

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 In the Matter of:)

4 Petition of the CITY OF GENEVA)

5 for an Adjusted Standard from)

6 35 Ill. Adm. Code 807.104)

7

8 CASE # AS 2001-2

9

10 TRANSCRIPT OF PROCEEDINGS had at
11 the hearing of the above-entitled matter, taken
12 stenographically by Cheryl L. Sandeck, CSR,
13 before BRADLEY P. HALLORAN, Hearing Officer, held
14 at 22 South First Street, Geneva, Illinois, on the
15 11th day of October, 2000, at the hour of
16 9:30 a.m.

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1 PRESENT:

2 HEARING TAKEN BEFORE:

3 Illinois Pollution Control Board
4 100 West Randolph Street
5 Room 11-500
6 Chicago, Illinois 60601
7 (312) 814-3620,
8 BY: MR. BRADLEY P. HALLORAN

9 -----

10 GARDNER, CARTON & DOUGLAS
11 BY: MR. ROY M. HARSCH
12 321 North Clark Street
13 Chicago, Illinois 60610
14 (312) 644-3000,

15 appeared on behalf of the City of
16 Geneva;

17 ILLINOIS ENVIRONMENTAL PROTECTION
18 AGENCY
19 BY: MR. MARK V. GURNIK and
20 MR. PAUL JAGIELLO
21 1021 North Grand Avenue East
22 P.O. Box 19276
23 Springfield, Illinois 62794-9276
24 (217) 782-5544,

25 appeared on behalf of the
26 Illinois Environmental Protection
27 Agency.

28 ALSO PRESENT: Ms. Alisa Liu, Illinois Pollution
29 Control Board Engineer
30 Mr. John Knittle
31 Ms. Cathy Glenn
32 Mr. Daniel Dinges

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1 HEARING OFFICER HALLORAN: Good morning. My

2 name is Brad Halloran. I am the hearing officer

3 from the Pollution Control Board.

4 We are here today in the Pollution
5 Control Board docket number Adjusted Standard
6 2001-02, entitled the matter of Petition of the
7 City of Geneva for an Adjusted Standard from
8 35 Illinois Administrative Code 807.104.

9 It is approximately 9:40. The hearing
10 was supposed to start at 9:30 today, October the
11 11th. The petitioner has not arrived yet so we
12 will hold this matter for a little while.

13 Off the record.

14 (Short recess taken.)

15 HEARING OFFICER HALLORAN: We are back on the
16 record. It is approximately 10:05. Petitioner
17 showed up about 9:45. We have been reviewing in
18 camera a video made by the Petitioners.

19 Again, my name is Brad Halloran. I am
20 with the Illinois Pollution Control Board. I am a
21 hearing officer. We are here for a hearing today
22 in the Adjusted Standard 2001-2 entitled the
23 matter of Petition of the City of Geneva for an
24 Adjusted Standard from 35 Illinois Administrative

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1 Code 807.104.

2 We are going to run this hearing
3 pursuant to 102 subpart (j) without objection from

4 the petitioner, which provides for hearings for
5 regulatory matters. We are running it this way
6 because, even though the petitioner is seeking an
7 adjusted standard under 807, it is not clear
8 whether or not this also could involve RCRA
9 regulations.

10 That being said, I note that there are
11 no members of the Board, excepting to my right I
12 have Alisa Liu, she is with the technical support
13 staff for the Board. We have Cathy Glenn, staff
14 attorney. And we have John Knittle, a hearing
15 officer with the Pollution Control Board.

16 I will also note there are no members
17 of the public here. And if there were, they would
18 be allowed to give a public comment after the
19 case-in-chiefs of the respective parties and would
20 also be allowed to file a written comment.

21 Preliminary matters, again, we had
22 reviewed in camera a video the petitioner brought
23 in and it was approximately ten minutes.

24 First of all, let's introduce

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1 ourselves. For the petitioner?

2 MR. HARSCH: Roy Harsch from the law firm of
3 the Gardner, Carton & Douglas.

4 MR. JAGIELLO: Paul Jagiello,

5 J-a-g-i-e-l-l-o, with the Illinois EPA.

6 MR. GURNIK: Mark V. Gurnik, G-u-r-n-i-k,
7 with the Illinois EPA.

8 HEARING OFFICER HALLORAN: Mr. Harsch, could
9 you explain a little bit about what the video
10 showed?

11 MR. HARSCH: Yes, Mr. Hearing Officer, I
12 would be happy to. The purpose of the video that
13 was taken by John Donahue yesterday -- and John is
14 here. He is one of my witnesses. -- is to show
15 the -- visually show the site characteristics, the
16 relationship of the areas from which the soils
17 materials that have been excavated -- were they
18 have come from on the site, how those materials
19 have been utilized on the site for backfilling in
20 the hole from which they came, and where the final
21 location or proposed resting point would be to
22 utilize the excess materials that have been
23 generated to date to fill in the lagoon as well as
24 the location where additional excess materials

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1 will be generated with the additional Phase II
2 construction, and again where those materials
3 would be utilized.

4 The video also depicts the waste water
5 treatment plant superintendent taking an actual

6 sample off the top of the pile of the materials
7 that were excavated and temporarily stored on site
8 to give the Board the opportunity to actually look
9 at the physical characterization and the makeup of
10 the soils materials that have been excavated.

11 HEARING OFFICER HALLORAN: The Agency having
12 reviewed the video, what is your position?

13 MR. JAGIELLO: I believe the Agency's -- the
14 Illinois EPA's position would be it would object
15 to the portion of the video that showed the sample
16 and the sample itself when the time comes. We
17 don't necessarily believe that that one sample is
18 necessarily representative of all of the dirt that
19 is in that pile.

20 HEARING OFFICER HALLORAN: So you would
21 object to the portion of the video showing the
22 dirt sample?

23 MR. JAGIELLO: And sampling. And when the
24 time comes, we would object to the sample itself.

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1 HEARING OFFICER HALLORAN: Are you objecting
2 to the foundation? We can bring Mr. Donahue up
3 here and have him testify to the foundation.

4 MR. JAGIELLO: Mr. Donahue can testify. I
5 don't know necessarily that the representative
6 nature of that sample -- that the foundation would

7 would address the objection.

8 HEARING OFFICER HALLORAN: Okay. Mr. Harsch,
9 why don't we have Mr. Donahue come up here and lay
10 a foundation for the video.

11 MR. HARSCH: I would be happy to.

12 (Witness duly sworn.)

13 JOHN DONAHUE,
14 called as a witness herein on behalf of the City
15 of Geneva, having been first duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HARSCH:

19 Q. Mr. Donahue, will you please state your
20 full name for the record?

21 A. John Donahue.

22 Q. What is your position with the City of
23 Geneva?

24 A. Superintendent of water and sewer.

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1 Q. How long have you held that position?

2 A. 13 years.

3 Q. Have you been involved in the ongoing
4 waste water treatment plant project in your
5 employment with Geneva?

6 A. Yes.

7 Q. How long have you been involved in that

8 project?

9 A. Since its inception, roughly 1993.

10 Q. Did you take -- cause a video -- we
11 have viewed a videotape in camera this morning.
12 Is that the videotape that you took yesterday?

13 A. Yes.

14 Q. Will you please explain how you did
15 that?

16 A. I positioned myself on the Union
17 Pacific railroad tracks that overlook the waste
18 water treatment facility that is located along
19 Route 25 and attempted to show the proximity of
20 the earth material dirt pile that we have
21 excavated from our Phase I construction and its
22 current location and how that -- the location
23 of that dirt pile as it relates to the
24 newly-constructed anaerobic digester facility that

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1 is immediately to its south and the proximity of
2 that newly-constructed anaerobic digester as it
3 relates to the tertiary lagoon that we propose to
4 fill at the appropriate time when Phase II
5 construction begins.

6 Q. Is the tape that you are showing, is
7 that a copy of the actual tape that you physically
8 took yesterday with your camera?

9 A. Yes.

10 Q. Would you explain why you made a copy?

11 A. The videotape for the VHS camera that

12 the City owns is compact video that won't fit in a

13 regular VCR. So we just recorded it onto a

14 standard VHS tape.

15 Q. Did you make any edits to that tape?

16 A. No.

17 Q. Does the tape accurately portray what

18 you described in your narrative that is recorded

19 on the tape?

20 A. Yes.

21 Q. Do you use -- does the City use

22 videotaping in the normal course of business?

23 A. Yes.

24 Q. And do you perform that operation

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1 occasionally for the City?

2 A. Occasionally.

3 HEARING OFFICER HALLORAN: Mr. Jagiello?

4 CROSS-EXAMINATION

5 BY MR. JAGIELLO:

6 Q. Mr. Donahue, the tape showed the taking

7 of a sample.

8 A. Yes.

9 Q. And how big is the dirt pile that is

10 out there?

11 MR. HARSCH: Mr. Hearing Officer, we first --
12 point of clarification. I thought the foundation
13 was being laid to allow -- the issue was whether
14 the videotape should be allowed into evidence or
15 not, not the sampling issue.

16 HEARING OFFICER HALLORAN: Well, the sampling
17 issue looks like it appears to be part of the
18 video.

19 MR. HARSCH: Well, then I have some
20 additional questions.

21 HEARING OFFICER HALLORAN: I am sorry, I
22 thought you were finished, Mr. Harsch.

23

24

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1 DIRECT EXAMINATION (Resumed)

2 BY MR. HARSCH:

3 Q. If we are going to address the sample
4 question, then there are a number of other
5 questions.

6 Did you direct -- did you direct
7 someone yesterday to take a sample?

8 A. Yes.

9 Q. And who was that individual?

10 A. Russ Baker, manager of waste water

11 treatment.

12 Q. Is he the treatment plant operator?

13 A. Yes.

14 Q. He is a licensed treatment plant
15 operator?

16 A. Yes.

17 Q. And as such he has the responsibility
18 to take the samples at the treatment plant?

19 A. Yes.

20 Q. And he performs that duty?

21 A. Yes.

22 Q. And those samples are -- he takes those
23 samples, and those samples are submitted to the
24 Illinois Environmental Protection Agency in the

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1 normal course of business?

2 A. Yes.

3 Q. How did you direct -- what kind of
4 directions did you give him with respect to taking
5 the sample?

6 A. Just asked him to bring the shovel and
7 a container to the site and select a location that
8 he could fill the container with from the spot. I
9 didn't point out any specific location. I just
10 asked him to pick a spot.

11 Q. Were you present at the job site

12 throughout the generation of the excavated
13 materials periodically?

14 A. Periodically.

15 Q. Did you observe those materials being
16 excavated and placed in the stockpile?

17 A. Yes.

18 Q. Have you -- did you examine the sample
19 that Russ took?

20 A. Yes.

21 Q. Based on your familiarity with the
22 materials as they were excavated, did those
23 excavated materials appear to be similar to the
24 sample collected by Russ?

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1 A. Yes.

2 Q. And how would you describe the
3 excavated materials?

4 A. Generally what we saw when we excavated
5 that site, it was predominantly the appearance of
6 dirt, glass and cinders.

7 Q. And what did Russ collect yesterday in
8 the bucket?

9 A. From what I observed, mostly just dirt
10 and some gravel. There didn't appear to be any
11 glass in that particular sample that we collected,
12 although there could have been.

13 Q. At your direction was a portion of that
14 bucket put in a jar?

15 A. Yes.

16 Q. That is the jarred material?

17 A. Yes.

18 Q. How do you describe that relative to
19 the -- how does that compare to the physical
20 material that is on the site?

21 A. Very close. Again, I said that the --
22 we did see quite a bit of glass in our excavation
23 that doesn't appear here. That would be the only
24 thing that would be lacking in this sample that I

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1 did observe when we were collecting our -- when we
2 were removing the soil.

3 Q. Apart from the glass, absence of any
4 glass --

5 A. It is consistent.

6 Q. As you understood it, the purpose of
7 gathering the sample was to collect a sample so
8 when you look at it you can become physically
9 familiar with the material that is excavated; is
10 that correct?

11 A. Correct.

12 Q. The sample was not taken to be
13 representative for chemical analysis?

14 A. Correct.

15 MR. HARSCH: I have no further questions.

16 HEARING OFFICER HALLORAN: Mr. Jagiello?

17 CROSS-EXAMINATION

18 BY MR. JAGIELLO:

19 Q. Mr. Donahue, you said Mr. Baker is the
20 licensed treatment plant operator?

21 A. Yes.

22 Q. And that he does take samples?

23 A. Yes.

24 Q. What kind of samples does he normally

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1 take?

2 A. Typically they are samples that are
3 required as part of our NPDES permitting, waste
4 water samples.

5 Q. So soil samples --

6 A. Process control samples.

7 Q. So soil samples would be something that
8 he normally doesn't take?

9 A. Correct.

10 Q. In getting back to a question I asked
11 before, the pile of dirt that we are talking
12 about, how big is it, length times width times
13 depth?

14 A. It is approximately 40 feet in length,

15 probably another -- well, I would say probably
16 without actually going out there and measuring it,
17 guesstimating maybe 80 feet in length, 40 feet in
18 width and 15 feet in height.

19 Q. And the sample that is in the jar that
20 we are speaking about that you brought -- that was
21 brought in today, that was just from the surface
22 of the dirt pile?

23 A. Correct.

24 Q. And there was only one sample taken?

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1 A. That is true.

2 Q. Mr. Donahue, are you aware of any
3 procedures that would set forth how many samples
4 would be representative for a dirt pile that is
5 roughly 80 feet long by 40 feet wide by 15 feet in
6 height?

7 A. No, I am not.

8 MR. JAGIELLO: No further questions.

9 HEARING OFFICER HALLORAN: Mr. Harsch?

10 REDIRECT EXAMINATION

11 BY MR. HARSCH:

12 Q. Mr. Donahue, you are physically
13 familiar -- actually familiar with the materials
14 that were excavated down there?

15 A. Yes.

16 Q. And placed in that pile?
17 A. Yes.
18 Q. Are they homogeneous basically as the
19 material was dug?
20 A. Yes.
21 Q. They appear to be similar throughout
22 the pile?
23 A. Yes.
24 Q. You were there when the pile was

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1 filled?
2 A. Yes.
3 Q. You were there when the materials were
4 excavated or moved from the pile and placed back
5 into the excavation hole for backfilling?
6 A. Yes.
7 Q. What Russ collected and what is in this
8 jar, is that representative in your opinion of
9 what you saw going into the pile, what you saw
10 being taken out of the pile and what is left in
11 the pile?
12 A. Yes.
13 MR. HARSCH: No further questions.
14 MR. JAGIELLO: No further questions.
15 HEARING OFFICER HALLORAN: Is it the Agency's
16 objection to the video the part where they are

17 digging up this sample? Or, Mr. Harsch, were you
18 planning to enter that jar of soil sample into
19 evidence?

20 MR. HARSCH: That is one of my exhibits
21 today.

22 MR. JAGIELLO: And the Illinois EPA takes the
23 position that we are going to object to the sample
24 again. I understand what Mr. Harsch is saying,

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1 but I don't believe that that sample is
2 necessarily representative of the entire pile that
3 is out there.

4 MR. HARSCH: It is a regulatory hearing.

5 HEARING OFFICER HALLORAN: Again, you are not
6 objecting to the video itself, just the sample?

7 MR. JAGIELLO: I think our objections -- the
8 objection would be to the sample as well as to
9 that portion of the video where they showed the
10 samples taken. But I think that the portion of
11 the video showing the sample being taken actually
12 would support the Illinois EPA's position that the
13 sample was not representative. So I suppose the
14 Agency would not object to the video. But at the
15 same time, the Illinois EPA is going to object to
16 the sample and we would probably even be referring
17 to the video to show how the sample is taken,

18 again to support the position that it is not
19 representative.

20 MR. HARSCH: Mr. Hearing Officer, the video
21 and Mr. Donahue's testimony clearly establishes
22 that this is a single sample taken. Mr. Donahue's
23 testimony is that in his opinion being physically
24 present on the site while the pile was being

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1 created and while the pile was being partially
2 used for backfill back into the hole, that the
3 single sample is representative of what is in that
4 pile from a purely physical observation
5 standpoint.

6 This is a -- you have stated that this
7 is going to be conducted under the regulatory
8 rules. I don't understand any of the Agency's
9 objection under that scenario. The evidence is
10 clearly admissible in a regulatory proceeding.
11 And as such, it is not being submitted to be a
12 technical representative sample carrying out --
13 being taken in accordance with any prescribed test
14 sample. It is simply a single sample of material
15 that there has been direct testimony under oath
16 that his opinion based on foundation is that it
17 does appear to be representative of what is in
18 that pile from a physical standpoint. We are not

19 trying to establish this for chemical parameters.

20 HEARING OFFICER HALLORAN: I am going to
21 allow the video, and I will reserve the ruling
22 until and if you offer the sample into evidence.

23 That being said, Mr. Harsch, do you
24 have an opening statement?

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1 MR. HARSCH: Yes, I do.

2 HEARING OFFICER HALLORAN: Before we get to
3 that -- I am sorry, you may step down. Before we
4 get to that, we have two people that walked in
5 during the hearing. Could you identify yourself?

6 MR. DINGES: Dan Dinges, city engineer for
7 the City of Geneva.

8 HEARING OFFICER HALLORAN: And are you going
9 to be a witness today?

10 MR. DINGES: No.

11 HEARING OFFICER HALLORAN: Here as a member
12 of the public?

13 MR. DINGES: Yes.

14 HEARING OFFICER HALLORAN: Sir?

15 MR. TALSMA: Thomas Talsma, director of
16 public works for the City of Geneva.

17 HEARING OFFICER HALLORAN: Thank you very
18 much.

19 Mr. Harsch, do you have an opening

20 statement, please?

21 MR. HARSCH: Yes.

22 OPENING STATEMENT

23 BY MR. HARSCH:

24 As will be established today, the City

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1 of Geneva started on a program that initially
2 envisioned expansion of its sewage treatment
3 plant. In the early 1990s time frame that project
4 was put on hold while the City of Geneva evaluated
5 alternatives to the expansion of the sewage
6 treatment plant and was restarted back in 1998
7 when Geneva abandoned the plan to construct a land
8 application system, and, therefore, necessitating
9 restarting the expansion program.

10 As will be described today, Geneva has
11 had a series of dealings with the Illinois
12 Environmental Protection Agency because it became
13 apparent early on that there would be excavated
14 materials, that those materials, in part, appear
15 to have components from a historical landfill that
16 existed somewhere in that area. And Geneva has
17 explained to the agency its plans -- desired plans
18 to use that material on site for burning and
19 filling.

20 We are, in essence, requesting the

21 Pollution Control Board to regulatorily authorize
22 Geneva to utilize the excess soil material that
23 probably in today's parlance would be referred to
24 as contaminated media on site beneficially to use

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1 it as fill material when they construct the
2 tertiary lagoon.

3 We attempted to respond to the concerns
4 of the Agency. We developed information since the
5 original Huff & Huff report was prepared, modified
6 that report and attempted to satisfy the concerns
7 of the Agency. And have -- even since we received
8 the adverse Agency recommendation, we generated
9 additional technical information, all in an
10 attempt to respond to the concerns that have been
11 raised by the Agency.

12 We believe that the overwhelming
13 evidence is that there is no environmental impact
14 from the existing materials on site. These
15 materials in all probability have been moved
16 numerous occasions as Route 25 was constructed,
17 the highway overpass over the railroad. The
18 treatment plant was, in fact, expanded in the
19 early '70s, roads built down to the treatment
20 plant and now the Phase I construction and the
21 upcoming Phase II.

22 We believe that the technical evidence
23 as supported by the testimony of Jim Huff today
24 will clearly show there is no environmental impact

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1 from these materials, and there will be no
2 environmental impact from the proposed use of the
3 materials on site.

4 The petition sets forth that the total
5 cost to Geneva if this relief is not granted will
6 be approximately \$850,000. That is the cost of
7 hauling the materials off site, taking them to
8 Settlers Hill Landfill, which is the closest
9 landfill, and bringing in additional material.
10 That is an awful lot of money if there is no
11 environmental impact. And we are requesting the
12 Pollution Control Board essentially authorize
13 Geneva to utilize this material on site for fill,
14 a practice that the Agency has and -- has
15 authorized, has allowed.

16 It is a constant interpretation to put
17 the materials back into the hole from which they
18 came. We just generated more materials than we
19 can put back in the hole. And we are, in essence,
20 asking the Board to make a waste determination, if
21 nothing else, that the stuff is not and should not
22 be subject to the Pollution Control Board

23 regulations that apply to waste -- handling of
24 waste material.

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1 Initially, we had approached the Agency
2 to simply ask for a determination that this
3 material is not waste. The Agency subsequently
4 made a conclusion in about 1995 that it didn't
5 have the authority to do that. And with the
6 project going on hold, we didn't go forward. And
7 the when the project came forth again in 1998, we
8 began approaching the Agency to find out how they
9 would like us to proceed. And that is why we are
10 here today, to ask the Pollution Control Board for
11 an adjusted standard or regulatory relief to
12 authorize the use of -- beneficial use of this
13 material on site, not treating it as waste
14 material subject to the act.

15 HEARING OFFICER HALLORAN: Mr. Gurnik,
16 Mr. Jagiello?

17 OPENING STATEMENT

18 BY MR. GURNIK:

19 Thank you, Mr. Hearing Officer. The
20 Illinois EPA has reviewed the petition as filed by
21 the City of Geneva, and it has submitted its
22 recommendation to the Board as reflected in the
23 response that it submitted on August 21st, 2000.

24 And Illinois is the -- it is the belief of the

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1 Illinois EPA that the City of Geneva has not
2 demonstrated it met the standard necessary for
3 granting the adjusted standard.

4 I will note that the relief requested
5 is extremely broad, and the Illinois EPA believes
6 that the situation or the factors presented or
7 faced by the City of Geneva are no different than
8 the factors that have been reviewed by the Board
9 in adopting the rules in Subtitle G or, I should
10 say, in the situation that any other individually
11 regulated community would be faced with in this
12 type of a situation. That is it.

13 HEARING OFFICER HALLORAN: Before we proceed
14 to petitioner's first witness, I wanted to add
15 that our technical staff support person, Alisa
16 Liu, may or may not be asking questions of the
17 respective witnesses at the end of the
18 questioning.

19 Mr. Harsch?

20 MR. HARSCH: At this time I would call
21 Mr. Thomas Talsma.

22 (Witness duly sworn.)

23

24

1 THOMAS W. TALSMA,
2 called as a witness herein on behalf of the City
3 of Geneva, having been first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HARSCH:

7 Q. Mr. Talsma, would you state your full
8 name for the record?

9 A. Thomas W. Talsma.

10 Q. And where do you reside?

11 A. Geneva, Illinois.

12 Q. And what is your current position with
13 the City of Geneva?

14 A. Director of public works for the City
15 of Geneva.

16 Q. How long have you held that position?

17 A. Approximately 23 years.

18 Q. Would you briefly describe what your
19 duties are?

20 A. As director of public works, I am
21 responsible for the administration, operation of a
22 full-service public works department, including
23 water, waste water utilities, electric utilities,
24 street fleet maintenance, engineering and a

1 variety of miscellaneous municipal management
2 responsibilities.

3 Q. When did the City of Geneva begin to
4 consider the expansion of the existing waste
5 treatment plant?

6 A. I believe it was sometime during the
7 year 1994.

8 Q. What was the purpose -- what purpose
9 was necessitated of the expansion of the treatment
10 plant?

11 A. There was a number of purposes. The
12 Pollution Control Board was in the process of a
13 rule-making proceeding with respect to ammonia
14 nitrogen standards. The City was and has been
15 experiencing growth. And in order to provide
16 adequate waste water treatment, it was appropriate
17 to begin the process at that particular time.
18 And there were -- we had just completed the
19 development of a facility plan update for the
20 city. And public policy was requesting that the
21 city staff begin pursuing that project.

22 Q. As part of that project, did you cause
23 any early excavation sampling to be done on that
24 site?

1 A. Yes. The early -- early in the project
2 planning process, in order to facilitate site
3 engineering data recognizance, the city crews, our
4 personnel, went down to the treatment plant and
5 prepared a number of excavations under the
6 direction of our consulting engineer, Baxter &
7 Woodman, for the purpose of documenting the
8 bedrock elevations in the area of the treatment
9 plant expansion.

10 Q. And did those excavations cause you any
11 concerns, the City any concerns?

12 A. Yes. Once the excavations commenced,
13 it was clear that based upon a visual observation
14 of the material that was removed with the
15 excavation, that there were the presence of glass
16 and what appeared to be cinder-type material. And
17 we raised a concern with respect to what we
18 encountered in that excavation with a consultant
19 at that time.

20 Q. Those were concerns that the material
21 could be from some historic landfilling or waste
22 disposal that would have occurred somewhere in
23 that area?

24 A. Yes. It was definitely not consistent

1 with what I had experienced throughout the City in
2 similar situations, yes.

3 Q. Did you direct your consultants to have
4 discussions with the Illinois Environmental
5 Protection Agency on how to proceed in light of
6 that?

7 A. Yes, we did. We were concerned that
8 knowing or having observed that material that we
9 wanted to proceed with respect to the management
10 of that material as our construction proceeded in
11 a manner that was consistent with existing
12 regulation and the guidance of the Agency.

13 Q. As you understand it, during that time
14 period, did the Illinois Environmental Protection
15 Agency have a procedure for making determinations
16 that materials could be beneficially reused on
17 site and not, therefore, waste material?

18 A. Yes, I was familiar with a procedure --
19 administrative procedure that was in existence at
20 that time.

21 Q. And that procedure was communicated by
22 the Agency to your very -- to your consultants?

23 A. Yes, sir.

24 Q. I am going to go through several of the

1 exhibits and then get back to that line of

2 questioning.

3 I show you, Mr. Talsma, what has been
4 marked as Petitioner's Exhibit 1. Is this a copy
5 of the petition for adjusted standard minus the
6 Huff & Huff report that we filed?

7 A. Yes.

8 Q. And you provided an affidavit, did you
9 not, regarding the facts as set forth in the
10 petition are true and accurate?

11 A. Yes.

12 Q. Is it your testimony that the facts set
13 forth in the petition still remain true and
14 accurate?

15 A. Yes.

16 MR. HARSCH: Mr. Hearing Officer, I would
17 move for the admission of what I have marked as
18 Petitioner's Exhibit No. 1.

19 HEARING OFFICER HALLORAN: Any objection?

20 MR. JAGIELLO: No objection.

21 HEARING OFFICER HALLORAN: It will be
22 accepted as Petitioner's Exhibit No. 1, petition
23 for adjusted standard.

24

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1 (Whereupon document so offered
2 was received in evidence as

3 Petitioner's Exhibit No. 1.)

4 BY MR. HARSCH:

5 Q. I show you what is marked as
6 Petitioner's Exhibit No. 2. Is this a copy of the
7 Huff & Huff report that is actually an exhibit to
8 the petition that was filed with the Pollution
9 Control Board?

10 A. Yes, it is.

11 MR. HARSCH: I would like to move at this
12 point that Exhibit 2 be entered. It is a copy
13 of the Huff & Huff report which is, in fact,
14 Exhibit B to the actual petition that was filed
15 with the Pollution Control Board. And Mr. Huff
16 will further testify regarding that report.

17 MR. JAGIELLO: No objection.

18 HEARING OFFICER HALLORAN: Petitioner's
19 Exhibit No. 2 is accepted.

20 (Whereupon document so offered
21 was received in evidence as
22 Petitioner's Exhibit No. 2.)

23 BY MR. HARSCH:

24 Q. I will show you what I have marked as

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1 Petitioner's Exhibit 3. And can you explain what
2 this is?

3 A. That is a site plan that depicts the

4 existing and proposed improvements at the site of
5 our waste water treatment plant in accordance with
6 the most recently updated facility plan prepared
7 for the City by Baxter & Woodman.

8 MR. HARSCH: Can we go off the record?

9 HEARING OFFICER HALLORAN: Off the record.

10 (Discussion had off the
11 record.)

12 MR. HARSCH: Mr. Hearing Officer, are we back
13 on the record?

14 HEARING OFFICER HALLORAN: We are back on the
15 record.

16 MR. HARSCH: I would like to move for the
17 admission of Petitioner's Exhibit 3.

18 MR. JAGIELLO: No objection.

19 HEARING OFFICER HALLORAN: Petitioner's
20 Exhibit No. 3 will be accepted.

21 (Whereupon document so offered
22 was received in evidence as
23 Petitioner's Exhibit No. 3.)

24 MR. HARSCH: Mr. Hearing Officer, for the

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1 ease of going through today, we have a copy of
2 Petitioner's Exhibit 3 that is mounted on the
3 board that I would like to use for the rest of the
4 proceeding.

5 HEARING OFFICER HALLORAN: So noted.

6 BY MR. HARSCH:

7 Q. And Mr. Talsma, the one on the board is
8 identical to the one that has been introduced into
9 evidence?

10 A. Yes, sir.

11 Q. Mr. Talsma, you earlier testified
12 regarding the Agency's administrative procedure
13 for making a solid waste determination request.
14 If I show you a copy of what I have marked as
15 Petitioner's Exhibit No. 4, is that what you
16 understood to be the Agency's procedure in the
17 1994, 1995 time frame?

18 A. Yes.

19 Q. And that is a copy of the document that
20 was provided to your consultants?

21 A. That's correct.

22 MR. HARSCH: I would like to move for the
23 admission of Petitioner's Exhibit 4 at this time.

24 MR. GURNIK: I would like to read this over.

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1 (Short pause in proceedings.)

2 MR. JAGIELLO: Mr. Hearing Officer, for the
3 record, the only thing we would object to
4 Petitioner's Exhibit No. 4 is based on relevance.
5 Reading through this document, it appears to apply

6 to processes that generate materials, and I don't
7 believe that that is the same situation that we
8 are dealing with in this particular case.

9 HEARING OFFICER HALLORAN: Mr. Harsch?

10 MR. HARSCH: It is the Agency's procedure
11 that was followed as Mr. Talsma has testified to
12 as communicated to his consultants for making
13 waste determinations, and we can lay additional
14 foundation if you would like. It was the
15 procedure that was outlined to Geneva and Geneva's
16 consultants for how the Agency would look at the
17 soil material, correct, Mr. Talsma?

18 THE WITNESS: That's correct.

19 MR. HARSCH: It would be generated on site
20 for making a determination that the material was
21 not a waste material in the 1994, 1995 time frame,
22 is that correct, Mr. Talsma?

23 THE WITNESS: That's correct.

24 HEARING OFFICER HALLORAN: Mr. Jagiello?

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1 MR. JAGIELLO: What is the date of this? I
2 mean, there is a February 13th stamp at the bottom
3 of it.

4 MR. HARSCH: It was February 13th, 1995, when
5 it was put in my file.

6 MR. JAGIELLO: 1995?

7 MR. HARSCH: Yes.

8 MR. JAGIELLO: We would just keep the same
9 objection.

10 HEARING OFFICER HALLORAN: I will overrule
11 your objection. I will allow it into evidence as
12 Petitioner's Exhibit No. 4. I find it relevant.

13 (Whereupon document so offered
14 was received in evidence as
15 Petitioner's Exhibit No. 4.)

16 BY MR. HARSCH:

17 Q. Mr. Talsma, are you or is the City
18 aware of any -- actually aware of any formal
19 landfilling operations that occurred in the area
20 of the treatment plant?

21 A. I am not personally aware of it, have
22 not witnessed it and am not knowledgeable of it.

23 Q. And you have caused discussions with
24 old-time city employees trying to find out the

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1 history of the site; is that correct?

2 A. That's correct.

3 Q. And you have not actually been informed
4 of any formal landfilling operations in that area?

5 A. That's correct.

6 Q. Your concerns that you testified as a
7 result of backhoe excavations that were done were

8 simply because there appeared to be fill-type --
9 some discarded materials in the soils; is that
10 correct?

11 A. That's right.

12 Q. Have there been historically
13 construction activities in that area?

14 A. Yes, there has been considerable
15 construction.

16 Q. And that would include the State's
17 construction of Highway 25, correct?

18 A. That's correct.

19 Q. Construction of the actual overpass of
20 Highway 25 after -- at some point in time over the
21 railroad tracks?

22 A. That's correct.

23 Q. And when was this -- when was the last
24 expansion of the Geneva Sewage Treatment Plant?

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1 A. The last expansion took place in 1971
2 and '72.

3 Q. And were materials that were excavated
4 during that construction based on your discussions
5 with long-time employees placed in the general
6 area?

7 A. Yes.

8 Q. And are those -- is it your

9 understanding that the materials that you have
10 uncovered beginning in 1994, the materials in
11 question, are probably throughout the entire area
12 of the Geneva Sewage Treatment Plant?

13 A. Yes, it is likely that it is.

14 Q. Does Geneva have any alternative to
15 constructing the sewage treatment plant expansions
16 on the east side of the plant? Is that the only
17 place you can do the construction?

18 A. Yes. That is the only remaining real
19 estate available.

20 Q. So in essence, looking at Petitioner's
21 Exhibit 3, you are talking about -- on
22 Petitioner's Exhibit 3, Phase I consisted of a
23 construction primarily of the anaerobic digester,
24 correct?

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1 A. That's correct, yes.

2 Q. And Phase II is what is in green on
3 petitioner's -- on this exhibit marked aeration
4 tanks and final clarifier?

5 A. That's correct.

6 Q. And the excess materials that were
7 generated from the excavation for the anaerobic
8 digesters are presently depicted in the video
9 located where the aeration tanks and final

10 clarifiers have to go; is that correct?

11 A. That's correct.

12 Q. Where are you abandoning the tertiary
13 pond?

14 A. The tertiary pond is being abandoned
15 because during certain periods of time during the
16 year the pond experiences significant algal
17 growth, which actually serves to be somewhat
18 counter-productive with respect to water quality
19 and the water being discharged through that lagoon
20 and subsequently into the Fox River.

21 Q. It is also necessary to construct the
22 sludge water and storage plant?

23 A. Correct.

24 Q. And the only place to construct that

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1 is, in fact, on the pond?

2 A. Yes.

3 Q. In the petition we referred to the
4 costs of disposing of the excess -- strike that.

5 It has been your understanding
6 throughout this process that the Illinois
7 Environmental Protection Agency and interpretation
8 of the Pollution Control Board rules and standard
9 practice as reinforced from your conversations
10 with your consultants is that materials that are

11 excavated can be returned to the excavated hole
12 from where they came?

13 MR. JAGIELLO: I would object to that
14 question as hearsay on at least two levels, I
15 believe. Mr. Harsch is asking for --

16 MR. HARSCH: I am asking for the witness's
17 understanding of what the Illinois Environmental
18 Protection Agency policies and procedures were and
19 how they have been communicated to him by his
20 consultants.

21 MR. JAGIELLO: That is what I am saying. He
22 is asking for his consultant's interpretation of
23 something that the Illinois EPA said to him that
24 the consultant then said to Mr. Talsma, and that

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1 is hearsay.

2 MR. HARSCH: It is a regulatory proceeding.
3 I believe it is relevant and reliable information
4 that should be allowed into the proceeding.

5 HEARING OFFICER HALLORAN: Could you rephrase
6 it?

7 BY MR. HARSCH:

8 Q. Mr. Talsma, is it your understanding
9 based upon your conversations with your
10 consultants and your staff's discussions with the
11 Illinois EPA that it was perfectly appropriate in

12 accordance with the Illinois environmental
13 regulations to use the material excavated from an
14 excavation as backfill around the structures such
15 as the anaerobic digesters?

16 MR. JAGIELLO: And I have the same objection.
17 If Mr. Talsma was involved in the conversations
18 himself, that is one thing. But what is being
19 asked of him is going from the Illinois EPA to the
20 consultant to Mr. Talsma, and there is at least
21 one level of hearsay in that question.

22 MR. HARSCH: Mr. Talsma, as director of
23 public works, is entitled to rely upon the
24 conclusions and advice of his consultants and his

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1 staff.

2 MR. JAGIELLO: Mr. Harsch, that has nothing
3 to do with the hearsay objection. Hearsay is when
4 you are using an out-of-court statement to prove
5 the truth of the matter asserted therein. And you
6 are asking for Mr. Talsma to take what his
7 consultant told him, what the Illinois EPA told
8 the consultant, and that is hearsay. That is
9 classic textbook hearsay.

10 MR. HARSCH: And it is typically relied upon
11 in this area, and it is admissible in regulatory
12 proceedings.

13 HEARING OFFICER HALLORAN: All right. I
14 would sustain the Agency's objection. However,
15 Mr. Harsch, you may make an offer of proof.

16 MR. HARSCH: I will make an offer of proof.

17 BY MR. HARSCH:

18 Q. Mr. Talsma, do you rely upon the advice
19 you receive from consultants?

20 A. Yes, sir.

21 Q. Do you rely upon the advice you receive
22 from your staff?

23 A. Yes.

24 Q. Did your consultants and staff have a

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1 series of conversations beginning in 1995 with the
2 Illinois Environmental Protection Agency
3 concerning this project?

4 A. Yes, they did.

5 Q. During those conversations, did your
6 consultants and your staff request advice from the
7 Agency as to whether or not it was appropriate and
8 allowable under the Illinois environmental
9 regulations to place the excavated materials back
10 in the hole for backfill around the structure?

11 A. Yes, they did.

12 Q. And what were they informed by the
13 Illinois Environmental Protection Agency?

14 A. That it was acceptable to utilize that
15 material to back fill the areas under construction
16 after the foundations have been constructed.

17 HEARING OFFICER HALLORAN: I sustain the
18 objection.

19 BY MR. HARSCH:

20 Q. Mr. Talsma, did the City of Geneva back
21 fill the areas -- excuse me.

22 The materials that were excavated and
23 placed in temporary storage for the aeration and
24 final clarifier, where did those materials come

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1 from?

2 A. They came from the ground under the
3 footprint of the new anaerobic digesters.

4 Q. And did -- was it necessary to back
5 fill over the foundations of the anaerobic
6 digesters?

7 A. Yes.

8 Q. And what material did Geneva use?

9 A. The material that was temporarily stock
10 piled in the area of the proposed expansion of the
11 aeration at the tanks and final clarifier and
12 primary clarifier.

13 Q. And did your consultants tell you that
14 that was an acceptable practice?

15 A. Yes, sir.

16 Q. And did you rely upon that advice?

17 A. Yes, I did.

18 Q. In the petition in Exhibit 1 that was
19 filed in this proceeding, what is the total cost
20 to the City of Geneva should this relief not be
21 granted?

22 A. Approximately \$850,000.

23 Q. And does that include the cost of
24 hauling the material off site for disposal in a

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1 landfill plus the cost of bringing back additional
2 fill?

3 A. Yes.

4 Q. Are those costs still accurate?

5 A. Yes.

6 Q. What is the total cost of the sewage
7 treatment and the planned expansion?

8 A. The total cost of Phase I and Phase II
9 is approximately \$21 million.

10 Q. Does the City of Geneva have any other
11 environmental-related projects underway?

12 A. Yes.

13 Q. What are those projects?

14 A. We are currently undertaking an
15 engineering feasibility study in cooperation with

16 the City of Batavia for a regional drinking water
17 lime softening treatment facility to address the
18 radium and drinking water compliance requirements
19 that both of the cities currently have.

20 Q. And what is the current cost estimates
21 for that project?

22 A. Current cost estimates are
23 approximately \$44 million.

24 Q. And is that the total project cost?

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1 A. That is the total capital cost of the
2 project.

3 Q. And split approximately 50/50 with
4 Geneva and Batavia?

5 A. Approximately.

6 Q. Are there a number of other public
7 works projects currently underway in the City of
8 Geneva?

9 A. Yes, definitely.

10 Q. And roughly give some idea of what the
11 cost of those public works --

12 MR. JAGIELLO: I am going to object. I just
13 fail to see the relevance of other projects. We
14 are dealing with the adjusted standard petition,
15 not any other project.

16 MR. HARSCH: Mr. Hearing Officer, we are

17 dealing with the cost of \$850,000 to the City of
18 Geneva.

19 HEARING OFFICER HALLORAN: Ms. Court
20 Reporter, could you read the question back,
21 please?

22 (Record read as requested.)

23 HEARING OFFICER HALLORAN: I will overrule
24 the objection. You may continue.

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1 BY MR. HARSCH:

2 Q. What is the rough cost?

3 A. The rough cost currently in various
4 stages of design and construction is probably
5 somewhere in the neighborhood of 12 to \$15
6 million.

7 Q. Mr. Talsma, when did the City of Geneva
8 put a temporary hold on this project and why?

9 A. I believe it was mid 1995,
10 approximately.

11 Q. And why did the City of Geneva do that?

12 A. The City placed this project in -- on a
13 temporary hold basis in order to investigate the
14 feasibility of a municipal land application or
15 spray irrigation waste water utility solution in
16 cooperation with the City of St. Charles.

17 Q. And that project had it gone forward

18 would have eliminated the need for this treatment
19 plant expansion?

20 A. That's right. That's correct, yes.

21 Q. What happened to that project?

22 A. That project proceeded through the
23 completion of preliminary engineering and was
24 determined to be economically infeasible by both

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1 the city council of the City of Geneva as well as
2 St. Charles.

3 Q. And what did that decision necessitate?

4 A. That decision necessitated that the
5 City of Geneva prepare an amendment to our
6 facility plan before we proceeded to
7 implementation of the plant expansion.

8 Q. And did you carry out that amendment?

9 A. Yes.

10 Q. And is that -- in fact, the results of
11 that plant amendment is the schematic you
12 testified to, which is Petitioner's Exhibit 3?

13 A. That's correct.

14 Q. And Geneva has moved forward then with
15 the construction of those treatment plant
16 expansion plans that are covered by that amended
17 facility plan; is that correct?

18 A. Yes, we have completed Phase I

19 consisting essentially of the anaerobic digesters
20 and the flood proofing of the plant site and have
21 filed a preapplication with the Agency for
22 revolving loan financing of the Phase II
23 improvements at this point in time and are
24 awaiting the issuance of an NPDES permit from the

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1 Agency associated with the proposed improvements,
2 and anticipate proceeding to design and
3 construction in a timely manner following the
4 receipt of that permit.

5 Q. And that is both -- the purpose of that
6 treatment plant Phase II is to service the
7 additional growth that is occurring in Geneva as
8 well as complying with the now-adopted ammonia
9 nitrogen requirements, correct?

10 A. That's correct.

11 MR. HARSCH: I have no further questions at
12 this time.

13 HEARING OFFICER HALLORAN: Cheryl, can we go
14 off the record?

15 (Discussion had off the
16 record.)

17 HEARING OFFICER HALLORAN: Mr. Jagiello?

18 CROSS-EXAMINATION

19 BY MR. JAGIELLO:

20 Q. Mr. Talsma, good morning. I just got a
21 few questions for you.

22 Mr. Talsma, I have handed you what has
23 been marked as Petitioner's Exhibit No. 1, and it
24 is the petition for adjusted standard that has

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1 been filed in this case. I ask please that you
2 look at page 2. Page 2 of the petition in the big
3 paragraph in the center about halfway down, it
4 says there that "the soil has been tested and does
5 not exhibit any of the characteristics of
6 hazardous waste." And then it refers you to
7 Exhibit B, page 7.

8 Exhibit B is the Huff & Huff report,
9 and it is sitting on the chair right next to you.
10 Now, would you please look at page 7 of the Huff &
11 Huff report? And it is under section 3.1 TCLP
12 characteristics, in the third paragraph. And
13 there is a sentence in the third paragraph that
14 says that "fill from each boring was composited
15 and tested with the analytical results presented
16 in appendix C. TCLP metals were run. And all but
17 the TCLP lead from location No. 3 were well below
18 the RCRA hazardous waste characteristics at
19 location No. 3, 12.9 milligrams per liter, TCLP
20 lead was reported." So that phrase that "soil has

21 been tested and does not exhibit characteristics
22 of hazardous waste," that is not really accurate,
23 is that?

24 MR. HARSCH: I object to that question and

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1 the implications in that. If you want to talk
2 about the facts, talk about the facts. Don't
3 characterize it as an inaccurate statement.

4 BY MR. JAGIELLO:

5 Q. Okay. Mr. Talsma, the petition states
6 that the soil has been tested and does not exhibit
7 the characteristics of hazardous waste; is that
8 correct, page 2?

9 A. Yes, that is what it says.

10 Q. And on page 7 of the Huff & Huff
11 report, it talks about a sample being taken which
12 did show above TCLP lead levels for at least one
13 of the samples taken; is that correct?

14 A. Yes.

15 Q. Mr. Talsma, was there any further
16 investigation of the area where that -- as stated
17 on page 7 of the Huff & Huff report where the high
18 lead level was detected? Was there any further
19 investigation of that area done back in 1998 when
20 that sample was taken?

21 A. I don't recall that there was, no.

22 Q. So the horizontal and the lateral
23 extent of the soil that exhibited high TCLP lead
24 levels wasn't determined?

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1 A. That's correct, right.

2 Q. Mr. Talsma, subsequent to the soil
3 sampling showing the high lead level, was any
4 investigation done to study the ground water to
5 determine whether that lead level or that lead
6 contaminated soil adversely affected ground water?

7 A. Subsequent to that?

8 Q. Correct.

9 A. Test result, yes.

10 Q. Was it done back in 1998 when that
11 sample was taken and analyzed?

12 A. No.

13 Q. Mr. Talsma, you said that there was
14 some ground water sampling that was done. When
15 was that done?

16 A. I believe it was done during September
17 of 2000.

18 Q. Just last month?

19 A. Yes.

20 Q. And as far as costs go, I believe that
21 you said that the cost for having the soil
22 disposed of as a waste was going to be -- I think

23 it was \$850,000. And that cost would be the same
24 for anybody that was required to comply with the

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1 regulations and dispose of that soil as a waste;
2 is that accurate?

3 A. Yes.

4 MR. JAGIELLO: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. HARSCH:

7 Q. Mr. Talsma, the Agency questions the
8 characterization of the petition on page 2, the
9 paragraph that was pointed out to you regarding
10 the materials where the petition states that they
11 don't address any of the characteristics of
12 hazardous waste, that is referring to the
13 excavated materials, is it not, the excavated --

14 A. Yes.

15 Q. And the sample that is referred to in
16 Mr. Huff's report is a soil sample from the
17 undisturbed soils that are essentially on the
18 bottom of that pile; is that correct?

19 A. Yes.

20 MR. HARSCH: No further questions.

21 HEARING OFFICER HALLORAN: Mr. Jagiello, any
22 recross?

23 MR. GURNIK: Just a moment, please.

1 Q. And is it the City's intention to carry
2 -- is that set forth in the Huff & Huff report as
3 amended?

4 A. Yes, it is.

5 Q. And is it the City's intention if the
6 relief is granted to abide by that plan?

7 A. Definitely, yes.

8 Q. Is it the City's intention to abide by
9 all the recommendations set forth by Mr. Huff on
10 page 19 and 20 of their report?

11 A. Yes.

12 MR. HARSCH: I have no further questions.

13 MR. JAGIELLO: Nothing.

14 HEARING OFFICER HALLORAN: There being no
15 further questions from the Agency or the
16 petitioner, I would ask Ms. Liu if she would have
17 any questions for the witness.

18 EXAMINATION

19 BY MS. LIU:

20 Q. Mr. Talsma, prior to digging the test
21 pits for the excavations to determine the depths
22 to bedrock, did the treatment plant employees have
23 any knowledge that the area was fill that was not
24 native?

1 A. I don't recall that, no.

2 Q. Okay. Well, subsequent to its
3 discovery, how did the City determine that area
4 came about from the burning of municipal waste and
5 that it was open from approximately the 1930s to
6 the 1960s as stated in your petition?

7 A. I believe that was a result of an
8 interview with a former alderman with the City of
9 Geneva.

10 Q. Do you know if there were any other
11 records kept about the operation of that area and
12 what it was used for?

13 A. No. We have searched for that in our
14 records here at the City, and there are no written
15 records of that operation.

16 Q. How else did the alderman describe that
17 to you from his recollection?

18 A. Pretty much as it was described in our
19 petition, that it was a location where individual
20 residential garbage was brought and burned.

21 MS. LIU: Thank you.

22 HEARING OFFICER HALLORAN: You may step down.

23 THE WITNESS: Thank you.

24 HEARING OFFICER HALLORAN: We will take a

1 short recess.

2 (Short recess taken.)

3 HEARING OFFICER HALLORAN: All right. We are
4 back on the record. It is approximately 11:35.

5 Mr. Harsch, do you have your next
6 witness?

7 MR. HARSCH: John Donahue I would like to
8 call again please.

9 HEARING OFFICER HALLORAN: The witness has
10 been previously sworn.

11 (Witness previously duly
12 sworn.)

13 JOHN DONAHUE,
14 called as a witness herein on behalf of the City
15 of Geneva, having been previously duly sworn, was
16 examined and testified further as follows:

17 DIRECT EXAMINATION (Resumed)

18 BY MR. HARSCH:

19 Q. Mr. Donahue, we have laid -- I assume
20 then the previous foundation for who Mr. Donahue
21 is I don't need to go through that, Mr. Hearing
22 Officer; is that correct?

23 HEARING OFFICER HALLORAN: I am sorry,
24 Mr. Harsch?

1 MR. HARSCH: I don't need to go through who
2 John is?

3 HEARING OFFICER HALLORAN: No. This is in
4 the record.

5 BY MR. HARSCH:

6 Q. Mr. Donahue, I have marked Petitioner's
7 Exhibit 5. Would you describe that?

8 A. It is a videotape approximately ten
9 minutes long.

10 Q. And that is an identical copy of a
11 videotape we have previously shown?

12 A. Yes.

13 MR. HARSCH: Mr. Hearing Officer, how would
14 you like to proceed? Do you want to reshow that?
15 I am more than happy to dispense with it.

16 HEARING OFFICER HALLORAN: I don't need to
17 see it. Mr. Jagiello, Mr. Gurnik?

18 MR. JAGIELLO: It is exactly a copy of the
19 tape we saw?

20 THE WITNESS: Yes.

21 MR. JAGIELLO: That is fine.

22 MR. HARSCH: Mr. Hearing Officer, I would
23 like to move at this point for the admission of
24 Petitioner's Exhibit No. 5 based on the foundation

1 that was previously laid.

2 MR. JAGIELLO: Earlier today I believe that
3 the Illinois EPA's position would be no objection
4 to this tape but for the sampling portion.

5 HEARING OFFICER HALLORAN: The sampling
6 portion of the tape itself.

7 MR. JAGIELLO: Yes. No objection.

8 HEARING OFFICER HALLORAN: That will be
9 received as Petitioner's Exhibit No. 5.

10 (Whereupon document so offered
11 was received in evidence as
12 Petitioner's Exhibit No. 5.)

13 BY MR. HARSCH:

14 Q. Mr. Donahue, have you been involved in
15 this project of the treatment plant expansion
16 through its inception?

17 A. Yes.

18 Q. And we have previously talked about I
19 guess what I might as well mark as Petitioner's
20 Exhibit 6, which is the jar of material. And just
21 to summarize your prior testimony, it is your
22 testimony, is it not, that what is in the jar of
23 Petitioner's Exhibit No. 6 is representative of
24 all of your observations of the materials that

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1 have been dug up out there during the excavation

2 of the digester project, correct?

3 A. Yes, with the exception of the absence
4 of glass in that particular sample.

5 Q. And during that excavation, you would
6 find whole bottles and broken bottles of glass?

7 A. Yes.

8 Q. That is what you are referring to?

9 A. Correct.

10 Q. Has the City of Geneva -- have you
11 participated in any discussions with the Illinois
12 Environmental Protection Agency regarding the
13 concerns that Mr. Talsma testified to earlier
14 about the historical fill-type material that is
15 mixed with the soils?

16 A. With regard to personal conversations
17 with members of our staff?

18 Q. Strike the question. Have you
19 participated in meetings and discussions with the
20 Illinois Environmental Protection Agency regarding
21 the use of the excess excavated materials on site?

22 A. Yes.

23 Q. And what was your understanding as to
24 the use of that material -- of these excess

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1 excavated materials -- the excavated materials on
2 site?

3 MR. JAGIELLO: I would object to foundation,
4 just when were the meetings, who was present,
5 where was the meeting held?

6 HEARING OFFICER HALLORAN: Mr. Harsch?

7 BY MR. HARSCH:

8 Q. Did you receive and the City of Geneva
9 receive advice from your consultants in 1994
10 and 1995 concerning the Agency's potential
11 determinations under the beneficial use procedure
12 at that time?

13 A. Yes.

14 MR. JAGIELLO: Then I am going to object to
15 the hearsay objection like before.

16 HEARING OFFICER HALLORAN: I am sorry, could
17 you read the question back, Mr. Harsch's question?

18 (Record read as requested.)

19 HEARING OFFICER HALLORAN: Overruled.

20 BY MR. HARSCH:

21 Q. You did receive such advice?

22 A. Yes.

23 Q. And what was that advice?

24 A. That the backfilling of the foundations

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1 for our anaerobic digester that would be under
2 construction, that it would be appropriate to use
3 fill material that was taken out of the original

4 hole.

5 Q. And did you receive advice regarding
6 the excess excavated materials and how this could
7 possibly be dealt with?

8 A. Yes.

9 Q. And was that advice that proceeded
10 through the beneficial use process at the Illinois
11 Environmental Protection Agency?

12 A. Yes.

13 Q. Have you personally participated in any
14 meetings with the Illinois Environmental
15 Protection Agency regarding this project?

16 A. Yes.

17 Q. And when were those meetings?

18 A. I don't recall the exact dates. I met
19 with the Bureau of Land, I guess, probably
20 approximately 1995, 1996.

21 Q. And did you meet again with that agency
22 in February of this year?

23 A. Yes.

24 Q. And who did you meet with in February

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1 of this year?

2 A. I met with Mr. Bill Ingersoll, Joyce
3 Munie. And I think Ken Smith was the other person
4 that was in there, in addition to yourself.

5 Q. And at that meeting did you describe
6 what Geneva's plans were for utilizing the
7 excavated materials for backfill?

8 A. Yes.

9 Q. And did you discuss with the Agency
10 going forward to the Pollution Control Board this
11 relief for the excess excavated materials?

12 A. Yes.

13 Q. Did the Agency subsequently raise
14 concerns regarding potential concerns that they
15 wanted to see addressed?

16 A. Yes.

17 Q. And were those concerns in a telephone
18 conference call?

19 A. Yes.

20 Q. And to respond to those concerns, did
21 the City of Geneva direct Huff & Huff to revise
22 their previous report that had been shared with
23 the Agency?

24 A. Yes.

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1 MR. JAGIELLO: I am going to object to the
2 leading nature of these questions. I would rather
3 have it done to have Mr. Donahue answer the
4 questions.

5 HEARING OFFICER HALLORAN: Mr. Harsch?

6 MR. HARSCH: I would be more than happy to
7 ask them any way he would like to have them asked.
8 We will be here all day if you would like.

9 HEARING OFFICER HALLORAN: Could you rephrase
10 that, please?

11 BY MR. HARSCH:

12 Q. Mr. Donahue, during the subsequent
13 telephone conversation in March of this year, did
14 the Illinois Environmental Protection Agency
15 express any concerns regarding the Huff & Huff
16 report and the draft adjusted standard petition
17 that had been provided to the Agency?

18 A. Yes, they did.

19 Q. And what were generally -- can you
20 summarize those concerns?

21 A. The -- I am having a hard time
22 recalling the specifics of the Agency's comments
23 in that regard.

24 Q. Did you direct Huff & Huff to amend the

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1 report to address those concerns?

2 A. Yes.

3 Q. And is it your understanding that the
4 amended Huff & Huff report, which is Petitioner's
5 Exhibit 2, reflects those efforts?

6 A. Yes.

7 Q. In the amended Huff & Huff report,
8 there is a proposed sampling protocol for sampling
9 the undisturbed soils at the bottom of the current
10 excavated pile, is there not?

11 A. Yes, there is.

12 Q. Is it the City -- does the City have
13 any -- is it the City's intention to comply with
14 that protocol should relief be granted in this
15 proceeding?

16 A. Yes, it is.

17 MR. HARSCH: At this point in time I have no
18 further questions.

19 CROSS-EXAMINATION

20 BY MR. JAGIELLO:

21 Q. Mr. Donahue, the Huff & Huff report
22 does recommend, as Mr. Harsch stated, additional
23 sampling for the unstored soil, correct?

24 A. Yes.

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1 Q. And that is because there was a soil
2 sample that was taken that was high in TCLP lead,
3 correct?

4 A. Correct.

5 Q. In fact, it exceeded the hazardous
6 level for TCLP lead, correct?

7 A. Correct.

8 Q. Mr. Donahue, I also want to clarify.
9 The pile of soil that is currently out there, that
10 is soil that was the result of Phase I work,
11 correct?

12 A. Yes, it was.

13 Q. And that soil wouldn't be going into
14 the same hole that it was taken from; is that
15 correct?

16 A. The existing pile -- that is correct.
17 The existing pile would be proposed to be put into
18 our tertiary lagoon.

19 Q. Which isn't where it was taken from?

20 A. Correct.

21 Q. And Mr. Donahue, the Phase II -- the
22 soil that is left over from the Phase II
23 excavation, would that also be placed to fill the
24 tertiary lagoon?

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1 A. It would be our intention to do so if
2 it meets with environmental regulation.

3 Q. So that wouldn't be going to the exact
4 same hole it was dug out of, it would be going
5 elsewhere on site?

6 A. During the construction of Phase II,
7 there will, obviously, be foundation similar to
8 what we did with Phase I that would have to be

9 backfilled. And it would be your desire to back
10 fill that foundation, that structure with material
11 that was taken out of that hole. But excess
12 materials that are left over from the balance of
13 that project would be -- it would be our intention
14 to dispose of -- to beneficially reuse that in the
15 tertiary lagoon.

16 MR. JAGIELLO: Nothing further. No further
17 questions.

18 MR. HARSCH: Very briefly.

19 REDIRECT EXAMINATION

20 BY MR. HARSCH:

21 Q. Mr. Donahue, all of the materials that
22 were excavated during Phase I were placed in the
23 pile which was shown in the video, correct?

24 A. Yes, sir.

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1 Q. And the materials -- after completion
2 of the digesters, material was removed from that
3 temporary pile and put back and used for
4 backfilling and berming around the digesters; is
5 that correct?

6 A. Yes.

7 Q. So what is left is the excess excavated
8 soils?

9 A. Yes.

10 Q. And the same process you would utilize
11 with respect to Phase II construction as well if
12 this relief is granted?

13 A. Yes.

14 MR. HARSCH: No further questions.

15 HEARING OFFICER HALLORAN: Mr. Jagiello?

16 MR. JAGIELLO: No further questions.

17 HEARING OFFICER HALLORAN: Ms. Liu, do you
18 have any questions of this witness?

19 MS. LIU: Yes, please.

20 EXAMINATION

21 BY MS. LIU:

22 Q. Mr. Donahue, how many employees does
23 the POTW have?

24 A. Full-time operators that are located at

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1 our waste water treatment plant are five.

2 Q. Could you be explain to me what the
3 areas are that would be potentially affected such
4 as the nearby Fox River or any other receptors in
5 that area that might be affected by either storm
6 water run-off or ground water infiltration from
7 what you have proposed?

8 A. The Fox River as we depicted in the
9 video is immediately adjacent to the tertiary
10 lagoon that is proposed to be filled. I am not

11 exactly sure what other type of -- that would be
12 immediately downstream -- down-gradient from the
13 tertiary lagoon and from the existing location of
14 the storage pile materials.

15 Beyond that, I don't believe that
16 run-off would go any further than the Fox River at
17 that point.

18 Q. Is the City proposing to use any storm
19 water pollution controls for the run-off?

20 A. At this point in time we haven't -- to
21 my knowledge, we haven't identified the need to do
22 that.

23 Q. Do you happen to know where the nearest
24 portable supply well is?

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1 A. Yes. It is Geneva well No. 7. It is a
2 deep well approximately 1,800 feet deep located
3 approximately 1,000 feet immediately west of the
4 waste water treatment plant -- east, I am sorry,
5 east of the treatment plant.

6 Q. During the excavation and sampling
7 activities that the City has already conducted,
8 has Geneva turned up anything other than ash,
9 cinders and broken glass?

10 A. During the construction of the Phase I
11 improvements, we did encounter materials such as

12 tires, railroad ties that were separated from a
13 pile and discarded in an appropriate manner. We
14 also encountered a small pocket of what appeared
15 to be dried paint. And that material was also
16 segregated and sampled and hauled off and disposed
17 of as special waste.

18 Q. Did you run across any metal containers
19 or intact glass bottles?

20 A. We ran across a large -- quite a few
21 glass bottles intact. To my knowledge, we never
22 ran across any metal cans or any other type of
23 metal debris. We were a little bit surprised by
24 that, to tell you the truth. But, no, we didn't

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1 run across that sort of thing.

2 Q. Is there any indication from the shape
3 or what is remaining on a bottle what it might
4 have contained?

5 A. We have collected a variety of bottles
6 from it, most of which were from the Geneva
7 Bottling Works. Many Coke bottles, 7-Up bottles,
8 old-time soft drink bottles, some what appear to
9 be old liquor bottles.

10 Q. In the course of doing this, did the
11 City provide any personal protective equipment or
12 any type of safety or hazardous materials handling

13 training to its employees before they engaged in
14 the excavation activities?

15 A. Geneva's employees weren't directly
16 engaged in the excavation with the exception of
17 the original digging to bedrock to find bedrock
18 that we did. And at that point in time, our
19 employees weren't placed in direct contact with
20 the soil. It was a situation where they dug it up
21 and they backfilled it immediately once we took
22 our elevations into the bedrock. Beyond that, I
23 would have to say, no, that they did not receive
24 any special training with regard to hazardous

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1 materials handling.

2 Q. Did you hire a contractor to do the
3 excavation for the work with the clarifier?

4 A. Yes.

5 Q. Was he told of any special nature of
6 the material that he was handling?

7 A. The sampling analysis that we performed
8 in that location prior to construction indicated
9 to us that there were no special waste
10 characteristics in that soil. So no special
11 precautions were taken at that time.

12 Q. Am I clear when you say that you have
13 basically done all the excavating you are planning

14 to do, now you are just looking to reuse what you
15 have excavated and piled up so that you know what
16 is in that pile, or are you planning to do more
17 excavation of the undisturbed fill?

18 A. Just to make sure -- I think we have
19 talked about this a little bit today. There are
20 two phases to our project. Phase I is complete,
21 and the soil pile that was identified in the
22 videotape was the left over soil that is the
23 purpose of most of our discussions today. There
24 will be another construction project in Phase II

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1 that will generate another pile after we are done.
2 And that pile still needs to be sampled in
3 accordance with the Huff & Huff supplemental
4 report.

5 Q. Does the City have a contingency plan
6 for unearthing something that is unexpected,
7 something that would be different than what you
8 have come across already?

9 A. Well, we have -- when we perform a
10 project of this magnitude, generally we contract
11 the site supervision and project management with a
12 consultant and -- so that there is somebody there
13 all the time monitoring that construction process,
14 that excavation process. And when something is

15 encountered that is different from what -- you
16 know, what we expect to see, then that consultant
17 will contact us and we will come over and they
18 will identify the extent of material that is
19 there, separate it.

20 We have in the past and what we did in
21 this particular case was place the material in an
22 impervious soil on a pad -- on a storage pad with
23 a protective blockade around it so that run-off
24 wouldn't leave it. Covered it with protective

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1 plastic to prevent rain water from leaching
2 through it and collected samples and did our
3 follow-up analysis.

4 Q. In the Huff & Huff report there is
5 mention of installing a monitoring well. Could
6 you show me where that monitoring well was
7 installed on the map there?

8 A. Sure. There was a monitoring well
9 right immediately adjacent to the -- there is a
10 storm water flared-in section outfall right here
11 that goes to the Fox River. It was right between
12 -- about five feet off of that monitoring well,
13 right here, probably about 15 feet from the
14 river's edge. And it would be down-gradient from
15 the proposed construction activity (indicating.)

16 Q. I don't know if I missed it or not, but
17 were there any ground water monitoring results
18 included in the report that was provided to the
19 Board?

20 A. I don't believe --

21 MR. HARSCH: Can I correct what appears to be
22 a mistake? I believe you are referring to the
23 existence of monitoring wells that had been
24 previously put in, and your question is probably

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1 in Huff & Huff report. I think Mr. Donahue is --
2 has located the monitoring well that was just put
3 in in September of this year that Mr. Talsma
4 testified to; is that correct?

5 THE WITNESS: Yes. That is not the one you
6 were talking about?

7 MR. HARSCH: We intend to offer those results
8 during Mr. Huff's testimony.

9 MS. LIU: Well, in the Huff & Huff report on
10 page 7, it mentions that a monitoring well was
11 installed on August 13th, 1998, and there was some
12 soil samples from the installation of that well
13 provided in the report. Generally when you
14 install a monitoring well, you intend to monitor
15 the ground water. So I am just wondering if there
16 were samples from the well that the City provided

17 and I just overlooked or if they would be willing
18 to provide that kind of information.

19 HEARING OFFICER HALLORAN: If Mr. Donahue
20 can't answer it, perhaps Mr. Huff can when he gets
21 up there. He can testify.

22 MS. LIU: I will save that one.

23 THE WITNESS: Thank you.

24 MS. LIU: Thank you very much.

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1 HEARING OFFICER HALLORAN: Any further
2 questions?

3 REDIRECT EXAMINATION (Further)

4 BY MR. HARSCH:

5 Q. Mr. Donahue, you intend to follow the
6 same procedure that if you find a non -- something
7 that is apart from the soils in the jar, that you
8 will physically separate that and ship that
9 off-site in accordance with appropriate rules?

10 A. Absolutely.

11 HEARING OFFICER HALLORAN: Mr. Jagiello?

12 MR. JAGIELLO: No questions.

13 HEARING OFFICER HALLORAN: You may step down,
14 Mr. Donahue. Thank you.

15 MR. HARSCH: At this point I call Mr. Huff.

16 (Witness duly sworn.)

17 JAMES HUFF,

18 called as a witness herein on behalf of the City
19 of Geneva, having been first duly sworn, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HARSCH:

23 Q. Mr. Huff, would you please state your
24 name for us?

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1 A. James Edward Huff.

2 Q. And could you briefly describe what
3 your educational and professional qualifications
4 are?

5 A. Bachelor of Science in Chemical
6 Engineering from Purdue University, 1970. I have
7 a Master's of Science in Engineering from the
8 environmental engineering department, Purdue
9 University, 1971.

10 I am a registered professional engineer
11 in the states of Illinois and New Jersey.

12 My work experience includes two years
13 with Mobil Oil as an advanced environmental
14 engineer; three years with IIT Research Institute
15 as an associate environmental engineer; four years
16 with a company that is called Akzo Nobel
17 Chemicals, A-k-z-o, two years as an senior
18 environmental engineer and two years as manager of

19 environmental affairs for the corporation.

20 1980 I joined my wife in a firm called
21 Huff & Huff, Incorporated, of which I am vice
22 president and part owner. And I have worked
23 full-time since 1979 in that consulting facility
24 in the environmental area.

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1 Q. Have you testified in proceedings as an
2 expert witness?

3 A. Yes, sir.

4 Q. Have those proceedings involved both
5 waste water and waste disposal -- solid waste
6 disposal?

7 A. Yes, sir.

8 Q. Have you qualified as an expert in the
9 area of impacts from releases of hazardous
10 substances and other waste materials?

11 A. Yes, sir.

12 Q. Can you describe the work that you
13 performed for the City of Geneva with respect to
14 this project?

15 A. I was asked by the City of Geneva to
16 analyze the results that were obtained from a
17 series of 12 soil borings from beneath where the
18 anaerobic digesters were built. There were three
19 additional soil borings that were placed -- where

20 Phase II work was going to be done that was
21 included in that analysis as well. So I did a --
22 basically a compare -- compared the results to the
23 part 742 tier I criteria and prepared a report in
24 accordance with that information.

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1 That report was later revised after a
2 discussion with the Agency on March 24th to
3 include the supplemental sampling that we proposed
4 to do along with the Phase II work.

5 Q. You said the report, what has been
6 marked and accepted in evidence as Petitioner's
7 Exhibit 2?

8 A. Yes, sir.

9 Q. Are you thoroughly familiar -- strike
10 that.

11 Did you visit the site?

12 A. Yes, sir.

13 Q. And did you as part of -- in
14 preparation of Phase II look both at the
15 environmental impacts as well as the structural
16 impacts and potential uses of this material?

17 A. Yes, sir, we did. We collected a
18 sample from the pile and had a series of
19 geotechnical tests done on that to see if it would
20 be suitable for fill-type material.

21 Q. You physically observed the pile?
22 A. Yes, sir.
23 Q. Physically observed the samples that
24 were taken?

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1 A. Yes, sir.
2 Q. That is what I marked as Petitioner's
3 Exhibit No. 6?
4 A. That would be this, yes, sir.
5 Q. Is what is in that jar consistent from
6 what you have seen from your sampling of the pile?
7 A. Mr. Donahue indicated -- I don't
8 readily see any fused glass in there, which there
9 is some trace amount of fused glass. And perhaps
10 that sample is a little wetter than a deeper down
11 pile.
12 About 20 percent or so of the sample
13 tends to be finer-type material that is not quite
14 as aggregated as that based on my experience. So
15 I think there is more finds in that pile as a
16 whole, but overall that is similar to what that
17 pile looks like, yes, sir.
18 Q. How would you describe the material in
19 that pile?
20 A. I would describe it as a contaminated
21 media. It is clearly a soil material. It is very

22 high in sand and gravel. There is also about
23 20 percent silt and clay in that soil. And then
24 there are clearly pieces, evidence of fused glass,

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1 that would suggest that there was some
2 incineration or open burning-type activity that
3 would occur there.

4 So I would describe it as contaminated
5 media as opposed to a landfill degree, if you
6 will. It is clearly a soil that is contaminated.
7 It does not -- and none of the boring logs
8 indicated that they ever came across any
9 landfilled material in there. It was
10 predominantly soil.

11 Q. And that would be the soil borings done
12 where Phase I has been performed?

13 A. Phase I. And the three that were done
14 were Phase II.

15 Q. So do I understand that -- this term
16 contaminated media I guess has got me a little
17 hung up. Are you saying that that material as you
18 have examined it and as the soil borings are is
19 not landfill material? What are you saying?

20 A. Well, there is no evidence from what I
21 have seen that there is any landfilled material on
22 that site. There is certainly evidence of man's

23 activities out there, the fused glass. And as
24 Mr. Donahue had alluded to, they did find an

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1 occasional tire. But the primary material out
2 there is soil-type material, silt, clay, sand and
3 gravel, that is intermixed with material that may
4 have come from a landfill at some point in time or
5 open dumping.

6 The question is, as that pile has been
7 moved around and dispersed, when does the landfill
8 stop and when does contaminated media begin. And
9 that, I think, is an issue here is to -- what is
10 it that we are actually focusing on, and I think
11 Exhibit 6 is very important. So that one
12 understands what we are dealing with here is not
13 landfill material, but predominantly soil that is
14 contaminated with the fused glass and that type of
15 thing.

16 Q. When you talk about -- when you
17 testified about the physical construction, you are
18 referring to the historical construction on site
19 that Mr. Talsma testified to, correct?

20 A. That's correct, both the Highway 25,
21 the railroad bridge over -- or the bridge over the
22 railroad tracks as well as the various expansions
23 of the waste water treatment plant, most recently

24 in '72.

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1 Q. From a geoengineering standpoint, is
2 this material suitable fill?

3 A. Yes, sir. We ran quite a few
4 structural-type tests on this material. Probably
5 the most important was the one on the slope's
6 stability to make sure that it could be piled up
7 with that digester with a 3 to 1 slope, which is
8 standard job construction practices. And it was
9 suitable for that. It was also rated as
10 acceptable for highway construction subbase.

11 Q. Did you ever advise the City of Geneva
12 regarding the appropriateness of backfilling the
13 excavation with this material?

14 A. I don't know if advised is the right
15 word. I certainly indicated that I concurred with
16 that, that that was an acceptable practice under
17 agency policy.

18 Q. Have you and your clients carried out
19 similar practices in the past?

20 A. Yes, sir, they have. If I can give you
21 one example, I won the year 2000 Engineering
22 Excellence Award from the Consulting Engineering
23 Council of Illinois for remediation of a
24 remanufactured glass plant site. And part of that

1 project was the replacement back in the hole of
2 excavated material that was similar to this. It
3 was slag material from the manufactured gas plant
4 site. And that was approved by the Illinois EPA.

5 Q. Did you participate in telephone
6 conversations with representatives of the Agency
7 this spring?

8 A. On March 24th, 2000, I was involved in
9 that conversation, yes, sir.

10 Q. Were there questions raised regarding
11 the sampling that had been done to date on the
12 materials that were -- that had been excavated and
13 placed in that pile?

14 A. Referring to the 12 borings that were
15 done under the anaerobic digester, the question
16 was was a comment I believe by Ms. Joy Munie that
17 we needed to explain the rationale behind the
18 sampling protocol there, that we needed to
19 basically be able to state that the sampling was
20 done in accordance with either USEPA sampling
21 protocol or ASTM protocol.

22 Q. And did you address those in the
23 revised report?

24 A. Yes, sir. We went back and looked at

1 the sampling of those 12 and addressed exactly how
2 that was done with ASTM.

3 Q. Where is that set forth in your amended
4 report?

5 A. It is in Exhibit 2 in the text.

6 Q. And what is -- what were your
7 conclusions?

8 A. Well, that sampling was done consistent
9 with ASTM protocol.

10 Q. Do you have an opinion then as to
11 whether or not the materials that are in the pile
12 are suitable for use as fill on the site in the
13 tertiary lagoon closure?

14 A. Yes, I have an opinion.

15 Q. What is that opinion?

16 A. My opinion is that the material is
17 acceptable both from a geotechnical perspective as
18 well as from an environmental prospective. The
19 Agency had a draft of a term called a soil
20 management zone sometime I think approximately
21 six, eight months ago that would allow a --
22 exactly what Geneva would be --

23 MR. GURNIK: Objection.

24 THE WITNESS: -- proposing.

1 MR. GURNIK: Objection. He is talking about
2 the proposals that aren't even adopted rules yet.

3 HEARING OFFICER HALLORAN: Mr. Harsch?

4 MR. HARSCH: He is talking about a procedure
5 that the Agency has developed. Obviously, he is
6 talking about a proposal that is not yet filed
7 with the Board. But it is the Agency's own
8 document. It is the Agency's own draft procedure.
9 Mr. Huff can testify regarding it, I believe.

10 MR. GURNIK: I think that you just stated it
11 right there, it is draft. It is not official. It
12 is merely a draft document, something that is
13 under consideration. Governmental bodies are
14 considering drafts all the time as well as private
15 individuals submitting drafts.

16 HEARING OFFICER HALLORAN: I will sustain the
17 Agency's objection.

18 MR. HARSCH: I would like to make an offer of
19 proof.

20 HEARING OFFICER HALLORAN: All right.

21 BY MR. HARSCH:

22 Q. Mr. Huff, are you aware of a draft of a
23 proposal that is currently going under review at
24 the Illinois Environmental Protection Agency for

1 submittal to the Pollution Control Board to
2 establish soil management zones?

3 A. Yes, I have seen that draft. Yes. I
4 am on the IEPA liaison committee for the
5 Consulting Engineers Council of Illinois. In
6 fact, I am the chairman of that committee. And as
7 part of that committee, we are often invited by
8 the agency to look at draft documents, including
9 the one on soil management zones.

10 Q. Have you commented on that document?

11 A. No, sir, I have not.

12 Q. Have you submitted any correspondence
13 to the Agency urging they proceed to adopt it,
14 submit it to the Board?

15 A. I personally have not. There has been
16 -- there is an advisory committee of which the
17 Consulting Engineering Council is a member, and
18 they sent a letter to Director Skinner
19 approximately three weeks ago urging that they
20 move forward with the soil management zone
21 proposal.

22 Q. Have you discussed that proposal with
23 any members of the Agency yourself?

24 A. Yes, sir.

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1 Q. Whom?

2 A. Larry Estep in the site remediation
3 program.

4 Q. Who is Larry Estep?

5 A. I believe he is the manager of the site
6 remediation program.

7 Q. Is it your -- do you have an opinion as
8 to whether or not what Geneva is proposing to do
9 would be consistent with the draft proposal as you
10 understand it now says?

11 A. Well, the only draft I have seen was
12 the one that was approximately six months ago, and
13 my understanding is that it would be consistent
14 with that draft.

15 MR. HARSCH: Thank you for the offer of
16 proof.

17 BY MR. HARSCH:

18 Q. During that March telephone
19 conversation, did the Agency raise any questions
20 or concerns regarding prospective testing of the
21 soils to be excavated under Phase II?

22 A. Yes, sir, they did.

23 Q. And what were those concerns?

24 A. Their primary concern was we had a soil

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1 boring result underneath where the proposed
2 primary clarifiers are located that exceeded the

3 TCLP lead number of five milligrams per liter,
4 which makes it a characteristic hazardous waste.

5 The other two soil borings beneath the
6 aeration tanks and the proposed final clarifiers
7 were well below the five milligram per liter TCLP
8 lead. So they asked how we were going to handle
9 the hazardous waste soils, if you will, as we came
10 to that and whether we needed to do additional
11 tests.

12 Q. And what did you do in response to
13 those concerns?

14 A. Well, we outlined what our intentions
15 were with respect to additional testing. We did a
16 statistical analysis on the data from the 12 soil
17 borings underneath the anaerobic digester, plus
18 the three from Phase II, and determined that we
19 needed an additional 14 soil samples in order to
20 determine the maximum TCLP lead at the 90 percent
21 confidence level.

22 So included in that Exhibit 2 in the
23 last section is a proposal basically to collect an
24 additional 20 soil samples from 10 borings,

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1 including exactly where that previous boring had
2 been completed. We would sample continuously and
3 analyze at that location.

4 Q. And what would those sampling results
5 allow Geneva to do?

6 A. Well, one, make a determination as to
7 whether there is any hazardous waste lead that
8 exists on that site at a 90 percent confidence
9 level. If the indication is that there is, then
10 the proposal would call for piling the soil up in
11 5,200 cubic yard piles and taking samples from
12 those. And depending on the results, it would
13 either go out as a hazardous waste or it would be
14 used as the fill material in the tertiary lagoon.

15 Q. To date there is only one sample that
16 has such elevated levels; is that correct?

17 A. That's correct.

18 Q. Do you have any opinion as to whether
19 or not there is a possibility that that may be an
20 outlier event?

21 A. I believe that there is a strong
22 possibility that that is an outlier value given
23 the results of the other 14 TCLP lead tests.

24 Q. You have reviewed the Agency's adverse

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1 recommendation in this proceeding?

2 A. Yes, sir, I have.

3 Q. Following the receipt of that, were you
4 requested to undertake any additional work on this

5 project?

6 A. Yes, sir.

7 Q. What is that work?

8 A. I installed a bedrock monitoring well
9 in the location that Mr. Donahue referred to.
10 This is Exhibit 3, I believe?

11 Q. Yes.

12 A. It is located immediately to the south
13 of the sludge beds and immediately east of the
14 river, basically right where the road bends down
15 in that location. The intent of this location,
16 ground water flow is predominantly to the west
17 here because of the strong relief. There is about
18 a 25-foot drop from the east side of the treatment
19 plant to the west side. And because the Fox River
20 flows to the south, there is probably a southerly
21 component to that as well. And so this location
22 was the most readily available location that would
23 be down-gradient of the Phase II work.

24 Q. And I show you what has been marked as

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1 Petitioner's Exhibit 7. I have previously given a
2 copy to the Agency before we broke or during a
3 break. Is that a copy of -- what is Petitioner's
4 Exhibit 7?

5 A. This is a letter I prepared yesterday,

6 and then I still don't have all the analytical
7 results. I got a few more in today, so I
8 supplemented this, and it is now dated
9 October 11th, 2000.

10 Q. That is the change at the top?

11 A. That's correct. And this describes the
12 monitoring well, the monitoring well log and
13 boring log, as well as the analytical results that
14 have been received to date.

15 Q. And would you describe what your
16 results are?

17 A. We ran basically what would be
18 characterized as a full priority pollutant
19 analysis on the sample. We ran both total leads
20 and soluble leads to make sure that if we did have
21 an exceedence on the total, we could determine
22 whether it was due to the particulates.

23 All of the metal results readily meet
24 the class I ground water standards in the state of

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1 Illinois. We ran a series of pesticides,
2 herbicides and PCBs on that ground water, and
3 those all came back nondetect on there. And I am
4 still waiting for what is called a semi-volatile
5 or acid extractables and base neutrals. However,
6 based on the soil results that have been

7 previously conducted, I wouldn't expect we will
8 find any of those. Those results should be back
9 by the end business today.

10 And then we ran the volatile organics.
11 And we got one hit. And that was a compound
12 called cis 1, 2 dichloral ethylene, which is a
13 degradation product of trichloral ethylene, and it
14 was present at .0012 milligrams per liter. And
15 the drinking standard or class I standard is
16 .070 milligrams per liter. So we were less than 2
17 percent of the class I standard.

18 Just to summarize, the ground water
19 that is migrating toward the Fox River from the
20 fill area achieves all of the class I ground water
21 standards. You could use that water supply for
22 drinking water purposes based on chemical
23 analysis. We didn't run a biological analysis.

24 MR. HARSCH: At this point, Mr. Hearing

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1 Officer, I would move for the admission of
2 Petitioner's Exhibit 7 with the ability to
3 supplement the additional analysis when they
4 become available.

5 MR. JAGIELLO: The Illinois EPA -- we would
6 object to the Petitioner's Exhibit No. 7. There
7 is a lot of -- this information has not been

8 submitted to the Illinois EPA. The Illinois EPA
9 technical staff has not had the opportunity to
10 review it. So at this point I can't tell you
11 whether the Illinois EPA would agree with that,
12 whether or not one well would be sufficient to
13 monitor the area that we are talking about. We
14 have no idea about how the well was installed, how
15 samples were taken and whether -- you know, have
16 the technical people take a look at what analyses
17 were run for. So at this point I would object.

18 MR. HARSCH: With all due respect, I have
19 never seen the Illinois Environmental Protection
20 Agency object in a regulatory proceeding to the
21 introduction of sampling results.

22 To the extent they have any technical
23 questions, I would be more than happy to make
24 Mr. Huff available. I would be happy to address

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1 those. And if the Agency wants to supplement this
2 record based on those questions once their
3 technical people, who they were free to have here
4 at today's hearing -- they raised the issue of
5 ground water -- lack of ground water sampling
6 results in the recommendation. And we have moved
7 forward to address that. The fact they don't have
8 any technical people here today is not my making,

9 Mr. Hearing Officer. I think this is a completely
10 proper exhibit and should be allowed into the
11 record.

12 MR. JAGIELLO: And I would disagree. I think
13 Mr. Harsch has been doing this long enough to know
14 that this document couldn't be reviewed today by
15 anybody sitting here. They wouldn't give any
16 answers to responses to the technical adequacy of
17 what has been done by the consultants there at the
18 site.

19 Again, I would object to the fact that
20 they are looking at supplementing this with
21 information that I don't even know if it exists
22 yet. I don't know if they are waiting for the
23 samples to be analyzed or they are waiting for the
24 results of samples that have been analyzed. I

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1 have never been part of a hearing where anybody
2 has introduced or tendered information that was
3 dated, you know, the same day as the hearing, at
4 least somebody penciled in October 11. It looks
5 like it was a 10. I have never had that happen
6 before, and I just would object to the
7 introduction of this document and the information
8 contained therein.

9 HEARING OFFICER HALLORAN: Anything further,

10 Mr. Harsch?

11 MR. HARSCH: I am free to introduce in a
12 regulatory proceeding or a contested case unless I
13 am under a hearing officer requirement any
14 relevant evidence, and this is clearly relevant.
15 It is in response to the Agency's adverse
16 recommendation. We are more than happy to
17 describe -- if you have any questions regarding
18 the -- Mr. Huff has explained why it is marked
19 October 11th. He has explained that we are
20 awaiting sampling results from the sample that was
21 submitted. The one parameter that was yet to be
22 completed -- and he does not believe that there
23 will be any problems associated with that, is the
24 scan based upon the soil analysis from the area.

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1 To have the Agency sit here and say
2 that we can't introduce evidence in response to
3 their adverse recommendation I believe is unheard
4 of and unprecedented.

5 HEARING OFFICER HALLORAN: I think based on
6 what we are proceeding under, 102(j) where
7 102.282, admissible information, all information
8 which is relevant and not repetitious, I would at
9 this point overrule the Agency's objection. If
10 they have any comment, they can follow up in a

11 post -- in the post-hearing brief regarding
12 Petitioner's Exhibit No. 7.

13 MR. HARSCH: And Mr. Hearing Officer, I stand
14 by my statement that we will make Mr. Huff
15 available for any questioning in a formal or
16 informal manner. If they want to go back on the
17 record at some point in time, we would be happy to
18 do that if the Agency has any questions regarding
19 the work that has been performed and the results
20 it obtained from that work.

21 MR. JAGIELLO: I would like to ask if this
22 document and any other information has been
23 submitted down to Springfield for the technical
24 people to actually review it?

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1 HEARING OFFICER HALLORAN: Mr. Harsch? I
2 believe the question is directed to Mr. Huff.

3 MR. JAGIELLO: Mr. Huff or Mr. Harsch. Maybe
4 it has already been sent. I don't know. I would
5 tend to doubt it since it is dated today.
6 Mr. Huff, were you planning to send this down to
7 somebody in Springfield for them to take a look at
8 this issue?

9 THE WITNESS: I was not. That was prepared
10 in direct response to the Agency's comments, so
11 that was prepared for today's hearing. Whether it

12 got -- I would presume you being a representative
13 of the Agency, I would only assume it would get
14 down to your technical people.

15 MR. JAGIELLO: I would think that it would be
16 more appropriate to, you know, formally send it
17 down to the same people that they apparently have
18 had discussions with regarding this and to
19 formally submit it to Springfield.

20 THE WITNESS: If I can just respond, I would
21 think those people should have been here today.
22 We have dealt with those people for five years,
23 and we get to this point in the hearing and they
24 are not here and we have two relatively new people

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1 that we haven't dealt with for the last five
2 years.

3 HEARING OFFICER HALLORAN: If I may interject
4 here, Mr. Harsch, I believe Mr. Gurnik had sent
5 you a memo probably about 30 days ago stating that
6 they would be calling no witnesses. And my
7 understanding is that you were aware of that
8 and --

9 MR. HARSCH: You are correct, Mr. Hearing
10 Officer, but there is no -- I had -- that is
11 calling no witnesses. It doesn't mean that the
12 Agency is going to show up at a preceding where

13 they have raised technical issues and there are
14 technical issues present and not have any
15 technical people present at the hearing. Whether
16 they were witnesses or not, the Agency is free to
17 bring whoever they want to bring to a hearing to
18 assist counsel in cross-examining witnesses. And,
19 frankly, and I don't mean to be flip about this, I
20 am -- I guess I kind of agree with Mr. Huff. I am
21 surprised there aren't technical people here.
22 They have raised technical issues, technical
23 questions.

24 MR. JAGIELLO: I just want to ask, is there

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1 anything in the record that indicates that the
2 petitioner was planning on submitting additional
3 information on the date of the hearing? I don't
4 remember seeing anything. I don't remember
5 reading anything.

6 MR. HARSCH: I am under no requirement to.

7 MR. JAGIELLO: Then I think we are getting
8 into the whole -- if they are wondering why there
9 aren't witnesses here when we have absolutely no
10 idea that there is going to be additional
11 information submitted, we had the petition and we
12 also had the Huff & Huff report, but we were
13 unaware that you were planning on submitting

14 anything at the day of the hearing. And to say
15 you should have had somebody here to review the
16 stuff that we didn't even know was going to come
17 in, I think that is a fairness issue.

18 MR. HARSCH: The hearing officer has ruled.
19 We will be more than happy -- again, if you feel
20 it necessary, we will be more than happy to
21 reconvene this or address it any way you would
22 like. It is simply an offer to address any
23 technical concerns so you can more than -- and
24 have every opportunity to address this issue and

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1 any concerns you might have on the record.

2 HEARING OFFICER HALLORAN: Can we take a
3 five-minute recess, please? Off the record.

4 (Short recess taken.)

5 HEARING OFFICER HALLORAN: All right. We are
6 back on the record after approximately a five,
7 six-minute break.

8 Any further questions of Mr. Huff?

9 MR. HARSCH: Yes, I do.

10 BY MR. HARSCH:

11 Q. Mr. Huff, you just informed me of
12 something. What was that?

13 A. Yes, I just called into my office to
14 see if they have heard from the laboratory on the

15 base neutrals and acid extractables. And the lab
16 has completed the analysis and none were detected.
17 So my statement that that ground water meets all
18 of the class I standards is valid and also
19 includes now what is called the semi-volatile
20 compounds. And we will have the written results
21 by tomorrow.

22 Q. Mr. Huff, why was it that you had not
23 earlier recommended ground water sampling at this
24 site?

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1 A. Well, if you look at the proximity of
2 the treatment plant and topography where you have
3 a 25-foot or more drop in elevation across the
4 site from east to west, it is apparent to me that
5 any ground water coming off of that site flows
6 into the Fox River, that that would be basically
7 an effective barrier for any ground water passing
8 over the other side and it would flow that way.

9 If you look at the water quality on the
10 Fox River, which is excellent, none of these
11 contaminants -- and we will focus right in on lead
12 -- are identified as there is any water quality
13 problem on the Fox River with those.

14 And so it is -- in my mind it is an
15 exercise that was pretty apparent that you

16 couldn't impact the Fox River from the ground
17 water quality here, you wouldn't get sufficient
18 ground water flow to impact the water quality in
19 the Fox River. So that was my primary motivation.

20 Q. Are you familiar with what was
21 encountered when the -- in terms of ground water
22 flow when they excavated for phase I?

23 A. Well, when they initially dug the pits,
24 they found that they had what I would guess would

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1 call perch water inside the contaminated media, if
2 you will. Bedrock is 10 to 15 feet down at the
3 east side of the plant. And then that drops down
4 to the river, it is approximately five feet to
5 bedrock.

6 And so there was some concern that when
7 they went to construct the anaerobic digesters
8 that they would have a large dewatering problem on
9 their hands. It turned out that when they
10 actually started constructing the anaerobic
11 digesters, the amount of perch water was truly
12 finite and it was not a big issue from a
13 construction point of view.

14 The ground water here based on our
15 monitoring well was approximately a foot above the
16 bedrock at the -- where -- at our location.

17 Q. Do you have an opinion as to whether or
18 not the historical presence of these materials on
19 this -- at the sewage treatment plant site have
20 had any adverse impact on the environment?

21 A. Yes, sir.

22 Q. What is that opinion?

23 A. Well, in order to have an adverse
24 impact, there has to be an exposure pathway and a

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1 receptor. We looked at from the chemical analyses
2 that were done, three standard pathways, if you
3 will, ingestion, inhalation and soil migration to
4 ground water. All of the analytical results from
5 all 15 borings showed that there is -- meet the
6 tier I ingestion numbers as well as the tier I
7 inhalation numbers for industrial, commercial and
8 construction work.

9 So I would conclude from that based on
10 the analysis there is no threat to human health in
11 the environment from an ingestion or inhalation
12 pathway.

13 From the soil migration to ground
14 water, there were exceedences of just one
15 parameter, and that was the TCLP lead. However,
16 the bedrock well that we just put in was
17 nondetectant at less than .005 milligrams per

18 liter. And again the Fox River does not have any
19 lead water quality problems, so it is not a
20 question of lead leaching into there.

21 Based on that, I would conclude that no
22 special precautions are necessary for that
23 material.

24 Q. And what about -- do you have an

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1 opinion as to whether or not the proposed use of
2 that -- the excess excavated materials for fill on
3 site as to whether that will have any adverse
4 environmental impact?

5 A. Well, you are moving material from
6 Point A to Point B. It is on the same property.
7 The ground water is going to continue to migrate
8 to the same exact location, basically the Fox
9 River, albeit maybe a couple hundred feet further
10 south.

11 So I don't believe that there will be
12 any change in the ground water quality, which we
13 show meets the class I standards. There certainly
14 is not going to be any change in the ingestion or
15 the inhalation exposure as a result of this other
16 than just normal airborne dust from a construction
17 project.

18 So I don't believe that there will be

19 any change in the impacts of which I don't believe
20 the impacts there are any. Basically, they are
21 all within what is acceptable under part 742.

22 Q. Did you ever complete your review of
23 what the impact would be of hauling that material
24 off site, hauling the fill back on site?

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1 A. Yes. No, I have not done a complete
2 review on that. I have would have several
3 concerns with that. First and foremost, it is a
4 pretty steep access road getting up to State
5 Route 25. You are looking at approximately 20,000
6 cubic yards. You are looking at probably about
7 1,200, 1,300 truckloads that are going to be
8 pulling out to there. I think you got a very real
9 safety issue from an access point of view. That
10 is a dangerous intersection there.

11 You, of course, are going to consume a
12 considerable amount of petroleum in the way of
13 diesel fuel in those trucks, which put out a
14 considerable amount of polynuclear aromatic-known
15 carcinogens for the public to breathe as well as
16 the carbon dioxide, which is a global pollutant.

17 My personal opinion and very
18 professional opinion is that you are very much
19 better off recycling that as beneficial use on

20 site. Because in addition to those truckloads
21 that you are going to have to haul out, you are
22 going to have to bring in some type of clean fill.
23 So you have the same access and CO2 and the
24 polynuclear aromatic emissions associated with the

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1 new trucks that have to bring in clean fill.

2 Q. You are familiar with the Agency's
3 adverse recommendations?

4 A. I have read it.

5 Q. On page 4 going over to page 5, the
6 Agency states that they believe additional studies
7 of the site or audits are necessary. Do you share
8 that opinion?

9 A. I believe with respect to the anaerobic
10 digester that there was adequate sampling that was
11 done to perform that. And so that existing pile
12 out there has been adequately characterized. And
13 as Mr. Donahue alluded to, that it is the -- you
14 do find an occasional surprise in there. He found
15 some dry paint in there that was managed as a
16 special waste.

17 I think for Phase II I would agree with
18 that that it is two-fold. We need to do the
19 additional soil borings to nail down, not only
20 TCLP lead, but we had proposed to do all the

21 metals on a TCLP basis. So statistically we are
22 comfortable that there is no hazardous waste
23 there.

24 But certainly areas like the dry paint

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1 could be encountered in Phase II, and I think
2 Geneva would continue to be diligent and would
3 need to be diligent if they do uncover something
4 during the excavation that they would manage that
5 properly just as they did with the dry paint.

6 Q. And the Agency questions on page 5 that
7 the excavated waste posed no significant risk to
8 the environment. Why is there a need to conduct
9 additional tests for hazardous waste
10 characteristics, close quote? Why did you propose
11 additional testing?

12 A. I think again you have to separate
13 Phase I piles from the Phase II that is still in
14 the ground. Phase I I believe there is no
15 additional testing that needs to be done.
16 Phase II I readily concur that three soil borings
17 is not sufficient to adequately characterize that.
18 So that would be standard practices, that we
19 believe those three are representative, other than
20 the one TCLP lead that we need to go back and need
21 to determine whether it is a valid number or

22 whether it is an outlier. And then we need to
23 continue to be diligent during the excavation.

24 Q. Do you believe that additional TCLP

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1 value characteristics should be done for organic
2 parameters?

3 A. No, I think for two reasons. One, the
4 organic results to date have been consistently
5 low. There has been an occasional hit of a
6 volatile organic compound and I believe some of
7 the polynuclear aromatics, but not enough that it
8 would pose a threat to ground water. And I think
9 our ground water results verified that as well.
10 And the numbers were all well below any ingestion
11 or inhalation exposure pathway. So I don't see
12 any reason to do that.

13 We proposed as we dug out the material
14 if we -- or actually even during the soil borings,
15 that if we do get an indication with a field
16 instrument called a photoionization detector,
17 which detects volatile compounds, we would then
18 run a volatile analysis, which would be a
19 potential concern. And you can tell by the field
20 reading whether you are going to have them there.

21 Q. And that additional sampling was all
22 done in response to the Agency's concerns voiced

23 to you and us during that March conversation?

24 A. I think they were formalized as a

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1 result of that. I think it was always the
2 intention of Geneva to recognize that if this
3 adjusted standard request was granted that there
4 was really additional work to do, specifically
5 with that one TCLP lead which a large number of
6 people in Geneva as well as myself believe is an
7 outlier.

8 Q. On page 6 of the Agency's
9 recommendation they talk about -- they raise
10 concerns regarding the movement of the excavated
11 materials and using it as fills. Are you familiar
12 with paragraph, sir?

13 A. This one (indicating)?

14 Q. Yes.

15 A. Yes, sir, I am.

16 Q. Both the concerns raised in the first
17 and second paragraphs on page 6?

18 A. Yes, sir.

19 Q. Do you share the Agency's concerns?

20 A. No, sir, I don't.

21 Q. And why?

22 A. Well, we could take them one by one.

23 First, prior to the excavation of the Phase I

24 material where the subject areas for Phase I and

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1 Phase II were relatively flat and they did not
2 have an asphalt parking lot or concrete over them,
3 so any precipitation that fell on those areas
4 probably had -- 90 percent of that was allowed to
5 infiltrate through that material.

6 Nothing is going to change with that.
7 If you move that over to fill in the tertiary
8 lagoon, you might slope it a little better to
9 reduce the amount that might infiltrate in. So
10 that was their first concern.

11 Second was compaction, they inferred
12 that it might not be as well compacted when it
13 goes into the tertiary lagoon, which would allow,
14 because it is uncompacted, water to migrate
15 through it faster. The same amount of water is
16 going to go through. It may go through at a
17 faster rate. And if it goes through at a faster
18 rate, it is likely to pick up less contaminants
19 instead of more because of -- the contact time
20 will be reduced.

21 However, the material will be compacted
22 to some degree as part of the construction. And
23 then over the next couple years that will compact
24 down to the levels that are similar to the

1 compaction that exists today.

2 Q. And your geotechnical review of the
3 material shows that it is capable of being
4 compacted?

5 A. Yes, sir.

6 Q. And part of the use would be used for
7 fill under the proposed sludge drying beds; is it
8 not?

9 A. That's correct, in the corner of the
10 tertiary lagoons there, yes.

11 Q. Do you have an opinion as to whether or
12 not the excavated materials are, in fact, landfill
13 material?

14 A. Well, as I think I have earlier
15 testified, the term that is used in the Agency is
16 contaminated media here as opposed to landfill
17 material. None of the boring logs would indicate
18 that they ran across, if you will, garbage or
19 trash. It was predominantly soil that had
20 contaminated material in there, the fused glass,
21 Coke, cinders, that type of thing.

22 Q. Do you believe any of the requirements
23 that apply to a solid waste landfill should apply
24 to an area where this material is moved and used

1 for fill?

2 A. Well, I believe that this is really
3 better characterized as contaminated media as
4 opposed to landfill material. So I don't believe
5 the landfill regulation would be appropriate in my
6 opinion.

7 MR. HARSCH: Mr. Hearing Officer, at this
8 point in time, I would move for the introduction
9 of Petitioner's Exhibit 6, which is the soil jar
10 for the purposes of allowing the Board to
11 physically look at what the material is.

12 MR. JAGIELLO: Again, we are -- we state our
13 position. We are objecting to it. We don't
14 believe it is necessarily representative of the
15 entire pile.

16 HEARING OFFICER HALLORAN: I will sustain the
17 Agency's objection. I don't think the Board will
18 be assisted by looking at a jar of material. I
19 think they can deduce any kind of needed
20 information regarding the adjusted standard from
21 the soil analysis from the Board.

22 MR. HARSCH: Mr. Hearing Officer, I would
23 like to make an offer of proof and have you take
24 that back for the Board.

1 HEARING OFFICER HALLORAN: Very well, sir.

2 MR. HARSCH: That concludes my questions of
3 Mr. Huff at this time.

4 CROSS-EXAMINATION

5 BY MR. JAGIELLO:

6 Q. Mr. Huff, how long have you been
7 working on this project with the City of Geneva?

8 A. Approximately a year.

9 Q. About a year. I want to ask you about
10 the report that you put together. And again
11 somebody brought it up earlier today on page 7 on
12 the report that you did talk about monitoring well
13 No. 1. Is there a monitoring well No. 1 out there
14 at the site?

15 A. Does it exist today?

16 Q. Yes.

17 A. I don't know. I don't believe it does,
18 but there was one, yes.

19 Q. Was it sampled during -- while it
20 existed?

21 A. Yes.

22 Q. Have you seen samples -- was it -- were
23 samples from that well analyzed?

24 A. Yes, sir.

1 Q. Have you seen the analysis?

2 A. Yes, sir.

3 Q. Was that information submitted to the
4 Illinois EPA, the ground water analysis for well
5 No. 1 prior to today?

6 A. I believe it was.

7 Q. Is the analyses from the well included
8 in the information in your report?

9 A. No, sir.

10 Q. And then you said that this monitoring
11 well, the new monitoring well, the one that was
12 put in -- well, the one that was installed in an
13 area you indicated, that was put in when?

14 A. September 11th or 13th, in that time
15 period.

16 Q. Just last month?

17 A. Yes.

18 Q. Are there other methods of taking
19 ground water samples other than installing a
20 monitoring well?

21 A. Pretty vague question. This was a
22 bedrock well, and so I believe my answer would be,
23 no, there is really no other acceptable method of
24 doing that.

1 Q. So on that site the only way you can
2 get a ground water sample would be by installing
3 ground water mining wells?

4 A. I don't think that was your first
5 question. Is that a new question?

6 Q. Well, that is my question now.

7 A. The answer to that is no.

8 Q. No meaning?

9 A. There are other methods -- you have to
10 differentiate here. You have to be very careful
11 of the term ground water. You have a site here
12 that true ground water is approximately at the
13 bedrock water surface depending on the
14 precipitation and the level in the Fox River.

15 You have up in this area where you have
16 the contaminated media what I would call perched
17 water. The Agency sometimes refers to that as
18 leachate water, as opposed to ground water. That
19 is not in the bedrock. It is sitting on top of
20 the bedrock.

21 So we have to be careful when you ask
22 me is there a way to get a ground water sample.
23 If it is the bedrock, you have to put a monitoring
24 well in. If you just want to take a sample of the

1 water that is perched on top of the bedrock, there

2 are other ways of doing that.

3 Q. And how would that be done?

4 A. You could, I suppose, dig a pit and
5 collect a sample out of the pit of the water. You
6 can put down with a unit called a geoprobe a pole
7 down and try to suck up with a vacuum a sample of
8 the water.

9 Q. Okay. And that had not been done prior
10 to installation of -- well, the geoprobe method of
11 taking a water sample had not been done by you in
12 your work on this site, correct?

13 A. That's correct. Because the ground
14 water again here is predominantly in the bedrock
15 and you couldn't use a geoprobe in that case.

16 Q. Mr. Huff, you said, I believe, that as
17 far as the Phase II work goes -- and that Phase II
18 work is where that soil sample was high in lead --
19 that additional investigation is necessary?

20 A. Well, the additional investigation is
21 really necessary over the whole Phase II report,
22 and the proposed sampling for that is outlined, I
23 believe, in appendix D to Exhibit 2.

24 Q. The additional work that would be done

1 out there would be to either show other lead is a
2 concern or not a concern, right?

3 A. It would be, yes, really two-fold. One
4 it would be that, if you can say to the 90 percent
5 confidence level that there is no TCLP levels
6 above five milligrams per liter, then additional
7 soil sampling wouldn't be necessary when you
8 excavate that soil.

9 However, if we do find that we have
10 results above five milligrams per liter and
11 statistically at least we show that, then we would
12 sample as we excavated every 200 cubic yards.
13 This is a site where we are going to pull out
14 somewhere between 10 and 15,000 cubic yards. So
15 it is a significant amount of samples that we
16 would collect then during the excavation.

17 Q. Couldn't samples have been taken in the
18 area where that sample showed the high-level lead,
19 sampling of that area could have been done,
20 correct?

21 A. At what point in time?

22 Q. Anytime.

23 A. No, sir.

24 Q. You couldn't put a probe down, some

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1 kind of probe to take samples in and around that
2 area where that high level was detected?

3 A. You have about 20 feet of material from

4 Phase I piled on top of it at the present time.

5 Q. Could it have been done?

6 A. Today?

7 Q. Yes.

8 A. Through that 20 feet?

9 Q. Yes.

10 A. Not without a massive amount of work in
11 order to recontour it so you can get a drill rig
12 up into that location, no, sir.

13 Q. Mr. Huff, you also referred to the
14 material out there as contaminated media, but yet
15 -- what exactly do you mean by contaminated media?

16 A. The media in this case is soil, and it
17 does have some contaminants in there.

18 Q. Contaminants such as what?

19 A. Well, there is clearly lead that is
20 present in there. The leachable lead is present
21 in there. Our report talks about various
22 compounds that were present in there,
23 predominantly below the tier I level, but
24 nonetheless present.

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1 Q. What about bottles, intact bottles,
2 what about tires, wouldn't that be indicative of
3 landfilling or open dumping in that area?

4 A. Well, certainly open dumping I would

5 concur with that. The question I would pose back
6 to you is if you find a tire along the roadway is
7 that a landfill when somebody discards a single
8 tire?

9 Q. If the tires were found while
10 excavation was progressing and you find tires and
11 bottles intact and paint material, what would you
12 consider that?

13 A. Too big a question. What are my
14 choices?

15 Q. Wouldn't that be consistent with
16 landfilling activity?

17 A. Well, if that is true, then every tire
18 along the road, every bottle along the road, every
19 paint can along the road is a landfill. And, no,
20 sir, I don't believe that is the correct
21 definition of a landfill.

22 Q. You are using -- the definition of
23 landfill that you are using now, is that your own
24 definition of landfill rather than perhaps a

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1 statutory or regulatory definition?

2 A. As I sit here, I am not sure what the
3 statutory, regulatory definition is. So yes, sir,
4 it is mine.

5 Q. You are using your definition?

6 A. Yes, sir.

7 Q. In the water sampling that was done, I
8 know that new well is installed. Did you take any
9 water samples from the Fox River?

10 A. No, sir.

11 MR. JAGIELLO: I have no further questions.

12 HEARING OFFICER HALLORAN: Can we go off the
13 record?

14 (Discussion had off the
15 record.)

16 HEARING OFFICER HALLORAN: Mr. Harsch?

17 REDIRECT EXAMINATION

18 BY MR. HARSCH:

19 Q. Mr. Huff, there are discarded materials
20 present on that site that have been encountered?

21 A. Yes, sir.

22 Q. And that would be the glass, the tires,
23 the small amount of dried paint that was referred
24 to?

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1 A. Correct. And that would be consistent
2 with the definition of waste under the 807 regs, I
3 believe it is.

4 Q. In your opinion is there any necessity
5 to taking any samples from the Fox River?

6 A. No, sir.

7 MR. HARSCH: I have no further questions.

8 HEARING OFFICER HALLORAN: Any recross,
9 Mr. Jagiello?

10 MR. JAGIELLO: No further questions.

11 HEARING OFFICER HALLORAN: Ms. Liu, do you
12 have any questions for the witness, Mr. Huff?

13 EXAMINATION

14 BY MS. LIU:

15 Q. Good afternoon, Mr. Huff. Could you
16 please explain how the priority pollutants were
17 determined for the sampling scheme that Huff &
18 Huff and B&W used?

19 A. I think it was by just specifying the
20 test method to cover the eight RCRA metals, the
21 volatile organics under the SW846 best procedure
22 and the same with the semi-volatiles and the
23 pesticides, herbicides and PCBs. The list varies
24 a little from water pollution test procedures to

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1 the solid waste test procedures.

2 Q. Before the 1960s, there were a lot of
3 materials that were used that are nowadays either
4 highly regulated or even banned, things like PCBs,
5 asbestos. Were those addressed at all in the
6 sampling scheme?

7 A. Asbestos is typically not analyzed for

8 on soil samples. PCBs certainly were analyzed on
9 numerous samples, including the last ground water
10 sample on that bedrock well, and no PCBs were
11 detected in any of the samples.

12 Q. Not being a chemist, can you tell me
13 where I can find that in the report?

14 A. We start with Petitioner's Exhibit 7,
15 the PCBs are listed on the Test America results on
16 -- under the analysis pesticides, PCBs. And it
17 lists all of the pesticides that were analyzed
18 for. And then there are approximately seven PCBs
19 that were analyzed for, PCB 1016, 1221, et cetera.
20 And that pertains to -- the number of carbon is
21 the first number on there. And the second two
22 digits are the percent chlorine. So, for example,
23 PCB 1242 would be a biphenyl, there are 12
24 carbons, and it is 42 percent chlorine.

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1 Q. Thank you. There is some mention in
2 the report about the levels of arsonic being found
3 above background levels that are --

4 A. Actually found above tier I, not above
5 background. That is not correct.

6 Q. I guess I was jumping ahead. How did
7 Huff & Huff determine what background would be for
8 that area?

9 A. Well, the Illinois EPA has a
10 publication that gives background levels for
11 all metals in metropolitan areas and the
12 nonmetropolitan areas. When they -- actually, the
13 number that the Agency proposed in part 742 is
14 exceeded by approximately 50 percent of the state
15 of Illinois in arsonic. And Huff & Huff testified
16 on two occasions in the part 742 proceedings that
17 that was going to be a significant problem in the
18 state.

19 There is a proposal before the Board
20 introduced by the Agency to amend part 742 that
21 will amend the arsonic level under tier I such
22 that the values here will meet the tier I arsonic
23 number that has been proposed by the Agency in the
24 part 742 proceedings.

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1 MS. LIU: Thank you very much. That is all I
2 have.

3 HEARING OFFICER HALLORAN: Mr. Harsch, any
4 questions?

5 MR. HARSCH: No.

6 MR. JAGIELLO: Mr. Jagiello?

7 MR. JAGIELLO: No.

8 HEARING OFFICER HALLORAN: You may step down.

9 Any further witnesses, Mr. Harsch?

10 MR. HARSCH: No, sir.

11 HEARING OFFICER HALLORAN: That appears to
12 conclude the petitioner's case-in-chief. The
13 Agency, do you wish to present any witnesses?

14 MR. GURNIK: No.

15 HEARING OFFICER HALLORAN: All right,
16 Mr. Harsch, would you care to make a closing
17 argument?

18 MR. HARSCH: Well, I would be more than happy
19 to waive closing arguments today and follow up
20 with written responses if counsel is agreeable.

21 MR. GURNIK: Yes.

22 HEARING OFFICER HALLORAN: Can we go off the
23 record, please?

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1 (Discussion had off the
2 record.)

3 HEARING OFFICER HALLORAN: We are back on the
4 record now. We were discussing the briefing
5 schedule. Again, there are no members of the
6 public here. But if there were, they would be
7 allowed a 14-day written public comment from the
8 end of the hearing.

9 With that said, the briefing schedule
10 is as follows: Petitioner's post-hearing brief is

11 due November 14th. The Agency's post-hearing
12 brief is due December 8th. And Petitioner's
13 reply, if any, is due December 22nd.

14 MR. GURNIK: May I ask one question?
15 Regarding Exhibit No. 7, if the Agency does find
16 that it has some questions or problems with this
17 exhibit upon review by its technical staff, you
18 had mentioned that we would be able to submit some
19 type of motion. I just want to make sure that I
20 know what procedural rules we are applying for the
21 motion of practice here so that I will be clear on
22 getting that motion filed on time.

23 HEARING OFFICER HALLORAN: Wouldn't it be
24 under 101, Mr. Gurnik? Offhand, I can't find it,

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1 Mr. Gurnik, but I will address that in my order
2 summarizing the briefing schedule that will be
3 filed next week.

4 MR. GURNIK: Thank you.

5 HEARING OFFICER HALLORAN: Anything else?
6 Thank you very much.

7 MR. HARSCH: Thank you.

8 MR. GURNIK: Thank you.

9 MR. JAGIELLO: Thank you.

10 (Whereupon the proceedings in
11 the above-entitled matter were

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concluded.)

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2) SS:
3 COUNTY OF LAKE)

4 I, Cheryl L. Sandeck, a Notary Public
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7 the State of Illinois, do hereby certify that I
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