

ILLINOIS POLLUTION CONTROL BOARD
OCTOBER 30, 2020

JOHNS MANVILLE,)
)
 Complainant,)
) No. PCB 14-3
 vs) (Citizens
) Enforcement -
 ILLINOIS DEPARTMENT OF) Land)
 TRANSPORTATION,)
)
 Respondent.)

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer
Bradley Halloran, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, RMR,
CRR, for the State of Illinois, 100 West Randolph
Street, Chicago, Illinois, on the 26th day of
October 2020, commencing at the hour of 9:20 a.m.

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24 ALSO PRESENT: MS. MARIE TIPSORD
MS. JENNIFER VAN WIE

REPORTED BY:

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17
18
19
20
21
22
23
24

I N D E X

THE WITNESS: TATSUJI EBIHARA

PAGE

Direct Examination by Ms. Gale..... 26

Cross-Examination by Mr. Grant..... 87

Redirect Examination by Ms. Gale..... 122

Recross-Examination by Mr. Grant..... 127

THE WITNESS: DAVID MICHAEL PETERSON

PAGE

Direct Examination by Ms. Gale..... 128

Cross-Examination by Mr. Grant..... 187

Redirect Examination by Ms. Gale..... 196

Recross-Examination by Mr. Grant..... 202

Further Examination by Ms. Gale..... 204

THE WITNESS: DOUGLAS DORGAN

PAGE

Direct Examination by Ms. Brice..... 206

E X H I B I T S

Marked for
Identification

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Complainant Exhibit No. 204-38.....	35
Complainant Exhibit No. 229F-377.....	37
Complainant Exhibit No. 213.....	42
Complainant Exhibit No. 204B.....	46
Complainant Exhibit No. 204-49.....	49
Complainant Exhibit No. 204-53.....	52
Complainant Exhibit No. 204-56.....	53
Complainant Exhibit No. 204-60.....	54
Complainant Exhibit No. 204-46.....	55
Complainant Exhibit No. 67-542.....	56
Complainant Exhibit No. 213-1834.....	81
Complainant Exhibit No. 213-1837.....	83
Complainant Exhibit No. 204-47.....	89
Complainant Exhibit No. 204-61.....	90
Complainant Exhibit No. 229G.....	101
Complainant Exhibit No. 229G-208.....	102
Complainant Exhibit No. 63-15.....	106
Complainant Exhibit No. 229.....	122
Complainant Exhibit No. 227-1.....	136
Complainant Exhibit No. 225-1.....	137

1	Complainant Exhibit No. 225-93.....	141
2	Complainant Exhibit No. 225-96.....	142
3	Complainant Exhibit No. 225-105.....	145
4	Complainant Exhibit No. 213.....	148
5	Complainant Exhibit No. 213-1210.....	149
6	Complainant Exhibit No. 213-1211.....	150
7	Complainant Exhibit No. 213-1220.....	151
8	Complainant Exhibit No. 213-1226.....	152
9	Complainant Exhibit No. 213-1254.....	154
10	Complainant Exhibit No. 204.....	156
11	Complainant Exhibit No. 213-38.....	159
12	Complainant Exhibit No. 214.....	170
13	Complainant Exhibit No. 214-14.....	173
14	Complainant Exhibit No. 214-19.....	175
15	Complainant Exhibit No. 214-15.....	176
16	Complainant Exhibit No. 214-17.....	177
17	Complainant Exhibit No. 214-18.....	179
18	Complainant Exhibit No. 204-71.....	182
19	Complainant Exhibit No. 204-79.....	184
20	Complainant Exhibit No. 204-90.....	185
21	Complainant Exhibit No. 204-4 204-5....	210
22	Complainant Exhibit No. 204-9 204-13...	213
23	Complainant Exhibit No. 204-16.....	215
24	Complainant Exhibit No. 204-7.....	227

1	Complainant Exhibit No. 65.....	228
2	Complainant Exhibit No. 65-5.....	229
3	Complainant Exhibit No. 65-16.....	230
4	Complainant Exhibit No. 65-11.....	231
5	Complainant Exhibit No. 79.....	233
6	Complainant Exhibit No. 79-7.....	233
7	Complainant Exhibit No. 120.....	234
8	Complainant Exhibit No. 120-3.....	235
9	Complainant Exhibit No. 204-40 21A-23..	246
10	Complainant Exhibit No. 204-15.....	257
11	Complainant Exhibit No. 204-39.....	258
12	Complainant Exhibit No. 204-36.....	261
13	Complainant Exhibit No. 204-18.....	264
14	Complainant Exhibit No. 204-39.....	266
15	Complainant Exhibit No. 204-20.....	271
16	Complainant Exhibit No. 204-21.....	274
17	Complainant Exhibit No. F.....	279
18	Complainant Exhibit No. 204-108.....	279
19	Complainant Exhibit No. 204-22.....	285
20	Complainant Exhibit No. 204-23.....	291
21	Complainant Exhibit No. 204-25.....	299
22	Complainant Exhibit No. 204-109.....	300
23	Complainant Exhibit No. 204-26.....	304
24		

1 HEARING OFFICER HALLORAN: Hi. Good
2 morning. My name is Bradley Halloran. I'm the
3 Hearing Officer with the Illinois Pollution
4 Control Board. I'm also assigned to this matter.
5 It's PCB 14-3. It's entitled Johns Manville,
6 complainant, versus the Illinois Department of
7 Transportation, respondent. Today is October
8 26th, 2020. It's approximately 9:20.
9 This hearing was properly noticed and will be
10 conducted pursuant to Sections 101 and 103 of the
11 Board's procedural rules. Due to the COVID-19
12 pandemic, we also have available a Webex platform
13 that will allow the public participants and
14 witnesses to participate without being physically
15 present. Information for accessibility can be
16 found in my September 22nd, 2020, notice of
17 hearing order and also if you have connection
18 issues I have my webmaster and general counsel to
19 the right of me. You can call her, Marie Tipsord,
20 at (312) 814-4925 and she will presumably help you
21 out.

22 I'm here to rule on any procedural
23 and evidentiary matters. After the hearing, I'll
24 take the record transcripts and post-hearing

1 briefs and forward them to the capable members of
2 the Board who will decide. Speaking of which, I
3 believe we have Chair Currie on Webex and we have
4 Member Van Wie here physically present to my right
5 and we have various staff attorneys on -- on Webex
6 as well and technical person Essence Brown, I
7 believe.

8 And, again, we're here because on
9 December 15th, 2016, in their interim order the
10 Board found that IDOT caused and allowed open
11 dumping of asbestos-containing material.

12 Specifically, the Board found that IDOT caused
13 open dumping of ACM waste along the south side of
14 Greenwood Avenue within Site 6 and adjacent areas
15 along the north edge of Site 3.

16 The Board further found that IDOT
17 allowed open dumping of ACM waste on a portion of
18 Site 3 within Parcel 0393. It's my understanding
19 that that there is a little disagreement as far as
20 what portion of Parcel 0393 is. The Board, after
21 finding the violations, made a determination as to
22 Section 33(c) factors and availability of cost
23 recovery. The Board found further hearing is
24 necessary. They directed me to conduct a hearing

1 for evidence on the following issues.

2 The cleanup work performed by JM on the portions
3 of Site 3 and Site 6 where the Board found IDOT
4 responsible for ACM waste present in the soil.

5 Number two, the amount and reasonableness of JM's
6 cost for this work and it's my understanding that
7 the parties have stipulated this morning, two.

8 It's -- number three, the share of JM's cost
9 attributable to IDOT.

10 After the hearing is completed, the
11 Board will enter a final order awarding cleanup
12 costs as the Board deems appropriate on the facts
13 and circumstances and I do want to remind the
14 parties that we had a sequester order entered. So
15 any lay or fact persons must leave the hearing
16 room and Webex until -- until they are called. In
17 any event, JM, would you like to introduce
18 yourself and we'll move on to IDOT.

19 MS. BRICE: Sure. Thank you very
20 much. My name is Susan Brice. Welcome to the
21 COVID hearing that we finally got scheduled here
22 after much, much delay. I appreciate it, Mr.
23 Halloran, Board members, Board Member Van Wie.
24 Thank you for having us and --

1 WEBEX: This meeting is being
2 recorded.

3 MS. TIPSORD: Sorry.

4 MS. BRICE: -- making this a
5 possibility. It's been a long time coming. I
6 also have with me my colleague Kristen Gale who is
7 also representing Johns Manville or sometimes we
8 call them JM for short because it's just easier
9 and makes things faster and then, IDOT, do you
10 want to introduce yourselves?

11 MS. O'LAUGHLIN: Sure. There we go.
12 I'll introduce myself from here. I'm Ellen
13 O'Laughlin. I'm an Assistant Attorney General and
14 we are here on behalf of the Illinois Department
15 of Transportation and I will let my colleague
16 introduce himself.

17 MR. GRANT: I'm Christopher Grant
18 with the Attorney General's Office on behalf of
19 IDOT.

20 MS. O'LAUGHLIN: Again, I will echo
21 we appreciate everybody being here and it has been
22 a long road getting here. So good morning,
23 everyone.

24 HEARING OFFICER HALLORAN: Thank you

1 and we've made it thus far, I think we can make it
2 a few more days. So thank you, all, for your
3 patience. Ms. Brice, opening.

4 MS. BRICE: Yes, sure. And I will
5 be brief. You said a lot of what I'm going to
6 say. So very brief here.

7 So National Marine Service
8 versus Illinois EPA the Illinois Supreme Court
9 held that a primary -- "The primary purpose of
10 the act is to ensure that adverse effect upon
11 the environment are fully considered and borne
12 by those who cause them."

13 This case is about fulfilling
14 that purpose and making the polluter pay. In this
15 case, IDOT is the polluter. The Board found, as
16 Mr. Halloran said, in the first hearing, that IDOT
17 violated Section 21 of the act by causing open
18 dumping of ACM waste on portions of Site 3 and
19 Site 6 and I have here Dorgan Figure 1, which is
20 not in dispute and I'm going to -- I'm going to
21 show you guys and I'm going to show the people
22 over here.

23 So this right here is Site 3,
24 the black line right here, and Site 6 starts

1 here and then goes over this way past the Board,
2 but in the first hearing we were focusing in on
3 this area so we don't have everything, but you'll
4 hear about that later in the hearing. The Board
5 also -- let me show you guys. Site 3 is this big
6 block here, Site 6 starts here and here and goes
7 further this way.

8 As Mr. Halloran said, the Board
9 also found that IDOT was liable because it allowed
10 open dumping on Parcel 0393 and held -- because
11 IDOT has held an interest and controlled Parcel
12 0393 since the 1970s. This right here is Parcel
13 0393 within this black area up here. This is
14 Parcel 0393 within this black area up here. The
15 Board also waived -- weighed all the Section 33
16 factors and found each of them was weighed against
17 IDOT and so what -- what is our purpose today?

18 Our purpose today is to decide
19 how much money IDOT owes Johns Manville, or JM for
20 short, for cleaning up the ACM waste IDOT dumped
21 in the 1970s. As the Board said in its interim
22 opinion, and this is important, it is "Appropriate
23 that a party recover the cost of performing
24 cleanup as a result of another party's

1 violations."

2 In other words, a party who
3 cleans up contamination caused by the illegal
4 acts of another can recover the cost incurred.
5 In order to decide how much IDOT owes Johns
6 Manville, the Board asked the Hearing Officer
7 to -- to take in evidence of three topics,
8 which he has gone through, which are the
9 cleanup, work performed by JM and the portions
10 of Sites 3 and 6 where the Board found IDOT
11 responsible for ACM waste present in soil.

12 Number two, the amount and
13 reasonableness of the cost of the work and the
14 share of the JM cost attributable to IDOT. The
15 good news as Mr. Halloran said is that Johns
16 Manville and IDOT agree on a lot. They agree that
17 Johns Manville spent \$5,579,794 on cleanup work at
18 Site 3 and Site 6 and they also agree that this
19 amount was reasonable. They also agree on how
20 that money should be divvied up among the various
21 tasks performed by Johns Manville as part of the
22 cleanup mandated by the U.S. EPA. That said,
23 there is a dispute and as Mr. Halloran mentioned
24 the dispute primarily focused on Question 3 which

1 is up there on the board on the share of JM's cost
2 attributable to IDOT, including a little bit about
3 the areas where IDOT is liable.

4 You will hear from Johns
5 Manville witnesses in the cleanup who were
6 involved in the cleanup as well as a Johns
7 Manville expert, Mr. Dorgan, and not surprisingly
8 the experts -- experts from both sides. You will
9 also hear from Mr. Gobelman, the expert from IDOT,
10 and they do disagree as expected on the issues and
11 calculate IDOT's share of costs in different ways.
12 Mr. Dorgan uses the Board's causation language to
13 determine how much of JM's response costs were
14 caused by IDOT.

15 The testimony of IDOT's expert,
16 Mr. Gobelman, will show that he did not use this
17 language, rather he looked narrowly at the costs
18 he believed were incurred at specific boring
19 locations identified on his own version of the
20 Sites 3 and 6 map. Not this map.

21 It's important to stress here
22 that IDOT's liability is not at issue. There was
23 no counterclaim brought in this case. So that all
24 we are dealing with is -- I mean, JM's liability

1 is not at issue. All we are dealing with is IDOT
2 and IDOT's expert who has already opined that IDOT
3 owes JM \$600,050. JM contends that the amount is
4 much higher and that's why we're here.

5 So let's call our first witness
6 after you do your opening.

7 HEARING OFFICER HALLORAN: Thank
8 you, Ms. Brice, very much. Ms. O'Laughlin.

9 MS. O'LAUGHLIN: Yes. Susan, this
10 is our demonstrative Figure 8 from Mr. Gobelman.
11 Good morning. Good morning, Illinois Pollution
12 Control Board, members of the Board, good morning
13 counsel and co-counsel. My name is Ellen
14 O'Laughlin and I am here representing IDOT in this
15 action that Johns Manville has brought against
16 IDOT where they seek money to help pay for the
17 cleanup mandated by the United States
18 Environmental Protection Agency against Johns
19 Manville pursuant to an enforcement action
20 memorandum.

21 MS. TIPSORD: Slower.

22 MS. O'LAUGHLIN: Slower.

23 MS. TIPSORD: I appreciate it.

24 MS. O'LAUGHLIN: It's a challenge

1 speaking with these masks. So as everyone knows
2 and has been said, this is our second time here.
3 The first part of this proceeding was with a
4 five-day hearing where Johns Manville presented
5 their theories of liability and IDOT defended
6 themselves and following those five days of
7 contested hearing the Board issued an interim
8 order and the interim order was very specific
9 fortunately for us. It was very specific about
10 what the additional hearing was to be and I quote
11 additional hearing.

12 As explained above, the Board
13 finds that IDOT caused and allowed open dumping
14 of ACM waste. Specifically, IDOT caused open
15 dumping of ACM waste along the south side of
16 Greenwood Avenue within Site 6 (1S, 2/4S) and
17 adjacent areas along the north edge of Site 3
18 (B3-25, B3-16 and B3-15). IDOT continues to allow
19 open dumping as long as ACM waste remains at these
20 locations. Additionally, the Board finds that
21 IDOT allowed open dumping through its control over
22 Parcel 0393 at sample locations B3-25, B3-16,
23 B3-15, B3-50, and B3-45 (to the extent sample
24 B3-45 falls on Parcel 0393).

1 So the purpose of today's
2 hearing is additional evidence on what is the
3 costs that are attributable to those areas where
4 the Illinois Pollution Control Board "the Board"
5 found IDOT liable and responsible for the ACM
6 waste and I think it's very important to keep that
7 in context exactly what we're doing here. JM is
8 going to try and is trying to expand the areas of
9 liability. We have been here before. We had the
10 five days of hearing. We have been here before.
11 IDOT -- excuse me -- JM is trying to expand areas
12 of liability and they make arguments that frankly
13 are wrong and IDOT had, through Mr. Gobelman, has
14 shown just a very straightforward approach given
15 the areas and the sample locations for which IDOT,
16 as mentioned by the Board, this is the amount
17 that -- this is the amount that would be IDOT's
18 maximum liability and, I mean, the difference
19 could not be more stark.

20 You know, Johns Manville comes
21 up with a figure of \$3,274,000 -- approximately
22 275 million of the \$5,579,794 and I'd like to just
23 give the Board an idea of that huge number of all
24 over costs given what is IDOT's area of liability.

1 So --

2 MS. BRICE: Sorry. Just -- just for
3 the record, sorry, we had objected to these
4 exhibits and based upon foundation and accuracy
5 and reliability we hadn't had a chance yet to --
6 to make that -- renew that objection in the motion
7 in limine. So now that you're going to talk about
8 that exhibit I just want to make that clear that
9 we do not agree that that exhibit is accurate.

10 MS. O'LAUGHLIN: And we talked about
11 this before. You will make that objection.

12 MS. BRICE: Sure. I just wanted to
13 make it clear for right now.

14 MS. O'LAUGHLIN: Okay. That's fine.
15 So you don't need to make it every single time.

16 MS. BRICE: Understood.

17 MS. O'LAUGHLIN: But if you want to
18 do it again for the record, that's fine, too.

19 HEARING OFFICER HALLORAN: What
20 exhibit is this, Ms. O'Laughlin?

21 MS. O'LAUGHLIN: This is Figure 8
22 and this is Figure 8 to Mr. Gobelman's
23 supplemental report, which is Exhibit 207.

24 HEARING OFFICER HALLORAN: Okay.

1 Thank you.

2 MS. O'LAUGHLIN: It's Figure 8 of
3 Mr. Gobelman's 207. And I just -- it's, you know,
4 we use this -- we'll use these later and present
5 Mr. Gobelman's report and there is a number of
6 figures that he has, but this one is just pretty
7 straightforward and it shows -- it shows, you
8 know, Site 3 and Site 6 and as Ms. Brice pointed
9 out, Site 6 goes to here, but this was the area
10 that is in play right now and so this is the area
11 that IDOT is responsible -- has been found
12 responsible for by the Board in its December 2016
13 order. Just this area here and this area here.

14 So that -- those are the
15 sampling results. Those are the wells. You know,
16 there is a little bit of dispute about, you know,
17 exactly where this goes and that goes, but the
18 dispute between the maps are negligible. The
19 important thing is the expansive area that JM
20 wants to assign IDOT and the area that IDOT,
21 pursuant to the Board's order, is responsible. So
22 we're going to talk a lot about this stuff so I
23 won't go into too much, but I just want to point
24 out that, you know, Mr. Dorgan has presented a

1 theory that I think it's important to know that he
2 expands liability and is basically three ways.

3 He expands 6 -- excuse me --
4 Site 6 area of liability and he wants to reopen
5 the hearing basically from previous. He had made
6 that argument before, Johns Manville had made that
7 argument, and he is trying to rehash areas that
8 have already been decided. The Board decided 01S
9 through 04S. Johns Manville argued that it should
10 be further than that, including to 08S. The
11 Board -- they did not prevail. The Board decided
12 01S to 04S, but nevertheless given that order
13 Johns Manville still wants to argue again that
14 IDOT is responsible for 05S to 08S in addition to
15 01S to 04S.

16 And the other -- the second area
17 is this expanded area of 0393. The Board's order
18 references specific sample wells. It does not
19 reference areas outside of -- outside of these
20 specific sample wells. So that's the second area,
21 this expansive area 0393, and the third area is
22 this theory that Johns Manville is promoting that
23 the remedy has driven IDOT liability whereas it's
24 just sort of a theory for them to, you know,

1 frankly be able to capture, to try to argue that
2 more costs should be assessed to IDOT when it's
3 just -- it's just an unfounded theory.

4 So what we'll be doing in
5 this -- in this, you know, hearing is sort of just
6 sorting through each of these theories and each of
7 these liabilities and I will just mention some of
8 the costs apply to the whole area. They can't be
9 segregated. And because Johns Manville has such a
10 large area associated with IDOT liability that the
11 overall percentage is high, which carries through
12 to other expenses that are applied to --

13 MS. BRICE: Your Honor, Mr.
14 Halloran, sorry. This has been a lot of argument,
15 which is usually not what is presented in opening.

16 HEARING OFFICER HALLORAN: Yeah.

17 MS. O'LAUGHLIN: I'll just try to --

18 MS. BRICE: I was very careful not
19 to do that and so I would -- you know, I don't
20 think this is appropriate for opening.

21 HEARING OFFICER HALLORAN: Yeah,
22 it's more argument than not.

23 MS. O'LAUGHLIN: Okay. I was trying
24 to frame the issues for the Board. It's sort of

1 complicated and a little dull. So I just wanted
2 to introduce these -- the areas -- these things so
3 we can sort of sort through it all.

4 HEARING OFFICER HALLORAN: If you
5 can just do an outline.

6 MS. O'LAUGHLIN: Sure.

7 HEARING OFFICER HALLORAN: We can --

8 MS. O'LAUGHLIN: We will continue to
9 do that.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 MS. O'LAUGHLIN: So let me just
13 finish up. The stipulations are correct. So
14 really just what is at issue is what is IDOT
15 responsible for given these numbers. And I think
16 that also to keep in mind is that, you know,
17 culpability has not been waived by the other
18 expert. Culpability, source of pollution,
19 culpability has not been waived by either expert
20 which will most likely be brought up in
21 post-hearing briefs. And having said that, they
22 have covered the cost and the buckets and things
23 like that. So thank you.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 MS. O'LAUGHLIN: We can continue.

3 HEARING OFFICER HALLORAN: Ms.
4 Brice, your first witness.

5 MS. GALE: Hearing Officer, we call
6 Tat Ebihara and I have binders to deliver.

7 MR. GRANT: Kristen, what is on your
8 screen?

9 MS. GALE: Here.

10 MR. GRANT: I was just wondering if
11 I should sit on the other side, if I need to see
12 what is presented.

13 MS. GALE: If you want to,
14 absolutely.

15 MR. GRANT: Is that okay with the
16 Hearing Officer?

17 HEARING OFFICER HALLORAN: I didn't
18 know what you're doing.

19 MR. GRANT: I wanted to see what was
20 up on the screen with what the witness was seeing.
21 So can I come up over here?

22 HEARING OFFICER HALLORAN: Sure.

23 MR. GRANT: Thank you.

24 MS. BRICE: Kristen, make the

1 objection first.

2 MS. GALE: Dr. Ebihara, why don't
3 you sit right there and if you can face the
4 screen, but the microphone is right that way.

5 HEARING OFFICER HALLORAN: Thanks
6 for being here Mr. Ebihara. If you can raise your
7 right hand, the court reporter will swear you in.

8 WHEREUPON:

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

12 MS. TIPSORD: Let's adjust the
13 camera a little bit.

14 MS. GALE: So is it now on where it
15 clicks on his face when he's talking? When he
16 talks, I want the viewers to be able to see him.

17 MR. NISHIOKA: I don't know if it
18 goes that far.

19 MS. TIPSORD: Would it work to set
20 it for that, but then turn it on speaker view so
21 when he is speaking you would only see him?

22 MR. NISHIOKA: Let me see. I can
23 manually do it. It depends what you want me to
24 do. Do you prefer speaker view?

1 MS. GALE: I prefer speaker view.

2 MR. NISHIOKA: Okay.

3 MS. GALE: Thank you. Mr. Hearing
4 Officer, before I begin, throughout this -- we
5 made an objection to a base map and various
6 figures by IDOT's expert witness Mr. Gobelman and
7 you overruled our objection and before we go any
8 further we're going to ask some questions about
9 those figures and base maps, but by asking these
10 questions Johns Manville is not waiving its
11 objections to the base map and the figures and
12 Johns Manville is not agreeing or admitting that
13 Mr. Gobelman has the skill, expertise or education
14 to create the base maps and the figure -- figures,
15 nor is Johns Manville agreeing or admitting that
16 the figures and the base maps created by
17 Mr. Gobelman are reliable or admissible or have
18 adequate foundation.

19 So throughout this hearing we
20 may say it occasionally on a shorter matter. We
21 will have a continuing objection to the
22 admissibility of the base maps and the figures and
23 objection to Mr. Gobelman's opinions that are
24 based upon that base map and those figures.

1 HEARING OFFICER HALLORAN: More
2 importantly, the Board affirmed these.

3 MS. GALE: I know. I understand.
4 You know, we have a continuing objection
5 regardless of the Board's opinion.

6 HEARING OFFICER HALLORAN: So noted.
7 Thank you.

8 MS. O'LAUGHLIN: Since we are making
9 objections to maps and they expanded their
10 objection to expertise, we also have objections
11 which we outlined in our motion in limine, which
12 was denied by the Hearing Officer, but we would
13 like to maintain and preserve all those objections
14 regarding the expertise and the creation of the
15 maps and all the arguments that were made during
16 our motion in limine.

17 HEARING OFFICER HALLORAN: So noted.
18 Thank you, Ms. O'Laughlin. Ms. Gale.

19 MS. GALE: Ready.

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

21 BY MS. GALE:

22 Q. Dr. Ebihara, ready?

23 A. Yes.

24 Q. Very good. Dr. Ebihara, can you

1 **please state your name for the record.**

2 A. Tatsuji Ebihara.

3 Q. **Can you spell Tatsuji for the court**
4 **reporter, please.**

5 A. Sure. T-A-T-S-U-J-I and last name
6 is E-B-I-H-A-R-A.

7 Q. **Thank you. Dr. Ebihara, I'm calling**
8 **you doctor, why am I calling you a doctor?**

9 A. I have a Ph.D. --

10 Q. **What is your Ph -- thank you.**

11 A. -- in environmental engineering.

12 Q. **Okay. And do you hold any**
13 **professional licenses?**

14 A. Yes, I have professional engineering
15 license in the state of Illinois and the state of
16 New York.

17 Q. **And where do you currently work?**

18 A. Here in Chicago.

19 Q. **For whom?**

20 A. AECOM.

21 Q. **And what is your title?**

22 A. Senior technical leader.

23 Q. **And how long have you been with**
24 **AECOM?**

1 A. I have worked for AECOM since 2012.

2 **Q. Okay. And at AECOM, generally, what**
3 **do you do for them?**

4 A. I have been a project manager on
5 multiple projects for different kinds of
6 environmental work.

7 **Q. Engineering work?**

8 A. Yes.

9 **Q. Very good. Dr. Ebihara, are you**
10 **familiar with the Johns Manville southwestern**
11 **sites in Waukegan, Illinois?**

12 A. Yes.

13 **Q. How are you familiar with it?**

14 A. I've worked on multiple projects
15 associated with it since 2007.

16 **Q. Okay. And what kind of -- describe**
17 **generally for me those projects.**

18 A. They're related to developing work
19 plans for investigation, carrying out those
20 sampling investigations work plans and engineering
21 plans for removal actions and then supporting the
22 execution of those plans.

23 **Q. What were you -- what were you**
24 **removing?**

1 A. We were removing soil --

2 Q. And --

3 A. -- impacted with asbestos material.

4 Q. And did you prepare any cost
5 analysis related to that work?

6 A. Yes, I did.

7 Q. Very good. Specifically, what were
8 your roles and responsibilities in connection with
9 Site 3 and Site 6?

10 A. I was the project manager
11 responsible for the report and engineering
12 deliverables for all of the southwest sites
13 removal action work.

14 Q. And in that report, what did you
15 guys put in that report? What did you do starting
16 in 2007 generally throughout?

17 A. We put in physical representations
18 about what -- where asbestos occurred and what
19 removal actions were required by the U.S. EPA.

20 Q. So it involved sampling, right, you
21 sampled the soil?

22 A. Yes.

23 Q. Great. And there was a removal
24 action work plan?

1 A. Yes, developed that.

2 Q. And you were involved in the
3 construction project?

4 A. Yes.

5 Q. So you communicated with U.S. EPA?

6 A. Yes.

7 Q. Very good. And is your work at
8 Sites 3 and 6 still ongoing?

9 A. Yes, it is.

10 Q. How so?

11 A. I am -- I prepared an operation and
12 maintenance manual that is connected with the
13 southwestern sites and that's under review right
14 now with the U.S. EPA.

15 Q. And can you describe for us what the
16 operation and maintenance is at the site?

17 A. It's -- operation and maintenance is
18 the work that happens and is required every year
19 of the project after construction is complete and
20 it's primarily for maintaining the integrity of
21 the soil engineering barrier at Sites 3 and 6.

22 Q. So like a cap?

23 A. It's a cap.

24 Q. Yeah. And is there any covenants

1 **related to Sites 3 or 6?**

2 A. Yes, there's an environmental
3 covenant for Site 3 that is being finalized and
4 also for the paved portion of Greenwood Avenue.

5 Q. Great. Now, I want to get into
6 professional services and I believe you said you
7 began working at the site around 2007.

8 Who were you working for at that
9 time?

10 A. I was working for LFR.

11 Q. And what timeframe was LFR's
12 involvement at the site approximately?

13 A. For southwestern sites?

14 Q. Yeah.

15 A. Probably 2000 -- from 1998 until --
16 until 2012. So Arcadis --

17 Q. Arcadis, right?

18 A. Arcadis purchased LFR.

19 Q. Right.

20 A. So the involvement continued through
21 about 2012.

22 Q. And your involvement started in
23 2007, right?

24 A. That's -- my involvement started in

1 2007.

2 Q. So about '07 to 2012 was the
3 LFR/Arcadis portion, correct?

4 A. That's correct.

5 Q. And then what happened -- and what
6 was going on from 2007, generally speaking, to
7 2012 at the site?

8 A. From 2007 to 2012, LFR and Arcadis
9 developed an extent of contamination work plan
10 that was reviewed and approved by the U.S. EPA.

11 Q. And is that commonly called the ECA?

12 A. It's actually a work plan just --

13 Q. Okay.

14 A. -- before the ECA.

15 Q. Sorry. Continue.

16 A. And we also prepared engineering
17 evaluation and cost analysis, which is -- the
18 acronym is ECA.

19 Q. Thank you. And that involved a
20 field investigation, too?

21 A. That's correct.

22 Q. Very good. Who did you submit the
23 ECA to?

24 A. To the United States EPA.

1 Q. And what did they say about it?

2 A. They approved it.

3 Q. Okay. And then in 2012, what
4 happened?

5 A. In 2012, I changed employment to
6 AECOM from Arcadis and continued to work on the
7 project as project manager to complete the removal
8 action work plan as well as the other reports --

9 Q. Mm-hmm.

10 A. -- and engineering deliverables for
11 the project.

12 Q. So you brought the project with you
13 to AECOM?

14 A. Yes.

15 Q. Very good. And you said the removal
16 action work plan, what other work was done then
17 about 2012 to -- ongoing?

18 A. There were a number of utility
19 agreements that needed to be finalized in order to
20 complete the removal actions. So I led that
21 effort to -- to finalize those.

22 Q. And those utilities, just generally,
23 can you identify a few of them?

24 A. AT&T, Nicor Gas, North Shore Gas.

1 Q. Wasn't there a water main as well?

2 A. City of Waukegan water main.

3 Q. Very good. All right. Mr. Dorgan,
4 I want you to open up your binder.

5 THE COURT REPORTER: You called him
6 Mr. Dorgan.

7 BY MS. GALE:

8 Q. I'm sorry. Dr. Ebihara. Sorry.

9 MR. GRANT: We're all going to do
10 that.

11 MS. GALE: Oh, boy. The word is
12 right in front of me.

13 BY MS. GALE:

14 Q. Dr. Ebihara, I want you to open up
15 your binder to Dorgan Figure 1, that's where that
16 came from, which is the second tab and labeled as
17 Exhibit 204-38.

18 MS. O'LAUGHLIN: Can you do the
19 trial exhibit number as well?

20 MS. GALE: I think Exhibit's 204.

21 MR. GRANT: It's down at the bottom.

22 MS. O'LAUGHLIN: Thank you. I
23 apologize.

24 MS. GALE: I get it. So Exhibit

1 204-38.

2 MS. O'LAUGHLIN: That's fine.

3 You're good.

4 (Document marked as Complainant
5 Exhibit No. 204-38 for
6 identification.)

7 BY MS. GALE:

8 Q. Are you there?

9 A. Yes.

10 Q. Very good. Do you recognize this?

11 A. I do.

12 Q. What is it?

13 A. It's a figure prepared by Weaver
14 Consultants Group utilizing the base map
15 information that I provided to Weaver.

16 Q. Okay. So you said utilizing the
17 base map information.

18 What is the base map information
19 you're describing?

20 MR. GRANT: Can you tell me where
21 you are? I'm sorry.

22 MS. GALE: I'm sorry. I'm at
23 204-38.

24 MR. GRANT: Okay. Thank you.

1 MS. GALE: It should be on the
2 second tab. Got it?

3 BY MS. GALE:

4 Q. Okay. Going back to my question.
5 You mentioned the base map you provided.

6 Please describe for me what the
7 base map is.

8 A. The base map is digital information
9 that is stored in an autoCAD file that identifies
10 site boundaries, site features, roadways, utility
11 locations and sample locations.

12 Q. And AutoCAD what is that?

13 A. It's a computer software used for
14 engineering design work.

15 Q. Like to create maps?

16 A. Yes.

17 Q. And what -- what kind of data do you
18 put into an AutoCAD to create these maps? Yes,
19 sir?

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

22 MS. TIPSORD: CMS requires you to
23 wear them inside even if there's six feet
24 distance.

1 BY MS. GALE:

2 Q. What kind of data do you put into
3 the AutoCAD software to create the maps?

4 A. It's locational information points,
5 lines.

6 Q. Such as longitude and latitude?

7 A. That's right. Or state plane
8 coordinates.

9 Q. State plane coordinates. Is plane
10 P-L-A-N-E or P-L-A-I-N?

11 A. P-L-A-N-E.

12 Q. Thank you. I believe you said this,
13 but you provided the AutoCAD base maps to
14 Mr. Dorgan?

15 A. Yes.

16 Q. Very good. Okay. So I want you
17 next to flip to 229 on your -- on your binder and
18 technically it's Exhibit 229F-377. Do you see
19 that there?

20 (Document marked as Complainant
21 Exhibit No. 229F-377 for
22 identification.)

23 BY THE WITNESS:

24 A. Yes.

1 BY MS. GALE:

2 Q. Okay. Do you recognize this?

3 A. Yes.

4 Q. What is it?

5 A. It appears to be a screenshot of an
6 open AutoCAD file of Site 3.

7 Q. Okay. So by screenshot, we're
8 looking actually at a picture of the software
9 AutoCAD?

10 A. That's correct.

11 Q. Is that what you prepared -- what
12 you worked off of when you created the auto -- the
13 base maps?

14 A. Yes.

15 Q. And --

16 MR. GRANT: Did he say he created
17 the base map?

18 THE WITNESS: Yes.

19 MR. GRANT: Not AECOM generally, but
20 him personally?

21 BY MS. GALE:

22 Q. Dr. Ebihara --

23 MR. GRANT: I just want to clarify.

24 MS. GALE: Okay.

1 BY MS. GALE:

2 Q. Dr. Ebihara, you were part of the
3 preparation of the base maps?

4 A. Yes.

5 Q. And you oversaw --

6 A. The original base map created by LFR
7 under my authority.

8 Q. Yes, you oversaw --

9 A. Oversaw the development.

10 Q. Of the base maps.

11 A. Yes.

12 Q. You approved the final version of
13 the base maps?

14 A. Yes.

15 Q. So I think we discussed this. The
16 input data that goes into an AutoCAD you said the
17 state plane location --

18 A. Coordinates.

19 Q. -- coordinates. Now, where do those
20 come from?

21 A. They come from land survey
22 information, from an official land surveyor and
23 they come from utilizing a field global
24 positioning system unit that is very precise and

1 it records a location and that -- that data --
2 those data are directly inputted into the AutoCAD
3 software.

4 **Q. And is that a standard engineering**
5 **practice?**

6 A. Yes.

7 **Q. And in this AutoCAD software --**

8 MR. GRANT: Before you ask another
9 question.

10 MS. GALE: Is this an objection?

11 MR. GRANT: Are you just going to
12 have the exhibits that you're -- in here that
13 you're referring to up there? Because then I can
14 get out of the Board's way.

15 MS. GALE: Yes. That's accurate.

16 MR. GRANT: Okay. I'll sit down.

17 BY MS. GALE:

18 **Q. A -- shoot. Okay. Dr. Ebihara,**
19 **looking at Exhibit 229F-377, that's just a**
20 **picture. In an AutoCAD, describe for me what**
21 **other elements are in an AutoCAD that you can't**
22 **see in this picture.**

23 A. The elements that are visible on a
24 particular screenshot are part of layers of

1 information that are turned on or off. So there
2 is -- depending on what you're interested in
3 viewing or the purpose of generating a figure,
4 you'll turn on the -- the layers that are required
5 of the information and then leave others off.

6 Q. Mm-hmm.

7 A. So there's a lot of digital
8 information stored within it.

9 Q. Very good. And when you provided
10 the AutoCAD to Mr. Dorgan, you provided the whole
11 thing?

12 A. All of the -- all of the information
13 requested.

14 Q. Okay. And in your work using this
15 AutoCAD base map, how is this used?

16 A. It was used to develop all the
17 engineering plans and site figures for all of the
18 U.S. EPA submittals that were reviewed by the U.S.
19 EPA.

20 Q. And so they were put into your
21 reports that you submitted to U.S. EPA?

22 A. Yes.

23 Q. Okay. And what did the U.S. EPA do
24 with those reports?

1 A. They approved them.

2 Q. And I think I already asked this,
3 but I'll ask it again.

4 By the figures, you mean the
5 maps of the site were in the reports were based
6 upon this AutoCAD, right?

7 A. Yes.

8 Q. Thank you. Dr. Ebihara, let's
9 actually flip to 213.

10 Ultimately, based upon all those
11 reports you submitted a final report to U.S. EPA,
12 didn't you?

13 (Document marked as Complainant
14 Exhibit No. 213 for
15 identification.)

16 BY THE WITNESS:

17 A. Yes.

18 BY MS. GALE:

19 Q. Is that what we're looking at in
20 213?

21 A. That's correct.

22 Q. Now, 213 for the sake of brevity is
23 about 20 pages in your binder, right?

24 A. Yes.

1 **Q. But in your final report, how big**
2 **was it?**

3 A. It was over 3,000 pages.

4 **Q. Too much -- it would probably cover**
5 **your entire table, wouldn't it?**

6 A. Yes.

7 **Q. So -- and who wrote the final**
8 **report, which is Exhibit 213?**

9 A. This is a report by AECOM that I
10 supervised and reviewed and participated in.

11 **Q. So --**

12 A. So my team wrote the report.

13 **Q. Right. And your signature is right**
14 **there, right?**

15 A. That's correct.

16 **Q. Okay. And you submitted this report**
17 **to U.S. EPA?**

18 A. Yes.

19 **Q. And what did U.S. EPA say?**

20 A. They -- they have approved all of
21 the construction, the physical construction, and
22 removal action completion. They have not formally
23 approved the final report in its entirety because
24 the environmental covenants for Sites 3 and 6 have

1 not been finalized yet.

2 Q. But they're maps in this final
3 report?

4 A. Yes.

5 Q. And did they approve those maps?

6 A. They approved them because they
7 didn't have further comments to request any
8 revisions to them.

9 Q. Very good. Dr. Ebihara, at some
10 point, you became aware of this litigation, isn't
11 that correct?

12 A. Yes.

13 Q. And you learned that Mr. Dorgan was
14 the expert?

15 A. Yes.

16 Q. And what, if any, information did he
17 ask from you?

18 A. He asked me for the pertinent
19 documents about the removal action, but also
20 requested cost information about Sites 3 and 6
21 that the LFR, Arcadis and AECOM had expended.

22 Q. And what did you do when he asked
23 you for that information?

24 A. I provided a summary of that

1 information of -- to him.

2 Q. Mm-hmm. Along with the AutoCAD, you
3 provided him the costs as well?

4 A. Yes.

5 Q. And when you provided that
6 information to him, what did you create, generally
7 speaking?

8 A. I created correspondence, two
9 different ones, one updated from the previous one
10 to summarize in tables the costs invoiced to JM
11 for the southwestern sites project as well as the
12 costs going forward that would end in completion
13 of the removal action and the final reports.

14 Q. Very good.

15 MS. GALE: I just want to ask, can
16 you hear him?

17 THE COURT REPORTER: Yes.

18 MS. GALE: Okay. Can you hear him?

19 HEARING OFFICER HALLORAN: Mm-hmm.

20 BY MS. GALE:

21 Q. All right. Let's flip now to
22 Exhibit 204 -- it's actually in your binder 204
23 Exhibit B. Do you recognize this?
24

1 (Document marked as Complainant
2 Exhibit No. 204B for
3 identification.)

4 BY THE WITNESS:

5 A. Yes, I do.

6 BY MS. GALE:

7 **Q. What is it?**

8 A. It's the second of two letters that
9 I prepared correspondence to Brent Tracy of Johns
10 Manville and Doug Dorgan of Weaver Consultants
11 Group.

12 MR. GRANT: Can I interrupt for a
13 second, Kristen? Sorry.

14 MS. GALE: Sure.

15 MR. GRANT: You said 204(c)?

16 MS. GALE: Exhibit B.

17 MR. GRANT: B.

18 MS. GALE: I'll get there. I will
19 get you there.

20 MR. GRANT: I have it. I'm sorry.

21 BY MS. GALE:

22 **Q. So if you flip to the first page,**
23 **Exhibit B, it's your understanding this is part of**
24 **Mr. Dorgan's expert report, correct?**

1 A. Yes.

2 **Q. And so he has inserted in his report**
3 **your letter and the information attached, right?**

4 A. That's correct.

5 **Q. And you created this. When did you**
6 **create this?**

7 A. I created this in 2018, February 15,
8 2018, when I was the senior project manager for
9 that project.

10 **Q. Okay. And for what purpose?**

11 A. To summarize the total costs
12 invoiced for Sites 3 and 6 between April 2007 and
13 September 2017 as well as the costs that were
14 forecasted to be required to get the project to
15 completion.

16 **Q. Mm-hmm. Okay. And I believe you**
17 **said it, but how -- we looked through this. There**
18 **are various tables and charts.**

19 **How did you go -- generally**
20 **speaking, how did you go about creating this**
21 **document?**

22 A. I took every invoice issued to Johns
23 Manville for the Sites 3 and 6 projects. So
24 really all of the invoiced records for that time

1 period that I mentioned and then I summarized both
2 the total cost for Site 3, the total cost for Site
3 6, as well as a categorization of those costs into
4 approximately eight categories.

5 **Q. So you said categories, have you**
6 **heard the term task buckets?**

7 A. Yes.

8 **Q. What is your understanding of task**
9 **bucket?**

10 A. They're the same categories I'm
11 referring to.

12 **Q. Okay. So when we use task bucket,**
13 **it's also a category, right?**

14 A. Yes.

15 **Q. And, generally speaking, how did you**
16 **determine which costs went into each task bucket?**

17 A. So I have a -- I have an invoice --
18 the invoice documentation provides a summary
19 narrative of Site 3 and Site 6 work. I also have
20 timesheet information from each employee that
21 charged time during that invoice period and that
22 has detailed notes regarding what they're working
23 on at the time and also I was familiar with the
24 main work going on in each of those invoice

1 periods as I was supervising each of those team
2 members directly.

3 Q. Okay. Great. So let's -- let's
4 turn to Table 1 in Exhibit 204. That's actually
5 on Exhibit 204-49.

6 (Document marked as Complainant
7 Exhibit No. 204-49 for
8 identification.)

9 BY MS. GALE:

10 Q. Okay. I have a magnifying glass if
11 you need it to see. Would you like to use the
12 magnifying glass?

13 A. I'm okay.

14 Q. I'll be asking you questions. So,
15 Dr. Ebihara, what is Table 1 and you'll see that
16 it is a number of -- there are four pages for this
17 table?

18 A. This is a summary for Site 3 and
19 Site 6. It's costs that were invoiced between
20 April 28th, 2007, and September 8th, 2017.

21 Q. Okay. So when you said earlier
22 about going back to invoices and looking at
23 timesheets, that's what you did in Table 1, right?

24 A. That's correct.

1 **Q. Okay. And you said you started in**
2 **2007.**

3 **Why -- why did you start in 2007**
4 **for costs? Why didn't you go back further?**

5 A. Right. 2007 I believe was June was
6 when the settlement agreement for southwest sites
7 was issued. So it kicked off a series of
8 requirements for Johns Manville to respond and
9 prepare for the U.S. EPA.

10 So that was the beginning of my
11 involvement, but also the beginning of where the
12 invoice records specifically identified
13 southwestern sites --

14 **Q. Right.**

15 A. -- as an invoice item.

16 **Q. So before 2007, it was general,**
17 **right?**

18 A. It was folded into the consulting
19 work we were doing, but not specifically
20 identifies southwestern sites in Sites 3 and 6
21 work.

22 **Q. So you wouldn't be able to in**
23 **your -- looking at the invoices to distinguish,**
24 **right?**

1 A. That's correct.

2 Q. Okay. And then I want to look at --
3 **let's see if I can see it here.**

4 MS. GALE: Drew, can you go over to
5 the right.

6 BY MS. GALE:

7 Q. **This is easier to see. I don't know**
8 **if they can see it on the Webex, but I just want**
9 **to point out this.**

10 MR. NISHIOKA: I can zoom out.

11 MS. GALE: I'm sorry?

12 MR. NISHIOKA: I can zoom out.

13 MS. GALE: No, the Webex just can't
14 see the screen.

15 BY MS. GALE:

16 Q. **So on the far right-hand side of**
17 **Table 1, there are various columns, what are those**
18 **columns?**

19 A. These are the task bucket categories
20 that I divided the work into for each invoice
21 total.

22 Q. Okay. Great. So let's flip to
23 **Table 2. Do you recognize this?**

24 MR. GRANT: Can you give me the page

1 number, Kristen? I'm sorry.

2 MS. GALE: Sure.

3 MR. GRANT: 204-50.

4 MS. GALE: Table 2 is 204-53.

5 (Document marked as Complainant
6 Exhibit No. 204-53 for
7 identification.)

8 BY MS. GALE:

9 **Q. So, Dr. Ebihara, can you describe**
10 **for me what Table 2 is?**

11 A. Table 2 is the completion costs for
12 Site 3 that were anticipated to be incurred after
13 the end of that final invoice cost provided in
14 Table 1.

15 **Q. How did you go about putting this**
16 **together?**

17 A. We understood what was yet to be
18 completed and those line items were -- were
19 identified and estimated and those are totaled at
20 the bottom of the page.

21 So you can -- you can see that
22 most of the work was involving establishing of
23 thriving vegetative cover and then completing some
24 project management regulatory support and final

1 report preparations.

2 Q. Okay. And then flipping to Table 3,
3 which is on Exhibit 204-56.

4 (Document marked as Complainant
5 Exhibit No. 204-56 for
6 identification.)

7 BY MS. GALE:

8 Q. Generally speaking, what is this?

9 A. This is a completion cost summary
10 for Site 6, in all of Site 6. So it's the similar
11 table to site -- Table 2, but associated with Site
12 6 where it identifies the costs that were
13 anticipated to be incurred to get through to the
14 end of the final report.

15 Q. Did you use a similar methodology to
16 create Table 3 as you did for Table 2?

17 A. Yes.

18 Q. Flipping to Table 4.

19 Again, Dr. Ebihara, do you need
20 a magnifying glass?

21 A. I'm okay.

22 Q. Good. Table 4, what is this?

23 A. Table 4 is a total of operation and
24 maintenance costs for Sites 3 and 6.

1 **Q. And how did you go about putting**
2 **this together?**

3 A. This is -- this is based on an
4 estimate of professional labor costs as well as
5 material costs that would be needed every year to
6 maintain that soil cover for Site 3 and that's
7 developed with further detail on page -- on Table
8 5, which is Exhibit 204-60.

9 (Document marked as Complainant
10 Exhibit No. 204-60 for
11 identification.)

12 BY MS. GALE:

13 **Q. Got it. And we'll get there. So I**
14 **see this goes out to 2047, which is 30 years, why**
15 **is it 30 years?**

16 A. Thirty years is the normal basis for
17 EPA estimates for long-term operation and
18 maintenance.

19 **Q. Very good. I think you already said**
20 **this, but you -- on Table 5, which is on 204-60,**
21 **can you just tell us how Table 5 connects to Table**
22 **4?**

23 A. Table 5 provides details of what
24 the -- what the total number each year, the total

1 costs each year is based on. So it's engineering,
2 it's staff hours and rates, that total, as well as
3 expenses for signs and stone materials to keep the
4 soil covering in good condition.

5 Q. And then in Table 4 it's that value
6 from Table 5, but projected out using what kind of
7 projection?

8 A. It includes an average rate of
9 escalation, but it assumes the same scope of work
10 each year is incurred, each year to maintain the
11 cap.

12 Q. Okay. Dr. Ebihara, going back to
13 look at all of 204-46 and your tables from
14 February 15, 2018, do you believe you've
15 accurately reflected the costs since 2007 at
16 Site 3 and Site 6?

17 (Document marked as Complainant
18 Exhibit No. 204-46 for
19 identification.)

20 BY THE WITNESS:

21 A. Yes.

22 BY MS. GALE:

23 Q. Now, I want to flip to and discuss
24 the task buckets that we mentioned before.

1 **Dr. Ebihara, are you familiar**
2 **with the location of the utility lines generally**
3 **speaking in Site 3 -- excuse me -- Site 6?**

4 A. Yes.

5 **Q. Okay. Let's flip to Exhibit 67-542,**
6 **which is the next thing in your binder.**

7 **(Document marked as Complainant**
8 **Exhibit No. 67-542 for**
9 **identification.)**

10 BY MS. GALE:

11 **Q. Do you recognize this?**

12 A. Yes, I do.

13 **Q. What is it?**

14 A. It's a figure prepared by AECOM that
15 describes Site 6 and the proposed excavation, the
16 soil excavation areas, along the north and south
17 shoulders.

18 **Q. North and south shoulders of?**

19 A. Site 6.

20 **Q. Greenwood Avenue, right?**

21 A. Greenwood Avenue.

22 **Q. Yeah. For a person that has never**
23 **seen this before, it's kind of an interesting map**
24 **and I had trouble with it, can you just generally**

1 **describe for me how this figure works?**

2 A. The top part of the figure shows the
3 right of way of Greenwood Avenue and the very top
4 portion of the figure is the western half of Site
5 6 and just below it is the eastern half of Site 6
6 and they -- they match up at the match line that
7 is described in the upper right corner.

8 So it's a -- it's a continuous
9 road right of way and it's a way of representing
10 in a figure so there is enough detail that is
11 available.

12 Q. And it was done this way so you
13 wouldn't have a two-foot page heading out of the
14 binder, right?

15 A. That's right, with really small
16 print.

17 Q. Exactly. And so looking at this
18 map, these two rows are actually connected at the
19 match line, right?

20 A. That's correct.

21 Q. Very good. And I want to focus on
22 the AT&T lines now. Let's look at the legend and
23 there is a -- for the record, I'll say pink, but
24 Dr. Ebihara does not see color very well. So this

1 **will be somewhat difficult, but do you see the**
2 **Comm, C-O-M-M, line?**

3 A. Yes.

4 **Q. What is that for?**

5 A. That's for the AT&T underground
6 phone cables that were present --

7 MR. GRANT: Can you show --

8 BY THE WITNESS:

9 A. -- before any work was completed.

10 MS. GALE: Pink Comm line right
11 there.

12 THE COURT REPORTER: Can you repeat
13 the end of your answer. AT&T underground phone
14 cables that were --

15 BY THE WITNESS:

16 A. Present before the removal action
17 work was performed.

18 BY MS. GALE:

19 **Q. And that -- is the -- so before the**
20 **removal action was begun, what happened to them**
21 **during the removal action?**

22 A. They were removed or deactivated,
23 decommissioned before the removal action was
24 started.

1 Q. Okay. So looking at the map, do you
2 see the Comm line, and it is difficult to see, but
3 I'll try for the record, on the northside of the
4 top row beginning at 01N?

5 A. Yes.

6 Q. Okay. And where does that go to, on
7 the northside of the top row, approximately what
8 sample point?

9 A. Approximately, 27N.

10 Q. 27N, right. And then what happens
11 there at 27N?

12 A. That underground cable comes up out
13 of the ground and goes up to overhead utility
14 poles.

15 Q. And those overhead utility poles,
16 that's the OH?

17 A. That's correct.

18 Q. And these are -- these OH, overhead
19 utility poles, this is a representation before
20 construction began, is that right?

21 A. That's right.

22 MR. GRANT: I'm lost a little bit.
23 Can you show me? I don't see an OH.

24 MS. GALE: Right there.

1 BY MS. GALE:

2 Q. So the OH is on the far right-hand
3 side right next to 29N?

4 A. That's correct.

5 Q. Okay. And that OH continues on
6 through the match line on the -- excuse me --
7 eastern -- towards the east on Greenwood Avenue,
8 right?

9 A. That's right. Continues to proceed
10 east and ends approximately at --

11 MR. GRANT: Mr. Halloran, I'm going
12 to object at this point. I don't understand the
13 relevance of this testimony. This is way outside
14 of the area that the Board found that IDOT was
15 involved.

16 HEARING OFFICER HALLORAN: I don't
17 know what your intention is. Ms. Gale?

18 MS. GALE: This is related to the
19 calculations that were by the experts in their
20 estimation of what the costs were associated with.
21 Part of the calculations that we contend
22 Mr. Gobelman did were inaccurate based upon
23 inaccurate information about his estimates of how
24 far these lines went. So it's related to, in

1 effect, the denominator of Mr. Gobelman's
2 estimations.

3 HEARING OFFICER HALLORAN:
4 Mr. Grant?

5 MR. GRANT: I'll withdraw my
6 objection.

7 HEARING OFFICER HALLORAN: Okay.
8 Thank you. You may proceed.

9 BY MS. GALE:

10 Q. Okay. I think we said it, but I
11 lost -- so -- these overhead lines depicted on
12 this map, these were there before construction
13 occurred, right?

14 A. That's correct.

15 Q. And during construction, what, if
16 anything, was done on these overhead lines?

17 A. They were -- they were not modified.

18 Q. They were not modified?

19 MR. GRANT: Let me object to the
20 term construction. What do you mean by
21 construction? You mean construction of the AT&T
22 lines?

23 MS. GALE: Okay. Fine.

24

1 BY MS. GALE:

2 Q. I'm using the term -- construction
3 term, what do you think I'm meaning by that?

4 A. It's the soil removal action and any
5 related utility work that was required to allow
6 that to occur safely.

7 Q. Okay. So where did the work on the
8 north side of Greenwood Avenue end?

9 A. On the north side, approximately
10 58N.

11 Q. On the north side?

12 A. Utility work or soil?

13 Q. I'm sorry. You're right.

14 Where did the utility work
15 related to Comm line end?

16 A. It ended at approximately 27N.

17 Q. Thank you. And so, to your
18 knowledge, were any costs incurred for the --
19 beyond 28 -- 27N by Johns -- excuse me -- by AT&T
20 that AT&T billed Johns Manville for?

21 A. For the north side?

22 Q. Correct.

23 A. No, there were no additional costs.

24 Q. Thank you. All right. I want to

1 now focus on the south side. Looking at the south
2 side, you see the Comm on the western end that is
3 actually not in the road and it heads northeast on
4 the south side of --

5 A. Yes.

6 Q. Where does it sort of enter the
7 area?

8 MR. GRANT: Excuse me. Can you show
9 me? I thought you were on this one.

10 MS. GALE: So match line. That's
11 how this works.

12 MR. GRANT: Yeah, I know. So it
13 goes here and continues there, right?

14 MS. GALE: Continues here, correct.

15 MR. GRANT: You're here.

16 MS. GALE: South end.

17 BY MS. GALE:

18 Q. So on the south end starting on the
19 western edge of Greenwood Avenue, where does the
20 Comm line seem to start?

21 A. Approximately, 03S.

22 Q. Mm-hmm. And then it travels along
23 the south side to approximately what sample
24 number? I think you're going to have to cross the

1 match line.

2 A. Right. It's 37S or 38S.

3 Q. Yeah. In between 37 and 38, right?

4 A. Right.

5 Q. Okay. And then what happens to that
6 line?

7 A. It goes across Greenwood Avenue from
8 south to north.

9 Q. Mm-hmm. And connects to --

10 A. The overhead line.

11 Q. Thank you. So now let's look at the
12 AT&T fiber line. Looking at the legend, the AT&T
13 fiber line is orange with FIB. So it's -- for
14 your sake, it's the top in the legend, the top
15 FIB.

16 A. That's correct.

17 Q. Okay. And this one is a bit harder
18 to see, but looking at the north side of Site 6 so
19 the top, top row, do you see the orange FIB
20 running along --

21 A. Yes.

22 Q. -- on the top?

23 A. Yes, I do.

24 Q. Okay. And you see that it travels

1 on the north side of Site 6 from one end to
2 approximately where?

3 A. To 27N.

4 Q. Okay.

5 MR. GRANT: I'm going to renew my
6 objection on relevance because there was -- there
7 was no finding of any involvement by IDOT on the
8 north side of Greenwood Avenue in its order. So,
9 number one, I say this is a very cluttered
10 document. I am continuing to get lost on it.

11 HEARING OFFICER HALLORAN: Ms. Gale?

12 MR. GRANT: Number two, to the
13 extent that this is running on the north side of
14 Greenwood Avenue, it really has no relevance to --
15 to what we're here for today.

16 HEARING OFFICER HALLORAN: Ms. Gale?

17 MS. GALE: Sure. Well, first of
18 all, I mean, it's a cluttered document, but this
19 was a document that was submitted to -- to the
20 U.S. EPA as part of the work done. So I can't
21 help that it's cluttered by AECOM. It has the
22 information of the utilities.

23 Secondly, as I said before, the
24 purpose of this -- of this testimony and this

1 description is to rebut the calculations made by
2 Mr. Gobelman in his expert report. He made
3 certain calculations and certain distances that we
4 contend are inaccurate based upon what the work
5 that was done there and because of his
6 calculations that are inaccurate because his
7 denominator is inaccurate. So this goes towards
8 the overall what was done and what was not done at
9 the site.

10 MR. GRANT: If they're talking about
11 a utility line that is running -- from what I can
12 see, if I am seeing this correctly, this orange
13 line runs only on the north side of Greenwood
14 Avenue where we weren't involved at all.

15 MS. GALE: Mr. Hearing Officer, one
16 last thing. This was an interim order. I
17 understand the Board made its decision. It is an
18 interim order and we still contend the Board may
19 be wrong and so part of, you know, in an interim
20 decision we would like this to be in there in case
21 there is a different decision at a later basis
22 that includes these sites so that we can
23 contend --

24 HEARING OFFICER HALLORAN: Did JM

1 file a motion to reconsider? I mean, the Board --
2 I'm looking at my cryptic notes found IDOT
3 violated at open dumping waste on the south side
4 of Greenwood Avenue. I don't see anything north
5 of Greenwood Avenue.

6 MS. GALE: Right. But we don't have
7 to -- just because it's an interim order. We
8 don't have to appeal it or do a motion to
9 reconsider. The Board made its decision. We may
10 disagree with it, but it's still available for
11 appeal later.

12 HEARING OFFICER HALLORAN: The issue
13 is not for this hearing, correct? Share of JM's
14 costs attributable to IDOT based on what they
15 found.

16 MS. GALE: Right. But our
17 contention is you have to understand all the costs
18 to understand what should be assigned to each
19 party.

20 MR. GRANT: Mr. Halloran.

21 HEARING OFFICER HALLORAN: It sounds
22 like you're backdooring it.

23 MR. GRANT: We're going to be
24 getting into this. You know, this is not Day 6 of

1 the 2016 hearing. We're not still putting on a
2 bunch of engineers to find, you know, what's on
3 Site 3. The Board had to review a ten-foot shelf
4 of exhibits and go through a lot of work to come
5 up with the order that it came up with.

6 Yeah, it's an interim order,
7 but -- but it was an interim order that set
8 exactly the purpose and the scope of this hearing
9 and you mentioned it at the beginning, it's been
10 mentioned several times, I hesitate to read the
11 order again, but basically it's -- it's defined
12 the share of IDOT's costs for open dumping at
13 these specific spots and they've got it laid out
14 very carefully in their order exactly where those
15 spots are that is meant to be found.

16 The Johns Manville site has got
17 asbestos all over the place. It's a Superfund
18 site. And after all the work we did in 2016 to
19 pin down the areas where IDOT may have been
20 involved for moving around this stuff, the Board
21 did it and, I mean, obviously they're not happy
22 with the scope of the Board's decision. They're
23 asking for all of Site 3 and an extensive part of
24 Site 6 on both sides of the road and they didn't

1 get it.

2 We're not particularly happy
3 that we were found liable for open dumping either,
4 but we're not challenging that in this hearing
5 because that's not the purpose of this hearing.
6 So I do think the scope needs to be limited. This
7 is not giving them an opportunity to reopen entire
8 new areas of this very contaminated site to try to
9 ascribe it to IDOT. Otherwise, we're going to
10 have another six-day hearing with trying to find
11 liability that has already been done.

12 MS. BRICE: Mr. Halloran, if I may.

13 HEARING OFFICER HALLORAN: Yes, you
14 may.

15 MS. BRICE: The Board order said it
16 is looking at the share of JM's cost attributable
17 to IDOT. Within that context, the Board said "A
18 party can recover the costs of performing cleanup
19 as a result of the other party's violations."
20 They didn't say you look at each little dot and
21 how much was -- was, you know, spent at that
22 specific dot. That dot is obviously
23 representative of a bigger area.

24 It's not our fault that it was

1 decided upon the basis of sampling locations.

2 We're not trying to -- there was no -- we
3 researched this. We did not have to appeal
4 anything at this point in time.

5 Listen, we're not trying to
6 reopen everything with respect to this testimony.
7 This testimony is only to rebut what their expert
8 did. Their expert assumed -- and they did this.
9 He calculated these lines. He said the lines run
10 all the way across the north side of 6 and all the
11 way across the south side of 6. He calculated
12 that number and then he said IDOT's portion of
13 responsibility is from here to here. He divided
14 it, came up with a percentage and then applied
15 that percentage to the cost incurred for that AT&T
16 line task bucket.

17 So how in the world we can't --
18 if we can't rebut what he is saying with his
19 assumption that the lines went all the way across
20 the north side of Site 6 and all the way across
21 the south side of 6 -- this is their testimony.
22 This isn't our testimony.

23 MR. GRANT: I would -- I guess my
24 response to that is that should be handled during

1 the examination of Mr. Gobelman.

2 MS. BRICE: But we're laying the
3 foundation for it.

4 MR. GRANT: Laying the foundation.
5 We're get into areas on the north side of Site 6
6 that by their own map show is outside of the area
7 as defined by the Board.

8 HEARING OFFICER HALLORAN: You know,
9 just by these arguments in front of me and the
10 2016 order is not crystal clear and understandably
11 so. It was mentioned again I think in the 2018
12 order that the parties were in disagreement. They
13 didn't address it there.

14 Ms. O'Laughlin addressed it in
15 her opening. It's rather confusing. So, you
16 know, my thought is that they're going to go ahead
17 and lay the foundation. I mean, nowhere does it
18 say north side of Greenwood, but, again, it's --
19 it's a complicated case.

20 MS. BRICE: Thank you.

21 HEARING OFFICER HALLORAN: It is
22 what it is and I wish it didn't have to be, but I
23 will allow Ms. Gale to continue, but I hope you
24 don't reopen this whole thing again.

1 MS. O'LAUGHLIN: Right, exactly.

2 HEARING OFFICER HALLORAN: I
3 haven't, but -- Ms. O'Laughlin?

4 MS. O'LAUGHLIN: Right. I mean,
5 that's the concern here. I thought Ms. Gale was
6 identifying that they wanted this to be sort of a
7 reconsideration where they could go make arguments
8 that have already been made and I understand in
9 the portion of Dorgan's report we may disagree on
10 that, but we don't need to blow open this whole
11 liability.

12 MS. BRICE: I can tell you we are
13 not looking for any costs on the north side of 6.

14 MS. GALE: This is 5.

15 MS. BRICE: I know. But just so you
16 know none of the costs that Mr. Dorgan is going to
17 testify to have anything to do with the north side
18 of 6.

19 HEARING OFFICER HALLORAN: Thank you
20 so much. Anything else?

21 MR. GRANT: Nothing.

22 HEARING OFFICER HALLORAN: You may
23 proceed. Sorry, Ms. Gale.

24 MS. GALE: No problem.

1 BY MS. GALE:

2 Q. Okay. I may have to backtrack.

3 Okay. The FIB orange line, that's the AT&T
4 fiberoptic cable, right?

5 A. Yes.

6 Q. Okay. And, again, looking at the
7 north side at 01N, do you see the orange FIB line?

8 A. Yes.

9 Q. Do you know -- we did this. You
10 said it traveled to 27N and went to the OH. Okay.
11 Sorry.

12 Now, the AT&T orange FIB line,
13 did it travel on the south side of Site 6?

14 A. AT&T --

15 MR. GRANT: Just let me point out --
16 again line --

17 MS. GALE: Actually you're going to
18 get a no on this one.

19 MR. GRANT: You said FIB line?

20 MS. GALE: Here.

21 MR. GRANT: Thank you.

22 BY MS. GALE:

23 Q. So the orange FIB line we already
24 said is on the north side 27N. Now, I'm looking

1 at the south side. Do you see the orange FIB line
2 on the south side of Site 6?

3 A. Yes.

4 Q. You do?

5 A. Is it orange? I don't know.

6 Q. It's not orange.

7 A. You have to distinguish between AT&T
8 and ComEd.

9 Q. Any FIB on the south side, on the
10 south side. It's not there, right?

11 A. Is there a color difference between
12 the AT&T and the ComEd fiberoptic cable?

13 Q. There is. The ComEd C-O-M-M is
14 pink, but the FIB is orange. It's on the north
15 side, but it's not on the south side, right?

16 A. Yes.

17 Q. Great. Forgive me. We have
18 coloring issues.

19 So I want to look actually at
20 the bottom of this figure Exhibit 67-542. On the
21 right-hand side, there is these charts excavation
22 coordinates. What are those -- so I just said it,
23 but what are these charts for?

24 A. It's to identify the corners of the

1 required excavations to remove asbestos-containing
2 material --

3 MS. BRICE: Can you point me?

4 MR. GRANT: Just point for the
5 record. They're essentially illegible on this
6 exhibit.

7 MS. GALE: Okay.

8 BY MS. GALE:

9 Q. Would you like -- I have a
10 magnifying glass. Would you like to look at it?

11 MR. GRANT: I have one in my office.
12 No, I'm just saying this exhibit is illegible and
13 obviously you know what it is because you've
14 looked at it and prepared testimony on it, but I
15 have no idea what these things are.

16 MS. GALE: Again, I have a
17 magnifying glass if you'd like to use it, but we
18 also have it blown up here.

19 MR. GRANT: Let me come around.

20 MS. GALE: So if you want to focus
21 in on the right-hand corner?

22 MR. NISHIOKA: Right here?

23 MS. GALE: Yes. There we go.

24 HEARING OFFICER HALLORAN: Can you

1 see it, Mr. Grant?

2 MR. GRANT: Yes. I apologize for
3 invading her space here.

4 MS. GALE: I'll load it up again.

5 MR. NISHIOKA: I have to go to the
6 bottom right.

7 MS. GALE: Mm-hmm. I just need the
8 chart table. Perfect.

9 BY MS. GALE:

10 Q. So those coordinates, what are
11 those -- describe for me what those coordinates
12 are.

13 A. They're longitude and latitude. So
14 specific locations, point locations, on the
15 Greenwood Avenue right of way where excavation is
16 to be performed to that limit. So each -- each
17 corner --

18 Q. Right.

19 A. -- of the rectangular excavation
20 area.

21 Q. And those relate to the GPS
22 locations, right?

23 A. Yes.

24 Q. Okay.

1 A. So it allows the field construction
2 worker to know what limit to dig to.

3 MS. GALE: Chris, you might want to
4 go back again.

5 MR. GRANT: Thanks for the warning.

6 MS. TIPSORD: You can pull a chair
7 around.

8 MS. GALE: We're almost done with
9 this exhibit.

10 MS. VAN WIE: I do have a question.

11 HEARING OFFICER HALLORAN: Ms. Gale?

12 MS. GALE: Yes.

13 HEARING OFFICER HALLORAN: Member
14 Van Wie has a question.

15 MS. VAN WIE: I do have a question.
16 I can't quite see the furthest left corner of
17 where it says 123. Is that referring to a
18 specific boring location or --

19 MS. GALE: I'm getting there.

20 MS. VAN WIE: Okay.

21 MS. GALE: I'm doing it right now.
22 Okay. So if you want to zoom out a bit.

23 MR. NISHIOKA: How much?

24 MS. GALE: Keep going. One more

1 time.

2 BY MS. GALE:

3 Q. Right. So, Dr. Ebihara, I'm looking
4 at this -- this excavation point which has --
5 excavation points 28, 30, 29 and 27, and this is
6 an excavation. The hashmarks are three feet
7 proposed, is that accurate?

8 A. That's right.

9 Q. And can you describe to me where
10 these, you know, 20 -- so what is 27 pointing to?

11 A. Twenty-seven is the point number
12 that you go to the table, reference table, and
13 then 27 in that middle second column from the left
14 is the longitude and latitude coordinate for that
15 point location and same for the other corners of
16 that rectangle for 28 --

17 Q. Right.

18 A. -- 29 and 30.

19 Q. So if we go back and look at that
20 rectangle -- and, for the record, the rectangle is
21 on the south --

22 MR. NISHIOKA: Sorry.

23 BY MS. GALE:

24 Q. For the record -- I'll describe it

1 for the record. It's on the south -- it's the
2 southeastern excavation and this is simply to
3 identify where these points are located, not to in
4 any way expand any scope. One more time.

5 MR. NISHIOKA: One more time?

6 MS. GALE: To the right.

7 MR. NISHIOKA: Okay.

8 MS. GALE: One more. You have to
9 get over here. There we go.

10 MR. NISHIOKA: I'll double click it.

11 Okay.

12 BY MS. GALE:

13 Q. So the coordinates in -- the
14 excavation coordinates they match up to each of
15 these points, right?

16 A. That's correct.

17 Q. And these points are -- these
18 coordinates are based upon what?

19 A. Their longitude and latitude
20 locations.

21 Q. And where did you put in these
22 coordinates -- what software did you use?

23 A. This is from our AutoCAD software
24 where those coordinates originated from.

1 Q. Great. Okay. All right. We can
2 get off of that.

3 Dr. Ebihara, I want to flip back
4 to 204-38, which is the second tab in your binder.
5 Are you there?

6 A. Yes.

7 Q. Okay. Dr. Ebihara, can you describe
8 for me where the northeast excavation is?

9 A. Yes, it's located within Site 3
10 along the north boundary on the east side and it's
11 labeled northeast excavation and it is also marked
12 with the diagonal cross hatch dash lines.

13 Q. And it --

14 A. It looks like it is three rectangles
15 linked together.

16 Q. And in looking at this map, is it in
17 the correct location?

18 A. Yes.

19 Q. How do you know that?

20 A. Because it's -- it was included in
21 the plans that were sent to U.S. EPA for approval
22 and this looks consistent with the base map in the
23 AutoCAD files that I provided.

24 Q. And, to your recollection, what

1 **did -- what work did you have to do in this area**
2 **specifically?**

3 A. In this area, soils were excavated
4 to about four foot depth and removed from the site
5 because of the presence of asbestos-containing
6 material.

7 Q. **And there weren't any utilities in**
8 **this area, right? Well, I guess --**

9 A. There are a couple utilities that
10 were abandoned, but that wasn't the driving force
11 for the removal action.

12 Q. **What was the driving force?**

13 A. The presence of asbestos material.

14 Q. **Okay. Okay. And now I want to flip**
15 **back to 2 -- so now we're going to go to 213G,**
16 **which is the last tab in your binder. Are you**
17 **there?**

18 (Document marked as Complainant
19 Exhibit No. 213-1834 for
20 identification.)

21 BY THE WITNESS:

22 A. Yes.

23 BY MS. GALE:

24 Q. **Okay. What is this?**

1 A. This is a technical memorandum by
2 AECOM authored by me and Matt Pyrus regarding
3 sample results from Site 3 to the Site 3 ramp.

4 MS. O'LAUGHLIN: I'm sorry. 213G,
5 do you have a more specific reference than 213G?

6 MS. GALE: Sure. 213-1834.

7 MS. O'LAUGHLIN: Thank you.

8 MS. GALE: It's -- I'll be
9 discussing 213-1834 through -- the whole report is
10 213-1852.

11 MS. O'LAUGHLIN: Thank you.

12 BY MS. GALE:

13 **Q. Okay. I believe you said the ramp.**
14 **Can you describe that location, generally**
15 **speaking?**

16 A. Within Site 3, it's the -- it's the
17 northwestern corner that follows more of the
18 northern boundary from that -- from that
19 northeastern corner across to the north.

20 MR. GRANT: I'm going to object on
21 the basis of relevance. It's my understanding the
22 ramp area is not at all included.

23 HEARING OFFICER HALLORAN: Can you
24 speak up? I'm sorry.

1 MR. GRANT: Yes, the ramp area that
2 they're referring to is not included in the area
3 of liability found by the Board.

4 HEARING OFFICER HALLORAN: Ms. Gale?

5 MS. GALE: Again, this goes back to
6 our laying foundation for rebuttal of --

7 HEARING OFFICER HALLORAN: I think
8 it's the same as far as they're laying out the
9 north side of Greenwood. So you may proceed.

10 MS. GALE: Thank you.

11 HEARING OFFICER HALLORAN: Thank
12 you. Overruled.

13 BY MS. GALE:

14 Q. Okie dokie. Dr. Ebihara, so let's
15 flip to Exhibit -- Page 213-1837 and this is a
16 figure -- are you there?

17 (Document marked as Complainant
18 Exhibit No. 213-1837 for
19 identification.)

20 BY THE WITNESS:

21 A. Yes.

22 BY MS. GALE:

23 Q. Okay. Great. Dr. Ebihara, so I
24 think looking at 213-1837, can you tell me where

1 **you see the phrase site ramp on here?**

2 A. The site ramp is located in labels
3 of the sample locations that are positioned at a
4 diagonal for each of the sample locations that are
5 summarized in this report.

6 HEARING OFFICER HALLORAN: Can you
7 speak up, please, Doctor?

8 THE WITNESS: Yes, sure.

9 BY THE WITNESS:

10 A. Site ramp followed by a number is
11 what denotes the sample locations located
12 throughout the sample area of the slope in that
13 northwestern corner of the site.

14 BY MS. GALE:

15 Q. Okay. And, Dr. Ebihara, to your
16 recollection, did you perform -- you said sample
17 location. So sampling was performed here?

18 A. Yes.

19 Q. And did you find ACM in this area?

20 A. Yes, in two of the samples.

21 MR. GRANT: I didn't see. I don't
22 see site ramp referred to when you say site ramp.
23 I mean, you know --

24 MS. GALE: Right here.

1 MR. GRANT: I know where it is.

2 MS. GALE: Right, site ramp.

3 MR. GRANT: Again --

4 MS. GALE: Yes.

5 MR. GRANT: -- it's very hard to
6 read.

7 MS. GALE: Okay.

8 BY MS. GALE:

9 Q. Okay. I believe you said you found
10 asbestos-containing materials in two locations,
11 what did you do when you found the material?

12 A. The soil associated with site ramp
13 sample number 6 was excavated and then a second
14 sample was obtained to verify that that was no
15 longer detected, asbestos was no longer detected,
16 and then in the site ramp sample 10 the required
17 two feet of soil cover was placed over that area.

18 Q. Okay. And this is Exhibit 213. So
19 this was actually -- I guess I'll ask it this way.

20 Dr. Ebihara, where is this
21 report in all of your reports, in what big report
22 is it a part of?

23 A. It's part of the final report for
24 the southwestern sites area.

1 MS. GALE: Give me a minute.

2 BY MS. GALE:

3 Q. Dr. Ebihara, looking back at the map
4 on Exhibit 2 --

5 MR. GRANT: The same exhibit.

6 MS. GALE: Yes. Let me finish my
7 sentence.

8 BY MS. GALE:

9 Q. 213-1837. And you said it was on
10 the northeast corner of Site 3.

11 A. Northwestern.

12 Q. I'm sorry. You're right. Northwest
13 corner. Engineers, man.

14 So, to your knowledge, is this
15 part of site 0393?

16 A. Yes.

17 Q. Okay. And when did this work occur?

18 A. It was sampling work that was
19 conducted in 2016.

20 Q. And so in 2016, it was after the
21 hearing, right?

22 MR. GRANT: You're reading now?

23 BY MS. GALE:

24 Q. So it occurred in 2016?

1 A. September of 2016 is when the sample
2 was conducted.

3 **Q. Very good.**

4 MS. GALE: I have nothing further.
5 Thank you.

6 HEARING OFFICER HALLORAN: Thank
7 you. Do you want to take a 10, 12-minute break
8 now? I'm seeing the most important guy in the
9 room say yes. Ten, 12 minutes. We're off the
10 record.

11 (Whereupon, a break was taken
12 after which the following
13 proceedings were had.)

14 HEARING OFFICER HALLORAN: All
15 right. We're back on the transcript.

16 Mr. Grant, cross of Dr. Ebihara.
17 You may proceed.

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

19 BY MR. GRANT:

20 **Q. Dr. Ebihara, you prepared the cost**
21 **summary for Sites 3 and 6 for Mr. Dorgan, didn't**
22 **you?**

23 A. Yes.

24 **Q. And was that in April of 2017?**

1 A. They were -- there were two versions
2 of it. What exhibit number is it?

3 Q. You're looking at their exhibits.
4 Was it in 2017, do you remember or do you want to
5 take a look?

6 A. February 15th, 2018.

7 Q. 2018 was your final, but when you
8 started putting together the --

9 A. I think I remember October 2017 --

10 Q. 2017?

11 A. -- was the first version.

12 Q. Okay. It was after the Board issued
13 it's December 15th, 2016, order, correct?

14 A. That's correct.

15 Q. And did you read the order?

16 A. Yes.

17 Q. Okay. Did you read the order before
18 you prepared the report for Mr. Dorgan?

19 A. Yes.

20 Q. And you prepared your report by
21 reviewing invoices going back to 2007, right?

22 A. That's correct.

23 Q. Okay. About ten years before you
24 sat down to -- to come up with the cost for Sites

1 **3 and 6?**

2 A. That's correct.

3 Q. Okay. Let's go to Exhibit 204 Page
4 **47. You're not going to find it conveniently in**
5 **that binder unfortunately. We're going to have to**
6 **go to the big white binders that are over to your**
7 **right. Do you want me to help assist in finding**
8 **it?**

9 (Document marked as Complainant
10 **Exhibit No. 204-47 for**
11 **identification.)**

12 BY THE WITNESS:

13 A. I see it.

14 BY MR. GRANT:

15 Q. Do you need help?

16 A. The cover letter for my --

17 Q. Yes, but I have a lot more that's in
18 **the expert report. It's in the binder. It begins**
19 **with 047.**

20 MS. VAN WIE: You said 47, 204-47?

21 MR. GRANT: Yeah, but I've got -- I
22 need Exhibit 204 in our binder. I have --
23 Kristen, I have the witness' book over here. Did
24 they get moved?

1 MS. GALE: What?

2 MR. GRANT: The witness exhibits
3 binders?

4 MS. GALE: Not by us. They weren't
5 there.

6 HEARING OFFICER HALLORAN: There are
7 some up here.

8 MS. BRICE: Got it.

9 BY MR. GRANT:

10 Q. Do you have it? Dr. Ebihara, do you
11 have it?

12 A. I do.

13 Q. Okay. And this is the beginning of
14 the same -- so this is the date of your report to
15 Mr. Dorgan, correct, February 18th -- or February
16 15th, 2018?

17 A. Yes.

18 Q. Take a look at the summaries Exhibit
19 204 Page 61.

20 (Document marked as Complainant
21 Exhibit No. 204-61 for
22 identification.)

23 BY THE WITNESS:

24 A. Yes, I'm there.

1 BY MR. GRANT:

2 Q. And, in general and summarizing,
3 these are periods of time from approximately
4 six-month periods that you reviewed or that you
5 mentioned in this narrative description summary?

6 A. Yes.

7 Q. Okay. And you reviewed all the
8 invoices from 2007 and you made the allocations?

9 MS. GALE: Objection.
10 Mischaracterization -- allocation as to between
11 IDOT and --

12 MR. GRANT: No.

13 MS. GALE: Okay.

14 MR. GRANT: To Sites 3 and 6.

15 MS. GALE: Very good.

16 BY MR. GRANT:

17 Q. And in the first ten summaries that
18 you have there listed in the section the cost for
19 Sites 3 -- or 4, 5 and 6 were all lumped together,
20 correct?

21 A. 4, 5 and 6?

22 Q. Yes, they were lumped together in
23 the invoices?

24 A. I believe it was Site 3 separately

1 and then Sites 4, 5 and 6.

2 Q. Okay. So the costs would all be
3 listed for Sites 4, 5, and 6 and you guys split
4 that model between 4, 5 and 6, correct?

5 A. That's correct.

6 MS. GALE: Objection as to
7 relevance. The costs have been stipulated to.

8 MR. GRANT: Yeah, I know.

9 MS. GALE: Okay.

10 MR. GRANT: How they came up with
11 the cost I think is relevant.

12 MS. GALE: Yes, but the stipulation
13 was that you're not disputing how they came up
14 with the costs.

15 MR. GRANT: This is -- we're
16 cross-examining your witness and you provided the
17 costs to Mr. Dorgan and there is a huge difference
18 of opinion as to what the costs allocable to IDOT
19 are, number one.

20 MS. GALE: Okay.

21 MR. GRANT: Number two, the fact
22 that you and I have stipulated to costs does not
23 bind the Pollution Control Board. It can make a
24 decision differently. Whether they decide to or

1 not, I don't know, but it is an agreement between
2 the two of us. It doesn't bind the finder of fact
3 and then, second, I think it adds a lot of color
4 to the -- to making the decision as to what the
5 appropriate costs are to find out how they were
6 arrived at. Plus, this is all tied in with
7 Mr. Dorgan's testimony that is going to come
8 later on as to what the cost allocation should
9 be.

10 MS. GALE: Right. And to your
11 first end about Mr. Dorgan, Mr. Dorgan is the
12 expert making the allocation between IDOT and
13 JM. Dr. Ebihara has no opinion --
14 doesn't have an opinion on that whatsoever.
15 So I guess our objection to relevance is why
16 is it relevant -- or it isn't relevant since
17 we have already stipulated to it.

18 MR. GRANT: He relied entirely on
19 the -- on both Mr. Peterson and Dr. Ebihara's
20 figures in coming up with his figures. He has a
21 firm figure and that's what he relied on in coming
22 up with it.

23 MS. GALE: He relied on the total
24 amount that Dr. Ebihara came up with, but he

1 didn't rely upon --

2 MR. GRANT: He didn't rely on the
3 method that he came up with? For example, he was
4 attributing costs for Sites 4 and 5.

5 MS. GALE: Okay.

6 HEARING OFFICER HALLORAN: Objection
7 overruled. You may proceed and -- and you can
8 redirect him.

9 MS. GALE: Thank you.

10 HEARING OFFICER HALLORAN: Thank
11 you, Ms. Gale.

12 MR. GRANT: Okay.

13 BY MR. GRANT:

14 Q. I think I have a pending question,
15 but I can't remember.

16 I think you agreed that sites
17 for an extensive period of time, which I've
18 represented is the first ten summaries in this
19 document the cost for 4, 5 and 6 were lumped
20 together, correct, in the invoices?

21 A. In the invoices, but not in the
22 summary.

23 Q. Correct, yeah.

24 A. Because the costs for Sites 4 and 5

1 were not included in the summary.

2 Q. And looking at the summaries with
3 the exception of 1 period, which is between
4 December 29th, 2007, and June 27th, 2008, I
5 believe that's the period for the work, not the
6 invoices, that with -- with the exception of that
7 one you allocated the costs for Site 6 as 50/50
8 with Sites 4 and Sites 5, correct?

9 A. That's correct.

10 Q. Okay. Now, there are three -- these
11 are all part of the southwest sites Superfund
12 sites.

13 There are three sites, why did
14 you choose one-third instead of one-half?

15 A. Because the Site 4, 5 is a grouped
16 site. It's one utility corridor and it was
17 actually quite -- it's of similar size to Site 6,
18 but Site 6 actually included much more complex
19 utility agreements and work. So I picked a
20 conservative number compared to what I thought
21 would actually be representative because Site 6
22 took more of our effort proportionally than Sites
23 4 and 5 combined, but because they're about equal
24 linear length of utility corridor, that 50 percent

1 was considered to be representative, but also
2 conservative. I think it actually took more than
3 50 percent -- Site 6 took actually more than 50
4 percent of our proportional effort during those
5 time periods.

6 **Q. Sites 4 and 5 are not contiguous,**
7 **right?**

8 A. They are.

9 **Q. Are they adjacent to --**

10 A. It's labeled Site 4-5 and it's --
11 there is not really a distinct Site 4 or a Site 5.
12 It's Site 4/5.

13 **Q. Aren't there --**

14 A. It's a contiguous unit.

15 **Q. I'm sorry. Aren't there several**
16 **hundred feet between Site 4 and Site 5?**

17 A. No, Site 4/5 is one site. Site 4/5
18 is one site.

19 **Q. I understand it's being treated as**
20 **one, but is it one contiguous piece of property?**

21 A. Yes.

22 **Q. In the second summary where you**
23 **reduce the amount allocated I think to 65 percent**
24 **to Sites 4 and 5 and the balance of the site to**

1 **Site 6 --**

2 HEARING OFFICER HALLORAN: Can you
3 keep your voice up, Mr. Grant? Thank you. Sorry.

4 MR. GRANT: I read the transcript.
5 I should have -- from the previous hearing. I
6 know that was an issue.

7 BY MR. GRANT:

8 Q. It appears that was based on -- and
9 I'm talking about this is 204-61 second paragraph
10 for the period December 29th, 2007, if you're
11 there. It appears that that was based on an
12 objective criteria based on the number of
13 drillings, do you agree?

14 A. Yes.

15 Q. I'm sorry. You have to give an
16 oral --

17 A. Sample -- sample grid sampled,
18 correct.

19 Q. Was that the only period that there
20 was some sort of objective criteria to
21 differentiate Sites 4 and 5 and 6?

22 A. Because it was field investigation
23 work plan oriented, it seemed appropriate to
24 proportion it that way --

1 Q. Sure.

2 A. -- since the number of samples
3 planned for that period.

4 Q. So there was actually an objective
5 criteria --

6 A. Yes.

7 Q. -- take a number of samples at one
8 spot and a number of samples at another spot,
9 correct?

10 A. Right. Whereas like the other
11 periods the utility work was the driving effort,
12 the utility agreement work was the --

13 Q. Was that the only period when there
14 was that sort of an objective criteria? In other
15 words, numbers of samples, numbers of tests, that
16 sort of thing?

17 A. During -- during -- during the heavy
18 construction period, which significantly more
19 costs and effort were expended I believe that was
20 based on sampling.

21 Q. Would that be after 2012 to 2013 in
22 that period when that began?

23 A. Yes.

24 Q. And by that time, AECOM was billing

1 **and they actually did separate --**

2 A. Yes.

3 Q. -- the costs out by site, correct?

4 A. Yes.

5 MS. BRICE: Tat, could you speak up
6 a bit. I think they're having trouble --

7 THE COURT REPORTER: And one at a
8 time with the overlapping.

9 HEARING OFFICER HALLORAN: One at a
10 time guys. Thank you.

11 BY MR. GRANT:

12 Q. Do you know how many invoices this
13 period covered?

14 A. I don't -- I don't recall in total.

15 Q. I'll tell you what. I'll take you
16 there. If you can go to 204-49.

17 A. It's represented in Table 1?

18 Q. Mm-hmm.

19 A. Do you want me to count them?

20 Q. I sort of already have and, frankly,
21 this is a document that is already read, but it
22 goes between those three sheets, I'm going to
23 represent that there were 45 invoices that
24 separated the costs out for 4, 5 and 6 at 45 -- or

1 at 50/50?

2 MS. GALE: I would only object. I
3 think you mean four sheets.

4 MR. GRANT: Is it four sheets?

5 MS. GALE: Yes.

6 BY MR. GRANT:

7 Q. So if you want to count them, I
8 don't know if it's necessary.

9 A. Forty-five total?

10 Q. Total invoices from I think there
11 were LFR or Arcadis invoices that are listed here
12 where you allocated the work 50 percent for Sites
13 4 and 5 and 50 percent for Site 6.

14 A. Yeah, I would have gone through the
15 details to --

16 Q. No, I understand and it's hard to
17 read. So I will just represent that there were
18 certainly -- there were a number of invoices where
19 they were split. I'm going to take you to Exhibit
20 229, which is not in that binder by the way. 229G
21 G.

22 MS. VAN WIE: I'm sorry. What was
23 that?

24 MR. GRANT: 229G.

1 MS. VAN WIE: 229.

2 MS. TIPSORD: Yes, it's a different
3 white binder.

4 (Document marked as Complainant
5 Exhibit No. 229G for
6 identification.)

7 BY MR. GRANT:

8 Q. Do you have that?

9 A. I don't have it.

10 Q. Sorry. I thought we put a set of --

11 HEARING OFFICER HALLORAN: I'm
12 sorry.

13 MR. GRANT: I thought we put a set
14 of binders for the witness, but apparently not.
15 We will in the afternoon.

16 MS. TIPSORD: Here -- I think
17 they're up here.

18 MR. GRANT: Those, I think, are all
19 for the Hearing Officer.

20 HEARING OFFICER HALLORAN: I have
21 all mine over here.

22 MR. GRANT: We'll make sure we get a
23 set up there.

24 MS. GALE: Do you need the exhibits?

1 He just has the deposition.

2 MR. GRANT: Yeah, it's the exhibits
3 to the deposition.

4 HEARING OFFICER HALLORAN: Steven,
5 we're off the transcript, I guess, until we get
6 situated here. Let me know.

7 (Whereupon, a discussion was had
8 off the record.)

9 HEARING OFFICER HALLORAN: Back on.

10 BY MR. GRANT:

11 Q. If you can turn to 229G-208.

12 MS. GALE: I'm sorry?

13 MR. GRANT: 208.

14 MS. GALE: Thank you.

15 MR. GRANT: It's in the exhibits.

16 MS. GALE: Got it. Thank you.

17 (Document marked as Complainant
18 Exhibit No. 229G-208 for
19 identification.)

20 BY MR. GRANT:

21 Q. Page 208 is a copy of an invoice
22 that was used at your deposition in this case,
23 Dr. Ebihara.

24 Is this the sort of invoice that

1 **you reviewed?**

2 A. Yes.

3 **Q. Okay. And down at the bottom --**

4 A. It's one page -- one page of it.

5 **Q. Okay. And down at the bottom line**

6 **26 where it says 4, 5 and 6 were -- that's what**

7 **you would have used in your calculation for the**

8 **report to Mr. Dorgan?**

9 A. Only the current invoice columns.

10 **Q. Not actual cost?**

11 A. Not billed to date. That's a

12 summary --

13 **Q. Okay.**

14 A. -- across multiple invoices. So the

15 only invoice numbers that I would have used would

16 have been the current invoice and not --

17 **Q. Here was what 13 -- \$1,343.50,**

18 **correct?**

19 A. That's correct.

20 **Q. Okay. So you would have split that**

21 **number in half and reported half of the number --**

22 **half of that figure for work that was done against**

23 **Site 6, right?**

24 MS. GALE: Objection.

1 HEARING OFFICER HALLORAN: Ms. Gale?

2 MS. GALE: Objection to the extent
3 of generalization. I believe earlier he testified
4 that depending what was done he either did it --
5 split it 50/50 or he looked at field
6 investigation.

7 HEARING OFFICER HALLORAN:

8 Mr. Grant?

9 MR. GRANT: Yeah, he said that, but
10 I just asked him the question about whether he
11 used the number on this invoice and split it
12 50/50.

13 HEARING OFFICER HALLORAN: He can
14 answer if he's able. Overruled.

15 BY THE WITNESS:

16 A. I'd have to -- I'd have to refer to
17 the narrative.

18 BY MR. GRANT:

19 Q. Refer to what?

20 A. I'd have to refer to the narrative I
21 provided to reflect the basis.

22 Q. Okay. There was no suggestion that
23 IDOT was involved in Sites 4 and 5, is that
24 correct?

1 MS. GALE: Again, objection to the
2 extent that he is asked to give an opinion on
3 IDOT's involvement. His testimony here and what
4 he did was simply calculate the total costs at the
5 sites. He made no assessment or allocation or
6 opinion about Johns Manville -- or excuse me IDOT.

7 MR. GRANT: This is based on the
8 nature of the case. Mr. -- Dr. Ebihara was out
9 there for a long time and he was -- testified at
10 the 2016 trial in this case. So I think the
11 question is there is no allegation in this case or
12 otherwise that IDOT was involved at all in Sites 4
13 or 5, isn't that correct?

14 HEARING OFFICER HALLORAN: He can
15 answer if he's able. Overruled.

16 MS. GALE: Okay.

17 BY THE WITNESS:

18 A. Can you repeat the question, please?

19 BY MR. GRANT:

20 Q. Sure. Are you aware of any
21 involvement by IDOT in Sites 4 -- 4 or 5?

22 A. I'm not.

23 Q. Weren't Sites 4 and 5 much more
24 contaminated than Site 6?

1 MS. GALE: Objection. Relevance.

2 HEARING OFFICER HALLORAN:

3 Overruled.

4 BY THE WITNESS:

5 A. There were removal actions --
6 complete removal actions completed for both.

7 BY MR. GRANT:

8 Q. Let me take you to Exhibit 63, Page
9 15 and that's a different binder that is -- the
10 white binder. If you can find 63 and go to Page
11 15.

12 (Document marked as Complainant
13 Exhibit No. 63-15 for
14 identification.)

15 HEARING OFFICER HALLORAN:

16 Sixty-three and what page?

17 MR. GRANT: Fifteen.

18 HEARING OFFICER HALLORAN: Thank
19 you.

20 BY THE WITNESS:

21 A. I'm on Page 15.

22 BY MR. GRANT:

23 Q. Okay. Let me join you. Okay. Now,
24 Exhibit 63 is a report that was prepared by

1 **Arcadis and submitted to Illinois EPA, correct?**

2 A. To the -- submitted to the U.S. EPA.

3 **Q. To the U.S. EPA, yes.**

4 A. That's correct.

5 **Q. And on the inside, I'll take you**
6 **back to the inside of the front cover of it, it**
7 **has your name, do you see that, and your**
8 **signature?**

9 A. Yes.

10 **Q. So were you involved in the**
11 **preparation of this report?**

12 A. Yes.

13 **Q. Now, let me take you back to Page**
14 **15. Under -- on Page 15, under Site 3 soil**
15 **sampling results reading down the first paragraph,**
16 **do you see where it says, "Only two of eight pits**
17 **completed near the former borings from the ELM**
18 **study were positive for visually ACM," do you see**
19 **that?**

20 A. On which paragraph again?

21 **Q. This is in the second paragraph**
22 **under -- with the heading 2.2.2 Site 3 sampling**
23 **results?**

24 A. Okay.

1 Q. And the first sentence second half
2 says, "Only two of eight test pits completed near
3 the former borings were positive for visually
4 ACM," do you see that?

5 A. Yes.

6 Q. Okay. If you can turn to Page 22.
7 Under heading 2.4.2 Site 6 soil sampling results,
8 do you see that?

9 A. Yes.

10 Q. Okay. At the second half of the
11 first paragraph, do you see where it says, "28
12 of 60" -- "of 88 of the sample locations" -- I'm
13 sorry. Backing up a little bit.

14 "ACM either visibly or detected
15 by laboratory analysis was present in soil at 28
16 of the 88 sample locations," do you see that?

17 A. Yes.

18 Q. If you can back up to Page 18 of the
19 same report.

20 MS. GALE: Sorry. What page?

21 MR. GRANT: Eighteen.

22 MS. GALE: Thank you.

23 BY THE WITNESS:

24 A. Sixty-three, 18. Page 63, 18.

1 BY MR. GRANT:

2 Q. Yes, please. Paragraph down at the
3 bottom under Site 4, 5 soil sampling results,
4 second half of the paragraph, do you see the
5 sentence that all but 4 of the 59 sampling --
6 sampling rows contained ACM in soil, do you see
7 that?

8 A. Yes.

9 Q. Okay. And where it says all but,
10 but four suggests to me that -- that states that
11 55 of the sample results were positive for ACM in
12 that sampling, correct?

13 A. That's correct.

14 Q. If you can take a look at the same
15 exhibit, Page 27. First paragraph scope of ACM
16 affected soil there is three bullet points just
17 below it where it reports Site 3 -- I'm sorry. Up
18 in the first paragraph estimated volume of soil
19 affected by ACM and then the bullet points below
20 Site 3 11,400 to 15,000 -- 15,200 cubic yards of
21 surface debris for Site 3 down below Site 4/5,
22 16,700 to 25,000 cubic yards of ACM affected soil,
23 Site 6, 3,200 to 7,500 cubic yards of ACM infected
24 soil?

1 A. Yes.

2 **Q. Based on these figures, wasn't 4/5**
3 **much more contaminated with ACM than Site 6?**

4 A. In terms of volume of affected soil,
5 yes, but that's not necessarily proportional to
6 the effort expended for the preparation of work
7 plans.

8 **Q. But it was much more contaminated,**
9 **correct?**

10 A. Yes.

11 **Q. Now, the Site 6 costs that you**
12 **reported to Mr. Dorgan included all Site 6 costs,**
13 **correct?**

14 A. That's correct.

15 **Q. Okay. And Site 6 goes significantly**
16 **further east than the area that IDOT was involved,**
17 **isn't that correct?**

18 A. I don't -- I don't know what the
19 specific area --

20 **Q. You don't know what --**

21 A. Specific area --

22 **Q. -- area Site 6 is?**

23 A. If you're referring to, like, the
24 sample locations 01 to 04.

1 Q. I'm talking --

2 HEARING OFFICER HALLORAN: One at a
3 time, gentlemen, please. Thank you.

4 BY MR. GRANT:

5 Q. I'm talking about the geographical
6 designation of Site 6. Site 6 is a designed area,
7 correct, or a designated area, correct?

8 A. Correct. We had sample grids from
9 01 to 60 for the entirety of the south side of
10 Site 6.

11 Q. Okay. So -- well, I mean, based on
12 your personal knowledge of the site, doesn't Site
13 6 extend to the east almost to the power plant?

14 A. It's on the north side of the power
15 plant.

16 Q. Mm-hmm. Your estimates for Site 6
17 also include costs for the north side of Greenwood
18 Avenue, correct?

19 A. The north shoulder of Greenwood
20 Avenue.

21 Q. The north side of Greenwood Avenue
22 within Site 6?

23 A. Yes.

24 Q. Those costs are included in the

1 costs that you prepared for Mr. Dorgan, correct?

2 A. Yes.

3 Q. And the Site 3 costs that you
4 prepared include all of Site 3 -- all of Site 3?

5 A. That's correct.

6 Q. Okay. Are you aware that the Board
7 order excluded IDOT from any liability from the
8 north side of Greenwood Avenue?

9 A. I'm not -- I'm not aware.

10 Q. Are you aware that -- that it held
11 IDOT liable for only a very small portion of Site
12 3?

13 A. I don't -- I don't know or I don't
14 recall.

15 Q. Are you aware -- are you familiar
16 with the Nicor utility corridor in Site 3?

17 A. Yes.

18 Q. Okay. Where were the costs related
19 to Nicor utility corridor included in the costs
20 you provided to Mr. Dorgan?

21 A. The costs that I represented in my
22 cost summary are the development of reports and
23 plans and submittals. So they don't necessarily
24 proportion to actual construction work that was

1 performed for the engineering --

2 Q. I understand.

3 A. -- services provided to develop a
4 compliant work plan or report for the U.S. EPA.

5 Q. And for all of Site 3, correct?

6 A. That's correct.

7 Q. Okay. Are there any other easements
8 in the southwest site Superfund area that you're
9 aware of? And when I say other easements, let me
10 ask you, are you familiar with the -- the IDOT
11 right of way that is in Parcel 0393?

12 A. Yes.

13 Q. Okay. Are there any other easements
14 besides that that you're aware of in the southwest
15 sites area?

16 A. Yeah, there's part of an elevated
17 ramp that abuts the south end of Site 4/5.

18 Q. I'm sorry. What was it?

19 A. Site 4/5 --

20 Q. Yeah.

21 A. -- extends north from the elevated
22 ramp.

23 Q. Elevated ramp. Okay.

24 A. But I don't think it includes the

1 elevated ramp to my recollection.

2 **Q. Are you aware that a Johns Manville**
3 **contractor or subcontractor brought soil to Site 3**
4 **that contained ACM sometime around 2016?**

5 A. Yes.

6 **Q. Did you include costs for removal of**
7 **that material in the costs provided to Mr. Dorgan?**

8 A. In my summary, I provide the
9 support -- any support that we may have provided
10 for sampling to verify where the contamination was
11 and for the testing of the new material after all
12 of the impacted material was removed. So I
13 provided sampling support services, not actual
14 field construction or materials.

15 **Q. Was the material that was brought in**
16 **again in 2016 by a contractor or subcontractor, I**
17 **don't know by who, was that tested for the**
18 **presence of ACM?**

19 A. The replacement soil?

20 **Q. Yes. Not the replacement soil, the**
21 **soil that was actually dumped that had ACM**
22 **material in it.**

23 A. We pretested the supply that was
24 identified by the contractor and it did not

1 include ACM -- any positive ACM test results and
2 so it was pre-approved for placement.

3 Q. Okay.

4 A. And then if that answers your
5 question.

6 Q. No. I'm talking about subsequently
7 determined that there was ACM in the soil that was
8 brought in and deposited on Site 3, you're aware
9 of that incident?

10 A. Yes.

11 Q. Okay. Did you provide any testing
12 services for -- or related to that dumping or the
13 removal of it?

14 A. I don't recall, but that would --
15 that's within the type of work that we had been
16 doing in support of the project.

17 Q. Okay. And, again, would that cost
18 have been reported to Mr. Dorgan, do you know? If
19 you don't know --

20 A. If it was in -- I don't recall the
21 time period of occurrence if it was in 2016. If
22 we provided support during the time period, it
23 would have been included in the invoices up to the
24 endpoints that I reported in my -- in my costs

1 summary. So up until September 8th, 2017, I would
2 have included.

3 Q. I'm going to take you back to the
4 easy-to-use binder provided by Johns Manville and
5 I want to look at Exhibit 229, which is I don't
6 know -- I'll wait until you're there.

7 Okay. Is -- am I correct in
8 assuming I think you testified this is the CAD map
9 that you provided to AECOM?

10 A. I work for AECOM.

11 Q. I'm sorry. That you provided to
12 Weaver, to Mr. Dorgan, for his report? Or if I'm
13 saying that wrong, please correct me.

14 A. It's a screenshot that looks typical
15 of an AutoCAD screen page and it has some of the
16 base map information that I would have provided to
17 Mr. Dorgan electronically.

18 Q. Now, I can't recall. I wanted to
19 say was this map created in 2007? I'm not trying
20 to misrepresent it. That's what I remember.

21 A. The original -- the original base
22 map for this portion of the site, is that your
23 question?

24 Q. What I'm curious about is the

1 document that is represented here. So if this
2 was -- is a screenshot of the base map that was
3 created, was it 2007 when this was done, this work
4 was done?

5 MS. GALE: My only objection is to
6 vague. Are you asking whether the base map was
7 created in 2007 or whether this PDF was created in
8 2007?

9 MR. GRANT: No. Yeah, my question
10 is about the base map.

11 MS. GALE: Okay.

12 MR. GRANT: And about creating
13 it with CAD. You know, I think that was
14 misrepresented. It was a CAD, screenshot of a
15 CAD --

16 MS. GALE: Well, again --

17 MR. GRANT: -- diagram.

18 MS. GALE: The objection is to
19 mischaracterization. This is -- this is meant to
20 be merely a screenshot of what it looks like.
21 It's not meant to demonstrate what it looked like
22 in 2007.

23 BY MR. GRANT:

24 Q. When was it created, I guess, is the

1 **first question?**

2 MS. GALE: The PDF or the AutoCAD?

3 MR. GRANT: The AutoCAD.

4 BY THE WITNESS:

5 A. There is portions of the base map
6 that we have used throughout the project. So when
7 I first became involved with JM, there's elements
8 of the road and the map and the boundaries, the
9 property boundaries, that were already in place
10 and in our use for Johns Manville before 2007.

11 BY MR. GRANT:

12 Q. Okay. So are we going to call this
13 a map or a CAD or information? Does this just
14 represent information that was generated in 2007?
15 I don't even know if it was 2007.

16 MS. GALE: Again, I would just
17 object as to misrepresentation. The purpose of
18 229F-377 was to be more of a demonstrative of what
19 an AutoCAD looks like because it is a software
20 program and we couldn't bring the whole program
21 into the hearing.

22 HEARING OFFICER HALLORAN:

23 Mr. Grant?

24 MR. GRANT: What I'm curious is that

1 Dr. Ebihara testified, I think, that the Weaver
2 map, which is Exhibit 204-38, was consistent
3 with -- with the screenshot.

4 MS. GALE: I would object. It
5 mischaracterizes his testimony. He did not
6 testify it was consistent with the screenshot.

7 HEARING OFFICER HALLORAN: Can you
8 rephrase, Mr. Grant, or are you doing the best you
9 can? I think it's clear enough in the record with
10 everybody testifying thus far regarding Exhibit
11 229.

12 MR. GRANT: Okay. I understand. I
13 am just wondering 229 and the screenshot 229 and
14 204-38 are different and, I mean, I heard
15 Dr. Ebihara say that the Weaver Boos Map was
16 consistent with the -- with the CAD drawing and
17 they're different. There is different details on
18 them. So that's kind of where I was going with
19 them.

20 HEARING OFFICER HALLORAN: Is that a
21 question out there for the doctor?

22 MR. GRANT: Not really.

23 BY MR. GRANT:

24 Q. Let's -- let me try to simplify it a

1 little bit. Look at the Weaver map which is
2 204-38, please.

3 And was this created with the
4 information that is represented on 229 using the
5 information that was contained on 229?

6 A. There are differences.

7 Q. Do you not know if it was created
8 using the information that is represented on 229?

9 A. Do I --

10 Q. The information that's represented
11 on 229, is it either a map or a screenshot or --

12 A. It doesn't -- there is some
13 differences between the screenshot and what is
14 involved in the drawing.

15 Q. Was the same AutoCAD information
16 used on both?

17 A. I --

18 Q. If you don't know --

19 A. I stand -- I stand by the
20 information I provided to Mr. Dorgan that has base
21 map features that I'm familiar with that was used
22 in the generation of all the EPA reports.

23 Q. Is --

24 A. I can't stand behind the screenshot

1 information because I don't know exactly -- it --
2 it looks -- has the appearance of the working
3 interface for AutoCAD and it has some of the site
4 features that is included for Site 3.

5 Q. Okay. All right. I was a little
6 bit confused about it, too. So you supplied
7 information to Mr. Dorgan from which he created
8 his -- his map of the site?

9 A. His figures, yes.

10 Q. His figures. Okay.

11 MR. GRANT: I think that's all I've
12 got.

13 MS. O'LAUGHLIN: Wait. Never mind.

14 MR. GRANT: Wait. Sorry. I was
15 kidding.

16 BY MR. GRANT:

17 Q. Okay. Taking you back to the Weaver
18 Boos Map.

19 A. Yes.

20 Q. It indicates -- actually, if you
21 look at the top of the map for Site 3, do you
22 recognize the dimensions in Parcel 0393 in there?

23 A. Yes.

24 Q. Okay. And looking to -- to the next

1 **Exhibit 229, that information is not contained in**
2 **the screenshot, correct?**

3 A. It does not appear to be.

4 (Document marked as Complainant
5 Exhibit No. 229 for
6 identification.)

7 MR. GRANT: That's all I have.

8 HEARING OFFICER HALLORAN: Thank
9 you, Mr. Grant. Ms. Gale, redirect?

10 MS. GALE: Just a few.

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

12 BY MS. GALE:

13 Q. We're going to stay on 204-38 versus
14 229F-377 and, Dr. Ebihara, in this screenshot
15 which we're calling a screenshot, this is not --
16 this PDF is not the AutoCAD, right? This piece of
17 paper is not the AutoCAD, right?

18 A. No.

19 Q. What is it? What is the AutoCAD?
20 Describe it for me.

21 A. It's a computer software package
22 that stores many different types of locational
23 data.

24 Q. Right. And that includes layers,

1 **right, you mentioned layers?**

2 A. Many layers.

3 **Q. Many layers. Describe what those**
4 **layers are.**

5 A. We -- we -- each layer is a set of
6 information. One could be sample locations, the
7 next layer could be property boundaries, the next
8 layer could be topographic information, the next
9 layer could be utility runs.

10 **Q. Right. And so as you're looking at**
11 **this screenshot, this screenshot of the AutoCAD**
12 **doesn't show all of the layers, does it?**

13 A. No.

14 **Q. Okay. But when you gave -- what did**
15 **you give -- when you gave your information to**
16 **Mr. Dorgan to create his figures, what did you**
17 **give him?**

18 A. I gave him many layers of
19 information about utilities, sample locations,
20 site boundaries, parcel boundaries and utility --

21 **Q. You --**

22 A. -- corridors.

23 **Q. I'm sorry. Finish your sentence.**

24 A. All that information was provided.

1 Q. So all of the -- all of the
2 information, all of the layers were provided,
3 right?

4 A. Mm-hmm.

5 Q. Very good. You were asked some
6 questions about Sites 4 and 5 versus Site 6 and I
7 want to go back to -- and you said about your
8 evaluation in comparing the two early on and you
9 thought it was conservative, can you explain to me
10 why you thought it was a conservative estimate to
11 do 50/50?

12 A. Because sites -- a lot of our work
13 plan descriptions involved the plan for utilities
14 and Site 4/5 for the most part involved one sewer
15 line north to south.

16 Q. Mm-hmm.

17 A. Whereas Site 6 included telephone
18 utilities, electrical utilities, gas utilities and
19 was quite complex.

20 Q. Okay.

21 A. So a lot of the effort expended
22 during the report preparation was to address those
23 elements.

24 Q. And so the effort -- yeah, so the

1 effort expended was in proportion to -- I'll ask
2 you.

3 The effort expended, was it in
4 proportion to the volume of ACM found in the site?

5 A. No, not necessarily. It was -- it
6 was the effort to develop the plan so that the
7 removal action could be completed safely so that
8 utility service wouldn't be interrupted or
9 appropriately closed and safe for workers to
10 perform the removal action.

11 Q. Okay. And I think just as a
12 demonstrative, if you want to flip in your exhibit
13 binder to 67-542, which is Site 6, and I believe
14 it's been described in this as a very complicated
15 and difficult figure, is this the complexity
16 you're talking about?

17 A. Yes.

18 Q. Very good.

19 A. So an interrupted utility service
20 would have caused disturbance and interruptions
21 for a lot of different parties. So we took a lot
22 of time to make sure that those plans and
23 agreements were going to be effective and
24 conducted before the removal action.

1 Q. Dr. Ebihara, you were asked some
2 questions about ACM that was brought --
3 unintentionally brought to the site as fill, do
4 you recall those questions? He just asked you
5 about fill brought in.

6 A. For Site 3.

7 Q. For Site 3, right. And if you were
8 to go back to those invoices about that -- that
9 work, would you be able to identify more clearly
10 whether that ACM was a part of your calculations
11 of cost analysis?

12 A. Yes, and to clarify, it wasn't fill.
13 It was just three inches or less of topsoil.

14 Q. Okay.

15 A. So it was easy to remove and it
16 didn't get mixed in or integrated with the actual
17 clay barrier portion of the engineered cover.

18 Q. Perfect. Thank you for that
19 clarification.

20 MS. GALE: Nothing further.

21 HEARING OFFICER HALLORAN: Thank
22 you. Mr. Grant, re-cross?

23 MR. GRANT: Yes, just real quickly.
24

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

2 BY MR. GRANT:

3 Q. You were talking about -- talking
4 about Site 6 and the utilities and specifically
5 with regard to 67-542.

6 How far does the clean corridor
7 for Site 6 extend?

8 A. The only clean corridor required
9 after the completion of Site 6 is the fiberoptic
10 corridor for AT&T.

11 Q. Okay.

12 MR. GRANT: That's all I have.

13 HEARING OFFICER HALLORAN: Thank
14 you. All right. Thank you, Mr. -- Dr. Ebihara.

15 MS. GALE: Thank you, Dr. Ebihara.

16 HEARING OFFICER HALLORAN: Dr.
17 Ebihara, you may step down. I think I was remiss
18 as far as the motion to exclude, sequester, the
19 witnesses. The witnesses are directed not to
20 discuss their testimony with other witnesses. All
21 right. Next witness.

22 MS. GALE: Our next witness is via
23 Webex. So --

24 HEARING OFFICER HALLORAN: Mr.

1 Peterson.

2 MS. GALE: Correct. I'm going to
3 text him to get logged on.

4 HEARING OFFICER HALLORAN: We're off
5 the transcript.

6 (Whereupon, a break was taken
7 after which the following
8 proceedings were had.)

9 HEARING OFFICER HALLORAN: Mr.
10 Peterson, if you can raise your right hand, the
11 court reporter will swear you in, please. You may
12 proceed, Ms. Gale.

13 MS. GALE: Thank you.

14 WHEREUPON:

15 DAVID MICHAEL PETERSON
16 called as a witness herein, having been first duly
17 sworn, deposeth and saith as follows:

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

19 BY MS. GALE:

20 Q. Well, almost good afternoon,
21 Mr. Peterson. Welcome and as I just remind you as
22 the Hearing Officer said because we're on Webex,
23 let's both speak slowly and clearly. That's
24 difficult for me. I speak quickly but I will do

1 my best to slow down and I will ask that you do
2 the same. So, Mr. Peterson, can you please state
3 your full name for the record?

4 A. Yes, my name is David Michael
5 Peterson.

6 Q. Thank you Mr. Peterson. What is
7 your educational background?

8 A. I have a bachelors in science in
9 chemical engineering from the University of
10 Michigan.

11 Q. And do you hold any professional
12 licenses?

13 A. I do. I'm a licensed professional
14 engineer in Illinois and several other states.

15 Q. And where do you currently work?

16 A. I'm currently in Ohio.

17 Q. I'm sorry. Who do you work for?

18 A. I am self-employed. I have been
19 self-employed for 20 years.

20 Q. And what is the company name?

21 A. The company name is David M.
22 Peterson, PE, PC.

23 Q. And could you generally describe
24 what you do for your -- your roles and

1 **responsibilities as part of your company?**

2 A. Sure. I'm the president and
3 responsible charge engineer. My company practices
4 in soil and groundwater remediation, industrial
5 wastewater treatment, subsurface vapor intrusion
6 projects, stormwater compliance and other matters.

7 Q. **Very good. Mr. Peterson, are you**
8 **familiar with the Johns Manville southwestern**
9 **sites in Waukegan, Illinois?**

10 A. Yes, I am.

11 Q. **And how are you familiar with it,**
12 **generally speaking?**

13 A. Generally, I have been part of the
14 southwest sites project from the preparation of
15 the remedial action work plan reviewing it through
16 the execution of the project and preparation of
17 the construction completion report.

18 Q. **And so when did you first get**
19 **involved, approximately what year?**

20 A. For the southwest sites project, I
21 became involved approximately 2013 when the
22 remedial action work plan was being prepared.

23 Q. **And what -- in 2013, what did you**
24 **start doing?**

1 A. AECOM prepared the remedial action
2 work plan and I would review it for applicable --
3 for construction purposes.

4 **Q. Okay. And then beyond that, what**
5 **else did you do? You had bid packages, what were**
6 **the other purposes there?**

7 A. Yeah, following the remedial action
8 work plan, I prepared bid specifications so that
9 we could get competitive pricing for the
10 completion of the project. I participated in the
11 bidding process, interviewing contractors, making
12 a technical evaluation of the bid. I was also
13 onsite acting as the resident site engineer
14 supervising the execution of the work when it was
15 performed and then I prepared a construction
16 completion report when the work was complete.

17 **Q. Okay. And when you were onsite,**
18 **what were some of your daily activities that you**
19 **did?**

20 A. So when I was onsite, I was
21 responsible for project health and safety. There
22 would be daily safety tailgate meetings. I was
23 responsible for overseeing the contractor's work,
24 supervising it, I was responsible for interfacing

1 with regulatory personnel, the Army Corps of
2 Engineers was onsite on a daily basis. I was also
3 responsible for documenting the work that was
4 completed which included preparing daily progress
5 reports. It included taking site photographs and
6 just general overall management of the project.

7 **Q. Okay. And when I refer to Site 3**
8 **and Site 6, do you know what I mean?**

9 A. I do know what Site 3 and Site 6
10 are.

11 **Q. And the activities that you just**
12 **described, did you do those at Site 3 and Site 6?**

13 A. I did, yes.

14 **Q. And is your work at Sites 3 and 6**
15 **still ongoing?**

16 A. It is from an operation and
17 maintenance perspective now that the remediation
18 work has been completed.

19 **Q. And what is that -- what is that**
20 **work, operation and maintenance work?**

21 A. So operation and maintenance
22 includes inspection for erosion, for vegetation.
23 For Site 3, it's to make sure that the cap
24 integrity is -- is -- the cap is in good shape and

1 it includes inspecting the perimeter fencing,
2 signage and just the overall health of those sites
3 from the ground level.

4 **Q. Okay. And how long will that**
5 **operation maintenance continue?**

6 A. Operation and maintenance will
7 continue for approximately 30 years.

8 **Q. And I think you said a cap for Site**
9 **3, is there a cap at Site 6?**

10 A. There is no cap for Site 6. There
11 is no cap because the asbestos was removed from
12 Site 6.

13 **Q. All right. I think you said one of**
14 **the roles was to do the bidding and the bidding --**
15 **what was the bidding for that you discussed?**

16 A. Yeah, so the bidding was for the
17 southwest sites project. It included Site 3, Site
18 4/5 and Site 6 as well as some remaining work in
19 the industrial canal.

20 For Site 3 and Site 6, the Site
21 3 work included construction of clean corridors
22 around the utilities and constructing the soil cap
23 which included geotextile, sand, clay, topsoil and
24 vegetation. For Site 6 it also included

1 construction of a clean utility corridor and
2 removal of asbestos and backfilling to grade.

3 **Q. And who are you getting the bids**
4 **from?**

5 A. We solicited bids from four
6 contractors, including Campanella & Sons, Lake
7 County Grading, Denovo Group and Severson
8 Environmental.

9 **Q. And those are all construction**
10 **companies?**

11 A. They are construction remediation
12 companies. Lake County Grading, Campanella & Sons
13 and Severson have all done work at the site
14 previously.

15 **Q. And how was one of those**
16 **construction companies selected?**

17 A. So I would supply the bid documents
18 to Johns Manville from the procurement group. The
19 procurement group would send the bid documents to
20 the contractors. I was a technical reference for
21 the contractors. So as they had questions or
22 wanted to make site visits, they would -- I would
23 facilitate the visits and answer the questions and
24 that's what I did during the bidding.

1 When the bids were -- the bids
2 were received by Johns Manville, then I was
3 allowed to look at the bids and made a technical
4 evaluation off the bids. We had bidders come in
5 and were interviewed and then I made technical
6 recommendations as to whether I thought the
7 bidders were qualified to complete the project.
8 Johns Manville then made the decision as to who
9 to -- who to contract with for the work.

10 **Q. All right.**

11 MS. GALE: Mr. Hearing Officer, can
12 I go off the record for a minute? I was so
13 focused on getting him on the Webex, I forgot to
14 hand out the binders.

15 HEARING OFFICER HALLORAN: Yes.
16 We're off the record.

17 MS. GALE: Thank you.

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

21 HEARING OFFICER HALLORAN: You may
22 proceed.

23 MS. GALE: Okay. Thank you.
24

1 BY MS. GALE:

2 Q. Mr. Peterson, I hope you have the
3 binder that was FedEx'd to you over the weekend.

4 A. I do have it.

5 Q. So I would like you to first turn to
6 Exhibit 227 and it's 227-1.

7 (Document marked as Complainant
8 Exhibit No. 227-1 for
9 identification.)

10 BY THE WITNESS:

11 A. Okay.

12 BY MS. GALE:

13 Q. What is this?

14 A. These are the bid forms that were
15 completed by Campanella & Sons.

16 Q. Okay. And that was submitted to
17 you?

18 A. Yes, these were submitted to Johns
19 Manville and then Johns Manville provided them to
20 me.

21 Q. And these are what you reviewed?

22 A. Yes, they are.

23 Q. Okay. And other companies also
24 submitted similar bid packages?

1 A. That's correct, they did.

2 **Q. And who was ultimately selected as**
3 **the construction contractor?**

4 A. Campanella & Sons were selected as
5 the construction contractor.

6 **Q. Okay. Great. I want you to flip to**
7 **225?**

8 A. Yes.

9 (Document marked as Complainant
10 Exhibit No. 225-1 for
11 identification.)

12 MS. GALE: It's 225-1.

13 BY MS. GALE:

14 **Q. It's a cover page, do you recognize**
15 **this cover page?**

16 A. Yes, this is the contract that was
17 executed between Johns Manville and Campanella &
18 Sons.

19 **Q. And in your binder, it's an excerpt,**
20 **correct, this is not the whole contract?**

21 A. That's correct. This is just a
22 fraction of the contract.

23 **Q. And as the resident site engineer,**
24 **are you familiar with the services and tasks that**

1 **were contemplated by this task?**

2 A. Yes, I am.

3 **Q. Okay. And can you describe to me**
4 **what a base bid is?**

5 A. Yes. So when the bid specification
6 went out, it had an original scope of work, it had
7 a scope of work described in it and the base bid
8 that was provided by the contractor was based on
9 that scope of work.

10 **Q. And that was prepared in**
11 **approximately when?**

12 A. The bid spec started to be prepared
13 in approximately May of 2015.

14 **Q. But that wasn't the end of the work,**
15 **right?**

16 A. No. I believe it went out for bid
17 in June of 2015 and then there was a bid addendum
18 and it went on from there.

19 **Q. Do you understand the term time and**
20 **materials?**

21 A. Yes, time and materials is for --
22 was for this project when out of scope items were
23 identified that needed to be completed.

24 **Q. So can you tell me what an out of**

1 **scope item is in relation to the base bid?**

2 A. Yeah, to clarify, that would be
3 information that is not included in the original
4 bid specification. So it would be additional
5 work.

6 Q. So, to your recollection, for the
7 Site 3 and Site 6, generally speaking, what were
8 some of the things that were big items that were
9 time and materials that weren't included in the
10 base bid?

11 A. We had work related to utilities.
12 For example, a North Shore Gas line needed to be
13 deenergized and so we had to get access to a valve
14 to close it which required working through a
15 wetland, installing a board road, installing a
16 de-watering system.

17 We also had other work
18 associated with AT&T where we had to provide
19 support activities. So when we excavated, we
20 handled the excavated material so that they could
21 do their work. There was also -- we ended up
22 moving everything to this area called the black
23 ditch area, which was different from the original
24 specification where we contemplated the industrial

1 canal.

2 There were also utility poles
3 that were installed so that some of the
4 underground communication lines could be put
5 overhead allowing us to excavate Site 6. Those
6 are some of the things -- others we had to import
7 quarry sand for backfilling as opposed to using
8 sand from the borrow pit. Off the top of my head,
9 those are a few of the items that were additional.

10 **Q. Perfect. Okay. So then now I want**
11 **to talk about the construction work. What was the**
12 **process for determining where removal work was**
13 **conducted at Site 3 and Site 6?**

14 A. So Site 3 and Site 6 work was
15 completed to create clean corridors for utilities.
16 So that was part of it. And then the other part
17 for Site 3 was to construct a cap across the
18 entire site to be protective of human health and
19 the environment.

20 **Q. And that work was based on prior**
21 **assessments?**

22 A. Yes, it was.

23 **Q. And what was in those prior**
24 **assessments, what was contained in that?**

1 A. My understanding was the prior
2 assessment involved sampling and sample results
3 detected asbestos.

4 **Q. And I think you described earlier**
5 **remedial action work plan, who prepared that work**
6 **plan?**

7 A. AECOM prepared it.

8 **Q. And what did they do with that work**
9 **plan once it was finished?**

10 A. They submitted it to the EPA for
11 approval.

12 **Q. And what did EPA do?**

13 A. They approved the work plan.

14 **Q. Great. So when a work plan is**
15 **approved, what happens?**

16 A. Work commences.

17 **Q. Yes. So I'm going to turn back to**
18 **225 and in your binder is 225-93. It should**
19 **actually just be the third page in.**

20 A. I have 225-93.

21 (Document marked as Complainant
22 Exhibit No. 225-93 for
23 identification.)

24

1 BY MS. GALE:

2 Q. And this is a bunch of figures, a
3 list of a bunch of figures, what are these
4 figures?

5 A. This -- this page identifies the
6 list of figures that the contractor used to base
7 their bid on.

8 Q. Okay. And then turning to 225-96,
9 which is actually just one page over, what is
10 that?

11 (Document marked as Complainant
12 Exhibit No. 225-96 for
13 identification.)

14 BY THE WITNESS:

15 A. This is the site layout for Site 3.
16 It uses Illinois state plane coordinates
17 northing's to easting's to identify the limit of
18 Site 3. It also uses them to identify the areas
19 of excavation in Site 3. It also -- the figure
20 shows the excavation depth by hatching in Site 3
21 and the figure also shows utilities in Site 3.

22 BY MS. GALE:

23 Q. Okay. And I think you said
24 northing's and easting's. Can you describe to me

1 **further what that is and point out to me where it**
2 **is on this figure, please?**

3 A. Yes, the table on the bottom right
4 corner shows it as latitude and longitude. That's
5 a misnomer. Those are northing's and easting's,
6 respectfully, in the Illinois state plane
7 coordinate system.

8 So you use those coordinates
9 with -- so the contractor uses those coordinates
10 with conventional surveying equipment, with a GPS,
11 and goes out to the site and pounds wooden stakes
12 at each one of these locations 1 through 26 using
13 the northing's and easting's to -- to basically
14 lay this drawing out on the ground. That's what
15 this drawing is used for.

16 Q. Okay. So can you point out for me I
17 guess top left corner there is a number one for --
18 this is an example.

19 What does that number one stand
20 for?

21 A. So in the table that is Boundary
22 Location 1, the table is latitude 2083126,
23 longitude 1122147. So those are the northing's
24 and easting's and with the GPS equipment you put

1 that into the GPS and you can locate Boundary
2 Location 1.

3 Q. Okay. So AECOM prepared this, but
4 did you review this document in the contract?

5 A. I did, yes.

6 Q. And what was its purpose in the
7 contract?

8 A. The purpose in the contract was to
9 lay out the site so that if during bidding -- it
10 was twofold.

11 One, the contractor could go out
12 during bidding with the GPS and walk the site and
13 see where the features are and, two, when the work
14 commenced the awarded contractor could install
15 stakes to layout the site in preparation for
16 commencing the work.

17 Q. Great. Mr. Peterson, can you please
18 point out where the northeast excavation is on
19 this figure, on Exhibit 225-96?

20 A. Yes, the northeast excavation is
21 bounded by boundary locations 5, 6, 7 and 8. It's
22 up in the northeast portion of this drawing and
23 it's got the diagonal crosshatch.

24 Q. Okay. Great. I want you to flip to

1 two pages or so to Exhibit 225-105.

2 (Document marked as Complainant
3 Exhibit No. 225-105 for
4 identification.)

5 BY THE WITNESS:

6 A. Okay. I'm there.

7 BY MS. GALE:

8 Q. Do you recognize this?

9 A. Yes, this is a similar drawing for
10 Site 6.

11 Q. And --

12 MS. O'LAUGHLIN: What number are we
13 on?

14 MS. GALE: 225-105.

15 MS. VAN WIE: I don't have that in
16 mine.

17 MS. BRICE: I have it.

18 MS. VAN WIE: The last page I have
19 is 225-96.

20 MS. BRICE: It's actually a bigger
21 version of the --

22 MS. VAN WIE: Do you have it?

23 MR. GRANT: I don't know that I have
24 it. That was under 225.

1 MS. GALE: It should be under there.

2 MR. GRANT: Hold on.

3 MS. O'LAUGHLIN: Yeah, we have the
4 small version.

5 MR. GRANT: Yeah, we're okay.

6 MS. O'LAUGHLIN: Give us a second to
7 do so.

8 MS. VAN WIE: I can see it.

9 MS. GALE: It should be in there.
10 Okay. This one is complete. She can have this
11 one.

12 MR. NISHIOKA: 225 Sections --

13 BY MS. GALE:

14 Q. Sorry, Mr. Peterson. We're at
15 Exhibit 225-105. Are you there?

16 A. Yes, I am.

17 Q. I think you said it was Site 6.

18 A. Yes.

19 Q. And you see -- I guess, what is
20 this? Generally speaking, what does this
21 represent? What do we see here?

22 A. This represents the areas of Site 6
23 that needed to be excavated to remove asbestos
24 that was present in the soil.

1 **Q. And what are the lines that we see,**
2 **the various color lines? Generally speaking, how**
3 **would you describe them?**

4 **A. So this -- this -- this figure shows**
5 **the utilities in the colored lines most of which**
6 **are running east to west and then the excavation**
7 **depths are shown by hatching.**

8 **Q. And as you observe on this figure,**
9 **does the utility line go the entire length of Site**
10 **6?**

11 **A. Yes.**

12 **Q. All the utility lines go the entire**
13 **length of Site 6? Let's look --**

14 **A. No, not all of them.**

15 **Q. Great.**

16 **A. Some of them do.**

17 **Q. But not all of them, right?**

18 **A. That's correct. Not all of them.**

19 **Q. And for the construction work that**
20 **was done by Campanella and the other utilities in**
21 **Site 6, was that -- where was that work,**
22 **aboveground or underground?**

23 **A. This was underground work. The**
24 **lines that are shown here are underground lines**

1 before construction started before some of the
2 lines were rerouted.

3 Q. Was any work done on the overhead
4 lines?

5 A. No, we didn't have to move overhead
6 lines. We just had to move underground lines.

7 Q. And when did construction work on
8 Sites 3 and 6 begin?

9 A. The earth work started in earnest in
10 2016. Some utility preparation work started in
11 2015.

12 Q. Okay. Great. But the real work
13 like the -- where you had the equipment in there,
14 the big -- I can't remember -- excavators.

15 A. That started summer of 2016.

16 Q. Great. I want you to now flip to
17 Exhibit 213 in your binder.

18 (Document marked as Complainant
19 Exhibit No. 213 for
20 identification.)

21 BY THE WITNESS:

22 A. Okay. I'm there.

23 BY MS. GALE:

24 Q. And it's actually the cover page and

1 then there is excerpts from this document, do you
2 recognize this document?

3 A. Yes.

4 Q. What is --

5 A. This is the final closure report.

6 Q. Okay. And the final closure report
7 for what?

8 A. For the southwest site.

9 Q. Okay.

10 A. Site 3, Site 4/5 and Site 6.

11 Q. And, for the record, is this -- is
12 what is in your binder the entire document?

13 A. No, it's in a much abbreviated
14 version.

15 Q. So now I want to flip to 213-1210 in
16 your binder.

17 (Document marked as Complainant
18 Exhibit No. 213-1210 for
19 identification.)

20 BY THE WITNESS:

21 A. Okay.

22 BY MS. GALE:

23 Q. It should be behind a yellow
24 hard-stock.

1 A. Okay. I'm at that page.

2 Q. Okay. It says it's Appendix F of
3 the AECOM report, right?

4 A. Yes, it does.

5 Q. And if you flip the page to Exhibit
6 213-1211, what is that?

7 (Document marked as Complainant
8 Exhibit No. 213-1211 for
9 identification.)

10 BY THE WITNESS:

11 A. This is the construction completion
12 report that I prepared --

13 BY MS. GALE:

14 Q. Okay.

15 A. -- for the southwest site.

16 Q. What is contained in this document?

17 A. This document contains a description
18 of the work that was performed. It describes
19 equipment, materials and the schedule for
20 completing the work. It also describes waste
21 management, equipment contamination, where
22 material was -- was placed and that is in the
23 black ditch, it has some approximate project costs
24 and also describes some operation and maintenance

1 activities.

2 Q. Okay. Great. So now I want you to
3 turn to -- so this is -- and I guess this is an
4 excerpt of your whole report, isn't it?

5 A. It is. It is just an excerpt.

6 Q. Okay. So I want to turn to Exhibit
7 213-1220.

8 (Document marked as Complainant
9 Exhibit No. 213-1220 for
10 identification.)

11 BY THE WITNESS:

12 A. Okay. I'm there.

13 BY MS. GALE:

14 Q. And so it says here Site 3.
15 Generally speaking, what kind of work was done at
16 Site 3.

17 A. So for Site 3 initially there was
18 site surveying to put the stakes in the ground.
19 There was access that was made which included an
20 access drive. There was also excavation in Site 3
21 around the utilities, the North Shore gas lines,
22 the Nicor gas lines and the City of Waukegan water
23 main. There was excavation for the northeast
24 excavation area in Site 3. Excavated material was

1 hauled -- hauled off to the black ditch area.
2 Excavations were backfilled by placing the
3 geotextile and sand and then the site was capped
4 with geotextile sand, clay, topsoil and seeded.

5 Q. Okay. And, now, I'd like you to
6 turn to 213-1226.

7 (Document marked as Complainant
8 Exhibit No. 213-1226 for
9 identification.)

10 BY MS. GALE:

11 Q. Again, it's behind hard-stock, I
12 believe.

13 A. Yes, I'm there.

14 Q. And this says Site 6. So, again,
15 similarly, generally speaking, what work was done
16 at Site 6?

17 A. So at Site 6, there was excavation
18 of asbestos-impacted soil. There was construction
19 of clean corridors. Utilities were rerouted
20 including AT&T and a fiberoptic cable for ComEd
21 and where excavations, when deep enough, the North
22 Shore Gas line was removed, clean corridor was
23 established for the City of Waukegan water main.
24 After excavation was complete and asbestos had

1 been removed, geotextile was placed in the
2 excavation and it was backfilled with sand,
3 topsoil and seeded.

4 **Q. And, big picture, what was -- what**
5 **was the focus of this work, what was the purpose?**

6 A. The purpose of this work was really
7 twofold. One, to create clean corridors for all
8 utilities. So if utilities needed to be serviced
9 in the future, they could not be covered by
10 asbestos-containing soil and, second, was to have
11 a clean cap or a clean surface for Site 6 where no
12 cap was installed because no asbestos remained to
13 be protective of human health and the environment.

14 **Q. And by cleaning those clean**
15 **corridors, what did you do?**

16 A. We removed soil from the ground. We
17 had to dewater to remove the soil.

18 **Q. That soil had what in it?**

19 A. The soil had asbestos in it.

20 **Q. Thank you. Staying with Exhibit**
21 **213. I want to turn to 1254, which is the last**
22 **page in your 213 tab.**

23

24

1 (Document marked as Complainant
2 Exhibit No. 213-1254 for
3 identification.)

4 BY THE WITNESS:

5 A. Okay. I'm there.

6 BY MS. GALE:

7 **Q. What is this?**

8 A. This is the survey of Site 3
9 after -- after the work was completed.

10 HEARING OFFICER HALLORAN: Ms. Gale,
11 excuse me, 213?

12 MS. GALE: Dash 1254. It should be
13 at the backend, the last page of your 213 tab. It
14 better be.

15 HEARING OFFICER HALLORAN: I'm
16 sorry. Go ahead. Sorry.

17 MS. GALE: No, that's fine. Heart
18 attack.

19 MR. NISHIOKA: They're all the same.

20 BY MS. GALE:

21 **Q. I'm sorry. Can you just repeat your**
22 **answer because I -- what is this?**

23 A. This figure is the survey after the
24 work was completed for Site 3. So it shows the

1 limit of the Site 3. It shows the limits of
2 fencing. It shows the Nicor gas line. It shows
3 the North Shore gas line. It shows the City of
4 Waukegan water main.

5 **Q. And you say survey, what do you mean**
6 **by that, what is a survey?**

7 A. So a surveyor came out with GPS
8 equipment and went to the fence line and marked
9 the limit of it, also marked the limits of the gas
10 line and the waterline. It also shows an area
11 where we placed some stone in the northwest
12 corner.

13 **Q. What methodology or data did the**
14 **surveyor use?**

15 A. So the surveyor goes out and he uses
16 the GPS equipment to record the northing's and
17 easting's in the Illinois state plane coordinate
18 system and then he plops this on a map. You can
19 see on the drawing itself it has the northing's
20 and easting's. Those are those E11, 22, 200.
21 Towards the bottom or to the right there is an
22 N2083 I think that's a 300 -- the 2083, excuse me,
23 100 to the right there. So they take those
24 coordinates, they put them into a CAD file and

1 locate the site --

2 Q. Okay.

3 A. -- and generate the drawing.

4 Q. Perfect. All right. Mr. Peterson,
5 I want you to flip to 204 in your binder.

6 (Document marked as Complainant
7 Exhibit No. 204 for
8 identification.)

9 BY THE WITNESS:

10 A. Okay. I'm there.

11 BY MS. GALE:

12 Q. Do you recognize this?

13 A. I do.

14 Q. Okay.

15 A. It's the expert report from
16 Mr. Dorgan.

17 Q. Very good. And if you can turn your
18 page to 204-38.

19 A. I'm there.

20 Q. What is this -- what are we looking
21 at here at 204-38?

22 A. This is a figure of Site 3 showing
23 the utilities. It also shows the eastern --
24 excuse me -- the western limits of Site 6.

1 Q. And in your experience -- I should
2 back this up.

3 You started working there in
4 20- -- working at the Sites 3 and 6 in 2013,
5 right?

6 A. That's correct.

7 Q. Okay. And I believe you said during
8 construction you were there on a daily basis,
9 didn't you?

10 A. I did, yes.

11 Q. So in your experience looking
12 at the title, does this document appear to
13 accurately represent where you did your work?

14 A. Yes, it does.

15 Q. I want to talk about Site 6 and I
16 believe you described that -- the work there was
17 excavation, right?

18 A. At Site 6?

19 Q. Mm-hmm.

20 A. Yes.

21 Q. Was there anything else? Excavation
22 and --

23 A. There was dewatering for excavation.

24 Q. Mm-hmm.

1 A. And utilities were moved before we
2 started work so that we could proceed with
3 excavation.

4 **Q. Once the excavation was complete,**
5 **what happened?**

6 A. When the excavation was complete,
7 the site was -- the excavations were covered with
8 geotextile and sand was used to fill them to grade
9 and then topsoil was seeded.

10 **Q. At Site 6?**

11 A. (Affirmative nod.)

12 **Q. Okay. Great. And then at Site 6,**
13 **did you excavate and fill every foot on the north**
14 **and south sides?**

15 A. I'm sorry. At Site 6, what did you
16 say?

17 **Q. I might have broken up. At Site 6,**
18 **did you excavate and fill every foot of the site,**
19 **the whole 6?**

20 A. Laterally. Not -- not the whole
21 site, no.

22 **Q. Okay. Great.**

23 A. Most of it.

24 **Q. I want to turn back to 213, which is**

1 **the excerpt of the final report.**

2 A. Two-thirteen. Okay.

3 Q. **And I want to go to 213-38 and it's**
4 **actually pretty tiny.**

5 (Document marked as Complainant
6 **Exhibit No. 213-38 for**
7 **identification.)**

8 MS. GALE: So, Mr. Grant, I would
9 recommend -- we're going to put it up on the
10 screen here. Give us a second. There we go.
11 Sorry, Mr. Peterson. We're just getting it on the
12 screen so we can more easily see it because as you
13 can tell the typing is very tiny.

14 THE WITNESS: Okay.

15 BY MS. GALE:

16 Q. **Mr. Peterson, this table, what is**
17 **it?**

18 A. This table summarizes the
19 confirmation sampling results for asbestos from
20 Site 6.

21 Q. **And does it also show where the**
22 **excavation and filling occurred?**

23 A. It does by way of the results, the
24 results show the depth of the clean samples. So

1 soil was excavated to that depth and then the grid
2 ID shows the location.

3 Q. Right. So the first column is what?

4 A. The first column is grid ID.

5 Q. Okay. And then the fourth column
6 is -- what is that?

7 A. The fourth column is the excavation
8 depth.

9 Q. And then looking at the fourth
10 column, are these -- I guess how would you
11 characterize these -- these depths, the same or
12 not the same?

13 A. They vary. They are not the same.

14 Q. And then let's look at the bottom
15 213-38. 55S through 58S. What happened here?

16 A. No asbestos was detected. So there
17 was no removal required.

18 Q. Okay. So these were not uniform
19 excavations, right?

20 A. Correct, they are not uniform.

21 Q. Okay. I want to turn to --

22 MS. GALE: Mr. Hearing Officer, I
23 have a ways to go with him. I don't know if you
24 want to do lunch.

1 HEARING OFFICER HALLORAN: Let's go
2 off the record for a minute, transcript, whatever.

3 (Whereupon, a break was taken
4 after which the following
5 proceedings were had.)

6 HEARING OFFICER HALLORAN: We're
7 going to take a lunch now and be back about 1:45.
8 Thank you.

9 (Whereupon, a break was taken
10 after which the following
11 proceedings were had.)

12 HEARING OFFICER HALLORAN: We're on
13 the record. It's approximately 1:50. We just got
14 back from lunch. Mr. Peterson is up and Ms. Gale
15 is directing him. You may proceed. Thank you.

16 MS. GALE: Thank you.

17 BY MS. GALE:

18 Q. Mr. Peterson, when we were talking
19 before lunch, we were discussing the excavation at
20 Site 6 and I just want to ask you a follow up on
21 that.

22 Where were the deepest
23 excavations in Site 6?

24 A. The deepest excavations were at the

1 west end proximate to Site 3 --

2 **Q. Okay. Great.**

3 A. -- on the south side -- south side
4 of Greenwood Avenue north of Site 3. Those were
5 the deepest.

6 **Q. Excellent. Thank you very much.**

7 **Now, I want to turn to a few questions about Site**
8 **3. I believe you said earlier that part of the**
9 **work that occurred at the site was putting on the**
10 **cap and what was involved in putting on that cap?**

11 A. So putting on the cap was we had
12 to -- I mean, I was putting down the geotextile,
13 putting down sand, compacted clay and three inches
14 of topsoil on top and then a vegetative cover on
15 the topsoil.

16 **Q. Great. So that -- so the topsoil,**
17 **was there something wrong with some of the**
18 **topsoil?**

19 A. Yes, after the work was completed a
20 subsequent inspection found that there were small
21 pieces of asbestos in the topsoil.

22 **Q. And when did that occur?**

23 A. The inspection occurred in April of
24 2018.

1 **Q. Okay. And so we found the asbestos.**
2 **I presume it had to be fixed, right?**

3 A. That's correct.

4 **Q. Who paid for fixing that problem?**

5 A. The contractor was responsible for
6 paying to remove all of the topsoil that was
7 disposed at the landfill and bring in new topsoil
8 and place it.

9 **Q. Who was that contractor, what was**
10 **their name?**

11 A. Campanella & Sons.

12 **Q. Okay. Since they paid for it, were**
13 **those costs and any invoices sent to Johns**
14 **Manville?**

15 A. No, they did not invoice Johns
16 Manville. It was all on their nickel.

17 **Q. Great. Thank you. Now, I want to**
18 **discuss -- let's actually turn to, again, Exhibit**
19 **204 and I want to go to 204-38, which is Figure 1**
20 **of Mr. Dorgan's report.**

21 A. Okay. I'm there.

22 **Q. Okay. Looking at this figure, where**
23 **was the City of Waukegan waterline located?**

24 A. The waterline is located in the

1 northwest area of the site. It's the L-shaped
2 trench. It's actually labeled City of Waukegan
3 waterline.

4 **Q. Now, when you first started working**
5 **at the site, at Site 3, is this location where you**
6 **believed the waterline to be?**

7 A. No, it is not.

8 **Q. Where did you originally think it**
9 **was located?**

10 A. The records that were done showed
11 the waterline being located south of this.

12 **Q. Okay. So the records -- what**
13 **records are you describing?**

14 A. Excuse me. Those were the drawings
15 in the remedial action work plan that was prepared
16 by AECOM that showed the waterline as being not
17 found it --

18 **Q. And where --**

19 A. It was located south.

20 **Q. Sorry. Where did they get that**
21 **information from?**

22 A. I presume that they visited the City
23 of Waukegan and possibly looked at some drawings
24 or maybe there weren't drawings. I'm not -- I'm

1 not really sure about how it was determined.

2 **Q. So I guess I take it from that that**
3 **it's a different location.**

4 **How did you learn that it was --**
5 **originally understood a location was incorrect?**

6 **A.** As it came time to do the work, we
7 asked the City of Waukegan field inspectors to
8 come out and locate the waterline and they had a
9 different idea of where it was than where it was
10 marked on the drawing. In addition, our
11 contractor had done a waterline repair a year or
12 two previously and marked the repair with a pipe
13 in the ground.

14 So based on that repair and the
15 field folks for the City of Waukegan, they located
16 the waterline where it is at that time. We then
17 dug some test pits to confirm the location of the
18 waterline.

19 **Q. Okay. And when was this done?**

20 **A.** I think we found it in approximately
21 June of 2016 when we found this location.

22 **Q. Okay. Great. Next I want to turn**
23 **to the northeast excavation. Looking at the same**
24 **figure, 204-38, can you describe for me where the**

1 **northeast excavation is located.**

2 A. Yes, it is at the northeast area of
3 Site 3. It is actually labeled northeast
4 excavation and it is three rectangles side by side
5 west to east.

6 **Q. To your knowledge and recollection,**
7 **is this located in the correct location on this**
8 **figure?**

9 A. It is, yes.

10 **Q. And what work was done within these**
11 **three, as you say, rectangles?**

12 A. The soil was excavated, material was
13 then -- geotextile was placed in the excavation,
14 it was backfilled with sand prior to capping the
15 site.

16 **Q. And how deep did you have to go in**
17 **this excavation?**

18 A. I believe it was approximately four
19 feet with the plan. I think one of the samples,
20 maybe the western wall, did not come back -- it
21 still contained asbestos at four feet. So we had
22 to go an additional foot deeper.

23 **Q. And I think you explained that. And**
24 **do you remember which sample it was that required**

1 **it to be deeper?**

2 A. The samples were taken and looking
3 at this drawing it must have been B3-50.

4 Q. Great. Same figure, Figure 204-38,
5 I now want to discuss North Shore gas line.

6 Can you describe to us the
7 location of the North Shore gas line running
8 through now -- I guess running through this entire
9 figure?

10 A. Yes, it enters Site 3 at the western
11 boundary kind of midpoint north to south and then
12 traverses across at an east northeasterly
13 direction. It kind of goes up near that B3-50
14 sample we were just talking about.

15 Q. Does it stop at Site 3?

16 A. No, it doesn't. It extends into
17 Site 6.

18 Q. And to your knowledge and
19 recollection, is it depicted on this figure in the
20 correct location?

21 A. Yes, it is.

22 Q. And for Site 3 related to the North
23 Shore gas line, what work was done?

24 A. So Site 3 had to be deenergized --

1 excuse me. The North Shore gas --

2 Q. Dave -- Mr. Peterson, you cut out.
3 So last thing we heard was so Site 3 had to be
4 deenergized. So start other again.

5 A. All right. Let me just start all
6 over. The work in Site 3 for the North Shore gas
7 line started with deenergizing the line. To do
8 that, we had to go west of Site 3 across the road
9 down in a swampy area. We had to build a board
10 road, we had to put in a dewatering point system
11 to draw the water down so we could get access
12 inside the -- inside the vault box, if you will,
13 to close the valve.

14 Once that was closed, we were
15 able to go over to the North Shore gas line that
16 was approximately near 04S where it was excavated.
17 The gas line was then cut and capped. This then
18 also severed service further east in Site 6 from
19 the North Shore gas line. Once that was cut and
20 capped, we proceeded to do the excavation around
21 the North Shore gas line constructing the clean
22 corridor. Once that was constructed and
23 geotextile was laid down and backfilled and
24 covered, then the valve off in the swampy area was

1 opened and the line was reenergized.

2 Q. I think -- so that was for Site 3
3 and then you mentioned location 04S, where is that
4 located?

5 A. That's sort of at the end of the
6 green in Site 6.

7 Q. Okay.

8 A. On the south side of Greenwood.

9 Q. Mm-hmm. So the work you described
10 started on the west -- western edge of Site 3 and
11 continued diagonally to Site 6, right?

12 A. Yes.

13 Q. And then your description of 04S,
14 that was in Site 6, right?

15 A. Yes.

16 Q. Okay. And then so continuing with
17 my next question related to Site 6, you may have
18 answered this, but I'm going to ask it, what work
19 was done on Site 6 for the North Shore gas line?

20 A. So after the North Shore gas line
21 was deenergized for Site 6, we proceeded to
22 excavate soil to remove that, which was --
23 contained asbestos. If the excavation was deep
24 enough that we encountered the North Shore gas

1 line, then that gas line was removed. And if our
2 excavation was shallow such that we did not
3 encounter the gas line, then the gas line was left
4 in place.

5 Q. All right. I want to turn now to
6 **Exhibit 214 in your binder. It should be the last**
7 **tab.**

8 A. Okay.

9 (Document marked as Complainant
10 Exhibit No. 214 for
11 identification.)

12 MS. TIPSORD: Ms. Gale, can you give
13 me just a minute?

14 MS. GALE: Yes.

15 MS. TIPSORD: I just want to check
16 with everyone. We have had a network issue here
17 showing up on the host computer and also in my
18 Outlook. So I want to be sure that everyone on
19 Webex was able to hear us. I'm going to unmute
20 everybody.

21 MR. PAULEY: It shows me you were --

22 MS. TIPSORD: Daniel Pauley, I'm
23 unmuting you.

24 MR. PAULEY: We can still hear you.

1 MS. TIPSORD: Okay. All right. I
2 just wanted to be sure everything -- everybody is
3 muted again. Okay.

4 Okay. Everybody is muted again,
5 including Dave. Let me unmute him. Danny, it's
6 not letting me do that. Danny, it's not letting
7 me unmute Dave. Mr. Peterson, if you can do Star
8 6 on your phone and unmute yourself.

9 THE WITNESS: I just did it. I'm
10 here. Can you hear me?

11 MS. GALE: Yes.

12 MS. TIPSORD: Sorry. There was a
13 network issue. It went all the way to my Outlook.
14 It did the same thing on the phone. It just
15 disappeared.

16 MS. GALE: It's fine. All good?

17 MS. TIPSORD: We're good.

18 MS. GALE: All right. Great.

19 BY MS. GALE:

20 Q. Exhibit 214, are you there?

21 A. Yes.

22 Q. Okay. And, generally speaking, what
23 is Exhibit 214?

24 A. It contains photographs of Site 6

1 and Site 3 excavation.

2 **Q. And who took these photographs?**

3 A. I took these photographs.

4 **Q. When did you take these photographs?**

5 A. These photographs would have been
6 taken -- from the work being completed, it would
7 have been probably August of 2016.

8 **Q. Okay. And how are these photographs**
9 **maintained or stored?**

10 A. These photographs are saved
11 electronically.

12 **Q. Where?**

13 A. On a computer and backed up.

14 **Q. And what was the purpose of taking**
15 **these photographs?**

16 A. This is just part of my routine,
17 daily activity where I photograph work that is
18 occurring. Since work was occurring here, I was
19 taking pictures.

20 **Q. And did you maintain these**
21 **photographs in your regular course of business?**

22 A. Yes, I did.

23 **Q. Very good. I want to turn to**
24 **Exhibit 214-14.**

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(Document marked as Complainant
Exhibit No. 214-14 for
identification.)

BY THE WITNESS:

A. Okay.

BY MS. GALE:

Q. Describe for me what is in this
photo.

A. This photo is taken --

MR. GRANT: Let me interrupt --

BY THE WITNESS:

A. -- of the excavation in Site 3 --

HEARING OFFICER HALLORAN: Mr.
Peterson, just hold on a minute, please.

MR. GRANT: Before he start -- they
start to use these exhibits, I'd like to know
where they were taken because if they're taken
outside the area that we all know is described by
the Board as the area of IDOT's liability, then
they're not relevant in this case.

HEARING OFFICER HALLORAN: Ms. Gale?

MS. GALE: Well, I'm actually going
to ask him where each picture is -- was located as
part of my questioning. We think these photos are

1 relevant because they demonstrate and they show
2 where the asbestos-containing material was found
3 during the excavations and so really the relevance
4 is to what was underneath each sample point.

5 HEARING OFFICER HALLORAN: Okay. I
6 will overrule it. Go ahead, Ms. Gale.

7 MS. GALE: Thank you.

8 BY MS. GALE:

9 Q. I'll ask the question so it's clear.
10 Looking at Exhibit 214-14, what does this picture
11 show?

12 A. This is a picture capturing the
13 excavation ongoing work in Site 6. The excavator
14 is down towards the western limit of Site 6 on the
15 south side of Greenwood and then a little bit of
16 light colored material on the right side of the
17 photo is the -- where the North Shore gas line was
18 terminated. So that's approximately where sample
19 04S is. So this shows what remains underneath
20 adjacent to Greenwood from the western limit of
21 Site 6 south side of Greenwood up to the North
22 Shore gas line where it was terminated.

23 Q. And so approximately if you can tell
24 me what sample points you can see in this photo.

1 A. Approximately, 01, 02, 03 and 04S.

2 **Q. And what do you see along the**
3 **excavation in the photo?**

4 A. In the photo, you see industrial
5 debris, including asbestos, approximately three to
6 five feet below grade in the bank of the
7 excavation.

8 **Q. Okay. And how do you know it's**
9 **asbestos?**

10 A. Because I was there and I saw it.

11 **Q. Now, I want you -- we're all going**
12 **to do this exercise and Mr. Peterson can play**
13 **along. The rest of you don't have to. I want you**
14 **to take that photo out and place it on the desk in**
15 **front of you and close your binder again and flip**
16 **to 214-19.**

17 (Document marked as Complainant
18 Exhibit No. 214-19 for
19 identification.)

20 BY THE WITNESS:

21 A. Okay. I'm at 214-19.

22 BY MS. GALE:

23 **Q. I guess first question where, to**
24 **your knowledge, is this photo pointing at?**

1 A. This photo is pointing at
2 approximately sample locations 04 and 05. It is
3 looking north into Site 6.

4 **Q. Okay. And what do you see in this**
5 **photo?**

6 A. Again, you can see the bank, you can
7 see the industrial debris, including asbestos,
8 well three to five feet below adjacent grade.
9 There are also some abandoned electrical conduits
10 running across the ground.

11 **Q. Okay. And, again, same deal pull**
12 **that photo out of your binder and place it next to**
13 **214-14. And let's turn back to 214-15.**

14 (Document marked as Complainant
15 Exhibit No. 214-15 for
16 identification.)

17 BY THE WITNESS:

18 A. Okay.

19 BY MS. GALE:

20 **Q. Okay. Where -- what does this**
21 **picture show?**

22 A. This picture is another picture of
23 the Site 6. It shows the bank. It also shows
24 where the gas line was cut. It shows the gas line

1 that is deenergized coming to the east and it also
2 shows the industrial debris, including asbestos
3 along the wall there just south of Greenwood
4 Avenue.

5 Q. And you said the gas line, can you
6 just tell us which one that is. I don't know what
7 gas lines look like.

8 A. Yeah, that yellow gas line is the
9 North Shore gas line.

10 Q. Great. What sample points can we
11 see in this photo?

12 A. 04, 05 and 06 most clearly.

13 Q. And I believe -- what in this --
14 what do you see in the embankment in this photo?

15 A. There is industrial debris,
16 including asbestos. You can see some pipes there
17 and there is other debris, asbestos debris in
18 there.

19 Q. Same deal. Let's pull this out and
20 put it next to 214-19. Please turn to 214-17.

21 (Document marked as Complainant
22 Exhibit No. 214-17 for
23 identification.)
24

1 BY THE WITNESS:

2 A. Okay. I'm there.

3 BY MS. GALE:

4 Q. What are we looking at here?

5 A. This is, again, a picture looking
6 north in Site 6. It shows industrial debris,
7 including asbestos in the bank below where the
8 three folks are standing and closer to who is
9 taking the photo there is the North Shore gas
10 line.

11 Q. Okay. And what sample locations do
12 you see in this photo?

13 A. This is approximately 07 and 08.

14 Q. And I guess if I'm looking at --
15 there is a green material in the middle, what is
16 that?

17 A. That is roofing granulars. They
18 make products for roofing and they're shingles.
19 They would put granulars on. So that looks like
20 roofing granulars like when we demolish the silos
21 at the plant that contain the roofing material.

22 Q. What is in those roofing materials?

23 A. Johns Manville made roofing
24 materials out of asbestos. That contains

1 asbestos.

2 Q. And, again, we'll take 217 out and
3 place it next to 215 and I want to turn right in
4 front of you to 2 -- we'll take 214-17 out and
5 place it next to 214-15 and I want you to turn to
6 214-18. What does this show?

7 (Document marked as Complainant
8 Exhibit No. 214-18 for
9 identification.)

10 BY THE WITNESS:

11 A. Just a different angle facing west
12 showing the industrial debris, including the
13 asbestos on the south side of Greenwood in the
14 bank there.

15 BY MS. GALE:

16 Q. And so what sample points are we
17 looking at?

18 A. This is approximately 07 and 08.

19 Q. Okay. So looking at --

20 MR. GRANT: Kristen, I don't have
21 18.

22 MS. GALE: What?

23 MR. GRANT: I don't have 18. I
24 found it. Go on.

1 BY MS. GALE:

2 Q. Now, looking at these five photos;
3 214-14, 214-19, 214-15, 214-17 and 214-18, please
4 describe for me collectively what these photos
5 show?

6 A. They show a consistent theme of
7 industrial debris, including asbestos-containing
8 material present underneath the southern -- the
9 bank next to Greenwood Avenue approximately three
10 to five feet below grade. That's what it shows.

11 Q. Okay. And what would that
12 consistent scene indicate to you?

13 A. To me, it looks like very similar
14 materials all along the way. It basically looks
15 like it's constructed at the same elevation. So
16 from my perspective, it looks like it was
17 something that was completed at approximately the
18 same time.

19 Q. And I guess a counter question is
20 what -- if it was completed at a different time,
21 what would you see?

22 A. I think it would be difficult -- it
23 would be difficult to do this at a different time
24 because you would have to plan to excavate to a

1 certain depth to lay down the same or similar
2 material and so that would have required planning
3 ahead of time and if it was -- if it was done at
4 different times, I would -- there would be some
5 changes I would think in industrial debris and in
6 some places like that layering wouldn't -- you
7 know, would be discontinuous. So this looks like
8 it was done at the same time.

9 MR. GRANT: Can you explain or at
10 least clarify what time you're talking about,
11 different times, same time?

12 MS. GALE: Can you do it on
13 your cross?

14 HEARING OFFICER HALLORAN: You can
15 do it on cross.

16 MR. GRANT: Sure.

17 HEARING OFFICER HALLORAN: Thanks.

18 BY MS. GALE:

19 Q. Mr. Peterson, at some point, you
20 became aware of this litigation, is that correct?

21 A. Yes, that's correct.

22 Q. And were you asked questions by
23 Mr. Dorgan about your work at the site?

24 A. Yes, I was.

1 **Q. And did you talk to him about the**
2 **work that is displaced in these five photos?**

3 A. I talked to him about a lot of work
4 and, yes, I did talk to him about the work that
5 was displayed in these five photos.

6 **Q. What did you tell him?**

7 A. I told him that it looked like
8 consistent material all along the north side of
9 Site 6, the north side of the southern portion of
10 Site 6.

11 **Q. Great. You can put those photos**
12 **away for now. Thank you very much. We just**
13 **discussed how you had talked with Mr. Dorgan.**

14 **As part of your conversations**
15 **with him, did he ask you to do anything?**

16 A. Yes. I was asked to prepare a
17 summary of all the costs associated with Site 3
18 and Site 6.

19 **Q. Okay. I want you to turn back to**
20 **204 in your binder and you're actually going to go**
21 **to Exhibit 204-71.**

22 **(Document marked as Complainant**
23 **Exhibit No. 204-71 for**
24 **identification.)**

1 BY THE WITNESS:

2 A. Okay. I'm there.

3 BY MS. GALE:

4 Q. Do you recognize this document?

5 A. Yes, this is the cost summary I
6 prepared.

7 Q. Okay. Okay. So let's turn to Table
8 1. What does Table 1 show us, generally speaking?

9 A. Table 1 summarizes various work
10 elements and describes the work elements and shows
11 where costs were incurred for those work elements
12 with respect to whether it was in the bid document
13 where the project was awarded, whether it was a
14 time and materials work for Campanella. It shows
15 engineering and onsite supervision of the work and
16 also includes a summary of other miscellaneous
17 costs --

18 Q. Now, you use the phrase --

19 A. -- to tally the total cost.

20 Q. Sorry. You used the phrase work
21 element.

22 Are you familiar with the phrase
23 task bucket?

24 A. Yes, I am. These work elements

1 could be called task buckets.

2 Q. Okay.

3 A. They're synonymous.

4 Q. Turn to Table 2. What does Table 2
5 show?

6 A. Table 2 is a detailed cost breakdown
7 for the awarded project, so the bid work, and it
8 takes each one of the line items and attributes it
9 to a work element or task bucket and then totals
10 it down at the bottom.

11 Q. Okay. Thank you. Turn to Table 3,
12 which is the next page. What does Table 3 show?

13 A. Table 3 shows time and material
14 invoices and attributes every line of every
15 invoice to a task bucket.

16 Q. Table 3 is kind of big. So we'll
17 skip to Table 4, which is located at 204-79.

18 (Document marked as Complainant
19 Exhibit No. 204-79 for
20 identification.)

21 BY THE WITNESS:

22 A. Okay.

23 BY MS. GALE:

24 Q. Can you describe to me what Table 4

1 **shows?**

2 A. Yes, Table 4 shows a breakdown of
3 engineering, like office type duties, compared to
4 onsite resident site engineer supervision crew,
5 guardhouse operation, for each -- each item.

6 Q. And just for the record for everyone
7 so when they're reading this Table 4, what does
8 D -- at the top left corner DMP, PE PC stand for?

9 A. That's my company. David M.
10 Peterson, PE PC.

11 Q. Thank you. And turning to Table 5,
12 which is on Page 204-90.

13 (Document marked as Complainant
14 Exhibit No. 204-90 for
15 identification.)

16 BY THE WITNESS:

17 A. Okay.

18 BY MS. GALE:

19 Q. Generally speaking, what does this
20 show?

21 A. This shows other costs associated
22 with the project. It shows utility costs that
23 were invoiced from AT&T to North Shore Gas, it
24 shows water discharge costs to North Shore Water

1 Reclamation District, it shows some fence
2 construction costs and some tree clearing costs.

3 Q. And looking at all of these tables,
4 Mr. Peterson, that you prepared, do you believe
5 you accurately reflected the costs for
6 Campanella's services related to Sites 3 and 6?

7 A. Yes, I do.

8 Q. Same question. In looking at these
9 tables that you prepared, do you believe you
10 accurately reflected the costs for your services
11 relating to Sites 3 and 6?

12 A. Yes, I do.

13 Q. Looking at these Tables 1 through 5,
14 Mr. Peterson, how many hours did you spend to
15 create this -- to work on these tables?

16 A. It took a long time because I went
17 through every invoice and every line item and
18 reconciled it with progress reports and photos and
19 I would say on the order of a couple hundred
20 hours.

21 Q. Excellent.

22 MS. GALE: Nothing further. Thank
23 you.

24 HEARING OFFICER HALLORAN: Thank

1 you, Ms. Gale. Mr. Grant?

2 MR. GRANT: Yes. Can I have one
3 second?

4 HEARING OFFICER HALLORAN: Yes.

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

6 BY MR. GRANT:

7 Q. Mr. Peterson, can you see me?

8 A. Your head is cut off. I can see
9 your shoulders.

10 Q. I probably look better that way.

11 I'm Chris Grant. I'm with the Attorney General's
12 Office and I represent IDOT.

13 Let me start with the question
14 that I tried to get Ms. Gale to ask about.
15 Looking at -- if you can pull out those pictures
16 if you still have them, it would be great; 214-14,
17 214-15, 214-17 and 214-18, do you have those?

18 A. I do, yes.

19 Q. Okay. Now, you mentioned that it
20 was your belief that this was -- this all happened
21 at the same time, I can't remember exactly what
22 your words, but what do you mean by the same time?

23 A. The same mobilization. In other
24 words, it was excavated, work was done, it wasn't

1 half done, people went away, came back months
2 later and did it again.

3 Q. Okay. You're -- you mentioned
4 looking at -- let's go to 214-14. You observed
5 industrial debris and asbestos and you even
6 specified the depth that it was buried from
7 looking at this picture.

8 I'm looking at it and I just see
9 what looks like a hole. Where are you seeing such
10 details like that there is asbestos in here in
11 214-14?

12 A. I mean, I was there. I was walking
13 in that trench. I was up close to it. The
14 picture doesn't show me being up close to it, but
15 I was right there.

16 Q. So did you take samples of the
17 material and have them -- have them tested?

18 A. No, I didn't.

19 Q. Why not?

20 A. Because we were excavating and
21 backfilling.

22 Q. Okay. In all the other photos that
23 you've -- that you've -- not all the other ones,
24 but in the ones we're talking about which is 14,

1 **15, 17 and 18 where you've identified asbestos, is**
2 **that true of all of those excavations?**

3 MS. GALE: Objection. Vague.

4 BY THE WITNESS:

5 A. Is what true?

6 HEARING OFFICER HALLORAN: Hold on.

7 Ms. Gale has an objection.

8 BY MR. GRANT:

9 Q. All right. Is -- is it true of all
10 **those other excavations where you've identified**
11 **asbestos that you didn't take any samples?**

12 MS. GALE: Objection. Vague all
13 those other excavations. I don't understand.

14 MR. GRANT: Fine. Let's do it
15 picture by picture. That ought to save time.

16 BY MR. GRANT:

17 Q. In 214-15 --

18 A. Okay. 214-15.

19 Q. -- you've identified asbestos as
20 **well as industrial debris, I believe, in there,**
21 **did you take samples at the location to verify**
22 **that it was asbestos?**

23 A. I did not.

24 Q. 214-17 where you have also

1 **identified general debris as well as asbestos.**

2 A. I did not sample the wall.

3 Q. You did not sample. And the same
4 for the next one 214-18?

5 A. I did not sample the wall.

6 Q. Okay. And for the same reason that
7 you were in the middle of an excavation, you
8 didn't have time to take samples?

9 A. There was no -- it wasn't part of
10 our scope of work. Our scope of work was to
11 excavate where samples had been taken and asbestos
12 had been found and so this whole trench was
13 excavated because there were prior samples
14 collected that determined there was asbestos
15 there.

16 Our purpose was to excavate Site
17 6 to remove the asbestos, provide a clean corridor
18 and the limits of that were predefined and so
19 that's what we did.

20 Q. Now, when -- when the initial
21 evaluation is done -- was done on this and the
22 engineering evaluation and cost analysis that was
23 submitted to U.S. EPA, they took samples,
24 identified the type of asbestos-containing

1 **material and then also had laboratory analysis**
2 **done of those samples, didn't they?**

3 A. I wasn't part of the ECA. So I
4 don't -- I don't know what they did.

5 **Q. Are you familiar with Sites 4 and 5?**

6 A. I am.

7 **Q. Okay. There was all sorts of buried**
8 **material, there was buried transite asbestos,**
9 **buried roofing material, brake shoe liners in**
10 **Sites 4 and 5 as well, correct?**

11 MS. GALE: Objection. Relevance.

12 HEARING OFFICER HALLORAN: Mr.
13 Grant -- overruled. You may proceed.

14 BY THE WITNESS:

15 A. The answer?

16 BY MR. GRANT:

17 **Q. Yes, please.**

18 A. That material was present in Sites
19 4 and 5.

20 **Q. Are you familiar with Site 2, which**
21 **is outside of the southwest site's area, but is**
22 **east of Site 3?**

23 A. Yes, I am.

24 **Q. Okay. And asbestos-containing**

1 **material was found there on the surface and then**
2 **also subsurface, correct?**

3 MS. GALE: Again, objection
4 relevance. This lawsuit isn't about Site 2.

5 MR. GRANT: No, it's about his
6 knowledge of asbestos.

7 HEARING OFFICER HALLORAN: I'm
8 sorry, Mr. Grant.

9 MR. GRANT: It's about his knowledge
10 of asbestos and subsurface asbestos.

11 HEARING OFFICER HALLORAN: Yeah.
12 You know what, he can answer if he's able.
13 Thanks. We have to move this along.

14 BY THE WITNESS:

15 A. I did not do the sampling at Site 2
16 and I did not manage the remediation at Site 2.
17 So I did not see that Site 2 up close and
18 personal.

19 BY MR. GRANT:

20 **Q. So you haven't visited Site 2?**

21 A. Excuse me. I know where Site 2 is.

22 **Q. Okay.**

23 A. What was your question?

24 **Q. That was my question. It was have**

1 **you visited it first?**

2 A. Yes, I know where Site 2 is.

3 **Q. And are you aware of the asbestos**
4 **contamination at Site 2?**

5 A. To my knowledge, the asbestos
6 contamination was -- the threat to exposure was
7 abated some time ago.

8 **Q. Have you heard of any IDOT**
9 **involvement, and by that, I mean any road**
10 **construction, any movement of the surface in Sites**
11 **4, 5 or 2?**

12 A. No.

13 **Q. In all three of those sites, 4, 5**
14 **and 2, they are outside of the Johns Manville**
15 **facility, correct?**

16 A. That's correct. Two is partially.

17 **Q. What I mean --**

18 A. Not completely.

19 **Q. Yeah. What I mean is outside of the**
20 **former Johns Manville facility.**

21 A. Site 2 is partially on Johns
22 Manville property.

23 **Q. I believe that you stated you**
24 **assisted Mr. Dorgan in providing the cost numbers**

1 for -- for his evaluation the work, the cost
2 numbers for the work that you oversaw at the
3 site?

4 A. That's correct. I prepared a cost
5 summary for Mr. Dorgan.

6 Q. And the numbers that you prepared
7 for Site 3, that was for all of Site 3, correct?

8 A. Yes, that's correct.

9 Q. And that would include the -- the
10 Nicor gas line in Site 3?

11 A. Yes, that's correct.

12 Q. Okay. And in the numbers that you
13 provided to him from Site 6, that included also
14 the northern border of Greenwood Avenue for
15 remediation at that location?

16 A. Yes, the northern shoulder of
17 Greenwood Avenue.

18 Q. Are you familiar with --

19 A. Yes.

20 Q. I'm sorry. Are you familiar with
21 the Board order that was issued on December 15th,
22 2016, in this case?

23 A. I know of it. I have not read it.

24 Q. Okay. Have you -- have you made

1 **that -- have you been asked to make any effort to**
2 **limit the costs that you reported to Mr. Dorgan**
3 **pursuant to the findings of the Board order?**

4 A. No, I presented total costs.

5 MR. GRANT: Can I have one minute,
6 Mr. Halloran. Just one minute, Mr. Peterson.

7 (Whereupon, a break was taken
8 after which the following
9 proceedings were had.)

10 MR. GRANT: Back on, please.

11 HEARING OFFICER HALLORAN: Go ahead.
12 I'm sorry.

13 MR. GRANT: No, it's okay. I
14 stopped.

15 BY MR. GRANT:

16 **Q. Mr. Peterson, are you familiar with**
17 **the north side of Greenwood Avenue on Site 6?**

18 A. I am, yes.

19 **Q. Weren't there multiple layers of**
20 **pavement on the north side of Greenwood Avenue?**

21 A. Partially adjacent to Greenwood
22 Avenue.

23 **Q. Doesn't that indicate that there**
24 **were several road projects over a period of time?**

1 A. I'm not really sure what it
2 indicates. I mean, multiple layers of pavement
3 could be because of maintenance. It could be -- I
4 don't know.

5 **Q. But that would indicate different**
6 **work at different times, wouldn't it?**

7 A. It could, sure.

8 MR. GRANT: That's all I have,
9 Mr. Halloran.

10 HEARING OFFICER HALLORAN: Thank
11 you, Mr. Grant. Ms. Gale, redirect.

12 MS. GALE: Just a few questions.

13 R E D I R E C T E X A M I N A T I O N
14 BY MS. GALE:

15 **Q. Mr. Peterson, I'm actually going to**
16 **sit here. Can you still hear me?**

17 A. Yes, I can.

18 **Q. Great. Let's go to picture -- let's**
19 **go to Exhibit 214-15.**

20 A. Okay.

21 **Q. I think you were asked some**
22 **questions on these various photos and he was**
23 **asking you about a different photo, but can you**
24 **just point out and describe for the record and**

1 even hold up to your screen, point out for the
2 people in the room where you see -- where you see
3 asbestos-containing materials?

4 A. It's kind of hard to do.

5 Q. Yeah.

6 A. There's a circle right here. You
7 can see that's a pipe, there is a piece of pipe
8 down here.

9 Q. So let me stop you for the record.
10 In the circle you see, is it directly below the
11 shelf underneath the road below -- I don't even
12 know what these things are called. Those camels,
13 is that the circle you're seeing?

14 A. Yeah, the barricades.

15 Q. The barricade if you go down, you
16 know, below the barricade, is that the circle that
17 you're describing the furthest right barricade?

18 A. Yes.

19 Q. Okay. And then keep on describing
20 for me where you see the other pipe that you
21 believe -- that you see asbestos-containing
22 material?

23 A. If you go further down towards this
24 corner of the picture.

1 **Q. The bottom right corner?**

2 A. Horizontal. Bottom right corner.

3 **Q. Mm-hmm.**

4 A. I don't -- I don't know how well
5 this is working.

6 **Q. I got it. And that just above the**
7 **shadow --**

8 A. Yeah, that's right there. The
9 picture is kind of a low resolution.

10 **Q. Sure.**

11 A. But those are two obvious pieces.

12 **Q. Right. And in your experience in**
13 **doing projects like this -- I guess I'll back it**
14 **up.**

15 **Mr. Peterson, how much**
16 **experience do you have in observing**
17 **asbestos-containing materials in soil?**

18 A. Well, I've been observing asbestos
19 material out here since the building demolition
20 and we've gone through several mediation projects
21 to close lagoons where we have dug into soil and
22 identified asbestos of all types. So I'm -- for
23 20 years, I have been observing asbestos out at
24 this project.

1 **Q. And at this project did you also see**
2 **transite material looking at --**

3 A. Yes, I've seen transite material in
4 excavations before.

5 **Q. And look at these photos 214-14,**
6 **214-15, do you see transite materials in these**
7 **photos?**

8 A. Yeah, 214-15 I believe those two
9 that I pointed out were transite material,
10 214-14 -- kind of far away from 214-14. And the
11 resolution is not very high. It's hard to see.
12 But, like I said, I was in the excavation close to
13 it.

14 **Q. Right. When you were there looking**
15 **at it, what did you see?**

16 A. I saw roofing material, I saw pipes,
17 I saw -- I saw the shingles, the granular material
18 with the shingles, I saw some transite wallboard.
19 That's what comes to me off the top of my head.

20 **Q. What did all those materials**
21 **contain?**

22 MR. GRANT: Objection.

23 BY THE WITNESS:

24 A. Those were all --

1 HEARING OFFICER HALLORAN: I'm
2 sorry. Mr. Grant has an objection.

3 MR. GRANT: Yeah. He has no way of
4 knowing. He didn't do any testing. That question
5 cannot be reasonably answered.

6 HEARING OFFICER HALLORAN: He can
7 answer if he is able. Proceed.

8 BY THE WITNESS:

9 A. Those are all products that in my
10 history out at this site my experience is they
11 contain asbestos. In the soils that we have
12 excavated out at the site, they have been there
13 when asbestos has been present. I know Johns
14 Manville made products using asbestos, made these
15 products using asbestos.

16 BY MS. GALE:

17 Q. Mr. Peterson, you were asked a few
18 questions about when you were doing your
19 construction work and the excavation work out
20 there whether you sampled and conducted the
21 sampling and you said you didn't do any sampling,
22 but then I believe you also said -- well, I'll ask
23 you this question.

24 Why didn't you take any samples?

1 A. We did not need to sample the side
2 wall of the excavation along Greenwood Avenue.
3 That was not part of our scope of work.

4 **Q. Right. Because who did?**

5 A. Nobody sampled the side wall along
6 Greenwood Avenue.

7 **Q. Why were you excavating there?**

8 A. We were excavating because there
9 were samples selected that contained asbestos and
10 we were removing those.

11 **Q. Okay.**

12 A. But we were not charged with digging
13 up Greenwood Avenue.

14 **Q. Right. But you were charged with**
15 **digging up just south of Greenwood Avenue,**
16 **correct?**

17 A. Correct.

18 **Q. And why -- why were you excavating**
19 **there?**

20 A. Because there were samples that
21 contained asbestos and the asbestos had to be
22 removed.

23 **Q. Thank you.**

24 MS. GALE: Nothing further.

1 HEARING OFFICER HALLORAN: Thank
2 you, Ms. Gale. Mr. Grant?

3 R E C R O S S E X A M I N A T I O N
4 BY MR. GRANT:

5 Q. Turning to 214-15 again.

6 A. Okay.

7 Q. And I think you identified a pipe in
8 the lower right-hand corner of the photograph, is
9 that where the pipe you were talking about was?

10 A. It is, yes.

11 Q. Is that a circular pipe?

12 A. Yes.

13 Q. Cylindrical. Are you aware of the
14 allegations -- not the allegations.

15 Are you aware of the position
16 that the parking lot that had been on the Site 3
17 had been partially constructed or had used split
18 transite pipe?

19 A. Yes, I heard that.

20 Q. That they were used for auto bumpers
21 for some reason?

22 A. Yes, I heard that.

23 Q. Okay. This is not a split pipe, is
24 it, in this photograph?

1 A. That's a small pipe. It's not a
2 pipe big enough to be used as an auto bumper.

3 **Q. But it's not split, it's intact,**
4 **isn't it, as an attached?**

5 A. I'm sorry. It's not --

6 **Q. It's -- I'm sorry.**

7 A. It's not what?

8 **Q. It's -- it's intact, it's not split.**

9 A. Oh, like cut in half?

10 **Q. Yes.**

11 A. Is that what you're referring?

12 **Q. Yes.**

13 A. Yes, I would say -- I mean, that's
14 not one of the half -- that's not a pipe that
15 could be cut in half to be used as a parking
16 bumper if that's what you mean. It's a small
17 pipe. That wouldn't serve that purpose, I don't
18 believe.

19 **Q. And pipes are made out of a number**
20 **of different materials not just transite, correct?**

21 A. I don't know that Johns Manville
22 made pipes at this plant out of materials that did
23 not include asbestos.

24 **Q. Okay. Do you know how this material**

1 **got into the excavation?**

2 A. I do not know how this material got
3 into the excavation.

4 MR. GRANT: That's all I have.

5 HEARING OFFICER HALLORAN: Thank
6 you.

7 MS. GALE: One final question. I
8 should have asked him before and I apologize.

9 FURTHER EXAMINATION
10 BY MS. GALE:

11 Q. In Site 6, when you did the
12 excavation, were samples taken at the bottom of
13 the excavation or confirmatory samples taken at
14 the bottom of the excavation?

15 A. Yes, confirmation samples were taken
16 because we had to demonstrate the asbestos was no
17 longer present on the bottom.

18 MS. GALE: Thank you. We're good.

19 MR. GRANT: I think we're through.

20 HEARING OFFICER HALLORAN:
21 Mr. Grant, you're done? Mr. Peterson, I have a
22 question. You stated that you went to the
23 University of Michigan.

24 MR. GRANT: I did. Go blue, baby.

1 HEARING OFFICER HALLORAN: And you
2 live in the Buckeye state, how's that working?

3 THE WITNESS: I'm sorry. What's
4 that?

5 HEARING OFFICER HALLORAN: And you
6 live in the Buckeye state?

7 THE WITNESS: Oh, my gosh it's
8 horrible. The last 19 years with, what is it, two
9 wins? I get pummeled every single November. It's
10 now I'm just hoping since it's in December I have
11 a chance. There might be enough snow to slow the
12 Buckeyes down. That's what I'm hoping for.

13 HEARING OFFICER HALLORAN: Good luck
14 and thank you, Mr. Peterson.

15 MS. GALE: Thank you.

16 MS. BRICE: Thank you.

17 THE WITNESS: All right. Thank you,
18 buh-bye.

19 HEARING OFFICER HALLORAN: We're off
20 the transcript.

21 (Whereupon, a break was taken
22 after which the following
23 proceedings were had.)
24

1 WHEREUPON:

2 DOUGLAS DORGAN

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

5 DIRECT EXAMINATION

6 BY MS. BRICE:

7 Q. Good afternoon, Mr. Dorgan.

8 A. Good afternoon.

9 Q. Okay. Could you please state your
10 name for the record.

11 A. Douglas G. Dorgan, Junior.

12 Q. And you testified for Johns Manville
13 in this case before, correct?

14 A. That's correct.

15 Q. And I'll refer to that as the
16 liability hearing.

17 A. That's fine.

18 Q. You were found to be an expert for
19 purposes of offering your opinions in the
20 liability hearing, is that right?

21 A. That's correct.

22 MS. TIPSORD: Off the record for
23 just a second.

24

1 (Whereupon, a discussion was had
2 off the record.)

3 BY MS. BRICE:

4 Q. Mr. Dorgan, can you just briefly
5 describe your educational background for us.

6 A. I have a Bachelor's of Science in
7 Earth Science with a minor in Geology and I have a
8 Master of Science in Geography with a
9 concentration in environmental science.

10 Q. And can you tell us a bit about your
11 work history.

12 A. I've been an environmental
13 consultant since roughly 1986. Early in my
14 career, I did a wide variety of work including
15 environmental/civil engineering surveying. As I
16 progressed in my career, I began doing and
17 concentrating more on the environmental side and
18 in that capacity I've managed environmental
19 investigations, I have managed design of
20 remediation systems, I have prepared bid
21 documents, I have let out bids, I have evaluated
22 bids, I have evaluated pay requests under those
23 bids and a number of different times I have been
24 involved in allocating costs related to the

1 implementation of environmental work.

2 Q. And what is your current title?

3 A. Co-president.

4 Q. Co-president of what?

5 A. Weaver Consultants Group and its
6 affiliated entities.

7 Q. Okay. And I did what Kristen did.
8 I forgot to pass out the binders. Sorry about
9 that.

10 HEARING OFFICER HALLORAN: We can go
11 off the record.

12 (Whereupon, a break was taken
13 after which the following
14 proceedings were had.)

15 BY MS. BRICE:

16 Q. One thing. You are -- are you
17 familiar with the opinion in this case?

18 A. With the opinion?

19 Q. The Board's opinion in this case?

20 A. Yes, ma'am.

21 Q. And have you read it?

22 A. Yes, I have.

23 Q. And what generally did the Board
24 conclude?

1 A. That IDOT was found to have violated
2 the Act in allowing the placement of asbestos
3 materials as part of their construction project at
4 Greenwood Avenue.

5 **Q. And where -- any other spots?**

6 A. Well, between both Site 6 and Site
7 3, various areas on both of those two sites.

8 **Q. Could you please turn to Exhibit**
9 **204. Do you recognize this?**

10 A. Yes, I do.

11 **Q. And what is it?**

12 A. This is my June 13th, 2018, Expert
13 Report of Douglas G. Dorgan, Junior on Damages
14 Attributable to IDOT.

15 **Q. Okay. And does it contain your --**
16 **at least your initial opinions in this case?**

17 A. Yes, it does.

18 **Q. And you -- you actually had a**
19 **rebuttal report in this -- I'm sorry. You had --**
20 **let's just back up. Let's keep going.**

21 **Can you turn to 204-4, please.**
22 **Here you lay out your various qualifications in**
23 **204-4 and 204-5, correct?**

24

1 (Document marked as Complainant
2 Exhibit No. 204-4 and 204-5 for
3 identification.)

4 BY THE WITNESS:

5 A. That is correct.

6 BY MS. BRICE:

7 Q. And, in particular, are some
8 examples of your experience that are relevant to
9 your work in the damages phase of this matter?

10 A. I have previously completed projects
11 where environmental work had been completed.
12 There were various parties that were involved,
13 that had been funding the cost of the cleanup and
14 part of my responsibility was to evaluate both
15 contribution and allocate out the cost based upon
16 the contributions that were made to the cleanup
17 scope of work.

18 Q. What about with respect to your
19 engineering -- your background on dealing with
20 environmental cleanups and surveying and that sort
21 of thing?

22 A. It's just been relevant to a lot of
23 the technical issues that are involved in this
24 particular matter in terms of your original road

1 construction that took place, the various
2 discussions around some of the figures, the
3 elevations of where things happened. It's all
4 been very relevant and contributory.

5 **Q. And your experience in that area**
6 **goes back how far?**

7 A. 1986.

8 **Q. On 204-5, you have a section about**
9 **information considered.**

10 **Can you briefly describe for us**
11 **what information you considered in comparing this**
12 **report -- preparing this report?**

13 A. Yeah. So as I lay out here of
14 course I looked at the documents that had been
15 prepared historically, including those that had
16 been generated and used in the earlier phase of
17 hearing, reviewed the depositions that had been
18 taken by a number of the witnesses that were
19 called, reviewed the work plan and the final
20 report that was generated for the work that was
21 implemented and then, of course, spent a lot of
22 time looking at the costs that were incurred as
23 tabulated by Dr. Ebihara and Mr. Peterson.

24 **Q. Okay. With respect to the**

1 information you relied upon, is this the type of
2 information reasonably relied upon by experts in
3 your field?

4 A. Yes.

5 Q. Since the parties have stipulated
6 to the costs incurred, I'd like you to briefly
7 explain what you did briefly to determine that
8 JM occurred \$5,579,794 in response costs at
9 Sites 3 and 6?

10 A. Well, basically, I asked Dr. Ebihara
11 and Mr. Peterson to tabulate their costs that they
12 had been respectfully managing and they provided
13 that to me. Of course as we have previously
14 heard, there were a couple variations on that as I
15 was asking questions and having those questions
16 responded to. And then once I had them, I had to
17 try to make sense of them. There was some strong
18 alignment even with what was originally given to
19 me. I believe Dr. Ebihara kind of categorized it
20 as categories. Mr. Peterson categorized it as
21 work elements. I coined the term task bucket just
22 for purposes of making sense out of how the work
23 was grouped between the two parties that were
24 managing different aspects of the work.

1 Q. If you look at Page 9 through --
2 204-9 through 204-13 of your report. And I'm
3 going through this quickly simply because most of
4 this is stipulated to.

5 Can you just -- what are these
6 pages detailing?

7 (Document marked as Complainant
8 Exhibit No. 204-9 - 204-13 for
9 identification.)

10 BY THE WITNESS:

11 A. So these pages are basically
12 grouping the different types of costs in terms of
13 broader categories before splitting them into the
14 task buckets. So here I'm looking initially at
15 the professional engineering services, which was
16 primarily the work that Dr. Ebihara was
17 responsible for through his involvement with the
18 project. I then looked separately at the
19 construction services.

20 Those were more related to the
21 work that Mr. Peterson had overseen and then the
22 way that I broke that out is I kind of looked at
23 the contractor's costs, which were here at the top
24 under 2.1.2.1 Campanella -- and performed by

1 Campanella & Sons and then Mr. Peterson's company
2 had provided onsite management services. So I
3 looked at his costs and grouped them together and
4 then there were a series of incidental costs that
5 were more directly related to the utility
6 companies and some of the fencing that had to be
7 put up around the site and then finally I was
8 provided with some cost detail for Donald Manikas
9 who had provided some legal support on the utility
10 work and then finally U.S. EPA's regulatory
11 oversight costs were provided and I included those
12 in the tabulation as well.

13 BY MS. BRICE:

14 **Q. And why did you ask for a tabulation**
15 **of all of the costs for Site 3 and Site 6?**

16 A. I needed to have a starting point to
17 understand what the total cost, what the total
18 spending was on Site 3 and Site 6 so I could begin
19 trying to pull out those that were not related to
20 the Board's opinion in terms of their findings in
21 the earlier hearing.

22 **Q. If you take a look at 204, just turn**
23 **the page, a couple of pages 13 and 15 there are --**
24 **you have your discussion of I guess it's 13, 14**

1 and 15 discussion of reasonableness, which, again,
2 is stipulated to.

3 Can you just really briefly
4 tell us what you did to come to that opinion?

5 A. Well, you know, obviously, first, I
6 wanted to know I had everything and that I was
7 tracking it accurately. So I was creating some
8 tables that allowed me to crosscheck my
9 tabulations. I then kind of looked at the costs
10 themselves just to get a feel for whether they
11 were reasonable in terms of what I could have
12 expected for the type of work that was implemented
13 and I lay out here a number of bases for coming to
14 the conclusion that I felt that they were
15 reasonable and then after I had done that I began
16 looking at whether or not the costs had actually
17 been paid and found that they had been in each
18 instance.

19 Q. Okay. Let's go to 204-16 of your
20 report.

21 (Document marked as Complainant
22 Exhibit No. 204-16 for
23 identification.)
24

1 BY MS. BRICE:

2 Q. You say that after the cost had been
3 allocated into the task buckets, you needed to,
4 quote, determine how best to align the task
5 buckets to the Board's finding of liability which
6 focused on boring locations, how did you do this?

7 A. Basically what I looked at was the
8 Board had identified a series of locations that
9 they had ruled as being IDOT's responsibility for
10 the conditions that existed at those locations. I
11 then considered the work that ended up being done
12 as a result of the presence of those locations in
13 terms of, you know, at those locations there was
14 certain work that was caused by the fact that the
15 conditions existed at the locations where the
16 Board had ruled the asbestos could be present. So
17 that's how I began doing my attribution of costs
18 that were incurred at both sites.

19 MS. O'LAUGHLIN: I'm going to lodge
20 an objection here. Some more foundation about how
21 you allocated your costs -- I get with the borings
22 and things like that, but the last thing I think
23 that we need some more foundation in your
24 testimony today.

1 MS. BRICE: I'm sorry. The
2 allocation into the task buckets was done by
3 Dr. Ebihara and Mr. Peterson.

4 MS. O'LAUGHLIN: Right.

5 MS. BRICE: So his attributions
6 we're going to go through in detail.

7 MS. O'LAUGHLIN: Okay.

8 MS. BRICE: This is just sort of a
9 setup question.

10 MS. O'LAUGHLIN: Okay.

11 BY MS. BRICE:

12 Q. Okay. If you take a look at 204-38,
13 which I actually have up here and I imagine it is
14 going to magically appear on the screen over here.

15 MS. BRICE: Thank you, Drew.

16 BY MS. BRICE:

17 Q. This is -- this is the Dorgan Figure
18 1 that we have been referring to previously. Who
19 created this document?

20 A. I did.

21 Q. And why did you create this map?

22 A. I was trying to show the various
23 work elements that took place across both Site 3
24 and Site 6.

1 Q. Okay. I want you to orient us a
2 little bit and I'm going to serve as your pointer
3 and I'm going over here so you guys can see.

4 So where -- where is the Johns
5 Manville, you know, former site?

6 A. North and east of these two.

7 Q. So up here --

8 A. That's correct.

9 Q. -- is that right? And then where is
10 Lake Michigan?

11 A. East.

12 Q. So it's over here?

13 A. Correct.

14 Q. And so is this Site 3 right here,
15 this kind of -- I don't even know what that is a
16 trapezoid or something like that?

17 A. Yes, that's Site 3.

18 Q. That's Site 3. And then you've got
19 0393 is here with this black line, is that
20 correct, right here on the northwest portion of
21 Site 3?

22 A. That's correct.

23 Q. And then Site 6 starts here a little
24 bit west of 01S and 01N, correct?

1 A. That's correct.

2 Q. And then goes further east as we've
3 previously discussed, correct?

4 A. That's correct.

5 Q. Okay. And there is a bunch of --
6 what -- what do we have here? What do we have
7 here?

8 A. That's the North Shore gas line.

9 Q. That's the North Shore gas line.
10 And what is this line here?

11 A. The Nicor gas line.

12 Q. And there is some lines that have
13 Ts on them. I believe there is one here, there is
14 one here, there is one here, there is one up
15 there, what are those?

16 A. AT&T telephone lines.

17 Q. And what is this purple line coming
18 down there?

19 A. That's a fiberoptic line.

20 Q. Okay. And then what about up here?

21 A. That is a fiber line as well.

22 Q. Okay. And we have green in here.
23 What is the green denoting?

24 A. That is referred to as the

1 embankment.

2 Q. And what -- what is this up here,
3 this backwards L?

4 A. That's the City of Waukegan
5 waterline.

6 Q. And then here -- down here on your
7 legend you say, "Note sample locations with ACM
8 detected above or equal to 0.2 percent and/or
9 visibly observed ACM are shown," do you see that?

10 A. I do.

11 Q. Okay. Why -- why did you pick those
12 sample locations to go on your map?

13 A. Well, the original work that had
14 been done at the site had been -- the site had
15 been graded out and there were samples collected
16 from every grid. So there was a lot of sampling
17 data that did not show asbestos. These were the
18 ones that had. So I thought they were relevant to
19 making the demonstration of where asbestos was
20 detected on the property.

21 Q. Okay. Thank you. One more thing
22 about this.

23 So they're boring locations in
24 Site 3 with Bs on them, B3s on them. What kind of

1 **borings were those?**

2 A. Those would have been soil borings.

3 **Q. Okay. And how big is a soil boring?**

4 A. Most of the time they're about two
5 inches in diameter.

6 **Q. Two inches in diameter. And how do**
7 **you take a soil boring?**

8 A. You pound a sampling device down
9 into the ground. As you pound it down, there's an
10 opening at the end and the soil goes up into the
11 device and then when you bring it to the surface
12 you crack it open and then you can see the soil
13 profile from the depth that you've just collected
14 the sample from.

15 **Q. And is -- is the -- is the two**
16 **inches representative of how much contamination is**
17 **located in and around that particular area in the**
18 **environmental field?**

19 A. Typically, the boring and the sample
20 that you pull ends up being representative of a
21 larger area, not just the specific location where
22 the sample was pulled.

23 **Q. Okay. And then up here in this 01S**
24 **through 08S, 01N through 8N and then I think there**

1 is some S -- S3-50s and a few other in here, what
2 kind of boring locations were those?

3 A. Those were test pits.

4 Q. Okay. And how big is a test pit?

5 A. It can vary. Typically, it's the
6 width of an excavator bucket to some usually four
7 feet, five feet by five feet. It can vary, but
8 depending on the excavator used.

9 Q. Okay. And is that sample done with
10 the test pit, is that necessarily representative
11 of what is below the sample?

12 A. Below --

13 Q. How much -- how much contamination
14 is right around the sample or is part of the
15 sample?

16 A. Again, usually the sample that is
17 collected from a test pit is going to be a sample.
18 So, therefore, it's representative of the
19 materials around it, not necessarily just the
20 sample itself.

21 Q. Okay. And Dorgan Figure 1 here,
22 how -- how is this created? We have had some
23 discussion about AutoCAD and that Mr. --
24 Dr. Ebihara gave you his AutoCAD, what does that

1 **mean to you? What happened?**

2 A. So -- there's a notation at the
3 bottom of our figure that references the fact that
4 we had -- we had based our drawing off of AECOM's
5 original DWG. That's a file format used for
6 AutoCAD. So we're able to receive a DWG file,
7 we're then able to open it in our own AutoCAD
8 software and then as was described earlier in that
9 file there is a series of layers and we can choose
10 which layers to look at and which layers to look
11 at.

12 The reason they're in layers is
13 because if you put everything into one layer you
14 would hardly be able to see anything because there
15 would be so much information. So what you do is
16 you put certain information on each layer and then
17 you choose what layers you're going to look at in
18 terms of what you're trying to represent.

19 **Q. Does the -- when you get the DWG**
20 **file from Dr. Ebihara and you put it into your**
21 **AutoCAD, is it going to be showing the same thing**
22 **it would be showing in his AutoCAD?**

23 A. Yes.

24 **Q. Okay. And will it show -- will the**

1 **state plane coordinates automatically be placed on**
2 **your figure?**

3 A. Yes.

4 Q. **And, again, the state plane**
5 **coordinates are what?**

6 A. They're a geographic information
7 system that is used to ground -- ground locate
8 certain features relative to survey information so
9 that you can be precise in terms of where things
10 are actually located.

11 Q. **Okay. So we had earlier, and I'm**
12 **doing this for purposes of brevity, I think it was**
13 **an exhibit that was a screenshot of the AutoCAD,**
14 **do you remember that?**

15 A. Yes.

16 Q. **That is not the AutoCAD drawing that**
17 **you were using, that screenshot itself, to create**
18 **the maps and figures in Dorgan 1, is it?**

19 A. I didn't actually see the
20 screenshot. So I'm not actually sure what it
21 showed.

22 Q. **Here, I think it is 229F something.**
23 **So this was --**

24 MS. BRICE: Do you have it?

1 MR. NISHIOKA: I definitely have it.
2 I saved it somewhere.

3 BY MS. BRICE:

4 Q. So this was a screenshot taken so
5 this is -- this is not exactly what you used. I
6 mean, why don't you explain it. How -- explain
7 what this is compared to how this is used to
8 create your maps?

9 A. Yeah. So there is -- I mean, the
10 screenshot shows some basic information, but you
11 can see it doesn't show everything. So it's a
12 screenshot of whatever layers were actually being
13 projected at the time that the screenshot was
14 taken.

15 Q. So it's not everything that is in
16 the AutoCAD file that you gave to Mr. Dorgan --
17 Dr. Ebihara gave to you?

18 A. That's correct.

19 Q. Thank you. What agency or agencies
20 oversaw the cleanup of Sites 3 and 6?

21 A. U.S. EPA and IEPA.

22 Q. Did AECOM submit its Site 3 and Site
23 6 maps to U.S. EPA?

24 A. Yes.

1 Q. And are you familiar with those
2 maps?

3 A. Yes.

4 Q. And did U.S. EPA approve them?

5 A. Yes.

6 Q. And does Dorgan Figure 1, does it
7 align with those maps submitted to U.S. EPA?

8 A. Yes.

9 Q. How do you know that?

10 A. Because we did a comparison.

11 Q. You did a comparison. Who did a
12 comparison?

13 A. Weaver Consultants did.

14 Q. Okay. You and -- did you do it
15 yourself or did you have help?

16 A. Ms. Dunton supported me on that.

17 Q. Is that Riah Dunton?

18 A. Yes, correct.

19 Q. And did you approve of the
20 comparison that she did?

21 A. Yes.

22 Q. Your report refers to multiple task
23 buckets, what is a task bucket in your mind?

24 A. It's a consolidation of the work

1 that was taking place around kind of a more
2 specific work effort that was occurring at the
3 site.

4 Q. Turn to 204-7 in your report,
5 please.

6 (Document marked as Complainant
7 Exhibit No. 204-7 for
8 identification.)

9 BY MS. BRICE:

10 Q. Here, you discuss the history of the
11 remedial action process. Can you please summarize
12 that for us?

13 A. So obviously there had been a number
14 of investigations that occurred at the site.
15 Things really kind of got going when the
16 engineering evaluation and cost analysis, which we
17 had been earlier heard as an ECA was submitted by
18 Johns Manville to U.S. EPA. U.S. EPA commented on
19 that, went through a series of revisions before it
20 was finally summarized and then under that there
21 had been a series of options considered for what
22 was going to be done for corrective action at both
23 Sites 3 and 6 and then based upon that back and
24 forth EPA issued what's referred to here as an

1 enforcement action memorandum and that's what
2 really drove the work that ended up having to be
3 done at the site. It was the enforcement action
4 memorandum that really became the basis for
5 developing the scope of work that was eventually
6 written into the removal work plan that was
7 prepared by AECOM.

8 Q. Okay. And let's turn to Exhibit 65,
9 please.

10 (Document marked as Complainant
11 Exhibit No. 65 for
12 identification.)

13 BY MS. BRICE:

14 Q. Are you there?

15 A. Yes, I am.

16 Q. Is this the enforcement action
17 memorandum?

18 A. Yes, it is.

19 Q. And this was written by U.S. EPA?

20 A. That's correct.

21 Q. Okay. If you turn to Page 5 --
22 65-5?

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(Document marked as Complainant
Exhibit No. 65-5 for
identification.)

BY THE WITNESS:

A. Yes.

BY MS. BRICE:

**Q. What are the utilities on Sites 3
and 6 reflected in this document?**

A. The Site 3 utilities are the North
Shore gas line, the City of Waukegan waterline
Commonwealth Edison both underground electric and
fiberoptic lines, the Nicor gas line and then a
series of AT&T telephone cables.

And then on Site 6 we have more
AT&T telephone cables, the North Shore gas line,
the City of Waukegan waterline and then, again,
Commonwealth Edison both underground electric and
fiberoptic lines.

**Q. Okay. Can you turn to 65-16,
please.**

MS. BRICE: And, Drew, if you can
please pull that up for us.

1 (Document marked as Complainant
2 Exhibit No. 65-16 for
3 identification.)

4 BY MS. BRICE:

5 Q. If you'll go down to maybe it's the
6 second to last sentence. It starts with
7 "Therefore" under B. Sorry.

8 A. I see it.

9 Q. Okay. Can you read that to us?

10 A. It says, "Therefore, excavation of
11 clean corridors for all such utilities must be
12 provided as soon as possible to prevent potential
13 release of ACM and asbestos fibers.

14 Q. What does this mean to you?

15 A. Basically, that means that they --
16 U.S. EPA was requiring that a clean corridor be
17 created for certain utilities as a result of the
18 asbestos that was identified in proximity of the
19 utilities.

20 Q. Right. And in the sentence right
21 before that, it talks about "In the event of a
22 breach or other loss of integrity, pressurized
23 utilities and underground utilities also have the
24 potential to force overlying soils to the surface

1 **resulting in the potential release of ACM and**
2 **asbestos fibers," do you see that?**

3 A. I do.

4 Q. Now, if you can turn to 65-11,
5 please.

6 (Document marked as Complainant
7 Exhibit No. 65-11 for
8 identification.)

9 BY MS. BRICE:

10 Q. This is just by way of example.
11 This is -- what is this? They have Site 3
12 modified alternative 2, what is this? Is this
13 EPA -- what is EPA doing here?

14 A. They are basically laying out
15 certain conditions relative to the alternatives
16 that have been presented in the ECA.

17 Q. Are they making a decision as to
18 what needs to be done?

19 A. That's correct.

20 Q. Okay. And what do they say onsite
21 3B utility areas, means needs to be done?

22 A. Well, as it says here "Within 90
23 days of approval of the work plan, excavate soil
24 and sediments contaminated with ACM and/or

1 asbestos fibers to a minimum depth of two feet
2 below each utility line and extending to the depth
3 requested by the owner of the utility line with
4 placement of a continuous barrier at the base and
5 sides of the excavation to inhibit further
6 excavation and/or exposure beyond the clean fill
7 and a minimum width of 25 feet centered on each
8 utility line and clean backfill to provide a clean
9 corridor for utility maintenance on Site 3."

10 **Q. So what is this telling you about**
11 **which utilities needed clean corridors?**

12 A. Basically all of them.

13 **Q. And was there anything specific --**
14 **is that because -- why is that? Because they had**
15 **asbestos detected near them?**

16 A. That's correct. And what they're
17 trying to do is prevent the possibility that in
18 the future workers come to maintain those lines
19 and at that point they're not dealing with hazards
20 associated with potential asbestos exposure.

21 **Q. Okay. If you can turn to 79 --**
22 **Exhibit 79 in your book, please, for me and**
23 **actually 79 -- and what is this?**

24

1 (Document marked as Complainant
2 Exhibit No. 79 for
3 identification.)

4 BY THE WITNESS:

5 A. This is a correspondence from Bryan
6 Cave on behalf of Johns Manville responding to the
7 administrative order on consent. Basically
8 lodging a dispute concerning the enforcement
9 action memorandum that U.S. EPA had issued.

10 BY MS. BRICE:

11 Q. Okay. If you turn to Page 79-7
12 under U.S. EPA action memorandum?

13 (Document marked as Complainant
14 Exhibit No. 79-7 for
15 identification.)

16 BY THE WITNESS:

17 A. Yes.

18 BY MS. BRICE:

19 Q. Second sentence, can you read that
20 into the record, please.

21 A. Starting with "The new remedy"?

22 Q. Yes, please.

23 A. "The new remedy expands the
24 necessary excavation to include clean corridors

1 for all utilities regardless of whether impacts
2 from ACM were noted in the overlying soil during
3 the assessment."

4 Q. Okay. Is it your understanding of
5 what occurred, meaning that there was asbestos in
6 one part of the -- one part of the line and then
7 they had to take out the entire line?

8 A. They had to create a clean corridor
9 for the entire line.

10 Q. So that's your understanding of what
11 U.S. EPA was requiring?

12 A. That's correct.

13 Q. If you can turn to 120, please. And
14 have you seen this before?

15 (Document marked as Complainant
16 Exhibit No. 120 for
17 identification.)

18 BY THE WITNESS:

19 A. Yes, this appears to be the EPA
20 response to the ECA.

21 BY MS. BRICE:

22 Q. And if you turn to Page 120-3.
23 Paragraph 8 if you take a second and read this and
24 then if you can summarize for us what -- what U.S.

1 **EPA is saying here?**

2 (Document marked as Complainant
3 Exhibit No. 120-3 for
4 identification.)

5 BY THE WITNESS:

6 A. Well, they're taking a relatively
7 conservative approach. They recognize that the
8 ACM across the site is somewhat sporadic, both in
9 location and at depth and because of that they are
10 still requiring that the full utility clean
11 corridors be -- be advanced.

12 BY MS. GALE:

13 Q. Okay. What about in the sampling
14 locations, so for the grids that contain ACM. It
15 says the boundary of ACM-containing material
16 should be extended all the way to the nearest
17 non-detect sample, what does that mean?

18 MS. O'LAUGHLIN: I'm sorry. Where
19 are you?

20 MS. BRICE: 120-3 middle of
21 Paragraph 9.

22 BY THE WITNESS:

23 A. Basically what it is saying is there
24 is no asbestos at a certain location and at

1 another location it's deemed to be there was no
2 asbestos detected. So they're taking the
3 materials out up to that next clean sample being
4 conservative that -- wherever that demarcation
5 line is between, it's been captured.

6 BY MS. BRICE:

7 Q. So if one sample was contaminated,
8 they had to clean up everything -- in a grid, they
9 had to clean up everything within that grid, is
10 that correct?

11 A. That's correct.

12 Q. And then everything else around it
13 until they got to a clean grid?

14 A. To a clean grid.

15 Q. Okay. After creating this map,
16 Dorgan Figure 1, you say you defined what you
17 called the IDOT areas of liability, what do you
18 mean by this?

19 A. So, for me, the IDOT areas of
20 liability, I started with the borings that had
21 been identified in the Board's ruling and then I
22 considered what work had to be done because of the
23 presence of the asbestos in those specific borings
24 and I, therefore, attributed that work that was a

1 result of and had been caused by the presence of
2 the asbestos at the locations that the Pollution
3 Control Board had identified them as the IDOT area
4 of liability.

5 Q. Okay. Let's -- let's walk through
6 this. 204-16.

7 A. Just one second, please.

8 Q. Take a look at 204-16. Site 3 IDOT
9 area of liability. Do you have that?

10 A. Yes, I do.

11 Q. You start out and you identify an
12 area of liability with respect to Parcel 0393, can
13 you explain this, please?

14 A. Yes. Well, first of all, a number
15 of the borings that had been identified as having
16 contained asbestos were located within 0393 and
17 then I also understood that IDOT had been
18 determined to have been owner of and in control of
19 Parcel 0393. So all of the activities that took
20 place within 0393 I found to be an area of
21 liability for IDOT.

22 MS. O'LAUGHLIN: Objection. I'd
23 like to lodge an objection here on relevance. The
24 Board's order was very clear on what areas should

1 be included and any testimony regarding areas
2 outside of that area in 0393 is not relevant to
3 this proceeding.

4 HEARING OFFICER HALLORAN: Ms. --

5 MS. BRICE: Yes, I completely
6 disagree. I think the Board's order is clear in
7 the other direction in that it's all about the
8 interest or control with respect to 0393. That's
9 by which they were found liable and at the time of
10 the first hearing the Waukegan waterline location
11 was not known as we have already heard testimony
12 about and some of the work that was done -- the
13 ramp had not been done and if you read the intent
14 of the Board's decision a violation under 21(a)
15 relates to if you own or control something and
16 they said the Parcel 0393 was owned and controlled
17 by -- or they held a possessory interest in --
18 sorry. Own is not accurate. And that that is how
19 Mr. Dorgan interpreted it, it's how I interpreted
20 it and I think that that's obviously relevant to
21 the -- the Board can make up its mind as to how
22 that happens, but I think the evidence should come
23 now.

24 HEARING OFFICER HALLORAN: As

1 before, I said the order, the 2016 order, it was a
2 little confusing and -- but based on what they had
3 to work with, it's understandably so. I've given
4 so far, and I have given, the parties a little
5 latitude. The Board can interpret their own order
6 and move forward. Because I know we don't want to
7 come back here again. So I think we should -- we
8 should go with it and have the Board decide what
9 they meant in the 2016 order.

10 MS. BRICE: Thank you, Mr. Halloran.

11 HEARING OFFICER HALLORAN: You may
12 proceed. Thank you.

13 MS. BRICE: Okay.

14 BY MS. BRICE:

15 Q. So you have 0393 as part of your
16 IDOT area of liability and then you have certain
17 boring, sample borings, as part of your IDOT area
18 of liability, can you explain that, please.

19 A. Yeah, these were specifically
20 referenced in the Board order B3-25, B3-15, B3-16,
21 B3-50 and B3-45 the work that was done that was
22 related to these sample locations I included as
23 part of the Site 3 area of liability.

24 Q. Or your damages, right, the damages

1 with respect to the response costs?

2 A. That's correct.

3 Q. And so the area of liability are the
4 areas that the Board recognized and then you used
5 that, as I understand it, to develop your
6 attribution?

7 A. To the extent -- to the extent any
8 work was done related to those borings, I included
9 it in the attribution.

10 Q. Okay. And why is that? What made
11 you -- what about the Board's order made you do
12 that?

13 A. The Board references that the --
14 that IDOT should be responsible for the work that
15 was implemented, that was caused by the actions
16 and conditions that were determined to be their
17 responsibility from the earlier hearing. So I
18 just maintained that approach in the way I looked
19 at the attribution.

20 Q. On Site 6, you identify the area of
21 01S/04S in your IDOT area of liability, why is
22 that?

23 A. That was specifically referenced in
24 the Board order.

1 Q. And then you -- you include 05S to
2 08S in your IDOT area of liability. Did the Board
3 specifically find that IDOT buried ACM from 05S to
4 08S?

5 A. No.

6 Q. So just to keep for reference here.
7 Sorry. You guys know.

8 So 01S through 04S goes to here
9 and 05S through 08S goes to here, correct?

10 A. That's correct.

11 Q. Briefly, and I'll go into this more
12 in detail, why did you include 05S to 08S in your
13 IDOT area of liability?

14 MS. O'LAUGHLIN: Objection.
15 Similarly -- but similarly for the reasons I
16 object to relevance again. The liability
17 regarding 05S to 08S was litigated at the first
18 hearing. So any testimony about 05S to 08S is
19 outside of the purpose of this hearing.

20 HEARING OFFICER HALLORAN: I'll
21 allow it. The Board can disregard if they see
22 fit, but you may proceed. Thank you.

23 MS. BRICE: Thank you.

24

1 BY MS. BRICE:

2 Q. Why did you include 05S through 08S
3 generally?

4 A. Well, first, I wasn't sure that the
5 conditions that had been evaluated by the Board in
6 the earlier hearings were necessarily completely
7 understood. I thought maybe there was a
8 disconnect in an understanding of some of the
9 earlier work, but more importantly I felt that
10 there was new information that had been generated
11 as a result of the actual removal that had taken
12 place and as Mr. Peterson earlier testified, and I
13 agree with him based on my own independent
14 evaluation of the photos that he provided, I
15 believe that what was seen during the removal
16 action was a seam of asbestos that ran from
17 basically the west end of Site 6 out to 04S which
18 it earlier had been identified as having been
19 IDOT's responsibility, but that seam continued out
20 past 08S and I concurred with Mr. Peterson in
21 looking at the information that is available that
22 that seam of asbestos material appears to be
23 consistent. There doesn't appear to have been
24 multiple construction efforts when those materials

1 would have been placed and, therefore, it was my
2 opinion that if IDOT was responsible for 01S to
3 04S it was the same of material that continued out
4 to 08S and I felt that it should be included as
5 part of my attribution.

6 MS. O'LAUGHLIN: I'd like to
7 complete my objection here. The things that
8 Mr. Dorgan is talking about would have been more
9 proper in a motion for reconsideration. He is
10 basically talking about reopening things that were
11 dealt with days in the first hearing. To allow
12 him to again present testimony and regarding 05S
13 to 8A is something we have already done and to the
14 extent that we can streamline this it would be
15 helpful -- or it would be appropriate. This
16 should have been done through a motion for
17 reconsideration. It should not be the subject of
18 this hearing.

19 HEARING OFFICER HALLORAN: Okay.
20 I'll address that in a minute. I think I already
21 have three times. Ms. Brice.

22 MS. BRICE: Sure. I think
23 Mr. Dorgan has testified, and we'll get into this,
24 in addition his argument is based upon causation

1 from the Board's order as a result of the Board's
2 order says one party can recover costs as a result
3 of the other party's violations and we've just
4 heard that underneath 04S is a consistent seem of
5 asbestos, whether it's -- if 05S, 06S, 07S, 08S
6 that's one issue, but there is other things that
7 Mr. Dorgan will talk about as to his causation
8 opinion with respect to 05S to 08S that I think
9 are relevant here and we're not going to spend --
10 you can see I'm running through this pretty fast.
11 So we're not going to spend a lot of time on this.

12 HEARING OFFICER HALLORAN: Yeah,
13 IDOT's objection is noted and, again, if it is
14 beyond the scope, I would ask the Board to
15 disregard it, but I think, you know, it's their
16 neighborhood to interpret their 2016 order and if
17 it is beyond the scope, they will throw it out and
18 not look at it, but so noted Ms. O'Laughlin and
19 Ms. Brice said she'll try to streamline this
20 matter along 05S and 08S. So overruled. You may
21 proceed.

22 BY MS. BRICE:

23 Q. So, in your opinion, what was found
24 underneath 04S?

1 A. Asbestos-containing material in the
2 layer with fill that had been placed during the
3 IDOT road project.

4 **Q. And how far did that layer expand?**

5 A. It extended at least as far as the
6 western end of Site 6 and out past 08S.

7 **Q. You also say that Mr. Peterson said**
8 **he encountered soils with ACM within IDOT fill**
9 **materials, can -- can you explain this and how**
10 **this supports your opinion?**

11 A. Well, the zone -- as we had
12 determined in the earlier hearing there was a zone
13 of fill materials that were placed during the road
14 construction project that were subsequently having
15 to be excavated and of the materials that were
16 excavated that were found to be within the seam
17 that was in that zone of material that had earlier
18 been determined to have been placed by IDOT.

19 **Q. Okay. Thank you. Just quickly can**
20 **you turn to 21A-23, please, and Figure 3 that we**
21 **have up here which is from your report 204-40.**

22 A. Sorry. Which exhibit?

23 **Q. 204-40 and 21A-23?**

24

1 (Document marked as Complainant
2 Exhibit No. 204-40 and 21A-23
3 for identification.)

4 BY THE WITNESS:

5 A. Yes. I don't think I have 21A.

6 BY MS. BRICE:

7 Q. **It's in the very back. It just says**
8 **21, I think.**

9 A. I have it.

10 Q. **Do you see 21A-23?**

11 A. Yes.

12 Q. **What is 21A-23?**

13 A. This is a profile of Detour Road A
14 from the original IDOT construction project.

15 Q. **And how is that depicted in Figure**
16 **3?**

17 A. It's basically replicated with the
18 profile that is shown at the bottom of the figure.

19 Q. **What -- what is Figure 3 trying to**
20 **show all of us?**

21 A. It is showing the fill that was
22 needed between the original grades that existed at
23 the time of the project and where the finished
24 elevation was intended to be.

1 **Q. Okay. Could you -- do you mind if I**
2 **approach?**

3 HEARING OFFICER HALLORAN: No, go
4 ahead.

5 MS. BRICE: Do you have a marker
6 with you by any chance? Here we go.

7 BY MS. BRICE:

8 **Q. Here on Figure 3, can you tell me**
9 **how far the construction on the Detour Road A**
10 **goes?**

11 A. It goes out nearly to Station 15.

12 **Q. Station 15. What is a station?**

13 A. A station is just a way of demarking
14 different locations along the road so that you
15 have -- they're usually on hundred foot increments
16 and it just gives both the field and the design
17 team an understanding of where you're at relative
18 to the project.

19 **Q. Okay. Can you please circle Station**
20 **15 for us?**

21 A. (Witness complies.)

22 **Q. How is Station 15 aligning with what**
23 **is going on down here? Can you just sort of**
24 **explain this figure to -- what is the best way for**

1 **him, to explain it to you guys to explain it to**
2 **the camera?**

3 MS. TIPSORD: Explain it for the
4 record.

5 HEARING OFFICER HALLORAN: Explain
6 it for the record.

7 BY MS. BRICE:

8 **Q. Explain it for the record.**

9 A. So basically what you have is the
10 vertical -- the profile which is basically the
11 cross section --

12 **Q. On the bottom?**

13 A. -- on the bottom lines up with the
14 stationing on the plan view at the top.

15 **Q. Of the detour road?**

16 A. Of the detour road. So Station 15,
17 which I circled, lines up with 15 and the vertical
18 profile of the bottom right of the figure and then
19 Station 14, which would be a hundred feet back to
20 the west lines up with Station 14 on the profile.

21 **Q. Okay. And what is -- and what is it**
22 **showing here that is needed at Stations 14 and 15?**

23 A. Fill.

24 **Q. Fill material. And that's from the**

1 IDOT documents?

2 A. That's correct.

3 Q. Okay. And what boring locations
4 does that lineup with?

5 A. Station 14 is basically Sample 05S.
6 14 plus 50 would be 06S and 15 would be 07S.

7 Q. Okay. And did you -- did you
8 prepare this -- this figure?

9 A. Yes, I did.

10 Q. We're going to talk about one more
11 figure and 21A-26 and I gave to Ellen earlier a
12 cleaner version of that and I'm not sure if it's
13 in your binders or not, but, Doug, do you have one
14 with the red -- yes.

15 A. Yes. It doesn't have an exhibit
16 number on it, though.

17 Q. It doesn't have an exhibit number in
18 it, but what we did for the record is just try and
19 clean up this very old document and I've shown it
20 to Ellen and she agrees that it is accurate. We
21 just put in the numbers and some of the words just
22 to make it clear. Can you explain what 21A-26 is?

23 A. Yeah, this is a profile Greenwood
24 Avenue roughly from Station 7 out to, I believe,

1 Station 15.

2 MS. O'LAUGHLIN: I'm sorry. He is
3 looking at this document?

4 MS. BRICE: Yes.

5 MS. O'LAUGHLIN: 21A-26?

6 MS. BRICE: Sorry. I apologize. My
7 binder is falling apart. That's the problem when
8 you don't have tables and chairs the right way.
9 Go ahead. Sorry.

10 BY THE WITNESS:

11 A. I'd just like to clarify.

12 BY MS. BRICE:

13 Q. Yes.

14 A. Are you asking me to look at 21A-26
15 or the blow up of it that was --

16 Q. The blow up of it. Sorry.

17 A. So then my earlier testimony is
18 consistent.

19 Q. Okay. So is the blow up the same as
20 the 21A-26 except it has some markings on it for
21 clarification purposes?

22 A. Yes, and it's a cutout of 21A-26.

23 Q. And what is 21A-26 showing? I'm
24 sorry you might have said this. I was having a

1 **binder drama.**

2 A. Again, 21A-26, the top half of it,
3 shows the profile for Greenwood Avenue and the
4 soil conditions over the extent of the planned
5 construction effort.

6 Q. Okay. And then Figure -- Figure 4
7 here, what is this document here? This is
8 contained in your expert report, correct?

9 A. That's correct.

10 Q. What is this document?

11 A. That is a plan and profile showing
12 the Greenwood Avenue project detail with a plan at
13 the top and a profile at the bottom.

14 Q. Okay. And why are these going
15 backwards five-fifty to nine when the other ones
16 were going that way?

17 A. The stationing that was used for
18 Greenwood Avenue was different than the station
19 used for Detour Road A.

20 Q. Okay. And so what -- what are you
21 showing -- what are you showing in this document?

22 A. Basically, again, we're showing the
23 profile at the bottom that according to IDOT's
24 plans there was a zone of material, soft peat in

1 this particular case, that had to be removed
2 before suitable fill could be brought in to
3 support the construction for the new Greenwood
4 road.

5 Q. Okay. And that is going -- how deep
6 is that -- what elevation is that fill having to
7 be removed at, let's say, 05S?

8 A. At 05.

9 Q. 05S is right here.

10 A. 05S. So it's roughly 584, I
11 believe.

12 Q. And how much was -- fill was added
13 back in?

14 A. Over 5 feet.

15 Q. Okay. And then how about at 6S?

16 A. 6S it was even deeper, about 5- --
17 583.9 roughly.

18 Q. Okay. And then they had to add
19 again with more fill material, correct?

20 A. To nearly 589.

21 Q. Okay. And then how about at 07S?

22 A. 07S I think was the one we just did.

23 Q. No, we did 06S. Sorry.

24 A. Oh, 07S, the sample location?

1 Q. Correct.

2 A. Again, that would be from roughly
3 583.75 or so up to about 580- -- 588.5.

4 Q. Okay. So the 21A-26 drawing was
5 done before IDOT did any work, correct?

6 A. That's correct.

7 Q. So in this area here above the peat,
8 it says black cindery fill, correct?

9 A. That's correct.

10 Q. Was there any black cindery fill
11 found when the soil borings were done from 01S to
12 08S?

13 A. Not that I'm aware of.

14 Q. What was found instead?

15 A. Asbestos.

16 Q. And if you can take a look at your
17 report, I think you have some numbers about where
18 the asbestos was found at maybe 05S, 06S and 07S
19 and if you can just draw on there where the
20 asbestos was found within those zones, that would
21 be appreciated.

22 HEARING OFFICER HALLORAN: The
23 record should reflect this is still all inside
24 IDOT's objection beyond the scope. Ms. Brice?

1 MS. BRICE: Yes, he is drawing on
2 it.

3 HEARING OFFICER HALLORAN: Your
4 mask.

5 MS. BRICE: Sorry. Yes, I
6 apologize. It gets hard to remember sometimes.

7 MS. VAN WIE: Sometimes you just
8 want to remove it --

9 MS. BRICE: That's true.

10 MS. VAN WIE: -- for normal air for
11 a minute.

12 BY MS. BRICE:

13 Q. This is all noted in your footnote
14 in your report, correct?

15 A. Footnote 14 on Page 204-17.

16 Q. Is where you have the elevations
17 of where ACM was found, correct, in these borings?

18 A. That's correct. And, of course,
19 this is --

20 Q. Approximate?

21 A. Yes.

22 Q. I'm moving on right after this.

23 Thank you, Mr. Dorgan. So I'm representing for
24 the record where Mr. Dorgan has drawn the lines at

1 05S, 06S and 07S and are those all within the IDOT
2 areas of fill based upon the IDOT engineering
3 drawings from your perspective?

4 A. That is correct.

5 Q. And I don't know how to show that
6 to -- sorry about that. Okay. One second. So
7 we've been having this dispute about 05S, 06S, 07S
8 and 08S.

9 Would your attribution opinions
10 change if you had not included 05S, 06S, 07S and
11 08S in your IDOT area of liability?

12 A. No.

13 Q. Why?

14 A. Because we already knew that there
15 was asbestos at 01S to 04S and we needed a clean
16 corridor for the entire length of the south side
17 of Greenwood Avenue. So I would have taken the
18 same approach. It's just further validated with
19 the presence of those materials at those
20 locations.

21 Q. Thank you.

22 HEARING OFFICER HALLORAN: We'll
23 take a short break. Maybe 10, 12 minutes, is that
24 okay?

1 MS. BRICE: Yes, we're making good
2 progress.

3 (Whereupon, a break was taken
4 after which the following
5 proceedings were had.)

6 BY MS. BRICE:

7 Q. All right. So I just have one quick
8 question again about Figure 3, 204-40, which you
9 have here and you say there's work going out all
10 the way here to -- to where?

11 So it shows on here 07S, but how
12 much further to the east did the work occur based
13 upon the documents -- based upon the Detour Road A
14 document 21A-23?

15 A. It shows it's out to about 15 plus
16 50 --

17 Q. Okay.

18 A. -- in terms of the stationing.

19 Q. What boring location would that be?

20 A. That would be close to 08S.

21 Q. And this is showing that there
22 needed to be fill in that location, correct?

23 A. That's correct. At 07S.

24 Q. And at --

1 A. Station 16 and the actual 08S
2 location isn't actually shown on that profile, but
3 right on the edge of it.

4 HEARING OFFICER HALLORAN: Ms.
5 O'Laughlin, do you --

6 MS. O'LAUGHLIN: I just don't know
7 which -- thank you.

8 BY MS. BRICE:

9 Q. Okay. All right. In your report,
10 you say that you quote -- and this is on 204-15.

11 (Document marked as Complainant
12 Exhibit No. 204-15 for
13 identification.)

14 BY MS. BRICE:

15 Q. You evaluated each task bucket to
16 determine whether the IDOT area of liability
17 caused JM to incur the implementation cost
18 associated with that task bucket, can you
19 elaborate, please?

20 A. So what I looked at was the work on
21 any given task bucket. The work that was related
22 to an area that the Board had determined IDOT was
23 responsible for if those conditions caused the
24 work to be done, then I included it in the

1 attribution. If it was not related to those
2 locations, then I did not.

3 Q. Okay. If you can turn to 204-39,
4 please.

5 MS. BRICE: And, Drew, if you can
6 please pull that up on the screen.

7 (Document marked as Complainant
8 Exhibit No. 204-39 for
9 identification.)

10 BY MS. BRICE:

11 Q. This is a figure from your report.
12 And I have a couple of questions.

13 Do you recognize this figure?

14 A. I do.

15 Q. And did you create it?

16 A. Yes.

17 Q. Okay. And this figure, as well as
18 the other figures that we have talked about,
19 Figure 3, Figure 4 and Dorgan 1, are they all
20 based upon the AutoCAD drawings given to you by
21 Dr. Ebihara and the IDOT plans with respect to
22 Figure 3 and Figure 4?

23 A. Yes.

24 Q. So here on Exhibit 204-39 there are

1 orange dots in this figure.

2 What do those orange dots
3 denote?

4 A. Exhibit 204-39 is basically the same
5 as dash 38. The exception being the location
6 where visual ACM had been observed during the
7 earlier investigation work, those locations had
8 been highlighted with the orange circle around the
9 sample location.

10 Q. What are you trying to show here
11 with Dorgan Figure 2?

12 A. Just where on the site visual ACM
13 was predominantly identified.

14 Q. And if there had been -- if IDOT
15 hadn't buried ACM for which it was found liable,
16 what do you believe would have happened based upon
17 your expertise?

18 MS. O'LAUGHLIN: Objection.
19 Misstates the record and the findings of the
20 Board.

21 BY MS. BRICE:

22 Q. If IDOT had not buried the ACM for
23 which it was found liable.

24 MS. O'LAUGHLIN: You're on 0393. It

1 **was not found liable for --**

2 MS. BRICE: No, I'm just talking
3 about -- let's just talk about the soil borings.
4 Okay. Take out 0393.

5 MS. O'LAUGHLIN: Okay.

6 BY MS. BRICE:

7 **Q. If IDOT -- I'll take out 0393 for**
8 **the purposes of my question.**

9 HEARING OFFICER HALLORAN:
10 Sustained. Thank you. You may proceed.

11 BY MS. BRICE:

12 **Q. If IDOT had not buried the ACM in**
13 **the soil boring locations for which it was found**
14 **liable by the Board, realizing we think that the**
15 **area is bigger, but just based upon those, what do**
16 **you think would have happened, what would U.S. EPA**
17 **have required?**

18 A. It would have likely been less than
19 what was actually done. If there had been no ACM,
20 there probably would have been no work done, but
21 certainly you can see from this figure the
22 predominant presence of surface ACM was in the
23 IDOT area of liability.

24 **Q. Surface or subsurface?**

1 A. Surface.

2 Q. **Visual ACM observed, are you sure**
3 **about that being surface or subsurface?**

4 A. That would have been ACM that was
5 observed at the -- at the -- I'm sorry. You're
6 correct.

7 In this particular case, there
8 were actual fragments of asbestos-containing
9 material that were present in the locations that
10 were being sampled. There were other instances
11 where ACM was observed at the surface.

12 Q. **Okay. So these are visual ACM**
13 **fragments found buried, correct?**

14 A. That's correct.

15 Q. **I'd like to turn to 204-36, which is**
16 **right here. 204-36, do you have that?**

17 (Document marked as Complainant
18 Exhibit No. 204-36 for
19 identification.)

20 BY THE WITNESS:

21 A. Yes, I do.

22 BY MS. BRICE:

23 Q. **And what is this, Mr. Dorgan?**

24 A. This is basically a summary table

1 that presents my allocation of costs attributable
2 to IDOT based upon task buckets in each of the
3 sites.

4 Q. So you have -- you have -- so
5 here -- down here all the task buckets in this row
6 that says task bucket, and do these align with the
7 task buckets that you were given the numbers for
8 from Dr. Ebihara and Mr. Peterson?

9 A. Yes.

10 Q. Okay. And then you've got Site 3
11 and you've got numbers here and these are your
12 attribution numbers, is that correct?

13 A. That's correct.

14 Q. Okay. So the allocation numbers are
15 much bigger than these attribution numbers in some
16 instances?

17 A. The total cost incurred are larger
18 than these numbers in many instances, yes.

19 Q. Okay. And then you have Site 6 and
20 what is this Sites 3 and 6?

21 A. That was work that was done where
22 there was no clear demarcation between -- the work
23 effort was done both in support of activities on
24 both Site 3 and Site 6 and there was difficulty in

1 teasing them apart in terms of which site that
2 they should go into. So they were collectively
3 referenced as Site 3 and Site 6 costs.

4 Q. Did Mr. Gobelman in his expert
5 report go through the same exercise, obviously
6 reaching different attribution numbers, but using
7 the same overall costs and the costs for Site 3,
8 Site 6 and Site 3/6 and the task buckets?

9 A. Yes, he did.

10 Q. We have one thing in common. All
11 right.

12 You discussed the Nicor gas
13 line. You attributed nothing to IDOT for the
14 Nicor gas line, why is that?

15 A. Because the Nicor gas line was not
16 located within an area -- IDOT area of liability
17 and as a result I did not attribute any of the
18 costs to IDOT.

19 MS. BRICE: Drew, if you wouldn't
20 mind pulling that up to 204-38, please. It's
21 Dorgan Figure 1.

22 BY MS. BRICE:

23 Q. So this right here is the Nicor gas
24 line, correct, it sort of cuts the Site 3 in half

1 about midway down?

2 A. That's right.

3 Q. Okay. And I believe Mr. Gobelman
4 agreed with you on that that nothing should be
5 attributed to IDOT for the Nicor gas line?

6 A. That's correct.

7 Q. Okay. I'd like to go to the
8 Waukegan waterline and on 204-18 you discussed the
9 Waukegan waterline and I believe we identified
10 that earlier as that backwards L-shape feature on
11 Dorgan Figure 1, is that correct?

12 (Document marked as Complainant
13 Exhibit No. 204-18 for
14 identification.)

15 BY THE WITNESS:

16 A. That's correct.

17 BY MS. BRICE:

18 Q. Okay. And before we go any further,
19 you have these sort of three categories of service
20 in here in your report, can you explain that for
21 us?

22 A. Yeah. So the professional
23 engineering, that would have been the work that
24 Dr. Ebihara and AECOM and its predecessors would

1 have been performing and then the construction
2 base bid was that work that was included in the
3 original scope that went out for bid to the
4 contractors and then the construction T&M is as
5 Mr. Peterson described is the work that was
6 done -- that needed to be done, but that happened
7 after the work plan had gone in and approved. So
8 that was done on a time and materials basis rather
9 than being included in the original base bid.

10 MS. O'LAUGHLIN: I'm sorry. Where
11 are you?

12 MS. BRICE: I am here right 204-18.

13 MS. O'LAUGHLIN: Thank you.

14 BY MS. BRICE:

15 Q. Did Mr. Gobelman dispute these
16 numbers in any way?

17 A. Yes, he challenged my allocation of
18 the amounts to IDOT.

19 Q. Right. But the base numbers, the
20 original numbers?

21 A. No, not the total spend.

22 Q. Okay. What work was done on the
23 Waukegan waterline?

24 MS. BRICE: And, Drew, if you can

1 please pull up 204-39 for us.

2 (Document marked as Complainant
3 Exhibit No. 204-39 for
4 identification.)

5 BY THE WITNESS:

6 A. A clean corridor was created for the
7 Waukegan waterline.

8 BY MS. BRICE:

9 Q. Okay. So this -- this entire line
10 here in a clean corridor, correct?

11 A. That's correct.

12 Q. Okay. And there's this B3-40 in
13 there, do you see that?

14 A. Yes, I do.

15 Q. And is that within -- denoting it is
16 within the Waukegan waterline area?

17 A. No.

18 Q. Is it right outside of it?

19 A. Yes.

20 Q. Okay. Well, there is S- -- S3-40B
21 if you see here -- actually, I think it's on the
22 line. Take a closer look at it or maybe, Drew,
23 you can blow it up.

24 Do you see the mark there, the

1 boring location?

2 A. Yes.

3 Q. Which is B3-40, is that this one
4 here on the line?

5 A. I believe so.

6 Q. So is it within 0393 or on the line?

7 A. Yes, it's on the line at least.

8 Q. Okay. We've discussed earlier that
9 the location of the Waukegan waterline was not
10 known at the first hearing and that they thought
11 it was located further south.

12 I believe you say in your report
13 that they determined it was in a different
14 location in August and I heard Mr. Peterson say
15 June, do you know which one it is?

16 A. I'm not certain.

17 Q. Okay. Do you know where you would
18 have gotten your information from?

19 A. From Mr. Peterson.

20 Q. Okay. So we can double check that
21 with Mr. Peterson.

22 How do you know that the
23 Waukegan waterline now is in the right spot?

24 A. Based upon the survey that was

1 provided.

2 Q. Okay. And so the centerline -- I
3 just want to explain like -- so this is the
4 centerline of the Waukegan waterline, right?

5 A. That would be the waterline itself.

6 Q. Okay. That's what I'm trying to
7 understand.

8 A. It serves as the centerline of the
9 clean corridor.

10 Q. So can you explain that in words for
11 everybody?

12 A. So basically on either side of the
13 waterline soils were excavated down to at least
14 two feet below the depth, the invert depth, of the
15 waterline.

16 Q. So that's this area and this area up
17 here?

18 A. That's correct. And that was
19 backfilled and I think Mr. Peterson explained how
20 a geocomposite -- or geotextile was laid in,
21 backfilled with sand and then topsoil was placed
22 in order to establish a vegetative cover.

23 Q. But the actual line itself is
24 actually up here above the bottom of 0393, is that

1 right?

2 A. That's correct.

3 Q. And so this is just the corridor,
4 the clean corridor is what we're seeing when we're
5 looking at the L, is that right?

6 A. Except the waterline is represented
7 as being right in the center of the clean
8 corridor.

9 Q. Okay. How much -- so is -- is the
10 waterline entirely within parcel 0393?

11 A. Yes.

12 Q. If you can stay on 204-18 for me.
13 How much money was incurred for the Waukegan
14 waterline work?

15 A. \$61,037 on Site 3 and \$86,674 on
16 Site 6.

17 Q. Okay. So for Site 3, how much did
18 you attribute to IDOT?

19 A. 100 percent.

20 Q. I'm sorry?

21 A. 100 percent.

22 Q. And why is that?

23 A. Because all of the waterline was
24 located within Parcel 0393.

1 Q. Okay. And how about Site 6?

2 A. I attributed none of that cost to
3 IDOT.

4 Q. And why is that?

5 A. Because it was outside of the IDOT
6 area of liability.

7 Q. Okay. So I'm just trying to hurry
8 things along.

9 As I understand it, the Waukegan
10 waterline went north out of Site 3, across
11 Greenwood and then there was work done on it on
12 the north side of 6, correct?

13 A. That's correct.

14 Q. And you're not including any of
15 those costs in the IDOT attribution, right?

16 A. I am not.

17 Q. Okay. So let's go back here to
18 204-36. So here we go. This is the summary. So
19 here is your \$61,037 which is the hundred percent
20 and here is your zero for Site 6.

21 And were there any Sites 3
22 and 6 costs incurred onsite -- for the waterline?

23 A. No.

24 Q. Okay. So your total here for the

1 **waterline is \$61,037, correct?**

2 A. That's correct.

3 **Q. Let's turn to the AT&T lines and**
4 **that's on Exhibit 204-20.**

5 (Document marked as Complainant
6 Exhibit No. 204-20 for
7 identification.)

8 BY MS. BRICE:

9 **Q. Again, you have some categories of**
10 **service. Can you explain these.**

11 A. Basically, the same first three that
12 I described for the Waukegan waterline
13 professional engineering -- actually, in this
14 case, they had -- there is work not only for the
15 engineering, but there was some projected costs
16 for completing the project on the professional
17 side that AECOM was intending to do and then there
18 is the construction T&M, which I described
19 previously and then there was construction
20 management services provided by Dave Peterson's
21 company related to the AT&T line abandonment and
22 then ultimately payments that were needed to be
23 made to AT&T regarding their work in abandoning
24 the lines.

1 Q. Okay. And what did AT&T do as far
2 as you know with respect to abandoning the lines?

3 A. They basically rerouted the service
4 and put it above grade on poles and took it around
5 the site.

6 Q. And JM -- so that was -- they had to
7 reroute the stuff that was underground, correct?

8 A. Yes.

9 Q. And JM then paid them back for doing
10 that?

11 A. That's correct.

12 Q. And that's what's reflected here in
13 utility payment to AT&T?

14 A. That's correct.

15 Q. What work was done on the AT&T lines
16 on Site 3?

17 A. They were removed.

18 Q. And how --

19 MS. BRICE: Drew, if you can pull
20 up, again, Dorgan Figure 1, please. 204-38.

21 BY MS. BRICE:

22 Q. And how many lines -- AT&T lines
23 were on Site 3?

24 A. There were 3 in total.

1 **Q. And how did you determine IDOT's**
2 **attribution for the work done regarding these**
3 **three lines?**

4 **A. I looked at the three, I looked at**
5 **the location of the three lines. Two of them were**
6 **running entirely within Parcel 0393 and one was**
7 **not. So I basically took two-thirds of the cost**
8 **for the line abandonment for AT&T on Site 3 and**
9 **attributed it to IDOT.**

10 **Q. Okay. And you're talking about**
11 **these orange lines, right, with the T --**

12 **A. That's correct.**

13 **Q. -- is that correct?**

14 **And there is one -- there is one**
15 **up here as well. Okay. What was your total for**
16 **IDOT Site 3 AT&T line attribution?**

17 **A. Total was \$71,710.**

18 **Q. And that's reflected here on 204-36,**
19 **correct?**

20 **A. That's correct.**

21 **Q. Let's talk about Site 6. What work**
22 **was done on Site 6 for the AT&T lines?**

23 **A. The same type of work.**

24 **Q. Okay. And if you turn to 204-21, I**

1 **believe you discuss how many AT&T lines were on**
2 **Site 6?**

3 (Document marked as Complainant
4 Exhibit No. 204-21 for
5 identification.)

6 BY MS. BRICE:

7 **Q. Can you please discuss that for the**
8 **record?**

9 A. Yeah, there were -- there was one
10 AT&T phone line, one fiberoptic line that was on
11 the north side of Site 6, and there was one
12 telephone line that was on the south side of Site
13 6 running through the Site 6 area of liability.

14 **Q. Okay. And where does that run**
15 **through the Site 6 area of liability?**

16 A. Right on -- you can see where it
17 comes --

18 **Q. Is it this one?**

19 A. It's a continuation of --

20 **Q. Is it purple?**

21 A. No, it's one of the telephone lines
22 that comes up and then you can see it running
23 right along on Site 6.

24 **Q. So -- right. It's this one right**

1 **here --**

2 A. Yes.

3 Q. -- correct? And then it comes
4 through here and then runs up through here --

5 A. Right.

6 Q. -- is that right?

7 A. That's correct.

8 Q. And describing it for the record,
9 what -- what -- can you describe where it's
10 running through like in terms of boring locations?
11 It's coming in at --

12 A. Just past 03S and then runs past
13 08S.

14 Q. Okay. How did you determine IDOT's
15 attribution for the AT&T lines on Site 6?

16 A. There were a total of three lines
17 for AT&T on Site 6. Two of them were on the north
18 side of Site 6, which I did not consider to be
19 within the IDOT area of liability. One was on the
20 south side. So I took a third of the costs for
21 the AT&T line abandonment and attributed them to
22 IDOT.

23 Q. And what was your total for IDOT
24 Site 6 AT&T line attribution?

1 A. \$88,858.

2 **Q. And that's reflected here on 204-36**
3 **under --**

4 A. That's correct.

5 **Q. -- Site 6 AT&T, correct?**

6 A. That's right.

7 **Q. And then we come to one of these**
8 **Sites 3 and 6 calculations which I will admit is**
9 **somewhat confusing. So let's start off by**
10 **saying -- explaining what costs for both Site 3**
11 **and Site 6 with respect to the AT&T lines and why?**

12 A. There were various steps that were
13 taken during the construction project that Dave's
14 group was providing services for. I think he
15 described a few of them earlier about some of the
16 telephone pole work and so those were related to
17 just in generally to the relocation work that was
18 being done for Site 3 and Site 6 not specific to
19 either one of them.

20 **Q. Okay. And so you had a number that**
21 **was both Site 3 and Site 6, correct?**

22 A. Mm-hmm.

23 **Q. For cost incurred?**

24 A. That's correct.

1 Q. And did Mr. Gobelman agree with that
2 number?

3 A. Yes.

4 Q. And is that -- and what exhibit is
5 that from, is that from Mr. Peterson's exhibits to
6 your report?

7 A. It's from my tabulation of the
8 documentation Mr. Peterson gave me.

9 Q. Okay. Gotcha. I'm going to get
10 into this specifically in a moment and walk
11 everybody through it because it's complicated, but
12 can you just generally explain how you attributed
13 these combined Sites 3 and 6 costs?

14 A. Yeah. So basically what I did is I
15 looked at my attributions to IDOT for Site 3 and
16 Site 6.

17 Q. Can you give me numbers, too, while
18 you're doing that.

19 A. \$71,710.

20 Q. Yeah?

21 A. And the \$88,858.

22 Q. Okay.

23 A. I then divided that by the total
24 costs that were incurred.

1 **Q. So you added those together?**

2 A. Yes.

3 **Q. And what was that when you added**
4 **those together?**

5 A. I believe that's \$160,568.

6 **Q. Okay. And then what did you do?**

7 A. I divided that by the total cost for
8 the Site 3 and Site 6 independent work.

9 **Q. Okay. And what was that?**

10 A. \$392,918.

11 **Q. When you divided that, what did you**
12 **come up with?**

13 A. 40.9 percent.

14 **Q. And then what did you do with the**
15 **40.9 percent?**

16 A. I took the combined Site 3 and
17 multiplied it by the 40.9.

18 **Q. What is the combined Site 3?**

19 A. That comes out -- well, actually, I
20 did that for each independent work effort.

21 **Q. Yes.**

22 A. So the first one was for the
23 Campanella T&M and that was \$21,901.

24 **Q. Okay. Let me back up because I**

1 think it's going to get confusing. Can we try to
2 do it this way? Can you turn to Exhibit F?

3 (Document marked as Complainant
4 Exhibit No. F for
5 identification.)

6 BY MS. BRICE:

7 Q. I'm going to go to 204-108.

8 MS. BRICE: Drew, if you can pull
9 that up, that would be helpful.

10 HEARING OFFICER HALLORAN: What
11 exhibit is this?

12 MS. BRICE: 204-108.

13 HEARING OFFICER HALLORAN: Thank
14 you.

15 (Document marked as Complainant
16 Exhibit No. 204-108 for
17 identification.)

18 BY MS. BRICE:

19 Q. Are you there, Mr. Dorgan?

20 A. Yes, I am.

21 Q. Okay. So you've got here total cost
22 right in here under AT&T Site 3 \$108,651, do you
23 see that?

24 A. I do.

1 Q. And how did you come up with that
2 number?

3 A. That's just a sum of the individual
4 amounts that are shown above it in the column for
5 Site 3.

6 Q. Okay. Then you've got the \$284,266,
7 how did you come up with that number?

8 A. That's a sum of the total amounts
9 that are shown in the column for Site 6 above it.

10 Q. Okay. And then you -- if I
11 understand this correctly, right underneath that
12 there is a section that says AT&T total, AT&T
13 Sites 3 and 6 costs and is this -- is this
14 \$392,918, is that the combined number of those
15 two?

16 A. Yes, that would be the sum of the
17 \$108,651 and the \$284,266.

18 Q. Okay. And then you've got the
19 \$71,710 and what is that?

20 A. That's the amount that I attributed
21 to IDOT for Site 3.

22 Q. Then you have the \$88,858 right next
23 to it, what is that?

24 A. That's the amount attributed to IDOT

1 for Site 6.

2 Q. Okay. Then you add those together,
3 I take it, and that's where you got \$165,068 down
4 here below?

5 A. That's correct.

6 Q. Okay. And then your 40.9 percent is
7 dividing the \$392,918 and the \$165,068, correct?

8 A. That's correct.

9 Q. Okay. And then you have this
10 IDOT -- AT&T IDOT total of 201 -- sorry. Let's
11 just skip that.

12 You have this under here, under
13 total IDOT attribution, Sites 3 and 6 AT&T right
14 underneath the \$89- -- the \$98,898 you have
15 \$40,449, how did you come up with that?

16 A. That would be the \$98,898 multiplied
17 by the 40.9 -- or multiplied by .409 in this case.

18 Q. Okay. So down here at the bottom
19 you have AT&T IDOT total \$201,017, do you see
20 that?

21 A. I do.

22 Q. And what is that?

23 A. That's the sum of the total IDOT
24 attribution row. So that would be the sum of the

1 three figures, the sum for Site 3 of \$71,710; the
2 sum for the Site 6 attribution of \$88,858; and
3 then the sum for the Sites 3 and 6 combined
4 attribution of \$40,449 --

5 Q. Okay.

6 A. -- those add up to \$201,017.

7 Q. And all of those numbers, as I see
8 them, are depicted here on 204-36 in the AT&T row,
9 is that correct?

10 A. That's correct.

11 Q. Now, did Mr. Gobelman use this same
12 methodology for determining his site for three
13 plus six costs obviously using different
14 attribution numbers?

15 A. Yes, he did.

16 Q. Now, I'd like to talk about utility
17 ACM soils task bucket. Can you tell me what that
18 is?

19 A. Yeah. So this was the soils that
20 were excavated where the utilities had been. The
21 utilities were abandoned. That was part of the
22 work to relocate them so service wasn't
23 interrupted and then those soils were actually
24 excavated and removed both on the north and south

1 sides of Site 6.

2 Q. Okay.

3 MS. BRICE: Drew, if you can please
4 pull up Dorgan Figure 1 again.

5 BY MS. BRICE:

6 Q. Okay. Can you describe for me where
7 this utility ACM soils task bucket is located on
8 Dorgan Figure 1?

9 A. Let me go back to that.

10 Q. This could be on 204-21.

11 A. So on this figure it's shown as
12 being the soils that were excavated both on the
13 north side which is shown with the crosshatching
14 and then on the south side of Site 6 with the
15 crosshatching.

16 Q. So what -- what sample locations are
17 we talking about here?

18 A. We're talking about from 01S out
19 past 08S.

20 Q. Okay. What about on the north side?

21 A. From 01N out past 08N.

22 Q. And did you attribute any of the
23 soils -- this work in this task bucket on the
24 north side to IDOT?

1 A. No.

2 **Q. And on 204-21, you say the**
3 **enforcement action memorandum required soils to be**
4 **excavated from Sites 3 and 6, can you elaborate?**

5 A. Yeah. So, basically, there was
6 asbestos found on both the north side and south
7 side of the right of way. Even though the utility
8 lines were being removed, it was still within a
9 public right of way. So they wanted the asbestos
10 materials to be removed so they wouldn't present a
11 future hazard to those that might come in contact
12 with it or as was discussed earlier the potential
13 of it being brought to the surface through some
14 other situation.

15 **Q. And is this task bucket work**
16 **separate from the North Shore gas line work on**
17 **Site 6 that runs through some of this same area?**
18 **Were the costs segregated out separately?**

19 A. Yes.

20 **Q. So there is no double counting with**
21 **respect to that?**

22 A. No.

23 **Q. On 204-22, you say there were eight**
24 **utility lines involved in this work, which ones**

1 **are those?**

2 **(Document marked as Complainant**
3 **Exhibit No. 204-22 for**
4 **identification.)**

5 BY THE WITNESS:

6 A. The City of Waukegan waterline, the
7 North Shore gas line, AT&T phone lines, the AT&T
8 fiberoptic line and then the ComEd fiberoptic line
9 and ComEd electric line.

10 BY MS. BRICE:

11 Q. **And how many of these were on the**
12 **north side of six?**

13 A. Four of them.

14 Q. **How many were on the south side of**
15 **six?**

16 A. Four.

17 Q. **And how many of the four on the**
18 **south side of 6 ran through the IDOT area of**
19 **liability?**

20 A. All of them.

21 Q. **And did they all go through 01S**
22 **through 04S?**

23 A. Yes. A --

24 Q. **At least some of them did?**

1 A. At least some of them.

2 Q. Somewhere in there, they hit 01S to
3 04S?

4 A. The telephone line came past to
5 about 03S.

6 Q. Okay. And the North Shore gas line
7 comes in at --

8 A. 04S.

9 Q. -- 04S? ComEd fiberoptic line is
10 01S through 04S?

11 A. That's correct.

12 Q. And ComEd electric line is 01S
13 through 08S, correct?

14 A. That's correct.

15 Q. So how did you calculate the IDOT
16 attribution for this task bucket?

17 A. I basically took 50 percent, half of
18 the total costs that were spent for the utility
19 and ACM impacted soil removal for Site 6 and
20 attributed it to IDOT.

21 Q. And why did you take half?

22 A. Because half of the lines that were
23 utility lines that were on the north side and half
24 of them were on the south side. So I took it

1 50/50.

2 Q. And if that number is reflected over
3 here as well again --

4 A. Yes.

5 Q. -- ACM utility soils zero for Site 3
6 because this is all really within Site 6, correct?

7 A. That's right.

8 Q. So you've got \$77,659 for Site 6 and
9 that's all on the south side, correct?

10 A. That's correct.

11 Q. Nothing -- there was nothing in that
12 category that Mr. Peterson didn't have anything
13 for the Site 3 plus 6, correct?

14 A. Correct.

15 MS. VAN WIE: I have a question,
16 Susan.

17 MS. BRICE: Yes.

18 MS. VAN WIE: Does the number
19 reflect the work on all of Site 6 on the south
20 side from 01S to 08S or are we just talking
21 specifically about the area 01S to 04S?

22 THE WITNESS: Just 08S.

23 BY MS. BRICE:

24 Q. To 08S. However, would your opinion

1 **change if it was only 01S to 04S?**

2 A. I believe it would still have had to
3 be done because of the asbestos present in 01S to
4 04S.

5 MS. VAN WIE: Thank you.

6 BY MS. BRICE:

7 **Q. Let's talk about the northeast**
8 **excavation.**

9 MS. BRICE: How much time do I have?

10 MS. TIPSORD: It's about 4:30.

11 MS. BRICE: Okay. Great.

12 BY MS. BRICE:

13 **Q. On 204-22, you talk about the**
14 **northeast excavation. We talked about that a lot.**

15 **Those are the three -- these**
16 **three grids basically, correct, right here on the**
17 **northeastern portion of Site 3?**

18 A. That's correct.

19 **Q. And what work did U.S. EPA require**
20 **to be done here?**

21 A. They had to remove soils through the
22 three grids down to a predetermined depth.

23 **Q. And where does the ComEd fiberoptic**
24 **line run through the northeast excavation?**

1 A. It kind of traverses across the top
2 of the middle one and, again, eastern and then
3 transverses the eastern grid.

4 **Q. And how did you attribute cost to**
5 **IDOT for the northeast excavation?**

6 A. I took 100 percent of the costs to
7 IDOT.

8 **Q. And why is that?**

9 A. Because the work that was being done
10 was being done because of the sample locations
11 that had been previously ruled by the Board as
12 being the responsibility of IDOT.

13 **Q. And which ones were those?**

14 A. That was B3-50 and B3-45.

15 **Q. Okay.**

16 A. And then, of course, those were
17 locations representing the larger grid.

18 **Q. And B3-46, which is a boring next**
19 **door, is not a clean boring, correct?**

20 A. That's correct.

21 **Q. And what else was happening in**
22 **B3-46?**

23 A. The fiber line was being taken out.

24 **Q. Okay. So you attributed 100**

1 percent, which was \$49,934, correct?

2 A. That's correct.

3 Q. And that's reflected there on the
4 tabulation 204-36, correct?

5 A. Yes.

6 Q. I will show you.

7 A. I see it, yes.

8 Q. You see it. Okay. And obviously
9 northeast excavation is not on Site 6 and there
10 were no Site 3 -- so there's no Site 3 plus 6
11 costs, so it's just the \$49,934?

12 A. That's correct.

13 Q. Okay. Now, we're going to talk
14 about North Shore gas. This is the line -- can
15 you describe for the record -- it's sort of --
16 I'll try to describe it I think just to hurry
17 things along. It cuts diagonally a bit through
18 the northern portion of Site 3 and then it enters
19 into 0393 and then I think Mr. Peterson testified
20 right about 03S -- 04S-ish they capped it,
21 correct, and then it extends east, correct, along
22 the south side of Site 6?

23 A. That's generally correct.

24 Q. Okay. Fix me, please.

1 A. They capped it where it entered Site
2 6, but basically put a flange on it and then now
3 that it was no longer in use east of where it
4 entered Site 6 if they excavated to remove the ACM
5 soils that we just talked about, if they had to
6 excavate down to a depth that encountered the gas
7 line, they just took the gas line out.

8 Once they no longer had to dig
9 that deep and the gas line was lower than the
10 bottom of what they had to excavate to, they left
11 the gas line in, but, at that point, it was
12 abandoned and no longer in service. It could be
13 left in place.

14 Q. Okay. Thank you. So here on 204-23
15 you have four services mentioned.

16 (Document marked as Complainant
17 Exhibit No. 204-23 for
18 identification.)

19 BY MS. BRICE:

20 Q. We have kind of gone through the --
21 actually, on -- North Shore gas is kind of
22 important. There is construction T&M for North
23 Shore gas Site 3. It's in T&M. It's not in
24 necessarily like the base bid and I think

1 **Mr. Peterson might have testified about this, but**
2 **can you explain your understanding of why that is?**

3 A. Yeah, I believe that was primarily
4 related to in order to deenergize the gas line so
5 they could cut it and cap it where it enters --
6 where it goes from Site 3 to Site 6 they had to
7 shut the gas supply off. So they had to access
8 that valve that Mr. Peterson talked about. So
9 that they could actually turn the valve off, turn
10 the gas off, do the disconnection, put the new
11 flange on and then they ultimately reenergized
12 just that portion that traverses across Site 3.

13 Q. **And let's just take -- you have in**
14 **here utility payments to North Shore gas on**
15 **204-23, what is that?**

16 A. That was work -- that was for costs
17 that they paid to North Shore gas for the work
18 that they did in support of this abandonment
19 effort.

20 Q. **Okay. So as we said on Site 3, they**
21 **capped it and -- they deenergized the line and**
22 **they capped it, correct?**

23 A. Correct.

24 Q. **And then what else did they do?**

1 A. They created a clean corridor.

2 **Q. They created a clean corridor. And**
3 **how did you determine IDOT's Site 3 North Shore**
4 **gas attribution? And if you can please use boring**
5 **numbers and your Dorgan Figure 204-38 to describe**
6 **it for the record, it would be much appreciated?**

7 A. Well, the clean -- the gas line and
8 the clean corridor that was needed for it ran up
9 through the boring locations B3-50 and B3-15 which
10 were both identified as borings in the Board's
11 order as IDOT responsibility and the clean
12 corridor was required to be constructed for the
13 remainder of the line regardless whether asbestos
14 was found in it. So I attributed a hundred
15 percent of the North Shore gas Site 3 clean
16 corridor to IDOT.

17 **Q. And just for the record, were there**
18 **any borings along the North Shore gas line on Site**
19 **3 that were not identified by the Board to be**
20 **contaminated?**

21 A. No.

22 **Q. So what was your total North Shore**
23 **gas Site 3 attribution?**

24 A. \$332,524.

1 **Q. And that's here under the row for**
2 **North Shore gas on 204-36.**

3 **Okay. Let's talk about Site 6.**
4 **Can you show us or explain for the record, more**
5 **likely, and we just sort of talked about it, but**
6 **I'd like you to explain it please where the North**
7 **Shore gas is on the south side of Site 6?**

8 **A. So when the EAM was written, there**
9 **was still the intention at that time of actually**
10 **putting the clean corridor in for the North Shore**
11 **gas line. Later on, it was determined that they**
12 **were going to end up capping that, but they still**
13 **were required to have the clean corridor across**
14 **all of the south side of Site 6 as far as where**
15 **the North Shore gas line ran to and that was all**
16 **part of the clean corridor construction.**

17 **Q. Okay. And you said the capping --**
18 **did the capping occur at what boring location?**

19 **A. 04S.**

20 **Q. And is that an area that the Board**
21 **identified as an area of liability?**

22 **A. Yes.**

23 **Q. Did you attribute any costs**
24 **associated with the North Shore gas line on the**

1 north side of Site 6 to IDOT?

2 A. No.

3 Q. Why not?

4 A. Because it was outside of the IDOT
5 area of liability.

6 Q. And at time -- you talk about the
7 enforcement action memorandum. At the time of the
8 enforcement action memorandum, was there any
9 asbestos containing material east of 08S that had
10 been detected?

11 A. No.

12 Q. So what -- what is that telling you,
13 what was driving the need to do the clean
14 corridor?

15 A. The asbestos that had been
16 identified from 01S to 08S was driving the clean
17 corridor construction, the remainder of the south
18 side of Site 6.

19 Q. And, again, if 05S to 08S weren't
20 part of your opinion, would you still -- let me
21 back up.

22 Would your opinion be the same
23 if the IDOT area of liability in your report was
24 just 01S to 04S?

1 A. Yes.

2 **Q. And explain, again, please why?**

3 A. Because the presence and the
4 potential presence of asbestos along the clean
5 corridor would have driven the need for the clean
6 corridor itself.

7 **Q. And Mr. Peterson testified about the**
8 **photographs taken along the south side of 6.**

9 **Do you -- do you have any**
10 **opinions about those photographs --**

11 A. Yes.

12 **Q. -- other than what you've already**
13 **stated?**

14 A. Yes, I've already stated that I
15 believe it's consistent with his description. I
16 can see a seam of material that is rather uniform
17 in depth and inconsistency across that entire
18 site.

19 **Q. Okay. So how did you attribute the**
20 **Site 6 North Shore gas cost to IDOT?**

21 A. I believe I took the total amount of
22 work that was done for North Shore gas on Site 6
23 and I calculated just the number of feet that were
24 related to work that was done within the IDOT area

1 of liability and made that attribution.

2 Q. And how many feet -- how many feet
3 was that?

4 A. It was 560 feet.

5 Q. Okay. But you have something in
6 here that talks about 205 lineal feet, is that on
7 the south side of 6?

8 A. That's on the total.

9 Q. Are you sure about that?

10 A. I believe so.

11 Q. Okay. So 205 lineal feet and then
12 560 feet is what you believe happened -- sorry.

13 Can you explain that again? I
14 got lost.

15 A. Yes, 560 feet was the distance that
16 was within the IDOT area of liability.

17 Q. Okay. And where is that? What does
18 the 560 feet comprise of?

19 A. That would be from 04S to 08S.

20 Q. Okay. So how did you get your 27.9
21 percent?

22 A. Actually, excuse me. That would
23 have been the linear feet from 04S to the eastern
24 extent of the North Shore gas line run on the

1 south side of Site 6. It then goes underneath
2 Greenwood and continues running east on the north
3 side. So that 560 would have been that length
4 from where it enters Site 6 and runs to, I
5 believe, it's somewhere around location 30.

6 Q. Okay. And the 2005 is the amount of
7 what?

8 A. The total linear feet for the North
9 Shore gas line work that was done on Site 6.

10 Q. And that was North Shore gas line
11 work of what was removed, correct?

12 A. That's right.

13 Q. Okay. And then you take and you got
14 the 27.9 percent how?

15 A. Divided the 560 linear feet by the
16 2005 linear feet.

17 Q. To give you 27.9 percent?

18 A. That's correct.

19 Q. And how do you get to your
20 attribution to IDOT?

21 A. Basically, take the total amount for
22 Site 6 and multiply it by the 27.9 percent.

23 Q. Okay. So the total amount for Site
24 6 for the North Shore gas costs which was given to

1 you by compiling what you got from Dr. Ebihara and
2 Mr. Peterson, correct?

3 A. That's right.

4 Q. And then you multiplied that by the
5 27.9 percent and came up with \$65,597?

6 A. That's correct.

7 Q. Okay. And, again, that's on the
8 figure over here 204-36?

9 A. Yes.

10 Q. Okay. So there is a Sites 3 and 6
11 cost category for the North Shore gas line on
12 204-35 -- it must actually be 25, I think, not 35.

13 (Document marked as Complainant
14 Exhibit No. 204-25 for
15 identification.)

16 BY MS. BRICE:

17 Q. Can you explain to me what those
18 costs were?

19 A. Yeah, those were the costs that were
20 implemented that Campanella incurred on a T&M
21 basis and some of Dave Peterson's oversight costs
22 related to the North Shore gas line work that was
23 being done in support of the clean corridor on
24 both Site 3 and Site 6.

1 Q. Okay. And who made the
2 determination that they applied to both Site 3 and
3 Site 6?

4 A. Mr. Peterson.

5 Q. Okay. Let's go back to Exhibit F.
6 We have a number of these complicated calculations
7 and if you can turn to 204-108 -- I mean, 109.
8 Sorry.

9 (Document marked as Complainant
10 Exhibit No. 204-109 for
11 identification.)

12 BY MS. BRICE:

13 Q. I'm going to be focusing here on
14 similarly these similar columns and then down here
15 on the bottom under North Shore gas there's a
16 calculation that is shown, correct --

17 A. That's right.

18 Q. -- underneath? So can you explain
19 these numbers, the \$332,524, what number is that?

20 A. That's the IDOT attribution for Site
21 3.

22 MS. BRICE: Drew, can you pull that
23 up, please? Thanks.

24

1 BY MS. BRICE:

2 Q. And what is the \$234,861?

3 A. That's the total cost for Site 6
4 North Shore gas line work.

5 Q. Okay. And then 332 -- so that's 524
6 because that's the same number in the attribution
7 because you attributed 100 percent for Site 3,
8 correct?

9 A. That's correct.

10 Q. And then under here for Site 6 you
11 have \$65,597 and how did you come up with -- what
12 number is that?

13 A. That is the percentage that I
14 attributed -- that's the allocation to IDOT based
15 upon that 27.9 percent calculation we discussed
16 earlier. So that would be the sum of the IDOT
17 attributions from the column above where that
18 number appears.

19 Q. Understood. So it's over here a
20 little bit to the right. So if you go down under
21 North Shore gas, the Sites 3 and 6 column right
22 beneath that -- the \$40,826 you've got \$567,385,
23 is that just adding together the numbers, the
24 \$332,000 and the \$234,000?

1 A. That's correct.

2 Q. Okay. And then the 398 number, is
3 that adding -- what is that adding exactly?

4 A. That's adding the \$332,524 plus the
5 \$65,597.

6 Q. Okay. How did you get to this 70.2
7 percent?

8 A. Basically, the 7 -- \$398,121
9 represents 70.2 percent of the total cost.

10 Q. And how did you get to this
11 attribution of costs for the Site 3 and Site 6?

12 A. I multiplied the total cost by
13 0.702.

14 Q. So the total -- so the total cost is
15 \$58,157?

16 A. That's correct.

17 Q. And then you multiplied that by the
18 70.2 percent by that \$58,157 to get to \$40,826?

19 A. That's correct.

20 Q. Did Mr. Gobelman approach this the
21 same way?

22 A. He did.

23 HEARING OFFICER HALLORAN: You have
24 about ten minutes, Ms. Brice, please.

1 BY MS. BRICE:

2 Q. Okay. We're going to move on to
3 dewatering, which start on 204-25. Can you tell
4 us what dewatering is?

5 A. Dewatering is basically you either
6 drive some well points or you put a pump in the
7 bottom of a hole and you begin pumping the water
8 out to press the groundwater table so that any
9 work you need to do at an elevation below the
10 groundwater table can be done in dry conditions
11 rather than underwater.

12 Q. And why is it necessary? Excuse me.

13 A. Because you can't actually work in
14 the subgrade if you're trying to work in the water
15 basically.

16 Q. Okay. In general, what was your
17 approach to determining IDOT's dewatering
18 attribution?

19 A. I basically looked at the elements
20 of the work that were needed to have dewatering
21 done in order to implement them.

22 Q. Okay. So let's -- let's -- let's go
23 here to 204-26. What dewatering work was done on
24 Site 3?

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**(Document marked as Complainant
Exhibit No. 204-26 for
identification.)**

BY THE WITNESS:

A. The dewater in order to do the clean corridors for the Nicor, North Shore gas, the City of Waukegan waterline and then also for the northeast excavation.

BY MS. BRICE:

Q. Okay. And you've got -- if you can turn back to 204-25 you've got multiple different categories of service here, do you see that?

A. I do.

Q. Okay. And I believe that you treated these somewhat differently, why -- why is that?

A. There was just some variability in terms of the work that was done between Site 3 and Site 6 and then Mr. Peterson had kind of filled me in on certain activities that were more focused on individual work elements than on a collective work element.

Q. So let's take this one by one. So the first paragraph of 204-26 under Site 3, you're

1 talking about the Campanella base bid dewatering
2 work and that number is the -- is what? The total
3 cost, where does that come from?

4 A. The total cost for the dewatering
5 work for Site 3 was \$259,000 and that comes from
6 Mr. Peterson's tabulations.

7 Q. Right. But I'm just talking about
8 the first paragraph on this one.

9 A. Oh, the construction?

10 Q. Yeah, I'm talking about -- I'm going
11 to go paragraph by paragraph.

12 So you have the Campanella base
13 bid?

14 A. Mm-hmm.

15 Q. So Mr. Peterson gave you that
16 number, correct?

17 A. That's correct.

18 Q. Okay. So can you explain how you
19 came to this 75 percent attribution and this total
20 of \$105,600?

21 A. Yes. So there were basically of the
22 work elements that required dewatering, three of
23 them I had previously determined to be IDOT's
24 responsibility, that was the North Shore gas line,

1 the City of Waukegan waterline and the northeast
2 excavation.

3 The last one, which was the
4 Nicor line, I had not included. So basically I
5 took three quarters of the work effort for the
6 dewatering under the Campanella base bid and
7 attributed it to IDOT.

8 Q. Okay. And this is all for Site 3,
9 correct?

10 A. That's for Site 3.

11 Q. And you took those and you took 100
12 percent of those because you had attributed 100
13 percent to each one of those three task buckets,
14 correct?

15 A. That's correct.

16 Q. Okay. Now, if you move down to
17 Paragraph 2, you've got Campanella T&M dewatering
18 services.

19 Can you explain this paragraph a
20 bit? You also have the 75 percent. Can you
21 explain what you did here?

22 A. Yeah, my understanding is that this
23 was kind of a cost-saving measure. They had to
24 move water from the south side of Greenwood Avenue

1 to the north side to tie into the North Shore
2 Sanitary District sewer line. So they had to put
3 basically a line in underneath Greenwood Avenue in
4 order to accommodate management of the water being
5 generated from the dewatering operation.

6 Q. Okay. So how did you determine that
7 the percentage, the 75 percent should apply here,
8 and that IDOT's attribution should be \$18,244?

9 A. I used the same methodology. I
10 applied the 75 percent in that three of the four
11 work elements were attributed to IDOT.

12 Q. And that's because those three of
13 the four work elements were driving the need for
14 that work that you just described?

15 A. That's correct.

16 Q. Okay. Under the next paragraph,
17 Paragraph 3, there is 100 percent attribution to
18 IDOT, why -- why is that?

19 A. This was work -- this was the work
20 that we described previously. Mr. Peterson
21 described as being related to the -- being able to
22 install the valve, which was at the western
23 boundary of the North Shore gas line so that they
24 could cut it and cap it at that Site 3/Site 6

1 boundary.

2 Q. So, once again, we're -- we're still
3 on Site 3, correct?

4 A. That's correct.

5 Q. Okay. So he is doing work here that
6 he says is only related to the North Shore gas
7 line?

8 A. That's correct.

9 Q. And because you attributed 100
10 percent to the North Shore gas line, you
11 attributed 100 percent for this work that was only
12 North Shore gas line related on Site 3?

13 A. That's correct.

14 Q. Okay. Fourth paragraph, these are
15 the DMP-incurred expenses associated with
16 discharge of water generated from dewatering
17 activities to the North Shore Water Reclamation
18 District.

19 Can you explain what you did
20 here?

21 A. So these were fees, I mentioned
22 earlier that they had tied into the sewer system
23 for North Shore Sanitary District. They were
24 required to pay a fee to the district for taking

1 and treating that water and that's what these
2 costs were related to.

3 **Q. Okay. And how did you come up with**
4 **the allocation?**

5 A. It's rather complicated. It's all
6 explained in Footnote 19.

7 **Q. Okay.**

8 A. It has to do with the actual days of
9 dewatering that were being undertaken for the
10 different areas and I basically -- Mr. Peterson
11 broke it down for me in terms of what days
12 dewatering was being done where and when you total
13 it all up it comes out to \$19,429.

14 **Q. Okay. So you went to -- you got**
15 **into the details here to make sure you got it**
16 **right?**

17 A. Mm-hmm. Yes.

18 **Q. Okay.**

19 MS. BRICE: Mr. Halloran, is this a
20 good place to stop?

21 HEARING OFFICER HALLORAN: Yeah,
22 because we're going on to Site 6 now?

23 MS. BRICE: Yes.

24 HEARING OFFICER HALLORAN: All

1 right. Let's stop. Hopefully tomorrow -- it's
2 about 5:00. Hopefully tomorrow we can start at
3 9:00 a.m. You guys have been great today. Thank
4 you so much and stay well.

5 MS. BRICE: Thank you.

6 MS. GALE: Thank you.

7 MR. GRANT: Thanks.

8 MS. O'LAUGHLIN: Thanks.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

I, Steven Brickey, Certified Shorthand Reporter, do hereby certify that I reported in shorthand the proceedings had at the trial aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said trial as appears from my stenographic notes so taken and transcribed under my personal direction.

Witness my official signature in and for Cook County, Illinois, on this _____ day of _____, A.D., 2020.

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<p style="text-align: center;">A</p> <p>A.D 311:13 a.m 1:15 310:3 abandoned 81:10 176:9 282:21 291:12 abandoning 271:23 272:2 abandonment 271:21 273:8 275:21 292:18 abated 193:7 abbreviated 149:13 able 21:1 24:16 50:22 104:14 105:15 126:9 168:15 170:19 192:12 200:7 223:6,7,14 307:21 aboveground 147:22 absolutely 23:14 abuts 113:17 access 139:13 151:19,20 168:11 292:7 accessibility 7:15 accommodate 307:4 accuracy 18:4 accurate 18:9 40:15 78:7 238:18 249:20 accurately 55:15 157:13 186:5,10 215:7 ACM 8:13,17 9:4 11:18 12:20 13:11 16:14,15 16:19 17:5 84:19 107:18 108:4,14 109:6 109:11,15,19,22</p>	<p>109:23 110:3 114:4,18,21 115:1,1,7 125:4 126:2,10 220:7,9 230:13 231:1,24 234:2 235:8,14 241:3 245:8 254:17 259:6,12 259:15,22 260:12,19,22 261:2,4,11,12 282:17 283:7 286:19 287:5 291:4 ACM-containing 235:15 acronym 32:18 act 11:10,17 209:2 acting 131:13 action 15:15,19 29:13,24 33:8,16 43:22 44:19 45:13 58:16,20 58:21,23 62:4 81:11 125:7,10 125:24 130:15 130:22 131:1,7 141:5 164:15 227:11,22 228:1 228:3,16 233:9 233:12 242:16 284:3 295:7,8 actions 28:21 29:19 33:20 106:5,6 240:15 activities 131:18 132:11 139:19 151:1 237:19 262:23 304:20 308:17 activity 172:17 acts 13:4 actual 103:10 112:24 114:13 126:16 242:11</p>	<p>257:1 261:8 268:23 309:8 add 252:18 281:2 282:6 added 252:12 278:1,3 addendum 138:17 adding 301:23 302:3,3,4 addition 20:14 165:10 243:24 additional 16:10 16:11 17:2 62:23 139:4 140:9 166:22 Additionally 16:20 address 71:13 124:22 243:20 addressed 71:14 adds 93:3 adequate 25:18 adjacent 8:14 16:17 96:9 174:20 176:8 195:21 adjust 24:12 administrative 233:7 admissibility 25:22 admissible 25:17 admit 276:8 admitting 25:12 25:15 advanced 235:11 adverse 11:10 AECOM 27:20,24 28:1,2 33:6,13 38:19 43:9 44:21 56:14 65:21 82:2 98:24 116:9,10 131:1 141:7 144:3 150:3</p>	<p>164:16 225:22 228:7 264:24 271:17 AECOM's 223:4 affiliated 208:6 Affirmative 158:11 affirmed 26:2 aforsaid 311:6 afternoon 101:15 128:20 206:7,8 agencies 225:19 agency 15:18 225:19 ago 193:7 agree 13:16,16,18 13:19 18:9 97:13 242:13 277:1 agreed 94:16 264:4 agreeing 25:12,15 agreement 50:6 93:1 98:12 agreements 33:19 95:19 125:23 agrees 249:20 ahead 71:16 154:16 174:6 181:3 195:11 247:4 250:9 air 254:10 align 216:4 226:7 262:6 aligning 247:22 alignment 212:18 allegation 105:11 allegations 202:14 202:14 allocable 92:18 allocate 210:15 allocated 95:7 96:23 100:12 216:3,21 allocating 207:24</p>	<p>allocation 91:10 93:8,12 105:5 217:2 262:1,14 265:17 301:14 309:4 allocations 91:8 allow 7:13 16:18 62:5 71:23 241:21 243:11 allowed 8:10,17 12:9 16:13,21 135:3 215:8 allowing 140:5 209:2 allows 77:1 alternative 231:12 alternatives 231:15 amount 9:5 13:12 13:19 15:3 17:16,17 93:24 96:23 280:20,24 296:21 298:6,21 298:23 amounts 265:18 280:4,8 analysis 29:5 32:17 108:15 126:11 190:22 191:1 227:16 and/or 220:8 231:24 232:6 angle 179:11 answer 58:13 104:14 105:15 134:23 154:22 191:15 192:12 200:7 answered 169:18 200:5 answers 115:4 anticipated 52:12 53:13 apart 250:7 263:1 apologize 34:23</p>
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<p>76:2 204:8 250:6 254:6 apparently 101:14 appeal 67:8,11 70:3 appear 122:3 157:12 217:14 242:23 appearance 121:2 Appeared 2:7,13 appears 38:5 97:8 97:11 234:19 242:22 301:18 311:8 Appendix 150:2 applicable 131:2 applied 21:12 70:14 300:2 307:10 apply 21:8 307:7 appreciate 9:22 10:21 15:23 appreciated 253:21 293:6 approach 17:14 235:7 240:18 247:2 255:18 302:20 303:17 appropriate 9:12 12:22 21:20 93:5 97:23 243:15 appropriately 125:9 approval 80:21 141:11 231:23 approve 44:5 226:4,19 approved 32:10 33:2 39:12 42:1 43:20,23 44:6 141:13,15 265:7 approximate 150:23 254:20</p>	<p>approximately 7:8 17:21 31:12 48:4 59:7,9 60:10 62:9,16 63:21,23 65:2 91:3 130:19,21 133:7 138:11,13 161:13 165:20 166:18 168:16 174:18,23 175:1 175:5 176:2 178:13 179:18 180:9,17 April 47:12 49:20 87:24 162:23 Arcadis 31:16,17 31:18 32:8 33:6 44:21 100:11 107:1 area 12:3,13,14 17:24 19:9,10,13 19:13,19,20 20:4 20:16,17,20,21 20:21 21:8,10 60:14 63:7 69:23 71:6 76:20 81:1,3,8 82:22 83:1,2 84:12,19 85:17 85:24 110:16,19 110:21,22 111:6 111:7 113:8,15 139:22,23 151:24 152:1 155:10 164:1 166:2 168:9,24 173:18,19 191:21 211:5 221:17,21 237:3 237:9,12,20 238:2 239:16,17 239:23 240:3,20 240:21 241:2,13 253:7 255:11 257:16,22</p>	<p>260:15,23 263:16,16 266:16 268:16 268:16 270:6 274:13,15 275:19 284:17 285:18 287:21 294:20,21 295:5 295:23 296:24 297:16 areas 8:14 14:3 16:17 17:3,8,11 17:15 20:7,19 22:2 56:16 68:19 69:8 71:5 142:18 146:22 209:7 231:21 236:17,19 237:24 238:1 240:4 255:2 309:10 argue 20:13 21:1 argued 20:9 argument 20:6,7 21:14,22 243:24 arguments 17:12 26:15 71:9 72:7 Army 132:1 arrived 93:6 asbestos 29:3,18 68:17 81:13 85:15 133:11 134:2 141:3 146:23 152:24 153:12,19 159:19 160:16 162:21 163:1 166:21 169:23 175:5,9 176:7 177:2,16,17 178:7,24 179:1 179:13 188:5,10 189:1,11,19,22 190:1,11,14,17 191:8 192:6,10</p>	<p>192:10 193:3,5 198:18,22,23 200:11,13,14,15 201:9,21,21 203:23 204:16 209:2 216:16 220:17,19 230:13,18 231:2 232:1,15,20 234:5 235:24 236:2,23 237:2 237:16 242:16 242:22 244:5 253:15,18,20 255:15 284:6,9 288:3 293:13 295:9,15 296:4 asbestos-contai... 8:11 75:1 81:5 85:10 153:10 174:2 180:7 190:24 191:24 197:3,21 198:17 245:1 261:8 asbestos-impact... 152:18 ascribe 69:9 asked 13:6 42:2 44:18,22 104:10 105:2 124:5 126:1,4 165:7 181:22 182:16 195:1 196:21 200:17 204:8 212:10 asking 25:9 49:14 68:23 117:6 196:23 212:15 250:14 aspects 212:24 assessed 21:2 assessment 105:5 141:2 234:3 assessments 140:21,24</p>	<p>assign 19:20 assigned 7:4 67:18 assist 89:7 Assistant 10:13 assisted 193:24 associated 21:10 28:15 53:11 60:20 85:12 139:18 182:17 185:21 232:20 257:18 294:24 308:15 assumed 70:8 assumes 55:9 assuming 116:8 assumption 70:19 AT&T 33:24 57:22 58:5,13 61:21 62:19,20 64:12,12 70:15 73:3,12,14 74:7 74:12 127:10 139:18 152:20 185:23 219:16 229:13,15 271:3 271:21,23 272:1 272:13,15,22 273:8,16,22 274:1,10 275:15 275:17,21,24 276:5,11 279:22 280:12,12 281:10,13,19 282:8 285:7,7 attached 47:3 203:4 attack 154:18 Attorney 2:8 10:13,18 187:11 attorneys 8:5 attributable 9:9 13:14 14:2 17:3 67:14 69:16 209:14 262:1</p>
---	---	--	---	--

<p>attribute 263:17 269:18 283:22 289:4 294:23 296:19 attributed 236:24 263:13 264:5 270:2 273:9 275:21 277:12 280:20,24 286:20 289:24 293:14 301:7,14 306:7,12 307:11 308:9,11 attributes 184:8 184:14 attributing 94:4 attribution 216:17 240:6,9 240:19 243:5 255:9 258:1 262:12,15 263:6 270:15 273:2,16 275:15,24 281:13,24 282:2 282:4,14 286:16 293:4,23 297:1 298:20 300:20 301:6 302:11 303:18 305:19 307:8,17 attributions 217:5 277:15 301:17 August 172:7 267:14 authored 82:2 authority 39:7 auto 38:12 202:20 203:2 autoCAD 36:9,12 36:18 37:3,13 38:6,9 39:16 40:2,7,20,21 41:10,15 42:6 45:2 79:23 80:23 116:15</p>	<p>118:2,3,19 120:15 121:3 122:16,17,19 123:11 222:23 222:24 223:6,7 223:21,22 224:13,16 225:16 258:20 automatically 224:1 availability 8:22 available 7:12 57:11 67:10 242:21 Avenue 8:14 16:16 31:4 56:20,21 57:3 60:7 62:8 63:19 64:7 65:8,14 66:14 67:4,5 76:15 111:18,20 111:21 112:8 162:4 177:4 180:9 194:14,17 195:17,20,22 201:2,6,13,15 209:4 249:24 251:3,12,18 255:17 306:24 307:3 average 55:8 awarded 144:14 183:13 184:7 awarding 9:11 aware 44:10 105:20 112:6,9 112:10,15 113:9 113:14 114:2 115:8 181:20 193:3 202:13,15 253:13</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B 4:1 45:23 46:16 46:17,23 230:7</p>	<p>B3-15 16:18,23 239:20 293:9 B3-16 16:18,22 239:20 B3-25 16:18,22 239:20 B3-40 266:12 267:3 B3-45 16:23,24 239:21 289:14 B3-46 289:18,22 B3-50 16:23 167:3 167:13 239:21 289:14 293:9 B3s 220:24 baby 204:24 Bachelor's 207:6 bachelors 129:8 back 36:4 49:22 50:4 55:12 77:4 78:19 80:3 81:15 83:5 86:3 87:15 88:21 102:9 107:6,13 108:18 116:3 121:17 124:7 126:8 141:17 157:2 158:24 161:7,14 166:20 176:13 182:19 188:1 195:10 198:13 209:20 211:6 227:23 239:7 246:7 248:19 252:13 270:17 272:9 278:24 283:9 295:21 300:5 304:11 backdooring 67:22 backed 172:13 backend 154:13 backfill 232:8 backfilled 152:2</p>	<p>153:2 166:14 168:23 268:19 268:21 backfilling 134:2 140:7 188:21 background 129:7 207:5 210:19 Backing 108:13 backtrack 73:2 backwards 220:3 251:15 264:10 balance 96:24 bank 175:6 176:6 176:23 178:7 179:14 180:9 barricade 197:15 197:16,17 barricades 197:14 barrier 30:21 126:17 232:4 base 25:5,9,11,14 25:16,22,24 35:14,17,18 36:5 36:7,8 37:13 38:13,17 39:3,6 39:10,13 41:15 80:22 116:16,21 117:2,6,10 118:5 120:20 138:4,7 139:1,10 142:6 232:4 265:2,9,19 291:24 305:1,12 306:6 based 18:4 25:24 42:5,10 54:3 55:1 60:22 66:4 67:14 79:18 97:8,11,12 98:20 105:7 110:2 111:11 138:8 140:20 165:14 210:15 223:4 227:23 239:2 242:13 243:24</p>	<p>255:2 256:12,13 258:20 259:16 260:15 262:2 267:24 301:14 bases 215:13 basic 225:10 basically 20:2,5 68:11 143:13 180:14 212:10 213:11 216:7 230:15 231:14 232:12 233:7 235:23 242:17 243:10 246:17 248:9,10 249:5 251:22 259:4 261:24 268:12 271:11 272:3 273:7 277:14 284:5 286:17 288:16 291:2 298:21 302:8 303:5,15,19 305:21 306:4 307:3 309:10 basis 54:16 66:21 70:1 82:21 104:21 132:2 157:8 228:4 265:8 299:21 began 31:7 59:20 98:22 207:16 215:15 216:17 beginning 50:10 50:11 59:4 68:9 90:13 begins 89:18 begun 58:20 behalf 2:7,13 10:14,18 233:6 belief 187:20 believe 8:3,7 31:6 37:12 47:16 50:5 55:14 82:13 85:9</p>
--	--	---	---	---

<p>91:24 95:5 98:19 104:3 125:13 138:16 152:12 157:7,16 162:8 166:18 177:13 186:4,9 189:20 193:23 197:21 199:8 200:22 203:18 212:19 219:13 242:15 249:24 252:11 259:16 264:3,9 267:5,12 274:1 278:5 288:2 292:3 296:15,21 297:10,12 298:5 304:14 believed 14:18 164:6 beneath 301:22 best 119:8 129:1 216:4 247:24 better 154:14 187:10 beyond 62:19 131:4 232:6 244:14,17 253:24 bid 131:5,8,12 134:17,19 136:14,24 138:4 138:5,7,12,16,17 139:1,4,10 142:7 183:12 184:7 207:20 265:2,3,9 291:24 305:1,13 306:6 bidders 135:4,7 bidding 131:11 133:14,14,15,16 134:24 144:9,12 bids 134:3,5 135:1 135:1,3,4 207:21 207:22,23</p>	<p>big 12:5 43:1 85:21 89:6 139:8 148:14 153:4 184:16 203:2 221:3 222:4 bigger 69:23 145:20 260:15 262:15 billed 62:20 103:11 billing 98:24 bind 92:23 93:2 binder 34:4,15 37:17 42:23 45:22 56:6 57:14 80:4 81:16 89:5,18,22 100:20 101:3 106:9,10 116:4 125:13 136:3 137:19 141:18 148:17 149:12 149:16 156:5 170:6 175:15 176:12 182:20 250:7 251:1 binders 23:6 89:6 90:3 101:14 135:14 208:8 249:13 bit 14:2 19:16 24:13 59:22 64:17 77:22 99:6 108:13 120:1 121:6 174:15 207:10 218:2,24 290:17 301:20 306:20 black 11:24 12:13 12:14 139:22 150:23 152:1 218:19 253:8,10 block 12:6 blow 72:10 250:15</p>	<p>250:16,19 266:23 blown 75:18 blue 204:24 board 1:1,12 7:4 8:2,10,12,16,20 8:23 9:3,11,12 9:23,23 11:15 12:1,4,8,15,21 13:6,10 14:1 15:12,12 16:7,12 16:20 17:4,4,16 17:23 19:12 20:8,11,11 21:24 26:2 60:14 66:17,18 67:1,9 68:3,20 69:15,17 71:7 83:3 88:12 92:23 112:6 139:15 168:9 173:19 194:21 195:3 208:23 216:8,16 237:3 238:21 239:5,8 239:20 240:4,13 240:24 241:2,21 242:5 244:14 257:22 259:20 260:14 289:11 293:19 294:20 311:1 Board's 7:11 14:12 19:21 20:17 26:5 40:14 68:22 208:19 214:20 216:5 236:21 237:24 238:6,14 240:11 244:1,1 293:10 book 89:23 232:22 Boos 119:15 121:18 border 194:14</p>	<p>boring 14:18 77:18 216:6 220:23 221:3,7 221:19 222:2 239:17 249:3 256:19 260:13 267:1 275:10 289:18,19 293:4 293:9 294:18 borings 107:17 108:3 216:21 221:1,2 236:20 236:23 237:15 239:17 240:8 253:11 254:17 260:3 293:10,18 borne 11:11 borrow 140:8 bottom 34:21 52:20 74:20 76:6 103:3,5 109:3 143:3 155:21 160:14 184:10 198:1,2 204:12,14,17 223:3 246:18 248:12,13,18 251:13,23 268:24 281:18 291:10 300:15 303:7 boundaries 36:10 118:8,9 123:7,20 123:20 boundary 80:10 82:18 143:21 144:1,21 167:11 235:15 307:23 308:1 bounded 144:21 box 168:12 boy 34:11 Bradley 1:11 7:2 brake 191:9 breach 230:22</p>	<p>break 87:7,11 128:6 135:18 161:3,9 195:7 205:21 208:12 255:23 256:3 breakdown 184:6 185:2 Brent 46:9 brevity 42:22 224:12 Brice 2:3 3:19 9:19,20 10:4 11:3,4 15:8 18:2 18:12,16 19:8 21:13,18 23:4,24 69:12,15 71:2,20 72:12,15 75:3 90:8 99:5 145:17,20 205:16 206:6 207:3 208:15 210:6 214:13 216:1 217:1,5,8 217:11,15,16 224:24 225:3 227:9 228:13 229:6,21 230:4 231:9 233:10,18 234:21 235:20 236:6 238:5 239:10,13,14 241:23 242:1 243:21,22 244:19,22 246:6 247:5,7 248:7 250:4,6,12 253:24 254:1,5,9 254:12 256:1,6 257:8,14 258:5 258:10 259:21 260:2,6,11 261:22 263:19 263:22 264:17 265:12,14,24 266:8 271:8</p>
--	---	---	--	---

<p>272:19,21 274:6 279:6,8,12,18 283:3,5 285:10 287:17,23 288:6 288:9,11,12 291:19 299:16 300:12,22 301:1 302:24 303:1 304:9 309:19,23 310:5 Brickey 1:12 2:21 311:3,18 brief 11:5,6 briefly 207:4 211:10 212:6,7 215:3 241:11 briefs 8:1 22:21 bring 118:20 163:7 221:11 broader 213:13 broke 213:22 309:11 broken 158:17 brought 14:23 15:15 22:20 33:12 114:3,15 115:8 126:2,3,5 252:2 284:13 Brown 8:6 Bryan 233:5 Bs 220:24 bucket 48:9,12,16 51:19 70:16 183:23 184:9,15 212:21 222:6 226:23 257:15 257:18,21 262:6 282:17 283:7,23 284:15 286:16 buckets 22:22 48:6 55:24 184:1 213:14 216:3,5 217:2 226:23 262:2,5,7 263:8 306:13</p>	<p>Buckeye 205:2,6 Buckeyes 205:12 buh-bye 205:18 build 168:9 building 198:19 bullet 109:16,19 bumper 203:2,16 bumpers 202:20 bunch 68:2 142:2 142:3 219:5 buried 188:6 191:7,8,9 241:3 259:15,22 260:12 261:13 business 172:21</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 26:20 87:18 122:11 127:1 128:18 187:5 196:13 202:3 206:5 C-O-M-M 58:2 74:13 cable 59:12 73:4 74:12 152:20 cables 58:6,14 229:13,15 CAD 116:8 117:13,14,15 118:13 119:16 155:24 calculate 14:11 105:4 286:15 calculated 70:9,11 296:23 calculation 103:7 300:16 301:15 calculations 60:19 60:21 66:1,3,6 126:10 276:8 300:6 call 7:19 10:8 15:5 23:5 118:12 called 1:11 9:16</p>	<p>24:10 32:11 34:5 128:16 139:22 184:1 197:12 206:3 211:19 236:17 calling 27:7,8 122:15 camels 197:12 camera 24:13 248:2 Campanella 134:6 134:12 136:15 137:4,17 147:20 163:11 183:14 213:24 214:1 278:23 299:20 305:1,12 306:6 306:17 Campanella's 186:6 canal 133:19 140:1 cap 30:22,23 55:11 132:23,24 133:8,9,10,11,22 140:17 153:11 153:12 162:10 162:10,11 292:5 307:24 capable 8:1 capacity 207:18 capped 152:3 168:17,20 290:20 291:1 292:21,22 capping 166:14 294:12,17,18 capture 21:1 captured 236:5 capturing 174:12 career 207:14,16 careful 21:18 carefully 68:14 carries 21:11 carrying 28:19</p>	<p>case 11:13,15 14:23 66:20 71:19 102:22 105:8,10,11 173:20 194:22 206:13 208:17 208:19 209:16 252:1 261:7 271:14 281:17 categories 48:4,5 48:10 51:19 212:20 213:13 264:19 271:9 304:12 categorization 48:3 categorized 212:19,20 category 48:13 287:12 299:11 causation 14:12 243:24 244:7 cause 1:10 11:12 caused 8:10,12 13:3 14:14 16:13,14 125:20 216:14 237:1 240:15 257:17 257:23 causing 11:17 Cave 233:6 center 269:7 centered 232:7 centerline 268:2,4 268:8 certain 66:3,3 181:1 216:14 223:16 224:8 230:17 231:15 235:24 239:16 267:16 304:20 certainly 100:18 260:21 Certified 311:3 certify 311:4</p>	<p>cgrant@atg.sta... 2:12 chair 8:3 77:6 chairs 250:8 challenge 15:24 challenged 265:17 challenging 69:4 chance 18:5 205:11 247:6 change 255:10 288:1 changed 33:5 changes 181:5 characterize 160:11 charge 130:3 charged 48:21 201:12,14 chart 76:8 charts 47:18 74:21,23 check 170:15 267:20 chemical 129:9 Chicago 1:14 2:4 2:11 27:18 311:20 choose 95:14 223:9,17 Chris 77:3 187:11 Christopher 2:9 10:17 cindery 253:8,10 circle 197:6,10,13 197:16 247:19 259:8 circled 248:17 circular 202:11 circumstances 9:13 Citizens 1:5 City 34:2 151:22 152:23 155:3 163:23 164:2,22 165:7,15 220:4</p>
---	--	--	--	--

<p>229:10,16 285:6 304:6 306:1 clarification 126:19 250:21 clarify 38:23 126:12 139:2 181:10 250:11 clay 126:17 133:23 152:4 162:13 clean 127:6,8 133:21 134:1 140:15 152:19 152:22 153:7,11 153:11,14 159:24 168:21 190:17 230:11 230:16 232:6,8,8 232:11 233:24 234:8 235:10 236:3,8,9,13,14 249:19 255:15 266:6,10 268:9 269:4,7 289:19 293:1,2,7,8,11 293:15 294:10 294:13,16 295:13,16 296:4 296:5 299:23 304:5 cleaner 249:12 cleaning 12:20 153:14 cleans 13:3 cleanup 9:2,11 12:24 13:9,17,22 14:5,6 15:17 69:18 210:13,16 225:20 cleanups 210:20 clear 18:13 71:10 119:9 174:9 237:24 238:6 249:22 262:22 clearing 186:2</p>	<p>clearly 126:9 128:23 177:12 cleat 18:8 click 79:10 clicks 24:15 close 139:14 168:13 175:15 188:13,14 192:17 198:21 199:12 256:20 closed 125:9 168:14 closer 178:8 266:22 closure 149:5,6 cluttered 65:9,18 65:21 CMS 36:22 co-counsel 15:13 Co-president 208:3,4 coined 212:21 colleague 10:6,15 collected 190:14 220:15 221:13 222:17 collective 304:21 collectively 180:4 263:2 color 57:24 74:11 93:3 147:2 colored 147:5 174:16 coloring 74:18 column 78:13 160:3,4,5,7,10 280:4,9 301:17 301:21 columns 51:17,18 103:9 300:14 combined 95:23 277:13 278:16 278:18 280:14 282:3 come 23:21 39:20</p>	<p>39:21,23 68:4 75:19 88:24 93:7 135:4 165:8 166:20 215:4 232:18 238:22 239:7 276:7 278:12 280:1,7 281:15 284:11 301:11 305:3 309:3 ComEd 74:8,12 74:13 152:20 285:8,9 286:9,12 288:23 comes 17:20 59:12 199:19 274:17 274:22 275:3 278:19 286:7 305:5 309:13 coming 10:5 93:20,21 177:1 215:13 219:17 275:11 Comm 58:2,10 59:2 62:15 63:2 63:20 commenced 144:14 commences 141:16 commencing 1:15 144:16 commented 227:18 comments 44:7 common 263:10 commonly 32:11 Commonwealth 229:11,17 communicated 30:5 communication 140:4 compactd 162:13 companies 134:10</p>	<p>134:12,16 136:23 214:6 company 129:20 129:21 130:1,3 185:9 214:1 271:21 compared 95:20 185:3 225:7 comparing 124:8 211:11 comparison 226:10,11,12,20 competitive 131:9 compiling 299:1 complainant 1:4 4:5,6,7,8,9,10,11 4:12,13,14,15,16 4:17,18,19,20,21 4:22,23,24 5:1,2 5:3,4,5,6,7,8,9 5:10,11,12,13,14 5:15,16,17,18,19 5:20,21,22,23,24 6:1,2,3,4,5,6,7,8 6:9,10,11,12,13 6:14,15,16,17,18 6:19,20,21,22,23 7:6 35:4 37:20 42:13 46:1 49:6 52:5 53:4 54:9 55:17 56:7 81:18 83:17 89:9 90:20 101:4 102:17 106:12 122:4 136:7 137:9 141:21 142:11 145:2 148:18 149:17 150:7 151:8 152:7 154:1 156:6 159:5 170:9 173:1 175:17 176:14 177:21 179:7 182:22</p>	<p>184:18 185:13 210:1 213:7 215:21 227:6 228:10 229:1 230:1 231:6 233:1,13 234:15 235:2 246:1 257:11 258:7 261:17 264:12 266:2 271:5 274:3 279:3,15 285:2 291:16 299:13 300:9 304:1 complete 30:19 33:7,20 106:6 131:16 135:7 146:10 152:24 158:4,6 243:7 311:7 completed 9:10 52:18 58:9 106:6 107:17 108:2 125:7 132:4,18 136:15 138:23 140:15 154:9,24 162:19 172:6 180:17,20 210:10,11 completely 193:18 238:5 242:6 completing 52:23 150:20 271:16 completion 43:22 45:12 47:15 52:11 53:9 127:9 130:17 131:10,16 150:11 complex 95:18 124:19 complexity 125:15 compliance 130:6 compliant 113:4 complicated 22:1</p>
--	---	--	--	---

<p>71:19 125:14 277:11 300:6 309:5 complies 247:21 comprise 297:18 computer 36:13 122:21 170:17 172:13 concentrating 207:17 concentration 207:9 concern 72:5 concerning 233:8 conclude 208:24 conclusion 215:14 concurred 242:20 condition 55:4 conditions 216:10 216:15 231:15 240:16 242:5 251:4 257:23 303:10 conduct 8:24 conducted 7:10 86:19 87:2 125:24 140:13 200:20 conduits 176:9 confirm 165:17 confirmation 159:19 204:15 confirmatory 204:13 confused 121:6 confusing 71:15 239:2 276:9 279:1 connected 30:12 57:18 connection 7:17 29:8 connects 54:21 64:9 consent 233:7</p>	<p>conservative 95:20 96:2 124:9,10 235:7 236:4 consider 275:18 considered 11:11 96:1 211:9,11 216:11 227:21 236:22 consistent 80:22 119:2,6,16 180:6 180:12 182:8 242:23 244:4 250:18 296:15 consolidation 226:24 construct 140:17 constructed 168:22 180:15 202:17 293:12 constructing 133:22 168:21 construction 30:3 30:19 43:21,21 59:20 61:12,15 61:20,21,21 62:2 77:1 98:18 112:24 114:14 130:17 131:3,15 133:21 134:1,9 134:11,16 137:3 137:5 140:11 147:19 148:1,7 150:11 152:18 157:8 186:2 193:10 200:19 209:3 211:1 213:19 242:24 245:14 246:14 247:9 251:5 252:3 265:1,4 271:18,19 276:13 291:22 294:16 295:17 305:9</p>	<p>consultant 207:13 Consultants 35:14 46:10 208:5 226:13 consulting 50:18 contact 284:11 contain 178:21 199:21 200:11 209:15 235:14 contained 109:6 114:4 120:5 122:1 140:24 150:16 166:21 169:23 201:9,21 237:16 251:8 containing 295:9 contains 150:17 171:24 178:24 contaminated 69:8 105:24 110:3,8 231:24 236:7 293:20 contamination 13:3 32:9 114:10 150:21 193:4,6 221:16 222:13 contemplated 138:1 139:24 contend 60:21 66:4,18,23 contends 15:3 contention 67:17 contested 16:7 context 17:7 69:17 contiguous 96:6 96:14,20 continuation 274:19 continue 22:8 23:2 32:15 71:23 133:5,7 continued 31:20 33:6 169:11</p>	<p>242:19 243:3 continues 16:18 60:5,9 63:13,14 298:2 continuing 25:21 26:4 65:10 169:16 continuous 57:8 232:4 contract 135:9 137:16,20,22 144:4,7,8 contractor 114:3 114:16,24 137:3 137:5 138:8 142:6 143:9 144:11,14 163:5 163:9 165:11 contractor's 131:23 213:23 contractors 131:11 134:6,20 134:21 265:4 contribution 210:15 contributions 210:16 contributory 211:4 control 1:1,12 7:4 15:12 16:21 17:4 92:23 237:3,18 238:8 238:15 311:1 controlled 12:11 238:16 conveniently 89:4 conventional 143:10 conversations 182:14 Cook 311:12 coordinate 78:14 143:7 155:17 coordinates 37:8</p>	<p>37:9 39:18,19 74:22 76:10,11 79:13,14,18,22 79:24 142:16 143:8,9 155:24 224:1,5 copy 102:21 corner 57:7 75:21 76:17 77:16 82:17,19 84:13 86:10,13 143:4 143:17 155:12 185:8 197:24 198:1,2 202:8 corners 74:24 78:15 Corps 132:1 correct 22:13 32:3 32:4,21 38:10 42:21 43:15 44:11 46:24 47:4 49:24 51:1 57:20 59:17 60:4 61:14 62:22 63:14 64:16 67:13 79:16 80:17 88:13,14,22 89:2 90:15 91:20 92:4,5 94:20,23 95:8,9 97:18 98:9 99:3 103:18,19 104:24 105:13 107:1,4 109:12 109:13 110:9,13 110:14,17 111:7 111:7,8,18 112:1 112:5 113:5,6 116:7,13 122:2 128:2 137:1,20 137:21 147:18 157:6 160:20 163:3 166:7 167:20 181:20</p>
---	--	--	--	---

181:21 191:10 192:2 193:15,16 194:4,7,8,11 201:16,17 203:20 206:13 206:14,21 209:23 210:5 218:8,13,20,22 218:24 219:1,3,4 225:18 226:18 228:20 231:19 232:16 234:12 236:10,11 240:2 241:9,10 249:2 251:8,9 252:19 253:1,5,6,8,9 254:14,17,18 255:4 256:22,23 261:6,13,14 262:12,13 263:24 264:6,11 264:16 266:10 266:11 268:18 269:2 270:12,13 271:1,2 272:7,11 272:14 273:12 273:13,19,20 275:3,7 276:4,5 276:21,24 281:5 281:7,8 282:9,10 286:11,13,14 287:6,9,10,13,14 288:16,18 289:19,20 290:1 290:2,4,12,21,21 290:23 292:22 292:23 298:11 298:18 299:2,6 300:16 301:8,9 302:1,16,19 305:16,17 306:9 306:14,15 307:15 308:3,4,8 308:13 311:7 corrective 227:22	correctly 66:12 280:11 correspondence 45:8 46:9 233:5 corridor 95:16,24 112:16,19 127:6 127:8,10 134:1 152:22 168:22 190:17 230:16 232:9 234:8 255:16 266:6,10 268:9 269:3,4,8 293:1,2,8,12,16 294:10,13,16 295:14,17 296:5 296:6 299:23 corridors 123:22 133:21 140:15 152:19 153:7,15 230:11 232:11 233:24 235:11 304:6 cost 8:22 9:6,8 12:23 13:4,13,14 14:1 22:22 29:4 32:17 44:20 48:2,2 52:13 53:9 69:16 70:15 87:20 88:24 91:18 92:11 93:8 94:19 103:10 112:22 115:17 126:11 183:5,19 184:6 190:22 193:24 194:1,4 210:13,15 214:8 214:17 216:2 227:16 257:17 262:17 270:2 273:7 276:23 278:7 279:21 289:4 296:20 299:11 301:3 302:9,12,14	305:3,4 cost-saving 306:23 costs 9:12 14:11 14:13,17 17:3,24 21:2,8 45:3,10 45:12 47:11,13 48:3,16 49:19 50:4 52:11 53:12,24 54:4,5 55:1,15 60:20 62:18,23 67:14 67:17 68:12 69:18 72:13,16 92:2,7,14,17,18 92:22 93:5 94:4 94:24 95:7 98:19 99:3,24 105:4 110:11,12 111:17,24 112:1 112:3,18,19,21 114:6,7 115:24 150:23 163:13 182:17 183:11 183:17 185:21 185:22,24 186:2 186:2,5,10 195:2 195:4 207:24 211:22 212:6,8 212:11 213:12 213:23 214:3,4 214:11,15 215:9 215:16 216:17 216:21 240:1 244:2 262:1 263:3,7,7,18 270:15,22 271:15 275:20 276:10 277:13 277:24 280:13 282:13 284:18 286:18 289:6 290:11 292:16 294:23 298:24 299:18,19,21	302:11 309:2 counsel 7:18 15:13 count 99:19 100:7 counter 180:19 counterclaim 14:23 counting 284:20 County 134:7,12 311:12 couple 81:9 186:19 212:14 214:23 258:12 course 172:21 211:14,21 212:13 254:18 289:16 court 11:8 24:7 27:3 34:5 45:17 58:12 99:7 128:11 covenant 31:3 covenants 30:24 43:24 cover 43:4 52:23 54:6 85:17 89:16 107:6 126:17 137:14 137:15 148:24 162:14 268:22 covered 22:22 99:13 153:9 158:7 168:24 covering 55:4 COVID 9:21 COVID-19 7:11 crack 221:12 create 25:14 36:15 36:18 37:3 45:6 47:6 53:16 123:16 140:15 153:7 186:15 217:21 224:17 225:8 234:8 258:15	created 25:16 38:12,16 39:6 45:8 47:5,7 116:19 117:3,7,7 117:24 120:3,7 121:7 217:19 222:22 230:17 266:6 293:1,2 creating 47:20 117:12 215:7 236:15 creation 26:14 crew 185:4 criteria 97:12,20 98:5,14 cross 63:24 80:12 87:16 181:13,15 248:11 Cross-Examina... 3:5,12 cross-examining 92:16 crosscheck 215:8 crosshatch 144:23 crosshatching 283:13,15 CRR 1:13 2:21 311:18 cryptic 67:2 crystal 71:10 CSR 1:12 2:21,21 311:18,21 cubic 109:20,22 109:23 culpability 22:17 22:18,19 curious 116:24 118:24 current 103:9,16 208:2 currently 27:17 129:15,16 Currie 8:3 cut 168:2,17,19 176:24 187:8
---	---	--	--	---

203:9,15 292:5 307:24 cutout 250:22 cuts 263:24 290:17 Cylindrical 202:13	232:19 dealt 243:11 debris 109:21 175:5 176:7 177:2,15,17,17 178:6 179:12 180:7 181:5 188:5 189:20 190:1 December 8:9 19:12 88:13 95:4 97:10 194:21 205:10 decide 8:2 12:18 13:5 92:24 239:8 decided 20:8,8,11 70:1 decision 66:17,20 66:21 67:9 68:22 92:24 93:4 135:8 231:17 238:14 decommissioned 58:23 deemed 236:1 deems 9:12 deenergize 292:4 deenergized 139:13 167:24 168:4 169:21 177:1 292:21 deenergizing 168:7 deep 152:21 166:16 169:23 252:5 291:9 deeper 166:22 167:1 252:16 deepest 161:22,24 162:5 defended 16:5 defined 68:11 71:7 236:16 definitely 225:1	delay 9:22 deliver 23:6 deliverables 29:12 33:10 demarcation 236:4 262:22 demarking 247:13 demolish 178:20 demolition 198:19 demonstrate 117:21 174:1 204:16 demonstration 220:19 demonstrative 15:10 118:18 125:12 denied 26:12 denominator 61:1 66:7 denote 259:3 denotes 84:11 denoting 219:23 266:15 Denovo 134:7 Department 1:6 2:14 7:6 10:14 depending 41:2 104:4 222:8 depends 24:23 depicted 61:11 167:19 246:15 282:8 deposeth 24:11 128:17 206:4 deposited 115:8 deposition 102:1 102:3,22 depositions 211:17 depth 81:4 142:20 159:24 160:1,8 181:1 188:6 221:13 232:1,2 235:9 268:14,14	288:22 291:6 296:17 depths 147:7 160:11 describe 28:16 30:15 36:6 40:20 52:9 57:1 76:11 78:9,24 80:7 82:14 122:20 123:3 129:23 138:3 142:24 147:3 165:24 167:6 173:7 180:4 184:24 196:24 207:5 211:10 275:9 283:6 290:15,16 293:5 described 57:7 125:14 132:12 138:7 141:4 157:16 169:9 173:18 223:8 265:5 271:12,18 276:15 307:14 307:20,21 describes 56:15 150:18,20,24 183:10 describing 35:19 164:13 197:17 197:19 275:8 description 66:1 91:5 150:17 169:13 296:15 descriptions 124:13 design 36:14 207:19 247:16 designated 111:7 designation 111:6 designed 111:6 desk 175:14 detail 54:7 57:10 214:8 217:6	241:12 251:12 detailed 48:22 184:6 detailing 213:6 details 54:23 100:15 119:17 188:10 309:15 detected 85:15,15 108:14 141:3 160:16 220:8,20 232:15 236:2 295:10 determination 8:21 300:2 determine 14:13 48:16 212:7 216:4 257:16 273:1 275:14 293:3 307:6 determined 115:7 165:1 190:14 237:18 240:16 245:12,18 257:22 267:13 294:11 305:23 determining 140:12 282:12 303:17 detour 246:13 247:9 248:15,16 251:19 256:13 develop 41:16 113:3 125:6 240:5 developed 30:1 32:9 54:7 developing 28:18 228:5 development 39:9 112:22 device 221:8,11 dewater 153:17 304:5 dewatering 157:23 168:10
--	--	---	---	---

303:3,4,5,17,20 303:23 305:1,4 305:22 306:6,17 307:5 308:16 309:9,12 diagonal 80:12 84:4 144:23 diagonally 169:11 290:17 diagram 117:17 diameter 221:5,6 difference 17:18 74:11 92:17 differences 120:6 120:13 different 14:11 28:5 45:9 66:21 101:2 106:9 119:14,17,17 122:22 125:21 139:23 165:3,9 179:11 180:20 180:23 181:4,11 196:5,6,23 203:20 207:23 212:24 213:12 247:14 251:18 263:6 267:13 282:13 304:11 309:10 differentiate 97:21 differently 92:24 304:15 difficult 58:1 59:2 125:15 128:24 180:22,23 difficulty 262:24 dig 77:2 291:8 digging 201:12,15 digital 36:8 41:7 dimensions 121:22 Direct 3:4,11,19 directed 8:24	127:19 directing 161:15 direction 167:13 238:7 311:10 directly 40:2 49:2 197:10 214:5 disagree 14:10 67:10 72:9 238:6 disagreement 8:19 71:12 disappeared 171:15 discharge 185:24 308:16 disconnect 242:8 disconnection 292:10 discontinuous 181:7 discuss 55:23 127:20 163:18 167:5 227:10 274:1,7 discussed 39:15 133:15 182:13 219:3 263:12 264:8 267:8 284:12 301:15 discussing 82:9 161:19 discussion 102:7 207:1 214:24 215:1 222:23 discussions 211:2 displaced 182:2 displayed 182:5 disposed 163:7 dispute 11:20 13:23,24 19:16 19:18 233:8 255:7 265:15 disputing 92:13 disregard 241:21 244:15	distance 36:24 297:15 distances 66:3 distinct 96:11 distinguish 50:23 74:7 district 186:1 307:2 308:18,23 308:24 disturbance 125:20 ditch 139:23 150:23 152:1 divided 51:20 70:13 277:23 278:7,11 298:15 dividing 281:7 divvied 13:20 DMP 185:8 DMP-incurred 308:15 doctor 27:8,8 84:7 119:21 document 35:4 37:20 42:13 46:1 47:21 49:6 52:5 53:4 54:9 55:17 56:7 65:10,18,19 81:18 83:17 89:9 90:20 94:19 99:21 101:4 102:17 106:12 117:1 122:4 136:7 137:9 141:21 142:11 144:4 145:2 148:18 149:1,2,12,17 150:7,16,17 151:8 152:7 154:1 156:6 157:12 159:5 170:9 173:1 175:17 176:14	177:21 179:7 182:22 183:4,12 184:18 185:13 210:1 213:7 215:21 217:19 227:6 228:10 229:1,8 230:1 231:6 233:1,13 234:15 235:2 246:1 249:19 250:3 251:7,10 251:21 256:14 257:11 258:7 261:17 264:12 266:2 271:5 274:3 279:3,15 285:2 291:16 299:13 300:9 304:1 documentation 48:18 277:8 documenting 132:3 documents 44:19 134:17,19 207:21 211:14 249:1 256:13 doing 17:7 21:4 23:18 50:19 77:21 115:16 119:8 130:24 198:13 200:18 207:16 216:17 224:12 231:13 272:9 277:18 308:5 dokie 83:14 Donald 214:8 door 289:19 Dorgan 3:17 11:19 14:7,12 19:24 34:3,6,15 37:14 41:10 44:13 46:10 72:16 87:21	88:18 90:15 92:17 93:11,11 103:8 110:12 112:1,20 114:7 115:18 116:12 116:17 120:20 121:7 123:16 156:16 181:23 182:13 193:24 194:5 195:2 206:2,7,11 207:4 209:13 217:17 222:21 224:18 225:16 226:6 236:16 238:19 243:8,23 244:7 254:23,24 258:19 259:11 261:23 263:21 264:11 272:20 279:19 283:4,8 293:5 Dorgan's 46:24 72:9 93:7 163:20 dot 69:20,22,22 dots 259:1,2 double 79:10 267:20 284:20 Doug 46:10 249:13 Douglas 3:17 206:2,11 209:13 Dr 24:2 26:22,24 27:7 28:9 34:8 34:14 38:22 39:2 40:18 42:8 44:9 49:15 52:9 53:19 55:12 56:1 57:24 78:3 80:3,7 83:14,23 84:15 85:20 86:3 87:16,20 90:10 93:13,19 93:24 102:23
---	--	--	--	---

<p>105:8 119:1,15 122:14 126:1 127:14,15,16 211:23 212:10 212:19 213:16 217:3 222:24 223:20 225:17 258:21 262:8 264:24 299:1 drama 251:1 draw 168:11 253:19 drawing 119:16 120:14 143:14 143:15 144:22 145:9 155:19 156:3 165:10 167:3 223:4 224:16 253:4 254:1 drawings 164:14 164:23,24 255:3 258:20 drawn 254:24 Drew 51:4 217:15 229:21 258:5 263:19 265:24 266:22 272:19 279:8 283:3 300:22 drillings 97:13 drive 151:20 303:6 driven 20:23 296:5 driving 81:10,12 98:11 295:13,16 307:13 drove 228:2 dry 303:10 Due 7:11 dug 165:17 198:21 dull 22:1 duly 24:10 128:16</p>	<p>206:3 dumped 12:20 114:21 dumping 8:11,13 8:17 11:18 12:10 16:13,15 16:19,21 67:3 68:12 69:3 115:12 Dunton 226:16,17 duties 185:3 DWG 223:5,6,19</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 2:1,1 3:1 4:1 26:20,20 87:18 122:11,11,11 127:1,1 128:18 128:18 187:5 196:13,13,13 202:3,3 204:9,9 206:5,5 E-B-I-H-A-R-A 27:6 E11 155:20 EAM 294:8 earlier 49:21 104:3 141:4 162:8 211:16 214:21 223:8 224:11 227:17 240:17 242:6,9 242:12,18 245:12,17 249:11 250:17 259:7 264:10 267:8 276:15 284:12 301:16 308:22 early 124:8 207:13 earnest 148:9 earth 148:9 207:7 easements 113:7,9 113:13</p>	<p>easier 10:8 51:7 easily 159:12 east 60:7,10 80:10 110:16 111:13 147:6 166:5 167:12 168:18 177:1 191:22 218:6,11 219:2 256:12 290:21 291:3 295:9 298:2 eastern 57:5 60:7 156:23 289:2,3 297:23 easting's 142:17 142:24 143:5,13 143:24 155:17 155:20 easy 126:15 easy-to-use 116:4 Ebihara 3:2 23:6 24:2,6,9 26:22 26:24 27:2,7 28:9 34:8,14 38:22 39:2 40:18 42:8 44:9 49:15 52:9 53:19 55:12 56:1 57:24 78:3 80:3,7 83:14,23 84:15 85:20 86:3 87:16,20 90:10 93:13,24 102:23 105:8 119:1,15 122:14 126:1 127:14,15 127:17 211:23 212:10,19 213:16 217:3 222:24 223:20 225:17 258:21 262:8 264:24 299:1 Ebihara's 93:19 ECA 32:11,14,18</p>	<p>32:23 191:3 227:17 231:16 234:20 echo 10:20 edge 8:15 16:17 63:19 169:10 257:3 Edison 229:11,17 education 25:13 educational 129:7 207:5 effect 11:10 61:1 effective 125:23 effort 33:21 95:22 96:4 98:11,19 110:6 124:21,24 125:1,3,6 195:1 227:2 251:5 262:23 278:20 292:19 306:5 efforts 242:24 eight 48:4 107:16 108:2 284:23 Eighteen 108:21 either 22:19 69:3 104:4 108:14 120:11 268:12 276:19 303:5 elaborate 257:19 284:4 electric 229:11,17 285:9 286:12 electrical 124:18 176:9 electronically 116:17 172:11 element 183:21 184:9 304:22 elements 40:21,23 118:7 124:23 183:10,10,11,24 212:21 217:23 303:19 304:21 305:22 307:11 307:13</p>	<p>elevated 113:16 113:21,23 114:1 elevation 180:15 246:24 252:6 303:9 elevations 211:3 254:16 Ellen 2:9 10:12 15:13 249:11,20 ELM 107:17 embankment 177:14 220:1 employee 48:20 employment 33:5 encounter 170:3 encountered 169:24 245:8 291:6 ended 62:16 139:21 216:11 228:2 endpoints 115:24 ends 60:10 221:20 enforcement 1:5 15:19 228:1,3,16 233:8 284:3 295:7,8 engineer 129:14 130:3 131:13 137:23 185:4 engineered 126:17 engineering 27:11 27:14 28:7,20 29:11 30:21 32:16 33:10 36:14 40:4 41:17 55:1 113:1 129:9 183:15 185:3 190:22 207:15 210:19 213:15 227:16 255:2 264:23 271:13 271:15</p>
--	---	--	---	---

<p>engineers 68:2 86:13 132:2 ensure 11:10 enter 9:11 63:6 entered 9:14 291:1,4 enters 167:10 290:18 292:5 298:4 entire 43:5 69:7 140:18 147:9,12 149:12 167:8 234:7,9 255:16 266:9 296:17 entirely 93:18 269:10 273:6 entirety 43:23 111:9 entities 208:6 entitled 1:10 7:5 environment 11:11 140:19 153:13 environmental 15:18 27:11 28:6 31:2 43:24 134:8 207:9,12 207:17,18 208:1 210:11,20 221:18 environmental/... 207:15 colaughlin@atg... 2:12 EPA 11:8 13:22 29:19 30:5,14 32:10,24 41:18 41:19,21,23 42:11 43:17,19 50:9 54:17 65:20 80:21 107:1,2,3 113:4 120:22 141:10 141:12 190:23 225:21,23 226:4</p>	<p>226:7 227:18,18 227:24 228:19 230:16 231:13 231:13 233:9,12 234:11,19 235:1 260:16 288:19 EPA's 214:10 equal 95:23 220:8 equipment 143:10 143:24 148:13 150:19,21 155:8 155:16 erosion 132:22 escalation 55:9 Essence 8:6 essentially 75:5 establish 268:22 established 152:23 establishing 52:22 estimate 54:4 124:10 estimated 52:19 109:18 estimates 54:17 60:23 111:16 estimation 60:20 estimations 61:2 evaluate 210:14 evaluated 207:21 207:22 242:5 257:15 evaluation 32:17 124:8 131:12 135:4 190:21,22 194:1 227:16 242:14 event 9:17 230:21 eventually 228:5 everybody 10:21 119:10 170:20 171:2,4 268:11 277:11 evidence 9:1 13:7 17:2 238:22</p>	<p>evidentiary 7:23 exactly 17:7 19:17 57:17 68:8,14 72:1 121:1 187:21 225:5 302:3 examination 3:4,6 3:11,13,15,19 71:1 example 94:3 139:12 143:18 231:10 examples 210:8 excavate 140:5 158:13,18 169:22 180:24 190:11,16 231:23 291:6,10 excavated 81:3 85:13 139:19,20 146:23 151:24 160:1 166:12 168:16 187:24 190:13 200:12 245:15,16 268:13 282:20 282:24 283:12 284:4 291:4 excavating 188:20 201:7,8,18 excavation 56:15 56:16 74:21 76:15,19 78:4,5 78:6 79:2,14 80:8,11 142:19 142:20 144:18 144:20 147:6 151:20,23,24 152:17,24 153:2 157:17,21,23 158:3,4,6 159:22 160:7 161:19 165:23 166:1,4 166:13,17 168:20 169:23</p>	<p>170:2 172:1 173:12 174:13 175:3,7 190:7 199:12 200:19 201:2 204:1,3,12 204:13,14 230:10 232:5,6 233:24 288:8,14 288:24 289:5 290:9 304:8 306:2 excavations 75:1 152:2,21 158:7 160:19 161:23 161:24 174:3 189:2,10,13 199:4 excavator 174:13 222:6,8 excavators 148:14 Excellent 162:6 186:21 exception 95:3,6 259:5 excerpt 137:19 151:4,5 159:1 excerpts 149:1 exclude 127:18 excluded 112:7 excuse 17:11 20:3 56:3 60:6 62:19 63:8 105:6 154:11 155:22 156:24 164:14 168:1 192:21 297:22 303:12 executed 137:17 execution 28:22 130:16 131:14 exercise 175:12 263:5 exhibit 4:5,6,7,8,9 4:10,11,12,13,14 4:15,16,17,18,19 4:20,21,22,23,24</p>	<p>5:1,2,3,4,5,6,7,8 5:9,10,11,12,13 5:14,15,16,17,18 5:19,20,21,22,23 5:24 6:1,2,3,4,5 6:6,7,8,9,10,11 6:12,13,14,15,16 6:17,18,19,20,21 6:22,23 18:8,9 18:20,23 34:17 34:19,24 35:5 37:18,21 40:19 42:14 43:8 45:22,23 46:2,16 46:23 49:4,5,7 52:6 53:3,5 54:8 54:10 55:18 56:5,8 74:20 75:6,12 77:9 81:19 83:15,18 85:18 86:4,5 88:2 89:3,10,22 90:18,21 100:19 101:5 102:18 106:8,13,24 109:15 116:5 119:2,10 122:1,5 125:12 136:6,8 137:10 141:22 142:12 144:19 145:1,3 146:15 148:17,19 149:18 150:5,8 151:6,9 152:8 153:20 154:2 156:7 159:6 163:18 170:6,10 171:20,23 172:24 173:2 174:10 175:18 176:15 177:22 179:8 182:21,23 184:19 185:14 196:19 209:8 210:2 213:8</p>
---	---	--	--	---

<p>215:22 224:13 227:7 228:8,11 229:2 230:2 231:7 232:22 233:2,14 234:16 235:3 245:22 246:2 249:15,17 257:12 258:8,24 259:4 261:18 264:13 266:3 271:4,6 274:4 277:4 279:2,4,11 279:16 285:3 291:17 299:14 300:5,10 304:2 Exhibit's 34:20 exhibits 18:4 40:12 68:4 88:3 90:2 101:24 102:2,15 173:16 277:5 existed 216:10,15 246:22 expand 17:8,11 79:4 245:4 expanded 20:17 26:9 expands 20:2,3 233:23 expansive 19:19 20:21 expected 14:10 215:12 expended 44:21 98:19 110:6 124:21 125:1,3 expenses 21:12 55:3 308:15 experience 157:1 157:11 198:12 198:16 200:10 210:8 211:5 expert 14:7,9,15 15:2 22:18,19 25:6 44:14</p>	<p>46:24 66:2 70:7 70:8 89:18 93:12 156:15 206:18 209:12 251:8 263:4 expertise 25:13 26:10,14 259:17 experts 14:8,8 60:19 212:2 explain 124:9 181:9 212:7 225:6,6 237:13 239:18 245:9 247:24 248:1,1,3 248:5,8 249:22 264:20 268:3,10 271:10 277:12 292:2 294:4,6 296:2 297:13 299:17 300:18 305:18 306:19 306:21 308:19 explained 16:12 166:23 268:19 309:6 explaining 276:10 exposure 193:6 232:6,20 extend 111:13 127:7 extended 235:16 245:5 extending 232:2 extends 113:21 167:16 290:21 extensive 68:23 94:17 extent 16:23 32:9 65:13 104:2 105:2 240:7,7 243:14 251:4 297:24</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F 6:17 150:2</p>	<p>204:9 279:2,4 300:5 face 24:3,15 facilitate 134:23 facility 193:15,20 facing 179:11 fact 9:15 92:21 93:2 216:14 223:3 factors 8:22 12:16 facts 9:12 falling 250:7 falls 16:24 familiar 28:10,13 48:23 56:1 112:15 113:10 120:21 130:8,11 137:24 183:22 191:5,20 194:18 194:20 195:16 208:17 226:1 far 8:19 11:1 24:18 51:16 60:2,24 83:8 119:10 127:6,18 199:10 211:6 239:4 245:4,5 247:9 272:1 294:14 fast 244:10 faster 10:9 fault 69:24 feature 264:10 features 36:10 120:21 121:4 144:13 224:8 February 47:7 55:14 88:6 90:15,15 FedEx'd 136:3 fee 308:24 feel 215:10 fees 308:21 feet 36:23 78:6 85:17 96:16</p>	<p>166:19,21 175:6 176:8 180:10 222:7,7,7 232:1 232:7 248:19 252:14 268:14 296:23 297:2,2,4 297:6,11,12,15 297:18,23 298:8 298:15,16 felt 215:14 242:9 243:4 fence 155:8 186:1 fencing 133:1 155:2 214:6 FIB 64:13,15,19 73:3,7,12,19,23 74:1,9,14 fiber 64:12,13 219:21 289:23 fiberoptic 73:4 74:12 127:9 152:20 219:19 229:12,18 274:10 285:8,8 286:9 288:23 fibers 230:13 231:2 232:1 field 32:20 39:23 77:1 97:22 104:5 114:14 165:7,15 212:3 221:18 247:16 Fifteen 106:17 figure 11:19 15:10 17:21 18:21,22 19:2 25:14 34:15 35:13 41:3 56:14 57:1 57:2,4,10 74:20 83:16 93:21 103:22 125:15 142:19,21 143:2 144:19 147:4,8 154:23 156:22 163:19,22</p>	<p>165:24 166:8 167:4,4,9,19 217:17 222:21 223:3 224:2 226:6 236:16 245:20 246:15 246:18,19 247:8 247:24 248:18 249:8,11 251:6,6 256:8 258:11,13 258:17,19,19,22 258:22 259:1,11 260:21 263:21 264:11 272:20 283:4,8,11 293:5 299:8 figures 19:6 25:6 25:9,11,14,16,22 25:24 41:17 42:4 93:20,20 110:2 121:9,10 123:16 142:2,3,4 142:6 211:2 224:18 258:18 282:1 file 36:9 38:6 67:1 155:24 223:5,6,9 223:20 225:16 files 80:23 fill 126:3,5,12 158:8,13,18 232:6 245:2,8,13 246:21 248:23 248:24 252:2,6 252:12,19 253:8 253:10 255:2 256:22 filled 304:19 filling 159:22 final 9:11 39:12 42:11 43:1,7,23 44:2 45:13 52:13,24 53:14 85:23 88:7 149:5,6 159:1</p>
---	---	--	---	---

<p>204:7 211:19 finalize 33:21 finalized 31:3 33:19 44:1 finally 9:21 214:7 214:10 227:20 find 68:2 69:10 84:19 89:4 93:5 106:10 241:3 finder 93:2 finding 8:21 65:7 89:7 216:5 findings 195:3 214:20 259:19 finds 16:13,20 fine 18:14,18 35:2 61:23 154:17 171:16 189:14 206:17 finish 22:13 86:6 123:23 finished 141:9 246:23 firm 93:21 first 11:16 12:2 15:5 16:3 23:4 24:1,10 46:22 65:17 88:11 91:17 93:11 94:18 107:15 108:1,11 109:15 109:18 118:1,7 128:16 130:18 136:5 160:3,4 164:4 175:23 193:1 206:3 215:5 237:14 238:10 241:17 242:4 243:11 267:10 271:11 278:22 304:24 305:8 fit 241:22 five 16:6 17:10 175:6 176:8</p>	<p>180:2,10 182:2,5 222:7,7 five-day 16:4 five-fifty 251:15 Fix 290:24 fixed 163:2 fixing 163:4 flange 291:2 292:11 flip 37:17 42:9 45:21 46:22 51:22 55:23 56:5 80:3 81:14 83:15 125:12 137:6 144:24 148:16 149:15 150:5 156:5 175:15 flipping 53:2,18 Floor 2:10 focus 57:21 63:1 75:20 153:5 focused 13:24 135:13 216:6 304:20 focusing 12:2 300:13 folded 50:18 folks 165:15 178:8 follow 161:20 followed 84:10 following 9:1 16:6 87:12 128:7 131:7 135:19 161:4,10 195:8 205:22 208:13 256:4 follows 24:11 82:17 128:17 206:4 foot 81:4 158:13 158:18 166:22 247:15 footnote 254:13 254:15 309:6</p>	<p>force 81:10,12 230:24 forecasted 47:14 foregoing 311:6 Forgive 74:17 forgot 135:13 208:8 formally 43:22 format 223:5 former 107:17 108:3 193:20 218:5 forms 136:14 forth 227:24 fortunately 16:9 Forty-five 100:9 forward 8:1 45:12 239:6 found 7:16 8:10 8:12,16,23 9:3 11:15 12:9,16 13:10 17:5 19:11 60:14 67:2,15 68:15 69:3 83:3 85:9 85:11 125:4 162:20 163:1 164:17 165:20 165:21 174:2 179:24 190:12 192:1 206:18 209:1 215:17 237:20 238:9 244:23 245:16 253:11,14,18,20 254:17 259:15 259:23 260:1,13 261:13 284:6 293:14 foundation 18:4 25:18 71:3,4,17 83:6 216:20,23 four 49:16 81:4 100:3,4 109:10 134:5 166:18,21</p>	<p>222:6 285:13,16 285:17 291:15 307:10,13 fourth 160:5,7,9 308:14 fraction 137:22 fragments 261:8 261:13 frame 21:24 frankly 17:12 21:1 99:20 FRANZETTI 2:2 front 34:12 71:9 107:6 175:15 179:4 fulfilling 11:13 full 129:3 235:10 fully 11:11 funding 210:13 further 3:15 8:16 8:23 12:7 20:10 25:8 44:7 50:4 54:7 87:4 110:16 126:20 143:1 168:18 186:22 197:23 201:24 219:2 232:5 255:18 256:12 264:18 267:11 furthest 77:16 197:17 future 153:9 232:18 284:11</p>	<p>37:1 38:1,21,24 39:1 40:10,15,17 42:18 45:15,18 45:20 46:6,14,16 46:18,21 49:9 51:4,6,11,13,15 52:2,4,8 53:7 54:12 55:22 56:10 58:10,18 59:24 60:1,17,18 61:9,23 62:1 63:10,14,16,17 65:11,16,17 66:15 67:6,16 71:23 72:5,14,23 72:24 73:1,17,20 73:22 75:7,8,16 75:20,23 76:4,7 76:9 77:3,8,11 77:12,19,21,24 78:2,23 79:6,8 79:12 81:23 82:6,8,12 83:4,5 83:10,13,22 84:14,24 85:2,4 85:7,8 86:1,2,6 86:8,23 87:4 90:1,4 91:9,13 91:15 92:6,9,12 92:20 93:10,23 94:5,9,11 100:2 100:5 101:24 102:12,14,16 103:24 104:1,2 105:1,16 106:1 108:20,22 117:5 117:11,16,18 118:2,16 119:4 122:9,10,12 126:20 127:15 127:22 128:2,12 128:13,19 135:11,17,23 136:1,12 137:12 137:13 142:1,22</p>
---	--	--	---	---

G

G 100:21 206:11
209:13
Gale 2:2 3:4,6,11
3:13,15 10:6
23:5,9,13 24:2
24:14 25:1,3
26:3,18,19,21
34:7,11,13,20,24
35:7,22 36:1,3

145:7,14 146:1,9 146:13 148:23 149:22 150:13 151:13 152:10 154:6,10,12,17 154:20 156:11 159:8,15 160:22 161:14,16,17 170:12,14 171:11,16,18,19 173:6,21,22 174:6,7,8 175:22 176:19 178:3 179:15,22 180:1 181:12,18 183:3 184:23 185:18 186:22 187:1,14 189:3,7,12 191:11 192:3 196:11,12,14 200:16 201:24 202:2 204:7,10 204:18 205:15 235:12 310:6 gas 33:24,24 124:18 139:12 151:21,22 152:22 155:2,3,9 167:5,7,23 168:1 168:6,15,17,19 168:21 169:19 169:20,24 170:1 170:3,3 174:17 174:22 176:24 176:24 177:5,7,8 177:9 178:9 185:23 194:10 219:8,9,11 229:10,12,15 263:12,14,15,23 264:5 284:16 285:7 286:6 290:14 291:6,7,9 291:11,21,23 292:4,7,10,14,17	293:4,7,15,18,23 294:2,7,11,15,24 296:20,22 297:24 298:9,10 298:24 299:11 299:22 300:15 301:4,21 304:6 305:24 307:23 308:6,10,12 general 2:8 7:18 10:13 50:16 91:2 132:6 190:1 303:16 General's 10:18 187:11 generalization 104:3 generally 28:2,17 29:16 32:6 33:22 38:19 45:6 47:19 48:15 53:8 56:2 56:24 82:14 129:23 130:12 130:13 139:7 146:20 147:2 151:15 152:15 171:22 183:8 185:19 208:23 242:3 276:17 277:12 290:23 generate 156:3 generated 118:14 211:16,20 242:10 307:5 308:16 generating 41:3 generation 2:7 120:22 gentlemen 111:3 geocomposite 268:20 geographic 224:6 geographical 111:5	Geography 207:8 Geology 207:7 geotextile 133:23 152:3,4 153:1 158:8 162:12 166:13 168:23 268:20 getting 10:22 67:24 77:19 134:3 135:13 159:11 give 17:23 51:24 86:1 97:15 105:2 123:15,17 146:6 159:10 170:12 277:17 298:17 given 17:14,24 20:12 22:15 212:18 239:3,4 257:21 258:20 262:7 298:24 gives 247:16 giving 69:7 glass 49:10,12 53:20 75:10,17 global 39:23 go 10:11 19:23 25:7 47:19,20 50:4 51:4 52:15 54:1 59:6 68:4 71:16 72:7 75:23 76:5 77:4 78:12,19 79:9 81:15 89:3,6 99:16 106:10 124:7 126:8 135:12 144:11 147:9,12 154:16 159:3,10 160:23 161:1 163:19 166:16,22 168:8 168:15 174:6 179:24 182:20 188:4 195:11	196:18,19 197:15,23 204:24 208:10 215:19 217:6 220:12 230:5 239:8 241:11 247:3,6 250:9 263:2,5 264:7,18 270:17,18 279:7 283:9 285:21 300:5 301:20 303:22 305:11 Gobelman 14:9 14:16 15:10 17:13 25:6,13,17 60:22 66:2 71:1 263:4 264:3 265:15 277:1 282:11 302:20 Gobelman's 18:22 19:3,5 25:23 61:1 goes 12:1,6 19:9 19:17,17 24:18 39:16 54:14 59:13 63:13 64:7 66:7 83:5 99:22 110:15 143:11 155:15 167:13 211:6 219:2 221:10 241:8,9 247:10 247:11 292:6 298:1 going 11:5,20,20 11:21 17:8 18:7 19:22 25:8 32:6 34:9 36:4 40:11 45:12 48:24 49:22 55:12 60:11 63:24 65:5 67:23 69:9 71:16 72:16 73:17 77:24 81:15 82:20	88:21 89:4,5 93:7 99:22 100:19 116:3 118:12 119:18 122:13 125:23 128:2 141:17 159:9 161:7 169:18 170:19 173:22 175:11 182:20 196:15 209:20 213:3 216:19 217:6,14 218:2,3 222:17 223:17,21 227:15,22 244:9 244:11 247:23 249:10 251:14 251:16 252:5 256:9 277:9 279:1,7 290:13 294:12 300:13 303:2 305:10 309:22 good 7:1 10:22 13:15 15:11,11 15:12 26:24 28:9 29:7 30:7 32:22 33:15 34:3 35:3,10 37:16 41:9 44:9 45:14 53:22 54:19 55:4 57:21 87:3 91:15 124:5 125:18 128:20 130:7 132:24 156:17 171:16 171:17 172:23 204:18 205:13 206:7,8 256:1 309:20 gosh 205:7 Gotcha 277:9 gotten 267:18 GPS 76:21 143:10
--	---	---	---	---

<p>143:24 144:1,12 155:7,16 grade 134:2 158:8 175:6 176:8 180:10 272:4 graded 220:15 grades 246:22 Grading 134:7,12 Grant 2:9 3:5,7 3:12,14 10:17,17 23:7,10,15,19,23 34:9,21 35:20,24 38:16,19,23 40:8 40:11,16 46:12 46:15,17,20 51:24 52:3 58:7 59:22 60:11 61:4,5,19 63:8 63:12,15 65:5,12 66:10 67:20,23 70:23 71:4 72:21 73:15,19 73:21 75:4,11,19 76:1,2 77:5 82:20 83:1 84:21 85:1,3,5 86:5,22 87:16,19 89:14,21 90:2,9 91:1,12,14,16 92:8,10,15,21 93:18 94:2,12,13 97:3,4,7 99:11 100:4,6,24 101:7 101:13,18,22 102:2,10,13,15 102:20 104:8,9 104:18 105:7,19 106:7,17,22 108:21 109:1 111:4 117:9,12 117:17,23 118:3 118:11,23,24 119:8,12,22,23 121:11,14,16 122:7,9 126:22</p>	<p>126:23 127:2,12 145:23 146:2,5 159:8 173:10,15 179:20,23 181:9 181:16 187:1,2,6 187:11 189:8,14 189:16 191:13 191:16 192:5,8,9 192:19 195:5,10 195:13,15 196:8 196:11 199:22 200:2,3 202:2,4 204:4,19,21,24 310:7 granular 199:17 granulars 178:17 178:19,20 great 29:23 31:5 49:3 51:22 74:17 80:1 83:23 137:6 141:14 144:17 144:24 147:15 148:12,16 151:2 158:12,22 162:2 162:16 163:17 165:22 167:4 171:18 177:10 182:11 187:16 196:18 288:11 310:3 green 169:6 178:15 219:22 219:23 Greenwood 8:14 16:16 31:4 56:20,21 57:3 60:7 62:8 63:19 64:7 65:8,14 66:13 67:4,5 71:18 76:15 83:9 111:17,19 111:21 112:8 162:4 169:8 174:15,20,21</p>	<p>177:3 179:13 180:9 194:14,17 195:17,20,21 201:2,6,13,15 209:4 249:23 251:3,12,18 252:3 255:17 270:11 298:2 306:24 307:3 grid 97:17 160:1,4 220:16 236:8,9 236:13,14 289:3 289:17 grids 111:8 235:14 288:16 288:22 ground 59:13 133:3 143:14 151:18 153:16 165:13 176:10 221:9 224:7,7 groundwater 130:4 303:8,10 group 35:14 46:11 134:7,18,19 208:5 276:14 grouped 95:15 212:23 214:3 grouping 213:12 guardhouse 185:5 guess 70:23 81:8 85:19 93:15 102:5 117:24 143:17 146:19 151:3 160:10 165:2 167:8 175:23 178:14 180:19 198:13 214:24 guy 87:8 guys 11:21 12:5 29:15 92:3 99:10 218:3 241:7 248:1 310:3</p>	<p style="text-align: center;">H</p> <p>H 4:1 204:9 half 57:4,5 103:21 103:21,22 108:1 108:10 109:4 188:1 203:9,14 203:15 251:2 263:24 286:17 286:21,22,23 Halloran 1:11 7:1 7:2 9:23 10:24 11:16 12:8 13:15,23 15:7 18:19,24 21:14 21:16,21 22:4,7 22:10,24 23:3,17 23:22 24:5 26:1 26:6,17 36:20 45:19 60:11,16 61:3,7 65:11,16 66:24 67:12,20 67:21 69:12,13 71:8,21 72:2,19 72:22 75:24 77:11,13 82:23 83:4,7,11 84:6 87:6,14 90:6 94:6,10 97:2 99:9 101:11,20 102:4,9 104:1,7 104:13 105:14 106:2,15,18 111:2 118:22 119:7,20 122:8 126:21 127:13 127:16,24 128:4 128:9 135:15,21 154:10,15 161:1 161:6,12 173:13 173:21 174:5 181:14,17 186:24 187:4 189:6 191:12 192:7,11 195:6 195:11 196:9,10</p>	<p>200:1,6 202:1 204:5,20 205:1,5 205:13,19 208:10 238:4,24 239:10,11 241:20 243:19 244:12 247:3 248:5 253:22 254:3 255:22 257:4 260:9 279:10,13 302:23 309:19 309:21,24 hand 24:7 128:10 135:14 handled 70:24 139:20 happened 32:5 33:4 58:20 158:5 160:15 187:20 211:3 223:1 259:16 260:16 265:6 297:12 happening 289:21 happens 30:18 59:10 64:5 141:15 238:22 happy 68:21 69:2 hard 85:5 100:16 197:4 199:11 254:6 hard-stock 149:24 152:11 harder 64:17 hashmarks 78:6 hatch 80:12 hatching 142:20 147:7 hailed 152:1,1 hazard 284:11 hazards 232:19 head 140:8 187:8 199:19 heading 57:13</p>
--	--	---	--	--

107:22 108:7 heads 63:3 health 131:21 133:2 140:18 153:13 hear 12:4 14:4,9 45:16,18 170:19 170:24 171:10 196:16 heard 48:6 119:14 168:3 193:8 202:19,22 212:14 227:17 238:11 244:4 267:14 hearing 1:10 7:1,3 7:9,17,23 8:23 8:24 9:10,15,21 10:24 11:16 12:2,4 13:6 15:7 16:4,7,10,11 17:2,10 18:19,24 20:5 21:5,16,21 22:4,7,10,24 23:3,5,16,17,22 24:5 25:3,19 26:1,6,12,17 36:20 45:19 60:16 61:3,7 65:11,16 66:15 66:24 67:12,13 67:21 68:1,8 69:4,5,10,13 71:8,21 72:2,19 72:22 75:24 77:11,13 82:23 83:4,7,11 84:6 86:21 87:6,14 90:6 94:6,10 97:2,5 99:9 101:11,19,20 102:4,9 104:1,7 104:13 105:14 106:2,15,18 111:2 118:21,22	119:7,20 122:8 126:21 127:13 127:16,24 128:4 128:9,22 135:11 135:15,21 154:10,15 160:22 161:1,6 161:12 173:13 173:21 174:5 181:14,17 186:24 187:4 189:6 191:12 192:7,11 195:11 196:10 200:1,6 202:1 204:5,20 205:1,5,13,19 206:16,20 208:10 211:17 214:21 238:4,10 238:24 239:11 240:17 241:18 241:19,20 243:11,18,19 244:12 245:12 247:3 248:5 253:22 254:3 255:22 257:4 260:9 267:10 279:10,13 302:23 309:21 309:24 hearings 242:6 Heart 154:17 heavy 98:17 held 1:9 11:9 12:10,11 112:10 238:17 help 7:20 15:16 65:21 89:7,15 226:15 helpful 243:15 279:9 hesitate 68:10 Hi 7:1 high 21:11 199:11	higher 15:4 highlighted 259:8 historically 211:15 history 200:10 207:11 227:10 hit 286:2 hold 27:12 129:11 146:2 173:14 189:6 197:1 hole 188:9 303:7 Honor 21:13 hope 71:23 136:2 Hopefully 310:1,2 hoping 205:10,12 Horizontal 198:2 horrible 205:8 host 170:17 hour 1:15 hours 55:2 186:14 186:20 how's 205:2 huge 17:23 92:17 human 140:18 153:13 hundred 96:16 186:19 247:15 248:19 270:19 293:14 hurry 270:7 290:16	136:9 137:11 141:23 142:13 145:4 148:20 149:19 150:9 151:10 152:9 154:3 156:8 159:7 170:11 173:3 175:19 176:16 177:23 179:9 182:24 184:20 185:15 210:3 213:9 215:23 227:8 228:12 229:3 230:3 231:8 233:3,15 234:17 235:4 246:3 257:13 258:9 261:19 264:14 266:4 271:7 274:5 279:5,17 285:4 291:18 299:15 300:11 304:3 identified 14:19 50:12 52:19 114:24 138:23 189:1,10,19 190:1,24 198:22 202:7 216:8 230:18 236:21 237:3,15 242:18 259:13 264:9 293:10,19 294:21 295:16 identifies 36:9 50:20 53:12 142:5 identify 33:23 74:24 79:3 126:9 142:17,18 237:11 240:20 identifying 72:6 IDOT 8:10,12,16 9:3,9,18 10:9,19	11:15,16 12:9,11 12:17,19,20 13:5 13:10,14,16 14:2 14:3,9,14 15:1,2 15:14,16 16:5,13 16:14,18,21 17:5 17:11,13,15 19:11,20,20 20:14,23 21:2,10 22:14 60:14 65:7 67:2,14 68:19 69:9,17 91:11 92:18 93:12 104:23 105:6,12,21 110:16 112:7,11 113:10 187:12 193:8 209:1,14 236:17,19 237:3 237:8,17,21 239:16,17 240:14,21 241:2 241:3,13 243:2 245:3,8,18 246:14 249:1 253:5 255:1,2,11 257:16,22 258:21 259:14 259:22 260:7,12 260:23 262:2 263:13,16,18 264:5 265:18 269:18 270:3,5 270:15 273:9,16 275:19,22,23 277:15 280:21 280:24 281:10 281:10,13,19,23 283:24 285:18 286:15,20 289:5 289:7,12 293:11 293:16 295:1,4 295:23 296:20 296:24 297:16 298:20 300:20
---	---	---	--	---

<p>301:14,16 306:7 307:11,18 IDOT's 14:11,15 14:22 15:2 17:17,24 25:6 68:12 70:12 105:3 173:19 216:9 242:19 244:13 251:23 253:24 273:1 275:14 293:3 303:17 305:23 307:8 IEPA 225:21 illegal 13:3 illegible 75:5,12 Illinois 1:1,6,11 1:13,14 2:4,11 2:13 7:3,6 10:14 11:8,8 15:11 17:4 27:15 28:11 107:1 129:14 130:9 142:16 143:6 155:17 311:1,12 311:20 imagine 217:13 impacted 29:3 114:12 286:19 impacts 234:1 implement 303:21 implementation 208:1 257:17 implemented 211:21 215:12 240:15 299:20 import 140:6 important 12:22 14:21 17:6 19:19 20:1 87:8 291:22 importantly 26:2 242:9 inaccurate 60:22 60:23 66:4,6,7</p>	<p>inches 126:13 162:13 221:5,6 221:16 incident 115:9 incidental 214:4 include 111:17 112:4 114:6 115:1 194:9 203:23 233:24 241:1,12 242:2 included 80:20 82:22 83:2 95:1 95:18 110:12 111:24 112:19 115:23 116:2 121:4 124:17 132:4,5 133:17 133:21,23,24 139:3,9 151:19 194:13 214:11 238:1 239:22 240:8 243:4 255:10 257:24 265:2,9 306:4 includes 55:8 66:22 113:24 122:24 132:22 133:1 183:16 including 14:2 20:10 134:6 152:20 171:5 175:5 176:7 177:2,16 178:7 179:12 180:7 207:14 211:15 270:14 inconsistency 296:17 incorrect 165:5 increments 247:15 incur 257:17 incurred 13:4 14:18 52:12 53:13 55:10</p>	<p>62:18 70:15 183:11 211:22 212:6 216:18 262:17 269:13 270:22 276:23 277:24 299:20 independent 242:13 278:8,20 indicate 180:12 195:23 196:5 indicates 121:20 196:2 individual 280:3 304:21 industrial 130:4 133:19 139:24 175:4 176:7 177:2,15 178:6 179:12 180:7 181:5 188:5 189:20 infected 109:23 information 7:15 35:15,17,18 36:8 37:4 39:22 41:1 41:5,8,12 44:16 44:20,23 45:1,6 47:3 48:20 60:23 65:22 116:16 118:13 118:14 120:4,5,8 120:10,15,20 121:1,7 122:1 123:6,8,15,19,24 124:2 139:3 164:21 211:9,11 212:1,2 223:15 223:16 224:6,8 225:10 242:10 242:21 267:18 inhibit 232:5 initial 190:20 209:16 initially 151:17 213:14</p>	<p>input 39:16 inputted 40:2 inserted 47:2 inside 36:23 107:5 107:6 168:12,12 253:23 inspecting 133:1 inspection 132:22 162:20,23 inspectors 165:7 install 144:14 307:22 installed 140:3 153:12 installing 139:15 139:15 instance 215:18 instances 261:10 262:16,18 intact 203:3,8 integrated 126:16 integrity 30:20 132:24 230:22 intended 246:24 intending 271:17 intent 238:13 intention 60:17 294:9 interest 12:11 238:8,17 interested 41:2 interesting 56:23 interface 121:3 interfacing 131:24 interim 8:9 12:21 16:7,8 66:16,18 66:19 67:7 68:6 68:7 interpret 239:5 244:16 interpreted 238:19,19 interrupt 46:12 173:10</p>	<p>interrupted 125:8 125:19 282:23 interruptions 125:20 interviewed 135:5 interviewing 131:11 introduce 9:17 10:10,12,16 22:2 intrusion 130:5 invading 76:3 invert 268:14 investigation 28:19 32:20 97:22 104:6 259:7 investigations 28:20 207:19 227:14 invoice 47:22 48:17,18,21,24 50:12,15 51:20 52:13 102:21,24 103:9,15,16 104:11 163:15 184:15 186:17 invoiced 45:10 47:12,24 49:19 185:23 invoices 49:22 50:23 88:21 91:8,23 94:20,21 95:6 99:12,23 100:10,11,18 103:14 115:23 126:8 163:13 184:14 involved 14:6 29:20 30:2 32:19 60:15 66:14 68:20 104:23 105:12 107:10 110:16 118:7 120:14 124:13,14</p>
--	---	---	---	--

<p>130:19,21 141:2 162:10 207:24 210:12,23 284:24 involvement 31:12,20,22,24 50:11 65:7 105:3,21 193:9 213:17 involving 52:22 issue 14:22 15:1 22:14 67:12 97:6 170:16 171:13 244:6 issued 16:7 47:22 50:7 88:12 194:21 227:24 233:9 issues 7:18 9:1 14:10 21:24 74:18 210:23 item 50:15 139:1 185:5 186:17 items 52:18 138:22 139:8 140:9 184:8</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 2:21 JENNIFER 2:16 JM 9:2,17 10:8 12:19 13:9,14 15:3,3 17:7,11 19:19 45:10 66:24 93:13 118:7 212:8 257:17 272:6,9 JM's 9:5,8 14:1 14:13,24 67:13 69:16 Johns 1:3 7:5 10:7 12:19 13:5,15,17 13:21 14:4,6 15:15,18 16:4 17:20 20:6,9,13</p>	<p>20:22 21:9 25:10,12,15 28:10 46:9 47:22 50:8 62:19,20 68:16 105:6 114:2 116:4 118:10 130:8 134:18 135:2,8 136:18 136:19 137:17 163:13,15 178:23 193:14 193:20,21 200:13 203:21 206:12 218:4 227:18 233:6 join 106:23 June 50:5 95:4 138:17 165:21 209:12 267:15 Junior 206:11 209:13</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 17:6 22:16 55:3 77:24 97:3 197:19 209:20 241:6 kg@nijmanfra... 2:5 kicked 50:7 kidding 121:15 kind 28:16 36:17 37:2 55:6 56:23 119:18 151:15 167:11,13 184:16 197:4 198:9 199:10 212:19 213:22 215:9 218:15 220:24 222:2 227:1,15 289:1 291:20,21 304:19 306:23 kinds 28:5</p>	<p>knew 255:14 know 17:20 19:3,8 19:15,16,24 20:1 20:24 21:5,19 22:16 23:18 24:17 26:3,4 51:7 60:17 63:12 66:19 67:24 68:2 69:21 71:8,16 72:15,16 73:9 74:5 75:13 77:2 78:10 80:19 84:23 85:1 92:8 93:1 97:6 99:12 100:8 102:6 110:18,20 112:13 114:17 115:18,19 116:6 117:13 118:15 120:7,18 121:1 132:8,9 145:23 160:23 173:16 173:18 175:8 177:6 181:7 191:4 192:12,21 193:2 194:23 196:4 197:12,16 198:4 200:13 203:21,24 204:2 215:5,6 216:13 218:5,15 226:9 239:6 241:7 244:15 255:5 257:6 267:15,17 267:22 272:2 knowing 200:4 knowledge 62:18 86:14 111:12 166:6 167:18 175:24 192:6,9 193:5 known 238:11 267:10 knows 16:1</p>	<p>Kristen 2:2 10:6 23:7,24 46:13 52:1 89:23 179:20 208:7</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 220:3 269:5 L-shape 264:10 L-shaped 164:1 labeled 34:16 80:11 96:10 164:2 166:3 labels 84:2 labor 54:4 laboratory 108:15 191:1 lagoons 198:21 laid 68:13 168:23 268:20 Lake 134:6,12 218:10 land 1:6 39:21,22 landfill 163:7 language 14:12,17 large 21:10 larger 221:21 262:17 289:17 LaSalle 2:3 Laterally 158:20 latitude 37:6 76:13 78:14 79:19 143:4,22 239:5 lawsuit 192:4 lay 9:15 71:17 143:14 144:9 181:1 209:22 211:13 215:13 layer 123:5,7,8,9 223:13,16 245:2 245:4 layering 181:6 layers 40:24 41:4 122:24 123:1,2,3 123:4,12,18</p>	<p>124:2 195:19 196:2 223:9,10 223:10,12,17 225:12 laying 71:2,4 83:6 83:8 231:14 layout 142:15 144:15 leader 27:22 learn 165:4 learned 44:13 leave 9:15 41:5 led 33:20 left 77:16 78:13 143:17 170:3 185:8 291:10,13 legal 214:9 legend 57:22 64:12,14 220:7 length 95:24 147:9,13 255:16 298:3 let's 15:5 24:12 42:8 45:21 49:3 49:3 51:3,22 56:5 57:22 64:11 83:14 89:3 119:24 128:23 147:13 160:14 161:1 163:18 176:13 177:19 183:7 188:4 189:14 196:18,18 209:20,20 215:19 228:8 237:5,5 252:7 260:3 270:17 271:3 273:21 276:9 281:10 288:7 292:13 294:3 300:5 303:22,22,22 304:23 310:1 letter 47:3 89:16</p>
---	---	---	--	--

<p>letters 46:8 letting 171:6,6 level 133:3 LFR 31:10,18 32:8 39:6 44:21 100:11 LFR's 31:11 LFR/Arcadis 32:3 liabilities 21:7 liability 14:22,24 16:5 17:9,12,18 17:24 20:2,4,23 21:10 69:11 72:11 83:3 112:7 173:19 206:16,20 216:5 236:17,20 237:4 237:9,12,21 239:16,18,23 240:3,21 241:2 241:13,16 255:11 257:16 260:23 263:16 270:6 274:13,15 275:19 285:19 294:21 295:5,23 297:1,16 liable 12:9 14:3 17:5 69:3 112:11 238:9 259:15,23 260:1 260:14 license 2:21 27:15 licensed 129:13 licenses 27:13 129:12 light 174:16 limine 18:7 26:11 26:16 limit 76:16 77:2 142:17 155:1,9 174:14,20 195:2 limited 69:6 limits 155:1,9 156:24 190:18</p>	<p>line 11:24 52:18 57:6,19 58:2,10 59:2 60:6 62:15 63:10,20 64:1,6 64:10,12,13 66:11,13 70:16 73:3,7,12,16,19 73:23 74:1 103:5 124:15 139:12 147:9 152:22 155:2,3,8 155:10 167:5,7 167:23 168:7,7 168:15,17,19,21 169:1,19,20 170:1,1,3,3 174:17,22 176:24,24 177:5 177:8,9 178:10 184:8,14 186:17 194:10 218:19 219:8,9,10,11,17 219:19,21 229:10,12,15 232:2,3,8 234:6 234:7,9 236:5 263:13,14,15,24 264:5 266:9,22 267:4,6,7 268:23 271:21 273:8,16 274:10,10,12 275:21,24 284:16 285:7,8,8 285:9 286:4,6,9 286:12 288:24 289:23 290:14 291:7,7,9,11 292:4,21 293:7 293:13,18 294:11,15,24 297:24 298:9,10 299:11,22 301:4 305:24 306:4 307:2,3,23 308:7 308:10,12</p>	<p>lineal 297:6,11 linear 95:24 297:23 298:8,15 298:16 liners 191:9 lines 37:5 56:2 57:22 60:24 61:11,16,22 70:9 70:9,19 80:12 140:4 147:1,2,5 147:12,24,24 148:2,4,6,6 151:21,22 177:7 219:12,16 229:12,18 232:18 248:13 248:17,20 254:24 271:3,24 272:2,15,22,22 273:3,5,11,22 274:1,21 275:15 275:16 276:11 284:8,24 285:7 286:22,23 lineup 249:4 linked 80:15 list 142:3,6 listed 91:18 92:3 100:11 Listen 70:5 litigated 241:17 litigation 44:10 181:20 little 8:19 14:2 19:16 22:1 24:13 59:22 69:20 108:13 120:1 121:5 174:15 218:2,23 239:2,4 301:20 live 205:2,6 LLP 2:2 load 76:4 locate 144:1 156:1 165:8 224:7</p>	<p>located 79:3 80:9 84:2,11 163:23 163:24 164:9,11 164:19 165:15 166:1,7 169:4 173:23 184:17 221:17 224:10 237:16 263:16 267:11 269:24 283:7 location 39:17 40:1 56:2 77:18 78:15 80:17 82:14 84:17 143:22 144:2 160:2 164:5 165:3,5,17,21 166:7 167:7,20 169:3 189:21 194:15 221:21 235:9,24 236:1 238:10 252:24 256:19,22 257:2 259:5,9 267:1,9 267:14 273:5 294:18 298:5 locational 37:4 122:22 locations 14:19 16:20,22 17:15 36:11,11 70:1 76:14,14,22 79:20 84:3,4,11 85:10 108:12,16 110:24 123:6,19 143:12 144:21 176:2 178:11 216:6,8,10,12,13 216:15 220:7,12 220:23 222:2 235:14 237:2 239:22 247:14 249:3 255:20 258:2 259:7 260:13 261:9</p>	<p>275:10 283:16 289:10,17 293:9 lodge 216:19 237:23 lodging 233:8 logged 128:3 long 10:5,22 16:19 27:23 105:9 133:4 186:16 long-term 54:17 longer 85:15,15 204:17 291:3,8 291:12 longitude 37:6 76:13 78:14 79:19 143:4,23 look 51:2 55:13 57:22 64:11 69:20 74:19 75:10 78:19 88:5 90:18 109:14 116:5 120:1 121:21 135:3 147:13 160:14 177:7 187:10 199:5 213:1 214:22 217:12 223:10 223:10,17 237:8 244:18 250:14 253:16 266:22 looked 14:17 47:17 75:14 104:5 117:21 164:23 182:7 211:14 213:18 213:22 214:3 215:9 216:7 240:18 257:20 273:4,4 277:15 303:19 looking 38:8 40:19 42:19 49:22 50:23 57:17 59:1 63:1</p>
---	---	--	--	---

64:12,18 67:2 69:16 72:13 73:6,24 78:3 80:16 83:24 86:3 88:3 95:2 121:24 123:10 156:20 157:11 160:9 163:22 165:23 167:2 174:10 176:3 178:4,5,14 179:17,19 180:2 186:3,8,13 187:15 188:4,7,8 199:2,14 211:22 213:14 215:16 242:21 250:3 269:5 looks 80:14,22 116:14 117:20 118:19 121:2 178:19 180:13 180:14,16 181:7 188:9 loss 230:22 lost 59:22 61:11 65:10 297:14 lot 11:5 13:16 19:22 21:14 41:7 68:4 89:17 93:3 124:12,21 125:21,21 182:3 202:16 210:22 211:21 220:16 244:11 288:14 low 198:9 lower 202:8 291:9 luck 205:13 lumped 91:19,22 94:19 lunch 160:24 161:7,14,19	122:11 127:1 128:18 129:21 185:9 187:5 196:13 202:3 204:9 206:5 ma'am 208:20 magically 217:14 magnifying 49:10 49:12 53:20 75:10,17 main 34:1,2 48:24 151:23 152:23 155:4 maintain 26:13 54:6 55:10 172:20 232:18 maintained 172:9 240:18 maintaining 30:20 maintenance 30:12,16,17 53:24 54:18 132:17,20,21 133:5,6 150:24 196:3 232:9 making 10:4 11:14 26:8 93:4 93:12 131:11 212:22 220:19 231:17 256:1 man 86:13 manage 192:16 managed 207:18 207:19 management 52:24 132:6 150:21 214:2 271:20 307:4 manager 28:4 29:10 33:7 47:8 managing 212:12 212:24 mandated 13:22 15:17	Manikas 214:8 manual 30:12 manually 24:23 Manville 1:3 7:5 10:7 12:19 13:6 13:16,17,21 14:5 14:7 15:15,19 16:4 17:20 20:6 20:9,13,22 21:9 25:10,12,15 28:10 46:10 47:23 50:8 62:20 68:16 105:6 114:2 116:4 118:10 130:8 134:18 135:2,8 136:19 136:19 137:17 163:14,16 178:23 193:14 193:20,22 200:14 203:21 206:12 218:5 227:18 233:6 map 14:20,20 25:5,11,24 35:14 35:17,18 36:5,7 36:8 38:17 39:6 41:15 56:23 57:18 59:1 61:12 71:6 80:16,22 86:3 116:8,16,19,22 117:2,6,10 118:5 118:8,13 119:2 119:15 120:1,11 120:21 121:8,18 121:21 155:18 217:21 220:12 236:15 maps 19:18 25:9 25:14,16,22 26:9 26:15 36:15,18 37:3,13 38:13 39:3,10,13 42:5	44:2,5 224:18 225:8,23 226:2,7 Marie 2:16 7:19 Marine 11:7 mark 266:24 marked 4:2 35:4 37:20 42:13 46:1 49:6 52:5 53:4 54:9 55:17 56:7 80:11 81:18 83:17 89:9 90:20 101:4 102:17 106:12 122:4 136:7 137:9 141:21 142:11 145:2 148:18 149:17 150:7 151:8 152:7 154:1 155:8,9 156:6 159:5 165:10,12 170:9 173:1 175:17 176:14 177:21 179:7 182:22 184:18 185:13 210:1 213:7 215:21 227:6 228:10 229:1 230:1 231:6 233:1,13 234:15 235:2 246:1 257:11 258:7 261:17 264:12 266:2 271:5 274:3 279:3,15 285:2 291:16 299:13 300:9 304:1 marker 247:5 markings 250:20 mask 254:4 masks 16:1 Master 207:8 match 57:6,6,19	60:6 63:10 64:1 79:14 material 8:11 29:3 54:5 75:2 81:6 81:13 85:11 114:7,11,12,15 114:22 139:20 150:22 151:24 166:12 174:2,16 178:15,21 180:8 181:2 182:8 184:13 188:17 191:1,8,9,18 192:1 197:22 198:19 199:2,3,9 199:16,17 203:24 204:2 235:15 242:22 243:3 245:1,17 248:24 251:24 252:19 261:9 295:9 296:16 materials 55:3 85:10 114:14 138:20,21 139:9 150:19 178:22 178:24 180:14 183:14 197:3 198:17 199:6,20 203:20,22 209:3 222:19 236:3 242:24 245:9,13 245:15 255:19 265:8 284:10 Matt 82:2 matter 7:4 25:20 210:9,24 244:20 matters 7:23 130:6 maximum 17:18 mean 14:24 17:18 42:4 61:20,21 65:18 67:1 68:21 71:17 72:4 84:23
M				
M 26:20 87:18				

<p>100:3 111:11 119:14 132:8 155:5 162:12 187:22 188:12 193:9,17,19 196:2 203:13,16 223:1 225:6,9 230:14 235:17 236:18 300:7 meaning 62:3 234:5 means 230:15 231:21 meant 68:15 117:19,21 239:9 measure 306:23 mediation 198:20 meeting 10:1 meetings 131:22 Member 8:4 9:23 77:13 members 8:1 9:23 15:12 49:2 memorandum 15:20 82:1 228:1,4,17 233:9 233:12 284:3 295:7,8 mention 21:7 mentioned 13:23 17:16 36:5 48:1 55:24 68:9,10 71:11 91:5 123:1 169:3 187:19 188:3 291:15 308:21 merely 117:20 method 94:3 methodology 53:15 155:13 282:12 307:9 Michael 3:9 128:15 129:4 Michigan 129:10 204:23 218:10</p>	<p>microphone 24:4 middle 78:13 178:15 190:7 235:20 289:2 midpoint 167:11 midway 264:1 Midwest 2:7 million 17:22 mind 22:16 121:13 226:23 238:21 247:1 263:20 mine 101:21 145:16 minimum 232:1,7 minor 207:7 minute 86:1 135:12 161:2 170:13 173:14 195:5,6 243:20 254:11 minutes 87:9 255:23 302:24 miscellaneous 183:16 mischaracteriza... 91:10 117:19 mischaracterizes 119:5 misnomer 143:5 misrepresent 116:20 misrepresentati... 118:17 misrepresented 117:14 Misstates 259:19 mixed 126:16 Mm-hmm 33:9 41:6 45:2,19 47:16 63:22 64:9 76:7 99:18 111:16 124:4,16 157:19,24 169:9 198:3 276:22</p>	<p>305:14 309:17 mobilization 187:23 model 92:4 modified 61:17,18 231:12 moment 277:10 money 12:19 13:20 15:16 269:13 Monroe 311:19 months 188:1 morning 7:2 9:7 10:22 15:11,11 15:12 motion 18:6 26:11 26:16 67:1,8 127:18 243:9,16 move 9:18 148:5,6 192:13 239:6 303:2 306:16,24 moved 89:24 158:1 movement 193:10 moving 68:20 139:22 254:22 multiple 28:5,14 103:14 195:19 196:2 226:22 242:24 304:11 multiplied 278:17 281:16,17 299:4 302:12,17 multiply 298:22 muted 171:3,4</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1 3:1 26:20,20 87:18,18 122:11 122:11 127:1,1 128:18,18 187:5 187:5 196:13,13 202:3,3 204:9,9 206:5,5 N2083 155:22</p>	<p>name 7:2 9:20 15:13 27:1,5 107:7 129:3,4,20 129:21 163:10 206:10 narrative 48:19 91:5 104:17,20 narrowly 14:17 National 11:7 nature 105:8 near 107:17 108:2 167:13 168:16 232:15 nearest 235:16 nearly 247:11 252:20 necessarily 110:5 112:23 125:5 222:10,19 242:6 291:24 necessary 8:24 100:8 233:24 303:12 need 18:15 23:11 49:11 53:19 72:10 76:7 89:15,22 101:24 201:1 216:23 295:13 296:5 303:9 307:13 needed 33:19 54:5 138:23 139:12 146:23 153:8 214:16 216:3 232:11 246:22 248:22 255:15 256:22 265:6 271:22 293:8 303:20 needs 69:6 231:18 231:21 negligible 19:18 neighborhood 244:16 network 170:16</p>	<p>171:13 never 56:22 121:13 nevertheless 20:12 new 27:16 69:8 114:11 163:7 233:21,23 242:10 252:3 292:10 news 13:15 nickel 163:16 Nicor 33:24 112:16,19 151:22 155:2 194:10 219:11 229:12 263:12 263:14,15,23 264:5 304:6 306:4 NIJMAN 2:2 nine 251:15 NISHIOKA 24:17 24:22 25:2 51:10,12 75:22 76:5 77:23 78:22 79:5,7,10 146:12 154:19 225:1 nod 158:11 non-detect 235:17 normal 54:16 254:10 north 8:15 16:17 33:24 56:16,18 62:8,9,11,21 64:8,18 65:1,8 65:13 66:13 67:4 70:10,20 71:5,18 72:13,17 73:7,24 74:14 80:10 82:19 83:9 111:14,17 111:19,21 112:8 113:21 124:15</p>
---	---	---	---	---

139:12 151:21 152:21 155:3 158:13 162:4 167:5,7,11,22 168:1,6,15,19,21 169:19,20,24 174:17,21 176:3 177:9 178:6,9 182:8,9 185:23 185:24 195:17 195:20 218:6 219:8,9 229:9,15 270:10,12 274:11 275:17 282:24 283:13 283:20,24 284:6 284:16 285:7,12 286:6,23 290:14 291:21,22 292:14,17 293:3 293:15,18,22 294:2,6,10,15,24 295:1 296:20,22 297:24 298:2,8 298:10,24 299:11,22 300:15 301:4,21 304:6 305:24 307:1,1,23 308:6 308:10,12,17,23 northeast 63:3 80:8,11 86:10 144:18,20,22 151:23 165:23 166:1,2,3 288:7 288:14,24 289:5 290:9 304:8 306:1 northeasterly 167:12 northeastern 82:19 288:17 northern 82:18 194:14,16 290:18	northing's 142:17 142:24 143:5,13 143:23 155:16 155:19 northside 59:3,7 northwest 86:12 155:11 164:1 218:20 northwestern 82:17 84:13 86:11 notation 223:2 Note 220:7 noted 26:6,17 234:2 244:13,18 254:13 notes 48:22 67:2 311:9 notice 7:16 noticed 7:9 November 205:9 number 9:5,8 13:12 17:23 19:5 33:18 34:19 49:16 52:1 54:24 63:24 65:9,12 70:12 78:11 84:10 85:13 88:2 92:19,21 95:20 97:12 98:2,7,8 100:18 103:21,21 104:11 143:17 143:19 145:12 203:19 207:23 211:18 215:13 227:13 237:14 249:16,17 276:20 277:2 280:2,7,14 287:2 287:18 296:23 300:6,19 301:6 301:12,18 302:2 305:2,16	numbers 22:15 98:15,15 103:15 193:24 194:2,6 194:12 249:21 253:17 262:7,11 262:12,14,15,18 263:6 265:16,19 265:20 277:17 282:7,14 293:5 300:19 301:23 <hr/> O O 26:20 87:18,18 122:11 127:1,1 128:18 187:5,5 196:13 202:3,3 204:9 206:5 O'Laughlin 2:9 10:11,13,20 15:8 15:9,14,22,24 18:10,14,17,20 18:21 19:2 21:17,23 22:6,8 22:12 23:2 26:8 26:18 34:18,22 35:2 36:21 71:14 72:1,3,4 82:4,7,11 121:13 145:12 146:3,6 216:19 217:4,7 217:10 235:18 237:22 241:14 243:6 244:18 250:2,5 257:5,6 259:18,24 260:5 265:10,13 310:8 object 60:12 61:19 82:20 100:2 118:17 119:4 241:16 objected 18:3 objection 18:6,11 24:1 25:5,7,21 25:23 26:4,10 40:10 61:6 65:6	91:9 92:6 93:15 94:6 103:24 104:2 105:1 106:1 117:5,18 189:3,7,12 191:11 192:3 199:22 200:2 216:20 237:22 237:23 241:14 243:7 244:13 253:24 259:18 objections 25:11 26:9,10,13 objective 97:12,20 98:4,14 observe 147:8 observed 188:4 220:9 259:6 261:2,5,11 observing 198:16 198:18,23 obtained 85:14 obvious 198:11 obviously 68:21 69:22 75:13 215:5 227:13 238:20 263:5 282:13 290:8 occasionally 25:20 occur 62:6 86:17 162:22 256:12 294:18 occurred 29:18 61:13 86:24 159:22 162:9,23 212:8 227:14 234:5 occurrence 115:21 occurring 172:18 172:18 227:2 October 1:1,15 7:7 88:9 offering 206:19 office 2:8 10:18	75:11 185:3 187:12 Officer 1:10 7:1,3 10:24 13:6 15:7 18:19,24 21:16 21:21 22:4,7,10 22:24 23:3,5,16 23:17,22 24:5 25:4 26:1,6,12 26:17 36:20 45:19 60:16 61:3,7 65:11,16 66:15,24 67:12 67:21 69:13 71:8,21 72:2,19 72:22 75:24 77:11,13 82:23 83:4,7,11 84:6 87:6,14 90:6 94:6,10 97:2 99:9 101:11,19 101:20 102:4,9 104:1,7,13 105:14 106:2,15 106:18 111:2 118:22 119:7,20 122:8 126:21 127:13,16,24 128:4,9,22 135:11,15,21 154:10,15 160:22 161:1,6 161:12 173:13 173:21 174:5 181:14,17 186:24 187:4 189:6 191:12 192:7,11 195:11 196:10 200:1,6 202:1 204:5,20 205:1,5,13,19 208:10 238:4,24 239:11 241:20 243:19 244:12 247:3 248:5
--	--	--	---	---

253:22 254:3 255:22 257:4 260:9 279:10,13 302:23 309:21 309:24 official 39:22 311:11 Oh 34:11 59:16 59:18,23 60:2,5 73:10 203:9 205:7 252:24 305:9 Ohio 129:16 okay 18:14,24 21:23 23:15 25:2 27:12 28:2 28:16 32:13 33:3 35:16,24 36:4 37:16 38:2 38:7,24 40:16,18 41:14,23 43:16 45:18 47:10,16 48:12 49:3,10,13 49:21 50:1 51:2 51:22 53:2,21 55:12 56:5 59:1 59:6 60:5 61:7 61:10,23 62:7 64:5,17,24 65:4 73:2,3,6,10 75:7 76:24 77:20,22 79:7,11 80:1,7 81:14,14,24 82:13 83:23 84:15 85:7,9,18 86:17 88:12,17 88:23 89:3 90:13 91:7,13 92:2,9,20 94:5 94:12 95:10 103:3,5,13,20 104:22 105:16 106:23,23 107:24 108:6,10 109:9 110:15	111:11 112:6,18 113:7,13,23 115:3,11,17 116:7 117:11 118:12 119:12 121:5,10,17,24 123:14 124:20 125:11 126:14 127:11 131:4,17 132:7 133:4 135:23 136:11 136:16,23 137:6 138:3 140:10 142:8,23 143:16 144:3,24 145:6 146:5,10 148:12 148:22 149:6,9 149:21 150:1,2 150:14 151:2,6 151:12 152:5 154:5 156:2,10 156:14 157:7 158:12,22 159:2 159:14 160:5,18 160:21 162:2 163:1,12,21,22 164:12 165:19 165:22 169:7,16 170:8 171:1,3,4 171:22 172:8 173:5 174:5 175:8,21 176:4 176:11,18,20 178:2,11 179:19 180:11 182:19 183:2,7,7 184:2 184:11,22 185:17 187:19 188:3,22 189:18 190:6 191:7,24 192:22 194:12 194:24 195:13 196:20 197:19 201:11 202:6,23 203:24 206:9	208:7 209:15 211:24 215:19 217:7,10,12 218:1 219:5,20 219:22 220:11 220:21 221:3,23 222:4,9,21 223:24 224:11 226:14 228:8,21 229:19 230:9 231:20 232:21 233:11 234:4 235:13 236:15 237:5 239:13 240:10 243:19 245:19 247:1,19 248:21 249:3,7 250:19 251:6,14 251:20 252:5,15 252:18,21 253:4 255:6,24 256:17 257:9 258:3,17 260:4,5 261:12 262:10,14,19 264:3,7,18 265:22 266:9,12 266:20 267:8,17 267:20 268:2,6 269:9,17 270:1,7 270:17,24 272:1 273:10,15,24 274:14 275:14 276:20 277:9,22 278:6,9,24 279:21 280:6,10 280:18 281:2,6,9 281:18 282:5 283:2,6,20 286:6 288:11 289:15 289:24 290:8,13 290:24 291:14 292:20 294:3,17 296:19 297:5,11 297:17,20 298:6 298:13,23 299:7	299:10 300:1,5 301:5 302:2,6 303:2,16,22 304:10,14 305:18 306:8,16 307:6,16 308:5 308:14 309:3,7 309:14,18 Okie 83:14 old 249:19 once 141:9 158:4 168:14,19,22 212:16 291:8 308:2 one-half 95:14 one-third 95:14 ones 45:9 188:23 188:24 220:18 251:15 284:24 289:13 ongoing 30:8 33:17 132:15 174:13 onsite 131:13,17 131:20 132:2 183:15 185:4 214:2 231:20 270:22 open 8:10,13,17 11:17 12:10 16:13,14,19,21 34:4,14 38:6 67:3 68:12 69:3 72:10 221:12 223:7 opened 169:1 opening 11:3 15:6 21:15,20 71:15 221:10 operation 30:11 30:16,17 53:23 54:17 132:16,20 132:21 133:5,6 150:24 185:5 307:5	opined 15:2 opinion 12:22 26:5 92:18 93:13,14 105:2,6 208:17,18,19 214:20 215:4 243:2 244:8,23 245:10 287:24 295:20,22 opinions 25:23 206:19 209:16 255:9 296:10 opportunity 69:7 opposed 140:7 options 227:21 oral 97:16 orange 64:13,19 66:12 73:3,7,12 73:23 74:1,5,6 74:14 259:1,2,8 273:11 order 7:17 8:9 9:11,14 13:5 16:8,8 19:13,21 20:12,17 33:19 65:8 66:16,18 67:7 68:5,6,7,11 68:14 69:15 71:10,12 88:13 88:15,17 112:7 186:19 194:21 195:3 233:7 237:24 238:6 239:1,1,5,9,20 240:11,24 244:1 244:2,16 268:22 292:4 293:11 303:21 304:5 307:4 orient 218:1 oriented 97:23 original 39:6 116:21,21 138:6 139:3,23 210:24 220:13 223:5
--	--	---	---	--

<p>246:14,22 265:3 265:9,20 originally 164:8 165:5 212:18 originated 79:24 ought 189:15 outline 22:5 outlined 26:11 Outlook 170:18 171:13 outside 20:19,19 60:13 71:6 173:18 191:21 193:14,19 238:2 241:19 266:18 270:5 295:4 overall 21:11 66:8 132:6 133:2 263:7 overhead 59:13 59:15,18 61:11 61:16 64:10 140:5 148:3,5 overlapping 99:8 overlying 230:24 234:2 overrule 174:6 overruled 25:7 83:12 94:7 104:14 105:15 106:3 191:13 244:20 oversaw 39:5,8,9 194:2 225:20 overseeing 131:23 overseen 213:21 oversight 214:11 299:21 owes 12:19 13:5 15:3 owned 238:16 owner 232:3 237:18</p> <hr/> <p style="text-align: center;">P</p> <hr/>	<p>P 2:1,1 P-L-A-I-N 37:10 P-L-A-N-E 37:10 37:11 package 122:21 packages 131:5 136:24 page 3:3,10,18 46:22 51:24 52:20 54:7 57:13 83:15 89:3 90:19 102:21 103:4,4 106:8,10,16,21 107:13,14 108:6 108:18,20,24 109:15 116:15 137:14,15 141:19 142:5,9 145:18 148:24 150:1,5 153:22 154:13 156:18 184:12 185:12 213:1 214:23 228:21 233:11 234:22 254:15 pages 42:23 43:3 49:16 145:1 213:6,11 214:23 paid 163:4,12 215:17 272:9 292:17 pandemic 7:12 paper 122:17 paragraph 97:9 107:15,20,21 108:11 109:2,4 109:15,18 234:23 235:21 304:24 305:8,11 305:11 306:17 306:19 307:16 307:17 308:14 parcel 8:18,20 12:10,11,12,14</p>	<p>16:22,24 113:11 121:22 123:20 237:12,19 238:16 269:10 269:24 273:6 parking 202:16 203:15 part 13:21 16:3 39:2 40:24 46:23 57:2 60:21 65:20 66:19 68:23 85:22,23 86:15 95:11 113:16 124:14 126:10 130:1,13 140:16 140:16 162:8 172:16 173:24 182:14 190:9 191:3 201:3 209:3 210:14 222:14 234:6,6 239:15,17,23 243:5 282:21 294:16 295:20 partially 193:16 193:21 195:21 202:17 participants 7:13 participate 7:14 participated 43:10 131:10 particular 40:24 210:7,24 221:17 252:1 261:7 particularly 69:2 parties 9:7,14 71:12 125:21 210:12 212:5,23 239:4 party 12:23 13:2 67:19 69:18 244:2 party's 12:24 69:19 244:3</p>	<p>pass 208:8 patience 11:3 Pauley 170:21,22 170:24 paved 31:4 pavement 195:20 196:2 pay 11:14 15:16 207:22 308:24 paying 163:6 payment 272:13 payments 271:22 292:14 PC 129:22 185:8 185:10 PCB 1:4 7:5 PDF 117:7 118:2 122:16 PE 129:22 185:8 185:10 peat 251:24 253:7 pending 94:14 people 11:21 188:1 197:2 percent 95:24 96:3,4,23 100:12 100:13 220:8 269:19,21 270:19 278:13 278:15 281:6 286:17 289:6 290:1 293:15 297:21 298:14 298:17,22 299:5 301:7,15 302:7,9 302:18 305:19 306:12,13,20 307:7,10,17 308:10,11 percentage 21:11 70:14,15 301:13 307:7 Perfect 76:8 126:18 140:10 156:4</p>	<p>perform 84:16 125:10 performed 9:2 13:9,21 58:17 76:16 84:17 113:1 131:15 150:18 213:24 performing 12:23 69:18 265:1 perimeter 133:1 period 48:1,21 94:17 95:3,5 97:10,19 98:3,13 98:18,22 99:13 115:21,22 195:24 periods 49:1 91:3 91:4 96:5 98:11 person 8:6 56:22 personal 111:12 192:18 311:9 personally 38:20 personnel 132:1 persons 9:15 perspective 132:17 180:16 255:3 pertinent 44:18 Peterson 3:9 93:19 128:1,10 128:15,21 129:2 129:5,6,22 130:7 136:2 144:17 146:14 156:4 159:11,16 161:14,18 168:2 171:7 173:14 175:12 181:19 185:10 186:4,14 187:7 195:6,16 196:15 198:15 200:17 204:21 205:14 211:23 212:11,20 213:21 217:3</p>
--	---	---	---	--

<p>242:12,20 245:7 262:8 265:5 267:14,19,21 268:19 277:8 287:12 290:19 292:1,8 296:7 299:2 300:4 304:19 305:15 307:20 309:10 Peterson's 214:1 271:20 277:5 299:21 305:6 Ph 27:10 Ph.D 27:9 phase 210:9 211:16 phone 58:6,13 171:8,14 274:10 285:7 311:20 photo 173:8,9 174:17,24 175:3 175:4,14,24 176:1,5,12 177:11,14 178:9 178:12 196:23 photograph 172:17 202:8,24 photographs 132:5 171:24 172:2,3,4,5,8,10 172:15,21 296:8 296:10 photos 173:24 180:2,4 182:2,5 182:11 186:18 188:22 196:22 199:5,7 242:14 phrase 84:1 183:18,20,22 physical 29:17 43:21 physically 7:14 8:4 pick 220:11 picked 95:19</p>	<p>picture 38:8 40:20 40:22 153:4 173:23 174:10 174:12 176:21 176:22,22 178:5 188:7,14 189:15 189:15 196:18 197:24 198:9 pictures 172:19 187:15 piece 96:20 122:16 197:7 pieces 162:21 198:11 pin 68:19 pink 57:23 58:10 74:14 pipe 165:12 197:7 197:7,20 202:7,9 202:11,18,23 203:1,2,14,17 pipes 177:16 199:16 203:19 203:22 pit 140:8 222:4,10 222:17 pits 107:16 108:2 165:17 222:3 place 68:17 118:9 163:8 170:4 175:14 176:12 179:3,5 211:1 217:23 227:1 237:20 242:12 291:13 309:20 placed 85:17 150:22 153:1 155:11 166:13 224:1 243:1 245:2,13,18 268:21 placement 115:2 209:2 232:4 places 181:6 placing 152:2</p>	<p>plan 29:24 32:9 32:12 33:8,16 97:23 113:4 124:13,13 125:6 130:15,22 131:2 131:8 141:5,6,9 141:13,14 164:15 166:19 180:24 211:19 228:6 231:23 248:14 251:11 251:12 265:7 plane 37:7,9,9 39:17 142:16 143:6 155:17 224:1,4 planned 98:3 251:4 planning 181:2 plans 28:19,20,21 28:22 41:17 80:21 110:7 112:23 125:22 251:24 258:21 plant 111:13,15 178:21 203:22 platform 7:12 play 19:10 175:12 please 27:1,4 36:6 84:7 105:18 109:2 111:3 116:13 120:2 128:11 129:2 143:2 144:17 173:14 177:20 180:3 191:17 195:10 206:9 209:8,21 227:5 227:11 228:9 229:20,22 231:5 232:22 233:20 233:22 234:13 237:7,13 239:18 245:20 247:19 257:19 258:4,6</p>	<p>263:20 266:1 272:20 274:7 283:3 290:24 293:4 294:6 296:2 300:23 302:24 plops 155:18 plus 93:6 249:6 256:15 282:13 287:13 290:10 302:4 point 19:23 44:10 51:9 59:8 60:12 70:4 73:15 75:3 75:4 76:14 78:4 78:11,15 143:1 143:16 144:18 168:10 174:4 181:19 196:24 197:1 214:16 232:19 291:11 pointed 19:8 199:9 pointer 218:2 pointing 78:10 175:24 176:1 points 37:4 78:5 79:3,15,17 109:16,19 174:24 177:10 179:16 303:6 pole 276:16 poles 59:14,15,19 140:2 272:4 polluter 11:14,15 pollution 1:1,11 7:3 15:11 17:4 22:18 92:23 237:2 311:1 portion 8:17,20 31:4 32:3 57:4 70:12 72:9 112:11 116:22 126:17 144:22 182:9 218:20</p>	<p>288:17 290:18 292:12 portions 9:2 11:18 13:9 118:5 position 202:15 positioned 84:3 positioning 39:24 positive 107:18 108:3 109:11 115:1 possessory 238:17 possibility 10:5 232:17 possible 230:12 possibly 164:23 post-hearing 7:24 22:21 potential 230:12 230:24 231:1 232:20 284:12 296:4 pound 221:8,9 pounds 143:11 power 111:13,14 practice 40:5 practices 130:3 pre-approved 115:2 precise 39:24 224:9 predecessors 264:24 predefined 190:18 predetermined 288:22 predominant 260:22 predominantly 259:13 prefer 24:24 25:1 preparation 39:3 107:11 110:6 124:22 130:14 130:16 144:15 148:10</p>
---	---	---	--	--

<p>preparations 53:1 prepare 29:4 50:9 182:16 249:8 prepared 30:11 32:16 35:13 38:11 46:9 56:14 75:14 87:20 88:18,20 106:24 112:1,4 130:22 131:1,8 131:15 138:10 138:12 141:5,7 144:3 150:12 164:15 183:6 186:4,9 194:4,6 207:20 211:15 228:7 preparing 132:4 211:12 presence 81:5,13 114:18 216:12 236:23 237:1 255:19 260:22 296:3,4 present 2:16 7:15 8:4 9:4 13:11 19:4 58:6,16 108:15 146:24 180:8 191:18 200:13 204:17 216:16 243:12 261:9 284:10 288:3 presented 16:4 19:24 21:15 23:12 195:4 231:16 presents 262:1 preserve 26:13 president 130:2 press 303:8 pressurized 230:22 presumably 7:20 presume 163:2</p>	<p>164:22 pretested 114:23 pretty 19:6 159:4 244:10 prevail 20:11 prevent 230:12 232:17 previous 20:5 45:9 97:5 previously 134:14 165:12 210:10 212:13 217:18 219:3 271:19 289:11 305:23 307:20 pricing 131:9 primarily 13:24 30:20 213:16 292:3 primary 11:9,9 print 57:16 prior 140:20,23 141:1 166:14 190:13 probably 31:15 43:4 172:7 187:10 260:20 problem 72:24 163:4 250:7 procedural 7:11 7:22 proceed 60:9 61:8 72:23 83:9 87:17 94:7 128:12 135:22 158:2 161:15 191:13 200:7 239:12 241:22 244:21 260:10 proceeded 168:20 169:21 proceeding 16:3 238:3 proceedings 1:9 87:13 128:8</p>	<p>135:20 161:5,11 195:9 205:23 208:14 256:5 311:5,7 process 131:11 140:12 227:11 procurement 134:18,19 products 178:18 200:9,14,15 professional 27:13 27:14 31:6 54:4 129:11,13 213:15 264:22 271:13,16 profile 221:13 246:13,18 248:10,18,20 249:23 251:3,11 251:13,23 257:2 program 118:20 118:20 progress 132:4 186:18 256:2 progressed 207:16 project 28:4 29:10 30:3,19 33:7,7 33:11,12 45:11 47:8,9,14 52:24 115:16 118:6 130:14,16,20 131:10,21 132:6 133:17 135:7 138:22 150:23 183:13 184:7 185:22 198:24 199:1 209:3 213:18 245:3,14 246:14,23 247:18 251:12 271:16 276:13 projected 55:6 225:13 271:15 projection 55:7 projects 28:5,14</p>	<p>28:17 47:23 130:6 195:24 198:13,20 210:10 promoting 20:22 proper 243:9 properly 7:9 property 96:20 118:9 123:7 193:22 220:20 proportion 97:24 112:24 125:1,4 proportional 96:4 110:5 proportionally 95:22 proposed 56:15 78:7 Protection 15:18 protective 140:18 153:13 provide 114:8 115:11 139:18 190:17 232:8 provided 35:15 36:5 37:13 41:9 41:10 44:24 45:3,5 52:13 80:23 92:16 104:21 112:20 113:3 114:7,9,13 115:22 116:4,9 116:11,16 120:20 123:24 124:2 136:19 138:8 194:13 212:12 214:2,8,9 214:11 230:12 242:14 268:1 271:20 provides 48:18 54:23 providing 193:24 276:14 proximate 162:1</p>	<p>proximity 230:18 public 7:13 284:9 pull 77:6 176:11 177:19 187:15 214:19 221:20 229:22 258:6 266:1 272:19 279:8 283:4 300:22 pulled 221:22 pulling 263:20 pummeled 205:9 pump 303:6 pumping 303:7 purchased 31:18 purple 219:17 274:20 purpose 11:9,14 12:17,18 17:1 41:3 47:10 65:24 68:8 69:5 118:17 144:6,8 153:5,6 172:14 190:16 203:17 241:19 purposes 131:3,6 206:19 212:22 224:12 250:21 260:8 pursuant 7:10 15:19 19:21 195:3 put 29:15,17 36:18 37:2 41:20 79:21 101:10,13 140:4 143:24 151:18 155:24 159:9 168:10 177:20 178:19 182:11 214:7 223:13,16 223:20 249:21 272:4 291:2 292:10 303:6 307:2</p>
--	--	---	--	--

<p>putting 52:15 54:1 68:1 88:8 162:9,10,11,12 162:13 294:10 Pyrus 82:2</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications 209:22 qualified 135:7 quarry 140:7 quarters 306:5 question 13:24 36:4 40:9 77:10 77:14,15 94:14 104:10 105:11 105:18 115:5 116:23 117:9 118:1 119:21 169:17 174:9 175:23 180:19 186:8 187:13 192:23,24 200:4 200:23 204:7,22 217:9 256:8 260:8 287:15 questioning 173:24 questions 25:8,10 49:14 124:6 126:2,4 134:21 134:23 162:7 181:22 196:12 196:22 200:18 212:15,15 258:12 quick 256:7 quickly 126:23 128:24 213:3 245:19 quite 77:16 95:17 124:19 quote 16:10 216:4 257:10</p> <hr/> <p style="text-align: center;">R</p> <hr/>	<p>R 2:1 26:20 87:18 122:11,11 127:1 127:1 128:18 187:5 196:13,13 202:3,3 204:9,9 206:5 raise 24:6 128:10 ramp 82:3,13,22 83:1 84:1,2,10 84:22,22 85:2,12 85:16 113:17,22 113:23 114:1 238:13 ran 242:16 285:18 293:8 294:15 Randolph 1:13 rate 55:8 rates 55:2 re-cross 126:22 reaching 263:6 read 68:10 85:6 88:15,17 97:4 99:21 100:17 194:23 208:21 230:9 233:19 234:23 238:13 reading 86:22 107:15 185:7 ready 26:19,22 real 126:23 148:12 realizing 260:14 really 22:14 47:24 57:15 65:14 96:11 119:22 153:6 165:1 174:3 196:1 215:3 227:15 228:2,4 287:6 reason 190:6 202:21 223:12 reasonable 13:19 215:11,15 reasonableness 9:5 13:13 215:1</p>	<p>reasonably 200:5 212:2 reasons 241:15 rebut 66:1 70:7,18 rebuttal 83:6 209:19 recall 99:14 112:14 115:14 115:20 116:18 126:4 receive 223:6 received 135:2 Reclamation 186:1 308:17 recognize 35:10 38:2 45:23 51:23 56:11 121:22 137:14 145:8 149:2 156:12 183:4 209:9 235:7 258:13 recognized 240:4 recollection 80:24 84:16 114:1 139:6 166:6 167:19 recommend 159:9 recommendations 135:6 reconciled 186:18 reconsider 67:1,9 reconsideration 72:7 243:9,17 record 7:24 18:3 18:18 27:1 57:23 59:3 75:5 78:20,24 79:1 87:10 102:8 119:9 129:3 135:12,16 149:11 155:16 161:2,13 185:6 196:24 197:9 206:10,22 207:2</p>	<p>208:11 233:20 248:4,6,8 249:18 253:23 254:24 259:19 274:8 275:8 290:15 293:6,17 294:4 recorded 10:2 records 40:1 47:24 50:12 164:10,12,13 recover 12:23 13:4 69:18 244:2 recovery 8:23 Recross-Exami... 3:7,14 rectangle 78:16 78:20,20 rectangles 80:14 166:4,11 rectangular 76:19 red 249:14 redirect 3:6,13 94:8 122:9 196:11 reduce 96:23 reenergized 169:1 292:11 refer 104:16,19,20 132:7 206:15 reference 20:19 78:12 82:5 134:20 241:6 referenced 239:20 240:23 263:3 references 20:18 223:3 240:13 referred 84:22 219:24 227:24 referring 40:13 48:11 77:17 83:2 110:23 203:11 217:18 refers 226:22 reflect 104:21</p>	<p>253:23 287:19 reflected 55:15 186:5,10 229:8 272:12 273:18 276:2 287:2 290:3 regard 127:5 regarding 26:14 48:22 82:2 119:10 238:1 241:17 243:12 271:23 273:2 regardless 26:5 234:1 293:13 regular 172:21 regulatory 52:24 132:1 214:10 rehash 20:7 relate 76:21 related 28:18 29:5 31:1 60:18,24 62:5,15 112:18 115:12 139:11 167:22 169:17 186:6 207:24 213:20 214:5,19 239:22 240:8 257:21 258:1 271:21 276:16 292:4 296:24 299:22 307:21 308:6,12 309:2 relates 238:15 relating 186:11 relation 139:1 relative 224:8 231:15 247:17 relatively 235:6 release 230:13 231:1 relevance 60:13 65:6,14 82:21 92:7 93:15 106:1 174:3 191:11 192:4</p>
--	--	--	--	--

<p>237:23 241:16 relevant 92:11 93:16,16 173:20 174:1 210:8,22 211:4 220:18 238:2,20 244:9 reliability 18:5 reliable 25:17 relied 93:18,21,23 212:1,2 relocate 282:22 relocation 276:17 rely 94:1,2 remainder 293:13 295:17 remained 153:12 remaining 133:18 remains 16:19 174:19 remedial 130:15 130:22 131:1,7 141:5 164:15 227:11 remediation 130:4 132:17 134:11 192:16 194:15 207:20 remedy 20:23 233:21,23 remember 88:4,9 94:15 116:20 148:14 166:24 187:21 224:14 254:6 remind 9:13 128:21 remiss 127:17 removal 28:21 29:13,19,23 33:7 33:15,20 43:22 44:19 45:13 58:16,20,21,23 62:4 81:11 106:5,6 114:6 115:13 125:7,10</p>	<p>125:24 134:2 140:12 160:17 228:6 242:11,15 286:19 remove 75:1 126:15 146:23 153:17 163:6 169:22 190:17 254:8 288:21 291:4 removed 58:22 81:4 114:12 133:11 152:22 153:1,16 170:1 201:22 252:1,7 272:17 282:24 284:8,10 298:11 removing 28:24 29:1 201:10 renew 18:6 65:5 reopen 20:4 69:7 70:6 71:24 reopening 243:10 repair 165:11,12 165:14 repeat 58:12 105:18 154:21 rephrase 119:8 replacement 114:19,20 replicated 246:17 report 1:9 18:23 19:5 29:11,14,15 42:11 43:1,8,9 43:12,16,23 44:3 46:24 47:2 53:1 53:14 66:2 72:9 82:9 84:5 85:21 85:21,23 88:18 88:20 89:18 90:14 103:8 106:24 107:11 108:19 113:4 116:12 124:22 130:17 131:16</p>	<p>149:5,6 150:3,12 151:4 156:15 159:1 163:20 209:13,19 211:12,12,20 213:2 215:20 226:22 227:4 245:21 251:8 253:17 254:14 257:9 258:11 263:5 264:20 267:12 277:6 295:23 reported 2:20 103:21 110:12 115:18,24 195:2 311:4 reporter 24:7 27:4 34:5 45:17 58:12 99:7 128:11 311:4 reports 33:8 41:21 41:24 42:5,11 45:13 85:21 109:17 112:22 120:22 132:5 186:18 represent 99:23 100:17 118:14 146:21 157:13 187:12 223:18 representation 59:19 representations 29:17 representative 69:23 95:21 96:1 221:16,20 222:10,18 represented 94:18 99:17 112:21 117:1 120:4,8,10 269:6 representing 10:7 15:14 57:9</p>	<p>254:23 289:17 represents 146:22 302:9 request 44:7 requested 41:13 44:20 232:3 requests 207:22 require 288:19 required 29:19 30:18 41:4 47:14 62:5 75:1 85:16 127:8 139:14 160:17 166:24 181:2 260:17 284:3 293:12 294:13 305:22 308:24 requirements 50:8 requires 36:22 requiring 230:16 234:11 235:10 reroute 272:7 rerouted 148:2 152:19 272:3 researched 70:3 resident 131:13 137:23 185:4 resolution 198:9 199:11 respect 70:6 183:12 210:18 211:24 237:12 238:8 240:1 244:8 258:21 272:2 276:11 284:21 respectfully 143:6 212:12 respond 50:8 responded 212:16 respondent 1:7 7:7 responding 233:6 response 14:13</p>	<p>70:24 212:8 234:20 240:1 responsibilities 29:8 130:1 responsibility 70:13 210:14 216:9 240:17 242:19 289:12 293:11 305:24 responsible 9:4 13:11 17:5 19:11,12,21 20:14 22:15 29:11 130:3 131:21,23,24 132:3 163:5 213:17 240:14 243:2 257:23 rest 175:13 result 12:24 69:19 216:12 230:17 237:1 242:11 244:1,2 263:17 resulting 231:1 results 19:15 82:3 107:15,23 108:7 109:3,11 115:1 141:2 159:19,23 159:24 review 30:13 68:3 131:2 144:4 reviewed 32:10 41:18 43:10 91:4,7 103:1 136:21 211:17 211:19 reviewing 88:21 130:15 revisions 44:8 227:19 Riah 226:17 right 7:19 8:4 11:23,24 12:12 18:13 19:10 24:3,4,7 29:20</p>
--	--	---	---	---

<p>30:13 31:17,19 31:23 34:3,12 37:7 42:6,23 43:13,13,14 45:21 47:3 48:13 49:23 50:5,14,17,24 51:5 56:20 57:3 57:7,9,14,15,19 58:10 59:10,20 59:21,24 60:3,8 60:9 61:13 62:13,24 63:13 64:2,3,4 67:6,16 72:1,4 73:4 74:10,15 75:22 76:6,15,18,22 77:21 78:3,8,17 79:6,15 80:1 81:8 84:24 85:2 86:12,21 87:15 88:21 89:7 93:10 96:7 98:10 103:23 113:11 121:5 122:16,17,24 123:1,10 124:3 126:7 127:14,21 128:10 133:13 135:10 138:15 143:3 147:17 150:3 155:21,23 156:4 157:5,17 160:3,19 163:2 168:5 169:11,14 170:5 171:1,18 174:16 179:3 188:15 189:9 197:6,17 198:1,2 198:8,12 199:14 201:4,14 205:17 206:20 217:4 218:9,14,20 222:14 230:20 230:20 239:24</p>	<p>248:18 250:8 252:9 254:22 256:7 257:3,9 261:16 263:11 263:23 264:2 265:12,19 266:18 267:23 268:4 269:1,5,7 270:15 273:11 274:16,23,24,24 275:5,6 276:6 279:22 280:11 280:22 281:13 284:7,9 287:7 288:16 290:20 298:12 299:3 300:17 301:20 301:21 305:7 309:16 310:1 right-hand 51:16 60:2 74:21 75:21 202:8 RMR 1:12 2:21 311:18 road 10:22 57:9 63:3 68:24 118:8 139:15 168:8,10 193:9 195:24 197:11 210:24 245:3,13 246:13 247:9,14 248:15,16 251:19 252:4 256:13 roadways 36:10 roles 29:8 129:24 133:14 roofing 178:17,18 178:20,21,22,23 191:9 199:16 room 9:16 87:9 197:2 roughly 207:13 249:24 252:10 252:17 253:2</p>	<p>routine 172:16 row 59:4,7 64:19 262:5 281:24 282:8 294:1 rows 57:18 109:6 rule 7:22 ruled 216:9,16 289:11 rules 7:11 ruling 236:21 run 70:9 274:14 288:24 297:24 running 64:20 65:13 66:11 147:6 167:7,8 176:10 244:10 273:6 274:13,22 275:10 298:2 runs 66:13 123:9 275:4,12 284:17 298:4</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 4:1 87:18,18 127:1,1 187:5,5 202:3,3 222:1 S- 266:20 S3-40B 266:20 S3-50s 222:1 safe 125:9 safely 62:6 125:7 safety 131:21,22 saith 24:11 128:17 206:4 sake 42:22 64:14 sample 16:22,23 17:15 20:18,20 36:11 59:8 63:23 82:3 84:3 84:4,11,12,16 85:13,14,16 87:1 97:17,17 108:12 108:16 109:11 110:24 111:8 123:6,19 141:2</p>	<p>166:24 167:14 174:4,18,24 176:2 177:10 178:11 179:16 190:2,3,5 201:1 220:7,12 221:14 221:19,22 222:9 222:11,14,15,16 222:17,20 235:17 236:3,7 239:17,22 249:5 252:24 259:9 283:16 289:10 sampled 29:21 97:17 200:20 201:5 261:10 samples 84:20 98:2,7,8,15 159:24 166:19 167:2 188:16 189:11,21 190:8 190:11,13,23 191:2 200:24 201:9,20 204:12 204:13,15 220:15 sampling 19:15 28:20 29:20 70:1 84:17 86:18 98:20 107:15,22 108:7 109:3,5,6,12 114:10,13 141:2 159:19 192:15 200:21,21 220:16 221:8 235:13 sand 133:23 140:7 140:8 152:3,4 153:2 158:8 162:13 166:14 268:21 Sanitary 307:2 308:23 sat 88:24</p>	<p>save 189:15 saved 172:10 225:2 saw 175:10 199:16,16,17,17 199:18 saying 70:18 75:12 116:13 235:1,23 276:10 says 77:17 103:6 107:16 108:2,11 109:9 150:2 151:14 152:14 230:10 231:22 235:15 244:2 246:7 253:8 262:6 280:12 308:6 sb@nijmanfran... 2:6 scene 180:12 schedule 150:19 scheduled 9:21 science 129:8 207:6,7,8,9 scope 55:9 68:8,22 69:6 79:4 109:15 138:6,7,9 138:22 139:1 190:10,10 201:3 210:17 228:5 244:14,17 253:24 265:3 screen 23:8,20 24:4 51:14 116:15 159:10 159:12 197:1 217:14 258:6 screenshot 38:5,7 40:24 116:14 117:2,14,20 119:3,6,13 120:11,13,24 122:2,14,15 123:11,11</p>
--	--	--	---	--

<p>224:13,17,20 225:4,10,12,13 seam 242:16,19 242:22 245:16 296:16 second 16:2 20:16 20:20 34:16 36:2 46:8,13 78:13 80:4 85:13 93:3 96:22 97:9 107:21 108:1,10 109:4 146:6 153:10 159:10 187:3 206:23 230:6 233:19 234:23 237:7 255:6 Secondly 65:23 section 8:22 11:17 12:15 91:18 211:8 248:11 280:12 Sections 7:10 146:12 sediments 231:24 see 23:11,19 24:16 24:21,22 37:18 40:22 49:11,15 51:3,3,7,8,14 52:21 54:14 57:24 58:1 59:2 59:2,23 63:2 64:18,19,24 66:12 67:4 73:7 74:1 76:1 77:16 84:1,21,22 89:13 107:7,16,18 108:4,8,11,16 109:4,6 144:13 146:8,19,21 147:1 155:19 159:12 174:24 175:2,4 176:4,6 176:7 177:11,14</p>	<p>177:16 178:12 180:21 187:7,8 188:8 192:17 197:2,2,7,10,20 197:21 199:1,6 199:11,15 218:3 220:9 221:12 223:14 224:19 225:11 230:8 231:2 241:21 244:10 246:10 260:21 266:13 266:21,24 274:16,22 279:23 281:19 282:7 290:7,8 296:16 304:12 seeded 152:4 153:3 158:9 seeing 23:20 66:12 87:8 188:9 197:13 269:4 seek 15:16 seen 56:23 199:3 234:14 242:15 segregated 21:9 284:18 selected 134:16 137:2,4 201:9 self-employed 129:18,19 send 134:19 senior 27:22 47:8 sense 212:17,22 sent 80:21 163:13 sentence 86:7 108:1 109:5 123:23 230:6,20 233:19 separate 99:1 284:16 separated 99:24 separately 91:24 213:18 284:18</p>	<p>September 7:16 47:13 49:20 87:1 116:1 sequester 9:14 127:18 series 50:7 214:4 216:8 223:9 227:19,21 229:13 serve 203:17 218:2 serves 268:8 service 11:7 125:8 125:19 168:18 264:19 271:10 272:3 282:22 291:12 304:12 serviced 153:8 services 31:6 113:3 114:13 115:12 137:24 186:6,10 213:15 213:19 214:2 271:20 276:14 291:15 306:18 set 24:19 68:7 101:10,13,23 123:5 settlement 50:6 setup 217:9 Sevenson 134:7 134:13 severed 168:18 sewer 124:14 307:2 308:22 shadow 198:7 shallow 170:2 shape 132:24 share 9:8 13:14 14:1,11 67:13 68:12 69:16 she'll 244:19 sheets 99:22 100:3 100:4 shelf 68:3 197:11</p>	<p>shingles 178:18 199:17,18 shoe 191:9 shoot 40:18 Shore 33:24 139:12 151:21 152:22 155:3 167:5,7,23 168:1 168:6,15,19,21 169:19,20,24 174:17,22 177:9 178:9 185:23,24 219:8,9 229:10 229:15 284:16 285:7 286:6 290:14 291:21 291:23 292:14 292:17 293:3,15 293:18,22 294:2 294:7,10,15,24 296:20,22 297:24 298:9,10 298:24 299:11 299:22 300:15 301:4,21 304:6 305:24 307:1,23 308:6,10,12,17 308:23 short 10:8 12:20 255:23 shorter 25:20 shorthand 311:3 311:5 shoulder 111:19 194:16 shoulders 56:17 56:18 187:9 show 11:21,21 12:5 14:16 58:7 59:23 63:8 71:6 123:12 159:21 159:24 174:1,11 176:21 179:6 180:5,6 183:8 184:5,12 185:20</p>	<p>188:14 217:22 220:17 223:24 225:11 246:20 255:5 259:10 290:6 294:4 showed 164:10,16 224:21 showing 156:22 170:17 179:12 223:21,22 246:21 248:22 250:23 251:11 251:21,21,22 256:21 shown 17:14 147:7,24 220:9 246:18 249:19 257:2 280:4,9 283:11,13 300:16 shows 19:7,7 57:2 142:20,21 143:4 147:4 154:24 155:1,2,2,3,10 156:23 160:2 170:21 174:19 176:23,23,24 177:2 178:6 180:10 183:10 183:14 184:13 185:1,2,21,22,24 186:1 225:10 251:3 256:11,15 shut 292:7 side 8:13 16:15 23:11 51:16 60:3 62:8,9,11 62:21 63:1,2,4 63:23 64:18 65:1,8,13 66:13 67:3 70:10,11,20 70:21 71:5,18 72:13,17 73:7,13 73:24 74:1,2,9 74:10,15,15,21</p>
---	---	---	--	---

80:10 83:9	site 8:14,15,18 9:3	132:9,9,12,12,23	200:12 202:16	301:10 302:11
111:9,14,17,21	9:3 11:18,19,23	133:8,9,10,12,17	204:11 209:6,6	302:11 303:24
112:8 162:3,3	11:24 12:5,6	133:17,18,20,20	214:7,15,15,18	304:18,19,24
166:4,4 169:8	13:18,18 16:16	133:20,24	214:18 217:23	305:5 306:8,10
174:15,16,21	16:17 19:8,8,9	134:13,22	217:24 218:5,14	307:24 308:3,12
179:13 182:8,9	20:4 29:9,9	137:23 139:7,7	218:17,18,21,23	309:22
195:17,20 201:1	30:16 31:3,7,12	140:5,13,13,14	220:14,14,24	site's 191:21
201:5 207:17	32:7 36:10,10	140:14,17,18	225:22,22 227:3	sites 13:10 14:20
255:16 268:12	38:6 41:17 42:5	142:15,15,18,19	227:14 228:3	28:11 29:12
270:12 271:17	48:2,2,19,19	142:20,21	229:9,14 231:11	30:8,13,21 31:1
274:11,12	49:18,19 52:12	143:11 144:9,12	232:9 235:8	31:13 43:24
275:18,20	53:10,10,11,11	144:15 145:10	237:8 239:23	44:20 45:11
283:13,14,20,24	54:6 55:16,16	146:17,22 147:9	240:20 242:17	47:12,23 50:6,13
284:6,7 285:12	56:3,3,15,19	147:13,21 149:8	245:6 259:12	50:20,20 53:24
285:14,18	57:4,5 64:18	149:10,10,10	262:10,19,24,24	66:22 85:24
286:23,24 287:9	65:1 66:9 68:3	150:15 151:14	263:1,3,3,7,8,8	87:21 88:24
287:20 290:22	68:16,18,23,24	151:16,17,18,20	263:24 269:15	91:14,19 92:1,3
294:7,14 295:1	69:8 70:20 71:5	151:24 152:3,14	269:16,17 270:1	94:4,16,24 95:8
295:18 296:8	73:13 74:2 80:9	152:16,17	270:10,20 272:5	95:8,11,12,13,22
297:7 298:1,3	81:4 82:3,3,16	153:11 154:8,24	272:16,23 273:8	96:6,24 97:21
306:24 307:1	84:1,2,10,13,22	155:1 156:1,22	273:16,21,22	100:12 104:23
sides 14:8 68:24	84:22 85:2,12,16	156:24 157:15	274:2,11,12,13	105:5,12,21,23
158:14 232:5	86:10,15 91:24	157:18 158:7,10	274:15,23	113:15 124:6,12
283:1	95:7,15,16,17,18	158:12,15,17,18	275:15,17,18,24	130:9,14,20
signage 133:2	95:21 96:3,10,11	158:21 159:20	276:5,10,11,18	132:14 133:2,17
signature 43:13	96:11,12,16,16	161:20,23 162:1	276:18,21,21	148:8 157:4
107:8 311:11	96:17,17,17,18	162:4,7,9 164:1	277:15,16 278:8	186:6,11 191:5
significantly	96:24 97:1 99:3	164:5,5 166:3,15	278:8,16,18	191:10,18
98:18 110:15	100:13 103:23	167:10,15,17,22	279:22 280:5,9	193:10,13 209:7
signs 55:3	105:24 107:14	167:24 168:3,6,8	280:21 281:1	212:9 216:18
silos 178:20	107:22 108:7	168:18 169:2,6	282:1,2,12 283:1	225:20 227:23
similar 53:10,15	109:3,17,20,21	169:10,11,14,17	283:14 284:17	229:7 262:3,20
95:17 136:24	109:21,23 110:3	169:19,21	286:19 287:5,6,8	270:21 276:8
145:9 180:13	110:11,12,15,22	171:24 172:1	287:13,19	277:13 280:13
181:1 300:14	111:6,6,10,12,12	173:12 174:13	288:17 290:9,10	281:13 282:3
similarly 152:15	111:16,22 112:3	174:14,21 176:3	290:10,18,22	284:4 299:10
241:15,15	112:4,4,11,16	176:23 178:6	291:1,4,23 292:6	301:21
300:14	113:5,8,17,19	181:23 182:9,10	292:6,12,20	situated 102:6
simplify 119:24	114:3 115:8	182:17,18 185:4	293:3,15,18,23	situation 284:14
simply 79:2 105:4	116:22 121:3,4,8	190:16 191:20	294:3,7,14 295:1	six 36:23 282:13
213:3	121:21 123:20	191:22 192:4,15	295:18 296:18	285:12,15
single 18:15 205:9	124:6,14,17	192:16,17,20,21	296:20,22 298:1	six-day 69:10
sir 36:19	125:4,13 126:3,6	193:2,4,21 194:3	298:4,9,22,23	six-month 91:4
sit 23:11 24:3	126:7 127:4,7,9	194:7,7,10,13	299:24,24 300:2	Sixty-three
40:16 196:16	131:13 132:5,7,8	195:17 200:10	300:3,20 301:3,7	106:16 108:24

<p>size 95:17 skill 25:13 skip 184:17 281:11 slope 84:12 slow 129:1 205:11 Slower 15:21,22 slowly 128:23 small 57:15 112:11 146:4 162:20 203:1,16 snow 205:11 soft 251:24 software 36:13 37:3 38:8 40:3,7 79:22,23 118:19 122:21 223:8 soil 9:4 13:11 29:1 29:21 30:21 54:6 55:4 56:16 62:4,12 85:12,17 107:14 108:7,15 109:3,6,16,18,22 109:24 110:4 114:3,19,20,21 115:7 130:4 133:22 146:24 152:18 153:10 153:16,17,18,19 160:1 166:12 169:22 198:17 198:21 221:2,3,7 221:10,12 231:23 234:2 251:4 253:11 260:3,13 286:19 soils 81:3 200:11 230:24 245:8 268:13 282:17 282:19,23 283:7 283:12,23 284:3 287:5 288:21 291:5 solicited 134:5 somewhat 58:1</p>	<p>235:8 276:9 304:15 Sons 134:6,12 136:15 137:4,18 163:11 214:1 soon 230:12 sorry 10:3 18:2,3 21:14 32:15 34:8,8 35:21,22 46:13,20 51:11 52:1 62:13 72:23 73:11 78:22 82:4,24 86:12 96:15 97:3,15 100:22 101:10,12 102:12 108:13 108:20 109:17 113:18 116:11 121:14 123:23 129:17 146:14 154:16,16,21 158:15 159:11 164:20 171:12 183:20 192:8 194:20 195:12 200:2 203:5,6 205:3 208:8 209:19 217:1 230:7 235:18 238:18 241:7 245:22 250:2,6,9 250:16,24 252:23 254:5 255:6 261:5 265:10 269:20 281:10 297:12 300:8 sort 20:24 21:5,24 22:3,3 63:6 72:6 97:20 98:14,16 99:20 102:24 169:5 210:20 217:8 247:23 263:24 264:19</p>	<p>290:15 294:5 sorting 21:6 sorts 191:7 sounds 67:21 source 22:18 south 2:3 8:13 16:15 56:16,18 63:1,1,4,16,18 63:23 64:8 67:3 70:11,21 73:13 74:1,2,9,10,15 78:21 79:1 111:9 113:17 124:15 158:14 162:3,3 164:11 164:19 167:11 169:8 174:15,21 177:3 179:13 201:15 255:16 267:11 274:12 275:20 282:24 283:14 284:6 285:14,18 286:24 287:9,19 290:22 294:7,14 295:17 296:8 297:7 298:1 306:24 southeastern 79:2 southern 180:8 182:9 southwest 29:12 50:6 95:11 113:8,14 130:14 130:20 133:17 149:8 150:15 191:21 southwestern 28:10 30:13 31:13 45:11 50:13,20 85:24 130:8 space 76:3 speak 82:24 84:7 99:5 128:23,24</p>	<p>speaker 24:20,24 25:1 speaking 8:2 16:1 24:21 32:6 45:7 47:20 48:15 53:8 56:3 82:15 130:12 139:7 146:20 147:2 151:15 152:15 171:22 183:8 185:19 spec 138:12 specific 14:18 16:8,9 20:18,20 68:13 69:22 76:14 77:18 82:5 110:19,21 221:21 227:2 232:13 236:23 276:18 specifically 8:12 16:14 29:7 50:12,19 81:2 127:4 239:19 240:23 241:3 277:10 287:21 specification 138:5 139:4,24 specifications 131:8 specified 188:6 spell 27:3 spend 186:14 244:9,11 265:21 spending 214:18 spent 13:17 69:21 211:21 286:18 split 92:3 100:19 103:20 104:5,11 202:17,23 203:3 203:8 splitting 213:13 sporadic 235:8 spot 98:8,8 267:23 spots 68:13,15</p>	<p>209:5 staff 8:5 55:2 stakes 143:11 144:15 151:18 stand 120:19,19 120:24 143:19 185:8 standard 40:4 standing 178:8 Star 171:7 stark 17:19 start 50:3 63:20 130:24 168:4,5 173:15,16 187:13 237:11 276:9 303:3 310:2 started 31:22,24 50:1 58:24 88:8 138:12 148:1,9 148:10,15 157:3 158:2 164:4 168:7 169:10 236:20 starting 29:15 63:18 214:16 233:21 starts 11:24 12:6 218:23 230:6 state 1:13 27:1,15 27:15 37:7,9 39:17 129:2 142:16 143:6 155:17 205:2,6 206:9 224:1,4 stated 193:23 204:22 296:13 296:14 states 15:17 32:24 109:10 129:14 station 247:11,12 247:12,13,19,22 248:16,19,20 249:5,24 250:1 251:18 257:1</p>
---	--	--	--	---

<p>stationing 248:14 251:17 256:18 Stations 248:22 stay 122:13 269:12 310:4 Staying 153:20 stenographic 311:8 step 127:17 steps 276:12 Steven 1:12 2:21 102:4 311:3,18 stipulated 9:7 92:7,22 93:17 212:5 213:4 215:2 stipulation 92:12 stipulations 22:13 stone 55:3 155:11 stop 167:15 197:9 309:20 310:1 stopped 195:14 stored 36:9 41:8 172:9 stores 122:22 stormwater 130:6 straightforward 17:14 19:7 streamline 243:14 244:19 Street 1:14 2:3,10 311:19 stress 14:21 strong 212:17 study 107:18 stuff 19:22 68:20 272:7 subcontractor 114:3,16 subgrade 303:14 subject 243:17 submit 32:22 225:22 submittals 41:18 112:23</p>	<p>submitted 41:21 42:11 43:16 65:19 107:1,2 136:16,18,24 141:10 190:23 226:7 227:17 subsequent 162:20 subsequently 115:6 245:14 subsurface 130:5 192:2,10 260:24 261:3 suggestion 104:22 suggests 109:10 suitable 252:2 Suite 2:4 311:19 sum 280:3,8,16 281:23,24 282:1 282:2,3 301:16 summaries 90:18 91:17 94:18 95:2 summarize 45:10 47:11 227:11 234:24 summarized 48:1 84:5 227:20 summarizes 159:18 183:9 summarizing 91:2 summary 44:24 48:18 49:18 53:9 87:21 91:5 94:22 95:1 96:22 103:12 112:22 114:8 116:1 182:17 183:5,16 194:5 261:24 270:18 summer 148:15 Superfund 68:17 95:11 113:8 supervised 43:10 supervising 49:1</p>	<p>131:14,24 supervision 183:15 185:4 supplemental 18:23 supplied 121:6 supply 114:23 134:17 292:7 support 52:24 114:9,9,13 115:16,22 139:19 214:9 252:3 262:23 292:18 299:23 supported 226:16 supporting 28:21 supports 245:10 Supreme 11:8 sure 9:19 10:11 11:4 18:12 22:6 23:22 27:5 46:14 52:2 65:17 82:6 84:8 98:1 101:22 105:20 125:22 130:2 132:23 165:1 170:18 171:2 181:16 196:1,7 198:10 224:20 242:4 243:22 249:12 261:2 297:9 309:15 surface 109:21 153:11 192:1 193:10 221:11 230:24 260:22 260:24 261:1,3 261:11 284:13 surprisingly 14:7 survey 39:21 154:8,23 155:5,6 224:8 267:24 surveying 143:10 151:18 207:15</p>	<p>210:20 surveyor 39:22 155:7,14,15 Susan 2:3 9:20 15:9 287:16 Sustained 260:10 swampy 168:9,24 swear 24:7 128:11 sworn 24:11 128:17 206:4 synonymous 184:3 system 39:24 139:16 143:7 155:18 168:10 224:7 308:22 systems 207:20</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 4:1 26:20,20 87:18 122:11,11 127:1 128:18,18 187:5 196:13,13 202:3 204:9,9 206:5,5 273:11 T-A-T-S-U-J-I 27:5 T&M 265:4 271:18 278:23 291:22,23 299:20 306:17 tab 34:16 36:2 80:4 81:16 153:22 154:13 170:7 table 43:5 49:4,15 49:17,23 51:17 51:23 52:4,10,11 52:14 53:2,11,11 53:16,16,18,22 53:23 54:7,20,21 54:21,23 55:5,6 76:8 78:12,12 99:17 143:3,21 143:22 159:16</p>	<p>159:18 183:7,8,9 184:4,4,6,11,12 184:13,16,17,24 185:2,7,11 261:24 303:8,10 tables 45:10 47:18 55:13 186:3,9,13 186:15 215:8 250:8 tabulate 212:11 tabulated 211:23 tabulation 214:12 214:14 277:7 290:4 tabulations 215:9 305:6 tailgate 131:22 take 7:24 13:7 87:7 88:5 90:18 98:7 99:15 100:19 106:8 107:5,13 109:14 116:3 155:23 161:7 165:2 172:4 175:14 179:2,4 188:16 189:11,21 190:8 200:24 214:22 217:12 221:7 234:7,23 237:8 253:16 255:23 260:4,7 266:22 281:3 286:21 292:13 298:13 298:21 304:23 taken 1:12 87:11 128:6 135:18 161:3,9 167:2 172:6 173:9,17 173:17 190:11 195:7 204:12,13 204:15 205:21 208:12 211:18 225:4,14 242:11 255:17 256:3</p>
---	---	---	---	---

<p>276:13 289:23 296:8 311:9 takes 184:8 talk 18:7 19:22 140:11 157:15 182:1,4 244:7 249:10 260:3 273:21 282:16 288:7,13 290:13 294:3 295:6 talked 18:10 182:3,13 258:18 288:14 291:5 292:8 294:5 talking 24:15 66:10 97:9 111:1,5 115:6 125:16 127:3,3 161:18 167:14 181:10 188:24 202:9 243:8,10 260:2 273:10 283:17,18 287:20 305:1,7 305:10 talks 24:16 230:21 297:6 tally 183:19 task 48:6,8,12,16 51:19 55:24 70:16 138:1 183:23 184:1,9 184:15 212:21 213:14 216:3,4 217:2 226:22,23 257:15,18,21 262:2,5,6,7 263:8 282:17 283:7,23 284:15 286:16 306:13 tasks 13:21 137:24 Tat 23:6 99:5 Tatsuji 3:2 24:9 27:2,3</p>	<p>team 43:12 49:1 247:17 teasing 263:1 technical 8:6 27:22 82:1 131:12 134:20 135:3,5 210:23 technically 37:18 telephone 124:17 219:16 229:13 229:15 274:12 274:21 276:16 286:4 tell 35:20 54:21 72:12 83:24 99:15 138:24 159:13 174:23 177:6 182:6 207:10 215:4 247:8 282:17 303:3 telling 232:10 295:12 ten 87:9 88:23 91:17 94:18 302:24 ten-foot 68:3 term 48:6 61:20 62:2,3 138:19 212:21 terminated 174:18,22 terms 110:4 210:24 213:12 214:20 215:11 216:13 223:18 224:9 256:18 263:1 275:10 304:18 309:11 test 108:2 115:1 165:17 222:3,4 222:10,17 tested 114:17 188:17 testified 104:3</p>	<p>105:9 116:8 119:1 206:12 242:12 243:23 290:19 292:1 296:7 testify 72:17 119:6 testifying 119:10 testimony 14:15 60:13 65:24 70:6,7,21,22 75:14 93:7 105:3 119:5 127:20 216:24 238:1,11 241:18 243:12 250:17 testing 114:11 115:11 200:4 tests 98:15 text 128:3 thank 9:19,24 10:24 11:2 15:7 19:1 22:10,23,24 23:23 25:3 26:7 26:18 27:7,10 32:19 34:22 35:24 37:12 42:8 61:8 62:17 62:24 64:11 71:20 72:19 73:21 82:7,11 83:10,11 87:5,6 94:9,10 97:3 99:10 102:14,16 106:18 108:22 111:3 122:8 126:18,21 127:13,14,15 128:13 129:6 135:17,23 153:20 161:8,15 161:16 162:6 163:17 174:7 182:12 184:11 185:11 186:22</p>	<p>186:24 196:10 201:23 202:1 204:5,18 205:14 205:15,16,17 217:15 220:21 225:19 239:10 239:12 241:22 241:23 245:19 254:23 255:21 257:7 260:10 265:13 279:13 288:5 291:14 310:3,5,6 Thanks 24:5 77:5 181:17 192:13 300:23 310:7,8 theme 180:6 theories 16:5 21:6 theory 20:1,22,24 21:3 thing 19:19 41:11 56:6 66:16 71:24 98:16 168:3 171:14 208:16 210:21 216:22 220:21 223:21 263:10 things 10:9 22:2 22:22 75:15 139:8 140:6 197:12 211:3 216:22 224:9 227:15 243:7,10 244:6 270:8 290:17 think 11:1 17:6 20:1 21:20 22:15 34:20 39:15 42:2 54:19 61:10 62:3 63:24 69:6 71:11 83:7,24 88:9 92:11 93:3 94:14,16 96:2,23 99:6 100:3,10</p>	<p>101:16,18 105:10 113:24 116:8 117:13 119:1,9 121:11 125:11 127:17 133:8,13 141:4 142:23 146:17 155:22 164:8 165:20 166:19 166:23 169:2 173:24 180:22 181:5 196:21 202:7 204:19 216:22 221:24 224:12,22 238:6 238:20,22 239:7 243:20,22 244:8 244:15 246:5,8 252:22 253:17 260:14,16 266:21 268:19 276:14 279:1 290:16,19 291:24 299:12 third 20:21 141:19 275:20 Thirty 54:16 thought 63:9 71:16 72:5 95:20 101:10,13 124:9,10 135:6 220:18 242:7 267:10 threat 193:6 three 9:8 13:7 20:2 78:6 80:14 95:10,13 99:22 109:16 126:13 162:13 166:4,11 175:5 176:8 178:8 180:9 193:13 243:21 264:19 271:11 273:3,4,5 275:16 282:1,12 288:15</p>
--	--	--	--	--

<p>288:16,22 305:22 306:5,13 307:10,12 thriving 52:23 throw 244:17 tie 307:1 tied 93:6 308:22 time 10:5 16:2 18:15 31:9 47:24 48:21,23 70:4 78:1 79:4,5 91:3 94:17 96:5 98:24 99:8,10 105:9 111:3 115:21,22 125:22 138:19 138:21 139:9 165:6,16 180:18 180:20,23 181:3 181:8,10,11 183:14 184:13 186:16 187:21 187:22 189:15 190:8 193:7 195:24 211:22 221:4 225:13 238:9 244:11 246:23 265:8 288:9 294:9 295:6,7 timeframe 31:11 times 68:10 181:4 181:11 196:6 207:23 243:21 timesheet 48:20 timesheets 49:23 tiny 159:4,13 Tipsord 2:16 7:19 10:3 15:21,23 24:12,19 36:22 77:6 101:2,16 170:12,15,22 171:1,12,17 206:22 248:3 288:10</p>	<p>title 27:21 157:12 208:2 today 7:7 12:17 12:18 65:15 216:24 310:3 today's 17:1 told 182:7 tomorrow 310:1,2 top 57:2,3 59:4,7 64:14,14,19,19 64:22 121:21 140:8 143:17 162:14 185:8 199:19 213:23 248:14 251:2,13 289:1 topics 13:7 topographic 123:8 topsoil 126:13 133:23 152:4 153:3 158:9 162:14,15,16,18 162:21 163:6,7 268:21 total 47:11 48:2,2 51:21 53:23 54:24,24 55:2 93:23 99:14 100:9,10 105:4 183:19 195:4 214:17,17 262:17 265:21 270:24 272:24 273:15,17 275:16,23 277:23 278:7 279:21 280:8,12 281:10,13,19,23 286:18 293:22 296:21 297:8 298:8,21,23 301:3 302:9,12 302:14,14 305:2 305:4,19 309:12</p>	<p>totaled 52:19 totals 184:9 tracking 215:7 Tracy 46:9 transcribed 311:9 transcript 87:15 97:4 102:5 128:5 161:2 205:20 311:7 transcripts 7:24 transite 191:8 199:2,3,6,9,18 202:18 203:20 Transportation 1:6 2:14 7:7 10:15 transverses 289:3 trapezoid 218:16 travel 73:13 traveled 73:10 travels 63:22 64:24 traverses 167:12 289:1 292:12 treated 96:19 304:15 treating 309:1 treatment 130:5 tree 186:2 trench 164:2 188:13 190:12 trial 34:19 105:10 311:5,8 tried 187:14 trouble 56:24 99:6 true 189:2,5,9 254:9 311:6 try 17:8 21:1,17 59:3 69:8 119:24 212:17 244:19 249:18 279:1 290:16 trying 17:8,11 20:7 21:23 69:10 70:2,5</p>	<p>116:19 214:19 217:22 223:18 232:17 246:19 259:10 268:6 270:7 303:14 Ts 219:13 turn 24:20 41:4 49:4 102:11 108:6 136:5 141:17 151:3,6 152:6 153:21 156:17 158:24 160:21 162:7 163:18 165:22 170:5 172:23 176:13 177:20 179:3,5 182:19 183:7 184:4,11 209:8,21 214:22 227:4 228:8,21 229:19 231:4 232:21 233:11 234:13,22 245:20 258:3 261:15 271:3 273:24 279:2 292:9,9 300:7 304:11 turned 41:1 turning 142:8 185:11 202:5 Twenty-seven 78:11 two 9:5,7 13:12 45:8 46:8 57:18 65:12 84:20 85:10,17 88:1 92:21 93:2 107:16 108:2 124:8 144:13 145:1 165:12 193:16 198:11 199:8 205:8 209:7 212:23 218:6 221:4,6,15</p>	<p>232:1 268:14 273:5 275:17 280:15 two-foot 57:13 two-thirds 273:7 Two-thirteen 159:2 twofold 144:10 153:7 type 115:15 185:3 190:24 212:1 215:12 273:23 types 122:22 198:22 213:12 typical 116:14 Typically 221:19 222:5 typing 159:13</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U 204:9 U.S 13:22 29:19 30:5,14 32:10 41:18,18,21,23 42:11 43:17,19 50:9 65:20 80:21 107:2,3 113:4 190:23 214:10 225:21 225:23 226:4,7 227:18,18 228:19 230:16 233:9,12 234:11 234:24 260:16 288:19 ultimately 42:10 137:2 271:22 292:11 underground 58:5,13 59:12 140:4 147:22,23 147:24 148:6 229:11,17 230:23 272:7 underneath 174:4</p>
--	---	---	--	--

<p>174:19 180:8 197:11 244:4,24 280:11 281:14 298:1 300:18 307:3 understand 26:3 60:12 66:17 67:17,18 72:8 96:19 100:16 113:2 119:12 138:19 189:13 214:17 240:5 268:7 270:9 280:11 understandably 71:10 239:3 understanding 8:18 9:6 46:23 48:8 82:21 141:1 234:4,10 242:8 247:17 292:2 306:22 understood 18:16 52:17 165:5 237:17 242:7 301:19 undertaken 309:9 underwater 303:11 unfortunately 89:5 unfounded 21:3 uniform 160:18 160:20 296:16 unintentionally 126:3 unit 39:24 96:14 United 15:17 32:24 University 129:9 204:23 unmute 170:19 171:5,7,8 unmuting 170:23 updated 45:9</p>	<p>upper 57:7 use 14:16 19:4,4 48:12 49:11 53:15 75:17 79:22 118:10 143:8 155:14 173:16 183:18 282:11 291:3 293:4 uses 14:12 142:16 142:18 143:9 155:15 usually 21:15 222:6,16 247:15 utilities 33:22 65:22 81:7,9 123:19 124:13 124:18,18,18 127:4 133:22 139:11 140:15 142:21 147:5,20 151:21 152:19 153:8,8 156:23 158:1 229:7,9 230:11,17,19,23 230:23 232:11 234:1 282:20,21 utility 33:18 36:10 56:2 59:13,15,19 62:5,12,14 66:11 95:16,19,24 98:11,12 112:16 112:19 123:9,20 125:8,19 134:1 140:2 147:9,12 148:10 185:22 214:5,9 231:21 232:2,3,8,9 235:10 272:13 282:16 283:7 284:7,24 286:18 286:23 287:5 292:14 utilizing 35:14,16 39:23</p>	<p style="text-align: center;">V</p> <p>vague 117:6 189:3 189:12 validated 255:18 value 55:5 valve 139:13 168:13,24 292:8 292:9 307:22 Van 2:16 8:4 9:23 77:10,14,15,20 89:20 100:22 101:1 145:15,18 145:22 146:8 254:7,10 287:15 287:18 288:5 vapor 130:5 variability 304:17 variations 212:14 variety 207:14 various 8:5 13:20 25:5 47:18 51:17 147:2 183:9 196:22 209:7,22 210:12 211:1 217:22 276:12 vary 160:13 222:5 222:7 vault 168:12 vegetation 132:22 133:24 vegetative 52:23 162:14 268:22 verify 85:14 114:10 189:21 version 14:19 39:12 88:11 145:21 146:4 149:14 249:12 versions 88:1 versus 7:6 11:8 122:13 124:6 vertical 248:10,17 view 24:20,24 25:1 248:14</p>	<p>viewers 24:16 viewing 41:3 violated 11:17 67:3 209:1 violation 238:14 violations 8:21 13:1 69:19 244:3 visible 40:23 visibly 108:14 220:9 visited 164:22 192:20 193:1 visits 134:22,23 visual 259:6,12 261:2,12 visually 107:18 108:3 voice 97:3 volume 109:18 110:4 125:4 vs 1:5</p> <p style="text-align: center;">W</p> <p>wait 116:6 121:13 121:14 waived 12:15 22:17,19 waiving 25:10 walk 144:12 237:5 277:10 walking 188:12 wall 166:20 177:3 190:2,5 201:2,5 wallboard 199:18 want 9:13 10:10 18:8,17 19:23 23:13 24:16,23 31:5 34:4,14 37:16 38:23 45:15 51:2,8 55:23 57:21 62:24 74:19 75:20 77:3,22 80:3 81:14 87:7</p>	<p>88:4 89:7 99:19 100:7 116:5 124:7 125:12 137:6 140:10 144:24 148:16 149:15 151:2,6 153:21 156:5 157:15 158:24 159:3 160:21,24 161:20 162:7 163:17,19 165:22 167:5 170:5,15,18 172:23 175:11 175:13 179:3,5 182:19 218:1 239:6 254:8 268:3 wanted 18:12 22:1 23:19 72:6 116:18 134:22 171:2 215:6 284:9 wants 19:20 20:4 20:13 warning 77:5 Washington 2:10 wasn't 34:1 81:10 110:2 126:12 138:14 187:24 190:9 191:3 242:4 282:22 waste 8:13,17 9:4 11:18 12:20 13:11 16:14,15 16:19 17:6 67:3 150:20 wastewater 130:5 water 34:1,2 151:22 152:23 155:4 168:11 185:24,24 303:7 303:14 306:24 307:4 308:16,17 309:1</p>
--	---	---	---	--

waterline 155:10 163:23,24 164:3 164:6,11,16 165:8,11,16,18 220:5 229:10,16 238:10 264:8,9 265:23 266:7,16 267:9,23 268:4,5 268:13,15 269:6 269:10,14,23 270:10,22 271:1 271:12 285:6 304:7 306:1	21:4 54:13 101:22 179:2,4 184:16 243:23 255:22 we're 8:8 15:4 17:7 19:22 25:8 34:9 38:7 42:19 65:15 67:23 68:1 69:2,4,9 70:2,5 71:2,5 77:8 81:15 87:9 87:15 89:5 92:15 102:5 122:13,15 128:4 128:22 135:16 146:5,14 159:9 159:11 161:6,12 171:17 175:11 188:24 204:18 204:19 205:19 217:6 223:6,7 244:9,11 249:10 251:22 256:1 269:4,4 283:18 290:13 303:2 308:2,2 309:22	wells 19:15 20:18 20:20 went 48:16 60:24 70:19 73:10 138:6,16,18 155:8 171:13 186:16 188:1 204:22 227:19 265:3 270:10 309:14 weren't 66:14 81:7 90:4 105:23 139:9 164:24 195:19 295:19 west 1:13 2:10 147:6 162:1 166:5 168:8 169:10 179:11 218:24 242:17 248:20 311:19 western 57:4 63:2 63:19 156:24 166:20 167:10 169:10 174:14 174:20 245:6 307:22	24:10 25:6 37:23 38:18 42:16 46:4 55:20 58:8,15 81:21 83:20 84:8,9 89:12 90:2,23 92:16 101:14 104:15 105:17 106:4,20 108:23 118:4 127:21,22 128:16 136:10 142:14 145:5 148:21 149:20 150:10 151:11 154:4 156:9 159:14 171:9 173:4,11 175:20 176:17 178:1 179:10 183:1 184:21 185:16 189:4 191:14 192:14 199:23 200:8 205:3,7,17 206:3 210:4 213:10 229:4 233:4,16 234:18 235:5,22 246:4 247:21 250:10 261:20 264:15 266:5 285:5 287:22 304:4 311:11	13:13,17 24:19 27:17 28:6,7,18 28:20 29:5,13,24 30:7,18 32:9,12 33:6,8,16,16 36:14 41:14 48:19,24 50:19 50:21 51:20 52:22 55:9 58:9 58:17 62:5,7,12 62:14 65:20 66:4 68:4,18 81:1 86:17,18 95:5,19 97:23 98:11,12 100:12 103:22 110:6 112:24 113:4 115:15 116:10 117:3 124:12 126:9 129:15,17 130:15,22 131:2 131:8,14,16,23 132:3,14,18,20 132:20 133:18 133:21 134:13 135:9 138:6,7,9 138:14 139:5,11 139:17,21 140:11,12,14,20 141:5,5,8,13,14 141:16 144:13 144:16 147:19 147:21,23 148:3 148:7,9,10,12 150:18,20 151:15 152:15 153:5,6 154:9,24 157:13,16 158:2 162:9,19 164:15 165:6 166:10 167:23 168:6 169:9,18 172:6 172:17,18 174:13 181:23 182:2,3,4 183:9
Waukegan 28:11 34:2 130:9 151:22 152:23 155:4 163:23 164:2,23 165:7 165:15 220:4 229:10,16 238:10 264:8,9 265:23 266:7,16 267:9,23 268:4 269:13 270:9 271:12 285:6 304:7 306:1	we've 11:1 198:20 219:2 244:3 255:7 267:8 wear 36:23 Weaver 35:13,15 46:10 116:12 119:1,15 120:1 121:17 208:5 226:13 Webex 7:12 8:3,5 9:16 10:1 51:8 51:13 127:23 128:22 135:13 170:19 webmaster 7:18 weekend 136:3 weighed 12:15,16 Welcome 9:20 128:21	wetland 139:15 whatsoever 93:14 white 89:6 101:3 106:10 wide 207:14 width 222:6 232:7 Wie 2:16 8:4 9:23 77:10,14,15,20 89:20 100:22 101:1 145:15,18 145:22 146:8 254:7,10 287:15 287:18 288:5 wins 205:9 wish 71:22 withdraw 61:5 witness 3:2,9,17 15:5 23:4,20	206:3 210:4 213:10 229:4 233:4,16 234:18 235:5,22 246:4 247:21 250:10 261:20 264:15 266:5 285:5 287:22 304:4 311:11 witness' 89:23 witnesses 7:14 14:5 127:19,19 127:20 211:18 wondering 23:10 119:13 wooden 143:11 word 34:11 words 13:2 98:15 187:22,24 249:21 268:10 work 9:2,6 13:9	138:14 139:5,11 139:17,21 140:11,12,14,20 141:5,5,8,13,14 141:16 144:13 144:16 147:19 147:21,23 148:3 148:7,9,10,12 150:18,20 151:15 152:15 153:5,6 154:9,24 157:13,16 158:2 162:9,19 164:15 165:6 166:10 167:23 168:6 169:9,18 172:6 172:17,18 174:13 181:23 182:2,3,4 183:9
way 12:1,7 24:4 40:14 57:3,9,9 57:12 60:13 70:10,11,19,20 76:15 79:4 85:19 97:24 100:20 113:11 159:23 171:13 180:14 187:10 200:3 213:22 231:10 235:16 240:18 247:13 247:24 250:8 251:16 256:10 265:16 279:2 284:7,9 302:21	ways 14:11 20:2 160:23 we'll 9:18 19:4			

183:10,11,14,15 183:20,24 184:7 184:9 186:15 187:24 190:10 190:10 194:1,2 196:6 200:19,19 201:3 207:11,14 208:1 210:9,11 210:17 211:19 211:20 212:21 212:22,24 213:16,21 214:10 215:12 216:11,14 217:23 220:13 226:24 227:2 228:2,5,6 231:23 236:22,24 238:12 239:3,21 240:8,14 242:9 253:5 256:9,12 257:20,21,24 259:7 260:20 262:21,22 264:23 265:2,5,7 265:22 269:14 270:11 271:14 271:23 272:15 273:2,21,23 276:16,17 278:8 278:20 282:22 283:23 284:15 284:16,24 287:19 288:19 289:9 292:16,17 296:22,24 298:9 298:11 299:22 301:4 303:9,13 303:14,20,23 304:18,21,21 305:2,5,22 306:5 307:11,13,14,19 307:19 308:5,11 worked 28:1,14 38:12	worker 77:2 workers 125:9 232:18 working 31:7,8,10 48:22 121:2 139:14 157:3,4 164:4 198:5 205:2 works 57:1 63:11 world 70:17 wouldn't 43:5 50:22 57:13 125:8 181:6 196:6 203:17 263:19 284:10 written 228:6,19 294:8 wrong 17:13 66:19 116:13 162:17 wrote 43:7,12	200:3 211:13 225:9 239:19 244:12 249:23 264:22 274:9 277:14,20 282:19 284:5 292:3 299:19 305:10 306:22 309:21 year 30:18 54:5 54:24 55:1,10,10 130:19 165:11 years 54:14,15,16 88:23 129:19 133:7 198:23 205:8 yellow 149:23 177:8 York 27:16	03 175:1 0393 8:18,20 12:10,12,13,14 16:22,24 20:17 20:21 86:15 113:11 121:22 218:19 237:12 237:16,19,20 238:2,8,16 239:15 259:24 260:4,7 267:6 268:24 269:10 269:24 273:6 290:19 03S 63:21 275:12 286:5 290:20 04 110:24 176:2 177:12 047 89:19 04S 20:9,12,15 168:16 169:3,13 174:19 175:1 241:8 242:17 243:3 244:4,24 255:15 285:22 286:3,8,9,10 287:21 288:1,4 294:19 295:24 297:19,23 04S-ish 290:20 05 176:2 177:12 252:8 05S 20:14 241:1,3 241:9,12,17,18 242:2 243:12 244:5,8,20 249:5 252:7,9,10 253:18 255:1,7 255:10 295:19 06 177:12 06S 244:5 249:6 252:23 253:18 255:1,7,10 07 32:2 178:13 179:18	07S 244:5 249:6 252:21,22,24 253:18 255:1,7 255:10 256:11 256:23 08 178:13 179:18 084-004675 2:21 311:21 08N 283:21 08S 20:10,14 221:24 241:2,4,9 241:12,17,18 242:2,20 243:4 244:5,8,20 245:6 253:12 255:8,11 256:20 257:1 275:13 283:19 286:13 287:20 287:22,24 295:9 295:16,19 297:19
	X			1
X 3:1 4:1 26:20 87:18 122:11 127:1 128:18 187:5 196:13 202:3 204:9 206:5		zero 270:20 287:5 zone 245:11,12,17 251:24 zones 253:20 zoom 51:10,12 77:22	Z	
	Y	0 0.2 220:8 0.702 302:13 01 110:24 111:9 175:1 01N 59:4 73:7 218:24 221:24 283:21 01S 20:8,12,15 218:24 221:23 241:8 243:2 253:11 255:15 283:18 285:21 286:2,10,12 287:20,21 288:1 288:3 295:16,24 01S/04S 240:21 02 175:1		
yards 109:20,22 109:23 yeah 21:16,21 30:24 31:14 56:22 63:12 64:3 68:6 89:21 92:8 94:23 100:14 102:2 104:9 113:16,20 117:9 124:24 131:7 133:16 139:2 146:3,5 177:8 192:11 193:19 197:5,14 198:8 199:8				

<p>102 4:20 103 7:10 105,600 305:20 106 4:21 108,651 279:22 280:17 109 300:7 11,400 109:20 1122147 143:23 12 87:9 255:23 12-minute 87:7 120 6:7 234:13,16 120-3 6:8 234:22 235:3,20 122 3:6 4:22 123 77:17 1254 153:21 154:12 127 3:7 128 3:11 13 103:17 214:23 214:24 136 4:23 137 4:24 13th 209:12 14 188:24 214:24 248:19,20,22 249:5,6 254:15 14-3 1:4 7:5 141 5:1 142 5:2 145 5:3 148 5:4 149 5:5 15 47:7 55:14 106:9,11,21 107:14,14 189:1 214:23 215:1 247:11,12,20,22 248:16,17,22 249:6 250:1 256:15 15,000 109:20 15,200 109:20 150 5:6</p>	<p>151 5:7 152 5:8 154 5:9 156 5:10 159 5:11 15th 8:9 88:6,13 90:16 194:21 16 257:1 16,700 109:22 160,568 278:5 165,068 281:3,7 17 189:1 170 5:12 173 5:13 175 5:14 176 5:15 177 5:16 179 5:17 18 108:18,24,24 179:21,23 189:1 18,244 307:8 182 5:18 184 5:19 185 5:20 187 3:12 18th 2:10 90:15 19 205:8 309:6 19,429 309:13 196 3:13 1970s 12:12,21 1986 207:13 211:7 1998 31:15 1S 16:16</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 51:23 52:4,10,11 53:11,16 81:15 86:4 179:4 184:4,4,6 191:20 192:4,15,16,17 192:20,21 193:2 193:4,11,14,21 231:12 259:11 306:17 2.1.2.1 213:24</p>	<p>2.2.2 107:22 2.4.2 108:7 2/4S 16:16 20 42:23 78:10 129:19 198:23 20- 157:4 200 155:20 2000 31:15 2005 298:6,16 2007 28:15 29:16 31:7,23 32:1,6,8 47:12 49:20 50:2,3,5,16 55:15 88:21 91:8 95:4 97:10 116:19 117:3,7,8 117:22 118:10 118:14,15 311:19 2008 95:4 201 281:10 201,017 281:19 282:6 2012 28:1 31:16 31:21 32:2,7,8 33:3,5,17 98:21 2013 98:21 130:21 130:23 157:4 2015 138:13,17 148:11 2016 8:9 19:12 68:1,18 71:10 86:19,20,24 87:1 88:13 105:10 114:4,16 115:21 148:10,15 165:21 172:7 194:22 239:1,9 244:16 2017 47:13 49:20 87:24 88:4,9,10 116:1 2018 47:7,8 55:14 71:11 88:6,7 90:16 162:24</p>	<p>209:12 202 3:14 2020 1:1,15 7:8,16 311:13 204 3:15 5:10 34:20 45:22,22 49:4 89:3,22 90:19 156:5,7 163:19 182:20 209:9 214:22 204-108 6:18 279:7,12,16 300:7 204-109 6:22 300:10 204-13 5:22 213:2 213:8 204-15 6:10 257:10,12 204-16 5:23 215:19,22 237:6 237:8 204-17 254:15 204-18 6:13 264:8 264:13 265:12 269:12 204-20 6:15 271:4 271:6 204-21 6:16 273:24 274:4 283:10 284:2 204-22 6:19 284:23 285:3 288:13 204-23 6:20 291:14,17 292:15 204-25 6:21 299:14 303:3 304:11 204-26 6:23 303:23 304:2,24 204-35 299:12 204-36 6:12 261:15,16,18</p>	<p>270:18 273:18 276:2 282:8 290:4 294:2 299:8 204-38 4:5 34:17 35:1,5,23 80:4 119:2,14 120:2 122:13 156:18 156:21 163:19 165:24 167:4 217:12 263:20 272:20 293:5 204-39 6:11,14 258:3,8,24 259:4 266:1,3 204-4 5:21 209:21 209:23 210:2 204-40 6:9 245:21 245:23 246:2 256:8 204-46 4:13 55:13 55:18 204-47 4:17 89:10 89:20 204-49 4:9 49:5,7 99:16 204-5 5:21 209:23 210:2 211:8 204-50 52:3 204-53 4:10 52:4 52:6 204-56 4:11 53:3 53:5 204-60 4:12 54:8 54:10,20 204-61 4:18 90:21 97:9 204-7 5:24 227:4 227:7 204-71 5:18 182:21,23 204-79 5:19 184:17,19 204-9 5:22 213:2 213:8</p>
---	---	--	---	---

<p>204-90 5:20 185:12,14 204(c) 46:15 2047 54:14 204B 4:8 46:2 205 297:6,11 206 3:19 207 18:23 19:3 208 102:13,21 2083 155:22 2083126 143:22 21 11:17 246:8 21(a) 238:14 21,901 278:23 210 5:21 213 4:7 5:4,22 42:9,14,20,22 43:8 85:18 148:17,19 153:21,22 154:11,13 158:24 213-1210 5:5 149:15,18 213-1211 5:6 150:6,8 213-1220 5:7 151:7,9 213-1226 5:8 152:6,8 213-1254 5:9 154:2 213-1834 4:15 81:19 82:6,9 213-1837 4:16 83:15,18,24 86:9 213-1852 82:10 213-38 5:11 159:3 159:6 160:15 213G 81:15 82:4,5 214 5:12 170:6,10 171:20,23 214-14 5:13 172:24 173:2 174:10 176:13</p>	<p>180:3 187:16 188:4,11 199:5 199:10,10 214-15 5:15 176:13,15 179:5 180:3 187:17 189:17,18 196:19 199:6,8 202:5 214-17 5:16 177:20,22 179:4 180:3 187:17 189:24 214-18 5:17 179:6 179:8 180:3 187:17 190:4 214-19 5:14 175:16,18,21 177:20 180:3 215 5:23 179:3 217 179:2 21A 246:5 21A-23 6:9 245:20 245:23 246:2,10 246:12 256:14 21A-26 249:11,22 250:5,14,20,22 250:23 251:2 253:4 22 108:6 155:20 225 137:7 141:18 145:24 146:12 225-1 4:24 137:10 137:12 225-105 5:3 145:1 145:3,14 146:15 225-93 5:1 141:18 141:20,22 225-96 5:2 142:8 142:12 144:19 145:19 227 5:24 136:6 227-1 4:23 136:6 136:8 228 6:1</p>	<p>229 4:22 6:2 37:17 100:20 101:1 116:5 119:11,13 119:13 120:4,5,8 120:11 122:1,5 229F 224:22 229F-377 4:6 37:18,21 40:19 118:18 122:14 229G 4:19 100:20 100:24 101:5 229G-208 4:20 102:11,18 22nd 7:16 230 6:3 231 6:4 233 6:5,6 234 6:7 234,000 301:24 234,861 301:2 235 6:8 246 6:9 25 232:7 299:12 25,000 109:22 257 6:10 258 6:11 259,000 305:5 26 3:4 103:6 143:12 261 6:12 262-5524 2:5 264 6:13 266 6:14 26th 1:14 7:8 27 78:5,10,13 109:15 27.9 297:20 298:14,17,22 299:5 301:15 271 6:15 274 6:16 275 17:22 279 6:17,18 27N 59:9,10,11 62:16,19 65:3</p>	<p>73:10,24 27th 95:4 28 62:19 78:5,16 108:11,15 284,266 280:6,17 285 6:19 28th 49:20 29 78:5,18 291 6:20 299 6:21 29N 60:3 29th 95:4 97:10</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 8:15,18 9:3 11:18,23 12:5 13:10,18,24 14:20 16:17 19:8 29:9 30:8 30:21 31:1,3 38:6 43:24 44:20 47:12,23 48:2,19 49:18 50:20 52:12 53:2,16,24 54:6 55:16 56:3 68:3 68:23 80:9 82:3 82:3,16 86:10 87:21 89:1 91:14,19,24 107:14,22 109:17,20,21 112:3,4,4,12,16 113:5 114:3 115:8 121:4,21 126:6,7 132:7,9 132:12,14,23 133:9,17,20,21 139:7 140:13,14 140:17 142:15 142:18,19,20,21 148:8 149:10 151:14,16,17,20 151:24 154:8,24 155:1 156:22</p>	<p>157:4 162:1,4,8 164:5 166:3 167:10,15,22,24 168:3,6,8 169:2 169:10 172:1 173:12 182:17 184:11,12,13,16 186:6,11 191:22 194:7,7,10 202:16 209:7 212:9 214:15,18 217:23 218:14 218:17,18,21 220:24 225:20 225:22 227:23 229:7,9 231:11 232:9 237:8 239:23 245:20 246:16,19 247:8 256:8 258:19,22 262:10,20,24 263:3,7,24 269:15,17 270:10,21 272:16,23,24 273:8,16 276:8 276:10,18,21 277:13,15 278:8 278:16,18 279:22 280:5,13 280:21 281:13 282:1,3 284:4 287:5,13 288:17 290:10,10,18 291:23 292:6,12 292:20 293:3,15 293:19,23 299:10,24 300:2 300:21 301:7,21 302:11 303:24 304:18,24 305:5 306:8,10 307:17 308:3,12 3,000 43:3 3,200 109:23</p>
---	---	---	--	--

<p>3,274,000 17:21 3/6 263:8 3/Site 307:24 30 1:1 54:14,15 78:5,18 133:7 298:5 300 6:22 155:22 304 6:23 312 2:5,11 7:20 311:20 33 12:15 33(c) 8:22 332 301:5 332,000 301:24 332,524 293:24 300:19 302:4 35 4:5 299:12 3600 2:4 37 4:6 64:3 37S 64:2 38 64:3 259:5 38S 64:2 392,918 278:10 280:14 281:7 398 302:2 398,121 302:8 3B 231:21</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 53:18,22,23 54:22 55:5 91:19,21 92:1,3 92:4 94:4,19,24 95:8,15,23 96:6 96:11,16,24 97:21 99:24 100:13 103:6 104:23 105:12 105:21,21,23 109:3,5 124:6 184:17,24 185:2 185:7 191:5,10 191:19 193:11 193:13 251:6 258:19,22</p>	<p>4-5 96:10 4/5 96:12,17,17 109:21 110:2 113:17,19 124:14 133:18 149:10 4:30 288:10 40,449 281:15 282:4 40,826 301:22 302:18 40.9 278:13,15,17 281:6,17 409 281:17 419-9292 311:20 42 4:7 45 99:23,24 46 4:8 47 89:4,20 49 4:9 49,934 290:1,11</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 54:8,20,21,23 55:6 72:14 91:19,21 92:1,3 92:4 94:4,19,24 95:8,15,23 96:6 96:11,16,24 97:21 99:24 100:13 103:6 104:23 105:13 105:21,23 109:3 124:6 144:21 185:11 186:13 191:5,10,19 193:11,13 228:21 252:14 5- 252:16 5,579,794 13:17 17:22 212:8 5:00 310:2 50 95:24 96:3,3 100:12,13 249:6 256:16 286:17</p>	<p>50/50 95:7 100:1 104:5,12 124:11 287:1 52 4:10 524 301:5 53 4:11 54 4:12 55 4:13 109:11 55S 160:15 56 4:14 560 297:4,12,15 297:18 298:3,15 567,385 301:22 58,157 302:15,18 580- 253:3 583.75 253:3 583.9 252:17 584 252:10 588.5 253:3 589 252:20 58N 62:10 58S 160:15 59 109:5</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 8:14 9:3 11:19 11:24 12:6 13:10,18 14:20 16:16 19:8,9 20:3,4 29:9 30:8 30:21 31:1 43:24 44:20 47:12,23 48:3,19 49:19 50:20 53:10,10,12,24 55:16 56:3,15,19 57:5,5 64:18 65:1 67:24 68:24 70:10,11 70:20,21 71:5 72:13,18 73:13 74:2 85:13 87:21 89:1 91:14,19,21 92:1 92:3,4 94:19</p>	<p>95:7,17,18,21 96:3 97:1,21 99:24 100:13 103:6,23 105:24 108:7 109:23 110:3,11,12,15 110:22 111:6,6 111:10,13,16,22 124:6,17 125:13 127:4,7,9 132:8 132:9,12,14 133:9,10,12,18 133:20,24 139:7 140:5,13,14 144:21 145:10 146:17,22 147:10,13,21 148:8 149:10 152:14,16,17 153:11 156:24 157:4,15,18 158:10,12,15,17 158:19 159:20 161:20,23 167:17 168:18 169:6,11,14,17 169:19,21 171:8 171:24 174:13 174:14,21 176:3 176:23 178:6 182:9,10,18 186:6,11 190:17 194:13 195:17 204:11 209:6 212:9 214:15,18 217:24 218:23 225:20,23 227:23 229:8,14 240:20 242:17 245:6 262:19,20 262:24 263:3,8 269:16 270:1,12 270:20,22 273:21,22 274:2 274:11,13,13,15</p>	<p>274:23 275:15 275:17,18,24 276:5,8,11,18,21 277:13,16 278:8 280:9,13 281:1 281:13 282:2,3 283:1,14 284:4 284:17 285:18 286:19 287:6,8 287:13,19 290:9 290:10,22 291:2 291:4 292:6 294:3,7,14 295:1 295:18 296:8,20 296:22 297:7 298:1,4,9,22,24 299:10,24 300:3 301:3,10,21 302:11 304:19 307:24 309:22 60 108:12 111:9 600,050 15:3 60602 2:11 60603 2:4 311:20 61 90:19 61,037 269:15 270:19 271:1 63 106:8,10,24 108:24 63-15 4:21 106:13 65 6:1 96:23 228:8 228:11 65-11 6:4 231:4,7 65-16 6:3 229:19 230:2 65-5 6:2 228:22 229:2 65,597 299:5 301:11 302:5 67-542 4:14 56:5 56:8 74:20 125:13 127:5 69 2:10 6S 252:15,16</p>
--	--	--	---	---

7				
7 144:21 249:24 302:8 7,500 109:23 70.2 302:6,9,18 71,710 273:17 277:19 280:19 282:1 75 305:19 306:20 307:7,10 77,659 287:8 79 6:5 232:21,22 232:23 233:2 79-7 6:6 233:11 233:14				
8				
8 15:10 18:21,22 19:2 144:21 234:23 311:19 81 4:15 814-2087 2:11 814-4925 7:20 83 4:16 86,674 269:15 87 3:5 88 108:12,16 88,858 276:1 277:21 280:22 282:2 89 4:17 89- 281:14 8A 243:13 8N 221:24 8th 49:20 116:1				
9				
9 213:1 235:21 9:00 310:3 9:20 1:15 7:8 90 4:18 231:22 98,898 281:14,16				