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ILLINOIS POLLUTION CONTROL BOARD

MATTESON WHP PARTNERSHIP,)
)
Complainant,)
)
vs.) No. PCB 97-121
)
JAMES W. MARTIN and)
EVA D. MARTIN, individually and)
d/b/a MARTIN'S OF MATTESON,)
)
Respondents.)

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by MICHELE J. LOSURDO, CSR, a notary public within and for the County of DuPage and State of Illinois, before JOHN KNITTLE, Hearing Officer, at 100 West Randolph Street, Room 11-512, Chicago, Illinois, on the 19th day of October, 1999, A.D., commencing at 9:30 a.m.

1 PRESENT:

2

ROSENTHAL AND SCHANFIELD
3 BY: MR. JOSEPH R. PODLEWSKI, JR.
55 East Monroe Street
4 46th Floor
Chicago, Illinois 60603
5 (312) 236-5622

6

Appeared on behalf of the Complainant;

7

ROSS & HARDIES
8 BY: MR. DAVID L. RIESER
150 North Michigan Avenue
Chicago, Illinois 60601-7567
9 (312) 558-1000

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Appeared on behalf of the Respondent.

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MARKED FOR IDENTIFICATION

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1 HEARING OFFICER KNITTLE: Hello my name is John
2 Knittle. I'm a hearing officer with the Illinois
3 Pollution Control Board also the assigned hearing
4 officer for this case which is PCB 1997 dash 121,
5 Matteson WHP Partnership versus James W. Martin and
6 Eva D. Martin individually and doing business as
7 Martin's of Matteson.

8 Today's date is October 18th, and it is
9 approximately 9:40 a.m. I note for the record there are
10 no members of the public present. I also note that we
11 have joining us today Mr. Charles King who is the
12 attorney assistant of Marili McFawn, a board member
13 assigned to this case.

14 This hearing has been scheduled in accordance
15 with the Illinois Environmental Protection Act and the
16 board's procedural rules and regulations will be
17 conducted in accordance with sections 103.202 and

18 103.203 of the board's procedural rules.

19 Just a moment while I explain a bit about the
20 board's process. You both know this, but I am not going
21 to be making the ultimate decision in this case. My job
22 is to ensure that there is a complete and hopefully
23 clear record for the board to base its decision upon. I
24 will, of course, rule on any evidentiary matters that

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1 come up during the hearing. If you want to appeal my
2 decision, you have the right, and you can appeal it to
3 the Illinois Pollution Control Board.

4 That being said, if we could have the
5 complainant introduce himself -- excuse me, the attorney
6 for the complainant.

7 MR. PODLEWSKI: My name is Joseph Podlewski,
8 P-o-d-l-e-w-s-k-i. I'm with Rosenthal and Schanfield.
9 I represent the complainant in this action.

10 HEARING OFFICER KNITTLE: And the respondent.

11 MR. RIESER: My name is David Rieser,
12 R-i-e-s-e-r. I'm with the law firm of Ross and Hardies
13 and I represent the respondent.

14 HEARING OFFICER KNITTLE: Thank you very much.

15 Now we can address the preliminary matters which I think

16 pretty much entail the stipulations.

17 MR. PODLEWSKI: Right. We have -- counsel for
18 the respondent and I have agreed upon certain
19 uncontested facts and also the admission of certain
20 documents. We have tendered to the hearing officer a
21 signed stipulation of uncontested facts, and we've also
22 tendered to the hearing officer the stipulation as to
23 the admission of certain documents and also copies of
24 those documents that are identified in the stipulation.

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1 Specifically, if I may on the record go over
2 what those documents are. Complainant's Exhibit A is a
3 Phase I environmental site assessment dated May 30,
4 1995, of the property located at 5603 West Vollmer,
5 that's V-o-l-l-m-e-r, Road in Matteson, Illinois.
6 Complainant's Exhibit B is a letter from Michael
7 Ciserella, C-i-s-e-r-e-l-l-a, of Pioneer Environmental
8 to Martin's, that's apostrophe S, of Matteson Dry
9 Cleaners dated June 2, 1995, along with an accompanying
10 subsurface investigation report also dated June 2, 1995.

11 Complainant's Exhibit C is a June 28th, 1995,
12 subsurface site investigation report of the property at
13 5603 West Vollmer Road in Matteson, Illinois also

14 prepared by Pioneer Environmental. Complainant's
15 Exhibit D is a letter report from Michael Ciserella and
16 Jeffrey McClelland, M-c-C-l-e-l-l-a-n-d, of Pioneer
17 Environmental to Martin's of Matteson dated May 8th,
18 1996.

19 Complainant's Exhibit E is a remedial
20 investigation services report prepared for Martin's of
21 Matteson Dry Cleaners by Pioneer dated September 10th,
22 1996, and the last document that the parties have
23 stipulated to is -- as far as its admissibility, is
24 Complainant's Exhibit F, which is the affidavit of

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1 Saeid, S-a-e-i-d, Yazdani, Y-a-z-d-a-n-i. He's the
2 president of Synergic Analytics and that's dated
3 March 27, 1998. That affidavit and the attachments all
4 relate to analyses that Synergic Analytics performed on
5 groundwater and soil samples they received from Pioneer
6 relating to the property.

7 HEARING OFFICER KNITTLE: Is the affidavit
8 enclosed in Complainant's Exhibit E, or is it a separate
9 document?

10 MR. PODLEWSKI: I believe it's a separate
11 document. There should be Exhibit F there. Maybe you

12 don't have it.

13 HEARING OFFICER KNITTLE: I don't have
14 Exhibit F.

15 MR. PODLEWSKI: Okay. My mistake. Correct. It
16 was among the documents that I didn't tender to the
17 hearing officer, so I stand corrected.

18 HEARING OFFICER KNITTLE: We are now in receipt
19 of Complainant's Exhibit F as previously described by
20 counsel for the respondent. I'm going to accept all
21 these stipulations. There was no objection, was there,
22 from the complainant? I know it was signed.

23 MR. RIESER: No objection. I just do want to
24 note for the record that with respect to the documents

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1 that we are stipulating to is the admissibility of those
2 documents and not necessarily the -- with respect to the
3 Pioneer reports, not necessarily the accuracy or the
4 veracity of the information contained in those
5 documents, but we admit that Pioneer performed that work
6 and that those reports were completed and that what have
7 been tendered as exhibits are true and accurate copies
8 of those reports.

9 HEARING OFFICER KNITTLE: It's duly noted. Also

10 for the record, it's been brought to my attention that
11 today's date is October 19th. My watch, although a
12 Timex, is apparently not keeping the appropriate date,
13 so it is October 19th and there is nobody present from
14 the public. We can now begin with the complainant's
15 case-in-chief.

16 MR. PODLEWSKI: I do have a brief opening
17 statement, Mr. Hearing Officer.

18 HEARING OFFICER KNITTLE: Please.

19 MR. PODLEWSKI: This is a citizens' enforcement
20 action brought pursuant to section 31(B) of the Illinois
21 Environmental Protection Act to enforce sections 21(E),
22 21(F)1 and 12(A) of the Illinois Environmental
23 Protection Act and certain of the Illinois Pollution
24 Control Board's groundwater quality standards under

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1 section 620.115.

2 The evidence that the complainant will
3 present in this case will reveal the following. The
4 complainant, Matteson WHP Partnership, is an Illinois
5 general partnership. Since 1981, the partnership has
6 been the operator of a certain parcel of real property
7 commonly know as 5601 to 5617 West Vollmer Road,

8 Matteson, Cook County, Illinois.

9 The title to the property is held in an
10 Illinois land trust of which the general partners of the
11 complainant, Matteson WHP Partnership, are the sole
12 beneficiaries. About 20 years ago a strip shopping
13 center was constructed at the property. The partnership
14 operates the shopping center at the property through a
15 management company. Prior to the construction of the
16 shopping center, the property was used for agricultural
17 purposes.

18 Among the first commercial tenants of the
19 property were the respondents, James W. Martin and
20 Eva D. Martin, who entered into a lease of a portion of
21 the property commonly known as 5603 West Vollmer Road in
22 March of 1981. We'll call that portion of the property
23 occupied by the Martin's the leased premises.

24 The Martin's were in continuous possession of

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1 the leased premises from 1981 through May of 1997.
2 During their tenancy, the Martins operated a dry
3 cleaning business at the leased premises. Initially,
4 they operated the leased premises as a franchisee of
5 Martin Franchises, Inc., of Cincinnati, Ohio, under the

6 name One Hour Martinizing.

7 Later in their tenancy, James W. Martin and
8 Eva D. Martin operated the dry cleaning business at the
9 leased premises under the name Martin's of Matteson.
10 During a portion of their tenancy, dry cleaning
11 activities were conducted on site.

12 The Martins admit that tetrachloroethane,
13 t-e-t-r-a-c-h-l-o-r-o-e-t-h-e-n-e (sic), was used in
14 their dry cleaning business and stored at the leased
15 premises. Tetrachloroethane is also known as
16 tetrachloroethylene,
17 t-e-t-r-a-c-h-l-o-r-o-e-t-h-y-l-e-n-e, or
18 perchloroethylene, p-e-r-c-h-l-o-r-o-e-t-h-y-l-e-n-e, or
19 perc, p-e-r-c, for short. Tetrachloroethane is a
20 chlorinated solvent and is classified as a hazardous
21 substance under section 3.14 of the Illinois
22 Environmental Protection Act.

23 The evidence will show that the dry cleaning
24 business operated at the leased premises by the Martins

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1 is and was the only business at the property to use
2 tetrachloroethane since the shopping center was
3 constructed. The evidence will show that from May 1995

4 to June 1996 the Martins performed four separate
5 subsurface investigations in the environmental condition
6 of the property and the leased premises.

7 All of these subsurface investigations were
8 performed on behalf of the Martins by Pioneer
9 Environmental. All four of the investigations in May
10 1995, June 1995, April of 1996 and May and June 1996
11 involved sampling of soil at the property. Two of the
12 four investigations also involved sampling of
13 groundwater from groundwater monitoring wells installed
14 by Pioneer.

15 After each investigation, Pioneer advised the
16 Martins in writing of the investigation's results.
17 These written reports are dated June 2, 1995; June 28,
18 1995; May 8, 1996; and September 10th, 1996. The
19 September 10, 1996, report is a comprehensive report
20 detailing not only the subsurface investigation of May
21 and June 1996, but also summarizing all environmental
22 work done to that date.

23 What do the Pioneer reports reveal about the
24 condition of subsurface soils about the property,

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1 concentrations of tetrachloroethane as high as 300,000

2 parts per billion? Degradation compounds of
3 tetrachloroethane, including 1, 2 dichloroethane, that's
4 1 comma 2, d-i-c-h-l-o-r-o-e-t-h-a-n-e, comma, cis-1, 2
5 dichloroethane, that's c-i-s hyphen 1 comma 2
6 d-i-c-h-l-o-r-o-e-t-h-e-n-e (sic) and trichloroethene
7 t-r-i-c-h-l-o-r-o-e-t-h-e-n-e were also detected.

8 What did the Pioneer reports reveal about the
9 condition of groundwater at the property, concentrations
10 of tetrachloroethane as high as 180,000 parts per
11 billion? Degradation compounds of tetrachloroethane
12 including 1, 2 dichloroethane and trichloroethene were
13 also detected. Trichloroethene was detected at a
14 concentration as high as 730 parts per billion.

15 What's the significance of Pioneer's
16 findings? They are clear unmistakable evidence that the
17 Martin's operations resulted in a release of dry
18 cleaning solvents into the environment in violation of
19 sections 21(E), 21(F)1 and 12(A) of the Act and the
20 Illinois Pollution Control Board's groundwater quality
21 standards all as alleged in the partnership's complaint,
22 that the Martin's operations caused this contamination
23 is the only inference that can be drawn from the facts
24 that will be proven.

1 Finally, what's the partnership seeking
2 through this citizens' enforcement case? Nothing noble
3 or unique, simply an order requiring the abatement of
4 the proven violations of the Act and the groundwater
5 quality standards through mediation of the property.
6 Such an order is well within the board's authority to
7 enter. Thank you.

8 HEARING OFFICER KNITTLE: Respondent.

9 MR. RIESER: I'm going to reserve my opening
10 until the beginning of our case.

11 HEARING OFFICER KNITTLE: Okay. Sir, you can
12 begin your case-in-chief.

13 Do you have a witness?

14 MR. PODLEWSKI: The complainant calls James D.
15 Persino.

16 HEARING OFFICER KNITTLE: Mr. Persino, could you
17 raise your right hand and the court reporter could swear
18 you in.

19 JAMES D. PERSINO

20 having been first duly sworn, was examined and testified
21 as follows:

22 DIRECT EXAMINATION

23 by Mr. Podlewski

24 Q. Mr. Persino, could you please spell your name

1 for the record?

2 A. P-e-r-s-i-n-o.

3 Q. And, Mr. Persino, what is your occupation?

4 A. I'm a real estate developer, principal of First
5 Development Corporation.

6 Q. First Development Corporation, what's the
7 business of First Development Corporation?

8 A. We primarily develop strip retail shopping
9 centers.

10 Q. Do you have any personal connection or
11 relationship with the complainant in this case, Matteson
12 WHP Partnership?

13 A. Yes. I'm one of the 50 percent general
14 partners.

15 Q. What is Matteson WHP Partnership?

16 A. It's the operating entity of the property at
17 5601 dash 17 West Vollmer Road in Matteson.

18 Q. Who holds title to that property?

19 A. Illinois Land Trust.

20 Q. And do you know when the land trust took title
21 to that property?

22 A. When it was purchased in 1981.

23 Q. From whom was the property purchased?

24 A. I believe the name of the company was Jetco. It

1 was a division of, at that time, Jewel Food Stores.

2 Q. Was that maybe the real estate division, do you
3 know?

4 A. Yes.

5 Q. Do you have any personal ownership interest in
6 the property?

7 A. I'm the 50 percent beneficiary of the land trust
8 as well as a 50 percent owner of the general
9 partnership.

10 Q. So you're a beneficiary of the land trust that
11 holds title to the property?

12 A. Yes.

13 Q. Now, Matteson WHP Partnership is the operating
14 entity of the property; is that correct?

15 A. Yes.

16 Q. And is there a property manager?

17 A. Yes.

18 Q. And who is the property manager?

19 A. Jasper Realty Corporation.

20 Q. And who owns Jasper Realty Corporation?

21 A. I own the company 100 percent. I'm the sole
22 shareholder and officer.

23 Q. Mr. Persino, what's presently located at the
24 property?

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1 A. It's just under an 11,000 square foot
2 convenience retail center.

3 Q. And was this convenience retail center located
4 at the property in 1995 and 1996?

5 A. Yes.

6 Q. Do you know when that convenience retail center
7 was constructed?

8 A. I believe we started construction in 1981.

9 Q. Were you personally involved in the construction
10 of that retail center at the property?

11 A. Yes.

12 Q. In what capacity were you involved?

13 A. Not only was I the owner, but I was also the
14 developer and I oversaw the hiring of the architects,
15 the general contractor, reviewed all the plans,
16 generally did whatever was necessary, you know, to have
17 the building developed and constructed.

18 Q. And what was the entity that developed the
19 property as a retail center?

20 A. Well, it was -- Matteson WHP Partnership was

21 always the operating entity, so First Development
22 Corporation is a company that my partner and I own which
23 is what we call a fee developer. It doesn't own
24 anything. It gets paid a fee for providing services to

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1 our individual entities.

2 Q. All right.

3 A. So it developed the property on behalf of
4 Matteson WHP Partnership.

5 Q. Prior to the construction of the shopping center
6 at the property, the use was agricultural; is that
7 correct?

8 A. Yes.

9 Q. And how do you know that?

10 A. I visited the site before I bought it, and
11 that's what was there.

12 Q. Do you know the respondents in this action,
13 James W. Martin and Eva D. Martin?

14 A. Yes.

15 Q. And how do you know them?

16 A. They were one of my original tenants at the
17 shopping center. Right after we signed the lease with
18 White Hen Pantry, which is the primary tenant, they were

19 I believe, the next tenant to sign a lease.

20 Q. So the Martins did have a written lease for a
21 portion of the property?

22 A. Yes.

23 Q. What space did the Martins lease?

24 A. 5603 West Vollmer Road.

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1 Q. And that lease commenced when?

2 A. 1981.

3 Q. How long did the Martins occupy the leased
4 premises?

5 A. They were in continuous possession through May
6 of 1997.

7 Q. Now, during their possession of the space known
8 as 5603 West Vollmer Road, did they operate a business
9 at that location?

10 A. Yes.

11 Q. And what was that business?

12 A. It was an on-premises dry cleaning operation.

13 Q. Did the Martins operate that dry cleaning
14 business for at least a portion of their tenancy under
15 the name Martin's of Matteson?

16 A. Yes.

17 Q. Do you know what tetrachloroethane is?

18 A. From what I've been told, it's the dry cleaning
19 solvent used to clean clothes.

20 Q. Is it also known as perchloroethylene?

21 A. That's what I've been told by consultants.

22 Q. Do you know whether the Martins used
23 perchloroethylene in connection with their dry cleaning
24 business at the property?

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1 A. That's the type of machinery that they had, so I
2 presume that's the chemical they were using.

3 Q. Are you familiar with the businesses of other
4 tenants at the shopping center at the property since it
5 was constructed in 1981?

6 A. Yes.

7 Q. Are there now or have there ever been any
8 tenants at the property other than the Martins that have
9 used perchloroethylene in connection with their
10 businesses?

11 A. No.

12 Q. Would you know if they did?

13 A. Absolutely. I negotiated every lease at the
14 shopping center for the entire time that the center has

15 been built.

16 Q. Mr. Persino, are you aware that in 1995 and 1996
17 an environmental consulting firm by the name of Pioneer
18 Environmental conducted subsurface investigations into
19 the environmental condition of the property for the
20 Martins?

21 A. Yes.

22 Q. And do you know how the Martins came to retain
23 Pioneer to do this work?

24 A. I recommended them.

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1 Q. What was the reason why this environmental
2 investigation or environmental work had to be performed?

3 A. The Martins approached my about selling their
4 business and as a matter of fact, had presented me a
5 prospective purchaser of the business, the first of
6 several prospective purchasers. In a conversation we
7 had or I had with that purchaser, the discussion, of
8 course, evolved around potential environmental
9 contamination because of the existence of the
10 on-premises dry cleaning plant and that precipitated the
11 request of the Martins to have environmental work
12 performed at the site to determine, you know, if the

13 site was clean or not.

14 Q. Did you direct the Martins to hire Pioneer?

15 A. No. I merely recommended them.

16 Q. And why did you recommend Pioneer for this work?

17 A. Because I had used them on another project and I
18 found them to be reasonably priced and efficient in
19 completing work in a timely manner.

20 Q. Could the Martins have used another
21 environmental consultant other than Pioneer
22 Environmental?

23 A. As long as I would have approved them. I wanted
24 to make sure that it was a reputable firm that would do

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1 the work if they were coming on my property.

2 Q. And you consider Pioneer to be a reputable
3 environmental consulting firm?

4 A. Yes.

5 Q. What relief is the Partnership seeking in this
6 action?

7 A. What we're seeking is to have the violations as
8 alleged in our complaint abated including through the
9 cleanup of the site.

10 Q. And the violations would be abated through clean

11 up of the property; is that correct?

12 A. Yes.

13 Q. Why are you seeking this particular relief?

14 A. My position on that is that I haven't
15 contaminated my property, somebody else did, and why
16 should I accept the property returned to me in a less
17 condition than it was when these tenants took over the
18 property as a tenant.

19 MR. PODLEWSKI: I don't have any further
20 questions.

21 HEARING OFFICER KNITTLE: Mr. Rieser, do you
22 have cross?

23 MR. RIESER: Yes.

24 CROSS-EXAMINATION

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1 by Mr. Rieser

2 Q. Mr. Persino, when you say that none of your
3 other tenants use perc, you say you know that because
4 you negotiated each of the leases; is that correct?

5 A. Yes.

6 Q. That was your testimony. Were you ever in any
7 of their shops of any of the other tenants that were
8 leasing the facility?

9 A. Yes.

10 Q. And is it your testimony that you never
11 observed -- and how often were you in in these other
12 shops?

13 A. Periodically.

14 Q. Periodically, once a year, twice a year, how
15 often?

16 A. It varied, multiple times per year.

17 Q. Is it your testimony that you never saw any of
18 them using perc?

19 A. By the use clause that we negotiate, which is
20 very stringent in all of our leases, we only allow
21 tenants to perform the particular type of business for
22 which we're leasing the premises, and none of the use
23 clauses in any of the tenants that preceded or that
24 existed at the shopping center throughout the life of

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1 the center have ever been allowed to do anything that
2 would involve the use of perchloroethylene.

3 Q. Were the leases that were negotiated with the
4 other tenants the same leases which was negotiated with
5 the Martins?

6 A. What do you mean by the same lease?

7 Q. Was it an identical lease except for the change
8 in the name and the amounts and the location?

9 A. Are you referring to the form document?

10 Q. Yes, I am.

11 A. The document is a living document. It changed
12 constantly. The initial tenants did have the same lease
13 that they had, but over time as time went and we've
14 modified our lease form, different forms were developed.

15 Q. You were also in the Martins premises from time
16 to time from 1981 to 1997; is that correct?

17 A. Yes.

18 Q. Did you ever observe the handling of perc -- I'm
19 going to call it perc for ease of our court reporter --
20 perc during that time?

21 A. Visibly see them handling it?

22 Q. Yes.

23 A. No.

24 Q. Did you ever observe any filling of their perc

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1 tanks? Were you there when there was a delivery of
2 perc?

3 A. I was never on the premises during any of those
4 occasions.

5 Q. Okay. Did you ever -- you never observed any
6 releases of perc while you were there, that's correct,
7 too, isn't it?

8 A. If it did occur, I wouldn't have known it was
9 perc.

10 Q. But you never observed any releases of perc that
11 you know of?

12 A. I never observed any releases of anything at the
13 property.

14 Q. You visited the store after the Martins left the
15 premises; that's correct?

16 A. Yes.

17 Q. And at that time you didn't observe any stains
18 on the concrete, correct?

19 A. No.

20 Q. No, it's not correct, or no, you --

21 A. No, that's correct. I did not observe any
22 stains.

23 Q. And you didn't observe any cracks in the floor,
24 correct?

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1 A. I did not observe any.

2 Q. Did you ask the Martins to repair any floor

3 cracks after they vacated the premises?

4 A. I don't believe so.

5 Q. So your only basis for alleging that the Martins
6 violated the Environmental Protection Act is the
7 presence of contamination in the soil, correct?

8 A. I'll let the reports speak for themselves. The
9 reports indicate there is contamination.

10 Q. But you have no facts in your knowledge that
11 you're aware of where the Martins mishandled their
12 perchloroethylene or did anything else to cause the
13 problems?

14 A. I would have no basis of knowing that.

15 Q. You testified that you want the Pollution
16 Control Board to -- I believe your words were to abate
17 the contamination on the soil and groundwater; is that
18 correct?

19 A. Yes.

20 Q. Now, you understand that there are different
21 levels on which abatement can be had?

22 A. Yes.

23 Q. And my understanding is that what you want the
24 board to order is for her to remove all of the

1 perchloroethylene from the soil and if it's in the
2 groundwater, the groundwater so that no evidence of
3 perchloroethylene can be detected; is that correct?

4 A. That's correct.

5 Q. Do you know the -- you don't know the cost of
6 such a cleanup, correct?

7 A. I don't care what it costs.

8 Q. You don't know if it will cost more than the
9 value of the property?

10 A. It's irrelevant. Don't know. Don't care.

11 Q. You understand that it might require buildings
12 to be either torn down or rendered unusable while the
13 remediation is going forward?

14 A. That's fine with me, and I'd make arrangements
15 with the existing tenants for that to occur so that the
16 cleanup could proceed.

17 Q. And whatever that costs you, you would expect
18 Eva Martin to compensate you at the end of the day
19 because of that -- of those additional costs?

20 A. Absolutely.

21 Q. And the purpose of this is because you want the
22 value of the property restored?

23 A. The purpose of it is because I don't feel that I
24 should, as an innocent land owner, be in any way

1 impacted by actions that were taken or that occurred on
2 that site by your client.

3 Q. But the property -- you'll agree we me that the
4 property has a certain value because you can either sell
5 it to somebody else or you can lease it to people who
6 want to lease your space, correct?

7 MR. PODLEWSKI: I'm going to object to this line
8 of testimony because I think it exceeds the direct
9 examination. Mr. Persino didn't testify to anything
10 about value of the property. He just testified that --
11 what he wanted in terms of relief that he was seeking.

12 MR. RIESER: And I think it's relevant and it's
13 part and parcel to the relief he's seeking because part
14 of the board's finding that it has to make is whether
15 the relief that's being sought is technically feasible
16 and economically reasonable. And so if he's testifying
17 as to relief, the economic reasonableness of that relief
18 is certainly an issue.

19 HEARING OFFICER KNITTLE: Anything else?

20 MR. PODLEWSKI: I think it still goes beyond the
21 direct examination of this witness.

22 HEARING OFFICER KNITTLE: The objection is
23 overruled. You can continue.

24 MR. RIESER: I'm sorry. Would you please read

1 back my last question?

2 (Record read as requested.)

3 HEARING OFFICER KNITTLE: Sir, if you can answer
4 that question.

5 BY THE WITNESS:

6 A. Properties -- all properties have a certain
7 value. At this point in time from my perspective, my
8 property has very little value. I'm precluded from
9 being able to sell it or refinance it because of the
10 existing contamination.

11 BY MR. RIESER:

12 Q. The value could be restored in one of two ways,
13 though, correct, at least one of two ways?

14 A. I don't hear a question.

15 Q. It's correct that the value of the property can
16 be restored by ways in addition to remediating the
17 contamination?

18 A. I'd like to hear those ways. I'm not familiar
19 with any way of restoring it.

20 Q. Well, if the value of the property is
21 diminished, for example, then one way is to seek the
22 diminishment of that -- the recovery of the diminishment
23 of that value?

24 A. Are you offering that?

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1 Q. No. I'm just asking whether that's another
2 mechanism that could be used to restore the value of
3 your property?

4 A. If an agreement can be reached as to what the
5 initial value was before contamination.

6 Q. And you don't have an appraisal of what that
7 value was before contamination, correct?

8 A. No.

9 Q. It was on the market prior to the contamination
10 being discovered, correct?

11 A. Yes.

12 Q. It was on the market for a price of about
13 \$850,000?

14 A. Correct.

15 (Short interruption.)

16 BY MR. RIESER:

17 Q. So your bottom line is for purposes of what you
18 want the board to do is you just want the board to order
19 Eva Martin to remove all contamination on the property,
20 correct?

21 A. Yes.

22 Q. And you don't care what that costs?
23 A. Yes.
24 MR. RIESER: I have nothing further.

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1 HEARING OFFICER KNITTLE: Do you have a
2 redirect --

3 MR. PODLEWSKI: Yes.

4 HEARING OFFICER KNITTLE: -- Mr. Podlewski?

5 MR. PODLEWSKI: Yes, Mr. Hearing Officer.

6 REDIRECT EXAMINATION

7 by Mr. Podlewski

8 Q. Mr. Persino, do you recall Mr. Rieser asking you
9 if you saw any spills of perchloroethylene or releases
10 of perchloroethylene at the property at the time you
11 visited it? Do you recall those questions?

12 A. Yes.

13 Q. Would you recognize perc if you saw it?

14 A. Absolutely not.

15 Q. When you -- and Mr. Rieser also asked you if you
16 had visited the premises or the space that was occupied
17 by the Martins after they left -- vacated that space, do
18 you recall those questions?

19 A. Yes.

20 Q. And what was the purpose of you going back and
21 looking at that tenant's space after it had been vacated
22 by the Martins?

23 A. We had negotiated a lease for a new tenant to
24 occupy the premises, and Eva and Jim had agreed to

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1 return the premises to us in what we call in the
2 industry white box condition, which is clean, painted,
3 everything in good condition to be released to a new
4 tenant, so I was going to inspect that work.

5 Q. Were you specifically looking for stains or
6 cracks on the floor?

7 A. No, and I wouldn't because when we lease to
8 tenants, we always deliver tenants with just a bare
9 concrete floor and they put their own floor coverings
10 down, so I really didn't care about the condition of the
11 floor.

12 Q. So you weren't necessarily looking for any
13 stains or cracks?

14 A. No.

15 MR. PODLEWSKI: I have no further questions.

16 HEARING OFFICER KNITTLE: Mr. Rieser?

17 MR. RIESER: I have nothing further.

18 HEARING OFFICER KNITTLE: Thank you, sir. You
19 could step down.

20 Could we go off for a second again?

21 (Discussion had off the record.)

22 (Recess taken.)

23 HEARING OFFICER KNITTLE: We're back on the
24 record after a ten-minute break, and, Mr. Podlewski,

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1 your next witness.

2 MR. PODLEWSKI: Complainant calls Jeffrey
3 McClelland.

4 HEARING OFFICER KNITTLE: Mr. -- how do you say
5 the last name?

6 THE WITNESS: McClelland.

7 HEARING OFFICER KNITTLE: McClelland?

8 THE WITNESS: Yes.

9 HEARING OFFICER KNITTLE: Can you raise your
10 right hand --

11 THE WITNESS: Do you need me to spell it?

12 HEARING OFFICER KNITTLE: Oh, yeah. Do you want
13 him to spell it for you?

14 THE COURT REPORTER: Yeah.

15 THE WITNESS: It's M-c-C-l-e-l-l-a-n-d.

16 HEARING OFFICER KNITTLE: Could you swear him
17 in, please?

18 JEFFREY McCLELLAND,
19 having been first duly sworn, was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 by Mr. Podlewski

23 Q. Mr. McClelland, what's your occupation?

24 A. Environmental consulting.

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1 Q. And did you attend college?

2 A. Yes.

3 Q. And where and when did you attend college?

4 A. Michigan Technological University from 1990 to
5 1994.

6 Q. And you graduated in 1994?

7 A. Yes.

8 Q. And what was your major area of study?

9 A. Environmental engineering.

10 Q. Were you awarded an undergraduate degree?

11 A. Yes, a bachelor of science.

12 Q. In environmental engineering, correct?

13 A. Yes.

14 Q. Have you taken any postgraduate examinations in
15 connection with your environmental engineering degree?

16 A. I've taken the EIT, which is the engineer in
17 training exam.

18 Q. And what kind of exam is that?

19 A. You have to take that exam before you can take
20 the professional engineering exam. Once you pass that
21 exam, you need four years of experience in your field of
22 work and then you can take the professional engineering
23 exam.

24 Q. And that's a state requirement?

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1 A. Yes.

2 Q. Did you pass the engineering training exam?

3 A. Yes.

4 Q. Are you currently a PE?

5 A. No. I'm taking the exam in April.

6 Q. Since your graduation from Michigan
7 Technological University, have you taken any
8 professional courses or continuing education courses in
9 the environmental area?

10 A. I took two courses in air-based remediation in
11 situ treatment. They were both short courses, one in

12 Madison and one in Florida.

13 Q. Now, Mr. McClelland, upon your graduation from
14 Michigan Technological University, where were you first
15 employed?

16 A. SEECO Environmental.

17 Q. And where are they located?

18 A. Tinley Park.

19 Q. How long did you work there?

20 A. Thirteen months.

21 Q. And from what -- what years and months and
22 years?

23 A. September '94 through October '95.

24 Q. And did you have a title while you were employed

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1 at SEECO?

2 A. Not really.

3 Q. What were your duties and responsibilities?

4 A. I did some Phase I environmental site
5 assessments, a couple soil testing jobs for
6 environmental purposes, but it was mainly geotechnical
7 work that was also done by the sister company, SEECO
8 Consultants.

9 Q. When you said soil testing, do you mean a

10 Phase II work?

11 A. Phase II, only a couple Phase II at SEECO.

12 Q. What's a Phase I environmental site assessment?

13 A. A Phase I assessment is basically a historical
14 study regarding the property. You look into the past
15 uses, the current uses, look at the site to see if
16 there's any recognizable environmental conditions at the
17 property and then you make recommendations accordingly.

18 Q. And how many Phase Is were you involved in at
19 SEECO as best as you can recall?

20 A. Maybe ten at the most. They didn't have a lot
21 of environmental work going on there.

22 Q. And what's a Phase II environmental site
23 assessment?

24 A. A Phase II is typically soil and groundwater

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1 soil testing which sometimes leads to groundwater
2 testing. It's usually based on the results of a Phase I
3 where you actually go out and test the site to see if
4 the recognizable environmental conditions have impacted
5 the site.

6 Q. When you say groundwater testing, does that
7 implicate the installation of groundwater monitoring

8 wells?

9 A. Yes.

10 Q. Were you involved in any Phase II while you were
11 employed at SEECO?

12 A. A couple.

13 Q. Do you recall what the scope of your involvement
14 was?

15 A. Mainly just field work, going out and doing soil
16 sampling. Like I said, there wasn't a lot of
17 environmental work at that company.

18 Q. On the Phase IIs that you were involved with
19 while you were employed at SEECO, did any of them
20 involve the installation of groundwater monitoring wells
21 for the sampling of groundwater as best you can recall?

22 A. I think I sampled groundwater maybe only at one
23 well -- or at one site, but I had not done the
24 groundwater installations -- or the groundwater well

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1 installations.

2 Q. So it was a sampling --

3 A. Right.

4 Q. -- activity? Why did you leave SEECO?

5 A. I was bored.

6 Q. Where did you work next?

7 A. Pioneer Environmental.

8 Q. And when did you begin working for Pioneer?

9 A. October of '95.

10 Q. And that's where you're presently employed?

11 A. Yes.

12 Q. What's the nature of Pioneer Environmental's
13 business?

14 A. They're an environmental consulting company. We
15 do Phase Is that you already mentioned and Phase II work
16 and then also remediation work.

17 Q. And what's your present job title?

18 A. Project manager.

19 Q. And what are your current duties and
20 responsibilities as project manager?

21 A. I performed soil testing, installed groundwater
22 monitoring wells, take care of scheduling jobs, analyze
23 the data once it comes in from laboratories, analyze the
24 field data, write reports, make recommendations on what

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1 we see in the field and find out from laboratory
2 testing.

3 Q. So it's correct to say that among your duties

4 and responsibilities are Phase II environmental site
5 assessments?

6 A. And also remediation work.

7 Q. How many Phase IIs have you been involved with
8 during your employment at Pioneer?

9 A. I would guess somewhere around 100.

10 Q. Did any of those Phase IIs involve the
11 installation or sampling of groundwater monitoring
12 wells?

13 A. Yes.

14 Q. Approximately how many?

15 A. Maybe 30 percent of those.

16 Q. So out of the 100 Phase IIs, there were
17 30 percent -- of the 100 Phase IIs that you've been
18 involved with at Pioneer, approximately 33 involved
19 installation or sampling of groundwater monitoring
20 wells?

21 A. Yeah, as an estimate.

22 Q. And of those approximately 33, how many
23 groundwater -- Strike that.

24 Of those 33, approximately how many were you

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1 personally involved with in terms of installing

2 groundwater monitoring wells or sampling groundwater?

3 A. Probably 90 percent of those.

4 Q. Of the Phase IIs you've been involved with at
5 Pioneer, how many involved the investigation into the
6 environmental impact of dry cleaning facilities?

7 A. Maybe four or five.

8 Q. Have you ever been involved with any Phase II
9 environmental site assessment of property --
10 environmental site assessments of property located at
11 5601 to 5617 West Vollmer Road in Matteson, Illinois?

12 A. Yes.

13 Q. Okay, Mr. McClelland, I want to first direct
14 your attention to what's been marked as Complainant's
15 Exhibit E?

16 A. Okay.

17 Q. Do you recognize that document?

18 A. Yes.

19 Q. Can you identify it for us, please?

20 A. It's the remedial investigations services report
21 for 5603 West Vollmer Road in Matteson, Illinois. It's
22 dated September 10th, 1996.

23 Q. And did you prepare that report?

24 A. Yes.

1 Q. You wrote it?

2 A. Yes.

3 Q. Yourself?

4 A. Yes. Well, I wrote it with the help of other
5 people in our office.

6 Q. But you had primary responsibility for its
7 preparation?

8 A. Yes.

9 Q. Directing your attention to page 20 of the
10 report, is that your signature that appears on page 20?

11 A. Yes.

12 Q. For whom was this report prepared?

13 A. For Martin's of Matteson Dry Cleaners and
14 specifically Ms. Eva Martin.

15 Q. And who are they?

16 A. They were the tenants at the 5603 West Vollmer
17 Road within the strip that was at the site.

18 Q. Were they also Pioneer's client?

19 A. Yes.

20 Q. Now, the property that's the subject of the
21 report is 5603 West Vollmer Road; that's correct?

22 A. Correct.

23 Q. And that's a -- can you describe that particular
24 property that's the -- identified at 5603 West Vollmer

1 Road for us?

2 A. It's one unit within a strip mall, so
3 specifically we were testing at the dry cleaner, but
4 then our scope kind of expanded beyond the dry cleaner,
5 on the same property, but not that specific address.

6 Q. So 5603 West Vollmer Road is specifically the
7 dry cleaner space; is that correct?

8 A. Right.

9 Q. As part of the larger shopping center?

10 A. Yes.

11 Q. Now, in this report, did you, among other
12 things, summarize all of the environmental work
13 previously performed by Pioneer at the property as of
14 September 10th, 1996?

15 A. Yes.

16 Q. And are those summaries of the work that was
17 previously performed by Pioneer at the property that are
18 contained in the September 10th, 1996, report true and
19 accurate?

20 A. Yes.

21 Q. Now, Mr. McClelland, I'd like to direct your
22 attention to page 1 of Complainant's Exhibit E. Now, on
23 page 1 of that September 10th, 1996, report, you refer
24 to several other investigations of the property by

1 Pioneer; is that correct?

2 A. Correct.

3 Q. The first was to a Phase I environmental
4 investigation as described in a May 30th, 1995, Phase I
5 environmental site assessment report; is that correct?

6 A. Correct.

7 Q. All right. If you could -- directing your
8 attention to what's been marked as Complainant's
9 Exhibit A, do you recognize that document?

10 A. Yes.

11 Q. And can you identify it for us, please?

12 A. It's a Phase I environmental assessment for 5603
13 West Vollmer Road in Matteson, Illinois.

14 Q. Is that the Phase I environmental site
15 assessment report of the property that's referenced on
16 page 1 of the September 10th, 1996, report that you
17 prepared?

18 A. Yes.

19 Q. Was the Phase I report, what's been marked as
20 Complainant's Exhibit A, prepared by Pioneer?

21 A. Yes.

22 Q. Did you review and rely upon this report in the

23 course of preparing the September 10th, 1996, report
24 that's been marked as Complainant's Exhibit E?

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1 A. Yes.

2 Q. For whom was the Phase I report on the property
3 prepared?

4 A. For Ms. Eva Martin at Martin's of Matteson at
5 5603 West Vollmer Road.

6 Q. Now, again, directing your attention to the
7 September 10th, 1996, report that's been marked as
8 Complainant's Exhibit E and specifically to paragraph
9 two of that report, you wrote that potential
10 environmental concerns were noted at the property in the
11 Phase I report; is that correct?

12 A. Correct.

13 Q. What were those potential environmental
14 concerns?

15 A. The concern was the use of the property as a dry
16 cleaning facility, and we wanted to do soil testing to
17 determine if the subsurface had been impacted.

18 Q. Directing your attention to Complainant's
19 Exhibit A, which is the Phase I report, and specifically
20 to page 13 of that report -- oh, page 15, excuse me.

21 Are you with me? I'm on page 3 --

22 A. Yes.

23 Q. -- of the Phase I report, Complainant's Exhibit

24 A?

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1 MR. RIESER: I thought you were on page 15.

2 MR. PODLEWSKI: Yeah, page 1 --

3 MR. RIESER: Okay.

4 MR. PODLEWSKI: -- Of Complainant's Exhibit A,
5 right.

6 BY MR. PODLEWSKI:

7 Q. The environmental concerns that you referenced
8 in the September 10th, 1996, report that you prepared
9 specifically in paragraph two of page 1 of that report,
10 those are the concerns that are found in the conclusion
11 section of the Phase I report?

12 A. Correct.

13 Q. Now, in the Phase I report, Pioneer recommends
14 that soil testing be performed in order to determine
15 whether the dry cleaning activities have impacted the
16 subject property's subsurface environment; is that
17 correct?

18 A. Correct.

19 Q. And that's found on page 15 of Complainant's
20 Exhibit A, correct?

21 A. Correct.

22 Q. Was such an investigation performed by Pioneer?

23 A. Yes.

24 Q. And is this the original subsurface

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1 investigation that's referred to on page 1 of Pioneer's
2 September 10th, 1996, report?

3 A. Yes.

4 Q. Do you know when that original subsurface
5 investigation was performed at the property by Pioneer?

6 A. I wasn't working there at the time, but it says
7 in the report that it was May 24th, 1995.

8 Q. And is that kind of work commonly known in the
9 environmental consulting industry as a Phase II
10 investigation?

11 A. Yes.

12 Q. Did Pioneer prepare a written report summarizing
13 the result of that investigation?

14 A. Yes.

15 Q. Directing your attention to what's been marked
16 as Complainant's Exhibit B, do you recognize that

17 document?

18 A. Yes.

19 Q. Can you identify it for us, please?

20 A. It is a letter/report summarizing the subsurface
21 investigation results for the 5603 West Vollmer Road
22 property dated June 2nd, 1995.

23 Q. And is that the initial Phase II environmental
24 assessment report of the property that's referenced on

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1 page one of the September 10th, 1996, report?

2 A. Yes.

3 Q. Did you review and rely upon this report in the
4 course of preparing your September 10th, 1996, report?

5 A. Yes.

6 Q. For whom was the June 2, 1995, Phase II report
7 prepared?

8 A. It was addressed to Martin's of Matteson,
9 Ms. Eva Martin, at the property address.

10 Q. And what, if you can recall, was the scope of
11 the initial Phase II investigation of the property in
12 May 1995?

13 A. The scope included the advancement of two soil
14 borings at the site.

15 Q. Are there protocols that Pioneer follows during
16 soil sampling activities?

17 A. Yes.

18 Q. Are those -- and directing your attention to the
19 June 2, 1995, report, which is Complainant's Exhibit B,
20 and specifically Appendix A, are those the protocols
21 that Pioneer follows during soil sampling activities?

22 A. Yes.

23 Q. Who developed these protocols?

24 A. They're ASTM standards, American Society of

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1 Testing Materials.

2 Q. And it's Pioneer's custom and practice to follow
3 these protocols during soil sampling activities; is that
4 correct?

5 A. Correct.

6 Q. Now, according to the soil sampling protocols,
7 soil samples are sent by Pioneer to an independent
8 laboratory for analysis; is that correct?

9 A. Correct.

10 Q. Do you know if that was done in this case?

11 A. Yes, it was.

12 Q. And what laboratory was used to analyze the soil

13 samples?

14 A. Synergic Analytics.

15 Q. Now, you'll also note that Pioneer soil sampling
16 protocol also provides that standard chain of custody
17 procedures are followed, correct?

18 A. Correct.

19 Q. Could you describe Pioneer's standard chain of
20 custody procedures?

21 A. The chain of custody is paperwork that involves
22 labeling the samples and identifying the date that it
23 was sampled, the property it was sampled from, what
24 analyses you'd like to have run on the property, and it

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1 follows the samples from the time when we send it to the
2 laboratory until they get it, and then they also fill it
3 out accordingly when they have it.

4 Q. Is there a form that's used for this purpose?

5 A. Yes.

6 Q. Directing your attention to what's been marked
7 as Complainant's Group Exhibit G, do you recognize that
8 document?

9 A. Yes. It's a chain of custody.

10 Q. Does it appear to be the chain of custody forms

11 for the soil samples that were obtained by Pioneer from
12 the property in May of 1995?

13 A. Yes.

14 Q. Were these forms prepared in the regular course
15 of Pioneer's business?

16 A. I would assume so. Again, I wasn't working
17 there at the time.

18 Q. Now, you'll note that this is a group exhibit.
19 There's two chain of custody forms.

20 A. Okay.

21 Q. Are these for the same soil samples?

22 A. It looks like the same samples.

23 Q. Would this be perhaps an original and a revised
24 chain of custody form?

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1 A. That's what it looks like, yes.

2 Q. Now, did Pioneer receive any results from the
3 laboratory from Synergic Analytics, laboratory results
4 on the soil samples that were taken from the property
5 and sent to Synergic Analytics for analysis?

6 A. Yes.

7 Q. Okay. Directing your attention again to Exhibit
8 B, Appendix C, are those the laboratory report sheets or

9 the laboratory analysis reports that Pioneer received
10 back from Synergic Analytics on the analysis that were
11 performed on the soil samples?

12 A. Yes.

13 Q. And do those same laboratory report sheets
14 appear on Complainant's Exhibit E, which is the
15 September 10th, 1996, report at Appendix D? You could
16 take a look at that.

17 A. Yes, they do.

18 Q. Now, are the laboratory results summarized in
19 the June 2, 1995, Phase II report, which is
20 Complainant's Exhibit B on table one of that report?

21 A. Yes, they are.

22 Q. Are they also summarized in the September 10th,
23 1996, report which is Complainant's Exhibit E at table
24 one, one of three?

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1 A. Yes.

2 Q. What do the laboratory reports reveal about the
3 property?

4 A. It reveals that tetrachloroethylene or PCE was
5 detected at the property.

6 Q. Is that also know as perchloroethylene?

7 A. Perchloroethylene, correct.

8 Q. And where at the property was perchloroethylene
9 detected?

10 A. It was detected at the two locations where soil
11 samples were collected.

12 Q. Were they in the vicinity of dry cleaning
13 equipment?

14 MR. RIESER: I'm going to object to the lack of
15 foundation for that question.

16 BY MR. PODLEWSKI:

17 Q. Is there a diagram that's included in
18 Complainant's Exhibit B, the June 2, 1995, report that
19 depicts where the two soil borings were located?

20 A. Yes.

21 Q. And is that --

22 HEARING OFFICER KNITTLE: Just -- let me
23 interrupt. Just for the record, it looks as if he's
24 going to go on with a different line of questioning, and

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1 has sort of withdrawn that question and is now laying
2 the foundation.

3 MR. RIESER: That's what it sounds like.

4 HEARING OFFICER KNITTLE: So I'm not going to

5 rule on the objection.

6 MR. RIESER: Fair enough.

7 BY MR. PODLEWSKI:

8 Q. And is that the -- is that drawing entitled site
9 plan?

10 A. Yes.

11 Q. And were the two borings located in the vicinity
12 of the dry cleaning equipment at the property?

13 A. Yes.

14 Q. Now, again, directing your attention to the
15 June 2, 1995, Phase II report, which is Complainant's
16 Exhibit B, it contains a -- and specifically page 5 of
17 that report, the summary and conclusion section, do you
18 see that?

19 A. Yes.

20 Q. Now, in that summary and conclusion section, it
21 states, quote, "further investigation would be necessary
22 in order to define the extent of subsurface impacts
23 identified during this preliminary soil testing
24 episode," close quote; is that correct?

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1 A. Correct.

2 Q. Was such an additional investigation performed?

3 A. Yes.

4 Q. Is this the second subsurface investigation you
5 referred to on page 1 of the September 10th, 1996,
6 report?

7 A. Yes.

8 Q. That's Complainant's Exhibit E? Yes?

9 A. Yes.

10 Q. When was this investigation performed at the
11 property by Pioneer?

12 A. June 14th, 1995.

13 Q. Did Pioneer prepare a written report summarizing
14 the results of this investigation?

15 A. Yes.

16 Q. Directing your attention to what's been marked
17 as Complainant's Exhibit C, if you take a moment to look
18 at that document and then you can tell me whether or not
19 you recognize it.

20 A. Yes, I recognize it.

21 Q. And what is it?

22 A. It's a subsurface investigation report for
23 5603 West Vollmer Road, but it looks like it's missing
24 the cover page, so I don't know the date.

1 Q. Would this be the second Phase II environmental
2 site assessment report of the property that you
3 reference on pages 1 and 2 of the September 10th, 1996,
4 report you prepared?

5 A. Yes.

6 Q. And you state in that report that Exhibit C was
7 dated June 28th, 1995; is that correct?

8 A. Correct.

9 Q. Did you review and rely upon this report, which
10 has been marked as Complainant's Exhibit C, in the
11 course of preparing the September 10th, 1996, report?

12 A. Yes.

13 Q. For whom was the June 28th, 1995, Phase II
14 report prepared?

15 A. Again, I don't have a cover page, but I would
16 assume it was also prepared for Martin's of Matteson.

17 Q. What was the scope of the second Phase II
18 investigation of the property in June 1995?

19 A. The advancement of six soil borings.

20 Q. Now, directing your attention to Complainant's
21 Exhibit C, following page 8 there is a site -- a page
22 that's marked site diagram soil boring locations; is
23 that correct?

24 A. Correct.

1 Q. And does this diagram depict or show where the
2 additional soil borings were located at the property?

3 A. Yes.

4 Q. Now, the second Phase II report, Complainant's
5 Exhibit C, contains the same soil sampling protocols
6 that were attached or included with the initial Phase II
7 report of June 2, 1995; is that correct?

8 A. That's correct.

9 Q. And it's Pioneer's custom and practice to follow
10 those protocols?

11 A. Yes.

12 Q. Is that correct?

13 A. Correct.

14 Q. And according to the soil sampling protocols,
15 soil samples were sent by Pioneer to an independent
16 laboratory for analysis; is that correct?

17 A. Correct.

18 Q. Was that done in this case?

19 A. Yes.

20 Q. And what laboratory was used?

21 A. Synergic Analytics.

22 Q. And Pioneer's soil sampling protocols also
23 provide that standard chain of custody procedures are
24 followed; is that correct?

1 A. Correct.

2 Q. Directing your attention to what's been marked
3 as Complainant's Exhibit H, do you recognize this
4 document?

5 A. Yes.

6 Q. And can you identify it for us, please?

7 A. It's another chain of custody for 5603 West
8 Vollmer Road.

9 Q. Does it appear to be the chain of custody forms
10 for the samples obtained by Pioneer from the property in
11 June 1995 --

12 A. Yeah.

13 Q. -- and sent to Synergic Analytics for analysis?

14 A. Yes.

15 Q. Did Pioneer receive any laboratory analysis
16 results?

17 A. Yes.

18 Q. And directing your attention to Complainant's
19 Exhibit C -- Strike that.

20 No. Directing your attention to Complainant's
21 Exhibit C, are those laboratory analysis results
22 attached to this exhibit?

23 A. Yes.

24 Q. And are the laboratory results also summarized

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1 in Complainant's Exhibit C, which is the second Phase II
2 report at table one which appears on page 6?

3 A. Yes.

4 Q. And are those laboratory results also summarized
5 in the September 10th, 1996, report specifically
6 directing your attention in Complainant's Exhibit E to
7 table one, two of three?

8 A. Yes.

9 Q. What do the laboratory results reveal?

10 A. That there was some additional borings that
11 detected concentrations of perc and also some of the
12 degradation compounds which would include
13 trichloroethene and 1, 2 dichloroethane.

14 Q. Now, according to the September 10th, 1996,
15 report, which is Complainant's Exhibit E, subsequent to
16 the June 1995 soil testing, additional soil testing at
17 the property was conducted in order to better
18 characterize the lateral and vertical extent of
19 contamination; is that correct?

20 A. Correct.

21 Q. Were you involved in this additional work, the

22 work that was done subsequent to June 1995?

23 A. Yes.

24 Q. No. Strike that. Yes. Subsequent to June

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1 1995, you were involved in additional work at the
2 property?

3 A. Yes. I was hired in October of 1995, so after
4 that point, I would have been involved.

5 Q. And in what capacity were you involved in
6 performing additional environmental work at the
7 property?

8 A. Project manager.

9 Q. Do you remember when this additional work took
10 place?

11 A. I'd have to look at the report.

12 Q. Why don't you. This is the September 10th,
13 1996, report. Would I be wrong if I told you that that
14 work occurred in April of 1996?

15 A. That looks to be right.

16 Q. Okay. Now, did you prepare a written report
17 describing the third Phase II environmental assessment
18 of the property?

19 A. I don't remember if there was a report or if it

20 was all included in this one.

21 Q. I'm going to direct your attention to what's
22 been marked as Complainant's Exhibit D.

23 A. Okay.

24 Q. If you could take a look at that. Do you

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1 recognize that document?

2 A. Yes.

3 Q. And could you identify it for us, please?

4 A. It's a site remediation update for 5603 Vollmer
5 Road dated May 8th, 1996.

6 Q. Does that report discuss the work that -- the
7 field work that was done at the property in April of
8 1996?

9 A. Yes, it does.

10 Q. And directing your attention to page 2 of that
11 letter report, is that your signature that appears on
12 page 2?

13 A. Yes.

14 Q. So you prepared this letter report?

15 A. Yes.

16 Q. For whom was this report prepared?

17 A. Martin's of Matteson at 5603 West Vollmer Road

18 to the attention of Ms. Eva Martin.

19 Q. Describe your involvement in this third Phase II
20 work at the property as best as you can recall?

21 A. Again, I was the project manager, so it would
22 have involved the project management activities that we
23 previously discussed.

24 Q. And were other Pioneer personnel involved in the

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1 work?

2 A. Yes.

3 Q. But you supervised them; is that correct?

4 A. I supervised people in the field, but there are
5 also people in the office that were, I guess,
6 supervising me.

7 Q. But as project manager, you supervised the field
8 work?

9 A. Right.

10 Q. What was the scope of this third Phase II
11 investigation of the property in April 1996?

12 A. The scope included additional soil testing, and
13 I guess we installed some wells also.

14 Q. Let's focus on the soil testing first.

15 Additional soil borings were advanced at the property?

16 A. Yes.

17 Q. And do you recall how many soil borings were
18 advanced at the property?

19 A. No, I don't.

20 Q. Do you remember how many soil samples were taken
21 in the course of doing that environmental work?

22 A. I'd have to look at the reports.

23 Q. Why don't you take a minute and look at the
24 reports.

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1 A. There were a total of 18 soil borings advanced
2 at the site throughout all the work that was done.

3 Q. But how many were advanced in April of 1996?

4 A. I don't know exactly. It looks like this report
5 is missing some soil boring logs that would have those
6 dates on it.

7 Q. But soil samples were obtained from the
8 property; is that correct?

9 A. Correct.

10 Q. And directing your attention to site diagram --
11 directing your attention to the detailed diagram that's
12 attached to or included with Complainant's Exhibit D as
13 figure one, do you see that?

14 A. Yes.

15 Q. Does that diagram, among other things, show
16 where the soil borings were located?

17 A. Yes.

18 MR. RIESER: Excuse me, Joe. Could we go off
19 the record?

20 MR. PODLEWSKI: Sure. Let's go off.

21 (Discussion had off the record.)

22 MR. PODLEWSKI: Apparently what's been marked as
23 Complainant's Exhibit E, which is the September 10th,
24 1996, report that Mr. McClelland prepared, is not

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1 complete and to the extent that it does not contain all
2 the soil boring logs for all the work that Pioneer did
3 at the property. Mr. Rieser has provided us with a copy
4 of -- another copy of -- Strike that.

5 Mr. Rieser has provided us with a copy of the
6 September 10th, 1996, report that was submitted by the
7 complainant in support of a previous motion for summary
8 judgment which does appear to be complete and contain
9 all the soil boring logs. What we will do is tomorrow
10 before we commence the -- or continue the hearing
11 tomorrow is that I will provide copies of the new

12 Exhibit E, what's been provided to us by Mr. Rieser, and
13 we will substitute that exhibit for the Exhibit E that
14 we've used thus far and to which Mr. McClelland has been
15 testifying.

16 HEARING OFFICER KNITTLE: And if I can note, the
17 correct Exhibit E is what we're going to use from here
18 on out for the testimony of this witness?

19 MR. PODLEWSKI: Correct, but I don't think that
20 the use -- the previous use of the former Exhibit E in
21 any way alters any of his testimony.

22 MR. RIESER: No, I wouldn't suspect it would.

23 HEARING OFFICER KNITTLE: No, I don't think so
24 either, and we'll accept that and we'll substitute it

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1 tomorrow as long as he makes copies for everybody.

2 MR. PODLEWSKI: But I do want to have
3 Mr. McClelland, if he could, look at what we're
4 proposing to substitute as Exhibit E, and if you could
5 take a moment to look through that and tell us whether
6 or not it's complete or not because he did prepare that
7 report.

8 HEARING OFFICER KNITTLE: It's probably a good
9 idea.

10 THE WITNESS: This one looks to be complete.

11 MR. PODLEWSKI: Okay. I don't know what the
12 last question was, but we'll move on.

13 BY MR. PODLEWSKI:

14 Q. Mr. McClelland, based upon your review of the
15 September 10th, 1996, report, Exhibit E, does that
16 report contain soil boring logs for all the work that
17 Pioneer conducted at the property?

18 A. Yes, it does.

19 Q. And looking at that report, how many soil
20 borings were advanced by Pioneer during the work in
21 April 1996?

22 A. Soil borings B9 through B15 were advanced in
23 April.

24 Q. And does -- and again directing your attention

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1 back to Complainant's Exhibit D, which is the May 8th,
2 1996, letter report --

3 A. Yes.

4 Q. -- and figure one detailed diagram, do you see
5 that?

6 A. Yes.

7 Q. Does that figure or diagram depict where those

8 additional soil borings were located?

9 A. Yes.

10 Q. And did you prepare the site diagram depicting
11 the soil boring locations?

12 A. Yes.

13 Q. Now, soil samples were obtained from the soil
14 borings and sent to the laboratory for analysis; is that
15 correct?

16 A. Correct.

17 Q. And the same soil sampling protocols that we've
18 already discussed in connection with the previous soil
19 sampling at the property were followed by Pioneer during
20 the soil sampling in April 1996?

21 A. Correct.

22 Q. Soil samples were sent to Synergic Analytics for
23 analysis; is that correct?

24 A. Correct.

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1 Q. And again, Pioneer's soil sampling protocols
2 provide that standard chain of custody procedures are
3 followed; is that correct?

4 A. Correct.

5 Q. And what were the chain of custody and

6 procedures followed by Pioneer in this case?

7 A. The same as we previously described.

8 Q. Directing your attention to what's been marked
9 as Complainant's Exhibit I, Group Exhibit I, do you
10 recognize that document?

11 A. Yes.

12 Q. Can you identify it for us?

13 A. It's a chain of custody for samples obtained
14 from 5603 West Vollmer Road and submitted to Synergic
15 Analytics.

16 Q. And were these the samples that were obtained
17 during the April 1996 field work?

18 A. Yes.

19 Q. And samples were taken it appears from borings
20 9, 10 and 11, correct?

21 A. Correct.

22 Q. And also samples were taken and sent to the
23 laboratory analysis -- sent to the laboratory for
24 analysis from borings B12, B13 and B15; is that correct?

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1 A. Correct.

2 Q. There were no samples that were sent to the
3 laboratory for analysis from B14; is that correct?

4 A. Correct.

5 Q. And there were two samples that were sent to the
6 lab from B13, but only one was requested to be analyzed;
7 is that correct?

8 A. Correct.

9 Q. And is that your signature that appears at the
10 bottom left-hand side of both sheets on Complainant's
11 Exhibit I?

12 A. Yes.

13 Q. Did Pioneer receive any results from Synergic
14 Analytics regarding the analysis of these soil samples?

15 A. Yes.

16 Q. And directing your attention to Complainant's
17 Exhibit D -- Strike that.

18 Directing your attention to Complainant's
19 Exhibit E, which is the September 10th, 1996, report,
20 and specifically Appendix D --

21 A. Okay.

22 Q. -- does that appendix contain the laboratory
23 analysis reports that you received from Synergic
24 Analytics relating to the soil samples that were taken

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1 from the property by Pioneer in April of 1996?

2 A. Yes.

3 Q. And are those laboratory results summarized in
4 the third Phase II report that's Complainant's Exhibit D
5 at table two?

6 A. Yes.

7 Q. Are they also summarized in the September 10th,
8 1996, report at table number one, three of three?

9 A. Yes.

10 Q. And what do the results of the third Phase II
11 investigation of the property reveal about the presence
12 of perc and its degradation compounds in the soil?

13 A. Again, they show that in some of the samples
14 perc and some degradation compounds were detected.

15 Q. Did the third Phase II investigation also
16 encompass the taking of groundwater samples from the
17 property?

18 A. Yes.

19 Q. How were the groundwater samples obtained?

20 A. Most of the samples were obtained from wells and
21 there was one sample obtained from a grab sample from an
22 open bore hole.

23 Q. Do you recall how many groundwater monitoring
24 wells were installed at the property by Pioneer in April

1 of 1996?

2 A. I believe it was four wells.

3 Q. And there is also one grab sample taken?

4 A. Correct.

5 Q. Again, directing your attention to Complainant's
6 Exhibit D, the May 8th, 1996, letter report, and
7 specifically figure two --

8 A. Okay.

9 Q. -- does this figure two detailed diagram depict
10 where the groundwater monitoring wells were installed?

11 A. Yes.

12 Q. Did you prepare this diagram?

13 A. Yes.

14 Q. Now, the field work that was done in April of
15 1996, this was the first time that any groundwater
16 samples were obtained from the property by Pioneer; is
17 that correct?

18 A. Correct.

19 Q. And I note that the May 8th, 1996, letter report
20 does not contain any protocols for groundwater sampling
21 at the property?

22 A. Correct.

23 Q. But looking at the September 10th, 1996, report
24 at Appendix C, that document does contain a protocol for

1 groundwater monitoring well installation sampling, does
2 it not?

3 A. Yes, it does.

4 Q. Who developed these protocols that are attached
5 to Exhibit E?

6 A. There the U.S. EPA protocols.

7 Q. Is it Pioneer's custom and practice to follow
8 these protocols during groundwater sampling activities?

9 A. Yes, whenever we can.

10 Q. What do you mean whenever we can?

11 A. Well, it states that hollow stem augers are used
12 in the borings and at the site. We were limited by
13 space to doing hand augers for lots of the wells, so we
14 deviated from the protocol in that.

15 Q. And with that caveat, were these groundwater
16 protocols followed during the groundwater sampling
17 activities at the property in April of 1996?

18 A. The installation protocols were.

19 Q. When you say installation, does that include
20 construction of the wells?

21 A. Construction of the wells, yes.

22 Q. Okay. So the wells were constructed in
23 accordance with the protocols that are set forth in
24 Appendix C to the September 10th, 1996, report?

1 A. Yes.

2 Q. But the sampling didn't follow those protocols
3 to the letter?

4 A. Exactly.

5 Q. Because hand augers were used instead of hollow
6 stem augers to dig bore holes for the installation of
7 the wells; is that correct?

8 A. Can you repeat that?

9 MR. RIESER: I'm going to object because I don't
10 think that correctly characterizes his testimony.

11 MR. PODLEWSKI: Okay.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. PODLEWSKI:

14 Q. But your testimony is that these protocols, with
15 respect to sampling, were not specifically followed, the
16 sampling of groundwater?

17 A. Yes.

18 Q. To what extent were they not specifically
19 followed?

20 A. There was very low yield from the wells. We
21 weren't able to develop by purging five to ten well
22 volumes or sample by purging three to five well volumes.

23 Q. Were those the only departures from the
24 protocols with respect to sampling the groundwater from

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1 the wells that were installed?

2 A. Yes.

3 Q. What happened to the groundwater samples that
4 were collected by Pioneer at the property during this
5 round of sampling in April of 1996?

6 A. They were submitted to Synergic Analytics for
7 analysis.

8 Q. And again the -- Strike that.

9 The groundwater sampling -- groundwater
10 monitoring well installation sampling protocols are
11 included in the September 10th, 1996, report provides
12 that standard chain of custody procedures are followed;
13 is that correct?

14 A. Yes, it is correct.

15 Q. And were they followed by Pioneer in this case?

16 A. Yes.

17 Q. Directing your attention to what's been marked
18 as Complainant's Exhibit J, if you take a moment to take
19 a look at that document and tell me if you recognize it?

20 A. Yes, I recognize it.

21 Q. And could you identify it for us, please?

22 A. They're four pages of chain of custodies for
23 groundwater samples collected at 5603 West Vollmer Road.

24 Q. So the first -- and is it correct that the first

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1 two pages are for the field blank samples and samples
2 from monitoring well 1, monitoring well 4 and boring
3 B15; is that correct?

4 A. That's correct.

5 Q. And boring B15 is the grab sample that you
6 previously testified about?

7 A. Correct.

8 Q. Is the second page of Complainant's Group J a
9 revised -- is the second page a revision of the chain of
10 custody form that is the first page of that group
11 exhibit?

12 A. Yes.

13 Q. And how does it differ from the first page?

14 A. On the first page, the grab sample water that we
15 collected from B15 was on hold, and the second page, we
16 indicated to the laboratory that we wanted to have that
17 sample analyzed.

18 Q. And then directing your attention to the third

19 and fourth pages of this group exhibit.

20 A. Okay.

21 Q. They relate again to samples taken from
22 monitoring wells one, three, four, five and six; is that
23 correct?

24 A. Correct.

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1 Q. And is the fourth page of this group exhibit a
2 revision of the chain of custody form that is page 3 of
3 this group exhibit?

4 A. Yes.

5 Q. And how is it different from page 3?

6 A. On the first page, we indicated that we wanted
7 all samples analyzed. On this second page, we indicated
8 that MW-4 was not to be analyzed.

9 Q. Do you recall why MW-4 -- why the decision was
10 made not to analyze groundwater sample from that well?

11 A. Most likely due to cost.

12 Q. Now, did Pioneer receive any results from the
13 laboratory on the analysis of these groundwater samples?

14 A. Yes.

15 Q. Directing your attention to Complainant's
16 Exhibit E, again which is the September 10th, 1996,

17 report, Appendix D, are those the results that you
18 received from Synergic Analytics?

19 A. Yes.

20 Q. By you I mean Pioneer.

21 A. Yes.

22 Q. And are the laboratory results -- those
23 laboratory results summarized in the third Phase II
24 report which is Exhibit D --

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1 A. Yes.

2 Q. -- at table three?

3 A. Yes.

4 Q. And are they also summarized in the
5 September 10th, 1996, report at table two, one of four
6 and two of four?

7 A. Yes.

8 Q. And what did the results of the third Phase II
9 of the property in April of 1996 reveal about the
10 presence of perc and its degradation compounds in the
11 groundwater?

12 MR. RIESER: I'm going to object to the question
13 that it calls for Mr. McClelland to provide an answer as
14 an expert in hydrogeology which I don't think the

15 testimony has shown that he is.

16 HEARING OFFICER KNITTLE: Mr. Podlewski?

17 MR. PODLEWSKI: He propped the report. I think
18 he can testify as to what the results of the laboratory
19 analysis that were received from Synergic Analytics
20 revealed.

21 MR. RIESER: And I understand that, but in terms
22 of what it means in terms of the site and whether
23 there's groundwater contamination at the site, I think
24 that's where we have to draw the line.

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1 HEARING OFFICER KNITTLE: All right. I'm going
2 to overrule the objection, but it will be noted for the
3 record.

4 MR. RIESER: Thank you.

5 HEARING OFFICER KNITTLE: You can go ahead and
6 answer the question.

7 BY MR. PODLEWSKI:

8 Q. Do you want me to repeat the question?

9 A. Please.

10 MR. PODLEWSKI: Can you read it back?

11 (Record read as requested.)

12 BY MR. PODLEWSKI:

13 Q. And its degradation compounds in the groundwater
14 was the question.

15 A. Right. The results of the groundwater samples
16 indicated that there was perc contamination and also
17 some of the degradation compounds were also present.

18 Q. Subsequent to the completion of the third
19 Phase II subsurface investigation in April of 1996 and
20 the issuance of this May 8th, 1996, letter report, which
21 is identified as Complainant's Exhibit D, did Pioneer
22 conduct any further investigation into the environmental
23 condition of the property either through the taking of
24 soil or groundwater samples?

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1 A. I believe there were three additional soil
2 borings that were advanced that were subsequently
3 converted into wells.

4 Q. All right. And what was your -- were you
5 involved in this work?

6 A. Yes.

7 Q. And what was your -- the nature of your
8 involvement?

9 A. Again, it was -- I was acting as a project
10 manager.

11 Q. And did you supervise field activities?

12 A. Yes.

13 Q. What was the scope of this fourth Phase II
14 investigation of the property -- well, strike that.

15 Do you recall when these additional
16 investigations were conducted at the property, and I'm
17 talking about the investigations subsequent to the
18 issuance of the third Phase II report on May 8th, 1996?

19 A. On June 14th, 1996, the borings were advanced
20 and the wells were installed.

21 Q. So the additional work involved the taking of
22 soil samples -- no. Strike that.

23 So the additional work involved advancement of
24 some additional soil borings and installation of

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1 additional groundwater monitoring wells?

2 A. Correct.

3 Q. How were the groundwater -- let's focus in on
4 the groundwater for the moment. How were the
5 groundwater samples obtained? Were they from existing
6 wells, from new wells, in the course of this additional
7 Phase II work?

8 A. They are obtained from the three monitoring

9 wells that we're installed in that June '96 field
10 testing.

11 Q. Directing your attention to Complainant's
12 Exhibit E, figure two, do you see that?

13 A. Yes.

14 Q. Did you prepare this site diagram?

15 A. Yes.

16 Q. Does it accurately depict the locations of all
17 soil borings and monitoring wells that Pioneer placed at
18 the property in the course of its investigation into the
19 environmental condition of the property as of
20 September 10th, 1996?

21 A. Yes.

22 Q. Now, you testified that there was some
23 additional groundwater sampling that was done at the
24 property in June of 1996; is that correct?

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1 A. Correct.

2 Q. And were the same groundwater sampling protocols
3 that have originally had been discussed with respect to
4 previous groundwater sampling by Pioneer, were they
5 followed by Pioneer during the groundwater sampling in
6 June of 1996?

7 A. Yes.

8 Q. Do you recall how many groundwater samples were
9 obtained for analysis during this round of groundwater
10 sampling?

11 A. No.

12 Q. Do you know how many samples were sent to the
13 laboratory for analysis?

14 A. No, I don't.

15 Q. Mr. McClelland, directing your attention to
16 what's been marked as Complainant's Group Exhibit K, do
17 you see that document?

18 A. Yes.

19 Q. And can you identify that document for us,
20 please?

21 A. It's another chain of custody for groundwater
22 samples collected from 5603 Vollmer Road.

23 Q. Now, this chain of custody form is dated
24 May 17th, 1996; is that correct?

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1 A. Correct.

2 Q. So is it possible that some additional
3 groundwater samples were, in fact, taken in May of '96
4 instead of June of '96 or in addition to June of '96?

5 A. In addition to June '96.

6 Q. Okay. And this Complainant's Group Exhibit K,
7 the first page identifies samples taken from wells MW-2,
8 3, 5 and 6; is that correct?

9 A. Correct.

10 Q. And do you recall whether or not those were
11 existing groundwater monitoring wells or new wells that
12 were installed after May 8th of 1996?

13 A. I believe those all would have been wells that
14 were installed in the April investigations which were
15 summarized in the May 8th report.

16 Q. And the second page of this Group Exhibit K
17 identifies samples taken from monitoring wells seven,
18 eight and nine?

19 A. Yes.

20 Q. And were those new wells?

21 A. Those were wells that were installed in June,
22 yes.

23 Q. Now, Pioneer's groundwater sampling protocols
24 standard that chain of custody procedures are followed

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1 in the handling of groundwater samples that are taken at
2 the property; is that correct?

3 A. Correct.

4 Q. And so the chain of custody procedures that you
5 previously testified to were the same chain of custody
6 procedures that were followed during this round of
7 sampling of the groundwater at the property?

8 A. Yes.

9 Q. And these, Complainant's Group Exhibit K, are
10 the chain of custody forms that relate to that last
11 round of groundwater sampling?

12 A. Yes, the last two rounds of groundwater
13 sampling.

14 Q. All right. And that's your signature that
15 appears on the bottom left-hand side of both of these
16 pages that are Complainant's Group Exhibit K?

17 A. Yes.

18 Q. Did Pioneer receive any results from the lab --
19 Strike that.

20 These groundwater samples were sent to a
21 laboratory; is that correct?

22 A. Correct.

23 Q. Were they sent to Synergic Analytics?

24 A. Yes.

1 Q. And were results received from Synergic
2 Analytics for these two rounds of groundwater sampling?

3 A. Yes.

4 Q. Directing your attention to the September 10th,
5 1996, report, which is Complainant's Exhibit E, at
6 Appendix D, are the laboratory analysis reports --
7 Strike that.

8 Do the Synergic Analytic laboratory reports on
9 these groundwater samples -- do those reports appear in
10 the September 10th, 1996, report as -- or at Appendix D?

11 A. Yes.

12 Q. And are those laboratory results also summarized
13 in the September 10th, 1996, report in table number two,
14 three of four and four of four?

15 A. Yes.

16 Q. Subject to David's objection, what do the
17 results of the fourth Phase II of the property reveal
18 concerning the existence of perc and its degradation
19 compounds in the groundwater at the property?

20 MR. RIESER: I'm going to make the same
21 objection I made last time.

22 HEARING OFFICER KNITTLE: Okay. It's noted, and
23 the same result, it will be overruled.

24 BY THE WITNESS:

1 A. It reveals that the groundwater samples
2 collected in May of '96, two of the wells had
3 concentrations of perc exceeding objectives and the June
4 sampling showed all clean results.

5 BY MR. PODLEWSKI:

6 Q. And the June sampling was from the new wells
7 that were installed at the property, correct?

8 A. Yes.

9 Q. Seven, eight and nine?

10 A. Correct.

11 Q. Now, directing your attention to the
12 September 10th, 1996, report, Complainant's Exhibit E,
13 there is two -- in figures one -- and I believe it's
14 figure four specifically. Actually, figure three and
15 figure four. Do you have those?

16 A. Yes.

17 Q. Now, figure three is what?

18 A. It's our estimated extent of impacted soil at
19 the site.

20 Q. And you prepared this figure?

21 A. Yes.

22 Q. And figure four is what?

23 A. Figure four is our estimated extent of
24 groundwater impacts specifically for perc, and it also

1 shows some predicted contours.

2 Q. Is it correct to state that at least a portion
3 of the Martin's of Matteson property is at the center of
4 both of these contaminant plumes?

5 MR. RIESER: I'm going to have the same
6 objection with respect to --

7 HEARING OFFICER KNITTLE: Could you restate it?

8 MR. RIESER: Yes, I have the same objection with
9 respect to Mr. McClelland's ability to identify
10 groundwater impacts and draw opinions about groundwater
11 impacts.

12 HEARING OFFICER KNITTLE: Mr. Podlewski,
13 anything?

14 MR. PODLEWSKI: He drew the site diagrams, so he
15 can testify as to why he located -- why he drew them the
16 way he did.

17 HEARING OFFICER KNITTLE: I'm going to overrule
18 the objection. You can answer the question.

19 THE WITNESS: Can you repeat the question,
20 please?

21 MR. PODLEWSKI: Yes. I'll ask the court
22 reporter to read it back.

23 (Record read as requested.)

24 BY MR. PODLEWSKI:

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1 Q. As depicted on figures three and four.

2 A. Yes.

3 Q. And why did you draw the diagrams in that
4 fashion? Why did you depict a portion of the Martin's
5 of Matteson site at the center of both the contaminant
6 plumes for soil and groundwater?

7 A. I drew it based on the results of -- on figure
8 three, it was the result -- based on the results of the
9 soil testing, and on figure four, it was based on the
10 results of the groundwater samples collected at the
11 site.

12 Q. Which showed what?

13 A. Which showed that there was perc contamination.

14 Q. In both the soil and groundwater?

15 A. Yes.

16 Q. Would it be correct to say that you drew figures
17 three and four and located the Martin's of Matteson site
18 or at least a portion of the Martin's of Matteson site
19 at the center of the contaminant plumes because that
20 location was the likely source of the contamination?

21 MR. RIESER: I'm going to object to that as a

22 leading question.

23 HEARING OFFICER KNITTLE: Sustained.

24 MR. PODLEWSKI: I'll withdraw it. I have no

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1 further questions.

2 HEARING OFFICER KNITTLE: Let's go off for just
3 a second.

4 (Discussion had off the record.)

5 HEARING OFFICER KNITTLE: We're back on the
6 record, and we're having a discussion about what
7 exhibits are actually in and what exhibits have not been
8 moved and, Mr. Podlewski, you have something you
9 wanted --

10 MR. PODLEWSKI: Right. What's already in are
11 Exhibits A through F, and Mr. McClelland has testified
12 and given testimony on Exhibits A, which is the Phase I
13 report; B, the June 2, 1995, report; C, the June 28th,
14 1995, report; D, the May 8th, 1996, letter report; and
15 E, the September 10th, 1996, Pioneer report which
16 summarizes all that previous work. Those have already
17 been stipulated as admissible.

18 HEARING OFFICER KNITTLE: A through F?

19 MR. PODLEWSKI: A through E.

20 HEARING OFFICER KNITTLE: A through E.

21 MR. PODLEWSKI: That's all Mr. McClelland has
22 testified to.

23 HEARING OFFICER KNITTLE: And, Mr. Rieser, you
24 have no objection to that statement?

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1 MR. RIESER: No. That's absolutely right.

2 HEARING OFFICER KNITTLE: Those are all then
3 admitted into evidence.

4 MR. RIESER: Right. Absolutely.

5 MR. PODLEWSKI: We also have stipulated to
6 Exhibit F, which Mr. McClelland did not testify to, but
7 that's identified as the Saeid Yazdani affidavit.

8 HEARING OFFICER KNITTLE: Okay.

9 MR. PODLEWSKI: I'm not going to present any
10 testimony on that point, but that has been stipulated
11 to.

12 HEARING OFFICER KNITTLE: Okay.

13 MR. PODLEWSKI: Now, I've also, in the course of
14 my direct examination, had marked as exhibits, Exhibits
15 G, H, I, J and K which are all chain of custody forms
16 that were prepared by Pioneer in connection with the
17 work that they've done at the property.

18 G is the chain of custody for the May 24th,
19 1995, soil samples from B1 and B2. H is the chain of
20 custody for the June 1995 soil samples from B3 through
21 B8. I is the chain of custody for the April 1996 soil
22 sampling.

23 J is the chain of custody for the April 1996
24 groundwater sampling, and K is the chain of custody for

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1 groundwater sampling that took place in May and June of
2 1996. And at this point, I would like to move to have
3 those introduced into evidence.

4 HEARING OFFICER KNITTLE: Mr. Rieser?

5 MR. RIESER: No objection.

6 HEARING OFFICER KNITTLE: Those are all admitted
7 as well, and now, we'll close your direct examination of
8 this witness. Also pursuant to an off-the-record
9 discussion, we're going to break for lunch before we
10 conduct cross-examination.

11 You didn't have an objection to that, did
12 you, Mr. Podlewski?

13 MR. PODLEWSKI: That's fine.

14 HEARING OFFICER KNITTLE: Let's break for an
15 hour.

16 MR. PODLEWSKI: So resume at about 12:35?

17 HEARING OFFICER KNITTLE: Yes.

18 (Recess taken.)

19 HEARING OFFICER KNITTLE: We're back after a
20 lunch break and, Mr. McClelland, you remember you're
21 still under oath, and we're going to start
22 cross-examination with Mr. Rieser.

23 THE WITNESS: Okay.

24 CROSS-EXAMINATION

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1 by Mr. Rieser

2 Q. Mr. McClelland, as of April 1996, how many
3 groundwater projects -- how many projects involving the
4 sampling of groundwater had you been involved in?

5 A. I have no idea. I think my previous testimony
6 was that I have done approximately 100 Phase Is since
7 I've been at Pioneer and about 30 percent of those
8 probably involve groundwater. So as of that time, there
9 probably were not a lot.

10 Q. And I think your testimony was that you
11 graduated in -- graduated from college in 1994 and then
12 had worked for SEECO for 13 months so that you had
13 started with -- correct?

14 A. Correct.

15 Q. And that with SEECO you hadn't done any
16 groundwater sampling work, correct?

17 A. I've done some sampling, but not groundwater and
18 well installation.

19 Q. You hadn't been involved in the installation of
20 groundwater monitoring wells with SEECO?

21 A. Correct.

22 Q. So you started with Pioneer in October of 1995,
23 and this work was done in April of 1996, correct?

24 A. Correct.

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1 Q. So the question is whether you remember how many
2 groundwater monitoring well installation projects you
3 were involved in between October of 1996 and -- I'm
4 sorry, October of 1995 and April of 1996.

5 A. Like I said, I don't know for sure, but I -- I
6 can't put a number on it, but I'm sure it was not a lot
7 or not very many.

8 Q. As part of your education, it's accurate, isn't
9 it, that you didn't have any formal training in
10 hydrogeology?

11 A. That's correct.

12 Q. And did you obtain any training either with
13 Pioneer or through other sources between October of 1995
14 and April of 1996 as to how one installed a groundwater
15 monitoring well?

16 A. I had been out at sites with other people
17 installing groundwater monitoring wells who had done
18 that work.

19 Q. So your training was simply watching what other
20 people at Pioneer -- watching how other people at
21 Pioneer installed groundwater monitoring wells; is that
22 correct?

23 A. Correct.

24 Q. It's accurate that you worked with others at

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1 Pioneer in preparing Exhibit E, the September 1996
2 report that we've been talking about this morning?

3 A. Correct.

4 Q. And one of those others was Mike Ciserella,
5 C-i-s-a-r-e-l --

6 MR. PODLEWSKI: E -- E-r-e-l-l-a.

7 MR. RIESER: Thank you.

8 BY MR. RIESER:

9 Q. Yes?

10 A. Yes.

11 Q. And was Wayne Smith also involved in the
12 preparation of --

13 A. Yes.

14 Q. -- the September 1996 report?

15 A. Yes.

16 Q. Neither of those are hydrogeologists; is that
17 also correct?

18 A. That's correct.

19 Q. You identified yourself as the project manager
20 for the April 1996 work that was done at the Martin's
21 site, correct?

22 A. Correct.

23 Q. And did that entail determining how the
24 groundwater monitoring wells were to be constructed?

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1 A. It -- I had some say into how it was to be
2 constructed, but there was also input from Mike
3 Ciserella and Wayne Smith.

4 Q. So the three of you together decided what
5 procedures would be used in the field for doing the
6 field work in April of 1996?

7 A. Correct.

8 Q. Page 5 of Exhibit E contains the statement at
9 the top of the page, quote, "the field procedures
10 followed by Pioneer concerning well installation, well
11 development and groundwater sampling are presented in
12 Appendix C," unquote. Do you see that?

13 A. Yes.

14 Q. As you've testified this morning, that's not, in
15 fact, an accurate statement, correct?

16 A. Correct.

17 Q. And there were several different respects in
18 which Pioneer deviated from the protocols that were
19 included in Appendix C to Exhibit E, correct?

20 A. Correct.

21 Q. Now, the protocols were put together by Pioneer
22 for a reason I assume, correct?

23 A. Correct.

24 Q. And it's important for Pioneer that the

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1 groundwater monitoring wells be constructed and
2 developed properly?

3 A. Correct.

4 Q. And if you don't construct and develop them
5 properly, then you can't be sure that you're getting

6 accurate results, correct?

7 A. I'd say that's correct to an extent.

8 Q. When you say to an extent, what do you mean?

9 A. I think that you may not get 100 percent
10 accurate results, but there will be some accuracy in
11 your results.

12 Q. What is accuracy if it's not 100 percent
13 accurate?

14 A. Maybe I should say representative instead of
15 accurate.

16 Q. What's the difference between representative and
17 accurate?

18 A. Representative would imply that it's not, as I
19 said, 100 percent accurate --

20 Q. So --

21 A. -- which --

22 Q. Go ahead. I'm sorry.

23 A. No. That's all right. You can go.

24 Q. So that means something's there, but we don't

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1 know how much?

2 A. I think that's a fair statement.

3 Q. So it's acceptable in Pioneer to report values

4 that they know may not be accurate values as long as
5 they're, quote, representative?

6 A. I think we reported values that were given to us
7 by the analytical laboratory based on the groundwater
8 samples that we got from the property, and the
9 groundwater samples that we obtained deviated, you know,
10 slightly, as I've discussed before from the protocol.

11 Q. Another purpose of having standardized protocols
12 is to have standardized procedures across the company,
13 correct?

14 A. Correct.

15 Q. So that individual project managers will run
16 their projects the same way at different locations?

17 A. Correct.

18 Q. And it's also to ensure consistency of results;
19 is that correct?

20 A. Correct.

21 Q. So it's a very important quality control tool to
22 have protocols like these?

23 A. Yes.

24 Q. Now, I think you testified this morning that you

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1 followed the protocols when you could. Is that a fair

2 statement of what you said earlier?

3 A. I think that's a fair statement.

4 Q. So sometimes Pioneer personnel follow the
5 protocols and sometimes they don't?

6 A. No. I think my testimony --

7 MR. PODLEWSKI: Objection. I don't think that
8 was his testimony. I think that mischaracterizes what
9 he testified to.

10 HEARING OFFICER KNITTLE: Do you have anything?

11 MR. RIESER: He said that they followed when
12 they could, so I think it's --

13 HEARING OFFICER KNITTLE: I'll sustain the
14 objection. You can ask him more questions along that
15 line if you'd like.

16 MR. RIESER: Okay.

17 BY MR. RIESER:

18 Q. If the protocols serve an important quality
19 control function, then wouldn't it be appropriate,
20 again, for quality control purposes, to note when there
21 are deviations from the protocol and note the reasons
22 for those deviations?

23 A. Probably.

24 Q. But it's not Pioneer's practice to note those

1 deviations; is that correct?

2 MR. PODLEWSKI: Objection to that, sir. I don't
3 think that was his testimony either.

4 MR. RIESER: That's what I'm asking.

5 HEARING OFFICER KNITTLE: Yeah. I'll overrule
6 that. I think he's asking whether or not that is what
7 Pioneer's --

8 MR. PODLEWSKI: Practice.

9 HEARING OFFICER KNITTLE: Practice, thank you.

10 THE WITNESS: I'm sorry. Can you ask again?

11 (Record read as requested.)

12 MR. PODLEWSKI: I'm still going to -- it's
13 vague.

14 HEARING OFFICER KNITTLE: I'm going to overrule
15 the objection, but it is noted. And do you understand
16 the question?

17 THE WITNESS: I think so.

18 HEARING OFFICER KNITTLE: Then you can answer
19 the question.

20 BY THE WITNESS:

21 A. I guess I wouldn't say that, in general, it is
22 Pioneer's policy to not follow protocols and not note
23 those protocols, but as I previously testified, there
24 were instances in this case where we could not follow

1 those protocols.

2 BY MR. RIESER:

3 Q. But it's also accurate that those instances were
4 not -- the instances of deviation from the protocols
5 were not specifically noted in the report that's
6 included as Exhibit E?

7 A. I think that in the boring logs where we showed
8 that we had also installed the monitoring wells, it
9 shows that we used hand augers, so it would have been
10 noted in there that we did not use hollow stem augers.
11 As far as the development of the wells, I'd have to look
12 at the report to see what we actually set.

13 Q. Now, when you're -- you've now constructed a
14 fair number of monitoring wells, I take it, from your
15 testimony so you would agree with me that the first step
16 in constructing a monitoring well is to dig a hole,
17 correct?

18 A. That's correct.

19 Q. And the protocol that you've attached as
20 Appendix C requires that the wells be constructed using
21 what's called a hollow stem auger, correct?

22 A. Correct.

23 Q. Could you describe a hollow stem auger?

24 A. A hollow stem auger is similar to a large drill

1 bit that through the center is open. When you're
2 drilling, there's a cap on the bottom so that soil only
3 goes out through the sides of the hole and not through
4 the inside of the augers, and then when you're ready to
5 install the well, you can knock out the cap at the
6 bottom and place the PVC in.

7 Q. Is there a standard diameter that the hollow
8 stem augers have?

9 A. There's different diameters depending on the
10 size of the wells.

11 Q. Is there a standard diameter hollow stem auger
12 that Pioneer uses for constructing groundwater
13 monitoring wells?

14 A. I think it depends on -- again on the diameter
15 of the well.

16 Q. Do you have one that's less than 4.25 inches?

17 A. A hollow stem that's less than 4.25?

18 Q. Yes.

19 A. No.

20 Q. Pardon?

21 A. No.

22 Q. What's your smallest hollow stem auger?

23 A. Four and a quarter.

24 Q. Four and a quarter inches?

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1 A. Inches.

2 Q. In diameter?

3 A. Its inside diameter.

4 Q. Inside diameter?

5 A. The hollow part is four and quarter.

6 Q. How is a hollow stem auger different than a hand
7 auger?

8 A. The hollow stem auger is when your drills are
9 consistently left in the ground they provide a casing to
10 keep soil from falling into the holes you're drilling.
11 A hand auger, you know, you put the bucket down, twist
12 it like a drill rig would and then pull the sample from
13 the ground and then knock that sample out of the bucket
14 and put the hand auger back in the ground and continue
15 drilling until you get to the depth that you're looking
16 for.

17 Q. So you're always -- with a hand auger, you're
18 always shoving it in the hole, twisting it, pulling the
19 sample out, putting it back in the hole to get the next
20 sample, pulling it out again, correct?

21 A. Correct.

22 Q. And the hand augers used at the Martin's site
23 were how large in diameter, do you know?

24 A. I would guess they were maybe three and a half

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1 inches, something like that.

2 Q. And that's their total diameter?

3 A. Total diameter.

4 Q. Now, the danger with using a hand auger is the
5 possibility that it could smear contaminants down the
6 inside of the hole, correct?

7 MR. PODLEWSKI: Objection. I don't think he
8 testified that there was any danger in using a hand
9 auger.

10 MR. RIESER: That's what I'm asking.

11 MR. PODLEWSKI: You're assuming a fact that you
12 didn't testify to.

13 HEARING OFFICER KNITTLE: I think I'll allow him
14 to ask the question. If that's not the case, the
15 witness can certainly say that, so objection overruled.

16 (Record read as requested.)

17 BY THE WITNESS:

18 A. I think I would agree that I didn't testify that

19 there was a danger in using hand augers, but you could
20 smear as you push it down through.

21 BY MR. RIESER:

22 Q. And that's one of the reasons the protocol
23 requires hollow stem augers rather than hand augers for
24 constructing groundwater monitoring wells?

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1 A. I think so.

2 Q. The protocol reflects a concern that the water
3 samples might show contamination from elsewhere in the
4 boring and not in the groundwater itself, correct?

5 MR. PODLEWSKI: I'm going to object because he
6 didn't write the protocols, so what the bases are of the
7 protocols I think is beyond this witness' expertise. He
8 didn't write them.

9 HEARING OFFICER KNITTLE: Mr. Rieser?

10 MR. RIESER: He testified as to where they were
11 from. He testified that they were used. He testified
12 that he's the project manager who I assume understands
13 why they're there and why they're in place. I certainly
14 think at this point he can testify as to what dangers
15 and concerns they are intended to address.

16 MR. PODLEWSKI: Well, when I follow a recipe for

17 baking a cake, I don't necessarily understand why the
18 recipe is written the way it is. I follow it.

19 HEARING OFFICER KNITTLE: I understand your
20 point. I'm going to overrule the objection. I think
21 he's shown sufficient technical expertise to be able to
22 answer this question. This is his profession. You're
23 an attorney. You're not a chef. He is an environmental
24 engineer. I think he could at least make a stab at

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1 answering this question, so objection overruled.

2 (Record read as requested.)

3 BY MR. RIESER:

4 Q. It's accurate that the protocols reflect a
5 concern with respect to the use of hollow stem augers,
6 that the water samples taken from that groundwater
7 monitoring well might show contamination from elsewhere
8 in the boring and not in the groundwater itself.

9 A. I don't think that the protocols state that.

10 Q. Is that a concern that the protocols are trying
11 to address by requiring a certain practice be used?

12 A. I think as you said before the protocols are
13 trying to keep consistency, and I don't know that these
14 protocols are implying that if you don't follow them

15 that you're going to find contamination that's not
16 there.

17 Q. There's no question that Pioneer used hand
18 augers to drill all the monitoring wells that were
19 installed at this site; is that correct?

20 A. No.

21 Q. It's not correct?

22 A. It's not correct.

23 Q. Which -- don't the boring logs that are included
24 in Exhibit E --

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1 MR. PODLEWSKI: Let's make sure we use the right
2 exhibit. The witness has it.

3 MR. RIESER: Right.

4 BY MR. RIESER:

5 Q. And I don't know which appendix this is.

6 A. It's Appendix A of the boring logs.

7 Q. Appendix A of the soil boring logs, don't each
8 of them indicate AU as to the sample type?

9 A. They do identify AU as a sample type, but if you
10 look at, as an example, B13, MW-6 for the rig type, it
11 lists hand auger at the bottom right over the driller's
12 name.

13 Q. I see.

14 A. And then on B16, MW-7, the rig type is IRA 300
15 which is Ingersoll-Rand A 300 which is a drill rig.

16 MR. PODLEWSKI: What boring was that again?

17 THE WITNESS: B16, MW-7 and I think that's true
18 also for MW-8 and MW-9.

19 BY MR. RIESER:

20 Q. But for all of the other monitoring wells, MW-1
21 through MW 6, the rig tip is identified as hand auger,
22 correct?

23 A. Correct.

24 Q. Now, in constructing a monitoring well, once you

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1 have this hole dug, you need to put a screen in the
2 bottom, correct?

3 A. Correct.

4 Q. And on top of the screen, you typically put a
5 PVC riser?

6 A. Correct.

7 Q. And around the screen in the bottom of the hole,
8 you put a sand pack to hold the screen in place?

9 A. Correct.

10 Q. And on top of the sand pack, you put a bentonite

11 seal?

12 A. Correct.

13 Q. And the purpose of the seal around the outside
14 of the well is to keep water or contaminants from
15 running down the outside of the riser and into the sand
16 pack and into the well; is that correct?

17 A. I'd say it's designed to keep water from --
18 mostly surface water from running down into the well.

19 Q. But it's also designed to keep other influences
20 from areas you haven't screened from entering the well
21 as well?

22 A. If you're installing a piezometer, that would be
23 true. On the groundwater monitoring well, you're
24 intentionally trying to screen the entire interval of

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1 water.

2 Q. If you don't have a proper seal, then you have
3 the potential pathway for contaminants to enter the
4 groundwater rather than the monitoring well, correct?

5 A. Again, I'd say if there's not a proper seal in
6 the groundwater monitoring well, you'd have the
7 potential of surface waters running down the well.

8 Q. Now, I think we established that the hand auger

9 used for drilling the monitoring wells at this site was
10 smaller than a -- smaller in diameter than a hollow stem
11 auger would have been?

12 A. Correct.

13 Q. And when you use a hollow stem auger, you have a
14 larger space from the edge of the hole to the outside of
15 the riser, correct?

16 A. Correct.

17 Q. And so when you use a hollow stem auger, you can
18 create a tighter seal than you can with a hand auger.

19 A. I don't know that it would affect the seal
20 integrity.

21 Q. You have less room to construct a seal when you
22 use a hand auger than when you use a hollow stem auger?

23 A. You do have less room.

24 Q. And so there's less sealant, less bentonite,

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1 around the riser when you use a hollow stem -- I'm
2 sorry, when you use a hand auger than when you would use
3 a hollow stem auger.

4 A. There would be less bentonite.

5 Q. Is that another reason that the protocols
6 require the use of a hollow stem auger in order to

7 create this tighter seal?

8 A. Again, I don't necessarily agree that it would
9 not provide as tight of a seal. The bentonite that you
10 use is a material that expands when it gets wet, so, you
11 know, it's going to expand and fill that space whether
12 it's a small space or a large space.

13 Q. Of course, if you have less bentonite, you have
14 less sealant as we've talked about, correct?

15 A. That's correct.

16 Q. Also, according to the protocols, you need two
17 feet of sand pack above the screen and one foot of
18 bentonite?

19 A. Correct.

20 Q. So you need at least three feet of distance from
21 the ground surface at the top of the well to the top of
22 the screen?

23 A. Correct.

24 Q. And if you look at the boring logs -- I'm sorry.

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1 In all of the monitoring wells, was that three
2 feet of distance provided?

3 A. No.

4 Q. Do you know which ones it wasn't provided for?

5 A. Well, I think we're getting into a topic that we
6 haven't discussed yet, was that our original intent for
7 these wells was to do a soil vapor extraction pilot
8 test, and those are typically installed above the water
9 table where you estimate the water table to be.

10 And since we were dealing with superficial
11 contamination, we were trying to install wells that
12 would draw vapors from higher intervals and then since
13 the water came into the wells, then we started sampling
14 groundwater. So no, they were not constructed with
15 three feet of material above the top of the screen
16 because of the original intention of the wells.

17 Q. How many of the wells were -- to what wells does
18 that statement -- do you believe that statement to
19 apply?

20 A. I believe it applies to all of the wells from my
21 recollection, and the reason for that is, like I said,
22 we originally had SVE wells which had water come into
23 them, and then based on the elevation of the water that
24 was in those, we constructed the other wells accordingly

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1 which would have not had three feet from the surface
2 down.

3 Q. You were mobilized to the site to construct the
4 wells on April 23rd and April 24th, correct?

5 A. Correct.

6 Q. And so three of the wells, I believe, you
7 constructed on the 23rd and the other -- and three more
8 were constructed on the 24th?

9 A. That sounds right.

10 Q. And then another set of three wells were
11 constructed in June?

12 A. Yes.

13 Q. Now, which of those wells -- at what point in
14 that process did you realize that you needed -- I should
15 say wanted to install groundwater monitoring wells
16 rather than SVE wells?

17 A. I don't know exactly where in that point. I do
18 know that the three wells that were installed in June
19 were specifically for groundwater purposes. The wells
20 prior to that, I believe our original scope was to do
21 SVE wells.

22 Q. So at least the three wells in June should have
23 had three feet of seal between the top of the riser --
24 I'm sorry, between the top of the sand pack and the top

1 of the ground surface -- strike that -- between the top
2 of the screen and the top of the ground surface. I
3 think that's what we talked about.

4 A. Like I said, we -- based on the elevations of
5 the water that we observed in the wells that were
6 originally meant to be SVE wells, it was pretty high
7 water, so we constructed the wells after that point in
8 order to try to screen that same interval of water that
9 was in the original wells which, since the water was so
10 high, necessitated not having that three feet of seal.

11 Q. Why would the height of the water obviate the
12 need for the seal?

13 A. Typical construction of wells, you want to have
14 the top of the screen above the top of the water table,
15 and if you're observing water that's at three feet below
16 surface grade and you want to have a screen above that
17 and some sand above it and bentonite, you know, you run
18 out of space.

19 Q. So, again, you made a field judgment with
20 respect to those last three wells that you wouldn't do
21 the things the protocols required in terms of having --
22 in terms of the amount of sealants that they called for?

23 A. I don't think it was a field decision. I think
24 it was decided prior to that because again of the

1 groundwater elevations that we observed at the site.

2 Q. Again, that specific deviation was -- from the
3 protocol wasn't noted in the report itself.

4 A. Yes. It was deviated from the protocol.

5 Q. You said earlier that the SVE -- that the
6 original wells were installed as SVE wells. So where is
7 it your understanding that you placed the screens in
8 those wells?

9 A. Like I said, the purpose of SVE is to draw
10 vapors from the subsurface, so you typically try to
11 screen them above the top of the water table or as much
12 as you can, and based on soil observations up to that
13 point, we estimated groundwater to be approximately
14 eight feet below grade.

15 Q. And so your screens were all set -- it's your
16 understanding that your screens were all set above eight
17 feet?

18 A. I don't remember exactly where they were
19 screened, but I would guess that our intention was to
20 install them above that point.

21 MR. RIESER: I'd like this marked as an exhibit.

22 HEARING OFFICER KNITTLE: Do you need a tag?

23 MR. RIESER: Is this going to be -- how are we
24 going to number things? Respondents' Exhibit A.

1 MR. PODLEWSKI: Respondents' A.

2 MR. RIESER: Respondents' A?

3 MR. PODLEWSKI: Yeah.

4 (Document marked as Respondents'
5 Exhibit A for identification.)

6 BY MR. RIESER:

7 Q. As part of doing -- as part of being a project
8 manager on a soil boring project, is part of your task
9 to keep and maintain a log of the soil borings that are
10 done at the site?

11 A. Yes.

12 Q. And what is exactly a soil boring log?

13 A. A soil boring log is just a record of the
14 observations that you make as you're collecting soil
15 samples at the site.

16 Q. As each sample is brought up, you literally log
17 what your observations are of the sample including its
18 geologic characteristics and whether it's dry or wet,
19 correct?

20 A. Correct.

21 Q. And you also log whether you detect any odors or
22 any visible contamination in that particular sample?

23 A. Correct.

24 Q. Now, was it your practice at the time that this

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1 work was being done in April of '96 to have handwritten
2 logs -- handwritten logs?

3 A. Yes.

4 Q. And that those were then subsequently
5 transferred into the typewritten logs, an example of
6 which we see in Exhibit E?

7 A. Yes.

8 Q. I'm going to show -- hand you what's been marked
9 for identification as Respondents' Exhibit A and ask if
10 you can identify those documents.

11 A. It looks like the handwritten logs that you've
12 been referring to.

13 Q. So these are the logs that you made at the time
14 on April 23rd and April 24th and June 14th of 1996 of
15 the soil borings that Pioneer made at that time,
16 correct?

17 A. Correct.

18 Q. Now, these handwritten logs also had indications
19 as to -- for those soil borings which were then
20 converted into monitoring wells had indications as to
21 where the monitoring wells were screened, correct?

22 A. Correct.

23 Q. So on the first page of Exhibit -- Respondents'
24 Exhibit A, when it says in the middle of the page

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1 screened 4.5 dash 9.5 feet, that's where you set the
2 screen; is that correct?

3 A. Correct.

4 Q. So in the interval in the soil column between
5 4.5 below ground surface to 9.5 below ground surface?

6 A. Correct.

7 Q. And so you made these notations as to the
8 screening levels on each of the monitoring well logs at
9 the time that you set the screens?

10 A. Yes.

11 Q. And this accurately reflects where you set the
12 screens?

13 A. Yes.

14 Q. Now, each of the screens for monitoring well
15 two, three, four, five and six are all set so that they
16 essentially cover the bottom half of that monitoring
17 well, would you agree with that?

18 A. Yeah.

19 Q. And if the groundwater level was expected to be

20 at eight feet, then these screens would include at least
21 some portion of the monitoring -- the soil column that
22 included the groundwater level, correct?

23 A. Correct.

24 Q. Is that consistent with setting an SVE well?

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1 A. Like I said, we try to keep it above the top of
2 the water table, but it's shown here it does intersect a
3 little bit with the water.

4 Q. Once the wells are constructed, then you need to
5 develop them, correct?

6 A. Correct.

7 Q. And this means flushing out of the particles of
8 soil loosened in the construction process?

9 A. Right. Well, you want to do that by taking
10 water out of the well.

11 Q. These particles are called fines; is that
12 correct?

13 A. Correct.

14 Q. F-i-n-e-s. And it's important to flush these
15 out because if you don't, they might be included in the
16 water sample that you take of that well?

17 A. Correct.

18 Q. And then analysis of that sample would show
19 positive for any contaminants that might be adhered,
20 a-d-h-e-r-e-d, to the fines?

21 A. Analysis of the water sample obtained from that
22 would include what's in the water and what's on the
23 fines.

24 Q. So for that sample where there were fines

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1 present, you wouldn't know whether the results
2 accurately indicated the contaminant level of the
3 groundwater?

4 A. Again, I guess I'll say that it's probably
5 representative of the contamination that's at the
6 location, but it would not accurately show the
7 concentration of the groundwater.

8 Q. Your protocols as Appendix B of Exhibit --
9 Appendix C of Exhibit E stated that you have to develop
10 a well by removing five to ten well volumes or until the
11 wells are visually clear, correct?

12 A. Correct.

13 Q. And this wasn't done at this site?

14 A. Correct.

15 Q. You removed one well volume and then took the

16 sample; is that correct?

17 A. Correct, approximately one well volume.

18 Q. And you did this because the wells took so long
19 to recharge, you didn't want to spend the time to
20 further develop the wells?

21 A. I don't think it's because I didn't want to
22 spend the time, but it, again, is a field decision where
23 it's not always practical to wait the time required for
24 five to ten well volumes in a clay formation.

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1 Q. It's your testimony that this work was being
2 done for Eva Martin, correct?

3 A. Correct.

4 Q. Did Eva Martin place any restrictions on the
5 time that you could spend at the site developing the
6 well?

7 A. No, she didn't.

8 Q. Now, after you take a sample from the well --
9 you take a sample by placing a bailer in a well, right?

10 A. Right.

11 Q. And that's a Teflon tube with a sort of stop
12 cock at the bottom?

13 A. Basically, yeah.

14 Q. And you used reusable Teflon tubes at the site?

15 A. At this site I believe we did.

16 Q. And you put samples into the jars, and you send
17 them to the lab according to the chain of custody as you
18 talked about before?

19 A. Correct.

20 Q. And the protocols also cover how you handle
21 chain of custody?

22 A. Correct.

23 Q. This protocol would require that every sample
24 jar sent to the lab be reflected on the chain of

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1 custody?

2 A. Correct.

3 Q. And so the chain of custody -- chains of custody
4 that had been introduced as Exhibits J through K
5 accurately reflect all of the samples that were sent to
6 the lab?

7 A. Correct.

8 Q. Now, the protocol, Appendix C, requires that
9 field blanks be included for each sampling interval,
10 correct?

11 A. That's correct.

12 Q. Now, the purpose of the field blank is to ensure
13 that the sampling equipment is decontaminated properly,
14 correct?

15 A. Correct.

16 Q. So that as you move your reusable bailer from
17 one monitoring well to the next, the protocols require
18 that you go through a process to decontaminate it,
19 correct?

20 A. Correct.

21 Q. And that process involves taking rinse water and
22 taking distilled water and literally pouring it over the
23 bailer?

24 A. Correct.

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1 Q. And what the field blank does is that
2 periodically in the sampling process, you're required to
3 sample the rinse water of your -- that you're using to
4 decontaminate the bailer so that you could document that
5 the bailer is not contaminated as it goes from one well
6 to the next well?

7 A. Correct.

8 Q. Now, the protocols talk about rinse water from
9 the decontamination process employed between sampling

10 intervals. Do you see that? It's on the second page of
11 Appendix C.

12 A. Yes.

13 Q. What was your understanding in April and June of
14 1996 as to how often that met? What was the sampling
15 interval, and how often did you have to collect a field
16 blank?

17 A. A sampling interval would be one well, so it
18 would be collecting in between each well.

19 Q. So each well you were supposed to collect a
20 field blank to document that the bailer was
21 decontaminated between each well?

22 A. Yes.

23 Q. So the protocols required that there should have
24 been a field blank for each of the samples sent to the

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1 lab, correct?

2 A. Correct.

3 Q. In fact, if you look at Exhibits G through K,
4 they document this was not done.

5 MR. PODLEWSKI: I'm going to object because G, H
6 and I are not groundwater samples. And I take it,
7 David, you're talking about groundwater samples.

8 MR. RIESER: Thank you. That's an accurate
9 correction. Let's look at --

10 MR. PODLEWSKI: So you're talking about J and K.

11 MR. RIESER: J and K. That's fair. Looking at
12 J and K.

13 HEARING OFFICER KNITTLE: Do you understand the
14 question?

15 THE WITNESS: I believe so.

16 BY THE WITNESS:

17 A. Right. There was only one field blank indicated
18 on Exhibits J and K.

19 BY MR. RIESER:

20 Q. So there was only one field blank taken on
21 April 24th with respect to the sampling of monitoring
22 wells one and four and the groundwater sample taken from
23 B15, correct?

24 A. Correct.

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1 Q. And no field blanks whatsoever taken on
2 April 26th, 1996, with respect to the samples
3 monitoring -- taken from monitoring wells one, three,
4 four, five and six?

5 A. Correct.

6 Q. And no field blanks whatsoever taken from
7 monitoring well samples from 2, 3, 5 and 6 from
8 May 17th, 1996?

9 A. Correct.

10 Q. And no field blanks for the samples from
11 monitoring wells 7, 8 and 9 on June 25th, 1996?

12 A. Correct.

13 Q. The protocols also require a trip blank to be
14 sent with each group of samples, correct?

15 A. Correct.

16 Q. And a trip blank is different from a field
17 blank, correct?

18 A. Correct.

19 Q. A trip blank is a sample of water that you
20 receive from the laboratory that's placed in the
21 container used to ship the samples and analyzed by the
22 laboratory when that container gets to the laboratory;
23 is that correct?

24 A. Correct.

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1 Q. And the purpose of the trip blank is to document
2 that there is no ambient sources of contamination that
3 might present contamination in the samples themselves

4 that might have contaminated the samples while they were
5 being delivered to the laboratory.

6 A. Correct.

7 Q. And I think you will agree with me that if you
8 look at Exhibits J and K, no trip blanks were --
9 whatsoever were sent with any of the sample deliveries
10 for any of the samples sent to the laboratory for any of
11 the samples taken from the -- groundwater samples from
12 the site?

13 A. Correct.

14 Q. Now, you weren't present for the Pioneer work
15 that was described in Exhibits A through C, correct?

16 A. Correct.

17 Q. In fact, you weren't even hired by Pioneer when
18 that work was done?

19 A. Correct.

20 Q. So you don't know the extent to which the
21 protocols for sampling were followed or not followed for
22 that sampling work?

23 A. Correct.

24 Q. Now, you testified with respect to Exhibit E in

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1 the sampling work done in April of '96 that a grab

2 sample was taken from the bore hole in -- at bore B15,
3 correct?

4 A. Correct.

5 Q. Will you agree with me that a grab sample from a
6 bore hole is not consistent with the Pioneer protocols
7 for taking groundwater samples?

8 A. It's not consistent with Pioneer's protocol for
9 well installations and subsequent sampling.

10 Q. And that also for all the reasons we've talked
11 about, a grab sample would not be representative of
12 groundwater conditions in that boring?

13 A. Again, I think my testimony was that I think it
14 would be representative, but it would not necessarily be
15 accurate.

16 Q. Well, we didn't discuss -- let me rephrase that
17 then. Well, let me ask it this way. It is your
18 position that a grab sample taken from a boring would be
19 as representative as a sample taken from a groundwater
20 monitoring well constructed according to your protocols?

21 A. No.

22 Q. It would be less representative?

23 A. Most likely.

24 Q. Page 7 of Exhibit E at the top of the page says,

1 quote, "since groundwater was not consistently
2 encountered during the subsurface investigation, it is
3 likely that the groundwater encountered at the site is a
4 relatively localized feature and the result of a purged
5 water table." Do you see that?

6 A. Yes.

7 Q. What was the basis for that statement?

8 A. I think it was based on the water table
9 elevations that we had determined from the water that
10 came into the wells which showed that water was present
11 at inconsistent depth throughout the site and also when
12 we were doing soil sampling that our observations of the
13 soil when we were sampling didn't consistently identify
14 water or water in the same locations.

15 Q. In fact, when you did the soil borings -- I'm
16 sorry. When Pioneer did the soil borings in June of
17 1995, very few of those borings exhibited any indication
18 of groundwater, correct?

19 A. I don't remember for sure, but I think it was
20 maybe two out of the eight samples.

21 Q. So the original -- it was not Pioneer's
22 expectation when they did the work in April of 1996 that
23 groundwater was going to be present throughout the site?

24 A. No, it was not our expectation.

1 Q. It was not our expectation. In fact, the
2 original purpose of the April of 1996 work was to run a
3 pilot test to show whether an SVE, soil vapor extraction
4 system, would work to remediate the identified soil
5 contamination at the site?

6 A. Right. The purpose of our work was to install
7 wells so that we could subsequently do an SVE pilot
8 test.

9 Q. And that test was really dependent on there not
10 being groundwater at the site?

11 A. Well, you can -- if there's a little bit of
12 groundwater, you can deal with it with SVE, but it was,
13 for the most part, dependent on not having groundwater.

14 Q. So it's only when the wells were installed in
15 1996 that groundwater was observed throughout the site
16 at each of the groundwater monitoring wells?

17 A. Correct.

18 Q. There is no discussion in the report
19 regarding --

20 (Short interruption.)

21 (Recess taken.)

22 BY MR. RIESER:

23 Q. There is no discussion in the report regarding
24 levels of precipitation before the groundwater -- on

1 either of the groundwater sampling events?

2 A. Correct.

3 Q. I should say any of the groundwater sampling
4 events.

5 And there is no findings in the report as to
6 whether the groundwater observed is a permanent feature
7 or subject to fluctuation?

8 A. Correct. It was only a couple runs of sampling
9 in a relatively short period of time.

10 Q. Pages 10 and 11 of Exhibit E, the bottom of 10
11 and top of 11, have discussions about the samples from
12 monitoring wells 3 and 6. And I think it's accurate
13 based on the tables that when 3 and 6 were first
14 sampled, they showed relatively low levels of
15 contamination, and when they were resampled in the
16 May 17th, 1996, sampling event, they showed
17 nondetectable levels of contamination, correct?

18 A. Correct.

19 Q. On the top of page 11, it says, as a note,
20 slight fluctuations of this nature -- again, referencing
21 the levels of EOC in monitoring wells 3 and 6 are common
22 in areas in which groundwater is marginally impacted.

23 Do you see that?

24 A. Yes.

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1 Q. It's accurate that by May of 1996, wells 3 and 6
2 had had a month to develop, correct, I should say a
3 month to stabilize?

4 A. Correct.

5 Q. And stabilization refers to a period of time
6 after the wells are drilled to allow the subsurface
7 conditions to return to what they were before the
8 drilling started?

9 A. Correct.

10 Q. And it's also true that for monitoring wells 3
11 and 6 you removed at least one more volume of water
12 prior to taking the samples in May?

13 A. Correct.

14 Q. So it's also possible that the samples from
15 monitoring wells 3 and 6 taken in May reflected of wells
16 that are, in fact, not impacted by groundwater
17 contamination?

18 A. I'm sorry. I was looking --

19 MR. RIESER: Would you please read it back?

20 MR. PODLEWSKI: I think that question is

21 confusing anyway.

22 MR. RIESER: Well, let's read it back and we'll
23 see.

24 (Record read as requested.)

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1 HEARING OFFICER KNITTLE: Mr. Podlewski, do you
2 still have an objection to that?

3 MR. PODLEWSKI: I think it's a confusing
4 question. I'm not exactly sure what he's asking.

5 MR. RIESER: I think it's fine. If the witness
6 is confused, I'll restate it, but --

7 HEARING OFFICER KNITTLE: Yeah. If you can
8 answer the question, please do, but if you're confused,
9 I have to admit I'm a little rattled by it myself. So
10 if you can't, I'm sustaining the objection. But answer
11 it if you can.

12 BY THE WITNESS:

13 A. Just can you ask -- just again?

14 BY MR. RIESER:

15 Q. Would it also be accurate to say that the
16 groundwater sampling results from monitoring wells 3 and
17 6 taken in May of 1996 reflect wells that are not
18 impacted by contamination?

19 A. I think you could say that.

20 Q. Now, as part of the work that Pioneer did on the
21 site in I believe it was June of 1996, you also did slug
22 tests to determine hydraulic conductivity, correct?

23 A. Correct.

24 Q. And hydraulic conductivity has to do with the

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1 rate of fluids moving through the soil, correct?

2 A. Correct.

3 Q. And the slug tests showed recharge -- let me
4 start over.

5 The slug tests were performed by taking all
6 of the water out of a particular monitoring well and
7 then observing to see how long it took before that
8 monitoring well to recharge or filled up again with
9 water?

10 A. Correct.

11 Q. And then you would note the time of recharge and
12 use that time to evaluate the hydraulic conductivity of
13 those soils?

14 A. Right, the time in relation to the recharge.

15 Q. Now, Respondent's Exhibit A -- Strike that.

16 Is that the only time that you did an evaluation

17 of the recharge rates of the wells?

18 MR. PODLEWSKI: Is what the only time?

19 BY MR. RIESER:

20 Q. Is the slug test that was done in June and
21 reported in Exhibit E the only time you did a timing of
22 the recharge rate of the wells?

23 A. I don't remember exactly if I did any other
24 official slug tests or not. I'd have to look through

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1 the file. I may have, you know, in the course of
2 sampling just checked the recharge.

3 Q. I'm sorry. Just a minute please. I'm sorry. I
4 have only one copy of the exhibit I'm about to discuss
5 so hopefully we could make another copy to distribute
6 after we're done.

7 In addition to maintaining soil boring logs
8 at the site, did you also keep logs in a bound book?
9 Did you keep notes of observations at the site in a
10 bound book?

11 A. Yeah, I keep observations that like.

12 MR. RIESER: Would you mark that Respondents'
13 Exhibit B, please?

14 (Document marked as Respondents'

15 Exhibit B for identification.)

16 BY MR. RIESER:

17 Q. I'm going to show you what's marked as
18 Respondents' Exhibit B and ask you if you could identify
19 that, please.

20 A. It looks like field notes that I took on
21 April 26th, 1996. It appears as though I took static
22 water levels. It looks like I would have bailed the
23 water and then watching the recharge rate.

24 Q. And is that a true and accurate copy of the

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1 notes that you took at the time on April 26th, 1996?

2 A. It looks like a true and accurate copy.

3 Q. So is it correct that for monitoring wells 6, 4,
4 1 and 5 you essentially did slug tests for each of those
5 monitoring wells by withdrawing a volume of water and
6 then noting the time it took to recharge?

7 A. I think it's less structured than a slug test
8 would be, but it's similar in concept. Slug tests, you
9 take numerous data points, and this I watched every half
10 an hour or so.

11 Q. Is it accurate that the rate of recharge for
12 those wells on Exhibit B that it takes them at least

13 three hours to recharge?

14 A. I'd say it took at least three hours.

15 Q. On page 15 of Exhibit E, you say that the --
16 quote, "based on the results of the slug tests performed
17 on site and the physical characteristics of the soil,
18 the hydraulic conductivity at the site is estimated to
19 be approximately tenth to the minus to ninth to tenth to
20 the minus seventh CM per second." Do you see that?

21 A. Yes.

22 Q. And that's based not only on the slug tests that
23 you did that were reported in Exhibit E, but also
24 confirmed by the observations that you got recorded in

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1 Defendants' -- Respondents' Exhibit B, correct?

2 A. And the soil types that are on the site, and
3 it's well published, a range like that in silty clay
4 type soils.

5 Q. Now, one could excavate the soils then and use
6 them for a landfill cap or a liner based on that
7 hydraulic conductivity?

8 A. If they were recompacted.

9 Q. By recompacted that means what?

10 A. If you were to excavate it, it would be

11 disturbed.

12 Q. Right.

13 A. And if you were to put it back in place, they
14 are cohesive soils and you could compact them, and you
15 could potentially get them back up to that relatively
16 impermeable nature where it could be used in something
17 such as a landfill.

18 Q. So the recompaction as your described it is
19 intended to get the soils back in the condition where
20 they have the hydraulic conductivities you observed for
21 them at this site of tenth to the minus seventh and
22 tenth to the minus ninth?

23 A. Yeah, I guess.

24 Q. On page 18 of Exhibit E under 6.2 conclusions,

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1 the statement appears, quote, "a review of the data
2 obtained to date indicates that the impacted areas
3 include the western portion of the subject property as
4 well as off-site areas to the north, south and west of
5 the subject property, figures three and four." Do you
6 see that?

7 A. Yes.

8 Q. When you used off-site areas in this statement,

9 that refers to areas off-site -- areas away from the
10 Martin's leased premises, but not off of the strip
11 center property; is that correct?

12 A. Correct.

13 Q. Now, as part of the work that's reported in
14 Exhibit E, you also ran a test of the soil vapor
15 extraction system, correct?

16 A. Correct.

17 Q. And what you did there is that you drew a vacuum
18 from one of the now monitoring wells and tried to detect
19 the presence of -- tried to detect the movement of air
20 in the other -- in another monitoring well; is that
21 correct? Is that a correct statement?

22 A. That's correct.

23 Q. Is there a better way to say that?

24 A. That's basically what we did.

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1 Q. Okay. And the tests showed that you couldn't,
2 in fact, detect the movement of air in the other
3 monitoring wells when you drew a vacuum on a particular
4 monitoring well?

5 A. Correct.

6 Q. So they didn't establish -- the tests that you

7 performed didn't establish whether or not the SVE system
8 would work?

9 A. Our results of the SVE system did show that we
10 were drawing VOCs from the subsurface which led us to
11 believe that if an SVE system was used at the site, that
12 VOCs would be recovered.

13 Q. But you could require a lot of withdrawal points
14 of air in order to make the system work across the site;
15 is that correct?

16 A. Yes.

17 Q. Turning your attention to Complainant's
18 Exhibit D, which is the May 8th, 1996, letter, you make
19 the statement on the second page of that letter that the
20 contaminant conditions recently detected may be the
21 result of a continuing source of contamination such as a
22 more recent or ongoing release of, quote, "perc,"
23 unquote, do you see that?

24 A. Yes.

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1 Q. It's accurate that in your visits to the site
2 that you never observed a release of perc from the dry
3 cleaning operation itself; is that correct?

4 A. That's correct.

5 Q. And the basis for the statement that there was,
6 quote, "a continuing source of contamination," unquote,
7 was simply Pioneer's evaluation of the subsurface
8 results but not based on any observation of the
9 practices of the dry cleaning operation itself?

10 A. I think, like you said, we saw observations that
11 led us to believe that there might be a continuing
12 source at the site, and by putting something like that
13 in a letter, you know, we were communicating to Eva
14 that -- or the Martin's of Matteson that they may need
15 to evaluate that as a possibility at the site.

16 Q. What did you observe that led you to draw that
17 conclusion?

18 A. I don't remember exactly. Again, this is three
19 years ago, but I would, you know, guess that we did see
20 higher concentrations in the soil than we had seen
21 earlier that we didn't necessarily expect. So we wanted
22 to convey that message.

23 Q. Did you discuss with Eva the possibility of --
24 Eva Martin -- the possibility of evaluating her dry

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1 cleaning operations to see if you could observe a source
2 of perchloroethylene in those operations themselves?

3 A. I don't think that we ever actually discussed
4 it, no.

5 Q. Again, turning to Exhibit E, it contains a
6 figure four which is entitled detailed diagram PCE
7 groundwater impact contour map. Do you see that?

8 A. Yes.

9 Q. And PCE is an acronym for perchloroethylene,
10 correct?

11 A. Correct.

12 Q. This map represents your personal estimate of
13 what you believe the extent of groundwater contamination
14 to be based on the results of the individual groundwater
15 monitoring wells; is that correct?

16 A. I would say it reflects Pioneer's interpretation
17 of the results, not just my personal opinion, but as
18 I've stated before, we always discuss these amongst
19 other people in the company.

20 Q. But there was no hydrogeologist who worked for
21 Pioneer who was involved in the drawing of this map?

22 A. Correct.

23 MR. RIESER: I have nothing further.

24 HEARING OFFICER KNITTLE: Do you have redirect?

1 MR. PODLEWSKI: Yes, very brief.

2 REDIRECT EXAMINATION

3 by Mr. Podlewski

4 Q. Mr. McClelland, most of or virtually all of
5 Mr. Rieser's cross-examination related to groundwater
6 work at the property, sampling installation of
7 groundwater monitoring well, sampling of groundwater
8 from those wells; is that correct?

9 A. Correct.

10 Q. Now, all the groundwater sampling work, the
11 construction of the wells, the development of the wells,
12 sampling, analysis, writing the reports relating to the
13 groundwater work, that was all done for the Martins,
14 correct?

15 A. Correct.

16 Q. And so Pioneer would try -- it would be in
17 Pioneer's interests and also in the interests of your
18 client to obtain information concerning the
19 environmental condition of the property that was true
20 and accurate; isn't that correct?

21 A. Correct.

22 Q. There wouldn't be any sense to do otherwise,
23 correct?

24 A. Correct.

1 Q. Do you believe that the information that
2 contained -- that the -- Strike that.

3 Do you believe that the samples that were
4 obtained by Pioneer of the groundwater at the property
5 were representative samples of groundwater?

6 MR. RIESER: I'm going to object to that
7 because, again, he's not a hydrogeologist and isn't in a
8 position to draw that conclusion.

9 MR. PODLEWSKI: He also testified as to the
10 representative nature of the groundwater samples during
11 Mr. Rieser's cross-examination.

12 HEARING OFFICER KNITTLE: Understood. The
13 objection is overruled, you can answer the question,
14 sir.

15 THE WITNESS: Can you repeat the question again,
16 please?

17 MR. PODLEWSKI: Can you read it back?

18 In fact, I'll withdraw that question and
19 rephrase it.

20 BY MR. PODLEWSKI:

21 Q. Do you believe that the samples of groundwater
22 that were taken by Pioneer at the property in April, May
23 and June of 1996 from groundwater monitoring wells that
24 were installed by Pioneer were representative samples of

1 groundwater?

2 A. Yes.

3 MR. PODLEWSKI: That's all I have.

4 HEARING OFFICER KNITTLE: Recross?

5 RECROSS-EXAMINATION

6 by Mr. Rieser

7 Q. But it would also be accurate to say that you're
8 not sure whether they're accurate samples of
9 groundwater; is that correct?

10 A. Correct.

11 MR. RIESER: Nothing further.

12 HEARING OFFICER KNITTLE: Re-redirect.

13 MR. PODLEWSKI: No.

14 HEARING OFFICER KNITTLE: You could step down,
15 sir. Thank you. Could we go off, please?

16 (Discussion had off the record.)

17 HEARING OFFICER KNITTLE: We're back on the
18 record.

19 MR. RIESER: I introduced two exhibits, and I'd
20 like to move at this point for their admission.

21 HEARING OFFICER KNITTLE: Is there an objection
22 to that, Mr. Podlewski?

23 MR. PODLEWSKI: I don't think it's proper to

24 introduce evidence -- exhibits through

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1 cross-examination. I don't think that's a proper
2 procedure.

3 HEARING OFFICER KNITTLE: Mr. Rieser?

4 MR. RIESER: A, I don't see why not. He
5 appropriately evaluated and identified the documents,
6 and B, this is the first time I've ever heard that you
7 couldn't introduce an exhibit through cross-examination.

8 HEARING OFFICER KNITTLE: Let me ask,
9 Mr. Podlewski, do you have an objection aside from the
10 procedural nature of introducing them on
11 cross-examination to the admittance of these two
12 exhibits?

13 MR. PODLEWSKI: No.

14 HEARING OFFICER KNITTLE: In that case, I'm
15 going to admit these two exhibits.

16 MR. RIESER: Thank you.

17 HEARING OFFICER KNITTLE: Let's go back off the
18 record. Hold on. We're back on the record.

19 MR. PODLEWSKI: The only thing is one of --
20 Mr. Rieser only has one copy of Exhibit --

21 MR. RIESER: B.

22 MR. PODLEWSKI: -- B, Respondents' Exhibit B, so
23 I trust that we'll have copies made sometime during the
24 hearing.

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1 HEARING OFFICER KNITTLE: I think they were each
2 one pagers, is that correct, one to two?

3 MR. RIESER: No. Exhibit B was a one-page
4 document.

5 HEARING OFFICER KNITTLE: I'd be happy to make
6 copies of anything that's not too voluminous.

7 MR. RIESER: Exhibit B was the one-page document
8 right here, so obviously that could be copied.

9 HEARING OFFICER KNITTLE: Yeah. I could do that
10 before the end of the day. Now, let's go back off
11 until --

12 MR. PODLEWSKI: Right, until I get organized
13 here.

14 (Discussion had off the record.)

15 HEARING OFFICER KNITTLE: And we are back on,
16 and you can call your next witness.

17 MR. PODLEWSKI: Complainant calls C. Michael
18 Perkins.

19 HEARING OFFICER KNITTLE: Could you swear him

20 in, please?

21 C. MICHAEL PERKINS

22 having been first duly sworn, was examined and testified

23 as follows:

24 DIRECT EXAMINATION

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1 by Mr. Podlewski

2 Q. Mr. Perkins, what's your occupation?

3 A. I'm a hydrogeologist. Title is senior project
4 manager.

5 Q. And where are you presently employed?

6 A. At Weaver, Boos & Gordon.

7 Q. What's the business of Weaver, Boos & Gordon?

8 A. They deal with landfills and environmental --
9 Phase I environmental assessments, property assessments,
10 Phase IIs, remediation, environmental compliance.

11 Q. So they provide a wide variety of environmental
12 consulting services?

13 A. That's correct.

14 Q. Do they have more than one office?

15 A. Yes, they do.

16 Q. And do they have a Chicago office?

17 A. Yes, they do.

18 Q. And that's where you're located?

19 A. Yes, I am.

20 Q. What's your job title at Weaver, Boos & Gordon?

21 A. Senior project manager.

22 Q. And what are your duties and responsibilities as
23 senior project manager?

24 A. To perform Phase I, Phase II, environmental

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1 assessments, remediation, design, installation and to
2 direct the people underneath me to do the work in the
3 field.

4 Q. Do any of your duties and responsibilities
5 involve issues relating to the field of hydrogeology?

6 A. Yes, they do.

7 Q. Such as?

8 A. Such as installing monitoring wells, evaluating
9 groundwater, evaluating results from pump tests, slug
10 tests and determining plume migration and fate and
11 transport.

12 Q. How long have you worked at Weaver, Boos &
13 Gordon?

14 A. Just about two years now.

15 Q. Where did you work immediately before that?

16 A. Wight & Company.
17 Q. And where are they located?
18 A. They're located in Downers Grove.
19 Q. Could you spell Wight for the court reporter?
20 A. W-i-g-h-t.
21 Q. And what's the business of Wight & Company?
22 A. Wight & Company is an architectural engineering
23 environmental firm. They perform, well, architectural
24 engineering, and they also have an environmental side

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1 which does the Phase I, Phase II, environmental
2 assessments, remediation and hydrological studies.
3 Q. And how long did you work at Wight & Company?
4 A. About two years.
5 Q. And what was your last job title there?
6 A. Project director.
7 Q. And what were your duties and responsibilities
8 as project director?
9 A. To do the environmental assessments, evaluate
10 groundwater, do modeling and fate and transport and do
11 design and install and operate remediation systems.
12 Q. So is it correct that some of your duties and
13 responsibilities involved issues relating to the field

14 of hydrogeology?

15 A. Yes.

16 Q. What was your reason for leaving Wight &
17 Company?

18 A. Basically a better opportunity.

19 Q. Where did you work immediately before your
20 employment at Wight & Company?

21 A. Mostardi-Platt.

22 Q. And what's the business Mostardi-Platt?

23 A. They're primarily an air testing group, and they
24 also have an environmental side which does primarily the

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1 same things as the Wight & Company and Weaver, Boos &
2 Gordon.

3 Q. And how long did you work at Mostardi-Platt?

4 A. About three years.

5 Q. What was your last job title?

6 A. Let's see. Senior hydrologist and project
7 manager. I think that's it.

8 Q. What were your duties and responsibilities in
9 that position?

10 A. Basically, again, the same as before and doing a
11 lot of environmental assessments, remediation. We did

12 hydrogeological studies there also.

13 Q. Have you ever received any degrees?

14 A. Yes.

15 Q. What are they?

16 A. I have a BS in earth science from the University
17 of Toledo, and I have an MS in geology from the
18 University of Toledo.

19 Q. And when did you receive your BS degree?

20 A. BS degree was in 1973.

21 Q. And when did you receive your master's degree?

22 A. Well, I graduated in '74 and received my degree
23 in '75.

24 Q. Have you taken any courses or done any work

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1 towards any further degrees since receiving your
2 master's degree?

3 A. Yes. I've taken coursework at Northern Illinois
4 University for my doctorate. I've completed all the
5 coursework necessary for it; however, I haven't taken --
6 I haven't done a thesis yet.

7 Q. Have you received any certifications relating to
8 the field of hydrogeology?

9 A. Yes. I received one from Oklahoma State

10 University through a federally funded program, and it
11 was certification to prove expertise in hydrogeological
12 studies and background.

13 And the coursework there was basically -- I
14 did some hydrogeology, well design, organic chemistry
15 and a number of others. I'm trying to think of what
16 they were. Right offhand I can't remember. There were
17 about six or seven other courses that we took.

18 Q. Do you hold any other certifications beside your
19 hydrogeology certification from Oklahoma State
20 University?

21 A. Not from Oklahoma State University.

22 Q. Do you hold any other certifications relating to
23 the field of hydrogeology?

24 A. I'm a licensed professional geologist in the

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1 state of Illinois. I have a -- I'm a certified
2 hazardous materials manager, and I also have my
3 certification as a petroleum geologist.

4 Q. Your certified hazardous materials manager
5 certification doesn't necessarily relate to the field of
6 hydrogeology though, does it?

7 A. Yes, it can --

8 Q. It does?

9 A. -- because part of it includes hydrogeology,
10 yes.

11 Q. Okay. I stand corrected. Do you belong to any
12 professional associations?

13 A. Yes. I belong to the AAPG or American
14 Association of Petroleum Geologists and recently I
15 joined the Association of Engineering Geologists and
16 with the American Association of Petroleum Geologists,
17 I'm a member of the minerals group, the petroleum group
18 and the environmental group.

19 Q. Since your graduation from the University of
20 Toledo, have you attended any seminars or courses on
21 subjects relating to the fields of geology and
22 hydrogeology?

23 A. Yes, I have.

24 Q. How many?

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1 A. Probably -- my guess would be around ten,
2 somewhere in that range.

3 Q. What work, to the best that you can recall, were
4 the subjects covered at these course and seminars you
5 have attended?

6 A. Well, I took -- let's see. There was open
7 hole -- there's drilling and evaluation, advanced open
8 hole well logging, computers for geology, seismic for
9 geologists, and there were a number of others. Right
10 offhand I don't remember.

11 Q. Have you taught any courses on the subject of
12 hydrogeology?

13 A. Yes. I taught hydrogeology and fate and
14 transport as a certified hazardous materials manager
15 course or at the certified.

16 Q. Can you please describe for me in sort of
17 summary fashion your work experience in the field of
18 geology and hydrogeology?

19 A. I started out in petroleum geology in 1975, and
20 a lot of the formulations are equivalent to hydrogeology
21 dealing with fluid flow, migration and permeability,
22 hydraulic conductivity.

23 I did a number of field studies and reserve
24 studies in the oil and gas industry. In the

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1 environmental industry, I have done pump tests. I have
2 done fate and transport analysis. I've done modeling,
3 groundwater modeling and, you know -- well, to put it in

4 a nutshell, that's it.

5 Q. About how many fate and transport tests have you
6 performed?

7 A. Right offhand I can't remember, but it's been a
8 number of them.

9 Q. Is it more than ten?

10 A. I'd say more than ten.

11 Q. Have you performed and evaluated any pump tests
12 or rising and falling head tests?

13 A. Yes, I have.

14 Q. About how many?

15 A. Probably 50, maybe more.

16 Q. And have you participated in any hydrological
17 and hydrogeological interaction studies?

18 A. Yes.

19 Q. About how many?

20 A. The hydrological interaction studies probably
21 about ten.

22 Q. Do you have a current statement of your
23 professional qualifications and credentials?

24 A. Not with me.

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1 Q. Mr. Persino (sic), I've handed you what's been

2 marked as -- sorry, Mr. Perkins.

3 Mr. Perkins, I've handed you what's been
4 marked as Complainant's Exhibit L and ask if you can
5 identify that.

6 A. Yes. This is my resume.

7 Q. And did you prepare this?

8 A. Yes, I did.

9 Q. And is it up-to-date and current?

10 A. As of the time I prepared it, yes.

11 Q. Do you remember when you prepared this?

12 A. It would have been -- this would probably have
13 been about almost just under two years ago.

14 Q. Now, Mr. Perkins, one other question, does this
15 statement accurately and completely describe your
16 project experience?

17 A. Yes.

18 Q. Mr. Perkins, did you receive from my office
19 certain documents relating to the sampling of
20 groundwater at a certain parcel of the real property
21 commonly known at 5601 to 5617 West Vollmer Road in
22 Matteson, Cook County, Illinois --

23 A. Yes.

24 Q. -- by Pioneer Environmental?

1 A. Yes, I did.

2 Q. Do you remember what those documents were?

3 A. I remember the report done by Pioneer and there
4 was a couple of documents relating to the references in
5 620.

6 Q. I'm going to hand you a number of exhibits, and
7 you can then tell me whether or not these were the
8 documents that I provided to you and that you reviewed.

9 First is a document that's previously been
10 identified in this case as Complainant's Exhibit D,
11 which is a May 8th, 1996, letter report?

12 A. Yes. I have seen this.

13 Q. Was that among the documents that I provided to
14 you?

15 A. Yes, it was.

16 Q. I'm also providing you what's been marked as
17 Complainant's Exhibit E, which is a September 10, 1996,
18 report by Pioneer Environmental?

19 A. Yes. This is it.

20 Q. Have you seen that report before?

21 A. Yes, I have.

22 Q. Was that among the documents that I provided to
23 you?

24 A. Yes, it was.

1 Q. I'm also handing you what's been marked as,
2 we're going a little bit out of order here,
3 Complainant's Group Exhibit N and, I believe -- David
4 can take a look at this and confirm it, but I believe
5 this has also been previously -- this document has also
6 been previously admitted as Respondent's Exhibit A, but
7 I'm not sure if it's exactly the same.

8 MR. RIESER: It's the same.

9 BY MR. PODLEWSKI:

10 Q. Mr. Persino, (sic) can you identify that
11 document?

12 MR. PERSINO: Perkins.

13 BY MR. PODLEWSKI:

14 Q. Mr. Perkins, can you identify that document,
15 please?

16 A. Yes.

17 Q. And what is it?

18 A. It's a handwritten log of the borings that were
19 installed at the site.

20 Q. And was that document among the documents that I
21 provided to you?

22 A. I'm not sure I remember if it was provided --
23 yes, it was.

24 Q. I'm also handing you what's been marked as

1 Exhibit O, Complainant's Exhibit O, which is a group
2 exhibit, and ask if you recognize that document?

3 A. Yes, I do.

4 Q. And what is it?

5 A. It's the slug test information from the field.

6 Q. And was this document among the documents that
7 were provided to you concerning your review of the
8 groundwater sampling activities at the property?

9 A. Yes.

10 Q. I'm handing you what's been marked as
11 Complainant's Exhibit P and ask if you recognize that
12 document?

13 A. Yes, I do.

14 Q. And what is it?

15 A. It looks like the data sheet from the pilot test
16 or the soil vapor extraction pilot test.

17 Q. And was this document among the documents that I
18 provided to you and asked you to review?

19 A. Yeah. I think so. Yes.

20 Q. All right. And the final document here is
21 Complainant's Exhibit Q and ask if you've seen that
22 before?

23 A. Yes, I have.

24 Q. And could you identify it for us, please?

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1 A. It appears to be the deposition of -- Jeff
2 McClelland's deposition.

3 Q. And was that among -- was that deposition
4 transcript among the documents that I provided to you --

5 A. Yes.

6 Q. -- and asked you to review?

7 Now, of these documents that I've presented
8 to you, what's been previously marked as Complainant's
9 Exhibit D, the May 8th, 1996, report; Complainant's
10 Exhibit E, the September 10th, 1996, report;
11 Complainant's Exhibit N, which is the handwritten soil
12 borings logs, which have already been identified as
13 Respondent's A; the handwritten slug tests data,
14 Complainant's Exhibit O; the handwritten data relating
15 to the SVE test, which is Complainant's Exhibit P; and
16 Mr. McClelland's deposition transcript, which is
17 Complainant's Exhibit Q, did you, in fact, review these
18 documents?

19 A. Yes, I did.

20 Q. Now, did you review anything else in conjunction

21 with your review of the documents you have identified
22 that relate to the sampling of groundwater at the
23 property?

24 A. Yes. I reviewed the documents that were

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1 referenced in regulation 620, what is it, 35 IAC 620,
2 regarding the groundwater, you know, the definitions for
3 sampling and collection.

4 Q. Were there any other documents that you
5 reviewed?

6 A. There was a document that I found, what is it,
7 U.S. EPA document regarding process -- installation of
8 monitoring wells and processes, but that was after the
9 fact.

10 Q. Mr. Perkins, I'm going to hand you what's been
11 marked as Complainant's Exhibit M and ask if you could
12 identify that document?

13 A. Yes. This is my affidavit.

14 Q. And directing your attention to page 3 of
15 that -- Strike that.

16 This is an affidavit that you prepared?

17 A. Yes, it is.

18 Q. And does your signature appear on page 8 of this

19 affidavit?

20 A. Yes, it does.

21 Q. Do you know why you prepared this affidavit?

22 A. I prepared it to give my opinion as to the data
23 that I reviewed.

24 Q. Was this affidavit prepared in connection with

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1 this case --

2 A. Yes.

3 Q. -- that's presently pending before the Pollution
4 Control Board?

5 A. Yes, it was.

6 Q. Now, directing your attention to -- again,
7 directing your attention to page 8, the last page of the
8 narrative of your affidavit, it's notarized July 2nd,
9 1998; is that correct?

10 A. That's correct.

11 Q. And so is it correct to state that this
12 affidavit was prepared on or about July 2nd, 1998?

13 A. Yes.

14 Q. Now, directing your attention to page 3 of that
15 affidavit -- are you with me?

16 A. Yes, I'm with you.

17 Q. Paragraph 9 identifies various documents that
18 you were provided with and reviewed that relate to the
19 sampling of groundwatering at the property; is that
20 correct?

21 A. That's correct.

22 Q. And these are all the documents that we have
23 discussed so far in your testimony today?

24 A. True. That's correct.

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1 Q. And continuing on the bottom of page 3 and on
2 the top of page 4, paragraph ten, you also identified
3 various materials that relate to procedures and
4 protocols for collecting representative samples of
5 groundwater; is that correct?

6 A. That's correct.

7 Q. Now, why did you review these particular
8 documents that are identified in paragraph ten of your
9 affidavit?

10 A. Well, I reviewed these in the process of
11 evaluating the regulatory requirements for -- according
12 to 620, determining quality of groundwater and the --
13 how to collect, the process of collection, the
14 investigations and to identify, you know, what it

15 takes -- basically what groundwater is by the regulatory
16 requirements.

17 Q. And are all these documents that are identified
18 in paragraph ten of your affidavit, are they reasonably
19 relied upon by professionals in the fields geology and
20 hydrogeology?

21 A. Yes, they are.

22 Q. Now, I note also in paragraph 11 of your
23 affidavit that you refer to a telephone conversation you
24 had with a Mr. Pete Sorenson of the Illinois

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1 Environmental Protection Agency?

2 A. Yes.

3 Q. Why did you speak with Mr. Sorenson?

4 A. One of the reasons is because after reading the
5 documents that were referenced in paragraph ten and were
6 referenced, for the most part, in 620, 35 IAC 620, it
7 became apparent that the method of collecting
8 groundwater and the procedure was vague. And so I
9 wanted to call the IEPA and see if they had any -- what
10 was their standard procedure for collecting samples,
11 viable and representative samples, in low hydraulic
12 conductivity soils and what procedures they wanted to

13 use or they used in collection.

14 Q. Now, Mr. Perkins, on the basis of your
15 education, training and experience, your review of the
16 documents you have identified as having received from my
17 office, which are identified in paragraph nine of your
18 affidavit, your review of the additional materials you
19 identified that relate to the procedures and protocols
20 for collecting representative groundwater samples, which
21 are identified in paragraph ten of your affidavit, and
22 consideration of in other information reasonably relied
23 upon by professionals in field of hydrogeology, do you
24 have a professional opinion as a hydrogeologist whether

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1 groundwater existed at the property?

2 A. It's my professional opinion that groundwater
3 existed at the property.

4 Q. And what's the basis for that opinion?

5 A. The basis for that opinion is that for one, the
6 groundwater when -- excuse me. When Pioneer bailed the
7 wells, the wells recharged. That can only happen when
8 groundwater is above the atmospheric pressure and has a
9 hydraulic head capable of pushing it into the monitoring
10 wells.

11 Q. And that was the conditions at the Martin's of
12 Matteson site?

13 A. That's correct.

14 Q. And is the basis for your opinion that
15 groundwater existed at the property stated in your
16 affidavit?

17 A. Yes.

18 Q. And does that appear at --

19 A. 13.

20 Q. -- paragraph 13 of your affidavit?

21 A. Yes.

22 Q. On page 5?

23 A. Yes, it does.

24 Q. On the basis of your education, training and

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1 experience, your review of the documents you have
2 already identified as having received from my office,
3 your review of additional materials you have identified
4 that relate to the procedures and protocols for
5 collecting representative groundwater samples and
6 consideration of other information that's reasonably
7 relied upon by professionals in the field of
8 hydrogeology, do you have a professional opinion as a

9 hydrogeologist whether the procedures followed by
10 Pioneer in collecting groundwater samples from the
11 property in April, May and June of 1996 satisfied the
12 minimum requirements for the collection of groundwater
13 for monitoring wells set in soils exhibiting low
14 hydraulic conductivity?

15 A. Yes, I do.

16 Q. And what's that opinion?

17 A. That opinion is that they did follow the minimum
18 requirements by bailing -- by removing all the static
19 water within the well bore which, in essence, removed
20 the water within the well bore and the annulus behind it
21 and any water that flowed in would be from the soil
22 itself or groundwater flowing into the well bore.

23 Q. And that's the basis of your opinion?

24 A. That's the basis of the opinion.

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1 Q. And is the basis of your opinion also set forth
2 in paragraph 14 of your affidavit which appears at the
3 -- begins at the bottom of page 5 and continues on
4 through near the bottom of page 7?

5 A. Yes, it is. And the reason why in this case
6 where you're dealing with a low hydraulic conductivity

7 soil -- and you will not have a large volume of water to
8 remove. So by removing the one volume and letting it
9 flow back in, you should be able to collect a
10 representative sample.

11 Q. On the basis of your education, training and
12 experience, your review of the documents you identified
13 as having received from my office, your review of the
14 additional materials you identified that relate to the
15 procedures and protocols for collecting representative
16 groundwater samples and consideration of other
17 information reasonably relied upon by professionals in
18 the field of hydrogeology, do you have a professional
19 opinion as a hydrogeologist as to whether the
20 groundwater samples collected at the property by Pioneer
21 in April, May and June of 1996 are representative
22 samples of groundwater?

23 A. Based on the information presented in the
24 report, I believe that it is a representative

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1 groundwater sample.

2 Q. And what's the basis -- the basis of your
3 opinion is what?

4 A. The basis of the opinion is they bailed the well

5 dry. They collected the water. They put it immediately
6 into a jar for sample without exposing it to air very
7 long. They did not filter the sample on site and sent
8 it to the laboratory, and that was the -- the laboratory
9 analyzed it and came up with the impact, the quantity or
10 concentrations of TCE within the water. I may be mixing
11 up my thing here.

12 Q. And it's your opinion that -- or the basis for
13 your opinion that the samples collected by Pioneer from
14 the property in April, May and June of 1996 are
15 representative samples, is that set forth in
16 paragraph 15 of your affidavit which begins at the
17 bottom of page 7 and on to page 8?

18 A. Yes.

19 MR. PODLEWSKI: I don't have anything more of
20 this witness, and, at this point, I would move to admit
21 Complainant's M through Q into evidence.

22 HEARING OFFICER KNITTLE: Let's take them one at
23 a time.

24 MR. PODLEWSKI: Actually, L through Q.

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1 HEARING OFFICER KNITTLE: L.

2 MR. PODLEWSKI: L, sorry.

3 HEARING OFFICER KNITTLE: L?

4 MR. PODLEWSKI: L is his CV.

5 HEARING OFFICER KNITTLE: Okay.

6 Complainant's L, do you have any objection?

7 MR. RIESER: No objection to L.

8 HEARING OFFICER KNITTLE: Complainant's M?

9 MR. RIESER: No objection to M.

10 HEARING OFFICER KNITTLE: I should be doing
11 these one at a time as well. Complainant's L is
12 admitted, as is Complainant's M. Complainant's N, which
13 is already admitted as Respondent's A, I understand
14 that, but --

15 MR. RIESER: Right. Yeah, because of that,
16 that's okay. I don't know if you need two, but suit
17 yourself.

18 HEARING OFFICER KNITTLE: You know what I'm
19 saying here.

20 MR. RIESER: Yeah.

21 MR. PODLEWSKI: The reason why is because I had
22 these previously marked, and otherwise the order would
23 be goofed up.

24 HEARING OFFICER KNITTLE: No. That's fine. You

1 have every right to submit it as an exhibit of your own
2 as well. We'll admit that as Exhibit N.

3 Complainant's Exhibit O was the slug test
4 info.

5 MR. RIESER: Yeah, and that I have a problem
6 with because those tests weren't performed by Perkins.
7 It was just a document he reviewed, and I think for an
8 exhibit to be admitted, you have to have -- lay some
9 foundation for the work that was done.

10 I mean, certainly Mr. McClelland could have
11 testified as to O, and this is true of P as well, but --
12 and have those admitted, but I don't think that those
13 could be admitted through Mr. Perkins.

14 MR. PODLEWSKI: Well, they are documents that he
15 relied upon in forming his professional opinion.
16 Whether they're admitted into evidence or not, they
17 still exist as documents that he was provided with by my
18 office and that he relied upon in forming his
19 professional opinion in this case, so you know --

20 MR. RIESER: And I don't think that each
21 document he relied on has to be admitted into evidence
22 is the other side of that. I mean, he's entitled to
23 rely on whatever he relied on, but whether they're
24 admitted as exhibits to the board, there still has to be

1 a foundation for them in terms of who prepared them and
2 what they mean and all the rest of it.

3 HEARING OFFICER KNITTLE: Anything further?

4 MR. PODLEWSKI: No.

5 HEARING OFFICER KNITTLE: Yeah. I'll sustain
6 that objection. Of course, those will still go to the
7 board. I'm not going to admit them into evidence, so if
8 you have -- if you so choose, you can always, as you
9 know, appeal my decision to the board and they'll have
10 those, but I'm going to instruct them not to look at
11 those.

12 MR. PODLEWSKI: Okay.

13 MR. RIESER: That's for O and P.

14 HEARING OFFICER KNITTLE: O and P, I was doing
15 them both.

16 MR. RIESER: And then Q I don't have an
17 objection to.

18 HEARING OFFICER KNITTLE: Q will be admitted,
19 and that's it for this witness, Mr. Podlewski?

20 MR. PODLEWSKI: That's it.

21 HEARING OFFICER KNITTLE: Do we have a
22 cross-examination of this witness?

23 MR. RIESER: I do. Can I take two minutes
24 before we start?

1 HEARING OFFICER KNITTLE: Yeah. Well, that's
2 fine. This is our last witness of the day regardless,
3 so we can take as much time as you'd like. We're
4 running ahead of schedule.

5 MR. RIESER: Okay. Let me just take about five
6 minutes.

7 HEARING OFFICER KNITTLE: Let's go off the
8 record

9 (Recess taken.)

10 HEARING OFFICER KNITTLE: Let's start with the
11 cross-examination. Let me remind you you're still under
12 oath.

13 THE WITNESS: Right.

14 CROSS-EXAMINATION

15 by Mr. Rieser

16 Q. Mr. Perkins, do you see a distinction between a
17 representative sample and an accurate sample?

18 A. A fine line, yes.

19 Q. What would that line be?

20 A. It would be -- an accurate and a representative
21 sample is both -- I mean, a representative sample is
22 close to an accurate sample and can be considered an
23 accurate sample in many cases. And a definition would

24 be -- to me would be did I perform it or did I not

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1 perform it?

2 Q. I'm sorry. What do you mean by that?

3 A. I mean, for me to say something is accurate, I
4 would have to know that I did the work exactly as it
5 should have been done. That to me would be accurate
6 because I know what I did.

7 A representative sample might be, you know,
8 what someone else did. Did they do what I think I would
9 have done for the most part? Is it representative? Is
10 it acceptable?

11 So there's a very fine line, and I wouldn't
12 say that to me a representative sample in many cases
13 means just as much as an accurate sample, but there is a
14 little definition difference.

15 Q. So your distinction would be that with an
16 accurate -- with a sample that you've done, you've known
17 that you've followed all the appropriate practices and
18 protocols that you think are appropriate for handling
19 that sample?

20 A. Uh-huh.

21 Q. And that you are convinced, as an expert in this

22 area, that the analytic finding is accurate in the sense
23 that it absolutely reflects the amount of contamination
24 in that sample?

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1 A. Well, I might be cutting a hair. It's not --
2 there isn't that much difference between the two. I
3 think the main thing is, to me, the only way I could
4 call something accurate is if I felt that -- you know, I
5 did the sampling and I felt that I followed all the
6 procedures versus saying someone else did it. Whereas,
7 even though they wrote down everything, you know, I did
8 not visually see it. I just know what they put down in
9 the report.

10 Q. So can we say, based on what you've just said,
11 that the difference between something that's accurate
12 and something that is representative is the level of
13 confidence that you personally have that the appropriate
14 practices and procedures were filed in the methodology
15 of taking that sample and having it analyzed?

16 A. Only insofar as the fact that I know exactly
17 what I did versus what I read and what I perceived to be
18 done based on a written report.

19 Q. So you have a high level of confidence,

20 obviously, in the work that you did. You have a
21 slightly lower level of confidence in looking at a
22 report prepared by somebody else?

23 A. Yeah, basically.

24 Q. And if you found out information about the

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1 report that suggested that there were a number of
2 deviations from the appropriate practices and
3 procedures, you would then start believing that the
4 sample was even less representative than that?

5 A. Well, to be representative and for me to state
6 that it's representative based on the written document,
7 I'd have to be fairly certain that what was followed is
8 the standard procedures, because within a
9 representative, there is a range of representative.

10 You can still be representative within the
11 range. When you get outside of not following the proper
12 procedures or, you know, someone can show me that they
13 didn't do the proper procedures, then that starts
14 falling outside the representative.

15 Q. Now, is it correct that your opinion as to
16 whether the samples described -- the groundwater samples
17 described in the Pioneer report of September 1996, which

18 has been introduced as Exhibit E, are representative,
19 does that assume that the groundwater monitoring wells
20 were properly constructed?

21 A. Yes.

22 Q. And the basis for that assumption is the
23 statement in the Pioneer report that they followed their
24 protocols for constructing the groundwater monitoring

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1 wells that are included as Appendix C to that report?

2 A. Not only that, but it also goes to the actual
3 report and the information stated as to how they put the
4 monitoring wells together. In some of it -- let's see
5 if I could remember. Excuse me while I take a look at
6 Appendix C.

7 Q. I'd rather you looked at it.

8 A. What they put in the protocol is your standard
9 protocols in Appendix C because they're talking about
10 using a hollow stem auger which they did do on some of
11 the outer line monitoring wells, but for the hand auger
12 ones on the interior ones, they obviously did not follow
13 this. They followed the hand auger procedure they
14 described within the body of the report.

15 Q. Is there a hand auger procedure defined within

16 the body of the report?

17 A. Basically, what I thought it was -- let's see.
18 I'd have to go take a look, but they do describe what
19 they did, if I remember correctly. Yeah, they do do a
20 brief description.

21 Q. They do a brief description of how they
22 constructed the soil borings, right?

23 A. Correct.

24 Q. And then you have to make the jump that they

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1 installed the monitoring wells into that same hole
2 constructed with the -- constructed by the hand auger?

3 A. Correct. You make the jump between the protocol
4 and for following the installation of the -- in the
5 back, Appendix C, and basically, the modification that
6 doing a hand auger instead of doing the hollow stem
7 auger, so you can't say that they followed this
8 entirely, but --

9 Q. By following this, you say follow Appendix C?

10 A. Appendix C, that's correct, but when they
11 constructed the wells, based on the information in here,
12 it sounds like they went back to the procedure. They
13 just used a different method of installing -- of

14 creating the soil boring.

15 Q. Your assumption, though, is that except for that
16 issue, the construction of the monitoring wells, they
17 followed Appendix C to the letter?

18 A. Not -- well, using a hand auger, no, it wouldn't
19 be to the letter.

20 Q. Are you aware of other deviations from Appendix
21 C that Pioneer engaged in in either the construction or
22 the sampling of the wells?

23 A. Again, I'd have to take a look. Hold on a
24 second. The deviations are relative to the differences

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1 between a hollow stem auger and a hand auger. For one,
2 a hand auger generally --

3 Q. I'm sorry. I was asking whether there were
4 other deviations other than that that you're aware of in
5 Pioneer's practices with respect to Appendix C. We'll
6 get to that.

7 A. Not to my knowledge. I'm not aware of, no.

8 Q. You assume, for example, that the sampling
9 protocols were followed as described in Appendix C?

10 A. Yes, for the most part.

11 Q. For the most part. Do you know the extent to

12 which they weren't?

13 A. Those variations when -- between a protocol that
14 you put in the appendix of a report versus which you
15 actually do are a lot of variances. I mean to say that
16 you followed it to the letter is, you know, I think is
17 -- there's variations.

18 Q. So the protocol is simply a guidance document
19 for people in the field?

20 A. It's a guidance document to be followed as best
21 as possible based on the conditions in the field.

22 Q. So there ought to be some conditions in the
23 field that justify a deviation from the protocol?

24 A. That's correct.

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1 Q. And would you agree that it's appropriate for
2 any report describing a sampling event to identify the
3 deviations from the protocol?

4 A. Can you repeat that?

5 Q. Would you agree that it's also important that a
6 sampling report describing the sampling event should
7 identify any deviations from the protocol?

8 A. It should describe, yes, the deviations or, at
9 the very least, what they did.

10 Q. You would also assume that there was no cross
11 contamination of the sampling of the equipment that was
12 used in performing the sample, correct?

13 A. You mean between boring and borings?

14 Q. Yes.

15 A. Yes.

16 Q. And you understand there are requirements in the
17 sampling protocol Appendix C of Exhibit E that are
18 designed to address the identification of the potential
19 for cross contamination, correct?

20 A. Yes, there should be, and I don't remember the
21 exact wording.

22 Q. By the use of field blanks and trip blanks?

23 A. The use of field blanks more -- that is a -- you
24 should be doing -- let me back up here.

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1 For a lot of times when you do your
2 investigation, if you're not doing it for regulatory
3 purposes, I would say that there are a lot of times you
4 don't -- most people don't do the trip blanks, the field
5 blanks or the duplicates. They may do one or the other,
6 usually the duplicate, and if they're not doing a study
7 to identify it for regulatory purpose, a lot of times

8 they do not do those.

9 Q. When you say regulatory purposes, what do mean?

10 A. You're saying this case, you're identifying the
11 extent of contamination. You're not -- at this point,
12 you want to find out what the problem is. You want to
13 find out the extent of the problem.

14 Now, if you go into one of the programs for
15 the IEPA like, well, at that time it would have been the
16 voluntary program or now the SRP, site remediation
17 program, then there are certain methodologies you have
18 to follow.

19 Q. And those methodologies are necessary because in
20 order to justify action by the government, you need to
21 follow the appropriate practices and procedures to
22 document that the sampling is as accurate and
23 representative as possible?

24 A. I would say it's from a -- yes, for the most

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1 part.

2 Q. We were talking a little bit earlier about the
3 use of the hollow stem auger versus the use of the hand
4 auger. You agree that the protocol which is in
5 Exhibit E as Appendix C requires, as we talked about,

6 the use of a hollow stem auger, correct?

7 A. That's correct.

8 Q. And you would agree that that protocol is very
9 much in line with industry standards, correct?

10 A. For -- yeah, auger, yes.

11 Q. For construction of a monitoring well?

12 A. Yes.

13 Q. And that's because there are differences between
14 how a hollow stem auger works and how a hand auger
15 works, correct?

16 A. Correct.

17 Q. The use of a hollow stem auger tends to work
18 against the problem of down hole contamination because
19 you're not taking it in and out of the hole all the time
20 as you would a hand auger?

21 A. There is still contamination that -- when you're
22 working it in and out, you still --

23 Q. When you're working -- I'm sorry. When you're
24 working a hand auger in and out?

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1 A. Yes. Well, some hand augers -- yeah -- never
2 mind. I'm talking about the regular auger, the rig --
3 the drill rig auger.

4 Q. The hollow stem auger?

5 A. That does cause some contamination, cross
6 contamination. Every form of drilling that I'm aware
7 of, even the one where you insert a casing, will create
8 some form of cross contamination.

9 Q. Would you agree that the potential for that is
10 less with a hollow stem auger than for a hand auger?

11 A. It's less, yes.

12 Q. The use of the hollow stem auger also allows for
13 the larger bore hole than with a hand auger?

14 A. Yes.

15 Q. And the larger bore hole allows for a better
16 seal around the well casing?

17 A. To some extent. It's easier to provide a good
18 seal with an auger -- a hollow stem auger than it is
19 hand auger, but you can still get good seals with the
20 hand augers, too.

21 Q. But you have a lesser area to work with --

22 A. That's correct.

23 Q. -- with a hand auger, and so you can't put as
24 much sealant into the annulus between the hole and the

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1 outside of the riser with a bore hole that's made by a

2 hand auger as opposed to a bore hole that's made with a
3 hollow stem auger?

4 A. What do you mean sealant?

5 Q. Bentonite chips or some other material that's
6 designed to provide a seal.

7 A. When you're talking about the seal, the whole
8 idea of using bentonite is that it expands and fills
9 that seal. Based on the amount of expansion that
10 bentonite will give you, you can create just as good a
11 seal by, you know, using bentonite chips as you can with
12 a hand auger as you can with a hollow step auger.

13 Q. But even though there's less annular space
14 between the edge of the -- the outside edge of the riser
15 and the inside edge of the bore hole created with a hand
16 auger?

17 A. Even with that and the reason is -- I don't know
18 if you've seen many examples of borings where they put
19 the bentonite chips all the way near the surface, and
20 what happens is it pops out. It pops the top right off
21 of the surface, or it creates a mound, and that's
22 because of the sheer expansion of that bentonite is
23 causing -- you know, if it can't go sideways, it goes up
24 or down.

1 Q. As part of your job at Weaver, Boos, do you
2 supervise -- I'm sorry. Do you perform -- both perform
3 and oversee groundwater investigations done by Weaver,
4 Boos?

5 A. I do more oversight than perform, yeah.

6 Q. And does Weaver, Boos have protocols similar to
7 the one used by Pioneer?

8 A. Those are very standard protocols.

9 Q. And so it would be your expectation that a
10 Weaver, Boos employee would use a hollow stem auger to
11 drill monitoring wells as opposed to a hand auger?

12 A. Actually, we use a significant number of hand
13 augers. I was doing some checking on this, and,
14 wherever possible, we use the hollow stem, but we do use
15 a number of the hand augers.

16 Q. So there has to be some type of limitation on
17 the physical use of -- on the physical use of a hollow
18 stem auger before you would recommend using a hollow
19 stem auger rather than a hand auger?

20 A. A hollow stem auger is generally -- it's a
21 better, easier procedure because, for one, you've got a
22 rig out there. You're not sitting there trying to
23 dig -- use muscle power to dig it down, and it is a
24 preferred method, but it isn't the only method.

1 Q. Looking at -- I'm going to direct your attention
2 to the second page of that protocol, Appendix C of
3 Exhibit E.

4 A. Okay.

5 Q. Looking at the second page -- at the last
6 paragraph on the second page, you'll see that the --

7 A. Excuse me. You're on another page than I am?

8 Q. Yeah, I'm looking at appendix --

9 A. Appendix B?

10 Q. C.

11 A. C, okay. I'm sorry. I went to page 2.

12 Q. You'll see in the last paragraph there a field
13 blank is required for each sampling interval. Do you
14 see that?

15 A. Yes, I see it.

16 Q. And the purpose of this is to verify that the
17 sampling equipment is not being contaminated as it moves
18 from bore hole to bore hole?

19 A. That's correct.

20 Q. And so the purpose of this protocol is to
21 require a trip blank to make sure that cross
22 contamination is not occurring between each bore hole?

23 A. Well, that's what a field blank is for.

24 Q. Right.

1 A. Right.

2 Q. And if you don't have this, you don't know
3 whether or not there was cross contamination between the
4 samples?

5 A. Well, it is usually -- if you -- say you're out
6 at a site and you do a number of borings, you might
7 perform one trip blank. You won't do it for every one
8 of them, and many times it's not even done as long as
9 the proper procedure is followed for cleaning the
10 appropriate equipment, and it's a quality control
11 method.

12 Q. But it is a quality control mechanism that's
13 part of the appropriate protocols?

14 A. That's right.

15 Q. So your opinion that all -- that the samples
16 were representative assumed that these protocols were
17 followed, including protocols with respect to field
18 blanks?

19 A. No. My opinion is based off the fact that if
20 they use the proper procedure for decontaminating their
21 equipment between wells, as they should do, and it
22 appears that they did do based on what I read and

23 knowing the fact that in many cases the only -- you
24 know, you would do these for regulatory purposes, but

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1 again if you go --

2 Q. I'm sorry. You would do these, i.e., the field
3 blanks?

4 A. The field blanks, the trip blanks. They're not
5 normally done -- performed if you're just identifying
6 the extent of contamination or you're just doing an
7 investigation. The reason is you put in the field blank
8 and the trip blanks and the duplicate samples, you're no
9 longer competitive and you won't get the work. But when
10 you're doing stuff for regulatory purposes, you've got
11 to do it.

12 Q. So your assumption that they followed all their
13 protocols with respect to decontaminating their
14 equipment is based on a review of what they say they did
15 in the report, correct?

16 A. Yes.

17 Q. You weren't actually at the site --

18 A. No, I wasn't.

19 Q. -- so you don't know whether or not it was done?

20 A. No, I don't know.

21 Q. You also had the opinion that the removal of one
22 well volume is appropriate purging for a low
23 permeability well; is that correct?

24 A. Yes.

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1 Q. Now, is there a distinction in your mind between
2 development and purging?

3 A. Yes, there is.

4 Q. Even in a low permeability well, doesn't there
5 have -- would you agree that there has to be certain
6 amount of well volumes removed to develop the wells and
7 then a certain amount removed to purge it prior to
8 sampling?

9 A. That would be -- the most common method of doing
10 it is to remove certain volumes, like five to ten, three
11 to five. However, when you read up as to what the
12 standards are, they're vague. And I think it's one of
13 the practical guides to groundwater sampling, if I
14 remember the report right, it says that there are no set
15 volumes for collecting water samples in a low hydraulic
16 conductivity well, and that is one -- if I remember
17 correctly, I think that it's one of the references in
18 the 620s.

19 Q. But there still is a -- you'd agree that there
20 is a functional goal that is to be achieved by both
21 development and purging, and they're separate goals,
22 correct?

23 A. Yes, they are.

24 Q. So the functional goal of development is to

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1 remove the fines created by the construction of the well
2 in order to assure that the sample taken from that well
3 is accurate, correct?

4 A. That's correct, yes.

5 Q. And so there are numerous, both qualitative and
6 quantitative, guides available to make sure that that's
7 happened, correct?

8 A. Again, it depends on what kind of formation
9 you're sampling the groundwater from.

10 Q. Well, for example, you could look and see if
11 the -- take a sample and see if it's clear or not, which
12 is what Pioneer's protocols talk about, right?

13 A. Right.

14 Q. Or you can do conductivity or pH sampling or
15 something of that nature to ensure that you've got
16 stability in the well, correct?

17 A. That's correct.

18 Q. None of this was done here, correct?

19 A. None of this was able to be done.

20 Q. When you say able to be done, that's because it
21 would take too long?

22 A. It would take -- the recharge rates, it would be
23 required for them to be out there an abnormally long
24 period of time first to develop -- if you're trying to

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1 remove the five to ten well volumes, I think that's what
2 they stated in here, you're probably looking at a couple
3 of days' worth just to develop it, and then to purge it,
4 which also requires pulling a certain number of well
5 volumes, you'd be looking at another couple of days.

6 And one reason why I called the IEPA, or
7 talked to Mr. Sorenson, was to find out what would they
8 do in an instance where you're dealing with low
9 hydraulic conductivity wells where you can't really
10 develop it and you can't really purge it. And they
11 stated you take out what you can out of the well bore
12 and then go back the next day and sample. And they said
13 that's the protocol they follow.

14 Q. And they would sample the material that was

15 sitting in the well bore right then or they would take
16 another removal or they would remove another amount
17 prior to taking that sample?

18 A. He did not say anything about taking an
19 additional amount.

20 Q. Do you think it's appropriate to take a sample
21 of water that's been sitting in a well hole for a 24
22 -hour period of time?

23 A. No.

24 Q. No?

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1 A. I would vary that by stating that I think if
2 you -- rather than let it recharge and wait for 24 hours
3 when you're dealing with volatiles, my opinion would be
4 to take it one step before that and as soon as it
5 recharges, you take your sample because whatever is
6 coming in should be a fresh sample from the soil
7 containing volatiles if volatiles are present, and
8 taking your sampling while it's a fresh sample.

9 Q. It's also your opinion that because these are
10 low permeability wells that have a low rate of recharge,
11 the recharge of water into the well, in other words, the
12 movement of water into the wells is so slow that it

13 would not resuspend the fines and they would be picked
14 up in -- such a way that they would be picked up by a
15 bailer or somebody sampling the water; is that correct?

16 A. For the most part, yes.

17 Q. When you say for the most part --

18 A. Again, if you have a real slow recharge, I'm in
19 agreement with that.

20 Q. But that also assumes that the sampling process
21 in terms of how the bailer is introduced in the well is
22 done correctly, correct?

23 A. True.

24 Q. So if the bailer is dropped down the well too

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1 fast, it can create turbulence that could resuspend the
2 fines?

3 A. It might resuspend some of them.

4 Q. With respect to your opinion that groundwater is
5 present at the site, that opinion is based on the fact
6 that the wells filled with water -- were filled with
7 water and recharged after they were bailed; is that
8 correct?

9 A. Yes.

10 Q. That also assumes that the wells themselves were

11 properly constructed?

12 A. That's correct.

13 Q. So if there was a problem in the construction of
14 the wells, the introduction of water into those wells
15 would not be evidence of groundwater, but might be
16 evidence of infiltration from another source?

17 A. If they weren't constructed right.

18 Q. Now, your opinion is also based on a definition
19 of groundwater as any water in the soil under more than
20 one atmospheric pressure, correct?

21 A. That's correct.

22 Q. So that can include percolation?

23 A. Percolation, when you're talking about -- you're
24 talking about the downward migration of the water?

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1 Q. Yes.

2 A. When you're talking about the water that's
3 migrating downward, you're less than one atmospheric
4 pressure because based on the capillary pressures trying
5 to hold it back and the gravity pulling it down, you're
6 going to actually end up with less than one atmospheric
7 pressure.

8 Q. So that a percolating water would not fill up a

9 well that was installed?

10 A. If it goes through the soil and back into the
11 well, it might, but you're talking about water that's
12 going down by drainage gravity flow and not -- I mean,
13 there's going to be a little bit of sideways migration
14 as it spreads out, but it should be minimal.

15 Q. It can also -- so in order to rule out
16 percolation in terms of groundwater sampling and
17 identification of groundwater aside, it's important to
18 know what the climatic conditions were at the time of
19 the sampling, correct?

20 A. Yes.

21 Q. Your definition of groundwater can include
22 groundwater introduced from a water pipe in the
23 building?

24 A. Yes. Water from any source once it reaches a

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1 point where it's in the saturated zone and the static
2 pressure or the fluid pressure is greater than one
3 atmosphere, it's now groundwater.

4 Q. Now, how do you define perched water?

5 A. Perched water would be water that would exist --
6 say if you have -- let's just say you have an aquifer

7 with the sand in it and you have a clay layer, water
8 will perch on that clay layer, but it won't be there --
9 usually it's not there all year round, or it could be
10 within like fill material that's sitting on top of a
11 clay that is not there all year round.

12 Q. So that can also include condition of the
13 presence of water that's intermittent over time, in
14 other words, it's not there all year round, as you said?

15 A. Correct.

16 Q. So if an area had groundwater during some
17 portion of the years and not at others, you would still
18 call that groundwater?

19 A. At the time it exists, it's groundwater, yes.

20 Q. Your affidavit, which was introduced as
21 Complainant's Exhibit M, contains a map which I believe
22 you identify as a potentiometric,
23 p-o-t-e-n-t-i-o-m-e-t-r-i-c, surface map?

24 A. That's correct.

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1 Q. Do you see that?

2 A. Yes.

3 Q. What is a potentiometric surface?

4 A. A potentiometric surface is the pressure surface

5 of groundwater, and in a case where it is free to the
6 surface, it can also be identified as a water table.

7 Q. So this map, which is included in your
8 Exhibit M, is a map of the surface of the water table,
9 is that another way to say that?

10 A. That's correct.

11 Q. The soil borings that I believe you reviewed as
12 part of Exhibit E, would you agree with me that they
13 show a relatively homogenous subsurface?

14 A. Yes.

15 Q. So it's the same types of soils across the site
16 represented by the soil borings?

17 A. Yes, if I remember correctly, it's pretty much
18 the clay, brown clay.

19 Q. And with very few exceptions, there are no
20 pockets of sand gravel or anything of that nature?

21 A. That's correct.

22 Q. You created this map that's in your Exhibit M by
23 essentially graphing the water levels reflected in
24 Exhibit E?

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1 A. That's correct. I used the data from Exhibit E.

2 Q. And did you use the data from one date or

3 several dates?

4 A. In this case just one date.

5 Q. So that's the July 25th?

6 A. That's correct, July 25th.

7 Q. Is that the day you made --

8 A. No. That's the date from the report where the

9 data came from, the elevations.

10 Q. Now, the distance from -- have you ever been to

11 the site?

12 A. No, I have not.

13 Q. Do you understand that the topography of the

14 site is that it's relatively flat?

15 A. Yes.

16 Q. And what this map shows is a -- would you agree

17 with me that it shows a very significant contour in the

18 potentiometric surface?

19 A. That's correct.

20 Q. So the distance reflected from, say, the top

21 boring, which I think is B8 --

22 A. B8 or 9.

23 Q. I'm sorry. It's B8.

24 A. B9.

1 Q. I'm looking at the top boring in the middle of
2 the picture, and the bottom boring, which is B14, that's
3 about 180 feet?

4 A. I don't really know. I don't have a scale on
5 here that I could -- but I'll assume that's correct.

6 Q. So you've got -- and the well point that's right
7 in the middle is about 90 feet from each side plus or
8 minus five feet or so?

9 A. That's correct.

10 Q. So you've got about a five-foot gradient going
11 north and a six-foot gradient going south?

12 A. That's correct.

13 Q. There's no topographic features that account for
14 this contour; is that correct?

15 A. That's correct.

16 Q. Do you know what accounts for this feature?

17 A. No, I do not.

18 Q. Is it your opinion that something is going on at
19 the site that we don't -- and we don't know what it is
20 with respect to the groundwater?

21 A. I agree.

22 Q. Would that be the introduction of water from
23 sources inside the facility?

24 A. It's very possible that there could be a water

1 leak and broken pipe. It could be something other than
2 that.

3 MR. RIESER: Just a minute please. I have
4 nothing further.

5 HEARING OFFICER KNITTLE: Mr. Podlewski, do you
6 have redirect?

7 MR. PODLEWSKI: Just a couple questions.

8 REDIRECT EXAMINATION

9 by Mr. Podlewski

10 Q. Mr. Perkins, the use of hand augers is an
11 appropriate methodology for advancing soil -- Strike
12 that.

13 The use of hand augers is an appropriate
14 methodology for developing bore holes for the
15 installation of groundwater monitoring wells, correct?

16 A. That's correct.

17 Q. Directing your attention to Complainant's
18 Exhibit M, specifically page 8.

19 A. Okay.

20 Q. In the last paragraph of your affidavit and in
21 the last sentence, you state that the laboratory
22 analysis of the groundwater samples that were taken at
23 the property indicate that the groundwater beneath the
24 property is impacted with VOCs and concentrations

1 exceeding the applicable groundwater standards under 35
2 Illinois Administrative Code part 620, correct?

3 A. That's correct.

4 Q. Does the fact that trip blanks or field blanks
5 may not have been prepared during groundwater sampling
6 activities at the site render that statement incorrect?

7 A. No, it doesn't.

8 Q. And why is that?

9 A. Because it's based off the assumption the
10 laboratory is certified. They followed all the correct
11 protocols. The sampling procedure was followed. The
12 samples were collected in accordance with the standard
13 procedures for collecting groundwater samples and that
14 the monitoring wells were installed properly. And I
15 have no reason to suspect otherwise.

16 Q. Now, also directing your attention on
17 Complainant's Exhibit M, page 7, paragraph C.

18 A. Yes.

19 Q. This is your paragraph in which you summarize
20 your discussions with Mr. Sorenson of the Illinois
21 Environmental Protection Agency and you describe how the
22 IEPA would take groundwater samples from soils with low
23 hydraulic conductivity?

24 A. Yes.

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1 Q. And you'll note about in the middle of that
2 paragraph, and I'll quote, generally the practice of the
3 Illinois EPA is to purge the water from the monitoring
4 well until dry then go back the next day and collect the
5 sample, period, close quote. Do you see that?

6 A. Yes.

7 Q. Okay. Now, I believe it was your testimony that
8 that would not be the way that you would take a sample?

9 A. No, it is not.

10 Q. Okay. And the reason being is why?

11 A. The reason I feel is that if you let the water
12 collect in the well bore overnight, you're going to have
13 volatiles that are going to be released into the air
14 within the well bore, and you're going to get a sample
15 that may not be exhibiting the groundwater -- the actual
16 content of the VOCs within the groundwater. And I think
17 mine might be a little more accurate than doing it this
18 way; however, the IEPA accepts this as an acceptable way
19 to collect samples.

20 Q. If you let volatile organic compounds volatilize
21 in the water that's in the well before you take a

22 sample, what does that tell you about the results of the
23 analysis of the sample of groundwater that you do, in
24 fact, take in from that well?

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1 A. It indicates that the concentration within the
2 groundwater was probably higher than the sample -- the
3 analysis that you received.

4 Q. So the analysis will be -- results will be lower
5 than the actual concentrations of volatiles in the
6 groundwater?

7 A. That's correct.

8 Q. Mr. Perkins, if you have below-grade water from
9 a broken pipe, is that -- does that not make that water
10 groundwater?

11 A. No, it does not. I mean once it gets -- below
12 grade until it reaches a point where the atmospheric
13 pressure reaches one or better, then you've got
14 groundwater.

15 MR. PODLEWSKI: I don't have any other
16 questions.

17 HEARING OFFICER KNITTLE: Recross?

18 RE-CROSS-EXAMINATION

19 by Mr. Rieser

20 Q. The purpose of -- it's correct, isn't it, that
21 the purpose of having protocols and the U.S. EPA
22 standards and the ESTM standards for constructing
23 monitoring wells and for sampling monitoring wells is to
24 provide a standardized process for those tasks so that

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1 between different reports produced by different
2 consultants you don't have to guess at what they did; is
3 that a fair statement?

4 A. Well, yes, for the most part, but if -- again,
5 when I say for the most part, there are standards, and
6 each standard is subject to the site specific parameters
7 or conditions, and they are the guidelines which you are
8 supposed to follow as much as possible.

9 And the guidelines for like the U.S. EPA and
10 the IEPA may be slightly different. So if you're doing
11 for the U.S. EPA, you might have it slightly different
12 one way, but it's still acceptable for IEPA if you did
13 it for them. They're almost identical, but there are
14 some variations.

15 Q. But the goal is to provide results that are both
16 accurate and consistent?

17 A. As much as possible.

18 Q. As much as possible given that we are humans
19 after all?

20 A. Yeah.

21 Q. If the U.S. EPA were bringing an enforcement
22 action against one of your clients based on sampling,
23 you would expect that they would follow each and every
24 one of their protocols to ensure the accuracy of the

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1 sampling that was done?

2 A. Yes.

3 Q. And you would take issue with any failure of the
4 U.S. EPA to document that they had, in fact, followed
5 those protocols?

6 A. Again, the protocols vary from document to
7 document based off of dealing with hydraulic
8 conductivity. There is a document out there that
9 states --

10 Q. I'm sorry. I'm going to cut you off because I
11 don't think that's -- I'd like an answer just to the
12 question I asked?

13 A. Okay.

14 MR. RIESER: Would you read it back, please?

15 (Record read as requested.)

16 BY THE WITNESS:

17 A. Again, it depends on the site depending on what
18 the protocols were.

19 BY MR. RIESER:

20 Q. So there would have to be some site specific
21 reason for them to not follow their protocols?

22 A. Yes.

23 MR. RIESER: I have nothing further.

24 HEARING OFFICER KNITTLE: Do you a re-redirect?

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1 MR. PODLEWSKI: No. I have nothing.

2 HEARING OFFICER KNITTLE: Thank you, sir. You
3 could step down.

4 Do you have any other witnesses you want to
5 call at this time, Mr. Podlewski?

6 MR. PODLEWSKI: No. I think we rest.

7 HEARING OFFICER KNITTLE: Before we do rest,
8 let's go through the exhibits you've offered to make
9 sure we've got them all. Let's do it on the record.

10 MR. PODLEWSKI: Is this mine?

11 THE WITNESS: That's the one you gave me.

12 MR. PODLEWSKI: These will eventually go to the
13 board, but we'll go through them all.

14 HEARING OFFICER KNITTLE: That's what I want.

15 I'm just going to go through chronologically in the
16 order that you offered them.

17 MR. PODLEWSKI: Go ahead. I'm sorry,
18 Mr. Hearing Officer.

19 HEARING OFFICER KNITTLE: Is that okay?

20 MR. PODLEWSKI: Yeah, go ahead.

21 HEARING OFFICER KNITTLE: Do you have a better
22 idea?

23 MR. PODLEWSKI: No. I just want to make sure
24 that I've got everything here, and I'm not sure if I do.

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1 HEARING OFFICER KNITTLE: I don't think you do,
2 that's why I want to -- we'll get them all together in a
3 stack and I'll take them with me.

4 First we have Complainant's Exhibit E, which
5 is the remedial investigative services report, 9/10/96.

6 MR. PODLEWSKI: That's right, September 10th,
7 1996, and as we agreed earlier, I'll take the copy that
8 Mr. Rieser gave me from the -- from my earlier summary
9 judgment motion, have copies made and then we'll
10 substitute what has previously been marked as
11 Complainant's E with this exhibit.

12 HEARING OFFICER KNITTLE: So you're going to
13 take that with you?

14 MR. PODLEWSKI: Right.

15 HEARING OFFICER KNITTLE: Then there's
16 Complainant's Exhibit A which was Phase I report.

17 MR. PODLEWSKI: And I don't seem to have a copy
18 of that here.

19 MR. RIESER: I have it in front of me. These
20 are the originals that were marked.

21 MR. PODLEWSKI: Here's the original.

22 HEARING OFFICER KNITTLE: That was admitted.

23 MR. PODLEWSKI: Right.

24 HEARING OFFICER KNITTLE: We went to

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1 Complainant's Exhibit B which was Phase II. We have the
2 original of that.

3 MR. PODLEWSKI: Right.

4 HEARING OFFICER KNITTLE: We had Complainant's
5 Exhibit G, which was chain of custody and it was Group
6 Exhibit G. We'll take that. Complainant's C, which was
7 a subsurface investigative report. Complainant's H.
8 Now we're working here. Complainant's D.

9 MR. PODLEWSKI: E?

10 HEARING OFFICER KNITTLE: D, site remediation
11 update, 5/8/96; Complainant's I, chain of custody;
12 Complainant's J, that's another chain of custody;
13 Complainant's K, chain of custody. I have a
14 Complainant's F, but I don't have anything written down.

15 MR. PODLEWSKI: Here. This was previously
16 stipulated by the parties as being admitted into
17 evidence.

18 HEARING OFFICER KNITTLE: No, I have it
19 admitted, and I have it as being previously stipulated.
20 I just didn't know what it was.

21 MR. PODLEWSKI: Right. There was no testimony
22 on that.

23 HEARING OFFICER KNITTLE: That's admitted.
24 Complainant's N, which was the same as Respondents' A.

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1 MR. PODLEWSKI: Let's go off the record for a
2 second.

3 (Discussion had off the record.)

4 HEARING OFFICER KNITTLE: Back on.
5 Complainant's N.

6 MR. PODLEWSKI: What about L?

7 HEARING OFFICER KNITTLE: That's the resume. I

8 have that at the end of my list. We can take them both
9 though if you want.

10 MR. PODLEWSKI: No. Here's N.

11 HEARING OFFICER KNITTLE: Complainant's O, these
12 were not admitted and P. Complainant's Q was the
13 deposition of McClelland.

14 MR. PODLEWSKI: I don't know if I've got the
15 original. Here it is.

16 HEARING OFFICER KNITTLE: Complainant's M was
17 the Perkin's affidavit.

18 MR. PODLEWSKI: I've got that here.

19 HEARING OFFICER KNITTLE: And Complainant's L is
20 a resume.

21 MR. PODLEWSKI: That's L.

22 HEARING OFFICER KNITTLE: L.

23 MR. PODLEWSKI: L was Mr. Perkin's credentials.

24 HEARING OFFICER KNITTLE: That's all I have for

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1 you.

2 MR. PODLEWSKI: That's all for Complainant.

3 HEARING OFFICER KNITTLE: You can close your
4 case-in-chief now. That will be closed.

5 Mr. Rieser, you had two exhibits, A and B.

6 MR. RIESER: Right.

7 HEARING OFFICER KNITTLE: I'm going to take
8 those two. They're both handwritten logs.
9 Respondent's A was logs of the soil borings, and
10 Respondent's B was handwritten notes.

11 MR. RIESER: What was M?

12 MR. PODLEWSKI: M was the affidavit, Perkin's
13 affidavit. Do you have it?

14 MR. RIESER: Yeah.

15 HEARING OFFICER KNITTLE: Respondent's A and B
16 were both admitted. That's all I have. Am I missing
17 anything?

18 MR. PODLEWSKI: That and then the stipulation to
19 fax and the stipulation of documents, but those weren't
20 marked.

21 HEARING OFFICER KNITTLE: No, they're not
22 marked, and I'm taking these to be fillings.

23 MR. PODLEWSKI: Right.

24 HEARING OFFICER KNITTLE: I'm going to -- I'll

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1 get them filed with the clerk probably tomorrow morning.
2 I don't think she takes filings this late in the day.

3 MR. RIESER: It's before 4:30.

4 HEARING OFFICER KNITTLE: I thought it was
5 before 4.

6 MR. RIESER: Whatever.

7 HEARING OFFICER KNITTLE: If I can get them done
8 today --

9 MR. RIESER: No. No. No. Do it tomorrow.

10 HEARING OFFICER KNITTLE: -- they'll be done
11 today. If not, it will be done tomorrow morning.

12 MR. RIESER: Do it tomorrow.

13 HEARING OFFICER KNITTLE: That's all I have.
14 We'll meet back here at 9:30 tomorrow.

15 MR. PODLEWSKI: Thank you.

16 MR. RIESER: Thanks.

17 (End of proceeding.)

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1 STATE OF ILLINOIS)

2 COUNTY OF DUPAGE) SS:
3)

3 I, Michele J. Losurdo, Certified Shorthand
4 Reporter of the State of Illinois, do hereby certify
5 that I reported in shorthand the proceedings had at the
6 taking of said hearing, and that the foregoing is a
7 true, complete, and accurate transcript of the
8 proceedings at said hearing as appears from my
9 stenographic notes so taken and transcribed under my
10 personal direction and signed this _____ day of
11 _____, 1999.

12

13

14

15 Notary Public, DuPage County, Illinois
16 CSR No. 084-004285
Expiration Date: May 31, 2001.

17

18 SUBSCRIBED AND SWORN TO
19 before me this _____ day
of _____, A.D., 1999.

20

Notary Public

21

22

23

24