. I'm showing you what's previously
19 been the subject of your testimony here today.

20 Okay. This is the first page
21 of the as-built plans. This shows the scope of
22 the project. It doesn't show the entire Amstutz.
23 It just shows a portion of the project that's
24 centered more or less along Greenwood Avenue.

1 Would you agree with that?

2 A. Yes, I do.

3 Q. Okay. I'm going to give this to
4 you, sir. Hold onto that, please. Let me ask
5 you again. The scope of this project, in terms
6 of linear distance, what was the linear distance
7 of this project?

8 A. I don't know that offhand.

9 Q. There is a scale that's included
10 at the bottom and it's demarcation on the length
11 of the project. It's actually demarcated there.
12 So what would that -- what's the length of that
13 project?

14 A. Well, there's a reference here at
15 the bottom that says gross length 2,221.01 feet
16 equals 0.421 miles, it appears, for Greenwood
17 Avenue with a net length 1,942.25 feet, 03.358
18 miles (Greenwood Avenue).

19 Q. Okay. So the project scope itself
20 is longer than just simply the embankment on
21 Greenwood Avenue, isn't it?

22 A. Yes.

23 Q. Okay. And in the course of that
24 approximately 2,000 feet linear distance along

1 Greenwood Avenue, there was more than just one
2 embankment that was constructed as part of this
3 project; isn't that right?

4 A. That's my understanding.

5 Q. Okay as a matter of fact, there
6 is more than one bridge that was constructed as
7 part of this or an elevated piece of roadway,
8 shall we say; isn't that right?

9 A. That's my understanding.

10 Q. So there would have been embankments
11 for that elevated roadway as well based on your
12 understanding of construction practices, that's --
13 we can assume that there would be other embankments
14 for that as well?

15 A. Yes.

16 Q. Okay. So when Mr. Mapes said I
17 recall having encountered some Transite pipe and
18 buried some of it, that actually means that if
19 we accept that statement as true, there is
20 approximately 2,000 feet of linear space along
21 which that Transite pipe could have been buried;
22 isn't that right?

23 A. Other than the reference in the
24 response that talked about location three, there

1 are no specific references to where that Transite
2 pipe was buried. It was used by me as an
3 acknowledgement that, yes, it's very plausible
4 that what we see here is attributed to IDOT's
5 actions because they've already acknowledged
6 that they buried Transite pipe during this
7 project.

8 Q. But you can't say for certain that
9 it went -- well, we have no way of knowing,
10 right, what Mr. Mapes actually meant by that
11 statement in the 104(e) response; isn't that
12 right?

13 A. We can only infer what we can
14 from what he said in that statement.

15 Q. Okay. You have chosen to infer
16 what is meant by that statement means that the
17 Transite pipe somehow ended up in the embankment;
18 isn't that correct?

19 A. I believe it is suggesting it could
20 have, yes.

21 Q. But it doesn't rule out the
22 possibility on its face that it was buried
23 someplace else along the line; right?

24 A. There's the possibility that

1 somewhere else on the project, it could have
2 been buried as well, yes.

3 Q. And you don't know from that
4 statement from Duane Mapes that's recorded in IDOT's
5 104(3) response how much Transite pipe
6 he was actually referring to, right? He said
7 some Transite pipe, correct?

8 A. That's correct.

9 Q. We don't know what that means. It
10 could have been five pieces of Transite pipe or
11 it could have been 100, correct?

12 A. Or 5,000.

13 Q. But we don't know. We have no idea
14 about what number -- what amount of this Transite
15 pipe was actually being buried or where it was
16 buried, correct?

17 A. That's correct.

18 Q. What's your understanding -- let's
19 go back to your expert report, sir. I want to
20 talk about -- again, on top of Page 2, this is
21 number two where you're talking about the placement
22 and dispersion of ACM waste currently found at
23 this site that IDOT at a minimum used to spread,
24 bury and place and dispose of ACM waste including

1 Transite pipe throughout the site.

2 Let me ask you this, sir, what's
3 your understanding of the meaning throughout? How
4 would you define that word?

5 A. Certainly more than one location.
6 I don't specifically attempt to define the
7 geography, but clearly from the mapping and figures
8 that have been produced, it's located in many
9 locations
10 across Site 3 and within Site 6.

11 Q. I'm going to give you an a
12 definition which I took out of Webster's Third
13 New International Dictionary. I meant to bring
14 it with me. I forgot. I apologize for that,
15 but a definition of throughout is everywhere.
16 That's what Webster's Third International
17 Dictionary says. Would you agree that throughout
18 means everywhere? Would you accept that definition?

19 A. I would not suggest that that was the
20 definition I was using when I referenced throughout
21 in this report.

22 Q. Well, but you chose the term
23 throughout and throughout has a relatively, I
24 think, common meaning in the English language,

1 wouldn't you agree with that?

2 A. I had a specific reason for using
3 throughout. I was implying that it was located
4 in more than one location in Site 3 and I certainly
5 think the figures and the information presented in
6 the record demonstrates that.

7 Q. But then if that was, in fact, your
8 intent, you could have said was located more than
9 one place at Site 3, buy you didn't say that. You
10 said throughout Site 3, correct?

11 A. I said throughout Site 3, yes.

12 Q. Okay. In your report -- hold on a
13 second. Let me get to that.

14 On Page 6, 2.3.2, regarding LFR
15 sampling, I will draw your attention specifically
16 to the discussion regarding Site 3, could you read
17 that paragraph, please?

18 A. "The investigation of Site 3 involved
19 the excavation of 14 test pits, see Figures 2 and 3
20 for test pit locations. The locations of the test
21 pits were generally placed near borings completed
22 during the 1999 ELM investigation. Visual ACM was
23 observed in two of the 14 test pits. Pursuant to
24 US EPA plans, no soil samples were collected and

1 analyzed for asbestos as a component of the Site 3
2 investigation."

3 Q. My question to you is this, sir,
4 after having read that paragraph, two out of 14,
5 that was the number of test pits in which visual ACM
6 was observed. Does two out of 14 test pits
7 with visual ACM observations equate to throughout
8 Site 3?

9 A. Certainly not.

10 Q. It's not everywhere, is it? I
11 mean, if you have two out of 14, it's far less
12 than everywhere. In fact, it's a minority of
13 locations, would you agree with that?

14 A. In this particular investigation,
15 yes.

16 Q. Okay. And this is the very source
17 of material in part that you are basing some of
18 the opinions in your report on, right, the LFR
19 sampling that you're referencing at 2.3.2?

20 A. Yes.

21 Q. I'm going to turn your attention
22 to Exhibit 66, please. Talk about being buried
23 under paper.

24 If I could direct your attention,

1 sir --

2 A. I'm sorry. I don't have Exhibit 66.
3 I'm not sure what it's in. I assumed you were going
4 to give it to me.

5 Q. It would be binder nine of 11
6 actually.

7 A. Okay.

8 Q. Okay. I'd like to turn your
9 attention, please, to page -- Exhibit 66, Page 766,
10 JM 02005240.

11 MS. BRICE: What page is it?

12 MR. MCGINLEY: It's 766 in
13 Exhibit 66.

14 BY MR. MCGINLEY:

15 Q. Do you see where I'm talking about,
16 sir?

17 A. Yes.

18 Q. Okay. Thank you. Third paragraph
19 down, I'd like to call your attention to. This
20 is the one that starts with "to date." Do you see
21 that?

22 A. Yes.

23 Q. Could you read that paragraph for us,
24 please?

1 A. It says, "To date, a total of 66
2 soil borings, 32 test pits and nine hydraulic
3 excavation locations have been installed at the
4 site by ELM, LFR and AECOM. The results from the
5 multiple investigations reveal that ACM occurrences
6 are sporadic across the site and typically coincide
7 with the location of utilities or other structures
8 installed after the mid-1950s. ACM and asbestos
9 structures were not found deeper than five feet
10 below ground surface along the Nicor gas line
11 corridor."

12 Q. Okay. So 66 soil borings, 32 test
13 pits and nine hydraulic excavation locations,
14 I've done the math, it's 108 separate locations
15 at Site 3.

16 With 108 separate locations,
17 only sporadic instances of ACM occurrences at
18 Site 3, do you still adhere to your opinion that
19 ACM is found throughout Site 3 in light of this?

20 A. Yes. I've demonstrated on the
21 figures that have been produced. ACM is in
22 different locations on the property including --
23 and in a number of locations. I've demonstrated
24 it several times on the figures that I prepared.

1 Q. Well, the figures that you prepare
2 are at odds with work that's been done by
3 Dr. Ebihara and work that's been done by ELM.
4 You have us believe that the work that you have
5 done is somehow superior and should stand in
6 lieu of work that's been done by two separate
7 contractors on behalf of Johns Manville.

8 A. The work that's been done by the
9 various contractors, I did not do. I simply
10 took their results and represented it on
11 figures that have now been presented in my
12 reports. I believe the figures stand for
13 themselves in terms of where you find ACM
14 on the property. Yes, is it considered to
15 be sporadic? I think I've stipulated to that
16 already. Is it located throughout? If you'd
17 like to take a more expensive definition of
18 throughout, but I've shown on the figures
19 where the data that's been present in these
20 reports has found asbestos.

21 Q. I'm using a definition of
22 throughout provided to me, which I am taking from
23 a dictionary because I don't actually know right
24 off the top of my head what that means. So I

1 figured I would check the dictionary just to blot
2 that down.

3 The point I'm trying to get at
4 here is you have sited Remedial Action Work Plan
5 in your report. You sited ELM study in your
6 report. You take issue with that. You don't
7 mention that you take issue with them or the
8 results they found in your report. You've cited
9 and you're using this in support, yet they stand
10 in contradiction with the results that you
11 would have us say that your opinions demonstrate.

12 A. I'm not sure you would find a
13 location where I said I contradict them or I
14 don't. I have no reason to believe that this
15 isn't accurate information presented in these
16 reports.

17 I've taken the aggregate work
18 that's been done by number of contractors and
19 represented their findings onto the figures that
20 were produced in my reports.

21 Q. And the aggregate result of the
22 work that's been done by Dr. Ebihara and by ELM
23 was to say that there's little or sporadic ACM
24 found at Site 3; isn't that right?

1 A. That's how they have characterized
2 the way that they've presented in these reports.
3 I've shown you where ACM has been found and I know
4 that the EPA considers what's been found at the
5 sites sufficient enough they're proposing that a
6 fairly substantial clean-up take place to address
7 what has been found.

8 Q. Let me ask you this now that you've
9 mentioned US EPA and what their findings throughout
10 the site are. US EPA -- I mean, we know that
11 US EPA at some point was looking at least to
12 IDOT as being potentially a responsible party
13 for this site; fair to say?

14 A. Yes.

15 Q. And yet after a period of some
16 seven years -- six years, between when the 104(b)
17 response was submitted and when then the AOC was
18 actually entered into between Johns Manville and
19 the US EPA as well as Commonwealth Edison, US EPA
20 decided apparently that there was not enough
21 evidence -- not enough information that allowed it
22 to compel IDOT to be made a party to the AOC, right?
23 I mean, that's the only logical takeaway from that.

24 A. I have no knowledge about what EPA's

1 evaluation was that led them to that conclusion,
2 but, yes, I do agree that they at that time elected
3 not to include them as a party.

4 Q. Based on your experience as an
5 environmental consultant, are you aware of any
6 NPL sites that are overseen by US EPA where local
7 governments had been made PRPs?

8 A. There are instances where local
9 governments have been named PRPs, yes.

10 Q. What about state agencies or
11 instrumentalities of state government, are you
12 aware of any NPL sites where state agencies or
13 state governments have been listed as PRPs?

14 A. There are locations where state
15 agencies have also been listed as PRPs.

16 Q. So clearly, US EPA is not adverse
17 to naming state agencies as being PRPs at sites
18 when the evidence seems to document that that
19 is the correct course of action, is that fair to
20 say?

21 MS. BRICE: Objection, calls
22 for speculation, lack of foundation.

23 MR. MCGINLEY: He's an
24 environmental consultant. He's testified

1 to his experience.

2 HEARING OFFICER HALLORAN: I
3 agree. Overruled. You can answer if you
4 are able.

5 BY THE WITNESS:

6 A. Certainly, there are instances where
7 state parties have been named as PRPs. The specific
8 instances or the specific considerations involved
9 in EPA's determination in this particular case, I'm
10 not familiar with the analysis that they did to
11 arrive at that determination.

12 BY MR. MCGINLEY:

13 Q. Okay. I would like to turn to
14 I believe it's Figure 2 in your initial report,
15 please.

16 HEARING OFFICER HALLORAN: What
17 exhibit is that, Mr. McGinley?

18 MR. MCGINLEY: This would be
19 Exhibit 6 and it's Figure 2 to that. If
20 you will bear with me, I can get you a
21 page number in just a hot second here.

22 THE WITNESS: It's 6-25.

23 MS. BRICE: Yes.

24 MR. MCGINLEY: Yes, right. It's

1 06-25.

2 HEARING OFFICER HALLORAN: Thank
3 you.

4 BY MR. MCGINLEY:

5 Q. Let me ask you this; if ACM is
6 found in subsurface environment throughout the
7 site, how come there are sampling locations with --
8 where there's been ACM that's been detected next
9 to soil sampling locations that have come up as
10 non-detects? And let me ask you this. If you
11 look at B-32, which is in the -- I believe --

12 MS. BRICE: Evan, can you
13 hold on a second and let me catch up
14 with you.

15 MR. MCGINLEY: Sure. I might
16 be catching up with myself.

17 MS. BRICE: Which figure are
18 you looking at?

19 MR. MCGINLEY: Figure 2.

20 BY MR. MCGINLEY:

21 Q. Are you looking at the figure right
22 now, sir?

23 A. Yes, I am.

24 Q. Okay. If you look at sort of the

1 eastern edge of the -- of what you've depicted
2 as Site 3, right about the center, do you see
3 where sample location B-32 is?

4 A. Yes, I do.

5 Q. Right next to that, if I understand
6 the figure correctly, there is S302-B, which kind
7 of lies to the southeast of B-32, and then there's
8 SB-15, which is east/southeast of B-32. Do you see
9 where all those samples are?

10 A. You're referring to SB-16, SB-15
11 and SB-13?

12 MR. MCGINLEY: Can I approach
13 the witness to make it easier?

14 HEARING OFFICER HALLORAN: Yes,
15 you may.

16 MR. MCGINLEY: Thank you.

17 BY MR. MCGINLEY:

18 Q. Unfortunately, we don't have a
19 larger exhibit here, but B-32 -- I'm pointing to
20 it right now. SB-15 is right to the northeast
21 and then S302-B is right down here.

22 So we know that SB -- B-32,
23 there is a detect for asbestos, but the other
24 two samples, which are in relatively close

1 proximity, non-detect; wouldn't you agree?

2 A. They are not -- there's no information
3 that indicates that asbestos was detected, but I'd
4 have to go back and look to see what samples were
5 collected and submitted from each of those two
6 locations. One was a test kit and the other was
7 an earlier phase of borings that were done as part
8 of an earlier investigation.

9 So in those three that you
10 reference, you have three test locations done
11 at three times as part of three different
12 investigations. You can have a lot of variability
13 in terms of what samples are analyzed, what
14 samples are even collected. You'd have to go
15 back and look at the original boring logs and the
16 sample records for those other two locations.

17 Q. Well, let me ask you this. Right
18 above that, you have B-346 and then you have S46-B.
19 It's almost directly north of the samples I was
20 just talking to you about. B-346 again, there's
21 a detect. This is in an area which you've marked
22 as being an area of soil excavation. So there's a
23 detect for asbestos there and immediately south of
24 that, S346-B is non-detect. If you go one sample

1 over to the left, B-345, there's a defect for
2 asbestos, but right below that S345-B.

3 My point to you, sir, is this;
4 if, as you say, asbestos is located throughout the
5 site, shouldn't -- when you have adjacent sampling
6 locations, shouldn't you be able to see asbestos
7 if in one? Shouldn't you be able to see asbestos
8 in the immediately adjacent sites as well?

9 A. No.

10 Q. Why?

11 A. This was -- these were samples
12 that are collected out of individual borings
13 that were done at different times for different
14 investigations and in some cases even using
15 different methods for how the samples -- and
16 I've tried to capture that in terms of the key
17 that shows the different types of methods that
18 were used at different times.

19 I can't even be certain without
20 going back and looking at those individual sample
21 locations whether samples were collected from
22 those same depth intervals and analyzed for the
23 same constituents using the same methods. It may
24 be that they were. I'm not saying that they

1 weren't, but it is not at all unusual in
2 environmental investigations, whether it be for
3 asbestos or just about any other contaminant, to
4 have locations where you will have a detection
5 of a contaminant at one location and you can be
6 proximal to that and not have it show up there
7 especially with these particular analyses where
8 they're looking at asbestos fibers at very low
9 concentrations and low counts using different
10 analytical methods.

11 Q. What accounts for the asbestos
12 that you note as being at B-34, which is at the
13 far eastern edge of Site 3?

14 Would your testimony be that
15 B-34 is the result of IDOT having done work there?
16 If the asbestos -- I'm sorry. Let me strike that
17 question.

18 Is it your opinion that the
19 asbestos that was discovered at B-34 came to be
20 there because of the same processes that you've
21 talked about in your opinion, that IDOT spread
22 and dispersed asbestos throughout the site?

23 A. My opinion concentrates on the
24 Transite pipe that's been crushed, buried and

1 dispersed across the site. I did not opine on
2 every instances of an asbestos fiber having
3 been detected in different borings and different
4 samples that were collected throughout the various
5 investigations.

6 That's why I chose to demonstrate
7 the analytical results on this figure and the
8 visual ACM on the next figure to get a sense of
9 how the two of those compare.

10 Q. But the fact of the matter is,
11 sir, you're the one who is offering the opinion
12 that says asbestos is located throughout the
13 site.

14 Here, we have instances -- I
15 can see one, two, three that are right along
16 the periphery at least 100 feet away from where
17 any construction took place. Your opinion is
18 that IDOT is the cause of having spread it
19 throughout the site. So doesn't therefore that
20 mean, according to your theory, that B-34, which
21 is on the eastern edge; B-33, which is on the
22 southeastern corner; and B3-14, which is on the
23 southeastern corner a little bit off to the side,
24 shouldn't those also be the result of IDOT having

1 dispersed and moved asbestos around at the site
2 during construction activities?

3 A. That could be possible.

4 Q. But it's 100 feet away from where
5 any activity that took place?

6 A. Yes. And we know that there was
7 activity took place across large areas of the
8 site including in areas that weren't necessarily
9 expected for there to be activities.

10 In this particular case, I
11 have not opined on the origin and nature of
12 each individual asbestos fiber that was detected
13 in the various investigations.

14 My focus has been on the
15 Transite pipe that was present at the property,
16 that continues to be present at the property in
17 the subsurface, and its affects on the way EPA
18 treated scoping the clean-up of this property.

19 Q. But you -- but isn't the problem
20 with your opinion that you haven't sought -- I
21 mean, there is asbestos at Site 3. Johns Manville
22 is required to clean up the asbestos at Site 3.
23 Shouldn't your theory then take into account and
24 logically address the asbestos that's all located

1 on Site 3 and not cherry picking through the
2 different samples as you fit to figure opinion?

3 A. I don't believe I have cherry picked.
4 I've represented each one on this particular figure.

5 Q. In your deposition last year, and
6 I think earlier today in response to Ms. Brice's
7 questioning, you testified, I believe, that there
8 were times when construction work, you know, goes
9 outside the limits of construction or what has been
10 planned for where the construction work will
11 take place. Is that a correct recapitulation
12 of your testimony?

13 A. Generally, yes.

14 Q. Okay. What is that statement based
15 on?

16 A. Well, it's based on several things.
17 It's based on what you can see in the aerial
18 photographs around the time this particular
19 project was undergoing. It's based upon the
20 individual technical specifications that apply
21 to this project, which allows for activities to
22 take place outside the limits of construction
23 if it's approved by the resident engineer.

24 I've seen in my own personal

1 experience that certainly areas can end up being
2 used that aren't necessarily at the outset of
3 the project specified to be an area of primary
4 work, whether that has specifically defined
5 construction limits or some other defined boundary
6 to the work limits.

7 Q. But your experience that when you've
8 observed work taking place outside of prescribed
9 boundaries, that's not work experience that's
10 related to highway construction because you've
11 already testified that you don't have any
12 experience overseeing or managing highway
13 construction projects?

14 A. I've been involved in projects
15 that involved highway construction, handling
16 environmental aspects of highway construction
17 projects, but I've never been responsible for
18 overseeing and managing the construction or
19 designing of a highway, no.

20 Q. So you're really not in a position
21 to opine about how IDOT would have actually done
22 the work and whether or not they would have worked
23 outside the construction limits that were prescribed
24 for this project, are you?

1 A. I believe I've provided an opinion
2 that it's possible that as part of this construction
3 project supported by the information that's
4 available in the record, it could have taken place
5 and it appears that it did.

6 Q. You talked earlier in response to
7 Ms. Brice's -- you testified, rather, in response
8 to Ms. Brice's questioning that it's your opinion
9 that basically Transite pipe was placed inside the
10 embankment along Greenwood Avenue; is that right?

11 A. That's correct.

12 Q. You've never seen any documentation
13 though in the rather expansive record for this
14 project that shows documents that, in fact, IDOT
15 actually approved the placements of Transite pipe
16 within the embankment, right?

17 A. Correct.

18 Q. Because that documentation doesn't
19 exist within the construction record?

20 A. I'm not aware of documentation to
21 that effect.

22 Q. And based on your experience within
23 construction projects, you would agree that --
24 you're familiar with documents that are called

1 change orders that typically would occur on the
2 construction project, right?

3 A. Yes.

4 Q. And change orders -- what's a change
5 order as far as you know? What does that mean?

6 A. It will typically require or it
7 will typically provide an adjustment to the contract
8 price based upon changes to the way that work is
9 going to be implemented at some point in time during
10 the actual implementation of the project work.

11 Q. Okay. And you've seen no change
12 orders that spoke about putting Transite pipe
13 in embankment; isn't that right?

14 A. That's correct.

15 Q. I'm going to go to JM Exhibit 84,
16 please.

17 MS. BRICE: I'm sorry. Did you
18 say Exhibit 84?

19 MR. MCGINLEY: Exhibit 84,
20 yes.

21 BY MR. MCGINLEY:

22 Q. Have you been able to find that yet,
23 sir?

24 A. No. I'm sorry. I haven't.

1 Q. I perfectly understand.

2 A. I'm sure it's here.

3 HEARING OFFICER HALLORAN: Off
4 the record.

5 (Whereupon, a discussion
6 was had off the record.)

7 HEARING OFFICER HALLORAN: Back
8 on the record.

9 BY MR. MCGINLEY:

10 Q. Mr. Dorgan, you have Exhibit 84 in
11 front of you?

12 A. Yes, I do.

13 Q. And these are the cross-section
14 analyses that you were testifying about earlier
15 in response to questions from Ms. Brice, correct?

16 A. Yes.

17 Q. Okay. Cross-section A, A prime,
18 runs west to east along Greenwood Avenue, right?

19 A. Yes.

20 Q. And there's seven bore holes that
21 are documented in the cross-section; is that
22 correct?

23 A. That's correct.

24 Q. Now, this runs predominantly through

1 Site 6; isn't that right?

2 A. Yes.

3 Q. Okay. And it seems to me from what I
4 can see here --

5 A. Excuse me. Are you referring to
6 cross-section A or B?

7 Q. A A.

8 A. Yes. A runs through predominantly
9 Site 6. B runs predominantly through Site 3.

10 Q. Okay. Thank you. Now, you
11 testified -- we talked -- you talked earlier about
12 the fact that there is Transite pipe found through
13 A A, but there's also some roofing material,
14 correct?

15 A. There's some roofing material, yes.

16 Q. Some? I think -- would it be fair
17 to say there's a substantial amount of roofing
18 material here?

19 A. I would not say that. When you look
20 at the actual occurrence of roofing material, it was
21 fairly infrequent relative to other materials that
22 were identified at the site.

23 Q. Well, but in the cross-section that
24 you've put here for A to A prime, would you not

1 agree that there's a significant amount of roofing
2 material that's depicted here? I mean, you're the
3 person who crafted this diagram and this
4 cross-section.

5 A. Yes. This is an interpretation of
6 what was encountered in the borings of those
7 locations.

8 Q. And there's also some quantity of
9 fibrous sludge that's found here as well?

10 A. That's correct.

11 Q. Do you know what fibrous sludge
12 actually is? What is that type of material?

13 A. I'm not entirely certain what the
14 fibrous sludge is.

15 Q. Is it relatively solid? Is it
16 flakey? I mean, what are the physical properties
17 of the material?

18 A. I've not seen it myself and I'm
19 not -- I've not interacted with it so I can't
20 provide a description of the material nature
21 itself.

22 Q. Okay. You don't know whether it's
23 an intermediate product or a waste product; fair
24 to say?

1 A. Yes.

2 Q. Could be an intermediate product for
3 all you know?

4 A. I have no knowledge of the source of
5 the fibrous sludge.

6 Q. Let me ask you this; isn't it true
7 that when we're looking at bore holes along A to A
8 prime that that also corresponds to a number of
9 utility lines?

10 A. There are utility lines in the
11 area, but certainly the cross-section of the
12 boring line would have been placed to try to
13 avoid utilities in order not to impact them.

14 Q. But there are utility lines
15 within close proximity to where these were
16 taken, correct?

17 A. Yes.

18 Q. And you weren't taking -- I mean,
19 borings weren't being taken -- pardon me. Let
20 me back up.

21 Borings are just being taken
22 in a limited area in order to avoid utility
23 lines, correct?

24 A. Yes.

1 Q. There's fiberoptic cable that
2 runs and is adjacent to boring locations 1-S
3 and 2-S, correct?

4 A. That's correct.

5 Q. And fiberoptic and phone at 3-S,
6 correct?

7 A. That appears to be the case.

8 Q. And at 4-S, 5-S and 6-S, I believe
9 there's also gas and electric, would that be
10 your interpretation as well?

11 A. Yes.

12 Q. Okay. Cross-section BB, what I can
13 see here -- and this is running inside of the north
14 end of Site 3, correct?

15 A. That's correct.

16 Q. And here, it seems as if there is
17 very little, if any, Transite pipe and instead
18 it's mostly roofing material, wouldn't you agree
19 with that assessment?

20 A. That's what's represented here,
21 yes.

22 Q. Okay. And so oddly enough, it
23 would seem in cross-section AA and cross-section
24 BB, you have represented areas that happen to

1 have a substantial amount of roofing material in
2 addition to some Transite pipe within ACM; isn't
3 that right?

4 A. That's correct.

5 Q. And yet your testimony is that
6 Transite pipe is largely the problem with Site 3
7 and Site 6, correct?

8 A. That's correct.

9 Q. How does showing roofing material --
10 strike that.

11 In the course of preparing your
12 opinions, did you ever attempt to figure out where
13 this roofing material might have come from?

14 A. No.

15 Q. It certainly wasn't -- I mean, is
16 it your understanding that roofing material had
17 any part in the parking lot -- surface of the
18 parking lot?

19 A. Not that I'm aware of.

20 Q. And the roofing material would
21 consist of material such as shingles and things
22 like that, right?

23 A. Correct.

24 Q. Do you have any idea how roofing

1 material happened to end up at Site 3 and Site 6?

2 A. I have no knowledge of how roofing
3 material ended up within these particular fill
4 materials on Site 3 or on Site 6.

5 Q. What about the fibrous sludge, how
6 did that end up at Site 6?

7 A. I can't speculate as to how it ended
8 up in these fill materials at Site 6.

9 Q. Well, you're an expert. I mean,
10 you could engage in speculation if you chose
11 to. Where do you think the roofing material
12 came from?

13 A. I have not opined on that and I
14 haven't speculated on that. I won't speculate
15 now. I don't know.

16 Q. I'm asking you to speculate. I
17 mean, roofing material is manufactured at Johns
18 Manville, correct?

19 A. I believe so.

20 Q. Isn't it possible that this happened
21 to be waste material that is dumped at Site 3 by
22 Johns Manville at some point in time?

23 A. I have no knowledge that waste
24 material was dumped by Johns Manville on Site 3.

1 Q. You have no knowledge about what their
2 waste management and waste handling practices were
3 historically, correct?

4 A. That's correct.

5 Q. So it's possible that this roofing
6 material, which had no part in the surface of the
7 parking lot at Site 3 could have actually been
8 waste material that was disposed of at Site 3;
9 isn't that possible?

10 A. The concern I have is that these
11 are the fill materials that were placed there
12 by IDOT as part of a ramp construction. So I
13 don't really know what the source of them is,
14 but they're in that fill material that the
15 IDOT specifications show had to be placed at
16 this location in order to accommodate that
17 particular construction project.

18 Their origin, their source,
19 who originally generated them, I have no independent
20 knowledge of that.

21 Q. Well, I think we can say who
22 originally generated them. It was probably Johns
23 Manville, right?

24 A. That would be speculation for now.

1 Q. I mean, the original materials were
2 asbestos --

3 A. That would be speculation for me to
4 say that it was. I don't know.

5 HEARING OFFICER HALLORAN: You
6 can't talk over each other. Mr. Dorgan?

7 BY THE WITNESS:

8 A. That would be speculation on my part.
9 I don't know.

10 BY MR. MCGINLEY:

11 Q. You wouldn't be comfortable saying
12 that roofing material with asbestos across the
13 street from the former Johns Manville manufacturing
14 facility would have been generated at the Johns
15 Manville facility?

16 A. Yes. I agree with that.

17 Q. Okay. One of the opinions that you
18 have regarding -- in Section 3.2 -- is that IDOT
19 crushed Transite pipe in the course of the project.
20 That's part of your opinion, right?

21 A. Yes.

22 Q. Have you seen any documentation in
23 the substantial project record from IDOT that
24 shows or speaks to your opinion or supports your

1 opinion that Transite pipe was crushed in the
2 course of the project?

3 A. No.

4 Q. No such documentation to that effect
5 exists; isn't that right?

6 A. Not that I'm aware of.

7 Q. Okay. I want to go back to your
8 report. You talked a lot about -- I'm going to
9 turn your attention to Page 15, please.

10 HEARING OFFICER HALLORAN: Page 15?

11 MR. MCGINLEY: Yes.

12 HEARING OFFICER HALLORAN: Of

13 Exhibit 6.

14 MR. MCGINLEY: Exhibit 6 and that
15 would be Exhibit 6, Page 18.

16 BY MR. MCGINLEY:

17 Q. Now, this is where you are talking
18 about the substantial cost that was incurred
19 by Johns Manville now because of what you alleged
20 to have been IDOT's work at this site, correct?

21 A. Correct.

22 Q. Elsewhere in here, you state that
23 in Section 3.3 that had it not been for this work
24 that was done by IDOT, that the remedy that could

1 have been employed could have been similar to the
2 remedy that was employed and is currently being
3 employed to remove the asbestos particles at
4 Illinois Beach State Park; isn't that right?

5 A. My opinion was that the presence
6 of the asbestos fragments primarily related to
7 the Transite pipe was the driver behind the way
8 in which EPA was approaching their specification
9 of the remedy at this site and I did make, yes,
10 make references to what's being done at Illinois
11 Beach State Park as a comparison of where similar
12 conditions were handled much differently there
13 than what's being expected to be done at this
14 site.

15 Q. Well, let's explore this idea of
16 similar conditions because, in fact, the asbestos
17 at Illinois Beach State Park, according to the
18 University of Illinois at Chicago report you site
19 in your report, according to that report, some of
20 the conditions that are responsible for asbestos
21 particles being deposited on the beach at Illinois
22 Beach State Park have to do with wave action, they
23 have to do with rising and lowering of water levels
24 within Lake Michigan and they also have to do with

1 the freeze cycle that affects the lake, right?

2 Those are three conditions that are
3 actually responsible for the transportation deposit
4 of asbestos material at Illinois Beach State Park;
5 is that correct.

6 A. That generally characterizes it, yes.

7 Q. And also part of the problem with
8 Illinois Beach State Park is that at present, there
9 is a number of possible sources for that asbestos
10 material to be washing up onto the beach, isn't
11 that also right?

12 A. I'm not as familiar with what they
13 are doing in terms of identifying the sources.
14 What's happening is there is materials washing
15 up on the beach. They are removed by hand. There's
16 asbestos fibers in the sand. The general public is
17 allowed to use the beach. If it weren't for the
18 materials that are washing up on the beach that
19 have to be picked up by hand, there would nothing
20 happening at Illinois Beach State Park.

21 I happen to believe that's
22 very similar from a very pragmatic perspective.
23 We've got some asbestos fibers. We've got solid
24 materials. They're being required to remove the

1 solid materials already. Now, they're putting in
2 more extensive remedy to deal with the solid
3 materials. It's very comparable, I think, to
4 what's happening at Illinois Beach State Park.

5 Q. I'd like for you to actually look
6 at Joint Exhibit 65, please. This is the 2012
7 enforcement action memorandum.

8 A. Exhibit 65?

9 Q. Yes, please. If you could turn
10 your attention, please, to Page 10. I'm sorry.
11 Not Page 10.

12 If I could direct your attention,
13 please, to Exhibit 65, Page 93. All right. Just
14 let me know when you've gotten to that page.

15 A. Yes.

16 Q. This is a portion of the enforcement
17 action memorandum from 2012. It discusses Illinois
18 Beach State Park. It has to do with US EPA's
19 response to why comments such as the ones that
20 you were just making about the treatment of
21 asbestos at Site 3 in the same fashion as is
22 being done at Illinois Beach State Park.

23 Isn't it true that ultimately,
24 the reason why US EPA decided to treat Site 3

1 differently from Illinois Beach State Park is
2 the only option that's available to Illinois Beach
3 State Park is go out and pick up the asbestos
4 washes onto the beach is because they don't know
5 where all the sources for the asbestos that washes
6 up onto the beach are?

7 There is no other option besides
8 picking up the asbestos; isn't that right?

9 A. Are you referring to some specific
10 reference in that particular section of their
11 document?

12 Q. I am, in fact, yes. If I could
13 call your attention to -- under response one,
14 two -- it's the really large third paragraph
15 that's under response. If you look at -- there
16 is a sentence that starts, oh, I would say about
17 three-quarters of the way down. It says, "The
18 source of the ACM that washes onto IBSP is unknown
19 at this time. Thus, hand removal ACM that washes
20 onto the beach is the only option available at
21 this time to address ACM."

22 Now, by comparison the difference
23 with what's going on at Site 3 is the fact that
24 there is a fixed amount of asbestos that's currently

1 at Site 3; isn't that right?

2 A. That's correct.

3 Q. So there is not -- there's no new
4 additional asbestos material that is being
5 introduced into Site 3. All the asbestos that needs
6 to be addressed in whatever remedy is going to
7 take place in Site 3 is already there, correct?

8 A. I believe that's true.

9 Q. Okay. So how then -- is there
10 any similarity between asbestos washing up
11 onto the beach versus the asbestos that needs
12 to be addressed at Site 3 similar? I mean,
13 there is nothing similar at all about the processes
14 that resulted in the asbestos in those locations.

15 MS. BRICE: I'd just like to
16 object to the relevance to this line of
17 questioning. I'm not sure how this ties
18 into everything.

19 HEARING OFFICER HALLORAN: Okay.
20 Mr. McGinley?

21 MR. MCGINLEY: It's part of his
22 opinion about why Johns Manville is incurring
23 additional costs because they are not allowed
24 to do the same type of cleanup methodology

1 for Site 3 as being allowed at IBSP. So I
2 think under the circumstance it's fair to
3 explore what the basis for that opinion is.

4 HEARING OFFICER HALLORAN: Yes.
5 I agree with Mr. McGinley, but I think you
6 are making your point. So I will give you
7 a little more, but kind of go into a different
8 field.

9 MR. MCGINLEY: Sure. That's fine.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 BY MR. MCGINLEY:

13 Q. I would like to close out with a few
14 last questions at this point. Turn your attention
15 again back to Exhibit 63. This is the EECA, as you
16 recall.

17 You cited this in your
18 bibliography. As you note, the EECA deals not
19 only -- it deals with the southwestern site area,
20 which includes not just Sites 3 and 6, but 4 and
21 5 as well, correct?

22 A. Yes.

23 Q. It's fair to say you're familiar
24 with this report, right?

1 A. Yes.

2 Q. Isn't it true that Sites 4 and 5
3 have substantial amounts of asbestos all along
4 the western boundary of the former Johns Manville
5 manufacturing site?

6 A. As I believe I testified during
7 my deposition, my focus and my purpose for my
8 involvement was to look at Site 3 and Site 6.
9 My review of the documentation was limited
10 almost exclusively to the conditions on those
11 two locations and any time spent on any of
12 the other sites, whether it be the main Johns
13 Manville site or Site 4/5 was very limited.

14 Q. Would you agree that at Sites 4
15 and 5, substantial amounts of Transite pipe
16 had been found?

17 A. I understand that there have been
18 Transite pipe on 4/5.

19 Q. What about roofing materials, is
20 it your understanding as well that roofing materials
21 have also been found at Sites 4 and 5?

22 A. I believe there was, yes.

23 Q. And what about fibrous process waste,
24 hasn't that also been found at Sites 4 and 5?

1 A. I don't recall specifically. It could
2 have been.

3 Q. As far as you know, IDOT was not
4 responsible for doing any construction along the
5 western edge of the former Johns Manville facility,
6 correct?

7 A. Other than the construction of
8 Detour Road B, which traversed across the western
9 side of the main Johns Manville facility, I'm
10 not as familiar with the specific construction
11 efforts that took place in that area.

12 Q. If I could turn your attention,
13 please, to Page 63-18.

14 A. Eighteen?

15 Q. Yes. And this would be Section 2.3.2.

16 A. Yes.

17 Q. Could you read the paragraph, please?

18 A. 2.3.2?

19 Q. Yes.

20 A. "Results of visual ACM inspection
21 and PLM and TEM analyses for soil samples collected
22 from test pits within the expanded Site 4/5
23 investigation area indicate the presence of a
24 variable thickness of ACM and soil above the action

1 level of 0.25 percent (Figure 9A). All but four
2 of the 59 sampling rows contained ACM in soil.
3 Visible ACM debris within the test pits included,
4 but is not limited to Transite pipe, roofing
5 material, fibrous process waste, wall board, brake
6 liners and flex board."

7 Q. Thank you. So the exact -- I mean,
8 some of the exact same types of material have been
9 found at Sites 3 and 6 on the one hand, Sites 4
10 and 5 on the other hand. I mean, doesn't the fact
11 that you have the same type of waste in totally
12 desperate areas suggest possibilities beyond just
13 IDOT having been responsible for dispersing --
14 leaving the waste that's at Sites 3 and 6?

15 A. Could you rephrase your question
16 because that seems to take multiple parts. I'd
17 like to be sure I get it right.

18 Q. Well, it's probably my last question
19 of the day. So my energy might be flagging at this
20 point.

21 The fact of the matter is you
22 agree that the same types of material have been
23 found at Sites 4 and 5 on the one hand and Sites 3
24 and 6 on the other, correct?

1 A. There are similarities in material
2 types, yes.

3 Q. Well, I mean, not just similarities,
4 but exact same types of material have been found
5 on both locations, right?

6 A. I'm not aware that break liners and
7 flex board and wall board were identified at Sites
8 3 and 6 or at least on the western end of Site 6.

9 Q. Doesn't it suggest under the
10 circumstances that the same processes that
11 resulted in the waste being deposited at Sites
12 3 and 6 were also deposited at Sites 4 and 5?

13 A. I'm not aware of the processes
14 that resulted in the conditions that are
15 described in this particular paragraph on Site
16 4/5. So attempting to compare it to the processes
17 that took place at Site 3 again would be speculation
18 on my part.

19 Q. But it's possible that the same
20 process could have resulted in the same types of
21 waste being deposited of in two separate locations
22 of the southwestern sites?

23 A. I suppose that the processes --
24 could they be the same? Again, I don't know,

1 but I guess I would have to say yes, that the
2 possibility exists that it could be the same.

3 MR. MCGINLEY: Thank you. I
4 have no further questions.

5 HEARING OFFICER HALLORAN: Thank
6 you.

7 Is everybody in agreement that
8 we will continue this on record until tomorrow?

9 All right. Please be back
10 here -- excuse me. We will not be back
11 here May 24th. Excuse me. We will not be
12 back here. We have a smaller room, which
13 is 9-34 down the hall. Please be back here
14 a little earlier than 9:00 a.m.

15 Mr. Dorgan, you'll probably
16 have to get sworn in again tomorrow.

17 Anyway, thanks for your
18 hospitality and professionalism. I will
19 see you tomorrow.

20 (Whereupon, the proceedings were
21 adjourned in the above-entitled
22 cause until 9:00 o'clock a.m. on
23 May 24, 2016.)

24

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF C O O K)
 4
 5

6 I, LORI ANN ASAUSKAS, CSR, RPR,
 7 do hereby state that I am a court reporter doing
 8 business in the City of Chicago, County of Cook,
 9 and State of Illinois; that I reported by means
 10 of machine shorthand the proceedings held in the
 11 foregoing cause, and that the foregoing is a true
 12 and correct transcript of my shorthand notes so
 13 taken as aforesaid.

14
 15
 16 *Lori Ann Asauskas*



17 Lori Ann Asauskas, CSR, RPR.

18 Notary Public, Cook County, Illinois
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