

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

No. PCB 02-177

(Enforcement-RCRA, Water)

JOHN PRIOR, d/b/a PRIOR OIL COMPANY

and JAMES MEZO, d/b/a MEZO OIL

COMPANY,

Respondents,

Proceedings held on September 16th, 2003, at the Washington
County Courthouse, Court Room 2, 101 East St. Louis Street,
Nashville, Illinois, before CAROL SUDMAN, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR

CSR License No.: 084-004316

KEEFE REPORTING COMPANY

11 North 44th Street

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Pollution Control Board

A P P E A R A N C E S

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By Javonna Homan, Esq.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By Michael S. Roubitchek, Esq. (Assistant Counsel)

John Prior, Pro Se

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I N D E X

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(Note: Exhibits not tendered for inclusion into deposition transcript.)

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1 HEARING OFFICER SUDMAN: Okay. Good morning and welcome to
2 day two of PCB 02-177, People vs. Prior-Mezo. It is September
3 16th and we are beginning at nine o'clock. I would also like to
4 note that there are no members of the public present here this
5 morning.

6 I would also like to clarify something we discussed
7 yesterday, and that is, that I have labeled as Respondents'
8 Exhibit 3 the items that were offered by Mr. Prior that were not
9 admitted to the record. I didn't label those. I just put
10 Respondents' Exhibit 3. Having said that, I think we are ready
11 to proceed to the People's next witness.

12 MS. CARTER: Thank you. The People call Lawrence Bengal.

13 LAWRENCE BENGAL,
14 called as a witness herein, having been first duly sworn,
15 deposeth and saith as follows:

16 DIRECT EXAMINATION

17 QUESTIONS BY MS. CARTER:

18 Q. Please state your name.

19 A. Lawrence Bengal.

20 Q. Mr. Bengal, can you tell me about your post-high school
21 education?

22 A. I have a degree from the University of Wisconsin,
23 bachelor of science in geology.

24 Q. When did you receive that degree?

1 A. 1972.

2 Q. Okay. And with whom are you currently employed?

3 A. The Illinois Department of Natural Resources.

4 Q. And what's your position with the Illinois Department of
5 Natural Resources?

6 A. I am a supervisor of the Division of Oil and Gas.

7 Q. Can you tell me a bit about your duties as the
8 supervisor of the Division of Oil and Gas?

9 A. As supervisor, I'm responsible for the administration of
10 the provisions of the Illinois Oil and Gas Act, the provisions of
11 the underground injection control program which is a federally
12 mandated program under the Federal Safe Drinking Water Act and
13 the State's Plugging Restoration Program.

14 Q. I'll get to each of those in a minute. How long have
15 you held this position with the Department?

16 A. I've been with the Department -- previously with the
17 Department of Mines and Minerals, in 1995 merged with the
18 Department of Natural Resources, so I've been division supervisor
19 since about 1989.

20 Q. Okay. And were you employed prior to 1989 with the
21 Department?

22 A. Originally I started with the Department as manager of
23 the Underground Injection Control Program and then was promoted
24 to the Division of Supervisors in that same year.

1 Q. And with whom were you employed prior to coming with the
2 Department?

3 A. Prior to the Department, I was an independent consulting
4 geologist. Prior to that, I worked for a consulting company and
5 was general manager and project manager and started my career in
6 the early '70s with the Illinois State Geology Service.

7 Q. Do you currently hold any accreditation?

8 A. I'm a Licensed Professional Geologist in Illinois and
9 Registered Geologist in Illinois, I'm a Certified Professional
10 Geological Scientist and a member of the Association of
11 Professional -- or Patrolling Geologist.

12 Q. Okay. I'm going to hand to you, Mr. Bengal, what's been
13 marked People's Exhibit No. 23 for identification. If you could
14 identify this document for me.

15 A. This is a current copy of my resume.

16 Q. Is it -- Does it fairly and accurately represent your
17 experience and your educational background?

18 A. Yes.

19 MS. CARTER: Okay. At this time the People move for the
20 admission of People's No. 23 into evidence.

21 HEARING OFFICER SUDMAN: Do the Respondents have any
22 objection? Hearing none, I will admit People's Exhibit 23.

23 Q. (By Ms. Carter) Before, Mr. Bengal, you discussed your
24 role as the director of the Oil and Gas Division and you

1 mentioned three main programs that you're responsible for
2 supervising. The first you said was the administration of the
3 Illinois Oil and Gas Act, can you tell me a little bit about your
4 duties in that administration?

5 A. The provisions of the Oil and Gas Act regulate the
6 operation of the Illinois oil and gas producing industries, in
7 that there is enforcement programs, there's a permitting program
8 and there's an administrative program as well as a field
9 operations program.

10 Q. And do you administer all those provisions or all those
11 sections?

12 A. I administer all those areas and the staff associated
13 with those areas.

14 Q. The second area, I think, you discussed was the UIC
15 program. When I say that, what does that mean to you?

16 A. Underground Injection Control Program.

17 Q. And can you tell me a little bit about that program?

18 A. It is a program that regulates the Underground Injection
19 Control Wells for Class 2 fluids. It's a program mandated by the
20 Federal Safe Drinking Water Act in which the Department of
21 Natural Resources administers it for the United States
22 Environmental Protection Agency.

23 Q. And when you say Class 2 fluids, what do you mean?

24 A. Class 2 fluids are defined in our statutes, as well as

1 federal statutes, as those fluids produced with production of oil
2 and gas.

3 Q. Okay. And you also said you administer the State's
4 Plugging and Restoration Program, can you tell me a bit about
5 that?

6 A. It's a program that was created probably in 1991. It
7 collects fees from the industry to plug abandoned wells around
8 the state.

9 Q. Getting back to the Department's jurisdiction, you did
10 discuss the Oil and Gas Act, a little bit about their
11 jurisdiction. In certain instances, does the Department of
12 Natural Resources have concurrent jurisdiction with other State
13 agency?

14 A. Yes.

15 Q. And in what instances and what agencies?

16 A. Primarily with the spill, relation to spills and with
17 the IEPA.

18 Q. Okay. I'm going to hand to you what's been previously
19 marked People's Exhibit No. 24. And I apologize, I only have two
20 copies of this. I'll hand you one, and I'll hand one copy to the
21 Respondents. If you could identify this document for me.

22 A. This is a Memorandum of Agreement between the Illinois
23 Environmental Protection Agency and the Illinois Department of
24 Natural Resources relative to our various jurisdictions

1 concerning spills of crude oil and salt water.

2 Q. Okay. Did you play some role in the drafting of this
3 document?

4 A. Yes.

5 Q. Okay. Can you tell me a bit about the role that you
6 played in the drafting of this document?

7 A. I was one of the primary authors.

8 Q. Can you tell me how this document seeks to address the
9 concurrent jurisdiction between the two agencies?

10 A. Under the State's Environmental Protection Act and the
11 Illinois Oil and Gas Act, there is joint jurisdiction of the
12 discharge or spillage of crude oil and salt water by both
13 agencies. Both agencies administer their respective enforcement
14 programs independently, and sometimes jointly, up until the time
15 of this Memorandum of Agreement which was designed to clarify
16 those joint jurisdictional areas. And what this MOU or MOA does,
17 is clarify that part of the discharge that occurs in the waters
18 of the state are in jurisdiction of IEPA. And the discharge that
19 occurs primarily on land, are the jurisdiction of IDNR.

20 Q. Okay. Was this MOU drafted in part to clarify the
21 applicable requirements for the regulating community?

22 A. Yes.

23 Q. Did the Illinois Department of Natural Resources and the
24 Illinois EPA subsequently provide training and/or outreach to the

1 regulating community?

2 A. Yes. Following the adoption of the program, both
3 agencies held joint seminars in conjunction with industry
4 meetings, the Illinois Oil and Gas Association, the Illinois
5 Joint Resources Board and State Geological Survey.

6 MS. CARTER: At this time the People move for the admission
7 of People's 24 into evidence. I'm sorry. That's the only one I
8 have.

9 HEARING OFFICER SUDMAN: That's okay. Do the Respondents
10 have any objection? I will admit People's Exhibit 24.

11 Q. (By Ms. Carter) Okay. Thank you. I think before that
12 you mentioned that the administration of the Oil and Gas Act does
13 involve permitting and inspections, for instance; correct?

14 A. Yes.

15 Q. Can you tell me a little bit about the permitting
16 process under the Oil and Gas Act?

17 A. There are various provisions for permitting contained in
18 the Act and the administrative rules that deal with permitting
19 for the drilling of wells, the permitting for hauling liquid oil
20 field wastes, various other permits relative to the lease of oil
21 and vacuuming permits, construction of salt disposal pits. All
22 these require submission of forms, payment of fees, review of the
23 permit applications by technical staff, posting of bonds, if
24 necessary.

1 Q. Okay. When you said payment of fees, are those fees
2 that they must pay annually to operate in the state?

3 A. Those fees are just permit fees relative to acquiring
4 the permit.

5 Q. And are those fees they must pay annually?

6 A. Those fees are not part of the annual fee payment.
7 That's a separate fee for maintaining your license to operate
8 after you receive the initial license.

9 Q. Okay. So once you receive a permit and once you receive
10 a license to operate, then you must pay annual well fees; is that
11 correct?

12 A. Maintaining well fees is what they call it.

13 Q. Okay. Thank you. And also you mentioned that you
14 oversee inspectors that, I'm presuming, are out in the field?

15 A. Yes.

16 Q. Okay. Can you tell me a little bit about the duties of
17 the well inspectors for the Department of Natural Resources?

18 A. The Division has approximately 22 well inspectors in
19 four district offices around the state. The well inspectors are
20 required to make routine inspections of all the well sites. They
21 issue Notices of Violation, at present when the well is plugged,
22 at present in the case when it is set, when wells are drilled.
23 They make inspections of the wells that are being plugged by the
24 State. They issue the -- or they supervise the contracts the

1 State enters into Abandoned Plugging Program as well as responses
2 to complaints, spills, and other routine inspections related to
3 the various permitting programs.

4 Q. Is it fair to say when a well inspector is on site, they
5 do generate some sort of documentation of that event?

6 A. Yes. Every inspection that is made have a specific form
7 depending on what the inspection is related to.

8 Q. And what happens to those forms once it is generated by
9 a well inspector?

10 A. All the forms are sent to Springfield, and they are
11 entered into two databases: One, a database for pertinent
12 information taken off, and they are imaged into a document
13 database.

14 Q. Okay. And does a computer system exist that allows
15 personnel within the Department, including yourself, to access
16 all that information?

17 A. Yes, that information is available to every staff member
18 in Springfield as well as the field office.

19 Q. Are operators required by statute to report spill events
20 to the Department?

21 A. Yes.

22 Q. And when is that to take place according to the statute?

23 A. Immediately a report has to occur.

24 Q. Okay. Mr. Bengal, are you familiar with a facility

1 consisting of an office located at 140 Gomper Street in Wamac?

2 A. Yes.

3 Q. How are you generally familiar with the site that I'll
4 be calling the Gomper site?

5 A. I'm familiar with that area where there was a discharge
6 and our inspectors made inspections reviewing the documents
7 related to that event.

8 Q. Okay. You said your inspectors made inspections of a
9 discharge at this location, do you recall the particulars of
10 that, sir?

11 A. There was a discharge of liquid oil field waste into an
12 abandoned mine shaft.

13 Q. Okay. Do you recall approximately when that took place?

14 A. I believe it was in 1996. I'm not sure of the exact
15 month.

16 Q. Okay. You said it took place in approximately 1996, did
17 the Department of Natural Resources subsequently take any action
18 to deal with the location of the material that was disposed of?

19 A. The Department took enforcement action for improper
20 disposal of that material.

21 Q. Okay. And now did the material, was it disposed to a
22 mine shaft?

23 A. Yes.

24 Q. Okay. And did the Department of Natural Resources take

1 action concerning the mine shaft itself?

2 A. No. The Division of Oil and Gas -- the Illinois Oil and
3 Gas Act does not have jurisdiction of the mine shaft. It has
4 jurisdiction of the material that was being put in the shaft but
5 not the shaft itself.

6 Q. Okay. Is there a division within the Department of
7 Natural Resources called the Abandoned Mines Lands Reclamation
8 Division?

9 A. Yes.

10 Q. What are their duties?

11 A. Their duties are to fill abandoned shafts and reclaim
12 abandoned strip mines through federal funds plus the Office of
13 Surface and Mining.

14 Q. Okay. Are you aware of whether or not they took any
15 action concerning this abandoned mine shaft?

16 A. Yes. We reported the presence of the shaft to them
17 following this incident, and they subsequently enacted the
18 contract to have the shaft filled.

19 Q. Okay. Are you aware, Mr. Bengal, of when the abandoned
20 mine shaft -- abandoned -- okay, excuse me, Abandoned Mines Lands
21 Reclamation Division undertook this action?

22 A. I think the work was completed in July 1998.

23 Q. Okay. Mr. Bengal, are there different types of liquid
24 oil field waste?

1 A. Yes.

2 Q. Okay. What is liquid oil field waste?

3 A. Liquid oil field waste is defined by our statute and in
4 the rules but primarily it is salt water which is produced with
5 crude oil. It's drilling fluids and drilling muds. It can be
6 bottom sediment which is a waste product from the production of
7 crude oil.

8 Q. Okay. Now are there certain requirements in terms of
9 the disposal of these liquid oil field wastes?

10 A. Yes.

11 Q. Can you tell me about the requirements associated with
12 each of the oil field waste that you justified?

13 A. The rule specify various disposal methodologies for each
14 of those wastes. In the case of salt water or produced fluids,
15 they can be disposed of only in an underground injection control
16 well under the UIC program. In case of bottom sediment, there
17 are various methodologies approved in a commercial disposal well
18 or another Class 2 well. They can be disposed of in a licensed
19 special waste landfill, and they can be placed on leased roads
20 through the permitting processing. Drilling muds can be exposed
21 through injection or landfill or land farmed on site of the
22 location which is the general methodology used.

23 Q. Why might an operator choose not to use a water input
24 well for inappropriate produced oils or any other liquid oil

1 field waste?

2 A. Well, if you're using your Class 2 well for -- in
3 secondary recoveries for injection waters to recover oil.

4 Q. Is that what secondary recover means, sir?

5 A. Yes. You might not want to use bottom sediments or
6 drilling muds because it might disrupt your secondary recovery
7 operation. It would plug up the well, plug up the reservoir. It
8 would not provide for good secondary recovery, so you wouldn't
9 want to use those types of fluids for disposal if you had one for
10 that purpose.

11 Q. Okay. Do these types of disposal that you just
12 discussed, require permits from the Department?

13 A. Yes.

14 Q. Okay. Are you aware of whether Mr. Prior possessed such
15 permits from the Illinois Department of Natural Resources to
16 dispose of liquid oil field waste in 1996?

17 A. Currently, and at that time, he had several disposal
18 wells under Prior Oil Company.

19 Q. Okay. You said he had several oil wells under Prior Oil
20 Company?

21 A. Uh-huh.

22 Q. So was it acceptable for him to dispose of materials
23 down those disposal wells?

24 A. Those wells would be available to dispose of materials.

1 Whether you would elect to do so because of the other uses of
2 those wells, because of secondary recovery, for example, you
3 might not want to do that.

4 Q. Are those the only permits that Mr. Prior had in 1996 to
5 dispose of liquid oil field waste?

6 A. Yes, those are the only injection wells that he had.

7 Q. Okay, okay. According to Illinois Department of Natural
8 Resources' rules and regulations, is it ever appropriate to dump
9 liquid oil field waste on the ground?

10 A. No.

11 Q. Okay. Is there such a thing as clean storm water
12 collected from tank batteries?

13 A. Well, theoretically there might be in a brand new
14 construction with no operation, but over the years the Department
15 has tested numerous tank battery sites with the spill and that
16 occurs in tank batteries, the overflow, we have never seen clean
17 storm water discharge contained within tank battery containment
18 dikes. And consequently, the rules do not permit discharge of
19 storm water fluid from inside the containment dike.

20 Q. Okay. Are permits required from the Department of
21 Natural Resources to haul liquid oil field waste?

22 A. Yes.

23 Q. Okay. Can you tell me about the permitting process that
24 one must go through to obtain those permits?

1 A. It's a permitting process that the -- requires
2 application to the Department and there's a bond requirement,
3 there is a fee payment requirement and there is a field
4 inspection of the equipment to make sure it is in leak-free
5 condition.

6 Q. Okay. In 1996 did Mr. Prior possess a permit to haul
7 liquid oil field waste from the Department of Natural Resources?

8 A. No.

9 Q. Okay. Mr. Bengal, are you familiar with the facility
10 consisting of several tank batteries located in the Wamac City
11 Park in Wamac, Illinois?

12 A. Yes.

13 Q. And how are you familiar with this site?

14 A. Again, it was a site of the spill that our field staff
15 responded to. I myself was at that particular site and visit.

16 Q. Okay. Now I believe before you did discuss generally
17 the permitting process briefly with the Department, can you tell
18 me when I use the term permittee, what does that mean to you?

19 A. Permittee is defined by the statutes and our rules as
20 that person required to hold the permit which allows that person
21 then to operate the wells or the brine hauling transportation
22 system.

23 Q. Okay. And again, there are certain requirements
24 associated with being the permittee under the Oil and Gas Act?

1 A. Yes. As permittee you are responsible for all the
2 regulatory requirements of the Act and to amend rules.

3 Q. Are you familiar with who is the permittee for this
4 Wamac City Park site in 1997?

5 A. Yes. I believe it was Prior Oil Company.

6 Q. Okay. Mr. Bengal, what is a containment berm?

7 A. It is a earthing construction around the tank battery
8 that contain spills from the tanks.

9 Q. Okay. And according the Illinois Oil and Gas Act, are
10 there certain requirements associated with the containment berm?

11 A. Yes, it is required to be proficient and containing one
12 and one and-a-half times of the largest tank around which it
13 surrounds.

14 Q. Are there also requirements that the land located within
15 a containment berm be free of any oil or produced fluids?

16 A. Yes, it's supposed to be kept free of produced fluids or
17 other oil field debris.

18 Q. Okay. Mr. Bengal, are you familiar with a facility
19 consisting of several above ground tank batteries at the
20 Oestreich No. 1 located at 224 Wabash?

21 A. Yes.

22 Q. And how are you familiar with this tank battery?

23 A. Again, it was the site of a spill event that the
24 Division of Oil and Gas has responded to.

1 Q. Okay. According to a Department of Natural Resources'
2 records, who was the permittee for this site in 1997?

3 A. Mezo Oil Company.

4 Q. Okay. And are you generally familiar with Mezo Oil
5 Company?

6 A. Yes.

7 Q. And how are you familiar with this oil company?

8 A. They have been an operator in Illinois for a number of
9 years before I became supervisor of Division of Oil and Gas.

10 Q. And does Mezo currently have wells permitted to them?

11 A. Yes.

12 Q. Okay. Mr. Bengal, I'm going to hand you what's been
13 previously mark People's Exhibit No. 25 for identification. And
14 then I'll ask you to identify this document for me. Can you
15 identify this document, sir?

16 A. These are documents I was first presented to last week
17 regarding the sale of certain properties from Mezo Oil Company to
18 Prior Oil Company.

19 Q. Who showed you these documents?

20 A. Yourself.

21 Q. Okay. And would you characterize this document as an
22 Assignment?

23 A. Yes.

24 Q. Okay. What's an Assignment when I use that term?

1 A. An Assignment is the assignment of the various oil and
2 gas interests from one person to another person. It's a transfer
3 of ownership.

4 Q. Does that typically happen with wells in the state?

5 A. Yes.

6 Q. Okay. And with whom did that assignment transfer or
7 seek to transfer a working interest to?

8 A. The document shows that the wells, or these various
9 interests in this particular well, was transferred from James
10 Mezo to John Prior.

11 Q. Okay. And what does that document indicate to you
12 generally?

13 A. This indicates that the responsibility or the ownership
14 of this particular property transferred from James Mezo to John
15 Prior in 1995.

16 Q. Okay. Now you said you just saw that document last
17 week?

18 A. Yes.

19 Q. Okay. Have you ever seen any sort of an Operating
20 Agreement amongst the parties?

21 A. No. The Department was not aware of this document until
22 last week. Had the Department been aware of this document in
23 1995, the Department would have exercised an action to require
24 the transfer of this well from Mr. Mezo as permittee to Prior Oil

1 Company as permittee.

2 Q. Okay. When I say an Operating Agreement, what do I mean
3 by that?

4 A. Had the transfer not taken place, the only other
5 methodology that would have allowed Mr. Mezo to be and remain
6 permittee with Mr. Prior as the owner, would be the -- an
7 Operating Agreement between Prior Oil Company and James Mezo. An
8 Operating Agreement is a document that provides the rights to
9 operate to a person who is not the owner.

10 Q. Okay. Does this document tell you that in essence that
11 Mr. Mezo was posing as the permittee for this site?

12 A. Yes. Past -- or after 1995 Mr. Mezo was not the owner
13 and was not technically the permittee without an Operating
14 Agreement with Mr. Prior.

15 Q. Why might Mr. Mezo be acting or serving as permittee in
16 this instance?

17 A. I can only assume, but my assumption would be that had
18 the -- had Mr. Prior requested a transfer of these wells, that he
19 would have been -- the Department would not have been able to do
20 the transfer due to permit blocks relative to enforcement actions
21 against Prior Oil Company.

22 Q. And you said there were permit blocks against Mr. Prior,
23 can you tell me a little bit about that?

24 A. When an operator is in violation, the statute requires

1 or does not permit that permittee to acquire new permits to drill
2 new wells or receive transfer of existing wells.

3 Q. So in essence, Mr. Prior did not have the ability to
4 operate this facility in his own name; is that correct?

5 A. Correct.

6 Q. Okay. Before, sir, I had a brief discussion with you
7 about annual well fees, can you just tell me again what purpose
8 they serve?

9 A. The annual well fees are a fee that is required to be
10 paid each year by every permittee. The well fees are based on
11 the number of wells the particular permittee owns. One well is
12 \$150, 2 to 5 to five wells is \$300, 6 to 25 wells is \$750, 25 --
13 26 to 100 wells is \$1,500. And if you own over 100 wells, it's
14 \$1,500 plus \$12.50 per well.

15 Q. Is there a fee each year for the wells?

16 A. Each July each permittee is sent a bill based on the
17 number of wells they own, which is accompanied by a list of every
18 well and well name and the well location.

19 Q. Okay. And so you just indicated that bill does
20 specifically indicate the wells that are permitted to each
21 permittee in any year for which the annual well fee is
22 applicable?

23 A. Correct.

24 Q. Correct. I'm going to hand you what has been previously

1 marked as People's 26. I'm going to ask you to identify that.
2 Unfortunately, I only have one copy of it but I'm going to show
3 it to the Respondents.

4 HEARING OFFICER SUDMAN: Ms. Carter, you also have -- don't
5 forget --

6 MS. CARTER: I won't forget. I was going to make a motion
7 at the end. I only have one copy. I was going to hand it to you
8 all at once.

9 HEARING OFFICER SUDMAN: Okay.

10 MS. CARTER: When you're done reviewing it, Mr. Prior,
11 please pass it to Mr. Mezo and then I will show it to the
12 witness.

13 Q. (By Ms. Carter) Have you had a chance to review that
14 document, Mr. Bengal?

15 A. Yes.

16 Q. Can you identify that document for me?

17 A. This is a copy of the well list that would have
18 accompanied the fiscal year 1997 annual well fee bill to James
19 Mezo.

20 Q. And again, that's a document that is regularly generated
21 by the Department of Natural Resources?

22 A. It's generated each year for the billing of each
23 operator and sent to each operator.

24 Q. And this billing, is it for Mr. Mezo?

1 A. Yes.

2 Q. And for what year?

3 A. Fiscal year 1997, which would have been billed in July
4 1996.

5 Q. And what information is included on there? Specifically
6 what wells are included on there that is significant to this
7 lawsuit?

8 A. The Oestreich No. 1 well is what is included on the
9 list.

10 Q. Okay. Mr. Bengal, I'm going to hand you what has been
11 previously marked People's Exhibit No. 27 for identification.
12 And if you could identify this document for me, sir.

13 A. This is a copy of the check for payment of the FY --

14 Q. Did I get the right one, sir?

15 A. This is for '98 is what you have.

16 Q. I have another copy. Let me start over. Oh, I do. Let
17 me start over. I'll take a different -- I'm going to take that
18 back, and I'm going to pull that exhibit back. Give me a new
19 number on those, please. Give you a new exhibit, Mr. Bengal.
20 I'm handing you what has been marked People's Exhibit No. 28 for
21 identification. See if you can identify that.

22 A. This is a copy of the check permitted for payment for
23 the FY '97 annual well fee, well fees by James Mezo Oil Company.

24 Q. And what does that indicate?

1 A. It indicates that all the wells included in the list,
2 the bill was paid in full \$1,500.

3 Q. Okay. Mr. Bengal, are you familiar with the Morgan
4 Kalber Kamp No. 1 tank located in close proximity to 312 Wabash
5 in Wamac, Illinois?

6 A. Yes.

7 Q. And how are you familiar with this tank?

8 A. Again, it's a site of a spill event that was responded
9 to by Department staff.

10 Q. Okay. And according to the Department of Natural
11 Resources' records, who was the tank permitted to in 2000?

12 A. I have to refresh my memory.

13 Q. Okay. I will do that.

14 A. There's different leases.

15 Q. Let me find documents. I've got kind of a mess over
16 here. Would the Inspector's Spill Report from that incident
17 assist you in refreshing your recollection?

18 A. Yes.

19 Q. Okay.

20 A. I apologize. I regulate 40,000 wells in the state so
21 it's hard to keep track of them all. Yes, permittee for this
22 tank was John Prior, Prior Oil Company.

23 MS. CARTER: Thank you, Mr. Bengal. I have no further
24 questions for this witness.

1 HEARING OFFICER SUDMAN: Okay. Thank you. Mr. Prior, do
2 you have any questions for this witness?

3 MR. PRIOR: Just one.

4 HEARING OFFICER SUDMAN: Can you see from there?

5 MR. PRIOR: Yes. He's seen enough of me.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. PRIOR:

8 Q. You said the Morgan Kalber Kamp battery is a tank being
9 used for the workover or plugging of a well considered a tank
10 battery?

11 A. If a well -- if that tank is sitting there for a short
12 period of time, days or so forth, for a workover to occur, that's
13 not considered a tank battery. If it sits there long-term,
14 months, years, it would be considered a part of a tank battery
15 other than still with the workover. I'm not familiar with the
16 time frames for your question for this particular site.

17 Q. Okay. I said one question but I do have one more.

18 A. Okay.

19 Q. Are you familiar with the -- the investigation that was
20 done into the alleged vandalism of that tank?

21 A. No. I'm aware of it because you mentioned that to our
22 field staff, I believe maybe myself, but that's all I'm aware of.

23 MR. PRIOR: Thank you. That's all.

24 HEARING OFFICER SUDMAN: Mr. Mezo, do you have any

1 questions for the witness?

2 MR. MEZO: No.

3 HEARING OFFICER SUDMAN: Okay. Thank you very much. Oh,
4 I'm sorry, Ms. Carter.

5 MS. CARTER: I need to make a motion at this point.
6 People's Exhibit 25 through 28 with the exception of 26 or 27.
7 Let me be clear. Exhibit 25, 26 and 28.

8 HEARING OFFICER SUDMAN: There is no 27?

9 MS. CARTER: That was a mistake.

10 HEARING OFFICER SUDMAN: Okay. There is no People's
11 Exhibit 27?

12 MS. CARTER: Yes, thank you.

13 HEARING OFFICER SUDMAN: Do the Respondents have any
14 objection to these exhibits? Hearing none, I will admit People's
15 Exhibit Nos. 25, 26 and 28.

16 MS. CARTER: Thank you.

17 HEARING OFFICER SUDMAN: I have 25 so I have all of them.
18 Thank you. Is there anything else before --

19 MS. CARTER: No, thank you.

20 HEARING OFFICER SUDMAN: All right. Before we hear closing
21 arguments, I'd like to mention a discussion we had off the record
22 regarding post-hearing briefs. The transcript will be available
23 from the court reporter by September 26th and will be posted on
24 the Board's website as soon as possible thereafter. The public

1 comment deadline will be October 3rd. Public comment must be
2 filed in accordance with Section 101.628 of the Board's
3 procedural rules.

4 The parties have agreed to a briefing schedule as follows:
5 The Complainant's brief will be due on October 27 and
6 Respondents' brief will be due by November 24th, and
7 Complainants' reply brief, if any, will be due December 8th. Now
8 would the People like to make a closing statement?

9 MS. CARTER: No, the people will reserve argument for its
10 brief.

11 HEARING OFFICER SUDMAN: Mr. Prior, would you like to make
12 a closing argument?

13 MR. PRIOR: No.

14 HEARING OFFICER SUDMAN: Mr. Mezo, would you like to make a
15 closing argument?

16 MR. MEZO: Yes. First of all, I need to correct something
17 we did yesterday. Ms. Carter asked me how many wells I had
18 permitted in the state, and I believe my answer was probably
19 around 60. Well, yesterday afternoon I had a chance to look at
20 my well fee report for the current year, and I guess I had failed
21 to account for some wells that had been plugged in and some that
22 had been sold, 14 or 15 of which was a unit, that took over a
23 year to get the permits transferred from my -- to the new owner.
24 So as you can see, my track record for getting wells transferred

1 off my bond is not too good. But anyway, my answer should have
2 been 42 -- or 41. I'm sorry. 41. It wasn't an intentional
3 misstatement. I just didn't have it in my mind.

4 And I would like to say that I've been in the oil and gas
5 business for approximately 23 years. And, of course, I realize I
6 didn't handle this situation very good. The only thing I can
7 plea is ignorance and inexperience because in those 23 years,
8 this is the only incident that I've been involved in where the
9 EPA, you know, was involved so I really had no reference.

10 I tried to follow the instructions I got from the Oil and
11 Gas People and the EPA, and did respond as quickly as reasonably
12 possible, and attempted to comply and correct the situation until
13 I got the letter from the Attorney General's Office saying that I
14 had failed to adequately reply. And that's when I requested the
15 meeting with the EPA and went to Springfield and had that
16 meeting. And, of course, that generated the violation to
17 Mr. Prior in Prior Oil Company.

18 I had gone, I thought, as far as, you know, I could with my
19 limited knowledge of what I needed to do. So after that meeting,
20 I got a copy of the subsequent Violation Notice that was sent to
21 Mr. Prior and Prior Oil and I guess misinterpreted that because
22 when they said I had furnished the information that I didn't own
23 the equipment, that I rightly or wrongly believed that I didn't
24 have any -- any right or obligation to do anything with that

1 equipment since I no longer owned it. And, of course, I realize
2 that the permit was still in my name but I guess I just didn't
3 know what to do. I had decided that -- I think we lost a tool in
4 the hole early on in this well and was unable to retrieve the
5 tool which that blocked -- actually the zone we were unable to
6 really get it driven down. And I thought at that time that --
7 that the only solution was to plug the well and forget it.

8 And now I realize that was what should have been done. But
9 Mr. Prior felt that there was a possibility of the well, so he
10 believed and told me at that time, that he had his violations
11 pretty well under control and was going to be able to get the
12 permit transferred, which turned out not to be the case. And so
13 but to my knowledge, and I believe this is right and Mr. Prior
14 can say yes or no, but to my knowledge that well was never
15 operated as an oil well after this -- after this assignment was
16 made and the OG-22 turned over to him. The record will show
17 whether any oil was run or anything, but I'm confident that -- Is
18 that the case?

19 MR. PRIOR: There was never any oil sold off that well at
20 no time.

21 MR. MEZO: To my knowledge the well was never operated by
22 anybody. It was in limbo. I kept hoping that the permit would
23 be transferred and it wasn't. And I guess from lack of, you
24 know, what to do and how to handle that situation, we let it

1 ride, which I can't justify it, but I just wanted to explain to
2 the Oil and Gas People and the Environmental Protection People
3 that, you know, I'm not -- I'm not an enemy of the environment.
4 I did what I could. So I would request that the Violation Notice
5 issued to Mr. Prior on December the 12th of '98 replace the
6 violation that was issued to me on December the 12th of '97.
7 Thank you.

8 HEARING OFFICER SUDMAN: Thank you, Mr. Mezo. At this time
9 since there are no members of the public here to make any public
10 comment, I will proceed to make a statement as to the credibility
11 of witnesses testifying during this hearing. Based on my legal
12 judgment and experience, I find all the witnesses to be credible.
13 Are there any final comments before we adjourn?

14 MS. CARTER: No.

15 HEARING OFFICER SUDMAN: Okay. At this time I will
16 conclude the proceedings and we stand adjourned. Thank you all
17 for your time.

18 MS. CARTER: Thank you.

19 (Hearing concluded at 10 a.m.)
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24

STATE OF ILLINOIS
COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 31 pages comprise a true, complete and correct transcript of the proceedings held on the 15th and 16th day of September A.D., 2003, at the Washington County Courthouse, Court Room 2, 101 East St. Louis Street, Nashville, Illinois, in the case of the People of the State of Illinois versus John Prior, d/b/a Prior Oil Company and James Mezo, d/b/a Mezo Oil Company, in proceedings held before Hearing Officer Carol Sudman, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 21st day of September A.D., 2003.



Beverly S Hopkins

Beverly S. Hopkins

Notary Public and

Certified Shorthand Reporter and

Registered Professional Reporter

CSR License No. 084-004316

KEEFE REPORTING COMPANY

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