

3-26-73

C

CASE TITLE EPA V. SEARS, ROEBUCK & Co. ET AL  
H.O. DONALD GANGER  
332-4545

CASE NUMBER 73-106  
CASE TYPE Enforcement  
DATE FILED 3-9-73  
OPINION \_\_\_\_\_

| DATE    | ITEMS                                                                                                    |
|---------|----------------------------------------------------------------------------------------------------------|
| 3-26-73 | HEARING SET FOR 5-7-73 10 AM<br>LIQUOR CONTROL COMMISSION, RM 419,<br>198 W. RANDOLPH ST., Chicago, Ill. |
| 5-2-73  | HEARING CONT'D - NO NEW DATE                                                                             |
| 5-3-73  | Motion for Continuance filed by Resp.                                                                    |
| 5-4-73  | ENTRY OF APPEARANCE filed by ATTORNEY<br>for Resp.                                                       |
| 5-7-73  | HEARING CANCELED - TENTATIVE DATE<br>Set for June 11, 1973, SAME TIME &<br>PLACE.                        |
| 5-10-73 | ENTRY of Appearance filed by EDWIN<br>KATZ AS ATTORNEY for MARIO &<br>DI BONO CORP. (Resp)               |
| 5-30-73 | HEARING June 11, 1973 at 10 AM<br>SAME LOCATION                                                          |
| 6-7-73  | Answer filed by Resp.                                                                                    |
| 6-8-73  | Amended Complaint filed by EPA                                                                           |
| 6-12-73 | HEARING Reset for June 29, 1973 10 AM<br>135 S. LA SALLE ST, RM 1848, CHICAGO,<br>ILLINOIS.              |
| 7-5-73  | TRANSCRIPT OF 6-11-73                                                                                    |
| 7-10-73 | EXHIBITS & H.O. Credibility Statement fil                                                                |
| 7-10-73 | Briefs due 30 days after transcript (8-4-73)                                                             |

CLOSED

X

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1.

EPA v. SEARS ET AL

ITEMS:4

|         |                                                                        |
|---------|------------------------------------------------------------------------|
| 7-27-73 | TRANSCRIPT of 6/29/73 hearing filed                                    |
| 8-27-73 | Motion for continuance of Time in which to file briefs (9/10/73) filed |
| 8-29-73 | H.O. Order Re: Briefs filed ✓                                          |
| 9-10-73 | Brief filed by Resp. (SEARS)                                           |
| 9-11-73 | Brief filed by Resp. (MARIO & Di Bona)                                 |
| 6-6-74  | OPINION & ORDER:                                                       |

X

STATE OF ILLINOIS )  
 ) ES  
 COUNTY OF COOK )

BEFORE THE POLLUTION CONTROL BOARD  
 OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
 an agency of the State of Illinois, )

Complainant, )

v. )

SEARS, ROEBUCK & COMPANY, a )  
 New York corporation; DIESEL )  
 CONSTRUCTION COMPANY, a division )  
 of CARL A. MORSE, INC. of Illinois, )  
 an Illinois corporation; and MARIO )  
 & DiBONO CORPORATION, a New York )  
 corporation, )

Respondents. )

PCB 73-106

NOTICE

To: Mr. Lloyd S. McClelland  
 Registered Agent for  
 Sears, Roebuck & Company  
 925 South Homan Avenue  
 Chicago, Illinois 60607

Mr. Stanton Schuman  
 Registered Agent for  
 Carl A. Morse, Inc.  
 11 South LaSalle Street  
 Chicago, Illinois 60603

Mr. Edwin M. Katz  
 Registered Agent for  
 Mario & DiBono Corporation  
 134 North LaSalle Street  
 Chicago, Illinois 60602

PLEASE TAKE NOTICE that I have today filed in the Office  
 of the Clerk of the Pollution Control Board of the State of

Illinois, a Complaint, a copy of which is attached hereto and thereby served upon you.

PLEASE TAKE FURTHER NOTICE that you may be required to attend a hearing at a date to be set by the Pollution Control Board, at which time you will be required to answer the allegations of the attached Complaint.

DATED: March 9, 1973

ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS;  
William J. Scott, Attorney  
General, as its attorney

By Harvey M. Sheldon  
HARVEY M. SHELDON, Chief  
Environmental Control Division

OF COUNSEL:

LEE A. CAMPBELL  
Assistant Attorney General  
Environmental Control Division  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601  
793-2491

STATE OF ILLINOIS )  
COUNTY OF COOK )

SS

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois,

Complainant,

v.

SEARS, ROEBUCK & COMPANY, a  
New York corporation; DIESEL  
CONSTRUCTION COMPANY, a division  
of CARL A. MORSE, INC. of Illinois,  
an Illinois corporation; and MARIO  
& DiBONO CORPORATION, a New York  
corporation,

Respondents.

COMPLAINT

Complainant, the ENVIRONMENTAL PROTECTION AGENCY of  
the State of Illinois, by WILLIAM J. SCOTT, Attorney General of  
the State of Illinois, complains of Respondents, SEARS, ROEBUCK  
& COMPANY, a New York corporation; DIESEL CONSTRUCTION COMPANY,  
a division of CARL A. MORSE, INC. of Illinois, an Illinois  
corporation; and MARIO & DiBONO CORPORATION, a New York corporation,  
and says as follows:

1. Complainant is an administrative agency established  
in the Executive Branch of the State Government by Section 4(a)

of the Environmental Protection Act (hereinafter sometimes "Act"), Ill. Rev. Stat., Ch. 111-1/2, §1004(a) (1971).

2. Respondent, Sears, Roebuck & Company, a New York corporation, (hereinafter "Sears"), at all times pertinent hereto, has been and now is a corporation organized and existing under the laws of the State of New York, duly licensed to do business in the State of Illinois, owning a piece of property and the improvements thereon (known as "Sears Tower") bordered by Jackson Boulevard, Wacker Drive, Adams Street and Franklin Street in Chicago, County of Cook, Illinois.

3. Respondent, Diesel Construction Company, a division of CARL A. MORSE, INC. of Illinois, an Illinois corporation, (hereinafter "Diesel"), at all times pertinent hereto, has been and now is a corporation organized and existing under the laws of the State of Illinois, and has been and now is acting as general contractor responsible for the construction of the aforementioned Sears Tower.

4. Respondent, Mario & DiBono Corporation, a New York corporation, (hereinafter "Mario"), at all times pertinent hereto, has been and now is a corporation organized and existing under the laws of the State of New York, duly licensed to do business in the State of Illinois, and has been and now is the sub-contractor charged with spraying fireproofing material on the aforementioned Sears Tower.

5. This is an action brought pursuant to the authority granted the Environmental Protection Agency by the Environmental Protection Act, Ill. Rev. Stat., Ch. 111-1/2, §1001 et seq. (1971).

6. Respondent Mario, under the direction of Respondent Diesel, both being employed by Respondent Sears, sprays non-asbestos fireproofing on the exposed surfaces of steel structural columns, beams and decks on the Sears Tower.

7. Said spraying operation utilizes a mixing room where the fireproofing material is prepared by dumping 50-lb. bags of dry mineral wool into a hopper. The material is then pumped to the floor where the spraying is to take place. The material is then wetted and sprayed onto the surfaces through a hose.

8. Respondents have, on April 27, 1972, June 6, 1972 and August 16, 1972, sprayed non-asbestos fibrous matter in an area open to the atmosphere, without enclosing the entire floor or area to be sprayed with plastic or plastic-coated tarpaulins in such a manner as to preclude the escape of fiber containing material to the atmosphere in violation of Part VI, Section III, Rule 632(a) of the Air Pollution Control Regulations and thus Respondents have violated Section 9(a) of the Act.

9. Respondents have, on April 26, 1972 and August 16, 1972, sprayed non-asbestos fibrous matter in an area open to

the atmosphere, without thoroughly vacuuming the entire sprayed area, all ledges and surfaces including tarpaulins within the enclosure, upon completion of the spraying operation and immediately before the enclosure is dismantled, in violation of Part VI, Section III, Rule 632(b) of the Air Pollution Control Regulations and thus Respondents have violated Section 9(a) of the Act.

WHEREFORE, Complainant, the ENVIRONMENTAL PROTECTION AGENCY, prays:

1. That the Board set a date for hearing not less than twenty-one (21) days from the date of service of this Complaint, at which time SEARS, ROEBUCK & COMPANY, et al. be required to answer the allegations here made against them;
2. That the Board thereafter enter an Order directing Respondents to cease and desist the aforesaid violations in accordance with a compliance program established by the Board;
3. That the Board assess against Respondents a penalty of up to \$10,000 for each violation, plus up to \$1,000 for each day each such violation continued; and
4. That the Board grant such further relief which it deems necessary in this case.

ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS;  
William J. Scott, Attorney  
General, as its attorney

By Harvey M. Sheldon  
HARVEY M. SHELDON  
Assistant Attorney General

OF COUNSEL:

HARVEY M. SHELDON, Chief  
Environmental Control Division

LEE A. CAMPBELL  
Assistant Attorney General  
Environmental Control Division

188 West Randolph, Suite 2315  
Chicago, Illinois 60601  
793-2491

PROOF OF SERVICE

I, Mary Zurawski, being first duly sworn on oath states that I did serve a copy of the foregoing Notice and Complaint upon the persons to whom said Notice is directed by depositing a copy of same in a properly addressed envelope, with sufficient postage affixed, certified mail, return receipt requested and depositing said envelope in the U.S. Postal Service at 166 North LaSalle Street, Chicago, Illinois this 9th day of March, 1973.

Mary Zurawski

SUBSCRIBED AND SWORN TO  
before me this 9th day  
of March, 1973.

Mary J. Cypher  
NOTARY PUBLIC

LAW OFFICES

QUERREY, HARROW, GULANICK & KENNEDY

827 FIELD BUILDING - 135 SOUTH LASALLE STREET - TELEPHONE 332-4545

CORWIN D. QUERREY  
JOSEPH HARROW  
EDWARD J. GULANICK (312) 332-4545  
JOHN T. KENNEDY  
JOHN F. SHEPPINGTON  
ROSS P. TORAN  
JAMES J. O'HAGAN  
RICHARD H. HOFFMAN  
DONALD C. GANCER  
THEODORE E. DAWES  
ROBERT S. MAJESKI  
CHARLES E. BELUND

CHICAGO, ILLINOIS 60603

March 23, 1973

RECEIVED  
POLLUTION CONTROL BOARD

FRANCIS D. FAYNES  
LAWRENCE S. SPEYER  
THOMAS M. MOREY  
JOSEPH A. WORTON  
CHARLES F. SCOTT  
JOHN J. CORRETT  
PAUL A. RETTERBERG  
RONALD M. JERRICK  
BRUCE T. LOGAN  
ROBERT W. ROONEY, JR.

Clerk, Illinois Pollution Control Board  
309 West Washington Street  
Suite 300  
Chicago, Illinois 60606

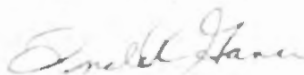
RE: PCB73-106  
EPA v. Sears Roebuck et al

Dear Sir:

Enclosed is a signed form advising you of the hearing date and time in the above case as well as enclosing a copy of notice I have sent out to all parties.

If attorneys file their appearance of record for any of the respondents please advise me.

Very truly yours,

  
Donald C. Gancer

DCG:fk  
Enclosures

STATE OF ILLINOIS)  
 ) SS  
COUNTY OF C O O K)

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an agency of the State of Illinois, )

Complainant, )

v. )

NO. PCB73-106

SEARS ROEBUCK & COMPANY, a )  
New York corporation; DIESEL )  
CONSTRUCTION COMPANY, a division )  
of CARL A. MORSE, INC. of Illinois, )  
an Illinois corporation; and MARIO )  
& DI BONO CORPORATION, a New York )  
corporation, )

Respondents. )

N O T I C E

TO: Mr. Lloyd S. Mc Clelland  
Registered Agent for  
Sears Roebuck & Company  
925 South Homan Avenue  
Chicago, Illinois 60607

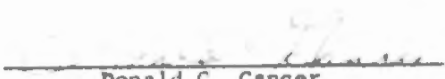
Mr. Edwin M. Katz  
Registered Agent for  
Mario & Di Bono Corporation  
134 North La Salle Street  
Chicago, Illinois 60602

Mr. Stanton Schuman  
Registered Agent for  
Carl A. Morse, Inc.  
11 South La Salle Street  
Chicago, Illinois 60603

Mr. Lee Campbell  
Assistant Attorney General  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that the above entitled cause will  
be set for hearing May 7, 1973 at 10:00 A. M. at the Liquor Control  
Commission, Room 419, 188 West Randolph Street, Chicago, Illinois.  
Dated: March 23, 1973.

135 South La Salle Street  
Chicago, Illinois 60603  
332-4545

  
Donald C. Gancer  
Hearing Officer



STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

309 WEST WASHINGTON STREET SUITE 300

CHICAGO, ILLINOIS 60606

TELEPHONE  
312 793 0600

DAVID F. CURRIE, CHAIRMAN  
SAMUEL R. ALDRICH  
JACOB D. DUMELLE  
RICHARD J. RISSEL  
SAMUEL T. LAWTON, JR.

DATE: March 19, 1973

TO: Mr. Donald C. Gancer CASE & DOCKET NO.: PCB73-106  
Querrey, Harrow et al  
827 Field Bldg.  
135 S. LaSalle Street  
Chicago, Illinois 60603

EPA v. Sears Roebuck et al

March 9, 1973

You have been designated Hearing Officer in the above captioned case. Attached are formal documents filed and correspondence received as of this date.

Please inform the Clerk of the Board within FIVE days of the location and date of the hearing. The hearing must be held in the County of the alleged violation and as close to the site of the alleged violation as possible. The hearing must be held no sooner than 35 days after we receive your notice (this will enable us to arrange for the proper 21 day newspaper notice to the parties and the public). However in no event should the hearing be held later than 60 days after the case is filed.

HEARING DATE AND TIME: May 7, 1973 at 10:00 A. M.

LOCATION: Liquor Control Commission, Room 419, 188 W. Randolph St., Chgo.

HEARING OFFICER SIGNATURE: Samuel T. Lawton, Jr.

Please be sure to notify all parties of the hearing date, time and location. Also provide the petitioner or respondent with a copy of the Board's Procedural Rules (enclosed).

Please return the original of this form as soon as you have established a hearing date, time and location to the Clerk's Office and a newspaper notice will be arranged (carbon copy will be sent to you).

Thank you for your courtesy and cooperation in handling this matter for the Pollution Control Board.

Very truly yours,

Samuel T. Lawton, Jr., Acting Chairman  
Illinois Pollution Control Board



ORG.

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an agency of the State of Illinois, )

Complainant, )

v. )

PCB 73-106

SEARS, ROEBUCK & COMPANY, a )  
New York corporation; DIESEL )  
CONSTRUCTION COMPANY, a division )  
of CARL A. MORSE, INC. of Illinois, )  
an Illinois corporation; and MARIO )  
& DIBONO CORPORATION, a New York )  
corporation, )

Respondents. )

NOTICE

TO: Mr. Edwin M. Katz  
Registered Agent for  
Mario & DiBono Corporation  
134 N. La Salle Street  
Chicago, Illinois 60602

Environmental Protection Agency  
of the State of Illinois  
William J. Scott, Attorney General  
as its attorney  
188 W. Randolph  
Suite 2315  
Chicago, Illinois 60601  
Attn: Lee Campbell

PLEASE TAKE NOTICE that I have today filed in the Office  
of the Clerk of the Pollution Control Board of the State of Illinois,  
a Motion for Continuance, a copy of which is attached hereto and  
thereby served upon you.

FOSS, SCHUMAN & DRAKE

BY: Barry Fisher  
Attorneys for Respondents.

FOSS, SCHUMAN & DRAKE(MH/BK)  
11 S. LaSalle Street  
Chicago, Illinois 60603  
782-2610

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an Agency of the State of Illinois, )

Complainant, )

v. )

PCB 73-106

SEARS, ROEBUCK & COMPANY, a )  
New York corporation; DIESEL )  
CONSTRUCTION COMPANY, a division )  
of CARL A. MORSE, INC. of Illinois, )  
an Illinois corporation; and MARIO )  
& DIBONO CORPORATION, a New York )  
corporation, )

Respondents. )

MOTION FOR CONTINUANCE

Now comes the Respondents, SEARS, ROEBUCK & COMPANY, a New York corporation, and DIESEL CONSTRUCTION COMPANY, a division of CARL A. MORSE, INC. of Illinois, an Illinois corporation, by its attorneys, FOSS, SCHUMAN & DRAKE, and moves that the original hearing set for May 7, 1973, be continued until June 11, 1973, saying as follows:

1. Michael Hawkins of FOSS, SCHUMAN & DRAKE, is the attorney with primary responsibility for the above entitled matter.
2. On or about April 29, 1973, Michael Hawkins was hospitalized but expects to return to active practice in the near future.

FOSS, SCHUMAN & DRAKE

BY: Berry Schuman

FOSS, SCHUMAN & DRAKE (MH/BK)  
11 S. LaSalle Street  
Chicago, Illinois 60603  
782-2610

PROOF OF SERVICE BY DELIVERY

I, \_\_\_\_\_, a non-attorney, on oath state that on May 3, 1973, I served this notice by delivering a copy personally to each person to whom it is directed.

\_\_\_\_\_

SUBSCRIBED and SWORN TO  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1973.

\_\_\_\_\_  
Notary Public

LAW OFFICES

QUERREY, HARROW, GILANICK & KENNEDY

827 FIELD BUILDING, 171 NORTH LA SALLE STREET, CHICAGO, ILL. 60606

CORWIN D. QUERREY  
JOSEPH HARROW  
EDWARD J. GILANICK (1947-1948)  
JOHN T. KENNEDY  
JOHN F. KEEFFINGTON  
ROSS F. TOBAN  
JAMES J. O'HAGAN  
RICHARD H. HOFFMAN  
DONALD C. CANCER  
THEODORE E. DAVES  
ROBERT A. MAJESKE  
CHARLES E. ERLUND

CHICAGO, ILLINOIS 60606

FRANCIS D. STANER  
JEROME A. SPEYER  
EDWARD H. MORTY  
THOMAS A. WORTON  
CHARLES E. MOTT  
JOHN J. CORRETT  
PAUL A. RETTERER  
RONALD M. JERRICK  
BRUCE E. LOGAN  
ROBERT W. ROONEY, JR.

May 4, 1973

Clerk, Illinois Pollution Control Board  
309 West Washington Street  
Suite 300  
Chicago, Illinois 60606

RE: EPA v. Sears Roebuck et al  
PCB 73-106

Dear Sir:

The above case involves the allegation that respondents sprayed non-asbestos fibrous matter in an open area in violation of Section 9(a) of the Act. It is my understanding that the board has an opinion in a case involving essentially the same issue and that a copy of this opinion would be available for me to use as a guide in determining what evidence is material on this issue.

Will you please furnish me with a copy of this opinion if possible.

Very truly yours,



Donald C. Cancer

DCG:fk

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois,

Complainant,

v.

No. PCB 73-106

SEARS ROEBUCK & COMPANY, a  
New York Corporation; DIESEL  
CONSTRUCTION COMPANY, a Division  
of CARL A. MORSE, INC., of Illinois,  
an Illinois Corporation; and MARIO  
& DI BONO CORPORATION, a New York  
Corporation,

Respondents.

N O T I C E

TO: Mr. Lloyd S. Mc Clelland  
Registered Agent for  
Sears Roebuck & Company  
925 South Homan Avenue  
Chicago, Illinois 60607

Mr. Stanton Schuman  
Registered Agent for  
Carl A. Morse, Inc.  
11 South La Salle Street  
Chicago, Illinois 60603

Mr. Edwin M. Katz  
Registered Agent for  
Mario & Di Bono Corporation  
134 North La Salle Street  
Chicago, Illinois 60602

Mr. Lee Campbell  
Assistant Attorney General  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that the hearing originally scheduled  
for May 7, 1973, in the above entitled cause has been continued.  
You will be advised of the new date.

Dated: May 4, 1973.

  
Donald C. Gancer  
Hearing Officer

135 South La Salle Street  
Chicago, Illinois 60603

LAW OFFICES

QUERREY, HARROW, GULANICK & KENNEDY

827 FIELD BUILDING 135 SOUTH LA SALLE STREET TELEPHONE 317-4441

CORWIN D. QUERREY  
JOSEPH HARROW  
EDWARD J. GULANICK - 317-4441  
JOHN T. KENNEDY  
JOHN F. STEFFINGTON  
ROSS P. TORAN  
JAMES J. O'HAGAN  
RICHARD H. HOFFMAN  
DONALD C. GANCER  
THEODORE E. DAVIES  
ROBERT S. MAJESKI  
CHARLES E. EKLUND

CHICAGO, ILLINOIS 60603

FRANCIS D. FAYNES  
LAWRENCE S. SPEYER  
THOMAS M. MOREY  
JOSEPH A. NORTON  
CHARLES F. SCOTT  
JOHN J. CORBETT  
PAUL A. RETTBERG  
RONALD M. JERRICE  
BRUCE T. LOGAN  
ROBERT W. ROONEY, JR.

May 4, 1973

Mr. Lloyd S. Mc Clelland  
Sears Roebuck & Company  
925 South Homan Avenue  
Chicago, Illinois 60607

Mr. Stanton Schuman  
Attorney at Law  
11 South La Salle Street  
Chicago, Illinois 60603

Mr. Edwin M. Katz  
Attorney at Law  
134 North La Salle Street  
Chicago, Illinois

Mr. Lee Campbell  
Assistant Attorney General  
188 West Randolph Street  
Chicago, Illinois 60601

Re: EPA v. Sears Roebuck et al  
PCB 73-106

Gentlemen:

The above case was continued at the request of Mr. Michael Hawkins, of Foss, Schuman & Drake, who is to represent Diesel Construction Company. He is ill and cannot attend the hearing on the originally scheduled date. Hopefully we will be able to obtain a hearing room for June 11th but we will not know this for certain for about a week. If that date is not available, I will contact the attorneys regarding an acceptable date and place.

I also call attention to Rule 106 of the Procedural Rules of the Pollution Control Board requiring filing of appearances by attorneys of record.

Very truly yours,

Donald C. Gancer

DCG:fk  
Enclosure

cc: Clerk, Illinois Pollution Control Board  
Mr. Michael Hawkins

LAW OFFICES  
KATZ, KARACIC & MANSFIELD

EDWIN M. KATZ  
THOMAS J. KARACIC  
RICHARD E. MANSFIELD JR. (DECEASED)  
KENNETH A. HELMIN  
HOWARD Z. GORMAN  
ALAN M. DEPCO  
ALAN M. BENDER

SUITE 710  
101 NORTH LA SALLE STREET  
CHICAGO, ILLINOIS 60602  
CENTRAL 6-4111

May 9, 1973

Clerk of Pollution Control Board  
of State of Illinois  
Room 300  
309 West Washington Street  
Chicago, Illinois

Re: Environmental Protection Agency, an  
agency of the State of Illinois vs.  
Sears, Roebuck & Company, a New York  
Corporation; Diesel Construction Company,  
a division of Carl A. Morse, Inc. of Illinois,  
an Illinois corporation; and Mario & DiBono  
Corporation, a New York corporation  
Case No. PCB 73-106  
Our File No. 6447

Dear Sir:

Enclosed please find our Appearance as attorneys for  
Mario & DiBono Corporation, a New York corporation, and  
a Notice to all other defendants of our filing.

Very truly yours,

KATZ, KARACIC & MANSFIELD

  
Edwin M. Katz

FMK/yn  
Enclosures

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an agency of the State of Illinois, )

Complainant, )

-vs-

PCB 73-106

SEARS, ROEBUCK & COMPANY, a )  
New York corporation; DIESEL )  
CONSTRUCTION COMPANY, a division )  
of CARL A. MORSE, INC. of Illinois, )  
an Illinois corporation; and MARIO )  
& DiBONO CORPORATION, a New York )  
corporation, )

Respondents. )

APPEARANCE

The undersigned, as attorney, enters the Appearance of  
the Respondents, MARIO & DiBONO CORPORATION, a New York  
corporation.

KATZ, KARACIC & MANSFIELD

BY: 

Edwin M. Katz, Attorneys for  
Respondents

KATZ, KARACIC & MANSFIELD  
134 North La Salle Street  
Chicago, Illinois 60603  
Central 6-4111

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois,

Complainant,

-vs-

SEARS, ROEBUCK & COMPANY, a  
New York corporation; DIESEL  
CONSTRUCTION COMPANY, a division  
of CARL A. MORSE, INC. of Illinois,  
an Illinois corporation; and MARIO  
& DiBONO CORPORATION, a New York  
corporation,

Respondents.

PCB 73-106

N O T I C E

TO: Environmental Protection Agency  
of the State of Illinois  
William J. Scott, Attorney General  
as its attorney  
188 W. Randolph - Suite 2315  
Chicago, Illinois 60601  
Attn: Lee Campbell

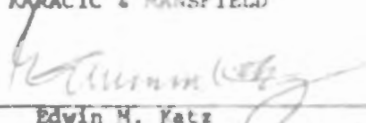
Mr. Lloyd S. McClelland  
Registered Agent for  
Sears Roebuck & Company  
925 South Homan Avenue  
Chicago, Illinois 60607

Mr. Stanton Schuman  
Registered Agent for  
Carl A. Morse, Inc.  
11 South La Salle Street  
Chicago, Illinois 60603

PLEASE TAKE NOTICE that I have on this date filed my  
Appearance as attorney for MARIO & DiBONO CORPORATION, a New  
York Corporation.

KATZ, KARACIC & MANSFIELD

BY:

  
Edwin M. Yatz  
Attorneys for Mario & DiBono  
Corporation, Respondent

KATZ, KARACIC & MANSFIELD  
134 N. La Salle Street  
Chicago, Illinois 60602  
Central 6-4111

STATE OF ILLINOIS }  
COUNTY OF COOK ) SS.

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois, )

Complainant, )

v. )

PCB 73-100

SEARS, ROEBUCK & COMPANY, a  
New York corporation; DIESEL  
CONSTRUCTION COMPANY, a division  
of CARL A. MORSE, INC. of Illinois,  
an Illinois corporation; and MARIO  
& DIBONO CORPORATION, a New York  
corporation, )

Respondents. )

O R D E R

Upon the motion of the Respondents SEARS, ROEBUCK & COMPANY, a New York corporation; DIESEL CONSTRUCTION COMPANY, a division of CARL A. MORSE, INC. of Illinois, an Illinois corporation, the hearing heretofore scheduled for May 7, 1973, is hereby continued to June 11, 1973, at 10:00 A.M. at the Liquor Control Commission, 188 W. Randolph Street, Room 419, Chicago, Illinois.

Donald C. Gancer  
ENTERED  
Hearing Officer: Donald Gancer  
DATED: May 29, 1973

FOSS, SCHUMAN & DRAKE (MH/BK)  
11 S. LaSalle Street  
Chicago, Illinois 60603  
782-2610

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an agency of the State of Illinois, )

Complainant, )

vs. )

SEARS, ROEBUCK & COMPANY, a )  
New York corporation; DIESEL )  
CONSTRUCTION COMPANY, a division )  
of CARL A. MORSE, INC., of Illinois, )  
an Illinois corporation; and MARIO )  
& DI BONO CORPORATION, a New York )  
corporation, )

Respondents. )

PCB 73-106

A N S W E R

Respondent, MARIO & DI BONO CORPORATION, a New York corporation, through its attorneys KATZ, KARACIC & MANSFIELD, in answer to Complaint of the ENVIRONMENTAL PROTECTION AGENCY, states as follows:

1. Respondent admits the allegations of Paragraph 1.
2. Respondent has no knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint.
3. Respondent has no knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint.

4. Respondent admits the allegations of Paragraph 4.
5. Respondent admits the allegations of Paragraph 5.
6. Respondent admits the allegations of Paragraph 6.
7. Respondent admits the allegations of Paragraph 7.
8. Respondent denies the allegations of Paragraph 8

and each of them, and states that on April 27, 1972 the Respondent was operating on the 37th and 38th floors of Sears Tower, that said floors had been permanently enclosed with curtain walls and windows prior to these dates and that said operation of this Respondent consisted of merely patch work, the actual spraying having already been completed. This Respondent further states that on June 6, 1972, the Respondent performed no operations at the Sears Tower since the lathers placed a picket line at the building site at 8:00 A.M. in connection with a strike which was settled at 4:30 P.M. that same day. Respondent further states that on August 16, 1972, all spraying operations were conducted on floors enclosed with plastic or plastic-coated tarpaulins in such a manner as to preclude the escape of fiber containing material to the atmosphere.

9. Respondent denies the allegations of Paragraph 9 and each of them and states that it is the duty of Respondent - Diesel Construction Company to enclose the floor of Sears Tower with tarpaulins while this Respondent is conducting spraying operations and to vacuum the sprayed area upon completion of the spraying operation.

WHEREFORE, this Respondent prays that the relief prayed

By Edward J. Egan  
Attorney

## PROOF OF SERVICE BY MAIL

Lloyd S. McClelland  
925 South Homan Avenue  
Chicago, Illinois 60623

Lee Campbell  
188 West Randolph Street, Suite 211  
Chicago, Illinois 60601

Michael Hawkins  
11 South LaSalle Street  
Chicago, Illinois 60601

Harvey M. Sheldon  
188 W. Randolph, Suite 2115  
Chicago, Illinois 60601

by depositing a copy of same in a properly addressed envelope, with sufficient postage affixed, certified mail, return receipt requested and depositing said envelope in the U.S. Postal Service at 134 S. LaSalle Street, Chicago, Illinois this 7th day of June, 1971.

Yasuna Tomie

SUBSCRIBED & SWORN TO  
before me this 7th day  
of June, 1973.

*Alan M. Dwyer*  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an Agency of the State of Illinois, )

Complainant, )

v. )

SEARS ROEBUCK & COMPANY, a New )  
York corporation; DIESEL )  
CONSTRUCTION COMPANY, a division )  
of CARL A. MORSE, INC. of Illinois, )  
an Illinois corporation; and MARIO )  
& DiBONO CORPORATION, a New York )  
corporation, )

PCB 73-106

Respondents. )

N O T I C E

TO: Mr. Donald Gancer  
Hearing Officer  
Querrey, Harrow, Gulanick  
& Kennedy  
827 Field Building  
135 South LaSalle Street  
Chicago, Illinois 60603

Mr. Edwin M. Katz  
Katz, Karacic & Mansfield  
134 North LaSalle Street  
Chicago, Illinois 60602

Mr. Barry Kahan  
Foss, Schuman & Drake  
11 South LaSalle Street  
Chicago, Illinois 60603

PLEASE TAKE NOTICE that the ENVIRONMENTAL PROTECTION AGENCY,  
by WILLIAM J. SCOTT, Attorney General of the State of Illinois,  
has filed in the office of the Clerk of the Illinois Pollution  
Control Board, an Amended Complaint, copies of which are here-  
with served upon you.

DATED: June 8, 1973.

ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS:  
William J. Scott, Attorney  
General, as its attorney

By LEE A. CAMPBELL  
LEE A. CAMPBELL,  
Assistant Attorney General

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY, )  
an agency of the State of Illinois, )  
 )  
Complainant, )

v. )

SEARS ROEBUCK & COMPANY, a New York )  
corporation; DIESEL CONSTRUCTION )  
COMPANY, a division of CARL A. )  
MORSE, INC. of Illinois, an )  
Illinois corporation; and MARIO )  
& DiBONO CORPORATION, a New York )  
corporation, )

PCE 73-106

Respondents. )

AMENDED COMPLAINT

NOW COMES Complainant, the ENVIRONMENTAL PROTECTION AGENCY of the State of Illinois, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, pursuant to the Environmental Protection Act of the State of Illinois (Ill.Rev.Stat.,Ch.111 1/2, Section 1001 ff, 1971)(hereinafter "the Act"), and as its Amended Complaint against Respondents, SEARS ROEBUCK & COMPANY, a New York corporation; DIESEL CONSTRUCTION COMPANY, a division

of CARL A. MORSE, INC. of Illinois, an Illinois corporation; and MARIO & DIBONO CORPORATION, a New York corporation, says as follows:

1. Complainant is an administrative agency established in the Executive Branch of the State Government by Section 4(a) of the Act.

2. Respondent, Sears Roebuck & Company, a New York corporation, (hereinafter "Sears"), at all times pertinent hereto, has been and now is a corporation organized and existing under the laws of the State of New York, duly licensed to do business in the State of Illinois, owning a piece of property and the improvements thereon (known as "Sears Tower") bordered by Jackson Boulevard, Wacker Drive, Adams Street and Franklin Street in Chicago, County of Cook, Illinois.

3. Respondent, Diesel Construction Company, a division of CARL A. MORSE, INC. of Illinois, an Illinois corporation, (hereinafter "Diesel"), at all times pertinent hereto, has been and now is a corporation organized and existing under the laws of the State of Illinois, and has been and now is acting as general contractor responsible for the construction of the aforementioned Sears Tower.

4. Respondent, Mario & DiBono Corporation, a New York corporation, (hereinafter "Mario"), at all times pertinent hereto, has been and now is a corporation organized and existing under the laws of the State of New York, duly licensed to do business in the State of Illinois, and has been and now is the sub-contractor charged with spraying fireproofing material on the aforementioned Sears Tower.

5. This is an action brought pursuant to the authority granted the Environmental Protection Agency by the Act.

6. Respondent Mario, under the direction of Respondent, Diesel, both being employed by Respondent Sears, sprays non-asbestos, fibrous fireproofing material on the exposed surfaces of steel structural columns, beams and decks on the Sears Tower.

7. Said spraying operation utilizes a mixing room where the fireproofing material is prepared by dumping 50-lb. bags of dry mineral wool into a hopper. The material is then pumped to the floor where the spraying is to take place. The material is then wetted and sprayed onto the surfaces through a hose.

8. That during the period from January 6, 1972 until April 13, 1972, and particularly including, but not limited to, March 21, 1972, Respondents caused or allowed visible emissions

of non-asbestos, fibrous fireproofing material to occur from within an area open to the atmosphere, in violation of Rule 304 of R 71-16, the Asbestos Regulations, adopted by the Pollution Control Board on January 6, 1972.

9. That during the period from April 14, 1972 until at least the filing of the Amended Complaint, and particularly including, but not limited to, April 21, 1972 and June 6, 1972, Respondents caused or allowed visible emissions to occur from within an area open to the atmosphere, in violation of Part VI, Section III, Rule 634 of the Air Pollution Control Regulations - (hereinafter "Air Regulations").

10. That on August 16, 1972, Respondents sprayed non-asbestos fibrous matter in an area open to the atmosphere without enclosing the entire floor or area to be sprayed with plastic or plastic-coated tarpaulins in such a manner as to preclude the escape of fiber-containing material to the atmosphere and furthermore without enclosing all elevator shafts and stairwells so as to prevent the escape of fiber-containing material from the working area, in violation of Part VI, Section III, Rule 632(a) of the Air Regulations.

11. That on August 16, 1972, Respondents sprayed non-asbestos fibrous matter in an area open to the atmosphere and failed to thoroughly vacuum the entire sprayed area, and all ledges and surfaces including tarpaulins within the enclosure before the enclosure was dismantled, in violation of Part VI, Section III, Rule 632(b) of the Air Regulations.

12. Pursuant to Section 9(a) of the Act, violations of the Asbestos Regulations and the Air Regulations are also violations of Section 9(a) of the Act.

WHEREFORE, the ENVIRONMENTAL PROTECTION AGENCY, asks the Board to grant the following relief:

1. That at the hearing to be held before Mr. Donald Gancer, Hearing Officer, the allegations of this Amended Complaint be considered.

2. That the Board, after due consideration of any statements, testimony and arguments as shall be duly submitted at the hearing, or upon default in the appearance of Respondents, enter and issue a final order; directing Respondents to cease and desist from further violations.

3. That the Board impose upon each Respondent a money penalty of not to exceed \$10,000 for each violation, and an

additional penalty of not to exceed \$1,000 for each day during which a violation shall have continued.

4. That the Board issue and enter such additional final order, or make such additional final determination, as it shall deem appropriate under the circumstances.

ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS;  
William J. Scott, Attorney  
General, as its attorney

By

Lee A. Campbell  
LEE A. CAMPBELL

Assistant Attorney General

PROOF OF SERVICE

I, Jonathan Frank, being first duly sworn on oath, depose and state that I served copies of the foregoing Notice and Amended Complaint upon the persons named in said Notice, on the 8th day of June, 1973, by personally delivering said pleadings, enclosed in properly addressed envelopes to the respective parties.

Jonathan Frank

Subscribed and sworn to  
before me this 8th day of  
June, 1973.

Mary J. Dykstra  
Notary Public

LAW OFFICES

QUERREY, HARROW, GULANICK & KENNEDY

827 FIELD BUILDING · 135 SOUTH LA SALLE STREET · TELEPHONE 393-4046

CORWIN D. QUERREY  
JOSEPH HARROW  
EDWARD J. GULANICK 1943-1971  
JOHN T. KENNEDY  
JOHN E. KEEFFINGTON  
ROSS F. TORAN  
JAMES J. O'HAGAN  
RICHARD H. HOFFMAN  
DONALD C. GANCER  
THEODORE E. DAVES  
ROBERT S. MAJESKE  
CHARLES F. BELUND

CHICAGO, ILLINOIS 60603

FRANCIS D. EVANS  
LAWRENCE S. SPYER  
THOMAS M. MORLEY  
JOSEPH A. MORTON  
CHARLES F. WATT  
JOHN J. HERBERT  
PAUL A. KITTRELL  
RONALD M. JERRICK  
BRUCE T. LOGAN  
ROBERT W. ROONEY JR.

June 11, 1973

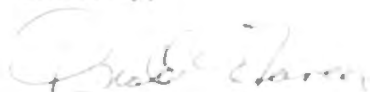
Clerk, Illinois Pollution Control Board  
309 West Washington Street  
Suite 300  
Chicago, Illinois 60606

Re: EPA v. Sears Roebuck et al  
PCB 73-106

Dear Sir:

This is to advise you that the hearing in the above case has been adjourned until Friday, June 29, 1973 at 10:00 A. M. at 135 South La Salle Street, Room 1848, Chicago, Illinois. Please have a court reporter available at that time and place.

Sincerely,



Donald C. Gancer

DCG:fk

STATE OF ILLINOIS  
COUNTY OF COOK SS

RECEIVED  
AUG 27 1973

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

POLLUTION CONTROL BOARD

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois.

Complainant.

v.

PCB 73-106

SEARS, ROEBUCK & COMPANY, a New  
York corporation; DIESEL  
CONSTRUCTION COMPANY, a division  
of CARL A. MORSE, INC. of Illinois,  
an Illinois corporation; and MARIO  
& DI BONO CORPORATION, a New York  
corporation,

Respondents.

NOTICE

TO: Mr. Donald Gancer  
Hearing Officer  
Querrey, Harrow, Galanick  
& Kennedy  
827 Field Building  
135 S. LaSalle Street  
Chicago, Illinois 60603

Mr. Lee A. Campbell, Assistant  
Attorney General, for  
ENVIRONMENTAL PROTECTION  
AGENCY  
188 W. Randolph Street,  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that respondents CARL A. MORSE, INC.  
and MARIO & DIBONO CORPORATION, have filed in the Office of the  
Clerk of the Illinois Pollution Control Board a motion for  
continuance of the time in which to file their briefs, copies  
of which are herewith served upon you.

Dated: Aug. 24, 1973.

KATE, KARACIC & MANSFIELD  
134 N. LaSalle St.  
Chicago, Illinois 60602  
Central 6-4111

FOSS, SCHUMAN & DRAKE  
11 S. LaSalle Street  
Chicago, Illinois 60603  
782-2610

By

*Edward L. Foss*  
*Michael H. Schuman*

STATE OF ILLINOIS)

55

COUNTY OF COOK)

## BEFORE THE POLLUTION CONTROL BOARD

ENVIRONMENTAL PROTECTION AGENCY,

Complainant,

y.

PCB 73-106

SEARS, ROEBUCK &amp; COMPANY, a New

York corporation: DIESEL

CONSTRUCTION COMPANY, a division

of CARL A. MORSE, INC. of Illinois.

an Illinois corporation; and MARIO

10 & DIBOND CORPORATION, a New York

CONFIDENTIAL

Respondents.

MOTION FOR CONTINUANCE

Respondents, CARL A. MORSE, INC. and MARIO & DiBONO CORPORATION, through their respective attorneys FOSS, SCHUMAN & DRAKE and KATZ, KARACIC & MANSFIELD, move the court for an order continuing the date when written briefs must be filed in this cause, and in support of said motion, state as follows:

1. Counsel for the respondents are otherwise engaged in the preparation of matters for litigation.
2. Therefore, counsel respectfully request that they be granted 14 days additional time in which to file their briefs

which were to have been filed on August 27, 1973.

FOSS, SCHUMAN & DRAKE  
Attorneys for CARL A. MORSE, INC.  
11 S. LaSalle Street  
Chicago, Illinois 60603  
782-2610

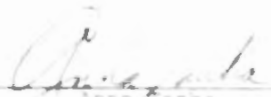
By Michael Hawkins

KATZ, KARACIC & MANSFIELD  
Attorneys for Mario & DiBono  
Corporation  
134 No. LaSalle Street  
Chicago, Illinois 60602  
CEntrol 6-4111

By Howard K. Jones

PROOF OF SERVICE BY MAIL

I hereby certify that copies of the aforesaid  
NOTICE and MOTION FOR CONTINUANCE were mailed to the  
persons at their respective addresses as indicated on  
said NOTICE this 24th day of August, 1973.

  
\_\_\_\_\_  
Anne Tanka

SUBSCRIBED & SWORN TO  
before me this 24th day  
of August, 1973.

  
\_\_\_\_\_  
Tanya Visk  
Notary Public

RECEIVED  
AUG 28 1952

y.

POSS, ECHUMAN & DRAKE  
11 S. LaSalle St.  
Chicago, Illinois 60603  
782-2610

RECEIVED

SEP 10 1973

POLLUTION CONTROL BOARD

STATE OF ILLINOIS) SS  
COUNTY OF COOK)

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois,

Complainant,

v.

PCB 73-106

SEARS, ROEBUCK & COMPANY, a New  
York corporation; DIESEL  
CONSTRUCTION COMPANY, a division  
of CARL A. MORSE, INC. of Illinois,  
an Illinois corporation; and MARIC  
& DI BONO CORPORATION, a New York  
corporation,

Respondents.

NOTICE

TO: Mr. Donald Gancer  
Hearing Officer  
Querrey, Marrow, Gulianick  
& Kennedy  
827 Field Building  
135 S. LaSalle Street  
Chicago, Illinois 60601

Foss, Schuman & Drake  
11 S. LaSalle Street  
Chicago, Illinois 60601

Mr. Lee A. Campbell, Asst.  
Attorney General, for  
ENVIRONMENTAL PROTECTION  
AGENCY  
188 W. Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that Respondent MARIC & DI BONO CORPORATION  
has filed in the Office of the Clerk of the Illinois Pollution  
Control Board a BRIEF OF RESPONDENT this 10th day of September,  
1973, copies of which are herewith served upon you.

KATZ, KARACIC & MANSFIELD  
134 N. LaSalle St.  
Chicago, Illinois 60602  
Central 6-4111

By *Howard L. Jones*

STATE OF ILLINOIS)

) ES

COUNTY OF C O O K)

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an agency of the State of Illinois,

Complainant.

v.

PCB 73-106

SEARS, ROEBUCK & COMPANY, a New  
York corporation; DIESEL CONSTRUCTION  
COMPANY, a division of CARL A. MORSE, INC.  
of Illinois, an Illinois corporation; and  
MARIO & DI BONO CORPORATION, a New York  
corporation,

Respondents.

BRIEF OF RESPONDENT MARIO & DI BONO CORPORATION

This Respondent hereby joins in and adopts the Brief  
of Respondents SEARS, ROEBUCK & COMPANY and DIESEL CONSTRUCTION  
COMPANY as its own.

As was pointed out in the Answer of this Respondent to the  
first Complaint of the Environmental Protection Agency, it is the  
contention of Mario & Di Bono Corporation that it was the duty of  
Respondent Diesel Construction Company to enclose a floor of the  
Sears Tower with tarpaulins while this Respondent was conducting  
spraying operations and to vacuum the sprayed area upon completion  
of the spraying operation pursuant to the contract between Respondent  
Diesel Construction Company and this Respondent.

We believe that upon a careful review of the evidence  
adduced at the trial of this matter, the Pollution Control Board

will conclude that Mario & Di Bono Corporat. B acted in good faith in conducting its fire proofing operations at the Sears Tower and fully complied with the rules and regulations of the Environmental Protection Agency.

Dated: September 10, 1971.

MARIO & DI BONO CORPORATION

By

Edward J. Hoffman  
Kati, Paracic & Mahan, Ltd.  
Its Attorneys

STATE OF ILLINOIS)  
COUNTY OF COOK)

RECEIVED  
SEP 10 1973

POLLUTION CONTROL BOARD  
BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY,  
an Agency of the State of Illinois.

Complainant,

VS.

SEARS ROEBUCK & COMPANY, a New York corporation; DIESEL CONSTRUCTION COMPANY, a division of CARL A. MORSE, INC. of Illinois, an Illinois corporation; and MARIO & DIBONO CORPORATION, a New York corporation,

### Respondents.

PCB 73-106

## N O T I C E

TO: Mr. Donald Gancer  
Hearing Officer  
Querrey, Barrow, Gulanick  
& Kennedy  
827 Field Building  
135 South La Salle Street  
Chicago, Illinois 60603

Mr. Edwin M. Katz  
Katz, Karacic & Mansfield  
134 North La Salle Street  
Chicago, Illinois 60602

PLEASE TAKE NOTICE that the Respondents, SEARS ROEBUCK & COMPANY and DIESEL CONSTRUCTION COMPANY, a division of CARL A. MORSE, INC. of Illinois, have filed in the office of the Clerk of the Illinois Pollution Control Board, a Brief, copies of which are herewith served upon you.

DATED: September 10, 1973.

SEARS ROEBUCK & COMPANY and  
DIESEL CONSTRUCTION COMPANY,  
a division of CARL A. MORSE, INC.  
of Illinois, Respondents.

By: Richard K. Smith  
Attorney for Respondents



ENVIRONMENTAL PROTECTION AGENCY's Exhibit No. 1 which was Mr. Gryzmowski's written report of that inspection rather than showing any violation by the Respondents shows that they have made every good faith effort to comply with the asbestos regulations, and the air pollution control regulations.

ENVIRONMENTAL PROTECTION AGENCY Exhibit No. 1 submitted by Mr. Gryzmowski states among other things that "no particulate emissions could be seen coming from subject building." This statement made at a time close to the date of the inspection sums up the testimony of Mr. Gryzmowski. The pictures that he submitted give evidence that there were personnel for DIESEL CONSTRUCTION vacuuming the tarpaulins, shovelling and sweeping the floors, and disclose an enclosed perimeter of the building which bear out his testimony. (Note pictures at the bottom of page 3 of Exhibit 2, the top picture and middle pictures on page 4 and the last picture on page 5.)

Mr. Gryzmowski testified to the fact that he did not inspect the premises at the Bears site on August 16, 1972 because there was a complaint filed. (Page 40, transcript of June 11, 1973.) The only possible violation that Mr. Gryzmowski testified to was an alleged opening in the perimeter covering on the 50th floor and which he submitted a picture, the bottom picture on page 4 of Exhibit 2, which Mr. Russell A. Paica, an employee of DIESEL CONSTRUCTION testified after viewing the picture and refreshing his recollection that there was no such opening and since the Hearing Officer has indicated that all witnesses were credible we have a disputed question of fact. (Page 115, June 29, 1973).

Mr. Russell A. Waice testified he was in charge of the erecting perimeter enclosures in the areas where fireproofing was to take place, and that he used from ten to thirty men a day, working eight hours a day in erecting the panels so that there would be no emissions from the area that was being sprayed. This expenditure of time and money and material is indicative of the good faith efforts on the part of the Respondents to comply with the rules and regulations of the ENVIRONMENTAL PROTECTION AGENCY.

Mr. Angelo Calandrella, Superintendent for Mario Bibono, testified that he was under orders from GILSEL CONSTRUCTION COMPANY not to proceed to do any fireproof spraying until the peripheral areas were enclosed. (Pages 110, 111, of Transcript of June 29, 1973.) Again, this indicates the good faith efforts by the Respondents, SEARS ROEBUCK & COMPANY and GILSEL CONSTRUCTION COMPANY, to do everything that was possible by rule or regulation to eliminate any contamination of the atmosphere.

TESTIMONY AS TO VIOLATIONS IN MARCH AND APRIL, 1972

Mr. Groll testified to two definite dates which he could recall emissions coming from the Sears site, April 21 and 28, 1972. He indicates that he had been passing that area for approximately three days out of the week and although he has been sensitized to this type of violation he could only testify as to the two specific dates and one unknown date. Mr. David Lee, an officer with the Federal Environmental Protection Agency testified to one specific date, March 21, 1972, where alleged violations took place. Aside from some vague statement to the effect that there were a small

number of occasions subsequent to March 21, 1972, the problem evidently was abated because of no subsequent complaint by Mr. Kee.

For these reasons, we believe that the Pollution Control Board should take into account the efforts made by SEARS ROEBUCK & COMPANY and DIESEL CONSTRUCTION COMPANY to do everything reasonably possible and the fact that they have acted in good faith in attempting to abate a situation when it was called to their attention.

DATED: September 9, 1973.

SEARS ROEBUCK & COMPANY, DIESEL CONSTRUCTION  
COMPANY, a division of CARL A. MORSE, INC. of  
Illinois

By: Michael J. H. H. H.

Attorney for Respondents

ILLINOIS POLLUTION CONTROL BOARD

June 6, 1974

ENVIRONMENTAL PROTECTION AGENCY,

Complainant,

vs.

SEARS, ROEBUCK & COMPANY, a  
New York corporation; DIESEL  
CONSTRUCTION COMPANY, a division  
of CARL A. MORSE, INC. of Illinois,  
an Illinois corporation; and MARIO  
& DIBONO CORPORATION, a New York  
corporation,

Respondents.

PCB 73-106

Mr. Lee A. Campbell, Special Asst. Attorney General, on behalf of the  
Environmental Protection Agency;

Mr. Edwin M. Katz and Mr. Howard Gopman, Attorneys, on behalf of Marie  
and DiBono Corporation;

Mr. Michael Hawkins, Attorney, on behalf of Sears, Roebuck and Company and  
Diesel Construction Company.

OPINION AND ORDER OF THE BOARD (by Mr. Seaman):

On March 9, 1973, the Illinois Environmental Protection Agency filed  
Complaint against the three Respondents cited above. On June 8, 1973,  
the Agency filed an Amended Complaint alleging violations of Rules 632 and  
634 of the Air Pollution Control Regulations (Non-asbestos spray insulation  
provisions) and Section 9(a) of the Environmental Protection Act.

Respondent Sears, Roebuck & Company (hereinafter "Sears") owns a  
piece of property and the improvements thereon (known as "Sears Tower")  
bordered by Jackson Boulevard, Wacker Drive, Adams Street and Franklin Street  
in Chicago, County of Cook, Illinois.

Respondent Diesel Construction Company (hereinafter "Diesel") acted  
as general contractor responsible for the construction of the aforementioned  
Sears Tower.

Respondent Mario & DiBono Corporation (hereinafter "Mario") was the sub-  
contractor charged with spraying fireproofing material on the aforementioned  
Sears Tower.

Respondent Mario, under the direction of Respondent Diesel, both being employed by Respondent Sears, sprayed non-asbestos, fibrous fireproofing material on the exposed surfaces of steel structural columns, beams and decks on the Sears Tower.

Said spraying operation utilized a mixing room where the fireproofing material was prepared by dumping 50-lb. bags of dry mineral wool into a hopper. The material was then pumped to the floor where the spraying was to take place. The material was then wetted and sprayed onto the surfaces through a hose.

Complainant alleges that during the period from January 6, 1972 until April 13, 1972, and particularly including, but not limited to, March 21, 1972, Respondents caused or allowed visible emissions of non-asbestos, fibrous fireproofing material to occur from within an area open to the atmosphere, in violation of Rule 304 of R 71-16, the Asbestos Regulations, adopted by the Pollution Control Board on January 6, 1972.

Complainant further alleges that during the period from April 14, 1972 until at least the filing of the Amended Complaint, and particularly including, but not limited to, April 21, 1972 and June 6, 1972, Respondents caused or allowed visible emissions to occur from within an area open to the atmosphere, in violation of Part VI, Section III, Rule 634 of the Air Pollution Control Regulations.

Complainant further alleges that on August 16, 1972, Respondents sprayed non-asbestos fibrous matter in an area open to the atmosphere without enclosing the entire floor or area to be sprayed with plastic or plastic-coated tarpaulins in such a manner as to preclude the escape of fiber-containing material to the atmosphere and furthermore without enclosing all elevator shafts and stairwells so as to prevent the escape of fiber-containing material from the working area, in violation of Part VI, Section III, Rule 632(a) of the Air Regulations.

Finally, Complainant alleges that on August 16, 1972, Respondents sprayed non-asbestos fibrous matter in an area open to the atmosphere and failed to thoroughly vacuum the entire sprayed area, and all ledges and surfaces including tarpaulins within the enclosure before the enclosure was dismantled, in violation of Part VI, Section III, Rule 632(b) of the Air Regulations.

Pursuant to Section 9(a) of the Act, violations of the Asbestos Regulations and the Air Regulations are also violations of Section 9(a) of the Act.

Public hearings were held in this matter on June 11 and June 29, 1973.

Complainant's witness, Gary Krztmowski, an Agency environmental protection engineer, inspected the site of the alleged accident on August 16, 1972. (6-11-73 R. 12). He was informed that the fireproofing material being sprayed was Calfed Blaze-Shield Type, Type III was a full listing of AU-156, manufactured by the United States Mineral Products Company. (6-11-73 R. 19).

Mr. Krztmowski testified that he inspected floors 49 and 48, where spraying had been completed, and observed that said floors were unenclosed and that a one-quarter inch layer of the Calfed fireproofing material loosely covered virtually the entire floor area. (6-11-73 R. 21, 22). Mr. Krztmowski further testified that he observed that at least two stairwells and one elevator shaft were unenclosed. (6-11-73 R. 23). Finally, Mr. Krztmowski testified that he observed that the building which enclosed the 50th floor was dismantled before spraying of that floor was completed (6-11-73 R. 26), and that, on the 48th floor where the fireproofing material was being mixed, the material was "flying about," totally unenclosed. (6-11-73 R. 58).

Complainant's witness, Richard G. Drull, is employee of the location one block south of the Sears Tower. (6-29-73 R. 19). Mr. Drull testified that on April 21, 1972, he observed a large chunk of insulation material (1/4 to 1/2 inches in diameter) falling from above onto the tenth floor of the Sears Tower and accumulating on the street in the side of a building. (6-29-73 R. 19, 20). Later in the day, the falling material became much more fine and the witness compared the situation to a snow storm. (6-29-73 R. 24). Mr. Drull observed similar conditions on April 28, 1972 and another date which the witness could not recall specifically. (6-29-73 R. 25-28).

Complainant's witness, David Kee, Chief of Air Information for Region Five of the United States Environmental Protection Agency, testified that on March 21, 1972, as he walked past the Sears Tower, he noticed a large amount of white material falling to the ground from the tower and covering the streets and sidewalk areas along Franklin and in the intersection of Franklin and Adams. It looked almost like snow to a certain extent, blowing up against the curbs and clinging to the cars and along the edges of the buildings in that general vicinity there.

Mr. Kee obtained a sample of the falling material and took several photographs of the street. The witness stated that he had observed the material falling from the Sears Tower on other occasions, but could not recall specific dates. (6-29-73 R. 55).

Respondent's witness, Angelo Calandrella, superintendent in charge of the fireproofing operation for Respondent Marino, stated that during the spraying operation all open areas were covered and that there was no possibility of material escaping. (6-29-73 R. 29). Respondent's witness, Russell A. Raica, an employee of Respondent Diavel in charge of enclosing each floor as the spraying operation proceeded, stated that floors being sprayed were always completely enclosed. (6-29-73 R. 173).

We are satisfied from the evidence that Respondents Sears and Diesel violated Rule 634 of the Air Pollution Control Regulations on April 21 and April 28, 1972; that Respondents Sears and Diesel violated Rule 632(a) of the Air Pollution Control Regulations on August 16, 1972; that Respondents Sears and Diesel violated Rule 632(a) and (b) of the Air Pollution Control Regulations on August 16, 1972; and that Respondents Sears and Diesel violated Rule 304 of R 71-16 on March 21, 1972.

We further find that Respondent Mario violated Rule 632(a) of the Air Pollution Control Regulations on August 16, 1972. Although it is manifest that the subject fireproofing material did fall from the Sears Tower on the enumerated dates, the evidence was not sufficient to show that said emissions resulted from Respondent Mario's spraying operation rather than Respondent Diesel's failure to thoroughly vacuum upon the completion of spraying each floor. It was the contractual duty of Respondent Diesel to enclose the floors of the Sears Tower before Respondent Mario conducted spraying operations and to vacuum the sprayed area upon completion of the spraying. Thus, while Respondent Mario is liable for spraying when the proper enclosure was not in place, it cannot be liable for emissions which occurred subsequent to the completion of said spraying operation.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that for the violations found herein:

1. Respondents Sears and Diesel shall each pay to the State of Illinois the sum of \$500.00 within 35 days from the date of this Order.
2. Respondent Mario shall pay to the State of Illinois the sum of \$250.00 within 35 days from the date of this Order.

Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 6<sup>th</sup> day of June, 1974 by a vote of 4-0.

Christian L. Moffett

TRANSCRIPT

CASE # PCB  
73-106

EPA vs SEAR, ROEBUCK Co. et al  
PCB No. 73-106

Chicago, Illinois  
June 11, 1973

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

ENVIRONMENTAL PROTECTION AGENCY, )  
Complainant, )

-vs-

SEARS ROEBUCK and COMPANY, a New )  
York Corporation; DIESEL CON- )  
STRUCTION COMPANY, a Division of )  
Carl A. Morse, Inc., of Illinois, )  
an Illinois Corporation; and )  
MARIO and DIBONO CORPORATION, a )  
New York Corporation, )  
Respondents. )

PCB NO. 73-106

Stenographic report of proceedings had  
and evidence offered at the hearing of the above  
entitled cause, before MR. DONALD C. GANDER,  
Hearing Officer, held at 188 West Randolph Street,  
Room 419, Chicago, Illinois, beginning at 10:00  
A. M., on June 11, 1973.

PRESENT:

MR. LEE A. CAMPBELL,  
Special Asst. Attorney General  
Appearing for Environmental Protection Agency;

MR. EDWIN M. KATZ,  
Appearing for Mario and Dibono Corporation;

MR. MICHAEL HAWKINS,  
Appearing for Sears Roebuck and Company and  
Diesel Construction Company.

I N D E X

| <u>WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u>   | <u>REDIRECT</u> | <u>RECROSS</u> |
|------------------|---------------|----------------|-----------------|----------------|
| CZARY KRZYMOWSKI | P. 9          | P. 39<br>P. 63 | P. 75           | P. 80          |

.....

| <u>WITNESSES</u>    | <u>Marked for<br/>Identification</u> | <u>In<br/>Evidence</u> |
|---------------------|--------------------------------------|------------------------|
| EPA EXHIBIT NO. 1   | P. 14                                |                        |
| EPA GROUP EXH. NO.2 | P. 28                                | P. 78                  |

P R O C E E D I N G S

MR. GANGER: Does anybody have any motions or stipulations to make at this time?

MR. HAWKINS: Yes, Your Honor.

I'm Michael Hawkins -- first of all, let me introduce myself.

I'm Michael Hawkins representing Sears and Roebuck and Diesel Construction in this matter.

Your Honor, I first of all, wanted to say, it is our understanding that this is an accommodation for Mr. Campbell and the Attorney General's Office in as much as received, I think it was Friday, a hand delivered Amended Complaint which we have not had an opportunity to make a decision as to whether we will file motions. We, first of all, wanted to reserve the right to file a motion to strike or any other appropriate motion dealing with this Amended Complaint. And, we also understand that we will start the hearing, and we

are hopeful that if it necessary to cross examine the witness, as I understand it, there will only be one who will testify, that we would not waive the right to call back the witness at some future time if we thought that was appropriate.

MR. GANGER: Well, certainly, on your right to make a motion, we'll grant that motion, and we will reserve that right. As far as the presentation of the witness, I don't exactly understand --

MR. HAWKINS: Well, Your Honor, if --

MR. GANGER: Off the record.

(Whereupon, a conversation  
was had off the record.)

MR. HAWKINS: Well, Your Honor, I think the point I'm trying to make, Your Honor, is with the new complaint we might not be fully advised as to what we want to cross examine this gentleman about, and if we feel it is necessary to call him back at some future time when the hearing is resumed, we would like to have that

right to do so.

MR. GANGER: Is that agreeable with you, Mr. Campbell?

MR. CAMPBELL: When the Amended Complaint was filed there were some dates that had been alleged in the original complaint that were deleted from the Amended Complaint. There are also two additional dates, March 21, 1972 and April 21, 1972, that were added, and had not been a part of the original Complaint. However, there is one date in the original Complaint and is also now in the Amended Complaint, and that is the date of August 16, 1972. The allegations regarding that date have not changed at all from the original Complaint. And, the witness that is going to testify today is going to limit himself exclusively to that date.

I don't see how it really poses any problem in terms of preparation for cross examination since the date has not changed, and

the witness will limit himself to that one day of testimony. However, we will have no objections to calling him back if it becomes necessary.

MR. KATZ: Sir, my name is Edwin M. Katz, Katz, Karacic and Mansfield, and this is Howard Gopman from our office with me.

We filed an appearance and an answer to the original Complaint on behalf of Mario and DiBono Corporation. Subsequently, I have had some conversations with Mr. Campbell, he spoke of filing an Amended Complaint. And, one was filed, and delivered in person to our office sometime on Friday. I believe it was in the afternoon. He and I discussed the advisability of going to trial on Monday when an amended complaint was filed on Wednesday -- or on Friday, and I said to him that I may want to file an answer; I may want to otherwise plead as Mr. Hawkins has indicated, and I'm sure that a request for a continuance would not have been unreasonable in your eyes, nor was it in his. So, I don't

want to call it an accommodation, but we are going ahead at the request of Mr. Campbell. I didn't want to bother you, and start to making the rounds for another continuance late Friday afternoon.

We are prepared to listen to Agency's Witness, and we certainly reserve the right to further plead and cross examine this witness in any manner that may become apparent after we have analyzed this Amended Complaint also.

MR. GANGER: I think that what we will do is that we will limit -- is it agreed that the August 16th date, the allegations are unchanged, is that agreeable?

MR. KATZ: I haven't even had a chance to compare the Amended Complaint to the Original Complaint, having been delivered on Friday afternoon and I wasn't even in the office.

MR. GANGER: I think the Attorney General is correct in saying the allegations on

the August 16th date are unchanged.

Well, they are a little bit different.

MR. HAWKINS: Mr. Hearing Officer --

MR. GANGER: They are substantially the same.

In the interest of moving this thing along, I'm going to rule that we are going to proceed on this August 16th date which I think if you were prepared to go to trial today, gentlemen, you were prepared for the August 16th date.

Mr. Campbell will have the witness back or you can subpoena him back at a later date if it becomes necessary, but I think we'll try to dispose of the August 16th date today. And, if something really surprising comes up that will merit your having another crack at him, we can bring him back.

MR. CAMPBELL: Mr. Hearing Officer, if I might, with regard to bringing the witness back,

if Mr. Katz or Mr. Hawkins desire to have him back, all they have to do is notify us at a later time prior to the hearing.

MR. GANGER: Are there any opening statements for anyone?

MR. CAMPBELL: We'll waive our opening statement.

MR. HAWKINS: We'll not have an opening statement.

MR. KATZ: No opening statement.

MR. CAMPBELL: Will you take the witness stand, please.

MR. GANGER: Proceed.

MR. CAMPBELL: Mr. Reporter, will you swear in the witness, please.

MR. CZARY KRZYMOWSKI  
called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q Would you state your full name, and

spell your name, please?

A     Czary Krzymowski, C-z-a-r-y, K-r-z-t-  
m-o-w-s-k-i.

Q     Where do you live?

A     3343 North Monticello, Chicago,  
Illinois.

Q     By whom are you employed?

A     The State of Illinois, Environmental  
Protection Agency.

Q     And, in what division of the Agency  
do you work?

A     Division of Air Pollution Control.

Q     And, your headquarters is over in the  
Navy Armory, is that correct?

A     Yes.

Q     How long have you been so employed?

A     Since November 15th of '71.

Q     Do you have a title?

A     Yes, Environmental Protection Engineer.

Q     What do your duties include -- duties  
and responsibilities?

A     Mainly, investigating possible sources of air pollution; writing reports as to the source investigated, and making recommendations following the Guidelines of the Act and the Rules and Regulations.

Q     And, are you familiar with the structure known as the Sears Tower?

A     Yes, I am.

Q     And, where is the Sears Tower located?

A     Well, it's in Chicago, Illinois. I believe the boundaries are Wacker Drive on the west; Adams to the north; Jackson Boulevard on the south, and Franklin on the east.

Q     Now, in the course of carrying out your responsibilities with the Environmental Protection Agency, have you had occasion to inspect or to visit the Sears Tower in Chicago?

A     Yes, I have.

Q     And, what dates, if you recall, did you go there?

A     Well, I visited the spraying site on

August 16, 1972.

Q And, what were the facts upon which you based your decision to inspect the Sears Tower?

MR. HAWKINS: Excuse me, Your Honor, I didn't hear that date.

MR. GANGER: Will you read the question and answer back, please.

(Whereupon, question and answer read back by the reporter as requested.)

THE WITNESS: Will you repeat the question, please.

MR. CAMPBELL:

Q What were the facts upon which you based your decision to inspect the Sears Tower?

A There was a memo in the file from an engineer who is no longer with the Agency regarding his inspecting the site, and so forth.

Q Do you recall when that inspection

had taken place?

A I believe his inspection took place sometime in April or May of '72.

MR. KATZ: Sir, I would object to this witness testifying to any inspection or proposed inspection by other individuals based on a memo that he said he saw in the file.

MR. GANGER: Well, I don't think he is testifying to the inspection. He is testifying to the fact that there is a memo in the file. I'm going to let that answer stand.

MR. CAMPBELL:

Q Was this a pre-arranged inspection?

A Yes, it was.

Q With whom did you make arrangements to carry out this inspection?

A I contacted a Mr. Barish.

Q Do you recall what position Mr. Barish had?

A I believe he is the Superintendent for

Diesel. I don't recall, exactly, his title.

Q Is there anything that would help you refresh your recollection on that point?

A Yes, I believe I have a memo that I wrote.

Q Concerning that investigation?

A Concerning that investigation.

Q When did you write that memo?

A Oh, it was around a few days after the investigation, August 16, 1972.

Q Okay, did you bring that with you today?

A Yes, I believe I have it.

MR. CAMPBELL: Could we have this marked as EPA's Exhibit No. 1 for Identification.

(Whereupon, document  
marked as requested.)

MR. CAMPBELL:

Q I show you what has been marked as Environmental Protection Agency's Exhibit No. 1 for Identification, and ask you if that is a copy

of the memorandum you prepared concerning your visit of August 16, 1972?

A Yes, it is.

Q Will you look at the memo and see if that refreshes your recollection as to Mr. Barish's title?

A Yes, sir, the Project Co-ordinator for Diesel Construction.

Q When did you have a conversation with Mr. Barish?

A I first contacted him on July 15th of '72, and --

Q And, what, if anything, did you say to him and what, if anything, did he say to you, as best you can recall?

A Well, I explained to him that we had a memo by an engineer who is no longer with the Agency, and I would like to go out to the site and re-investigate. There was some correspondence before that with, I think it was from Diesel Construction, regarding a warning letter that

was sent by the engineer who was no longer with us. And, certain things -- the response in that letter stated that certain things had been done, and so forth and so on, and I wanted to check this out personally.

Q Okay, and what did he say in response to your request?

A I believe he stated that presently they were -- there was some kind of labor strike going on, and no spraying was being conducted.

MR. GANGER: What date was that conversation on ?

THE WITNESS: That was July 15th of '72.

MR. KATZ: Sir, with reference to the testimony given by this witness relating to the findings or alleged findings of a prior engineer which to me certainly sound like conclusions and unfairly incriminating. We don't know who the man was or what he said, but I got the impression that his conclusions were that there

were violations, and there have been no facts to define those violations. And, we would, respectively, ask that that portion of the testimony be stricken.

MR. GANGER: I understand that the allegations here are for specific dates, and how he happened to go out there on the dates of the violations. I think I'm going to let his testimony stand.

MR. CAMPBELL: If I may add to that just briefly, the dates that have been included in the original complaint concerning the prior inspection have been removed from the Amended Complaint. So, we are no longer alleging any violations having occurred on those dates. The man is unavailable to testify.

MR. CAMPBELL:

Q Mr. Krzymowski, did you have any subsequent conversation with Mr. Barish after July 14, 1972?

A Yes, I read in the newspapers that the

that the labor strike had ended, and I called Mr. Parish, again, I think on August 15th of '72.

Q Did the two of you arrange for a visit on August 16th?

A Yes.

Q And, what time did you arrive at the site on August 16, 1972?

A I believe it was about two in the afternoon.

Q And, who did you contact or meet on that date?

A I believe I met Mr. Bob Malenowski, and he was the Assistant Superintendent for Diesel Construction. And, he took me on a tour of the site.

Q You were particularly interested in seeing the spraying operation?

A Yes.

Q Did you have any conversation with Mr. Malenowski concerning the material that is

sprayed at the Sears Tower?

MR. HAWKINS: Objection, Your Honor, that's leading.

MR. GANGER: I'm going to let him answer that.

A Yes, I asked Mr. Malenowski what material was being sprayed, and he stated it was Calico Blaze-Sheild Type, Type CD/P with a UL Listing of AU-156, and it was manufactured by the United States Mineral Products Company.

Q Did he explain the spraying operation to you?

A Well, I don't think we got into any great details and how the material was actually -- there was some kind of driving force where the material was mixed in minutes and pumped up to the higher floors, and mixed with water at the spray outlet. But, I don't think that we got into any great details --

Q All right, then, why don't you tell us what took place, what observations did you

make?

A Well, we went to the 50th Floor where the spraying was to be conducted. We went up an elevator shaft which was enclosed --

Q You say it was enclosed, with what was it enclosed?

A A plastic sheeting, I believe.

I observed, I believe, it was two people -- two men spraying with two guns. They were northeast. The corner of the building was where the spraying was going on. I observed the over-spray material lying around on the floor.

Q What do you mean when you say "over-spray material?"

A Well, when you spray this material all of it doesn't adhere to a column or beam. Some of it misses, and falls to the floor. I believe we, then, proceeded to the 51st Floor where the spraying was not being conducted. The floor was being prepared, in other words, starting to be enclosed for spraying. We also went

to -- down to the 49th, the 48th floor, and to the 47th floor where they were mixing. The -- they were dumping the material from bags into six machines. This floor was totally unenclosed.

Q The 47th floor?

A The 47th floor.

Q What about the 48th and 49th floors?

A The 48th and 49th were also unenclosed.

The spraying was finished there. There was -- I did observe a layer of what appeared to be the spray fire proofing material covering the entire floor.

Q What floor was that, now?

A Floors 48th and 49th. The 47th floor -- there was like a snow fall effect when they dump the bag, and there were piles of the material lying around the machines, I guess, from missing the opening or something of that sort. The 50th floor, I observed spraying going on --

Q Excuse me, before you go on to the

50th floor, can we come back to the 48th and 49th.

You described a layer of spraying material on the floor, how thick was that layer?

A It seemed to be a very evenly distributed thin layer of about, I would say, approximately -- well, I would say, approximately, a quarter of an inch, at the most, evenly distributed over the -- almost the entire floor.

MR. HAWKINS: Your Honor, which floor is speaking about now, I'm sorry.

MR. CAMPBELL: The 48th floor.

THE WITNESS: The 48th and 49th floors.

MR. CAMPBELL:

Q Did you have an opportunity to walk around the entire 48th and 49th floors?

A No, not the entire floor. I had the opportunity, but we did not.

Q What, if anything, did you notice

about the stairwell or the elevator shaft on the 48th and 49th floors?

A Well, what struck me -- the elevator shaft that was in use was entirely enclosed with plastic -- a plastic type material, a cage built around it of two by fours, I believe, or something like that. And, the plastic was stapled to it or fastened to it in some manner, but the stairwells and the other elevator shafts were totally unenclosed.

Q How many other elevator shafts were there?

A I can only recall seeing one. I don't know if the stairwells were elevator shafts or temporary stairwells. At the time I was there, there were two stairwells, and I saw one other elevator shaft, I think, directly next to the one in use.

Q So, there is one enclosed elevator shaft -- that you saw and two stairwells, and these were both unenclosed, is that correct?

A And, the one unenclosed elevator shaft.

Q Now, this is on the 48th and 49th.

What about the 47th, were they enclosed or unenclosed?

A Unenclosed.

Q Except for the one that was in use?

A Except for the one that was in use.

Q And, this is the same answer for Floor Number 50?

A Yes.

Q And, how about 51?

A The same thing. That floor, the 51st floor was not yet prepared. It was being prepared to be sprayed. There was no spraying going on on that floor.

Q How many spray guns did you see in use on Floor Number 50?

A Two, I believe.

Q Did you have any conversation with anyone concerning the number of spray guns normally

in use?

A Mr. Raica, I believe, his name is, if I can refer to my memo. He was, I think, the carpenter-foreman for Diesel Construction. He said that when they spray at full capacity, I guess this depends on construction, they could use up to 16 guns at full capacity.

Q What observation did you make on the 51st floor concerning preparations for spraying, what were they doing in preparing for spraying?

A It looked like they -- they weren't actually doing it at the time, but it was explained that the tarpaulin was being lifted along a frame from the floor beneath it to the floor above it.

Q From the 50th up to the 51st?

A From the 50th up to the 51st, and then there was a plastic sheeting put between the floor and the tarpaulin on the top and bottom to that -- because the tarpaulin did not completely

touch the side of the wall. It was some distance away from it.

Q So, in order to seal it off --

A In order to seal it off, they put some plastic sheeting between the bottom of the floor, and the perpen -- the tarpaulin on the wall.

Q Did you see any evidence of enclos -- strike the question.

What observation, if any, did you make concerning over-spray on the 50th floor?

A Well, the -- when the spray gun was being operated, it -- the -- a large area of the floor looked like a snow fall. Also, I think the northeast part of the 50th floor, the tarpaulin was being dismantled while spraying was going on.

MR. GANGER: Excuse me one second.

Miss, who are you hear for?

Off the record.

(Whereupon, a conversation was had off the record.)

MR. GANGER: Mr. Reporter, could we have the last answer read back.

(Whereupon, answer read as requested.)

MR. CAMPBELL:

Q What observation did you make concerning this dismantling of the tarpauling, what was going on there?

A Well, they were -- the workmen was taking off the plastic sheeting, and I believe part of it was being hoisted up. I didn't actually see the hoisting, but it looked as if part of it had been hoisted. They were starting to dismantle the plastic sheeting that they put around the bottom floor, also shovelling of the material was being conducted; sweeping, I think, in the southeast corner of the floor, and they were vacuuming.

MR. GANDER: This is all on the 50th floor?

THE WITNESS: Yes.

MR. CAMPBELL:

Q Mr. Krzykowski, did you cause any photographs to be taken on the date of your August 16, 1972 visit?

A Yes, I took some photographs.

MR. CAMPBELL: Could we have these marked as exhibit -- EPA's Exhibit Number 2 for Identification?

(Whereupon, said documents marked as requested.)

MR. CAMPBELL:

Q Okay, Mr. Krzykowski, I show you what has been marked as EPA's Exhibit Number 2 for Identification, are those the photographs that you took on August 16, 1972?

A Yes, they were.

Q Would you look through those, look through each page?

Are those all of the photographs

that you took on that day?

A Well, I believe they are unless some were over-exposed, or something like that.

Q Those are all of the ones that turned out?

A Yes.

Q Do those truly and accurately portray the conditions that you saw at the site on that date?

A I believe so.

Q Calling your attention to Page 1 of 5, the top photograph, what does that photograph portray, what did you observe when you took that photograph?

A Well, it mainly portrays fire proofing material, among other rubbish on the corner -- I believe this was the corner of Adams and Franklin, the eastside of Franklin and the southside of Adams.

Q Calling your attention to the bottom photograph on that page, what did you observe

when you took that photograph?

MR. KATZ: Sir, I don't want to appear to be unduly harsh here, but I think the introduction of pictures in the case that they would better show the testimony than the words of the witness.

MR. GANGER: Are they marked to tell what these are?

MR. KATZ: Yes, they are.

MR. GANGER: I agree.

In the interest of speeding this up, can you gentlemen stipulate that the type of material next to the picture accurately describes the location?

MR. CAMPBELL: Absolutely not, Your Honor.

MR. GANGER: You are not saying that the picture is inaccurate. I think what he is trying to do is go through these, and show where each of these were --

MR. HAWKINS: You Honor, would that

specifically be to Picture Number 1 only?

MR. GANGER: I guess we can do it for all of them.

MR. CAMPBELL: We are not going to go through all of them.

MR. KATZ: My suggestion, sir, is that there is a picture which is an exhibit and there is an explanatory remark next to it.

What is the point of the witness saying what he thinks it is?

Why have the pictures admitted if we are going to have oral testimony on the condition of the premises at that time?

MR. GANGER: Well, I agree with you. I think what you have to do is get these tied up as to what they show, and elaborate by other testimony as to what he saw.

MR. CAMPBELL:

Q Okay, showing you the bottom photograph, what does that show in regard to the stairwell?

MR. GANGER: Now, I'm going to sustain his objection. If you want to identify what these pictures show and what part of the building, what floors they were on, that will be fine, unless these gentlemen want to stipulate.

MR. CAMPBELL:

Q And, what floor was that bottom photograph taken?

A On the 50th floor.

Q In what portion of the 50th floor, if you recall?

A Well, I believe it was some place toward the center of the floor. It was next to the stairwell.

Q Okay, there are two men that appear in that photograph, what were they doing at the time these photographs were taken?

MR. KATZ: I must object to that.

MR. GANGER: No, I'm going to let him answer that.

A They were spraying the columns and "I" beams. There is -- there are two open stairwells with large piles of material --

MR. GANGER: You answered his question. We are never going to get out of here if we don't get this thing moving.

MR. CAMPBELL:

Q Okay, calling your attention to Page 3, the top photograph --

MR. KATZ: Pardon me, your testimony was with reference to Picture Number 2 on Page 1?

MR. CAMPBELL: The bottom picture.

MR. KATZ: The bottom picture on Page 1.

MR. CAMPBELL:

Q Where was that photograph taken, Mr. Krzymowski?

A This was on the 50th floor. I think it's the northeast corner of the building, and it portrays the dismantling --

MR. HAWKINS: That's a conclusion,  
Your Honor, I object to that.

MR. GANGER: I'm going to let him  
briefly identify as to what he saw at the time.

MR. CAMPBELL:

Q What was taking place at the time  
you took that photograph?

A The dismantling of the tarpaulin.

Q Was this the same dismantling that  
you spoke about earlier, you testified earlier  
that some dismantling was going on and this  
was the same operation, is that correct?

A Yes.

Q The middle photograph on Page 3,  
where was that taken, if you recall, was that,  
again, on the 50th floor?

A Yes.

Q What was going on and what was taking  
place at the time that photograph was taken?

A Well, this is a photograph of the  
enclosed elevator shaft, and the -- and an

unenclosed elevator shaft right next to it, or an opening in the floor. To me, it looked like an elevator shaft -- an opening for an elevator shaft.

Q What other observations did you make at the time this photograph was taken regarding the spraying material?

A Well, you can see the two bins with wheels, and they are open and standing right next to the open elevator shaft. And, you could see material inside the bins -- inside one of the bins.

Q Okay, calling your attention to Page 4, the bottom photograph, where was that photograph taken, and what did it portray?

A This portrays spraying of columns and a slight opening in the tarpaulin.

Q Was the spraying taking place at the time that photograph was taken?

A Yes.

Q And, you mentioned an opening in the

tarpaulin, where was that opening, if you can indicate where it appears on the photograph?

A The opening is in the middle of the photograph to the left most part of the photograph.

Q All the way to the left, and about half way up?

MR. GANGER: What floor is this on?

THE WITNESS: The 50th.

MR. CAMPBELL:

Q And, do you recall how wide that opening was?

A I believe about 5 inches.

Q How far away was the opening from the spraying that taking place?

A Maybe, 10 feet.

Q Do you recall what time you left the site that day?

A I believe it was somewhere around three o'clock.

Q Have you been back to the site since then for an inspection?

A No.

MR. CAMPBELL: I have no further questions, Mr. Hearing Officer.

MR. HAWKINS: Would you like for me to proceed?

MR. KATZ: For the record, sir, we do have a stipulation for further cross examination of this witness, and you will produce him if necessary.

MR. GANGER: And, if I judge correctly, there is some reason for it.

MR. KATZ: If in our opinion, it is necessary. I hope that we can conclude today on this date.

MR. HAWKINS: May I proceed, Mr. Hearing Officer?

MR. GANGER: Sure, unless somebody wants to take a break.

Let's take a five minute break.

(Whereupon, a brief  
pause was had in the  
proceedings.)

MR. GANGER: All right, we're back  
on the record.

## CROSS EXAMINATION

BY MR. HAWKINS:

Q Mr. Krzykowski, you started -- you said you have been working for the EPA since November 15, 1971?

A Yes.

Q What did you do prior to that?

A I designed coll stock feeding machinery.

Q Do you have formal training in designing?

A I have a degree -- a Bachelor of Science Degree in Mechanical Engineering.

Q Mechanical Engineering, and when you started with the Environmental Protection Agency, what was the position you started in?

A In Environmental Protection Engineering in the Surveillance Section?

Q In the Surveillance Section?

A Yes.

Q And, was that the same type of work

you were doing on August 16, 1972, is this the same type of work?

A Surveillance, yes.

Q Did you proceed -- from your testimony, you did not proceed to the Sears Tower on the basis of a complaint, is that correct?

A No, I don't believe so.

Q On that particular day when you arrived at the building, you indicated you arrived at 2:00 P. M., is that correct?

A To the best of my knowledge, yes.

Q And, where did you go to when you arrived at the job site at 2:00 P. M.

A Well, of course, first --

Q That's what I mean, where did you go first?

A I went to the office across -- I think it was on Jackson Boulevard, from the Sears Tower where I met Mr. Malenoski.

Q And, Mr. Malenoski, was he in the office of Diesel Construction?

A I don't recall whose office that was, to tell you the truth.

Q Does Mr. Malenoski work for Diesel Construction?

A To the best of my knowledge, he identified himself as working for them.

Q Did you show Mr. Malenoski credentials when you spoke to him in the building across from the Sears Tower?

A I believe I did.

Q And, after you met Mr. Malenoski and showed him credentials, what did you say to him and what did he say to you?

A I don't recall the exact conversation, but I believe it was to the affect that he would take me to see the spraying operation going on at Sears Tower.

Q Did you ask for Mr. Malenoski when you got to the building?

A I was told -- I don't recall if Mr. Barish was there are not. I believe I was told

to contact either Mr. Malenoski or Mr. Barish.  
I don't know who I met first.

Q Who told you this?

A I had a phone conversation twice  
with Mr. Barish.

Q And, you believe that it was Mr.  
Barish who told you when you got to the build-  
ing to either contact him or Mr. Malenoski?

A Yes.

Q How long were you in the building  
across the street from the job site?

A I could have been fifteen minutes,  
I believe.

Q And, do you know what floor the  
Diesel Construction's office is on in that  
building across the street from the job site?

A I don't recall.

Q So, after you left the office of  
Diesel Construction to proceed across the street,  
it was approximately 2:15, is that correct?

A To the best of my knowledge.

Q And, where did you proceed to when you went across the street?

A Well, I believe we went to an elevator.

Q And, did you take one elevator directly to a floor and get off, or did you have to transfer elevators is that I want to know?

A I don't recall.

Q You do not recall.

What floor did you get off on, Mr. Krzymowski?

A I believe it was the 50th floor.

Q And, when you got off the floor at the 50th, you indicated that you observed some people spraying, is that correct?

A Yes.

Q And, you testified that you observed two people spraying, could you observe that from the elevator when you got off the elevator is what I'm asking?

A I don't recall. I think I saw it immediately.

Q You indicated that these people, in your testimony, was spraying in the northeast corner, is that correct?

A Yes.

Q And, in the northeast corner of that building, were there tarpaulins hanging in the areaways on the outer periphery of the building?

A Yes.

Q There were.

Did you go to the southeast corner of the building?

A Yes, I believe so. Yes.

Q Did you go to the southwest corner of the building?

A Yes.

Q And, then, you went to the -- did you go to the northwest corner of the building?

A Yes.

Q Did you observe any tarpaulin in any other place but the northeast corner of the building?

A Yes, I observed tarpaulin surrounding the total 50th floor.

Q There were tarpaulins completely around the 50th floor, is that correct?

A There were openings in certain places, as I have testified to before.

Q And, when you say that there were opening, I recall testimony to the affect of an opening approximately 5 inches, are you talking about larger openings than the 5 inch opening that you mentioned in your direct testimony?

A Yes, when the plastic sheeting between the floors and the tarpaulin was being moved, I believe at the northwest corner of the building.

Q You observed the tarpauling being moved in the northwest corner of the building?

A Yes.

Q Was it being moved up, or down, or sideways, or was it being brought into the building?

A It was not the tarpauling. It was the plastic sheeting.

Q This is the plastic sheeting that is on the periphery of the building, correct, and was that being brought up or down --

A No, they are two different types of sheeting. One is perpendicular to the floor area which surrounds the building. Another -- that I guess you would call the tarpauling. Then, there is a plastic sheeting which I would say is about 4 feet across, and it is put between the floor and the tarpaulin.

Q Okay, and are you saying that there was holes in the tarpaulin?

A Well, what I just said --

Q In the area perpendicular to the floor on the periphery of the building?

A Yes, I saw some openings.

Q And, you saw one you testified to that was 5 inches, did you see others?

A Yes, I believe I did.

Q Did you take pictures of them?

A No, I don't think so.

Q Can you tell me what part of the floor they were on?

A No, not other than the opening between -- where they were dismantling the plastic sheeting from the tarpaulin which was the northwest, I believe.

Q So that we fully understand what we are talking about here, this is what we characterize as the tarpaulin (indicating), what I'm pointing to is the thing that is around the building there?

MR. GANGER: What page is that?

MR. HAWKINS: Excuse me, this is on Page 3 at the bottom of the page. I'm pointing to this area (indicating). This is what we describe as the tarpauling.

A Right.

MR. HAWKINS:

Q And, are you -- on Page 3 in the first

picture there is a note saying "dismantling of the tarpauling on the 50th floor," is this gentleman removing or dismantling the tarpaulin?

A I believe that should have been -- well, it's part of the tarpaulin. It's the plastic sheeting.

Q Well, we attempted to make a distinction between the tarpaulin and the plastic sheeting that was put between the tarpauling and the floor, evidently, to stop seepage to the other floors?

A He was dismantling the plastic sheeting.

Q And, not the tarpaulin.

When you say in this particular picture you characterize as dismantling, could you please tell me what you observed this gentleman do?

A Well, I think he was taking off the plastic sheeting.

Q Did you observe him take the plastic

sheeting off?

A I don't recall. I know he was doing something with the tarpaulin.

Q Right, you have characterized it as dismantling, but you don't know exactly what he was doing?

A I don't recall exactly watching him take off any plastic, but it looked as if he was doing something there.

Q Thank you very much.

On the 50th floor, did you observe anybody sweeping?

A Yes.

Q And, how long were you on the 50th floor?

A It could have been 15 minutes.

Q Fifteen minutes.

During the time that you were on the floor, were they spraying all the time?

A I wasn't in a position to see them spraying all the time.

Q While you were still on the 50th floor.

Did you ever return there after you left the first time?

A I believe we went up to the 51st floor, and then came back down to the 50th.

Q And, you were on it the second time then?

A Well, I guess I would have had to pass it. I don't know if I went through the floor again.

Q So, you went from the 50th floor to the 51st floor, while you were on the 50th floor you did observe people sweeping, is that correct?

A Yes.

Q Did you observe people vacuuming?

A Yes, one person.

Q One person vacuuming.

How many people did you observe sweeping or shovelling?

A I believe there were a few.

Q Looking at the middle picture on Page 4 of 5, did you take this picture?

A Yes.

Q And, what is the gentleman doing in this picture that you could observe, or what was he doing at the time you took the picture?

A He was shovelling over-spray material, and over-fire proofing material into these bins.

Q And, he was getting this off of the floor?

A Yes.

Q Was this in the area where spraying was going on?

A No, I believe that was the southeast corner of the building.

Q Had they already finished spraying in the southeast corner, from your observation?

A Yes, it looked as if they had.

Q Did this gentleman that you observed at the time you took this picture, did he leave the area before you did?

A I don't recall that.

Q So, he may have still been in the area when you left?

A Yes.

Q The last thing you remember was that he was shovelling and sweeping?

A Yes.

Q Looking at Page 4 of 5, the bottom picture, could you also point -- first of all, at the time you took that picture, did you observe an opening in the tarpaulin?

A Yes.

Q Could you also put your finger on it so that I can see where it was?

A (Indicating).

Q Is it this area, supposedly, between these two lines?

A Yes.

MR. GANGER: Let the record show that it is the extreme left side of the picture.

THE WITNESS: Yes.

MR. HAWKINS:

Q And, it runs -- about how long is that opening -- supposed opening?

A I don't know. It could be 6 feet, I guess.

Q So, it runs from this line here (indicating) up to the 51st floor, is that correct?

A I guess, yes. I didn't actually look at how far up it ran.

Q Was this particular tower joint or juncture that we have here, was this two frames overlapping, were they supposed to have met and didn't meet, is that what we -- are there two frames we are talking about here or is that a cut in the tarpaulin, it's very difficult for me to observe from that picture?

A I don't think -- I didn't take a look at the construction of the tarpaulin very specifically as to how -- all I can say is there was an opening there. I don't know if that was

junction.

Q Or a slit in the tarpaulin, you cannot tell?

A No.

Q Could you see something beyond or through that opening?

A When I was -- when I was there I recall visibly seeing the sky better than to the left or to the right of that opening.

Q Was this in the northeast corner?

A Yes, I believe so.

Q After you left the 50th floor you went to the 51st floor and you testified you were on the 50th floor, approximately, 15 minutes before you proceeded to the 51st floor, is that correct?

A To the best of my knowledge.

Q And, you were on the 51st floor.

Did you observe tarpaulin on the 51st floor?

A Yes, I observed tarpaulin being erected.

Q Did you observe anybody spraying on that floor, you did not testify that anybody was spraying on the 51st floor?

Is this what you observed --  
Page 5 of 5, the top picture, Your Honor.

Did you take a picture on the 51st floor?

You took that picture there, did you observe any spray coming up from the 50th floor, did you testify to any spray coming up from the 50th floor when you got to the 51st?

A No.

Q And, you say that they were erecting these, is that correct?

A I don't believe I saw anybody working on it. I was told they were being erected. It looked as if they were being erected, and the spray was -- the floor was getting prepared for spraying.

Q The floor was getting prepared for spraying, what do you mean "getting --

A Putting the hoses up and some of the spray guns.

Q Did you walk around the 51st floor?

A I believe I did. I don't know if I walked around the total floor.

Q And, how long were you on the 51st floor?

A I don't recall.

Q Do you think it was 10 minutes, 15 minutes --

A Five or ten minutes.

Q And, where did you proceed to after you left the 51st floor?

A I believe we went down the stairwell to the 49th, 48th, and 47th floor. I wanted to see how the material was being mixed -- fire proofing material.

Q Excused me, you dropped voice.

I'm sorry, could you repeat that?

S I wanted to see how the fire proofing

material was being mixed.

Q And, you observed that on the 47th floor, is that correct?

A Yes.

Q And, you indicated or characterized in your direct testimony that there was a snow shower or snow fall of dust, is that correct?

A Yes, by the machines as the material was being dumped, and there were piles of the material lying about.

Q And, where was -- in relation to the four corners of this building, where was this mixing taking place?

A I believe it was the northeast.

Q Northeast corner of the building?

A To the best of my knowledge, it was the northeast.

Q Did you take any pictures on the 47th floor?

A No, I ran out of film.

Q And, you indicated that there was a

snow fall of material, and you said that it was approximately -- was it a quarter of an inch on the floor?

A On the 47th floor, I saw material flying about something --

Q Flying about?

A Yes, something resembling a snow fall, or as if you were dumping something in from a bag, it could have been flying up. Also, it looked like a snow fall in the area where they were mixing, and also the -- there was very much material -- there were piles of the material -- dry material lying about around the machines. The floor was totally unenclosed, and it was covered with a thin layer of material. I'm not sure if the total floor was covered with it, but mainly in the area of the machines.

Q Did you walk around the whole floor?

A No.

MR. CAMPBELL: Excuse me, Counsel.

What floor are we talking about?

MR. HAWKINS: The 47th floor.

MR. HAWKINS:

Q You did not walk around the whole floor?

A No.

Q In the areas that you did walk, did you find that material on the floor?

A Yes.

Q So, you don't know if there was other stuff in other areas of the floor?

A No.

Q How long did you stay on the 49th floor?

A The 49th, I believe we just passed through and stopped for a minute or so.

Q How long did you stay on the 48th floor?

A Just enough -- like on the 49th, just enough to take a quick look around.

Q And, how long did you stay on the 47th floor?

A Well, it could have been a few minutes.

Q A few minutes.

And, after you left the 47th floor, where did you go?

A Somehow we got back on the elevator. We could have -- I believe we had to go to another floor. I'm not positive. It could have been the 50th or the 51st.

Q And, when you got on the elevator, where did you go?

A Down.

Q You went down, and did you leave the job site?

A Yes.

Q Did you say that this one quarter inch, approximately, of material that was on the floor, that was also on the 48th and 49th?

A That was on the 48th and 49th, particularly, I noticed it. I guessed the quarter inch as the maximum. It was very evenly spread

about the floor.

Q Was this powder?

A Powder, no --

Q Was this powder?

A I didn't say it was flying around the 48th and 49th. It was just laying on the floor.

Q Laying on the floor?

A Right.

Q On the 47th floor, did you say something was flying around?

A Yes.

Q Was it powder?

A No, it resembled the fire proofing material that was -- it was the fire proofing material because Mr. Malenoski stated that this is where they mix it, and I saw the bags.

Q Was it so thick that it was difficult to see?

A Well, the workmen had respirators on where I was standing. It wasn't that thick, no. But, I didn't come very close to it. I didn't

have a respirator.

MR. HAWKINS: May I take just a few minutes to talk to Counsel here.

MR. GANGER: You may.

(Whereupon, a conversation was had off the record.)

MR. HAWKINS: Your Honor, I'm going to stop my cross examination at this time. Mr. Katz has just a few questions.

## CROSS EXAMINATION

BY MR. KATZ:

Q May I see that, sir.

Mr. Krzymowski, in this 45 minute period which I believe was established to have been the time you spent on the premises on August the 16th, all of this took place on August 16th, is that correct?

A Yes.

Q So, that in that 45 minute period when you got to the job site at about 2:15 and left at 3:00 o'clock, you observed the things you testified to, you took the pictures and left the premises.

Now, do I understand that only Mr. Malenoski was with you or were there any other gentlemen with you in your course of examining these floors?

A Another gentleman, we met -- I think his name was Mr. Raica.

Q Yes, you did testify to that.

You ran into him on one of the

floors?

A Yes.

Q And, what floor was that, again,  
I don't recall?

A I don't either.

Q What was his part in this?

A I believe Mr. Malenoski introduced me to him. This was on the bottom floor when we were leaving -- just about when we were leaving. And, I think he asked me "Well, if you have any further questions, this is the man who construction -- who is the carpenter-foreman."

Q He is the one in charge of putting of the enclosures?

A Right, and that's what I was led to understand. And, he stated -- I asked him how guns they normally operated, and I believe he stated 16 guns or something like that.

Q Sixteen?

A Yes.

Q Was anyone ther from Mario and DiBono Corporation, the people that actually did the spraying?

Did you request that anyone from Mario and DiBono be along with you on this examination -- on this investigation?

A I don't believe I requested it, no.

Q Mr. Malenoski, as I understand it, is with Diesel Construction, the general contractor, is that right?

A Yes.

Q And, with the exception of that short periof of time that Mr. Raica talked to you, you were always in the presence of Mr. Malenoski, he accompanied you from floor to floor?

A Yes.

Q And, from site to site?

A Yes.

Q And, you are the one that took all of the pictures in Complainant's -- marked as Complainant -- Group Exhibit 2?

A Yes.

Q Did you develop them yourself?

A No, I did not.

Q Who developed them, if you know?

A I believe it's the Camera Exchange.

I'm not positive.

Q And, are these all the pictures that you took in the course of that visit to Sears Tower?

A No, I think there were some more, but -- either they didn't come out or were meaningless.

Q This material that was being mixed on the 47th or 48th floors, I believe you testified, is that right, is that where it was being mixed?

A I believe it was the 47th floor from what Mr. Malenoski told me.

Q And, did that floor appear to be finished in so far as the spraying process is concerned?

A Yes.

Q Was the spraying process finished on

the 48th floor?

A Yes.

Q And, how about the 49th?

A The same.

Q What floor was it about to begin, where were they going to begin spraying?

A They were going to begin on the 51st.

Q So, that the 50th had been completed to, is that right?

A It was in the process of --

Q They were cleaning and vacuuming?

A And, sweeping, finishing up.

Q On every one of these floors.

Since you left at three o'clock, you would have no knowledge of any activity that took place subsequent to that time?

A I don't recall exactly if I left at three o'clock. It could have been three o'clock -- three-thirty, around three o'clock.

Q And, workmen remained on the premises after you left the site, it was not shut down

at the time when you left so that there might have been additional vacuuming subsequent to your --

MR. CAMPBELL: Objection to what might have been after the witness left. He is clearly not there, and in no position to tell.

MR. KATZ: Correct.

MR. KATZ:

Q But, there were workmen on the premises after you left?

A Yes -- I will have to qualify that answer. I don't know what happened after I left. As I was leaving, there were still some people there.

Q I agree with you, sir. You don't know.

This material that you saw on the floor and in the air of the various areas that you visited, was it moving about violently or did it -- of course, what was on the floor was stationary.

I believe you testified that some of this was in the atmosphere in the area of the floor, was it moving violently or was it just in a stationary state?

A Well, on the 47th floor where they were mixing it would be something like dumping a bag of feathers -- I believe the action of a feather, I would say, would describe it the best way.

Q How large of an area did this mixing take place in?

A Well, it was the northeast corner of the building.

Q Well, was it the size of this room or a quarter of this room?

A I would say twice the size of this room.

Q And, I'm not familiar with this mixing process, just what happens when they mix it, there are machines or vats sitting on the floor, is that correct?

A They look like machines that have a pump by them, and vats where they -- I guess they open them up and open a bag and manually dump the material into the machines.

Q What was dumped into these vats, you saw some bags of material?

A Cafco, the spary on fire proofing material.

Q Now, what was the purpose of throwing it in, was it to mix with a liquid?

A I'm not exactly positive about that. I don't think I went into details on that. I believe it was just pumped up to the floor or else it could have been mixed right there with the liquid.

Q And, this material that you refer to as Cafco, do you have any independent knowledge as to it composition -- as to the chemical composition that makes up that Cafco product?

A I believe they describe it in their brochure --

Q No, I mean do you have any personal knowledge?

A Did I ever analyze it?

Q Yes, did you ever analyze it?

You have no personal knowledge as to the composition of that material other than what you read in the brochure that came to your attention?

A Well, there is also some report that we got from our lab in Champaign which describes it.

Q So, that you believe that your lab in Champaign did analyze the material?

A That's what I believe, yes.

Q And, was there any -- did you read those analytical reports?

A Yes.

Q Are you of the opinion that there is any harmful substance in that material?

MR. CAMPBELL: I object to what his opinion is. There is no foundation for this

witness to testify to that.

MR. KATZ: Mr. Campbell, sir, he is an engineer. He saw the material. He testified about it. He read the analysis of it by some laboratory at the request of the Agency. I simply want to know whether he has any opinion as to its composition.

MR. GANGER: I'm going to let him answer, but I don't see where that is material. That isn't even what the issue is here today.

A Well, from my observation from the workers that applied the material, and the workers that mixed it and who were wearing aspirators, I believe it is harmful.

MR. KATZ:

Q It is your conclusion that this material is harmful to human beings?

A Yes, if you breathe it.

Q And, there could be no other reason for their wearing respirators, if they were wearing them all the time?

A There could be other reasons. They could be doing other work, but the people who were dumping and spraying, I believe, were wearing the respirators because of this material.

Q Well, what would happen?

A MR. GANGER: We have to stick to what the issues are, Mr. Katz.

MR. KATZ: All right, I will withdraw that.

I have no further questions of this witness.

MR. HAWKINS: May I just ask one or two other questions?

MR. GANGER: Sure.

MR. HAWKINS:

Q Mr. Krzymowski, could you observe any particulate matter emitting from the building?

A Could I, yes.

Q With respect -- could you observe this from outside the building?

A I could observe it. I did not.

Q This memo dated August 17th from you to Miles Zamco, this is the memo that you wrote, isn't it?

A Yes.

Q In that memo, didn't you -- did you say at that time, "However, no particulate emissions could be seen coming from the subject building?"

A Yes, I believe so, if that's what it says in there.

MR. GANGER: All right, we'll adjourn to another date --

MR. CAMPBELL: Mr. Hearing Officer, I have some redirect.

MR. GANGER: Oh, I'm sorry.

## REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q Could you explain the answer you just gave, I was a little bit confused with regard to the last question -- last two questions that were asked?

A Well, I thought the gentleman was asking me if I could observe something relating to my side, but I did not observe any particulate matter on August 16th coming from the building.

Q Now, when you were on the 50th floor you observed several people, at least one individual, vacuuming?

A Yes.

Q Was there more than one person vacuuming?

A Just one.

Q How about shovelling, was this the same person that you saw vacuuming shovelling, or was this two different people?

A I believe I observed a few people shovelling

and sweeping, and one person vacuuming.

Q When you left the 50th floor and went up to the 51st floor and then came back down to the 49th and 48th, did you see anybody shovelling or sweeping, or vacuuming on the 48th or 49th floors?

A No.

Q Was there anyone present on that floor that you could observe, on either the 48th or 49th?

A I don't recall seeing anybody.

Q Now, on cross examination you were asked questions concerning the top picture on Page 3, and I believe you testified that there was an opening where the dismantling was taking place or what you have characterized as this dismantling, I wonder if you could point out in that photograph where the opening was?

A It was right here (indicating).

MR. GANGER: Well, you have to show for the record just where it is.

Could I make a statement for all, I'm sure that you are aware that I'm not going to make the decision in this case. I'm simply here as the Hearing Officer to conduct the hearing and make sure that we have an orderly proceeding, and it is not going to make much difference to the Board, his pointing.

THE WITNESS: It was almost in the middle of the photograph by the -- between the floor and the tarpaulin perpendicular to the floor.

MR. CAMPBELL:

Q Directly and behind the man with the yellow shirt on in the photograph?

A Yes.

MR. CAMPBELL: At this time, I will move for the admission of EPA's Group Exhibit No. 2 into evidence.

MR. GANGER: Well, I'm going to take the pictures into evidence, but I'm going to point out for the record that I don't believe all of

them were identified completely by the witness. But, subject to that, I'm going to leave it up to the Board to make a final determination.

MR. HAWKINS: Your Honor --

MR. KATZ: Furthermore, sir, I think that the admission of this exhibit ought to be deferred until we have determined that there is no further cross examination of this witness. We do have a stipulation that he is to be brought back in the event we feel there is additional cross examination.

MR. GANGER: I think that this is all there is going to be. If I feel there is some reason for further cross examination -- I think I will admit these now. I don't see how cross examination is going to get them out of evidence, at least the one he identified.

MR. HAWKINS: Your Honor, may I ask that the pictures -- I have no objection to them being admitted, but the comments that are next to the pictures, I think, should be stricken from

the picture. The picture is fine, but the comment --

MR. GANGER: Again, I'm going to leave that up to the Board -- the full Board to clarify the record. And, in my opinion and my judgement, some of the pictures he testified to and where it was, and what he saw, I believe corresponds to the type of material adjoining. I don't believe he did that for all the pictures. However, as I understand it, the rules for evidence on these proceedings are a little broader than the rules for evidence in the courtroom.

Are there any further proceedings today?

MR. HAWKINS: Your Honor, I'm a little bit confused as to what he pointed out in this picture that he just marked.

MR. GANGER: That's the top picture.

MR. HAWKINS: Is this suppose to be a different view of this?

MR. GANGER: This would be the bottom picture on Page 4.

MR. HAWKINS: The bottom picture on Page 4 from which it has been implied there was some material escaping. I assume that he was identifying this picture on Page 3.

Is what he marked also shown on Page 4?

THE WITNESS: No.

RECROSS EXAMINATION

BY MR. HAWKINS:

Q This is another opening.

And, did this opening go outside or did it go down to the floor below it?

A It went down to the floor below it which was uncovered.

Q Okay, and I note in this picture at the top of Page 3 that there is a gentleman who is working with the plastic cover?

A Yes.

Q I do not observe in spraying in this

area.

Was there spraying in this area at this time?

A There was spraying -- that's the northwest corner, and I believe they were spraying to the northeast corner along the same --

Q At the time that you took this picture, did you see any people in the area?

A I don't believe so.

MR. HAWKINS: Okay.

Thank you, Your Honor.

MR. GANGER: Anybody else?

MR. KATZ: One moment, sir.

(Whereupon a conversation was had off the record.)

MR. HAWKINS: Mr. Katz has asked if it's possible that we might be able to get a copy of the group exhibit that was just entered into evidence in preparing our defense.

MR. GANGER: We'll be able to furnish the negatives.

MR. CAMPBELL: Mr. Krzymowski might have additional copies of those photographs.

MR. KRZYMOWSKI: I don't think I have any additional copies. I can't speak for the Agency.

MR. HAWKINS: We'll be happy to pay for the expenses.

MR. GANGER: Why don't I entrust them into your care for a couple of days, and then you return them to me.

MR. KATZ: May we also have a copy of Exhibit 1, the report -- the memo.

MR. CAMPBELL: Is there another set of those photographs anywhere, are there usually more than one set made?

MR. KRZYMOWSKI: I don't recall if there was more than one set.

MR. CAMPBELL: We'll provide you with one.

MR. GANGER: Do you have any objections, I think --

MR. KRZYMOWSKI: There is another set in Springfield, I believe.

MR. GANGER: Is this all?

I noticed you mentioned you had filed an Answer. I never got a copy of your Answer. I think I'd like copies if you got them.

MR. HAWKINS: We did not file an answer. We may do so now that we got an amendment.

MR. GANGER: When do you think you will be ready to proceed?

MR. CAMPBELL: I now have three more witnesses to call. It's somewhat of a scheduling problem because of the vacation, the date that all three could appear. There is only one date, and that's June 29th. I don't know if that's convenient for anyone else.

MR. GANGER: How does that sound with you people?

MR. HAWKINS: I have no objections to June 29th or 30th.

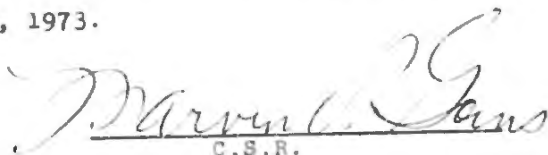
MR. GANGER: All right, we'll continue  
this hearing to June 29th at 10:00 A. M.

(WHEREUPON, FURTHER HEARING IN THE  
ABOVE ENTITLED CAUSE WAS CONTINUED  
UNTIL JUNE 29, 1973, AT 10:00 A. M.)

STATE OF ILLINOIS        )  
                              ) SS:  
COUNTY OF COOK         )  
  
CASE NO. PCE 73-106

I, MARVIN V. GOINS, do hereby certify that I am a Certified Shorthand Reporter employed by CHARLES McCORKEL, JR., COURT REPORTERS of Chicago, Illinois; that I reported in shorthand the evidence taken and proceedings had on the hearing of the above entitled case on the 11th day of June, A. D., 1973; that the foregoing pages are a true and correct transcript of my shorthand notes so taken as aforesaid, and contain all of the proceedings directed by the Illinois Pollution Control Board or other persons authorized by it to conduct the said hearings to be so stenographically reported.

Dated at Chicago, Illinois, this 3rd day of July, A. D., 1973.

  
C.S.R.

IN RE: EPA AN AGENCY OF THE  
STATE OF ILLINOIS vs SEARS  
ROEBUCK AND COMPANY, et al  
73-106  
Taken 6/29/73

BEFORE THE

ILLINOIS POLLUTION CONTROL BOARD

IN RE:

ENVIRONMENTAL PROTECTION AGENCY,)   
an Agency of the State of Ill., )

Complainant, )

-vs- )

73-106 )

SEARS ROEBUCK AND COMPANY, a )   
New York Corporation; Diesel )   
Construction Company, a Division )   
of CARL A. MORSE, Incorporated, )   
of Illinois, an Illinois )   
Corporation and MARCO AND DI )   
BONO CORPORATION, a New York )   
Corporation, )

Respondent. )

STENOGRAPHIC REPORT OF PROCEEDINGS HAD  
and evidence offered at the hearing of the  
above-entitled cause before MR. DONALD GANCER,  
Hearing Officer, held in Room 1848, 135 South  
La Salle Street, Chicago, Illinois, beginning at  
ten o'clock A.M. on June 29th, 1973.

PRESENT:

MR. MICHAEL HAWKINS,

appearing on behalf of Sears Roebuck;

MR. EDWIN M. KATZ,

appearing on behalf of Di Bono;

MR. HOWARD GOPMAN,

appearing on behalf of Di Bono;

PRESENT: (Continued)

HON. WILLIAM J. SCOTT,  
Attorney General,  
BY: MR. LEE A. CAMPBELL,  
Assistant Attorney General,  
  
appearing on behalf of the EPA.

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Di Bono Number 1

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HEARING OFFICER GANCER: On the record. This is an adjourned hearing from June 11th, 1973 at the Liquor Control Commission Hearing Room, continued to today by agreement and notice to all parties.

Before we commence, are there any motions or stipulations to be presented by any party?

MR. CAMPBELL: I have a motion.

HEARING OFFICER GANCER: What is it?

MR. CAMPBELL: Earlier this week, one of the witnesses who will be here to testify today, informed us that a date which is part of the allegations of the amended complaint was not an accurate date. The date in question being June 6th, 1972, and that the date should have been June 2nd, 1972, and that being the date on which observations were, which they will testify to today, were made.

I move to amend the complaint on its face to change the date in paragraph nine from June 6th, 1972 to June 2nd, 1972.

MR. HAWKINS: Your Honor, may I oppose that motion?

HEARING OFFICER GANCER: Oppose it?

MR. HAWKINS: Oppose it. The reason being that this is an amended complaint, they had an opportunity to make this correction and they have failed to do that until this time.

I will stand on your decision, of course.

HEARING OFFICER GANCER: Let me ask you, Mr. Campbell, when did you learn about this?

MR. CAMPBELL: Monday or Tuesday of this week, and I immediately informed both Mr. Katz and Mr. Hawkins of the news of which I had been informed. The date in reality was not 6 but 2nd. I called them on the phone immediately after I talked to Mr. Vaitonis, who is one of the witnesses that we will call today.

MR. KATZ: Sir, I would like to join in the objection to the allowance of the motion for amendment now, for the following reasons, supplementing Mr. Hawkins' objections.

The original complaint was subsequently amended, I had answered the original complaint, the amendment to the complaint sets out a vital date of June 6th.

Now, either in my answer, I haven't had a chance to peruse it, or in my conversation in a pre-trial, both Mr. Hawkins and I, with Mr. Campbell, made very clear, June 6th could not have been a date involving violations because everyone was on strike on that date.

It appears to me unusual to me, unusual to have a complaint amended complaint and, when he has an opportunity to interrogate the witness upon whose testimony he drafted the complaint.

It is not Mr. Campbell's fault, it suddenly changes to another date and we, of course, it is true that some time during the week, Mr. Campbell called me, and said, I think it was Wednesday, sir, you called me, and said that he has interrogated the witness, while we haven't had an opportunity, I haven't, to explore what had happened on the second, and I

think that that motion should not be allowed for those reasons.

HEARING OFFICER GANCER: Well, I am going to deny that motion, Mr. Campbell, my reason is this, I think that a motion to amend this complaint should have been made promptly upon your learning of the correct date.

Should have been made in writing and then, if need be, we could have continued this hearing date or, if the respondent's requested a continuance, to prepare their case, we could have considered continuing this hearing date.

MR. CAMPBELL: Let me say, before you make an opinion, a ruling, I had spoken to this witness, I believe, on two occasions and in good faith, he believed it was June 6th.

During the course of our conversation he came across information in his file which changed his recollection of the date, and in fact, proved to him that it was a different date.

This is the earliest opportunity that I had to inform Mr. Katz and Mr. Hawkins and I

immediately called him, told him I would be making a motion at the hearing, and suggested to him, if necessary, they could move to continue hearing as to the testimony regarding June 2nd, to give them an opportunity to prepare and I did not want to surprise them by forcing them to defend on that date, such an early date, after they had been informed of the change.

This is the reason I immediately called and suggested that if it would cause undue surprise, that the testimony of this witness regarding June 2nd could be continued to another date, and we could continue with the other two witnesses.

HEARING OFFICER GANCER: What did they say?

MR. CAMPBELL: They said they would oppose the motion.

HEARING OFFICER GANCER: Well, I am going to rule, as I said, I think you should have brought that to my attention by a notice, promptly. After everybody has come here in good faith to go ahead, I think we are going to go ahead.

MR. CAMPBELL: I have no objection to going ahead. I am saying, as to that date, we can move that if you don't want to hear the testimony, now, or don't think it is appropriate in line of the shortness of the notice, to the defendants, if we could continue Mr. Vaitonis' testimony to a later date, to allow time for preparation.

HEARING OFFICER GANCER: What burden has this put on you to prepare your case?

MR. HAWKINS: Well, your Honor, as I say, the burden was that we had a defense based on this thing.

HEARING OFFICER GANCER: The strike defense? That was a pretty good one.

MR. HAWKINS: That is right, your Honor, and it was not unknown, I venture to say. My recollection was, at least it was known to me, maybe I did not tell Mr. Campbell, but I believe in your pleadings you pleaded the fact there was a strike prior to the amended complaint, and my point is that they had the opportunity to do it and Mr. Campbell called me and told me and I believe my recollection was Monday

Monday or Tuesday, you called me on this, that I told them I would oppose the motion to amend and if I was denied we would go ahead, we would not ask for a continuance.

We do believe they have had adequate opportunity, I think in fairness that it should be stricken and it should not be allowed.

HEARING OFFICER GANCER: Let's take a brief --

MR. KATZ: May I say this, before you consider the rules, I am sorry you don't have a copy of the answer, I think you instructed me to mail one.

HEARING OFFICER GANCER: The rules call for that.

MR. KATZ: I think I did, but I will see that a copy goes to you, paragraph eight of my defense specifically states, this Respondent further states, June 6th, 1972, the Respondents performed no operations at the Sears Tower since the latter placed a picket line at the building site at eight A.M. in connection with a strike settled at four-thirty P.M. on the same date.

It is strange to me, the original

complaint had that date, the amended complaint had that date, the amended complaint filed subsequent to this had the same date.

Lo and behold, when Mr. Vaitonis whoever the witness is, who probably had notice of the complaint and answer there to, now finds it convenient to fix another date.

Now, it is impossible to defend pleadings of that sort.

HEARING OFFICER GANCER: I have got your point.

MR. CAMPBELL: I want to respond to that. Mr. Vaitonis, I talked to him several times, believed him to be acting in total good faith in this matter, not in response to any fact that there was a pleading stating that there was no work being done on June 6th.

He came across information in the file, during the course of our conversation, which caused him to realize that he had been incorrect in informing me of the June 6th date, and the date in fact should be June 2nd, and I just want to get it on the record, when

Mr. Vaitonis testified, this fact can be brought out, he was in fact acting in good faith in telling me of that change.

HEARING OFFICER GANCER: We are going to take a recess.

(Whereupon, discussion was held off the record.)

HEARING OFFICER GANCER: I am going to rule as I indicated, that that motion is not timely name and I am not going to delay this proceeding, and I am not going to allow you to put in any evidence regarding the June 2nd date, especially since in paragraph nine you have another date, April 21st, that you will be specifically able to prove up on the same kind of charge.

I refer you to Section 308 of the rules and I think it would be proper for you to submit along with this case, when it goes to the Board, I will give you leave to file with the record, affidavit in support of your motion, setting forth the facts you have orally stated here to us about when you first learned of this and you can, as I see it, file any kind of a brief you want with the Board and they may

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well want to send this back for further hearing on the June 2nd date, or, yes, June 2nd date, but we are not going to have any testimony on that day.

I want you to confine yourself to April 21st, 1972 date.

MR. HAWKINS: May we also file a short memorandum opposing that?

HEARING OFFICER CANCER: Oh, yes, I think that is in the rules, yes.

MR. CAMPBELL: I think in terms of getting at the truth of what happened here, Mr. Valtonis is here today, and in terms of filing an affidavit, and filing briefs to prove whether or not --

HEARING OFFICER CANCER: Well, you don't have to.

MR. CAMPBELL: You made the suggestion, I think, a much better alternative, of finding the truth, is call Mr. Valtonis and have him testify as to the conversations.

HEARING OFFICER CANCER: No, I am sure what you are telling me is correct, and I have no reason to doubt Mr. Valtonis.

However, the point here is that we cannot go ahead with that particular evidence today because -- all the Respondents have not had an opportunity to prepare for it.

For me to let you put in what his testimony would be on June 2nd would not accomplish anything, because it would have to be sent back anyway, so to keep this short, and moving, I am denying your motion.

You can submit it to the full board along with the transcript in this case and let's get going on whatever else you are going to prove up today, but let's leave June 2nd out of it, because we are going to deny your motion.

MR. CAMPBELL: Okay now, if I understand you correctly, you are denying the motion to amend today, as to June 6th, to make it June 2nd, if I were to file a written motion on Monday to amend the complaint and to continue the hearing to such time as will give the respondents sufficient time to prepare with respect to that day, does that cause any undue burden?

HEARING OFFICER GANCER: Let's see how it goes today, let me reserve that question. You can certainly renew the motion at the close today. It is ten-thirty now. Let's get going and proceed with this case.

You can make such motion later, if you want.

MR. CAMPBELL: I have three witnesses, Mr. Vaitonis at ten o'clock; another witness at ten-thirty, and Mr. David Key at eleven.

Before we go on, at the conclusion of the last hearing, I indicated, and this was the subject of some discussion, whether or not Mr. Wisnowski should come back for cross-examination.

Let the record show he is here and if Mr. Katz and Mr. Hawkins desires any further cross-examination, he is available today.

HEARING OFFICER GANCER: Well, let's hope they don't go ahead.

MR. KATZ: No, your Honor, we have no further cross-examination.

MR. HAWKINS: No, your Honor, I will restrain myself.

RICHARD G. GROLL,  
called as a witness on behalf of the Complainant  
was duly sworn, and upon examination, testified  
as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q State your full name and spell it.

A Richard G. G-r-o-l-l.

Q Where do you live?

A Oaklawn, Illinois.

Q And by whom are you employed?

A Hartford Fire Insurance Company.

Q Where is that located? The office  
that you work in.

A The Hartford Plaza Building, Chicago.

Q Where is that located?

A The mailing address is Hartford Plaza.

Q Could you give me the location?

A Corner of Monroe and Wagner.

Q What is your position with the Hartford  
Insurance --

A Technical representative, loss control  
department.

Q Are you familiar with the location of

the Sears Tower?

A Yes.

Q Where is that located in relation to the Hartford Plaza Building?

A It is one block south and directly across the street.

Q Calling your attention to April 21st, 1972, did you have occasion to be in the vicinity of the Sears Tower Building?

A Yes, I did.

Q What were the circumstances surrounding your being in the vicinity of the Sears Tower on that date?

A I was up working at 175 West Jackson Building, that morning and coming back to the building before lunch.

Q Now, this is coming back to the Hartford Plaza Building?

A Yes, I observed the material coming out of the --

Q Let's focus on what you were doing that date, and how you came to be in the vicinity of the Sears Tower, you were working

at 175 West Jackson returning to Hartford Plaza building?

A Yes.

Q Do you recall approximately what time?

A Ten-thirty in the morning.

Q And what, if anything, unusual did you observe on the way back to the Hartford Plaza building?

A I observed the material that was in the air, coming out of the Sears Tower building and my main concern was the amount of accumulation that was accumulating on our property building.

Q This is on the --

A That was not on the Hartford Plaza building, it was at 150 South Wacker, Twin Tower, I think you would call it, a Twin Tower, it is connected by a tunnel.

Q What special observations did you make with regard to material coming from the Sears Tower?

A Large chunks of spray on insulation material was falling through the air and what caught my attention was the size of the pieces.

Q What caught your attention was the size? What was the sizes you observed?

A They were pieces a quarter of an inch up to a half an inch in diameter in fact, I got hit by two of them on the way back.

Q And could you tell where these materials were coming from?

A From the Sears Tower, at approximately the tenth floor level, this is such as I recall, it now, because I, at that time, I did not count the floors.

Q What effect -- strike that.

What observations then did you make with respect to where the material was going as it left the Sears Tower?

A It was going in a slightly north-western direction.

Q From the Sears Tower and where was it going then, it was carried northwest of the Tower?

A It was dropping to the ground and also large accumulations were accumulating on one of our buildings.

Q You say large accumulations, would you be more specific?

A Well, my understanding, that the bill for washing it down was seven thousand dollars.

MR. HAWKINS: I object, your Honor, I don't think that that is, that answer is responsive to the question or relevant.

HEARING OFFICER GANCER: Well, I think it gives some indication of what was involved. I am going to let the answer stand.

MR. KATZ: I too, want to join in the objection. May I say something in support of it. A sum of money expended for washing down a building based on what testimony he has given so far is entirely illogical and impossible, as a result of a few --

HEARING OFFICER GANCER: It is noted. I overrule it. Go ahead.

DIRECT EXAMINATION (continued)

BY MR. CAMPBELL:

Q As to the specific observations of what you say you saw on the 150 North Wacker Drive Building, could you describe a little more in detail what this looked like, as you saw it on that day?

A The building is granite finish covering

on that building with a large amount of glass for office occupancy.

Up to the tenth floor level, the entire length of that building was covered with these large pieces over the glass, over the granite, roughly looking, I would say, that there was not more than two feet or three feet between chunks of this material over the face of that building.

Q How wide is the building, the 150 Wacker building, how wide was the area of coverage of this material?

A I don't have the exact dimensions, it would have to be somewhere as close to at least 100 feet in length.

Q Well, the question had to do with the width of the building.

A That side would be at least 100 feet in length.

Q And from the ground level up to the tenth floor with an area separating chunks of not more than how many feet?

A Two to three feet.

Q Covering the glass?

A Glass and granite.

Q At the time you observed the coverage on the building you also observed material continuing to come from the Tower and landing on the building, is that your testimony?

A Yes.

Q How long did you continue making these observations?

A At least five minutes at that time.

Q Was there anyone else with you at the time that you were making these observations that was making the observations also?

A At that time in the morning, no, a little later in the morning, yes.

Q Did you come back later that same day?

A I reported it to my superintendent advisor and I went out with him some time approximately 12:30 to one o'clock and we both observed the same condition applying and he made the report to the building manager.

Q Who is your supervisor?

A Al Dando.

Q What observations did you make during this period, from 12:30 to one o'clock?

A The same conditions were existing except it was coming down much heavier, much more finer material coming down.

The first observation, I would say it was although large chunks, it was trickling down, later, when we both observed it together, it almost looked like a snow storm out there of fine material.

Q You said it was much finer, how what was the approx'mate size of these pieces?

A Grains of sand or smaller extremely fine material.

Q And in what direction was the wind blowing?

A Same direction, roughly, as previously.

Q Was it blowing in the direction of 150 North Wacker building?

A Yes.

Q And where was this material coming from?

A From the Sears Tower building.

Q From the same area as you described before?

A From approximately the same area.

A From approximately the same area.

Q Have you had occasions other than on April 21st, 1972 to observe similar conditions in the vicinity of the Sears Tower?

A I noticed it on two other occasions, one I know the date, the other I don't have any idea what date it was.

Q Was -- were these two dates before or after April 21st, 1972?

A After.

Q And what observations did you make, let's take the date that you are not aware of, you don't know the specific date, what observations --

A On that date, it was coming out of the Sears Tower in large quantities and accumulating on the gypsum property.

Q Where is the gypsum property?

A Not the gypsum property, the building directly south of the gypsum property, it is a new one going up.

Q Was it going up at that time?

A At that time.

Q Where were these particles coming from?

A From the Sears Tower building.

Q Do you know the approximate floor that the material was coming from?

A At that time I do not know.

Q And it was going from the Sears Tower in what direction?

A In a northerly direction.

Q And where was the material ending up if you saw it, if you observed it?

A On the sidewalk street, parking areas.

Q Parking?

How long a period of time did you make these observations?

A Well, over, over ten minute periods of time.

Q You recall approximately what time of the day this was?

A It was later in the day, than the date, I don't know exactly, some time after one and before four.

Q Now, what about the other specific date, on what date was that?

A On the 28th of April, the material was still coming out of the Sears Tower building.

Q Do you recall what time of the day you made these observations.

A Late in the afternoon. Somewhere around three o'clock.

Q Was anyone else with you at the time?

A No.

Q Okay, you want, what direction was the material blowing or no, what material what direction was the material going after it left the Sears Tower?

A I honestly couldn't tell you, it was visible on the west side of the building. Now, it didn't appear to be going any general direction; on the first occasion when I said it was going in a general direction, that was a damp, wet day, in fact, it probably was the reason so much was accumulating on our building, it was sticking to the dampness.

Q That is April 21st, correct?

A Yes, and when it was still in the air.

Q On April 28th, this is a week later what were the weather condition on that date?

A I couldn't tell you.

Q Did you notice?

A It was nothing unusual about it that I recall at this time.

Q And what quantities was the material coming from the building?

A In a light quantity.

Q Could you tell where, exactly, in the Sears Tower building it was coming from?

A No.

MR. CAMPBELL: I have no further questions.

MR. HAWKINS: Your Honor, may I make a motion to strike the testimony as to an unspecified date, it being impossible to defend against a date that is not specified?

MR. HEARING OFFICER GANCER: Well, I am going to overrule your objection because the way I read the complaint, it says, during the period from April 14th until at least the filing of the amended complaint, particularly including and he named the two dates.

Now, if you want to pin him down there is discovery available and you did not avail

yourself of it, so I am going to overrule that motion.

In some respects it is inconsistent with my earlier ruling, you can't put in evidence on June 6th. However, I do think you did call attention in your complaint to two specific dates and I think that on those two dates the defense had a right to expect testimony on those, and to rely on it, and to defend against those two dates, but he came in with other dates here, Counsel, which you didn't do, anything, to pin down in discovery.

I don't think I am going to --

MR. HAWKINS: I would just like to preserve that motion to strike that testimony, your Honor.

HEARING OFFICER GANCER: It is denied.

CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Groll, how long have you worked in this area of the Sears Tower?

A You mean for the company?

Q For your company, you are with Hartford Fire Insurance.

A Yes, how long I have been with them 24 and a half years.

Q And how long did, had they been at the present location, approximately?

A Over five years, five to ten years.

Q And do you know approximately when they started the construction of the Sears Tower?

A Yes, again, I don't -- couldn't give you the date that they broke ground.

Q Well, I know approximately a year ago, three years ago, 18 months ago?

A It was over two years ago.

Q And you are in the area every working day of the week, is that correct?

A Not every day. I am probably in that area three days out of the week.

Q And the only particular instance of seeing this matter that you have testified to were on the 21st of April and 23th of April, 1972?

A Twenty-first, 28th of April, and one

other day.

Q That you don't have --

A any recollection --

Q Those are the three dates now. Now, as to the nature of the material you described, as you saw it visually, do you know the nature of the material, do you know whether it was a plaster or a wood--

A It is a product sprayed on, fire-proofing.

Q I see.

Now, could, incidentally, you being with the Hartford Insurance Company, would you be familiar with the fire protection rules and regulations of the underwriters labs?

A Yes.

Q Would you mark this Di-Bono exhibit One for Identification, Defendants.

Might you have had an opportunity in your duties with your employer to have seen this report?

A This I did not see.

Q Are you familiar with the subject in general?

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A I am familiar with fire proofing, no particular brand name as such.

Q You have never seen a report from Industrial Hygeine Foundation of America representative to fire proofing material?

A No.

Q And you haven't seen this in particular?

A No.

Q Now, you testified that on one occasion I believe it was, the 21st of April, chunks of this material came in contact with your body, face, or other parts, of --

A It fell on my clothing.

Q And you say they were heavy?

A Heavy chunks.

Q What was their consistency?

A Pasty, wet.

Q Might they have been pieces of plaster?

A No, they definitely were not plaster.

Q What were they, in your opinion?

A They were a fire proofing material commonly used for spraying columns and beams.

Q I have no further questions.

## CROSS EXAMINATION

BY MR. HAWKINS:

Q You are familiar with fireproofing material, is that correct?

A Yes.

Q Did you take any specimens of this particular material on that particular day?

A No.

Q So you have not analyzed it and have not gotten an opinion from some other sources as to whether it was fireproof material?

A No.

Q Have you ever seen or are you familiar with the material called Capco fireproofing?

A I know it has been used on some jobs that we have insured.

Q Have you ever seen it being used on any job?

A I know I have seen it I could not give you the name of the job.

Q One ambiguity which I would like to have cleared up, you indicated after you had spoken to someone at your place of business,

that they complained to the building manager. Was that the building manager of the Sears Tower that you complained to?

A No, we have a building manager for our properties and IEB then took it up with him, that was the last I heard of it.

Q My point is, you did not bring this to the attention of anyone at Sears, on the Sears site, or with the construction?

A No.

Q Do you know if anybody with your firms brought this up to the Sears to the attention of anyone working on the Sears site?

A It has been brought up to some other people, on the Sears site, or architects, or somebody; there was correspondence outside of our department, the building manager.

Q Have you seen this correspondence?

A I have looked at it.

Q And what is the nature of the correspondence?

A They were informed that the building would be washed down and that is where I got the seven thousand dollar figure that at a cost of

of seven thousand, they would bill the contractor or the architect.

I don't know -- for that amount, and that it was still being observed coming out of that, and that any other accumulation on the building would be washed down and billed in the future.

Q Do you know how long this was after this incident?

A It was very shortly, it was within days.

Q So somebody did, within a very short time, just didn't let this intrusion, as you have described, onto this property, someone did make a notice either by mail, correspondence, or something like that?

A Yes.

Q That is what I was interested in. I don't believe I have any further questions, your Honor, of this witness.

HEARING OFFICER CANCER: Did they pay the bill?

THE WITNESS: I was informed that it was

negotiated and settled, this, I don't have any --

MR. HAWKINS: May I ask that be stricken from the record?

HEARING OFFICER GANCER: No, I will have it in the record.

MR. KATZ: Sir, I have one more question, if I may.

CROSS EXAMINATION (continued)

BY MR. KATZ:

Q Did I understand you to state that this Cafco Company material has been used in other buildings in Chicago, prior to the Sears?

A I have been involved with the name Cafco material, now, I don't know if I visually saw it on a site.

I also review plans and specifications in our office for properties where that name rings a bell, but I don't know if I actually saw it being applied at the site, or if it is something I ran across in a specification for a building I was checking out.

Q The answer is you don't know whether this material that fell upon you that you now

suggest is Cafco was used at other sites, is that correct?

A I don't know that it was used at other sites.

I have been involved with the name of Cafco. I work outside of Chicago also, so I couldn't say whether this came up in Chicago or Waukegan.

Q That is not responsive. I am asking in Chicago, do you know of your knowledge whether Cafco has, prior to the Sears project been used in Chicago?

A Oh, in Chicago, then definitely, I can't give an answer.

Q One more question, now, you testified that these emissions from the building in April of '72 on one occasion in any event, came from approximately the tenth floor.

You looked up in that direction and ascertained that -- is that correct, were they working on that floor, if you could tell?

A I could not see the men spraying it, I saw workers up there. I did not see it.

Q Was that floor enclosed with

tarpaulin or any --

A No, the floor that it was coming out of was not enclosed.

Q Were any other floors within your line of vision enclosed with tarpaulins on that occasion?

A Yes. They were below the floor it was coming out of.

Q Below the floor?

A Yes.

Q That is all I have.

MR. HAWKINS: I have no further questions, your Honor.

HEARING OFFICER GANCER: Mr. Campbell, anything further?

MR. CAMPBELL: No, thank you very much Mr. Groll.

(Witness dismissed.)

MR. CAMPBELL: I will call Mr. David Kee.

DAVID KEE,  
called as a witness on behalf of the Complainant,  
was duly sworn, and upon examination testified  
as follows:

## DIRECT EXAMINATION

BY MR. CAMPBELL:

Q State your name and address please?

A David Kee, I live in Oak Forest,  
Illinois, 5648 Lancaster.Q Oak Forest is southwest of  
Chicago, down towards Joliet?

A That is correct.

Q By whom are you currently employed?

A United States Environmental Protection  
Agency.

Q And where do you work specifically?

A I work at One North Wacker, corner  
of Madison and Wacker.Q From your home in Oak Forest, how  
do you travel each day to your job at One  
North Wacker?

A I commute on the Rock Island Railroad.

Q And take that train, where does it  
arrive in Chicago?A LaSalle Street Station, La Salle and  
Van Buren Streets.

Q Then, from the train station, how do you get to One North Wacker?

A By various routes, generally, I walk up Van Buren to Wells and over up north on Wells to Jackson from along Jackson to Franklin Street, and up Franklin to Madison, from there to Wacker Drive.

Q And approximately what time to you usually get to work in the morning?

A Eight-fifteen in the morning.

Q You work until what time?

A Four-forty-five.

Q Are you familiar with the location of the Sears Tower?

A I certainly am.

Q Where is that located in relationship to your offices at One North Wacker Drive?

A It is on the same block and it is directly two blocks directly south of the building in which I work.

Q What duties do you have with the United States Environmental Protection Agency?

A With the enforcement Division of that agency Region Five.

Q Do you have a specific title?

A Presently, I am Chief of Air Enforcement.

Q That is Region Five?

A Yes.

Q That includes a number of states?

A That includes six midwestern states.

Q Calling your attention to March 21st, 1972, during the early morning hours, on your way from the train station to your place of employment, did you have occasion to notice anything unusual?

A Yes. As I walked past the Sears Tower, I noticed a large amount of white material falling to the ground from the Tower and covering the streets and sidewalk areas along Franklin and in the intersection of Franklin and Adams it looked almost like snow to a certain extent, blowing up against the curbs and clinging to the cars and along the edges of the buildings in that general vicinity there.

Q Do you recall approximately what time this would have been?

A This would have been just about eight o'clock in the morning.

Q You were on your way to work?

A That is correct.

Q For how long a period of time did you make these observations?

A Well, initially, this would have been a matter of several minutes. I walked, I stopped at the corner and looked back up at the building. This is the corner of Franklin and Adams and then, of course, I had to get to work so I continued along to work.

Q What date was this?

A On the 21st of March, 1972.

Q So you were at the northeast corner in Franklin and Adams, northeast side of the Sears Tower?

A Yes, east, the northeast side of the tower that intersection there, right.

Q Could you tell where the material was coming from?

A Well, at this time, I, although I looked up, I could tell it was coming from the building, I didn't spend much time, as I indicated, I later returned.

Q You indicated it was coming from the building?

A Yes, definitely, the Sears Tower.

Q What then did you do after you made these observations for a few minutes?

A Okay. I noticed this material. I continued to walk the three blocks to work and I went up to my --

Q Up what street now?

A Well, I walked down Franklin to Madison and one block over to Wacker Drive and I went up to my office.

Q Did you come back later that day?

A Yes, well, then, if I may just relate it, it bothered me that this material was being discharged at this time, I did not know what kind of material it was.

I had a personal interest because I work with the Federal Environmental Agency,

so I had to obtain a camera from our office and I came back approximately it would be about ten o'clock in the morning, that same morning, and I proceeded to make some more observations and take pictures of the material, both the area, it was coming from in the building and some of the material on the ground and I had to -- I did obtain a sample of the material that I had seen fall from the building and I have kept that sample to this time.

Q When you came back, approximately what time was this now?

A In the area of nine-thirty to ten o'clock and I then spent about perhaps 15 minutes to a half an hour at the corner of Adams and Franklin taking pictures, walking around talking to people, just kind of making some observations.

Q What observations did you make with respect to any emissions from the building, during this second period of time approximately nine-thirty to ten o'clock?

A I noticed this material actually

falling down from the building from an area apparently an area screened, or had some type of material on it, covering this, you could see this in the pictures, I took, from areas either above or below that, looking up, you know, it was up maybe ten or more stories up.

I couldn't tell specifically, but I could see particles coming as they approach me, it was almost like snow.

You could actually dodge them as they fell down on cars in the general vicinity.

You could see them coming from the building.

Q During this period of time, you took photos and collected samples?

A That is right.

Q Bring that sample with you today?

A Yes, I did.

Q Complainant's Exhibit Three for Identification, I ask you if you will look at that contents of that envelope and explain what that is?

A I don't to this date know exactly what

it is.

This is the material though, the white, fibrous kind of material coming from the Sears Tower and a piece of this rather large piece of this fell at my feet as I stood on the corner of Franklin and Adams and I had an envelope along, and I picked up a piece of this and put it in this sample.

This is approximately half of the sample that I took at that time.

Q Okay. What did you do with the other half of the sample?

A Following my complaint to the Illinois Environmental Protection Agency, in their subsequent investigations, they asked me for a portion of this sample and I subsequently mailed them half of this sample to their office.

Q Do you know what they did with that sample?

A I really do not at this date.

Q At this time I will move the admission of Complainant's Exhibit Three into Evidence.

MR. KATZ: I will object to its admission. I object to the admission of Complainant's Exhibit Three for Identification for the reason among others, that on the date it was taken, the rules relating to the issues in this case and the emission of this sort of substance were not in force and effect. They did not go into force and effect until March 31st.

HEARING OFFICER GANCER: Let me deny your motion because I don't think I am able to rule on that. That is more or less a question of the effect of the legality of this thing, and I think that will have to be admitted into Evidence. It is what the witness saw.

MR. CAMPBELL: The asbestos regulation had been adopted January 6th, 1972 and later incorporated -- I think we should get it in the record.

HEARING OFFICER GANCER: Let's go on, you can argue that.

MR. KATZ: I reserve the objection, your Honor.

## DIRECT EXAMINATION (continued)

BY MR. CAMPBELL:

Q Did you bring the photos that you took?

A Yes, a number of them.

MR. HAWKINS: Your Honor, may I make an inquiry of this commission, the Judge here, what is the appropriate time to question the witness here about the chain of custody of this.

I am not objecting, but I would like to enquire into the chain of custody in this particular thing.

I am reserving it until cross-examination, I assume it is proper?

HEARING OFFICER GANCER: Go ahead. The policy is to be liberal. We are not exactly in a Court of Law, so you can go ahead and put that in on cross.

MR. HAWKINS: I assume if it is -- has a gross break in the chain that that might be the type of thing, although the rules are liberal, some type of gross break might be --

HEARING OFFICER GANCER: Don't spend too much

time on it, because it is going to get in and you can use it in argument to the Board, to reflect credibility of the witness' testimony.

DIRECT EXAMINATION (continued)

BY MR. CAMPBELL:

Q I am showing you what has been marked as Complainant's Exhibit 4-A for identification and ask you to explain when that photo was taken, where you were when you took that photo?

A Yes. That photograph was taken in a period of nine-thirty to ten o'clock after I had returned to the Tower site and I was standing, I would say, on Adams Street, facing in a southerly direction and this, of course, is a photo of the lower floors of the Tower.

Q During the period of time, during which you took this or shortly before or after, did you make any observations concerning emissions --

A Yes, this is the lower portion, there was exposed this white material on some metal there and wind was blowing to a certain extent, and there was material coming from this area down in these, I guess it is the first floor above the main floor, the large tower floor.

Q The bottom portion of that photo appears to be a double floor with at least a high ceiling?

A Yes, I think it is the first floor of the building, first one you can actually discern over the fence that surrounds the property, the floor above had no glass in it and the material was coming from that area.

Q Showing you what has been marked complainant's exhibit 4-B for identification, would you explain what that picture portrays where you were when you took that photo; approximately what time the photo was taken?

A This is a picture looking upward toward the building, as much of it as was completed, at that time, it shows the upper portion of that building and this area, the middle part of this area, there were also emissions, I noticed particular pieces coming out of or coming down from this area.

Q Okay, in the middle of the photo from left to right across the photo there is a white area approximately three to four floors in

height and then an open area below that, at the very bottom of the photo there appears to be a glassed in area.

Now, on or about the time that you took this photo, did you observe any emissions from this part of the building?

The building portrayed in the photo?

A The emissions, well, which part?

Q You tell me where the emissions were coming from.

A Well, to the best of my judgment they were coming either immediately above or below this covered-in area. Obviously, they weren't coming from the covered-in area, but I cannot say specifically where a given particle came from, but they were coming from this general vicinity and falling down toward me, as I looked up.

Q As you looked up the emissions were coming from an area either immediately above or below the closed in portion?

A That is correct.

Q Showing you Complainant's Exhibit

4-C for Identification, I ask you when that photo was taken, where it was taken and what it portrays?

A Taken at the same time, nine-thirty to ten o'clock that morning, portrays a car, the hood of a car, some of this material had fallen on and then the sidewalk behind it.

This is on the north sidewalk on Adams Street, right near the corner of Franklin and Adams, and you can see the material that had accumulated along the sidewalk there.

Q Where was that?

HEARING OFFICER GANCER: May I see it?

DIRECT EXAMINATION (continued)

BY MR. CAMPBELL:

Q Where was the car in relation to the Sears Tower?

A Well, it would have been across the street from it, this is the, I was standing on, I was standing on the north sidewalk looking south toward the Tower.

This car was parked of course, facing in a westerly direction and that is the fence

you see in the background, is the fence around the Sears property.

Q I show you what has been marked as Complainant's Exhibit 4-D for Identification and ask you if you can identify that photo when it was taken, where it was taken?

A It was taken at the same time as the others, approximately nine-thirty, ten A.M. of that morning and it shows this is on the north side, across the street from the Sears Tower building on Adams, several, oh, maybe thirty feet in from the street, from Franklin, that is, and it portrays some of this material as it had piled up alongside the building there, alongside the wall.

It was from this general area on the sidewalk that I took my sample that I earlier introduced.

Q General area portrayed in this photograph?

A Yes.

Q Showing you what has been marked as Complainant's Exhibit 4-E for Identification,

can you identify that as to the time it was taken, where it was taken, what it portrays?

A This was taken at the same time, nine-thirty to ten approximately, and it portrays of course, this building, 311 West Adams, and the shop there, with this material, that had fallen in front of the store, and on the sidewalk and it accumulated in the crevasses of the sidewalk.

Q Showing you what has been marked as Complainant's Exhibit A- for identification, and ask you to identify the time that was taken, the location, and what that portrays?

A This was taken at the same time, nine-thirty to ten in the morning and it, of course, shows the street sign of Adams and Franklin Street with the Sears Tower in the background and this was the area where the emissions were coming from, or that building.

Q Do these photos truly and accurately portray conditions at the site as you observed them when you took those photos?

A Yes, they do, with the possible exception,

you cannot see in the photo the material I saw with my eyes as it fell from the building to the ground.

Q I ask for the admission of those photos.

MR. KATZ: May I see them, your Honor. May I suggest sir that the admission of this exhibit be reserved until after we have had an opportunity to cross-examine?

HEARING OFFICER GANCER: Fine, we will reserve it, then we will rule.

DIRECT EXAMINATION (continued)

BY MR. CAMPBELL:

Q Mr. Kee, other than March 21st, 1972, have you had occasion to make observations, similar observations?

A Yes. I have seen this material falling on other occasions other than this one, both previous to and subsequent to that particular date.

Q Do you recall any specific dates on which you made these observations?

A I can't recall specific dates, no sir.

Q You indicated both before and after March 21st?

A That is right.

Q 1972?

A That is right.

Q Do you recall approximately on how many different occasions before March 21st, 1972, you made these similar observations?

A I think probably for about a week prior to that, my daily going by, I noticed certain amounts of material and it had built up to the point that I kind of got kind of angry on this particular day, because the material was rather, there was a large amount of it on this particular day, relative to other days, I did note there was material -- I remember once, I made my complaint that same day to the EPA, I did keep track of this information a number of days and actually weeks subsequent to this time, and it did continue to fall and I think I called back, in fact, a couple of times to the EPA to check on the progress of this, because I did not see any cessation of it, but I can't testify as to specific dates.

A After March 21st, approximately how many different dates did you make similar observations?

A Oh, five to ten probably, just noting it as I went by that the conditions were not greatly changed.

It was something just as I walked by. I was kind of monitoring the -- it, five to ten days, probably.

Q I have no further questions, thank you.

HEARING OFFICER GANCER:

Q May I ask one, what was the texture, is it sticky or dry kind of material?

A It seemed to be rather dry.

Q Is it the same condition now it was in then, basically, is that true?

A Yes, it has not changed its composition.

Q Okay.

CROSS EXAMINATION

BY MR. HAWKINS:

Q Is it the same -- Mr. Kee, are you still working for the EPA?

A For the United States EPA yes sir.

Q Do you still work at the same address?

A That is correct.

Q And since, prior to March 21st, you say that you think five to ten occasions where there has been emissions, is that your testimony?

A I think that was subsequent to.

Q Since March 21st?

A Since then I am making an estimate, yes, a number of several occasions, after that time, because I did follow up with some phone calls to the State Agency subsequent to that.

Q Now, these pictures here, you indicated rather qualified the fact that they might not accurately portray what they seem to portray?

A No, I don't think I said that. I think what I said was that you can't see the particles the way I could see them with my eye, falling from the building.

Q In many of these pictures or several, like in Exhibit 4-B, I can't see any, and you would say that there were particles falling while this picture was being taken, is that correct?

A Particles were falling during the period I was taking these pictures, yes sir.

Q But it does not show on that picture does it?

A Oh, I think, looking at this one, I do see particles through right here, I think you can see a piece of something falling right there to counteract my earlier testimony, I think I do.

Q So it was not a snow flurry, this is a single piece of material falling from the building, is that correct?

A There was material falling almost constantly from the building and the effect on the ground was rather like a snow fall, it was blowing and drifting in the crevices, although, yes, they were pieces were falling, now individually now, and again.

Q You mentioned one of the things that disturbed you over a period of days, prior to March 21st date was there seemed to be a build-up of this material, is that what you said?

I think that was.

A I think it was worse on this day. <sup>than</sup>

it had been previously.

Q And I am wondering when you say build-up, does that mean that on the streets surrounding on the ground or do you mean that the intensity of the material coming out of the building was greater than it had been on other days?

A I think probably both, both things were happening, I think that there was obviously some was building up day by day, on the ground; more perhaps coming out on this day than earlier.

It is really difficult for me to remember and make that kind of assessment.

I think this was a particularly bad day. I, as I recall, a number of them, and it was the day I decided to take pictures.

Q You are sensitized, of course, as the head of the region, what you would call it?

A I did not have that particular job at that time, but I am certainly sensitive to --

Q You have been in this business. The other thing, I would like to ask, you,

is that this sample you collected on this particular date, where have you kept this?

A In a file drawer in my office.

Q Has it ever been in the hands of anyone else?

A No.

Q Shown it to anyone else?

A I have shown it to a number of people.

Q But you have always had it in your sight when you have shown it to --

A You mentioned the term, "chain of custody", this is one I am familiar with. This has not been given any formal chain of custody, procedures, we normally would give our own samples because I was acting as a private citizen, it has been in my possession though, for this period of time, since I took it and that is the same material that I took the sample of.

Q Okay, you have a firm belief that that is --

A Yes.

Q I don't think I have any further questions.

MR. KATZ: I have a few.

CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Kee, have you had this material analyzed?

A No, I have not, sir.

Q I am referring to material in Complainant's Exhibit Three for Identification, you have not?

A No, sir.

Q Now, at what particular area did you gather this material?

A This was taken from the north sidewalk on Adams Street and that was a piece of material that fell at my feet that I physically saw fall, and it was in the location, in front of that shop.

Q That is the location on any one of these exhibits?

A Well, I would say it is in this general vicinity here.

Q That would be Plaintiff's Exhibit 4-E. You evidence a great enthusiasm for your work

Mr. Kee, and I can appreciate it, I was impressed by your dramatic testimony that on the 21st of May, the material was falling heavily to the floor, covering cars, individuals, and the entire intersection of Adams and Franklin.

A I don't think I said individuals.

Q You said cars?

A Well, cars.

Q You said the entire intersection, that is the way I heard it.

A Well, the material was falling on the entire intersection.

Q I haven't asked the question yet, Mr. Kee, I show you the only picture of a car that you took and I observed two specs on the hood, is that what you see there? Or don't I see it correctly?

A I see about seven.

Q You see seven?

A Yes, sir, but I don't think I used the word entirely covering at any point in time.

Q Well, you used the word, the analogy,

almost like a snowfall.

HEARING OFFICER GANCER: Mr. Katz, I am going to tone you down now. Why don't you ask him again to describe what he saw?

I think he is trying to help you, if you will give him a chance.

MR. KATZ: This is cross-examination.

HEARING OFFICER GANCER: Mr. Katz, I am telling you let's keep the orations down, stick to the cross-examination.

CROSS EXAMINATION (continued)

BY MR. KATZ:

Q All right, Exhibit 4-D, is that structure around the Sears Building?

A No, no, sir, it is across the street.

Q Is there another building going up across the street?

A I believe at the corner of Wacker and Adams it would be.

Q And this is it, is that what this picture depicts?

A No, that would not be that far, I think that was closer to the intersection of Franklin

than Adams.

Q What building is this?

A That would be --

Q I refer to Exhibit 4-D, there appears to be a structure around the building, indicating some remodelling or building?

A That is correct.

Q Was there any spraying at that building?

A Not to my knowledge, sir.

I think that was a building coming down.

Q The material lying there may have been coming from the building that the structure was around?

A That particular material, I am convinced came from the Sears Tower. I don't believe any material was coming from the other building. There were no openings. It is an existing structure. I don't believe there is any spraying going on there.

I did not see any material coming from that building in that area.

Q In your view of the material emitting from the Sears Tower, did you see the particular floors that it came from?

A You are looking upward at a rather steep angle to those. They were the upper floors at that time, and it was very difficult at that angle to tell a specific floor, a particular particle came from, but they were coming from the upper areas there, with the exception of this one open area I described, which is the floor immediately above the main floor, if you will, that had this material already in place on some structural members, and some of that was coming off.

Q Did you observe any closures on any of the floors on the Sears Tower at the date that you took these pictures and took these samples?

A You mean the temporary kind of closure?

Q Yes, tarpaulins?

A There was plastic, or tarpaulin material covering a number of floors, yes.

Q That is all.

MR. HAWKINS: Just one or two questions,  
and I just wanted to go back over this.

CROSS EXAMINATION (continued)

BY MR. HAWKINS:

Q You have been working at this particular  
place at one North Wacker since March of this  
last year, correct?

A Right.

Q And you have testified that since  
this particular instance that there have been  
several occasions when you have observed incidents  
is that correct? A correct statement of what you  
were saying?

A You are saying since I have taken those  
pictures, I have seen additional, yes.

Q And you characterized it as several?

A I said five to ten.

Q And that has been well over 365 days  
since this incident?

A Well, the occurrence has occurred  
near the time of this, I had not noticed  
this in the recent past.

Q I am very happy to hear you say that.

Thank you very much.

HEARING OFFICER GANCER: All right, those will be admitted into Evidence.

On the question, just to keep the record straight for the Board, Mr. Katz, on that motion concerning the date of the testimony, I am going to call the Board's attention to Rule 308-F, which states the Hearing Officer will not have authority to dismiss or decide a proceeding on the merits -- state a claim or strike any claim for insufficient or want of proof.

I think that your motion will go right to that point and I think it has to be made before the Board, not before me.

I can't rule on that in your favor, so I just want to point that out on the record, for the Board.

MR. KATZ: May I, at this point, enquire, is it your understanding that upon termination of the testimony, we are to file summaries or briefs, or --

HEARING OFFICER GANCER: Off the record.

(Whereupon, discussion was  
held off the record.)

MR. KATZ: Let me state for the record,  
one more observation, this is a non-asbestos  
material.

MR. CAMPBELL: That is the allegation that  
is made.

We relate also to non-asbestos  
materials, asbestos regulations, including  
non-asbestos fibrous materials went into effect  
January 6th, 1972.

MR. KATZ: But if you insist on elaborating  
on it, the regulations prohibiting the use of  
non-asbestos material, did not go into force  
until March.

HEARING OFFICER GANCER: I am going to cut  
you off because I can't well determine --

Any further cross? Any further  
evidence?

MR. CAMPBELL: With the exception of the  
motion I will be making on Monday, regarding  
Mr. Vaitonis's testimony.

HEARING OFFICER GANCER: Why Monday?

Off the record.

(Whereupon, discussion was held  
off the record.)

HEARING OFFICER GANCER: Back on the record.  
Why don't you, for the record, make your motion  
which I had reserved, I said I wanted to hear  
at the close of your case, concerning this June  
amendment of the Complaint.

MR. CAMPBELL: The motion made earlier in  
this hearing to amend the complaint on its  
face, an amended complaint on its face, and to  
change a date in the amended complaint from  
June 6th, 1972 to June 2nd, 1972, that allegation  
appears in paragraph nine of the amended complaint  
that motion overruled earlier today.

At this time, we would indicate our  
intention of filing a written motion with the  
Pollution Control Board to allow that amendment  
to take place and to allow additional testimony  
to be taken with respect to 1972 observations  
of Mr. Steven Vaitonis, who is here today, and  
available to testify and as a result of the  
Hearing Officer's ruling, was not permitted

to testify.

HEARING OFFICER GANCFER: Fine, you are going to make that before the Board. I feel my reason for denying it is, we have already heard evidence of similar violations on different dates.

Your complaint actually covered a general period with two specific dates on that point, and some testimony, as to some other date unascertained.

I think it would unduly prolong these hearings to allow the complaint to be amended and introduced evidence on that specific date, and therefore, it is denied.

Are you then resting your case at this point?

MR. CAMPBELL: With the exception of the motion, we are resting our case.

(Whereupon, a short recess was held.)

ANGELO CALANDRELLA,  
called as a witness on behalf of the Respondent,  
was duly sworn, and upon examination, testified  
as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q State your name please?

A Angelo Calandrella.

Q What is your address?

A 600 McClurg Court.

Q Chicago?

A Chicago, Illinois.

Q What is your occupation?

A Superintendent for Mario Di Bono.

Q And does Mario Di Bono have an office  
in Chicago?

A Yes, 325 West Jackson.

Q That is directly across from the Sears  
Tower?

A Sears Tower.

Q Are you in charge of the fireproofing  
of the Sears Tower?

A Yes, I am.

Q Approximately how many employees did you have at the peak period?

A About sixty men.

Q Sixty?

A Sixty between laborers and plasterers.

Q And when did you start this job?

A Oh, I don't remember.

Q Approximately?

A We started in the month of November, of 1971.

Q And at what stage of construction are you now?

A I am near the finish of the job.

Q How many storys is that building?

A One hundred and nine, the penthouse makes it 110.

Q Will you describe the preparation of the fire proofing material?

A In what manner?

Q What is this fireproofing material we are talking about?

A Well, it is a mineral wool and it is dry material, which is sprayed onto the steel.

It is put in hoppers dry, and it is blown to the floor where we are working and at the time of the gun, your water is sprayed out with the material at the same time.

Q It is put into the hoppers dry. Do I understand that the hoppers have a tendency to draw it downwards?

A It has got a worm and when it pushes, the worm pushes the material into the place where the air sucks it down and sends it up.

Q So that the likelihood of the material coming out of the vat is, as it is being poured in, is very little?

A Very little.

Q How big are the hoppers?

A Two feet by three feet and I would say three feet deep.

Q And the size of the bags of material?

A Only 50 pound bags.

Q So that they are pretty tightly fit into the vat, is there -- as they are emptied?

A Right.

Q Does this material have a trade name?

A Yes, Cafco.

Q I show you an exhibit marked Defendant's Exhibit One for Identification, for Di Bono, and ask you what is it?

A You mean what the material is?

Q No, what is this exhibit, what does it purport to show?

A Oh, it shows that it is not harmful to a human being.

Q This is an analysis of the nature and character of the material?

A Right.

Q Made by the Industrial Hygiene Foundation of American and as prepared for the Underwriter's Laboratories, the Fire Protection Department of Underwriter's Laboratories?

A Yes.

Q Have you read this report?

A I have read it yes, I can tell you what is in that report.

Q Would you advise the Hearing Officer of the nature of this material so far as it relates to its effect on human beings, if any?

A Well, it is non-asbestos material.

It is a mineral wool. If the material falls to the floor, you can't slip on it and it is not harmful to a human being.

Q Okay. Now, what preparations are made by anyone prior to your men coming on the particular site for work on any day?

A Well, Diesel construction will put out the outside panels to cover the exterior of the building, and he covers all shafts and stairways so that the material will not escape into the air.

Q The obligation to close the area where you are to work is undertaken by Diesel under its contract with you?

A Right.

Q And is it your practice to be on the premises daily?

A Oh, yes, I go on the premises at least three to four times a day.

Q Is it your practice?

A Three to four times a day.

Q Is it your practice to examine the premises and in particular, the floors that

worked on, on that day, before the work commences?

A Right.

Q Is that your daily practice?

A Right.

Q Have you ever found an area where your men were called upon to work in that was not properly enclosed in accordance with your requirements?

A No, it has to be enclosed before we get on the floor to work on.

Q What is the nature of that enclosure material?

A It is a plastic.

Q And are the floors covered with plastic?

A Your shafts are covered with plastic.

Q And all open areas?

A All open areas are covered.

Q So that when the work is being performed by your employees there is no possibility of it escaping?

A That is right.

Q At the time that you examined it?

A That is right.

Q Do you also examine the finished work of your employees at the end of the day?

A I examine the floors before they go off the floors to make sure that all work is done and that the cleanup is being cleaned.

Q Well, what was your observation with reference to finishing a job on any particular floor?

A Well, the men are there. They finish a job. They move up to the next floor and laborers are left behind to clean the floor.

Q In what manner do they clean the floors?

A We shovel, clean, and put it in containers. The containers are brought down and disposed of. The floors are vacuumed by the builder.

Q That is Diesel's obligation?

A Right.

Q And have you examined, in the course

of your duties, each of the floors that you worked on?

A That is right.

Q And have you found them to have been vacuumed when your employees were through at the end of the day?

A That is right.

Q Do you know whether this vacuuming process is done on other floors except those on which you worked on a particular day?

A Well, some times they fall back if the floor isn't completely finished before the tarpaulins or covering on the outside is brought up, they will check the floors to make sure they are cleaned and vacuumed.

Q Have you had any notice of material Cafco material coming out of the building?

A Well, I think my man might have had a letter, main office might have had a letter on it, but we were instructed by Diesel --

MR. CAMPBELL: I will object to those instructions. The question calls for whether or not there was any notice.

MR. HAWKINS: I don't think he can object --

MR. CAMPBELL: I object that the answer is not responsive to the question.

MR. HAWKINS: I don't believe that he can object to that.

HEARING OFFICER GANCER: He may answer.

THE WITNESS: My main office might have had a letter which I never seen, but I know we were instructed on the job by Diesel that we have to keep everyting in good order so that no material will go out of that building.

DIRECT EXAMINATION (continued)

BY MR. KATZ:

Q Is there any other construction in the area?

A I think a job right on Adams across from us.

Q Known as the Northern Trust Company job?

A I don't know the name.

Q Are they fireproofing the steel in that building?

A Yes.

Q Not your company?

A No, no, no.

Q A process in your industry in your particular sub-contract is known as patching.

What is patching?

A Well, anything that is taken over by other trades that follow me which may be, they might have, if they are attaching something to the steel, or put hangers for pipes or so forth, or so on, after that is done, we go patching.

That is usually done when the whole building is closed in.

Q So that patching may be in areas other than the areas that had been worked on some time before?

A Oh, yes.

Q Weeks before?

A Sometimes months before.

Q Are these areas completely enclosed?

A They are completely enclosed with original skin and glass.

Q Permanently enclosed?

A Right.

Q And are those areas properly swept and vacuumed after they have been worked in?

A They are.

Q Have you ever been contacted by personally, or anyone else in your office, on Jackson Boulevard, by the Illinois Environmental Protection Agency?

MR. CAMPBELL: Objection to any contacts by others not within --

DIRECT EXAMINATION (continued)

BY MR. KATZ:

Q Are you in charge of the office?

A That is right.

Q And have any governmental agencies, if they would give notice, or make contact with the office, would it be called to your attention?

A It has got to be referred to me.

Q How many employees are there in your office?

A One girl and myself.

Q Now, have you received any notice from the EPA or any State agency?

A No.

Q With reference to possible violations of regulations relating to environmental control?

A No, I never

Q Has anyone ever violated you?

A No.

Q With reference to that?

A No.

Q Have you ever seen any agent of EPA or any agency of the State of Illinois on the premises?

A I haven't met them.

Q I have no further questions.

You may supplement this if you want to.

MR. HAWKINS: I have no further questions of this witness.

HEARING OFFICER GANCER: Cross?

MR. KATZ: Oh, pardon me, I should like to offer Di Bono Exhibit Number One for identification, which I understand Mr. Campbell has no objection to. While I appreciate that the

regulations don't refer to the seriousness of it, I think --

HEARING OFFICER GANCER: Admitted.

You have no objection, I take it?

Admitted.

(Said document, so offered and received in Evidence, as Di Bono's Exhibit Number One, is in words and figures, as follows:)

## CROSS EXAMINATION

BY MR. CAMPBELL:

Q You indicated you hadnot had any contact at all with any employees of EPA is that correct?

A That is right.

Q Never met Amerigo Sterba?

A Not that I know of.

Q Never explained any spraying operations to him, Mr. Sterba or anyone from EPA?

A Who is Mr. Sterba?

Q I am asking if you have, if you have met him or have you explained spraying operations to Mr. Sterba or anyone from EPA?

A No.

Q You are quite sure?

A That is right.

Q What is your routine from the time you get on the job until you go home, what are you during most of the day?

A My routine in the morning, at seven o'clock, I am in the building. I don't leave the building until all my men are placed where

they got to go; where to work; check the floor out, to make sure we can work on the floor.

After that, I have a foreman on the job. He stays there and I go back into my office.

Q How long were you, say you were on the site in the morning?

A At least two hours.

Q You are on the site for two hours checking to see that everything is in place; men are there, equipment is there, and you leave then?

A Right.

Q And then when do you come back?

A Before lunch.

Q So you leave approximately at nine and you come back some time around lunch?

A Right. About eleven o'clock.

Q So you are gone for two hours?

A Right.

Q And then what do you do when you come back at lunchtime?

A Check the floors to make sure how far my men are; see that everything is right on the floor. I have my machines, if the machines are working.

Q How long does that take.

A Some times I stay there until twelve, sometimes maybe 12:30.

Q You are there from eleven?

A That is not every day. The hours might change from day to day. It depends on what I have on the floor.

Q In other words, it takes you an hour to hour and a half generally speaking, to check out the area.

A Okay.

Q Then what do you usually do?

A I usually go back to my office.

Q Have lunch back at the office?

A Sometimes at the office; sometimes I have no lunch at all.

Q When would you come back to the --

A Well, my men start to work at 12:30 again, so I come back at 1:30, sometimes I

stay there for the rest of the day.

Sometimes I go back to the office.

Q So you sometimes come back around one-thirty and go back to the office?

A Right.

Q How long do you spend in the office?

A It all depends what I have to do in the office.

Q When do you usually go back?

A If I get a call from my Secretary, that I have to come back to the office.

Q On the usual --

A Usually, I usually stay on the job in the afternoon.

Q In your office?

A No, no, on the job, on the job site.

Q Well, you have gone back to the office about one-thirty?

A No, no. I said I go back to the building at one-thirty.

Q Okay.

A And sometimes I go back at one o'clock. Depends how I find my floors before lunch.

Q What duties do you have in the office?

A Well, I deal with Diesel paper work, my daily reports, my time, men's time.

Q You figure out the men's time from the previous day?

A No, for the day that they are working.

Q When do you do that?

A At the office.

Q When?

A During the course of the day.

Sometimes I am there at nighttime, if I can't get into the office, I do it at night.

Q What other duties do you have at the office other than the men's time?

A Well.

Q Any other matters that I explained?

A Well. I do these around the job as a super you have all different type of duties. The main thing is to get the job rolling and get it done.

Q The main job of supervising on the job is that of the foreman. Don't you delegate that responsibility to him?

A Yes. But I still supervise your foreman, you just don't leave your foreman there and let it go wild, do you?

Q Well, you have to have contact with him?

A That is right.

Q Because you have --

A Because you have got two foremen. A job laborer and a plasterer foreman.

Q Do you recall anybody, about March 21st, 1972?

A No.

Q Do you recall whether or not you were at the site?

A Oh, I was on the site of the -- if the job was going, I am there.

Q You are sure? Because you haven't been sick?

A None.

Q You were there that day?

A That is right.

Q Do you recall anything else about it other than the fact you were most likely there?

A No.

Q How about April 21st, 1972?

A I was on the job, job was working,  
I am there.

Q Do you recall anything other than the  
fact that you were there on that day?

A That is all.

Q On what do you base your conclusion  
that the material is not harmful to human beings?

A By the reports that we get from  
doctors. I think I have a report right here,  
if I am not mistaken.

Q Have you read that report?

A Yes, I have got more reports in the  
office too, if you would like to have copies.

Q Have you read that report?

A Not fully, no.

Q How fully have you read that report?

A Well.

Q Before you came to this hearing today?

A I would say I read half of it.

Q Now, you have read some reports that  
indicated it is not harmful to human beings?

A Yes.

MR. KATZ: I want to object to that.  
I remember when I tried to introduce testimony  
as to the nature and effect of the material,  
the ruling was there is no allegation that the  
material is harmful.

HEARING OFFICER GANCER: I think that is  
a good point.

MR. CAMPBELL: I am certainly entitled  
to question this man as to the basis on which  
he draws a conclusion.

MR. KATZ: He is not a doctor.

MR. CAMPBELL: I will stipulate to that.

HEARING OFFICER GANCER: Do you have any  
independent knowledge concerning what effect  
ingestion or inhalation of this material might  
have?

THE WITNESS: No, just --

HEARING OFFICER GANCER: Just other than  
what you read?

THE WITNESS: Right, because if I had  
any other knowledge --

HEARING OFFICER GANCER: I don't know

what more you can ask him, Counsel.

MR. CAMPBELL: Okay. Fine. We will let it go at that.

CROSS EXAMINATION (continued)

BY MR. CAMPBELL:

Q You are present part of the time at least when spraying operations are being conducted, aren't you?

A That is right.

Q Is it safe to say there are times spraying operations are taking place when you are not present?

A Of course.

Q You have indicated this covers a period of several hours; at least during each day operations are taking place when you are not there?

A Several hours. How could I be out of the building several hours? My men work eight hours a day and I will supervise my men.

Q But there are times when you are not present when they are spraying?

A Sure, sure.

Q Your men wear face masks? When spraying?

A That is right.

Q When they are spraying?

A It is a rule of the City of Chicago that each man, it is a safety rule, as far as I understand it.

Q What about when they are dumping material?

A They wear a mask too.

Q They wear masks when they are dumping the material into the hopper which then gets sucked by air up to the floors where a spraying takes place?

A Right.

Q Will you explain a little more about the screw conveyor?

A The worm?

Q The worm that is essentially a screw conveyor?

A Right. What would you want to know about it? It is operated by electrical --

Q What does it do. What operations does it perform?

A It pushes the material to the blower.

Q And it is blown up then?

A That is right. That is what I said before.

Q I thought you said there was air suction, it is blown up from the mixing area to the top floors?

A It is not blown from the hopper, the worm pushes the material only a certain amount of material can go into that blower.

If there is too much going at one time, she will pack.

Q What does that mean?

A The machine will stop.

Q Now, the area where mixing takes place, is that an area in which closures enclose that floor?

A Well, we usually have canvasses up, if there is not canvas, we have plastic up.

Usually where my plant is, it is usually a floor already finished.

Q In other words, you are mixing -- your mixing plant is in a plant where spraying has already taken place?

A Right.

Q And mixing occurs and then the material

is forced through a hose up to the floor where spraying --

A Right, forced through a hose into pipes and forced onto the floor where I am working on.

Q Now, what about the mixing area itself, is that always enclosed?

A yes. That is enclosed with canvasses, if there is no canvasses up there, it is enclosed with a partition of plastic.

Q All the way around the exterior of the building?

A No, I only got a certain area now and that is the only place you enclose.

You don't enclose the whole area around the building, but I would say that when we usually do get a plant on the floor, that is already, there is already glass up there.

Q Does that mean there are times when there is not glass up there?

A Oh, that is right.

Q So sometimes there is, sometimes

there isn't, and sometimes there are enclosures around the mixing area, or all of the time?

(Whereupon, discussion was held off the record.)

CROSS EXAMINATION (continued)

BY MR. CAMPBELL:

Q You mentioned that the stairwells are enclosed?

A That is right.

Q Did you personally see this?

A That is right.

Let me explain something to you.

Q Please do so.

A On the lower floors we have four stairwells usually when we go on the floor, they enclosed the whole exterior of the building, but then they built a center partition inside of the building, because they have to leave stairwells open, so all your stairways are not enclosed, but we are not working in that area, we are working in the area that is enclosed.

Q So some are open?

A Not in the area where I am, okay,

because you have to leave stairways open in case of fire, so you can't enclose the whole floor, off, there is a partition where usually we do half of a floor at a time.

Q When you say you have to keep some stairwells open, do you mean a door opening?

A There is no doors. The building is still in the raw, all you see is steel.

HEARING OFFICER GANCER: Let's get back to cases. The case here now. You are enquiring into a genralization about how he works in his building.

This is not what this case is about. It is about what happened on four or five floors and let's ask him about those floors.

This case is about emissions to the outside. If you want to ask him about that, let's ask him about that.

I don't think we are getting anywhere asking general questions about how he operates.

MR. CAMPBELL: I have to respectfully disagree.

HEARING OFFICER GANCER: Disagree. My job is to keep this record in order and it it not. We haven't got down to what you case is about.

It is about the 47th, to 51st floor and I would appreciate your asking him about that condition, not about what he has done.

MR. CAMPBELL: We have presented our evidence on that. Remember, if you are going to object to this testimony on the basis it does not relate to anything in the complaint, then I suggest the complaint be stricken.

HEARING OFFICER GANCER: I was waiting for your objection. If you are going to cross-examine that man, let's get down to it.

MR. CAMPBELL: I am carrying out cross-examination based on the direct-examination enquiring more deeply into that.

HEARING OFFICER GANCER: I am asking you to direct your cross to the floors that are involved in this complaint. I am requesting you to do that.

MR. CAMPBELL: Okay. I am making a motion to strike the material in the direct-examination

relating to general procedures that did not relate to the specific allegations made.

HEARING OFFICER GANCER: I think in general, your motion is well taken. It is a little late now, but it is certainly something the Board will consider when it gets up there.

MR. CAMPBELL: Okay, we will go back to -- I show you what has been marked EPA Group Exhibit Number Two for Identification, these photos which have been testified previously to, as having been taken August 16th, 1972.

I show you both photos on page one of five, which appears to portray a stairwell and that stairwell appears to be open, is this the type of open stairwell that you referred to just a few moments ago?

THE WITNESS: Well, I can't remember now, on the 50th floor.

CROSS EXAMINATION (continued)

BY MR. CAMPBELL:

Q Is this generally the type of condition though that you referred to?

A No. No.

Q How does that differ from the condition that you described as to the open stairwell?

A Is this floor enclosed yet?

Q I am not referring to the rest of the floor.

A No, but I am saying is this floor enclosed?

The only thing I can think of, is maybe they might have cleaned the stairwell coming down. That is why that pile of material is there, and it is going to be taken away.

Q Would that stairwell normally be enclosed when spraying is taking place on that floor?

A That is right.

HEARING OFFICER GANGER: Let the record show the witness was testifying to the first page of that group exhibit.

MR. CAMPBELL: Yes, that would be the bottom photo on that first page.

Call it page three, same exhibit, Group Exhibit Two, the middle photo portrays what appears to be another open stairwell or

or area not enclosed. Would you explain that?

We have got a railing --

THE WITNESS: Yes, I know that.

CROSS EXAMINATION (continued)

BY MR. CAMPBELL:

Q And it appears to encircle an area open and to the left is an enclosed area.

A Maybe that row was finished and they are taking down the center partition.

MR. HAWKINS: Your Honor, May I ask, is that man testifying from firsthand knowledge or is he making inferences from these photos and as -- is this what Mr. Campbell is asking him to do?

HEARING OFFICER GANCER: I am going to let Mr. Campbell proceed.

MR. CAMPBELL: Well, there appears to be a condition, I would like the gentleman to explain if he knows, that that is a normal condition.

HEARING OFFICER GANCER: If you don't know about this condition, you can so state?

THE WITNESS: I have never seen these pictures before.

## CROSS EXAMINATION (continued)

BY MR. CAMPBELL:

Q On a day when spraying would be occurring on the floor, would you expect to see conditions such as that?

A No.

Q I show you what has been marked as Complainant's Exhibit Number Three and ask you to observe the contents of this.

Do you recognize that material?

A Yes. This is Cafco material.

Q Is that the same material used in fireproofing on the Sears Tower?

A Right.

Q What happens when that material becomes wet?

A Sticks to the steel.

Q Is that a pre-condition, to having it stick to the steel?

A That is right.

Q And the wetness occurs just prior to the time that the material leaves the hose?

A The material and water is at the

same time.

Q Thank you very much. I have no further questions.

EXAMINATION

BY HEARING OFFICER GANCER:

Q Let me ask a couple of questions.

Did you ever have occasion at any time you were on the job to see material in the air around your job site from wherever it came?

A No.

Q Never saw any of this white emission?

A I never took note of it.

Q I think you testified Diesel is responsible for actually doing the enclosures?

A Right.

Q But you check out their work, is that correct?

A Right.

Q Did you ever have to ask, did you ever find on inspection there was more work needed before you could commence spraying?

A Usually when we see something like that --

Q You would advise somebody from Diesel?

A We would not go up on the floor.

Q You would delay doing your work until they correct it?

A Yes.

MR. CAMPBELL: Excuse me. I have one further question.

You mentioned another job in the area of Sears Tower, a job on Adams?

THE WITNESS: Yes.

CROSS EXAMINATION (continued)

BY MR. CAMPBELL:

Q Where exactly is that located?

A Wacker and Adams, if I am not mistaken.

Q Do you know when that building, when the construction began?

A No, I wouldn't remember that.

Q Was that before or after the Sears Tower building started construction?

A Well, Sears Tower I was not there when it started construction, so I wouldn't know.

Q When did you first come to Sears?

A November, 1971.

Q When did they begin fireproofing on this other building?

A That, I don't know.

Q You said they are fireproofing now?

A They were fireproofing, I don't know if they are fireproofing now.

Q Okay, no further questions.

MR. KATZ: Just two rebuttal questions.

REDIRECT EXAMINATION

BY MR. KATZ:

Q Do you keep records of the employees at work?

A Right.

Q Daily records and hourly records?

A Right.

Q Were there any strikes during the period that you have been supervising?

A 1972 there were strikes.

Q Was there a strike on June 6th, 1972?

A That is right, there was.

Q Were all employees off the job?

A Everyone was off the job.

Q The answers that you gave with respect to separation and finishing processes, after finishing the job. Would that have been true of the work to be done on the 47th to the 50th floor?

A That is right.

Q That is the preparation and procedure on every floor of the building at all times?

A Yes.

Q When this material becomes separated, from the steel, is -- as a result of other trades working on it or for any other reason, isn't it a fact, it would necessarily have to be dry at that time, or else it couldn't fall off?

A It is dry. The only way you can take that material off is by scraping it off?

Q Final question. On this procedure of pouring the raw material into this vat, which then is drawn down, am I correct in assuming that the only direction which the material is drawn is downward?

A It is drawn, the worm pushes your material into this, how do I explain it to you, it is like a round disc.

Q And that disc then is enclosed?

A And inside of that disc there is a worm that turns that material, because it breaks up the material.

Then on the bottom of that, you have got another fan and that pushes your material right up.

Q And it then comes through an enclosed area?

A It is all enclosed. It has got a hose and -- to a pipe and from the pipe then to another hose on the floor where you are working at --

Q That is all.

MR. HAWKINS: May I ask one question, your Honor?

You indicated that Diesel construction is responsible for enclosing the peripheral areas, elevator shafts?

A Right.

Q Have you received orders from Diesel construction not to proceed if these things have not been done?

A Oh, yes, I -- sometime where I was off maybe three or four weeks, where we couldn't proceed.

Q In this picture that you testified on page three, middle picture, regarding this elevator?

A It is hard to figure this out. I don't know, the floor could have been finished.

Q Let me ask you, are you familiar with this picture?

A No, I never saw it before.

Q Okay, that is all I want to know.

RECROSS EXAMINATION

BY MR. CAMPBELL:

Q You have no personal, direct knowledge of procedures that were followed on August 16th 1972 on the 47th, 48th, 49th, 50th floors, is that correct?

A What do you mean, direct knowledge?

Q Do you have any recollection of the

procedures followed on that particular day?

A Well, I checked the floor every day,  
I should know what is going on.

Q But on that particular day --

MR. KATZ: I object to his arguing.

HEARING OFFICER CANCER: He is making  
his point. You have no specific recollection  
of August 16th as to any other day?

THE WITNESS: Every day to me is the  
same.

HEARING OFFICER CANCER: Any other questions?

MR. CAMPBELL: No.

HEARING OFFICER CANCER: You are excused.  
Next witness.

RUSSELL A. RAICA,  
called as a witness on behalf of the Respondent,  
was duly sworn, and upon examination, testified  
as follows:

DIRECT EXAMINATION

BY MR. HAWKINS:

Q Please state your name.

A Russell A. Raica.

Q And, Mr. Raica where are you employed?

A Diesel Construction Company.

Q And specifically in terms of geographic location, where do you work?

A On Frankoin and Adams.

Q And is that, that is called the Sears Tower site?

A Yes.

Q And how long have you been working in that Sears Tower site?

A September 17th, will be two years.

Q And during that time, what have been your duties on the Sears Tower site?

A I originally started out in the safety crew and then I was promoted to carpenter foreman in charge of the enclosures.

Q And exactly what does that mean, or entail?

A Enclosing Mario Di Bono's fireproofing procedures.

Q How many men do you have working with you? Or under you?

A Anywhere from ten to thirty men.

Q And I want to call your attention to a specific date of August 16th, 1972, which time Mr. Grasnowski from the EPA visited the Sears site, it has been testified to, between the hours of two and three in the afternoon, and did you accompany him or did you meet him at that time?

A I met him on the concourse of the building. We went up to inspect the building.

Q Who else?

A Mr. Harmer and Mr. Malanowski.

Q Where did you go to with Mr. Grasnowski?

A We walked through the first to the 48th or 49th floor.

Q Did you have any occasion to spend some time on the 50th floor when Mr. Grasnowski took some pictures of that area?

A I was on the floor.

Q You were with him?

A Yes.

Q Did you observe him taking pictures on the job?

A Yes, I did.

Q Okay, I am again going to refer to, I believe it is called Plaintiff's Exhibit Group Exhibit, I don't know the, two, on page four of this on the bottom picture on page four of this Group Exhibit, have you had a chance, if -- have I shown you that picture before?

A Yes.

Q Have you had a chance to carefully look at that picture?

A Yes.

Q Do you remember being on the floor when Mr. Graszowski took the picture?

A Vaguely, yes.

Q Now, observing this picture, there is an area that on the lefthand side of the picture, which there are two braces running up and down, is that correct?

A Right.

Q Is there an opening between those to -- two braces?

A No, there is not.

Q How do you know there is not?

A That is part of the frame of the panel.

Q Are you in charge of putting up those frames?

A Yes.

Q While you were with Mr. Grasnowski, did he point out there was an opening there?

A Not to my recollection.

Q Did Mr. Grasnowski point out any opening on the perimeter of the building to you at the time you were with him on the 50th floor?

A Not to my recollection.

Q Now, in that picture, on that particular day, do you recall if any of the elevator shafts were enclosed?

A I believe they all were.

Q Did Mr. Grasnowski point out any elevator shafts to you that were not enclosed?

A Not to my recollection.

Q Looking at this picture here, the second picture on page three, middle picture on page, three, in looking at that particular

does that indicate that the particular area that that picture depicts has been sprayed and the job has been finished in the area?

A Yes, it has, most definitely.

Q Is it possible that that elevator shaft in that area where the spraying has been finished, has been, is not enclosed for purposes --

MR. CAMPBELL: Objection to the leading nature of the questions.

MR. HAWKINS: I assume we are doing leading questions here for a long time.

HEARING OFFICER GANCER: We sure have. I think his objection is well taken. I think we should watch this.

I am going to grant Counsel's motion. I think that Counsel, for the Respondents have been leading the witnesses and I guess it is not my job to object to that, but since the objection has been made, I think you should confine questions to your witness to non-leading.

DIRECT EXAMINATION (continued)

BY MR. HAWKINS:

Q . Mr. Raica, have you received orders from your superiors as to the procedure to be followed prior to spraying going on in the area?

A Yes, I have.

Q And what are they?

A In reference to --

Q To your job of closing the area in on floors that are to be sprayed.

MR. CAMPBELL: I will object to the hearsay nature of the --

HEARING OFFICER GANCER: Objection overruled.

DIRECT EXAMINATION (continued)

BY MR. HAWKINS:

Q What have been your instructions regarding closing the building prior to spraying?

A To retain the fireproofing inside the panels.

Q And you testified you had ten to 30 men at different times working on the perimeter

of the building. About how many hours a week would this entail?

Just give me a rough estimate.

A These men work eight hours a day, strictly on these panels.

Q Do these men do any of the cleanup work after?

A No. Not the carpenters.

Q And they are just carpenters then?

A Yes.

Q And it is their job to erect the panels on the perimeter of the building?

A Right.

Q I have to show you the first top picture on page three of this Group Exhibit Number Two and ask you to look at this picture and tell me whether where there is a pen mark, do you recall either observing or having pointed out to you an opening between the tarpaulin barricade, what do you call these?

A Panels.

Q Panels, and area below, was there a hole pointed out to you or that you observed?

A From the photograph it does not look like there was a hole and I don't recall anything being pointed out to me.

Q I think that is the extent of my direct examination.

MR. KATZ: Just one question.

Sir, when you met with the representative from the Agency, on the date that these pictures were taken, do you recall how much time he spent there?

THE WITNESS: Not off-hand.

DIRECT EXAMINATION

BY MR. KATZ:

Q Do you know what floors he visited, you testified earlier?

A Between the 51st and 48th or --

Q Or 49th?

A Right.

Q He did not go below the 49th?

A To my knowledge, no.

Q Were you with him all the time?

A Somewhere after the 48th or 49th floor, I was called away.

Q Did he remain there?

A I do not know.

Q Was the subject matter that these pictures depict called to your attention at any time during your visit with him?

Were any of these particular sites or activities depicted by the pictures called to your attention by this gentlemen?

A No.

MR. KATZ: I have no further questions.

HEARING OFFICER GANCER: Mr. Campbell?

CROSS EXAMINATION

BY MR. CAMPBELL:

Q How long were you with Mr. Grasmowski August 16th, 1972?

A In his presence approximately 15 minutes, I would estimate.

Q As best you can recall, would you state where you were when you first met Mr. Grasmowski and then take us through, tell us what you did after that?

A We met him on the first floor of the building. We took the elevator to where we

were spraying and briefly walked through with him.

Q That was up on the 50th floor where the spraying was taking place?

A Right.

Q And how long would you say you were on the 50th floor with Mr. Grasmowski?

A Five to ten minutes.

Q And then what did you do after that?

A I was called away.

Q After you had been on the 50th floor?

A Right, 50th, 49th.

Q Did you stay on the 50th when you say you were called away, where did you go?

A Where my duty called me at the time.

Q Was it on the 50th floor?

A No, I believe I walked away from that floor.

Q So you had been on the 50th floor, with Mr. Grasmowski, you don't know where he went after that?

A No, I don't.

Q No further questions.

## EXAMINATION

BY HEARING OFFICER GANCER:

Q Mr. Raica, let me ask you a question. Did you say you had this job, it will be a year in September?

A Two years in September.

Q Now, during that time, was there ever a time that you observed spraying going on when the area was not completely enclosed because perhaps they were late or forgot something?

A No.

Q And did you ever observe any of this white material outside the building at any time?

A No. If I go through lower Wacker Drive to my car, and there is a loading dock which I use. I leave from there and I couldn't say, I really -- if you mean laying on the street.

Q Or floating in the air?

A Not outside of my enclosures.

HEARING OFFICER GANCER: Okay. Thank you very much. Anybody else? Any members of the public here to testify?

MR. HAWKINS: I have one other witness, it

is going to be very short.

KEN METIVIER,  
called as a witness on behalf of the Respondent,  
was duly sworn, and upon examination, testified  
as follows:

DIRECT EXAMINATION

BY MR. HAWKINS:

Q What sort of work do you do?

A I am safety supervisor for Diesel  
Construction at the Sears Tower. I am responsible  
for safety coordination at that project.

Q I ask you if you have any firsthand  
knowledge as to what transpired August 16th or any  
of these previous dates testified to?

A No, I was not employed at the Sears  
Tower until December 5th of 1972.

Q And since you have been employed there,  
have you become knowledgeable about rules, regulations,  
promulgated by Sears regarding enclosing and  
protecting the general environment surrounding the  
Sears Tower?

A Yes.

MR. CAMPBELL: I will object to any testimony

as to what occurred after December 5th, 1972.

HEARING OFFICER GANCER: You just came on the Tower in December?

A December 5th, 1972.

HEARING OFFICER GANCER: Counsel, is there anything in this complaint -- I am going to grant his motion. I don't think Mr. Metivier has anything material to evidence.

MR. HAWKINS: Okay. I can understand that, your Honor, I then will excuse Mr. Metivier.

Your Honor, I have no further witnesses.

HEARING OFFICER GANCER: Okay, that will conclude the hearing today, unless anybody has a motion or anything like that, and it would seem to me the next issue you are going to make a motion before the Board to amend the complaint and if it is amended, we will hear further testimony.

If it is not, this will conclude the thing.

MR. HAWKINS: May I make an oral motion to dismiss the charges as to August 26th, 1972

as being insufficient.

HEARING OFFICER CANCER: I cannot rule on the merits.

By agreement of the parties there will be granted 30 days after the record is filed, to submit briefs.

These will be simultaneous briefs and either party by motion thereafter to the Board may request an opportunity to file responding briefs which it would then be up to the Board to grant and I will give the notice to you of filing of the transcript.

Please may I get the transcript to sign so I will give notice.

(Which was all of the proceedings had.)

STATE OF ILLINOIS)  
                                ) SS:  
COUNTY OF COOK)

I, EVELYN SHAHROCH, do hereby certify that I am a Certified Shorthand Reporter employed by Charles McCorkle, Jr., Court Reporters of Chicago, Illinois; that I reported in shorthand the evidence taken and proceedings had on the hearing of the above-entitled case on the 29th day of June, A. D. 1973; that the foregoing pages are a true and correct transcript of my shorthand notes so taken as aforesaid, and contain all of the proceedings directed by the Illinois Pollution Control Board or other persons authorized by it to conduct the said hearings to be so stenographically reported.

Evelyn M. Smith  
C.S.R.