

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

2

3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-3461
8 BY: MS. CAROL WEBB, HEARING OFFICER,

6

7 BROWN, HAY & STEPHENS, LLP,
8 205 South Fifth Street
9 Suite 700
10 Springfield, Illinois 62705
11 (217) 544-8491
12 wingersoll@bhslaw.com
13 BY: MR. WILLIAM D. INGERSOLL,

10

11 Appeared on behalf of the Petitioner;

11

12 ILLINOIS ENVIRONMENT PROTECTION AGENCY,
13 1021 North Grand Avenue East
14 P.O. Box 19276
15 Springfield, Illinois 62794-9276
16 (217) 782-5544
17 scott.sievers@illinois.gov
18 BY: MR. SCOTT SIEVERS,

12

13

14

15

16 Appeared on behalf of the Respondent.

16

17 ALSO PRESENT:

17

18 Ms. Antonette Palumbo

19 Mr. Shane Thorpe

20 Mr. Joseph W. Truesdale

21 Ms. Connie Newman

22 Mr. Karl Kaiser

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1 HEARING OFFICER WEBB: Good morning.
2 My name is Carol Webb. This is the hearing for
3 PCB 14-131, Piasa Motor Fuels versus IEPA. It is
4 September 10th and we are beginning at 9:00 a.m.

5 For the record, although this
6 facility is located in Madison County, there was
7 no known public interest in this case. So at the
8 parties' request, we will hold the hearing in
9 Springfield.

10 I will note for the record that
11 there are no members of the public present. We
12 have witnesses here today as well as Connie Newman,
13 who is the Board's public information officer.

14 Members of the public are allowed
15 to provide public comment if they so choose.

16 At issue in this case is the
17 Site Investigation Plan and Budget for Petitioner's
18 facility located at 4101 Alby Street in Alton. The
19 decision deadline is November 20th.

20 The Pollution Control Board
21 members will make the final decision in this case.
22 My purpose is to conduct a hearing in a neutral
23 and orderly manner so that we have a clear record
24 of the proceedings.

1 This hearing was noticed
2 pursuant to the Act and the Board's rules and
3 will be conducted pursuant to Sections 101.600
4 through 101.632 of the Board's procedural rules.

5 At this time I will ask the
6 parties to please make their appearances on the
7 record.

8 MR. INGERSOLL: For the Petitioner,
9 William D. Ingersoll of Brown, Hay & Stephens.

10 MR. SIEVERS: Scott Sievers on behalf
11 of the Illinois Environmental Protection Agency,
12 Respondent.

13 HEARING OFFICER WEBB: Thank you. Are
14 there any preliminary matters to discuss on the
15 record?

16 MR. INGERSOLL: I think, and I think
17 Mr. Sievers apparently concurred, that we would move
18 to exclude witnesses.

19 MR. SIEVERS: That's correct.

20 HEARING OFFICER WEBB: Okay.

21 MR. INGERSOLL: So that would mean, I
22 guess -- well, he's going to be the first witness.

23 MR. SIEVERS: Who is that?

24 MR. INGERSOLL: Joe Truesdale.

1 MR. SIEVERS: Okay.

2 MR. INGERSOLL: Shane is the -- our --
3 well, he may testify, but he's going to be the
4 client's agent for the purposes of this.

5 MR. SIEVERS: Sure. Well, Mr. Kaiser
6 here, is going to be the Agency representative for
7 the Respondent. So I guess that leaves Brandon to
8 step out, I guess.

9 MR. INGERSOLL: Well, in that case,
10 if he's the only one that's going to be -- wind
11 up being excluded, I don't care if he stays. I
12 don't imagine that he wants to waste any time
13 sitting here since his part would be some time
14 later and may not --

15 MR. SIEVERS: I would still like to
16 have him excluded.

17 MR. INGERSOLL: Okay. Yeah, I mean,
18 you can always call him since he's in the building.

19 HEARING OFFICER WEBB: Okay.

20 MR. SIEVERS: Yes. If you could
21 just -- if you could just wait in the library for
22 now perhaps.

23 MR. HARGRAVE: Sure.

24 MR. SIEVERS: Great. Thank you.

1 HEARING OFFICER WEBB: All right.

2 There is also a motion to supplement the record
3 that I understand is unopposed; is that correct?

4 MR. INGERSOLL: Yes.

5 HEARING OFFICER WEBB: Okay. So I
6 will go ahead and grant the motion to supplement
7 the record that was filed with the Board yesterday.

8 Would the Petitioner like to
9 make an opening statement?

10 MR. INGERSOLL: Yes, please.

11 HEARING OFFICER WEBB: Okay.

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

13 by Mr. Ingersoll

14 The issues we bring to the
15 Board today involve, number one, the site-specific
16 conditions that would justify drilling below the
17 "water table" and what level of justification is
18 necessary on the record before the Agency at the
19 time it makes its decision.

20 Secondly, what exactly is the
21 water table and how is the Agency using it?

22 Third, I guess what -- we
23 have -- we are trying to figure out what level of
24 second-guessing, if you will, the Agency is allowed

1 to do on these kind of issues after approving the
2 Stage 1 budget and plan, which is, as the rules
3 require, only a P.E. certification that comes along
4 with the 45-day report and, in fact, was approved
5 in this situation by the Agency.

6 We believe -- I don't know --
7 we -- we have to explore what exactly the level of
8 justification that is required to show site-specific
9 conditions that warrant drilling below the water
10 table, but we believe that whatever that level is,
11 it has been met on the record in this matter and we
12 will provide testimony to that affect.

13 We believe that the Agency or
14 we're going to try to show that the Agency has been
15 misusing or misapplying the regulatory provision
16 as it relates to water table in that they are using
17 incorrect terms interchangeably with the term water
18 table.

19 That's it. We hope to show all
20 of that stuff today and that's it.

21 HEARING OFFICER WEBB: Would the Agency
22 like to make an opening statement?

23 MR. SIEVERS: No, we do not.

24 HEARING OFFICER WEBB: Okay. The

1 Petitioner may call its first witness.

2 MR. INGERSOLL: Joseph W. Truesdale.

3 HEARING OFFICER WEBB: Mr. Truesdale,
4 would you come and have a seat up here, please?
5 Let's go that way to make it easier for you. Right
6 here (indicating).

7 Would the court reporter please
8 swear in the witness?

9 THE COURT REPORTER: Would you please
10 raise your right hand?

11 (Witness sworn.)

12 WHEREUPON:

13 J O S E P H W. T R U E S D A L E
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 E X A M I N A T I O N

17 by Mr. Ingersoll

18 **Q. Would you state your name and please**
19 **spell your last name?**

20 A. Joseph W. Truesdale,
21 T-R-U-E-S-D-A-L-E.

22 MR. INGERSOLL: Okay. This is
23 going to be Exhibit No. 1.

24

1 (Document marked as Petitioner's
2 Exhibit No. 1 for identification,
3 9/10/14.)

4 BY MR. INGERSOLL:

5 Q. I'm going to show you what we have
6 marked as Petitioner's Exhibit No. 1. Can you tell
7 us what that is?

8 (Document tendered
9 to the witness.)

10 BY THE WITNESS:

11 A. It would be my resume.

12 BY MR. INGERSOLL:

13 Q. All right. And do you believe that to
14 be current?

15 A. Yes.

16 Q. Okay. Could you give us a description
17 of your educational background?

18 A. I hold three degrees; the first
19 being an associate's degree in engineering
20 technology in surveying and construction management;
21 the second being a bachelor of science in
22 environmental engineering; and the third being a
23 bachelor of science in geology, applied geology and
24 hydrogeology.

1 **Q. And what year -- do you recall what**
2 **years those degrees were earned approximately?**

3 A. The last one in applied geology and
4 hydrogeology would have been in 1998. The first
5 one would have been in 1991. The other one was
6 somewhere in between there.

7 **Q. Okay. That's fine. I believe you**
8 **have additional graduate work?**

9 A. Correct.

10 **Q. Could you --**

11 A. I completed graduate work in analysis
12 of environmental systems, advanced soil mechanics,
13 and subsurface flow in porous media.

14 **Q. Could you please walk us through your**
15 **work experience?**

16 A. Well, I started with a consulting firm
17 after the receipt of my associate's degree doing
18 land development and working in LUST regulations in
19 association with Capital Development Board UST
20 upgrades for all of their facilities.

21 MR. SIEVERS: Can we go off the
22 record for a second?

23 (Whereupon, a discussion
24 was had off the record.)

1 HEARING OFFICER WEBB: Go ahead. We
2 can go back on.

3 MR. INGERSOLL: Is that an objection?

4 MR. SIEVERS: Well, I was asking off
5 of the record. That's why I was raising it
6 off the -- trying to ask it off the record.
7 So now it's not an objection now that it's
8 clarified.

9 MR. INGERSOLL: Okay.

10 HEARING OFFICER WEBB: Okay. Go
11 ahead.

12 BY THE WITNESS:

13 A. Following that, I had received my
14 bachelor's degree in environmental engineering. I
15 began -- actually, I received both my degree in
16 environmental engineering and geology/hydrogeology.
17 I began working for CSD Environmental Services in
18 1998.

19 I think I said that my applied
20 geology and hydrogeology degree was in 1998, if
21 I'm correct. I've been working primarily in the
22 LUST site remediation program and RCRA management.

23 BY MR. INGERSOLL:

24 Q. Did you say RCRA?

1 A. Yes.

2 **Q. R-C-R-A?**

3 A. Yes.

4 **Q. Okay.**

5 A. And I was doing primarily site
6 investigation, risk assessments, remedial action
7 plans and documentation, project management,
8 fiscal oversight, research and development of
9 investigation and remedial action methodology.
10 I received my P.E. license in 2003.

11 **Q. From what state?**

12 A. My original license was in Illinois.
13 I have been licensed and am currently licensed in
14 Illinois and Missouri. I have been licensed in
15 Iowa, but I do not currently maintain that license.
16 My professional geologist license was in 2005. I
17 am licensed in Illinois as a professional geologist.

18 My professional land surveying
19 license was in 2009, I believe. I'm only licensed
20 in Illinois as a professional land surveyor. I
21 currently act as the managing agent and professional
22 engineer, senior professional hydrogeologist for CSD
23 Environmental Services.

24 **Q. Okay. You've mentioned being involved**

1 with LUST projects and remedial activities over a
2 period of time in different jobs that you described.
3 When did you first start working with LUST projects,
4 do you recall?

5 A. The LUST program, 1992 or probably
6 maybe 1993-ish.

7 Q. Is that constituted as a significant
8 portion of your experience?

9 A. Yes.

10 Q. Okay.

11 A. For some years probably greater than
12 90 percent.

13 Q. How many LUST projects have you been
14 involved with overseeing?

15 A. Hundreds.

16 Q. Well, 100, 500?

17 A. I would say somewhere between -- at
18 some level of involvement somewhere between, yeah,
19 100 and 300 maybe.

20 MR. INGERSOLL: Okay. I would
21 request admission of Petitioner's Exhibit
22 No. 1.

23 MR. SIEVERS: We will object. It's
24 not -- it's not something that the Agency

1 relied upon in making its decision.

2 HEARING OFFICER WEBB: Well, you
3 do or do not object?

4 MR. SIEVERS: We do object.

5 HEARING OFFICER WEBB: You do object.
6 Well, it's --

7 MR. INGERSOLL: I think being
8 in the record in the hearing is different
9 than necessarily being part of the
10 administrative record.

11 HEARING OFFICER WEBB: Yes. I
12 mean, it -- I'll just go ahead and I'm
13 going to admit it as Exhibit No. 1 as just
14 supporting documentation.

15 (Petitioner's Exhibit No. 1
16 was admitted into evidence.)

17 MR. INGERSOLL: Okay. Thank you.

18 I will mark this as Exhibit
19 No. 2, the 45-day report. Mark that as
20 Exhibit No. 2, please. The copy I gave
21 you doesn't have markings on it.

22 (Document marked as Petitioner's
23 Exhibit No. 2 for identification,
24 9/10/14.)

1 BY MR. INGERSOLL:

2 Q. I'm going to show you what we have
3 marked as Petitioner's Exhibit No. 2. Do you
4 recognize that document?

5 (Document tendered
6 to the witness.)

7 BY THE WITNESS:

8 A. I do.

9 BY MR. INGERSOLL:

10 Q. All right. Could you tell us what
11 that is?

12 A. It was the 45-day report for the
13 referenced incident number that was submitted
14 in conjunction with the statutory requirements
15 for early action reporting.

16 Q. And from the numbers, can I assume
17 that that is the incident that is at issue here
18 today?

19 A. I believe so, yes.

20 Q. Okay. I see there's a lot of other
21 markings on this page. Do you --

22 A. Yes.

23 Q. -- know what that is?

24 A. Yes. The received stamp by the

1 security desk is --

2 MR. SIEVERS: I'm going to
3 object. I don't really even know what
4 the question is. Could the court
5 reporter read back the question?

6 HEARING OFFICER WEBB: All right.
7 Would you read back the question?

8 (Whereupon, the requested
9 portion of the record was
10 read accordingly.)

11 MR. SIEVERS: Withdrawn.

12 HEARING OFFICER WEBB: Okay. Go
13 ahead.

14 BY THE WITNESS:

15 A. I know that the received, July 21,
16 2006, security desk stamp is what they Bate stamp
17 documents when we hand deliver them to the Agency.
18 It looks like the notation at the top is the LPC
19 number, county, responsible party, and the LUST
20 tech notation for where the file was supposed to
21 go.

22 BY MR. INGERSOLL:

23 Q. But you didn't put -- those weren't --

24 A. No.

1 Q. -- markings from CSD?

2 A. No.

3 Q. So do you believe they came from the
4 Agency?

5 A. Correct.

6 MR. INGERSOLL: Okay. Instead
7 of creating a lot of exhibits -- separate
8 exhibits for items that are already in
9 the record, if it's acceptable, I'm just
10 going to refer to the witnesses to the
11 record as filed and it's paginated. So
12 we can all --

13 HEARING OFFICER WEBB: Go ahead.

14 MR. INGERSOLL: -- just flip --
15 we can all flip to where we need.

16 BY MR. INGERSOLL:

17 Q. All right. Mr. Truesdale, I am
18 providing you a copy of what the Agency had filed
19 as the administrative record.

20 Okay. Could you refer to the
21 first item in that -- I'm not talking about the
22 table of contents, but the first document there.

23 (Document tendered
24 to the witness.)

1 BY THE WITNESS:

2 A. In the letter?

3 BY MR. INGERSOLL:

4 **Q. In the record.**

5 A. "The Illinois Environmental Protection
6 Agency has received the 45-day report, which
7 included a Stage 1 Site Investigation Plan and
8 Budget Certification."

9 MR. SIEVERS: Objection. The
10 call wasn't to read the document. It was
11 just to refer to it.

12 BY THE WITNESS:

13 A. 45-day report, Stage 1 Site
14 Investigation Plan and Budget Certification.

15 MR. SIEVERS: Was there a ruling
16 on my objection?

17 HEARING OFFICER WEBB: Overruled.

18 BY MR. INGERSOLL:

19 **Q. Do you -- can you tell from that**
20 **letter what was -- what was its purpose? I mean,**
21 **what -- was it in response to something?**

22 MR. SIEVERS: Objection, calls
23 for speculation.

24 HEARING OFFICER WEBB: What was the

1 question?

2 MR. INGERSOLL: Can you tell from
3 this document to what it refers?

4 HEARING OFFICER WEBB: I'll allow
5 it. Go ahead.

6 BY THE WITNESS:

7 A. It refers to this 45-day report listed
8 as Exhibit No. 2.

9 BY MR. INGERSOLL:

10 Q. Okay.

11 A. And the associated Stage 1 site
12 investigation site certification.

13 Q. Okay. And what decision was rendered
14 in this letter by the --

15 MR. SIEVERS: I'm going to object.
16 The document speaks for itself.

17 HEARING OFFICER WEBB: Mr. Sievers,
18 could we just maybe -- just let him get
19 through some testimony. I mean, it may
20 speak for itself, but he's here -- he's
21 a witness. You know, he needs to be able
22 to testify to what he needs to testify
23 to. I understand, but just -- I'll allow
24 it. Go ahead.

1 MR. INGERSOLL: We're just trying
2 to tell a story and we'll try to get through
3 it as directly as possible.

4 HEARING OFFICER WEBB: Okay.

5 BY THE WITNESS:

6 A. It states that at a later time, the
7 Illinois EPA will conduct a full technical review
8 of the 45-day report and it states that pursuant
9 to my certification, the Stage 1 site investigation
10 plan is approved.

11 BY MR. INGERSOLL:

12 Q. Okay. The document to which that
13 decision letter refers is not in the record, is
14 it?

15 A. No.

16 Q. Okay. Now, I would ask you just
17 to leaf through the 45-day report, Exhibit No. 2,
18 and direct our attention -- well, first, direct
19 our attention to the certification -- the P.E.
20 certification that you have provided. What page
21 would that be on?

22 A. Page 6 of 50.

23 Q. Okay. And we have paginated this
24 particular exhibit in the lower right-hand corner

1 so it's page number to which he refers.

2 Okay. And then could you leaf
3 through the document and point -- direct our
4 attention to any information that would relate
5 to, first of all, the depth of the groundwater
6 or any groundwater that's found in the activities
7 that led up to the 45-day report?

8 A. On Page 4 of 50, we responded to
9 Item C 6 of the Agency's technical form, was
10 groundwater encountered at the site? It was
11 affirmatively answered as a yes.

12 Q. Okay.

13 A. On Page 8 of 50, we noted that
14 noticeably saturated sediments were encountered
15 by CSD at approximately ten to 11 feet below
16 the ground surface. However, no wells have been
17 installed yet to measure static groundwater
18 levels.

19 We stated that no soil or
20 groundwater has been transported off-site for
21 disposal at that point in time.

22 We noted on the log for soil
23 boring B-1 on Page 26 of 50 that very high moisture
24 was observed at approximately 11 feet and noted

1 that groundwater was observed while drilling at
2 that same elevation.

3 On boring B-2 on Page 27 of
4 50, we noted that very soft and wet soil was
5 observed at ten feet and similarly noted,
6 groundwater observation while drilling at a
7 depth of ten feet.

8 I believe that is probably
9 all of the references to any groundwater
10 observations.

11 **Q. Okay. Could you direct our**
12 **attention to any information showing any levels**
13 **of contamination at -- during your investigation?**

14 A. Yes. On Page 7 of 50, we note that
15 two soil borings were advanced to a depth of 16
16 feet and soil samples obtained from these borings --
17 based on soil samples obtained from these borings
18 a determination was made that a release had
19 occurred from the UST system and subsequently,
20 there was the referenced incident number.

21 MR. SIEVERS: Can we have a
22 reference to a paragraph on that exhibit
23 page?

24 THE WITNESS: That is in response

1 to Section B-1 of the Agency's technical
2 form.

3 BY MR. INGERSOLL:

4 **Q. Okay.**

5 A. We noted on Page 9 of 50 and in
6 response to Section D, G-3 of the Agency's
7 technical form that soil samples collected
8 from these borings and submitted for laboratory
9 chemical analysis were -- results were provided
10 in Table 1 of Section E-4 below.

11 Copies of laboratory reports
12 were provided in Attachment A and the results
13 of said analysis indicated concentrations of
14 benzene and MTBE above the Tier 1 clean-up
15 objectives for residential land use.

16 **Q. As you are going through all of**
17 **this information, please skip all of the lab**
18 **results.**

19 A. Absolutely. Table 1 on Page 10
20 of 50 that was referred to, that indicates
21 exceedances of Tier 1 objectives and samples
22 B-2 for benzene and MTBE at a depth of 12 feet.

23 **Q. All right. And that's in soil,**
24 **right?**

1 A. Correct.

2 Q. Okay.

3 A. And I believe absent the laboratory
4 results, that is the only other reference to the
5 analysis performed in the initial early action.

6 Q. Could you -- could you refer to
7 Pages 26 and 27?

8 A. Yes.

9 Q. What are those forms?

10 A. Soil boring logs.

11 Q. And is that a standardized type of
12 form?

13 A. Yes.

14 Q. So one --

15 A. We also --

16 Q. -- project to the next would have
17 similar forms, wouldn't they?

18 A. Yes.

19 Q. Okay.

20 A. And in response to a previous
21 question, actually on both of those logs, we
22 reference organic vapor analysis photoionization
23 detector response readings that are obtained from
24 core samples from the soil from each of the soil

1 borings indicating the presence of --

2 **Q. So wait a minute. Could you tell us**
3 **what -- okay. Now, you said -- what's the OVA, did**
4 **you say?**

5 A. Organic vapor analysis.

6 **Q. And PID?**

7 A. Photoionization detector.

8 **Q. And was -- were both used or was one**
9 **used?**

10 A. Organic vapor analysis.
11 Photoionization detector is one means of conducting
12 organic vapor analysis.

13 **Q. Okay. And these numbers, what are the**
14 **units of measurement?**

15 A. PID is typically in milligrams per
16 kilogram, but it's an overall summation of all
17 organic vapors analyzed. It doesn't differentiate
18 between the different chemical components of that
19 or that organic vapor benzene, toluene,
20 ethylbenzene. It's a summarization of everything.

21 So it's just an indicator of
22 the total organic vapor in a sample. The vapors
23 are pulled through the photoionization detector
24 using a vacuum. The vapor stream is exposed to

1 a light source with a specific ionization charge
2 and different organic vapors exhibit different
3 ionization potentials.

4 So the vapors within the range
5 of typical BTEX show up as an organic vapor
6 concentration based on their ionization response
7 and PID.

8 **Q. Okay. So to people like me, what**
9 **do these numbers mean?**

10 A. It means there are petroleum products
11 or some other source of organic vapor typically
12 associated with organic chemicals in the subsurface
13 at those depths.

14 **Q. Okay. So I guess it could be -- I**
15 **mean, this is a screening tool?**

16 A. Exactly.

17 **Q. I mean, you're not going to analyze**
18 **it to the -- it's not lab work clearly?**

19 A. No.

20 **Q. Okay.**

21 A. It would be considered field
22 screening.

23 **Q. Okay. Now, this ASTM CL, what does**
24 **that mean?**

1 A. American Society for Testing Materials
2 classification for the soil type encountered and its
3 textural classification. ML would be a mean silty
4 clay. SP would be a poorly sorted sand. CL would
5 be a lean clay.

6 **Q. Okay. And then you've got -- there**
7 **are dotted lines across that. What are those?**

8 A. Those are just reference lines for
9 the soil core samples that we extract every four
10 feet.

11 **Q. Okay.**

12 A. When we pull a -- when we advance
13 a soil boring, we pull a core sample from that
14 soil boring using thin wall tube sampling. That
15 core that extends for a length of four feet then
16 is evaluated by the geologist or environmental
17 scientist on the site classified using visual/manual
18 classification methodology, documented on the
19 form, field screened for visual and olfactory
20 evidence of petroleum contamination or -- and/or
21 PID response. Once again, it is documented on
22 the log.

23 **Q. Okay. Describe this -- how do you**
24 **do this boring? I mean, what piece of equipment**

1 **or what -- just --**

2 A. With a -- with a drill rig. Like
3 I said, we use thin wall tube samples, which
4 are acetate tubes that are pushed below the
5 ground surface.

6 As the tube is advanced through
7 the ground surface -- once again, like I said,
8 they're thin walls. So it's like a cutting edge
9 around the parameter of this tube. It cuts
10 through the soil and the core.

11 **Q. All right. So that it spins on its**
12 **way down?**

13 A. No. It's in its case. We --

14 **Q. Driven?**

15 A. Yes. We -- to get a soil sampling,
16 we would have done a direct push. So it would
17 have just been a tube -- a thin wall tube that was
18 pushed through the soil column.

19 **Q. Okay. For the --**

20 A. That way -- the intent of the thin
21 wall tube sampling is to produce an undisturbed
22 sample that yields more representative information
23 about what's occurring in the subsurface.

24 **Q. Now, earlier I think you described**

1 **that you do this four feet at a time, right?**

2 A. There are variations, but our
3 particular equipment uses a four-foot tube.

4 **Q. Okay. So then you push this thing**
5 **down in the ground four feet and you pull it up**
6 **and then I assume that it's a tube full of --**

7 A. Soil.

8 **Q. And what's it look like? Just --**

9 A. Well, apparently in this case --

10 **Q. No, I mean, what's it look like? I**
11 **mean, is it -- I assume it's just a round plug? I**
12 **mean --**

13 A. It's like a round cylindrical
14 four-foot long chunk of dirt.

15 **Q. Okay. And what do you do with it? I**
16 **mean, break --**

17 A. Visually --

18 **Q. -- it up?**

19 A. Yes. Our normal procedure is we
20 would -- we would first look at the exterior --
21 the core and see if we could note any distinct
22 contrast that would indicate bedding plains or
23 transition between soil types and then we would
24 start looking at core samples in those areas

1 and try to distinguish where specific gradational
2 transitions occur, breaks between different soil
3 types, potential migratory pathways based on soil
4 textural classifications.

5 When we take those cores,
6 we would segregate a portion of that core sample,
7 screen it visually, you know, olfactory, for the
8 evidence of petroleum contamination and/or with
9 a PID meter and then document those results on
10 the boring log.

11 **Q. Okay. So that's -- you do our first**
12 **four feet and then you push it down and then I guess**
13 **you just add another pipe to the end and --**

14 A. Exactly.

15 **Q. -- push it another four feet?**

16 A. Right.

17 **Q. And now you've got a new four-foot --**

18 A. Right.

19 **Q. -- cylindrical plug of the dirt that**
20 **was at those levels?**

21 A. Right.

22 **Q. Okay. I noticed that there are**
23 **positive PID reported readings down to 12 feet?**

24 A. Correct.

1 **Q. Okay. And then zero below that down**
2 **to 16?**

3 A. Correct.

4 **Q. All right. So what's the significance**
5 **of that?**

6 A. That's an indication there are
7 no petroleum products or organic chemicals that
8 produce organic vapors are present in the
9 subsurface at those particular depths if there
10 is a zero PID response.

11 Like I said, it's an indicator
12 that certain soil conditions would not necessarily
13 result in conclusive evidence of lack of any
14 organic chemicals at that depth just based on
15 field screening of PID.

16 There could, in fact, be low
17 level concentrations still that just aren't
18 volatilized quickly enough because of soil matrix
19 to be recorded in the PID meter.

20 **Q. Okay. Thank you. I see a notation**
21 **of very high moisture --**

22 A. Correct.

23 **Q. -- at 11 feet?**

24 A. Uh-huh.

1 **Q. What -- I mean, what would that look**
2 **like to the normal observer?**

3 A. Water droplets.

4 **Q. Okay.**

5 A. If you look at your shower door
6 after you take a shower, you will see droplets
7 of water.

8 **Q. Okay. I mean, does that -- I mean,**
9 **can you see that while that tube of dirt is laying**
10 **there where you break it up or how do you look at**
11 **it?**

12 A. In certain cases based on soil
13 texture, classification, and diagnostic properties
14 of that soil, yes. Sometimes you can see it. In
15 this case, we noted Roxanna silts. Silts have an
16 extremely high dilatancy, which is a measure of
17 how rapidly soil moisture is expressed at the
18 surface of a sample using the visual manual
19 classification process for ASTM.

20 Other soils, clays, for instance,
21 may have the same moisture content, but don't
22 readily -- don't result in readily observing water
23 or moisture in that particular core sample because
24 of the soil texture of classifications or diagnostic

1 properties of that soil.

2 Q. Okay. I'm going to read you a couple
3 of definitions from the Pollution Control Board
4 regulations and then ask you to expand.

5 This is from Section 742.200.
6 This is the definition section in the so-called
7 TACO, T-A-C-O, all caps, regulations. "Capillary
8 fringe" means the zone above the water table in
9 which water is held by surface tension. Water in
10 the capillary fringe is under a pressure less than
11 atmospheric.

12 Then further down in the
13 definitional section, "Water table" means the
14 top water surface of an unconfined aquifer at
15 atmospheric pressure.

16 Okay. What does all of
17 that mean to this discussion about where it's
18 noted that groundwater --

19 A. Capillaries --

20 Q. -- the depth while drilling was
21 11 feet?

22 A. That was the point where the geologist
23 was actually able to visually observe moisture in
24 a core sample or groundwater in a core sample.

1 The groundwater above that
2 depth within the capillary fringe may not have
3 been readily observable to the geologist because
4 of the soil type. There's gradational contact
5 there. Without getting into a lot of detail
6 about geology and glacial depositional environments,
7 we're not looking at things that have sharp
8 contrast. We're talking about glacial timeframes
9 of thousands of years.

10 So the difference between one
11 specific soil type, a till, for instance, versus
12 a windblown loess deposit is not always perfectly
13 abrupt. It's -- the till is exposed to surface
14 conditions, rainfall, weathering, grass growth,
15 root zone penetrations, overlying silts that have
16 been deposited on top of that over time, comingle
17 with those and it creates a gradational transition
18 between soil types.

19 **Q. All right. Now, this -- where it**
20 **indicates the depth while drilling 11 feet, is that**
21 **a determination that that's the water table?**

22 A. Absolutely not. There's no observable
23 degree of saturation, moisture or groundwater from a
24 soil boring or a core sample that could be uniquely

1 associated with the groundwater table, which is a
2 pressure surface defined as the location where the
3 pore water pressure is equal to atmospheric pressure
4 and can only be observed by water table in a
5 monitoring well at any particular location and time.
6 It's dynamic. It changes daily based on differences
7 in atmospheric pressure.

8 **Q. Okay. Hold on. Let me interrupt.**

9 **So if you did want to determine**
10 **what the water table was, and for the sake of this**
11 **question, we'll assume you are talking about any**
12 **one day, one time, at a particular time, what would**
13 **you need to do?**

14 **A. You would have to have a well screened**
15 **in that aquifer and measure the depth of water**
16 **within that well for that one specific location in**
17 **that point in time.**

18 **Q. So you wouldn't be able to determine**
19 **with any certainty or a given date, once again**
20 **because I know it can change, be able to determine**
21 **where the water table was until you had a monitoring**
22 **well in a particular spot?**

23 **A. Absolutely correct.**

24 **Q. Okay. Thank you. On Page 27, I mean,**

1 **we've covered a lot of the types of information**
2 **here --**

3 A. Other than the other data we've
4 covered in the other boring log lists, the OVA
5 PID readings from this boring indicated more
6 significant levels of contamination, which extended
7 to a much greater depth terminating below our depth
8 of investigation presumably since we still have
9 large OVA PID response at the end of our boring.

10 Q. Okay. And there's also a difference
11 here that the groundwater data in the lower
12 left-hand portion of the form, the depth while
13 drilling is ten feet, and then it appears at the
14 ten-foot level of boring, the -- it's-- there's
15 a description that says very soft and wet?

16 A. Correct.

17 Q. Are these objective assessments or
18 subjective? I mean, is there a standard for how
19 much water is there as how you describe it? I
20 mean, do you have a -- do you have a set number
21 of descriptors that you geologists can use?

22 A. Generally speaking, yes. The ASTM
23 visual manual classification process outlines how
24 to describe soils in a soil core.

1 **Q. Okay.**

2 A. And it uses those terms such as
3 soft, hard, wet, dry, moist, plastic, non-plastic.

4 **Q. Okay. So hopefully you get some**
5 **consistency from one geologist to the next?**

6 A. Sure. And some of those diagnostic
7 characteristics are more readily observable in
8 the field than others. So you may not have every
9 single classification noted on a soil boring log.
10 You will have the ones that are readily discernible.

11 **Q. Okay. On both of these forms, at**
12 **the bottom, it says, "geologist BH." Who is that?**

13 A. That would be Brandon Hargrave.

14 **Q. Okay. And he worked for CSD at that**
15 **time?**

16 A. Yes.

17 **Q. Okay. Now, in the administrative**
18 **record, would you turn to Page 354? At the upper**
19 **part, there is an asterisk marked comment with**
20 **a parenthetical below it. Would you read that**
21 **parenthetical?**

22 A. "This approval came from 45-day
23 report certification for Stage 1 activities.
24 Amended 45-day report followed."

1 **Q. And what does that document? At**
2 **least what do you believe it to be?**

3 MR. SIEVERS: Objection, calls
4 for speculation.

5 BY THE WITNESS:

6 A. Amended 45-day report.

7 MR. INGERSOLL: Hold on, hold
8 on.

9 HEARING OFFICER WEBB: Okay.

10 MR. INGERSOLL: If there's an
11 objection, wait until the hearing officer
12 rules.

13 THE WITNESS: I tend to speak
14 quickly, yes.

15 MR. INGERSOLL: As do we all.
16 It's a common thing.

17 HEARING OFFICER WEBB: Well,
18 go ahead.

19 MR. INGERSOLL: Go ahead.

20 BY THE WITNESS:

21 A. Once again, as I mentioned, there's a
22 statutory requirement for a 45-day report submittal
23 as part of early action. An amended 45-day --

24

1 BY MR. INGERSOLL:

2 Q. No, no, no. I'm sorry. The document
3 that you are reading from here, what is that?

4 A. Oh, oh. I'm sorry. Leaking
5 underground storage tank technical review notes.

6 Q. That was placed in the record and
7 reportedly drafted the by Karl Kaiser; is that
8 correct?

9 A. Yes.

10 MR. INGERSOLL: I would move for
11 the admission of Petitioner's Exhibit
12 No. 2.

13 HEARING OFFICER WEBB: Is there
14 any objection?

15 MR. SIEVERS: No objection.

16 HEARING OFFICER WEBB: Okay. Then
17 Petitioner's Exhibit No. 2 is admitted.

18 (Petitioner's Exhibit No. 2
19 was admitted into evidence.)

20 MR. INGERSOLL: We will mark this as
21 Petitioner's Exhibit No. 3.

22 (Document marked as Petitioner's
23 Exhibit No. 3 for identification,
24 9/10/14.)

1 BY MR. INGERSOLL:

2 Q. Mr. Truesdale, I'm showing you a
3 document we have marked as Petitioner's Exhibit
4 No. 3.

5 (Document tendered
6 to the witness.)

7 BY THE WITNESS:

8 A. Okay.

9 BY MR. INGERSOLL:

10 Q. Do you recognize that document?

11 A. I do.

12 Q. What is it?

13 A. The amended 45-day report that was
14 submitted to document early action activities
15 conducted during the early action extension period.

16 Q. And this was submitted to the
17 Agency --

18 A. Correct.

19 Q. -- from CSD?

20 A. Correct.

21 Q. On behalf of Piasa?

22 A. Correct.

23 MR. INGERSOLL: Before we walk
24 through the document -- do you have

1 pictures?

2 MS. PALUMBO: Yes.

3 (Document marked as Petitioner's
4 Exhibit No. 4 for identification,
5 9/10/14.)

6 BY MR. INGERSOLL:

7 Q. I'm showing you what we have marked
8 as Petitioner's Exhibit No. 4. Do you recognize
9 those pages?

10 (Document tendered
11 to the witness.)

12 BY THE WITNESS:

13 A. Yes.

14 BY MR. INGERSOLL:

15 Q. And it looks like there are one,
16 two, three, four, five, six, seven, eight, nine,
17 ten photos on five pages?

18 A. Right.

19 Q. And I direct your attention to the
20 Petitioner's Exhibit No. 3 at Pages 50 to 54.
21 Are these color photos the same as the imaged
22 photos that are found in the copies that we
23 have?

24 A. They appear to be.

1 Q. All right. So what we have is
2 just a better representation of what was in
3 the Agency's file?

4 A. Correct.

5 Q. Okay. Now, going through the
6 amended 45-day report, first of all, I assume
7 you had a certification in this one as well?

8 A. I did. That would be Page 6 of
9 56.

10 Q. Okay. Now, similar to what we
11 did with the 45-day report, which was Exhibit
12 No. 2, could you flip through that document
13 and direct our attention to places where
14 groundwater is mentioned?

15 A. Several of the citations specified
16 are referred in the 45-day report. So it's the
17 same reference locations that I have discussed
18 before would apply.

19 Then additionally in the
20 amended 45-day report, I see no direct reference
21 to any groundwater observed during the early
22 action activities.

23 Q. There weren't any boring logs in
24 this one, were there?

1 A. No.

2 **Q. Okay.**

3 A. So...

4 **Q. Could you look at Page 15 of 56?**

5 A. Okay.

6 **Q. What does that represent?**

7 A. That is the locations of UST removal
8 early action excavation wall and floor samples.

9 **Q. Okay. So these are an attempt at**
10 **three dimensional descriptions of the pits on the**
11 **previous page?**

12 A. Yes.

13 **Q. And you have a bunch of notations,**
14 **TP-1 and so forth. What do those mean?**

15 A. Those would be the sample identifiers
16 used for the actual samples collected and submitted
17 to the laboratory for chemical analysis at the
18 locations identified in the figure.

19 **Q. Okay. Now, directing your attention**
20 **to, say, for instance, TP-1, TP-2, TP-3, TP-4, TP-9**
21 **in Pit 2, what are those? Where are they in**
22 **relationship to this excavation?**

23 MR. SIEVERS: Objection,
24 compound.

1 HEARING OFFICER WEBB: I'm sorry.

2 I didn't hear you.

3 MR. SIEVERS: Objection,
4 compound.

5 HEARING OFFICER WEBB: If you
6 could --

7 MR. INGERSOLL: I could rephrase
8 it to make it a little more understandable.

9 HEARING OFFICER WEBB: Yes.

10 MR. INGERSOLL: I disagree that
11 it's compound, but I will try to make it
12 clearer.

13 BY MR. INGERSOLL:

14 **Q. Okay. Look at the drawing for Pit 2.**
15 **Could you tell us where in that pit the samples were**
16 **taken from this drawing?**

17 A. Yes.

18 **Q. Please describe.**

19 A. They were color coded in the original.
20 So it would be easier to distinguish, but in the
21 copy, I can still -- with this black and white, I
22 can still make it out. TP-1 and TP-2 would have
23 been floor samples. TP-5, 6, 9 and 10 would have
24 been side wall samples. TP-3, 4, 7 and 8 would

1 have been end wall sample locations.

2 **Q. How about Pit 1?**

3 A. Floor samples would have been TP-21
4 and 22. Side wall samples would have been TP-11,
5 12, 13, 14, 19 and 20. End wall samples would have
6 been TP-15, 16, 17 and 18.

7 **Q. Okay. Now, is there any significance**
8 **to the fact that floor samples were taken in these**
9 **excavations?**

10 A. We collected floor samples so soils
11 at the bottom of the UST excavation were accessible
12 for sampling at 13 feet. That would indicate to me
13 based on our standard procedures for sampling that
14 there was no water at the bottom of the excavation.

15 Conditions were dry, accessible
16 for sampling and representative of soil conditions
17 at the bottom of the UST excavation at a depth of
18 13 feet.

19 **Q. Looking at the photocopies that we**
20 **have in what's been marked as Petitioner's Exhibit**
21 **No. 4, and then I believe you testified before**
22 **that those correlate with the black and white**
23 **photos -- photocopies that we see on Pages 50 to**
24 **54, would you look at -- well, look at all of**

1 **them, I guess, and then do any of them show any**
2 **water in that excavation pit?**

3 A. Not that I can see.

4 (Document marked as Petitioner's
5 Exhibit No. 5 for identification,
6 9/10/14.)

7 BY MR. INGERSOLL:

8 **Q. I hand you what we have marked as**
9 **Petitioner's Exhibit No. 5. Do you recognize that**
10 **document?**

11 (Document tendered
12 to the witness.)

13 BY THE WITNESS:

14 A. I do.

15 BY MR. INGERSOLL:

16 **Q. Do you know where -- you provided this**
17 **to me, right?**

18 A. I did.

19 **Q. And what was its source?**

20 A. It was an additional photograph that
21 was in our file from Brandon Hargrave's photo
22 documentation of early action activity -- activities
23 that was not selected for inclusion in the amended
24 45-day report.

1 It looks like it is the same
2 excavation as the photograph on the fourth page
3 of Exhibit No. 5 from a different orientation --
4 the top of the fourth page of Exhibit No. 4.

5 **Q. Okay.**

6 A. Since it hasn't been scanned numerous
7 times, it's a little more clear.

8 **Q. All right. Okay. Flip back, please,**
9 **to the second page of the photos in Exhibit No. 4**
10 **and compare this Exhibit No. 5 photo. It appears to**
11 **be the same truck, doesn't it?**

12 A. Yes. Once again, it's the same or
13 excavation, just a different orientation. We
14 probably took pictures from multiple orientations
15 and selected a couple of representative ones for
16 inclusion in the documentation.

17 **Q. And Petitioner's Exhibit No. 5 came**
18 **from CSD files; is that correct?**

19 A. Correct.

20 **Q. Once again, would you look at Page 354**
21 **of the record?**

22 A. Yes.

23 **Q. Just to cut to the chase here, what**
24 **you read before, it says, "amended 45-day report**

1 followed"?

2 A. Correct.

3 Q. Is the amended 45-day report that
4 Mr. Kaiser referred to in his reviewer notes the
5 same as this document?

6 A. Yes.

7 MR. INGERSOLL: Okay. Thank you.
8 I would move for the admission of exhibits
9 marked as Petitioner's Exhibit Nos. 3, 4
10 and 5.

11 MR. SIEVERS: No objection as
12 to Exhibit No. 3 and no objection as to
13 Exhibit No. 4 and subject to cross on
14 Exhibit No. 5.

15 HEARING OFFICER WEBB: Okay.
16 Then I will go ahead and admit these
17 exhibits subject to cross on Exhibit
18 No. 5.

19 I will admit Exhibits 3
20 and 4 right now and we will address
21 Exhibit No. 5 after you have had a
22 chance to do your cross.

23 MR. SIEVERS: Thank you.

24

1 (Petitioner Exhibit Nos. 3 and 4
2 were admitted into evidence.)

3 BY MR. INGERSOLL:

4 Q. I have one last question about this
5 document.

6 So you can reasonably
7 conclude from this -- the information included in
8 this document that at least on that day, groundwater
9 was lower than 13 feet deep?

10 MR. SIEVERS: I didn't mean to
11 cut you off. Objection as to leading.

12 HEARING OFFICER WEBB: Would
13 you like to rephrase the question? Is
14 there any way to --

15 MR. INGERSOLL: I don't -- well,
16 first of all, I don't think that it's
17 an objectionable type leading question
18 when we're just trying to fill in a
19 couple of blanks, but I will try to
20 rephrase it.

21 HEARING OFFICER WEBB: All right.

22 Thank you.

23 BY MR. INGERSOLL:

24 Q. Can you draw any conclusions as to

1 the depth to groundwater -- and once again, I'm
2 not talking about the water table -- but the
3 depth to groundwater on the day these pictures
4 were taken and the day the samples were taken?

5 A. No. I can conclude that the
6 groundwater table was below 13 feet because
7 there is no evidence of free flow into the open
8 excavation.

9 Q. Okay.

10 A. I wouldn't be able to testify
11 on the groundwater conditions without visually
12 observing the actual soils that are depicted.

13 Q. Okay. Thank you. I will direct
14 your attention back to the administrative record.

15 A. Okay .

16 Q. Once again, we're going to --
17 we're trying to look for information that may
18 relate to the depth to groundwater at various
19 times that are produced in here and I believe
20 the first document is a Stage 3 Site Investigation
21 Plan and Budget that appears to have been received
22 by the Bureau of Land on January 11, 2012. That
23 starts at Page 3 of the record. Page 9 appears to
24 have some groundwater depth and boring information.

1 A. Uh-huh.

2 Q. What does that mean, groundwater depth
3 and boring?

4 A. That would have been the location
5 in each boring where groundwater was observed
6 physically by the geologist evaluating the soil
7 conditions.

8 Q. Okay. Does that define where the
9 water table is?

10 A. Absolutely not.

11 Q. Okay. Now, there is some handwritten
12 notations in the margin here that says "Average GW
13 depth 8.8 during drilling." Is there any indication
14 in any of this material who made those markings?

15 A. No.

16 Q. Look at Page 354 of the -- wait a
17 minute -- 354 of the record again and there is a
18 reference in there to groundwater was approximately
19 8.8 feet.

20 A. I see that.

21 Q. Okay. Let's see. Once again,
22 we go through -- I mean, it's the same thing
23 on Pages 10 and 11. We've got groundwater
24 depth and boring. I guess your testimony will

1 **consistently be that that's not an indicator**
2 **of the groundwater table.**

3 MR. SIEVERS: Objection, leading.

4 HEARING OFFICER WEBB: I mean,
5 unless you're asking for clarification,
6 I'll sustain that.

7 BY MR. INGERSOLL:

8 Q. As we look at all of these, Table 1,
9 boring -- groundwater depth and boring, do any of
10 those depths prove the level of the water table?

11 A. No observation of degree of
12 saturation, moisture or groundwater in any soil
13 boring or core sample can be uniquely related to
14 the groundwater table.

15 Q. Okay. Then look at Page 12 and
16 there is a Table 3.0.

17 A. Correct.

18 Q. And groundwater depth there is 3.6
19 to 5.65. Is seems to be considerably different
20 than some of the numbers we have been looking at
21 before.

22 A. Correct.

23 Q. Now, that's in a monitoring well. So
24 was that the water table on that day?

1 A. Yes.

2 Q. Okay.

3 A. Or the phreatic surfaces.

4 Q. What now?

5 A. The phreatic surfaces, I prefer to
6 refer to it, which is --

7 Q. Okay. Would you tell us --

8 A. -- pressure surface where --

9 Q. Tell the rest of us non-engineers and
10 non-geologists what that means?

11 A. Okay. It is the pressure surface
12 where poor water pressure is equal to atmospheric
13 pressure.

14 Q. Okay. And the term you used is what?

15 A. Phreatic surface.

16 Q. Could you spell it?

17 A. P-A- -- no.

18 Q. Good enough.

19 A. Spelling is definitely not one of my
20 strong suits.

21 Q. Okay then. Please turn to Page 14.

22 Now, there you've got a bunch of different
23 elevations. You know, we'll note here that in
24 parenthesis,

1 **it's 12/14/06, which is the same date as was on**
2 **Table 3.0 and this is Table 6.0; is that correct?**

3 A. No. That appears to be a
4 typographical error. The narrative below states
5 that the sampling was conducted -- actually, the
6 narrative above states that the sampling and
7 groundwater gauging was performed on November 13,
8 2007.

9 **Q. Okay. I guess --**

10 A. That's the same date noted on the
11 previous table. We probably copied and pasted
12 it to start the new table and then neglected to
13 update the date in the title.

14 **Q. Okay. So these numbers are quite**
15 **a bit different. Could you comment on that?**

16 A. I can.

17 MR. SIEVERS: Objection. I
18 don't know the relevancy of the Stage 2
19 site investigation data. This is a
20 Stage 1 issue, the entire case.

21 MR. INGERSOLL: I would suggest
22 that the elevation of groundwater and
23 water is or is not -- the groundwater
24 table is one of the key issues here

1 in this matter.

2 HEARING OFFICER WEBB: Overruled.

3 BY THE WITNESS:

4 A. That is the elevation measured in
5 the groundwater monitoring wells penetrating the
6 aquifer identified at the site on the two different
7 dates and illustrates that the water table is a
8 dynamic environmental condition that varies
9 spatially and temporal.

10 BY MR. INGERSOLL:

11 Q. Okay. All right. I will skip over
12 these lab reports.

13 Could you refer to Page 143 and
14 following? It's Appendix B, soil boring logs.

15 A. Okay.

16 Q. Is Appendix B where the soil boring
17 logs are supposed to be put in all of these reports?
18 Never mind. It just seems consistent.

19 A. I would say probably.

20 Q. Never mind. Never mind.

21 MR. SIEVERS: I'm going to
22 object to further reference to the
23 Stage 3 report at all. CSD actually
24 asked the Agency to suspend its review

1 of this report. That's in the record.
2 So this has really no bearing on this
3 matter at all.

4 MR. INGERSOLL: Except that
5 the Agency put it in the record so
6 apparently it was relied upon.

7 MR. SIEVERS: No. That's not
8 the requirement under the record -- the
9 requirements under the record. It's not
10 simply that it's relied upon. There are
11 several things that are mentioned in
12 there. Okay?

13 MR. INGERSOLL: That's true.

14 HEARING OFFICER WEBB: Well,
15 I'm going to go ahead and allow your
16 direct and then you can cross-examine
17 him on that issue further.

18 MR. INGERSOLL: Thank you.

19 Going back to Page 9 of
20 the record, please, somebody wrote that
21 the average depth -- groundwater depth
22 is 8.8. That same number appears in
23 reviewer notes on Page 354.

24 So it would seem that

1 the same report that we're looking at
2 for our testimony with Mr. Truesdale at
3 this time contained that 8.8 information
4 that was apparently used by someone at
5 the Agency.

6 MR. SIEVERS: Objection. Is
7 that a question or is that counsel now
8 testifying?

9 MR. INGERSOLL: I'm not trying
10 to testify. I'm trying to rebut your --
11 the argument behind your objection.

12 MR. SIEVERS: I move to strike.

13 HEARING OFFICER WEBB: Well, the
14 objection is overruled.

15 MR. INGERSOLL: I'm just trying
16 to --

17 HEARING OFFICER WEBB: You don't
18 need to rebut.

19 MR. INGERSOLL: I want to tamp it
20 down for the rest of this discussion.

21 HEARING OFFICER WEBB: Okay.

22 MR. INGERSOLL: All righty then.

23 BY MR. INGERSOLL:

24 Q. **Let's go back to the boring logs**

1 that start at Page 144, the ones on 144 and 145.

2 Are those the same ones from the 45-day report?

3 A. Yes.

4 Q. Okay. We've already talked about them
5 so let's move on.

6 All right. The ones that start
7 at 146, there is a dashed line across Page 146.
8 There is a dashed line at -- it looks likes at nine
9 and a half feet. What does that indicate?

10 A. That is an indication of stratographic
11 transition between the overlying Peoria loess and
12 the underlying Roxanna silt.

13 Q. Okay. So that's not water --
14 immediate water?

15 A. No. It's where a change in soil,
16 textural classification and diagnostic properties
17 of the soil types encountered were observed.

18 Q. Okay. So the reference to depth
19 to groundwater was hit. It's down here in the
20 lower left-hand corner again, it's not this line?

21 A. No, no.

22 Q. Okay.

23 A. It's just -- there's a correlation
24 there because once again, that consistent level

1 where there's a transitional stratigraphic change
2 between Peoria loess and Roxanna silt, it's a
3 location where the silt component would be most
4 prominent and as a result, groundwater conditions
5 at that particular interface would be more readily
6 observable by the person logging the boring --

7 **Q. Okay.**

8 **A. -- as a result of the dilatancy**
9 **characteristics we discussed.**

10 **Q. Okay. Now, when -- looking from**
11 **Pages 146 throughout 157, we will try to -- I mean,**
12 **the terms on these are similar. So we're not going**
13 **to go through every page, but here, we're in the**
14 **OVA/PID column. There are no numbers. It's more**
15 **of a descriptor. Would you tell us what was going**
16 **on there?**

17 **A. That was visual olfactory screening**
18 **versus PID screening.**

19 **Q. Okay. And who would have done that?**

20 **A. Brandon Hargrave.**

21 **Q. Okay. You certified all of these**
22 **reports, correct, as overseeing?**

23 **A. I believe.**

24 **Q. Okay. I guess, let's put it this way,**

1 I believe from some of these earlier things, you
2 have certified work done by Brandon Hargrave before?

3 A. Brandon Hargrave was a staff geologist
4 under my professional review as a professional
5 geologist.

6 Q. And so he was qualified and capable
7 of making these kinds of observations as it relates
8 to organic material?

9 A. Yes.

10 Q. Particularly, the potential existence
11 of organic material?

12 A. Yes.

13 Q. Okay. So we won't talk about all the
14 rest of them if they are the same.

15 Is that typical if you don't -- I
16 mean, what happens if you don't have the PID meter
17 with you?

18 A. Yes, yes. I mean, a lot of times,
19 we would note even with PID response that there
20 was a discernible odor or visible occurrence of
21 free product.

22 Q. Okay. And then starting on Page 158,
23 then we have a bunch of numbers again. I assume
24 that's the PID meter?

1 A. Correct.

2 Q. Okay.

3 A. Or like if he would have done a field
4 screening with visual olfactory criteria for organic
5 vapor analysis versus PID reading, like I said,
6 there was probably a problem with the PID meter. It
7 may have been out of calibration. It may have been
8 dead. It may not have been --

9 Q. No. I mean, I wasn't trying to
10 suggest what was going on. I just noticed that
11 it was different.

12 Okay. And I believe you have
13 already testified what those numbers mean at various
14 depths.

15 Now, please turn to Pages 165
16 through 167. No, 166. Just 165 through 166. All
17 right. This boring only went down to eight feet
18 on Page 165, correct?

19 A. Yes.

20 Q. And 12 feet on the next one?

21 A. Yes.

22 Q. Okay. But then on the next -- on
23 Page 167, it also stopped at 12 feet. Can you
24 comment as to why the boring stopped at these --

1 **on these three pages? If you don't know, that's**
2 **fine too.**

3 A. No. I mean, I would -- I probably
4 directed them to stop from monitor well installation
5 at that depth installing the 3.6 high water level
6 elevation that we noted previously so that our
7 screen interval would intercept that 3.6 elevation
8 because that's a criteria that we've had issues with
9 the Agency on in the past.

10 **Q. Okay.**

11 A. The screen during water table
12 fluctuations, if this high water level falls outside
13 of the screen interval, we've had problems with the
14 Agency suggesting that they were installed
15 improperly.

16 **Q. Okay. Could you turn to Page 232?**

17 A. Okay.

18 **Q. What is that document? Do you**
19 **recognize it?**

20 A. That would be the Stage 2 site
21 investigation plan and budget.

22 **Q. And this is the -- this is the**
23 **document that resulted in the Agency's April 8,**
24 **2014, decision letter; is that right?**

1 A. Correct.

2 Q. Would you look at Pages 240 and 241?
3 I haven't done a real perfect comparison, but it
4 looks like we've seen these numbers before, is that
5 right, in one of these earlier things?

6 MR. SIEVERS: Objection,
7 leading.

8 HEARING OFFICER WEBB: I'll
9 allow it. Go ahead.

10 BY MR. INGERSOLL:

11 Q. Are these tables the same or similar
12 to the ones you've already testified to?

13 A. Yes.

14 Q. All right. Then we can skip them.

15 A. During site investigations -- during
16 all LUST investigations, we build on successive
17 pieces of data. So previous investigation results
18 are always built upon and included on subsequent
19 submissions.

20 Q. Okay. It looks like the boring logs
21 in this report begin on Page 320. Would you look
22 those over, 320 to, I think, 331?

23 A. Yes.

24 Q. All right. So can we -- can we

1 **assume your testimony -- I mean, you've testified**
2 **as to what all of these terms mean?**

3 A. Correct.

4 **Q. And I assume that that testimony**
5 **would be consistent for these boring logs as well?**

6 A. Correct.

7 MR. SIEVERS: Objection,
8 leading.

9 HEARING OFFICER WEBB: I'll
10 allow it just to expedite this direct
11 examination.

12 MR. INGERSOLL: Thank you.

13 BY MR. INGERSOLL:

14 **Q. Okay. Go ahead.**

15 A. Correct.

16 **Q. Now, is soil sampling for monitoring**
17 **well development -- are the requirements for soil**
18 **sampling and water well development -- monitoring**
19 **well development -- I'm sorry. Let me start over.**

20 For the development of monitoring
21 **wells, is the soil sampling requirement different**
22 **than for soil borings to soil sampling?**

23 A. Yes.

24 **Q. Okay. I'm going to read from the**

1 rules, 734.315(a)(2)(C), "One soil sample must be
2 collected from each five-foot interval of each
3 monitoring well installation boring drill pursuant
4 to Subsection (a)(2)(B) of this section. Each
5 sample must be collected from the location within
6 the five-foot interval that is the most contaminated
7 as a result of the release. If an area of
8 contamination cannot be identified within a
9 five-foot interval, the sample must be collected
10 from the center of the five-foot interval. All
11 soil samples exhibited signs of contamination
12 must be analyzed for the applicable indicator
13 contaminants. For borings that do not exhibit
14 any signs of soil contamination, samples from
15 the following intervals must be analyzed for
16 applicable indicator contaminants, provided that
17 the samples must not be analyzed if other soil
18 sampling conducted to date indicates that soil
19 contamination does not extend to the location
20 of the monitoring well installation boring."

21 Okay. What's that mean to a
22 guy in the field? What do you do different?

23 A. You collect samples based on the
24 maximum PID reading or the highest evidence of

1 visual and olfactory organic vapor occurrence
2 for every five-foot interval through the extent
3 of contamination.

4 **Q. Does that water table question come**
5 **into play for that?**

6 A. No.

7 **Q. Okay. Now, in your opinion, is the**
8 **Illinois EPA correctly using the term "water table"**
9 **as it has been applied in this matter?**

10 A. No.

11 MR. SIEVERS: Objection,
12 vague.

13 HEARING OFFICER WEBB: It
14 is a little vague. I'll sustain.

15 BY MR. INGERSOLL:

16 **Q. Do you have an opinion as to the**
17 **Illinois EPA's interpretation of water table?**

18 A. (Witness nodded.)

19 **Q. Please describe it. You just nodded**
20 **your head.**

21 A. I know I've done it a couple of times.
22 No observation of degree of saturation, moisture or
23 groundwater in a soil boring or core sample can be
24 uniquely related to the water table.

1 **Q. Okay.**

2 A. The only way you can determine the
3 water table is by measurement of the depth of the
4 height which a column of water will rise in a
5 monitoring well screened in the aquifer, which
6 is representative of the pressure surface where
7 the pore water pressure of that unit is equal to
8 atmospheric pressure and that varies.

9 **Q. Are wells present when you start a**
10 **Stage 1 investigation?**

11 A. No.

12 **Q. Okay. Now, forget for a second the**
13 **water table issue and the level of groundwater**
14 **issue.**

15 **In your opinion, were there**
16 **observations noted in the field on this project**
17 **showing site-specific conditions warranting**
18 **drilling through the water table?**

19 A. Yes.

20 **Q. Could you give us examples?**

21 A. Yes.

22 **Q. Okay. Please.**

23 A. Normal contaminant fate and transport
24 processes for any fine grain soil would almost

1 always necessitate drilling below the water table
2 and evaluation of the distribution of soil phase
3 contaminants absorbed to the solids within
4 the water bearing unit.

5 **Q. Okay. Now, the guy out in the field,**
6 **how does he make this call? What's he looking at?**

7 A. Field screening and PID response
8 combined with textural classification of the soils
9 that are impacted according to ASTM classification.

10 **Q. And were those kind of observations**
11 **present in the record before us?**

12 A. Yes.

13 MR. INGERSOLL: Okay. Thank you.

14 I have nothing further.

15 HEARING OFFICER WEBB: Okay.

16 Mr. Sievers?

17 MR. SIEVERS: Sure.

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

19 by Mr. Sievers

20 **Q. Mr. Truesdale, the boring logs that**
21 **we've looked at today, in the lower left-hand corner**
22 **of each of those forms, there's a little box that**
23 **says groundwater data?**

24 A. Correct.

1 **Q. And then there are two references,**
2 **depth while drilling and depth after drilling. In**
3 **lay terms, can you explain what the difference is?**

4 A. Depth while drilling would have been
5 an observation once again made by the geologist
6 logging the boring, the occurrence of the visual
7 water in a particular core sample.

8 The depth after drilling,
9 if we measured the height of the column of water
10 in that soil boring prior to installation of
11 monitoring well, he may record that as well there,
12 but we don't typically do that. We rely on the
13 monitor wells since that is the only means of
14 determining the water table.

15 The soil boring logs give
16 us a diagnostic criteria to establish that
17 groundwater exists. The only way to establish
18 what the water table is is through the measurement
19 of monitoring wells.

20 **Q. So you're saying that had the**
21 **measurement been taken of a column of water coming**
22 **up into the boring after the boring, that wouldn't**
23 **be sufficient to determine the groundwater table?**

24 A. Not typically because of disruption

1 to the soil. In that direct push boring, there's
2 a smearing affect that usually occurs on the outside
3 of our tube, which obscures. It produces a layer
4 that limits infiltration of groundwater particularly
5 in fine grain soils just like if you created a clay
6 slurry on pottery that was a barrier that prevents
7 the discharge of groundwater into that opening.

8 So we don't use it because
9 it's not a reliable means of evaluating a
10 groundwater table and it may not even -- because
11 of the skin friction disruption, it may not even
12 result in occurrence of groundwater in that
13 boring and would certainly be affected by time.

14 So depending on the point in
15 time we measured, the flux of groundwater into
16 the hole, we would have to wait until it was at
17 static conditions for a reliable measurement of
18 the water table and not knowing what affects skin
19 friction has on the disruption of that bore hole,
20 there would be no way to know how long we would
21 have to wait to have a reliable measurement of
22 water table in a disturbed soil boring.

23 **Q. Okay. Is it your contention that the**
24 **term "groundwater table" is vague?**

1 A. No. It's explicit.

2 Q. Is it your characterization that
3 groundwater table is a term that has more than one
4 meaning?

5 A. No.

6 Q. So you -- so there is one meaning for
7 groundwater table as far as a professional engineer
8 or geologist is concerned?

9 A. Yes. From a hydrogeologic standpoint,
10 there is one definition of groundwater table.

11 Q. Okay. So if that term is used in
12 your submissions here, what specifically are you
13 referring to when you say "groundwater table"?

14 A. The elevation of a column of water
15 measured in a monitoring well at that specific
16 location at that specific point in time.

17 Q. I believe it was your testimony,
18 correct, that there were site-specific conditions
19 at this site warranting drilling -- boring below
20 the groundwater table, correct?

21 A. Yes.

22 Q. And consequently, the geologist,
23 Brandon Hargrave, did drill below the -- had borings
24 go below the water table?

1 A. He wouldn't have been able to
2 determine where the water table was at all at that
3 point. So drilling would have advanced to the depth
4 of extent of contamination where he could make a
5 reasonable assumption that migration of organic
6 chemicals began to cease or ceased.

7 **Q. So there is no idea at all at that**
8 **point -- strike that.**

9 **When a boring is going down, the**
10 **field staff just have no clue where that groundwater**
11 **table is; is that correct?**

12 A. No.

13 **Q. So just keep on drilling 20, 40, 70,**
14 **80 feet?**

15 A. Until there is no indication that
16 continual migration of organic chemicals is
17 occurring based on field screening as described
18 in the regulation.

19 MR. INGERSOLL: Could we go
20 off the record for a second?

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

23 HEARING OFFICER WEBB: Okay.

24 We are back on the record after a short

1 break.

2 Mr. Sievers, we will pick
3 up with your cross-examination.

4 BY MR. SIEVERS:

5 Q. Mr. Truesdale, when -- in a Stage 1
6 investigation, which is what is at issue in this
7 case today, borings are being drilled at the site.
8 Monitoring wells are not typically in place; isn't
9 that correct?

10 A. Correct.

11 Q. And I believe it's your testimony that
12 monitoring wells are really the only means by which
13 the true and accurate measure of the groundwater
14 table can be determined?

15 A. Correct.

16 Q. So when your staff is on-site boring
17 in the course of a Stage 1 investigation, they do
18 not know and cannot know where the groundwater table
19 is?

20 A. Correct.

21 Q. And I believe your prior testimony --
22 let's see if we can try to clear this up a little
23 bit.

24 It is correct that there is no

1 means for you to know or your staff to know when
2 they are boring on site in the course of a Stage 1
3 investigation where that groundwater table is?

4 A. On a typical LUST site, no.

5 Q. Was the -- was this site at issue in
6 the case today, the Piasa Motor Fuels site in Alton,
7 a typical LUST site?

8 A. Based on my experience, yes.

9 Q. So when drilling those borings,
10 there was no way the geologist -- no way any
11 of your staff could know where the groundwater
12 table was?

13 A. At that particular location at that
14 point in time, no.

15 Q. And so since you can't determine
16 where the groundwater table is while you are
17 on-site, wouldn't it be accurate then that the
18 provision in Section 734.315 of the regulations
19 providing that borings must be drilled beyond
20 the groundwater table only if site-specific
21 conditions warrant would never apply to any of
22 your borings because you could never know where
23 the groundwater table was?

24 A. No. It would apply at any point

1 that the water table was based on the diagnostic
2 properties of the soils and the site conditions.
3 If the water table was three feet that day, it
4 would warrant drilling below it. If it were at
5 12 feet that day, it would warrant drilling below
6 it. If it were at eight feet that day, it would
7 warrant drilling below it.

8 **Q. You don't know where the groundwater**
9 **table is?**

10 A. No. At any point in that column,
11 it would warrant drilling below it in those soil
12 conditions.

13 **Q. So that caveat in the regulations**
14 **need never apply to CSD at least when its drilling**
15 **borings in a Stage 1 investigation?**

16 A. In my opinion, it does not need
17 to apply at a typical LUST site in Illinois in
18 a glacial depositional environment ever.

19 **Q. Thank you. Let me call your attention**
20 **to Petitioner's Exhibit No. 3.**

21 MR. SIEVERS: May I approach,
22 your Honor?

23 HEARING OFFICER WEBB: Yes.

24

1 BY MR. SIEVERS:

2 Q. I believe your testimony was water
3 had not been encountered in the 45-day report?

4 A. No. I -- my testimony was that
5 groundwater was encountered affirmatively. We
6 encountered water in the boring.

7 Q. So it is correct, then, on Page 4
8 of Petitioner's Exhibit No. 3 that groundwater
9 was encountered at the site?

10 A. Groundwater was encountered. The
11 depth to the groundwater table could not be known,
12 but groundwater was encountered.

13 Q. No. It never could be, could it?

14 A. No, not at that point in time.

15 Q. Not under the CSD interpretation,
16 though, correct?

17 A. Not under scientific --

18 MR. INGERSOLL: Objection.

19 HEARING OFFICER WEBB: Sustained.

20 MR. INGERSOLL: Thank you.

21 BY MR. SIEVERS:

22 Q. Now, I would like to call your
23 attention to Page 11 of the record, which is
24 the stage site -- which is part of the Stage 3

1 **Site Investigation Plan and Budget.**

2 A. What page of the record?

3 Q. **Page 11. And then go to Page 242**
4 **of the record, which is part of the Stage 2 Site**
5 **Investigation Plan and Budget.**

6 **Have you found those pages?**

7 A. Yes.

8 Q. **Okay. On Pages 241 and 242, there**
9 **is a Table 2.0, Summary of Stage 1 Soil BTEX and**
10 **MTBE Results. Do you see that table?**

11 A. On which page are you referring to?

12 Q. **Pages 241 and 242.**

13 A. Yes.

14 Q. **Okay. Now, on Pages 11 and 12,**
15 **we also have a Table 2.0 Summary of Stage 1 Soil**
16 **BTEX and MTBE Results. Do you see that as well?**

17 A. I do.

18 Q. **Now, I believe your prior testimony**
19 **was that these two tables reported the same data;**
20 **is that right?**

21 A. Correct.

22 Q. **And the one at 241 and 242, that's**
23 **a later submission by CSD than the one that's in**
24 **Pages 11 and 12, correct?**

1 A. Yes.

2 Q. Now, the table that's set forth in
3 Pages 11 and 12, that has some text underneath
4 that, doesn't it?

5 A. Yes.

6 Q. And that text differs from the text
7 under Table 2 on Page 242, correct?

8 A. Correct.

9 Q. All right. What does the text say on
10 Page 12?

11 A. Page 12?

12 Q. Underneath -- immediately underneath
13 the table.

14 A. "Results shown in bold and highlighted
15 exceed the applicable Tier 1 soil remediation
16 objectives. Results shown in strikethrough font
17 indicate the sample was collected below the depth
18 at which groundwater was observed in the associated
19 soil boring."

20 Q. Now, that is not included in the
21 language underneath the table on Page 242, is
22 it?

23 A. No. It was added in response to
24 conversations with Karl Kaiser following the

1 submittal.

2 **Q. And there are numbers in Table 2**
3 **on Pages 11 and 12 that have had a strikeout on**
4 **them; isn't that correct?**

5 A. Correct.

6 **Q. And there are no numbers on Page 241**
7 **and Page 242 in Table 2 that are stricken out,**
8 **correct?**

9 A. Correct.

10 **Q. Okay. Those tables have different**
11 **information in them; isn't that correct?**

12 A. They have the same information
13 presented differently to -- in an attempt to
14 illustrate to the Agency that it was ridiculous
15 to exclude samples that were collected and
16 analyzed beneath a depth where groundwater
17 was observed in a boring or purposes of a risk
18 assessment.

19 **Q. Pages 241 and 242 don't have**
20 **anything indicating which data was taken below**
21 **the groundwater observation, correct?**

22 A. Correct, but it can be inferred
23 from the information presented.

24 **Q. Let me call your attention to**

1 **Petitioner's Exhibit No. 5. Do you have a copy**
2 **of that?**

3 A. Yes.

4 **Q. Who took that photograph?**

5 A. Brandon Hargrave.

6 **Q. When was that photograph taken?**

7 A. Following UST removal and the early
8 action extension period, early action excavation
9 activities.

10 **Q. What date?**

11 A. The 45-day report --

12 **Q. I'm not asking you to refer to other**
13 **documents. I'm asking you off the top of your head**
14 **do you know -- do you actually have personal**
15 **knowledge when this photograph, Petitioner's Exhibit**
16 **No. 5, was taken?**

17 A. I can't state the date. The day
18 it was taken was the day we completed early action
19 excavation following UST removal, which is in the
20 record.

21 **Q. Do you know what time Petitioner's**
22 **Exhibit No. 5 was taken?**

23 A. No.

24 **Q. Were you present at the time**

1 **Petitioner's Exhibit No. 5 was photographed?**

2 A. I don't believe so.

3 **Q. Okay. So your knowledge about the**
4 **taking of this photograph is based on reading the**
5 **reports and having some familiarity with when**
6 **Brandon might have been out there and so forth,**
7 **correct?**

8 A. Yes. He would have reported directly
9 to me and possibly corresponded with me via the
10 telephone while he was in the field.

11 MR. SIEVERS: I'm going to
12 object to the admission to Petitioner's
13 Exhibit No. 5.

14 The witness has no
15 personal knowledge of this photograph,
16 foundation, it is undermined by his
17 own testimony.

18 Further, Petitioner's
19 Exhibit No. 5 was not before the Agency
20 at the point where it made its --
21 reached its determination.

22 HEARING OFFICER WEBB: Well,
23 Mr. Ingersoll, are you going to have
24 another witness --

1 MR. INGERSOLL: Yes.

2 HEARING OFFICER WEBB: -- testify
3 about -- do you want to hold off on the
4 exhibit?

5 Are you going to use Exhibit
6 No. 5 in your examination of your next
7 witness?

8 MR. INGERSOLL: I think --
9 yes. I think we can close this up with
10 Mr. Hargrave.

11 HEARING OFFICER WEBB: Okay. I
12 will delay ruling on Exhibit No. 5 for now.

13 MR. SIEVERS: Okay. I have nothing
14 further of this witness.

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

16 by Mr. Ingersoll

17 **Q. Mr. Truesdale, Mr. Sievers, I think,**
18 **elicited testimony from you seeking to show that**
19 **according to you, there was no limitation -- the**
20 **water table places no limitation on drilling. Is**
21 **that a correct interpretation of your testimony?**

22 A. According to regulations, there is
23 a limitation under Stage 2, but not under Stage 1
24 if site-specific conditions warrant.

1 Q. Okay. So it's not unconditional?

2 A. No.

3 Q. The conditions are stated in the
4 regulations?

5 A. Correct.

6 Q. I.e., site-specific conditions?

7 A. Right.

8 Q. And I believe you rendered an opinion
9 earlier where you said site-specific conditions were
10 present here?

11 A. Correct.

12 MR. INGERSOLL: Thank you. That's
13 all.

14 HEARING OFFICER WEBB: Is there
15 anything else?

16 MR. SIEVERS: Yes.

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

18 by Mr. Sievers

19 Q. Mr. Truesdale, isn't it correct,
20 though, you don't need any site-specific conditions
21 because you only need to know site-specific
22 conditions to drill below groundwater table,
23 isn't that right, under the regulation?

24 A. You need to know site-specific

1 conditions under the regulation in Stage 1 to
2 support drilling below the water table, correct.

3 **Q. And you don't -- CSD, when it**
4 **does a boring in Stage 1, doesn't know where**
5 **that groundwater table is?**

6 A. I don't care where it is in
7 Stage 1 under a typical LUST site. Site-specific
8 conditions with glacial geology, with a typical
9 LUST site in Illinois, always provides site-specific
10 conditions that dictate drilling below the water
11 table.

12 **Q. So that provision in Section 734.315**
13 **qualifying the ability to bore to the full vertical**
14 **extent of contamination, but only if -- to only**
15 **below the groundwater table if site-specific**
16 **conditions apply, that caveat never applies because**
17 **you're saying that you always need to be drilling?**

18 MR. INGERSOLL: Objection,
19 objection, objection. He's asking
20 for a legal conclusion, which is one
21 of the very core issues here today.

22 MR. SIEVERS: I believe that
23 Mr. Ingersoll has asked the same
24 question. I can rephrase it if

1 you like.

2 HEARING OFFICER WEBB: Yes.

3 I mean, he can give his interpretation.

4 BY THE WITNESS:

5 A. I said that in a typical LUST site.
6 There are always site-specific conditions in a
7 glacial depositional environment. In Illinois,
8 there are other types of depositional environments
9 such as alluvial, sand and gravel, valley terrains,
10 where conditions may not dictate sampling below the
11 water table.

12 If there's a large vertical
13 separation between the source and observed
14 groundwater and visual olfactory evidence or field
15 screening of organic vapors, that indicates that
16 migration ceases before groundwater is observed
17 in a boring, those are the two principle cases
18 where it would not apply.

19 But in a typical LUST site,
20 that clause would never be applicable, but there
21 are cases in Illinois where that would be
22 applicable.

23 MR. SIEVERS: Okay. Very good.

24 I have nothing further.

1 MR. INGERSOLL: Nothing.

2 HEARING OFFICER WEBB: Okay.

3 Thank you. Mr. Truesdale.

4 (Witness excused.)

5 MR. INGERSOLL: Can he leave
6 or should he hang around as a potential
7 rebuttal witness?

8 HEARING OFFICER WEBB: Do you
9 want to call him again at all?

10 MR. INGERSOLL: He might be a
11 rebuttal witness by someone. Sorry,
12 Joe. You get to take a break in the
13 other room.

14 MR. TRUESDALE: No problem.

15 MR. SIEVERS: And leave the
16 exhibits here.

17 HEARING OFFICER WEBB: You may
18 call your next witness.

19 MR. INGERSOLL: Let's get Brandon
20 Hargrave out of the way.

21 (Whereupon, after a short
22 break was had, the following
23 proceedings were held
24 accordingly.)

1 HEARING OFFICER WEBB: Let's go
2 back on the record.

3 Mr. Ingersoll, you may call
4 your next witness.

5 MR. INGERSOLL: I will now call
6 Brandon Hargrave.

7 HEARING OFFICER WEBB: The
8 court reporter will swear you in.

9 THE COURT REPORTER: Raise your
10 right hand, please.

11 (Witness sworn.)

12 WHEREUPON:

13 B R A N D O N H A R G R A V E
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 D I R E C T E X A M I N A T I O N
17 by Mr. Ingersoll

18 **Q. Would you state your name and spell**
19 **your last name, please?**

20 A. Brandon Hargrave, H-A-R-G-R-A-V-E.

21 **Q. And where are you employed?**

22 A. Illinois EPA.

23 **Q. And what position?**

24 A. I work for the solid waste permit

1 section, Bureau of Land.

2 Q. Okay. Prior to your employment at the
3 Illinois EPA, where were you employed?

4 A. CSD Environmental Services.

5 Q. And what was your position there?

6 A. Staff geologist.

7 Q. Okay. Are you familiar with a
8 site called Piasa Motor Fuels, Inc. and I think in
9 some places, I saw that it was called Steve's
10 Service? Are you familiar with that site?

11 A. Yes.

12 Q. And how? What's your contact with
13 that site?

14 A. It was quite some time ago. You
15 know, I remember being onsite. I generally remember
16 what the site looks like. I believe it's a former
17 gas station site used as an auto service station
18 now.

19 Q. Okay. I'm going to show you what
20 was previously marked as Petitioner's Exhibit
21 No. 3 and Petitioner's Exhibit No. 4. Do you
22 recognize those documents?

23 (Documents tendered
24 to the witness.)

1 BY THE WITNESS:

2 A. I don't recognize it. I know what it
3 is though.

4 BY MR. INGERSOLL:

5 Q. Okay. And what do you understand it
6 to be?

7 A. This is a 45-day report generally
8 issued, oh, after an incident has been called in
9 stating that there may or may not have been a
10 release of contamination at a site. Someone like
11 now, a staff geologist, would have showed up and
12 advanced a couple of borings to see if, indeed,
13 there was contamination at the site. I believe
14 this report, the 45-day report, would have been
15 issued after that.

16 Q. I believe that's the amended 45-day
17 report, isn't it?

18 A. This says amended, yes.

19 Q. Okay. And do you know what the
20 purpose of that report was? As it stands --

21 MR. SIEVERS: Objection. He's
22 already testified he doesn't even recognize
23 the report.

24 HEARING OFFICER WEBB: Pardon me?

1 MR. SIEVERS: He already testified
2 he doesn't even recognize the report.

3 BY THE WITNESS:

4 A. I haven't seen this before.

5 BY MR. INGERSOLL:

6 Q. Okay. Do you recall being at that
7 location for a tank pull?

8 A. Yes.

9 Q. Okay. And would you look at
10 Petitioner's Exhibit No. 3?

11 A. Three is this?

12 Q. Yes. Look at Pages 50 to 54.

13 A. Okay.

14 Q. And then would you look at
15 Petitioner's Exhibit No. 4. Those are the color
16 photos.

17 A. Is it the same thing, but color?

18 Q. I'm asking you to confirm that.

19 MR. SIEVERS: He has already
20 testified that he doesn't recognize
21 the report. Now, he is asking him to
22 match up two documents and the only way
23 he can do it is if he -- I mean, anybody
24 could do that by comparing two documents.

1 There is no testimony that
2 he has any personal knowledge to put
3 these two together any more than a
4 layperson on the street.

5 MR. INGERSOLL: Except that
6 he --

7 HEARING OFFICER WEBB: Well, is
8 he the one who took the picture? Did
9 he take the photograph?

10 MR. INGERSOLL: We haven't gotten
11 there yet.

12 HEARING OFFICER WEBB: All right.
13 Well, that's where we're going, right?

14 MR. INGERSOLL: We do have him
15 present at the scene during the tank pull.

16 HEARING OFFICER WEBB: Okay.
17 I'll allow it.

18 BY THE WITNESS:

19 A. These look to be the same, yes, as the
20 one that's in color.

21 BY MR. INGERSOLL:

22 **Q. Did you take these pictures?**

23 A. I believe I did, yes.

24 **Q. Thank you. I'm going to show you**

1 **what we have marked as Petitioner's Exhibit No. 5.**

2 **(Document tendered**
3 **to the witness.)**

4 BY THE WITNESS:

5 A. Okay.

6 BY MR. INGERSOLL:

7 **Q. Did you take that photo?**

8 A. Most likely. I generally would
9 take photos on the job sites and especially of
10 the tank pulls.

11 **Q. Now, based on your recollection**
12 **and those other pictures that you have identified,**
13 **does this -- does that photo accurately portray**
14 **the scene at that tank pull excavation as you**
15 **recall it?**

16 A. Yes.

17 **Q. Your recollection and pictures compare**
18 **with the pictures that you did take?**

19 A. Yes.

20 **Q. Okay. Thank you.**

21 MR. INGERSOLL: I would move
22 for the admission of Petitioner's Exhibit
23 No. 5.

24 MR. SIEVERS: Subject to cross.

1 MR. INGERSOLL: Okay.

2 HEARING OFFICER WEBB: All right.

3 We will hold off ruling.

4 MR. INGERSOLL: Once again?

5 HEARING OFFICER WEBB: Once again.

6 BY MR. INGERSOLL:

7 Q. Okay. So that we don't spend as
8 much time as we did earlier, let's find some boring
9 logs here.

10 Would you look at the
11 administrative record, which is -- I didn't give it
12 to you yet. I'm sorry.

13 This is the administrative record
14 that the Agency has filed in this underground
15 storage tank appeal. It was paginated in the lower
16 right-hand corner. It will say Piasa Motor Fuels,
17 Inc. and it's paginated all the way through.

18 Would you look at Pages 320 and
19 following up to 331. Now, the BH initials, that's
20 you, right?

21 (Document tendered
22 to the witness.)

23 BY THE WITNESS:

24 A. That is me, yes.

1 BY MR. INGERSOLL:

2 Q. On Page 320, there is a column that
3 says, "OVA/PID"?

4 A. Yes.

5 Q. Could you tell us what those
6 descriptors mean to you?

7 A. These were my descriptions --
8 normally, this column would have a series of
9 numbers in it as if taken by some equipment. We
10 didn't have a working piece of equipment that day
11 called the PID machine. So you will see these --
12 you will see these words, "slight in odor." That
13 is me using my, you know, visual and olfactory
14 sense of -- I basically had to look and smell the
15 soil to try to see if it was contaminated or not.

16 Q. Okay. How many LUST projects had
17 you been involved with in your career?

18 A. How many different sites are you
19 talking about?

20 Q. Yes.

21 A. I'm just taking a guess here off the
22 cuff. Maybe 40.

23 Q. Okay. And these descriptors, slight,
24 odor, odor, odor, odor, slight, is that standard

1 **practice for when you have to use your nose to**
2 **figure it out?**

3 A. That is not standard practice. You
4 know, like I said, it's pretty rare to see this.
5 Usually, you will see a series of number recordings
6 by a PID, a photoionization detector.

7 **Q. Okay. All right then. Let us flip**
8 **back to Page 144 in the record.**

9 A. Okay.

10 **Q. Okay. BH is still you?**

11 A. Yes.

12 **Q. And now you have numbers instead of**
13 **descriptions?**

14 A. Correct.

15 **Q. Okay. That's what you are talking**
16 **about, the typical scenario?**

17 A. Correct, typical scenario. We would
18 have a PID machine in the field to -- what the PID
19 does is it kind of reads the hydrocarbons that are
20 being released by the soil samples while I'm logging
21 in basically.

22 **Q. Okay. Back to Page 320, or any of**
23 **them, but Page 320, let's look at that.**

24 A. Okay.

1 **Q. In the lower left-hand corner, it**
2 **says, "Groundwater data, depth while drilling,**
3 **ten feet"?**

4 A. Yes.

5 **Q. So what does that mean that you**
6 **noticed at ten feet?**

7 A. That means that we encountered
8 the groundwater table at a depth of ten feet.

9 **Q. The groundwater table?**

10 A. Yes.

11 **Q. Could you give me the definition**
12 **for groundwater table?**

13 A. The depth below ground surface
14 at which groundwater -- where you generally
15 encounter groundwater.

16 **Q. Okay. Now, in the regulations,**
17 **the Board's regulations, there is a definition**
18 **for water table.**

19 A. Okay.

20 **Q. Do you know what it is?**

21 A. No, I don't.

22 **Q. Okay. Let me read it to you.**

23 A. Okay.

24 **Q. Once again, it's from Section**

1 742.200. It's from the so-called TACO regs.

2 A. Okay.

3 Q. "Water table means the top water
4 surface of an unconfined aquifer at atmospheric
5 pressure." Now, that's not the same as when you
6 encounter groundwater is it?

7 A. Can you repeat that, please?

8 Q. "Water table means the top water
9 surface of an unconfined aquifer at atmospheric
10 pressure."

11 A. Can you just -- I mean, that's
12 generally the same thing as what I stated,
13 right?

14 Q. That's what you stated.

15 A. Okay.

16 Q. Okay.

17 MR. INGERSOLL: I have nothing
18 further.

19 MR. SIEVERS: Permission to go
20 beyond the scope just to speed things
21 up? Otherwise, I'm going to have to call
22 Mr. Hargrave back for my case-in-chief.

23 MR. INGERSOLL: I'll tell you
24 what, I've got a question then.

1 Have you spoken with
2 Mr. Sievers about this --

3 MR. SIEVERS: I'm sorry. I
4 believe that you closed your testimony
5 at this point.

6 HEARING OFFICER WEBB: I'll
7 allow it. Go a head and finish up.

8 BY MR. INGERSOLL:

9 **Q. Have you spoken with Mr. Sievers**
10 **about this proceeding we are here for today?**

11 A. Yes.

12 **Q. And what did he tell you?**

13 A. I don't know that he told me anything.
14 He asked me various things about the project here.
15 I saw a couple of these documents.

16 **Q. Did he tell you what the issues were**
17 **in this proceeding?**

18 A. All I know is this is in reference
19 to an appeal for payment for soil samples taken.

20 **Q. Soil samples that you took?**

21 A. Yes.

22 **Q. Aren't you the one who physically**
23 **extracted the soil samples?**

24 A. Yes, that's correct.

1 MR. INGERSOLL: Okay. Nothing
2 further.

3 And, yes. It's okay to.

4 HEARING OFFICER WEBB: To go
5 beyond the scope.

6 MR. INGERSOLL: Yes. We will
7 try to work through it.

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

9 by Mr. Sievers

10 Q. Mr. Hargrave, did I -- when we met,
11 at any time did I tell you how to answer questions
12 as to what the definition of what a water table
13 is?

14 A. No.

15 Q. Of what the groundwater table is?

16 A. No.

17 Q. You are employed here at the Agency,
18 correct?

19 A. Yes.

20 Q. How long have you been employed?

21 A. Since June of 2012.

22 Q. And where are you employed?

23 A. Bureau of Land in the solid waste
24 permit section.

1 **Q. And you were employed at CSD prior to**
2 **that.**

3 A. Yes.

4 **Q. I believe you testified you were a**
5 **staff geologist there?**

6 A. Yes.

7 **Q. You have a degree in geology from**
8 **EIU?**

9 A. Eastern Illinois, yes.

10 **Q. Thank you. And what were your duties**
11 **at CSD?**

12 A. I was generally their field point
13 technician for any of these job sites that we would
14 go to that came to the door that required actual
15 field analysis, field expertise. I was part of
16 the group, myself and another guy. The field
17 supervisor would show up and actually perform the
18 work on job sites.

19 **Q. Just the two of you?**

20 A. Yes.

21 **Q. Was he also a geologist?**

22 A. No. He was our field supervisor. He
23 generally ran the equipment.

24 **Q. So in the field, you were CSD's**

1 geologist?

2 A. Correct.

3 Q. You were the one that was there when
4 borings were taken?

5 A. Yes.

6 Q. When borings were analyzed in the
7 field?

8 A. Yes.

9 Q. Let's talk about when you would
10 come to the site, how would you determine what
11 borings to take?

12 A. Can you clarify that question?

13 Q. Well, would you determine -- would
14 you just -- would there be a plan in place to
15 determine where maybe the first boring would be
16 taken how many boring would be taken before you
17 got to the site?

18 A. Generally, yes, like a plan of
19 attack kind of a thing.

20 Q. Would you develop that or would that
21 be provided to you?

22 A. Usually provided by the project
23 manager. We may sit down and go through it
24 together, but for the most part, you know, I

1 had a plan, you know, with a number of borings
2 maybe in mind, that kind of thing.

3 **Q. And what are the -- what is the**
4 **purpose of the borings from a geologist's**
5 **perspective?**

6 A. The purpose of the borings?

7 **Q. Yes.**

8 A. Well, as it relates to specifically
9 this site, the purpose of borings is to go in
10 and not only catalogue the soil types, but we're
11 searching for evidence of contamination in those
12 borings.

13 When the borings come up, I
14 would log the soil types, log any evidence of
15 contamination and potentially take samples.

16 **Q. Now, you are talking about vertical**
17 **borings, correct?**

18 A. Yes.

19 **Q. So are we only measuring where**
20 **contamination might be vertically?**

21 A. That's all you can do in a single
22 boring.

23 **Q. With multiple borings, what could**
24 **you do?**

1 A. With multiple borings, you can
2 determine the horizontal extent. What you
3 are looking for is contamination or a contaminant
4 plume. So with multiple borings, you can kind
5 of start beginning to define this, you know, three
6 dimensional horizontal -- how far does this
7 contamination spread horizontally. Within the
8 boring itself, all you can do is determine vertical
9 in a single boring.

10 **Q. Is that the goal of conducting**
11 **borings at a LUST site, is to determine the**
12 **extent of the horizontal and vertical contamination?**

13 A. Yes.

14 **Q. All right. Now, when you are**
15 **conducting these borings, you are also pulling**
16 **cores; is that right?**

17 A. Yes. You are pulling up soil
18 samples known as cores, the actual -- you
19 know, you are pulling soil out of the ground.
20 Those are known as soil cores.

21 **Q. When you were boring at -- when**
22 **you bored at this site, did you have some sort**
23 **of equipment that allowed you to conduct the**
24 **boring?**

1 A. Do you mean the drilling mechanism?

2 Q. Yes.

3 A. Yes.

4 Q. How far down could that boring
5 equipment go?

6 A. Capability-wise?

7 Q. Yes.

8 A. We have been as deep as maybe 60
9 feet before.

10 Q. Okay. Now, how would the cores
11 be taken?

12 A. We would have a series of four-foot
13 steel tubes. Each tube would be pounded into
14 the ground by our -- it's called a direct push
15 geoprobe. So each four-foot section is pounded
16 into the ground.

17 Once that four-foot section
18 has been pounded in or driven in, we remove
19 that four-foot section and have an inner liner,
20 which would trap that soil inside the soil
21 cores. So we would pull out the inner liner
22 and lay them out on the table for, you know,
23 observation.

24 Q. Do you know what at that inner

1 **liner was made out of?**

2 A. It was plastic. It was PVC
3 probably.

4 **Q. Okay. When you have -- and at**
5 **that point, what would you do with the core**
6 **once that had been removed?**

7 A. I would open up the plastic
8 sleeve and set it out on the table. I would
9 then begin to log the soil types. Normally,
10 I would PID, which is a field screen, a PID
11 screen every foot or so.

12 **Q. That's an electronic device?**

13 A. Correct.

14 **Q. To determine the soil types, how**
15 **would you do that?**

16 A. Just by training. You know, it
17 may have been sand, it may have been clay, it may
18 have been silt, that kind of thing. So I would --
19 you know, I would make -- for example, I would
20 denote, you know, zero to two feet may be organic
21 top soil. Then, you know, two feet to four feet
22 may be a clay or a silty clay, something of that
23 nature.

24 **Q. Was this a visual determination?**

1 A. Yes.

2 **Q. While you were conducting this**
3 **analysis of the core, what is your fellow CSD**
4 **employee doing?**

5 A. He is running the equipment, you
6 know, preparing further -- another rod to be
7 driven down further, you know, et cetera and
8 so forth, whatever. It's kind of my job, you
9 know, I was logging the soils while he was
10 performing the mechanical duties.

11 **Q. So did it happen where you would**
12 **be analyzing a four-foot core and your coworker**
13 **was in the process of drilling or boring an**
14 **additional -- another deeper four-foot core?**

15 A. Yes, that possible.

16 **Q. Was that the normal process?**

17 A. Generally, yes.

18 **Q. So that likely was the process that**
19 **applied here at the Piasa site?**

20 A. Yes, most likely. I don't recall
21 specifically.

22 **Q. How far down would you typically**
23 **bore at a LUST site?**

24 A. It kind of depends. You know,

1 each site is so specific-specific. You know,
2 when you're dealing with geology, each side
3 is different. You know, we might drill ten
4 feet. We might drill 30 feet. It just kind
5 of all depends on what we find.

6 **Q. Would your analysis of the cores**
7 **in the contamination you might find in those**
8 **cores have some bearing as to how deep you might**
9 **drill?**

10 A. Yes.

11 **Q. And explain how that would work?**

12 A. You know, generally we might take a
13 boring -- it kind of all depends. If you look --
14 well, like I said, generally -- a common boring,
15 you know, you might go the first four feet and
16 you may have no evidence of contamination. The
17 next rod or two rods or three rods, you may find
18 signs of contamination. Then you may go, you
19 know, even deeper until you're quote, unquote
20 clean again. That's kind of a typical -- a
21 typical boring.

22 **Q. Is that typically then when you**
23 **stop boring when you reach clean samples?**

24 A. Typically, yes.

1 **Q. So would the goal then, as you**
2 **are conducting these borings, to determine the**
3 **full vertical extent of contamination?**

4 A. For the most part, yes.

5 **Q. When is that not the case?**

6 A. It kind of depends on where you
7 are at in the progress of work at that site.
8 When you first show up, you know, you may not
9 even know there is contamination there. So
10 you might do a couple of borings just to see
11 if there is.

12 So the very first, you know,
13 borings that you do, you really don't know what
14 you're going to find at that site, you know,
15 with everything being site-specific. So if
16 the first two borings are clean at 16 feet,
17 you can begin to make an assumption that, you
18 know, hey, these might all be clean at 16 feet,
19 but as you continue on, you might find contamination
20 to go deeper, you know, at 20 feet or something
21 like that.

22 **Q. If you pull a core and there is**
23 **still some odor, slight or otherwise, in that**
24 **core, at the very bottom of this core, the**

1 **farthest down you bore to date, do you take**
2 **further steps at that point?**

3 A. Yes.

4 **Q. What's a further step?**

5 A. You might advance one more four-foot
6 rod to see if the soil will clean up at some point
7 after that.

8 **Q. Is that because you are trying to**
9 **determine the full extent vertically of**
10 **contamination?**

11 A. Yes.

12 **Q. I want to call your attention**
13 **to Page 232 of the administrative record on**
14 **to Page 352, but the document begins at 232.**

15 A. Page 232 to what?

16 **Q. To 352.**

17 A. 352. Okay.

18 **Q. Do you recognize that document?**

19 A. I do.

20 **Q. What do you recognize it to be?**

21 A. This is the Stage 2 Site Investigation
22 Plan and Budget.

23 **Q. Have you seen this before?**

24 A. I have.

1 Q. Now, did you prepare this entire
2 document?

3 A. No.

4 Q. Did you prepare any portion of this
5 document?

6 A. Only the boring logs and the
7 monitoring log completion reports.

8 Q. Okay. Now, let me call your attention
9 to Page 240 of that report and Page 241.

10 A. Okay.

11 Q. Am I reading correctly then -- well,
12 strike that.

13 Table 1 has four -- I'm sorry --
14 six columns to it; is that right?

15 A. Yes.

16 Q. And one of the columns has the boring
17 depth, correct?

18 A. Yes.

19 Q. And these are the depths for each of
20 the borings that were conducted as part of Stage 1
21 at the Piasa site?

22 A. Yes.

23 Q. Am I reading it correctly that all,
24 but one of the borings was drilled to 20 feet?

1 A. Yes. It looks like that way.

2 Q. One of them was just a 16?

3 A. Yes.

4 Q. And what do you -- on the column
5 next to that to the right, what is the heading
6 there?

7 A. Soil sample depth.

8 Q. Actually to the left of that.

9 A. Oh, I'm sorry. Boring name.

10 Q. I'm looking for -- it says GW depth in
11 boring. What does that mean?

12 A. Oh, excuse me. I'm sorry. GW depth
13 in boring.

14 Q. What does that mean?

15 A. It means groundwater depth in boring.

16 Q. Is that when you encountered the
17 groundwater table, the groundwater table?

18 A. Yes.

19 Q. All right. Let me call your attention
20 to Page 241 and Page 242. Do you see that Table 2
21 there?

22 A. Yes.

23 Q. Now, that table shows lab results; is
24 that right?

1 A. Yes, that's correct.

2 **Q. And what do you understand the bold**
3 **numbering to indicate?**

4 MR. INGERSOLL: I'm going
5 to object to going beyond the boring
6 information. Mr. Hargrave's testimony
7 was not at CSD when this document was
8 prepared and he told us that he
9 prepared the boring logs and the
10 monitoring well completion portions
11 of this document.

12 MR. SIEVERS: I asked him
13 what he understood the bold portions
14 to be.

15 HEARING OFFICER WEBB: Okay.
16 I'll allow it.

17 BY THE WITNESS:

18 A. I'm sorry. Can you repeat your
19 question?

20 BY MR. SIEVERS:

21 **Q. What do you understand the bold**
22 **portions on Pages 241 and 242 to indicate?**

23 A. It looks like these bold numbers --
24 according to the last row, it appears as if the

1 bold numbers means that there was an exceedance
2 of objectives in these particular samples, meaning
3 a dirty sample.

4 Q. That there were exceedances in these
5 lab samples, is that consistent of your recollection
6 of the analysis of the lab work at the ^ class
7 off-site?

8 A. Yes, sir.

9 Q. Let me call your attention to boring
10 logs at Page 320.

11 A. Okay.

12 Q. And so my understanding, and you can
13 correct me, is that the column on that log that
14 says OVA/PID, that normally would have numerical
15 numbers in there --

16 A. Correct.

17 Q. -- indicating PID readings?

18 A. Yes.

19 Q. These, instead, have things like
20 slight in odor.

21 A. Yes.

22 Q. How are those determined?

23 A. By my nose. I literally smelled each
24 foot of soil core that I examined.

1 Q. What does ND stand for?

2 A. ND means no detection.

3 Q. So on Page 320, your first observation
4 was no detect; is that correct?

5 A. Yes.

6 Q. And then your next observation was
7 slight?

8 A. Yes.

9 Q. So slight -- slight what?

10 A. Slight odor.

11 Q. Then the next is odor?

12 A. Yes.

13 Q. Would that indicate something stronger
14 than a slight odor?

15 A. It would indicate most likely in this
16 case the presence of a gasoline smell.

17 Q. Okay. And would that be the case all
18 the way down that column until we got to slight and
19 ND again?

20 A. Correct.

21 Q. Okay. So in your professional opinion
22 then, looking at Page 320, would that column,
23 OVA/PID, indicate to you where contamination might
24 begin, continue and then fade off and end?

1 A. Yes.

2 **Q. And now that boring, that ended at**
3 **20 feet; is that right?**

4 A. Yes.

5 **Q. And that was a no detect at the very**
6 **end of that boring?**

7 A. Yes.

8 **Q. I will call your attention to the**
9 **next page, which is Page 321, is that correct**
10 **as well there that the very last observation you**
11 **made was a no detect at that 20-foot level?**

12 A. Yes, relative to these portions
13 that day odor, you know, where we would get a
14 strong odor and then towards the end of the
15 boring, we began to detect less or none in
16 that case.

17 **Q. Okay. And would it be the case**
18 **then on Pages 322, 323, 324 and 325?**

19 A. Yes, all the same reasoning.

20 **Q. Okay. On Page 330, there was**
21 **a slight -- you identified a slight, the very**
22 **last detection, on that boring, correct?**

23 A. I'm just getting there. Hang on.

24 **Q. Sure.**

1 A. You said 330?

2 Q. Yes.

3 A. Yes.

4 Q. Before that, you had indicated odor
5 in that last core sample; is that right?

6 A. Yes.

7 Q. Would -- in your professional opinion,
8 has the full vertical extent of contamination been
9 determined through boring 13 at this point?

10 A. Here's where it gets a little tricky.
11 Anything that's done in the field, my observations
12 made in the field are just that. They are my
13 observation at the time.

14 Without actually having these
15 so-called result samples back from the laboratory,
16 there is really no actual way to tell. So to the
17 best of my ability, these are my observations in
18 the field at that moment.

19 Q. Another core could have been taken
20 below that, correct, to determine whether you get
21 to a point where there was a no detect?

22 A. Quite possibly.

23 Q. At this point you -- on B-13 on
24 Page 330, you don't know yet from a field

1 **perspective whether the vertical extent of**
2 **contamination has been defined?**

3 A. Not without the lab results.

4 **Q. Okay. That would apply for all of**
5 **the field analysis, correct?**

6 A. You know, in the field, my
7 observations at the time, it is using my training
8 and my best guess to try to determine this stuff
9 at that moment, you know, while the boring has
10 been advanced and I have the soil cores in front
11 of me and I am writing that stuff down.

12 **Q. So you could have had a core pulled**
13 **where you had no defect at all in there, but you**
14 **still take a lab sample and the lab sample is what**
15 **controls?**

16 A. Yes. The lab sample is be all, end
17 all.

18 **Q. What do you have to do to know**
19 **that you have fully defined a vertical extent of**
20 **contamination?**

21 A. I'm not --

22 **Q. Is there a point in your boring that**
23 **you, in the field, have in your professional opinion**
24 **gotten to the point where you feel that**

1 **you have fully defined the vertical extent of**
2 **contamination?**

3 A. If you are using your PID machine,
4 and again, the PID is a useful tool it helps us
5 in the field at the time of the boring, it gives
6 you a general idea, your PID readings. You know,
7 if those would be a zero or a non-defect, you'd
8 have a pretty good idea that the soil at that
9 location was quote, unquote clean.

10 **Q. And without that PID, you'd be**
11 **left to your visual and olfactory senses; is that**
12 **correct?**

13 A. Correct, yes. That's my best --
14 you know, it's based on my training and what
15 I saw and what I smelled and, you know, any
16 discoloration maybe, if there was any, in the
17 soil. That's what I had to go by on that day.

18 **Q. So if you got to a stretch of a**
19 **core where you didn't -- where there was a no**
20 **detect, you didn't see any indications and you**
21 **didn't smell any indication of contamination**
22 **and this is below areas where you have identified**
23 **contamination, might that indicate to you then**
24 **that you have at least as far as you could tell**

1 **from the field, you fully determined the vertical**
2 **extent of contamination?**

3 A. I would agree with that, yes.

4 **Q. I would like to call your attention**
5 **to Petitioner's Exhibit No. 4 and Petitioner's**
6 **Exhibit No. 5.**

7 **(Documents tendered**
8 **to the witness.)**

9 BY THE WITNESS:

10 A. Okay.

11 BY MR. SIEVERS:

12 **Q. Are you certain that you took those**
13 **photographs?**

14 A. I'm not certain. Normally, I would
15 take photographs, but I don't specifically recall
16 taking these pictures.

17 **Q. Could another employee of CSD have**
18 **taken these photographs?**

19 A. That could have been, yes.

20 **Q. Sitting here today, do you know for**
21 **sure?**

22 A. I don't know for sure, no. I mean,
23 this was quite a few years ago.

24 MR. SIEVERS: And nothing further.

1 I have nothing further of this witness.

2 HEARING OFFICER WEBB: Okay.

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

4 by Mr. Ingersoll

5 Q. Mr. Hargrave, staying with these

6 boring logs at 320 and onward, if you look at

7 Page 328, the boring went to 16 feet --

8 A. Yes.

9 Q. -- and stopped. Why did you stop at
10 that point?

11 A. From the -- my description here on
12 the boring log, it appeared that at 16 feet, I no
13 longer smelled a strong odor.

14 Q. Once again, these are four feet?

15 A. Four-foot sections.

16 Q. They are not -- you do it a foot at a
17 time because --

18 A. No.

19 Q. -- you do it four feet at a time?

20 A. It was four feet or nothing, you
21 know, pretty much.

22 Q. Okay. So look at the next page. Your
23 non-detect down at 1920.

24 A. Yes.

1 Q. You had odor at 16?

2 A. Yes.

3 Q. So based on what your other testimony
4 was, it would seem that the next option was to move
5 four more feet?

6 A. Correct.

7 Q. And look at 324, please, Page 324.
8 So if your same logic is being applied, you will
9 note what you believe to be contamination at the
10 end of the fourth push at 16?

11 A. Yes, at 16 feet, yes. I did note a
12 slight odor there.

13 Q. So you -- the only option to get to
14 non-defect would be to stick on another four-foot
15 extension?

16 A. Push down another rod, yes.

17 Q. When we were talking earlier about
18 Petitioner's Exhibit No. 3, you said -- I believe
19 you said you didn't recognize that. You could
20 read it and tell what it was, but you didn't
21 recognize that; is that correct?

22 A. That's right.

23 Q. Did you take any samples during the
24 tank pull?

1 A. I don't recall without reviewing a
2 document. I don't recall right now.

3 **Q. Would you look at Page 44 of 56?**

4 A. Sure.

5 **Q. It's the same, I think, on all of**
6 **these chain of custody forms.**

7 A. Yes.

8 **Q. On the lower left-hand corner --**

9 A. Yes.

10 **Q. -- is that you?**

11 A. That's me.

12 **Q. I can hardly read what it says**
13 **for the title of that little box. Does it say**
14 **collected by or what the heck does it say?**

15 A. I can't read it. That is my
16 signature, B. Hargrave. That's my signature.

17 **Q. Okay. So it appears that you**
18 **did take those samples or at least you were**
19 **responsible for them at some point or another?**

20 A. Yes.

21 **Q. So you were, in fact, there when**
22 **this activity was going on?**

23 A. Yes, apparently.

24 **Q. And you took samples from the --**

1 **and do you recall taking any samples from the**
2 **bottom of the excavation?**

3 A. I don't recall.

4 **Q. Would you look at Page 15 of 56?**

5 A. Yes.

6 **Q. Can you tell what that is?**

7 A. Yes.

8 **Q. Okay. And the TP-1, et cetera,**
9 **et cetera, et cetera?**

10 A. Yes.

11 **Q. Those are sample locations?**

12 A. Yes.

13 **Q. And you took all of them? Nope.**
14 **You didn't take -- yes, you did. You took all**
15 **of these samples, right?**

16 A. Let me check to see if the core --

17 MR. SIEVERS: I'm going to
18 object. He's asking him just to review
19 the document. Clearly, he doesn't have
20 actual knowledge separate from the
21 document. I mean, if he refreshes his
22 recollection, he can present the document
23 to him and have him review the document,
24 take the document away from him and then

1 ask him questions about the document.
2 Otherwise, he's simply asking him to
3 look at the document and read off of
4 it.

5 MR. INGERSOLL: And we are
6 looking at a record that has already
7 been admitted into evidence. It
8 was in the Agency's files and omitted
9 for some unknown reason from the
10 administrative record in this matter.

11 HEARING OFFICER WEBB: I'll
12 go ahead and allow it.

13 BY HE WITNESS:

14 A. Can you repeat the question? I'm
15 sorry.

16 BY MR. INGERSOLL:

17 Q. Okay. So you took all of these
18 samples according to this. I mean, your signature
19 is on these pages, which indicates you took those
20 samples?

21 A. Correct, yes.

22 Q. Okay. When you were in that hole in
23 the ground, were you standing in any water?

24 A. I don't recall.

1 **Q. Would you take soil samples if you**
2 **were standing in water?**

3 A. No.

4 MR. INGERSOLL: Okay. Nothing
5 further.

6 HEARING OFFICER WEBB: Okay.
7 Mr. Sievers?

8 R E C R O S S - E X A M I N A T I O N
9 by Mr. Sievers

10 **Q. Counsel asked you about Page 324,**
11 **boring B-7.**

12 A. Which document?

13 **Q. We are talking about the Stage 2 Site**
14 **Investigation Plan and Budget.**

15 A. What was the page number?

16 **Q. Page 324.**

17 A. Okay.

18 **Q. Now, where was the groundwater table**
19 **on that boring?**

20 A. Nine feet.

21 **Q. How did you determine that?**

22 A. Inside the boring, that's where the --
23 you kind of have a change from, you know, a dryer
24 soil into a wetter soil. That's where you kind

1 of -- that's where you kind of surmise there might
2 be a groundwater table right there. That's as
3 you are doing it in the field as I'm logging the
4 borings, you might go from a period of dry soil
5 to wet soil, in which case I will denote that.

6 **Q. And would that be the case throughout**
7 **your boring logs that if you indicated the depth**
8 **while drilling, that indicates you've determined**
9 **that's where the groundwater table is through**
10 **analyzing cores?**

11 A. Yes. That's where we encountered
12 moisture, yes.

13 MR. SIEVERS: I have nothing
14 further.

15 HEARING OFFICER WEBB: Anything
16 further for you, Mr. Ingersoll?

17 MR. INGERSOLL: No. I think we
18 should let Mr. Hargrave go to lunch.

19 HEARING OFFICER WEBB: Thank you
20 very much.

21 (Witness excused.)

22 HEARING OFFICER WEBB: Let's go
23 off the record for a moment.

24

1 (Whereupon, after a short
2 break was had, the following
3 proceedings were held
4 accordingly.)

5 HEARING OFFICER WEBB: We will
6 go back on the record. We just had a
7 short break and the Petitioner may call
8 its next witness.

9 MR. SIEVERS: The Respondent
10 would just like to renew its objection
11 to Petitioner's Exhibit No. 5, a
12 photograph that was still pending
13 subject to cross.

14 HEARING OFFICER WEBB: It is
15 still pending. Would you like to deal
16 with that now or will it be used again
17 in any of the future testimony?

18 MR. INGERSOLL: No. I guess
19 my response would be that if you look
20 at the picture itself and compare it
21 with the known pictures that are in
22 the record -- no, I'm sorry. They are
23 not in the record. They were admitted
24 into the evidence.

1 I think there is a
2 certain amount of corroboration in
3 that that the vehicles in the background
4 can be identified as the same vehicles.
5 So it would seem that corroborates its
6 accuracy and its useful necessary at
7 least at this level.

8 I'm not going to request
9 that it be supplemented into the record.

10 MR. SIEVERS: We would just
11 reiterate that it was not made part of
12 the record. There is no argument there.
13 There has never been submission to the
14 Agency. I mean, it clearly has not been
15 submitted to the Agency prior to today.
16 So certainly, it has had no basis
17 whatsoever upon the Agency's decision.

18 Further, we don't have a
19 witness here testifying they actually
20 took the photograph to lay the foundation
21 to make this admissible. This is simply
22 hearsay at this point.

23 HEARING OFFICER WEBB: Well, I --
24 I'll interject here. I also am not totally

1 comfortable with this exhibit, but I will --
2 if you would like to make an offer of proof,
3 I will -- we will send it to the Board.

4 MR. INGERSOLL: No, that's okay.

5 HEARING OFFICER WEBB: No?

6 MR. INGERSOLL: I will withdraw
7 it.

8 HEARING OFFICER WEBB: Okay.

9 Mr. Ingersoll, you may call your next
10 witness.

11 MR. INGERSOLL: Karl Kaiser,
12 please.

13 HEARING OFFICER WEBB: Mr. Kaiser,
14 you may step up here and the court reporter
15 will swear you in.

16 THE COURT REPORTER: Raise your
17 right hand, please.

18 (Witness sworn.)
19
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1 WHEREUPON:

2 K A R L K A I S E R

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

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

6 by Mr. Ingersoll

7 Q. Would you state your name and spell
8 your last name, please?

9 A. It's Karl Kaiser, K-A-I-S-E-R, and
10 Karl with a K.

11 Q. Thank you. Okay. The site we have
12 been talking about all day, you have been here, so
13 you are the Agency's assigned project manager?

14 A. Yes.

15 Q. And you have been from the beginning,
16 as I understand it, from looking at the record?

17 A. I believe so.

18 Q. Okay. Looking at pages -- is the
19 record there? Yes. Looking at Pages 353, 354
20 and 355, those purport to be your review notes of
21 this matter; is that correct?

22 (Document tendered
23 to the witness.)

24

1 BY THE WITNESS:

2 A. Yes.

3 BY MR. INGERSOLL:

4 Q. These were all prepared by you?

5 A. Yes.

6 Q. I notice they were prepared on
7 different dates?

8 Let's put it this way, I note
9 that they report -- that they were reviews of
10 different dates. The one that says, "date reviewed,
11 April 8, 2014," when was that document created?

12 A. April 8, 2014.

13 Q. So the same date as the review is when
14 you completed it?

15 A. When I completed my review and
16 generated the letter on it.

17 Q. Was this document created before the
18 letter was signed by Mr. Lowder?

19 A. Yes.

20 Q. Do you have any idea when you
21 sent this document to the Agency's central files?

22 MR. SIEVERS: Assumes a fact
23 not in evidence, objection.

24 HEARING OFFICER WEBB: Pardon

1 me?

2 MR. SIEVERS: I'm going to
3 object because it assumes a fact not
4 in evidence.

5 HEARING OFFICER WEBB: Would you
6 like to ask an additional question?

7 BY MR. INGERSOLL:

8 Q. Did you ever send this document to the
9 Agency's central files?

10 A. I don't recall it would have been
11 part of my review, but and I'm not sure when it
12 would have been in the Agency's file.

13 HEARING OFFICER WEBB: Mr. Kaiser,
14 could you just speak up a little bit?

15 THE WITNESS: Yes. Excuse me.

16 BY MR. INGERSOLL:

17 Q. Well, who is responsible for seeing
18 that a document such as these are filed in the
19 central files?

20 A. Normally, when we send a letter
21 for signature, it includes notes and particular
22 submittals that I reviewed and those would then
23 go to our Agency clerical along with signed
24 letters and they would be -- I'm not sure exactly

1 how they route them to the actual division file,
2 but they are the ones who then would send it on
3 to the files.

4 **Q. Okay. Going back to Page 353, it**
5 **mentions a March 25, 2014, manager's meeting. Were**
6 **you at that meeting?**

7 A. Yes.

8 **Q. Who else was present?**

9 A. From the best of my recollection,
10 it would have been Hernando, our section manager,
11 Tom Henninger, Harry Chappel and Mike Lowder.

12 **Q. And did you make a presentation to**
13 **those managers?**

14 A. Yes.

15 **Q. Could you describe your presentation**
16 **to them?**

17 A. Yes.

18 **Q. What did it entail?**

19 A. I explained to them and set forth
20 the information that was given to me for the
21 Stage 2 Plan and Budget and the circumstances
22 around that site and presented them what I,
23 through my review, had planned on doing with
24 it as far as what type of letter I was going

1 to generate and my determinations on that.

2 I was getting concurrence
3 with them whether that was what type of letter
4 needed to be sent and whether that fell in line
5 with the circumstances of the report that was
6 submitted and how that applied to the regs.

7 Q. Did you provide them with any
8 memos or written records?

9 A. No.

10 Q. On Page 354, it says, "Average
11 depth to groundwater was approximately 8.8 feet."
12 Go back to Page 9.

13 A. What was the page you just mentioned?

14 Q. I'm sorry. Page 354.

15 A. Okay.

16 Q. It was the second page of the
17 three-page review note set.

18 A. Okay.

19 Q. It mentioned "Average depth to
20 groundwater is approximately 8.8 feet." Go back
21 to Page 9 in the Agency record. There's some
22 handwritten -- there's a handwritten entry in
23 the right-hand margin.

24 A. Uh-huh.

1 **Q. Is that your writing?**

2 A. Yes, it is.

3 **Q. And what information did you use to**
4 **derive that 8.8 feet average?**

5 A. I used that or calculated that
6 based on the information that was provided in
7 this particular report.

8 **Q. Well, could you point us to the**
9 **information?**

10 A. It would have been going through
11 and averaging the depth to groundwater that was
12 listed on the -- four of the different borings
13 in Stage 2 -- Stage 1.

14 **Q. So that would have been the 14**
15 **borings in Stage 1, the table that runs over**
16 **onto Page 10?**

17 A. I don't recall if it included that
18 or if it included the additional Stage 2 at this
19 time. I can't remember.

20 **Q. Okay. Would you please look at**
21 **Page 12, Table 3.0. I assume you didn't use any**
22 **of these numbers?**

23 A. No.

24 **Q. Okay. Then on Page 14, there is a**

1 question mark and handwritten markings on that
2 piece of paper and then average, approx, 9.5. Are
3 those your marks?

4 A. Yes.

5 Q. Okay. Can I assume you don't
6 believe -- you believe that the 12/14/06 is
7 inaccurate?

8 A. The date?

9 Q. Yes.

10 A. Yes.

11 Q. And the 9.5 is the arithmetic average
12 of all the numbers in the depth to groundwater --

13 A. Uh-huh.

14 Q. -- column?

15 A. Yes.

16 Q. So what is the groundwater table level
17 at that site?

18 A. Based on an average -- looking at an
19 averaging, it was 8.8.

20 Q. Not the 9.5 that actually came from
21 monitoring wells?

22 A. Correct.

23 Q. And you did not include the very low
24 numbers that were seen on 12/14/06?

1 A. No.

2 Q. Okay. If the average that you
3 thought was 9.5, why did you use 8.8 in your
4 notes?

5 MR. SIEVERS: Objection. That's
6 contrary to his testimony. That's not what
7 he just testified to.

8 MR. INGERSOLL: I know. He
9 testified it was 9.5.

10 MR. SIEVERS: He testified it
11 was 8.8 and then he said it was 9.5 on
12 this other table.

13 HEARING OFFICER WEBB: Let's
14 clear this up.

15 BY MR. INGERSOLL:

16 Q. What's the groundwater table out at
17 this site? What's the level?

18 A. It's 8.8.

19 Q. Okay. What's -- so you have decided
20 that the monitoring well levels mean nothing?

21 A. I did not use those. I used the
22 depth while drilling.

23 Q. And why is that?

24 A. Because that's -- the depth while

1 drilling is what we used to determine the level
2 of whether you are taking soil samples or whether
3 it becomes a groundwater issue.

4 **Q. Where is that from? I mean, why**
5 **did you decide on that? Is that Agency policy**
6 **or what?**

7 A. It's through the Agency insofar as
8 the LUST action is concerned and our determinations
9 of where the wells need to be set and everything
10 else. It's determined or purveyed to me as the
11 project manager that it's depth while drilling.

12 **Q. Okay. Did anyone offer up any**
13 **technical support for that position?**

14 A. I myself am not aware of the
15 decisions the Agency made to make the determination
16 of depth while drilling. I was not included in
17 that decision.

18 **Q. Okay. So the Agency will interpret**
19 **the groundwater table to be the depth -- the**
20 **average depth contacting -- at which groundwater**
21 **is contacted during drilling?**

22 A. It would be -- the individual boring
23 would be the depth while drilling -- determined
24 while depth while drilling. The average -- the

1 8.8 is what I came up by averaging the information
2 given to me in this particular report.

3 **Q. Okay. I believe the rule allows**
4 **drilling through and beyond the water table if**
5 **site-specific conditions warrant. Is that your**
6 **understanding?**

7 A. Yes.

8 **Q. And can you describe any site-specific**
9 **conditions that would warrant that?**

10 A. As far as my understanding, there
11 would not be any site-specific conditions that
12 would warrant taking samples below the groundwater
13 table that I have seen.

14 **Q. Is that the Agency's position?**

15 A. As far as the regs are concerned,
16 it leaves it open for that to be site-specific
17 determination or site-specific conditions to be
18 surveyed, but I did not see anything that would
19 require them to take samples below the groundwater
20 table in this particular instance.

21 **Q. Does the Agency have a position**
22 **on this generally? I mean, is it -- are there**
23 **any site-specific conditions that the Agency**
24 **would consider justifying going beyond the water**

1 **table?**

2 A. Not that I'm aware of.

3 **Q. Have you been advised by any of**
4 **your managers that there are none that would be**
5 **approved?**

6 A. Correct. This was discussed, like
7 I said, in the manager's meeting. We came up with
8 the determination that there was no site-specific
9 conditions that warranted the sampling below the
10 groundwater table.

11 **Q. Ever or in these circumstances?**

12 A. In these particular circumstances.

13 **Q. How about ever?**

14 A. That, I wouldn't know.

15 **Q. Have you been getting any instructions**
16 **on that?**

17 A. No.

18 **Q. I assume you reviewed this amended**
19 **45-day report that's marked as Petitioner's Exhibit**
20 **No. 3?**

21 **(Document tendered**
22 **to the witness.)**

23 BY THE WITNESS:

24 A. Yes.

1 BY MR. INGERSOLL:

2 Q. Okay. And they have the number
3 of excavation so-called floor samples -- soil
4 samples from the floor of those excavations,
5 don't they?

6 A. Yes.

7 Q. All right. So what was the water
8 table level on that day of -- let's see when those
9 samples were taken -- August 24, 2006?

10 MR. SIEVERS: Are we making a
11 reference to a part of the record?

12 MR. INGERSOLL: No. I'm making
13 reference to this document, Exhibit No. 3.

14 MR. SIEVERS: Can you give us a
15 page number?

16 MR. INGERSOLL: Well, the -- the
17 sample forms -- the chain of custody forms
18 are at 43, 44, 45. Then once again, you
19 go back to the figures, which I did not
20 really direct him to. I just -- I asked
21 him if he did floor samples and he said
22 yes. I think --

23 BY MR. INGERSOLL:

24 Q. Did they do floor samples?

1 A. Yes.

2 Q. Of soil?

3 A. Yes.

4 Q. Okay. So what was the water table
5 on that date?

6 A. They didn't indicate depth of water
7 at that table based on those samples.

8 Q. Okay. There's a hole 13 feet in
9 the ground and it didn't have any water in it.
10 How deep was it -- what was the water table on
11 that day? It was below 13 feet, wasn't it?

12 A. That, I don't know. I wasn't
13 given that information. I was given in that
14 particular reporter that they encountered
15 groundwater.

16 Q. Well, I'm not talking about this
17 report. It's a different day. It's different
18 information. This doesn't say anything about
19 what level the groundwater was encountered
20 because they've got a dry hole in the ground.
21 What's that say? What's that tell you about
22 the level of groundwater?

23 MR. SIEVERS: I'm going to
24 object. This particular report actually

1 does say groundwater was encountered at
2 the site on Page 4 of 56.

3 HEARING OFFICER WEBB: Is
4 this Exhibit No. 3?

5 MR. INGERSOLL: That's a
6 different question.

7 MR. SIEVERS: Exhibit No. 3.

8 MR. INGERSOLL: I'm talking
9 about the date that that hole in the
10 ground was made. I don't think there
11 has been any disagreement.

12 MR. SIEVERS: I don't think
13 there's any qualification that said
14 that it was not encountered on that
15 day. It says groundwater was encountered
16 at the site in question.

17 MR. INGERSOLL: Groundwater has
18 been encountered at the site, yes.

19 HEARING OFFICER WEBB: Do you
20 want to ask the question again?

21 MR. INGERSOLL: As reported in
22 this very report. Referencing the 45-day
23 report, it was submitted sometime before,
24 I've got a question. I mean, this man

1 has been reviewing project reports for
2 how many years?

3 THE WITNESS: Twenty-two, 23
4 years.

5 MR. INGERSOLL: Okay.

6 HEARING OFFICER WEBB: I'll allow
7 it. Go ahead and ask it.

8 BY MR. INGERSOLL:

9 **Q. Okay. So are you unable to deduce**
10 **that the groundwater, at least on that day that**
11 **that excavation was going on, was below 13 feet?**

12 A. Based on the information that they
13 provided in here and the fact that they took
14 samples and showed the excavation, they did not
15 indicate to me a depth to groundwater level other
16 than stating in a report that they encountered
17 groundwater.

18 **Q. At the site?**

19 A. At the site. Based on looking at
20 the pictures alone, I could not determine that
21 myself because of the quality and clarity of
22 those pictures.

23 MR. INGERSOLL: I have nothing
24 further.

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HEARING OFFICER WEBB: Okay.

Mr. Sievers?

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

by Mr. Sievers

Q. Okay. Mr. Kaiser, there has been introduced in this case Petitioner's Exhibit No. 2 and Petitioner's Exhibit No. 3.

Petitioner's Exhibit No. 2 is a 45-day report and Petitioner's Exhibit No. 3 is amended 45-day report. They were not included in administrative record in this case; is that your recollection?

A. Correct.

Q. Why?

A. Because at the time that I reviewed that, I had already seen a Stage 3 Site Investigation Plan and Budget that documented Stage 1 and Stage 2 activities.

The particular report that I was reviewing at the time was a Stage 2 Plan and Budget because they had neglected to ever submit that particular report prior to the Stage 3 submittal. So I was reviewing that particular information based on my knowledge of the site.

1 I did go back and look at the
2 45-day report or the certification of the 45-day
3 or what was on our database to determine if that
4 was approved, which would have included the
5 Stage 1 certification.

6 Q. But you didn't rely upon the 45-day
7 report -- the amended 45-day report in reaching
8 your decision on the Stage 2 site inspection and
9 budget?

10 A. No.

11 Q. Is it possible that site-specific
12 conditions could exist warranting boring below
13 the groundwater table, but you just haven't
14 encountered them yet?

15 A. True.

16 Q. In the Stage 2 report that was
17 submitted to you in this action or to the Agency
18 in this action, were any site-specific conditions
19 called to your attention that the Petitioner
20 contended warranted drilling or boring below the
21 groundwater table?

22 A. No.

23 Q. Your job duties, they include
24 reviewing, approving, denying, modifying budget

1 **plans involved in the Leaking Underground Storage**

2 **Tank Program, correct?**

3 A. Yes.

4 **Q. What's your highest level of**
5 **education?**

6 A. I have a master's degree in
7 environmental studies.

8 **Q. Do you work with the Office of the**
9 **State Fire Marshal?**

10 A. Yes.

11 **Q. In what capacity?**

12 A. I am a liaison between the Agency
13 and the Office of the State Fire Marshal with
14 regards to record retrievals or removal logs or
15 anything that our project managers may need during
16 the process of a review.

17 **Q. Okay. What's your title with the**
18 **IEPA?**

19 A. Environmental protection specialist
20 three.

21 **Q. How long have you worked at the**
22 **Agency?**

23 A. Approximately 23 years. I started
24 contractually for six months and then was an

1 employee after that.

2 **Q. You are in the LUST section?**

3 A. I have been in the LUST section the
4 whole entire time.

5 **Q. Leaking Underground Storage Tank**
6 **Section?**

7 A. Yes.

8 **Q. You are a project manager?**

9 A. Correct.

10 **Q. And you are the project manager on**
11 **the Piasa Motor Fuels, Inc. site or the Steve's**
12 **Service site?**

13 A. Yes.

14 **Q. And how did you get assigned to this**
15 **site?**

16 A. I'm not aware. I think it's maybe
17 a random allotment of sites that come in.

18 **Q. Does a file exist for this site?**

19 A. A division file?

20 **Q. Within the Agency.**

21 A. A division file exists, yes.

22 **Q. It includes petitioner's submissions**
23 **and correspondence and so forth?**

24 A. Correct.

1 Q. I'm going to call your attention
2 to Page 3 of the administrative record through
3 Page 229.

4 A. Through page what?

5 Q. Page 229.

6 A. Okay.

7 Q. Do you recognize what that document
8 is?

9 A. Yes.

10 Q. What do you recognize it to be?

11 A. This is their Stage 3 planning budget.

12 Q. Have you seen it before?

13 A. Yes.

14 Q. Is it in that file that we spoke
15 about?

16 A. No, it isn't.

17 Q. Is it part of the Agency files?

18 A. Yes.

19 Q. Now, before -- strike that.

20 Prior to receiving this Stage 3
21 Site Investigation Plan and Budget at Page 3 of
22 the record, when was the last time you received
23 a submittal from the Petitioners?

24 A. I believe it would have been at the

1 point of the amended 45-day report.

2 **Q. In 2006?**

3 A. Yes.

4 **Q. And this Stage 3 Site Investigation**
5 **Plan and Budget was received by EPA in January 2012;**
6 **is that right?**

7 A. Yes.

8 **Q. After you received this -- after the**
9 **Agency received this Stage 3 Plan and Budget, did**
10 **you receive a letter from CSD concerning this plan**
11 **and budget?**

12 A. Yes.

13 **Q. Calling your attention to Page 231**
14 **of the record, do you recognize that document?**

15 A. Yes.

16 **Q. What is that document?**

17 A. It was a letter that was submitted
18 to the Agency requesting that the Stage 1 and
19 Stage 2 action costs and the Stage 3 Plan and
20 Budget, that the review for that be waived.

21 **Q. Was that the word they used?**

22 A. No. Their words were, "At this
23 time, CSD would like to request that the Agency
24 suspend their review of these documents until

1 receipt of a revised Stage 2 Plan and Budget
2 currently being completed for submittal to the
3 Agency."

4 Q. Okay. And to your knowledge, did
5 the Agency so suspend its review?

6 A. Yes.

7 Q. This is a May 7, 2012, document; is
8 that right?

9 A. Yes.

10 Q. Prior to this -- prior to the
11 Agency's receipt of this document, did you have
12 any conversations with CSD Environmental Services,
13 Inc.'s personnel?

14 A. Yes, I did.

15 Q. Did you have -- did those
16 conversations, in your mind, result in the
17 receipt of this letter at Page 231?

18 A. Yes.

19 Q. Who did you have the conversation
20 with?

21 A. I believe at the time I talked to Joe
22 Truesdale.

23 Q. And what about that conversation do
24 you think prompted this letter?

1 A. Upon my initial review of that
2 particular document, I became aware that they
3 had never submitted a Stage 2 Plan and Budget
4 to the Agency for review and approval.

5 So I called Mr. Truesdale up
6 and explained to him that we had a Stage 3 plan
7 that had come in prior to this and that I could
8 not review that based on the fact that I -- I
9 don't know what they would have ever had proposed
10 in their Stage 2 Plan and Budget.

11 Therefore, the actual costs
12 in Stage 1 and Stage 2 included that particular
13 thing were things that were -- at that particular
14 point in time I felt I couldn't review because
15 of a lack of that Stage 2 Plan and Budget.

16 I suggested to him that they
17 suspend review on this particular report at
18 such time that would give them the opportunity
19 to submit a Stage 2 Plan and Budget so that it
20 would bring things back into the normal progression
21 of submittal of the plans and reports to the
22 Agency.

23 **Q. So in the five and a half years**
24 **between the amended 45-day report and the receipt**

1 of the Stage 3 Site Investigation Plan and Budget,
2 the Agency had not received any other submittals
3 from CSD for the Piasa Motor Fuels, Inc. site?

4 A. Yes.

5 Q. Now, response to this conversation,
6 you received this letter. Did you ultimately
7 also receive a Stage 2 Site Investigation Plan and
8 Budget?

9 A. Yes.

10 Q. I call your attention to Pages 232
11 through 352 of the record.

12 A. Okay.

13 Q. Do you recognize Pages 232 to 352
14 of the administrative record? Do you recognize
15 that document?

16 A. Yes.

17 Q. What do you recognize it to be?

18 A. Stage 2.

19 Q. Have you seen it before today?

20 A. Yes.

21 Q. Was it in the Agency's files?

22 A. Yes.

23 Q. And I'll call your attention to
24 Pages 353 through 355 of the record.

1 A. Page 253?

2 Q. Pages 353 to 355.

3 A. Okay.

4 Q. All right. Now, do you recognize
5 those documents?

6 A. Yes.

7 Q. What do you recognize them to be?

8 A. My review notes.

9 Q. Is that more than one set of review
10 notes?

11 A. Yes. There's two separate review
12 notes.

13 Q. Are they from different dates?

14 A. Yes.

15 Q. One is for April 8, 2014, and one for
16 March 25, 2014?

17 A. Correct.

18 Q. Okay. And in the review note
19 dated April 8, 2014, there is reference to a
20 LUST section manager's meeting. Do you see
21 that?

22 A. Yes.

23 Q. Are you aware of any records
24 documenting this meeting such as agendas, memos,

1 **notes, emails, et cetera?**

2 A. No.

3 **Q. Have you searched for any such**
4 **records?**

5 A. Yes.

6 **Q. And what was the result of your**
7 **search?**

8 A. There is none.

9 **Q. Okay. Now, I want to call your**
10 **attention to Page 356 of the administrate record**
11 **through Page 358. Do you recognize that document?**

12 A. Yes.

13 **Q. What is that document?**

14 A. Yes.

15 **Q. What is that document?**

16 A. That is the letter that I generated
17 in response to the Stage 2 Plan and Budget.

18 **Q. Is that the Agency's decision letter?**

19 A. Yes.

20 **Q. Who drafted that letter?**

21 A. I did.

22 **Q. Now, that's signed by someone other**
23 **than you, correct?**

24 A. Yes.

1 **Q. Who is that signed by?**

2 A. My immediate supervisor, Michael
3 Lowder.

4 **Q. Okay. Why did Michael Lowder sign**
5 **it and not you?**

6 A. It's just Agency protocol for the
7 LUST section. Project managers don't sign their
8 own letters. It's done by the individual unit
9 managers.

10 (Document marked as Respondent's
11 Exhibit No. R-1 for
12 identification, 9/10/14.)

13 MR. SIEVERS: May I approach
14 the witness?

15 HEARING OFFICER WEBB: Yes.

16 MR. SIEVERS: Thank you.

17 BY MR. SIEVERS:

18 **Q. Mr. Kaiser, I'm handing you what**
19 **was previously marked as Respondent's Exhibit No. 1**
20 **or R-1. Can you take a moment to review that**
21 **and let me now when you have finished?**

22 (Document tendered
23 to the witness.)

24

1 BY THE WITNESS:

2 A. Okay.

3 BY MR. SIEVERS:

4 Q. What do you recognize exhibit --
5 Respondent's Exhibit R-1 to be?

6 A. It's an excerpt of a reg regulations
7 regarding Stage 1 site investigation.

8 Q. Does it set forth Section 734.315 of
9 the regulations?

10 A. Yes.

11 Q. And did you rely upon Section 734.315
12 in reaching your decision on the decision letter set
13 forth April 8, 2014, as set forth in the record at
14 Pages 356 to 358?

15 A. Yes.

16 Q. And Respondent's R-1 contains language
17 concerning borings being drilled groundwater table,
18 correct?

19 A. Yes.

20 Q. And that -- was that language --
21 did you rely upon that language in reaching your
22 April 8, 2014, decision?

23 A. Yes.

24 Q. Okay. And is it your understanding

1 of Section 734.314 as set forth in Respondent's R-1
2 that borings are not to be advanced below the
3 groundwater table unless site-specific conditions
4 warrant it?

5 A. Correct.

6 Q. Do you understand the Petitioner's
7 Stage 2 submittal to include a Stage 1 budget for
8 work involving boring below the groundwater table?

9 A. The Stage 2 Plan and Budget did
10 include sample results below the groundwater
11 table that were in their corresponding budget.

12 Q. Were any site-specific conditions
13 set forth in the Stage 2 submittal indicating to
14 you that site-specific conditions warranted
15 boring below the groundwater table?

16 A. No, they were not.

17 Q. Were any site-specific conditions
18 called to your attention in the Stage 2 submittal
19 in which CSD or the Petitioner contended
20 site-specific conditions warranted boring below
21 the groundwater table?

22 A. No.

23 Q. Did the Stage 2 submittal from the
24 Petitioner include the submittal of any actual costs

1 **incurred in Stage 1?**

2 A. No, it did not.

3 MR. SIEVERS: I don't think
4 I have anything further with this
5 witness.

6 R E D I R E C T E X A M I N A T I O N
7 by Mr. Ingersoll

8 **Q. Mr. Kaiser, is it your contention**
9 **that an applicant has to specifically highlight**
10 **site-specific conditions that it may want to**
11 **rely upon for drilling beyond the water table?**

12 A. When looking at -- when reviewing
13 a particular report like this and looking at
14 compliance like this, I would look for a
15 statement within the submittal of the extenuating
16 circumstances or the reasoning why they would have
17 wanted to stay below the water table and that was
18 not provided in the submittal.

19 **Q. It was not provided. That implies**
20 **that you think it's required by the regs?**

21 A. Yes.

22 MR. SIEVERS: Objection.

23 HEARING OFFICER WEBB: You object?

24 MR. SIEVERS: Withdrawn.

1 HEARING OFFICER WEBB: Okay.

2 BY MR. INGERSOLL:

3 Q. So it's your contention that the
4 applicant should not be allowed to just rely
5 upon you being able to deduce from the information
6 provided in the report whether or not those
7 conditions exist?

8 A. I don't understand the question.

9 Q. Is it your contention -- okay.

10 Are the applicants allowed to
11 rely upon your review of the information in the
12 report that would allow you to deduce whether
13 those conditions exist absent -- go ahead, I'm
14 sorry. Do you want to answer to that part? This
15 is a mess. I'm sorry.

16 A. I was going to --

17 Q. No, no, no. My fault, my fault.

18 Okay. You testified that it
19 is required for the applicant -- if they drill
20 beyond the water table it's required that they
21 specifically highlight the site-specific conditions
22 that relate to that?

23 A. It's my understanding that
24 site-specific conditions need to be present to

1 warrant them drilling below the water table and
2 taking samples.

3 **Q. If there's information elsewhere**
4 **in the report, unless they do a specific assertion**
5 **about those site-specific conditions, you don't**
6 **believe that's adequate?**

7 A. They need to provide me with their
8 reasoning why they had site-specific conditions
9 that warrant them taking samples below the water
10 table.

11 **Q. It has to be set forth separately**
12 **from the data that may be otherwise present?**

13 A. That's what I would look for, yes.

14 MR. INGERSOLL: I have nothing
15 further.

16 HEARING OFFICER WEBB: Mr. Sievers,
17 anything further?

18 MR. SIEVERS: Nothing further of
19 for this witness.

20 HEARING OFFICER WEBB: Okay. Thank
21 you, Mr. Kaiser.

22 (Witness excused.)

23 MR. INGERSOLL: We have nothing
24 further. Thank you.

1 HEARING OFFICER WEBB: Mr. Sievers?

2 MR. SIEVERS: Yes. I guess we will
3 call Mr. Thorpe.

4 HEARING OFFICER WEBB: Mr. Thorpe,
5 why don't you come up and let the court
6 reporter swear you in.

7 THE COURT REPORTER: Raise your
8 right hand, please.

9 (Witness sworn.)

10 WHEREUPON:

11 S H A N E T H O R P E
12 called as a witness herein, having been first duly
13 sworn, deposeth and saith as follows:

14 D I R E C T E X A M I N A T I O N
15 by Mr. Sievers

16 **Q. Mr. Thorpe, could you state your name**
17 **and spell it for the court reporter?**

18 A. Shane Thorpe, T-H-O-R-P-E.

19 **Q. Are you employed?**

20 A. Yes.

21 **Q. Where are you employed?**

22 A. I'm a senior project manager with
23 CSD Environmental Services.

24 **Q. How long have you been employed by**

1 **CSD Environmental Services?**

2 A. Currently, I have been there for --
3 since 2007. Before that, I worked there for a
4 couple of years in the '90s.

5 Q. Okay. Are you familiar with the
6 **Stage 2 Site Investigation Plan and Budget that**
7 **was submitted in this matter?**

8 A. Yes.

9 Q. I would like to call your attention
10 to the record. Do you have that before you?

11 (Document tendered
12 to the witness.)

13 BY THE WITNESS:

14 A. I do.

15 BY MR. SIEVERS:

16 Q. I would like to call your attention to
17 **Page 238.**

18 A. Okay.

19 Q. **Is Page 238 part of the Stage 2 Site**
20 **Inspection Plan and Budget?**

21 A. Site investigation.

22 Q. **Site Investigation Plan and Budget?**

23 A. Yes.

24 Q. Okay. And on Page 238, is that your

1 **signature under the heading of consultant?**

2 A. Yes.

3 **Q. Now, the Stage 2 Site Investigation**
4 **Plan and Budget, that reports, among other things,**
5 **results from a Stage 1 investigation; isn't that**
6 **right?**

7 A. Correct.

8 **Q. And the Stage 1 investigation**
9 **involved Brandon Hargrave, and another CSD**
10 **employee physically going out to the Piasa**
11 **Motor Fuels, Incorporated site and conducting**
12 **an investigation?**

13 A. Yes.

14 **Q. Mr. Hargrave and his coworker**
15 **caused borings to be taken at the site?**

16 A. They caused borings to be taken?

17 **Q. Borings were taken at the site;**
18 **is that right?**

19 A. Yes.

20 **Q. And whether it was taken by**
21 **Mr. Hargrave or his coworker, one of the two**
22 **of them took the borings; is that correct?**

23 A. As I understand it, yes by, by
24 looking at the boring logs.

1 **Q. You weren't onsite when those**
2 **borings were taken?**

3 A. No.

4 **Q. So Mr. Hargrave, he was a**
5 **geologist on the site; isn't that right?**

6 A. Yes.

7 **Q. His analysis of the borings -- of**
8 **the cores retrieved from the borings, those are**
9 **the basis for the Stage 1 data set forth in the**
10 **Stage 2 Site Investigation Plan and Budget; is**
11 **that correct?**

12 A. That's a portion of the data, yes.

13 **Q. Okay. It's the data -- did you**
14 **have other data about the site from the Stage 1**
15 **investigation that didn't come from Brandon**
16 **Hargrave?**

17 A. Well, after the wells were installed,
18 someone went down and gauged them and sampled them.
19 I don't -- off the top of my head, I don't know who
20 did that.

21 **Q. Could that have been Brandon?**

22 A. It could have been.

23 **Q. Okay. But as far as the borings**
24 **for Stage 1 are concerned, the analysis of the**

1 **cores that were taken from those borings, that**
2 **was all done by Brandon Hargrave; isn't that**
3 **right?**

4 A. As far as I know. Like I said,
5 I started at CSD again in 2007. These borings
6 were done in 2006. You are asking me to testify
7 to something that I can't.

8 **Q. Fair enough. You did sign the**
9 **Stage 2 Investigation Plan and Budget as a**
10 **consultant, correct?**

11 A. Correct.

12 **Q. And you relied upon at least data**
13 **from somebody in preparing that plan and budget,**
14 **correct?**

15 A. Yes.

16 **Q. Okay. Are you aware of any statement**
17 **in the Stage 2 Investigation Plan and Budget that's**
18 **false? Well, let me -- I didn't mean to be that**
19 **burdensome. Let me withdraw that question and ask**
20 **you another question and ask you this.**

21 **At the time that you signed the**
22 **Stage 2 Site Investigation Plan and Budget, was it**
23 **your understanding that everything in that plan and**
24 **budget was true and accurate?**

1 A. Yes.

2 Q. And let me call your attention to
3 Page 7 of the administrative record or actually
4 Pages 3 through 229 of the administrative record.
5 So go to Page 3 to start with. Do you see that?

6 A. Okay.

7 Q. Now, do you understand Pages 3
8 through 229 of the administrative record to be
9 Stage 3 Site Investigation Plan and Budget in
10 this matter?

11 A. Yes.

12 Q. I will call your attention to
13 Page 7 of that document. Does that include your
14 signature as the consultant for that document as
15 well?

16 A. Yes.

17 Q. At the time you signed that, you
18 had every reason to believe that that document
19 was true and accurate; isn't that correct?

20 A. That's correct.

21 Q. Okay.

22 A. Going back through it, I have seen
23 a couple of errors and I think we have identified
24 a couple of them today.

1 **Q. Right. Have you identified any**
2 **errors in either the Stage 2 Site Investigation**
3 **Plan and Budget or the Stage 3 Site Investigation**
4 **Plan and Budget that are anything more than a**
5 **typographical error?**

6 A. No. Although I will -- well, sort
7 of, I guess. I noted in the Stage 2 Plan and
8 Budget on Page 246 of the record that we were
9 only going to propose two BTEX and MTBE from
10 each boring because I knew that that was going
11 to be an issue with the samples from below the
12 water table. I did forget -- I forgot to take
13 that out of the budget itself, but the budget
14 didn't get approved or anything.

15 **Q. I'm sorry. I'm confused. Could**
16 **you point to the sentence that you are talking**
17 **about on Page 246?**

18 A. It's in the third paragraph down,
19 second sentence, "For budgetary purposes, only
20 two BTEX and MTBE soil samples are proposed from
21 each soil boring."

22 **Q. Now, are you saying that is a mistake**
23 **to have included that in the report or not?**

24 A. No. I'm saying I meant to only

1 include two of each in the budget, but when I
2 went back and looked at it, I saw that there
3 are four from each of those in the budget.

4 **Q. Why is that a mistake?**

5 A. Because as we have conceded in
6 this case, the Stage 2 explicitly denies or
7 prohibits samples from below the water table
8 whereas Stage 1 does not.

9 **Q. Okay. I just wanted clarification**
10 **on that.**

11 A. It's not to be confused with the
12 depth to groundwater in the boring samples.

13 MR. SIEVERS: I don't think
14 I have anything further with this witness.

15 MR. INGERSOLL: I don't have
16 any questions.

17 HEARING OFFICER WEBB: Okay.
18 thank you.

19 (Witness excused.)

20 HEARING OFFICER WEBB: Mr. Sievers,
21 do you have anything else you would like
22 to present?

23 MR. SIEVERS: No, your Honor.

24 HEARING OFFICER WEBB: Okay. All

1 right.

2 MR. INGERSOLL: May I have a couple
3 minutes to confer to see if we need to put
4 anybody on rebuttal?

5 HEARING OFFICER WEBB: Okay. Let's
6 go off the record.

7 (whereupon, a discussion
8 was had off the record.)

9 HEARING OFFICER WEBB: Okay.
10 We will go back on the record.

11 It is my understanding
12 that Petitioner has nothing further
13 to present today.

14 MR. INGERSOLL: Correct.

15 HEARING OFFICER WEBB: Respondent
16 has one additional issue to address?

17 MR. SIEVERS: Merely moving into
18 evidence Respondent's R-1.

19 HEARING OFFICER WEBB: Which is?

20 MR. SIEVERS: Which is Regulation
21 731.315.

22 HEARING OFFICER WEBB: Okay. I
23 understand you do not have any objection
24 to that?

1 MR. INGERSOLL: No.

2 HEARING OFFICER WEBB: Okay. So

3 I will go ahead and admit that for the
4 convenience of the Board. Respondent's
5 Exhibit No. 1 is admitted.

6 (Respondent's Exhibit No. 1
7 was admitted into evidence.)

8 HEARING OFFICER WEBB: You have
9 nothing further for the Agency?

10 MR. SIEVERS: That's correct, your
11 Honor.

12 HEARING OFFICER WEBB: Okay. The
13 transcript is due by September 22nd and
14 will be posted on the Board's website.
15 The public comment deadline is September
16 24th. Any public comment must be filed
17 in accordance with Section 101.628 of the
18 Board's procedural rules.

19 Petitioner's brief is due
20 by October 6th and Respondent's brief is
21 due by October 20th. The mailbox rule
22 will not apply and briefs are due by
23 4:30 p.m. on the due date.

24 Would Petitioner like to

1 make a closing argument?

2 MR. INGERSOLL: No, thank you.

3 HEARING OFFICER WEBB: Would the
4 Agency like to make a closing argument?

5 MR. SIEVERS: No, thank you.

6 HEARING OFFICER WEBB: At this
7 time, I will conclude the proceedings. We
8 stand adjourned and I thank you all for
9 your participation.

10 (Whereupon, the proceedings
11 in the above-entitled cause
12 were adjourned.)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
4
5

6 I, LORI ANN ASAUSKAS, CSR, RPR,
7 do hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook,
9 and State of Illinois; that I reported by means
10 of machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a true
12 and correct transcript of my shorthand notes so
13 taken as aforesaid.

14
15 
16



17 Lori Ann Asauskas, CSR, RPR.

18 Notary Public, Cook County, Illinois
19
20
21
22
23
24

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