

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

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

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Geanna M. Iaquina, 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 23rd day of September 1997, A.D., scheduled to commence at 9:30 a.m., commencing at 10:00 o'clock 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

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

7 Appeared on behalf of the Respondent,
8 Mineral and Land Resources.
9

10 ALSO PRESENT:

11 Mr. Michael Vondra

12 Mr. Joseph R. Benedict, Jr.

13

14

15

16

17

18

19

20

21

22

23

24

1	I N D E X	
2		PAGES
3	Greeting by Hearing Officer.....	6-7
4	Opening Statement by Mr. Makarski.....	8-18
5	Opening Statement by Mr. Stick.....	20-35
6	Opening Statement by Ms. O'Connell.....	35-36
7	THE WITNESS: Maurice Robert Vick	
8	Direct Examination	
9	by Mr. Makarski.....	39-76
10	Cross-Examination	
11	by Mr. Knippen.....	78-147
12	Redirect Examination	
13	by Mr. Makarski.....	147-150
14	Recross-Examination	
15	by Mr. Knippen.....	150-154
16	THE WITNESS: Harold Michael Wells	
17	Direct Examination	
18	by Mr. Makarski.....	155-209
19	Cross-Examination	
20	by Mr. Stick.....	210-233
21	E X H I B I T S	
22	Marked for	
23	Identification	
24	Complainant's Exhibit	
25	Nos. 1, 2, and 3.....	45
26	Complainant's Exhibit No. 4.....	
27		55

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

I N D E X (cont'd)

E X H I B I T S

Marked for
Identification

Complainant's Exhibit
Nos. 5, 6, 7, 8, and 9..... 57

Complainant's Exhibit
No. 5A, 5B, 5C, 5D, and 5E..... 59

Complainant's Exhibit No. 10..... 160

Complainant's Exhibit No. 11..... 170

Respondent's Exhibit No. 1..... 81

Respondent's Exhibit No. 2..... 108

Respondent's Exhibit No. 3..... 119

Respondent's Group Exhibit
No. 4..... 123

Respondent's Exhibit No. 5..... 130

Respondent's Exhibit No. 6..... 145

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

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

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

12 MR. STICK: Michael Stick of Butler, Rubin,
13 Saltarelli & Boyd for the respondents Bluff City
14 Materials and Southwind Financial. In addition,
15 Mr. Jim Knippen of Walsh, Knippen, Knight & Diamond
16 who represents the same two respondents, and with me
17 in court is Mr. Michael Vondra, the president of
18 both of those entities.

19 MS. O'CONNELL: Your Honor, Karin O'Connell
20 from the law firm of Gould & Ratner representing the
21 respondent Mineral and Land Resources.

22 THE HEARING OFFICER: Let the record reflect
23 there are no other appearances at today's hearing.

24 We had a brief off-the-record

1 discussion whether or not there were any preliminary
2 matters. Mr. Makarski, you had one that you wanted
3 to bring up.

4 MR. MAKARSKI: Yes. Mr. Hearing Officer,
5 Steven Helm filed an appearance in this case for the
6 complainant, and he's a Naperville attorney as
7 co-counsel with us, and he's asked to withdraw. We
8 have no objection because we will be here to handle
9 the case for the complainant.

10 THE HEARING OFFICER: All right.

11 MR. MAKARSKI: And I have a formal motion
12 signed by him, which I've tendered to counsel for
13 the respondents.

14 THE HEARING OFFICER: All right.

15 Mr. Stick, you don't have any
16 objection, do you?

17 MR. STICK: To the motion to withdraw?

18 THE HEARING OFFICER: Right.

19 MR. STICK: No objection.

20 THE HEARING OFFICER: No objection, the motion
21 to withdraw as counsel filed by Mr. Steven Helm is
22 granted. All right. I think that was all the
23 preliminary matters we had.

24 Mr. Makarski, do you wish to make an

1 opening statement?

2 MR. MAKARSKI: A brief one, please.

3 THE HEARING OFFICER: You may proceed.

4 MR. MAKARSKI: Thank you.

5 Mr. Hearing Officer, ladies and
6 gentlemen for the respondents, my name, as the
7 record shows, is Richard Makarski and with me is
8 Mr. Robert Tucker. We're of Chapman and Cutler, and
9 we represent the complainant, the Forest Preserve
10 District of DuPage County in this proceeding.

11 Also with us in the courtroom is
12 Mr. Joseph R. Benedict, Jr., who's a staff member of
13 the district and is the director of the
14 Environmental Services Department.

15 This is an action brought by the Forest
16 Preserve District of DuPage County against three
17 respondents seeking removal of some material which
18 we believe was illegally dumped.

19 The Forest Preserve District is a
20 municipal governmental body here in DuPage County
21 which owns approximately 25,000 acres of land which
22 is used for generally recreational purposes. It's a
23 separate governmental body with a board of
24 commissioners who also serve on the county board

1 here in DuPage County.

2 In 1989, the district commenced a
3 condemnation proceeding to acquire approximately 77
4 acres of land in the northwest corner of this county
5 which we will refer to as the Stearns Road
6 property. It's on Stearns Road about two miles west
7 of Route 59 in DuPage County.

8 The land surrounding this on three
9 sides to the west to the south to the east is
10 already owned by the district. It's part of about a
11 1500 acre preserve called Pratts Wayne. This was to
12 be part of that situation.

13 In the condemnation proceedings, the
14 district -- the land was owned by Mineral and Land
15 Resources Corporation who has a sublicense agreement
16 with Bluff City Materials, which is a gravel and
17 sand operator and Abbott Contractors, which is now
18 called Southwind, which is a construction company,
19 and they had already commenced the mining of sand
20 and gravel on this land at the time we filed the
21 condemnations proceedings.

22 The district's lawyers, none of us, by
23 the way, were involved in any of the proceedings,
24 any of the attorneys who are before you, the

1 district's lawyers and the lawyers for Mineral Land
2 and Bluff City eventually worked out a settlement of
3 the condemnation proceedings by which the district
4 took title to the 77 acres and granted a license
5 agreement to Mineral Land and Resources. We call it
6 MLR for short, and designating Bluff City and Abbott
7 as their approved contractors.

8 In order to mine the aggregates, the
9 sand and the gravel, and when complete to construct
10 a wetland for the district's use after the
11 construction finished. The district took title, and
12 the license agreement was signed in March of 1991.

13 The district -- actually, Bluff City
14 went about the business of mining this property.
15 The district did not oversee the work. Early in
16 1993, March of 1993, two of the employees of the
17 planning and development department for the district
18 who worked for Mr. Vick, who will be the first
19 witness, went to the site and looked it over and
20 were surprised to find that a big deal of material
21 from off site had been brought on which they had
22 significant problems.

23 What they observed -- and Mr. Wells
24 will be a witness here. They observed in the

1 materials that was brought from off site for fill a
2 strong petroleum odor from trucks which were dumping
3 material there. They saw fill, which is overhanging
4 a pond, which is the result of the mining effort,
5 the groundwater created a pond on the site, and they
6 observed asphalt, plastics, concrete, wires, posts,
7 corrugated metal pipe in amongst the fill.

8 On several occasions after
9 March 3rd and to the end of March, Mr. Wells stopped
10 by and observed the delivery of more of this fill of
11 a similar nature.

12 On March 24th or 23rd, Mr. Wells and
13 Mr. Utt, who was then in Mr. Benedict's position,
14 director of environmental services department, it
15 was called the government service at the time, went
16 out and looked at the property and took a video of
17 some of the operation, which we will put in
18 evidence.

19 The district believed that the material
20 was not -- to be brought onto the property was not
21 consistent with its efforts to develop a wetland,
22 and on March 25th served a stop-work notice and
23 stopped all of the operations at the site.

24 From that date on, no more off-site

1 material was brought to the site, although they did
2 work out with Bluff City that a considerable amount
3 of the sand and gravel, which had already been
4 mined, was removed and sold by Bluff City.

5 Since that date, the site has remained
6 not used. It was used a slight bit in 1993 to
7 remove the gravel and a bit of mining, but from that
8 point on, it remains just sitting in its present
9 that, the same that. In January of 1995, one of the
10 employees of the district, Dennis Urbanski, who will
11 testify in this case, excavated a series of pits in
12 the material that had been brought and was stacked
13 up at the site.

14 He had 19 excavations, and he noted it
15 went down 15 feet, and he noted the material that he
16 found in each excavation and took photographs of
17 many of them, which we will put into evidence.

18 In 11 of the 19 excavations they did of
19 this material, they found what we call debris, old
20 cables, concrete slabs, asphalt slabs, wood posts,
21 wire fencing, PVC pipe, metal pipe, metal culverts,
22 and a septic tank odor in some of the material which
23 he believed was from an asphalt plant, occurring
24 from an asphalt plant. As I said, there were

1 photographs that were taken.

2 Later in 1995, the district
3 commissioned EMCON, which is an environmental
4 engineering firm to do a study, a site evaluation,
5 to determine what could be done with the site, what
6 had occurred at the site and what should be done.

7 EMCON reviewed all of the available
8 material and comprised a big site evaluation book
9 and did soil borings and studies, hydropunches in
10 test pits and what have you, made the soil and
11 groundwater analysis and took a number of
12 photographs of the material at issue. They prepared
13 a report. That's that large book, and their people
14 will testify as to the test and Mr. McGuigan as to
15 his analysis and opinion as to what this material
16 is.

17 They did 39 test pits out there in the
18 material that was brought from off site.
19 Twenty-five of them contained what we call debris,
20 concrete fragments, plastic asphalt, clay tile, wood
21 fragments, metal rods and strapping, corrugated
22 metal, and they have photographs of this.

23 The other material was either gravel or
24 sand or dirt. In the pits that had nothing or was

1 mixed in all this -- all material mixed together was
2 found at various depths, not just at the top, all
3 the way down as far as it went, and the soil and
4 analytical tests show that there are small amounts
5 of PNAs and some volatiles, which we believe is a
6 result of this dumping.

7 The district will offer as an admission
8 against interest, understanding who will testify, a
9 former employee, Mr. Fiordirosa, who testified that
10 the trucks -- the material brought in was what they
11 call reclamation fill or he also referred to it as
12 construction debris came from many, many different
13 construction projects, mainly underground work,
14 sewers, roads and that throughout this area.

15 He's testified that they were paid, in
16 many instances, to accept this material at the
17 site. A former attorney for the district did an
18 analysis of some of the tickets that the respondent,
19 Bluff City, had of the material that came into the
20 site. They were called trip tickets.

21 The purpose of that was not to say so
22 many tons or so many feet came in or to have some
23 idea of the sources, the extent of the various
24 sources of this material, and she examined,

1 obviously, I don't think all, but a good number of
2 tickets over a one-year period from -- it covered
3 April of '92 through March of '93, and that's one of
4 the two years that they operated under the license
5 agreement.

6 We had a paralegal -- and that -- we
7 have a due diligence study, and that lady will
8 testify. It's four big, thick volumes. We had our
9 paralegal just analyze the various sources, the
10 names of where the material came from, and it turns
11 out that there were 225 different sources of this
12 material in that one-year period, which amounted to
13 10,000 loads, semi-truckloads of material.

14 In answers to the interrogatories that
15 Bluff City made to other -- in another litigation we
16 had with them, they admitted that they brought in a
17 total of 17,828 loads of outside fill and were paid
18 \$283,627 by the people who were getting rid of that
19 fill to leave it at the site.

20 Mr. McGuigan of EMCON will testify to
21 the study they did, the examinations they did, and
22 will give the Board an opinion that the off-site
23 material is waste and should be removed from the
24 site.

1 Joan Anderson, who's a former member of
2 the Pollution Control Board, was retained by us as
3 an expert and examined the situation, looked at the
4 site, looked at the material, and she will testify
5 that her opinion is it is waste and that, in fact,
6 this has become a landfill.

7 Obviously, there is no permits for any
8 solid waste disposal. For one reason, Illinois law
9 bars the Forest Preserve District from having a
10 landfill on its property except for two operating
11 sites, which it is now closing and are unrelated to
12 this situation, and, of course, the Environmental
13 Act requires a permitted site to be the repository
14 of waste in most instances.

15 Bluff City, of course, was the operator
16 that did the activities. Southwind, which was
17 formerly Abbott, was then there as a contractor.
18 They did so as the agents of Mineral Land and
19 Resources named right in the license agreement, and
20 they have a sublicense agreement.

21 Mineral Land and Resources was
22 compensated on a royalty basis for the minerals that
23 were sold and I don't think for the stuff that came
24 in, the off-site material, but they received a

1 royalty of so much a ton for every ton of gravel or
2 sand that was sold from the site, which is a little
3 over a million tons as I believe.

4 It is our position that the material,
5 off-site material, brought onto the site should not
6 have been brought on. It's not provided for in the
7 agreement, not approved by the district, and it is,
8 in fact, waste. It's waste for a number of
9 reasons. It is construction or demolition debris,
10 which is part of the definition of municipal waste
11 in 415 Il. CS5-3.30.

12 There's even many things in there that
13 are not construction and demolition debris, cables
14 and wires and what have you, which is discarded
15 material. The whole -- all of this material is
16 discarded material and such is waste under Il.
17 CS5/3.53. The evidence of discard, of course, is
18 that it's there. It is not -- it is a material that
19 people pay to get rid of just like you would pay to
20 get rid of things in a landfill. It's not dirt that
21 is in commercial use beyond the disposal.

22 This is -- it is waste by any view of
23 the term, and it also amounts to an open dump
24 because it is a collection of waste from various

1 sources under 5/3.24, and we'll allege it also
2 amounts to dumping on public property since it's
3 owned by a public agency.

4 The site is all yet used as a landfill,
5 and the waste was brought in to be used as fill, but
6 still was waste and people paid to do it. In the
7 end, the district will ask that this Board enter an
8 order and direct that this material be removed
9 because we cannot have illegal landfill on our
10 property. Thank you.

11 MR. KNIPPEN: Mr. Hearing Officer, can I bring
12 something to your attention at this point?

13 THE HEARING OFFICER: Yes.

14 MR. KNIPPEN: During the course of
15 Mr. Makarski's opening statement, a witness to this
16 proceeding came into the courtroom. He is a witness
17 of the district's. I believe it's Mr. Utt who's
18 sitting behind me. I don't know how long he has
19 been in here with regard to the opening statement,
20 but I think that the motion to exclude was
21 applicable for that time.

22 I think the district has the obligation
23 and responsibility to monitor their witnesses so
24 they cannot be tainted by anything of an evidentiary

1 or an argumentative nature as was just made.

2 I want to bring it to your attention
3 now for purposes of the record. We may subsequently
4 have a motion to exclude Mr. Utt depending upon our
5 examination of him depending on how long he's been
6 in here listening to what Mr. Makarski has been
7 arguing.

8 MR. TUCKER: For the record, Mr. Hearing
9 Officer, I think yourself and probably the court
10 reporter noted that Mr. Utt just came in in the last
11 20 seconds at the very end of this. I'm sure you
12 noted that yourself.

13 MR. MAKARSKI: I didn't see it. I'm sorry.

14 Could you wait outside?

15 MR. UTT: Sure.

16 MR. MAKARSKI: We've asked him to remain
17 outside until he is called as a witness.

18 THE HEARING OFFICER: Yes. What was his name
19 again?

20 MR. MAKARSKI: Richard Utt, U-t-t.

21 MR. TUCKER: U-t-t.

22 THE HEARING OFFICER: Mr. Utt did literally
23 just walk in at the closing of Mr. Makarski's
24 opening statement.

1 Mr. Stick?

2 MR. STICK: Thank you. Thank you, your Honor.

3 As Mr. Makarski indicated, this
4 proceeding involves a site of approximately 77 acres
5 located on Stearns Road in Bartlett, Illinois.
6 During this proceeding, that site will be referred
7 to and is commonly referred to as the Stearns Road
8 site.

9 Mr. Makarski also indicated that at the
10 time the Forest Preserve District proceeded with
11 there condemnation proceeding with respect to that
12 site, the respondent, Bluff City, was mining sand
13 and gravel at the site.

14 Now, these mining operations involve
15 using a front-end loader and later in the operation
16 a dragline to excavate aggregate, place it on a
17 conveyor belt which transported the aggregate to an
18 on-site facility where the aggregate was crushed,
19 washed, separated, and stockpiled for later sale.

20 When contractors who needed aggregate
21 would come to the site and purchase the aggregate,
22 they would take it from the stockpile, and it was
23 removed from the site. As part of its operations,
24 Bluff City also received broken concrete from

1 off-site sources, which it ran through its jaw or
2 crusher and turned into usable recycled aggregate.

3 Now, Bluff City intended to reclaim
4 this parcel of property for later development after
5 the mining had ended. As part of those reclamation
6 activities, Bluff City was bringing on to the site
7 clay and topsoil excavated and off-site construction
8 sites for use as a reclamation fill.

9 This reclamation fill was being spread,
10 compacted, and worked into the reclaimed portion of
11 the site, and in conjunction with the reclamation
12 activities, there were bulldozers, scrapers, and
13 other heavy equipment on the site moving the
14 reclamation fill around the property.

15 Also as parts of its operations, Bluff
16 City had a trailer on site, a set of scales on site,
17 and there was an above-ground fuel tank for fueling
18 the pieces of heavy equipment, and Bluff City was
19 using fencing, cable, wires, PVC pipe, and other
20 items in its activities. In the winter, the heavy
21 equipment was often parked on tires so that it would
22 not freeze to the ground.

23 Now, as part of the Forest Preserve
24 District's pursuit of the condemnation of the

1 Stearns Road site, during 1990, the Forest Preserve
2 District began negotiations with respondent Mineral
3 and Land Resources regarding a purchase of the
4 site.

5 These negotiations provided, in their
6 preliminary forms, that Mineral and Land Resources
7 would have the right to continue the mining activity
8 that Bluff City was carrying on on the site prior to
9 the condemnation proceeding being instituted.

10 The negotiations also envisioned that
11 Mineral and Land Resources would have a period of
12 five years to mine the site, and at the end of that
13 five-year period, they would be required to
14 implement a reclamation plan the Forest Preserve
15 District would choose.

16 Because Bluff City contracted with
17 Mineral and Land Resources for mining rights, Bluff
18 City was involved in these negotiations as well.

19 During 1990, Bluff City provided the
20 Forest Preserve District with detailed estimates
21 based upon soil borings that had been taken at the
22 site of the amount of usable overload on the site as
23 well as the amount of minable aggregate on the
24 site. Now, bear in mind, in 1990, the mining

1 operations were -- had commenced, but the mining
2 operations certainly had not come close to being
3 completed, and so no one knew for sure how much
4 minable aggregate were there other than the
5 estimates that these soil borings indicated, and no
6 one really knew for sure how much overburden was at
7 the site other than by way of these estimates, these
8 soil borings.

9 However, as early as July of 1990,
10 Bluff City gave the Forest Preserve District written
11 estimates regarding the amount of overburden and the
12 amount of minable aggregate at the site. Now, I
13 talked about early negotiations regarding the Forest
14 Preserve's purchase of the property and early
15 negotiations regarding a reclamation plan for the
16 property.

17 During 1990, the Forest Preserve and
18 Bluff City were preparing proposed reclamation plans
19 for the site. Now, these reclamation plans were
20 different than what Bluff City had anticipated.
21 These reclamation plans were what the Forest
22 Preserve anticipated they wanted in the site once
23 the mining activities were over.

24 The first early drafts of the

1 reclamation plan called for a -- called for the
2 construction of a prairie with a lake in it on the
3 site. The early reclamation plans called for a
4 proposed lake elevation of 754 feet. Now, these
5 elevations you'll hear throughout this proceeding,
6 and they are significant. The early negotiations
7 centered around a lake elevation of 754 feet and a
8 surface area of the lake of between 19 and 20
9 acres. So roughly a quarter of the 77 acres
10 initially was envisioned to become a lake. The rest
11 will be prairie, and the lake would have a surface
12 elevation of 754 feet.

13 In November of 1990, Bluff City
14 informed the Forest Preserve District that based
15 upon the current information regarding overburden,
16 the current information regarding minable aggregate
17 of the site, and based upon a proposed lake
18 elevation of 754 feet, there was not quite enough
19 overburden on site to construct the reclamation
20 plan.

21 Now, as a practical matter, this meant
22 that off-site fill material had to be brought on to
23 the site to construct the lake at a lake water level
24 of 754 feet. In early 1991 before acquiring title

1 to the site, the Forest Preserve altered its
2 reclamation plans. Instead of the 754 feet water
3 elevation, the Forest Preserve District proposed
4 three alternative reclamation plans with lake water
5 elevations of 760, 762, and 764 feet respectively.

6 Each of these proposed reclamation
7 plans raised the water level of the proposed lake,
8 reduced the steepness or the slope of the
9 embankments adjacent to the lake, and reduced the
10 lake surface area to approximately four acres.

11 The end result was that a substantial
12 amount of off-site fill material had to be brought
13 onto the site to construct any of the three proposed
14 reclamation plans that were being offered by the
15 Forest Preserve District in early 1990, and the
16 evidence will show that.

17 March 29th, 1991, the Forest Preserve
18 District and Mineral and Land Resources entered into
19 a license agreement pursuant to which the Forest
20 Preserve District acquired the Stearns Road site and
21 Mineral and Land Resources retained the right for a
22 five-year period to mine all of the aggregate at the
23 site. Pursuant to the license agreement, Mineral
24 and Land Resources also agreed to reclaim the site

1 pursuant to one of the three proposed reclamation
2 plans that had been proposed by the Forest Preserve
3 District in early 1991.

4 These reclamation plans called for a
5 water lake level of, alternatively 760, 762, or 764
6 feet. It was the Forest Preserve District's express
7 preference that the lake water level be as high as
8 possible. Pursuant to the sublicense or pursuant
9 the license -- Strike that.

10 MLR, pursuant to a sublicense, granted
11 Bluff City the continuing right to mine the
12 aggregate at the site so that the Bluff City's
13 operations continued. There was no interruption in
14 the mining operations they had commenced
15 previously.

16 Now, the reclamation plan, which called
17 for a lake water elevation of 764 feet required that
18 the entire reclamation project at the Stearns Road
19 site be elevated approximately ten feet higher than
20 the November 1990 reclamation plan which called for
21 a lake water elevation of 754, if you recall, and
22 the evidence will show that in November of 1990 at a
23 lake water elevation of 754 feet outside fill was
24 required. With a lake water elevation of 764 feet,

1 a substantial amount of off-site fill material was
2 going to be required to construct the proposed
3 wetland or the proposed reclamation project.

4 The evidence will show that on March
5 29th, 1991, the Forest Preserve District knew or
6 should have known based upon the estimates of
7 minable aggregate that Mineral and Land Resources
8 and Bluff City had the right to mine and based upon
9 the estimates of available overburden at the site
10 that none of the three proposed reclamation plans
11 could be constructed without the use of off-site
12 fill material.

13 Now, after the license agreement was
14 entered into between March of 1991 and March of
15 1993, Bluff City continued to mine sand and gravel
16 at the Stearns Road site. Bluff City continued to
17 bring broken concrete from off-site construction
18 activities to the site for crushing and later resale
19 as reclaimed aggregate.

20 Bluff City continued to bring clay and
21 topsoil excavated pursuant to off-site construction
22 activities to the site to be used as reclamation
23 fill. During the period from March 1991 to March
24 1993, the Forest Preserve District had the right to

1 inspect operations of the Stearns Road site and did,
2 in fact, inspect those operations.

3 The evidence will show that prior to
4 March of 1993 the Forest Preserve District never
5 objected that Bluff City was recycling broken
6 concrete at the site and never objected that Bluff
7 City was bringing clay and topsoil excavated during
8 off-site construction activities to the site to be
9 used as reclamation fill.

10 During the period from March of 1991 to
11 March of 1993, the Illinois Environmental Protection
12 Agency inspected the Stearns Road site on at least
13 three occasions. The IEPA inspector observed the
14 mining operations, observed the recycling
15 operations, and observed the reclamation
16 activities.

17 The Illinois Environmental Protection
18 Agency never informed any of the respondents that
19 they needed a permit to bring material excavated
20 during off-site construction activities onto the
21 site for use as reclamation fill.

22 Now, you will hear testimony from the
23 respondents from qualified experts in various fields
24 that the reclamation fill brought to the Stearns

1 Road site provided a suitable subbase for the
2 proposed development of the site and served a
3 beneficial purpose in the construction of the
4 reclamation plan that the Forest Preserve had
5 requested. You will not hear any testimony from any
6 qualified experts contradicting those opinions.

7 Bluff City had an appropriate procedure
8 in place for inspecting the incoming reclamation
9 fill and to ensure that it was suitable for use on
10 the site, and this ruling involved two stages.
11 First, as reclamation fill came on to the site, the
12 back of the trucks could be observed from the
13 trailer that I mentioned earlier was at the gate of
14 the site. Second, as trucks were being unloaded on
15 the site, the dozer operators inspected the fill as
16 it was coming out of the back of the truck and if it
17 was unsuitable, rejected it.

18 There was another aspect of the
19 inspection at this site that the evidence will
20 establish and that is that after the fill material
21 had been unloaded from the trucks and as it was
22 being dozed and worked, items that appeared to be
23 large pieces of wood or other material and items
24 that did not appear to be suitable for reclamation

1 fill were worked out of the fill, were segregated
2 out, and were accumulated in a particular portion of
3 the site for later transportation off site, and you
4 will hear testimony that Bluff City sent items such
5 metal culverts to the junk yards off site, and you
6 will hear testimony that those pieces of concrete
7 and large pieces of asphalt that happened to be in
8 any of the fill material that might be coming in
9 were segregated out and sent through Bluff City's
10 recycling operations.

11 Now, in March of 1993, two years into
12 the five year license agreement, the Forest Preserve
13 District issued a stop work notice and forced the
14 respondents off the site. The Forest Preserve
15 District complained, as you heard Mr. Makarski
16 indicate in his opening, that the reclamation fill
17 contained inappropriate material.

18 The evidence will show that the
19 respondents were not allowed to remove their
20 equipment, were not allowed to remove their
21 stockpiled aggregate, and were not allowed to remove
22 any material initially from the site. When they
23 were allowed to remove stockpiled aggregate, they
24 certainly were not allowed to remove anything other

1 than the aggregate that had previously been
2 stockpiled at the site.

3 From March of 1993 to the present, the
4 evidence will establish that the Forest Preserve
5 District had exclusive control over the site and
6 exclusive control over site access. In early 1995,
7 my clients, the respondents Southwind Financial and
8 Bluff City, sued the Forest Preserve District in the
9 Circuit Court of DuPage County for breaching the
10 contract arising out of the stop work notice and the
11 fact that these respondents had been forced off the
12 site.

13 In November of 1995, after the Circuit
14 Court of DuPage County action had been filed and two
15 years and nine months after the Forest Preserve
16 District forced the respondents off the Stearns Road
17 site complaining about inappropriate material in the
18 reclamation fill and two years and nine months after
19 the Forest Preserve District had taken over
20 exclusive control of the site, the Forest Preserve
21 District filed this proceeding with the Pollution
22 Control Board.

23 In this proceeding, the Forest Preserve
24 District complained that the respondents deposited

1 waste at the Stearns road site. They asked the
2 Pollution Control Board to find the respondents in
3 violation of the act and asked the Pollution Control
4 Board to require the respondents to excavate
5 approximately 136,000 cubic yards of fill material
6 and that material to a landfill.

7 Now, you will hear evidence regarding
8 two types of investigations that were conducted at
9 the site since 1995. The first type of
10 investigation were these test pit excavations that
11 Mr. Makarski had talked about, and the second type
12 of investigation were analytical testing of the soil
13 and the water at the site.

14 It's important to remember and evidence
15 will establish that all of this investigation took
16 place after 1995, more than almost two years after
17 the respondents were forced to leave the site. In
18 January of 1995, Mr. Urbanski excavated
19 approximately 20 test pits. In March of 1995, EMCON
20 excavated approximately 40 test pits at the site.

21 Now, the testimony of these two
22 gentlemen will establish that physical constituents
23 of the fill material generally fall within the
24 definition of clean construction and demolition

1 debris as that term is defined in the Environmental
2 Protection Act. The Forest Preserve District will
3 not offer evidence regarding what proportion or what
4 portion of the 136,000 cubic yards of fill material
5 that the Forest Preserve District believes is
6 comprised of items falling outside the scope of
7 clean construction or demolition debris.

8 The evidence in this proceeding will
9 establish that if there are items in the fill that
10 fall outside of the scope of the definition of clean
11 construction or demolition debris, those items
12 constitute an insignificant portion of 136,000 cubic
13 yards of fill material the Forest Preserve District
14 is asking the Pollution Control Board to require
15 respondents to send to a landfill.

16 Two sets of analytical tests were
17 conducted at the site. In March of 1995, EMCON on
18 behalf of the Forest Preserve conducted analytical
19 test of the soil and water and in February of 1996
20 ERM North Central, an environmental consulting firm
21 hired by respondents Bluff City and Southwind
22 conducted analytical testing of the water at the
23 site.

24 You will hear expert testimony from Roy

1 Ball, an environmental engineer with ERM North
2 Central, that the analytical testing at the site
3 established from constituents tested are all below
4 the top of tier one clean objectives and that the
5 site is uncontaminated, does not constitute a threat
6 to human health or the environment, and does not
7 require remediation.

8 That testimony from Mr. Ball will be
9 consistent with the analytical testimony of the
10 Forest Preserve's experts.

11 In sum, the evidence in this proceeding
12 will establish the following: The material used as
13 reclamation fill at the Stearns Road site served an
14 appropriate and beneficial purpose; the material was
15 not waste; the respondent's conduct does not
16 contribute -- constitute waste disposal; the
17 reclamation fill is not contaminated; the Stearns
18 Road site does not pose a threat to human health or
19 the environment; the site does not require any
20 remediation as requested by the Forest Preserve; and
21 the Forest Preserve has not carried its burden of
22 proof in this enforcement proceeding.

23 At the close of these proceedings,
24 respondents Bluff City and Mineral and Land

1 Resources will request the Pollution Control Board
2 to deny the Forest Preserve District's request for a
3 finding of a violation of the Illinois Environmental
4 Protection Act. Thank you, your Honor.

5 THE HEARING OFFICER: Ms. O'Connell?

6 MS. O'CONNELL: Yes. Mr. Hearing Officer, on
7 behalf of Mineral and Land Resources, I'd like to
8 emphasize that Mineral and Land Resources was a mere
9 pass through in this case on the day that -- by
10 virtue of the fact that Mineral and Land Resources
11 held title to the property that was condemned by the
12 Forest Preserve District.

13 Once that condemnation took place,
14 Mineral and Land Resources had a license agreement
15 to mine the sand and aggregate from the site, but at
16 that same time, all those rights were transferred to
17 the other respondent companies on the same day, in
18 fact, as was the obligation to create a wetlands at
19 this site under the sublicense agreement.

20 The complaint in this proceeding
21 alleges that Mineral and Land Resources engaged in
22 various illegal activities under the Illinois
23 Environmental Protection Act including importing
24 illegal fill, causing or allowing the importation of

1 such fill, and engaging in the sanitary landfill
2 operation.

3 Mineral and Land Resources didn't do
4 any of those things. It had no operation at this
5 site. It had no oversight out there, and the
6 evidence will show that the negotiations for the
7 construction of this wetland were -- took place
8 between -- largely between the Forest Preserve
9 District and the other defendant companies in this
10 case.

11 So at the end of the proceeding,
12 Mineral and Land Resources will ask that it be
13 dismissed completely to the extent that there could
14 be any liability based on the fact that it didn't
15 engage in any of the activities that are named in
16 the lawsuit.

17 THE HEARING OFFICER: Thank you.

18 MR. STICK: Your Honor, if I might, one more
19 item and that is during the course of this, it's
20 been brought to my attention that during the course
21 of my opening and Ms. O'Connell's opening
22 Mr. Vick, the Forest Preserve District's first
23 witness, was in the courtroom, and at this point, we
24 need to make a formal motion that these witnesses

1 not be present during proceedings until they are
2 called upon to testify.

3 I thought we had an understanding. We
4 hereby make a motion that witnesses be excluded from
5 these proceedings unless and until they are either
6 the client representative, a party -- a
7 representative of the party, or are testifying.

8 Thank you, your Honor.

9 MR. MAKARSKI: Mr. Hearing Officer, I thought
10 they were excluded when other witnesses were
11 testifying the way I understood, not during
12 arguments, but we have no objection. I've asked
13 Mr. Utt to leave, and I'll ask the other witnesses
14 not to be present when anyone else is testifying.

15 THE HEARING OFFICER: Well, in our
16 off-the-record discussion, I thought that we had
17 agreed that these two gentlemen behind Mr. Makarski
18 were going to be first up.

19 MR. MAKARSKI: Yeah, he's the first witness.

20 THE HEARING OFFICER: Right. And the witnesses
21 who will be excluded I thought there was an
22 agreement on that. If you wanted him excluded
23 during the oral arguments, then maybe we should have
24 brought it up before we spent all this time on it.

1 So to the extent that you're making an
2 objection, the objection is overruled. I thought we
3 had an agreement on, I can't remember their names,
4 but the two gentlemen that are sitting behind
5 Mr. Makarski.

6 We will exclude witnesses, but he was
7 the first witness up. The other gentlemen is the
8 representative of the DuPage County Forest
9 Preserve. I see no real problem.

10 All right. The first witness.

11 MR. MAKARSKI: Mr. Vick, would you take the
12 stand right there?

13 (Witness sworn.)

14 THE HEARING OFFICER: Speak clearly and loudly
15 so the court reporter can hear you and everyone else
16 can.

17 THE WITNESS: Okay.

18 THE HEARING OFFICER: You may proceed.

19

20

21

22

23

24

1 WHEREUPON:

2 M A U R I C E V I C K ,
3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

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

6 by Mr. Makarski

7 Q. Would you give us your name, please, sir?

8 A. Maurice Robert Vick.

9 Q. Would you spell your last name for the
10 lady?

11 A. V-i-c-k.

12 Q. And who is your employer, Mr. Vick?

13 A. The Forest Preserve District of DuPage
14 County.

15 Q. And how long have you worked for the
16 Forest Preserve District of DuPage County?

17 A. Since December of 1984.

18 Q. And what's your educational background?

19 A. I have a bachelor of landscape
20 architecture from the University of Illinois.

21 Q. And where did you work -- did you have
22 employment prior to the time you worked for the
23 district?

24 A. Yes, I did.

1 Q. What was your experience?

2 A. Directly prior to working for the Forest
3 Preserve District, I worked for about a year and a
4 half with the Chemlawn Corporation, and prior to
5 that, I and another landscape architect had our own
6 firm for about two years, a landscape architectural
7 firm. Prior to that -- and that was around 1980.
8 Between 1980 and going backwards to 1971, I worked
9 for a landscape architectural firm in Rolling
10 Meadows that was called Novak, Carlson, &
11 Associates.

12 Q. Now, what's your position with the Forest
13 Preserve District?

14 A. Director of planning and development.

15 Q. And how long have you held that position?

16 A. Since November of 1990.

17 Q. And what are your responsibilities as
18 director of planning and development?

19 A. Basically, to oversee the physical
20 development of recreational facilities for the
21 forest preserves.

22 Q. What was your position before you were
23 director of planning and development?

24 A. I was a senior landscape architect.

1 Q. And what does that involve?

2 A. Supervising the landscape architects that
3 prepare the drawings and specifications for
4 construction projects.

5 Q. Now, are you familiar with the property
6 which are called -- the 77 acres called the Stearns
7 Road site, which is involved in this proceedings?

8 A. Yes, I am.

9 Q. And would you describe what the district
10 owns? Tell us where that property is located.

11 A. Well, it's within the Pratts Wayne Forest
12 Preserve directly south of Stearns Road, directly
13 east of the EG & E railroad tracks, and probably a
14 quarter mile or so east of Powis Road.

15 Q. Does the district own other property
16 surrounding the site?

17 A. Yes, we do.

18 Q. Tell us its location and the amount of
19 property and what it's called.

20 A. Well, the district owns the property
21 directly south and east of the MLS site. The
22 railroad tracks border the west side of the site and
23 then we own property west of the railroad tracks.
24 That entire area, some -- now some 3,000 plus acres

1 is called Pratts Wayne Woods Forest Preserve.

2 Q. Now, are you familiar with the acquisition
3 of the site -- the Stearns Road site?

4 A. Yes.

5 Q. And what involvement did you have in the
6 acquisition of this land?

7 A. My department was asked to develop concept
8 plans for the development of a wetland which would
9 become part of the sale or settlement agreement for
10 the land acquisition called MLR.

11 Q. Now, when did you get involved with this
12 situation?

13 A. I think it was around 1990.

14 Q. And what did planning and development do?

15 A. Well, there were -- we prepared a series
16 of several plans for the restoration of this
17 property over a period of several months, and
18 eventually there were alternatives that were
19 acceptable and made part of the land acquisition
20 agreement.

21 Q. What do you mean they were acceptable?

22 A. When we prepared the plans, either myself
23 or my staff for that matter, were actually involved
24 in the land acquisition proceedings. So we would

1 prepare plans and draft specifications. We viewed
2 some drafts of the license agreement. Those were
3 then taken to the land acquisition committee by the
4 executive director and Craig Hubert. Negotiations
5 took place in those meetings, and then we were told
6 the results of the negotiations.

7 Q. Did you ever have any meetings with the
8 owners or the agents of MLR or Bluff City during the
9 course of the acquisition proceedings?

10 A. Yes. We had meetings with Mr. Vondra.

11 Q. And whom did he represent?

12 A. Bluff City.

13 Q. What was Bluff City's relationship to this
14 situation?

15 A. As I understood, they are the mining
16 company that does the sand and gravel mining there.

17 Q. And do you recall any specific meetings
18 you had with Bluff City?

19 A. To be quite honest, there were several
20 meetings, some I was involved in and some I was not
21 involved in.

22 Q. Do you recall any meeting you participated
23 in where there was any discussion of bringing fill
24 into the site to be used in the construction of the

1 wetland.

2 A. No, sir.

3 Q. Now, did you -- did the district receive
4 information from Bluff City with respect to the site
5 prior to the license agreement being developed?

6 A. Yes.

7 Q. Just, generally, what was that
8 information?

9 A. Well, there were several -- there were
10 letters, correspondence to I believe a gentleman
11 called -- named Mark Vierck to myself,
12 correspondence to discussing the cut and fill
13 calculations that Bluff City was running on
14 different concept plans. There was correspondence
15 which described the approximate quantities involved
16 that Bluff City used to determine what they felt the
17 performance bond and out should be for putting the
18 agreement --

19 Q. Did you see the correspondence? This came
20 to you or to somebody else?

21 A. Yes.

22 MR. MAKARSKI: Let me -- you didn't put the
23 stickers on these things. This is 7-93 letters. Do
24 you have sets? Did you want them?

1 MR. STICK: Yeah.

2 MR. MAKARSKI: Bob, why don't you mark all
3 three of these and give them -- you had said,
4 Mr. Hearing Officer, you had complainant stickers?

5 THE HEARING OFFICER: No. I have petitioners
6 exhibits.

7 MR. MAKARSKI: For petitioners.

8 We have -- what do ours say?

9 MR. TUCKER: If you'd prefer to mark them or we
10 can mark them?

11 THE HEARING OFFICER: Off the record.

12 (Discussion had

13 off the record.)

14 (Break taken.)

15 (Complainant Exhibit Nos. 1,

16 2, and 3 marked for identification,

17 9-23-97.)

18 THE HEARING OFFICER: Back on the record. You
19 may continue.

20 BY MR. MAKARSKI:

21 Q. Let me show you what we've marked as
22 Complainant Exhibit 1, Mr. Vick. Would you tell us
23 what that is?

24 A. It is a letter to me from Mr. Vondra from

1 Bluff City.

2 Q. And did you have a conversation with him
3 which resulted in this letter being generated?

4 A. Yes, I did.

5 Q. Do you recall when it was and who was
6 present?

7 A. Obviously, it was prior to July 18th,
8 1990. I don't recall who was present at the
9 discussions.

10 Q. What information is provided to you in
11 that exhibit?

12 MR. KNIPPEN: Objection. The document speaks
13 for itself. I have no objection to its admission,
14 Mr. Hearing Officer.

15 MR. MAKARSKI: I move for the admission of the
16 exhibit -- Complainant's Exhibit 1, Mr. Hearing
17 Officer.

18 THE HEARING OFFICER: No objection?
19 Complainant's Exhibit No. 1 is admitted.

20 BY MR. MAKARSKI:

21 Q. Would you tell us at this stage of the
22 proceeding again what was the contemplated end use
23 of the preserve when the mining was completed?

24 A. The contemplated end use was the

1 development of a wetland area.

2 Q. And is that one of the exhibits to the
3 letter?

4 A. Yes, it is.

5 Q. Do you know who generated that -- let me
6 show you what's the third page. It says Pratt North
7 restoration plan. Do you see that?

8 A. Yes, I do.

9 Q. Was that generated by the district or by
10 Bluff City?

11 A. I believe this was generated by the Forest
12 Preserve District. I'm not positive though.

13 THE HEARING OFFICER: Mr. Vick, you need to
14 keep your voice up.

15 THE WITNESS: I'm sorry.

16 BY MR. MAKARSKI:

17 Q. And then the fifth page, which is
18 cross-sections. Is that what those are?

19 A. Yes.

20 Q. Who prepared those?

21 A. Those were prepared by Bluff City, I
22 believe.

23 Q. And how about Exhibit C?

24 A. That was also prepared by Bluff City.

1 Q. What is Exhibit C?

2 A. Well, Exhibit C is a calculation of the
3 cut and fill on the site.

4 Q. What about Exhibit D?

5 A. It's the same thing.

6 Q. And Exhibit E?

7 A. Exhibit E is a calculation based on --
8 it's a calculation of the amount of fill required
9 based on different parameters such as the slope, the
10 outside lake area, the lake area bottom, and the
11 lake area itself.

12 Q. Now, in the early stages, did the
13 district, you or the planning and development
14 department, contemplate that fill was to be brought
15 in to use in the construction of this wetland?

16 MR. KNIPPEN: Objection. He's asking for a
17 that of mind, your Honor, or an intent of the
18 district. The district is a corporate entity, the
19 Forest Preserve District of DuPage County.

20 The corporate entity is made up of the
21 corporate authorities which are the appointed
22 officials under the statute. Mr. Vick is
23 an employee.

24 The question presumes that he can now

1 answer for the entire Forest Preserve District as to
2 what its intent was.

3 MR. MAKARSKI: I just asked what he thought.

4 MR. KNIPPEN: That's not the question. The
5 question was specifically related to the district.

6 BY MR. MAKARSKI:

7 Q. Did you, as director of planning and
8 development working on this project, contemplate
9 that fill would be brought in to be used in the
10 construction of the wetland?

11 MR. KNIPPEN: Objection as to materiality.

12 THE HEARING OFFICER: Overruled.

13 BY THE WITNESS:

14 A. No, sir.

15 BY MR. MAKARSKI:

16 Q. Why do you say that?

17 A. Well, it explains in the letter here that
18 based on certain parameters that the site will
19 balance.

20 Q. And what does that mean?

21 A. That means that the amount of cut
22 basically equals the amount of embankment or fill
23 that's on that site.

24 Q. Now, this was based on a water level

1 assumption of 754; is that right?

2 A. Yeah, that's correct.

3 Q. Now, subsequently in the license
4 agreement, there were other plans at different
5 levels, was there not?

6 A. That's correct.

7 Q. And they were, in fact, higher, weren't
8 they, 760?

9 A. Yes.

10 Q. What were the other two?

11 A. I believe they were 762 and 764.

12 Q. Did you, Mr. Vick, in planning and
13 development contemplate fill being brought in
14 because of the -- of those other later plans because
15 of the fact that the levels were higher?

16 MR. KNIPPEN: Objection, materiality.

17 THE HEARING OFFICER: Overruled.

18 BY THE WITNESS:

19 A. No, I didn't.

20 BY MR. MAKARSKI:

21 Q. Why is that?

22 A. I still believe that the activity on the
23 site, the wetland restoration design, along with the
24 excavation was going to balance on the site.

1 Q. Now, let me show you what we've marked as
2 Complainant's Exhibit 2. When you're done, you
3 know, you can just set those up there, if that's all
4 right, and then we'll give them to the judge.

5 MR. MAKARSKI: Do you want to look at a copy,
6 your Honor?

7 THE HEARING OFFICER: I have a copy.

8 MR. MAKARSKI: Okay.

9 BY MR. MAKARSKI:

10 Q. I ask you if you can identify that
11 document?

12 A. Yes. It's a letter to Mr. Vierck from Mr.
13 Michael Glenn of Bluff City Materials.

14 Q. Did you see that correspondence
15 previously?

16 A. Yes, I have.

17 Q. You're familiar with it. And was this
18 received by the district?

19 A. Yes, it was.

20 MR. KNIPPEN: Mr. Hearing Officer, I would
21 stipulate to the admission of this document.

22 MR. MAKARSKI: I offer it.

23 THE HEARING OFFICER: Complainant's Exhibit No.
24 2 is admitted.

1 BY MR. MAKARSKI:

2 Q. Let me show you what we've marked as
3 Exhibit 3, Mr. Vick, and I ask if you can identify
4 that document?

5 A. Well, the top document is a letter to Mr.
6 Craig Hubert from Mr. Vondra, and the letter
7 attached to that is a letter to Mr. Mark Vierck from
8 Mr. Glenn of Bluff City Materials.

9 Q. And did you review this correspondence
10 previously?

11 A. The top letter, the one to Mr. Hubert, I
12 don't believe I've seen before. The other letter to
13 Mr. Vierck I have seen.

14 Q. Is the top letter a document received by
15 the district though --

16 A. Yes.

17 Q. -- in the ordinary course of business?

18 A. Yes, it is.

19 MR. MAKARSKI: I would move the admission of
20 Exhibit 3, your Honor.

21 MR. KNIPPEN: I would object, Judge, to the
22 March 6th, 1991, letter for lack of foundation. I
23 have no objection to the other document appended to
24 it, which is the March 5th, 1991, letter. The lack

1 of foundation being based on the witness' own
2 testimony with regard to the top page of the
3 document.

4 MR. MAKARSKI: He said it was received by the
5 district in its ordinary course of business, your
6 Honor.

7 MR. KNIPPEN: That is not the foundation for a
8 business record under Illinois law.

9 THE HEARING OFFICER: Do you want to separate
10 it out, or do you want to --

11 MR. MAKARSKI: Well, we'll just -- we'll offer
12 then the March 5th letter. Take off the top.

13 THE HEARING OFFICER: All right.

14 BY MR. MAKARSKI:

15 Q. You have previously viewed this letter, is
16 that right, Exhibit 3?

17 A. Yes, sir.

18 THE HEARING OFFICER: Before you continue, then
19 Exhibit 3 will consist of a March 5th, 1991, letter
20 signed by Mr. Glenn addressed to Mark Vierck and is
21 admitted.

22 BY MR. MAKARSKI:

23 Q. Is there anything in Exhibit 3 which
24 refers to bringing fill to the site?

1 A. No, sir. This basically shows that,
2 again, that at elevation 760, the project will
3 balance on site.

4 Q. Now, 760 was one of the elevations which
5 was included in the eventual agreement; is that not
6 true?

7 A. That is correct.

8 Q. Now, are you familiar with the -- by the
9 way, do you know how the three elevations you
10 testified to earlier, 760, 762, and 764 were arrived
11 at for inclusion in the license agreement?

12 A. My recollection is that Mr. Vondra
13 requested that those elevations be used.

14 Q. And you're familiar, are you not, with the
15 -- what became the final judgment order which
16 included the license agreement between MLR and the
17 district?

18 A. Yes, sir.

19 Q. Let me show you -- we've marked that four,
20 Bob?

21 MR. TUCKER: Yes.

22 BY MR. MAKARSKI:

23 Q. -- (continuing) Exhibit 4.

24

1 (Complainant's Exhibit No. 4
2 marked for identification,
3 9-23-97.)

4 BY MR. MAKARSKI:

5 Q. I'll ask you are you familiar with that
6 document?

7 A. Yes, I am.

8 Q. Does that include the license agreement
9 you've already discussed?

10 A. Yes, sir.

11 Q. Does this include the grading plans for
12 the three levels -- water levels which you earlier
13 discussed?

14 A. Yes, it does.

15 Q. And what else does it include?

16 A. Well, it includes a typical cross-section
17 at each elevation showing the different plat habitat
18 zones. It includes specifications that are on the
19 drawings. There are construction details for tree
20 planting and staking, erosion control, a planting
21 plan and a vegetation plan, location plan. That's
22 about it.

23 Q. And the fine print is the details and
24 specifications, I believe you said that?

1 A. Yes.

2 Q. We have that -- that is unreadable, is it
3 not, as blown down to that size?

4 A. That's correct.

5 MR. MAKARSKI: I would offer Exhibit 4 into
6 evidence, Mr. Hearing Officer.

7 MR. KNIPPEN: Mr. Hearing Officer, I have no
8 objections with the exception of the page which is
9 entitled Pratt North details and specifications. I
10 would no have objection to an admission of this
11 exhibit, which would include the full size of that
12 so it's legible. Otherwise, I believe this page has
13 no evidentiary value at all because it's kind of
14 meaningless.

15 MR. MAKARSKI: We've blown them up, and we'll
16 offer those blowups so you can read them.

17 THE HEARING OFFICER: Complainant's Exhibit No.
18 4 is admitted, and we will be admitting -- are you
19 going to mark those separately later on?

20 MR. MAKARSKI: Yes, sir. We realized after we
21 had them blown up so they can be read, and we have
22 copies for everybody. That's exhibit -- that would
23 be five.

24 MR. TUCKER: Five, I believe.

1 MR. KNIPPEN: Then I withdraw my objection to
2 that page.

3 THE HEARING OFFICER: All right.

4 (Discussion had
5 off the record.)

6 THE HEARING OFFICER: How many pages are in the
7 oversized exhibit.

8 MR. MAKARSKI: This contains five.

9 MR. TUCKER: Five.

10 MR. MAKARSKI: We have three blowups. One is
11 this which is Exhibit D to the agreement. Then we
12 have a blowup of Exhibit E and a blowup of Exhibit F
13 so that they can be read.

14 MR. STICK: This will be Exhibit 6 and 7?

15 MR. MAKARSKI: Right.

16 MR. TUCKER: This will be Exhibit 6.

17 (Complainant's Exhibit Nos. 5,
18 6, 7, 8, and 9 marked for
19 identification, 9-23-97.)

20 MR. TUCKER: Mr. Hearing Officer, we're
21 admitting blowup versions of the cross-sections.
22 They appear slightly different. They're just all
23 included on one page here for the convenience of the
24 Board.

1 This will be Complainant's Exhibit 9.

2 MR. STICK: Nine?

3 MR. MAKARSKI: Nine.

4 MR. TUCKER: I'll show it to you. Any
5 objection?

6 MR. KNIPPEN: Let me just look at it.

7 Mr. Hearing Officer, in order to
8 clarify the Complainant's Group Exhibit 5, could we
9 also designate those 5A, B, C, D, and E?

10 MR. MAKARSKI: I have no objection to that.

11 THE HEARING OFFICER: That will be fine. Those
12 don't correspond with the reduced versions, do they.

13 MR. KNIPPEN: In Exhibit 4, they do, Judge.

14 MR. STICK: The pages correspond.

15 What Mr. Knippen is suggesting is
16 designating them as A, B, C, D, and E does not. I
17 mean, those letters are not on the document, but the
18 pages themselves correspond to what is in Exhibit 4.

19 MR. TUCKER: I should also note for the hearing
20 officer's information that each particular level is
21 then followed with a cross-section which corresponds
22 to it. The larger exhibits are presented. These
23 cross-sections are all on one page, but the numbers
24 at the bottom correspond with the 760, 762, 764

1 level. We move for this to be placed in evidence.
2 Is that all right?

3 MR. STICK: Well, why don't you give us a
4 chance to --

5 MR. TUCKER: Absolutely.

6 MR. STICK: -- review this?

7 MR. TUCKER: That's fine.

8 MR. KNIPPEN: I've got to look at this for a
9 minute.

10 THE HEARING OFFICER: Let's go off the record a
11 minute.

12 (Discussion had
13 off the record.)
14 (Complainant's Exhibit No. 5A,
15 5B, 5C, 5D, and 5E were
16 subsequently clarified for the
17 record.)

18 THE HEARING OFFICER: Back on the record.

19 We've marked exhibit -- Group Exhibit 5
20 with 5A, 5B, 5C, 5D, and 5E.

21 I would note that in trying to check
22 Complainant's Exhibit No. 4 with the expanded
23 versions, are there some pages that are not included
24 or were they all there?

1 MR. MAKARSKI: In Exhibit 4?

2 THE HEARING OFFICER: All right. On Group
3 Exhibit -- on Complainant's Exhibit No. 4, if you go
4 back to what's typed on as Exhibit A, it's a very
5 small version called plat of survey, that has not
6 been enlarged, has it.

7 MR. MAKARSKI: No, it has not.

8 MR. TUCKER: Right. No, it has not.

9 THE HEARING OFFICER: And then the next page I
10 guess would be Exhibit B to Complainant's 4 is Pratt
11 North revegetation. Now, that's not been enlarged.

12 MR. MAKARSKI: That's correct.

13 MR. TUCKER: That's correct.

14 THE HEARING OFFICER: And then Exhibit C, a map
15 has not been enlarged?

16 MR. MAKARSKI: That's correct.

17 THE HEARING OFFICER: And then we start with
18 the enlargements on Pratt North details and
19 specifications?

20 MR. TUCKER: That's correct.

21 MR. MAKARSKI: That's correct, which is Exhibit
22 5A through 5E.

23 THE HEARING OFFICER: And then we go with
24 the -- what did you call the zones?

1 MR. MAKARSKI: Oh, the natural water level,
2 NWLA.

3 BY MR. MAKARSKI:

4 Q. Is that what that's called?

5 A. Normal water level.

6 Q. Normal water level. I'm sorry.

7 A. Those are the plat zones, habitat area.

8 THE HEARING OFFICER: But those are all on one
9 page?

10 MR. MAKARSKI: No. There's three different
11 pages.

12 THE HEARING OFFICER: I understand it. Does
13 everyone else understand it?

14 MR. TUCKER: Yeah.

15 THE HEARING OFFICER: Okay.

16 MR. MAKARSKI: What's all on one page,
17 Mr. Hearing Officer, are these cross-sections, which
18 are --

19 THE HEARING OFFICER: Cross-sections. I'm
20 sorry.

21 MR. MAKARSKI: -- attached, and we just blew
22 them all on one page instead of having three
23 separate pages.

24 THE HEARING OFFICER: Right.

1 The only thing I was trying to check is
2 the first two or three pages that weren't blown up,
3 and there's objection to those?

4 MR. KNIPPEN: No.

5 THE HEARING OFFICER: Okay. And if I've missed
6 it, did you move for their admission?

7 MR. MAKARSKI: We moved for all -- 5A through
8 E, six, seven, eight and nine.

9 MR. KNIPPEN: No objection.

10 THE HEARING OFFICER: Complainant's Group
11 Exhibit 5A through 5E, Exhibit 6 -- Complainant's
12 Exhibit 6, 7, 8, and 9 are admitted into evidence.

13 MR. MAKARSKI: And I believe we already asked
14 for Exhibit 4, which is the license to settle or the
15 judge order includes the license.

16 THE HEARING OFFICER: Yes. All right.

17 BY MR. MAKARSKI:

18 Q. Now, Mr. Vick, why were there three
19 different rating plans with three different normal
20 water levels included in the license agreement?

21 MR. KNIPPEN: Objection. It calls for this
22 witness to draw a conclusion as to the intent of the
23 license agreement, which is the corporate
24 authority's intent, not this witness' intent.

1 MR. MAKARSKI: He testified he worked on it,
2 that they drew up the plans. He can certainly
3 testify to what his thinking was on it.

4 THE HEARING OFFICER: With that in mind, the
5 objection is overruled.

6 BY MR. MAKARSKI:

7 Q. Could you tell us?

8 A. Could you repeat the question for me?

9 Q. Why did you include three different normal
10 water level grading plans in the license agreement?

11 A. Well, basically because throughout the
12 process of developing the restoration plan, we did
13 not have complete engineering information on the
14 site, and it was unclear as to what the normal --
15 the surface water -- ground surface water level
16 really was out there, and I believe the reason there
17 were three alternatives was to provide the
18 opportunity to adjust this based on what the normal
19 water level might be once we got into them.

20 Q. Now, was there any provision in the
21 license agreement for the importation of off-site
22 material to be used as fill?

23 MR. KNIPPEN: Objection. The document speaks
24 for itself. It calls for a legal conclusion.

1 THE HEARING OFFICER: Overruled.

2 BY THE WITNESS:

3 A. No, there is not.

4 BY MR. MAKARSKI:

5 Q. And why?

6 MR. KNIPPEN: Objection. The same objection as
7 I had the time before last, your Honor.

8 THE HEARING OFFICER: That?

9 MR. KNIPPEN: Materiality. This witness --

10 THE HEARING OFFICER: He's not the Forest
11 Preserve?

12 MR. KNIPPEN: He's not the Forest Preserve.

13 MR. MAKARSKI: I'm just asking his -- he worked
14 on the agreement, why he didn't include it.

15 THE HEARING OFFICER: All right.

16 Mr. Vick?

17 BY THE WITNESS:

18 A. Why was there no provision in the license
19 agreement for the importation --

20 BY MR. MAKARSKI:

21 Q. Correct.

22 A. -- of the fill?

23 MR. KNIPPEN: Objection to that question as
24 it's been phrased, Judge. I've lost track of the

1 question now, and I'm not sure what it is anymore.

2 Could you go back and read it?

3 THE HEARING OFFICER: No.

4 Well, I think it's time to rephrase the
5 question because the objection will stand up if it's
6 not rephrased.

7 BY MR. MAKARSKI:

8 Q. All right. Why did you not include a
9 provision in the license agreement for the
10 importation of fill?

11 A. Well, number one, I didn't develop the
12 license agreement, but my understanding throughout
13 the process is that that site -- this site --

14 MR. KNIPPEN: Objection.

15 BY THE WITNESS:

16 A. -- was going to balance or it was going to
17 closely balance when it was completed.

18 MR. KNIPPEN: Judge, now I would object based
19 on foundation. He can't answer by saying well, I
20 didn't develop the license agreement, and then he
21 goes into well, my understanding was.

22 There's no foundation for that
23 understanding at this point. If you determine
24 whether that's admissible or not, there has to be a

1 determination of what the basis of that
2 understanding is because if the understanding, for
3 example, is provided through hearsay through other
4 witnesses who would be incompetent to provide that
5 understanding that that opinion is incompetent,
6 there's been no foundation.

7 So objection foundation, motion to
8 strike the last part of that answer.

9 MR. MAKARSKI: Well, I think the answer could
10 stay. He said that he understood it would balance,
11 and the letters back him -- the correspondence,
12 which is already in evidence, says that.

13 MR. KNIPPEN: I would ask that the answer be
14 read back.

15 THE HEARING OFFICER: Would you read the answer
16 back, please?

17 (Record read.)

18 THE HEARING OFFICER: Okay. Overruled. Next
19 question, please.

20 BY MR. MAKARSKI:

21 Q. Now, Mr. Vick, this is from your
22 perspective, if you knew that fill would have to be
23 brought in, what would you have suggested to be
24 included in the license agreement?

1 MR. KNIPPEN: Objection, materiality.

2 THE HEARING OFFICER: Overruled.

3 BY THE WITNESS:

4 A. There would have been two things in the
5 license agreement if I could simply say would be
6 there. One would be a provision determining the
7 parameters within which it would -- within which a
8 fill outside of the site could be brought in to the
9 site and actually that is covered to a certain
10 degree in the specifications.

11 Secondly, I would have asked for or
12 asked to have provided a full-time inspector on the
13 project.

14 BY MR. MAKARSKI:

15 Q. And now you said it's already provided for
16 in the specifications?

17 A. That's correct.

18 Q. Would you tell us what you mean by that?
19 You can read off one of those exhibits if you want.
20 Just tell us which one it is.

21 A. Yes. We refer to the IDOT specifications.

22 Q. Could you give us what exhibit that is
23 you're talking about there, five...

24 A. I'm sorry. I didn't hear the question.

1 Q. What's the exhibit number?

2 A. Exhibit 5, 5B.

3 Q. Okay. What about those IDOT

4 specifications? First, what's IDOT?

5 A. Illinois Department of Transportation.

6 Q. Okay. What does Exhibit 5B say about

7 those?

8 A. Well, on the top -- in the center column
9 up at the top of Exhibit 5B there's a description of
10 topsoil excavation and description and it says this
11 work shall conform to Section 216 of the standard
12 specifications which refers to the IDOT
13 specifications.

14 Further down the next paragraph earth
15 excavation and embankment indicates that that work
16 shall conform to Sections 202, 204, and 207 of the
17 standard specifications, and the third paragraph
18 down refers, again, to Section 216.

19 To go back up to the middle paragraph,
20 I believe it's Section 204 in the IDOT
21 specifications. That is the section entitled
22 borrow, and in that -- in the specifications, it
23 indicates that if off-site material is contemplated,
24 then prior to that material being excavated and

1 brought to the site, it's to be notified and inspect
2 the material to determine whether it's appropriate
3 or not for using it as embankment or fill to
4 construct the project.

5 Q. Now, have you seen the -- have you been at
6 the Stearns Road site and seen the off-site material
7 that was brought onto it?

8 A. Yes, I've been there, and I've observed
9 some things.

10 Q. In your opinion, as the director of
11 planning and development, is that material suitable
12 for the embankments in which you just testified?

13 MR. KNIPPEN: Objection, foundation.

14 THE HEARING OFFICER: Sustained.

15 BY MR. MAKARSKI:

16 Q. To your knowledge, did the district
17 approve -- let me first -- did you ever approve the
18 deposit of that off-site material that now exists on
19 the site?

20 MR. KNIPPEN: Objection, materiality,
21 relevance.

22 THE HEARING OFFICER: Overruled.

23 BY THE WITNESS:

24 A. No, I did not.

1 BY MR. MAKARSKI:

2 Q. Are you aware of anyone in the district
3 that made such an approval?

4 A. No, sir.

5 Q. Would you have approved that material?

6 MR. KNIPPEN: Objection, materiality,
7 relevance.

8 THE HEARING OFFICER: Overruled.

9 BY THE WITNESS:

10 A. No, I wouldn't.

11 BY MR. MAKARSKI:

12 Q. Would you tell us why?

13 MR. KNIPPEN: Same objection.

14 THE HEARING OFFICER: Overruled.

15 BY THE WITNESS:

16 A. When I went out to look at the site after
17 Mr. Wells and Mr. Vierck were out there --

18 THE HEARING OFFICER: Speak up, please.

19 THE WITNESS: Okay. I'm sorry

20 BY THE WITNESS:

21 A. -- (continuing) I observed plastic pipe,
22 brick debris, corrugated metal culverts, rubber
23 tires, metal fencing, wood material, broken
24 concrete, concrete with reinforcing bars sticking

1 out of it, pieces of asphalt.

2 I believe there was an old lawn chair
3 out there somewhere floating in the water, materials
4 of that nature, materials which are unsuitable for
5 fill.

6 BY MR. MAKARSKI:

7 Q. When did you go out there and observe
8 this?

9 A. This was directly or shortly after the
10 time when Mike Wells and Mark Vierck went out there
11 and noticed the petroleum odors, and I think it was
12 also after Mr. Utt had been out there.

13 Q. What month and year is that?

14 A. March. I think it was March or April of
15 1993.

16 Q. Did you as director of planning and
17 development from March of '91 when the license
18 agreement was signed until March of '93 direct any
19 inspections of the site by your people?

20 A. No, I did not.

21 Q. Do you know if any were done?

22 A. I know Mr. Wells went out there on,
23 perhaps, a couple of occasions to take people out to
24 show them the stone-crushing process, but as far as

1 him going out to inspect the project or being asked
2 to inspect the project, no.

3 Q. Now, when you went out there in March of
4 '93, would you tell us where the -- what the site
5 looked like? I mean, where was the off-site
6 material, and was there any grading that had been
7 done or give us a description of how -- what you
8 observed?

9 A. Well, as you entered the site from the
10 north, you obviously went by the weight station.
11 There were stockpiles of gravel. There was a
12 significant amount of excavation, which had water in
13 it. I believe there was some overburden material
14 down in the very southern part of the site, and
15 there may have been some up in the northwest corner
16 of the site. I'm not positive on that. The area --
17 the western portion of the site is the area where it
18 had apparently been filled, and that's where I saw a
19 lot of the debris.

20 Q. You used the term overburden, would you
21 tell us what that means?

22 A. Overburden typically is defined as the
23 material that you have to excavate first to get to
24 the gravel. It's the layer of earth or several

1 layers of different types of zone profiles that go
2 from the gravel up to it's existing grade.

3 Q. What is done with that overburden?

4 A. The overburden is supposed to be
5 stockpiled and then to be used for restoration.

6 Q. Was there a body of water existing on the
7 site that you observed?

8 A. Yes, there was.

9 Q. And did that result from the mining
10 activity?

11 A. Yes.

12 Q. Where did the water come from?

13 A. It was groundwater.

14 Q. And how large of a surface would you say
15 was that body of water?

16 A. I honestly don't know.

17 Q. Was there -- were there any slopes at the
18 site?

19 A. Well, there are a number of slopes. Most
20 of them were fairly steep.

21 Q. And what was the -- what caused that, to
22 your knowledge?

23 MR. KNIPPEN: Objection, foundation.

24 THE HEARING OFFICER: Overruled.

1 BY THE WITNESS:

2 A. It appeared as though as the result of a
3 mining operation.

4 BY MR. MAKARSKI:

5 Q. Do you know how deep the body of water
6 was?

7 A. I've heard people say that it could
8 be --

9 MR. KNIPPEN: Objection, Judge.

10 THE HEARING OFFICER: Excuse me. Yes. Don't
11 talk over. You're stating your objection.

12 MR. KNIPPEN: Objection. He's about to say
13 hearsay.

14 BY MR. MAKARSKI:

15 Q. Just if you, from your own knowledge or
16 testing, know?

17 A. No, I don't.

18 Q. Okay. Had you been out to that site prior
19 to this visit in 1993?

20 A. Yes, I have. I believe the only other
21 time I was out to that site, though, was prior to
22 the development of the settlement agreement.

23 We got permission to go out and install
24 two water monitoring wells on site, and the reason

1 we had that done was to try and establish or get an
2 idea of what the groundwater elevation is out
3 there. I think I was out to the site maybe twice
4 when those were being put in.

5 Q. So that would have been before March
6 of '91?

7 A. Right.

8 Q. And now after this visit in March
9 of '93 or '92 that you discussed, did you go out
10 there at any subsequent times?

11 A. After March of '93?

12 Q. Correct.

13 A. I think I was out there a couple other
14 times after that.

15 Q. And when was that, do you recall?

16 A. One time was when -- it was after
17 Mr. Vondra had completed certain things that he was
18 supposed to do on site in order for the Forest
19 Preserve District to say that he could go ahead and
20 sell material that was already stockpiles. I was
21 out in the afternoon at that time.

22 I was out there one other time, and I'm
23 not really sure when it was, but there was kind of a
24 meeting and discussion out there. There was several

1 people from the Forest Preserve District, Mr.
2 Vondra, Mr. Schillerstrom was there. I don't know
3 how to spell it.

4 Q. Now, when did it first come to your
5 attention as director of planning that off-site
6 material had been brought on to the site for use as
7 fill?

8 A. It was March or April of 1993.

9 Q. And who brought that to your attention?

10 A. I honestly can't remember.

11 MR. MAKARSKI: We have no further direct of
12 Mr. Vick, your Honor.

13 THE HEARING OFFICER: Cross-examination,
14 Mr. Stick?

15 MR. KNIPPEN: I will conduct the
16 cross-examination of this witness with your
17 permission.

18 THE HEARING OFFICER: Mr. Knippen.

19 MR. KNIPPEN: Your Honor, are you going to
20 break for lunch, or are you going to work just
21 straight through?

22 THE HEARING OFFICER: We will break for lunch,
23 but I would like to go a little farther.

24 MR. KNIPPEN: Your Honor, would you have any

1 objection if I worked from the podium? I'm more
2 comfortable standing.

3 THE HEARING OFFICER: No. Go ahead.

4 MR. KNIPPEN: Thank you.

5 MR. MAKARSKI: He's younger than I am.

6 MR. STICK: I was going to make the same
7 request.

8 MR. KNIPPEN: The reason I asked about lunch is
9 that this will take a minute to set up. We have an
10 overhead projector and some exhibits.

11 Maybe we can take a five-minute recess
12 so we can get this set up and ready to go?

13 THE HEARING OFFICER: Let's go off the record.

14 (Discussion had
15 off the record.)

16 (Whereupon, further proceedings
17 were adjourned pursuant to the
18 lunch break and reconvened
19 as follows.)

20 THE HEARING OFFICER: Back on the record.

21 Mr. Knippen, you may proceed with
22 cross.

23 MR. KNIPPEN: Thank you very much,
24 Mr. Hearing Officer.

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

2 by Mr. Knippen

3 Q. Mr. Vick, the planning and development
4 department of the DuPage County Forest Preserve
5 District does both recreation and natural area
6 restorations; isn't that correct?

7 A. Yes.

8 Q. Okay. And the recreational type of work
9 that the department does would apply to things such
10 as fishing lakes, boating, concession areas, parking
11 areas, picnicking, picnicking shelters, play fields,
12 campgrounds, and those types of items, correct?

13 A. Yes.

14 Q. And when we're dealing with the
15 construction or the restoration of a wetland, that's
16 what you would generically consider to fall into the
17 category of those natural restorations, correct?

18 A. Yes.

19 Q. And between the years 1989 and 1991, isn't
20 it true that the majority of the work that was done
21 by the planning and development department for the
22 Forest Preserve District related to recreational
23 development as opposed to natural restoration?

24 A. I don't know. I can't answer that.

1 Q. Is that because you didn't start there in
2 1989?

3 A. No, I was there in 1989. I just -- I
4 don't know if we did more recreational work versus
5 restoration work.

6 Q. You're responsible for managing that
7 department; is that correct?

8 A. That's correct.

9 Q. Let's go over some terms that were used
10 before, but possibly not defined. Could you please
11 tell us what embankment is?

12 A. Embankment?

13 Q. Yes, sir.

14 A. It's placing fill on the land.

15 Q. So when you have an embankment area, what
16 you're doing is you're constructing something with
17 the fill; is that correct?

18 A. Yes.

19 Q. What is a cut?

20 A. It's when you're excavating an area.

21 Q. So what you're actually doing when you cut
22 something is you take material and remove it from a
23 location, correct?

24 A. Yes.

1 Q. So when we use the ideas of excavation and
2 embankment, they are, in many respects, synonymous
3 with the terms cut and fill, correct?

4 A. They could be, yes.

5 Q. Within the concept of cuts and fills, what
6 is a slope?

7 A. When we refer to it, it's the grading of
8 the side of the embankment.

9 Q. And slopes in construction can vary
10 significantly, correct?

11 A. Yes.

12 Q. You can have a gradual slope or you can
13 have a steep slope, correct?

14 A. Yes.

15 Q. And, generally, if you're filling an area
16 that has a gradual slope, it will require more fill
17 than an area with a steep slope if you're talking
18 about the same underlying ground area, correct?

19 A. Actually, I think it would be just the
20 opposite. If you have -- let's say, for example,
21 you just have a rectangular area and the sides are a
22 steep slope and you fill that, it's going to be more
23 fill than if the sides -- maybe I don't understand
24 your question.

1 Are you saying --

2 Q. Okay.

3 A. Why don't you rephrase your question?

4 (Respondent's Exhibit No. 1

5 marked for identification,

6 9-23-97.)

7 Q. Okay. Let me use this demonstrative
8 exhibit just for a minute and maybe we can clarify
9 my question a little bit. Maybe it was a bad
10 question.

11 Let's assume that the black outlines in
12 what I've marked as Respondent's Exhibit No. 1,
13 which is for demonstrative purposes only, constitute
14 the bottom three lines of that rectangle you
15 described.

16 A. Okay.

17 Q. And let's assume that we want to construct
18 a slope that is as steep as the slope that's
19 illustrated with the green material on the
20 right-hand side of the exhibit. Do you see that?

21 A. Yes.

22 Q. Now, if I want to take a more gradual
23 slope down out further, for example, that would
24 require more fill than the steep slope that would be

1 depicted here. So say, for example, if I was moving
2 that fill line and wanted a more gradual slope out
3 to what I've marked as X under one of those dots,
4 that would require more fill than the steeper slope
5 that's depicted by the green fill area, correct?

6 A. Yes.

7 Q. What is a natural groundwater elevation?

8 A. Well, it's the elevation of the
9 groundwater below the surface of the ground.

10 Q. And what does it -- does that differ from
11 a designed water level?

12 A. Well, it depends on what you're building.
13 If you're designing something and you're going to
14 rely on surface drainage, for example, to sustain a
15 certain water elevation, then the groundwater
16 elevation doesn't really have the same relationship
17 to that type of project.

18 If you're designing something where
19 you're going to rely on the ground water to provide
20 the water source, then it becomes an important
21 factor.

22 Q. Okay. The wetland that was to be
23 constructed at the Stearns Road site was intended to
24 be a groundwater wetland, correct?

1 A. Yes.

2 Q. So the groundwater elevation of the water
3 at the Stearns Road site then was an extremely
4 significant factor in the design of this wetland and
5 whether this wetland would function properly, wasn't
6 it?

7 A. Yes.

8 Q. Going back to general concepts of cut and
9 fill now and not using this exhibit to specifically
10 relate to the Stearns Road site, I'd like to ask you
11 some questions about cut and fill.

12 Let's look at this diagram, Mr. Vick,
13 and let's assume that what I have put on here in the
14 green constitutes the existing overburden on this
15 particular site represented by this diagram. Will
16 you assume that for me?

17 A. Sure.

18 Q. And also assume that the natural
19 groundwater level at this site is at 754 feet. Do
20 you see that?

21 A. Yes.

22 Q. I want you to assume those two factors.
23 Now, if this is all the existing overburden on the
24 site and there is no additional overburden, that

1 would mean that, say, for example, if you wanted to
2 fill a portion of this open water area, you would
3 have to bring in fill from the outside, correct?

4 A. Correct.

5 Q. In other words, when you have overburden
6 on a particular site, there's a finite amount of
7 overburden, right?

8 A. Yes.

9 Q. And if you need more fill to construct
10 than overburden exists, you have no alternative but
11 to bring it in from another location, correct?

12 A. Correct.

13 Q. Okay. Let's also assume for purposes of
14 my question that the surface area of this lake is
15 approximately 20 acres, okay, and understanding that
16 this is not to scale, of course, but that the
17 surface area is approximately 20 acres.

18 Now, based on that fact, if I want to
19 reduce the surface area of this particular open
20 water to four acres, then what I have to do is bring
21 in outside fill and fill so it's four acres,
22 correct?

23 A. Correct.

24 Q. So in this particular example, if I wanted

1 to do that what I would do is I would bring in fill
2 and I would fill those areas where I've placed the
3 brown slash marks reducing the area, and now the
4 brown slash marks would be the outside fill that
5 would be brought into the site, which would be
6 necessary to create four acres of open water here as
7 opposed to 20, correct?

8 A. Yes.

9 Q. Now, I want you to assume, Mr. Vick, that
10 I want to take the entire site and I want to lift it
11 up so my water level -- Strike that, first so my
12 ground level is at 764, but that I still have a four
13 acre lake.

14 Under that particular circumstance what
15 I would need to do is I would need to bring in
16 outside fill, and that outside fill would be used to
17 construct an embankment that would take the ground
18 level up to 764, correct?

19 A. Yes.

20 Q. Now, at that point -- and I'm off here a
21 little bit because I haven't drawn my lines exactly
22 the same. At that point, I have a lake surface
23 that's still down at 754, but now I have an
24 embankment that's been constructed up to 764 without

1 side fill, correct?

2 A. Yes.

3 Q. Now, Mr. Vick, if I want to take this
4 ground -- natural groundwater level, which we assume
5 to be 754 with a four acre lake and I want to take
6 that surface area and I want to pick it up so it's
7 at the same 764 level that the top of my embankment
8 is at, how do I do that? How do I get it up to that
9 jagged, saw-like line that I've drawn on the
10 exhibit?

11 MR. MAKARSKI: Just a point of clarification,
12 you're asking hypothetical questions, aren't you?

13 MR. KNIPPEN: This is demonstrative. I'm
14 asking him his knowledge regarding cut and fill
15 procedures and techniques associated with water
16 elevations at an embankment site.

17 BY THE WITNESS:

18 A. You would have to do it using some kind of
19 engineering method. You'd have to, for example,
20 install a well, ensure that the slopes or the banks
21 between 754 and 764 weren't permeable, and you'd
22 have to then pump water into there until you reached
23 a rate that would keep it constant at 764. That's
24 one way of doing it.

1 BY MR. KNIPPEN:

2 Q. Okay. So one of the ways would be to pump
3 water in so long as you had a nonpermeable area
4 under the lake, correct?

5 A. Right.

6 Q. Okay. Another thing that you might do as
7 a part of that process which would be an accepted
8 engineering practice just as a partial solution, not
9 as a complete solution, would be to fill in the
10 bottom of the water area with the additional fill,
11 correct? That would help you move the water up if
12 you were pumping it in?

13 A. If you were pumping it in?

14 Q. Yes.

15 A. Yes.

16 Q. And if you had another way to supply
17 water, that would help you lift the surface level
18 up; isn't that correct?

19 A. I'm not sure that it would have any
20 relationship in lifting the surface of the water
21 up. I think whether there's water existing at 754
22 or whether there's some other impermeable material
23 at 754, the water would still rise to 764 if you
24 were pumping it.

1 Q. You would agree with me based upon this
2 example that I've given you that the amount of fill
3 required to construct this particular drawing to the
4 level of 764 is considerably more fill than would be
5 required -- Strike that. Let me rephrase the
6 question, please.

7 You would agree with me, wouldn't you,
8 Mr. Vick, that to construct a four acre lake at a
9 764 design water level based on this particular
10 diagram would require substantially more fill than
11 the construction of a 20 acre lake with existing
12 overburden on the site, wouldn't you?

13 A. Yes.

14 Q. And these types of concepts with regard to
15 cut and fill are generally true concepts that exist
16 throughout the industry in these types of
17 construction situations from a general standpoint,
18 don't they?

19 A. Yes.

20 MR. TUCKER: Just for clarification sake, on
21 the key that's been added to this demonstrative
22 exhibit, it's a little ambiguous where you've just
23 written the fill material to four acres, whereas the
24 fill material on top of that is also for four

1 acres. Perhaps you mean to say a four acre lake at
2 754 just for clarification?

3 MR. KNIPPEN: Okay. That would be fine. Then
4 for clarification purposes, I will just add this at
5 764 design water elevation.

6 Mr. Hearing Officer, I don't know how
7 you rule on respondents making motions for the
8 introduction of exhibits during the complainant's
9 case, but I guess I'll find out right now.

10 I'm going to make a motion to introduce
11 this as a demonstrative exhibit only.

12 THE HEARING OFFICER: Any objections?

13 MR. MAKARSKI: No, I don't have an objection.

14 THE HEARING OFFICER: Respondent's Exhibit No.
15 1 is admitted.

16 MR. KNIPPEN: Thank you.

17 BY MR. KNIPPEN:

18 Q. The Stearns Road site was the construction
19 of a new wetland; isn't that correct?

20 A. Yes.

21 Q. It was not the restoration of an existing
22 wetland, was it?

23 A. No.

24 Q. And to the best of your knowledge, prior

1 to the time that the Forest Preserve condemned the
2 site, it was a cornfield and then an aggregate mine;
3 is that correct?

4 A. It was a cornfield and a what? I'm sorry.

5 Q. And an aggregate mine.

6 A. There was a cornfield. I know there was
7 some mining done on it. I don't know how much.

8 Q. But it was a mining site as well, wasn't
9 it?

10 A. Yes.

11 Q. And that was going to be my next
12 question. At the time the Forest Preserve District
13 filed the condemnation action in this case, you were
14 not aware, were you, how much aggregate had been
15 removed from the site at that point in terms of
16 total cubic yards or tonnage?

17 A. No.

18 Q. And during the design process for the
19 site, you personally were not aware up until the
20 point that the final design was approved how much
21 total aggregate had been removed either by cubic
22 yards or by tonnage from the site, were you?

23 A. No.

24 Q. The amount of aggregate that is removed

1 from the site will have an effect on the cut and
2 balance computation, isn't that correct, or the cut
3 and fill computations?

4 A. Yes.

5 Q. So, in other words, if you remove more
6 aggregate from the site, in some circumstances that
7 may require more fill than if you remove less
8 aggregate, correct?

9 A. Yes.

10 Q. Mr. Vick, when you were attending
11 landscape school at the University of Illinois, you
12 didn't have any specific classes that dealt with the
13 design of wetlands, did you?

14 A. No.

15 Q. And in terms of your participation in the
16 design of the Stearns Road wetland, you did not
17 actually draw the specifications yourself, did you?

18 A. No.

19 Q. Those were drawn by Mark Vierck; isn't
20 that correct?

21 A. Mark Vierck and there could have
22 been -- Kevin Coe might have helped out.

23 Q. Who provided the information to
24 Mr. Vierck and Mr. Coe for the preparation of those

1 plans?

2 A. The executive, Dr. Johnson, Craig Hubert,
3 the plan acquisition committee, Mr. Vondra.

4 Q. You didn't provide any of that information
5 directly yourself, did you?

6 A. Not that I recall.

7 Q. So basically when they were preparing the
8 plans, they were acting at the direction of others
9 with regard to how they were to be prepared,
10 correct?

11 A. Yes.

12 Q. And then they were exercising some of
13 their own design discretion with regard to how to
14 take that information and mold it into a plan?

15 MR. TUCKER: Objection as to calling for
16 speculation on what someone else was doing or what
17 they were thinking.

18 MR. KNIPPEN: Your Honor, I think there's been
19 extensive testimony regarding his knowledge of these
20 particular plans. I objected on foundation, and I
21 think my objections were overruled. That's why I'm
22 asking about this now.

23 THE HEARING OFFICER: Overruled.

24 Mr. Vick?

1 BY THE WITNESS:

2 A. Could you repeat your question, please?

3 MR. KNIPPEN: Could the court reporter please
4 read the question back?

5 (Record read.)

6 BY THE WITNESS:

7 A. That's correct. They also -- I should add
8 here that there was extensive assistance from Wayne
9 Lampa, L-a-m-p-a. He's with the Forest Preserve
10 District.

11 BY MR. KNIPPEN:

12 Q. Mr. Lampa was the district's ecologist,
13 correct?

14 A. That's right.

15 Q. And he was extremely significant in the
16 process because he designated slopes for you,
17 correct?

18 A. Slopes and the types of plants that would
19 survive.

20 Q. One of the things, for example, that
21 Mr. Lampa wanted you to do is he didn't want
22 extremely steep slopes on the side of this lake
23 because they are not particularly conducive to the
24 growth of wetland plants, correct?

1 A. Yeah. I believe it was for the first two
2 vertical feet or so above the water elevation you
3 want to be careful that there was somewhat of a flat
4 slope in that area because of the type of plants.

5 Q. Now, with regard to your background and
6 experience, Mr. Vick, prior to the design of the
7 Stearns Road wetland, you had never designed a
8 wetland yourself, had you?

9 A. I think I mentioned this in my deposition,
10 but there were two projects that I did design that
11 had some wetland relationships. One was a project
12 at a forest preserve Campbell Slough, and there was
13 an existing wetland there.

14 We enlarged a section of it to add
15 about a ten or 12 acre lake directly adjacent to the
16 wetland.

17 Q. That wasn't the actual design of a wetland
18 itself though. It was a project that was related to
19 an existing wetland, correct?

20 A. That's correct. However, you know,
21 wetland plants did develop along that. That's why I
22 mentioned it.

23 The other project was called a project
24 at Wood Dale Grove Forest Preserve, and there

1 was -- the drainage worked in a fashion there where
2 it went to one quarter of the site, and in order to
3 accommodate that, we developed a detention area,
4 which turned into a fairly decent wetland.

5 Q. When you said we developed it, who
6 developed it?

7 A. I designed it. When I say we, the
8 district.

9 Q. In terms of an actual wetland design prior
10 to the Stearns Road site, that was the only wetland
11 per se that you had actually designed yourself;
12 isn't that correct?

13 A. Yes.

14 Q. Okay. And prior to Stearns Road, you had
15 never been involved in the design of a wetland that
16 was an aggregate mine, had you?

17 A. No.

18 Q. You're licensed in landscape architecture
19 in the that of Illinois?

20 A. Yes.

21 Q. That landscape architecture licensing does
22 not require any specific design knowledge of
23 wetlands, does it?

24 A. No.

1 Q. It does not require any specific knowledge
2 of aggregate mining, does it?

3 A. No.

4 Q. When you were involved in your landscape
5 architecture courses at the University of Illinois,
6 did you have any specific training in the
7 application of the IDOT specifications 202, 204, and
8 207?

9 A. No.

10 Q. Mr. Vick, I'd now like to turn your
11 attention to some of the exhibits which have
12 previously been introduced in this case, and the
13 first exhibit I'm going to show you is Complainant's
14 Exhibit No. 1. That is the letter from Mr. Vondra
15 dated July 18th of 1990. Do you see that, sir?

16 A. Yes.

17 Q. And with regard to that letter, I'm going
18 to ask you specifically to turn your attention to
19 Exhibit E of that letter.

20 Now, when that letter came to you,
21 Mr. Vick, and that was addressed to you, wasn't it?

22 A. Yes.

23 Q. And that came over with Mr. Vondra's
24 signature, correct?

1 A. Yes.

2 Q. When that letter came to you, it did have
3 Exhibit E attached to it, didn't it?

4 A. As far as I know, it did.

5 Q. And at the time that it came to you and
6 you had that exhibit, you had an opportunity to
7 review it, didn't you?

8 A. Yes.

9 Q. I'd like to go through this Exhibit E for
10 a minute and explain what you understood this
11 exhibit to mean when you got it. Proposed slope,
12 the first line indicates one to seven. Now, what
13 does that mean?

14 A. It would drop one foot vertically for
15 every seven feet horizontally.

16 Q. And as we go down these proposed slope
17 figures to one to eight, one to nine, one to ten,
18 and one to 15, you would agree with me that what
19 that means is that the slope is diminishing in terms
20 of its severity? It's not as steep, correct?

21 A. That's correct.

22 Q. There's a column on this particular
23 Exhibit E which also refers to lake area at bottom
24 of EXC. That means lake area at bottom of

1 excavation, doesn't it?

2 A. Yeah.

3 Q. The top figure is 19.2 acres, and that's
4 the largest lake area at the bottom of the
5 excavation on this exhibit, correct?

6 A. Yes.

7 Q. And as you go down, the size of the bottom
8 of the lake area at the excavation gets smaller,
9 doesn't it?

10 A. That's correct.

11 Q. With regard to the lake area at 754, you
12 understood that to mean a lake area at a water
13 elevation of 754, didn't you?

14 A. That's correct.

15 Q. And as we look at this, if we have a 20.5
16 acre surface area at 754, a 19 area -- 19.2 area
17 lake bottom, and a one to seven slope, that would
18 require 256,770 cubic yards of fill to construct,
19 correct?

20 A. Correct.

21 Q. Okay. Let's talk about this 754 figure
22 for just a minute. When the Forest Preserve
23 District began designing this plan, I think you said
24 that one of the things that you did is you went out

1 and helped install or observe the installation of
2 water monitoring on the site, correct?

3 A. Yes.

4 Q. What are those called?

5 A. Monitoring wells.

6 Q. Okay. With regard to those monitoring
7 wells, the Forest Preserve District did obtain some
8 information, didn't it?

9 A. Yes. They were only in for a couple of
10 months. So I don't know how good the information
11 was. We didn't -- we couldn't tell.

12 Q. But you would agree with me that it was
13 the information that was used to design the
14 preliminary plans, wasn't it?

15 A. It was the only information we had.

16 Q. So you used it, didn't you?

17 A. Yes.

18 Q. Okay. And the water elevations that you
19 had with regard to those water monitoring wells at
20 the time indicated that the water level was
21 somewhere between 754 and 756, didn't it?

22 A. Yes.

23 Q. So when you're drawing those plans
24 originally, you've got to use those figures because

1 if you build it above the natural groundwater level
2 on the site, you're going to have a hard time
3 supplying water to the wetland, aren't you?

4 A. Yes.

5 Q. Now, as we go down through this Exhibit E,
6 wouldn't you agree with me that what this exhibit is
7 communicating is that if you diminish the steepness
8 of the slope, diminish the bottom of the lake, and
9 diminish the surface area of the lake, more fill is
10 going to be required; isn't that correct?

11 A. Yes.

12 Q. And you would have understood this, as a
13 landscape architect, that that was the information
14 that was being communicated to you at the time,
15 wouldn't you have?

16 A. Yes.

17 Q. So, for example, if we have a proposed
18 slope of one to 15, a 7.7 acre lake bottom, an 11.7
19 acre surface area at 754, if the calculation is
20 correct, we need 550,222 cubic yards of fill to fill
21 the site, correct?

22 A. Yes.

23 Q. The maximum amount of fill that was ever
24 estimated on this site to exist by the contractor

1 was 333,000 -- Strike that.

2 The maximum amount of fill that was
3 ever assumed to be on this site by the contractor
4 was 329,500 cubic yards, correct?

5 A. I don't have it in front of me.

6 Q. Okay. I think if you look on the --

7 MR. KNIPPEN: I shouldn't approach the witness
8 without your permission.

9 Mr. Hearing Officer, may I approach the
10 witness?

11 THE HEARING OFFICER: Yes.

12 MR. KNIPPEN: Thank you. My apologies.

13 BY MR. KNIPPEN:

14 Q. Mr. Vick, if we look at the July 18th, 19
15 -- excuse me. I've got the incorrect exhibit.

16 I ask you to take Exhibits 1, 2, and 3,
17 if you could, please, if you could find those.

18 A. This is yours, isn't it?

19 Q. Yes, it is.

20 You have all those exhibits in front of
21 you, correct?

22 A. Yes.

23 Q. Now, would you agree with me that
24 estimating the amount of fill on a site is not an

1 exact science?

2 A. It's not an exact science, but you can
3 come pretty close.

4 Q. Yeah. In this particular case, if we look
5 at Exhibits 1, 2, and 3, by your own testimony,
6 would you tell me what is the maximum amount in any
7 of those exhibits you see to be the overburden on
8 site?

9 A. Three hundred twenty-nine thousand five
10 hundred cubic yards.

11 Q. And that is the estimate of overburden
12 contained in Mr. Glenn's letter to Mr. Vierck dated
13 November 19th of 1990, correct?

14 A. Yes.

15 Q. If we assume, Mr. Vick, for purposes of
16 this record that that is the correct amount of fill
17 on this site, 329,500 cubic yards, and we assume
18 that the figures in Exhibit E are accurate, if the
19 final design for the Stearns Road wetland was a one
20 to 15 slope with a 7.7 acre lake area bottom and an
21 11.7 acre surface area, there would have been
22 insufficient overburden on the Stearns Road site to
23 construct that particular design; isn't that
24 correct?

1 A. That's correct if those figures were
2 calculated using the existing topography out there.

3 Q. Do you have any reason to believe that
4 they weren't?

5 A. I don't know. It doesn't say.

6 Q. Did you ask whether or not these figures
7 were used or were prepared using the existing
8 topography?

9 A. No, I didn't.

10 Q. That wasn't important to you?

11 A. I didn't ask.

12 Q. Was the reason you didn't ask because you
13 didn't think it to be significant at the time?

14 A. No.

15 Q. Why didn't you ask?

16 A. I don't recall.

17 Q. If these figures contained on Exhibit E
18 were based upon the site conditions that would have
19 existed after the removal of the aggregates from the
20 site, we still would have been in a situation in
21 that circumstance, wouldn't we, where a one to 15
22 proposed slope, a 7.7 acre lake bottom, and an 11.7
23 surface area at 754 would not have been able to be
24 constructed with the on-site overburden; isn't that

1 correct?

2 A. If the aggregates had been removed?

3 Q. Yes, if the aggregates had been removed
4 from the site. If those figures are based upon the
5 assumption that the aggregates had been removed from
6 the site as opposed to existing topography, they
7 would still have the same effect. You wouldn't have
8 enough overburden to build the one to 15, 7.7, or
9 11.7 acre lake, would you?

10 A. No, you wouldn't.

11 Q. As a matter of fact, based upon these
12 examples, whether it's based on existing topography
13 or the condition of the site after the aggregate is
14 removed, there is insufficient fill on the site to
15 construct these areas from the one to nine proposed
16 slope down to the one to 15 proposed slope if the
17 estimate of the overburden at 329 is correct; isn't
18 that true?

19 A. Well, there's enough overburden to do one
20 to seven, one to eight, and one to nine. There's
21 not enough to do one to ten and one to 15.

22 Q. Let's extrapolate these figures out beyond
23 what's on this chart for just a minute. Let's
24 assume we have a one to 15 proposed slope. Let's

1 assume that we have a lake area with a bottom of 2.8
2 acres, and let's assume that we have a surface area
3 on that lake of, let's say, 4.4 acres.

4 Under that particular scenario, you're
5 going to need more than 550,222 cubic yards of fill,
6 aren't we?

7 A. Yes.

8 Q. Did you know of any scientific studies
9 that were done by the Forest Preserve District that
10 established that the natural ground water level at
11 the Stearns Road site was 760, 762, or 764?

12 A. No.

13 Q. And at the time when the final plans were
14 prepared for the Stearns Road site, you were not
15 aware of any scientifically verifiable information
16 that the water level was at any of those three
17 designations, were you?

18 A. No.

19 Q. So to say that the water level at the
20 Stearns Road site on the date that the license
21 agreement was approved in March of 1991 was 760,
22 762, or 764 at that point would have been pure
23 speculation, wouldn't it?

24 A. They were concepts, yes. I've said that

1 before.

2 Q. But they were concepts that were not based
3 upon scientific study or engineering studies,
4 correct?

5 A. That's right.

6 Q. Mr. Vick, now I'd like to refer your
7 attention to the specifications that we've discussed
8 and specifically I'd like to refer your attention to
9 what has been marked as 5B. 5B is a document
10 entitled Pratt North details and specifications,
11 correct?

12 A. Yes.

13 Q. And this is part of the document that was
14 or part of the specifications that were proved with
15 the license agreement that were a part of the final
16 settlement order, correct?

17 A. Yes.

18 Q. Now, you yourself did not prepare these
19 specifications, did you?

20 A. No.

21 Q. Do you know who prepared these
22 specifications?

23 A. I believe Mark Vierck did.

24 Q. And what was Mark's title at the time that

1 these specifications were being prepared?

2 A. Senior landscape architect.

3 Q. With regard to earth excavation and
4 embankment, there's a specific reference to that in
5 the second column entitled special provisions of
6 this document, the second full paragraph down; is
7 that correct?

8 A. Yes.

9 Q. That particular paragraph reads this work
10 shall conform to Sections 202, 204, and 207 of the
11 standard specifications. Do you see that?

12 A. Yes.

13 Q. When it refers to the standard
14 specifications, is it referring to the
15 specifications of the Illinois Department of
16 Transportation?

17 A. Yes.

18 Q. And Sections 202, 204, and 207 are part of
19 those specifications; is that correct?

20 A. Yes.

21 MR. KNIPPEN: I don't have any respondent
22 stickers. I was using blanks, Mr. Hearing Officer.
23 Would you like me to use a respondent sticker?

24 Thank you.

1 (Respondent's Exhibit No. 2
2 marked for identification,
3 9-23-97.)

4 BY MR. KNIPPEN:

5 Q. Mr. Vick, I'm now going to show you what
6 I've had marked as Respondent's Exhibit No. 2 for
7 purposes of identification and ask you to look at
8 that briefly. Do you recognize what that is?

9 A. Yes.

10 Q. And is that the standard specifications
11 for road and bridge construction from the Illinois
12 Department of Transportation adopted July 1st of
13 1988?

14 A. Yes.

15 Q. And when we're referring in this section
16 of Exhibit 5B to earth excavation and embankment,
17 Sections 202, 204, and 207, it is referring to that
18 book; is that correct?

19 A. That's correct.

20 Q. Now, I'd like you to go in that book to
21 Section 202, and I would like you to read the title
22 of that section into the record.

23 A. Section 202, roadway excavation.

24 Q. I'd like you to go to Section 204 and read

1 the title of that section into the record?

2 A. Borrow excavation.

3 Q. And I'd like you to go to Section 207 and
4 read that section into the record, the title of that
5 section, not the entire thing.

6 A. Embankment.

7 Q. Mr. Vick, those were the specifications
8 for earth excavation and embankment that were
9 provided by the Forest Preserve District to the
10 contractors on the site for Stearns Road, weren't
11 they?

12 A. Yes.

13 Q. Thank you.

14 Now, you had indicated before that
15 Mr. Vondra was the one -- Strike that. You didn't.
16 You had indicated before that it was Mr. Vondra that
17 had asked that the water levels of the Stearns Road
18 site go to 762, 760, and 764?

19 A. Yes.

20 Q. Do you remember that?

21 Do you specifically remember when that
22 happened?

23 A. It was very late in the negotiations when
24 we were finalizing the concept plans. I don't

1 remember the exact date.

2 Q. Were you present at the time that he
3 allegedly made that suggestion?

4 A. That I can't recall.

5 Q. So you may not have even been present at
6 the time, correct?

7 A. That's correct.

8 Q. Somebody else may have told you that,
9 correct?

10 A. Yes.

11 Q. So if somebody else told you that, you're
12 relying upon the accuracy of what they're reporting
13 to you as a result -- as opposed to your own
14 personal knowledge, correct?

15 A. Yes.

16 Q. I'd like to go back to Exhibit 3. I'd ask
17 you to refer your attention to the second paragraph
18 of that letter and specifically the last two
19 sentences which read the exact quantities of fill at
20 this point cannot be determined due to the areas
21 which remain undisturbed. Based on these
22 variations, I trust the approximate quantities will
23 not become part of the settlement agreement. Do you
24 see that?

1 A. Yes.

2 Q. What did you understand the writer of this
3 letter was attempting to communicate to your
4 planning and development department by those
5 sentences?

6 A. That they couldn't guarantee that there
7 was exactly 325,000 cubic yards of overburden
8 removal and replacement, that it was an approximate
9 number, and that's why they didn't want an exact
10 number in the settlement agreement.

11 Q. This particular letter was prepared in an
12 effort to come up with some basis for a bond
13 reduction estimate; isn't that correct?

14 A. Yes --

15 Q. You have to answer the question.

16 And this particular letter was not
17 provided for input into those site specifications
18 other than the bond reduction, wasn't it?

19 A. That I don't know.

20 Q. Another thing that the contractor did in
21 these letters or at least, say, for example, in the
22 letter of November 19th, 1990, was he informed you
23 of what his estimate was of the sand and gravel
24 aggregates on the site, didn't he?

1 A. Which exhibit now are you talking about?

2 Q. November 19th of 1990.

3 A. Yes.

4 Q. Did your planning and development
5 department do any analysis of the total amount of
6 cubic yards that the contractor was informing you
7 were available for removal on the site to determine
8 how the removal of that material would affect the
9 ultimate amount of fill that would be required to be
10 brought to this site?

11 A. That I don't recall.

12 Q. You didn't do it yourself, did you?

13 A. No.

14 Q. Do you recall talking to anybody in your
15 department that they told you that they performed
16 that analysis?

17 A. I don't recall.

18 Q. This letter of November 19th, 1990, in
19 fact, informs you that there isn't sufficient fill
20 on this site based upon whatever plan it's referring
21 to to construct this without the importation of
22 outside fill, doesn't it? Let me withdraw the
23 question and rephrase it.

24 Mr. Vick, this letter of November 19th,

1 1990, indicates that the amount of fill on site or
2 overburden is 329,500 cubic yards; isn't that
3 correct?

4 A. That's correct.

5 Q. And it also indicates that based upon the
6 contractor's estimate that 333,255 cubic yards of
7 fill would be required for reclamation of this site;
8 isn't that correct?

9 A. That's correct.

10 Q. So that is informing you as of November
11 19th, 1990, that fill would be required to construct
12 the plan that was being referred to as of that date;
13 is that correct?

14 A. Well, these numbers are approximate. I
15 mean, we're talking about a small amount, a smaller
16 difference here.

17 Q. Let's assume the accuracy of that letter
18 for just a minute because you've relied on that
19 letter for other purposes in this case. It still
20 does require some fill, doesn't it?

21 A. A small amount, yes.

22 Q. You don't know what plan was being
23 referred to when this letter was written, do you?

24 A. At the time, I might have. I don't recall

1 now.

2 Q. It certainly would have had to have been a
3 plan that was written on or before November 19th,
4 1990, wouldn't it?

5 A. Yes.

6 Q. At the time that the specifications were
7 prepared for the Stearns Road site, the planning and
8 development department knew that there was no
9 right-of-way existing at the site, didn't it?

10 A. Do you mean a right-of-way through the
11 site?

12 Q. Was there any right-of-way existing on the
13 site?

14 A. No. There was a right-of-way to the north
15 of the site of Stearns Road.

16 Q. But there was no right-of-way existing on
17 the site; is that correct?

18 A. That's correct.

19 Q. There was no intent to reconstruct the
20 right-of-way that existed north of the site, was
21 there?

22 A. No.

23 Q. The reason that the IDOT specifications
24 were inserted into the Stearns Road agreement was

1 because Mr. Vondra requested that they be inserted;
2 isn't that correct?

3 A. Yes.

4 Q. The reason Mr. Vondra wanted those --
5 Strike that.

6 Mr. Vondra told you why he wanted them
7 inserted into the Stearns Road specifications,
8 didn't he?

9 A. Yes.

10 Q. Okay. As a matter of fact, at the time
11 that those IDOT specifications were inserted into
12 the Stearns Road specifications, the Forest Preserve
13 District had its embankment and cut standards,
14 didn't it?

15 A. Yes.

16 Q. And those embankment and cut standards
17 were more stringent in terms of what they would
18 permit for fill materials than the IDOT standards,
19 weren't they?

20 A. Yeah, I believe they were.

21 Q. So when the Forest Preserve District had
22 those IDOT specifications inserted into the Stearns
23 Road specifications, they understood that they were
24 getting a less stringent fill specification than

1 what their own fill specifications provided; isn't
2 that correct?

3 A. Yes.

4 Q. How was it that a less stringent fill
5 standard ended up in these specifications, if you
6 know?

7 A. The difference, if I recall correctly,
8 wasn't that great. The difference was that I
9 believe our fill specification that we did not allow
10 the burying of broken concrete in embankments.

11 MR. KNIPPEN: Mr. Hearing Officer, I would ask
12 not to strike that answer, but I would ask that the
13 witness be directed to answer the question. That
14 answer was not an answer to that question. I'd ask
15 that the question be read back and the answer so you
16 can evaluate it.

17 MR. MAKARSKI: He did answer it.

18 MR. KNIPPEN: No, he didn't.

19 THE HEARING OFFICER: I believe he did answer
20 it. What part --

21 MR. KNIPPEN: The question was why or do you
22 know how it was that the less stringent
23 specification got into the specifications, and then
24 the answer was well, it was a description of the

1 difference between the two specifications. It
2 wasn't responsive.

3 THE HEARING OFFICER: Mr. Vick, do you know how
4 or why there was?

5 THE WITNESS: No, I don't. All I can say is
6 what -- repeat what I've said earlier today, and
7 there were numerous instances where we didn't make
8 the decisions in my department. The decisions came
9 out of negotiating meetings that took place where we
10 weren't involved. So I assume it was one of those
11 types of situations.

12 BY MR. KNIPPEN:

13 Q. Certainly if your department had say in
14 the meetings, if you had been able to make the
15 decision yourself, you would have wanted the more
16 stringent Forest Preserve specifications, wouldn't
17 you?

18 A. Yes.

19 Q. It would have been your opinion that you
20 would have wanted that because in your opinion it
21 would have provided greater protection to the
22 district, correct?

23 A. Yes.

24 Q. But someone other than you made the

1 decision that the less stringent specification, the
2 IDOT specification, would be satisfactory for
3 purposes of this agreement, correct?

4 A. I assume so.

5 Q. Well, that's what was approved by the
6 Forest Preserve Commission, wasn't it?

7 A. Yes.

8 Q. So the Forest Preserve Commission at least
9 agreed that the less stringent specification would
10 go into the site specifications, correct?

11 A. I'm not sure the commission knew there was
12 -- by the time it got to the commission, I'm not
13 sure they knew there had been two different versions
14 even negotiated, if you know what I mean. It came
15 to them as a package, and they voted on it, yes.

16 Q. And they voted to approve the IDOT
17 specifications, didn't they?

18 A. Yes, they did.

19 Q. A minute ago you told us that the IDOT
20 specifications would permit the placement of
21 concrete in an embankment, whereas the Forest
22 Preserve District's specifications would not have,
23 correct?

24 A. I believe so, yes.

1 Q. So what this specification communicates to
2 a contractor is that he can place concrete in an
3 embankment; isn't that true?

4 A. Yes, following certain parameters that are
5 mentioned in there.

6 Q. Mr. Vick, the site plans for Stearns Road
7 went through a significant number of changes and
8 evolutions; isn't that correct?

9 A. Yes.

10 MR. KNIPPEN: Mr. Hearing Officer, could we
11 break for just five minutes? I have an exhibit that
12 unfortunately I left in my car this morning because
13 we had so much to carry, and I need it for the next
14 portion of my cross-examination. My apologies to
15 you.

16 THE HEARING OFFICER: All right. We'll take a
17 five-minute break.

18 (Break taken.)

19 (Respondent's Exhibit No. 3
20 marked for identification,
21 9-23-97.)

22 THE HEARING OFFICER: Back on the record.

23 BY MR. KNIPPEN:

24 Q. Mr. Vick, I just asked you a series of

1 questions regarding the evolutions of the site plans
2 for Stearns Road, and now I'm going to show you what
3 I've had marked as Respondent's Exhibit No. 3 for
4 purposes of identification and ask you to take a
5 look at that document.

6 The first thing is you understand that
7 when these documents refer to Pratt North that
8 they're referring to Stearns Road, correct?

9 A. Yes.

10 Q. So this is a preliminary grading plan or a
11 conceptual grading plan related to the Stearns Road
12 site; isn't that correct?

13 A. Yes.

14 Q. Now, with regard to this particular plan,
15 this plan depicts a wetland at that location on
16 Stearns Road, doesn't it?

17 A. Yes.

18 Q. And it depicts that the natural water
19 level of this particular wetland is 754, correct?

20 A. Normal water level.

21 Q. Okay. The normal water level. What's the
22 difference between a normal water level and a
23 natural water level?

24 A. Normal water level is the term they use to

1 indicate what they believe the water level is going
2 to be once it's completed.

3 Q. And so that would be what they anticipate
4 upon completion will be the groundwater level of the
5 site, correct?

6 A. Normal water level.

7 Q. Okay. And with regard to the normal water
8 level on this site, once, again, that is 754; is
9 that correct?

10 A. That's correct.

11 Q. Now, this particular plan was developed or
12 dated, anyway, January 11th of 1990, correct?

13 A. Yes.

14 Q. Okay. And this particular plan depicts a
15 much larger wetland lake area than the plan that was
16 ultimately approved, doesn't it?

17 A. That I can't say because it doesn't tell
18 what that -- oh. Well, it doesn't tell what the
19 acreage is, but it looks like it's larger.

20 Q. Okay. And when you say it looks like it's
21 larger, it looks like it's larger because the dark
22 line with the three dots that surrounds -- that's
23 contained in the central portion of this exhibit
24 would be the boundaries of the water surface area of

1 the wetland, correct?

2 A. Yes.

3 Q. And the rest of this exhibit in the very
4 dark broken lines around the exhibit depicts the
5 entire site, correct?

6 A. Yes.

7 Q. So roughly when we look at this, we are
8 talking about a wetland area that takes up a very
9 substantial portion of this site; isn't that
10 correct?

11 A. Yes.

12 Q. And from the looks of things, can you tell
13 whether or not it looks to be depicted at about 20
14 acres?

15 A. The entire site is 80 acres.

16 Q. Okay.

17 A. It could be.

18 Q. It certainly isn't four acres, is it?

19 A. No.

20 Q. And it's not five acres, is it?

21 A. No.

22 Q. In fact, it's not even ten acres, is it?

23 THE HEARING OFFICER: Your answer?

24

1 BY THE WITNESS:

2 A. I don't know what the acreage is.

3 BY MR. KNIPPEN:

4 Q. It doesn't appear to be ten acres, does
5 it --

6 A. No.

7 Q. -- by gross examination?

8 Now, I'm going to show you what I'm
9 going to mark as Group Exhibit No. 4 for
10 identification.

11 (Respondent's Group Exhibit No. 4
12 marked for identification,
13 9-23-97.)

14 BY MR. KNIPPEN:

15 Q. And let me go back to Group Exhibit -- the
16 Exhibit 3 for purposes of identification for just a
17 minute.

18 To the best of your knowledge, does
19 that appear to be a true and accurate copy of the
20 Pratt North grading plan that was prepared for the
21 Stearns Road site on or about January 11th, 1990, by
22 the Forest Preserve District of DuPage County other
23 than the exhibit tags that are attached to it?

24 A. Yes.

1 Q. Now, Mr. Vick, I'm going to show you what
2 I've had marked as Respondent's Exhibit No. 4 for
3 purposes of identification, and ask you to examine
4 that group of documents.

5 Have you had an opportunity to look at
6 that?

7 A. Yes.

8 Q. Now, that group of documents, Mr. Vick, is
9 one of those alternative conceptual plans that
10 evolved during the preparation of the Stearns Road
11 site plans; isn't that correct?

12 A. Yes.

13 Q. And as a matter of fact, the last revision
14 date on this particular plan shows January 17th of
15 1991, correct?

16 A. Yes.

17 Q. So this plan, at least in this form,
18 occurs more than a year, slightly more than a year,
19 after what's depicted on Exhibit 3, correct?

20 A. Yes.

21 Q. Now, there's been a very significant
22 change in the design of the wetland in this
23 particular grading plan, is that correct, when
24 compared to the grading plan represented by

1 Respondent's Exhibit No. 3?

2 A. Yes.

3 Q. And would you please describe for
4 Mr. Wallace what that -- what those significant
5 differences are?

6 MR. MAKARSKI: Mr. Hearing Officer, I'd like to
7 object. I think we're off on an irrelevant subject
8 here to do with the wetland and the preliminary
9 designs and all of the rest of it. The issue here
10 is a dumping issue. It's whether or not the
11 material brought on was waste or not, and the design
12 of the project came in through the license
13 agreement, but it was only background to show what
14 they were doing out there, and I don't think there's
15 any relevance to all of these preliminary designs or
16 later designs or what you could have done or should
17 have done or what have you with the property, and my
18 objection is that none of this is relevant.

19 THE HEARING OFFICER: Mr. Knippen?

20 MR. KNIPPEN: In brief response, your Honor, if
21 you look at what Mr. Makarski has submitted into
22 evidence, he submitted through this testimony
23 evidence that A, the Forest Preserve District felt
24 that this site balanced. In other words, there was

1 no need to import outside fill.

2 In support of that proposition, he has
3 submitted letters that were drafted by my client, a
4 representative of my client, that talk about the
5 amount of overburden on the site, that talk about
6 the amount of excavation on the site, the amount of
7 aggregate that's going to be removed.

8 They're using those letters to support
9 the proposition that we should have never brought
10 fill into this site. The evolution of these plans
11 and the exhibits that I previously have put before
12 the hearing officer established that as the Forest
13 Preserve District changes these plans through the
14 process of reaching the final license agreement, the
15 amount of fill required to construct this site goes
16 sky high. It changes.

17 You're going from a 754 lake plan,
18 which has a very significant open surface area, to a
19 plan which is depicted on Respondent's Exhibit 54
20 (sic), which is at the 754 water level that has 4.43
21 acres of total water surface area, and based upon
22 those initial questions that I went through with
23 Mr. Vick regarding what happens when you decrease
24 the slopes and shrink the lake, what does it do to

1 the fill requirements, it changes it significantly.

2 These plans show the evolution of how
3 that occurred, and I believe that, therefore, it is
4 relevant because it directly responds to what they
5 have introduced in their case and they want the
6 Pollution Control Board to believe, i.e., this site
7 balances and no fill should have ever been brought
8 to the site.

9 MR. MAKARSKI: Well, we did ask him on direct
10 if fill was needed how do you bring it in, and it
11 was under the borrow regulation which required the
12 approval of the district. So whether it balanced or
13 it didn't balance, whether they needed fill or they
14 didn't need fill for the purposes of this case I
15 think is irrelevant.

16 THE HEARING OFFICER: Well, we are getting far
17 afield I think. Let's go off the record.

18 (Discussion had
19 off the record.)

20 THE HEARING OFFICER: Back on the record.

21 MR. KNIPPEN: Mr. Hearing Officer, just to
22 clean up the record at this point, I am motioning
23 for the introduction of Respondent's Exhibit No. 2,
24 which is the IDOT specifications, Respondent's

1 Exhibit No. 3, and Respondent's Group Exhibit No. 4
2 into evidence.

3 MR. MAKARSKI: No objection.

4 THE HEARING OFFICER: Respondent's Exhibit 2,
5 3, and Group 4 are admitted into evidence.

6 MR. KNIPPEN: Mr. Wallace, just to finish this
7 up, can I ask a few additional questions related to
8 these issues, and then I will move on?

9 THE HEARING OFFICER: All right.

10 MR. KNIPPEN: Thank you very much.

11 BY MR. KNIPPEN:

12 Q. Mr. Vick, the total open water area in
13 Respondent's Exhibit 4 is now down to 4.43 acres;
14 isn't that correct?

15 A. Yes.

16 Q. And the elevation of this particular
17 grading plan is a normal water level of 754; is that
18 correct?

19 A. Yes.

20 Q. You would agree with me, wouldn't you,
21 Mr. Vick, that it takes more fill to construct what
22 is depicted on Respondent's Exhibit No. 4 than it
23 takes to construct what is depicted on Respondent's
24 Exhibit No. 3, wouldn't you?

1 A. Yes.

2 Q. And if we take Respondent's Exhibit
3 No. 4 and we look at --

4 A. Six and seven.

5 Q. The one that combined them.

6 Now, if we take plaintiff's --
7 Complainant's Exhibit No. 9 that takes the water
8 level of the Stearns Road site up to -- normal water
9 level up to 760, 762, and 764, correct?

10 A. Yes.

11 Q. If we assume that the acreage of the lake
12 or the total open water of the wetland remains 4.43
13 acres as depicted on Respondent's Exhibit
14 No. 4, and we take the normal water elevation up to
15 760, the 760 plan will require more fill to
16 construct than the 754 plan; isn't that correct?

17 A. Yes.

18 Q. And the 762 plan will require more fill to
19 construct than the 754 plan; isn't that correct?

20 A. Yes.

21 Q. And the 764 plan will require more fill to
22 construct than the 754 plan; isn't that correct?

23 A. Yes.

24 Q. In fact, out of all of these plans that

1 you have now laying on the floor in front of you,
2 the plan that requires the greatest amount of fill
3 is the 764 plan, correct?

4 A. Yes.

5 Q. And it was the Forest Preserve District's
6 preference that this site under the licensed
7 agreement be constructed to the highest possible
8 water level if the 764 was possible, wasn't it? Let
9 me rephrase the question. It's a bad question.

10 Under the terms of the license
11 agreement, which you have reviewed, it was the
12 district's preference that this Stearns Road site be
13 constructed at the 764 normal water level; isn't
14 that correct?

15 A. Yes.

16 (Respondent's Exhibit No. 5
17 marked for identification,
18 9-23-97.)

19 BY MR. KNIPPEN:

20 Q. Mr. Vick, I'm now going to show you what I
21 have had marked as Respondent's Exhibit No. 5 for
22 purposes of identification and ask you to take a
23 look at this document. Do you recognize that as a
24 document that portrays cut and fills at different

1 stations?

2 A. Yes.

3 Q. Now, a station, if we're looking at a site
4 plan such as is depicted on the first page of
5 Respondent's Exhibit 4, are the numbers that are
6 contained along the left-hand side of the exhibit,
7 correct?

8 A. Yes.

9 Q. Now, if the Forest Preserve District
10 received a cross-section such as this regarding
11 stations, that would communicate information to you
12 regarding the cut and fill of a particular location,
13 wouldn't it?

14 A. Yes.

15 Q. Okay. Now --

16 A. A proposed cut and fill.

17 Q. A proposed cut and fill.

18 Let's look at station 19 on this
19 exhibit for just a minute. Station 19 shows a
20 figure that says approximate gravel limit
21 excavation. Do you see that?

22 A. Uh-huh.

23 Q. And that depicts that the gravel at this
24 particular location is going to be excavated below a

1 level of 750 feet, correct?

2 A. Yes.

3 Q. It also shows that after that gravel is
4 excavated, it will be filled back in that area,
5 correct?

6 A. Yes.

7 Q. So essentially when you read a document
8 like this, what you're seeing is you're constructing
9 an embankment in the area designated as fill,
10 correct?

11 A. Yes.

12 Q. Thank you.

13 Mr. Vick, the license agreement for the
14 Stearns Road site was for five years, correct?

15 A. Yes.

16 Q. You went -- and the license agreement was
17 approved in March of 1991?

18 A. I believe so.

19 Q. You went out there two years later or
20 approximately two years later in March or April of
21 1993; is that correct?

22 A. Yes.

23 Q. And you had never been to the site between
24 your initial visit when you went there for the land

1 acquisition committee and that visit in March or
2 April of 1993, correct?

3 A. Not that I can recall, no.

4 Q. You never, during that period of time,
5 observed the manner in which the contractor was
6 conducting operations on that site, did you?

7 A. No.

8 Q. You don't know whether or not the operator
9 at the site was removing concrete from fill
10 material, putting it into a pile, and then reusing
11 it as part of its aggregate operation, do you?

12 A. No.

13 Q. You don't know whether they were doing the
14 same thing with asphalt, do you?

15 A. No.

16 Q. You don't know whether or not they were
17 taking culverts or metal pipes that were being
18 brought to the site, putting them in a pile, and
19 having the junker haul them away, do you?

20 A. No.

21 Q. When you went to that site in March or
22 April of 1991, and by the way, do you remember
23 whether it was March or April of 1991?

24 MR. MAKARSKI: You've got the wrong year

1 there.

2 BY MR. KNIPPEN:

3 Q. Excuse me, 1993. My apologies. Let me
4 withdraw the question.

5 When you went to that site in March or
6 April of 1993 and performed your site evaluation or
7 went to that site to look at it, was the site in
8 operation then, or was the operation shut down?

9 A. I don't remember.

10 Q. So you don't specifically recall that date
11 whether there was any heavy equipment operating on
12 the site?

13 A. No, I don't.

14 Q. You don't have any recollection as to
15 whether anything was being removed from the site as
16 of that date?

17 A. No.

18 Q. Who did you go out there with, if anyone?

19 A. I can't recall. I can't recall whether I
20 went by myself or if I went with another person.

21 Q. You've indicated that you saw a number of
22 different types of things on the site when you went
23 that day. You didn't dig any test pits in the site,
24 did you?

1 A. No.

2 Q. You didn't conduct any chemical or soil
3 sampling, did you?

4 A. No.

5 Q. Now, I assume that the materials that you
6 observed on the site at that time were then on the
7 surface or partially on the surface of the site;
8 isn't that correct?

9 A. Yes.

10 Q. You didn't know whether up until the time
11 that you went to that site whether the contractor
12 had been removing materials that were considered
13 inappropriate on that site, did you?

14 A. No.

15 Q. Do you know whether or not contractors
16 under these particular circumstances use tires to
17 keep their vehicles from freezing to the ground in
18 winter temperatures?

19 A. No.

20 Q. Okay. That's not a technique you were
21 familiar with, correct?

22 A. No.

23 Q. Do you know whether or not, as part of
24 this mining operation, the contractors were using

1 PVC pipe?

2 A. Do I know that they were?

3 Q. Do you know whether they were or not?

4 A. No, I don't.

5 Q. Do you know whether there was fencing on
6 the site that was being used by the contractors?

7 A. Fencing within the perimeter fence, an
8 additional site?

9 Q. Within the site, do you know?

10 A. No, I don't.

11 Q. When you went out to the site on that date
12 in March or April of 1993, did you know what stage
13 the contractor was in in terms of completion of the
14 mining and construction of the wetland?

15 MR. MAKARSKI: I'm going to object to that. I
16 don't know what the word stage means. I think it's
17 a vague term, and he's obviously having difficulty
18 answering the question like that.

19 BY THE WITNESS:

20 A. I just --

21 THE HEARING OFFICER: Just a second,

22 Mr. Vick.

23 I think the question is clear enough.

24 So the objection is overruled. Mr. Vick, can you

1 answer the question?

2 BY THE WITNESS:

3 A. Yeah. I guess the only thing I can say is
4 as near as I could tell, there hadn't been any work
5 done to develop the wetland that was shown on the
6 plan.

7 Q. The contractor had five years to do that,
8 didn't he?

9 A. Yes.

10 Q. And you were out there approximately two
11 years after the license agreement was approved,
12 weren't you?

13 A. Right.

14 Q. So it appeared to you that there were
15 mining operations ongoing at the property at that
16 point, didn't it?

17 A. Yes.

18 Q. When you were out examining the site in
19 March or April of 1993, you didn't smell any
20 petroleum on the site, did you?

21 A. No.

22 Q. And what you were able to observe on the
23 site you were able to observe because it was on the
24 surface or partially on the surface; isn't that

1 correct?

2 A. Yes.

3 Q. How much of the 77 acres of the site did
4 you walk that day, if you recall?

5 A. I walked the north side and the entire
6 west side of the site.

7 Q. Approximately, what percentage of the
8 property would you estimate that to be?

9 A. Well, there was a big chunk of it that was
10 lake that you couldn't walk on. So if you
11 subtract -- I really can't.

12 Q. Did you -- were you able to make any
13 analysis of a percentage of those materials that you
14 found objectionable were out there when you walked
15 on the site in terms of the total acreage?

16 A. No.

17 Q. You didn't make any effort to do that,
18 correct?

19 A. That's correct.

20 Q. And when you were out there, you didn't
21 take any measurements to determine the elevations or
22 topography that existed at the site at that point,
23 did you?

24 A. No.

1 Q. And as you sit today, you do not know what
2 the relationship is between the current topography
3 of the site and what would be the final topography
4 if the plan was built in conformance with the
5 license agreement, do you?

6 A. That's correct.

7 Q. That's correct you don't know?

8 A. Yes.

9 Q. We had a double negative going, and that's
10 my fault.

11 Mr. Vick, you by your own definition
12 don't consider yourself to be an expert in the
13 creation of new wetlands, do you?

14 A. No.

15 Q. You don't consider yourself an expert, by
16 your own definition, in the maintenance of wetland
17 flora and fauna after a wetland is initially
18 established, do you?

19 A. No.

20 Q. Mr. Vondra never told you that the Stearns
21 Road site balanced at 760, 762, or 764, did he?

22 A. I thought one of the exhibits showed that
23 the site balanced at 760.

24 Q. My question, sir, is did Mr. Vondra ever

1 tell you that this site balanced at 760, 762, or
2 764?

3 A. Not that I recall.

4 Q. With regard to the letter that didn't say
5 the site balanced at 760, but referred to 760, you
6 don't know what plan the person who wrote that
7 letter was looking at at the time they wrote that
8 letter, do you?

9 MR. MAKARSKI: You're referring to Exhibit 3?

10 MR. KNIPPEN: Yes.

11 BY THE WITNESS:

12 A. I don't know what plan, however, it was
13 just three weeks before the license was signed. So
14 it had to be a recent plan you would think.

15 BY MR. KNIPPEN:

16 Q. You don't know which one, though, do you?

17 A. No.

18 Q. Do you know the depth of the aggregate
19 mine at the Stearns Road site at the time that this
20 Forest Preserve District commenced its condemnation
21 action?

22 A. No.

23 Q. Do you know the depth of the aggregate
24 mine at the Stearns Road site at the time that the

1 Forest Preserve District approved the license
2 agreement?

3 A. I don't recall it, no.

4 Q. Do you know whether or not any fill had
5 been imported to the Stearns Road site prior to the
6 time the Forest Preserve District commenced its
7 condemnation proceeding?

8 A. No.

9 Q. The lake bottoms on the 760, 762, and 764
10 plans are all at different elevations, aren't they?

11 A. Yes.

12 Q. And the higher the normal water elevation
13 on those plans the higher the bottom of the lake,
14 correct?

15 A. Yes.

16 Q. None of the plans that are before you show
17 what this site would look like during different
18 stages or different times in the mining construction
19 process, do they?

20 A. No. However, I was told how the area was
21 going to be mined by Mr. Vondra.

22 MR. KNIPPEN: I would motion to strike the last
23 portion of that answer as being nonresponsive.

24 THE HEARING OFFICER: Motion is granted. The

1 last part of the answer is stricken.

2 BY MR. KNIPPEN:

3 Q. Mr. Vick, you wouldn't cover the Stearns
4 Road site with emulsified asphalt, would you?

5 A. Not today I wouldn't, no.

6 Q. Would you have done it back in 1991?

7 A. I believe one of the IDOT specifications
8 for mulch proceeding allowed that.

9 Q. One of the things that the district is
10 complaining about in this case is the PNAs on the
11 property, correct?

12 THE HEARING OFFICER: Do you know,
13 Mr. Vick?

14 BY MR. KNIPPEN:

15 Q. Do you know?

16 A. I don't know.

17 Q. I'm going to refer your attention now,
18 Mr. Vick, to what is sheet four six in Respondent's
19 Exhibit No. 4 and ask you to look at that document,
20 and tell me if you see anything in there regarding
21 the application of erosion control to this
22 particular property that would involve spraying
23 asphalt over the entire site?

24 MR. MAKARSKI: I'm going to object to this, Mr.

1 Hearing Officer. I don't think what the plans have
2 that were never completed have to do with the issues
3 in this case.

4 THE HEARING OFFICER: Brief response,
5 Mr. Knippen.

6 MR. KNIPPEN: Your Honor, I think that in that
7 one section in the Environmental Protection Act
8 where they deal with the board basically taking into
9 consideration the totality of the circumstances
10 surrounding the particular incident, this is a
11 situation in which they're complaining that we've
12 asphalt on this site, and it's a situation in which
13 they instructed my client at the beginning of this
14 process to spray the site with emulsified asphalt.

15 THE HEARING OFFICER: Well, that's not your
16 question. In fact, if we're just going to look here
17 and see if it could be sprayed with emulsified
18 asphalt, that's completely irrelevant to this
19 proceeding. So to the extent that it's just
20 engaging in speculation here, the objection is
21 sustained.

22 BY MR. KNIPPEN:

23 Q. My client was required to comply with the
24 terms of the license agreement, correct, Mr. Vick?

1 A. Yes.

2 Q. And the terms of the license agreement
3 required my client to spray the site with emulsified
4 asphalt; isn't that correct?

5 A. I don't know.

6 MR. MAKARSKI: I'm going to object to that. I
7 don't think that that's relevant.

8 MR. TUCKER: This is the same line of
9 questioning that was just sustained.

10 THE HEARING OFFICER: No. I sustained it
11 because the prior questions, I thought, were very
12 speculative. He asked a very direct question, and
13 the witness, I believe, his answer was he did not
14 know.

15 BY MR. KNIPPEN:

16 Q. Mr. Vick, I'm now going to show you what
17 I'm going to mark as Respondent's Exhibit
18 No. --

19 MR. TUCKER: Six, I think.

20 BY MR. KNIPPEN:

21 Q. -- 6 and ask you if you recognize this as
22 part of the details and specification for the
23 Stearns Road site?

24

1 (Respondent's Exhibit No. 6
2 marked for identification,
3 9-23-97.)

4 BY THE WITNESS:

5 A. It appears as though it is, but now we've
6 got two different sets of plans in front of us.

7 BY MR. KNIPPEN:

8 Q. Well, this is the 754 plan. It's
9 represented by four. Six, I will represent, is the
10 final plan, and I want you to assume that it's the
11 final plan.

12 A. Okay.

13 Q. Do you see that, sir?

14 A. Yes.

15 Q. Okay. In the section that's entitled
16 mulching, that section specifically required my
17 client to comply with Section 643, method two, of
18 the IDOT specifications, didn't it?

19 A. Yes.

20 Q. And method two in the IDOT specifications
21 provides that it consists of applying a layer of
22 asphalt coated straw or mulch on seeded areas or
23 planted areas; isn't that correct?

24 A. Yes. It says a partial coating of

1 emulsified asphalt.

2 Q. Do you know what the chemical constituents
3 of emulsified asphalt are for purposes of this IDOT
4 standard?

5 A. No, I don't.

6 Q. Do you know whether or not it would have
7 included any of the PNAs or VOCs which the Forest
8 Preserve District now complains of?

9 A. No.

10 Q. You don't know or it doesn't?

11 A. No, I don't know.

12 Q. Thank you.

13 MR. KNIPPEN: Your Honor, if I could have one
14 moment, please?

15 (Break taken.)

16 BY MR. KNIPPEN:

17 Q. Just one final question, Mr. Vick.

18 After Mr. Vondra submitted to you as
19 part of his letter, Exhibit E, which is the exhibit
20 that's depicted on the screen, you yourself did not
21 take any of those figures and compare them to the
22 final site plan that was approved by the Forest
23 Preserve District to determine what the effect of
24 lifting this lake to be between 760, 762, and 764,

1 did you?

2 A. Did I personally?

3 Q. Yes.

4 A. No.

5 Q. To the best of your knowledge, no one in
6 your department did either, did they?

7 A. Not that I'm aware of.

8 MR. KNIPPEN: No further questions at this
9 time.

10 THE HEARING OFFICER: Ms. O'Connell?

11 MS. O'CONNELL: No questions.

12 THE HEARING OFFICER: Redirect?

13 MR. MAKARSKI: Thank you.

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

15 by Mr. Makarski

16 Q. Mr. Vick, what did Mr. Vondra tell you
17 about the way the area was to be mined?

18 A. The way he explained it he was going to
19 divide the site up into four quarters starting from
20 north to south. That on the north one quarter of
21 the site he was going to remove the overburden,
22 stockpile it, and do the mining there.

23 When the mining was completed there, he
24 was going to move it to the second quarter, remove

1 that overburden, and begin the restoration of the
2 first quarter of the site while he was mining the
3 second quarter of the site and continue the mining
4 and restoration concurrently as he moved south
5 through the site.

6 Q. Did you observe that that was being
7 accomplished when you saw it in March or April of
8 1993?

9 A. No, it wasn't.

10 Q. What did you observe?

11 A. It looked like a dump.

12 Q. Now, Mr. Vick, there was some discussion
13 of these three IDOT regs, 202, 204, and 207?

14 A. Yes.

15 Q. And 204 deals with roadway construction or
16 202? I'm sorry.

17 A. Roadway excavation.

18 Q. And 204 is borrow?

19 A. Yes.

20 Q. An 207 is embankment construction?

21 A. That's correct.

22 Q. Do 202 and 207, the roadway excavation and
23 the embankment construction have anything to do with
24 bringing material in from off site?

1 A. No.

2 Q. Which one does?

3 A. Borrow, 204.

4 Q. Finally, I think you testified that you
5 thought by Exhibit 3, the March 5th, 1991, letter
6 that the site was the balance of the 760; is that
7 right?

8 A. Yes.

9 Q. What -- does that show how much mass
10 excavation there was?

11 A. Yes, it does.

12 Q. And how many cubic yards was that?

13 A. Three hundred and fifty thousand.

14 Q. Does it show what would have had to be
15 replaced then?

16 A. Yes.

17 Q. And what was that?

18 A. Three hundred and twenty-five thousand
19 cubic yards of replacement of the overburden and
20 25,000 yards of topsoil.

21 Q. So that's 350,000, right?

22 A. That's correct.

23 Q. Is that what made you conclude that the
24 site would balance?

1 A. Yes.

2 MR. MAKARSKI: I have nothing further.

3 THE HEARING OFFICER: Recross?

4 MR. KNIPPEN: Thank you very much.

5 R E C R O S S - E X A M I N A T I O N

6 by Mr. Knippen

7 Q. Mr. Vick, this letter that you just
8 referred to of March 5th, 1991, that you said led
9 you to the conclusion that this site balanced refers
10 to mass excavation, correct?

11 A. Yes.

12 Q. It does not refer to aggregate mining,
13 does it?

14 A. No.

15 Q. It doesn't tell you how much aggregate
16 will be removed from the site ultimately, does it?

17 A. No.

18 Q. And the amount of aggregate that would be
19 removed from the site didn't have anything to do
20 with the bond reduction schedule, did it?

21 A. Well, yes, it did, not the way that you
22 think it does, but in order to replace the
23 overburden, to construct the improvement, you have
24 to remove the aggregate.

1 So if he wasn't going to remove any
2 aggregate, there wouldn't be any replacement
3 required, correct. So yes, he has to remove the
4 aggregate in order to do mass excavation.

5 Q. But those figures that are contained in
6 that particular letter and the appendix to it, which
7 is the bond reduction estimate, does not give you
8 any information with the amount -- with regard to
9 the amount of aggregate that would be removed from
10 the site, correct?

11 A. That's correct.

12 Q. And that letter's primary purpose is to
13 determine the bond reduction for the mass
14 excavation, correct?

15 THE HEARING OFFICER: What was your answer?

16 BY THE WITNESS:

17 A. It does not say that.

18 BY MR. KNIPPEN:

19 Q. It has a bond reduction schedule attached
20 to it, doesn't it?

21 A. Bond reduction estimate?

22 Q. Yes.

23 A. Yes, it does.

24 Q. Okay. And the figures in the bond

1 reduction estimate are based upon percentages of
2 overburden removed, clay replaced, and topsoil
3 respread, correct?

4 A. Yes.

5 Q. That particular document also does not
6 address any outside fill, does it?

7 A. That's correct.

8 Q. With regards to how Mr. Vondra told you
9 how this area was to be mined, that's not in the
10 license agreement, is it?

11 A. It's in the mining permit.

12 Q. Sir, would you please answer my question?

13 MR. KNIPPEN: I motion to strike that response.

14 THE HEARING OFFICER: Motion to strike is
15 granted.

16 BY MR. KNIPPEN:

17 Q. Is what Mr. Vondra allegedly told you
18 regarding the manner in which the site was to be
19 mined contained in the license agreement?

20 A. No.

21 Q. Your understanding would be it's the
22 license agreement that controls the conduct or
23 contractual conduct on the property, isn't that
24 correct, between the parties?

1 A. The license agreement also says that all
2 the regulatory permits are supposed to be followed,
3 obtained and followed.

4 Q. Mr. Vick, you're not an expert in
5 interpreting these IDOT specifications, are you?

6 A. No.

7 Q. So when you tell us what you think design
8 and specifications mean, that's just really your
9 personal opinion, isn't?

10 A. It's just what I read.

11 Q. With regard to how Mr. Vondra was going to
12 mine the site or what he told you, which of the
13 Forest Preserve District plans did that conversation
14 pertain to?

15 A. It pertained to how the site was going to
16 be minded, period. It was not associated with any
17 particular plan.

18 Q. Why is it that you draw that conclusion?

19 A. Because when he told it to me, he didn't
20 point to a specific plan and say I'm going to build
21 this plan this way.

22 Q. There was probably a plan though that
23 existed at that point in time that was the
24 conceptual plan for the property, wasn't it?

1 MR. MAKARSKI: Objection.

2 BY THE WITNESS:

3 A. I don't recall.

4 MR. MAKARSKI: Well, you've answered it. I'll
5 withdraw it.

6 MR. KNIPPEN: Mr. Wallace, I have no further
7 questions. Thank you.

8 THE HEARING OFFICER: Ms. O'Connell?

9 MS. O'CONNELL: No questions.

10 THE HEARING OFFICER: Thank you, Mr. Vick.

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: You may step
13 down.

14 THE WITNESS: Thank you.

15 THE HEARING OFFICER: Just a second.

16 Off the record.

17 (Discussion had
18 off the record.)

19 THE HEARING OFFICER: Back on the record.

20 Mr. Makarski?

21 MR. MAKARSKI: We'd like to call Mr. Mike Wells
22 from the Forest Preserve District, Mr. Hearing
23 Officer.

24 (Witness sworn.)

1 THE HEARING OFFICER: You may sit down. You
2 may proceed.

3 WHEREUPON:

4 H A R O L D M I C H A E L W E L L S,
5 called as a witness herein, having been first duly
6 sworn, deposeth and saith as follows:

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

8 by Mr. Makarski

9 Q. Would you give us your name please, sir?

10 A. Harold Michael Wells.

11 Q. And speak up loudly so that the judge and
12 the court reporter can hear you.

13 Did you -- what's your employer -- who
14 is your employer?

15 A. The Forest Preserve District of DuPage
16 County.

17 Q. And how long have you worked for the
18 Forest Preserve District?

19 A. I'm three weeks shy of 11 years.

20 Q. And what's your educational background,
21 Mr. Wells?

22 A. High school graduate.

23 Q. Who did you work with before you worked
24 with the Forest Preserve?

1 A. I've worked for various contractors.

2 Q. And what is your position with the Forest
3 Preserve District now?

4 A. A construction inspector.

5 Q. And how long have you held that position?

6 A. Almost 11 years.

7 Q. And in what department are you assigned?

8 A. Planning and development.

9 Q. And who's your supervisor?

10 A. Robert Vick.

11 Q. What are your duties as a construction
12 supervisor?

13 A. I share contract compliance on various
14 projects, specifications, assuring that the contract
15 is completed within the contract documents.

16 Q. And you're familiar with the parcel of
17 property purchased by the district we call the
18 Stearns Road site?

19 A. Yes, I am.

20 Q. And what is out there?

21 A. Presently?

22 Q. Yes.

23 A. There's a body of water and a few piles of
24 sand and gravel.

1 Q. Is that a mining operation?

2 A. Yes, it was.

3 Q. Now, are you familiar with the underlying
4 license agreement between the district and the
5 former owner of that property?

6 A. No.

7 Q. Now, did you have any responsibilities to
8 inspect the Stearns Road site?

9 A. No.

10 Q. Prior to March or January of 1993, did you
11 ever go out to that site?

12 A. I believe I did, yes.

13 Q. How many times?

14 A. Prior to January?

15 Q. Prior to January.

16 A. No.

17 Q. Do you know of anyone else from your
18 construction inspection staff that went to that
19 site?

20 A. No one was out there, no.

21 Q. And when was the first occasion for you to
22 be out there?

23 A. I believe it was in January. I'm not sure
24 of the dates.

1 Q. Do you -- you have no recollection of the
2 date?

3 A. I think the first time was in January
4 sometime. I kept a log. I have notes.

5 Q. Let me ask you this. Do you keep a log or
6 notes of your daily activities?

7 A. Yes, I do.

8 Q. From November of 1992 through March of
9 1993?

10 A. Yes.

11 Q. Would that help refresh your recollection
12 as to the times you went to the site and what you
13 observed?

14 A. Yes, it would.

15 Q. Let me show you -- what is our next
16 number?

17 THE HEARING OFFICER: Ten.

18 MR. STICK: Your Honor, I object to that
19 exhibit being shown to this witness until we have
20 determined the extent that the witness' recollection
21 needs to be refreshed.

22 THE HEARING OFFICER: What more do you want? I
23 believe --

24 MR. STICK: Well, I think Mr. Makarski has

1 established he doesn't recall the first time he went
2 to the site, but I think what Mr. Makarski intends
3 is to hand him the exhibit and let him testify off
4 the exhibit, and that is what I object to.

5 If he wants to use it to refresh his
6 recollection regarding the date of his first visit,
7 I have no objection. If he's wants to hand the
8 exhibit to the witness and allow the witness to
9 testify off the exhibit, then I do object unless he
10 has established that the witness' recollection is
11 exhausted or is incapable of responding to the
12 question.

13 THE HEARING OFFICER: Mr. Makarski?

14 MR. MAKARSKI: Well, I just intend to give it
15 to him and ask him if he recalls the next time he
16 was there. If he does, fine. If he has to -- if he
17 doesn't, I would ask him to look at his diary and
18 determine that and then testify as best he can
19 recall what occurred.

20 THE HEARING OFFICER: Well -- all right. Why
21 don't we see how extensive Mr. Wells' memory is
22 before you hand it to him then?

23 MR. MAKARSKI: In what respect is that?

24 THE HEARING OFFICER: Does he recall anything?

1 MR. MAKARSKI: Oh, okay. Well, he doesn't
2 recall the first date. We could establish that, and
3 then set the document aside, and we'll go on to the
4 next --

5 THE HEARING OFFICER: Is it broken up into just
6 days?

7 MR. MAKARSKI: Yes, sir.

8 THE HEARING OFFICER: Just so he can see that
9 first page?

10 MR. MAKARSKI: Yes. It has it for separate
11 dates, yes.

12 THE HEARING OFFICER: All right. Proceed.

13 (Complainant's Exhibit No. 10
14 marked for identification,
15 9-23-97.)

16 BY MR. MAKARSKI:

17 Q. I show you what we've marked as
18 Complainant's Exhibit 10, Mr. Wells, and ask you if
19 you recognize that document?

20 A. Yes, I do.

21 Q. And what is it?

22 A. It's my daily log.

23 Q. Is it a copy of it?

24 A. Yes.

1 Q. Now, you said your best recollection is
2 you were out there in January of 1993, do I
3 understand you?

4 A. Yes.

5 Q. And will this refresh your recollection as
6 to the date in January?

7 A. Yes, it will.

8 Q. Would you take a look and then after
9 you've looked at it tell us if your recollection is
10 refreshed?

11 A. I can't recall if it was January of '92 or
12 January of '93. I have December '92 here. It might
13 take me a minute to find it.

14 Q. Well, at any rate, what was the -- do you
15 recall going out there in January of 1993?

16 A. Yes.

17 Q. Why don't you set that aside, and I'll ask
18 you what was the purpose of that visit to the
19 Stearns Road site?

20 A. If I recall, I scheduled a tour of the
21 mining operations with some fellow co-workers.

22 Q. And who were those people?

23 A. I can't remember who those people were.

24 They were landscape architects and designers in the

1 planning and development offices.

2 Q. And did you go with them to the Stearns
3 Road site?

4 A. Yes, I did.

5 Q. And how long did the group stay there?

6 A. I think it was around an hour or so. It
7 wasn't too long. It was very cold out.

8 Q. And what -- did you meet the people that
9 operated the site at the time?

10 A. I arranged a tour with the plant foreman
11 at the time. He was the only person I met, and he
12 gave the tour.

13 Q. And what did he do with the tour? What
14 did he show you?

15 A. Basically, we walked down to the crushing
16 operation. He showed us how the mine operation
17 worked, and then he gave us a short tour of the
18 washing plant, washing operation.

19 Q. And then what happened after that?

20 A. After that, we left the site.

21 Q. Did you observe any -- while you were at
22 the site, did you observe any trucks bringing
23 off-site material onto the site?

24 A. No.

1 Q. Did you observe any collection of off-site
2 material which was at the site?

3 A. I don't recall any going off the site or
4 into the site. I think everything was being
5 stockpiled at that time.

6 Q. Did you see any stockpiles of material
7 that was brought in from off site?

8 A. No.

9 Q. Did you go to what you subsequently saw to
10 that part of the site to look?

11 A. The crushing operation was the only thing
12 I observed going on there.

13 Q. Okay. Now, did you have occasion to go to
14 the Stearns Road site again in 1993?

15 A. I believe so, yes.

16 Q. And when was the next time?

17 A. I believe it was in March.

18 Q. Did you make an entry in your diary?

19 A. Yes, I did.

20 Q. Would you look at the diary and see if you
21 can tell us what date the next date is?

22 MR. STICK: Your Honor, I object again. Mr.
23 Makarski has not asked him when he visited the
24 site. The witness responded that he thought it was

1 in March.

2 Again, Mr. Makarski has not established
3 that the witness' recollection has been exhausted,
4 and I object to the use of the exhibit until the
5 witness' recollection is exhausted.

6 THE HEARING OFFICER: Sustained.

7 BY MR. MAKARSKI:

8 Q. Do you recall the date, the specific date
9 you went there?

10 A. Not the specific date, no.

11 Q. Would the diary refresh your recollection
12 as to the date that you went out there?

13 A. Yes, it would.

14 MR. MAKARSKI: May he look at the diary?

15 THE HEARING OFFICER: Yes.

16 BY MR. MAKARSKI:

17 Q. Would you please look and tell us the next
18 date that you went to the Stearns Road site?

19 A. I can't recall the exact date. It might
20 take me a second here to find it. March 1st, 1993.

21 Q. You could set that aside.

22 Did you go to the Stearns Road site
23 with any other person?

24 A. Yes, I did.

1 Q. And with whom did you go?

2 A. Senior landscape architect Mark Vierck.

3 Q. And would you spell his name for the lady?

4 A. I believe it's V-e-i-r-c-k.

5 Q. And what time did you go to the -- what
6 time of day did you go?

7 A. I believe it was sometime in the morning.

8 Q. And was there a particular purpose for
9 your visit?

10 A. Mark just wanted to look over the site and
11 see how the progress was going.

12 Q. And did you each go out there separately
13 or did you go together?

14 A. We drove together.

15 Q. And tell us what happened when you arrived
16 at the site and what you observed?

17 A. We walked around the site a bit just
18 casually observing the operation. We went to the
19 southwest corner of the project. We noticed trucks
20 were bringing in material. We observed a lot of
21 things in the fill that I thought shouldn't be in
22 the fill and Mark thought shouldn't be in the fill.

23 We smelled petroleum odors. Mark was
24 rather concerned. I was rather concerned, and he

1 asked me to fill out a report when we got back to
2 the office and talk to the director of the planning
3 and development office about our observations.

4 MR. STICK: Your Honor, I would ask that in
5 references to what Mark Vierck may have said or his
6 concerns be stricken as hearsay, and because of the
7 narrative nature of that response, I did not
8 anticipate the testimony would include the hearsay.
9 I'm only asking for Mark Vierck's comments.

10 MR. MAKARSKI: Well, I think it's part of the
11 background. We're not offering him for the truth of
12 it, just the fact that he was there.

13 MR. STICK: Your Honor, I mean, he testified
14 regarding Mr. Vierck's feelings regarding fill
15 material. That's the issue in this case, and he is
16 offered for the truth of the matter asserted, and
17 Mark Vierck is not a witness who has been identified
18 by the complainant.

19 THE HEARING OFFICER: All right. Sustained.
20 The references to Mark Vierck's statements are
21 stricken.

22 BY MR. MAKARSKI:

23 Q. You testified that you observed a smell of
24 petroleum, didn't you say?

1 A. Yes.

2 Q. And where did you observe that petroleum
3 smell?

4 A. In the soil itself.

5 Q. Which soil?

6 A. The soil that had been placed there by the
7 filling operation.

8 Q. Brought in?

9 A. Yes.

10 Q. And did you observe trucks depositing
11 off-site fill while you were there?

12 A. I believe they were dumping their loads
13 that day, yes.

14 Q. And what -- did you observe any petroleum
15 smell in any of those loads that were coming in?

16 A. We didn't go directly to where they were
17 dumping the fill. The smell permeated from the
18 entire area where we were walking on the south,
19 southwest side of the project.

20 Q. Did you do anything with anything -- with
21 any of that dirt?

22 A. No.

23 Q. Did you physically examine it?

24 A. Yes.

1 Q. Tell us what you did?
2 A. Just grabbed a handful and smelled it.
3 Q. What did it smell like to you?
4 A. To me, it smelled like diesel fuel.
5 Q. And did you see any material -- is there a
6 body of water on the premises?
7 A. Yes.
8 Q. And did you see any of the fill material
9 near that body of water?
10 A. Yes, I did.
11 Q. And what did you observe in the fill
12 material you saw near the body of water?
13 A. Asphalt, concrete, it looked like electric
14 wire, if I recall, plastic buckets, tires, clay
15 tile, corrugated metal pipe.
16 Q. Was that material segregated, or was it
17 mixed with the fill?
18 A. It was mixed with the fill.
19 Q. And how close was it to the body of water?
20 A. It was from the water's edge up to an
21 angle 25, maybe 20-foot tall.
22 Q. Did you see any cranes operating in
23 the -- doing mining operation in the body of water
24 itself?

1 A. Yes, I did.

2 Q. And what were they doing?

3 A. It looked like they had a clamshell bucket
4 on mining the sand and gravel.

5 Q. And could you tell from watching that
6 approximately how deep they were going to get at the
7 sand and the gravel through the water?

8 A. It appeared from what I seen they were
9 down about 20, 25 feet just observing the bucket
10 drop down into the water.

11 Q. Now, did you see at any time the placement
12 of any of this fill into the water itself?

13 A. Not on that date. There was another date.

14 Q. Okay. Now, did you have any other
15 observations while you were out there?

16 A. Not that I recall.

17 Q. How long did you and Mr. Vierck stay at
18 the site?

19 A. Maybe a half hour to 45 minutes.

20 Q. And then did you make any report or any
21 other memorandum as a result of your visit on that
22 date?

23 A. Yes, I did.

24 Q. And what is it that you prepared?

1 A. I prepared an observation report.

2 MR. MAKARSKI: Is that 11?

3 THE HEARING OFFICER: Eleven, yes.

4 (Complainant's Exhibit No. 11
5 marked for identification,
6 9-23-97.)

7 BY MR. MAKARSKI:

8 Q. Let me show you -- would you take a look
9 at what we've marked as Complainant's Exhibit 11,
10 Mr. Wells?

11 A. Yes.

12 Q. Do you recognize that document?

13 A. Yes, I do.

14 Q. What is it?

15 A. It's an observation report filled out by
16 myself.

17 Q. And that was as a result of your visit on
18 March 1st; is that right?

19 A. That's correct.

20 MR. MAKARSKI: I would offer Exhibit 11 into
21 evidence.

22 MR. STICK: I'll object, your Honor, on the
23 grounds of hearsay.

24 THE HEARING OFFICER: Overruled.

1 BY MR. MAKARSKI:

2 Q. Would you --

3 THE HEARING OFFICER: Just a second.

4 MR. MAKARSKI: Excuse me.

5 THE HEARING OFFICER: Complainant's Exhibit 11
6 is admitted.

7 BY MR. MAKARSKI:

8 Q. Would you -- you made a brief report, did
9 you not, of what occurred and what you observed at
10 the site?

11 A. Yes, I did.

12 Q. Would you read that into the record,
13 please?

14 A. Yes. It reads toured the grading of the
15 proposed wetland with Mark Vierck at 2:00 p.m. We
16 noticed trucks bringing in fill material and dumping
17 at the southwest side of the project limits. We
18 walked this area and noticed fill material had a
19 heavy petroleum odor plus fill material has assorted
20 pieces of sewer tile, asphalt, metal culverts, and
21 other construction debris buried in the fill.

22 It was our determination that the fill
23 is unsuitable as per the license agreement. Craig
24 Hubert and Art Strong will be contacted and advised

1 of the situation.

2 Q. Who was Craig Hubert?

3 A. I believe Craig Hubert at that time was
4 like an assistant director of the Forest Preserve
5 District.

6 Q. And did you advise him?

7 A. I don't believe I did. I believe I
8 contacted my boss Bob Vick.

9 MR. STICK: Your Honor, I've got one other item
10 on Exhibit No. 11. At the bottom of the first
11 paragraph, the last sentence, it is our
12 determination, that sentence states a legal
13 conclusion regarding the license agreement.

14 Now, I've got two objections to that.
15 First, it states a legal conclusion. Secondly, this
16 witness has already testified he had no knowledge
17 and no involvement in the license agreement. So to
18 the extent it's being offered, it's being offered as
19 a legal conclusion, which is inappropriate, and,
20 secondly, it is being offered without the foundation
21 for this witness to that an opinion, even if it was
22 an appropriate opinion, it is not from this
23 witness. It appears to be from Mr. Vierck who,
24 again, is an out-of-court declarant, and this is

1 being offered for the truth of the matter asserted.

2 I would move to strike Exhibit 11, or
3 at a minimum, strike the last sentence of the first
4 paragraph, and I think that can be accomplished
5 through redaction and a striking of the testimony
6 when it was read into the record.

7 MR. MAKARSKI: It's his observation of what he
8 saw that day. It's part of the whole material.
9 We're not offering it as a binding conclusion on the
10 Pollution Control Board, but surely people who work
11 for the district and are familiar with its
12 operations conclude in their minds what they think
13 is appropriate and what isn't appropriate.

14 MR. STICK: Your Honor, a fundamental basis for
15 a foundation is that the witness have some basis for
16 stating an opinion, a conclusion, and an
17 observation. The second question Mr. Makarski asked
18 this witness was did you have any involvement in the
19 license agreement, and his answer was no.

20 THE HEARING OFFICER: All right. This is
21 normally the type of thing that the Pollution
22 Control Board allows into evidence. Your objections
23 are noted and overruled.

24 Mr. Makarski?

1 MR. MAKARSKI: Thank you.

2 BY MR. MAKARSKI:

3 Q. Did anything else occur on March 1st of
4 1993 with respect to the Stearns Road site?

5 A. Not that I recall.

6 Q. Did you have occasion after March 1st to
7 again visit the site?

8 A. Yes, I did.

9 Q. Do you recall the next date that you did?

10 A. The exact date, no.

11 Q. Would it refresh your recollection to look
12 at your diary to determine that date?

13 A. Yes, it would.

14 MR. MAKARSKI: May he do so?

15 THE HEARING OFFICER: Yes.

16 BY MR. MAKARSKI:

17 Q. Do you know what month it was? I mean,
18 was it years later?

19 A. I believe the next visit was in March
20 also.

21 Q. Okay.

22 A. I believe it was March 18th, 1993.

23 Q. And do you know what time of the day you
24 went out there?

1 A. I believe it was in the morning.

2 Q. You can set that down. And did you go
3 there with anybody?

4 A. No.

5 Q. And where did you -- did you go into the
6 site or did you stay outside of it or what did you
7 do?

8 A. I believe I went into the site.

9 Q. Where did you go on the site?

10 A. To the southwest corner.

11 Q. And why did you go there?

12 A. If I recall, I was asked to go out there
13 and observe if any fill was being brought in with
14 the same type of debris that was in the fill we
15 observed previously.

16 Q. And what did you observe on March 18th?

17 A. I believe I observed the same type of
18 operation.

19 Q. What do you mean by the same?

20 A. The filling operation still hauling in
21 fill. I can't recall if I noticed, without
22 referring to my notes, if I noticed the same amounts
23 of debris and so forth that was in the fill.

24 Q. Would it refresh your recollection to look

1 at the notes you made in your diary from March 18th?

2 A. Yes, it would.

3 MR. MAKARSKI: May he do so?

4 THE HEARING OFFICER: Yes.

5 BY MR. MAKARSKI:

6 Q. You can read it. You know, look at it and
7 then set it down, and we'll ask you.

8 A. All right.

9 Q. Okay. Do you recall what you observed
10 March 18th?

11 A. Yes.

12 Q. Would you tell us, please?

13 A. There was fill being hauled in with -- I
14 noted asphalt, sewer pipe I believe I wrote down in
15 the log.

16 Q. Did you have any -- observe any petroleum
17 odor as you had the prior time?

18 A. I don't think I was there long enough to
19 walk around the site.

20 Q. So you didn't?

21 A. Basically, if I recall, I stayed in my
22 vehicle. I was just asked to see if the filling
23 operation was continuing.

24 Q. And was there anything else that you

1 observed then at the Stearns Road site on March
2 18th, 1993?

3 A. I don't believe so.

4 Q. How long total did you stay at the site?

5 A. It was a short stay. I was, again, asked
6 to go out and see if the filling operation was
7 continuing.

8 Q. And you said you stayed in your vehicle
9 you think?

10 A. I believe I did, yes.

11 Q. Then did you have occasion to visit the
12 Stearns Road site subsequent to March 18th, 1993?

13 A. I believe I did, yes.

14 Q. Do you know when the next time was?

15 A. I'd have to refer to my notes.

16 Q. Was it relatively close to the 18th?

17 A. Yes, it was.

18 MR. MAKARSKI: May he review his notes and
19 determine the exact date?

20 THE HEARING OFFICER: Yes.

21 BY THE WITNESS:

22 A. March 19th, 1993.

23 BY MR. MAKARSKI:

24 Q. Do you recall going out there then on

1 March 19th, 1993?

2 A. Yes.

3 Q. And what time of the day did you go out
4 there?

5 A. I believe it was sometime in the a.m.

6 Q. And what was the purpose of this visit?

7 A. Again, to see if the filling operation was
8 continuing.

9 Q. By the way --

10 MR. STICK: Your Honor, could he put the diary
11 back?

12 THE WITNESS: Sure.

13 MR. STICK: Thanks.

14 BY MR. MAKARSKI:

15 Q. Did you -- after the 18th visit, did you
16 report what you observed to anyone at the Forest
17 Preserve District?

18 A. I believe I did.

19 Q. Who would that be?

20 A. I believe it would be Bob Vick.

21 Q. Your supervisor?

22 A. Yes.

23 Q. All right. Now, you said you went out
24 there on the 19th; is that right?

1 A. Yes.

2 Q. And where did you go? You went out on the
3 site itself?

4 A. Yes, I did.

5 Q. Where did you physically go on the site?

6 A. To the filling operation on the southwest
7 corner.

8 Q. Did you stay in your vehicle, or did you
9 get out?

10 A. I believe I was out of the vehicle that
11 day.

12 Q. And what did you observe going on at the
13 southwest corner of the site when you were there on
14 March 19th, 1996 -- 1993? Excuse me.

15 A. I noticed trucks dumping fill material
16 again with basically the same debris mixed in with
17 it as I've previously testified to.

18 Q. Do you recall what debris you saw that
19 day?

20 A. I probably wrote it down in my notes.

21 Q. Would that refresh your recollection?

22 A. Yes, it would.

23 Q. Do you also recall seeing any specific
24 trucking company bringing material in that day?

1 A. Yes, I do.

2 MR. STICK: Your Honor, I will object to the
3 leading nature of that question. Mr. Makarski has
4 been leading this witness throughout, and I haven't
5 objected. I'm going to start objecting on the basis
6 of leading questions.

7 THE HEARING OFFICER: Rephrase your question,
8 Mr. Makarski.

9 MR. MAKARSKI: Yes.

10 BY MR. MAKARSKI:

11 Q. Would you -- do you remember what you
12 observed out there on March 19th, the particular
13 material in the fill?

14 A. I believe it was, again, concrete,
15 asphalt, metal pipes. I can't recall everything I
16 wrote down.

17 Q. Would it refresh your recollection to look
18 at your notes in order to tell everything you saw?

19 A. Yes, it would.

20 Q. Would you take a look?

21 A. On March 19th, 1993 --

22 Q. Why don't you just read it and then after
23 you're done tell us what your recollection is?

24 A. It reads off at 6:30.

1 Q. No, no. I mean --

2 A. Pratts North --

3 Q. No, to yourself.

4 A. Oh, I'm sorry.

5 Q. Just look it over and then tell us what
6 you recall.

7 A. Okay.

8 Q. Would you tell us what you recall seeing
9 there?

10 A. Yes. It says G.G. Trucking hauling in
11 fill with assorted garbage.

12 Q. What do you mean by assorted garbage?

13 A. That would be everything I discussed
14 earlier; piping, asphalt, concrete, other debris.

15 Q. Do you recall what other debris you meant?

16 A. Well. I didn't log in everything I've
17 seen. That's why I just basically put the whole
18 thing off as garbage.

19 Q. On any of these visits, did you ever
20 observe any material being pushed -- off-site
21 material being pushed in the water?

22 A. Yes.

23 Q. Would you tell us when that was and what
24 you observed?

1 A. Again, the exact date I can't remember,
2 but that was -- I believe I was there with Dick
3 Utt. I observed the filling operation where the
4 trucks were dumping and the dozer was pushing
5 directly into the water.

6 Q. Was that sometime subsequent to this March
7 19th date that you just testified to?

8 A. Yes.

9 Q. Okay. Do you recall the next date that
10 you -- let me strike that.

11 Did you go to the site again in March
12 of 1993?

13 A. Yes, I did.

14 Q. Do you remember the date? Just give us
15 the date.

16 A. The exact date, no.

17 Q. Did you go with any other particular
18 person?

19 A. I believe the next visit was with Dick
20 Utt.

21 Q. Would it refresh your recollection to look
22 at your diary to determine the next time you went to
23 the site after March 19th?

24 A. Yes, it would.

1 Q. Would you do so?

2 A. March 20th, 1993, Saturday.

3 Q. Do you recall whether you observed

4 anything occurring on a Saturday there?

5 A. No, I didn't. There was nothing going on
6 that date.

7 Q. What is the next -- do you remember going
8 after March 20th and still within the month of March
9 --

10 A. Yes.

11 Q. -- to the site again?

12 A. I believe so, yes.

13 Q. Do you recall what date that was?

14 A. Exact dates, no.

15 Q. Would it refresh your recollection to
16 check your diary to see the date?

17 A. Yes, it would.

18 Q. Would you do so?

19 A. It looks like March 23rd, 1993.

20 Q. And do you recall if you went there by
21 yourself or if you went with somebody else?

22 A. I went with a Mr. Jim Morand.

23 Q. And who is Mr. Morand?

24 A. He's a landfill foreman for Environmental

1 Services.

2 Q. And what did you -- did you go out there
3 together, or did you meet there, or tell us what
4 happened?

5 A. We drove out together, if I recall.

6 Q. Do you know what time you arrived at the
7 site?

8 A. I believe it was in the morning.

9 Q. And what did you and Mr. -- did you stay
10 together while you were at the site?

11 A. Yes.

12 Q. What did you and Mr. Morand do once you
13 arrived at the Stearns Road site?

14 A. If I recall, Jim was directed by
15 Mr. Utt to sample some of the material, some of the
16 fill material.

17 MR. STICK: Your Honor, I will object to that
18 as nonresponsive and move that it be stricken. The
19 question was what did you do, and the answer was
20 hearsay directions from a third party.

21 MR. MAKARSKI: I'll rephrase the question.

22 MR. STICK: Well, I --

23 MR. MAKARSKI: I'll agree to strike the
24 answer.

1 THE HEARING OFFICER: All right. The answer is
2 stricken.

3 BY MR. MAKARSKI:

4 Q. Would you tell us what was physically done
5 by you and/or Mr. Morand while you were there?

6 A. We went to the site. I directed Mr.
7 Morand to the area where the diesel fuel seemed to
8 be rather heavy, which was everywhere you walked on
9 the southwest corner of the site. Let me put it
10 this way. That's all I did that day. I directed
11 Mr. Morand to where he thought he could take his
12 samples.

13 Q. And did he do that? Did you see him do
14 it?

15 A. Yes.

16 Q. And what did you -- was that from the fill
17 material that was brought in from off site?

18 A. Yes, it was.

19 Q. Did you observe anything yourself about
20 that fill material?

21 A. It had a heavy petroleum odor. I still
22 noticed things on the southwest corner that was in
23 the fill that I testified to earlier.

24 Q. Did you do anything with any of the

1 material out there yourself?

2 A. I believe I picked up a couple handfuls
3 and smelled it just to...

4 Q. And what did you observe from picking it
5 up?

6 A. Once again petroleum odors.

7 Q. Did anything else occur on that date,
8 March 23rd?

9 A. Not that I recall.

10 Q. Now, where did you go when you were
11 finished with Mr. Morand at the site?

12 A. I believe I went back to the office.

13 Q. Now, did you have occasion to go
14 subsequent to March 23rd, still within the month of
15 March of '93, to the site again?

16 A. Yes, I did.

17 Q. And when was that and with whom did you
18 go?

19 A. I believe it was March 24th, and I went
20 with -- it was either the 22nd or the 24th I went
21 with Mr. Utt.

22 Q. And who was Mr. Utt?

23 A. He was the director of, at that time, the
24 government services department.

1 Q. And did you take any equipment with you
2 when you went to the site?

3 A. Yes, I did.

4 Q. What did you take with you?

5 A. A video camera.

6 Q. And did you make any video filming of
7 anything at the site that day?

8 A. Yes, I did.

9 Q. And we have a copy of that video with us
10 today?

11 A. I believe you do.

12 MR. MAKARSKI: Mr. Hearing Officer, I'd like at
13 this time to play the video and let him look at it
14 and verify that that's, in fact, or tell us what it
15 is if that's all right, and we would want to run it
16 back again slowly to look at certain things.

17 THE HEARING OFFICER: All right.

18 MR. MAKARSKI: The video screen is to your
19 right. Do you want to -- I don't know how we handle
20 a video on the record.

21 MR. STICK: Well, your Honor, for the record,
22 I'm going to object to the audio version of the
23 video. The video has both picture and audio, and
24 there's not extensive discussion, but there is some

1 discussion. I'm objecting to the audio as hearsay,
2 and I think that solves your problem as far as what
3 do we do with transcribing. Is that the issue you
4 were raising?

5 MR. MAKARSKI: Well, no. I don't want the
6 audio stricken. He's out there. He's looking at it
7 and saying things, and Mr. Utt is also in the
8 transcription. It certainly is an accurate
9 portrayal with theirs. It's not hearsay.

10 MR. TUCKER: He's doing it
11 contemporaneous --

12 THE HEARING OFFICER: Wait. No. One at a
13 time.

14 MR. STICK: Well, it certainly is hearsay.
15 It's an out-of-court statement offered for the truth
16 of the matter asserted, and the declarant is here
17 and available for cross-examination. The declarant
18 was not available for cross-examination when he made
19 the out-of-court statement. So it's classic
20 hearsay, and, in fact, it's something that we can
21 simply turn the audio down and avoid it.

22 MR. MAKARSKI: The declarant is here. It's
23 contemporaneous. It's an integral part of the
24 entire photograph. You might as well take the

1 photographs as hearsay too.

2 THE HEARING OFFICER: What's the -- how much
3 audio portion is there?

4 MR. MAKARSKI: Not much.

5 THE HEARING OFFICER: Is it very hard to
6 transcribe -- let's go off the record.

7 (Discussion had
8 off the record.)

9 THE HEARING OFFICER: Mr. Tucker, you may turn
10 it on, I guess.

11 MR. TUCKER: Thank you, Mr. Hearing Officer.

12 (Whereupon, a videotape was
13 played.)

14 BY MR. MAKARSKI:

15 Q. Mr. Wells, you observed a video we just
16 played, did you not?

17 A. Yes.

18 Q. Did you take that video?

19 A. Yes, I did.

20 Q. And was that on March 24th, the date
21 that's shown on it?

22 A. I believe it was.

23 Q. And does that truly and accurately depict
24 the scene you observed at the time?

1 A. Yes, it does.

2 MR. MAKARSKI: I would offer the video into
3 evidence as Complainant's Exhibit No. 13.

4 MR. STICK: I have no objection to the visual
5 portion, but I reassert my objection to the audio
6 portion of the video as hearsay, and I think after
7 having heard the audio, your Honor can understand
8 what my problem is with it.

9 This was prepared and there are
10 comments and statements made on the audio that are
11 hearsay and are out-of-court statements that are
12 being offered here to the truth of the matter
13 asserted.

14 THE HEARING OFFICER: All right. I'm going to
15 take the audio portions under advisement for the
16 time being. The video portion will be admitted, and
17 I'll rule later on whether the audio can go along
18 with it or not.

19 MR. MAKARSKI: Just for your information, Mr.
20 Hearing Officer, Mr. Utt will be a witness. He'll
21 testify tomorrow.

22 MR. TUCKER: And it should be noted that was
23 Mr. Utt who was pictured in the video.

24 MR. MAKARSKI: Can you scroll that video and

1 play it back, turn it on and off?

2 MR. TUCKER: I'll give it my best shot.

3 THE HEARING OFFICER: Off the record.

4 Back on the record. You may proceed.

5 MR. MAKARSKI: Do you want to stop that now?

6 BY MR. MAKARSKI:

7 Q. What is that?

8 MR. MAKARSKI: Can it be frozen, Bob?

9 MR. TUCKER: Oh, yeah. I'll try that. I'm
10 sorry.

11 BY MR. MAKARSKI:

12 Q. Which way were you facing your video
13 camera there, Mr. Wells?

14 A. I believe I was facing west, southwest.

15 Q. And what is that that you observed there?

16 A. That looks like a crushed plastic pail on
17 the upper right-hand portion of the screen and two
18 pieces of asphalt in the center of the screen.

19 Q. This is all the -- this video is all of
20 the fill material; is that right?

21 A. Yes.

22 MR. MAKARSKI: Would you move it on, Bob? Do
23 you want to freeze that?

24

1 BY MR. MAKARSKI:

2 Q. What is that, Mr. Wells?

3 A. I can't make that out. I'm not sure what
4 it is.

5 Q. Okay.

6 MR. MAKARSKI: Can you move?

7 BY THE WITNESS:

8 A. That's a piece of corrugated metal pipe.

9 BY MR. MAKARSKI:

10 Q. Is that water that it's sitting in?

11 A. Yes, it is.

12 Q. Is that part of a body of water? What's
13 the water from, do you know? Where is it at?

14 A. The water is from the mining operation.

15 Q. Is that part of a larger body of water?

16 A. Yes.

17 Q. There's a pond that's there?

18 A. Yeah. It's going into the pond that was
19 out there.

20 MR. MAKARSKI: Do you want to move that on? Do
21 you want to freeze that there? Go back just a
22 second.

23 MR. TUCKER: Sure.

24 MR. MAKARSKI: Right there.

1 BY MR. MAKARSKI:

2 Q. What is that, Mr. Wells?

3 A. Out on that little peninsula there?

4 Q. Yes.

5 A. I'm not really -- it looks like concrete
6 on the upper portion of it, but I can't make out
7 what's on the lower portion.

8 Q. What is the water? Is that part of the
9 pond?

10 A. Yes, it is.

11 MR. MAKARSKI: Could you move ahead, Bob? Hold
12 it right there. That's it.

13 BY MR. MAKARSKI:

14 Q. What was that?

15 A. Again, it looked like asphalt.

16 Q. Can you tell what's in the material there
17 that you're looking at?

18 A. No, I can't.

19 Q. Right there?

20 A. That's asphalt. I believe that's a
21 plastic pail.

22 Q. What is that material there?

23 A. That looks like two large chunks of
24 asphalt.

1 Q. What about right there?

2 A. I'm not sure.

3 Q. Okay. Who is that in the picture?

4 A. That's Mr. Dick Utt.

5 Q. The time is, what, 12:38 there?

6 A. Yes.

7 MR. MAKARSKI: Stop there.

8 BY MR. MAKARSKI:

9 Q. Do you see the material in the screen
10 there at 12:38?

11 A. Yes. It looks like some type of cable on
12 the right-hand side by the lower side and some type
13 of plastic in the upper center and some type of
14 piping in the upper right-hand side.

15 MR. MAKARSKI: Stop there. It says, what,
16 12:39?

17 MR. TUCKER: I believe so.

18 BY MR. MAKARSKI:

19 Q. What is that you see there, Mr. Wells?

20 A. I can't make out the center of the
21 screen. The upper left-hand corner looks like
22 concrete.

23 MR. MAKARSKI: Stop there. This is, what,
24 12 -- what time does it say?

1 MR. TUCKER: Thirty-nine.

2 MR. MAKARSKI: Oh, it's still 12:39.

3 BY MR. MAKARSKI:

4 Q. What is that material, Mr. Wells?

5 A. It looks like a timber on the right center
6 part of the screen. It looks like a plastic bucket
7 lid in the center of the screen. The upper
8 center -- right-hand center looks like a piece of
9 metal piping.

10 MR. MAKARSKI: Stop there.

11 BY MR. MAKARSKI:

12 Q. Is that the same material we looked at
13 before?

14 A. Yes.

15 Q. Okay.

16 MR. MAKARSKI: Stop there. What is -- that's,
17 what, 12:40?

18 MR. TUCKER: Yes.

19 BY MR. MAKARSKI:

20 Q. What is that? Can you tell, Mr. Wells?

21 A. It's some type of piping.

22 MR. MAKARSKI: Stop there. Is it still 12:40,
23 Bob?

24 MR. TUCKER: I can't tell.

1 MR. MAKARSKI: Okay.

2 BY MR. MAKARSKI:

3 Q. Can you tell us what you observed there,
4 Mr. Wells?

5 A. The upper left-hand side looks like a
6 piece of lumber. The lower right-hand side looks
7 like a piece of plastic.

8 MR. TUCKER: Yes, it was 12:40.

9 MR. MAKARSKI: Stop there.

10 BY MR. MAKARSKI:

11 Q. What is that at 12:41, Mr. Wells?

12 A. I observed a large pile of crushed
13 corrugated metal pipe.

14 MR. MAKARSKI: Stop there.

15 BY MR. MAKARSKI:

16 Q. What is that, Mr. Wells, at 12:42?

17 A. Some type of a film that was on top of the
18 water.

19 Q. Is that the pond?

20 A. Yes, that's the pond.

21 Q. Which is -- is that groundwater?

22 MR. STICK: Objection, foundation.

23 BY MR. MAKARSKI:

24 Q. Do you know? Do you know where the water

1 comes from in the pond?

2 THE HEARING OFFICER: Are you withdrawing your
3 question?

4 MR. MAKARSKI: Yes.

5 BY MR. MAKARSKI:

6 Q. Do you know where the water comes from?

7 A. I believe it's groundwater.

8 Q. The material -- is there material in the
9 water there?

10 A. Yes.

11 Q. What is that?

12 A. It looks like a piece of piping.

13 Q. Can you see what that is?

14 A. I can't make that out.

15 MR. MAKARSKI: Could you stop there?

16 BY MR. MAKARSKI:

17 Q. Can you tell what that is?

18 A. That's a piece of corrugated metal pipe.

19 MR. MAKARSKI: That's, what, 12:43 there.

20 MR. TUCKER: Yes, it is.

21 BY MR. MAKARSKI:

22 Q. Is that the water behind that?

23 A. Yes, it is.

24 Q. That's the pond on the property?

1 A. Yes.

2 Q. Is that partially in the water,
3 Mr. Wells?

4 A. Yes, it is.

5 MR. MAKARSKI: Can you stop? Okay. That's
6 where Mr. Utt is.

7 BY MR. MAKARSKI:

8 Q. Let me ask you a question before that.
9 Did you -- you testified you saw some film, and I
10 think we saw it in the movie -- video, film on the
11 water?

12 A. Yes.

13 Q. Did you observe that in other places than
14 that one -- other than the one that you were
15 standing at?

16 A. Basically, I observed it as far as the eye
17 could see, although filming only shows you a portion
18 of what was actually out there.

19 Q. What was on the water?

20 A. Yes.

21 Q. Do you know what that material was?

22 A. No, I don't.

23 Q. What is that by Mr. Utt's hand there?

24 MR. MAKARSKI: Is that, what, 12:44 there,

1 Bob?

2 MR. TUCKER: Twenty-four, I believe.

3 MR. MAKARSKI: Or 24, I'm sorry.

4 BY THE WITNESS:

5 A. I couldn't be sure what that was. It's a
6 rust colored solid material in the center of the
7 screen. You've got the same color type of a dusting
8 on the outside of the solid object.

9 MR. TUCKER: I'm sorry. That was 43. That was
10 12:43.

11 MR. MAKARSKI: Can you stop there?

12 BY MR. MAKARSKI:

13 Q. What is that material?

14 MR. MAKARSKI: Is that 12:43?

15 MR. TUCKER: Forty-four.

16 MR. MAKARSKI: 12:44.

17 BY THE WITNESS:

18 A. I'm not sure what that is.

19 BY MR. MAKARSKI:

20 Q. What is he -- do you know what it is he's
21 lifting up there?

22 A. I believe he's holding a piece of clay
23 tile.

24 MR. MAKARSKI: That's, what, 12:44?

1 MR. TUCKER: That's correct.

2 MR. MAKARSKI: Stop there again.

3 BY MR. MAKARSKI:

4 Q. Do you know what that is, Mr. Wells?

5 A. That appears to be a plastic bucket lid.

6 MR. MAKARSKI: That said, what, 12:44 or

7 12:45?

8 MR. TUCKER: 12:45.

9 MR. MAKARSKI: Could you go back?

10 BY MR. MAKARSKI:

11 Q. What was that next to the lid?

12 A. That appears to be a piece of clay tile.

13 MR. MAKARSKI: That's the clay tile. Right

14 there, 12 --

15 MR. TUCKER: Forty-five.

16 BY MR. MAKARSKI:

17 Q. Is that your answer?

18 A. Yes.

19 MR. MAKARSKI: Stop there.

20 BY MR. MAKARSKI:

21 Q. What is -- could you tell what that

22 material is, like a ridge there?

23 A. I'm not sure what it was. There was a lot

24 of different colors out there that day.

1 MR. MAKARSKI: Right there, 12, what, 45?

2 MR. TUCKER: Yes.

3 BY THE WITNESS:

4 A. That appears to be a piece of concrete
5 partially buried with the reinforcing bar coming out
6 of the concrete. Also it appears to be a piece of
7 metal piping, corrugated metal piping, submerged --
8 partially submerged in the water.

9 BY MR. MAKARSKI:

10 Q. Is that a fence back there?

11 A. Yes, it is.

12 Q. Is that the fence line of the property?

13 A. Yes, it is.

14 Q. What is that material?

15 MR. MAKARSKI: That's at 12, what, 45?

16 MR. TUCKER: Forty-six.

17 MR. MAKARSKI: Forty-six.

18 BY THE WITNESS:

19 A. It looks like again -- I believe the blue
20 is a plastic lid. It looks like some more
21 corrugated piping to the right-hand side of the
22 screen, upper right-hand side.

23 BY MR. MAKARSKI:

24 Q. What is that material there?

1 MR. MAKARSKI: That's 12:45 again?

2 MR. TUCKER: Forty-six, I believe.

3 MR. MAKARSKI: Forty-six, I'm sorry.

4 BY THE WITNESS:

5 A. I'm not sure what the yellow object is.

6 To the left of that is corrugated metal piping.

7 BY MR. MAKARSKI:

8 Q. What is that in front of Mr. Utt? Do you
9 see the material on the ground?

10 A. Yes. There's rust colored reddish brown
11 type of material scattered throughout the field
12 area.

13 Q. Do you know what that material is?

14 A. No, I don't.

15 Q. Is that water there?

16 A. Yes.

17 MR. MAKARSKI: Stop there.

18 BY MR. MAKARSKI:

19 Q. What is that by Mr. Utt's foot?

20 A. I can't make that out. It's a buried
21 tire.

22 MR. TUCKER: 12:50.

23 BY MR. MAKARSKI:

24 Q. That's partially in the ground; is that

1 right?

2 A. Yes.

3 MR. MAKARSKI: And stop there.

4 BY MR. MAKARSKI:

5 Q. What is that?

6 MR. MAKARSKI: That's 12:50 again?

7 MR. TUCKER: Yes.

8 BY THE WITNESS:

9 A. That appears to be a red plastic pail.

10 MR. MAKARSKI: Stop there. Is that 12:51?

11 MR. TUCKER: 12:50 still.

12 MR. MAKARSKI: 12:50.

13 BY MR. MAKARSKI:

14 Q. What is that, Mr. Wells, can you tell?

15 A. That's another shot of the tire that's
16 partially buried.

17 Q. Okay. And what is that? What did you
18 observe those trucks doing?

19 A. Those trucks were backing in and dumping a
20 load of fill material.

21 Q. Did you observe anything in the fill
22 material?

23 MR. STICK: Your Honor, I will -- objection on
24 the grounds of leading.

1 BY MR. MAKARSKI:

2 Q. What did you observe that they were
3 dumping there?

4 A. I noticed when the trucks were dumping
5 there were pieces of asphalt and, I believe,
6 concrete.

7 Q. What was the other material that they were
8 dumping other than -- was there anything other than
9 asphalt and concrete?

10 A. It was a mixture of -- I'd just have to
11 say the soil material appeared to be very wet, a
12 variation of colors.

13 Q. Did you observe any petroleum odor?

14 A. Yes, I did.

15 MR. STICK: Your Honor, I'll object on the
16 grounds of leading.

17 THE HEARING OFFICER: Sustained. The answer is
18 stricken.

19 MR. STICK: Your Honor, could I have an
20 instruction to counsel from the bench that he cease
21 leading this witness?

22 THE HEARING OFFICER: Mr. Makarski --

23 MR. MAKARSKI: I don't think -- there's some
24 questions you can spend the rest of your life

1 getting answers to.

2 THE HEARING OFFICER: I understand that.

3 MR. STICK: Was there a petroleum smell is a
4 leading question.

5 MR. MAKARSKI: Was there a petroleum smell?
6 There was or there wasn't. If there was, then we
7 ask him what he observed about it.

8 THE HEARING OFFICER: Restrain your leading
9 questions, Mr. Makarski.

10 MR. MAKARSKI: Yes, sir.

11 Would you run that back, Bob, a
12 second?

13 BY MR. MAKARSKI:

14 Q. Is there a bulldozer?

15 A. Yes. It looks like a front-end loader.

16 Q. What did you observe that front-end loader
17 doing on the site that day?

18 A. Just what it depicts on the tape. He was
19 pushing the fill into the water.

20 Q. Is that what you saw on the tape there?

21 A. Yes, it is.

22 MR. MAKARSKI: Can you stop there?

23 BY MR. MAKARSKI:

24 Q. Do you observe any particular material

1 there, Mr. Wells?

2 A. Yes. In the upper left center of the
3 screen, it looks like there's a piece of asphalt
4 that's protruding from the fill.

5 MR. MAKARSKI: Stop there.

6 BY MR. MAKARSKI:

7 Q. What is that, Mr. Wells? Well, that's Mr.
8 Utt.

9 A. Again, it's just a variation of different
10 colors of the soil.

11 Q. Did you observe what material was coming
12 off that truck?

13 A. Yes, I did.

14 Q. What did you observe?

15 A. It looked like there was a few pieces of
16 asphalt in that last couple seconds of film. Also,
17 the petroleum odor was quite heavy that day in that
18 area where they were dumping.

19 Q. Okay. Is that the end of the film?

20 A. Yes, it is.

21 Q. What did you do after you completed the
22 video?

23 A. If I recall, I went back to the office
24 with Mr. Utt, and it was either that day or the next

1 day when Mr. Morand and I went out to sample the
2 material.

3 Q. You've already testified to that?

4 A. Yes.

5 Q. Did you -- after you had been out there
6 with Mr. Morand and with Mr. Utt, when is the next
7 time you went to the Stearns Road site?

8 A. I can't recall.

9 Q. Was it shortly thereafter or a long time?

10 A. I think it was a while longer, yes.

11 Q. Would you look in your -- would it refresh
12 your recollection to look in your diary to determine
13 the next time you visited the site?

14 A. Yes.

15 Q. Would you do so?

16 A. I stand corrected. It was March
17 23rd -- 25th, 1993.

18 Q. And do you recall what you did when you
19 went out to the site that day?

20 A. Yes, I do.

21 Q. Would you tell us?

22 A. I went out with our sworn police officers
23 to serve a cease and disorder -- a stop work order,
24 whatever it's called, to -- I'm not sure who we

1 served it to. MLR I think it says in the diary or
2 something.

3 Q. And was that done?

4 A. Yes, it was.

5 Q. And did the operations then stop at that
6 site?

7 A. I believe it did.

8 Q. Did you go out there subsequent to March
9 25th, 1993?

10 A. I believe I did.

11 Q. Do you recall the next time you went out
12 there?

13 A. No, I don't.

14 Q. Do you remember how many times after March
15 25th you went out there?

16 A. Maybe six or seven times maybe.

17 Q. I mean, in what time frame, what time
18 period?

19 A. Within the next few months.

20 Q. And what was the -- did you have a
21 particular purpose in going out on those six or
22 seven times?

23 A. If I recall, I was asked -- the next time
24 I was asked to go out there it had been quite a

1 while, and if I recall, I was asked to go out there
2 one time to educate our police force on what to look
3 for.

4 At that time, no trucks were allowed
5 into the site with fill. Trucks were allowed only
6 to bring the processed material off site, and then
7 after that, I was out there a few times, I can't
8 recall how many, where I was asked to sit in my
9 truck and observe to make sure that no trucks with
10 fill were coming into the site.

11 Q. And did you do that?

12 A. Yes, I did.

13 Q. And what did you observe?

14 A. I observed no trucks coming into the site
15 with fill.

16 Q. Were rangers out there also, did you say?

17 A. I believe the rangers were out there after
18 the stop work order was issued to assure that no
19 work was going on. After that, I'm not sure. I
20 wasn't really involved in all of the proceedings
21 after that date.

22 MR. MAKARSKI: I have no further direct,
23 Mr. Hearing Officer.

24 MR. STICK: Can I have a moment, your Honor?

1 (Brief pause.)

2 THE HEARING OFFICER: Cross-examination,
3 Mr. Stick?

4 MR. STICK: Yes, please.

5 C R O S S - E X A M I N A T I O N
6 by Mr. Stick

7 Q. Mr. Wells, how many sites do you visit on
8 an average day in your job as a construction
9 inspector?

10 A. That varies greatly from construction
11 season to construction season.

12 Q. How many in the construction season do you
13 visit a day on average?

14 A. On an average, four.

15 Q. And out of construction season, how many
16 do you visit a day?

17 A. Zero.

18 Q. How many years have you been employed by
19 the Forest Preserve, 11 years?

20 A. Eleven years.

21 Q. In the course of a year, how many sites do
22 you visit on behalf of the Forest Preserve District
23 for purposes of inspecting construction?

24 A. In the course of a year, during

1 construction season, probably on average of four
2 times a day. In nonconstruction season, I'm usually
3 in the office.

4 Q. So in the course of a year, how many sites
5 will you visit on behalf of the Forest Preserve
6 District?

7 A. I would say maybe five to six on an
8 average.

9 Q. In the course of a year?

10 A. Oh, per day? I couldn't tell you.

11 Q. How many different visits --

12 A. I've never counted it.

13 Q. -- to a site --

14 THE HEARING OFFICER: Wait. Stop.

15 MR. STICK: Yes.

16 THE HEARING OFFICER: All right. Mr. Wells,
17 don't -- wait for the question to be finished before
18 you start, please.

19 THE WITNESS: I'm sorry.

20 BY MR. STICK:

21 Q. Mr. Wells, in the course of a year, on
22 average, how many different site visits will you
23 make to inspect construction activities?

24 A. Well, if I have four jobs and I visit that

1 site for eight months, it would be around 64 times.

2 Q. In a year?

3 A. In a year.

4 Q. Your recollection with respect to the
5 events that took place in March of 1993 is not as
6 good as you sit here today as it was at that point
7 in time. Would that be correct?

8 A. That would be correct.

9 Q. And, in fact, you have a difficult time
10 recalling some of the dates and other events that
11 took place in March of 1993, do you not?

12 A. Yes, I do.

13 Q. Do you have any independent recollection
14 outside of your log and discussions you've had with
15 others since March of 1993 regarding what took place
16 during that period of time?

17 A. Vaguely.

18 Q. You have a vague recollection?

19 A. Yes.

20 Q. Okay. Would it be fair to say that you
21 are relying primarily on your log and your
22 discussions with others in order to recreate in your
23 mind what took place during March of 1993?

24 A. I would agree with that.

1 Q. I'm sorry?

2 A. Yes.

3 Q. You would agree?

4 A. Yes.

5 Q. Now, did you prepare a log prior to
6 November of 1992?

7 A. No.

8 Q. At no time prior to November of 1992 did
9 you keep a log of your daily activities on behalf of
10 the Forest Preserve District; is that correct?

11 A. That's correct.

12 Q. Why did you start keeping a log in
13 November of 1992?

14 A. I began keeping a log because the Forest
15 Preserve District commissioners at that time wanted
16 a more solid time accounting program of the
17 different activities each person was doing and the
18 different activities each department was doing.

19 So I started a log that would jog my
20 memory each day when I went into the office and
21 filled out my time sheets.

22 Q. Do you fill out your time sheets on a
23 daily basis?

24 A. Yes.

1 Q. So one purpose of the log was to help you
2 recall at the end of the day what you'd done during
3 the course of that workday, correct?

4 A. Correct.

5 Q. And one purpose of your log was to help
6 you recall what you had done at the site the last
7 time you visited when you make your next visit to
8 that site, correct?

9 A. Yes.

10 Q. And another purpose of the log was to
11 assist you in preparing your inspection or
12 observation reports at the end of the day regarding
13 sites you had visited during the course of the day,
14 correct?

15 A. Correct.

16 Q. So the purpose of the log is to prompt
17 your recollection for later in the day and later in
18 the course of your duties with the Forest Preserve
19 District, correct?

20 A. Yes.

21 Q. By the way, do you keep a camera in your
22 vehicle?

23 A. Yes.

24 Q. What kind of camera is it?

1 A. Thirty-five millimeter.

2 Q. Do you try to keep it loaded with film?

3 A. Yes, I do.

4 Q. And what's the purpose of keeping that
5 camera in your vehicle?

6 A. I keep it in my vehicle for the purpose of
7 photographing the progress of construction progress
8 -- the construction projects, excuse me, I'm
9 getting all confused here, projects and also it's a
10 good source of getting documentation of any problems
11 that might go on on site.

12 Q. So if you see problems on a site, it's a
13 good way to document it, correct?

14 A. Yes.

15 Q. And a good way to document it is to grab a
16 camera out of your vehicle and take a picture of the
17 problem?

18 A. Correct.

19 Q. What kind of vehicle were you driving in
20 1993?

21 A. I believe it was a Chevrolet Blazer.

22 Q. Is that the same type -- what year was the
23 make of that vehicle?

24 A. In '93, I believe I had a Blazer for a

1 while, and then I went to a Jeep.

2 Q. So in 1993, you switched vehicles?

3 A. I believe it was in '93.

4 Q. Was it before or after March of 1993 that
5 you switched vehicles?

6 A. I believe it was after.

7 Q. And in 1992, did you drive the same type
8 of vehicle, a Blazer?

9 A. Yes.

10 Q. Now, you mentioned petroleum odors in your
11 direct examination. You would agree with me that it
12 is not at all uncommon for you as a construction
13 inspector to smell petroleum odors at construction
14 sites that you visit, correct?

15 A. Correct.

16 Q. And it is not at all uncommon to smell
17 petroleum odors originating from fuel at these
18 construction sites, correct?

19 A. That's correct.

20 Q. And it's not uncommon to smell fuel at
21 these construction sites as opposed to burnt exhaust
22 fumes, correct?

23 A. Correct.

24 Q. And, in fact, virtually every construction

1 job you visit where there's heavy equipment involved
2 you expect to smell some form of petroleum odor,
3 correct?

4 A. I would agree with that.

5 Q. And at the Forest Preserve District jobs
6 that you were visiting in 1993 such as Meachum
7 Grove, you smelled petroleum odors at that site,
8 correct?

9 A. Yes.

10 Q. And these petroleum odors were similar to
11 the ones you smelled at the Stearns Road site,
12 correct?

13 A. Yes.

14 Q. And at the De Nada site, for instance,
15 that you were visiting in 1993, you smelled
16 petroleum odors at that site, correct?

17 A. Yes.

18 Q. And those odors were similar to the
19 petroleum odors that you smelled at the Stearns Road
20 site, correct?

21 A. Yes.

22 Q. And both Meachum and De Nada were
23 construction sites where heavy equipment was being
24 operated, correct?

1 A. That's correct.

2 Q. Let me get back to your log and inspection
3 reports and the preparation of those.

4 You testified one reason you prepare a
5 daily log was to allow you to prepare your time
6 sheets in the evening, correct?

7 A. Correct.

8 Q. And another reason was to allow you to
9 prepare your inspection or observation reports in
10 the evening, correct?

11 A. Yes.

12 Q. Is it fair to say that your daily log is
13 the primary item where you list your observations
14 during the course of an inspection?

15 A. I wouldn't say it's my primary.

16 Q. Well, in fact, it is the only place where
17 you list your observations during the course of an
18 inspection at the time you make those observations,
19 correct?

20 A. I would agree with that, yes.

21 Q. The observation report is something you
22 prepare in the evening or possibly even the next
23 day, correct?

24 A. Or possibly before I leave the job site.

1 Q. Okay. But you would prepare the
2 observation report after you prepared your daily
3 log?

4 A. Yes.

5 Q. Your daily log is intended to be accurate,
6 correct?

7 A. Intended to be.

8 Q. And intended to be as complete as
9 possible. Would you agree with that?

10 A. Yes.

11 Q. And it is intended to include any
12 significant information that you observe about the
13 construction sites that you visit, correct?

14 A. Yes.

15 Q. Do you make a daily log entry for every
16 site you visit during the course of a day?

17 A. I believe I try to.

18 Q. Now, if you visited a site on a particular
19 day, there will be an entry for that site on that
20 day, correct?

21 A. Typically, there should be.

22 Q. If you visit that site more than once,
23 would there be more than one entry or just the one
24 entry?

1 A. There should be more than one entry.

2 Q. So not only do you attempt to identify and
3 make a daily log entry for every site you visit
4 during the course of a day, you attempt to make a
5 daily log entry every time you visit that site
6 during the course of a day?

7 A. Yes, I try to.

8 Q. Would you agree with me that if you
9 observed something significant at a site you would
10 include it in your daily log?

11 A. Yes.

12 Q. Now, do you include all the information in
13 your daily log in preparing your observation?

14 A. Can you repeat that?

15 Q. Do you incorporate all the information
16 that's contained in your daily log into your
17 observation reports?

18 A. I try to, yes.

19 Q. Do you make an observation report for
20 every visit you make to a construction site?

21 A. Yes, I do.

22 Q. Do you make an observation report every
23 time you observe a problem at a construction site?

24 A. No.

1 Q. But -- let me back up.

2 But if you have made an observation for
3 every time you visit a site, you would include the
4 problems you viewed at the site, correct?

5 A. Correct.

6 Q. So every problem you see at a site would
7 be included in an observation report?

8 A. Yes.

9 Q. During the period of 1991 to 1993, you
10 often ate lunch alone in your truck, correct?

11 MR. MAKARSKI: I object. Mr. Hearing officer,
12 I don't see where he's eating lunch has anything to
13 do with illegal dumping in this case.

14 MR. STICK: Well, I think -- we hope to tie
15 this up with some other witnesses, your Honor.

16 THE HEARING OFFICER: All right. Give it a
17 stab.

18 BY THE WITNESS:

19 A. Can you repeat that one more time, please?

20 BY MR. STICK:

21 Q. During the period 1991 to 1993, it was
22 your practice to eat lunch regularly in your truck,
23 correct?

24 A. It depends on what time of the year it is.

1 Q. Okay. How would it depend on the time of
2 year?

3 A. I'm more inclined to eat in my truck
4 during the construction season than I am more
5 inclined to eat in my truck when it's -- I'm
6 supposed to be in the office.

7 Q. Because that's -- you're more busy during
8 the construction season, and you're moving around to
9 sites, correct?

10 A. That's correct.

11 Q. And was it your practice during 1991 to
12 1993 during the course of your inspections of sites
13 to occasionally eat lunch in the truck on the site?

14 A. Occasionally, yes.

15 Q. Now, on January 22nd, 1993, you were given
16 a tour of the Stearns Road site by Mr. Aprile,
17 correct?

18 A. Yes.

19 Q. And that tour involved watching the
20 crushing facility, correct?

21 A. Correct.

22 Q. The washing facility, correct?

23 A. Yes.

24 Q. And the mining operation, correct?

1 A. I don't believe we were shown the mining
2 operation.

3 Q. Do you recall walking down towards where
4 the mining operation was taking place on January
5 22nd, 1993?

6 A. I don't recall walking down there. You
7 can see the operation. The operation was going on
8 no more than 50 yards from the mining -- from the
9 crushing operation.

10 Q. So you were able to see the mining
11 operation?

12 A. Yes.

13 Q. Now, you arranged this plant tour that
14 ultimately took place on January 22nd, 1993, a
15 couple weeks earlier by placing a call to Bluff
16 City, correct?

17 A. Yes.

18 Q. And so it was your understanding, at least
19 a couple of weeks earlier, that Bluff City had a
20 mining operation going on at the Stearns Road site?

21 A. Yes.

22 Q. Now, it is possible, is it not, that prior
23 to January 22nd, 1993, you had been at the Stearns
24 Road site?

1 A. I don't recall being at the site prior to
2 that.

3 Q. My question to you is it is possible that
4 you had been at the site and simply don't recall at
5 this point in time, correct?

6 A. I would agree with that.

7 Q. You may have stopped by the site prior to
8 January 22nd, 1993, and actually entered into the
9 site, correct?

10 MR. MAKARSKI: I object to that. That's not
11 what the testimony was. He said he didn't recall
12 being there.

13 MR. STICK: I'm asking him the question -- I
14 asked him if it was possible that he visited the
15 site prior to January 22nd, and he said that it is
16 possible. It is possible that he visited it and he
17 doesn't recall it.

18 Now, I'm asking him is it also possible
19 that he may have gone through the gate and entered
20 the site.

21 THE HEARING OFFICER: All right. Go ahead and
22 answer the question.

23 BY THE WITNESS:

24 A. Again, it might be possible, but I don't

1 recall.

2 BY MR. STICK:

3 Q. Prior to January 22nd, 1992, you had the
4 occasion to drive past the Stearns Road site on
5 average of maybe once a week or so, correct?

6 A. I can't recall.

7 Q. You recall driving by the Stearns Road
8 site prior to January 22nd, 1992?

9 A. If I had a project in that -- construction
10 project in that area, it would be highly likely that
11 I would pass by the mining operation, yes.

12 Q. And, in fact, you recall driving past the
13 Stearns Road site prior to January 22nd, 1992,
14 correct?

15 A. Right now, I can't recall.

16 Q. One of the problems with your recollection
17 is that prior to November of 1992 you didn't
18 maintain a daily log. Would you agree with that?

19 A. I guess I'd agree with that.

20 Q. So it's very difficult as you sit here
21 today to really reconstruct in your mind what took
22 place before November of 1992. Would you agree with
23 that?

24 A. I have other sources of observation

1 reports from the day I started as a construction
2 inspector that would recollect -- recall my memory
3 prior to starting my log, yes.

4 Q. But you don't have a daily log, correct?

5 A. No.

6 Q. And one of the purposes of keeping a daily
7 log was to ensure that your observation reports were
8 full and complete, correct?

9 A. That and time accounting.

10 Q. So would you agree with me that it's more
11 difficult for you to reconstruct time prior to
12 November of 1992 than it is after November of 1992
13 partly because you don't have the benefit of a daily
14 log?

15 A. I would agree with that.

16 Q. Now, when you visited the site on January
17 22nd, 1993, you observed broken concrete on the
18 site, correct?

19 A. That's correct.

20 Q. And it was your understanding at that time
21 on January 22nd, 1993, that broken concrete was
22 being processed at the site into various grades of
23 gravel, right?

24 A. I wasn't aware of that.

1 Q. Were you not aware on January 22nd, 1993,
2 that concrete was being crushed at the site into
3 various grades of gravel?

4 A. I didn't see concrete being crushed.

5 Q. Were you aware that Bluff City was
6 reprocessing or recycling concrete during your visit
7 on January 22nd, 1993?

8 A. I do not recall what they were processing
9 that date if it was concrete or the mining of
10 gravel. I'm not sure what grades they were
11 producing that day. Basically, it was an operation
12 to show the people in the office how things worked.

13 Q. Do you recall being asked the following
14 questions and making the following answers during
15 your deposition in this case, page 126, line 13.
16 I'm going to ask you a brief series of questions and
17 answers.

18 First of all, do you recall being
19 deposed in this case?

20 A. Yes, I do.

21 Q. Now, do you recall being asked the
22 following series of questions and giving the
23 following answers during your deposition?

24 Question, did you see on January 22nd

1 piles of broken concrete on the site?

2 Answer, yes.

3 Question, what was your understanding
4 of how that broken concrete was being used?

5 Answer, it was my understanding it was
6 going to go through the jaw crusher and be graded to
7 whatever grade they wanted to sell.

8 Question, it was your understanding
9 that the material was being processed at the
10 facility, correct?

11 Answer, yes.

12 Do you recall being asked those
13 questions and making those answers during your
14 deposition?

15 A. Yes, I do.

16 Q. Okay. So would you agree with me on
17 January 22nd you knew that there was a concrete
18 crushing operation going on at the Stearns Road
19 site?

20 A. On that day, they were not crushing
21 concrete through the jaw crusher.

22 Q. My question to you --

23 A. Now, I assume they were going to because
24 it was stockpiled next to the crusher.

1 Q. My question to you is on January 22nd, did
2 you know they had a concrete crushing operation
3 going on at the site?

4 THE HEARING OFFICER: Your question is
5 confusing. He's actually answered your question. I
6 think you need to rephrase it.

7 BY MR. STICK:

8 Q. Well, Mr. Wells, I'm not asking what
9 you -- at this time, I'm not asking you whether you
10 saw concrete being crushed. I'm asking you did you
11 know on January 22nd that there was a concrete
12 crushing operation going on at the site?

13 A. I would have to assume so when I seen the
14 stockpile of concrete sitting next to the jaw
15 crusher.

16 Q. So you drew that conclusion from what you
17 saw?

18 A. Yes.

19 Q. Now, on your March 1st visit to the site,
20 the material you saw at the site, the items you
21 talked about were items you saw on the surface of
22 the soil, correct?

23 A. I don't believe that's correct.

24 Q. On March 1, 1993, did you dig any test

1 pits at the site?

2 A. No.

3 Q. On March 1, 1993, did you take any
4 chemical samples for analysis of the site?

5 A. No.

6 Q. On March 1, 1993, everything you saw at
7 the site was visible on the surface, at least
8 partially visible on the surface, right?

9 A. Partially visible.

10 Q. So my question is on March 1, 1993, you
11 didn't see what was buried below the site, correct?

12 A. Below the site, no.

13 Q. Or below the surface?

14 A. Or below the surface, no.

15 Q. Now, when you entered the site on March 1,
16 1993, you didn't stop at the gate, correct?

17 A. I don't believe we did.

18 Q. You didn't check in with anybody from
19 Bluff City?

20 A. I don't believe so.

21 Q. You simply drove through the gate and
22 drove back to the operations, correct?

23 A. Correct.

24 Q. And no one from Bluff City asked you what

1 you were doing there, correct?

2 A. That's correct.

3 Q. And no one stopped you or tried to

4 interfere with your inspection, correct?

5 A. Correct.

6 Q. Let me refer you to your -- Strike that.

7 When you prepared your log entry for

8 March 1, 1993, did you prepare that at the site?

9 A. No, I don't believe I did.

10 Q. Do you recall where you prepared it?

11 A. I don't recall where I prepared it, no.

12 Q. Do you recall whether you prepared it that

13 day?

14 A. I believe I did.

15 Q. And do you recall whether you prepared it

16 before you took off work that evening?

17 A. I believe I did, yes.

18 Q. In your daily log entries, you did not

19 note anything regarding an observation of electrical

20 wiring on site, correct?

21 A. May I refer to --

22 Q. In your daily log entry on March 1, 1993,

23 you did not note that you had seen any electrical

24 wiring on the site, correct?

1 A. I believe that's correct.

2 Q. And you did not indicate that you had seen
3 any plastic at the site, correct?

4 A. Correct.

5 Q. And you did not indicate on March 1, 1993,
6 in the daily log entry that you had seen any tires
7 at the site, correct?

8 A. That's correct.

9 Q. And on March 1, 1993, you did not make any
10 entry in your daily log regarding metal piping of
11 any sort, correct?

12 A. That's correct.

13 Q. No corrugated metal pipes were noted in
14 your log; is that correct?

15 A. That's correct.

16 Q. Now, you talked about sewer piping at one
17 point in your direct testimony, I believe. In your
18 mind, is sewer pipe the same as clay tile?

19 A. I'd say that's correct.

20 Q. When you talk about seeing sewer pipe at
21 the site, that's the same as clay tile, correct?

22 A. Yes.

23 Q. And in your mind, you did not have an
24 understanding of the clay tile at the site of where

1 that clay tile had been used, correct?

2 A. That's correct.

3 Q. And you didn't know whether it had been
4 used in the cornfields, correct?

5 A. That's correct.

6 Q. And you didn't know whether it had been
7 used as a sanitary sewer or a storm sewer or some
8 other use, correct?

9 A. That's correct.

10 Q. Now, on March 1, 1993, you did not observe
11 fill material being pushed into the water, correct?
12 I believe that's what you testified under your
13 direct.

14 A. I don't believe I did, that's right.

15 Q. Under direct examination, you talked about
16 your visit to the site on March 18th. Your March
17 18th entry in your daily log does not -- Strike
18 that.

19 MR. STICK: Your Honor, at this point, I was
20 going to get into the videotape in my
21 cross-examination, and it would be very useful for
22 me if you could make a ruling on the audio portion.

23 THE HEARING OFFICER: If you wish --

24 MR. STICK: And I would suggest --

1 THE HEARING OFFICER: If you wish a ruling
2 today, then the audio portion is in.

3 MR. STICK: Well, what I was going to suggest
4 is it was my understanding that what you probably
5 want to do is think about it in the evening and make
6 a ruling in the morning.

7 THE HEARING OFFICER: Actually, I wasn't going
8 to make a ruling until sometime -- I know videotapes
9 have been around quite a while. We don't get them
10 in board hearings very often.

11 If there's anything about them, I was
12 going to look that up. If you want a ruling now,
13 I'll allow the audio in to the extent that the board
14 would probably allow it in anyway.

15 MR. STICK: What I was going to suggest rather
16 than ask you to rule at this point was since you're
17 talking about breaking at 5:00, this is a good point
18 since the next point in my cross-examination was
19 going to be the video.

20 THE HEARING OFFICER: No. This is a good time
21 to break. I agree with you on that.

22 MR. STICK: But what I was going to suggest is
23 perhaps we could discuss the audio portion tomorrow
24 morning.

1 THE HEARING OFFICER: All right. That would be
2 fine.

3 MR. STICK: Actually, he's not going to be on
4 the stand tomorrow morning.

5 MR. MAKARSKI: Well, I have a witness coming up
6 from Florida tonight. He'll leave tomorrow, and I'd
7 like to interrupt and then have Mr. Wells start in
8 again when Mr. Urbanski is done. I don't think
9 it -- it will still be tomorrow morning, I believe.

10 THE HEARING OFFICER: Well, we'll agree to that
11 before we start.

12 MR. MAKARSKI: Will you come back tomorrow,
13 Mike?

14 THE WITNESS: Love to.

15 THE HEARING OFFICER: All right. Let's recess
16 until tomorrow morning at 9:30. Thank you.

17 MR. MAKARSKI: Thank you.

18 MR. STICK: Thank you.

19 (Whereupon, these were all the
20 proceedings held on September
21 23, 1997, in the above-entitled
22 matter.)

23

24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, GEANNA M. PIGNONE-IAQUINTA, do
5 hereby that that I am a court reporter doing
6 business in the City of Chicago, County of
7 Cook, and state of Illinois; that I reported
8 by means of machine shorthand the proceedings
9 held in the foregoing cause, and that the
10 foregoing is a true and correct transcript of
11 my shorthand notes so taken as aforesaid.

12

13

14

Geanna M. Pignone-Iaquinta
Notary Public, Cook County, IL
Illinois License No. 084-004096

15

16

17

18

19

SUBSCRIBED AND SWORN TO
before me this ____ day
of _____, A.D., 1997.

20

21

Notary Public

22

23

24