

1441 Kingshighway, LLC,
v.
Illinois Environmental Protection Agency

Hearing

April 10, 2024

Reporter: Mark Arndt, CSR, CCR, CRR
CSR No. 084-004711
CCR No. 1398

1 The aforementioned proceedings were held
2 on April 10, 2024, at 1021 North Grand Avenue East,
3 Springfield, Illinois, before Mark Arndt, a certified
4 shorthand reporter and certified court reporter.

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APPEARANCES OF COUNSEL

On Behalf of Petitioner:

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By: Patrick Shaw

On Behalf of Respondent:

Illinois Environmental Protection Agency
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By: Richard Kim

Also present: Carol Webb, Pollution Control Board
Jennifer Van Wie, Pollution Control Board

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(Exhibits were retained by counsel.)

1 [10:00 a.m.]

2 MS. WEBB: Good morning. Welcome. I'd
3 like to welcome -- Board Member Van Wie is here, along
4 with our general counsel, Maury Tipsord (ph). My name
5 is Carol Webb, and this is the hearing for PCB 24-32
6 regarding 1441 Kingshighway, the IEPA. It is April
7 10th and we are beginning at 10:00 AM.

8 For the record, this facility is located in St.
9 Clair County, but there was no known public interest in
10 this case, so we are holding the hearing in
11 Springfield. There are no members of the public
12 present to comment, but written public comment may be
13 filed with the clerk by April 24th.

14 In this case, the agency partially denied
15 petitioner's request for reimbursement from the UST
16 fund for a site commonly known as Tamer's located in
17 Washington Park. The Pollution Control Board members
18 will make the final decision in this case.

19 My purpose is to conduct the hearing in a
20 neutral and orderly manner so that we have a clear
21 record of the proceedings. The decision deadline is
22 June 20th. This hearing was noticed pursuant to the
23 act and the board's rules and will be conducted
24 pursuant to Section 101.600 through 101.632 of the

1 board's procedural rules.

2 At this time I will ask the parties to please
3 make their appearances on the record.

4 MR. SHAW: Patrick Shaw for petitioners.

5 MR. KIM: Rich Kim for the agency.

6 MS. WEBB: Thank you. Are there any
7 preliminary matters to discuss on the record?

8 MR. SHAW: No.

9 MS. WEBB: No? Okay.

10 Mr. Shaw, would you like to make an opening
11 statement?

12 MR. SHAW: I will waive opening statement.

13 MS. WEBB: Okay.

14 Mr. Kim, would you like to make an opening
15 statement?

16 MR. KIM: We will waive an opening
17 statement as well.

18 MS. WEBB: Okay.

19 Mr. Shaw, you may call your first witness.

20 MR. SHAW: Thank you.

21 MS. WEBB: Sir, would you please come sit
22 up here, please? And would the court reporter please
23 swear in the witness?

24 [Goebel Rowe sworn.]

1 EXAMINATION

2 BY MR. SHAW:

3 Q. Could the witness state his name for the
4 record?

5 A. Gobel Tod Rowe.

6 THE REPORTER: Could we have a spelling on
7 that, please?

8 A. Goebel is G-O-E-B-E-L. Middle is Tod,
9 T-O-D. Last name is R-O-W-E.

10 THE REPORTER: Thank you.

11 BY MR. SHAW:

12 Q. Mr. Rowe, what's your highest educational
13 attainment?

14 A. I have a bachelor's degree in geological
15 engineering, and some coursework towards a master's
16 degree.

17 Q. Do you have any certifications related to
18 underground storage tank remediation?

19 A. I'm a licensed professional geologist with
20 the State of Illinois. I am also a licensed tank
21 remover by a firm known as ICC, which is what is
22 required by the office of State Fire Marshal to be
23 authorized to remove underground storage tanks.

24 Q. What is your current occupation?

1 A. I am a senior project manager with CW3M
2 Company, an environmental consulting firm.

3 Q. And what do you do for that firm, like for
4 instance?

5 A. I coordinate underground storage tank
6 removals. I coordinate work with the Illinois
7 Department of Transportation and the state Capital
8 Development Board.

9 I do drilling, fieldwork, actually overseeing
10 underground storage tank removals, oversighting --
11 contaminated soil removals on construction sites. I
12 perform as the estimator for the construction site
13 work.

14 I do additional things in terms of basically
15 running our field operations as it goes to tank
16 removals and construction sites.

17 Q. When did you first start work -- do work
18 on underground storage tank remediations?

19 A. I was actually -- in terms of doing
20 remediations, I was one of the original managers for
21 the Illinois EPA when they turned the underground
22 storage tank program into a section many, many years
23 ago.

24 MR. SHAW: I'm going to ask permission to

1 approach the witness.

2 MS. WEBB: Go ahead.

3 MR. SHAW: Hand you something that's been
4 marked exhibit -- I've marked Exhibit 1.

5 MR. KIM: Thank you.

6 MR. SHAW: Does that need to be initialed
7 or anything, or is this fine as an exhibit?

8 MS. WEBB: No, that's fine.

9 [Petitioner's Exhibit 1 marked for
10 identification.]

11 BY MR. SHAW:

12 Q. Do you recognize Exhibit 1?

13 A. Yes. It's my résumé.

14 Q. And did you prepare that?

15 A. Yes, I did.

16 Q. Are you familiar with the 1441
17 Kingshighway site?

18 A. Yes, I am.

19 Q. And how are you familiar with it?

20 A. I did the initial visit and site
21 assessment of the property, and then I also performed
22 the initial drilling that was done that initiated the
23 calling it of an incident.

24 Q. Would that have been part of an

1 environmental assessment?

2 A. Yes, it was our environmental assessment
3 on the property.

4 Q. What has CW3M's role been at the site?

5 A. As the environmental consultant for the
6 property owner and also the underground storage tank
7 contractor -- dealing with it -- this particular site
8 we had been advising the client how to remove the
9 tanks, remove the piping, get in compliance with the
10 office of State Fire Marshal, get in compliance with
11 the Illinois EPA.

12 Q. With respect to the tanks at the site, how
13 would you describe them?

14 A. They --

15 Q. Well, let me --

16 A. Yeah -- can you clarify that a little bit?

17 Q. I'll just clarify just to get to the issue
18 in the case here.

19 You're aware of the issues in the case here
20 today?

21 A. Yes. I'm aware of the issue of tanks and
22 how they are classified.

23 Q. And are you aware that the agency has
24 classified one or more tanks at the site as compartment

1 tanks?

2 A. Yes, I'm aware that is a position the
3 agency has taken.

4 Q. Now, given the issue with the -- just that
5 we've identified -- how would you describe the tanks at
6 the site? Are they compartment tanks? Are they not
7 compartment tanks? Are they -- or is --

8 A. One --

9 Q. Please describe it for me.

10 A. One of them was a compartment tank.

11 Q. Okay.

12 And by --

13 A. Being a compartment tank is -- it's --
14 basically, when they are produced it's literally two
15 separate fiberglass tanks that they basically glue
16 together to reduce the space that they're taking in the
17 ground by a little bit compared to the two separate
18 tanks.

19 They've got all apparatus of two separate tanks.
20 They just share the end of the connection. Instead of
21 putting a separate end on one of the sections, they
22 usual a combined jointing between the two.

23 Q. And you mentioned that they have all the
24 same apparatus, each compartment has all the same

1 apparatus.

2 What kind of apparatuses are you referring to?

3 A. From a physical standpoint, they are two
4 separate tanks. They have -- you have a separate pump
5 in each, you have a separate fill port in each, you
6 have separate vent lines in each, you have separate
7 monitoring for each, separate secondary containment for
8 each so that you can detect an internal or external
9 release from an individual tank.

10 As we look at it, we look at this as two tanks
11 because, with the exception of that one seam, it is two
12 complete different operational units. Different
13 products are in them.

14 Sometimes those products are extreme
15 differences -- premium gas and diesel. Sometimes it
16 may be just two different forms of gas. Or it may be
17 an ethanol-free verse a non-ethanol, so they're totally
18 separate products that -- and in some cases they're
19 also even piped to separate dispensing mechanisms.

20 Q. How long have these compartment tanks been
21 around, to your knowledge?

22 A. They kind of showed up around 2000, plus
23 or minus a couple years. Seen some as early as '98,
24 '99. It was -- it's in the transition period going

1 from mainly steel tanks to fiberglass tanks, and so
2 we've -- we -- they've been in operation now for
3 probably 25ish years on the high side.

4 Q. Are they similarly sized as
5 noncompartmentalized tanks?

6 A. Yeah. Yes, they are. The example would
7 be a 20,000-gallon tank. If it was not a compartment
8 tank, it would be -- an eight and a 12, a five and a
9 15 -- that sizing's variable depending on the capacity
10 needed for the site.

11 The way they are structured are kind of based on
12 the need of the facility and what they're trying to
13 produce and the way the pump islands and different
14 things are laid out on a property.

15 Q. With respect to tank removal, as part of
16 an underground storage tank remediation, how does the
17 consultant know whether or not the tank is
18 compartmentalized or not?

19 A. Amazingly, sometimes not till we actually
20 expose the tank. Very rarely is it documented in the
21 Fire Marshal record. Unless you've got somebody that's
22 been there for a long time, you have a circumstance
23 that until you have removed the concrete and exposed
24 it, you're not for sure if it's one large compartment

1 tank or whether it's two individual tanks.

2 I've seen it happen both ways. I've seen it
3 where, you know, we've uncovered thinking we were going
4 to have a compartment tank and realized we have two
5 smaller tanks, and sometimes thinking we had -- because
6 of the way the pumps and everything were laid out,
7 we're thinking we're going to have two separate tanks,
8 and they end up being one large one.

9 What I mean by that is the way the apparatus on
10 the top of the tanks are spaced, it's not a
11 consistent -- so you may have two separate tanks, but
12 your pumps are fairly close together because they put
13 them on those ends of the tanks. Vice-versa, you can
14 have one on each end.

15 Same thing for a compartment tank. There's no
16 standard out there in the industry of where these
17 access ports are and where they put them. A lot of
18 them are made or laid out to the request of the
19 installer from the manufacturer.

20 Q. I think you mentioned this before, but
21 just to clarify, how do service stations usually or
22 generally allocate products in cases where there is one
23 or more compartment tanks?

24 A. The most common compartment tank

1 distribution is diesel fuel on one side, premium fuel
2 on the other. There's exceptions to that. You know,
3 there's places where, you know, they just --
4 production-wise, they may have had one product and
5 changed it another, but the standard design that goes
6 in is a diesel fuel, premium, and a separate tank with
7 regular and/or mid range.

8 But we -- I've seen them where they've both been
9 the same product. I've seen it where they have also
10 had ethanol-free in them. I've seen it where they've
11 had kerosene in them. So that product is variable and
12 based on the needs of the service operator.

13 Q. Are there any special issues with removing
14 a compartment tank?

15 A. Yeah. They're a pain in the butt. Sorry
16 to be -- but -- yeah, because you got to double-do
17 everything before the Fire Marshal will let you even
18 try to remove the tank from the ground. And usually
19 our biggest issue is getting both of those compartments
20 to an explosive level that makes it manageable.

21 You've also got two pumps you got to remove.
22 You got two drop tubes you got to remove. Any other
23 monitoring that's down in the tank, you got to remove
24 them separately. So it's -- from a practical

1 standpoint, when it's in the ground, you're working on
2 two separate tanks, and really variable based on the
3 product in them.

4 And again, the most common is the diesel fuel
5 and the premium. The extreme issue we get in there is
6 if that was two separate tanks, the diesel fuel -- we
7 can get it ready, if not -- without doing very minimal
8 work to it -- able to remove it from the ground and get
9 it up on the surface where we can deal with it. The
10 premium, by the nature of premium gas, has a very high
11 volatile level. It takes a lot of extra effort to get
12 that tank down to a level that's safe to manage.

13 So we may have a side that if it was a separate
14 tank, we could have had it up, be getting it cleaned
15 out, dealing with other complications that comes with
16 diesel fuel, but we can't because it's attached to the
17 compartment tank.

18 One of the things we have run into, though, is
19 you could also get in a circumstance where -- because
20 there's a failure of some sort, an internal or external
21 failure, on one side of the tank, you may be abandoning
22 half of that compartment or 30 percent of the
23 compartment or 70 percent of the compartment tank in
24 place because you're -- the other side is still

1 operational and still considered an individual tank by
2 the Fire Marshal.

3 So there are situations where you abandon a tank
4 in place, part of the compartment -- which, again, from
5 the Fire Marshal's perspective, is one tank -- and
6 leaving the second one still operational.

7 Q. Does the office of State Fire Marshal
8 require an assessment for each tank and its --
9 compartment?

10 A. Yes.

11 Q. Does compartment tank -- or compartment of
12 a compartment tank require the same number of holes to
13 be cut into it as a regular tank?

14 A. No. The -- I think the question where
15 you're going with this -- when we have a tank removed
16 from the ground and up on the surface, before we can
17 get in the tank, we have to cut two holes in what -- in
18 each tank as defined by the Fire Marshal.

19 So for an individual 20,000-gallon tank we'll
20 cut a four-by-four hole in the ends of it so we can
21 inspect it, determine if we need to clean it out, and
22 what measures we need to do for the Fire Marshal to say
23 that does not pose a hazard anymore and now can just be
24 crunched and go to the landfill when we're talking

1 fiberglass.

2 A fiberglass composite, per the Fire Marshal's
3 spec, we got to cut a hole in each end, same size, but
4 then we got to cut a four-by-four hole in the side of
5 it with that joint between it, which is -- you can
6 imagine accessing a tank from just the ends is not a
7 very difficult task, but when you have to -- then have
8 to access it from the side and the ends, it takes a lot
9 more effort to clean out a tank like that.

10 Q. Or -- does it take more time to remove a
11 tank -- that is a compartment tank?

12 A. Yes, it takes more time just because of --
13 you're literally duplicating pretty well every step of
14 the process dealing with one tank without compartments
15 and dealing with two tanks that are compartment tanks.

16 Q. Roughly how common do you believe
17 compartment tanks are in the last 10 or so years?

18 A. Pretty common that a basic station would
19 put in a -- one compartment and one non-compartment to
20 get the basic layout of a diesel, a premium, and then a
21 low-grade -- 87. And then when you see the pump,
22 it's -- has a blended midgrade on it, so you got all
23 four.

24 But it -- since 2000 I think it was pretty

1 common. Honestly, I think right now the bigger
2 stations, especially some of the big ones going in,
3 have got away from compartments because of the
4 additional issues they've had to deal with them.

5 Because they are more of a maintenance -- you
6 know, same type of things we deal with on the removal,
7 the duplication of effort, and the problem with them
8 being connected and limited what you can do with that
9 tank has created operational issues. So people on the
10 operational side of it are really leaning to staying
11 away from installing compartment tanks because of that.

12 Q. And by maintenance issues, what would be
13 typical maintenance issues that a gas service station
14 would have during its operating stage?

15 A. One of the bigger issues is that they have
16 to do internal inspections on these tanks. So if it's
17 a composite tank, it's that gas/diesel layout, they
18 have to clear both those tanks from a volatile
19 standpoint like we have to do for removal to be able to
20 go in and do their internal inspections.

21 So they have the same issue we've got. They
22 have a -- by Fire Marshal -- an empty tank, but because
23 it's attached to this other tank, they can't get in and
24 do their inspection till they have what is the most

1 difficult tank on the property, being a premium tank,
2 blown down to a level that makes it safe to access
3 either side.

4 That's the biggest, you know, and the easiest to
5 really explain the difference. I mean, they got the
6 same things with pumps and piping and, you know, issues
7 that we deal with with the double, but their ability to
8 do their inspections and work on them is tied to making
9 sure they clear that adjoining structure.

10 MR. SHAW: I have no further questions.

11 MS. WEBB: Okay. Mr. Kim?

12 MR. KIM: Thank you.

13 EXAMINATION

14 BY MR. KIM:

15 Q. In this case it took the -- much longer
16 for the non-compartment tank to be removed.

17 Isn't that correct?

18 A. Because it was -- yes, it is. And --

19 Q. It did.

20 Right?

21 A. It did. If I can, can I explain part of
22 that process?

23 Q. I'll just ask you another question, okay?

24 Were you present during the underground storage

1 tank removals in late August 2022?

2 A. No, I was not on site when these were
3 removed.

4 Q. Is it your testimony that the first time
5 CW3M realized that there was a compartment tank was
6 when the tanks were removed?

7 A. From -- since I was the -- I actually did
8 the permitting on this, and when I was doing the
9 permitting, I did not, based on what the Fire Marshal
10 had online, see any indication. And when I was on
11 site, I saw nothing that was obvious, so until they
12 cleared the concrete -- we prepare for it anymore all
13 the time.

14 Q. Okay.
15 When did --

16 A. We did not know till they removed the
17 concrete.

18 Q. When did you do the permitting?

19 A. It would have been probably about 30 days
20 prior to the removal. The exact date I would have to
21 look.

22 Q. I'm showing you what's been marked as
23 Respondent's Exhibit 1, which is in the record on 45.

24 Do you recognize that exhibit?

1 [Respondent's Exhibit 1 marked for
2 identification.]

3 A. Yes. It's a site map of the Tamer's
4 property.

5 Q. And it's dated August 1st, 2022.
6 Is that correct?

7 A. Correct.

8 Q. And it shows the presence of a compartment
9 tank?

10 A. It shows the presence of two tanks there.
11 I would -- I've seen a lot of drawings like this that
12 are compartment and that also aren't compartment. So
13 it would not indicate to me that that was a
14 compartment. It would indicate to me that we need to
15 be prepared to deal with either situation.

16 Q. And it's showing there's two tanks next to
17 each other.

18 Is that correct?

19 A. That's correct. And I've looked at a lot
20 of drawings over the years, and I've seen, you know,
21 drawings like this that are compartment and drawings
22 like this that aren't compartment. So I would not jump
23 to that conclusion. It's just a flag to be prepared
24 from a response standpoint to deal with both

1 situations.

2 Q. But this is in August 1st of 2022, 30 days
3 before the removal.

4 Is that correct?

5 A. Yes. We knew there were two tanks there,
6 you know, per what we define operating with the Fire
7 Marshal and the permit for the Fire Marshal.

8 Q. And let's be clear.

9 That diagram shows the two tanks next to each
10 other contiguous.

11 Correct?

12 A. Yes.

13 MR. KIM: That's all I have.

14 MS. WEBB: Did you want to --

15 MR. KIM: I would move to admit
16 Respondent's Exhibit Number 1.

17 MS. WEBB: Okay. Well, it's already --
18 yeah, it's already part of the record.

19 MR. KIM: Right.

20 MS. WEBB: But why don't you give it to me
21 and it'll make it easier --

22 MR. KIM: Sure.

23 MS. WEBB: -- for the board to refer to in
24 the order. I assume that's a -- you have a --

1 MR. SHAW: I had a question for him,
2 but --

3 MS. WEBB: Oh, a question. Oh, okay. I
4 didn't know if you had a comment on the exhibit.

5 MR. SHAW: I didn't know if -- are you
6 still -- sorry.

7 MR. KIM: No, you're fine. That's all I
8 have.

9 MS. WEBB: Okay. Mr. Shaw.

10 EXAMINATION

11 BY MR. SHAW:

12 Q. I was just going to ask you, with respect
13 to how long it took the non-compartment tank to be
14 removed -- do you know why it took the non-compartment
15 tank long to remove?

16 A. The first tank is always the longest to
17 remove, and it was the first tank, if I recall from the
18 notes. And the first tank is the hinge pinch (ph) in
19 the hole. It's -- you've got very limited room to work
20 with on one side. It's usually hydraulically stuck,
21 for lack of a better term, in the hole.

22 So under any tank removal I've ever been
23 involved with, the first tank is always the most
24 time-consuming and hardest to get out of the ground

1 just because it's the first piece of the pie that
2 you're pulling out.

3 Once you have that removed, the other tanks
4 have, you know, room inside the ground to move around
5 and give you the ability to break a seal or move it a
6 little bit to adjust piping to be able to get it out.

7 But the very first tank is always the most
8 difficult, and I would say on average of all the years
9 I've been around it, it's probably -- unless you run
10 into other circumstances -- takes you twice as long to
11 get that first one out.

12 Because you're also factoring, you know, that
13 first one's the first one you're removing concrete
14 from, it's the first one that you're pulling the pumps
15 from. You're learning a lot on that first one of how
16 that installer installed those tanks, so you're better
17 prepared to deal with the second, third, fourth, fifth,
18 sixth, however many tanks you've got there.

19 But that first one is -- between the
20 difficulties of it being in place and being that key
21 piece coming out, you're also learning a lot about what
22 you're going to run into because every one of these
23 installs are different, but they're pretty consistent
24 once you get it exposed and see how they did it.

1 I mean, one of the big issues is how did they
2 anchor them? You know, you know, these tanks have
3 straps over them. They have various different anchors
4 that might be under the ground for them. There's no
5 way to know what that is till you get that first one
6 out.

7 And first one is a lot of trial and error, you
8 know, and a fine line of making sure you're doing that
9 trial and error safely that you don't have because you
10 know what you're dealing with on additional tanks that
11 follow.

12 MR. SHAW: Thank you. No further
13 questions.

14 MS. WEBB: Mr. Kim, anything further?

15 MR. KIM: No, Your Honor.

16 MS. WEBB: Okay. Thank you so much.

17 THE WITNESS: Okay. What do I do with --

18 MS. WEBB: You can just leave that.

19 That's fine.

20 THE WITNESS: Okay.

21 MS. WEBB: All right.

22 Mr. Shaw, would you like to call your next
23 witness? Do you need a minute?

24 MR. SHAW: Nope, we rest our case.

1 MS. WEBB: All right.

2 Oh, no more witnesses?

3 MR. SHAW: No more witnesses.

4 MS. WEBB: I'm sorry.

5 MS. SHAW: Oh, did I formally offer
6 Exhibit 1?

7 MS. WEBB: No, you did not.

8 MR. SHAW: We'd like to offer Exhibit 1
9 into evidence.

10 MR. KIM: No objection.

11 MS. WEBB: All right. Petitioner's
12 Exhibit 1 is admitted.

13 Mr. Kim, you may call your first witness.

14 MR. KIM: Ms. Carol Rowe.

15 MR. SHAW: Yeah.

16 MR. KIM: I would call Carol Rowe.

17 [Carol Rowe sworn.]

18 EXAMINATION

19 BY MR. KIM:

20 Q. Would you please state your name and spell
21 your last name for the court reporter?

22 A. Carol Rowe. R-O-W-E.

23 Q. And how are you employed?

24 A. In CW3M Company.

1 Q. Are you currently the president?

2 A. Yes.

3 Q. Okay.

4 Are you familiar with the 45-day report
5 submitted in this case?

6 A. Yes. I haven't looked at it, but --

7 Q. It's been a while?

8 A. It's been a while.

9 Q. Okay.

10 Is the term compartment tank mentioned anywhere
11 in the 45-day report?

12 A. Probably not.

13 Q. Are you familiar with the reimbursement
14 claim submitted in this case?

15 A. Yes.

16 Q. Is the term compartment tank mentioned
17 anywhere in that reimbursement claim?

18 A. I don't believe so. We just match
19 everything up with what the Fire Marshal has
20 registered.

21 Q. I'm showing you what's been marked
22 Respondent's Exhibit 2, which is -- 50.

23 Do you recognize this exhibit?

24 A. I do. I don't honestly remember it,

1 but it looks familiar.

2 Q. Your initials are on the bottom right.

3 Correct?

4 A. Yes.

5 Q. Okay.

6 And it's the -- is this the west UST cross view
7 diagram?

8 A. Yes, I believe so.

9 Q. Okay.

10 Was this map included -- diagram in Appendix B
11 of the 45-day report?

12 A. I'm not sure.

13 Q. Would it be common to include diagrams and
14 maps --

15 A. Uh-huh.

16 Q. -- in that report?

17 A. Yes.

18 Q. Now, the diagram shows an excavation depth
19 of 14 feet.

20 Is that correct?

21 A. I believe so.

22 Q. It also shows the underground storage
23 tanks had a diameter of 10-and-a-half feet.

24 Is that correct?

1 A. Yes.

2 Q. Does this diagram show Tank 2?

3 A. No, this one does not.

4 Q. And that's because Tank 2 was connected to
5 Tank 3 as part of a single-compartment tank.

6 Is that right?

7 A. I'm not sure without looking at maybe all
8 the maps exactly what was in the report.

9 MR. KIM: We move to admit Respondent's
10 Exhibit 2 at this time. I have nothing further.

11 MS. WEBB: Can you -- this is in the
12 record, you said?

13 MR. KIM: It is.

14 MS. WEBB: Okay. Yeah. I assume --
15 anything -- any comments to that, Mr. Shaw?

16 MR. SHAW: No comments.

17 MS. WEBB: This is -- okay, it is marked
18 as 2. Okay. All right. Respondent's Exhibit 2 is
19 accepted as part of the record.

20 [Respondent's Exhibit 2 marked for
21 identification.]

22 MS. WEBB: Mr. Shaw?

23 MR. SHAW: No questions.

24 MS. WEBB: Okay. Thank you.

1 THE WITNESS: All right.

2 MS. WEBB: Mr. Kim, you may call your next
3 witness.

4 MR. KIM: Call Robert Mileur.

5 [Robert Mileur sworn.]

6 EXAMINATION

7 BY MR. KIM:

8 Q. Would you please state your name and spell
9 your last name for the court reporter?

10 A. Yeah. It's Robert Mileur. M-I-L-E-U-R.

11 Q. How are you employed?

12 A. I work for the Illinois EPA in the
13 underground storage tank program.

14 Q. And what is your current position?

15 A. I'm a project -- field project manager. I
16 go out and inspect the underground storage tank
17 removals and remediation work.

18 Q. What region do you work out of?

19 A. The Marion region, which also covers
20 Collinsville.

21 Q. Are you familiar with Tamer's, also known
22 as 1441 Kingshighway in Washington Park, Illinois?

23 A. Yes.

24 Q. In late August 2022, were you on site to

1 observe the underground storage tank removals?

2 A. Yes.

3 Q. How many underground storage tanks were
4 removed at the site?

5 A. There were two tanks.

6 Q. I'm showing you what's been marked
7 Respondent's Exhibit 3, which is administrative record
8 368 and 369.

9 [Respondent's Exhibit 3 marked for
10 identification.]

11 BY MR. KIM:

12 Q. Do you recognize this exhibit?

13 A. Yes.

14 Q. What is it?

15 A. It is my field inspection report.

16 Q. And did you prepare this report?

17 A. Yes.

18 Q. Directing your attention to August 30th,
19 2022.

20 Did you observe the first 20,000-gallon
21 underground storage tank be removed?

22 A. Yes, I did.

23 Q. And did it take some time to remove that
24 underground storage tank?

1 A. Yeah, it took some time. Yeah.

2 Q. And why was that?

3 A. They had a lot of really fine limestone
4 material that packed around the tanks, so it was really
5 hard to get that off of there.

6 Q. Was there issue with the lugs (ph)?

7 A. And the lugs, yeah, when they tried
8 to pull that -- because it was so tight -- end up
9 pulling the lugs out of the tank.

10 Q. Did it take most of the day to remove this
11 first underground storage tank?

12 A. It took a good while, yeah.

13 Q. Now, the following day were you back on
14 site to observe -- witness the other underground
15 storage tank being removed?

16 A. Yes.

17 Q. And how would you describe this
18 underground storage tank?

19 A. It was a 20,000-gallon double compartment
20 tank.

21 Q. Once it was removed, were both ends cut
22 open?

23 A. Yes.

24 Q. When the ends were cut open, could you see

1 the divider between the two compartments?

2 A. Yes, I could. Uh-huh.

3 Q. Was there any issues of the actual removal
4 of that underground storage tank?

5 A. No, it pulled out okay. They used the
6 lugs on it to get it out.

7 Q. Did you take any photographs while you
8 were on scene both days?

9 A. Yes, I did.

10 Q. I'm showing you what's been marked
11 Respondent's Group Exhibit 4, which is administrative
12 record 370 to 377.

13 [Respondent's Exhibit 4 marked for
14 identification.]

15 BY MR. KIM:

16 Q. Do you recognize this group exhibit?

17 A. Yes, these are my field inspection photos.

18 Q. And did you take those photographs?

19 A. Yes, I did.

20 Q. Do the photographs fairly and accurate
21 represent the scene at 1441 Kingshighway on August 30th
22 and 31st of 2022?

23 A. Yes.

24 Q. If you look at Page 7 of that Group

1 Exhibit 4, does Photo Exposure Number 14 show the
2 divider between the two compartment tanks?

3 A. Yes, you can see the divider inside.

4 Q. And compare that with Page 4, Photo
5 Exposure Number 8.

6 Does this photograph show the first underground
7 storage tank cut open?

8 A. Yes.

9 Q. And can you see straight through to the
10 other end?

11 A. Yeah. No divider in this one. Right.

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

13 MS. WEBB: Mr. Shaw?

14 EXAMINATION

15 BY MR. SHAW:

16 Q. Mr. Mileur, why were you at the Tamer's
17 site on August 30th and 31st?

18 A. I am required by the Illinois EPA to check
19 the work of our consultants and contractors to make
20 sure the work is being done properly.

21 Q. Do you do this for all tank removals?

22 A. Uh-huh.

23 Q. What is your purpose in these inspections?

24 A. To make sure that the work is being

1 completed as said it was supposed to be done,
2 basically.

3 Q. Isn't that the State Fire Marshal's job?

4 A. They cover other aspects of it. I --

5 Q. What are the aspects that you focus on
6 that the State Fire Marshal doesn't?

7 A. What type of tanks, the condition, if
8 there's any contamination in the field.

9 Q. Have you been told to go identify
10 compartment tanks at these tank pulls?

11 A. Not specifically, no.

12 Q. When you mean "not specifically," are you
13 saying generally you're asked to look for compartment
14 tanks?

15 A. Not to look for compartment tanks. I
16 mean, if they're there, that's what I observe. I'm
17 observing what is there at the time.

18 Q. Do you report compartment tanks to
19 anybody?

20 A. If it's a compartment tank, yeah, I do
21 report it in my field notes.

22 Q. Where are your field notes located?

23 A. Where are they located?

24 Q. Yeah.

1 Are they in Marion?

2 A. Yes.

3 Q. Okay.

4 Are they put online at any point in time, to
5 your knowledge?

6 A. I send them up to Springfield.

7 Q. I'm sorry. What?

8 A. I send them up to Springfield.

9 Q. And who do you send them to?

10 A. I send them to whoever's in charge at the
11 time. Now I send them to Brian Bauer (ph).

12 Q. And he's the -- currently the head of
13 the --

14 A. Over the -- section -- yeah.

15 Q. Do you send them to the reviewer assigned
16 to the file?

17 A. I send them up to him, and then they --
18 I'm assuming they sort it out to whoever it goes to.

19 Q. Has Brian Bauer ever told you to look for
20 compartment tanks?

21 A. No, not to look for them. No.

22 Q. Do -- are you aware of any regulations
23 that the Illinois Environmental Protection Agency
24 enforces that mention compartment tanks?

1 A. Just when it gets into the reimbursement
2 side of things. I don't know --

3 Q. What regulation would that be?

4 A. That I don't know.

5 Q. So the reimbursement --

6 A. I don't do that.

7 Q. Okay.

8 So the reimbursement isn't anything that --
9 involved with what you're doing when you're doing
10 inspection --

11 A. No, I just report what I see in the field.

12 Q. Okay.

13 Would there be situations where you would
14 possibly not mention there were compartment tanks
15 because it didn't strike you as important at that time?

16 A. No. I mean, unless I didn't know it or
17 something, but --

18 Q. When did you first have any discussion
19 with anybody from EPA about compartment tanks at the
20 site?

21 A. Received a memo about the hearing a couple
22 weeks ago.

23 Q. Okay.

24 So -- no, that's --

1 MR. SHAW: I have no further questions.

2 MS. WEBB: Okay.

3 MR. KIM: Nothing further.

4 MS. WEBB: Okay. Thank you, sir.

5 A. Do you want this?

6 MS. WEBB: Yes. Please.

7 THE WITNESS: Okay.

8 MS. WEBB: I know these are already in the
9 record.

10 MR. KIM: Yes.

11 MS. WEBB: Do you want me to mark them?

12 MR. KIM: 3 and 4.

13 MS. WEBB: Yes, 3 and 4.

14 MR. KIM: Yes.

15 MS. WEBB: Okay.

16 MR. KIM: Thank you.

17 MS. WEBB: Thank you.

18 MR. KIM: Final witness is Brian Bauer.

19 MS. WEBB: Okay. Mr. Bauer?

20 [Brian Bauer sworn.]

21 EXAMINATION

22 BY MR. KIM:

23 Q. Would you please state your name and spell
24 your last name for the court reporter?

1 A. Brian Bauer. B-A-U-E-R.

2 Q. How are you employed?

3 A. The Illinois Environmental Protection
4 Agency.

5 Q. And how long have you been so employed?

6 A. Almost 32 years.

7 Q. What section do you work?

8 A. The 1a (ph) section.

9 Q. And what is your current job title?

10 A. Interim section manager.

11 Q. And how long have you held that title?

12 A. Five, six months.

13 Q. What other positions have you held in the
14 agency?

15 A. Special projects and financial unit
16 manager. Lead worker (ph) for the reimbursement claims
17 group. And project manager.

18 Q. And what's your educational background?

19 A. I have a bachelor's degree in biology and
20 a master's degree in environmental studies from UIS.

21 Q. Are you familiar with the site at 1441
22 Kingshighway in Washington Park, Illinois?

23 A. Yes.

24 Q. And who was the consultant at that site?

1 A. CWM Companies.

2 Q. Are you familiar with the 45-day report
3 filed by CWM?

4 A. I am.

5 Q. And have you reviewed it?

6 A. I looked at it, yes.

7 Q. Was the term compartment tank mentioned
8 anywhere in the 45-day report?

9 A. Not that I recall, no.

10 Q. Are you familiar with the original
11 reimbursement claim submitted by CWM?

12 A. Yes.

13 Q. Have you reviewed that claim?

14 A. Yes.

15 Q. Was the term compartment tank mentioned
16 anywhere in the original reimbursement claim?

17 A. It was not.

18 Q. At the time of the initial agency decision
19 on the original claim, was the issue of a compartment
20 tank known?

21 A. It was not.

22 Q. At some point after that initial decision,
23 did the issue arise?

24 A. Yeah, on a rereview.

1 Q. And how did it come about?

2 A. I mean, it just -- when -- after the
3 review, the claim came through, I looked at it, and it
4 looked like that -- kind of looked like a possible
5 compartmentalized tank.

6 Q. Why is that?

7 A. I don't know. I just kind of -- I just
8 had a gut feeling, I mean, just based upon 32 years of
9 experience looking at this stuff.

10 Q. And what did you do?

11 A. I contacted the Fire Marshal's office.

12 Q. Did you receive confirmation that there
13 was a compartment tank?

14 A. I have, yes.

15 MR. KIM: That's all I have.

16 MS. WEBB: Okay.

17 EXAMINATION

18 BY MR. SHAW:

19 Q. Mr. Bauer, did you review the 45-day
20 report in conjunction with the initial application for
21 reimbursement?

22 A. The first?

23 Q. First.

24 A. No.

1 Q. Were you involved in the first application
2 for reimbursement?

3 A. I don't recall. I might have signed the
4 letter.

5 Q. Do you sense that possibly you had a
6 different relationship with the first reimbursement and
7 the rereview?

8 A. I don't understand the question.

9 Q. Let me ask this question then.

10 On rereview -- did you look at the 45-day report
11 in conjunction with the rereview?

12 A. Yes, I did.

13 Q. Okay.

14 You seem more certain about the rereview than
15 the initial review.

16 Is -- did you have a different relationship with
17 the project at that time, or why would that be?

18 A. Maybe they were asking me questions. I
19 really don't -- I don't know how to answer that.

20 Q. You were certainly aware, I assume, of the
21 forms that agency produces for reimbursements?

22 A. Yes.

23 Q. You probably had a hand in making some of
24 them, I suppose.

1 Is that true?

2 A. Possibly, yes.

3 Q. Do those forms indicate that compartment
4 tanks need to be identified?

5 A. The reimbursement forms?

6 Q. Yes.

7 A. No.

8 Q. Okay.

9 And you're probably also familiar with the
10 agency instructions for those forms, I assume?

11 A. Yes.

12 Q. Those instructions do not refer to
13 identifying compartment tanks.

14 Is that true?

15 A. That's probably correct. Yes.

16 Q. Is it also true that there's nothing in
17 any of these Part 734 regulations that expressly
18 mentions compartment tanks?

19 Isn't that true?

20 A. I believe so. Yes.

21 MR. SHAW: I have no further questions.

22 MR. KIM: Nothing further.

23 MS. WEBB: I believe Member Van Wie had a
24 question?

1 MS. VAN WIE: I just have a general
2 question.

3 A. Sure.

4 MS. VAN WIE: If you're aware that a tank
5 is a compartment tank --

6 A. Uh-huh.

7 MS. VAN WIE: -- do you view that as one
8 tank for reimbursement or two tanks for reimbursement?

9 A. We viewed it as one tank for
10 reimbursement.

11 MS. VAN WIE: Always or -- I'm not just --
12 I'm talking generally, not just specific to this
13 matter.

14 A. Always.

15 MS. VAN WIE: Always? Okay.

16 A. Yeah. Yeah.

17 MS. VAN WIE: Okay. Thank you.

18 MS. WEBB: Thank you, sir.

19 THE WITNESS: Thanks.

20 MS. WEBB: Mr. Kim, do you have anything
21 further you'd like to present?

22 MR. KIM: Nothing further.

23 MS. WEBB: Nothing further for you, Mr.
24 Shaw?

1 MR. SHAW: Can I take like a minute, a
2 couple minutes?

3 MS. WEBB: Would you like a recess --
4 should we take a recess, or --

5 MR. SHAW: Take a recess, yeah.

6 MS. WEBB: Okay. Let's take a recess for
7 about 10 minutes, come back at 11:00.

8 [A recess was taken.]

9 MS. WEBB: We're back on the record.

10 Mr. Shaw, would you like to add anything before
11 we wrap things up?

12 MR. SHAW: No, we won't. Thanks for
13 asking.

14 MS. WEBB: Okay. Okay. Thank you. All
15 right.

16 Well, then I will conclude by saying that the
17 transcript is due by April 17th and will be posted on
18 the board's website. The public comment deadline is
19 April 24th. Any public comment must be filed in
20 accordance with Section 101.628 of the board's
21 procedure rules.

22 The petitioner's brief is due by May 1st. The
23 agency's brief will be due by May 15th. And the
24 petitioner's reply is due by May 20th.

1 Mr. Shaw, would you like to make any closing
2 statement?

3 MR. SHAW: I'll reserve argument for the
4 brief.

5 MS. WEBB: Oh, okay.

6 Mr. Kim, would you like to make any closing
7 statement?

8 MR. KIM: I will reserve as well.

9 MS. WEBB: Okay. At this time I will
10 conclude the proceedings and we stand adjourned. Thank
11 you, everybody.

12 [11:00 a.m.]

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C E R T I F I C A T E

I, Mark Arndt, a Certified Shorthand Reporter and Certified Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me on April 10, 2024, at the time and place hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

Mark Arndt

MARK ARNDT, CSR, CCR, CRR

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