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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DONALD HOING d/b/a DON'S  
SERVICE,  
Petitioner,

vs.

No. PCB 98-146

OFFICE OF THE STATE  
FIRE MARSHAL,  
Respondent.

Proceedings held on January 10, 2001, at 1:30 p.m., at the  
Illinois Pollution Control Board, 600 South Second Street, Suite  
403, Springfield, Illinois, before Hearing Officer John Knittle.

Reported by: Darlene M. Niemeyer, CSR, RPR  
CSR License No.: 084-003677

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11 North 44th Street  
Belleville, IL 62226  
(618) 277-0190

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A P P E A R A N C E S

STATE OF ILLINOIS, OFFICE OF THE ATTORNEY  
GENERAL

BY: Deborah L. Barnes  
Senior Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
On behalf of the Office of the State Fire Marshal.

HODGE & DWYER  
BY: Thomas G. Safley  
Attorney at Law  
3150 Roland Avenue  
Springfield, Illinois 62705  
On behalf of Donald Hoing d/b/a Don's Service.

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1 P R O C E E D I N G S

2 (January 10, 2001; 1:30 p.m.)

3 HEARING OFFICER KNITTLE: Good afternoon. My name is John  
4 Knittle. I am the Chief Hearing Officer with the Illinois  
5 Pollution Control Board and I am also the assigned Hearing  
6 Officer for this matter, entitled Donald Hoing -- am I saying  
7 that correctly, sir?

8 MR. HOING: Hoing.

9 HEARING OFFICER KNITTLE: Doing business as Don's Service,  
10 versus Office of the State Fire Marshal, Pollution Control Board  
11 docket number 1998-146. Today's date is January 10th, 2001. It  
12 is approximately 1:30 p.m. I want to note for the record that  
13 this matter was noticed up pursuant to the Board's regulations  
14 and the appropriate statutory provisions. Notice of hearing was  
15 issued on October 10th and was published shortly thereafter in  
16 the local paper of the county, being Sangamon County.

17 I do note we have some preliminary matters to address, but  
18 before I do that I want to have each of the parties introduce  
19 themselves and people they have sitting there with them, starting  
20 with the Petitioner.

21 MR. SAFLEY: Thank you, Mr. Knittle. My name is Tom  
22 Safley, S-A-F-L-E-Y, from the law firm of Hodge and Dwyer on  
23 behalf of the Petitioner.

24 Mr. Hoing, if you could introduce yourself.

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1 MR. HOING: Donald Hoing, from Carthage, Illinois. I run  
2 Don's Service.

3 HEARING OFFICER KNITTLE: Ms. Barnes?

4 MS. BARNES: Deborah Barnes from the Attorney General's  
5 Office, representing the Office of the State Fire Marshal. I  
6 have with me my agency representative, who is Jim Boone,  
7 B-O-O-N-E.

8 HEARING OFFICER KNITTLE: Thank you both. Are there any  
9 members of the public here who are not affiliated with one of the  
10 parties? Everybody is affiliated with somebody? What about you,  
11 sir?

12 MR. ALDERSON: I am with the Fire Marshal's Office.

13 HEARING OFFICER KNITTLE: Okay. That is fine. If there  
14 were members of the public, our Board's procedural rules require  
15 that we allow them to give public comment. I don't see anybody  
16 here that would fit that bill. If anybody comes during the  
17 course of this hearing they will, of course, be given the  
18 opportunity to provide public comment in this matter, as this is  
19 a public hearing.

20 That being said, let's move to preliminary matters. I have  
21 in front of me a motion to supplement the record, filed by the  
22 Respondent, Office of the State Fire Marshal. Is there any  
23 objection to this motion to supplement the record?

24 MR. SAFLEY: No, sir.

6

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1 HEARING OFFICER KNITTLE: This will be granted. I also  
2 have before me two stipulations. Any comment on either one of  
3 them, starting with the Petitioner?

4 MR. SAFLEY: No, sir.

5 HEARING OFFICER KNITTLE: Ms. Barnes?

6 MS. BARNES: No, sir.

7 HEARING OFFICER KNITTLE: Both stipulations will be  
8 accepted. They are both just titled stipulation, but there are  
9 two of them. So I am just attempting to figure out a way to  
10 distinguish them. Are we going to refer to these at all during  
11 the course of the hearing?

12 MR. SAFLEY: I may refer to one of them, but I don't intend  
13 to present it to any witness. The reason there are two is one is  
14 a stipulation regarding a witness that the Petitioner would have  
15 called but for the stipulation and the other involves two  
16 witnesses that the Respondent would have called but for a  
17 stipulation.

18 HEARING OFFICER KNITTLE: Any objection if I label one  
19 stipulation 1 and stipulation 2?

20 MR. SAFLEY: Not at all.

21 MS. BARNES: No.

22 HEARING OFFICER KNITTLE: All right. What I will do is  
23 accept both of these stipulations, and I will label them Hearing

24 Officer 1 and Hearing Officer 2, just for clarification.

7

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1 (Whereupon said documents were duly marked for purposes of  
2 identification as Hearing Officer Exhibits 1 and 2 as of  
3 this date.)

4 HEARING OFFICER KNITTLE: Hearing Officer 1 is a  
5 stipulation three pages long with no attached exhibits, and  
6 Hearing Officer 2 is the stipulation with the attached Exhibit A,  
7 just for clarification, and both exhibits are accepted.

8 (Whereupon said documents were duly admitted into evidence  
9 as Hearing Officer Exhibits 1 and 2 as of this date.)

10 HEARING OFFICER KNITTLE: Mr. Safley, you said you had  
11 another matter that you wanted to discuss before we started with  
12 opening statements?

13 MR. SAFLEY: Yes, sir. One motion and a couple of other  
14 matters. First of all, it is my understanding that Ms. Barnes  
15 and I have agreed to refer to pages of the record on appeal by  
16 their number as they are numbered in the record on appeal rather  
17 than submitting each of them as a separate exhibit with the  
18 sticker. And assuming I am correct in that understanding, we  
19 would like to move you for permission to do so just to avoid more  
20 clutter and paper and for ease of reference, so that when we  
21 refer to the same exhibit we are sure that we are referring to  
22 the same thing.



23 HEARING OFFICER KNITTLE: Ms. Barnes?

24 MS. BARNES: Yes, that is my understanding.

8

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1 HEARING OFFICER KNITTLE: No objection to that?

2 MS. BARNES: None.

3 HEARING OFFICER KNITTLE: All right. That will be granted.

4 When you refer to the supplemented record you will, of course,  
5 refer specifically to the attached portion of the motion to  
6 supplement the record?

7 MR. SAFLEY: Yes.

8 HEARING OFFICER KNITTLE: Okay.

9 MR. SAFLEY: Thank you. The second issue, I intend to call  
10 Bill Carl and Jim Boone, who are both employees of the Office of  
11 the State Fire Marshal as witnesses, and Ms. Barnes asked me  
12 whether I would have any opposition to her conducting a full  
13 examination of those witnesses after my direct examination of  
14 those witnesses, rather than having to recall them in her  
15 case-in-chief. I have -- I and Mr. Hoing have no objection to  
16 that motion by Ms. Barnes.

17 HEARING OFFICER KNITTLE: Ms. Barnes, is that correct?

18 MS. BARNES: Yes, that's correct.

19 HEARING OFFICER KNITTLE: You are going to want to -- let's  
20 go off the record for a second.

21 (Discussion off the record.)

22 HEARING OFFICER KNITTLE: All right. We are back on the

23 record. Ms. Barnes was filling me in on how this is going to  
24 work. Ms. Barnes, can you say that again, please.

9

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1 MS. BARNES: To facilitate, I think, the hearing, what I  
2 propose to do is after Mr. Safley has completed his examination  
3 of the Fire Marshal witnesses --

4 HEARING OFFICER KNITTLE: His direct examination?

5 MS. BARNES: His direct examination. I will complete any  
6 cross and also include direct examination questions that might be  
7 beyond the scope of his direct examination, that is, information  
8 that I would ordinarily present in our case-in-chief I would  
9 present while the witness is still on the stand and under oath.

10 HEARING OFFICER KNITTLE: Mr. Safley, what you are agreeing  
11 is that you are not going to object along the lines of beyond the  
12 scope of direct examination, and you are going to allow her to  
13 ask those questions?

14 MR. SAFLEY: Yes, sir.

15 HEARING OFFICER KNITTLE: Okay.

16 MS. SAFLEY: And then on any matters outside the scope, I  
17 will conduct a cross-examination as part of my redirect  
18 examination.

19 HEARING OFFICER KNITTLE: Okay. Both parties agree to  
20 that?

21 MS. BARNES: Yes.

22 MR. SAFLEY: Yes.

23 HEARING OFFICER KNITTLE: All right. I will allow that.

24 What else, Mr. Safley?

10

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1 MR. SAFLEY: Mr. Knittle, the last issue is we would like  
2 to move for leave to call Office of the State Fire Marshal  
3 employee Bill Carl as an adverse witness.

4 HEARING OFFICER KNITTLE: Ms. Barnes?

5 MS. BARNES: I don't have any objection to that. I don't  
6 think he will be hostile. If that means he wishes to ask leading  
7 questions, I don't have an objection to that.

8 HEARING OFFICER KNITTLE: Okay. As long as there is no  
9 objection, that is fine. I will grant that. Otherwise, we  
10 would, of course, have to -- we have new procedural rules here at  
11 the Board. I want to get the right section. Section 101.624 is  
12 examination of adverse, hostile, or unwilling witnesses. I think  
13 he would qualify even under this new definition. I will allow  
14 that to happen. I do want to note for the record -- are you  
15 finished, sir? Are there any other preliminary matters?

16 MR. SAFLEY: I am finished. Thank you.

17 HEARING OFFICER KNITTLE: Okay. We do have -- Ms. Barnes?

18 MS. BARNES: I have nothing.

19 HEARING OFFICER KNITTLE: We do have new procedural rules  
20 here at the Board that went into effect of January 2nd of the  
21 year 2001. We will be running the hearing in accordance with

22 those, specifically Subpart F of Part 101, the general rules,  
23 provides for hearings, evidence, and discovery. We will be using  
24 that section primarily. Matters such as this are referred to in

11

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1 Section 105, it looks like Subpart E. However, Subpart E directs  
2 us back to Subpart F of 101. So essentially we are going to be  
3 basing it off of the Subpart F, Part 101. You will have to bear  
4 with me. These are new rules and I am still becoming familiar  
5 with them. But that's how we are going to run the hearing, in  
6 accordance with the procedures set out there.

7 Okay. Let's start, then, with opening statements. Do you  
8 have an opening statement for the Petitioner?

9 MR. SAFLEY: Yes, I do. Just a very short one. Just as a  
10 preliminary matter, one, from where would you like me to speak?  
11 And, two, where would you have the witnesses sit?

12 HEARING OFFICER KNITTLE: Let's have you speak anywhere you  
13 would like, but feel free to remain seated and ask your questions  
14 from your desk over there. I would like the witnesses to sit  
15 next to Ms. Niemeyer, the court reporter.

16 MR. SAFLEY: All right. Thank you.

17 HEARING OFFICER KNITTLE: We will have her swear them in at  
18 the appropriate time.

19 MR. SAFLEY: Thank you. Again, my name is Tom Safley. I  
20 am from the law firm of Hodge and Dwyer. To my left is Mr.

21 Donald Hoing. Mr. Hoing owns and operates Don's Service, which  
22 is located at 255 Buchanan Street in Carthage, Illinois. This  
23 matter involves an appeal of a decision by the Office of the  
24 State Fire Marshal regarding Mr. Hoing's eligibility for access

12

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1 to the Illinois Underground Storage Tank Fund and the deductible  
2 that would apply to Mr. Hoing for reimbursement from that fund.

3 The evidence will show that Mr. Hoing is, again, the owner  
4 of Don's Service. It is located in Carthage, Illinois. That  
5 three underground storage tanks were previously located on Mr.  
6 Hoing's property. The evidence will further show that at some  
7 point in 1992 or early 1993 the Office of the State Fire Marshal  
8 was contacted with a report from either the city of Carthage or  
9 someone else in Carthage of fumes in a sewer or a basement, that  
10 the Office of the State Fire Marshal employee, Bill Carl, went  
11 to -- contacted Mr. Hoing, and later actually went to Mr. Hoing's  
12 property and inspected that property.

13 The evidence will further show that Mr. Carl originally,  
14 upon his contact with Mr. Hoing, concluded that the three  
15 underground storage tanks located on Mr. Hoing's property were  
16 not registered with the Office of the State Fire Marshal. The  
17 evidence will further show, however, that Mr. Carl later changed  
18 his mind on that and concluded that the underground storage tanks  
19 had been registered by a previous owner of the property. That  
20 Mr. Carl informed Mr. Hoing of his changed conclusion and further

21 informed Mr. Hoing that Mr. Hoing's deductible for the fund would  
22 be \$10,000.00, based on the timing of the registration, as Mr.  
23 Carl understood at that time.

24 The evidence will further show that Attorney Keith Emkey

13

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1 (spelled phonetically) of the Office of the State Fire Marshal  
2 issued originally an administrative order to Mr. Hoing which, in  
3 part, alleged that Mr. Hoing was in violation of the registration  
4 requirements of Illinois law for underground storage tanks. But  
5 that later, after Bill Carl had changed his mind on the issue of  
6 registration, Mr. Emkey issued a withdraw of the administrative  
7 order to Mr. Hoing including that portion of the administrative  
8 order dealing with the registration of underground storage tanks.

9 The evidence will further show that after that date Mr.  
10 Hoing applied to the OSFM for reimbursement from the fund for  
11 monies that he had spent to remediate contamination that  
12 allegedly originated from his property, that Mr. Hoing spent that  
13 money in reliance on Mr. Carl's statements to him and the letter  
14 from Mr. Emkey, and Mr. Hoing's understandings based on those  
15 statements and correspondence that his deductible would be  
16 \$10,000.00.

17 The evidence will further show that the Office of the State  
18 Fire Marshal has never issued a decision as to whether or not Mr.  
19 Hoing is eligible to access the fund or what his deductible would

20 be as required by Illinois law, but has indicated that it is the  
21 opinion of the Office of the State Fire Marshal that Mr.  
22 Hoing's -- that the underground storage tanks located on Mr.  
23 Hoing's property were registered at such a time that would  
24 indicate or would lead to a deductible of \$100,000.00 for

14

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1 reimbursement from the fund instead of the \$10,000.00 that Mr.  
2 Hoing was originally informed would apply.

3           It will be our contention in post hearing briefs and has  
4 been our contention in this action that all of those events lead  
5 to estoppel of the Office of the State Fire Marshal to deny that  
6 Mr. Hoing has a deductible of \$10,000.00, and that the Office of  
7 the State Fire Marshal should be ordered to make a finding that  
8 Mr. Hoing's deductible is \$10,000.00 for access to the fund.  
9 That's it.

10           HEARING OFFICER KNITTLE: All right. Ms. Barnes, do you  
11 have an opening statement?

12           MS. BARNES: Very briefly. The Fire Marshal's Office does  
13 not contest that there was a mix-up or a clerical error in  
14 whether or not Mr. Hoing's tanks were registered. The facts, as  
15 they are brought out in the hearing, will show how that was  
16 straightened out. The Fire Marshal's position is that as a  
17 matter of law these facts do not estop the State from concluding  
18 that Mr. Hoing's tanks were registered at such a time that the  
19 \$100,000.00 deductible would apply.

20 HEARING OFFICER KNITTLE: All right. Thank you, Ms.  
21 Barnes.

22 Would you like to call your first witness, please?

23 MR. SAFLEY: Yes, sir. As our first witness the Petitioner  
24 would like to call Mr. Donald Hoing.

15

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1 HEARING OFFICER KNITTLE: Mr. Hoing, would you mind coming  
2 up here and having a seat.

3 (Whereupon the witness was sworn by the Notary Public.)

4 HEARING OFFICER KNITTLE: Sir, do you mind -- by "yes,  
5 ma'am," do you mean that you do intend to tell the truth, the  
6 whole truth, and nothing but the truth?

7 THE WITNESS: Yes.

8 HEARING OFFICER KNITTLE: Do you mind saying I do.

9 THE WITNESS: I do.

10 HEARING OFFICER KNITTLE: Thank you very much.

11 THE WITNESS: Okay. Whatever.

12 HEARING OFFICER KNITTLE: Just a minor technicality.

13 DONALD HOING,  
14 having been first duly sworn by the Notary Public, saith as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. SAFLEY:

18 Q. Mr. Hoing, could you please state your full name and



19 spell your last name for the record.

20 A. Donald G. Hoing, H-O-I-N-G.

21 Q. Mr. Hoing, how old are you?

22 A. I am 52.

23 Q. Are you married?

24 A. Yes, sir.

16

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1 Q. What is your wife's name?

2 A. Evelyn.

3 Q. Is she here in the hearing room today?

4 A. Yes.

5 Q. Is your wife employed?

6 A. Yes.

7 Q. By whom?

8 A. Western Illinois University.

9 Q. Okay. Mr. Hoing, do you own real property located at  
10 255 Buchanan Street in Carthage, Illinois?

11 A. Yes.

12 Q. What use do you make of that property currently?

13 A. Now I repair automobiles.

14 Q. From whom did you purchase that property?

15 A. William Rampley.

16 Q. Did you own that property in 1993?

17 A. Yes, sir.

18 Q. Was your use of the property in 1993 any different than

19 it is now?

20 A. Sold gasoline.

21 Q. Were there any underground storage tanks located on the  
22 property in 1993?

23 A. Yes.

24 Q. Mr. Hoing, were you ever contacted by a representative

17

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1 from the Office of the Illinois State Fire Marshal regarding an  
2 alleged release of gasoline from your property?

3 A. Sometime around 1993.

4 Q. Okay. And, Mr. Hoing, if I refer to the Office of the  
5 Illinois State Fire Marshal as OSFM, will you understand what I  
6 am referring to?

7 A. Yes.

8 Q. Who was it from OSFM that contacted you?

9 A. Bill Carl.

10 Q. What did he say when he contacted you?

11 A. Well, when he first come he said there was gas fumes in  
12 a sewer and then he come back later and said that I had to get  
13 the tanks tested, so I done that. And then he come by and said  
14 they passed the test.

15 MS. BARNES: Could I have a more specific time frame than  
16 sometime in 1993, if that is possible?

17 THE WITNESS: I can't recall the date exactly.

18 MR. SAFLEY: I am happy to follow-up.

19 Q. (By Mr. Safley) Mr. Hoing, I meant to confine my  
20 question to your first contact with Mr. Carl. Do you remember  
21 the exact date on which that contact occurred?

22 A. No.

23 Q. Before that contact, had the Office of the State Fire  
24 Marshal or the Illinois Environmental Protection Agency or any

18

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1 other governmental agency ever contacted you about the  
2 underground storage tanks located on your property?

3 A. Nope.

4 Q. Had OSFM or the Illinois Environmental Protection Agency  
5 or any other government agency ever contacted you about any  
6 alleged release of gasoline from those underground storage tanks?

7 A. Nope.

8 Q. Did Mr. Carl ask you, when you first spoke with him,  
9 whether you had registered your underground storage tanks?

10 A. Yes, he did.

11 Q. What did you tell him?

12 A. No, I hadn't.

13 Q. Mr. Hoing, I would like to show you what has been marked  
14 for identification as pages 47 through 51 of the record on  
15 appeal, and ask you to take a look at that, please.

16 A. (Witness complied.)

17 Q. Have you had a chance to review that?

18 A. Yes.

19 Q. Could you turn to the last page for me, please. There  
20 is a signature at the bottom, Donald G. Hoing. Is that your  
21 handwriting?

22 A. Yes, sir.

23 Q. Is that your signature?

24 A. Yes.

19

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1 Q. Is this a notification form that you filed with the  
2 Office of the State Fire Marshal?

3 A. That is what it reads on the front.

4 Q. And you will notice it also reads February 11th of 1993,  
5 date received by the Division of Petroleum Chemical Safety. What  
6 caused you to file this form in February of 1993?

7 A. I would say Bill Carl told me that I was supposed to.

8 Q. Okay. Before you spoke with Bill Carl had anyone from  
9 the Office of the State Fire Marshal contacted you and told you  
10 that you needed to file any forms regarding underground storage  
11 tanks?

12 A. No.

13 Q. Had your fuel supplier ever told you that you needed to  
14 file any forms regarding underground storage tanks?

15 A. No.

16 Q. Had anyone else ever told you that you needed to file

17 any such forms?

18 A. This was the first I had heard of it.

19 Q. Thank you. Did Mr. Carl eventually come to your  
20 property on Buchanan Street in Carthage, Illinois?

21 A. Several times.

22 Q. Do you recall when the first time was that he came to  
23 your property?

24 A. Not date-wise.

20

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1 Q. If I told you that the records of the Office of the  
2 State Fire Marshal indicate that Mr. Carl at least was there in  
3 May of 1993, would you have any reason to disagree with that?

4 A. No.

5 Q. Did you speak to Mr. Carl -- pardon me. Did you speak  
6 with Mr. Carl when he came to your property?

7 A. Probably every time.

8 Q. Mr. Hoing, I would like to hand you what has been marked  
9 as page 44 of the record on appeal and ask you, please, to take a  
10 look at that and tell me when you have had a chance to review it.

11 A. (Witness complied.)

12 Q. Have you had a chance to review that, sir?

13 A. Yes.

14 Q. Do you recall ever seeing this document before?

15 A. Yes.

16 Q. Do you recall receiving this document sometime around

17 the date of the document, which is May 13th of 1993?

18 A. Probably, yes.

19 Q. I would next like to hand you what have been marked as  
20 pages 37 and 38 of the record on appeal and ask you to take a  
21 look at them, and I am also, if Ms. Barnes has no objections,  
22 would like to hand you what I understand is the original document  
23 of page 38, a bill from the Office of the State Fire Marshal.

24 MS. BARNES: I have no objection to that.

21

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1 MR. SAFLEY: Because the copy is very difficult to read.

2 Q. (By Mr. Safley) And I would ask you to take a look at  
3 both of those.

4 A. (Witness complied.)

5 Q. Have you had a chance to review them?

6 A. Yes.

7 Q. Regarding page 38, which is the second page, which is a  
8 bill from the Office of the State Fire Marshal, do you recall  
9 receiving that bill from them?

10 A. Yes, I do.

11 Q. All right. Do you recall what you did when you received  
12 that bill?

13 A. I received the bill and I called over to the State Fire  
14 Marshal's Office and talked to Bill Carl and he told me that it  
15 was a transfer and not a new registration, to write that on it

16 and send it back.

17 Q. Were you surprised to receive a bill from the State Fire  
18 Marshal?

19 A. Yes, I was.

20 Q. Why was that?

21 A. Because I was informed that they was already registered  
22 and there would be no charges.

23 Q. Who informed you of that?

24 A. Mr. Carl.

22

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1 Q. Did you follow Mr. Carl's directions and send back the  
2 bill?

3 A. Yes, sir.

4 Q. If you will look at the -- at page 37, which is the  
5 letter which is attached to that bill, there is some handwriting  
6 at the bottom of that page which states, sirs, this was to be a  
7 transfer instead of new registration, thanks, Don Hoing. Is that  
8 your handwriting?

9 A. Yes, sir.

10 Q. Did you write that on the bottom of that page?

11 A. Yes, sir.

12 Q. Is that what you sent back to the Office of the State  
13 Fire Marshal at Mr. Carl's direction?

14 A. Yes, sir.

15 Q. I would next like to show you what has been marked as

16 pages 41 through 43 of the record on appeal and ask you to take a  
17 look at those and tell me when you have had a chance to do that.

18 A. (Witness complied.)

19 Q. Have you had a chance to review the document?

20 A. Yes, sir.

21 Q. Do you recall seeing this document before?

22 A. Yes, sir.

23 Q. Do you recall whether you received the document -- well,  
24 pardon me. Let me ask this a different way. If you would turn

23

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1 to page 43, there is a receipt for -- a domestic return receipt  
2 for correspondence and near the bottom on the left-hand side it  
3 says Don Hoing's signature, addressee. Is that your signature?

4 A. Yes, sir.

5 Q. And it says date of delivery 05-22-93. Do you have any  
6 reason to believe that you did not receive that letter and sign  
7 that receipt on or about May 22nd of 1993?

8 A. No, I would say I got it and signed it.

9 Q. Now, Mr. Hoing, you have just mentioned that you had a  
10 conversation with Bill Carl in which he told you that he had  
11 concluded that your tanks were registered, the tanks on your  
12 property were registered; is that correct?

13 A. Yes, sir.

14 Q. Do you recall exactly when that conversation took place?



15 A. It would have been about the time when I sent back that  
16 bill on the transfer.

17 Q. Okay. Fair enough. Is that because you sent back the  
18 bill based on what Mr. Carl had told you?

19 A. Yes. He had told me they was registered and there  
20 shouldn't be a charge.

21 Q. When you talked to Mr. Carl, did you also discuss what  
22 the -- your deductible would be for the Illinois Underground  
23 Storage Tank Fund?

24 A. Yes.

24

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1 Q. What did Mr. Carl tell you?

2 A. He said where they was registered it would be  
3 \$10,000.00.

4 Q. Mr. Hoing, the conversations that -- or the conversation  
5 that you are talking about we have just established occurred more  
6 than seven years ago or about seven years ago, sometime in 1993.  
7 Are you sure that you are remembering them correctly?

8 A. Yes.

9 Q. How can you be sure?

10 A. Well, \$10,000.00 is a lot of money to me, let alone  
11 \$100,000.00.

12 Q. Was it important to you what your deductible would be  
13 for the Underground Storage Tank Fund?

14 A. Yes.

15 Q. Do you have any other livelihood other than the station  
16 that these tanks were located at?

17 A. No, sir.

18 Q. Mr. Hoing, did you ever arrange to have the underground  
19 storage tanks located on your property removed at some point?

20 A. Not until this all started up.

21 Q. Do you remember having them arranged to be -- arranging  
22 for them to be removed after this started up, though?

23 A. Al Green done it for me, yes.

24 Q. Was Al Green a consultant of yours?

25

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1 A. Yes, sir.

2 Q. Do you remember approximately when the underground  
3 storage tanks were removed?

4 A. In 1994.

5 Q. If I told you that the records of the Office of the  
6 State Fire Marshal indicated that the tanks were removed in  
7 December of 1994, would you have any reason to disagree with  
8 that?

9 A. No.

10 Q. Was Mr. Carl present when the tanks were removed?

11 A. Yes, sir.

12 Q. Did you speak with Mr. Carl when he was present on that  
13 date?

14 A. Yes, sir.

15 Q. Did you and Mr. Carl discuss on that date the  
16 registration -- whether or not the underground storage tanks  
17 located on your property were registered?

18 A. Yes, sir.

19 Q. Did you discuss what your deductible would be for the  
20 underground storage tank fund?

21 A. Well, he had already told me before. Whether we  
22 actually brought that up that day, I can't say for sure.

23 Q. What did you discuss with him about whether your tanks  
24 were registered? What did he tell you?

26

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1 A. He said they were.

2 Q. Did he tell you what your deductible would be that day?

3 A. He may have. I can't guarantee that he did, but he told  
4 me several times.

5 Q. Did he change -- did he ever change -- did he ever tell  
6 you different amounts at different times that he told you?

7 A. No.

8 Q. It was always \$10,000.00?

9 A. Yep.

10 Q. Do you know approximately how many times you spoke with  
11 Mr. Carl?

12 A. Probably over the phone and there, ten, twelve times,  
13 maybe more.

14 Q. Sometimes in person?  
15 A. Yes.  
16 Q. And sometimes on the telephone?  
17 A. Yes.  
18 Q. Now, I would like to ask you the same question I did  
19 before. A lot of these conversations occurred several years ago.  
20 Are you sure you are remembering them correctly?  
21 A. The main part I am.  
22 Q. Why is that?  
23 A. It is going to break me.  
24 Q. If your deductible is \$100,000.00 as opposed to

27

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1 \$10,000.00 that would be a hardship for you?  
2 A. Yes, sir.  
3 Q. I would like to next show you what has been marked as  
4 page 29 of the record on appeal and ask you to take a look at  
5 this, please.  
6 A. (Witness complied.)  
7 Q. Have you had a chance to review that?  
8 A. Yes.  
9 Q. Do you recognize that document?  
10 A. Yes.  
11 Q. Do you remember receiving that document from the Office  
12 of the State Fire Marshal?

13 A. Yes.

14 Q. Do you have any reason to believe that you did not  
15 receive it on or about -- or at least soon after the date that it  
16 says it was sent, January 9th of 1995?

17 A. That would be when I got it probably.

18 Q. Did you read this letter when you received it?

19 A. Yes, sir.

20 Q. If you will notice the first paragraph of the body of  
21 this letter states, this letter is being sent as a follow-up to  
22 our order dated 05-19-93. After a review of our records it  
23 appears that you have complied with this order. When you got  
24 this letter in or about January of 1995, what did this language

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1 mean to you in the first paragraph?

2 A. It meant that I had done everything I was supposed to  
3 and I would be under the \$10,000.00.

4 Q. Thank you. And why did it mean that to you?

5 A. Why else would I have received it.

6 Q. Was that consistent with your discussions with Bill Carl  
7 about the registration of the tanks?

8 A. Yes.

9 Q. Was it consistent with your conversations with Bill Carl  
10 about your deductible of \$10,000.00 for the --

11 A. Yes.

12 Q. -- Underground Storage Tank Fund?

13 A. Yes.

14 Q. Thank you. Mr. Hoing, are you aware that the State of  
15 Illinois has filed a lawsuit against you in Hancock County court?

16 A. Yes.

17 Q. Are you aware that the state wants you to clean up  
18 contamination, environmental contamination that allegedly came  
19 from underground storage tanks located on your property?

20 A. Yes.

21 Q. Mr. Hoing, have you done anything to try to clean up any  
22 of that contamination?

23 A. I started.

24 Q. What did you do?

29

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1 A. I had the tanks removed and the ground tests and water  
2 samples and I don't know what all.

3 Q. You mentioned Al Green earlier. Did you hire Mr. Green  
4 as a consultant?

5 A. Yes.

6 Q. Is he still your consultant?

7 A. No.

8 Q. Do you have a different consultant now?

9 A. Yes and no.

10 Q. But you have -- so you have hired at least two different  
11 consultants at different times?

12 A. Yes.

13 Q. Mr. Hoing, have you done anything to try to protect  
14 persons living near your property from any contamination?

15 A. I put a fan in there to suck fumes out of the basement.

16 Q. Out of your basement?

17 A. No, the neighbor behind the station.

18 Q. Are you paying the electricity for that fan?

19 A. Yes.

20 Q. How much money have you spent as a result of the  
21 contamination?

22 A. I am going to say around \$32,000.00 all together.

23 Q. Have you actually paid that \$32,000.00 to someone or do  
24 you still owe it?

30

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1 A. I owe the bank some.

2 Q. How do you owe the bank some?

3 A. I had to get a mortgage.

4 Q. You took out a mortgage to pay part of the costs?

5 A. Yes.

6 Q. Do you know approximately how much that mortgage was?

7 A. It started out at \$18,000.00, is what I borrowed, when  
8 it all started.

9 Q. Do you still owe on -- are you still paying off that  
10 \$18,000.00?

11 A. Yes.

12 Q. Mr. Hoing, I next want to show you some of your tax  
13 returns. And this is something that I meant to ask Ms. Barnes  
14 about before we started but forgot.

15 Ms. Barnes, do you want me to show him each of these  
16 individually or can I give them all to him as one package as an  
17 exhibit?

18 MS. BARNES: One package is fine.

19 MR. SAFLEY: Okay. Would you like to see a copy right now,  
20 too?

21 MS. BARNES: No, that is fine.

22 MR. SAFLEY: Okay.

23 Q. (By Mr. Safley) Mr. Hoing, I am going to give you what I  
24 am going to mark as P Exhibit 1, P standing for Petitioner's,

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1 because I don't have enough room to write Petitioner's on the  
2 sticker.

3 (Whereupon said documents were duly marked for purposes of  
4 identification as Petitioner's Exhibit 1 as of this date.)

5 Q. (By Mr. Safley) It is a stack of documents which are  
6 stapled together into six different piles. And I would ask you  
7 to take a look through those and tell me when you have had a  
8 chance to do so.

9 A. Do you want me to look through every one of them?

10 Q. Just glance through them. My next question is going to



11 be do you recognize what those documents are.

12 A. I know what they are.

13 Q. Okay. What are they?

14 A. Taxes, income taxes.

15 Q. Are they for you?

16 A. Yes, sir.

17 Q. Are they also jointly through your wife?

18 A. Yes, sir.

19 Q. All right. If you can look at the one that says 1994 at  
20 the top?

21 A. Yes.

22 Q. I would like to go down to the middle section on that  
23 first page, which is labeled income, and if you go to the  
24 right-hand column, if you look at -- there is line numbered seven

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1 and it says \$22,908.00.

2 A. Yes.

3 Q. Is that your income?

4 A. No.

5 Q. Whose income is it?

6 A. It would be my wife's.

7 Q. If you go down to line twelve, it says business income  
8 or loss and it shows a loss of \$11,629.00. Is that your loss?

9 A. Yes.

10 Q. Do you have any other income other than -- well, let me

11 back up. Is that a loss from Don's Service?

12 A. Yes.

13 Q. Do you have any other income except for what you get  
14 through Don's Service?

15 A. No.

16 Q. Well, if you don't mind, let me flip through them with  
17 you real quick. Does this indicate that in 1994 your income for  
18 Don's Service was a loss of \$11,629.00?

19 A. Yes.

20 Q. If you flip to the next bundle of documents, which is  
21 1995, as I read that, line twelve indicates a loss of \$14,205.00?

22 A. Yes.

23 Q. Does that indicate that Don's Service had a loss of  
24 \$14,205.00 in 1995?

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1 A. Yes.

2 Q. If you would turn to the next document, which is 1996, I  
3 read line twelve on that document as showing a gain of \$3,996.00;  
4 is that correct?

5 A. Yes, sir.

6 Q. Does that mean that Don's Service had income of -- a  
7 positive income of \$3,996.00 in 1996?

8 A. Yes.

9 Q. And for 1997, 1998, and 1999 do the amounts that are

10 reflected on line twelve of the first pages of those tax returns  
11 accurately indicate the loss or positive income experienced by  
12 you in Don's Service for those years?

13 A. Yes.

14 Q. Thank you.

15 MR. SAFLEY: Mr. Knittle, I would like to move to introduce  
16 Petitioner's Exhibit Number 1, which is the stack of tax returns,  
17 into evidence.

18 HEARING OFFICER KNITTLE: Ms. Barnes?

19 MS. BARNES: I have no objection.

20 HEARING OFFICER KNITTLE: Those will be admitted.

21 (Whereupon said documents were duly admitted into evidence  
22 as Petitioner's Exhibit 1 as of this date.)

23 HEARING OFFICER KNITTLE: Are they bound together in any  
24 way?

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1 MR. SAFLEY: No, sir, they are not. I don't know whether I  
2 have a clip that I could use to bind them.

3 HEARING OFFICER KNITTLE: I can find a clip at a later  
4 point in time.

5 MR. SAFLEY: Okay. Thank you.

6 Q. (By Mr. Safley) Mr. Hoing, you said that you had spent  
7 approximately \$32,000.00 responding to contamination that  
8 allegedly came from your property; is that correct?

9 A. Yes.

10 Q. Did the fact that Mr. Carl told you your deductible for  
11 the fund would be \$10,000.00 affect your decision to spend  
12 \$32,000.00?

13 A. Yes.

14 Q. How did it affect your decision?

15 A. I took him at his word. I thought I would get  
16 reimbursed after the 10.

17 Q. Would you have spent \$32,000.00 if he told you that your  
18 deductible was going to be \$100,000.00?

19 A. No.

20 Q. Why not?

21 A. I would have filed bankruptcy and give it to him.

22 Q. Could you have afforded to spend the \$32,000.00 if you  
23 knew your deductible was going to be \$100,000.00?

24 A. Nope.

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1 Q. Did you also rely on the letter that you received from  
2 the Office of the State Fire Marshal in January of 1995 that told  
3 you that all of the issues had been resolved?

4 A. Well, it would have been a combination of both.

5 Q. Mr. Hoing, did you actually ever apply for reimbursement  
6 from the Underground Storage Tank Fund?

7 A. I did not personally, no.

8 Q. Did you ever ask for anyone to apply on your behalf?

9           A.    Well, I thought Al Green was and then I am not sure he  
10 ever filed and then Craig Coker (spelled phonetically).

11           Q.    Those are your consultants?

12           A.    Yes, sir.

13                   (Whereupon a document was duly marked for purposes of  
14           identification as Petitioner's Exhibit 2 as of this date.)

15           Q.    (By Mr. Safley) I would like to hand you what I have  
16 marked as Petitioner's Exhibit Number 2, which is several pages  
17 which are bound together.  And I would ask you to take a look at  
18 this document, and tell me when you have had a chance to do that.

19           A.    (Witness complied.)

20           Q.    Have you had a chance to review that document?

21           A.    Yes.

22           Q.    Mr. Hoing, if you could please turn to the fourth page  
23 of that document.  And they are not numbered.

24           A.    (Witness complied.)

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1           Q.    And if you look in the middle of the page, there is a  
2 line that says signature, paren, owner/operator or designated  
3 agent, close paren, colon, and then someone has signed Donald G.  
4 Hoing.  Is that your signature?

5           A.    Yes, sir.

6           Q.    Did you sign this document?

7           A.    Yes, sir, plus I had it notarized.

8           Q.    Is this an Underground Storage Tank Fund application

9 that your consultant sent in to OSFM?

10 A. It surely was, yes.

11 MR. SAFLEY: Mr. Knittle, we would move to introduce  
12 Petitioner's Exhibit Number 2 into evidence.

13 HEARING OFFICER KNITTLE: Ms. Barnes?

14 MS. BARNES: I don't have an objection.

15 HEARING OFFICER KNITTLE: It is admitted.

16 (Whereupon said document was duly admitted into evidence as  
17 Petitioner's Exhibit 2 as of this date.)

18 Q. (By Mr. Safley) Mr. Hoing, if you turn to the fifth page  
19 of this document, which is after the page that contained your  
20 signature, and you will notice it is copied horizontally. If you  
21 will look at what is the bottom of that document, it reads Mr.  
22 Hoing says the registration fee was paid by the former owner and  
23 as a result were transferred to him in 1993, wherein no fees were  
24 required on his part. Did you type that onto that page?

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1 A. No, sir.

2 Q. Did you tell your consultant to type that onto that  
3 page?

4 A. No, sir.

5 Q. Did you have any conversations with your consultant  
6 about what Bill Carl had told you regarding the registration of  
7 your underground storage tanks?

8 A. Yes. He asked me if they was registered before he ever  
9 started the work.

10 Q. Your consultant did?

11 A. Yes.

12 Q. What did you tell him?

13 A. I told him supposedly they were.

14 Q. And that was based on your conversation with Bill Carl?

15 A. Yes.

16 Q. Did the Office of the State Fire Marshal ever send you  
17 anything in response to this application stating what your  
18 deductible for the fund would be?

19 A. Nope.

20 Q. Mr. Hoing, the parties here today have stipulated in a  
21 stipulation that we filed before this hearing that if your  
22 consultant, Craig Coker, had been called to testify today he  
23 would have testified to clean up the contamination at issue would  
24 cost more than \$220,000.00. Can you afford to pay \$220,000.00 to

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1 clean up that contamination?

2 A. No.

3 Q. If the court in Hancock County ordered you to clean up  
4 that contamination, could you afford to do that?

5 A. Nope.

6 Q. If the Board decides that your deductible in this case  
7 is \$100,000.00, and you are entitled to recover from the fund all

8 approved expenses above that figure, can you afford to pay the  
9 \$100,000.00 deductible to the fund?

10 A. No.

11 Q. Mr. Hoing, regarding everything you have said here  
12 today, have you told the truth?

13 A. Yes.

14 Q. Have you done your best to testify about things as well  
15 as you can recall them?

16 A. Yes.

17 Q. Are you making up any of your testimony to try to get  
18 some money from the Underground Storage Tank Fund?

19 A. Nope.

20 MR. SAFLEY: Thank you. That's all I have.

21 THE WITNESS: Okay.

22 HEARING OFFICER KNITTLE: All right. Cross-examination,  
23 Ms. Barnes?

24 MS. BARNES: Just a few questions.

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1 CROSS EXAMINATION

2 BY MS. BARNES:

3 Q. Mr. Hoing, I think I heard you correctly. When Mr. Carl  
4 visited you the first time, you told him the tanks were not  
5 registered; is that correct?

6 A. That's correct.



7 Q. Why would you tell him that?

8 A. Because I had not registered them. He asked me if I had  
9 and I said no.

10 Q. You had owned those tanks or had owned that station  
11 since 1983; is that correct?

12 A. Yes, ma'am.

13 Q. How long had you known Mr. Rampley?

14 A. Have I known him personally?

15 Q. Right.

16 A. Since I was probably ten years old or eleven.

17 Q. You had worked at that station before you bought it from  
18 him, right?

19 A. No. You said known him.

20 Q. Right. My next question is had you worked at the  
21 station before you bought it from him?

22 A. No, ma'am.

23 Q. Okay. You just bought it from him in 1983?

24 A. I owned another station just ahead of that, and I sold

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1 that and bought that one.

2 Q. Okay. And you had known Mr. Rampley since you were ten  
3 years old?

4 A. Probably ten or eleven.

5 Q. Did he live in Carthage?

6 A. Denver, Illinois.

7 Q. He lived in Denver? He had a station there too, right?

8 A. He had one there, Augusta, Hamilton, and Carthage.

9 Q. Did you call him and ask him if he had registered your  
10 tanks?

11 A. When all of this started, which he had had a fire. I  
12 can't remember when it was, but whatever records he had on  
13 anything were destroyed, which was before this all took place, I  
14 am sure.

15 Q. You bought the station from him a couple of years before  
16 the statute was passed requiring the tanks to be registered,  
17 right?

18 A. I bought it in 1983.

19 Q. Okay.

20 MR. SAFLEY: And I know it is too late, but I am going to  
21 object to the question to the extent that it calls for a legal  
22 conclusion from Mr. Hoing on Illinois law regarding timing of  
23 registration of underground storage tanks. He is not qualified  
24 to give that answer.

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1 HEARING OFFICER KNITTLE: Ms. Barnes?

2 MS. BARNES: I was just asking about timing. I was not  
3 asking him to draw a legal conclusion.

4 HEARING OFFICER KNITTLE: Are you moving to strike the  
5 response?

6 MR. SAFLEY: No, I am not. I am interposing a late  
7 objection to the question as a whole, which --

8 HEARING OFFICER KNITTLE: I am going to allow the question  
9 to stand since you are not moving to strike. But I will note  
10 your objection for the record.

11 MR. SAFLEY: Thank you.

12 Q. (By Ms. Barnes) Mr. Hoing, when the May 19th  
13 administrative order was delivered to you, at that point one of  
14 the violations was that the tanks were not registered, right?

15 A. If that's the letter I read a while ago, true.

16 Q. In fact, the Fire Marshal's Office assigned a new number  
17 to your station, right?

18 A. They assigned a number. I reckon it was new. I had no  
19 numbers.

20 Q. Where did you get the number that was used to fill out  
21 the first notification form?

22 A. From the State Fire Marshal's Office.

23 Q. I am talking about that -- take a look at that page 47.

24 A. 47 or 37?

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1 Q. Page 47. See that number up there where it says  
2 facility ID?

3 A. It says ID number.

4 Q. Uh-huh.

5 A. This?

6 Q. Yes, the line down?  
7 A. Yes.  
8 Q. Did you initially fill that in?  
9 A. That corner?  
10 Q. Yes.  
11 A. I never filled that corner in, no. That says office use  
12 only.  
13 Q. No, I am talking about where it says facility ID on the  
14 left?  
15 A. Yes. Yes, I did.  
16 Q. Okay. Where did you get that number?  
17 A. Probably from Mr. Carl.  
18 Q. And then subsequently when you received correspondence  
19 from the Fire Marshal's Office later, they had given you a new  
20 number, right?  
21 A. 37?  
22 Q. Yes.  
23 A. They had give me this number and someone called and said  
24 it was this 301, which I wrote on there by hand. And then they

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1 called back and said it was the number that was on it, the  
2 facility Id number that was typed on here. Do you have the one I  
3 am talking about?

4 Q. You are looking at page 37?

5 A. Yes, ma'am.

6 Q. Okay. So the Fire Marshal's Office initially gave your  
7 facility a new ID number, right?

8 A. They give me this, yes, this number that is right here  
9 that is typed in there, 3032053.

10 Q. Right.

11 A. They give me that and then later someone called and they  
12 told me it was this number that I have handwritten in there,  
13 3016671, and then they called back probably a day or two later  
14 and said, no, it was the one that was typewritten on the letter.

15 Q. Okay. So you knew at that time there was some confusion  
16 over whether the tanks were registered and which facility ID  
17 number belonged to your station, right?

18 A. Well, not really. All I was going by was the one they  
19 stamped me and then they called about this other one.

20 Q. It didn't raise any questions in your mind about whether  
21 there might be some confusion?

22 A. No. I took the man at what he told me.

23 Q. At any rate, your testimony is that you, yourself did  
24 not, before you sent in that February 1993 form, register your

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1 tanks?

2 A. No, ma'am, I did not.

3 MS. BARNES: Okay. That's all I have.

4 HEARING OFFICER KNITTLE: Redirect, Mr. Safley?

5 MR. SAFLEY: Yes, sir, just a couple short questions.

6 REDIRECT EXAMINATION

7 BY MR. SAFLEY:

8 Q. Mr. Hoing, Ms. Barnes asked you whether you told Bill  
9 Carl that your tanks were not registered, and if I recall your  
10 answer it was I told him I did not register them, correct?

11 A. That's true.

12 Q. I just want to make sure I understand the answer. Did  
13 you tell Mr. Carl that your tanks were -- my tanks are not  
14 registered or did you tell him I have not sent in a form, a  
15 registration form?

16 A. I told him I have never received nothing and I have  
17 never registered them.

18 MR. SAFLEY: Thank you. That's my only question.

19 HEARING OFFICER KNITTLE: Recross, Ms. Barnes?

20 MS. BARNES: No.

21 HEARING OFFICER KNITTLE: Thank you, sir. You may go back  
22 to your seat next to Counsel there.

23 MR. HOING: Thank you.

24 (The witness left the stand.)

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1 HEARING OFFICER KNITTLE: The next witness, Mr. Safley?

2 MR. SAFLEY: Yes. We --

3 HEARING OFFICER KNITTLE: Sir, before you go back, can you

4 leave those exhibits with me?

5 MR. SAFLEY: I am sorry. You need to leave them --

6 MR. HOING: All of them?

7 MR. SAFLEY: Yes, you need to leave them.

8 HEARING OFFICER KNITTLE: Yes.

9 MR. SAFLEY: Yes, you leave them with him.

10 HEARING OFFICER KNITTLE: If your attorney wants us to take

11 them back to the Board and look at them, I think we probably

12 ought to take them.

13 MR. HOING: You can have all of them.

14 MR. SAFLEY: Some of them are duplicates of what is in the

15 record. I just did that for his ease, rather than having to flip

16 through the 50-some odd pages of the record.

17 HEARING OFFICER KNITTLE: Understood. We call them out

18 afterwards and go over the exhibits.

19 MR. SAFLEY: Sure. Thank you, Mr. Knittle. Our next

20 witness is Bill Carl. Do you want to get him?

21 MS. BARNES: Yes, I will get him.

22 HEARING OFFICER KNITTLE: Let's take a short recess before

23 the next witness.

24 (Whereupon a short recess was taken.)

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1 HEARING OFFICER KNITTLE: All right. Back on the record.

2 We have had a short recess. It is about 2:30 p.m. now. Further

3 noting for the record that there are still no members of the

4 public present here today. We are getting ready to call the  
5 Petitioner's second witness, but the Petitioner's attorney had a  
6 matter that he wanted to bring up before we got started.

7 MR. SAFLEY: Thank you, Mr. Knittle. There is an employee  
8 of the Office of the State Fire Marshal, whose, unfortunately,  
9 name I don't know who is present in the gallery, and I just noted  
10 on our break that he was speaking with Ms. Carlisle, who is a  
11 witness who will be called later and who has been separated for  
12 purposes of this hearing. I don't know whether he spoke with Mr.  
13 Carl, as well. I certainly did not see that. But I just wanted  
14 to note for the record that we had separated the witnesses by an  
15 agreement of the parties, and to raise an objection to any  
16 conversation by anyone, for that matter, with the separated  
17 witnesses about the testimony that has occurred, if -- or to move  
18 you, Mr. Knittle, to instruct everyone present not to do that and  
19 to raise an objection to any conversations that might have  
20 occurred, if it did.

21 HEARING OFFICER KNITTLE: Anything, Ms. Barnes?

22 MS. BARNES: Yes. I am sorry. I did not advise the  
23 employee from the Office of the State Fire Marshal of what it  
24 means when you separate witnesses. So if he spoke to Ms.

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1 Carlisle about the testimony that was presented, it was certainly  
2 because he didn't understand the proceedings.



3 HEARING OFFICER KNITTLE: Right. I don't think that is  
4 your responsibility. We can exclude them, but there is also --  
5 you know, we can make sure that they are separated and making  
6 them not talk are two fairly separate things.

7 Sir, did you have any communication with the witnesses?

8 MR. ALDERSON: With Betty, I talked to her.

9 HEARING OFFICER KNITTLE: About?

10 MR. ALDERSON: Who was talking and that he was the only one  
11 who had been up on the chair, and about how long -- that they  
12 said at the beginning that it might take three hours. She is  
13 riding with me back.

14 HEARING OFFICER KNITTLE: Your name, sir?

15 MR. ALDERSON: Alderson.

16 HEARING OFFICER KNITTLE: I don't think there has been any  
17 prejudice here. I am not going to do anything with the standing  
18 testimony or the upcoming testimony, but I will direct anybody  
19 here not to communicate with the witnesses who have been excluded  
20 at least insofar as it pertains to the proceedings here in the  
21 Pollution Control Board's conference room. Let's make it a  
22 hearing room. Okay. Would that suffice it, sir?

23 MR. SAFLEY: Yes, sir. Thank you very much.

24 HEARING OFFICER KNITTLE: Okay. Let's proceed, then, with

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1 your next witness who is already sitting down. His name, please?

2 MR. SAFLEY: Mr. Carl, Bill Carl.

3 HEARING OFFICER KNITTLE: Okay. Darlene, could you swear  
4 him in, please.

5 (Whereupon the witness was sworn by the Notary Public.)

6 W I L L I A M C A R L,  
7 having been first duly sworn by the Notary Public, saith as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. SAFLEY:

11 Q. Mr. Carl, could you state your full name and spell your  
12 last name for the record, please.

13 A. It is actually William, is my official name. George  
14 Carl is my middle name. George is my middle name. Carl,  
15 C-A-R-L.

16 Q. Mr. Carl, are you employed?

17 A. Yes.

18 Q. By whom?

19 A. The State of Illinois.

20 Q. And do you work for any specific agency or division of  
21 the State of Illinois?

22 A. I work for the Office of the State Fire Marshal,  
23 Division of Petroleum and Chemical Safety.

24 HEARING OFFICER KNITTLE: Let's go off the record.

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1 (Discussion off the record.)

2 HEARING OFFICER KNITTLE: Okay. Let's go back on the  
3 record.

4 Q. (By Mr. Safley) I am sorry. Could you repeat that? You  
5 work for the Office of the State Fire Marshal, the Division of  
6 Petroleum and Chemical Safety?

7 A. Yes, that's correct.

8 Q. How long have you worked for that division of the Office  
9 of the State Fire Marshal?

10 A. I came into that division in January of 1990.

11 Q. Okay.

12 A. Officially.

13 Q. What is your position currently with the Office of the  
14 State Fire Marshal?

15 A. I am a storage tank safety specialist.

16 Q. How long have you held that position with the OSFM?

17 A. Since that same time frame, January of 1990.

18 Q. What did you -- were you employed before you began  
19 working for OSFM?

20 A. I came over -- I was with OSFM in May of 1988 for  
21 approximately a year and a half in the Division of Fire  
22 Prevention.

23 Q. What position did you hold in the Division of Fire  
24 Prevention?

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1 A. Fire prevention inspector II.

2 Q. What were the duties of a fire prevention inspector II?

3 A. They basically inspected facilities that were state  
4 licensed; hospitals, nursing homes, day care centers. They did  
5 self-service gas stations. At that time the only thing that they  
6 did with gas stations was the self-service permit. They  
7 basically handled the Underground Storage Tank Division  
8 responsibilities before the Underground Storage Tank Division was  
9 started.

10 Q. Did you inspect any gas stations or locations of  
11 underground storage tanks when you were an inspector with the  
12 Division of Fire Protection?

13 A. Prevention, Division of Fire Prevention.

14 Q. Prevention. Pardon me.

15 A. Yes, I did.

16 Q. What are your duties as a storage tank safety specialist  
17 for the Division of Petroleum and Chemical Safety?

18 A. Okay. I am the State's witness that the tanks have been  
19 properly removed if it is on removal. Okay. We have a number of  
20 different reasons we go out on the jobs. For example, new  
21 installation of new tanks, existing facilities, or upgrading  
22 requirements, we are present for upgrades. We are at all of the  
23 removals or abandonments, what they call abandonment in place,  
24 where you physically can't remove the tank from the ground and it

1 has to be filled with inert material. We are on those.

2 We handle -- we do certification audits on existing  
3 facilities for new compliance -- or the new technical  
4 requirements that came in effect in December of 1998. We handle  
5 leak investigations if we are -- if we are requested from some  
6 other agency to come in and assist on leak investigations. That  
7 is pretty much -- I think that is pretty much it.

8 Q. Okay. Do you actually go out to these different  
9 stations for these different activities?

10 A. Yes.

11 Q. Is there a certain area of the state in which you work?

12 A. Yes, I have a nine county territory that I cover.

13 Q. And just roughly where is that territory located?

14 A. You mean you want all nine counties?

15 Q. Well --

16 A. I can give you all nine counties. It would be mainly  
17 west central Illinois.

18 Q. Okay. Do you go as far north as the Quad Cities?

19 A. No.

20 Q. Galesburg?

21 A. No, sir.

22 Q. Okay. Do you go as far south as Quincy?

23 A. No, sir.

24 Q. So kind of in between?

1           A.    It is Peoria and Tazewell Counties and then basically  
2 straight west towards the Mississippi River.

3           Q.    Okay.

4           A.    And it is about a two county wide area.

5           Q.    Oh, I see.

6           A.    Yes.

7           Q.    Okay.  Are you -- do you have an office at the office  
8 of -- at the OSFM headquarters here in Springfield?

9           A.    (Nodded head up and down.)

10          Q.    Do you work out of this office or --

11          A.    Yes.

12          Q.    Okay.

13          A.    I mean, we all work out of this office, but I do -- I  
14 never come down to the Springfield office unless it is for either  
15 training or a hearing or, you know, meetings with my boss or  
16 whatever.  I leave the house at 8:30 in the morning and I am back  
17 home by 5:00 in the afternoon.  That's -- I do have an office at  
18 home, but it is not technically my office.

19          Q.    Does -- do you get direction from the headquarters here  
20 in Springfield about where some new installations are going to be  
21 and where you are supposed to be going?

22          A.    Yes, sir.

23          Q.    How do they communicate with you?

24          A.    By phone.

1 Q. Okay.

2 A. I call the office every day and get any kind of messages  
3 that there may be from the day before or any schedules that have  
4 been scheduled for me through my -- I have an office associate  
5 that I work with.

6 Q. Okay.

7 A. She does all of my scheduling for me as far as that  
8 goes.

9 Q. Have the duties you have talked about, have those been  
10 pretty much the same since you started at that position in 1990?

11 A. Yes.

12 Q. Okay. Has the area in which you have worked been the  
13 same?

14 A. No.

15 Q. How has that changed?

16 A. When I first started the division I covered a larger  
17 area than what I do now.

18 Q. Roughly where was that area?

19 A. Well, when I first came in, I believe I was the fifth or  
20 sixth employee in this division, and I -- at that time I did go  
21 up into the Quad Cities and down in the Quincy area, and  
22 basically there was not a written territory area where they sent  
23 you. It was wherever you were needed.

24 Q. Okay. When did your area get changed to this smaller

1 nine county area?

2 A. Specifically, I can't tell you. I mean, I don't have a  
3 specific -- I can't specifically say 1992 this is what happened.  
4 They just kept adding specialist, and as a specialist was added,  
5 they may have taken a county or two away from me at that time.

6 Q. Okay. Is Hancock, Illinois -- pardon me -- Hancock  
7 County in Illinois currently part of your nine counties?

8 A. Yes.

9 Q. Okay. And was it in 1993?

10 A. Yes.

11 Q. Okay. In your employment as a storage tank safety  
12 specialist, did you ever have occasion to come into contact with  
13 Mr. Hoing?

14 A. Yes, sir.

15 Q. What caused you -- what caused that contact?

16 A. I was contacted by -- and I can't remember if it was  
17 either the City of Carthage or the Carthage Fire Department.  
18 They had -- they were getting some vapors of petroleum or  
19 something in the sewers in -- it is not just in his case, but it  
20 has been in other cases, too. We have been in Carthage before.

21 Q. Okay. After you received that contact from either the  
22 city or the fire department, did you contact Mr. Hoing?

23 A. Yeah, I have had contact with him.

24 MS. BARNES: Do we have a time frame? I am sorry.



1 Q. (By Mr. Safley) I didn't ask. Do you remember when it  
2 was that you got this call from the City of Carthage or the fire  
3 department in Carthage about the fumes in the sewer?

4 A. As far as an exact date, no, I don't remember.

5 Q. Do you remember what year it was?

6 A. The only thing that I can think of off the top of my  
7 head is because it was wintertime, so it could have been the end  
8 of 1992 or the beginning of 1993.

9 Q. Okay.

10 A. I know that one of the first -- see, you got to  
11 understand that when we go out and investigate we check out the  
12 areas that are involved as far as the manways and try to pinpoint  
13 a proximity as to where the source may be coming from. So I may  
14 have been in Carthage a day or two before I actually had any  
15 contact with him.

16 Q. Okay.

17 A. But I can't give you specific times and dates, no.

18 Q. And one thing, Mr. Carl, I should tell you, just so you  
19 understand, as you know, the State -- as I assume you know, the  
20 State has filed an action against Mr. Hoing in court in Hancock  
21 County that is being prosecuted on behalf of the Illinois  
22 Environmental Protection Agency. I don't intend to get into  
23 those issues here that involve that. This is really -- this is  
24 confined to the deductibility issue.

1           A.    Uh-huh.

2           Q.    So if you wonder why I am not dealing with some of the  
3 more technical issues about what you found, that's the reason.  
4 We are reserving that for the other lawsuit.

5           A.    Okay.

6           Q.    Okay.

7           A.    I was not aware of that.

8           Q.    Oh, okay. Well, I am sorry. Then now you are.

9           A.    I didn't --

10          Q.    You may or may not be a witness in it. I don't know.

11          A.    Okay.

12          Q.    I am going to steer away from some of the more technical  
13 issues regarding contamination because I don't want to prejudice  
14 Mr. Hoing's rights in that other lawsuit.

15          A.    Okay.

16          Q.    Especially since you didn't even know it existed.  
17 Correct me if I am wrong. Is it your recollection that at some  
18 point fairly soon after you were contacted either by the city or  
19 the fire department you had contact with Mr. Hoing, you may have  
20 done some other things in between, but you had contact with Mr.  
21 Hoing --

22          A.    Yes, that is it probably a good --

23          Q.    Okay. Just so I understand. When you first contacted  
24 Mr. Hoing, did you talk to him about whether he had filed a

1 notification form for the underground storage tanks located on  
2 his property?

3 A. No. It may have come up in the conversation but the  
4 notification form was something that was handled through the  
5 office. You know, I may have asked him about registration, which  
6 is a different issue.

7 Q. Okay.

8 A. I mean, to me it is a different issue.

9 Q. Okay. Well, then -- and maybe I am confusing those two  
10 issues. Did you ask him whether he had registered -- whether his  
11 tanks were registered?

12 A. I believe we did -- I believe we had that conversation.

13 Q. What did he tell you? Do you remember?

14 A. Well, I -- again, you are asking me to say something,  
15 you know, under sworn statement and I can't tell you exactly what  
16 I said. I can just tell you what I kind of remember. You know,  
17 that was a long time ago.

18 Q. I don't -- just so you understand, I don't want you -- I  
19 don't expect you to make up something to satisfy my question?

20 A. No.

21 Q. I don't want you to feel like you have to give me an  
22 answer to something you don't know. If you don't know, I don't  
23 want to force you to testify. So if you don't remember, you  
24 know, and I am sure Ms. Barnes may have told you. If you don't

1 remember, feel free to just tell me you don't remember.

2 A. Okay. Right.

3 Q. Okay.

4 A. I am sure we had conversation about tank registration,  
5 because one of the first things that I do -- and may I show this  
6 list? When I do go into a facility is we do check on facility  
7 numbers, because I -- you know, I have to look up to see if the  
8 tanks were registered or not.

9 MS. BARNES: Do you want to identify for the record what he  
10 is referring to?

11 MR. SAFLEY: Yes, I was going to do that. Thank you.

12 Q. (By Mr. Safley) I appreciate that, Mr. Carl. Just for  
13 the record, we have -- or Ms. Barnes has supplemented the record  
14 with two pages from I think the list you are holding, which is  
15 dated January 6th of 1992.

16 A. Yes.

17 Q. Specifically, the pages that deal with Carthage,  
18 Illinois?

19 A. Yes.

20 Q. And I am not sure exactly what they are calling them.  
21 But that has been introduced into the record.

22 A. Okay.

23 Q. And that is what you were just referring to?

24 A. That's what I am referring to.

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1 Q. Okay. I do intend to ask you a little bit about that.  
2 Do you ever remember actually going to Mr. Hoing's property in  
3 1993 to conduct an inspection of the property?

4 A. Yes.

5 Q. Okay. And I would like to hand you what has been marked  
6 as page 45 of the record on appeal, and ask you to take a look at  
7 that.

8 A. Okay.

9 Q. And just take your time and tell me when you have had a  
10 chance to look it over.

11 A. (Witness complied.) Okay. This would have -- okay.

12 Q. Okay. That is fine. Do you recognize the document?

13 A. Yes.

14 Q. Can you tell me what it is?

15 A. This is called an inspection log. This is after we  
16 would go in and do an inspection on a premises, and this is  
17 mainly a form that we used if we found violations.

18 Q. Okay. And does this -- did you prepare this form?

19 A. Yes, I wrote this form.

20 Q. Okay. Does it pertain to Mr. Hoing's --

21 A. I wrote --

22 Q. Sure. You filled in the form?

23 A. Yes.

24 Q. Does this form -- does what you filled out pertain to

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1 Mr. Hoing's property in Carthage?

2 A. Yes.

3 Q. Okay. Now, it says at the top, date -- on the first  
4 page, the top right-hand corner says, date, 05-03-93?

5 A. Yes.

6 Q. Would that be the date that you went to the property or  
7 the date that you filled out form or would those be the same?

8 A. That would have been the day -- that would have been the  
9 day that I was at his facility, one of the days.

10 Q. Sure.

11 A. It could --

12 Q. Sure. And you might have been there other days?

13 A. Yes.

14 Q. Okay. Fair enough. Do you normally fill out the form  
15 the same date that you are at the facility?

16 A. Yes.

17 Q. Okay.

18 A. I may not fill it out at his facility, but I do fill  
19 out -- I have daily paperwork that I have to do and that's part  
20 of it.

21 Q. Do you take notes to help you fill out the forms later  
22 or do you just remember?

23 A. I am not sure.

24 Q. Okay.

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1 A. I am not sure how it was done in this scenario.

2 Q. Okay.

3 A. And I am just telling you because I don't remember.

4 Q. That is fine. Is it safe to say that if you did have  
5 any notes that you don't have them anymore?

6 A. That's correct.

7 Q. Okay. Fair enough. Now, you mentioned a little bit  
8 earlier that one of the things that you check whenever you go to  
9 a facility, or at least in this kind of circumstance, is whether  
10 the tanks are registered; is that right?

11 A. Yes.

12 Q. And that was true in 1993 as well as now?

13 A. Yes.

14 Q. And that's because Illinois law requires owners to  
15 register their tanks?

16 A. Yes.

17 Q. And, in fact, if you look at this form when you get past  
18 the place to fill in for owner and location and fire department  
19 the first box to either be checked or not checked is whether the  
20 owner has registered their tanks?

21 A. Yes.

22 Q. Now, as I read this form, that box in this case is  
23 checked, the first box?

24 A. Yes.

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1 Q. What does it mean -- what did you mean when you checked  
2 that box?

3 A. That the tanks -- in my opinion at the time of the  
4 inspection that the tanks were not registered.

5 Q. Okay. Now, you mentioned earlier that the Office of the  
6 State Fire Marshal keeps a list of persons who have registered  
7 their tanks?

8 A. Yes.

9 Q. Okay. And that's what you held up earlier when you were  
10 talking about and we had talked about it being supplemented in  
11 the record?

12 A. Uh-huh.

13 Q. I would like to go ahead and hand you the -- just the  
14 pages that were supplemented in the record --

15 A. That's fine.

16 Q. -- so that you know which ones we are talking about.

17 MS. BARNES: Why don't you use this?

18 MR. SAFLEY: Oh, I am sorry. We have one that is marked.  
19 Mine is not properly marked. That should be the same thing.  
20 What is that marked?

21 MS. BARNES: Respondent's 1.

22 MR. SAFLEY: We are calling it Respondent's Exhibit Number  
23 1, just for the record.



24 Q. (By Mr. Safley) Is that the kind of list that you meant

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1 or a portion of the kind of list that OSFM keeps?

2 A. Yes.

3 Q. Now, did you -- does that list play any part in you  
4 determining whether or not tanks have been registered?

5 A. Yes.

6 Q. All right. And tell me how you use that list?

7 A. Well, I mean, we have got -- we have got these  
8 facilities listed by a number of different things. It could be  
9 by name and it could be by address and it could be by facility  
10 number. And, obviously, if we don't have a facility number then  
11 obviously we go by either a name or an address.

12 Q. Okay.

13 A. I believe in Mr. Hoing's case, because the address is  
14 225, which led me to believe that there was no 225 Buchannan  
15 Street on my list, that this facility was not registered.

16 Q. Is Mr. Hoing's name on that list?

17 A. Mr. Hoing's name is not on this list.

18 Q. Okay.

19 A. Let me make sure.

20 Q. Sure, sure.

21 A. Mr. Hoing's name is not on this list.

22 Q. Okay.

23 A. That's correct.

24 Q. It is my understanding that the list groups

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1 registrations by city, is that correct, as well as other ways?

2 A. Right.

3 Q. So you don't have to look through all of the pages of  
4 the list, you can just go to the entries for Carthage and that  
5 should be what you need?

6 A. It is grouped by county and then by city.

7 Q. Okay.

8 A. Alphabetical order by city after you get through the  
9 county.

10 Q. Okay. That enables you to more quickly narrow it down?

11 A. Sure, sure.

12 Q. Then it is my understanding that you reviewed this list?

13 A. Uh-huh.

14 Q. And you found that Mr. Hoing's name was not on the list  
15 and you concluded that he had not registered his tanks?

16 A. Yes, it was the conclusion at that time --

17 Q. Sure.

18 A. -- that he had not registered his tanks.

19 Q. Okay. Then if I understand right, that led you to  
20 include on your inspection log and check the first box on the  
21 inspection log stating that Mr. Hoing had not registered his  
22 tanks?

23 A. That's correct.

24 Q. Okay. Now, are you aware of the fact that Illinois has

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1 a fund to help owners of underground storage tanks pay for  
2 releases from those tanks?

3 A. Yes, I am aware of that.

4 Q. Okay. Are you also aware that persons who want to  
5 access that fund have to pay a deductible for the fund?

6 A. Yes, I am aware of that.

7 Q. And are you aware that the amount of the deductible  
8 varies depending on when the tanks were registered?

9 A. I believe that's how it goes, yes.

10 Q. Okay. And that if tanks were registered before a  
11 certain date the deductible might be one number and if they were  
12 registered after that certain date they would be another number?

13 A. Uh-huh.

14 Q. Did you discuss that deductible issue with Mr. Hoing at  
15 this inspection in May of 1993?

16 A. On the 5th of May?

17 Q. Well, or --

18 A. Or the 3rd of May, whatever that day was?

19 Q. Yes.

20 A. May 3rd, did I discuss it?

21 Q. Yes.

22 A. I don't know.

23 Q. Okay.

24 A. The reason I am saying I don't know is because I don't

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1 specifically know if I discussed anything with him on May 3rd,  
2 other than what was here.

3 Q. Fair enough. Now, my understanding is that when you do  
4 an inspection like this and you find violations at a station you  
5 pass that information on to the headquarters of OSFM; is that  
6 correct?

7 A. Yes, yes.

8 Q. And the reason you do that is so that OSFM can decide  
9 whether to issue an administrative order to the person ordering  
10 them to --

11 A. Yes.

12 Q. -- deal with those violations?

13 A. Yes.

14 Q. But there is not a lawyer from OSFM that accompanies you  
15 out to these sites to inspect them?

16 A. No.

17 Q. And so OSFM's lawyers rely on your conclusion to decide  
18 whether or not to issue an administrative order?

19 A. Yes.

20 Q. And after your inspection of Mr. Hoing's property in May  
21 of 1993, you concluded that there were some violations on his

22 property?

23 A. Yes.

24 Q. And if I understand it correctly, specifically you

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1 concluded that Mr. Hoing was in violation of the notification  
2 requirement and four other provisions of Illinois law; is that  
3 correct?

4 A. Yes.

5 Q. And you passed that conclusion on to OSFM?

6 A. Yes.

7 Q. There was no lawyer from OSFM that was with you when you  
8 made -- when you inspected Mr. Hoing's property?

9 A. No.

10 Q. And so OSFM relied on your conclusion -- I am sorry.  
11 Did you answer out loud?

12 A. I said no.

13 Q. Okay. I am sorry.

14 A. I shook my head and then I said -- and then I thought  
15 for a minute. I did say no.

16 Q. I am sorry. I just didn't hear you. And so OSFM relied  
17 on your conclusion that Mr. Hoing had -- was in violation of five  
18 provisions of Illinois law?

19 A. Yes.

20 Q. And OSFM issued an administrative order to Mr. Hoing  
21 based on that conclusion?

22 A. Yes.

23 Q. I would like to hand you what has been marked as page 41  
24 of the record on appeal, and ask you to take a look at that and

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1 tell me when you have had a chance to do that.

2 A. (Witness complied.) Okay.

3 Q. Have you had a chance to look at that document?

4 A. Yes.

5 Q. It is my understanding that that is the administrative  
6 order that OSFM issued to Mr. Hoing as a result of your May of  
7 1993 inspection of Mr. Hoing's property; is that correct?

8 A. That's correct.

9 Q. Now, some time after your inspection of Mr. Hoing's  
10 property you talked to Mr. Hoing again; is that right?

11 A. We had -- I had been in and out of there several times  
12 talking to him, yes.

13 Q. Okay. And Mr. Hoing told you at some point that he had  
14 purchased this property from Mr. William Rampley?

15 A. Yes.

16 Q. At that point my understanding is that you checked your  
17 copy of the list from OSFM that we looked at earlier to see  
18 whether Mr. Rampley had registered any USTs?

19 A. Usually what I do is if I can't find your name or your  
20 address on a list I ask if there is any other possible way that

21 the tanks could be registered under either another address or  
22 another name.

23 Q. And --

24 A. I think that's when he told me he had bought it off of

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1 Rampley.

2 Q. And you checked the list at that point to see whether  
3 Mr. Rampley had registered any tanks?

4 A. Yes.

5 Q. And Mr. Rampley's name is on the list that you had?

6 A. Yes.

7 Q. The list indicates that Mr. Rampley had registered  
8 underground storage tanks in Carthage, Illinois?

9 A. That's correct.

10 Q. And Mr. Hoing's underground storage tanks were also  
11 located in Carthage, Illinois?

12 A. That's correct.

13 Q. And the OSFM list also indicates that Mr. Rampley  
14 registered three underground storage tanks?

15 A. Yes.

16 Q. And three underground storage tanks were located at Mr.  
17 Hoing's property as well?

18 A. Yes.

19 Q. So it is my understanding that after reviewing the OSFM  
20 list you concluded that the underground storage tanks located on

21 Mr. Hoing's property were registered by Mr. Rampley?

22 A. At a later visit, yes.

23 Q. At some point?

24 A. Yes, yes.

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1 Q. Okay.

2 A. Not on the initial visit, but yes.

3 Q. Sure. I apologize if I was not clear.

4 A. Yes.

5 Q. Not on this visit, but at some point later than that --

6 A. Yes.

7 Q. -- you concluded after reviewing this list that the  
8 underground storage tanks on Mr. Hoing's property had been  
9 registered by Mr. Rampley?

10 A. Yes. It was my understanding because he had told me  
11 that he purchased the property from Rampley that this could  
12 possibly be the same facility, yes.

13 Q. Okay. I would like to hand you what has been marked as  
14 page 36 of the record on appeal, and ask you to take a look at  
15 this and tell me when you have had a chance to do that.

16 A. (Witness complied.) Okay.

17 Q. And is that your signature, Mr. Carl, at the bottom of  
18 this page?

19 A. Yes, it is.



20 Q. Can you tell me what this document is?  
21 A. This is a progress report where we had -- this would  
22 basically be a reinspection report of a previous inspection log.  
23 Q. Okay.  
24 A. It is called a progress report.

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1 Q. Okay. At the upper right-hand corner there are four  
2 line and the bottom says today's date, 10-08-93.  
3 A. I am sorry. Say that again.  
4 Q. I am sorry. At the top right-hand corner of the  
5 document --  
6 A. Yes.  
7 Q. -- there are four lines?  
8 A. Yes.  
9 Q. And the bottom of those four lines states today's date,  
10 and it says 10-18-93?  
11 A. Yes.  
12 Q. Would that be the date that you either reinspected the  
13 property or filled out this form?  
14 A. Yes, reinspected the property.  
15 Q. Okay. Just as with your earlier form, you might have  
16 filled this form out on the same date or soon thereafter?  
17 A. Sure.  
18 Q. And I noticed that under the remarks section -- well,  
19 first of all, in the middle there are some numbers, one through

20 five, and then on the right-hand side six through ten?

21 A. Yes.

22 Q. What do those refer to?

23 A. Those are the violation numbers.

24 Q. Okay. If I remember correctly, the violation relating

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1 to registration of underground storage tanks was number one in  
2 the administrative order and you certainly can look at it.

3 A. Yes, yes.

4 Q. And I notice that next to number one on this progress  
5 report from October 18th of 1993, there is an X under compliance?

6 A. Yes.

7 Q. Does that refer to the fact that you had concluded that  
8 Mr. Rampley had registered these tanks, as you and I had  
9 discussed before?

10 A. Mr. Rampley --

11 Q. Yes.

12 A. -- or Mr. Hoing?

13 Q. No. You had testified earlier that you concluded at  
14 some point that the tanks had been registered by Mr. Rampley?

15 A. Right, yes.

16 Q. This says compliance next to one. Is this related to  
17 Mr. -- to the fact that the tanks were -- that you had concluded  
18 the tanks were registered by Mr. Rampley?

19           A.    Because of the different facility ID numbers I have to  
20 say no. I am not -- I am not saying that Mr. Rampley registered  
21 the tanks. I am saying Mr. Hoing registered them.

22           Q.    And I am asking the question specifically about in  
23 October of 1993 when you wrote this progress report?

24           A.    Yes.

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1           Q.    You just testified that at some point you concluded that  
2 the tanks on Mr. Hoing's property were the same tanks that Mr.  
3 Rampley had registered?

4           A.    It was an assumption, yes.

5           Q.    Right.

6           A.    Yes, yes.

7           Q.    I am saying that was your understanding then?

8           A.    Yes.

9           Q.    And was that your understanding when you filled out this  
10 form?

11          A.    My understanding when I filled out this form was that  
12 these tanks were registered, yes.

13          Q.    Okay. And you -- my understanding is that you based  
14 your understanding on the fact -- on your review of the OSFM list  
15 and your conclusion that it was the same tanks that Mr. Rampley  
16 had registered, at least at this point in October of 1993?

17          A.    No.

18          Q.    Okay. Well, then tell me what you base that

19 understanding on?

20 A. Our office policy is before we can -- before we can  
21 comply a registration, okay, we just basically -- I have to call  
22 the office to make sure that it is registered.

23 Q. Okay.

24 A. Because we don't -- this list at that time was not

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1 available every month or every week or, you know, so on and so  
2 forth.

3 Q. Okay.

4 A. Okay. But what I am saying is because of the facility  
5 ID number up in the top right-hand corner is different from the  
6 facility ID number for Mr. Rampley, okay, do you follow me so  
7 far?

8 Q. Yes. I got you.

9 A. I cannot say that -- I have to say no to your question.

10 Q. Okay.

11 A. Was he complied because of Rampley's registration, the  
12 answer is no.

13 Q. Okay. And let me ask you -- let me show you another  
14 document and ask you about that. This is what has been marked as  
15 page 39 of the record on appeal.

16 A. Okay.

17 Q. Now, did you -- is this a document that you prepared?

18 A. No.

19 Q. Have you ever seen this document before?

20 A. I have seen it, yes.

21 Q. Okay. And I understand that you did not prepare this

22 document, but I just want to read a little bit from the bottom of

23 this document. And it states, talked to Bill Carl and he stated

24 that the tanks were already registered under 3-016671. He said

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1 he had at one time thought he had written an order for them to

2 register, but found out that they were already registered.

3 That's why the note was attached. Signed, Betty Carlisle. Do

4 you recall having a conversation with Ms. Carlisle about this

5 issue --

6 A. Yes.

7 Q. -- sometime either on or near the date --

8 A. Sure.

9 Q. -- that is on here?

10 A. Yes, I do.

11 Q. Does this accurately reflect what you told her at that

12 time?

13 A. Now I can say yes --

14 Q. Okay.

15 A. -- to the question that you asked me before. I can say

16 yes.

17 Q. Okay.

18           A.    At the time we had thought that those tanks and his  
19 facility were the same, yes.

20           Q.    Okay.  Thank you.  That helps me out.  I appreciate it.  
21 Now, you mentioned that you had several conversations with Mr.  
22 Hoing at different times?

23           A.    Yes.

24           Q.    And you spoke at some point with Mr. Hoing after you had

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1   concluded that these tanks were registered by Mr. Rampley?

2           A.    Uh-huh.

3           Q.    And you spoke with Mr. Hoing about the registration of  
4 his tanks; is that correct?

5           A.    Uh-huh.

6           Q.    And you told Mr. Rampley -- pardon me.  You told Mr.  
7 Hoing that you had concluded that his tanks were registered?

8           A.    It appeared by the -- from all of the information that I  
9 had received that the tanks were registered, yes.

10          Q.    Okay.  You told him that you concluded that they had  
11 been registered by the previous owner of the property, Mr.  
12 Rampley?

13          A.    It had never been changed over to his name, yes.

14          Q.    Okay.  Now, you also told Mr. Hoing that because Mr.  
15 Rampley had registered the USTs, Mr. Hoing's deductible for the  
16 UST fund would be \$10,000.00; is that correct?

17           A.    I cannot say yes or no to that, and the reason why is we  
18 had a strict policy not to discuss deductibility because that was  
19 not my field of expertise.  However, our policy was to try to  
20 help the consumer, and what I probably said to him was in most  
21 cases if all -- if the tanks were registered by a certain date  
22 and the fees were paid then in most cases the deductibility is  
23 \$10,000.00.

24           Q.    You can't say for sure whether you told him your

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1   deductible is \$10,000.00?

2           A.    I would have never told him that his deductible was  
3 \$10,000.00.

4           Q.    Never?

5           A.    No, it is not my job.  It is somebody else's job to  
6 actually say what his deductible is.  I would offer what his  
7 options would be, but I would not tell him -- I would not have  
8 said, Mr. Hoing, your deductible is \$10,000.00.

9           Q.    You have never told an owner of a tank what their  
10 deductible would be?

11          A.    No.

12          Q.    How many owners of tanks have you talked to in the ten  
13 years that you have been a storage tank safety specialist?

14          A.    I could not give you a number.

15          Q.    How many facilities do you visit in a year?

16          A.    Again, I couldn't give you a specific number.  I

17 don't -- those numbers are kept in our office.

18 Q. Is it more than 100?

19 A. In a given year?

20 Q. Yes.

21 A. Yes.

22 Q. Is it more than 200?

23 A. I would assume so, yes.

24 Q. Okay. And you have been doing this for ten years?

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1 A. Yes.

2 Q. And if it is more than 200 that means that in over ten  
3 years you have visited more than 2000 different facilities?

4 A. No. That may --

5 Q. Or at least 2000 visits to facilities. It might have  
6 been the same facilities sometimes?

7 A. Right. That certainly could be the number, yes.

8 Q. And you probably -- well, you talked to owners of USTs  
9 on most occasions when you visit those facilities?

10 A. Unless it happens to be a large chain of, you know, such  
11 as a Casey's or Clark Oil or whatever where the owners may be in  
12 a different state, yes, that's correct.

13 Q. You also talk to them sometimes by phone even when you  
14 are not visiting?

15 A. Yes.



16 Q. And you can -- given that, over ten years and 2000  
17 visits and just as many conversations, you can remember that you  
18 have never told a tank owner what their deductible would be?

19 A. To be right honest with you, sir, I have been instructed  
20 from pretty much day one not to discuss deductibility issues with  
21 the consumer. However, because we try to be friendly with those  
22 people to help them out in any way possible, I cannot -- I can  
23 honestly say that I can't think of one time when I told a person  
24 what his deductibility range would be.

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1 Q. Okay.

2 A. I have no -- I would not have the authority to do that.  
3 I would not have the knowledge to do that, because there is a lot  
4 of different variables that play -- that go into play on  
5 deductibility issues, and I certainly don't know them.

6 Q. You mentioned that you had been instructed not to  
7 discuss deductibility. If you had, what would have happened to  
8 you?

9 A. I probably would have been disciplined.

10 Q. If you did that today would you be disciplined?

11 A. Yes.

12 Q. Were you present at Mr. Hoing's property when the USTs  
13 were removed from his property?

14 A. Yes. Yes, sir.

15 MR. CARL: Do you care if I get some water?

16 MR. SAFLEY: No, no, not at all.

17 HEARING OFFICER KNITTLE: Let's take 30 seconds. I have to  
18 close these shades.

19 MR. SAFLEY: Okay.

20 (Whereupon a short recess was taken.)

21 HEARING OFFICER KNITTLE: Okay. We are back on the record.

22 MR. SAFLEY: Thank you.

23 Q. (By Mr. Safley) I would like to hand you what has been  
24 marked as I think page 33 of the record, although my copy is not

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1 very clear. It is titled at the top log of underground storage  
2 tank removal.

3 A. Yes.

4 Q. I would ask you to take a look at that, and I will  
5 verify the page number here while you are doing that.

6 A. Okay.

7 Q. It is 33. Thank you.

8 A. Okay.

9 Q. Have you had a chance to look at that?

10 A. I have.

11 Q. Can you tell me what that document is?

12 A. This is the log of underground storage tank removal, in  
13 other words, it is the form that we use when we witness a tank  
14 removal.

15 Q. Did you fill out this form?  
16 A. I did.  
17 Q. And does what you filled in relate to the removal of  
18 tanks from Mr. Hoing's property?  
19 A. Yes, they do.  
20 Q. When you were present at Mr. Hoing's property for the  
21 removal of tanks, did you talk to Mr. Hoing?  
22 A. I am sorry? Say that again, please.  
23 Q. When you were present at Mr. Hoing's property for the  
24 removal of the underground storage tanks, did you talk to Mr.

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1 Hoing?  
2 A. Yes.  
3 Q. Did you talk to him about this registration issue with  
4 his tanks?  
5 A. On the day of the removal?  
6 Q. Yes.  
7 A. Probably not.  
8 Q. Okay.  
9 A. I don't remember. I don't remember that, no.  
10 Q. Okay. It is my understanding that after the removal of  
11 Mr. Hoing's underground storage -- pardon me -- the underground  
12 storage tanks located on Mr. Hoing's property, you prepared a  
13 progress report, and I am going to hand you what has been marked  
14 as page 30 of the record on appeal and ask you to take a look at

15 it.

16 A. Okay.

17 Q. Is my understanding correct that you filled this  
18 progress report out after the tanks were removed?

19 A. Yes.

20 Q. And it had to do with Mr. Hoing's property?

21 A. Yes.

22 Q. In the upper right-hand corner where it says today's  
23 date, 12-21-94, that is the date that you were out there for the  
24 tank removal?

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1 A. Yes, that's the date. Well, that's the day on both  
2 forms, so I don't have my calendar book in front of me.

3 Q. Sure, sure.

4 A. Yes.

5 Q. Okay. If you look at the very top right-hand corner,  
6 there is a number written in next to facility number, 3-016671,  
7 and that's crossed out. And I know the copy is bad, but it is  
8 the best we have. And another number is written in. Do you see  
9 that?

10 A. Yes.

11 Q. Did you write that first number that was crossed out,  
12 the 3-016671? Is that your handwriting?

13 A. Yes.

14 Q. Okay. Did you write the second number that has been  
15 filled in?

16 A. No.

17 Q. Okay. Thank you. You indicated in this progress report  
18 that Mr. Hoing is in compliance on all five of the issues raised  
19 in the administrative order; is that correct?

20 A. Yes, that is how it is marked.

21 Q. Okay. And that includes the issue of the registration  
22 of the underground storage tanks?

23 A. If you don't mind me going back to --

24 Q. Sure.

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1 A. -- the original administrative order.

2 Q. Not at all. Of course. Feel free.

3 A. (The witness reviewing document.) That's correct.

4 Q. Now, my understanding is that you -- one of the reasons  
5 for you preparing this report was to transmit it to the Office of  
6 the State Fire Marshal so they could decide what further action  
7 to taking on the administrative order?

8 A. Yes.

9 Q. You did that in this case? You sent it on to OSFM?

10 A. Yes.

11 Q. And OSFM's legal counsel was not present for the removal  
12 of the tanks; is that correct?

13 A. No. Yes. That's correct. I mean, he was not there.

14 Q. Right. Okay. I am sorry if I asked an awkward  
15 question. Rather, OSFM's legal counsel relies on this progress  
16 report to decide what to do about the administrative order?

17 A. Yes.

18 Q. Okay. Next I would like to hand you what has been  
19 marked as page 29 of the record on appeal and ask you to take a  
20 look at that.

21 A. Okay.

22 Q. Have you had a chance to take a look at that?

23 A. Yes.

24 Q. It is my understanding that that is the letter that OSFM

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1 sent out to Mr. Hoing based on your progress report; is that  
2 correct?

3 A. Yes.

4 Q. And that indicates that the administrative order has  
5 been resolved or the issues raised in the administrative order  
6 have been resolved?

7 A. They have been complied with, yes.

8 MR. SAFLEY: Great. Thank you. Those are all of my  
9 questions, Mr. Carl.

10 HEARING OFFICER KNITTLE: Ms. Barnes, do you want to get  
11 started right away? Do you need a break?

12 MS. BARNES: I only have a few questions.

13 HEARING OFFICER KNITTLE: Okay. Please proceed.

14 CROSS EXAMINATION

15 BY MS. BARNES:

16 Q. Do you assign facility ID numbers?

17 A. No, I don't.

18 Q. Where is that done?

19 A. It is done in the Springfield office.

20 Q. When you filled out number -- look at page 33.

21 A. Could you hold that up so I can see which one that is?

22 I am having trouble reading the numbers at the bottom of the

23 page.

24 MR. SAFLEY: I apology. The copies are --

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1 THE WITNESS: This one here, the progress report?

2 Q. (By Ms. Barnes) Yes. That is --

3 A. Yes.

4 Q. Okay. Where did you get the number that has been lined

5 out?

6 A. That would have been on the permit.

7 Q. Okay. You are not the one who lined out that number?

8 A. No, I didn't do it.

9 MS. BARNES: Okay. That's all I have.

10 HEARING OFFICER KNITTLE: Redirect, sir?

11 MR. SAFLEY: No. Thank you.

12 HEARING OFFICER KNITTLE: All right. Thank you, sir. You

13 may step down.

14 MR. CARL: Do you get these back, I assume?

15 MS. BARNES: You can just leave them up there.

16 MR. SAFLEY: I think those were all -- I don't think I  
17 introduced any new documents through Mr. Carl. That's fine.  
18 Just leave them up there. Thank you.

19 (The witness left the stand.)

20 MR. CARL: I can go?

21 MS. BARNES: You can go home.

22 MR. SAFLEY: Have a good trip.

23 MR. CARL: Thank you.

24 HEARING OFFICER KNITTLE: Do you need a brief recess before

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1 your next witness, or are you ready to push ahead?

2 MR. SAFLEY: I am ready to push ahead. Is Mr. Boone? It  
3 all depends on Mr. Boone and --

4 HEARING OFFICER KNITTLE: Mr. Boone, are you ready to go?

5 MR. BOONE: I am fine.

6 HEARING OFFICER KNITTLE: I take it that your next witness,  
7 then, is Mr. Boone?

8 MR. SAFLEY: My next witness is Mr. Boone.

9 HEARING OFFICER KNITTLE: Mr. Boone, come on up here and  
10 have a seat, please.

11 MR. SAFLEY: We are running out of witnesses.



12 HEARING OFFICER KNITTLE: If you could swear him in,  
13 please.

14 (Whereupon the witness was sworn by the Notary Public.)

15 HEARING OFFICER KNITTLE: All right, sir.

16 MR. SAFLEY: Thank you.

17 J A M E S B O O N E,  
18 having been first duly sworn by the Notary Public, saith as  
19 follows:

20 DIRECT EXAMINATION

21 BY MR. SAFLEY:

22 Q. Mr. Boone, could you state your full name for the record  
23 and spell your last name for the court reporter.

24 A. Yes. It is James Alan Boone, B-O-O-N-E.

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1 Q. Thank you. Mr. Boone, are you employed?

2 A. Yes, I am employed by the State of Illinois, Office of  
3 the State Fire Marshal's Office.

4 Q. Okay. When did you start working for the Office of the  
5 State Fire Marshal?

6 A. In February of 1992.

7 Q. What position do you currently hold with the Office of  
8 the State Fire Marshal?

9 A. Currently I am Administrative Assistant to the Director  
10 of Management Services.

11 Q. Okay. How long have you held that position?

12 A. Since May of last year.

13 Q. Okay. What was your position before that?

14 A. I was Administrative Assistant to the Director of

15 Petroleum and Chemical Safety.

16 Q. How long did you hold that position?

17 A. Since September of 1993.

18 Q. Okay.

19 A. So do the math.

20 Q. And then -- I am sorry -- you said you started working

21 for OSFM in 1992?

22 A. Correct, I was an intern.

23 Q. An intern?

24 A. Yes.

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1 Q. Okay. What are your current job duties?

2 A. I assist the Director of Management Services in a

3 variety of his duties. Some of my main responsibilities is

4 receiving the payroll and mailing it out, doing maintenance on

5 the agency building.

6 Q. Okay.

7 A. Working with the landlord, maintenance, if necessary, on

8 the alarm systems, assisting fiscal in any assistance that they

9 might need and also data processing, assisting them.

10 Q. Okay. What were your job duties in your former

11 position?

12 A. I reviewed eligibility applications for the Underground  
13 Storage Tank Fund.

14 Q. Okay. Was there anybody else employed by OSFM who did  
15 that?

16 A. Yes, Kim McCoy. We both began September of 1993 with  
17 those duties, both administrative assistants.

18 Q. Were you two the only ones that did that at the time?

19 A. Yes.

20 Q. Did you have authority to issue the decision on that, or  
21 did you make a recommendation and someone else review your  
22 recommendation?

23 A. No. We issued the letter stating eligibility and the  
24 deductible amount.

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1 Q. Okay. You held that position from approximately 1993  
2 until the summer of last year?

3 A. Yes.

4 Q. Okay. Thank you. Now, it is my understanding that your  
5 job related to the Illinois Underground Storage Tank Fund, your  
6 job -- your previous position?

7 A. Yes, yes.

8 Q. And that that fund exists to help owners and operators  
9 of underground storage tanks clean up contamination from  
10 releases?

11 A. Correct.

12 Q. Okay. It is also my understanding that the fund -- that  
13 anyone who wants to access the fund has to pay a deductible?

14 A. Correct.

15 Q. And part of your job was to figure out what the proper  
16 deductible was?

17 A. Or -- well, first of all, determine eligibility, if they  
18 were even eligible.

19 Q. Okay.

20 A. If they were set the deductible.

21 Q. Okay.

22 A. After that the EPA would actually be involved in  
23 delegating the money. The Fire Marshal just set the deductible  
24 and the eligibility decision.

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1 Q. Okay. It is my understanding that there were some types  
2 of tanks that were eligible and some that weren't?

3 A. Correct.

4 Q. And also that the amount of the deductible, assuming the  
5 tank was eligible, varied depending on when the tank had been  
6 registered?

7 A. Yes.

8 Q. Or when some of the tanks had been registered?

9 A. Yes. Well, the equation was all tanks at the site --

10 Q. Okay.

11 A. -- were in the equation.

12 Q. Okay. Did you have any assistance from anyone in doing  
13 that job?

14 A. Um...

15 Q. Secretarial staff or did you have your own assistant?

16 A. I believe there was office assistants who might have  
17 helped type the letters.

18 Q. Okay.

19 A. That's all I can recall.

20 Q. Okay. The reason I asked was I think I have seen the  
21 initials KLH on some of the documents that we have been dealing  
22 with?

23 A. KLH?

24 Q. Yes.

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1 A. Yes, that was Kim McCoy. Her maiden name was Harms.

2 Q. Oh, okay.

3 A. She might have been Harms at the time she did certain  
4 things.

5 Q. Then that clears that up.

6 A. Okay.

7 Q. I wasn't sure who KLH was.

8 A. Yeah.

9 Q. Now, can you tell me who Betty Carlisle is?

10 A. Yes. She works for the Division of Petroleum and  
11 Chemical Safety. She is a supervisor over the clerical staff.

12 Q. Okay. Did she ever assist you at all in these  
13 eligibility or deductibility determinations?

14 A. No. She never assisted in the determinations  
15 themselves. She might have assisted in -- if there was questions  
16 with the file or procedure questions.

17 Q. Okay. I guess that brings up an issue. It is my  
18 understanding that one of the things that you have to do when  
19 determining whether a tank is eligible or what the deductible is,  
20 is to look back over the file?

21 A. Yes. We receive the applications for eligibility. We  
22 look at the information on the application. We cross-examine  
23 that to our file records. If there is discrepancies, we send a  
24 letter back explaining the discrepancies, along with the original

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1 application, asking for additional information to clear up those  
2 discrepancies.

3 Q. Okay. Do you actually keep the OSFM files yourself?

4 A. The original file records are at the office agency. The  
5 application for reimbursement that is sent to us, when we request  
6 for additional information, we send the original back to the  
7 owner along with the request for additional information, so it  
8 leaves our office at that time.

9 Q. Who has the responsibility for maintaining the OSFM's  
10 original file?

11 A. We have a file room and it is just kept in a file room.

12 Q. It is not your job to keep those files?

13 A. No, no.

14 Q. Okay. I would like to show you, Mr. Boone, what -- a  
15 copy of what was marked at Petitioner's Exhibit Number 2 and ask  
16 you to take a look at this and tell me when you have had a chance  
17 to do that.

18 A. Okay. (The witness reviewing document.) Okay. I have  
19 taken a look at the document.

20 Q. Is that an application for a deductibility or an  
21 eligibility determination?

22 A. Yes, and I believe it was submitted in May of 1995.

23 Q. Okay. Who was the owner or operator identified on that  
24 application?

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1 A. The applicant is identified as Donald Hoing and he is  
2 stated as the tank owner and tank operator.

3 Q. Okay. Did you review that application when it came in  
4 in 1995?

5 A. I am going by memory. I don't have anything in front of  
6 me. But from what I remember, I believe Kim McCoy, who would  
7 have been Kim Harms at the time, reviewed it when it initially  
8 came in 1995 and asked for a removal notification. And what that

9 stated was that tanks were officially removed from the site. It  
10 is a five page booklet that is filed out by the tank owner or  
11 operator or designated agent stating officially what tanks were  
12 removed, the capacity, and the product. The reason I believe  
13 that she asked for that was there was discrepancies with the tank  
14 removal dates and products in these tanks with the -- on the  
15 application against our file records.

16 Q. Okay.

17 A. And so she sent the application back along with a  
18 request for that removal notification to clarify that in 1995.

19 Q. Okay. I would like to show you next, Mr. Boone, what  
20 has been marked as page 26 of the record on appeal.

21 A. Okay.

22 Q. And I would ask you to take a look at that and tell me  
23 when you have had a chance to do so. I apologize for the copy  
24 quality, but it is the best that we have.

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1 A. Sure. I am familiar with this form.

2 Q. All right. What is that form?

3 A. It was a checklist that we had when we first started the  
4 program back in 1993 to enable us not to forget anything and also  
5 give -- if Kim would fill it out, then if I got it next time I  
6 would kind of know -- it is notes between the people reviewing.

7 Q. Okay.



8           A.    She is stating on here that she did, indeed, need a  
9 removal notification and there was some discrepancies on tank  
10 removal that she was going to clear up with this removal  
11 notification.

12          Q.    And was this filled out by Kim -- now Kim McCoy?

13          A.    Yes.

14          Q.    Okay.  So you didn't fill this document out?

15          A.    No.

16          Q.    Okay.  And I am sorry, this relates to that application  
17 that you identified earlier; is that correct?

18          A.    The application for eligibility?  Yes.  This is speaking  
19 of that.

20          Q.    Okay.  Thank you.  I would like to show you next what  
21 has been marked as pages 27 and 28 of the record on appeal and  
22 ask you to take a look at them.

23          A.    Okay.

24          Q.    Can you tell me what this document is?

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1           A.    Yes.  This is the request that Kim Harms, Kim McCoy,  
2 filled out requesting a removal notification be completed by Mr.  
3 Hoing and sent back along with his application for reimbursement,  
4 which is being sent back with the packet.

5           Q.    Okay.  If you will flip to the second page, which is  
6 number 28 --

7           A.    Uh-huh.

8 Q. -- there is a statement or something written in at the  
9 top. Is it your understanding that Ms. Harms wrote that at the  
10 top?

11 A. Yes.

12 Q. And that that relates to the discrepancy that she had  
13 seen in the file?

14 A. Right.

15 Q. Okay.

16 A. And she was hoping that the removal notification would  
17 clear that up.

18 Q. Okay. Thank you. And, again, this is in response to  
19 the application that we discussed earlier?

20 A. Yes, for the Underground Storage Tank Fund eligibility  
21 application, correct.

22 Q. Okay. Thank you. Mr. Boone, I would next like to show  
23 you what I am going to mark as Petitioner's Exhibit Number 3.

24 A. Okay.

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1 (Whereupon said document was duly marked for purposes of  
2 identification as Petitioner's Exhibit 3 as of this date.)

3 Q. (By Mr. Safley) I would ask you to take a look at this  
4 and tell me when you have had a chance to look at it.

5 A. Okay.

6 Q. And you will notice that page, the first page, has two

7 stamps on it stating that it was received by the Division Of  
8 Petroleum and Chemical Safety. One is May 24th of 1995 and the  
9 other is October 4th of 1996. What does that indicate to you,  
10 the fact that it is stamped twice?

11 A. Yes, this is the original application that was sent back  
12 May 24th of 1995 to Mr. Hoing, and then Kim Harms sent this  
13 original application back to him along with a blank removal  
14 notification to fill out. Then he resubmitted the application  
15 back along with that removal notification back in October of  
16 1996, as he was supposed to do.

17 Q. Okay.

18 A. So it is the second receiving of that application along  
19 with the additional information that we requested, I assume.

20 Q. That's just what I was looking for, was the amended  
21 notification form, but I am having trouble finding it.

22 Be that as it may, I also would like to show you, Mr.  
23 Boone, what has been marked as pages 17 and 18 of the record on  
24 appeal and ask you to take a look at that and tell me when you

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1 have had a chance to review it.

2 A. Okay.

3 MR. SAFLEY: Before I forget, and I am sorry to interrupt,  
4 I need to move to admit Petitioner's Exhibit Number 3, which Mr.  
5 Boone just identified.

6 HEARING OFFICER KNITTLE: Ms. Barnes?

7 MS. BARNES: No objection.

8 HEARING OFFICER KNITTLE: It is admitted.

9 (Whereupon said document was duly admitted into evidence as  
10 Petitioner's Exhibit 3 as of this date.)

11 THE WITNESS: Okay. I have read over the document.

12 Q. (By Mr. Safley) I apologize. Can you tell me what this  
13 document is?

14 A. Yes. I believe this is when we received the application  
15 for reimbursement back October 4th of 1996, I reviewed it at that  
16 time. This is when I first reviewed the file.

17 Q. Okay.

18 A. I reviewed the removal notification, I assume, and the  
19 application and the file records. I am sending a request back to  
20 Mr. Hoing along with the application again, trying to clear up  
21 some confusion we had on the number of tanks at the site.  
22 Because the file records is stating that perhaps there is six  
23 tanks at the site or, indeed, we are talking about two separate  
24 sites here.

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1 Q. Okay.

2 A. And I am asking him to please explain this to me. Are,  
3 indeed, these two separate sites. There is addresses  
4 conflicting, and I am asking him to explain the situation to me.  
5 And I am sending the application back because I need this

6 clarified.

7 Q. Okay. And you prepared this document?

8 A. Yes, I did.

9 Q. Okay. Now, this document relates to the October 4th  
10 application that is stamped twice that we marked as Number 3, as  
11 Petitioner's Exhibit Number 3?

12 A. Yes, October 4th of 1996.

13 Q. Okay. Great. Those are my only questions about that  
14 document. I would like to now hand you, Mr. Boone, what has been  
15 marked as page 11 of the record on appeal and ask you to take a  
16 look at this and tell me when you have had a chance to do that.

17 A. Yes.

18 Q. Can you tell me what this document is?

19 A. Yes. This is just a handwritten document. It is really  
20 just notes so that the next person who processes this file would  
21 know exactly what I was thinking up to that point, if they had to  
22 take over for me processing the file.

23 Q. Okay. And you prepared this document?

24 A. Yes, I did. It is just handwriting. It is really for

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1 us processors at the Office of the State Fire Marshal. It is  
2 notes.

3 Q. Okay. Can you tell me what this document relates to in  
4 general?

5 A. Yes. What it is saying is that I found a situation that

6 I think that these sites that -- excuse me. I will start over.  
7 Mr. Hoing had registered tanks in 1993, per the request of Bill  
8 Carl. He was given a facility number. Later, I believe in that  
9 same year, or if not, real close, Bill reviewed it again and  
10 perhaps made a clerical error and stated, well, I think these  
11 have already been registered under another facility. He was  
12 confused on the addresses, speaking to Mr. Hoing and getting  
13 confused on addresses. So he told our clerical staff it is a  
14 duplicate and needs to be merged together.

15 So Mr. Hoing's information was merged with Mr. Rampley's  
16 information and it was thought to be only three tanks at that  
17 site. Really, it was information about six tanks, two different  
18 sites. I am figuring this out at the time, and I think I am just  
19 scratching the surface when I am writing this note. I have not  
20 really deeply figured it out yet. But what I am saying here is I  
21 believe these sites need to be separated. I believe Mr.  
22 Rampley's site was first registered in 1986 and fees were paid,  
23 which would have been \$300.00, three tanks.

24 Q. Okay.

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1 A. Mr. Hoing's site was first registered in 1993, and I  
2 could not find that they were registered prior to that.  
3 Therefore, he has a separate site and he still has outstanding  
4 fees. And I believe I say that we need to separate these sites.

5 Q. Okay.

6 A. And I think I am awaiting information back from Mr.  
7 Hoing to verify this.

8 Q. Okay. Thank you. You mentioned in this document and  
9 you also just mentioned in your testimony that it was your  
10 understanding that Bill Carl had had certain conversations with  
11 some staff at OSFM about this issue?

12 A. Yes.

13 Q. Okay. Were you a party to those conversations?

14 A. No, I was not, but I seen that a phone log had been  
15 stated and I believe you spoke to Bill about it earlier, him and  
16 Betty speaking back, and I think Bill was telling Betty, hey,  
17 these need to be merged together.

18 Q. Okay.

19 A. Betty probably told her clerical staff to go ahead and  
20 merge them together.

21 Q. Okay.

22 A. And that was an incorrect call at the time.

23 Q. So when you are talking about Bill Carl's conversations,  
24 you are referring to that phone log?

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1 A. Yes. I had no --

2 Q. Okay. But you didn't talk to Bill Carl?

3 A. No, no. I would not have touched the file until, I  
4 believe, 1996.

5 Q. Okay. So you don't have personal knowledge as to what  
6 Bill Carl told Betty?

7 A. No.

8 Q. You just know what Betty wrote down?

9 A. Right.

10 MR. SAFLEY: Okay. At this time we would like to move the  
11 Board to not consider this document to the extent that it  
12 incorporates hearsay. I am not moving to strike the document  
13 from the record. I am just asking that the Board, when it is  
14 considering this case, not consider hearsay that is included in  
15 this document, but rather consider the original document on which  
16 Mr. Boone relied and the testimony of Mr. Carl about his actions  
17 as opposed to considering what Mr. Boone's understanding of Mr.  
18 Carl's conversation with Ms. Carlisle was.

19 HEARING OFFICER KNITTLE: Ms. Barnes?

20 MS. BARNES: I am not quite sure I understood every element  
21 of that, but our position is that to the extent Mr. Boone relied  
22 on a document, or relied on a conversation or knowledge he had at  
23 the time when preparing page 11, that that testimony is  
24 admissable.

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1 MR. SAFLEY: I am not moving to strike Mr. Boone's  
2 testimony now or I am not moving the Board not to consider this  
3 document for what it is, which is a representation of Jim Boone's



4 understanding at the time. All I am moving the Board to do is  
5 not consider the hearsay that is in this document when it is  
6 trying to figure out what Bill Carl did or Betty Carlisle did. I  
7 want the Board to consider their testimony and the original  
8 documents as opposed to Mr. Boone's characterization of those  
9 original documents. It may be an unnecessary point.

10 MS. BARNES: Well, it may be a point that is immaterial,  
11 because the only issue, I believe, in the case is how the  
12 eligibility and deductibility determination was made by Mr.  
13 Boone.

14 HEARING OFFICER KNITTLE: You are not moving to strike the  
15 document, sir?

16 MR. SAFLEY: No.

17 HEARING OFFICER KNITTLE: Ms. Barnes, do you have any  
18 objection -- let me say this. Do you have any objection to the  
19 Board not considering hearsay statements contained within page  
20 11, which I take it is the page in question. I don't have a copy  
21 of that in front of me. I think that's the crux of your  
22 objection.

23 MR. SAFLEY: Yes, not considering them to be true or for  
24 the truth of what they contain.

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1 HEARING OFFICER KNITTLE: For the truth of the matter  
2 asserted.

3 MR. SAFLEY: Right. I am not moving the Board not to

4 consider them as indicating Mr. Boone's understanding at the time  
5 he wrote it, but I don't want the Board to consider it as being  
6 the truth because it is hearsay.

7 MS. BARNES: It seems to me there are a couple of levels  
8 here. Page 11 is a memorandum written by Mr. Boone which  
9 describes why he took the actions that he did. To the extent  
10 that that memorandum is based on some hearsay, even that is  
11 admissible, because it is not -- it is not in there for the truth  
12 of the matter asserted, but it is in there to explain why Mr.  
13 Boone took the actions that he did.

14 MR. SAFLEY: And that's why I am not moving to strike the  
15 document or strike Mr. Boone's testimony. I am just trying to  
16 make a point to the Board through this motion that we object to  
17 the Board considering it for the truth of the matter that it  
18 asserts.

19 HEARING OFFICER KNITTLE: Can I see the document, please?

20 MR. SAFLEY: Sure.

21 THE WITNESS: Do you want --

22 HEARING OFFICER KNITTLE: Sure. Do you have it?

23 THE WITNESS: Yes. Do you want mine?

24 HEARING OFFICER KNITTLE: Yes, that is fine. This is part

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1 of the administrative record?

2 MR. SAFLEY: Yes.

3 MS. BARNES: Yes. It is in the original file at the Office  
4 of the State Fire Marshal and was in existence on the date  
5 indicated. It was placed in there on the date indicated.

6 HEARING OFFICER KNITTLE: Okay. I am going to allow this  
7 document to stand and I am not going to limit it in any way. To  
8 the extent that you want the Board to be aware of potential  
9 problems, I think you have already established that. It is part  
10 of the administrative record. It is already in the record. I  
11 think it is qualified, and even if it weren't part of the  
12 administrative record, I would accept it as an exhibit because we  
13 have Mr. Boone here to testify to its foundation. So I am going  
14 to allow it to remain in the record. But I think you have made  
15 your point to the Board sufficiently.

16 MR. SAFLEY: Thank you. I appreciate it.

17 HEARING OFFICER KNITTLE: If you like to do that further in  
18 writing, I would be happy to grant you leave to do that.

19 MR. SAFLEY: Well, my understanding is that both parties  
20 would like leave to file a post hearing motion -- a post hearing  
21 brief with the Board so I guess that --

22 HEARING OFFICER KNITTLE: Yes. You can definitely address  
23 it in the post hearing brief.

24 MR. SAFLEY: Right. Thank you.

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1 Q. (By Mr. Safley) Going on, Mr. Boone, you state, about  
2 halfway down through this, quote, I separated these sites with

3 Betty, close quote. Do you mean Betty Carlisle?

4 A. Yes.

5 Q. Okay. I just wanted to make sure that I understood what  
6 that referred to. I would now like to show you what has been  
7 marked as page ten of the record on appeal, and ask you to take a  
8 look at this document and tell me when you have had a chance to  
9 look at it.

10 A. (Witness complied.) Yes, I have read it.

11 Q. Okay. Can you tell me what this document is?

12 A. Yes, I believe it is a follow-up to the document  
13 earlier, number 11. It is the next day, and I think I am just  
14 adding what I had found. I had probably worked on this more than  
15 one day, trying to figure this out.

16 Q. Okay. You wrote this document?

17 A. Yes, I did. And what I think it is, is I think it is  
18 just elaborating on that, saying that -- perhaps I found out a  
19 little bit more, and I am just elaborating on it. If you notice  
20 at the top, it says note to the processors. That would be  
21 anybody that is going to touch the file after me, because I am  
22 not sure I am going to be the one that touches this file next, so  
23 I have to put everybody up to speed.

24 Q. That is what I was going to ask you, is who are the

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1 processors?

2           A.    It could have been me or Kim.

3           Q.    Okay.  But you were the only two?

4           A.    Yeah.

5           Q.    Okay.  Now, if you will look at -- if you will look five  
6 lines down into the body of it, it begins, the owner, Mr. Hoing,  
7 told Bill Carl the tanks were already registered by the previous  
8 owner, Mr. Rampley.  Do you see that?

9           A.    Yes.

10          Q.    Were you a party to that conversation that Bill Carl had  
11 with Mr. Hoing?

12          A.    No.

13          Q.    Okay.  So you are relying on -- what were you relying on  
14 to that make that statement here?

15          A.    I could only assume, and I -- it has been a long time.

16          Q.    I understand.

17          A.    But I think I called Bill and talked to him by phone.

18          Q.    Okay.

19          A.    And I am almost positive that I called Bill and talked  
20 to him about this site.

21          Q.    Okay.

22          A.    And had him explain.  I think, after talking to Bill, I  
23 wrote this.

24          Q.    Okay.  And it continues, so Bill called our office and

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1    told Betty to look up Rampley and see what site he owns in

2 Illinois?

3 A. Right.

4 Q. And that would also have been a product of your  
5 conversation with Bill Carl?

6 A. I believe so, yes.

7 Q. Okay. But you weren't -- but Bill Carl didn't talk to  
8 you when he called in?

9 A. No.

10 Q. He talked to Betty Carlisle or someone else?

11 A. Right.

12 MR. SAFLEY: You probably can see that I am leading up to  
13 the same objection with this document as I did with the last.  
14 Again, I am not moving to strike this document from the record,  
15 because it is -- I understand it is part of the administrative  
16 record and that's the way it is. But I would like to note an  
17 objection on the record to the Board to consider the hearsay  
18 statements contained in here, especially the double hearsay of  
19 what Mr. Hoing told Bill Carl, that Bill Carl then told Jim  
20 Boone, and move the court not -- not the court -- move the Board  
21 not to consider this for the truth of the matters contained  
22 herein.

23 HEARING OFFICER KNITTLE: Ms. Barnes?

24 MS. BARNES: I have the same position.

1 HEARING OFFICER KNITTLE: I had assumed that was going to  
2 be the case. I am just giving you the chance to restate it if  
3 you would like.

4 MS. BARNES: Yes.

5 HEARING OFFICER KNITTLE: Would you like to restate it or  
6 would you like to stand on your previous statement?

7 MS. BARNES: I will stand on my previous statement --

8 HEARING OFFICER KNITTLE: Okay. I am going to --

9 MS. BARNES: -- regarding the significance of this  
10 document.

11 HEARING OFFICER KNITTLE: I am going to allow it in, as  
12 before. I am not going to limit it. I think it is a part of the  
13 record because it is part of the reason Mr. Boone and the OSFM  
14 made their decision, and I am not going to limit the record in  
15 any way. However, your objection is noted again for the record.

16 MR. SAFLEY: Thank you.

17 Q. (By Mr. Safley) Mr. Boone, have you ever been involved  
18 in another situation at OSFM where you have discovered, when you  
19 were doing an eligibility or a deductibility determination, where  
20 two files had been merged together?

21 A. Yes.

22 Q. How many times has that happened?

23 A. I can't give you an exact number, but I would say over  
24 five.

1 Q. Has there ever been -- in any of those five situations,  
2 did that affect the person -- did that affect the deductibility of  
3 the person who was applying for a deductibility or eligibility --

4 A. I would have to take it on a case by case but, yes, I  
5 would say yes it probably has.

6 Q. On each of those or only some of those?

7 A. Oh, I don't know. I would have to take it on a case by  
8 case. I don't have a memory of every one of them.

9 Q. Okay.

10 A. But I know it has happened in the past, sure.

11 Q. Okay.

12 A. When you are dealing with the eligibility and  
13 deductibility, we have to look at the file and the information  
14 much more thoroughly than someone that is, say, reviewing it to  
15 issue a permit in our office. So we are much more meticulous on  
16 getting the information correct. We spend a lot more time in  
17 making sure a lot of different things are correct. So we catch a  
18 lot of things that previous processors for permits, etcetera,  
19 wouldn't catch.

20 Q. How many applications for eligibility or deductibility  
21 determinations does OSFM get each year?

22 A. I don't know that number. I can say -- I can give you  
23 an estimate.

24 Q. That's fine.



1           A.    It would really be an estimate.  I would say probably  
2  1,000 or more.

3           Q.    Each year?

4           A.    Yes.

5           Q.    Okay.

6           A.    And that's an estimate.

7           Q.    Okay.  Thank you.  Mr. Boone, I would like to show you  
8  what has been marked as page number nine of the record on appeal,  
9  and as soon as I get the sticker on here, what I am going to mark  
10 as Petitioner's Exhibit Number 4, and ask you, please, to take a  
11 look at these.

12                   (Whereupon said document was duly marked for purposes of  
13                   identification as Petitioner's Exhibit 4 as of this date.)

14          A.    Okay.  I have looked over the documents.

15          Q.    (By Mr. Safley) Can you tell me what the -- the document  
16 that I have marked as Petitioner's Exhibit Number 4 is or is a  
17 copy of?

18          A.    Oh, Number 4?

19          Q.    Yes.

20          A.    Okay.  Yes.  I believe that is an invoice from our  
21 office.  I am having trouble reading it but, yes, it is an  
22 invoice from our office.

23          Q.    I understand.  An invoice for what?

24          A.    Tank fees.

1 Q. Okay. To whom was this sent? Can you make that out?

2 A. I can barely make it out, but I can see that it is Mr.  
3 Hoing.

4 Q. Okay. And then the other document that I handed you  
5 that was marked as page nine of the record on appeal, can you  
6 tell me what that document is?

7 A. Yes. That is a computer-generated document that goes  
8 to, I believe, the tank owner stating that there are some fees  
9 that are outstanding with our office.

10 Q. Okay. Do those two documents relate to each other?

11 A. Yes, yes, they do. I don't know for a fact but I think  
12 clerically they might have been sent at the same time in the same  
13 envelope to the person. But I am not sure about that. One might  
14 be for office use and one -- it is just different computer  
15 printouts, I believe.

16 Q. Okay.

17 A. It is a letter generated off the invoice.

18 Q. So one is an invoice asking for payment of \$1,800.00 and  
19 the other one is -- it says second notice. It is a letter saying  
20 our records indicate that you were invoiced on 12-06 of 1996,  
21 invoice number UST 33021 for \$1,800.00. As of the date of our  
22 records -- as of this date, our records indicate a balance due of  
23 \$1,800.00.

24 A. Okay.

1 Q. I mean, I guess the way I read these is the first one  
2 is -- what I have marked as Petitioner's Exhibit Number 4 is an  
3 invoice and the second one is a letter that says, hey, pay us our  
4 money, basically, or we invoiced you and we have not received  
5 payment?

6 A. Yes, I believe so.

7 Q. Okay. Who made the decision that Mr. Hoing owed  
8 \$1,800.00 in registration fees?

9 A. Well, when I separated the file, I guess I would have  
10 been the one.

11 Q. Okay.

12 A. His tanks would have been originally notified to our  
13 office in 1993.

14 Q. Okay.

15 A. I don't know the exact date, but I believe they needed  
16 to be originally in 1987.

17 Q. Okay.

18 A. They had to be notified by 1987. Therefore, there is a  
19 \$500.00 late fee for each tank and a \$100.00 registration fee for  
20 each tank.

21 Q. Okay.

22 A. Making the balance of \$1,800.00.

23 Q. Okay. So you decided that the underground storage tanks  
24 located on Mr. Hoing's property were not registered before that

1 date in September of 1987, that triggered the \$500.00 late fee  
2 per tank?

3 A. Yes.

4 Q. What date did you conclude the USTs were registered?

5 A. I don't have that information in front of me, but it  
6 would have been the exact date of the first notification in 1993.  
7 It is one of the exhibits. I don't know what the month is, but I  
8 believe it is 1993. That would have been the first notification  
9 that Mr. Hoing filled out for his tanks at his site and submitted  
10 it to our office.

11 Q. Have you issued a determination to Mr. Hoing as to what  
12 his deductible will be for the fund?

13 A. No. No, we have not. I believe the last  
14 correspondence, I am not sure of the year, but we were asking for  
15 an \$1,800.00 fee, and we sent the application back requesting  
16 that \$1,800.00 and we have not yet received anything back along  
17 with the application.

18 Q. Okay. That actually was the next piece of paper I was  
19 going to ask you about, so that's a good transition. I would  
20 like to show you what has been marked as page number one of the  
21 record on appeal and ask you to take a look at that.

22 A. Okay.

23 Q. Can you tell me what this document is?

24 A. Yes. We received the application back -- I don't have

1 the application in front of me -- but from the 1996, the request  
2 for additional information when we sent the application back to  
3 Mr. Hoing. This is -- I believe we received the application back  
4 with the response and this is my response to that.

5 Q. Okay.

6 A. I am saying, okay, that we clarified that it is two  
7 separate sites. Your first notification was submitted in 1993,  
8 therefore, there is some outstanding fees. So we are asking for  
9 the outstanding fees before we make our eligibility decision.  
10 And that's located in Public Act 88-496, that all outstanding  
11 fees must be paid to the State Fire Marshal's Office prior to an  
12 eligibility decision from our office.

13 Q. Okay. Let me hand you what I have marked as  
14 Petitioner's Exhibit Number 5, and ask you to take a look at that  
15 and tell me if you can identify what that document is.

16 (Whereupon said document was duly marked for purposes of  
17 identification as Petitioner's Exhibit 5 as of this date.)

18 A. Again, I assume this is the application for  
19 reimbursement that was submitted back in 1998.

20 Q. Okay.

21 A. Then the prior document number one is my response to  
22 that.

23 Q. Okay.

24 A. So this application and the page number one here would

1 have been sent back to Mr. Hoing so his application would have  
2 been sent back along with a request for \$1,800.00 to be sent back  
3 along with his application.

4 Q. If you look at what I have marked as Petitioner's  
5 Exhibit Number 5, am I correct that it states or it is stamped  
6 received February 24th of 1998?

7 A. Yes.

8 Q. If you look at the top of page one, the third line -- in  
9 the upper right-hand corner, the third line down, it says date  
10 received, 02-24-98; is that correct?

11 A. Uh-huh.

12 Q. Are those dates the same?

13 A. Yes.

14 Q. Does that indicate to you that page number one of the  
15 record on appeal is a response to this application that was  
16 received on February 24th of 1998 --

17 A. Yes.

18 Q. -- and marked as Exhibit Number 5?

19 A. Yes.

20 MR. SAFLEY: Mr. Knittle, I would like to move to introduce  
21 both Exhibits 4 and 5 that Mr. -- Petitioner's Exhibits 4 and 5  
22 that Mr. Boone has discussed.

23 HEARING OFFICER KNITTLE: Ms. Barnes, Petitioner's Exhibit  
24 Number 4?

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1 MS. BARNES: No objection.

2 HEARING OFFICER KNITTLE: It is admitted.

3 MR. SAFLEY: Thank you.

4 (Whereupon said document was duly admitted into evidence as  
5 Petitioner's Exhibit 4 as of this date.)

6 HEARING OFFICER KNITTLE: Petitioner's 5?

7 MS. BARNES: No objection.

8 HEARING OFFICER KNITTLE: Okay. That, too, is admitted.

9 (Whereupon said document was duly admitted into evidence as  
10 Petitioner's Exhibit 5 as of this date.)

11 MR. SAFLEY: Thank you.

12 Q. (By Mr. Safley) I wanted to ask you a little bit about  
13 your statement regarding late fees. I notice that a box -- that  
14 there is an X on the left-hand side of this document. Pardon me.  
15 It is page number one.

16 A. Uh-huh.

17 Q. It is about halfway down and it is -- it is in a blank  
18 that is next to a paragraph that reads, the annual and/or late  
19 registration fees for this facility have not been paid as  
20 required by state and federal law. All applicable fees must be  
21 paid before we can process your request. And then it goes on to  
22 say please issue a check for \$1,800.00. What did you say the  
23 source was for the OSFM's position that it could not process an  
24 eligibility or deductibility determination request?

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1 A. Public Act 88-496.

2 Q. Do you know whether that public act has ever been  
3 codified into statute?

4 A. I don't know what that term means. I am sorry.

5 Q. Okay. That's fine. I am going to hand you what I am  
6 going to mark as Petitioner's Exhibit Number 6, and ask you to  
7 take a look at this. Pardon me. I am going to highlight part of  
8 it. I think it may be what you are referring to, but I want to  
9 find out for sure.

10 (Whereupon said document was duly marked for purposes of  
11 identification as Petitioner's Exhibit 6 as of this date.)

12 A. Okay. I have looked at the document.

13 Q. (By Mr. Safley) Okay. Is that the same document that  
14 you are referring to as Public Act 88-496?

15 A. I have to admit that I don't know exactly what I am  
16 looking at here.

17 Q. Okay.

18 A. But if I had a copy of 88-496 I could show you where it  
19 is at in there, and I believe that is the same statement.

20 Q. The same language?

21 A. Yeah.

22 MR. SAFLEY: Just to state for the record, what I have  
23 given Mr. Boone as Petitioner's Exhibit Number 6 is a printout  
24 that I made of 415 Illinois Code 5/57.9, which is titled



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1 Underground Storage Tank Fund; Eligibility and Deductibility.

2 MS. BARNES: I don't have any doubt that this is the Public  
3 Act that Mr. Boone was referring to if that helps.

4 MR. SAFLEY: Well, on that statement, I will move to admit  
5 this as Petitioner's Exhibit Number 6.

6 MS. BARNES: I don't have any objection, but I would just  
7 like to point out that it is the law. We don't have to admit the  
8 law as an exhibit.

9 MR. SAFLEY: I understand that. I just wanted to -- part  
10 of the reason why I want to admit it is because I highlighted a  
11 portion of the exhibit that I handed Mr. Boone, and I want the  
12 Board to know --

13 HEARING OFFICER KNITTLE: I will admit it just for ease of  
14 use.

15 MR. SAFLEY: Yes. I realize that we can take official  
16 notice of it. As you said, for ease of use.

17 (Whereupon said document was duly admitted into evidence as  
18 Petitioner's Exhibit 6 as of this date.)

19 Q. (By Mr. Safley) I am sorry, Mr. Boone, again, so this --  
20 at least you -- it is your understanding that the language that  
21 is contained on that document is the same as the language that is  
22 contained in Public Act 88-496 that you are referring to?

23 A. To my knowledge, yes.

24 MR. SAFLEY: Okay. Those are all of my questions, Mr.

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1 Boone. Ms. Barnes may have some questions for you.

2 HEARING OFFICER KNITTLE: Let's go off the record.

3 (Discussion off the record.)

4 HEARING OFFICER KNITTLE: We will take a five minute  
5 recess.

6 HEARING OFFICER KNITTLE: Okay. We are back on the record.

7 Mr. Boone, let me remind you that you are still under oath.

8 THE WITNESS: Okay.

9 HEARING OFFICER KNITTLE: As I am sure you know.

10 THE WITNESS: Yes.

11 HEARING OFFICER KNITTLE: Ms. Barnes, you have  
12 cross-examination.

13 CROSS EXAMINATION

14 BY MS. BARNES:

15 Q. Just briefly, Mr. Boone. What did you review when you  
16 wrote the -- that last letter back to Mr. Hoing asking him for  
17 clarification, what had you reviewed?

18 A. What letter are you speaking of, what number?

19 Q. It was the exhibit where you did the typewritten note.

20 A. Exhibit 1, where I am asking for the fees?

21 Q. Well, actually, what had you reviewed by the time you  
22 had wrote these handwritten notes back in November of 1996?

23 A. I had reviewed the file up to that point.

24 Q. Which file?

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1 A. Oh, Mr. Hoing's file and Mr. Rampley's file.

2 Q. Okay.

3 A. At that time they were one file. I reviewed the file up  
4 to that point and anything up to that date would have been  
5 reviewed by me.

6 Q. And at the time they were one file under which number?

7 A. At that time when I reviewed them back in 1996 they  
8 would have been all under one number.

9 Q. Do you know which one?

10 A. It would have been Mr. Rampley's number.

11 Q. Okay.

12 A. 3016671, I believe.

13 Q. Now, upon reviewing that file, what, if any, conclusions  
14 did you draw about what had happened?

15 A. I come to the conclusion that Bill Carl went to Mr.  
16 Hoing's location in 1993 to further investigate a chemical  
17 petroleum leak or a spill, and found that Mr. Hoing had not  
18 registered his tanks and probably told him to go ahead and  
19 register them. He did so on a notification submitted to our  
20 office and we gave him a facility number. Later, I think --

21 Q. A different one from the --

22 A. From Mr. Rampley, yes.

23 Q. All right.

24 A. A different facility number and a separate one. So at

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1 that time they are two different sites in our file records. Then  
2 I believe Bill Carl got confused on what was told to him and also  
3 his paperwork in front of him and thought they were, indeed --  
4 that Mr. Rampley's site was Mr. Hoing's site.

5 Q. Okay.

6 A. That they were one site, and told our clerical people to  
7 member them together and it was done. Then I came along or,  
8 actually, Kim Harms reviewed the eligibility application in 1995  
9 and seen some discrepancies, and then asked for a removal  
10 notification. We received all of that information back in 1996,  
11 where I came up to the conclusion that, indeed, these are  
12 separate sites and they never should have been merged together by  
13 our office. At the time I separated them back.

14 MS. BARNES: Okay. That's all I have.

15 HEARING OFFICER KNITTLE: Any redirect?

16 MR. SAFLEY: No. Thank you.

17 HEARING OFFICER KNITTLE: Thank you, Mr. Boone.

18 THE WITNESS: Thank you.

19 (The witness left the stand.)

20 HEARING OFFICER KNITTLE: Any further witnesses?

21 MR. SAFLEY: Not on behalf of the Petitioner, Mr. Knittle.

22 HEARING OFFICER KNITTLE: Okay. We will close your

23 case-in-chief, then.

24 Ms. Barnes, do you have any witnesses?

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1 MS. BARNES: I have one witness, Betty Carlisle.

2 HEARING OFFICER KNITTLE: Let's call her. We will go off  
3 the record while we get her.

4 (Discussion off the record.)

5 HEARING OFFICER KNITTLE: All right. We are back on the  
6 record after a short recess, commencing with the Respondent's  
7 case-in-chief.

8 Ms. Barnes? Actually, that's a bit of a misstatement since  
9 we have been conducting your case-in-chief throughout the  
10 case-in-chief of --

11 MS. BARNES: Yes.

12 HEARING OFFICER KNITTLE: -- the Petitioner.

13 MS. BARNES: I want to make sure the record is clear.

14 HEARING OFFICER KNITTLE: Yes. We have, as everyone knows,  
15 given you leave to conduct some direct examination included with  
16 your cross-examination. So when I say that, that is just a form  
17 of habit and I don't mean you have not already done your  
18 case-in-chief.

19 All right. You can go ahead and call this witness if you  
20 would like.

21 MS. BARNES: We are calling Betty McGill, who I believe  
22 Counsel will agree is the Betty Carlisle that has been referred

23 to throughout the hearing.

24 MR. SAFLEY: That is certainly my understanding.

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1 HEARING OFFICER KNITTLE: All right. Let's swear her in,  
2 please.

3 (Whereupon the witness was sworn by the Notary Public.)

4 B E T T Y M C G I L L,  
5 having been first duly sworn by the Notary Public, saith as  
6 follows:

7 DIRECT EXAMINATION

8 BY MS. BARNES:

9 Q. Would you state your name for the record.

10 A. My name is Betty McGill.

11 Q. And did you formerly -- were you formerly Betty  
12 Carlisle?

13 A. Yes, I was.

14 Q. When you were Betty Carlisle and now, who do you work  
15 for?

16 A. The State Fire Marshal's Office.

17 Q. What is your job?

18 A. I am a clerical supervisor at the Division of Petroleum  
19 and Chemical Safety.

20 Q. Ms. McGill, did you have occasion to become involved in  
21 a situation with respect to -- facility identification numbers

22 which had been assigned to a Donald Hoing and a William Rampley?

23 A. Yes, as much as I can remember.

24 Q. What was the occasion for your involvement? How did you

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1 become involved in that?

2 A. Well, Jim had come to me when he received the file and  
3 thought there was a discrepancy in that file.

4 Q. What did you do when he came to you?

5 A. We looked over the file and decided that we would  
6 separate the file.

7 Q. Okay. Who reviews the State Fire Marshal's records to  
8 determine whether a tank -- a facility's tanks are registered?

9 A. Well, various people in the division do that.

10 Q. Okay. When you get a notification, for example, who  
11 assigns the number?

12 A. The computer does now.

13 Q. Who did that --

14 A. Back then we generate -- we just had numeric numbers and  
15 we gave it the next number. But at that time, though, I do  
16 believe that it was the computer that did it at that time also.

17 Q. And you just testified that you went over this -- the  
18 files with Mr. Boone. What, if any, conclusions did you draw  
19 about how the two files became one file?

20 A. Well, as far as I know, when the file came in you would  
21 look and check to see if that owner or -- on the computer then at

22 that time you only could check the owner, I believe. We had what  
23 you would call a facility printout that would have addresses and  
24 names in of all of the tanks registered.

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1 Q. Let me hand you what we have already marked, and it is  
2 already up there as Respondent's Number 1.

3 A. Okay. This right here?

4 Q. Is that what you are talking about?

5 A. Yes.

6 Q. Okay.

7 A. And we would go through here and look and see if that  
8 owner was on here or that address and a specific city. If it  
9 wasn't, then we would generate the new number for that facility.  
10 And that's what we did in this case, we could not find Don Hoing  
11 registered, the tanks registered when the notification came in.

12 Q. Okay. But at some point the files were -- when you were  
13 dealing --

14 A. Right.

15 Q. -- with Mr. Boone there was one file. Did you draw any  
16 conclusions about how that happened?

17 A. Well, I believe after that time then a notification came  
18 in with a note from Bill Carl stating that he had thought that  
19 this was one and the same location that was on this list because  
20 Mr. Rampley was a previous owner. And so then from what Bill



21 stated then someone in the office, and I am not positive who that  
22 one person was, merged this file together as one.

23 Q. Okay.

24 A. Later.

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1 Q. Now, how do you know that -- well, actually, you are --  
2 you supervise the clerical staff?

3 A. Yes.

4 Q. You maintain custody of these files?

5 A. The files, yes.

6 Q. All right. I am going to show you page 52 of the  
7 administrative record. Do you recognize that document?

8 A. Yes, that is Mr. Rampley's notification.

9 Q. And where does that indicate that his station is  
10 located?

11 A. Well, it says city, Carthage. But under Denver service  
12 they put Denver, Illinois in parenthesis.

13 Q. So there are two cities listed on it?

14 A. Yes.

15 Q. Did that have anything to do with any conclusions that  
16 you drew?

17 A. Yes, it would state -- I mean, that we would believe  
18 that this was two separate facilities, yes.

19 Q. Okay. At any rate, what facility was actually  
20 registered?

21 A. This notification?  
22 Q. Right. Where was it?  
23 A. This was in Denver, Illinois.  
24 Q. Okay. At that time -- where was it listed on the

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1 Respondent's Exhibit Number 1?  
2 A. I am sorry?  
3 Q. Take a look at Respondent's Exhibit Number 1, the  
4 printout.  
5 A. Oh.  
6 Q. Is it listed?  
7 A. No, his is not listed. William Rampley is listed as  
8 Carthage.  
9 Q. And Carthage also appears on his notification?  
10 A. On this notification also.  
11 Q. There is not --  
12 A. Where I could see where that would be a confusion to  
13 someone when it came in, yes.  
14 Q. Okay. Does the Office of the State Fire Marshal have  
15 any record of tanks at 225 Buchanan in Carthage being registered  
16 before February of 1993?  
17 A. No.  
18 MS. BARNES: Okay. That's all I have.  
19 HEARING OFFICER KNITTLE: Mr. Safley?

20 MR. SAFLEY: I do have a short follow-up.

21 CROSS EXAMINATION

22 BY MR. SAFLEY:

23 Q. Ms. McGill, looking at that page 52, if you go down to  
24 the bottom of that page, under roman numeral four, it says type

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1 of notification, mark box here only if this is an amended or a  
2 subsequent notification for this location. That box is marked;  
3 is that correct?

4 A. Correct.

5 Q. What does that mean to you?

6 A. To me that these tanks were registered already under  
7 this facility ID number, and that he was amending that for some  
8 reason. I don't know what.

9 Q. Does it further mean that this was not the first  
10 notification form --

11 A. Correct.

12 Q. -- that had been involved for this site?

13 A. Correct.

14 Q. I would like to show you what has been marked as pages  
15 54 and 55 of the administrative record, or the record on appeal,  
16 and ask you to take a look at this.

17 A. That would be the original notification that Mr. Rampley  
18 sent in in 1986.

19 Q. Is this -- which one of these two would have been the

20 one that someone in your office reviewed when they assigned a  
21 facility identification number?

22 A. This one here, to get this number here? This file here  
23 in 1986.

24 Q. The one that I just handed you?

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1 A. Yes.

2 Q. Marked page 54 at the bottom?

3 A. Correct.

4 Q. Okay. Which of these two would have been the one that  
5 someone in your office reviewed when the facility was entered  
6 into the computer printout that Ms. Barnes showed you?

7 A. I would state that it was this one right here.

8 Q. Okay. Is it correct that the computer -- that  
9 registrations are entered into the computer printout when the  
10 first registration is filed?

11 A. Correct, but I don't -- I can't think right now, but I  
12 would say that this one now would be what is in the computer.

13 Q. Okay. But --

14 A. Since this was 1992 and this was 1986. So maybe when we  
15 had a printout in 1986 this would have been on that printout.

16 HEARING OFFICER KNITTLE: Ma'am, when you say this and  
17 that.

18 THE WITNESS: Oh, number 54 and 55 would be the original

19 notification that if we had a facility printout it would be on  
20 that printout. But this is a 1992 printout and if nothing has  
21 ever came in after number 52, then it would be the one that would  
22 be on this list.

23 Q. (By Mr. Safley) So does that mean that the information  
24 in the computer can be changed if a new registration -- if an

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1 amended registration comes in?

2 A. Yes.

3 Q. Okay. But there would have been something in the  
4 computer in 1986 when page 54 was filed?

5 A. Correct.

6 MR. SAFLEY: Okay. Those are all of my questions.

7 HEARING OFFICER KNITTLE: Ms. Barnes?

8 MS. BARNES: I have nothing else.

9 HEARING OFFICER KNITTLE: Thank you, ma'am. You may step  
10 down.

11 THE WITNESS: Okay.

12 (The witness left the stand.)

13 HEARING OFFICER KNITTLE: Any other witnesses, Ms. Barnes?

14 MS. BARNES: No. We rest.

15 HEARING OFFICER KNITTLE: What about Respondent's Exhibit

16 1. I have heard talk about it. Are you going to offer that?

17 MR. SAFLEY: That was the notion to supplement the record.

18 MS. BARNES: That was the motion to supplement the record.

19 I just called it Respondent's Exhibit Number 1.

20 MR. SAFLEY: That is just what we referred to it for ease  
21 of --

22 HEARING OFFICER KNITTLE: Okay. That's good to know. The  
23 Respondent's Exhibit Number 1 has been the whole time the motion  
24 to supplement the record, which I have already granted.

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1 All right. Do you have any rebuttal witnesses?

2 MR. SAFLEY: No, I do not.

3 HEARING OFFICER KNITTLE: All right. We are finished up  
4 with the cases-in-chief, then. Let's go off the record.

5 (Discussion off the record.)

6 HEARING OFFICER KNITTLE: We are back on the record after  
7 an off-the-record discussion about briefing schedules. Both  
8 parties indicate that they are waiving closing arguments. Is  
9 that correct for the Petitioner?

10 MR. SAFLEY: Yes, sir.

11 HEARING OFFICER KNITTLE: Ms. Barnes.

12 MS. BARNES: Yes.

13 HEARING OFFICER KNITTLE: We have set up a briefing  
14 schedule off the record, and the briefing schedule is as follows.  
15 The Petitioner's brief is due on or before February 23rd of 2001.  
16 The Respondent's brief is due on or before March 23rd. The  
17 Petitioner's reply brief is due on or before April 6th.

18 I want to note for the record there are still no members of  
19 the public here. If they were here, of course, they would be  
20 offered the opportunity to give public comment. That not being  
21 the case, we will move on.

22 We had four witnesses today. I did not find a credibility  
23 issue with any of the four witnesses based on my legal judgement  
24 and experience.

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1 Also, I want everybody remaining here to know that I do not  
2 make the ultimate decision in the case. That ultimate decision  
3 is, in fact, made by the Illinois Pollution Control Board, which  
4 is comprised of seven members located throughout the state, who  
5 have been chosen for their environmental expertise. They will be  
6 making the decision as soon as they get a chance to do that. The  
7 record will close on April 6th. So the time for them to make the  
8 decision will start on that date.

9 Are there any other motions, comments, questions from the  
10 Petitioner?

11 MR. SAFLEY: No. Thank you.

12 HEARING OFFICER KNITTLE: Respondent?

13 MS. BARNES: My only concern is that we had testimony from  
14 Mr. Hoing that Bill Carl told him that he had a deductible, and  
15 testimony from Mr. Carl that he said he never would have told him  
16 that. I don't know if you have to make a finding on that or  
17 what.

18 HEARING OFFICER KNITTLE: I am not going to make a finding  
19 on that right now. When I stated that the credibility is not an  
20 issue, I did not notice any overt problems with either of the  
21 witnesses. I did not find either of them to be testifying  
22 untruthfully. There is, of course, two different people saying  
23 two different things, and one of them is going to be the one that  
24 the Board ends up believing, for whatever reason, based on the

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1 other evidence and, you know, the cumulative effect of all of the  
2 testimony. So I was not addressing that particular issue.

3 MS. BARNES: Okay.

4 HEARING OFFICER KNITTLE: I am required by the procedural  
5 rules to make that statement as to credibility, and what I am  
6 judging is the characterizations and the affects of the people  
7 here at the hearing.

8 MS. BARNES: Okay.

9 HEARING OFFICER KNITTLE: Thank you all very much.

10 MR. SAFLEY: Thank you.

11 MS. BARNES: Thank you.

12 (The hearing exhibits were retained by  
13 Hearing Officer Knittle.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the  
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that  
7 the foregoing 134 pages comprise a true, complete and correct  
8 transcript of the proceedings held on the 10th of January A.D.,  
9 2001, at the Illinois Pollution Control Board, Hearing Room 403,  
10 Springfield, Illinois, in the case of Donald Hoing d/b/a Don's  
11 Service v. Office of the State Fire Marshal, in proceedings held  
12 before John Knittle, Hearing Officer, and recorded in machine  
13 shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed  
15 my Notarial Seal this 19th day of January A.D., 2001.

16

17

18

Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

19

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CSR License No. 084-003677  
My Commission Expires: 03-02-2003

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