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ILLINOIS POLLUTION CONTROL BOARD

FOREST PRESERVE DISTRICT)
OF DUPAGE COUNTY, ILLINOIS,)
a body politic and corporate)
in the County of DuPage,)
State of Illinois,)
Complainant,)
vs)
MINERAL LAND AND RESOURCES)
CORPORATION, a Delaware)
corporation, SOUTHWIND)
FINANCIAL, LTD., an Illinois)
corporation, formerly known)
as ABBOTT CONTRACTORS, INC.,)
BLUFF CITY MATERIALS, INC.,)
an Illinois corporation as)
assignee of ABBOTT CONTRACTORS,)
INC.,)
Respondents.)

PCB No. 96-84

Volume IV

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Caryl L. Hardy, CSR, a notary public within and for the County of Cook and State of Illinois, before Michael Wallace, Hearing Officer, at 505 North County Farm Road, Wheaton, Illinois, on the 21st day of October 1997, A.D., scheduled to commence at 9:30 a.m., commencing at 9:50 a.m.

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

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-4925
8 BY: MR. MICHAEL WALLACE

9 CHAPMAN AND CUTLER,
10 111 West Monroe Street
11 Chicago, Illinois 60603
12 (312) 845-3000
13 BY: MR. RICHARD A. MAKARSKI and
14 MR. ROBERT G. TUCKER

15 Appeared on behalf of the Complainant,

16 WALSH, KNIPPEN, KNIGHT & DIAMOND, CHARTERED,
17 601 West Liberty Drive
18 Wheaton, Illinois 60189
19 (630) 462-1980
20 BY: MR. JAMES H. KNIPPEN, II

21 Appeared on behalf of the Respondents,
22 Bluff City Materials, Inc. and Southwind
23 Financial, Ltd.,

24 BUTLER, RUBIN, SALTARELLI & BOYD,
25 Three First National Plaza
26 Suite 1800
27 Chicago, Illinois 60602
28 (312) 444-9660
29 BY: MR. MICHAEL A. STICK

30 Appeared on behalf of the Respondents,
31 Bluff City Materials, Inc. and Southwind
32 Financial, Ltd.,

33

34

35

1 A P P E A R A N C E S: (cont'd)

2 GOULD & RATNER,
3 222 North LaSalle Street
4 Chicago, Illinois 60601
5 (312) 236-3003
6 BY: MS. KARIN O'CONNELL

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9
10 Appeared on behalf of the Respondent,
11 Mineral and Land Resources.

12

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16 ALSO PRESENT:

17 Mr. Michael Vondra

18 Mr. Joseph R. Benedict, Jr.

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1 I N D E X

2 PAGES

3 Greeting by Hearing Officer. 751

4 Greeting by Mr. Makarski 751

5 Greeting by Mr. Stick 751

6 Greeting by Ms. O'Connell 751

7

8 THE WITNESS: James J. McGuigan, P.E.

9 Direct Examination
by Mr. Makarski 754

10 Cross Examination
by Mr. Stick. 833

11

12 E X H I B I T S

13

14 Marked for
Identification

15 Complainant's Exhibit No. 28. 762

16 Complainant's Exhibit No. 29. 769

17 Complainant's Exhibit Ms. 30. 785

18 Complainant's Exhibit No. 31. 786

19 Respondents' Exhibit No. 32 931

20 Respondents' Exhibit No. 33. 993

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1 THE HEARING OFFICER: On the record. Pursuant
2 to the direction of the Illinois Pollution Control
3 Board, I now call Docket 96-84. This is the
4 complaint of the Forest Preserve District of DuPage
5 County vs. Mineral and Land Resources Corporation,
6 Southwind Financial, Limited, and Bluff City
7 Materials.

8 May I have appearances for the record,
9 please, for the Complainants?

10 MR. MAKARSKI: Richard Makarski and Robert
11 Tucker of Chapman of Cutler for the Complainant.

12 MR. STICK: Michael Stick on behalf of
13 Respondents, Bluff City Materials and Southwind
14 Financial, and my co-counsel, Mr. Jim Knippen, who
15 will join me momentarily.

16 MS. O'CONNELL: Karen O'Connell of the law firm
17 of Gould and Ratner on behalf of the Respondent,
18 Mineral and Land Resources.

19 THE HEARING OFFICER: Thank you. Let the
20 record reflect there are no other appearances at
21 today's hearing.

22 Prior to going on the record, Mr. Stick
23 handed me a subpoena that he served on Christopher
24 Burke. I understand that was also given to the

1 Complainant.

2 MR. MAKARSKI: Yes, we have it.

3 THE HEARING OFFICER: And then Mr. Stick also
4 has given the hearing officer a short memo on the
5 relevance of amendments to the Environmental
6 Protection Act, and I believe that was also given to
7 the other parties.

8 MR. MAKARSKI: That's correct.

9 THE HEARING OFFICER: Thank you, Mr. Stick, for
10 the memo.

11 Are there any other preliminary matters?

12 MR. MAKARSKI: Mr. Hearing Officer, our
13 representative, Mr. Benedict, had to be before our
14 board of commissioners this morning. They have
15 their weekly meeting, and he has to attend. He will
16 come as soon as it is completed. He is in the
17 building to the south of us here, but they have a
18 way of dragging on those meetings. As soon as they
19 are done, he will be here, but we can work without
20 him.

21 MR. STICK: And similarly, Mr. Vondra has had
22 sort of an emergency business situation come up this
23 week, and he may not be able to attend all portions
24 of the hearing.

1 THE HEARING OFFICER: And, Ms. O'Connell, any
2 preliminary matters?

3 MS. O'CONNELL: No preliminary matters.

4 THE HEARING OFFICER: Thank you.

5 MR. STICK: Your Honor, I'm sorry. There was
6 one other preliminary matter, and that is during our
7 conference call of last week, I indicated I would be
8 calling Mr. Burke and subpoenaing him at 1:00
9 o'clock on Wednesday, and I just want to, for the
10 record, clarify that this is agreeable to all
11 parties. Regardless of where we are in the
12 proceedings, at 1:00 o'clock tomorrow, we will put
13 Mr. Burke on the stand.

14 MR. MAKARSKI: That's correct.

15 THE HEARING OFFICER: That's acceptable to me.

16 MS. O'CONNELL: We have no objection.

17 And also, Mr. Hearing Officer, I would
18 like to offer my apologies for no one being present
19 at the telephone conference call. We intended to
20 be, and my colleague was called away on an emergency
21 hearing, and wasn't available to be on that call on
22 Friday.

23 THE HEARING OFFICER: All right. Okay.

24 If nothing else, Mr. Makarski?

1 MR. MAKARSKI: We have Mr. McGuigan from Emcon,
2 Mr. Hearing Officer. Where do you want him to sit?

3 THE HEARING OFFICER: Well, the court reporter
4 likes to be able to hear, so let's put him out here
5 in front.

6 MR. MAKARSKI: Okay. Would you sit right
7 there?

8 (Witness sworn.)

9 THE HEARING OFFICER: You may be seated. You
10 may proceed.

11 MR. MAKARSKI: Thank you, sir.

12 JAMES J. MCGUIGAN, P.E.,
13 called as a witness herein, having been first duly
14 sworn, was examined upon oral interrogatories, and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MAKARSKI:

18 Q Sir, would you give us your name?

19 A My name is James J. McGuigan,
20 M-c-G-u-i-g-a-n.

21 Q And what is your occupation?

22 A I'm an engineering consultant,
23 environmental.

24 Q With whom?

1 A Emcon.

2 Q Would you give us your educational
3 background, please?

4 A Yes. I received a Bachelor's degree in
5 engineering from the Illinois Institute of
6 Technology in 1980, and I have completed graduate
7 course work in environmental chemistry.

8 Q When did you graduate, 1980?

9 A Correct.

10 Q And what is your employment background?

11 A After I graduated, I started with the
12 company called Eldrige Engineering, which was an
13 environmental consulting firm dealing with solid
14 waste and industrial compliance issues. I worked
15 for Eldridge until that company was acquired by
16 another company called Wehran Envirotech, to
17 W-e-h-r-a-n. That was about 1989.

18 And then in '93, Wehran was acquired by
19 Emcon, which is the company I'm presently employed
20 by.

21 Q And what do you do for Emcon?

22 A Currently, I'm the director of the site
23 restoration group.

24 Q What does that mean?

1 A Well, Emcon is broken up into several
2 divisions, including construction and professional
3 services. The consulting division is known as the
4 professional services division, and that division is
5 split into three groups: Solid waste, site
6 restoration, and facilities. I'm the director for
7 the midwest office for the site restoration group
8 which deals mainly with issues concerning
9 redevelopment of industrial properties, RCRA and
10 superfund compliance issues, industrial cleanups,
11 things of that nature.

12 Q And do you do what they call site
13 evaluations?

14 A Yes, that's correct.

15 Q Would you tell us what a site evaluation
16 is?

17 A Well, normally a site evaluation would be
18 looking at a site that's suspected of containing
19 some type of contamination and making an assessment
20 as to the extent both vertical and horizontal of
21 that contamination and potential impacts that might
22 have on the environment.

23 Q Do you get into areas of illegal disposal
24 of waste?

1 A Yes.

2 Q Have you had experience in that previous
3 to this case?

4 A Yes, we have.

5 Q Would you tell us a couple of situations?

6 A Oh, around --

7 MR. STICK: I will object on the basis of
8 foundation that this witness has -- there is no
9 evidence this witness has any competency to talk
10 about what is or is not illegal, and without a
11 proper foundation, any opinions or testimony he may
12 have on that issue is inadmissible.

13 THE HEARING OFFICER: Mr. Makarski?

14 MR. MAKARSKI: I was just bringing it up as
15 background. I'm not asking him specifically whether
16 anything was illegal or not here. It's just
17 background material which I'm trying to develop as
18 to his expertise.

19 THE HEARING OFFICER: All right. Please
20 continue. The objection is overruled.

21 THE WITNESS: Could you repeat the question?

22 MR. MAKARSKI: Would the lady?

23 THE HEARING OFFICER: Would you read the
24 question back, please?

1 (Whereupon, the record was read by
2 the court reporter.)

3 THE WITNESS: As environmental consultants,
4 on numerous occasions we have performed evaluations
5 of sites where material has been disposed of to
6 assess the potential impact that that material might
7 have on the environment.

8 Examples would be we're currently working
9 on the Mallard North Landfill, which is a small
10 landfill north of the main Mallard facility that was
11 a landfill. We have worked on a landfill, an
12 illegal disposal operation in I believe it was Lake
13 County near the Edens and Golf Road. We have also
14 worked on numerous landfills that were both
15 permitted and unpermitted, superfund sites, things
16 of that nature.

17 BY MR. MAKARSKI:

18 Q Are you familiar with the Illinois
19 Environmental Protection Act?

20 A Yes.

21 Q And the regulations that are adopted
22 thereunder?

23 A Correct.

24 Q And to what use do you put the Act and the

1 regulations?

2 A Well, normally, when you are trying to
3 apply for a new landfill facility, you look at those
4 regulations in order to comply with the Act. In
5 situations where there has been material that has
6 been disposed of at a non-permitted facility, you
7 might look at that Act to determine whether or not
8 the material constituted a waste and whether or not
9 the material on the site was disposed of there or
10 just accumulated there.

11 Q Have you in the past made determinations
12 to whether particular material is a waste or not?

13 A Yes.

14 Q Do you have any particular instances you
15 can recall?

16 MR. STICK: I will object again on foundation,
17 materiality and relevancy, and the lack of
18 competence on the part of this witness to testify
19 about what may or may not be illegal.

20 MS. O'CONNELL: I join in that objection,
21 Mr. Hearing Officer. This witness has not been
22 established that he has any basis for determining
23 the legality of the regulations.

24 THE HEARING OFFICER: All right. I think we do

1 need more background, Mr. Makarski.

2 BY MR. MAKARSKI:

3 Q What has your experience been with the
4 Illinois Environmental Protection Act with respect
5 to waste?

6 A Basically, we make determinations for
7 industries that are generating materials that are to
8 be disposed of as to whether or not that constitutes
9 a waste, whether it's a recyclable, if it is a
10 waste, whether it would be considered a special
11 waste or a hazardous waste, basically what is called
12 waste characterization of different waste products.

13 Also, as engineering consultants to the
14 landfills, we were routinely make determinations as
15 to acceptability of materials coming into the
16 landfill for disposal.

17 Q Are you familiar with the definitions in
18 the Illinois Environmental Protection Act?

19 A Yes.

20 Q Are you familiar with the definition of
21 waste?

22 A Yes. I mean, I couldn't recite it, but I
23 have read that definition.

24 Q And clean construction and demolition

1 debris?

2 A I have also seen that definition.

3 Q Have you had experience with the Illinois
4 Groundwater Protection Act?

5 A Yes.

6 Q Would you please relate to us what you
7 have done with that?

8 A My experience with the Groundwater
9 Protection Act relates to several situations. One
10 is in working with landfills, we routinely set up
11 what is called a groundwater monitoring network to
12 determine whether or not the landfills have any
13 impact on the surrounding environment.

14 In doing so, we compare the water quality
15 in the wells outside the landfill to the groundwater
16 protection quality standards. That also comes into
17 play in sites where there is a potential for a
18 groundwater contamination issue whether it be from,
19 say, a release from dry clean air or gas station
20 where there has been an impact to the groundwater.
21 Normally, what you would do is check the groundwater
22 and then compare it to the standards in the
23 Groundwater Protection Act.

24 Q Now, have you prepared a curriculum vitae

1 for us?

2 A Yes, I have.

3 MR. MAKARSKI: I'm not sure what our next
4 exhibit number is.

5 THE HEARING OFFICER: It would be Number 28.

6 (Complainant's Exhibit No. 28 marked
7 for identification, 10-21-97.)

8 BY MR. MAKARSKI:

9 Q Let me show you what we have had marked as
10 Exhibit 28 and ask you if you can identify that
11 document.

12 A Yes. It would be a copy of my curriculum
13 vitae or my resume. It's probably a year or two
14 old.

15 Q And does that truly and accurately reflect
16 your experience up to the point it was prepared?

17 A Yes.

18 Q And your educational background?

19 A Yes.

20 MR. MAKARSKI: I would offer Exhibit 28 into
21 evidence, Mr. Hearing Officer.

22 MR. STICK: No objection.

23 MS. O'CONNELL: No objection.

24 THE HEARING OFFICER: Complainant's Exhibit

1 Number 28 is admitted.

2 BY MR. MAKARSKI:

3 Q Now, are you familiar with a parcel of
4 property in DuPage County which is this proceeding
5 we refer to as the Stearns Road site?

6 A Yes, I am.

7 Q And where is that located?

8 A It's located on Stearns Road. It's part
9 of the Pratt North Forest Preserve. We refer to it
10 as north -- we've always called it the Pratt North
11 site.

12 Q And when did you first become involved
13 with the Pratt North site?

14 A I believe it was sometime around January
15 of 1995.

16 Q And what occurred?

17 A The Forest Preserve District approached us
18 and said they had a site that was a sand and gravel
19 pit that had been filled or was in the process of
20 being filled and they suspected that some of the
21 fill material was unsuitable and asked us to perform
22 an investigation into the extent of that fill
23 material and do a characterization as to whether or
24 not that fill material would be considered suitable.

1 Q Were you to do an assessment of the
2 environmental conditions at the site?

3 A Yes. Basically, our scope of work
4 entailed several issues. One was to estimate the
5 quantity of the fill material and try and determine,
6 if there were unsuitable fill materials, what the
7 quantity of that was.

8 Also, the land use plan for that site had
9 a particular land configuration or topography. They
10 asked us to look at the current condition versus the
11 proposed end use to determine how much work would be
12 required to bring it to the proposed final grade.

13 They also asked us to look at potential
14 impacts from the fill material on surrounding
15 groundwater and then the potential chemical
16 constituents of concern that might be within the
17 fill material itself.

18 Q Were you asked to provide opinions as to
19 the remediation or restoration of the site?

20 A Yes, we were.

21 Q Now, what did you do after Emcon first met
22 with the Forest Preserve?

23 A Well, we went and visited the site to get
24 a look at what we had. We basically wrote a scope

1 of work that we submitted to the district for
2 approval, which subsequently was approved, and then
3 basically we initiated our work plan.

4 The first thing we did was we visited the
5 site. We reviewed the existing files that were
6 available at the district, including some previous
7 environmental investigations and reports that had
8 been prepared by others. We also reviewed some
9 previous investigation that was done by the Forest
10 Preserve District themselves.

11 Then we instituted our work plan, which
12 primarily entailed a combination of I think it was
13 27 soil borings at the site, some hydro-punch
14 sampling, which is a method to collect a discreet
15 groundwater sample. We installed piesometers to get
16 a groundwater flow pattern or a depth of
17 groundwater.

18 We also installed some test pits to take a
19 closer look at the fill to see what the fill
20 materials were comprised of. Then we collected both
21 soil and groundwater samples from that investigation
22 and submitted it to a laboratory for chemical
23 analysis.

24 We also, during the course of the

1 investigation, looked at some of the environmental
2 regulations. We looked at some of the available
3 documentation concerning the license agreement for
4 the site and then compiled that into what we call
5 the site evaluation report.

6 Q What was your role with respect to this
7 investigation in that report?

8 A At that time, it was what was called the
9 environmental department manager which is similar to
10 the site restoration department manager. We
11 basically have changed the names of that department
12 a few times.

13 As the department manager, ultimately I
14 was responsible for overseeing the work, supervising
15 the personnel in the field as far as the collection
16 of the samples, and then performing a QA/QC role on
17 the final report preparation.

18 Q What is a QA/QC?

19 A Quality assurance/quality control.

20 Q Who at Emcon assisted you in this project?

21 A Well, primarily, the majority of the
22 fieldwork was performed under the supervision of our
23 field geologist. That would be Steve Heuer,
24 H-e-u-e-r. He had a couple of assistants with him.

1 That would vary from time to time. We have
2 technicians that specialize in different aspects.
3 I'm sure they sent a survey crew out there to check
4 where borings were located and plot them on a map.

5 Jerry Kaminecke, who is one of our project
6 engineers with a chemistry and groundwater
7 background, also assisted in selecting samples for
8 analysis. Ted Denning, whose background is in
9 primarily surface water, was involved in the
10 project. The office director at that time also had
11 some involvement. That was Keith Gordon. There was
12 probably people in the graphics department involved
13 and other ancillary support staff, but those were
14 the primary individuals.

15 Q You said you visited the site originally
16 in early 1995?

17 A That's correct, prior to the start of the
18 work. I think visited the site prior to even
19 developing the scope of work.

20 Q Would you tell us what you observed on
21 your first visit?

22 A The site is comprised of about 40 acres of
23 a larger parcel. I think the whole parcel is 77
24 acres or something like that.

1 Towards the front, there was a trailer
2 like an office trailer, then a road leading around
3 on the north side. There were several piles of
4 various materials. There was a pile that looked
5 like it was primarily sand and gravel -- processed
6 sand and gravel. There were a couple other piles
7 that appeared to be concrete that had been brought
8 into the site, large slabs of concrete with some
9 culverts. That pile had some metal culverts and
10 some other metal in it.

11 Then towards the southern portion of the
12 site there was a large depression or pond or lake
13 that was filled with water where they had obviously
14 mined out the sand and gravel.

15 Then towards the southwestern side of the
16 site, it was fairly level. We later discovered that
17 area was -- primarily had been fill material. When
18 you walked around that area, there was some broken
19 rubble on the ground and also some metal pipe
20 protruding out of the ground, some wood, and some
21 other miscellaneous debris.

22 Q Now, how many times have you visited the
23 site since the first visit?

24 A Two or three.

1 Q And were photographs taken during the
2 course of the investigation?

3 A Yes, there were. There were also photos
4 taken previous to our involvement by the district
5 and their personnel.

6 Q Now, this site evaluation report, is that
7 a copy of it that you have there?

8 A Yes, it is.

9 MR. MAKARSKI: I will mark that as Exhibit 29
10 Mr. Hearing Officer.

11 The photographs in what I am giving to the
12 court for evidence, the photographs taken by Emcon
13 to which Mr. Heuer testified are in there. The
14 other photographs taken by Mr. Urbanski, but they
15 are copies. They are Xeroxed and they are very
16 poor, but the originals are already in evidence. I
17 have given copies to the other side. It's just that
18 we ran out of copies.

19 THE HEARING OFFICER: Mr. Makarski, this entire
20 document is to be Exhibit 29?

21 MR. MAKARSKI: Yes, sir.

22 (Complainant's Exhibit No. 29 marked
23 for identification, 10-21-97.)

24

1 (Whereupon, a discussion was held off
2 the record.)

3 THE HEARING OFFICER: Back on the record. You
4 may continue.

5 MR. MAKARSKI: Thank you.

6 BY MR. MAKARSKI:

7 Q Let me show you what we have marked as
8 Exhibit 29 for identification and ask if you
9 recognize that collection of material?

10 A Yes. That's what I previously referred to
11 as the site evaluation report that we prepared upon
12 the conclusion of our investigation.

13 Q You are looking at a separate copy than
14 what is before the court, right?

15 A Correct. The copy I have is actually the
16 original. The original ones had blue covers. We
17 don't have blue covers anymore. Now we have white
18 covers, so the copies that are being handed are the
19 same copies except the covers are different.

20 Q And some of the photographs are Xeroxed?

21 A I believe in the copies that you have the
22 photographs that are in exhibit -- or Appendix
23 Number 5 at the end, the Urbanski test pit photos,
24 are Xeroxed copies of your reports. The copies I

1 have are color, but everything should be the same.
2 The copies of the photographs taken by Emcon in
3 Appendix 7 should be color in the ones that you
4 have.

5 Q Now, would you just describe it? Not read
6 it or go into detail, but tell us what Exhibit 29
7 consists of, the various parts.

8 A Yes. It starts out with an introduction
9 that gives kind of an overall description of the
10 site and an ownership and operational history. Then
11 it goes into a brief rationale for the additional
12 investigation. As I have stated previous, there had
13 been some investigations done both by the district
14 and some other consultants prior to our
15 involvement.

16 There is a little project history, and
17 then we go basically into our investigation. We
18 outline the procedures we utilized, what kind of
19 testing we did, where we did the testing.

20 Then there is a section that discusses the
21 applicable regulations of the Environmental
22 Protection Act, some of the solid waste
23 regulations.

24 Then there is a conclusions and

1 recommendations section that basically talks about
2 some potential remedial options and then gives some
3 recommendations.

4 Q And what are the appendices?

5 A Basically, the appendices are supporting
6 information for the text. They include a site
7 topographic map that shows the conditions on the
8 property, some cross-sections regarding the existing
9 contours versus the proposed final contours. There
10 are copies of some of the license agreements, the
11 settlement agreement, the stop work notice, some of
12 those legal-type documents.

13 Then there are copies of the permits, the
14 surface water mining permit, a water pollution
15 control permit, and an air permit for a concrete
16 crusher that was located on-site.

17 Then there is an appendix that contains
18 basically documentation of some previous allegations
19 of the proper disposal. These are comprised mainly
20 of Forest Preserve District observation reports and
21 internal memos.

22 Appendix 5 contains copies of the reports
23 of previous investigations that were done by other
24 consultants.

1 Appendix 6 is a cross-section location map
2 and basically a location map showing where all the
3 soil borings were performed.

4 Appendix 7 is photographic documentation
5 of the Emcon investigation.

6 Appendix 8 is a summary of the results of
7 the test pits that were performed.

8 Appendix 9 is a water well location map
9 which basically contains the records of available
10 water well logs that were obtained from the Illinois
11 State Water Survey. This would be like water wells
12 that are within a couple miles of the site, and they
13 are plotted on a location map.

14 Q Where did the information of the existence
15 of those wells come from?

16 A Basically, we get from that two sources.
17 One is the Illinois State Geological Survey, and the
18 other is the Illinois Water Survey. Basically, you
19 write to them and tell them where your site is
20 located. They will look up in their records for --
21 well records that they have on file within whatever
22 range you tell them to look for within a mile or two
23 of your site.

24 Our experience has been if you go to the

1 water survey and get the records and you also go to
2 the geological survey and try and get records,
3 several times there will be records at one agency
4 that aren't at the other.

5 Our experience also shows that in many
6 cases water wells don't necessarily get recorded
7 with the state, even though that is technically a
8 requirement. I believe there is a well on the site
9 itself right next to the trailer.

10 Q Was that registered?

11 A No. Well, it didn't show up when we asked
12 the state for the records. It's possible that it's
13 registered and they lost the file. It's hard to
14 say.

15 Q So that well that's on the property is not
16 depicted on your Exhibit 7 then?

17 A That's correct.

18 Q Nine. I'm sorry.

19 A That's correct. We didn't get a record
20 from the state showing that that well was
21 registered.

22 Q But you saw one there?

23 A Yes.

24 The Appendix 10 would be the analytical

1 results for the soil and the groundwater.

2 Appendix 11 is some physical
3 characterization we did on the soil, basically
4 permeability and grain size testing to determine
5 engineering characteristics of the soil.

6 Q Now, who prepared Exhibit 29?

7 A Basically, the report was prepared by
8 Jerry Kaminecke, Steve Heuer, Ted Denning each
9 focusing on a particular section.

10 For instance, Steve Heuer, who was the
11 field geologist in charge of the actual boring
12 installation and test pit installation, he probably
13 wrote the first draft governing what is basically
14 Section 3, the field activities, how the borings
15 were installed. He would be responsible for
16 preparing the boring logs, chain of custody
17 documentation, things of that nature.

18 I believe Jerry Kaminecke and Ted Denning
19 worked on the applicable regulation section, and
20 then myself and Keith Gordon basically during the
21 preparation of various drafts reviewed the different
22 components of the report and probably made editorial
23 comments and technical revisions, and then basically
24 the report was compiled into one document, then

1 reviewed again, issued in draft to the district, and
2 then finalized.

3 Q Did you review the material as it was
4 being put together?

5 A Yes, I did.

6 Q Did you prepare any part of the final
7 product?

8 A I believe I did not initially write any of
9 the sections, but probably rewrote sections. In
10 other words, the initial drafts were done by the
11 people that were in the field. Those pieces would
12 all come together, and in an effort to make the
13 document uniform and also to cross-reference one
14 section to the other, there would probably be
15 revisions made that I actually authored.

16 Q And you said you reviewed the product
17 throughout the time it was being prepared?

18 A That's correct.

19 Q And how about at its completion?

20 A That's correct. The first draft I
21 reviewed prior to its submittal to the district, and
22 then the final product I also reviewed prior to it
23 being sent out.

24 Q You said there was a section that dealt

1 with applicable regulations?

2 A That's correct, Section 4.

3 Q Are you familiar with those regulations?

4 A Yes, I am.

5 Q Did you review what was put in there?

6 A Basically, Section 4 talks about a couple
7 of different regulations. One is the Environmental
8 Protection Act, and as it relates to this particular
9 site, we included some definitions from the Act,
10 including municipal waste, the definition of that,
11 which basically in the regs says it means garbage
12 and construction or demolition debris. There is
13 some parts missing in that definition, but basically
14 that's what it says. Also, refuse is also defined
15 as meaning waste.

16 Pretty much most of the definitions
17 regarding refuse and municipal waste all revert back
18 to the definition of waste, which is Section 3.53 of
19 the Act, and basically waste means any garbage or
20 other discarded material, including solid or
21 material resulting from industrial or commercial
22 operations.

23 MR. STICK: Your Honor, I will move to strike
24 that entire testimony as nonresponsive to the

1 question. The question was either did you review it
2 or are you knowledgeable, and the narrative
3 testimony is a legal conclusion that's inadmissible
4 and on that basis should also be stricken. So my
5 motion is to strike it as nonresponsive and strike
6 it as it is offering a legal conclusion that this
7 witness is not capable, competent, or has any
8 expertise to offer. And I will object on the basis
9 of materiality and relevance.

10 THE HEARING OFFICER: Well, I will strike it as
11 being nonresponsive at this time.

12 BY MR. MAKARSKI:

13 Q Would you just tell us which regulations
14 that you felt were appropriate to consider? You
15 don't have to read them, but just which ones are
16 applicable to this.

17 A Basically, we looked at the Act itself,
18 the Environmental Protection Act. We also looked at
19 the Part 810 solid waste disposal regulations, and I
20 believe we looked at the Mines Reclamation Act and
21 also the water pollution regulations regarding
22 mines.

23 Q And as a result of reviewing those
24 statutes and regulations, what did you do?

1 A Basically at the end, we came up with a
2 summary that said based on what we found at the
3 site, we --

4 Q You came to a conclusion?

5 A Correct.

6 Q I didn't ask you for it at this time.

7 Without giving the specifics in general,
8 what was the opinion that you reached?

9 MR. STICK: Your Honor, I will object. If what
10 Mr. Makarski is doing is asking this witness for an
11 opinion or a conclusion based upon a review of the
12 regulations and the Environmental Protection Act and
13 he's asking this witness for a legal conclusion, the
14 objection I am stating is lack of competence, lack
15 of any foundation that this witness has any
16 expertise in the area of interpreting legal laws and
17 the inadmissibility of this evidence because it
18 states an ultimate conclusion in this case, and that
19 is were the environmental laws violated? To put a
20 lay witness on the stand and ask them a conclusion
21 that the Pollution Control Board is being asked to
22 determine is inappropriate. The evidence and the
23 expected testimony is inadmissible, and I will
24 object on that basis.

1 MS. O'CONNELL: And I join in that objection,
2 Mr. Hearing Officer.

3 MR. STICK: And as well, form and foundation.

4 MR. MAKARSKI: I was not at this time asking
5 his opinion. I was asking if he reached one and in
6 general what, so we have some understanding of what
7 is in the document.

8 Furthermore, I think he certainly is
9 adequate to offer expert testimony, and the board
10 should hear expert testimony. As to whether certain
11 material is or is not waste doesn't have to be left
12 in a hanging mode for the board to try and figure
13 out.

14 MR. STICK: Your Honor, Mr. Makarski asked if
15 he reached a conclusion. The witness said yes.
16 Then he asked for general testimony regarding that
17 conclusion. That's asking for the conclusion. It
18 may be a general narrative testimony, but he's
19 asking now for a conclusion. In fact, this witness
20 has no competence to testify to the ultimate
21 conclusion in this case, and the objection should be
22 sustained.

23 MS. O'CONNELL: I join in that objection,
24 Mr. Hearing Officer, and add that this witness has

1 no competence to discuss interpretations of the
2 applicable regulation -- of the regulations or
3 whether indeed they even apply in this case.

4 THE HEARING OFFICER: I think the objection
5 will be sustained for the reason that it does sound
6 like Mr. McGuigan is approaching giving an opinion
7 on the ultimate issue in this case.

8 BY MR. MAKARSKI:

9 Q Now, Mr. McGuigan, after you had prepared
10 Exhibit 29, what occurred?

11 A Basically, the report was submitted to the
12 Forest Preserve District for their review, and we
13 made a presentation to the I believe it was the
14 Landfill Committee.

15 MR. MAKARSKI: Now, Mr. Hearing Officer, large
16 parts of this collection are already in evidence,
17 the photographs, the analytical studies that
18 Mr. Heuer did, things like that. I'm going to deal
19 with some of them, and then I'm going to get to the
20 entire report later on. What I am going to ask him
21 now is stuff that we have already by and large put
22 into evidence.

23 THE HEARING OFFICER: All right.

24

1 BY MR. MAKARSKI:

2 Q Are you familiar with the license
3 agreement between the district and Mineral and Land
4 Resources?

5 A Yes. That was one of the documents we
6 obtained from the files from the Forest Preserve
7 District, and we basically reviewed that.

8 Q And from your review of that license
9 agreement, which is in evidence in this case, were
10 there certain proposed ultimate uses of the land in
11 there?

12 A Yes. The license agreement basically
13 called for the mining of sand and gravel from the
14 site and then the reconfiguration of the contours at
15 the site to a proposed end use that was going to be
16 a wetland development.

17 Q Was there more than one proposed wetland
18 development in the license agreement?

19 A Yes. There was, I believe, either three
20 or possibly four different configurations, all being
21 a surface depression being created at the site with
22 varying depths.

23 Q Now, are you familiar with the mining
24 permit involved with this site?

1 A Yes. We also obtained a copy of that from
2 the district's files.

3 MR. MAKARSKI: If we could take a few-minute
4 break, I think we could stipulate to some of this
5 stuff.

6 THE HEARING OFFICER: All right. Off the
7 record. We will take a short break.

8 MR. MAKARSKI: Thank you.

9 (Whereupon, a discussion was held off
10 the record.)

11 (Whereupon, a recess was taken.)

12 THE HEARING OFFICER: Let's go back on the
13 record.

14 MR. STICK: We have stipulated to the
15 introduction into evidence or acceptance into
16 evidence of certain legal documents, mining permits,
17 and I just want to make clear for the record that by
18 stipulation to the admissibility of the document, we
19 are not waiving our objections to this witness or
20 any other incompetent witness opining as to the
21 effect of those documents. So we are stipulating
22 simply to the offering of the permit into evidence.

23 MR. TUCKER: Mr. Hearing Officer, if I may
24 approach, that is also laid out in the written

1 stipulation, and the two documents are attached as
2 Group Exhibit A and Exhibit B, Exhibit B being the
3 letter. I present this for --

4 THE HEARING OFFICER: Why are we marking them
5 Group A and B?

6 MR. TUCKER: I'm sorry?

7 THE HEARING OFFICER: Why are we marking them A
8 and B?

9 MR. TUCKER: They are simply subgroups of the
10 actual stipulation. Because they refer to them as
11 the attached documents that are being stipulated to,
12 the actual stipulation can be Exhibit 30, I believe
13 we are on. Is that correct?

14 THE HEARING OFFICER: Right.

15 MR. STICK: Your Honor, if I may further
16 explain, we are not waiving our objection to this
17 witness or any other incompetent witness being asked
18 to opine as to the effect or the legal meaning or to
19 the implication or any other kind of conclusion
20 arising from that document unless there is a proper
21 foundation for the witness' competence to do so. I
22 believe the stipulation also reserves either side's
23 right to impeach or other evidence or question the
24 materiality.

1 MR. TUCKER: That's correct. That is the
2 understanding.

3 THE HEARING OFFICER: Well, we could either
4 mark it as Complainant's Exhibit 30, or we could
5 mark it as Joint Exhibit 1.

6 MR. TUCKER: Complainant's 30 we might as well
7 stay on.

8 THE HEARING OFFICER: Would you mark it as
9 Complainant's Exhibit 30, please?

10 (Complainant's Exhibit No. 30 marked
11 for identification, 10-21-97.)

12 THE HEARING OFFICER: You may proceed.

13 MR. TUCKER: The aforementioned qualifications
14 and stipulation also apply for the next document,
15 which on the front is called application for
16 mine-related pollution control permit and attached
17 documents. If I may present this to the court
18 reporter for Exhibit 31, it's the same understanding
19 the parties have as to the previous document,
20 Exhibit 30.

21 MR. STICK: The same stipulation. That
22 document will be offered and admitted into evidence,
23 but Respondents reserve their rights to object to
24 questioning of this witness or any other incompetent

1 witness regarding the conclusions or the legal
2 meaning of the document, and we reserve our right to
3 offer other evidence impeaching, contradicting,
4 explaining, or intending to show that the document
5 is immaterial to the issues in this case.

6 THE HEARING OFFICER: All right. Would you
7 mark Complainant's Exhibit 31, please?

8 (Complainant's Exhibit No. 31 marked
9 for identification, 10-21-97.)

10 THE HEARING OFFICER: With the understanding
11 that Mr. Stick has expressed for the record and
12 agreement by Complainants, Complainant's Exhibits 30
13 and 31 being stipulations among the parties are
14 accepted into evidence.

15 You may continue, Mr. Makarski.

16 MR. MAKARSKI: Thank you.

17 BY MR. MAKARSKI:

18 Q Mr. McGuigan, have you had experience in
19 the past with mining permits?

20 A A few.

21 Q What experience have you had?

22 A Basically, I was involved in the
23 development of some former mining sites for
24 landfills. I didn't actually apply for the mining

1 permit, but subsequent to the mining being
2 completed, we were involved in the development of
3 some of those sites for landfills.

4 Q Now, let me show you what is more complete
5 than what is in the book that has been marked as
6 Exhibit 30, the mining permit and related
7 documents. Have you reviewed both documents before?

8 A The mining permit is included in the site
9 evaluation report. Yes, I have seen this before.

10 Q Now, is there in Group Exhibit 30 a
11 grading plan which is a part of that group exhibit?

12 A Yes. There are two drawings attached
13 labeled Sheet 1 of 6 and 2 of 6, and they were what
14 I would call -- one's a grading plan, and one's a
15 revegetation plan.

16 Q Now, are you familiar with reviewing
17 grading plans?

18 A Yes, I am.

19 Q Have you reviewed that particular plan?

20 A Yes. I have seen this one before.

21 Q Now, is there a natural water level or
22 normal water level set forth on that plan?

23 A Yes. There is a normal water level noted
24 in the bottom left-hand corner in the legend.

1 Q And what is that?

2 A I don't know. I can't read it.

3 Q Can you tell from looking at the marks on
4 the grading plat itself what that normal water level
5 would be?

6 A It would appear to be -- based on the
7 contours on the map, it looks like the water line is
8 indicated as Contour 754.

9 Q Now, did you review the application for
10 the mining permit?

11 A Yes, we did.

12 Q From your review, did you determine if
13 there was any provision in that for using off site
14 fill in the reclamation of the site?

15 MR. STICK: Your Honor, I will object to that
16 question based on this witness' lack of competence
17 to opine regarding an interpretation of the mining
18 application or the mining permit. He has testified
19 under oath that he has never prepared a mining
20 permit. There is no other evidence regarding any
21 expertise or particular qualification he might have
22 to opine regarding the mining application or the
23 mining permit.

24 My objection is lack of foundation, lack

1 of materiality, relevance, and that this witness is
2 incompetent to testify regarding whether the mining
3 application or the mining permit called for any
4 particular type of conduct.

5 MS. O'CONNELL: Mr. Hearing Officer, I join in
6 that objection for all of the same reasons.

7 MR. MAKARSKI: He said he has had experience
8 with this before, but it's just reading the
9 documents. I don't know that you need expertise
10 other than the English language to be able to
11 determine what is in the document.

12 MR. STICK: Your Honor, he did not say he had
13 experience with this before. What he said was he
14 has never applied for a mining permit. What he has
15 done is developed landfills on old mining sites.
16 That's wholly irrelevant to the mining operation,
17 it's wholly irrelevant to the mining regulations,
18 and it's wholly irrelevant to the application for a
19 mining permit.

20 If what Mr. Makarski wants this witness to
21 do is read the document, that's inappropriate. We
22 have stipulated the document is now in evidence and
23 can be read by the Pollution Control Board. There
24 is no reason for this witness to read the document

1 or opine on its legal effect.

2 THE HEARING OFFICER: The objection is
3 overruled.

4 BY MR. MAKARSKI:

5 Q Do you recall the question, Mr. McGuigan?

6 A No, I don't.

7 (Whereupon, the record was read by
8 the court reporter.)

9 THE WITNESS: Nowhere in the permit does it
10 mention the importation of fill materials for the
11 reclamation of the site.

12 BY MR. MAKARSKI:

13 Q Now, you had also the opportunity to
14 review the license agreement and the grading plans
15 attached thereto, did you not?

16 A That's correct.

17 Q And I think they are in your book there
18 admitted into evidence, but they are also a part of
19 the Exhibit 29. Do you recall from your review of
20 the license agreement and the grading plans attached
21 if there is -- well, let me do this.

22 Can you tell us what the natural -- is it
23 called natural or normal water levels, NWL?

24 A Most people call it the normal water

1 level.

2 Q Would you tell us the normal water level
3 set forth in each of the three grading plans
4 attached to the license agreement? We might have to
5 show you the bigger ones.

6 A I believe attached in the license
7 agreement records are three different water
8 elevations: 760, 762, and 764.

9 Q And your understanding of the grading plan
10 of the mining permit was at what level?

11 A That's the one that's at, I believe, 754.

12 Q Did you testify that one of the things
13 done by Emcon was to estimate the fill material
14 present at the site?

15 A Yes, we did.

16 Q Now, is there a differentiation between
17 fill materials?

18 A Yes.

19 Q Tell us what.

20 A In order to clarify things at this site,
21 we basically broke the fill material into two
22 categories which we said basically consisted of
23 unsuitable fill materials, which would be the
24 materials that had debris and waste in it, and then

1 clean fill materials, which were comprised primarily
2 of soil, rock, gravel, clay, basically clean soil
3 materials.

4 Q Were you able to differentiate between
5 fill which was native to the site or fill that was
6 brought into the site?

7 A For clean fill materials, it would be very
8 difficult to ascertain the difference between those
9 materials that were on the site which were excavated
10 to get at the gravel and then placed back on the
11 soil. To distinguish those from clean soil that was
12 brought in from off the site would be very
13 difficult. So we were not able to ascertain any
14 particular difference between the clean fill
15 materials that were comprised of soil and gravel and
16 sand, whether or not that came from off site or on
17 site.

18 The debris containing fill materials
19 basically had materials in them that would not be
20 native to the facility. For instance, there were
21 large pieces of wood, metal culverts, wire, things
22 of that nature that would not be native to the fill
23 material itself, and therefore, that material where
24 there was a boring or a test pit that suggested

1 there was waste within the soil would be classified
2 as unsuitable fill material.

3 MR. STICK: Your Honor, I will move to strike
4 the use of the word waste because you have already
5 sustained the objection that based on a legal
6 interpretation of the Act and nothing about Emcon's
7 investigation of the site that would lead them to
8 draw that conclusion. So I will move to strike the
9 word waste whenever it's used by Mr. McGuigan, and I
10 would ask you to instruct the witness not to use
11 that word, to use some other word.

12 THE HEARING OFFICER: I'm going to deny the
13 objection at this time. I think that Mr. McGuigan's
14 use of the word waste is an attempt to be
15 descriptive and is not going to any ultimate
16 issues. If there is a different word that can be
17 used to describe what he's testifying to, that would
18 be useful, but otherwise, I will not strike the
19 previous testimony.

20 BY MR. MAKARSKI:

21 Q Was Emcon able to determine the amount of
22 fill that was at the site?

23 A We came up with an estimate as to the
24 amount of unsuitable fill material that was at the

1 site, correct.

2 Q How do you do the estimate?

3 A Basically, based on the test pits and the
4 borings, we came up with locations where the
5 unsuitable fill of the waste was found, the depth to
6 which that material was found, and then plotted that
7 on a topographic map.

8 Given the existing surface contours versus
9 the depth of fill materials at that particular
10 location, you could basically come up with a number
11 that said at this particular spot on the map there
12 was 15 feet of this unsuitable material.

13 Then by connecting the points and
14 interpolating between the areas, there are basically
15 two methods to determine the total volume. One is
16 called the end area method where you basically plot
17 cross-sections and measure the area of those
18 cross-sections every 50 feet, every 100 feet,
19 whatever you so choose.

20 The other area is a little more
21 sophisticated. It's computerized. It basically
22 uses the same principle, and it basically uses what
23 are called surface nets. Basically, it takes the
24 contour map that was drawn of the base of the fill

1 and compares that surface with the existing contours
2 at the site and then calculates the volume of the
3 material between the two surfaces.

4 Q Do you recall if you came to any estimate
5 of the amount of material?

6 A We estimated approximately 165,000 yards
7 of unsuitable material.

8 Q That's cubic yards?

9 A Cubic yards, right.

10 Q You used the word unsuitable. Why is it
11 that you used that?

12 A Well, in the beginning, we had kind of a
13 semantics problem from the start with the difference
14 between the fill that the district was concerned
15 with and normal fill material. Technically, the
16 word fill usually means material that was placed
17 back on the site.

18 In this particular case, if they had mined
19 the gravel in order to get at the gravel, they may
20 have excavated three or four feet of soil above the
21 gravel and stockpiled that somewhere on the site and
22 then placed that back in the hole. Technically, we
23 would consider that to be fill. Even though it was
24 native material when it was on the site, once it's

1 disturbed, stockpiled, and placed again, you can
2 tell by the stratigraphy of that material that it's
3 not native to the site, that it had been removed and
4 replaced in an engineering fashion.

5 In order to distinguish between that fill
6 and the fill the district was concerned with, the
7 fill that basically they suspected contained waste
8 and had odors in their observation reports, we kind
9 of chose a term to describe that material, and we
10 basically decided unsuitable fill would be the word
11 we would use for that.

12 Q Now, where was this fill located on the
13 site?

14 A The unsuitable fill material was primarily
15 located along the western boarder of the site
16 towards the south end, and also there was a portion
17 encountered up along the northern part of the site
18 along Stearns Road.

19 There is a map in our report. It's
20 basically called the boring piesometer map, and on
21 that map there is a shaded area that shows the
22 debris-containing fill, that's another word we use
23 to describe the unsuitable material, and then some
24 areas where there was other fill, which was

1 primarily comprised of soil materials.

2 Q Now, these test pits that were taken or
3 were done, were they done in that material?

4 A Basically, what we were trying to do is
5 determine where the unsuitable material was and
6 where native materials were, so the test pits were
7 dug over most of the site. Therefore, some of the
8 test pits did not encounter unsuitable fill. Some
9 of the test pits did encounter unsuitable fill,
10 which is to be expected based on -- what we were
11 trying to do was determine at any given location
12 whether or not there had been fill material placed
13 and whether or not that fill material was
14 unsuitable.

15 So in some locations, we would dig a test
16 pit, and all we would encounter would be soil. In
17 other areas, we would dig a test pit, and we would
18 encounter debris-type fill.

19 Based on previous studies, we had an idea
20 as to where we knew some locations were where the
21 unsuitable fill would be found. We kind of
22 concentrated on that area and radiated out, whereas
23 in other areas, like on the north end of the
24 property, we didn't have any real good recollection

1 from anyone as to what type of material would be
2 found up there.

3 Q And the analysis of what was in those test
4 pits is in the test pit summary?

5 A That's correct. There is a summary chart
6 that gives basically a text description of what was
7 found in the test pits, and then there are also
8 photographs of some of the material that was removed
9 from the test pits.

10 MR. MAKARSKI: That has been already admitted,
11 Mr. Hearing Officer, as Exhibit 22, even though it's
12 a part of the book, too.

13 BY MR. MAKARSKI:

14 Q Did you review the test pit analysis?

15 A Yes.

16 Q Now, you said that you did a soil
17 analysis?

18 A That's correct.

19 Q And would you tell us what a soil analysis
20 is?

21 A Basically, it's chemical testing of soil
22 for specific constituents of concern that we felt
23 were likely to be present given the suggested
24 history of the property.

1 Q And where did the soil come from that was
2 analyzed?

3 A We analyzed soil both from the borings
4 that were performed and, I believe, some soil from a
5 couple of the test pits.

6 Q And was that Mr. Heuer that did that?

7 A He didn't perform the analysis. He
8 collected the samples and then under chain of
9 custody transmitted them to an analytical
10 laboratory.

11 Q Right.

12 And then you prepared an analysis of those
13 soil tests?

14 A That's correct. The actual chemical
15 results of the testing are in Appendix 10 to the
16 report, and there are two basically summary tables
17 of the groundwater results of the soil results
18 beginning in Appendix 10.

19 MR. MAKARSKI: And those are already in
20 evidence. I don't recall the exhibit number.

21 BY MR. MAKARSKI:

22 Q Now, did you review the soil analytical
23 test results?

24 A Yes, I did.

1 Q And is there some standard that these are
2 compared to to determine if there is a level of
3 contamination?

4 A Well, there is a standard that's
5 considered guidance back when this report was
6 prepared. That standard has moved several times.

7 Back when this report was prepared in
8 1995, the IEPA was basically using what they called
9 generic clean up objectives, and for the
10 constituents of concern that we were looking for at
11 this site, which were polynuclear aromatic
12 hydrocarbons, which are heavy end petroleum
13 fractions and volatile organic compounds, at the
14 time the report was prepared, the state had some
15 generic guidance numbers that they were using.

16 Subsequent to that in, I think, January of
17 '96, the IEPA published what they called the Tiered
18 Approach to Clean Up Objectives Guidance Manual,
19 which had a different set of numbers based on human
20 health which may or may not be applicable to the
21 site. That guidance manual specifically excluded
22 conservation sites and potential ecological risks.

23 MR. STICK: May I make a motion? I will move
24 to strike that testimony because, again, he's

1 opining on a legal document or a guidance document
2 of the IEPA.

3 MS. O'CONNELL: I join in the objection.

4 THE HEARING OFFICER: The objections are
5 overruled.

6 BY MR. MAKARSKI:

7 Q Would you tell us why you believe that
8 the -- is that referred to as TACO?

9 A The one from January of '96 was commonly
10 referred to as TACO because of the tiered approach
11 to clean up objectives title.

12 Q Is that what you are speaking about now?

13 A That's correct.

14 Q Why do you think it would not be
15 applicable to our site?

16 A In the introduction to that document, they
17 specifically say that that document is not
18 applicable to agricultural or potential conservation
19 sites.

20 They also reference that the document may
21 not be applicable where waste is left in place.
22 There is some other guidance in the beginning of
23 that document that suggests that it would also not
24 be applicable to a site where the proposed future

1 use would be a conservation-type property and there
2 could be an ecological-type risk rather than a human
3 health risk.

4 The document was basically prepared to
5 assess potential human health risks from soil
6 contamination levels. As such, there are various
7 levels for various potential exposure pathways.

8 For instance, there would be a level that
9 they would suggest is appropriate or would basically
10 be a one in a million cancer risk for a particular
11 chemical for ingestion of the soil. If you ate some
12 of this soil, it should be below this level.

13 There is a number in the '96 document for
14 migration to groundwater potential. In other words,
15 what is the potential for the soil to leach this
16 chemical into the groundwater? Actually, there
17 would be two numbers for that based on whether the
18 groundwater you were impacting was a Class 1 or
19 Class 2.

20 So basically, there are several numbers in
21 that document that would apply to soil, although
22 whether or not that document would be applicable to
23 this case is somewhat in question.

24 There is always the option of doing what

1 is currently called the Tier 3 approach, which is a
2 human health and ecological risk assessment where
3 you actually calculate the numbers based on the
4 exposure pathways. That was not done.

5 Now, subsequent again to the January '96
6 document, I believe legislation was passed that was
7 effective July '97 that's referred to as Part 742,
8 which is basically the tiered approach, the clean up
9 objectives, only they don't call it TACO, although
10 most people refer to it as TACO. The letters are in
11 a different order. It's TACOA. Basically, it's a
12 similar document, although there have been revisions
13 made between the January '96 guidance and the actual
14 legislation that was passed that took effect in July
15 under Part 742.

16 Q Now, if the TACO guidelines are not
17 applicable to our site, what would be?

18 A You would basically have to do a human
19 health and ecological risk assessment to calculate
20 those numbers.

21 Q Now, did you compare the soil analytical
22 test results to the TACO standard for particular
23 chemicals?

24 A In the report, we didn't make such a

1 comparison, although I have looked at the reported
2 levels detected of certain chemicals and compared
3 them basically to three things.

4 Originally, like I said, when this
5 document was prepared, the IEPA had what they called
6 generic guidelines or generic clean up objectives
7 for petroleum. The numbers particularly for the
8 polynuclear aromatic hydrocarbons were based on 20
9 times the groundwater standard.

10 I'm not exactly sure how they arrived at
11 that number, but if you use that number as guidance,
12 a substantial portion of the samples for several
13 constituents were over those generic numbers.

14 If you compared the detected levels found
15 in the soil samples to the TACO regulations as
16 outlined in the 1996 guidance manual, there were, I
17 believe, two samples that had benzo-A-pyrene above
18 the suggested clean up level in that document, and I
19 believe those are the same levels that are now in
20 the 742 regulations.

21 I believe the suggestion ingestion number
22 for benzo-A-pyrene is 0.09 parts per million, and
23 Sample B-2 had a benzo-A-pyrene level of 0.12. A
24 sample obtained from the pond sediment at Location 4

1 had a benzo-A-pyrene level of 0.14 parts per
2 million, both of which are above that suggestion
3 ingestion number.

4 Q That is all that you discovered with
5 respect to the soil analysis?

6 A That's correct.

7 Q Now, did you review the analysis of the
8 water samples?

9 A Yes, I did.

10 Q And they are in evidence. They are also
11 in your book, aren't they?

12 A That's correct. There is a summary of the
13 analytical data for the groundwater, again, in
14 Appendix 10. There's a summary table in the very
15 beginning, and then all the subsequent lab reports
16 are in that appendix.

17 MR. MAKARSKI: That has already been offered
18 into evidence, Mr. Hearing Officer.

19 BY MR. MAKARSKI:

20 Q Is there a standard to compare these water
21 samples to in order to determine if there are
22 acceptable levels?

23 A Yes. There are groundwater standards in
24 Illinois. There are a couple ways to get to a

1 number. Originally, the 1996 TACO guidance document
2 actually gave you numbers, but they were based on
3 ultimately -- I think it's Part 620 of the
4 groundwater regulations for Illinois.

5 The new TACO guidance document under
6 Part 742 doesn't specifically list groundwater
7 levels, although they give an appendix that
8 basically lists the 620 regulations for various
9 constituents. So there are several ways to get at
10 the same number.

11 The groundwater standard is a little more
12 exacting. Basically, there is a Class 1 standard
13 business, which is potable drinking water, and then
14 there are Classes 2, 3, and 4. Class 2 would be
15 general use, water quality, and then 3 and 4 are
16 kind of exceptions.

17 Q What standard did you use?

18 A We compared the results obtained from the
19 sampling to the Class 1 standard, which basically
20 our understanding is you always use Class 1 unless
21 you can make a demonstration to the agency that you
22 have Class 2, 3, or 4 water. In other words, the
23 assumption is always based on Class 1 water.

24 Q And what did you observe?

1 A Based on the Class 1 drinking water
2 standards, there were two samples that had
3 constituents above the drinking water standard. One
4 was at Boring Number 6, which is at the south end of
5 the site, actually slightly off the site in native
6 material, and then one at B-12, a duplicate sample
7 that was obtained that boring, had several
8 constituents over the Class 1 drinking water
9 standard.

10 MR. STICK: Your Honor, I will move to strike
11 that based on the foundation of the question.

12 THE HEARING OFFICER: I'm sorry. I didn't hear
13 you.

14 MR. STICK: I move to strike the answer based
15 on the form and foundation of the question as
16 posed.

17 MR. MAKARSKI: I asked him about the results of
18 his comparison. He told us.

19 THE HEARING OFFICER: What did you find wrong
20 with that, Mr. Stick?

21 MR. STICK: The form and foundation of the
22 question did not ask for the type of opinion or
23 analytical answer that was given.

24 THE HEARING OFFICER: All right. The objection

1 is sustained. The answer is stricken.

2 BY MR. MAKARSKI:

3 Q Did you make a comparison of the standards
4 to the results of the analytical survey?

5 A Yes.

6 MR. STICK: I object to the form.

7 (Brief pause.)

8 MR. STICK: No objection.

9 BY MR. MAKARSKI:

10 Q What were the results of that with respect
11 to --

12 MR. STICK: I object.

13 THE HEARING OFFICER: Well, let him finish his
14 question, please.

15 BY MR. MAKARSKI:

16 Q What were the results of that comparison?

17 MR. STICK: I object on the basis of form and
18 foundation.

19 THE HEARING OFFICER: Overruled. You may
20 answer the question, please.

21 THE WITNESS: Basically, we compared the
22 result of the groundwater testing to the Class 1
23 groundwater standard, and in two of the sample
24 locations, there were constituents detected above

1 the Class 1 groundwater standard.

2 BY MR. MAKARSKI:

3 Q Which were those two samples?

4 A One was from Boring B-6, which is located
5 at the south end of the property.

6 Q Would you tell us what you detected above
7 in that B-6?

8 MR. KNIPPEN: Your Honor, could the record show
9 a continuing objection based on this line of
10 questioning based on form and foundation based on
11 the original question?

12 THE HEARING OFFICER: All right. Your
13 objection is noted.

14 THE WITNESS: At Boring B-6,
15 benzo-A-anthracene was detected at 0.2, whereas the
16 Class 1 groundwater standard is at 0.13. Also,
17 benzo-B-floranthene was detected at 0.2. These
18 would be micrograms per liter or parts per billion.
19 The Class 1 drinking water standard for
20 benzo-B-floranthene is 0.1.

21 We also detected constituents above the
22 Class 1 drinking water standard at a duplicate
23 sample obtained from B-12, which was located within
24 the site in an area where we had uncovered what we

1 classified as unsuitable fill --

2 BY MR. MAKARSKI:

3 Q Let me ask you this. You said that was
4 duplicate. Are you familiar with how the test is
5 done at B-12?

6 A Yes. Basically, the way this
7 groundwater sample --

8 Q Tell us what your knowledge is.

9 A The way the groundwater sample was
10 conducted was with a device called a hydro-punch
11 sampler, which basically is a stainless steel probe
12 that is driven through the hollow-stem augers in
13 advance of the auger. It's driven into the
14 groundwater bearing zone, and then a shield around a
15 screen is lifted up, and water enters that screen in
16 the hydro-punch. Then a small bailer is dropped
17 down the hydro-punch, and the water is collected
18 into a jar, which is sent to the laboratory for
19 analysis.

20 Now, on a duplicate sample, basically, you
21 take two samples from the same location.

22 Q Is that what was done here?

23 A That's correct. The sample was obtained
24 from the hydro-punch at B-12, and then when enough

1 water reentered the screen, another sample was
2 collected.

3 Q Was there a time differential between the
4 two samples, do you know?

5 A I believe it was like an hour between when
6 the first B-12 PNA sample was collected and the
7 second one.

8 Q Now, what were the results of your
9 comparison as to the first B-12?

10 A In the original B-12 sample, none of the
11 compounds were detected above the method detection
12 limit.

13 Q Now, would you tell us what the results
14 were of your comparison as to the duplicate B-12?

15 A On the duplicate B-12 sample,
16 benzo-A-anthracene, crocene, benzo-B-floranthene,
17 benzo-K-floranthene, dibenzo, A-H-anthracene, and
18 andino 1, 2, 3, C-D-pyrene were all detected above
19 the Class 1 drinking water standard.

20 Q Do you have an explanation of why there
21 would be constituents found in the second sample and
22 not in the first?

23 MR. STICK: Objection. Form and foundation.

24 MR. MAKARSKI: He's familiar with it.

1 THE HEARING OFFICER: Overruled.

2 THE WITNESS: When you collect a duplicate
3 sample, there are several ways to do it. Normally,
4 with a hydro-punch in an environment such as this
5 where it's my understanding based on looking at the
6 boring log, the sand or gravel seam that was being
7 monitored was very thin, it's hard to get enough
8 yield on that well. It's not like a well in your
9 front yard where you can just pump all the water you
10 want and take lots of samples.

11 In this case, they dropped the bailer down
12 and collected enough sample for an analysis and
13 labeled that jar B-12. Because of the constituents
14 they were analyzing, the PNA constituents, the
15 polynuclear aromatic hydrocarbons, you need about a
16 quart. Whereas if you were analyzing for a volatile
17 organic compound, you only need, say, 40 milligrams.

18 So in order to get a quart out of the
19 sample location, basically that sample's hydro-punch
20 point was basically drained dry to obtain the first
21 sample. Then what would happen is water from the
22 surrounding fill material would have to flow through
23 that fill material and into the screened area and
24 collect before you could get enough water for your

1 second sample, and I believe that's what would
2 explain the hour difference between the two samples.

3 Q Now, how many cubic yards of what you call
4 unsuitable fill did you say you estimated to be at
5 the site?

6 A Approximately 165,000 cubic yards.

7 Q And that was located at what portion of
8 the site?

9 A Primarily along the western boundary, some
10 in the southwest, and a little bit along the north
11 along Stearns Road.

12 Q Now, could you within a reasonable degree
13 of scientific certainty give us an opinion of what
14 you would characterize this unsuitable fill to be?

15 A It would be considered waste, in my
16 opinion.

17 MR. STICK: Your Honor, I move to strike that
18 testimony based on this witness' stated expertise.
19 He was asked a question based upon his reasonable
20 basis of scientific certainty to explain what he
21 thought the fill material was, and that called for a
22 scientific conclusion. What he was giving or what
23 the witness gave us was a legal conclusion, the
24 ultimate issue in the case. I move to strike the

1 testimony.

2 MS. O'CONNELL: I join in the motion to strike
3 and with the objection.

4 MR. MAKARSKI: There is a mixed issue of fact
5 and law in all of these proceedings, and I think as
6 an expert he can come in and testify that certain
7 material is or is not a waste in his opinion.
8 Eventually, obviously, the board has to make that
9 decision on its own.

10 THE HEARING OFFICER: I think as to this
11 particular question and answer objection the
12 objection will be sustained because there was a
13 leap. You went directly from unsuitable fill to
14 waste, so on that basis, I'm going to sustain the
15 objection.

16 MR. MAKARSKI: I didn't hear. There was a leap
17 what?

18 THE HEARING OFFICER: You leapt right from
19 unsuitable fill to waste, and so I think Mr. Stick's
20 objection is well taken, and it's sustained and that
21 answer is stricken.

22 BY MR. MAKARSKI:

23 Q Are you familiar with the term waste?

24 A Yes.

1 Q What does it mean to you?

2 A Basically, in the Act it's defined as
3 material that's discarded, and then it goes on
4 further to include liquid, solid, gaseous materials.

5 Q And do you have an opinion as to what the
6 material is that you observed at the site which is
7 referred to as unsuitable with respect to whether or
8 not that's waste?

9 MR. STICK: Objection. Form and foundation,
10 and I object to the competency of this witness to
11 opine on the ultimate conclusion in this case.

12 MS. O'CONNELL: I join in the objection.

13 THE HEARING OFFICER: Well, we still haven't
14 established that this witness has any knowledge as
15 to what material is in the fill, so the objection is
16 sustained.

17 BY MR. MAKARSKI:

18 Q Now, let us go back. This material you
19 have called unsuitable material; is that right?

20 A Correct.

21 Q Now, how many times did you observe this
22 material?

23 A Once, and then I observed the photos that
24 were brought back from the field.

1 Q What else did you analyze?

2 A I looked at the results of the chemical
3 testing. I also looked at the records from the
4 Forest Preserve District of inspections that were
5 performed and looked at some other additional
6 photographs that were taken by, I believe,
7 Mr. Urbanski prior to our investigation of what was
8 dug up at the site.

9 Q Is that within that material you are
10 describing?

11 A That's correct. The test pits that were
12 done by both Emcon and Mr. Urbanski, some of those
13 test pits had this unsuitable material, and, like I
14 said, others were just native soil.

15 Q Would you tell us in reviewing the
16 documents with respect to Urbanski and the Emcon
17 test pits that were all in evidence what you would
18 consider to be, you used the word, unsuitable?

19 A Basically, we considered materials to be
20 unsuitable if they were either putrescible or could
21 represent a potential chemical threat. Things of
22 that nature that were detected, I'm looking at the
23 first test pit, test pit A: Leaves, branches,
24 stumps, clay tile fragments, metal pipe, blue and

1 black plastic, plywood, white cloth, boards, white
2 PVC pipe fragments. And then if you go through some
3 of the other test pits, there was metal rod and
4 strapping detected, wood fragments, pieces of wood,
5 some more metal banding. There were some tires, a
6 saw blade, basically materials that would not be
7 considered suitable fill.

8 Q What would be suitable fill?

9 MR. STICK: Objection. Form and foundation.

10 THE HEARING OFFICER: Overruled.

11 THE WITNESS: Suitable fill would be basically
12 soil materials, clean soil materials.

13 BY MR. MAKARSKI:

14 Q And why do you differentiate to call that
15 suitable and the other unsuitable?

16 A Basically, clean soil materials would not
17 have the potential to either leach contaminants into
18 the groundwater, normally would not pose a threat to
19 either human health or ecological receptors, and
20 would have some engineering properties regarding
21 compaction and potential sediment that unsuitable
22 fill materials wouldn't have.

23 For instance, what materials are known to
24 be putrescible? They will decay over time. They

1 also can give off gas. As that material decays,
2 there is the potential for sediment at the site.
3 Some of the constituents, the PVC plastic and some
4 of the metal, again would have the potential to
5 leach contaminants into the groundwater. That's
6 basically based on the visual inspection.

7 Some of the results of the chemical
8 testing would suggest that there were constituents
9 in the fill related to probably petroleum-type
10 issues. The PNAs are normally considered materials
11 that are detected in a petroleum contamination
12 situation.

13 MR. STICK: I move to strike that entire
14 testimony based upon the lack of form and foundation
15 in the initial question.

16 THE HEARING OFFICER: Overruled.

17 BY MR. MAKARSKI:

18 Q Now, as a result of your analysis of the
19 test pits, photographs, and observation of the
20 material which you referred to as unsuitable fill, I
21 ask you again if you could within a reasonable
22 degree of scientific certainty give us an opinion as
23 to what you would characterize that material?

24 A Basically, that material that was

1 unsuitable I would characterize as waste that was
2 disposed of on the site.

3 MR. STICK: Your Honor, I move to strike that
4 testimony. Again, the question was posed based upon
5 a reasonable degree of scientific certainty how he
6 would characterize the material in the fill. The
7 answer we got was the ultimate conclusion in the
8 case, a legal conclusion, not a scientific
9 conclusion, a legal conclusion. It was
10 nonresponsive to the question, and it's coming from
11 a witness who is incompetent to state a legal
12 conclusion that is the ultimate conclusion in this
13 case. So I will move to strike on those bases.

14 MS. O'CONNELL: I join in the motion.

15 MR. MAKARSKI: I thought it was responsive. I
16 asked the question, and as I said before, there is a
17 mixed question here of the word waste. The legal
18 conclusion eventually will be whether the board
19 decides this is waste and was illegally dumped
20 there. It's common parlance in environmental
21 studies and environmental law and people working in
22 environmental engineering to characterize material
23 as waste, non-waste, special waste, what have you.
24 It has to be done. These decisions have to be made

1 in instances all the time, and that's as much a
2 factual determination as a legal determination.

3 MR. STICK: Your Honor --

4 THE HEARING OFFICER: Well, okay. One last
5 statement.

6 MR. STICK: This witness is an engineer. He
7 has got a technical scientific curriculum. The
8 questions are being posed to him based on a
9 reasonable degree of scientific certainty, and they
10 call for answers that are in some way tied to his
11 background, his competence, what he was hired to do
12 by the Forest Preserve. Instead, the witness is
13 responding with a legal argument and legal
14 conclusions that were not called for and that are
15 incompetent. Mr. Makarski is right. Somebody does
16 have to make the determination whether this fill
17 material constitutes waste. That somebody is the
18 Pollution Control Board, not this witness, and not
19 Mr. Makarski, not me, and no other witness. I move
20 to strike the testimony on that grounds.

21 THE HEARING OFFICER: All right. Thank you,
22 Mr. Stick. The objection is overruled. The
23 question and answer will stand. The Pollution
24 Control Board is the ultimate decider of this issue,

1 and I believe that the witness' answers are in the
2 nature of giving a scientific opinion. I think that
3 he was qualified, and I do believe the answer was
4 responsive to the question. So on all the bases,
5 the objection is overruled. The Pollution Control
6 Board is well-suited to handle this type of inquiry
7 and will do so at the conclusion of the hearing.

8 Go ahead, Mr. Makarski.

9 BY MR. MAKARSKI:

10 Q I don't recall if I asked you this. What
11 is the reason for characterizing this as waste?

12 MR. STICK: Objection. Form and foundation.

13 MS. O'CONNELL: I join in that objection.

14 THE HEARING OFFICER: I think we have already
15 had this. I think he has already answered this
16 question.

17 MR. MAKARSKI: I didn't recall. If it has been
18 answered, then I will withdraw it.

19 BY MR. MAKARSKI:

20 Q Now, Mr. McGuigan, in your experience,
21 have you ever dealt with what we call remediation --

22 A Yes.

23 Q -- of sites?

24 Tell us what that is.

1 A Remediation is basically fixing a
2 perceived problem. In particular in the
3 environmental field, remediation normally refers to
4 cleaning up a site or correcting an environmental
5 deficiency on a piece of property through some type
6 of clean up activity.

7 Q Have you made suggested remediations in
8 the past?

9 A Yes.

10 Q Would you give us a few examples?

11 A We have worked on hundreds of underground
12 storage tank releases. We have worked on superfund
13 sites. I personally have worked on several RCRA
14 issues, RCRA closures, Resource Conservation and
15 Recovery Act issues for closure of hazardous waste
16 storage areas for treatments.

17 I have also worked on old abandoned
18 landfills to remediate potential releases from
19 groundwater or leaching from the landfill. I have
20 worked on sites where there has been groundwater
21 contamination. I have performed remediation on
22 groundwater.

23 Q Now, with respect to our site here and the
24 material which you referred to as unsuitable fill,

1 have you given any thought to possibly mediation?

2 A Yes. We have evaluated a couple of
3 options. One was a no action option which basically
4 would entail leaving the material where it is. Then
5 we evaluated an excavation option which basically
6 would be to remove that material and dispose of it
7 off site at a licensed landfill.

8 Q Are there other options available?

9 A Yes.

10 Q What would they be?

11 A Depending on proposed final use and the
12 level of comfort with potential liability that the
13 owner had, you could do other remediations which
14 would include more of an isolation technique,
15 basically turn the site into a licensed landfill,
16 keep that waste from coming in contact with the
17 groundwater by installing some sort of cap over the
18 waste and probably some sort of slurry wall or other
19 isolation device around the sides of the waste to
20 keep it out of the groundwater table would be one.

21 There are other potential treatment
22 options which would be because of the constituents
23 of concern being polynuclear aromatic hydrocarbons.
24 You could remove that material through thermal

1 treatment. Normally, what would happen is you would
2 excavate that material and you would run it through
3 basically a rotary kiln-type heating device, which
4 would volatilize the PNAs. You would collect them
5 in the scrubber on the exhaust stack, and then the
6 soil coming out the other end would be absent those
7 PNAs, and then you could return that soil.

8 While you are doing that, you would
9 probably also have to segregate out the unsuitable
10 non-soild-type materials: The metal pipe, the
11 plastic type, things of that nature.

12 There are lots of available remedial
13 techniques, all of which are based on kind of a cost
14 benefit analysis.

15 Q In your opinion, what remediation would be
16 appropriate for the unsuitable fill at this site?

17 MR. STICK: Objection. Form and foundation.

18 THE HEARING OFFICER: Overruled.

19 THE WITNESS: The removal -- the best long-term
20 solution would be the removal of the material off
21 the site and put it in a licensed facility. Any
22 other solutions --

23 BY MR. MAKARSKI:

24 Q Would you tell us your reason for that?

1 A Any other solutions which would entail
2 leaving the material would pose some potential
3 long-term liability. Either if the material was
4 designated a waste by the Pollution Control Board
5 and the site received a landfill permit, you would
6 still have the stigma basically of owning a
7 landfill. The owner, in this case, the DuPage
8 County Forest Preserve District, would wind up being
9 the owner of a closed landfill which, you know, is
10 not the best situation from a liability standpoint.

11 So basically, the best long-term solution
12 would be to remove the material from the site, you
13 know, if you want absolute no liability.

14 MR. MAKARSKI: Mr. Hearing Officer, I have no
15 further requests of Mr. McGuigan at this time. I
16 would ask to offer into evidence Exhibit 29, which
17 is the site evaluation report to which Mr. McGuigan
18 has testified. Many of the documents in that report
19 are already in evidence.

20 MR. STICK: Your Honor --

21 THE HEARING OFFICER: Any objection?

22 MR. STICK: Your Honor, I object to the
23 offering and admission of that document on at least
24 three bases.

1 First, Mr. McGuigan has testified to what
2 he has testified to. What he's offering now is
3 hearsay, but it's more than hearsay. It is hearsay
4 that contains hearsay, and the hearsay that it
5 contains is contained in Appendix 4 and 5.

6 In those sections, there are documents,
7 letters, previous investigations offered along with
8 the exhibit for which no foundation has been laid.
9 No witness has been called to lay a foundation, and
10 essentially this exhibit becomes a vehicle for
11 introduction into evidence of documents and hearsay
12 that would not be allowed otherwise. So the first
13 objection is the document itself is hearsay.
14 Mr. McGuigan can testify to what he wants to testify
15 to within proper means, but a written document
16 purporting to outline that testimony or the
17 conclusion of Emcon is hearsay.

18 The second objection is the hearsay
19 document attaches hearsay and comments on hearsay
20 and is essentially a vehicle for hearsay.

21 And the third objection is Mr. McGuigan
22 and Emcon lack any foundation, expertise, or
23 competence to state many of the opinions they have
24 stated or purport to state in the Emcon evaluation

1 report.

2 The examples I will draw to the hearing
3 officer's attention are the legal conclusions that
4 are throughout the document, the conclusions
5 regarding what is or is not appropriate for wetlands
6 construction or maybe harmful for wetlands fauna and
7 flora, and the conclusions regarding the mining
8 permit and mining applications. All of those are
9 either legal conclusions.

10 And there is a fourth, and that is
11 conclusions regarding the documents, the license
12 agreements in the legal documents of the parties.
13 The conclusions stated by Emcon in this exhibit are
14 legal conclusions about written contracts, legal
15 conclusions about environmental writings, legal
16 conclusions about mining ranks, and conclusions
17 about wetlands for which they have no competency, no
18 expertise, and no basis to opine.

19 And so those are the three bases of my
20 objection, plus form and foundation with respect to
21 all of it. In that regard, I have a written
22 objection which I would like to tender to the
23 Hearing Officer at this time. May I approach?

24 THE HEARING OFFICER: Yes.

1 MS. O'CONNELL: Mr. Hearing Officer, while I'm
2 not a party to the written objection being handed to
3 you by Mr. Stick, I do join in his objection for all
4 of the reasons here stipulated and join in the
5 written objection on the record now.

6 MR. STICK: Your Honor, the Complainant listed
7 the Emcon report as a potential exhibit in their
8 answers to interrogatories. We intended to file a
9 motion in limine to bar that report. When we got
10 their exhibit list, the Emcon report was not
11 included initially.

12 After the 21 days -- motions in limine, as
13 I interpret the regs, have to be filed within prior
14 to 21 days before the hearing. After the 21-day
15 period had expired and we were closer to hearing,
16 they added the exhibit as a potential exhibit at
17 trial, and at that point we felt it was appropriate
18 to file what would have been the motion in limine as
19 a written objection.

20 THE HEARING OFFICER: All right. I'm going to
21 take the Exhibit 29 and the objection under
22 advisement and rule on those later.

23 Can you begin your cross examination now
24 without a ruling on this?

1 MR. STICK: Yes. And, in fact, your Honor, I
2 would request that you take it in advisement until
3 the cross examination is over.

4 THE HEARING OFFICER: All right.

5 MR. MAKARSKI: Your Honor, one other thing that
6 has come to mind that somewhat relates to that is
7 Mr. Stick's letter, which is in the form of a brief,
8 I'm somewhat troubled by one side filing what is
9 essentially a legal argument as to why something is
10 or is not applicable. I never understood that you
11 were requesting something that elaborate when we
12 discussed this issue last month.

13 THE HEARING OFFICER: I'm sorry. Which one are
14 you talking about?

15 MR. MAKARSKI: That letter.

16 THE HEARING OFFICER: I didn't know that you
17 had an objection to it, Mr. Makarski.

18 MR. STICK: I have no problem withdrawing it.
19 I was just tendering it in response to your request
20 for a citation to authority.

21 THE HEARING OFFICER: I did make mention one of
22 the days last time about citation to authority. If
23 you wish to respond or if you object to it now, we
24 can do it in a more formal fashion, and that's fine

1 with me.

2 MR. TUCKER: I think counsel has offered to
3 withdraw it, and that's fine, if that's what he's
4 willing to do.

5 MR. STICK: I will leave it up to the hearing
6 officer. The only reason I submitted it to your
7 Honor is because you asked for it. If you would
8 like to keep it and allow them to respond, that's
9 fine. If you, having looked at it, don't think it's
10 worth keeping, I will withdraw it. I don't have a
11 real problem.

12 MR. TUCKER: I think your Honor just wanted a
13 case cite at the time, and what he has provided you
14 are statutory cites, case cites, analyses of cases.

15 THE HEARING OFFICER: All right. Why don't you
16 withdraw it at this time? I was under the
17 impression there was no objection to it, but
18 apparently there is an objection. So why don't you
19 withdraw? We will take this up in a more formal
20 manner at some other point.

21 MR. STICK: If your Honor would like and if
22 counsel agrees, I would just offer the citation to
23 the cases.

24 MR. MAKARSKI: That's all right.

1 MR. STICK: Withdraw the letter and offer the
2 citation to the two cases which we can read into the
3 record. I think that answers your inquiry.

4 MR. MAKARSKI: Yes. I think that's what you
5 wanted, and I think giving you those citations gives
6 you what -- well, and the statute, but I think that
7 already came up.

8 THE HEARING OFFICER: All right. Then the
9 letter will be withdrawn, and the citations to the
10 cases are?

11 MR. STICK: Would you like me to read them your
12 Honor?

13 The two cases were Envirote Corporation
14 vs. IEPA, 158 Il.2d 210, a 1994 case, and Chemrex,
15 Inc., vs. Pollution Control Board, 257 Il.Ap.3d 274,
16 a First District case in 1993.

17 THE HEARING OFFICER: Thank you.

18 MR. MAKARSKI: Thank you.

19 THE HEARING OFFICER: Before you begin, I will
20 take this under advisement, but I wish to let you
21 put on any response, if you would like to.

22 MR. MAKARSKI: Just briefly, the document, of
23 course, as testified was prepared under his
24 supervision, reviewed what have you by him, so I

1 don't think that's a document he did himself. It
2 doesn't become hearsay.

3 With respect to things in it, those two
4 appendices that they criticized, I would have no
5 objection to withdrawing those from the Appendix 4
6 and 5. The rest of them I think, except for the
7 report itself, are all in evidence, and the report
8 itself I think is admissible under the board's
9 regulations where a person can file an opinion or
10 written documents with the board provided he's
11 available for cross examination, and of course he
12 is.

13 THE HEARING OFFICER: Thank you.

14 MR. STICK: The problem with withdrawing 4 and
15 5 now is the text of the report deals in great
16 detail with Appendix 4 and 5 and he has already
17 testified about it, so if they withdraw 4 and 5, we
18 need to strike much of his testimony.

19 THE HEARING OFFICER: All right. Thank you.
20 Okay.

21 Why don't you go ahead and get started on
22 your cross, if you don't mind?

23

24

1 CROSS EXAMINATION

2 BY MR. STICK:

3 Q Mr. McGuigan, I believe you testified
4 Emcon was retained in January of 1995 to perform
5 services at the Stearns Road site; is that correct?

6 A Somewhere around that time, correct.

7 Q But prior to that point, Emcon and its
8 predecessors had provided numerous services for the
9 Forest Preserve District, correct?

10 A Numerous, I wouldn't use that word, no,
11 but we have worked for the Forest Preserve District
12 before. In this particular case, I believe we were
13 working for Chapman and Cutler.

14 Q The question was you had worked for the
15 Forest Preserve District prior to January of 1995,
16 correct?

17 A That's correct. I believe you asked
18 numerous times.

19 Q And you had worked for the Forest Preserve
20 to provide services to the Forest Preserve as far
21 back as the late 1970s and early '80s, correct?

22 A I couldn't verify that because I didn't
23 start with Eldridge until 1981.

24 Q It's your understanding that the companies

1 that were later merged into Emcon had a long history
2 of providing services to the Forest Preserve
3 District, correct?

4 A I believe that's correct, yes.

5 Q Whether those services were numerous or
6 not, it was a lengthy history?

7 A Yes.

8 Q Now, many of these services were performed
9 in conjunction with the Forest Preserve District's
10 landfills, correct?

11 A Again, the recollection I have of the
12 projects we have worked on for the Forest Preserve,
13 at no time did we ever work at one of their two
14 landfills, to my knowledge.

15 Q Did you perform services investigating any
16 of the Forest Preserve District's landfills at any
17 time?

18 A The projects that I am aware of that we
19 worked historically for the Forest Preserve District
20 included a site that's known as Whites Farm, which
21 was a septic hauler discharge to the ground. We
22 also did some planning work.

23 I believe recently on the two landfills
24 when the lawsuit that closed the two landfills,

1 Mallard and Green Valley, was involved, that was a
2 more of a study on the potential impact of the
3 disposal capacity.

4 Q So you have provided services with respect
5 to the Forest Preserve District's landfills?

6 A Yes.

7 Q Now, when this site evaluation report was
8 prepared by Emcon, a draft of that report was sent
9 to the Forest Preserve District, correct?

10 A That's correct.

11 Q And a draft of that report was also sent
12 to the attorneys for Chapman and Cutler, correct?

13 A That's correct.

14 Q And you and others at Emcon sat down with
15 the attorneys from Chapman and Cutler and with
16 members of the Forest Preserve District and reviewed
17 and discussed the preliminary conclusions that Emcon
18 had made in the site evaluation report, correct?

19 A That's correct.

20 Q And the attorneys from Chapman and Cutler
21 and the Forest Preserve District made some comments,
22 and changes were made to the site evaluation report,
23 correct?

24 A Correct.

1 Q Now, the Illinois Department of
2 Registration and Education provides written
3 standards for conduct of professional engineers,
4 correct?

5 A That's correct.

6 Q And those written standards govern the
7 certification of certain reports prepared by the
8 professional engineers, correct?

9 A Correct.

10 Q Now, just for clarification, the site
11 evaluation report prepared by Emcon was not a
12 certified report, correct?

13 A I don't believe there is a certification
14 page or signature page in that report.

15 Q Can you check?

16 A That's correct. Within the report there
17 is not a certification, nor a signature page.

18 Q So that was not a certified report,
19 correct?

20 A Correct.

21 Q And one of the significances of that is
22 that Emcon did not have to certify that its
23 investigation was conducted utilizing appropriate
24 quality control and quality assurance standards,

1 correct?

2 A The fact that there is no page in the
3 report would not give us any less liability, I would
4 perceive, in preparing a document that was
5 suitable.

6 MR. STICK: Your Honor, I move to strike that
7 answer as nonresponsive.

8 THE HEARING OFFICER: Sustained.

9 BY MR. STICK:

10 Q Can you answer the question that was posed
11 to you?

12 A Would you ask the question again, please?

13 THE HEARING OFFICER: Would you read the
14 question back, please?

15 (Whereupon, the record was read by
16 the court reporter.)

17 THE WITNESS: That is correct. There is no
18 certification page in the report.

19 BY MR. STICK:

20 Q And Emcon did not have to certify that
21 it's investigation of the Stearns Road site was
22 conducted pursuant to ASTM standards, correct?

23 A That's correct. There is no certification
24 in the report, although we did utilize quality

1 control and ASTM standards as guidelines.

2 Q The question to you is Emcon did not
3 certify that its investigation of the site was in
4 conformance with standard ASTM procedures, correct?

5 A That's correct. There is no certification
6 statement in the report.

7 Q And Emcon did not certify to other
8 assurances that are typically made when a report
9 such as the Emcon report is certified, correct?

10 A That's correct. There is no certification
11 in the report.

12 Q Now, you do not qualify or claim to be an
13 expert in the construction of wetlands, do you?

14 A That's correct.

15 Q And you do not qualify or claim to be an
16 expert in wetlands flora or fauna, correct?

17 A Correct.

18 Q And, in fact, no one at Emcon who was
19 involved in the Emcon investigation at the Stearns
20 Road site qualifies as an expert in wetlands
21 construction or wetlands flora and fauna, correct?

22 A Correct.

23 Q Now, you have heard of Christopher Burke
24 Engineering, haven't you?

1 A I have heard of them, yes.

2 Q And you know that firm to be a wetlands
3 civil engineering firm, correct?

4 A That would be their reputation. I don't
5 have personal knowledge of any of their work.

6 Q You know their reputation?

7 A I would go as far as to say that I know
8 who they are and I know they do wetlands work.

9 Q And you know the firm's experience is in
10 the area of wetlands, correct?

11 A I know that's one of the things that they
12 do.

13 Q Let me ask you this. You don't know of
14 any reason why Christopher Burke Engineering would
15 not qualify as experts in the areas of wetlands
16 construction or wetlands flora and fauna, would you?

17 A That's correct. I have no knowledge one
18 way or the other.

19 Q So you don't know of any reason why they
20 would not qualify, correct?

21 A Correct.

22 Q Now, you do not qualify as an expert on
23 mining or compliance with mining regulations, do
24 you?

1 A Correct. I would not classify myself as
2 an expert.

3 Q Nor would you claim to be an expert in
4 that area, correct?

5 A Correct.

6 Q You have never personally prepared an
7 application for a mining permit, correct?

8 A Not an entire permit, no. I may have been
9 involved in some storm water issues or whatever, but
10 correct, I have never prepared a mining permit in
11 its entirety.

12 Q And you have never personally advised a
13 client with respect to compliance with mining
14 regulations, correct?

15 A No. That's not correct. I believe we
16 have been involved in a couple mining operations
17 that had NPDES issues. So in regards to your
18 question, we have advised some clients regarding
19 mining permits per se.

20 Q NPDES issues are issues requiring a
21 different type of permit, correct?

22 A That's correct. It would not be a mining
23 permit, but it would be for a mining operation.

24 Q So what you have been involved in is NPDES

1 permits that were issued for mining operations?

2 A Correct.

3 Q But you have not been involved in offering
4 guidance in compliance with a mining permit,
5 correct?

6 A That's correct.

7 Q Now, Mr. McGuigan, you are not a lawyer,
8 either, are you?

9 A No, I'm not.

10 Q And you have no particular expertise that
11 would allow you to provide competent expert
12 testimony or opinions regarding the interpretation
13 of legal documents, correct?

14 A I'm not a lawyer. I mean, I can read a
15 document and tell you what I think as an engineer,
16 but I don't claim to have any special legal
17 knowledge.

18 MR. STICK: Your Honor, I move to strike that
19 answer as nonresponsive, and I ask you to instruct
20 the witness to answer the question as posed.

21 MR. MAKARSKI: I object. I think it was
22 responsive.

23 THE HEARING OFFICER: The answer will stand.

24

1 BY MR. STICK:

2 Q Mr. McGuigan, do you have any expertise
3 that would allow you to provide competent expert
4 testimony or opinions regarding the interpretation
5 of legal documents?

6 MR. TUCKER: Objection. Asked and answered.

7 MR. STICK: Your Honor, I asked the question.
8 It wasn't answered.

9 THE HEARING OFFICER: Overruled.

10 THE WITNESS: I have scientific knowledge
11 regarding regulations that I deal with on a
12 day-to-day basis that would lead me to believe I
13 have an understanding of what the regulations
14 require. So to answer your question, yes, I do have
15 some expertise regarding regulations.

16 BY MR. STICK:

17 Q Well, the question, Mr. McGuigan, was
18 legal documents, not regulations. So do you have
19 any particular expertise that would allow you to
20 provide competent expert testimony or opinions
21 regarding the interpretation of legal documents?

22 A For legal documents, I would say no, I
23 don't have any particular expertise.

24 Q And for legal documents, that would

1 include, for instance, the license agreement,
2 correct?

3 A That's correct.

4 Q This is not an area in which you are
5 qualified, correct?

6 A Correct.

7 Q And, in fact, no one employed by Emcon
8 that assisted in the preparation of the site
9 evaluation report is qualified to offer competent
10 expert testimony or opinions regarding the
11 interpretation of legal documents, correct?

12 A Correct.

13 Q Let me back up to the wetlands issue.

14 Because you do not claim or qualify to be
15 an expert in the area of wetlands construction or
16 wetlands flora and fauna, would you agree with me
17 that you are not qualified to offer competent expert
18 opinions or conclusions regarding wetlands
19 construction or wetlands flora and fauna?

20 MR. MAKARSKI: My objection to this, your
21 Honor, is that I don't think it has anything to do
22 with the case. We are not arguing the construction
23 of a wetland. We are arguing whether it was an
24 illegal dumping.

1 MR. STICK: Well, your Honor, when you read the
2 Emcon site evaluation report, you will see there is
3 a lot of information in there that has got nothing
4 to do with this case, and that's an independent
5 basis for excluding that report from evidence. But
6 some things that are in that report are conclusions
7 and opinions regarding wetlands, wetlands
8 construction, wetlands flora and fauna, as well as
9 legal interpretation of documents and
10 interpretations of mining permits. So all I'm doing
11 here is establishing that this witness is not
12 qualified to state those opinions, and I think I'm
13 entitled to cross examine this witness on those
14 areas based on those facts that Mr. Makarski has
15 offered a report through this witness reviewed by
16 this witness that offers those conclusions.

17 THE HEARING OFFICER: Objection is overruled.

18 BY MR. STICK:

19 Q Do you recall the question?

20 MR. STICK: Could you read the question back,
21 please?

22 THE HEARING OFFICER: Before you do,
23 Mr. McGuigan. It will help us a lot if you will
24 keep the questions in mind.

1 THE WITNESS: Okay.

2 THE HEARING OFFICER: Would you read the
3 question back again?

4 (Whereupon, the record was read by
5 the court reporter.)

6 THE WITNESS: That's correct.

7 BY MR. STICK:

8 Q Similarly, with respect to mining
9 regulations and the compliance with mining
10 regulations, because you do not qualify or claim to
11 be an expert in those areas, would you agree with me
12 that you are not competent to state opinions and
13 conclusions regarding interpretations of mining
14 applications, mining permits, or mining regulations?

15 A That's correct.

16 Q Now, Mr. McGuigan, occasionally in
17 providing services to your clients, I take it there
18 arises instances where you might rely upon the
19 Illinois Environmental Protection Agency to provide
20 guidance as to whether or not something falls within
21 the scope of the Illinois Environmental Protection
22 Act. Would that be correct?

23 A I will try to answer your question. We
24 usually read the regulations and make our own

1 interpretation, but then ultimately we do contact
2 the Illinois EPA regarding what their interpretation
3 is, if it's unclear.

4 Q If it's a close question, you might
5 contact the Illinois Environmental Protection Agency
6 to confirm the conclusion that you have reached,
7 correct?

8 A Normally, our procedure would be to read
9 the regulation, make our interpretation, go to the
10 client. The client would consult his attorney, and
11 then the attorneys would make a determination as to
12 whether or not they would go to the agency for a
13 determination.

14 Q Have you ever contacted the Illinois
15 Environmental Protection Agency or any person
16 employed by that agency to receive comments from
17 them on an interpretation of the Illinois
18 Environmental Protection Act?

19 A Yes.

20 Q And that might arise in circumstances
21 where you have made a determination or conclusion,
22 but it's a close question and you seek
23 confirmation? Would that be one instance where you
24 might do that?

1 A That's correct.

2 Q Or another instance might be where it's
3 such a close issue that you don't feel as though you
4 can make a determination and so you go to the
5 Illinois Environmental Protection Agency to find out
6 what their interpretation is, correct?

7 A That's a possibility, correct.

8 Q And in those instances where you contact
9 the Illinois Environmental Protection Agency, the
10 type of information you have obtained from that
11 agency is the type of information that you typically
12 rely upon in providing services to your client,
13 correct?

14 A Correct, although we normally, depending
15 on what their opinion was, may check further into it
16 either with the Pollution Control Board-type issues
17 or, again, checking with the attorney. We have
18 gotten opinions from the state that later have
19 proven to be wrong.

20 Q My question to you is not is that the only
21 information you rely upon, but is that the type of
22 information, opinions, or guidance from the Illinois
23 Environmental Protection Agency that you would
24 typically rely upon in providing services to your

1 clients?

2 A Yes.

3 Q You might rely on other information, but
4 that's the type of information that in the
5 appropriate case would be a typical source of
6 information, correct?

7 A Right. That would be one source.

8 Q And, in fact, in your experience, haven't
9 you come across instances where you sought an
10 interpretation from the Illinois Environmental
11 Protection Agency regarding whether something
12 qualifies as a waste?

13 A I believe that's probably true, although
14 it would usually be regarding whether it was a
15 special waste or a hazardous waste, but we may
16 have. I personally don't recall ever calling and
17 asking about whether something was a waste or not,
18 but that's possible. You could ask that question.

19 Q Well, hazardous waste is a waste, correct?

20 A That's correct.

21 Q And special waste is a waste?

22 A That's correct, the specific category of
23 waste.

24 Q So what you are saying is the categories

1 of waste that you recall contacting the Illinois
2 Environmental Protection Agency for guidance on are
3 special waste and hazardous waste?

4 A Correct.

5 Q And I take it what you are also saying,
6 correct me if I'm wrong, is that you don't
7 particularly recall calling the IEPA regarding a
8 solid waste?

9 A Correct, making the determination as to
10 whether or not an item was a waste or not a waste.

11 Q Now, is that because you don't recall
12 having done that, or do you know for a fact you have
13 never contacted the Illinois Environmental
14 Protection Agency regarding guidance on whether or
15 not something constitutes a solid waste?

16 A I don't recall specifically contacting
17 them on that issue.

18 Q So it may have happened, but you don't
19 have any specific recollection?

20 A It's possible.

21 Q Let me refer you to the Emcon site
22 evaluation report, which has been marked, I believe,
23 as Complainant's Exhibit 29. What I would like to
24 refer you to is the executive summary. Let me refer

1 you to the first page of the executive summary in
2 the second paragraph. Do you see the second
3 paragraph?

4 A Yes.

5 Q You state or Emcon states several
6 regulatory and end use concerns have been identified
7 based on our evaluation, and then Emcon states three
8 concerns, correct?

9 A Correct.

10 Q And the very first concern that Emcon
11 states in the site evaluation report is improper
12 landform configuration, correct?

13 A That's correct.

14 Q Now, would it be fair to say that when
15 Emcon talks about improper landform configuration,
16 it is referring to the difference between what the
17 site might have looked like five years down the road
18 under one of the three planned proposed grading
19 plans versus what it looked like two years into
20 mining and construction when the stop work notice
21 was issued, correct?

22 A That's correct.

23 Q So it is simply a comparison between
24 current conditions and what conditions were expected

1 to look like if the contractor had been allowed to
2 complete the remaining three years of the contract?

3 A Not -- it's a comparison between what the
4 site looked like at the time of our study versus the
5 proposed final design. I have no knowledge as to
6 whether or not the contractor had any intention of
7 making it look like that at the end. So the way
8 your question was posed, I'm just clarifying it.

9 Q Fair enough.

10 Now, you don't know what the proposed
11 final design was, do you?

12 A In the respect that there are four
13 different ones that have been either attached to
14 license agreements or other pieces of paper, we are
15 not sure which of those four, if any, is actually
16 the approved proposed final design, that's correct.

17 Q So you don't know what the parties
18 intended --

19 A That's correct.

20 Q -- at the end of the construction process?

21 A That's correct.

22 Q So you don't know what the final
23 configuration of the site was intended to be?

24 A All of the proposed final configurations

1 were wetlands, so from the standpoint of the
2 proposal was to build a wetland, we know that was a
3 fact. How exactly that was accomplished and what
4 the final grades were to be, we don't know what that
5 was exactly.

6 Q Now, a comparison between the physical
7 configuration of the site when you investigated or
8 Emcon investigated versus what the site may have
9 looked like under one of three or four proposed
10 final grades is absolutely irrelevant to this
11 proceeding, wouldn't you agree with me?

12 A No.

13 Q It in no way involves the environmental
14 regulations, correct?

15 A That's correct.

16 Q And it in no way involves an analysis or
17 investigation of waste disposal or debris or any of
18 the other things you mentioned in your direct
19 examination, correct?

20 A That's correct, and let me clarify.

21 If your question was meant has nothing to
22 do with the proceedings here today before the
23 Pollution Control Board, I will agree that the
24 landform has little or nothing to do with whether or

1 not the material in the site is unsuitable or a
2 waste.

3 Q Well, you would agree with me that whether
4 or not the site has an improper landform
5 configuration is irrelevant to this Pollution
6 Control Board proceeding?

7 A That's correct.

8 Q Now, that, if it is an issue, is a
9 contract issue, correct?

10 A I'm not a lawyer, so I believe a contract
11 issue would be a legal opinion.

12 Q Well, from Emcon's investigation of the
13 Stearns Road site, if -- strike that.

14 At the end of the second paragraph, Emcon
15 states the opinion that all of the items outlined
16 above require corrective action, correct?

17 A Correct.

18 Q Now, the appropriate corrective action to
19 the issue of whether or not the site has an improper
20 landform configuration would be to grade the site,
21 correct?

22 A Correct.

23 Q So that has nothing to do -- the remedy
24 has nothing to do with any kind of environmental

1 issues, correct?

2 A That's correct. That's just an
3 earth-moving problem.

4 Q Now, the second issue or the second
5 concern that Emcon raised is the presence of
6 unsuitable waste fill materials, correct?

7 A Correct.

8 Q Now, unsuitable waste fill materials is
9 not a phrase that's defined in the Illinois
10 Environmental Protection Act, is it?

11 A No. I believe waste is defined, but
12 unsuitable waste fill materials is not defined.

13 Q And unsuitable is not defined, correct?

14 A Correct.

15 Q This is a phrase that Emcon coined,
16 correct?

17 A Correct.

18 Q And you defined it, and I think you said
19 in your direct examination how you defined it,
20 correct?

21 A Correct.

22 Q Isn't it true that in defining the term
23 unsuitable waste fill materials, Emcon looked at two
24 separate definitions of suitable fill?

1 A I don't understand the question.

2 Q Strike that.

3 Isn't it true in coming up with the phrase
4 unsuitable waste fill material Emcon looked at two
5 separate sources for determining what may or may not
6 be suitable?

7 A That's correct. Because there is fill
8 material on the site, some of which was soil and/or
9 dirt and some of which was the debris containing or
10 waste containing fill, we coined the phrase
11 unsuitable fill or debris containing fill to
12 represent that portion of the fill that ultimately
13 we said was unsuitable versus other materials on the
14 site that would be fill that we felt were perfectly
15 acceptable fill materials.

16 Q Well, unsuitable fill material means not
17 acceptable to your client, Forest Preserve District,
18 correct?

19 A That's correct.

20 Q That, whether it's suitable to the Forest
21 Preserve District or unsuitable to the Forest
22 Preserve District, you would agree with me is
23 completely irrelevant to this Pollution Control
24 Board proceeding?

1 A I believe that's what this hearing will be
2 about is to determine whether or not that material
3 is indeed a waste or unsuitable.

4 Q But that's different than whether it's
5 acceptable to the Forest Preserve District, correct?

6 A That's correct.

7 Q And in determining that certain material
8 at the site was unsuitable, Emcon looked both at the
9 environmental regulations and at whether that
10 material was acceptable to the Forest Preserve
11 District?

12 A Correct.

13 Q And my question to you is whether it's
14 acceptable to the Forest Preserve District is
15 irrelevant in this Pollution Control Board
16 proceeding, correct?

17 A That's correct.

18 Q Now, how is the Pollution Control Board
19 supposed to know when you use the phrase unsuitable
20 waste fill material whether Emcon is talking about
21 unsuitable from a regulatory point of view or
22 unsuitable because it may be something the Forest
23 Preserve District doesn't like?

24 A I believe it wouldn't matter. Based on

1 our opinions as to what we call unsuitable, we
2 believe that the Pollution Control Board will also
3 determine that that material is unsuitable or a
4 waste, so there is no difference.

5 Q Let me give you an example. Concrete is
6 suitable under a regulatory analysis, correct?

7 A It could be.

8 Q It is suitable, is it not, as fill
9 material?

10 A It could be. It could be classified as a
11 waste. In fact, as far as I know, it is a waste.
12 There are exemptions for using it as fill material.

13 Q Would you agree that the only reason
14 concrete and asphalt have been coined unsuitable by
15 Emcon is because the Forest Preserve District
16 doesn't like it?

17 A Yes. I think that's a fair assessment.

18 Q Otherwise, concrete and asphalt are
19 suitable fill material?

20 A They could be. Not below the water table,
21 but they could be.

22 MR. MAKARSKI: Why don't we head for the lunch
23 hour?

24 THE HEARING OFFICER: I was going to let

1 Mr. Stick find an appropriate breaking point.

2 MR. STICK: I'm flexible. I have got enough to
3 keep me going for a while, so whenever anybody else
4 wants to break, they can. But otherwise, I will
5 just keep plugging away.

6 THE HEARING OFFICER: All right. Well, then
7 let's go ahead and take our lunch break. Let's
8 resume at 1:15.

9 MR. STICK: Thank you, your Honor.

10 (Whereupon, a recess was taken.)

11 AFTERNOON SESSION

12 THE HEARING OFFICER: Back on the record.

13 You may proceed with your cross,
14 Mr. Stick.

15 MR. STICK: Could I ask the reporter to read
16 back the last question and answer, your Honor?

17 THE HEARING OFFICER: Yes. Would you read the
18 last question and answer back, please?

19 (Whereupon, the record was read by
20 the court reporter.)

21 BY MR. STICK:

22 Q Mr. McGuigan, you don't know of any
23 environmental regulation that prohibits the
24 placement of asphalt or concrete as fill material

1 below the water table, do you?

2 A Not specifically. It's not good practice.

3 Q Well, you don't know of any such

4 environmental regulation, correct?

5 A That's correct.

6 Q So concrete and asphalt you would agree

7 with me that from an environmental regulatory point

8 of view constitutes acceptable and appropriate fill

9 material, correct?

10 A That's correct.

11 Q Now, referring you back to the executive

12 summary, we were on the second paragraph. That

13 would -- let me back up a minute.

14 Clean construction or demolition debris is

15 acceptable fill material from a regulatory

16 standpoint, correct?

17 A Correct.

18 Q It may not be acceptable based upon the

19 Forest Preserve's desires, correct?

20 A That's correct.

21 Q But it is acceptable for purposes that are

22 relevant to this proceeding?

23 A That's correct.

24 Q Now, in the second paragraph, the third

1 concern that Emcon identified was the quote,
2 potential environmental impacts to the proposed
3 wetlands/park development. Do you see that?

4 A Yes.

5 Q Was that a concern that Emcon identified?

6 A Yes.

7 Q Identifying that as a potential concern
8 requires a certain level of wetlands expertise, does
9 it not?

10 A That's correct, if you read it in as much
11 as the potential environmental impacts to proposed
12 wetland park development. I think the meaning of
13 that sentence was the fill material had the
14 potential to have an environmental impact to any
15 potential end use in the fact that we reference park
16 land. Wetland development is just because that's
17 the end use that's proposed.

18 Q But that's not what you said in the
19 report. What you said in the report was there was a
20 potential environmental impact to the proposed
21 wetland park development, correct?

22 A That's correct. That's what it says.

23 Q And to make that determination, you would
24 agree with me you would have to have or someone at

1 Emcon would have to have some level of wetland
2 expertise, correct?

3 A To make the assessment that it would have
4 an impact on the wetland, correct.

5 Q And those are expertise that neither you
6 nor anyone at Emcon who prepared or assisted in the
7 preparation of the site evaluation report possessed,
8 correct?

9 A That's correct. I wouldn't classify
10 anyone that participated in the preparation of the
11 report as an expert in wetland construction or flora
12 and fauna.

13 Q Thank you.

14 Let me refer you to the third paragraph of
15 the executive summary. There is a reference thereto
16 man-made piles of fill material that extend over 30
17 feet above the proposed final grade. Do you see
18 that?

19 A Yes.

20 Q Now, you are referring there to two
21 stockpile areas, correct?

22 A Correct.

23 Q In the northern part of the site?

24 A Two in the northern part, correct. There

1 is also a stockpile in the southern part of the
2 site.

3 Q The stockpile in the southern part of the
4 site is the stockpile of overburden, correct?

5 A Correct. That's our assessment.

6 Q And the two stockpiles in the northern
7 portion of the site are a stockpile of aggregate
8 that has been mined and is stockpiled waiting for
9 sale, correct? That's one of them?

10 A Correct. Whether it was mined -- we
11 assume it was mined from the site. It wouldn't make
12 sense to bring in a stockpile of gravel and put it
13 on the site.

14 Q And the other stockpile on the north side
15 of the site is a stockpile of concrete that has been
16 brought onto the site for crushing and recycling
17 into aggregate, correct?

18 A That pile was not comprised solely of the
19 concrete. It had other materials in it.

20 Q Such as?

21 A There was some metal culverts and some
22 rebar hanging out and other miscellaneous-type
23 stuff, but it was primarily a concrete pile that had
24 some other materials in it, some metal culverts and

1 some other type of materials.

2 Q This pile, the second pile in the northern
3 part of the site that you are referring to as
4 concrete, metal culverts, and rebar, that was not a
5 pile of material that had been utilized for fill
6 purposes, correct?

7 A I wouldn't classify it as a pile that was
8 utilized in its current condition for fill. Whether
9 it was going to be used for fill or for some other
10 purpose I don't know.

11 Q Obviously, you don't know what the intent
12 was with respect to that pile for future content,
13 correct?

14 A Correct.

15 Q And by looking at that pile, you can
16 determine that it had not been used for fill?

17 A The fact that it's in a pile on the site,
18 I mean, you could call that fill, but that's not
19 where the fill needed to be placed. So I would say
20 that it wasn't being used for fill in its present
21 configuration.

22 Q The fact that it was stockpiled above
23 ground on the site upwards of 30 feet in the air
24 would indicate to you that it had been segregated

1 into that portion of the site, correct?

2 A They had been deposited at that place into
3 the pile, correct.

4 Q And that it had not been used as fill
5 material in the fill areas of the site?

6 A In its present configuration, it's not
7 being used as fill. I think that's a fair
8 assessment.

9 Q Now, the mind and processed aggregates in
10 the north portion of the site, you would not
11 characterize that as fill material either, would
12 you?

13 A I would classify that probably as a
14 product they were getting ready to sell. You could
15 use it for fill, but in its present configuration,
16 again, it didn't appear to be what the intent of the
17 pile was.

18 Q It was pretty evident that that material
19 had not yet been used as fill material?

20 A Correct.

21 Q And you would suspect that it was not
22 going to be used as fill material, correct?

23 A I wouldn't know one way or the other. I
24 mean, my own personal opinion would be they probably

1 wouldn't use it for that, but they could.

2 Q So the only piles of material that could
3 be characterized as fill material is the stockpile
4 of overburden in the southern part of the site,
5 right?

6 A All of the piles have the potential to be
7 used for fill, but it was obvious that the pile in
8 the southern portion because it was fairly
9 inaccessible and close to the excavation that that
10 was probably going to be used to backfill the
11 excavation.

12 Q And that was the intended -- as you
13 understand the operations at the cited, the intended
14 purpose was to eventually use the overburden that
15 was stockpiled either as fill material or respread
16 it as overburden, correct?

17 A Correct.

18 Q Let me refer you to the fourth paragraph
19 of the executive summary. In the first sentence,
20 Emcon makes the statement, "It appears that the
21 excavation of native sand and gravel deposits
22 extended both vertically and laterally beyond the
23 original limits identified in the plan sheets
24 included as part of the license agreement."

1 Now, initially, you would agree with me
2 that that calls for a legal interpretation of the
3 license agreement and the appended plan sheets,
4 correct?

5 A I don't think we were proposing this
6 sentence as a legal opinion. I think we were just
7 stating a fact that the based on the contour maps
8 attached to the license agreement that the
9 excavation is deeper than and extends horizontally
10 farther than any of the plans that were appended.

11 Q But again, that's not what Emcon said in
12 that statement, is it?

13 A I think we said it appears the excavation
14 of native sand and gravel deposits extended both
15 vertically and laterally beyond the original limits
16 identified on the plan sheets.

17 Q Where in the plan sheets are limits to the
18 excavation identified?

19 A They show a proposed final grading plan.

20 Q Do they specifically anywhere in the plan
21 sheets or the license agreement limit the excavation
22 that the contractor can perform in the sand and
23 gravel aggregate on the process?

24 A I don't believe it specifically limits the

1 depth, although from a horizontal perspective, you
2 would think that the mining would be confined to the
3 property and not off the adjacent property.

4 Q So you would agree with me there are no
5 limits to the depth of the mining excavations
6 permitted at the site under the license agreement or
7 the appended plans?

8 A That's correct.

9 Q Further in Paragraph 4, there is the
10 statement these localized ponds are connected to the
11 local groundwater table. Is it Emcon's theory that
12 the pond water is interconnected with the
13 groundwater table?

14 A Yes.

15 Q In the next sentence, it says, "The water
16 depth at some locations has been estimated to be 20
17 feet deep." Do you see that statement?

18 A Yes.

19 Q Is that Emcon's statement in its site
20 evaluation report?

21 A Yes.

22 Q Emcon did not perform any test to
23 determine how deep the pond was, correct?

24 A That's correct. We obtained that data

1 based on some soundings that were done by another
2 party.

3 Q And that other party was Mr. Steinbrecker?

4 A I believe that's the case, yes. There was
5 a map that showed soundings of the pond.

6 Q Now, isn't it true that Emcon in making
7 that statement as to the depth of the pond is
8 relying in part on an aerial photograph that was
9 taken in approximately November of 1994?

10 A I believe -- I'm not sure of the date, but
11 yes, we relied on an aerial photo.

12 Q And you relied upon a topographic map that
13 was prepared based upon the aerial photograph,
14 correct?

15 A Correct.

16 Q And that topographic map indicated a
17 surface elevation for the pond water, correct?

18 A Yes.

19 Q And for Emcon to determine or to speculate
20 as to what the depth of the pond was, you used the
21 surface elevation of the pond from the November topo
22 map and Mr. Steinbrecker's soundings as to the depth
23 of the pond, correct?

24 A Correct.

1 Q Now, were you present when
2 Mr. Steinbrecker performed his soundings?

3 A No.

4 Q Was anyone from Emcon present when
5 Mr. Steinbrecker performed his soundings?

6 A Not to my knowledge.

7 Q Does anyone from Emcon know when
8 Mr. Steinbrecker performed his soundings?

9 A I don't believe so. There may be a date
10 on his map, but I'm not sure.

11 Q You testified during direct examination
12 that Emcon had purported to attempt to quantify the
13 amount of fill material at the site, correct?

14 A The amount of unsuitable fill material,
15 correct.

16 Q And you referred to a graph or a chart or
17 a drawing in the Emcon report?

18 A I believe I referred to some
19 cross-sections.

20 Q Didn't you refer to a drawing with some
21 shaded areas for unacceptable fill areas?

22 A Correct. There is a drawing that shows
23 areas based on the test pits and borings on a
24 horizontal basis where materials were found that we

1 felt were unsuitable.

2 Q And which drawing is that?

3 MR. STICK: And I will tell you, Dick, the copy
4 of the Emcon report that you tendered to me, I can't
5 find that. It may be in my old copy.

6 THE WITNESS: It's a drawing that's found
7 following Page 3-2. It's an 11-by-17 drawing, and
8 it's labeled boring/piesometer map.

9 MR. MAKARSKI: That's not in there? Do you
10 want to take this? This is complete.

11 MR. STICK: Thanks.

12 Dick, this doesn't have it either.

13 MR. KNIPPEN: What is the name of that?

14 THE WITNESS: Boring/piesometer map.

15 MR. MAKARSKI: I think that's in evidence.

16 MR. TUCKER: It is another exhibit in evidence,
17 I believe. Do you recall offhand, Mike, what that
18 number would be?

19 THE HEARING OFFICER: It's Complainant's
20 Exhibit Number 20. Certain of those maps, I think,
21 were taken out of these booklets last time.

22 MR. MAKARSKI: That is right. I tried to
23 replace everything, but I missed one.

24 THE WITNESS: It's also known on a map that's

1 showed the test pit/sediment sample location map,
2 which is the page following 3-10. It's a different
3 map, but the shading is the same as to where
4 unsuitable fill material was found.

5 BY MR. STICK:

6 Q Let me direct you to the second to last
7 paragraph of the first page of the executive
8 summary. In that paragraph, you refer to previous
9 investigations. Is that a reference to
10 Mr. Urbanski's investigation?

11 A Where are you at again?

12 Q The second to last paragraph, the first
13 page of the executive summary.

14 A Correct. It refers to during previous
15 investigations, which we would be referring to those
16 investigations, I believe, that were included in
17 Appendix 5, which is the Urbanski material. Also, I
18 believe there is an appendix -- also in 5 there are
19 some reports, summary of findings by
20 P and P Consultants, another interim report by
21 Goodwyn and Brohms, and a letter report by Testing
22 Service Corporation.

23 Q The TSC investigation did not identify
24 waste materials below the surface, did it?

1 A I don't believe it was a subsurface
2 exploration, correct.

3 Q And the P and P investigation did not
4 identify waste materials below the surface, correct?

5 A That's correct. I believe that report
6 also was concentrated on samples that were taken
7 from the surface.

8 Q And the Goodwyn and Brohms report did not
9 do any -- Goodwyn and Brohms did not do any
10 investigation of the site, correct?

11 A I'm not sure, but I could look -- that's
12 probably true.

13 Q I mean, they didn't do any physical
14 sampling of the site, correct?

15 A I don't believe so.

16 Q So when you refer to previous
17 investigations there, you are referring to what?

18 A Basically previous studies that were done
19 at the site at the request of, I believe, the
20 district to assess the potential for a material that
21 was coming on the site to be contaminated.

22 Q Let me refer you to the last paragraph,
23 the first page of the executive summary. There is a
24 statement made, "Current site configurations,

1 therefore, not compatible with productive final use,
2 especially the proposed wetlands conservation area
3 development." That, again, is an opinion stated by
4 Emcon, correct?

5 A That's correct.

6 Q And would you agree with me that that
7 opinion requires some degree of wetlands expertise
8 that neither you nor anyone at Emcon possesses?

9 A That's correct, as far as it's related
10 directly to a wetland end use.

11 Q The only subsurface investigation that had
12 been conducted prior to Emcon's test pits was
13 Mr. Urbanski's test pits, correct?

14 A To our knowledge.

15 Q To your knowledge, there were no other
16 subsurface investigations performed?

17 A That's correct. There may have been
18 borings performed before the mining started to
19 determine the extent of gravel, but not to my
20 knowledge.

21 Q Let me refer you to the second page of the
22 executive summary. In the second paragraph, there
23 is a reference to putrescible waste and petroleum
24 odors. Wouldn't you agree with me that

1 characterizing certain waste as putrescible requires
2 some degree of a legal conclusion?

3 A No. I mean, if you are trying to make a
4 legal statement, that would be a legal conclusion.
5 But as an environmental consultant that deals with
6 waste all the time, we made an observation of
7 material that was putrescible that had a putrescent
8 odor to it.

9 Q The reference to petroleum odors, isn't it
10 correct that Emcon identified only one location at
11 the site where there was a petroleum -- or what
12 Emcon believed was a petroleum odor?

13 A I believe that's correct that one of the
14 pits -- there was a note, I think it was a test pit,
15 that had a petroleum odor.

16 Q So in all the testing that Emcon performed
17 at the Stearns Road site, the only odor Emcon
18 detected that was arguably petroleum was at Test
19 Pit U, correct?

20 A That's correct.

21 Q In the next paragraph of the executive
22 summary in the second line, there is a reference to
23 clean soil fill. That's not a defined term in the
24 Environmental Protection Act, is it?

1 A That's correct.

2 Q That's a term that Emcon created for this
3 report, correct?

4 A Correct.

5 Q Further in that paragraph, Emcon reaches
6 the conclusion that the material at the site would
7 not meet the definition of clean construction or
8 demolition debris. Wouldn't you agree with me that
9 that again is a legal conclusion of a legal term in
10 the Environmental Protection Act?

11 A It could be. I believe we were stating
12 what our opinion was reading the Act and as not
13 being legal experts that it wouldn't be a legal
14 opinion.

15 Q It would be a lay opinion?

16 A No. It would be an opinion as an expert
17 in environmental consulting dealing with solid waste
18 and construction debris on a day-to-day basis.

19 Q Further in that paragraph, Emcon makes the
20 statement that neither the license agreement nor the
21 site's Illinois Department of Mines and Minerals
22 permit appear to contemplate or authorize
23 importation of fill material. Do you see that?

24 A Yes.

1 Q Would you agree with me that an
2 interpretation of the license agreement requires
3 some expertise in the interpretation of legal
4 documents that neither you nor anyone at Emcon
5 possesses?

6 A Yes.

7 Q So that's not an opinion that Emcon can
8 make with any degree of competency, correct?

9 A We don't offer it as a legal opinion.

10 Q Well, you can't state any opinion
11 regarding -- any competent opinion regarding what
12 the license agreement may or may not contemplate,
13 correct?

14 A We read it and we reiterated what it
15 said. Basically, we are saying here that there was
16 nothing in the license agreement or the permit that
17 mentioned the importation of fill. I think we are
18 just stating a fact read from the permit.

19 Q There is nothing in the license agreement
20 that prohibits the importation of outside fill,
21 correct?

22 A That's correct.

23 Q And there is nothing in the Illinois
24 Department of Mines and Minerals permit that

1 specifically prohibits the importation of outside
2 fill, correct?

3 A That's correct.

4 Q Would you agree with me that Emcon's
5 opinion regarding what the Illinois Department of
6 Mines and Minerals permit may or may not contemplate
7 is an interpretation of a mining permit that you do
8 not have the competency to offer?

9 A That's correct.

10 Q Referring you to the next paragraph in the
11 executive summary, Emcon states an opinion regarding
12 whether the placement of fill material at the site
13 is in compliance with the Illinois Environmental
14 Protection Act and regulations, correct?

15 A That's correct.

16 Q Would you agree with me that that is the
17 ultimate legal conclusion in this proceeding?

18 A That's my suspicion. I'm not, again, a
19 lawyer, so this legal proceeding here before the
20 board I assume is to determine whether or not the
21 material constitutes a waste and if such, a permit
22 is required.

23 Q And what gives you or anyone at Emcon the
24 competency to state that type of ultimate

1 conclusion?

2 A Based on our experience in dealing with
3 obtaining permits for landfills on a daily basis.

4 Q You would agree with me that you are
5 nowhere near as competent to resolve that issue as
6 the Pollution Control Board?

7 A From a legal standpoint, I believe the
8 Pollution Control Board would be the ultimate
9 determining factor, correct.

10 Q And you would agree with me that whether
11 or not the fill material constitutes a waste is an
12 issue that the Illinois Environmental Protection
13 Agency is much more competent to determine than you?

14 A Again, competent, I don't know if that's
15 the right word. Authorized maybe. That's their
16 job. That's what they do. If I was at the Illinois
17 Environmental Protection Agency, I believe I would
18 be competent to make that decision on behalf of the
19 agency. I guess I'm struggling with the word
20 competent.

21 Q You would agree with me that the Illinois
22 Environmental Protection Agency's opinion or
23 determination on whether something is or is not
24 waste is entitled to more credence than your

1 determination or opinion, correct?

2 A I believe in a court of law probably it
3 would be.

4 Q Well, that would be true in a court of law
5 or outside of a court of law, wouldn't you agree?

6 A I guess my problem is I had determinations
7 made by the agency that I felt strongly I disagreed
8 with and later were upheld based on appeal to a
9 higher authority at the agency or other people.
10 Therefore, I'm struggling with the -- if I called
11 down there and somebody tells me something, are they
12 way more competent and smarter than me to make the
13 right choice, and my experience has shown that's not
14 always the case.

15 Q It's more often the case. Would you agree
16 with that?

17 A Yes. I would agree that they have a more
18 day-to-day working knowledge and expertise,
19 particularly with the Pollution Control Board and
20 the Illinois Environmental Protection Agency. They
21 deal with this on a daily basis. You would suspect
22 they would have a higher level of knowledge and
23 experience.

24 Q In the next paragraph of the executive

1 summary, there is an analysis regarding whether or
2 not the fill material at the Stearns Road site would
3 be characterized as a special waste. Do you see
4 that?

5 A That's correct.

6 Q Isn't it true that you have not reached an
7 opinion within a reasonable degree of scientific or
8 engineering certainty that the fill material at the
9 waste constitutes a special -- fill material at the
10 site constitutes a special waste?

11 A I believe what we are stating here is if
12 that material were removed from the site and
13 transported off site for disposal, it would, by
14 definition, be a special waste. As it sits on the
15 site, whether or not it's a special waste in place,
16 we have not determined that.

17 Q You don't know whether it's a special
18 waste?

19 A Correct, as it sits on the site.

20 Q And you did not reach any conclusion with
21 any degree of scientific or engineering certainty as
22 to whether or not the material at the site is a
23 special waste, correct?

24 A As it is sitting there today, correct.

1 Q And your only thought that it might be a
2 special waste is if it has to be excavated and
3 removed off site, correct?

4 A That's correct.

5 Q And under that scenario, you would opine
6 that it might be characterized as a pollution
7 control waste, correct?

8 A That's correct.

9 Q But the only way that material gets
10 excavated and removed off site is if it is
11 determined to be a waste, correct?

12 A I don't know that for a fact, no.

13 Q Well, if it's not a waste and if it's
14 excavated and removed off site, it's not a special
15 waste, correct?

16 A I believe that would be the subject of a
17 separate hearing. If it's determined that as it
18 sits today it doesn't constitute a waste, I think
19 that's a done deal.

20 If someone went to remove that material
21 and dig it up and haul somewhere else, you are
22 obligated, when you are removing material for
23 disposal, to classify it as a waste and whether or
24 not it's a special waste. So I think the whole

1 issue would be different if it was removed and
2 hauled off site.

3 Q Let me ask you this. If the Pollution
4 Control Board determines that that is not a waste,
5 then that material may stay on site, correct?

6 A As far as the Pollution Control Board is
7 concerned. It may remain on site. I believe there
8 are other issues in this case not related to the
9 Pollution Control Board that may warrant that the
10 material be removed anyway.

11 Q There are no issues in this case that are
12 not being addressed by the Pollution Control Board,
13 correct?

14 A I believe the whole issue of the license
15 agreement and the district's authority to approve or
16 disapprove of fill materials is a separate issue.

17 Q Not in this case.

18 A That's correct. This issue strictly
19 before the Pollution Control Board is if the
20 Pollution Control Board decides it's not a waste,
21 then as far as the Pollution Control Board is
22 concerned, it can remain in place.

23 Q And if the Forest Preserve District then
24 decides to excavate that material and remove it off

1 site, you would agree that it doesn't necessarily
2 become a special waste?

3 A If it wasn't a waste to begin with, it's
4 possible it wouldn't be. What I am suggesting is if
5 it was excavated and offered for disposal somewhere
6 else, it would now become a waste because it's
7 offered for disposal, and you would be obligated to
8 categorize it as special.

9 Q The only reason that Emcon opines that
10 material at the site may be a special waste is based
11 upon the assumption that it's going to be excavated
12 and moved off site as the pollution control waste?

13 A That's correct.

14 MR. MAKARSKI: Objection. Asked and answered.

15 BY MR. STICK:

16 Q And Emcon has reached no opinion on
17 whether or not the material over at the site is a
18 special waste, correct?

19 A No. That's not correct. I think we
20 offered our opinion that it is a waste.

21 Q Emcon has offered and reached no opinion
22 within a reasonable degree of scientific or
23 engineering certainty that the material at the site
24 is a special waste, correct?

1 A I believe we have reached a conclusion
2 with a degree of scientific and engineering
3 certainty that, in our opinion, the material is a
4 waste. If that material is excavated and offered
5 for off-site disposal, it, therefore, would be a
6 special waste. As it sits in the landfill today or
7 at the site today --

8 Q You have not made that determination?

9 A We, in our opinion, determined that it is
10 a waste.

11 Q As you sit here today, you have not
12 reached a determination based upon a reasonable
13 degree of scientific or engineering certainty that
14 the material in the fill at the site is a special
15 waste, correct?

16 A As it sits in the site, correct.

17 Q Let me refer you to the third page of the
18 executive summary. In the first full paragraph,
19 there is a statement, "Fill material at the site
20 presents obvious complications in terms of
21 developing the site into a wetlands environment."
22 Do you see that?

23 A Correct.

24 Q Is that an opinion that Emcon stated in

1 the site evaluation report?

2 A Yes.

3 Q And that's an opinion that neither you nor
4 anyone at Emcon has any competency to offer,
5 correct?

6 A We don't claim to be experts in wetlands.
7 We are basically saying in this statement --

8 Q Well, that's a yes or no answer,
9 Mr. McGuigan.

10 Isn't it true that you do not have the
11 competency to state the opinion that the material at
12 the site presents obvious complications in
13 developing the site into a wetlands environment?

14 A I believe we're --

15 Q Mr. McGuigan --

16 THE HEARING OFFICER: Wait.

17 THE WITNESS: I can't answer the question yes
18 or no.

19 I believe we have expertise to make a
20 statement that the presence of the waste fill
21 materials presents an obvious complication in terms
22 of developing the site period. Whether that be a
23 wetland or some other development, be it a shopping
24 center or a nursery school, it basically doesn't

1 matter as far as our opinion is concerned that the
2 fill material -- the waste fill material would
3 present a complication to the development

4 BY MR. STICK:

5 Q Mr. McGuigan, isn't it true that Emcon
6 determined there was something unique about this
7 wetland development? Isn't that correct?

8 A I don't understand what you mean.

9 Q Emcon refers throughout the site
10 evaluation report to the wetland environment,
11 correct?

12 A That's because that's the proposed end
13 use. If we were talking about a site today that was
14 proposed for development as a nursery school, we
15 would be saying this would present an obvious
16 complication to developing the site as a nursery
17 school. I don't think the wetland in and of itself
18 is driving this sentence.

19 Q You would agree with me that if a
20 consultant or professional who has expertise in the
21 areas of wetlands construction and development
22 testified that, in their opinion, the fill material
23 at the site did not pose any complications, you
24 would have to defer to that expert's opinion,

1 correct?

2 A If -- yes, for the wetland. If a wetland
3 expert says he didn't feel the fill material
4 constituted a problem for building a wetland, then I
5 would defer to that opinion.

6 Q And Emcon would have to defer to that
7 opinion, correct?

8 A I'm sure we would look at it.

9 Q Now, would you agree with me that in the
10 next paragraph when Emcon says, "the current
11 conditions of the Pratt North site is not conducive
12 to the creation of the planned wetlands
13 environment," that that opinion requires some degree
14 of wetlands expertise?

15 A Not particularly because I believe that
16 paragraph is specifically referring to the
17 topography of the site, and we are referring to the
18 fact that it doesn't look like a wetland now in its
19 present landform. Whether or not you need to be an
20 expert to say that you can't build a wetland from a
21 mountain and a lake, you know, I don't see the
22 relevance to having to be an expert to say that.
23 It's more of a topography statement.

24 Q Mr. McGuigan, that opinion is supported by

1 Emcon with two bullet points immediately below that,
2 correct?

3 A Correct.

4 Q The first bullet point refers to the
5 development or support of characteristic wetlands
6 flora and fauna, correct?

7 A That's correct. It's referring to the
8 fact that there is a lake.

9 Q That is not an opinion that you or anyone
10 at Emcon can offer competently, correct?

11 MR. MAKARSKI: I would object to that, your
12 Honor. This has been gone over several times. For
13 one thing, it's arguing with the witness about what
14 they can opine about.

15 MR. STICK: Your Honor, in response, that's the
16 first time I have asked him any questions on that
17 particular part of the site investigation report.
18 He has admitted that he has no expertise in the
19 areas of wetlands flora and fauna. He has admitted
20 that Emcon has no expertise in the areas of wetlands
21 flora and fauna, and yet Emcon is stating an opinion
22 regarding the support of characteristics of wetland
23 flora and fauna. I think I'm entitled to ask him to
24 admit that he has got no basis for stating that

1 opinion.

2 THE HEARING OFFICER: Well, it seems to me we
3 are being somewhat repetitious here, but to the
4 extent that -- he can either admit or deny that he
5 has the expertise to make the statement that you are
6 pointing to. The fact that he is neither an expert
7 in wetlands does not necessarily go to that
8 statement. So to that extent, the objection is
9 overruled, and the witness will answer the
10 question.

11 THE WITNESS: The statement basically says that
12 we do not believe that due to the permanently
13 inundated area of the lake area, it would be not
14 conducive to wetland flora and fauna. We are not
15 making that statement as a wetland expert. We are
16 making that statement of having some knowledge of
17 wetlands. In our opinion, wetlands normally aren't
18 lakes.

19 BY MR. STICK:

20 Q Isn't it true that you are making that
21 statement as a layperson without the expertise in
22 wetlands flora and fauna?

23 A We are making the statement as engineers
24 with some experience in wetlands, but not in any way

1 claiming to be wetland experts.

2 Q Similarly, in the second bullet point, the
3 statement that steep slopes are not conducive to
4 creating wetland resources, you would agree with me
5 that to make that statement and offer that opinion,
6 you would require some degree of wetlands expertise
7 that neither you nor anyone at Emcon possesses,
8 correct?

9 MR. MAKARSKI: I object to that because he's
10 concluding that nobody possessed it, and that's not
11 what they said in the first place.

12 Secondly, I don't know that you have to be
13 an expert to be able to look at a slope to realize
14 that that's not a wetland.

15 THE HEARING OFFICER: Sustained.

16 MR. KNIPPEN: Mr. Wallace, could I grab an
17 exhibit to assist Mr. Stick while he continues to
18 cross examine? It's actually in evidence already.

19 THE HEARING OFFICER: Yes.

20 MR. KNIPPEN: Thank you, Mr. Wallace.

21 BY MR. STICK:

22 Q Mr. McGuigan, based upon the three
23 proposed final grading plans, you would agree with
24 me that the entire site was not to be turned into a

1 wetland, correct?

2 A Correct.

3 Q There was going to be a pond at the site,
4 correct?

5 A A small pond, correct.

6 Q And that pond would not constitute a
7 jurisdiction of wetland, correct?

8 A I believe, based on all your questions to
9 this point, I have already admitted I'm not an
10 expert in wetlands, so whether or not that small
11 pond would constitute a wetland I don't believe I'm
12 qualified to state that. My experience has been
13 large, open bodies of water aren't wetlands.

14 Q Large, open bodies of water do not
15 constitute wetlands, correct?

16 A That's correct.

17 Q So the pond at the site would not
18 constitute a wetland, correct?

19 A It could. The pond is relatively small in
20 the plan configurations that I have seen.

21 Q And the portions of the planned
22 development at the site that called for prairie
23 grasses would not constitute wetland areas at the
24 site, correct?

1 A Again, I'm not an expert in wetlands, as
2 we have been through. There are some prairie-type
3 materials that would constitute wetland
4 environments. There are other prairie-type
5 materials that wouldn't be wetland material.

6 Q You have never attempted to see or plant
7 wetland flora and fauna, correct?

8 A Personally, no.

9 Q You have never overseen such a project,
10 correct?

11 A No.

12 Q You don't know where the wetlands flora
13 and fauna anticipated for the Stearns Road site was
14 intended to be placed, correct?

15 A I assume it was intended to be placed in
16 one of the four configurations shown in the plans.

17 Q Well, you know it wasn't intended to be
18 placed throughout the site, correct?

19 A That's correct.

20 Q It was only intended to be placed at
21 particular limited areas on the site; isn't that
22 correct?

23 A That's correct, although a large portion
24 of the site was intended for wetland development.

1 Q You don't know what portion of the site
2 was intended to be used for wetland development, do
3 you?

4 A I believe it shows on the plans which
5 areas were proposed for wetland-type vegetation.

6 Q I'm asking you. You don't know what
7 portion of that property was intended for wetlands
8 vegetation, correct?

9 A It's shown on the plans.

10 Q Mr. McGuigan, you don't know, correct,
11 what portion of that property was intended for
12 wetlands vegetation?

13 A The only knowledge I have of which portion
14 was intended for vegetation is based on the plan
15 sheets.

16 Q Mr. McGuigan, you can't tell me what
17 portion of the planned site was intended for
18 wetlands vegetation, correct?

19 MR. MAKARSKI: Objection, your Honor. Asked
20 and answered several times.

21 MR. STICK: Well, your Honor, I have asked it
22 three times. It has yet to be answered. That is a
23 yes or no answer, and he has answered on two
24 occasions about the plan sheets. I'm not interested

1 in the plan sheets. I'm interested in whether he
2 knows what portion of the intended development was
3 intended for wetlands flora and fauna.

4 THE HEARING OFFICER: And his previous answer
5 was his knowledge is related solely to the plans, so
6 I think it has been asked and answered.

7 BY MR. STICK:

8 Q Mr. McGuigan, what do the plans say with
9 respect to what portion of the site is intended for
10 wetlands flora and fauna?

11 A Basically, there are four different sets
12 of plans, all of which have some different
13 elevations shown, but there are cross-sections on
14 the plans that refer to specific vegetation at
15 different levels.

16 Q What is the 760? What portion of the site
17 is intended for wetlands flora and fauna pursuant to
18 the 760 elevation plan?

19 A I don't know. I would have to do an area
20 calculation with a pronometer as to the area that's
21 inundated, the area with wetland vegetation planted
22 versus the entire area of the site. You could do
23 that calculation.

24 Q You don't know whether the areas that were

1 inundated when you visited the Stearns Road site
2 were areas that were intended for wetlands flora and
3 fauna pursuant to the final development of the site,
4 do you?

5 A Some of the areas that are presently
6 inundated are proposed for inundation under the
7 other plan, although the existing configuration has
8 much more water inundated than is shown on any of
9 the plans. I do recollect that.

10 Q You don't know whether areas where you
11 reported huge, steep slopes at the Stearns Road site
12 are intended to support wetland or create wetland
13 resources, correct?

14 A The steep slopes that were noted in
15 particular along the east side of the property line,
16 given the fact that the wetland development was
17 towards the center, I would say no, the steep slopes
18 on the extreme east side of the property aren't a
19 portion of the wetland development.

20 Q So based on that, you would agree with me
21 your second bullet point is irrelevant?

22 A No. I think our second bullet point is
23 basically saying there are steep slopes on the west
24 side, and if you want to call that area the wetland,

1 that doesn't look like any wetland we have ever
2 seen. Basically, what we are saying is the present
3 landform and topography does not look like any of
4 the proposed final end uses.

5 Q Well, that's not what the second bullet
6 point on the third page of the executive summary
7 says, does it?

8 A It says, "Steep slopes are not conducive
9 to creating a wetland resource." What we are
10 stating there is based on our observation along the
11 east property line where the banks of the site are
12 basically caving in to the extent that the gravel
13 excavation is now basically in jeopardy of going off
14 the property because of the excavation and the
15 sliding of the material, we are saying if that were
16 to remain as is, that would not be conducive to a
17 wetland.

18 Q Mr. McGuigan, isn't it correct that if the
19 wetland was not proposed to be built on the east
20 portion of the site, then those slopes are
21 irrelevant to the wetland portion of the site?

22 A Yes.

23 Q And isn't it correct that the portions of
24 the east side of the site that you were referring to

1 were not intended for wetland development?

2 A Well, we don't seem to know that for sure
3 since there are four different sets of plans,
4 although I will acknowledge that none of those
5 proposed to have the wetland extending that far. So
6 given that, then that slope on the east side we are
7 talking about in this particular instance wouldn't
8 be relevant to the wetland development. Those steep
9 slopes were also noted pretty much surrounding that
10 entire pond area.

11 Q Now, you understood, did you not, that the
12 Stearns Road site was not at the point in the
13 construction process where anyone could expect that
14 it would look like its intended final configuration,
15 correct?

16 A Correct.

17 Q So when you walked out on the Stearns Road
18 site, you did not anticipate that the site would
19 look like the final plans, correct?

20 A I didn't know what it would look like.
21 Basically, the first time we went out there, we knew
22 it was a gravel pit that was supposed to look like a
23 wetland when it was finished, and I believe our
24 observation is it doesn't look like a wetland.

1 Q And you understood that wetlands -- the
2 mining operations and wetlands construction had not
3 been completed, correct?

4 A That's correct. We understood that the
5 operation had been stopped.

6 Q And it was your understanding that the
7 Forest Preserve District stopped the operation two
8 years into the five-year process, correct?

9 A That's basically -- I'm not sure on the
10 two years, but yeah, sometime before the license
11 agreement -- the five-year agreement was up, they
12 had stopped because of the unsuitable fill material
13 coming on the site.

14 Q So it didn't surprise you, did it, that
15 the Stearns Road site did not look in conformance
16 with any of the proposed final plans, correct?

17 A That's correct. It didn't surprise us.

18 Q Mr. McGuigan, let me refer you to the next
19 paragraph of the executive summary. Emcon states
20 the conclusion that they do not believe that the
21 chemical constituents present an immediate threat to
22 human health or the environment, correct?

23 A That's correct.

24 Q By stating that the constituents do not

1 pose an immediate threat to human health or the
2 environment, Emcon meant they do not state a current
3 threat to the environment, correct?

4 A Meaning at the date this report was
5 prepared, correct. Based on our findings, the
6 chemical constituents that were detected were
7 primarily within the fill. The site is fenced and
8 access is limited. Therefore, as of the date of
9 this report, based on our findings, there was no
10 immediate threat to human health or the environment.

11 Q Isn't it correct that Emcon reached the
12 opinion that the chemical constituents and fill
13 material did not pose a current threat to human
14 health or the environment?

15 A Again, current being the time the report
16 was prepared, correct.

17 Q And isn't it true that the constituents of
18 the fill material do not pose a threat to human
19 health or the environment?

20 A Today?

21 Q At the time this report was prepared.

22 A Based on our findings, that's what we
23 said.

24 Q And they do not today, correct?

1 A I have no idea.

2 Q When Emcon prepared the site evaluation
3 report in May of 1995, its determination was that
4 the fill material did not pose a threat to human
5 health or the environment, correct?

6 A That's correct.

7 Q And you have no evidence as you sit here
8 today that there is a threat to human health or the
9 environment?

10 A I have no evidence either way.

11 Q In the last sentence of that paragraph,
12 Emcon states a conclusion regarding detrimental
13 impact on the development of flora and fauna.
14 That's not an opinion that Emcon has any basis to
15 offer, correct?

16 A This is not an expert opinion, correct.

17 Q Emcon has no basis for offering an expert
18 wetlands opinion regarding the development of flora
19 and fauna at the Stearns Road site, correct?

20 A That's correct. We are not offering that
21 opinion as an expert in flora and fauna in wetlands.

22 Q Now, referring you to the next paragraph
23 of the executive summary, there is a reference to
24 unsuitable fill materials. My question to you is,

1 again, that is a reference to both suitability under
2 the environmental regs and suitability as it relates
3 to what the Forest Preserve may have wanted,
4 correct?

5 A That's correct.

6 Q And based upon both of those suitability
7 considerations, Emcon concluded that excavation and
8 disposal at an off site facility was the recommended
9 corrective measure?

10 A That's correct.

11 Q Let me refer you to the next section,
12 Section 1, the introduction portion of the site
13 evaluation report. Emcon purported to evaluate the
14 nature and extent of the groundwater contamination,
15 correct?

16 A Correct.

17 Q And determined that there was no threat to
18 the environment, correct?

19 A That's correct. In general, given that
20 there is no water use in that shallow aquifer, there
21 is no threat to human health or the environment.
22 Although there was contamination detected above the
23 Class 1 drinking water standard, no one is drinking
24 the water at the site.

1 Q Emcon determined that there was no threat
2 to human health or the environment posed by any of
3 the constituents that it sampled at the site,
4 correct?

5 A Correct, at the time the report was
6 prepared.

7 Q And you have no evidence as you sit here
8 today that there is any threat to human health or
9 the environment posed by that site, correct?

10 A I have no evidence, correct. It could
11 be -- you know, materials could have migrated
12 further. They might not have. I have no evidence.

13 Q In the next bullet point, there is a
14 reference to clean fill. Again, that's Emcon's
15 term, correct?

16 A Correct.

17 Q That's not a defined term under the
18 Environmental Protection Act?

19 A That's correct.

20 Q Now, Emcon's proposed scope of work was
21 designed to accomplish, among other things, an
22 evaluation of the composition of the fill materials
23 in order to determine their suitability for the
24 site's planned end use as a wetland park, correct?

1 A That's correct.

2 Q You would agree with me to determine
3 whether the composition of the fill material is
4 suitable for the site's planned end use as a wetland
5 park would require some degree of wetlands
6 expertise, correct?

7 A Inasmuch as you were trying to make a
8 direct correlation to a wetland development, yes.

9 Q You would need to have some degree of
10 expertise in wetlands construction and wetlands
11 flora and fauna, correct?

12 A Correct.

13 Q Let me refer you to Page 1-4. Isn't it
14 correct that the Stearns Road site is surrounded by
15 an asphalt highway and two railroad tracks on three
16 of the four sides?

17 A I believe the site on the north side is a
18 highway. On the west side is a set of railroad
19 tracks. The east side is primarily open space. It
20 used to be farm field, and technically, depending on
21 what you define as the Stearns Road, a natural
22 mining operation took place, based on my
23 understanding, on the north 40 acres. South of that
24 would be more open space. And then further south of

1 the open space would be another set of railroad
2 tracks.

3 Q So there are railroad tracks on two sides
4 of the Stearns Road site, correct?

5 A Directly on the west side and then further
6 south of the property on the south side.

7 Q Emcon determined that prior to being
8 turned into a sand and gravel mine, the Stearns Road
9 site appeared to have been farm field, correct?

10 A That's correct.

11 Q Now, referring you to Page 1-5, in the
12 sixth bullet point, there is a reference to an
13 aerial photograph taken in March of 1990 and to
14 surficial disturbances on the site, correct?

15 A Correct.

16 Q Isn't it correct that that would lead you
17 to believe that mining operations had commenced at
18 the Stearns Road site at least as of March of 1990?

19 A I don't believe it's clear in the photo
20 what exactly was going on. The area was disturbed.
21 If you will note in the '92 photo, we definitively
22 state it looks like it's an operating quarry. We
23 were a little less definitive in the '90 photo
24 because it's not quite clear exactly what is going

1 on, but there is some disturbance at the site which
2 could be relating to mining.

3 Q Mr. McGuigan, you would agree that in
4 March of 1990 the site or at least a portion of the
5 site was no longer a farm field?

6 A That's correct.

7 Q It had been disturbed, correct?

8 A Correct.

9 Q And it is reasonable to presume that the
10 site as of March of 1990 was either an operating
11 quarry or was in the process of being turned into an
12 operating quarry, correct?

13 A That's a possibility, correct.

14 Q Mr. McGuigan, Emcon did not detect any
15 petroleum odors in either the southwest or southeast
16 portion of the Stearns Road site, correct?

17 A I believe the only petroleum odor noted
18 was in Test Pit U.

19 Q Which was not in the southwest or the
20 southeast portion of the site, correct?

21 A That's correct. Test Pit U was in the
22 northwestern portion of the site.

23 Q Mr. McGuigan, on Page 1-6 of the site
24 evaluation report, there is a statement that the

1 stop work notice was allowed under the license
2 agreement. Do you see that?

3 A Correct.

4 Q Doesn't that type of an opinion require
5 Emcon to interpret the license agreement as a legal
6 document?

7 A It could. I believe all we are doing is
8 stating that in the license agreement there was a
9 provision for a stop work notice. We are not
10 offering a legal opinion. We are just stating that
11 the license agreement has a provision for a stop
12 work notice.

13 Q Well, let me drop you down to the next
14 paragraph. Emcon says that the interim agreement is
15 a -- there is a question as to the legal validity of
16 the interim agreement. Now, you would agree with me
17 there that that is a legal conclusion?

18 A Yes.

19 Q And that is a legal conclusion that Emcon
20 is not competent to make, correct?

21 A I would agree, correct.

22 Q Let me refer you to the last paragraph on
23 Page 1-6. Emcon has no firsthand knowledge of
24 anything stated in that paragraph, correct?

1 A Correct.

2 Q Let me refer you to Section 1.2.2, a
3 discussion of the license agreement. Would you
4 agree with me that that entire section contains a
5 legal interpretation of the license agreement, the
6 sublicense agreement, and the interim agreement?

7 A I would state that that section contains
8 our repetition of what was in the license, and we
9 are not offering that as a legal opinion.
10 Ultimately, a legal opinion will be made regarding
11 the validity and interpretation of that.

12 Q Well, you comment on Page 1-8 that the
13 interim agreement would require legal analysis to
14 determine its binding effect. You would agree with
15 me that just making that conclusion requires a legal
16 interpretation of the interim agreement, correct?

17 A Correct.

18 Q And that's an interpretation that Emcon
19 has no basis for making?

20 A And I don't think we have made a basis
21 decision. We basically said someone is going to
22 have to look at this from a legal standpoint.

23 Q You didn't say that about the license
24 agreement, though?

1 A No.

2 Q You chose the interim agreement and chose
3 to say this will require legal analysis to determine
4 its binding effect. My question to you is doesn't
5 that in and of itself require a legal interpretation
6 of the interim agreement?

7 A Yes.

8 Q Mr. McGuigan, let me refer you to Page 1-9
9 of the site investigation report. The operations
10 permit section, do you see that, in the second
11 paragraph?

12 A Correct.

13 Q Emcon makes the statement that no mention
14 of receiving or placing off site fill material is
15 made in the permit or the application. Do you see
16 that statement?

17 A Yes.

18 Q You would agree with me that there is no
19 prohibition in the operations permit against
20 receiving off site fill material at the site?

21 A Correct. There is no specific reference
22 in the permit forbidding off site importation.

23 Q In the next section where Emcon interprets
24 the IEPA water pollution control permit, it also

1 makes the statement in the second paragraph in the
2 bottom that no mention was made of receiving or
3 placing of off site fill material. Do you see that
4 statement?

5 A Yes.

6 Q You would agree with me that the IEPA
7 water pollution control permit does not prohibit the
8 receiving or placing of off site fill material at
9 the site, correct?

10 A Correct.

11 Q Now, in the last paragraph on Page 1-9,
12 Emcon states the opinion that the on site well,
13 which is operated and apparently owned by Bluff City
14 Materials, would be considered a private well. Do
15 you see that?

16 A Correct.

17 Q You cannot state an opinion regarding
18 whether that is a potable water supply well,
19 correct?

20 A That's correct.

21 Q And no one at Emcon can state an opinion
22 within a reasonable degree of scientific certainty
23 as to whether that well on site is a potable water
24 supply, correct?

1 A That's correct. We have no knowledge of
2 its intent or use.

3 Q And you would agree with me that the
4 setback provisions in Section 14.2 of the Act would
5 now apply to that well if it was not a potable water
6 supply well?

7 A That's correct.

8 Q And in any event, Emcon's analysis of
9 Section 14.2 of the Act is, again, a legal
10 interpretation of one of the regulations, correct?

11 A It's our opinion on our reading of the
12 regulation which ultimately I agree will ultimately
13 be the subject of a legal interpretation.

14 Q Now, let me refer you to Page 1-10 under
15 Section 1.3, the rationale for additional
16 investigation. In the first paragraph, Emcon refers
17 to multiple environmental investigations. Which
18 investigations is Emcon referring to in that
19 provision?

20 A I believe we would be referring to the
21 ones that we have appended in this report, including
22 the P and P report, the TSC report, the Goodwyn and
23 Brohms report, the Urbanski test, the ones we had
24 knowledge of, which are all appended in one form or

1 another into this document.

2 Q Let me refer you to Page 1-11, Section
3 1.3.1, the fill material investigation. Emcon
4 states, "Previous studies indicated fill material
5 placed on site was potentially contaminated and
6 could act as a source of groundwater contamination."
7 Is Emcon referring to the P and P investigation
8 there?

9 A I believe the P and P report did reference
10 some potential groundwater contamination. I believe
11 some of the other reports addressed that, too.

12 Q Did any report other than -- strike that.
13 No report other than P and P and the TSC
14 report referenced any potential contamination of the
15 site, correct?

16 A I don't specifically recall. Some of them
17 referenced some potential for groundwater
18 contamination. Others were silent on that issue.

19 Q Let me refer you to Page 1-12. There is a
20 statement at the bottom that it was determined that
21 further investigation was warranted to evaluate
22 groundwater characteristics and to evaluate the
23 regulatory status and environmental impact, if any,
24 of the fill being deposited in the groundwater act.

1 Do you see that?

2 A Yes.

3 Q At the time -- strike that.

4 Prior to Emcon's site evaluation, it had
5 done no hydrogeological testing at the site,
6 correct?

7 A Correct.

8 Q So prior to the time Emcon went out on the
9 site, it didn't know where the groundwater aquifer
10 was, correct?

11 A Prior to us visiting the site and prior to
12 us becoming involved in the project, we don't know
13 about the project.

14 Once we visited the site and due to the
15 fact that it was a sand and gravel pit and sand and
16 gravel is normally a very prolific aquifer and the
17 fact that there was a large lake out there below the
18 ground surface suggested to us that the groundwater
19 was shallow and interconnected with the pond, but we
20 didn't know that.

21 Q You didn't know that because you had done
22 no hydrogeological testing, correct?

23 A Correct. We basically suspected that the
24 groundwater would be shallow and would be found in

1 the sand and gravel.

2 Q Emcon had formed no opinion within a
3 reasonable degree of scientific certainty as to
4 where that groundwater aquifer was at the site prior
5 to doing hydrogeological testing, correct?

6 A We had an opinion that it would be
7 shallow, but not specifically as to which direction
8 it was flowing or where exactly it would be.

9 Q Let me refer you to the site project
10 history. Emcon has no firsthand knowledge of
11 anything contained in this entire section, correct?

12 A We weren't physically present during any
13 of these. This is all just based on memos that are
14 in the file.

15 Q So this entire section is something that
16 is outside the scope of Emcon's firsthand knowledge?

17 A That's correct.

18 Q Let me refer you to Section 2.1,
19 allegations of improper disposal. In the second
20 line, Emcon states, "Allegations were documented
21 which indicated improper disposal of waste materials
22 at the subject site." You would agree with me that
23 that is a legal conclusion, correct?

24 A I agree that's going to be a legal

1 conclusion. I think we are just stating that
2 allegations of improper disposal were made. Whether
3 or not the allegations are founded or true remains
4 to be seen.

5 Q Now, what you are saying here, aren't you,
6 is that allegations were documented which indicate
7 improper disposal of waste materials, correct?

8 A No. I believe you are adding the
9 emphasis, and I don't know how you can do that from
10 a piece of paper. It says, "Allegations were
11 documented which indicated improper disposal of
12 waste."

13 Q And the indication is something that Emcon
14 concluded, correct?

15 A Not necessarily, no.

16 Q Well, had Emcon concluded that there was
17 improper disposal of waste materials at the site
18 prior to doing its site evaluation?

19 A Based on the information we reviewed, we
20 agreed with, if the allegations were true, that that
21 material was improperly disposed. I don't say we
22 disagreed with it.

23 Q And you would agree with me that that
24 conclusion is a legal conclusion and, in fact, the

1 ultimate legal conclusion in this case?

2 A I would agree.

3 Q Emcon did not experience or detect any
4 petroleum odors in the southeast side of the site,
5 correct?

6 A None that were noted.

7 Q And none on the southwest side of the
8 site, correct?

9 A Again, none that were noted.

10 MR. STICK: Your Honor, could I have a moment
11 with my co-counsel?

12 THE HEARING OFFICER: All right.

13 (Brief pause.)

14 BY MR. STICK:

15 Q Let me refer you to Page 2-2 of the site
16 evaluation. You were not present when
17 P and P Consultants performed its investigation of
18 the Stearns Road site, correct?

19 A Correct.

20 Q And no one at Emcon was present, correct?

21 A Not to my knowledge.

22 Q Now, Mr. McGuigan, you and Emcon relied on
23 P and P's data for informational purposes, correct?

24 A For informational purposes. It was data

1 that was available. We looked at it.

2 Q And you attached it to your report,
3 correct?

4 A Yes.

5 Q And you discussed it on more than several
6 occasions in your report, correct?

7 A It's discussed, I know, in this section.
8 It may come up again later, yes.

9 Q And it's discussed in the text, correct?

10 A I thought that's where we were. I thought
11 we were on Page 2-2 and 2-3.

12 Q Now, Emcon was unable to obtain any of the
13 P and P backup data, correct?

14 A Correct.

15 Q And you could not find the raw analytical
16 lab data that P and P relied upon, correct?

17 A Correct.

18 Q And you had never heard of P and P
19 Consultants, correct?

20 A That's correct.

21 Q And you had never heard of the lab that
22 they were using, correct?

23 A I don't recall.

24 Q Do you even know what lab they were using?

1 A I don't know if I knew that.

2 Q I'm sorry?

3 A You are correct. I don't know if we even
4 knew who the lab was.

5 Q You don't know whether P and P Consultants
6 had conducted a random sampling at the site or some
7 other type of sampling, correct?

8 A That's correct.

9 Q And you don't know how P and P Consultants
10 determined where to place their samples, correct?

11 A Correct.

12 Q Isn't it correct that you don't know and
13 no one at Emcon knows whether P and P had any
14 quality control or quality assurance procedures in
15 place when they sampled the Stearns Road site?

16 A As far as I'm concerned, I don't know, and
17 to the best of my knowledge, no one at Emcon knows
18 whether they had any knowledge of QA/QC.

19 Q Neither you nor anyone at Emcon knows
20 anything about P and P's laboratory methods,
21 correct?

22 A Correct. I mean, we know that they ran
23 VOCs and PNAs.

24 Q But you don't know what kind of laboratory

1 procedures were implemented?

2 A I don't believe so, no.

3 Q And neither you nor anyone at Emcon could
4 locate any chain of custody records with respect to
5 P and P's investigation, correct?

6 A That's correct.

7 Q Now, Emcon attached two P and P reports to
8 its site evaluation report, correct?

9 A I think there was only one, but I would
10 have to check.

11 Q Would you check?

12 A There is one dated May 5th, and then there
13 is another one dated June 1st.

14 Q Now, the June 18th one is marked draft,
15 correct?

16 A That's correct.

17 Q And the June 18th P and P report is not
18 signed, correct?

19 A That's correct.

20 Q It's a letter to the Forest Preserve
21 District, correct?

22 A Correct.

23 Q But it's unsigned?

24 A That's correct.

1 Q Emcon ultimately concluded, did they not,
2 that P and P made contradictory statements and
3 unsubstantiated conclusions in its reports, correct?

4 A That's correct. Because of our inability
5 to obtain any of the backup information, basically
6 we could not vouch for the validity of any of their
7 data. I don't think we also could tell where they
8 even obtained their samples.

9 Q And Emcon also determined that P and P
10 made contradictory statements, correct?

11 A Yes.

12 Q And Emcon disagreed with P and P's
13 conclusions regarding profiles of the soils at the
14 Stearns Road site, correct?

15 A I believe we stated our opinion was
16 that they did not have sufficient information based
17 on their testing results to make the conclusions
18 that they were drawing as to specific constituents
19 of concern and what the source of those materials
20 were.

21 Q And, in fact, Emcon labeled the P and P
22 information and conclusions as highly suspect,
23 correct?

24 A That's correct, because of the lack of

1 backup information.

2 Q Yet Emcon relied on the P and P report and
3 attached it as an exhibit to its site evaluation
4 report, correct?

5 A I believe in our report we clearly state
6 that here's a piece of information that was in the
7 files. It's appended for the review as part of the
8 overall information available for the site, and, you
9 know, did we rely on that, not specifically because
10 there was nothing in that report for us to really
11 rely on other than the fact that someone purportedly
12 had taken samples and found contamination.

13 Q And, in fact, Emcon references or bases
14 statements in the site evaluation report on the
15 P and P report, correct?

16 A I would have to have you refer to specific
17 statements.

18 Q Let me refer you to Page 1-6, the second
19 paragraph from the bottom regarding a study
20 conducted in 1993 that, according to Emcon, resulted
21 in a determination that PNAs were present within the
22 fill material sampled. Do you see that?

23 A Correct.

24 Q Now, that's a situation where Emcon is

1 stating that a prior study determined that there
2 were PNAs in the fill material, correct?

3 A That's correct.

4 Q And the entire study that Emcon is
5 referring to is P and P, correct?

6 A I don't know that specifically. I believe
7 there was some testing done by TSC also.

8 Q And was TSC's testing done before or after
9 May 1993?

10 A I don't know.

11 Q Isn't it correct that TSC's testing had
12 not been conducted as of May 1993?

13 A I don't know. I can look.

14 Q Will you check?

15 A The TSC report is dated January '94.

16 Q So on Page 1-6 where Emcon states that in
17 May 1993 an investigation of fill materials at the
18 site resulted in a determination that PNAs were
19 present in the fill materials, Emcon is relying on
20 the P and P investigation, correct?

21 A That is correct.

22 Q And it's relying on no other investigation
23 other than P and P, correct?

24 A Specifically to the incident of May '93,

1 yes, that is the P and P report.

2 Q Did you review the interim reports of
3 findings prepared by Goodwyn and Brohms that's
4 included in Section 5 of the Emcon report?

5 A I probably read it at sometime.

6 Q Did you review it before it was attached
7 to the Emcon report?

8 A I'm sure I read it before it was attached,
9 yes.

10 Q You have heard of Goodwyn and Brohms,
11 correct?

12 A Yes.

13 Q And Goodwyn and Brohms' report was
14 prepared for the DuPage County Department of
15 Environmental Concerns, correct?

16 A I have to find it in the book. Bear with
17 me a minute.

18 Q Okay.

19 A Correct.

20 Q Was it your understanding -- strike that.

21 It was your understanding that the DuPage
22 County Department of Environmental Concerns had
23 brought a large amount of material to the Stearns
24 Road site in conjunction with the construction of

1 sewers, correct?

2 A I believe that's what the Goodwyn and
3 Brohms report is specifically referring to, although
4 it's vague enough that it doesn't specifically
5 outline the history, but that's basically what you
6 get from the report.

7 Q There is a reference to the construction
8 of new sewers. You understood that to mean clean
9 construction and demolition debris had been taken to
10 the Stearns Road site for purposes of use as fill
11 material, correct?

12 A No, I didn't understand that. Basically,
13 when you are constructing new sewers, if you are
14 excavating in divergent material, then I would
15 suspect that would be clean construction material,
16 although at any given point in time you are likely
17 to encounter materials that aren't clean.

18 Also, if you are replacing sewers and you
19 are removing existing sewers, those would not be my
20 definition of clean construction material.

21 Q Do you know what type of material was
22 taken to the Stearns Road site by the DuPage County
23 Department of Environmental Concerns?

24 A No.

1 Q Let me refer you to Page 4 of the Goodwyn
2 and Brohms report. In the second paragraph, there
3 is a statement. Goodwyn and Brohms makes the
4 statement, "The Illinois Environmental Protection
5 Agency has taken the position that if clean material
6 was used at a site beneficially for fill material,
7 it is not a waste and thus can be used as fill
8 without a permit from IEPA." Do you see that?

9 A Yes.

10 Q You would agree with that statement,
11 correct?

12 A No, not necessarily.

13 Q Well, you would agree that IEPA has taken
14 that position, correct?

15 A They have taken that position on
16 occasion. They have also taken the position that
17 any kind of disposal constitutes a waste being
18 disposed --

19 Q In fact --

20 A -- even if ultimately we built something
21 over that material.

22 Q It's your understanding IEPA has taken the
23 position stated by Goodwyn and Brohms in the second
24 paragraph on Page 4?

1 A On occasion.

2 Q And, in fact --

3 MR. MAKARSKI: Objection. That has been asked
4 and answered. Now he's trying to go back and get a
5 different answer.

6 THE HEARING OFFICER: Sustained.

7 BY MR. STICK:

8 Q Now, do you see below that midway down on
9 the page that Goodwyn and Brohms cites the
10 definition of clean construction or demolition
11 debris?

12 A Yes.

13 Q And then makes the statement, "The intent
14 of this section was to allow the use of this type of
15 material in a beneficial manner." Do you see that
16 statement?

17 A Yes.

18 Q And you agree with that statement,
19 correct?

20 A Yes.

21 Q On Page 5, Goodwyn and Brohms makes the
22 statement, "IEPA thus allows the use of asphalt for
23 clean fill without any requirements for testing." Do
24 you see that?

1 A Yes.

2 Q You agree with that statement, don't you?

3 A I don't have any specific knowledge one
4 way or the other.

5 Q You have no reason to disagree with that
6 statement by Goodwyn and Brohms, correct?

7 A That's correct.

8 Q In the second paragraph on the bottom on
9 Page 5 of the Goodwyn and Brohms report, Goodwyn and
10 Brohms makes the statement, "PNAs are relatively
11 immobile." Do you see that?

12 A Yes.

13 Q Isn't it correct that you agree with that
14 statement?

15 A Relatively. I mean, relatively is a
16 pretty broad term, so you could say that pretty much
17 about any constituents if you are not trying to
18 define it. Some compounds migrate way faster than
19 others through different medium.

20 Q You would agree with Goodwyn and Brohms
21 that PNAs tend to strongly adhere to soil particles,
22 correct?

23 A Given certain conditions, correct, and if
24 the soil is of a certain type. They don't usually

1 adhere well to sand and gravels.

2 Q And isn't it also correct that you would
3 agree with Goodwyn and Brohms next conclusion that
4 this means they pose -- PNAs pose a relatively small
5 risk of migrating into the groundwater?

6 A No. I don't agree with that at all. If
7 the PNAs are in contact with the groundwater, they
8 pose a tremendous risk of migrating because they are
9 in contact with the groundwater.

10 In general, a statement can be made that
11 in the normal clay environment found throughout
12 northern Illinois, if you have 30 or 40 feet of clay
13 and you have PNA contamination and the nearest
14 groundwater is separated by 30 feet of clay, yes,
15 they are relatively immobile, and there is
16 relatively little risk of them migrating to
17 groundwater.

18 On the other hand, if you take a slug of
19 PNA and throw it into a sand and gravel pit where
20 the water is already at that level, it's already in
21 the groundwater. There is no migration occurring.
22 You directly injected the PNA material into the
23 groundwater.

24 MR. STICK: Your Honor, I move to strike that

1 as nonresponsive to my question.

2 THE HEARING OFFICER: No. I believe it was
3 responsive. The answer will stand.

4 BY MR. STICK:

5 Q Mr. McGuigan, would you agree with Goodwyn
6 and Brohms' soil sampling in the parts per billion
7 range involve substantial risk of cross
8 contamination of samples?

9 A It's proper precautions aren't taken,
10 there's a possibility.

11 THE COURT REPORTER: I'm sorry. Could you
12 repeat that? I couldn't hear you.

13 THE HEARING OFFICER: Just a second.
14 Mr. Stick, when you walk this way, it causes
15 Mr. McGuigan to swing that way, and then the court
16 reporter can't hear him as well.

17 THE WITNESS: If proper precautions aren't
18 taken.

19 THE HEARING OFFICER: In fact, let's take a
20 break until 3:00 o'clock at this time.

21 (Whereupon, a recess was taken.)

22 THE HEARING OFFICER: Back on the record.

23 Mr. Stick?

24 MR. STICK: Could I ask the court reporter to

1 read back the last question and answer?

2 THE HEARING OFFICER: Certainly. Would you
3 read back the last question?

4 (Whereupon, the record was read by
5 the court reporter.)

6 BY MR. STICK:

7 Q Mr. McGuigan, let me refer you to the
8 second page of the Goodwyn and Brohms report. Was
9 it your understanding that the Forest Preserve
10 District of DuPage County sent the P and P test
11 results to Angela Tenn of the Illinois Environmental
12 Protection Agency, the LUST section?

13 A I don't have any specific recollection.

14 Q You are not aware of that?

15 A I mean, I can read down this and make
16 speculation as to what happened, but it didn't
17 really matter to us.

18 Q Did you ever see the letter from the
19 Forest Preserve District to Angela Tenn of the IEPA
20 LUST section dated May 13th, 1993, that is attached
21 as Appendix 2 to the Goodwyn and Brohms report?

22 A I don't have a specific recollection and I
23 don't see it attached to the exhibit as it is here,
24 so I may not have ever seen that letter. I may

1 have. I don't recall specifically one way or the
2 other.

3 Q It is not attached to Emcon's report,
4 correct?

5 A That's correct. It's not attached to the
6 Goodwyn and Brohms attachment.

7 Q And you don't have a specific recollection
8 whether you received a copy from the Forest Preserve
9 District and chose not to attach it or whether the
10 Forest Preserve District was unable to send you a
11 copy, correct?

12 A That's correct. I have no recollection
13 one way or the other.

14 Q Do you have any recollection of having
15 seen that letter?

16 A Not specifically, no.

17 Q Let me refer you to the third page of
18 Goodwyn and Brohms' report. Have you ever seen the
19 faxed response from IEPA dated May 26th, 1993, a
20 letter sent by Robert Brohms to IEPA?

21 A I don't specifically recall one way or the
22 other.

23 MR. STICK: Your Honor, may I mark this as
24 Respondents' next exhibit? I believe it is --

1 THE HEARING OFFICER: 32.

2 MR. MAKARSKI: That's ours. You don't have 31
3 exhibits, do you?

4 MR. KNIPPEN: I don't believe so.

5 MR. STICK: I think it's 32.

6 THE HEARING OFFICER: We are both on 32.

7 (Respondents' Exhibit No. 32 marked
8 for identification, 10-21-97.)

9 BY MR. STICK:

10 Q Mr. McGuigan, let me show you what has
11 been marked as Respondents' Exhibit 32 for
12 identification purposes. Have you ever seen that
13 letter before?

14 A I don't specifically recall seeing it.

15 Q Do you recognize that letter as -- strike
16 that.

17 Now, Mr. McGuigan, based upon the
18 description of the faxed response to Robert Brohms'
19 May 26th, 1993, letter that is found at Page 3 of
20 the Goodwyn and Brohms report, can you identify
21 Respondents' Exhibit 32 as that faxed response from
22 IEPA?

23 MR. MAKARSKI: I object to that, your Honor. I
24 don't know how he could know what somebody sent to a

1 third-party.

2 MR. STICK: We won't know until he answers.

3 THE WITNESS: I can't find a date. The typical
4 IEPA, they don't put dates on their letters. Maybe
5 you can find it, but it says, "This letter is in
6 response to your May 26th, '93, letter," but
7 nowhere, at least on this page, do I see a date
8 except for some fax dates going back and forth.

9 BY MR. STICK:

10 Q My question is do you understand
11 Respondents' Exhibit 32 to be the faxed response
12 from IEPA to Robert Brohms in response to
13 Mr. Brohms' May 26th, 1993, letter?

14 MR. MAKARSKI: I have the same objection.

15 MR. TUCKER: It calls for speculation.

16 MR. STICK: I'm not asking -- I'm asking does
17 he know, does he understand that to be, can he
18 identify it? This is preliminary stuff.

19 THE WITNESS: I can't. The only date --
20 there are a couple dates on it. One is from the
21 IEPA's fax machine. It's dated June 18th, which
22 obviously then it's not the June 21st. I don't
23 know. I guess my answer is I don't know.

24

1 BY MR. STICK:

2 Q Now, you attached to the Emcon report
3 numerous pieces of correspondence, correct?

4 A Correct.

5 Q And you attached numerous investigation
6 reports or letters, correct?

7 A Correct.

8 Q And you attached observation reports,
9 correct?

10 A Correct.

11 Q Referring you to Respondents' Exhibit 32,
12 is this the type of information that if the Forest
13 Preserve had given it to you, you would have
14 considered and relied upon in forming your opinions?

15 A Yes. I would say we relied on all the
16 information that we had in the files.

17 Q And this particular letter purports to
18 come from the IEPA, correct?

19 A That's correct.

20 Q And that's something that you would
21 typically rely upon if it's available, correct?

22 A Yes.

23 Q Do you agree with the statement that clean
24 construction and demolition debris excavated during

1 the construction of a sewer system -- strike that.

2 Do you agree with the statement that if
3 clean construction or demolition debris excavated
4 during the construction of a sewer system meets the
5 definition contained in the Act, there are no permit
6 or analytical requirements for the spoil when used
7 as fill material?

8 MR. MAKARSKI: I object to him using a document
9 that's not in evidence. It's not part of this book,
10 but it was supposed to be a part. If you are going
11 to admit the Emcon report, then I wouldn't have any
12 objection because this is referred to. It may be
13 referred to in the Emcon report.

14 MR. STICK: Your Honor, they have offered into
15 evidence documents that were otherwise not in
16 evidence and asked Mr. McGuigan about them, and all
17 I'm trying to do is find out if this is the type of
18 thing he would have relied upon. It appears to me
19 to be the attachment to the Goodwyn and Brohms
20 report that was never given to him, and I think I
21 have a right to ask him whether he would have relied
22 upon it if it was given to him.

23 MR. TUCKER: He has answered that question
24 already. That's not the question that's pending.

1 MR. STICK: I think I have the right to ask him
2 if he agrees with the statements made.

3 THE HEARING OFFICER: You can ask him if he
4 agrees with the statements made.

5 BY MR. STICK:

6 Q Mr. McGuigan, do you agree with the
7 statements made in the letter from Lawrence Eastep
8 at IEPA to Mr. Robert Brohms that is identified as
9 Respondents' Exhibit 32?

10 A I agree that if the material from the
11 sewer construction meets the definition of clean
12 construction and demolition debris under Section 378
13 of the Act, then you can use that material for fill.

14 Q Is that consistent with your
15 understanding -- strike that.

16 Mr. McGuigan, you agree, do you not, that
17 clean construction and demolition debris can be used
18 as fill material without a permit and without any
19 analytical requirements?

20 A If it meets the definition of clean
21 construction debris.

22 Q Clean construction or demolition debris?

23 A Correct.

24 Q Thank you.

1 Mr. McGuigan, let me refer you to Page 2-3
2 of the Emcon site evaluation report. I'm sorry.
3 2-4. Were you present during TSC's testing at the
4 Stearns Road site?

5 A No.

6 Q Was anyone from Emcon present during TSC's
7 testing of the Stearns Road site?

8 A Not to my knowledge.

9 Q Can anyone from Emcon vouch for the
10 reliability of the TSC testing protocols at the
11 Stearns Road site?

12 A We reviewed their report, and it appeared
13 they used appropriate testing protocol. If the
14 question is can we definitively state what happened
15 and were we there, no, we can't. We weren't there.

16 Q So no one at Emcon can definitively vouch
17 for the reliability of that information, correct?

18 A That's correct.

19 Q Now, referring you to the TSC report dated
20 January 19th, 1994, that's appended to the Emcon
21 site evaluation report, on the first page, was it
22 your understanding that TSC removed several inches
23 of exposed and cross bearing soil with a shovel
24 before conducting any testing at the site?

1 A Yes. That's what it states here in their
2 report. I can only read what it says in the report.

3 Q Do you know whether TSC decontaminated
4 that shovel between sampling episodes?

5 A No idea.

6 Q Does anyone at Emcon know whether TSC
7 decontaminated that shovel between sampling
8 episodes?

9 A Again, we weren't there. We would assume
10 TSC is a reputable firm and they know how to collect
11 samples, but we weren't there.

12 Q Does anyone at Emcon know whether the TSC
13 personnel at the Stearns Road site were wearing
14 protective gloves while they were sampling the site?

15 A No. I don't believe so unless it's stated
16 in the report, and then we still wouldn't know one
17 way or the other because we weren't there.

18 Q Now, these were grab samples. Is that
19 your understanding?

20 A Yes. You could call them grab samples.

21 Q From the surficial soil?

22 A Well, from beneath the surficial soil
23 since, as you said, they dug the top -- a couple of
24 inches of frost off and then collected samples. So

1 whether or not you would call that surficial or not
2 is debatable.

3 Q Is it your understanding that TSC took
4 their grab samples from relatively close to the
5 surface at the Stearns Road site?

6 A Relatively.

7 Q Does anyone at Emcon know what types of
8 steel implements were utilized by TSC in its
9 sampling at the Stearns Road site?

10 A Not specifically, no.

11 Q Does anyone at Emcon know whether or not
12 TSC implemented appropriate QA/QC procedures in the
13 field while sampling at the Stearns Road site?

14 A Not specifically.

15 Q Does anyone at Emcon know whether TSC's
16 laboratory implemented appropriate QA/QC procedures
17 with respect to the lab analysis?

18 A Again, I mean, the report states that they
19 analyzed the samples via method 8310 found in SW86,
20 which I believe is a typo. It should be 846, test
21 methods for evaluating solid waste. If indeed they
22 followed that method, that would be an acceptable
23 method with appropriate QA/QC, but all we can go on
24 is what they state in their report.

1 Q But Emcon doesn't know for sure whether
2 they actually implemented that method either in the
3 field or in the lab, correct?

4 A That's correct. They could be lying.

5 Q Or they could have made a mistake,
6 correct?

7 A Correct.

8 Q Is it fair to say that you would rely more
9 precisely and with more comfort on Emcon's data than
10 on TSC's data?

11 A Yes.

12 Q And is it also fair to say that you would
13 credit Emcon's data more than P and P's data?

14 A Yes. We have firsthand knowledge of how
15 and where we got our samples. We have firsthand
16 knowledge of the laboratory. So we have knowledge
17 and chain of custody on the samples that we
18 obtained.

19 Q Let me refer you to Page 2-5 under the
20 summary section. In the fourth bullet point, there
21 is a statement made by Emcon based upon the
22 information it reviewed in the Forest Preserve
23 District's file material that there is evidence of
24 widespread PNA contamination existing within the

1 fill material. Do you see that?

2 A Yes.

3 Q And is that a conclusion that Emcon
4 reached based upon a review of the file material
5 that the Forest Preserve District had provided?

6 A Yes.

7 Q And is that conclusion based on P and P's
8 test results and TSC's test results?

9 A In part. I think it would also be based
10 on noted petroleum odors which would suggest if you
11 did have a petroleum contamination problem, you
12 would also have PNAs.

13 Q Mr. McGuigan, that bullet point refers
14 specifically to widespread PNA contamination
15 existing in the fill material, correct?

16 A Correct.

17 Q There is nothing -- strike that.

18 Isn't it correct that unsupported comments
19 about petroleum odors would not lend any credence to
20 a conclusion that there is, in fact, PNA
21 contamination in the fill material, correct?

22 A I don't necessarily agree. I believe
23 reports from Forest Preserve District personnel that
24 they observed or smelled diesel fuel in the fill

1 materials -- diesel fuel by definition has PNAs in
2 it, so if you say diesel fuel, I say PNA. I have
3 never seen diesel fuel that doesn't have PNA in it.

4 Q So you are relying not only on P and P and
5 TSC, but also other aspects of your file report --

6 A Correct.

7 Q -- for concluding that there is PNA
8 contamination in the fill material?

9 A That's correct.

10 Q Would you agree with me that the last
11 paragraph of the summary section on Page 2-5
12 includes, in part, some legal conclusion?

13 A Yes.

14 Q And would you also agree with me that that
15 last paragraph includes, in part, some conclusions
16 that are based upon a degree of wetlands expertise?

17 A Yes.

18 Q Let me refer you to Page 3-9 of the site
19 evaluation report. Emcon makes a statement that in
20 Boring B-12 -- or B-2 located directly below the
21 above-ground diesel storage tank, the ground surface
22 was stained with petroleum. That is an incorrect
23 statement, correct?

24 THE HEARING OFFICER: What paragraph are you

1 looking at, please?

2 MR. STICK: The fourth paragraph.

3 THE WITNESS: In Boring B-2 located directly
4 below the above-ground diesel storage tank, the
5 ground surface was stained with petroleum.

6 BY MR. STICK:

7 Q Isn't that a typo?

8 A What specifically are you referring to? I
9 don't think it is. Is it a gasoline tank and not a
10 diesel tank?

11 Q No. If you refer to Page 3-14, the
12 above-ground storage tank is located in the vicinity
13 of Boring B-16, isn't it?

14 A Yeah. Let me check the map.

15 It would be B-16. That is a typo.

16 Q So this is a typo on Page 3-9, correct?

17 A Correct. Boring B-16 is where the
18 above-ground diesel storage tank was located.

19 Q And there was only one indication that
20 there may have been petroleum staining in the soil
21 at the Stearns Road site that Emcon found, and that
22 was not at B-2, correct?

23 A The correct. It was at -- surface soil
24 staining was only observed based on what was noted

1 in the field at the location of the diesel
2 above-ground tank, which is B-16.

3 Q That was the only indication of surface
4 staining, correct?

5 A The only one that was noted.

6 Q Well, it's the only one you have any
7 evidence of, right?

8 A It's the only one I have any evidence of,
9 correct.

10 Q And it's the only one Emcon has any
11 evidence of, correct?

12 A I don't know that. The people in the
13 field may have other recollections that weren't in
14 their field notes.

15 Q Isn't it fair to say that if one of your
16 personnel in the field saw staining on the ground,
17 they would have noted it?

18 A I would expect them to.

19 Q Let me refer you to Page 3-12 under local
20 potable water wells. Emcon located 14 water wells
21 within a one-mile radius of the Stearns Road site,
22 correct?

23 A Emcon obtained records of 14 wells from
24 the appropriate sources. We did not field locate

1 these wells. Our experience has been and on several
2 occasions we have been asked -- enforced by the IEPA
3 or the U.S. EPA to physically go do a well survey
4 door to door because these records can be absent
5 several of the wells. But we asked for the records
6 that were available. These are the ones that we got
7 from the Illinois state geological survey and the
8 water well survey.

9 Q None of the 14 wells that Emcon is aware
10 of within a one-mile radius of the site constitutes
11 a community water supply well, correct?

12 A I don't believe we know that for a fact,
13 but I wouldn't suspect that they do. They appear to
14 be individual wells. A community supply well would
15 be serving more than one household, but again, all
16 we have is the well logs and placed them on a map.

17 Q Emcon has no evidence that there is a
18 community water supply well within a mile radius of
19 the Stearns Road site, correct?

20 A Correct.

21 Q And the only evidence that Emcon has
22 regarding potable water supply wells indicates that
23 the nearest one is a quarter of a mile east of the
24 site, correct?

1 A Discounting the fact that there is a well
2 on the site, correct.

3 Q You don't know if the well on the site is
4 a potable water supply well, correct?

5 A That's correct. We don't know.

6 Q So do you know whether all 14 of the wells
7 you identified are potable water supply wells?

8 A We don't know that for a fact one way or
9 the other. They are all deep wells suggesting they
10 probably are.

11 Q But you don't know if all 14 are potable
12 water supply wells?

13 A That's correct.

14 Q The nearest one that you identified in
15 your report is a quarter of a mile to the east,
16 correct?

17 A The nearest one that we obtained a record
18 on that's identified in the report is a quarter mile
19 to the east.

20 Q Let me refer you to Page 3-15 in the
21 first -- second paragraph, last line. There is the
22 statement made, "Fuel observations suggested the
23 contaminants encountered at B-16 and at Test Pit U
24 locations are the results of petroleum

1 contamination." The only evidence you have
2 regarding Test Pit U is a log entry indicating
3 petroleum odor, correct?

4 A Correct. There is no note on that test
5 pit as to a visual observation. It says smelled
6 like, petroleum odor noted, or something to that
7 effect.

8 Q But there was no identification of stained
9 soil at Test Pit U, correct?

10 A Not specifically --

11 Q Well --

12 A -- not one way or the other, correct. It
13 didn't say clean. It didn't say stained. It didn't
14 say anything.

15 Q And did test -- strike that.

16 At the B-16 location, there was an
17 indication of surface staining, correct?

18 A Correct.

19 Q But there was no indication of any smell,
20 correct?

21 A None noted.

22 Q There was no indication of any smell,
23 correct?

24 A None was noted, correct.

1 Q And those were the only two instances in
2 Emcon's investigation of the Stearns Road site for
3 either a petroleum odor or surface staining of the
4 soil that was purportedly identified, correct?

5 A Correct.

6 Q Let me refer you to Page 3-16. Up at the
7 top of the page in the second sentence, Emcon --
8 strike that.

9 Emcon cannot state an opinion within a
10 reasonable degree of scientific or engineering
11 certainty that the presence of contaminants in the
12 groundwater at any of the locations at the Stearns
13 Road site is the result of leaching from the fill
14 material, correct?

15 A I believe what we said was it could be. I
16 think we could state it could be. We didn't say it
17 was definitively, correct. We can't state it
18 definitively came from this fill.

19 Q Emcon cannot state that opinion within a
20 reasonable degree of scientific certainty, correct?

21 A Based on the information in this report,
22 correct.

23 Q Let me refer you to page B-17 of the Emcon
24 site evaluation report. Do you see in the first

1 bullet point that there is a statement
2 made, "Minimum estimated volume of fill materials
3 which exhibit odors or have been observed to contain
4 materials which are not clean fill equals 165,000
5 cubic yards plus or minus." Do you see that?

6 A Yes.

7 Q Is that a conclusion that Emcon reached
8 after conducting its site evaluations --

9 A Yes.

10 Q -- investigation?

11 A Yes.

12 Q Now, Emcon did not test or otherwise
13 investigate or sample 165,000 cubic yards of fill
14 material, correct?

15 A Correct. I mean, if we did, it wouldn't
16 be there anymore. It would all be at the lab.

17 Q So when you say the minimum estimated
18 volume of fill materials which exhibit odors equal
19 165,000 cubic yards of material, Emcon is not saying
20 that there is 165,000 cubic yards of fill material
21 out there that exhibits odors, correct?

22 A That's correct. I believe we said exhibit
23 odors or have been observed to contain materials.

24 Q And Emcon is not saying that 165,000 yards

1 of fill material contains materials which are not
2 clean fill, correct?

3 A I think we are saying that the majority of
4 the soil that is in this 165,000 yards is in that
5 number because it exhibited unsuitable fill
6 material.

7 Q In fact, Emcon only had one instance of
8 any type of petroleum odor at the site, correct?

9 A One instance of odor, one instance of
10 stainage.

11 Q And you did not find 165,000 cubic yards
12 of material that Emcon would consider debris,
13 correct?

14 A Correct.

15 Q Mr. McGuigan, the soil staining that you
16 indicated previously was underneath the above-ground
17 fuel tank, correct?

18 A Correct.

19 Q Would you agree with me that it was not in
20 the fill material?

21 A I would have to look at Boring 16 to see
22 if it detected fill. If you can wait, I will do
23 that.

24 (Brief pause.)

1 THE WITNESS: Based on the boring log for B-16,
2 it appears just the top eight or nine inches of the
3 material was fill, and that was probably either road
4 bedder or sand and gravel that was put down. Then
5 the rest of it appears to be native material, which
6 was primarily clay until you encountered sand and
7 gravel at about 11 feet, which continued on to about
8 18 feet.

9 BY MR. STICK:

10 Q You would not consider then location B-16
11 as being in the fill area, correct?

12 A Correct.

13 Q Now, the second bullet point on Page 3-17
14 refers to 70,000 cubic yards of acceptable material
15 on site. That refers to the stockpile of sand you
16 referred to earlier this morning, correct?

17 A That's correct.

18 Q The sand and gravel stockpile on the
19 northern part of the site; is that correct?

20 A Correct. I believe it may -- no. I think
21 that is just a sand and gravel.

22 Q Now, you would agree with me that there is
23 other acceptable, even by Emcon's analysis, material
24 on site for filling purposes, correct?

1 A Correct. I believe there is a stockpile
2 that we believe to be primarily overburden located
3 along the south property line towards the east side.

4 Q And there is other material on site that
5 Emcon would not describe as inappropriate or
6 unacceptable, correct?

7 A Yes.

8 Q Now, there are several references in the
9 Emcon site evaluation report to putrescent odors.
10 My question to you is isn't it correct that the
11 putrescent odors identified by Emcon in the site
12 evaluation report all relate to naturally occurring
13 putrescent odors?

14 A I don't believe so. I guess define
15 naturally occurring as to unnaturally occurring.

16 Q Isn't it correct that all of the
17 putrescent odors identified by Emcon in the site
18 evaluation report relate to such things as topsoil,
19 peat, or other types of natural organic material
20 that is decomposing at the site?

21 A I don't think that's true, but you would
22 have to ask the person that wrote the field notes, I
23 believe that would be Steve Heuer, as to what he
24 meant. My understanding of putrescent odors would

1 be decaying material.

2 If it was peat, he would have noted peat
3 in the drilling log, and I don't believe any of the
4 drilling logs note peat, but I may be mistaken.
5 Some of these test pits in the fill were down, you
6 know, 15 feet or so, and then he noted a putrescent
7 odor and other materials in that test pit that would
8 decay; for instance, wood. My assumption would be
9 that the putrescent odor would be coming from the
10 wood, but only Steve Heuer could probably define
11 what he meant.

12 Q And you would agree with me that wood is a
13 natural source for a putrescent odor smell, correct?

14 A I guess if you are using that definition,
15 then steel could be a natural source of -- you know,
16 because you can find it in the ground. I guess I'm
17 having trouble -- if it's a tree, I would call that
18 naturally decaying wood. If it's a two-by-four, I
19 would probably have trouble calling it naturally
20 decaying wood, although they are both wood. I guess
21 that's what I am struggling with here.

22 Q Emcon has no evidence that there is any
23 rotting garbage on the Stearns Road site, correct?

24 A Well, that's probably correct. If you are

1 using the strict act definition of garbage, which
2 is, I believe, food processing-type material. I
3 don't think we found any of that.

4 Q And you have no information that would
5 lead you to conclude that the putrescent odors
6 identified in the Stearns Road site evaluation
7 report originate from anything other than wood,
8 leaves, and other naturally occurring organic
9 materials, correct?

10 A That's a fair statement.

11 Q Let me refer you to the second paragraph
12 on Page 3-18. Is it fair to say that the petroleum
13 impacted soils at two locations on site that Emcon
14 is referencing there are Test Pit U and the B-16
15 location under the above-ground storage tank?

16 A That would be the two specific locations
17 referenced in that paragraph I believe, yes.

18 Q There was no stained or impacted soils
19 found at Test Pit U, though, was there?

20 A There was no stained soils noted at Test
21 Pit U, no.

22 Q Would you agree with me that most of the
23 potable water supply wells in northern Illinois are
24 screened at depths much greater than the shallow

1 sand and gravel aquifer at which Emcon took its
2 water samples in the Stearns Road site?

3 A Yes. I would agree most of them are
4 deeper.

5 Q And there were none, in fact, within a
6 mile of the Stearns Road site that accessed water
7 and shallow sand and gravel aquifer, correct?

8 A None that we were able to obtain records
9 for. I kind of hesitate to say none. There might
10 be.

11 Q Do you know whether any of those 14 wells
12 that you identified within a mile of the Stearns
13 Road site were wells that the Forest Preserve
14 District had capped after acquiring houses in the
15 area?

16 A I have no idea.

17 Q Let me refer you to Page 4-1, collectible
18 regulations. Mr. McGuigan, isn't it correct that
19 the opinions and statements contained in Section 4
20 require at least some legal expertise in order to
21 draw the conclusions that are drawn in that section?

22 A I think if you are trying to draw legal
23 conclusions, then you would want legal expertise.
24 As consultants that deal with solid waste and these

1 definitions every day, these are our professional
2 opinions as experts in the field of solid waste in
3 the Environmental Protection Act. We don't purport
4 them to be legal opinions.

5 Q Mr. Makarski asked you on direct
6 examination a question regarding waste, and he asked
7 it based upon a reasonable degree of scientific
8 certainty. Do you recall that question?

9 A Not specifically, but I do recall he asked
10 a question about what the definition of waste was.

11 Q Referring you to the definition of waste
12 contained on Page 4-1, what about that definition
13 requires any degree of scientific expertise in
14 rendering an opinion?

15 A Well, if you read -- first of all, this
16 definition is excerpted from the regulations and
17 portions are missing, but if you read the first
18 sentence, it says waste, meaning any garbage. I
19 believe if I walked out in the hall and asked
20 somebody what garbage was, they would not give me
21 the appropriate definition because the definition of
22 garbage is food processing waste, and I think most
23 people would think garbage is everything that winds
24 up in the can out on the street.

1 Q Would you agree with me that the
2 definition of garbage is based upon a legal
3 definition, not a scientific definition?

4 A You could say it was a legal definition.
5 I guess if you want to refer to the Act and the
6 implementation and passing of the Act as all legal
7 material, then yes, it would be a legal definition
8 that you can read in the Act.

9 Q Would you agree with me -- strike that.
10 Isn't it correct that the definition of
11 waste is a legal definition and not a scientific
12 definition?

13 A I would say that's correct, yes.

14 Q And isn't it correct that if there is
15 particular expertise required in interpreting the
16 definition of waste, it requires legal expertise
17 rather than scientific expertise?

18 A I believe ultimately it requires a
19 determination by the Pollution Control Board, and
20 whether they are all lawyers on the Pollution
21 Control Board or not, I don't have any knowledge as
22 to that. So if the board has a member that's not a
23 lawyer who participates in that decision, then the
24 answer would be no, it doesn't require legal

1 expertise evidently.

2 Q Is there anything -- strike that.

3 Isn't it correct that there is nothing
4 about the definition of clean construction or
5 demolition debris that requires any scientific
6 expertise?

7 A I wouldn't say it requires a tremendous
8 amount of scientific expertise as long as you knew
9 what reclaimed asphalt pavement was, and you would
10 have to have some scientific expertise to understand
11 what the word uncontaminated dirt or sand meant.

12 Q Do you understand that term?

13 A Yes, I do.

14 Q Now, on Page 4-2 of the site evaluation
15 report, Emcon reaches the conclusion that the
16 placement of fill at the Stearns Road site
17 constitutes unpermitted disposal activity. Do you
18 see that in the fourth paragraph?

19 A That's correct.

20 Q That conclusion is a legal conclusion, is
21 it not?

22 A I would say it's our opinion, but you
23 could say it was a legal conclusion. We are not
24 purporting that it is a legal conclusion. We are

1 just stating our opinion.

2 Q And, in fact, that conclusion is the
3 ultimate conclusion in this case, correct?

4 A I'm not exactly sure. I believe whether
5 or not a permit is required may be the jurisdiction
6 of the Illinois Environmental Protection Agency.

7 It was my understanding, and I may be
8 incorrect, that the Pollution Control Board's
9 decision was whether or not the site constituted a
10 facility that had waste disposed of on it. If it
11 did, then it would meet the definition of an open
12 dump because it didn't have a permit, and then I
13 would assume you would have to apply to the IEPA to
14 get that permit.

15 Q Let me refer you to Page 4-3 in the site
16 evaluation report. Just above Section 4.2, isn't it
17 correct that Emcon reaches a number of conclusions
18 regarding purported violations of the Illinois
19 Environmental Protection Act?

20 A Yes. We render a statement that says
21 there is prohibitions in the Act that may have been
22 violated. We didn't say they were violated. We
23 said they may have been violated.

24 Q Isn't it correct that those types of

1 conclusions are conclusions that Emcon and you
2 personally are not competent to testify to?

3 A I believe we can say here's a statute that
4 may have been violated. We are not making a
5 determination whether or not it was or not. We are
6 just pointing out that based on our understanding of
7 the regulations and what we have seen today, this
8 may be a legal issue.

9 Q On Page 4-4, isn't it correct that Emcon
10 reaches the conclusion that there may have been
11 violations of the Surface Mining Act, correct?

12 A Correct.

13 Q Aren't those conclusions that would
14 require some degree of expertise in interpreting
15 mining regulations?

16 A Yes.

17 Q And aren't those expertise ones that you
18 have indicated you do not possess?

19 A Correct.

20 Q And no one at Emcon who worked on the site
21 evaluation report possesses the expertise to draw
22 conclusions regarding whether regulations under the
23 Surface Mining Act have been violated, correct?

24 A I believe there are people at Emcon that

1 did work on this project that do have more expertise
2 in mining than myself, but I wouldn't call them
3 experts. So to answer your question, that's
4 correct. There wasn't one person I would call an
5 expert.

6 Q Let me refer you to Page 4-6 under the
7 summary section. In that first paragraph, isn't it
8 correct that in that first paragraph Emcon is
9 purporting to interpret what is contemplated by the
10 license agreement?

11 A That's correct. I think that's why we
12 used the words it did not appear to contemplate. We
13 are not sure what it actually did contemplate. We
14 are just basing this on what we read.

15 Q And Emcon is also purporting to interpret
16 the surface mining permit, correct?

17 A Correct. Basically, we were stating that
18 the permit in no way ever mentioned importation of
19 fill material. We are just stating the fact that
20 the permit says.

21 Q And, in fact, the surface mining permit in
22 no way prohibits the importation of off site fill
23 material, correct?

24 A Correct.

1 Q And, in fact, the license agreement in no
2 way prohibits the importation of off site fill
3 material, correct?

4 A I believe that's true, although the
5 license agreement does reference in some places, and
6 I don't know if it's in the license agreement or the
7 sublicense agreement, the district's right to
8 approve or disapprove of materials placed in the
9 wetland construction.

10 Q Again, that statement would require some
11 degree of legal expertise in interpreting the legal
12 effect of the license agreement, correct?

13 A Correct.

14 Q Mr. McGuigan, referring you back to
15 Section 4.5 on Page 4-5 of the Emcon site evaluation
16 report, isn't it correct that Emcon in that section
17 purports to draw legal conclusions regarding the
18 interpretation of the Illinois Department of
19 Transportation specifications?

20 A I believe this section recounts our
21 examination of the existing file documents and what
22 we thought they said. Again, we are not offering
23 this as a legal opinion.

24 Q Well, in fact, Emcon draws a conclusion

1 that the IDOT specifications are not applicable to
2 this Stearns Road site, correct?

3 A That's correct. That was our opinion.

4 Q And doesn't that require an interpretation
5 of the license agreement?

6 A Yes. You could say that, I believe.

7 Q Because the IDOT specs are appended and
8 incorporated into the license agreement, correct?

9 A That's correct. The whole issue of the
10 IDOT specs -- to be honest, we weren't real certain
11 exactly what that was all about. There was
12 something in the license agreement that referenced
13 some IDOT specs, so we looked at the IDOT specs as
14 it would relate to the material on the site.

15 Q What do you mean you weren't real certain
16 what that was about?

17 A Well, there is a section in the license
18 agreement that references IDOT specs, but doesn't
19 really discuss the applicability of those specs to
20 the site.

21 Q Are you saying this section of the site
22 evaluation report is sort of meaningless?

23 A No. What I am saying is based on the
24 license agreement, there is a section, and I'm not

1 sure if it's the license agreement or, again, the
2 sublicense agreement, that references some -- has
3 some reference to IDOT's specification material. So
4 as such, we looked at that regulation and what IDOT
5 specification material would be and basically put a
6 discussion in there because it's in the license
7 agreement or the sublicense agreement.

8 Q Let me refer you to the conclusion section
9 of the site evaluation report, Section 5.1 in the
10 second paragraph. Emcon makes a statement that the
11 presence of chemical constituents does not pose an
12 immediate threat to human health or the environment,
13 correct?

14 A That's correct.

15 Q And that is the same as saying that the
16 chemical constituents do not pose a threat to human
17 health and the environment, correct?

18 A I believe it says the presence of these
19 chemical constituents pose an immediate threat,
20 blah-blah blah. Although it does not appear that
21 the presence of these chemical constituents poses an
22 immediate threat to the human health or the
23 environment, and then it goes on to say it is a
24 further indication of the unsuitable nature of these

1 fill materials. So we are saying it doesn't pose an
2 immediate threat, correct.

3 Q Which is the same as saying it doesn't
4 pose a current threat?

5 A Current meaning at the time the report was
6 prepared, correct.

7 Q And, in fact, the presence of the chemical
8 constituents did not pose a threat to human health
9 and the environment at the time Emcon prepared its
10 report?

11 A Correct, based on the existing site use at
12 that time.

13 Q Let me refer you back to Page 2-4 of the
14 Emcon site evaluation report. Isn't it correct that
15 Emcon reached the conclusion that the levels of
16 constituents reported by TSC did not present an
17 immediate threat to human health and the
18 environment?

19 A That's correct.

20 Q Which is another way of saying that Emcon
21 reached the conclusion that as of the date of the
22 site evaluation report, the levels of constituents
23 reported by TSC did not pose a threat to human
24 health and the environment, correct?

1 A That's correct, assuming that the levels
2 reported by TSC were still the same levels that were
3 present at the site the day the report was prepared,
4 and that's all we can assume. We didn't feel they
5 posed an immediate threat, again, given the current
6 land use.

7 Q And you had no reason to believe that
8 TSC's levels of constituents had changed or
9 anything?

10 A We had no knowledge either way.

11 Q In the third paragraph of the conclusion
12 section on Page 5-1 of the evaluation report, Emcon
13 draws the conclusion that the current site
14 configuration is not conducive to wetland
15 development. Isn't it correct that that type of
16 conclusion will require at least some degree of
17 wetlands expertise?

18 A I believe we are making a topographic
19 statement saying it doesn't look like a wetland or
20 anything that resembles a wetland. I don't believe
21 we are saying it couldn't be made into a wetland,
22 and I don't believe we are purporting to be experts
23 on wetlands. I think what we are saying is there is
24 a mountain out there. There is a big lake out

1 there. You know, this isn't a wetland.

2 Q So Emcon is not stating the opinion in the
3 site evaluation report that the site could not be
4 turned into a wetland?

5 A From a topographic standpoint, which this
6 paragraph is discussing, we are saying hey, you can
7 move all the dirt you want and make it look like a
8 wetland.

9 Q Now, in the next paragraph, Emcon states
10 the conclusion that the placement of materials on
11 the site does not appear to have been contemplated
12 or authorized in the mines and minerals operations
13 permit application or in the permit. Do you see
14 that?

15 MR. MAKARSKI: What page is that on?

16 MR. STICK: 5-1 and carrying over to 5-2.

17 THE HEARING OFFICER: Mr. Stick, aren't we
18 going over the same ground again over and over?

19 MR. STICK: Well, your Honor, to a certain
20 extent, yes, because the same things are repeated
21 three or four times in different ways in the site
22 evaluation report. I need to examine Mr. McGuigan
23 on the site evaluation report. Thankfully, we are
24 getting close to the end, but --

1 THE HEARING OFFICER: What I am saying is I
2 think we have heard about all we can hear on this
3 mines and mineral permit. I think Mr. McGuigan has
4 pretty well exhausted his ability to testify in any
5 different ways, so I would like for us to move along
6 if we could, please.

7 MR. STICK: Well, are we are at the conclusion,
8 and I will -- I have to ask him the questions about
9 the conclusions he has reached, and we are at the
10 conclusions section. I will make it as prompt as
11 possible, but I have to continue until you cut me
12 off.

13 THE HEARING OFFICER: Please proceed.

14 BY MR. STICK:

15 Q Mr. McGuigan, isn't it correct that the
16 type of interpretation of the mines and minerals
17 operations permit that Emcon is purporting to make
18 in the conclusion section of the site evaluation
19 report is an interpretation that neither you nor
20 anyone at Emcon has the expertise to offer?

21 A I believe what we said is it does not
22 appear to have been contemplated that material be
23 brought into the site. Basically, I believe what we
24 are doing is just summarizing what the permit said.

1 We are not offering a legal opinion as to what was
2 contemplated or a legal opinion as to the permit.
3 We are just saying hey, we read the permit. Here's
4 what's in it.

5 Q Well, what you are saying is it wasn't
6 contemplated or authorized, correct?

7 A That's correct. There is nothing in the
8 permit specifically authorizing that type of
9 activity.

10 Q And to determine whether the permit
11 authorizes certain conduct, you have to interpret
12 the permit, correct?

13 A I believe what we are saying is we read
14 it, and it doesn't authorize it the way we read it.
15 Whether or not that's a legal opinion, I don't think
16 we are offering a legal opinion.

17 Q It is an opinion of mining regulations and
18 mining permits that you are not qualified to offer,
19 correct

20 MR. MAKARSKI: I object to that. We have been
21 through this several times.

22 THE HEARING OFFICER: I think so. Go into
23 another question, please.

24

1 BY MR. STICK:

2 Q Mr. McGuigan, the conclusion that Emcon
3 reaches that the presence of an on site water well
4 may be a violation of the water pollution control
5 permit is a legal conclusion, correct?

6 A I think we said it may be a violation. I
7 think if we said it was a violation that would be
8 offering a legal opinion. I believe what we are
9 doing here is alerting the district to a potential
10 problem that they should have their legal advisers
11 look at.

12 Q If it's not a legal opinion based upon a
13 competent legal expertise, then it is speculation,
14 correct?

15 MR. MAKARSKI: Objection. I think that's
16 speculation.

17 THE HEARING OFFICER: Sustained.

18 THE WITNESS: I don't believe it's
19 speculation.

20 THE HEARING OFFICER: No. Don't answer the
21 question.

22 BY MR. STICK:

23 Q Let me refer you to Page 5-4 of the site
24 evaluation report. Isn't it correct that Emcon

1 based its selection of an appropriate remedy on
2 three factors?

3 A Those three factors would be?

4 Q Isn't it correct that Emcon based its
5 selection of a remedy on three factors which include
6 protection of human health and the environment,
7 considerations regarding future uses of the
8 property, and the cost and regulatory approval?

9 A That's correct. It states that in the
10 opening paragraph on Page 5-4.

11 Q Now, on Page 5-4 in that same paragraph,
12 Emcon refers to future hazards. Do you see that?

13 A Correct.

14 Q Isn't it correct that Emcon is not able to
15 state any opinion within a reasonable degree of
16 scientific certainty that there are future hazards
17 posed by site conditions?

18 A No. I don't believe that is correct. I
19 think that's not a correct statement.

20 I believe based on the fill material at
21 the site and the chemical contamination detected
22 there is the potential for future leaching of those
23 materials in the groundwater.

24 Q Is that the future hazards that Emcon is

1 referring to in that section?

2 A That would be one.

3 Q Is that the only one?

4 A No. I mean, future hazards could include
5 ingestion of the soil by people on the site. It
6 could include excavation exposures to construction
7 workers.

8 Q Mr. McGuigan, Emcon had determined that
9 there was no current threat to human health and the
10 environment, correct?

11 A Based on the given land use, the site was
12 not occupied, and access was limited by a fence.

13 Q Mr. McGuigan, Emcon had determined based
14 upon a reasonable degree of scientific certainty
15 that there was no current threat to human health or
16 the environment posed by the Stearns Road site,
17 correct?

18 A Given the existing land use.

19 Q Now, there was access to that site,
20 correct?

21 A Unauthorized access it would be. The site
22 is fenced. The gate is locked.

23 Q Emcon had access to that site, correct?

24 A Authorized access.

1 Q And others had access to that site,
2 correct?

3 A Again, that would be authorized access.

4 Q So the site was being visited by people
5 while you investigated the site, correct?

6 A Correct.

7 Q And you made the determination that it did
8 not pose a threat to human health or the
9 environment, correct?

10 A That's correct. Our exposure was the
11 duration of our investigation. We also have our
12 people trained for properly handling material of
13 this type. Our people have a physical inspection
14 that's very detailed, very lengthy, including a lot
15 of chemical blood testing that's done once a year
16 for every person that's in the field.

17 Q Now, Emcon has not performed a detailed
18 hydrogeological assessment of the site conditions,
19 correct?

20 A Correct. I think that's a fair statement.

21 Q And so isn't it correct that Emcon is not
22 in a position to state any opinions with any degree
23 of scientific certainty that there are risks in the
24 environment or to human health posed by the

1 potential migration of contaminants at the site into
2 the groundwater?

3 A That's not correct.

4 Q Are you saying Emcon can reach conclusions
5 based on threats to human health and the environment
6 based upon assumptions on groundwater -- the nature
7 of groundwater without having done hydrogeological
8 studies at the site?

9 A I'm saying we installed piesometers and
10 have a general feel for the direction of the
11 groundwater flow. We also have a well or a sample
12 from B-6, which is off the site in native material,
13 that showed PNA contamination adjacent to the fill
14 suggesting the potential for migration out of the
15 fill into the surrounding environment was very
16 real. Based on that limited information, all I can
17 say is there is a potential for that material to
18 migrate off site in the groundwater.

19 Q Now, Emcon does not know whether the
20 groundwater -- strike that.

21 Emcon cannot state an opinion within a
22 reasonable degree of scientific certainty that the
23 groundwater at the site is interconnected with the
24 fill material, correct?

1 A I believe we can make that statement. I
2 believe based on the test borings and the fact that
3 the fill, particularly on the west side of the large
4 pond, runs up to and into the pond and the pond is
5 interconnected with the groundwater level that the
6 fill is in the groundwater table.

7 Q So that opinion, though, is based upon
8 Emcon's assumption that the fill material is
9 interconnected with the pond water, correct?

10 A Correct, and that the pond water is
11 interconnected with the surrounding gravel. It's a
12 gravel pit. There is 20 feet of gravel full of
13 water that's running through the site running
14 through the fill.

15 Q So Emcon's suspicion that the fill
16 material may be interconnected with the groundwater
17 table is based upon a connection between the fill
18 material with the pond water and the pond water with
19 the groundwater table, correct?

20 A That's one reason. The other reason would
21 be if you look at the groundwater contour map that
22 was drawn based upon the piezometers installed
23 around the site, the groundwater level is above what
24 is the depth of the fill. Therefore, there is fill

1 material below the normal groundwater level.

2 Q Emcon does not know within a reasonable
3 degree of scientific certainty that the groundwater
4 at the site is interconnected with the fill material
5 other than it may be interconnected through the
6 pond, correct?

7 A No, that's not correct.

8 I believe if you look at the groundwater
9 contour map, it will show groundwater elevations
10 ranging from 760 to 755 across the site. If you go
11 and look at the boring logs of where fill was
12 encountered, I believe you will find fill in some
13 locations may have been encountered below that
14 level.

15 Q Let me phrase this a different way.

16 Emcon can't state an opinion based upon a
17 reasonable degree of scientific certainty that
18 groundwater is flowing through the fill material,
19 correct?

20 A It may be flowing around the fill
21 material, but it's definitely in contact with the
22 fill material at some point.

23 Q Emcon can't state an opinion based upon a
24 reasonable degree of scientific certainty that the

1 groundwater is flowing through the fill material,
2 correct?

3 A You can make a statement that it was
4 flowing through the fill material, yes, but it would
5 be at a much lower rate because the permeability in
6 general of the fill is much lower than the
7 surrounding sand and gravel.

8 If I had a piece of clay in a sandbox and
9 I filled it up with water and I started to move the
10 water through the sandbox, most of the water would
11 travel through the sand. The clay would become
12 saturated, and by pore movement, there would be
13 water flowing through the clay material albeit at a
14 very, very slow rate.

15 Q Mr. McGuigan, isn't correct that you are
16 speculating now?

17 A I don't believe so. I think there is
18 water in contact with the fill. We collected water
19 samples from within the fill.

20 Q Isn't it correct that you can't tell
21 within a reasonable degree of scientific certainty
22 whether the water you collected in the fill material
23 came from precipitation or from groundwater?

24 A First of all, that isn't necessarily a

1 recognizable difference. The water in the sand and
2 gravel probably came from precipitation at one point
3 in time. The water in the fill material, whether
4 that came from infiltration through the surface or
5 from horizontal movement of the groundwater through
6 the sand and gravel I cannot tell.

7 Q Isn't it correct that you can't state an
8 opinion within a reasonable degree of scientific
9 certainty that the water in the fill material at the
10 Stearns Road site constitutes Class 1 groundwater?

11 A I can state that based on my knowledge of
12 the regulations all water beneath the ground is
13 Class 1 groundwater until a demonstration is made
14 otherwise. Therefore, water that's detected would
15 be considered Class 1 groundwater unless someone
16 makes a demonstration that it is not.

17 Q Did you do sufficient pump tests in the
18 fill material to establish the yields necessary in
19 order to form a conclusion that the water that was
20 being sampled in the fill material constituted
21 ground water?

22 A We did not do pump testing on the fill
23 material samples, the water samples.

24 Q And isn't it correct that you need to do

1 pump testing in the fill material in order to
2 determine whether you can sustain a sufficient yield
3 to form a conclusion that that water constitutes
4 groundwater?

5 A That's correct. You have to do a pump
6 test to prove or disprove whether the water is
7 groundwater. We are going on the assumption that if
8 there is water in the ground, it's groundwater until
9 someone proves otherwise.

10 Q So Emcon has not proved or disproved that
11 the water in the fill material constitutes
12 groundwater, correct?

13 A That's correct.

14 Q You are assuming it is groundwater,
15 correct?

16 A That's correct.

17 Q Now, isn't it correct that Emcon cannot
18 state based on its sampling, its testing, and a
19 reasonable degree of scientific certainty that the
20 water found in the fill material constitutes
21 groundwater?

22 MR. MAKARSKI: Objection. Asked several
23 times.

24 THE HEARING OFFICER: I think so. Move onto

1 another question, please.

2 BY MR. STICK:

3 Q Let me refer you to Page 5-4 of the
4 conclusion section. In the third paragraph on that
5 page, Emcon states certain possibilities with
6 respect to exposures; is that correct?

7 A That's correct.

8 Q Isn't it correct that Emcon concludes that
9 because it has not performed a detailed
10 hydrogeological assessment of the site's conditions,
11 it is difficult to assess the potential rates of
12 contamination migration at the site?

13 A That's correct. It's difficult to come up
14 with a flow rate. It's not difficult to come up
15 with an assessment that the potential exists. It
16 would be difficult to calculate the foot per second
17 movement of the plume.

18 Q Let me refer you to Page 5-6 of the Emcon
19 site evaluation under recommendations. Isn't it
20 true that Emcon in the first paragraph on Page 5-6
21 states that it is selecting the excavation and off
22 site disposal option because it provides the Forest
23 Preserve District with a cost-effective remedy?

24 A I believe that's part of the sentence.

1 It's cost-effective, technically sound for
2 responding to the site conditions. That's one of
3 the things in the sentence.

4 Q Mr. McGuigan, did you consider the off
5 site excavation option cost effect?

6 A I think we just said it.

7 Q Given what you know about the site,
8 wouldn't you agree with me that a \$13 million remedy
9 to excavate 165,000 yards of fill material is not
10 cost-effective given what Emcon knows about the site
11 conditions?

12 A I would not agree, no. I think if it was
13 your property that someone else had contaminated,
14 you would settle for nothing less.

15 Q Isn't it correct that Emcon's choice of a
16 remedy at the Stearns Road site is based, in part,
17 upon the Forest Preserve District's desires as
18 opposed to environmental regulations mandating a
19 particular remedy?

20 A I believe we considered the Forest
21 Preserve District's ultimate objectives here within
22 the regulations.

23 Q Isn't it correct that you cannot state an
24 opinion that a \$13 million remedy for excavating

1 soil at the Stearns Road site is justified based
2 upon the scientific and technical information that
3 Emcon knows about the site?

4 A I believe I can state that it's justified
5 if your ultimate goal is to have no potential future
6 liability.

7 Q Isn't it correct that based exclusively on
8 the environmental laws in the state of Illinois such
9 a remedy is not justified?

10 A I believe there is nothing in the
11 environmental laws that would prevent you from
12 removing that material and hauling it off site.
13 There are other remedies.

14 Q Wouldn't you agree with me that there is
15 nothing in the environmental laws in the state of
16 Illinois that would require you to spend \$13 million
17 to excavate 165,000 yards of fill material and move
18 it off site based on you what know about the site
19 conditions at the Stearns Road site?

20 A I would agree that's correct. You could
21 probably implement a different remedy and get the
22 agency to issue a 4-Q letter I believe it's called
23 stating that the site did not pose an ultimate
24 hazard.

1 Q Now, when you refer to no potential future
2 liability, you are referring to potential liability
3 for the Forest Preserve, correct?

4 A Referring to the owner, whoever that might
5 be.

6 Q And that standard or that consideration is
7 not an applicable issue in determining whether a
8 remediation plan is appropriate or inappropriate
9 under the environmental laws in the state of
10 Illinois, correct?

11 A Under the law, I don't know the relevance
12 of the question. When you are doing an analysis of
13 potential remedies, you are normally talking to the
14 owner or the client as to what his ultimate goal is.

15 Q Wouldn't you agree with me whether the
16 Stearns Road site requires any remedy whatsoever is
17 dependent upon whether it poses risk to human health
18 and the environment, correct?

19 A That would be one issue. There are also
20 issues of long-term potential liability of having a
21 landfill on the site.

22 Q That's an issue for the Forest Preserve to
23 address, correct?

24 A Correct.

1 Q That's not an issue that the Pollution
2 Control Board needs to address, correct?

3 A I believe the Pollution Control Board
4 ultimately will be asked to address the issue of
5 whether or not there is waste on the site and
6 whether or not that constitutes a landfill.

7 Q Would you agree with me, Mr. McGuigan,
8 that in determining -- in the Pollution Control
9 Board's determination of whether or not a \$13
10 million remedy is appropriate in this case, the
11 primary issue is going to be whether there is a
12 threat to human health and the environment?

13 MR. MAKARSKI: Objection. I think we have been
14 through this at least once or twice.

15 MR. STICK: This is the first time I have asked
16 that.

17 MR. TUCKER: It's also calling for speculation
18 as to what the Pollution Control Board thinks and
19 how they act.

20 THE HEARING OFFICER: Overruled.

21 THE WITNESS: Basically, I believe the
22 Pollution Control Board will come to a determination
23 of whether or not the material on the site is a
24 waste, and if it is a waste, then the site would

1 constitute an open dump or need to be permitted as a
2 landfill.

3 My understanding is at that point they
4 would turn it over to the Illinois Environmental
5 Protection Agency, who would either permit it as a
6 landfill and implement landfill regulations or ask
7 that that material be somehow remedied under the
8 Voluntary Cleanup Program, which now is called
9 something else, Site Remediation Program.

10 BY MR. STICK:

11 Q Mr. McGuigan, from your point of view and
12 based upon a reasonable degree of scientific
13 certainty, isn't it correct that you would agree
14 with me that the most important factor in
15 determining whether your proposed \$13 million remedy
16 is appropriate for the site is whether the site
17 poses a threat to human health and the environment?

18 MR. MAKARSKI: I object. I know that has been
19 asked and answered several times.

20 THE HEARING OFFICER: I think so.

21 MR. STICK: From his point of view. The last
22 one was from the Pollution Control Board's point of
23 view. Before that, it was the environmental
24 regulations. So I want to know his professional

1 opinion.

2 THE HEARING OFFICER: Do you have a
3 professional opinion, Mr. McGuigan?

4 THE WITNESS: Based on my professional opinion,
5 I think what is driving the whole remediation is the
6 ownership of the property. If I personally owned
7 the property, depending on my proposed end use and
8 depending upon my comfort level with future
9 liabilities regarding issues concerning landfills,
10 you may implement a remedy leaving the material in
11 place that would be perfectly fine from a human
12 health and environment risk standpoint. Now,
13 ultimately how you develop that property and how
14 much liability exposure you can tolerate is -- you
15 know, that's up to you.

16 BY MR. STICK:

17 Q Mr. McGuigan, you were not present when
18 Dennis Urbanski performed his test pits, correct?

19 A Correct.

20 Q And no one from Emcon was, correct?

21 A Not to my knowledge.

22 Q You never saw any engine blocks at the
23 site, correct?

24 A I don't believe our test pits uncovered

1 engine blocks.

2 Q And you personally never saw any engine
3 blocks at the Stearns Road site, correct?

4 A Correct.

5 Q You never saw any saw blades at the
6 Stearns Road site, correct?

7 A Correct.

8 Q And you were not present when Emcon
9 performed its test pit investigation at the Stearns
10 Road site, correct?

11 A That's correct.

12 Q Isn't it correct that you personally have
13 never seen what is below the surface of the site at
14 the Stearns Road site?

15 A In person, no. I have seen the photos of
16 the material that was excavated.

17 Q You personally have never seen what is
18 found in the fill material at the Stearns Road site,
19 correct?

20 A No, I don't believe that's correct. I
21 have been to the site. There is fill material on
22 the surface. Therefore, I have seen some of the
23 fill material that's on the surface where I was
24 walking around.

1 Q You would agree with me that the only
2 material you have seen at the Stearns Road site is
3 material that was on the surface, correct?

4 A Correct.

5 Q You have not seen any material that was
6 buried as fill material at the site, correct?

7 A Unless it was subsequently dug up and put
8 on the surface and that's what I saw.

9 Q Now, neither you nor anyone at Emcon has
10 ever observed any of the operations at the site
11 prior to the shutdown of those operations in March
12 of 1993, correct?

13 A I have not personally. I can't speak for
14 others on my staff who may have driven by. I don't
15 know.

16 Q Now, Emcon assumed mining had commenced as
17 of -- had not commenced as of the date of the
18 license agreement, correct?

19 A I think the way the text is written we did
20 make that assumption initially. Subsequently, I
21 have come to the conclusion that the mining started
22 before the license agreement, and I think that came
23 out in either my deposition or someone else's
24 deposition.

1 Q Isn't it correct that you don't know what
2 the topography of the Stearns Road site looked like
3 in March of 1995?

4 A Specific to that date, that's correct.

5 Q And no one at Emcon knows what the
6 topography of the Stearns Road site looked like in
7 March of 1991, correct?

8 A That would be correct. We have an aerial
9 photo that was taken. I don't know the date, but
10 that's the topography then. We have some
11 information from an older USGS quad map when it was
12 a farm field prior to any kind of activity, so we
13 know that. But specific to March of '91, I believe
14 you said, no, we have no specific knowledge.

15 Q And you don't know whether the Stearns
16 Road site balanced as of the date the license
17 agreement was signed, correct?

18 A Could you define balanced?

19 Q You don't know whether as of the date that
20 the license agreement was signed material from off
21 site was needed as fill material on site in order to
22 build the intended development?

23 A As I stated, we have no specific knowledge
24 of the March '91 date, so the answer to that

1 question would be no. We knew it balanced from
2 pre-excavation to any of the proposed final contours
3 that were proposed attached to the license
4 agreement, but specific to that date and time, no.

5 Q Now, you have no idea what the proposed
6 final contours that the parties intended to utilize
7 as part of the reclamation at the Stearns Road site
8 were, the particular final contours, right?

9 A That's correct. We assumed it was one of
10 the four, but which one, we have no idea.

11 Q Isn't it true that Emcon has not reached
12 any opinion based upon a reasonable degree of
13 scientific certainty as to what caused the petroleum
14 odor reportedly detected in Test Pit U?

15 A We assume it was petroleum. I mean, we
16 haven't defined the source of that petroleum.

17 Q Emcon has not determined a source of that
18 purported problem, correct?

19 A Meaning the generator like it came from
20 this address?

21 Q Correct.

22 A That's correct. We have not determined
23 that.

24 Q Isn't it correct that Emcon has no reason

1 to believe that any of the material at the Stearns
2 Road site came from a landfill?

3 A I don't think we have any reason to
4 believe that or not believe that. We have no
5 knowledge specific to that.

6 Q Emcon has no evidence that any of the
7 material at the Stearns Road site came from a
8 landfill, correct?

9 A That's correct.

10 Q Isn't it correct that Emcon does not know
11 currently what the seasonal fluctuations of the
12 groundwater level is at the site?

13 A That's correct.

14 Q Mr. McGuigan, Emcon did not ask -- strike
15 that.

16 The Forest Preserve District did not ask
17 Emcon to consider any corrective action at the site
18 other than no removal or removal, correct?

19 A Just as a point of clarification,
20 actually, our client in this case, we were working
21 for Chapman and Cutler, but I assume also that the
22 Forest Preserve District was involved, and that's
23 correct. We looked at the no action versus the
24 removal of the material options.

1 Q And on direct examination when you talked
2 about other available remedies at the Stearns Road
3 site, you have never been asked to consider them
4 specifically with respect to the site, correct?

5 A I have been asked particularly by you
6 during depositions in some other cases to discuss
7 other particular options that could be available,
8 yes, I have.

9 Q You have never been asked by the Forest
10 Preserve District or Chapman and Cutler to consider
11 any remedies other than no remedy or removal of
12 165,000 cubic yards of material at the cost of
13 \$13 million, correct?

14 A At the time the report was prepared,
15 that's probably correct. I have probably discussed
16 other remedial options after this point in time,
17 which was May of '95.

18 Q Since May of 1995, has Emcon altered its
19 conclusions regarding what the appropriate remedy of
20 the Stearns Road site is?

21 A No.

22 Q Is it fair to say that since May of 1995,
23 Emcon has at least considered other options for
24 remediation at the Stearns Road site?

1 A We have looked at other potential options,
2 you know, other things you could do to remediate the
3 site. Specifically as a task assignment from the
4 district or Chapman and Cutler, no, we haven't been
5 asked to do that specifically. We have had general
6 discussions about are there other solutions, but
7 nothing specific and not really a task that was
8 scoped by the district or Chapman and Cutler.

9 Q Mr. McGuigan, as early as January 25th,
10 1995, Emcon had concluded that fill material at the
11 Stearns Road site was inappropriate, correct?

12 A I believe in our initial letter based on a
13 review of the available reports, we basically wrote
14 a letter to the district saying based on our review
15 of existing information, we think the fill material
16 is unsuitable.

17 Q And, in fact, as of January 25th, 1995,
18 Emcon had concluded that there was waste in the
19 reclamation fill at the Stearns Road site, correct?

20 A That's correct. I believe we made a
21 statement that, again, based on the available
22 information it would appear that there was waste.

23 Q As of January 25th, 1995, Emcon had
24 determined that the filling activity at the site

1 constituted an open dumping, correct?

2 A I don't have the letter you are referring
3 to, but I believe you are reading directly from a
4 letter that was written by Emcon. I don't believe
5 it was written by myself, although I might be
6 mistaken there.

7 Q Do you recall Emcon preparing a letter to
8 the Forest Preserve District on or about
9 January 25th, 1995, stating certain preliminary
10 conclusions?

11 A I know there is a letter that was prepared
12 around January of '95, correct.

13 Q And do you recall that you reviewed that
14 letter and provided input in its final -- or at
15 least authorized its final form?

16 A I don't specifically recall one way or the
17 other. If I knew who signed the letter, I would
18 know if I had reviewed it or if Keith Gordon
19 reviewed it. I'm sure I have seen the letter.

20 MR. STICK: May I mark this as Respondents'
21 Exhibit 33 for identification?

22 THE HEARING OFFICER: Yes.

23 (Respondents' Exhibit No. 33 marked
24 for identification, 10-21-97.)

1 BY MR. STICK:

2 Q Mr. McGuigan, let me show you what has
3 been marked as Respondents' Exhibit Number 33.

4 Mr. McGuigan, do you recognize that document?

5 A It's a letter prepared by Wehran Emcon,
6 which is the previous name of my company, to
7 Mr. Richard Makarski, and it's dated January 5th,
8 1995.

9 Q And that's a letter that you at least
10 reviewed before it went out, correct?

11 A I believe I have seen this letter, yes.
12 Actually, Mr. Keith Gordon is the author, but I
13 signed for him probably because he wasn't there.

14 Q So you did, in fact, review that letter
15 before it was sent out, correct?

16 A I can't specifically state I reviewed it
17 before or after it went out.

18 Q Does this letter represent conclusions
19 that Emcon was providing to the Forest Preserve
20 District as of January 25th, 1995?

21 A Yes.

22 Q Mr. McGuigan, isn't it true that as of
23 January 25th, 1995, Emcon had determined that the
24 fill material could be classified as a special

1 waste?

2 A I believe we state that if it's going to
3 be removed, it would be considered a special waste,
4 and that was our opinion based on the documents and
5 the information that's bulleted on the first page.

6 Q And isn't it true that Emcon had
7 determined as of January 25th, 1995, that the
8 decomposition and leaching of the material at the
9 site has a potential to contaminate the surrounding
10 soils?

11 A I believe that was our preliminary
12 conclusion based on the material and information we
13 had available at the time, correct.

14 Q And isn't it correct that Emcon had
15 determined and concluded on January 25th, 1995, that
16 the contamination at the site could readily migrate
17 into the ponds and local groundwater?

18 A I believe it says decomposition and
19 leaching of the waste has the potential to
20 contaminate the surrounding soils. I don't see
21 where it references readily migrate to groundwater.

22 Q In the next sentence, doesn't it
23 say that this contamination in a pervious soils
24 environment can readily migrate into the ponds and

1 local groundwater?

2 A What page are you on?

3 Q The sentence immediately after the one you
4 read.

5 A This contamination in a pervious soils
6 environment can readily migrate into the ponds and
7 local groundwater. I think we are stating that in a
8 pervious environment, which we suspect this is since
9 it is a sand and gravel pit, contamination migrates
10 readily. Yes, that's what we're saying.

11 Q So isn't it correct that Emcon had
12 concluded on January 25th, 1995, that any
13 contamination at the Stearns Road site could readily
14 migrate into the ponds and local groundwater?

15 A Correct.

16 Q And isn't it correct that Emcon had
17 concluded by January 25th, 1995, the fill material
18 at the Stearns Road site could have a detrimental
19 impact on the development of wetland flora and
20 fauna?

21 A I believe that's what we suspected based
22 on the report and the information available from
23 others. I think we are reluctant to make strong
24 conclusions and also in this letter recommended that

1 further studies be performed.

2 Q Now, the first time Emcon ever viewed the
3 site was in early 1995, correct?

4 A I believe this letter references a site
5 inspection by senior Emcon staff. Therefore, I
6 suspect that that inspection happened sometime in
7 either January of '95 or possibly earlier, but not
8 appreciably earlier.

9 Q As of January of 1995, you visited the
10 site only once or twice, correct?

11 A Correct.

12 Q And as of January 25th, 1995, Emcon had
13 not done any water sampling at the site, correct?

14 A That's correct.

15 Q As of January 25th, 1995, Emcon had not
16 done any soil sampling at the Stearns Road site,
17 correct?

18 A That's correct.

19 Q As of January 25th, 1995, Emcon had not
20 dug any test pits at the Stearns Road site, correct?

21 A Correct.

22 Q And as of January 25th, 1995, Emcon had
23 not performed any other intrusive sampling at the
24 Stearns Road site, correct?

1 A That's correct, other than walking the
2 site and kicking the dirt.

3 Q As of January 25th, 1995, you don't know
4 whether you had seen the P and P Consultants report
5 or the TSC report, correct?

6 A I couldn't recall. The reference in this
7 letter references the inspection reports by the
8 Forest Preserve District, but doesn't specifically
9 reference the other P and P and TSC reports.

10 Q So you don't know whether you or anyone at
11 Emcon had seen the P and P reports or the TSC
12 reports as of January 25th, 1995, when Emcon made
13 these conclusions and presented them to the Forest
14 Preserve District, correct?

15 A I can only speak for myself, and I don't
16 recall having seen those reports either prior to or
17 after this meeting in particular. I know I have
18 seen those reports. I know we have received the
19 file information early on in the project. Whether
20 or not it was previous to January 25th or not I
21 don't recall. As far as other employees at Emcon
22 involved in the project, I can't speak for them.

23 Q As of January 25th, 1995, Emcon had not
24 conducted any hydrogeological testing at the site,

1 correct?

2 A Correct.

3 Q And as of January 25th, 1995, Emcon had
4 not conducted any permeability studies at the
5 Stearns Road site, correct?

6 A Correct.

7 Q Emcon did not know as of January 25th,
8 1995, which way the groundwater at the site was
9 moving, correct?

10 A Not specifically, although you can make
11 generalizations based on landforms and topography.

12 Q But Emcon had not done any hydrogeological
13 testing, so Emcon couldn't state any real scientific
14 conclusions regarding groundwater flow at the
15 Stearns Road site as of January 25th, 1995, correct?

16 A We could state a presumed direction, but
17 we couldn't have definitive proof of which way it
18 went. That's why we installed the piesometers.

19 MR. STICK: Your Honor, I have got a bit more
20 with Mr. McGuigan, but I'm ready to move into a new
21 area. This will be a good time to break, or I can
22 continue. But unless we are going to go for -- I
23 have at least a couple more hours.

24 THE HEARING OFFICER: All right. Let's go off

1 the record.

2 (Whereupon, a discussion was held off
3 the record.)

4 THE HEARING OFFICER: Back on the record.

5 Let's adjourn until tomorrow morning at 9:30.

6 (Whereupon, further proceedings were
7 continued sine die.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, CARYL L. HARDY, do hereby state that I
5 am a court reporter doing business in the City of
6 Chicago, County of Cook, and State of Illinois; that
7 I reported by means of machine shorthand the
8 proceedings held in the foregoing cause, and that
9 the foregoing is a true and correct transcript of
10 my shorthand notes so taken as aforesaid.

11

12

13

Caryl L. Hardy
Notary Public, Cook County, IL
Illinois License No. 084-003896

14

15

16

17 SUBSCRIBED AND SWORN TO
before me this____day
18 of_____, A.D., 1997.

19

20 Notary Public

21

22

23

24