

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

2

3	REZMAR CORPORATION,)
)
4	Petitioner,)
) Consolidated
5	vs) PCB 02-91
) PCB 02-116
6	ILLINOIS ENVIRONMENTAL PROTECTION) (UST Appeal)
	AGENCY,)
7)
	Respondent.)

8

9 TRANSCRIPT OF PROCEEDINGS held

10 in the hearing of above-entitled matter,
11 taken stenographically by Stacy L. Lulias, CSR,
12 before RICHARD R. MCGILL, hearing officer,
13 100 West Randolph Street, Room 11-512, Chicago,
14 Illinois, on the 18th day of December, A.D., 2002,
15 at the hour of 9:15 a.m.

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

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BY: MR. RICHARD R. MCGILL, JR.,
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BY: MR. MICHAEL J. HUGHES

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Appeared on behalf of the Petitioner;

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BY: MR. JOHN J. KIM

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Appeared on behalf of the Respondent.

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1 I N D E X

2	WITNESS	DX	CX	RDX	RCX
3	LARRY BERTSCH				
4	By Mr. Hughes	12			
5	By Mr. Kim		39		
6	By Mr. Hughes			49	
7					

8 E X H I B I T S

9	JOINT GROUP EXHIBIT	MARKED	RECEIVED
10	No. 1	7	7
11	No. 2	27	30
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1 MR. HEARING OFFICER: Good morning.
2 Today is December 18th, 2002. My name is
3 Richard McGill and I'll be serving as the
4 hearing officer in these leaking underground
5 storage tank reimbursement appeals before the
6 Illinois Pollution Control Board.

7 Rezmar Corporation has appealed
8 two final decisions of the Illinois
9 Environmental Protection Agency. The Board
10 docketed these appeals as PCB 02-91 and
11 PCB 02-116, each captioned Rezmar Corporation
12 versus IEPA.

13 For present purposes, the Board
14 has consolidated these appeals. Today's
15 hearing is being held in Chicago at the
16 James R. Thompson Center. The hearing will
17 be governed by the Board's procedural rules
18 at 35 Illinois Administrative Code 101 and
19 105.

20 At this point, we had a procedural
21 discussion off the record and counsel for
22 both parties waived any opening statements.

23 So, Mr. Hughes, counsel for
24 Rezmar, you were going to go ahead and call

1 your first witness?

2 MR. HUGHES: For the record, my name
3 is Michael Hughes, H-U-G-H-E-S, of Neal,
4 Gerber and Eisenberg here on behalf of the
5 Petitioner, Rezmar Corporation. I'd like to
6 address a couple of housekeeping matters on
7 the record.

8 We stated off the record that
9 Rezmar is prepared to withdraw the second
10 petition that was scheduled for hearing
11 today, which is PCB 02-116. I prepared a
12 short withdrawal of that petition which I
13 would like to tender to the Hearing Officer
14 with the requisite number of copies for the
15 Board.

16 (Document tendered.)

17 MR. HEARING OFFICER: I've been handed
18 the withdrawal of petition filed on behalf of
19 Rezmar Corporation Mr. Hughes just described.
20 I will bring this to the Board's attention
21 and see that it is filed in the official
22 record and the clerk's office.

23 In terms of today's hearing then,
24 you'll be focusing on the remaining matter,

1 PCB 02-91?

2 MR. HUGHES: Correct. We'll be
3 limiting our testimony presentation to that
4 petition.

5 MR. HEARING OFFICER: Okay, thank you.

6 MR. HUGHES: And as a follow-up, I've
7 noted in the withdrawal that -- this is by
8 agreement of the parties -- the Illinois EPA
9 did consent to this withdrawal after
10 discussions that we had regarding settlement
11 and resolution of the issues. And I wanted
12 to make sure, for the record, that Mr. Kim
13 didn't have any objections to this
14 withdrawal.

15 MR. KIM: That's correct.

16 And, for the record, my name is
17 John Kim. I'm an attorney here representing
18 the Illinois EPA.

19 And as Mr. Hughes stated, he and I
20 have discussed the withdrawal of petition
21 that he submitted to the Board, and the
22 Illinois EPA is in agreement with the content
23 of the withdrawal and specifically with the
24 last sentence of the withdrawal that states

1 that the dismissal of PCB 02-116 does not in
2 any way prejudice Rezmar Corporation's right
3 or ability to submit a revised reimbursement
4 request for future consideration by the
5 Illinois EPA.

6 MR. HUGHES: And one other record
7 matter. Rezmar has discussed with the
8 Illinois EPA supplementing the record with
9 certain environmental reports that were
10 referred to in the reimbursement paperwork.
11 I'll defer to Mr. Kim in terms of how or when
12 we handle that.

13 MR. KIM: Yes. The documents that we
14 would be submitting to the Board -- and I've
15 just labeled the top document as Group
16 Exhibit Number 1. I can label each document,
17 if you'd like, or I can just -- whatever you
18 think is easiest.

19 MR. HEARING OFFICER: Group Exhibit is
20 fine.

21 MR. KIM: I can just briefly describe
22 what the documents are.

23 First there are three pieces of
24 correspondence. There is a May 20, 1999

1 letter from GaiaTech to the Illinois EPA.

2 There's a July 3rd, 2000 letter
3 from the Illinois EPA to John Keich,
4 K-E-I-C-H. And there is a March 16, 2001
5 letter from the Illinois EPA to Mr. Keich.

6 In addition, there are some
7 technical reports. There is a copy of a
8 45-day report and a free product removal
9 report also submitted by GaiaTech.

10 There is a copy of a free product
11 removal update report, and there is a copy of
12 a site classification completion report.

13 These documents were not included
14 in the Agency's record that was submitted to
15 the Board; however, in discussions with
16 Mr. Hughes, the Illinois EPA agrees that
17 these documents were before the Agency at the
18 time of the decision. Reference was made to
19 some or all of these documents, and the
20 Illinois EPA would have no objection to
21 including these documents as supplement to
22 the administrative record.

23 MR. HEARING OFFICER: And just to
24 clarify, these would be supplementing the

1 record in PCB 02-91?

2 MR. KIM: That's correct, that's
3 correct.

4 MR. HEARING OFFICER: All right, I'll
5 accept those documents.

6 (Documents tendered.)

7 MR. HUGHES: While we're on the topic
8 of documents, if I may, I've got -- I
9 prepared some color reproductions of one of
10 the appendices to the free product removal
11 report. I think I'll probably just handle
12 that document with the witness. It's an
13 excerpt from one of these reports. I wanted
14 to make sure we had color versions, which is
15 how they were submitted to me originally.
16 They usually don't translate very well in a
17 normal black and white photocopier.

18 MR. HEARING OFFICER: So just to
19 clarify, that's a color copy of something
20 that's already in the 02-91 Agency record?

21 MR. HUGHES: It's a color copy of an
22 appendix. One of the reports that was just
23 submitted as the record supplement today.

24 MR. HEARING OFFICER: So it's a color

1 copy of part of what's just been handed to me
2 by Mr. Kim as the supplemental materials to
3 the record?

4 MR. HUGHES: Correct.

5 MR. HEARING OFFICER: I just wanted to
6 make sure it wasn't a document outside of
7 this supplement or the existing record.

8 MR. HUGHES: We also have a series of
9 fact stipulations that I drafted and worked
10 out subsequently with the Illinois EPA's
11 counsel really to expedite our hearing here
12 today and eliminate some of the factual
13 chronologies and the dates and things that
14 might not be necessary to do with the witness
15 or with documents.

16 I don't think there's any need to
17 read that in the record, unless anybody has a
18 preference for that. I've got a number of
19 copies of it signed by both parties. So I'd
20 like to also tender that to the Hearing
21 Officer at this time.

22 MR. HEARING OFFICER: Yeah, there's no
23 need to read it into the record.

24 Would this be then -- we have a

1 Group Exhibit 1, the supplemental
2 administrative record materials. Are we
3 going to be -- are you suggesting we mark
4 this as Group Exhibit 2 as a joint submittal,
5 or is this Rezmar's Hearing Exhibit 1?
6 However you --

7 MR. KIM: It doesn't matter to us.
8 If you'd like it marked as an exhibit, that's
9 fine. If you'd like to take it just as
10 another pleading in the case, that's fine as
11 well.

12 MR. HEARING OFFICER: If you have all
13 the copies, then I can just take it as
14 another pleading.

15 MR. HUGHES: Yeah, I think that's
16 preferable.

17 (Document tendered.)

18 MR. HEARING OFFICER: Thank you.

19 MR. HUGHES: As I said, we've resolved
20 a portion of the petitions by settlement and
21 I think it's really going to be a short
22 hearing today. I only have one witness, and
23 that is Larry Bertsch, who is a project
24 manager and geologist from GaiaTech

1 Incorporated who worked for Rezmar
2 Corporation, the Petitioner, as an
3 environmental consultant.

4 With the permission of the Hearing
5 Officer, I'd like to call Mr. Bertsch.

6 MR. HEARING OFFICER: Mr. Bertsch, if
7 you'd please step over and we'll have you
8 sworn in.

9 (Witness sworn.)

10 WHEREUPON:

11 LARRY BERTSCH

12 called as a witness herein, having been first duly
13 sworn, deposeth and saith as follows:

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

15 BY MR. HUGHES:

16 Q. Could you state your name and address
17 for the record, please?

18 A. My name is Larry Bertsch. I live at
19 509 Turf Lane in Wheaton, Illinois.

20 Q. And what is your current place of
21 employment?

22 A. GaiaTech Incorporated.

23 Q. What type of business is GaiaTech
24 Incorporated?

1 A. It's environmental consultant.

2 Q. And how long have you been working
3 for GaiaTech Incorporated?

4 A. Four and a half years.

5 Q. Could you give me a very brief summary
6 of your educational background starting after high
7 school?

8 A. I attended Central Michigan University
9 and got a B.S. degree in geology, 1984. I attended
10 Central Michigan University again and received a
11 teaching certificate in earth science and biology in
12 1988. I received a master's degree in geology, in
13 hydrogeology, from Northern Illinois University in
14 1997.

15 Q. Do you currently hold any professional
16 licenses?

17 A. Yes, I have a professional geologist
18 license through the State of Illinois.

19 Q. And when did you acquire that license?

20 A. I believe it was 1998.

21 Q. So how many years total have you been
22 working in the environmental consulting and
23 engineering field?

24 A. Since 1988, but that includes two

1 years doing graduate work at Northern Illinois.

2 Q. What is your current title or position
3 at GaiaTech?

4 A. As a project manager hydrogeologist
5 for GaiaTech.

6 Q. And can you give me also just a brief
7 summary of some of the types of projects that you
8 work on or have worked on since you've been employed
9 at GaiaTech?

10 A. It's a variety of projects. It
11 includes UST projects both within Illinois and other
12 states; phase II investigations; groundwater
13 investigation; electromagnetic surveys and
14 investigations; site remediation program
15 investigations and that sort of work.

16 Q. You used the term UST, can you tell us
17 what that stands for?

18 A. That's underground storage tank.

19 Q. We have a stipulation in this matter
20 that Rezmar Corporation, the Petitioner, engaged
21 GaiaTech to assist with an underground storage tank
22 removal and remediation project at 850 North Ogden
23 Avenue in Chicago, Illinois.

24 Are you familiar with that

1 project?

2 A. Yes.

3 Q. And is that a project on which you've
4 worked personally?

5 A. Yes, almost the entire project.

6 Q. When did you first become involved
7 with that project?

8 A. In mid May of 1999. The original
9 project manager, Patricia Feeley, was at the
10 original tank removal. And shortly after that, she
11 was leaving GaiaTech and I took over the project.

12 Q. When you took over the project, what
13 was your role on that matter?

14 A. As project manager, to continue the
15 work, remediation and the next phase of work after
16 the removal.

17 Q. So you said when you began working
18 the project the tanks were already removed; is that
19 correct?

20 A. That's correct.

21 Q. And did you do anything to familiarize
22 yourself with the project to date and the file and
23 documents that were in that file?

24 A. Looked over the correspondence, any

1 notes from the field, spoke with Patricia Feeley.
2 We had a conversation on several occasions to
3 discuss the project and status of the work.

4 Q. So would you say that you're generally
5 familiar with the project itself?

6 A. Yes.

7 Q. Can you tell me how many tanks were
8 removed from the site?

9 A. There was two tanks removed. One was
10 a 5,000 gallon heating oil tank, the other one was
11 a 550 gasoline tank.

12 Q. And was there a release confirmed from
13 the 5,000 gallon heating oil tank?

14 A. Yes.

15 Q. And was that release reported to the
16 Illinois Emergency Management Agency?

17 A. It was.

18 Q. What was the reason for making that
19 report?

20 A. There was holes observed in the base
21 of both tanks, and there was noticeable oil in the
22 excavation of the heating oil tank.

23 Q. And what was done with the oil that
24 was noticed in the excavation?

1 A. At the time, we removed, I believe,
2 900 gallons of oil and some perched water from the
3 excavation as well as some oil from the tank itself.

4 Q. And how was that material removed?

5 A. That was removed by vacuum truck.

6 Q. After the release notification was
7 made to the Illinois Emergency Management Agency,
8 was there additional soil investigation or removal
9 performed at the site?

10 A. Yes, at a later date.

11 Q. And when did that take place?

12 A. That took place starting
13 June 11th.

14 Q. And were you present during that
15 investigation and removal effort?

16 A. Yes.

17 Q. Can you describe for me what you
18 observed at the site on that day, June 11th?

19 A. On the first day of removal, we opened
20 the excavation and started to excavate, and it
21 was -- quite a bit of oil was coming in from the
22 surrounding fill material as well as the native
23 soils. And as the excavation progressed, we
24 encountered some clay pipes which were along the

1 east wall of the excavation as well as on the south
2 wall.

3 Q. Do you have an understanding of the
4 term free product as it's used in the State of
5 Illinois regulations?

6 A. Yes.

7 Q. And what is your understanding of that
8 term?

9 A. There's several interpretations.

10 One is a separate phase floating
11 on the water table. Another is it exceeds
12 attenuation capacity of the soil. And it also can
13 be kind of a source material that is kind of a
14 separate phase within the soil.

15 Q. Would you characterize the material
16 that was in the excavation on June 11th as free
17 product?

18 A. I would.

19 Q. You mentioned that clay pipes were
20 encountered. Can you describe those pipes in
21 greater detail for me?

22 A. They were six inch diameter clay
23 pipes, and they're older sewer pipes that are not
24 connected directly together. There's a gap between

1 each pipe. They're about two feet long
2 (indicating). Those were apparently cut off or
3 broken when the tank was installed. And there was
4 three or four that ended right at the tank
5 excavation.

6 Q. You said that those were sewer pipes,
7 were they connected in any way to the tank system,
8 to your knowledge?

9 A. No.

10 Q. Can you describe the contents of the
11 pipes, if any?

12 A. The majority of the pipes that were
13 near the tank itself, the heating oil tank,
14 contained free product or oil as well as some water.
15 Some of the pipes were at different depths from
16 8, 9, 4, 5, 6 and 7 feet at several different depths
17 that fed into several different catch basins that
18 were eventually uncovered.

19 Those catch basins, one that was
20 nearest the tank excavation, had 5 feet of oil in it
21 which we removed by vacuum truck. But the base of
22 it had some that was gelatinous in nature that we
23 had to excavate.

24 Q. Was there any discharge from these

1 pipes that you observed on that day?

2 A. Yes, the oil and the water mixture was
3 continually running into excavation from the pipes
4 that were uncovered.

5 Q. And was the oil that you observed in
6 those pipes similar to the oil that was in the tank?

7 A. Yes, it was a black petroleum type
8 oily substance that was similar to what was released
9 from the -- immediately adjacent to the tank.

10 Q. And approximately how many pipes do
11 you believe that you observed surrounding the
12 excavation?

13 A. A fairly large network. I couldn't
14 really elaborate on a number at this time, but if
15 you refer to the figure and some of the reports,
16 they can give you a better idea of the number. But
17 the pipes were at several different depths. And
18 most of them, except for the most shallow ones, did
19 have oil in them.

20 Q. Was there any other discharge or
21 release of petroleum that you observed other than
22 coming from the pipes?

23 A. From the surrounding soils in the fill
24 material directly adjacent to the tank as well as

1 the native soils, near the tank and surrounding the
2 clay pipes. Again, there's a gap between those
3 pipes which caused the petroleum to leak from those
4 pipes into the surrounding soil and saturate those
5 soils.

6 Q. You mentioned saturated soils, and I
7 know in the technical reports that were submitted to
8 the record today there are references to saturated
9 soil as well. Can you give me a little bit more
10 detail or description of saturated soils that you
11 observed?

12 A. Well, in my opinion, it's the --
13 it's -- when we were excavating, the oil leaches or
14 oozes from the soil. It's a liquid material. It
15 comes out of the soil.

16 Q. And is there any odor associated with
17 the saturated soils?

18 A. Yeah, there's petroleum odor.

19 Q. Would you consider the material that
20 you just described to be solid form or liquid form?

21 A. Mostly liquid, but some of it was
22 somewhat gelatinous or -- and it did leach off of
23 the soils.

24 Q. Was the removal work completed on

1 June 11th?

2 A. No, it continued. The actual liquid
3 removal, the majority of the liquid removal
4 continued through, I believe, the 15th of June. And
5 then we continued to follow the clay pipes until we
6 had a point where we knew that it wasn't going
7 off site. And that was on the 22nd of June.

8 Q. In our stipulations, we've referred to
9 a rain event that occurred on the weekend of
10 June 12th and 13. Did you return to the site
11 yourself after that weekend?

12 A. I did.

13 Q. And what did you observe?

14 A. Well, that rain event included four
15 and a half inches of rain over the weekend which put
16 a considerable amount of water in the excavation.

17 On top of that water, there was a
18 fairly thick layer of -- about a quarter of an inch
19 of oil floating on the water surface.

20 Q. What did you do to respond to the oil
21 and water that you observed?

22 A. We removed it by vacuum truck.

23 Q. And you've mentioned that the
24 investigation and removal work continued through --

1 I'm sorry. What date did you say the --

2 A. 22nd of June 1999.

3 Q. Through the 22nd of June.

4 Can you tell me generally what the
5 purpose was of the continued investigation during
6 that time frame?

7 A. It's to eliminate migration of
8 petroleum, and it was to try to eliminate
9 potentially explosive vapors in these conduits,
10 these utility -- these sewer pipes. Because many of
11 them were not filled to the top, so there's a
12 potential for vapors to accumulate in some of these
13 pipes.

14 And, at that time, we were not
15 sure if the material was going to migrate off site
16 or into an area where it could be a danger to human
17 health and the environment.

18 Q. What did you do to complete the work
19 during the time frame that we mentioned between
20 June 11th and June 22nd, how did you leave the site?

21 A. Well, we continued to excavate until
22 we came to where most of the clay pipes appeared to
23 feed into, which was a two foot diameter brick sewer
24 that appeared to be at least partially inactive

1 because it contained some soil. However, it was in
2 direct line with an active sewer, so we felt that --
3 we actually broke that one and backfilled it with
4 soil to eliminate further migration into the active
5 sewer.

6 Following the 22nd, we did some --
7 we had excavated to the point where we eliminated
8 the potential migration to that active sewer and we
9 terminated work for the time being.

10 Q. Was all of the free product and
11 saturated soil removed from the site at that time?

12 A. No, we did not remove all of it.
13 About three-quarters of it was removed at that time.
14 We could not remove the rest of it because it sat
15 underneath a large temporary office trailer where
16 pipes continued underneath it.

17 We did do some trenching on the
18 other side of the trailer to break the pipes and to
19 seal them so that further migration couldn't occur
20 through that particular conduit.

21 We put some plastic along the wall
22 of the excavation between the excavation and the
23 one-quarter of the soils that still contained free
24 product, and we sealed the pipes that we knew of in

1 the excavation.

2 The hole was eventually backfilled
3 with clay soils and compacted in one foot benches to
4 eliminate remigration into the excavation that was
5 just excavated. And that's it.

6 Q. What material did you use to seal
7 those pipes?

8 A. Portland Cement.

9 Q. Was there additional work done at the
10 site at a later date?

11 A. Yes, the following year, additional
12 removal was done once the office trailer was moved.

13 Q. Going back only to the first removal
14 effort, can you tell me approximately what amount of
15 the saturated soil material was removed from the
16 site?

17 A. 2,375 cubic yards.

18 Q. And what was the disposition of that
19 material?

20 A. It was loaded on the trucks and
21 removed to the landfill.

22 Q. Is it possible for you to determine
23 how much of that material was native soil and how
24 much would be characterized as free product?

1 A. It's pretty difficult to determine
2 because of the nature of the free product. It was
3 in -- contained within pipes as well as in discrete
4 zones in the soil.

5 Q. And what was the reason for taking
6 that material off site for disposal?

7 A. It's to eliminate migration of
8 petroleum compounds and to remove it from the site.

9 Q. So was that essentially a safety
10 concern?

11 A. Yes, yes.

12 Q. Now, were there also practical
13 considerations?

14 A. Yes, there's practical considerations
15 as well. If you leave soil on site instead of
16 removing it, then you have to -- in this case, we
17 would have had to move it to the other side of the
18 site. It would had to have been handled two more
19 times, to move it and then to load it at a later
20 date.

21 Q. Would it have been feasible to
22 stockpile that material?

23 A. Not really because of the -- there's a
24 fair amount of moisture content in the soil, and to

1 stockpile an amount of that magnitude required
2 berming plastic sheeting, and then the plastic
3 sheeting needs to be routinely maintained because
4 wind and whatever blows it off. And also the
5 handling of the material in two cases as well as all
6 the surrounding property were residential properties
7 and we didn't want to have the soil sitting around
8 for many, many months while it was reviewed by the
9 EPA.

10 Q. The 2,375 cubic yards that you
11 referred to, would you consider that material native
12 soil or backfill material?

13 A. The majority was native soil.

14 Q. Did you take any photographs during
15 the removal effort?

16 A. Yes, took about 100 pictures, as if
17 which there's 32 in the record that were the best.

18 (Document marked as
19 Group Exhibit No. 2
20 for identification, 12/18/02.)

21 BY MR. HUGHES:

22 Q. Mr. Bertsch, the court reporter has
23 just handed you what's been marked as Group Exhibit
24 Number 2. Could you take a look at that, please?

1 A. Yes.

2 Q. This is an excerpt titled appendix A,
3 photographic summary from GaiaTech's free product
4 removal report.

5 Do you recognize this as a portion
6 of the free product removal report that was prepared
7 by GaiaTech and kept in their business records?

8 A. Yes.

9 Q. Can you verify whether these represent
10 color photos of any of the photographs that you took
11 on the site at 850 North Ogden?

12 A. I personally took all the photographs
13 except for the first six photographs which were
14 taken by Patricia Feeley on May 3rd, 1999.

15 MR. HUGHES: I'd like to offer Group
16 Exhibit Number 2 for admission into the
17 record, and I do have extra copies, if we
18 need those.

19 MR. HEARING OFFICER: I assume no
20 objection as to Group Exhibit, and as I
21 understand it, these are color reproductions
22 of photos that are already in Group Exhibit
23 1; is that correct?

24 MR. KIM: That's correct. And the EPA

1 has no objections.

2 MR. HEARING OFFICER: Thank you.

3 I'll -- if you have an extra copy, I
4 wouldn't mind looking on.

5 MR. HUGHES: Sure.

6 MR. HEARING OFFICER: But I accept
7 that into the record as Group Exhibit 2.

8 BY MR. HUGHES:

9 Q. Mr. Bertsch, did you also assist in
10 the preparation of the captions for these
11 photographs?

12 A. Yes, I did.

13 Q. And how were those captions prepared
14 or developed? Was that done contemporaneously with
15 the taking of the photographs or done subsequently?

16 A. Well, there's a record in her field
17 notes as well as written on the back of the
18 photographs prior to their inclusion in the report.

19 Q. I'd like to go through just maybe four
20 or five of these photos and have you describe what
21 you're seeing and in the photo, you know, in your
22 own words, and tell whether that's consistent with
23 what you observed on the site.

24 You can look at photograph

1 number 3.

2 A. Yes.

3 Q. Can you describe what that photo
4 represents?

5 A. That photograph represents the
6 excavation immediately after the removal of the
7 5,000 gallon heating oil tank and what the base of
8 the excavation looked like at that time.

9 And as you can see in the middle
10 of the photograph, there's an oily substance that's
11 floating at the base of the excavation.

12 Q. Can you also take a look at photograph
13 number 8 and describe for me what that picture
14 represents?

15 A. That shows some free product or oil
16 being removed by vacuum truck in the base of heating
17 oil excavation. That heating oil is coming from the
18 surrounding soils, the native soils as well as the
19 clay pipes I mentioned earlier.

20 Q. And when was that photo taken, if you
21 know?

22 A. I think on the 11th here. It's a
23 little hard to read the date.

24 Q. Is that one of the photos that you

1 took personally?

2 A. Yes.

3 Q. So that was done after the date of
4 removal; is that correct?

5 A. Yes, that was done in June as opposed
6 to the removal date, which occurred in one day in
7 May.

8 Q. Could you also describe for me what is
9 represented in photograph number 9, please?

10 A. This shows along the one side of an
11 excavation. You can see some native soil, clay and
12 some free product that's leaching from the
13 surrounding soils into the base of the excavation.
14 It's a black petroleum odor liquid.

15 Q. Could you also describe for me what is
16 represented in photograph number 11?

17 A. This is looking into the top of one of
18 the first subgrade catch basins we discovered
19 that -- from the clay pipes that were nearest the
20 tank fed into this particular catch basin. And
21 within this catch basin, there was four to five feet
22 of oil in this catch basin. We were unaware of this
23 catch basin because it was three or four feet below
24 the surface and formerly covered by a structure.

1 Q. By the way, was that catch basin
2 removed from the site?

3 A. We did try to remove what was
4 practical out of the -- by vacuum truck out of this
5 opening and then we excavated the remaining free
6 product and oil saturated sediment in the base of
7 the catch basin.

8 Q. How many catch basins did you
9 encounter at the site?

10 A. At the early stage, we ran into three.
11 There's this one and there's two on the far east end
12 of the excavation. And later when free product
13 removal activities commenced, the following year we
14 found another one.

15 Q. Can you also describe for me what is
16 represented by photograph number 12?

17 A. That's a look at the excavation
18 following the rainstorm on the weekend of the 12th
19 and the 13th. What the excavation looked like when
20 we returned after the weekend.

21 Q. And is there anything significant
22 about that photograph?

23 A. Yes. There's some heavy oil present
24 on the surface of the water.

1 Q. Can you turn to photograph 13 and tell
2 me what is represented there?

3 A. This shows one of the typical clay
4 pipes that was encountered in the excavation. It's
5 set -- the surrounding soils are predominantly the
6 native clay soils except for the fill material
7 that's directly adjacent to the pipe. There's oil
8 and water gushing from the pipe, which was typical
9 throughout the excavation from near the heating oil
10 tank to the terminus of the excavation.

11 Q. If you can turn finally to photograph
12 22, could turn tell me please what that photograph
13 represents?

14 A. That shows one of the clay pipes that
15 was encountered on the south side of the excavation
16 fairly close to the UST, the heating oil UST.

17 We sealed this pipe because this
18 is one of the pipes that extended under the office
19 trailer that we could not get to, but we wanted to
20 seal it so it wouldn't run into the excavation.

21 Q. I'm sorry. Is that number 22 you were
22 looking at?

23 A. Oh, that was 21, I'm sorry.

24 22? That shows excavation of

1 soils on the east end of the initial excavation.
2 Also noticeable, on the base, there's some oil
3 floating on the soil surface that's leaching from
4 the surrounding soils and the clay pipes.

5 Q. Can you tell me, if you know, when
6 that photograph was taken?

7 A. Yes, that was taken on the 15th of
8 June, 1999.

9 Q. So that was three or four days
10 following the removal of the tanks?

11 A. Yes, that would have been -- yeah.

12 Q. Did you personally assist in preparing
13 reports and submitting technical reports to the
14 Illinois Environmental Protection Agency?

15 A. Yes, all the reports. The initial
16 20-day report was mostly done by Patricia Feeley
17 prior to her leaving GaiaTech. But the balance of
18 the reports was completed by myself as well as other
19 GaiaTech personnel.

20 Q. And when you say balance of the
21 reports, could you tell me what additional reports
22 were prepared and submitted to the Illinois EPA?

23 A. The 45-day report, the free product
24 removal report, site classification completion

1 report, and an update to free product removal
2 activities as well as numerous correspondence.

3 Q. What's the purpose of the free product
4 removal reports?

5 A. That's to document the free product
6 removal activities up to that point in conjunction
7 with the 45-day report.

8 Reports after that date are to
9 update the IEPA to activities continuing to remove
10 free product from the site.

11 Q. And is the free product removal report
12 something that is required by state regulation?

13 A. Yes, it is.

14 Q. I think you mentioned there was also a
15 site classification and completion report prepared?

16 A. Yes.

17 Q. And what's the purpose of that report?

18 A. That can be used in two fashions.
19 That's to classify the site as either low priority,
20 high priority or no further action.

21 In this case, since the source
22 material or the free product was removed and
23 additional borings and investigation was done, we
24 were able to obtain a no further action at that

1 time.

2 Q. And, in your experience, would that no
3 further action classification or designation been
4 possible without the removal of free product or
5 without the removal of the saturated soils?

6 A. No, it would not because the IEPA does
7 not allow source material or free product to remain
8 in place at any time in order to close a site.

9 Q. Based on your experience as a project
10 manager and environmental consultant, would you
11 consider this a typical underground storage tank
12 removal project?

13 A. No, it is not. Just for the fact of
14 the clay pipes and the migration potential was very
15 high in a short period of time, and normally it's
16 best to proceed as the Agency wants you to proceed
17 by only removing a certain amount of soil as they
18 require in early action.

19 However, in this case, with the
20 massive amount of free product present and the
21 potential for migration, there was a need to
22 mitigate this immediately.

23 Q. And the no further action designation
24 that was eventually approved by the Agency, was that

1 also made on the basis of soil samples or on
2 analytical data?

3 A. Yes, it was done by confirmatory soil
4 samples along the base and side walls of the
5 excavation as well as borings which were done for
6 site classifications along some of the side walls
7 and to classify the site.

8 Q. And did GaiaTech prepare a
9 reimbursement billing package for this site?

10 A. Yes, three separate packages.

11 Q. The packet that's the subject of this
12 petition is the one I believe dated April of 2001
13 that addresses the work that we've been discussing
14 here today, did you assist in preparation of that
15 first billing package?

16 A. Yes.

17 Q. And was that package submitted to
18 Illinois EPA for review?

19 A. Yes, it was.

20 Q. In that reimbursement package, did
21 Rezmar, with GaiaTech's assistance, request
22 reimbursement for any of the tank removal costs that
23 were incurred on the 3rd of May?

24 A. No.

1 that should read June 12 and 13, '99. So I
2 am going to physically change that on these
3 stipulations to June. And both parties, if
4 you will, just state for the record that that
5 is a correct representation.

6 MR. HUGHES: I'm in agreement with
7 that.

8 MR. KIM: The Illinois EPA agrees as
9 well.

10 MR. HEARING OFFICER: Thank you.

11 Okay, with that clarification,
12 Mr. Kim has some cross-examination for the
13 witness.

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

15 BY MR. KIM:

16 Q. I told you before, Mr. Bertsch, I
17 wouldn't have anything. I just have a few
18 questions. And mostly just to maybe clarify some
19 things.

20 I believe you said you received
21 your license as a professional geologist in 1998;
22 is that correct?

23 A. Let me check. I have something with
24 me here. I can check it.

1 Q. Sure.

2 A. I don't have it with me, but it is a
3 matter of public record. The licensing board has it
4 on record.

5 Q. I'm just trying to get a sense of a
6 time line.

7 Let's try it this way: When did
8 you join GaiaTech?

9 A. That was June 1st, 1998.

10 Q. To the best of your recollection, do
11 you recall if you had your license at the time you
12 joined GaiaTech, or if it was sometime shortly
13 thereafter that you received --

14 A. I believe it was a little after that
15 point.

16 Q. And you stated that you did not become
17 involved with the Rezmar site in your capacity as a
18 project manager until sometime in mid May 1999 after
19 the former project manager, Patricia Feeley, left
20 GaiaTech's employment; is that correct?

21 A. Yes.

22 Q. So you were not at the site when the
23 photographs in appendix A that are identified as
24 Group Exhibit 2 were taken on May 3rd, 1999; is that

1 correct?

2 A. That's correct. However, before she
3 left GaiaTech, in her own handwriting, the captions
4 were labeled on each photograph.

5 Q. I understand.

6 You also testified that there were
7 several different -- and I can't recall the word you
8 used if it was interpretations or definitions, but
9 several different meanings that could be applied to
10 the term free product; is that correct?

11 A. Correct.

12 Q. What's your basis for those
13 different -- and I believe you listed three
14 different interpretations or applications. What's
15 your basis for your understanding of those
16 definitions?

17 A. Well, the one that's most often quoted
18 in the regulations is the one used as a separate
19 phase floating on the water table. That one's most
20 commonly used by the Agency. However, when there's
21 no ground water present and there's still free
22 product present, that definition doesn't really work
23 in that case and there's no qualifier in the
24 regulations for that case. However, oil can exist

1 within soil or in fracture zones or as a saturated
2 state within soil even if water is not present. And
3 that's what I was trying to explain with some of the
4 definitions that I had given to you.

5 Q. So some of the definitions that you
6 provided on the record are not found in the
7 regulations found in Title 35 of the Illinois
8 Administrative Code, Part 732, or let's just refer
9 that in shorthand to the Board's regulations in
10 Section 732; is that correct?

11 A. Really there's two. There's the
12 attenuation capacity and the free product flowing on
13 the water table. However, I believe that
14 attenuation capacity can also mean that its ability
15 to hold the free product without it leaching out of
16 the soil. In my opinion, that is something that
17 qualifies as exceeding the attenuation capacity
18 besides various chemical analysis.

19 Q. And I understand that that's your
20 understanding or your interpretation, but, again, my
21 question is, at least some of your interpretations
22 of the term free product are not directly based upon
23 regulations found in Section 732; is that correct?

24 A. That would be correct.

1 Q. And in the time --

2 MR. HEARING OFFICER: Just to clarify,
3 you're referring to Part 732?

4 MR. KIM: Part 732, I'm sorry.

5 THE WITNESS: Could I qualify that a
6 little bit or --

7 MR. KIM: I think Mr. Hughes can
8 probably help you with that in redirect.

9 BY MR. KIM:

10 Q. So you joined GaiaTech in June of --
11 sometime in June of 1999, correct?

12 A. No, 1998.

13 Q. I'm sorry. 1998, that's right.

14 Since that time -- and you've been
15 employed by GaiaTech since that time; is that
16 correct?

17 A. Yes.

18 Q. For the course of that time, how many
19 different LUST removal sites have you been involved
20 with in the capacity as project manager?

21 A. From that date to the present?

22 Q. Yes. Ballpark if you don't know the
23 exact number.

24 A. 20. But prior to that, I also worked

1 for another consultant which their primary focus was
2 on UST releases within Illinois only as well as
3 pipeline releases.

4 Q. Well, let's back up a little bit then.

5 Who was your previous employer
6 before GiaiTech?

7 A. Delta Environmental Consultants.

8 Q. And how long were you employed with
9 Delta Environmental?

10 A. Two and a half years.

11 Q. And would this have been sometime
12 after you received your master's from Northern
13 Illinois that you joined Delta?

14 A. Yeah, that was immediately following
15 my --

16 Q. You received that degree?

17 A. Correct, yes.

18 Q. Didn't want to leave your sentence
19 hanging.

20 So let's take that into -- well,
21 what was your job title with Delta Environmental?

22 A. I was a project geologist. I managed
23 assessment for that -- the way they managed it there
24 was different groups did different things. One was

1 some of the tank removals and assessment of those,
2 which I did, and other people would do the
3 risk based, closure reports and reimbursement.

4 Q. Well, then taking into account both
5 your time with Delta and your time with GaiaTech,
6 approximately how many LUST removal sites have you
7 been involved with either as a project manager or in
8 your capacity with Delta Environmental, roughly?

9 A. Let's see. There's 60 different sites
10 at Delta and I said 20 at that, and then prior to
11 that, it was Wight and Company as well, which
12 there's several at that one.

13 Q. So before Delta you were employed by
14 Wight and Company?

15 A. Yes.

16 Q. And was that before you received your
17 master's degree?

18 A. Yes, it was.

19 Q. How long were you employed by Wight
20 and Company?

21 A. Almost four years.

22 Q. And what was your -- what were your
23 job duties and what was your job title when you were
24 employed by Wight and Company?

1 A. I was a staff geologist at that point.

2 Q. And in your capacity as a staff
3 geologist, did you also receive or were you involved
4 with LUST removals?

5 A. Some, yes.

6 Q. Was there anything else before
7 Wight and Company?

8 A. Not directly related to underground
9 storage tanks.

10 Q. So taking into account your tenure
11 with Wight and Company, Delta Environmental and
12 GaiaTech, again, approximately how many different
13 LUST removal sites have you been involved with in
14 your capacity as either a project manager or your
15 previous job titles?

16 A. Could I have some clarification to
17 your question? Earlier -- you just said underground
18 storage tank sites. Is this removal only?

19 Q. Removal sites.

20 A. So removal would actually be probably
21 30, I guess, over time, 35.

22 Q. Do you recall roughly when you began
23 work with Wight and Company?

24 A. I think that was August 1989.

1 Q. And in that time and over the course
2 of the LUST removals that you have overseen or
3 participated in, have there been sites that have had
4 tank removals and involving tanks of similar size
5 and similar material -- let me rephrase that.

6 How many of the LUST removal sites
7 that you were involved with were similar in terms of
8 tank size and tank material to the Rezmar site that
9 we're talking about today?

10 A. As far as size, I don't believe that's
11 really relevant to how a tank site is generally
12 handled.

13 MR. HEARING OFFICER: Well, if you can
14 just try and answer.

15 BY MR. KIM:

16 Q. I understand that, but can you just
17 try and answer --

18 MR. HEARING OFFICER: And can I just
19 clarify? You have referred to 30 removal
20 sites, each of those involved leaking tanks
21 or they may have just been a clean-up?

22 THE WITNESS: Just tanks.

23 MR. HEARING OFFICER: Mr. Kim, you're
24 now referring to LUST removal sites, leaking

1 underground storage tanks -- if he could
2 clarify.

3 MR. KIM: No, you're right and that's
4 true. I apologize. I do keep bouncing back
5 and forth.

6 BY MR. KIM:

7 Q. And just so we're clear on this, what
8 I'm specifically interested in is finding out how
9 many underground storage tank removal projects
10 you've been involved with in which the underground
11 storage tank was leaking or the tanks were leaking?
12 So would your figure of 30 be revised upwards or
13 downwards based on that qualification?

14 A. Downwards by two.

15 Q. So approximately 28?

16 A. Yes.

17 Q. Okay, that's fine.

18 So then again my question was, in
19 terms of -- how many of those past 28 or so sites
20 were similar in terms of tank size and tank material
21 to the Rezmar Corporation removal?

22 A. I'd say approximately that size would
23 be five or six probably of that approximate size.
24 However, a lot of them are heating oil. A lot more

1 of them than the five, but they were different
2 sizes.

3 Q. And, in your experience, would those
4 five or so similar sites, and when I say similar I'm
5 referring to the qualification that I just asked,
6 was the amount of free product removal that was
7 taken out at the Rezmar site consistent with what
8 those other five sites encountered or was it much
9 more or much less?

10 A. It was on the top end, however, not
11 the highest.

12 MR. KIM: I think that's all I have.

13 MR. HUGHES: I'd like to ask just a
14 couple quick questions on redirect.

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

16 BY MR. HUGHES:

17 Q. Mr. Bertsch, the work that was done in
18 removing saturated soils from the site, did you
19 consider that work necessary at the time?

20 A. As I felt it was necessary to protect
21 further migration both on site and off site as well
22 as to prevent, you know, potentially explosive
23 vapors in some of these -- the clay pipes and catch
24 basins and that's it.

1 Q. And, in your understanding of the
2 state regulations, is prevention of further
3 migration required by the regulations?

4 A. Yes.

5 MR. HUGHES: That's all I have.

6 MR. KIM: No recross.

7 MR. HEARING OFFICER: Let's go off the
8 record for a moment.

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

11 MR. HEARING OFFICER: Just a few
12 procedural items. Based on my legal
13 judgment, I find today's witness,
14 Larry Bertsch credible. For the record,
15 there have been no members of the public
16 present today.

17 The transcript of today's hearing
18 should be available in the Board's office by
19 December 31 and shortly thereafter it will be
20 posted on the Board's website at
21 www.ipcb.state.il.us.

22 The briefing schedule that the
23 parties have agreed to is for the Rezmar
24 posthearing brief to be filed by January 22,

1 2003, the Agency's response brief filed by
2 February 18, 2003 and the Rezmar reply brief
3 filed by March 3, 2003.

4 The current decision deadline for
5 the Board is April 21, 2003 and the Board
6 meeting just prior to that is April 17.

7 And to clarify the -- we had two
8 exhibits today, Group Exhibit 1, which are
9 the supplemental materials to the agency
10 administrative record, and Group Exhibit 2,
11 the photographic summary of -- those are both
12 joint exhibits of the two parties. So it's
13 Joint Group Exhibit 1 and Joint Group 2, and
14 obviously there's no objection to having
15 entered those.

16 Is there anything else while we're
17 still on the record that either party would
18 like to raise at this point?

19 MR. HUGHES: Not from Rezmar.

20 MR. HEARING OFFICER: Seeing nothing,
21 I'd like to thank everyone for participating
22 today. This hearing's adjourned.

23 AND FURTHER DEPONENT SAITH NAUGHT...

24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF DUPAGE)

4

4 I, STACY L. LULIAS, CSR, do hereby
5 state that I am a court reporter doing business in
6 the City of Chicago, County of DuPage, and State of
7 Illinois; that I reported by means of machine
8 shorthand the proceedings held in the foregoing
9 cause, and that the foregoing is a true and correct
10 transcript of my shorthand notes so taken as
11 aforesaid.

12

13

14

Stacy L. Lulias, CSR
Notary Public,
DuPage County, Illinois

15

16

17 SUBSCRIBED AND SWORN TO
18 before me this ___ day
19 of _____, A.D., 2002.

20

Notary Public

21

22

23

24

