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ILLINOIS POLLUTION CONTROL BOARD

A.F. MOORE & ASSOCIATES,)
Petitioner,)
vs.) No. PCB 96-182
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

REPORT OF PROCEEDINGS at the hearing of
the above-entitled cause before the MICHAEL L.
WALLACE, Hearing Officer, on the 24th day of April,
1996, at the hour of 10:00 o'clock a.m.

Reported by: Judy A. Orlandi, CSR
License No.: 084-002857

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APPEARANCES:

COSBY AND BELL,
77 West Washington Street
Suite 1605
Chicago, Illinois 60602
BY: MR. RICHARD W. COSBY,
On behalf of the petitioner;

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794
BY: MR. JOHN J. KIM,
On behalf of the respondent.

1		I N D E X			
2	WITNESS		DX	CX	RDX RCX
3	KENDRA BROCKAMP				
4	By Mr. Cosby		5		
5	By Mr. Kim			20	
6	BRIAN MOODY				
7	By Mr. Cosby		22		
8	By Mr. Kim			28	
9	ANDREW CARLSON				
10	By Mr. Cosby		29		
11	By Mr. Kim			43	
12	KENDRA BROCKAMP				
13	By Mr. Kim		62		
14	By Mr. Cosby			65	
15	ANDREW CARLSON				
16	By Mr. Kim		71		
17					
18					
19		E X H I B I T S			
20	NUMBER		MARKED		RECEIVED
21	Petitioner's Exhibit				
22	Nos. 1-4		24		
23	No. 5		34		79
24					

1 THE HEARING OFFICER: Pursuant to the direction
2 of the Illinois Pollution Control Board I now call
3 docket PCB 96-182.

4 This is the matter of A.F. Moore &
5 Associates versus the Illinois Environmental
6 Protection Agency.

7 This is a UST appeal. May I have
8 appearances for the the record, please.

9 MR. COSBY: Richard Cosby on behalf of
10 A.F. Moore & Associates, petitioner.

11 THE HEARING OFFICER: For the Agency?

12 MR. KIM: John Kim, assistant counsel and
13 special assistant attorney general for the Illinois
14 EPA.

15 THE HEARING OFFICER: Thank you.

16 Let the record reflect we do have some
17 members of the public here.

18 And you have three witnesses to present?

19 MR. COSBY: Two witnesses.

20 THE HEARING OFFICER: Do you wish to make an
21 opening statement?

22 MR. COSBY: I would like to waive that.

23 THE HEARING OFFICER: Mr. Kim?

24 MR. KIM: I don't need to make a statement.

1 THE HEARING OFFICER: All right. So are there
2 any preliminary matters while we're on the record?

3 MR. COSBY: None that I can think of,
4 Mr. Hearing Officer.

5 THE HEARING OFFICER: Mr. Kim?

6 MR. KIM: I have none.

7 THE HEARING OFFICER: Call your first witness,
8 please.

9 MR. COSBY: I would like to call Kendra
10 Brockamp as my first witness as an adverse witness.

11 THE HEARING OFFICER: All right.

12 (Witness sworn.)

13 THE HEARING OFFICER: You may proceed,
14 Mr. Cosby.

15 MR. COSBY: Thank you.

16 KENDRA BROCKAMP,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MR. COSBY:

21 Q. Would you state your name, please.

22 A. My name is Kendra Brockamp.

23 Q. Where do you reside?

24 A. 416 South State Street in Chatham,

1 Illinois.

2 Q. And by whom are you employed?

3 A. The Illinois Environmental Protection
4 Agency.

5 Q. Are you employed by the Land Bureau of
6 that agency?

7 A. Yes, I am.

8 Q. And what are your specific duties at the
9 Illinois EPA?

10 A. My primary duty is to manage various
11 projects, primarily that involves reviewing
12 engineering and remedial reports that come in on
13 various sites.

14 I may manage up to 200 projects at one
15 time. These would include reviewing reports,
16 providing written comments, coordinating with other
17 agency personnel.

18 Q. Are you familiar with the 7444 West
19 90th Street, Bridgeview, Illinois site?

20 A. I am project manager for that site.

21 Q. And that's the site that's the subject of
22 this appeal, isn't it?

23 A. Yes.

24 Q. I may refer to it simply as the site in

1 the future, and you understand that that would
2 be -- I would be referring to the 7444 West 90th
3 Street site in Bridgeview?

4 A. Yes.

5 Q. Thank you.

6 Did you have occasion on July 7, 1994 to
7 visit the site in Bridgeview?

8 A. No.

9 Q. Did you have occasion on September 8, 1994
10 to visit the site in Bridgeview?

11 A. No.

12 Q. Did you have occasion on September 9, 1994
13 to visit the site in Bridgeview?

14 A. No.

15 Q. At any time in 1994 or 1995 did you have
16 occasion to visit the site in Bridgeview?

17 A. No, I did not.

18 Q. Okay. I believe you said that you were
19 the agency employee who was assigned the task of
20 reviewing the 45-day report and the corrective
21 action completion report submitted by A.F. Moore &
22 Associates?

23 A. I'm not sure I said that, but I was that
24 person.

1 Q. Very good. Then the question was worth
2 asking.

3 Are you the Illinois EPA employee who
4 initially proposed that A.F. Moore & Associates
5 conduct a groundwater investigation at 7444 West
6 90th Street?

7 A. Yes, I made that request.

8 Q. I'm going to read an interrogatory number
9 5 of the interrogatories submitted to the Agency by
10 A.F. Moore & Associates, and I'm going to read the
11 answer, and I'll ask you a question about your
12 answer -- or the answer afterwards.

13 The interrogatory states "Do you contend
14 that groundwater is or was present at the site?"

15 The answer provided is "The Agency
16 contends that Moore provided information to the
17 Agency representing groundwater with a sheen was
18 removed from the excavation site on or around
19 September 8 or 9, 1994 (the date of remediation of
20 the site)."

21 Hearing that answer in response to that
22 particular interrogatory, do you agree with the
23 answer to interrogatory number 5?

24 A. Yes.

1 Q. Okay. Also, I'm also going to read
2 interrogatory number 6 and the answer and ask you a
3 question about the answer.

4 Interrogatory 6 states "If your answer to
5 interrogatory number 5 is affirmative, please
6 identify all information in your possession that
7 supports and/or refutes your contention that
8 groundwater is or was present at the site."

9 The answer, and I quote, "The Agency's
10 answer to interrogatory number 5 is based upon
11 information provided to the Agency by Moore in the
12 form of its 45-day report submitted on behalf of
13 Moore by Turnkey Environmental Consultants, Inc.
14 (Turnkey), dated March 14, 1995 and received by the
15 Agency on March 16, 1995. Additional information
16 submitted to the Agency by Turnkey on behalf of
17 Moore dated September 21, 1995 and received on
18 September 25, 1995 provides information contrary to
19 the previous information provided by Moore to the
20 Agency."

21 That finishes the reading of the answer.
22 Do you agree with the answer to interrogatory
23 number 6?

24 A. Yes.

1 Q. Okay. Can we agree that you proposed that
2 A.F. Moore & Associates conduct a groundwater
3 investigation at 7444 West 90th Street because of
4 the way the company answered question C-5 of the
5 45-day report?

6 And if I may, I can hand you your copy of
7 the Agency administrative record, and on Page 4 of
8 that record is the 45-day report and the answer to
9 C-5.

10 A. Yes.

11 Q. Pardon?

12 Did you just answer the question?

13 A. No, I responded that I see that.

14 Q. Okay. Do you want me to read the question
15 back to you?

16 A. If you don't mind, please.

17 Q. Okay. Can we agree that you proposed that
18 A.F. Moore & Associates conduct a groundwater
19 investigation at 7444 West 90th Street because of
20 the way the company answered question 5 -- C-5 of
21 the 45-day report?

22 A. Yes.

23 Q. Can we agree that A.F. Moore & Associates'
24 corrective action completion report was denied on

1 January 12, 1996 because the company had not
2 conducted a groundwater investigation?

3 A. Yes.

4 Q. Can we agree that you would not have
5 proposed that A.F. Moore & Associates conduct a
6 groundwater investigation of the 7444 West
7 90th Street site if you had no basis to believe
8 that groundwater was present at the site?

9 A. No.

10 MR. COSBY: With permission of the hearing
11 officer could I have the question and answer read
12 back.

13 THE HEARING OFFICER: Would you read the last
14 question and answer back, please.

15 (Record read as requested.)

16 BY MR. COSBY:

17 Q. Did you understand my question?

18 A. Yes, I did.

19 Q. So even if you had no basis to believe
20 groundwater existed at the site you would have
21 still required a groundwater investigation?

22 A. Yes.

23 Q. So it's fair to say that you require
24 groundwater investigations to be conducted at all

1 sites that you review?

2 A. No.

3 Q. Maybe I'm missing something here.

4 Clearly if you have a basis to believe
5 groundwater exists at a site then you would require
6 a groundwater investigation, is that correct?

7 A. Yes.

8 Q. Okay. But you've testified that even if
9 you have no basis to believe groundwater is present
10 at a site you would still require groundwater
11 investigation?

12 A. Yes, that's a possibility.

13 Q. How do you distinguish between the
14 sites -- how do you determine whether a groundwater
15 investigation should be conducted?

16 A. Primarily whether or not there is the
17 possibility that contaminated soils come in contact
18 with groundwater or if there is the presence of
19 free product or sheen noted at the site and the
20 excavation or on top of the ground.

21 Q. So if there is water at a site with a
22 sheen on it then that might suggest to you that a
23 groundwater investigation is necessary?

24 A. Yes.

1 Q. Regardless of where that water comes from?

2 A. Yes.

3 Q. Okay. And we can agree that the only
4 evidence that you have of the existence of
5 groundwater in the excavation at 7444 West
6 90th Street is found in the answer to question C-5
7 of the 45-day report?

8 A. Yes.

9 Q. Can we also agree that the log of the
10 underground storage tank removal found at Page 62
11 of the Agency administrative record and prepared by
12 Ronald H. Davison, D-a-v-i-s-o-n, a storage tank
13 safety specialist employed by the Office of the
14 State Fire Marshal makes no mention of the
15 existence of groundwater in the excavation of
16 July 7, 1994?

17 A. Yes.

18 Q. And, of course, we can agree that the
19 phrase groundwater with a sheen is part of the
20 printed part of the 45-day report form?

21 A. You're referring again to C-5?

22 Q. Absolutely.

23 A. Yes.

24 Q. Can we agree that the record of the

1 National Oceanic and Atmospheric Administration
2 found at Pages 100 and 101 of the Agency's
3 administrative record shows that it rained in the
4 Chicago metropolitan area between July 7, 1994 and
5 September 9, 1994?

6 MR. KIM: I have an objection on two points.

7 First of all, I'm just unclear as to
8 whether or not these references to the pages in the
9 administrative record are being done with the
10 thought that those would actually be offered as
11 evidence and, second, I don't believe that, at
12 least as far as the logs, the precipitation logs
13 that I have in my copy of the administrative
14 records that there is any report for the month of
15 July.

16 MR. COSBY: May I respond, Mr. Hearing
17 Officer?

18 THE HEARING OFFICER: Yes.

19 MR. COSBY: First of all, my question is
20 whether it rained between July 7, 1994 and
21 September 9, 1994.

22 We do have a log for August, which is
23 between those two dates, and maybe that would
24 satisfy the second part of the objection raised.

1 But I will be very happy to stipulate that
2 we do not have a log for July, 1994.

3 With regard to the first part of the
4 objection, we do intend later to introduce the
5 record as evidence.

6 MR. KIM: The entire record or just the
7 portions you're referring to?

8 MR. COSBY: Well, I would be happy to stipulate
9 to put in the entire record as evidence.

10 MR. KIM: Unless it's necessary I think it
11 would be the Agency's preference just to -- and I
12 don't think we have a problem with anything that
13 you're going to offer up, but the Agency would
14 prefer to do this as to the specific pages or the
15 specific documents that you refer to within the
16 record itself.

17 I mean, I would assume that would take
18 care of your concern.

19 MR. COSBY: Can we go off the record for a
20 second, Mr. Hearing Officer?

21 THE HEARING OFFICER: Off the record.

22 (Discussion held off the record.)

23 THE HEARING OFFICER: We can handle this later
24 on, I guess when we get to it, but go ahead.

1 There is an objection pending, I guess,
2 that I think we've taken care of in terms of
3 Pages 100 and 101.

4 MR. KIM: I think by his stipulation, yes, we
5 have.

6 THE HEARING OFFICER: All right.

7 And your answer is?

8 THE WITNESS: Could you repeat the question,
9 please.

10 MR. COSBY: I'll be happy to repeat the
11 question.

12 BY MR. COSBY:

13 Q. Can we agree that the record of the
14 National Oceanic and Atmospheric Administration
15 found at Pages 100 and 101 of the Agency
16 administrative record show that it rained in the
17 Chicago metropolitan area between July 7, 1994 and
18 September 9, 1994?

19 A. The records do indicate that, yes.

20 Q. Can we agree that rainwater entered the
21 excavated and backfilled area that until July 7,
22 1994 contained the 8,000 gallon diesel fuel tank at
23 the site?

24 MR. KIM: Objection as to foundation.

1 I think Ms. Brockamp has testified that
2 she did not visit the site at any time during 1994
3 or '95.

4 THE HEARING OFFICER: That objection is
5 overruled.

6 She could either agree or disagree as the
7 question is phrased.

8 THE WITNESS: No, I can't agree with that.

9 BY MR. COSBY:

10 Q. And the reason is that you have no
11 knowledge that rainwater did enter the site or
12 enter the excavation?

13 A. Right, I did not observe that activity.

14 Q. Pardon?

15 A. I did not observe that happening.

16 Q. And that was because you never were at the
17 site?

18 A. That's correct.

19 Q. Can we agree that if rainwater does
20 infiltrate, that is, infiltrate a site that has
21 contamination in it, contaminated soil in it, that
22 it is likely that the infiltrating rainwater would
23 come in contact with soils contaminated with the
24 release from the tank and acquire a petroleum sheen

1 from that contact?

2 A. That is possible.

3 Q. Can we agree that if Moore properties had
4 sent out a 45-day report with the letters
5 g-r-o-u-n-d of the word groundwater in question C-5
6 of the report form crossed out that you would have
7 had no basis to believe groundwater existed at the
8 excavation at the site?

9 A. That's correct.

10 Q. Can you tell me what the initials C-O-R-E
11 stand for?

12 A. Cleanup objectives review and evaluation
13 group.

14 Q. In turning to Page 153 and 154 of the
15 Agency record, do you recognize the document
16 contained on those two pages?

17 A. Yes.

18 Q. And what is that document?

19 A. It is a memo submitted by my supervisor
20 and I to the CORE group.

21 Q. And what does the CORE group do?

22 A. Primarily, and specifically in this
23 instance, they review requests for site specific
24 cleanup objectives.

1 Q. And did A.F. Moore & Associates or Moore
2 Properties make such a request?

3 A. Yes, they submitted that request.

4 Q. Turning to the second page of the report,
5 which is Page 154, I see three signatures, all
6 dated January 11, 1996.

7 Do you see that?

8 A. Yes.

9 Q. And underneath there is a phrase that says
10 CORE concurrence, is that correct?

11 A. Yes.

12 Q. What does CORE concurrence mean?

13 A. It means that they have agreed with the
14 recommendation of the last section.

15 Q. Would it be fair to say that the CORE
16 group agreed to grant A.F. Moore & Associates or
17 Moore Properties the site specific standards or
18 cleanup objectives?

19 A. For soil, yes.

20 MR. COSBY: I have no further questions.

21 THE HEARING OFFICER: Mr. Kim?

22 MR. KIM: Just a moment.

23 (Brief pause.)

24 MR. KIM: I have just a few questions for you,

1 Ms. Brockamp.

2 EXAMINATION

3 BY MR. KIM:

4 Q. You stated that there would be potentially
5 several reasons why a groundwater investigation
6 would be required for a site such as the A.F. Moore
7 property, is that correct?

8 A. Yes.

9 Q. And at the risk of being redundant, could
10 you just very quickly describe what those factors
11 would be again.

12 A. Primary reasons would be when it is
13 suspect that contaminated soil would come in
14 contact with groundwater, also the presence of
15 sheen of free product.

16 Q. And based upon your review of the
17 information submitted by the consultant for
18 A.F. Moore were either of those factors or both of
19 those factors evident at the site?

20 A. Yes.

21 Q. You also testified briefly as to -- I'm
22 referring to Page 62 of the administrative record.

23 You also testified as to the log of
24 underground storage tank removal, which is a form

1 that is prepared by the Office of the State Fire
2 Marshal.

3 What is the date of that form's
4 preparation?

5 A. July 7th. My copy is cut off, but I
6 believe it's 1994.

7 Q. Is there any information contained on this
8 log which describes the status of the site on any
9 date after July 7th of 1994, assuming that is the
10 date?

11 A. No.

12 Q. The last question that I have for you is
13 turning to Page 4 of the administrative record,
14 which is the Agency's 45-day report, and if you
15 could turn your attention to section C-5, was there
16 any modification of the language that is contained
17 in that form, or in that sentence?

18 And when I say modification, I mean any
19 modification in the manner described by Mr. Cosby?

20 A. No.

21 MR. KIM: I have nothing further.

22 THE HEARING OFFICER: Redirect?

23 MR. COSBY: Nothing.

24 THE HEARING OFFICER: Thank you, Ms. Brockamp.

1 You may step down.

2 You may call your next witness.

3 MR. COSBY: Yes. I would like to call
4 Mr. Moody.

5 (Witness sworn.)

6 THE HEARING OFFICER: You may proceed.

7 BRIAN MOODY,

8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. COSBY:

12 Q. Would you state your name, please.

13 A. Brian Moody.

14 Q. Where do you reside, Mr. Moody?

15 A. 12950 Silver Fox Drive in Lemont,
16 Illinois.

17 Q. And by whom are you employed?

18 A. I'm employed by A.F. Moore & Associates.

19 Q. And can you briefly describe your duties
20 for A.F. Moore & Associates?

21 A. We are an industrial land developer. We
22 build and lease industrial warehouses, light
23 warehouses, and I construct, lease, collect the
24 rents, all the day-to-day activities for A.F. Moore

1 & Associates.

2 Q. Did you have occasion to observe the
3 removal of an 8,000 gallon diesel fuel tank from
4 7444 West 90th Street in Bridgeview, Illinois?

5 A. Yes.

6 Q. In 1994?

7 A. Yes, I did.

8 Q. And that tank was removed on July 7, 1994?

9 A. That is correct.

10 Q. Were you at the site during removal?

11 A. Yes.

12 Q. After the tank was removed did you have
13 occasion to view the excavation from which the tank
14 was removed?

15 A. Yes, I did.

16 Q. Did you observe any groundwater in the
17 excavation?

18 A. No, I did not.

19 MR. COSBY: If we could have the court reporter
20 mark some exhibits.

21 THE HEARING OFFICER: Yes. Let's go off the
22 record.

23 (Discussion held off the record.)

24

1 (Whereupon, Petitioner's Exhibit
2 Nos. 1-4 were marked for
3 identification.)

4 THE HEARING OFFICER: All right. Back on the
5 record.

6 MR. COSBY: Please?

7 THE HEARING OFFICER: You may proceed.

8 BY MR. COSBY:

9 Q. Mr. Moody, I'm going to hand you four
10 exhibits, Exhibits 1 through 4 for the petitioner,
11 and ask you if these are the photographs that
12 you -- I'm sorry, I don't know -- could we have the
13 last question read back.

14 (Record read as requested.)

15 BY MR. COSBY:

16 Q. Mr. Moody, did you have occasion to take
17 photographs of the excavation on the 7th of July,
18 1994?

19 A. Yes, I did.

20 Q. I hand you what has been marked
21 Petitioner's Exhibits 1 through 4 and ask you if
22 these are the photographs that you took?

23 A. Yes, they are.

24 Q. Can you examine those and let me know

1 whether those four photographs accurately depict
2 the scene that you saw when you took the
3 photographs?

4 A. They do.

5 Q. Handing you Petitioner's Exhibit 1, can
6 you tell me what that photograph depicts?

7 A. It's a photograph looking east of the tank
8 uncovered, and present are the village fire
9 inspector, the owner of the excavating company,
10 Tony Biassi of Midwest Environmental and the State
11 Fire Marshal that was present that date.

12 Q. And the picture also shows the tank in
13 question, is that not right?

14 A. That is correct.

15 Q. I now hand you Exhibit 2, and ask you what
16 that picture depicts?

17 A. It's a picture of the site looking north
18 of the tank removed and set to the side for
19 cleanup and removal.

20 Q. And now I hand you Exhibit 3 and ask you
21 what that depicts?

22 A. It's a photograph looking west, looking
23 with the tank -- with the tank uncovered but still
24 in the ground of the site.

1 Q. And, finally, Exhibit 4?

2 A. Similar picture of the same -- the same
3 situation.

4 Q. Okay.

5 A. Looking west with the tank in the ground.

6 Q. Handing you back Exhibit 2, can you tell
7 me what is to the left of the tank?

8 There seems to be some new construction
9 there?

10 A. The same -- at the same time, prior to
11 removal of the tank we were digging a new truck
12 dock for a tenant that was to be taking the
13 building over in the short-term future.

14 Q. How deep was the excavation for the dock?

15 A. The dock walls itself, the dock is 4 foot
16 deep and about another, and another -- about 8 feet
17 deep.

18 Q. Did you observe the excavation for the
19 foundation for the truck dock?

20 A. Yes, we general contracted that ourselves.

21 Q. And did you observe that excavation when
22 it was open?

23 A. Yes, I did.

24 Q. Did you see any groundwater in that

1 excavation?

2 A. No, I did not.

3 Q. Have you ever had occasion to be
4 responsible for the removal of any other tank for
5 A.F. Moore & Associates?

6 A. Prior to this removal we removed a
7 10,000 gallon steel diesel fuel tank approximately
8 two blocks east of this location.

9 Q. Did you observe the removal of that 10,000
10 gallon diesel tank?

11 A. Yes, I did.

12 Q. Did you observe the excavation after the
13 tank was removed from the ground?

14 A. Yes, I did.

15 Q. Did you observe any groundwater in that
16 excavation?

17 A. No, I didn't.

18 MR. COSBY: I have no further questions of
19 Mr. Moody at this time on direct.

20 THE HEARING OFFICER: Mr. Kim, cross-
21 examination?

22 MR. KIM: I have a few questions.

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CROSS-EXAMINATION

BY MR. KIM:

Q. Mr. Moody, the photographs that have been marked as Petitioner's Exhibits 1 through 4, were those submitted at any time to the Agency either as part of the 45-day report or as part of the information that was provided in September of '95, which I think was part of the site specific objectives?

A. I don't believe so.

Q. And you referred to photograph No. 2 -- or Petitioner's Exhibit No. 2 also depicting an adjacent excavation involving construction of a truck dock?

A. Correct.

Q. Was any information about that excavation submitted either with the 45-day report or with the September, 1995 submittal?

A. I don't believe so.

Q. And along the same lines, you testified that you participated previously in the removal of another tank in the general vicinity.

Was any information regarding that removal included in either the 45-day report or the

1 September, 95 submittal?

2 A. I don't believe so.

3 MR. KIM: I have nothing further.

4 THE HEARING OFFICER: Any redirect?

5 MR. COSBY: No.

6 THE WITNESS: Okay. Thank you, Mr. Moody. You
7 may step down.

8 MR. COSBY: I would like to call my last
9 witness.

10 THE HEARING OFFICER: All right.

11 MR. COSBY: Mr. Carlson.

12 (Witness sworn.)

13 THE HEARING OFFICER: You may proceed.

14 MR. COSBY: Thank you.

15 ANDREW CARLSON,

16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. COSBY:

20 Q. Would you state your name, please.

21 A. Andrew Carlson.

22 Q. And where do you reside, Mr. Carlson?

23 A. 355 West Slade in Palatine.

24 Q. And by whom are you employed?

1 A. Turnkey Environmental Consultants.

2 Q. And how long have you been employed by
3 Turnkey Environmental Consultants?

4 A. Approximately eight years.

5 Q. What are your duties at Turnkey?

6 A. I oversee and manage a variety of
7 environmental safety and health projects.

8 Q. And in your duties overseeing
9 environmental projects have you ever had occasion
10 to supervise leaking underground storage tank
11 remediation efforts?

12 A. Yes.

13 Q. Approximately how many such site
14 remediation efforts have you supervised for
15 Turnkey?

16 A. Approximately 30 actual remediations.

17 Q. In any of the 30 or so lust sites that you
18 have supervised for Turnkey have you ever
19 encountered groundwater?

20 A. Yes.

21 Q. Have you ever ignored groundwater at a
22 lust site for remediation of which you were
23 supervising?

24 A. No.

1 Once we encounter groundwater we have to
2 abide by a different set of rules.

3 Q. Is it generally true that Turnkey
4 Environmental earns more fees at sites that are --
5 where groundwater is encountered?

6 A. We would -- groundwater investigations are
7 not inexpensive and, therefore, we are going to
8 incur additional bills related to conducting the
9 groundwater investigation.

10 THE HEARING OFFICER: I'm sorry, Mr. Carlson,
11 did you say not inexpensive?

12 THE WITNESS: Groundwater investigations are
13 not inexpensive, they're expensive, therefore, we
14 incur additional bills.

15 BY MR. COSBY:

16 Q. What, if anything, do you do at those last
17 sites where groundwater is encountered?

18 A. Different things can be done, but
19 generally a groundwater study would likely be a
20 scenario, that we would conduct a groundwater study
21 at that site.

22 Q. Did you supervise the remediation
23 activities at the 7444 West 90th Street site in
24 Bridgeview in September of 1994?

1 A. Yes.

2 Q. Approximately how much soil was removed
3 from the site at that time?

4 A. A total of approximately 525 yards.

5 Q. That's 525 cubic yards?

6 A. Correct.

7 Q. Did you use an H New (phonetic) meter to
8 determine the extent of contamination at the site?

9 A. H New is actually a brand. We used an MSA
10 photoionization meter, which is a similar thing
11 that measures volatile organic compounds and allows
12 one to get a reasonable -- it's a field instrument,
13 it gives you a reasonable idea to ascertain the
14 extent of contamination of the soil until you get
15 to a point where you feel you can use laboratory
16 analysis to verify that the soil is clean.

17 Q. Did the results of using the
18 photoionization meter cause you to take additional
19 action?

20 A. After screening the excavation to a point
21 of about 4 feet from the excavation and trying to
22 abide by Title 16 laws I deemed at that point that
23 the levels in the soil were drastically,
24 dramatically decreasing, and that as opposed to

1 stopping and filling the excavation and conducting
2 a deep hole boring, as would be required, that that
3 expense would be justified because of only a few
4 additional -- actually about 175 additional cubic
5 yards turned out to clean the site up and the
6 expense was less than it would have been to conduct
7 the deep hole boring.

8 Q. Did you observe the excavation after soil
9 removal was completed?

10 A. Yes.

11 Q. From where did you observe the excavation?

12 A. Both in the top and inside the
13 excavation. I entered the excavation.

14 Q. Could you describe the soils that were
15 exposed by the excavation at that time.

16 A. Soils? There was a cap maybe of about a
17 foot and a half of asphalt and brown, fairly firm
18 brown silty clays started off down to around 4,
19 5 feet where they began turning to stiff brown,
20 silty gray, brown and gray clays down to very stiff
21 clays, silty clays down to 12 feet.

22 Q. Did you have occasion to take photographs
23 of the excavation when you were examining it?

24 A. I did.

1 MR. COSBY: If we can mark this last exhibit.
2 (Whereupon, Petitioner's Exhibit
3 No. 5 was marked for
4 identification.)

5 BY MR. COSBY:

6 Q. I had you what has been marked
7 Petitioner's Exhibit 5 for identification and ask
8 you if these are the photographs that you took?

9 A. Yes.

10 Q. And can you tell me what those photographs
11 depict, starting with photograph A?

12 A. Photograph A is a photograph of the
13 excavation after remediation had been completed,
14 looking, I believe, northwest.

15 Q. And what about photograph B?

16 A. Photograph B, I believe, if I'm not
17 mistaken, we're looking east -- I'm sorry, west and
18 also a clear photograph of the completed
19 excavation.

20 Q. And what does photograph C depict?

21 A. Photograph C is a typical sampling
22 location of the closure sampling, soil sampling
23 done.

24 Q. Do these three photographs accurately

1 depict the scene that you saw when you took the
2 photographs?

3 A. Yes, sir.

4 MR. KIM: Just for clarification, this is
5 collectively Petitioner's Exhibit No. 5?

6 MR. COSBY: 5.

7 BY MR. COSBY:

8 Q. Do the photographs show the gray and the
9 brown clay that you've described?

10 A. Yes, they fairly well depict that.

11 Q. Did you cause soil samples to be taken in
12 the excavation?

13 A. Yes.

14 Q. Why did you have soil samples taken?

15 A. Once I believe an excavation is cleaned
16 out, you're required to take soil sampling to prove
17 that no further contamination exists in the
18 excavation.

19 Q. And how many soil samples were taken?

20 A. I took six samples, as would be required,
21 two beneath, on the floor of the excavation beneath
22 the fuel tank and one on each wall, representative
23 sample of the wall.

24 Q. How far into the wall and the floor of the

1 excavation were the soil samples taken?

2 A. Probably in about 6 inches, 4 to 6 inches.

3 Q. Was it difficult to obtain the samples?

4 A. Yes. The clays were very, very hard and
5 stiff and dry, and it was very difficult to
6 subsequently even pack them into the sampling
7 container because of the -- the hardness of the
8 clay and the dryness.

9 Q. And that was true for the soil samples
10 from the base of the excavation as well as the
11 walls?

12 A. Correct.

13 The floors were harder, but, correct.

14 Q. Did you observe any groundwater after the
15 excavation was completed?

16 A. No.

17 Q. Did you observe any groundwater when the
18 soil samples were taken?

19 A. No.

20 Q. Did you observe any groundwater after the
21 soil samples were taken?

22 A. No.

23 Q. Did you observe water pumped from the site
24 during the excavation?

1 A. Yes.

2 Q. Based on your experience supervising the
3 remediation of lust sites, have you formed an
4 opinion about the source of the water removed from
5 the site during the excavation?

6 A. Yes.

7 Q. And what is that opinion?

8 A. That the water entered the excavation from
9 precipitation occurring between the period of
10 uncapping the area and removing the tank and
11 subsequent remedial efforts.

12 Q. Did you attempt to determine how thick the
13 clay was that you encountered at the excavation?

14 A. Yes.

15 After the initial -- subsequent to the --
16 I'm sorry, this was before the original report,
17 45-day report, yes.

18 As I said, short of actually doing a
19 boring to verify this, I was able to use the Berg
20 document and I was able to use the well logs
21 obtained from the Illinois State Geological Survey
22 that were in the area, in the vicinity of this
23 property, somewhat in the vicinity of this
24 property.

1 Q. And what is the Berg document that you
2 just mentioned?

3 A. It's a document under Title 16 used as a
4 reference to show the type of geological formations
5 that are likely to be found beneath a given area
6 prior to conducting a study.

7 Q. Have you been able to determine how close
8 the closest well log that you obtained from the
9 Illinois State Geologic Survey was to the
10 excavation?

11 A. There is a couple within approximately
12 1 half mile of the property.

13 Q. And directing your attention to those well
14 logs, are the well logs that we're talking about
15 found at Page 9 of the Agency administrative
16 record?

17 A. Yes.

18 Q. And the following pages?

19 A. Right, correct.

20 Q. Can you tell me which of the well logs is
21 closest to the site?

22 A. Both the first -- the first two are both
23 in the same section as the subject property,
24 they're located to the southeast of the property,

1 and the southeast quadrant portion of the section.

2 The subject property is in approximately
3 the center, slightly upper center of the section,
4 if I recall.

5 MR. KIM: Objection, or clarification. Could
6 you also give the page number when you say the
7 first two.

8 THE WITNESS: Certainly.

9 MR. COSBY: Unfortunately it's been cut off,
10 but it's the middle one between 090 and 092, so I
11 think we can probably stipulate that it's 091.

12 BY MR. COSBY:

13 Q. What do the well logs tell you, those two
14 well logs tell you about the thickness of the clay
15 at the site?

16 A. That the clays are described as existing
17 down to 50 or 60 feet.

18 Q. Okay. Mr. Carlson, did you prepare the
19 45-day report that was ultimately sent to the
20 Illinois EPA for the 7444 West 90th Street site?

21 A. Yes, I did.

22 Q. When you answered question C-5 of the
23 45-day report did you believe that groundwater had
24 been encountered at the site?

1 A. No, I did not.

2 Q. You answered that question yes though,
3 didn't you?

4 A. Yes.

5 Q. Why did you do that?

6 A. Well, in the past I had submitted reports
7 indicating no to that answer, and yet, like this
8 situation, we had standing excavatory waters
9 removed and the Agency subsequently questioned why
10 I answered no and, therefore, I deemed in the
11 future that I ought to answer yes, and then the
12 explanations following would answer whether I was
13 distinguishing between true groundwater or standing
14 excavatory waters.

15 Q. You're using a phrase for water as opposed
16 to groundwater, can you say that slowly for me?

17 A. True groundwater existing subterraneously
18 as opposed to such as precipitory waters that fall
19 into an excavation, or in the case of an uncapped,
20 a tank that's not capped over a period of years
21 water can enter even in a situation with tight
22 clays and no existence of groundwater, underneath
23 waters can enter into that backfill area and a
24 bathtub is created where water can stand.

1 Q. When you first observed the site in
2 September of 1994 before any material was
3 excavated, did you observe a cap over the site?

4 A. The cap -- I was not present for the
5 original tank removal. The cap had been removed by
6 the time I was hired and visited the site, the cap
7 was removed.

8 And as I understood, the cap had
9 remained -- as I understand, the area was capped,
10 the cap was removed due to the tank excavation, and
11 in the subsequent two months before remediation it
12 remained uncapped.

13 Q. You didn't see a cap when you were there?

14 A. No.

15 Q. Okay. In the future, in preparation of
16 future 45-day reports in situations like the one we
17 have here today would you cross out the word ground
18 of groundwater in question C-5?

19 A. Yes, yes, if that clarifies the situation
20 I certainly will.

21 MR. COSBY: Okay. I have no further questions
22 on direct.

23 THE HEARING OFFICER: Mr. Kim?

24 MR. KIM: Just a moment, please.

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(Brief pause.)

CROSS-EXAMINATION

BY MR. KIM:

Q. Mr. Carlson, just as a matter of clarification, you said you were not at the site when the original work was done, in other words, when the tank was removed?

A. Correct.

Q. Was Turnkey -- had Turnkey been retained by Moore Properties at that time?

A. Not at that time, no.

Q. What was the approximate date that you were retained by Moore?

A. When we actually invoiced or proposed and received a signed proposal was, I'm imagining, within two to three weeks, that's off the top of my head, of the remediation efforts, so around the beginning of September maybe.

That's off the top of my head.

THE HEARING OFFICER: Of '94?

THE WITNESS: Of '94.

MR. KIM: Okay.

BY MR. KIM:

Q. At that time were you aware that the

1 excavation was uncovered?

2 A. Yes.

3 Q. Would that have been common practice had
4 you been retained at the time of the tank removal
5 to leave that kind of excavation uncovered for a
6 two-month period prior to final completion of work?

7 A. Yes.

8 Q. Aside from your observations during the
9 remediation work, and I think it's actually several
10 days in September, isn't it, that the remediation
11 took place?

12 A. Actually, two days that actual soil was
13 removed.

14 Q. Are those two days coinciding with the
15 dates that the water in the excavation was removed?

16 A. Some water was removed on the day prior to
17 beginning the remediation and then water was
18 subsequently removed as we gained depth into the
19 excavation, as we encountered the standing water on
20 the 8th and the 9th, as I recall.

21 Q. Can you give me, or do you know, because
22 it seems a bit unclear, what activities took place
23 beginning, I think, September 7th?

24 A. September 7th, initially a sort of sump,

1 we call it a sump hole was created to allow
2 standing waters to pour in and remove it and begin
3 to dry the soils because the landfill will not
4 accept soils that are significantly wet, they will
5 fail a type of test.

6 On September 8th remedial efforts began,
7 dirt was loaded out, again, a sump was created as
8 we gained depth into the excavation to remove more
9 water.

10 The remediation was completed on the
11 9th with water, the final amount of water being
12 removed in the morning.

13 And on the 9th soil -- soil was trucked
14 out on the 8th. On the 9th it was stockpiled and
15 then removed subsequently on Monday, the 12th.

16 The manifest, you'll note, was signed on
17 Monday, the 12th, as the trucks were not available
18 on Friday.

19 MR. KIM: Do you have a copy of the
20 administrative record?

21 BY MR. KIM:

22 Q. Would you please turn your attention to
23 Page 88 of the record, and what I'm referring you
24 to is some documentation which is under a general

1 subheading beginning on Page 86, which is support
2 for site specific objectives?

3 A. Right.

4 Q. This is all part of the information that I
5 believe was submitted in September of 1995 as part
6 of the site specific objectives report?

7 A. Correct.

8 Q. And, again, if you could look specifically
9 to page 88.

10 A. Okay.

11 Q. And just read very quickly -- or, I'm
12 sorry, just read the first paragraph to yourself
13 and familiarize yourself with what's there.

14 A. Okay.

15 Q. Is that your understanding of the sequence
16 of events?

17 A. Well, no. I'm not entirely correct in
18 describing the sequence in the report.

19 What I just stated is the correct
20 sequence. This is in error, slightly in error.

21 Q. How is that in error?

22 A. It's saying that additional waters removed
23 on September 9th, that's true.

24 Prior to completion of excavation on

1 September 12th, actually what was completed was the
2 removal of the soil on the 12th. The actual
3 completion of the excavation was on Friday, the
4 9th, and that is when soil sampling was conducted.

5 Q. Okay. So when you say excavation
6 completion on the 12th, you really mean --

7 A. That was when the soils were removed to
8 completely wrap up the project, so I'm not
9 completely stating this correctly in the report.

10 Q. You also stated in the report that the --
11 the second sentence on that page, precipitation
12 occurring on September 9 and 10 resulted in
13 additional waters needing to be removed?

14 A. I think they -- the problem that we were
15 incurring in getting waters out so that we could
16 get the soils dry and removed.

17 Q. The last --

18 A. The precipitation on September 10th would
19 not have affected -- I prepared this some time ago,
20 and that would not have affected our project.

21 We did have precipitation in the area at
22 the time that was slowing down the project and
23 causing delays.

24 Q. So it's your testimony today that

1 precipitation occurring on September 9 resulted in
2 additional waters needing to be removed?

3 A. Slightly, and slowing down the project.

4 Q. Do you know how much water was removed on
5 September 9?

6 A. Off the top of my head, 2200 gallons, I
7 believe.

8 There is two manifests for 2200 and one
9 for 28, I believe, so it's either 22 or 28.

10 Q. I believe you're correct, and just for
11 purposes of the record, if you look to Pages 30, 31
12 and 32 of the record, those do give the numbers
13 that you were describing?

14 A. Okay. Yes.

15 Q. And looking at those pages, Page 30?

16 A. Yes.

17 Q. Is the representation there that on
18 September 9, 2200 gallons of water were removed?

19 A. Correct.

20 Q. And looking on Page 31, is the
21 representation there that on September 8, 2200
22 gallons were removed?

23 A. Correct.

24 Q. And then finally on Page 32, is the

1 representation that on September 7, 2800 gallons
2 were removed?

3 A. Correct.

4 Q. Going back to Page 88 and the sequence of
5 events, how much of that 2200 gallons of water that
6 was removed on September 9 was removed due to the
7 precipitation that was occurring on September 9?

8 A. Relatively little. Most of it remained
9 standing in the excavation from the prior two
10 months.

11 Q. So your statement in the first sentence
12 that says primarily -- the first sentence of this
13 paragraph reads "Primarily waters were removed the
14 day prior to and on the first day of excavation,
15 September 7 and 8," closed parens, but I don't
16 believe there is an open one, so...

17 That seems to indicate that the primary
18 removal of water was done on September 7 and
19 September 8, is that correct?

20 A. I'm not sure if that completely indicates
21 that, but water was removed, approximately
22 two-thirds of the water was removed on
23 September 7th and 8th.

24 Q. So the statement in the second sentence

1 that says -- that makes a reference to
2 precipitation on September 9 really was not the
3 contributing factor to the 2200 gallons that was
4 removed, it was rather that, as you say, you
5 removed the first two-thirds and you needed to
6 remove the last third of water?

7 A. Correct.

8 Q. I believe you also testified as to the
9 well logs, and those begin -- I do believe it is
10 Page 91.

11 I apologize for the page number being cut
12 off on your copy of the record.

13 And I always get confused when people say
14 this, you said the closest well log was
15 approximately -- was at either 1.5 miles or
16 0.5 miles?

17 A. 0.5 miles, right.

18 Q. Would you -- this information is found on
19 Page 91?

20 A. Um-hum.

21 THE HEARING OFFICER: You need to say yes,
22 Mr. Carlson.

23 When responding to a question please say
24 yes.

1 THE WITNESS: Okay.

2 BY MR. KIM:

3 Q. What was this information submitted as
4 part of, what report?

5 A. This was part of the site specific report.

6 Q. That was submitted in --

7 A. I believe, yes.

8 It is part of the site specific report.

9 Q. You stated during your testimony that it
10 is your common practice to -- when working on lust
11 projects such as this, to attempt to ascertain
12 whether or not there were well logs that would be
13 available that would give you a better idea of the
14 geologic conditions of the site?

15 A. Yes.

16 Q. And you did that in this case?

17 A. Yes.

18 Q. And you did complete the 45-day report?

19 A. Yes.

20 Q. Turn to Page 7 of the administrative
21 record.

22 Do you recognize what this page is?

23 A. Yes.

24 Q. And is it correct that this is the

1 narrative that was provided along with the 45-day
2 report that you prepared?

3 A. Yes.

4 Q. And would you look to paragraph D, section
5 3, and there is a statement there, "Use and
6 approximate locations of wells potentially affected
7 by the release." And then below that in bold face,
8 "A review of well logs from the Illinois State
9 Geological Survey did not reveal any recorded wells
10 in the vicinity of the property."

11 A. Yes.

12 Q. Were you not aware of the well logs that
13 are found at Page 90?

14 A. No.

15 In fact, I obtained the well logs to make
16 sure there were no wells in a significant vicinity
17 of the property where this lust could have affected
18 it, in other words, coming in a setback zone or
19 such of a well being that close.

20 The well logs were then subsequently used,
21 since I did not have any in the vicinity of the
22 property I had to use -- I had to find well logs as
23 close as possible to the site to demonstrate
24 geology.

1 In this case this was just representing
2 that there were no wells in the area, immediately
3 around the property, that could have been affected
4 by the release.

5 Q. Were the well logs that you referred to
6 here the well logs that are found on Page 91?

7 A. Yes. In this case the well logs showing
8 there is none immediately in the vicinity of the
9 property, and the site specific report showing them
10 as examples as close as possible to the property,
11 being a half a mile to equate geology.

12 Q. So your use of the well log on Page 7 here
13 is not done as to the soil conditions but rather as
14 to whether or not there are any wells that were in
15 the immediate vicinity?

16 A. Correct, sir.

17 Q. All right. If you could now refer to
18 Page 4 of the record, which is the 45-day report
19 itself?

20 A. Um-hum.

21 Q. I'm a bit unclear about an answer you gave
22 during direct testimony.

23 As to section C, question 5?

24 A. Um-hum.

1 Q. You stated that in the past you have
2 marked no and then the Agency would in turn ask you
3 for more information?

4 A. If I marked no -- in the past I marked no,
5 submitted water invoices because we removed
6 standing waters and there wasn't a question.

7 Also in the past, depending on say the
8 project manager or whatnot, I checked no and when
9 they noted water invoices in the back they said you
10 should have checked yes.

11 So having been confused at that time, I
12 thought well, I better check yes, I'm submitting
13 water invoices, and then subsequently the
14 geological explanations would verify that that was
15 not groundwater but excavatory standing water.

16 Q. Do you agree that the representation made
17 by your completing a check mark in the yes square
18 was an affirmative statement that there was
19 groundwater with a sheen removed from the
20 excavation?

21 A. Not groundwater per se, standing
22 excavatory water from precipitation.

23 Q. On Page 4 of the records?

24 A. Right.

1 Q. Where is that specification, or that
2 clarification --

3 A. That clarification is not on Page 4.

4 Q. I'm saying as to that statement on Page 4,
5 C-5, do you agree that the representation there is
6 there was groundwater with a sheen removed from the
7 excavation?

8 A. No.

9 Q. Are you saying there that the
10 representation was made that there was no
11 groundwater with a sheen removed from the
12 excavation?

13 A. I've saying I was confused as to how the
14 Agency preferred that question answered based on
15 whether standing waters or groundwaters were
16 removed.

17 And I personally was not trying to
18 represent that true groundwater with a sheen was
19 removed from the excavation.

20 I was trying to represent that standing
21 water was removed from the excavation.

22 Q. And you stated that it would have been --
23 you feel your position at that time would have been
24 more clearly stated had you stricken out the

1 word -- the letters g-r-o-u-n-d?

2 A. I think in retrospect, yes, and maybe even
3 added the word standing above it.

4 Q. Which was not done in this case?

5 A. Which was not done in the case.

6 Q. If you look to section C, question 1, the
7 first few words there are "Was the tank system
8 removed, and/or abandoned in place:"

9 Did you strike out the words "and/or
10 abandoned in place"?

11 A. Yes.

12 Q. Why did you do that?

13 A. Either the tank system was removed or it
14 was abandoned in place, and that clarified that the
15 tank system was removed.

16 Q. So you felt that striking out those words
17 clarified your position?

18 A. Yes.

19 Q. Okay. If you look back to Page 7 again,
20 which is, again, the removal narrative?

21 A. Okay.

22 Q. And you look to the initial first
23 paragraph there in bold face, you can take a minute
24 to read that through.

1 A. Okay.

2 Q. Where in that paragraph is a clarification
3 made along the lines of what you were talking
4 about, that groundwater was not removed but rather
5 standing water was removed?

6 A. There is no clarification.

7 Q. Let's take it a step further.

8 Is there anywhere in the 45-day report
9 submittal a clarification that groundwater was not
10 removed but rather standing water was removed?

11 A. In retrospect I was not being clear enough
12 under section D-4 where they ask subsurface soil
13 conditions.

14 Unfortunately, I assumed that the absence
15 of an explanation, the absence of an explanation of
16 water indicated that there was not groundwater. In
17 other words, I described subterraneous soil
18 conditions and did not bring into account that
19 there was water.

20 I should probably in retrospect have added
21 a clarification in that geological description
22 saying that no groundwater was encountered.

23 In other words, I was assuming in the
24 absence of not needing to say that groundwater was

1 at the site, because I didn't say it here, that
2 that would be clear; but it was not, therefore, my
3 subsequent -- I became much more specific about
4 that in the subsequent site specific objective
5 report.

6 Q. To be clear, it's true, is it not, that
7 there is no information or no representation or no
8 statement contained in the 45-day report that says
9 anything other than groundwater was removed at the
10 site?

11 A. Again, I say I felt --

12 Q. I appreciate your explanation, but I think
13 it's a yes or no.

14 MR. COSBY: I object to the question. The
15 record is clear what it says.

16 The record is also clear, I think in this
17 case, that we're not talking about one single
18 report that was sent from Turnkey to the Illinois
19 EPA.

20 What we're objecting to is not the fact
21 that they required us to do some more work after
22 the 45-day report was sent in.

23 What we're objecting to, and the reason
24 for this appeal is that the subsequent information

1 supplied by Turnkey to the Illinois EPA, and that
2 information, which Mr. Carlson has alluded to, is
3 extremely clear.

4 I will stipulate for the record that
5 Mr. Kim is right about what's in the 45-day report,
6 but we're not taking an appeal from the 45-day
7 report problem, we're taking an appeal for the
8 subsequent things, and I think the material that
9 we're getting into here and these questions are not
10 relevant to what we're talking about.

11 THE HEARING OFFICER: Are you satisfied with
12 his stipulation?

13 MR. KIM: I am.

14 I was directing my question only to the
15 45-day report.

16 I understand that there was a subsequent
17 submittal. And I think my question was clear and I
18 think his stipulation satisfies my question.

19 Can I take a moment?

20 (Discussion held off the record.)

21 MR. KIM: I have nothing further.

22 THE HEARING OFFICER: Redirect?

23 MR. COSBY: No.

24 EXAMINATION

1 BY THE HEARING OFFICER:

2 Q. Mr. Carlson, what is your title with
3 Turnkey?

4 A. Environmental safety and health
5 consultant.

6 Q. And what is your background?

7 A. I've been in the field for approximately
8 ten years.

9 I have a degree pending from the
10 University of Iowa that is a matter of a legal
11 dispute, but I attended the University of Iowa for
12 five years in the scientific field and have been
13 doing a variety of environmental safety and health
14 projects during that period for the last ten years,
15 including numerous lust projects.

16 Q. And how long have you been with Turnkey?

17 A. About eight years.

18 Q. I just have one other quick question.

19 On September 9th when you say the
20 remediation was completed, does that also mean that
21 the excavated area was then backfilled?

22 A. I don't recall exactly when the excavation
23 was backfilled. I would, if I looked in my
24 records, but I don't have them with me because I do

1 keep records of that nature, and I don't recall
2 offhand if it was backfilled that day or the 11th,
3 12th or whatnot.

4 Q. Why would you say that remediation was
5 complete on the 9th?

6 A. Closure sampling was conducted. Of course
7 laboratory analysis had to verify that the samples
8 were clean, and soils that had been removed from
9 the excavation had to be removed from the site, but
10 the cleaning of the contaminated tank excavation
11 had been complete.

12 Q. So that's what you considered the
13 remediation?

14 A. Yes, sir.

15 Q. And the backfill is not necessarily part
16 of the remediation?

17 A. No, only in that it needs to be
18 backfilled, but it's not part of the environmental
19 aspects of cleaning up the site.

20 Q. Is Turnkey responsible for that, too?

21 A. We're a consultant. Say the funds for the
22 excavatory do not go through us. Generally what we
23 do is spec and bid a job and the bids come back to
24 us, sometimes it's not even done that day.

1 We recommend a contractor, he comes up
2 with a good price, we oversee him to make sure he
3 does his job right and doesn't try to do anything
4 shady with the client and conduct the environmental
5 aspect of determining if the excavation is dirty
6 what action are we going to take, and if it cleans
7 up, to conduct a cleanup, oversee it and do the
8 closure sampling.

9 Q. And then you mentioned the word cap. What
10 do you mean by the word cap?

11 A. I mean as in many tanks are capped by an
12 asphalt or concrete which creates an impermeable
13 barrier, somewhat of an impermeable barrier so that
14 not normally rainwaters would flow into the
15 excavation, although over a long period of time
16 with cracks and whatnot some precipitory waters
17 could.

18 But once an excavation is uncapped and for
19 some period of time if rain occurs, quite a bit of
20 runoff will occur filling the excavation, typically
21 the stone pile or the pea gravel or whatnot that's
22 used in an excavation.

23 A tank placement is on whole very porous,
24 in other words, there is a lot of space that water

1 can retain in that backfill area.

2 THE HEARING OFFICER: All right.

3 Thank you, Mr. Carlson. You may step
4 down.

5 Mr. Cosby?

6 MR. COSBY: That completes my case.

7 THE HEARING OFFICER: Before I forget,
8 Mr. Moody, what is your title with A.F. Moore?

9 MR. MOODY: Vice-president, general manager.

10 THE HEARING OFFICER: Thank you.

11 Mr. Kim?

12 MR. KIM: I call my one witness, Kendra
13 Brockamp.

14 THE HEARING OFFICER: Ms. Brockamp, would you
15 please take the stand again.

16 And you are still under oath.

17 MS. BROCKAMP: Yes.

18 KENDRA BROCKAMP,
19 called as a witness herein, having been previously
20 duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KIM:

23 Q. Ms. Brockamp, I have just a couple
24 questions for you.

1 You were responsible for preparing the
2 July 11, 1995 denial of the -- let me rephrase
3 that.

4 You were responsible for preparing the
5 July 11, 1995 letter that was sent to Moore
6 Properties in response to the Agency's receipt of
7 the 45-day report and corrective action completion
8 report submitted by Moore?

9 A. Yes, I was.

10 Q. And were you also the person responsible
11 for preparing the -- let me make sure I get the
12 right date, the January 12, 1996 letter sent by the
13 Agency to Moore Properties denying the corrective
14 action completion report?

15 A. Yes, I was.

16 Q. And it's the January 12, 1996 letter that
17 is being appealed today.

18 And there is -- what is the -- what was
19 the Agency's basis for the denial?

20 A. The basis for denial was that no
21 groundwater investigation was performed as
22 requested previously.

23 The request was based on the presence of
24 water -- groundwater with a sheen in the

1 excavation.

2 Q. And in response to that concern and that
3 denial point what action would Moore need to take
4 to satisfy that request?

5 A. They would need to perform a groundwater
6 investigation at the site.

7 Q. What would that entail?

8 A. It would entail drilling borings and
9 installing monitoring wells within those borings,
10 subsequently collecting the samples once the wells
11 had been developed.

12 Q. How many borings would be required?

13 A. Minimum of four for the wells.

14 Q. And have any such borings been performed
15 by A.F. Moore or a consultant retained by them?

16 A. No.

17 Q. And based upon your past experience of
18 reviewing technical submittals in response to
19 underground storage tank releases, have you
20 observed changes in geologic conditions within a
21 fairly short proximity of the site?

22 MR. COSBY: Objection -- I withdraw my
23 objection.

24 THE WITNESS: Yes.

1 BY MR. KIM:

2 Q. And could you give a range as to what
3 those proximities might be in terms of any change
4 in geologic conditions?

5 A. For instance, I've had sites that were
6 across the street from each other, one which
7 produced water in wells, the other which did not
8 produce water in wells.

9 There are differences in geologic
10 conditions.

11 MR. KIM: I have nothing further.

12 THE HEARING OFFICER: Mr. Cosby?

13 CROSS-EXAMINATION

14 BY MR. COSBY:

15 Q. What is your educational background?

16 A. I have a bachelor of science degree in
17 biology from the University of Illinois at
18 Champaign.

19 Q. Would you consider yourself to be a
20 geologist?

21 A. No.

22 Q. Would you consider yourself to be a hydro-
23 geologist?

24 A. No.

1 Q. So the testimony you've just given about
2 changes in geologic conditions are strictly
3 anecdotal?

4 MR. KIM: Objection. The question was phrased
5 based upon her experience and review of documents
6 submitted in response to releases of this type.

7 She has not been offered up as an expert
8 in geologic conditions or as a geologist.

9 THE HEARING OFFICER: Objection is overruled.

10 MR. KIM: Objection then to the
11 characterization of anecdotal.

12 THE HEARING OFFICER: Overruled.

13 THE WITNESS: Could you repeat the question,
14 please.

15 THE HEARING OFFICER: Would you read the
16 question back.

17 (Record read as requested.)

18 THE WITNESS: They are based on review of
19 documents.

20 BY MR. COSBY:

21 Q. I think I asked for a yes or no answer.
22 If you can't answer yes or no just tell me.

23 A. I'm not really certain what you mean by
24 anecdotal.

1 Q. Okay. You have no particular knowledge or
2 peculiar knowledge or special knowledge of the site
3 at 7444 West 90th Street, do you?

4 A. No, only that which was provided in the
5 documents submitted by Moore and the Office of the
6 State Fire Marshal.

7 Q. And had the -- as you sit here today you
8 don't know whether there is any groundwater at that
9 site, do you?

10 A. Not from personal observation, no.

11 Q. Or from anything else, do you?

12 MR. KIM: Objection. This is beyond the
13 scope.

14 THE HEARING OFFICER: Sustained.

15 MR. COSBY: I'm sorry?

16 THE HEARING OFFICER: Sustained.

17 BY MR. COSBY:

18 Q. Do you have any knowledge that would
19 suggest to you that the excavation immediately to
20 the -- or immediately adjacent to the excavation
21 from the tank, the excavation that was put in the
22 ground to put in a truck dock, that that excavation
23 is not typical of what happened in the immediate
24 vicinity?

1 MR. KIM: Objection. Again, this is, again,
2 beyond the scope of direct testimony.

3 MR. COSBY: Mr. Hearing Officer, I don't think
4 so. We had a question about a -- a very general
5 question about the variability of geologic
6 conditions in an area, and I think it's perfectly
7 within the scope for me to ask whether this
8 particular -- these two excavations, if she has
9 knowledge that they're dissimilar.

10 THE HEARING OFFICER: I think it's beyond the
11 scope. Objection sustained.

12 MR. COSBY: I would like to make an offer of
13 proof of that.

14 THE HEARING OFFICER: All right.

15 MR. COSBY: My offer of proof would be that
16 question and your answer, if you would give an
17 answer to that.

18 THE HEARING OFFICER: Your answer,
19 Ms. Brockamp?

20 THE WITNESS: I have no knowledge of the
21 adjacent excavation.

22 MR. COSBY: I would like to continue my offer
23 of proof then.

24 As you sit here today you have no reason

1 to suspect that the excavation for the truck dock
2 is in any way different from the excavation for the
3 tank?

4 THE WITNESS: I have no reason to suspect that,
5 no.

6 MR. COSBY: That concludes my offer of proof,
7 Mr. Hearing Officer.

8 THE HEARING OFFICER: Thank you.

9 MR. COSBY: I have no further questions.

10 THE HEARING OFFICER: Redirect?

11 MR. KIM: I have no redirect; however, I would
12 like to rescind my statement that Ms. Brockamp
13 would be my only witness.

14 Could we go off the record for a moment?

15 THE HEARING OFFICER: Off the record.

16 (Discussion held off the record.)

17 EXAMINATION

18 BY THE HEARING OFFICER:

19 Q. Ms. Brockamp, before you step down, would
20 you describe what a project manager is, or does?

21 A. Primarily my responsibilities involve
22 reviewing reports, investigation and remediation
23 reports that are submitted for leaking underground
24 storage tank sites.

1 In response to those reports I prepare
2 notes, memos and ultimately make the determination
3 as to whether or not the information is accurate,
4 complete, if there are any violations with respect
5 to the statutes and regulations that govern the
6 underground storage tank program.

7 THE HEARING OFFICER: All right. Thank you.

8 MR. COSBY: I'm sorry, Mr. Hearing Officer, I
9 forgot to do something, and that was to off the
10 offer of proof testimony that came in, again, as
11 evidence in this cause.

12 THE HEARING OFFICER: I'm sorry, I didn't hear
13 you.

14 MR. COSBY: I forgot to offer the offer of
15 proof testimony as evidence and tender that to you
16 for you to reconsider your decision after you've
17 heard the offer of proof, the questions and the
18 answers. I believe that's a requirement under the
19 Civil Practice Act.

20 MR. KIM: We would certainly renew our
21 objection.

22 THE HEARING OFFICER: And I would, again,
23 uphold the objection, I think it would still be
24 beyond the scope.

1 MR. COSBY: Thank you.

2 THE HEARING OFFICER: Thank you, Ms. Brockamp,
3 you may step down.

4 THE HEARING OFFICER: Mr. Kim, you were saying
5 off the record.

6 MR. KIM: I have a very limited set of
7 questions for Mr. Carlson.

8 THE HEARING OFFICER: During an off-the-record
9 discussion there was an agreement that Mr. Moody,
10 Brian Moody is not trained or educated in geology
11 or hydrogeology, is that correct?

12 MR. COSBY: That's correct.

13 THE HEARING OFFICER: Mr. Carlson, you're still
14 under oath.

15 THE WITNESS: Yes, sir.

16 ANDREW CARLSON,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MR. KIM:

21 Q. Mr. Carlson, I was a little bit unclear by
22 your earlier statement to the hearing officer.

23 You have a degree pending from, I'm sorry,
24 which school?

1 A. University of Iowa.

2 Q. What is that degree in?

3 A. General science.

4 Q. Do you -- aside from that pending degree

5 do you hold any other post high school degrees?

6 A. No.

7 Q. Have you taken any formal courses relating

8 to geology?

9 A. No.

10 Q. Have you taken any formal courses relating

11 to hydrogeology?

12 A. No.

13 Q. Do you have any information -- I'm sorry,

14 do you have any knowledge of geology, hydrogeology

15 or geologic conditions other than information you

16 have retained through the course of your work at

17 Turnkey?

18 A. Yes.

19 Q. And what would that be?

20 A. Personal study.

21 Q. When you say personal study, is that study

22 in formal courses offered by any learning

23 institution?

24 A. No, that would be formal that I answered

1 no to earlier.

2 Q. Okay.

3 MR. KIM: I have nothing further.

4 THE HEARING OFFICER: Mr. Cosby?

5 MR. COSBY: I have nothing.

6 THE HEARING OFFICER: All right. Thank you,
7 Mr. Carlson. You may step down.

8 Anything further, Mr. Kim?

9 MR. KIM: I don't believe so.

10 THE HEARING OFFICER: All right.

11 Is there any objections -- anything
12 further, Mr. Cosby?

13 MR. COSBY: I have nothing further, with the
14 exception of talking about agreements.

15 THE HEARING OFFICER: Is there any agreement,
16 do you want to put into the record any agreement
17 concerning the Agency administrative record?

18 MR. KIM: I would ask, I believe this was
19 discussed earlier, I can't remember if it was on or
20 off the record, the Agency would have no objection
21 as to agreements as put in the record before.

22 THE HEARING OFFICER: No objection as to the
23 agency administrative record being considered as
24 evidence in this case, with the exception that

1 Pages 110 through 145 of that document be excluded
2 from such characterization, and those pages I
3 believe constitute the reimbursement request
4 submitted by Turnkey Environmental Consultants on
5 behalf of A.F. Moore.

6 MR. COSBY: Mr. Hearing Officer, I think I need
7 to ask a couple of questions of Ms. Brockamp before
8 I can agree to that.

9 THE HEARING OFFICER: Well, I think that I'm
10 going to.

11 MR. COSBY: The reason I say that is I believe
12 that Ms. Brockamp was involved in the reimbursement
13 decision making, and I believe that that may have
14 occurred, if not prior to the decision of
15 January 12th, it may have occurred
16 contemporaneously.

17 I don't know that, but this was submitted,
18 or received by the Illinois EPA on November 1,
19 1995, and the decision to deny -- the decision that
20 is being appealed is dated January 12, 1996, and so
21 it's possible that that material was considered
22 even though Ms. Brockamp was engaged in two
23 separate different functions.

24 But we already heard that Ms. Brockamp was

1 the one who made the decision to deny -- or she
2 prepared the letter of January 12, 1996.

3 THE HEARING OFFICER: Well, I think that it's
4 probably unnecessary because it's my understanding
5 it's the Board's practice that they will look at
6 the Agency administrative record that's submitted,
7 and I would not wish to enter into evidence the
8 administrative record and leave out portions of the
9 record inasmuch as the Board may or may not wish to
10 consider those pages, so I'm going to consider the
11 entire administrative record as part of the record,
12 which I think the Board does as a matter of
13 course.

14 And there are these photos. Were they
15 moved?

16 MR. COSBY: We have to do something with
17 those. I would like to offer Petitioner's Exhibits
18 1 through 5 into evidence as Petitioner's Exhibits
19 1 through 5.

20 THE HEARING OFFICER: Any objection?

21 MR. KIM: Again, there is no objection
22 certainly as to Exhibits 1 through 4, which I
23 believe are the individual photographs.

24 The Agency does not object to the

1 admission of Exhibit No. 5, however, again, we did
2 state and restate our objection as to what that
3 document actually depicts.

4 THE HEARING OFFICER: I'm sorry, Mr. Kim, you
5 lost me.

6 MR. KIM: We have no problem with Exhibit No. 5
7 being admitted into evidence, however, we would
8 take issue as to the conclusions that would be
9 drawn from the representation found in that
10 photograph.

11 THE HEARING OFFICER: All right. And you have
12 no objections to 1 through 4?

13 MR. KIM: No.

14 MR. COSBY: Mr. Hearing officer, I'm a little
15 bit perplexed of what the basis of the objection to
16 Exhibit 5 is, or what the conclusions are.

17 THE HEARING OFFICER: Would you care to
18 elaborate.

19 MR. KIM: This may be a fine point, I don't
20 know, all I'm saying is that I have no objection to
21 that being admitted into evidence.

22 I don't think it's inconsistent, however,
23 to say that the Agency does not agree with the
24 representations that have been made by the

1 witnesses for A.F. Moore as to what those photos
2 represent in terms of on-site conditions.

3 In other words, to the extent that we
4 would disagree or contest statements, testimony
5 made by, for example, Mr. Carlson, if those
6 statements would somehow, for example, state that,
7 you know, my opinion is such and clearly you can
8 see by this photograph of that that's what we, you
9 know, we don't agree with that testimony, we don't
10 agree that that's what the photograph shows.

11 I have no problem with those photographs
12 going in, the color copies being used instead of
13 the originals.

14 MR. COSBY: Mr. Hearing Officer, I have a
15 problem with that.

16 What Mr. Kim I guess is saying, since
17 there is no testimony from the Agency that these
18 conditions aren't correct, that Mr. Carlson is
19 lying.

20 I don't understand what Mr. Kim is saying
21 other than that, and I find that highly insulting,
22 and I would like the record to note that.

23 We have a witness -- we have one witness
24 present on behalf of the Illinois EPA, and that's

1 Ms. Brockamp who has never been to the site, who
2 has never seen anything other than some pictures,
3 and now Mr. Kim is saying that he objects to the
4 characterization that Mr. Carlson made of these
5 three photographs on zero basis, they have no basis
6 to say that whatsoever.

7 And I find it highly insulting to my
8 client and to my client's consultant that a
9 suggestion is being made that somehow, I suppose,
10 supposedly considered tricked up photographs by the
11 Agency, even though they have no basis for saying
12 that, and I do not take that kind of suggestion
13 happily.

14 MR. KIM: Mr. Hearing Officer, I apologize if
15 that's the impression Mr. Cosby got.

16 I'm not saying that Mr. Carlson is a liar,
17 I'm not saying that those are not photographs of
18 the excavation.

19 All I'm saying is it's no different than
20 any other piece of evidence that would be admitted
21 at hearings, we would draw different conclusions
22 from what those photos may depict, and I'm not
23 saying that Mr. Carlson has in any way, shape or
24 form lied during his testimony.

1 What I'm saying is it's obviously a
2 fundamental point in this case whether or not there
3 is the possibility or whether or not there was
4 groundwater that existed at the site. There is
5 clearly a difference as to what the Agency contends
6 and what A.F. Moore contends, that's the reason
7 we're having this hearing, and all I'm saying is to
8 the extent that those photographs would play into
9 that kind of difference of factual opinion we
10 object.

11 And perhaps it's best if I just remove my
12 objection because if that's what is causing all the
13 problems, I'm not impugning Mr. Carlson's
14 representation in any way.

15 THE HEARING OFFICER: All right then.

16 Exhibits 1 through 4 are admitted, and
17 Exhibit 5 is admitted, and since you've withdrawn
18 your objection, it's admitted into evidence without
19 any reservations.

20 Okay. Let's go off the record.

21 (Discussion held off the record.)

22 (Whereupon, documents so offered

23 were received in evidence as

24 Petitioner's Exhibit Nos. 1-5.)

1 THE HEARING OFFICER: Back on the record, we've
2 had an off-the-record discussion concerning filing
3 of briefs.

4 The court reporter indicates that the
5 transcript will be due May the 6th, is that
6 correct?

7 THE COURT REPORTER: Yes.

8 THE HEARING OFFICER: And so, therefore,
9 starting from May the 6th the petitioner's initial
10 brief is due May the 20th. The Agency's brief is
11 due June the 3rd, and a reply brief by the
12 petitioner is due June the 10th.

13 The petitioner also indicated in an
14 off-the-record discussion that the decision
15 deadline, which now is June 15th, will be waived
16 until July 18th, 1996, and a filing will be made
17 with the clerk's office to that effect.

18 The hearing officer also finds that no
19 issue of credibility arose during today's hearing,
20 and closing arguments have been waived in lieu of
21 briefs.

22 Is there any anything else, Mr. Cosby?

23 MR. COSBY: I have nothing further.

24 THE HEARING OFFICER: Mr. Kim?

1 MR. KIM: Nothing.

2 THE HEARING OFFICER: Okay. There being
3 nothing further, this hearing is closed.

4 Thank you, very much.

5 (Which were all the proceedings
6 had at this time.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)
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5 JUDY A. ORLANDI, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct excerpt of her shorthand notes so taken as
11 aforesaid, and contains an excerpt of the
12 proceedings given at said hearing.

13

14

Certified Shorthand Reporter

15

16

17 SUBSCRIBED AND SWORN TO

18 before me this _____ day

19 of _____, 1994.

20

21

22

Notary Public

23

24