

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs. No. PCB 97-203

7 SPIRCO ENVIRONMENTAL, INC.,

8 a Missouri Corporation,

9 Respondent.

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13 Proceedings held on September 29, 1998, at 10:00

14 a.m., at the Illinois Pollution Control Board, 600

15 South Second Street, Suite 402, Springfield, Illinois,

16 before the Honorable Amy L. Jackson, Hearing Officer.

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29

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31

32

1 INDEX

2

3 WITNESS PAGE NUMBER

4

5 DAVID FODOR

Direct Examination by Mr. Davis.....17

6 Cross Examination by Mr. Berry.....76

Redirect Examination by Mr. Davis.....136

7 Recross Examination by Mr. Berry.....150

8 JEFFREY DeCANEY

Direct Examination by Mr. Berry.....164

9 Cross Examination by Mr. Davis.....204

Redirect Examination by Mr. Berry.....215

10

11

E X H I B I T S

12

NUMBER MARKED FOR I.D. ENTERED

13

Defendant's Exhibit 1 -- 221

14 Defendant's Exhibit 2 111 221

Defendant's Exhibit 3 114 221

15 Defendant's Exhibit 4 114 221

Defendant's Exhibit 5 118 221

16 Defendant's Exhibit 6 124 221

Defendant's Exhibit 7 -- 221

17

People's Exhibit 1 -- 16

18 People's Exhibit 2 -- 163

19

20

21

22

23

24

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1            P R O C E E D I N G S

2            (September 29, 1998; 10:00 a.m.)

3            HEARING OFFICER JACKSON: Good morning everyone.

4 My name is Amy Jackson and I am the Board's Hearing

5 Officer assigned to this case. For the record, I note

6 that it is 10:00, Tuesday, September 29th, 1998.

7 There are no members of the public present this

8 morning. A sign has been posted outside the hearing

9 room. So I will assume that members of the public

10 will join us if they are interested.

11        The proceeding before us today is Pollution

12 Control Board Number 97-203, the People of the State

13 of Illinois versus Spirco Environmental, Inc.

14        The People's complaint in this case alleges that

15 Spirco Environmental has violated provisions of the

16 Illinois Environmental Protection Act and of the

17 Board's regulations by causing or allowing air

18 pollution, by conducting an unlawful demolition

19 activity, and by failing to use proper measures to

20 control asbestos emissions. All of these being in

21 conjunction with Spirco's late 1995, early 1996,

22 demolition of the former Pabst Brewery site in Peoria,

23 Illinois.

24        Before we begin, for anyone who is not familiar

25 with the Board's procedures, I will let you know that

1 it is the Board and not me that makes the final  
2 decision in this case. My job as the Hearing Officer  
3 is to conduct a hearing process in a neutral and  
4 orderly manner so that we have a clear transcript of  
5 these proceedings. Since the Board Members are not  
6 present for the hearing itself, it is important to  
7 them that we do have a good, clean transcript for them  
8 to review on which they can then base their decision.  
9 It is also my responsibility to assess the credibility  
10 of any witnesses, and I will do so on the record at  
11 the conclusion of these proceedings.  
12 I may at times ask for a clarification from a  
13 witness or an attorney for the record, or I may ask  
14 questions which I believe are necessary for the Board  
15 to understand fully what is taking place.  
16 The Board's procedural rules and the Environmental  
17 Protection Act provide that members of the public  
18 shall be allowed to speak or submit a written  
19 statement at hearing. Any person offering testimony  
20 today will be subject to cross-examination.  
21 Additionally, any statements offered by members of the  
22 public must be relevant to this case and to the issues  
23 currently before the Board. I will call for  
24 statements from any members of the public after the  
25 parties have presented their evidence today.

1 Finally, I would caution everyone that a Board  
2 hearing is much the same as being in court and I would  
3 expect everyone to act appropriately and with proper  
4 decorum.

5 At this time I will ask the parties to make their  
6 appearances for the record. We will begin with the  
7 Complainant.

8 MR. DAVIS: Good morning. My name is Thomas  
9 Davis. I am an Assistant Attorney General on behalf  
10 of the People. Assisting me this morning is Crystal  
11 Myers, Illinois EPA Assistant Counsel.

12 HEARING OFFICER JACKSON: All right. Thank you,  
13 Mr. Davis.

14 And for the Respondent?

15 MR. BERRY: I am Eric Berry of Thompson Coburn  
16 here for the Respondent. I represent Spirco  
17 Environmental.

18 HEARING OFFICER JACKSON: Thank you, Mr. Berry.  
19 Are there any preliminary matters that we need to  
20 address on the record?

21 MR. DAVIS: Yes, and I intend to do that as part  
22 of my opening remarks.

23 HEARING OFFICER JACKSON: All right.

24 MR. BERRY: I have one. It might be a little  
25 irregular, but if you will hear an oral motion in

1 limine, I have one.

2 HEARING OFFICER JACKSON: If you would hang on one  
3 second. I will check the Board's procedural rules  
4 regarding oral motions in limine.

5 Typically Board rules require that all motions  
6 prior to hearing be presented in writing no less than  
7 14 days prior to hearing. However, there are  
8 exceptions and considering that we are all here and  
9 probably the parties have discussed this in advance of  
10 today's hearing, I will allow you to go ahead and make  
11 the motion on the record, and then I will reserve my  
12 ruling until after I have heard the motion.

13 MR. BERRY: Okay. The complainant intends to  
14 submit into evidence some documents from a federal  
15 court case, a court sitting in Missouri, that concerns  
16 my client, Spirco. It arises from a criminal action  
17 that was over two years ago and arose out of a project  
18 that Spirco conducted in Missouri in 1993, five years  
19 ago. And the purpose, admittedly, that it is being  
20 submitted for is for consideration of the Board in the  
21 amount of the penalty under Section 42H of the Act.  
22 And that section specifically limits consideration to  
23 previously adjudicated violations of this Act. This  
24 Act is defined elsewhere as the Illinois Environmental  
25 Protection Act. There is no dispute that this did not

1 involve the Illinois Environmental Protection Act and  
2 by its very terms is not admissable for that purpose.

3 HEARING OFFICER JACKSON: Anything else?

4 MR. BERRY: So I would move to keep these out or  
5 refuse their admission.

6 HEARING OFFICER JACKSON: Okay. Mr. Davis.

7 MR. DAVIS: This is one of the matters that I had  
8 intended to raise to the Board during my opening  
9 remarks. So I am not surprised by the request. We  
10 have had some discussion about it. Perhaps if I could  
11 just proceed and then the Respondent could respond to  
12 my remarks.

13 HEARING OFFICER JACKSON: Okay. I also am not  
14 surprised by this. I anticipated some sort of an  
15 objection regarding these documents. If neither party  
16 has an objection, I am prepared to make a ruling on  
17 the motion in limine at this time.

18 MR. DAVIS: Well, I have not really stated my  
19 basis for foundation or the fact that I do oppose the  
20 motion.

21 HEARING OFFICER JACKSON: Okay. Let me just say  
22 this, then. I will reserve my ruling until after  
23 Complainant's opening remarks. However, I will note  
24 for the record that Section 42H specifically states  
25 that the Board is authorized to consider any matter in



1 the record including, but not limited to, the specific  
2 factors set forth in Subsections 1 through 5. Okay.  
3 Having stated that, I will reserve my final ruling on  
4 the admissibility of these documents until they are  
5 offered by the Complainant in their case.

6 MR. DAVIS: I intend really to do that at the  
7 outset. And let me tender, Ms. Hearing Officer,  
8 People's Group Exhibit Number 1. These are copies of  
9 U.S. District Court documents in a case involving the  
10 United States of America versus Spirco Environmental  
11 Inc., in the Eastern District of Missouri, consisting  
12 collectively as to an information, a criminal  
13 information.

14 And then, secondly, would be the stipulation of  
15 facts relative to sentencing, in essence, the criminal  
16 plea. And then the remaining documents involve the  
17 sentence itself which was a term of probation plus a  
18 \$70,000.00 total criminal penalty or fine. And this  
19 final set of documents has various parts to it, but it  
20 essentially comprises the so-called sentence.

21 Now, that is only one part of what the People  
22 intend to present. But let me focus, since we have  
23 already had an objection, to the basis for this. As  
24 you have noted, Ms. Hearing Officer, there is a basis  
25 in the statute for the Board to consider this type of

1 information, any information in aggravation or  
2 mitigation. And I would assume that if we were to  
3 admit this material then the Respondent would have a  
4 chance either through testimony or in briefs to  
5 respond to that pointing out, for instance, that the  
6 fine has been paid, the probation term is being  
7 complied with, this, that, and the other.

8 But as far as the prosecution is concerned, this  
9 is a legitimate attempt to put relevant evidence  
10 before the Board. It does pertain to previously  
11 adjudicated violations, not necessarily of the  
12 Illinois Environmental Protection Act, but rather in  
13 particular of the Federal Asbestos NESHAP. And as the  
14 Board is cognizant, these federal regulations are the  
15 law in Illinois by virtue of Section 9.1(d) of the  
16 Environmental Protection Act.

17 So in a way it is the same substantive regulations  
18 that we are dealing with in our state. There is no  
19 concern regarding authenticity. In fact, the Board's  
20 records will note that a request to admit genuineness  
21 of documents had been duly filed by the People and had  
22 been responded to by the Respondent. The Respondent's  
23 position on this was that although they didn't contest  
24 that these were, in fact, copies of the actual  
25 documents, they did reserve the right and, in fact,

1 did overtly object to relevance. And that's fine.

2 This is just a portion of our case. The heart and  
3 soul of our case is the testimony of Dave Fodor,  
4 F-O-D-O-R, who is the asbestos inspector for the  
5 Illinois EPA. And he will testify to the results of  
6 his inspections. We believe as you, Ms. Hearing  
7 Officer, have summarized, that we, in alleging three  
8 different counts, have sufficient evidence to show  
9 that it is more likely than not that the control  
10 exerted by Spirco over this asbestos project did  
11 release fibers to the atmosphere, thereby causing or  
12 threatening to cause air pollution.

13 We also believe that it is more likely than not,  
14 as you will see from the evidence, that the written  
15 notification, the logistics and procedures of  
16 notifying the Illinois EPA of the ongoing project, or  
17 rather the upcoming project, and then complying with  
18 those types of procedural requirements in order to  
19 make it a lawful project were not strictly followed.

20 And then the third count is perhaps the most  
21 important, if you will, because it shows a rather  
22 disturbing neglect to follow what we call the worker  
23 safety practices and other control measures to prevent  
24 the releases of asbestos fibers. Now, I won't  
25 summarize the evidence, because we will be hearing

1 shortly from the People's sole witness, but I will  
2 focus on the last remaining component of our case, and  
3 this is a written stipulation of facts that has been  
4 negotiated in good faith between the parties and  
5 executed by each of the attorneys.

6 So I will tender that to you at this time. It has  
7 not been marked as an exhibit but, rather, it is a  
8 pleading.

9 And those are my remarks for the time being.

10 HEARING OFFICER JACKSON: Okay. Thank you, Mr.  
11 Davis.

12 I will note that the stipulation of facts that was  
13 just tendered to me by Mr. Davis is signed by Mr.  
14 Davis, dated September 25, signed by Mr. Berry, dated  
15 September 29.

16 Mr. Berry, you had an opportunity to review the  
17 stipulation of facts?

18 MR. BERRY: Yes.

19 HEARING OFFICER JACKSON: Is this, in fact, an  
20 agreed document between both parties?

21 MR. BERRY: It was negotiated and agreed to, yes.

22 HEARING OFFICER JACKSON: Okay. Thank you. I  
23 will then accept the stipulation of facts and direct  
24 that the Clerk of the Board incorporate this  
25 stipulation in today's hearing record as a document

1 that the Board should consider in rendering a decision  
2 in this case.

3 Mr. Davis, it is my understanding that the  
4 statement you have just made would constitute the  
5 People's opening statement in this case?

6 MR. DAVIS: Yes, ma'am.

7 HEARING OFFICER JACKSON: Is there any objection  
8 at this time to a ruling on the Respondent's motion in  
9 limine to exclude what has been tendered as People's  
10 Exhibit Number 1, the information and other documents  
11 from the United States District Court, Eastern  
12 District of Missouri?

13 MR. DAVIS: I would ask that that motion be  
14 denied.

15 HEARING OFFICER JACKSON: Okay.

16 MR. BERRY: I would like the same opportunity that  
17 Mr. Davis had to address this issue in my opening  
18 statement as well.

19 HEARING OFFICER JACKSON: Okay. You may proceed.

20 MR. BERRY: Your Honor, I will just start right  
21 there with these documents. We simply feel that it is  
22 too attenuative, from a project that Spirco did not do  
23 within Illinois, in another state, in Missouri, five  
24 years ago, in 1993. That they negotiated an agreement  
25 and this was a plea agreement that you will see, the

1 Board will note. And I also add that I am not sure  
2 that a plea agreement and the information that has  
3 been submitted constitute a previous adjudication as  
4 is specified in the Act.

5 You pointed out that the Section says, 42H does,  
6 that the Board is authorized to consider any matters  
7 of record in mitigation or aggravation, penalty  
8 including but not limited to the following factors.

9 But then the specific one of the items that they  
10 specifically list is the number approximating a time  
11 and gravity of previously adjudicated violations of  
12 this Act by the violator.

13 First, it is not established that we are a  
14 violator, but second it was clearly not, and it is not  
15 even contested, not a violation of this Act, which is  
16 the Illinois Environmental Protection Act. And it  
17 seems that when the legislature drafted this Section  
18 42H(5) and specifically did list something that they  
19 were, in fact, trying to limit it to those issues.

20 In the alternative, Your Honor, if the Hearing  
21 Officer allows the submission of these documents, I  
22 have some documents that I have made Mr. Davis aware  
23 of, he has copies of, which constitute a letter from  
24 Linda Tape of my office dated May 28th, 1998. This  
25 is, in fact, how Mr. Davis first became aware of this

1 1996 plea agreement.

2 And appended to that document is basically an  
3 exculpatory document that explains the subsequent  
4 steps that Spirco has taken to correct these actions,  
5 and so that the same mistakes are not made again. Mr.  
6 Davis has indicated to me that he would not oppose  
7 these being admitted if you allow the federal  
8 documents from the federal court in.

9 Moving on to address the same issues that Mr.  
10 Davis touched upon, we do first oppose the fact of the  
11 violation and we intend to show this through the  
12 cross-examination of the inspector who is here today  
13 and through our witness, an employee of Spirco, Mr.  
14 Jeff DeCaney. In the alternative, we believe that if  
15 the Board finds that a technical violation has  
16 occurred, that the amount of the penalty that is  
17 sought is grossly disproportionate to the facts, and  
18 we intend to show that through our witnesses as well.

19 That's my opening statement.

20 HEARING OFFICER JACKSON: Okay. Thank you, Mr.  
21 Berry.

22 At this time I am prepared to make a ruling on the  
23 oral motion in limine, offered by the Respondents at  
24 the beginning of these proceedings, that documents  
25 from the Missouri Eastern District Federal Court be

1 excluded. My ruling is the motion is denied. We will  
2 allow these documents in as evidence that the Board  
3 may consider in reaching a determination as to the  
4 issue of penalty in this case.

5 However, Mr. Berry's arguments regarding the  
6 letter and other documents they may want to introduce  
7 or testimony to rebut the information in the Federal  
8 Court documents, certainly they are allowed to do  
9 that. And so we will proceed at this time.

10 (Whereupon said documents were admitted into  
11 evidence as People's Group Exhibit Number 1 as of  
12 this date.)

13 MR. BERRY: Would you like for this now?

14 HEARING OFFICER JACKSON: We can address that when  
15 we come to it with a particular witness.

16 MR. BERRY: Okay.

17 HEARING OFFICER JACKSON: Are there any other  
18 preliminary matters that need to be addressed on the  
19 record?

20 Okay. Having had opening statements from both  
21 parties, Mr. Davis, would you like to call your first  
22 witness?

23 MR. DAVIS: Thank you. We would call Dave Fodor.

24 HEARING OFFICER JACKSON: Mr. Fodor, if you would  
25 step forward, please, and the court reporter will



1 swear you in.

2 (Whereupon the witness was sworn by the Notary

3 Public.)

4 OFFICER JACKSON: You can take a seat up here next

5 to the court reporter, please.

6 Mr. Davis, you may proceed.

7 MR. DAVIS: Thank you.

8 D A V I D F O D O R,

9 having been first duly sworn by the Notary Public,

10 saith as follows:

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q Sir, your name and occupation, please.

14 A My name is David Fodor. I am the current

15 acting NESHAP coordinator for the State of Illinois

16 Environmental Protection Agency.

17 Q How long have you worked for the Illinois

18 EPA?

19 A Since April of 1995.

20 Q What sort of previous employment did you

21 have?

22 A I was involved in asbestos consulting in my

23 own firm and with previous employers.

24 Q And for how long?

25 A Approximately since 1989.

1 Q Let me focus for the moment on your  
2 educational background. Can you summarize that for  
3 us?

4 A Sure. I currently hold licenses as an  
5 asbestos project manager, air sampling professional,  
6 asbestos worker, and supervisor.

7 Q What about college?

8 A I have had about a year of college in pursuit  
9 of an Associate's Degree. I have specialized courses  
10 in asbestos. I have completed asbestos project  
11 design, management planning, and inspector.

12 Q Have you had any further training since being  
13 hired by the Illinois EPA?

14 A Yes, I have. I have had 40 hours of haz  
15 health and safety classes, and things of that nature.

16 Q Now, are you fully certified to do the work  
17 that you are currently engaged in?

18 A Yes, I am.

19 Q And can you explain that very briefly for us?

20 A Well, if I understand the question correctly,  
21 I have --

22 Q The inspection of projects?

23 A Yes, I was certified at my sixth month  
24 probationary level.

25 Q And regarding the nature of the work that you

1 inspect, are you also certified to do those things as  
2 well?

3 A Yes.

4 Q Would it be fair to say, Dave, that you can  
5 see the projects from both angles, that of the worker  
6 as well as the inspector?

7 A Yes.

8 Q Do you also have a complete knowledge of the  
9 federal NESHAP regulations?

10 A I would assume so, yes.

11 Q Well, do you feel that you do?

12 A Yes, I do.

13 Q Okay. Are these the regulations that are  
14 applicable to the projects that you inspect?

15 A Yes.

16 Q Let me focus your attention on one particular  
17 project, that being the Pabst Brewery in Peoria,  
18 Illinois. Did you have an occasion to inspect that  
19 project?

20 A Yes, I did.

21 Q Now, how did you become aware that there was  
22 an asbestos project at that location?

23 A I conduct, on a periodic basis, searches  
24 through the computer to find out which projects are in  
25 our area. And I base those inspections on what type

1 of project it is, et cetera, if they meet a certain  
2 set of criteria. And it was on a random basis. And  
3 looking at the project itself, based upon the  
4 information I had, notices and such, that I decided to  
5 select this particular project for inspection.

6 Q How does the information, to your knowledge,  
7 get into the computer?

8 A Well, notices are received as required by the  
9 federal NESHAP by our office and they are inputted  
10 into an asbestos tracking system. It is commonly  
11 referred to as the ACT system.

12 Q Okay. So it is on the basis of the routine  
13 ten day notices that the computer generates a list of  
14 projects?

15 A Yes.

16 Q You indicated that there is an effort to be  
17 random. Can you explain that, please?

18 A Sure. Obviously, we don't have the resources  
19 to conduct investigations on each project. So,  
20 therefore, I look at various things, such as  
21 complexity of the job, compliance history of the  
22 contractor, obviously, distance away from the office,  
23 depending on the time of year, and how much asbestos  
24 is being removed. And I do a search, and based on  
25 what information I get I assign a priority to each one

1 of the projects.

2 Q Now, focusing on the last three or four  
3 years, what are the investigatory resources of the  
4 Illinois EPA as far as asbestos projects? How many  
5 people?

6 A Well, we have -- we are in a period of  
7 transition. Previously, we had 11 to 12 inspectors  
8 who were -- who had other duties assigned to them. We  
9 are now going to a dedicated force of inspectors who  
10 do nothing but NESHAP and ASHARA inspections for the  
11 State. At that particular time, I was the only  
12 dedicated asbestos inspector for the State.

13 Q How many investigations were you doing on a  
14 weekly or monthly basis?

15 A It varied with work load. Probably two, two  
16 a week, maybe. It was never consistent. You couldn't  
17 put an average to it really.

18 Q Okay. One hundred a year, perhaps?

19 A Maybe.

20 Q Do you have any estimate as far as the number  
21 of projects that would be ongoing in the State during  
22 any given year?

23 A Well, we receive notifications for  
24 approximately 6,000 a year.

25 Q Thank you. That gives the Board I think a

1 little bit of a comprehension of just how random it  
2 is. In addition, I think you mentioned that you also  
3 try to look at the size of the facility?

4 A Yes, I do.

5 Q What do you remember about the size of the  
6 Pabst Brewery project?

7 A Size as to --

8 Q Well, as to any of the factors you look at,  
9 either the building size or the amount of ACM?

10 A As I recall, not looking at the notice, there  
11 was a couple thousand square -- excuse me -- a couple  
12 thousand lineal feet of piping insulation to be  
13 removed. There was roughly 5,000 square feet of  
14 something. I don't know exactly what that was, and  
15 maybe one hundred cubic feet of regulated material  
16 that was going to be disturbed.

17 Q Would it help refresh your recollection to  
18 glance at what you referred to as the notice?

19 A Definitely.

20 MR. DAVIS: Okay. This is one I would show Dave.

21 (Mr. Davis showed document to Mr. Berry.)

22 MR. DAVIS: I am not going to mark this for the  
23 time being.

24 Q (By Mr. Davis) Let me ask that you review  
25 this and tell me what it is?

1 A This is a form developed by the Illinois EPA  
2 to -- for the regulated community to notify our office  
3 of asbestos renovation projects and demolition  
4 projects as required by NESHAPS.

5 Q Okay. Does it reflect the numbers that you  
6 referred to earlier?

7 A With one exception. I did not refer to the  
8 category one material of 10,000 square feet to be  
9 removed.

10 Q Okay.

11 A I did not recall that.

12 Q On the point of the 5,000 square feet of  
13 something, does it give you any further information?

14 A No, it does not. I am not sure exactly what  
15 the 5,000 square feet are.

16 Q Okay. Now, perhaps I should back up. When  
17 we say ACM, does that mean to you asbestos containing  
18 materials?

19 A Yes.

20 Q Okay. What is category one?

21 A Category one is a category of material. It  
22 is by definition floor tiles, linoleum type materials,  
23 gaskets, packing, the materials that do not release as  
24 many fibers as like, say, friable materials.

25 Q Okay.

1 A These materials are greater than one percent  
2 by PLM. That's the asbestos content I mean.

3 Q Okay.

4 A And they are in a nonfriable condition.

5 Q So these would be materials that would pose  
6 what sort of hazard during renovation or demolition,  
7 in your view?

8 A Well, then we have to look at the activities  
9 being subjected to the category one nonfriable. Just  
10 because it is a nonfriable material does not mean that  
11 it will not necessarily become so depending on the  
12 actions imposed on it.

13 Q What sort of project was this intended to be?

14 A As far as I know it was a demolition project.

15 Q And would that --

16 A But --

17 Q I am sorry.

18 A That's fine.

19 Q Okay. Would that be -- would the extent of  
20 your knowledge be based upon the form that was  
21 submitted to the EPA?

22 A Yes, uh-huh.

23 HEARING OFFICER JACKSON: I have a quick question  
24 just to clarify. Excuse me.

25 You mentioned nonfriable. Can you explain for the



1 Board what nonfriable and friable mean?

2 THE WITNESS: Yes. There is a definition of  
3 friable and nonfriable materials in the NESHAP  
4 regulation. Friable basically is a material that is  
5 greater than one percent by polarized light  
6 microscopy, the content of asbestos, that can be  
7 reduced to a powder by -- can be reduced by crumbling  
8 to a powder utilizing hand pressure.

9 HEARING OFFICER JACKSON: Okay. Thank you.

10 Q (By Mr. Davis) Now, before we focus on your  
11 inspection or investigation, can you tell me whether  
12 you had a chance to see the notification that was ever  
13 submitted, the first one that was submitted? Was  
14 there a problem with the first notice?

15 A Yes.

16 Q What was that problem?

17 A It was missing the second page.

18 Q And what information is contained on that  
19 second page?

20 A Well, some important information would be  
21 like whether or not an inspection was performed prior  
22 to the activity. How did they determine there was  
23 asbestos containing materials there. The type of  
24 operations and engineering controls that would be used  
25 in the work. It also had things such as if an

1 unexpected asbestos is found, you know, what  
2 procedures would be implemented at that point. It  
3 would include the certification and an on-site  
4 representative trained in the NESHAPS who will be at  
5 the site during removal or disturbance.

6 Q Okay.

7 A Waste information as far as like where the  
8 waste was going to.

9 Q Now, Dave, you used the phrase operation and  
10 engineering controls. Would that be the same thing as  
11 the phrase I used, worker safety practices?

12 A No, not necessarily so.

13 Q Okay. Is your term more broad?

14 A When you talk about engineering controls of  
15 asbestos, you are talking mainly of confining the  
16 asbestos so that the fibers do not migrate outside of  
17 a controlled area. Safety hazards could be a number  
18 of things, such as respirators to protect the worker  
19 against inhalation of the asbestos, practices to  
20 decontaminate themselves after they have completed  
21 their work, the types of suits they wear to keep from  
22 getting dermal exposure to asbestos.

23 Q Okay. Now, we have stipulated to this, so  
24 let me simply represent it to you. On November 28,  
25 1995, the NESHAP notification was submitted to the

1 Illinois EPA and the second page was inadvertently  
2 omitted. Would this second page have contained the  
3 information you just told us about?

4 A Possibly, if it had not been omitted.

5 Q Okay. And to your knowledge, was the second  
6 page eventually submitted?

7 A I believe so, yes.

8 Q Did it reflect some of those things?

9 A I believe it did, although I don't recall the  
10 contents.

11 Q Okay. Now, getting back to the first page,  
12 hopefully one last time, this first page was, as we  
13 have stipulated, submitted to the EPA in November of  
14 1995, advising of the project and estimating the  
15 amount of asbestos containing materials. Was it based  
16 upon this notification, at least in part, incomplete  
17 although it may be, that you decided to inspect the  
18 Pabst Brewery?

19 A I would not have seen the actual  
20 notification, however, I would have looked at the  
21 information in the computer.

22 Q Okay.

23 A Which should have represented some of the  
24 information on the notice.

25 Q Very good. I think we have explored the

1 reasons why this project was chosen. Can you tell us  
2 when you did inspect it?

3 A I believe it was January 10th, 1996.

4 Q Now, would you tell us -- well, first of all,

5 I think we realize it, but perhaps the Board does

6 not. You are based in Springfield, aren't you?

7 A That's correct.

8 Q Okay. When, approximately, did you appear to

9 do your investigation at the Peoria facility, what

10 time of day?

11 A Around 11:15 or so.

12 Q Okay. What was the first thing that you did

13 on that day in investigating this project?

14 A Well, obviously, I looked at the facility

15 upon my arrival to determine if anything was going on.

16 Q And what did you see?

17 A I saw a rather large brick structure, masonry

18 structure. The windows had been knocked out. There

19 was some poly in place covering an opening in the

20 building.

21 Q Okay. Now, some of the terms you use you may

22 have to explain. What is poly?

23 A Poly is polyethylene sheeting. Usually it is

24 in six mill thickness. It is commonly used in the

25 asbestos industry to create containments or other

1 types of barriers sometimes to construct decons.

2 Q Now, the six mill sheeting would be  
3 substantially thicker than the two or four mill that  
4 you might use on home improvement projects?

5 A Oh, yes, yes.

6 Q What else did you observe, I take it, from  
7 the outside?

8 A I observed several trucks and cars at the  
9 entrance. I don't recall. I would have to see my  
10 report to refresh my memory.

11 Q Before we do that, let me ask you regarding  
12 the windows. You mentioned something that you  
13 observed the windows?

14 A The windows had been broken, yes.

15 Q At what point does a demolition occur  
16 generally under the NESHAP regulations?

17 A Demolition would be the taking out or removal  
18 of any structural components, structural member. It  
19 could be a beam, or it could be a column, or it could  
20 be a lintel for a window, anything that supports a  
21 load.

22 Q We understand from your testimony just a few  
23 minutes ago that the Illinois EPA had been advised by  
24 Spirco through this so-called ten day notice that a  
25 demolition would occur at the facility. My question

1 to you, Dave, is did you observe anything that would  
2 corroborate that a demolition had been commenced?

3 A I believe that the hole covered with poly had  
4 demonstrated that some demolition had occurred.

5 Q How big a hole was this?

6 A I don't recall, sir. I would have to look at  
7 photo.

8 Q Okay. Let me show you now, for various  
9 purposes, People's Exhibit Number 2, another group  
10 exhibit and, first of all, ask if you would tell us  
11 what this is and how many different photos and so  
12 forth?

13 HEARING OFFICER JACKSON: Mr. Davis, has a copy of  
14 this exhibit been provided to the Respondent?

15 MR. DAVIS: Yes, ma'am.

16 HEARING OFFICER JACKSON: Thank you.

17 THE WITNESS: There are 16 Polaroid photographs.

18 Q (By Mr. Davis) Are these the -- at least the  
19 exhibit in front of you the actual Polaroids that you  
20 took on that day?

21 A Yes, sir.

22 Q Does each truly and accurately reflect what  
23 you were trying to photograph?

24 A Yes, with the exception of one which is a bit  
25 dark, on photo number 11 there appears to be something

1 in front of the photo, so you can't really tell. I  
2 believe these to be accurate representations of what I  
3 observed.

4 Q Okay. We will get back to that one. But as  
5 a group, are the photographs fairly good, so to speak?

6 A Yes.

7 Q There seems to be some problem with the film  
8 on number 11?

9 A Yes.

10 Q Can you, in referring to the 16 photos, by an  
11 individual number identify each as we go through your  
12 testimony?

13 A Yes.

14 Q Okay. Very good. I think that will help  
15 make it clear to the Board. Now, on the point that we  
16 were just discussing, the so-called hole in the wall  
17 or the window or the poly, which photograph, if any,  
18 reflects those conditions?

19 A Photo Number 6.

20 Q Okay. Does this, first off all, refresh your  
21 memory regarding the size of that hole?

22 A It is significant. It is a large hole. I  
23 could not give you actual measurements.

24 Q Okay. That is fine. But it is a sizeable  
25 hole?

1 A Yes, it is.

2 Q Do you have any knowledge as to what had  
3 filled that hole before it was removed?

4 A Well, based on looking at the rest of the  
5 structure, I would assume that there would be a couple  
6 of windows at that level and, of course, the masonry  
7 would be stacked up and possibly a couple of vents.  
8 It is speculation since I didn't observe it.

9 Q I don't want you to do that. And I really  
10 don't want to jump ahead in your testimony, but based  
11 upon your later observations as you went into the  
12 building, did it appear that anything inside this old  
13 brewery had been removed from inside to outside, any  
14 big objects, any salvage operations?

15 A It is possible.

16 Q Okay. We will drop it for the time being  
17 then. Let me try to make this as chronological as I  
18 can. What did you do after looking at the building  
19 from the outside?

20 A Well, I went into where the cars were, where  
21 I thought would be an obvious entrance. I went into  
22 the facility and introduced myself to a Mr. Bowker,  
23 and he represented that he was the on-site supervisor  
24 for Spirco.

25 Q Would this be James Bowker?



1 A Yes.

2 Q B-O-W-K-E-R?

3 A Yes.

4 Q Okay. Did Mr. Bowker explain in any further  
5 detail who he was? You mentioned just a supervisor.

6 Was he the project manager or --

7 A He identified himself as a supervisor for  
8 Spirco.

9 Q Okay. While I am thinking of it, Dave, let  
10 me direct your attention to the gentleman seated by  
11 Mr. Berry. This gentleman's name is Mr. DeCaney. Did  
12 you see him there that day?

13 A I couldn't positively identify him.

14 Q Was he with Mr. Bowker when you were  
15 initially talking to Mr. Bowker?

16 A I don't know for sure.

17 Q All right. Were you given permission to go  
18 ahead and inspect the site?

19 A Yes, I was.

20 Q What did you do first?

21 A I looked around at the area where I was in,  
22 and I noticed right adjacent to the clean area, so to  
23 say, there was some activity occurring. People were  
24 bagging up debris from the floor.

25 Q Well, let's keep it simple. Again, I will

1 interrupt you. What is the clean area at this site?

2 A Well, normally a clean area is where you have  
3 done an assessment to determine if there was any  
4 contamination there, and that is where you would  
5 construct your decon on a normal abatement project.

6 And that would be an area that would not be subject to  
7 contamination coming from the adjacent work areas.

8 Q Would this be sort of a transition from the  
9 inside where the project is to the outside where the  
10 environment is?

11 A It could be. On significantly contaminated  
12 projects sometimes the decon would have to be  
13 constructed outside the facility but at the entrance.

14 Q Okay.

15 A So that the interior of the structure would  
16 be contaminated and then, of course, you go through  
17 your progressive decontamination procedures to come  
18 outside.

19 Q What did you observe regarding whether it  
20 was, in fact, a clean area?

21 A Well, I observed the decon that had been  
22 constructed. At the time of my arrival, the decon was  
23 not in operation. The water had not been hooked up.  
24 The water heater had not been hooked up. In addition,  
25 the location of the decon was such that contaminants

1 could go from an adjacent work area to what would be  
2 believed as a clean area.

3 Q Let me again ask you to explain a decon. Is  
4 it a decontamination?

5 A Yes. Well, typically, on nonschool projects,  
6 it consists of three chambers, or it is referred to as  
7 a three stage decon. You have a dirty room, in which  
8 a -- a dirty room, a shower and a clean room. Going  
9 into the work area, of course, the men working go into  
10 the clean room. They disrobe. They put on their  
11 asbestos suits and their personal protective equipment  
12 and proceed through the shower and the equipment room  
13 into the work area.

14 Coming out would be just the reverse. In the  
15 equipment room they would disrobe the suits and go  
16 into the shower and then remove the respirator and  
17 then come back out into the clean room and get  
18 dressed.

19 Q Okay. What sort of suits, as you put it,  
20 would be involved in this type of process?

21 A Industry standard would be Tyvek or a similar  
22 material. The NESHAP does not actually specify what  
23 types of suits to wear. OSHA has a little more  
24 information in that regard.

25 Q Tyvek seems to be what everyone uses?

1 A Yes, mostly.

2 Q As far as the poly that you described  
3 earlier, was this a component of the clean room setup  
4 to have a polyethylene sheeting to make -- to  
5 segregate areas?

6 A Yes, that would be a component of a  
7 containment.

8 Q You also mentioned something about water?

9 A Yes.

10 Q Can you describe or elaborate on that?

11 A The NESHAP regulation requires that asbestos  
12 be removed wet, and it is to be kept wet until it is  
13 containerized and disposed of. It is also used in the  
14 showers obviously to decontaminate yourself along with  
15 soap.

16 Q This was January, was it not?

17 A Yes.

18 Q Was the water operational?

19 A It was not at the time that I arrived,  
20 although the superintendent, Mr. -- forgive me if I  
21 mispronounce his name -- Mr. Bowker, he said he could  
22 have it operational in 15 minutes.

23 Q What did that involve at this site, to your  
24 knowledge?

25 A To my knowledge, he would have to hook up the

1 hose to the water heater and hook up another hose to  
2 the decon shower itself.

3 Q Now, as to this water heater, would this be  
4 the item -- one of the items reflected in photo 5 of  
5 our Exhibit 2?

6 A Yes.

7 Q What was the reason for this photo?

8 A To document that the water heater had not  
9 been hooked up.

10 Q This being January and so forth, do you have  
11 any recollection as to how cold it was?

12 A I believe the National Weather Service  
13 records indicated that it was 26 degrees around the  
14 time of my inspection.

15 Q You noticed this in your report?

16 A Yes, I did.

17 Q What does temperature have to do with  
18 anything?

19 A Well, obviously, if the temperature is below  
20 32 degrees, it is a benchmark in the NESHAPS  
21 regulation that you do not have to keep the material  
22 wet. However, under that provision, you have to do a  
23 couple other things. First of all, you have to have  
24 permission from the administrator to do a dry  
25 removal. You have to use the procedures in the

1 NESHAP, such as negative air pressure, or glove bag  
2 removal, or along those lines. Plus you have to keep  
3 temperature records at the beginning, at the middle  
4 and at the end of the day.

5 Q Would it be fair to say that you have to  
6 request permission to use these alternatives?

7 A Yes. Only the wetting provisions of the  
8 Section C under 61.145 is suspended during those  
9 periods, to the best of my knowledge.

10 Q Is there any alternative to showers?

11 A Not to my knowledge, no.

12 Q Let me take you up again on your tour. Now,  
13 after observing the clean room, what next did you do  
14 or see?

15 A I am trying to think of this  
16 chronologically. Could I see my report to refresh my  
17 memory?

18 (Mr. Davis showed Mr. Berry the document.)

19 Q (By Mr. Davis) Let me show you what I would  
20 represent is a memorandum authored by you --

21 A Yes.

22 Q -- and reflecting this inspection report?

23 A Uh-huh.

24 Q Does this help you?

25 A Yes. After my initial arrival at the site I

1 looked over and I observed essentially what photo  
2 number 1 indicates. There were workers. I don't know  
3 whether there was five or six of them, something like  
4 that, in an area that had asbestos tape around it,  
5 with numerous bags of waste. They were scooping the  
6 materials from the floor into the bags. The material  
7 appeared to be dry. It appeared to be friable. And I  
8 considered it as suspect ACM.

9 Q Let me interrupt you, Dave. Can you describe  
10 what sort of gear the workers were using?

11 A They had street clothes on and over those  
12 they had rain suits. I did not see any personal  
13 protective equipment being worn at that time. As a  
14 matter of fact, if you look at photo number 1, you can  
15 see a gentleman on the right is not wearing a  
16 respirator.

17 Q Okay. And what else can you see within that  
18 photo regarding any signs or placards?

19 A Okay. There is a danger, asbestos hazard  
20 tape that has been set up in the areas where the bags  
21 were.

22 Q What would be the point of trying to --  
23 attempting to segregate one area from another through  
24 signs or tape or anything?

25 A Well, there is -- you have to understand it

1 is not just the NESHAP regulation that applies. There  
2 are also OSHA regulations. And to do removal under  
3 OSHA you have to do it in a regulated area for class  
4 one and two materials. This, I assume, they would be  
5 attempting to comply with the OSHA regulations as far  
6 as regulated areas.

7 Q As far as in particular for this project did  
8 it appear to you that the tape tried to delineate an  
9 area where materials would be stored?

10 A Yes, I believe so at the time I was doing the  
11 inspection.

12 Q Getting back to the workers, you mentioned  
13 there were four and five. Are there four depicted in  
14 this photo number 1?

15 A There are. I also -- if I recall vaguely,  
16 there might have been another person bringing a  
17 wheelbarrow through and dumping the material in the  
18 area.

19 Q Okay. Let's focus for the moment, regardless  
20 of whether there were four or five, did any of the  
21 individuals you observed have any respirators or face  
22 masks, for lack of a better term?

23 A I vaguely recall one having one down around  
24 his neck. He was not wearing it. It was just  
25 hanging. But I don't recall the other ones having



1 respirators.

2 Q Now, also to sort of clarify this for the  
3 Board so we all know what you are talking about, can  
4 you make a distinction between those white 3M little  
5 dust mask filters that strap around your head, and  
6 what you are referring to as a respirator? Can you  
7 tell us the difference?

8 A Yes, there are specific filters designed for  
9 various contaminants. The filters for asbestos are  
10 usually purple or magenta in color. They would have  
11 like for particulates, radionuclides and asbestos  
12 written on them in a little tag. But normally by the  
13 color you can tell whether or not it was acceptable.

14 Q Okay. What we might refer to as like a home  
15 improvement dust mask, did you observe any of those at  
16 this site?

17 A I don't believe so.

18 Q Okay. So all that you saw may have been a  
19 respirator?

20 A Yes.

21 Q And were such items being employed properly?

22 A No.

23 Q How many respirators did you see regarding  
24 these four or five individuals?

25 A I believe I vaguely recall one man had a

1 respirator.

2 Q Now, you mentioned bags. Did you observe --  
3 did you make any observations regarding the quantity  
4 of bags?

5 A I saw a very large pile, as you can see in  
6 photo 1. And I asked Mr. Bowker how many bags of  
7 material that he had there, and he stated around 800.

8 Q Okay. Now, during this point in your  
9 investigation, would it be fair to say that Mr. Bowker  
10 was accompanying you?

11 A Yes.

12 Q And was there anyone else going along with  
13 the two of you?

14 A I don't recall. There were people around.

15 Q Let me focus in on your conversation. As you  
16 may know, in order to testify about what somebody told  
17 you, we have to indicate who else was involved. Was  
18 there anyone else involved in your conversations with  
19 Bowker?

20 A I don't think so. There were people there,  
21 but I don't think they were accompanying us.

22 Q When Mr. Bowker indicated to you that there  
23 may have been 800 bags, did it look to you that he may  
24 have been accurate?

25 A Obviously, it is hard to make that

1 determination, but I thought it was reasonable.

2 Q Okay. Did you on that point in time, early  
3 on, in essence, look inside or closer to the bags?

4 A I did do a quick evaluation of the bags. I  
5 wanted to see if they were the same types of bags, if  
6 they had generator tags, if the stuff in them appeared  
7 to be dry, whether, you know, if there were any --

8 Q Let's cover that now.

9 A Okay.

10 Q Were they properly tagged?

11 A They did not have generator tags, no.

12 Q What would --

13 A Most of the ones that I had seen.

14 Q What would a generator tag indicate?

15 A It would indicate the operator and the  
16 facility information as required under NESHAPS.

17 Q In this case, Dave, would it indicate Spirco,  
18 Pabst Brewery, Peoria, Illinois?

19 A Yes, it should have, yes.

20 Q What is the reason for this type of  
21 information?

22 A Well, to tell you the truth, I don't know  
23 what their thinking was. I have been told that it is  
24 so when the stuff is put in a landfill that if at a  
25 later date they run into it, they know where it came

1 from and they know how much is there. But, obviously,  
2 it is not first-hand knowledge.

3 Q Is there any manifest system for this type of  
4 waste?

5 A NESHAPS does require what they call a waste  
6 shipment record to accompany the disposal of regulated  
7 materials.

8 Q Would it appear that the generator  
9 information that is supposed to be on the bags would  
10 assist in this effort?

11 A Yes.

12 Q Now, would it be fair to say, Dave, that you  
13 didn't look at each and every bag?

14 A That's true. I did not dig through all 800.

15 Q How many, roughly, did you look at?

16 A Basically what was on the surface, probably  
17 20 percent maybe.

18 Q Did any of these numerous bags have any of  
19 the generator information on them?

20 A I don't believe so, no.

21 Q You also mentioned the nature of the  
22 container itself. Describe to us what should be used  
23 and what you saw there?

24 A What should be used?

25 Q Is it like a six mill poly or is it a trash

1 bag?

2 A I believe it is a standard asbestos disposal  
3 bags that were used. Keep in mind that NESHAPS does  
4 not delineate what kind of bag, what kind of poly, et  
5 cetera.

6 Q Okay.

7 A I do believe that they had the asbestos  
8 warning sticker required by the Illinois Department of  
9 Transportation and OSHA. Those markings were on the  
10 bags.

11 Q Were the bags themselves -- did they look  
12 adequate?

13 A Some of them, they had holes in them.

14 Q Oh, okay. Is there a prohibition against  
15 that?

16 A Yes, because once they have a hole in them,  
17 they are no longer leak tight containers. NESHAPS  
18 does require a leak tight container.

19 Q You mentioned, I believe, something about the  
20 nature of the material within the bags. Did you make  
21 any observations on this point?

22 A What I observed, I believe the material was  
23 dry. There was a few of the bags I could see into and  
24 there were some of them I couldn't. And by judging  
25 the weight you can sometimes tell whether or not the

1 stuff is wet. Obviously, it is not a die hard  
2 system. You can just make some reasonable guesses.  
3 It is our policy normally that if we run into such a  
4 situation we do take one bag with us for further  
5 sampling to determine whether there is asbestos in the  
6 bag and to determine whether or not it is wet, which  
7 was subsequently done after my inspection.

8 Q Okay. You mentioned that you could look into  
9 the bags. How could you do this?

10 A Because some of the bags were clear.

11 Q Okay. Did you open any of the bags?

12 A No, not there.

13 Q And the bag that you later took with you, did  
14 you have occasion to look inside that bag?

15 A Yes, I did.

16 Q Okay.

17 A I set up an appointment with another  
18 inspector so we would have two personnel there during  
19 this. And we did a glove bag extraction of a sample.  
20 And during that extraction I looked into the bag and  
21 all the contents were dry and appeared friable.

22 Q For a point of information, Dave, we have  
23 stipulated to the analytical results on that and they  
24 were asbestos containing, were they not?

25 A Yes, they were, the material in the bags.

1 Q Getting back, then, to your investigation of  
2 the site, after looking at the bags, and making the  
3 observations that you have just summarized, did you  
4 look at anything else that these workers appeared to  
5 be doing?

6 A Yes, sure.

7 Q Okay. What were they doing?

8 A At this point in time they were taking the  
9 material that was on the floor and putting it in bags.

10 Q Do you have any photos in Group Exhibit  
11 Number 2 that showed the types of things that were on  
12 the floor?

13 A Yes. If you look at photo number 2, that was  
14 taken adjacent to the area in which they were  
15 working. Photos 11 and 12 also depict some of the  
16 materials that was on the floor.

17 Q Let's take those photos each in turn. As to  
18 number 2, does this photo show a bag scattered on the  
19 floor.

20 A Yes, it does.

21 Q How many bags in your estimation would there  
22 be?

23 A In the photo or just around?

24 Q Just in the photo.

25 A Probably seven. Maybe eight.

1 Q Okay. This is an area adjacent to what is  
2 depicted in photo 1?

3 A Yes.

4 Q What else is shown in photo number 2  
5 regarding things that may be on the floor?

6 A Well, suspect debris that may or may not have  
7 been asbestos containing.

8 Q According to my view, some of the floor  
9 surface appears to be white or light colored?

10 A Yes.

11 Q Is this a fair and accurate depiction?

12 A I believe it to be, yes.

13 Q What was the color of the floor without any  
14 debris on it?

15 A It would have been standard concrete.

16 Q Okay.

17 A A standard concrete finish.

18 Q So when you look at this photo and you see  
19 the light or whitish surface, is this the floor  
20 surface or the debris on the floor?

21 A That would be the debris on the floor.

22 Q What color was the debris?

23 A Kind of a white, gray type. It is similar to  
24 concrete but you can look at the texture and you can  
25 see by looking at the photo that this is just not a



1 concrete surface, that there is debris on top of it.

2 Q I realize we are being very general here for  
3 the moment, but what is the visual appearance of  
4 asbestos containing products that you would expect to  
5 find in such a place?

6 A There would be very many. Asbestos was used  
7 in over 3,600 different products. It would be hard to  
8 say.

9 Q Now, focusing on insulating materials, pipe  
10 coverings, tank coverings, this type of material,  
11 first of all, were these the types of materials that  
12 were actually in the Pabst Brewery?

13 A I believe so. If you will look at the photo  
14 showing the tank and pipe insulation, you will see  
15 that it is white in color.

16 Q This would be number 13 and 14?

17 A Yes.

18 Q So when we are talking about white or off  
19 white or gray materials as far as floor debris is this  
20 consistent with the actual asbestos containing  
21 products?

22 A Yes.

23 Q You can't tell, or can you, that something is  
24 asbestos containing just by looking at it?

25 A No, you cannot. That's why I use the term

1 suspect in my report.

2 Q Are there any other qualities to the material  
3 that would make it suspect in your view?

4 A Well, I have been trained in accordance with  
5 HARA as far as building inspections. They have a list  
6 of suspect materials. There are materials that they  
7 don't consider suspect such as wood, metal, stuff like  
8 that. So normally when I run into debris or material,  
9 unless it meets one of the exclusions under a HARA I  
10 consider it to be a suspect material.

11 Q Now, a HARA would be the federal legislation  
12 dealing with the schools?

13 A Yes, uh-huh.

14 Q I take it, Dave, that you did some schools  
15 work when you were in the private sector?

16 A Yes, quite a few.

17 Q Quite a few. How many?

18 A Oh, God, probably 12 school districts in  
19 Illinois. Maybe more.

20 Q Getting back to the Pabst Brewery, did the  
21 material, the floor debris, I think we should call it,  
22 was it of a fibrous nature?

23 A It was more of a powdery. It was a mix.

24 There was a lot of different materials. It was what I  
25 determined to be a suspect material.

1 Q Okay. That is what I am getting at. Why  
2 other than appearance and texture did you believe that  
3 it was suspect?

4 A Well, it was not one of the materials that  
5 are normally not considered to be asbestos.

6 Q Okay. To be fair, Dave, would it be accurate  
7 to say that this was sort of an abandoned facility and  
8 had other dirt sources come in?

9 A Yes.

10 Q What about pigeon droppings, for instance?

11 A Yes.

12 Q Okay. Now, getting back, once again, to  
13 photo 2 and any other of these photos, were there  
14 larger pieces of what I have been saying as things on  
15 the floor?

16 A Uh-huh.

17 Q Not being a bag, not being a powder debris,  
18 that you viewed as being suspect ACM?

19 A There are chunks, if you look in photo 11 and  
20 12.

21 Q Okay.

22 A There are chunks of debris laying there.

23 Q And I think we have already mentioned photo  
24 11 is not very good, but does it show anything that is  
25 helpful in determining the suspicious nature of this

1 material?

2 A Well, if you look again at photo 11 you will  
3 see areas of white powdery material, gray material  
4 laying on the floor.

5 Q Okay.

6 A If you look at photo 15 also in the basement  
7 that shows some suspect material.

8 Q All right. Let me ask you to look in  
9 particular now at 12. Does this show any things on  
10 the floor that appear to be pipe covering?

11 A Yes.

12 Q Can you tell us about that in particular?

13 A It would appear on the top most part of the  
14 photo that there are some items that could be pipe  
15 insulation.

16 Q And I believe that you have testified that  
17 through the written notification your Agency was  
18 advised that a certain amount of piping was believed  
19 to be ACM, was it not?

20 A Yes.

21 Q Okay. And within the bag that you later  
22 sampled and was confirmed to be asbestos containing,  
23 did that bag contain pipe covering?

24 A It was a type of a mag block type of a  
25 material. I believe it to be pipe covering, yes.

1 Q What do you mean as mag block?

2 A There are a bunch of different types of  
3 insulations, of course, that contain asbestos. There  
4 are some that look similar to a mineral wool. There  
5 are some what is termed air cell which has the  
6 appearance of layers of cardboard. And then there is  
7 another that is a powdery type that is pressed into  
8 form.

9 Q Okay.

10 A And that material is referred to as mag  
11 block.

12 Q Okay.

13 A It reduces itself to a powder.

14 MR. BERRY: It is known as what?

15 THE WITNESS: Mag block, M-A-G.

16 Q (By Mr. Davis) For purposes of a complete  
17 record, would it be fair to say that the pipe fitters  
18 would put this material on in conjunction -- I am  
19 sorry -- the insulators in conjunction with the pipe  
20 fitters as you build something?

21 A Uh-huh. It is put on in place.

22 Q Okay.

23 A But there was more than one type of material  
24 in that bag also. So, you know, some material may or  
25 may not have been asbestos. Some is.

1 Q I think we have covered what you saw on the  
2 floor. Now, let's talk about what did you see, if  
3 anything, as far as these workers disturbing the  
4 materials on the floor?

5 A They were dry sweeping the material and  
6 shoveling it up and putting it in the bags dry.

7 Q Now, you mentioned that there was no water  
8 being employed, so that was the dry part. What about  
9 the sweeping?

10 A It was also dry, dry sweeping.

11 Q What were they using to sweep?

12 A They used a broom similar to what you would  
13 use in a garage to sweep out.

14 Q Heavy, course bristles and so forth?

15 A Uh-huh.

16 Q Did the workers -- how many workers were  
17 sweeping, if you can remember?

18 A I think just one.

19 Q And were there other workers in that vicinity  
20 as the one was sweeping?

21 A Yes.

22 Q Was there somebody else then collecting the  
23 debris for the bags?

24 A Yes.

25 Q How long did you watch this type of

1 operation?

2 A A few minutes, first upon my arrival.

3 Q Did you observe any other controls or  
4 engineering or operational requirements that might be  
5 applicable?

6 A No, not really.

7 Q What about air sampling in particular?

8 A I did not see any air sampling pumps.

9 Q Did you talk to Mr. Bowker about air  
10 sampling?

11 A Yes, because I wanted to take a look at my  
12 own personal exposure at the site. I wanted to know  
13 if they had done a negative exposure assessment or had  
14 sample results.

15 Q Did you have any concerns at that time about  
16 what you observed, as far as sweeping of dry material?

17 A Yes, I did.

18 Q What were those concerns?

19 A Well, the concerns were that I observed dry  
20 material being swept without any controls, and I was  
21 also in an area which I could be exposed to the fibers  
22 if that was asbestos material.

23 Q Did you observe any visible fibers?

24 A I did not see fibers, but I did observe dust  
25 as they were sweeping.

1 Q Okay. Can you quantify or give us any  
2 details about your observations of what was being put  
3 into the air?

4 MR. BERRY: Your Honor, it calls for speculation.

5 HEARING OFFICER JACKSON: I am going to allow the  
6 question.

7 THE WITNESS: You will allow it?

8 HEARING OFFICER JACKSON: Yes.

9 Q (By Mr. Davis) Just focus on your  
10 observations?

11 A Okay. My observation was that I did see dust  
12 and debris being kicked up during the sweeping  
13 operation.

14 Q Can you tell us about the lighting in this  
15 particular area?

16 A It was adequate.

17 Q Okay. And how close were you to the outside  
18 of the building?

19 A Roughly 25, 30 feet maybe.

20 Q What physical barriers, if any, were in  
21 between the sweeping activity and the outdoors?

22 A There was little because of the fact that the  
23 windows in the building had been broken out. There  
24 was airflow through the building. You could feel it.

25 I would say there was very little. There was the



1 shell of the structure, and with the windows broken

2 out I --

3 Q In addition to -- well, tell us how you could

4 feel the airflow.

5 A Well, while you were standing there, whenever

6 the wind flows through a structure, especially with

7 the windows out, and you could feel the wind blowing a

8 little bit.

9 Q I think we have established that this was a

10 cold -- or it was at least 26 degrees in January. Was

11 it windy to your recollection?

12 A There was a little bit of a wind. I would

13 not be able to tell you how much wind.

14 Q Did you observe any affects of the wind upon

15 the dust being generated by the sweeping?

16 A There was wind when we went up on the upper

17 floors, the second and third floor. I felt winds

18 blowing through there.

19 Q Okay. But regarding the sweeping, or

20 somebody doing something to disturb the debris, did

21 you see any wind impacts?

22 A Other than when he swept, you know, you can

23 see the dust and debris going up and then floating off

24 with the air currents.

25 Q All right. Did you have a conversation

1 regarding -- well, did you tell Mr. Bowker that you  
2 thought air sampling should be conducted?

3 A I asked for his results and I was surprised  
4 at the fact that there were no air sampling. And he  
5 did not have a negative exposure assessment to figure  
6 out what levels, you know, they would be looking at to  
7 protect the workers.

8 Q How did you find this out? Did Bowker say  
9 something?

10 A Well, I asked him. He told me, yeah, they  
11 took air samples, but they sent it to the lab and he  
12 didn't have the results at the site. They were at his  
13 hotel.

14 MR. BERRY: Your Honor, I am going to object.  
15 They are trying to establish a violation that is not  
16 asserted in the complaint and not a part of this  
17 case. It is simply prejudicial against my client.

18 HEARING OFFICER JACKSON: Mr. Davis?

19 MR. DAVIS: Well, I think what we are doing is  
20 establishing that certain applicable requirements were  
21 not being met, and in that context that other things  
22 that Mr. Fodor, in particular, would view as being  
23 routine were also not being done. So I think it  
24 really fits in together -- it corroborates, if we are  
25 allowed to pursue this, it would corroborate the lack

1 of attention to details, as I would put it.

2 HEARING OFFICER JACKSON: Your response?

3 MR. BERRY: Your Honor, lack of attention to  
4 details is not alleged in the complaint. It is not a  
5 part of this case.

6 HEARING OFFICER JACKSON: I am going to allow this  
7 line of questioning to proceed. I think it is  
8 relevant just to the overall work practices that were  
9 being employed at the facility, not to the issue of  
10 whether an additional violation was committed,  
11 though.

12 Q (By Mr. Davis) Dave, you have told us, I  
13 believe, that air sampling would help assess personal  
14 exposure. How does it do that?

15 A Well, it allows you to see what exposure  
16 levels that you are getting from a certain type of  
17 work from a certain type of material. Obviously, the  
18 first thing that should have been done was to  
19 determine whether or not the debris on the floor was,  
20 in fact, asbestos containing or contaminated before  
21 they even began. I asked Mr. -- well, I am getting  
22 away from your question. The air sampling would give  
23 you some indication as to the level of personal  
24 protective equipment that you would need while  
25 performing these functions.

1 Q Mr. Bowker had indicated that some sampling  
2 had been done?

3 A Yes.

4 Q Did he have the results?

5 A No, he did not.

6 Q Did it appear to you that a well-informed  
7 decision had been made regarding personal protection?

8 A Not a well informed, no.

9 Q What do you base this opinion on?

10 A The fact that we did not have any air  
11 sampling data to look at.

12 Q Okay. Now, the same sort of inquiry,  
13 although now we are talking about preventing fibers  
14 from being released to the atmosphere. Was there any  
15 sampling being done in the context of a proper  
16 containment so that you know what is being kept in and  
17 what is getting out?

18 A There was a decon chamber at the site. But  
19 that is about the extent of it.

20 Q Okay. After exploring that issue with Mr.  
21 Bowker, did you also ask him regarding the  
22 arrangements for disposal and storage facilities?

23 A Yes, I did. And Mr. Bowker stated that there  
24 had not been a dumpster spotted at the site for this  
25 debris and, therefore, it was being stored in this one

1 room.

2 Q The 800 bags area?

3 A Yes, the 800 bags.

4 Q And this was all on the second floor or the  
5 first floor?

6 A The first floor.

7 Q Okay. Did you proceed then to the second  
8 floor?

9 A Yes, we went to the second and third floors  
10 and basically the photos that you see on 12, I think  
11 12 was taken on the first floor. We also went to the  
12 basement level. I observed various materials in  
13 various conditions. Some of them were not in bad  
14 condition. The other ones were deteriorated to the  
15 point where they were actually falling off. I believe  
16 if you look at the tank in photo 15 it indicates some  
17 of the deterioration. You can see that the insulation  
18 has either been pulled off or fell off, due to aging  
19 or whatever and was laying on the floor.

20 Q What sort of tanks were these?

21 A I am assuming that they are brewery tanks. I  
22 don't know what types of tanks that they were.

23 Q Something regarding production rather than a  
24 heating, a boiler system?

25 A I would say probably but then, again, I

1 couldn't say for certain.

2 Q Going throughout the facility -- well, let me  
3 back up. At any point in time, did you make a  
4 decision to employ protective gear?

5 A Yes, I did.

6 Q At what point?

7 A At the point when I did the sampling and the  
8 work on the other floors was not in progress at the  
9 time. I didn't feel it was necessarily a risk.

10 Q Sampling was done where and of what?

11 A I took samples of debris on the floor that  
12 was on the first floor when I went in. I took two  
13 samples there. And then I did take one bag of waste  
14 with me.

15 Q Right.

16 A That was then sampled later utilizing the  
17 appropriate personal equipment.

18 Q And the floor debris samples that we have  
19 stipulated to come back as trace amounts of asbestos?

20 A Yes, less than one percent.

21 Q Less than one percent would mean that the  
22 NESHAP would not consider it to be ACM?

23 A They would not meet the definition of ACM,  
24 but could meet the definition of asbestos containing  
25 waste materials.

1 Q Explain that for us?

2 A The asbestos containing waste material  
3 definition, as it applies to renovation and demolition  
4 projects, includes material that may have become  
5 contaminated with regulated asbestos containing  
6 materials.

7 Q Did you observe in your inspection of the  
8 Pabst Brewery any activity that you would consider to  
9 be asbestos stripping?

10 HEARING OFFICER JACKSON: Before he answers that  
11 question, can we first explain what asbestos stripping  
12 is, for the record.

13 THE WITNESS: Okay. That is defined in NESHAPS as  
14 removing materials from components. In other words,  
15 you would strip off the insulation.

16 HEARING OFFICER JACKSON: Okay. Thank you.

17 Q (By Mr. Davis) Did you see any of this type  
18 of work going on?

19 A I did not see actual removal of the  
20 insulation but I saw indications in some areas that it  
21 had been removed.

22 Q Did you have a conversation with Bowker about  
23 this?

24 A About the stripping?

25 Q Yes.

1 A Yes, I did.

2 Q Yes, about when the stripping had been done  
3 and by whom?

4 A Yes.

5 Q What did he tell you?

6 A He indicated to me that there had been  
7 another company there that had done some of the  
8 stripping. He indicated that that material had been  
9 laying on the floor and that they had taken that down  
10 to the first floor level where they were bagging it.  
11 He did not know who the other contractor was.

12 Q When Bowker told you that somebody else had  
13 removed the asbestos containing material from the  
14 facility components did you have any concerns at that  
15 time?

16 A Sure.

17 Q What were those concerns?

18 A Well, the concern number one was I was in a  
19 potentially contaminated area. The material that was  
20 being swept up possibly contained asbestos.

21 HEARING OFFICER JACKSON: Could we go off the  
22 record for one second, please.

23 HEARING OFFICER JACKSON: Okay. Back on the  
24 record.

25 Before we resume the direct examination, I do want



1 to note for the record that Joe Sternstein has joined  
2 us. He is Attorney Assistant to Board Member Nicholas  
3 Melas.

4 Okay. Having said that, please resume your direct  
5 examination.

6 MR. DAVIS: Thank you.

7 Q (By Mr. Davis) The concerns that you had  
8 regarding somebody else removing facility components  
9 or asbestos from those components, one, your own  
10 safety, two, that you might be in a contaminated  
11 area. What else?

12 A Well, that the material had been  
13 uncontrolled. And I don't know exactly, you know,  
14 what -- how far the contamination had spread. I could  
15 only assume that it -- wherever they cleaned up and  
16 wherever they were hauling it would be also  
17 contaminated.

18 Q Did it appear to you, Dave, that the  
19 materials in the 800 bags may have come from those  
20 activities?

21 A Mr. Bowker stated that they had taken the  
22 stuff from the floors and they took it down to the  
23 first floor and bagged it.

24 Q Okay. That's what I wanted to focus on.  
25 When Bowker said "they," who did they mean?

1 A Spirco.

2 Q How did he make this clear to you?

3 A He stated to me very plainly. I asked him,  
4 you know, what had happened and where the materials  
5 came from, and he said someone else had done the  
6 abatement and they were cleaning the stuff up,  
7 cleaning the mess up I think is what he actually said.

8 Q According to what he told you, had Spirco  
9 been going from floor to floor removing the debris?

10 A Yes. Not removing the stuff on the pipes but  
11 removing the floor debris and carrying it down.

12 Q When I say debris, I mean the asbestos that  
13 has been removed from the facility components that has  
14 been stripped?

15 A Yes.

16 Q Did Spirco, according to Bowker, employ any  
17 of the necessary work practices in doing that?

18 A I believe -- I don't think he made a direct  
19 statement as to what happened.

20 Q Tell us then what would have to be done in  
21 order to comply with the requirements to containerize  
22 asbestos that has been stripped off facility  
23 components and simply put on the floor.

24 A Okay. The first thing that would have to  
25 happen was obviously wetting the material and keeping

1 it in a wet state during the procedure until it is  
2 containerized. Only once it has been containerized  
3 can the wetting stop. That was not my description of  
4 the site as I saw it.

5 Q Okay.

6 A Everything that I saw appeared to be dry and  
7 friable. If wetting could not be done due to the  
8 temperature fall, restrictions, fixing the windows,  
9 you know, putting barriers up, something to keep that  
10 stuff from blowing around would have to be done.

11 Q Did you see it?

12 A And probably a negative air pressure  
13 containment system erected.

14 Q Would a negative air containment be required  
15 in your view, in your opinion?

16 A Yes.

17 Q And what do you base that opinion on?

18 A On the condition of the material, on the fact  
19 that the windows were open, allowing wind to go  
20 through the structure. That would be the only way  
21 that I could see that that material would have been  
22 kept, you know, from migrating outside.

23 Q Now, I realize that you can't tell us what  
24 might have happened prior to your visit, and I am not  
25 asking you to speculate. But did you observe anything

1 on January 10th regarding whether a negative air  
2 containment was or was not employed?

3 A I saw negative air machines down in the lower  
4 level being stored without filters. It did not appear  
5 when I was there that they were being used.

6 Q Did you talk to Bowker about that issue?

7 A Yes, and he mentioned to me that he was in a  
8 pre-clean, not doing removal.

9 Q Based upon everything that you saw and  
10 everything that Bowker told you, did it appear to you  
11 that negative air containment had not yet been  
12 attempted?

13 A Yes.

14 Q Let's get back, just one more time, to  
15 Exhibit Number 2, which is the collection of photos  
16 and look at number 6. Is there anything about this  
17 photo or the conditions depicted in the photo that  
18 pertain to negative containment?

19 A If this bidding was under negative pressure,  
20 if those were the containment barriers that we are  
21 looking at in that photo, that would indicate that  
22 negative pressure is not existence at that barrier.

23 Q What would you see instead of the poly  
24 bulging out?

25 A If there was negative pressure at that

1 location the barriers would be pulling in instead of  
2 out.

3 Q And not to put too fine a point on it, but  
4 what is the purpose of negative pressure?

5 A Well, asbestos fibers become airborne quite  
6 easily and they go with the wind, so to say. They  
7 can't go against the airflow. In other words, they  
8 just float. If you put one on a river it is going to  
9 go downstream and not upstream. So what happens is  
10 you get negative air filtration units which is a big  
11 set of fans and has filters on them. It sucks the air  
12 into the machine and then vents it outside the  
13 structure which lowers the pressure inside the  
14 structure. So if there are any cracks, any openings,  
15 air is going to be coming from the outside of the  
16 structure in, not from the inside out.

17 Q Okay. Did you do anything else during your  
18 investigation that we have not touched on yet? If you  
19 need to refresh your memory by looking at your report,  
20 please do so.

21 A Yes, I just need to do a quick survey. (The  
22 witness reviewed report.) I did ask them to  
23 voluntarily stop the work until the proper emission  
24 control procedures could be implemented, and I asked  
25 them to submit a plan to us.

1 Q Okay.

2 A And before --

3 Q I guess what I am getting at, Dave, is after  
4 you and Bowker went through the facility you then had  
5 a conversation sort of at the end?

6 A Yes.

7 Q At the end did you have some more questions  
8 regarding the nature of their investigation, Spirco's  
9 investigation?

10 A Yes. I asked them if they had done an  
11 inspection, to which Mr. Bowker replied, no, that they  
12 had not. I asked if a design plan for the facility  
13 had been done and he stated no. And I asked him how  
14 they knew under their contract what work they had to  
15 perform and he said, well, I just had to clean up the  
16 floors and abate any asbestos material that was here.

17 Q So the area or quantity estimates on the  
18 written notification, did these appear to be based  
19 upon any objective investigation by Spirco?

20 A I wouldn't know about Spirco. I don't know  
21 how they came up with the figures.

22 Q Well, did you talk to Bowker about whether  
23 these were correct numbers or did it appear to you  
24 that --

25 A I just asked if he had done an inspection and

1 determined, you know, what was there, and he said no.

2 Q Is an inspection required under the NESHAP?

3 A Yes, it is.

4 Q And for what purposes?

5 A Each owner and/or operator is supposed to  
6 conduct an investigation before conducting renovation  
7 or demolition operations for the presence of  
8 asbestos.

9 Q Now, in this instance, and I believe at least  
10 some of this is based upon the facts that we have  
11 stipulated to, we have a brewery that is being -- I am  
12 sorry. Let me back up. We have a project on the  
13 brewery that is being conducted by Spirco, do we not?

14 A Uh-huh.

15 Q And Spirco is not the owner?

16 A Correct, but they are an operator.

17 Q And being an operator means what?

18 A It means that they are responsible for  
19 conducting an inspection prior to their work.

20 Q And as operator, did Spirco send in at least  
21 one page of the notification?

22 A Yes, I assume that they did. I have seen the  
23 form.

24 Q Okay. Did the notification reflect any prior  
25 so-called abatement activities by any third parties?

1 A Not to my knowledge.

2 Q Can you tell us whether or not you had any  
3 other conversations with Bowker?

4 A The only other conversation that I can recall  
5 was the fact about the air samples being -- he didn't  
6 have the results, and I asked him if I could just talk  
7 to the lab to see what they were. I thought maybe  
8 they didn't have a copy on the site.

9 Q Sure.

10 A He then indicated to me that he had forgotten  
11 to send the samples. They were still in his hotel  
12 room. The only other conversation I recall was that  
13 at the end of the discussions he asked me if there was  
14 anything that we could do to keep it between him and  
15 I.

16 Q Let me focus on this. Is it your practice,  
17 Dave, sort of at the end of the inspection to inform  
18 the operator of the problems that you observed?

19 A Typically at the end of my discussion if I  
20 find what I feel are significant problems I will call  
21 and talk to Mr. Kline, who was the asbestos  
22 coordinator at the time, and my direct supervisor.  
23 And then I would tell him what I found and asked him  
24 how he wanted me to proceed. And then after that  
25 conversation then I would discuss what we felt was



1 significant with the operator at the site and the  
2 owner.

3 Q Did you attempt, at the end of your  
4 investigation, to discuss with Mr. Bowker what you  
5 felt was significant?

6 A Yes, I did.

7 Q Did you communicate to him that things were  
8 not being done properly?

9 A I indicated to him that I thought that there  
10 were some significant problems such as the dry  
11 sweeping, the materials being suspect, and no sampling  
12 to indicate otherwise. And I recommended that they  
13 voluntarily stop the work until they determined how  
14 far the contamination is or just what they were  
15 dealing with and to try to control it during that  
16 time.

17 Q Did he have any questions or requests of you?

18 A Well, he did ask me if I was sure that I  
19 wanted them to stop the work. I just related to him  
20 that, you know, why would you want to continue once  
21 you have been informed that violations are occurring.

22 Q Did he have a response to that?

23 A He said, no, I will stop the work. He then  
24 asked me what they should do and --

25 MR. BERRY: What was that response? I am having

1 trouble hearing.

2 THE WITNESS: He then told me that he would stop

3 the work.

4 MR. BERRY: That he would?

5 THE WITNESS: Yes.

6 HEARING OFFICER JACKSON: Make sure you keep your

7 voice up.

8 THE WITNESS: Okay. I am getting a little crackly

9 here.

10 Q (By Mr. Davis) We are almost done. We are

11 almost done. Now, did Bowker have any further

12 statements to you regarding about what might or might

13 not happen?

14 A What might or might not happen?

15 Q Yes. A moment ago you indicated something

16 about keeping it quiet or something?

17 A Oh, yeah. He just asked me -- I believe his

18 words were, I don't mean this as a bribe, but what can

19 we do to keep this between ourselves. And I informed

20 him, I said, well, I am required to inform my

21 supervisor of the violations that I find, and I would

22 have to officially make my report.

23 Q Finally, Dave, before leaving, did you stress

24 or attempt to communicate what sort of measures should

25 be employed?

1 A The first recommendation that I made is a  
2 reevaluation of the site and to submit a work plan for  
3 our acceptance. That is the first thing that they  
4 have to do. After that was done, then they could  
5 proceed with the work.

6 Q Now, I believe at some point in your  
7 testimony you related that Bowker referred to cleaning  
8 or preparation or pre-cleaning?

9 A Yes, that's a lot of times -- they require a  
10 pre-clean in schools. Those are for equipment and  
11 things that are in areas where there is asbestos, but  
12 the asbestos has not directly been disturbed. That  
13 would be a pre-clean. In this area we have  
14 contaminated materials, in other words, asbestos  
15 containing waste materials that have been contaminated  
16 with what we believed to be regulated asbestos  
17 containing materials. So, therefore, that would no  
18 longer be a pre-clean. That would be an actual  
19 removal of regulated materials.

20 Q Would it be fair to say that once stripping  
21 of asbestos from a facility component might occur that  
22 it is too late to pre-clean?

23 A Yes.

24 MR. DAVIS: I don't have any other questions.

25 HEARING OFFICER JACKSON: Mr. Berry,

1 cross-examination?

2 MR. BERRY: Yes, please.

3 HEARING OFFICER JACKSON: Do we need to take a  
4 break before we start?

5 THE WITNESS: I could use something to drink.

6 HEARING OFFICER JACKSON: Okay. It is 11:30. We  
7 will come back on in about five minutes.

8 (Whereupon a short recess was taken.)

9 HEARING OFFICER JACKSON: Okay. Back on the  
10 record. It is 11:35.

11 Mr. Berry, if you want to begin with your  
12 cross-examination.

13 MR. BERRY: Before I begin formally I want to  
14 pronounce your name correctly.

15 THE WITNESS: Fodor.

16 MR. BERRY: Fodor.

17 THE WITNESS: Yes.

18 CROSS EXAMINATION

19 BY MR. BERRY:

20 Q Mr. Fodor, I know you were here earlier when  
21 we introduced ourselves, but I will do it again for  
22 you. I am Eric Berry and I am an attorney  
23 representing Spirco. And I just have a few questions  
24 for you to follow-up on what Mr. Davis asked you  
25 about.

1 I missed your title. I didn't catch all of your  
2 title.

3 A At this time I am the acting state NESHAP  
4 coordinator for the Illinois EPA.

5 Q I am sorry?

6 A For the Illinois EPA.

7 Q Okay. In what sense is it the acting?

8 A Mr. Kline retired on January 31st of this  
9 year and then I was directed to assume his position  
10 until it would be filled.

11 Q Okay. You talked a bit with Mr. Davis about  
12 how you select which of the many projects in Illinois  
13 that are going on at any given time that you are going  
14 to inspect?

15 A Uh-huh.

16 Q I had a question or two about that. You  
17 included in your list of factors that go into how you  
18 decided which ones to look at, the compliance history  
19 of the company?

20 A Uh-huh.

21 Q Do you recall what the compliance history of  
22 Spirco was?

23 A No, I don't. As I recall, I don't think  
24 there was much of a factor in that regard. I thought  
25 they had just a couple notification violations, but

1 this has been some time ago now.

2 Q It might have been no violations?

3 A It could have been. I don't recall any of  
4 that. I based it, I think, primarily on the size of  
5 the project.

6 Q Okay. Let's talk about that. You mentioned  
7 a 5,000 square foot figure and then I think you looked  
8 at a notification of demolition --

9 A Uh-huh.

10 Q -- and renovation form. Where do those  
11 figures come from? Are they provided by the  
12 contractor?

13 A Yes. In other words, Spirco, since they  
14 filled out the notice, they would get it from  
15 somewhere. Normally what they do is they conduct an  
16 investigation to see what is going to be disturbed and  
17 based on that inspection report the contractor will  
18 put the information, you know, as far as what he is  
19 going to remove, what he is going to disturb.

20 Q Okay. I believe that Mr. Davis touched on  
21 the fact that -- it is included in our stipulation --  
22 that the second page of the notification -- first of  
23 all, is the notification two pages?

24 A A normal notification, yes, is two pages. I  
25 believe that we got one, just the front page, and then

1 we received the second page sometime later after  
2 contacting Spirco.

3 Q Okay. I believe it is in the stipulations  
4 that this was an inadvertent omission. Did that  
5 missing second page affect your decision on whether or  
6 not to investigate this site?

7 A Oh, boy. I don't recall.

8 Q Okay.

9 A I think it may have in reference -- if I were  
10 to look at the situation today, with any other  
11 contractor I think I would probably investigate it  
12 because of the fact that I noticed that you had 10,000  
13 square feet of category one. I knew it was a  
14 demolition. I probably would have conducted it.

15 Q Well, okay. I am going to go back to this,  
16 then. I may have more questions later?

17 MR. BERRY: May I approach the witness?

18 HEARING OFFICER JACKSON: Yes.

19 Q (By Mr. Berry) Is this the same notification  
20 form that you were looking at earlier with Mr. Davis?

21 A It appears to be.

22 Q Okay. The 10,000 square foot figure that you  
23 mentioned, where is that found on this document?

24 A ACM not to be removed, demo only, in section  
25 six.

1 Q Okay. So the 10,000 square feet was actually  
2 ACM that the contractor was not going to remove?

3 A Right.

4 Q Okay. The 2,000 square feet, lineal feet of  
5 ACM on pipes?

6 A Uh-huh.

7 Q And 5,000 square feet surface area?

8 A Right.

9 Q I will apologize to you right now, because I  
10 think I am a bit fragmented. I had some questions  
11 prepared, and things have come up and some of this is  
12 going to be out of order and I will skip around. I  
13 apologize for that. I will try to be as clear as I  
14 can.

15 Let's go back to when you were at the site. When  
16 you first arrived, were the appropriate signs posted  
17 at the facility?

18 A I believe there was a sign on the front door.

19 Q Would it help you in that regard to look at  
20 your report that you prepared?

21 A Yes.

22 Q I would draw your attention to the last  
23 sentence in the first paragraph.

24 A Well, with regard to the last sentence of the  
25 first --



1 Q Actually, the second paragraph?

2 A The second paragraph, what those are, are the  
3 credentials of the workers and employees at the site.

4 That is not intended to be for signage.

5 Q Okay.

6 A Okay. We normally look to see if the persons  
7 are licensed or accredited under the ASHARA program.

8 Those were at the site.

9 Q Okay. And it is also your recollection that  
10 there was no problem with the signage that was at the  
11 site?

12 A I thought there may have been a sign at the  
13 front door but I don't recall.

14 Q You didn't note any violations in your  
15 report?

16 A I didn't note them, no.

17 Q Do you usually record violations that you  
18 find?

19 A I try to, sure.

20 Q Okay.

21 A I don't appear to have an exterior photograph  
22 that would show that either.

23 Q How did you gain access to the building?

24 A Well, I noticed where the cars were parked,  
25 and I just tried to go to that door where logically

1 they would go in and out, and that is the one I  
2 entered.

3 Q Was that door lockable?

4 A I believe it was.

5 Q So did you just walk right in the front door  
6 and there the people were?

7 A Yes.

8 Q Within ten feet, between you and me, or  
9 further?

10 A Approximately between you and I.

11 Q Okay. No hallways and no --

12 A No, not that I recall.

13 HEARING OFFICER JACKSON: Let me clarify for the  
14 record. You said between you and me, but the Board  
15 doesn't know what distance that is. Can you be more  
16 specific?

17 MR. BERRY: I am sorry. I thought I said ten feet.

18 HEARING OFFICER JACKSON: I didn't know if that  
19 was the same.

20 THE WITNESS: You know, 10 to 20 feet, around in  
21 that range.

22 HEARING OFFICER JACKSON: Thank you.

23 Q (By Mr. Berry) I believe you testified that  
24 it was cold that day?

25 A Yes, it was.

1 Q Below freezing?

2 A Yes.

3 Q Was it snowing that day?

4 A I don't believe it was, not at the time that

5 I did the inspection, anyway.

6 Q I need to explore something with you that has

7 been raised in the complaint. Did you see visible

8 emissions to the outside air on the date of the

9 inspection, January 10, 1996?

10 A Let me ask, if I may, you are asking me if I

11 saw anything come outside the building at that time?

12 Q No, not anything. Visible emissions?

13 A The way you asked me the question, sir, is --

14 it is hard to answer.

15 Q Okay.

16 A What I saw was I saw dust entering the air

17 during the sweeping operation. Where it went after it

18 went up into the air, I don't know, sir.

19 Q Okay. So are you saying you did not see the

20 dust or asbestos fibers leave the building?

21 A I did not see it coming out of the building.

22 Q Okay. What color was the asbestos that you

23 saw?

24 A The color of the asbestos that I saw?

25 Q The suspect ACM? I am sorry.

1 A The suspect materials was a range from gray  
2 to white, generally.

3 Q Okay. I used some regulatory defined terms  
4 in my question that I think you picked up on, and to  
5 make sure we are using the same language, I would like  
6 to give you a chance to see those definitions and make  
7 sure that we agree.

8 A Okay.

9 MR. BERRY: Tom, I have shown you this.

10 MR. DAVIS: Sure.

11 Q (By Mr. Berry) I will represent to you that  
12 this is a copy of a portion of 40 CFR, the Code of  
13 Federal Regulations.

14 A Uh-huh.

15 Q I will hand this to you. Do you agree that  
16 is what it appears to be?

17 A Yes, it does.

18 Q I believe that if you turn to Section 61.142  
19 you will find the definition of the term visible  
20 emissions.

21 A It is under 141.

22 Q You are right. It is 141. Would you turn to  
23 that, please?

24 A Yes, sir.

25 Q Visible emissions is defined as emissions

1 that are, quote, visually detectable without the aid

2 of instruments; is that right?

3 A Uh-huh.

4 Q That means with the naked eye?

5 A Uh-huh.

6 Q Now, where you might have or might not have

7 seen visible emissions is important; is that right?

8 A Yes.

9 Q Under the regulatory regime. The term

10 outside air is also defined in that section. Will you

11 turn to that?

12 A Yes. I am familiar with it.

13 Q That means air outside buildings, doesn't it?

14 A Uh-huh.

15 Q Not inside?

16 A Uh-huh.

17 Q I want to keep talking about the

18 regulations. You mentioned that Spirco had not

19 adequately wetted certain ACM; is that right?

20 A Essentially, yes.

21 Q Are you familiar with the regulation that

22 requires ACM to be wetted?

23 A Uh-huh.

24 HEARING OFFICER JACKSON: You need to answer with

25 a yes or a no.

1 THE WITNESS: Yes, I believe so.

2 Q (By Mr. Berry) I believe that is 61.150; is  
3 that correct?

4 A It depends. 61.145 can apply. The 61.150  
5 applies during disposal and, of course, materials that  
6 are going to be disposed of off site.

7 Q Okay. Did 61.150 apply to this site, in your  
8 estimation?

9 A Yes, it did.

10 Q Okay. Do you know how 61.150 reads?

11 A Not verbatim. I essentially know the basics,  
12 if you will.

13 Q Okay. Well, you have a copy. Would you turn  
14 to 61.150(a)?

15 A Yes.

16 Q This is, for your information, something that  
17 is cited in the complainant's complaint. Would you  
18 read 61.150(a), stopping at the number 1 in  
19 parenthesis?

20 A Okay. Each owner or operator of any source  
21 covered under the provisions of 61.144, 145, 146 and  
22 147 shall comply with the following provisions: (a)  
23 discharge no physical emissions to the outside air  
24 during the collection, processing, including  
25 incineration, packaging, or transporting of any

1 asbestos containing waste material generated by the  
2 source or use one of the emission control and waste  
3 treatment methods specified in paragraphs (a)(1)  
4 through (a)(4) of this section.

5 Q Okay. Thank you, sir. That's where I want  
6 to focus. So it sounds like the contractor has two  
7 choices under that, what you just read. You can  
8 either, one, not discharge visible emissions to the  
9 outside air or, two, use one of the methods of control  
10 that are listed in (a)(1) through (a)(4). Is that  
11 your understanding as well?

12 A Essentially, yes.

13 Q You testified that you didn't see any visible  
14 emissions to the outside air?

15 A Not to the outside air, correct.

16 Q Assuming that you do decide to use, rather  
17 than not discharging visible emissions to the outside  
18 air, you used one of the methods under (a)(1) through  
19 (a)(4)?

20 A Uh-huh.

21 Q Wetting the ACM is an appropriate method,  
22 correct?

23 A Yes.

24 Q 61.145(c)(6) is another section of the regs,  
25 and it also prescribes wetting of the ACM, correct?

1 A Uh-huh, I believe so.

2 Q Would you confirm that?

3 A Okay. 145(c).

4 Q (c)(6)?

5 A (c)(6), yes. It requires wetting the  
6 material.

7 Q But when the temperature is below 32 degrees  
8 you don't have to use water; is that correct?

9 A You are talking about Section 7?

10 Q Correct.

11 A Is that what you are asking me?

12 Q Yes.

13 A Okay. Only under Section 7 are the wetting  
14 operations, and only the wetting operations subpart is  
15 eliminated by that.

16 Q Okay. So when the temperature is below 32  
17 degrees, you don't have to use water; is that correct?

18 A As long as you have authorization from the  
19 administrator and you incorporate one of the other  
20 methods under that section.

21 Q Okay. On the permission issue that you just  
22 identified, permission from the --

23 A Administrator?

24 Q Where would I find that requirement? I don't  
25 see it in (c)(7).



1 A Okay. If you will look at (c)(7) it says  
2 specifically under paragraph (i), the owner or  
3 operator need not comply with paragraph (c)(2)(i) and  
4 the wetting provisions of paragraph (c)(3) of this  
5 section. So it would be paragraph (c)(3), is where  
6 that is -- I wish I had my own copy back. I have all  
7 of that highlighted.

8 MR. DAVIS: Mr. Berry, Mr. Fodor has his own copy  
9 of what you had given him. He feels more comfortable  
10 because he has his highlighted.

11 MR. BERRY: Well, good because frankly I could use  
12 mine.

13 THE WITNESS: Okay. Here is yours back.

14 HEARING OFFICER JACKSON: Those are both the same  
15 copy?

16 MR. DAVIS: Mr. Fodor's copy has highlighted  
17 provisions.

18 HEARING OFFICER JACKSON: Okay.

19 MR. BERRY: Is his the 1996 version? Because that  
20 is what I was using, and that's what.

21 THE WITNESS: November of 1990 is what I rely on.

22 MR. BERRY: 1990. Okay. Do we know if there are  
23 any substantive changes between 1990 and 1996?

24 MR. DAVIS: None that would affect this.

25 MR. BERRY: Okay. That's fine with me.

1 THE WITNESS: Okay. I will quote from this. It  
2 says under paragraph (c)(3), when RACM is stripped  
3 from a facility component while it remains in place in  
4 the facility, adequately wet the RACM during stripping  
5 operations.

6 In renovation operations wetting is not required  
7 if, A, you have permission from the administrator and,  
8 B, incorporate one of the emission control system,  
9 which essentially would be a negative pressure or a  
10 glove bag or in leak type wrapping.

11 Q (By Mr. Berry) Well, I am sorry. When I read  
12 (c)(7), doesn't it say when the temperature is below  
13 32 degrees Fahrenheit, the owner or operator need not  
14 comply with the wetting provisions of paragraph  
15 (c)(3); is that right?

16 A Uh-huh.

17 Q And (c)(3) is the one that requires  
18 permission?

19 A When you are stripping it off the components.

20 Q Right.

21 A Now, once it hits the floor paragraph 6  
22 applies.

23 Q Sure. Paragraph 6 applies in all instances,  
24 right?

25 A Okay. Once it has been removed I believe

1 so.

2 Q Sir, when you arrived at the site, weren't  
3 the Spirco employees, or at least some of them, in the  
4 process of wetting the bags that were found on the  
5 first floor?

6 A Not that I saw if they were.

7 Q You didn't see the employees of Spirco  
8 wetting the inside of the bags?

9 A No, sir.

10 Q They had on Tyvek suits, didn't they?

11 A Not to my knowledge. I thought they had  
12 street clothes on.

13 Q They didn't have on Tyvek suits under their  
14 raincoats that you testified that you saw earlier?

15 A Not that I seen.

16 Q Were they handling the bags at all?

17 A Yes.

18 Q They were not shipping any of the bags out,  
19 were they?

20 A No.

21 Q Did you see anyone loading bags on to a  
22 truck?

23 A No, sir.

24 Q Did you see anybody leaving the building with  
25 a bag?

1 A No, sir.

2 Q They were not putting bags in the dumpster  
3 because there was not even one on site, correct?

4 A Correct.

5 Q So they were being stored on site inside a  
6 lockable building?

7 A That's correct. I assume it is lockable,  
8 okay.

9 Q Okay.

10 A Buildings with age, sometimes the locks don't  
11 work or maybe they don't have keys to them. I am  
12 assuming that it is.

13 Q Okay. All of the bags that you saw there on  
14 the first floor were clear, weren't they?

15 A I believe there were some black bags mixed in  
16 with them.

17 Q They were in the same area as the clear bags?

18 A Yes.

19 Q You said you believe. How sure are you?

20 A Well, it has been a couple of years now since  
21 I was there.

22 Q Right.

23 A I recall looking -- I believe there were some  
24 black bags there.

25 Q Is it possible that they were on the first

1 floor but not with those bags in the storage area?

2 A That is possible.

3 Q You have no reason to believe or evidence, do  
4 you, that any bags had been taken from the building  
5 before you got there?

6 A No. Mr. Bowker stated to me that all of the  
7 material that was moved was still stored at the site  
8 on the first floor location. As a matter of fact --  
9 well --

10 Q Thanks. The largest concentration of the  
11 bags, and you testified there may have been a few  
12 other bags scattered, black bags on the first floor?

13 A Yes.

14 Q And not with the others, but all of the ones  
15 that were together, were they inside any kind of  
16 enclosure at all?

17 A They were inside of an area delineated by  
18 asbestos danger tape.

19 Q Okay.

20 A Which photo 1 illustrated.

21 Q I am sorry. What?

22 A Photo 1 illustrated, you know, essentially  
23 what was there.

24 Q Okay. Were they not also inside of poly  
25 walls?

1 A I don't recall. I would have to look at the  
2 diagram that I filled out on my inspection report to  
3 see if there were any poly walls there. I don't  
4 believe I remember seeing them.

5 Q The bags were not yet labeled, right?

6 A That is correct.

7 Q Are you familiar with the regulation that  
8 requires labeling?

9 A Yes.

10 Q Where would I find that?

11 A 61.150 O.

12 Q Okay. Is there a subsection of that?

13 A Sure. If you will look at paragraph (a)(4).

14 Q Okay. Now, again, I want to make sure I  
15 understand. Before we ever get to (a)(4), you don't  
16 have to do anything in (a)(4) if you discharge no  
17 visible emissions to the outside air, correct?

18 A Under NESHAPS, yes.

19 Q Okay. (a)(5) also mentions something about  
20 labels. Are those --

21 A Those are generator tags, as we term them.

22 Q Okay. We are really talking -- it can all be  
23 done in one label, though, or are these two different  
24 labels?

25 A Normally, it is two different labels. When

1 you mention labels, to me you are talking about the  
2 OSHA labels that is preprinted on the bags that meets  
3 with the DOT requirements. When you mention tags, to  
4 me that is the generator tags that are required by  
5 NESHAPS.

6 Q Okay. Under (a)(4), are those OSHA labels?

7 A Yes, they are.

8 HEARING OFFICER JACKSON: Let me just interrupt  
9 here for a second to clarify. You are saying (a)(4),  
10 but I think it should actually be (a)(1) Subpart (4)  
11 and Subpart (5), correct?

12 THE WITNESS: Yes.

13 HEARING OFFICER JACKSON: Does everybody follow  
14 that?

15 MR. BERRY: 150(a)(1) Subpart IV and V.

16 HEARING OFFICER JACKSON: Right. Okay. I just  
17 wanted to make sure that was clear so the Board can  
18 follow what we are talking about.

19 THE WITNESS: Okay.

20 HEARING OFFICER JACKSON: Thank you.

21 MR. BERRY: And while we are doing that, I guess  
22 we might as well specify that OSHA is the Occupational  
23 Safety & Health Administration.

24 HEARING OFFICER JACKSON: Please continue.

25 Q (By Mr. Berry) So under (a)(1)(4) those are

1 OSHA labels?

2 A Yes.

3 Q The labels in (a)(4) and (a)(1) (4) and (5),  
4 must be applied prior to the transport of the bags; is  
5 that correct?

6 A Yes.

7 Q But they were not yet being transported,  
8 right?

9 A Correct.

10 Q Did Spirco have labels on site to use for  
11 this purpose?

12 A I believe they did.

13 Q Did you ask to see them?

14 A Yes.

15 Q I think I just have two more questions before  
16 we leave this topic. The first is are you aware of  
17 any economic benefit, meaning a dollar benefit to a  
18 company for not labeling bags while they are on site  
19 in a storage area?

20 A Common sense, I would say not.

21 Q The last question on this subject is are you  
22 familiar with the practice of contractors of putting  
23 trash and other non ACM in the same containers that  
24 you use to put ACM in?

25 A I have run into that on occasion.



1 Q Okay. Let's go back to what you saw when you  
2 arrived on January 10th of 1996. The workers were not  
3 performing any demolition or renovation work when you  
4 arrived, were they?

5 A Not to my knowledge.

6 Q Did you see all of the workers there?

7 A Well, I went into one section and I saw  
8 several workers. If there were workers on the 12th  
9 floor or the 10th floor, but I was not aware of -- you  
10 know, I only know in those sections of the buildings  
11 that I was in. I assume that that was the entire  
12 operation at that point.

13 Q Well, do you know how many workers were there  
14 that day?

15 A I know there were probably five or six, maybe  
16 seven.

17 Q I hope I am not mischaracterizing your  
18 testimony, but I believe that you said earlier you  
19 said you saw five or six --

20 A Five or six.

21 Q -- or seven together there at the same time.  
22 So to your knowledge then -- well, to your knowledge  
23 no Spirco workers or employees were performing  
24 demolition or renovation work when you saw them?

25 A I would say that's an accurate statement.

1 Q And you did not observe any?

2 A I did not observe any demolition occurring.

3 Q You actually took a picture before you  
4 introduced yourself, didn't you?

5 A Yes.

6 Q So you had your camera ready when you walked  
7 in?

8 A Well, I wouldn't exactly say that. It is our  
9 normal practice to take a photograph of the exterior  
10 and then proceed to the interior.

11 Q You testified before that you saw at least  
12 one Spirco employee dry sweeping the suspect ACM; is  
13 that right?

14 A Yes.

15 Q I guess my only question on that is are you  
16 sure?

17 A Yeah.

18 Q Okay. And are you sure, positive, that you  
19 saw workers putting material from the floor into bags?

20 A Yes.

21 Q Did you take a picture of workers doing that?

22 A No.

23 Q I think you said before that you observed  
24 them for several minutes doing this. Is that  
25 accurate?

1 A A couple of minutes.

2 Q Okay.

3 A I didn't stand there for five or ten minutes  
4 and actually see them.

5 Q Is it fair to say you had time to take a  
6 picture of them doing that, but did not?

7 A I would say it is possible.

8 Q Before I used the words demolition and  
9 renovation. These are, again, regulatory defined  
10 terms, aren't they?

11 A Uh-huh.

12 Q Back in 61.141, demolition is defined as,  
13 quote, the wrecking or taking out of any load  
14 supporting structural members of the facility, end  
15 quote, isn't it?

16 A Yes, but I think there is more to it than  
17 that.

18 Q Okay. I am sorry.

19 A Doesn't it also say it also includes non load  
20 bearing materials such as ceilings, et cetera.

21 Q I will have you read it. I don't want to  
22 leave anything out.

23 A Okay. It means the wrecking or taking out of  
24 any load supporting structural member of a facility  
25 together with any related handling operations or

1 intentional burning of the facility.

2 Q Okay. Is it still your testimony now that we  
3 have refreshed your memory of what the definition is  
4 that you didn't observe this happening while you were  
5 there?

6 A That's correct.

7 Q Okay. Renovation is also defined in this  
8 section; is that right?

9 A Yes, it is.

10 Q So I don't leave anything out, would you read  
11 that?

12 A Renovation means altering the facility or one  
13 of -- or one or more facility components in any way,  
14 including the stripping or removal of RACM from a  
15 facility component. Operations in which load  
16 supporting structural members are wrecked or taken out  
17 are demolitions.

18 Q Again, is it still your testimony that you  
19 did not observe that happening either?

20 A Not observe a demolition?

21 Q No, a renovation.

22 A I don't necessarily agree with that  
23 statement.

24 Q Okay. Why not?

25 A Because a facility component means any part

1 of a facility. If you have RACM that is on a floor  
2 which could be part of a facility is being disturbed  
3 could that not be a renovation.

4 Q Let me ask you, did you observe the  
5 renovation, renovation work being performed while you  
6 were there? You testified before that you did not.  
7 Are you now changing your mind?

8 A No, I won't.

9 Q I am sorry. I am confused. I am not trying  
10 to confuse you. I believe you testified before that  
11 you did not see any renovation work being performed?

12 A I don't recall it. When did I state that or  
13 did I?

14 Q The record will reflect. Are you now  
15 testifying that you don't recall seeing any renovation  
16 work being performed?

17 A What I testified to was I saw debris that was  
18 on the floor being swept up and put in bags.

19 Q Is it fair to say that you did not see Spirco  
20 performing any removal of asbestos while you were  
21 there?

22 A I stand on my other statement. I saw them  
23 sweep stuff up from the floor and put them into bags.

24 Q Okay. Remove is also defined. Would you  
25 read that section, sir?

1 A Uh-huh. Remove means to take out RACM or  
2 facility components that are covered with a RACM from  
3 any facility.

4 Q Did you see any Spirco employees take out  
5 RACM or facility components covered with RACM from the  
6 facility?

7 A It was still in the facility when I arrived.

8 Q Is that a no, sir?

9 A I would have to say no.

10 Q If Spirco had performed any removal, then you  
11 didn't see it?

12 A That's correct.

13 Q And if they had performed any removal, you  
14 don't know what work practices that they had used  
15 because you weren't there?

16 A Correct.

17 Q You don't know if they wore the appropriate  
18 gear?

19 A That's correct.

20 Q Okay.

21 A During that period of time, let me clarify.  
22 I can't only attest to what I actually saw.

23 Q So you don't know if they used full  
24 containment, if they did any removal?

25 A I don't know.

1 Q Or if they had negative air pressure?

2 A That's correct. But isn't that speculation?

3 Q No, sir, not as to what you saw.

4 A I mean, we are talking prior to what I saw.

5 While I was there I did not observe negative air

6 pressure in place.

7 Q Right. My question was if any removal had

8 been done before you were there, you didn't see it?

9 That is all I am asking.

10 A That is correct, yes.

11 Q Did you take any samples of the material that

12 you saw on the floor?

13 A Yes, I did. I took two.

14 Q Which floor? Which level of the building was

15 that on?

16 A It was the entrance level that we walked in

17 on. I believe I termed that one the first floor.

18 Q The same place where the bags were?

19 A Yes.

20 Q What were you wearing when you sampled that?

21 A I don't recall. I don't know if I just

22 picked up a piece and put it into a sample bag. I

23 don't recall what I did.

24 Q Help me with what your testimony was on the

25 direct. Did you say that you did not wear a

1 respirator during the time you were in the building or  
2 did you wear one?

3 A I don't recall, sir.

4 Q Did you wear a Tyvek suit?

5 A I don't recall.

6 Q Did you have on gloves when you picked up a  
7 piece of suspect ACM from the floor?

8 A (The witness shrugging shoulders.)

9 HEARING OFFICER JACKSON: You need to answer out  
10 loud.

11 THE WITNESS: I don't recall. I really don't.

12 Q (By Mr. Berry) Did you have that sample  
13 analyzed for asbestos?

14 A Yes.

15 Q Do you know what the results were?

16 A I would have to look back on the report.

17 They were less than one percent, as I recall.

18 Q Less than one percent asbestos is not  
19 regulated, is it?

20 A It could be.

21 Q Okay. In what way?

22 A Okay. If you had regulated asbestos  
23 containing material and it contaminated other debris,  
24 it would meet the definition of asbestos containing  
25 waste material.



1 Q Was there snow inside the building?

2 A I don't recall any.

3 Q Okay.

4 A At least where I was.

5 Q Do you recall snow on any of the floors?

6 A Not really.

7 Q But some of the windows had been broken?

8 A Uh-huh.

9 HEARING OFFICER JACKSON: You need to answer out  
10 loud again.

11 THE WITNESS: Yes.

12 HEARING OFFICER JACKSON: Thank you.

13 Q (By Mr. Berry) Sir, you also took a bag of  
14 material from the site, didn't you?

15 A Yes, sir.

16 Q I want to talk a little bit about that. Do  
17 you recall whether it was one of the clear bags?

18 A I believe it was.

19 Q How did you choose that bag from the many  
20 that were there?

21 A I looked at that bag and I looked at some of  
22 the other ones. Obviously, I didn't go through every  
23 bag. I took one that I felt was representative of  
24 what was there.

25 Q Okay. You don't know, then, do you, where

1 the material in that bag came from? It could have  
2 been in floor sweepings or if removal had been  
3 performed on the floor it could have been from there?

4 A That's possible, yes.

5 Q Did you put a label on the bag?

6 A Did I put a label on the bag?

7 Q Yes.

8 A No, sir, I did not.

9 Q Did you complete a hazardous waste manifest  
10 to transport it?

11 A No.

12 MR. DAVIS: I would object to this question in  
13 particular since this is obviously not a hazardous  
14 waste situation. It is not relevant.

15 HEARING OFFICER JACKSON: Mr. Berry?

16 MR. BERRY: That's fine. Strike. That question.

17 HEARING OFFICER JACKSON: All right.

18 Q (By Mr. Berry) Are you a licensed transporter  
19 of ACM waste?

20 A I could be.

21 Q Are you?

22 A I can't answer that question the way it is  
23 phrased.

24 Q I will let you rephrase it.

25 A Okay. Asbestos containing materials in

1 accordance with NESHAPS are a non special solid  
2 waste. Therefore, the bag, if it contained asbestos  
3 and it was properly sealed, it was not a special waste  
4 and would not have required a special waste license.  
5 So, therefore, I don't need one.

6 Q Okay. Did you mark your vehicle in any way?

7 A No, I did not.

8 Q We talked earlier about 61.150. Do you still  
9 have your copy in front of you?

10 A Yes.

11 Q Could you read Subpart C, please?

12 A Marked vehicles used to transport asbestos  
13 containing waste material during loading and unloading  
14 of waste so that signs are visible.

15 Q But you didn't do that?

16 A In our internal policy during the  
17 investigations that has not been required.

18 Q That's your internal policy, the IEPA's?

19 A Well, not just ours, but we are trained by  
20 the U.S. EPA, and that is not one of our requirements.

21 Q I am looking now at 61.150(b)(1). There is a  
22 number of subparts here. I won't read them all. They  
23 include such things as for all asbestos containing  
24 waste material transported off the facility site  
25 certain steps must be taken including keeping a

1 record. Are those also excluded under your internal  
2 policy from what you have to do?

3 A As far as I know, yes.

4 Q So how did you transport this bag? Did you  
5 just put it in your trunk?

6 A I put it in a clean disposable bag, sealed it  
7 up and then it was placed in the trunk.

8 Q Okay. So you put the poly bag inside another  
9 bag and then put it in your trunk?

10 A Yes.

11 Q Sir, when you left, you didn't tell Spirco  
12 that you were going to call OSHA, did you?

13 A I believe I did.

14 Q You think that you told Mr. Bowker that --

15 A I think I said basically that I would have to  
16 refer this to the appropriate personnel.

17 Q Did you tell them that you were going to call  
18 OSHA when you left?

19 A I don't think so specifically.

20 Q But you did call OSHA; is that correct?

21 A Yes, I did.

22 Q And you called OSHA because there is some  
23 overlap in their duties and your duties as an IEPA  
24 inspector?

25 A We have an open cooperation between the

1 regulatory agencies that if I see what would be

2 blatant violations that I would let them know.

3 Q Because there is an overlap in what they do

4 and what you do?

5 A Yes.

6 Q I mean, you didn't call the FBI because there

7 is no overlap. You called OSHA because they also

8 regulate some aspects of asbestos, right?

9 A Right.

10 Q Does this include worker protection?

11 A Yes.

12 Q And the OSHA labels that we talked about

13 before?

14 A Yes.

15 Q So since you did not tell Spirco that you

16 were calling OSHA to advise them perhaps to perform an

17 inspection or that you saw -- that you observed

18 violations, then to the best of your knowledge, if an

19 OSHA inspection was done that day it was a surprise to

20 Spirco, right?

21 MR. DAVIS: I would object. That obviously calls

22 for conjecture or speculation on the part of the

23 witness.

24 HEARING OFFICER JACKSON: Sustained.

25 Q (By Mr. Berry) That's fine. You didn't tell

1 Spirco that you were going to do that, right?

2 A I don't believe so.

3 Q There was nothing in your actions that would  
4 have advised Spirco that OSHA might come later that  
5 day and perform an inspection?

6 A I don't think I notified them, no.

7 Q Okay. In your experience, do OSHA inspectors  
8 generally do a thorough and adequate job of inspecting  
9 sites?

10 A It is like anyone else. Sometimes you have  
11 good inspectors and sometimes you have bad ones.

12 Q Okay. You didn't call them because you  
13 thought that they would do a lousy job of inspecting;  
14 is that right?

15 A That's correct.

16 Q You wouldn't bother to call maybe if you  
17 thought they did a lousy job?

18 A That's correct.

19 Q In your job have you ever reviewed an OSHA  
20 inspection report?

21 A Yes.

22 Q Okay. So you are familiar with how they  
23 look?

24 A The ones I reviewed. I mean, I can compare  
25 them. Obviously, each one is a bit different.

1 Q Okay. Well, I will hand you one?

2 MR. BERRY: I will ask the court reporter to mark  
3 this as an exhibit.

4 (Whereupon said document was duly marked for  
5 purposes of identification as Defendant's Exhibit  
6 2 as of this date.)

7 HEARING OFFICER JACKSON: This is Respondent's  
8 Exhibit 2?

9 MR. BERRY: Yes.

10 Q (By Mr. Berry) Sir, have you had a chance to  
11 review that document?

12 A There is not much to review. Yes.

13 Q Is it a two-page document?

14 A Yes, it is.

15 Q Have you looked at both pages?

16 A Yes.

17 Q Do you need more time to look at it?

18 A No.

19 Q Okay. Do your files contain a copy of this  
20 document?

21 A My files do not.

22 Q Okay. What about in other files at the IEPA?

23 A Possibly.

24 Q Have you ever seen this document?

25 A I believe I have seen a copy of it.

1 HEARING OFFICER JACKSON: Mr. Berry, could we have  
2 the witness identify the document for the record,  
3 please.

4 MR. BERRY: Yes. I am sorry.

5 Q (By Mr. Berry) Does the document before you  
6 appear to be a U.S. Department of Labor, Occupational  
7 Safety & Health Administration narrative?

8 A Yes, it does.

9 MR. BERRY: Is that sufficient?

10 HEARING OFFICER JACKSON: Thank you.

11 Q (By Mr. Berry) When was it that you saw this  
12 document?

13 A A week ago maybe.

14 Q Was it shown to you by Mr. Davis?

15 A Yes.

16 Q If I could, sir, would you -- could I direct  
17 your attention to boxes 11 through 14?

18 A Uh-huh.

19 Q Do you see them?

20 A Yes.

21 Q This document appears to reflect an OSHA  
22 inspection on the same day as your inspection, doesn't  
23 it?

24 A It appears, yes.

25 Q And it is signed?



1 A Yes, it is signed.

2 Q Now, would you look at page two, the box  
3 numbered 19 and tell me what that says?

4 A It is checkmarked no violations observed.

5 Q So they apparently didn't find any labeling  
6 violations?

7 A Apparently not.

8 Q Or worker protection noncompliance?

9 A I would assume so.

10 Q You assume that because --

11 A I wasn't there, yes. I don't know what was  
12 happening at the site.

13 Q Right. I am just asking you about this  
14 document.

15 A Okay.

16 Q You went to the facility for the purpose of  
17 performing an inspection; is that right?

18 A Yes.

19 Q I am through with that document, by the way.

20 A Good.

21 Q You knew Spirco or someone was performing  
22 work at that site because they had submitted a  
23 notification?

24 A Yes.

25 Q I think you testified that you are not sure

1 if you had seen that document, but you had seen a  
2 computer report that is generated from that document?

3 A Right. Typically I don't see the notice  
4 until after the inspection.

5 MR. BERRY: I am going to ask the court reporter  
6 to mark Defendant's Exhibit Number 3, and then I will  
7 hand it to you, sir.

8 (Whereupon said document was duly marked for  
9 purposes of identification as Defendant's Exhibit  
10 Number 3 as of this date.)

11 MR. BERRY: Could you also mark Defendant's  
12 Exhibit Number 4.

13 (Whereupon said document was duly marked for  
14 purposes of identification as Defendant's Exhibit  
15 Number 4 as of this date.)

16 Q (By Mr. Berry) Are these documents  
17 notifications of demolition and renovation submitted  
18 by Spirco?

19 A I don't know who they were submitted by.

20 Q Okay. Do they differ only in the dates that  
21 are listed on the pages down at the bottom for the --

22 A No. They differ also -- well, that will be a  
23 separate question.

24 Q Okay. How else do they differ?

25 A One is an original and one is a revision.

1 Q That is indicated on one of the forms?

2 A Yes, Exhibit Number 4 is a revision, I  
3 assume, to Exhibit Number 3.

4 Q Okay. Other than that, do they only differ  
5 by the dates that are indicated in Section 7 and 8?

6 A It appears that way.

7 HEARING OFFICER JACKSON: Mr. Berry, not to  
8 interrupt your train of thought, but could we get a  
9 specific identification of the exhibits for the record  
10 from the witness?

11 Q (By Mr. Berry) Sir, what are these documents?

12 A These appear to be the first pages, one,  
13 Exhibit 3, is an original, appears to be an original  
14 notice for the former Pabst Brewery. Exhibit 4  
15 appears to be a revision, the first page only, for  
16 that same site.

17 HEARING OFFICER JACKSON: Thank you.

18 Q (By Mr. Berry) Appearing to change only the  
19 dates of when the work will be performed?

20 A Yes.

21 Q Doesn't this notification form state that the  
22 building has asbestos, quote, throughout?

23 A Yes. It also has a notice that most of it is  
24 on floors one through three.

25 Q And also a statement about the amount of

1 asbestos to be removed?

2 A Yes, it does say that.

3 Q Sir, one of the allegations that has been  
4 made against my client is that a thorough inspection  
5 under 40 CFR 61.145(a) was not performed. Are you  
6 familiar with that regulation that I just mentioned?

7 A Yes.

8 Q Isn't the purpose of that inspection to  
9 determine if any asbestos is present?

10 A Yes.

11 Q Is it necessary that the personnel that are  
12 on site performing the work also have been the ones  
13 who performed this inspection?

14 A Not necessarily.

15 Q It is not necessarily required?

16 A No, it is not necessarily true. There could  
17 have been another company, other employees used to do  
18 the inspection and then Spirco would use the abatement  
19 workers to actually carry out the work, if that's the  
20 way I understand your question.

21 Q No, I don't think I am being clear. Is it  
22 required that the people actually performing the work  
23 have been the ones who did the inspection before?

24 A The regulation states the owner and/or  
25 operator shall. The owner or operator shall conduct

1 an inspection.

2 Q Is it necessary that the workers who are on  
3 site have been the same ones who performed the  
4 investigation as long as one was done?

5 A Oh, you are asking me if they can do it.

6 Q Yes.

7 A They can do it, yes.

8 Q They can do what? I think I have muddled  
9 this up.

10 A They can do the inspection. Yes, you have me  
11 thoroughly confused.

12 Q I don't mean to. So you were saying they can  
13 do what?

14 A They can do the inspection under NESHAPS.

15 Q Well, sir, you testified that Mr. Bowker told  
16 you that he had not done an inspection?

17 A That's correct.

18 Q Is it necessary that Mr. Bowker have been the  
19 individual who performed that inspection --

20 A No, it is not.

21 Q -- as long as one was done?

22 A But my question to him was had an inspection  
23 been done.

24 Q Okay.

25 A He replied, no, one had not been done.

1 Q Okay. Did Spirco have equipment on site to  
2 perform an asbestos removal job?

3 A They had some equipment there.

4 Q Did they have glove bags?

5 A I don't know. I would have to refer to the  
6 photographs to see if I saw any. It is possible.

7 Q Did they have poly for the walls and for  
8 holes?

9 A It was two years ago. I don't really recall.

10 Q Hadn't they set up a decon area?

11 A Yes, they had a decon area.

12 Q Hadn't they submitted a notification to the  
13 IEPA that indicated that there was ACM throughout this  
14 building, and that a certain amount would be removed?

15 A That's essentially correct, yes.

16 Q Didn't it also give the dates -- didn't it  
17 also give the dates on which asbestos removal would  
18 occur -- I am sorry -- the dates between which  
19 asbestos removal would occur?

20 A Yes.

21 MR. BERRY: Sir, I am going to hand you what I  
22 will ask the court reporter to mark as Defendant's  
23 Exhibit Number 5.

24 (Whereupon said document was duly marked for  
25 purposes of identification as Defendant's Exhibit

1 5 as of this date.)

2 Q (By Mr. Berry) Sir, do you have that document  
3 before you?

4 A Yes, I do.

5 Q Would you like a minute or two to review it?

6 A Please. (Witness reviewed document.) Some of  
7 these copies are a bit --

8 Q I apologize for that. So were mine.

9 A I will review it specifically based on your  
10 questioning.

11 Q Have you seen this document before?

12 A No, I have not.

13 Q What does it appear to be?

14 A Well, it appears to be a letter. It is a  
15 proposal about removal for the scope of friable  
16 asbestos and demolition, and it includes some  
17 information as far as whether there is some asbestos  
18 or whether there isn't on various floors.

19 Q Okay. Does it specify -- is it dated?

20 A Yes, 02-07 of 1994.

21 Q Is it February?

22 A February 8, but the subsequent pages are  
23 February 7th, 1994.

24 Q In the first paragraph of the letter does it  
25 specify where this proposal is for work to be

1 performed at?

2 MR. DAVIS: I would propose an objection at this  
3 point in time now that we are looking at the substance  
4 of the document. This witness has, of course, no  
5 personal knowledge. He has told us that he has never  
6 seen this before. It is not generated by him. It is  
7 generated by Spirco. My suggestion is that all we are  
8 really doing is putting into the record what would  
9 appear to be hearsay information. It is coming from  
10 the wrong source.

11 I certainly don't know exactly where the line of  
12 questioning is going, but it would appear to be a  
13 legitimate inquiry for another witness other than Mr.  
14 Fodor.

15 HEARING OFFICER JACKSON: I have not seen the  
16 exhibit, so let me take a look at it.

17 Mr. Berry, do you have a response to the  
18 objection?

19 MR. BERRY: I do. I am not offering this document  
20 for the truth of the content but merely for the fact  
21 it was generated and that an inspection was done.

22 MR. DAVIS: Well, as you look at that, then, Ms.  
23 Hearing Officer, I would say we have accomplished that  
24 objective with the questions that have been asked and  
25 answered. If we go further and focus on the



1 particulars or details, if you will, then we do engage  
2 in truth seeking beyond the confines of what we have,  
3 that is a document prepared by somebody other than the  
4 witness.

5 MR. BERRY: Again, Ms. Jackson, I am not offering  
6 it for the truth of what is on page three as to what  
7 the author of this document saw, but for the fact that  
8 it was generated.

9 HEARING OFFICER JACKSON: Okay.

10 MR. BERRY: I won't go into the details.

11 HEARING OFFICER JACKSON: Very good, then. The  
12 objection, I guess to a certain extent, is sustained  
13 and overruled both. The document will be allowed in  
14 for the limited purpose that Mr. Berry has indicated  
15 to show that an inspection was performed. I think  
16 that has been shown. So I don't know that any other  
17 questions are necessary as to the exact content of the  
18 report itself.

19 MR. BERRY: Okay. I won't ask anymore about the  
20 content, but I do have another question or two if you  
21 would allow it.

22 HEARING OFFICER JACKSON: I was going to explain,  
23 too, that this is cross-examination, so I will allow  
24 some latitude. If you did have other questions, we  
25 can take them on a question by question basis and

1 address objections to those questions as they come up.

2 MR. DAVIS: But it has not been tendered for  
3 admission. Is this your purpose, to solicit testimony  
4 or tender it as a document.

5 MR. BERRY: No, I would like him to look at that  
6 and testify about it.

7 MR. DAVIS: That's what we are here for. But I  
8 would object to the entry into the record of that  
9 exhibit.

10 HEARING OFFICER JACKSON: I don't think a motion  
11 has been made yet to admit it into the record.

12 MR. BERRY: Is your objection on the hearsay  
13 basis?

14 MR. DAVIS: Right.

15 MR. BERRY: Okay.

16 HEARING OFFICER JACKSON: We will allow the  
17 witness to look at the document, and when it is moved  
18 for admission, if there are objections at that time we  
19 will take them up at that time. Okay.

20 MR. BERRY: Okay.

21 Q (By Mr. Berry) Sir, isn't this document the  
22 type of document that you would expect to see  
23 generated as a result of an inspection at a site?

24 A No.

25 Q It is not?

1 A No.

2 Q Isn't it a four-by-four recital of the  
3 asbestos that someone found in the building?

4 A No.

5 Q The document in front of you is not?

6 A Ask me why and I will tell you.

7 Q Well, I think I need to back up then. If  
8 there is a hearsay objection on this we will have to  
9 address it. Would you read the regarding, the subject  
10 line of this letter?

11 A You are referring to what the scope of this  
12 purpose is?

13 Q The re line?

14 A The what?

15 Q The RE, colon, line, the words that follow.

16 A Revised proposal for the Pabst Brewery  
17 facility in Peoria.

18 Q Okay. I am just trying to tie it in. Sir,  
19 this does not appear to you to be a level by level  
20 assessment of whether and how much asbestos was found  
21 in this facility?

22 A That's not what you asked me. You asked me  
23 two different questions.

24 Q Okay. Let's go with the one I just asked.

25 A This does indicate a summary of what the

1 author believed to be present at the site.

2 MR. BERRY: I am going to ask the court reporter  
3 to mark this as Defendant's Exhibit Number 6.

4 (Whereupon said document was duly marked for  
5 purposes of identification as Defendant's Exhibit  
6 Number 6 as of this date.)

7 MR. BERRY: Ms. Jackson, I am offering this  
8 document for the same limited purpose as the prior  
9 document.

10 HEARING OFFICER JACKSON: Are you offering it into  
11 evidence at this point or moving that it be admitted  
12 into evidence, or asking that the witness review the  
13 documents?

14 MR. BERRY: I am not moving to put it into  
15 evidence yet.

16 HEARING OFFICER JACKSON: Okay.

17 Q (By Mr. Berry) Sir, have you had a chance to  
18 review that document?

19 A Yes.

20 Q Mr. Fodor, isn't this also the type of  
21 document that you would expect to see generated as a  
22 result of an inspection of a facility?

23 A This is part of the document that would  
24 encompass an inspection.

25 Q Okay. What does this document, for the

1 record, appear to be?

2 A This document appears to be sample analysis  
3 of three samples and included in that would be a  
4 bilayer analysis for one of the samples.

5 Q Isn't it dated about two months prior to your  
6 inspection?

7 A Yes.

8 Q Isn't it for a project named Pabst?

9 A Yes.

10 Q Doesn't it seem to reflect the result that  
11 the fact that three samples were taken at the site and  
12 submitted for analysis of asbestos?

13 A Three samples, correct.

14 Q So, sir, is it fair to say that it appears an  
15 inspection of this facility for the presence of ACM  
16 was conducted?

17 A A limited inspection.

18 Q Sir, if you know, why was this abandoned  
19 brewery having this work performed?

20 A For demolition.

21 Q It was an abandoned brewery?

22 A Yes, that is my understanding.

23 Q There were no operations going on other than  
24 the work being conducted by Spirco?

25 A I don't recall -- no, it was not a

1 functioning brewery, the building that I was in.

2 Q Do you know what the current condition of the  
3 site is?

4 A No, I do not.

5 Q On the date of the inspection you took some  
6 pictures; is that correct?

7 A Yes.

8 Q Is that standard practice?

9 A Yes.

10 Q Do you still have a copy of the pictures --

11 A Yes, I do.

12 Q -- in front of you, I believe it is People's  
13 Exhibit Number 2?

14 A Yes.

15 Q Okay.

16 A Are we done with these, sir?

17 Q I am.

18 A Yes, I still have the photos.

19 Q Okay. That is People's Exhibit Number 2?

20 A Yes, correct.

21 Q These are the pictures that you took?

22 A They are.

23 Q Sir, in the second photo, number 2 --

24 A Yes.

25 Q -- that white substance on the floor is snow,

1 isn't it?

2 A Not to my recollection.

3 Q Not to your recollection. Were there broken  
4 windows in this building?

5 A Yes, there were.

6 Q Do you remember where this picture was taken?

7 A No. I would have to look at my report.

8 Q Okay. Would you like to?

9 A There is a drawing that --

10 MR. DAVIS: Ms. Hearing Officer, if it is  
11 acceptable to you, I would supplement People's Exhibit  
12 Number 2 with three pages of drawings that show where  
13 the photos were taken from. I neglected to do that  
14 before. This will assist Mr. Berry in his  
15 cross-examination, I hope.

16 HEARING OFFICER JACKSON: I think that would be  
17 helpful. We can make copies here if we need to.

18 MR. BERRY: I have seen this before. I just don't  
19 have one.

20 Q (By Mr. Berry) Does looking at those three  
21 additional pages refresh your memory?

22 A Yes.

23 Q Where was that photo taken?

24 A This photo was taken on the first floor,  
25 adjacent to where the 800 bags of debris were.

1 Q Okay. Well, backing up to another question  
2 that you said before that it would help if you had  
3 this, now can you answer the question whether or not  
4 the bags that were all collected together in one area  
5 were enclosed by poly walls?

6 A I don't think they were, sir.

7 Q Okay. What is the solid line that you have  
8 drawn around the circular area that you labeled as  
9 bags?

10 A I believe that was the asbestos tape. If you  
11 look at photo number 1, which is in toward that pipe,  
12 you will see the asbestos barrier tape stretched  
13 across there.

14 Q That is what you think you indicated with  
15 this solid line?

16 A Yes, uh-huh.

17 Q Sir, photo number 6, if you will --

18 A Okay.

19 Q This appears to be a hole in the building?

20 A Sure.

21 Q Did you ask Mr. Bowker who was responsible  
22 for putting that hole in the building?

23 A I don't believe I did, no.

24 Q Sir, in photo number 13 -- well, let me back  
25 up to 11 and 12. These appear to be debris laying



1 around on the floor?

2 A Yes.

3 Q Did you ask Mr. Bowker who had placed that  
4 material there?

5 A I believe he responded that the other company  
6 had done an improper removal.

7 Q Okay. On photo number 13 --

8 A Okay.

9 Q -- what does this appear to reflect?

10 A Deteriorated pipe insulation of some sort in  
11 the basement level.

12 Q It looks like some had also been removed,  
13 doesn't it?

14 A Yes.

15 Q Did you ask Mr. Bowker who had performed that  
16 removal?

17 A No, because he told me -- his general  
18 statement was he had done no removal. Another company  
19 had done the removal.

20 Q Your answer would be the same on 14, 15, and  
21 16?

22 A Yes.

23 Q That is what Mr. Bowker told you, that  
24 another company had done the removal?

25 A That's correct.

1 Q Back to photo number 2. I should have asked  
2 this when I was there before. Did Mr. Bowker tell you  
3 that those -- that debris pile was also placed there  
4 by another company?

5 A It was my understanding that Mr. Bowker  
6 stated that the material that had been cleaned up from  
7 the upper floors had also been brought down. I don't  
8 know if this stuff would be placed there from  
9 somewhere else. I don't know if this stuff was the  
10 stuff that was brought down.

11 Q Okay. So you understood from what Mr. Bowker  
12 told you that the material on the other floors, not on  
13 floor one, had not been bagged and brought down, but  
14 they had been brought down in a fashion similar to  
15 photo number 2?

16 A I believe so, yes.

17 Q In loose form, from what he told you?

18 A In loose form, and then it was bagged at this  
19 location.

20 Q Okay. Sir, isn't there necessarily a time  
21 period, after a contractor arrives and before they are  
22 done, when the contractor is in a state of transition  
23 in performing their work? You can't be instantly  
24 complete with your work, right?

25 A True.

1 Q Is it possible that they cleaned the upper  
2 floors one at a time, using all the practices that you  
3 described before, including negative air, putting poly  
4 over the elevator shaft, the broken windows, then  
5 cleaned it and bagged it up, and then brought the  
6 material down?

7 A I will say it is possible.

8 Q Sir, you spoke before about a conversation  
9 you and Mr. Bowker had at the end before you left?

10 A Uh-huh.

11 Q Where were you when that conversation  
12 occurred?

13 A In the clean area.

14 Q On the first floor?

15 A Uh-huh.

16 Q Didn't Mr. Bowker simply ask you what steps  
17 Spirco needed to take to come into compliance, and if  
18 he did those things would you not then have to report  
19 it to other regulatory agencies?

20 A The conversation, as I recall, was that he  
21 asked me, you know, what they could do to keep it  
22 between him and I. And I told him directly that I  
23 have a responsibility to notify my superiors and any  
24 other regulatory agencies, I suspect, but I don't  
25 recall my exact wording.

1 Q I guess I am more concerned about his exact  
2 wording. The word bribe was thrown out before. I  
3 want to talk about that. Did Mr. Bowker offer you  
4 anything?

5 A No, sir.

6 Q Would you call this a bribe, anything that  
7 Mr. Bowker said? That word was used. I want to clear  
8 that up.

9 A I would not call it a bribe, no.

10 Q You didn't consider it a bribe at the time?

11 A I considered it as he was trying to influence  
12 me. I would not so much say it was a bribe.

13 Q Is it possible that what he asked you was if  
14 we take whatever steps you tell us to take, that you  
15 won't have to report this to other regulatory  
16 agencies, OSHA, for example?

17 A I don't think I would have taken it that way,  
18 no.

19 Q Is it possible that is what he said, not how  
20 you took it? You have testified as to how you took  
21 it.

22 A Yes. It could have. He could have stated it  
23 in that way.

24 Q So that there could be some confusion on that  
25 issue?

1 A Well, I still understand how I took it.

2 Q Sir, when Mr. Bowker asked you how he could  
3 comply with the problems that you indicated to him,  
4 you wouldn't tell him how to fix it, would you?

5 A We have a policy of not addressing every  
6 single issue. It is -- I may not tell someone  
7 everything that it takes. I made certain  
8 recommendations for him to take, of which he agreed,  
9 and to the best of my knowledge he followed  
10 thereafter. But I cannot tell them possibly  
11 everything to do on that job to bring it into  
12 compliance. I cannot -- I cannot -- how should I say  
13 this -- assume the responsibility and liability for  
14 telling someone how to conduct their project.

15 Q You are familiar with the regulations, right?

16 A Well, within my own requirements. I work for  
17 the IEPA. I don't know everything about everything in  
18 the regulations. I know some specifics and I know  
19 some generalities.

20 Q I assume you are pretty familiar with the  
21 ones that you use when you site violations?

22 A Yes.

23 Q So you have the knowledge then of what  
24 complies with the regs and what does not?

25 A Pretty much, yes.

1 Q So you might indicate to someone that there  
2 is a problem with this certain area, whatever it is,  
3 but not then indicate to them how they could come into  
4 compliance?

5 A Sure. You have to understand, on a situation  
6 such as we ran into, it is not real clear-cut because  
7 we have a possibly of a potentially contaminated  
8 building. I cannot tell him you have to take these  
9 samples, verify this and this and this. When you get  
10 into larger problems like that, I just -- I can't.

11 Q Okay.

12 A I do try to be a help.

13 HEARING OFFICER JACKSON: Mr. Berry, do you have  
14 much more cross-examination?

15 MR. BERRY: No, I don't. Very little.

16 Q (By Mr. Berry) Mr. Davis and you had a  
17 conversation earlier about wind coming through the  
18 building?

19 A Uh-huh.

20 Q You said that you saw or felt wind on the  
21 upper floors?

22 A Uh-huh.

23 Q Those floors had already been cleaned, hadn't  
24 they?

25 A As I recall, there was still some residual

1 stuff there. They had not been completely.

2 Q On the floors?

3 A There were some things on pipes. There were  
4 some stuff on the floor. But I am not sure. Now, if  
5 you look at the photo on the second floor, photo  
6 number 12, there was still debris there.

7 Q Okay. So you include the second floor and  
8 the upper floors?

9 A Sure.

10 MR. BERRY: I have no more questions.

11 HEARING OFFICER JACKSON: Okay. Mr. Davis, do you  
12 have any rebuttal?

13 MR. DAVIS: Yes, I have some redirect, but I would  
14 request a lunch break.

15 HEARING OFFICER JACKSON: That's what I was  
16 wondering. We will go ahead and take a lunch break  
17 now. It is just about 1:00. We will come back in an  
18 hour and resume at 2:00.

19 (Whereupon a lunch recess was taken from 1:00 p.m.  
20 to 2:05 p.m.)

21

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1           AFTERNOON SESSION

2           (September 29, 1998; 2:05 p.m.)

3    HEARING OFFICER JACKSON: Back on the record. It  
4 is about five after 2:00, and we will begin again with  
5 Mr. Davis on his redirect.

6    MR. DAVIS: Thank you. I would like to utilize  
7 some of these Defendant's exhibits, probably all of  
8 them.

9    HEARING OFFICER JACKSON: I think that's all I  
10 have got. I don't show an Exhibit 1 yet identified  
11 for the Defendant.

12   MR. BERRY: Right.

13   HEARING OFFICER JACKSON: Okay.

14   MR. DAVIS: Okay. Now I have 2, 3, 4, 5 and 6.

15           REDIRECT EXAMINATION

16           BY MR. DAVIS:

17    Q   Dave, getting back to some of the regulatory  
18 terms that we have been using and that Mr. Berry  
19 inquired into, let me ask when in time does renovation  
20 occur? What activities constitute renovation?

21    A   Well, the renovation is the altering of any  
22 facility components in any way. That could mean a lot  
23 of different things.

24    Q   Now, in the Pabst facility, did you observe  
25 that any of the facility components had been altered?



1 A What I saw was asbestos insulation appeared  
2 to either having been removed or deteriorated to the  
3 point where it fell off.

4 Q Do you have an opinion as to whether  
5 stripping had occurred prior to your inspection on the  
6 10th of January of 1996?

7 A I believe it had based on what I saw. There  
8 were some areas where piping had had the insulation  
9 removed and there was some evidence of whitening that  
10 had occurred, or what appeared to be whitening had  
11 occurred.

12 Q Okay. Now, you had already testified on  
13 direct that you believe that some form of demolition  
14 activities had occurred prior to your inspection on  
15 January 10, 1996, did you not?

16 A Correct.

17 Q Okay. This would generally be focused upon  
18 that window area --

19 A Yes.

20 Q -- depicted in photo number 6 of People's  
21 Group Exhibit Number 2?

22 A That's correct.

23 Q Okay. My question to you is, once a  
24 renovation and/or demolition has commenced, does it  
25 continue in time?

1 A Does it continue in time?

2 Q Yes. Well, let me ask, what happens once a  
3 demolition or renovation commences?

4 A It has occurred.

5 Q Okay. Does the occurrence of that trigger  
6 the applicability of the NESHAP regulations?

7 A Yes.

8 Q Is there any event that could then occur that  
9 would untrigger those regulations?

10 A Not to my knowledge.

11 Q In essence does the project start, stop,  
12 start, stop, as far as the applicability of the  
13 regulations?

14 A No. Once it is covered, it is covered by the  
15 regs.

16 Q The claim that we have heard regarding  
17 stripping by third parties, did you have any  
18 observations that would corroborate that claim?

19 A I could not say one way or the other who  
20 actually did the removal. I don't know.

21 Q Let me show you Defendant's Exhibits 3 and 4,  
22 3 being the original first page of the notification,  
23 and 4 being the revised first page of the notification  
24 and ask if there is any other operator identified on  
25 those forms?

1 A There is not.

2 Q Is there a spot for the identification of  
3 another operator?

4 A Yes, there is.

5 Q When stripping did occur, did the parties  
6 engaging in that activity become the generator of the  
7 asbestos waste materials?

8 A Say that again.

9 Q Okay. When stripping did occur, and you have  
10 testified that you had made observations that would  
11 lead you to conclude that it did occur prior to your  
12 inspection. Did the party engaging in those  
13 activities become the generator of the waste  
14 materials?

15 A Yes, they would have.

16 Q Is there any requirements under the NESHAP  
17 for the generator in that situation to put the waste  
18 materials in containers and to follow the other  
19 procedures?

20 A Yes, there is under the NESHAP regs.

21 Q And one of those other procedures would be to  
22 place generator tags on those bags?

23 A That's correct.

24 Q If a third party did strip asbestos from the  
25 facility components and leave the material on the

1 floors would another party be responsible for  
2 following those types of requirements if that other  
3 party put the waste into bags?

4 A Yes, they would be held accountable for  
5 that.

6 Q Based upon what you know of the facts,  
7 including your own observations, what Mr. Bowker told  
8 you, et cetera, what the documents may have revealed  
9 to you, do you have any opinion or conclusion, Dave,  
10 as to whether Spirco became a generator for the  
11 purposes of the NESHAP?

12 A I personally believe that they are a  
13 generator. They disturbed possibly regulated asbestos  
14 containing material, and possibly asbestos containing  
15 waste material was disturbed. I do believe that they  
16 were an operator. No inspection data has been  
17 presented to me that would show a thorough inspection  
18 as per the NESHAP regs.

19 Q Let me focus on that. You have now seen  
20 Exhibits 5 and 6 for the Defendant, the Respondent.  
21 Exhibit Number 5 is the February 1994 proposal -- I am  
22 sorry -- revised proposal for the Pabst Brewery  
23 facility, and Number 6 being the November 1995  
24 analytical information from the laboratory?

25 A Uh-huh.

1 Q Combining these two documents, would this  
2 reflect that a thorough inspection of the facility had  
3 been done prior to the activities?

4 A I personally believe it is not, because a  
5 thorough inspection would be the identification of  
6 suspect materials, the quantification to determine how  
7 many samples of each different type of material should  
8 be taken for analysis. What I have before me is I  
9 have a list of information depicting so much asbestos  
10 on pipes and on tanks. I have sample analysis for  
11 three different -- I have three different sample  
12 analysis. I really question whether or not any other  
13 suspect materials that were there should have been  
14 sampled. It may be a case where they would have to,  
15 and I don't feel this would -- based on the  
16 information I have, I don't feel that this is an  
17 adequate inspection.

18 Q Take another look at Exhibits 3 and 4, and  
19 would it be fair to say that the facility has been  
20 described as having 12 floors?

21 A Yes, it has.

22 Q Comprising some 80,000 square feet?

23 A Yes.

24 Q And then immediately below that we have the  
25 estimated amounts of ACM?

1 A I see a lot of information in this report on  
2 scare footages and lineal footages and I feel that  
3 there might be a significant difference between --  
4 well, obviously, I can't read the whole report because  
5 of the copying. But I am wondering why the  
6 information on the notifications does not reflect what  
7 was originally put into this inspection report.

8 Q That was my question. So let me ask it.  
9 Does the information as to estimated amounts of ACM on  
10 Exhibits 3 and 4, does that information appear to you  
11 to be supported by the information in Exhibit 5?

12 A Without having to add up each lineal foot and  
13 each square foot on all of the pages of this document,  
14 it appears at first glance that there is much more  
15 material there than was reported on the notification.

16 Q You would acknowledge, however, that you have  
17 not had the opportunity to make a very close  
18 comparison?

19 A Well, I can.

20 Q Would you, please?

21 A Okay. Can I have a sheet of paper?

22 Q For the purposes of exhibiting our hearing,  
23 could you focus just on piping?

24 A Just on piping. Thank you. Okay.

25 Q Okay.

1 A Based on a quick addition, I find that what  
2 they document in here was roughly 5,010 lineal feet of  
3 piping insulation on this inspection.

4 Q Now, to be fair, this inspection, as  
5 reflected in Exhibit Number 5 for the Respondent, was  
6 apparently done in February of 1994?

7 A Yes.

8 Q Turning now to the analytical information in  
9 Exhibit Number 6, I believe you testified that there  
10 were only three samples?

11 A Yes.

12 Q How many samples of piping does it appear  
13 that were taken?

14 A One.

15 Q Would you have any opinion or conclusion,  
16 Dave, as to whether this would be an adequate number  
17 of samples to take for 5,010 lineal feet of pipe?

18 A If it is all the same pipe insulation at the  
19 same time it is possible, but I doubt it. Normally  
20 you have different homogenous areas. In other words,  
21 this insulation is different than this insulation, or  
22 the pipe insulation may be different from the fitting  
23 insulation. I don't really -- based on this, I don't  
24 really feel that that is enough samples.

25 Q Okay. Now, whether or not something is

1 homogenous might be a more direct issue in a schools  
2 context, wouldn't you agree?

3 A Yes, but still we have been guided by the  
4 U.S. EPA to recommend that the HARA protocol be  
5 followed.

6 Q The one sample of piping that was taken  
7 turned out to be ACM, did it not?

8 A Yes, it did.

9 Q So based upon whatever that investigation is,  
10 the entire 5,010 lineal feet would have to be treated  
11 as ACM?

12 A Yes.

13 Q Yes. What about this category one,  
14 nonfriable material. Is there anything in Exhibit 5  
15 or 6 that would relate to the type of material or its  
16 condition?

17 A I don't have any information as to the  
18 condition of the material. I do have notes here that  
19 there is category one nonfriable. There has been some  
20 reference to floor tile material. Whether or not that  
21 would be regulated I don't know because I don't know  
22 the condition and I don't know what operations they  
23 are going to apply to it.

24 Q You do know that the building was to be  
25 demolished?



1 A Yes.

2 Q And is. In that context of demolition, the  
3 condition of the category one nonfriable ACM a direct  
4 issue?

5 A Yes, if it is in poor condition it would have  
6 to be removed.

7 Q Since there is no characterization of the  
8 condition of that material within those two documents,  
9 Exhibits 5 and 6, do you have any opinion as to  
10 whether or not it is a thorough inspection on just  
11 that limited issue?

12 A No, it is not a thorough inspection.

13 Q Be that as it may, does Exhibits 3 and 4,  
14 which is the first page of the NESHAP notifications,  
15 identify the job superintendent?

16 A Yes.

17 Q Who is that?

18 A Mr. James Bowker.

19 Q Now, was Mr. Bowker, in your opinion or  
20 conclusion, aware of the information in Exhibits 5 and  
21 6?

22 A I don't believe so.

23 Q Did he tell you essentially that no  
24 inspection had been done?

25 A Correct.

1 Q There was a suggestion during  
2 cross-examination that you may have not complied with  
3 requirements regarding material that was sampled. Are  
4 there any requirements that are applicable to your  
5 activities?

6 A I follow the guidelines sent down to us from  
7 the U.S. EPA, which have not required us to do the  
8 things that the NESHAP requires such as labeling, such  
9 as waste manifest.

10 Q What requirements are applicable to what you  
11 did as far as sampling and transportation?

12 A Well, the Department of Transportation would  
13 be. But you are asking me a question that I am really  
14 not -- that I don't feel comfortable with answering.

15 Q All right. I believe the problem is with my  
16 use of the word requirement. Let me change that.  
17 What procedures did you feel obligated to follow?

18 A Well, the procedures I followed were  
19 basically in double bagging the material to make sure  
20 there is no contamination that would spread to the  
21 vehicle or myself. We did keep it in the locked area  
22 at the office, a warehouse area that only I had access  
23 to as well as my supervisor. During the glove bag  
24 extraction, track or the extraction of the sample, we  
25 used a glove bag. We extracted the sample and we had

1 the appropriate PPD on.

2 Q Would it be fair to say, Dave, that the  
3 procedures that you followed were designed to preserve  
4 the integrity of the sample and also to protect you  
5 and others during the handling of the material?

6 A That's correct yes.

7 Q To your knowledge, would a laboratory, after  
8 performing its analysis, be obligated to dispose of  
9 the waste material properly?

10 A No, the samples are actually returned to us  
11 for archiving and we preserve those.

12 Q Would it be fair to say, then, that this bag  
13 of waste material that you took from the Pabst Brewery  
14 was somehow transformed from waste into evidence at  
15 some point?

16 A Yes.

17 Q Okay. I just have one last area of inquiry.  
18 Mr. Berry had asked you whether it were possible that  
19 each floor had been properly cleaned and abated. Let  
20 me ask you to include within the realm of possibility  
21 the statements of the job superintendent, Mr. Bowker,  
22 and your observations of a wheelbarrow being used to  
23 transport this material, and also your observations,  
24 as you have already testified, as to certain equipment  
25 not being hooked up. And ask the question, is it

1 likely that each floor had been properly cleaned and  
2 abated prior to your inspection, based upon all of  
3 that?

4 A I don't believe it is likely. Even if it was  
5 properly cleaned I would have concerns about the  
6 contamination spreading to that point because the  
7 building was not just a closed box between each  
8 floor. There are routes -- anytime the material on  
9 the lower levels is disturbed, the possibility is for  
10 the air flowing through the building to carry it back  
11 up to the higher levels and re-contaminate that area.  
12 It is definitely possible.

13 Q Now, the end result was a demolition; isn't  
14 that true?

15 A Based on what I know, yes.

16 Q Did that demolition ever, in fact, occur? Do  
17 you know?

18 A I don't know the status of the site.

19 Q Would you have to follow the same fundamental  
20 procedures in making sure that an area that you have  
21 already abated not be re-contaminated if the building  
22 is just going to be torn down?

23 A Yes.

24 Q Why?

25 A Because if you re-contaminate a section of

1 the building, during the demolition operations, that  
2 would be exposed to the outside air.

3 Q And lastly, on cross-examination you  
4 indicated that you were reluctant on the 10th of  
5 January of 1996 to provide any direct guidance. Why  
6 is that?

7 A I have been instructed, as have all of our  
8 inspectors, that we can give limited information as  
9 far as violations. We can instruct someone that they  
10 are performing violations and they should comply with  
11 the regulations. If it was that cut and dry that  
12 would be one thing. However, we have a situation of a  
13 potentially contaminated building. We don't know the  
14 extent. Any recommendations that I would make would  
15 have to be based on some knowledge of what we have,  
16 what we are dealing with, how badly contaminated is  
17 it.

18 Q Did you feel that you had more questions than  
19 answers at that point in time?

20 A Yes. That's why I requested the work to stop  
21 and the -- a plan be developed before they begin  
22 again, because we just did not have enough  
23 information.

24 Q Would such a plan be the responsibility of a  
25 consultant rather than the Illinois EPA?

1 A Yes.

2 Q Did a plan ever get submitted for your  
3 review?

4 A I believe so. I don't have a copy of it in  
5 front of me. I vaguely remember, yes, that occurring,  
6 and I believe that they did start and finish the job  
7 again.

8 MR. DAVIS: Okay. I don't have any other redirect  
9 exam.

10 HEARING OFFICER JACKSON: Mr. Berry, do you have  
11 any recross?

12 MR. BERRY: Yes, sticking strictly with what Mr.  
13 Davis touched upon.

14 RECCROSS EXAMINATION

15 BY MR. BERRY:

16 Q Mr. Fodor, you and I talked about renovation  
17 and Mr. Davis just touched upon it again. I believe  
18 that you used, and it is in the definition, the word  
19 altering --

20 A Uh-huh.

21 Q -- facility components. Is that the proper  
22 wording?

23 A Uh-huh.

24 Q And you stated that you saw deteriorated or  
25 stripped ACM?

1 A (Nodded head up and down.)

2 Q Is deteriorated ACM an alteration?

3 A Well, I would suspect. I am not an attorney,  
4 but if a component has been contaminated with another  
5 material, I would suspect that that somehow is an  
6 alteration of the facility component. It was not  
7 contaminated before and it is now.

8 Q Okay. Is it an alteration by Spirco if they  
9 come into a building and find deteriorated ACM?

10 A That's the question.

11 Q Okay.

12 A I don't know how far contamination went.

13 Q If over time ACM naturally deteriorates, the  
14 contractor comes on site before they do anything else,  
15 have they already done a renovation, based on your  
16 understanding of what an alteration is?

17 A Rephrase that.

18 Q Okay. Assume you have a situation where a  
19 building has pipe lagging that contains asbestos.

20 A Okay.

21 Q And over time it deteriorates.

22 A Okay.

23 Q Much like this site. A contractor arrives on  
24 the site to clean the building. Now, if I understand  
25 your -- what we have just said, before they do

1 anything else when they get there they have already  
2 renovated, because deteriorated, contaminated pipe is  
3 an alteration and, therefore, there is a renovation?

4 A To me and, again, I am not an attorney, an  
5 alteration occurred, but it was not an intentional.  
6 It was not a part of a renovation process.

7 Q Okay. It was not performed by Spirco?

8 A Well, you know, deterioration of pipe and  
9 contamination of other components I don't believe  
10 would be a renovation.

11 Q Okay.

12 A The difference being what caused this item to  
13 become contaminated or what cleaned this item from  
14 contamination.

15 Q So if it just over time, without any action  
16 on Spirco's part, deteriorated that is not a  
17 renovation?

18 A I would not believe so.

19 Q And you were told by Spirco that the removal,  
20 everything that you pictured in here that constituted  
21 a removal, any pipe lagging or anything that had been  
22 taken off was performed by someone else other than  
23 Spirco; is that true?

24 A Yes. I was told that the removal was done by  
25 another contractor.



1 Q On Exhibit 3 and 4 that Mr. Davis asked you  
2 about --

3 A Okay.

4 Q -- about whether there was any other company  
5 listed on that form and whether there was a spot for  
6 another operator to be listed, what were you told when  
7 you asked Mr. Bowker of the identity of the other  
8 company?

9 A I don't recall being told any other company  
10 name. I don't know who they are.

11 Q In fact, weren't you told when you asked that  
12 he didn't know the name of the other company?

13 A Correct.

14 MR. BERRY: Okay. I would also point out that in  
15 the stipulations we have agreed that another company  
16 had performed removal at this site.

17 MR. DAVIS: Yes, I think the language was  
18 apparently. I don't have it in front of me.

19 HEARING OFFICER JACKSON: Apparently. The  
20 language is prior to January 2, 1996, unknown persons  
21 had apparently salvaged parts of the facility and  
22 disturbed asbestos containing materials throughout the  
23 facility.

24 MR. BERRY: Thank you.

25 Q (By Mr. Berry) On Exhibits 5 and 6 -- it was

1 your opinion that Exhibits 3 and 4 are not supported  
2 by Exhibits 5 and 6?

3 A Based on a rough additional estimate, yes.

4 Q I want to make sure that you didn't double  
5 count something.

6 A I mean, it could be. These copies are poor.

7 Q In your 5,010 estimate, I want to make sure  
8 that there is no double counting. Confirm this for  
9 me. On the first page -- well, the second page, which  
10 is the first handwritten page?

11 HEARING OFFICER JACKSON: Which exhibit are we  
12 talking about?

13 MR. BERRY: Exhibit 5.

14 Q (By Mr. Berry) We have down the left side  
15 levels nine, eight, seven, six and five.

16 A Now, wait a minute. I will run through my  
17 calculations.

18 Q Well, that's not my question yet.

19 A All right.

20 Q We have levels nine down through five?

21 A Okay. I got you.

22 Q The next page is four and three and the next  
23 page two and one?

24 A Uh-huh.

25 Q And on the following page we start back at

1 nine down through four, and the next page is three,

2 and the next page is two and one?

3 A Okay.

4 Q Okay. Now, in the 5,010, I am just trying to

5 make sure that you didn't double count some of those

6 figures because that is not what I came up with when I

7 did it real quickly. What numbers did you add?

8 A Well, the first one on level three and --

9 well, obviously, the first page, I didn't see any

10 quantification as far as piping.

11 Q Right.

12 A The second page, level four, I had ten lineal

13 feet. I had on level three 100 lineal feet. Then I

14 had on the same page 300 lineal feet of piping. And

15 then another 200 in the silo area.

16 Q Okay.

17 A Then on the next page I had 500 lineal feet

18 of piping. And then in the main area I had another

19 500 lineal feet. Then I had in the tunnel 1,000

20 lineal feet of piping.

21 Q So what are we up to now in the first nine

22 down through one?

23 A 1,610. Is that what you came up with?

24 Q No. Do you want to add again? I think it is

25 2,610.

1 A It is 2,610. I am sorry.

2 Q Okay. Now, for some reason it starts back at  
3 nine and works back down. What are the numbers here  
4 that you used?

5 A Somehow -- where did I get the 1,000 from.  
6 The 1,000 may have been from the next page. Okay. On  
7 the next page there is 300 lineal feet. I can't  
8 account for 1,000. Bear with me a second. Then I had  
9 100 lineal feet.

10 Q Where would I find that?

11 A On the bottom of the next page it says 100  
12 lineal feet of aerosol.

13 Q Next to the number four? I mean, that's --  
14 it has four over to the side?

15 A Yes.

16 Q Indicating the fourth level. Let me show you  
17 another copy of the same document. Is this copy in  
18 better or worse than yours?

19 A It is a little better.

20 Q Are you reading this figure as 100?

21 A Is that 100 aerosol?

22 Q I thought that was an LF, lineal feet.

23 A All right. Maybe it is. I will change that  
24 to ten.

25 Q If that is a ten and found on the fourth

1 floor --

2 A Ten lineal feet.

3 Q -- where was the ten lineal feet of aerosol  
4 found on the first three pages, what level?

5 A Level four.

6 Q Okay. The same level?

7 A Yeah. Well, why would they do it twice like  
8 this?

9 Q I don't know. But why would they cut it in  
10 half and do two. I don't know. That doesn't make  
11 sense either, does it?

12 A No.

13 Q Okay. The next figure that you used was  
14 what?

15 A Wait a minute. Let me make this correction.

16 So down here we have 2,620 now.

17 Q Well, okay.

18 A Then you have 300 lineal feet on the next  
19 page.

20 Q Okay. 300 lineal feet on the next page.

21 That is found on what floor, what level?

22 A You got me.

23 Q Well --

24 A Is that first? It can't be first, because it  
25 is under number three.

1 Q I will give you this copy. Is this the next  
2 page that you are on?

3 A No, no.

4 Q Okay. We were here.

5 A We are here. This is where the ten was. We  
6 put this down. And then I flip the next page and  
7 there is 300, but I can't tell. It just says next  
8 level, maybe. I can't hardly --

9 Q And then something about --

10 A So do you concur? Is that the next 300?

11 Q That's what it looks like to me, too, yes.

12 A All right. Then the next one was 100 lineal  
13 feet of piping.

14 Q Okay. That seems to be located on what  
15 floor?

16 A It just has a circle with a number three  
17 around it. If that's the floor, I have no idea.

18 Q Okay.

19 A Then the next one, which I am glad you  
20 brought that to my attention, because I didn't have  
21 that 100 feet in there.

22 Q Okay.

23 A The next one was 500 lineal feet of piping,  
24 which I assume could be level two, and then you have  
25 another 1,000.

1 Q Okay. 1,000 at the bottom. Okay. So  
2 looking at this, the first figures you had were 10,  
3 100, 300, 200, those were the first few pages, right?

4 A Yes, 10, 100, 300, 200.

5 Q And then when it starts over, the same  
6 floors, we have 10, and then 300, and then 100, and  
7 then a 500 and then a 1,000?

8 A A 100 and then a 500 and then 1,000.

9 Q Okay. What were the three figures, the last  
10 three numbers in your first --

11 A Are you trying to say that the first few in  
12 the top of the first ones we analyzed are the same  
13 down below? Is that what you are trying to tell me?

14 Q Yes. I am trying to get you to agree that it  
15 appears that these are not added to -- that you don't  
16 start at the beginning, nine through one, and then  
17 start beginning at the other nine and go down through  
18 one and count them twice.

19 A Given the fact that I don't know what the  
20 intent of this author was, and given the fact that  
21 this could be separate sections of the buildings or it  
22 could just be coincidence, I am going to say I don't  
23 know.

24 Q Okay. If it is the result of two different  
25 authors going through the same building at the same

1 time and if, in fact, you don't start at the beginning  
2 and add them to the bottom, your first figure was,  
3 what, 2,610 would be the lineal feet?

4 A Well, no, they would actually be more than  
5 that, because you have -- that is 2,000 -- yes, 2,610.

6 Q Okay. 2,610. What is the figure that is  
7 indicated on the notification for lineal feet?

8 A 2,000.

9 Q Okay. As you testified on redirect, there  
10 appears to be, in Exhibit Number 6, one sample taken  
11 from asbestos found on pipe, right?

12 A Okay.

13 Q If a contractor takes one sample out of 2,010  
14 or 2,610 20 or even 5,000 feet, takes one sample, and  
15 on that basis treats all of the pipe lagging as though  
16 it were ACM, is that not permissible?

17 A I would say no.

18 Q Okay. Why not?

19 A Because the NESHAP inspection requires you to  
20 do a thorough inspection. There are different types  
21 of piping insulation. Under the definition of friable  
22 material you have to have it analyzed and be greater  
23 than one percent. So if you have one type of material  
24 that is friable and tested that does not necessarily  
25 mean that the other types of material are. And you



1 have to have a point counter, by the way, if it is  
2 less than ten percent.

3 Q Okay. I agree. I think I was not clear. If  
4 you take one sample out of 5,000 lineal feet and it  
5 comes back positive, it is over ten percent, whatever  
6 percent, and on that basis you assume that all of it  
7 is also of that same high content, and you remove all  
8 of that pipe lagging accordingly, is that permissible?

9 A The NESHAP regulation does not allow you to  
10 assume materials. You have to test them. If it is a  
11 different material I believe you have to sample it.

12 Q Okay. Is it not more protective to assume  
13 that all ACM -- all pipe covering is asbestos  
14 contained and treat it accordingly than not?

15 A Given that scenario, why don't you just  
16 assume everything is asbestos containing and just take  
17 it out an eliminate simply?

18 Q That would be fine, sure, right, because that  
19 way health and the public would be protected, because  
20 we are assuming that it is asbestos containing and if  
21 we follow all the precautions, that would certainly  
22 comply with the regulations, wouldn't it?

23 A I believe I would have to look at some of our  
24 guidance documents just to verify that.

25 Q Okay. So you are not sure that it is not

1 okay to be more protective and to assume that all  
2 material contains ACM and treat it as though it does?

3 A No, that is not exactly what my intent is.

4 Q Okay. Well, that's the question I am  
5 asking.

6 A My intent is you are supposed to do a  
7 thorough inspection. The U.S. EPA recommends a HARA  
8 type inspection. That's what I would prefer to  
9 recommend. I don't know if you can assume it all as  
10 asbestos containing material without sampling. I  
11 would have to get direction from the U.S. EPA to be  
12 sure.

13 Q It is not a violation, is it, for Mr. Bowker,  
14 specifically, to incorrectly state that no inspection  
15 has been done when, in fact, one has been done; is  
16 that true?

17 A Yes, that's true.

18 MR. BERRY: Okay. I am done.

19 HEARING OFFICER JACKSON: Okay.

20 MR. DAVIS: No further questions. I would move  
21 the admission of Exhibit Number 2.

22 HEARING OFFICER JACKSON: Any objection?

23 MR. BERRY: No.

24 HEARING OFFICER JACKSON: All right. Exhibit 2 is  
25 admitted.

1 (Whereupon said document was admitted into  
2 evidence as People's Group Exhibit 2 as of this  
3 date.)

4 HEARING OFFICER JACKSON: People's Group Exhibit 2  
5 were the 16 photographs that the witness testified  
6 to?

7 MR. DAVIS: Yes, plus the three pages of diagrams.

8 HEARING OFFICER JACKSON: Correct. Thanks for  
9 reminding me.

10 MR. DAVIS: We would present no other evidence at  
11 this time.

12 HEARING OFFICER JACKSON: Okay. The witness is  
13 excused.

14 MR. DAVIS: You can stay or go as you wish.

15 (The witness left the stand.)

16 HEARING OFFICER JACKSON: The People having  
17 rested, Mr. Berry, do you want to call your first  
18 witness?

19 MR. BERRY: Yes. The defendant calls Jeff  
20 DeCaney.

21 HEARING OFFICER JACKSON: Mr. DeCaney, please step  
22 forward. The court reporter will swear you in  
23 (Whereupon the witness was sworn by the Notary

24 Public.)

25 HEARING OFFICER JACKSON: Mr. Berry, before you

1 begin with your direct examination, I just want to  
2 remind you that you have not moved to admit any of  
3 your exhibits into evidence. So I will ask that you  
4 just keep that in mind and do so before you finish  
5 with this witness.

6 MR. BERRY: Okay. Have I lost my opportunity to  
7 introduce anything I needed to produce through the  
8 last witness?

9 HEARING OFFICER JACKSON: No.

10 JEFFREY SCOTT DECANEY,  
11 having been first duly sworn by the Notary Public,  
12 saith as follows:

13 DIRECT EXAMINATION

14 BY MR. BERRY:

15 Q Would you please state your name for the  
16 record.

17 A Jeffrey Scott DeCaney.

18 Q Sir, are you currently employed?

19 A Yes, I am, with Spirco Services.

20 Q How long have you been with Spirco?

21 A I have been there for seven years.

22 Q In what capacity? In other words, what  
23 duties or jobs have you held?

24 A I have been a worker for four years and  
25 supervisor for the last three.

1 Q As a worker, what are some of your job  
2 duties? What are your job duties?

3 A Just the removal of asbestos inside, you  
4 know, and containment, and just various worker  
5 practices, you know, make sure everything was done.

6 Q Okay. Is it any different now that you are a  
7 supervisor?

8 A Yes, it is. It is totally different. You  
9 have to -- as a worker basically you just go in there  
10 and you listen to somebody tell you, you know, how to  
11 do things. And as a supervisor you are the one that  
12 has to be telling people how to do it, what procedures  
13 to follow, the paperwork and stuff. You have to do a  
14 lot more paperwork. And it is just a more lengthy  
15 process.

16 Q But you still have, apparently, all the same  
17 skills?

18 A Uh-huh.

19 Q What job training have you had that allows  
20 you to do asbestos removal?

21 A I did the -- when I first started out I did  
22 the 40 hour -- well, it was a four day initial  
23 training course from a certified trainer. And then I  
24 went through the refreshers every year. I have got  
25 different state licenses for Illinois, Missouri. And

1 then as a supervisor I went through another supervisor  
2 training, and got a supervisor's license.

3 Q Just so it is clear, what kind of Illinois  
4 license do you have?

5 A I have a worker and a supervisors.

6 Q With respect to asbestos?

7 A Yes.

8 Q So if you have been with them seven years,  
9 then you were employed by Spirco in January of 1996?

10 A Uh-huh.

11 Q Were you at the job site at Pabst Brewery at  
12 Seiberling and Prospect Streets in Peoria, Illinois?

13 A Yes, I was.

14 Q Were you only there for part of the project?

15 A No, I was there from the very first day we  
16 stepped on until the very last day.

17 Q So then were you there on January 10th, 1996?

18 A Yes, I was.

19 Q Do you remember that day?

20 A Pretty much, yes.

21 Q Were you in charge of the site that day?

22 A No, I was not. I was second in command.

23 James Bowker was the one who was in charge of it.

24 Q Do you know if Mr. Bowker is still employed  
25 by Spirco?

1 A No, he is not.

2 Q Was there an inspection on that day?

3 A Yes, there was.

4 Q Were you with the inspector and Mr. Bowker  
5 the whole time?

6 A I joined, like, when they -- when he first  
7 come in, we was in the process of wetting the bags  
8 down. The reason we seen him was we seen a flash, and  
9 when we looked up and seen the flash that's when we  
10 seen him standing with the camera. At that instant, I  
11 think it was just right after that, James walked over  
12 there and talked to him. So they went up to the top  
13 and started working their way down. It was, like, on  
14 the fifth or sixth floor is when I joined up with  
15 them.

16 Q Okay. I want to talk more about that day.  
17 How many employees were there that day?

18 A There was five of the workers, myself, and  
19 James. Seven.

20 Q How many of them were standing right there  
21 when you saw Mr. --

22 A We were all there except for James.

23 Q Okay. For the record, do you know the name  
24 of the inspector who was there that day?

25 A Yes, Dave Fodor.

1 Q Have you seen him here today?

2 A Yes.

3 Q Where was he?

4 A I seen him when he first came out of the  
5 elevator, and then I seen him when he sat over here.

6 Q Was he the same person that has given  
7 testimony?

8 A Yes.

9 Q Well, sort of take us through what happened  
10 that day starting with what work Spirco had done that  
11 day and through the inspection?

12 A It started in the morning. We had the -- in  
13 our elevator, we were loading out our bags in the  
14 elevator, and as we was loading out they would take  
15 them to this holding area. In the holding area, due  
16 to the -- since the asbestos and stuff was upstairs,  
17 it was all frozen. It was real hard. So whenever we  
18 brought them to there, just before lunch everyone was  
19 there, and they were putting water in the bags.

20 What we were doing is we had a hose with like a  
21 copper tube on the end of it that was sharp that you  
22 would puncture a hole into the top of the bag. As  
23 soon as you puncture it, then you would put some water  
24 in it, and then you would grab it right at that  
25 puncture and then you would twist it. And then you



1 put duct tape around it and then that way it would  
2 seal the hole along with taping the bag up. And then  
3 we would take them and stack them over into the other  
4 area.

5 Q You mentioned the elevator was being used.

6 Was the elevator functional?

7 A No, it wasn't. We rigged up a rope and a  
8 pulley system. What we did is we had a tarp that was  
9 laying on the ground, and through the eye holes -- it  
10 was a small tarp. Through the eye holes we put a  
11 rope. What we would do is put the bags on top of the  
12 poly, on top of that tarp, and then we would hook a  
13 chain to the side, to the one side of it. And when  
14 you pulled it up, it would make like a basket.  
15 Sometimes you would put two or five, depending on the  
16 weight of the bags.

17 But you would take it and then put them out in the  
18 elevator and then one man would lower the bags down  
19 with the rope, and then when it got to that floor, the  
20 first floor, since there was a basement below it, you  
21 would have to stop it. And then the guy would reach  
22 out with some kind of a tool, like a piece of conduit  
23 or something and he would pull the bags in and then  
24 holler up the shaft. And when he hollered the other  
25 guy would ease off the rope. Then once it set down

1 they would open it up and then move the bags out.

2 Q So that is what you meant when you said that  
3 on that day you were loading out bags?

4 A Uh-huh.

5 Q Bags from where?

6 A From -- it was, like, the eighth, seventh and  
7 sixth floor.

8 Q Do you remember how far it was from where you  
9 all were doing your work when the inspector arrived to  
10 the outside of the building?

11 A To where the door was or to the closest  
12 outside of the building?

13 Q Well, to the door.

14 A Oh, 30, 40 feet.

15 Q A straight shot?

16 A Yeah.

17 Q I don't know if you finished telling us about  
18 what happened when the inspector arrived. Carry us  
19 through, please, until he left?

20 A He first got there and, like I said, we seen  
21 the flash. We looked up and seen it was him. James  
22 got to talking to him. They went on a tour and I  
23 joined up with them. And then we kept walking  
24 around. We went to the basement and then we came back  
25 up.

1 Well, during -- he had -- one thing that was  
2 mentioned in the discussion was we was sitting on the  
3 first floor and it was our load out, this storage  
4 area. It was not adequate enough. And he never would  
5 describe what exactly was supposed to be done. The  
6 only thing he would say during the whole thing is I am  
7 not a project designer. I cannot tell you how to  
8 build this.

9 James would then ask him, like, well, if I put  
10 poly walls around it, would that be adequate. And he  
11 would be, like, well, I can't tell you that. He says,  
12 I am not your project designer. I don't draw your  
13 plans. I can't tell you. And then James asked him,  
14 well, what if I put four walls around it and put a  
15 negative air in there, would that be adequate. And he  
16 said, I can't tell you that, but that's better.

17 He said, I am not a project designer or nothing  
18 like that. I can't tell you how to build your  
19 things. So James took it that that was -- you know,  
20 that that would be all right. So they sat there and  
21 they discussed some more.

22 And then after that he went over and picked out a  
23 bag, and he took the bag. We had a table there. He  
24 sat it up on there on the table. He had James sign  
25 some kind of piece of paper. He was saying it was

1 like a waiver or something for him to take it. After  
2 he signed the paper, he took the bag, went outside,  
3 put it into the trunk of his car and then left.

4 Q Okay. Did he take any other samples while he  
5 was there?

6 A Right next to the load out there was -- well,  
7 to the storage area he took one that was there.

8 Q Tell us more about that. Where was it?

9 A Well, like, it was where we was doing our  
10 bags. It was kind of like off to the front, off to  
11 the side of it, more towards -- how the building was  
12 designed is on the first floor you had -- where you  
13 walked in the door it was an open area. That's where  
14 we had our equipment and our decon.

15 Then you had the elevator shaft, and then you had  
16 a stairway right next to it. And then in front where  
17 the holding area was was a flat spot where there used  
18 to be a couple tanks that sat there, but someone had  
19 taken them out. Right off to the side of that was an  
20 opening with a handrail that actually went down to the  
21 basement where you could see into the basement. It  
22 was right in that area right there.

23 Q Was that the only inspection by a regulatory  
24 agency that day?

25 A No, there was a younger guy and an older guy

1 from OSHA that was on site later.

2 Q How do you know they were from OSHA?

3 A Because that is what they introduced

4 themselves as.

5 Q By the way, you have mentioned the name

6 James. Who is James?

7 A James Bowker was the supervisor on the site.

8 Q Okay. So when you refer to James, you will

9 always mean James Bowker?

10 A Yes.

11 Q Did Mr. Fodor tell you or Mr. Bowker while

12 you were there that he was going to call OSHA?

13 A I don't ever remember him saying that. I

14 mean, I am not for sure.

15 Q Okay. Were you surprised when the OSHA

16 inspectors arrived?

17 A Yes, we were.

18 Q Did they look around the site as well?

19 A Yes, they did. They took the same tour.

20 They went from the top and came to the bottom.

21 Q The same tour as what?

22 A As Mr. Fodor did.

23 Q Did the OSHA inspectors have any comments

24 about what they saw?

25 A The only comment they ever said was out on

1 our front steps we had some pallets that was set up  
2 that we was actually using as steps, and they made the  
3 comment that we might want to change that. That was  
4 all. Other than that, they said everything looked  
5 okay, and that was it.

6 Q Okay. They didn't note any violations to  
7 you?

8 A No.

9 Q Okay. Let me back up. On the day of the  
10 inspection by Mr. Fodor, was any demolition or  
11 renovation work being performed?

12 A No.

13 Q Tell us what the employees were doing when  
14 Mr. Fodor arrived?

15 A We was in this area watering down the bags.

16 Q Was anyone sweeping or did anyone sweep at  
17 anytime while Mr. Fodor was there?

18 A Not to my knowledge, no.

19 Q At any time, to your knowledge, did any  
20 Spirco employees dry sweep material debris that was on  
21 the floor?

22 A To my knowledge, I don't know. I was not  
23 with them all of the time. So when I was with them,  
24 no.

25 Q I used the word demolition. I want to make

1 sure that we mean the same things. If I told you that  
2 demolition meant wrecking or taking out load  
3 supporting structural pieces of the building, would  
4 that change your answer?

5 A No.

6 Q If I told you that renovation meant altering  
7 the facility itself or performing ACM removal or  
8 stripping facility components, would that change your  
9 answer?

10 A No.

11 Q We have talked about the day of the  
12 violations. Let's back up and talk about the days  
13 preceding that. Were you there on the very first day?

14 A Yes, I was.

15 Q If you would, describe the conditions that  
16 you found when you arrived?

17 A Well, I arrived on site and we met with a guy  
18 from Williams --

19 Q Who is we?

20 A Huh?

21 Q Who is we?

22 A Me and Mr. Bowker. When we arrived on site  
23 we met with a man from Williams Construction. At that  
24 time he -- we kind of like went into the building and  
25 he unlocked the lock that they had and give us the

1 key. We went inside and we walked the various floors  
2 with him. There was a large hole on the second floor  
3 going on the outside.

4 There was just like piles of debris and stuff, you  
5 know. It was just laying on different floors where  
6 someone had previously come in there, and there was  
7 two big tanks on the second floor that were actually  
8 called copper vats. And someone come in there and  
9 they removed the copper vats out.

10 Well, during the process of their removal, it  
11 looked like they took and just whatever insulation was  
12 on it they just left it on the floor. That's what the  
13 big hole on the side of the building was, that is  
14 where they got them out at. There was other spots  
15 where there was smaller tanks and stuff on the  
16 previous floors and it was the same situation. I  
17 mean, it was really just a basic mess in there.

18 Q Were there any broken windows?

19 A Yes. That was -- there were several broken  
20 windows.

21 Q Was there any snow in the building?

22 A Yes, there was on the second floor where the  
23 big hole was. I remember snow blowing in there before  
24 we actually covered it up one day.

25 Q Why did you cover it up?



1 A Why did we? Because at them kind of  
2 temperatures and stuff like that, we was trying to  
3 keep as much heat in the building as we could.

4 Q Well, let's talk about the temperature. What  
5 is your recollection as to the temperature during this  
6 project?

7 A From the start to the finish it was extremely  
8 cold. There might have been a couple days that we  
9 might have broke 30 or 40 degrees, but that was it.

10 Q Let me make sure I understand something. The  
11 hole in the wall that you testified about, did Spirco  
12 put that hole there?

13 A No, Spirco didn't.

14 Q Was there other evidence on the floors or  
15 anywhere that somebody else had been in this building  
16 before?

17 A Up on the second floor there was numerous  
18 black bags. They were the older type black bags,  
19 asbestos bags. They were actually frozen into the  
20 pile that was there.

21 Q Did it appear that some ACM removal had  
22 occurred at the site?

23 A Yes, it looked like someone was in there and  
24 it looked like they started putting stuff into bags  
25 and then after that it looked like something might

1 have happened. I don't know. And then they just  
2 started just taking it off and leaving it lay.

3 Q How does this site compare, as far as the  
4 conditions, to others that you have been to?

5 A It was pretty bad. I mean, usually sometimes  
6 you find small areas that are like this, but nothing  
7 of this size.

8 Q You said that someone from Williams  
9 Construction had to come let you guys into the  
10 building?

11 A Uh-huh.

12 Q Did Spirco continue to lock the building?

13 A Yes, we did every evening. Well, usually we  
14 would leave the site for lunchtime, sometimes. We  
15 would lock it at lunchtime. Whenever we would leave  
16 the site we would lock the building.

17 Q Did you sometimes leave it when you went to  
18 lunch?

19 A Sometimes.

20 Q All right. What work did Spirco perform  
21 between the first day and the date of the inspection?

22 A The first day we got there, me and Mr.  
23 Bowker, we brought in supplies, and established all of  
24 our supply area. And then we built a little tent to  
25 keep all of our liquids and stuff in there. We put a

1 heater in there to keep them from getting frozen. The  
2 day that the workers arrived, they built the decon,  
3 the shower area and stuff. And then there was like a  
4 couple days after that that they started cleaning up  
5 on the upper floors. I think they did like the first  
6 three or four floors before the inspection.

7 Q The first, the top?

8 A Yes. It was, like, nine, eight or eight  
9 down, something like that.

10 Q You mentioned supplies. What supplies?

11 A It was all of our poly, our bags, negative  
12 airs, the showers, water heater, all of the fire hose  
13 and stuff that we had for our water, water hoses, you  
14 know, just general supplies.

15 Q You mentioned bags. What color were the  
16 bags?

17 A All of our bags are clear bags.

18 Q No black bags?

19 A No, because the company in Missouri, they  
20 outlawed the black bags. Since our company is from  
21 Missouri we don't use black bags anymore.

22 Q You also mentioned a water heater. Was that  
23 hooked up?

24 A What we would do on the water heater, is when  
25 the guys was up working like 30 minutes before they

1 come down we would actually hook everything up.

2 Because if you left it hooked up and there was no

3 water circulating through it, the lines to it and

4 everything would freeze up.

5 Q Did they use the shower each day?

6 A Yes.

7 Q I am kind of skipping around and I

8 apologize. You mentioned before that -- when you were

9 talking about loading out the bags, what area were

10 they put in?

11 A They were put in the storage area.

12 Q Is that a designated area?

13 A Yes.

14 Q How?

15 A It was the only area that in the whole

16 building that actually had no ACM suspect debris

17 laying around. It was actually the cleanest part of

18 the building.

19 Q That's where you --

20 A That's where we decided to store all of our

21 bags at. When we stored them we actually put poly on

22 one side of the wall and down. It was like a corner

23 right there. We put some poly on both sides of the

24 wall and poly on the floor and then put the bags in

25 that area.

1 Q Okay. You mentioned that the workers had  
2 done some clean up on the upper floors?

3 A Uh-huh.

4 Q Tell me how they did that work?

5 A Well, when they went up there, they took and  
6 put on the windows and stuff we put like a poly  
7 barrier, a critical barrier. And then they sealed the  
8 door where it goes to the staircase. And then they  
9 had -- and then coming out of the elevator shaft is  
10 where we had a negative air. I remember there was one  
11 negative air up there, because we had to carry it up  
12 the elevator shaft.

13 Q A negative air machine?

14 A Yes. And then what we would do is just clean  
15 up the floors and stuff and put stuff into the bags  
16 and put it over there in front of the elevator. And  
17 then whenever they set it next to the elevator they  
18 would go to the next floor and they would do the same  
19 thing cleaning it up. And then every evening what we  
20 would do is, like, load the bags down to the bottom  
21 floors, and put them in that area, a storage area.

22 Q And you would lower them --

23 A Through the elevator.

24 Q So when those floors were cleaned up, the  
25 windows and everything were poly?

1 A Uh-huh.

2 Q And it was put under negative air?

3 A (Nodded head up and down.)

4 Q But only that floor?

5 A Yes.

6 Q What kind of material were they cleaning up

7 there? Were they taking stuff off pipes?

8 A No, everything that they were doing was

9 cleaning off of the floors. I mean, there was enough

10 stuff on the floor to -- I mean, there wasn't nothing

11 on the pipes and stuff on the upper floors. I think

12 it was like the third floor down where all of the pipe

13 and stuff like that was at.

14 Q How many negative air machines were at the

15 site during this project?

16 A Somewhere around maybe eight or ten.

17 Q Do you remember where they were located when

18 Mr. Fodor came to the site?

19 A They were down -- I think one or two was

20 still upstairs somewhere, but they were down in our

21 equipment room, down there on the first floor.

22 Q How were they stored?

23 A Just stacked on top of each other stored in

24 the corner.

25 Q Did they have the filters on?

1 A No.

2 Q Why?

3 A Because they bought brand-new filters and  
4 stuff for them and they were still in the boxes. We  
5 don't put the filters in them until you get ready to  
6 use them. Because then after you use them you have to  
7 tape the front of the -- you have to leave them in  
8 containment and remove the filters and dispose of them  
9 or you have to tape the front of the machines up and  
10 tape them all the way around where no air can get into  
11 the filters.

12 Q At any point did employees of Spirco take the  
13 piled up material that was on any floor other than the  
14 second floor and put it on the first floor?

15 A No.

16 Q Okay. What did they do instead?

17 A What we did is -- are you talking about --  
18 repeat your question one more time.

19 Q Was the material on any floor other than the  
20 first floor taken down to the first floor other than  
21 in a bag?

22 A No. Whenever they cleaned an area up on the  
23 upper floors it was put into a bag, double bag, and  
24 then sent down the elevator shaft.

25 Q And then they would move to the next floor?

1 A And then they would go to the next floor.

2 Q Okay.

3 A There was nothing on any of the lower floors  
4 that were done.

5 Q When they were cleaning up on those floors  
6 upstairs did they use water?

7 A Yes. We run a fire hose up the shaft and  
8 then we would have to use it sparingly, because  
9 whenever we run it up there, it would freeze up. If  
10 they sat and -- it was cold enough in the building  
11 that if you sat there and you wet -- you would wet  
12 down a lot and then you would sit there and put it  
13 into bags, and then we would break the fire hose down  
14 at the bottom loose and that way it would drain the  
15 water back out. Because if not, we was constantly --  
16 when we first got there we was constantly changing  
17 sections of host out because they were freezing up.

18 Q So was water always used upstairs?

19 A I would say 50 percent of the time, yes.

20 Q Why wasn't it used the other times?

21 A Because it was froze up and we was in the  
22 process of changing hoses.

23 Q You were talking before about when Mr. Fodor  
24 arrived the employees were watering the bags. Why  
25 were you doing that?



1 A Because it was easier. The stuff that was  
2 upstairs was in frozen chunks. When they would put  
3 the water to it, it would help kind of loosen it up  
4 enough to where they could break it up in chunks.  
5 Then whenever they got downstairs the term that James  
6 would -- that Mr. Bowker would use, he wanted to see,  
7 actually see the water in the bags before he sent them  
8 to the dumpster. So what we was doing is we was  
9 actually putting the water in the bags where you could  
10 see that there was -- that it was adequately wet  
11 before it went to the dumpster area.

12 Q Did these bags have labels on them at the  
13 time Mr. Fodor was there?

14 A Which labels are we talking about?

15 Q You tell me. Any labels.

16 A The OSHA or the generators?

17 Q Either one.

18 A The OSHA is preprinted on the -- is on the  
19 bags. The generator labels, we usually make a  
20 practice that when it is cold weather we do not put  
21 the labels on until they actually go to the dumpster.  
22 Because if you don't, they are made of a little sticky  
23 stuff on the back, and whenever you put them on there  
24 and you leave them sit, and the cold weather gets to  
25 them, the first time you grab the bag or move the bag

1 it just peels the labels off. And then that way you  
2 have to go through double the amount of labels.

3 Q Did you have labels on site to label the  
4 bags?

5 A Yes, we did.

6 Q Were you going to label them?

7 A Yes, we were.

8 Q When?

9 A When we got ready to put them into the  
10 dumpster.

11 Q You mentioned that you put poly over the big  
12 hole on the second floor?

13 A Uh-huh.

14 Q Was that to contain that floor?

15 A No, that was to reduce the snow and cold air  
16 and stuff that was blowing through the building.

17 Q When that floor was cleaned up, the floor  
18 with the hole on it --

19 A Uh-huh.

20 Q -- was that floor put under negative air  
21 pressure?

22 A Yes. Whenever they cleaned the previous  
23 floors above it, that floor was completely poly and  
24 negative air was put in it and it was put under  
25 negative pressure.

1 Q After the inspection by Mr. Fodor and OSHA,  
2 did Spirco at that site do everything that you could  
3 to comply with all of the regulations?

4 A Yes, we did.

5 Q Okay. I want to show you what has already  
6 been marked as People's Exhibit Number 2. Okay. You  
7 already have a copy there. Would you take a minute to  
8 look through those?

9 A (Witness complied.) Okay.

10 Q We have been informed that these pictures  
11 were taken by Mr. Fodor on the date of the  
12 inspection. Do they seem to accurately reflect the  
13 way that you remember the site on that day?

14 A Yes.

15 Q All right. Let's go through them one at a  
16 time. And I would ask you to explain briefly in each  
17 one what is going on, what we are looking at?

18 A In the first picture, that's the first  
19 picture he took when he walked in the door. What we  
20 were doing is we were wetting the bags and putting  
21 water in the bags at that period. And that's whenever  
22 he took the picture, is when we looked up and seen  
23 that he was there.

24 Q Okay. You seem to have on -- whoever is in  
25 the picture seems to have on a red sort of something.

1 What is that?

2 A That's a raincoat.

3 Q Okay. What did you have on under the  
4 raincoats?

5 A They had their street clothes and then they  
6 had a Tyvek suit that was under it and then they had  
7 the raincoat over top of it.

8 Q Okay. Can we tell from this photo whether or  
9 not they had Tyvek suits on?

10 A I don't know if you can or not. I can't from  
11 here.

12 Q Okay. Why did you have raincoats on over  
13 Tyvek suits?

14 A Because the weather and stuff outside, the  
15 raincoat keeps the wind and stuff from getting through  
16 it. The Tyvek's are real thin, and they are not  
17 really windproof and the raincoats was windproof and  
18 plus they would help hold the body heat and the  
19 temperature of your body and stuff in.

20 Q Okay. What about picture number 2?

21 A Okay. Picture 2.

22 Q What is that?

23 A It looks like a trash pile. That's one of  
24 the areas where there was some trash bags and stuff.

25 The white stuff is actually -- is a thin layer of,

1 like, snow and stuff. If you look closely -- if you  
2 look at this picture, on the bag itself right here you  
3 can see where the snow is in the creases of the bags.  
4 HEARING OFFICER JACKSON: Okay. For the record,  
5 when you say on the bag right here you need to be real  
6 specific.  
7 THE WITNESS: On the bag on this picture, on  
8 number 2 picture.  
9 HEARING OFFICER JACKSON: Okay. There are a  
10 number of bags in the number 2 picture. Can you even  
11 be more specific as far as where it is located in the  
12 picture, like the lower right-hand corner, for  
13 example?  
14 THE WITNESS: Like lower in the middle and then  
15 the next one above the lower middle. And then the one  
16 to the right, the first bag to the right.  
17 Q (By Mr. Berry) How did snow get in the  
18 building?  
19 A The hole in the building. The windows that  
20 was busted out and the big hole that was up top.  
21 Q Who put this pile here?  
22 A I have no idea.  
23 Q Did Spirco?  
24 A No.  
25 Q Was this here when you got there?

1 A Yes, it was.

2 Q What is picture number 3?

3 A Picture 3 is of the second floor. Where you  
4 see kind of back in the picture a little bit towards  
5 the right-hand side, see like a little rail that  
6 sticks up? That is actually where there was two like  
7 bigger tanks that was actually there. That was the  
8 tanks that were removed. That right there was  
9 actually like the bottom part of the tank. There was  
10 one here, and then if you were to turn a little bit to  
11 the left you would have seen another tank that was  
12 there.

13 Laying on the ground the stuff that was there, the  
14 first bags that you see, they were bags that -- they  
15 are black asbestos bags that were previously there.  
16 And then the ones that is further back a little bit  
17 were the same way.

18 Q Okay. Do you see a white something on the  
19 ground?

20 A Yes.

21 Q Do you know what that was?

22 A From this area right here, there was -- the  
23 block and stuff that was on the tanks was a whitish  
24 color, and it was like a big -- I can remember in this  
25 area there was like a three or four foot pile of it

1 that was just piled up. There was snow and stuff that  
2 was in this area, too.

3 Q Okay. What do we see in photo 4?

4 A Photo 4 is an area where our decon, our clean  
5 room and our showers and stuff is. It is also where  
6 you see all of our supplies and stuff. The supplies  
7 that you see there is our regular poly and our bags  
8 and stuff.

9 Q What are in the boxes?

10 A It is -- the first two rows is bags, and then  
11 the other row that is next to it is poly, six mill  
12 poly.

13 Q Okay. What is photo number five?

14 A That is our water heater. The reason that  
15 our water heater was never hooked up was because, like  
16 I stated earlier, usually 30 minutes before they would  
17 come down to shower, we would hook everything up.  
18 After they got down we would drain everything again  
19 because if it sat there it would actually freeze up.

20 Q Okay. Look at photo number 6. Before you  
21 talked about a hole in the building. Is that it?

22 A That's it right there. That was on the  
23 second floor.

24 Q Okay. Photo 7.

25 A Photo 7 is our equipment, our negative airs.

1 You can see our water hose there and fire extinguisher  
2 and electrical cords in the back, in the far back,  
3 back there in the picture.

4 Q Okay. What about photo 8?

5 A Photo 8 was just a different view of -- if  
6 you go back to picture number 1, if you would take  
7 where he took the picture there, if you would actually  
8 turn completely around, that's what you would be  
9 looking at. That was from that same -- from right  
10 there at the tape.

11 Q Okay. Is that the same as photo 4, the same  
12 area?

13 A No, photo 4 is more like -- if you will look  
14 back at photo 8 a minute, to the left of the hot water  
15 heater that was the door. That was the entrance that  
16 went in and out.

17 Q Okay.

18 A It is just -- it is the same picture, just  
19 two different angles.

20 Q Okay. What do we see in photo 9 and 10?

21 A Photo 9 is our supplies that we had under a  
22 heater. If you look in the left bottom corner you  
23 will see what looks like a little trash can. That's  
24 what we call a bullet heater. We had this area polyed  
25 and had a roof on it and all of our liquids and stuff



1 was in here that we kept and kept them under heat, and  
2 that way it would keep them from getting frozen.

3 Q Okay. What about photo 10?

4 A I couldn't tell you what 10 is.

5 Q Okay. What about photo 11?

6 A That, again, is on the second floor, where I  
7 mentioned awhile ago the little short railing where  
8 the tank used to sit, that's to the top left-hand  
9 corner. That was some of the debris and stuff. If  
10 you look on the left-hand side, you have two  
11 colorations. At the bottom you have two different  
12 colors of things. You have kind of like a grayish  
13 color and a whitish color. If you look to the right  
14 over here you will see the white there. That was  
15 actually a thin layer of snow that was blowing in from  
16 the building from that hole.

17 Q Okay. Let me back up to photo 10. Why can't  
18 you tell us what is pictured in number 10?

19 A Because it looks like --

20 Q Is it because you don't know or you can't  
21 tell what it is?

22 A All I can see is it looks like there is some  
23 poly stretched out there, but other than that I really  
24 can't make it out, you know, where it was.

25 Q Okay. What about photo 12?

1 A Photo 12 is just some more piping and stuff  
2 that had been down laying on the ground.

3 Q Who put it there?

4 A Not Spirco.

5 Q Do you know what floor that was found on?

6 A He has got the second floor. I would assume  
7 the second floor.

8 Q Okay. Is that what a floor would look like  
9 when were you done with it?

10 A No, that is what the floor looked like when  
11 we first got there.

12 Q Well, the floors that you said you cleaned  
13 up, you had cleaned up by this day, when you were done  
14 with them I am trying to get an idea of what condition  
15 they were in then. Do they look like this?

16 A No, when we got done the floors looked like  
17 this, right out here, like what is in here. They were  
18 clean concrete floors.

19 Q What do we see in photo 13?

20 A A pipe that had been -- you can see the pipe  
21 that is going across that it looks like someone cut  
22 something out of the middle of it. There is different  
23 piping in the back. If you look towards kind of the  
24 center, right on the top up there, you can see a pipe  
25 that has -- it has got some coating on it, and then it

1 has a bare pipe, and then if you look, it looks like a  
2 hanger or something with a piece hanging down where  
3 maybe it deteriorated and it was hanging there.

4 Q Okay. Was Spirco responsible for the  
5 condition of this pipe?

6 A No.

7 Q Did Spirco remove any of the -- what appears  
8 to be missing?

9 A No when we got on site we started from the  
10 top and worked our way towards the bottom.

11 Q So had any work been done in the basement,  
12 then?

13 A No, except for the areas where we built our  
14 storage and our load out and stuff. The only reason  
15 we did them, you know, put them where they were is  
16 because that was the only places that were clean in  
17 the building.

18 Q Okay. I thought that was on the first floor.

19 A That is. That's the only place we did any  
20 work other than the top floors.

21 Q Okay. I see. What about photo 14?

22 A Photo 14 is just one of the pipes that is  
23 down -- it looks like it was one of the main water  
24 pipes that was in there.

25 Q Do you remember where this was found?

1 A The basement. All the water comes out of the  
2 basement.

3 Q Okay. So the condition in this picture here  
4 was not caused or created by Spirco?

5 A No.

6 Q Okay. Just two more. What about photo 15?

7 A Photo 15 was a tank that was in -- when you  
8 walked into the basement, it was in the far, back  
9 corner. It was one tank that was back in there. It  
10 had all the block and stuff where someone had come  
11 through and took the block and stuff off of it. It  
12 was laying around. I remember cleaning that area up,  
13 too, whenever we got down there.

14 Q Later?

15 A Yes, much later.

16 Q Okay. Photo 16?

17 A Photo 16 is do you remember when I told you  
18 about the -- a few minutes ago where I said our load  
19 out was and then our storage area, and then right off  
20 from our storage area there was a railing, and then it  
21 went down into the basement. That actually is a tank  
22 that sat -- if you was upstairs on the first floor and  
23 you looked at that railing and you looked down towards  
24 the basement, that is a tank that was sitting there.

25 Q Okay. What is pictured in 16, does that tank

1 have asbestos covering on it?

2 A Yes.

3 Q Okay.

4 A You are talking about the one in 15, right?

5 Q Photo 16.

6 A Photo 16, no, 16 doesn't have any asbestos  
7 covering on it.

8 Q Did Spirco take that off?

9 A No, they didn't.

10 Q Okay. I think I am finally through with the  
11 pictures. There was testimony that was at least  
12 touched upon the subject of a bribe. Were you with  
13 Mr. Fodor and Mr. Bowker the whole time that they were  
14 together?

15 A Like I said, from like the third or fourth  
16 floor on I was. When they were sitting there talking  
17 and that part of the conversation came up, yes, I was  
18 there.

19 Q You were with them on the first floor?

20 A Uh-huh.

21 Q Okay. Do you have an idea of what Mr. Fodor  
22 might be referring to?

23 A Well, the only thing I can think of is that  
24 James -- Mr. Fodor stated that in his findings he  
25 would have to -- once he went back and told his

1 supervisor and did his filing of his paperwork that  
2 then the other regulatory agencies would have to see  
3 it, that they would have to see. And James asked him,  
4 after they got through the discussion of the loading,  
5 the holding area, after that, James asked him was  
6 there anything that was -- well, he asked if that was  
7 good enough on that. And he stated that, you know, he  
8 was not the project designer.

9 Well, James asked him if there was anything that  
10 he could do or anything that could be done that would  
11 keep it within his own -- within Mr. Fodor's agency.  
12 And he said, no, that once he filed the paperwork that  
13 the other agencies would have to be notified or they  
14 would know of the paperwork.

15 Q Okay. So based on what you heard, did you  
16 take it as a bribe?

17 A No.

18 Q Okay. Did Mr. Bowker offer the inspector  
19 anything?

20 A No.

21 Q Do you know whether Spirco owned the building  
22 that you were working in?

23 A No, they didn't.

24 Q So Spirco was hired as a contractor?

25 A Uh-huh.

1 Q Do you know whether a bid was prepared?

2 A I know the proposal was prepared. I know  
3 that.

4 Q What is a proposal?

5 A It is a -- usually what they do is someone  
6 from our company, most likely an estimator, goes out  
7 with whoever is putting the job out for hire, goes  
8 with them and looks at the building. After he looks  
9 at the building they come up with some kind of  
10 quantities of how much is there, what is there, and  
11 then estimate it. And then they take it back to the  
12 office and come up with a price.

13 Q Would the amount of asbestos that they find  
14 in the building affect Spirco's cost to do the work?

15 A Yes, it would.

16 Q And, therefore, the bid price?

17 A Yes.

18 Q Okay.

19 A If you find -- if there was only a little bit  
20 then the prices would be smaller than -- because of  
21 the labor and stuff.

22 Q So if there is more asbestos it will probably  
23 cost more?

24 A Yes, it would.

25 Q What other reasons factor into that?

1 A Well, you have got -- it would cost more  
2 because of supplies. One, you would have to have more  
3 supplies than what -- you would have to have more  
4 labor. Your time frame then would stretch out, you  
5 know, which would fall under labor. Instead of like a  
6 month job, it would be a three or four month job.

7 Q Well, what is done with the asbestos when it  
8 is removed, bagged up, what do you do with it then?

9 A After that you put it into a dumpster and --  
10 as soon as you get it bagged up, what you do is you  
11 take the asbestos from a floor and you put it into a  
12 bag. And then once you get all of your bags and stuff  
13 up, before you take it -- before you load it out, you  
14 double bag it. Once you double bag it, you put it  
15 into a holding area unless you have a dumpster sitting  
16 right there.

17 In this case we put it in a holding area, and then  
18 we water the bags down and added more water to them.  
19 And then when we got our dumpster we took and put  
20 labels on them. As soon as you put the label on them  
21 we went and hauled them on a cart and then took them  
22 and put them into the dumpster. After that the  
23 dumpster picks them up and takes it to a landfill.

24 Q Do you just put it in any old dumpster that  
25 the trash guy will come pick up?



1 A The ones we used up there were 40 yard closed  
2 top dumpsters, and we would put -- layered them with  
3 poly on the insides.

4 Q Is that free?

5 A No.

6 Q So you have to pay to dispose of the asbestos  
7 as well?

8 A Yes.

9 Q So if there is more that's another cost?

10 A Yes, it would be.

11 Q Let me show you Defendant's Exhibit Number  
12 5. Is that 5?

13 A Yeah.

14 Q Is that the kind of document that is  
15 typically generated during the walk-through process  
16 that you described?

17 A This looks like it would be an estimator's  
18 notes that he would write down. As he walked through  
19 the building, he would kind of look and assess what  
20 was there and then kind of write down onto his notes.  
21 And then he would take this back to the office and put  
22 this into a computer.

23 Q Okay. If you would, look at Exhibits 3 and  
24 4.

25 A I do not see 4. All I have up here is 3, 5

1 and 6.

2 Q Maybe I have it.

3 A There it is. Okay.

4 Q Okay. Have you ever seen those before?

5 A Yes, that's a job notification. You are  
6 required by law to post them at every job on a board.

7 Q More particularly, with those, have you seen  
8 those and were they posted?

9 A Yes, I have. I have seen these and I posted  
10 them on the job board that we had.

11 Q Where did you post them?

12 A As you walked in the front door, to the right  
13 we had a big board that was a piece of plywood that  
14 was there that had all of the workers' credentials and  
15 stuff on them along with our other paperwork that we  
16 are required to post.

17 Q Did you kind of hide that behind something  
18 else?

19 A No.

20 Q It was out there for you to see when you came  
21 in?

22 A Yes.

23 Q So would you see them every day when you came  
24 in?

25 A If you wanted to.

1 Q Would Mr. Bowker have?

2 A Yes.

3 Q Did Mr. Bowker or did you put that on the  
4 board you described?

5 A I posted them on the board.

6 Q Did he review it?

7 A Yes.

8 Q In your opinion, was Mr. Bowker familiar with  
9 the contents of that notification?

10 A Yes, he was.

11 Q If you know, why was this work being  
12 performed at this facility?

13 A To clean up the building. I mean, they was  
14 wanting to tear the building down and to build  
15 something -- you know, put the land up for sale and  
16 build something else eventually.

17 Q Okay. Was this a functioning, operating  
18 brewery at the time you were there?

19 A No, it was not.

20 Q Was it abandoned?

21 A Yes, it was.

22 MR. BERRY: I have no more questions.

23 HEARING OFFICER JACKSON: All right. Thank you.

24 Do we need to take a break before we begin

25 cross-examination?

1 MR. DAVIS: Would you like a break, sir?

2 THE WITNESS: Go ahead if you would like.

3 HEARING OFFICER JACKSON: Okay.

4 CROSS EXAMINATION

5 BY MR. DAVIS:

6 Q Mr. DeCaney, you indicated to us that the  
7 first time you showed up you thought the place was a  
8 basic mess?

9 A Yes.

10 Q What day was that?

11 A It was like the 2nd or 3rd of January.

12 Q Okay. Did the project start then sort of on  
13 time? It was supposed to start on January 2nd?

14 A Yes. Usually what you do is -- the way we  
15 done it was whenever, like, Mr. Bowker and myself was  
16 there, that was actually considered the start date.  
17 Because whenever you bring supplies in and you start  
18 putting up poly and stuff that is considered an  
19 abatement activity.

20 Q Okay. What did you mean when you said it  
21 was, in your view, a basic mess?

22 A It was -- a lot of the jobs and stuff that  
23 you go to, you go in and, I mean, you might have some  
24 deterioration from here and there, but you just don't  
25 see piles and mounds of, you know, stuff laying

1 around, ACM suspect debris or whatever. Most jobs you  
2 just don't see that.

3 Q Did you have any suspicion that vandals may  
4 have come in and stolen the brass valves or copper  
5 tubing and those types of materials?

6 A Yes.

7 Q In dealing with the basic mess, what was your  
8 and Mr. Bowker's first task?

9 A Our first task was getting supplies in and  
10 taking a walk-through of the building and finding out  
11 basically where we was going to start.

12 Q Did you decide to sort of start at the top  
13 and work your way down?

14 A Yes. The upper floors, there wasn't that  
15 much ACM stuff laying around on the floors. It was  
16 the least amount of work, was the upper floors. The  
17 lower floors was the more concentrated work, the  
18 larger areas. So we decided to start from the top and  
19 work our way to the bottom.

20 Q Do you recall which floor you started working  
21 on?

22 A It was whatever the top floor was, eight or  
23 nine, something like that.

24 Q And by the time Mr. Fodor inspected on the  
25 10th of January, which floor were you working on?

1 A We had done like three floors, so that would  
2 put it at, like, four, five.

3 Q Now, you have told us that each of the floors  
4 that you had worked on before Mr. Fodor came to  
5 inspect, you had set up poly and containment and  
6 negative pressure and hoses and all of that. Did you  
7 have that set up on the day that he was inspecting?

8 A Up the elevator shaft there was a water  
9 hose. There was a fire hose that was up the shaft,  
10 yes, there was.

11 Q What about the negative containment on what  
12 would have been the fifth floor?

13 A I know that there was -- on one of the floors  
14 there was poly on the windows, and I know there was a  
15 negative air up there.

16 Q And as number two in command, or the  
17 assistant supervisor, what title would you have used?

18 A I was basically a job foreman at that time.

19 Q Okay. As job foreman, would you supervise  
20 the workers directly?

21 A When I was up there working with them, yes, I  
22 would.

23 Q Would you be wearing the same protective gear  
24 that they would?

25 A Yes.

1 Q And on the 10th of January when Mr. Fodor  
2 inspected, did you have an opportunity to see what  
3 your workers were doing that morning?

4 A Yes. I was with my workers right there when  
5 he took the picture. All of us was right there.

6 Q That was on the first floor?

7 A Uh-huh.

8 Q Okay. What about the work that was  
9 apparently going on on the fifth floor that day?

10 A The work -- there was no work on the fifth  
11 floor. What they were doing was loading bags down and  
12 putting them into the holding area.

13 Q Containment and negative pressure was still  
14 set up up there?

15 A I can't remember if we started -- we went to  
16 the floors, did the floors, moved the bags down and  
17 then we went to the floors and started removing  
18 again. I can't remember if that was the point where  
19 we was in our break between floors.

20 Q Well, that's what I am trying to figure out,  
21 too. So help me out. Tell me when you would break,  
22 that is take down containment and so forth?

23 A What you would do is go up there and put your  
24 poly on the windows, put your negative air in there,  
25 clean up an area, and then you would take the bags and

1 put them in front of the elevator. Sometimes you  
2 would lower the bags down that evening and go ahead  
3 and get them down and out of the way. Sometimes we  
4 would wait until the morning time.

5 Then you would drop to the next floor, and then  
6 you would do the same thing. Once there was some -- I  
7 can't remember if James did the air sampling on that  
8 floor or if he did a visual inspection, or how he did  
9 the floor. But I know he would tell us to take the  
10 poly and stuff down, and the next floor would be under  
11 containment.

12 We would always do two floors. We would do one,  
13 and then when you are done with that one, you would  
14 put that one under containment while that one was  
15 still up. And then from there you would go to the  
16 next one.

17 Q So at this point in the project, January 10,  
18 you would have containment set up on at least one  
19 floor and probably two?

20 A At least one.

21 Q Okay.

22 A Or some poly on the windows and stuff on at  
23 least on one floor.

24 Q Did any of your workers use a wheelbarrow to  
25 transport unbagged material?



1 A No. The wheelbarrows were used from -- when  
2 they would come out of the elevator, they would put  
3 the bags and stuff into a wheelbarrow and then they  
4 would put the bags there and transport them over to  
5 the pile where we was, you know, holding them at.

6 Q And at what point would you double bag these  
7 containers?

8 A While they was still in containment.

9 Q Now, you have heard the testimony that Mr.  
10 Fodor gave us, and he indicated that he didn't see any  
11 containment. Were you with him when he took his tour?

12 A I joined them -- they went to like three  
13 floors without me, and then I joined them from there.

14 Q Why was it that you weren't there?

15 A Because I was busy with these guys, with the  
16 workers that was there.

17 Q Okay.

18 A And then James told me to go ahead and stop  
19 everything and make sure that, you know -- let them  
20 guys go ahead and quit, and then he would meet up with  
21 me on the top.

22 Q Was there some point that Mr. Bowker had you  
23 leave the site in order to go back to the hotel to get  
24 something?

25 A Mr. Bowker did not. I left the site to go to

1 the motel and get something.

2 Q Okay. That was on your own?

3 A No. Well, there was something about a  
4 temperature log or something that I had to go -- that  
5 he had the paperwork in the motel room. I went to go  
6 get it while they was done with their tour and on the  
7 first floor.

8 Q Okay. So when you were not with Bowker and  
9 the gentleman from the agency, you were either  
10 supervising the workers on the first floor or going to  
11 the hotel to get something?

12 A Yes.

13 Q Now, on the decontamination and cleanup, at  
14 the end of the day we understand that the workers  
15 would remove their working clothing and then take  
16 showers?

17 A Yes.

18 Q And then get dressed in the clean area?

19 A Yes. That area through there we had two  
20 heaters in it and it was always heated.

21 Q Well, if it were always heated, why didn't  
22 you just leave the water heater hooked up?

23 A Because that was on the outside. Under that  
24 poly -- if you go back to the picture you can see  
25 where -- if you go back to -- go with picture 4.

1 Q All right.

2 A If you look on the left-hand side, you see  
3 where the danger asbestos sign is?

4 Q Right.

5 A That is where the showers and the clean room  
6 and stuff was in. That went all the way to the  
7 ceiling and it had a roof in it. The water heater is  
8 on the outside. I mean, that was exposed to whatever  
9 temperatures, cold temperatures. Inside there where  
10 you see the -- it looks like lights that was in there.

11 Q Yes.

12 A We had our lights in there, and then we had  
13 another one of those bullet heaters in there. So that  
14 area through there, the showers, the dirty room, that  
15 was always heated.

16 Q And how did that area inside of that room  
17 drain?

18 A When it drained?

19 Q Yes.

20 A You wouldn't have water in there. I mean,  
21 you would have water --

22 Q Well, I mean the shower area?

23 A It wouldn't.

24 Q Okay.

25 A What it would do is when you took the water,

1 the things loose off the water hose, whatever back  
2 pressure was would drain it. But that area would stay  
3 heated and we never had a problem with it freezing in  
4 there.

5 Q I think maybe you misunderstood. Where was  
6 the water going that was used for the showering?

7 A You mean water from when you took a shower?

8 Q Right.

9 A It was going into one of the drains that was  
10 in the floor.

11 Q Okay. Do you have to filter that out or do  
12 anything special?

13 A Yes. If you look at that same picture, you  
14 will see a -- it looks like a shiny box right next to  
15 the fire extinguisher there. That is a shower pump.  
16 It hold two filters in it. It is like a 20 micron and  
17 a 5 micron. And the water from the showers and stuff  
18 would go from there, and from the showers to that to  
19 be filtered out and then filtered into a drain.

20 Q Okay. Did you or Mr. Bowker have to do  
21 anything different, because of the extreme  
22 temperatures, on the showering?

23 A Except for disconnecting the water, you know,  
24 no.

25 Q Now, I believe we have covered this, but I

1 think it is important for the Pollution Control Board  
2 to get the right idea. Spirco didn't strip any ACM  
3 off of these facility components by January 2nd when  
4 Mr. Fodor inspected?

5 A No, we did not.

6 Q I am sorry. January the 10th. On January  
7 2nd, when you and Mr. Bowker showed up at the site to  
8 assume control of the project, it appeared to you that  
9 facility components had been stripped?

10 A Yes, that is correct.

11 Q Do you have any information as to who did  
12 this type of stripping?

13 A No, I don't.

14 Q I also want to be clear. We have concerns  
15 regarding how the stripped material was handled by  
16 Spirco after you took control of the site. So I want  
17 to make that distinction.

18 A Okay.

19 Q You have testified that as you cleaned from  
20 floor to floor, you set up containment, you set up  
21 negative pressure, and you utilized proper wetting  
22 methods. Did the extreme temperatures interfere with  
23 this at all?

24 A Yes.

25 Q How did it?

1 A Like I said, sometimes they wouldn't put the  
2 water directly on them because we would have our lines  
3 froze up or something, and we would have to change out  
4 hoses. And instead of the whole crew standing there  
5 while we changed hoses and stuff and tried to get them  
6 thawed out, they would go ahead and bag the stuff up.

7 Q Okay. And you gave us an estimate that at  
8 least 50 percent of the time you could not use the  
9 wetting methods?

10 A Yes.

11 Q Was this one of the reasons that Mr. Bowker  
12 wanted the bagged materials to be wetted down? You  
13 have told us that some of the bags you would stick a  
14 tube in to insert water?

15 A Uh-huh.

16 Q Okay. My question is was this because the  
17 material had not been wetted before it had been  
18 bagged?

19 A The way he stated to me was that he wanted to  
20 see water, whether it was frozen or not, in the bottom  
21 of a bag. Sometimes, like I said, we could not get  
22 water in the bags upstairs because they were frozen.  
23 So before we put them into the dumpster and before we  
24 put them into this holding area we would make sure  
25 that there was water in the bags.

1 Q Okay. What efforts did you try to employ to  
2 make sure that the areas that you had cleaned did not  
3 get recontaminated?

4 A I don't remember right offhand.

5 MR. DAVIS: Thank you, sir. I have no other  
6 questions.

7 HEARING OFFICER JACKSON: Any redirect?

8 MR. BERRY: Just one or two.

9 HEARING OFFICER JACKSON: Okay.

10 REDIRECT EXAMINATION

11 BY MR. BERRY:

12 Q I need to clarify now, too. Was any material  
13 bagged when the floor that it was bagged on was not  
14 under containment?

15 A No.

16 Q And when you couldn't use the wetting methods  
17 because your hoses were freezing, did you take any  
18 other steps to wet the material?

19 A Yes, once they were down in our holding area.

20 Q Okay. That's the process that you were  
21 talking about before?

22 A Yes.

23 MR. BERRY: Okay. That's all I have.

24 HEARING OFFICER JACKSON: Okay. Since I gave Mr.  
25 Berry the luxury of recross in order to make a

1 complete record, I will give you the same option, Mr.

2 Davis.

3 MR. DAVIS: I have nothing further.

4 HEARING OFFICER JACKSON: Okay. Thank you. May  
5 the witness be excused?

6 MR. DAVIS: Yes.

7 MR. BERRY: I am through, yes.

8 HEARING OFFICER JACKSON: Okay. The witness is  
9 excused.

10 (The witness left the stand.)

11 MR. BERRY: At this time, Your Honor, I would like  
12 to move to have admitted Defendant's Exhibits 1  
13 through 6.

14 HEARING OFFICER JACKSON: I don't have a  
15 Defendant's Exhibit Number 1.

16 MR. BERRY: Defendant's Exhibit Number 1 is a May  
17 28th, 1998 letter that I mentioned in my opening  
18 statement that we are submitting that also addresses  
19 the federal criminal matter that has been introduced  
20 by Mr. Davis.

21 HEARING OFFICER JACKSON: Was there a motion, Mr.  
22 Davis, to admit the federal document?

23 MR. DAVIS: Yes, in my opening statement I had  
24 suggested that it be admitted and by that time we had  
25 already had a motion in limine to not admit it. So I



1 will formally admit it and move for its admission at  
2 this point.

3 HEARING OFFICER JACKSON: Okay. Your earlier  
4 objection to the introduction of that exhibit is  
5 noted. Over that objection, I will admit People's  
6 Exhibit Number 1, and I believe the earlier statement  
7 at the time was that Mr. Davis had no objection to the  
8 admission of Defendant's Exhibit Number 1.

9 MR. DAVIS: Right. Respondent's 1 is an attempt  
10 to make the record more complete regarding what  
11 compliance there may have been subsequent to the  
12 guilty plea and the sentencing. It is in the form of  
13 a letter to me and it says confidential settlement  
14 negotiations, but it really -- that's because  
15 something was in there that has been redacted. The  
16 main thrust of the letter is to explain what the  
17 attachments are.

18 HEARING OFFICER JACKSON: Okay.

19 MR. DAVIS: As I understand it, Spirco was, at one  
20 point, debarred from federal projects because of this  
21 criminal prosecution and maybe you can explain it  
22 better, but that status has been changed.

23 MR. BERRY: Yes. You also have the sentence that  
24 was entered.

25 HEARING OFFICER JACKSON: Yes.

1 MR. BERRY: According to the plea and that the  
2 penalty was a penalty amount and probation. And that  
3 triggered debarment under federal contracts. So  
4 normally during the entire period of probation that  
5 contractor is debarred. But with the steps that  
6 Spirco took subsequent to the plea agreement, this  
7 petition that is attached to the letter was successful  
8 in having Spirco reinstated. So everything that Mr.  
9 Davis said is accurate, and that's the purpose of  
10 submitting this.

11 MR. DAVIS: So it is my position that it is really  
12 a business record in the sense that the other federal  
13 pleadings are business records.

14 HEARING OFFICER JACKSON: Okay. So we are  
15 foregoing any formal authentication by any witnesses?

16 MR. BERRY: Right.

17 HEARING OFFICER JACKSON: Okay.

18 MR. BERRY: So that is 1 through 6. And I have  
19 also talked to Mr. Davis, and he has indicated that he  
20 will not oppose the introduction of Defendant's  
21 Exhibit Number 7, which are federal tax returns from  
22 1993 through 1997, for Spirco Environmental. And  
23 these are being submitted for the Board's  
24 consideration on the ability to pay issue.

25 There is also one document in here that is not a

1 federal income tax return. It was a document that  
2 appears -- that was prepared internally two years ago  
3 that is a status report basically of the company's  
4 financial status.

5 HEARING OFFICER JACKSON: The People have no  
6 objection?

7 MR. DAVIS: Taking them each in turn, Number 2 is  
8 the OSHA report?

9 MR. BERRY: That's right.

10 MR. DAVIS: Okay. We have taken the position that  
11 that is a government document that the Respondent  
12 obtained through FOIA, and that it is  
13 self-authenticating and so forth. We wouldn't, of  
14 course, waive any arguments as to the lack of any  
15 weight. That goes to the weight, not the  
16 admissibility.

17 Number 3 and 4 are the NESHAP notifications. No  
18 objection.

19 Numbers 5 and 6 we believe contain -- Number 5  
20 certainly contains hearsay regarding the substance --  
21 the truth of the matter as to whatever inspection may  
22 have been done for bidding purposes. So I would note  
23 for the record that although this is a document that  
24 appears to be a business record, that we are not  
25 waiving any objections as to the accuracy and

1 completeness, much less the confusing nature of the  
2 notations.

3 And Number 6, no objection at all. That is some  
4 analytical reports on sampling. That's fine.

5 Number 7, the tax returns, certainly, the five  
6 years of tax returns will be helpful to the Board.

7 They are business records, obviously, the same with  
8 the financial statement that is in there, so no  
9 objection.

10 HEARING OFFICER JACKSON: Okay. All of the  
11 Defendant's exhibits -- oh, I am sorry.

12 MR. BERRY: As to Exhibit 2, I think Tom and I  
13 talked about it when we came back from lunch that  
14 there was another comment or agreement that we needed  
15 to make as to that document. And that is that it does  
16 reflect the OSHA inspection of this site. It is  
17 dated, but it does not clearly specify where the  
18 inspection occurred. I think that we both agreed that  
19 we can stipulate that it is this site.

20 MR. DAVIS: Yes.

21 HEARING OFFICER JACKSON: Okay. That is so noted  
22 for the record. That is regarding Defendant's Exhibit  
23 Number 2.

24 MR. BERRY: Yes, Defendant's 2. As to Defendant's  
25 Exhibit 5, as to the hearsay objection, I don't

1 disagree that it is hearsay. If admitted for the  
2 truth of the matter asserted, which I am not -- I am  
3 offering it for the limited purpose of proving the  
4 fact that an inspection was done, and not the specific  
5 numbers and such that are included within.

6 HEARING OFFICER JACKSON: With that understanding,  
7 then all of the Defendant's exhibits will be admitted  
8 into the record.

9 (Whereupon said documents were admitted into  
10 evidence as Defendant's Exhibits 1 through 7 as of  
11 this date.)

12 HEARING OFFICER JACKSON: Just to note,  
13 Defendant's Exhibit Number 5 is, obviously, somewhat  
14 confusing, as what brought out through some of the  
15 testimony. So I think that the Board can consider  
16 that based on the testimony that was offered and give  
17 it whatever weight that they deem is warranted.

18 MR. BERRY: I would also hope that they would give  
19 the calculations performed, based upon the contents of  
20 it, the same limited weight.

21 HEARING OFFICER JACKSON: That is also noted for  
22 the record.

23 MR. BERRY: Fair enough, Tom?

24 HEARING OFFICER JACKSON: Did the State have any  
25 rebuttal evidence?

1 MR. DAVIS: No.

2 HEARING OFFICER JACKSON: Are there any other  
3 matters that we need to cover before concluding these  
4 proceedings?

5 MR. BERRY: Just the briefing schedule.

6 HEARING OFFICER JACKSON: All right. Did either  
7 party wish to make a closing argument on the record?

8 You may reserve closing arguments for your post  
9 hearing briefs, if you so desire.

10 MR. DAVIS: I think what I would note, Ms. Hearing  
11 Officer, is that there may be a need to make a motion  
12 to conform the pleadings to the proof, just to make  
13 sure that the context that the Board considers the  
14 evidence is as accurate as possible. But as far as  
15 the allegations of violations, my closing remarks  
16 would simply be that we have not at any time pleaded  
17 the theory that Spirco came in and ripped the ACM off  
18 the facility components.

19 It is only -- I shouldn't say only, because it is,  
20 in our view, so serious. It is what happened after  
21 they took control of the project and how the asbestos  
22 containing waste materials were handled or  
23 mishandled.

24 So that would be the extent of my closing  
25 argument.

1 HEARING OFFICER JACKSON: Certainly, the Board  
2 rules provide for motions to conform the pleadings to  
3 proof. That has come out at hearing. So any such  
4 motion the Board will consider.

5 Okay. Why don't we go off the record for just one  
6 second.

7 (Discussion off the record.)

8 HEARING OFFICER JACKSON: Let's go back on the  
9 record.

10 Pursuant to the Board's regulations I, as the  
11 Hearing Officer, am required to make a statement as to  
12 the credibility of the witnesses at hearing. This  
13 statement is to be based on my legal judgment and  
14 experience. Accordingly, I hereby state that I found  
15 the witnesses testifying today to be credible, and I  
16 do not see credibility as an issue in the Board's  
17 determination of this matter.

18 We have just been off the record for a brief  
19 moment discussing a post hearing briefing schedule.  
20 What we have agreed to and what I am ordering today is  
21 that the Complainant's brief will be due on Monday,  
22 October 26th, delivered to Respondent's Counsel by  
23 5:00 p.m. on that date.

24 Respondent's brief will then be due on Monday,  
25 November 16th, delivered to Complainant's counsel by

1 5:00 p.m. on that date. And then Complainant's reply  
2 brief will be due on Monday, November 23rd.  
3 Closing arguments, except for what Mr. Davis has  
4 already stated on the record, will be reserved for  
5 those post hearing briefs.

6 There have been no members of the public that have  
7 joined us during today's proceedings. The sign was  
8 posted outside so they knew where to go. We will take  
9 that as an understanding that there are no members of  
10 public wishing to make comment on the record today.

11 I will state on the record that if any members of  
12 the public do wish to submit post hearing comments to  
13 the Board they may do so by submitting those written  
14 comments to the Board's Chicago office within 30 days  
15 from today's date, which is October 29th.

16 There is no further business we need to discuss on  
17 the record?

18 MR. BERRY: No.

19 HEARING OFFICER JACKSON: Okay. I will conclude  
20 these proceedings. It is Tuesday, September 29th,  
21 approximately 4:10 p.m. We stand adjourned. Thank  
22 you.

23 (Exhibits retained by Hearing  
24 Officer Jackson.)

25



1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3

4 C E R T I F I C A T E

5

6 I, DARLENE M. NIEMEYER, a Notary Public in and for

7 the County of Montgomery, State of Illinois, DO HEREBY

8 CERTIFY that the foregoing 224 pages comprise a true,

9 complete and correct transcript of the proceedings

10 held on the 29th of September A.D., 1998, at 600 South

11 Second Street, Springfield, Illinois, in the case of

12 People of the State of Illinois v. Spirco

13 Environmental, Inc., in proceedings held before the

14 Honorable Amy L. Jackson, Hearing Officer, and

15 recorded in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my hand and

17 affixed my Notarial Seal this 9th day of October A.D.,

18 1998.

19

20

21 Notary Public and  
22 Certified Shorthand Reporter and  
23 Registered Professional Reporter

24 CSR License No. 084-003677

25 My Commission Expires: 03-02-99

26

27