

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

3	PEOPLE OF THE STATE OF ILLINOIS,)
)
4	Complainant,)
)
5	vs) No. PCB 96-98
)
6	SKOKIE VALLEY ASPHALT CO., INC.,)
	EDWIN L. FREDERICK, JR.,)
7	individually and as owner and)
	president of SKOKIE VALLEY ASPHALT)
8	CO., INC., and RICHARD J. FREDERICK,)
	individually and as owner and vice)
9	president of SKOKIE VALLEY ASPHALT)
	CO., INC.,)
10)
	Respondents.)

11

12 VOLUME II

13 PAGES 330 - 524

14 TRANSCRIPT OF PROCEEDINGS held in

15 the hearing of the above-entitled matter, taken

16 stenographically by Stacy L. Lulias, CSR, before

17 CAROL SUDMAN, Hearing Officer, at the Libertyville

18 Village Hall, 118 West Cook Street, Libertyville,

19 Illinois, on the 31st day of October, A.D., 2003, at

20 9:00 a.m.

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

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4 1021 North Grand Avenue East
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7 BY: MS. CAROL SUDMAN, Hearing Officer

8

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2						
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1 HEARING OFFICER SUDMAN: Good morning.
2 My name is Carol Sudman. Welcome to day two of the
3 hearing for PCB 96-98, People versus Skokie Valley
4 Asphalt, Edwin Frederick and Richard Frederick. It
5 is October 31st and we are beginning at 9:00 o'clock
6 a.m.

7 I will first note for the record
8 that there are no members of the public present, and
9 I think we are ready to call the People's next
10 witness.

11 MR. COHEN: Your Honor, at this time,
12 the People call James Huff.

13 HEARING OFFICER SUDMAN: Mr. Huff,
14 please have a seat at that table and the court
15 reporter will swear you in.

16 (Witness sworn.)

17 WHEREUPON:

18 JAMES E. HUFF
19 called as a witness herein, having been first duly
20 sworn, deposeth and saith as follows:

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

22 BY MR. COHEN:

23 Q. Good morning, Mr. Huff.

24 A. Good morning.

1 Q. Please state your name and spell your
2 last name for the record.

3 A. James E. Huff, H-U-F-F.

4 Q. Mr. Huff, what business are you in?

5 A. I'm an environmental consultant.

6 Q. What is the name of your business?

7 A. Huff and Huff Incorporated.

8 Q. What is the address that you work out
9 of?

10 A. 512 West Burlington Avenue, LaGrange,
11 Illinois.

12 Q. Are you a licensed professional
13 engineer in Illinois?

14 A. Yes, sir.

15 Q. As a licensed professional engineer,
16 are you familiar with the site that used to be owned
17 by Skokie Valley Asphalt Company Incorporated in
18 Grayslake, Illinois?

19 A. Yes, sir.

20 Q. That same site used to be owned by
21 Liberty Asphalt?

22 A. I'm sorry. Is that a question?

23 Q. Yes.

24 A. That is my understanding, yes, sir.

1 Q. When within did you first become aware
2 of the Skokie Valley Asphalt site?

3 A. Approximately March 1995.

4 Q. How did you become aware of Skokie
5 Valley Asphalt at that time?

6 A. One of the Fredericks called the
7 office. We had been referred to them from another
8 firm. And they called in one day in March of '95.

9 Q. When you say one of the Fredericks,
10 who do you mean?

11 A. I don't recall. I'm sorry. Richard
12 or Larry Frederick.

13 Q. And you were contacted by telephone?

14 A. Yes, sir.

15 Q. Did you speak to one of the Fredericks
16 during that telephone conversation?

17 A. Yes, sir.

18 Q. What was the situation that was
19 described to you?

20 MR. JAWGIEL: I'm going to object,
21 your Honor, foundation. We don't know which
22 individual they're talking about, either Larry or
23 Richard, and we have to differentiate the two in
24 order to lay the proper foundation for the

1 conversation. One is not responsible for the
2 conversation of the other.

3 HEARING OFFICER SUDMAN: Would you
4 like to respond to that?

5 MR. COHEN: Again, this isn't -- we're
6 not -- this is foundational, and we're not asking
7 for responsibility at this point. We're just trying
8 to lay the foundation to show that this witness did.

9 MR. JAWGIEL: If you're asking for a
10 specific what was said in the conversation, that is
11 not foundational. The foundation has already been
12 laid that he came to the site because he was called
13 by one of the Frederick brothers, that's how he got
14 involved.

15 MR. COHEN: No, that foundation has
16 not been laid.

17 HEARING OFFICER SUDMAN: Gentlemen,
18 I'm going to overrule the objection. Continue.

19 BY MR. COHEN:

20 Q. You may answer the question if you
21 remember it.

22 A. I do not. I'm sorry.

23 Q. What was the situation that was
24 described to you during that telephone call?

1 MR. JAWGIEL: Same objection. I have
2 to do that for the record, unless it's noted for the
3 record.

4 HEARING OFFICER SUDMAN: That's fine.
5 Overruled.

6 BY THE WITNESS:

7 A. Skokie Valley had a -- I believe it's
8 called a 104(e) investigation scheduled from the
9 USEPA coming up in early March, and they were
10 interested in some assistance on their part for that
11 investigation.

12 BY MR. COHEN:

13 Q. Do you recall what a 104(e)
14 investigation is?

15 A. Well, they were being investigated
16 because they were listed on, I believe, it's the
17 CERCLA.

18 Q. What does CERCLA stand for?

19 A. Comprehensive Environmental
20 Responsibility something Liability Act.

21 Q. And what does it mean to be on the
22 CERCLA list?

23 A. Means that at some point since, I
24 believe, it was 1982, an event happened or a report

1 submitted that there had been some type of release
2 to the environment from that property.

3 Q. Is that the type of work that you,
4 based on your training and experience, would be able
5 to assist the Frederick brothers with in terms of
6 their Skokie Valley Asphalt site?

7 A. I would say yes.

8 Q. Did they describe any other situation
9 or problems they were having with their site at that
10 time during that conversation?

11 A. No, sir.

12 Q. Now, you mentioned a couple times
13 already this morning that you believe these calls or
14 this telephone call occurred in March of 1995; is
15 that correct?

16 A. Yes, sir.

17 Q. Could it have been in April of 1995?

18 A. I don't believe so. I'm pretty
19 confident it was March, but it's possible.

20 Q. Based on the telephone conversation,
21 what did you agree to do?

22 A. I was going to meet them at the
23 facility the following week.

24 Q. When you say meet them at the

1 facility, would that have been Skokie Valley Asphalt
2 site?

3 A. Yes.

4 Q. And would that have been their
5 facility in Grayslake, Lake County, Illinois?

6 A. Yes.

7 Q. Did anything happen between the
8 telephone conversation and the scheduled appointment
9 to meet them the next week?

10 A. My recollection is a little vague. I
11 don't think I made it up there for that. I think I
12 received a subsequent phone call on Saturday morning
13 at the office before my scheduled visit out there.

14 Q. And who did you receive the telephone
15 call from?

16 A. Again, either Larry or Richard
17 Frederick.

18 Q. Is that normally who you communicated
19 with when you were working for Skokie Valley
20 Asphalt?

21 A. One and/or the other, yes, sir.

22 Q. Why did you receive that telephone
23 call on that Saturday?

24 A. They had been excavating in what would

1 be the southeast corner of their property and they
2 had found the drain tile, and when they opened that
3 drain tile up, there was a visible sheen or oil on
4 the water.

5 Q. Did you discuss that situation during
6 the telephone call?

7 A. Yes.

8 Q. And also during the telephone call,
9 did you make any recommendations about what to do
10 with the train tile and the oil sheen in the drain
11 tile?

12 A. Well, it was kind of mutual. Larry
13 and/or Richard Frederick had indicated their intent
14 was to pull out, I believe, 25 feet of the drain
15 tile and backfill that area with a clay-type soil
16 basically to stop the flow, and I made a suggestion
17 that Monday morning first thing we needed to report
18 an oil spill release incident to the USEPA.

19 Q. Do you know why it was important to
20 stop the flow from the drain tile?

21 A. In December 1994, there was an oil
22 sheen that started to appear on the Avon Fremont
23 drainage ditch, and that oil sheen had continued
24 intermittently from that time to the end of March

1 when I received that phone call, and we believe that
2 that drain tile was the one connected to the Avon
3 Fremont drainage ditch, so the intent of plugging
4 that was to stop any flow of oil that was flowing
5 through that drain tile.

6 Q. So that drain tile was flowing toward
7 the Avon drainage ditch?

8 A. That's my understanding, yes, sir.

9 Q. And I think you mentioned that you
10 also suggested on Monday morning the oil in the
11 drain tile needed to be reported?

12 A. That phone call was Saturday, and they
13 said first thing Monday morning we need to report a
14 release.

15 Q. And why did that have to be done?

16 A. My understanding, that a spill of oil
17 under 40 CFR 112 is a reportable event under the
18 federal regulations.

19 Q. And who would that type of event be
20 reported to?

21 A. The National Response Center.

22 Q. Do you know if the Fredericks had that
23 25 feet of drain tile pulled and plugged as was
24 discussed in that Saturday telephone conversation?

1 A. Well, I have no personal knowledge.
2 They represented to me that that was done, and any
3 flow of oil subsided right after that, so I believe
4 it was done.

5 Q. And on the following Monday, did you
6 go out to the Skokie Valley Asphalt site?

7 A. I'm pretty sure it was Monday. It's
8 possible it was Tuesday. We reported the incident
9 first thing Monday morning, and then I believe I was
10 at that site that same day.

11 Q. When you say, "we reported the
12 incident," who do you mean?

13 A. Either Larry or Richard Frederick or
14 myself made that phone call on a three-way phone
15 call.

16 Q. I see. And who did you call?

17 A. I think we reported it to USEPA.

18 Q. Do you recall who you spoke to at the
19 USEPA?

20 A. I do not.

21 Q. When you went out to the site, now,
22 again, do you recall what time period we're talking
23 about?

24 A. That would have been the last week in

1 March or the first week in April, at this point,
2 1995.

3 Q. Do you recall if you had given a
4 deposition in this case?

5 A. Yes.

6 Q. During the deposition, you usually
7 refer to the dates as being in April?

8 MR. JAWGIEL: Your Honor, I'm going to
9 object. The proper foundation, if you're going to
10 use a deposition, is to at least give us the page,
11 the line and say, do you remember giving this answer
12 to this question and reading that. This is not the
13 proper foundation for impeachment. You just can't
14 shoot from the hip.

15 BY THE WITNESS:

16 A. I do not --

17 HEARING OFFICER SUDMAN: Sir, if
18 there's an objection pending, please hold off on
19 your response.

20 Mr. Cohen, do you know where in
21 the deposition you're referring?

22 MR. COHEN: I could go through the
23 response, your Honor. I'm just hoping to refresh
24 the witness' recollection first. If that doesn't do

1 it, then I will go to a specific document.

2 MR. JAWGIEL: Your Honor, he hasn't
3 laid the proper foundation for refreshing
4 recollection either. If he has a specific area,
5 he's referenced, do you remember saying in your
6 deposition transcript, if there's so many numerous
7 spots that he said this, point one out for us.

8 HEARING OFFICER SUDMAN: Well,
9 overruled for now. I'm going to allow you to
10 refresh his memory and then proceed as you mentioned
11 you would.

12 BY MR. COHEN:

13 Q. Do you recall during the deposition
14 that the time frame you were talking about began in
15 April of 1995?

16 MR. JAWGIEL: Again, objection,
17 improper foundation.

18 HEARING OFFICER SUDMAN: Would you
19 like to make a standing objection to this line of
20 questioning?

21 MR. JAWGIEL: Yes. I don't think
22 unless he can lay the foundation that his memory has
23 to be refreshed or he can lay the foundation that he
24 is going to impeach him with something that's

1 actually impeachable in the transcript, he shouldn't
2 be allowed to go along this line.

3 HEARING OFFICER SUDMAN: Mr. Cohen,
4 would you like to lay a little more foundation for
5 this line of questioning, please?

6 MR. COHEN: Yes. I certainly don't
7 mean to intend to impeach Mr. Huff on this date.
8 I'm just trying to get the time line correct for the
9 Board.

10 HEARING OFFICER SUDMAN: Okay. Thank
11 you.

12 BY MR. COHEN:

13 Q. Rather than do that, let me direct
14 your attention to Complainant's Exhibit Number 34.

15 Do you have Complainant's Exhibit
16 Number 34 in front of you?

17 A. Yes, sir.

18 Q. Do you recognize what that document
19 is?

20 A. Yes, sir.

21 Q. Can you describe for the Board what
22 that is?

23 A. This is a report that I prepared
24 entitled site investigation of work plan for the

1 Skokie Valley Asphalt Company dated November 2000.

2 Q. And I believe several pages back
3 there's a --

4 MR. JAWGIEL: Your Honor, I'm going to
5 have an objection to the use of this document. This
6 has to go to remediation after the incident that's
7 at issue. Areas that are unrelated have not been
8 tied into this particular case, so to admit this
9 document in full or to use this document in full is
10 inappropriate without a proper foundation and
11 without a causal link into the issues that are
12 germane to this case.

13 HEARING OFFICER SUDMAN: Well, I
14 believe that's probably where your testimony is
15 headed, Mr. Cohen.

16 MR. COHEN: It is headed, but again,
17 for the moment, I'm just trying to get the time line
18 correct, you know, for the record. And there is a
19 section in here that I believe will help refresh his
20 recollection.

21 HEARING OFFICER SUDMAN: Okay. Please
22 proceed.

23 BY MR. COHEN:

24 Q. I believe there's a section in this

1 report, and correct me if I'm wrong, concerning the
2 Avon Fremont drainage ditch release of 1994, '95, do
3 you see that section?

4 A. Yes, sir.

5 Q. And is there also a chronology of
6 events of the work that you performed in that
7 section of your report?

8 A. Not only myself, but Skokie Valley,
9 yes, sir.

10 Q. Could you take just a minute to glance
11 at the chronology to see when your work at the site
12 first began? Have you had a chance to glance --

13 A. Well, yes, sir. Not necessarily the
14 first phone call that I had, but the April 22nd,
15 1995 is when they located that drain tile, so it
16 wasn't late March, it was late April.

17 Q. Thank you.

18 Now, would you have gone out to
19 the site for the first time in late April after the
20 Fredericks had first found that drain tile with the
21 oil in it?

22 A. That's my recollection that would have
23 been the first time. It's possible I had a site
24 meeting before that, but I think this was the first

1 time.

2 Q. When you went out there for that first
3 site visit, what observations did you make?

4 A. Well, I drove and looked at the Avon
5 Fremont drainage ditch at a variety of locations. I
6 observed the drain tile outfall going into the Avon
7 Fremont drainage ditch.

8 Q. What observations did you make of the
9 Avon Fremont drainage ditch?

10 A. Well, there was still a slight oil
11 sheen, there were some booms that had been placed, I
12 believe, at that point by USEPA's contractor, and
13 those booms were basically desorbing as much oil off
14 of them back into the Avon Fremont drainage ditch as
15 they were absorbing on the front end. So the booms
16 were really not very effective because the oil flow
17 was so light. And as you went further down the Avon
18 Fremont drainage ditch, the oil had totally
19 disappeared from the surface. It was not traveling
20 more than a mile or so down that Avon Fremont
21 drainage ditch at that point.

22 Q. And when you were describing a mile,
23 you're talking about a mile from where the drain
24 tile fed the Avon drainage ditch downstream?

1 A. That's correct.

2 Q. When you went out there this first
3 site visit, did you see anyone there from the
4 USEPA?

5 A. I'm not sure if it was that first site
6 visit. Certainly that same week, within a couple
7 days of my first time, there was a large contingent
8 of USEPA -- I believe Don Klopke, from the Illinois
9 EPA was also present, and there was about five or
10 six people from the regulatory agencies there, and
11 there was, I believe, also a consultant that was
12 along with them.

13 Q. Now, you also mentioned on your first
14 visit that you went to look at the farm tile, did
15 you -- what were your observations of the farm tile?

16 A. Well, where it was entering into the
17 Avon Fremont drainage ditch, someone had previously
18 wrapped, if you will, the -- there was a
19 polyethylene perforated corrugated drain tile at
20 that point, had wrapped it back into kind of a
21 little bay area and had installed a series of booms
22 right in that area.

23 So behind those booms, there was
24 some oil. Clearly at that point what was flowing

1 out of the drain tile, it was not apparent that
2 there was any oil flowing out at that point in time,
3 but it was difficult to tell because it was back in
4 this bay area.

5 Q. So when you're describing this drain
6 tile that you just did, are you describing it at the
7 point where it empties into the drainage ditch?

8 A. Yes, sir.

9 Q. Now, you mentioned that the USEPA
10 booms were already desorbing by the time you had
11 seen them? You were seeing them this first time,
12 correct?

13 A. Yeah I'm not sure about the word
14 already. They were desorbing when I observed them.
15 They may have been out there for months at that
16 point.

17 Q. Based on the fact that the booms were
18 desorbing when you saw them, could you tell or
19 estimate how long they had been absorbing oil?

20 A. No, sir, no idea.

21 Q. Could you determine based on the fact
22 that they were desorbing oil how much oil they had
23 absorbed?

24 A. No, you cannot.

1 Q. After seeing the oil in the farm tile
2 and the drainage ditch, what did you suggest Skokie
3 Valley Asphalt do at that point?

4 A. I think you're mischaracterizing my
5 testimony. I don't believe I ever said I observed
6 oil in the drain tile. There was a sheen on the
7 Avon Fremont drainage ditch, so I recommended that
8 Skokie Valley purchase some much better booms that
9 do not suffer this bleeding, if you will, or
10 desorption of oil. There are much better booms out
11 there than what USEPA's contractor was utilizing.
12 Skokie Valley did that, they went and picked up
13 those booms and replaced the USEPA booms with these
14 better oil-absorbing booms.

15 Q. Why did you make that suggestion to
16 Skokie Valley Asphalt as opposed to the USEPA?

17 A. Because I thought it was the
18 environmentally right thing to do, asking USEPA to
19 go buy better booms frankly would take six months
20 even if they would agree to do it. For a protection
21 of the environment, it was something that I thought
22 should be done right away, and Skokie Valley agreed
23 to do it.

24 Q. Now, did you have a chance to examine

1 the farm tile that you had discussed plugging before
2 you had gone out to the site?

3 A. No, sir, that was done that Saturday
4 when I received that phone call from one of the
5 Fredericks.

6 Q. So when you went out on your first
7 site visit, were you able to tell that that had been
8 done?

9 A. Only that the soil had been disturbed
10 in that area, that it had been plugged and the soil
11 brought back up to grade.

12 Q. And I think you mentioned that Skokie
13 Valley did purchase the booms that you recommended
14 and placed them in the Avon drainage ditch?

15 A. Yes, sir, and we communicated to
16 USEPA that Skokie Valley would take over the
17 responsibility for maintaining those booms.

18 As the water level drops or rises
19 in a stream, you have to constantly adjust those
20 booms. You just can't put them out and leave them.
21 You have to adjust it to make sure that you're not
22 getting oil slipping by the sides as the water
23 crops.

24 Q. And downstream in this case actually

1 means north of where the field tile empties into the
2 ditch, would that be correct?

3 A. Where the booms were placed, that's
4 correct.

5 Q. And the Avon drainage ditch flows
6 north?

7 A. Initially, north from where the drain
8 tile was and then it has an easterly component to
9 the flow.

10 Q. After that first visit in April of
11 1995, did you do your additional work at the site
12 related to the oil sheen in the Avon Fremont
13 drainage ditch?

14 MR. JAWGIEL: Objection. This has
15 nothing to do -- I'm sorry. Did he say the Avon
16 Fremont drainage ditch?

17 HEARING OFFICER SUDMAN: Yes.

18 MR. JAWGIEL: I'll withdraw that
19 objection.

20 BY THE WITNESS:

21 A. I collected two samples out of that
22 drain tile to measure the oil content that was
23 flowing out of that drain tile.

24

1 BY MR. COHEN:

2 Q. Do you recall when you did that?

3 A. I believe one would have been that
4 first week that I got involved out there after the
5 incident, so it would have been the last week in
6 April, and the second one was probably a week later
7 in early May.

8 Q. As part of your work for Skokie Valley
9 Asphalt, you also prepared a chronology of the
10 things that you did at the site beginning in April
11 1995, correct?

12 A. Several times, yes.

13 Q. And eventually, you also prepared a
14 site investigation and work plan on behalf of Skokie
15 Valley Asphalt which you submitted to the Illinois
16 EPA, correct?

17 MR. JAWGIEL: Your Honor, I'm going to
18 object. There's no relevance with respect to the
19 broad base of that work plan to the issues in this
20 case.

21 HEARING OFFICER SUDMAN: Well, I'm
22 going to allow the testimony to make it relevant.

23 BY THE WITNESS:

24 A. Yes, sir.

1 BY MR. COHEN:

2 Q. Directing your attention back to
3 Exhibit Number 34, which is in front of you, did you
4 prepare that report?

5 A. Yes, sir.

6 MR. JAWGIEL: Same -- sorry. Go
7 ahead.

8 BY MR. COHEN:

9 Q. And does that appear to be a true and
10 correct copy of your report?

11 MR. JAWGIEL: Again, your Honor, I'm
12 going to object to admitting this report, this total
13 into evidence. There are issues in here that are
14 not germane to the issues of this case.

15 HEARING OFFICER SUDMAN: Mr. Cohen,
16 can you reference what this exhibit -- how this
17 relates to -- which allegations of the complaint
18 that this exhibit may relate to?

19 MR. JAWGIEL: In total. I mean, this
20 is about a two-inch document here, and I want to
21 know how two inches of paper that are in here which
22 relate to other issues on this site are related to
23 this cause?

24

1 MR. COHEN: This is a document that
2 the respondent's consultant prepared and submitted
3 to the Illinois EPA as part of the site remediation
4 program that they participated in. It includes
5 information related specifically to the Avon Fremont
6 drainage ditch release in 1994 and 1995. It also
7 includes historical data about prior releases at the
8 site. It also includes information about different
9 areas on the site where Mr. Huff was able to find
10 oil contamination throughout his work over the last
11 eight-plus years of working at the Skokie Valley
12 site. All of that oil contamination on the site is
13 relevant to this case.

14 MR. JAWGIEL: Your Honor, if I may?
15 Not all the oil contamination on
16 the site is relevant to the case, and they have to
17 tie it into what are the allegations in the
18 complaint, which is discharge into this particular
19 drainage ditch. Whether they find oil pooled
20 somewhere else on the property, unless they can draw
21 some sort of connection between that pool and that
22 ditch, it's not relevant in this case. And this is
23 a voluntary program that they've gone into to clean
24 up this area.

1 HEARING OFFICER SUDMAN: I agree with
2 the respondent, as I've already ruled in my Hearing
3 Officer Order of October 28th based upon his -- one
4 of his pretrial motion -- in the motion in limine,
5 that the evidence relating to the prior releases
6 must be tied into the allegations alleged in the
7 complaint. So I am going to -- for now I will allow
8 this testimony as an offer of proof so that you can
9 demonstrate relevance to the allegations in the
10 complaint with respect to the prior releases. With
11 respect to items that you can currently associate
12 with an allegation of the complaint, I will allow
13 that right now.

14 MR. COHEN: Your Honor, I just want to
15 also say for the record that, of course, we have our
16 42(h) and 33(c) factors that have to be considered,
17 and this information all points to that as well.

18 MR. JAWGIEL: 42(h), your Honor, says
19 allegations that have been adjudicated, not
20 allegations that have been brought out of the air.
21 Unless they can show it's either been adjudicated
22 and that this particular area that has been
23 remediated is tied into somehow this drainage,
24 whether it's historical or whether it's a direct

1 source of that contamination, they need to do that
2 in order to lay the proper foundation.

3 HEARING OFFICER SUDMAN: Mr.
4 Jawgiel, I think I just agreed with you, so let's
5 proceed.

6 MR. JAWGIEL: Sorry, your Honor.

7 BY MR. COHEN:

8 Q. Mr. Huff, I'm not sure if you had a
9 chance to answer is that a true and correct copy of
10 your report?

11 A. It appears to be, yes, sir.

12 Q. And directing your attention to
13 page 14 titled -- the section titled Avon Fremont
14 drainage ditch release, 1994, '95, do you have that
15 in front of you?

16 A. Yes, sir.

17 Q. And does that include the chronology
18 that you prepared related to that event?

19 A. Yes, sir.

20 Q. I'd like to continue with the
21 chronology of things that you did at the site or
22 either of the Fredericks did at the site. If you
23 need to refer to that chronology in front of you,
24 please do.

1 On the Monday in April, other than
2 seeing the oil sheen you described, were you able to
3 determine where the oil was coming from?

4 A. The oil in the drain tile?

5 Q. Correct.

6 A. No.

7 Q. Before going onto the next steps, can
8 you describe for the Board the type of land and land
9 use that surrounds the Skokie Valley Asphalt site?

10 A. To the south is agricultural land, to
11 the east is agricultural land, to the north is
12 railroad followed by an apartment complex, and to
13 the west is agricultural land followed a little
14 further west by a nursery.

15 Q. What is the land use between Skokie
16 Valley Asphalt's site and the Avon drainage ditch?

17 A. Immediately to the east is
18 agricultural land or was agricultural land in 1995.

19 Q. Is there any other industry, factories
20 or gas stations nearby?

21 A. Would you define nearby for me,
22 please?

23 Q. Well, that you can see from the drain
24 tile where it meets the Avon drainage ditch where

1 you were beginning your site investigation.

2 A. Well, as you go further north into
3 Grayslake, you have all of those things. So in the
4 immediate area, no, it's the land use that I
5 described.

6 Q. Farther away there are, of course,
7 other industries?

8 A. Yes.

9 Q. After that Monday, what other work did
10 you perform for Skokie Valley Asphalt related to the
11 oil flowing in the Avon Fremont drainage ditch?

12 A. Well, I continued to monitor the
13 presence or absence of a sheen on the Avon Fremont
14 drainage ditch. I continued to observe the drain
15 tile that was -- the clarity of the drain tile.

16 Q. Did you also pick up communications
17 with the USEPA?

18 A. Yes, sir, I was in almost daily
19 communications with the USEPA. They took the lead
20 on overseeing this, and so that was the regulatory
21 agency that I dealt with on a daily basis.

22 Q. Now, you mentioned earlier that a
23 drain tile had been plugged by the Fredericks, did
24 anything happen as a result of that?

1 MR. JAWGIEL: I'm going to object to
2 foundation and speculation.

3 BY THE WITNESS:

4 A. The drain tile --

5 HEARING OFFICER SUDMAN: Sir. Would
6 you like to respond to that? What was your
7 objection?

8 MR. JAWGIEL: Foundation and
9 speculation.

10

11 HEARING OFFICER SUDMAN: And the
12 question was?

13 BY MR. COHEN:

14 Q. You mentioned earlier that the
15 Fredericks had plugged the drain tile, did anything
16 happen as a result of that?

17 HEARING OFFICER SUDMAN: I'll allow
18 it. Overruled. You may answer.

19 BY THE WITNESS:

20 A. If you go back to that Exhibit 34 and
21 the chronology, after that April 25th, when that
22 field tile -- or April 22nd when the field tile was
23 plugged, over the next several weeks, the oil sheen
24 subsided coming out of the drain tile and to the

1 Avon Fremont drainage ditch.

2 BY MR. COHEN:

3 Q. Was there an incident where water had
4 also backed up into the farmland?

5 A. Yes.

6 Q. What was that about?

7 A. That drain tile drained the property
8 to the east of Skokie Valley. There's a low-lying
9 area, and this drain tile drained that area. And so
10 as a result of plugging that drain tile, the water
11 began to accumulate in the low-lying part of the
12 field to the east. And so Skokie Valley ran a new
13 drain tile along the road on the east side of their
14 property and connected that downstream of where they
15 had previously plugged it to allow that low-lying
16 area to drain.

17 Q. Now, you mentioned that you continued
18 to conduct inspections of the Avon drainage ditch
19 area and the area the Skokie Valley Asphalt property
20 as well; is that correct?

21 A. Yes.

22 Q. When you were conducting those
23 inspections of the ditch in that area, were the
24 Fredericks brothers with you?

1 A. Sometimes.

2 Q. What else did you do at the Skokie
3 Valley Asphalt site?

4 A. You want to give me a time frame,
5 please?

6 Q. After you finished this preliminary
7 work with the drain tile, did you do additional work
8 at the Skokie Valley Asphalt site?

9 A. Well, I've been doing work there for
10 eight years.

11 Q. What was the next thing you did?

12 A. Well, we dug a series of pits, if you
13 will, on the Skokie Valley site down to basically
14 what was the fill and native soil interface, and
15 that's where you had some perched water that these
16 drain tiles were draining in part in an attempt to
17 see if there was any evidence of any oil or
18 petroleum sitting on that ground water.

19 Q. Did any of your work include
20 underground storage tanks?

21 A. Yes, sir.

22 Q. What work did you do related to
23 underground storage tanks on the Skokie Valley
24 Asphalt site?

1 A. On April 28th, 1995, Skokie Valley
2 discovered that their heating oil tank on one of the
3 buildings on the west side contained water, and so
4 our initial thought was, whoa, maybe that heating
5 oil was the source of the oil. It was speculation
6 clearly at that time. We reported a leaky
7 underground storage tank incident to IEMA, the
8 Illinois Emergency Management Agency on April 28th.

9 Q. Do you know what the underground
10 storage tank -- was there just one underground
11 storage tank at this point?

12 A. Well, they had three underground
13 storage tanks. They had the heating oil tank and
14 then there were two small waste oil tanks also
15 located on the west property line.

16 Q. What does water indicate in an
17 underground storage tank?

18 A. Indicates that water has gotten into
19 the tank either through leaving some line open or
20 potentially that there's a hole in the piping or the
21 tank itself.

22 Q. You mentioned that you reported this
23 leaking underground storage tank to IEMA?

24 A. Yes, sir.

1 Q. And why did you think that was
2 necessary?

3 A. Because we had evidence or a
4 suggestion from the water in the tank that there had
5 been a leak from the underground storage tank, and
6 the federal state regulations, as I understand them,
7 require an immediate notification in the event of a
8 discovery of a leaky underground storage tank.

9 Q. And that was discovered April 28th,
10 1995?

11 A. That's correct.

12 Q. Now, was this also still around the
13 time period where you're conducting your inspections
14 around the Avon drainage ditch and around the site?

15 A. Yes, sir.

16 Q. When you were conducting those
17 inspections of the ditch and the area around it, did
18 you find any other sources of oil that were
19 discharging into the farm tile for the Avon drainage
20 ditch?

21 MR. JAWGIEL: Your Honor, I'm going to
22 object. He hasn't established that any of the oil
23 so far located was actually discharging out of the
24 farm tile into the ditch, particularly, with respect

1 to the tank, so I object to the foundation in the
2 form of that question?

3 HEARING OFFICER SUDMAN: Overruled.

4 BY THE WITNESS:

5 A. Could you repeat the question, please?

6 BY MR. COHEN:

7 Q. Yes.

8 When you were conducting your
9 inspections of the ditch and the area around it, did
10 you find other sources of oil that were discharging
11 in the farm tile or the ditch?

12 MR. JAWGIEL: Same objection.

13 BY THE WITNESS:

14 A. I don't believe that we found any
15 evidence that the oil that we found was discharging
16 to the ditch. I don't think I ever reached that
17 conclusion.

18 BY MR. COHEN

19 Q. Did you find any areas off Skokie
20 Valley's site where you found evidence that oil was
21 discharging into the ditch?

22 A. I never looked anywhere offsite. That
23 I didn't think was my responsibility nor Skokie
24 Valley's responsibility.

1 Q. Well, did you look in the farmland
2 between the Avon drainage ditch and Skokie Valley
3 Asphalt?

4 MR. JAWGIEL: Objection, asked and
5 answered. He gave a broad-based question, did you
6 look anywhere else for it offsite, now he's trying
7 to re-ask the question over.

8 HEARING OFFICER SUDMAN: I'll allow
9 it.

10 BY THE WITNESS:

11 A. Did I look on the property to the
12 east? No, I did not do any investigation on the
13 property to the east.

14 BY MR. COHEN:

15 Q. Well, when you saw the pond buildup on
16 the property adjacent to Skokie Valley because of
17 the plugged drain tile, did you look in that area
18 and see any sources of oil?

19 A. Did I look in that area? No.

20 Q. Were you involved in any of that
21 re-routing of the drain tile at that time?

22 A. No.

23 Q. After you discovered the leaking
24 underground storage tank, did you think you had

1 found the cause of the oil on the Skokie Valley
2 Asphalt site and in the drainage ditch at the time?

3 A. At that time, I thought potentially we
4 had indeed found it, yes, sir.

5 Q. Was the removal of the underground
6 storage tanks the last work that you performed at
7 the site?

8 A. No, sir, I'm continuing to perform
9 work till this day.

10 Q. A minute ago, I think you mentioned
11 there were three underground storage tanks in this
12 area where you found a leaking underground storage
13 tank, correct?

14 A. Yes, sir.

15 Q. Were all three tanks removed?

16 A. Yes.

17 Q. Why were all three tanks removed?

18 A. Well, the case of the heating oil, we
19 had an indication that there had been a leak. I
20 don't recall if it was my recommendation or Larry
21 and Richard Frederick's idea, but they thought it
22 was time to pull the two waste oil tanks as well.
23 It could have been a collaborative decision, but
24 there are alternatives to storing waste oils in

1 underground storage tanks, and Skokie Valley elected
2 to go to an alternative approach, a more
3 environmentally sound way of doing that.

4 Q. What other work have you done besides
5 the removal of the underground storage tanks at the
6 Skokie Valley Asphalt site?

7 MR. JAWGIEL: Again, your Honor, I
8 object to other things that Mr. Huff may have done
9 on their site unless there can be a foundation laid
10 that it's related to the allegations in this
11 complaint.

12 HEARING OFFICER SUDMAN: Overruled.

13 BY THE WITNESS:

14 A. I had done some work on their NPDES
15 permit, I've done some work on air permitting work.
16 I have an ongoing project now there. We have the
17 site enrolled in the voluntary site remediation
18 program, and that work continues till this day. I
19 have done some work under SARA Title III, the tier
20 one, tier two reports for Skokie Valley. And I'm
21 sure there's considerable miscellaneous work that
22 I've done over time for them related to storm water
23 issues, that type of thing.

24 Q. Now, did part of that work include a

1 subsurface investigation?

2 A. Yes.

3 Q. And you mentioned the Illinois site
4 remediation program, what is Skokie Valley Asphalt
5 seeking in terms of the site remediation?

6 MR. JAWGIEL: Your Honor, same
7 objection. I don't see what the relevance is to the
8 allegations in the complaint regarding what they're
9 seeking at this point in time. I don't see it
10 without a foundation.

11 HEARING OFFICER SUDMAN: Mr. Cohen,
12 what is this line of questioning going towards?

13 MR. COHEN: Well, it's all going
14 toward the water pollution allegation and the
15 history of the site as a result of the work that
16 Mr. Huff did at the site. He found numerous areas
17 through his subsurface investigation where there was
18 oil contamination at the site, and also, learned the
19 history of the site and how those areas of oil
20 contamination came to be.

21 MR. JAWGIEL: Again, your Honor, I
22 don't see the relevance unless they can tie it into
23 what the allegations in the complaint raise, which
24 is basically that this witness so far has been the

1 contamination in the Avon drainage ditch.

2 HEARING OFFICER SUDMAN: Well, I think
3 the People have just said that it relates back to
4 the water pollution count of this case, so...

5 MR. JAWGIEL: That's nice that the
6 People say that, but the people have to prove it,
7 and they have to lay some sort of foundation that it
8 does relate back. It just can't be tossed out there
9 and eventually maybe never even tied in.

10 HEARING OFFICER SUDMAN: You have a
11 point. Your point is well taken, Mr. Jawgiel. I
12 will take this line of questioning as an offer of
13 proof.

14 MR. JAWGIEL: Your Honor, I would
15 object to the Board accepting this only as an offer
16 of proof, and 42(h) specifically allows the Board to
17 consider duration and gravity of violations, the
18 presence or absence of due diligence on the part of
19 the violator in attempting to comply with the
20 requirements of the Act.

21 HEARING OFFICER SUDMAN: Your
22 objection is noted. I'm taking it as an offer of
23 proof just because -- just to ensure that it does
24 relate to the allegations in the complaint.

1 BY MR. COHEN:

2 Q. I don't suppose you remember the
3 question?

4 A. No, sir, I don't.

5 Q. What was Skokie Valley Asphalt seeking
6 in terms of the no further remediation letter or the
7 site remediation program I guess is the way to say
8 it?

9 A. My understanding is Skokie Valley
10 Asphalt enrolled in the voluntary program as part of
11 the sale of the company to Curran Contracting. The
12 specific application is seeking a no further
13 remediation letter for two types of compounds,
14 benzene, toluene, ethylbenzene and xlenes, and
15 a second group called polynuclear aromatic
16 hydrocarbons. Both of those are associated with
17 the type of compounds that were used at that site
18 historically, asphalt-based compounds,
19 petroleum-based compounds.

20 Q. And would that be considered seeking a
21 focused no further remediation letter?

22 A. Yes, sir.

23 Q. And is that what the site
24 investigation and work plan that you prepared was

1 for, the site remediation program?

2 A. Yes, sir.

3 Q. And that's Complainant's Exhibit
4 Number 34 that's in front of you, correct?

5 A. Yes, sir.

6 Q. To participate in that program, you
7 have to submit a site remediation program
8 application and services agreement, the DRM-1 to the
9 Illinois EPA, correct?

10 A. Yes, sir

11 Q. Who signed that form on behalf of
12 Skokie Valley Asphalt?

13 A. I don't recall.

14 Q. I believe if you'll refer to Exhibit
15 Number 34, it might be the second or third page in.

16 A. DRM-1 is signed by Edwin Frederick,
17 which is Larry Frederick.

18 Q. And when did Larry Fredericks sign
19 that?

20 A. October 26, 1998.

21 Q. During your subsurface investigation
22 of Skokie Valley Asphalt site, did you find other
23 areas of oil contamination?

24 MR. JAWGIEL: Your Honor, I think

1 we're still in an offer of proof situation here.

2 HEARING OFFICER SUDMAN: Yes, as far
3 as I know, this is testimony relating to the history
4 of the site. Would you repeat the question?

5 MR. COHEN: Yes.

6 BY MR. COHEN:

7 Q. During your subsurface investigation
8 of the Skokie Valley Asphalt Company site, did you
9 find other areas of oil contamination?

10 HEARING OFFICER SUDMAN: What is the
11 time frame that you're discussing here?

12 MR. COHEN: Well, his investigation
13 continues after this initial April work on through
14 to today.

15 MR. JAWGIEL: But, your Honor, we've
16 already established that there are many other areas
17 that he's working on that are not related to the
18 allegations in the complaint. And again, they still
19 have not tied it in.

20 Allegedly, they were given a
21 latitude to do an offer of proof to show some sort
22 of causal connection, and we have yet to hear it.

23 HEARING OFFICER SUDMAN: Well, that
24 was when I thought that this line of questioning was

1 going to go towards evidence that predated the
2 period of this complaint. You know, it's hard for
3 me to know what testimony is coming from where I'm
4 sitting.

5 So I agree, I think this
6 particular testimony is relevant. I'm going to
7 allow it.

8 MR. JAWGIEL: If I just may make the
9 record, the subsequent remediation of areas not
10 related to the allegations of the complaint have no
11 relevance unless the State can tie them in to
12 something as it related to the allegations of the
13 complaint.

14 Whether they found oil somewhere
15 else on-site and remediated it, involuntarily by the
16 way, has no relevance whatsoever to this case at all
17 at any level to what is in the complaint.

18 HEARING OFFICER SUDMAN: And, Mr.
19 Cohen, you are asserting that it is relevant towards
20 Count III and sections 33 and 42?

21 MR. COHEN: Yes, definitely 42(h) and
22 33(c). I want to say -- I'm not sure Count III is
23 accurate. I believe it's Count IV, Madam Hearing
24 Officer. My second amended complaint shows Count IV

1 as water pollution.

2 MR. JAWGIEL: Your Honor, that clearly
3 does not relate to either of those sections.

4 HEARING OFFICER SUDMAN: I'm going to
5 overrule your objection. Please continue.

6 BY MR. COHEN:

7 Q. Mr. Huff, during your subsurface
8 investigation of the Skokie Valley Asphalt Company
9 site, did you find other areas of oil contamination?

10 MR. JAWGIEL: Same objection.

11 HEARING OFFICER SUDMAN: Sir, would
12 you like to make a standing objection?

13 MR. JAWGIEL: Yes, I would, to all
14 lines of questioning regarding Exhibit 34 is my
15 standing objection that are not causally related or
16 related somehow with the proper foundation to the
17 allegations in the complaint. That's my objection.

18 HEARING OFFICER SUDMAN: I'm going to
19 overrule that for now, because I --

20 MR. JAWGIEL: Do I get a standing
21 objection, though, with respect to that?

22 HEARING OFFICER SUDMAN: Yes.

23 MR. JAWGIEL: Then we're fine.

24

1 BY THE WITNESS:

2 A. Could you clarify, when you say other
3 areas of contamination, what the first areas of
4 contamination are that you're referring to?

5 BY MR. COHEN:

6 Q. Well, let me just say after the
7 leaking underground storage tank is removed, did you
8 find other areas on the site of oil contamination?

9 A. Let me see if I can answer it this
10 way. When we removed all three tanks, we removed
11 the tank backfill area, collected soil samples --

12 Q. Excuse me. That's not my question.

13 A. I think it is.

14 Q. No, excuse me.

15 Once the tanks are removed --

16 A. Right.

17 Q. -- did you find other areas on-site --
18 okay.

19 Once the tanks are removed, did
20 you find any areas on-site of oil contamination?

21 A. I was trying to answer that question.

22 Once the tanks were removed, we
23 took soil samples. I'd be happy to tell you what we
24 found because I think that's the question, but you

1 indicate that's not the question.

2 Q. Did you find oil contamination when
3 you took those samples?

4 A. No, they were clean.

5 Q. So that wasn't my question.

6 A. Okay. You want to try again for me,
7 please?

8 Q. Did you find oil contamination on the
9 Skokie Valley Asphalt property?

10 A. As part of the Exhibit 34 work.

11 Q. Is that a yes?

12 A. I'm trying to understand the
13 question --

14 Q. Listen, please.

15 MR. JAWGIEL: Your Honor, there's no
16 need to get combative with the witness. I'd ask
17 that you admonish counsel.

18 HEARING OFFICER SUDMAN: Both of you
19 please calm down. We're all trying to get this
20 evidence in the record as quickly as possible.

21 Please ask the question again.

22 BY MR. COHEN:

23 Q. Did you find oil contamination on the
24 Skokie Valley Asphalt site?

1 A. No time frame in answer to that is we
2 have found evidence of oil on the site, yes, sir.

3 Q. Where did you find evidence of oil
4 contamination on the site?

5 A. The three underground storage tanks,
6 there was limited amount of contamination associated
7 with petroleum products in the tank backfill. It
8 did not extend outside the tank backfill.

9 We have dug a series of trenches
10 on the property to the north of the building and the
11 south, there wasn't a trench there, but there was
12 evidence of petroleum sitting on the same perched
13 ground water.

14 Q. Is that the only other area where you
15 found oil on the Skokie Valley Asphalt site?

16 A. To the best of my recollection, that
17 extended a little to the east, and I think that was
18 the only area. We did not find it over by the
19 aboveground storage tanks.

20 Q. Did you find any trapped oil at the
21 fill, native soil interface on the south end of the
22 Skokie Valley Asphalt site?

23 A. I think that was the area I just
24 referenced, yes, sir.

1 Q. How do you know you an oil got to that
2 area of the site?

3 A. It would require me to speculate. If
4 I could do that, I'd be happy to.

5 MR. JAWGIEL: No, I'm going to object
6 to any speculation. If he doesn't know, he doesn't
7 know.

8 HEARING OFFICER SUDMAN: Would you
9 like to respond to that, Mr. Cohen?

10 MR. COHEN: If I could just re-ask the
11 question, maybe?

12 HEARING OFFICER SUDMAN: Okay.

13 BY MR. COHEN:

14 Q. Mr. Huff, do you know or did you learn
15 how the oil in the area at the south end of the
16 Skokie Valley Asphalt property got to that area of
17 the property?

18 A. No, sir.

19 Q. Did you discuss the history of the
20 Skokie Valley Asphalt site with the Frederick
21 brothers to learn what might have caused the oil to
22 get in that portion of the site?

23 A. Yes, sir.

24 Q. Based on that conversation, do you

1 have an idea as to how the oil might have gotten to
2 that location?

3 A. Yes, I do.

4 Q. And what is that?

5 A. There was a gasoline underground --

6 MR. JAWGIEL: Your Honor, I'm just
7 going to object. This is speculation.

8 HEARING OFFICER SUDMAN: He's an
9 environmental consultant, he can give his
10 professional opinion on --

11 MR. JAWGIEL: It's based purely on
12 hearsay. It isn't based on anything else. He
13 hasn't laid a foundation at all. It's based purely
14 on hearsay of conversations he may have had with
15 people who haven't even been identified individually
16 and what they said. The foundation has not been
17 laid.

18 HEARING OFFICER SUDMAN: He didn't ask
19 what was said, he asked what his opinion was from
20 that, was that not your question, Mr. Cohen?

21 MR. COHEN: Correct.

22 MR. JAWGIEL: The question was, based
23 on those conversations, did you have an
24 understanding where the oil had come from. That's

1 pure speculation, and it's based solely on hearsay.

2 HEARING OFFICER SUDMAN: Overruled.

3 He can give his professional opinion.

4 You may answer, sir, if you remember
5 the question.

6 BY THE WITNESS:

7 A. There was three possible sources.

8 There was a gasoline underground storage tank in
9 that area that was removed in about 1975 or '76.

10 After it's removal, Skokie Valley ran a product line
11 over to the same pump island from the aboveground
12 storage tank, so you had that line as well. And
13 when the asphalt plant was operating, there was a
14 heating oil line that went from the aboveground
15 storage tanks in the southwest corner to the asphalt
16 plant. So on Skokie Valley's property, there are
17 three potential causes of the oil that was observed
18 in the subsurface on Skokie Valley's property.

19 BY MR. COHEN:

20 Q. You mentioned earlier that you also
21 dug some trenches on the Skokie Valley Asphalt site,
22 was the purpose of that to collect some oil
23 contamination?

24 MR. JAWGIEL: Your Honor, I'm going to

1 object to the leading nature. This is not an
2 adverse witness. He does not have a right to lead.
3 He has to ask open-ended questions.

4 HEARING OFFICER SUDMAN: Mr. Cohen,
5 would you please rephrase your question?

6 BY MR. COHEN

7 Q. Why were you digging the trenches that
8 you described earlier on the site?

9 A. We dug the trenches to try to identify
10 whether there was oil present at that fill made of
11 soil interface.

12 Q. And by digging those trenches, were
13 you able to determine that there was oil present?

14 A. Yes, sir, in the general vicinity on
15 that south side where the former gasoline
16 underground storage tank was located.

17 Q. And based on observing, did you
18 observe the oil in that location or was there some
19 other way to detect it?

20 A. I observed it.

21 Q. Based on your observations, did you do
22 any work to remove that oil?

23 A. We installed a couple of drain tiles
24 with perforated pipes and connected those to a sump

1 and then the oil was manually removed by Skokie
2 Valley on, I think, approximately a weekly basis
3 from that sump.

4 Q. Was that the only area on the site
5 where you dug trenches to remove oil contamination?

6 A. You being Huff and Huff, Jim Huff or
7 Skokie Valley?

8 Q. Skokie Valley.

9 A. They subsequently extended some
10 trenches across approximately the south third of the
11 property. They put in three more perforated
12 horizontal drain tiles.

13 Q. And what was the purpose of that?

14 A. Again, to drain any oil that might be
15 present in that same interface, the native soil and
16 fill interface.

17 Q. Did you also find oil on the Skokie
18 Valley Asphalt property along the east side?

19 MR. JAWGIEL: Your Honor, I'm going to
20 object to the leading nature of the question. He
21 has no reason to ask open-ended questions. He's not
22 an adverse witness.

23 HEARING OFFICER SUDMAN: Would you
24 please rephrase your question, Mr. Cohen.

1 BY MR. COHEN:

2 Q. Where else may you have found oil
3 contamination on the Skokie Valley Asphalt property?

4 A. I don't believe we did.

5 Q. After 1995, did your opinion change as
6 to what possibly caused the oil sheen to appear in
7 the Avon drainage ditch?

8 A. Yes, sir.

9 Q. How did that change?

10 A. When we removed the three underground
11 storage tanks, their release that was associated
12 with all three of those is what would be classified
13 as a minor release that was limited to the tank
14 backfill itself, so I was no longer of the opinion
15 that they could be the source of the oil that was
16 observed in the Avon Fremont drainage ditch.

17 Q. Did your opinion change also related
18 to some of the work you had done on the site?

19 A. I'm not sure I'm following the
20 question.

21 MR. COHEN: Directing counsel's
22 attention to page 50.

23 MR. JAWGIEL: Your Honor, this is not
24 impeachment. There's no question to impeach him on.

1 You only use the transcript for impeachment
2 purposes.

3 HEARING OFFICER SUDMAN: What are you
4 using this for?

5 MR. COHEN: The answer that he just
6 gave is different than the answer that he gave at
7 his deposition.

8 MR. JAWGIEL: The answer he gave
9 was I'm not sure what you're asking I think is what
10 his answer was. It was a clarification comment,
11 not --

12 HEARING OFFICER SUDMAN: Let's back
13 up. Would you repeat the question for the witness
14 again, please?

15 BY MR. COHEN:

16 Q. In 1996, how did your opinion of what
17 caused the oil sheen on the Avon drainage ditch
18 change?

19 A. Well, as I said, I no longer believed
20 it was associated with the three underground storage
21 tanks along the west side.

22 Q. What did you believe it was caused by?

23 A. Well, I think there's a chance, a
24 probability or possibility, that it could be

1 associated with the three items that I had described
2 earlier along the south side. There was a former
3 gasoline tank there, there was a fill line from the
4 ASTs that went over to that same pump island, or it
5 could be the line that went to the hot mix asphalt
6 and then from the underground storage tanks. All
7 three of those are potential sources for that oil.

8 Q. Are you still doing work related to
9 the Skokie Valley Asphalt site?

10 A. Yes, sir.

11 Q. Who are you actually working for?

12 A. You know, I'm not sure. I -- whether
13 Skokie Valley or Larry and Richard Frederick. I
14 really don't know. I have a contract with Skokie
15 Valley Asphalt that goes back to probably 1998 or
16 so.

17 Q. Who's paying your fees?

18 A. You know, I -- I don't know. I mean,
19 we get a check. I don't see those checks.

20 Q. Do you recall giving your deposition
21 on August 29th, 2003?

22 A. I recall giving a deposition, yes.

23 Q. Page 43. Do you recall this question
24 and giving this answer:

1 MR. JAWGIEL: What line or lines?

2 MR. COHEN: Line two.

3 BY MR. COHEN:

4 Q. "Question: The work that you are
5 continuing to perform is all for Skokie Valley
6 Asphalt?"

7 "Answer: Well, I believe it's for the
8 Fredericks."

9 MR. JAWGIEL: Your Honor, I don't
10 think that's impeachment. That's not impeachment
11 whatsoever. I ask that that be struck from the
12 record. He indicated he thinks it could have been
13 Skokie Valley or possibly the Fredericks. That's
14 not impeachment.

15 HEARING OFFICER SUDMAN: Well, I'm not
16 sure what the significance is. I'm going to allow
17 it though.

18 BY MR. COHEN:

19 Q. Do you recall that question and giving
20 that answer?

21 A. No, sir.

22 Q. Who do you report to as your work
23 evolves at the Skokie Valley Asphalt or what used to
24 be the Skokie Valley Asphalt site in Grayslake?

1 A. Larry and/or Richard Frederick.

2 Q. Ever since starting your work at the
3 Skokie Valley Asphalt Company site in Grayslake,
4 have you always reported to both Larry and Richard
5 Frederick?

6 A. One or the other or both.

7 Q. Have you ever dealt with anyone else
8 at Skokie Valley Asphalt site related to your work?

9 A. Not from a management perspective, no.
10 I mean, we've certainly dealt with employees that
11 have been on the site and things, but all the
12 management and reporting has been to Larry and/or
13 Richard.

14 Q. What environmental work is left to do
15 at the Skokie Valley Asphalt site?

16 MR. JAWGIEL: Again, same objection,
17 your Honor. I guess I have a standing objection to
18 this. I just want to make sure that this is part of
19 my standing objection regarding this whole
20 remediation of this site that is not related to the
21 allegations of the complaint.

22 HEARING OFFICER SUDMAN: And again,
23 Mr. Cohen, I will just ask you to repeat what
24 allegations are you using this testimony to support?

1 MR. COHEN: Well, it relates to the
2 water pollution count and 42(h) and 33(c) factors.

3 HEARING OFFICER SUDMAN: Okay. I'll
4 allow it.

5 BY THE WITNESS:

6 A. We are working on the site
7 investigation completion report. We have an ongoing
8 soil vapor extraction operation at the facility. We
9 have the risk assessment to do and the corrective
10 action completion report yet to do.

11 BY MR. COHEN:

12 Q. Are you able to estimate how long the
13 rest of that work will take?

14 MR. JAWGIEL: Objection, your Honor.
15 I don't understand the relevance to that at all and
16 how that relates to any allegation in the complaint.
17 What's the relevance of duration of, how long this
18 process is going to take. It's not coming out of
19 the State coffers, it's coming out of the
20 Fredericks.

21 HEARING OFFICER SUDMAN: Would you
22 like to respond to that, Mr. Cohen?

23 MR. COHEN: Again, your Honor, it
24 relates to the water pollution count and 42(h) and

1 33(c) factors.

2 MR. JAWGIEL: First off, how does it
3 relate to 42(h)? I'd like to know where in 42(h)
4 this relates, this particular question relates?

5 MR. COHEN: Is the Madam Hearing
6 Officer going to make me conduct this legal --

7 HEARING OFFICER SUDMAN: No, no. I'm
8 going to overrule your objection. He may answer, if
9 he knows.

10 MR. JAWGIEL: I'm going to also object
11 it calls for speculation. I don't think he
12 established a foundation for that either.

13 HEARING OFFICER SUDMAN: If he doesn't
14 know, he can say he doesn't know.

15 BY MR. COHEN

16 Q. Do you remember the question?

17 A. It's complicated by what the future
18 land use for that property is, and at this point, I
19 can't give you an estimate because, primarily, it's
20 a land use issue.

21 Q. Thank you.

22 During your investigation, did you
23 learn of earlier incidents where oil from Skokie
24 Valley Asphalt was reported to be released in the

1 Avon drainage ditch. I'm talking before the 1994,
2 1995 release?

3 A. And did I learn of them as part of my
4 investigation, yes, sir. Those are referenced in
5 Exhibit 34 in the appendices.

6 Q. What incidents did you learn about?

7 A. Skokie Valley, at one point, had a
8 three foot coating on top of their asphalt at the
9 facility. There was a rain storm before that
10 coating was cured causing a runoff of a sheen that
11 entered into the storm sewer of Grayslake and got
12 into wherever that storm sewer discharged. I
13 believe that was the incident that caused Skokie
14 Valley to be identified on the CERCLA list.

15 Subsequent to the --

16 Q. Excuse me. Do you recall when that
17 incident was?

18 A. No, I do not.

19 Q. This might help. Let me direct your
20 attention to pages 10 and 11, Complainant's Exhibit
21 Number 34. I'm not sure if that will help you.

22 A. Well, I believe in 1975, as a result
23 of the exit from the Skokie Valley property that
24 flowed north under the railroad tracks was removed,

1 and at that point in time, Skokie Valley had no
2 outlet for any of their storm water. So they
3 put in an oil-water separator and a couple of
4 underflow/overflow manholes and then the storm water
5 retention basins, and for a period of time, they
6 then pumped the water back to the south side of the
7 property into some manhole that apparently was
8 connected to a drain tile that went into the Avon
9 Fremont drainage ditch. There was an incident where
10 that pump was allowed to pump too long allowing the
11 oil to flow behind the underflow backfill that was
12 holding it back and there was oil that was pumped
13 into the Avon Fremont drainage ditch at that time as
14 well.

15 Q. Did you learn of any other incidents
16 or complaints of oil off this Skokie Valley Asphalt
17 site but coming from Skokie Valley Asphalt prior to
18 the 1994, 1995 Avon Fremont drainage ditch release?

19 MR. JAWGIEL: Again, your Honor, we
20 have many objections to this line of questioning,
21 unless it can be tied in.

22 HEARING OFFICER SUDMAN: Well, you
23 have a standing objection to the relevance of
24 Exhibit 34, is that?

1 MR. JAWGIEL: Correct, unless it can
2 be tied in.

3 HEARING OFFICER SUDMAN: Okay.

4 BY THE WITNESS:

5 A. Not that I recall.

6 BY MR. COHEN:

7 Q. Mr. Huff, let me direct your attention
8 to Complainant's Exhibit Number 32.

9 Do you recognize that?

10 A. It's a topographic map showing Skokie
11 Valley in a radius of a thousand feet around Skokie
12 Valley.

13 Q. I don't recall, did you prepare this
14 map?

15 A. It was prepared by my office, I
16 believe.

17 Q. And can you point out for the Board
18 where the Avon drainage ditch is in relation to the
19 Skokie Valley Asphalt or what used to be the Skokie
20 Valley Asphalt property?

21 A. From Skokie Valley Asphalt property,
22 it's approximately a thousand feet to the east, and
23 the Avon Fremont drainage ditch flows from south to
24 north at that location.

1 Q. And are you aware that the Avon
2 Fremont drainage ditch flows into Third Lake to the
3 north there?

4 A. That's my understanding, yes, sir.

5 Q. And those are both waters of the
6 State, correct, if you know?

7 A. I don't know.

8 Q. I direct your attention to
9 Complainant's Exhibit Number 31.

10 Do you recognize that?

11 A. Well, it's a figure prepared by my
12 office. I'm not sure which report this was
13 associated with, but it was one of the earlier ones
14 back in 1995, I believe.

15 Q. And can you describe what that is for
16 the Court, please?

17 A. This is a layout drawing of Skokie
18 Valley, and it shows a series of the test pits or
19 trenches that we excavated.

20 Q. If I can now direct your attention to
21 Complainant's Exhibit Number 33. Can you describe
22 for the record -- maybe if you just flip through
23 each of the pages and just describe generally what
24 they are and then we'll go through it in more

1 detail.

2 A. The first page of Exhibit 33, the top
3 photo is one of the test pits that --

4 Q. Excuse me. I don't mean to interrupt.

5 Can you just sort of flip through
6 all the pages and describe for the record what that
7 entire series is and then we'll go back and explain
8 what each photo is.

9 A. These are photographs that I have
10 taken back in 1995 in that time period.

11 Q. And you probably haven't seen -- these
12 are actually color copies of photos that we've
13 taken, would that be fair to say?

14 A. Yes.

15 Q. And do they appear to be pretty good
16 copies of your photos?

17 A. A little too much yellow in some of
18 them, but these are my photos.

19 Q. This was put together by our
20 paralegal, Phyllis Dunn, and she labeled each page a
21 different letter. So if you could start with 33-A,
22 can you describe for the record what the photos show
23 on that page?

24 A. Top left is one of the test pits that

1 we excavated on May 1st, 1995, generally, in the
2 southeast portion of the Skokie Valley property.

3 The bottom left is a test pit that
4 we excavated adjacent to the heating oil USD.

5 And the bottom right one is also
6 the same excavation of the heating oil adjacent to
7 the heating oil.

8 Q. For the record, those pictures on that
9 page are taken May 1st, 1995; is that correct?

10 A. Yes, sir.

11 Q. Now, that test pit you dug that's
12 shown in the top left picture, does that show to you
13 any indication of oil contamination?

14 A. Yes, sir.

15 Q. Can you describe that?

16 A. Well, right on the surface of the
17 perched groundwater, if you will, there is a layer
18 of oil -- picking up that it's more than a sheen,
19 from a thickness point of view, probably at its
20 thickest point it's under a quarter of an inch in
21 thickness.

22 Q. Next page, please.

23 Can you describe the photos in
24 that taken? If you could also mention the date as

1 well, please.

2 A. These were taken, I believe, all
3 May 1st. The date is off of two of them in the
4 reproduction process. The upper left-hand one is
5 one of the photos on May 1st of the Avon Fremont
6 drainage ditch downstream near Route 20, and there's
7 no oil sheen visible on May 1st that far downstream
8 on the Avon Fremont drainage ditch.

9 The bottom left-hand ones are the
10 booms that are set across in this little bay area
11 where the drain tile comes out. You could see a lot
12 of discoloration. That discoloration is just the --
13 more the turbidity, I believe. I don't believe that
14 reflects oil. At that point, there was nothing
15 more than the sheen coming out.

16 The top right-hand one shows this
17 corrugated plastic drain tile, and you can see how
18 it was turned around back so that any oil would be
19 removed via the straw ahead of the sheens.

20 And then the bottom right-hand one
21 is the Avon Fremont drainage ditch looking upstream
22 from an earthen bridge, which is downstream several
23 hundred yards from where the subject drain tile was
24 located.

1 Q. Referring to the picture in the upper
2 right-hand corner, is the liquid that is seen in
3 that photo, is that either oil or is it an oil sheen
4 evident on that to you?

5 MR. JAWGIEL: I'm going to object to
6 the compound nature of the question, your Honor, and
7 the leading nature as well.

8 HEARING OFFICER SUDMAN: Could you
9 break it up a little bit?

10 BY MR. COHEN:

11 Q. Referencing the picture in the top
12 right corner of 33-B, you see which picture I'm
13 referring to?

14 A. Yes, sir.

15 Q. What is the liquid that appears in
16 that photo?

17 A. I believe it's water. I think that
18 it's just because this area was disturbed by whoever
19 turned this drain tile around that you get basically
20 all mud. And what re-enforces that belief, if you
21 look at the clarity of the water coming out of that
22 drain tile, it's crystal clear coming out, then on
23 May 1st, that was indeed what was flowing out of
24 that drain tile.

1 Q. And you did not see any oil sheen on
2 that water, correct?

3 A. I don't recall, but I sure don't see
4 it in this photo.

5 Q. And the photo in the bottom right-hand
6 corner, what else besides the Avon drainage ditch is
7 in that photo?

8 A. You can see the oil booms that were
9 placed just ahead of a corrugated pipe that flows
10 underneath that earthen bridge.

11 Q. Now, if you could go to the photos in
12 Complainant's Exhibit 33-C and describe those for
13 the Board, please?

14 A. This is April 26, 1995. The upper
15 left is the Avon Fremont drainage ditch looking
16 upstream from the railroad bridge, and the railroad
17 bridge is located basically immediately downstream
18 or what I have referred to earlier as that earthen
19 bridge.

20 The upper right-hand is the Avon
21 Fremont drainage ditch looking upstream from the
22 railroad bridge as well. Pretty much a similar
23 picture there.

24 The bottom left-hand is the Avon

1 Fremont drainage ditch looking downstream from the
2 railroad bridge.

3 And the bottom right-hand one is,
4 again, the Avon Fremont drainage ditch upstream near
5 Route 120.

6 Q. Was April 26th the first day you had
7 gone out to the site?

8 A. I may have been out there on
9 April 25th as well on -- I think I was.

10 Q. The next page really might confuse
11 things. Can you flip to the next set of pictures?

12 A. Exhibit 33-D as in David?

13 Q. Correct.

14 A. The upper left-hand one is the
15 drive-on retention basin located north of Skokie
16 Valley, and currently, a hundred percent of the
17 drainage from Skokie Valley drains beneath the
18 railroad line into this dry bottom retention basin.

19 The upper right-hand one is a
20 photograph showing the aboveground storage tanks
21 that are located in the southwest corner of the
22 Skokie Valley property.

23 The bottom left-hand one is
24 looking south towards Skokie Valley basically from

1 the dry bottom retention basin, and you can see one
2 of the piles of what's called reclaimed asphalt
3 pavement or RAP that is recycled.

4 And then the bottom right-hand one
5 is a close-up of the same wrap material.

6 Q. Are you saying RAP, R-A-P?

7 A. R-A-P, reclaimed asphalt pavement.

8 When you put down a new asphalt layer on the street,
9 they now take that old asphalt up, grind it up and
10 reuse it in the asphalt operations. Typically, in
11 asphalt, you can use 30 percent reclaimed asphalt
12 and 70 percent virgin.

13 Q. Are the piles of RAP indicated in the
14 photos in Exhibit 33-D on Skokie Valley Asphalt
15 property?

16 A. At that time, yes, sir.

17 Q. Now, the reason this might be somewhat
18 confusing is what is the date on those pictures?

19 A. They appear to be mislabeled as
20 4/14/95.

21 Q. Do you have any idea what they should
22 be or can't recall or --

23 A. You know, I can't. I mean, there's
24 nothing in here that ties it into the oil release or

1 any of that, so it -- I mean, they might even have
2 been April 14th. Maybe I was out that early, but I
3 don't have any recollection of that.

4 Q. But those pictures appear to be true
5 and accurate recollections of what you observed on
6 that day?

7 A. In that time period, yes, sir.

8 Q. Flipping to the next page of this
9 exhibit, Complainant's Exhibit 33-E, can you
10 describe what -- there's only two photos on this
11 page, can you describe what those are?

12 A. They're upside down in my book, so I'm
13 not sure if I can describe where they're located on
14 here, but one of them is the farmer's field east of
15 Skokie Valley, and this is a picture showing the
16 standing water that developed as an apparent result
17 of disconnecting that drain tile.

18 The other photos, the Avon Fremont
19 drainage ditch looking downstream from the earthen
20 bridge toward the railroad bridge.

21 Q. Now, the two photos that you just
22 described are dated May 1st, 1995, correct?

23 A. Yes.

24 Q. There are also some handwritten notes

1 on that page that appear to be dated April 14th,
2 1995?

3 A. Well, those April 14th would be the
4 backside of the photographs that were in the same
5 plastic pockets.

6 Q. Thank you. Let's move onto 33-F.

7 Can you describe for the Board
8 what those pictures show?

9 A. This is uncovering the heating oil
10 underground storage tank.

11 The upper left one looks like the
12 beginning of excavation.

13 The top right-hand one is the --
14 we're physically lifting a thousand gallon heating
15 oil tank out of the ground.

16 The bottom left-hand one shows a
17 small amount of oil that's on the trapped water
18 that's in the tank excavation, and the white items
19 on there are oil-absorbing pads just to take that
20 oil off.

21 And the bottom right-hand picture
22 is the same thing. And we came in and removed that
23 water and placed it into 55 gallon drums.

24 BY MR. COHEN:

1 Q. I thought I heard you say that the
2 bottom right-hand picture was the same picture, the
3 same --

4 A. Yes, that's the heating oil tank
5 excavation, and at the time we were starting to pump
6 the water out.

7 Q. And is that the same view that we're
8 looking at as the picture next to it?

9 A. It sure looks like it to me, yes, very
10 similar.

11 Q. If you could flip the page to the
12 photos on 33-G and describe for the Board what those
13 show?

14 A. The top left-hand one is the same,
15 I believe, heating oil excavation after we
16 successfully removed all of the oil off the surface
17 and that.

18 The top right-hand one is the
19 heating oil underground tank. Before you send these
20 off to a metal reclaimer, you have to clean them and
21 you have to cut the ends off of those. And so this
22 shows the ends have been cut off by a tank
23 contractor.

24 The bottom left-hand one is the

1 excavated soil from the heating oil area. We
2 stockpile those on the north end and ultimately
3 those were land filled.

4 And then the bottom right-hand one
5 is the north wall sample area. They're collected
6 from the east wall of the excavation due to
7 foundation footing. No wall sample was collected
8 from the north side because you have a footing right
9 there. So we collected three wall samples from that
10 excavation, but none from the north side. I'm
11 sorry. From the east wall side.

12 Q. Can you describe what the wall is in
13 the picture in the lower right-hand corner of 33-G?

14 A. Yes, this heating oil was associated
15 with the building that's located on the west side,
16 and so that is the building and this tank was
17 located on the west side just outside the building.

18 Q. 33-H, please, could you describe for
19 the Board what those pictures show?

20 MR. JAWGIEL: You're Honor. We've let
21 this go on long enough. With respect to the tanks
22 that were taken out, the three tanks that were taken
23 out. There has been no testimony - as a matter of
24 fact, Mr. Huff said in his testimony they're not

1 related to the discharge into the Avon drainage
2 ditch. They have no relevance whatsoever with
3 respect to this case at all. Nothing that the State
4 can tie in. And we don't have any evidence here of
5 problems of any significant nature here with respect
6 to EPA issues regarding these tanks, nor has
7 anything been adjudicated nor has anything been
8 brought in the complaint regarding that.

9 HEARING OFFICER SUDMAN: Mr. Jawgiel,
10 I believe that the People -- that this is relevant
11 to one or more of counts. I'm going to allow it,
12 but, yes, it is dragging on a little. If we could
13 please get through it, that would be great.

14 BY MR. COHEN:

15 Q. Could you describe what the pictures
16 show on that page?

17 A. 33-H shows the April 25th, 1996
18 removing of the waste oil tanks.

19 The top left is the south USD tank
20 cavity, and you see the perched water that is also
21 present there, and you can see some oil droplets
22 that are present on the surface.

23 The top right-hand one is part of
24 the excavation, and we're just starting to uncover

1 the underground storage tank.

2 And the bottom left is the
3 physically removing of the north underground storage
4 tank from its tank cavity.

5 Q. Rather than detail each of the rest of
6 these pictures, if you could just look at them and
7 do they sort of show photographs and summarize the
8 work that you did at the site related to the
9 underground storage tanks and the trenches that
10 you've dug or had dug?

11 A. Yes, with the caveat that there's way
12 too much yellow in these photos, so it gives them
13 kind of an eery look.

14 Q. Thank you.

15 Mr. Huff, do you know any reason
16 the Fredericks could not have removed the lines from
17 the aboveground storage tank to the asphalt plant or
18 done any of the remediation back in the early 1980s
19 when they discontinued using the asphalt plant?

20 MR. JAWGIEL: Your Honor, objection as
21 to speculation. There has been no foundation laid.

22 HEARING OFFICER SUDMAN: Could you
23 repeat the question?

24 MR. COHEN: Yes.

1 BY MR. COHEN:

2 Q. Do you know of any reason the
3 Fredericks could not have removed the line from the
4 aboveground storage tank to the asphalt plant or
5 done the remediation work in that area of the site
6 at the time it was removed?

7 HEARING OFFICER SUDMAN: I'll allow
8 you to give your professional opinion if you have
9 one.

10 BY THE WITNESS:

11 A. Yes, I do.

12 There's no requirement to remove
13 that line, and you're presuming that they had
14 knowledge that there was contamination in 1980.
15 It's pretty tough to do remediation when there's no
16 knowledge that there's any contamination at that
17 point in time. And that any potential amount to
18 that really never showed up until the Avon Fremont
19 drainage ditch in late 1994 or early 1995.

20 BY MR. COHEN:

21 Q. Would your answer be the same if I ask
22 the question about the other area of contamination?
23 I believe you said the south end where the old fuel
24 island used to be?

1 A. Well, unless they had knowledge that
2 there was contamination there, you know, to the
3 extent that that tank was literally removed over a
4 decade before this incident in the Avon Fremont
5 drainage ditch, it's difficult even to sit here
6 today and say, how could that have been a source of
7 this if it didn't show up until late 1994?

8 MR. COHEN: Can I have one moment?

9 HEARING OFFICER SUDMAN: Sure.

10 (Brief pause.)

11 MR. COHEN: Madam Hearing Officer, I
12 have no more questions, but for purposes of this
13 case, People versus Skokie Valley Asphalt Company
14 Incorporated, Edwin Frederick and Richard Frederick,
15 the People stipulate that James Huff is an expert in
16 environmental engineering.

17 HEARING OFFICER SUDMAN: Thank you.

18 MR. JAWGIEL: Your Honor, could we
19 please take a break?

20 HEARING OFFICER SUDMAN: Yes, please,
21 let's take a five-minute break.

22 (Whereupon, a break was taken,
23 after which the following
24 proceedings were had:)

1 HEARING OFFICER SUDMAN: We are back
2 on the record. We are ready for Mr. Jawgiel's
3 cross-examination of this witness.

4 You are still under oath, I'll
5 remind you, Mr. Huff.

6 THE WITNESS: Thank you, your Honor.

7 MR. JAWGIEL: Thank you.

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

9 BY MR. JAWGIEL:

10 Q. Morning, Mr. Huff. There was some
11 questioning regarding during the course of your
12 investigation in -- I believe we have established it
13 was in late March early April of 1995, whether or
14 not you went to other sites around the area of
15 Skokie Valley in order to determine whether or not
16 they may have been a potential source for the oil,
17 and I think you had indicated that you had not?

18 MR. COHEN: Objection, leading.

19 MR. JAWGIEL: I'm just setting a
20 foundation. There's a whole body of questions --

21 HEARING OFFICER SUDMAN: Overruled.

22 BY THE WITNESS:

23 A. I did not.

24

1 BY MR. JAWGIEL:

2 Q. Now, do you have the authority as a
3 consultant to Skokie Valley to go onto other
4 people's property without their permission?

5 A. No, sir, not my understanding.

6 Q. You also had indicated that you
7 assisted Skokie Valley in their NPDES permit as part
8 of what you were doing for them; is that correct?

9 A. Yes.

10 MR. JAWGIEL: If I may take this
11 exhibit out of order. We're at 1 for us. I'm going
12 to move it all the way down to 7 so everybody is
13 onboard as far as what exhibit this is. I just want
14 to make sure everybody is onboard. We are going to
15 take an exhibit out of order, if that is okay?

16 HEARING OFFICER SUDMAN: Yes.

17 MR. JAWGIEL: And this series of
18 exhibits actually will follow sequentially from 7,
19 but we do have a gap between 2 and 7 right now. I
20 just want to make sure everybody is onboard with
21 what we're trying to do.

22 BY MR. JAWGIEL:

23 Q. Sir, I'm going to show you what I've
24 marked as Exhibit Number 7, and I should have

1 wrote -- it should be Respondent, just so we have
2 a --

3 Mr. Huff, I show you what we've
4 marked as Exhibit Number 7 for the Respondent. Is
5 that a document that was generated during your
6 consulting of the Skokie Valley site?

7 A. Yes.

8 Q. And this is a document that you
9 generated in the normal course of your business; is
10 that correct?

11 A. Yes, sir.

12 Q. And this is a document that you would
13 have kept in the ordinary course of your business?

14 A. Yes.

15 Q. And this document you actually did
16 keep in the ordinary course of your business, did
17 you not?

18 A. Yes.

19 Q. And is this a true and accurate copy
20 of the document that you generated?

21 A. It appears to be, yes, sir.

22 Q. And in this document, you come to the
23 opinion, I believe it's on the last of the three
24 pages in the last paragraph as a matter of fact that

1 Skokie Valley has been subject to more stringent
2 requirements regarding effluent limit levels than
3 you have experienced with any other of your clients;
4 is that correct?

5 MR. COHEN: Objection, leading.

6 MR. JAWGIEL: It's cross-examination,
7 your Honor. I'm allowed to lead.

8 HEARING OFFICER SUDMAN: Yes.

9 MR. COHEN: This is a total area that
10 has not been addressed in direct examination, and if
11 this letter relates to the NPDES permit in 1997,
12 it's well past the issue of the NPDES permits in
13 this case.

14 HEARING OFFICER SUDMAN: I don't
15 recall the testimony on NPDES permits. What is
16 this --

17 MR. JAWGIEL: He asked what his role
18 was and what he did for Skokie Valley, and one of
19 the things he mentioned was that he worked on their
20 NPDES permit. They opened the door. If they want
21 to open the door, we have a right to walk right
22 through it.

23 HEARING OFFICER SUDMAN: He mentioned
24 it. Okay, go ahead.

1 BY MR. JAWGIEL:

2 Q. Did you have that opinion, sir?

3 MR. COHEN: I still object to the
4 leading nature. You can ask what his opinion was,
5 but --

6 MR. JAWGIEL: It's cross-examination.

7 HEARING OFFICER SUDMAN: I'll allow
8 it.

9 BY THE WITNESS:

10 A. Yes, sir.

11 BY MR. JAWGIEL:

12 Q. Now, you have consulted with literally
13 hundreds of companies similarly situated to Skokie
14 Valley before being retained by Skokie Valley;
15 isn't that correct?

16 A. Well, I'm not sure about the term
17 similarly situated. I have consulted with well over
18 a hundred industrial facilities across the United
19 States and primarily in Illinois.

20 Q. And you've reached the opinion that
21 Skokie Valley was being held to a standard regarding
22 effluent limits that you had not experienced in your
23 experience as a consultant with a hundred or so
24 other clients; is that correct?

1 MR. COHEN: Objection, your Honor.
2 This is the Respondent's expert witness. He's not
3 disclosed as an expert into this area at all, and
4 he's leading him and giving him his opinions.

5 MR. JAWGIEL: Your Honor, they called
6 him as a witness in their case in chief. He is not
7 a named party. They did not call him as an adverse
8 witness pursuant to 1011 of the Supreme Court Rules.
9 They did not do so. I have a right to lead him.
10 He's on cross-examination and they opened the door
11 regarding this NPDES permit. As a matter of fact,
12 they attached his entire report as Exhibit 34.

13 If they open the door, they have
14 to live with the fact that they've opened the door.

15 HEARING OFFICER SUDMAN: He mentioned
16 the NPDES permit, but they -- there wasn't whole
17 lining of questioning on it, that I recall. I'm
18 going to give you leeway to ask a couple questions,
19 but, please, move on.

20 BY MR. JAWGIEL:

21 Q. Did you reach an opinion, sir, whether
22 or not Skokie Valley, during the course of your work
23 with them even needed an NPDES permit in your
24 opinion?

1 A. My opinion is they were eligible for
2 the general storm water permit instead of an
3 individual storm water permit.

4 Q. And when you say the general storm
5 water permit, is that something kind of known as a
6 blanket permit where other industries go into that
7 type of a permit, or is it -- what is it, let me
8 just ask you that?

9 A. In Illinois, there is a general permit
10 for storm water discharges off of industrial
11 properties that requires no monitoring, only the
12 development of a storm water pollution prevention
13 plan to assure that that facility maximizes its
14 efforts to minimize any impacts in its storm water
15 runoff.

16 Q. Did that require -- that particular
17 type of permit in your experience, does that require
18 DMRs?

19 A. No, there are no DMRs associated with
20 the general storm water permit.

21 Q. Now, just so the record is crystal
22 clear. With respect to the three underground
23 storage tanks that you supervised the removal of or
24 suggested the removal of, there was no oil of any

1 significance associated with those tanks; is that
2 correct?

3 A. Again, that was what would be
4 classified under the Office of the State Fire
5 Marshals categories as a minor release. The
6 contamination was limited to the tank backfill and
7 did not extend out beyond the tank backfill.

8 Q. Now, given that, certainly, those
9 tanks were not the source, as we've already talked
10 about, of the discharge into the Avon drainage
11 ditch; is that correct?

12 A. That would be my opinion. It's
13 unlikely that they would have been the source.

14 Q. With respect to the discharge, the
15 actual substance that was floating in the Avon
16 drainage ditch, was that oil, like motor oil; do you
17 know?

18 A. It was a petroleum product. I believe
19 it created the sheen that was on there. Whether
20 it -- it certainly appeared to have some oil
21 component to it, a heavier oil than gasoline.

22 Q. Was it diesel fuel?

23 A. I don't know.

24 Q. Could it have been some sort of farm

1 product, like fertilizer?

2 A. No, it was a petroleum product.

3 Q. Did you smell diesel fuel smells when
4 you were at the Avon drainage ditch in your first
5 visit to it?

6 A. I don't recall.

7 Q. Did you do any chemical analysis of
8 what was actually in the Avon drainage ditch and
9 compare it to any substance that you may have found
10 on the Skokie Valley property?

11 A. I took two samples out of the field
12 tile directly.

13 Q. When you say you took a sample out of
14 the drain tile directly, did you take it out of the
15 Avon drainage ditch at all at any point in time, a
16 sampling?

17 A. No, it was strictly the drain tile,
18 the subject drain tile?

19 Q. Do you know when Skokie Valley came
20 into existence as a corporation?

21 A. I'd have to look it up. I believe --

22 Q. Please do, please do.

23 A. I believe it's in Exhibit 34.

24 Q. Would it help refresh your

1 recollection?

2 A. I believe it was 1978.

3 Q. Do you know if the gasoline
4 underground tank that you had referred to earlier
5 that was removed in 1978 was actually removed by
6 Skokie Valley or its predecessor corporation?

7 A. I have no knowledge. I believe that
8 tank was removed in '75, '76, which would suggest
9 Liberty Asphalt.

10 Q. So Liberty Asphalt was the entity that
11 actually, from your understanding, removed the tank
12 that was in this southeast area?

13 A. Well, it was in the south area, and
14 again, based on the date and my understanding that
15 Skokie Valley owned that property beginning in 1978,
16 that would be correct.

17 Q. Now, based on your understanding,
18 Skokie Valley would have been in existence since
19 1978, which would have made it approximately 25
20 years, and you're aware of two incidents where there
21 was discharge from this plant; is that correct?

22 A. Well, counting in 1995, there would
23 have been three.

24 Q. Three in 25 years of existence?

1 A. Yes.

2 Q. Was there, in your opinion, sir, any
3 environmental impact with respect to the discharge
4 into the Avon drainage ditch?

5 A. I believe there were temporary
6 impacts. There was, I believe, odor associated with
7 that that was reported, and there was certainly a
8 visual sheen that made it at least partway down the
9 Avon Fremont drainage ditch.

10 After the subsidence of the oil,
11 there was some oil that was absorbed onto the
12 shoreline that continued to leach out, if you will,
13 over a period of a month or so, so there would have
14 been a short-term impact until that oil had been
15 degraded or further weathered or absorbed, so I
16 don't believe there was any long-term impact from
17 that, just the short term primarily when it was
18 occurring and shortly thereafter.

19 Q. Is there any fish-kill associated with
20 the discharge into the Avon drainage ditch?

21 A. Not that I observed nor that I've ever
22 heard from any of the regulatory agencies.

23 Q. Was there any impact to Third Lake
24 with respect to the Avon drainage ditch?

1 MR. MURPHY: Madam Hearing Officer, I
2 have an objection to this line of questioning that
3 now goes back two or three questions. There's no
4 relevance at all to any environmental impact in this
5 case, none.

6 MR. JAWGIEL: Your Honor, if I may?
7 Number one, it goes to 42(h).
8 Also, if Mr. Cohen is the one who had brought this
9 witness to the stand and questioned him, I don't
10 know why Mr. Murphy thinks he has standing to bring
11 an objection. The objection should be brought by
12 the person who actually called the witness. This is
13 his witness. I understand they are --

14 HEARING OFFICER SUDMAN: I don't have
15 a problem with Mr. Murphy bringing the objection.
16 I'm going to allow questioning though.

17 BY THE WITNESS:

18 A. I'm sorry. Could you repeat the
19 question?

20 BY MR. JAWGIEL

21 Q. Sure.

22 Was there any impact to Third Lake
23 as a result of the discharge into the Avon drainage
24 ditch?

1 A. Not that I'm aware of.

2 Q. Do you have an estimate of how much
3 you've been paid for your services to date with
4 respect to the Skokie Valley property?

5 A. For all the work that we've done, I
6 can give you an order of magnitude estimate. We
7 would be somewhere between 60 and probably \$75,000,
8 in that order.

9 Q. I'm going to show you what was
10 previously marked as Deposition Exhibit Number 6.
11 I'm starting to get a little bit back on order in
12 our exhibits.

13 Do you recognize Exhibit Number 6
14 as a document you received?

15 A. I have a vague recollection, yes.

16 Q. And is this a document you would have
17 kept in the ordinary course of your business at Huff
18 and Huff?

19 A. Yes.

20 MR. COHEN: Excuse me. For the
21 record, he called this Deposition Exhibit 6.

22 MR. JAWGIEL: Did I say Deposition?
23 I'm sorry. Exhibit Number 6 for the Respondent.
24 Thank you.

1 MR. COHEN: Just for this. It wasn't
2 used before.

3 MR. JAWGIEL: No, I don't believe it
4 has, but thank you. You're absolutely right. I
5 misspoke.

6 BY MR. JAWGIEL:

7 Q. With respect to Exhibit 6 for the
8 Respondent, is this a document you would have kept
9 in your ordinary course of business, sir?

10 A. Yes, sir.

11 Q. And is Exhibit Number 6 a copy of a
12 document you would have received, true and accurate
13 copy?

14 A. To the best of my recollection, yes.

15 Q. What was the recommendation of the
16 USEPA regarding the Skokie Valley site?

17 A. It's quoted under D.

18 "Based on the results of the
19 investigation undertaken by the USEPA, no further
20 actions are recommended at this time."

21 Basically, they found no evidence
22 that there was contamination to the north associated
23 with Skokie Valley Asphalt.

24 Q. Sir, at some point in time, did you

1 tell representatives -- well, strike that. Let's
2 put a time frame on this.

3 In May of 1995, did you tell
4 representatives of the USEPA that you thought that
5 the source of the contamination in the Avon drainage
6 ditch was the leaking underground storage tank on
7 SVA facility?

8 A. That's my recollection, yes.

9 Q. And you would have told that to a
10 Ms. Lavis? She was the representative from the
11 USEPA?

12 A. There was two. She went on vacation
13 for a period of time there, so it would have been
14 her that -- a gentleman that was standing in for her
15 for a period of time.

16 Q. You also relayed that opinion
17 regarding that the source of the contamination at a
18 particular point in time was the underground storage
19 tank on the SVA property to the Fredericks, both
20 Larry and Richard; is that correct?

21 A. I don't have any specific
22 recollection, but that would seem reasonable,
23 certainly.

24 Q. Did the Fredericks allow you to do

1 what you needed to do in order to remediate this
2 site, sir?

3 A. Yes. And indeed, that oil was
4 discovered on April 28th. They had the heating oil
5 removed from that tank the very next day, and they
6 were very responsive. We tried to get an emergency
7 permit from the Office of the State Fire Marshal to
8 pull that tank. And we moved forward as
9 expeditiously as we could, and certainly, the
10 Fredericks were very supportive of that.

11 Q. Based on your experience, how would
12 you characterize the Fredericks overall response to
13 the environmental issues after you got involved?

14 A. Well, I think they were committed to
15 make sure that they were doing their business in an
16 environmentally acceptable manner, and I think they
17 have accepted, to the best of my recollection, every
18 recommendation that I've had.

19 Q. And with respect to what was actually
20 going on at that site when you first arrived there
21 in March of 1995, it was no longer an asphalt
22 manufacturing plant, was it?

23 A. It probably was April of 1995.

24 Q. Oh, April.

1 A. We're confused a little on that.

2 No, asphalt production had
3 discontinued, I believe, in the late 1980s. So it
4 was strictly like a headquarters, vehicle
5 maintenance and storage area.

6 Q. During your investigation, did you
7 take samples from the drain tiles and have them
8 tested for total petroleum hydrocarbons?

9 A. Just the one drain tile that has been
10 the subject of discussion today, yes, sir.

11 Q. And did that come back as a
12 non-detect.

13 A. I took two. I believe the first one
14 would have been in that last week in April of 1995.
15 I did a test called total petroleum hydrocarbons,
16 which would pick up gasoline and diesel fuel, oil,
17 those type of compounds, and I had a result of less
18 than five milligrams per liter. Approximately a
19 week later, I took a second sample, took a much
20 larger volume, and the laboratory was able to report
21 down another magnitude lower, and that result came
22 in at less than point five milligrams per liter.

23 Q. I'm going to show you what was
24 previously marked as Respondent Exhibit Number 8.

1 Do you recognize this document, sir?

2 A. Yes, sir.

3 Q. What is it?

4 A. It's just a follow-up on the NPDES
5 permit to the Illinois EPA on Skokie Valley Asphalt
6 providing them with a little information from the
7 U.S. Geological Survey that the same petroleum
8 compounds are detected in storm water throughout the
9 United States.

10 Q. This is a document that you prepared;
11 is that correct?

12 A. The cover letter. The attachment is a
13 U.S. Geological Survey publication.

14 Q. And this is a document you kept in
15 your ordinary course of business; is that correct?

16 A. Yes, sir.

17 Q. And this is a type of document you
18 would have kept in your ordinary course of business;
19 is that right?

20 A. Yes.

21 Q. And this is a true and accurate copy
22 of that particular document?

23 A. Appears to be, yes, sir.

24 Q. There was some testimony on direct

1 examination that there were some aboveground storage
2 tanks on the SVA site during your time on this site
3 in mid 1995 -- or actually, from the first time you
4 went on the site, so let's say, 1996 or so.

5 Did you inspect those aboveground
6 storage tanks?

7 A. I did two things with respect to
8 inspection. One, I physically walked around them,
9 but I also dug a trench immediately to the east of
10 those underground storage tanks to see whether there
11 was oil present at that location.

12 Q. And based on those things that you did
13 around the aboveground storage tanks, you were able
14 to come to the conclusion that those particular
15 aboveground storage tanks were not a source of the
16 contamination in the Avon drainage ditch; isn't that
17 correct?

18 A. That's correct, we found no evidence
19 that those tanks were leaking.

20 MR. JAWGIEL: Well, thank you for your
21 time, sir. We're going to reserve a right, though,
22 to call you in our case in chief if we do need so,
23 so I'm going to ask him to hang around.

24 HEARING OFFICER SUDMAN: Okay. We're

1 not quite through with you yet, Mr. Huff. I'll ask
2 Mr. Cohen if he has any redirect for you.

3 MR. COHEN: Briefly.

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

5 BY MR. COHEN:

6 Q. Mr. Huff, you mentioned these two
7 tests that you took from the farm time when you
8 first went out to the Avon drainage ditch at the
9 Skokie Valley site in April of 1995; do you recall?

10 A. I believe one was on April. The
11 second one was in May. It's possible they both were
12 in May, but my recollection is they were about a
13 week apart.

14 Q. Did you take a sample from the same
15 location?

16 A. Yes, right out of that, they -- if
17 you recall your photographs showing that black
18 corrugated plastic pipe, it was directly what was
19 flowing out of that pipe, that field tile discharge.
20 You can see that on Exhibit 33-B in the top
21 right-hand corner.

22 Q. So when you testified earlier, I think
23 you testified that that water looked clear to you?

24 A. Yes.

1 Q. And you took those samples after the
2 Frederick brothers had already plugged that drain
3 tile, correct?

4 A. That would have been correct, yes,
5 sir.

6 MR. COHEN: I have nothing further,
7 your Honor.

8 HEARING OFFICER SUDMAN: Anything more
9 for you?

10 MR. JAWGIEL: No. Thank you though.

11 HEARING OFFICER SUDMAN: We're done
12 with you for now, Mr. Huff, but stick around,
13 please.

14 And I think we're ready for the
15 People to call their next witness.

16 MR. COHEN: Madam Hearing Officer, at
17 this time, the State calls Edwin L. Frederick to the
18 stand.

19 (Witness sworn.)

20 WHEREUPON:

21 EDWIN L. FREDERICK
22 called as a witness herein, having been first duly
23 sworn, deposeth and saith as follows:

24

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

2 BY MR. MURPHY:

3 Q. Good morning.

4 A. Good morning.

5 Q. Will you please state and spell your

6 last name for the record?

7 A. My name is Edwin L. Frederick,

8 F-R-E-D-E-R-I-C-K.

9 Q. What name do you go by, Mr. Frederick?

10 A. Larry.

11 Q. You're familiar with a company by the

12 name of Skokie Valley Asphalt Company?

13 A. Yes.

14 Q. Did you ever work for that company?

15 A. Yes.

16 Q. How long did you work at Skokie Valley

17 Asphalt Company?

18 A. From sometime in 1978 till the sale in

19 1998.

20 Q. Do you know if the site was at one

21 time referred to as Liberty Asphalt Company?

22 A. Yes.

23 Q. Did you also work for that entity

24 while it operated at the site?

1 A. Yes.

2 Q. And what were the dates that you
3 worked at that entity?

4 A. As a high school student from 1958
5 through 1977.

6 MR. MURPHY: Madam Hearing Officer, I
7 would like to treat this witness as an adverse
8 witness. I request permission to do so.

9 HEARING OFFICER SUDMAN: Granted.

10 MR. MURPHY: Thank you.

11 BY MR. MURPHY:

12 Q. You were a corporate officer at Skokie
13 Valley, correct?

14 A. Yes, I was.

15 Q. And which officer were you?

16 A. I was president.

17 Q. And you became the president of Skokie
18 Valley Asphalt around 1979; isn't that correct?

19 A. That is correct, yes, sir.

20 Q. Were you ever a corporate officer
21 before that point?

22 MR. JAWGIEL: I'll object to the form
23 of the question. Corporate officer of what
24 location?

1 HEARING OFFICER SUDMAN: Would you
2 please clarify your question?

3 MR. MURPHY: Sure.

4 BY MR. MURPHY:

5 Q. Were you corporate officer of Liberty
6 Valley Asphalt Company?

7 A. There's no such company.

8 Q. Well, during the time that it existed?

9 A. There's no such company as Liberty
10 Valley Asphalt.

11 Q. Did I say Liberty Valley?

12 A. Yes, sir.

13 Q. Liberty Asphalt Company?

14 A. I was an officer for a time.

15 Q. Your duties as president of Skokie
16 Valley Asphalt were to operate the company and to
17 make decisions for that company, correct?

18 A. Yes, part of my duties.

19 Q. And one of your duties was to hire
20 environmental consultants, correct?

21 A. Yes.

22 Q. And you were paid for your work as
23 president of Skokie Valley Asphalt, were you not?

24 A. Yes.

1 Q. You ceased being president of -- or
2 you were -- strike that.

3 You were president of Skokie
4 Valley Asphalt all the way up until the time of sale
5 to Curran Contracting?

6 A. Yes.

7 Q. And that sale to Curran Contracting
8 was the sale of assets of Skokie Valley Asphalt to
9 Curran, correct?

10 A. Yes.

11 Q. So the last year that you were
12 president of Skokie Valley Asphalt was 1996?

13 A. No.

14 Q. What was the last year there?

15 A. 1998.

16 Q. You were a partial owner in addition
17 to being president of Skokie Valley Asphalt, were
18 you not?

19 A. Yes, I was.

20 Q. And you owned 50 percent of Skokie
21 Valley Asphalt?

22 A. Maybe. That's debatable, yes.

23 Q. Well, it's true, though, isn't it, you
24 and your brother each owned 50 percent of Skokie

1 Valley Asphalt?

2 A. Along with our banks and creditors,
3 yes.

4 Q. Your brother and you were the only
5 shareholders of Skokie Valley Asphalt Company,
6 right?

7 A. We were the only shareholders at that
8 time.

9 Q. There wasn't a Board of Directors of
10 Skokie Valley Asphalt, was there?

11 A. It was an informal Board of Directors,
12 yes.

13 Q. Were there only two officers of Skokie
14 Valley Asphalt?

15 A. Yes.

16 Q. That was you and your brother?

17 A. Correct.

18 Q. You were part owner of Skokie Valley
19 Asphalt Company until you made the sale of that
20 company's assets to Curran Contracting Company,
21 correct?

22 A. That is correct, yes.

23 Q. Your brother was partial owner of
24 Skokie Valley Asphalt for the same time period that

1 you were, correct?

2 A. That is correct.

3 Q. You and your brother were responsible
4 for the day-to-day operation of Skokie Valley
5 Asphalt, were you not?

6 MR. JAWGIEL: Your Honor, I'm going to
7 object as to a legal conclusion.

8 HEARING OFFICER SUDMAN: You asked him
9 if he was what?

10 MR. MURPHY: Responsible for the
11 day-to-day operation.

12 HEARING OFFICER SUDMAN: I'll allow
13 it.

14 BY THE WITNESS:

15 A. Not all day-to-day operations, no.

16 BY MR. MURPHY:

17 Q. But as far as management wise you
18 were?

19 A. I was a manager, yes, one of them.

20 Q. And your brother was the other?

21 A. Along with several other employees,
22 yes. We shared management responsibilities.

23 Q. Those employees that shared in the
24 management responsibilities reported to you or your

1 brother, correct?

2 A. Some reported to me, some reported to
3 my brother.

4 Q. But nobody else?

5 A. No.

6 Q. Skokie Valley Asphalt was a trucking
7 and material storage business during that time that
8 you and your brother operated it, correct?

9 A. Yes.

10 Q. And it's accurate to say that you and
11 your brother together had exclusive control over
12 Skokie Valley Asphalt while you were the owners of
13 Skokie Valley Asphalt?

14 MR. JAWGIEL: Objection, your Honor,
15 asks for a legal conclusion. He hasn't laid the
16 foundation. And the form of the question in and of
17 itself is inconsistent. I don't know how he and his
18 brother can have exclusive control. One person is
19 going to have exclusive control. If it's a joint
20 effort, you know you don't have exclusive control.

21 HEARING OFFICER SUDMAN: Would you
22 please explain to the witness exclusive control or
23 rephrase your question?

24 MR. MURPHY: Okay.

1 BY MR. MURPHY:

2 Q. No one else besides you or your
3 brother made management decisions on behalf of
4 Skokie Valley Asphalt, right; isn't that true?

5 A. Final decisions, yes. Other decisions
6 were made by our management people.

7 BY MR. MURPHY:

8 Q. Decisions to spend large amounts of
9 money?

10 A. Correct.

11 Q. You and your brother made those
12 decisions exclusively, no one else did?

13 A. I made some of them, my brother made
14 some of them.

15 Q. But no one else made them for that
16 company?

17 A. We allowed other people to spend money
18 when it was required for materials, for labor, for
19 trucking, for various and different items that we
20 did within the scope of our business.

21 Q. But those were routine items as part
22 of the operations, were they not?

23 MR. JAWGIEL: I'm going to object,
24 your Honor, with respect to the characterization of

1 routine items as opposed to large number of
2 expenditures or large sums of expenditures. He's
3 trying to draw a differentiation. He said, do you
4 allow other people to spend large sums of money. He
5 didn't say that they were routine items or materials
6 or managerial items or anything along those lines.

7 MR. MURPHY: I can change the question
8 then.

9 HEARING OFFICER SUDMAN: Thank you.

10 BY MR. MURPHY:

11 Q. Those decisions that you allowed other
12 employees to make with respect to expenditures of
13 sums, those were for smaller amounts of money, were
14 they not?

15 MR. JAWGIEL: I'm going to object. It
16 hasn't been established what was defined as larger
17 sum or smaller sum.

18 BY MR. MURPHY:

19 Q. Okay. Smaller than the expenditures
20 that you and your brother authorized?

21 A. Not necessarily.

22 Q. And you and your brother were
23 responsible for record keeping at Skokie Valley
24 Asphalt, correct?

1 A. That would be characterized as
2 correct, yes.

3 Q. Mr. Frederick, you mentioned in
4 earlier testimony today that the company, Skokie
5 Valley Asphalt, had an informal Board?

6 A. That is correct.

7 Q. Isn't it a true statement that the
8 company had no corporate Board?

9 A. We had an informal Board.

10 Q. Do you recall signing answers to
11 interrogatories the State propounded you in this
12 litigation, sir?

13 A. Yes.

14 MR. MURPHY: Madam Hearing Officer,
15 I'm afraid I don't have copies of this document, but
16 I would like to have them marked.

17 MR. JAWGIEL: If it's going to be
18 presented to the witness, I would just like to see
19 the actual copy that's being presented.

20 MR. MURPHY: Sure.

21 HEARING OFFICER SUDMAN: Of course.

22 MR. MURPHY: Madam Hearing Officer,
23 I'm going to mark this exhibit Complainant's Exhibit
24 Number 42.

1 HEARING OFFICER SUDMAN: Okay.

2 MR. MURPHY: May I approach?

3 HEARING OFFICER SUDMAN: Yes.

4 BY MR. MURPHY:

5 Q. Mr. Frederick, I'm showing you a copy
6 of what's been marked as Complainant's Exhibit 42.
7 I'm going to represent to you that those are your
8 answers to a set of interrogatories propounded to
9 you by the State of Illinois in this case. And I'm
10 going to direct your attention to page two of that
11 document and I'm going to ask you to read the first
12 paragraph of answer three.

13 A. Corporate officers of SVA were
14 Edwin L. Frederick as president and Richard J.
15 Frederick as vice president. Richard J. Frederick
16 and Edwin L. Frederick each own 50 percent of SVA.
17 The company had no corporate Board. Social Security
18 numbers --

19 Q. Okay, that's fine.

20 Now, you signed this document, did
21 you not?

22 A. Yes, I did.

23 MR. JAWGIEL: Your Honor, I'm going to
24 object that they haven't presented the question

1 along with the interrogatory answer. We don't know
2 what time frames we're talking about or the actual
3 question that was being asked in that document.
4 The interrogatory clearly had a question that wasn't
5 attached to it. He cannot impeach the witness with
6 the interrogatory unless we have the question that
7 was actually asked.

8 MR. MURPHY: I don't have to. It says
9 the corporate officers of SVA, Skokie Valley
10 Asphalt, were the Fredericks and that the company
11 had no corporate Board.

12 MR. JAWGIEL: But the question could
13 frame it differently, the question could put a time
14 frame on it, the question could ask a lot of
15 different things. Could be formal Board, could be
16 informal Board. The question is imperative in order
17 to understand that answer.

18 MR. MURPHY: I'll read the
19 interrogatory into the record.

20 HEARING OFFICER SUDMAN: Thank you.

21 MR. JAWGIEL: I also object to him
22 reading the interrogatory. They have to give that
23 to the witness and ask him whether or not he
24 answered that particular interrogatory question.

1 Reading it into the record needs a foundation. Did
2 you receive this, did you see it, so on and so
3 forth.

4 HEARING OFFICER SUDMAN: Mr. Murphy,
5 would you please lay a foundation?

6 MR. MURPHY: I will, Madam Hearing
7 Officer.

8 HEARING OFFICER SUDMAN: Okay. Thank
9 you.

10 MR. MURPHY: Your Honor, I'd like the
11 record to reflect that I've marked Complainant's
12 first set of interrogatories to Respondent Edwin L.
13 Frederick, Jr. as Complainant's Exhibit 43.

14 HEARING OFFICER SUDMAN: Okay.

15 MR. MURPHY: May I approach?

16 HEARING OFFICER SUDMAN: Yes.

17 BY MR. MURPHY:

18 Q. Mr. Frederick, I'm showing you what
19 had been marked as Complainant's Exhibit Number 43,
20 and I'm going to represent to you that it's
21 Complainant's first set of interrogatories to
22 Respondent Edwin L. Frederick, Jr. Have you ever
23 seen that document?

24 A. I don't remember.

1 Q. You don't remember.

2 Will you flip to interrogatory
3 number three, please? Can you read interrogatory
4 number three into the record?

5 MR. JAWGIEL: Your Honor, I'm going to
6 object. He indicated he doesn't remember seeing
7 this interrogatory. The foundation has not been
8 laid for this reading of this particular paragraph.

9 MR. MURPHY: Madam Hearing Officer, I
10 can have you take judicial notice of the certificate
11 of service. If he doesn't recall seeing it, he
12 doesn't recall seeing it. Then I can go
13 into the fact that he signed his answer to
14 interrogatories saying that they're accurate and
15 true --

16 MR. JAWGIEL: Your Honor --

17 MR. MURPHY: And this is just an
18 artful dodge --

19 MR. JAWGIEL: Your Honor, you cannot
20 take judicial notice of something that is a
21 discovery document in this particular proceeding
22 that may or may not have been exchanged between the
23 parties. There's no certification of that document
24 other than their representation.

1 HEARING OFFICER SUDMAN: Your
2 objection is overruled. We can proceed.

3 BY MR. MURPHY:

4 Q. Will you please read interrogatory
5 number three into the record?

6 A. Identify all of the corporate officers
7 of SVA. Later, LRF, Incorporated from November 1988
8 through December 1998, including the officers' full
9 legal names, positions and/or titles on the
10 corporation's Board, percent ownership of the
11 corporation, Social Security number or current or
12 known last addresses.

13 Q. Now, I'm going to take that document
14 from you. I'm going to show you Exhibit 42 again.
15 I'm going to ask you to read the last paragraph that
16 states on this page right here (indicating) into the
17 record.

18 A. Under penalties as provided by law,
19 pursuant to 735 ILCS 5/1-109, the undersigned
20 certifies that the statements set forth in this
21 instrument are true, correct, except as to matters
22 herein stated to be on information and belief, and
23 as to such matters, the undersigned certifies as
24 aforesaid that he verily believes the same to be

1 true.

2 Q. Now, is that your signature that
3 follows that paragraph?

4 MR. JAWGIEL: Your Honor, objection.
5 This is not impeachment. This individual never said
6 that they had a Board. All he said is that they had
7 an informal Board. The question doesn't ask or
8 define -- that particular interrogatory question
9 does not define what they met by Board. All they
10 said -- or officers.

11 All that question says is identify
12 the officers of the corporation, which they did in
13 the answer, and with respect, I think, to Board
14 members, identify them by name.

15 MR. MURPHY: Well, then, Madam Hearing
16 Officer, I'm going to move for sanctions pursuant to
17 Illinois Supreme Court Rule 219 based on the fact
18 that they have now, at this late date, at trial,
19 equivocated or attempting to equivocate an answer to
20 the interrogatories that was a very clear response
21 to a very clear interrogatory, and this is an ambush
22 and should not be --

23 HEARING OFFICER SUDMAN: Gentlemen,
24 the Board is going to be able to weigh this

1 evidence. I'm going to allow it. I think this --
2 you know, this is admissible. Go ahead.

3 BY MR. MURPHY:

4 Q. Mr. Frederick, is it a fact that your
5 duties with respect to Skokie Valley Asphalt
6 Company, Inc., as president of Skokie Valley
7 Asphalt Company, Inc., included financial matters?

8 A. Yes.

9 Q. And those financial matters included
10 liaison with banks and suppliers and purchasing
11 materials, making payments, matching payroll and
12 reviewed accounts receivable and accounts payable?

13 A. Yes.

14 Q. And you also were responsible for
15 sales and preparing bid quotations?

16 A. Yes.

17 Q. Isn't it also true that the sales and
18 price quote duties involve preparation of price
19 quotes, estimating jobs, negotiating contracts,
20 calling on customers and submitting bids?

21 A. Yes.

22 Q. Isn't it also true that your duties
23 also included supervising jobs at job sites?

24 A. From time to time, yes.

1 Q. Isn't it also true that your
2 supervision duties involved on-site meetings,
3 reviewing on-site work, daily consultation with
4 foreman engineers, liaison with state, county,
5 federal officials; isn't that true?

6 A. Yes.

7 Q. And also, with private owners for whom
8 work was performed?

9 A. Yes.

10 Q. Isn't it also a fact that Richard
11 Frederick's duties as vice president of Skokie
12 Valley Asphalt Company, Inc., during the time period
13 that he was vice president of that company, included
14 construction management?

15 A. Yes.

16 Q. His duties also included construction
17 management involving handling personnel, the
18 equipment and material scheduling and budgeting for
19 all work performed?

20 A. Yes.

21 Q. Isn't it a fact that the personnel
22 work involved hiring and control of all employees
23 and the review and approval of all time cards, union
24 contracts and personnel relations issues?

1 A. Yes.

2 Q. Isn't it a fact that Richard was also
3 responsible for all equipment matters including
4 purchasing and maintaining equipment, daily review
5 of equipment matters with outside maintenance shops?

6 A. Yes.

7 Q. Richard's duties also included the
8 scheduling of all jobs, employees and
9 subcontractors; isn't that a fact?

10 A. To a great degree, but not all.

11 Q. Richard was also responsible for all
12 traffic control and safety matters?

13 A. Yes.

14 Q. Richard also reviewed and approved all
15 contract items, bills and invoices?

16 A. Not all, but many.

17 Q. Thank you.

18 Isn't it a fact that you had
19 conversations with or wrote letters to State
20 officials with the Illinois EPA regarding Skokie
21 Valley Asphalt's NPDES permits?

22 A. I signed letters that went to the
23 State of Illinois for NPDES permits, yes.

24 Q. You were the person for Skokie Valley

1 Asphalt that was handling those aspects of that
2 environmental matter?

3 A. Not in all instances. We used
4 consultants in almost every instance.

5 Q. But the consultants reported to you
6 and Richard?

7 A. Well, the consultants prepared
8 documents and we signed those.

9 Q. Sir, my question is, the consultants
10 that you hired for the NPDES permits reported to you
11 and Richard?

12 A. They reported to us, yes.

13 Q. Mr. Frederick, you have a binder in
14 front of you. I'd like to direct your attention to
15 Exhibit Number 28 or tab 28 in that binder.

16 Will you please take a moment to
17 look through that?

18 (Witness perusing
19 the document.)

20 BY MR. MURPHY:

21 Q. Have you had a chance to look through
22 that?

23 A. Yes, sir.

24 Q. Do you recognize that document?

1 A. Yes, sir.

2 Q. What is it?

3 A. It's a letter over my signature to the
4 Environmental Protection Agency Compliance Assurance
5 Division. It's the Illinois Environmental
6 Protection Agency Division of Water Pollution
7 Control.

8 Q. And you sent this letter to the
9 Illinois EPA, correct?

10 A. Yes, I signed this letter and mailed
11 it to the USEPA. No, to the Illinois Environmental
12 Protection Agency.

13 Q. And this letter pertained to Skokie
14 Valley Asphalt's NPDES permit, correct?

15 A. Yes, it did.

16 Q. In the first sentence, first word is
17 the word, we?

18 A. Yes.

19 Q. That would be you and your brother,
20 correct?

21 A. That would be the corporation. It's a
22 parenthetical, we. We, corporation.

23 Q. Corporation?

24 A. Yes.

1 Q. And the corporation is not -- an
2 organic life form, is it not?

3 A. A corporation --

4 MR. JAWGIEL: I'm going to object to
5 the relevance of whether it's an organic life form
6 or not. I don't see the relevance of that. Can you
7 explain the context of those --

8 MR. MURPHY: Well, I'll withdraw the
9 question.

10 HEARING OFFICER SUDMAN: Thank you.

11 BY MR. MURPHY:

12 Q. My point is, you and your brother ran
13 that corporation, correct?

14 MR. JAWGIEL: I'm going to object to
15 the characterization that he ran the corporation.
16 He already had testified that there were numerous
17 other managers of this corporation who also ran
18 various elements of it.

19 MR. MURPHY: That's not his testimony.

20 HEARING OFFICER SUDMAN: I don't think
21 that was exactly his testimony. But I think it's --
22 you know, I think it's fair to say that he testified
23 to that effect.

24 MR. JAWGIEL: Well, I'm not saying it

1 verbatim. My comments aren't verbatim. I'm not a
2 court reporter.

3 But he indicated during the course
4 of his testimony there were various other managers
5 other than him and his brother who helped run the
6 corporation.

7 HEARING OFFICER SUDMAN: Well, I don't
8 think it was the point of the -- what was the
9 question anyway that --

10 MR. JAWGIEL: The we, the organic we.

11 MR. MURPHY: The we applies to he and
12 his brother.

13 BY MR. MURPHY:

14 Q. You're saying it applies to the
15 corporation?

16 A. The corporation, Skokie Valley
17 Asphalt.

18 HEARING OFFICER SUDMAN: Of which they
19 did testify they were shareholders?

20 MR. JAWGIEL: Correct.

21 MR. MURPHY: And president and vice
22 president.

23 THE WITNESS: Yeah, and president and
24 vice president.

1 BY MR. MURPHY:

2 Q. The second sentence of that letter,
3 can you read that sentence into the record?

4 A. The second sentence, upon reviewing?

5 Q. Yes.

6 A. Upon reviewing your enclosures and in
7 conjunction with discussions with our civil
8 engineering representative, we believe that we are
9 not required to have a permit for this facility.
10 And since we feel that we are not required to have a
11 permit for this facility, we would not be required
12 to submit discharge monitoring reports.

13 Q. Thank you.

14 Mr. Frederick, is this a true and
15 accurate copy of that letter?

16 A. It appears to be a true and accurate
17 copy of that letter.

18 Q. It appears to be? Does anything
19 indicate to you otherwise?

20 A. No. It appears it's a legitimate
21 work.

22 MR. MURPHY: I move to strike that
23 last comment from the record, Madam Hearing Officer.

24 MR. JAWGIEL: Your Honor, if he wants

1 to get contentious and define appears, I think
2 appears was pretty clear when he answered it. He
3 said that it appears to be a true and accurate copy.
4 He didn't say, I don't think so, it may not be.

5 MR. MURPHY: I didn't ask him to
6 define appears.

7 HEARING OFFICER SUDMAN: That's true.
8 I think he was just qualifying his response, but --
9 please, go on.

10 BY MR. MURPHY:

11 Q. Mr. Frederick, I'm going to direct
12 your attention to Exhibit Number 23 in the binder.
13 Take a moment to look at that.

14 (Witness perusing
15 the document.)

16 BY MR. MURPHY:

17 Q. Do you recognize that letter?

18 A. Yes.

19 Q. What is it?

20 A. It's a letter to the Illinois
21 Environmental Protection Agency requesting that our
22 civil engineer be allowed to review the regulations.

23 Q. That letter is on Skokie Valley
24 Asphalt's letterhead?

1 A. Yes.

2 Q. And that's your signature at the
3 bottom, correct?

4 A. Yes, it is.

5 Q. It's dated May 7th, 1991?

6 MR. JAWGIEL: Your Honor, I'm going to
7 object. The document speaks for itself.

8 HEARING OFFICER SUDMAN: It's okay.
9 I'll allow it.

10 BY MR. MURPHY:

11 Q. That letter is dated May 7th, 1991?

12 A. Yes.

13 Q. If you look at the second full
14 paragraph, would you read that, the first two
15 sentences into the record?

16 A. Thank you for your consideration in
17 this matter. I trust that this will meet with your
18 approval, and as I have always stated, we will
19 continue to communicate with you on a regular basis
20 until this matter is fully resolved.

21 Q. And that letter was addressed to
22 Jan Hopper?

23 A. Correct.

24 Q. Who is Jan Hopper?

1 A. She was an official at the IEPA.

2 Q. Going back up to the first paragraph,
3 starting with the second sentence, can you read that
4 paragraph into the record? It starts with the word
5 since.

6 A. Since the decision to request this
7 termination in our previous discussions with you and
8 our civil engineer, we have discovered that new
9 regulations regarding the NPDES permit are to be
10 activated in the fall of 1991.

11 Continue?

12 Q. Yes, please.

13 A. In our engineer's preliminary review
14 of the new regulations compared to the old, it
15 appears that one of them would request us to renew
16 our permit. In order that our civil engineer might
17 review the new regulations more thoroughly, we
18 request at least a three-week extension from today
19 which would require us to have our renewal
20 application in your office by the 21st of May?

21 Q. Who was the civil engineer that this
22 letter --

23 A. Mr. Gordon White of Manhart &
24 Associates and I worked together to write this

1 letter.

2 Q. You and Mr. Manhart worked together?

3 A. Mr. White.

4 Q. Mr. White. Sorry.

5 A. Yes.

6 Q. And he's the one that disclosed to you
7 the information that one of the new regulations
8 would require your company to get an NPDES permit?

9 MR. JAWGIEL: Objection, your Honor.

10 The document speaks for itself that it may require
11 an NPDES permit, but they were unclear at this time.
12 But the document speaks for itself.

13 MR. MURPHY: I'll change the question.

14 HEARING OFFICER SUDMAN: Thank you.

15 BY MR. MURPHY:

16 Q. May require you to get an NPDES
17 permit? Mr. White is the one that informed you of
18 that?

19 A. No, Mr. White did not inform me of
20 that.

21 BY MR. MURPHY:

22 Q. Mr. Frederick, will you please turn to
23 tab six? Do you recognize that document, sir?

24 A. Yes, I do.

1 Q. What is it?

2 A. Well, it's an application.

3 Q. Is that your name on the front page
4 under name and title?

5 A. Yes, it is.

6 Q. Turn to page two. Is that your
7 signature at the bottom?

8 A. Yes, it is.

9 Q. And will you read the certification
10 that is immediately before your signature?

11 A. I certify under penalty of law that I
12 have personally examined and am familiar with the
13 information submitted in this application and all
14 attachments, and that based on my inquiry of those
15 persons immediately responsible for obtaining the
16 information contained in that application, I believe
17 the information is true, accurate and complete. I
18 am aware that there are significant penalties for
19 submitting false information, including the possibly
20 of fines and imprisonment.

21 Q. You signed that document on June 3rd,
22 1991?

23 A. It appears that I did, yes.

24 Q. And that was a true statement then?

1 What you just read was a true statement then?

2 A. I guess, I mean --

3 Q. You guess?

4 A. Yes. It was on the document.

5 Q. Did you do the things that that
6 certification said you did?

7 A. I read through this document before I
8 signed it, yes.

9 Q. Well, the certification says that
10 you'd do a little bit more than that.

11 MR. JAWGIEL: Your Honor, I don't
12 understand where this line of questioning is going
13 with respect to the issues in the complaint.
14 There's no allegation that they filed a false
15 application for an NPDES permit.

16 HEARING OFFICER SUDMAN: I'll allow
17 it, but could you maybe just ask him what he did,
18 could we get through this a little quicker?

19 MR. MURPHY: Sure.

20 BY MR. MURPHY:

21 Q. What did you do to live up to the
22 certification's statements with respect to this
23 NPDES permit?

24 MR. JAWGIEL: I'm going to object to

1 the form of that question. Live up to it? I don't
2 know what that means first off, but secondly, I
3 think it's combative. Live up to that --

4 HEARING OFFICER SUDMAN: Could you
5 rephrase the question?

6 MR. MURPHY: Be happy to.

7 BY MR. MURPHY:

8 Q. What did you do to comply with the
9 statements that are contained in that certification
10 before you signed it?

11 A. I hired a consultant of known quantity
12 and ability to prepare these documents for us. I
13 reviewed them and signed them.

14 Q. When did you cause this NPDES permit
15 renewal to be submitted to the Illinois EPA?

16 A. I don't know from --

17 Q. Would it have been contemporaneously
18 to the date that you signed it?

19 A. It would be within -- depending
20 whether it went back to the consultant's office, it
21 would have been in a day or two, the date of
22 signature, correct.

23 Q. Isn't it true then in April of 1995,
24 you hired Huff and Huff as your environmental

1 consultant?

2 A. I don't know the exact date, but --

3 Q. But you hired --

4 A. -- approximately.

5 Q. Approximately?

6 A. Right.

7 Q. Which of you decided to hire Huff and
8 Huff, you or Richard?

9 A. I don't know that for sure.

10 Q. It was one of the two of you, or maybe
11 both?

12 A. It could have been both of us.

13 Q. What did you want Huff and Huff to do?

14 A. Because we were unskilled in
15 environmental law and problems, we needed somebody
16 that knew more about it than we did.

17 Q. So what did you hire them to do?

18 A. Anything that required environmental
19 action on our part.

20 Q. Meaning the company's part?

21 A. Meaning the corporation's part, yes,
22 correct.

23 Q. Mr. Frederick, will you please turn to
24 tab 34 in that binder?

1 MR. JAWGIEL: Again, if I could renew
2 my standing objection to Exhibit 34?

3 HEARING OFFICER SUDMAN: You may.

4 MR. JAWGIEL: Thank you.

5 BY MR. MURPHY:

6 Q. Turn to the second page. Are you
7 there?

8 A. There is no --

9 Q. Romanette one?

10 A. Okay. It's the page after it, yes.

11 Q. That's your name after where it
12 appears applicant's name in the middle of that, is
13 it not?

14 A. Yes, it is

15 Q. And that's your signature on the
16 bottom of that page?

17 A. Yes, it is.

18 Q. And the date following that signature
19 is October 26, 1998?

20 A. Yes, it is.

21 Q. And the statement on the form
22 immediately before your signature means what?

23 A. Item four?

24 Q. No. The statement immediately before

1 your signature on that form reads as follows: I
2 hereby certify that I have authority to enter into
3 this agreement, does it not?

4 A. Yes, it does.

5 Q. And you were the person for Skokie
6 Valley Asphalt that had the authority to answer to
7 that agreement, were you not?

8 A. I signed this document, yes.

9 Q. My question was, you were the person
10 on behalf of Skokie Valley Asphalt that had the
11 authority on behalf of that company to enter into
12 this agreement?

13 A. Yes.

14 Q. Thank you.

15 Mr. Frederick, can you please turn
16 to tab seven in the binder? Take a moment to review
17 that document.

18 (Witness perusing
19 the document.)

20 BY MR. MURPHY:

21 Q. Do you recognize this document?

22 MR. JAWGIEL: I'm not quite sure he's
23 done reviewing it.

24 THE WITNESS: I'm on the first page.

1 BY MR. MURPHY:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. And what is it?

5 A. It's a letter to the IEPA Division of
6 Water Pollution Control in answer to some request of
7 theirs.

8 Q. Is that your signature on page three
9 of that document?

10 A. Yes, sir.

11 Q. And this letter is on Skokie Valley
12 Asphalt Company, Inc. letterhead, is it not?

13 A. Yes, it is.

14 Q. Is that a true and accurate copy of
15 that letter?

16 A. To the best of my knowledge, it's a
17 true and accurate copy.

18 Q. You mentioned earlier in your
19 testimony that your brother Richard's duties
20 included supervision of work at the site, Skokie
21 Valley Asphalt site, did that supervision of work
22 include the spraying of liquid asphalt on the Skokie
23 Valley Asphalt when it occurred?

24 A. When it occurred from time to time,

1 yes.

2 Q. Now, you eventually sold Skokie Valley
3 Asphalt to a company called Curran Contracting, did
4 you not?

5 A. Yes, we did.

6 Q. And the sale price for that
7 transaction was, I believe, in the neighborhood of
8 \$8.2 million?

9 MR. JAWGIEL: Your Honor, I'm going to
10 object, again, keeping in line with my objections
11 yesterday regarding this. It had no relevance or
12 bearing in this case.

13 HEARING OFFICER SUDMAN: Overruled.

14 BY MR. MURPHY:

15 Q. That's what it says in the sale
16 document?

17 A. Yes.

18 Q. But that's accurate, isn't it?

19 A. That's what it says in the sale
20 document.

21 Q. How much money did Skokie Valley
22 Asphalt pay to Huff and Huff for Huff and Huff to do
23 its work there?

24 A. I don't have an exact amount.

1 Q. Can you approximate?

2 A. At least \$150,000 over the last ten
3 years.

4 Q. Isn't it a fact that only you and your
5 brother and/or your brother had the authority on
6 behalf of Skokie Valley Asphalt Company to authorize
7 that kind of expenditure?

8 MR. JAWGIEL: I'm going to object to
9 the form of the question. In his previous
10 testimony, he never qualified this. He's calling
11 him as an adverse witness, he has to start, I
12 believe, impeaching him with something.

13 MR. MURPHY: I don't understand the
14 objection.

15 HEARING OFFICER SUDMAN: Go ahead.
16 I'll allow the question.

17 BY THE WITNESS:

18 A. I don't remember the question.

19 BY MR. MURPHY:

20 Q. I'll ask it again.

21 Was there anyone else at Skokie
22 Valley Asphalt Company besides you and/or your
23 brother that had the authority on behalf of that
24 company to authorize an expenditure of the amount

1 that you paid to Huff and Huff?

2 A. There were several people that would
3 have the authority to authorize expenditures of that
4 amount.

5 Q. Mr. Frederick, did anyone ever come to
6 Skokie Valley Asphalt and complain about -- well,
7 first of all -- strike that.

8 You were aware that there is a
9 drainage tile that drains just east of Skokie Valley
10 Asphalt site into Avon Fremont drainage ditch?

11 A. There's an outfall. I don't know
12 where the tile is.

13 Q. Okay, fair enough.

14 But there was testimony earlier in
15 the case for Mr. Huff of Huff and Huff that at one
16 time that draining tile was plugged?

17 MR. JAWGIEL: Your Honor, I'm going to
18 object with this witness referencing testimony of
19 another witness in his examination of the witness
20 that's currently on the stand. That serves no basis
21 whatsoever.

22 If he wants to ask this witness
23 his knowledge, that's fine. But he cannot ask this
24 witness to reference or qualify the other witness'

1 testimony. That's improper.

2 MR. MURPHY: I'm making a
3 representation to him of the fact that there was
4 that testimony. He was also sitting in the room
5 when Mr. Huff testified.

6 MR. JAWGIEL: Does he have a
7 transcript of that testimony? Does he have the
8 exact language of that testimony? Does he have
9 anything that indicates exactly what was said, or is
10 this his paraphrasing of what was said? He doesn't
11 have that. He cannot ask this witness based on his
12 interpretation of what was said by another witness
13 and set that foundation.

14 HEARING OFFICER SUDMAN: Well, he
15 hasn't asked anything yet.

16 MR. JAWGIEL: Well, he said he was
17 supposed to make comments regarding it. Making
18 comment alone is inappropriate, with respect to
19 paraphrasing another witness' testimony.

20 If he had a transcript and asked
21 them to read the transcript and said, here's what he
22 said, that's a different story. He doesn't have
23 that. He's not to make side comments or try to
24 qualify or set this witness in a certain atmosphere.

1 He's here to ask questions directly of this witness.

2 MR. MURPHY: I'm about to do that.

3 HEARING OFFICER SUDMAN: I'm going to
4 allow the question.

5 BY MR. MURPHY:

6 Q. Did anyone ever come to Skokie Valley
7 Asphalt Company, to your knowledge, and complain
8 that any kind of plugging of the farm tile
9 located near the Skokie Valley Asphalt site
10 that emptied into the Avon drainage ditch caused
11 backing up of water on their property?

12 MR. JAWGIEL: Objection, hearsay.
13 Pure hearsay.

14 MR. MURPHY: To his knowledge.

15 MR. JAWGIEL: No, it's not to his
16 knowledge. His knowledge would only be if someone
17 told him that that happened. There hasn't been a
18 proper foundation and it's based on pure hearsay.

19 HEARING OFFICER SUDMAN: He's not
20 quoting any -- I'll allow it.

21 BY THE WITNESS:

22 A. What's the question?

23 MR. MURPHY: Can you read it back,
24 please?

1 MR. JAWGIEL: If you could note my
2 objection again, please, so I don't have to stand
3 back up?

4 HEARING OFFICER SUDMAN: Yes.

5 (Whereupon, the record
6 was read as requested.)

7 BY MR. MURPHY:

8 Q. Did anyone come and talk to you about
9 that?

10 MR. JAWGIEL: Same objection, your
11 Honor.

12 BY THE WITNESS:

13 A. Not to my knowledge.

14 BY MR. MURPHY:

15 Q. Nobody from Mitch's Green Thumb came
16 to you and talked to you about that?

17 MR. JAWGIEL: Same objection, your
18 Honor.

19 HEARING OFFICER SUDMAN: You have a
20 standing objection to this question, okay.

21 MR. JAWGIEL: To this whole line of
22 questioning about people who came and made
23 complaints to Mr. Frederick?

24 HEARING OFFICER SUDMAN: To the

1 different business entities if he's going to run
2 through them, okay?

3 MR. JAWGIEL: Sure.

4 HEARING OFFICER SUDMAN: Overruled.
5 Please continue.

6 BY MR. MURPHY:

7 Q. Nobody came from Mitch's Green Thumb
8 and complained to you about that?

9 A. Not to my knowledge.

10 MR. MURPHY: Could I have a moment,
11 Madam Hearing Officer?

12 HEARING OFFICER SUDMAN: Yes.

13 MR. MURPHY: Pass the witness, Madam
14 Hearing Officer. No more questions at this time.

15 HEARING OFFICER SUDMAN: Oh, thank
16 you. Mr. Jawgiel?

17 MR. JAWGIEL: Yes, thank you.

18 Your Honor, would it be possible
19 to take our lunch break at this point?

20 HEARING OFFICER SUDMAN: How much --
21 well, let's go off the record to discuss this for a
22 moment.

23 (Whereupon, a discussion was had
24 off the record.)

1 (Whereupon, a lunch recess was
2 taken, after which the following
3 proceedings were had:)

4 HEARING OFFICER SUDMAN: We're back on
5 the record. We've decided to break for lunch. It
6 is 12:10. We will assume again at 1:10. Thank you.
7 We're off the record.

8 (Whereupon, the further taking
9 of the deposition of James E.
10 Huff was resumed pursuant to the
11 lunch recess.)

12 HEARING OFFICER SUDMAN: It is 1:10
13 p.m. and we are picking up with Mr. Frederick's
14 cross-exam.

15 Mr. Frederick, I'll remind you
16 that you are still under oath.

17 THE WITNESS: Yes.

18 EDWIN L. FREDERICK
19 having been previous duly sworn and examined,
20 resumed testifying further as follows:

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

22 BY MR. JAWGIEL:

23 Q. Good afternoon, sir.

24 A. Good afternoon.

1 Q. There was some testimony regarding the
2 sale of Skokie Valley Asphalt Company. What did you
3 net from that sale as far as proceeds?

4 A. After all suppliers were paid, all
5 fees, taxes and everything that was necessary, we
6 were able to eek out -- well, what our 401K's were
7 and some insurance, about \$125,000 a piece.

8 Q. When you say \$125,000 a piece, you're
9 talking about between you and Richard?

10 A. No, that's each of us.

11 Q. Each of you?

12 A. Right.

13 Q. Did you sell Skokie Valley for book
14 value?

15 A. Book value is hard to determine. We
16 believe it was sold for under book value.

17 Q. And what did the sale of Skokie Valley
18 to Curran include?

19 A. It included all the assets of the
20 company.

21 Q. And what were those in this particular
22 sale?

23 A. Land, buildings, plants, trucks and
24 construction equipment.

1 Q. Were there --

2 A. And the inventory.

3 Q. Were there other locations other than
4 the Skokie Valley location in Grayslake included in
5 this sale?

6 A. Yes, there were.

7 Q. What other indications were included?

8 A. There was a lease and a partially
9 built new asphalt plant and the McHenry plant. It
10 was fairly ancient but still serviceable.

11 Q. How many total acres were involved in
12 this sale with respect to the McHenry plant?

13 A. There was no acreage. And the McHenry
14 plant was a long-term lease with Meyer Material
15 Company.

16 Q. How many acres are there at the Skokie
17 Valley plant in Grayslake?

18 A. The Grayslake site, number one, was
19 about 42 acres total.

20 Q. There's been some questioning about
21 cleanup procedures and things of that nature, why
22 did Skokie Valley undertake the cleanup of the Avon
23 drainage ditch?

24 A. Number one, it seemed like the right

1 thing to do, although nobody knew what the source of
2 the alleged pollution was, and it was on the advice
3 of Huff and Huff, and we just thought it was the
4 right thing to do. We had always tried to keep that
5 site as clean as possible.

6 Q. Now, you've been shown a number of
7 documents. Some of them are on Skokie Valley's
8 letterhead, and you also indicated, I think, in your
9 testimony, that you were responsible for, at least
10 in part, of record keeping for Skokie Valley. What
11 happened to the Skokie Valley records after the
12 sale?

13 A. After the sale, the management that we
14 sold to -- I stayed on almost two years -- just took
15 all the records and hauled them away. They cleaned
16 out every office, every -- they did away with desks,
17 they threw out computers, they threw out everything,
18 file cabinets. All the records were -- well, 98.9
19 percent of the records were destroyed by Curran
20 Contracting.

21 Q. And with respect to -- let's talk
22 about the exhibits you saw before you here today
23 with respect to Exhibits 28, 29, 7 and 6 of the
24 documents shown to you by the State. Is it your

1 understanding that those documents came from a
2 source other than Skokie Valley?

3 A. Consultants assisted in the
4 preparation, and generally, the final form of the
5 letters and documents of which I would read and/or
6 review and then sign.

7 Q. But with respect to the actual copies
8 that are contained in that document, you didn't have
9 the documents at your disposal to copy and bring
10 here today because your documents were destroyed?

11 A. That is correct.

12 Q. My previous question goes to the fact
13 that it's your understanding that the document that
14 we see here today that are marked by the State as
15 their exhibits that were shown to you in your direct
16 examination came from a source other than Skokie
17 Valley?

18 A. Yes.

19 Q. If you could refer to State Exhibit
20 tab 28, please.

21 Is this one of the documents you
22 had indicated that you had worked on in
23 collaboration with an engineer or consultant?

24 A. That is correct.

1 Q. And this data established that it was
2 your signature at the bottom right-hand corner, but
3 you signed this document as president of Skokie
4 Valley Asphalt Company, Inc.; is that correct?

5 A. That is correct.

6 Q. If you can flip to 29, since we're in
7 the same neighborhood, would the same hold true with
8 respect to Exhibit Number 29 that you signed in your
9 capacity as president of Skokie Valley Asphalt
10 Company, Inc.?

11 A. Yes, I did.

12 Q. I don't mean to bounce too much, and I
13 apologize for doing so. Let's refer you to Exhibit
14 Number 7 of the Complainant.

15 MR. COHEN: Madam Hearing Officer, we
16 would stipulate to the documents we've already
17 discussed, and that Mr. Frederick has identified
18 with his signature are signed with him as president
19 of Skokie Valley Asphalt.

20 MR. JAWGIEL: We'll accept that
21 stipulation and tender to the Court. That way, it
22 will shorten this tremendously.

23 HEARING OFFICER SUDMAN: Thank you.

24 BY MR. JAWGIEL:

1 Q. What I'm going to show you is what was
2 previously marked and identified as Respondent
3 Exhibit Number 1. Let me know when you've had an
4 opportunity to review the documents, sir.

5 (Witness perusing
6 the document.)

7 MR. JAWGIEL: While he's reviewing
8 that, I think we have another stipulation that will
9 also shorten this whole proceeding.

10 MR. COHEN: Yes. Madam Hearing
11 Officer, we certainly didn't mean to mislead anybody
12 in this matter. The signatures we went through with
13 Mr. Richard Frederick through the DMRs in this case,
14 each of those signatures represent he's vice
15 president of the corporation. He signed the
16 document as vice president of the corporation, and
17 we would stipulate to that.

18 HEARING OFFICER SUDMAN: Thank you.

19 MR. JAWGIEL: We will accept that
20 stipulation and we thank the State for doing that as
21 well.

22 HEARING OFFICER SUDMAN: Thank you.

23 BY MR. JAWGIEL:

24 Q. My question to you is, is this --

1 well, strike that.

2 What is this document?

3 A. This was a letter prepared and sent to
4 Richard and myself by Murray Counselman, who was our
5 attorney at the time, that straightened out the
6 dates of the DMRs.

7 Q. And this was a document that was kept
8 in the ordinary course of Skokie Valley's business;
9 is that correct?

10 A. Yes.

11 Q. And this appears to be a true and
12 accurate copy of the letter, including the
13 attachments?

14 A. Yes, it does.

15 Q. And this is the type of document you
16 would have had in your records; is that correct?

17 A. Yes.

18 Q. I'm going to show you for
19 identification Exhibit Number 2. This is a document
20 previously marked as Respondent's Exhibit Number 2.
21 Let me know when you've had an opportunity to review
22 the document.

23 (Witness perusing
24 the document.)

1 MR. COHEN: And Madam Hearing Officer,
2 I have an objection as to a prior consistent
3 statement, a self-serving statement. That is
4 inappropriate.

5 MR. JAWGIEL: Your Honor, I'm just
6 going to establish the business document foundation
7 for this record, and a prior consistent statement is
8 not anything that would be left out in a case.
9 This is clearly a document that allows for other
10 inferences as well. It should be --

11 HEARING OFFICER SUDMAN: Your
12 objection is noted. I'm going to allow you to ask
13 your question.

14 BY MR. JAWGIEL:

15 Q. Sir, what is Exhibit Number 2?

16 A. It's a letter to Murray Counselman
17 from my brother, who, with I believe, Bob
18 Christiansen, made some attempt to unravel the real
19 or imagined misplacement of the DMRs. I did not
20 have much to do with it, but I remember this is what
21 they attempted to do, and I believe this was
22 submitted to the Attorney General's Office and to
23 the IEPA.

24 Q. When you say real or imagined

1 mishandling of the DMRs on whose part are you
2 referring to?

3 A. Well, it could have been our part, I
4 suppose. I never followed it real closely, and I
5 presume something at the IEPA also.

6 Q. Is this document a document that
7 Skokie Valley would have kept in its ordinary course
8 of business?

9 A. Yes.

10 Q. Did Skokie Valley actually keep this
11 document in its records?

12 A. Yes, I believe so.

13 Q. Is this a true and accurate copy of
14 that document?

15 A. It appears to be true and accurate,
16 yes.

17 Q. I'm going to show you what we've
18 previously marked as Exhibit Number 3, Respondent's
19 Exhibit Number 3.

20 (Witness perusing
21 the document.)

22 BY MR. JAWGIEL:

23 Q. I think you may have already seen this
24 document. It was one of the State's documents.

1 A. Yes.

2 Q. This is the same document that we see
3 on Exhibit 29 for the Complainant with respect to
4 page one of Exhibit 3?

5 A. Yes, it appears to be the same
6 document.

7 Q. With respect to the second and third
8 page of Exhibit Number 3 for the Respondent, were
9 those documents also documents that Skokie Valley
10 would have kept in its ordinary course of business?

11 A. Yes, it would have.

12 Q. And did Skokie Valley keep those
13 documents in the ordinary course of business?

14 A. Yes, we did.

15 Q. And do those documents appear to be
16 true and accurate copies of the documents you
17 received --

18 A. They appear --

19 Q. -- or sent?

20 A. Yes, they do appear to be true and
21 accurate copies.

22 Q. I show you what we've previously
23 marked as Exhibit Number 4. It's a multi-page
24 document. This is Respondent's Exhibit Number 4.

1 (Witness perusing
2 the document.)

3 BY MR. JAWGIEL:

4 Q. Do you recognize that document, sir?

5 A. Yes, I've seen it before.

6 Q. And what is this document?

7 A. This is another letter to Murray
8 Counselman in May from my brother, Richard
9 Frederick, and it includes the reports, I believe --
10 the corrected reports and further explanation and
11 support of the DMRs that were either misplaced or
12 mis-sent or -- I really didn't have a lot to do with
13 the DMRs.

14 MR. MURPHY: Madam Hearing Officer, I
15 have a similar objection to this document prior to a
16 consistent statement. It's inappropriate.

17 MR. JAWGIEL: Your Honor, I think it's
18 admissible. I think there's information here that
19 is very relevant to what's going on. It was made
20 obviously without the I-Force litigation, so there's
21 no reason to think that it is self-serving in any
22 nature. It's just historical.

23 HEARING OFFICER SUDMAN: I think it's
24 relevant. I'm going to allow you to continue.

1 MR. JAWGIEL: Thank you, your Honor.

2 BY MR. JAWGIEL:

3 Q. Is Exhibit Number 4 an attachment to
4 something that Skokie Valley kept in its ordinary
5 course of business?

6 A. Yes, it is.

7 Q. And did Skokie Valley actually keep
8 this in its records?

9 A. Yes, they did.

10 Q. And is this a true and accurate
11 representation of the letter and it's attachments?

12 A. Yes, it is.

13 Q. One last one for everybody who's
14 interested.

15 (Witness perusing
16 the document.)

17 MR. MURPHY: Madam Hearing Officer,
18 can I show the same objection to this document too?

19 HEARING OFFICER SUDMAN: Yes, you may.

20 BY MR. JAWGIEL:

21 Q. Sir, do you recognize this document?

22 A. Yes, I do.

23 Q. What is it?

24 A. It's a letter to Elizabeth Wallace at

1 the Office of the Attorney General which was
2 presented to her at a meeting by Mr. Counselman and
3 I believe my brother and I think myself and maybe
4 James Huff.

5 Q. And this is a document including its
6 attachments something that Skokie Valley would have
7 kept in its ordinary course of business?

8 A. Oh, certainly, yes.

9 Q. And did Skokie Valley actually keep
10 this document in its ordinary course of business?

11 A. Yes.

12 Q. And is this a true and accurate copy
13 of the actual document?

14 A. Yes. I mean, yes.

15 MR. JAWGIEL: Thank you for your time,
16 sir.

17 HEARING OFFICER SUDMAN: Any redirect?

18 MR. MURPHY: Yes.

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

20 BY MR. MURPHY:

21 Q. Mr. Frederick, you testified earlier
22 when your attorney was asking you questions that you
23 netted out of the sale of Skokie Valley Asphalt and
24 the other assets that were sold to Curran

1 Contracting approximately \$150,000, is that your
2 testimony?

3 A. Approximately. It could be plus or
4 minus. It's hard to say. It was some years back.

5 Q. That was the net proceeds, that
6 figure?

7 A. No, that was not the net proceeds.
8 That was the net, net, net, net to Richard and
9 myself.

10 Q. Well, I'm going to ask you to take a
11 look at what's been marked as Exhibit Number 35,
12 which is in that red roped binder in front of you.
13 And this is going to take a little effort to get
14 everybody to the same page. I'm going to direct
15 your attention to Volume I of II, tab 11, last page
16 entitled settlement.

17 Can you tell me what -- directing
18 your attention to the bottom of that page, can you
19 tell me what figure is represented or listed next to
20 the item net proceeds?

21 A. Yes, I can.

22 Q. Can you read that into the record,
23 please?

24 A. \$460,866.72.

1 Q. Thank you.

2 MR. MURPHY: For the record, that's
3 the settlement statement on tab 11 of Exhibit 35,
4 Volume I of 35.

5 MR. JAWGIEL: Do you want to mark that
6 as a sub exhibit, 35-A or B or something like that.

7 MR. MURPHY: I can do that.

8 MR. JAWGIEL: Yeah, just for the
9 record's sake, because we do have an objection to
10 all these documents going in, so...

11 HEARING OFFICER SUDMAN: Sure.

12 MR. JAWGIEL: And I think it just
13 would make things easier for whomever is going to
14 read this down the road.

15 MR. MURPHY: So I'll mark the
16 settlement statement of tab 11, Exhibit 35, Volume
17 I, as 35-A.

18 MR. COHEN: Which one are you marking?
19 That's probably the one that's going to go into the
20 record.

21 MR. MURPHY: Okay. I'll mark that
22 too.

23 BY MR. MURPHY:

24 Q. Mr. Frederick, can you turn to page 30

1 of the first attachment, which is the asset purchase
2 agreement of Exhibit 35. It's in the front of that
3 document, Volume I, page 30.

4 Is that your name or your
5 signature listed under Skokie Valley Asphalt
6 Company, Inc.?

7 A. Yes.

8 Q. Is that also your name under
9 Independence Leasing Corporation?

10 A. Yes.

11 Q. As president of Independence Leasing
12 Corporation?

13 A. Yes.

14 Q. So Independence Leasing Corporation
15 sold some of the assets that were involved in this
16 asset purchase by Curran?

17 A. Well, Independence Leasing Corporation
18 was a separate corporate entity, but that's all it
19 was.

20 Q. But it was involved in this asset --

21 A. It held nothing.

22 MR. MURPHY: May I approach, Madam
23 Hearing Officer?

24 HEARING OFFICER SUDMAN: Yes.

1 BY MR. MURPHY:

2 Q. Mr. Frederick, I'm showing you what's
3 been marked as Complainant's Exhibit Number 36, do
4 you recognize that?

5 A. Yes.

6 Q. And what is it?

7 A. It's a letter from Munch & Shult
8 Attorneys at Law with a cover letter by a legal
9 assistant.

10 Q. What does it enclose?

11 A. It encloses the escrow money that we
12 had put up.

13 Q. As part of the transaction with Curran
14 Contracting?

15 A. Correct. This is part of the escrow
16 that we had put up, yes.

17 Q. And it encloses two checks, one
18 payable to yourself and one payable to your brother,
19 correct?

20 A. Yes, that's correct.

21 Q. And the check payable to you was in
22 the amount of \$132,434.12?

23 A. Right.

24 Q. The check payable to your brother was

1 in the amount of 132,434.13?

2 A. Correct.

3 Q. Is this an accurate copy of that
4 document?

5 A. Seems to be, yes.

6 Q. Okay. Thank you.

7 Turning you again to Exhibit 35,
8 this time tab 12, which follows immediately after
9 Exhibit 35-A. And we'll mark tab 12 Exhibit 35-B.

10 HEARING OFFICER SUDMAN: Is this all
11 one document in tab 12?

12 MR. MURPHY: Yes.

13 BY MR. MURPHY:

14 Q. Do you recognize the document that's
15 been labeled Complainant's Exhibit 35 B?

16 A. Yes, I do.

17 Q. And what is it?

18 A. It's an escrow agreement.

19 Q. That was the escrow agreement that
20 pertained to the transaction between Skokie Valley
21 Asphalt and Curran Contracting?

22 A. Correct.

23 Q. And it is also the same escrow
24 agreement that governed the refund of the monies

1 that were referenced in Exhibit 36?

2 A. Correct.

3 MR. MURPHY: Can I have a moment,
4 Madam Hearing Officer?

5 HEARING OFFICER SUDMAN: Yes.

6 MR. MURPHY: Madam Hearing Officer,
7 may I approach the witness?

8 HEARING OFFICER SUDMAN: Yes.

9 BY MR. MURPHY:

10 Q. Mr. Frederick, I'm going to hand you
11 in a moment a document that's been marked
12 Complainant's Exhibit Number 37 for identification.
13 Take a moment to look at that.

14 (Witness perusing
15 the document.)

16 BY MR. MURPHY:

17 Q. Do you recognize it?

18 A. Yes.

19 Q. What is it?

20 A. It's a statement of accounts for our
21 liquidating trust.

22 Q. And that was a liquidating trust in
23 connection with Skokie Valley Asphalt?

24 A. Correct.

1 Q. It was used to liquidate -- strike
2 that.

3 Do you see the date of that
4 statement?

5 A. January 12th, 2000; is that right?

6 Q. Well, through January 31st, 2000.

7 A. Correct.

8 Q. And at that time -- well, who were the
9 beneficiaries of this trust, yourself and your
10 brother?

11 MR. JAWGIEL: Your Honor, I'm going to
12 object to the relevance with respect to who the
13 beneficiaries are.

14 HEARING OFFICER SUDMAN: Overruled.

15 BY MR. MURPHY:

16 Q. The beneficiary to this trust are
17 yourself and your brother, correct?

18 MR. JAWGIEL: Same objection.

19 HEARING OFFICER SUDMAN: Overruled.

20 You may answer.

21 BY THE WITNESS:

22 A. Yes.

23 BY MR. MURPHY:

24 Q. The date of this statement, January

1 12th, 2000 through January 31st, 2000, you still had
2 over \$600,000 in this liquidated trust, correct?

3 A. Yes.

4 Q. Is that a true and accurate copy of
5 that document?

6 A. Yes. It's three years old, but yes.

7 MR. MURPHY: May I approach, Madam
8 Hearing Officer?

9 HEARING OFFICER SUDMAN: Yes. You
10 have standing permission to approach.

11 BY MR. MURPHY:

12 Q. Mr. Frederick, I'm showing you what's
13 been marked as Complainant's Exhibit Number 38, do
14 you recognize that document?

15 A. Yes, it's another trust, another
16 document.

17 Q. It's another statement from the same
18 trust, correct?

19 A. Correct.

20 Q. Different date?

21 A. Different date.

22 Q. April 1st, 2000 through April 30,
23 2000?

24 A. Yes.

1 Q. And it shows disbursements totaling
2 \$180,000 during that statement period, does it not?

3 A. Yes.

4 Q. It also shows that those distributions
5 or disbursements went to you and your brother,
6 \$90,000 each, correct?

7 A. I don't see that in this document.

8 Q. If you turn to page four, is that a
9 true and accurate copy of that document?

10 A. I have no reason to doubt it, yes.

11 Q. Thank you.

12 Mr. Frederick, I'm showing you
13 what's been marked as Complainant's Exhibit Number
14 39, do you recognize that document?

15 A. Yes.

16 Q. What is it?

17 A. Again, it's a statement of accounts.

18 Q. For the same trust, same liquidating
19 trust?

20 A. Yes.

21 Q. And this is for different statement
22 periods, September 1st, 2000 through September 30th,
23 2000, correct?

24 A. Yes.

1 MR. JAWGIEL: Your Honor, I'm going to
2 object to this whole line of questioning regarding
3 this, and if I can have a standing objection to this
4 liquidating account documentation, which is 37
5 through now 39.

6 HEARING OFFICER SUDMAN: You may have
7 a standing objection. It's overruled. You may
8 continue.

9 BY MR. MURPHY:

10 Q. Turn to page four of that document,
11 sir.

12 A. Yes.

13 Q. It shows a distribution in the amount
14 of \$10,000 on September 27th to Bank of Waukegan,
15 account number 1952555?

16 A. Yes.

17 Q. Of Larry Frederick dated same date?

18 A. Yes.

19 Q. That was a disbursement to your
20 account at Bank of Waukegan, was it not, of that
21 account number?

22 A. I don't know if that's my personal
23 account number. I don't have a personal account
24 at -- as of that day, I didn't have a personal

1 account at the Bank of Waukegan.

2 Q. You're disputing that you had a
3 personal account at the Bank of Waukegan by that
4 number on that date?

5 A. Yes, that's -- I don't have a personal
6 account under the trust account at the Bank of
7 Waukegan.

8 Q. Well, is it possible that they were
9 account numbers for the trust account?

10 A. Yes, it could be.

11 MR. MURPHY: Could I have a moment,
12 Madam Hearing Officer?

13 HEARING OFFICER SUDMAN: Yes.

14 (Brief pause.)

15 BY MR. MURPHY:

16 Q. Who's the beneficiary of that trust
17 account?

18 MR. JAWGIEL: Your Honor, I'm going to
19 object to the relevance with respect to an account
20 at the Bank of Waukegan and who's the beneficiary of
21 it.

22 HEARING OFFICER SUDMAN: Overruled.

23 BY THE WITNESS:

24 A. Who would be the beneficiary, is that

1 your question?

2 BY MR. MURPHY:

3 Q. Yes, sir.

4 A. It would be Richard and myself.

5 Q. At the time of this disbursement,
6 September of 2000, Skokie Valley Asphalt had been
7 dissolved, correct.

8 A. Yes, I -- that was handled by the
9 accountants, I believe so, yes.

10 Q. So these monies are going to you and
11 your brother personally, not as corporate officers
12 of that corporation, that former corporation?

13 A. They would be to us personally, yes.

14 Q. That's true for all of the
15 disbursements that are referenced in the documents
16 that I've shown you, Exhibits Number 36 through 39?

17 A. They would be ours, yes.

18 Q. Mr. Frederick, I'm showing you what's
19 been marked Complainant's Exhibit Number 40, do you
20 recognize that document?

21 A. Yes, I recognize it.

22 Q. What is it?

23 A. It's a statement of accounts.

24 Q. For the same liquidating trust?

1 A. Yes.

2 Q. And the date of this statement is
3 June 1st, 2001 through June 30th, 2001?

4 A. Yes.

5 Q. And this statement shows disbursements
6 totaling \$32,550, correct?

7 A. What page are you on, sir?

8 Q. I'm on page two under payments.

9 A. It says disbursements.

10 Q. Okay. Disbursements totaling 32,550?

11 A. Correct.

12 Q. If you turn the page -- actually, two
13 pages, get to page four, this document showed that
14 on June 4th, 2001, there was a distribution to Bank
15 of Waukegan account 1952555, which is the same
16 account you described in Exhibit 39 in the amount of
17 \$15,000, correct?

18 A. Correct.

19 Q. And again, on June 22nd, 2001, another
20 distribution to the same account of \$17,550,
21 correct?

22 A. Correct.

23 Q. Is this a true and accurate copy of
24 this document, sir?

1 A. Correct.

2 Q. Isn't it true then, sir, that the
3 \$600,000 sum that was in this liquidating trust as
4 of the date referenced in Exhibit 36 was ultimately
5 disbursed to you and your brother personally?

6 A. It was disbursed to bank accounts that
7 my brother and I held, yes.

8 MR. MURPHY: Thank you.

9 I have no more questions at this
10 time, Madam Hearing Officer.

11 HEARING OFFICER SUDMAN: Thank you.

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

13 BY MR. JAWGIEL:

14 Q. Sir, if you could look at what has
15 been marked as Exhibits 37 through 40 of
16 Complainant's -- you have those in front of you.
17 The title of them is ILC/SVA liquidating trust, was
18 this also the leasing company's trust?

19 A. Yes, that's what ILC is. It was the
20 holding company for Skokie Valley, but it wasn't
21 used as that because there was no -- while it was an
22 entity, it didn't have any assets and it didn't --
23 it just appeared until it could be done away with.
24 There was a reason for Independence Leasing Company

1 years ago when you bought equipment and you leased
2 it, you got tax breaks. But that went away
3 sometime and then -- and we just never liquidated
4 the corporation, we just kept it.

5 Q. What is the business purpose for
6 having a liquidating trust?

7 A. When we sold the business, we had
8 accounts receivable that needed to be collected, and
9 that's -- and bills to pay beyond those that were
10 shown in the sale documents. There were other bills
11 to pay.

12 Q. So some of these disbursements that we
13 see in these exhibits which have been marked by the
14 Complainant as 37 through 40, some of those proceeds
15 actually went to pay outstanding bills?

16 A. Outstanding bills, tax bills,
17 accounting bills, legal bills, all kinds of bills.

18 Q. So if we look at what those draws
19 were, those weren't going into your pockets or
20 Larry's pocket, they were being used to offset
21 expenses?

22 A. Correct.

23 MR. MURPHY: I object. It's
24 speculation as to what happens when the money goes

1 to -- by this witness when it goes to his brother's
2 account.

3 HEARING OFFICER SUDMAN: Well, he can
4 comment on his account.

5 MR. JAWGIEL: He can comment on his
6 account, he can comment on his understanding of what
7 happened with his brother's personal --

8 HEARING OFFICER SUDMAN: I'll allow it
9 to the extent he knows.

10 BY THE WITNESS:

11 A. There's an answer to that. Maybe you
12 don't want me to make it, but --

13 MR. COHEN: Excuse me. Objection, no
14 question pending.

15 HEARING OFFICER SUDMAN: That's true.

16 BY MR. JAWGIEL:

17 Q. Was the money being distributed out of
18 this trust account into the same account number
19 regardless of whether it was under your name or
20 Richard's name?

21 A. That's exactly correct.

22 MR. JAWGIEL: That's all I have.

23 HEARING OFFICER SUDMAN: Anything
24 else? Mr. Frederick, I think you may step down.

1 Nobody has any other further questions for you.

2 Do the People have another witness
3 or do you have anything more you would like to
4 present before you conclude your presentation of
5 your case?

6 MR. COHEN: We have no further
7 witnesses. We would just like to move in our
8 exhibits at this time.

9 MR. JAWGIEL: We have an objection to
10 certain exhibits, your Honor.

11 HEARING OFFICER SUDMAN: Do you
12 stipulate to any of them? That might be faster.

13 MR. JAWGIEL: Certainly.

14 We can stipulate -- well, we can
15 have a mutual stipulation with respect to the
16 business documents that have been established from
17 both sides. We can maybe truncate that.

18 My objection goes to the
19 photographs, other than what was on page 33-D, the
20 foundation was not established for those.

21 HEARING OFFICER SUDMAN: Could you
22 please give me the exhibit numbers?

23 MR. JAWGIEL: Sure. It's 33-A through
24 J with the exception of 33-D. It was never

1 established that those photographs were a true and
2 accurate depiction of what was represented in the
3 photographs.

4 And I also have an objection with
5 respect to the Exhibits 37 through 40, because the
6 business document exception was not established. It
7 was never established that it was kept in the
8 ordinary course of business, never established that
9 that was a factual document that was kept in the
10 ordinary course of business. All that was
11 established was that it was a true and accurate copy
12 of a document.

13 MR. COHEN: I'm not quite sure what
14 we're doing. Does that mean all other exhibits are
15 admitted?

16 HEARING OFFICER SUDMAN: Are those the
17 only --

18 MR. JAWGIEL: As long as we have a
19 mutual understanding with respect to what has been
20 established in the business document exception
21 that -- I'll mutually stipulate to both of those
22 documents, including basically my 1 through 8.

23 MR. COHEN: Well, again, I'd like to
24 get on the record to move our exhibits into

1 evidence.

2 HEARING OFFICER SUDMAN: Okay, yeah.
3 It would help me to just deal with the Complainant's
4 exhibits right now.

5 MR. COHEN: Complainant's move into
6 evidence at this time Exhibits 1 through 29 and 31
7 through 40. And as I understand it, Mr. Jawgiel
8 has objections to 33, which I'd like to address.

9 MR. JAWGIEL: 33-A through J. I think
10 J was the last page with the exception of D. I do
11 not have an objection to 33-D. I believe the
12 foundation was properly laid for that page.

13 MR. COHEN: Is that the only one?

14 MR. JAWGIEL: Right.

15 MR. COHEN: Your Honor, as I recall,
16 Mr. Huff's testimony with regard to the pictures, I
17 had him flip through the pictures, make sure they
18 were copies of his pictures. I did ask him to
19 clarify that they were color photocopy copies of his
20 pictures and asked him whether they accurately
21 depicted or were accurate copies of his pictures.
22 He did indicate that yes, they were. That those
23 were his notes on the page, and that the only
24 blemish -- and that's my word. I don't believe that

1 was his word -- was that some of the pictures had
2 too much yellow in them; otherwise, they accurately
3 depicted what he saw in the pictures he took on
4 those days.

5 HEARING OFFICER SUDMAN: I agree. I
6 feel that he laid enough of a foundation for these
7 photos. I'm going to admit 33.

8 Now, you did not have objections
9 to 1 through 29?

10 MR. JAWGIEL: No.

11 MR. COHEN: And I believe you had
12 objections for these last bank account statements?

13 MR. JAWGIEL: Right, the 37 through
14 40. So anything outside of 37 through 40 other than
15 what we just talked about with 33, I do not have an
16 objection to.

17 HEARING OFFICER SUDMAN: Now, hang on.
18 What about 30, are you --

19 MR. COHEN: 30 I did not use, your
20 Honor. It was a sort of a blank sketch. And 31 was
21 the one Mr. Huff used to --

22 MR. JAWGIEL: So there is no 30?

23 MR. COHEN: Right, everyone can pull
24 it or whatever they want to do.

1 HEARING OFFICER SUDMAN: So there was
2 no objection to 31 and 32, 34, 35 and 36. Those
3 exhibits are then admitted.

4 37 through 40, let's discuss
5 those.

6 MR. MURPHY: Well, the witness
7 testified clearly that -- although I'm not sure I
8 understand your objection.

9 HEARING OFFICER SUDMAN: When I say
10 let's discuss, I mean let me find them. Here we go.

11 Okay, the financial information
12 you're objecting --

13 MR. JAWGIEL: At the tail end of their
14 case.

15 HEARING OFFICER SUDMAN: And you're
16 objecting on relevance?

17 MR. JAWGIEL: I'm objecting on a lack
18 of foundation.

19 Mr. Murphy asked him whether or
20 not this was a true and accurate company but never
21 established that this was something that they kept
22 in the ordinary course of business, and that they
23 didn't establish any of the other elements of the
24 business record.

1 HEARING OFFICER SUDMAN: I don't think
2 they're using them as --

3 MR. MURPHY: I wasn't using them to --

4 MR. JAWGIEL: I don't know how else he
5 can get them in.

6 MR. MURPHY: They're letters, they're
7 accurate copies of those documents.

8 HEARING OFFICER SUDMAN: Well, they're
9 bank statements.

10 MR. JAWGIEL: They're hearsay
11 statements at the very least. The bank statement is
12 not generated by the witness.

13 HEARING OFFICER SUDMAN: They appear
14 to be reliable to me. I'm going to admit them.

15 MR. MURPHY: I think that does it.

16 MR. JAWGIEL: Does the State rest?

17 MR. COHEN: Yes. With the admission
18 of those exhibits, we have no further witnesses to
19 call and the Complainants rest.

20 MR. JAWGIEL: At this point, your
21 Honor, we move for a directed finding with respect
22 to Count I through V.

23 With respect to Count I, we move
24 for a directed finding as stated against Richard and

1 Edwin Frederick.

2 With respect to Count II, we move
3 for directed finding with respect to Richard and
4 Edwin Frederick.

5 With respect to Count III, we move
6 for a directed finding with respect to Richard and
7 Edwin Frederick.

8 With respect to Count IV, we move
9 for a directed finding in favor of all Respondents.

10 With respect to Count V, we move
11 for a directed finding with respect to Richard and
12 Edwin Frederick.

13 HEARING OFFICER SUDMAN: Mr. Jawgiel,
14 I don't have the authority to make those findings,
15 so I'm going to have to deny your motion.

16 MR. JAWGIEL: Just so the record is
17 clear that I'm preserving my right for appeal on
18 those issues, I have to bring the motion at the end
19 of our case as well, and I will renew it at that
20 point in time.

21 And I'll also, for the record, lay
22 the basis for the motions, I guess.

23 With respect to the allegations
24 against Richard and Edwin Frederick, Counts I, II,

1 III and V have not been established by the State
2 that those individuals were permittees under the
3 law; that their own witnesses had testified that the
4 permittee, the named permittee, was the only entity
5 responsible for compliance under those permits; that
6 the allegations of the complaint were drafted
7 without concern regarding the law and somewhat in
8 bad faith against those individuals. And what I
9 mean by those individuals, it would be the
10 Fredericks; that it is clear that their own
11 witnesses established the fact that those causes of
12 action against the Fredericks had no basis whatsoever.

13 With respect to Count IV, as we
14 stated in our opening statement, they have not
15 established that the contaminant came from the
16 property of Skokie Valley that was found in the Avon
17 drainage ditch.

18 HEARING OFFICER SUDMAN: Mr. Jawgiel,
19 could you save this for your closing argument?

20 MR. JAWGIEL: I have to establish a
21 record. And I'm establishing a record to preserve
22 it, because if I don't give you a basis, all you did
23 is deny my motion without a basis and Appellate
24 Court would have nothing to review regarding what

1 our position is on this. So I have to bring --

2 HEARING OFFICER SUDMAN: Well, I
3 specifically said I didn't have the authority.

4 MR. JAWGIEL: That's understandable
5 you don't have the authority, but somebody else may
6 who reads this before it comes to some sort of a
7 decision. And if not, at least I've preserved it,
8 as I am obligated to do so.

9 HEARING OFFICER SUDMAN: Okay. Please
10 continue.

11 MR. JAWGIEL: And that's it.

12 Our case?

13 HEARING OFFICER SUDMAN: Yes, please.
14 I'm sorry. Would the Respondents please call their
15 first witness.

16 MR. JAWGIEL: Certainly. Mr. James
17 Huff, please.

18 HEARING OFFICER SUDMAN: Mr. Huff, you
19 may have a seat again at the table. I remind you
20 that you're still under oath.

21 THE WITNESS: Yes, ma'am.

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

23 BY MR. JAWGIEL:

24 Q. Good afternoon, sir.

1 A. Good afternoon.

2 Q. Sir, in your experience as a
3 consultant, have you had the opportunity to review
4 what has been called DMRs, discharged monitoring
5 reports?

6 A. Not only review them, but I have
7 prepared hundreds of discharge monitoring reports
8 over my career.

9 Q. And if I can direct your attention to
10 the Complainant's Exhibits 9 through 17, you'll see
11 a series of discharge monitoring reports, I believe;
12 is that correct?

13 A. Yes.

14 Q. With respect to Exhibit Number 9, do
15 you hold an opinion whether or not there was any
16 environmental impact with respect to the levels
17 reported in that singular report?

18 MR. COHEN: You Honor, just for the
19 record, I guess Mr. Jawgiel is going to go through
20 these with that similar question, the objection that
21 Mr. Murphy has been making throughout, environmental
22 impact, is not an element of our case. So for that
23 basis, we would object to the line of questioning,
24 but we understand he's going to go through it, I

1 would just like a continuing objection for now.

2 HEARING OFFICER SUDMAN: Okay.

3 MR. COHEN: Thank you.

4 BY MR. JAWGIEL:

5 Q. Let me ask --

6 MR. JAWGIEL: And we'll allow the
7 objection to stand throughout this line of
8 questioning, because I assume it's going to be the
9 same, correct?

10 HEARING OFFICER SUDMAN: Yes.

11 BY MR. JAWGIEL:

12 Q. I'm going to rephrase the question for
13 you.

14 With respect to Exhibit Number 9,
15 with regard to the levels reported in this
16 particular DMR, what is the gravity of the alleged
17 violation here?

18 A. Well, the violation or alleged
19 violation is with respect to the single total
20 suspended solids standard. They're not standard,
21 but permit condition. There's a 15 monthly average
22 and a 30 milligram per liter daily maximum. They
23 received 55 milligrams per liter on their sample
24 result.

1 I guess you could answer that
2 question several ways. First and foremost, the
3 USEPA recognized that effluent limits and storm
4 water permits was inappropriate, and that was
5 referenced in the exhibits that you handed me
6 earlier today, I believe, either Respondent Number 6
7 or Number 8 referred to that.

8 More importantly, the Illinois EPA
9 has recognized that total suspended solids limits
10 aren't appropriate in storm water. If you look at
11 the draft NPDES permit that the Agency had prepared
12 for Skokie Valley, there is no suspended solids
13 limit.

14 So you ask is 55 milligrams per
15 liter a large amount for storm water discharge or
16 typical or on the low side, and I would answer it's
17 on the low side. Remember that when Skokie Valley
18 applied for this NPDES permit, they put in a two
19 stage retention basin which is effective at reducing
20 the suspended solids and for storm water runoff, so
21 55 milligrams per liter would be on the low side for
22 typical storm water content.

23 MR. COHEN: Objection, move to strike.
24 Nonresponsive. Nothing to do with environmental

1 impact, which was the question.

2 MR. JAWGIEL: No, I asked him the
3 gravity of this particular -- the levels of this
4 particular report, whether there was any gravity of
5 the alleged violation, and I think he gave a
6 complete and comprehensive answer.

7 HEARING OFFICER SUDMAN: I thought it
8 was okay. I'll let it stand.

9 BY MR. JAWGIEL:

10 Q. With respect to Exhibits 10 through
11 17 -- and, you know, take some time to look at those
12 various exhibits.

13 Do you find any level that's
14 reported in those exhibits that you would find
15 anything but minor?

16 A. Well, minor is, I guess, a term of
17 art. If you look at Exhibit 10 where the value of
18 25 milligrams per liter was reported, that was below
19 the daily maximum limits. And certainly, anything
20 below 30 under the NPDES permit program where you're
21 under the daily maximum I would term to be a minor
22 violation or a minor exceedence.

23 With respect to the answer I gave
24 under Exhibit 9, that 55 milligrams per liter was

1 the highest recorded between Exhibit 11 and -- or 10
2 and Exhibit 16. And then Exhibit 17, there is a
3 higher value at 126 milligrams per liter. And that
4 is getting into a range more typical of what you see
5 in storm water runoff in the hundreds of milligrams
6 per liter.

7 Q. Now, you see with respect to
8 Exhibit 17 there's a note in the upper right-hand
9 corner in the comment section?

10 A. Yes.

11 Q. Is, in your experience, the amount of
12 rainfall one of the factors that affects the total
13 suspended solid levels of a DMR?

14 A. To answer that twofold, yes, it's the
15 intensity of the storm event, because that helps
16 define the amount of soil or solids that are eroded.
17 And then the volume is also pertinent because you
18 have retention time in the storm water detention
19 basins, so when you have a lot of rain storm, your
20 detention time goes down, so your solids removal
21 through detention basins would also be reduced. So
22 during periods of heavy precipitation, you would
23 expect the suspended solids discharge to go up.

24 Q. If you were handed, let's say, Exhibit

1 Number 9 to review, would you recommend any action
2 to be taken?

3 MR. COHEN: I object to the form of
4 that question.

5 MR. JAWGIEL: It's an opinion.

6 HEARING OFFICER SUDMAN: I think it's
7 okay. Go ahead.

8 BY THE WITNESS:

9 A. Am I wearing a regulatory hat with
10 that question or a consulting engineering hat, what
11 hat am I wearing?

12 BY MR. JAWGIEL:

13 Q. Well, you're a consulting engineer, so
14 in this case, as a consulting engineer, if you were
15 just handed this one singular report, which is
16 Exhibit Number 9, would you recommend any action be
17 taken?

18 A. My opinion is that it was an error to
19 ever put a suspended solids limit in this NPDES
20 permit. They don't belong in storm water permits.
21 I believe the Agency made a mistake putting it in
22 there, which they corrected when they issued the
23 draft permit in 1996.

24 MR. JAWGIEL: I think you've answered

1 my question. I don't need to go any further. Thank
2 you very much, sir. That's all I have of this
3 witness.

4 HEARING OFFICER SUDMAN: Thank you.

5 Cross exam?

6 MR. COHEN: One moment.

7 (Brief pause.)

8 MR. COHEN: No questions.

9 HEARING OFFICER SUDMAN: Okay. Thank
10 you very much, Mr. Huff. You may step down.

11 THE WITNESS: Thank you, Madam Hearing
12 Officer.

13 HEARING OFFICER SUDMAN: In fact, you
14 may be excused. We're finished with you.

15 The Respondents may call their next
16 witness.

17 MR. JAWGIEL: We can also excuse
18 Mr. Callus.

19 HEARING OFFICER SUDMAN: Okay.

20 MR. COHEN: Would you mind if we took
21 a five-minute break?

22 HEARING OFFICER SUDMAN: Sure. Let's
23 take a five-minute break.

24

1 (Whereupon, a break was taken,
2 after which the following
3 proceedings were had:)

4 HEARING OFFICER SUDMAN: Would the
5 Respondents like to call their next witness?

6 MR. JAWGIEL: At this time, your
7 Honor, what we would do is incorporate the testimony
8 as presented by the State into our case in chief in
9 support of our affirmative defense and move to admit
10 our Exhibits 1 through 8. I think those are all our
11 exhibits.

12 HEARING OFFICER SUDMAN: Are there any
13 objections to any of these exhibits?

14 MR. MURPHY: There were objections to
15 Exhibits 4 and 5, your Honor. The objection was
16 overruled, but I can't stipulate -- I can stipulate
17 to the others. I can't stipulate to 4 and 5 because
18 of the objection I articulated.

19 MR. JAWGIEL: Am I to assume you will
20 just note the objection given the ruling, and that's
21 fine to preserve their right.

22 HEARING OFFICER SUDMAN: Yes.

23 MR. JAWGIEL: And at that, we would
24 rest and renew our motion for a directed finding,

1 which has already been ruled on, but we do want to
2 note the case in support thereof with respect to
3 Counts I, II, III and V, which is People versus -- I
4 believe it's Bohne, B-O-H-N-E. It is 728 N.E. 2nd,
5 509. It is an Illinois Appellate First District
6 2000 case.

7 HEARING OFFICER SUDMAN: So noted.

8 Before we hear closing arguments,
9 I would like to go off the record to discuss the
10 briefing schedule.

11 (Whereupon, a discussion was had
12 off the record.)

13 HEARING OFFICER SUDMAN: We are back
14 on the record. We've just had an off-the-record
15 regarding post-hearing briefs. The parties have
16 agreed to a briefing schedule as follows:

17 The transcript of these
18 proceedings will be available from the court
19 reporter by November 12th and will appear on the
20 Board's web site thereafter.

21 The public comment deadline is
22 November 19th. Public comment must be filed in
23 accordance with Section 101.628 of the Board's
24 procedural rules.

1 Complainant's brief is due January
2 12th, 2004. Respondent's brief is due March 15th,
3 2004. And Complainant's reply, if any, is due April
4 15th, 2004. The mailbox rule will apply.

5 At this time, I would like to ask
6 Complainant if he would like to make a closing
7 argument?

8 MR. COHEN: No, your Honor,
9 Complainant waives closing argument.

10 HEARING OFFICER SUDMAN: Would
11 Respondents like to make a closing argument?

12 MR. JAWGIEL: We will waive as well.

13 HEARING OFFICER SUDMAN: At this time,
14 I will ask again if there are any members of the
15 public present that want to make statements on the
16 record?

17 Seeing none, I will proceed to
18 make a statement as to the credibility of witnesses
19 testifying during this hearing.

20 Based on my legal judgment and
21 experience, I find all of the witnesses testifying
22 to be credible. At this time, I will conclude the
23 proceedings. I thank all of you for your patience
24 and professionalism and we stand adjourned. Thank

1 you very much.

2 MR. COHEN: Thank you, your Honor.

3 MR. MURPHY: Thank you very much.

4 MR. JAWGIEL: Thank you very much.

5 MR. O'NEILL: Thank you.

6 (Which were all the proceedings
7 had in the above-entitled cause
8 on this date.)

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

3

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

12

13

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

14

15

SUBSCRIBED AND SWORN TO
16 before me this ___ day
17 of _____, A.D., 2003.

17

18 Notary Public

19

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