

May 25, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHNS MANVILLE, a Delaware corporation,

Complainant,

vs

ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.



ORIGINAL

No. PCB 14-3

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STATE OF ILLINOIS Pollution Control Board

TRANSCRIPT FROM THE PROCEEDINGS taken before HEARING OFFICER BRADLEY HALLORAN by STEVEN BRICKEY, CSR, 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, Chicago, Illinois, on the 25th day of May, 2016, A.D., at 9:00 a.m.

L.A. Court Reporters, L.L.C. 312-419-9292

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD  
3 BY: MR. BRADLEY HALLORAN  
4 100 West Randolph Street  
5 Suite 11-500  
6 Chicago, Illinois 60601  
7 (312) 814-6983,

8 Appeared on behalf of the Plaintiff;

9 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

10 Ms. Jennifer Burke, Board Member  
11 Ms. Carrie Zalewski, Board Member

12 BRYAN CAVE

13 BY: MS. SUSAN E. BRICE  
14 MS. LAUREN J. CAISMAN  
15 161 North Clark Street  
16 Suite 4300  
17 Chicago, Illinois 60601  
18 (312) 602-5070,  
19 susan.brice@bryancave.com  
20 lauren.caisman@bryancave.com

21 Appeared on behalf of the Complainant;

22 ILLINOIS ATTORNEY GENERAL'S OFFICE

23 BY: MR. EVAN J. MCGINLEY  
24 MS. ELLEN F. O'LAUGHLIN  
25 69 West Washington Street  
26 Suite 1800  
27 Chicago, Illinois 60602  
28 (312) 814-3153,  
29 emcginley@atg.state.il.us  
30 eolaughlin@atg.state.il.us

31 Appeared on behalf of the Respondent;

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

2 Mr. Brent Tracy, Johns Manville  
Mr. Steven Gobelman, Andrews Engineering  
3 Mr. Matthew Dougherty, Illinois Department of  
Transportation  
4 Mr. James Stumpner, Illinois Department of  
Transportation  
5 Ms. Susan Watkins, Johns Manville  
Mr. Tatsuji Ebihara, AECOM  
6 Mr. William Clinton, Johns Manville  
Mr. Joseph Fortunato, Jr., Momkus McCluskey, LLC  
7 Mr. Daniel May, Illinois Pollution Control Board  
Mr. Mark Powell, Illinois Pollution Control Board

8

9 REPORTED BY:

10 Steven J. Brickey, CSR  
CSR License No. 084-004675

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I N D E X

THE WITNESS: JAMES STUMPNER

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E X H I B I T S

Marked for  
Identification

1 HEARING OFFICER HALLORAN: Okay.  
2 Hi. We're on the record. Good morning. It is  
3 May 25th, 2016, the third day of the hearing in  
4 this matter PCB No. 14-3 and before I forget I  
5 want to note for the record that May 23rd and 24th  
6 there were no members of the public present and  
7 the only members -- the only people in the room  
8 are the attorneys and witnesses for the respective  
9 parties.

10 Again, today, I'm pleased to  
11 announce we have Member Burke, Member Zalewski, we  
12 have Staff Attorney Daniel Robertson, Senior  
13 Attorney Mark Powell and we have an intern who  
14 just started the other day and welcome. Thank you  
15 for your help.

16 I believe right now we're on  
17 direct. Ms. O'Laughlin is directing Mr. Steven  
18 Gobelman. If you can just step up or do we have  
19 any preliminary issues we need to talk about  
20 first?

21 MR. MCGINLEY: Mr. Halloran, we  
22 actually have one fact witness that we're going to  
23 call, James Stumpner, who is with IDOT and it is  
24 really just a relatively brief bit of testimony.

1                   With your indulgence, would it  
2 be possible to just have him go first and then --  
3 because it's probably going to be after  
4 Ms. O'Laughlin finishes with Mr. Gobelman  
5 obviously Ms. Brice or somebody will want to  
6 cross-examine him and that's going to take several  
7 hours I would think.

8                   HEARING OFFICER HALLORAN: Who is  
9 the witness?

10                  MR. MCGINLEY: James Stumpner.

11                  HEARING OFFICER HALLORAN: Ms.  
12 Brice? Ms. Caisman?

13                  MS. CAISMAN: That's fine by me.

14                  MS. BRICE: That's fine.

15                  HEARING OFFICER HALLORAN: Okay.  
16 Sure.

17                  MR. MCGINLEY: Thank you. I  
18 appreciate that.

19                  HEARING OFFICER HALLORAN: You can  
20 step up, Mr. Stumpner and Mr. Brickey will swear  
21 you in.

22                  MR. STUMPNER: This seat right here?

23                  HEARING OFFICER HALLORAN: I'm  
24 sorry. We can move it over next to the magic

1 markers. Thank you.

2 WHEREUPON:

3 JAMES STUMPNER

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

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

7 BY MR. MCGINLEY

8 Q. Good morning. Mr. Stumpner, how are  
9 you doing today?

10 A. Fine.

11 Q. Great. Could you state your full  
12 name and spell it for the record, please.

13 A. James A. Stumpner. Last name  
14 spelled S-T-U-M-P-N-E-R.

15 Q. Okay. And what is the -- what is  
16 the highest level of education you have, sir?

17 A. I have a Bachelor's of Engineering  
18 degree in -- Bachelor of Science degree in civil  
19 engineering.

20 Q. Okay. And do you have any licensing  
21 or certifications?

22 A. I'm a registered professional  
23 engineer in the State of Illinois.

24 Q. For how long have you been a

1 professional engineer?

2 HEARING OFFICER HALLORAN: Could you  
3 keep your voice up? We have the trains and  
4 everything.

5 MR. MCGINLEY: Sure.

6 HEARING OFFICER HALLORAN: Thank  
7 you, Mr. McGinley.

8 BY MR. MCGINLEY:

9 Q. And for how long have you been a  
10 professional engineer?

11 A. I've been a registered professional  
12 engineer since 1991.

13 Q. Thank you. As part of being a  
14 registered professional engineer, do you do -- do  
15 you have to take regular continuing education  
16 requirements?

17 A. Yes, I am required to do so.

18 Q. Who is your current employer?

19 A. I am currently employed by the State  
20 of Illinois through the Illinois Department of  
21 Transportation.

22 Q. And -- and for how long have you  
23 worked for IDOT?

24 A. I've worked for IDOT since August of

1 1985.

2 Q. Okay. And who did you work for  
3 prior to IDOT?

4 A. Briefly I worked for the Michigan  
5 Department of Transportation.

6 Q. What's your current position with  
7 IDOT?

8 A. I'm currently the Bureau Chief of  
9 Maintenance for the Illinois Department of  
10 Transportation.

11 Q. Okay. And for Bureau of  
12 Maintenance, is that for the entire state or a  
13 portion of the state?

14 A. It's for the District 1 portion of  
15 the state.

16 Q. And District 1 comprises what part  
17 of the State of Illinois?

18 A. Northeast corner, which consists of  
19 the six counties of Lake, McHenry, Cook, Du- --  
20 Kane, DuPage and Will continues.

21 Q. As the Chief for the Bureau of  
22 Maintenance, could you tell us please what your --  
23 what your -- the Bureau of Maintenance is  
24 responsible for?

1           A.       The Bureau of Maintenance is  
2 responsible for a number of things which include  
3 bridge maintenance and -- we have a bridge  
4 maintenance section, we have three operations  
5 sections, we have a landscape and contracts  
6 section and we have a support section.

7           Q.       Okay. In order to -- so in order to  
8 understand what your bureau is responsible for  
9 maintaining, what information do you rely on to --  
10 to help understand what you're responsible for?

11          A.       Within our support section, we -- we  
12 keep records of all the construction agreements,  
13 agreements with municipalities and we track all  
14 those records and those help us keep track of what  
15 we are responsible for.

16          Q.       Okay. And -- and what form do the  
17 records -- are they kept in?

18          A.       We keep them in -- in hardcopy  
19 paper -- paper copies.

20          Q.       Okay. What is the volume of the  
21 records that are maintained by your bureau?

22          A.       We have all these agreements and --  
23 and I don't know exactly how many there are. I  
24 would estimate in the thousands, but we keep them

1 in file cabinets. Approximately somewhere in the  
2 vicinity of around 15 file cabinets for records.

3 Q. And how far back do the bureau's  
4 records go?

5 A. We have some -- we actually have  
6 some records that go back into the 1910's.

7 Q. I'd like to give you a scenario just  
8 to kind of help understand how these records might  
9 be utilized in the course of your -- your job. If  
10 you were trying to find out who had jurisdiction  
11 over a given piece of roadway, how would you go  
12 about doing that using the resources that are  
13 available to you?

14 A. Well, we have -- like I said, we  
15 have construction agreements and maintenance  
16 agreements and all these agreements and we -- we  
17 keep track of them by route name or number. Some  
18 of the roads have a number, some have route names  
19 and so every route is -- is kept in its own file  
20 and then also we have files that we keep by local  
21 municipalities, by county, by township and those  
22 types of records.

23 So within the counties, towns  
24 and townships, there is -- those route names are

1 also recorded under -- under the various villages  
2 and municipalities.

3 Q. What -- so you keep all of these  
4 records and you use them to figure out who has  
5 jurisdiction over a given parcel of roadway, is  
6 that what we understand from your testimony?

7 A. Yes, that is correct.

8 Q. Are you familiar with the term  
9 jurisdiction and also with another term ownership?

10 A. Yes, I am.

11 Q. Okay. Could you explain -- could  
12 you first define what jurisdiction means as far as  
13 IDOT is concerned?

14 A. Jurisdiction identifies the entity  
15 that has the maintenance responsibility, the  
16 operation responsibility and the use  
17 responsibility of a roadway and when I say  
18 maintenance responsibility it is to maintain or  
19 cause to be maintained. As far as operational, it  
20 would include things like oversized permits,  
21 overweight permits, driveway access permitting and  
22 signage, regulations, speed limits and such like  
23 that as far as operational jurisdiction.

24 Q. Okay. And ownership, how would --

1 what does that term mean in the context of IDOT?

2 A. Ownership is the entity or person  
3 that may own the actual land that the road is  
4 constructed on.

5 Q. Is it possible for jurisdiction and  
6 ownership to be divided between -- between local  
7 governments or levels of government I should say?

8 MS. CAISMAN: Objection. Lack of  
9 foundation.

10 HEARING OFFICER HALLORAN:

11 Mr. McGinley?

12 MR. MCGINLEY: Well, he is talking  
13 about his experience. I mean, I think he is  
14 capable of saying if -- if -- how jurisdiction  
15 works between -- an ownership may work between  
16 local governments. We've established the  
17 foundation because he is responsible for  
18 maintenance.

19 HEARING OFFICER HALLORAN: Yeah, I  
20 agree. Overruled. You may proceed.

21 BY THE WITNESS:

22 A. Yes, it is possible that different  
23 government entities could have jurisdiction and  
24 ownership.

1 BY MR. MCGINLEY:

2 Q. Give us an example of a situation  
3 like that, maybe something in the City of Chicago.

4 A. The Kennedy Expressway. Much of the  
5 Kennedy Expressway is under the jurisdiction --  
6 all of the Kennedy Expressway is under the  
7 jurisdiction of the Illinois Department of  
8 Transportation, but much of the Kennedy Expressway  
9 is owned by the City of Chicago.

10 Q. So what -- in IDOT's eyes in terms  
11 of discharging its maintenance responsibilities,  
12 what is more important, jurisdiction or ownership?

13 A. Jurisdiction.

14 Q. And why is jurisdiction important?

15 A. Because that's the regulating body  
16 that has the ability to dictate how the road is  
17 utilized.

18 Q. I think it's fair to say you're  
19 familiar with the project that is at issue in this  
20 case. You've been already deposed in this case.  
21 So what do you know about the Amstutz Project?

22 A. The Amstutz Project was a project  
23 that was initiated and constructed by the Illinois  
24 Department of Transportation. It was under the

1 Department of Building in the previous name, but  
2 currently now as IDOT. It was -- so basically it  
3 was built by the Illinois Department of  
4 Transportation and it utilizes the markings of  
5 Illinois Route 137. So it is a marked highway in  
6 addition to being named the Amstutz Expressway.

7 Q. Okay. I would like to --

8 MR. MCGINLEY: It appears that the  
9 binder of our exhibits is not up there.

10 MS. CAISMAN: It's on the chair.

11 HEARING OFFICER HALLORAN: It's on  
12 the chair.

13 MR. MCGINLEY: Can I approach,  
14 please, just --

15 HEARING OFFICER HALLORAN: You may.

16 BY MR. MCGINLEY:

17 Q. Mr. Stumpner, I'd like to direct  
18 your attention as to what is marked as Exhibit 166  
19 in the binder that is in front of you.

20 MS. BRICE: Evan, is this stipulated  
21 to?

22 MR. MCGINLEY: It is an exhibit to  
23 Mr. Stumpner's deposition. I assume it's  
24 stipulated to.

1 MS. CAISMAN: It's fine.

2 MS. BRICE: Yes, it is.

3 BY MR. MCGINLEY:

4 Q. Could you please turn to -- it is  
5 tabbed -- you'll see Exhibit 166. It is towards  
6 the back. Probably the next to last tab that you  
7 see in there.

8 A. One-sixty-six, yes.

9 Q. Could you take a second to just look  
10 that over. I'd like to ask you a few questions  
11 about it when you're -- after you've familiarized  
12 yourself with it.

13 A. Okay.

14 Q. The Amstutz Expressway Project, as  
15 best you know, what was actually constructed with  
16 respect to this project that is memorialized in  
17 Exhibit 166?

18 A. I'm sorry. I couldn't -- what was  
19 the question?

20 Q. Sure. What is your understanding of  
21 what was -- what was actually constructed -- what  
22 improvements were made with -- under this project  
23 that is memorialized in Exhibit 166?

24 A. Well, it's the Amstutz Expressway as

1 well as several roadways in the vicinity of the  
2 Amstutz Expressway that were affected by the -- by  
3 the construction of the Amstutz Expressway.

4 Q. Could I -- we didn't -- we don't  
5 have individual exhibit numbers so I'm going to  
6 have to have people indulge me by just flipping to  
7 the proper page. The fourth page in.

8 HEARING OFFICER HALLORAN: Are we  
9 still on Exhibit 166?

10 MR. MCGINLEY: We are, yes. This  
11 would be IDOT 01219.

12 MS. O'LAUGHLIN: 119.

13 MR. MCGINLEY: 119. Sorry.

14 BY MR. MCGINLEY:

15 Q. Have you had a chance to look that  
16 over?

17 A. Yes, I believe so.

18 Q. I'm sorry. That should be IDOT  
19 12118. Could you read -- you'll see there is a  
20 Roman numeral at the top.

21 Can you read that first  
22 paragraph that is right there, please?

23 A. From Roman numeral one, "The city  
24 will at locations -- it is really hard to read.

1 Q. I think it's 50 years old. It is  
2 probably a little bit of a challenge.

3 HEARING OFFICER HALLORAN: Keep your  
4 voice up, Mr. McGinley.

5 MR. MCGINLEY: Sorry.

6 HEARING OFFICER HALLORAN: Thank  
7 you. Mine is hard to read as well.

8 BY THE WITNESS:

9 A. "The city will at locations -- and  
10 that's about all I can read.

11 BY MR. MCGINLEY:

12 Q. Okay. Can you -- can you make out  
13 any other part of the paragraph?

14 A. The last sentence is "in accordance  
15 with the following."

16 MS. CAISMAN: I'm going to object to  
17 the rule of completeness that if we can't read the  
18 whole paragraph --

19 HEARING OFFICER HALLORAN: Who is  
20 objecting?

21 MS. BRICE: I am.

22 MS. CAISMAN: That was me before.

23 HEARING OFFICER HALLORAN: I'm  
24 sorry. You stipulated to this, correct?

1 MS. BRICE: We stipulated to our  
2 version of a document. Not -- I don't think  
3 this -- I don't know if this is the same document.

4 MS. CAISMAN: We don't mind the  
5 admissibility. I just don't think it's proper to  
6 be reading portions of the document when you're  
7 not reading the full paragraph where that portion  
8 is contained. I think that's misleading.

9 HEARING OFFICER HALLORAN: Do we  
10 have a cleaner copy? I mean, can you read yours,  
11 Ms. Caisman, or is yours more legible than mine or  
12 the witnesses?

13 MR. MCGINLEY: I can read mine. If  
14 it's easier, I'll just read it into the record.

15 MS. CAISMAN: I think Exhibit 40 is  
16 the same and is easier to read.

17 BY MR. MCGINLEY:

18 Q. Exhibit 40-3. It's right in here  
19 40-3.

20 HEARING OFFICER HALLORAN: Thank  
21 you.

22 BY THE WITNESS:

23 A. Oh, yeah.

24

1 BY MR. MCGINLEY:

2 Q. Sir, directing your attention again  
3 to this is the Exhibit 40-3 in your binder, can  
4 you see that?

5 A. Yes, I can.

6 Q. Can you read that first paragraph  
7 now?

8 A. Yes.

9 Q. Could you please read it for us?

10 A. "The city will at locations noted  
11 assume responsibilities pertinent to proposed  
12 construction at these locations in accordance with  
13 the following."

14 Q. Okay. And underneath that you see  
15 letter A, what does that signify next to it?

16 A. That is a subset of the project at  
17 Greenwood Avenue.

18 Q. Okay. Directing your attention to  
19 the last paragraph on the page, could you read  
20 that for us, please, and I'd like to ask you a few  
21 questions about it.

22 A. Okay. Paragraph six. "The city  
23 will maintain the improvement along Greenwood  
24 Avenue in its entirety as indicated on the

1 attached exhibit. This will include the wearing  
2 surface of the grade separation structure over the  
3 expressway excluding the structure proper and the  
4 railroad structure including the wearing surface  
5 and that portion of Sand Street which is  
6 reconstructed."

7 Q. Okay. Thank you. Sir. First of  
8 all, the improvement along Greenwood Avenue -- and  
9 it references an exhibit we'll get to that in just  
10 a moment.

11 What is your understanding of  
12 the improvement? What improvements were actually  
13 done to Greenwood Avenue as part of this project?

14 MS. CAISMAN: Object to lack of  
15 foundation as to whether he actually has personal  
16 knowledge.

17 HEARING OFFICER HALLORAN:  
18 Mr. McGinley?

19 MR. MCGINLEY: He is the Bureau of  
20 Maintenance Chief. I mean, he understands what is  
21 within the jurisdiction, a portion of what's in  
22 the jurisdiction.

23 HEARING OFFICER HALLORAN: I can --  
24 I think he can testify to his understanding and

1 take it for what it's worth, but you may proceed.

2 BY THE WITNESS:

3 A. Could you repeat it?

4 BY MR. MCGINLEY:

5 Q. Sure. What is your understanding of  
6 the improvements that were done along Greenwood  
7 Avenue?

8 A. The Greenwood Avenue improvements  
9 relative to the construction of the Amstutz  
10 Expressway required that Greenwood Avenue be  
11 raised, elevated to the point that it could pass  
12 over the Amstutz Expressway.

13 Q. Anything else besides just raising  
14 it over the Amstutz itself?

15 A. Then that obviously would affect  
16 other -- other side streets and -- and relative --  
17 when you raise Greenwood Avenue, all the side  
18 streets would have to be elevated to meet up with  
19 Greenwood Avenue.

20 Q. Okay. What about when they say  
21 wearing surface, what is a wearing surface, sir?

22 A. The wearing surface is the overlay  
23 that run -- would ride over the top of the deck.  
24 You basically would have a deck and then a wearing

1 surface which would be the -- the surface that the  
2 vehicles actually drive on.

3 Q. Okay. I'd like to direct your  
4 attention -- it would be in your volume, sir. It  
5 would be 40 -- 40-11, please. It's a colored  
6 exhibit and it shows differentiations state funds,  
7 county funds, local city funds. What does that  
8 mean to you, sir?

9 A. For a project this large, it --  
10 different entities, different forms or levels of  
11 government all have a purpose in a project like  
12 this and so, therefore, some of the segments were  
13 funded exclusively by the state, some were funded  
14 exclusively by the county, some were funded  
15 exclusively by the city and then there was joint  
16 participation.

17 Q. And those are signified by the  
18 different colors that are here on the key, is that  
19 right?

20 A. That's correct.

21 Q. Let me direct your attention to the  
22 next page 40-12. Do you have an understanding of  
23 what 40-12 is representing?

24 A. Yes, I do.

1 Q. Okay. Could you explain to us what  
2 that represents?

3 A. 40-12 shows a portion of the  
4 project. There was a total project of  
5 construction of the Amstutz Expressway. This is a  
6 segment of it that identifies Greenwood Avenue and  
7 Sheridan Road, the intersection of Greenwood  
8 Avenue and Sheridan Road.

9 Q. Okay. Is this -- and is this the  
10 western edge of the project, the middle of the  
11 project, the eastern edge of the project? Do you  
12 know?

13 A. This would be the far west of the  
14 project.

15 Q. Okay. Let me direct -- and just  
16 again the colors that we see indicated here red  
17 and also green, so that would tell you what in  
18 terms of the funding for this project?

19 A. Well, you'd have to go back and it  
20 would identify which -- which entities  
21 participated in that segment.

22 Q. Okay. For the -- on 40-12, there is  
23 a green segment, what -- do you know what street  
24 that corresponds to?

1           A.       I have to apologize. I can't tell  
2 the difference between the colors.

3           Q.       I'm sorry. Mr. Stumpner is color  
4 blind with --

5                   MR. MCGINLEY: Can I just make a  
6 representation? We can all agree what the colors  
7 on this are.

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

10                  MS. CAISMAN: I guess I'll object.  
11 If he is color blind, that must mean that his  
12 understanding of what is colored comes from  
13 someone else, which is hearsay.

14                  HEARING OFFICER HALLORAN: Yeah, I  
15 think I can take administrative notice that colors  
16 are what they are. So I'm not sure it encroaches  
17 upon hearsay.

18                  MS. CAISMAN: I'm not disputing the  
19 colors. I'm just disputing that he can't  
20 really -- what he interprets just based on the  
21 colors comes from someone else.

22                  MR. MCGINLEY: He is --

23                  HEARING OFFICER HALLORAN: I'm  
24 sorry?

1                   MR. MCGINLEY: In response to  
2                   counsel, to simply say, again, Mr. Stumpner is the  
3                   Chief of the Bureau of Maintenance. Within his  
4                   duties are the necessity to understand what roads  
5                   are within the jurisdiction of District 1, how the  
6                   allocation and the responsibility falls within  
7                   District 1. This is completely -- I mean, not  
8                   withstanding the fact that Mr. Stumpner may be  
9                   color blind, the fact of the matter is that this  
10                  is completely under his aegis. This is what he  
11                  does. This is what he oversees.

12                  HEARING OFFICER HALLORAN: You know,  
13                  I agree and I think we'll -- you know, again, the  
14                  weight -- overruled. I think Mr. McGinley can  
15                  point out what colors and Mr. Stumpner can answer.

16                  MR. MCGINLEY: Thank you.

17                  BY MR. MCGINLEY:

18                  Q.           Mr. Stumpner, in 40-12, can you see  
19                  the writing that is in the middle of the page on  
20                  the left-hand side? The -- can you see the  
21                  writing on the left-hand side of the page?

22                  A.           Yes.

23                  Q.           What does that say, sir?

24                  A.           It says Greenwood Avenue.

1 Q. And so this would be the first and  
2 after this, this would be the eastern edge of  
3 Greenwood Avenue?

4 A. No, Greenwood Avenue goes well  
5 beyond -- well beyond this page to the east.

6 Q. Okay. And how would you tell that  
7 based on the next two pages, 40-13 and 40-14?

8 A. There -- there is some stationing  
9 identified there, but actually the -- the actual  
10 document is a long document that when we made  
11 these copies of these pages we couldn't run the  
12 whole document through a copy machine. So we had  
13 to make segments.

14 Q. Okay. Can you tell us please -- if  
15 you look at 40-13, you'll see some writing at the  
16 top of the page, do you see what I'm referring to?

17 A. I believe 40- --

18 Q. The writing that is up at the top  
19 here.

20 A. 40-13?

21 Q. The writing that is on the page,  
22 sir, can you see that?

23 A. Yes, I do.

24 Q. Can you explain that to us, please?

1           A.       That identifies for the bridge  
2 structures different maintenance  
3 responsibilities --

4           Q.       Okay.

5           A.       -- for those segments.

6                   MR. MCGINLEY: Do I have the Hearing  
7 Officer's permission to represent to Mr. Stumpner  
8 that the structure that is right here is in red?

9                   HEARING OFFICER HALLORAN: You do.  
10 Over objection.

11 BY MR. MCGINLEY:

12           Q.       If it's -- the red corresponds on  
13 the legend the interpretive key for this exhibit  
14 as corresponding to state funds, so what does that  
15 tell you?

16           A.       That means state funds were used  
17 exclusively for that segment to construct that  
18 segment.

19           Q.       And this is the segment that carries  
20 Greenwood Avenue over the Amstutz, correct?

21           A.       Yes, that is correct.

22           Q.       What is directly to the east of --  
23 these would be today, these would be the on-ramps  
24 and the off-ramps, correct?

1           A.       The on-ramps and off-ramps are  
2 depicted in this exhibit.

3           Q.       Okay. What would come directly to  
4 the east of the on-ramp and off-ramp on the  
5 Amstutz between Greenwood Avenue?

6           A.       It would be Greenwood Avenue itself,  
7 but also it would be the railroad structure that  
8 was referenced earlier in the agreement.

9           Q.       Is that -- is that on 40-13 or is  
10 that on the next page 40-14?

11          A.       Well, it shows -- it has the very  
12 west edge of the railroad bridge is on Exhibit  
13 40-13.

14          Q.       Okay. So can you point -- could you  
15 just lift that out of the book and point, please,  
16 so everybody can see.

17          A.       On this Exhibit 40-13, the Amstutz  
18 Bridge is the one that is shown in the middle.  
19 Right here on the what would be the right-hand  
20 side of the exhibit is the beginning of the  
21 railroad structure.

22                   MR. MCGINLEY: Can I just ask him to  
23 mark that so we have that in the record, please?

24                   HEARING OFFICER HALLORAN: Any

1 objection, Ms. Caisman?

2 MS. CAISMAN: No.

3 HEARING OFFICER HALLORAN: Okay.

4 Thank you.

5 BY MR. MCGINLEY:

6 Q. You have some pens up there. Here.

7 Why don't you take that one.

8 A. Do you want me to just simply  
9 circle?

10 Q. Sure, that would be fine.

11 HEARING OFFICER HALLORAN: Now, I  
12 guess for the record how am I going to get that?  
13 Are you going to put it back in the binder?

14 MR. MCGINLEY: Yes.

15 HEARING OFFICER HALLORAN: Do you  
16 want me to take that with me after this hearing?

17 MR. MCGINLEY: Yes.

18 HEARING OFFICER HALLORAN: You have  
19 to make sure I get it.

20 MR. MCGINLEY: We will do that.

21 HEARING OFFICER HALLORAN: Okay.

22 Thank you.

23 BY MR. MCGINLEY:

24 Q. So that's on 40-13, sir. On 40-14,

1 what do you see depicted there?

2 A. A segment of Greenwood Avenue at the  
3 intersection with Sands Road.

4 Q. Okay. Can you tell from looking at  
5 this what actually -- is this just a road? Is  
6 it -- what is actually being depicted here on  
7 the -- right where you see the four-way  
8 intersection on 40-14?

9 A. On this document, it shows the area  
10 or the limits of those pieces of road that were  
11 required to be reconstructed as part of the  
12 Amstutz Expressway Project.

13 Q. And do you have an understanding of  
14 what was actually reconstructed right here at this  
15 four-way intersection? What is this part of?

16 A. Well, it would have been a  
17 reconstruction of the whole -- the whole roadway.  
18 So the road would have been removed and  
19 reconstructed.

20 Q. Okay. Do you know what -- what  
21 physically happens to be at this location? Is it  
22 just a roadway? Is it more than a roadway?

23 A. Well, the roadway and the right of  
24 way, of course.

1 Q. And anything else?

2 A. I am aware that there was some  
3 construction easements relative to -- to doing  
4 this project.

5 Q. And did those -- what were those  
6 construction easements used for?

7 A. Because the roadway was being raised  
8 in grade. They had to build temporary access  
9 to -- to construct that segment, to maintain  
10 traffic through the construction period.

11 Q. Is it just a flat road that is there  
12 today or is there more than a flat road?

13 A. Well, no, there is an embankment  
14 that leads up to the overpasses that lead over the  
15 railroad structure as well as the bridge over the  
16 Amstutz.

17 Q. Do you know who is responsible for  
18 maintaining that embankment that goes and carries  
19 Greenwood Avenue over the railroad?

20 A. Yes.

21 Q. My question is do you know who  
22 actually -- who is responsible for maintaining the  
23 embankment over the railroad?

24 A. The City of Waukegan.

1 Q. How do you know that?

2 A. Per the entire agreement that -- the  
3 1966 agreement with -- between the -- well, the  
4 Department of Public Works and Buildings at the  
5 time and the City of Waukegan.

6 Q. In the period of time that you've  
7 been with the Bureau of Maintenance, are you aware  
8 of any point in time when the bureau has been  
9 responsible for the maintenance of the embankment?

10 A. No.

11 Q. And how far back does that go, sir?  
12 How long have you worked for the Bureau of  
13 Maintenance itself?

14 A. Since November of 1985.

15 Q. So for the past 30 years in your  
16 capacity working in the Bureau of Maintenance,  
17 you're not aware of any actual work or maintenance  
18 work that has been done on the embankment?

19 A. No, I'm not aware of any work.

20 Q. What about Sand Street that's south  
21 of Greenwood Avenue, who is responsible for the  
22 maintenance of that?

23 A. The City of Waukegan.

24 Q. How long -- to the best of your

1 knowledge, how long has that been the case?

2 A. As long as I've ever been aware of  
3 Sand Street.

4 Q. If -- if there was a problem with  
5 the embankment, whose responsibility would it be  
6 to address a repair of the embankment?

7 A. It would be the City of Waukegan.

8 Q. What if you're talking about the  
9 roadway or the wearing surface, whose  
10 responsibility would that be?

11 A. The City of Waukegan.

12 Q. And as far as Sand Street, who's  
13 responsible for the maintenance of that?

14 A. The City of Waukegan.

15 Q. Does IDOT have -- are you familiar  
16 with the term state highway?

17 A. Yes.

18 Q. Greenwood Avenue east of Sand  
19 Street, is that considered to be state highway?

20 A. No.

21 Q. How do you know that?

22 A. From the Bureau of Maintenance, we  
23 would have all the records of these agreements and  
24 of all -- anything that would be considered a

1 state highway. We do not have an agreement or  
2 anything that identifies Greenwood Avenue east of  
3 Sand in our records or Sand Street at all in our  
4 records.

5 Q. Okay. And so nothing from Greenwood  
6 east of Sand Street and Sand Street south of  
7 Greenwood same situation?

8 A. Yes, that is correct.

9 Q. No maintenance records at all?

10 A. No maintenance records at all.

11 Q. Over the course of the past month or  
12 two months, have you -- since you've become aware  
13 of this lawsuit, have you had any opportunity to  
14 review the records or have people working for you  
15 review the records concerning maintenance  
16 responsibilities in the vicinity of Greenwood  
17 Avenue and Sand Street?

18 A. Yes.

19 Q. Okay.

20 A. Yes, I have.

21 Q. And what -- what was the result  
22 of -- I mean, who did you ask to do that work for  
23 you?

24 A. My support section had Steve

1 Hooghkirk, H-O-O-G-H-K-I-R-K. I had asked him to  
2 research the subject and -- relative to Sand  
3 Street as well as Greenwood and we found no  
4 records.

5 Q. And as you testified to earlier, you  
6 maintain all the records for everything that is  
7 within your jurisdiction, correct?

8 A. Of things that the state is  
9 responsible for.

10 MR. MCGINLEY: No further --

11 MS. O'LAUGHLIN: Wait.

12 BY MR. MCGINLEY:

13 Q. Do you know who paid for the  
14 construction of the embankment over the railroad  
15 tracks?

16 A. I would have to reference the chart  
17 on Exhibit 40-11 and then cross reference that to  
18 the segment of that map.

19 Q. Okay.

20 A. That was identified somewhat circled  
21 on 40-13.

22 Q. Okay. And red is for state funds,  
23 blue is for county funds and green is for local  
24 city funds.

1 MR. MCGINLEY: And for the record,  
2 Mr. Halloran, I'll state with your permission that  
3 the improvement that is depicted on 40-14 is a  
4 mixture of blue and green.

5 BY MR. MCGINLEY:

6 Q. So, Mr. Stumpner, what would that  
7 suggest to you?

8 A. There were mixed funds between the  
9 two entities.

10 Q. And the fact that there is no red  
11 markings relative to that improvement would tell  
12 you what?

13 A. That it was not exclusively state  
14 funds.

15 Q. The -- the issue about the  
16 embankment, you said that the City of Waukegan has  
17 maintenance responsibility for the embankment,  
18 correct?

19 A. Yes.

20 Q. Does the City of Waukegan -- it was  
21 constructed as part of the Amstutz Project by  
22 IDOT, correct?

23 A. Yes, that is correct.

24 Q. If the City of Waukegan wanted to

1 tear that down or modify that in some fashion, do  
2 they have the right to be able to do that?

3 A. IDOT would object to that, but  
4 technically they would have the right to do that.

5 Q. Okay. And same question for  
6 Commonwealth Edison, would Commonwealth Edison  
7 have the right because a portion of the embankment  
8 sits on Commonwealth Edison property, what about  
9 Commonwealth Edison?

10 A. Commonwealth Edison would not have  
11 the right to do that.

12 Q. But the City of Waukegan would,  
13 correct?

14 A. Yes.

15 Q. That's fine. Thank you, sir.

16 HEARING OFFICER HALLORAN: Are you  
17 finished with direct, Mr. McGinley?

18 MR. MCGINLEY: Yes.

19 HEARING OFFICER HALLORAN: Ms.  
20 Caisman, take your time.

21 C R O S S E X A M I N A T I O N

22 BY MS. CAISMAN

23 Q. Good morning, Mr. Stumpner.

24 A. Good morning.

1           Q.       You don't know for how long the City  
2 of Waukegan has had maintenance responsibility  
3 over Greenwood Avenue north of parcel 0393, do  
4 you?

5           A.       No, I do not know.

6           Q.       You didn't review any historical  
7 maintenance maps to determine that?

8           A.       No.

9           Q.       And you don't even know whether IDOT  
10 maintains historical maintenance maps?

11          A.       We do not maintain historical  
12 maintenance maps.

13          Q.       IDOT's maintenance maps only keep  
14 records related to actual roadways themselves,  
15 isn't that right?

16          A.       Yes, that is correct.

17          Q.       And not abutting parcels?

18          A.       Yes, that is correct.

19          Q.       So, theoretically, you could look up  
20 Greenwood Avenue on an IDOT maintenance map, is  
21 that right?

22          A.       Yes.

23          Q.       And you could look up Sand Street on  
24 an IDOT maintenance map?

1           A.       I could look for Sand Street.

2           Q.       Sure. But you didn't do that in  
3 this case?

4           A.       We did look for Sand Street. I  
5 apologize. We didn't look on a map for Sand  
6 Street.

7           Q.       So you couldn't look on an IDOT  
8 maintenance map for parcels abutting an actual  
9 roadway, right?

10          A.       No.

11          Q.       Your belief that the City of  
12 Waukegan has responsibility for maintaining  
13 Greenwood Avenue and Sand Street comes from this  
14 resolution that is Exhibit 40 that you were  
15 looking at with Mr. McGinley?

16          A.       Yes, that is correct.

17          Q.       Do you know the effect of a  
18 resolution from a city or -- from a city or  
19 municipality without an ordinance?

20          A.       No, I do not.

21          Q.       Do you know whether the resolution  
22 is effective without an ordinance from the city or  
23 municipality?

24          A.       No, I do not.

1 Q. If you could turn to Exhibit 40, you  
2 were not involved in drafting this resolution,  
3 were you?

4 A. No.

5 Q. And you weren't involved in any  
6 negotiations related to this resolution?

7 A. No, I was not.

8 Q. This resolution if you could turn to  
9 40-2 in the top right-hand corner, do you see  
10 where it is stamped division of highways April  
11 13th, 1966?

12 A. Yes.

13 Q. The Amstutz Project didn't start  
14 until the 1970s, isn't that right?

15 A. Yes, that's approximately correct.

16 Q. So any improvements made along  
17 Greenwood Avenue during the Amstutz Project didn't  
18 exist at the time this document was written or  
19 recorded in 1966?

20 A. Could you -- I'm sorry. Could you  
21 repeat that question?

22 Q. Sure. Any improvements that were  
23 made along Greenwood Avenue as part of the Amstutz  
24 Project didn't actually exist when this document

1 was written or recorded?

2 A. That is correct.

3 Q. And the plans for the Amstutz  
4 Project hadn't even been completed by April 13th,  
5 1966, isn't that right?

6 A. Yes, that's correct.

7 Q. If you could turn to -- I think  
8 we're at 40-3. Specifically, I'm looking at 1A-3  
9 in the middle of the page and I guess I'll read it  
10 into the record for you and you can tell me if I  
11 read it correctly. "The city will reimburse the  
12 state for one hundred percent of the cost of all  
13 construction necessary along Greenwood Avenue  
14 between the stations 22 plus 50 and 31 plus 00 and  
15 for 40 percent of the cost of all construction  
16 along Greenwood Avenue east of station 13 plus 20  
17 including the railway grade separation structure,  
18 intersection work at Sand Street and any  
19 reimbursable utility work necessary as indicated  
20 on the attached exhibit. Cost to the city  
21 estimated to be \$241,000," did I read that  
22 correctly?

23 A. Yes, you did.

24 Q. Now, the portion of Greenwood Avenue

1 that is east of station 13 plus 20 is the area of  
2 Greenwood Avenue that's immediately abutting into  
3 the east of the intersection of Sand Street and  
4 Greenwood Avenue, isn't that right?

5 A. I'm sorry. Could you repeat that  
6 question again or have that question repeated?

7 Q. Sure. If you want to go to Exhibit  
8 40-13 and do you see where it says 13 plus 20?

9 A. Yes, I do.

10 Q. So is that referring to station 13  
11 plus 20?

12 A. Yes, it does.

13 Q. And if you go east on this document  
14 along Greenwood Avenue, you then encounter on page  
15 40-14 Sand Street and Greenwood Avenue?

16 A. Yes, that is correct.

17 Q. And so for that portion of Greenwood  
18 Avenue, the city was only reimbursing the state  
19 for 40 percent of the cost of construction, isn't  
20 that right?

21 A. Yes, that is correct.

22 Q. So the state was not being  
23 reimbursed for a majority of the construction of  
24 that portion of Greenwood Avenue?

1 A. That is correct.

2 Q. If you could turn to -- if you could  
3 turn to 40-11. And this is the key that we were  
4 discussing earlier. You are color blind,  
5 Mr. Stumpner, is that right?

6 A. Yes.

7 Q. So you can't actually read this  
8 document yourself?

9 A. I can read the words.

10 Q. Now, Mr. McGinley had brought out on  
11 Exhibit 40-14, the areas for Sand Street and  
12 Greenwood Avenue are depicted in varying blue and  
13 green colors.

14 So based on this key, my  
15 understanding is that would indicate that it is --  
16 the county and local city funds are being  
17 contributed to the cost for those roadways, is  
18 that right?

19 A. Yes, that is correct.

20 Q. But that's not what it says in  
21 Section 1 on page 40-3, isn't that right?

22 A. Yes, that's correct.

23 Q. Those conflict?

24 A. No, they don't conflict. They just

1 dictate -- this is an agreement with the City of  
2 Waukegan. So it would dictate the city's  
3 involvement.

4 Q. Now, if you look on 40-14. The  
5 coloring on Greenwood Avenue and Sand Street,  
6 that's just coloring on the actual roadway itself,  
7 isn't that right?

8 MR. MCGINLEY: Can I just make one  
9 point? This is flipped around. This is actually  
10 on sort --

11 MS. BRICE: We can't flip it back.

12 HEARING OFFICER HALLORAN: When you  
13 say this, you're pointing to the screen,  
14 Mr. McGinley?

15 BY THE WITNESS:

16 A. If you're --

17 HEARING OFFICER HALLORAN: Wait.

18 BY MS. CAISMAN:

19 Q. On 40-14, can you see where it says  
20 Greenwood Avenue?

21 A. Yes, I can.

22 Q. Okay. And can you see where it says  
23 Sand? I think it may be a little cutoff.

24 A. Yes.

1 Q. Okay. So does that help you orient  
2 that Greenwood is running east/west?

3 A. Yes, that is correct.

4 Q. And Sand is running north/south?

5 A. Yes, that is correct.

6 Q. So the portion of Greenwood that  
7 we're looking at here is the portion of Greenwood  
8 that is east of Sand Street?

9 A. Yes, that is correct.

10 Q. Okay. And where there is coloring  
11 on this document that's over the actual roadways  
12 of Greenwood Avenue and Sand Street, isn't that  
13 right?

14 A. Yes, that is correct.

15 Q. The land abutting those roadways  
16 isn't colored at all?

17 A. No, it is not.

18 Q. So if you could then turn back to  
19 Exhibit 40-3. I just want to -- paragraph six  
20 does refer to an attached exhibit, isn't that  
21 right?

22 A. Yes, that is correct.

23 Q. And the page we just looked at was  
24 an exhibit -- one of the exhibits that was

1 attached?

2 A. Yes, that is correct.

3 Q. I believe you testified on direct  
4 that your opinion is that the city -- your belief  
5 is that the City of Waukegan has maintenance  
6 responsibility over parcel 0393?

7 MR. MCGINLEY: Objection. Misstates  
8 the witness's testimony.

9 HEARING OFFICER HALLORAN:  
10 Overruled. He can answer if he is able.

11 BY THE WITNESS:

12 A. Under direct, I didn't make any  
13 reference to parcel -- to the parcel. We were  
14 talking about the highway.

15 BY MS. CAISMAN:

16 Q. But I believe you referenced the  
17 embankment abutting the southern edge of Greenwood  
18 Avenue?

19 A. Yes.

20 Q. If we could turn to Exhibit 15.

21 MS. CAISMAN: If I may approach and  
22 help him find it.

23 BY MS. CAISMAN:

24 Q. Mr. Stumpner, on Exhibit 15, do you

1 see where Greenwood Avenue is located running  
2 east/west and Sand or Pershing is running  
3 north/south?

4 A. Yes, I do.

5 Q. And do you see where just to the  
6 south of Greenwood Avenue there is a rectangle  
7 with 0393 in the middle?

8 A. Yes, I do.

9 Q. Is the embankment that we were  
10 talking about -- is it your understanding that the  
11 embankment we were talking about abutting  
12 Greenwood Avenue is located on that parcel?

13 A. Yes.

14 Q. So you testified on direct, and  
15 please clarify if I'm wrong, that you believe that  
16 the City of Waukegan has maintenance  
17 responsibility over the parcel or the embankment  
18 that is on parcel 0393?

19 A. Yes, that is correct.

20 Q. Didn't you testify in your  
21 deposition, though, that maintenance  
22 responsibility would be the property owners?

23 A. I do not recall stating that.

24 Q. If you could turn to Exhibit 4G,

1 which is another one of those binders in front of  
2 you.

3 HEARING OFFICER HALLORAN: There it  
4 is.

5 THE WITNESS: 4G.

6 BY MS. CAISMAN:

7 Q. I believe the correct page would be  
8 4G-113. I'll represent that this 4G is the  
9 transcript from your deposition.

10 A. Okay. I found it.

11 Q. Sorry. I'm actually going to direct  
12 you to 4G-110. My apologies.

13 You were deposed in this case,  
14 Mr. Stumpner?

15 A. Yes, that is correct.

16 Q. And on that day you took an oath, is  
17 that right?

18 A. Yes, that's correct.

19 Q. And you swore to tell the truth?

20 A. Yes, that's true.

21 Q. And it's the same oath you took  
22 today?

23 A. Yes, it is.

24 Q. If you could look at -- the top of

1 the page is 109, but we're on 4G-110 line six.

2 Did I ask the following question and did you give  
3 the following answer?

4 Question: Does anyone currently  
5 have maintenance responsibility over parcel 0393,  
6 the parcel itself?

7 Answer: As far as maintenance  
8 responsibility, it would be the property owner.

9 A. That is what I said.

10 Q. And ComEd is the fee simple property  
11 owner of parcel 0393, right?

12 MR. MCGINLEY: Objection. Assumes  
13 facts not in evidence.

14 HEARING OFFICER HALLORAN: I'm  
15 sorry. You have to speak --

16 MR. MCGINLEY: Objection -- I'm  
17 sorry. Objection. Assumes facts not in evidence.  
18 Lacks foundation.

19 HEARING OFFICER HALLORAN: Ms.  
20 Caisman?

21 MS. CAISMAN: I guess I can ask him  
22 if he knows. I don't know that there is a dispute  
23 that ComEd is really the fee owner of the  
24 property.

1 HEARING OFFICER HALLORAN: I don't  
2 think there is, but you can rephrase or re-ask.

3 BY MS. CAISMAN:

4 Q. Mr. Stumpner, do you know who the  
5 property owner of parcel 0393 is?

6 A. No, I do not know.

7 Q. So you don't know if it's the City  
8 of Waukegan?

9 A. No, I do not know.

10 Q. You know that there is a right of  
11 way over parcel 0393?

12 A. Yes.

13 Q. And you're aware that it is IDOT  
14 that has a right of way over parcel 0393?

15 A. I don't know that it is IDOT.

16 Q. You're aware that IDOT needed to  
17 acquire an easement over parcel 0393 so it could  
18 build the embankment that is on 0393 as part of  
19 the Amstutz Project, is that correct?

20 A. That would not be correct.

21 Q. They needed to acquire an easement  
22 over that parcel so they could build a slope to  
23 get over -- to heighten the overpass to get over  
24 the rail bridge and connect to the Amstutz, didn't

1 they?

2 A. Yes, there was an easement for that  
3 purpose.

4 Q. Okay. So there was an easement over  
5 parcel 0393 for that purpose as part of the  
6 Amstutz Project?

7 A. The easement was not for that  
8 purpose.

9 Q. Well, IDOT needed to obtain access  
10 to that parcel to do that work as part of the  
11 Amstutz --

12 A. Yes, that is --

13 Q. -- didn't they?

14 A. -- correct.

15 Q. And IDOT would have gotten that  
16 easement by acquiring an easement or right of way  
17 over that parcel?

18 A. They did acquire the right of way.

19 Q. Over parcel 0393?

20 A. Yes, that is correct.

21 Q. And so on parcel 0393 because  
22 Greenwood Avenue was at the same grade as the  
23 bridge, IDOT had to raise the road over Greenwood  
24 Avenue, isn't that right?

1           A.       They had to raise Greenwood Avenue  
2     itself, yes.

3           Q.       So they needed an easement or right  
4     of way to go on to parcel 0393 to raise that road?

5           A.       Yes.

6           Q.       That road and the grade of the road  
7     along Greenwood Avenue still exists today?

8           A.       Yes, that is correct.

9           Q.       So the embankment that helps prop up  
10    the grade of that road on Greenwood Avenue still  
11    exists today?

12          A.       Yes, that is correct.

13          Q.       And IDOT was able to do its work on  
14    parcel 0393 because it had received a grant for a  
15    public highway?

16          A.       That is correct.

17          Q.       So a grant for public highway and  
18    the rights given under that grant is different  
19    than jurisdiction, would you agree?

20          A.       No, I would disagree with that.

21          Q.       Well, you don't think IDOT ever had  
22    jurisdiction over Greenwood Avenue and Sand  
23    Street, right?

24          A.       That's correct.

1 Q. But they had an easement over parcel  
2 0393?

3 A. They did not have an easement.

4 Q. They had a right of way --

5 A. Yes.

6 Q. -- over 0393?

7 A. Yes.

8 Q. So having a right of way over a  
9 particular piece of property is different than  
10 having jurisdiction over the roadways abutting  
11 that right of way?

12 A. That is correct.

13 Q. You testified that IDOT would object  
14 if the City of Waukegan would tear down that  
15 embankment or wanted to tear down that embankment  
16 on parcel 0393, is that correct?

17 A. That is correct.

18 Q. And, in fact, the City of Waukegan  
19 would need IDOT's approval to do that?

20 MR. MCGINLEY: Objection. Misstates  
21 the witness's testimony.

22 HEARING OFFICER HALLORAN: He can  
23 answer if he is able. Overruled.

24

1 BY THE WITNESS:

2 A. In my opinion, the -- the City of  
3 Waukegan would need IDOT approval.

4 BY MS. CAISMAN:

5 Q. If you could turn to what has been  
6 marked as Exhibit 89.

7 HEARING OFFICER HALLORAN: Here it  
8 is.

9 THE WITNESS: Thank you.

10 BY MS. CAISMAN:

11 Q. Exhibit 89 is a Notice of Service of  
12 Rule 206(a)(1) Notice of Deposition that was  
13 admitted yesterday.

14 You were deposed as a corporate  
15 representative of IDOT on certain topics, isn't  
16 that correct?

17 A. Yes, that is correct.

18 Q. If you could turn to 89-11, I  
19 believe. It should be the last page of that  
20 exhibit. And you were designated as IDOT's  
21 representative with respect to topic seven, isn't  
22 that right?

23 A. Yes.

24 Q. And were you prepared to testify

1 regarding that topic?

2 A. Yes.

3 Q. And the topic is generally  
4 jurisdictional responsibility and/or maintenance  
5 responsibility over Greenwood Avenue, Sand Street  
6 parcel 0393 and improvements on parcel 0393, isn't  
7 that right?

8 A. Yes, that's correct.

9 Q. But you don't know for how long the  
10 City of Waukegan in your mind has had  
11 jurisdictional responsibility over Greenwood  
12 Avenue north of parcel 0393?

13 A. That is correct.

14 Q. And, in fact, you didn't think  
15 anyone had jurisdictional responsibility over  
16 parcel 0393?

17 A. Yes, that would be correct.

18 Q. So in your -- it was your belief  
19 that no entity had jurisdiction over improvements  
20 made on parcel 0393?

21 MR. MCGINLEY: Objection. I think  
22 that misstates the witness's testimony.

23 HEARING OFFICER HALLORAN: He can  
24 answer if he is able.

1 BY THE WITNESS:

2 A. For the documents that I had in  
3 possession in the Bureau of Maintenance, we did  
4 not have the parcel 0393 identified and as such at  
5 the time I identified that, I did not know who had  
6 jurisdiction on those.

7 BY MS. CAISMAN:

8 Q. And the Bureau of Maintenance  
9 doesn't maintain grant documents giving, for  
10 example?

11 A. No, we do not.

12 Q. You also didn't know for how long in  
13 your belief the City of Waukegan had maintenance  
14 responsibility over Greenwood Avenue north of  
15 parcel 0393?

16 A. That is correct.

17 Q. If you can turn to topic eight. You  
18 were designated as IDOT's corporate representative  
19 for a deposition with respect to topic eight in  
20 Exhibit 89 as well, weren't you?

21 A. I believe, yes.

22 Q. And that topic asks about certain  
23 databases such as the Illinois Roadway Information  
24 System, the Illinois State Geological Survey Extra

1 Net and Geographic Information Systems Resources,  
2 is that correct?

3 A. That is correct.

4 Q. And were you prepared to testify on  
5 that topic?

6 A. No.

7 Q. Because you didn't know what kind of  
8 records were maintained in the Illinois Roadway  
9 Information System, is that right?

10 A. Yes, that is correct.

11 Q. And you didn't know what type of  
12 records were maintained in the ISGS Extra Net?

13 A. That is correct.

14 Q. You didn't know what records were  
15 maintained in the GIS resources?

16 A. That is correct.

17 Q. So you didn't know how any of those  
18 databases treated parcel 0393?

19 A. No.

20 Q. If you can turn to Exhibit 3F, do  
21 you recognize these in 3F? These are respondent's  
22 responses to plaintiff's third set of  
23 interrogatories.

24 A. Yes.

1           Q.       If you can, quickly we'll go  
2 through -- excuse me. Turn to Exhibit 3H and then  
3 we'll go back to 3F. 3H consists of verifications  
4 to the responses to the third set of  
5 interrogatories in 3F. If you turn to 3H-3 --

6           A.       Yes.

7           Q.       -- is that your signature on the  
8 verification page?

9           A.       Yes.

10          Q.       So you were verifying that IDOT's  
11 Responses to Interrogatories number one through  
12 four were true, accurate and complete, weren't  
13 you?

14          A.       Yes.

15          Q.       If you turn back to 3F and if you  
16 could turn to 3F-3.

17                   Now, at the time you verified  
18 the response to this interrogatory number one on  
19 the bottom of 3F-3, you had actually never seen  
20 this -- the language of this interrogatory before,  
21 had you?

22                   MR. MCGINLEY:  Objection.

23                   HEARING OFFICER HALLORAN:  Why,  
24 Mr. McGinley, please?

1 MR. MCGINLEY: It's argumentative.

2 HEARING OFFICER HALLORAN: You can  
3 rephrase that, please. Sustained.

4 BY MS. CAISMAN:

5 Q. At the time you signed the  
6 interrogatory verifications for these responses,  
7 had you actually read interrogatory number one on  
8 the bottom of 3F-3?

9 A. Yes.

10 Q. You were deposed in this case,  
11 right?

12 A. Yes.

13 Q. Did I ask the following question and  
14 did you give the following answer?

15 Question: But you have never  
16 seen the question that it was responding to that  
17 number one?

18 Answer: I don't necessarily  
19 recall seeing that question, but I do recall  
20 seeing that response.

21 MR. MCGINLEY: Objection. Lacks  
22 foundation. If she wants to ask the witness a  
23 question about his deposition testimony, perhaps  
24 she can direct him to --

1 HEARING OFFICER HALLORAN: I agree.  
2 Sustained.

3 MS. CAISMAN: Sure, I was trying to  
4 flip back.

5 HEARING OFFICER HALLORAN: I know.

6 BY MS. CAISMAN:

7 Q. If you can turn to Exhibit -- let's  
8 go back to Exhibit 4G. We'll be looking at 4G-15.  
9 I'll go a little further back  
10 than I just read. Start on line 19 and let me  
11 know if you recall I asked the following questions  
12 and you gave the following answers.

13 Question: Okay. So, for  
14 example, if we turn to page three towards the  
15 bottom of the page, there is a bold heading saying  
16 Responses to Interrogatories and then there is a  
17 number one.

18 Answer: Yes.

19 Question: Have you seen that  
20 number one before, the language following that  
21 number one? Describe what, if any, interest or  
22 rights...

23 A. I'm sorry. Which page are you on?

24 Q. 4G-15.

1 A. Okay.

2 Q. Do you need me to read that again?

3 HEARING OFFICER HALLORAN: Please.

4 BY MS. CAISMAN:

5 Q. Line 19.

6 Question: Okay. So, for  
7 example, if we turn to page three towards the  
8 bottom of the page, there is a bold heading saying  
9 Responses to Interrogatories and then there is a  
10 number one.

11 Answer: Yes.

12 Question: Have you seen that  
13 number one before, the language following that  
14 number one, quote, describe what, if any, interest  
15 or rights..."

16 Answer: Yes, I don't -- that  
17 would be --

18 Question: I'm just asking  
19 whether or not you have seen that short paragraph  
20 before.

21 Answer: I don't recall seeing  
22 that. I don't recall seeing that.

23 Did I ask those questions and  
24 did you give those answers?

1 A. Yes.

2 Q. Now, if you could turn back to 3F-4,  
3 which contains IDOT's response to interrogatory  
4 number one. In the second paragraph, it states  
5 that the grant for public highway in question was  
6 only used in conjunction with the construction of  
7 an overpass across railroad tracks as part of the  
8 construction of the Amstutz Expressway, do you see  
9 that?

10 A. Yes, I do.

11 Q. And you verified that was a true  
12 response?

13 A. Yes.

14 Q. But you're aware that the embankment  
15 that IDOT built on parcel 0393 as part of the  
16 Amstutz Project still exists today?

17 A. Yes.

18 Q. And you're aware, of course, that  
19 the grant for public highway was rerecorded in  
20 1984 after the Amstutz Project was concluded?

21 A. Yes.

22 Q. And are you aware of what  
23 investigative work IDOT did on parcel 0393 in 2011  
24 and 2012?

1 A. No.

2 Q. So you don't know if IDOT performed  
3 field surveys on 0393 after construction on the  
4 Amstutz was completed?

5 A. No.

6 Q. You don't know if IDOT took soil  
7 borings on parcel 0393 after construction on the  
8 Amstutz was completed?

9 A. No.

10 Q. You don't know whether IDOT  
11 employees accessed parcel 0393 to do inspections  
12 after the Amstutz Project was completed?

13 A. No.

14 MR. MCGINLEY: Mr. Halloran, just  
15 for the record I'm going to object because  
16 Mr. Stumpner had not been designated for that  
17 purpose. He was designated to talk about  
18 maintenance for the 206(a)(1) deposition.

19 HEARING OFFICER HALLORAN: Ms.  
20 Caisman?

21 MS. CAISMAN: He verified these  
22 responses under oath that they were true, accurate  
23 and complete. So IDOT put him in that position.

24 HEARING OFFICER HALLORAN: You know,

1 I'd have to agree with Ms. Caisman. I think this  
2 line of questioning is appropriate. So, thank  
3 you.

4 BY MS. CAISMAN:

5 Q. Looking at interrogatory number two,  
6 3F-4. When you signed the verification for IDOT's  
7 response to this interrogatory, you had also not  
8 seen the language of that actual interrogatory  
9 before, had you?

10 A. I had seen -- I had seen the  
11 language. When I signed this document, I had seen  
12 the language.

13 Q. If you could turn back to Exhibit  
14 4G, your deposition. Specifically, 4G-17. Again,  
15 you were under oath when you were deposed in this  
16 case?

17 A. Yes.

18 Q. And did I ask the following question  
19 and did you give the following answer starting at  
20 line one?

21 Question: Okay. What about  
22 number two on page four, have you seen that  
23 question before?

24 Answer: Once again, I don't

1 recall seeing that question.

2 A. Yes, that is correct.

3 Q. To determine what steps IDOT took to  
4 determine whether it had an interest in parcel  
5 0393 you only looked to the 1966 resolution that  
6 was Exhibit 40 that we discussed and two grant  
7 documents?

8 A. That is correct.

9 Q. You didn't talk to anyone else at  
10 IDOT about what steps they had taken to determine  
11 whether IDOT had an interest in parcel 0393?

12 A. No, I did not.

13 Q. You didn't talk to Steven Gobelman?

14 A. No, I did not.

15 Q. You didn't talk to Keith Stoddard?

16 A. No, I did not.

17 Q. You didn't talk to Steven Warren?

18 A. No, I did not.

19 Q. So you don't know what they did to  
20 determine if IDOT had an interest in parcel 0393?

21 A. Yes, that is correct.

22 Q. And you verified that this response  
23 was complete, correct --

24 A. Yes.

1 Q. -- and accurate?

2 A. Yes.

3 Q. You don't know -- when you verified  
4 this response, you didn't know whether anyone at  
5 IDOT had also consulted Sidwell Maps or Tax Maps?

6 A. No, I do not.

7 Q. You don't know whether anyone had  
8 reviewed a project report for a bridge  
9 conditioning project that occurred around 2010 to  
10 2012?

11 A. No, I did not.

12 Q. You didn't know that IDOT had  
13 ordered a title commitment with respect to parcel  
14 0393?

15 A. No, I did not.

16 Q. If you could turn -- quickly turn  
17 back to Exhibit 40. This resolution does not use  
18 the word jurisdiction, does it?

19 A. I do not recall seeing that.

20 Q. If you could turn to 40-3 and  
21 looking at Section 1A for Greenwood Avenue,  
22 nowhere in that section is the word jurisdiction  
23 mentioned, is it?

24 A. One -- Section I capital A I do not

1 see the word jurisdiction.

2 Q. Okay. And specifically in IA-6,  
3 there is no mention of jurisdiction?

4 A. That is correct.

5 Q. Do you know whether this concept of  
6 jurisdiction used by IDOT even existed in 1966?

7 A. I do not know.

8 Q. Since the Bureau of Maintenance  
9 doesn't keep copies of the grant documents, you  
10 don't know how those grant documents would impact  
11 jurisdiction, do you?

12 A. No, I do not.

13 Q. And you don't have experience  
14 reviewing grant documents in your course of  
15 employment at IDOT, do you?

16 A. No, I do not.

17 Q. You don't have experience  
18 interpreting them at all?

19 A. No, I do not.

20 Q. You don't have any legal background?

21 A. That is correct.

22 Q. So you don't know what rights and  
23 responsibilities come when a grant document is  
24 given to IDOT?

1           A.       That is correct.

2           Q.       Other than the 1966 resolution, you  
3 haven't seen any other documents identifying who  
4 has responsibility over -- maintenance  
5 responsibility over Greenwood Avenue and Sand  
6 Street, have you?

7           A.       That is correct.

8           Q.       And you haven't seen -- other than  
9 what you claim is the 1966 resolution, you haven't  
10 seen any documents that state that the City of  
11 Waukegan has jurisdiction over parcel 0393, have  
12 you?

13          A.       That is correct.

14          Q.       The embankment that is being used  
15 to, I guess, hold up the grade of Greenwood Avenue  
16 that is being used for a highway purpose, isn't  
17 that right?

18          A.       That is correct.

19                   MS. CAISMAN: No further questions.

20                   HEARING OFFICER HALLORAN: Thank  
21 you, Ms. Caisman. Mr. McGinley, redirect, please.

22                   MR. MCGINLEY: Yes, please.

23

24

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

2 BY MR. MCGINLEY

3 Q. Mr. Stumpner, counsel just asked you  
4 regarding the resolution that she had you looking  
5 at whether or not the term jurisdiction was  
6 actually used in the resolution document and you  
7 said no, it is not.

8 However, if you go back and look  
9 at the section of 40-3(1)(a)(6), is there a way  
10 from looking at that that you might be able to --  
11 to make an educated understanding about who  
12 actually has jurisdiction over Greenwood Avenue  
13 particularly with respect to the portion of  
14 Greenwood Avenue that lies east of the off-ramp  
15 for the Amstutz Highway?

16 MS. CAISMAN: Objection. Lack of  
17 foundation. Lack of personal knowledge.  
18 Speculation.

19 HEARING OFFICER HALLORAN: You may  
20 answer. Overruled.

21 BY THE WITNESS:

22 A. The verbiage that the city will  
23 maintain and then the various aspects being  
24 identified would lead me to believe that the city

1 would have jurisdiction.

2 BY MR. MCGINLEY:

3 Q. Do you recall counsel asking you a  
4 few moments ago about whether or not you had  
5 documents regarding jurisdiction over Greenwood  
6 Avenue east of the off-ramp for the Amstutz  
7 Expressway, do you recall her asking you about  
8 that?

9 A. Yes.

10 Q. And you testified earlier as I  
11 understand it that the Bureau of Maintenance  
12 maintains records over -- maintains records for  
13 the roadways that it actually has jurisdiction  
14 for, correct?

15 A. That is correct.

16 Q. So what would you infer from the  
17 absence of documents in your files?

18 MS. CAISMAN: Objection.  
19 Speculation. Lack of foundation. He is guessing  
20 about an absence of a document.

21 HEARING OFFICER HALLORAN: But  
22 that's his job. I mean, he's been there since,  
23 what, 1985? I think you can infer. Overruled.

24

1 BY THE WITNESS:

2 A. Could you repeat the question,  
3 please?

4 BY MR. MCGINLEY:

5 Q. Sure. So you stated at the -- early  
6 on that the Bureau of Maintenance maintains  
7 records for all of the roadways that are under  
8 District 1's jurisdiction, correct?

9 A. Yes.

10 Q. So what would you infer from the  
11 absence of records pertaining to a given piece of  
12 roadway?

13 A. The absence of a record would  
14 indicate that IDOT doesn't have jurisdiction over  
15 that portion of roadway.

16 Q. And you testified earlier that the  
17 reason why you maintain all of these file cabinets  
18 full of paper is because of what reason?

19 A. The reason why IDOT maintains all  
20 these records is to ensure the safety of the  
21 motoring public. Should a segment of road not be  
22 maintained, the motoring public would see that and  
23 so we maintain these records so that we know all  
24 the aspects that we're responsible for.

1 MR. MCGINLEY: No further --

2 HEARING OFFICER HALLORAN: Ms.

3 Caisman, I presume recross?

4 R E C R O S S E X A M I N A T I O N

5 BY MS. CAISMAN

6 Q. Mr. Stumpner, do you know if  
7 maintenance was treated by IDOT the same way it's  
8 treated today in -- IDOT was treated -- sorry.  
9 By -- maintenance was treated by IDOT in 1966 the  
10 same way it's treated today?

11 A. I -- I believe it to be the case.

12 Q. But you don't know how jurisdiction  
13 was treated, if at all, in 1966?

14 A. Once again, I believe that to be  
15 consistent, the way we're treating jurisdiction  
16 now.

17 Q. You testified on direct that you  
18 didn't know when IDOT first started using this  
19 concept of jurisdiction?

20 A. That is correct.

21 Q. And you didn't know how it was used  
22 in 1966?

23 A. Once again, I don't know as a fact,  
24 but I did work for people that were employed by

1 IDOT in 1966.

2 Q. You haven't investigated how they  
3 treated jurisdiction in 1966?

4 A. No.

5 Q. So you don't know how that would  
6 relate to maintenance in 1966?

7 A. Yes, that would be correct.

8 MS. CAISMAN: No further questions.

9 HEARING OFFICER HALLORAN: Thank you  
10 Mr. McGinley?

11 MR. MCGINLEY: I want to ask one  
12 question.

13 FURTHER EXAMINATION  
14 BY MR. MCGINLEY

15 Q. IDOT has maintained records from  
16 apparently the 1910s coming forward to the present  
17 day and continues to maintain records, right?

18 A. That is correct.

19 Q. And the reason why it maintains  
20 those records from the 1911s to the present day is  
21 what, for what purpose?

22 A. To maintain order and know exactly  
23 what we're responsible for and -- to know what  
24 exactly IDOT is responsible for and to ensure the

1 safety of the motoring public.

2 MR. MCGINLEY: That's it. Thank  
3 you.

4 FURTHER EXAMINATION  
5 BY MS. CAISMAN

6 Q. Mr. Stumpner, IDOT doesn't maintain  
7 historical maintenance maps?

8 A. That is correct.

9 Q. So you can't know for certain how --  
10 whether IDOT had maintenance responsibility as  
11 depicted in any historical maintenance maps?

12 A. We do not have maintenance  
13 records -- maintenance -- historic maintenance  
14 maps.

15 Q. That wasn't my question.

16 A. I'm sorry.

17 Q. You just testified with Mr. McGinley  
18 that the maintenance records are maintained so  
19 that IDOT can know for sure what its  
20 responsibilities are and so because you don't  
21 maintain historical maintenance maps, my question  
22 was whether or not you could know for sure whether  
23 IDOT had maintenance responsibilities  
24 historically?

1 MR. MCGINLEY: Objection. It  
2 mischaracterizes the witness's testimony, it's  
3 compound and ambiguous.

4 HEARING OFFICER HALLORAN: I agree  
5 it's compound. If you can rephrase.

6 BY MS. CAISMAN:

7 Q. Because IDOT does not maintain  
8 historical maintenance maps, IDOT cannot tell for  
9 sure whether it had historical maintenance  
10 responsibility, isn't that right?

11 A. From the maintenance maps, we would  
12 not be able to tell, but we do have files on every  
13 road that the State of Illinois ever was  
14 responsible for the maintenance of.

15 Q. And I'm just asking about the  
16 historical maintenance maps.

17 MR. MCGINLEY: Objection. Asked and  
18 answered at this point.

19 HEARING OFFICER HALLORAN: I don't  
20 think it has. If you can answer.

21 BY THE WITNESS:

22 A. We do not have maintenance --  
23 historic maintenance maps.

24

1 BY MS. CAISMAN:

2 Q. So you could not rely on those  
3 historic maintenance maps to tell you for sure  
4 whether or not IDOT had maintenance responsibility  
5 over a particular area?

6 MR. MCGINLEY: Objection.  
7 Objection. It is mischaracterizing his testimony.  
8 I mean, he has testified that they don't maintain  
9 any historic maintenance maps. He has testified  
10 they have records. I mean, what more is there to  
11 be left to be said about this?

12 HEARING OFFICER HALLORAN: Ms.  
13 Caisman?

14 MS. CAISMAN: I'm not making any  
15 kind of summary as to his testimony. I'm trying  
16 to elicit a yes or no answer if as to whether or  
17 not that's true.

18 HEARING OFFICER HALLORAN: Yeah,  
19 I'll let it in. If you can answer -- if you  
20 remember the question. I think we should wrap  
21 this up soon.

22 MS. CAISMAN: I'm trying. I'm  
23 trying.

24 THE WITNESS: If you can repeat the

1 question.

2 MS. CAISMAN: Mr. Court Reporter,  
3 can you please read it back.

4 (Whereupon, the record was read  
5 as requested.)

6 BY THE WITNESS:

7 A. Correct.

8 BY MS. CAISMAN:

9 Q. Thank you.

10 MS. CAISMAN: No further questions.

11 MR. MCGINLEY: We have nothing  
12 further for this witness.

13 HEARING OFFICER HALLORAN: Any  
14 questions from the Board?

15 Thank you, Mr. Stumpner. Let's  
16 take a 15-minute coffee break, please, or  
17 whatever.

18 (Whereupon, a break was taken  
19 after which the following  
20 proceedings were had.)

21 HEARING OFFICER HALLORAN: We're  
22 back on the record after a short break. We just  
23 finished up with IDOT's witness Mr. Stumpner.

24 Ms. O'Laughlin, we interrupted

1 Mr. Gobelman's direct. Are we going to continue  
2 with Mr. Gobelman?

3 MS. O'LAUGHLIN: Yes, please.

4 HEARING OFFICER HALLORAN: Okay.

5 Thank you. Mr. Gobelman, you may stand up.

6 Mr. Brickey, will you please swear him in and I  
7 know he was sworn in yesterday, but I guess it  
8 never hurts.

9 WHEREUPON:

10 STEVEN GOBELMAN

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

13 DIRECT EXAMINATION

14 BY MS. O'LAUGHLIN

15 Q. Good morning.

16 A. Good morning.

17 Q. Mr. Gobelman, when you started  
18 working on this matter, who did you work for?

19 A. When I first started working on  
20 this, I was employed by the Illinois Department of  
21 Transportation.

22 Q. And when did you stop working for  
23 the Illinois Department of Transportation?

24 A. The last working day of July 2015.

1 Q. And prior to July of 2015, you were  
2 employed by IDOT, is that right?

3 A. Yes.

4 Q. And you currently work for whom?

5 A. Andrews Engineering, Incorporated.

6 Q. And are you being compensated for  
7 your work in connection with this matter at this  
8 time?

9 A. Yes.

10 Q. And what is your compensation?

11 A. I am paid \$157 an hour.

12 Q. And are you a professional engineer?

13 A. Yes, I'm licensed in the State of  
14 Illinois.

15 Q. Do you have any other licenses?

16 A. I am also a licensed professional  
17 geologist.

18 Q. If you can turn to Exhibit 59.

19 A. I am there.

20 Q. Do you recognize this document?

21 Wait. Excuse me. I'm sorry. Strike that.

22 Nevermind. Go to Exhibit 59.

23 A. Yup.

24 Q. Turn to 59-2.

1 A. Yes.

2 Q. Are you familiar with this document?

3 A. Yes.

4 Q. And what is it?

5 A. It's a request from US EPA  
6 requesting information from IDOT regarding the  
7 Johns Manville Superfund site in Waukegan.

8 Q. Did you have any connection to this  
9 104(e) request?

10 A. Yes.

11 Q. What was your connection?

12 A. At the time, I was employed with the  
13 Illinois Department of Transportation and as my  
14 role as sort of an environmental expert for the  
15 department regarding soil and groundwater issues I  
16 was asked by Randy Schick who was the assistant  
17 chief counsel at the time to -- obtain some  
18 information from me.

19 Q. And what did you do to obtain  
20 information for him?

21 A. I tried to track down whatever  
22 information he asked me to get.

23 Q. And so what did you do?

24 A. Some of the information he was

1 looking for was historical aerial photographs.  
2 Any other documents that I could find in regards  
3 to this type of project.

4 Q. If you could turn to paragraph ten  
5 of this exhibit, page 59-5.

6 A. Yes.

7 Q. If you can read that paragraph.

8 A. It states "J. Randle Schick reviewed  
9 the documents in the possession of the department  
10 and attached hereto and none of them appear to  
11 discuss any arrangements of ACM that was in situ  
12 at areas of concern number three. The retired  
13 resident engineer Duane Mapes for his -- for this  
14 construction project during a telephone call with  
15 J. Randle Schick, assistant chief counsel, in  
16 October 2000 recalled dealing with asbestos pipe  
17 during the project and burying some of it. As the  
18 department does not have any information about  
19 where ACM was located at the start of the project  
20 and where it is alleged to have been disposed, he  
21 was unable to ask Mr. Mapes to provide more  
22 information. The department has no other  
23 information responsive to this question."

24 Q. And what does this response indicate

1 about asbestos pipe?

2 A. In my opinion, this indicates that  
3 IDOT as part of this construction project  
4 encountered asbestos concrete pipe and removed  
5 some of it and buried it somewhere on the project.

6 Q. Would this be limited to transite  
7 pipe?

8 A. When it is talking about  
9 specifically saying asbestos pipe, to me, it is  
10 referring to what would be considered at the time  
11 asbestos-containing pipe which I think everybody  
12 has been locally using it as transite pipe.

13 Q. Could this also include drainage  
14 pipe?

15 A. At the time of 1970  
16 asbestos-containing cement pipe was allowed as a  
17 specification for piping.

18 Q. Are there other pipes that would  
19 have been present at this project besides transite  
20 pipe, for instance, storm sewers?

21 A. Yeah, there would have been other  
22 types of pipes potentially.

23 MS. BRICE: Objection. Calls for  
24 speculation.

1 HEARING OFFICER HALLORAN: He can  
2 answer if he is able.

3 BY THE WITNESS:

4 A. In construction back then, they  
5 would have -- the department would have specified  
6 that there would have been a certain type of pipe  
7 requirement that would have to go in to whether it  
8 was drainage, storm sewer, water line or whatever  
9 they're building or need to have and the spec book  
10 allows what types of pipes meet those types of  
11 qualifications.

12 BY MS. O'LAUGHLIN:

13 Q. Okay. But I'm asking you about  
14 paragraph ten. In reference to asbestos pipe,  
15 could the reference to asbestos pipe could it have  
16 been referred to other pipes such as storm sewers  
17 or cement underdrains, for instance?

18 MS. BRICE: Objection. Calls for  
19 speculation.

20 HEARING OFFICER HALLORAN: Ms.  
21 O'Laughlin?

22 MS. O'LAUGHLIN: I think  
23 Mr. Gobelman is more than qualified to comment on  
24 what type of pipes would be in a project like

1 this.

2 HEARING OFFICER HALLORAN: And why  
3 is that?

4 MS. O'LAUGHLIN: He -- as we brought  
5 out yesterday in his testimony, he has reviewed  
6 thousands of construction plans, reviewed -- he  
7 actually worked on this response. I can ask him  
8 why he might be familiar if you want more  
9 information.

10 HEARING OFFICER HALLORAN: Thank  
11 you. I know how I was going to rule. I just  
12 wanted to hear it on the record. Overruled.

13 MS. BRICE: Can I respond, please?

14 HEARING OFFICER HALLORAN: I'm  
15 sorry.

16 MS. BRICE: I can't respond?

17 HEARING OFFICER HALLORAN: You can  
18 respond.

19 MS. BRICE: Sorry. I thought I was  
20 going to respond. He has testified that he has  
21 absolutely no -- he has never seen a construction  
22 plan from the 1970s, he wasn't working for IDOT  
23 during the 1970s. In his deposition, he said he  
24 had no -- nothing to do with response number ten.

1 HEARING OFFICER HALLORAN: I  
2 thought -- didn't you testify yesterday that you  
3 did look at some construction plans from the late  
4 '70s, possibly late '70s, early '80s?

5 THE WITNESS: Yes.

6 MS. BRICE: '80s. He said '80s.

7 HEARING OFFICER HALLORAN: I think  
8 he said late '70s, too, because I took note of  
9 that. Overruled. You may answer.

10 BY THE WITNESS:

11 A. Well, the spec book at the time that  
12 this project allows for the use of  
13 asbestos-containing material in construction  
14 projects. So in part of doing work whether it's  
15 with the state or local or a county doing work  
16 that refers to the spec book, they -- they -- the  
17 contractor can use whatever pipe that he can use  
18 in building storm sewers, drainage pipes, anything  
19 else. So there would be no way of knowing when  
20 we're building a project, this particular project,  
21 what types of pipes we would be encountering, you  
22 know, if we hit pipe.

23 BY MS. O'LAUGHLIN:

24 Q. And the reference to project, is

1 that -- could that have meant the entire Amstutz  
2 Bridge Project that was contained within that  
3 as-built construction plans we were looking at  
4 yesterday?

5 A. Yes, I believe that's exactly what  
6 this is referring to. He -- and asked the  
7 question did one touch asbestos-containing pipe.  
8 The term project would -- in Mr. Mapes' mind would  
9 mean the entire project.

10 MS. BRICE: Objection. Calls for  
11 speculation as to what someone else's mind -- what  
12 his state of mind was. He is no longer alive.

13 HEARING OFFICER HALLORAN: Ms.  
14 O'Laughlin, can you rephrase?

15 MS. O'LAUGHLIN: Can I respond a  
16 little bit?

17 HEARING OFFICER HALLORAN: Sure.

18 MS. O'LAUGHLIN: Ms. Brice raises an  
19 interesting point. We're here trying to  
20 superimpose what was meant by this. We've already  
21 objected to the prejudicial nature of this  
22 document and of these statements. Johns Manville  
23 has been able to talk about what they believe it  
24 means and, consequently, I believe IDOT should be

1 able to talk about what it means especially by  
2 someone who actually worked on this.

3 MS. BRICE: I don't dispute that  
4 they can talk about what they think it means. I  
5 don't think he can say what he thought Mr. Mapes  
6 thought at that time.

7 HEARING OFFICER HALLORAN: You know,  
8 I agree with that question and I keep hearing  
9 objection to speculation. Come on. I mean, this  
10 is 46 years ago. Nobody was around then. So it  
11 is kind of a forensic thing, but I agree with  
12 Ms. Brice as far as Mr. Mapes' state of mind.

13 MS. O'LAUGHLIN: Okay. Very good.  
14 I'll rephrase the question.

15 HEARING OFFICER HALLORAN: Yes.

16 BY MS. O'LAUGHLIN:

17 Q. What do you think it means,  
18 Mr. Gobelman?

19 A. What I think it means is that  
20 asbestos-containing material was buried somewhere  
21 throughout the entire project.

22 Q. And have you ever responded to a  
23 104(e) request -- Strike that.

24 What has been your involvement

1 with IDOT in responding to any 104(e) response  
2 from the US EPA?

3 A. I assisted on a couple other 104(e)  
4 requests with the department in sort of the same  
5 capacity, as sort of trying to find information,  
6 historical information, regarding what we have  
7 done or how the project was done associated with  
8 that material.

9 Q. And do you recall how many 104(e)  
10 responses you had worked on for IDOT?

11 A. Off the top of my head, I know I  
12 could name two.

13 Q. And what are those two?

14 A. One of them is our involvement with  
15 the Sauget No. 1 Superfund site in Sauget,  
16 Illinois and the other one is a part of the  
17 radioactive sites of Ottawa.

18 Q. And do you know what the consequence  
19 of those 104(e) responses -- did US EPA name,  
20 include IDOT in a -- as a PRP?

21 A. Yes, IDOT has been named as a PRP in  
22 both of those.

23 Q. I just want to ask a couple of  
24 clarifying questions from yesterday.

1                                   Who was the contractor for this  
2 Amstutz Bridge Project?

3           A.       I believe their name was Bolander.

4           Q.       Was -- okay. Do you want to look at  
5 a document?

6           A.       It would be on the top of the bid  
7 documents I think because it is their bid document  
8 they submitted.

9           Q.       Okay. If you can turn to Exhibit  
10 20.

11          A.       Okay.

12          Q.       And who is the contractor?

13          A.       The contractor is Eric Bolander.

14          Q.       Can you spell that?

15          A.       B-O -- Eric, E-R-I-C,  
16 B-O-L-A-N-D-E-R, Construction Company.

17          Q.       And I have some questions about how  
18 IDOT awards a contract to a contractor.

19                                   Is there a prequalification  
20 process?

21          A.       Yes.

22          Q.       And what is that?

23          A.       The prequalification basically is a  
24 qualification to make sure that you're, in

1 essence, qualified and can meet the financial  
2 responsibilities of doing the work and that you're  
3 capable of doing whatever portion you're being  
4 qualified for.

5 Q. And was -- would Bolander have been  
6 qualified --

7 A. I would assume.

8 Q. -- or pre-qualified? Excuse me.

9 A. I would assume so since they were  
10 awarded this contract.

11 Q. Turning to Exhibit 21A.

12 A. Okay.

13 Q. On the cover page of that document,  
14 I believe it references as-built?

15 A. Yes.

16 Q. Can you explain the difference  
17 between as-built versus a construction plan?

18 A. The construction plan is what is  
19 used as part of the bidding process and what the  
20 contractor uses as part -- to build what he --  
21 what he was awarded to do under the contract. The  
22 as-builts sort of become that doc- -- the contract  
23 plans he adds to it, what features he thinks are  
24 important that need to be historically preserved

1 for the future people to deal with the next time  
2 they do a project here.

3                   So one of the things he might  
4 mark on there was if utilities are not in the  
5 right place that were originally there or if storm  
6 sewers or drainage pipes were marked at a certain  
7 station and offset, but when he goes out in the  
8 field he finds them at a different station and a  
9 different offset he will mark that so that the  
10 next person who does design can then correct  
11 those -- those types of issues.

12           Q.       Okay. Thank you. If we can turn to  
13 Exhibit 141.

14           A.       Is it in this one?

15           Q.       I believe so.

16           A.       Okay.

17           Q.       Do you recognize this document?

18           A.       Yes.

19           Q.       Yesterday we talked about the  
20 shoofly detour?

21           A.       Yes.

22           Q.       Does this document explain that  
23 detour or help explain that detour?

24           A.       It's a change order. It's a change

1 order or authorization number one and what change  
2 orders are is if something has not previously been  
3 identified in the contract plans as a pay item and  
4 quantities if there is a change, then they will  
5 have to do a change order to either add additional  
6 money or deduct money depending on what the change  
7 is regarding and in this particular case it's a  
8 change order regarding the need to construct a  
9 temporary road around the site of the proposed  
10 bridge carrying Greenwood Avenue over the future  
11 FA Route 42, which is the Amstutz Expressway, and  
12 then it says this roadway will permit the  
13 contractor to start the structural work now and  
14 continue through the winter completion and use of  
15 the regular planned detour roads depending upon  
16 the completion of a railroad crossing which is to  
17 our best estimate will not be ready until the  
18 Spring of 1972.

19 Q. And what is a shoofly?

20 A. A shoofly is just sort of a  
21 colloquial term that we've used to mean a turnout.  
22 It's a lot of times used in railroads also as a  
23 means of moving a train over so a main line can go  
24 through. So it's sort of a detour to allow -- a

1 short detour to move through-traffic over and  
2 around something.

3 Q. Thank you. What is a Highway  
4 Authority Agreement?

5 A. A Highway Authority Agreement is an  
6 agreement that is regulated in the TACO  
7 regulations that allow for a property owner that  
8 has impacted and contaminated what is in the soil  
9 or groundwater state right of way and it's a means  
10 by which they, the property owner, can get IDOT to  
11 sign off in allowing that contamination to occur  
12 on our right of way without having to remediate it  
13 and that agreement then would allow them to go to  
14 Illinois EPA so that they can get relief through a  
15 no further remediation letter to show that the  
16 contamination has all been contained or addressed  
17 in some way in order to meet the TACO regulations  
18 and in our Highway Authority Agreement process we  
19 have the means in addition to the model Highway  
20 Authority Agreement that's in the regulations to  
21 recoup future costs and recoup all of our past  
22 costs and sometimes that past cost means projects  
23 that are occurring today and, in essence, we --  
24 once we identify those costs whether it's

1 historically, something that occurred 20 years ago  
2 or something that occurred two years ago, we  
3 calculate the cost of managing soil and  
4 groundwater in a way that was different than was  
5 required under normal means if it wasn't impacted.  
6 We put that cost in the agreement and IDOT does  
7 not sign this agreement until we receive the  
8 funding from our past cost.

9 Q. Thank you. Yesterday, Mr. Gobelman,  
10 you talked about stations along Greenwood Avenue  
11 and involved with the Amstutz Bridge Project.

12 Can you explain a little bit  
13 more what you -- what those stations are? What is  
14 a station in terms of this project or any project?

15 A. Well, in order to provide the  
16 contractor with means of direction and spacing of  
17 where things are at, IDOT has a method of creating  
18 a stationing along -- tried to keep it throughout  
19 multiple contracts so that the stationing stays  
20 the same so that every hundred feet there is a  
21 demarcation of a station.

22 So, in essence, somewhere there  
23 would be a station 1 and then every hundred feet  
24 it would be -- it would go two, three, four, five

1 and what that does and it's marked along the  
2 center line of the proposed right of way and in a  
3 case that there is a roadway being adjusted left  
4 or right for the new construction project, then it  
5 would be a new center line associated with a new  
6 road, too.

7 So there would be sort of a  
8 baseline and a center line for the existing and  
9 what that does is it allows the contractor to know  
10 the center line of the road is where everything is  
11 going to be measured off of. So then in the  
12 contract plan there would be -- if something was  
13 30 feet to the left of the road, then it would be  
14 identified that that stationing is 30 feet left or  
15 30 feet right and so, therefore, the contractor  
16 would know his orientation on the project to the  
17 plans to know that is where he is supposed to be  
18 within and that's what needs to be done.

19 Q. Is the -- is that a standard  
20 measurement?

21 A. Yes.

22 Q. What is that measurement?

23 A. The measurement -- we measure every  
24 hundred feet.

1 Q. So it's -- a station is a hundred  
2 feet?

3 A. Yes.

4 Q. Does every road have stations?

5 A. Yes. And, in fact, railroads do the  
6 same thing with mile markers in how they do their  
7 marking of how they do their railroad lines.  
8 There was a stationing process to them to do the  
9 same thing.

10 Q. Okay. Thank you. I'd like to turn  
11 to Exhibit 164. Okay. Turning to Exhibit 164.

12 A. Okay.

13 Q. Did you prepare this document?

14 A. The final version of it, yes.

15 Q. The first page of Exhibit 164 I'm  
16 going to -- is this a replication of the first  
17 page of Exhibit 164?

18 A. Well, in this book, it is  
19 technically the third page.

20 Q. Okay.

21 A. It's sort of backwards.

22 Q. Okay. So the third page, is that a  
23 replication of the third page of Exhibit 164?

24 A. Unfortunately, it is not.

1 Q. Why not?

2 A. Because this was the most current  
3 version that was submitted and the one that is in  
4 this book is an earlier version.

5 Q. Okay. What is the difference?

6 A. The difference is that in this book  
7 we use the A plus A prime to signify that it was  
8 going through S1 through 8S. In reality, it was  
9 in this revised version we moved the line over to  
10 show A-A prime was actually beginning at the LFR  
11 test pit excavation. There was some clarity in  
12 the circles because some of the circles were  
13 bigger than they should have been and then I added  
14 some circles to some borings that I had missed in  
15 identifying asbestos boring that had  
16 asbestos-containing material.

17 MS. BRICE: Okay. I'd like to  
18 object because we have never received a copy of  
19 whatever document he is talking about.

20 HEARING OFFICER HALLORAN: This has  
21 been at least the third exhibit that it's been  
22 changed from this exhibit book in the last two  
23 hours of his testimony.

24 MS. O'LAUGHLIN: I believe it's the

1 second.

2 HEARING OFFICER HALLORAN: Okay.

3 Two out of three. But how -- how are you going to  
4 respond to that? I guess can you clear it up or  
5 can you give Ms. Brice a copy of it?

6 MS. O'LAUGHLIN: Yeah, I can. Why  
7 don't we make sure the copy is correct and we'll  
8 do that in the lunch break and we'll make sure  
9 everybody has a copy.

10 HEARING OFFICER HALLORAN: Okay.

11 I'll reserve ruling, Ms. Brice, is that okay?

12 MS. BRICE: Okay.

13 BY MS. O'LAUGHLIN:

14 Q. Let's put Exhibit 164 to the side  
15 for now.

16 Do you recall yesterday during  
17 Mr. Dorgan's testimony that they had -- that he  
18 used a cross section of A-A and B-B?

19 A. Yes.

20 Q. Turning to Exhibit 84.

21 A. Yes, I'm there.

22 Q. Are you able to -- are you able to  
23 state what station the western edge of cross  
24 section A-A is on the IDOT map depicted in the top

1 left-hand corner?

2 A. The western edge of Site 6 along  
3 Greenwood Avenue would appear to be somewhere  
4 around station 9 plus -- I would say 9 plus 20, 9  
5 plus 25 without having a scale.

6 Q. And how do you know that?

7 A. There is stationing marked along --  
8 as discussed earlier, the IDOT stationing is  
9 marked there. It shows stationing 6 through -- at  
10 least marked and identified station 6 through 11,  
11 but there are also ticks where I believe the plus  
12 50s are in there. So you're roughly -- that whole  
13 line is roughly 5 plus 22. I would say almost --  
14 I don't think 12 was shown there, but at least 12,  
15 25 or so.

16 Q. If you can keep that map in front of  
17 you, but turning to Exhibit 35, but keep that  
18 demonstrative in front of you, but also turning to  
19 Exhibit 35. Are you --

20 A. Yes. I'm sorry.

21 Q. What is the significance of this  
22 document?

23 A. This is sort of the final change  
24 order that was submitted by the contractor.

1 Authorization number 18 and next to 18 is in  
2 parenthesis final and what this does is it's sort  
3 of the final balance changes, any changes that he  
4 needs to have the payment. Specifically, it's  
5 regarding additional quantity for the pay item,  
6 special excavation and then it has deductions on  
7 three different pay items, which is the removal of  
8 unsuitable materials, borrow excavation and coarse  
9 granular embankment.

10 Q. And does this show any -- what does  
11 this -- does this refer to the embankment, is that  
12 what you had said?

13 A. Well, it refers to deductions that  
14 were made in regards to materials that were  
15 utilized in the building of the embankments.

16 Q. And what is the significance of  
17 that?

18 A. Well, in this project, there are  
19 cross sections in the plans at the back that shows  
20 there are certain excavations down that were  
21 deemed to be unsuitable and then the department  
22 had to backfill that area with at least a foot of  
23 coarse granular backfill and then the rest was  
24 going to be fill, but in this case there was a

1 large deduction of that stating that none of this  
2 material -- a lot of this material it did not  
3 occur.

4 Q. How do you know that?

5 A. Because there was a deduction of  
6 quantities and if you look at the original bid  
7 item of the quantities that were in play.

8 Q. Would that be Exhibit 20?

9 A. Yes, it would be the pay items that  
10 Bolander bid on or basically listed in Exhibit 20  
11 75 through 79 and so if -- and if you look at the  
12 historical record, there were no other additions  
13 put into the contract plans for those particular  
14 pay items. So, in essence, the total volume being  
15 removed and was -- was deducted. So there was --  
16 there was a percentage that was not being used.

17 Q. And so what is the significance of  
18 that in terms of the fill for the embankment?

19 A. Well, to me, it would show that --  
20 can I draw a picture?

21 Q. Sure.

22 A. Will it be easier --

23 MS. BRICE: Can I make an objection?

24 There is no opinion in his report relating to this

1 line of questioning.

2 HEARING OFFICER HALLORAN: Ms.

3 O'Laughlin, has this been disclosed?

4 MS. O'LAUGHLIN: One second, please.

5 Yes, he -- he opined about Site 6 and what would  
6 have been in the embankment. So, yes, this would  
7 have --

8 HEARING OFFICER HALLORAN: Can you  
9 point me to some document as far as his disclosure  
10 report? I don't have it offhand.

11 MS. BRICE: It's Exhibit 8.

12 HEARING OFFICER HALLORAN: Exhibit  
13 8?

14 MS. BRICE: Yes.

15 MS. O'LAUGHLIN: It is also directly  
16 responsive and I'll tie it to Mr. Dorgan's  
17 testimony. It is directly responsive to some of  
18 the things he testified.

19 BY MS. O'LAUGHLIN:

20 Q. Mr. Gobelman, if you can turn to  
21 Exhibit 8.

22 HEARING OFFICER HALLORAN: Your  
23 response again, Ms. O'Laughlin, and if you can  
24 direct me to the page of his rebuttal -- or I'm

1 sorry -- his expert report.

2 MS. O'LAUGHLIN: It's more or less  
3 throughout he talks about borrow material at page  
4 four. He talks about --

5 HEARING OFFICER HALLORAN: Hold on.

6 THE WITNESS: It's -- I've  
7 identified in my bibliography documents cited as  
8 number seven Authorization of Contract Change not  
9 Involving Section Length Authorization #18 (final)  
10 May 5th, 1975.

11 MS. BRICE: Right. But you haven't  
12 discussed anything about the composition of the  
13 embankment in your Site 6. Actually, Site 6 is  
14 not really discussed very much at all in your  
15 expert report. It's focused on Site 3.

16 HEARING OFFICER HALLORAN: Yeah, I  
17 see Site 3 a ton.

18 MS. BRICE: I believe there is one  
19 section that might discuss Site 6, but it is  
20 nothing relating to --

21 MS. O'LAUGHLIN: Fourteen. I'm  
22 sorry. Excuse me.

23 MS. BRICE: Eight.

24 HEARING OFFICER HALLORAN: Eight the

1 department did use, spread, place or dispose of  
2 ACM.

3 MS. BRICE: That says eight  
4 regarding Site 3 and 6. No, this is all about  
5 that they weren't responsible, the contractor was  
6 responsible. That whole section. They didn't  
7 have anything to do with it.

8 MS. O'LAUGHLIN: Well, the argument  
9 here -- Johns Manville's theory is that the  
10 contractor would have used material from the  
11 parking lot to build the embankment and our theory  
12 is that it does not make sense and consistent with  
13 construction practices that the contractor would  
14 have used the transite pipe and, in fact, the  
15 sample results can support that theory.

16 So Mr. Gobelman has given  
17 opinions that the contractor would have not used  
18 this transite pipe and he is showing exactly how  
19 they did not use it and they would not have used  
20 it in the embankment and it's directly pertinent  
21 to this --

22 HEARING OFFICER HALLORAN: I  
23 remember --

24 MS. O'LAUGHLIN: -- matter.

1 HEARING OFFICER HALLORAN: I  
2 remember in his testimony yesterday. I still  
3 don't see it in his opinion, you know, report  
4 on --

5 MS. O'LAUGHLIN: That you don't  
6 see --

7 HEARING OFFICER HALLORAN: I don't  
8 see him referencing Site 6 and if you can just  
9 point me to it.

10 MS. O'LAUGHLIN: Well --

11 HEARING OFFICER HALLORAN: You say  
12 throughout --

13 MS. O'LAUGHLIN: I mean --

14 HEARING OFFICER HALLORAN: -- and  
15 then we have a different version of throughout,  
16 which he was on.

17 MS. O'LAUGHLIN: Sporadic.

18 MS. BRICE: I mean, there is nothing  
19 about what was composed of the fill in the  
20 embankment in this report.

21 MS. O'LAUGHLIN: On page four, he  
22 discussed porous granular embankment.

23 MS. BRICE: That's just with respect  
24 to it's a material that can be used in general.

1 It's talking about general materials and that's  
2 the background section, not that it was placed in  
3 the embankment in 6.

4 HEARING OFFICER HALLORAN: If you  
5 can speak up.

6 MS. BRICE: Sure. Sorry.

7 HEARING OFFICER HALLORAN: I need  
8 Mr. Brickey to take this down. Yeah, I don't  
9 really see it's a stretch to argue -- to argue  
10 that it's in here what he is testifying to today.  
11 So what I'm going to do is sustain Ms. Brice's  
12 objection, but I'll take it as an offer of proof  
13 and let me know when you're outside that offer of  
14 proof and get back into --

15 MS. O'LAUGHLIN: I --

16 HEARING OFFICER HALLORAN: Go ahead.

17 MS. O'LAUGHLIN: Excuse me. We'd  
18 also like to support some cases in our support on  
19 our behalf that what Mr. Gobelman is testifying is  
20 consistent with his expert opinion and we're  
21 allowed to elicit testimony from him in this  
22 regard in the support --

23 HEARING OFFICER HALLORAN: You can  
24 put that in your post-hearing brief, but as far as

1 right here I don't really see anything --

2 MS. O'LAUGHLIN: And it is directly  
3 responsive to Mr. Dorgan's testimony and we're  
4 allowed to defend ourselves and explain it.

5 HEARING OFFICER HALLORAN: But it's  
6 not in his disclosure, correct?

7 MS. O'LAUGHLIN: It is in his  
8 disclosure throughout, sporadic. It's consistent  
9 with his theory about how and why the contractor  
10 would not and did not -- would not have used  
11 transite pipe in building the embankment in number  
12 six and that is directly relevant here and useful  
13 to the finders of fact in whether IDOT should be  
14 liable.

15 HEARING OFFICER HALLORAN: Ms.  
16 Brice, he testified to some of it yesterday that  
17 there was no objection. Is there a reason for  
18 today? As I recall, I thought he did.

19 MS. BRICE: Yesterday he talked  
20 about laying some foundation for some documents  
21 and stationing, but he never talked about what the  
22 embankment was composed of and that's what I'm  
23 going after here. I mean, he is trying to take  
24 this document which frankly relates to the entire

1 project and say that what he said in his  
2 deposition relates to the entire project and say  
3 "Oh, well, this embankment right here they didn't  
4 have enough, you know, fill material. They didn't  
5 remove enough unsuitable material" and make some  
6 argument how that relates to everything, which I'm  
7 not quite sure where he's going because it was  
8 never disclosed. It's not something I have ever  
9 encountered before and I took an exhaustive  
10 deposition, this argument.

11 HEARING OFFICER HALLORAN: Anything  
12 further, Ms. O'Laughlin?

13 MS. O'LAUGHLIN: I think we've  
14 stated our objection -- we've stated our response.  
15 I reserve the right to supplement our response to  
16 Johns Manville's objections because I believe this  
17 to be very important.

18 HEARING OFFICER HALLORAN: I'm sure  
19 it's important, but I don't see it in this  
20 disclosure, his report.

21 MS. O'LAUGHLIN: If I may reserve  
22 the right to expand upon our objection --

23 HEARING OFFICER HALLORAN: Okay.

24 MS. O'LAUGHLIN: -- in the future.

1 HEARING OFFICER HALLORAN: In the  
2 future.

3 MS. O'LAUGHLIN: Yes.

4 HEARING OFFICER HALLORAN:  
5 Certainly. That's good. This is in the offer of  
6 proof?

7 MS. O'LAUGHLIN: Correct.

8 BY MS. O'LAUGHLIN:

9 Q. Okay. Mr. Gobelman, you -- turning  
10 to Exhibit 84-1 and the cross section A-A that is  
11 shown there.

12 A. Yes.

13 Q. And you were present when Mr. Dorgan  
14 was testifying that this area was fill or are you  
15 aware of Johns Manville's theory that this  
16 material depicted in cross section A-A is fill  
17 material?

18 A. I believe that's correct what the  
19 figure A -- cross section A1-A the dotted line at  
20 the bottom is depicting that that is the base  
21 elevation of the fill material.

22 Q. And given what you just reviewed in  
23 the previous documents, can you give your opinion  
24 on this matter?

1           A.       Yeah, my opinion would be I don't  
2 believe -- although that may be the baseline of --  
3 of some fill, I don't believe it's a  
4 representation of the baseline of what IDOT's fill  
5 is.

6           Q.       And why not?

7           A.       Well, one, the construction of  
8 Greenwood Avenue ends at station 7 and, in  
9 essence, to be able to -- and that is just -- but  
10 the tie down of the embankment that is coming off  
11 of Sand Street actually touches down at around  
12 station 9 plus 00. Somewhere in that area it  
13 touches down to be at grade and then the remaining  
14 200 feet or so is more of a road improvement  
15 within the existing baseline.

16          Q.       And where would those stations be on  
17 cross Section A-A?

18          A.       Well, they're not depicted on cross  
19 Section A-A other than it's noting it through the  
20 boring locations as it relates to the map above  
21 it.

22          Q.       And so do you agree with Mr. Dorgan?

23          A.       No, I do not.

24          Q.       Do you know where the -- so correct

1 me if I'm wrong, 1S was located approximately  
2 station 9, is that correct? Is there anything  
3 that would help you to determine that?

4 A. Well, I believe it's in the area of  
5 9. It's sort of covered up by other elevation  
6 markers, but there is like, I think, a 1S between  
7 the two elevation markers. So I would say, yes,  
8 it's near -- it's near the offset of station 9.

9 Q. Do you -- there is a picture. It  
10 says "approximate location of old IDOT pipe."

11 A. Yes.

12 Q. Do you know what that is?

13 A. No, I do not.

14 Q. Did you try and figure out what that  
15 represents?

16 A. I tried through -- looking through  
17 the plan documents and I couldn't see a reference.  
18 To me, this would be a reference to some sort of  
19 drainage structure that would cross Greenwood  
20 Avenue somewhere between the LRF excavation and 1S  
21 and I didn't see any notation in the contract  
22 plans of a drainage structure that would go  
23 through there.

24 MS. O'LAUGHLIN: That concludes the

1 offer of proof, but I'm going to go back to it  
2 once we get the correct --

3 HEARING OFFICER HALLORAN: Let us  
4 know and I'll let Mr. Brickey know. Thank you.

5 MS. BRICE: Can I do a cross of the  
6 offer of proof?

7 HEARING OFFICER HALLORAN: I'm  
8 sorry? Oh, yes, you can.

9 MS. O'LAUGHLIN: We're not finished  
10 with the offer of proof. Why don't we complete  
11 what we're going to talk about in terms of this  
12 offer of proof when we have the complete  
13 demonstrative exhibit this afternoon.

14 HEARING OFFICER HALLORAN: I'm going  
15 to let Ms. Brice do it now. I think it makes a  
16 cleaner record. She can respond to what was just  
17 in the offer of proof. You may respond.

18 MS. BRICE: Okay. Thank you.

19 BY MS. BRICE:

20 Q. First of all, I'd like to turn your  
21 attention to exhibit -- the plans I think it's 19  
22 or 21. 21. Thank you. 21A, I believe.

23 A. Yes, 21A.

24 Q. Great. Thank you. Can you take a

1 look --

2 MS. BRICE: Do you mind if I  
3 approach?

4 HEARING OFFICER HALLORAN: No, go  
5 ahead.

6 BY MS. BRICE:

7 Q. Okay. If you can grab 21A, please.

8 A. A.

9 Q. That's weird. That's A1. Sorry.  
10 It's not very helpful. This one it is 21A-8. I'd  
11 like to direct your attention over to the left of  
12 this page and it says blend to match existing  
13 conditions, what does that mean to you?

14 A. It means that they -- they had --  
15 when the paving came through, they had to match up  
16 the existing to the new pavement. They blended to  
17 match it.

18 Q. And the new pavement, why would they  
19 have to do that there at that location?

20 A. Well, because that is -- is --

21 Q. That's --

22 A. That's roughly at the end of the  
23 match because the construction ends at station 7.  
24 So they're not going beyond Greenwood Avenue to

1 the east any further. So they -- there -- at some  
2 point before they're going to blend the road to  
3 make sure there is a smooth transition from new  
4 pavement to old pavement.

5 Q. And the new pavement is coming up  
6 from the west, correct?

7 A. The new pavement -- yeah, the new  
8 pavement is coming from the west.

9 Q. And do you see here this is at --  
10 what station does this blend to match say that it  
11 is at? That's hard to see.

12 A. Well, the arrow to the left, which  
13 is the east, shows the construction limit at seven  
14 plus.

15 Q. That wasn't my question. My  
16 question was what does this say? What does the --  
17 blend to match 7, is that what it says?

18 A. Well, it says here that the end --  
19 construction end -- the limit is at 7. There is  
20 no -- something to say --

21 Q. Okay. Thank you.

22 A. -- you know, how far that distance  
23 is other than it doesn't exceed -- go to station  
24 8. So it's somewhere -- I would assume that it is

1 somewhere between station 7 and 7 plus 50.

2 Q. Thank you. If you can stay with  
3 that document, please. I apologize. I wasn't  
4 prepared that this was going to happen right now.

5 MS. BRICE: I think we actually have  
6 a board of that. Pardon me. Here we go.

7 BY MS. BRICE:

8 Q. I'm going to show you what has been  
9 blown up here and this is a soil profile and it  
10 is -- we're going to get the correct exhibit  
11 number, but it's JM001157, do you see this?

12 A. Yes.

13 Q. Okay. And what is this?

14 A. It is depicting what the existing  
15 soil profile was put in the plans and what the  
16 proposed grade line is going to be and where the  
17 existing pavement surface was located at.

18 Q. Okay. And if you could -- if I  
19 could direct your attention to the top -- the top  
20 photo here and if you can tell me what station is  
21 there at the far left side.

22 A. The last station.

23 MS. O'LAUGHLIN: Objection. Just  
24 for the record we can't see what is going on.

1 MS. BRICE: Do you want to approach?

2 MS. O'LAUGHLIN: Could we display  
3 somehow?

4 MS. BRICE: Here.

5 BY THE WITNESS:

6 A. The station -- the far station to  
7 the left that is marked 7.

8 BY MS. BRICE:

9 Q. Okay. And what does it say right  
10 above that station? What is that demarking that  
11 says something has to be removed, right, removal  
12 of unsuitable material?

13 A. Yes, it says that there was -- well,  
14 it doesn't say removal. It just says -- this  
15 marking that there is a PETE material there.

16 Q. And if you look down here on the --  
17 over here to the right there is -- there is a key  
18 and what does the key relate to with respect to  
19 those hashmarks over there by station 7?

20 A. It is stating that that type of  
21 symbol indicates unsuitable material that they  
22 believe will need to be removed.

23 Q. Thank you. And how far to the right  
24 on this document, which would be to the west on

1 Greenwood Avenue, is there some necessary removal  
2 of unsuitable material?

3 A. Well, the document shows that  
4 throughout the entire -- well, virtually, I'll  
5 say -- maybe 85, 90 percent of some were  
6 underneath Greenwood Avenue, but there is some  
7 unsuitable material being identified.

8 Q. Thank you. And directly above where  
9 station 7 is there is some information. It says  
10 black cinder fill, do you see that?

11 A. Yes.

12 Q. And it doesn't say fill containing  
13 any other type of material, it just says black  
14 cinder fill, is that right?

15 A. It's identified as black cinder  
16 fill.

17 Q. And I believe you testified in your  
18 deposition that black cinder fill would most  
19 likely come to this property from the Midwest  
20 Generation Plant, which is currently on the ComEd  
21 property, isn't that true?

22 A. That -- that would be a potential  
23 source.

24 Q. But you said that that was the most

1 likely source. I think it is stated there.

2 A. It's the closest source --

3 Q. Okay.

4 A. -- I stated.

5 Q. And it's stated in your report,  
6 correct?

7 A. That is the closest source.

8 Q. And do you have any reason to  
9 dispute the accuracy of this document exhibit that  
10 I'm holding right now?

11 A. No, I have nothing to -- to dispute  
12 the accuracy of that because that is what was  
13 provided in the contract plans that the contractor  
14 would need to be identified.

15 Q. And these are the as-built plans,  
16 correct?

17 A. Well, it is also the -- as far as I  
18 know, it's the plans that was in the construction  
19 plans, too.

20 Q. Right. But the as-built plans are  
21 supposed to signify what was actually done, isn't  
22 that true?

23 A. It is, but I don't know if that  
24 meant there was cross sections on this was that it

1 was to be removed. This doesn't say that it was  
2 to be removed. This indicates that it is  
3 indicating unsuitable material to be removed.

4 Q. Right. But this is the as-built  
5 plans, correct?

6 A. I do not know if that's the as-built  
7 plans.

8 Q. I'll represent to you it is coming  
9 off of the as-built plans. So assuming that  
10 representation is correct, these are the as-built  
11 plans, correct?

12 A. That is what is in the as-built  
13 plans if that's what you're representing.

14 Q. Thank you. Do you have any  
15 information to indicate that this document is --  
16 Strike that. Thank you.

17 MS. CAISMAN: Just for the record  
18 that is a blowup of 21-A-26.

19 MS. BRICE: 21-A-26. Thank you.

20 HEARING OFFICER HALLORAN: We're  
21 outside the offer of proof, Steven. You may  
22 continue on your direct, Ms. O'Laughlin.

23 MS. O'LAUGHLIN: Sure.

24

1 BY MS. O'LAUGHLIN:

2 Q. Turn to Exhibit 107.

3 A. Okay.

4 Q. Before we get to asking questions  
5 about this document, what is your background in  
6 aerial analysis of topography?

7 A. In my undergraduate, I took  
8 coursework in remote sensing and geomorphology  
9 and obviously remote sensing dealt strictly with  
10 aerial photography and how it is produced and how  
11 it's done, how to view it and stereo geomorphology  
12 was more using the same types of tool sets to  
13 identify through aerial stereoscopic approaches  
14 land forms and being able to identify them in  
15 nature through the aerial photography.

16 Q. What is -- you mentioned stereo.  
17 What is that? What do you mean?

18 A. In essence, when IDOT flies or when  
19 people typically fly areas it isn't necessarily a  
20 picture taken next to a picture. There is a  
21 certain percentage of overlap and within those  
22 overlaps you can see both things. You can use a  
23 special reading glass, in essence, that sits that  
24 you look down almost like a microscope in a sense,

1 but you look through and focus your eyes on  
2 looking straight down on that eventually it blurs  
3 the image into one image and when those two images  
4 come together it creates a 3D representation of  
5 that photograph, of that area that you're looking  
6 at.

7 Q. And what is some of the purposes of  
8 looking at aerial photographs through a stereo  
9 image?

10 A. Well, it helps you identify relief  
11 to a major point, but it also allows to sometimes  
12 identify structures that may not be able to easily  
13 be identified in a normal 2D approach of looking  
14 at a single photo.

15 Q. Now, turning to Exhibit 107, do you  
16 know what this document is?

17 A. It was an aerial -- not an aerial.  
18 It is a topographic figure that I received from  
19 the Illinois State Geological Survey.

20 Q. Okay. And why did you do that?

21 A. I wanted to -- as far as putting  
22 together the historical of that whole area, I on  
23 top of obtaining all of the aerial photography  
24 that was flown that IDOT knew of in that area, I

1 also then went to the geological survey to obtain  
2 all the historical topographic maps of the area  
3 that would then identify how they identified the  
4 properties at that time.

5 Q. And is what has been come to be  
6 known as Site 3 in this lawsuit, is that area that  
7 was -- that is now Site 3 portrayed in this  
8 topographic map?

9 A. It's not portrayed as far as being  
10 readily identified, but what is being identified  
11 as Greenwood Avenue that is at the north portion  
12 of the map and as it crosses the railroad tracks  
13 and it extends to the east a number of distance  
14 that would get you more into a -- a -- more body  
15 of water or wet areas which could be identified  
16 near probably the shorelines.

17 Q. And what is significant about this  
18 map to you?

19 A. To me, this showed that this entire  
20 area within the corner of the railroad tracks and  
21 Greenwood Avenue was a very wet, marshy area and  
22 marshy symbols is sort of a line with a fan shape  
23 off the top and that indicates in the topo realm  
24 of a wet, marshy area and it also shows there was

1 a lot of stagnant water or maybe even a drainage  
2 pattern of water through the middle of this map.

3 Q. And when was this -- what is the  
4 date of this topographic map?

5 A. The date itself is -- it is  
6 represented by -- it was 1939.

7 Q. If you can turn to Exhibit 53-P.

8 A. What did you say?

9 Q. Five-three P.

10 A. Okay.

11 Q. 53-P, as in Peter, what is this?

12 A. It's an aerial photography of --  
13 of -- it doesn't actually give a date on this  
14 picture, but it's represented by 1939 the year.

15 Q. And what is significant to you about  
16 this picture?

17 A. This is sort of a pre, you know,  
18 before any of this -- sort of the oldest,  
19 historical photograph that IDOT had in its  
20 possession and it is showing -- there is a circle  
21 that is marked there and I'm not sure if that  
22 was -- I think that might have been on the  
23 photograph to begin with that we had and that  
24 represents the intersection of Sand Street and --

1 and Greenwood Avenue and so the area to the  
2 southeast would be the areas of Site 3 and  
3 Greenwood somewhat and somewhere in the middle of  
4 or right at the very beginning of I would say Site  
5 6 and basically it shows this area was a little  
6 wet area. It showed sort of dudish features from  
7 sort of the existing conditions.

8 Q. At the top of the exhibit it states  
9 Johns Manville, is this a picture that IDOT  
10 obtained or Johns Manville?

11 A. This is their exhibit, but I believe  
12 IDOT has this photograph.

13 Q. Is this similar -- but this is --  
14 you have seen this photograph or something like  
15 this, is that correct?

16 A. Yes. Because I know the photograph  
17 that I obtained from IDOT has that circle in it.  
18 So --

19 Q. And -- excuse me. I'm sorry. Are  
20 you able to identify where Site 3 is located?

21 A. Roughly, yes.

22 Q. And what are the conditions of Site  
23 3 in 1939?

24 A. In that particular area, when I

1 looked at it in stereo, in essence in 3D --

2 MS. BRICE: I'd like to object.

3 There was no disclosure that he used stereoscopic  
4 technology to look at aerial photographs in his  
5 deposition or in his report. This is a --

6 HEARING OFFICER HALLORAN: Didn't he  
7 testify to it yesterday because I wouldn't have  
8 forgotten that?

9 MS. BRICE: No, they asked him if he  
10 used it. No one has ever -- this is brand new.  
11 Okay? This has never been raised. This is a  
12 technique that you have to be qualified in. You  
13 know, I don't even know if he has the  
14 qualifications to look at this. I mean, this is  
15 coming out of nowhere. There is no disclosure  
16 that this was ever done before.

17 MS. O'LAUGHLIN: I can't account for  
18 them not asking this in the deposition. They  
19 certainly had the opportunity to. Aerial  
20 photographs were cited in his bibliography. They  
21 were included as an exhibit to his deposition.  
22 They've had every opportunity to ask him about  
23 aerial photography. They have his CV. He is  
24 qualified. He looked at them. He stated he

1 looked at them. They're pertinent to this matter.  
2 For her to claim she neglected to ask him a  
3 question, that's not -- that's not -- that doesn't  
4 mean we shouldn't be able to ask him questions.

5 MS. BRICE: When we asked him  
6 everything he relied upon, his methodology, et  
7 cetera, he never mentioned some sort of technique  
8 and unique technique. I mean, under Daubert, I  
9 don't even know if this is reliable. I haven't  
10 had a chance to study it or know anything about it  
11 and I know we're not under Daubert, we're under  
12 Frye, but this is completely out of the blue. I  
13 didn't know when he did stereoscopic. Maybe he  
14 did it recently and hadn't done it at this point  
15 in time because he didn't -- he didn't dwell on  
16 this in his expert report or -- in his deposition,  
17 he talked about the topographic maps.

18 HEARING OFFICER HALLORAN: When you  
19 say dwell, does he mention it at all?

20 MS. BRICE: I was just looking for  
21 it. He does say he looked at the 1939 photograph  
22 and it looks like it has vegetative swales, but I  
23 don't know anything in here about any other  
24 photographs, but it just -- new things keep coming

1 in that were never disclosed or discussed in his  
2 deposition and I would say what methodology did  
3 you use? All I did was I looked at the documents  
4 and put together the story, not that I used some  
5 sort of specific technique to look at aerial  
6 photographs or I did a reconstruction of anything.

7 I mean, that would be the kind  
8 of thing that you would disclose in some -- in a  
9 deposition that you used some sort of specific  
10 technique that is not common.

11 HEARING OFFICER HALLORAN: Thank  
12 you. Ms. O'Laughlin?

13 MS. O'LAUGHLIN: They had the  
14 opportunity to request it. I would say that it is  
15 common. Anyone who is qualified to look at aerial  
16 photographs should know about stereo imaging. The  
17 fact that it is new to them just shows that  
18 they're not prepared and they really don't know  
19 what they're talking about. As well as Steven  
20 Gobelman, I think we should allow him to interpret  
21 the photography, he has the qualification. If he  
22 wants to use stereo, he should use stereo.

23 HEARING OFFICER HALLORAN: Again, it  
24 should have been disclosed. What I'm going to

1 do -- I'm sorry, Ms. O'Laughlin, you're making a  
2 face for the record?

3 MS. O'LAUGHLIN: No. No. No  
4 disrespect. I'm listening for your ruling.

5 HEARING OFFICER HALLORAN: Okay. I  
6 can always revisit this.

7 MS. O'LAUGHLIN: Okay. I would like  
8 to proceed. Excuse me.

9 HEARING OFFICER HALLORAN: Go ahead.

10 MS. O'LAUGHLIN: Should we proceed  
11 in an offer --

12 HEARING OFFICER HALLORAN: In an  
13 offer of proof, yes. Thank you.

14 BY MS. O'LAUGHLIN:

15 Q. Going back to this picture, what  
16 does -- what does this picture tell you about Site  
17 3?

18 A. Well, as I said, Site 3 is not  
19 identified, but the area that would have  
20 encompassed Site 3, to me, was a low-lying area  
21 and it had some sand dune sort of ridges as I'll  
22 call them throughout that whole area.

23 Q. Turning to -- I think it was a  
24 picture they used Exhibit 52. Do you still have

1 your large photographs that you used?

2 HEARING OFFICER HALLORAN: Are we  
3 still in the offer of proof?

4 MS. BRICE: Yes, we are definitely  
5 still in the offer of proof with respect to my  
6 objection at least, sorry, on 52. It was not  
7 mentioned.

8 BY MS. O'LAUGHLIN:

9 Q. I believe this has been represented  
10 as Exhibit 52 in this matter, although there is no  
11 identifying exhibit number. It is -- has a Bates  
12 number of JM1296. Have you seen this picture  
13 before?

14 A. It is part of my deposition of when  
15 I first saw a copy of this.

16 Q. And what does this picture tell you  
17 about Site 3?

18 A. Well, the area of Site 3 contains  
19 the existing -- the parking lot that was in place  
20 at that time and shows, to me, that the parking  
21 lot is elevated based upon this part here and the  
22 rest of this area, to me, is at a lower elevation  
23 than -- than the parking lot. I don't know  
24 exactly how far this photograph takes -- exactly

1 Site 3 -- or how far to the northern portion of  
2 the photo that Site 3 would go based upon -- it's  
3 hard to see any landmarks.

4 Q. Would fill need to have been added  
5 to raise the site so a parking lot could be built?

6 A. Based on the historical photographs,  
7 yes, it would have to be material added to bring  
8 the parking lot area up to the grade of the  
9 existing roadway of Greenwood Avenue.

10 Q. Thank you. Do you know what would  
11 have been used as fill material -- are we still  
12 within the offer of proof?

13 HEARING OFFICER HALLORAN: You tell  
14 me.

15 MS. O'LAUGHLIN: I believe we can go  
16 out of it. I think he did testify about fill  
17 material.

18 MS. BRICE: He did testify about  
19 fill material. He did not testify about that  
20 document nor is it noted in his expert report. It  
21 was produced on 12/12/2014, which was more than  
22 eight months before his deposition.

23 HEARING OFFICER HALLORAN: Okay.  
24 Would you like to make -- do a cross within the

1 offer of proof?

2 MS. BRICE: Yeah, I guess I will ask  
3 a few questions at least.

4 BY MS. BRICE:

5 Q. With respect to the 1939 photograph,  
6 when was the first time you did this stereoscopic  
7 review of that photograph?

8 A. I would -- I believe they would have  
9 been -- I would have done them -- I do not  
10 remember whether or not -- because I provided  
11 Randy Schick and the 104(e) stereo sets of the  
12 photographs. I don't necessarily remember whether  
13 I viewed them at that time, but I know I viewed  
14 them when Phil McQuillan was involved when I  
15 believe this first case came to IDOT's attention.  
16 I viewed the photographs in stereo. I provided  
17 stereo sets to Phil McQuillan. I provided blowups  
18 of those areas and then showed them to Phil  
19 McQuillan who was the assistant attorney with IDOT  
20 at that time of the stereo sets and the viewing of  
21 it.

22 Q. Okay. But in your deposition and in  
23 your report you say nothing about reviewing stereo  
24 sets, correct?

1           A.       No, I do not.  And that is because I  
2    just feel it is common practice.  I didn't think  
3    it was something special.

4           Q.       And do you with respect to the  
5    photograph -- the 1952 photograph I believe you  
6    just said the first time you saw that was in your  
7    deposition?

8           A.       Yes, I believe you showed it to me  
9    in -- I can't remember if it was a picture of the  
10   picture or of the actual picture.

11          Q.       Okay.  So when was the first time  
12   you reviewed that in stereoscopic?

13          A.       I don't have a stereo set of that  
14   picture.

15          Q.       Okay.  So you haven't reviewed that  
16   in stereoscopic?

17          A.       I never said I have.

18          Q.       I wasn't aware of that.  I was  
19   assuming that you had.

20                    So you have never reviewed that  
21   in stereoscopic, is that your testimony?

22          A.       That particular photograph, no.

23          Q.       So your testimony is based upon just  
24   looking at that photograph from -- from this --

1 from just a 2D perspective, is that correct?

2 A. Yes, and based upon the -- what I  
3 had viewed and observed in the '30s aerial  
4 photography knowing that that was a lower area.  
5 So the parking lot to get to that level there had  
6 to be an elevation.

7 Q. Okay. But as I recall from -- give  
8 me one second here.

9 What you testified to, I  
10 believe, in your report and in your deposition was  
11 that you based this low-lying elevation issue on  
12 the topographic maps, is that not correct?

13 A. It provided information in regards  
14 to the condition of the property in the '30s, yes.

15 Q. Okay. I believe on page eight of  
16 the report you stated that -- and it's Exhibit --  
17 it's Exhibit 8. It is at 08-10. Do you see that?

18 A. I'm on page ten -- or 08-10 I should  
19 say.

20 Q. Thank you. You say up here at the  
21 top of page eight a review of historical  
22 topographic maps from 1908, '14, '29, '39, '60,  
23 '72, '80, '93 and '12 the area shown is marshy wet  
24 from 1908 to 1960 where it is no longer depicted

1 as a wet area. A review of the 1939 aerial  
2 photograph of Site 3 shows the area as vegetative  
3 with swale. The swale is a low-lying area, a wet  
4 depression between ridges. Then you say in order  
5 for Johns Manville to create a dry parking area  
6 for their employees, Johns Manville would have had  
7 to add fill material to bring up the parking area  
8 to a similar elevation as Greenwood and to keep  
9 the parking lot dry during the wet times of the  
10 year, correct?

11 A. Yes.

12 Q. In the report, you say that the area  
13 was wet in 1939 and dry in 1960, isn't that  
14 correct?

15 A. I believe the -- what I'm stating  
16 there is that the topographical maps that I  
17 obtained showed a -- symbols of marshy areas from  
18 1908 to the topographic map of 1960.

19 Q. I believe you say -- it says until  
20 1960 where the area was no longer depicted as a  
21 wet area, do you see that?

22 A. Yes, according to the topographic --  
23 historical topographic maps.

24 Q. Understood.

1 A. Yes.

2 Q. So you just said that it was still a  
3 wet area in 1960, but I think your report says it  
4 was no longer wet in 1960.

5 A. I think I was saying here that  
6 between '08 and the '60 topo that it was still  
7 wet. It showed marshy areas.

8 Q. Okay. But let me read it into the  
9 record again. In a review of historical  
10 topographic maps from '08, '14, '29, '39, '60,  
11 '80 --

12 HEARING OFFICER HALLORAN: If you  
13 can slow down a little, please, for the court  
14 reporter.

15 MS. BRICE: Sure.

16 BY MS. BRICE:

17 Q. -- 1993 and 2012 the area shown as a  
18 marshy, wet area from 1908 until 1960 where the  
19 area was no longer depicted as a wet area, is that  
20 in your report?

21 A. Yes.

22 Q. Did you review any topographic maps  
23 between 1939 and 1960?

24 A. No, there was none.

1           Q.       And we continue with this line of  
2       questioning in your deposition. So let's go with  
3       what I thought you were intending in your  
4       deposition was that it was dry in 1960.

5                       Who would have filled it in  
6       your -- in your opinion?

7           A.       In my opinion, at that time, my  
8       opinion was that I believe Johns Manville had  
9       filled that in because they wanted a parking lot.

10          Q.       Okay. When was the parking lot  
11       constructed?

12          A.       Well, my earliest aerial photograph  
13       that I had was at the time of my deposition I  
14       believe was '61 the parking lot existed and the  
15       report stated that the parking lot was sometime  
16       constructed in the late '50s they thought.

17          Q.       Okay. So if the parking lot was  
18       constructed in the late '50s and the area is still  
19       wet, then isn't it true that Johns Manville didn't  
20       create -- use fill to create the parking lot?

21          A.       I don't understand what you're  
22       asking.

23          Q.       Okay. So you're saying here that  
24       the area is still wet in 1960, right? That's what

1 you said --

2 A. No.

3 Q. -- a moment ago.

4 A. I'm saying the statement here says  
5 that from '08 until '60 the area no longer  
6 depict -- that area is no longer depicted as a  
7 wetland after '60.

8 Q. Okay.

9 A. I think we're reading the same  
10 thing. I don't know what the issue is here.

11 Q. Okay. Let's get it straight because  
12 I think you said two things.

13 Are you saying that in 1960 the  
14 area was wet or it was dry?

15 A. Well, I believe in the sentence that  
16 you read in '60 is where it was no longer depicted  
17 as wet.

18 Q. Okay. So you're saying it was dry  
19 in 1960, is that what you're saying?

20 A. No, I'm saying that it's no longer  
21 depicted as wet.

22 Q. Fine. It's no longer depicted as  
23 wet in 1960, right?

24 A. Correct.

1 Q. But you haven't reviewed any -- you  
2 haven't reviewed any topo maps between 1939 and  
3 1960, right?

4 A. No. Because they didn't exist.

5 Q. Assuming you're right and the area  
6 was wet in '39 and no longer wet in 1960, you  
7 don't know when the change in hydrology took  
8 place, do you?

9 A. No, I do not.

10 Q. It could have been 1940?

11 A. It could be any time between the  
12 last aerial photography or topographical map until  
13 1960, '61.

14 Q. It could have been 1940, right?

15 A. We can go every year, yes.

16 Q. 1945, right?

17 A. Yes.

18 Q. Okay. Assuming, again, that you're  
19 correct that the parking lot was wet in 1939 and  
20 no longer wet in 1960 you also don't know what or  
21 whom was responsible for the change in hydrology,  
22 do you?

23 A. Only from what was read in the  
24 reports.

1 Q. Okay. But you don't know for sure  
2 one way or another, do you?

3 A. No, I do not know factually.

4 Q. In fact, you agree that it's  
5 possible that ComEd did this filling on Site 3,  
6 isn't that true?

7 A. I don't necessarily think I ever  
8 stated that.

9 Q. Okay. Let's take a look at your  
10 deposition and I will hand you -- where is the 4H?  
11 It is 4H, but, here, I have a copy for you.

12 MS. CAISMAN: 4C.

13 MS. BRICE: That might make it  
14 slightly easier.

15 BY MS. BRICE:

16 Q. You took a deposition in this case,  
17 correct?

18 A. Yes.

19 Q. And you were under oath in the  
20 deposition, right?

21 A. Yes.

22 Q. Okay. Can you please turn to page  
23 191. Is this the same --

24 MS. BRICE: Page 191, Hearing

1 Officer Halloran, on 191 of the deposition page  
2 and for purposes of my cross-exam I think it will  
3 be way easier and way faster if we use the  
4 deposition page number and then we can go in and  
5 correlate it. I'll be happy to do it to the  
6 exhibit number, but the deposition page number is  
7 a lot easier to cite to.

8 HEARING OFFICER HALLORAN: Fair  
9 enough.

10 MS. BRICE: Thank you.

11 BY MS. BRICE:

12 Q. Do you have page 191?

13 A. Yes.

14 Q. Okay. And did I ask the following  
15 question?

16 Question: Right. So do you  
17 have any topo information between 1939 and '60  
18 that you haven't referenced in this report?

19 Answer: No, I do not believe  
20 that I do.

21 Question: Okay. So it's  
22 possible that between 1939 and 1960 ComEd filled  
23 the area that is depicted on the topo maps?

24 Answer: Yes. In using the

1 topos as a guide --

2 HEARING OFFICER HALLORAN: Ms.

3 Brice, could you slow down?

4 MS. BRICE: Yes. Sorry.

5 HEARING OFFICER HALLORAN: Thank  
6 you. We have a court reporter feverishly trying  
7 to type this.

8 MS. BRICE: I apologize.

9 BY MS. BRICE:

10 Q. Answer: In using the topos as  
11 your guide and under your theory, that is  
12 possible, yes.

13 Do you see that?

14 A. Yes.

15 Q. Did you say that during your  
16 deposition?

17 A. Yes.

18 Q. Actually, in your report, you said  
19 that the fill, quote, most likely came from the  
20 waste products from a coal fired power plant  
21 Midwest Gen, didn't you?

22 MS. O'LAUGHLIN: I object. It seems  
23 we've clearly moved out of the offer of proof by  
24 now. We're going to his opinions regarding what

1 he has testified to and I'd like to ask my own  
2 questions first about the fill material before  
3 Ms. Brice --

4 HEARING OFFICER HALLORAN: Yeah,  
5 this is going a little far upfield of what your  
6 original objection on nondisclosure was.

7 MS. BRICE: I was just going to the  
8 marshy area.

9 HEARING OFFICER HALLORAN: All  
10 right. Well, let's not. You can address that on  
11 your cross.

12 MS. BRICE: All right. Sounds good.

13 HEARING OFFICER HALLORAN: We're  
14 outside the offer of proof. Ms. O'Laughlin?

15 BY MS. O'LAUGHLIN:

16 Q. Mr. Gobelman, in order to build --  
17 in order to have a parking lot exist on Site 3,  
18 what needed to have been done to the surface?

19 A. Material had to be added to bring  
20 the area that you wanted to use as a parking lot  
21 up to the existing grade of Greenwood Avenue.

22 Q. And do you know what was added to  
23 the area to bring it up to grade?

24 A. The only thing that has any record

1 of what was used for it was that the ELM report  
2 stated that they had -- somebody from Johns  
3 Manville stated that the parking lot was filled  
4 with asbestos-containing material.

5 Q. What about the fill material to  
6 raise the parking lot -- to raise the surface of  
7 the parking lot that was used on top of it?

8 A. I don't know exactly what the  
9 material -- where it came from, but one part of  
10 the report had that it was -- that it contained  
11 asbestos-containing materials.

12 THE COURT REPORTER: Can you do  
13 something about that noise?

14 HEARING OFFICER HALLORAN: It's  
15 lunchtime.

16 (Whereupon, a discussion was had  
17 off the record.)

18 HEARING OFFICER HALLORAN: Let's  
19 take a break and I'll see you back at 1:25. Thank  
20 you. We're off the record.

21 (Whereupon, a break was taken  
22 after which the following  
23 proceedings were had.)

24 HEARING OFFICER HALLORAN: All

1 right. We're back on the record, back from a  
2 lunch break. It is approximately 1:35.  
3 Ms. O'Laughlin is still on her direct of  
4 Mr. Gobelman. You're still under oath. You may  
5 proceed.

6 MS. O'LAUGHLIN: I have a  
7 demonstrative exhibit here which I have just  
8 tendered to counsel, opposing counsel, and through  
9 a copying snafu it was my understanding this was  
10 Exhibit 164, but I learned it had been slightly  
11 modified. I'd like to give it to the witness.

12 MS. BRICE: Are we on --

13 MS. O'LAUGHLIN: My preference would  
14 be to mark it as corrected Exhibit 164,  
15 alternatively we can mark it as a new Exhibit 202.

16 MS. BRICE: I'm -- I'm fine if we  
17 want to mark it as a new demonstrative exhibit,  
18 but I don't know -- and I relayed this to  
19 Ms. O'Laughlin. I'm not sure what his testimony  
20 is going to be about this and to the extent it is  
21 outside the scope of what was in his report, which  
22 looks like it might be but I don't know, and  
23 that's why I was waiting to see what he was going  
24 to say about it, you know, we're going to object

1 to that.

2 HEARING OFFICER HALLORAN: Object

3 to --

4 MS. BRICE: Object to testimony --  
5 to the extent what he says about this is outside  
6 the scope of his opinion that he produced.

7 HEARING OFFICER HALLORAN: Okay.

8 Does this go back to the offer of proof?

9 MS. BRICE: Not yet.

10 HEARING OFFICER HALLORAN: Okay.

11 MS. BRICE: I don't know yet.

12 HEARING OFFICER HALLORAN: Does this  
13 go to the original offer of proof as far as his --

14 MS. BRICE: Yes. Yes. Earlier we  
15 had discussed that, yes.

16 HEARING OFFICER HALLORAN: Okay.

17 MS. BRICE: This was the original  
18 objection when we had this document out and we  
19 started asking --

20 HEARING OFFICER HALLORAN: All  
21 right. I'll note your objection.

22 MS. O'LAUGHLIN: May I correct that?

23 HEARING OFFICER HALLORAN: I'm  
24 sorry?

1 MS. O'LAUGHLIN: I'm sorry. I don't  
2 mean -- may I correct the record because I believe  
3 counsel unintentionally misstated the record  
4 regarding this exhibit? This was what we  
5 attempted to use as 164, but through a copying  
6 snafu it was not our most recent version. This is  
7 our most recent version. We have not used it yet.  
8 Once we learned that there were a couple more  
9 things added, I took it back and said we'll do it  
10 again after lunch.

11 I understand they'll have  
12 objections to what we bring out in testimony, but  
13 what I'm asking here is just merely how to  
14 identify this exhibit whether it's correcting  
15 Exhibit 164 or we go with a new exhibit Exhibit  
16 202 and if Johns Manville's counsel has an  
17 objection, let's just go with 202.

18 That way you can do whatever you  
19 want with either one.

20 MS. BRICE: Fine.

21 HEARING OFFICER HALLORAN: So you  
22 still object to Exhibit 202?

23 MS. BRICE: I don't object. I mean,  
24 she can correct it if she wants. I mean, but I

1 object to the fact we didn't see it before, I now  
2 see it, but I will have other objections about the  
3 documents. That's my point. I don't want -- not  
4 to the correction not being correct, but to the  
5 testimony being elicited.

6 HEARING OFFICER HALLORAN: Terrific.  
7 So we're working off 202 now, but it hasn't been  
8 moved or anything.

9 MS. O'LAUGHLIN: I'd like to tender  
10 to the Hearing Officer Exhibit 202 for  
11 identification purposes.

12 HEARING OFFICER HALLORAN: Is this  
13 marked on here, Ms. O'Laughlin?

14 MS. O'LAUGHLIN: No, it's not.

15 HEARING OFFICER HALLORAN: I'll mark  
16 it.

17 MS. O'LAUGHLIN: Thank you.

18 BY MS. O'LAUGHLIN:

19 Q. Mr. Gobelman, this demonstrative  
20 exhibit in front of you has been marked Exhibit  
21 202 for identification purposes.

22 Do you know what this document  
23 is?

24 A. It's a document I produced using

1 Mr. Dorgan's rebuttal report Figure 2 and then  
2 Arcadis' Engineering and Evaluation Cost Analysis  
3 Report Revision 4 April 2011 Figure 5 and then  
4 utilizing table two of that report.

5 Q. What was the last thing you  
6 identified?

7 A. Table two of that same report.

8 Q. Of what report?

9 A. Of the Arcadis Engineering and  
10 Evaluation Cost Analysis of 2011 Revision 4.

11 Q. So it's the Arcadis report and  
12 Mr. Dorgan's exhibits?

13 A. Yes.

14 Q. Is there anything else?

15 A. No. I mean, I used those to mark --  
16 some of the locations were marked I believe in  
17 Mr. Dorgan's report. He marked the location of  
18 transite pipes and I sort of added based upon the  
19 Arcadis report the location of asbestos-containing  
20 materials.

21 Q. On this Exhibit 202, are you able to  
22 identify the right of ways?

23 A. Part of the right of way is marked.

24 Q. And what part of the right of way is

1 marked?

2 A. The right of way that parallels  
3 Greenwood Avenue to the south and a little bit of  
4 it to the north of Greenwood Avenue.

5 Q. And is it -- does it have a color?

6 A. It's a black dashed line and it's  
7 marked both to the north of Greenwood Avenue and  
8 to the south. It is marked as -- which was  
9 Mr. Dorgan's figure of IDOT right of way.

10 Q. Can you use this easel as a backdrop  
11 and show where the right of way is and you can  
12 just point to it.

13 A. To the south of Greenwood, it's --  
14 it's marked with the dashed line through here. It  
15 is marked over here. It says IDOT and it is  
16 marked up here along the northside of Greenwood  
17 Avenue as the right of way line.

18 Q. And is detour road A exhibited on  
19 this exhibit?

20 A. Yes, detour road A exists from the  
21 northeast side of the map and runs diagonally to  
22 the southwest.

23 Q. And is the temporary easement shown  
24 on this map?

1           A.       Yeah, the temporary easements are  
2 marked in a red crosshatch to the south of the --  
3 the limit is marked to the south of detour A and  
4 also to the north of detour A and up to the north  
5 along the eastern side of detour road B.

6           Q.       And are the construction limits  
7 displayed on this exhibit?

8           A.       Yes, they're marked in a small dash  
9 along the detour A on both sides and along the  
10 eastern side of detour road B and along the  
11 southern side of Greenwood Avenue and on the  
12 northside as well.

13          Q.       Is the embankment for Site 6 shown  
14 on this exhibit?

15          A.       Well, Site 6 is identified in  
16 this -- in this figure.

17          Q.       And how is it identified?

18          A.       It's identified in a blue rectangle  
19 along -- encompassing Greenwood Avenue starting  
20 somewhere around 920, 925 station. It gets marked  
21 also along Greenwood Avenue. It runs to the east  
22 and it doesn't end. It goes off the map.

23          Q.       And what is that again, that is --

24          A.       That is -- that's what was

1 identified on this figure as Site 6.

2 Q. And that was the embankment that is  
3 partially located on this site, is that shown on  
4 this map?

5 A. The embankment is very faint, but  
6 there is -- the embankment is shown through  
7 elevations starting at the western side of  
8 Greenwood and down to -- to where it comes down to  
9 grade and it shows also the elevations of the rest  
10 of Greenwood Avenue to the east.

11 Q. And how about the IDOT construction  
12 limits for the embankment?

13 A. Yeah, those are also I pointed out  
14 represented by a short dashed line.

15 MS. BRICE: And just for the record  
16 this -- to the extent we're talking about the  
17 elevation, this goes to some of the stuff that we  
18 objected to earlier, but I'll just note that for  
19 the record.

20 HEARING OFFICER HALLORAN: Okay.  
21 Thank you.

22 BY MS. O'LAUGHLIN:

23 Q. And what about sample results or  
24 logs, soil boring locations or other sampling

1 results, are those shown on this exhibit?

2 A. A lot of the subsurface sample  
3 locations are shown there and then I added some  
4 borings going through the Arcadis document of  
5 circling in red the borings that had  
6 asbestos-containing materials and noting what  
7 depths they were encountered and then there was  
8 also a bunch of red hexagon-ish -- red drawings  
9 around areas that have been identified as where  
10 transite pipe was.

11 MS. BRICE: Right. And we would  
12 object to the extent that Mr. Gobelman never  
13 testified to the locations of any of the  
14 asbestos-containing materials in his documents, in  
15 his report, and testified that this is based upon  
16 Mr. Dorgan's rebuttal report.

17 HEARING OFFICER HALLORAN: I think  
18 you guys -- I'm going to give you a project  
19 between now and June, what is it, 23rd. I'll give  
20 you a three-page brief on this. Whole offer of  
21 proof and your objection.

22 MS. BRICE: Sure.

23 HEARING OFFICER HALLORAN: I think I  
24 know how I'm going to rule because I may revisit

1 it, but that would probably be a good thing to do  
2 in your time off, but, anyway, your objection is  
3 so noted. I'm sorry, Mr. Gobelman, you may  
4 continue.

5 BY THE WITNESS:

6 A. Is there a question, I forget now,  
7 on the books?

8 BY MS. O'LAUGHLIN:

9 Q. What are these red circles or red  
10 hexagons on this exhibit?

11 A. They're the locations of where  
12 either transite pipe was identified in the  
13 subsurface or asbestos-containing material.

14 Q. And what does the circle mean?

15 A. The circle means that it was an  
16 asbestos-containing material and not necessarily  
17 transite pipe.

18 Q. And what about a hexagon?

19 A. Hexagon is noted as being transite  
20 pipe.

21 Q. And next to these red marks, either  
22 a circle or hexagon, is there some color code next  
23 to it?

24 A. Well, when -- when looking at the

1 borings that are associated with A and A prime, B  
2 and B prime on the north and south of Greenwood  
3 Avenue, I added a sort -- because there was a  
4 mixed bag of materials that were identified in the  
5 borings, I sort of added a color code associated  
6 with the depths of what types of materials were  
7 found within a three-foot boring or a trench that  
8 was dug.

9 Q. And where did you obtain that  
10 information?

11 A. I obtained that also from the  
12 Arcadis report.

13 Q. And are those --

14 A. I should also state that that was  
15 also -- a lot of that information Mr. Dorgan's  
16 figure showed just the hexagon where the transite  
17 pipe was and I added the color scheme, the  
18 associated depths to that, but I also then added  
19 circles to the other borings that had  
20 asbestos-containing material and the color depths  
21 associated with it.

22 Q. In building detour road A, what is  
23 the area that the Bolander contractor would have  
24 operated within?

1           A.       Well, he would have operated within  
2 the -- the construction limits.

3           Q.       Can you keep that up and show where  
4 he would have operated within?

5           A.       Well, this is only a part of detour  
6 road A. Detour road A will continue down until it  
7 hits Sand Street somewhere. You know, this is  
8 just at the intersection. So there is another 300  
9 or 400 feet before it ends at Sand. So he would  
10 have operated -- and this is sort of represented  
11 by the shading of the green as depicted by the  
12 IDOT construction limit.

13          Q.       And also is the former Johns  
14 Manville parking lot shown on this demonstrative  
15 exhibit?

16          A.       Yes, it is identified by this black  
17 line and I think it's got some sort of textured  
18 figure, I mean, a crosshatch.

19          Q.       And would the contractor have gone  
20 outside the construction limits?

21          A.       He is not allowed to go outside the  
22 construction limit or IDOTs right of way easement  
23 without permission from the RE and permission from  
24 the land owner.

1 Q. What area exactly is the contractor  
2 allowed to operate within?

3 A. Well, it's defined as the  
4 construction zone because that's where he is  
5 expected to do all work.

6 Q. That's within the construction  
7 limit?

8 A. Within the construction limit, but  
9 there is additional right of way or easements that  
10 IDOT has purchased to sort of allow sometimes  
11 movement of vehicles or machinery to give them a  
12 little bit more of a buffer outside the  
13 construction limit, but all work is within the  
14 construction limits.

15 Q. Okay. So the construction work is  
16 within the construction limits, but the contractor  
17 is allowed to use the easement area?

18 A. He can touch it, yes. He can  
19 maneuver around it. He is not constructing  
20 anything in it.

21 Q. Okay. And explain why it is  
22 unlikely the contractor would have met or gone  
23 outside the construction limits --

24 MS. BRICE: Can I do something to

1 limit the record?

2 BY MS. O'LAUGHLIN:

3 Q. -- or the limits of the easement?

4 MS. BRICE: I'm sorry, Ellen, but  
5 just to clarify the record because this is  
6 confusing. He did testify about the construction  
7 limit issue. He hasn't testified about the  
8 borings, but -- so it gets kind of confusing here.  
9 So to the extent your ruling would apply here, I  
10 want to be clear that that was in his report.

11 HEARING OFFICER HALLORAN: All  
12 right. Right. And I did notice and, again, I'm  
13 not making a ruling. I noticed Exhibit 84 that  
14 was processed in May of 2016 that Mr. Dorgan  
15 referred to in his testimony regarding soil  
16 borings and whatnot. So, you know, that's just  
17 for the record, but you may continue. Thank you.

18 BY MS. O'LAUGHLIN:

19 Q. Why is it unlikely the contractor  
20 would have operated outside of the easement  
21 limits?

22 A. Well, if he has -- as I said  
23 earlier, if he has to go outside and do some work  
24 or do something that he wants to do outside of the

1 area that the department has defined for him, he  
2 can do so with the permission of the resident  
3 engineer and with the property, but the issue is  
4 going to be that if he needs to get permission  
5 from the property owner, then it roughly becomes  
6 at his cost. So the property owner could charge  
7 him a fee to do whatever or, you know -- but it's  
8 on him. It's not on the department.

9 Q. If the contractor had gone outside  
10 of the construction limits, would he -- would the  
11 agreement of the IDOT engineer have been needed?

12 A. He would need his permission to do  
13 so.

14 Q. And would the engineer give it?

15 A. I would say in most circumstances  
16 they would, but that would also depend upon  
17 exactly what they planned to do and what the  
18 condition that the contractor is going to leave  
19 that property in, too, because they don't want to  
20 have some sort of issue with damages coming back  
21 to them.

22 MS. BRICE: Objection.

23 BY MS. O'LAUGHLIN:

24 Q. So what process would have to have

1 been gone through for the contractor to operate  
2 outside of the easement?

3 MS. BRICE: Okay. I will object to  
4 this line of questioning. There was nothing in  
5 his report about this level and I think they're  
6 trying to say now the contractor is liable if he  
7 has gone outside the limits and that was not an  
8 opinion of his.

9 HEARING OFFICER HALLORAN: Ms.  
10 O'Laughlin?

11 MS. O'LAUGHLIN: I'm just trying to  
12 be accurate here. I'm just trying to be accurate,  
13 that is the contractor. It's just the way it's  
14 done. There is nothing -- I'm just trying to be  
15 accurate. That's all. And we can use IDOT or  
16 IDOTs contractor --

17 MS. BRICE: Thank you.

18 MS. O'LAUGHLIN: -- you know, if  
19 that's a preference.

20 HEARING OFFICER HALLORAN: Thank  
21 you.

22 MS. O'LAUGHLIN: Or IDOTs  
23 contractor. Although, I do think it helps to  
24 clarify what exactly IDOTs role is. So we'll just

1 continue with the questioning.

2 BY MS. O'LAUGHLIN:

3 Q. Is there anything else significant  
4 about the easement limits or construction limits  
5 in your demonstrative?

6 A. No, I don't believe so.

7 Q. So if the contractor -- if IDOTs  
8 contractor were to encounter concrete or transite  
9 pipes on the parking lot, what would he have done  
10 with it? How would he have handled it? How would  
11 it have been handled? Excuse me.

12 A. My opinion is that he would consider  
13 it an obstruction and would be required to clear  
14 the pipes out of his way.

15 Q. And why -- what is that based upon?  
16 Your opinion is based upon what?

17 A. It's -- it's sort of -- the pipes if  
18 they were sitting on the surface of the parking  
19 lot have no use in the building of that detour  
20 road and needs to be moved out of the way so that  
21 they can build that detour road. So the '71 spec  
22 talks about clearing of material that's -- you  
23 know, that needs to be removed.

24 Q. So if they ran into pipes, they

1 would remove the pipes or concrete pipes?

2 A. They would clear them out of their  
3 way.

4 Q. Okay. And then what would happen?

5 A. Well, the process is that the pipes  
6 have -- even though I think it's been brought up  
7 is they have a value. So the contractor isn't  
8 necessarily going to want to remove these pipes  
9 and take them offsite someplace and to discard  
10 them. They have some sort of valuing because the  
11 spec states that they can use -- if they choose to  
12 use, they can use concrete pipe in an embankment  
13 process as long as it's within certain criteria  
14 and meet -- and the embankment is not going to be  
15 endangered by specifications and can meet  
16 compactions.

17 So, in this case, they would  
18 most likely at the time that this was going on  
19 there is a current structure being built that is  
20 going to need a lot of material and it would be  
21 easy for that material to be utilized as part of  
22 the embankment outside of this area.

23 Q. Why would -- would the contractor or  
24 IDOT have used concrete or transite pipes within

1 detour road A?

2 A. I don't believe it's possible --

3 Q. Why is that?

4 A. -- based upon the amount of  
5 embankment that's occurred within areas -- Site 6  
6 is very little.

7 Q. I'm sorry. I asked you about detour  
8 road A.

9 A. Oh, detour road A. Sorry.

10 Q. Could you show on the --

11 A. Detour road A isn't occurred because  
12 they already have -- they already have according  
13 to the plans an excessive amount of cut material  
14 that is plenty to build this road. So for them to  
15 move pipe over and crush and take time to do it,  
16 it's easier for them to put that material in a  
17 place that they no longer have to move it twice.  
18 Because according to the plans, once -- they know  
19 once that road is built and in place, it's going  
20 to have to be renewed to meet what is required on  
21 our obligations to ComEd as how we leave this  
22 property. This road and all detour roads have to  
23 be removed. So it would be a wasted effort to use  
24 a viable product that can be used in embankments

1 if it meets certain criteria in an area that is  
2 going to have to be removed and this area is going  
3 to be removed after all the embankments are in  
4 place. So there is no place for him to remove  
5 this material other than off the project itself  
6 because he has to grade Site 3 back down to a  
7 condition that is existing and allow it to drain  
8 properly.

9 Q. You read Mr. Dorgan's report and you  
10 understand his theory that IDOT's contractor or  
11 IDOT would have buried concrete or transite pipe,  
12 are you familiar with that theory?

13 A. Yes.

14 Q. And do you agree with it --

15 A. Well, I agree --

16 Q. -- on detour road A? Let's take it  
17 site by site. Detour road A.

18 A. No, I do not agree that IDOT or its  
19 contractors would have buried any transite pipe in  
20 detour road A.

21 Q. How about Site 3?

22 A. I do not believe they would have  
23 buried any of that material that was pulled off  
24 the top of the parking lot at the time this was

1 being built into the rest of Site 3.

2 Q. And why is that?

3 A. As I said, the material that they  
4 would have found on the surface has a value. It  
5 serves them no purpose to go off the right of way  
6 and bury something that he could save -- be able  
7 to utilize in an embankment someplace else. It  
8 has value. It doesn't have -- it reduces the  
9 amount of material that he is going to have to try  
10 to find from a borrow source.

11 MS. BRICE: Can I just interject for  
12 a second? It seems like you're changing your  
13 opinion from -- completely and agreeing with us.

14 MS. O'LAUGHLIN: Objection.  
15 Objection.

16 MS. BRICE: Okay.

17 HEARING OFFICER HALLORAN: You can  
18 have at him on cross if you like to.

19 MS. BRICE: I'm not -- this is  
20 surprising to me.

21 HEARING OFFICER HALLORAN: Well, you  
22 can address it on cross, but thank you.  
23 Ms. O'Laughlin, you can continue.

24 MS. O'LAUGHLIN: Can you read the

1 last question, please?

2 (Whereupon, the record was read  
3 as requested.)

4 BY MS. O'LAUGHLIN:

5 Q. Do you agree with -- do you believe  
6 that the concrete or transite pipe would have been  
7 buried throughout Site 3?

8 A. No.

9 Q. And why is that?

10 A. Because, like I said, it serves no  
11 purpose for the contractor to take extra effort to  
12 go offsite and get rid of a product that he can  
13 utilize someplace else.

14 Q. Is there -- what is the requirement  
15 about using such a material as a concrete or  
16 transite pipe? I believe Mr. Dorgan testified  
17 about four-inch pieces being placed below the  
18 surface of the finished earth grade, do you  
19 remember that?

20 A. Yes, it's what's identified in -- in  
21 the spec book for embankments of -- if the  
22 contractor chooses to use concrete in his  
23 embankment, the criteria for which he can utilize  
24 it. If -- off the top of my head, if he is going

1 to use it outside of the roadway in the  
2 embankment, then I believe it's 12 inches below  
3 the ground surface and if it is under the  
4 pavement, it has to be nine inches or something  
5 like that or six inches below the pavement.

6 Q. Is there something that you want to  
7 look at?

8 A. I can look at the original '71 spec.

9 Q. Spec book. Exhibit 19, I believe.  
10 Would it be spec 207.04?

11 A. Yeah, I just didn't turn the page  
12 enough. Yeah, if it is being placed before an  
13 existed -- existing ridged type pavement or base  
14 coarse, then there is no less than three inches or  
15 no more than 12 inches within the -- below that  
16 base coarse ridged pavement. So it has to be  
17 somewhere between three and 12 and then --

18 Q. So knowing this, what would have had  
19 to occur for IDOT or its contractor to use  
20 transite pipe or concrete pipe in the building of  
21 the embankment for detour road A?

22 MS. BRICE: And just to preserve the  
23 objection, there was no discussion of the  
24 specifications or the size or the types in his

1 report or deposition.

2 HEARING OFFICER HALLORAN: So noted.

3 Thank you.

4 BY THE WITNESS:

5 A. For them to build -- use the pipe in  
6 detour road A?

7 BY MS. O'LAUGHLIN:

8 Q. Right. How -- how -- correct.

9 A. Well, I don't believe they did use  
10 it in detour road A.

11 Q. Right. And why -- why -- and why?

12 A. Because there was plenty of soil in  
13 the -- in the cut material in the building of that  
14 detour road that they had plenty of soil to  
15 utilize as part of the detour road and then the  
16 other issue was that road has to be removed. So  
17 whatever they put in that -- in building that road  
18 is going to be removed.

19 Q. Looking at your demonstrative, are  
20 you able to show what -- are you able to -- does  
21 the low area, the existing grade, is that shown on  
22 this demonstrative?

23 A. Outside of the construction limits,  
24 there is some grade elevations shown.

1 Q. Where is that?

2 A. If you look at the southeast side of  
3 Site 3, you'll see some faint lines with numbers  
4 of like 588, 587, 589, 586, I think it says, 588,  
5 587.

6 Q. Okay. Thank you. Would the --  
7 would IDOTs contractor have used it within the  
8 embankment of Site 6?

9 A. No. Because it's -- it's a very  
10 small, you know, embankment that is being built at  
11 the end of the western end of Site 6. It's maybe  
12 only a foot or so of embankment at that particular  
13 point, if that.

14 MS. BRICE: Objection again.  
15 Entirely new opinion.

16 HEARING OFFICER HALLORAN: So noted.  
17 Thank you, Ms. Brice.

18 BY MS. O'LAUGHLIN:

19 Q. Would you use your demonstrative and  
20 show the area.

21 A. Site 6 western end is marked right  
22 here around 920. At that particular place, it's  
23 the end of the embankment is going to end  
24 somewhere around 9 plus 00. So at that time there

1 was very little embankment material that is  
2 occurring around there.

3 Q. And how do you know that about the  
4 amount of embankment material?

5 A. That is based upon the contract  
6 plans cross sections.

7 Q. Okay. And if you can go on, so  
8 where does the embankment begin on your  
9 demonstrative?

10 A. Roughly -- it's not really laid out  
11 other than there are some topographical grades,  
12 but roughly it's around at 9 is where the road  
13 itself is going to start coming above its present  
14 grade.

15 Q. And what is the western limit of  
16 Site 6?

17 A. On this figure, it is shown  
18 somewhere around 9 plus 20, 25.

19 Q. And do you know how much embankment  
20 material would be needed at that point?

21 A. It's maybe a foot.

22 Q. And how do you know that?

23 A. Based upon the contract cross  
24 sections for Greenwood Avenue.

1 MS. BRICE: I just have to state --  
2 objection -- state for the record this whole  
3 theory is completely the antithesis of what was  
4 stated in his --

5 HEARING OFFICER HALLORAN: Well, I  
6 disagree, but it's so noted and this I know  
7 dovetails from your offer of proof.

8 MS. BRICE: I understand.

9 HEARING OFFICER HALLORAN: And  
10 that's what the three to four-page brief will do  
11 come probably June 20th, but I note your objection  
12 and the record notes it. Thank you.

13 BY MS. O'LAUGHLIN:

14 Q. Turning to Exhibit 164.

15 A. Okay.

16 Q. And the part of the exhibit that is  
17 noted as cross section A-A, can you just pull that  
18 out of your binder.

19 Matching your demonstrative with  
20 this -- where does this cross section A-A come  
21 from?

22 A. It comes from the results that were  
23 identified in the Arcadis Engineering Evaluation  
24 and Cost Analysis Report.

1 Q. If you can identify just for the  
2 record, Exhibit 164, does it have a figure number  
3 on it?

4 A. It has Figure 2.

5 Q. Continue, please.

6 A. And it has -- and it also came from  
7 Mr. Dorgan's -- one of the figures that was  
8 provided at some point in this process regarding  
9 these cross sections that I think was previously  
10 used and then what I did is I added soil borings  
11 number seven and number eight which are two  
12 borings that continued to the east along Greenwood  
13 Avenue to the south of -- to the south of  
14 Greenwood Avenue I should say.

15 Q. Is that 7S and 8S?

16 A. Correct.

17 Q. If you could mark on your exhibit  
18 where station 7 approximately begins.

19 A. Okay.

20 Q. And how are you able to mark that  
21 with any degree of certainty?

22 A. I was utilizing the Figure 1  
23 demonstrative that has the station numbers along  
24 the center line of Greenwood Avenue.

1 Q. And, remind me, how much embankment  
2 material would have been needed at station 7?

3 A. At that point for -- in regards to  
4 Greenwood Avenue, it would be no material because  
5 that's the end of the project along Greenwood  
6 Avenue.

7 Q. And if you could mark on Figure 2,  
8 Exhibit 164, approximately where station 9 is  
9 located?

10 A. Okay.

11 Q. And how are you able to mark that  
12 with any certainty?

13 A. It's -- it's for the same reason  
14 that the Figure 1 Greenwood Avenue has the station  
15 names along the center line of Greenwood Avenue.

16 Q. And how much embankment material  
17 would have been needed at station 9?

18 A. About a foot.

19 Q. In looking at this cross section of  
20 A-A in regards to -- is asbestos-containing  
21 material shown on this cross section A-A?

22 A. Yes.

23 Q. What type of ACM material?

24 A. There is transite pipe identified,

1 there is roofing material, hard fibers materials,  
2 raw material, insulation materials, brake shoes  
3 and fibrous sludge.

4 Q. Would IDOT or its contractor have  
5 used ACM fibrous sludge as an embankment material?

6 A. I do not believe so.

7 Q. Would IDOT or its contractor have  
8 used ACM brake shoes as embankment material?

9 A. I do not believe so.

10 Q. How about roofing material?

11 A. Nope.

12 Q. Insulation material?

13 A. Nope.

14 MS. BRICE: Again, objection to a  
15 new opinion.

16 HEARING OFFICER HALLORAN: So noted.  
17 You may continue.

18 BY MS. O'LAUGHLIN:

19 Q. It looks like there is ACM material  
20 throughout the embankment -- Strike that.

21 It appears to be that there is  
22 ACM material throughout the sampling results  
23 displayed in cross section A-A, is that a fair  
24 characterization?

1           A.       Yes, there is ACM material in  
2 every -- in every boring.

3           Q.       And what about transite pipe?

4           A.       There is not transite pipe in every  
5 one.

6           Q.       How is transite depicted on this?

7           A.       Transite pipe is marked in sort of  
8 dots is the best way I can describe it, I guess.

9           Q.       And are there -- it's displayed as  
10 what?

11          A.       Like dots.   Speckles.

12          Q.       And are there some of these dots or  
13 speckles mixed in with this roofing material?

14          A.       Yes.

15          Q.       Moving to Figure 3 of Exhibit 164.

16                   MS. BRICE:   Could you hold for a  
17 second?   It's not in the binder.   It's not in your  
18 binder.

19                   MS. O'LAUGHLIN:   Is this it?

20                   MS. BRICE:   No.

21                   THE WITNESS:   It's in the back.

22                   MS. O'LAUGHLIN:   That's A-A.   It's  
23 not right behind -- can you take that?

24                   MS. BRICE:   For some reason, it's

1 not, but do you mind if I take this one?

2 MS. O'LAUGHLIN: No. Please do.

3 MS. BRICE: Thanks. Are you going  
4 to ask him questions about B-B?

5 MS. O'LAUGHLIN: Yes.

6 MS. BRICE: Okay. This, I --  
7 Mr. Gobelman testified in his deposition that  
8 there was no --

9 HEARING OFFICER HALLORAN: Is this  
10 an objection?

11 MS. BRICE: Yes.

12 HEARING OFFICER HALLORAN: Okay.  
13 Thank you. You may proceed.

14 MS. BRICE: Sorry. He testified in  
15 his deposition that there was no asbestos on the  
16 northside embankment at all. This wasn't depicted  
17 in Mr. Dorgan's figure. This is entirely new out  
18 of left field information.

19 HEARING OFFICER HALLORAN: Okay.  
20 Well, maybe you can address that on your cross,  
21 but the objection is noted.

22 MS. BRICE: But if he is going to  
23 offer opinions on it, we object for the same  
24 reasons that this has never been -- it's coming up

1 for the first time here.

2 HEARING OFFICER HALLORAN: Okay.

3 And the question is regarding these diagrams?

4 MS. O'LAUGHLIN: Yes. Just one more  
5 foundation.

6 BY MS. O'LAUGHLIN:

7 Q. On your demonstrative exhibit, is  
8 this cross section A-A shown on your demonstrative  
9 exhibit, which is --

10 A. Yes.

11 Q. -- now Exhibit 202 for  
12 identification?

13 A. Yes.

14 Q. And how about cross section -- where  
15 is that located? Where is that shown on your  
16 demonstrative?

17 A. It's shown on the south end of -- of  
18 Greenwood Avenue going through the borings.

19 Q. And how about cross section B-B?

20 A. It is shown on the north end of  
21 Greenwood Avenue.

22 Q. And did you create this diagram  
23 cross section B-B?

24 A. Yes.

1 Q. And how did you do that?

2 A. I utilized the materials that -- the  
3 materials that are identified in the Arcadis  
4 report of 2011.

5 Q. And what does this cross section B-B  
6 tell you about ACM material?

7 HEARING OFFICER HALLORAN: I'm  
8 sorry?

9 BY MS. O'LAUGHLIN:

10 Q. What does this cross section B-B  
11 tell you about ACM material?

12 A. That it also exists on the northside  
13 of Greenwood Avenue.

14 Q. How is it depicted in this cross  
15 section B-B?

16 A. It's used in the same notations that  
17 were identified in the A-A cross section.

18 Q. It also looks like there is an ACM  
19 fibrous paper here, is that also depicted?

20 A. Yes.

21 Q. Otherwise, ACM -- there is ACM  
22 fibrous sludge?

23 A. Yes.

24 Q. There is roofing material?

1 A. Yes.

2 Q. There is transite pipe?

3 A. Yes.

4 Q. In the cross section marked as A-A,  
5 do you know if all unsuitable material identified  
6 in this cross section was actually removed?

7 A. No, I do not.

8 Q. And why not?

9 A. Because the -- one, the plans don't  
10 show what materials were removed and there is  
11 actually a deduction in the volume of unsuitable  
12 material that shows that it was -- that there  
13 was a -- you know, 17 percent or 20 percent  
14 reduction in the amount of unsuitable material  
15 that was not removed because they found the  
16 material -- the existing conditions to be suitable  
17 enough for the road.

18 MS. BRICE: Objection. New opinion.

19 BY MS. O'LAUGHLIN:

20 Q. And --

21 HEARING OFFICER HALLORAN: So noted.

22 Overruled. You may proceed.

23 BY MS. O'LAUGHLIN:

24 Q. And how do you know that? Was that

1 in the materials furnished to Johns Manville in  
2 this matter?

3 A. Yes, it was in the plans giving the  
4 quantities that was bid upon and then there was  
5 the final change order that identified what the  
6 deductions were.

7 Q. Can you turn to Exhibit 35?

8 A. Yes.

9 Q. Is this the document that you were  
10 referring to?

11 A. Yes.

12 Q. And are you able to calculate the  
13 percent reduction?

14 A. Not in my head, but yes.

15 Q. Is there something that would  
16 refresh your recollection?

17 A. Well, I had calculated it, you know,  
18 before.

19 Q. Would this refresh your  
20 recollection?

21 A. Yes.

22 MS. BRICE: Okay. I'm going to  
23 object.

24 HEARING OFFICER HALLORAN: You know,

1 Ms. O'Laughlin you were objecting to the same  
2 thing that Ms. Brice did.

3 MS. O'LAUGHLIN: I --

4 HEARING OFFICER HALLORAN: Since  
5 then I think you finally got around your witness  
6 as far as volume. You finally got the answer in  
7 that you asked of --

8 MS. BRICE: We ended up getting a  
9 percentage. We didn't get the number.

10 HEARING OFFICER HALLORAN: I'm going  
11 to give you leave to get a percentage in.

12 MS. BRICE: I got the percentage in.  
13 I didn't get the number.

14 HEARING OFFICER HALLORAN: You can  
15 get the number in.

16 MS. BRICE: Okay.

17 HEARING OFFICER HALLORAN: Because  
18 do you remember you objected?

19 MS. O'LAUGHLIN: Yes. If I recall,  
20 I objected and then Ms. Brice showed it to me and  
21 I said you can show it to him and then she turned  
22 around and decided not to.

23 HEARING OFFICER HALLORAN: Since  
24 then, I went back to my bargaining days, but in

1 any event, yes, you can get your number in. Let  
2 me know how you want --

3 MS. BRICE: Thank you. Mr. Ebihara  
4 can get the number in.

5 MS. O'LAUGHLIN: Yeah, I had no  
6 objection to her approaching the witness. I just  
7 wanted to look at it first and I'd be happy to  
8 show it to Ms. Brice as well.

9 MS. BRICE: That was not my  
10 understanding. You said I couldn't show it. So I  
11 was thinking that I couldn't. So go ahead.  
12 However --

13 HEARING OFFICER HALLORAN: You  
14 objected.

15 MS. BRICE: Sure. No. Right.  
16 However, you'd like to proceed.

17 HEARING OFFICER HALLORAN: I thought  
18 they objected. So next time let me know whether  
19 you do or not. I heard an objection.

20 MS. O'LAUGHLIN: I apologize.

21 HEARING OFFICER HALLORAN: No. No  
22 apologies. In any event, here we are. She is  
23 going to get her number in and you're going to  
24 show him.

1 MS. O'LAUGHLIN: May I approach the  
2 witness?

3 HEARING OFFICER HALLORAN: Yes.

4 BY MS. O'LAUGHLIN:

5 Q. Does this refresh your recollection?

6 A. Yeah. Because what I did is I  
7 looked at the -- the total bid quantity that was  
8 being -- that the contractor had to bid upon the  
9 removal of unsuitable material which was 44,809  
10 cubic yards and then the final deductions it's --  
11 it is -- there was 14,700 cubic yards of  
12 unsuitable material that was not removed. And so  
13 when you calculate the percentage of that, it is  
14 roughly 32.8 percent reduction in the amount of  
15 unsuitable materials that were -- that was  
16 scheduled to be removed, but left onsite because  
17 the material was suitable for roadwork.

18 MS. BRICE: Objection. That's a new  
19 opinion.

20 HEARING OFFICER HALLORAN: So noted.

21 MS. O'LAUGHLIN: If you could turn  
22 to -- for the record, we'd like to move Exhibit  
23 202 into evidence, into the record here.

24 MS. BRICE: We object because

1 it's -- the foundation of it is all sorts of new  
2 opinions.

3 HEARING OFFICER HALLORAN: Do you  
4 object to the exhibit itself?

5 MS. BRICE: The exhibit itself as  
6 far as what it's showing I don't know because  
7 there were changes made to it and I haven't had a  
8 chance to know if they're accurate or not.

9 HEARING OFFICER HALLORAN: Well, you  
10 know what, I'll reserve ruling until June 23rd.  
11 That should give you plenty of time to take a look  
12 at it.

13 MS. BRICE: Thank you.

14 HEARING OFFICER HALLORAN: So I'll  
15 mark that on my notes. Thank you.

16 BY MS. O'LAUGHLIN:

17 Q. Okay. If you could turn to the  
18 exhibit that is your -- Mr. Gobelman's deposition,  
19 which is --

20 MR. MCGINLEY: It's 4C.

21 BY MS. O'LAUGHLIN:

22 Q. It's 4C.

23 A. Okay.

24 Q. I'm going to ask you to move to the

1 exhibits to your deposition.

2 A. Okay.

3 Q. One second, please. If you can turn  
4 to -- turn to page 04C-481.

5 A. Okay.

6 Q. Do you see what has been marked as  
7 Exhibit No. 9?

8 A. Yes.

9 Q. Is this the document that you  
10 earlier testified to regarding the percentage  
11 reduction in the embankment?

12 A. It's where I received the deductions  
13 that were coming from the unsuitable, the borrow  
14 and the coarse granular embankment. It's the  
15 final authorization 18.

16 Q. Is that the same document as Exhibit  
17 35 that you testified to earlier?

18 A. Yes.

19 Q. Turning the page -- what exhibit is  
20 that marked as, the document that I just asked you  
21 about?

22 A. It's marked as -- this is Exhibit  
23 04C-481 and it is marked as Exhibit No. 9.

24 Q. During your deposition?

1 A. During my deposition.

2 Q. If you can turn the page.

3 HEARING OFFICER HALLORAN: What is  
4 it here, Exhibit 4?

5 THE WITNESS: 04C-481.

6 HEARING OFFICER HALLORAN: Okay.

7 Thank you.

8 BY MS. O'LAUGHLIN:

9 Q. Turning the page is it marked for  
10 the trial exhibits as 04C-482?

11 A. 482, yes.

12 Q. And do you know what number is  
13 marked as your deposition exhibit?

14 A. It's marked as Exhibit No. 11.

15 Q. And we jumped from Exhibit 9 to  
16 Exhibit 11?

17 A. Yes.

18 Q. I just wanted to lay that foundation  
19 so I could ask you about these aerial photographs,  
20 which I believe were inadvertently left out of the  
21 record, the exhibits.

22 HEARING OFFICER HALLORAN: Your --  
23 your record?

24 MS. O'LAUGHLIN: No. The exhibit

1 binders we received Monday morning and I'd like to  
2 ask Mr. Gobelman about some exhibits that should  
3 have been in the binder, but they're not.  
4 Unintentionally, I'm sure. And I'd like to  
5 establish that they were -- should be there and to  
6 lay the foundation so that I can ask him about  
7 them.

8 MS. BRICE: Have they been produced?

9 HEARING OFFICER HALLORAN: Have you  
10 talked to counsel about this?

11 MS. BRICE: They were part of the  
12 deposition --

13 MS. O'LAUGHLIN: Let's just go  
14 through it and you can object if you want, but I'm  
15 asking him questions about -- photographs that you  
16 asked about to him during his deposition.

17 MS. BRICE: Sure. Understood. But  
18 have these been produced by somebody at some  
19 point?

20 MS. O'LAUGHLIN: You asked -- they  
21 were in -- they're an exhibit to his deposition.

22 MS. BRICE: I get that, but --

23 HEARING OFFICER HALLORAN: Let's go  
24 off the record.

1 (Whereupon, a discussion was had  
2 off the record.)

3 BY MS. O'LAUGHLIN:

4 Q. I'd like to show you, Mr. Gobelman,  
5 the aerial photograph dated June 11th, 1970, which  
6 has -- which has been identified as Exhibit 54-S  
7 in this proceeding.

8 HEARING OFFICER HALLORAN: S as in  
9 Sam?

10 MS. O'LAUGHLIN: S as in Sam,  
11 correct.

12 HEARING OFFICER HALLORAN: Thank  
13 you.

14 BY THE WITNESS:

15 A. Okay.

16 BY MS. O'LAUGHLIN:

17 Q. Have you seen this before?

18 A. I've seen the aerial photo and  
19 aerial stereo sets of this photo, yeah.

20 Q. Can you display it so we can all see  
21 it, if you can. Multitalented. And can you  
22 identify Exhibit -- excuse me, Site 3 on this.  
23 You can just point to it to give an orientation.

24 A. It's roughly coming down I'm not

1 sure how far down it's going to come, but it  
2 starts over here at the turn and then comes down  
3 across and up somewhere in this area.

4 Q. And do you see any pipes or any  
5 material -- excuse me. Strike that. Do you see  
6 any pipes in this aerial photograph?

7 A. In this blowup, it's difficult to  
8 identify what is in this aerial.

9 Q. Do you see any demarcations of  
10 parking spaces?

11 A. No.

12 Q. Do you see any pipes?

13 A. Like I said, it's very hard to tell  
14 what is in this area because the blowup distorts  
15 the system.

16 Q. And do you see any cars parked  
17 there?

18 A. No.

19 Q. Could this perhaps have been a  
20 Saturday or a Sunday, a non-working day?

21 A. I believe this is a working day  
22 because there appears to be cars in the other  
23 parking lot.

24 Q. And so what does this aerial

1 photograph suggest to you about the use of the  
2 parking lot located on Site 3?

3 A. Well, it appears that at the time  
4 that the parking lot was no longer being used or  
5 is not being used.

6 Q. Okay. Is there anything of  
7 significance that you see in this aerial photo?

8 A. It's hard to say. It doesn't seem  
9 anything out of the ordinary that I can tell that  
10 is occurring here.

11 Q. Okay. If you can next move to the  
12 aerial photograph of 1972, which has been  
13 identified as Exhibit 54-Q in this matter.

14 A. Okay.

15 Q. And what does this aerial photograph  
16 depict?

17 A. It depicts the -- it's sort of the  
18 beginning, middle of the construction project  
19 probably more towards the beginning than the  
20 middle that shows -- it shows the location of  
21 detour road A that comes around from Greenwood  
22 Avenue from the northeast to the southwest. It  
23 ends to the southern part of Sand Street. It  
24 shows a portion of detour road B that T's off of

1 detour road A and moves upward to the north and  
2 then it goes further up off the figure and it sort  
3 of shows a sliver of detour road A that is in the  
4 northwest corner of this blowup that cuts across  
5 the map.

6 Q. I'm sorry. Did you mean detour road  
7 A or --

8 A. C. I thought I said C. I didn't.

9 Q. Anything -- can you point out the  
10 location of the parking lot at issue here?

11 A. At this time you cannot make out the  
12 parking lot. It could have been roughly in this  
13 area.

14 Q. And what about where is Site 6?

15 A. Site 6 would have been somewhere to  
16 the west of where detour road A comes in to  
17 Glenwood (sic) and then moves to the east along  
18 Greenwood Avenue.

19 Q. Is there anything else of  
20 significance on this aerial photo?

21 A. It's already depicting the bridge  
22 embankment associated with the Amstutz Expressway.  
23 Already gone because they had a jump in the  
24 process and then sort of the beginning process of

1 the railroad bridge and that's about all the  
2 construction, you know. There is some access  
3 roads that are here, but this appears to be the  
4 places between the bridges, it looks like backfill  
5 is going in for the embankment. I guess that's  
6 about it as far as the construction.

7 Q. If you can next move to an aerial  
8 from 1974, which I believe is Exhibit 54-R.

9 MS. BRICE: I don't think we have  
10 54-R.

11 HEARING OFFICER HALLORAN: I'm  
12 sorry.

13 MS. BRICE: I don't think we have a  
14 blowup of that, at least not here.

15 HEARING OFFICER HALLORAN: We can go  
16 off the record until we figure it out.

17 (Whereupon, a discussion was had  
18 off the record.)

19 HEARING OFFICER HALLORAN: We're  
20 back on the record.

21 MS. BRICE: I think -- sorry. Just  
22 to help clarify. I think 54-R is 72.

23 THE WITNESS: It is.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 MS. BRICE: Seventy-four is K --  
3 54-K.

4 MS. O'LAUGHLIN: Thank you.

5 MS. BRICE: No. 53-K. Sorry.  
6 53-K.

7 MS. O'LAUGHLIN: Thank you.

8 THE WITNESS: 53-K?

9 MS. O'LAUGHLIN: Yes. If you can  
10 turn to Exhibit 53-K.

11 BY THE WITNESS:

12 A. Okay.

13 BY MS. O'LAUGHLIN:

14 Q. And can you identify the area that  
15 is Site 3? Are you able to locate that on this  
16 aerial photograph?

17 A. The rough location of it, yes.

18 Q. And where is it located?

19 A. I know this will be easy for you  
20 guys to see. It's roughly south of these  
21 buildings. It comes around and comes back up  
22 somewhere in this area here.

23 Q. And earlier in this hearing I  
24 believe somebody testified that it looked like

1 some of the material -- some of the ground was  
2 disturbed, do you recall that?

3 A. I believe it was -- I'm not sure if  
4 it was on this photo or not. It was regarding a  
5 photo.

6 Q. Okay. You're right. Excuse me. I  
7 apologize. Was that -- would that have been the  
8 '72 photo?

9 A. I'm thinking that's what the photo  
10 was being used for.

11 Q. Let's go back to that exhibit and --  
12 MS. BRICE: Could you hold that up  
13 for us to see? Thanks.

14 BY MS. O'LAUGHLIN:

15 Q. Perhaps it is already marked what  
16 has been -- somebody has testified about a  
17 disturbance, I believe.

18 A. I think -- I don't know if the  
19 disturbance was marked. I know it has on here the  
20 portion of detour road A is marked and the part of  
21 the other detour roads are so marked and it looks  
22 like -- I think the marking is a marking of the  
23 parking lot within Site 3.

24 Q. Do you see a, quote, unquote,

1 disturbance in this photo?

2 HEARING OFFICER HALLORAN: Is this a  
3 blowup of Exhibit 54 or is this marked or  
4 anything?

5 MS. BRICE: This is 54-Q.

6 MS. O'LAUGHLIN: 54-Q.

7 HEARING OFFICER HALLORAN: 54-Q.

8 Okay. Thank you.

9 BY THE WITNESS:

10 A. What was the question again?

11 BY MS. O'LAUGHLIN:

12 Q. Do you see a disturbed area of  
13 ground outside three?

14 A. Yes.

15 Q. And then turning your attention to  
16 Exhibit 31-1-2 and 3.

17 A. Okay. Thirty-one. And what were  
18 the numbers after?

19 Q. 31-1-2 and 3, I believe.

20 A. Okay.

21 Q. Can you identify that document?

22 A. It's a change order authorization  
23 number five dated October 19th, 1972, and the  
24 authorization was to allow the contractor to

1 install drains so that the area in the middle of  
2 the connection of Greenwood detour road A and B  
3 can properly drain.

4 Q. And what was the date of the change  
5 order?

6 A. The change order authorization --  
7 the change order was October 19th of '72, but it  
8 was authorized or approved I should say on  
9 November 2nd of '72.

10 Q. And this aerial photograph from '72,  
11 what is the date of this aerial photograph?

12 A. I'd have to look at the -- the  
13 blowup doesn't have the '72 date on it. It just  
14 has the year.

15 Q. If I represented and told you it was  
16 October 26th, 1972, because the copy we have the  
17 photograph doesn't have the precise date --

18 A. Yes, that would be accurate.

19 Q. And is October 26th, 1972, close in  
20 time to November 2nd, 1972, and October 19th,  
21 1972?

22 A. It would be right around -- the  
23 photo was taken probably right after the  
24 submission of this change order.

1 Q. And would this change order explain  
2 the darker area on Site 3?

3 A. It would explain the disturbance  
4 area of -- within that triangle area.

5 Q. On this aerial photograph, did you  
6 look at this in stereo?

7 A. Yes, I did.

8 Q. And did you observe any piles?

9 A. No, I never observed any piles.

10 MS. BRICE: Objection.

11 HEARING OFFICER HALLORAN: Go ahead,  
12 Ms. Brice.

13 MS. BRICE: Same objections.

14 HEARING OFFICER HALLORAN: Stereo?

15 MS. BRICE: New -- stereo. New --  
16 new opinion.

17 HEARING OFFICER HALLORAN: So noted.

18 MR. MCGINLEY: Can we respond?

19 MS. O'LAUGHLIN: Can we put  
20 something into the record on these objections, on  
21 these aerial photos?

22 MR. MCGINLEY: It is simply this.

23 Ms. Brice questioned Mr. Gobelman extensively  
24 about the aerial photos that he looked at in the

1 formation of his opinion and I would call -- I  
2 don't have the exhibit number pages handy, but  
3 pages 198 through 200 certainly represent  
4 extensive discussions about that. Furthermore,  
5 there was only two instances during the deposition  
6 where she asked about his qualifications. So, I  
7 mean, to the extent --

8 HEARING OFFICER HALLORAN: What  
9 document are you looking at, Mr. McGinley?

10 MR. MCGINLEY: This is --

11 MS. O'LAUGHLIN: Exhibit 4F, I  
12 believe.

13 HEARING OFFICER HALLORAN: What I  
14 said earlier the objection is noted. Your guy's  
15 homework over the next few weeks is to brief  
16 those -- the offer of proofs that I've done. One  
17 was the cross section and then the stereos. The  
18 stereo scope, is that --

19 THE WITNESS: Yeah.

20 MS. BRICE: I was assuming that it  
21 would also apply to my -- these other objections  
22 that I've made that are not the same -- that is  
23 not the same objection because they're new  
24 opinions that are completely different from the

1 ones you're talking about.

2 HEARING OFFICER HALLORAN: The other  
3 new opinions?

4 MS. BRICE: When I was saying new  
5 opinion, it was a new opinion that wasn't related  
6 to those two opinions. It was a completely new  
7 entire opinion that has no relationship to those  
8 other two. So I was thinking we were briefing  
9 them all. We haven't done --

10 HEARING OFFICER HALLORAN: You can  
11 brief them all. You'll have the transcript by  
12 then.

13 MS. BRICE: Right.

14 HEARING OFFICER HALLORAN: I think  
15 we have to learn how to get along because I think  
16 we're splitting hairs and it's got to stop. I  
17 understand your objections, but -- but we have to  
18 move on. This witness has been here  
19 four-and-a-half hours already and the parties  
20 represented to me that it will probably go two,  
21 maybe three days and we're not even done with  
22 direct of Mr. Gobelman, but, yeah, you can brief  
23 your objections. We'll get the transcript back.  
24 I'll take a look at them regarding all these new

1 opinions that supposedly aren't in his -- his  
2 report or the deposition or the things that had  
3 been manufactured after his report or deposition  
4 that was brought in by various other people. So  
5 that's my -- that's my ruling.

6 MS. BRICE: Okay.

7 HEARING OFFICER HALLORAN: Thank  
8 you. You may proceed.

9 BY MS. O'LAUGHLIN:

10 Q. Next, if you can turn to your  
11 demonstrative exhibit that has been marked as  
12 Exhibit 202.

13 A. Okay.

14 Q. I'd like to ask you about the  
15 location of ACM related to the location of utility  
16 lines.

17 A. I believe that there is a strong  
18 indication that the asbestos-containing material  
19 follows a lot of the utility lines.

20 Q. Can you expand on that? Which  
21 utility line? For instance, in cross section A-A  
22 in that vicinity? What utility lines are located  
23 in that area?

24 A. Well, between A and A prime is --

1 there is telephone, there is gas, there is  
2 electric and there is fiberoptics. I think that  
3 catches them all. Yeah, I don't think there is  
4 water in the A to A prime.

5 Q. How could ACM come to have been  
6 buried within installation or maintenance of  
7 utility lines?

8 A. Well, when -- if they were  
9 excavating out depending on the types of  
10 excavation, but if they were excavating out of the  
11 trench, then they're going to excavate out the top  
12 portion of the material and place it beside the  
13 trench that they're excavating and then take  
14 another bucket of material and place that on top  
15 of the first bucket and they will continue on in  
16 that process so that you end up -- beside the  
17 trench you'll end up what was on the surface being  
18 at the bottom of this new pile and what is at the  
19 base where they want to put the utility is now on  
20 top of the pile.

21 And so then after they have  
22 installed what they want to backfill the typical  
23 procedure would be for the contractor to just move  
24 that material back into the hole as quickly as

1 possible. So there is basically going to be  
2 either a flip of the material or at best it is  
3 going to just be a commingling of that material  
4 within the horizons that were excavated.

5 MS. BRICE: And just for the record  
6 I'm not sure if this is a new opinion or not, but  
7 I want to note it because it seems different from  
8 the one that was offered.

9 HEARING OFFICER HALLORAN: You can  
10 brief that as well.

11 MS. BRICE: Thank you.

12 HEARING OFFICER HALLORAN: Thank  
13 you. So noted. You may continue.

14 BY MS. O'LAUGHLIN:

15 Q. Is that a process by which ACM on  
16 the surface could cause to be buried --

17 A. Yes.

18 Q. -- and appear below surface?

19 A. Yes.

20 Q. Moving to -- further south on your  
21 demonstrative the -- some of the sampling that  
22 occurs B3-22 in the middle of the parking lot in  
23 the middle -- in the middle of Site 3.

24 A. Yes.

1 Q. There is a line marked I believe  
2 it's G, is that correct?

3 A. Yes, it's a gas line that runs  
4 east/west through the middle of Site 3.

5 Q. And can you explain the sampling  
6 results in relation to the gas line?

7 A. Well, when you look at the  
8 subsurface impacts, there are a number of samples  
9 that correspond to that gas main that I believe  
10 was installed back in the '40s.

11 Q. And is there areas of ACM  
12 contamination that is aligned with the gas line?

13 A. There is -- there is not only  
14 asbestos-containing material fibers that were  
15 identified in those borings, but there was also  
16 transite pipe identified in borings near that gas  
17 line.

18 Q. Is there another possibility of how  
19 ACM material could have come to be buried on Site  
20 3? For instance, the continual bumping of pipe.

21 A. Well, there was noted that transite  
22 pipe was used as borders and bumpers since the  
23 '60s and maybe even the early '50s and the  
24 continuing use of those bumpers through

1 weathering and through cars running into them  
2 would have naturally broken a number of those  
3 things that they would have to replace them and  
4 move -- you could have moved the excess material  
5 off the parking lot and replace them with newer  
6 transite pipes.

7 Q. Are you familiar with James' theory  
8 that -- the comparison of Site 2, the Illinois  
9 Beach State Park remediation versus the  
10 remediation that is being required by US EPA for  
11 Site 3 and Site 6?

12 A. Yes, I'm familiar with what is being  
13 required and what is being required there, yes.

14 Q. And what is US EPA -- excuse me.  
15 What is US EPAs concern regarding remediation on  
16 Site 3?

17 A. Their main concern is to make sure  
18 that for all future that there isn't going to be  
19 any exposure to asbestos-containing material  
20 whether it's airborne, through the air to nearby  
21 residents, or by utility workers that have to  
22 maintain utility lines that are going through this  
23 area.

24 Q. And what about the freeze/thaw

1 cycle, how does that play in?

2 A. Well, it plays a part if nothing is  
3 going to be done there as far as -- it's a cycle  
4 that exists, but once you're installing a cap on  
5 it you've reduced the depth of the freeze/thaw  
6 cycle and with the cap and that reduction of that  
7 freeze -- the frost line being elevated then  
8 you've eliminated that freeze/thaw cycle.

9 Q. Are there utilities located on the  
10 Illinois State Beach Park?

11 A. I'm not aware of any underground  
12 utilities.

13 Q. If not for the transite pipe, would  
14 the remedy have been different for Site 3?

15 A. I don't believe so. I think the  
16 remedy that US EPA is proposing would be the same.

17 Q. How about Site 6?

18 A. I believe it would be the same.

19 Q. Is one of the other issues with the  
20 Illinois State Beach Park the fact that the ACM  
21 material is less friable, is that a factor?

22 A. It's hard to say. I mean, the  
23 material washing up at some point is wet, which  
24 makes it less friable, but then it dries out if it

1 is not picked up in time, but it will become more  
2 friable because it would become more brittle  
3 depending on the material.

4 Q. Why would have US EPA chosen the  
5 same remedy but for the transite pipe?

6 A. Say that again.

7 Q. Yeah. Excuse me. That was a bad  
8 question.

9 I think I had asked you if not  
10 for the transite pipe, would there have been a  
11 different remedy on Site 3?

12 A. No, there would not have been.

13 Q. Why not?

14 A. Because there is still -- even if  
15 you remove out all of the transite pipe and say it  
16 never existed on Site 3 or Site 6, there was still  
17 asbestos-containing materials and fibers that had  
18 been identified at depth. Some of them would have  
19 been in the areas that are identified as utility  
20 lines. So US EPA would still have required a  
21 clean corridor to make sure that those utility  
22 workers are not going to be exposed to potential  
23 asbestos fibers.

24 Q. And what about Site 6?

1           A.       That would be -- it's the same. It  
2 would be the same conclusion because there are  
3 other materials there other than transite pipe.  
4 So those -- those corridors would still have to be  
5 protected to allow workers to work in those areas  
6 or any future utilities that want to be installed.

7           Q.       And what is your experience with  
8 remediation issues, for example?

9           A.       Issues of what?

10          Q.       Remediation issues of contaminated  
11 sites in general.

12          A.       Well --

13          Q.       What is your experience? I just  
14 want to get your background experience in  
15 analyzing these types of issues.

16          A.       Well, when I was at EPA, I was a  
17 project manager dealing with state funding  
18 cleanups and also overseeing voluntary cleanups  
19 where I reviewed hundreds of reports of -- I think  
20 at one point I might have had a hundred or so  
21 projects that I was overseeing in the voluntary  
22 cleanup process and plus I've done probably 20 or  
23 so site funded remediations. I also as part of  
24 IDOT being in charge of the soil and groundwater

1 investigation was also on sites in construction  
2 projects dealing with the management of those  
3 soils and not -- you know, so I viewed, you know,  
4 probably thousands of reports that we investigated  
5 along our roadway since '93.

6 I was also involved in the  
7 management of those -- the results of those  
8 reports that were put in the construction plans.  
9 In some instances, if there was confusion or  
10 problems, I would have to go out in the  
11 construction and deal with those issues in  
12 construction as well. They dealt with analytical  
13 of all types, you know, from volatile,  
14 semi-volatile, metals, PCB impacts.

15 Q. Thank you. In your opinion, did  
16 IDOT use, spread, place nor dispose of ACM on Site  
17 3?

18 A. I do not believe that is possible.

19 Q. Is it your opinion that IDOT did not  
20 use, spread, place, nor dispose of ACM on Site 6?

21 A. I do not believe that was possible.

22 Q. If we can just take a short break, I  
23 believe we'll wrap up. Would that be okay?

24 HEARING OFFICER HALLORAN: Why would

1 you need a short break?

2 MS. O'LAUGHLIN: To just cleanup and  
3 see if there is anything more we want to go into.  
4 I think we're about done, but if I can have a  
5 short break just to make sure we've covered  
6 everything.

7 HEARING OFFICER HALLORAN: All  
8 right. And, Ms. Brice, I'm sure you'll have a  
9 long cross because it was a long direct. Let's go  
10 off the record.

11 (Whereupon, a break was taken  
12 after which the following  
13 proceedings were had.)

14 HEARING OFFICER HALLORAN: Okay.  
15 We're back on the record. Ms. O'Laughlin was  
16 trying to figure out if she had any more questions  
17 for direct.

18 MS. O'LAUGHLIN: We have nothing  
19 further.

20 HEARING OFFICER HALLORAN: Nothing  
21 further. Okay. Ms. Brice, cross, please. Thank  
22 you.

23 MS. BRICE: Thank you.  
24

1 C R O S S E X A M I N A T I O N

2 BY MS. BRICE

3 Q. Mr. Gobelman, you're being offered  
4 as an expert in this case, correct?

5 A. Yes.

6 Q. And you've never testified as an  
7 expert witness before, have you?

8 A. No.

9 Q. If you can please turn to Exhibit 8,  
10 which is your report.

11 A. Okay.

12 Q. Is this the report in this case that  
13 you wrote to memorialize your opinions?

14 A. Yes.

15 Q. And didn't you testify in your  
16 deposition that this report contained all of your  
17 opinions?

18 A. Yes.

19 Q. But today you offered some opinions  
20 that aren't contained in this report, isn't that  
21 true?

22 A. I don't necessarily believe so.

23 Q. Did you draft a supplemental report  
24 and provide it to Johns Manville?

1 A. Supplemental report to what?

2 Q. To supplement any opinions that you  
3 had, did you provide a supplemental report?

4 A. No.

5 Q. Is it fair to say that many of the  
6 opinions you are offering in this case deal with  
7 what you believe happened during the Amstutz  
8 Project from approximately 1970 to '76?

9 A. Yes.

10 Q. And these opinions are based upon  
11 your expertise in IDOT historic practices and  
12 construction methodologies, correct?

13 A. Among other things, yes.

14 Q. Okay. If you can turn to your  
15 deposition at page 66, please.

16 HEARING OFFICER HALLORAN: Which  
17 exhibit is that, Ms. Brice?

18 MS. BRICE: He has it in front of  
19 him and we marked it earlier. It's 04-C.

20 HEARING OFFICER HALLORAN: I'm  
21 sorry. What exhibit is --

22 MS. CAISMAN: 4C.

23 HEARING OFFICER HALLORAN: 4C.

24 Thank you.

1 BY MS. BRICE:

2 Q. And we are on the deposition page of  
3 60 -- 65. Okay. Question at line 24.

4 Question: So you are  
5 offering -- are you offering any opinion on how  
6 the asbestos currently buried on Sites 3 and 6  
7 became buried on Sites 3 and 6?

8 Answer: My opinions were based  
9 upon the IDOT construction methodology and how  
10 IDOT did its work.

11 Question: Right. But I want to  
12 know what your opinion is, how did it get there?  
13 How did the asbestos on Sites 3 and 6 that is  
14 buried on 3 and 6 get there? Are you offering an  
15 opinion on that or not?

16 Answer: I believe the only  
17 opinion that is in my report had to do with  
18 utilities and their being installed through  
19 asbestos-containing material and being maintained  
20 in asbestos-containing material.

21 Question: Okay. But are you  
22 saying that's how it got there or that's a  
23 possibility?

24 Answer: I'm saying that

1 those -- material was there and that the  
2 installation of utilities would have potentially  
3 moved that to a different horizon from which it  
4 was originally in.

5 Did you say those things in your  
6 deposition?

7 A. That's not all on 65.

8 Q. It's 65 to 66.

9 A. I didn't --

10 Q. I apologize.

11 A. That's what is written in the  
12 transcript, yes.

13 Q. Now, obviously, you did not work for  
14 IDOT in the 1970s, correct?

15 A. No.

16 Q. And you did not start to work for  
17 IDOT until 1994, right?

18 A. No.

19 Q. No? Okay. When did you start to  
20 work for IDOT?

21 A. 1993.

22 Q. I don't think it's worth pointing  
23 out that you said something different in your  
24 deposition, but that's fine.

1                                   And you no longer work for IDOT,  
2 correct?

3           A.       Correct.

4           Q.       When you were an employee of IDOT is  
5 when you wrote this report, true?

6           A.       Yes.

7           Q.       And I believe you testified that  
8 your employment ended at the end of July --

9           A.       Correct.

10          Q.       -- in 2015? You're now working for  
11 Andrews Consulting, is that right?

12          A.       No.

13          Q.       What is it?

14          A.       Andrews Engineering, Incorporated.

15          Q.       Okay. I apologize. Thank you.

16 Andrews does a lot of work for IDOT, isn't that  
17 true?

18          A.       They have some contracts to do soil  
19 and groundwater investigations.

20          Q.       Okay. And are you currently doing  
21 work for IDOT through Andrews?

22          A.       Yes, technically.

23          Q.       Okay. And what are you doing?

24          A.       An expert witness in this case.

1 Q. Other than this case, are you doing  
2 other work for IDOT through Andrews?

3 A. I work on those contracts that  
4 Andrews has with IDOT. Yes, other contracts.

5 Q. And how many contracts are those  
6 approximately?

7 A. I believe there is two -- well,  
8 there is two open contracts.

9 Q. Okay. And since you've been working  
10 for Andrews almost a year, how many contracts for  
11 IDOT have you worked on?

12 A. I suspect it would be three  
13 contracts.

14 Q. Okay. Can you explain to me what  
15 you mean by contracts?

16 A. Well, the contracts that are at  
17 issue to our statewide -- statewide consultants  
18 through IDOT are a contract that is issued that is  
19 a work order derived contract. So the contract  
20 itself is just for a period of time for a certain  
21 volume of money that is put into those contracts  
22 and it is distributed based upon the work that is  
23 assigned to those consultants through a work  
24 order.

1 Q. Okay. So since you began working  
2 with Andrews, how many work orders have you worked  
3 on for IDOT?

4 A. I would say somewhere in the  
5 neighborhood of 30 or 40 I would think. Somewhere  
6 in that neighborhood.

7 Q. Thank you. As to your expertise in  
8 this matter, you've not taken any special courses  
9 on IDOTs historic road and bridge construction  
10 practices, have you?

11 A. I do not believe one exists.

12 Q. Okay. You claim, do you not, that  
13 you taught yourself about these practices, right?

14 A. Which practices?

15 Q. The ones you're testifying about.  
16 There were historic practices -- there were many  
17 opinions in your report at least that were based  
18 upon IDOTs historic practices, isn't that true?

19 A. Yes.

20 Q. Okay. And that's what I'm trying to  
21 figure out is you taught yourself about those  
22 practices, right?

23 A. No.

24 Q. Okay. Well, if you can turn to page

1 59 in your deposition, which is 4C.

2 HEARING OFFICER HALLORAN: Thank  
3 you.

4 BY THE WITNESS:

5 A. Okay.

6 BY MS. BRICE:

7 Q. And at line 17 I asked you the  
8 question

9 Question: Have you ever  
10 attempted to study how IDOT or its contractors  
11 handles materials on road and bridge construction  
12 projects in the 1970s?

13 There was an objection to vague  
14 and ambiguous and compound by Mr. McGinley and you  
15 said

16 Answer: Yes, I have reviewed  
17 the 1970 spec book.

18 Do you see that?

19 A. Yes.

20 Q. So other than that, did you collect  
21 a bunch of IDOT project files from the 1970s to  
22 study to learn about these historic practices?

23 A. No.

24 Q. Actually, isn't it true that you

1 just read one historic file to become an expert on  
2 IDOTs historic road and bridge construction  
3 practices?

4 A. I would say no.

5 Q. Okay. So if you can turn to page 60  
6 in your expert report. Not your expert report.  
7 I'm sorry. Your deposition.

8 And up above I think you'll see  
9 we were talking about the spec book you said  
10 answer on number -- line 12.

11 Answer: I reviewed the spec  
12 book outside of this project for things -- how  
13 things were done in the 197- -- how they did in  
14 the spec book.

15 Question: I'm sorry. I'm  
16 confused by your answer. You reviewed the spec  
17 book, right?

18 Answer: Correct.

19 Question: What else have you  
20 done to become an expert on how materials were  
21 handled by IDOT and its contractors in the 1970s?

22 Answer: You're asking me a  
23 question that is related to the entirety of all  
24 IDOT work --

1 Question: Sure.

2 Answer: -- in the 1970s?

3 Question: Sure.

4 Answer: And in doing so, I  
5 reviewed the spec book in regards to how IDOT  
6 managed materials --

7 Question: So other than that --

8 Answer: -- other than what's in  
9 this case.

10 Question: So you reviewed the  
11 materials in this case and you reviewed the spec  
12 book, is that your answer?

13 Answer: Yes.

14 Do you see that?

15 A. Yes.

16 Q. Since you did not study an  
17 assortment of files, you must have interviewed a  
18 bunch of people who worked at IDOT on IDOT  
19 projects from the 1970s to educate yourself,  
20 right?

21 MS. O'LAUGHLIN: Objection.

22 Mischaracterizes his testimony.

23 MS. BRICE: It's a question.

24 HEARING OFFICER HALLORAN: Yeah,

1 I'll allow it. Yes, I will allow it.

2 BY THE WITNESS:

3 A. Could you ask it again, please?

4 BY MS. BRICE:

5 Q. Sure. Since you didn't study an  
6 assortment of files, you must have interviewed  
7 folks that worked on IDOT projects from the 1970s  
8 to educate yourself about their practices, right?

9 A. I don't believe so.

10 Q. In fact, you never spoke to anyone  
11 who did road and bridge projects in the 1970s for  
12 IDOT or its contractors to ask them how they  
13 handled materials, have you?

14 A. Correct.

15 Q. All you know about IDOTs historical  
16 practices from the 1970s is what is in the file in  
17 this case and the specifications, correct?

18 A. No.

19 Q. Okay. I think we already went  
20 through that on page 60. So we already agree that  
21 you testified to what you testified on page 60.

22 While at IDOT from 1993 to 2000  
23 and from 2011 until August of 2015, you were  
24 responsible for conducting assessments and

1 investigations of special waste, is that right?

2 A. Throughout most of that, yes, I was  
3 investigating special waste investigations.

4 Q. And this work was from District 1,  
5 right?

6 A. It was statewide.

7 Q. Statewide. Okay. And were you the  
8 special waste coordinator during these timeframes?

9 A. The central office does not have  
10 special waste coordinators.

11 Q. Okay. Did you serve -- how were  
12 you -- what was your relationship to the special  
13 coordinator for District 1?

14 A. I was their -- I was the person that  
15 they submitted the information to process their  
16 work that needed to get done in their district.

17 Q. Okay. And would you see all of the  
18 information that was -- would they -- so they  
19 would gather information and then submit it to you  
20 and what would you do with it?

21 A. I would task it to -- if necessary,  
22 to the appropriate statewide consultant for an  
23 investigation.

24 Q. And then were you the one overseeing

1 these -- the consultants doing the investigations?

2 A. Yes.

3 Q. I believe you testified in your  
4 deposition that you were a hundred percent certain  
5 that your opinions you were offering in this case  
6 are correct, isn't that right?

7 A. I believe I stated that.

8 Q. Let's talk about how you arrived at  
9 these opinions concerning the Amstutz Project and  
10 its historical practices.

11 The project was from roughly '70  
12 through '77, correct?

13 A. I don't believe it was that long,  
14 but -- or -- it started roughly '71 to maybe '75.

15 Q. Okay. Are there any people who  
16 actually worked on the project still around?

17 A. No.

18 Q. How do you know that?

19 A. Based upon the 104(e), the only  
20 person that was able to be tracked down was Duane  
21 Mapes and I believe he passed away within six or  
22 so months after the interview with Randy Schick.

23 Q. Other than Duane Mapes, did you  
24 attempt to locate anyone who worked on the project

1 in the 1970s in the course of working on this?

2 A. I did not.

3 Q. And how do you know that Duane Mapes  
4 would be the only person from IDOT that ever  
5 worked on this project in the 1970s?

6 MS. O'LAUGHLIN: Objection.  
7 Mischaracterizes his testimony.

8 MS. BRICE: Sorry. I think you're  
9 right. I did say the wrong thing.

10 BY MS. BRICE:

11 Q. You said Duane Mapes was the only  
12 person who would be tracked down, how do you know  
13 that?

14 A. Because he was the only person  
15 interviewed.

16 Q. Okay. But that doesn't mean that he  
17 was the only person from IDOT that ever worked on  
18 the Amstutz Project in the 1970s, does it?

19 A. It does to me.

20 Q. Didn't you testify in your  
21 deposition that you didn't bother to find anybody  
22 around because it was, quote, such an old project  
23 I didn't think there was anyone around anymore?  
24 Did you say that?

1 A. I don't recall saying it.

2 Q. Okay. Would you disagree with me if  
3 I told you you said that?

4 A. It would be hard for me to say  
5 whether I did or didn't say that.

6 Q. Okay. Let's take a look then on  
7 page 31 of your deposition. Are you there?

8 A. Yes. I'm sorry.

9 Q. I'm on page 31 at line ten.

10 Question: Did you attempt to  
11 locate anyone who worked on the project in the  
12 1970s in the course of working on this?

13 Answer: No. Sorry.

14 Question: Why not?

15 Answer: Well -- it was -- I  
16 think my perception was that there was no one else  
17 alive.

18 Question: And why was that, did  
19 someone tell you that? Why was that your  
20 perception?

21 Answer: Well, I -- because it  
22 was such an old project I did not think that there  
23 was anyone around anymore.

24 Now, do you recall saying that?

1 A. If it's written that way.

2 Q. Don't you think that someone who  
3 actually worked on the project would be a good  
4 source of information as to how IDOTs historical  
5 practices were actually applied to the Amstutz  
6 Project?

7 A. Yes.

8 Q. But you didn't talk to anyone who  
9 worked on it, right?

10 A. No.

11 Q. In fact, you didn't try to find  
12 anybody who worked on it, isn't that true?

13 A. No. No. Or yes for --

14 Q. If somebody was 20 years old and  
15 working on the project in 1975, right now they  
16 would be 61, isn't that true?

17 A. I guess, yes.

18 Q. Couldn't you have talked to IDOT HR  
19 or someone similarly situated to try to figure out  
20 how to locate some of these folks identified in  
21 the records? There are names in the records,  
22 right?

23 A. I don't know. I'm not aware.

24 Q. Well, you've seen lots of IDOT

1 documents, have you not, in the record?

2 A. Yes.

3 Q. And there is lots of people's names  
4 on there, people who worked for IDOT, correct?

5 A. Yes.

6 Q. You could have gone to HR at IDOT to  
7 try to figure out whether these people were  
8 actually still alive, couldn't you?

9 MR. MCGINLEY: I'm going to object  
10 at this point. You know, Mr. Gobelman was not --  
11 Mr. Gobelman was supporting Randy Schick's work in  
12 trying to ascertain the information and I think  
13 it's pretty clear from Mr. Gobelman's earlier  
14 testimony and what we know about this is that all  
15 he did was pull information for Randy Schick. I  
16 mean, that wasn't his job.

17 MS. BRICE: I'm not talking about  
18 that. I'm talking about for his expert report.

19 HEARING OFFICER HALLORAN: Yeah, I  
20 think it's fair game, particularly what happened  
21 on direct, but your objection is noted. You may  
22 continue.

23 MS. BRICE: I'm -- this inquiry is  
24 intended to be going to what he did with respect

1 to his expert report and I'm sorry if that was not  
2 clear.

3 BY MS. BRICE:

4 Q. Did you understand that's what I was  
5 asking, Mr. Gobelman?

6 A. I have no idea what you're asking.  
7 I was just answering your questions.

8 Q. Okay. Would your answers change --  
9 MS. BRICE: Do we have to go back  
10 through it?

11 HEARING OFFICER HALLORAN: We  
12 probably better, make it cleaner and clearer.

13 MS. BRICE: Okay.

14 BY MS. BRICE:

15 Q. We established that your opinions  
16 are based upon your expertise in IDOTs historic  
17 practices and construction methodologies, correct?

18 A. Yes.

19 Q. And I'm referring to the opinions  
20 that you're offering in this case, correct? You  
21 understand that, right?

22 A. Yes.

23 Q. Okay. So this line of question --  
24 questioning relates to your opinions being offered

1 in this matter. All right?

2 A. Okay.

3 HEARING OFFICER HALLORAN: I'm

4 sorry. This is the opinions in his report?

5 MS. BRICE: Correct.

6 HEARING OFFICER HALLORAN: That's

7 what I understood.

8 MS. BRICE: And/or opinions being  
9 offered that are new opinions being offered today.

10 HEARING OFFICER HALLORAN: That's --

11 MS. BRICE: Any opinions.

12 HEARING OFFICER HALLORAN: You may  
13 proceed.

14 MS. BRICE: Correct.

15 BY MS. BRICE:

16 Q. And with respect to these opinions I  
17 had asked you if you had taken any special courses  
18 on IDOTs historic road and bridge construction  
19 practices in order to become an expert on this  
20 topic and you said no, I believe, is that correct?

21 A. No.

22 MR. MCGINLEY: Objection. Misstates  
23 his testimony.

24

1 BY MS. BRICE:

2 Q. Okay. What is your answer to the  
3 question?

4 A. I do not believe they exist.

5 Q. Okay. But you didn't take them, did  
6 you, you didn't take any?

7 A. I cannot take what is not existing.

8 Q. Rather you claim you taught yourself  
9 about these practices, right?

10 A. No.

11 Q. Okay. Let's turn back to page 59 of  
12 your deposition. On line 17

13 Question: Have you ever  
14 attempted to study how IDOT or its contractors  
15 handled materials on road and bridge construction  
16 projects in the 1970s?

17 There was an objection.

18 Answer: Yes, I have reviewed  
19 the 1970 spec book.

20 Do you see that?

21 A. Yes.

22 Q. And then further down on page 60 I  
23 ask

24 Question: What else have you

1 done to become an expert on how materials were  
2 handled by IDOT and its contractors in the 1970s?

3 Answer: Are you asking me a  
4 question that is related to the entirety of all  
5 IDOT work --

6 Question: Sure.

7 Answer: -- in the '70s?

8 Question: Sure.

9 Answer: And in doing so, I  
10 reviewed the spec book in regards to how IDOT  
11 managed materials --

12 Question: So other than that --

13 Answer: -- other than what's in  
14 this case?

15 Question: Okay. So you  
16 reviewed the materials in the spec book and you  
17 reviewed -- I mean, you reviewed the materials in  
18 this case and you reviewed the spec book, is that  
19 your answer?

20 Answer: Yes.

21 Do you see that?

22 A. Yes.

23 Q. Okay. Then I said did you collect a  
24 bunch of IDOT project files from the 1970s to

1 study to learn about these historic practices, did  
2 you?

3 A. Are you reading from the transcript  
4 or are you asking me a question?

5 Q. I'm asking you a question.

6 A. I'm sorry.

7 Q. Did you collect a bunch of IDOT  
8 project files from the 1970s to study to learn  
9 about these historic practices?

10 A. No.

11 Q. Actually, isn't it true that you  
12 just read one historic file to become an expert on  
13 IDOTs historic road and bridge construction  
14 practices?

15 A. No.

16 Q. Okay. I will refer back to what we  
17 just read. And that one file was the file in this  
18 case, correct?

19 A. You lost me. What file?

20 Q. The project file in this case.

21 A. Yes.

22 Q. You testified in your deposition  
23 that in order to become an expert on this you read  
24 the project file in this case and the spec book,

1 isn't that true?

2 A. Correct.

3 Q. Did you do anything else?

4 A. In regards to this case, no.

5 Q. Then I said since you didn't study  
6 an assortment of files you must have interviewed  
7 folks that worked on IDOT projects from the '70s  
8 to educate yourself about their practices, but you  
9 didn't do this, did you?

10 A. Correct.

11 Q. In fact, you've never spoken to  
12 anyone who did road and bridge construction  
13 projects in the 1970s for IDOT or its contractors  
14 to ask them how they handled materials, have you?

15 A. Correct.

16 Q. All you know about IDOTs historical  
17 practices from the 1970s is what is in the file  
18 and the standard specifications, right?

19 A. Correct.

20 Q. While at IDOT from 1990- -- I don't  
21 think we have to go through that. You remember  
22 those questions about special -- special waste and  
23 division one and being -- were those questions  
24 clear to you?

1 A. Yes.

2 Q. Thank you. Okay. Then we talked  
3 about how you're a hundred percent certain that  
4 the opinions you are offering here today are  
5 correct, right, or at least the ones that you --  
6 let me put it this way.

7 I was questioning you about this  
8 report, isn't that right, Exhibit 8 when I took  
9 your deposition?

10 A. Yes.

11 Q. And you told me, did you not, that  
12 you are one hundred percent certain that the  
13 opinions contained in this report were correct,  
14 isn't that what you told me?

15 A. Yes.

16 Q. Let's talk about how you arrived at  
17 these opinions. Okay.

18 We talked about -- I asked are  
19 there any people who actually worked on the  
20 project still around. What is your answer to  
21 that?

22 A. They don't exist.

23 Q. I said "Don't you think that someone  
24 who actually worked on the project would be a good

1 source of information as to how IDOTs historical  
2 practices were actually applied to the project"?

3 A. Yes.

4 Q. But you didn't talk to anyone who  
5 ever worked on the project, correct?

6 A. I don't know.

7 Q. Well, earlier, you said that you  
8 didn't?

9 A. I believe you asked me a different  
10 question.

11 Q. No, I asked exactly the same  
12 question.

13 A. The answer to your last question is  
14 I don't know.

15 Q. Okay. Turn to page 29 of your  
16 deposition, please. I'm at line 16.

17 Question: Did you ever talk to  
18 anyone that worked on the project in the 1970s?

19 Answer: No.

20 Question: Have you ever talked  
21 to anyone at any time who worked on the project in  
22 the 1970s?

23 Answer: No.

24 Do you see that?

1 A. Yes.

2 Q. In fact, you didn't even try to find  
3 anyone who had worked on the project in the 1970s,  
4 did you?

5 A. Correct.

6 Q. You thought that it was -- the  
7 project was so old that no one would be around,  
8 right?

9 A. Yes.

10 Q. And I said if someone was working --  
11 was 20 years old and working on the project in  
12 1975 they would now be 61, right?

13 A. Correct.

14 Q. Then I said couldn't you talk to  
15 IDOT HR or someone similarly situated to figure  
16 out how to locate some of the folks identified in  
17 the records?

18 A. No, I couldn't.

19 Q. You could not have done that?

20 A. No.

21 Q. Okay. Well, that's not what you  
22 said a few minutes ago.

23 A. No.

24 Q. IDOT HR does not have records of

1 people who work with IDOT?

2 A. IDOT doesn't have an HR.

3 Q. Well, IDOT has some form of Human  
4 Resources department somewhere in IDOT where  
5 people are able to follow the historic employees,  
6 right, some people get, you know, pensions, but I  
7 can't really go through -- but there is a system  
8 for tracking employees from IDOT, isn't that true?

9 A. There was a system to track  
10 employees, I would assume.

11 MS. O'LAUGHLIN: Objection. May I  
12 ask a clarification? If she is -- on the  
13 timeframe of the -- is she requesting this  
14 information about in preparation for doing the  
15 report in 2014 or in response to the 104(e)  
16 request --

17 MS. BRICE: These are --

18 MS. O'LAUGHLIN: -- in 2000? I'm  
19 just not clear. If I can get a clarification --

20 HEARING OFFICER HALLORAN: Ms.  
21 Brice?

22 MS. O'LAUGHLIN: -- and the  
23 timeframe of the --

24 MS. BRICE: This is all in preparing

1 for this case. I'm not asking anything about the  
2 104(e) right now. This is all about his opinions  
3 and trying to figure out the basis of his  
4 opinions.

5 MS. O'LAUGHLIN: Thank you.

6 MS. BRICE: Okay.

7 MS. O'LAUGHLIN: Thank you.

8 BY MS. BRICE:

9 Q. So do you now understand that?

10 MS. O'LAUGHLIN: Looking at your --

11 BY THE WITNESS:

12 A. I understand. I believe I'm  
13 answering your question.

14 BY MS. BRICE:

15 Q. Okay. Is there a source within IDOT  
16 that you could go to to find out if someone who  
17 worked on the Amstutz Project in the 1970s was  
18 still alive?

19 A. No.

20 Q. How about is there a source within  
21 the State of Illinois that you could go to to find  
22 out if there is someone who worked on the Amstutz  
23 Project still alive?

24 A. I would assume so.

1 Q. Did you do that?

2 A. No.

3 Q. But that would have been a good  
4 idea, don't you think?

5 A. If I believe someone existed, yes.

6 Q. Okay. But someone who was once  
7 again 20 in 1975 would be 61, isn't that true?

8 A. Yes.

9 Q. Okay. And they could actually still  
10 be an IDOT employee, isn't that true?

11 A. Yes.

12 Q. I'd like to mark Exhibit 91, please.

13 MS. BRICE: Sorry. If you don't  
14 mind, could I approach?

15 HEARING OFFICER HALLORAN: You may.

16 MS. BRICE: Thank you.

17 BY MS. BRICE:

18 Q. Sorry. My copy is missing. Do you  
19 have 91? Thank you. And I am turning to Exhibit  
20 91-2, do you see this?

21 A. Yes.

22 Q. Did you review this document in  
23 preparing for your expert report and opinion in  
24 this matter?

1 A. Yes.

2 Q. And the date on this document is  
3 October 15th, 1971, correct?

4 A. Correct.

5 Q. Okay. And this is a  
6 pre-construction conference that was held in the  
7 district offices in 1971, correct?

8 A. Correct.

9 Q. I'd like to direct your attention to  
10 91-5?

11 A. Okay.

12 Q. Do you see that?

13 A. Yes.

14 Q. Okay. And at this time IDOT was  
15 actually part of the Division of Highways, isn't  
16 that right? I'm maybe not saying it correctly,  
17 the exact name, but the Division of Highways was  
18 related to IDOT, isn't that true?

19 A. I would -- I believe so, yes.

20 Q. Okay. So we've got on this document  
21 how many people who were working for the Division  
22 of Highways at that time that were at this  
23 meeting?

24 A. Seven, I think.

1 Q. Pardon me. Seven?

2 A. I think.

3 Q. Thanks. Did you try to find Ray  
4 Rickert?

5 A. No.

6 Q. Did you try and find Mr. Riddle?

7 A. No.

8 Q. Did you try and find Mr. Mullejons?

9 A. No.

10 Q. Did you try and find Mr. Hall?

11 A. No.

12 Q. How about Mr. Lorentzen?

13 A. No.

14 Q. How about Mr. Blum?

15 A. No.

16 Q. And I might be missing one, but --  
17 thank you. Did you talk to anyone with the  
18 contractor Bolander Construction?

19 A. No.

20 Q. Did you try to find anyone from the  
21 contracting company Bolander?

22 A. No.

23 Q. And, therefore, you didn't actually  
24 speak to anyone who worked on the project in

1 forming your opinions about how IDOTs historical  
2 practices were applied on this project, isn't that  
3 right?

4 A. Correct.

5 Q. Thus, you really don't know what the  
6 contractor did, do you?

7 A. I don't understand your question.

8 Q. You really don't know what actually  
9 happened, do you?

10 MR. MCGINLEY: I'm going to object  
11 and note that in prior pleadings that we've filed  
12 in this case we've submitted something -- a  
13 certified record from the Secretary of State  
14 showing that Bolander Construction went out of  
15 business in the '90s. So if counsel is asking  
16 Mr. Gobelman if he had the opportunity to speak to  
17 anybody at Bolander, they didn't exist at that  
18 point.

19 HEARING OFFICER HALLORAN: You can  
20 redirect whenever we meet back next June 23rd, but  
21 your objection is so noted.

22 MS. BRICE: And that wasn't the  
23 question that I had asked.

24

1 BY MS. BRICE:

2 Q. My question was you don't really  
3 know what the contractor actually did on the  
4 project, do you?

5 A. Other than what is in the contract  
6 plans and as-builts or I should say within the  
7 file of the contract plans.

8 Q. But the file -- I believe you  
9 testified earlier that, you know, things happened  
10 in the field that make -- there is changes in the  
11 field that are not necessarily noted in the file,  
12 isn't that true?

13 A. I don't think that represents what I  
14 was saying.

15 Q. Okay. But isn't that right? I  
16 mean, not everything that occurred on the Amstutz  
17 Project is in the currently existing file, isn't  
18 that right?

19 A. Correct.

20 Q. And, in fact, the as-built drawings  
21 are more representative, are they not, of what  
22 actually occurred on the project than the  
23 construction bid drawings, isn't that right?

24 A. Yes.

1 Q. Right. And the point of the  
2 as-built drawing, is it not, to add to the  
3 drawings to depict actually what occurred that was  
4 a deviation from the bid drawings?

5 MS. O'LAUGHLIN: Objection. Vague.

6 BY THE WITNESS:

7 A. I disagree with that.

8 HEARING OFFICER HALLORAN: I'm  
9 sorry. What is your --

10 MS. O'LAUGHLIN: I'll withdraw my  
11 objection.

12 HEARING OFFICER HALLORAN: We have  
13 to keep it to one attorney and I think you're  
14 Mr. Gobelman's attorney. Your objection?

15 MS. O'LAUGHLIN: I'll withdraw my  
16 objection.

17 HEARING OFFICER HALLORAN: Okay.  
18 Thank you.

19 BY MS. BRICE:

20 Q. Let me rephrase. The as-built  
21 drawings are more accurate as to what actually  
22 occurred on the site during the -- during the  
23 Amstutz Project than the bid documents, isn't that  
24 true?

1           A.       I don't believe you're representing  
2 what the as-builts mean correctly.

3           Q.       Okay. Well, the as-built drawings  
4 are intended to demonstrate some changes that were  
5 made during the project, isn't that right?

6           A.       Correct.

7           Q.       You also didn't talk to anyone from  
8 the US EPA in reaching your opinions, did you?

9           A.       Correct.

10          Q.       Or anyone from IEPA?

11          A.       Correct.

12          Q.       Now, you put together the 104(e)  
13 response to US EPA regarding the project in 2000,  
14 right --

15          A.       No.

16          Q.       -- we talked about that? Well, you  
17 were involved in that, right?

18          A.       Yes.

19          Q.       You were involved in it. And you  
20 were involved in compiling information for this  
21 response, is that accurate?

22          A.       No.

23          Q.       Okay. I believe you said earlier  
24 Mr. Schick asked you to provide information, is

1 that a more accurate description of what you did  
2 for the 104(e)?

3 A. Yes.

4 Q. But you didn't talk to anyone else  
5 who was involved in compiling the 104(e) response  
6 before reaching your opinions, did you?

7 A. Correct.

8 Q. And you -- part of your opinions  
9 involves what was actually stated in that 104(e)  
10 response, isn't that correct?

11 A. Say that again.

12 Q. You're relying on your  
13 interpretation of Mr. Mapes' response -- no. Let  
14 me strike that. You're relying on -- Strike that  
15 again.

16 You spoke earlier about IDOTs  
17 104(e) response, correct?

18 A. Correct.

19 Q. And you talked about Mr. Mapes --  
20 the reference to Mr. Mapes in that response,  
21 correct?

22 A. Yes.

23 Q. But you didn't talk to anyone else  
24 who was involved in the 104(e) response to see if

1 you could figure out what Mr. Mapes had intended,  
2 did you?

3 A. Correct.

4 Q. Okay. And you didn't talk to anyone  
5 else who was involved in the 104(e) response to  
6 figure out what else was done in putting together  
7 the 104(e) response outside of what you were  
8 working on, right?

9 A. Correct.

10 Q. And Mike Hine I believe is someone  
11 who worked on the 104(e) response, isn't that  
12 true?

13 A. I do not know.

14 Q. Well, I'll represent in your  
15 deposition that you indicated that he was. Is he  
16 still at IDOT?

17 A. No.

18 Q. Okay. Turn to page 50 of your --  
19 did he recently leave in the last year?

20 A. No.

21 Q. Okay. I'm sorry. He is with the  
22 Federal Highway Administration, is that correct?

23 A. I'm not sure at this particular  
24 time.

1 Q. But he was at the time of your  
2 deposition?

3 A. I believe so, yes.

4 Q. So you knew where he was at the time  
5 you were working on this matter?

6 A. Yes.

7 Q. And you could have reached out to  
8 him and figured out what he knew about the 104(e)  
9 response, is that right?

10 A. Yes.

11 Q. But you did not?

12 A. Correct.

13 Q. You don't actually know what  
14 happened to the concrete transite pipe parking  
15 bumpers, do you?

16 A. Correct.

17 Q. As I understand it, you didn't even  
18 consider other options for how the  
19 asbestos-containing materials might have been  
20 buried on Site 3 in arriving at your opinions, did  
21 you?

22 A. I disagree with the question.

23 Q. The question?

24 A. Yeah, I don't think it's an

1 answerable question.

2 Q. Okay. Did you consider any other  
3 options for how asbestos-containing material or  
4 any other theories as to how it might have ended  
5 up being buried on Site 3 --

6 A. Yes.

7 Q. -- when you were putting together  
8 your report?

9 A. Yes.

10 Q. Okay. If you can turn to page 63 of  
11 your deposition and I'm on line three.

12 Question: I want to step back  
13 for a second. A lot of your opinions focus on how  
14 asbestos-containing materials ended up buried on  
15 Sites 3 and 6. What possible explanations did you  
16 consider?

17 Answer: I considered the record  
18 that was in the file of how the construction job  
19 was created.

20 Question: Okay. And what are  
21 the possible ways that the asbestos ended up on  
22 Sites 3 and 6? You know, I imagine you came up  
23 with a variety of theories and then said "This is  
24 the right theory." So what theories did you

1 analyze?

2 Answer: I did not come up with  
3 a variety of theories.

4 Do you see that?

5 A. Yes.

6 Q. I think actually at one point in  
7 your deposition we talked about some hypothetical  
8 situations and I said if the utilities weren't  
9 there and if the concrete transite pipe had been  
10 left there by JM in the 1970s and it wasn't IDOT  
11 that buried it, how else could it have gotten  
12 there, do you remember that line of questioning?

13 A. Yes.

14 MS. O'LAUGHLIN: I'll object to  
15 this -- this hypothetical. Continue. Just note  
16 my objection.

17 HEARING OFFICER HALLORAN: Okay.  
18 It's in the deposition, I think, right, you were  
19 asking him?

20 MS. BRICE: Yes.

21 HEARING OFFICER HALLORAN: So  
22 overruled.

23 BY MS. BRICE:

24 Q. And isn't it true that your response

1 was "Well, it could possibly be nature or  
2 gravity"?

3 A. I don't believe we ever got to a  
4 conclusion of your hypothetical.

5 Q. Okay. Take a look on page 183,  
6 please. And I'll direct your attention to --  
7 actually make it 182 line 22 and this was in the  
8 context of the hypothetical and it says

9 Answer: It is still possible  
10 that transite pipe that were on the surface could  
11 have still gotten buried.

12 That's the answer. Sorry. My  
13 question then was --

14 Question: By whom?

15 Answer: Well, it could be by  
16 nature itself depending upon the wetness and the  
17 water and the muckiness --

18 Question. Okay.

19 Answer: -- and, you know,  
20 gravity could have done something.

21 Do you see that?

22 A. I don't see it -- you said 82?

23 Q. Eighty-three. It's at the top of  
24 83.

1 A. I thought you said 182 and 183.

2 Yes.

3 Q. As I understand it, your opinions,  
4 at least the ones that were in your report, are  
5 based upon five things; your review of  
6 Mr. Dorgan's report, is that correct?

7 A. Yes.

8 Q. Your review of the available IDOT  
9 construction file, right?

10 A. Yes.

11 Q. Documents provided to you by  
12 counsel, correct?

13 A. Yes.

14 Q. The standard specifications?

15 A. Yes.

16 Q. And aerial photographs and  
17 topographic maps?

18 A. Yes.

19 Q. And am I missing anything?

20 A. I don't believe so.

21 Q. You -- you reviewed the construction  
22 file that was available, right? So you did not  
23 review the entire construction file, isn't that  
24 true?

1 A. I don't know.

2 Q. Okay. Well, wasn't the engineer's  
3 logbook missing from the construction file?

4 A. Correct.

5 Q. And that logbook would have  
6 contained the events of the day, right?

7 A. Correct.

8 Q. And would include what material came  
9 in and left that day, correct?

10 A. Possibly.

11 Q. Okay. Turn to page 193 of your  
12 deposition, please. I'm on line 13

13 Question: And what type of  
14 information does an engineer put in his logbook?

15 Answer: Typically, he would  
16 document the events of the day. You know,  
17 material that comes in and material that leaves,  
18 where they're working. He would include in that  
19 how people were working, you know, whatever was  
20 required for him to document in his reports  
21 regarding, you know, for payment so that he can  
22 document when he sees the bills come through that  
23 that is an acceptable pay.

24 Do you see that?

1 A. Yes.

2 Q. So without the logbook, you cannot  
3 testify as to exactly what happened during the  
4 project, can you?

5 A. I would disagree with that.

6 Q. Okay. But once again you don't  
7 know -- you can't testify as to what materials  
8 came in one day and what materials left, can you?

9 A. I believe you can.

10 Q. You can testify as to what happened  
11 on a specific day?

12 A. No.

13 Q. Okay. You can testify as to what  
14 happened on a specific week?

15 A. No.

16 Q. You can testify as to exactly what  
17 type of fill material was used in the embankment  
18 on the southside of Site 6, right?

19 A. I don't believe there was fill on  
20 the southside of -- along south six -- Site 6.

21 Q. Okay. But I think you just had a  
22 long discussion about earlier -- earlier about how  
23 there were soil borings and there are -- I think  
24 it's your testimony, at least now, that there is

1 at least one foot of fill material at some points  
2 in the embankment on the southside of 6?

3 A. There is. I agree there is fill  
4 material on the southside of Site 6, yes.

5 Q. Okay. But you can't testify for  
6 sure exactly what type of material was placed  
7 there, can you, by IDOT?

8 A. I don't agree that fill material was  
9 placed by IDOT.

10 Q. Okay. Let's assume for a second  
11 that IDOT did place -- IDOT placed fill material  
12 some place in the Amstutz Project, isn't that  
13 correct?

14 A. Yes.

15 Q. There was thousands of yards of  
16 borrow material that came onto the site, isn't  
17 that right?

18 A. Yes.

19 Q. And borrow material is, in essence,  
20 fill material, isn't that true?

21 A. It's used as fill, yes.

22 Q. Okay. You can't tell me where any  
23 particular borrow material was used at any  
24 specific location on the site, can you?

1 A. Yes, I can.

2 Q. Oh, you can? Okay. Can you tell me  
3 then -- for instance, let's take a spot.

4 Where is the drawing for the  
5 Amstutz? Okay. There was cut and fill material  
6 on the detour roads, correct?

7 A. Correct.

8 Q. Okay. Can you tell me exactly which  
9 fill material was used on detour road C and where  
10 it came from?

11 A. I cannot.

12 Q. You can? Exactly? You know for a  
13 hundred percent that a specific type of fill  
14 material was used on detour road C?

15 A. I didn't say that.

16 Q. Sorry. I misunderstood.

17 A. I said I cannot.

18 Q. I thought you said you could.

19 Sorry.

20 A. For that question, I answered it  
21 correctly.

22 Q. Thank you. And you cannot tell me  
23 exactly the source of the fill material for detour  
24 road A, can you?

1 A. Correct.

2 Q. Nor detour road B, isn't that true?

3 A. Correct.

4 Q. Nor the shoofly road, right?

5 A. Correct.

6 Q. And you can't tell me the source of  
7 the fill material in the embankment on the  
8 southside of the embankments along Sand Street,  
9 can you?

10 A. Correct.

11 Q. You also reviewed other documents.  
12 You said you read documents provided to you by  
13 IDOTs attorneys, isn't that true?

14 A. Correct.

15 Q. But you didn't review the entire  
16 file, did you?

17 A. I reviewed the entire file that I  
18 had.

19 Q. Okay. But you don't know if that  
20 was the entire file of everything that was  
21 produced, do you?

22 A. I have no idea.

23 Q. You didn't go look at the Bates  
24 numbers and match them up with the production and

1 have any idea if you reviewed the entire file,  
2 right?

3 A. No, I didn't review the -- receive  
4 the Bates numbers until within a week or so ago.

5 Q. Okay. So you -- is US EPAs remedy  
6 for the site relevant to your opinions?

7 A. I provided in my report an opinion  
8 on it.

9 Q. Okay. But you didn't look at US  
10 EPAs file, did you?

11 A. Correct.

12 Q. In fact --

13 MS. O'LAUGHLIN: Objection. I  
14 believe that mischaracterizes his testimony.

15 HEARING OFFICER HALLORAN: Ms.  
16 Brice?

17 MS. BRICE: He answered that I was  
18 correct.

19 HEARING OFFICER HALLORAN: Yeah,  
20 I'll let it stand.

21 BY MS. BRICE:

22 Q. In fact, at the time of your  
23 deposition, you hadn't read the final Removal  
24 Action Work Plan, had you?

1 A. Correct.

2 Q. And the Removal Action Work Plan is  
3 the document that details how the remedy is going  
4 to be implemented, isn't that right?

5 A. Yes.

6 Q. Now, I'd like to talk about the  
7 standard specifications for road and bridge  
8 construction. Those were one of your sources of  
9 information, right?

10 A. Yes.

11 Q. Okay. Let's pull out Exhibit 19,  
12 please.

13 A. Okay.

14 Q. Okay. You've reviewed these, right?

15 A. What's in this book?

16 Q. These are the standard  
17 specifications that have been referred to in this  
18 case. So I'm assuming yes, but the ones -- yes,  
19 these standard specifications. Have you reviewed  
20 them?

21 A. Yes.

22 Q. And you relied on them in rendering  
23 your opinions?

24 A. Not these pages.

1 Q. Well, it's a lot of pages.

2 A. I know.

3 Q. What do you mean not these pages?

4 A. I reviewed -- I used the original  
5 book.

6 Q. Okay. But this is a copy of the  
7 book.

8 A. Yes.

9 Q. So it's a copy of the pages that you  
10 reviewed, isn't that right?

11 A. Correct.

12 Q. And these are the pages that would  
13 have governed the Amstutz Project in 1970, '71  
14 through '75 I think you said?

15 A. No.

16 Q. Okay. These are some of them,  
17 though, right?

18 A. Correct.

19 Q. And these are the specifications  
20 that describe how the contractor and IDOT or its  
21 predecessor are supposed to manage different types  
22 of materials on the project, right?

23 A. No.

24 Q. All right. Well, then we'll look at

1 them and see about that.

2 IDOT is the one who prepared the  
3 specifications, correct?

4 A. Correct.

5 Q. And the IDOT resident engineer is  
6 supposed to enforce the specifications, right?

7 A. Correct.

8 Q. And the contractor is required to  
9 follow them?

10 A. Correct.

11 Q. As well as the decisions of the  
12 resident engineer, the contractor is required to  
13 follow the decisions of the resident engineer?

14 A. Yes.

15 Q. And if the contractor wants to  
16 deviate from the specifications or the plans, he  
17 has to get IDOTs approval, right?

18 A. No.

19 Q. Okay. Please turn to page 89 in  
20 your deposition.

21 HEARING OFFICER HALLORAN: Ms.  
22 Brice, do you want to get Mr. Ebihara's number in  
23 before we take the long break?

24 MS. BRICE: We would love to, but he

1 doesn't have it.

2 HEARING OFFICER HALLORAN: Can you  
3 write it on a piece of paper? All right. So then  
4 he'll have to come back on June 23rd?

5 MS. BRICE: Unfortunately.

6 HEARING OFFICER HALLORAN: Sorry.

7 MS. BRICE: Are you able to come  
8 back on that day?

9 MR. EBIHARA: Yes.

10 HEARING OFFICER HALLORAN: You may  
11 proceed. Thank you.

12 BY MS. BRICE:

13 Q. Question -- this is page 89 line 13.

14 A. Okay.

15 Q. Question: And if the  
16 contractor wants to deviate from the plan, does he  
17 have to get approval from IDOT?

18 Answer: If he is deviating from  
19 what the contract's plans are, he has to get IDOTs  
20 approval.

21 Question: And why is that?

22 Answer: Because it's IDOTs job.  
23 It's their project.

24 Do you see that?

1 A. Yes.

2 Q. Now, before we end --

3 MS. BRICE: I think maybe after this  
4 next section might be a good place to stop.

5 HEARING OFFICER HALLORAN: Okay.

6 Let me know.

7 BY MS. BRICE:

8 Q. Before we dive into the opinions, I  
9 want to clarify something. We're dealing with  
10 Site 3 and Site 6, correct, in this case?

11 A. Yes.

12 Q. And a lot of your opinions, if not  
13 all of them, most of them, deal with what you  
14 think that happened when the parking lot area was  
15 created, isn't that true, at least with respect to  
16 what was in the original report?

17 A. I lost you halfway through that.  
18 Can you repeat that, please?

19 Q. That was a really bad question. A  
20 lot of your opinions in your original report deal  
21 with what you think happened when the parking lot  
22 was created, isn't that true?

23 A. I would disagree with that.

24 Q. Okay. Didn't you offer an opinion

1 about how the parking lot was created?

2 A. Yes.

3 Q. Okay. And didn't you offer an  
4 opinion as to the materials used to create the  
5 parking lot?

6 A. Yes.

7 Q. And didn't you offer an opinion  
8 about the fact that the parking lot was covered  
9 with asphalt?

10 A. I believe I disagree with that part.

11 Q. Okay. Let's pull out your opinion.

12 What are you disagreeing with,  
13 that it's asphalt? Are you -- are you quibbling  
14 with the word?

15 A. Of course I am.

16 Q. Okay.

17 A. I'm quibbling that you narrowed it  
18 to just asphalt.

19 Q. That's what I'm trying to  
20 understand. There was an opinion about the  
21 parking lot being covered with some sort of  
22 bituminous or asphaltic or some type of material,  
23 is that right?

24 A. Correct.

1 Q. And there was an opinion about what  
2 happened during the construction of the parking  
3 lot with respect to their -- it being a very  
4 low-lying, marshy area, right?

5 A. Correct.

6 Q. So I want to focus for a second here  
7 on Site 6, which Site 6 doesn't overlap with the  
8 former parking lot area, right?

9 A. Correct.

10 Q. It's actually north of the former  
11 parking lot area?

12 A. Adjacent, yes.

13 Q. Adjacent to the north?

14 A. Yes.

15 Q. In fact, part of 6 -- part of Site 6  
16 is an embankment that IDOT built in the 1970s,  
17 isn't that right?

18 A. I would disagree.

19 Q. Okay. So if I can approach, I'd  
20 like to show you Exhibit 202.

21 HEARING OFFICER HALLORAN: You may.

22 BY MS. BRICE:

23 Q. And this might help clarify for me a  
24 couple of things about your earlier testimony. So

1 if I can show you this. It's your opinion at this  
2 point I take it that nothing east of station 920  
3 is -- contains any embankment on Site 6?

4 A. I'll change my -- I was confused how  
5 you -- you're representing that, but, yes, the  
6 western end of -- of Site 6 along Greenwood  
7 contains a portion of -- the beginning of the  
8 embankment, yes. Sorry.

9 Q. Okay. Can you please clarify for  
10 me -- actually, can you draw on this piece of  
11 paper, we're not going to enter it into evidence  
12 right now, just so I understand, and we can if we  
13 have to, where you're saying the embankment is  
14 located on Exhibit 202 and why don't we do that  
15 and we'll turn this document -- in blue if you can  
16 outline for me --

17 A. On this?

18 Q. Perfect. If you can outline in blue  
19 where you actually believe the embankment to be  
20 located.

21 MS. O'LAUGHLIN: If we could see  
22 what the witness is doing and maybe --

23 HEARING OFFICER HALLORAN: I agree.

24 MS. O'LAUGHLIN: Point to it so

1 everyone --

2 MS. BRICE: I'm happy --

3 HEARING OFFICER HALLORAN: We'll

4 publish it as soon as Mr. Gobelman --

5 MS. BRICE: He hasn't gotten the pen

6 out.

7 BY THE WITNESS:

8 A. Am I only to use what is on this  
9 figure as reference to be able to identify the  
10 exact position where the embankment begins?

11 BY MS. O'LAUGHLIN:

12 Q. Yes. Because I think you testified  
13 earlier, did you not, based upon that figure where  
14 the embankment begins.

15 A. Just clarifying.

16 Q. I'd like you to circle the whole  
17 embankment area from where you think the  
18 embankment is located on site -- in general. If  
19 you can -- if you can outline the embankment for  
20 me on that map.

21 A. Well, that would be difficult to do  
22 using this map without having proper scaling  
23 abilities.

24 Q. Well, why don't you give it your

1 best shot.

2 A. This should be pretty close.

3 HEARING OFFICER HALLORAN: If you  
4 can show Ms. O'Laughlin and Mr. McGinley.

5 MR. MCGINLEY: Can you bring it  
6 closer? I can't see that far.

7 MS. O'LAUGHLIN: I know.

8 MS. BRICE: Before you -- go ahead.

9 BY MS. BRICE:

10 Q. So your drawing here as I understand  
11 it is what you believe to be the eastern end of  
12 the embankment?

13 A. It would be the eastern end of the  
14 embankment for the elevated Greenwood Avenue.

15 Q. Okay. How far south does that  
16 embankment -- can you please put a line on there?

17 A. I believe I have.

18 Q. How far south?

19 A. I believe I have an open box that  
20 depicts --

21 Q. I mean, as far as the width, right,  
22 the width of the embankment.

23 A. Yes, I believe I have already  
24 identified that for you.

1 Q. Okay. Why don't you draw it then  
2 going all the way to the west for me, please.

3 A. I would then have to -- I cannot do  
4 that off the top of my head. I have to refer to  
5 the plans.

6 Q. Okay. But you -- so you're unable  
7 to based upon this document draw the embankment  
8 for me?

9 A. In the context that you're asking me  
10 to, yes.

11 Q. Okay. Thank you. So I think the  
12 question that I had asked was part of Site 6  
13 contains the embankment that IDOT built in the  
14 1970s, is that right?

15 A. Correct.

16 Q. Okay. So portions of Site 6 did not  
17 exist in the late 1950s or '60s, did they?  
18 Portions of Site 6 did not exist prior to IDOT  
19 building the embankment in the 1970s, isn't that  
20 true?

21 A. I disagree with that.

22 Q. Okay. Well, IDOT used fill material  
23 to build its embankment, right, in some places?

24 A. Yes.

1 Q. Okay. And I believe --

2 MS. BRICE: I need 21-A-26.

3 BY MS. BRICE:

4 Q. If you can please turn to 21-A-26, I  
5 believe we were looking at this in an offer of  
6 proof earlier, but that was an offer of proof. Do  
7 you recall that?

8 A. I recall seeing this diagram  
9 previously, yes.

10 Q. Okay. And this is a blowup of that  
11 diagram, is that not true, right here?

12 A. Yes.

13 Q. Okay. At what station does the  
14 slope begin to ascend on this document that -- the  
15 profile of Greenwood Avenue?

16 A. This, I can't necessarily see the  
17 existing profile line, but it would appear that  
18 it's somewhere past station 8, between station 8  
19 and station 9, I believe.

20 Q. Well, station 8 is right here.

21 A. Yes.

22 Q. So at station 8 if you move up, the  
23 line is starting to ascend, is that not true?

24 A. There is -- you're asking me where

1 the contact between the existing pavement was.

2 Q. The existing pavement is right here.  
3 There is a line, do you see that?

4 A. I understand that. I'm just saying  
5 I do not see that on the --

6 MS. O'LAUGHLIN: Objection.  
7 Objection. May we please see what is being  
8 pointed to. I'd like to see what Mr. Gobelman  
9 pointed to. Your back is to me and you guys are  
10 having this exchange and I can't see.

11 MS. BRICE: Would you like to  
12 come --

13 MS. O'LAUGHLIN: No, I would like  
14 you to step away and have him look at it and show  
15 it to everyone so that we can all see.

16 MS. BRICE: Sorry. I was not -- I'm  
17 just trying to point.

18 MS. O'LAUGHLIN: I understand.

19 BY MS. BRICE:

20 Q. There is something that says  
21 existing pavement surface, do you see that?

22 A. There is a text pointing to a line  
23 in the middle of the figure.

24 MS. O'LAUGHLIN: Can you show where

1 that is because I'm trying to keep up.

2 THE WITNESS: Right there.

3 MS. O'LAUGHLIN: Thank you.

4 BY MS. BRICE:

5 Q. Okay. And if that -- that line is  
6 depicted at about 587, do you see that?

7 Five-eighty-seven elevation, is that about right?

8 A. Where the line is being started with  
9 the line -- where the existing pavement surface is  
10 pointed to is roughly around 591 on the page or  
11 so.

12 HEARING OFFICER HALLORAN: Can you  
13 speak up?

14 THE WITNESS: Five-ninety-one.  
15 Sorry.

16 BY THE WITNESS:

17 A. Where the text is being pointing to.

18 BY MS. BRICE:

19 Q. Can I look at that, please?  
20 Existing pavement surface, do you see this line  
21 right here? And I'll come show you.

22 MS. O'LAUGHLIN: Okay.

23 BY MS. BRICE:

24 Q. There is probably no way to do it.

1 Do you see this line?

2 A. Yes.

3 Q. And this line goes over here?

4 A. Yes.

5 Q. And then over here, where is that?

6 What is the elevation right there?

7 A. Where you're pointing to at the end  
8 it came across as somewhere around 589.

9 Q. Okay. This is -- this is the  
10 existing pavement line, correct, the one you say  
11 that is at 589?

12 A. No, I was pointing to where you  
13 pointed at the end over here. You pointed over  
14 here where the elevation was. I said 589. I  
15 cannot tell because there is also a line also  
16 marking the cinder fill that corresponds with the  
17 pavement surface. So what line is what when it  
18 crosses there --

19 Q. Okay. Great. The document will  
20 speak for itself. We can have Mr. Dorgan testify  
21 about it.

22 HEARING OFFICER HALLORAN: Just for  
23 the record, it's 4:35 and I suggested earlier that  
24 we'd wrap it up about now. So, Ms. Brice --

1 MS. BRICE: I think that's fine.

2 Let's just stop here. That's fine.

3 HEARING OFFICER HALLORAN: All  
4 right. Before we go off the record, I just want  
5 to note for the record that we, by agreement, are  
6 not finished yet with this matter 14-3. I'm going  
7 to continue this matter, this hearing, on record  
8 to June 23rd in Room 11-512. That is up in the  
9 Pollution Control Board's offices and I also want  
10 to state that any objections to my rulings are due  
11 by June 9th, responses by June 14th and then I  
12 guess we're going to get Mr. Ebihara's number in  
13 the next time we meet or before we finish the  
14 hearing. Anything else we need to talk about?  
15 Ms. Caisman?

16 MS. CAISMAN: Because we're taking  
17 such a long break I know that we moved the  
18 exhibits that we used in our case in chief into  
19 evidence yesterday at the close of our case in  
20 chief. Obviously, subject to how you want to  
21 handle it, but I might suggest that we move in the  
22 exhibits that we used on cross-examination today  
23 and we can make that as part of our homework to  
24 compile a list of the exhibits moved into

1 evidence.

2 HEARING OFFICER HALLORAN: Yes, that  
3 is music to my ears.

4 MS. CAISMAN: So Johns Manville --

5 HEARING OFFICER HALLORAN: You  
6 showed me a list this morning.

7 MS. CAISMAN: Right. And that was  
8 the list for the exhibits moved in our case in  
9 chief. So we would just move to enter into  
10 evidence the exhibits that we used today on  
11 cross-examination and we'll add that to that list.

12 HEARING OFFICER HALLORAN: Yeah, the  
13 other issue out there Ms. O'Laughlin was inquiring  
14 the other day about the ones that you all  
15 stipulated to, but you haven't used at the hearing  
16 and I reread the hearing report and there is  
17 nothing to distinguish between stipulation to the  
18 authenticity and/or the admissibility. So I don't  
19 know, Ms. Brice, you had some objection to that I  
20 think. I'm not sure.

21 MS. BRICE: Right. I think in some  
22 of the situations we said on the prehearing, at  
23 least ours, we were stipulating to the  
24 authenticity, not the admissibility. I don't

1 know. I just had understood we were using --

2 HEARING OFFICER HALLORAN: Well, the  
3 report you gave me on May 17th there were some  
4 outstanding exhibits out there, but the ones you  
5 stipulated to doesn't distinguish between whether  
6 you're going to use them at the hearing or not.

7 MS. BRICE: Right. I understand  
8 that. And I was just communicating yesterday that  
9 my understanding is I thought is we were -- it was  
10 only asked what we were using. That's generally  
11 how it is done. So I was suppose confused and  
12 that was not my understanding.

13 HEARING OFFICER HALLORAN: Okay. So  
14 what -- your objection is it was a  
15 misunderstanding, but why do you object now? Do  
16 you have a problem with --

17 MS. BRICE: Well, yeah, I mean, if  
18 they're going to start using exhibits in  
19 post-hearing briefs and we don't have a witness  
20 and have any idea what that witness is going to  
21 say about those exhibits or, you know, what that  
22 exhibit is being offered for, it's sort of a  
23 strange situation. You're not being able to  
24 cross-examine. You're not being able to deal with

1 the evidence in the way that you normally do in a  
2 hearing.

3 HEARING OFFICER HALLORAN: Well, it  
4 is strange. You stipulated to it and you didn't  
5 distinguish. So I would ask you to put your  
6 reasons on paper and have them filed on the  
7 responses -- have them filed by June 9th with the  
8 objections and then response is due June 14th to  
9 that and, Ms. O'Laughlin, Mr. McGinley, if you  
10 could also state in there what exhibits do you  
11 plan to use that weren't used at hearing.

12 MS. O'LAUGHLIN: Right. Following  
13 our discussion yesterday, we did go over the  
14 exhibit list and identify the additional exhibits  
15 additional to Johns Manville that we would like to  
16 be part of the record and to be entered into  
17 evidence and to be able to be used in a  
18 post-hearing brief. So we have identified a list.

19 HEARING OFFICER HALLORAN: How  
20 extensive is that list?

21 MR. MCGINLEY: A little bit more  
22 than -- it's less than a page and a half.

23 HEARING OFFICER HALLORAN: So that's  
24 40?

1 MR. MCGINLEY: I think we're talking  
2 like two dozen.

3 HEARING OFFICER HALLORAN: Okay.  
4 Well, you know, brief it June 9th and then  
5 response June 14th. Anyway, have a great break,  
6 everyone.

7 MS. BRICE: Can we clarify  
8 something?

9 MS. O'LAUGHLIN: On the record or  
10 off the record?

11 MS. BRICE: Actually on the record.

12 HEARING OFFICER HALLORAN: Let's go  
13 back on the record, Steve, please and based on the  
14 avalanche of exhibits and the number of markings  
15 on them, some of them have two or three and they  
16 have been referred to throughout the hearing two  
17 or three different ways we're going to need some  
18 kind of understanding on how and I think you  
19 briefly mentioned this yesterday, maybe Monday, on  
20 how you're going to approach that in your  
21 post-hearing briefs. That would be a big help.

22 MS. BRICE: We'll figure it out.

23 HEARING OFFICER HALLORAN: Yeah,  
24 especially for the Board so --

1 MS. BRICE: Sure. We'll figure that  
2 out.

3 HEARING OFFICER HALLORAN: Okay.

4 MS. BRICE: All right. I do have a  
5 question. Are you planning to call Mr. Tracy or  
6 Mr. Ebihara in your case because I don't want  
7 to -- you know, they don't live here -- or  
8 Mr. Clinton? They don't live here.

9 MR. MCGINLEY: No. I mean, the  
10 answer would be we don't intend to call them at  
11 this point, but we reserve the right to call them  
12 should that be necessary.

13 MS. BRICE: Okay. But we're not  
14 going to have them come out here if you're not  
15 going to call them. They're not going to fly out  
16 here just to be here in case. You know, I mean --

17 MR. MCGINLEY: You said Ebihara  
18 and --

19 MS. BRICE: Not Ebihara. I was  
20 confused. Clinton and Tracy.

21 MR. MCGINLEY: You're confusing me.

22 MS. BRICE: I know. It's been a  
23 long day. Clinton and Tracy or Ebihara if he  
24 needs to come down.

1 MR. MCGINLEY: One moment. Yes, we  
2 don't care as far as Mr. Clinton and Mr. Tracy are  
3 concerned, that's fine.

4 MS. BRICE: Thank you.

5 HEARING OFFICER HALLORAN: Thank  
6 you.

7 MR. MCGINLEY: But we reserve with  
8 respect to Mr. Ebihara because --

9 MS. BRICE: He has to come down to  
10 do the numbers anyway.

11 HEARING OFFICER HALLORAN: All  
12 right. I think we're finished?

13 MR. MCGINLEY: Can I just ask one  
14 question as a matter of clarification,  
15 Mr. Halloran? So essentially when we come back on  
16 the 23rd and 24th next month this would be to  
17 continue the cross-examination of Mr. Gobelman and  
18 what else does the Hearing Officer expect us to be  
19 doing at that time?

20 HEARING OFFICER HALLORAN: You're  
21 going to be calling your next witness, I guess,  
22 and then we'll setup and I'm sure Ms. Brice -- I  
23 almost forgot your name. Ms. Brice will have a  
24 rebuttal. I don't know how many more witnesses

1 you have.

2 MR. MCGINLEY: I mean, unless  
3 something -- unless something unforeseen was to  
4 occur with respect to perhaps Mr. Ebihara,  
5 Mr. Gobelman represents our -- our final witness.

6 MS. BRICE: You're not calling  
7 Mr. Stoddard, your expert?

8 MS. O'LAUGHLIN: Well, that goes to  
9 the admissibility of the exhibits. If we can just  
10 have his expert disclosure report moved in.

11 MS. BRICE: No.

12 MS. O'LAUGHLIN: Let's talk.

13 MS. BRICE: No, you need to present  
14 your expert. His expert report is very, very  
15 different than his deposition. They're night and  
16 day.

17 MS. O'LAUGHLIN: Do you still want  
18 to be on the record?

19 MS. BRICE: Yes, I do.

20 HEARING OFFICER HALLORAN: Yes.

21 MS. O'LAUGHLIN: You subpoenaed  
22 Mr. Stoddard. You agreed to the admissibility.

23 MS. BRICE: We will subpoena  
24 Mr. Stoddard in our case.

1 MS. O'LAUGHLIN: Excuse me. May I  
2 please finish? You agreed to the admissibility of  
3 his expert report is my understanding and based on  
4 those we had not planned to call him to date, but  
5 we can revisit this in the future.

6 MS. BRICE: You designated an  
7 expert. You made us go through expert reports.  
8 This was your idea to have an expert introduced  
9 into this entire matter. We then went through the  
10 trouble -- because we wanted to go to trial back  
11 in March -- went through the trouble to hire an  
12 expert to rebut your expert and spent a ton of  
13 money dealing with this issue and you're now  
14 telling me you're not going to call your expert.  
15 I'm not conceding, I'm sorry, to anyone  
16 stipulating to an expert report without your  
17 expert showing up when his expert report is  
18 nothing like what his deposition was.

19 MS. O'LAUGHLIN: Well, our  
20 understanding was --

21 MS. BRICE: That's highly  
22 prejudicial.

23 MS. O'LAUGHLIN: Our understanding  
24 was that you were stipulating to the admissibility

1 of his expert report.

2 MS. BRICE: I'm sorry. That was  
3 with the understanding that he was going to be  
4 here to testify about it. That is incredibly  
5 prejudicial and I vigorously object to that.

6 MR. MCGINLEY: You subpoenaed him.

7 MS. O'LAUGHLIN: You're the one --

8 HEARING OFFICER HALLORAN: Okay.  
9 You know what, I think we've heard enough on the  
10 record. You all can talk --

11 MS. BRICE: Okay.

12 HEARING OFFICER HALLORAN: -- in the  
13 next 29 days.

14 MS. BRICE: Well, then, we'll have  
15 to subpoena him I guess in our rebuttal case.

16 HEARING OFFICER HALLORAN: Thank  
17 you, all.

18 MR. MCGINLEY: Thank you.

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1 STATE OF ILLINOIS )  
 2 ) SS.  
 3 COUNTY OF COOK )  
 4

5 I, Steven Brickey, Certified Shorthand  
 6 Reporter, do hereby certify that I reported in  
 7 shorthand the proceedings had at the trial  
 8 aforesaid, and that the foregoing is a true,  
 9 complete and correct transcript of the proceedings  
 10 of said trial as appears from my stenographic  
 11 notes so taken and transcribed under my personal  
 12 direction.

13 Witness my official signature in and for  
 14 Cook County, Illinois, on this \_\_\_\_\_ day of  
 15 \_\_\_\_\_, A.D., 2016.

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*Steven Brickey*  
 STEVEN BRICKEY, CSR  
 8 West Monroe Street  
 Suite 2007  
 Chicago, Illinois 60603  
 Phone: (312) 419-9292  
 CSR No. 084-004675



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