

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

No. PCB 02-177

(Enforcement-RCRA, Water)

JOHN PRIOR, d/b/a PRIOR OIL COMPANY

and JAMES MEZO, d/b/a MEZO OIL

COMPANY,

Respondents,

Proceedings held on September 15th, 2003, at the Washington
County Courthouse, Court Room 2, 101 East St. Louis Street,
Nashville, Illinois, before CAROL SUDMAN, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR

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A P P E A R A N C E S

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I N D E X

WITNESSES	PAGE NUMBER
MICHAEL GRANT	
Direct Examination	8
Cross-Examination	25
CHRISTOPHER CAHNOVSKY	
Direct Examination	30
CHERYL CAHNOVSKY	
Direct Examination	70
THOMAS POWELL	
Direct Examination	115
JOHN PRIOR	137
JAMES MEZO	141
Cross-Examination	148

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

KEEFE REPORTING COMPANY

1 HEARING OFFICER SUDMAN: Good morning. My name is Carol
2 Sudman and I'm the hearing officer with the Pollution Control
3 Board. This is PCB 02-177, the People of the State of Illinois
4 vs. John Prior, d/b/a Prior Oil Company and James Mezo, d/b/a
5 Mezo Oil Company.

6 It is a few minutes after 10 o'clock and Mr. Mezo is not
7 yet here, but we're going to go ahead and begin because we have
8 to be out of here by four o'clock today.

9 I will note for the record that there are no members of the
10 public present also. Members of the public may provide public
11 comment if they so choose.

12 At issue in this case is the People's complaint alleging
13 that Respondent's violated the Environmental Protection and the
14 Board's regulation. Numerous violations are alleged concerning
15 Respondents' facilities in Wamac, Washington County.

16 You should know it is the Pollution Control Board, and not
17 me, that will make the final decision in this case. My purpose
18 is to conduct the hearing in a neutral and orderly manner so that
19 we have a clear record of the proceedings. I will also assess
20 the credibility of the witnesses on the record at the end of the
21 hearing.

22 This hearing was noticed pursuant to the Act and the Board's
23 rules and will be conducted pursuant to Sections 101.600 through
24 101.632 of the Board's procedural rules.

1 At this time I will ask the parties to make their
2 appearances on the record, please.

3 MS. CARTER: Sally Carter with the Attorney General's
4 Office.

5 HEARING OFFICER SUDMAN: And, Mr. Prior, you're
6 representing yourself here today; is that right?

7 MR. PRIOR: Yes.

8 HEARING OFFICER SUDMAN: Mr. Mezo is expected to be here as
9 far as you know?

10 MR. PRIOR: I assume so. I --

11 HEARING OFFICER SUDMAN: All right. Are there any
12 preliminary matters to discuss on the record?

13 MS. CARTER: The People have no preliminary matters.

14 HEARING OFFICER SUDMAN: Okay. Mr. Prior, anything
15 preliminary before we begin?

16 MR. PRIOR: I don't know if it's preliminary or when I
17 should present it. I would like to present some evidence that I
18 was not the one that done, at least part of this, and I really
19 believe all of it. But I don't know if I should do that now or
20 when.

21 HEARING OFFICER SUDMAN: Yeah, well, that's the purpose of
22 the hearing today. You will be able to put on all your evidence
23 after the People put on their evidence.

24 MR. PRIOR: Okay.

1 HEARING OFFICER SUDMAN: I'll let you know when. Would the
2 People like to give an opening statement?

3 MS. CARTER: A brief one.

4 HEARING OFFICER SUDMAN: Okay.

5 MS. CARTER: Thank you. The People are before the Board
6 due to the Respondent, John Prior's, open dumping of fluids
7 generated from oil steps and activities and other waste at a site
8 commonly referred to as the Gomper site. A number of land
9 pollution violations have been alleged and will be proven today
10 to the testimony of two Illinois EPA inspectors, Mr. Mike Grant
11 and Mr. Chris Cahnovsky.

12 In addition, the People will present evidence of three
13 separate releases of oil and/or produced fluids to State water by
14 Mr. Prior and/or Mr. James Mezo. The first of these releases
15 took place at a site commonly referred to as the Wamac City Park
16 site by John Prior. Emergency Responder, Cheryl Cahnovsky, will
17 testify not only to the release, but to its impact, but to prior
18 failure to adequately maintain and respond to the release. The
19 second release occurred at the Oestreich Tank Battery, a site
20 that was, and is still, permitted by the Illinois Department of
21 Natural Resources to Mr. Mezo.

22 At the time of the incident Prior operated the tank
23 battery. Emergency Responders, Tom Powell and Cheryl Cahnovsky,
24 will testify to the releases, its impact and the Respondents'

1 failure to adequately contain and respond to the release.

2 Finally, the third release occurred at the Morgan Kalber
3 Kamp Site operated by Mr. Prior.

4 Emergency Responder, Cheryl Cahnovsky, will testify to the
5 release and its impacts again.

6 In addition, the People will offer the testimony from one
7 witness who will discuss the relative permitting and disposal
8 requirements of the Illinois Oil and Gas Act.

9 Based on the facts that we will be presented in this
10 hearing, the People respectfully request that the Board find the
11 Respondent in violation of the Illinois Environmental Protection
12 Act and the associated regulations. In addition, the People seek
13 a penalty that appropriately addresses the duration and the
14 gravity to violation.

15 Finally, the People request that Board award the People
16 attorney's fees for Prior's repeated violations of the Act. The
17 State's prayer for relief will be addressed in greater detail in
18 the State's post-hearing brief. Thank you.

19 HEARING OFFICER SUDMAN: Thank you. Mr. Prior -- First of
20 all, let me ask, are you Mr. Mezo or are you a witness? You are
21 Mr. Mezo. Would you like to have a seat at the table with
22 Mr. Prior? You can make your appearance now. Just state your
23 name and --

24 MR. MEZO: James Mezo.

1 HEARING OFFICER SUDMAN: And you're representing yourself?

2 MR. MEZO: Yes.

3 HEARING OFFICER SUDMAN: Mr. Prior, would you like to give
4 an opening statement? You don't have to.

5 MR. PRIOR: I like to say that these alleged things that --
6 I don't know if I should, Sally Carter or the State, whoever is
7 saying that, I disagree with and that I wasn't the one that done
8 it. And I think I can show you, as well as the others here, that
9 I didn't do it.

10 HEARING OFFICER SUDMAN: Okay. Thank you very much.
11 Mr. Mezo, would you like to give an opening statement? Again,
12 it's not required.

13 MR. MEZO: Well, just that I brought, you know, what
14 evidence I can come up with as far as correspondence and that.
15 And at the time the oil spill happened on the Oestreich lease, I
16 have, prior to that, attempted to transfer that property and had
17 sold it to Mr. Prior along with the equipment, and he was unable
18 to get the permit transferred at that time. And at the time of
19 the spill, we still hadn't succeeded in doing that. I have a
20 letter from the EPA saying that they have the evidence.

21 HEARING OFFICER SUDMAN: Okay. Thank you. What's going to
22 happen is the People will call all of their witnesses, and when
23 their witnesses are done, then you will have an opportunity to
24 put on all your evidence, okay. Having said that, the People can

1 present their case.

2 MS. CARTER: Okay. The People call Mike Grant.

3 HEARING OFFICER SUDMAN: You can take the witness stand
4 over there. Would you please swear him in.

5 MICHAEL D. GRANT,
6 called as a witness herein, having been first duly sworn,
7 deposeseth and saith as follows:

8 DIRECT EXAMINATION

9 QUESTIONS BY MS. CARTER:

10 Q. Please state your name.

11 A. Michael D. Grant.

12 Q. Can you tell me a bit about your post-high school
13 education?

14 A. I have a bachelor's degree in environmental studies
15 from, what was then Sangamon State, now the University of
16 Illinois, Springfield.

17 Q. And when did you obtain that degree?

18 A. 1983.

19 Q. With whom are you currently employed?

20 A. Illinois Environmental Protection Agency. I work for
21 the Bureau of Land in the Collinsville Regional Office.

22 Q. Okay. And what's your current position with the
23 Illinois EPA?

24 A. I've been serving as assistant regional manager for the

1 past 14 years.

2 Q. Okay. As the assistant regional manager for the office,
3 can you tell me a bit about your duties?

4 A. In regards to overseeing other personnel in the Bureau
5 of Land and assisting and training, I also conduct various
6 inspections, the majority of being hazardous waste compliance
7 inspections.

8 Q. And I think you mentioned that you trained new employees
9 as well, sir?

10 A. Right.

11 Q. Okay. What does that consist of?

12 A. Consists of taking them out in the field, showing them
13 how our inspection reports are to be written up, assisting in
14 drafting letters, reviewing their work, sampling, showing them
15 how to sample, and all the procedures that the Bureau of Land is
16 required to follow during inspections.

17 Q. I believe you mentioned before that you also conduct
18 inspections?

19 A. Right.

20 Q. And that includes hazardous waste inspections?

21 A. And solid waste inspections.

22 Q. When you say solid waste inspections, what does that
23 mean?

24 A. Materials such as garbage, liquids, stuff that's

1 non-hazardous is referred to as solid waste.

2 Q. During the course of your inspection --

3 A. Yes.

4 Q. -- do you also review certain reports that are
5 submitted?

6 A. Yes.

7 Q. Okay. What sort of reports might you review?

8 A. I would review closure plans submitted by regulated
9 facilities in regards to clean-up activities we may have required
10 them to do through a course of findings during an inspection,
11 correspondence submitted in response to if we issued a Violation
12 Notice, they would submit a response, we would review the
13 adequacy of that.

14 Q. Okay. Prior to serving as assistant regional manager,
15 did you hold a different position at the Illinois EPA?

16 A. I was an inspector for approximately five years.

17 Q. And during the course of your employment with the
18 Illinois EPA, approximately how many hazardous waste inspections
19 have you conducted in that time?

20 A. Over 200.

21 Q. And approximately how many solid waste inspections have
22 you conducted?

23 A. Total amount of inspections would be close to a
24 thousand, I would imagine.

1 Q. Since you have been employed by the Illinois EPA, have
2 you received any additional training?

3 A. I received continuing education training in sampling,
4 negotiations, I've been to the RCRA Hazardous Waste School for
5 Inspectors in Denver at the National Investigation Center,
6 USEPA's National Environmental Investigation Center.

7 Q. Have you also attended some regulatory courses?

8 A. Yes, Midwest Environmental, the Enforcement Associations
9 Case for Regulatory Inspectors, working environmental crimes.

10 Q. I'm going to hand you what's been previously marked
11 People's Exhibit No. 1 for identification, can you identify that
12 document?

13 A. That's my current resume.

14 Q. Is it current through what date?

15 A. Today.

16 Q. Okay. Does this resume fairly and accurately show your
17 work experience and your educational background?

18 A. Yes.

19 MS. CARTER: Ms. Hearing Officer, at this time the People
20 move for the admission of People's Exhibit 1 into evidence.

21 HEARING OFFICER SUDMAN: Do the Respondents have any
22 objection?

23 MR. PRIOR: No.

24 HEARING OFFICER SUDMAN: I'm admitting the People's Exhibit

1 1, the resume of Michael Grant.

2 Q. (By Ms. Carter) Are you generally familiar with the
3 Illinois Attorney General's Office case involving John Prior?

4 A. Yes.

5 Q. Okay. How are you familiar with the case?

6 A. Some of the inspections that I have conducted at the
7 Gomper site are being discussed in this case today.

8 Q. And you refer to the Gomper site, is that the site
9 located at 140 Gomper Street in Wamac?

10 A. Yes.

11 Q. Are you familiar with who operates the facility at the
12 Gomper site?

13 A. Yes.

14 Q. Okay. And who is that?

15 A. John Prior.

16 Q. Have you been to the site on -- do you recall exactly
17 how many occasions?

18 A. Four or five.

19 Q. Does that include a site visit from June of '96?

20 A. Yes.

21 Q. I'm going to hand you what's previously been marked as
22 People's Exhibit No. 2 for identification in just a moment. If I
23 could ask you to identify this document.

24 A. This is what's referred to as the state of Illinois Open

1 Dump Inspection Checklist. This is our Open Dump Report.

2 Q. Okay. And what does the Illinois EPA make of this sort
3 of document?

4 A. We use it in conduction inspections of open dumps to
5 determine whether they're in compliance or not.

6 Q. And who generally enters the information that's
7 contained in the Dump Inspection Reports?

8 A. The inspector.

9 Q. And when are these inspection documents typically
10 generated?

11 A. After we get back from the inspection back to the
12 office.

13 Q. And what does your Bureau do with the completed
14 Inspection Report?

15 A. If apparent violations are alleged, then we send -- we
16 usually send a letter to the responsible party discussing our
17 findings.

18 Q. Does the Illinois EPA Bureau of Land also maintain the
19 Inspection Reports after they're completed?

20 A. Yes.

21 Q. They're maintained in your files?

22 A. In our files, and then up to the headquarters in
23 Springfield.

24 Q. Are these inspections regularly generated by the

1 Illinois EPA Bureau of Land?

2 A. Yes.

3 Q. And in the ordinary course of business activity?

4 A. Yes.

5 Q. Okay. I see as well that -- did you take photographs on
6 site on July -- June 13th, 1996?

7 A. Yes, I did.

8 Q. Okay. And are you familiar with the site as it appears
9 on this date?

10 A. Yes.

11 Q. And do these photographs fairly and accurately show the
12 condition of the site?

13 A. Yes, they do.

14 Q. Did you also complete a site sketch?

15 A. Yes, I did.

16 Q. And does the site sketch generally show the site on this
17 date?

18 A. Yes.

19 Q. And will the sketch assist you in describing your
20 observations?

21 A. Yes.

22 MS. CARTER: Okay. At this time the People move for the
23 admission of People's No. 2 into evidence.

24 HEARING OFFICER SUDMAN: Have the Respondents seen a copy

1 of this?

2 MS. CARTER: I just handed it to them.

3 HEARING OFFICER SUDMAN: Do the Respondents have any
4 objection to this document?

5 MR. MEZO: (Shakes head.)

6 HEARING OFFICER SUDMAN: We will go ahead and admit
7 People's Exhibit 2.

8 Q. (By Ms. Carter) Why was the inspection conducted?

9 A. We received a complaint regarding some dumping of some
10 oil field waste down an abandoned mine shaft.

11 Q. Prior to going on site, did you conduct a review of the
12 Bureau of Land's file for this site?

13 A. Yeah.

14 Q. Okay. And did you make any determinations on whether
15 the Gomper site possess any Illinois EPA permits?

16 A. They did not have any permits with the Bureau of Land.

17 Q. Okay. Prior to going out there, did you have any
18 discussions with anybody about the condition of the site?

19 A. I contacted Alan Whitler with the Office of Mines and
20 Minerals.

21 Q. Do you know what Mr. Whitler's position is with the
22 Office of Mine & Minerals?

23 A. Yeah, he's -- my understanding is he's the inspector out
24 of the Centralia office that handles the oil fields for that

1 area.

2 Q. And what did you discuss with Mr. Whitler?

3 A. I asked him if Mines and Minerals had issued any
4 disposal permits for the Gomper site.

5 Q. And had they issued any permits for disposal?

6 A. He said they had not.

7 Q. Did anybody accompany you on site?

8 A. Chris Cahnovsky with our office.

9 Q. Okay. What's Mr. Cahnovsky's position with your office?

10 A. Currently he's regional manager. At that time, he was
11 an inspector.

12 Q. Did anybody from Prior Oil Company accompany you?

13 A. Once we got to the facility, we met with the Prior Oil
14 employee, Juvenile Hixenbaugh.

15 Q. Let's turn to your observations on site on this date.
16 Generally when you first arrived, what did you observe?

17 A. We observed a tanker truck backed up to an opening in
18 the ground which appeared to be the mine shaft that was
19 referenced in the complaint that we received.

20 Q. Perhaps if I direct you to your photographs that would
21 assist you in your discussion. Turning to Photograph No. 1, sir.

22 A. Yes.

23 Q. What does that show?

24 A. It shows an opening of the apparent mine shaft with a

1 hose leading into it and oily substance around the end of the
2 hose.

3 Q. Turning to Photograph No. 4, what does that show?

4 A. That shows a picture of the actual vehicle that was
5 backed up to the shaft that had the hose attached to it.

6 Q. Was the shaft then directly then behind --

7 A. Yes.

8 Q. -- the process that's shown in Photograph 4?

9 A. Yes, ma'am.

10 Q. Turning to Photograph No. 6, what does that show?

11 A. That shows the rear end of the truck and the hose
12 leading from the rear end of the truck going down into the shaft.

13 Q. And what about Photograph No. 8, what does that show?

14 A. That just shows the name of the truck, of who owned the
15 truck.

16 Q. And what does that say, sir?

17 A. Prior Oil.

18 Q. Did you question Mr. Hixenbaugh about your observations
19 concerning the truck and the mine shaft?

20 A. Yes.

21 Q. And what did he state?

22 A. He indicated that they were just discharging storm water
23 collected from tank batteries.

24 Q. Okay. Now while you were on site, did you also notice

1 any tires out there?

2 A. Yes, we did notice a pile of tires.

3 Q. And what kind of tires were they? Were they on or off
4 rim?

5 A. The majority of them were off rim, and they appeared to
6 be truck tires.

7 Q. Okay. What's the significance of tires being off rims?

8 A. At that time, used tires are regulated off the rim as
9 there's regulations specific on how they must be stored and
10 handled.

11 Q. Do tires off rim also provide a potential ground for
12 breeding of vectors?

13 A. Yes, they pose a threat for mosquitoes.

14 Q. And how is that?

15 A. They accumulate the water, and mosquitoes use this water
16 to breed.

17 Q. Are there photographs that document your tires on site?

18 A. Yes, Photographs No. 2 and No. 3.

19 Q. While you were on site, Mr. Grant, did you make any
20 other observations?

21 A. We did observe a couple of drums that appeared to
22 contain oil. They were not labeled, and they were not closed,
23 and they appeared to be standing around the areas of the drum.

24 Q. Should these drums have been labeled?

1 A. Yes.

2 Q. What should they have been labeled with?

3 A. Used oil.

4 Q. Okay. Is there a photograph that depicts that
5 operation?

6 A. Photo No. 5.

7 Q. Now I think you mentioned that there was a considerable
8 amount of stained oil in the area of the drums, what does that
9 indicate to you?

10 A. That it either had been spilled when the drums were
11 filled or the drums had been leaking -- with them being open,
12 rain water could cause the oil to be released from the drums.

13 Q. Subsequent to your visit on June 13th, did you discuss
14 your findings with anybody?

15 A. Yes. We went and talked to Alan Whitler regarding what
16 we had observed at the site.

17 Q. Did you question him about Mr. Hixenbaugh's statement
18 that they were simply discharging clean storm water?

19 A. Yes.

20 Q. And what was Mr. Whitler's response?

21 A. He stated that was -- that was prohibited, that that
22 cannot be discharged in this manner.

23 Q. Do you have an opinion concerning your observations of
24 June 13th of the Gomper site?

1 A. Yes, this was in violation of the Environmental
2 Protection Act. And discharging of this material into an
3 abandoned mine shaft, contribute to the possibility of ground
4 water contamination.

5 Q. Did you return to the site in August of 2000?

6 A. Yes.

7 Q. Did anybody accompany you during that visit?

8 A. Chris Cahnovsky.

9 Q. Okay. Did you return to the site in November of 2000?

10 A. Yes.

11 Q. I'm going to hand you what's been previously marked as
12 People's Exhibit No. 4 for identification. I'll ask you to
13 identify it in just a moment. Can you identify that document for
14 me?

15 A. Yes. This is another Open Dump Checklist similar to the
16 one I discussed from June of '96.

17 Q. Okay. And what -- Did you return to the site in
18 November of 2000?

19 A. Our office received a complaint about open burning at
20 the Gomper site.

21 Q. Okay. Now I think you just mentioned, sir, that this
22 document was generally produced in the same manner that you
23 produced your '96 Inspection Report?

24 A. Yes, ma'am.

1 Q. Okay. And did you take photographs while you were on
2 site on November 3rd, 2000?

3 A. Yes, yes, I did.

4 Q. Okay. And are you familiar with the site as it appeared
5 on this day?

6 A. Yes.

7 Q. And does this photograph fairly and accurately show the
8 condition on site?

9 A. Yes.

10 Q. Is there a site sketch as well that you generated?

11 A. Yes.

12 Q. Does the site sketch generally show the nature of the
13 site in November of 2000?

14 A. Yes, ma'am.

15 Q. And will it assist you in explaining your observations?

16 A. Yes.

17 Q. And was this Inspection Memo generated in the ordinary
18 course of business activity?

19 A. Yes.

20 MS. CARTER: At this time the People move for the admission
21 of People's 4 into evidence.

22 HEARING OFFICER SUDMAN: Do the Respondents have any
23 objections? Hearing none, I will admit People's Exhibit No. 4.

24 Q. (By Ms. Carter) Okay. I believe you mentioned that you

1 were on site responding to a site complaint; is that correct?

2 A. Correct.

3 Q. Okay. Can you tell me a little bit more about the
4 complaint that the Illinois EPA received?

5 A. We received a complaint concerning some open burning at
6 the site. I believe we also received a complaint from the fire
7 chief.

8 Q. Okay. The fire chief from what district?

9 A. Centralia Fire Protection District.

10 Q. Okay. And did they have any concerns about what was
11 happening out there?

12 A. Just with the burning.

13 Q. Okay. Did anybody accompany you on site?

14 A. Yes.

15 Q. And who was that?

16 A. Ken Mensing, who at that time was my regional manager,
17 and Jeff Benbenek with the Bureau of Air Pollution out of our
18 Collinsville Field Office.

19 Q. Let's turn a little bit more to your observations of
20 November 3rd. What did you observe out there?

21 A. When we arrived, we observed a -- what appeared to be a
22 trench that had been dug and had smoldering. It looked like oil
23 and straw that had been used for absorbant.

24 Q. Did you notice that there was any smoke or not?

1 A. Yes, it was smoking at the time of the inspection.

2 Q. Are there photographs that document your observations?

3 A. Yes.

4 Q. Maybe if I could just direct your attention to

5 Photographs No. 1 and No. 2, what did -- what do those show?

6 A. Those are photos of the area where the material was

7 burning.

8 Q. And Photograph No. 3?

9 A. Three is a similar picture, just taken from a further

10 distance.

11 Q. If I could just direct your attention to Photograph No.

12 4, with the material that was burning, was it straw or was it

13 something different?

14 A. It looked like straw and maybe oil and garbage, plastic

15 bags that had contained some material.

16 Q. And can you see that in Photograph No. 4, 5 and 6?

17 A. Yes.

18 Q. Okay. Directing your attention to Photographs No. 7 and

19 8, what do those show?

20 A. That's material that appears to have been dumped on the

21 ground, was oil and contaminated straw, but this was not in the

22 area that was smoldering at the time of the inspection.

23 Q. Where was this area, sir?

24 A. Adjacent to it.

1 Q. While you were on site, was this matter discussed with
2 Mr. Prior?

3 A. Yes.

4 Q. What was stated?

5 A. Mr. Prior had indicated that he had instructed some
6 employees to clean out an area in one of his buildings, and that
7 this was what happened to the material.

8 Q. Did Prior make any indication on whether or not he
9 recognized that he was in violation?

10 A. Yeah. When he found out his employees had dumped the
11 material on the ground, he was concerned about a rain event and
12 wanted the material burned.

13 Q. Okay. Do you have an opinion concerning your
14 observations of November 3rd?

15 A. Yes, this was violation of the Environmental Protection
16 Act. Open burning emits hazardous air pollutants from the
17 products of combustion.

18 Q. Did you return to the site subsequent to November of
19 2000?

20 A. Yes.

21 Q. Approximately how many occasions?

22 A. Twice, I believe.

23 Q. Does this includes a December 2000 site visit?

24 A. Yes.

1 Q. Does it also include a May 2003 site visit?

2 A. Yes.

3 Q. Who accompanied the site visit with you?

4 A. Chris Cahnovsky.

5 MS. CARTER: I have no more questions for this witness.

6 HEARING OFFICER SUDMAN: Mr. Prior, would you like to
7 cross-examine this witness?

8 MR. PRIOR: Yes, I'd like to ask a couple of questions.

9 HEARING OFFICER SUDMAN: Okay.

10 CROSS-EXAMINATION

11 QUESTIONS BY MR. PRIOR:

12 Q. I'm sorry. Your name again?

13 A. Mike Grant.

14 Q. Mr. Grant, you said that this material was dumped into a
15 mine shaft?

16 A. Apparently an abandoned mine shaft.

17 Q. Was that -- There is a mine shaft, however, the State
18 plugged that mine before this date of June 13th when you
19 inspected it. Now there is a -- there was a small pit there that
20 was used with the incinerator --

21 MS. CARTER: Ms. Hearing Officer, I'm going to have to
22 object unless there is a question pending to Mr. Grant.

23 HEARING OFFICER SUDMAN: I'll note your objection, but I
24 sense a question pending so I'm going to allow them a little

1 further latitude because they're pro se. Please continue.

2 MR. PRIOR: Does that mean I can go ahead and ask the
3 question?

4 HEARING OFFICER SUDMAN: Yes.

5 Q. (By Mr. Prior) Then you don't know if there was a mine
6 shaft or not? It was a hole in the ground or something?

7 A. My understanding is our investigation got the abandoned
8 Mines people to close that shaft after our visit.

9 MR. PRIOR: I disagree with that. Can I produce some
10 evidence at another time to show --

11 HEARING OFFICER SUDMAN: At another time, yes.

12 Q. (By Mr. Prior) Let's see. The truck that was sitting
13 there with my name on it, and the pictures indicate that, did
14 anybody say who put that truck there or why?

15 A. Mr. Hixenbaugh just indicated when we asked what was
16 happening, he said we were pumping storm water from tank
17 batteries.

18 Q. It also says into an old mine shaft, he told you that?

19 A. I believe so. I'm not sure he knew where, what the area
20 was.

21 MR. PRIOR: Well, then I need to present some evidence at a
22 later time a well.

23 HEARING OFFICER SUDMAN: When you testify, you can present
24 all of your evidence. Right now, this is just to clarify any

1 questions about what Mr. Grant said in his testimony.

2 MR. PRIOR: But I don't have evidence today with me. I had
3 not seen this. I didn't know it existed. I didn't know.

4 HEARING OFFICER SUDMAN: Well, we'll be meeting tomorrow as
5 well.

6 MR. PRIOR: I didn't know Mr. Grant had spoke to
7 Mr. Hixenbaugh. I wasn't aware of that.

8 HEARING OFFICER SUDMAN: Well, you can testify to that. Do
9 you have any questions to Mr. Grant about what he said?

10 MR. PRIOR: Yes.

11 Q. (By Mr. Prior) You talked about truck tires that was
12 adjacent to the site. That site does have -- did have old tires
13 there. They're gone now, but it did have tires there. But there
14 is also a trucking and salvage operation right next to it that
15 used that same area. But did anybody tell you that those tires
16 were my tires?

17 A. No. My understanding that these tires were on your
18 property.

19 Q. Well, okay. You don't know for sure though that those
20 tires were on my property?

21 A. Yes, as I believe, they were on your property. That was
22 our understanding.

23 Q. I just don't recognize that particular photo, that's --
24 Who was the complainer then?

1 MS. CARTER: Objection.

2 HEARING OFFICER SUDMAN: On what grounds, Ms. Carter?

3 MS. CARTER: There is an informant privilege in the state
4 of Illinois. I do have case law on the matter if I can find it.
5 Ms. Hearing Officer, there is extensive case law in the state of
6 Illinois that maintains if the defendant -- if the defendant is
7 simply seeking the information just to have knowledge as to whom
8 the complainer is and it doesn't serve to facilitate his defense,
9 there is no right to that information. And we are objecting on
10 the basis on informant's privilege.

11 HEARING OFFICER SUDMAN: I'm going to sustain her objection
12 for now. I don't think that information is crucial right now for
13 your case.

14 MR. PRIOR: I think it will be before it's over. And maybe
15 I can ask another question and see if it helps.

16 HEARING OFFICER SUDMAN: Okay. Why don't we do that.

17 Q. (By Mr. Prior) Was the complainer the same complainer?

18 A. Are we talking about the '96 investigation?

19 Q. All of them.

20 A. I don't know -- I don't recall who complained in '96.

21 Q. Was the complainer the same complainer more than one
22 time?

23 A. I'm only aware of who complained on the November 2000
24 inspection that I was on.

1 Q. I'm sure it was the same complainer. And I wanted to
2 establish that and say that isn't it odd that the complaint
3 always happened right at the perfect time for you to be there?

4 HEARING OFFICER SUDMAN: Mr. Prior, you will have an
5 opportunity to present all of your evidence in testimony. The
6 cross-examination, as I said before, is just to clarify anything
7 that Mr. Grant has already said. If you don't have any more
8 questions for him, basically you're giving testimony right now,
9 and you will have an opportunity to do that, but now isn't the
10 right time.

11 MR. PRIOR: Okay.

12 Q. (By Mr. Prior) Is the site cleaned up now?

13 A. I believe so. That was --

14 Q. You believe so?

15 A. The May 2003 visit that I conducted with Mr. Cahnovsky.

16 Q. You was real sure about the other things but you're not
17 sure about that?

18 A. I know the shaft has been closed in the area where the
19 open dumping and open burning occurred appeared to have been
20 remediated, and I believe you submitted documentation to that.

21 Q. Turning to the trench, burning -- open burning of the
22 straw, oily straw, I believe it stated somewhere, did they say
23 where that straw come from?

24 A. I think you told us it came from inside your shop.

1 Q. But beyond that, why was it there in the first place?

2 A. Oh, it was a clean-up from a spill. I'm not sure if it
3 was at the Gomper site or at one of your other facilities.

4 Q. Okay. And -- and that is cleaned up as well?

5 A. Yes.

6 MR. PRIOR: Okay. No more questions.

7 HEARING OFFICER SUDMAN: Mr. Mezo, do you have any other
8 questions?

9 MR. MEZO: No, no.

10 HEARING OFFICER SUDMAN: If there are no further questions
11 for Mr. Grant, you may step down. Thank you. These are yours.
12 I have copies. The People may call their next witness.

13 MS. CARTER: The People call Chris Cahnovsky.

14 HEARING OFFICER SUDMAN: Would you swear him in, please?

15 CHRISTOPHER CAHNOVSKY,

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

18 DIRECT EXAMINATION

19 QUESTIONS BY MS. CARTER:

20 Q. Please state your name.

21 A. Christopher Neal Cahnovsky.

22 Q. Can you tell me about your post-high school education,
23 sir?

24 A. I graduated with a bachelor's degree in animal science

1 from Southern Illinois University in 1988, I received a master's
2 degree in environmental science from Southern Illinois University
3 at Edwardsville in 1993.

4 Q. With whom are you employed?

5 A. The State of Illinois Environmental Protection Agency.

6 Q. And what is your current position with the Illinois EPA?

7 A. I currently hold the position of a senior public service
8 administrator, which is more commonly referred to as a regional
9 manager.

10 Q. And can you tell me a bit about your duties as regional
11 manager?

12 A. As regional manager I supervise seven inspectors and one
13 student intern. Our charge is to enforce the Illinois
14 Environmental Protection Act and to enforce and observe
15 compliance with the Illinois Pollution Control Board regulations
16 for nine counties, both solid -- solid waste, hazardous waste,
17 tires, infectious medical waste. We conduct inspections at
18 permitted facilities as well as unpermitted open dump sites and
19 hazardous waste facilities.

20 Q. I think you said you supervise staff as part of your
21 employment with the Illinois EPA?

22 A. Yes.

23 Q. What sort of review do you do with your staff?

24 A. Well, I review all of the reports before they're

1 submitted to the Springfield office and before they're mailed to
2 the general public, and ensure that they meet the policies of the
3 Bureau of Land and the Section 31 processing and the Illinois
4 Environmental Protection Act is being followed.

5 Q. As a regional manager for the Bureau of Land, do you
6 also go out and conduct inspections?

7 A. Yes, I've been conducting inspections since May of 1990.

8 Q. How long have you served as regional manager?

9 A. A little over two years.

10 Q. And I believe you said that you were conducting
11 inspections in May of 1990?

12 A. Yes.

13 Q. It fair to say you were a field inspector prior?

14 A. Yes.

15 Q. Okay. And can you tell me a little but about the type
16 of investigations that you conducted in the past?

17 A. I started out doing used tire inspections and
18 inspections of places that generate used tires and used tire
19 recycling facilities as well as open dumps, unregulated trash
20 dumps, and then I moved into conducting inspections at facilities
21 that generate, transport, treat, store and dispose of hazardous
22 waste, both permitted and permitted exempt facilities.

23 Q. Do you -- do you also provide assistance to the Illinois
24 State Police?

1 A. Yes. At times I have provided technical assistance for
2 the -- to solidify their criminal cases.

3 Q. And have you also assisted emergency response in
4 responding to certain releases?

5 A. Yes. At some points in times I was the Collinsville
6 regional backup for the Emergency Response Unit. When they were
7 short personnel, I provided back-up service and was an emergency
8 responder with them.

9 Q. Okay. During the course of your employment, have you
10 also had occasion to review remediation plans?

11 A. Yes, I have. I review closure plans and ground water
12 plans and compliance commitment agreements that where clean-up
13 plans have been part of the compliance commitment agreement.

14 Q. Since you've been employed by the Agency, have you had
15 the opportunity to participate in any training?

16 A. Yes. In 1995 I received my Certified Hazardous
17 Materials Manager Certification which is a national -- actually
18 an international professional certification for the management of
19 hazardous materials, as well as I have attended several hazardous
20 waste courses, Department of Transportation hazardous materials
21 courses, inspector courses for dealing with civil inspections as
22 well as civil inspector looking at criminal type inspections.

23 Q. Have you also had the opportunity to attend courses
24 provided by the Midwest Environmental Enforcement Association?

1 A. Yes, I've conduct -- I've attended several of their
2 training. The regulatory course, the criminal investigator
3 course, the two other periodic conferences and the petroleum
4 refinery course.

5 Q. Are you a member of some entity called the Gateway
6 Society of Hazardous --

7 A. Materials Manager. Yes, I currently serve as past
8 president. I've been on the board of directors serving as
9 director at large, secretary and president. That's one of the
10 largest environmental groups in the St. Louis area.

11 Q. And what does that group serve to do?

12 A. We are a educational group, a networking group for
13 environmental professionals. We're made up of industry,
14 education, government, and the consulting fields. We have right
15 now about 155 paid members, and which about half of them are
16 certified members of the CHMM certification.

17 Q. Since you've been employed by the Illinois EPA, can you
18 give me an estimate of how many inspections you've conducted?

19 A. About 1,000 inspections.

20 Q. Mr. Cahnovsky, I'm going to hand you what's been marked
21 as People's Exhibit 5. Do you recognize that document?

22 A. Yes, I do.

23 Q. And what is that?

24 A. It is a copy of my resume.

1 Q. Is it current through the present?

2 A. Yes, it is.

3 Q. Does it accurately reflect your work experience and your
4 educational background?

5 A. Yes, it does.

6 MS. CARTER: At this time the People move for the admission
7 of People's 5 into evidence.

8 HEARING OFFICER SUDMAN: Do the Respondents have any
9 objection? Hearing none, I will admit People's Exhibit 5.

10 Q. (By Ms. Carter) Are you familiar with the Illinois
11 Attorney General's case involving John Prior?

12 A. Yes, I am.

13 Q. And how are you familiar with it?

14 A. I am familiar with it because several of the inspections
15 I conducted at that site have been referred to the Attorney
16 General's Office for enforcement, and I'm familiar with it
17 through the documents that have been submitted to us by the
18 Attorney General's Office.

19 Q. And when you refer to that site, are you referring to
20 the 140 Gomper Street site in Wamac?

21 A. Yes, I am.

22 Q. Are you familiar with who operates a facility at 140
23 Gomper Street?

24 A. Yes, I am.

1 Q. And who is that?

2 A. Prior Oil Company, John Prior.

3 Q. Okay. Have you been to the site on approximately eight
4 occasions?

5 A. That sounds about right.

6 Q. Okay. Does it include a site visit of June '96?

7 A. Yes, it does.

8 Q. Okay. Did anybody from Illinois EPA accompany you on
9 that site visit?

10 A. Mike Grant.

11 Q. Okay. Did you then return to the site in August of
12 2000?

13 A. Yes, I did.

14 Q. It was on about four occasions in August?

15 A. Yes. It was -- it was -- four pretty close together.

16 Q. Prior to going on site, did you review the Illinois EPA
17 files for this facility?

18 A. Yes, I did. Yes, I did.

19 Q. And did you determine during the course of your review
20 whether the site conducts any Illinois EPA permits to conduct a
21 waste storage or waste facility operation?

22 A. My review concluded that 104 Gomper Street possess no
23 permits from the Illinois EPA for the land disposal.

24 Q. I heard you say 104 Gomper Street. Did you mean to

1 say --

2 A. I'm sorry, 140 Gomper Street.

3 Q. Did you make any determination as to whether the site
4 possessed any Illinois EPA permits to operate and develop a
5 landfill?

6 A. No, it did not.

7 Q. I'm going to hand you what's been previously marked as
8 People's Exhibit No. 3 for identification. If you can identify
9 that for me.

10 A. It is an Open Dump Checklist. There's a narrative
11 associated with that, a sample receipt form, a chain of custody,
12 an analytical data, site map photographs and a Violation Notice.
13 And this package is what I would refer as an Inspection Package.

14 Q. Does this Inspection Package seek to document your
15 observations while on site?

16 A. Yes, it does.

17 Q. Who enters the information that typically would appear
18 in an Inspection Package?

19 A. The inspector does.

20 Q. And when is that generally completed?

21 A. Upon returning to the office after an inspection.

22 Q. Okay. What does the Illinois EPA do once you've created
23 this document?

24 A. Once this document's created, it is reviewed by the

1 regional manager to make sure that it conforms with the policy of
2 the Agency. A copy is made for our division files in
3 Springfield, a copy for our regional files and a copy goes to the
4 respondents.

5 Q. Okay. Was this Inspection Packet made under the
6 procedures that you typically follow that you just described?

7 A. Yes.

8 Q. Okay. And was the Inspection Packet generated in the
9 ordinary course of business activity?

10 A. Yes.

11 Q. I think you also said there's photographs attached to
12 it?

13 A. Yes, there is.

14 Q. Okay. Did you take photographs while you were on site
15 on August 22nd, 2000?

16 A. Yes, I did.

17 Q. What about on August 31st, 2000?

18 A. Yes, I did.

19 Q. And are you familiar with the site as it appeared on
20 these dates?

21 A. Yes, I am.

22 Q. And do these photographs fairly and accurately show the
23 condition of the site on these dates?

24 A. Yes, they did.

1 Q. Did you complete a site sketch for the facility as you
2 observed it on August 22nd?

3 A. Yes.

4 Q. And does the site sketch generally show the site as it
5 appeared on that date?

6 A. Yes.

7 Q. And did you also complete a site sketch for the facility
8 on August 31st?

9 A. Yes, I did.

10 Q. And does it generally show the site as it appeared on
11 that date?

12 A. Yes.

13 MS. CARTER: At this time People move for the admission of
14 People's 3 into evidence.

15 HEARING OFFICER SUDMAN: Do the Respondents have any
16 objection? I don't have a People's Exhibit 3.

17 MS. CARTER: I'm walking around and I'm not paying
18 attention.

19 HEARING OFFICER SUDMAN: That's all right. I will admit
20 People's Exhibit 3.

21 Q. (By Ms. Carter) Why did you conduct a site visit on
22 August 22nd?

23 A. Well, it was -- I had a complaint, an unrelated
24 complaint at an adjoining property. And while I was

1 investigating that complaint, I noticed there was a pit. And so
2 I walked over behind the 140 Gomper Street site and I observed a
3 pit.

4 Q. Okay. And what was in the pit?

5 A. What was in the pit? There was a -- it was an old BBQ
6 grill, car parts, plastic containers, paint cans, clothes, used
7 oil, absorbant pads, landscape waste.

8 Q. How big was the pit?

9 A. The pit was about 20 feet long by 10 feet wide by
10 approximately 7 feet deep.

11 Q. Outside of those items that you just described, did it
12 also contain any sort of liquid?

13 A. Yes, it contained a large pool of oil at one end of the
14 pit.

15 Q. How much oil was in the pit?

16 A. It looked like it could have been about 70 gallons.

17 Q. Did it coat the walls of the pit?

18 A. Yes.

19 Q. Did it coat the bottom of the pit?

20 A. Yes, it did.

21 Q. Okay. Are there photographs that document your
22 observations of the pit?

23 A. Yes, there are.

24 Q. If I could direct your attention to photograph --

1 starting with Photograph No. 1?

2 A. Yes.

3 Q. What does that show?

4 A. That shows the pit and the waste inside of it.

5 Q. And is Photograph No. 2 the same but more of a close-up?

6 A. Yes, number 2 is a more detail shot of number 1.

7 Q. Is the item towards the front of Photograph No. 2 the

8 BBQ grill that you referenced?

9 A. Yes, the BBQ grill, the car parts and some other
10 material.

11 Q. If I could direct your attention to Photograph No. 3 and
12 No. 4, but more particularly number 4?

13 A. Uh-huh.

14 Q. What does that show?

15 A. That shows a pool of oil and oil contaminated soil in
16 the deepest part of the pit.

17 Q. Did you have any environments or concerns regarding the
18 oil and the waste at the pit?

19 A. Yes, I did. I was concerned that the oil in the pit
20 would contaminate ground water, cause soil contamination,
21 contaminate the soil and potentially be, if it was a flammable
22 material, pose a fire risk. And if it was volatile enough and it
23 volatilized out, it would put volatile compounds into the air.

24 Q. After you made these observations, did you subsequently

1 walk back to the office on site?

2 A. Yes, I did.

3 Q. About how far was the pit from the office?

4 A. About 150 yards.

5 Q. When you were in the office, did you meet up with
6 anybody?

7 A. Yes, I met with Mr. John Prior.

8 Q. And then did you subsequently have a conversation with
9 Mr. Prior?

10 A. Yes. After we met, we walked back to the pit and I
11 asked him, you know, what he knew about it. And he stated that
12 he had no idea that the pit was there or how the waste got in the
13 pit. He didn't really know anything about it. And I asked him
14 if it was crude oil or used motor oil in the pit, and he thought
15 it was too black to be crude oil.

16 Q. Okay. Did you have discussion with Mr. Prior what
17 needed to be done to clean-up the pit?

18 A. Yes, I said that the -- it needed to be -- he said, oh,
19 he would immediately clean it up and take the dirt. And I stated
20 that the dirt and everything needed to go to the landfill.
21 However, I wanted to make sure that it was not a hazardous waste
22 so I needed to get a sample of it prior to him taking it to the
23 landfill. It was okay him for him to dig it up and to
24 consolidate it and put it into a container, but we needed test

1 results to make sure it was not hazardous, and it could go to the
2 landfill.

3 Q. Did you return to the site on August 23rd?

4 A. Yes, I did.

5 Q. Was that the sample as you just discussed?

6 A. Yes. I sampled the material in the pit, and I noticed
7 it was -- the material was about 8 to 10 inches deep and had a
8 kerosene like odor.

9 Q. Okay. How did you identify the sample?

10 A. I identified the samples by our Bureau of Land
11 procedures for identifying samples. X meaning special, 2 meaning
12 waste and 01, meaning the number 1, the first sample. X201.

13 Q. Can you tell me how you took sample X201?

14 A. I took the sample using a 32-ounce glass jar. And I
15 dipped the 32-ounce glass jar into the waste, and then I poured
16 it into my sampling jars. I used two 2-ounce jars for volatile
17 samples and one 32-ounce jar for semi-volatile sample and one
18 9-ounce jar for a flash point sample.

19 Q. When you say flash point, what does that mean?

20 A. Flash point material will flash but will not sustain
21 ignition.

22 Q. Okay. And I don't know if I asked you this before, and
23 I apologize if I did. When you say volatile, what does that
24 mean?

1 A. There's a certain group of chemicals that are considered
2 volatile organic compounds, and there's thousands of those types
3 of compounds. And then there's another list which are considered
4 semi-volatile, not quite as volatile as the volatile ones.

5 Q. Okay. Once you took the samples, what did you do with
6 them?

7 A. Once I took the samples, I sealed them with evidence
8 tape and I pack them for shipment to our organics lab in
9 Springfield, Illinois, and I followed the Agency's chain of
10 custody and sampling procedure then.

11 Q. And what analysis did you request of your sample?

12 A. I requested flash point, Polychlorobiphenyls, PCBs, the
13 toxic characteristic leachate procedure for volatile organic
14 compounds, the toxic characteristic leachate for semi-volatile
15 organic compounds.

16 Q. Now does that go by the abbreviation TCLP?

17 A. TCLP.

18 Q. That will help me out. Okay. What are each of those,
19 the PCB?

20 A. PCB are Polychlorinated Biphenyls that are known as
21 human carcinogens, and they're some nasty stuff.

22 Q. And what about TCLP?

23 A. TCLP is actually is a test that mimics how a material
24 will behave in a landfill. And the regulation gives a list of

1 compounds that we look for and a target number, basically a
2 concentration. And if you test a material and your TCLP comes
3 back and the concentration is above what's in the list, that
4 means -- that means it meets the definition of a hazardous waste.

5 Q. Okay. Did you make any other requests for analysis of
6 these samples?

7 A. Yes, I did. I asked -- There was some confusion whether
8 the oil in the pit was motor oil, used crank case motor oil or
9 whether it was crude oil, unrefined oil from an oil field
10 production waste. And I asked the lab to run it against crude
11 oil standards and motor oil standards.

12 Q. Did you ultimately receive back from the lab sample
13 results?

14 A. Yes, I did.

15 Q. And did they reference the same site and sample that you
16 took in August of 2000?

17 A. Yes, they did.

18 Q. And what did the sample results ultimately indicate?

19 A. The sample results indicated several things. First, it
20 indicated that a flash point of 139 degrees Fahrenheit. The
21 regulatory limit for flash point is 140 degrees. So this is one
22 of those where if it's below the regulatory limit, it's
23 considered an ignitable waste. So which means it has a flash
24 point lower than what -- what the regulations require. So that

1 tells me that it is an ignitable waste, and it meets the
2 definition of a DOT flammable waste.

3 Q. Okay.

4 A. The results also show that it had below detectable
5 limits of PCPs, so the sample contained -- if it contained PCBs,
6 we didn't see it --

7 Q. Okay.

8 A. -- because it was below detectable limits. It also
9 showed that -- that the -- it was compared to crude oil
10 standards, and it appeared that the crude oil standards that --
11 it had the same pattern and it matched that of the crude oil
12 standards. So it was crude oil and not motor oil.

13 Q. Did you also find that the sample contained other
14 organic materials?

15 A. Yes. The sample contained Toluene, Ethylbenzene
16 Benzelethelene, Xylene, and other Polynuclear Aromatic and 2, 4,
17 6 Tribromophenol.

18 Q. What is the significance of these results to you?

19 A. The significance of it that it was crude oil and not
20 motor oil. Because if -- if it was motor oil, this would be
21 considered a hazardous waste. But since it was crude oil, there
22 is a regulatory exemption for oil field production waste and that
23 exempts it from a definition from a hazardous waste. It also
24 tells me that the chemical compounds that are found in here are

1 hazardous constituents and pose a threat to the environment.

2 Q. Okay. You mentioned a couple of different things there.
3 It exempts in the definition of hazardous waste?

4 A. Right.

5 Q. Is it exempt in the definition of a special waste?

6 A. No, it is not. It is still considered a solid waste.
7 And in the state of Illinois, and since it is a pollution control
8 waste, i.e., a clean-up waste, it will meet the definition of a
9 special waste and require manifesting and analysis to get it into
10 the landfill.

11 Q. And before you -- before you were discussing flash
12 points?

13 A. Right.

14 Q. And that was 139 degrees Fahrenheit?

15 A. Yes.

16 Q. Were you concerned that the material might be flammable?

17 A. Yeah, it was flammable, yes.

18 Q. Okay. And also did this pose any threat to ground
19 water?

20 A. Yes. There -- With a liquid being discharged in and
21 onto the ground, there is definitely a substantial threat to
22 contaminating the ground water. Obviously it contaminated the
23 soil. And with the volatile organics, it will release volatile
24 organic compounds into the atmosphere.

1 Q. After this, did you return to the site on August 29th,
2 2000?

3 A. Yes, I did.

4 Q. Did anybody accompany you?

5 A. John Singen (phonetic).

6 Q. Who is that?

7 A. He is one -- another regional inspector.

8 Q. What did you observe on site?

9 A. The site remained unchanged since the August 22nd
10 inspection.

11 Q. Did you have a conversation with Mr. Prior while you
12 were out there?

13 A. Yes, I did. He told me he would begin the excavation on
14 August 31st, and he also told me that he had the pit dug over a
15 month ago to bury concrete.

16 Q. Now did that conversation differ with what he stated to
17 you on August 22nd concerning the pit?

18 A. Yes, it did. In the August 22nd inspection, he told me
19 he didn't know anything about the pit.

20 Q. Did you observe any concrete in the pit?

21 A. No, I did not observe any concrete in the pit.

22 Q. Did you return to the site on August 31st?

23 A. Yes, I did.

24 Q. Why did you go out there on the 31st?

1 A. I returned on the 31st because Mr. Prior called me on
2 the 30th and said he had dug the pit on the previous day, and I
3 wanted to go out and make sure and verify that was true.

4 Q. What did you observe on site?

5 A. I observed that the waste had been removed from the pit,
6 and it was put in a 20-yard roll-off box on the back of the
7 truck.

8 Q. Did you make any additional observations while you were
9 on site?

10 A. Yes, I did. On the southwest sight of the shop I
11 observed two 30-gallon drums that looked like they contained used
12 motor oil, and neither drum was labeled with the words used oil
13 per the regulation. And there was a large amount of used oil on
14 the top of the drums and around the drums and on the ground.

15 Q. What did that indicate to you, sir?

16 A. That indicated there was poor management of the used oil
17 and poor housekeeping practices. And there were violations of
18 the Environmental Protection Act and violations of the -- both
19 regulations.

20 Q. Did it indicate to you that the drums could be leaking?

21 A. They could be leaking.

22 Q. Okay.

23 A. It looked like more -- it was more like was overfill,
24 that they were open and rain water was getting in. And since oil

1 floats on water, the oil was being forced out of the drum.

2 Q. Did you have a conversation with anybody on site about
3 those drums?

4 A. Yes. I went to the office and I spoke with a Jenny
5 Dining and explained to her that the drums were leaking and
6 released oil and that needed to be cleaned up. And I told her
7 that the oil could be scraped up and put in the same roll-off box
8 as the oil from the -- from the pit. And she said she would tell
9 the guys in the shop.

10 Q. Do you have an opinion, an environmental opinion,
11 concerning your observations of August 2000, the Gomper site?

12 A. Yes, I do. In my opinion there was a threat to the
13 environment, a potential ground water contamination, there was
14 soil contamination from the drums, there would have definitely
15 been a threat of surface water contamination during the storm
16 water runoff. Because they were volatile compounds in the crude
17 oil that was in the pit, there was definitely air pollution
18 concerns with the volatilization of the chemicals.

19 Q. Did the Illinois EPA subsequently send Mr. Prior a
20 Violation Notice?

21 A. Yes, we did.

22 Q. Okay. What's a Violation Notice?

23 A. A Violation Notice, pursuant to Section 31 of the
24 Illinois Environmental Protection Act, which serves to notify the

1 responsible party of violations of the Act and regulations.

2 Q. What information is specifically include in a Violation
3 Notice?

4 A. There is a letter attached to the Violation Notice which
5 spells out the Section 31 procedures and how to respond to the
6 Violation Notice and the time frames required to respond. It
7 also has an Attachment A to it which spells out the alleged
8 violations and what -- which each violation it is and the reason
9 it was cited. And also contains a section called a Suggested
10 Resolution Section which outlines the steps the Agency expects
11 the responsible party to take to bring the facility back into
12 compliance. And also there is further information on how to
13 respond.

14 Q. Does it also include the Inspection Packet that we
15 discussed before?

16 A. Yes. The checklist, the narrative, the site diagram are
17 typically what is attached to the Violation Notice. In this
18 case, there was also the sample results should have been
19 attached.

20 Q. In this instance, was there a Suggested Resolution
21 attached to the Violation Notice?

22 A. Yes.

23 Q. Sent to Mr. Prior?

24 A. Yes, there was.

1 Q. And what did that include?

2 A. The Suggested Resolutions included immediately cease all
3 open dumping, immediately label all containers with the words
4 used oil, containers containing used oil with the words used oil,
5 immediately begin cleaning up the release from the two drums of
6 used oil on the southwest side of the shop.

7 I asked that by December 14th, 2000, that Prior Oil Company
8 submit documentation showing what steps are taken to clean up
9 crude oil in the pit. And once this waste is no longer liquid,
10 i.e., that's it solidified and there's no free liquids in it, and
11 may be disposed as a special waste. However, a Special Waste
12 Manifest needs to accompany it to the landfill. And I ask that a
13 Hazardous Waste Determination be conducted on the two drums of
14 used oil in the shop, and at a minimum, they must look for flash
15 point, and that all waste be removed from the site by December
16 14th, 2000.

17 Q. Did you return to the site on December 5th, 2000?

18 A. Yes, I did.

19 Q. I'm going to hand you what's been previously marked
20 People's Exhibit 6 for identification. I'll ask you to identify
21 it. Can you identify that document for me?

22 A. It is an Open Dump Checklist for December 5th, 2000.

23 Q. Why did you return to the site on December 5th?

24 A. I received a complaint that the oil well development

1 waste was being dumped in a hole behind the old incinerator that
2 was located behind the Prior Oil Company shop.

3 Q. Did anybody accompany you on site?

4 A. Yes, Mike Grant and Alan Whitler and another gentleman
5 from the Illinois Department of Natural Resources.

6 Q. Who is that? Was it Mr. Price?

7 A. Charlie Price, yes.

8 Q. Is he a well inspector?

9 A. Yes.

10 Q. This December 5th, 2000, Inspection Memo, was it made by
11 you under the procedures that we previously discussed with the
12 August 2000 memo?

13 A. Yes, it was.

14 Q. Okay. And it was generated in the ordinary course of
15 business activity?

16 A. Yes, it was.

17 Q. Did you take photographs on site on December 5th?

18 A. Yes, I did.

19 Q. And are you familiar with the site as it appeared on
20 that date?

21 A. Yes, I am.

22 Q. Do these photographs fairly and accurately show the
23 condition of the site on December 5th?

24 A. They do.

1 Q. What about a site sketch, did you complete one of those?

2 A. Yes.

3 Q. Does it generally show the condition of the site on that
4 date?

5 A. Yes.

6 MS. CARTER: At this time the People move for the admission
7 of People's No. 6 into evidence.

8 HEARING OFFICER SUDMAN: Do the Respondents have any
9 objection? Hearing none, I will admit People's Exhibit No. 6.

10 MS. CARTER: Thank you.

11 Q. (By Ms. Carter) When you first arrived on site on
12 December 5th, what did you observe?

13 A. I observed an oil stained area about 100 feet south of
14 the railroad tracks.

15 Q. Did you notice any vegetation in the area?

16 A. Yes. It looked like the oil had been dumped sometime
17 ago due to the growth of the vegetation.

18 Q. Are there photographs that document your observations?

19 A. Yes, Photos 1 and 2 show that particular area. It looks
20 like the -- the material -- that a truck backed in and discharged
21 the material there because it appears to be like tire tracks.

22 Q. Is it the dark material in Photograph 1 and 2?

23 A. Yes.

24 Q. I think before you mentioned that you had met

1 Mr. Whitler and Mr. Price out there?

2 A. Yes.

3 Q. Did they indicate to you what observations they had made
4 prior to your arrival?

5 A. Well, they had told me that Mr. Prior did not have any
6 permits to haul oil field waste.

7 Q. Okay. Did you make any other observations on site on
8 that day?

9 A. Yes, I did. We went -- We walked, not only did we see
10 the oil staining waste that was about 100 feet south of the
11 track, we also observed that there was oil within the -- within
12 some rubble. There was concrete rubble and dense vegetation
13 right next to the incinerator, and we observed vehicle tracks
14 leading to those concrete slabs. And I observed a low area
15 within the concrete area and vegetation where it appeared that
16 oily waste had been discharged. And it appeared that a hose was
17 used to get into this area and discharge this material. And the
18 gentleman from the -- Mr. Whitler from the Illinois Department of
19 Natural Resources, he estimated that about three barrels, or 126
20 gallons, of oil field waste had been discharged in this area.

21 Q. Was there a tanker truck on site?

22 A. There was a tanker truck. There was a Prior Oil Company
23 tanker truck on site.

24 Q. If I could direct your attention to Photograph No. 10.

1 What does that show?

2 A. That shows the concrete rubble that I referred
3 previously, and the general area where the oily waste was
4 discharged.

5 Q. Was that in the middle of the photograph there?

6 A. Yes.

7 Q. What's the red and white structure behind that?

8 A. That is -- I believe the name of the company is Fisher
9 Metal Fabrications.

10 Q. Okay. What about Photograph No. 12, what does that
11 show?

12 A. That is essentially the same picture as Photo 10, but a
13 more close-up view which shows some oil field waste on the right
14 -- if you're looking at the picture, there's a concrete -- piece
15 of concrete to the right at the bottom of that, there's some oily
16 material on the ground.

17 Q. What does Photograph No. 14 show?

18 A. Photograph 14 shows the tanker truck.

19 Q. What do Photographs No. 3 through 5 show?

20 A. Three shows -- it's a picture of the vegetation with the
21 -- If you look in the very middle of the picture, there's some
22 oily material on the ground. If you look at Picture No. 4, it
23 shows there's oily material actually on the branches and the
24 vegetation. Picture No. 5 is the same picture.

1 Q. And where are these photographs taken on site?

2 A. They're taken just in back of that -- that concrete
3 rubble structure that was in Photo 10 and in Photo 12.

4 Q. Did you make any observations on the northwest side of
5 the Gomper site?

6 A. Yes. That was the area of the -- of the -- where the
7 pit was I saw during the August inspections, August 2000
8 inspections. And I observed that the -- there was a large pile
9 of oily contaminated soil that contained many of the same waste
10 items that were in the -- that were in the pit. It appeared that
11 the truck that I observed in August with the roll-off box with
12 soil, the soil had been dumped on the ground here.

13 Q. Did you observe that roll-off box during your August
14 2000 inspection site?

15 A. No, I didn't.

16 Q. Is there a picture that depicts your observations?

17 A. Yes, Photograph No. 6.

18 Q. Do you have an opinion concerning your observations of
19 December 5th at the Gomper site?

20 A. Yes. It appears that used -- that oil field waste was
21 deposited on the ground causing a -- again, a risk for ground
22 water contamination, soil contamination, storm water runoff and
23 surface water contamination. It appeared that the waste that was
24 in the roll-off box had been redispersed of on the ground causing

1 potential surface ground water and soil contaminations.

2 Q. Did the location of the discharged oil in that heavily
3 wooded area indicate to you any efforts on site to disguise that?

4 A. Yes, that would tell me that discharging it in an area
5 where it's difficult to see, they were trying to conceal the
6 dumping of oil field waste.

7 Q. Did the oiled soaked land pose a threat to the
8 environment?

9 A. Yes. Residual oil contaminations poses a threat to
10 potential surface water and leaching into the ground water.

11 Q. Did Mr. Prior ultimately respond to the Violation Notice
12 that the Illinois EPA mailed?

13 A. Yes, he did.

14 Q. Do you recall Mr. Prior's response to the Violation
15 Notice?

16 A. The response was made through his consultant. I believe
17 it was Hopper Environmental.

18 Q. Did Mr. Prior, through his consultant, commit to
19 complete any activities on site?

20 A. Yes, they said they would clean the soil up, take it to
21 the landfill, and they would take the used oil to the -- to the
22 recycle -- a recycling facility. And they said they would stop
23 dumping oil field waste at that -- at that facility.

24 Q. Did they commit to a completion of these activities by a

1 certain date?

2 A. I would have to review the documents to refresh my
3 memory.

4 Q. Okay. I'll hand you a document. If you can identify
5 this document for me.

6 A. It is the response to the -- to the Violation Notice
7 that the Agency sent to Prior Oil Company.

8 Q. Will that document assist you in refreshing your
9 recollection?

10 A. Yes, it would.

11 Q. Okay. By what date did Hopper Environmental commit to
12 those measures that you just described?

13 A. They said that -- that they will have it done by January
14 19th, 2001, that for one part of it; and that was for the
15 contaminated soil from the pit. And they also committed to
16 having the containers of used oil off site by January 12th, 2001.

17 Q. Okay. Thank you. Was a Notice of Intent to Pursue
18 Legal Action sent to Mr. Prior?

19 A. Yes, it was.

20 Q. Did you request that the Notice of Intent to Pursue
21 Legal Action be sent to Mr. Prior?

22 A. I recommended, with concurrence from my regional
23 attorney, that a Notice of Intent to Pursue Legal Action be sent
24 to Mr. Prior.

1 Q. I'm going to hand you what's been previously marked as
2 People's Exhibit No. 7 for identification. If you could identify
3 this document for me. It is a Notice of Intent to Pursue Legal
4 Action. What kind of records does your Bureau regularly maintain
5 or generate to notify individuals that the State will be
6 proceeding with legal action against them?

7 A. This document is part of the Section 31 process that
8 let's the respondent know that the Agency may take legal action,
9 and it's sent via certified letter.

10 Q. Once the list is sent to the respondent, what does your
11 Bureau do with this document and how? Do you maintain it in your
12 files?

13 A. Yes, it's maintained in our file. And it gives the
14 respondent 30 days to -- I'm sorry, 20 days to set up a meeting.

15 Q. Are these Notice of Intent to Pursue Legal Action
16 letters regularly generated by the Illinois EPA?

17 A. Yes, they are.

18 Q. Do you typically receive a copy of these documents?

19 A. Yes.

20 Q. Was this Notice of Intent to Pursue Legal Action
21 produced in the ordinary course of business activity.

22 A. Yes, it was.

23 MS. CARTER: At this time the People move for the admission
24 of People's Exhibit 7.

1 HEARING OFFICER SUDMAN: Do the Respondents have any
2 objection? Hearing none, I will admit People's 7.

3 Q. (By Ms. Carter) Did Mr. Prior respond to the NIPLA, or
4 the Notice of Intent to Pursue Legal Action?

5 A. Not in writing. He did call to set up the meeting.
6 However, I believe there was an illness in the family and it was
7 cancelled but not rescheduled.

8 Q. Did you return to the site on August 30th, 2001?

9 A. Yes, I did.

10 Q. I'm going to hand you what's previously been marked
11 People's Exhibit 8 for identification. If you could identify
12 this document for me.

13 A. It is an Open Dump Checklist for an August 30th, 2001,
14 inspection.

15 Q. Was this document generated in the procedures we
16 discussed with accepting your August 2000 Inspection Report?

17 A. Yes. And the December 5th, 2000, inspection.

18 Q. Okay. Did you take photographs while you were on site
19 on August 30th, 2001?

20 A. Yes, I did.

21 Q. Are you generally familiar with the site as it appeared
22 on that date?

23 A. Yes, I am.

24 Q. Did these photographs fairly and accurately show the

1 condition of the site on August 30th?

2 A. Yes.

3 Q. Did you also complete a site sketch for this visit?

4 A. Yes.

5 Q. And does it generally show the conditions of the site on
6 August 30th?

7 A. Yes.

8 Q. And will it assist you in explaining your observations
9 on this date?

10 A. Yes, it will.

11 MS. CARTER: At this time the People move for the admission
12 of People's Exhibit No. 8 into evidence.

13 HEARING OFFICER SUDMAN: Do the Respondents have any
14 objection? Hearing none, I will admit People's Exhibit 8.

15 Q. (By Ms. Carter) What did you observe on site?

16 A. I observed that it remained relatively unchanged since
17 my December 5th inspection. I observed a pile of oily,
18 contaminated soil from the pit was still there, and it appeared
19 that since none of the rubble or vegetation had been moved
20 around, it did not look like that any of the crude oil material
21 had been cleaned up either.

22 Q. Okay. I think you mentioned that you observed the
23 material that you previously believe you observed in the pit?

24 A. Right, yes.

1 Q. In the January 2001 letter from Hopper Environmental to
2 the Illinois EPA responding to the Violation Notice, did they
3 make any commitments concerning that pit?

4 A. Yes, they commit that they would have the waste from the
5 pit sent to the landfill and the oil field -- and the used oil
6 drums sent to a recycling facility by the end of January 2001.
7 And by the inspection, it appeared that they did not comply with
8 that compliance commitment agreement.

9 Q. Did they also state that the material had been placed on
10 plastic?

11 A. Yes. And it was evident that there was no plastic under
12 the soil.

13 Q. Okay. If I could direct your attention to the
14 photographs -- specifically Photograph No. 1, what does -- or
15 excuse me, just a moment, sir. Okay. Photograph No. 1, what
16 does that depict?

17 A. That is the pile of contaminated soil from the pit that
18 is disposed of on the ground with no plastic underneath it.

19 Q. I see there's quite a bit of vegetation out there; is
20 that correct?

21 A. Yes.

22 Q. Did it make it difficult to observe things?

23 A. No, not really.

24 Q. Okay. What about the Photograph No. 3?

1 A. That is another view of the contaminated soil.

2 Q. Did you make any other observations on this date?

3 A. Yes, I did. It appeared that it was difficult to see

4 down into the areas where the -- where the, sorry, oil field

5 waste had been dumped and the concrete rubble and vegetation. I

6 did not observe any further oil staining on the -- on the

7 branches. It looks like the rain water, through natural

8 attenuation, had washed this material off the plants.

9 Q. Did you observe any new pits on site?

10 A. Yes, there was a new pit on site. However, that pit was

11 empty. There was no -- there was no waste in it.

12 Q. Do you have an opinion concerning your observations on

13 this date?

14 A. Yes, I do. It looked like the letter that -- the letter

15 we received stating that they would clean it up, they did not

16 clean it up. It looks like the -- little to no effort at all was

17 done towards compliance of the Violation Notice.

18 Q. In your opinion, did the crude oil contaminated soil

19 still present a threat to the environment?

20 A. Yes, it did.

21 Q. Okay. Why so?

22 A. It is still exposed to the elements. You still have a

23 threat for ground water contamination, surface water

24 contamination and soil contamination.

1 Q. Did the Illinois EPA ultimately receive an Environmental
2 Site Assessment Report from Hopper Environmental for the
3 respondent?

4 A. Yes, yes.

5 Q. And as a result of that report, did you subsequently
6 return to the site?

7 A. Yes, I did.

8 Q. And it was in May of this year?

9 A. No, I think it was May of last year.

10 Q. I'll hand you what's been previously marked as People's
11 Exhibit 9.

12 A. Yes, it was this year.

13 Q. Did you respond to that question, I'm sorry?

14 A. Yes, it was this year.

15 Q. I'm handing you what has been marked for identification
16 People's Exhibit 9, what is this document?

17 A. It is an Open Dump Checklist with narrative, site sketch
18 and photographs.

19 Q. Did -- Was this document generated under the same
20 procedures we discussed earlier in your testimony?

21 A. Yes, it was.

22 Q. Okay. And was it generated in the ordinary course of
23 business activity?

24 A. Yes, it was.

1 Q. And did you take photographs out there on May?

2 A. Yes, I did.

3 Q. And are you generally familiar with the site as it
4 appeared on May 8th, 2003?

5 A. Yes.

6 Q. And do these photographs fairly and accurately show the
7 site on this date?

8 A. Yes.

9 Q. Did you also take -- draw a site sketch?

10 A. Yes, I did.

11 Q. Did this site sketch generally show the condition of the
12 site on this date?

13 A. Yes.

14 MS. CARTER: At this time the People move for the admission
15 of People's No. 9 into evidence.

16 HEARING OFFICER SUDMAN: Do the Respondents have any
17 objection? Hearing none, I will admit People's No. 9.

18 Q. (By Ms. Carter) What was the purpose of this site
19 visit?

20 A. To assess the compliance with the acting regulations and
21 to determine if, and to verify, if the site had been cleaned up
22 pursuant to the plan that was submitted by Hopper Environmental.

23 Q. The plan that was submitted by Hopper Environmental, do
24 you recall when that was submitted to the Illinois EPA?

1 A. It was March 12th, 2003.

2 Q. What did that plan generally state took place on site?

3 A. It stated that the -- the oil had been remediated and

4 the soil had been cleaned up. And it also indicated that the

5 used oil drums were sent to a recycling facility, and the waste

6 in the pit had been sent to the landfill.

7 Q. Did they submit receipts for the disposal of the general

8 trash, refuse and tires?

9 A. No, there was no receipts for the disposal of general

10 trash --

11 Q. Okay.

12 A. -- and/or tires.

13 Q. What does that tell you or not tell you?

14 A. Well, I suspect that the trash went into the 15-yard

15 roll-off box that went to Cottonwood Landfill in Marissa,

16 Illinois, but the landfills are banned from accepting tires, so I

17 still question where the tires went to, where they're disposed of

18 at.

19 Q. And the report from Hopper Environmental, it included

20 sample results; correct?

21 A. Yes, it did.

22 Q. What do they generally show?

23 A. They showed that, through field screenings, that the

24 area met the Tiered Approach to Clean-up Objectives that are in

1 the Board regulations.

2 Q. The Tiered Approach to Clean-up Objectives, is that
3 generally referred to as TACO?

4 A. Yes.

5 Q. What does TACO seek to do or allow?

6 A. Well, TACO is our clean-up standards that are based on
7 risk based clean-up standards. And essentially what -- what a
8 facility does is, if they have a release, we tell them to clean
9 up the release and clean it up and meet the levels that are in
10 TACO. Again, another list of chemical constituents, another list
11 of concentrations of those chemicals. And if you clean it up and
12 then you sample what's left, and if those numbers are below
13 what's in the list -- on the list, then you're done. You don't
14 have to clean up any further. And it appeared that Shamo
15 Environmental had met those objectives.

16 Q. What did you generally observe on site in May of 2003?

17 A. I did not observe any open dumping of waste on site. It
18 -- The waste soil that was in the pit, was no longer on site. I
19 did not observe any oil, stained soil, around the broken concrete
20 or on the rear of the property. The one open pit did not contain
21 any waste, and I did not see any drums of used oil on site.

22 MS. CARTER: I have no further questions for this witness.

23 HEARING OFFICER SUDMAN: Okay. Thank you. I will remind
24 the Respondents, this is your opportunity to cross-examine this

1 witness. You will have an opportunity to testify and present all
2 of your evidence later. This is not the time to do that. This
3 is simply your time to question the witness about anything he's
4 just said in his direct testimony. Having said that, Mr. Prior,
5 you may continue if you have any questions for this witness.

6 MR. PRIOR: No, ma'am.

7 HEARING OFFICER SUDMAN: Okay. Mr. Mezo, do you have any
8 questions for this witness?

9 MR. MEZO: No.

10 HEARING OFFICER SUDMAN: Okay. If there are no other
11 questions for this witness, you may step down. Let's go off the
12 record for a minute?

13 (A discussion was held off the record.)

14 HEARING OFFICER SUDMAN: Okay. We're back on the record.
15 We just decided to take a one-hour lunch break and meet back here
16 at 12:40. Thank you.

17 (A lunch break was taken.)

18 HEARING OFFICER SUDMAN: Okay. We are back from lunch. It
19 is 12:45. We are ready to proceed with the People's next
20 witness.

21 MS. CARTER: The People call Cheryl Cahnovsky.

22 HEARING OFFICER SUDMAN: The court reporter will swear you
23 in.

24 CHERYL CAHNOVSKY,

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

3 QUESTIONS BY MS. CARTER:

4 Q. Please state your name.

5 A. Cheryl Lynn Cahnovsky.

6 Q. Just to make sure the record is clear and to make sure
7 there's no mistake on my part, what was your name a few weeks
8 ago?

9 A. Last name was Kelly. I got married.

10 Q. I am still probably going to call you Cheryl Kelly. Can
11 you tell me a little bit -- a little bit about your post-high
12 school education?

13 A. I have an undergraduate degree from Southern Illinois
14 University in Edwardsville in earth science with a focus in
15 geology, and I have a master's of science degree from Southern
16 Illinois University at Edwardsville in environmental studies.

17 Q. And with whom are you currently employed?

18 A. Illinois EPA.

19 Q. And what's your position with the Illinois EPA?

20 A. I'm an emergency responder.

21 Q. For what unit?

22 A. The Emergency Operations Unit, Office of Chemical
23 Safety.

24 Q. Okay. Can you tell me about your duties as an emergency

1 responder?

2 A. Yes. I respond to hazardous material, chemical
3 incidents, whether it's air, land or water related; I conduct
4 site visits, do follow-up inspections and review remediation
5 plans and reports and review the sample results until completion
6 of the project.

7 Q. When you respond to environmental releases, do you also
8 coordinate responses amongst various groups?

9 A. Yes, I coordinate with local, state and county
10 officials, fire departments. And if it's an emergency response,
11 usually the HAZMAT team is on site.

12 Q. How long have you been working in this capacity?

13 A. I've worked with Emergency Response Unit for seven
14 years, and I did have a previous position with Illinois EPA.

15 Q. And what was that position?

16 A. I worked as an Environmental Protection Specialist for
17 the Bureau of Air and Air Quality Planning Section. I did review
18 transportation conformity measures for non-attainment areas such
19 as ozone, for the metropolitan areas of St. Louis and Chicago.

20 Q. During the course of your employment with the Illinois
21 EPA Office of Emergency Response, can you estimate how many
22 inspections you've done in that time?

23 A. Total?

24 Q. Total, or so many per year. What's easier for you?

1 A. Inspections, probably at least 100 related to oil, 50 to
2 100 per year related to oil spills.

3 Q. Okay. Since you've been employed by the Illinois EPA,
4 have you had the opportunity to have some training as well?

5 A. Yes. I've gone to quite a few spill drills and been
6 involved with salt water training as well as the spill drills
7 deal with oil pollution act which is under crude oil or petroleum
8 products and impact water waste.

9 Q. When you say spill drills, what sort of activities do
10 you undertake in those sort of events?

11 A. The spill drills are normally sponsored by an
12 organization. It's required to do these periodically. And we
13 act as the emergency responder or oversight manager for the EPA on
14 site. They -- What they do is go through either a table-top
15 exercise or a hands-on exercise. If it was an hands-on exercise,
16 they would deploy river boom and absorbant boom to the river,
17 have their emergency response contractors on site and try to go
18 through the motions of the spill as best they can. By
19 remediating and addressing how big of the spill was and deploying
20 boom at strategic locations downstream.

21 Q. You use the term river boom or absorbant boom, is that
22 interchangeable?

23 A. No. River boom is classic skirted boom. It floats on
24 water and they come in different lengths. But typically what

1 they're designed to do is deploy a sheet of plastic about this --
2 at least 12 inches in depth in the water to slow down or help
3 recover the crude oil or petroleum products that are on top of
4 the water. So they place these in the water on an angle,
5 straight across on an angle, and the corner of it will collect
6 the oil and bring it to the bank. And then they have recovery
7 trucks that recover the petroleum.

8 Q. And what about an absorbant boom?

9 A. An absorbant boom, it absorbs the petroleum products.
10 It floats on water too. They are normally white, and they're
11 made of an -- I would say a petroleum fiber or a plastic fiber
12 that absorbs the petroleum. And they are used in conjunction
13 with river boom a lot of times in larger waterways. Absorbant
14 boom can be used in smaller waterways. A river boom, unless the
15 creek is at least 12 inches in depth, that isn't used.

16 Q. Have you also had the opportunity to participate in
17 training sponsored by Department of Transportation, are those the
18 same things the spill drills you were discussing then?

19 A. Yes.

20 Q. I'm going to hand you what has previously been marked as
21 People's Exhibit No. 10 for identification. If you could
22 identify this document for me.

23 A. This is my resume.

24 Q. And does it fairly and accurately show your work

1 experience and educational background?

2 A. Yes.

3 Q. And does it -- or is it current through today's date to
4 the present?

5 A. Yes.

6 MS. CARTER: At this time the People move for the admission
7 of People's Exhibit 10.

8 HEARING OFFICER SUDMAN: Are there any objections to this?
9 Hearing none, I will admit People's Exhibit 10.

10 Q. (By Ms. Carter) Are you generally familiar with the
11 Attorney General's case involving John Prior and James Mezo?

12 A. Yes.

13 Q. How are you familiar with it?

14 A. I have conducted several site visits to different crude
15 oil spills.

16 Q. Are you familiar with the facility consisting of several
17 tank batteries used to store crude oil located in the Wamac City
18 Park in Wamac, Illinois?

19 A. Yes.

20 Q. Okay. How are you familiar with what I'll refer to as
21 the Wamac Park site?

22 A. I was notified by IEMA of a crude oil spill, 20 barrel
23 crude oil spill, and have conducted several site visits there.

24 Q. When you say IEMA, what does that stand for?

1 A. Illinois Emergency Management Agency.

2 Q. What is the purpose of IEMA?

3 A. IEMA is the agency that has the reportable quantities as

4 required to report through the state, and we receive their IEMA

5 reports, when it's applicable to IEPA.

6 Q. Okay. Are you familiar with who operates the tank

7 batteries located in the Wamac City Park?

8 A. John Prior.

9 Q. Okay. And approximately how many occasions have you

10 been to the site?

11 A. I believe three.

12 Q. Okay. And does it include a July '97 site visit?

13 A. Yes.

14 Q. I'm going to hand you what has previously been marked as

15 People's Exhibit 11 for identification. If you can identify this

16 document for me.

17 A. This is my Inspection Memo.

18 Q. Okay. Are these Inspection Memos something that you

19 typically generate in response to an inspection?

20 A. Yes.

21 Q. Okay. What use does the Office of Emergency Response

22 make of these documents once its generated? Are they kept in a

23 file?

24 A. Yes, they're kept in a file and maintained.

1 Q. Are these Inspection Memos generally completed shortly
2 after your inspection?

3 A. Yes.

4 Q. And this August 7th, 1997, Inspection Memo, was it made
5 by you under these procedures we just described?

6 A. Yes.

7 Q. And was it made at or near the time the events contained
8 within these documents were observed?

9 A. Yes.

10 Q. Okay. Is this document ordinarily produced in the
11 course of business by the Illinois EPA?

12 A. Yes.

13 Q. Did you take photographs while you were out there?

14 A. I did.

15 Q. Okay. If I can have you turn to the photographs, are
16 you generally familiar with the site as it appeared on July 22nd,
17 1997?

18 A. Yes.

19 Q. Do these photographs fairly and accurately show the
20 condition of the site on this date?

21 A. Yes.

22 Q. Did you also include a map of this facility with your
23 Inspection Memo?

24 A. I did.

1 Q. And why did you include the map?

2 A. I put down the location of the photographs that I took.

3 Q. Are the photographs marked by numbers?

4 A. Yes, they're marked by numbers. And then I have the
5 roll number associated with the roll of film that I took.

6 Q. And then are those photograph numbers cross-referenced
7 on the map that you attached?

8 A. Yes.

9 Q. Will this map -- will these maps assist you in
10 explaining your observations on July 22nd?

11 A. Yes.

12 MS. CARTER: Okay. At this time the People move for the
13 admission of People's Exhibit 11 into evidence.

14 HEARING OFFICER SUDMAN: Do the Respondents have any
15 objection? Hearing none, I will admit People's Exhibit 11.

16 Q. (By Ms. Carter) Why were you on site on July 22nd? Was
17 it in response to an IEMA report?

18 A. Yes, it was. And we had received a call from Alan
19 Whitler who is the Mines and Mineral manager in Centralia.

20 Q. When did you receive the call from Alan Whitler?

21 A. On the 22nd that morning, and I had spoken to Woody
22 Myers.

23 Q. And who is Woody Myers?

24 A. He's the Mines and Mineral inspector that was at the

1 site on the 21st.

2 Q. Did Mr. Myers relay any information to you in that phone
3 call?

4 A. He did. He told me that he had responded to the
5 incident that evening. That crude oil was not contained or fully
6 contained within the fire walls of the containment berm and had
7 overflowed the containment berm. The crude oil had drained down
8 20 to 30 feet into the Wamac City Park into a small drainageway
9 that impacted Fulton Creek, and -- and they had deployed straw
10 bales at two bridge locations in Fulton Creek in the Wamac -- in
11 the city of Wamac. A thunderstorm had occurred that evening on
12 the 21st, and it had spread out the oil even farther. And I
13 think that's -- he discussed how much he thought was released in
14 the spill.

15 Q. Okay. He said there was straw bales deployed?

16 A. Yes.

17 Q. What purpose would straw bales serve?

18 A. Well, if you don't have absorbant boom, straw bales are
19 used to help contain the crude oil if there isn't much flow in a
20 -- in a drainageway. But absorbant booms absorb oil and straw
21 bales do not absorb the oil, they only help contain it. And the
22 straw bale -- the straw itself is coated on the outside with the
23 oil, but it was flowing through the bales.

24 Q. If the water body has a great deal of flow, are straw

1 bales effective?

2 A. No.

3 Q. I think you also mentioned that the crude oil -- had
4 been reported that the crude oil drained on through the Wamac
5 City Park, is this facility in close proximity to the Wamac City
6 Park?

7 A. Yes, it's actually literally in the Wamac City Park.

8 Q. Is there a photograph that actually physically depicts
9 the location of the tank battery relative to the park?

10 A. There is.

11 Q. Is it -- If I could direct your attention maybe to speed
12 this up --

13 A. To number 10.

14 Q. On what date?

15 A. July 28th.

16 Q. And what does that show then?

17 A. It shows a picture of the tank battery adjacent to the
18 park.

19 Q. Is that a baseball field there?

20 A. Yes, it's a baseball field next to the tank battery.

21 Q. Let's turn to your inspection now, Mrs. Cahnovsky, when
22 you first arrived on site. Did you make any observations in
23 terms of odors?

24 A. Yes, the odors were strong at the release point.

1 Q. And what did it smell of?

2 A. Crude oil.

3 Q. And did you find Mr. Prior on site?

4 A. I did find Mr. Prior on site. He was working on

5 constructing the tank walls within the containment battery.

6 Q. Within the containment battery, is that what you said?

7 A. He was building them up with soil.

8 Q. Okay. What about any other employees, did you observe

9 any other employees on site?

10 A. No, I didn't.

11 Q. Okay. Did you observe any sort of recovery equipment

12 such as a vacuum truck on site?

13 A. Yes, there was a vacuum truck on site next to the tank

14 battery, but it was not operating.

15 Q. Okay. And maybe just to clarify, what purpose does a

16 vacuum truck serve?

17 A. A vacuum truck is used -- it's basically a truck with a

18 tank on the back with a pump. And what they do is they suck the

19 liquids, usually they're used in petroleum product spills to

20 recover the crude oil from a creek.

21 Q. Okay. And in a release such as this, would you have

22 expected to see a vacuum truck in use?

23 A. Yes.

24 Q. Okay. Did you then or did you have a conversation with

1 Mr. Prior while you were on site?

2 A. I did have a conversation with Mr. Prior.

3 Q. Did you discuss with him the cause of the incident?

4 A. Initially the IEMA report had stated this was from a --

5 he reported from IEMA that this was due to a lightening strike.

6 But his reports, what he had told me, that this was due to

7 children had opened the ball valve through the fence. There's a

8 fence outside the tank battery, and the children must have opened

9 a ball valve and released the crude oil.

10 Q. Okay. You said a number of things there. I'm going to

11 back up just a moment.

12 A. Okay.

13 Q. When you were out there, did you notice any sort of

14 potential damage due to a lightening strike?

15 A. No, I didn't.

16 Q. Okay. And then you also mentioned that children were

17 responsible for the incident. When you arrived on site on July

18 22nd, was there access, control access, to this facility?

19 A. No, there wasn't because the gate was not locked.

20 Q. Okay. While on site, did you try to estimate the amount

21 of oil that was released from the tank battery?

22 A. I did try to estimate that. I had asked Mr. Prior from

23 what tank this was released, and he said the gun barrel.

24 Q. And what is a gun barrel generally?

1 A. A gun barrel is a tank where the crude oil comes in from
2 a flow line, and it separates the salt water from the crude oil
3 in two separate tanks. So since oil floats on water, since this
4 was releasing from the bottom, there would have been salt water
5 on the bottom of the containment berm along with crude oil.

6 Q. Okay. And so getting back to estimate, Mr. Prior told
7 you how much capacity the gun barrel had; is that right?

8 A. Yes. He said it was 210 barrels, and he said it
9 contained a stock of 59 barrels and 28 barrels remained in the
10 tank, so that left 31 barrels to be released to Fulton Creek.

11 Q. Okay. Let's turn to your observations while you were on
12 site. Beginning in the area of the containment site, can you
13 tell me generally what sort of purpose a containment dike is?

14 A. A containment dike, or what the Mines and Minerals or
15 the oil producers call, that a fire wall.

16 Q. Okay.

17 A. What it does, it contains -- it's supposed to contain
18 one and-a-half times the largest tank capacity. So in case there
19 is a release from the tank, it's contained within the tank
20 battery.

21 Q. And turning to the containment dike on site, did you
22 observe any crude oil within that structure?

23 A. There was crude oil within the containment berm.

24 Q. If I could direct your attention to Photograph No. 3

1 from July 22nd, are you there Ms. Cahnovsky?

2 A. Yes.

3 Q. What does that photograph show?

4 A. It shows the ball valve that was opened, and it also

5 shows crude oil in the containment berm.

6 Q. Now which structure is the ball valve that you're

7 referring to?

8 A. The yellow handle is the valve.

9 Q. Okay. If I could direct your attention to Photograph

10 No. 7, what does that show, from the same date it?

11 A. Shows crude oil within the containment berm.

12 Q. And Photograph No. 8?

13 A. It also shows crude oil in the containment berm.

14 Q. I think you mentioned that the report was that the crude

15 oil drained to Fulton Creek; is that correct?

16 A. I don't know if IEMA report stated it drained to Fulton

17 Creek, but it did say there was a release.

18 Q. Did you observe -- Can you tell me about the drainage

19 that you observed on site?

20 A. Yes. There's a couple photographs that -- number 9 and

21 10 show a site picture right outside the tank battery. You can

22 see in Photograph No. 9 that the grass is stained with oil, and

23 on number 10 the grass is also again stained with oil with new

24 rock outside the containment berm.

1 Q. Turning to Photograph No. 11 and 12, where are those
2 taken?

3 A. These are taken in town in Wamac. This one number 12 is
4 by the bridge, and number 11 is also in town. That one was taken
5 in Fulton Creek.

6 Q. Approximately how far downstream would you estimate that
7 these are from the release points?

8 A. For sure within a quarter mile. These are in town.

9 Q. And in terms of these photographs, can you tell me a bit
10 what they depict?

11 A. Yes, there's crude oil in Photograph No. 11 and 12. You
12 can see heavy crude oil in number 12 and you can see the crude
13 oil residue on top of the water on 11 and 12. That's why the
14 water is discolored to a brownish yellow.

15 Q. And turning to Photograph No. 13 of July 22nd, what does
16 that depict?

17 A. That's crude oil with some straw that he put into the
18 waterway.

19 Q. Is this further downstream from Photographs No. 11 and
20 12?

21 A. Yes.

22 Q. Let me just back up for a minute. Did you see any
23 containment operation taking place at the release point?

24 A. What do you mean by containment? The tank battery or in

1 the water?

2 Q. In the water.

3 A. In the water there was none at the release point. There
4 was, like I said earlier, two locations that -- where straw bales
5 were deployed at intersections, at bridge intersections, in
6 Fulton Creek.

7 Q. And again, that was further downstream?

8 A. Yes.

9 Q. Okay. Would you expect to see containment operations at
10 the release point in the water when it first entered the water?

11 A. Yes. There was -- A containment should have been done
12 at the containment spot, but the focus was to contain it more
13 downstream because there had been rainfall the night before that
14 had migrated it down further.

15 Q. I think before we had an extensive conversation of a
16 straw dam and whether or not they are effective in a high flowing
17 body of water, would you typically or expect to see any sort of
18 support of the straw dams and make them more effective?

19 A. I told Mr. Prior that they weren't working very well,
20 that they weren't effective. He suggested that because of the
21 bulk of the crude oil was migrating around the straw bales along
22 the bridges, and he suggested using chicken wire, so I told him
23 to use chicken wire.

24 Q. Have you ever seen that done before?

1 A. Honestly straw bales aren't used very often. Most
2 people use absorbant boom and river absorbant and siphon dams as
3 well.

4 Q. When you say siphon dams, what do you mean by that?

5 A. Well, siphon dams are put in waterways that have some
6 water movement. And what they do is they are constructed of soil
7 and they put a PCV pipe at least 2 to 3 feet long and they put it
8 on an angle so the water below it will migrate through on the
9 other side of the damn, and the oil will be collected on one side
10 so they can recover the oil on top of the water.

11 Q. Okay. Did you see such a dam in this siphon in this
12 instance?

13 A. I -- I did not see a siphon dam being used.

14 Q. And would you have expected to see a siphon dam such at
15 a release like this?

16 A. Yes. It could have been more difficult in Fulton Creek,
17 but it could have been used in town at the drainageway.

18 Q. While you were on site, did you see any recovery
19 operations taking place?

20 A. No. I told Mr. Prior to use the recovery truck when I
21 was there.

22 Q. Did you have any other conversations with Mr. Prior in
23 terms of what was expected of him for containment and/or
24 recovery?

1 A. Well, I told him that he needed to use -- that I had
2 some absorbant booms with me. And if he would pay the cost of
3 replacing them to the IEPA, that I would give them to him because
4 he said he did not have them.

5 Q. Do you know if the Illinois EPA was ever reimbursed
6 their cost for the absorbant boom?

7 A. To my knowledge they haven't.

8 Q. And I apologize if I asked this before, were there
9 workers on site anywhere?

10 A. Initially I did not see any workers.

11 Q. Okay. After that, did workers arrive on site?

12 A. Later in the day I did see a couple of workers in the
13 creek because I recommended that he have workers working with
14 hand tools deploying the booms, which he did not do the work
15 himself. He had his staff do it. Deploy the absorbant booms
16 that I gave him and work on the chicken wire with the straw
17 bales, and I told him later to use a recovery truck.

18 Q. Based -- based on your experience, how many workers do
19 you think should have been on site? Was this a sufficient amount
20 or should there have been more?

21 A. This was more of a medium size release.

22 Q. Okay.

23 A. So at least for a spill this size, I would say two
24 recovery trucks would have been good and enough staff, at least

1 two to four workers, in the creek with hand tools. A leaf blower
2 is used a lot of times to push the oil on top of the water to the
3 recovery point on downstream, and they use shovels to smash the
4 water off the bank instead of using a pressure -- a water
5 pressure device to spray wash the -- the creek. So that's what
6 was used.

7 Q. Is that what you would have expected to be used?

8 A. Uh-huh.

9 Q. But did you see it in this instance?

10 A. I saw the hand tools being used later in the day.

11 Q. Okay.

12 A. But I did not see a pressure washer, a leaf blower or
13 recovery truck initially being used.

14 Q. If I could direct your attention to Photograph 0 and 1
15 dated July 22nd, 1997, where are those taken?

16 A. Those are taken downstream. And the other photographs,
17 they're still in town. There is straw there, and you can see the
18 bridge post on number 1. Those were at the bridge intersections.
19 You can see crude oil because the river -- or the creek had come
20 up because of the rainfall, and the crude oil is on the
21 vegetation on both photographs.

22 Q. While you were on site, Mrs. Cahnovsky, were you
23 informed of children playing in Fulton Creek near Wabash Avenue?

24 A. I was. A resident had told me that information.

1 Q. Okay. Did you then go to this location and make any
2 observations?

3 A. I did. I saw the children playing on Wabash Avenue
4 underneath the -- in -- in Fulton Creek under the bridge.

5 Q. Was there an oil residue in the creek at that location?

6 A. Yes.

7 Q. Okay. If I could direct your attention to Photographs
8 No. 4 and 5 of July 22nd, 1997, what do those show?

9 A. They show the children in the creek.

10 Q. Okay. What did you tell the children to do?

11 A. I told the children to go home and clean up.

12 Q. After you observed children in the creek, did you go and
13 discuss your observations with Mr. Prior?

14 A. I talked to Mr. Prior and told him that there were nine
15 children in Fulton Creek.

16 Q. And what was Mr. Prior's response?

17 A. He told me only nine children.

18 Q. After observing the children in the oil and discussing
19 the matter with Mr. Prior, did you then leave the site?

20 A. I did. I followed Fulton Creek outside of town. I
21 think it was to Persimmon, Persimmon Road.

22 Q. And what did you observe along the way?

23 A. There was crude oil along Fulton Creek. My Photographs
24 No. 6 and 7, show outside of town about a half mile. It was

1 crude oil in -- in the wooded debris, and along -- there's -- in
2 number 6 you can see there's crude oil collected up behind the
3 log that's laying in the creek.

4 Q. Approximately how many miles were you downstream from
5 the release point at that time?

6 A. About a half mile.

7 Q. And how far did you notice that the oil traveled down
8 stream in Fulton Creek and Sewer Creek?

9 A. I went down and noticed pockets of oil and scum to about
10 two to three miles.

11 Q. Downstream to the release point?

12 A. Yes.

13 Q. Do you have an environmental opinion concerning your
14 observations of July 22nd?

15 A. Yes. There was impact to the surface water, the soil,
16 air quality, and to the fish, aquatic life, vegetation and biota
17 in the stream.

18 Q. Do you have any concerns about the remediation efforts
19 that you observed on July 22nd?

20 A. Well, they weren't adequate. He seemed to be responding
21 to what I asked him to do eventually, but it wasn't very -- he
22 wasn't proactive, and he was moving after several repeated
23 discussions of what needed to be done.

24 Q. Did you return to the site on July 28th, '97?

1 A. I did.

2 Q. Okay. Why did you go back on site?

3 A. On July 28th there was a call to the office from
4 Collinsville, a complaint, a woman from Wamac, and she said there
5 was crude oil draining by her home in Fulton Creek.

6 Q. What did you observe on site on the 28th?

7 A. Well, I initially went back to the tank battery and
8 noticed that the crude oil had been recovered pretty well from
9 the tank battery, but there was still soil, oily soil, outside
10 the tank battery; and the creek was still impacted in Fulton
11 Creek.

12 Q. What does an oily soil outside a tank battery indicate
13 to you?

14 A. Well, he hadn't worked on in the vegetation. He hadn't
15 worked on addressing that. But I had told him the day before
16 that the focus should be in the creek.

17 Q. When you arrived on July 28th, did you have any problems
18 gaining access to the tank battery?

19 A. No, I didn't. The tank battery is unlocked.

20 Q. Did you continue to have environmental concerns based on
21 your July 28th site visit?

22 A. No. Well, actually I did have environmental concerns.
23 I told him again to contain the oil. I went looking for
24 Mr. Prior because he wasn't recovering --

1 Q. Uh-huh.

2 A. -- in Fulton Creek, and I found him at the Prior
3 Oestreich Number tank battery which is another release we're
4 going to discuss today. He was there with several other crew
5 members, and I told him that I was concerned about the crude oil
6 in the creek.

7 Q. Okay. Did Mr. Prior now state another reason for the
8 cause of this incident?

9 A. Yes, he did. He stated that another competitor had
10 sabotaged his two tank batteries; the one that we were at there
11 at the location, and also the one at the park.

12 Q. Did you subsequently conduct a site visit on September
13 11th, 1997?

14 A. Yes.

15 Q. I'm going to hand you what has previously been marked
16 People's Exhibit No. 12 for identification. I'll ask you to
17 identify this document for me.

18 A. That's an Inspection Memo of mine.

19 Q. From your September 11th site visit?

20 A. Yes.

21 Q. Did you generate this document according to the same
22 procedures that we discussed when we were talking about your July
23 site visit?

24 A. Yes.

1 Q. Was this Inspection Memo generated in the ordinary
2 course of business activity?

3 A. Yes.

4 Q. And did you take photographs while you were on site on
5 September 11th, '97?

6 A. I did.

7 Q. And are you generally familiar with the site as it
8 appeared on that date?

9 A. Yes.

10 Q. And do these photographs fairly and accurately show the
11 site on that date?

12 A. Yes.

13 Q. And again, did you attach a map?

14 A. I don't think I did. Oh, yes, I did.

15 Q. Okay. And what does this map seek to do?

16 A. The map shows the photo locations in town.

17 MS. CARTER: At this time the People move for the admission
18 of People's 12 into evidence. Did I hand you one?

19 HEARING OFFICER SUDMAN: No.

20 MS. CARTER: Okay.

21 HEARING OFFICER SUDMAN: Do the Respondents have any
22 objection? Hearing none, I will admit People's Exhibit 12.

23 Q. (By Ms. Carter) When you first arrived on the 11th, was
24 the gate locked?

1 A. No. And my photograph on number 1 shows that the gate
2 was open.

3 Q. What did you observe?

4 A. I observed several inches of crude oil in the
5 containment berm. If you look at the pictures, you can tell that
6 there's a reflection, and that shows that's crude oil and not
7 water. Number 2, it shows that I put a stick in the crude oil in
8 the containment berm. It shows about the depth of the water of
9 the crude oil.

10 Q. In your opinion, did this crude oil continue to present
11 a threat to the environment?

12 A. It did, because it had been raining. I was concerned
13 about it overbanking the containment berm into the creek again.
14 And by not recovering the crude oil, it could impact the ground
15 water.

16 Q. Is there any other source that could have contributed to
17 your observations of July '97 in the unnamed drainage way in
18 Fulton Creek and Sewer Creek?

19 A. No, I did not see any upgraded impact into the creek,
20 and he was the only person that had reported a release to the
21 EPA.

22 Q. Mrs. Cahnovsky, what kind of records does ERU regularly
23 generate and maintain concerning Notices of Violation to a
24 responsible party?

1 A. Violation Notice.

2 Q. Okay. I'm going to hand you what has previously been
3 marked as People's Exhibit No. 13 and People's Exhibit No. 14 for
4 identification. If you could identify these two documents for me
5 and tell me which document you're referring to for
6 identification?

7 A. Well, these are both Violation Notices. One was sent
8 registered mail, and the other one was hand delivered. They were
9 seven months apart. And I believe the reason why the second one
10 was sent out to Mr. Prior was -- is that he did not accept the
11 first one.

12 Q. So the first one is the one that says certified mail,
13 People's Exhibit 13?

14 A. Yes.

15 Q. Okay. And then the People's Exhibit 14, sent -- it was
16 sent via hand delivery?

17 A. Right.

18 Q. Okay. Do you typically make some sort of recommendation
19 for a Violation Notice?

20 A. I do give a suggestion to management.

21 Q. And based on that suggestion, management will make a
22 decision on whether or not a VN is being sent?

23 A. Yes.

24 Q. Are these Violation Notices regularly generated by the

1 Illinois EPA?

2 A. Yes.

3 Q. And did you receive copies of these VNs that were either
4 hand delivered or mailed to Mr. Prior?

5 A. I did.

6 Q. And once the Violation Notice letter has been sent, do
7 you typically participate in any subsequent VN meetings with the
8 violator?

9 A. I'm usually there.

10 Q. And this Violation Notice letter, was it generated in
11 the ordinary course of regularly conducted business activity?

12 A. Yes.

13 MS. CARTER: At this time People ask for the admission of
14 People's 13 and People's 14.

15 HEARING OFFICER SUDMAN: Does the Respondent have any
16 objection? Hearing none, I will admit People's 13 and 14.

17 Q. (By Ms. Carter) Did the Illinois EPA receive a response
18 from Prior to either Violation Notice?

19 A. I believe we received a response after a Violation
20 Notice meeting that was held in Springfield. I believe that was
21 sent in '99.

22 Q. Okay. Mr. Prior's response was sent in '99?

23 A. Yes.

24 Q. And did Mr. Prior commit to performing any measures in

1 his response?

2 A. Yes, his response was short. It just basically stated
3 that he would take soil samples, and it would be, I guess, used
4 in the work plan and soil sampling plan would be taken from the
5 Mezo-Prior site.

6 Q. Okay. Are you familiar with the -- whether a Notice of
7 Intent to Pursue Legal Action letter was sent to Mr. Prior for
8 the violation?

9 A. I believe a letter was sent to him.

10 Q. Okay. Did you participate in any NIPLA meetings with
11 Mr. Prior?

12 A. I did not. Tom Powell did.

13 Q. Okay. Did the Illinois EPA ultimately receive soil
14 sample -- soil, excuse me, and sediment results from Prior for
15 this incident?

16 A. Yes.

17 Q. And do you recall approximately when the Illinois EPA
18 received them?

19 A. I think it was 2000.

20 Q. Is there something that would assist you in your
21 recollection?

22 A. Yes.

23 Q. What is that?

24 A. The Site Investigation Plan. Yes, this is the Surface

1 Investigation Plan that was dated October 10th, 2000, and it was
2 prepared by Hopper Environmental.

3 Q. Okay. Thank you. Based on this report, Mrs. Cahnovsky,
4 did the Illinois EPA ultimately determine that no further action
5 was required on site?

6 A. Yes.

7 Q. Okay. Switch gears on you, okay. Are you generally
8 familiar with the -- a facility consisting of several
9 above-ground tank batteries used to store oil, and it includes
10 the Mezo-Oestreich site, and it's located at 224 Wabash in Wamac,
11 Illinois?

12 A. Yes.

13 Q. And how are you generally familiar with the site?

14 A. We received an IEMA report for that one as well, and I
15 conducted a site visit. I believe it was on July 1st of '97.

16 Q. Are you generally -- I apologize.

17 A. Of 1997.

18 Q. Are you generally familiar who operated this site in
19 1997?

20 A. Yes, John Prior operated the site.

21 Q. Okay. Do you recall on approximately how many occasions
22 you've been out there?

23 A. Three.

24 Q. Okay. I'm going to hand you what's previously been

1 marked as People's Exhibit No. 15 for identification, and ask you
2 to identify this document for me.

3 A. This is Tom Powell's Inspection Memo.

4 Q. Okay. I may have handed you the wrong document. Let me
5 check and see. Were you on site on July 1st, '97?

6 A. I was.

7 Q. Okay. And you said it was Tom Powell's Inspection Memo?

8 A. Yes.

9 Q. Who is Tom Powell?

10 A. He is another emergency responder out of the
11 Collinsville Field Office.

12 Q. And did Mr. Powell accompany you then?

13 A. On July 1st he did.

14 Q. After that site visit, did you return to the site?

15 A. Yes, I did.

16 Q. And does that include the July 22nd --

17 A. Yes.

18 Q. -- site visit?

19 A. Yes.

20 Q. I'm going to hand you what has previously been marked
21 People's 16 for identification. If you can identify this
22 document for me.

23 A. This is my Inspection Memo.

24 Q. And did you generate this Inspection Memo in accordance

1 with the procedures that we discussed earlier?

2 A. Yes.

3 Q. Okay. And did you take photographs on this date?

4 A. I did not -- I did on the 22nd. I didn't I believe --
5 Yes, I did.

6 Q. Did you on the 22nd?

7 A. Uh-huh. And I did also on the 28th.

8 Q. Does this Inspection Memo document both your inspections
9 on the 22nd and 28th?

10 A. Yes.

11 Q. And you said you took photographs out there on the 22nd,
12 are you generally familiar with the site as it appeared on July
13 22nd, '97?

14 A. Yes.

15 Q. And do these photographs fairly and accurately show the
16 condition of the site on the 22nd?

17 A. Yes.

18 Q. And are you generally familiar with the conditions of
19 the site on July 28th, '97?

20 A. Yes.

21 Q. And do these photographs fairly and accurately show the
22 condition of the site on that date?

23 A. Yes.

24 MS. CARTER: And at this time the People move for the

1 admission of People's 16 into evidence.

2 HEARING OFFICER SUDMAN: Do the Respondents have any
3 objection? Hearing none, I will admit People's 16.

4 Q. (By Ms. Carter) What did you observe on the 22nd?

5 A. There was crude oil and quite a bit of water, it may
6 have been salt water, in the containment battery. There was
7 actually about a foot of it, and there was more liquid in crude
8 oil in there during my site visit on July 1st.

9 Q. Okay. If I could direct your attention to Photograph
10 No. 1 and Photograph No. 2. Turning first to Photograph No. 1,
11 what does that show?

12 A. It shows within the containment berm the tank battery,
13 and it shows crude oil and salt water and perhaps some fresh
14 water in there.

15 Q. What about Photograph No. 2?

16 A. It shows the tank battery as well, and it shows that
17 there was some soil berm built-up on the right side of the
18 picture.

19 Q. You said there was soil berm built-up on the right side
20 of the picture?

21 A. Yeah. Soil was added to the berm to make it higher to
22 contain the crude oil and salt water.

23 Q. Had that happened since your July visit, July 1st, '97,
24 visit?

1 A. Yes.

2 Q. Okay. If I could scratch that. While you were on site,
3 did you notice whether the soil outside of the berm was still
4 oily?

5 A. Yeah, the soil outside of the berm was quite oily right
6 outside of the berm, and along into the woods and into the
7 drainageway.

8 Q. What did that indicate to you?

9 A. Well, he had not tilled it up or applied lime or
10 anything at that time.

11 Q. In your opinion, did the conditions of the site on July
12 22nd continue to pose a threat to the environment?

13 A. Yes, they did. I would say that there was still a
14 surface water impact due to the oily soil, potential impact also
15 from the containment berm considering there was a foot of liquid
16 inside a containment berm, although it was built-up. My concern
17 also within the containment berm was potential impact to the
18 ground water, if it migrated, if it stayed in the containment
19 berm, and I -- there was offensive -- and off-site there was
20 offensive conditions in the creek.

21 Q. Okay. What do you mean by that?

22 A. There was visible crude oil within the creek that was
23 not supposed to have been there.

24 Q. Did you observe any remediation avenue taking place on

1 the 22nd of July?

2 A. No.

3 Q. Did you -- You mentioned before you conducted an
4 inspection on July 28th?

5 A. Yes. I stopped by this tank battery to discuss the park
6 incident, and I found Mr. Prior here, because I was looking for
7 him. And we discussed, like I had said earlier, there was
8 another reason why the spill occurred and that was due to
9 competitor sabotage at his tank batteries.

10 Q. Okay.

11 A. I also told him that I observed that the tank battery
12 valve was leaking liquids into the containment berm in that
13 Photograph No. 20 -- on number 12 shows that.

14 Q. Oh, from the July 28th date?

15 A. Yes.

16 Q. Did you discuss with him it was leaking?

17 A. I did discuss that it was leaking with him, and he tried
18 to tighten up the valve, and it still continued to leak.

19 Q. Did Mr. Prior make any comment about the valve that was
20 leaking oil?

21 A. Yes, he said that -- Initially I had thought this was a
22 -- not a Mines and Mineral approved valve, but he said it was,
23 but he would replace it.

24 Q. What does Photograph No. 1 depict of July 28th?

1 A. Of July 22nd?

2 Q. Oh, mine says July 28th.

3 HEARING OFFICER SUDMAN: There is two number 1s.

4 A. Okay.

5 HEARING OFFICER SUDMAN: The first one is July 22nd, and
6 the next page is July 28th.

7 A. Yeah, within the containment berm there is a pit with
8 crude oil in -- in it.

9 Q. (By Ms. Carter) A pit with crude oil in it?

10 A. Yeah, you can see a little crude oil in this pit in the
11 containment berm.

12 Q. Okay. Did this pose a threat to the environment?

13 A. Yes, it did. It posed a threat to ground water. And
14 potentially if this wasn't recovered out, it could overtop the
15 containment berm.

16 Q. Was there any other source that could have contributed
17 to your observations in July '97 at the Mezo-Oestreich No. 1
18 site?

19 A. I did not see any of -- location upstream or downstream
20 in the creek that would have posed another threat.

21 Q. Are you generally familiar with the Morgan Kalber Kamp
22 No. 1?

23 A. Let me correct myself.

24 Q. Yes.

1 A. The other -- July 28th, I went there because of the
2 other incident. Downstream in Fulton Creek there was an
3 impact --

4 Q. Okay.

5 A. -- and this one impacted basically the same location as
6 the other one in Fulton Creek in town.

7 Q. Are you talking about the park incident, the other
8 incident?

9 A. Yes.

10 Q. Okay, okay. Moving on then, are you familiar with the
11 Morgan Kalber tank that's located near 312 Wabash in Wamac,
12 Illinois?

13 A. Yes.

14 Q. How are you familiar with this site?

15 A. I conducted a couple site visits and also received a
16 call from Alan Whitler of a small crude oil spill in Fulton
17 Creek.

18 Q. Did you receive a report from IEPA?

19 A. Yes.

20 Q. Do you recall on the report who reported the incident to
21 IEMA?

22 A. I believe it was John Prior. I don't recall offhand.

23 Q. Is there anything that would assist you in refreshing
24 your recollection?

1 A. Yes, the IEMA report.

2 Q. Okay.

3 A. John Prior did call this in to IEMA.

4 Q. Okay. And what was designated as the cause of the
5 release?

6 A. Now are where talking about the Mezo or Kalber Kamp?

7 Q. We're talking about -- Is that for the Kalber Kamp that
8 I just handed you?

9 A. This is for the first one.

10 Q. Did I mess it up?

11 A. This is 13, 14.

12 Q. Let me make sure. Excuse me.

13 A. That one is for the park incident.

14 Q. This one I just handed you, Mrs. Cahnovsky, you said was
15 for the park incident?

16 A. Yes, 13, 14 for the park incident. The third incident
17 was a one and-a-half berm.

18 MS. CARTER: Ms. Hearing officer, can I have a two-minute
19 break to search for documents?

20 HEARING OFFICER SUDMAN: Sure. We'll take a break.

21 (A short break was taken.)

22 HEARING OFFICER SUDMAN: Go back on the record now.

23 MS. CARTER: Okay. Thank you.

24 Q. (By Ms. Carter) Mrs. Cahnovsky, now, I'm going to hand

1 you what has been previously marked as People's Exhibit No. 17
2 for identification. If you can identify this document for me.

3 A. This is my Inspection Memo.

4 Q. Okay. And was this Inspection Memo generated in
5 accordance with the procedures that we discussed earlier?

6 A. Yes.

7 Q. Okay. And was it made at or near the event?

8 A. Yes.

9 Q. Generated in the ordinary course of business activity?

10 A. Yes.

11 MS. CARTER: At this time People move for the admission of
12 People's 17 into evidence.

13 HEARING OFFICER SUDMAN: Do the Respondents have any
14 objection? Hearing none, I will admit People's Exhibit 17.

15 Q. (By Ms. Carter) Where is this tank located?

16 A. This tank low -- is located near Wabash Street near a
17 residence at 112 in Wamac.

18 Q. Are you familiar who operated the tank in July of 2000?

19 A. John Prior.

20 Q. It says here you were on site on July 19th; is that
21 correct?

22 A. Yes.

23 Q. What did you observe on this date?

24 A. There was -- I was -- There was approximately three

1 barrels of crude oil. Alan Whitler had reported three barrels of
2 crude oil, and John Prior had reported a barrel and-a-half, so
3 it's in the ballpark there, crude oil that impacted Fulton Creek.
4 He had told me that the cause was vandalism.

5 Q. Okay. Did Mr. Prior tell you anything else? What that
6 the expense --

7 A. He told me to speak to Irina Smith who was a resident,
8 and I did speak to her and she said she saw the tank battery cap
9 on the floor of the tank battery.

10 Q. Was access controlled to this site?

11 A. No, there was not a fence.

12 Q. Okay. You mentioned before that you observed impact in
13 the creek, did you observe any oil along the creek banks?

14 A. Yes.

15 Q. Okay. Did you notice any efforts at straw containment?

16 A. Well, there wasn't a location for really containment.
17 What they were doing was putting straw on top of the water. The
18 impacted area was about 300 feet so it wasn't as far as the other
19 two spills. And there was crude oil in the creek, and I believe
20 there was a worker or two at the site.

21 Q. Was the straw containment oily?

22 A. I believe the top of -- What I saw from my photographs
23 is that the oil had collected on the bottom of it, but from the
24 photographs, I don't think you'll be able to see that there's oil

1 on the straw.

2 Q. Does the oily straw show any purpose of containment.

3 A. Well, it's to collect oil in the creek.

4 Q. Does it actually work when it's oily?

5 A. Not when it's oily.

6 Q. And did you observe any recovery operation on site?

7 A. I believe there was a truck, recovery truck, on site but
8 I don't believe it was operational.

9 Q. In your opinion, did this crude oil pose a threat to the
10 environment?

11 A. It did to the -- to the water, to the surface water. It
12 was a surface water, surface water hazard. It was offensive
13 conditions from the crude oil in the creek and onto the soil.

14 Q. Did you have any concerns about the remediation efforts,
15 or lack thereof, on July 19th?

16 A. Yes, I did tell him to continue working on this. This
17 was in a residential area. There was homes nearby. We had
18 received a call from the Collinsville office from a person who
19 owned the property, and he was concerned about getting the crude
20 oil, removing the crude oil.

21 Q. I'm going to hand you what has been previously been
22 marked People's Exhibit 18 for identification. I will ask you to
23 identify this document for me. But did you conduct a subsequent
24 inspection on site at Morgan Kalber Kamp on July 24th?

1 A. Yes.

2 Q. Can you identify this for me?

3 A. This is my Inspection Memo with photographs.

4 Q. And was this Inspection Memo done under your procedures
5 as we discussed earlier?

6 A. Yes.

7 Q. Was it generated at or near the time the events are
8 observed?

9 A. Yes.

10 Q. And was it generated in the ordinary course of business
11 activity?

12 A. Yes.

13 Q. I see that you took photographs on July 24th, are you
14 familiar with the conditions on the site on this date?

15 A. Yes.

16 Q. And do these photos fairly depict the site on July 2000?

17 A. They do.

18 MS. CARTER: At this time People ask for the admission of
19 People's 18.

20 HEARING OFFICER SUDMAN: Do the Respondents have any
21 objection? Hearing none, I will admit People's Exhibit 18.

22 Q. (By Ms. Carter) What did you observe on July 24th?

23 A. There was pockets of crude oil still in the creek. This
24 photograph doesn't depict it quite as my original but you can see

1 them.

2 Q. And are you referring to Photograph No. 5?

3 A. Five and six.

4 Q. Let's turn to Photograph No. 5. Where do you observe
5 the pockets of crude oil in that photograph?

6 A. You can see them. This is a shaded area and that's why
7 it's a little bit difficult to see. But you can see in through
8 where it looked yellow, there's pockets of black crude oil in the
9 middle of those shaded tan areas, and you can see straw at the
10 bottom of the photograph with a broom that I'm assuming that he
11 used on the banks of the creek.

12 Q. Can you tell from this photograph whether the bank was
13 still oily?

14 A. Yeah, they are a little oily. You can see it probably
15 up 6 inches to a foot.

16 Q. Do you have an environmental concern based on your
17 observations on this date?

18 A. Yes. He still needed to remove the crude oil from the
19 creek. I was concerned about the aquatic life downstream and
20 that it would impact Sewer Creek along with the three spills. It
21 had offensive conditions with the crude oil in the creek. The
22 water hazard in the water impact, water pollution.

23 Q. And the creek we're referring to this incident is the
24 Fulton Creek again; correct?

1 A. Yes.

2 Q. And is that the same creek that we were referring to in
3 the other two instances as well?

4 A. Yes.

5 Q. That's what I thought. Did you have any concerns about
6 the remediation efforts, or lack of them, that you observed on
7 the 24th of July?

8 A. We discussed removing the straw and putting new straw in
9 and recovering the crude oil from the creek.

10 Q. Based on the size of this release?

11 A. This size is not as serious as the other two, but still
12 an impact to the creek is -- is a concern.

13 Q. But based on the size of this release, were remediation
14 efforts going slowly?

15 A. Yes, they were going slowly. Because this spill
16 happened on -- I was called about the spill on July 19th of 2000.

17 Q. And this was the 24th which is five days later?

18 A. And typically companies have -- can have a spill pretty
19 well under control in three days.

20 Q. And was this spill under control on the 24th.

21 A. No, he was still working on it.

22 Q. Was there any other source that could have been
23 attributed to your observations of July?

24 A. No.

1 Q. Why not?

2 A. Up gradient I did not see any impact, and down gradient
3 I only went to about the location of where the spill ended. I
4 did not go downstream. But normally a spill will impact the
5 upstream.

6 Q. Are you familiar with what remediation activities after
7 this incident, after this site visit, excuse me, have taken place
8 on site?

9 A. After this incident?

10 Q. Let me just strike that question. Are you familiar with
11 whether or not there were any subsequent remedial activities
12 performed at this site after your site visit in July?

13 A. Well, I was back -- I spoke to John Prior on the 28th of
14 July, and he told me that he removed the oily straw from the
15 creek on the 26th.

16 Q. Did you engage in any discussions with any consultants
17 representing Mr. Prior?

18 A. Yes, I dealt with Hopper Environmental.

19 Q. Did they ultimately submit sampling verifying compliance
20 with TACO standards?

21 A. Yes.

22 Q. Do you recall approximately when that was?

23 A. I think that was 2003.

24 Q. Would anything assist you in refreshing your

1 recollection?

2 A. Yes, the Assessment.

3 Q. I'll have you take a look at this and tell me what the
4 date on that is?

5 A. This is March 12th, 2003. And this is a Site Assessment
6 for three clean-ups, IEPA was going to have do and included this
7 too.

8 Q. And it included the Morgan Kalber Kamp?

9 A. Yes.

10 Q. And what were the other two incidents that were included
11 in there?

12 A. The Bureau of Land, the Gomper site and the
13 Mezo-Oestreich.

14 Q. Okay.

15 MS. CARTER: I have no further questions.

16 HEARING OFFICER SUDMAN: Okay. Mr. Prior, do you have any
17 questions for Mrs. Cahnovsky?

18 MR. PRIOR: No, ma'am.

19 HEARING OFFICER SUDMAN: Mr. Mezo?

20 MR. MEZO: (Shakes head.)

21 HEARING OFFICER SUDMAN: Okay. We'll take about a 5 or 10
22 minute break.

23 (A short break was taken.)

24 HEARING OFFICER SUDMAN: Ms. Carter, you may call your next

1 witness.

2 MS. CARTER: The People call Tom Powell.

3 TOM POWELL,

4 called as a witness herein, having been first duly sworn,

5 deposeeth and saith as follows:

6 DIRECT EXAMINATION

7 QUESTIONS BY MS. CARTER:

8 Q. Please state your name.

9 A. Name is Thomas E. Powell.

10 Q. And can you tell me about your post-high school
11 education?

12 A. I have a bachelor's degree in earth science from
13 Southern Illinois University in Edwardsville.

14 Q. When did you obtain that degree?

15 A. I obtained that degree in 1975.

16 Q. With whom are you currently employed?

17 A. I'm employed by the Illinois Environmental Protection
18 Agency, Emergency Operations Unit.

19 Q. What's your position with the Illinois EPA?

20 A. I'm senior emergency responder with the emergency
21 operations unit. I've worked for the Agency for over 23 years.
22 The last 20 which has been as an emergency responder responding
23 to environmental emergencies in the southern 41 counties of the
24 state on a 24/7/365 period.

1 Q. Okay. Can you tell me about your duties when you
2 respond to an emergency incident?

3 A. Emergency incidents, always taking into account of
4 public health and safety, the well-being of the citizens of
5 Illinois, as such, responding to environmental emergencies that
6 would -- would include, but not be limited to, oil, hazardous
7 materials, hazardous substances through transportation incidents,
8 pipeline which it would include pipeline, commercial carriers,
9 barge, tow and as such, in addition to fixed facility incidences,
10 again dealing with hazardous materials, hazardous substance,
11 hazardous waste.

12 Q. And responding to environmental releases, do you
13 coordinate your activities with various State agencies?

14 A. Yes, ma'am. We coordinate with local officials: local
15 fire, police, law enforcement either on a local level, a county
16 level or a state level, and upon the jurisdiction where we are
17 working.

18 Q. Do you also review certain technical submittals that may
19 be provided to the Illinois EPA after the incident has occurred?

20 A. Yes, ma'am.

21 Q. And what do those consist of?

22 A. Consist of -- those could consist of remediation reports
23 based upon the correspondence that is issued from the Illinois
24 EPA to a responsible party or to a party in which we're dealing.

1 Q. Might it also include sampling plans?

2 A. Yes, ma'am.

3 Q. And I think you said you worked in that capacity for
4 approximately 20 years?

5 A. 20 years with the emergency response unit. Emergency --
6 emergency operations unit.

7 Q. What did you do with the Illinois EPA prior to that
8 time?

9 A. Prior to that time I was a RCRA inspector, pursuant to
10 the RCRA program, Resource Conservation and Recovery Act that
11 came into being in the early '80s to regulate cradle to grave,
12 the generation of hazardous waste.

13 Q. During the course of your employment as an emergency
14 responder, approximately how many inspections have you conducted?

15 A. Well, in excess of 1,000 inspections and site visits.

16 Q. And what about inspections pertaining to releases of
17 crude oil and/or brine?

18 A. Crude oil and produce water well in excess 200.

19 Q. When I say the term brine, what does that mean?

20 A. Brine means to me in the oil production through southern
21 Illinois, crude oil production, means to be produced water which
22 is typically very high in chloride content, depending upon the
23 formation from which the oil and produced water come from.

24 Q. Since you've been employed by the Illinois EPA, have you

1 had the opportunity to participate in training?

2 A. Yes, ma'am. As an emergency responder, there are nine
3 of us in the state of Illinois. We are all trained to a
4 Technician B level pursuant to OSHA 1910-120 of the OSHA
5 regulations. As such as a technician, we receive over 120 hours
6 of training to achieve that position. Much more than the normal
7 rank and file agency employees would receive.

8 Q. And what might that training consist of?

9 A. Training consists of mitigation, both offensive and
10 defensive posture with hazardous material and hazardous substance
11 releases. As far as the Technician B training, again, it's all
12 geared to first responder. I've also been trained with the
13 Illinois -- Illinois Petroleum Resources Board with oil and brine
14 releases. We have been trained with the OPA 90, OPA standing for
15 the Oil Pollution Act of 1990 which is a federal requirement.
16 We've also been trained in various hazardous material instances
17 through USEPA through continuing education courses.

18 Q. Okay. I'm going to hand you, Mr. Powell, what's been
19 previously marked People's Exhibit No. 19 for identification. If
20 you could identify this document for me.

21 A. This is my resume.

22 Q. And does it accurately reflect your educational
23 background in an employment history?

24 A. Yes, ma'am.

1 Q. Okay. And is it current through the present?

2 A. This is about -- This is a number of years old.

3 Q. Okay.

4 A. But it does reflect my job position that I have held for
5 a number of years now.

6 Q. Okay. So the only changes might be under personnel or
7 something like that?

8 A. Personnel, ages of my children.

9 MS. CARTER: At this time People move for the admission of
10 People's 19 into evidence.

11 HEARING OFFICER SUDMAN: Do the Respondents have any
12 objection? Hearing none, I will admit People's Exhibit 19.

13 Q. (By Ms. Carter) Are you generally familiar with the
14 Illinois Attorney General's Office case involving John Prior and
15 James Mezo?

16 A. Yes, ma'am.

17 Q. And how are you familiar with this case generally
18 speaking?

19 A. I'm familiar with the Prior-Mezo site in Wamac,
20 Illinois, as a result of a response that I conducted there.

21 Q. And when you're saying the Prior-Mezo site in Wamac, are
22 you referring to the Oestreich No. 1 site located at
23 approximately 224 Wabash in Wamac?

24 A. I know it to be the Prior-Mezo Oestreich site.

1 Q. Okay. The Oestreich site then, okay.

2 A. Uh-huh.

3 Q. Are you familiar with who operated that site?

4 A. It is my understanding that it was operated by Mr. Prior
5 for Mr. Mezo.

6 Q. And approximately how many occasions have you been to
7 this site?

8 A. That particular site I was only at one time being July
9 1st, 1997.

10 Q. Okay. I'm going to hand you what has previously been
11 marked People's Exhibit 15 for identification. If you could
12 identify this document for me, sir?

13 A. This is an Inspection Memorandum that I had generated as
14 a result of the site visit by myself and Cheryl Cahnovsky.

15 Q. Does this Inspection Memorandum generally describe your
16 observations during an inspection?

17 A. Yes, ma'am.

18 Q. And when do you typically complete such document?

19 A. Some time after the site visit has taken place.

20 Q. Once you've completed an Inspection Memorandum, what do
21 you do with it at the Illinois EPA? Is it filed?

22 A. Yes, ma'am. The original goes to our Bureau files or
23 the headquarter file, which is located in Springfield, Illinois.

24 Q. And this Inspection Memorandum, was it generated in the

1 ordinary course of business activity?

2 A. Yes, ma'am.

3 Q. Did you take photographs while you were out there?

4 A. Yes, ma'am. Myself and Mrs. Cahnovsky also took
5 photographs during this visit.

6 Q. Okay. And are you familiar with the site as it appeared
7 on July 1st, '97?

8 A. Yes, ma'am.

9 Q. Okay. These photographs fairly and accurately show this
10 site on this date?

11 A. Yes, ma'am.

12 Q. Did you also attach some maps to this document?

13 A. Yes, ma'am.

14 Q. What purpose do the maps serve?

15 A. The maps were -- I use the maps to refresh my memory and
16 to depict the location of the photographs that we had taken as
17 well as the actual site where the release took place.

18 Q. So do the numbers on the photograph correspond with the
19 numbers on the map that you've drawn?

20 A. Generally speaking, yes.

21 Q. Okay. And will these maps assist you in describing your
22 observations on July 1st?

23 A. Yes.

24 MS. CARTER: At this time the People move for the admission

1 of People's Exhibit 15. I don't think I handed you this one.

2 HEARING OFFICER SUDMAN: No. Do the Respondents have any
3 objection? Hearing none, I will admit People's Exhibit 15.

4 Q. (By Ms. Carter) Why were you on site July 1st?

5 A. We were on site July 1st as a result of a
6 Notification 1 the day before to my regional office to the Bureau
7 of Water Pollution, and as well as a notification of the release
8 by Mr. Prior to IEMA.

9 Q. And did anybody accompany you on site on July 1st?

10 A. Yes, Cheryl Kelly at that time, Cheryl Cahnovsky.

11 Q. And did anybody meet you on site?

12 A. On site we had previously met earlier while we were
13 inspecting and observing the downstream oiled condition of Fulton
14 Branch Creek. We met Alan Whitler and Larry Bengal and an
15 unknown attorney with the Illinois Department of Natural
16 Resources.

17 Q. You said Larry Bengal, who is Mr. Bengal?

18 A. Larry Bengal is, I believe, the manager of the Illinois
19 -- the Mines and Minerals portion of the Illinois Department of
20 Natural Resources.

21 Q. Are you aware whether a significant thunderstorm
22 occurred in the evening prior to your site visit?

23 A. Pursuant to conversation with Alan Whitler, Mr. Whitler
24 indicated there was a shower, thunderstorm as your words,

1 thunderstorm afternoon or evening of June 30th.

2 Q. Can you just generally describe the tank battery
3 production area of the site?

4 A. Okay. The tank battery production area appeared to
5 consist of three approximately 200 barrel tanks also with a gun
6 barrel. Gun barrel is a slang term for an oil water separator.
7 At this location there were, as I say, three approximately 200
8 barrel tanks. And also during my -- our visit of this day, we
9 observed a small bobcat type end loader also at the location.
10 However, the bobcat was not being operated at that time. It was
11 pretty much parked.

12 Q. Okay. If I could direct your attention to Photograph
13 No. 1, what does that show? Maybe if I could actually point to
14 you one, two and three if you could describe those generally?

15 A. Okay. Photograph 1 is an access road, or sometimes
16 known as a lease road, that leads up to a tank battery or a oil
17 well. This particular area is -- this particular photograph
18 depicts the access road. It also depicts some oil staining in
19 the foreground. It also depicts, appears to be fresh soil that
20 was deposited on the fire wall or the berms of this tank battery.
21 I can -- it appears to be fresh because of the green vegetation
22 that appears on the inside of the berm. But on the exterior of
23 the berm, there appears to be more -- more freshly disturbed soil
24 that is not green with summer foliage which one would typically

1 expect.

2 Q. I apologize. But does that indicate to you that that
3 berm had recently been built-up?

4 A. It depicts some activity, earth moving activity had
5 probably taken place with this. It's depicted a little better on
6 Photograph 3 wherein the foreground or on the right side of the
7 photograph you can see the berm that is lush with green
8 vegetation, but in the back of the photograph you can see the
9 aforementioned bobcat type end loader and some freshly disturbed
10 soil on that, which I believe be the northern portion of that
11 tank battery.

12 Q. Mr. Powell, did you observe, while you were on site, the
13 flow of any material from this tank berm area?

14 A. I saw past, past evidences of flows from this tank
15 battery. Two locations, again, referencing Photograph 1 behind
16 the red SUV, you can see there's some oil staining on the lease
17 road. General gradient direction towards the west where we had
18 drainage to the intermittent drainageway of Fulton Branch Creek.
19 Likewise, on Photograph No. 5, again which is a picture of the
20 aforementioned bobcat, you can see some oil staining on the soil
21 heading in the direction of the woods. You can also depict some
22 bags of what, I believe, to be some peat moss and perhaps some
23 straw material which is more difficult to see, but again visible
24 in Photograph 5.

1 Q. In Photograph No. 5?

2 A. Uh-huh.

3 Q. What's the significance of the peat moss?

4 A. Peat moss is used sometimes on very light spills to try
5 to use as to tie up or bind up the oil as an absorbant. I was
6 going to say typically we see this on very, very light spills
7 where we would have perhaps some -- just some rainbow or sheen in
8 a waterway or some very, very light oiling of some soil.

9 Q. In what direction did the material flow?

10 A. From the tank battery it flowed generally -- depicted on
11 Photograph 1, generally flowed to the west to the wooded area,
12 likewise on photograph 5 to the northwest into an unnamed
13 intermittent drainageway that is tributary to Fulton Branch
14 Creek.

15 Q. Did you notice any collection activities at this point
16 where it entered the unnamed intermittent tributary Fulton Branch
17 Creek? Did I get that right?

18 A. Yes.

19 Q. Did you notice any recovery at that point? Did you
20 notice any containment at that point?

21 A. No, ma'am, other than -- other than a couple straw
22 bales.

23 Q. What about further downstream?

24 A. Within the unnamed tributary, or in Fulton Branch Creek?

1 Q. Let's do the tributary first.

2 A. No, ma'am. Other than with the placement of some straw
3 bales in and around the aforementioned tributary.

4 Q. Would you have expected to observe any containment or
5 recovery taking place in that tributary?

6 A. Yes, ma'am. There were oiled soils, there were oiled
7 pockets of water, pool ponded water that could have utilized
8 either an absorbant boom or a siphon or underflow dam.

9 Q. When you use the term underflow dam and siphon dam, are
10 those terms interchangeable?

11 A. Yes, ma'am.

12 Q. What about further downstream in Fulton Creek?

13 A. Fulton Creek was depicted by some photographs taken by
14 myself and Mrs. Cahnovsky. In Photograph No. 8 and 9, which I
15 had taken, they were approximately two miles away from the spill
16 site and they depict heavy accumulation of crude oil that is
17 certainly recoverable.

18 Q. Okay. You mentioned that it was certainly recoverable,
19 did that straw serve any purpose when it was heavily oiled?

20 A. The straw serves no purpose once it's heavily oiled.
21 All it will do is leach crude oil constituents from its -- from
22 the straw itself.

23 Q. And you're noticing that in Photograph No. 8? What
24 about Photograph No. 9?

1 A. Likewise. You can see straw bales that have been broken
2 apart. Someone had placed some straw in -- again, these pictures
3 were taken from Fulton Branch Creek. It was apparent that
4 someone had spread some -- some straw or straw type material in
5 the creek. But generally speaking, the straw is used in this
6 instance as a type of containment only successful when vacuum
7 trucks or mechanical recovery is also taking place in conjunction
8 with placement of the bales.

9 Q. Did you see any vacuum trucks or any recovery anywhere
10 at Fulton Creek?

11 A. On July 1st I saw absolutely no recovery at any
12 location.

13 Q. And you would expect to see recovery operation in a
14 spill such as this?

15 A. Yes, ma'am. Yes, ma'am.

16 Q. Now in terms of oil staining on the sidewalls of Fulton
17 Creek, did you make observations of that?

18 A. Yes, ma'am.

19 Q. Approximately how far downstream on Fulton Creek
20 sidewalls?

21 A. Okay. There were, as referenced before, there was some
22 rain showers and/or thunderstorms the evening before. There were
23 some sidewall staining, excuse me, on bridges and concrete
24 apparatus associated with the bridges and the drainageway there

1 in Wamac. In speaking with Alan, which is the letter he
2 acknowledged there was visible oil within Sewer Creek, some over
3 -- some two and-a-half miles away from the particular tank
4 battery.

5 Q. What does Photograph No. 10 depict?

6 A. Photograph No. 10 depicts oil that is floating
7 downstream. You can see it tied to the -- or close to the banks
8 and you can see portions of oil also floating downstream. Again,
9 this location was again taken, referencing my map or referencing
10 the maps associated with this location, that was nearly not quite
11 two miles away from the site from the tank battery that
12 experienced the breach.

13 Q. I probably should have asked you this sooner. Is this
14 located in close proximity to the tank battery? I apologize.
15 Was this located in close proximity to residential areas?

16 A. There were houses, as I recall, to the south and/or
17 southeast.

18 Q. Okay.

19 A. I do not recall any access restrictions or fences or
20 anything like that.

21 Q. And just for a frame of reference, how many gallons are
22 in a barrel?

23 A. 42 petroleum barrels.

24 Q. And did you notice any crude oil odors while you were on

1 site?

2 A. Yes, ma'am.

3 Q. Was that just in the vicinity of the spill or the
4 release point or was it further downstream?

5 A. At the release points at the tank batteries, in the
6 unnamed intermittent drainageway to Fulton Branch Creek, in
7 Fulton Branch Creek also on the southwest portion of Wamac. A
8 strong olfactory, odor was detected.

9 Q. Do you have an opinion concerning the remedial efforts,
10 if any, you observed to this site?

11 A. Yes, ma'am.

12 Q. And what's your opinion?

13 A. My opinion is that on July 1st when I visited the site,
14 there was absolutely no recovery operations that were taking
15 place. There were feeble attempts for using straw for
16 containment methods. But, again, no, no commercially available
17 boom or pads which is a hydrophobic material which is typically
18 used in oil field industry nowadays. And as such, I basically
19 saw no recovery taking place whatsoever, again, at these
20 downstream locations as well as at the tank battery itself.

21 Q. Based upon your observations of July 1st, did you form
22 an opinion concerning what the Respondents' efforts, if any, were
23 directed to at that time?

24 A. Yes, ma'am.

1 Q. And what was that?

2 A. It was apparent that there was no recovery that was
3 taking place downstream because of the aforementioned rainfall
4 event that occurred on the 30th of June perhaps washing away the
5 oil from the site.

6 Q. Okay. From your observations of July 1st, did it appear
7 the priority was being given to improve the tank berm?

8 A. That was my observation. That there was actual physical
9 activity, one piece of equipment, although it was unmanned, but
10 one piece of equipment and, again, the fresh soil that was
11 apparent around the west and northwest and north berms of the
12 aforementioned tank battery.

13 Q. Do you have any environmental opinions concerning your
14 observation?

15 A. Yes, ma'am.

16 Q. And what is that?

17 A. As far as aquatic receptors in Fulton Branch Creek and
18 additionally downstream Sewer Creek, I feel that a pollution
19 event had occurred to the water and most likely to the wildlife
20 associated with those waterways.

21 Q. Okay. Mr. Powell, what kind of record does the Illinois
22 EPA regularly generate and maintain to provide notice to a
23 potential violator of violations of the Illinois Environmental
24 Protection Act?

1 A. It could take the form of a non-advisory letter, it
2 could take the form of a Violation Notice or it could take the
3 form of a Section 43 which is an immediate referral to the
4 Attorney General's Office.

5 Q. I'm going to hand to you what's previously been marked
6 People's No. 20 for identification here today. Hang on. I just
7 got to put it together here. I'll ask you to identify this
8 document for me because I will also hand you what has also
9 previously been marked People's Exhibit 21 and ask the same
10 questions of you in just a moment. I'll hand you, again, what's
11 been marked People's Exhibit 20 and 21. If you could take them
12 in turn and identifying each document for me.

13 A. Okay. People's Exhibit No. 20 is a Violation Notice,
14 1997-01058 issued to Mr. Jim Mezo doing business as James Mezo
15 Oil Company.

16 Q. And what about People's Exhibit 21?

17 A. 21 is a Violation Notice 1998-00071 issued to Mr. John
18 Prior, again, doing business as Prior Oil Company.

19 Q. Does the People's Exhibit 21 indicate that it was
20 delivered via hand delivery?

21 A. Yes, ma'am.

22 Q. And People's Exhibit 20 indicates that it was delivered
23 via certified mail?

24 A. Yes, ma'am.

1 Q. Once a Violation Notice is completed and sent to the
2 respondent, does the Illinois EPA maintain these records in its
3 files?

4 A. Yes, ma'am.

5 Q. Okay. And are they regularly generated by the Illinois
6 EPA?

7 A. They are generated by the Illinois EPA for sites that
8 require additional remediation or work.

9 Q. Okay. And do you typically receive copies or notice
10 that these violation letters have gone out?

11 A. Not in all cases. We have -- Sometimes yes, sometimes
12 no.

13 Q. Okay. If a Violation Notice letter goes out, do you
14 typically participate in any subsequent meetings with the
15 respondent if it is requested?

16 A. If requested by my management or my in-house attorneys,
17 yes, ma'am.

18 Q. Okay. And was this People's Exhibit No. 20 generated in
19 the ordinary course of business activity?

20 A. Yes, ma'am.

21 Q. And what about Exhibit 21, was it generated in the
22 ordinary course of business activity?

23 A. Yes, ma'am.

24 MS. CARTER: At this time People move for the admission of

1 People's 20 and 21 into evidence.

2 HEARING OFFICER SUDMAN: Do the Respondents have any
3 objection? Hearing none, I will admit People's Exhibits 20 and
4 21.

5 Q. (By Ms. Carter) Turning to the Violation Notice, what
6 sort of information is typically included in these documents?

7 A. Typically it's a slight -- it's a very brief overview of
8 the facts, as we understand them, pursuant to the release or
9 pertaining to the release. It references some of the alleged
10 violations out of our Environmental Protection Act. It also
11 discusses or provides some discussion needed to resolve the
12 Agency the violations.

13 Q. Did you participate in a Violation Notice meeting with
14 Mr. Mezo?

15 A. Yes, ma'am.

16 Q. Do you recall generally what was discussed in that
17 meeting?

18 A. Generally what was discussed was the need for
19 remediation and documentation of clean-up of the site which would
20 typically be in the form of samples, soil samples, from around
21 the tank battery as well as sediment samples from the
22 aforementioned drainage waste and creek.

23 Q. Have a similar violation meeting with Mr. Prior?

24 A. I don't recall. I recall a NIPLA, Notice of Intent to

1 Pursue Legal Action, which is -- that was on October 4th, 1999,
2 because we had not received a resolution of the -- of the site,
3 you know, in that two and-a-half year period or two year plus
4 period.

5 Q. Do you recall what was generally discussed in that
6 meeting?

7 A. That meeting we generally discussed the need for
8 documentation that the site has been cleaned up or remediated in
9 some fashion.

10 Q. Mr. Powell, is there any other source that you have
11 contributed to your observation of July 1st?

12 A. Based on July 1st, no, ma'am.

13 Q. Are you familiar with what remedial activities, if any,
14 have taken place since that time?

15 A. I'm familiar that there have been two reports generated
16 as a result of this release. When I say reports, environmental
17 contractors or consultant reports; one, the initial one by, I
18 believe, order or requested by Mr. Mezo was by Chase
19 Environmental, I believe, out of Paducah, Kentucky. That would
20 have been early '98. And subsequent to that what later one that,
21 I believe, was requested by Mr. Prior by Hopper Environmental
22 that was completed or dated earlier this year.

23 Q. And you said there was plans submit earlier this year or
24 reports submitted earlier this year; correct?

1 A. Yes, ma'am.

2 Q. Do you recall generally what would have included in that
3 report?

4 A. It was a report that we requested some additional
5 sampling pursuant to the first report, a report by Chase
6 Environmental, and it was some additional sampling.

7 Q. Did you review that first report by Chase Environmental?

8 A. I remember seeing it.

9 Q. Did you generate a memo documenting your review of it?

10 A. I don't recall.

11 Q. Would anything assist you in refreshing your
12 recollection?

13 A. If I had a memo.

14 Q. Does that assist you? Can you identify that? Is that
15 the right thing?

16 A. Yes, ma'am.

17 Q. Okay. Can you identify that document?

18 A. This is a memorandum from me to my immediate manager
19 referencing the Chase Environmental Group report that -- initial
20 report was submitted -- was dated March 6 of 1998, and a revised
21 submission dated April 4th of 1998.

22 Q. And what does your memorandum indicate to you about your
23 report?

24 A. There was three bullet points on the memorandum

1 basically requesting additional sample locations north and south
2 of sample locations before B8 and B9, requesting a minimum of two
3 soil sediment sample locations from the unnamed intermittent
4 drainageway that first received the oil that ran off from this
5 site. And then I also had comment pursuant to the depth of
6 samples obtained by Chase Environmental, as this was a surface
7 spill. I believe that some initial sample results by Chase were
8 taken at a depth of 2 feet. Which typically if you have a
9 surface spill, we look for 0 to 6 inches or perhaps 6 inches to a
10 2 foot level rather than taking samples beginning at 2 feet.
11 Again, if it were a subsurface release point, i.e., a buried
12 pipeline, that would be an area to look for, but again, since
13 this was a -- basically an overtopping of a fire wall, ran across
14 the surface, I was -- had some concerns about the depth at which
15 these samples were taken.

16 Q. Mr. Powell, are you aware of whether the Respondent ever
17 performed the sampling consistent with your memorandum?

18 A. I believe the subsequent report dated earlier this year
19 by Hopper Environmental addresses these concerns.

20 Q. Okay. And if I hand you this report, which I'm doing,
21 can you identify the date on that document?

22 A. This is the Hopper Environmental, Incorporated report
23 dated March 12th of 2003.

24 Q. And is this the report that you're referencing that

1 incorporated your sampling concerns and requirements for the Mezo
2 site?

3 A. Yes, ma'am.

4 MS. CARTER: Okay. Thank you, sir. I have no further
5 questions of this witness.

6 HEARING OFFICER SUDMAN: Mr. Prior, do you have any
7 questions for this witness?

8 MR. PRIOR: No.

9 HEARING OFFICER SUDMAN: Mr. Mezo?

10 MR. MEZO: No.

11 HEARING OFFICER SUDMAN: Let's go off the record.

12 (A discussion was held off the record.)

13 HEARING OFFICER SUDMAN: The People's final witness will
14 not be here until tomorrow morning so we decided to go ahead and
15 have one of the Respondents testify now. So I will call
16 Mr. Prior to the witness stand, please. And the court reporter
17 will swear you in.

18 JOHN PRIOR,
19 called as a witness herein, having been first duly sworn,
20 deposeth and saith as follows:

21 HEARING OFFICER SUDMAN: And would you state your name before you
22 begin, please?

23 A. John Prior.

24 HEARING OFFICER SUDMAN: Okay. Mr. Prior, you just may

1 proceed in a narrative form and present your evidence.

2 MR. PRIOR: Okay. I don't recall how and where to start,
3 but this entire matter stems from, if you want to call it,
4 vandalism. And there's not a whole lot I can say about it except
5 I do have a -- I have a tape recording, and I have a written
6 document notarized from the people that took it in confession of
7 one of the people that done it indicating the person that hired
8 him to do it. And I then called a meeting to discuss that with
9 people from the EPA, the local authorities, the insurance people,
10 Illinois Department of Natural Resource people and the person's
11 property that this particular incident happened on.

12 It was not the complainant who has always been Harold
13 Alexander or his son, Harold Junior. They've been the
14 complainants every time, and they're the ones responsible for
15 this -- these releases every time. And I have a list of the
16 people present at that meeting, and they signed the meeting time
17 and date. I'd like to present that as evidence.

18 HEARING OFFICER SUDMAN: Do you have a copy of that with
19 you that I can take a look at?

20 MR. PRIOR: Yes.

21 HEARING OFFICER SUDMAN: And do you happen to have an extra
22 copy that I can and Ms. Carter can look at?

23 MR. PRIOR: No.

24 HEARING OFFICER SUDMAN: This is a statement from a person

1 that admits to vandalizing your tanks?

2 MR. PRIOR: Yes.

3 HEARING OFFICER SUDMAN: I'll show this to you when I'm
4 done.

5 MS. CARTER: Okay.

6 HEARING OFFICER SUDMAN: And this is a typed out copy of
7 what your tape recording says?

8 MR. PRIOR: Yes.

9 HEARING OFFICER SUDMAN: What is this second sheet of
10 paper?

11 MR. PRIOR: That -- that Harold Alexander Junior, he's
12 referring to when he was telling me these things, he continued on
13 talking about that.

14 HEARING OFFICER SUDMAN: Okay. So this isn't relevant to
15 your case?

16 MR. PRIOR: I believe it is in that he has a vendetta
17 against me for some reason, and I really don't know why. Also,
18 these things happened every time -- Every time it happened, it
19 either just rained or was raining at the time.

20 HEARING OFFICER SUDMAN: We'll give Ms. Carter a minute to
21 read that as well.

22 MS. CARTER: Okay. May I respond to --

23 HEARING OFFICER SUDMAN: Are you moving to introduce that
24 into evidence?

1 MR. PRIOR: Yes, ma'am.

2 HEARING OFFICER SUDMAN: You may respond.

3 MS. CARTER: My first objection to the two documents, that
4 they are affidavits of Brandon Reynolds: One, is that both
5 documents are hearsay. We don't have the gentleman here to
6 testify to the truth of what is certified in both of these
7 documents. My second objection to the first document where it's
8 talking about an oil spill in Wamac. We've been talking about
9 three oil spills in Wamac. It doesn't talk with specificity,
10 which discerns this from what he's talking about. My second
11 objection to the second attachment it's completely not relevant.
12 It has nothing to do with the release of that issue in this case.
13 It does not discuss a personal vendetta between a Mr. Harold
14 Alexander and Mr. John Prior and, therefore, I don't see the
15 relevance of this at all. In terms of the third document, I
16 don't have an objection to this.

17 HEARING OFFICER SUDMAN: Well, I think they're all
18 together.

19 MS. CARTER: All together. Well, I don't have an objection
20 to that at all.

21 HEARING OFFICER SUDMAN: Mr. Prior, I'm going to sustain
22 the People's objection. I reviewed the document. It is
23 primarily hearsay. It's not very clear exactly what it's about,
24 and I don't think it's terribly probative or relevant to this

1 proceeding. So I'd like you to -- I'm not going to admit this
2 document to the record, so please pick up where you left off and
3 let's move on to your next -- the next evidence you'd like to
4 produce.

5 MR. PRIOR: I don't have any other evidence.

6 HEARING OFFICER SUDMAN: Do you have any more to add to
7 your narrative? Would you like to go into some explanation about
8 anything that the People presented in their case? Would you like
9 to respond to that at this time?

10 MR. PRIOR: I really don't know how to, ma'am.

11 HEARING OFFICER SUDMAN: Okay. So you don't have anything
12 else?

13 MR. PRIOR: No.

14 HEARING OFFICER SUDMAN: Anything you care to add?

15 MR. PRIOR: No.

16 HEARING OFFICER SUDMAN: Okay. Ms. Carter?

17 MS. CARTER: I have no questions for this witness.

18 HEARING OFFICER SUDMAN: Okay. Then you may step down.

19 Mr. Mezo?

20 JAMES MEZO,

21 called as a witness herein, having been first duly affirmed,
22 deposeth and saith as follows:

23 HEARING OFFICER SUDMAN: And, Mr. Mezo, would you please
24 state your name again for the record before you begin?

1 MR. MEZO: James Mezo, M-E-Z-O.

2 HEARING OFFICER SUDMAN: Okay. Thank you. You may be
3 begin.

4 MR. MEZO: Well, my whole story depends or hinges on the
5 ownership. Several months prior to this spill that we're talking
6 about, I had sold the Oestreich lease and the equipment to John
7 Prior, and he was going to go ahead and try to develop it. He
8 had a problem with getting the permits transferred. We had done
9 the assignment and the OG-22, but for some reason he was unable
10 to get the transfer made. And, of course, this spill occurred in
11 the meantime.

12 And I believe that I did everything possible as soon as I
13 knew, you know, what I needed to do. I wasn't aware of the spill
14 until several days later. I don't know the exact date, but, you
15 know, by that time the information I had, was that the spill was
16 pretty well contained and cleaned up.

17 And I got -- Let's see. I got a letter, I guess, on July
18 the 14th of '97. Let's see. No, I got to back up. I'm wrong
19 there. My response letter to Charles Brutlag with the Illinois
20 EPA was dated July the 14th and I had -- I had been notified of
21 the spill. And they subsequently on December the 12th of '97
22 rejected the plan that I had submitted, said it wasn't sufficient
23 and instructed me to have some environmental company to do this
24 study. And then I contacted Chase Environmental out of Paducah

1 and gave him the letter outlining what the EPA wanted done. And
2 he proceeded to do that, and I have the invoice that I received,
3 March the 3rd of '98.

4 And then I -- I guess I subsequently received a letter
5 that, I guess, Mr. Powell, is he the one that testified, referred
6 to and said doesn't remember if the got the second 6 inch
7 samples? But then I have here the invoice where Chase
8 Environmental billed me for those extra samples, the 6 inch
9 samples, as opposed to the 2 foot samples on March the 11th. And
10 then I received the site investigation and the plan that they --
11 that they had come up with to develop it, and I sent that to the
12 compliance specialist in Springfield on March the 18th of '98.

13 Let's see. I don't think they furnished me with a copy of
14 the notice. But anyway, the EPA rejected that plan and notified
15 me on, I guess, August -- no, wait a minute. I can't seem to
16 find the date. But subsequently they notified me that the plan
17 had been rejected and that they plan to pursue legal action. And
18 at that time I decided that I couldn't -- I couldn't handle it,
19 you know. I done everything I thought I could humanly possibly
20 could do. So I contacted the EPA and went to Springfield for a
21 meeting.

22 HEARING OFFICER SUDMAN: Mr. Mezo, can I interrupt you for
23 a moment? Are you speaking with any particular site or all of
24 the -- all of the sites?

1 MR. MEZO: I'm just talking about the Oestreich strike. I
2 thought that was the only one I was involved in. I hope it is.

3 HEARING OFFICER SUDMAN: Okay. Proceed.

4 MR. MEZO: Okay. Then on -- I received a letter dated
5 August the 6th from the EPA -- I can condense this. I probably
6 just need to read this one part here.

7 HEARING OFFICER SUDMAN: Mr. Mezo, what are you looking at?
8 Is this a letter that the People have introduced already into
9 evidence?

10 MR. MEZO: No, no, it isn't.

11 HEARING OFFICER SUDMAN: Okay.

12 MR. MEZO: It's a letter dated August 6, 1999, from
13 Illinois Protection Agency and it's -- that's the wrong letter.
14 I got too many papers here. Give me a minute. Yeah, I guess
15 that's right. Yeah, I guess August the 6th is the date. And
16 this is a -- this is the attachment to this letter, for whatever
17 that means, but it reads here in the second paragraph on the
18 first page of the Attachment No. 1. I'll just read the whole
19 paragraph. "The release incident was initially reported by Prior
20 as having been closed by Mezo Oil Company. Accordingly, Illinois
21 EPA issued a code Violation Notice on December 12th, 1997,
22 relative to the release. On September 29th, 1998, following
23 Illinois EPA's rejection of Mezo's proposed compliance commitment
24 agreement and Agency's issuance of a Notice of Intent to Pursue

1 Legal Action, Illinois EPA representatives met with Mezo to
2 discuss the release. On that date Mezo provided information
3 which indicated that Prior had purchased the mineral rights and
4 all equipment at the relevant tank battery from Mezo before
5 Release No. 9711959." That's the Oestreich release I think.
6 "Occurred more over Prior responded to the spill and did not
7 inform Mezo of the occurrence or the release until several days
8 later." So when I received this letter, and it goes ahead and
9 says further on September 29th Mezo indicated --

10 HEARING OFFICER SUDMAN: Mr. Mezo, could you speak up a
11 little bit, please?

12 MR. MEZO: Yeah, probably.

13 HEARING OFFICER SUDMAN: Okay.

14 MR. MEZO: That's not relevant. Anyway, after I got this
15 letter, I guess wrongly assumed that they had, you know, got off
16 my case and was going to have Mr. Prior do it. As it turned out,
17 I think they required him to do probably the same tests and
18 surveys that I had ordered done. And I believe Mr. -- I think I
19 told you -- on this -- yeah, I got that, okay. So anyway, the
20 letter that I got from the -- from Mr. Ryan's office, stated that
21 the reason they were going to take the legal action was that I
22 had failed to respond. And I don't know, you know, what else I
23 could have done. I didn't have the right, or I didn't think I
24 had the legal right, to go do anything on the lease since I

1 actually didn't own the equipment any more. And did, you know, I
2 thought well, you know, if I can reasonably get it handled, I
3 knew I still had a responsibility because the permit was still in
4 my name, because it hadn't been transferred, even though I didn't
5 own the equipment any more. So, you know, it just seemed to me
6 that I was at a brick wall, and I had tried to do everything they
7 asked me to do and timely.

8 I think if you look at the time line in the records, all
9 the documents, that they're response -- the State's response time
10 and the EPA's response time was a lot longer than mine from the
11 time I received notice.

12 HEARING OFFICER SUDMAN: Did you want to introduce that
13 into evidence, that letter?

14 MR. MEZO: Yes, if I can get it all together. You know, I
15 believe I can. And I thought I had a list of the people that
16 were at that meeting, but I had requested all the documents on
17 that case. And when I got the packet, there was a -- three pages
18 of things that they had withheld because it was going to be used
19 in the -- their case. And I thought one of those was the list of
20 the people that was at that meeting, and if it was, I misplaced
21 it. But I believe Mr. Powell testified that he was at that
22 meeting that we had. But there was, I think, three EPA agents
23 and then the supervisor was on the phone, on the conference call,
24 speaker phone type thing, and my wife was there. But I don't

1 have that list. But, yes, I would like to enter this -- this
2 letter and those attachments. Let's see. I believe that's it.

3 HEARING OFFICER SUDMAN: Mr. Mezo, that letter was
4 addressed to Mr. Prior. Is that what you wanted to give to us?

5 MR. MEZO: Yes, that is my copy. Part of that attachment
6 is what I thought was transferring the responsibility for that
7 spill from myself to Mr. Prior.

8 HEARING OFFICER SUDMAN: Okay. I see.

9 MS. CARTER: I don't have any objection.

10 HEARING OFFICER SUDMAN: Is this the only evidence you're
11 seeking to have admitted, or do you have any others?

12 MR. MEZO: Well, the invoices from Chase Environmental that
13 would only indicate that I was trying, but that would probably
14 not have no effect?

15 MS. CARTER: Can I see them?

16 HEARING OFFICER SUDMAN: Yes, why don't you show them to
17 Ms. Carter.

18 MR. MEZO: This is the initial study when he was referring
19 to the 2 foot sample and then they asked for the 6 inch samples,
20 and then I asked Chase to do those, and then this is the invoice
21 for that. It was a few days later.

22 MS. CARTER: I do not have any objections on these
23 documents, but I have questions on the questionability of these
24 documents.

1 HEARING OFFICER SUDMAN: Okay. Mr. Mezo, I'm marking these
2 as Respondents' Exhibit 1. That I will clarify in the record
3 that it's you. That August 6th, 1999, letter to Mr. Prior and
4 it's the attachment and your invoice. Your invoices will be
5 marked as Respondents' Exhibit 2. So you may proceed. Do you
6 have anything else you'd like to say on your behalf?

7 MR. MEZO: No, not that I can think of now.

8 HEARING OFFICER SUDMAN: Ms. Carter?

9 MS. CARTER: Ms. Hearing Officer, when you're done marking
10 those exhibits, can I take a look at the invoices?

11 HEARING OFFICER SUDMAN: Sure.

12 CROSS-EXAMINATION

13 QUESTIONS BY MS. CARTER:

14 Q. Good afternoon, Mr. Mezo. I've sat in this room all day
15 today and haven't introduced myself. Sally Carter. I've talked
16 to you on the phone a number of times.

17 A. Many times.

18 Q. Many times. I do have a few questions, sir. What do
19 you do for a living?

20 A. Well, I'm in the oil production business, and I also
21 have an insurance agency.

22 Q. How long have you been in the oil production business?

23 A. About 23 years. Starting 1980, I believe.

24 Q. Do you currently have a number of wells permitted to you

1 by the Illinois Department of Natural Resources?

2 A. Yes, I do.

3 Q. Okay. Do you know approximately how many you have?

4 A. I think totally probably 60.

5 Q. 60?

6 A. Uh-huh.

7 Q. Okay.

8 A. Total wells. That's producers and disposal injection
9 wells.

10 Q. Yeah, injection. And are they located in a number of
11 counties across the state?

12 A. Yes.

13 Q. Do you know what counties they're located in?

14 A. Yes.

15 Q. Can you tell me, sir?

16 A. Hamilton, White, Washington, Jefferson, Wayne.

17 Q. Any others?

18 A. I guess I don't have Saline any more.

19 MR. PRIOR: Maybe Franklin.

20 MR. MEZO: No Franklin.

21 Q. (By Ms. Carter) Do you actually physically operate all
22 those wells?

23 A. Yes, ma'am.

24 Q. You're actually on site doing all the work and

1 everything else?

2 A. Yes, ma'am. I have no employees.

3 Q. No employees?

4 A. Only contract labor.

5 Q. Have your operations changed over time? Have you always
6 been the individual on site doing the operations?

7 A. Yes.

8 Q. Okay. And this well that we've been talking about here
9 today, you referred to it by a lease name?

10 A. Oestreich, Oestreich No. 1.

11 Q. Oestreich No. 1. That's how you say the name that I've
12 been murdering all day today?

13 A. Yes, ma'am.

14 Q. So that's included in the lease that we've been talking
15 about with Mr. Prior and you?

16 A. Yes, ma'am.

17 Q. And I think that you mentioned before that several
18 months prior to the release, you sold all the equipment and
19 everything else to Mr. Prior; is that correct?

20 A. Yes.

21 Q. But you didn't get the well --

22 A. We didn't get the bond transferred.

23 Q. And a bond is a requirement of the Department of Natural
24 Resources?

1 A. Well, we didn't get the permits transferred. I misspoke
2 that.

3 Q. You couldn't get the permits transferred? And why did
4 you not get the permits transferred? Is it a permit block?

5 A. I was trying to think of the term. He had a violation
6 that prevented the State from transferring, was my understanding.

7 Q. Okay. And today, sir, isn't it true that that well is
8 still permitted in your name?

9 A. Permit is still in my name, but it's been plugged.

10 Q. It's been plugged?

11 A. The well's been plugged out and the tanks are gone and
12 the oil and gas people have sent release of --

13 Q. I'm sorry. They sent what?

14 A. They sent a -- the release to me that the well has been
15 plugged and the site is cleaned up, pits are filled and all the
16 equipment is removed and it's not there any more.

17 Q. Okay. Are you familiar with when that well was plugged?

18 A. Yeah, if I can get my stuff. I think I got the -- I
19 think I got the plugging affidavit.

20 Q. Is it in this document?

21 A. Yeah.

22 HEARING OFFICER SUDMAN: Go ahead, Mr. Mezo.

23 Q. (By Ms. Carter) Nothing in it I really don't feel.

24 A. Nope, sorry. I don't have it.

1 Q. You don't have it?

2 MR. MEZO: Do you know when it was plugged, John? He did
3 it.

4 MR. PRIOR: It was more than a year.

5 A. It was sometime last year, but I guess I failed to pick
6 up the plugging affidavit.

7 Q. (By Ms. Carter) Okay. And you said that Mr. Prior did
8 the plugging work for you; is that correct?

9 A. He did the plugging work. It wasn't actually for me.
10 It was his.

11 Q. Okay. But you were still permittee of record at the
12 time?

13 A. I was still the permittee of record, yes.

14 Q. And was a well inspector from the Department of Natural
15 Resources on site during the plugging?

16 A. Yes, I'm sure.

17 Q. Okay. And was that Mr. Alan Whitley?

18 A. I believe it was --

19 Q. Mr. Myer or Mr. Price?

20 A. Price.

21 Q. Mr. Price.

22 A. I think Price is the one that signed the plugging
23 affidavit.

24 Q. Okay.

1 A. And also I didn't bring that either I don't think but I
2 did get a, you know, the final release that everything had been
3 cleaned up and --

4 Q. So the site has been remediated?

5 A. The site has been restored.

6 Q. Do you have a copy of that, sir? May I see that?

7 A. There it is. March 18th of 2002, that's when they dated
8 that plugging affidavit.

9 Q. Okay. Thank you.

10 A. And this is the letter, I think, verifying that
11 everything has been done.

12 Q. May I see that?

13 A. As far as, you know, you get the plugging affidavit and
14 then later you gone -- you got six months to fill the pits and
15 clean it up and all that.

16 Q. May I just take this back to my desk for a minute?

17 A. Can I look at it for a minute before you do?

18 Q. Yeah. I just want to write something down.

19 A. I want to make sure. Yeah, I think that's what I think
20 it is.

21 Q. Okay. Mr. Mezo, you said you've been working in the oil
22 production business for the past 23 years or so; is that correct?

23 A. That's correct.

24 Q. Do you -- Can you tell me about your educational

1 background?

2 A. Yeah, I went to high school and then graduated.

3 Q. When did you do that?

4 A. 1950.

5 Q. Okay. Have you had any further courses since that time,
6 any schooling, sir, since then?

7 A. Well, I have to do ongoing education every year for --
8 or every two years for my insurance license.

9 Q. Okay.

10 A. And I've been to several of the PTTC training sessions
11 on -- in oil production.

12 Q. What did you just say?

13 A. PTTC.

14 Q. What does that stand for?

15 A. Petroleum Technology Transfer Something.

16 Q. Okay.

17 A. It comes through the University of Illinois. They do
18 periodic seminars and training sessions in, you know, different
19 towns, different areas.

20 Q. I'm going to hand you, sir, your Exhibit No. 2. It's
21 your invoice from Chase Environmental.

22 A. Okay.

23 Q. If I could just direct your attention, sir, to the
24 analytical portion of that document. Do you see that at the

1 bottom, where it says analytical?

2 A. Oh, yeah.

3 Q. Do you see something that says B Text?

4 A. Yes.

5 Q. Okay. Do you know what that means?

6 A. Yeah, I did but I forgot.

7 Q. Do you see the word -- or PNA there?

8 A. Yes.

9 Q. Do you know what that means?

10 A. Huh-uh.

11 Q. Okay.

12 A. That's why I paid Timmy Walker to do this.

13 Q. Do you happen -- I'm handing you the second page of your
14 Respondents' Exhibit 2, do you see the words B Text or PNA on
15 that invoice?

16 A. No.

17 Q. I'll take those back from you, sir? Thank you. Sir, I
18 think when you were testifying before you referenced a July 14th,
19 1997, letter of yours responding to a letter of Mr. Charles
20 Brutlag, do you recall that? I'll hand you a copy, sir.

21 A. Yes.

22 Q. And I'll mark it as an exhibit. It's marked as People's
23 Exhibit No. 22. Okay. The first letter is that letter that you
24 received from Mr. Brutlag?

1 A. Yeah, I think that's it.

2 Q. Okay. And the second letter that is attached to that,
3 that's -- is that your response that you identified before?

4 A. Yes.

5 Q. Okay. And in the second paragraph of your July 14th,
6 1997, letter, do you identify the measures that you employed to
7 deal with the situation on site?

8 A. Uh-huh.

9 Q. Okay. And then in the last line of your second
10 paragraph there, it says "We hope to have this accomplished
11 today," who's we?

12 A. John Prior and his crew.

13 MS. CARTER: Ms. Hearing Officer, at this time the People
14 seek to admit into evidence People's Exhibit 22.

15 HEARING OFFICER SUDMAN: And there's no objection to this?

16 MR. MEZO: No, is that this letter?

17 HEARING OFFICER SUDMAN: Yeah. You've seen this. I'm
18 going to go ahead and admit People's Exhibit 22.

19 MS. CARTER: I'll just be just a moment. I have no further
20 questions. Thank you.

21 HEARING OFFICER SUDMAN: Mr. Mezo, I'll allow you to
22 redirect yourself if you want. Would you like to make any
23 comments in light of the questions that Ms. Carter has asked you,
24 or is there anything further that you would like to -- any

1 further documents that you would like to introduce or anything
2 you'd like to clarify?

3 MR. MEZO: Except I probably should say I wasn't on site on
4 this. The information I received was for the people that were
5 doing the work, you know, so, like I said, I had -- I had no, no
6 personal involvement in the operation at that time since I didn't
7 think I had the right or the ability to do that since it, you
8 know, it wasn't my equipment and it wasn't my lease at that
9 point, you know, except like she said, I was still the permittee
10 of record, but not by my choice.

11 HEARING OFFICER SUDMAN: Would you like to ask anything
12 further about that, Ms. Carter?

13 MS. CARTER: No, thank you.

14 HEARING OFFICER SUDMAN: Okay. Thank you, Mr. Mezo. I
15 think we will go ahead and wrap up for the day. Let's go off the
16 record for one moment.

17 (A discussion was held off the record.)

18 HEARING OFFICER SUDMAN: We will recess for the day. And
19 we will begin tomorrow at 9 a.m. with the Complainant's final
20 witness. We are recessed.

21 (Recessed at 3:45 p.m.)

22

23

24

STATE OF ILLINOIS
COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 157 pages comprise a true, complete and correct transcript of the proceedings held on the 15th and 16th day of September A.D., 2003, at the Washington County Courthouse, Court Room 2, 101 East St. Louis Street, Nashville, Illinois, in the case of the People of the State of Illinois versus John Prior, d/b/a Prior Oil Company and James Mezo, d/b/a Mezo Oil Company, in proceedings held before Hearing Officer Carol Sudman, and recorded in machine shorthand by me.

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



Beverly S Hopkins

Beverly S. Hopkins

Notary Public and

Certified Shorthand Reporter and

Registered Professional Reporter

CSR License No. 084-004316

KEEFE REPORTING COMPANY

158

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<p>A</p> <p>abandoned 15:10 20:3 25:16 26:7</p> <p>abbreviation 44:16</p> <p>ability 157:7</p> <p>able 4:22 108:24</p> <p>about 8:12 9:3 15:18 17:13,18 19:17 20:19 22:3,10 24:11 27:1,9,11 28:18 29:16,17 30:22 31:10 32:15 34:15,15,19 36:5 36:14 38:17 40:9 40:16 42:3,4,11,13 43:7 44:22 48:19 50:2 54:1,13 55:10 55:19 56:10 63:24 69:3 70:11,24 73:1 73:8 80:8 83:18 89:24 90:6,9,18 92:5,22 94:8,13 101:7,15 103:19 105:7 106:6,7 108:18 109:14,19 111:19 112:5,16 113:3 114:21 115:10 116:1 117:16 119:2 125:23 126:12,24 131:16 132:21 135:22 136:14 138:4 139:13 140:8,8,10,23 141:7 142:6 144:1 148:23 150:8,15 153:24 157:12</p> <p>above 45:3</p> <p>above-ground 98:9</p> <p>absolutely 127:11 129:14</p> <p>absorb 78:20,21</p> <p>absorbant 22:23 40:7 72:16,21 73:8 73:9,13 78:18,20 86:2,2 87:2,6,15 125:5 126:8</p> <p>absorbs 73:9,12</p> <p>accept 95:10</p> <p>accepting 61:16 67:16</p> <p>access 81:18,18 91:18 108:10 123:15,18 128:19</p> <p>accompanied 25:3</p> <p>accompany 16:7,12 20:7 22:13 36:8 48:4 52:12 53:3 99:12 122:9</p> <p>accomplished</p>	<p>156:10</p> <p>accordance 99:24 107:5</p> <p>according 92:21</p> <p>Accordingly 144:20</p> <p>account 116:3</p> <p>accumulate 18:15</p> <p>accumulation 126:16</p> <p>accurately 11:16 14:11 21:7 35:3 38:22 53:22 61:24 66:6 73:24 76:19 93:10 100:15,21 118:22 121:9</p> <p>achieve 118:6</p> <p>acknowledged 128:2</p> <p>across 73:5 136:13 149:11</p> <p>act 3:22 6:8,12,16 20:2 24:16 31:14 32:4 49:18 50:24 51:1 72:7,13 117:10 118:15 130:24 133:10</p> <p>acting 66:20</p> <p>action 59:18,21,23 60:4,6,8,15,20 61:4 97:7 98:4 134:1 143:17 145:1,21</p> <p>activities 5:7 10:9 58:19,24 72:9 113:6,11 116:13 125:15 134:13</p> <p>activity 14:3 21:18 38:9 53:15 60:21 65:23 93:2 96:11 107:9 110:11 121:1 124:4,4 130:9 132:19,22</p> <p>actual 17:4 121:17 130:8</p> <p>actually 33:17 44:23 56:23 79:7,8 91:22 101:7 109:4 123:13 146:1 149:21,24 152:9</p> <p>add 141:6,14</p> <p>added 101:21</p> <p>addition 5:12 6:6,12 116:9</p> <p>additional 11:2 49:8 132:8 135:4,6 136:1</p> <p>additionally 130:18</p> <p>addressed 6:17 147:4</p> <p>addresses 6:13</p>	<p>136:19</p> <p>addressing 72:19 91:15</p> <p>adequacy 10:13</p> <p>adequate 90:20</p> <p>adequately 5:18 6:1</p> <p>adjacent 23:24 27:12 79:17</p> <p>adjoining 39:24</p> <p>administrator 31:8</p> <p>admission 11:20 14:23 21:20 35:6 39:13 54:6 60:23 62:11 66:14 74:6 77:13 93:17 96:13 101:1 107:11 110:18 119:9 121:24 132:24</p> <p>admit 15:6 21:23 35:9 39:19 54:9 61:2 62:14 66:17 74:9 77:15 93:22 96:16 101:3 107:14 110:21 119:12 122:3 133:3 141:1 156:14,18</p> <p>admits 139:1</p> <p>admitted 147:11</p> <p>admitting 11:24</p> <p>affidavit 151:19 152:6,23 153:8,13</p> <p>affidavits 140:4</p> <p>affirmed 141:21</p> <p>affixed 158:16</p> <p>aforementioned 124:9,20 126:3 130:3,12 133:22</p> <p>after 3:6 4:23 13:11 13:19 26:8 37:21 41:24 42:10 48:1 76:2 87:11 89:12 89:18 90:22 96:19 99:14 113:6,7,9,12 116:19 120:19 145:14</p> <p>afternoon 123:1 148:14</p> <p>again 6:5 7:11 25:12 57:21 68:10 83:23 85:7 91:23 93:13 94:13 111:24 116:10 118:11 124:15,19,23 127:2 128:8,9 129:16,19 130:10 131:10,18 136:11 136:12 141:24</p> <p>against 45:10 60:6 139:17</p>	<p>agencies 116:13</p> <p>agency 2:4 8:20 31:5 33:14 38:2 51:10 59:7 60:8 75:1,3 115:18,21 118:7 133:12 144:13 148:21</p> <p>Agency's 44:9 144:24</p> <p>agents 146:22</p> <p>ages 119:8</p> <p>ago 48:15 54:17 70:8</p> <p>agreement 33:13 63:8 144:24</p> <p>agreements 33:12</p> <p>ahead 3:7 15:6 26:2 137:14 142:7 145:8 151:22 156:18 157:15</p> <p>air 22:17 24:16 41:23 50:17 71:3 71:17,17 90:16</p> <p>Alan 15:19 19:15 53:4 77:18,20 105:16 108:1 122:14,23 128:1 152:17</p> <p>Alexander 138:13 139:11 140:14</p> <p>alike 148:6</p> <p>alleged 3:14 5:9 7:5 13:15 51:7 133:9</p> <p>alleging 3:12</p> <p>allow 25:24 68:5 156:21</p> <p>along 7:17 82:5 85:21 89:22,23 90:1 102:6 108:13 111:20</p> <p>already 29:7 144:8</p> <p>although 102:16 130:9</p> <p>always 29:3 116:3 138:12 150:5</p> <p>amongst 71:8</p> <p>amount 10:23 19:8 49:13 81:20 87:19</p> <p>analysis 44:11 45:5 47:9</p> <p>analytical 37:12 154:24 155:1</p> <p>and-a-half 82:18 106:17 108:2 128:3 134:3</p> <p>and/or 5:13,14 67:12 86:23 117:17 127:22 128:16</p> <p>angle 73:4,5 86:8</p>	<p>animal 30:24</p> <p>another 20:15 26:10 26:11 28:15 44:3 48:7 53:4 64:1 68:10,10 92:3,7,9 99:10 103:8 104:20</p> <p>anybody 15:18 16:7 16:12 19:14 20:7 22:13 26:14 27:15 36:8 42:6 48:4 50:2 53:3 122:9,11</p> <p>anything 4:14 29:6 42:13 48:19 69:3 102:10 105:23 108:5 113:24 128:20 135:11 141:8,11,14 145:24 148:6 156:24 157:1,11</p> <p>anyway 143:14 145:14,19</p> <p>anywhere 87:9 127:9</p> <p>apart 95:9 127:2</p> <p>apologize 43:23 87:8 98:16 124:2 128:14</p> <p>apparatus 127:24</p> <p>apparent 13:15 16:24 127:3 130:2 130:11</p> <p>Apparently 25:16</p> <p>appear 37:17 130:6</p> <p>appearance 6:22</p> <p>appearances 4:2</p> <p>appeared 16:18 18:5,21,23 21:4 22:21 29:19 38:19 39:5,10 46:10 53:19 55:15,16 57:10,23 61:21 62:18 63:7 64:3 66:4 68:14 76:16 93:8 100:12 121:6 123:4</p> <p>appears 14:8 23:20 54:21 57:20 123:19,21,22,23</p> <p>applicable 75:5</p> <p>applied 102:9</p> <p>Approach 67:24 68:2</p> <p>appropriately 6:13</p> <p>approved 103:22</p> <p>approximately 10:16,18,21 24:21 36:3 40:10 75:9 84:6 90:4 97:17 98:21 107:24</p>
--	---	--	---	--

113:22 117:4,14 119:23 120:6 123:5,7 126:15 127:19 149:3 April 135:21 aquatic 90:16 111:19 130:17 area 16:1 19:8 23:6 23:22,23 24:6 26:19 27:15 29:18 34:10 54:13,15,19 55:14,15,17,20 56:3 57:6 58:3,4 67:24 82:12 108:18 109:17 111:6 123:3,4,17 124:13 125:11 136:12 areas 18:23 64:4 71:18,19 111:9 128:15 154:19 Aromatic 46:16 around 17:1 18:23 39:17 49:14 62:20 68:19 85:21 126:3 130:11 133:20 arrival 55:4 arrive 87:11 arrived 16:16 22:21 54:11 79:22 81:17 91:17 93:23 asked 16:3 26:15 42:11,13 43:22 45:7,10 52:7 81:22 87:8 90:21 128:13 146:7 147:19,20 156:23 assess 3:19 66:20 Assessment 65:2 114:2,5 assignment 142:9 assist 14:19 16:21 21:15 59:8 62:8 77:9 97:20 105:23 113:24 121:21 135:11,14 assistance 32:23 33:1 assistant 2:5 8:24 9:2 10:14 assisted 33:3 assisting 9:5,13 associated 6:12 37:11 77:5 127:24 128:10 130:20 Association 33:24 Associations 11:8 assume 4:10 assumed 145:15 assuming 111:10	atmosphere 47:24 attach 93:13 121:12 attached 17:5 38:11 51:4,17,19,21 77:7 156:2 attachment 51:7 140:11 144:16,18 147:5 148:4 attachments 147:2 attempted 7:16 attempts 129:15 attend 33:23 attended 11:7 33:19 34:1 attention 23:4,11,18 39:18 40:24 41:11 55:24 63:13 79:11 82:24 83:9 88:14 89:7 101:9 123:12 154:23 attenuation 64:8 attorney 2:2 4:3 12:3 35:11,15,18 59:23 74:11 119:14 122:15 131:4 attorneys 132:16 attorney's 6:16 attributed 112:23 August 20:5 36:11 36:14 38:15,17 39:2,8,22 43:3 45:16 48:1,9,14,17 48:18,22 50:11 53:12 57:7,7,11,13 61:8,13,16,19 62:1 62:6 76:4 143:15 144:5,12,15 148:3 authorities 138:9 available 129:16 avenue 88:23 89:3 102:24 award 6:15 aware 27:7 28:23 122:21 136:16 142:13 away 126:15 128:3 128:11 130:4 A.D 158:10,17 a.m 157:19 B B 118:4,11 155:3,14 bachelor's 8:14 30:24 115:12 back 13:11,11 42:1 42:10 45:3,12 49:6 51:11 57:2 69:14 69:15,18 80:18 81:11 82:6 84:22	91:2,7 106:22 113:13 124:8 142:18 153:16 155:17 backed 16:17 17:5 54:20 background 11:17 35:4 74:1 118:23 154:1 backup 33:6 back-up 33:7 bags 23:15 124:22 bale 78:22 bales 78:10,15,17,18 78:21,23 79:1 85:4 85:21 86:1 87:17 125:22 126:3 127:1,8 ball 81:7,9 83:4,6 ballpark 108:3 bank 73:6 88:4 111:12 banks 108:13 111:11 128:7 banned 67:16 barge 116:9 barrel 74:22 81:23 81:24 82:1,7 108:2 123:5,6,6,8 128:22 barrels 55:19 82:8,9 82:9,10 108:1,1 128:23 baseball 79:19,20 based 6:9 68:6,7 87:18,18 91:20 95:21 98:3 111:16 112:10,13 116:23 129:21 134:12 basically 29:8 45:1 80:17 97:2 105:5 129:18 136:1,13 basis 28:10 batteries 17:23 26:17 74:17 75:7 92:10 98:9 103:9 129:5 battery 5:19,23 79:9 79:17,20 80:5,6,14 81:8,21 82:20 83:21 84:24 91:7,9 91:10,12,18,19 92:3 101:6,12,16 103:5,11 108:8,9 123:2,4,16,20 124:11,15 125:10 128:4,11,14 129:20 130:12 133:21 145:4 BBQ 40:5 41:8,9 before 1:1,16 4:15	5:5 9:17 25:18 28:14 29:6 31:24 32:1 43:22 47:11 47:11 51:15 54:24 85:13,15,24 87:8 91:15 103:3 108:12 122:6 127:21,22 136:2 137:21 141:24 145:4 150:17 153:17 155:18 156:3 158:14 begin 3:7 4:15 48:13 52:5 137:22 141:24 142:3 157:19 beginning 82:12 136:10 behalf 148:6 behave 44:24 behind 17:6 40:2 53:1,2 56:7 90:2 124:15 being 9:6 12:7 18:7 19:11 32:4 47:20 50:1 53:1 86:13 88:10,13 95:22 117:11 120:8 123:10 130:7 believe 4:19 9:17 21:24 22:6 24:22 26:19 27:21 29:13 29:14,20,22 32:10 56:8 58:16 61:6 62:23 75:11 95:9 96:19,20 97:9 98:15 100:4 105:22 108:19,22 109:7,8 122:18 124:10,22 134:18 134:19,21 136:7 136:18 139:16 142:12 145:18 146:15,21 147:2 148:23 152:18 Belleville 1:23 below 45:22 46:4,8 68:12 86:8 Benbenek 22:17 Bengal 122:14,17,17 122:18 Benzelethelene 46:16 berm 78:6,7 82:5,23 83:5,11,13,24 94:5 94:8,13 101:12,17 101:19,21 102:3,5 102:6,15,16,17,19 103:12 104:7,11 104:15 106:17	123:22,23 124:3,7 124:13 130:7 berms 123:20 130:11 best 72:18 better 124:5 between 140:13 Beverly 1:19 158:6 158:20 beyond 30:1 big 40:8 72:19 billed 143:8 bind 125:5 biota 90:16 Biphenyls 44:20 bit 8:12 9:3 22:3,19 31:10 63:19 70:11 70:11 84:9 101:5 111:7 145:11 black 42:15 111:8 block 151:4 blower 88:1,12 board 1:1 3:3,16 5:5 6:10,15 31:15 34:8 68:1 118:13 Board's 3:14,22,24 bobcat 123:9,10 124:9,20 body 78:24 85:17 bond 150:22,23 boom 72:16,16,20 72:21,21,23,23 73:8,9,13,14,14 78:18 86:2 87:6 126:8 129:17 booms 78:20 87:2 87:14,15 both 31:16 32:22 49:18 88:21 95:7 100:8 118:9 140:4 140:6 bottom 40:19 56:15 82:4,5 108:23 111:10 155:1 box 49:6 50:7 57:11 57:13,24 67:15 Branch 122:14 124:18 125:13,16 125:24 127:3 129:6,7 130:17 branches 56:23 64:7 Brandon 140:4 breach 128:12 break 69:15,17 106:19,20,21 114:22,23 breed 18:16 breeding 18:12 brick 146:6 bridge 78:10 84:4
--	--	--	--	---

85:5 88:18,18 89:4 bridges 85:22 127:23,24 brief 5:3 6:18 133:7 brine 117:17,19,20 118:13 bring 51:11 73:6 153:1 broken 68:19 127:1 broom 111:10 brought 7:13 brownish 84:14 Brutlag 142:19 155:20,24 building 80:7 buildings 24:6 built-up 101:17,19 102:16 124:3 bulk 85:21 bullet 135:24 Bureau 8:21 9:4,15 13:13,18 14:1 15:12,16 22:17 32:3,5 43:10 60:4 60:11 71:17 114:12 120:22 122:6 buried 136:11 burned 24:12 burning 20:19 22:5 22:12 23:7,12 24:16 29:19,21,21 bury 48:15 business 14:3 21:18 38:9 53:15 60:21 65:23 76:11 93:2 96:11 107:9 110:10 121:1 131:14,18 132:19 132:22 148:20,22 153:22 B8 136:2 B9 136:2	78:3 82:15 91:3 105:16 106:3 109:18 114:24 115:2 137:15 138:3 146:23 called 8:6 30:16 34:5 49:1 51:9 70:1 112:16 115:4 137:19 138:8 141:21 came 29:24 117:11 cancelled 61:7 cans 40:6 cap 108:8 capacity 71:12 82:7 82:18 117:3 car 40:6 41:9 carcinogens 44:21 care 141:14 Carol 1:16 3:1 158:14 carriers 116:8 Carter 2:3 4:3,13 5:3,5 7:6 8:2,9 11:19 12:2 14:22 15:2,8 21:20,24 25:5,21 28:1,2,3 30:13,19 35:6,10 39:13,17,21 54:6 54:10,11 60:23 61:3 62:11,15 66:14,18 68:22 69:21 70:3 74:6,10 77:12,16 93:17,20 93:23 96:13,17 100:24 101:4 104:9 106:18,23 106:24 107:11,15 110:18,22 114:15 114:24 115:2,7 119:9,13 121:24 122:4 132:24 133:5 137:4 138:22 139:5,20 139:22 140:3,19 141:16,17 147:9 147:15,17,22 148:8,9,13,15 149:21 151:23 152:7 156:13,19 156:23 157:12,13 case 3:12,17 8:1 11:9 12:3,5,7 28:4 28:5,13 35:11 45:8 51:18 74:11 82:18 119:14,17 139:15 140:12 141:8 145:16 146:17,19 158:12 cases 33:2 132:11	CATER 4:3 cause 19:12 41:20 81:3 92:8 106:4 108:4 causing 57:21,24 cease 52:2 Center 11:5,6 Centralia 15:24 22:9 77:19 certain 10:4 33:4 44:1 59:1 116:18 certainly 126:17,18 certification 33:17 33:18 34:16 certified 33:16 34:16 60:9 95:12 131:23 140:6 158:21 CERTIFY 158:7 chain 37:11 44:9 changed 150:5 changes 119:6 characteristic 44:13 44:14 charge 31:13 Charles 142:19 155:19 Charlie 53:7 Chase 134:18 135:5 135:7,19 136:6,7 142:24 143:7 147:12,20 154:21 check 99:5 checklist 13:1 20:15 37:10 51:16 52:22 61:13 65:17 chemical 46:24 68:10 70:22 71:2 chemicals 44:1 50:18 68:11 Cheryl 2:13 5:16,23 6:4 69:21,24 70:5 70:10 120:14 122:10,10 Chicago 71:19 chicken 85:22,23 87:16 chief 1:16 22:7,8 children 81:7,8,16 88:23 89:3,9,10,11 89:12,15,17,18 119:8 chloride 117:22 CHMM 34:16 choice 157:10 choose 3:11 Chris 5:11 16:8 20:8 25:4 30:13 Christopher 2:11 30:15,21	cited 51:9 citizens 116:4 city 5:15 74:17 75:7 78:8,11 79:5,5,7 civil 33:21,22 clarify 26:24 29:6 80:15 148:2 157:2 classic 72:23 clean 19:18 24:6 42:19 52:8 58:20 64:15,16 68:8,9,11 68:14 89:11 153:15 cleaned 29:12 30:4 50:6 62:21 66:21 67:4 134:8 142:16 151:15 153:3 cleaning 52:5 clean-up 10:9 30:2 33:12 42:17 47:8 67:24 68:2,6,7 133:19 clean-ups 114:6 clear 3:19 70:6 140:23 close 10:23 26:8 36:15 79:5 128:7 128:14,15 closed 18:22 29:18 144:20 close-up 41:5 56:13 closure 10:8 33:11 clothes 40:6 coat 40:17,19 coated 78:22 code 144:21 collect 73:5 109:3 collected 17:23 86:9 90:2 108:23 collection 125:15 Collinsville 8:21 22:18 33:5 91:4 99:11 109:18 combustion 24:17 come 7:14 29:23 72:24 88:19 117:23 143:11 comes 45:2 82:1 154:17 comment 3:11 103:19 136:5 comments 156:23 commercial 116:8 commercially 129:16 commit 58:18,24 59:11 63:4 96:24 commitment 33:12 33:13 63:8 144:23 commitments 63:3	committed 59:15 commonly 5:8,15 31:8 companies 112:18 company 1:8,10,22 2:24 3:4,5 16:12 36:2 52:7 53:2 55:22 56:8 59:7 131:15,18 142:23 144:20 158:13,13 158:24 compared 46:9 competitor 92:9 103:9 complainant 138:12 complainants 138:14 Complainant's 157:19 complained 28:20 28:23 complainer 27:24 28:8,17,17,21,21 29:1 complaint 3:12 15:9 16:19 20:19 22:1,4 22:5,6 29:2 39:23 39:24 40:1 52:24 91:4 complete 14:14 39:1 39:7 54:1 58:19 62:3 120:18 158:8 completed 13:13,19 37:20 76:1 120:20 132:1 134:22 completely 140:11 completion 58:24 71:5 compliance 9:6 13:5 31:15 33:12,13 51:12 63:8 64:17 66:20 113:19 143:12 144:23 comply 63:7 compounds 41:23 44:2,3,14,15 45:1 46:24 47:24 50:16 comprise 158:8 conceal 58:5 concentration 45:2 45:3 concentrations 68:11 concern 102:16 111:16 112:12 concerned 24:11 41:19 47:16 92:5 94:12 109:19 111:19 concerning 3:14
--	---	--	--	--

17:19 19:23 22:5 24:13 48:17 50:11 57:18 63:3 64:12 90:13 94:23 129:9 129:22 130:13 concerns 22:10 41:17 50:18 90:18 91:20,22 109:14 112:5 136:14,19 137:1 concluded 36:22 concrete 48:15,20 48:21 55:12,14,15 56:2,14,15 57:2 64:5 68:19 127:23 concurrence 59:22 condense 144:5 condition 14:12 15:18 21:8 38:23 53:23 54:3 62:1 66:11 76:20 100:16,22 122:13 conditions 62:5 100:18 102:11,20 109:13 110:14 111:21 conduct 3:18 9:5,17 15:11 31:17 32:6 34:1 36:20 39:21 71:3 92:12 109:23 conducted 3:23 10:19,22 12:6 15:8 29:15 32:16 34:18 35:15 52:13 74:14 74:23 96:11 98:15 103:3 105:15 117:14 119:20 conducting 32:7,10 32:20 conduction 13:4 conducts 36:20 conference 146:23 conferences 34:3 confession 138:6 conformity 71:18 conforms 38:1 confusion 45:7 conjunction 73:12 127:7 considerable 19:7 considered 44:1,3 45:23 46:21 47:6 considering 102:15 consist 9:11 116:21 116:22,22 118:8 123:5 consistent 136:17 consisting 74:16 98:8 consists 9:12 118:9	consolidate 42:24 constituents 47:1 68:10 126:21 constructed 86:6 constructing 80:5 consultant 58:16,18 134:17 consultants 113:16 consulting 34:14 contacted 15:19 142:24 143:20 contain 6:1 18:22 40:12 68:20 78:19 78:21 82:17 85:12 91:23 101:22 contained 13:7 23:15 40:13 46:5,5 46:13,15 49:11 57:9 76:7 78:5,6 82:9,19 142:16 container 42:24 containers 40:6 52:3 52:4 59:16 containing 52:4 containment 78:6,7 80:5,6 82:5,12,13 82:14,21,23 83:5 83:11,13,24 84:23 84:24 85:9,11,12 86:23 94:5,8,13 101:6,12 102:15 102:16,17,18 103:12 104:7,11 104:15 108:15,16 108:21 109:2 125:20 126:4 127:6 129:16 contains 51:9 82:17 contaminate 41:20 41:21 contaminated 23:21 41:15 47:22 57:9 59:15 62:18 63:17 64:1,18 contaminating 47:22 contamination 20:4 41:20 50:13,14,15 57:22,22,23 64:23 64:24,24 contaminations 58:1 58:9 content 117:22 continue 26:1 69:5 91:20 94:10 102:12 109:16 continued 103:18 139:12 continuing 11:3 118:17	contract 150:4 contractors 72:17 134:17 contribute 20:3 contributed 94:16 104:16 134:11 control 1:1 3:2,16 31:15 47:7 81:18 112:19,20 controlled 108:10 conversation 42:8 48:11,16 50:2 80:24 81:2 85:15 117:10 122:23 conversations 86:22 coordinate 71:8,9 116:13,14 copies 30:12 96:3 132:9 copy 14:24 34:24 38:2,3,3 60:18 138:18,22 139:6 143:13 147:5 153:6 155:20 corner 73:5 correct 22:1,2 63:20 67:20 83:15 104:23 107:21 111:24 134:24 150:19 152:8 153:22,23 158:8 correspond 121:18 correspondence 7:14 10:11 116:23 cost 87:2,6 Cottonwood 67:15 Counsel 2:5 counties 31:16 115:23 149:11,13 county 1:15 3:15 71:9 116:15 158:2 158:7,10 couple 18:21 25:8 47:2 83:20 87:12 105:15 125:21 course 10:2,10,17 14:3 21:18 33:9 34:2,3,4 36:19 38:9 53:14 60:21 65:22 71:20 76:11 93:2 96:11 107:9 110:10 117:13 121:1 132:19,22 142:10 courses 11:7 33:20 33:21,21,23 118:17 154:5 court 1:15 69:22 137:16 158:10 Courthouse 1:15	158:10 cradle 117:11 crank 45:8 created 37:22,24 credibility 3:20 creek 73:15 78:9,10 80:20 82:10 83:15 83:17 84:5 85:6 86:16 87:13 88:1,5 88:19,23 89:4,5,9 89:12,15,20,23 90:3,8,8 91:5,10 91:11,16 92:2,6 94:13,18,18,19 102:20,22 104:20 105:2,6,17 108:3 108:13,13,19 109:3,13 110:23 111:11,19,20,21 111:23,24 112:2,9 112:12 113:15 122:14 124:18 125:14,17,24 126:12,13 127:3,5 127:10,17,19 128:2 129:6,7 130:17,18 133:22 crew 92:4 156:12 crimes 11:9 criminal 33:2,22 34:2 cross-examination 2:10,17 25:10 29:6 148:12 cross-examine 25:7 68:24 cross-referenced 77:6 crucial 28:12 crude 42:14,15 45:9 45:10 46:9,10,11 46:12,19,21 50:16 52:9 62:20 64:18 72:7 73:3 74:14,17 74:22,23 78:5,7,19 79:3,4 80:2,20 81:9 82:1,2,5,22 82:23 83:5,11,13 83:14 84:11,12,12 84:17 85:21 88:19 88:20 89:23 90:1,2 91:5,8 92:5 94:4,6 94:7,9,10,14 101:5 101:7,13,22 102:22 104:8,9,10 105:16 108:1,2,3 108:19 109:9,13 109:19,20 110:23 111:5,8,18,21 112:9 117:17,18	117:21 126:16,21 128:24 CSR 1:19,19 158:23 current 8:22 11:13 11:14 31:6 35:1 74:3 119:1 currently 8:19 16:10 31:7 34:7 70:17 115:16 148:24 custody 37:11 44:10 D D 2:7 8:5,11 dam 85:16 86:11,13 86:14 126:8,9,9 damage 81:14 damn 86:9 dams 85:18 86:2,4,5 dark 54:22 data 37:12 date 11:14 14:9,17 16:15 25:18 39:5 39:11 53:20 54:4 59:1,11 61:22 62:9 64:2,13 66:7,12 74:3 76:20 79:14 83:10 93:8,11 100:3,22 103:14 107:23 110:14 111:17 114:4 121:10 136:21 138:17 142:14 143:16 144:15 145:2 dated 88:15 98:1 134:22 135:20,21 136:18,23 142:20 144:4,12 153:7 dates 38:20,23 day 21:5 49:2 55:8 87:12 88:10 91:15 122:6 123:8 148:14 150:12 157:15,18 158:9 158:17 days 60:14,14 112:17,19 142:14 145:7 147:21 deal 72:7 78:24 156:7 dealing 33:21 116:10,24 dealt 113:18 debris 90:1 December 24:23 52:7,15,17,22,23 53:10,17,23 54:12 57:19 61:17 62:17 142:21 144:21
---	---	--	---	--

<p>decided 69:15 137:14 143:18</p> <p>decision 3:17 95:22</p> <p>deep 40:10 43:7</p> <p>deepest 41:16</p> <p>defendant 28:6,6</p> <p>defense 28:8</p> <p>defensive 118:10</p> <p>definitely 47:21 50:14,17</p> <p>definition 45:4 46:2 46:23 47:3,5,8</p> <p>degree 8:14,17 30:24 31:2 70:13 70:15 115:12,14 115:15</p> <p>degrees 45:20,21 47:14</p> <p>delivered 95:8 96:4 131:20,22</p> <p>delivery 95:16 131:20</p> <p>dense 55:12</p> <p>Denver 11:5</p> <p>Department 5:20 33:20 53:5 55:18 73:17 122:15,19 138:10 149:1 150:23 152:14</p> <p>departments 71:10</p> <p>depending 117:22</p> <p>depends 142:4</p> <p>depict 63:16 84:10 84:16 103:24 110:16,24 121:16 124:21 126:16 128:5</p> <p>depicted 124:5 125:10 126:13</p> <p>depicts 19:4 57:16 79:8 123:18,18,19 124:4 128:6</p> <p>deploy 72:16 73:1 87:15</p> <p>deployed 78:9,15 85:5</p> <p>deploying 72:19 87:14</p> <p>deposeth 8:7 30:17 70:2 115:5 137:20 141:22</p> <p>deposited 57:21 123:20</p> <p>deposition 2:19</p> <p>depth 73:2,15 94:8 136:5,8,14</p> <p>describe 120:15 123:2,14</p> <p>described 38:6 40:11 59:12 76:5</p>	<p>describing 14:19 121:21</p> <p>designated 106:4</p> <p>designed 73:1</p> <p>desk 153:16</p> <p>detail 6:17 41:6</p> <p>detectable 46:4,8</p> <p>detected 129:8</p> <p>determination 37:3 52:13</p> <p>determinations 15:14</p> <p>determine 13:5 36:19 66:21 98:4</p> <p>develop 37:4 142:7 143:11</p> <p>development 52:24</p> <p>device 88:5</p> <p>diagram 51:16</p> <p>differ 48:16</p> <p>different 10:15 23:13 47:2 72:24 74:14 154:18,19</p> <p>difficult 58:5 63:22 64:3 86:16 111:7 124:23</p> <p>dig 42:23</p> <p>dike 82:13,14,21</p> <p>Dining 50:5</p> <p>dipped 43:15</p> <p>direct 2:10,12,13,15 8:8 16:20 23:4,11 30:18 40:24 41:11 55:24 63:13 69:4 79:11 82:24 83:9 88:14 89:7 101:9 115:6 123:12 154:23</p> <p>directed 129:23</p> <p>Directing 23:18</p> <p>direction 124:17,21 125:9</p> <p>directly 17:6</p> <p>director 34:9</p> <p>directors 34:8</p> <p>dirt 42:19,20</p> <p>disagree 7:7 26:9</p> <p>discerns 140:10</p> <p>discharge 55:17</p> <p>discharged 19:22 47:20 54:20 55:16 55:20 56:4 58:2</p> <p>discharging 17:22 19:18 20:2 58:4</p> <p>discolored 84:14</p> <p>discuss 4:12 6:7 16:2 19:13 81:3 89:13 92:4 103:5 103:16,17 138:8 140:13 145:2</p>	<p>discussed 12:7 20:16 24:1 43:5 51:15 53:11 61:16 65:20 78:13 92:22 100:1 103:7 107:5 110:5 112:8 133:16,18 134:5,7</p> <p>discusses 133:11</p> <p>discussing 13:16 47:11 73:18 89:18</p> <p>discussion 16:21 42:16 69:13 133:11 137:12 157:17</p> <p>discussions 15:18 90:23 113:16</p> <p>disguise 58:3</p> <p>disposal 6:7 16:4,5 36:23 67:7,9 149:8</p> <p>dispose 32:21</p> <p>disposed 52:11 63:18 67:17</p> <p>distance 23:10</p> <p>district 22:8,9</p> <p>disturbed 123:23 124:9</p> <p>division 38:2</p> <p>document 11:12 12:23 13:3 15:4 18:17 20:13,22 23:2 34:21 37:14 37:23 40:21 52:21 54:18 59:4,5,8 60:3,7,11 61:12,15 65:16,19 73:22 75:16 76:10 92:17 92:21 95:5 99:2,4 99:22 100:8 107:2 109:23 118:20 120:12,18 121:12 131:8,12 135:17 136:21 138:6 140:7,15,22 141:2 151:20 154:24</p> <p>documentation 29:20 52:8 133:19 134:8</p> <p>documenting 135:9</p> <p>documents 13:9 35:17 59:2 60:18 75:22 76:8 95:4 106:19 133:6 140:3,5,7 146:9,16 147:23,24 157:1</p> <p>document's 37:24</p> <p>doing 7:19 32:17 108:17 131:14,18 136:20 149:24 150:6 157:5</p> <p>done 4:18 7:7,23</p>	<p>42:17 59:13 64:17 68:13 71:22 85:11 85:24 90:23 110:4 138:7 139:4 142:8 143:1,19 145:18 145:23 148:9 153:11</p> <p>DOT 46:2</p> <p>down 15:10 17:12 30:11 64:4 69:11 73:2 77:2 78:7 85:14 90:7,9 113:2 141:18 153:18</p> <p>downstream 72:20 84:6,19 85:7,13 88:3,16 90:4,11 104:19 105:2 111:19 113:4 122:13 125:23 126:12 127:19 128:7,8 129:4,20 130:3,18</p> <p>drafting 9:14</p> <p>drainage 83:18 94:17 124:18 133:22</p> <p>drainage 78:8 78:20 86:17 102:7 124:18 125:13 127:24 129:6 136:4</p> <p>drained 78:7 79:4 83:15,16</p> <p>draining 91:5</p> <p>draw 66:9</p> <p>drawn 121:19</p> <p>drills 72:5,6,9,11 73:18</p> <p>drum 18:23 49:12 50:1</p> <p>drums 18:21,24 19:8,10,11,12 49:11,14,14,20 50:3,5,14 52:5,13 63:6 67:5 68:21</p> <p>due 5:6 54:17 81:5,6 81:14 102:14 103:8</p> <p>dug 22:22 48:14 49:2</p> <p>duly 8:6 30:16 70:1 115:4 137:19 141:21</p> <p>dump 13:1,1,7 20:15 31:18 37:10 52:22 61:13 65:17</p> <p>dumped 23:20 24:10 25:14 53:1 54:16 57:12 64:5</p> <p>dumping 5:6 15:9</p>	<p>29:19 52:3 58:6,23 68:17</p> <p>dumps 13:4 32:19 32:20</p> <p>duration 6:13</p> <p>during 9:16 10:2,10 10:17 20:7 33:9 36:19 50:15 57:7 57:13 71:20 101:8 117:13 120:16 121:5 123:8 152:15</p> <p>duties 9:3 31:10 70:24 116:1</p> <p>d/b/a 1:8,9 3:4,4 158:13,13</p> <p style="text-align: center;">E</p> <p>E 2:1,1,7 115:9 158:4,4</p> <p>each 44:18 51:8 131:12</p> <p>earlier 65:20 85:4 100:1 103:7 107:5 110:5 122:12 134:22,23,24 136:18</p> <p>early 117:11 134:20</p> <p>earth 70:14 115:12 124:4</p> <p>easier 71:24</p> <p>East 1:15 158:11</p> <p>education 8:13 11:3 30:22 34:14 70:12 115:11 118:17 154:7</p> <p>educational 11:17 34:12 35:4 74:1 118:22 153:24</p> <p>Edwardsville 31:3 70:14,16 115:13</p> <p>effect 147:14</p> <p>effective 79:1 85:16 85:18,20</p> <p>effort 64:16</p> <p>efforts 58:3 90:18 108:15 109:14 112:6,14 129:9,22</p> <p>eight 36:3</p> <p>either 19:10 62:21 72:14 96:3,18 116:15 126:8 139:19 153:1</p> <p>elements 64:22</p> <p>emergencies 115:23 116:5</p> <p>emergency 5:16,23 6:4 33:3,6,7 70:20 70:22,24 71:10,13 71:21 72:13,17</p>
--	---	---	--	---

75:1,21 99:10 115:18,20,20,22 116:2,3 117:5,5,6 117:13 118:2 emits 24:16 employed 8:19 11:1 31:4 33:14 34:17 70:17 72:3 115:16 115:17 117:24 156:6 employee 16:14 employees 9:8 24:6 24:10 80:8,9 118:7 150:2,3 employment 10:17 31:21 33:9 71:20 117:13 118:23 empty 64:11 end 3:20 17:1,11,12 40:13 63:6 123:9 124:9 ended 113:3 enforce 31:13,14 enforcement 11:8 33:24 35:16 116:15 Enforcement-RC... 1:7 engage 113:16 enough 41:22 87:24 ensure 32:2 enter 147:1 entered 85:10 125:16 enters 13:6 37:17 entire 138:3 entity 34:5 environment 47:1 50:13 58:8 64:19 94:11 102:12 104:12 109:10 environmental 2:4 3:13 6:11 8:14,20 11:6,8,9 20:1 24:15 31:2,5,14 32:4 33:24 34:10 34:13 49:18 50:10 50:24 58:17 59:11 63:1 65:1,2 66:22 66:23 67:19 68:15 70:16 71:7,16 90:13 91:20,22 98:2 111:16 113:18 115:17,23 116:5,12 130:13 130:23 133:10 134:16,19,21 135:6,7,19 136:6 136:19,22 142:23 142:24 143:8	147:12 154:21 environments 41:17 EPA 5:10 7:20 8:23 10:15,18 11:1 13:2 13:18 14:1 15:15 22:4 31:6,21 34:17 36:8,16,20,23 37:4 37:22 50:19 58:12 60:16 63:2 65:1 66:24 70:18,19 71:14,21 72:3,13 76:11 87:5 94:21 96:1,17 97:13,17 98:4 115:19 116:19,24 117:7 117:24 120:21 130:22 132:2,6,7 138:9 142:20 143:1,14,20 144:5 144:21 145:1 146:22 EPA's 144:23 146:10 equipment 7:17 80:11 130:9,10 142:6 145:4 146:1 146:5 150:18 151:16 157:8 ERU 94:22 Esq 2:3,3,5 essentially 56:12 68:7 establish 29:2 estimate 34:18 71:21 81:20,22 82:6 84:6 estimated 55:19 Ethylbenzene 46:15 even 78:12 146:4 evening 78:5,11 122:22 123:1 127:22 event 24:11 107:7 130:4,19 events 72:10 76:7 110:7 eventually 90:21 ever 85:24 87:5 136:16 every 138:14,15 139:18,18 154:7,8 everything 42:20 142:12 143:19 146:6 150:1,19 153:2,11 evidence 4:17,22,23 5:12 7:14,20,24 11:20 14:23 21:21 26:10,21,24 27:2 29:5 35:7 39:14	44:7 54:7 62:12 66:15 69:2 77:13 93:18 101:1 107:12 119:10 133:1 138:1,17 139:24 141:3,5 144:9 146:13 147:10 156:14 evidences 124:14 evident 63:11 exact 142:14 exactly 12:16 140:23 Examination 2:10 2:12,13,15 8:8 30:18 115:6 excavation 48:13 except 138:4 157:3,9 excess 117:15,18 excuse 63:15 97:14 106:12 113:7 127:23 exempt 32:22 47:5 exemption 46:22 exempts 46:23 47:3 exercise 72:15,15,15 exhibit 11:11,20,24 12:22 15:7 20:12 21:23 34:21 35:9 37:8 39:16,20 52:20 54:9 60:2,24 61:11 62:12,14 65:11,16 73:21 74:7,9 75:15 77:13 77:15 92:16 93:22 95:3,3,13,15 99:1 107:1,14 109:22 110:21 118:19 119:12 120:11 122:1,3 131:9,11 131:13,16,19,22 132:18,21 148:2,5 154:20 155:14,22 155:23 156:14,18 exhibits 2:19 133:3 148:10 existed 27:3 expect 85:9,17 124:1 127:13 expected 4:8 80:22 86:14,23 88:7 126:4 expects 51:10 expense 108:6 experience 11:17 35:3 74:1 87:18 experienced 128:12 explained 50:5 explaining 21:15 62:8 77:10	explanation 141:7 exposed 64:22 extensive 28:5 85:15 exterior 123:22 extra 138:21 143:8 F F 158:4 Fabrications 56:9 facilitate 28:8 facilities 3:15 10:9 30:3 31:18,19 32:19,20,22 facility 12:11 16:13 35:22 36:17,21 39:1,7 51:11 58:22 58:23 63:6 67:5 68:8 74:16 76:22 79:5 81:18 98:8 116:9 facts 6:9 133:8 Fahrenheit 45:20 47:14 failed 145:22 152:5 failure 5:18 6:1 fair 32:13 fairly 11:16 14:11 21:7 38:22 53:22 61:24 66:6 73:24 76:19 93:10 100:15,21 110:16 121:9 familiar 12:2,5,11 14:8 21:4 35:10,13 35:14,16,22 38:19 53:19 61:21 66:3 74:10,13,16,20 75:6 76:16 93:7 97:6 98:8,13,18 100:12,18 104:21 105:10,14 107:18 110:14 113:6,10 119:13,17,19 120:3 121:6 134:13,15 151:17 family 61:6 far 4:9 7:14 42:3 84:6 90:7 108:18 118:11 127:19 130:17 153:13 farther 78:12 fashion 134:9 Fayette 158:2,7 federal 118:15 feeble 129:15 feel 130:18 151:23 fees 6:16 feet 40:9,9,10 54:13 55:10 78:8 86:7 108:18 136:8,10	fence 81:7,8 108:11 fences 128:19 few 3:6 70:7 72:5 147:21 148:18 fiber 73:11,11 field 9:12 15:10 22:18 32:13 45:9 46:22 55:6,20 56:13 57:20 58:6 58:23 63:5 64:4 67:23 79:19,20 99:11 129:18 fields 15:24 34:14 file 15:12 60:13 75:23,24 118:7 120:23 filed 120:21 files 13:21,22 36:17 38:2,3 60:12 120:22 132:3 fill 153:14 filled 19:11 151:15 film 77:5 final 3:17 137:13 153:2 157:19 Finally 6:2,15 find 6:10 28:4 46:13 80:3,4 143:16 findings 10:10 13:17 19:14 fire 22:6,8,9 41:22 71:10 78:6 82:15 116:15 123:20 136:13 first 5:14 6:19 8:6 16:16 30:1,16 43:12 45:19 54:11 70:1 79:22 85:10 93:23 95:11,12 101:10 104:5 106:9 115:4 118:12 126:1 135:5,7 136:4 137:19 140:3,7 141:21 144:18 155:23 fish 90:16 Fisher 56:8 five 10:16 12:18 111:3 112:17 fixed 116:9 flammable 41:21 46:2 47:16,17 flash 43:18,19,20,20 44:12 45:20,21,23 47:11 52:14 floating 128:6,8 floats 50:1 72:23 73:10 82:3 floor 108:9
--	---	--	---	---

<p>flow 78:19,24 82:2 124:13 125:9 flowed 125:10,11 flowing 78:23 85:16 flows 124:14 fluids 5:6,13 focus 70:14 85:12 91:16 foliage 123:24 follow 9:16 38:6 followed 32:4 44:9 89:20 following 144:22 follows 8:7 30:17 70:2 115:5 137:20 141:22 follow-up 71:4 foot 101:7 102:15 111:15 136:10 143:9 147:19 forced 50:1 foregoing 158:8 foreground 123:19 124:6 forgot 155:6 form 37:11 129:21 131:1,2,3 133:20 138:1 formation 117:23 found 24:10 46:24 92:2 103:6 four 3:8 12:18 36:14 36:15 88:1 frame 128:21 frames 51:6 Franklin 149:19,20 free 52:10 fresh 101:13 123:19 123:21 130:10 freshly 123:23 124:9 front 41:7 fully 78:5 Fulton 78:9,10 82:10 83:15,16 84:5 85:6 86:16 88:23 89:4,15,20 89:23 90:8 91:5,10 92:2 94:18 105:2,6 105:16 108:3 111:24 122:13 124:18 125:13,16 125:24 126:12,13 127:3,10,16,19 129:6,7 130:17 furnished 143:13 further 23:9 26:1 30:10 51:12 64:6 68:14,22 84:19 85:7,14 98:4 114:15 125:23</p>	<p>126:12 129:4 137:4 145:9 154:5 156:19,24 157:1 157:12</p> <p style="text-align: center;">G</p> <p>gaining 91:18 gallons 40:16 55:20 128:21 garbage 9:24 23:14 gas 6:8 151:12 gate 81:19 93:24 94:1 Gateway 34:5 gave 87:16 143:1 geared 118:12 gears 98:7 general 32:2 56:3 67:7,9 124:17 generally 12:2 13:6 14:16 16:16 20:22 21:12 37:20 39:4 39:10 54:3 61:21 62:5 66:3,11 67:2 67:22 68:3,16 74:10 76:1,16 81:24 82:13 93:7 98:7,13,16,18 100:12,18 104:21 119:13,17 120:15 121:20 123:2,14 125:10,11 127:5 133:16,18 134:5,7 135:2 General's 2:2 4:3 12:3 35:11,16,18 74:11 119:14 131:4 generate 32:18,21 60:5 75:19 92:21 94:23 99:24 130:22 135:9 generated 5:7 13:10 13:24 21:10,17 38:8 53:14 60:16 61:15 65:19,22 75:22 93:1 95:24 96:10 107:4,9 110:7,10 120:13 120:24 132:5,7,18 132:21 134:15 generation 117:12 gentleman 53:4 55:18 140:5 geology 70:15 getting 49:24 82:6 109:19 142:8 give 5:2 7:3,11 34:18 87:3 95:20 139:20 144:14</p>	<p>147:4 given 130:7 gives 44:24 60:13 giving 29:8 glass 43:14,15 go 3:7 15:6 26:2 32:6 42:20 43:1 44:16 48:24 49:3 69:11 72:14,17 89:1,11,12 91:2 106:22 113:4 137:11,14 141:7 142:7 145:24 151:22 156:18 157:15,15 goes 38:3 120:22 132:13 145:8 going 3:7 7:21 11:10 12:21 15:11,17 17:12 20:11 25:21 25:24 28:11 34:20 36:16 37:7 52:19 60:1 61:10 70:10 73:20 75:14 81:10 92:4,15 95:2 98:24 99:20 106:24 109:21 112:14,15 114:6 118:18 120:10 125:6 131:5 140:21 141:1 142:7 145:16,21 146:18 154:20 156:18 Gomper 5:8 12:7,8 12:9,12 15:15 16:4 19:24 20:20 30:3 35:20,23 36:22,24 37:2 40:2 50:11 57:5,19 114:12 gone 27:13 72:5 132:10 151:11 153:14 good 3:1 87:24 148:14 government 34:14 gradient 113:2,2 124:17 graduated 30:24 154:2 Grant 2:9 5:10 8:2,5 8:11 12:1 18:19 25:13,14,22 27:1,6 27:9 29:7 30:11 36:10 53:4 grass 83:22,23 grave 117:11 gravity 6:14 great 78:24 greater 6:17 green 123:21,24</p>	<p>124:7 grill 40:6 41:8,9 ground 16:18 18:11 20:3 23:21 24:11 26:6 33:11 41:20 47:18,21,22 49:14 50:13 56:16,22 57:12,21,21,24 58:1,10 63:18 64:23 94:14 102:18 104:13 grounds 28:2 group 34:11,12,12 44:1 135:19 groups 34:10 71:8 growth 54:17 guess 97:3 142:17 143:4,5,15 144:14 144:15 145:15 149:18 152:5 gun 81:23,24 82:1,7 123:5,6 guys 50:9</p> <p style="text-align: center;">H</p> <p>half 34:15 89:24 90:6 Hamilton 149:16 hand 11:10 12:21 20:11 34:20 37:7 52:19 59:4 60:1 61:10 65:10 73:20 75:14 87:14 88:1 88:10 92:15 93:18 95:2,8,16 96:4 98:24 99:20 106:24 109:21 118:18 120:10 131:5,8,10,20 136:20 154:20 155:20 158:16 handed 15:2 99:4 106:8,14 122:1 handing 65:15 155:13 handle 83:8 143:18 handled 18:10 146:2 handles 15:24 hands-on 72:15,15 Hang 131:6 happen 7:22 138:21 155:13 happened 7:15 24:7 29:3 101:23 112:16 138:11 139:18,18 happening 22:11 26:16 Harold 138:12,13 139:11 140:13</p>	<p>haul 55:6 having 7:24 8:6 30:16 59:16 69:4 70:1 115:4 137:19 141:21 144:20 hazard 109:12 111:22 hazardous 9:6,20 10:18 11:4 24:16 31:16,19 32:21 33:16,19,19,20 34:6 42:21 43:1 45:4 46:21,23 47:1 47:3 52:13 71:2 116:6,7,10,10,11 117:12 118:10,10 118:16 HAZMAT 71:11 head 15:5 114:20 heading 124:21 headquarter 120:23 headquarters 13:22 health 116:4 heard 36:24 hearsay 140:5,23 heavily 58:2 126:19 126:20 heavy 84:12 126:16 held 1:14 69:13 96:20 119:4 137:12 157:17 158:9,14 help 44:18 73:2 78:19,21 helps 28:15 her 28:11 50:5,6 91:5 108:8 hereunto 158:16 hering 3:22 high 85:16 117:22 154:2 higher 101:21 him 8:4 16:3 19:17 29:8 30:14 42:11 42:13,22,23,23 81:3 85:22 86:23 87:1,3,16,17 89:14 90:21 91:15,23 92:2,5 97:9 103:7 103:11,16,17 109:16 138:8 143:1 145:17 himself 87:15 hinges 142:4 hired 138:7 history 118:23 Hixenbaugh 16:14 17:18 26:15 27:7 Hixenbaugh's 19:17 hold 10:15 31:7</p>
---	---	---	---	---

hole 26:6 53:1	immediately 42:19 52:2,3,5	informant 28:3	148:21 154:8	Jim 131:14
Homan 2:3	impact 5:17,24 72:8 90:15 94:14,19	informant's 28:10	Intent 59:17,20,23 60:3,15,20 61:4	job 119:4
home 89:11 91:5	102:14,14,17	information 13:6 28:7,9,12 37:17	97:7 133:24	John 1:8 2:6,16 3:4 5:6,16 12:3,15
homes 109:17	105:3 108:12	51:2,12 78:2 88:24	144:24	35:11 36:2 42:7
Honestly 86:1	111:20,22 112:12	133:6 142:15	interchangeable 72:22 126:10	48:5 74:11 75:8
hope 144:2 156:10	113:2,4	145:2 157:4	intermittent 124:18	98:20 105:22
Hopkins 1:19 158:6 158:20	impacted 78:9 91:10 105:5 108:3,18	informed 88:23	125:13,16 129:6 136:3	106:3 107:19
Hopper 58:17 59:11 63:1 65:2 66:22,23 67:19 98:2 113:18 134:21 136:19,22	impacts 6:5	initial 134:17 135:19 136:7 147:18	international 33:18	108:2 113:13
hose 17:1,2,5,11 55:16	improve 130:7	initially 81:4 87:10 88:13 91:7 103:21 144:19	interrupt 143:22	119:14 131:17
hours 118:5	inch 143:6,8 147:19	injection 149:8,10	intersections 85:5,5 88:18	137:18,23 140:14 142:6 152:2 156:12 158:12
housekeeping 49:17	inches 43:7 73:2,15 94:4 111:15 136:9 136:9	inside 29:24 41:4 102:16 123:22	introduce 139:23 146:12 157:1	July 14:6 75:12 76:16 77:10,16 79:15 81:17 83:1
houses 128:16	incidences 116:9	inspected 25:19	introduced 144:8 148:15	84:15 88:15 89:8 90:14,19,24 91:3 91:17,21 92:22
Huh-uh 155:10	incident 5:22 78:5 81:3,17 92:8 97:15	inspecting 122:13	investigating 40:1	94:17 98:15 99:5
human 44:21	103:6 105:2,7,8,20	inspection 9:13 10:2 10:10 13:1,7,9,11 13:14,19 15:8 20:23 21:17 23:1 23:22 28:24 37:13 37:14,18,21 38:5,8 48:10,18 51:14 53:10 57:14 61:14 61:16,17 62:17 63:7 75:17,18,19 76:1,2,4,23 79:21 92:18 93:1 99:3,7 99:23,24 100:8 103:4 107:3,4 109:24 110:3,4 120:13,15,16,20 120:24	investigation 11:5,6 26:7 28:18 97:24 98:1 143:10	99:13,16 100:12 100:19 101:8,23 101:23 102:11 103:1,4,14,24 104:1,2,5,6,17 105:1 107:18,20 109:15,24 110:13 110:16,22 112:7 112:16,23 113:12 113:14 120:8 121:7,22 122:4,5,9 127:11 129:13,21 130:6 134:11,12 142:17,20 155:18 156:5
humanly 143:19	106:13,15,16,16 111:23 113:7,9 116:2,19 138:11 144:19	inspections 9:6,7,16 9:18,20,21,22 10:18,21,23 12:6 13:4,24 31:17 32:6 32:7,11,17,18,20 33:21,22 34:18,19 35:14 57:7,8 71:4 71:22 72:1 100:8 117:14,15,16	invoices 147:12 148:4,10	101:23 102:11 103:1,4,14,24 104:1,2,5,6,17 105:1 107:18,20 109:15,24 110:13 110:16,22 112:7 112:16,23 113:12 113:14 120:8 121:7,22 122:4,5,9 127:11 129:13,21 130:6 134:11,12 142:17,20 155:18 156:5
hydrophobic 129:17	116:2,19 138:11 144:19	109:24 110:3,4 120:13,15,16,20 120:24	involved 72:6 144:2	142:17,20 155:18 156:5
I	incidents 71:3 114:10 116:3,7	inspectors 5:10 11:5 11:9 31:12	involvement 157:6	June 12:19 14:6 19:13,24 20:16 25:18 36:6 123:1 130:4
idea 42:12	incinerator 25:20 53:1 55:13	inspector 10:16 13:8 15:23 16:11 32:13 33:21,22 37:19 48:7 53:8 77:24 117:9 152:14	involving 12:3 35:11 74:11 119:14	Junior 138:13 139:11
identification 11:11 12:22 20:12 37:8 52:20 60:2 61:11 65:15 73:21 75:15 92:16 95:4,6 99:1 99:21 107:2 109:22 118:19 120:11 131:6	include 12:19 25:1 36:6 51:2,14 52:1 75:12 76:22 77:1 99:16 116:6,8 117:1	inspectors 5:10 11:5 11:9 31:12	in-house 132:16	jurisdiction 116:16
identified 43:10 156:3	included 52:2 67:19 114:6,8,10 133:6 135:2 150:14	instances 112:3 118:16	Irina 108:7	just 6:22 7:13 12:22 15:2 17:14,22 20:13,21 22:12 23:4,9,11 26:15,24 27:23 28:7 29:6 38:6 40:11 43:5 57:2 59:12 63:15 69:4,15 70:6 76:5 80:15 81:11 84:22 97:2 106:8,14 113:10 123:2 125:7 128:21 129:3 131:6,10 137:24 139:19 144:1,6,18 146:5 153:16,18 154:12 154:23 156:19,19
identify 11:11 12:23 20:13,13 37:8 43:9 52:20,21 59:4 60:2 61:11 73:22 75:15 92:17 95:4 99:2,21 107:2 109:23 110:2 118:20 120:12 131:7 135:14,17 136:21 156:6	includes 9:20 24:23 98:9	insurance 138:9	issuance 144:24	154:23 156:19,19
identifying 43:11 131:12	inclusion 2:19		issue 3:12 140:12	
IEMA 74:22,24 75:2 75:3,4 77:17 81:4 81:5 83:16 98:14 105:21 106:1,3 122:8	incorporated 136:22 137:1		issued 10:11 16:3,5 116:23 131:14,17 144:21	
IEPA 75:5 87:3 105:18 114:6	indicate 19:9 26:13 45:18 49:15,20 55:3 58:3 91:12 102:8 124:2 131:19 135:22 147:13		item 41:7	
ignitable 45:23 46:1	indicated 17:22 24:5 26:15 45:19,20 49:16 67:4 122:24 145:3,9		items 40:11 57:10	
ignition 43:21	indicates 131:22		i.e. 47:8 52:10 136:11	
IL 1:23	indicating 138:7		J	
illness 61:6	indication 24:8		James 1:9 2:6,17 3:4 5:14 6:24 74:11 119:15 131:14 141:20 142:1 158:13	
imagine 10:24	individual 150:6		January 59:13,16 63:1,6	
immediate 131:3 135:18	individuals 60:5		jar 43:14,15,17,18 jars 43:16,16	

<p>K</p> <p>Kalber 6:2 104:21 105:11 106:6,7 109:24 114:8</p> <p>Kamp 6:3 104:21 106:6,7 109:24 114:8</p> <p>KEEFE 1:22 2:24 158:24</p> <p>Kelly 70:9,10 122:10</p> <p>Ken 22:16</p> <p>Kentucky 134:19</p> <p>kept 75:22,24</p> <p>kerosene 43:8</p> <p>kind 18:3 60:4 94:22 130:21</p> <p>knew 26:19 42:11 142:13 146:3</p> <p>know 3:16 4:9,16,19 5:1 7:6,13 15:21 26:5 27:3,3,6,19 28:20 29:18 42:11 42:13 43:22 48:19 60:8 83:16 87:5 119:24 134:3 139:17 141:10 142:13,14,15 143:19 145:15,22 145:22 146:1,2,5 146:14 149:3,13 152:2 153:2,13 154:18 155:5,9 157:5,8,9</p> <p>knowledge 28:7 87:7</p> <p>known 44:20 123:16</p> <p>L</p> <p>lab 44:8 45:10,12</p> <p>label 52:3</p> <p>labeled 18:22,24 19:2 49:12</p> <p>labor 150:4</p> <p>lack 109:15 112:6</p> <p>land 5:8 8:21 9:5,15 13:18 14:1 15:16 32:3,5 36:23 43:10 58:7 71:3 114:12</p> <p>landfill 37:5 42:20 42:23 43:2 44:24 47:10 52:12 58:21 63:5 67:6,15</p> <p>landfills 67:16</p> <p>landscape 40:7</p> <p>Land's 15:12</p> <p>large 34:9 40:13 49:13 57:8</p> <p>larger 73:13</p> <p>largest 34:10 82:18</p>	<p>Larry 122:14,17,18</p> <p>last 65:9 70:9 115:22 152:5 156:9</p> <p>later 26:22 69:2 87:12,17 88:10 112:17 134:20 142:14 145:8 147:21 153:14</p> <p>latitude 26:1</p> <p>law 28:4,5 116:15</p> <p>laying 90:3</p> <p>leach 126:21</p> <p>leachate 44:13,14</p> <p>leaching 58:10</p> <p>leading 17:1,12 55:14</p> <p>leads 123:16</p> <p>leaf 88:1,12</p> <p>leak 103:18</p> <p>leaking 19:11 49:20 49:21 50:5 103:12 103:16,17,20</p> <p>lease 7:15 123:16 124:16 142:6 145:24 150:9,14 157:8</p> <p>least 4:18 72:1 73:2 73:15 86:7 87:23 87:24</p> <p>leave 89:19</p> <p>left 68:12 82:10 141:2</p> <p>legal 59:18,21,23 60:3,6,8,15,20 61:4 97:7 134:1 143:17 145:1,21 145:24</p> <p>lengths 72:24</p> <p>let 5:1 6:20 84:22 99:4 104:23 106:12 113:10</p> <p>letter 7:20 13:16 51:4 60:9 63:1 64:14,14 96:6,10 97:7,9 128:1 131:1 132:13 142:17,19 143:1,4 144:4,8,12 144:13,16 145:8 145:15,20 146:13 147:2,3 148:3 153:10 155:19,19 155:23,23 156:2,6 156:16</p> <p>letters 9:14 60:16 132:10</p> <p>let's 16:15 22:19 26:12 60:8 69:11 79:21 82:11 111:4 126:1 137:11</p>	<p>141:3 142:17,18 143:13 147:2 157:15</p> <p>level 116:15,16,16 118:4 136:10</p> <p>levels 68:9</p> <p>license 1:19 154:8 158:23</p> <p>life 90:16 111:19</p> <p>light 125:4,6,8 156:23</p> <p>lightening 81:5,14</p> <p>like 4:17 5:2 6:21 7:3,5,11 22:22 23:14 25:6,8 40:16 43:8 49:11,23,23 54:16,20,21 62:20 64:7,14,16 85:4 86:15 103:7 119:7 128:20 138:17 141:1,3,7,8 147:1 156:22,24 157:1,2 157:5,9,11</p> <p>likely 130:19</p> <p>likewise 124:19 125:12 127:1</p> <p>lime 102:9</p> <p>limit 45:21,22</p> <p>limited 116:6</p> <p>limits 46:5,8</p> <p>line 82:2 146:8 156:9</p> <p>liquid 40:12 47:20 52:9 101:7 102:15</p> <p>liquids 9:24 52:10 80:19 103:12</p> <p>list 44:3,24 45:3 60:10 68:10,10,13 68:13 138:15 146:15,19 147:1</p> <p>literally 79:7</p> <p>little 22:3,19 25:24 32:9,15 64:16 70:11,11 104:10 111:7,14 124:5 145:11</p> <p>living 148:19</p> <p>loader 123:9 124:9</p> <p>local 71:9 116:14,14 116:15 138:9</p> <p>located 12:9 53:2 74:17 75:7 98:10 105:11 107:15,16 119:22 120:23 128:14,15 149:10 149:13</p> <p>location 58:2 77:2 79:9 89:1,5 92:11 104:19 105:5 108:16 113:3</p>	<p>121:16 123:7,9 127:12 128:9,10</p> <p>locations 72:20 78:10 85:4 93:16 124:15 129:20 136:1,2,3</p> <p>locked 81:19 93:24</p> <p>log 90:3</p> <p>long 32:8 40:9 71:12 86:7 148:22</p> <p>longer 52:9 68:18 146:10</p> <p>look 45:1 52:14 56:21,22 62:20 94:5 114:3 136:9 136:12 138:19,22 146:8 148:10 153:17</p> <p>looked 22:22 23:14 40:16 49:11,23 54:16 64:14 111:8</p> <p>looking 33:22 56:14 91:23 103:6 144:7</p> <p>looks 54:19 64:7,16</p> <p>lot 73:13 88:2 138:4 146:10</p> <p>Louis 1:15 34:10 71:19 158:11</p> <p>low 55:14 107:16</p> <p>lower 45:24</p> <p>lunch 69:15,17,18</p> <p>lush 124:7</p> <p>Lynn 70:5</p> <p>M</p> <p>machine 158:15</p> <p>made 34:13 38:2,5 41:24 53:10 55:3 58:16 73:11 76:4,7 107:7 142:10</p> <p>mail 95:8,12 131:23</p> <p>mailed 32:1 58:12 96:4</p> <p>maintain 5:18 13:18 60:4,11 94:23 130:22 132:2</p> <p>maintained 13:21 60:13 75:24</p> <p>maintains 28:6</p> <p>majority 9:6 18:5</p> <p>make 3:17 4:1 6:22 13:2 15:14 18:19 24:8 37:3 38:1 42:21 43:1 45:5 49:3,8 55:7 57:4 63:3,22 64:2 70:6 70:6 75:22 79:22 85:18 89:1 95:18 95:21 101:21 103:19 106:12</p>	<p>127:17 153:19 156:22</p> <p>management 33:18 49:16 75:1 95:20 95:21 132:16</p> <p>manager 8:24 9:2 10:14 16:10 22:16 31:9,11,12 32:5,8 33:17 34:7 38:1 72:13 77:19 122:18 135:18</p> <p>Manifest 52:12</p> <p>manifesting 47:9</p> <p>manner 3:18 19:22 20:22</p> <p>many 10:18,21 12:17 24:21 34:18 57:9 71:21,24 75:9 87:18 90:4 98:21 117:14 120:6 128:21 144:14 148:17,18 149:3</p> <p>map 37:12 76:22 77:1,7,9 93:13,15 93:16 121:19 128:9</p> <p>maps 77:9 121:12 121:14,15,15,21 128:10</p> <p>March 67:1 114:5 135:20 136:23 143:3,9,12 153:7</p> <p>Marissa 67:15</p> <p>mark 155:22</p> <p>marked 11:10 12:21 20:11 34:20 37:7 52:19 60:1 61:10 65:10,15 73:20 75:14 77:3,4 92:15 95:3 99:1,20 107:1 109:22 118:19 120:11 131:5,9,11 148:5 155:22</p> <p>marking 148:1,9</p> <p>married 70:9</p> <p>master's 31:1 70:15</p> <p>matched 46:11</p> <p>material 20:2 23:6 23:12,15,20 24:7 24:11,12 25:14 41:10,22 43:6,7,20 44:23 45:2 47:16 54:20,21,22 55:17 56:16,22,23 62:20 62:23 63:9 64:8 71:2 118:10,16 124:13,23 125:9 127:14 129:17</p> <p>materials 9:24 33:17 33:19,20 34:7</p>
---	---	--	--	--

46:14 116:7,10 matter 24:1 28:4 89:19 138:3 matters 4:12,13 may 3:10 10:9 25:1 29:15 30:11,12 32:7,11 52:11 60:8 65:8,9 66:1,4 68:16 69:5,11 99:4 101:5 114:24 116:18 137:24 139:22 140:2 141:18 142:2 148:5 153:6,12,16 maybe 23:4,14 28:14 79:11 80:15 123:13 149:19 ma'am 17:9 20:24 21:14 69:6 114:18 116:14,20 117:2 118:2,24 119:16 120:17,22 121:2,4 121:8,11,13 125:21 126:2,6,11 127:15,15,18 129:2,11,24 130:15 131:21,24 132:4,17,20,23 133:15 134:12 135:1,16 137:3 140:1 141:10 149:23 150:2,13 150:16 mean 9:23 26:2 36:24 43:19,24 84:24 86:4 102:21 117:19 meaning 43:11,11 43:12 means 45:4,4,23 117:20,21 144:17 155:5,9 measures 59:12 71:18 96:24 156:6 mechanical 127:7 medical 31:17 medium 87:21 meet 32:2 42:5 47:8 68:9 69:15 122:11 meeting 27:4 60:14 61:5 96:20 133:13 133:17,23 134:6,7 138:8,16,16 143:21 146:16,20 146:22 meetings 96:7 97:10 132:14 meets 45:4 46:1 member 34:5 members 3:9,10	34:15,16 92:5 memo 21:17 53:10 53:12 75:17 76:4 76:23 92:18 93:1 99:3,7,23,24 100:8 107:3,4 110:3,4 135:9,13 memorandum 120:13,15,20,24 135:18,22,24 136:17 memory 59:3 121:15 Memos 75:18 76:1 Mensing 22:16 mentioned 9:8,17 19:7 20:21 21:24 47:2 54:24 62:22 79:3 81:16 83:14 103:3 108:12 126:18 150:17 mess 106:10 met 16:13 42:7,10 54:24 67:24 68:15 122:12,14 145:1 Metal 56:9 methods 129:16 metropolitan 71:19 Mezo 1:9,9 2:6,17 3:4,5,6 4:8 5:14,21 6:20,21,24,24 7:2 7:11,13 15:5 30:7 30:9 69:7,9 74:11 106:6 114:19,20 119:15 120:5 131:14,14 133:14 134:18 137:1,9,10 141:19,20,23 142:1,1,4 143:22 144:1,4,7,10,12,20 145:1,2,4,7,9,10 145:12,14 146:14 147:3,5,12,18 148:1,7,14 149:20 151:22 152:2 153:21 156:16,21 157:3,14 158:13 158:13 Mezo's 144:23 Mezo-Oestreich 98:10 104:17 114:13 Mezo-Prior 97:5 Michael 2:5,9 8:5,11 12:1 middle 56:5,21 111:9 Midwest 11:8 33:24 might 10:7 47:16 117:1 118:8 119:6	migrate 86:8 migrated 85:14 102:18 migrating 85:21 Mike 5:10 8:2 25:13 36:10 53:4 mile 84:8 89:24 90:6 miles 90:4,10 126:15 128:3,11 mimics 44:23 mine 15:10,22 16:18 16:24 17:19 20:3 25:15,16,17,18 26:5,18 92:18 104:2 146:10 mineral 77:19,24 103:22 145:3 Minerals 15:20,22 16:3 82:14 122:19 Mines 15:19 16:3 26:8 77:19,24 82:14 103:22 122:19 minimum 52:14 136:2 minute 69:12 84:22 114:22 139:20 143:15 144:14 153:16,17 minutes 3:6 misplaced 146:20 misspoke 151:1 mistake 70:7 mitigation 118:9 moment 12:22 20:13 63:15 81:11 131:10 143:23 156:19 157:16 month 48:15 months 95:9 142:5 150:18 153:14 more 22:3,19 25:5 28:21 29:7 30:6 31:8 41:5,6,12 49:23,23 56:13 85:12,18 86:16 87:20,21 101:7 118:6 123:23,23 124:23 141:6 145:6 146:1,5 149:18 151:16 152:4 Morgan 6:2 104:21 105:11 109:24 114:8 morning 3:1 77:21 137:14 mosquitoes 18:13,15 moss 124:22 125:3,4 most 86:1 130:19	motions 72:18 motor 42:14 45:8,8 45:11 46:12,20,20 49:12 move 11:20 14:22 21:20 35:6 39:13 54:6 60:23 62:11 66:14 74:6 77:12 93:17 100:24 107:11 119:9 121:24 132:24 141:3 moved 32:20 62:19 movement 86:6 moving 90:22 105:10 124:4 139:23 much 7:10 40:15 78:13,19 82:7 118:6 123:11 murdering 150:12 must 18:9 52:14 81:8 Myer 152:19 Myers 77:22,23 78:2 myself 104:23 120:14 121:4 126:14 147:7 148:15 M-E-Z-O 142:1 N N 2:1,7 name 3:1 6:23 8:10 17:14 25:12 26:13 30:20 56:8 70:4,7 70:9 115:8,9 137:21 141:24 146:4 150:9,11 151:8,9 narrative 37:10 51:16 65:17 138:1 141:7 Nashville 1:16 158:11 nasty 44:21 national 11:5,6 33:17 natural 5:21 53:5 55:19 64:7 122:15 122:20 138:10 149:1 150:23 152:14 nature 21:12 Neal 30:21 near 76:7 88:23 105:11 107:7,16 107:16 110:7 nearby 109:17	nearly 128:10 need 26:21 133:18 134:7 144:6 needed 42:17,18,20 42:22,24 50:6 87:1 90:23 111:18 133:11 142:13 needs 52:12 negotiations 11:4 neither 49:12 networking 34:12 neutral 3:18 new 9:8 64:9,10 83:23 112:8 next 27:14 30:12 55:13 69:19 79:20 80:13 104:6 114:24 141:3,3 night 85:13 nine 31:16 89:14,17 118:2 NIPLA 61:3 97:10 133:24 none 21:23 35:9 54:9 61:2 62:14,19 66:17 74:9 77:15 85:3 93:22 96:16 101:3 107:14 110:21 119:12 122:3 133:3 non-advisory 131:1 non-attainment 71:18 non-hazardous 10:1 Nope 151:24 normal 118:6 normally 72:11 73:10 113:4 north 1:22 130:11 136:1 northern 124:10 northwest 57:4 125:12 130:11 Notarial 158:17 notarized 138:6 Notary 158:6,21 note 2:19 3:9 25:23 nothing 140:12 151:23 notice 10:12 17:24 18:2 22:24 37:12 50:20,22,23 51:3,4 51:6,17,21 54:15 58:11,15 59:6,17 59:20,23 60:3,15 60:20 61:4 63:2 64:17 81:13 90:7 95:1,19 96:6,10,18 96:20 97:6 102:3 108:15 125:15,19
---	---	--	--	--

125:20 128:24 130:22 131:2,13 131:17 132:1,9,13 133:5,13,24 143:14 144:21,24 146:11 noticed 3:22 40:1 43:6 90:9 91:8 Notices 94:23 95:7 95:24 noticing 126:23 notification 122:6,7 notified 74:22 142:20 143:14,16 notify 50:24 60:5 November 20:9,18 21:2,13 22:20 24:14,18 28:23 nowadays 129:18 number 2:8 5:8 41:6 41:6,12 43:12 45:1 77:5 79:13 81:10 83:20,23 84:3,4,12 88:18 90:2 92:3 94:1,7 103:13 104:3 119:2,5 148:16,24 149:10 numbers 68:12 77:3 77:4,6 121:18,19 Numerous 3:14	104:17 111:17 112:23 120:16 121:22 127:17 129:21 130:6 observe 16:16 18:21 22:20 31:14 48:8 48:20,21 49:4 54:12 57:13 62:15 63:22 64:6,9 68:16 68:17,19 80:8,11 82:22 83:18 89:22 91:6 94:3 101:4 102:24 107:23 108:13 109:6 110:22 111:4 124:12 126:4 observed 16:17 19:16 22:21 39:2 40:2 49:5,11 54:13 55:11,13,14 57:8 57:11 62:16,17,22 62:23 76:8 83:19 89:12 90:19 94:4 103:11 108:12 110:8 112:6 123:9 129:10 observing 89:18 122:13 obtain 8:17 115:14 obtained 115:15 136:6 Obviously 47:22 occasion 33:10 occasions 12:17 24:21 36:4,14 75:9 98:21 120:6 occurred 5:19 6:2 29:19 78:11 103:8 116:19 122:22 130:4,19 142:10 145:6 occurrence 145:7 October 98:1 134:1 odd 29:2 odor 43:8 129:8 odors 79:23,24 128:24 Oestreich 5:19 7:15 92:3 119:22,24 120:1 142:6 144:1 145:5 150:10,10 150:11 off 18:3,5,7,8,11 59:16 64:8 69:11 69:13 88:4 136:4 137:11,12 141:2 145:15 157:15,17 offensive 102:19,20 109:12 111:21 118:9	offer 6:6 offhand 105:22 office 2:2 4:4 8:21 9:2 12:3 13:12 15:19,22,24 16:8,9 20:19 22:18 32:1 35:16,18 37:21 42:1,3,5 50:4 70:22 71:21 75:21 91:3 99:11 109:18 119:14 122:6 131:4 145:20 officials 71:10 116:14 off-site 102:19 often 86:1 OG-22 142:9 oh 30:2 42:18 93:14 103:14 104:2 155:2 oiled 58:7 122:13 126:6,6,19,20 oiling 125:8 oily 17:1 29:22 55:16 56:3,15,22 56:23 57:9 62:17 91:9,12 102:4,5,14 108:21 109:2,4,5 111:13,14 113:14 old 26:18 27:12 40:5 53:1 119:2 olfactory 129:8 once 16:13 37:22,24 44:5,7 52:9 60:10 75:22 96:6 120:20 126:20 132:1 one 4:18 5:3 6:6 7:7 20:16 24:6 28:21 30:3 31:12 34:9 40:13 43:17,17 45:21 48:7 54:1 59:14 68:20 82:18 84:3,4 86:9 92:10 92:11 93:18 95:7,8 95:9,11,12,12 98:14 104:5 105:5 105:6 106:9,13,14 106:17 120:8 122:1 123:14,24 130:9,10 134:17 134:17,20 137:15 138:7 140:4 143:5 144:2,6 146:19 152:22 157:16 ones 44:4 138:14 one-hour 69:15 ongoing 154:7 only 5:17 28:23 55:9 78:21 89:17 94:20 113:3 119:6 120:8	127:6 144:2 147:10,13 150:4 onto 47:21 109:13 OPA 118:14,14 open 5:6 12:24 13:1 13:4 19:11 20:15 20:19 22:5 24:16 29:19,19,21 31:18 32:19 37:10 49:24 52:3,22 61:13 65:17 68:17,20 94:2 opened 81:7,8 83:4 opening 5:2 7:4,11 16:17,24 operate 37:4 149:21 operated 5:22 6:3 98:18,20 107:18 120:3,4 123:10 operates 12:11 35:22 75:6 operating 80:14 operation 19:5 27:14 36:21 84:23 109:6 127:13 157:6 operational 109:8 operations 70:22 85:9 86:19 115:18 115:21 117:6 129:14 150:5,6 opinion 19:23 24:13 50:10,10,12 57:18 64:12,18 90:13 94:10 102:11 109:9 129:9,12,13 129:22 opinions 130:13 opportunity 7:23 29:5,9 33:15,23 68:24 69:1 72:4 73:16 118:1 opposed 143:9 order 134:18 ordered 145:18 orderly 3:18 ordinarily 76:10 ordinary 14:3 21:17 38:9 53:14 60:21 65:22 93:1 96:11 107:9 110:10 121:1 132:19,22 organic 44:2,13,15 46:14 47:24 organics 44:8 47:23 organization 72:12 original 110:24 120:22 OSHA 118:4,4 other 5:7 9:4 18:20	29:16 30:3,7 34:3 41:9 45:5 46:13,16 55:7 64:2 69:10 80:8,9 86:9,22 88:16 92:4 94:16 95:8 104:16 105:1 105:2,6,7 108:18 112:3,11,22 114:10 125:21,21 126:2 134:10 141:5 others 7:8 147:11 149:17 out 3:8 9:12 15:17 15:23 18:1 22:11 22:17,20 24:6,10 32:6,17 41:23 44:18 48:12,24 49:3 50:1 51:5,7 55:1 63:19 66:1 76:13 78:12 81:13 95:10 98:22 99:10 100:11 104:14 121:3 132:10,13 133:10 134:19 139:6 142:24 145:16 151:11 outlines 51:10 outlining 143:1 outside 40:11 78:22 81:8 83:21,24 89:20,24 91:9,12 102:3,5,6 over 8:4 10:20 28:14 32:9 40:2 48:14 115:21 118:5 128:2 145:6 150:5 overbanking 94:13 overflow 49:23 overflowed 78:7 overseeing 9:4 oversite 72:13 overtop 104:14 overtopping 136:13 overview 133:7 own 146:1,5 owned 17:14 109:19 ownership 142:5 ozone 71:19 o'clock 3:6,8
P				
P 2:1,1 pack 44:8 package 37:13,13,14 37:18 packet 38:5,8 51:14 146:17 pads 40:7 129:17 Paducah 134:19				

142:24	138:10,16 141:8	person's 138:10	127:2	point 43:18,19,20
page 2:8 104:6	144:8 146:15,20	pertaining 117:16	piece 56:14 130:9,10	44:12 45:20,21,24
144:18 155:13	151:12 156:13	133:9	pile 18:2 57:8 62:17	52:15 79:24 84:23
pages 146:17 158:8	157:4 158:12	Petitioner 1:4	63:17	85:3,10 88:3 90:5
paid 34:15 155:12	People's 3:12 11:11	petroleum 34:3 72:7	pipe 86:7	90:11 123:13
paint 40:6	11:20,24 12:22	73:3,7,9,11,12	pipeline 116:8,8	125:15,19,20
paper 139:10	14:23 15:7 20:12	80:19 118:13	136:12	129:4 136:11
papers 144:14	21:21,23 34:21	128:23 154:15	pit 25:19 40:1,3,4,5	157:9
paragraph 144:17	35:7,9 37:8 39:14	phone 78:2 146:23	40:8,9,14,15,17,19	points 33:5 47:12
144:19 156:5,10	39:16,20 52:20	146:24 148:16	40:22 41:4,16,18	84:7 129:5 135:24
park 5:15 74:18,21	54:7,9 60:2,24	phonetic 48:5	41:19 42:3,10,12	police 32:24 116:15
75:7 78:8 79:5,6,7	61:2,11 62:12,14	photo 19:6 27:23	42:13,14,17 43:6	policies 32:2
79:9,18 92:11	65:10,16 66:15,17	56:12 57:3,3 93:16	45:8 48:14,17,19	policy 38:1
103:5 105:7	69:19 73:21 74:7,9	photograph 16:21	48:20,21 49:2,5	pollutants 24:16
106:13,15,16	75:15 77:13,15	17:3,8,10,13 19:4	50:8,17 52:9 57:7	pollution 1:1 3:2,16
parked 123:11	92:16 93:18,22	21:7 23:8,11,16	57:10 59:15 62:18	5:9 22:17 31:15
part 4:18 31:20	95:3,3,13,15 96:14	40:24 41:1,5,7,11	62:23 63:3,5,17	47:7 50:17 72:7
33:13 41:16 59:14	96:14,16 99:1,21	54:22 55:24 56:5	64:10,10 67:6	111:22 118:15
60:7 70:7 144:6	101:1,3 107:1,12	56:10,17,18 57:17	68:18,20 104:7,9	122:7 130:18
147:5	107:14 109:22	63:14,15,24 77:6	104:10	Polychlorinated
participate 33:15	110:19,21 118:19	79:8 82:24 83:3,9	pits 64:9 151:15	44:20
73:16 96:7 97:10	119:10,12 120:11	83:12,22 84:1,11	153:14	Polychlorobiphen...
118:1 132:14	122:1,3 131:6,9,11	84:15 88:14 94:1	place 5:15 30:1 67:2	44:12
133:13	131:13,16,19,22	101:9,10,10,15	73:4 84:23 86:19	Polynuclear 46:16
particular 27:23	132:18 133:1,3	103:13,24 110:24	102:24 113:7	ponded 126:7
54:19 120:8	137:13 140:22	111:2,4,5,10,12	120:19 121:17	pool 40:13 41:15
123:17,17 128:3	155:22 156:14,18	121:18 123:12,15	124:5 126:5 127:7	126:7
138:11 143:23	per 49:13 71:24 72:2	123:17 124:6,7,8	129:15,19 130:3	poor 49:16,17
particularly 41:12	perfect 29:3	124:15,19,24	134:14	portion 122:19
parties 4:1	performed 113:12	125:1,11,12	placed 63:9 127:2	124:10 129:7
parts 40:6 41:9	136:17	126:14,23,24	placement 126:2	154:24
party 13:16 51:1,11	performing 96:24	128:5,6	127:8	portions 128:8
94:24 116:24,24	perhaps 16:20	photographs 14:5	places 32:18	pose 18:13 41:22
past 9:1 32:16 34:7	101:13 124:22	14:11 16:20 18:17	plan 66:22,23 67:2	47:1,18 58:7
124:14,14 153:22	125:7 130:4 136:9	18:18 21:1 23:2,5	97:4,4,24 98:1	102:12 104:12
pattern 46:11	period 115:24 134:3	23:18 37:12 38:11	142:22 143:10,14	109:9
pay 87:2	134:4	38:14,22 40:21	143:16,17	posed 104:13,20
paying 39:17	periodic 34:3	53:17,22 54:18	Planning 71:17	poses 58:9
PCB 1:6 3:3 44:19	154:18	56:19 57:1 61:18	plans 10:8 33:10,11	position 8:22 10:15
44:20	periodically 72:12	61:24 63:14 65:18	33:12,13 71:5	15:21 16:9 31:6,7
PCBs 44:12 46:5	permit 7:18 146:3	66:1,6 76:13,15,19	117:1 134:23	70:19 71:14,15
PCPs 46:5	151:4,9	77:2,3 83:20 84:9	plants 64:8	115:19 118:6
PCV 86:7	permits 15:15,16	84:19 88:16,21	plastic 23:14 40:6	119:4
peat 124:22 125:3,4	16:4,5 36:20,23	89:7,23 93:4,10	63:10,11,18 73:1	possess 15:15 36:22
penalty 6:13	37:4 55:6 142:8	100:3,11,15,21	73:11	possessed 37:4
pending 25:22,24	151:1,3,4	108:22,24 110:3	playing 88:23 89:3	possibility 20:3
people 1:3 3:3 4:13	permitted 5:20	110:13 121:3,5,9	please 4:2 8:4,10	possible 142:12
4:23 5:2,5,12 6:6	31:18 32:22,22	121:16 126:13	26:1 30:14,20 70:4	possibly 143:19
6:10,12,15,15 7:22	148:24 151:8	photos 23:6 54:19	115:8 137:16,22	post 88:18
7:24 8:2 11:19	permittee 152:11,13	110:16	141:2,23 145:11	posture 118:10
14:22 21:20 26:8	157:9	physical 130:8	plugged 25:18 151:9	post-hearing 6:18
30:12,13 35:6	permitting 6:7	physically 79:8	151:10,11,15,17	post-high 8:12
39:13 54:6 60:23	Persimmon 89:21	149:21	152:2	30:22 70:11
62:11 66:14 69:21	89:21	pick 141:2 152:5	plugging 151:19	115:10
74:6 77:12 86:2	person 94:20 109:18	picture 17:4 23:9	152:6,8,9,15,22	potential 18:11
93:17 96:13	138:7,24	56:12,14,20,21,22	153:8,13	50:13 58:1,10
100:24 107:11	personal 140:13	56:24,24 57:16	plus 134:3	81:14 102:14,17
110:18 115:2	157:6	79:17 83:21	PNA 155:7,14	130:23
119:9 121:24	personnel 9:4 33:7	101:18,20 124:19	pockets 90:9 110:23	potentially 41:21
132:24 138:6,7,9,9	119:6,8	pictures 26:13 94:5	111:5,8 126:7	104:14

poured 43:15	76:5 92:22 100:1	80:15 82:13 109:2	144:18	139:7
Powell 2:14 5:23	107:5 110:4	121:14 126:19,20	reads 144:17	records 60:4 94:22
97:12 99:9,12	proceed 69:19 138:1	pursuant 3:22,23	ready 69:19	132:2 146:8
115:2,3,9 118:18	144:3 148:5	50:23 66:22 117:9	real 29:16	recover 73:3,7 80:20
124:12 130:21	proceeded 143:2	118:4 122:23	really 4:18 42:13	86:10
134:10 136:16	proceeding 60:6	133:8 135:5 136:5	63:23 108:16	recoverable 126:17
143:5 146:21	141:1	pursue 59:17,20,23	139:17 141:10	126:18
Powell's 99:3,7	proceedings 1:14	60:3,15,20 61:4	151:23	recovered 91:8
practices 49:17	3:19 158:9,14	97:7 134:1 143:17	rear 17:11,12 68:20	104:14
prayer 6:17	process 17:8 60:7	144:24	reason 51:8 92:7	recovering 91:24
preliminary 4:12,13	processing 32:3	push 88:2	95:9 103:8 139:17	94:14 112:9
4:15,16	produce 26:9	put 4:22,23 7:24	142:9 145:21	recovery 73:6 80:11
prepared 98:2	117:18 141:4	26:14 41:23 42:24	reasonably 146:2	86:18,20,24 87:17
present 3:10 4:17,17	produced 5:13	49:6 50:7 77:2	recall 12:16 28:20	87:24 88:3,13
5:12 8:1 26:21,23	20:22,23 60:21	84:17 86:5,7,7	58:14 66:24 97:17	109:6,7 117:10
29:5 35:1 64:19	76:10 117:21,23	94:7 131:7	98:21 105:20,22	125:19 126:5
69:1 74:4 94:10	producers 82:15	putting 108:17	113:22 128:16,19	127:7,9,11,13
119:1 138:1,16,17	149:8	112:8	133:16,24,24	129:14,19 130:2
presented 6:9 141:8	product 80:19	p.m 157:21	134:5 135:2,10	recycle 58:22
president 34:8,9	production 45:10		138:2 155:20	recycling 32:19
pressure 88:4,5,12	46:22 117:20,21	Q	receipt 37:11	58:22 63:6 67:5
pretty 36:15 91:8	123:3,4 148:20,22	quality 71:17 90:16	receipts 67:7,9	red 56:7 124:16
112:18 123:11	153:22 154:11	quantities 75:3	receive 45:12 60:18	redirect 156:22
142:16	products 24:17 72:8	quarter 84:8	65:1 75:4 77:20	redisposed 57:24
prevented 151:6	73:3,9	question 17:18	96:3,17 97:13	refer 12:8 35:19
previous 49:2 71:14	professional 33:18	19:17 25:22,24	105:18 118:5,7	37:13 74:20
previously 11:10	158:22	26:3 28:15 65:13	132:9	reference 45:15
12:21 20:11 37:7	professionals 34:13	67:17 69:3 113:10	received 11:2,3 15:9	128:21
52:19 53:11 56:3	program 117:10	questionability	16:19 20:19 22:4,5	referenced 16:19
60:1 61:10 62:23	prohibited 19:21	147:23	22:6 31:1 33:16	41:8 127:21
65:10 73:20 75:14	project 71:6	questions 8:9 25:5,8	52:24 64:15 77:18	155:18
92:15 95:2 98:24	property 7:16 27:18	25:11 27:1,9 29:8	96:19 97:18 98:14	references 133:9
99:20 107:1	27:20,21 39:24	30:6,8,10,19 68:22	105:15 109:18	referencing 124:15
109:21 118:19	68:20 109:19	69:5,8,11 70:3	134:2 136:4 143:2	128:9,9 135:19
120:10 122:12	138:11	114:15,17 115:7	143:4,10 144:4	136:24
131:5,9	proposed 144:23	131:10 137:5,7	145:8 146:11	referral 131:3
Price 53:6,7 55:1	Protection 2:4 3:13	141:17 147:23	155:24 157:4	referred 5:8,15 10:1
152:19,20,21,22	6:11 8:20 20:2	148:13,18 156:20	recently 124:3	12:24 31:8 35:15
primarily 140:23	22:9 24:15 31:5,14	156:23	receptors 130:17	56:2 68:3 143:5
priority 130:7	32:4 49:18 50:24	quite 44:4 63:19	recess 157:18	150:9
Prior's 5:6 6:16	71:16 115:17	72:5 101:5 102:5	recessed 157:20,21	referring 35:19 83:7
58:14 89:16 96:22	130:24 133:10	110:24 128:10	recognize 27:23	95:5 111:2,23
Prior-Mezo 119:19	144:13		34:21	112:2 119:22
119:21,24	proven 5:9	R	recognized 24:9	139:12 147:18
privilege 28:3,10	provide 3:10 18:11	R 2:1 158:4	recollection 59:9	refinery 34:4
pro 2:6,6 26:1	32:23 130:22	railroad 54:14	97:21 105:24	reflect 35:3 118:22
proactive 90:22	provided 33:1,7,24	rain 19:12 24:11	114:1 135:12	119:4
probably 70:10 72:1	116:19 145:2	49:24 64:7 127:22	recommendation	reflection 94:6
111:14 124:5	provides 133:11	rainbow 125:7	95:18	refresh 59:2 121:15
128:13 144:5	proximity 79:5	rained 139:19	recommended 59:22	refreshing 59:8
145:12,17 147:13	128:14,15	rainfall 85:13 88:20	87:13	105:23 113:24
149:4 157:3	PTTC 154:10,13	130:3	record 3:9,19,20 4:2	135:11
probative 140:24	public 3:10,10,10	raining 94:12	4:12 69:12,13,14	refuse 67:8
problem 142:8	31:7 32:2 116:4	139:19	70:6 106:22	regarding 15:9
problems 91:17	158:6,21	ran 136:4,13	130:21 137:11,12	19:15 41:17
procedural 3:24	pump 80:18	rank 118:7	141:2,24 148:2	regards 9:4 10:9
procedure 44:10,13	pumping 26:16	rather 136:10	152:11,13 157:10	regional 8:21,24 9:2
procedures 9:15	purchased 145:3	RCRA 11:4 117:9	157:16,17	10:14 16:10 22:16
38:6 43:11 51:5	purpose 3:17 4:21	117:10	recorded 158:15	31:8,10,12 32:5,8
53:11 61:15 65:20	66:18 75:2 78:17	read 139:21 144:6	recording 138:5	33:6 38:1,3 48:7

59:22 122:6 registered 95:8 158:22 regularly 13:24 60:4 60:16 94:22 95:24 96:11 130:22 132:5 regulate 117:11 regulated 10:8 18:8 regulation 3:14 44:24 49:13 regulations 6:12 18:9 31:15 45:24 49:19 51:1 66:20 68:1 118:5 regulatory 11:7,9 34:2 45:21,22 46:22 reimbursed 87:5 rejected 142:22 143:14,17 rejection 144:23 related 71:3 72:1,2 relative 6:7 79:9 144:22 relatively 62:16 relay 78:2 release 5:17,18,19 6:1,2,5 47:23 52:5 68:8,9 79:24 80:21 82:19 83:17 84:7 84:23 85:3,10 86:15 87:21 90:5 90:11 92:3 94:20 106:5 112:10,13 121:17 122:7 129:4,5 133:8,9 134:16 136:11 140:12 144:19,22 145:2,5,5,7 150:18 151:12,14 153:2 released 19:12 50:6 78:13 81:9,21,23 82:10 releases 5:13,14,24 33:4 71:7 116:12 117:16 118:11,14 138:15 releasing 82:4 relevance 140:15 relevant 139:14 140:11,24 145:4 145:14 relief 6:17 remained 48:9 62:16 82:9 remedial 113:11 129:9 134:13 remediated 29:20 67:3 134:8 153:4	remediating 72:19 remediation 33:10 71:4 90:18 102:24 109:14 112:6,13 113:6 116:22 132:8 133:19 remember 135:8 143:6 remind 68:23 remove 111:18 removed 49:5 52:15 113:14 151:16 removing 109:20 112:8 repeated 6:16 90:22 replace 103:23 replacing 87:3 report 13:1,14 20:23 61:16 65:2,5 67:19 75:4 77:17 81:4 83:14,16 98:3,14 105:18,20 106:1 135:3,4,5,5,7,19 135:20,23 136:18 136:20,22,24 reportable 75:3 reported 1:19 79:4 81:5 94:20 105:20 108:1,2 144:19 reporter 69:22 137:16 158:21,22 REPORTING 1:22 2:24 158:24 reports 9:13 10:4,7 13:7,19 31:24 71:5 75:5 81:6 116:22 134:15,16,17,24 representatives 145:1 representing 4:6 7:1 113:17 request 6:10,15 44:11 59:20 requested 44:12 132:15,16 134:18 134:21 135:4 146:16 requesting 136:1,2 requests 45:5 require 45:24 47:9 132:8 required 7:12 9:16 10:9 51:6 72:12 75:4 98:5 145:17 requirement 118:15 150:23 requirements 6:8 137:1 rescheduled 61:7 residence 107:17	resident 88:24 108:7 residential 109:17 128:15 Residual 58:9 residue 84:13 89:5 resolution 51:10,20 134:2 Resolutions 52:2 resolve 133:11 Resource 117:10 138:10 Resources 5:21 53:5 55:19 118:13 122:16,20 149:1 150:24 152:15 respectfully 6:10 respond 5:18 6:1 51:5,6,13 58:11 61:3 65:13 71:2,7 116:2 139:22 140:2 141:9 145:22 responded 78:4 145:6 respondent 5:6 6:11 60:8,10,14 65:3 96:15 132:2,15 136:16 respondents 1:11 3:15 5:24 11:21 14:24 15:3 21:22 35:8 38:4 39:15 54:8 61:1 62:13 66:16 68:24 77:14 93:21 101:2 107:13 110:20 119:11 122:2 129:22 133:2 137:15 148:2,5 155:14 Respondent's 3:13 respondor 5:16 6:4 33:8 70:20 71:1 72:13 99:10 115:20,22 117:14 118:2,12 Responders 5:23 responding 22:1 33:4 63:2 90:20 115:22 116:5,12 155:19 response 10:11,12 19:20 33:3,6 58:14 58:16 59:6 71:10 71:13,21 72:17 75:19,21 77:17 89:16 96:17,19,22 97:1,2 117:5 119:20 142:19 146:9,9,10 156:3	responses 71:8 responsibility 146:3 147:6 responsible 13:16 51:1,11 81:17 94:24 116:24 138:14 restored 153:5 restrictions 128:19 result 65:5 119:20 120:14 122:5 134:16 results 43:1 45:13 45:18,19 46:4,18 51:18 67:20 71:5 97:14 136:7 resume 11:13,16 12:1 34:24 73:23 118:21 return 20:5,9,17 24:18 36:11 43:3 48:1,22 52:17,23 61:8 65:6 90:24 99:14 returned 49:1 returning 37:21 review 10:4,7,8,12 15:11 31:23,24 33:10,11 36:16,19 36:22 59:2 71:4,5 71:17 116:18 135:7,9 reviewed 37:24 140:22 reviewing 9:14 revised 135:20 Reynolds 140:4 right 4:6,11 9:10,19 26:24 27:14 28:9 28:12 29:3,8,10 34:14 36:5 39:19 47:4,13 55:13 56:13,15 62:24 82:7 83:21 95:17 101:17,19 102:5 124:6 125:17 135:15 144:15 145:23,24 157:7 rights 145:3 rim 18:4,5,8,11 rims 18:7 risk 41:22 57:21 68:7 river 72:16,16,21,23 73:13,14 86:2 88:19 road 89:21 123:15 123:16,18 124:17 rock 83:24 roll 77:5,5	roll-off 49:6 50:7 57:11,13,24 67:15 room 1:15 148:14 158:11 Roubitchek 2:5 RPR 1:19 rubble 55:12,12 56:2 57:3 62:19 64:5 rules 3:23,24 run 45:10 runoff 50:16 57:22 Ryan's 145:20 S S 1:19 2:1,5 158:6 158:20 sabotage 103:9 sabotaged 92:10 safety 70:23 116:4 saith 8:7 30:17 70:2 115:5 137:20 141:22 Saline 149:18 Sally 2:3 4:3 7:6 148:15 salt 72:6 82:2,4 101:6,13,22 salvage 27:14 same 20:22 27:15 28:17,21 29:1 41:5 45:15 46:11 50:7 56:12,24 57:9 65:19 73:18 83:10 92:21 105:5 112:2 131:9 145:17 sample 9:15 37:11 42:22 43:5,9,12,13 43:14,17,18 44:11 45:12,15,18,19 46:5,13,15 51:18 67:20 68:12 71:5 97:14 136:1,2,3,7 147:19 sampled 43:6 samples 43:10,11,17 44:5,7 45:6 97:3 133:20,20,21 136:6,10,15 143:7 143:8,9,9 147:19 sampling 9:14 11:3 43:16 44:10 97:4 113:19 117:1 135:5,6 136:17 137:1 Sangamon 8:15 sat 148:14 saw 57:7 88:10 89:3 108:8,22 124:14 127:11 129:19
---	--	---	---	--

saying 7:7,20 119:21	44:4,14	show 7:8 11:16	154:20,23 155:17	84:17 86:5 87:2
says 26:18 95:12	send 13:15,16 50:19	14:11,16 16:23	155:17,20	95:18 101:13,17
104:2 107:20	senior 31:7 115:20	17:3,10,13 21:7,12	sites 31:18 132:7	120:19 121:12
139:7 145:9 155:1	sense 25:24	23:5,19 26:10	143:24	123:18 124:4,9,16
155:3 156:10	sent 51:23 59:7,18	38:22 39:4,10 41:3	sitting 26:12	124:20,21,22,22
school 8:12 11:4	59:21,23 60:9,10	41:14 46:4 53:22	situation 156:7	125:7,7,8,8 126:2
30:22 70:12	63:5,6 67:5,6 95:7	54:3,19 56:1,11,17	six 111:3 153:14	126:13 127:2,4,4
115:10 154:2	95:10,15,16,22	56:19 61:24 62:5	size 87:21,23 112:10	127:21,23 128:2,3
schooling 154:6	96:6,21,22 97:7,9	66:6,11 67:22	112:11,13	133:9,11 134:9
science 30:24 31:2	132:1 143:11	73:24 76:19 79:16	sketch 14:14,16,19	135:4,6 136:7,14
70:14,15 115:12	151:12,13,14	83:3,10,21 89:8,9	21:10,12 39:1,4,7	139:17 141:7
scrapped 50:7	separate 5:13 82:3	89:24 93:10	54:1 62:3 65:17	142:9,23
scratch 102:2	separates 82:2	100:15,21 101:11	66:9,11	someone 127:2,4
screenings 67:23	separator 123:6	109:2 121:9	skirted 72:23	something 23:13
scum 90:9	September 1:14	123:13 139:3	slabs 55:14	26:6 75:18 97:20
se 2:6,6 26:1	92:12,19 93:5	147:16	slang 123:6	119:7 153:18
Seal 158:17	144:22 145:9	showed 46:9 67:23	slight 133:7	154:15 155:3
sealed 44:7	158:10,17	shower 122:24	slow 73:2	sometime 54:16
search 106:19	serious 112:11	showers 127:22	slowly 112:14,15	152:5
seat 6:21	serve 28:8 34:7,11	showing 9:12,14	small 25:19 78:8	sometimes 123:15
second 5:19 95:9	78:17 80:16	52:8	105:16 123:9	125:4 132:11,11
139:9 140:7,10,11	121:14 126:19	shown 17:8	smaller 73:14	somewhere 29:22
143:6 144:17	served 32:8	shows 16:24 17:4,11	smash 88:3	son 138:13
155:13 156:2,5,9	serves 50:24 126:20	17:14 41:4,15 56:2	smell 80:1	soon 142:12
secretary 34:9	service 31:7 33:7	56:13,18,20,23	Smith 108:7	sooner 128:13
section 32:3 50:23	servicing 8:24 10:14	79:17 83:4,5,11,13	smoke 22:24	sorry 25:12 37:2
51:5,9,10 60:7	34:8	93:16 94:1,6,7,8	smoking 23:1	60:14 64:4 65:13
71:17 131:3	sessions 154:10,18	101:12,13,16,16	smoldering 22:22	151:13,24
Sections 3:23	set 60:14 61:5	103:13	23:22	sort 10:7 13:2 31:23
sediment 97:14	158:16	side 52:6 57:4 86:9,9	soaked 58:7	40:12 72:9,10
133:21 136:3	seven 31:12 71:13	101:17,19 124:6	Society 34:6	80:11 81:13 82:13
see 14:5 23:16 26:12	95:9	sidewall 127:23	soil 41:15,20,21	85:17 95:18 133:6
28:15 46:6 55:9	several 33:19 34:1	sidewalls 127:16,20	47:23 50:14 57:9	sounds 36:5
58:5 63:19 64:3	35:14 45:19 74:14	sight 49:10	57:12,12,22 58:1	source 94:16 104:16
68:21 80:22 83:22	74:16,23 90:22	signed 138:16	58:20 59:15 62:18	112:22 134:10
84:12,12,22 85:9	92:4 94:4 98:8	152:22	63:12,17 64:1,18	south 54:13 55:10
85:17 86:11,13,14	142:5,14 145:7	significance 18:7	64:24 67:4 68:18	128:16 136:1
86:18 87:10,12	150:17 154:10	46:18,19 125:3	68:19 80:7 86:6	southeast 128:17
88:9,12,17,19 90:2	Sewer 90:8 94:18	significant 122:21	90:15 91:9,9,12	southern 31:1,2
94:19 99:5 104:10	111:20 128:2	similar 20:15 23:9	97:3,4,13,14	70:13,15 115:13
104:19 108:24	130:18	133:23	101:17,19,21	115:23 117:20
110:13,24 111:6,7	shaded 111:6,9	simply 19:18 28:7	102:3,5,14 109:13	southwest 49:10
111:7,9,14 113:2	shaft 15:10 16:18,24	69:3	123:19,23 124:10	52:6 129:7
124:7,8,16,20,23	17:5,6,12,19 20:3	since 11:1 32:7	124:20 125:8	speak 108:7,8
125:6 127:1,9,13	25:15,16,17 26:6,8	33:14 34:17 46:21	130:10 133:20	145:10
128:7,8 140:14	26:18 29:18	47:7 48:9 49:24	136:3	speaker 146:24
142:17,18 143:13	Shakes 15:5 114:20	62:16,19 72:3 82:3	soils 126:6	speaking 119:18
147:2,8,15 153:6	Shamo 68:14	82:3 101:23	sold 7:17 142:6	121:20 127:5
153:12 154:24	sheen 125:7	117:24 134:14	150:18	128:1 143:23
155:3,7,14	sheet 73:1 139:9	136:12 145:24	solid 9:21,22 10:1	special 43:11 47:5,9
seeing 135:8	shipment 44:8	154:5,6 157:6,7	10:21 31:16,16	52:11,11
seek 6:12 37:14 68:5	shop 29:24 49:10	Singen 48:5	47:6	specialist 71:16
93:15 156:14	50:9 52:6,14 53:2	siphon 86:2,4,5,11	solidified 52:10	143:12
seeking 28:7 147:11	short 33:7 97:2	86:13,14 126:8,9	solidify 33:2	specific 18:9
seem 143:15	106:21 114:23	sir 9:9 16:21 17:16	some 4:17 11:7 12:6	specifically 51:2
seemed 90:20 146:5	shorthand 158:15	20:21 23:23 30:23	15:9,9 22:5 23:15	63:14
seen 14:24 27:3	158:21	49:15 63:15	24:5 26:9,21 33:5	specificity 140:9
85:24 156:17	shortly 76:1	120:12 137:4	34:5 41:9 44:21	speed 79:11
seminars 154:18	shot 41:6	148:18 149:15	45:7 55:12 56:13	spells 51:5,7
semi-volatile 43:17	shovels 88:3	151:7 153:6 154:6	56:15,21 72:4	spill 7:15,19 30:2

72:5,6,9,11,18,19 73:18 74:22,23 78:14 87:23 103:8 105:16 112:15,16 112:18,20 113:3,4 126:15 127:14 129:3 136:7,9 140:8 142:5,10,13 142:15,21 145:6 147:7 spilled 19:10 spills 72:2 74:15 80:19 108:19 111:20 125:4,6 140:9 spoke 27:6 50:4 113:13 spoken 77:21 sponsored 72:11 73:17 spot 85:12 spray 88:5 spread 78:12 127:4 Springfield 8:16 13:23 32:1 38:3 44:9 96:20 120:23 143:12,20 St 1:15 34:10 71:19 158:11 staff 31:20,23 87:15 87:24 stained 19:8 54:13 68:19 83:22,23 staining 55:10 64:6 123:18 124:16,20 127:16,23 stand 8:3 74:24 137:16 154:14 standards 45:11,11 46:10,10,12 68:6,7 113:20 standing 18:23 118:14 start 138:2 started 32:17 starting 41:1 148:23 state 1:3 3:3 5:13 6:22 7:6 8:10,15 12:24 17:21 25:17 28:3,5 30:20 31:5 32:24 47:7 60:5 63:9 67:2 70:4 71:9 75:4 92:7 115:8,24 116:13 116:16 118:3 137:21 141:24 149:11 151:6 158:1,7,12 stated 19:21 24:4 29:22 42:11,19	48:16 67:3 81:4 83:16 92:9 97:2 145:20 statement 5:2 7:4,11 19:17 138:24 State's 6:17,18 146:9 stating 64:15 stayed 102:18 stems 138:3 step 30:11 69:11 141:18 steps 5:7 51:10 52:8 stick 94:7 still 5:20 7:19 47:6 62:18 64:19,22,22 67:17 70:10 88:17 91:9,10 102:3,13 103:18 110:23 111:13,18 112:11 112:21 146:3,3 151:8,9 152:11,13 157:9 stock 82:9 stop 58:22 stopped 103:5 storage 36:21 store 32:21 74:17 98:9 stored 18:9 storm 17:22 19:18 26:16 50:15 57:22 story 142:4 straight 73:5 strategic 72:20 straw 22:23 23:12 23:14,21 29:22,22 29:23 78:9,15,17 78:18,20,22,22,24 84:17 85:4,16,18 85:21 86:1 87:16 88:17 108:15,17 108:21 109:1,2 111:9 112:8,8 113:14 124:23 125:21 126:2,19 126:20,22 127:1,2 127:4,4,5 129:15 stream 90:8,17 Street 1:15,22 12:9 35:20,23 36:22,24 37:2 40:2 107:16 158:11 strike 81:5,14 113:10 144:1 strong 79:24 129:8 structure 56:7 57:3 82:22 83:6 student 31:13 studies 8:14 70:16	study 142:24 147:18 stuff 9:24 44:21 151:18 submission 135:21 submit 10:12 52:8 67:7 113:19 134:23 submittals 116:18 submitted 10:5,8,11 29:20 32:1 35:17 66:22,23,24 134:24 135:20 142:22 subsequent 19:13 24:18 96:7 109:23 113:11 132:14 134:20 136:18 subsequently 41:24 42:8 50:19 65:5 92:12 142:21 143:4,16 substance 17:1 116:10 118:10 substances 116:7 substantial 47:21 subsurface 136:11 succeeded 7:19 successful 127:6 suck 80:18 sufficient 87:19 142:22 suggested 51:9,20 52:2 85:20,22 suggestion 95:20,21 summer 123:24 supervise 31:12,20 supervisor 146:23 support 85:18 supposed 82:17 102:23 sure 26:19 27:19 29:1,16,17 30:2 38:1 42:21 43:1 49:3 70:6,6 84:8 106:12,20 148:11 152:16 153:19 surface 50:15 57:23 58:1,10 64:23 90:15 97:24 102:14 109:11,12 109:12 136:6,9,14 surveys 145:18 suspect 67:14 sustain 28:11 43:20 140:21 SUV 124:16 swear 8:4 30:14 69:22 137:17 Switch 98:7 sworn 8:6 30:16	70:1 115:4 137:19 T T 158:4,4 table 6:21 table-top 72:14 TACO 68:3,5,6,10 113:20 take 8:3 14:5 21:1 38:14 42:19 51:11 53:17 58:20,21 60:8 61:18 66:1,9 69:15 76:13 93:4 97:3 100:3 106:20 114:3,21 121:3 131:1,2,2,11 138:19 145:21 148:10 153:16 155:17 taken 23:9 52:8 57:1 57:2 69:17 84:2,3 84:4 88:15,16 97:4 106:21 113:7 114:23 120:19 121:16 124:5 126:13,15 127:3 128:9 134:14 136:8,15 taking 9:12 42:22 84:23 86:19 102:24 116:3 126:5 127:7 129:14,19 130:3 136:10 talk 140:9 talked 19:15 27:11 89:14 148:15 talking 28:18 92:22 105:7 106:6,7 139:13 140:8,8,10 142:5 144:1 150:8 150:14 tan 111:9 tank 5:19,22 17:23 26:16 74:17 75:6 79:9,17,20 80:5,13 80:18 81:8,21,23 82:1,10,18,19,19 83:21 84:24 91:7,9 91:10,12,18,19 92:3,10 98:9 101:12,16 103:5,9 103:11 105:11 107:15,16,18 108:8,9 123:2,4,16 123:20 124:11,13 124:14 125:10 128:3,11,14 129:5 129:20 130:7,12 133:21 145:4	tanker 16:17 55:21 55:22,23 56:18 tanks 82:3 123:5,8 139:1 151:11 tape 44:8 138:5 139:7 target 45:1 TCLP 44:16,17,22 44:23 45:2 team 71:11 technical 33:1 116:18 technician 118:4,5 118:11 Technology 154:15 tell 8:12 9:3 22:3 27:15 30:22 31:10 32:15 43:13 50:8 58:4 67:13,13 68:8 70:11,24 82:13 83:18 84:9 89:10 94:5 95:5 108:5 109:16 111:12 114:3 115:10 116:1 149:15 153:24 telling 139:12 tells 46:1,24 tendered 2:19 term 72:21 117:19 123:6 126:9 151:5 terms 79:23 84:9 86:23 126:10 127:16 140:15 terribly 140:24 test 42:24 44:23 45:2 testified 143:5 146:21 testify 5:17,24 6:4 26:23 27:8 69:1 137:15 140:6 testifying 155:18 testimony 5:10 6:6 27:1 29:5,8 65:20 69:4 tests 145:17 Text 155:3,14 thank 5:5 6:18,19 7:10,21 30:11 54:10 59:17 68:23 69:16 98:3 106:23 137:4 142:2 153:9 155:17 156:20 157:13,14 their 4:1,23 7:22,23 8:1 9:14 30:12 33:2 34:1 72:17 75:4 87:6 141:8 146:19
--	--	---	---	---

thereof 109:15	tie 125:5	Tom 5:23 97:12	trucking 27:14	undergraduate
thing 135:15 146:24	tied 128:7	99:3,7,9 115:2,3	trucks 73:7 87:24	70:13
things 7:5 29:16	Tiered 67:24 68:2	tomorrow 27:4	127:7,9	underneath 63:18
45:19 47:2 63:22	tighten 103:18	137:14 157:19	true 49:3 151:7	89:4
73:18 81:10	filled 102:9	tools 87:14 88:1,10	158:8	understand 133:8
139:12,18 146:18	time 4:1 5:22 7:15	top 49:14 73:3 84:13	truth 140:6	understanding
think 7:8 9:8 19:7	7:18,18 10:19	86:10 88:2 108:17	try 72:17 81:20,22	15:23 26:7 27:17
20:21 28:12,14	11:19 14:22 16:10	108:22	125:4 142:7	27:22 120:4 151:6
29:24 31:20 38:11	18:8 21:20 22:16	Total 10:23 71:23	trying 58:5 147:13	undertake 72:10
54:24 62:22 65:9	23:1,22 26:10,11	71:24 149:8	151:5	unit 33:6 70:21,22
78:13 79:3 83:14	26:22 28:22 29:3	totally 149:4	turn 16:15 22:19	71:13 115:18,21
85:15 87:19 89:21	29:10 35:6 39:13	tow 116:9	76:15 79:21 82:11	117:5,6
93:14 97:19	51:6 54:6 60:23	towards 41:7 64:17	111:4 131:12	University 8:15 31:1
108:24 113:23	62:11 66:14 69:2,3	124:17	turned 145:16	31:2 70:14,16
117:3 122:1	71:22 74:6 76:7	town 84:3,4,8 86:17	turning 16:21 17:3	115:13 154:17
140:17,24 143:13	77:12 90:5 93:17	88:17 89:20,24	17:10 29:21 82:21	unknown 122:15
145:5,17,18,23	96:13 100:24	93:16 105:6	84:1,15 101:10	unless 25:22 73:14
146:8,22 148:7	102:10 107:11	towns 154:19	133:5	unlocked 91:19
149:4 150:17	110:7,18 117:8,9	toxic 44:13,14	Twice 24:22	unmanned 130:9
151:5,18,19	119:9 120:8,19	track 55:11	two 5:10 32:9 34:3	unnamed 94:17
152:22 153:1,10	121:24 122:10	tracks 54:14,21	43:16 49:11 52:5	125:12,16,24
153:19,19 155:18	123:10 129:23	55:13	52:13 78:10 82:3	129:6 136:3
156:1 157:7,15	132:24 134:14	trained 9:8 118:3,12	85:4 87:23 88:1	unpermitted 31:18
third 6:2 106:16	138:14,15,16	118:14,16	90:10 92:10 95:4	unrefined 45:9
140:15	139:18,18,19	training 9:5 11:2,3	104:3 108:19,20	unregulated 32:19
Thomas 2:14 115:9	141:9 142:15	33:15 34:2 72:4,6	112:3,11 114:10	unrelated 39:23
though 27:19 146:4	143:18 146:8,9,10	73:17 118:1,6,8,9	123:14 124:15	until 71:5 137:14
thought 42:14 78:13	146:11 150:5	118:11 154:10,18	126:15 128:3,11	142:14 145:7
103:21 112:5	152:12 154:5	transcript 2:19	134:3,3,15 136:2	upgraded 94:19
143:19 144:2	156:13 157:6	158:9	140:3 154:8	upstream 104:19
146:2,15,19 147:6	timely 146:7	transfer 7:16 142:10	two-minute 106:18	113:5
thousand 10:24	times 33:1,5 73:13	154:15	type 32:15 33:22	use 13:4 18:15 72:21
thousands 44:2	82:18 88:2 148:16	transferred 7:18	123:9 124:9 127:4	75:21 80:22 85:23
threat 18:13 47:1,18	148:17,18	142:8 146:4	127:6 146:24	86:2,20 87:1,17
47:21 50:12,15	Timmy 155:12	150:22 151:1,3,4	typed 139:6	88:3 121:15 125:5
58:7,9 64:19,23	tire 32:17,18 54:21	transferring 147:6	types 44:2	126:9
94:11 102:12	tires 18:1,2,3,6,7,8	151:6	typically 13:9 37:17	used 18:8 19:3 22:23
104:12,13,20	18:11,17 27:11,12	transport 32:21	38:6 51:17 60:18	25:20 27:15 32:17
109:9	27:13,15,16,17,20	transportation	72:24 75:19 85:17	32:18,18 40:6
three 5:12 23:9	31:17 32:18 67:8	33:20 71:18 73:17	95:18 96:7 112:18	42:14 43:16 45:8
55:19 56:20 75:11	67:12,16,17	116:7	117:22 120:18	49:11,12,13,16
90:10 98:23	today 3:8 4:6,22 5:9	trash 32:19 67:8,10	123:24 125:6	52:4,4,4,6,14
107:24 108:1	11:15 12:7 27:2	67:14	129:17 132:9,14	55:17 57:20 58:21
111:20 112:19	92:4 131:6 148:15	traveled 90:7	133:6,7,20 136:8	59:16 63:5 67:5
114:6 123:5,7,14	150:9,12 151:7	treat 32:21		68:21 73:12,14,15
135:24 140:9	156:11	trench 22:22 29:21	U	74:17 78:19 80:17
146:17,22	today's 74:3	Tribromophenol	Uh-huh 41:13 88:8	80:19 86:1,13,17
through 3:23 10:10	together 36:15	46:17	92:1 100:7 120:2	88:2,6,7,10,13
11:14 35:1,17	131:7 140:18,19	tributary 125:13,16	125:2 149:6 156:8	97:3 98:9 111:11
56:19 58:16,18	146:14	125:24 126:1,3,5	ultimately 45:12,18	125:4 127:5
64:7 67:23 72:14	told 26:18 29:24	tried 103:17 146:6	58:11 65:1 97:13	129:18 146:18
72:18 74:3 75:4	48:13,14,18 50:6	truck 16:17 17:11	98:4 113:19	USEPA 118:17
78:23 79:4 81:7	55:5 78:4 81:6	17:12,14,15,19	unable 7:17 142:9	USEPA's 11:6
86:8 111:7 116:7	82:6 85:19,22	18:6 26:12,14	unchanged 48:9	using 43:14 85:22
117:20 118:17,17	86:20 87:1,17	27:11 49:7 54:20	62:16	88:4 129:15
119:1 154:17	88:24 89:11,14,17	55:21,22,23 56:18	under 38:5 53:11	usually 13:16 71:11
thunderstorm 78:11	91:15,23 92:5	57:11 80:12,13,16	63:11 65:19 72:7	80:19 96:9
122:21,24 123:1	103:11 108:4,7	80:17,17,22 86:20	76:5 89:4 110:4	utilized 126:7
thunderstorms	113:14 145:19	87:17 88:13 109:7	112:19,20 119:6	
127:22	Toluene 46:15	109:7	underflow 126:8,9	V

<p>vacuum 80:12,13,16 80:17,22 127:6,9 valve 81:7,9 83:4,6 83:8 103:12,18,19 103:22 vandalism 108:4 138:4 vandalizing 139:1 various 9:5 71:8 116:13 118:16 vectors 18:12 vegetation 54:15,17 55:12,15 56:20,24 62:19 63:19 64:5 88:21 90:16 91:14 123:21 124:8 vehicle 17:4 55:13 vendetta 139:16 140:13 verify 49:3 66:21 verifying 113:19 153:10 versus 158:12 very 7:10 56:21 85:19 86:1 90:21 117:22 125:4,6,6,8 125:8 133:7 140:23 via 60:9 95:16 131:20,23 vicinity 129:3 view 56:13 64:1 violated 3:13 violation 6:11,14 10:11 20:1 24:9,15 37:12 50:20,22,23 51:2,4,6,8,17,21 58:11,14 59:6 63:2 64:17 94:23 95:1,7 95:19,24 96:6,10 96:18,19 97:8 131:2,13,17 132:1 132:10,13 133:5 133:13,23 144:21 151:5 violations 3:14 5:9 6:16 13:15 49:17 49:18 51:1,8 130:23 133:10,12 violator 96:8 130:23 visible 102:22 124:23 128:2 visit 12:19 19:13 20:7 24:23 25:1,3 26:8 29:15 36:6,9 39:21 62:3 66:19 75:12 91:21 92:12 92:19,23 98:15 99:14,18 101:8,23 101:24 113:7,12</p>	<p>120:14,19 121:5 122:22 123:8 visited 129:13 visits 71:4 74:14,23 105:15 117:15 VN 95:22 96:7 VNs 96:3 volatile 41:22,23 43:16,23 44:2,4,4 44:13 47:23,23 50:16 volatilization 50:18 volatilized 41:23 vs 3:4</p> <p style="text-align:center">W</p> <p>Wabash 88:23 89:3 98:10 105:11 107:16 119:23 wait 143:15 walk 42:1 walked 40:2 42:10 55:9 Walker 155:12 walking 39:17 wall 82:15 123:20 136:13 146:6 walls 40:17 78:6 80:5 Wamac 3:15 5:15 12:9 35:20 74:17 74:18,21 75:7 78:8 78:10,11 79:4,5,7 84:3 91:4 98:10 105:11 107:17 119:19,21,23 128:1 129:7 140:8 140:9 want 138:3 146:12 153:18,19 156:22 wanted 24:12 29:1 42:21 49:3 143:1 147:4 wash 88:5 washed 64:8 washer 88:12 washing 130:4 Washington 1:14 3:15 149:16 158:10 wasn't 7:7 27:7 81:19 90:21,22 91:24 104:14 108:16,18 142:13 142:22 152:9 157:3,8,8 waste 5:7 9:6,20,21 9:22 10:1,18,21 11:4 15:10 31:16 31:16,17,19 32:22</p>	<p>33:20 36:21,21 40:7 41:4,18 42:12 42:21 43:12,15 45:4,10,23 46:1,2 46:21,22,23 47:3,5 47:6,8,8,9 49:5 52:9,11,11,13,15 53:1 55:6,10,16,20 56:3,13 57:9,20,23 58:6,23 63:4 64:5 64:11 67:5 68:17 68:18,21 72:8 116:11 117:12 133:22 water 1:7 5:13 17:22 18:15,15 19:12,18 20:4 26:16 33:11 41:20 47:19,22 49:24 50:1,13,15,16 57:22,22,23 58:1 58:10,10 64:7,23 64:23 71:3 72:6,8 72:24 73:2,4,4,10 78:24 82:2,3,4 84:13,14 85:1,2,3 85:10,10,17 86:6,8 86:10 88:2,4,4 90:15 94:7,8,15 101:5,6,13,14,22 102:14,18 104:13 108:17 109:11,11 109:12,12 111:22 111:22,22 117:18 117:21,23 122:7 123:6 126:7,7 130:19 waterway 84:18 125:8 waterways 73:13,14 86:5 130:20 way 89:22 94:17 Wayne 149:16 weeks 70:7 well 4:21 7:8,13 9:9 14:5 21:10 26:21 26:22 27:4,5,8,19 30:4 31:18,24 32:19 33:19,22 39:23 52:24 53:8 55:5 67:14 68:6 72:4,6 78:18 85:19 86:3,5 87:1 90:20 91:7,8,14,22 95:7 98:14 101:16 102:9 108:16 109:3 112:3,19 113:13 117:15,18 121:17 122:7 123:17 129:20</p>	<p>133:21 139:21 140:17,19 142:4 142:16 146:2 147:12 148:20 150:8,21 151:1,7 151:14,17 152:14 154:7 wells 148:24 149:8,9 149:22 well's 151:11 well-being 116:4 went 19:15 50:4 55:9 67:14,15,17 90:9 91:7,23 105:1 113:3 143:20 154:2 were 17:22,24 18:3 18:3,5,19,22,22 19:10,18 21:1 22:1 24:1 26:16 27:16 27:17,20,21 32:10 32:13 33:6 38:14 42:5 47:11,16 48:12 49:8,17,24 50:5,16 57:10,10 58:5 61:18 67:5 73:18 76:8,13 77:16 79:24 81:1 81:13,16 82:11 85:5 86:18 87:8 88:18,22,22 89:14 90:4 92:10,22 93:4 95:8 96:3 99:5 102:2 107:20 108:17 112:2,13 112:15 113:11 114:10,10 121:3 121:15 122:4,5,12 123:7 124:12 126:6,6,15 127:3 127:21,22 128:16 128:24 129:14,15 129:22 136:7,11 136:15 145:21 146:16 152:11 155:18 157:4 weren't 85:19,20 90:20 west 124:17 125:11 130:11 we'll 27:4 106:20 114:21 139:20 we're 3:7 34:13 69:14 92:3 106:7 111:23 116:24 142:5 we've 118:16 140:8 150:8,14 whatsoever 129:19 WHEREOF 158:16</p>	<p>while 17:24 18:19 21:1 24:1 37:15 38:14 39:24 48:11 49:8 61:18 76:13 81:1,20 82:11 86:18 88:22 93:4 102:2 121:3 122:12 124:12 128:24 white 56:7 73:10 149:16 Whitler 15:19 16:2 19:15 53:4 55:1,18 77:19,20 105:16 108:1 122:14,23 122:23 152:17 Whitler's 15:21 19:20 whole 138:4 142:4 144:18 wide 40:9 wife 146:24 wildlife 130:19 wire 85:22,23 87:16 withheld 146:18 witness 6:7,20 8:3,6 25:5,7 30:12,16 68:22 69:1,3,5,8 69:11,20 70:1 115:1,4 137:5,7,13 137:16,19 141:17 141:21 157:20 158:16 witnesses 2:8 3:20 7:22,23 woman 91:4 wooded 58:3 90:1 125:11 woods 102:6 124:21 Woody 77:21,23 word 155:7 words 49:12 52:3,4 122:24 155:14 work 8:20 9:14 11:17 35:3 73:24 87:14,16 97:4 109:4 132:8 149:24 152:8,9 157:5 worked 71:13,16 91:14,15 115:21 117:3 worker 108:20 workers 87:9,10,11 87:12,13,18 88:1 working 11:9 71:12 80:4 85:19 87:13 109:16 112:21 116:17 153:21 wrap 157:15</p>
---	---	--	--	--

write 153:18	1,000 34:19 117:15	19 118:19 119:10,12	114:5 136:23	41:12,12 46:16
writing 61:5	10 3:6 40:9 43:7	19th 59:14 107:20	158:10,17	56:22 89:8
written 9:13 138:5	55:24 56:12 57:3	109:15 112:16	21 131:9,11,16,17	4th 134:1 135:21
wrong 99:4 142:18	73:21 74:7,9 79:13	1910-120 118:4	131:19 132:21	41 115:23
144:13	83:21,23 114:21	1950 154:4	133:1,4	42 128:23
wrongly 145:15	128:5,6	1975 115:15	21st 78:1,12 158:17	43 131:3
	10th 98:1	1980 148:23	210 82:8	44th 1:22
X	100 54:13 55:10	1983 8:18	22 155:23 156:14,18	5
X 2:7 43:11	72:1,2	1988 31:1	22nd 38:15 39:2,22	5 19:6 23:16 34:21
Xylene 46:16	101 1:15 158:11	1990 32:7,11 118:15	48:9,17,18 76:16	35:7,9 56:19,24
X201 43:12,13	101.600 3:23	1993 31:3	77:10,16,21 81:18	89:8 111:2,4
	101.632 3:24	1995 33:16	83:1 84:15 88:15	114:21 124:19,24
Y	104 36:22,24	1996 14:6	89:8 90:14,19	125:1,12
yards 42:4	11 1:22 75:15 77:13	1997 76:4,17 88:15	99:16 100:4,6,9,11	5th 52:17,22,23
yeah 4:21 15:13,23	77:15 84:1,4,11,13	89:8 92:13 98:17	100:13,16 101:4	53:10,17,23 54:12
24:10 47:17	84:19	98:19 120:9	102:12 103:1	57:19 61:17 62:17
101:21 102:5	11th 92:13,19 93:5	144:21 155:19	104:1,5	50 72:1
104:7,10 111:14	93:23 143:9	156:6	224 98:10 119:23	59 82:9
144:14,15 145:12	112 107:17	1997-01058 131:14	23 115:21 148:23	
145:19 149:10	115 2:15	1998 135:20,21	153:22	6
151:18,21 153:18	12 56:10 57:3 73:2	144:22	23rd 43:3	6 17:10 23:16 46:17
153:19 154:2	73:15 84:1,3,11,12	1998-00071 131:17	24th 109:24 110:13	52:20 54:7,9 57:17
155:2,6 156:1,17	84:13,20 92:16	1999 134:1 144:12	110:22 112:7,17	89:24 90:2 111:15
year 65:8,9,12,14	93:18,22 103:13	148:3	112:20	135:20 136:9,9
71:24 72:2 134:3,3	12th 59:16 67:1	2	24/7/365 115:24	143:6,8 144:12
134:22,23,24	114:5 136:23	2 1:15 12:22 14:23	25 2:10	147:19
136:18 152:4,5	142:21 144:21	15:7 18:18 23:5	26th 113:15	6th 144:5,15 148:3
154:7	12:40 69:16	41:5,6,7 43:11	28 82:9	60 149:4,5
years 9:1 10:16 32:9	12:45 69:19	46:16 54:19,22	28th 79:15 90:24	62226 1:23
71:14 115:21	120 118:5	86:7 94:7 101:10	91:3,6,17,21 100:7	7
117:4,5 119:2,5	126 55:19	101:15 136:8,10	100:9,19 103:4,14	7 23:18 40:10 60:2
148:23 153:22	13 84:15 95:3,13	136:10 143:9	103:24 104:2,6	60:24 61:2 83:10
154:8	96:14,16 106:11	147:19 148:5	105:1 113:13	89:24
yellow 83:8 84:14	106:16	154:20 155:14	29th 48:1 144:22	7th 76:4
111:8	13th 14:6 19:13,24	158:11	145:9	70 2:13 40:16
0	25:18	2-ounce 43:16	3	8
0 88:14 136:9	137 2:16	20 40:9 60:14 74:22	3 18:18 23:8 37:8	8 2:10 17:13 23:19
01 43:12	139 45:20 47:14	78:8 103:13	39:14,16,20 41:11	43:7 61:11 62:12
02-177 1:6 3:3	14 9:1 56:17,18 95:3	115:22 117:4,5	56:19 63:24 82:24	62:14 83:12
084-004316 1:19	95:15 96:14,16	131:6,11,13,22	86:7 124:6	126:14,23
158:23	106:11,16	132:18 133:1,3	3rd 21:2 22:20	8th 66:4
1	14th 52:7,16 142:18	20-yard 49:6	24:14 143:3	80s 117:11
1 11:11,20 12:1	142:20 155:18	200 10:20 117:18	3:45 157:21	9
16:21 23:5 41:1,6	156:5	123:5,7	30 2:12 60:14 78:8	9 65:11,16 66:15,17
43:12 54:19,22	140 12:9 35:20,22	2000 20:5,9,18 21:2	30 2:12 60:14 78:8	83:20,22 126:14
63:14,15 88:14,18	37:2 40:2 45:21	21:13 24:19,23	30th 49:2 61:8,13,19	126:24 157:19
94:1 101:10,10	141 2:17	28:23 36:12 38:15	62:1,6 123:1 130:4	9-ounce 43:18
103:24 104:17,22	148 2:17	38:17 45:16 48:2	30-gallon 49:11	90 118:14
119:22 122:6	15 99:1 120:11	50:11 52:7,16,17	300 108:18	96 12:19 20:16,23
123:13,15 124:15	122:1,3	52:22 53:10,12	31 32:3 50:23 51:5	28:18,20 36:6
125:11 144:18	15th 1:14 158:9	57:7,14 61:16,17	60:7 82:10	97 75:12 90:24 93:5
148:2 150:10,11	15-yard 67:14	97:19 98:1 107:18	31st 38:17 39:8	94:17 98:15 99:5
Is 104:3	150 42:4	110:16 112:16	48:14,22,24 49:1	100:13,19 101:23
1st 98:15 99:5,13	155 34:15	2001 59:14,16 61:8	312 105:11	104:17 121:7
101:8,23 120:9	157 158:8	61:13,19 63:1,6	32-ounce 43:14,15	142:18,21
121:7,22 122:4,5,9	16 99:21 101:1,3	2002 153:7	43:17	9711959 145:5
127:11 129:13,21	16th 158:9	2003 1:14 25:1	4	
130:6 134:11,12	17 107:1,12,14	29:15 66:4 67:1	4 17:3,8 20:12 21:21	
	18 109:22 110:19,21	68:16 113:23	21:23 23:12,16	
	18th 143:12 153:7			

98 134:20 143:3,12
99 96:21,22

--	--	--	--	--