

1 ILLINOIS POLLUTION CONTROL BOARD

2

3 FOREST PRESERVE DISTRICT)
 OF DUPAGE COUNTY, ILLINOIS,)
 4 a body politic and corporate)
 in the County of DuPage,)
 5 State of Illinois,)
)
 6 Complainant,)
)

7 vs) PCB No. 96-84
)

8 MINERAL LAND AND RESOURCES)
 CORPORATION, a Delaware)
 9 corporation, SOUTHWIND)
 FINANCIAL, LTD., an Illinois)
 10 corporation, formerly known)
 as ABBOTT CONTRACTORS, INC.,)
 11 BLUFF CITY MATERIALS, INC.,)
 an Illinois corporation as)
 12 assignee of ABBOTT CONTRACTORS,)
 INC.,)
 13)
 Respondents.) Volume III

14

15

16 The following is the transcript of a hearing
 17 held in the above-entitled matter, taken
 18 stenographically by Kim M. Howells, CSR, a notary
 19 public within and for the County of Cook and State
 20 of Illinois, before Michael Wallace, Hearing
 21 Officer, at 505 North County Farm Road, Wheaton,
 22 Illinois, on the 25th day of September 1997, A.D.,
 23 scheduled to commence at 9:30 a.m., commencing at
 24 9:45 a.m.

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

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-4925
8 BY: MR. MICHAEL WALLACE

9 CHAPMAN AND CUTLER,
10 111 West Monroe Street
11 Chicago, Illinois 60603
12 (312) 845-3000
13 BY: MR. RICHARD A. MAKARSKI and
14 MR. ROBERT G. TUCKER

15 Appeared on behalf of the Complainant,

16 WALSH, KNIPPEN, KNIGHT & DIAMOND, CHARTERED,
17 601 West Liberty Drive
18 Wheaton, Illinois 60189
19 (630) 462-1980
20 BY: MR. JAMES H. KNIPPEN, II

21 Appeared on behalf of the Respondents,
22 Bluff City Materials, Inc. and Southwind
23 Financial, Ltd.,

24 BUTLER, RUBIN, SALTARELLI & BOYD,
25 Three First National Plaza
26 Suite 1800
27 Chicago, Illinois 60602
28 (312) 444-9660
29 BY: MR. MICHAEL A. STICK

30 Appeared on behalf of the Respondents,
31 Bluff City Materials, Inc. and Southwind
32 Financial, Ltd.,

33

34

1 A P P E A R A N C E S: (cont'd)

2 GOULD & RATNER,
3 222 North LaSalle Street
4 Chicago, Illinois 60601
5 (312) 236-3003
6 BY: MS. KARIN O'CONNELL

7 Appeared on behalf of the Respondent,
8 Mineral and Land Resources.
9

10 ALSO PRESENT:

11 Mr. Michael Vondra

12 Mr. Joseph R. Benedict, Jr.

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1 THE HEARING OFFICER: Pursuant to adjournment, I
2 now call docket PCB 96-84. This is the complaint of
3 the Forest Preserve District of DuPage County vs.
4 Mineral and Land Resources Corporation, Southwind
5 Financial Ltd., and Bluff City Materials, Inc.

6 All right. Let's do the appearances
7 again.

8 MR. MAKARSKI: Sure. Richard Makarski and
9 Robert Tucker of Chapman and Cutler for the
10 complainant, and we also will have with us
11 Mr. Joseph Benedict from the Forest Preserve
12 District.

13 MR. STICK: Michael Stick and Jim Knippen for
14 the respondents, Southwind Financial and Bluff City
15 Materials, and Mr. Vondra will be joining us later
16 this morning.

17 MS. O'CONNELL: Karin O'Connell on behalf of
18 Mineral and Land Resources.

19 THE HEARING OFFICER: Thank you.

20 Let the record reflect there are no other
21 appearances at today's hearing.

22 Anything preliminary, Mr. Makarski?

23 MR. MAKARSKI: Nothing, your Honor.

24 MR. TUCKER: No, your Honor.

1 THE HEARING OFFICER: Mr. Stick?

2 MR. STICK: No, your Honor.

3 THE HEARING OFFICER: You may proceed. Call
4 your first witness.

5 MR. TUCKER: Thank you.

6 The Forest Preserve District calls
7 Miss Lara Walicek.

8 THE HEARING OFFICER: All right. Miss Walicek,
9 would you please stand, raise your right hand?

10 (Witness sworn.)

11 WHEREUPON:

12 L A R A W A L I C E K ,
13 called as a witness herein, having been first duly
14 sworn, testified and saith as follows:

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

16 by Mr. Tucker

17 Q. Good morning. Thank you for being with
18 us today.

19 Could you state your name and spell it for
20 the record?

21 A. Sure. Lara Walicek, W-a-l-i-c-e-k.

22 Q. And where do you live?

23 A. 5561 Redford Lane, Hanover Park,
24 Illinois.

1 Q. And your occupation?

2 A. I'm self-employed. I'm an attorney and
3 a CPA.

4 Q. Will you give us a brief sketch of your
5 educational background?

6 A. I have a bachelor's degree in
7 accounting from Northern Illinois University. I
8 have a JD also from Northern Illinois University
9 College of Law. I have a CPA.

10 Q. Where were you employed from around the
11 fall of 1992 to the end of 1994?

12 A. I was employed by a firm in Itasca when
13 I was initially hired. It was Schirott & Hervas,
14 and it later became Schirott & Leutkehans.

15 Q. Who --

16 MR. MAKARSKI: Excuse me. Why don't you try and
17 spell all those, get them on the record now.

18 MR. TUCKER: Oh. That's a good idea.

19 BY THE WITNESS:

20 A. Okay. Schirott is S-c-h-i-r-o-t-t.
21 Hervas is H-e-r-v-a-s. And Leutkehans is
22 L-e-u-t-k-e-h-a-n-s.

23 BY MR. TUCKER:

24 Q. Thank you.

1 And you were employed as an attorney?

2 A. Yes, I was.

3 THE HEARING OFFICER: Stop just a minute. Off
4 the record.

5 MR. TUCKER: Off the record.

6 (Discussion had off
7 the record.)

8 THE HEARING OFFICER: Back on the record.

9 You may continue, Mr. Tucker.

10 MR. TUCKER: Would we like the record to reflect
11 that Mr. --

12 THE HEARING OFFICER: No. I wanted to just
13 avoid any problems if he was a witness.

14 MR. MAKARSKI: Oh, no.

15 BY MR. TUCKER:

16 Q. And how were you employed with them?

17 What was your occupation for that law firm?

18 A. I was an attorney. I also oversaw the
19 accounting there.

20 Q. And did you work with all the attorneys
21 in that office?

22 A. Yes, I did.

23 Q. Were there any attorneys you worked
24 primarily for, or was your work divided?

1 A. I worked primarily for Jim Schirott.

2 MR. TUCKER: Okay. Let me approach the
3 witness.

4 BY MR. TUCKER:

5 Q. I have here four volumes of documents
6 marked on the first volume is MLR Due Diligence
7 Study, Volume I-4, Pages 1-149.

8 MR. TUCKER: If we could mark this as
9 Complainant's Group Exhibit, and the subsequent
10 volumes I think we can do A, B, C and D.

11 Do we know what number we're on?

12 MR. STICK: Fifteen.

13 THE HEARING OFFICER: Fifteen.

14 MR. MAKARSKI: Fifteen.

15 I will hand four volumes of these copies to
16 the witness.

17 (Complainant's Exhibit
18 Nos. 15-A, B, C, and D
19 marked for identification,
20 9/25/97.)

21 MR. TUCKER: For the record, I identified for
22 the witness that we referred to the first volume,
23 Volume I, is A, and then the subsequent volumes are
24 B, C, and D, Exhibit 15.

1 BY MR. TUCKER:

2 Q. Could you describe these for me?

3 A. These are four volumes of a project
4 that I worked on while I was at Schirott &
5 Leutkehans.

6 Q. Did you prepare these documents?

7 A. Yes, I did.

8 Q. Can you tell us how you prepared these
9 documents?

10 A. I went through the trip tickets from
11 Bluff City and dictated the information on those
12 tickets through a dictaphone, gave the cassette to a
13 secretary who typed up the information, and this is
14 what she typed up.

15 Q. Did you double check when you got back
16 the typed-up version, double check your work to see
17 if it was accurate or at least partially check it?

18 A. I did not check every single entry. I
19 did do spot checking.

20 Q. Who asked you to prepare this document?

21 A. Jim Schirott.

22 Q. That's an attorney with that law firm
23 you were employed with at that time?

24 A. Correct.

1 Q. Do you know on behalf of what client
2 that document was prepared?

3 A. No. To be honest with you, at the time
4 I'm not sure who we were representing. My
5 involvement was extremely limited to just this
6 project.

7 Q. Just the trip tickets and taking the
8 information from the trip tickets and putting it
9 into those documents?

10 A. Correct.

11 Q. Can you tell us when you prepared that
12 document?

13 A. It took several -- several weeks or
14 months to do. It was over a period of time, I
15 believe, in the spring, early summer of 1994.

16 Q. Would you have any idea of the total
17 amount of time you spent on that?

18 A. A lot. I don't recall offhand exactly
19 how much time I spent, but it was quite -- quite
20 significant.

21 Q. To the best of your knowledge, does
22 that document accurately and truly reflect the
23 information that you gathered from what you call the
24 trip tickets, the trip tickets that you reviewed?

1 A. The information I took off the trip
2 tickets, yes.

3 MR. TUCKER: Let me approach the witness. I'm
4 going to have another document I'd like mark as
5 Complainant's Exhibit 16, and I'll hand the witness
6 a copy as well.

7 (Complainant's Exhibit No. 16
8 marked for identification,
9 9/25/97.)

10 MR. TUCKER: I ask the witness to look at the
11 document as well.

12 (Witness perusing
13 document.)

14 BY MR. TUCKER:

15 Q. Have you had a chance to look at the
16 document?

17 A. Yes.

18 Q. It was a document that was recently
19 given to us by Bluff City.

20 Do you recognize this document, or does it
21 resemble anything you've seen in the past?

22 A. Yes, it does. It appears to be a
23 photocopy of one of the trip tickets.

24 Q. Is this what the trip tickets looked

1 like that you reviewed in general?

2 A. Yes. This is their format, yes.

3 Q. So it's safe to say you looked at
4 literally hundreds of these types of documents and
5 put it into the volumes that are before you now?

6 A. Yes.

7 Q. Do you know what the time frame
8 reflected in the trip tickets were that you looked
9 at approximately?

10 A. Approximately April of '92 through -- I
11 believe it was March of '93.

12 Can I look at the exhibit to verify that?

13 MR. TUCKER: If the parties have no objection if
14 she can more substantially refresh her recollection
15 by looking at her prepared document.

16 MR. KNIPPEN: If her recollection is exhausted,
17 I have no objection to questioning, but I think that
18 a foundation question needs to be posed to the
19 witness prior to the time for that to occur.

20 BY MR. TUCKER:

21 Q. Would looking at the MLR Due Diligence
22 four-volume summary in front help refresh your
23 recollection as to the dates you prepared these
24 documents?

1 A. Yes.

2 Q. Thank you.

3 THE HEARING OFFICER: Yes, she may.

4 BY MR. TUCKER:

5 Q. You may.

6 A. April of '92 through March -- the end
7 of March of '93. So I was -- I recalled correctly.

8 Q. If you would, please, could you locate
9 where the ticket I just gave you is in the volumes
10 and perhaps identify it by page number, volume
11 number?

12 A. Okay. This is the very first ticket in
13 the exhibit which would be Volume I, Page 1, the
14 first entry.

15 Q. And I believe that would be
16 Exhibit 15-A.

17 MR. TUCKER: Let me approach the witness and
18 show you another document.

19 This we'd like marked as Complainant's
20 Exhibit 17.

21 (Complainant's Exhibit No. 17
22 marked for identification,
23 9/25/97.)

24 MR. TUCKER: At this time Mr. Hearing Officer, I

1 would move to have the previous ticket, No. 16,
2 introduced into evidence.

3 THE HEARING OFFICER: Any objection?

4 MR. KNIPPEN: Objection, foundation.

5 MR. TUCKER: You Honor, I believe she identified
6 it as, one, it's actually in the report that she
7 prepared. She identified it as a trip ticket as to
8 also that being similar to other trip tickets she
9 reviewed.

10 I think it's absolutely material. I think
11 foundation has been laid.

12 MR. KNIPPEN: The document, your Honor, is
13 hearsay. It is blatant hearsay, and there is no
14 evidence at this juncture that establishes this
15 witness's direct personal knowledge of the
16 generation of this document. It is hearsay.

17 THE HEARING OFFICER: Complainant's 16 is
18 admitted into evidence.

19 MR. TUCKER: Thank you, your Honor.

20 BY MR. TUCKER:

21 Q. This next trip ticket, for lack of a
22 better word, trip ticket, is that also similar to
23 the trip tickets that you reviewed?

24 A. Yes, it's similar.

1 Q. Could you take a minute and see if you
2 can -- I should note this is just another trip
3 ticket that was given to us recently by Bluff City.

4 Can you look within the volumes to see if
5 that trip ticket is in there as well?

6 A. No, it's not.

7 Q. Would you have any idea why that's not
8 in there?

9 A. Yes. On this particular ticket, it
10 says pick up or delivery, and there's a P next to
11 it, which in my mind means pick up. I was only
12 supposed to be recording what was delivered to the
13 site.

14 Q. When you say that's what you were
15 recording, where did you do most of this work,
16 preparing these volumes?

17 A. Part of the time I did it at what I
18 believe was Bluff City's offices.

19 Q. Did they give you the trip tickets?

20 A. Yes, they did.

21 Q. What did they identify these trip
22 tickets as?

23 A. The tickets reflecting what was brought
24 into and removed.

1 MR. KNIPPEN: Objection, foundation, Judge. I
2 want to know who told her that, where it was, and at
3 what time.

4 I would like to. Excuse me. I apologize
5 for the way I stated that objection.

6 MR. TUCKER: Understood.

7 MR. KNIPPEN: Objection, foundation.

8 THE HEARING OFFICER: All right.

9 MR. TUCKER: Thank you, Jim.

10 MR. KNIPPEN: Sorry, Judge.

11 BY MR. TUCKER:

12 Q. Could you tell us who told you that
13 information?

14 A. I believe the individual's name was
15 Jeff Senato.

16 Q. And was he at the Bluff City offices --
17 were you and he at the Bluff City offices when he
18 told you this?

19 A. Yes. It was my understanding that he
20 was their accountant and -- at least in-house
21 accountant.

22 Q. For Bluff City?

23 A. Correct.

24 Q. Before you went to Bluff City, was it

1 understood that you were going there to review trip
2 tickets representing -- documents representing
3 material that was brought on to the site for a
4 certain time period?

5 A. Yes.

6 Q. Thank you.

7 You said before when you did this, but this
8 would obviously be one of the first pages where it
9 starts. So this was about what time?

10 A. When --

11 Q. This conversation, when you first
12 started the project.

13 A. Yeah. It would have been the very
14 beginning of mid-spring, middle of spring of '94,
15 right before I actually started.

16 I had met with him once just to see what
17 exactly it was I was going to be dealing with, so I
18 had an idea of how I was going to record the
19 information.

20 Q. How many tickets that were supplied by
21 Bluff City to you would you contend you reviewed,
22 hundreds, thousands?

23 A. I have no idea. It was hundreds at
24 least, possibly in the thousands. I never actually

1 counted, but it was a lot.

2 MR. TUCKER: Your Honor, at this time, I'd like
3 to move for the admission of that latest trip ticket
4 into evidence as Exhibit 17.

5 MR. KNIPPEN: The same objections for the
6 record, your Honor.

7 THE HEARING OFFICER: Fine. Complainant's
8 Exhibit 17 is admitted into evidence.

9 I would back up and amend my admission on
10 both 16 and 17 that at this point in time they are
11 being admitted to the extent that the witness viewed
12 them and transcribed the information to
13 Documents 15 -- Group Exhibit 15.

14 MR. TUCKER: Or did not view them as the case
15 may be.

16 THE HEARING OFFICER: Or did not -- I will say
17 that to the extent that she looked at them they are
18 admitted for that purpose.

19 MR. TUCKER: At this time, I'd also like to move
20 for the admission of the four-volume set, which is
21 Exhibits 15-A, B, C, and D.

22 MR. KNIPPEN: I have the same objections,
23 your Honor. In addition to that, I will have
24 additional objections, and we'll follow up with a

1 motion to strike after I complete my
2 cross-examination of this witness with regard to
3 this particular document.

4 I'd like to reserve those objections at
5 this time.

6 THE HEARING OFFICER: All right. Group Exhibit
7 15 is admitted into evidence.

8 MR. TUCKER: Thank you, Mr. Hearing Officer.

9 THE HEARING OFFICER: And I will say for the
10 purpose that the witness testified that she
11 transcribed or had transcribed information from trip
12 tickets into her -- into the study.

13 BY MR. TUCKER:

14 Q. And again, Miss Walicek, to the best of
15 your knowledge, these four volume documents do
16 accurately reflect the information on the trip
17 tickets that you were given by Bluff City; is that
18 correct?

19 A. Yes.

20 MR. TUCKER: That's all.

21 THE HEARING OFFICER: Cross-examination?

22 MR. KNIPPEN: Thank you, very much.

23 Your Honor, I would ask that the record
24 reflect at this time that my cross-examination is

1 being undertaken because my objections were
2 overruled, and that I am not, by cross-examining,
3 waiving the foundational objections that I
4 previously made for the record.

5 THE HEARING OFFICER: All right.

6 MR. KNIPPEN: Thank you very much.

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

8 by Mr. Knippen

9 Q. Miss Walicek, do you know Mary Dixon?

10 A. Yes, I do.

11 Q. Who is Mary Dixon?

12 A. She was an associate at the law firm
13 also.

14 Q. Could you spell her last name for the
15 court reporter?

16 A. Sure. D-i-x-o-n.

17 Q. And she worked with you part of the
18 time you were at Mr. Schirott's office, correct?

19 A. She worked also at the law office, yes.

20 Q. She was an attorney at the law office,
21 correct?

22 A. Yes.

23 Q. She prepared part of Exhibit 15, didn't
24 she?

1 A. She did dictate, I believe, maybe one
2 box, yes.

3 Q. Okay. Now, when you say "one box," how
4 many trip tickets approximately would have been in
5 one box?

6 A. I honestly can't tell you, but a box
7 was approximately -- is this three feet, two feet,
8 three feet? Does this look three feet long
9 (indicating)?

10 Q. And were those boxes full?

11 A. And they were jammed packed with the
12 tickets.

13 Q. If we look at Exhibits 15 and 16 in
14 this matter, do these represent the approximate
15 sides and dimensions of the trip tickets you
16 reviewed?

17 A. Yes.

18 Q. And were they as thick as this piece of
19 paper, or were they thicker, or were they thinner?

20 A. They were a piece of paper. I mean,
21 they were each a paper -- I don't recall any special
22 type of thickness to the paper.

23 Q. Okay. Were they like a cardboard
24 thickness, or were they a paper thickness?

1 A. They were a paper thickness.

2 Q. Okay. And you would agree with me then
3 that if we're talking about a box this large
4 containing paper thickness -- pieces of paper that
5 are this size (indicating), there were a significant
6 number of tickets in that box, correct?

7 A. Yes.

8 Q. Okay. As you look at this particular
9 exhibit, Exhibit 15, can you identify for me in that
10 exhibit what Mary Dixon did by page and by specific
11 designation in that document?

12 A. Specifically, I cannot by looking at
13 this identify which entries Mary dictated.

14 Q. You were not physically present when
15 she dictated those, were you?

16 A. Yes, I was.

17 Q. You were in her presence?

18 A. Yes.

19 Q. Okay. You were in the same room?

20 MR. TUCKER: Your Honor, objection. The
21 question has been answered.

22 THE HEARING OFFICER: Sustained.

23 BY MR. KNIPPEN:

24 Q. Where were you with her?

1 A. I believe we were -- if I remember
2 correctly, we were down in the garage, the
3 conference room, of Jim Schirott's office.

4 Q. Were you also dictating other trip
5 tickets at the same time yourself?

6 A. No.

7 Q. You were just standing behind her
8 watching her dictate these tickets?

9 A. No. I was working on another project
10 for another case.

11 Q. So you weren't observing directly what
12 she was doing, were you?

13 A. Well, no, I wasn't over her shoulder
14 reading what she was reading, no.

15 Q. Okay. Thank you.

16 MR. KNIPPEN: Judge, now I would make a motion
17 to strike that document because that document
18 contains hearsay which we cannot identify the origin
19 of at this point.

20 We cannot identify or confirm the accuracy
21 of it, and they are unable to distinguish what in
22 that document was prepared by Mary Dixon and what
23 was prepared by this witness.

24 THE HEARING OFFICER: All right. Your objection

1 is noted and overruled.

2 BY MR. KNIPPEN:

3 Q. Miss Walicek, you remember at some
4 point in time Mr. Schirott telling you that one of
5 the purposes of this study or one of the potential
6 purposes of this study was to be incorporated into
7 some type of settlement agreement or interim
8 agreement between the parties that were involved in
9 this matter, don't you?

10 A. Well, what I understood was this was a
11 part of an interim agreement.

12 Q. Okay. And when you say an "interim
13 agreement," did you understand that to be a
14 settlement agreement?

15 A. No.

16 Q. What did you understand an interim
17 agreement to be?

18 A. I really did not think about what it
19 was. I never read the document. I just know that
20 it was an agreement in which Jim was involved
21 between two parties, and as a result, they agreed
22 that this would be done.

23 Q. Did you understand that there was a
24 conflict or a dispute between these two parties at

1 the time with regard to the information represented
2 in these trip tickets?

3 A. Yes. I supposed it would have to be if
4 this was going to be done, yes.

5 Q. Okay. So to the best of your knowledge
6 then you understood that you were reviewing these as
7 a result of a dispute and that it might become part
8 of an agreement between the parties related to that
9 dispute, correct?

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

11 Q. When you were preparing these
12 documents, I think you indicated that Exhibit 16
13 would represent a document that you had actually
14 incorporated in this study; is that correct?

15 A. Yes.

16 Q. Okay. And Exhibit 16 is incorporated
17 into this study because it represents a, in your
18 opinion, load being brought to the site; is that
19 correct?

20 A. Yes.

21 Q. With regard to that, when you prepared
22 this study, you did not attempt to make any efforts
23 to distinguish between material that was brought to
24 the site for use as fill and material that was

1 brought to the site for later resale, did you?

2 A. No, I did not.

3 Q. And with regard to this particular
4 study, you have no idea or opinion yourself as to
5 what percentage of these materials brought to the
6 site were left upon the site or what may have been
7 removed from the site as contained in this study
8 that was sold for resale, correct?

9 A. I have no knowledge of that, correct.

10 Q. You yourself never observed any of the
11 loads that are represented by the trip tickets in
12 this study, did you?

13 A. No.

14 Q. You did not review any materials from
15 this particular site prior to 1992, did you?

16 A. No.

17 Q. Did you understand that there were trip
18 tickets that existed for the site prior to 1992?

19 A. Yes.

20 Q. Some tickets you reviewed at the
21 offices of Bluff City, and some tickets you reviewed
22 at the Schirott law offices, correct?

23 A. Yes.

24 Q. And one night you took a box of tickets

1 home yourself because you were concerned about being
2 in the office alone, correct?

3 A. Correct.

4 Q. You yourself personally did not return
5 all of the boxes of tickets to the Bluff City office
6 that had been removed from that office to review; is
7 that correct?

8 A. That's correct.

9 Q. And with regard to the boxes that you
10 returned, did you receive any receipts from Bluff
11 City with regard to those boxes?

12 A. No, I did not.

13 Q. Did you maintain a log of the boxes
14 that you took and the dates that were contained in
15 the particular boxes that you took off Bluff City
16 premisses?

17 A. No. As far as recording which boxes
18 were taken on what particular days, no.

19 Q. There were other boxes that were taken
20 to the Schirott offices that after they left your
21 possession were in the possession of other Schirott
22 office employees, correct?

23 A. I see what you're referring to. Yes,
24 that's correct.

1 Q. Was there any log maintained in the
2 Schirott offices of people who had access to those
3 boxes?

4 A. Who had access to the boxes?

5 Q. Correct.

6 A. Anyone who had access to my office
7 would have access to the boxes.

8 Q. With regard to the information that was
9 contained on the tickets that you transcribed into
10 the document which has been admitted as Exhibit 15,
11 you don't have personal knowledge of any of the
12 contents of any of those loads as represented on
13 those tickets other than what is contained -- that
14 document other than what was contained on those
15 tickets; is that correct?

16 A. Correct.

17 Q. So if the ticket refers to -- let's
18 take 16 for a minute. Sixteen refers to job info,
19 Summit & Wise, Schaumburg.

20 Do you see that?

21 A. Yes.

22 Q. You have no knowledge of what was going
23 on at Summit & Wise in Schaumburg that constituted
24 this job, do you?

1 A. No, I don't.

2 Q. And, for example, if there was a
3 reference somewhere in the due diligence study to
4 sewer work at a particular location, you wouldn't
5 know whether they were pulling out an old sewer or
6 putting in a new sewer or relocating a sewer line,
7 would you?

8 A. Not unless it said so on the ticket. I
9 would say no.

10 Q. So when we have a generic description
11 in a ticket of, say, sewer work or let's say Jiffy
12 Lube, you don't know whether they were constructing
13 a new Jiffy Lube on the site or whether they were
14 tearing up an old Jiffy Lube that existed there, do
15 you?

16 A. No, I don't.

17 Q. And as a matter fact, based upon your
18 understanding of the tickets, those tickets don't
19 communicate anything about the nature of the work
20 that was being performed on those job sites as
21 recorded in the tickets, do they?

22 A. No. I don't have any knowledge of
23 that.

24 Q. And the tickets did not communicate

1 that knowledge to you, did they?

2 A. No, they did not.

3 MR. KNIPPEN: Thank you. If I might just have
4 one minute.

5 (Brief pause.)

6 MR. KNIPPEN: I have no further questions at
7 this time.

8 THE HEARING OFFICER: Redirect?

9 MR. TUCKER: Thank you, Mr. Hearing Officer.

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

11 by Mr. Tucker

12 Q. Counsel mentioned someone named Mary
13 Dixon.

14 What was her role in that office again?

15 A. She was an attorney with the firm.

16 Q. Did she work under you?

17 A. No. We worked together.

18 Q. And the work she did, did you also
19 review that much like you reviewed your own work?

20 A. Yes, I did.

21 Q. When this apparently long project was
22 finally done, did you request someone in your office
23 or direct someone in your office to return the
24 tickets to Bluff City?

1 A. Yes. We were returning them. I didn't
2 have all the tickets at once. I would get a couple
3 boxes, work on those, and return them; get a couple
4 more boxes, work on those, and return them.

5 So when the project was finally over, there
6 were several boxes, but not all the boxes that I
7 looked at were in the office. There were just
8 several boxes left, and, yes, I directed those to be
9 returned.

10 MR. TUCKER: Nothing further.

11 THE HEARING OFFICER: Recross?

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

13 by Mr. Knippen

14 Q. You did not physically return them
15 yourself or you were not in the physical presence of
16 the return of all those boxes to Bluff City, were
17 you?

18 A. No.

19 MR. KNIPPEN: Thank you.

20 Judge, I don't know if Miss O'Connell
21 has --

22 MS. O'CONNELL: No, sir. I have no questions.

23 THE HEARING OFFICER: I apologize.

24 THE HEARING OFFICER: Thank you, Miss Walicek.

1 You may step down.

2 MR. TUCKER: Thank you.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 MR. KNIPPEN: Your Honor, may I make an
6 additional point for the record at this point?

7 THE HEARING OFFICER: Sure.

8 MR. KNIPPEN: Based upon the testimony of the
9 witness, your Honor, there is evidence now in the
10 record that this particular document was generated
11 in the context of what's been referred to as an
12 interim agreement based upon a dispute between the
13 parties at the time that the document was being
14 generated.

15 My belief is that under the rules,
16 procedures and the Supreme Court rules in Illinois
17 any evidence of things that occurred during the
18 course of settlement negotiations is absolutely
19 inadmissible in any proceeding for any purpose, and
20 I would add that to my litany of objections that I
21 have previously made.

22 THE HEARING OFFICER: Do you wish to respond to
23 that?

24 MR. MAKARSKI: I -- I --

1 MR. TUCKER: No, your Honor. I think.

2 THE HEARING OFFICER: One at a time.

3 MR. TUCKER: Your Honor, he's way overstating
4 the rule regarding settlement negotiations and
5 documents and whatnot relating to that.

6 I don't think you'd necessarily want that
7 issue argued right now, but if at a later time you
8 do, we'd be happy to argue that.

9 THE HEARING OFFICER: All right. Your objection
10 is noted and overruled.

11 MR. KNIPPEN: Thank you.

12 MR. TUCKER: Your Honor, if I can have 30
13 seconds, I'll go get the next witness.

14 THE HEARING OFFICER: All right. Let's go off
15 the record.

16 (Discussion had off
17 the record.)

18 THE HEARING OFFICER: Back on the record.

19 Miss O'Connell, I apologize for skipping
20 over you. I do not mean to be rude, and I will try
21 not to do it again.

22 MS. O'CONNELL: That's fine, Mr. Hearing
23 Officer.

24 THE HEARING OFFICER: Next witness?

1 MR. TUCKER: Thank you, Mr. Hearing Officer.

2 The complainant, the Forest Preserve
3 District of DuPage County, would like to call to the
4 stand Mr. John Giazzon.

5 THE HEARING OFFICER: Mr. Giazzon, would you
6 please stand?

7 (Witness sworn.)

8 WHEREUPON:

9 J O H N G I A Z Z O N ,
10 called as a witness herein, having been first duly
11 sworn, testified and saith as follows:

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

13 by Mr. Tucker

14 Q. Mr. Giazzon, could you state your full
15 name and spell it for the record?

16 A. John Giazzon. It's G-i-a-z-z-o-n.

17 Q. Mr. Giazzon, where do you live?

18 A. I live in Palatine.

19 Q. And what is your occupation?

20 A. Paralegal for Chapman and Cutler in the
21 litigation department.

22 Q. How long have you been employed at
23 Chapman and Cutler?

24 A. Over ten years.

1 Q. Can you tell us generally what your
2 duties at Chapman and Cutler are?

3 A. Well, I work for the litigation
4 department in preparation of documents, filing of
5 pleadings, general paralegal work.

6 Q. How many attorneys do you work with in
7 that department?

8 A. All of them. I forget how many are
9 there.

10 Q. Approximately?

11 A. Eight, nine.

12 MR. TUCKER: Let me approach the witness. I'm
13 going to hand him a document as well as handing the
14 document to the court reporter and ask that this be
15 marked as Complainant's Exhibit 18.

16 (Complainant's Exhibit No. 18
17 marked for identification,
18 9/25/97.)

19 THE HEARING OFFICER: You may proceed.

20 BY MR. TUCKER:

21 Q. Do you recognize this document,
22 Mr. Giazzon?

23 A. Yes. It's the summary that I did off
24 of the MLR Due Diligence Studies.

1 Q. You mentioned the MLR Due Diligence
2 Studies. I'm going to show for you what has already
3 been previously marked as Complainant's Exhibits 15-A,
4 B, C, and D. They're in front of you actually on
5 the stand.

6 Do you recognize these documents?

7 A. Yes. That's what I used to create the
8 summary. That's titled MLR Due Diligence Study
9 Analysis.

10 Q. And Exhibit 15 is titled what?

11 A. MLR Due Diligence Study, Volumes I
12 through IV.

13 Q. How did you prepare this document?

14 When I say "this document," I mean the document
15 you've already identified as 18 that you prepared.

16 A. Just by going through the due diligence
17 study by hand and writing down first the job
18 description or source and then just counting up how
19 many truckloads and how many different kinds of
20 materials were in the trucks and summarizing it.

21 Q. Can you tell us when and where you
22 prepared this document?

23 A. It was October or November of last
24 year, and I prepared it at the firm, at Chapman and

1 Cutler.

2 Q. Who asked you to prepare it?

3 A. Mr. Makarski and yourself.

4 Q. Volumes which have previously been
5 marked Complainant's Exhibit 15-A, B, C, and D,
6 those are the volumes that you reviewed in making
7 your document; is that correct?

8 A. Yes.

9 Q. Is it fair to say you simply
10 transferred the information from the bigger set of
11 documents into your due diligence summary?

12 A. Yes.

13 Q. To the best of your knowledge, does
14 your document, which has been marked as
15 Complainant's Exhibit 18, accurately and truly
16 reflect the information that's contained within the
17 MLR Due Diligence Study, which is Exhibit 15?

18 A. Yes.

19 Q. Did anybody else assist you on this
20 matter?

21 A. Yes, two people did, Sebastian Flatley.

22 Q. Could you spell that?

23 A. F-l-a-t-l-e-y. And Nick Saucedo. It's
24 S-a-u-c-e-d-o.

1 Q. What are the occupations of these two
2 gentlemen?

3 A. Sebastian is a docket clerk, court
4 runner for the litigation department, and Nick works
5 for the same company that Sebastian does. It's
6 IKON. That's I-K-O-N. And they supply, I guess,
7 support help for the firm. And when Sebastian is
8 not there, I use Nick.

9 Q. You use Nick. These two people work
10 for you in essence?

11 A. Yes.

12 Q. Did they do similar work to your
13 knowledge that you did in reviewing information from
14 the books and into your study?

15 A. Correct.

16 Q. Did you review that work?

17 A. Yeah.

18 Q. Did you make spot checks of their work
19 and their entries?

20 A. Right.

21 Q. Did you review the work that came back
22 that you also did -- you sent this off to be typed
23 up?

24 A. Correct.

1 Q. And did you review it when it came back
2 to you?

3 A. Yes, off of the handwritten copies.

4 Q. Are you familiar with a site known as
5 the Stearns Road site?

6 A. I've just heard the name. I'm not
7 familiar with it.

8 Q. Have you ever been out there?

9 A. No.

10 Q. Have you ever seen trucks bringing
11 loads of anything to the site?

12 A. No.

13 MR. TUCKER: Your Honor, I would move to admit
14 Exhibit 18 -- Complainant's Exhibit 18 at this time.

15 MR. STICK: Your Honor, I object on a number of
16 bases. Some are similar to Mr. Knippen's
17 objections.

18 The first basis is the underlying trip
19 tickets which form the foundation apparently of the
20 due diligence study. There has not been an adequate
21 foundation for the offering of them into evidence
22 for the creation of the study that was admitted. So
23 foundation of this analysis prepared by Mr. Giazzon
24 is one basis for my objection.

1 The second basis is hearsay. It is not a
2 court statement offered for the truth of the matter
3 asserted. And the third basis is the settlement
4 issue that Mr. Jim Knippen raised.

5 On the hearsay, I would like to -- I would
6 like to offer one other basis, and that is to the
7 extent the information contained in the due
8 diligence study analysis does not accurately and
9 faithfully simply transcribe and compile information
10 in the due diligence study. I object to it on that
11 basis.

12 And for one example, he didn't just simply
13 transfer information. He changed the captions, for
14 instance, from job information to source. And so
15 there is more than simply a transfer of
16 information. There is an interpretation of what
17 that information means and the significance of that
18 information.

19 And to that extent, I object on the basis
20 of the foundation for this witness to have conducted
21 that kind of a study. He admitted on direct he had
22 no information other than hearing of the site,
23 hadn't seen any of the operations, and has no basis
24 and no foundation for interpreting the due diligence

1 study or the underlying information.

2 MS. O'CONNELL: Mr. Hearing Officer, I'd like to
3 join in that objection and add an objection on the
4 basis of relevance.

5 As Mr. Knippen established through his
6 examination of Miss Walicek, there's no indication
7 that these loads that may have been brought to the
8 site weren't processed and taken off later, and,
9 therefore, there's no relevance to the issue at hand
10 in front of the board now.

11 THE HEARING OFFICER: All right. Do you care to
12 respond?

13 MR. MAKARSKI: Yeah.

14 This is a summary as the other one was of
15 complicated and extensive records which are
16 generally allowed into evidence. The word "source"
17 is the same as the job info. That's where it came
18 from.

19 And as far as Miss O'Connell's objection,
20 we did -- and part of his analysis is to show the
21 different categories that they put down, and one of
22 them is clean concrete which I, you know, assume is
23 what they're taking about.

24 Anyway, the idea of this is not to prove

1 everything that went in there or didn't go in
2 there. It's some idea of what was bought to the
3 site because we have significant evidence of
4 extensive amount of material being brought in. And
5 this is to show from where that material came from.

6 MR. TUCKER: I would add for the record the
7 hearing officer and the board can take the documents
8 for what they are and can use them accordingly. And
9 I would just add to Mr. Stick's most recent
10 objection which was a little different than the
11 other ones previously employed by Mr. Knippen that
12 this is -- this is something that's maybe perhaps
13 better brought out on cross but not as to the
14 admissibility of the document.

15 THE HEARING OFFICER: All right. Complainant's
16 Exhibit No. 18 is admitted to the extent that the
17 witness drew the information from the due diligence
18 study, 15-A through D.

19 BY MR. TUCKER:

20 Q. Mr. Giazzon --

21 THE HEARING OFFICER: Oh, I thought you were
22 through with direct.

23 MR. TUCKER: No. I had just moved to admit the
24 exhibit. I'm sorry.

1 THE HEARING OFFICER: Go ahead.

2 MR. TUCKER: Thank you.

3 BY MR. TUCKER:

4 Q. Mr. Giazzon, could you turn to the last
5 page of your report?

6 (Witness complied.)

7 BY MR. TUCKER:

8 Q. The page at the top is titled
9 Description of Materials.

10 Do you see that page?

11 A. Yes.

12 Q. This is merely a summary of the
13 previous pages counting the number of what you
14 defined as loads; is that correct?

15 A. I'm sorry. Could you repeat that?

16 Q. This is merely a summary of the
17 previous page and descriptions of the loads of the
18 tickets you reviewed; is that correct?

19 A. Correct.

20 Q. How many loads of clean black dirt does
21 this illustrate were brought on?

22 A. Twenty-six.

23 Q. Clean clay, Mr. Giazzon?

24 A. 3,098.

1 Q. Dirt and clay mix?

2 A. 6,469.

3 Q. What does the term clean concrete,

4 Mr. Giazzon?

5 A. Four hundred and ten.

6 Q. Concrete and rebar mixed?

7 A. One.

8 Q. Tree stumps and branches?

9 A. Two.

10 Q. Crushed concrete?

11 A. One.

12 Q. This totals slightly over 10,000; is

13 that correct?

14 A. Correct.

15 Q. If you can, turn to the page before

16 which is Page 7.

17 How many number of sources do you have

18 listed at the bottom of your document?

19 A. 225.

20 MR. TUCKER: No further on direct.

21 THE HEARING OFFICER: Cross, Mr. Stick?

22 MR. STICK: Thank you, your Honor.

23

24

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

2 by Mr. Stick

3 Q. Mr. Giazzon, a moment ago Mr. Tucker
4 asked you a question regarding the last page of
5 Exhibit No. 18, and his question to you was, does
6 this summarize the information contained on the
7 tickets you reviewed?

8 Do you recall that question?

9 A. Yes.

10 Q. Does the last page of Exhibit 18
11 summarize the information contained on the tickets
12 you reviewed?

13 A. If you mean the MLR Due Diligence Study
14 as the tickets, yes.

15 Q. Well, now, the question was, does it
16 accurately summarize the information contained on
17 the tickets you reviewed?

18 A. I didn't review any tickets.

19 Q. You didn't review any tickets, did you?

20 A. No, not at all.

21 Q. And so when you answered Mr. Tucker's
22 questions by saying it does, that answer was
23 incorrect?

24 A. Correct.

1 Q. And you misunderstood what he was
2 asking you?

3 A. Exactly.

4 Q. Okay. So you thought he asked you,
5 does it accurately reflect the information contained
6 in the due diligence study?

7 A. Correct.

8 Q. Okay. But you didn't review any
9 tickets?

10 A. No, I did not.

11 Q. And the last page of Exhibit 18 does
12 not purport to reflect -- you can't determine
13 whether it reflects information contained in the
14 tickets, correct?

15 A. Correct.

16 Q. Okay. Mr. Sebastian Flatley and
17 Mr. Saucedo -- is that his last name?

18 A. Yes.

19 Q. (Continuing.) -- are not employed by
20 Chapman and Cutler, correct?

21 A. No, they're not.

22 Q. They do work for Chapman and Cutler but
23 they are employed by someone else?

24 A. Correct.

1 Q. So in that respect, they are employed
2 by someone different than you are employed by?

3 A. Correct.

4 Q. And you delegated some of the duties
5 that had been delegated to you to these two
6 gentlemen who were performing contractual services
7 for them, correct?

8 A. Correct.

9 Q. And you spot checked their work,
10 correct?

11 A. Correct.

12 Q. Did you check every aspect of their
13 work?

14 A. No, I did not.

15 Q. So you didn't go line by line and proof
16 the work they had done to make sure it was correct?

17 A. No.

18 Q. Otherwise you could have done it just
19 as easily as they could have, correct?

20 A. Correct, yes.

21 Q. Now, Mr. Tucker asked you whether these
22 two gentlemen worked for you in essence.

23 Do you recall that question?

24 A. Yes, I do.

1 Q. And your answer was correct?

2 A. Yes.

3 Q. But they don't work for you, correct?

4 They work for an independent third-party;
5 is that correct?

6 A. Right. But I manage them.

7 Q. Well, you were overseeing their work?

8 A. Correct.

9 Q. But you weren't overseeing all of their
10 work?

11 A. No.

12 Q. In other words, you didn't check every
13 aspect of the work they were performing on --

14 MR. TUCKER: Objection --

15 BY MR. STICK:

16 Q. -- Exhibit 18?

17 MR. TUCKER: Objection. That's been asked and
18 answered already.

19 THE HEARING OFFICER: Sustained.

20 BY MR. STICK:

21 Q. Now, you've never been to the Stearns
22 Road site, correct?

23 A. No, I have not.

24 Q. And you're not familiar with any of the

1 operations that have ever taken place on that site,
2 correct?

3 A. No, correct.

4 Q. Have you ever heard of Bluff City
5 Materials?

6 A. I've heard of it.

7 Q. Do you know anything about their
8 operations?

9 A. No.

10 Q. Do you know anything about -- have you
11 ever seen Complainant's Exhibit 16 or 17?

12 A. Which one was that?

13 Q. Those are the two trip tickets.

14 A. Those weren't showed to me yet, I don't
15 think.

16 MR. STICK: May I approach the witness, your
17 Honor?

18 THE HEARING OFFICER: Yes.

19 BY MR. STICK:

20 Q. Let me tender you copies of Exhibits 16
21 and 17.

22 Have you ever seen those two documents?

23 A. Not that I recall.

24 Q. And you've never saw documents that

1 look like that either, did you?

2 A. I've seen these documents before.

3 Q. You have seen those particular
4 documents?

5 A. Not these particular ones but documents
6 that look like these.

7 Q. And that's in the files of Chapman and
8 Cutler?

9 A. Correct.

10 Q. You didn't review those in any respect
11 in preparation of Complainant's Exhibit 18 though,
12 correct?

13 A. No, I did not.

14 Q. Now, you and Mr. Flatley performed
15 about equal service and equal work preparing
16 Exhibit 18, correct?

17 A. Correct.

18 Q. Okay. And Mr. Saucedo also performed
19 work, correct?

20 A. Correct.

21 Q. So at most you performed something less
22 than half of the work necessary to prepare
23 Complainant's Exhibit 18, correct?

24 A. Correct.

1 Q. Did you ever meet the person who
2 prepared the due diligence study?

3 A. No, I have not.

4 Q. You cannot confirm whether or not the
5 due diligence study itself is accurate, correct?

6 A. Correct.

7 Q. Okay. You were asked to compile
8 information and put it in a different format,
9 correct?

10 A. Correct, from the due diligence.

11 Q. You were not asked to try to verify
12 the due diligence study, and you cannot verify it,
13 correct?

14 A. Correct.

15 MR. STICK: Okay. Does he have a copy of
16 Exhibit 15?

17 MR. MAKARSKI: Sure.

18 BY MR. STICK:

19 Q. Let me refer you to Exhibit 15.

20 MR. TUCKER: Why don't you give him yours?

21 MR. STICK: You didn't give me one.

22 MR. TUCKER: I gave it to Jim then.

23 MR. MAKARSKI: Which one is that?

24 MR. TUCKER: Yeah, which one is that?

1 MR. STICK: That's the due diligence study.

2 MR. TUCKER: Oh, okay.

3 MR. KNIPPEN: You did not give us a copy.

4 MR. TUCKER: I'm sorry.

5 MR. MAKARSKI: I'm sorry.

6 MR. TUCKER: I'm sorry.

7 MR. STICK: Can I use yours?

8 MR. MAKARSKI: Sure, go right ahead.

9 BY MR. STICK:

10 Q. Mr. Giazzon. I refer you to
11 Complainant's Exhibit 15, and I'll ask you to
12 compare that with Complainant's Exhibit 18, the
13 document you prepared.

14 Do you have both of those documents in
15 front of you?

16 A. Yes, I do.

17 Q. Now, your document, the due diligence
18 study analysis, refers to certain sources, correct?

19 A. Correct.

20 Q. Okay. Do you see anything in
21 Exhibit 15 that refers to sources?

22 A. No, I don't.

23 Q. How did you determine that what you
24 have identified as a source was, in fact, a source?

1 A. I believe I got that word for the
2 heading from either Mr. Makarski or Bob Tucker.

3 Q. One of the attorneys for the Forest
4 Preserve District?

5 A. Correct.

6 Q. And one of the attorneys for the Forest
7 Preserve District told you to use the word
8 "sources," correct?

9 A. I can't remember specifically, but
10 that's where I would assume that I got that word
11 from.

12 Q. Do you have an understanding of what
13 the phrase "job description" means?

14 A. In the --

15 Q. In the context of the due diligence
16 study.

17 A. Not really, no.

18 Q. Okay. So that term and that phrase is
19 meaningless to you?

20 A. Correct.

21 Q. It is just a caption for information,
22 correct?

23 A. Correct.

24 Q. In the due diligence study?

1 A. Correct.

2 Q. Okay. Now, what do you mean by
3 "sources"?

4 A. What do I personally mean by sources?

5 Q. In Exhibit 18.

6 A. Oh. I meant -- in writing the sources,
7 I mean the job descriptions in the MLR Due Diligence
8 Study.

9 Q. Well, why didn't you just say job
10 descriptions?

11 A. That wasn't the word that was given to
12 me.

13 Q. Okay. Well, my question to you is, you
14 have rejected job descriptions. Now, what do you
15 mean by the word sources if it is something other
16 than job description?

17 MR. TUCKER: Objection, your Honor. That is not
18 what he testified to. He just testified that
19 sources means job description.

20 BY MR. STICK:

21 Q. Do you --

22 THE HEARING OFFICER: I think he did, so. . .

23 MR. STICK: You are sustaining?

24 THE HEARING OFFICER: Yes.

1 BY MR. STICK:

2 Q. Do you have any definition of sources
3 independent of the phrase "job description"?

4 A. Yeah. Something from which something
5 is derived from.

6 Q. Okay. Was that intended as your use of
7 the word in Exhibit 18?

8 A. No.

9 Q. Now Mr. Tucker in responding --
10 Mr. Tucker asked you a question in which he, I
11 believe, asked you whether you had simply
12 transferred the information from the due diligence
13 study to the due diligence study analysis.

14 Do you recall that question?

15 A. Yes.

16 Q. Isn't it true you did more than simply
17 transfer information. You added and reconfigured
18 captions?

19 A. If you mean by sources, yes. I changed
20 that job description to source.

21 Q. And by adding a new job description,
22 you intended to make some type of analysis of what
23 the information contained in the due diligence study
24 actually stood for, correct?

1 A. I don't believe that I intended to do
2 anything with that word sources. I think I was told
3 to use it, and I just used it.

4 Q. Okay. So you had no -- there was no
5 reason for the use of the word sources other than it
6 was a word that would be given to you by one of the
7 attorneys?

8 MR. TUCKER: Objection, asked and answered
9 several times now.

10 THE HEARING OFFICER: Sustained.

11 BY MR. STICK:

12 Q. Let me refer you to the first page of
13 Complainant's Exhibit No. 18, the number of loads
14 column.

15 Do you have an understanding of what the
16 information contained in that column represents?

17 A. Yes.

18 Q. What does it represent?

19 A. I believe it means truckloads, number
20 of truckloads.

21 Q. Does it mean truckloads in or out of a
22 particular place?

23 A. I'd have to guess. I'm not confident.

24 Q. Do you know?

1 A. I'm pretty sure it's in.

2 Q. Do you know what the truckloads --
3 whether it refers to a particular site or not?

4 A. I'd have to guess the site you
5 mentioned earlier.

6 Q. But you don't know?

7 A. No, I don't know.

8 Q. Okay. Have you ever been to any of
9 these locations listed under sources?

10 A. No, I have not.

11 Q. Do you have any information regarding
12 any activities that were taking place at those
13 locations?

14 A. No, I do not.

15 Q. Do you have any information regarding
16 what was contained or may have been contained in any
17 loads that are referenced in Complainant's Exhibit
18 No. 18?

19 A. No.

20 Q. And you have no independent information
21 regarding the number of loads or the description of
22 the job other than what you may have derived from
23 the due diligence study, correct?

24 A. Correct.

1 Q. Do you know whether any material
2 whatsoever from any of the locations identified
3 under your caption, sources, made its way to the
4 Stearns Road site?

5 A. No, I do not.

6 MR. STICK: Okay. I have no further questions,
7 your Honor, and I would make a motion to strike
8 Complainant's Exhibit 18 --

9 THE HEARING OFFICER: All right.

10 MR. STICK: -- based upon the consideration
11 examination.

12 THE HEARING OFFICER: Motion to strike is
13 denied.

14 Miss O'Connell?

15 MS. O'CONNELL: I have no questions.

16 THE HEARING OFFICER: Redirect?

17 MR. TUCKER: Just a couple.

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

19 by Mr. Tucker

20 Q. Mr. Giazzon, you said that Mr. Flatley
21 and Mr. Nick -- I guess no one is remembering his
22 name.

23 A. Saucedo.

24 Q. Thank you.

1 (Continuing.) -- work for IKON; is that
2 correct?

3 A. Correct.

4 Q. Is IKON used routinely and Mr. Flatley
5 and Nick in your work at Chapman and Cutler?

6 A. Yes.

7 Q. Mr. Flatley and Nick follow your
8 orders, do they not?

9 A. Yes, they do.

10 MR. TUCKER: No other questions, your Honor.

11 THE HEARING OFFICER: Recross?

12 MR. STICK: No, your Honor.

13 MS. O'CONNELL: No.

14 THE HEARING OFFICER: Thank you.

15 You may step down, Mr. Giazzon.

16 (Witness excused.)

17 MR. TUCKER: If we could go off the record for a
18 moment.

19 THE HEARING OFFICER: Off the record.

20 (Discussion had off
21 the record.)

22 THE HEARING OFFICER: Back on the record.

23 Next witness?

24 MR. TUCKER: Thank you, Mr. Hearing Officer.

1 The Forest Preserve District would like to
2 call Mr. Steven Heuer.

3 (Witness sworn.)

4 WHEREUPON:

5 S T E V E N H E U E R ,
6 called as a witness herein, having been first duly
7 sworn, testified and saith as follows:

8 THE HEARING OFFICER: Please speak clearly and
9 loudly so everyone can hear.

10 MR. TUCKER: Thank you very much for being with
11 us today, Mr. Heuer.

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

13 by Mr. Tucker

14 Q. Could you please state your full name
15 and spell it for the record?

16 A. Steven Heuer, H-e-u-e-r.

17 Q. Mr. Heuer, where do you live?

18 A. I live in unincorporated Will County
19 near Lockport.

20 Q. What is your occupation?

21 A. I'm a geologist with Emcon in
22 Naperville, Illinois.

23 Q. How long have you been employed there?

24 A. A little over seven years.

1 Q. Could you please provide us with a
2 brief sketch of your education and work experience?

3 A. With Emcon, I performed numerous
4 subsurface investigations which include supervising,
5 soil borings, logging of subsurface soil samples,
6 collection of samples for analysis, ground water and
7 soil samples, installation of monitoring wells,
8 aquifer testing, report preparation.

9 Prior to Emcon, I worked at a company
10 called Professional Service Industries in Hillside,
11 Illinois. I performed subsurface investigations for
12 environmental and geotechnical explorations. I also
13 performed physical soils laboratory work and did
14 some report preparation.

15 Prior to that, I completed the earth
16 science program at Western Illinois where I took
17 courses such as physical geology, glacial geology,
18 and geology of ground water resources.

19 Q. Did you receive a degree from there?

20 A. A BS degree in 1984.

21 THE HEARING OFFICER: What year?

22 THE WITNESS: 1984. I'm sorry.

23 BY MR. TUCKER:

24 Q. Would you repeat the year?

1 A. 1984. I'm sorry.

2 Q. Do you know of a parcel of land that
3 has been described as the Stearns Road site?

4 A. Yes.

5 Q. Could you describe where it is and what
6 it is?

7 A. The site you are discussing is located
8 on the south side of Stearns Road. It's west of
9 Route 59. I was there as part of an environmental
10 investigation performed by Emcon back in early
11 1995. My understanding was that the site was
12 formerly a sand and gravel quarry operation. It was
13 not in service at the time that I was on the site.

14 Q. You said you performed a site
15 evaluation report out there?

16 A. Correct. We performed a site
17 investigation. After the site investigation, we
18 prepared a site evaluation report.

19 Q. How many times have you been out to
20 that site?

21 A. The site investigation probably took
22 about three weeks, my portion of it. A portion of
23 it was performed by somebody else from our office
24 prior to me being out there. That included the

1 installation of piezometers and some initial
2 surveying.

3 The work I did included soil boring,
4 supervision, collection of soil samples for
5 analysis, collection of ground water samples for
6 analysis. I also supervised some test pits that
7 were performed on the site. I logged the materials
8 that came out of those test pits, and I took some
9 photographs of the materials that came out of those
10 test pits.

11 Q. You said you supervised. There were
12 other people out there with you?

13 A. Yes. When we performed the soil and
14 ground water sampling, there was a drilling crew out
15 there from Fox Exploration. There were two people
16 in that crew, and they were working under my
17 direction.

18 There was an operator with a backhoe that
19 performed the test pits. They were a subcontractor
20 also working under my direction.

21 Q. Do you know their names, if you know?

22 A. Mike Stoub was the backhoe operator.
23 He was with a company called SET Environmental. The
24 driller's name was Bill, and I don't recall his last

1 name at this point.

2 Q. While you were out there, did you
3 record or keep any kind of written logs?

4 A. Yes, actually there were several types
5 of logs. I had a field notebook which I recorded
6 general site activities and times that they
7 occurred. I also logged the materials I encountered
8 while doing the soil borings on soil boring logs,
9 and I kept a separate log of materials encountered
10 in the test pits. I also logged a number of
11 photographs on the test pit logs.

12 Q. Can you tell us the purpose for these
13 various logs? Perhaps you can do each one
14 individually. I believe you mentioned three.

15 A. The field book was a general way of
16 keeping track of what time and when certain events
17 took place at the site while I was at the site.
18 There was not a lot of specific detail in there. It
19 was just a standard operating procedure for a site
20 investigation.

21 Soil boring logs are a standardized form on
22 which you record the materials encountered while
23 drilling, the sampling intervals, the organic vapors
24 measured from the samples and times that individual

1 samples were collected. Also depth to water
2 encountered while drilling is recorded on the boring
3 logs.

4 On the test pit logs, they weren't a formal
5 log. I just recorded what I encountered as the
6 individual bucket fulls of material came out of the
7 backhoe onto the ground. I also recorded the number
8 of the photographs that I took of each particular
9 test pit location.

10 Q. You personally took photographs out
11 there?

12 A. Correct.

13 Q. You've already mentioned a term which
14 I'd like you to define. I was a political science
15 major in college. These terms are -- so if you can
16 educate me a little bit. The word piezometer.

17 A. Piezometer is similar to a monitoring
18 well. It's a piece of screen pipe installed
19 horizontally in the ground to intercept the ground
20 water table. It is different from a monitoring well
21 in that it is used only to record the groundwater
22 level. Samples are typically not collected from a
23 piezometer.

24 Q. I see.

1 (Complainant's Exhibit No. 19
2 marked for identification,
3 9/25/97.)

4 MR. TUCKER: Let me approach the witness. It's
5 already been previously marked as Complainant's
6 Exhibit 19. Gentlemen, it's the boring log.

7 I would note for the record, Mr. Hearing
8 Officer, that this is one of the documents which has
9 been stipulated to between the parties as to be
10 allowed into evidence without further foundation.

11 MR. STICK: Can I --

12 MR. TUCKER: Yeah (indicating). And, again,
13 that is Complainant's Exhibit 19.

14 (Complainant's Exhibit No. 20
15 marked for identification,
16 9/25/97.)

17 MR. TUCKER: We have also marked Complainant's
18 Exhibit No. 20 which is a boring piezometer map.
19 I'll give that to you, Mr. Hearing Officer. I'll
20 present a copy to the witness as well. That's
21 No. 20.

22 MR. STICK: Do you a have a copy of that for
23 us?

24 MR. TUCKER: (Indicating).

1 The boring piezometer map is No. 20. The
2 log is No. 19.

3 (Complainant's Exhibit No. 21
4 marked for identification,
5 9/25/97.)

6 MR. TUCKER: And this will be the last one I
7 flood you with right now. This has been previously
8 marked as Complainant's Exhibit No. 21. I present
9 this to the hearing officer as well as to the
10 witness. This is the test pit/sediment sample
11 location map.

12 I gave a copy to Mr. Stick as well.

13 MR. STICK: Thank you.

14 BY MR. TUCKER:

15 Q. Let's start with the boring log, which
16 has been marked as Exhibit 19.

17 Do you recognize that document? You can
18 take a minute to flip through it if you'd like.
19 There's numerous pages.

20 A. Yes.

21 Q. Can you tell me what that is?

22 A. These are computer-generated boring
23 logs that I prepared based on my field boring logs
24 from the subject site project.

1 Q. Can you work that process through for
2 me as to what you do comes out into this document?

3 A. Certainly. The information on this
4 page was recorded in the field during the
5 performance of the soil borings. I take that
6 information back to the office. We have a computer
7 program called GTGS. I believe it stands for
8 Geotechnical Graphic Systems.

9 I enter that information into the program,
10 and it prints out these legible logs for inclusion
11 into the report.

12 Q. Thank you.

13 MR. TUCKER: I would move for the admission of
14 these into evidence. As I had previously noted,
15 Mr. Hearing Officer, this has been stipulated to by
16 the parties. I ask that the hearing officer admit
17 them into evidence.

18 MR. STICK: Well, Exhibit, I believe, 19, the
19 boring logs, we have stipulated to.

20 MR. TUCKER: Yes. I'm sorry. That is all I'm
21 offering right now, yeah.

22 MR. STICK: Okay. I thought you said "these
23 exhibits."

24 THE HEARING OFFICER: You do stipulate to 19?

1 MR. STICK: To 19 we stipulate to, yes.

2 THE HEARING OFFICER: Complainant's Exhibit 19
3 is stipulated to.

4 MR. TUCKER: Thank you.

5 THE HEARING OFFICER: And is admitted.

6 MR. STICK: I might add, your Honor, our
7 stipulation is a written stipulation that will be
8 offered at some point, and all parties have reserved
9 the right to challenge the validity of the
10 information and accuracy of the information
11 contained within the stipulated documents.

12 The stipulation is simply as to foundation
13 and would allow them into evidence.

14 THE HEARING OFFICER: All right.

15 MR. TUCKER: Ultimately, I think the parties
16 would agree to just save some time on all these.

17 BY MR. TUCKER:

18 Q. Let's take a look at these boring logs,
19 if you would.

20 The first boring log which is marked page
21 one of two and states log boring B-1, do you see
22 that document?

23 A. Yes.

24 Q. Could you describe what was found in

1 this boring? And again describe how the boring
2 would be taken.

3 And are all the borings taken similarly?

4 A. Correct. Yes. There's a standard
5 procedure that we use for doing these soil borings.

6 Q. And what is that?

7 A. We used an ATV mounted drill rig to
8 access the boring locations. Once we got to the
9 boring locations hollow stem augers were used to
10 advance the soil borings. They were drilled down to
11 the top of the depth which we plan to take a
12 sampling.

13 A device called a split spoon sampler was
14 attached to a drilling rod inserted into the middle
15 of the hollow stem auger and driven two feet out the
16 end of the hollow stem auger. It was then
17 withdrawn, unscrewed from the drilling rods, and
18 broken open, at which point I was able to view the
19 contents of the split spoon sampler.

20 At that point, I logged -- visually logged
21 the sample in the field book, and I collected a
22 sample for a potential future chemical analysis. We
23 collected samples at continuous two foot intervals
24 until we reached a point where we concluded the

1 boring.

2 Q. Why were these borings taken?

3 A. They were taken at the Pratts Wayne
4 site.

5 Q. No. Why? I'm sorry.

6 Why were they taken?

7 A. Several reasons. One was to determine
8 what type of material was below the ground surface
9 at these locations. If, in fact, there was fill
10 material in there, we wanted to know the depth.
11 Soil boring is the most accurate way to determine
12 the depth of whatever subsurface material happens to
13 be there.

14 Also, we wanted to collect soil samples as
15 well as ground water samples for potential chemical
16 analysis.

17 Q. You mentioned fill material. How did
18 you know when there was fill material?

19 Were these dug in places where there was
20 fill material?

21 A. Yes. Quite a few of the borings were
22 placed in fill material. Mr. Phil Vincent of our
23 office who had been out to the site prior to when I
24 was there to install the piezometers, his logs

1 indicated that several piezometers were placed in
2 fill material.

3 Another way to determine whether its fill
4 material or non-native material is to compare that
5 boring to a typical nondisturbed area. We did a
6 series of borings around the perimeter of the site
7 to the south and to the east, I believe.

8 The typical soil profile at these
9 undisturbed areas was a dark brown to black topsoil
10 grading into a lighter brown soil under which we
11 encountered a sand and gravel unit. Below the sand
12 and gravel unit we encountered a gray silty clay
13 unit.

14 In areas that had been disturbed or had
15 fill material, we typically encountered a mix of
16 colors of primarily clay soil with non-soil
17 materials in it such as asphalt and concrete
18 fragments, wood, vegetation, things like that.

19 MR. STICK: Your Honor, for the record, I'd like
20 to object to the narrative nature of the testimony,
21 and I ask, you know, the questions being
22 interspersed a bit more frequently, so that I might
23 have an opportunity to know what is coming.

24 THE HEARING OFFICER: All right. Mr. Tucker?

1 BY MR. TUCKER:

2 Q. Getting back to the boring logs, if we
3 can start with that first page. If you can tell us
4 a little bit about what boring log, first page
5 indicates.

6 A. This indicates that I encountered
7 approximately 17 feet of fill material, which I
8 described as mixed brown, black, and gray silty clay
9 with some sand and gravel.

10 In the 13 to 15-foot sampling, I noted that
11 I found wood fragments. I also noted there's a
12 putrescent odor from that sample down to 17 feet.
13 In the 15 to 17-foot sample, I found some grass in
14 that sample. At 17 feet, I noticed a wet zone, and
15 below that I encountered a dirty clay silt which
16 graded into a gray silty clay. I determined that
17 that was the native material.

18 We continued the boring down to 25 feet
19 where I terminated the boring.

20 Q. And that's indicated on the second
21 page, is it not?

22 A. Correct.

23 Q. You detected a putrescent odor.

24 THE HEARING OFFICER: Just a minute,

1 Mr. Tucker.

2 What page are you looking at?

3 MR. TUCKER: The first page of the boring logs.

4 MR. TUCKER: You're missing the first page.

5 Great. Can we go off the record for a second?

6 MR. HEARING OFFICER: Off the record.

7 (Discussion had off
8 the record.)

9 THE HEARING OFFICER: All right. Back on the
10 record. You may continue.

11 MR. TUCKER: Thank you.

12 BY MR. TUCKER:

13 Q. You noted a putrescent odor.

14 A. Yes.

15 Q. Can you tell me what that is?

16 A. I would describe a putrescent odor as a
17 rotting, organic-type odor.

18 Q. Did you encounter this odor before in
19 your experience in the field?

20 A. At past sites, yes, I have.

21 Q. Why don't we move on to the next boring
22 log? This would be log of boring B-2, page one of
23 one, the third page of the exhibit.

24 Can you tell me what you found there?

1 A. From zero to -- it looks like
2 approximately 15 and a half feet, I encountered what
3 I described as mixed brown, black, and gray silty
4 clay fill, some sand and gravel, and root and wood
5 fragments and a slight putrescent odor.

6 At 15 and a half feet, I encountered wet
7 brown silty sand and gravel, which I determined to
8 be the native material.

9 Q. That putrescent odor you described
10 here, is that similar to the putrescent odor in the
11 other boring you previously mentioned?

12 A. Yes.

13 Q. Why don't we turn to the next one, log
14 of boring B-3?

15 Can you describe what you found in that
16 boring, please?

17 A. Yes. I encountered approximately nine
18 feet of what I described as mixed brown and black
19 silty clay fill with some sand and gravel and wood
20 fragments.

21 At nine feet, I encountered brown silty
22 sand and gravel. I determined that to be the native
23 soil. We continued the boring down to 17 feet. The
24 reason for that was we were looking for the ground

1 water table. We had to continue down to where we
2 hit the ground water table in order to collect the
3 ground water sample.

4 Q. Let's move on to B-4. That's the log
5 of boring B-4.

6 Can you tell me what you found there?

7 A. Yes. I encountered approximately three
8 feet of what I termed to be black silty clay topsoil
9 which likely graded into the brown silty clay I had
10 described below it.

11 At approximately three feet, I encountered
12 brown silty sand and gravel. At approximately ten
13 feet, the brown silty sand and gravel was
14 saturated.

15 We continued this boring down to -- it
16 looks like 25 feet. The brown sand and gravel
17 changed to a brown silty fine sand, and at 26 feet,
18 I encountered gray silty clay.

19 I determined this entire soil profile as
20 natural. The reason we continued down past the top
21 of the water table and into the clay -- we did this
22 at several locations to determine the top of the
23 underlying gray silty clay.

24 Q. Let's turn to log boring B-5. We'll go

1 through just a couple more of these, the operative
2 word here being boring, I suppose.

3 A. At boring B-5, I encountered what I
4 described as a black silty clay topsoil. It changed
5 to brown silty clay at approximately two and a half
6 feet. At approximately three and a half feet, the
7 clay coloration changed to a mild brown and gray.

8 At approximately six and a half feet, it
9 changed to mild brown and gray sandy clay and then
10 changed to a brown silty sand and gravel. At ten
11 feet, we encountered the water table at which point
12 I terminated the boring. I determined this soil
13 profile to be natural.

14 Q. How far down did you determine the
15 water table to be at that point?

16 A. Ten feet below ground surface.

17 MR. HEARING OFFICER: I'm sorry. I need to
18 interrupt.

19 Mr. Heuer, when you say you determined the
20 soil to be natural, you're talking about all 11
21 feet?

22 THE WITNESS: Correct.

23 THE HEARING OFFICER: All right.

24 THE WITNESS: Undisturbed native soil.

1 BY MR. TUCKER:

2 Q. We'll move on to the log boring B-6.
3 Could you similarly describe what you found there?

4 A. Yes. At this location, I encountered
5 what I described as black silty clay topsoil. At
6 three feet, I encountered a mild brown and gray
7 sandy clay. At five feet, I encountered brown silty
8 sand and gravel, and that sand and gravel unit was
9 saturated at nine feet.

10 Q. I'd like you now, Mr. Heuer, to flip
11 through the other pages started with log boring
12 B-7. Would you just take a minute or two to review
13 those? And let me know after you've done so.

14 (Witness perusing
15 documents.)

16 BY MR. TUCKER:

17 Q. If you can, go through B-27. That will
18 save you a little time.

19 A. Okay.

20 Q. Do the documents you reviewed from
21 boring B-1 through B-27 accurately reflect what you
22 found out there in these borings?

23 A. Yes.

24 Q. Can you tell me when you were doing

1 these borings what steps were taken to prevent
2 against any contamination?

3 A. Yes. Prior to and in between boring
4 locations anything that would be used in the next
5 borehole to collect samples would be
6 decontaminated.

7 Drilling augers and drilling rods were
8 decontaminated by steam cleaning at a centralized
9 location. Because they had more augers with them
10 than are needed to perform one boring at a time, we
11 typically did not decontaminate the augers after
12 each borehole until we've used the entire amount of
13 augers that they had brought with them.

14 Individual sampling items such as the split
15 spoon samplers and the stainless steel trawl I used
16 to collect the individual soil samples were
17 decontaminated between each individual sampling by
18 washing with a detergent wash, a tap water rinse,
19 and a deionized water rinse.

20 Q. Is this standard procedure to protect
21 from contamination?

22 A. That's standard operating procedure for
23 doing an environmental investigation, yes.

24 Q. You've done this kind of -- taken these

1 kinds of precautions before in other projects, have
2 you not?

3 A. Numerous times.

4 Q. Now, we turn to -- after B-27, it says
5 logger boring P-1. Could you tell me what that is?

6 A. That is a log of the boring that was
7 installed when the piezometers were installed by
8 Mr. Phil Vincent, formerly at Emcon. He was with
9 Emcon at the time.

10 Q. P in essence standing for piezometer?

11 A. Correct.

12 Q. You've already explained to us what a
13 piezometer is, but can you tell us what -- for
14 instance, in this first one, log boring P-1, what
15 was found according to this document?

16 A. According to the log, Mr. Vincent
17 identified a mixed brown, black, and gray silty clay
18 with some sand and gravel down to approximately 16
19 and a half feet. At that point, he encountered a
20 seam of brown silty sand and gravel which was
21 underlying by a gray silty clay.

22 He continued the boring down to 29 feet,
23 and it's likely he did that to install a ten-foot
24 screen at this location.

1 MR. STICK: I'll object, your Honor, to the
2 extent the testimony speculated regarding what
3 Mr. Vincent may or may not have done and why he did
4 it. I asked for the last sentence of the testimony
5 to be stricken.

6 MR. TUCKER: The objection is noted. I
7 understand his objection.

8 BY MR. TUCKER:

9 Q. If you could just keep it to describing
10 what's on the log.

11 THE HEARING OFFICER: The objection is
12 sustained. The last part will be stricken.

13 BY THE WITNESS:

14 A. The boring was terminated at 29 feet.
15 A piezometer was installed in this boring following
16 completion.

17 BY MR. TUCKER:

18 Q. Thank you.

19 I direct your attention to Exhibit 20, I
20 believe it is, which is titled the boring piezometer
21 map.

22 Do you see this map?

23 A. Yes.

24 Q. Can you identify what that map

1 represents?

2 A. Yes. It's a map of the subject site.
3 It includes the locations of piezometers, soil
4 borings, and it also depicts what we determine to be
5 fill material.

6 Q. And there's a key on this map, is there
7 not?

8 A. Correct. There's a legend.

9 Q. And that's on the right-hand side of
10 the map?

11 A. Yes.

12 Q. Does this map truly and accurately
13 portray what it purports to portray, the boring
14 locations of the piezometer map as well as the
15 general layout of the Stearns Road site?

16 A. It looks accurate to me, yes.

17 Q. Did you at Emcon actually prepare this
18 map?

19 A. I didn't personally prepare it, but
20 Emcon prepared the map. The base map was prepared
21 by the graphics department, and the other locations
22 were put on this map based on survey data.

23 After completing the individual boring
24 locations, I took a survey stake with an

1 identification of the boring and placed it at that
2 location. A survey crew later surveyed those
3 locations, and that information was given to whoever
4 prepared this map and placed on it based on this
5 coordinate system that's on the map.

6 Q. And you've already stated that the map
7 is true and accurate, correct?

8 A. The map was reviewed prior to
9 completion of the report. It looked accurate, yes.

10 MR. TUCKER: I would move at this time to admit
11 this map into evidence, Mr. Hearing Officer.

12 MR. STICK: I object on foundation grounds. He
13 testified he did not prepare the map. He also
14 testified he did not drill the piezometer borings
15 which are identified on the map, and he referenced
16 survey points.

17 Now, there was apparently a surveyor who
18 identified these points in preparing this exhibit,
19 and he was not involved in that. So I object on the
20 basis of foundation and hearsay.

21 MR. TUCKER: Your Honor, as you well realize,
22 maps, graphs, diagrams are generally admissible into
23 evidence if there's testimony on the record
24 indicating that it fairly depicts a scene it

1 purports to describe. I believe the witness has
2 already done that.

3 THE HEARING OFFICER: All right. Complainant's
4 Exhibit No. 20 is admitted.

5 BY MR. TUCKER:

6 Q. Earlier in your testimony, Mr. Heuer,
7 you discussed something about digging test pits?

8 A. Correct.

9 After we completed the soil borings in
10 collection of the soil and ground water samples, we
11 performed approximately 37, I believe, test pits at
12 various locations on the site.

13 Q. Can you tell us what a test pit is and
14 what you did out there to dig these test pits?

15 A. A test pit is a general description for
16 a hole dug in the ground. In this case, we
17 mobilized a backhoe to the site. At various
18 locations, we dug into the soil. The purpose of
19 this was to determine what type of material was
20 located in the subsurface.

21 Q. In doing these test pits, did you also
22 have procedures that protected against -- for lack
23 of a better word -- contamination of the test pits?

24 A. No, we didn't. We were not collecting

1 any environmental samples. The only reason we did
2 the test pits was for visual purposes. The test pit
3 bucket was not cleaned off in between individual
4 locations.

5 It was used to remove soils from the ground
6 to get a better view of them, and then the materials
7 that were removed were placed back into the test pit
8 locations. No environmental sampling was done at
9 any of the test pit locations.

10 Q. In essence the backhoe then just dug up
11 pits, and you examined the material?

12 A. Exactly.

13 Q. I show you what has been marked as
14 Exhibit 21, I believe, the test pit sediment
15 sample.

16 Could you review that document please,
17 Mr. Heuer?

18 A. Okay.

19 Q. What does that map show?

20 A. The base map is similar to the boring
21 location map. This map shows the locations of the
22 test pits that were performed by Emcon. It also
23 shows the locations that were performed -- test pit
24 locations performed by a Forest Preserve District

1 employee several months prior to us coming out to
2 the site.

3 Q. There's a legend to this map, is there
4 not?

5 A. Yes.

6 Q. You noted that there are certain things
7 noted that a Forest Preserve employee had dug.
8 Would those on the map be indicated by small round
9 circles some of which are colored in completely and
10 others which are checked --

11 A. Correct.

12 Q. -- in the legend?

13 And those are then placed on the map in
14 certain locations?

15 A. Correct.

16 Q. You've been to that site, and you've
17 seen where those other pits -- not the pits you dug,
18 but where the other pits were dug, correct?

19 A. Yes.

20 Q. And you also know where your pits were
21 dug, correct?

22 A. Correct.

23 Q. Does that map truly and accurately
24 reflect all the information contained on it relating

1 to the various pits and whatnot that were dug?

2 A. Yes. It looks accurate to me.

3 Q. Did you or Emcon prepare that map?

4 A. This map was prepared in a similar
5 manner to the boring map after test pits were
6 performed, the stake identifying the test pit
7 location was placed next to it, the survey crew
8 surveyed those locations, and that data was put on
9 this grid coordinate map.

10 Q. Mr. Heuer, was that done all under your
11 supervision and your direction?

12 A. Correct. I did not -- I was not there
13 when the test pits identified as 1695 were
14 performed; however, the remainder of the test pits
15 were done under my supervision.

16 Q. But, again, you have seen those test
17 pits out there and you know where they're located?

18 A. Correct.

19 Q. And the map accurately depicts where
20 those are located?

21 A. Yes.

22 MR. TUCKER: I'd like to move at this time,
23 Mr. Hearing Officer, for the admission of this map
24 into evidence.

1 MR. STICK: I object on foundation and hearsay
2 grounds. With this particular map, I don't believe
3 the witness has said he actually prepared it.

4 It does contain information regarding an
5 investigation with which he was not involved. And I
6 have an additional objection to the extent both
7 Exhibits 20 and 21 contained comment. In the
8 legend, there are identifications of debris
9 containing fill and other fill. That comment is
10 hearsay. It is not something that he has testified
11 about, and there's no foundation for that type of a
12 comment in a document like this.

13 MR. TUCKER: Your Honor, I would note that,
14 again, he has indicated that the map is completely
15 accurate to the best of his knowledge. He's been
16 there. He's seen where these things are.

17 Furthermore, maps are generally admitted
18 into evidence when there's a reasonable probability
19 that it will be helpful to the fact finder. We're
20 talking about different logs and where they're dug.
21 I think it's very helpful to yourself and the board
22 to see where these were dug.

23 THE HEARING OFFICER: Complainant's Exhibit
24 No. 21 is admitted.

1 MR. TUCKER: Thank you, Mr. Hearing Officer.

2 MR. HEARING OFFICER: Before you go on, just for
3 point of clarification.

4 MR. TUCKER: Yes.

5 MR. HEARING OFFICER: Mr. Heuer, what does the
6 hub location mean?

7 THE WITNESS: The hub would be a survey
8 location. I do not specifically use those. That
9 was survey points used by our survey crew.

10 MR. HEARING OFFICER: Thank you.

11 BY MR. TUCKER:

12 Q. Let's take another look at that map.

13 By looking at this map, can you generally
14 determine where fill material was brought into this
15 site?

16 A. For the most part, yes. There's some
17 areas -- particularly the area that is marked WE,
18 which stands for elevation, that's difficult to
19 determine. But the areas that are above that water
20 elevation, yes.

21 Q. The test pits you did not dig but were
22 dug before you arrived there by Mr. Urbanski as
23 we've learned from various testimony, are those
24 within the fill area?

1 A. Yes.

2 Q. Tell me about these test pits.

3 You would dig out stuff. Would you lay it
4 out on the ground to examine it then? Would you
5 examine it when it's coming out of a bucket?

6 THE HEARING OFFICER: A compound question.

7 BY THE WITNESS:

8 A. The general procedure was for the
9 backhoe operator to pull out a bucket of soil and
10 drop that soil onto the ground next to the test pit,
11 at which point I would take a look at what materials
12 were visible on the top of that mount of soil. I
13 would write those down on my field notes, and
14 occasionally I would take a picture.

15 Typically, we would continue the test pit
16 until we encountered either native soil or we
17 encountered the maximum reach of the bucket which I
18 assume was approximately 20 feet. In several
19 locations where we dug test pits to determine the
20 approximate extents of the fill material, we
21 encountered only native material, and it's likely
22 that only one bucket or possibly two buckets came
23 out at those locations.

24 Q. Do you know approximately how big the

1 bucket was?

2 A. I did not attempt to measure the volume
3 of the bucket. I didn't measure the depth, width,
4 anything like that. Several feet by several feet
5 would just be a guess.

6 Q. Did you take occasion to look into the
7 various test pits that were dug out, actually look
8 down into the pit?

9 A. To the extent it was safe. I
10 realistically couldn't get right to the edge of the
11 test pit due to the potential for caving. I did
12 pick an angle, maybe five feet away or so from the
13 edge of the test pit, and look into it to determine
14 if we had reached native soil.

15 I was also looking for stuff like ground
16 water on the base of the excavation to see if
17 anything was sticking on the sides. On a couple of
18 occasions, I took pictures looking down into the
19 test pits.

20 Q. How many picture do you think you've
21 taken?

22 A. At this particular site, many. At
23 least 50 I would say.

24 Q. And you took those all yourself?

1 A. Correct.

2 MR. TUCKER: Your Honor, if we could go off the
3 record for a second?

4 THE HEARING OFFICER: Off the record.

5 (Discussion had off
6 the record.)

7 (Whereupon, a lunch recess
8 was taken, reconvening
9 at 12:45 p.m.)

10 (Complainant's Exhibit
11 Nos. 22 - 24 marked
12 for identification,
13 9/25/97.)

14 THE HEARING OFFICER: All right. Back on the
15 record. Let's reconvene after lunch. Mr. Heuer is
16 back on the stand.

17 You may proceed.

18 MR. TUCKER: Thank you, Mr. Hearing Officer.

19 BY MR. TUCKER:

20 Q. Mr. Heuer, I show you what has been
21 marked as Complainant's Exhibit No. 22.

22 If you could, take a second please to look
23 over that document.

24 A. Okay.

1 Q. Do you recognize this document?

2 A. Yes.

3 Q. Can you describe it to us, please?

4 A. It's a summary of the test pit
5 investigation. It was included in the report that
6 we prepared for the investigation of the site.

7 Q. Can you tell me how this was prepared?

8 A. It was prepared, I believe, on Excel
9 based on my field notes.

10 Q. Your field notes taken at the Stearns
11 Road site?

12 A. Correct.

13 Q. And your field notes represent -- this
14 represents what is contained within those field
15 notes?

16 A. Correct.

17 Q. You've had a chance to look through
18 it.

19 Does it truly and accurately depict what
20 you took in your field notes?

21 A. Yes.

22 Q. You prepared this document, did you
23 not?

24 A. Yes.

1 MR. TUCKER: Your Honor, I would offer this
2 exhibit into evidence as Complainant's Exhibit 22.

3 MR. STICK: I object on the basis of
4 foundation. I believe his field -- he had some
5 handwritten field notes, and during this witness's
6 deposition we identified some errors in what has
7 been tendered as Complainant's Exhibit No. 22.

8 Have those errors been corrected?

9 MR. TUCKER: If there are any errors, that table
10 has not changed to my understanding since you've had
11 it in the deposition. I would indicate to
12 Mr. Hearing Officer that that is not something that
13 would prevent this from being included into
14 evidence, but obviously something he might want to
15 bring out on cross-examination if there's one or two
16 minor errors with it.

17 MR. STICK: I object on foundation and hearsay
18 grounds.

19 THE HEARING OFFICER: Mr. Heuer, what does PID
20 stand for?

21 THE WITNESS: Point ionization detector. It's a
22 device used --

23 THE HEARING OFFICER: No. I just wanted to know
24 what PID -- photo ionization --

1 THE WITNESS: Detector.

2 THE HEARING OFFICER: -- detector.

3 All right. Complainant's Exhibit 22 is
4 admitted.

5 BY MR. TUCKER:

6 Q. Mr. Heuer, if we can take this exhibit
7 and run through a horizontal column starting with
8 what is TPA -- does that stand for test pit A?

9 A. Yes.

10 Q. Now, referring back to the test pit map
11 which I gave you earlier today, is there also a test
12 pit A listed on that map which corresponds to this
13 test pit summary table in this particular test
14 pit A?

15 A. Yes.

16 Q. Before we even get to that, if we can
17 run across some of the information in your headings
18 on top. We've already indicated that the first
19 column on the left-hand side will indicate the test
20 pit which is being studied.

21 The second column says date?

22 A. Correct.

23 Q. What does the date refer to?

24 A. The date that the test pit was

1 performed, that particular test pit.

2 Q. What does ground surface refer to,
3 that's the next column over?

4 A. That was what was visible at the ground
5 surface that particular test pit location prior to
6 initiating the test pit.

7 Q. Just right on top?

8 A. Correct.

9 Q. What does fill soil type refer to?

10 A. The different types of soil I may have
11 observed within each individual test pit as opposed
12 to a non-soil type.

13 Q. The next column, vertical column going
14 to the right, fill materials, what does that stand
15 for?

16 A. That describes any materials that I saw
17 in the material taken from the excavation that was
18 not soil.

19 Q. The next column, native soil type?

20 A. That was the type of soil located below
21 the limit of fill material.

22 Q. The next column, odor, what does that
23 mean?

24 A. The type of odor that I noted emanating

1 from the material that was taken from the test pits.

2 Q. If, in fact, any odor was detected?

3 A. Right. In some columns, you'll see
4 none where I noted no odor.

5 Q. Then the final column, which
6 Mr. Hearing Officer has already touched on, PID,
7 could you explain what that is?

8 A. Correct. A photo ionization detector
9 is a device used in the field to screen samples for
10 potential volatile compounds. It doesn't tell you
11 what the compound is, or it doesn't tell you the
12 exact reading. It's basically a screen -- a field
13 screening instrument used to determine if you are
14 going to collect any samples for chemical analysis.

15 Q. And to briefly refresh our recollection
16 since we had a short break between your previous
17 testimony and now, the test pits were dug at various
18 locations all over what is the Stearns Road site,
19 and those test pits are all indicated on the map
20 which has previously been admitted into evidence?

21 A. Yes.

22 MR. STICK: Objection, leading.

23 THE HEARING OFFICER: Sustained.

24 MR. TUCKER: I'll withdraw the question.

1 BY MR. TUCKER:

2 Q. Let's start with column, the very first
3 column at the top, test pit A. Can you tell me what
4 was found in test pit A?

5 A. At the surface, I noted there was brown
6 clay with brick fragments, clay tile fragments,
7 concrete fragments and gravel. In the material
8 removed from the test pit, I noted mixed brown,
9 black, and gray silty with sand and gravel.

10 Mixed in with that soil, I noted leaves,
11 branches, stumps, clay tile fragments, metal pipe,
12 blue and black plastic, plywood, white cloth,
13 boards, white PVC pipe fragments, bricks and brick
14 fragments, and concrete fragments.

15 Q. Can you tell me what white PVC pipe
16 fragments are?

17 A. PVC is typically used for modern
18 plumbing. I assumed it to be PVC because it may
19 have been marked, or I may have assumed it's PVC.
20 It was probably a former portion of a pipe that had
21 been broken apart. It's probably an arc to the
22 fragment.

23 Q. Thank you.

24 In test pit A, I noticed there was an odor

1 that was detected?

2 A. Yes. That was -- again, we discussed
3 putrescent earlier as an organic rotting odor. That
4 was very strong at this location.

5 Q. And it is noted here strong whereas in
6 the next column simply putrescent is written?

7 A. Correct.

8 Q. What is the distinction between those
9 two?

10 A. Putrescent means I noticed the odor;
11 however, it was not overpowering.

12 Q. Let's move on to the next test pit,
13 test pit B.

14 Could you run through those same categories
15 you did on A for me, please?

16 A. Yes. At the ground surface, I observed
17 ground clay with asphalt fragments, clay tile
18 fragments, wood and glass. In the materials
19 excavated from the test pit, the soil types were
20 mixed brown and gray silty clay with sand and
21 gravel.

22 Mixed in that soil, I noted concrete
23 fragments, clay tile fragments, white and yellow
24 plastic, metal pipe, metal post, metal strapping,

1 wood fragments, and asphalt fragments.

2 At this base of the fill, I noted brown
3 silty sand and gravel, and that also exhibited a
4 putrescent odor.

5 Q. If I can just back you up to the fill
6 materials.

7 Metal strapping, what does that mean?

8 A. Metal strapping would be a thin band of
9 metal something you would probably see used to strap
10 down a material that's stored on a palette or
11 stacked on a palette --

12 Q. I understand.

13 A. -- something like that.

14 I don't know for sure that it was metal
15 strapping, but it appeared to be something similar
16 to metal strapping.

17 Q. Thank you.

18 Test pit C, if you could run through those
19 columns for me, please?

20 A. Yes. At the ground surface, I observed
21 brown clay with clay tile fragments, brick,
22 concrete, and asphalt fragments. The fill soil
23 types were mixed brown, black, and gray silty clay
24 with sand and gravel, and in the fill materials, I

1 noticed asphalt, clay tile, brick and wood
2 fragments, wire and aluminum cans.

3 Below the fill, I noted brown silty sand
4 and gravel that was wet and a putrescent odor.

5 Q. Test pit D, the next column?

6 A. Yes. At the surface, I noted brown
7 clay with gravel and fill soil type. I noted mixed
8 brown and black silty clay with sand and gravel.
9 Mixed in that soil, I noted wood fragments. I did
10 not observe native soil type.

11 Apparently, the test pit continued to cave
12 in, and we were unable to get down to native soil.
13 No odor was noted at this test pit.

14 Q. The next column, test pit E?

15 A. At the ground surface, I noticed brown
16 clay with gravel. The fill soil type was mixed
17 brown and black silty clay with sand and gravel.

18 Mixed in that material, I observed wood
19 fragments. Below the fill, I noted brown silty sand
20 and gravel. No odor was noted.

21 Q. Moving on to the next page and the next
22 test pit listed. We have test pit F, as in Frank.

23 Could you go through that column for us
24 please?

1 A. At the ground surface, I observed brown
2 clay with gravel. The fill soil type was mixed
3 brown and black silty clay with sand and gravel. I
4 observed wood fragments in the fill soil. Below the
5 fill, I noted brown silty sand and gravel, and I did
6 not note an odor.

7 Q. Test pit G?

8 THE HEARING OFFICER: Mr. Tucker, I'm not sure
9 it's necessary to have the witness read every single
10 test pit.

11 MR. TUCKER: I was just going to read through a
12 couple more, but that's fine, your Honor.

13 BY MR. TUCKER:

14 Q. Mr. Heuer, if you could go through the
15 remaining pages and examine those. Let me know when
16 you've gone through them.

17 A. Yes.

18 Q. Thank you.

19 Does this test pit summary table accurately
20 reflect what you found in those test pits?

21 A. Yes, it does. He did previously bring
22 up some mistakes that were noted during the
23 deposition. I do --

24 MR. KNIPPEN: Judge, I'm going to object to the

1 witness just volunteering information on the record
2 at this point. This is not responsive to this
3 question.

4 THE HEARING OFFICER: Sustained.

5 BY MR. TUCKER:

6 Q. Mr. Heuer, opposing counsel has noted
7 some discrepancies between your field notes and this
8 document.

9 First of all, do you know the discrepancies
10 of which he speaks?

11 A. Not offhand, no. I would have to
12 compare the field notes with this typed summary.

13 Q. Have you done that before and noticed
14 any discrepancies?

15 A. During the deposition.

16 Q. I'm going to direct your attention to
17 Page 4 of this test pit summary table.

18 The third column down there's a test
19 pit U. For the record, could you run through that
20 column because it's slightly different than some of
21 the others?

22 A. Okay. At ground surface, I observed
23 from gray gravel and concrete fragments, fill soil
24 types were described as gray crushed stone. The

1 fill materials including concrete, asphalt, clay
2 tile fragments.

3 Below the fill, I noted a brown fine sand.
4 I noted a -- what I call the petroleum/solvent odor
5 in the fill.

6 Q. Could you explain that?

7 A. Yes. I've worked at numerous petroleum
8 contaminated sites, and I noticed an odor similar to
9 that in the gray crushed stone that came out of that
10 test pit.

11 If you look in the PID column, head space
12 analysis indicated 19 parts per million organic
13 vapors from a sample taken from that crushed stone.

14 Q. And that odor then was similar to the
15 odors you've experienced in the past which were
16 petroleum/solvent related?

17 A. Correct.

18 Q. Thank you.

19 Mr. Heuer, did you also prepare -- strike
20 that.

21 Did you take photographs of these test
22 pits?

23 A. Yes.

24 MR. TUCKER: I present what has been marked as

1 Complainant's Exhibit 23. I should note that
2 there's a cover page which says photographic
3 documentation. It's a list of 16 items
4 typewritten. Then it's followed by pages of 16
5 different photographs.

6 The exhibits which have been presented to
7 the hearing officer are the actual individual
8 photographs.

9 I'm presenting to the witness as well as a
10 copy to opposing counsel colored quality photocopies
11 of those photographs.

12 MR. STICK: Thank you.

13 BY MR. TUCKER:

14 Q. Could you look through that document?

15 THE HEARING OFFICER: Where are the photos?

16 MR. TUCKER: Here you go.

17 THE HEARING OFFICER: Mr. Heuer, would you
18 rather work from the photos?

19 THE WITNESS: The copies are fine.

20 BY MR. TUCKER:

21 Q. If you would, let me know when you're
22 done examining those?

23 A. Yes, I'm done.

24 Q. Thank you.

1 Can you tell me what those are?

2 A. Those are photographs --

3 MR. HEARING OFFICER: Excuse me. Before you get
4 started, do you care to look at the photos?

5 MR. STICK: Not at this moment, thank you, your
6 Honor. I might if an issue comes up as to needing
7 better qualify, but these look good at this point.

8 THE HEARING OFFICER: All right. Sorry for the
9 interruption.

10 Continue.

11 BY THE WITNESS:

12 A. These are 16 photographs I took at this
13 site during the test pit investigation.

14 BY MR. TUCKER:

15 Q. You personally took those?

16 A. Yes.

17 Q. What kind of camera generally did you
18 use?

19 A. I used my personal camera which is a
20 Minolta 3XI.

21 Q. Do you know if that's a 35 millimeter
22 camera?

23 A. Yes, it is.

24 Q. Do these photos truly and actually

1 represent what you saw in those test pits which are
2 indicated on those photographs?

3 A. Yes.

4 Q. By looking at those, can you identify
5 where each photo was taken? And when I say "where,"
6 I mean the particular test pit.

7 A. In this particular case, there's a log
8 attached to this section. It says photographic
9 documentation. The way I noted which photograph
10 went with which test pit, on the field logs I wrote
11 down a photo number, say, one, two, three, four,
12 which would correspond to that negative on the roll
13 of film after it was developed.

14 Q. And so then those numbers were then
15 corresponded with the particular photograph?

16 A. Yes.

17 Q. The very first page of this exhibit is
18 a log, for lack of a better word.

19 Can you tell me generally what that is or
20 what that says?

21 A. It describes which photograph
22 corresponds with which test pit, and I also made a
23 little notation alongside of it noting something
24 that was significant in the individual photograph.

1 Q. Did you prepare that cover page?

2 A. Yes.

3 Q. Does that cover page accurately

4 represent what are in those photos?

5 A. Yes.

6 MR. TUCKER: I would move at this time, your

7 Honor, to present this exhibit as Complainant's

8 Group 23 into evidence.

9 MR. STICK: No objection.

10 BY MR. TUCKER:

11 Q. Let's take a look at the photos?

12 THE HEARING OFFICER: Just a second.

13 Complainant's Exhibit Group 23 consisting of

14 Photographs 23 --

15 THE REPORTER: B through Q.

16 THE HEARING OFFICER: Oh, there's no A?

17 THE REPORTER: Well, the A is the cover page.

18 MR. TUCKER: The A is the cover page. I should

19 note for your records, the cover page A. We start

20 with photo B which corresponds to one.

21 THE HEARING OFFICER: All right. 23-A through Q

22 are admitted.

23 BY MR. TUCKER:

24 Q. This first photo, Mr. Heuer, where was

1 that taken?

2 A. That was taken at test pit J.

3 Q. And test pit J is listed on the map
4 indicating where the various test pits were dug; is
5 that correct?

6 A. Yes.

7 Q. What's in photograph one?

8 A. It appears to be a metal rod sticking
9 out of the side of a mound of soil.

10 Q. Test pit two, where was that taken --
11 photograph two?

12 MR. MAKARSKI: Actually, that's Exhibit C, isn't
13 it.

14 BY MR. TUCKER:

15 Q. Exhibit C of this group exhibit.

16 A. Photograph two was taken at test pit K.

17 THE HEARING OFFICER: It would be much better if
18 we refer to them as 23-C and 23-B or whatever you're
19 looking at, sir.

20 MR. TUCKER: Very well.

21 BY MR. TUCKER:

22 Q. And what does that picture depict?

23 A. It's a photograph of a corrugated metal
24 pipe.

1 Q. So you found that in that test pit that
2 was dug there?

3 A. Correct.

4 Q. The next exhibit, 23-D, where was that
5 taken?

6 A. This was taken at test pit L.

7 Q. What is depicted in that picture?

8 A. In the center of the photograph it is
9 at a slightly mud-covered bundle of white plastic
10 coded wire. To the right of that is a bent piece of
11 metal rebar.

12 Q. That material was found in that test
13 pit?

14 A. Correct.

15 Q. Photograph E, where was that taken?

16 A. Test pit L.

17 Q. What is depicted in that photograph?

18 A. Numerous bent pieces of rebar of
19 various different sizes.

20 Q. You found that in that test pit?

21 A. Yes.

22 Q. 23-F, where was that taken? This is
23 Photograph No. 5.

24 A. That was at test pit O.

1 Q. What is depicted in that photograph?

2 A. There's a slightly crushed piece of
3 corrugated metal pipe in the center, and there's a
4 small fragment of wood at the bottom to the right of
5 the photograph.

6 Q. Do you recall how big that piece of
7 pipe was?

8 A. I did not attempt to take any
9 dimensions of any of the materials.

10 Q. 23-G, which is Photograph 6?

11 A. That is at test pit N.

12 Q. Can you tell me what the photograph
13 depicts?

14 A. There's a chunk of concrete in the
15 center of the photograph.

16 Q. So that material was found in that test
17 pit?

18 A. Yes.

19 Q. Test pit -- I'm sorry.
20 Photograph 23-H? Photograph No. 7 for you.

21 A. That would be from test pit A.

22 Q. And what does that photograph depict?

23 A. In the center of the photograph,
24 there's a mud-stained piece of white cloth. In the

1 upper left-hand corner, there's a pile of leaves.

2 Q. So that was found in that particular
3 test pit?

4 A. Yes.

5 Q. Test pit 23 I, where was that taken?

6 A. That's also test pit A.

7 Q. What does that photo depict?

8 A. In the center of the photograph,
9 there's a metal pipe. Below the metal pipe is a
10 chunk of concrete.

11 Q. Moving on to photograph 23-J, where was
12 that taken?

13 A. That is test pit A also.

14 Q. And what does that photograph depict?

15 A. To the left of the --

16 THE HEARING OFFICER: Stop just a minute. 23-I
17 has a test pit B label on the back.

18 MR. TUCKER: Could we go off the record?

19 THE HEARING OFFICER: Yes.

20 (Discussion had off
21 the record.)

22 THE HEARING OFFICER: Let's go back on the
23 record.

24

1 BY MR. TUCKER:

2 Q. The particular photograph that's been
3 identified as 23-I -- which is Exhibit 23-I has on
4 the back of it, the actual photograph that's being
5 offered into evidence, test pit B on the back.

6 Where did you say this photograph was taken
7 from when I asked you that question previously.
8 Where was that photograph taken?

9 A. That was test pit A according to the
10 photographic log.

11 Q. Is the log correct, or are these
12 stickers on the back of this particular photograph
13 correct, to your knowledge?

14 A. It's likely that the log is correct.
15 Those photographs were made -- those photos were
16 copied approximately a year and a half after the
17 project was done, and I had some assistants who were
18 trying to label the back of those for documentation
19 purposes. They may not have been incorrect.

20 Q. But, in fact, the log you corresponded
21 to the photographs originally.

22 A. Yes.

23 THE HEARING OFFICER: All right.

24 MR. TUCKER: Thank you, Mr. Hearing Officer.

1 THE HEARING OFFICER: Mr. Heuer, is it your
2 testimony that Exhibit 23-I is from test pit 1?

3 THE WITNESS: Test pit A.

4 THE HEARING OFFICER: All right.

5 BY MR. TUCKER:

6 Q. I think I completed J, but why don't we
7 run through it again just in case.

8 This is Photograph No. 9?

9 A. Right. We hadn't discussed that yet.

10 Q. Oh, okay. I'm sorry. That would be
11 23-J.

12 Can you tell me where that photograph was
13 taken?

14 A. That's also at test pit A.

15 Q. Can you tell me what that depicts?

16 A. To the left of the photograph is a
17 portion of a piece of plywood. In the center toward
18 the bottom are a bunch of what I call leaves and
19 brush, and there are larger wood, log size pieces of
20 wood, to the right.

21 Q. 23-K, which is No. 10 on your exhibit,
22 can you tell me where that was taken?

23 A. That would be test pit A also.

24 Q. Can you tell me what that picture

1 depicts?

2 A. In the center of a photograph is a
3 degraded plastic bag. Inside the plastic bag are
4 what I call leaves and brush.

5 Q. That was found in that test pit?

6 A. Yes.

7 Q. 23-L as in Larry, which is No. 11 for
8 you, can you tell me what that photograph depicts?

9 A. In the center of that photograph is
10 what I described as metal strapping.

11 Q. Can you tell me where that photograph
12 was taken?

13 A. That would be test pit B.

14 Q. And for clarification sake, when you
15 said what you described earlier in your testimony
16 when I asked you about metal strapping, that's what
17 you were talking about?

18 A. Correct.

19 Q. Photograph 23-M, as in Mary, that's
20 your Photograph No. 12, can you tell me where that
21 was taken?

22 A. That was at test pit B also.

23 Q. Can you tell me what that photo
24 depicts?

1 A. That photo shows a bent metal pipe.

2 Q. So that was found in that test pit?

3 A. Right.

4 Q. The next photograph is 23-N, which is
5 No. 13, can you tell me where that was taken?

6 A. That was taken at the ground surface at
7 or near test pit B.

8 Q. Can you tell me what that photograph
9 depicts?

10 A. I can see brick, concrete, asphalt, and
11 wood fragments in this photograph.

12 Q. Photograph 23-O, which is your 14, can
13 you tell me where that was taken?

14 A. That is at test pit KK.

15 Q. And can you tell me what that
16 photograph depicts?

17 A. In the center of the photograph is a
18 brick. Behind the brick partially covered and
19 partially stained black is a piece of wood.

20 Q. The next photograph is 23-P. I draw to
21 your attention that on this page it's actually the
22 photo of the bottom of the page, your No. 15. I
23 draw that to counsels' attention as well.

24 Can you tell me what that photograph --

1 where that photograph was taken? I'm sorry.

2 A. That photograph was taken looking into
3 test pit R.

4 Q. Can you tell me what it depicts?

5 A. At the top and at the bottom are
6 concrete fragments.

7 Q. The final photograph in this group
8 exhibit is 23-Q, at the top of the page, your
9 No. 16, can you tell me where that was taken?

10 A. That is a photograph near test pit U.
11 In fact, you can see portions of test pit U at the
12 left of the photograph in the center.

13 Q. Can you tell me what that depicts?

14 A. It shows several chunks of concrete and
15 a small chunk of asphalt, also a clay tile fragment
16 on the ground surface.

17 Q. Thank you. I'm done with that
18 exhibit. If you want to put that off to the side.

19 I now want to present what has been marked
20 as Complainant's Exhibit 24, a series of five
21 additional photographs A through E.

22 Mr. Heuer, I presented you with quality
23 color photocopies of these photos. Would you look
24 at these five photos, please?

1 A. Okay.

2 Q. Did you take these five photos at the
3 Stearns Road site?

4 A. Yes.

5 Q. Do they truly and accurately represent
6 what you took at that site?

7 A. Yes.

8 Q. To the best of your knowledge, do the
9 corresponding test pit numbers correspond to the
10 photographs?

11 A. Yes.

12 MR. TUCKER: I move for the introduction of
13 these into evidence, Mr. Hearing Officer.

14 MR. STICK: Of Exhibit 24?

15 MR. TUCKER: Yes, A through D.

16 MR. STICK: No objection.

17 THE HEARING OFFICER: Okay. Complainant's
18 Exhibit 24-A through E is admitted.

19 BY MR. TUCKER:

20 Q. Mr. Heuer, I would just like to quickly
21 walk through these photographs as well.

22 These are also photographs that came out of
23 test pits at the site?

24 A. Correct.

1 Q. This is all material you dug up at that
2 site?

3 A. Correct.

4 Q. What's depicted in the first exhibit,
5 which would be 24-A?

6 A. That appears to be a fragment of a
7 piece of wood probably a mill piece of wood.

8 Q. So you found that in the material out
9 there?

10 A. Yes.

11 Q. The next photograph?

12 A. It says test pit R. It appears to be
13 plastic in the center of the photograph.

14 Q. So you found that in the test pit out
15 there was well?

16 A. Yes.

17 Q. The next photograph, which is C?

18 A. It says test pit M. That appears to be
19 branches and twigs rather stained in the center of
20 the photograph.

21 Q. The next photograph, which is D?

22 A. That's also from test pit N. It
23 appears to be a fragment of clay tile.

24 Q. Did you find a lot of clay tile out

1 there?

2 A. A lot of fragments, yes.

3 Q. The next photograph, which is

4 photograph E?

5 A. That was from test pit L. There's a
6 rather damaged piece of wood probably a branch in
7 the center of the photograph.

8 Q. Thank you, Mr. Heuer.

9 You took more photographs than this, did
10 you not?

11 A. Yes.

12 Q. Would you have any guess as to how many
13 others you might have taken?

14 MR. STICK: Objection, foundation.

15 THE HEARING OFFICER: Sustained.

16 MR. STICK: It calls for speculation.

17 MR. TUCKER: Withdrawn.

18 BY MR. TUCKER:

19 Q. Mr. Heuer, I'm now going to present to
20 you what we will mark as the next complainant's
21 exhibit, 25. At the top it's called the Pratt Wayne
22 Soil Analytic Test Results Summary Table.

23

24

1 (Complainant's Exhibit No. 25
2 marked for identification,
3 9/25/97.)

4 MR. TUCKER: Mr. Hearing Officer, for the
5 record, I'd like to indicate that this item, as
6 several other items, has been stipulated to by
7 opposing counsel to be admitted into evidence
8 without further foundation.

9 At this point, I'd like to move to have
10 this admitted into evidence.

11 MR. STICK: I have no objection based upon our
12 stipulation as to foundation. All parties have
13 reserved the right to comment and offer evidence on
14 validity, and I have one other caveat.

15 I have not checked this against what I
16 stipulated to, but based upon counsel's
17 representation it's the same document.

18 THE HEARING OFFICER: All right. With those
19 notations, Complainant's Exhibit 25 is admitted into
20 evidence.

21 MR. TUCKER: Thank you, Mr. Hearing Officer.

22 BY MR. TUCKER:

23 Q. Mr. Heuer, can you tell me what this
24 is?

1 A. This is a summary table of the
2 analytical results of the soil samples collected
3 from the site during our investigation and submitted
4 to the laboratory for analysis.

5 Q. Can you tell me how this document was
6 prepared?

7 A. I prepared this as an Excel table based
8 on laboratory reports.

9 Q. Can you tell me since this deals with
10 soil how the soil samples were taken?

11 A. Yes. Along the top line denotes which
12 boring location they came from or pond sediment
13 sample in test pit in one case. It denotes the
14 sampling interval. The boring samples were
15 collected by a split spoon sampling which we
16 discussed earlier.

17 The pond sediment samples were collected
18 with a backhoe bucket prior to initiating the test
19 pit study. The test pit sample was collected from a
20 pile of soil removed from test pit U.

21 Q. Can you tell me how the samples, for
22 lack of a better word, were preserved to then be
23 analyzed?

24 A. Yes. Each sample at the site was

1 placed in a laboratory supply jar with a stainless
2 steel trawl. That trawl was decontaminated in
3 between each sampling interval.

4 The jars were labeled and put in a cooler
5 and packed with ice.

6 Q. Then what happened?

7 A. After each day, all samples collected
8 were transported back to the office where they were
9 placed in a refrigerator that was placed in a room
10 with a lock on it to prevent access.

11 Q. And then?

12 MR. STICK: Object to the form of the question.

13 BY MR. TUCKER:

14 Q. What did you do next with those
15 samples?

16 A. At intervals of every several days or
17 so, at the end of each workday, I sat down with one
18 or two other people who were involved with the
19 project. We selected samples that we wanted to have
20 analyzed. At that point, I took the information,
21 filled out a chain of custody form. I chose the
22 samples that were listed on the chain of custody
23 form, placed them in a cooler with ice, packed them
24 with materials such as bubble wrap to prevent

1 breakage.

2 The chain of custody was placed into the
3 cooler. A custody seal was placed on the outside of
4 the cooler. The cooler was wrapped with shipping
5 tape, and the coolers were Fed Ex'd to the
6 laboratory in Washington for analysis.

7 Q. And then what happened after that?

8 Did you receive results back?

9 A. Correct. We received results of the
10 analysis also a copy of the chain of custody that
11 was signed by a laboratory representative indicating
12 that they had received the samples intact.

13 Q. Where was this laboratory located
14 again?

15 A. I believe Kelso, Washington.

16 Q. What is its name?

17 A. Columbia Analytical Services.

18 Q. Have you used that -- you or Emcon used
19 that service before?

20 MR. STICK: Objection, foundation.

21 BY MR. TUCKER:

22 Q. Have you used that laboratory before
23 for analyzing test rests or soil samples?

24 A. Yes, several times.

1 Q. Let's look at this table.

2 You've described what is indicated on the
3 top of the table. The horizontal column starting at
4 the very top and continuing to the right of the
5 page.

6 Could you -- and I don't want you to
7 necessarily walk through each and every listing on
8 the left-hand side. But could you briefly explain
9 what those are?

10 A. That column refers to the particular
11 compound that was analyzed for. The upper group of
12 compounds are called polynuclear aromatic
13 hydrocarbons, which underneath its acronym is PAH.

14 The MGKG stands for the units at which the
15 concentrations are reported. Below that are
16 volatile organic compounds. Those four compounds
17 are listed because at one point or another they were
18 detected. A volatile organic scan actually includes
19 more compounds than are listed. We did not list all
20 the compounds, only the ones that were detected at
21 one point or another.

22 Q. And those would be listed below where
23 it says volatile organic compounds; is that correct?

24 A. Yes.

1 Q. Generally, polynuclear aromatic
2 hydrocarbons --

3 A. Correct.

4 Q. Thank you.

5 (Continuing.) -- what are those?

6 MR. STICK: Objection, foundation.

7 THE HEARING OFFICER: Objection to asking what
8 they are?

9 MR. STICK: What they are unless he can
10 establish that this particular witness has the
11 basis in his training or scientific background to be
12 able to explain that with some degree of scientific
13 certainty.

14 THE HEARING OFFICER: All right. Mr. Tucker?

15 MR. TUCKER: Sustained?

16 THE HEARING OFFICER: Pardon me?

17 MR. TUCKER: Was that sustained?

18 MR. HEARING OFFICER: Sustained.

19 BY MR. TUCKER:

20 Q. Do you have training in polynuclear
21 aromatic hydrocarbons?

22 A. Not specifically, no.

23 Q. Have you dealt with them in the past?

24 A. Yes.

1 Q. You dealt with them in what capacity?

2 A. Polynuclear aromatic hydrocarbons are a
3 required analysis --

4 MR. STICK: Objection, your Honor, to the extent
5 he's going to now answer the question I objected to
6 without having the foundation presented.

7 MR. TUCKER: If you could just --

8 THE HEARING OFFICER: Well --

9 MR. STICK: In other words, the question was
10 asking for foundation, and the witness was beginning
11 to explain what the compounds were.

12 MR. HEARING OFFICER: Okay. Sustained.

13 MR. STICK: So it's nonresponsive.

14 BY MR. TUCKER:

15 Q. Are you familiar with why -- I'm going
16 to call them PAHs if I may, are important in your
17 field of work?

18 A. Yes. They are representative of --
19 well, actually, there could be several types of
20 contaminants. Typically --

21 MR. STICK: Objection, your Honor, the same
22 basis for my objection.

23 THE HEARING OFFICER: Okay.

24 MR. STICK: They have not laid a foundation with

1 this witness as to his scientific competency to
2 explain what PNAs or PAHs are, and every time
3 there's a question as to foundation, there's a
4 beginning of an answer as to what they are.

5 So I object because there's a lack of
6 foundation, and the answer is nonresponsive.

7 MR. TUCKER: Mr. Hearing Officer, I believe
8 unfortunately, the answers are intertwined. They're
9 important to him for the very reasons as to what
10 they are, and that's why he has dealt with them in
11 the past as to what they are.

12 It's a pretty straightforward question. I
13 hate to spend five, ten minutes on this.

14 MR. STICK: If I could just respond to that.

15 THE HEARING OFFICER: No, I've heard enough.
16 The objection is overruled at this point. I think
17 we're -- I think that we're getting to a
18 foundation.

19 Go ahead and answer the question,
20 Mr. Heuer.

21 BY THE WITNESS:

22 A. The Illinois Environmental Protection
23 Agency requires analysis of PAHs at hydrocarbon
24 release sites. They are indicative of heavier end

1 petroleum contaminants such as diesel fuel or oil.

2 BY MR. TUCKER:

3 Q. Thank you.

4 Examining this table -- examining this
5 table the top column, before we get to the volatile
6 organic compounds, is there anything of significance
7 to you, anything that stands out, from your
8 experience, that is out of the ordinary with these
9 test results?

10 A. Well, I note that in every soil sample
11 analyzed at least one PH compound was detected.
12 Numerous compounds were detected in the majority of
13 the soil samples analyzed.

14 Q. In your experience, do you generally
15 know where these PAHs come from?

16 MR. STICK: Objection, foundation.

17 MR. TUCKER: I only asked him in his experience
18 if he knew where they came from.

19 THE HEARING OFFICER: Sustained.

20 BY MR. TUCKER:

21 Q. Have you encountered PAHs before in
22 your work?

23 A. Yes.

24 Q. During that training and in your

1 experience in encountering, have you come to learn
2 where PAHs come from?

3 A. PAHs are organic compounds. In my
4 experience, I typically encounter them as a result
5 of analysis of petroleum contaminated material.

6 Q. Thank you, Mr. Heuer.

7 I want to move down to the volatile organic
8 compounds, if I may. Is there anything in that
9 chart, the bottom for horizontal lines, that stands
10 out to you as out of the ordinary?

11 A. Yes. Several compounds were detected.
12 Xylene was detected at three of the samples.
13 Acetone was detected in two samples. Two butanone
14 and two hexane were also detected in one of the
15 samples.

16 Q. At the bottom, there is, for lack of a
17 better word, a key to this chart --

18 A. Right.

19 Q. -- where it says MRL.

20 Can you tell me what ND depicts on that
21 chart?

22 A. That means the compound was not
23 detected at a concentration above the method
24 reporting limit, which is the laboratory detection

1 limit.

2 Q. And have NA?

3 A. That means we did not analyze for that
4 particular compound. Many of the soil samples we
5 did not analyze for volatile organic compounds.

6 Q. We're going to move on.

7 MR. TUCKER: I now want to present to
8 Mr. Hearing Officer what will be marked as
9 Complainant's Exhibit 26. This is titled the Pratt
10 Wayne Ground Water Analytical Test Results Summary
11 Table.

12 (Complainant's Exhibit No. 26
13 marked for identification,
14 9/25/97.)

15 MR. TUCKER: Mr. Hearing Officer, I would note
16 that this document is similar to the previous
17 document. It has been stipulated to between the
18 parties that this could be allowed into evidence
19 with the some restrictions that Mr. Stick has
20 previously noted for the record.

21 MR. STICK: I have no objection. We stipulate
22 to the foundation, and that it may be allowed into
23 evidence subject to the right to challenge the
24 validity and subject to counsel's representation

1 that this is the same document I stipulated to.

2 MR. TUCKER: Thank you, Michael. So at this
3 time I would move to have this placed into evidence,
4 Mr. Hearing Officer.

5 MR. HEARING OFFICER: No objection from you?

6 MS. O'CONNELL: No objection.

7 THE HEARING OFFICER: Complainant's Exhibit
8 No. 26 is admitted.

9 BY MR. TUCKER:

10 Q. Mr. Heuer, can you tell me what this
11 document is?

12 A. This is a summary table of the
13 analytical results of the ground water samples
14 collected at the Stearns Road site.

15 Q. Let's talk about the water samples.
16 Can you tell me how those water samples
17 were taken at the site?

18 A. Yes. The samples were collected
19 from the soil borings utilizing a tool called a
20 hydropunch. In cases where we encountered ground
21 water well drilling, we removed the split spoon
22 sampling device from the individual boring. We
23 replaced it with a hydropunch.

24 A hydropunch is a stainless steel tube with

1 an adaptor at one end that connects to the drilling
2 rods. Into the other end of the hydropunch, a
3 five-foot plastic screen, a polypropylene screen, is
4 inserted.

5 This is attached to a stainless steel drive
6 point which is attached to the end of the hydropunch
7 with a rubber band. The hydropunch is lowered down
8 through the augers to the base of the augers and
9 then driven out the end of the augers into the
10 soil.

11 After it's been driven a certain depth, not
12 to exceed five feet because that's the length of the
13 screen, the drill rods are then withdrawn
14 approximately four feet or so, and the pressure of
15 the soil around the stainless steel drive point
16 holds the drive point which is attached to the
17 screen in the ground, and when the stainless steel
18 outer casing is withdrawn, the screen is exposed to
19 the saturated soil.

20 At that point, you lower a one-inch
21 diameter Teflon baler through the center of the
22 drill rods down into the screen, into the temporary
23 screen. The baler fills with water. It has a check
24 valve in the bottle. The baler is withdrawn, and

1 the water in the baler is decanted directly into the
2 laboratory jars.

3 Q. What is then done with the laboratory
4 jars?

5 Is it similar to what happened with the
6 soil samples?

7 A. Correct. Those jars are labeled, seals
8 are put on them, and they are placed in the cooler
9 packed with ice till the end of the day when they're
10 transported back to the office and placed in a
11 refrigerator.

12 Q. What kind of precautions are taken to
13 avoid contamination?

14 A. In between each hydropunch location --
15 hydropunches were collected at all boring locations
16 except one, I believe. In between each location,
17 it's decontaminated by steam cleaning. It's also
18 washed down with the detergent rinse and deionized
19 water wash. That should be backwards. It's a
20 detergent wash and a deionized water rinse.

21 Q. What is a deionized water rinse?

22 A. Deionized water is typically used when
23 doing environmental sampling. What it does, it's
24 a -- it's produced by -- we buy ours from a company

1 called EKI. They make products for the medical
2 industry. It's a highly processed water. It's
3 also deionized, and it provides a level of
4 decontamination that's superior to, let's say, tap
5 water.

6 Q. Then these samples are then stored and
7 sent off to the lab again?

8 A. Correct. As with the soil samples,
9 they are kept in a refrigerator in a locked room.
10 Every several days, we assemble samples. They'd be
11 packed in a cooler with ice with the chain of the
12 custody documentation. A seal would be placed on
13 the cooler, and they would be shipped by Federal
14 Express to the laboratory for analysis.

15 Q. Were they shipped to the same laboratory
16 that we previously discussed?

17 A. Yes.

18 Q. You received those results back from
19 that laboratory?

20 A. Correct.

21 Q. And those results are reflected in this
22 summary table?

23 A. Yes.

24 Q. Let's take a look at the table.

1 The column along the top, the top
2 horizontal column, where again it's listed PAHs, can
3 you tell me what that column represents?

4 A. As with the soil chart, that represents
5 specific compounds that are described as polynuclear
6 aromatic hydrocarbons.

7 Q. The vertical column on the left-hand
8 side which starts with PAHs and then is listed
9 volatile organic compounds, that is also similar to
10 what is listed in the previous document on the soil
11 samples?

12 A. Correct.

13 Q. Looking at this summary table, is there
14 anything that sticks out to you as unusual?

15 First let's deal with everything under the
16 PAHs.

17 A. Yes. The samples listed across the top
18 are only those samples in which one -- at least one
19 compound was detected. If no compounds were
20 detected, that particular sample is not included on
21 this list.

22 Therefore, every sample listed on here at
23 least one compound or volatile organic compound was
24 detected. B-6, B-12 duplicate, the B-13 sample all

1 have numerous polynuclear aromatic hydrocarbon
2 compound detected.

3 Q. I see B-12 listed on the top horizontal
4 column, and I see B-12 dup., in parenthesis, d-u-p.

5 You just referred to B-12 duplicate. Is
6 that what that column represents?

7 A. Yes.

8 Q. What do you mean by duplicate?

9 A. Duplicate samples are typically taken
10 for quality assurance purposes. In this case, we
11 had discussed collecting a duplicate sample
12 approximately every ten samples. In samples -- I
13 believe it was B-4 through B-10 those samples were
14 taken outside the perimeter of the area that was the
15 former sand and gravel excavation.

16 Rather than taking a duplicate at the B-10
17 location, I wanted to take a duplicate that was
18 collected from water within the fill area.

19 At location B-11, we were unable to obtain
20 any water. It was my original intention to attain a
21 duplicate sample at the B-11 location; however, I
22 was unable to get any water whatsoever out of that
23 location.

24 At the B-12 location, we did encounter a

1 very thin sand seam at the base of the fill
2 material, between the base of the fill and the
3 underlying clay. We drove the hydropunch at that
4 location and pulled it back.

5 And based on reading my field notes, I was
6 able to collect the day that we originally drove the
7 hydropunch sampler only enough water volume to fill
8 the vials that are used for the VOC analysis. I was
9 unable to obtain enough to fill the court jar that
10 was used for the PNA analysis or PAH analysis, and I
11 was obviously unable to get enough sample to collect
12 a duplicate sample.

13 Q. Now, you noted --

14 MR. STICK: Your Honor, I object to narrative
15 nature of the testimony.

16 THE HEARING OFFICER: All right. Mr. Tucker,
17 please intersperse questions.

18 BY MR. TUCKER:

19 Q. I noticed you said that B-12 was within
20 the test fill same; is that correct?

21 A. That's correct.

22 Q. So you first took the B-12 sample.
23 Then the B-12 duplicate was taken later?

24 A. Correct. A portion of the B-12 sample

1 was taken one day. The PNA portion of that sample
2 was taken on a another day. The B-12 sample
3 duplicate was collected on the same day as the B-12
4 PAH sample, however, at a later time.

5 Q. How many days apart were those samples
6 taken?

7 A. I believe between the day we originally
8 pushed the hydropunch and the day I was able to
9 collect a sufficient sample for both B-12 and the
10 B-12 duplicate it was probably four days.

11 Q. Now looking a this, I see that the
12 results of B-12 and B-12 duplicate are different.

13 Specifically, B-12 duplicate notes certain
14 contamination of the water. Is it possible that
15 both samples are accurate?

16 A. Yes.

17 Q. Could you explain that?

18 A. Although it's listed as a duplicate, it
19 is not actually the same water that was put into the
20 B-12 jar as put into the B-12 duplicate jar.

21 Q. What do you mean by that?

22 A. I noted in my field records that it
23 took at least an hour for the well screen to
24 recharge enough for me to get enough sample volume

1 to take the B-12 duplicate sample.

2 Therefore, I had drained that location dry
3 by collecting the B-12 sample and also had to allow
4 time for that to recharge. Therefore, the water in
5 the B-12 sample was actually not the same water as
6 the B-12 duplicate.

7 Also, in laboratory --

8 MR. STICK: Your Honor, I object to the
9 narrative nature.

10 THE HEARING OFFICER: Sustained.

11 BY MR. TUCKER:

12 Q. Was there anything else with B-12 that
13 makes it -- B-12 duplicate which made it different
14 than the B-12 sample that you haven't already
15 explained to us?

16 A. There's a volatile organic compound,
17 CIS 1, 2 dichloroethane, that was detected in B-12
18 and was not detected in the B-12 duplicate.

19 Q. Were there any other differences with
20 the samples?

21 Did they look different to you?

22 A. I did not note in my field notes
23 whether or not the samples looked different.
24 However, the laboratory made note that the samples

1 appeared different. There's a significant sediment
2 in them, and they actually reran the B-12 duplicate
3 sample due to the difference.

4 Q. Which one had the sediment in it?

5 A. The B-12 duplicate sample had
6 significant sediment in it.

7 Q. Thank you.

8 Was there any difference between the two
9 runs? You mentioned they were run twice.

10 A. They were very similar.

11 Q. Okay. Anything else -- again, just
12 dealing with the top PAH section, anything else that
13 sticks out to you as being unusual?

14 A. Two locations, B-6 and B-13 numerous PH
15 compounds were detected.

16 Q. Thank you.

17 Let's move on to the volatile organic
18 compound which are the three remaining horizontal
19 lines at the bottom at the chart of the summary
20 table.

21 Anything there that sticks out as unusual
22 to you?

23 A. B-2, B-12 sample, and the B-18 sample.

24 Q. Why are those unusual?

1 A. A volatile organic compound was
2 detected in each of those samples.

3 Q. Thank you, Mr. Heuer.

4 We're going to move on.

5 THE HEARING OFFICER: Mr. Heuer, PNAs the same
6 as PAHs?

7 THE WITNESS: Yes. Typically, they're referred
8 to as PAHs. Illinois EPA calls them PNAs. That's
9 why I typically call them PNAs.

10 MR. TUCKER: I'd now like to present to the
11 hearing officer a somewhat thicker document. This
12 document is, in fact, two different items. It
13 includes the laboratory analytical results as well
14 as the chain of custody documentation for the
15 complainant's exhibits and samples. It's
16 approximately an inch thick.

17 I'd like it marked as Complainant's Exhibit
18 No. 27, and I would like to note to Mr. Hearing
19 Officer that this document -- these two documents,
20 which were listed as one exhibit, have also been
21 stipulated to by opposing counsel under, again, the
22 same qualifications that Mr. Stick has noted on the
23 record before.

24

1 (Complainant's Exhibit No. 27
2 marked for identification,
3 9/25/97.)

4 MR. TUCKER: So at this time, I'd like to move
5 for the introduction of these documents into
6 evidence.

7 MR. STICK: Your Honor, at this point, I'd like
8 a moment to look at the exhibit --

9 MR. TUCKER: Absolutely.

10 MR. STICK: -- since this is a little bigger.

11 THE HEARING OFFICER: Miss O'Connell, you've
12 agreed with those stipulations as well?

13 MS. O'CONNELL: Yes.

14 MR. TUCKER: Yes, all parties have stipulated.

15 MR. STICK: Your Honor, based upon our
16 stipulation as to foundation with the reservation of
17 the right to challenge the validity and accuracy, I
18 have no objection.

19 MR. TUCKER: Thank you, Mr. Stick.

20 MR. STICK: And based upon counsel's
21 representation that this is the document we
22 stipulated.

23 MR. HEARING OFFICER: Thank you, Mr. Stick.

24

1 BY MR. TUCKER:

2 Q. Mr. Heuer --

3 THE HEARING OFFICER: Okay. Complainant's
4 Exhibit 27 is admitted.

5 MR. TUCKER: Thank you, Mr. Hearing Officer.

6 BY MR. TUCKER:

7 Q. Mr. Heuer, if you could just flip
8 through that document.

9 (Witness perusing
10 document.)

11 BY THE WITNESS:

12 A. Yes.

13 BY MR. TUCKER:

14 Q. In your experience, have you come
15 across laboratory analytical results and evidence
16 before like this?

17 A. I've come across laboratory results
18 before on numerous occasions.

19 Q. Can you generally explain what those
20 are?

21 More precisely, can you generally explain
22 what is before you as the analytical results here in
23 the complainant's exhibit?

24 A. These are the results provided to our

1 office by Columbia Analytical Services. They are
2 results of the analysis we requested of the soil and
3 water samples submitted to them as part of the
4 Stearns Road site project.

5 Q. And that is the same laboratory you
6 have spoken of previously?

7 A. Yes.

8 Q. At the back of there, there is what is
9 called change of custody logs?

10 A. Yes.

11 Q. Are you familiar in your practice with
12 change of custody logs?

13 A. Yes. That's a standard operating
14 procedure for environmental sampling. What that
15 does is it documents who had control of the samples
16 at any particular point.

17 In this case, it indicates that I
18 relinquished the samples. It gives the time and the
19 date. In this case, we shipped the samples by Fed
20 Ex with a custody seal on the outside of the
21 cooler. When it gets to the laboratory, the
22 receiving person indicates that they received it
23 there.

24 Q. And this is all contained within the

1 log, these notes?

2 A. Yes.

3 Q. You said you spent many days out at the
4 Stearns Road site; is that correct?

5 A. Approximately three weeks total.

6 Q. During that time you've had the chance
7 to not only dig these pits, but did you have the
8 chance to just generally observe the site?

9 A. Yes.

10 Q. Can you tell us what you saw out there?

11 A. In general, I saw what was very clearly
12 a disturbed site relative to land surrounding the
13 site.

14 Q. What do you mean by that?

15 A. There were large stockpiles of material
16 at various locations about the site. There was a
17 large pond near the southeastern corner of the site,
18 and the stockpiles of material were clearly of
19 different composition.

20 Q. Did you see anything that struck you as
21 unusual out at that site?

22 MR. STICK: Objection, foundation.

23 THE HEARING OFFICER: Overruled.

24

1 BY MR. TUCKER:

2 Q. You may answer.

3 A. Several of the stockpiles consisted of
4 what was probably sand and gravel stockpile from the
5 mining operation, from the quarry operation. But
6 also at one location, which is shown on the test pit
7 map, is clearly a stockpile of non-soiled material.
8 Several locations -- in some cases I indicated on
9 the ground surface near the test pits I saw some
10 non-soiled material, but I also recall at one
11 location which wasn't at a test pit there was an
12 engine block partially sticking out of the ground.

13 Q. It was in the ground partially sticking
14 out?

15 A. Correct.

16 MR. TUCKER: If we could have just one second,
17 your Honor.

18 (Brief pause.)

19 BY MR. TUCKER:

20 Q. In dealing with a clean -- strike
21 that.

22 In dealing with the areas where fill was
23 brought out, did you see debris out there beyond
24 what you've already described to us?

1 MR. STICK: Objection, leading.

2 THE HEARING OFFICER: Sustained.

3 BY MR. TUCKER:

4 Q. What, in general, did you see in the
5 fill material out there besides soil and clay?

6 A. The most commonly seen materials were
7 fragments of brick, concrete, asphalt. There was a
8 lot of metal. There's rebar, metal bars, metal
9 strapping, which I discussed earlier, a lot of wood,
10 different forms of wood out there. In some
11 individual cases, I saw things like a circular saw
12 blade, a tire, a piece of cloth.

13 MR. TUCKER: Thank you. We have no further
14 questions, your Honor.

15 THE HEARING OFFICER: Cross-examination?

16 MR. STICK: Yes, please.

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

18 by Mr. Stick

19 Q. Mr. Heuer, you photographed an engine
20 block?

21 A. I did not, no.

22 Q. Did anyone photograph the engine block?

23 A. Not that I'm aware of.

24 Q. Did you photograph a saw blade?

1 A. I don't believe so, no.

2 Q. Did you photograph a tire?

3 A. No.

4 Q. Now, you referred to the site as a very
5 clearly disturbed site.

6 Do you recall that testimony?

7 A. Yes.

8 Q. Were you aware that the site was a
9 mining site?

10 A. I believe I had been told that prior to
11 my having gone out there for the first time.

12 Q. Didn't you anticipate in investigating
13 a mining site to find a site that had been
14 disturbed?

15 A. Yes.

16 Q. Okay. So that is not something you did
17 not anticipate before going onto the site?

18 A. Correct.

19 Q. And yet you found it unusual?

20 A. I guess I would say I found it unusual
21 that it did not resemble other sand and gravel
22 quarry operations that I've seen.

23 Q. Have you seen other sand and gravel
24 quarry operations that had been sitting without

1 operations for two years?

2 A. Not that I'm aware of, no.

3 Q. Now, did anyone other than you take
4 photographs of any items at the site?

5 A. Not that I'm aware of.

6 Q. And I take it in choosing what to
7 photograph, you determined that you would photograph
8 what you felt were the most significant items at the
9 site, correct?

10 A. Correct.

11 Q. You mentioned some piezometers tests.

12 The piezometers investigation took place
13 before you actually got to the site, correct?

14 A. Yes.

15 Q. And you were not present during any of
16 that, correct?

17 A. Correct.

18 Q. That was Mr. Phil Vincent?

19 A. Yes.

20 Q. Who had the responsibility at Emcon for
21 deciding where to locate the test pits?

22 A. I don't believe any one person had that
23 responsibility. Realistically, the majority of that
24 responsibility would have been myself.

1 Q. And that was something that was left up
2 to you to decide primarily in the field, correct?

3 A. Correct.

4 Q. Neither you or anyone at Emcon utilized
5 any kind of computer to generate a random sampling
6 grid for the site, right?

7 A. Correct.

8 Q. And neither you or anyone at Emcon
9 utilized U.S. EPA SW 846 to develop a random
10 sampling criteria for the site, correct?

11 A. Correct.

12 THE HEARING OFFICER: What was the number on
13 that?

14 MR. STICK: SW 846.

15 MR. HEARING OFFICER: Thank you.

16 BY MR. STICK:

17 Q. And neither you nor anyone at Emcon
18 utilized any other regulatory guidelines for
19 establishing a random sampling criteria for the test
20 pit investigation site, correct?

21 A. Correct.

22 Q. In fact, randomness, I believe you
23 testified in your deposition, was not part of the
24 selection of the test pit locations, correct?

1 A. Not a scientific definition of
2 randomness, no.

3 Q. And you do not prepare any kind of a
4 grid or plot out the particular locations for the
5 test pits prior to coming to the site, correct?

6 A. Correct.

7 Q. Generally, isn't it fair to say that
8 after you had completed a couple of test pits, two,
9 three, or four, you would then generally decide
10 which direction you were going to go with the
11 backhoe?

12 A. Correct.

13 Q. Now, with respect to the soil and water
14 samplings, did anyone at Emcon utilize a
15 computer-generated random sampling grid to locate
16 either of the soil or water sample locations?

17 A. No.

18 Q. And did anyone at Emcon utilize
19 U.S. EPA SW 846 in locating the soil or water boring
20 points?

21 A. No.

22 Q. Did anyone at Emcon, to your knowledge,
23 utilize any kind of regulatory guidelines for
24 establishing random sampling of the soil and water

1 at the site?

2 A. No.

3 Q. You talked about the crew you had with
4 you.

5 You had a two-person drill team from Fox
6 Engineering, correct?

7 A. Fox Exploration.

8 Q. Fox Exploration.

9 And this involved a driller and a driller's
10 helper --

11 A. Yes.

12 Q. -- is that correct?

13 And then you had an operator with a
14 backhoe, correct?

15 A. Yes. They were not there at the same
16 time. The drill crew was there separate from the
17 backhoe, I believe.

18 Q. Okay. The backhoe is a tracked
19 equipment backhoe?

20 A. Track mounted equipment, yes.

21 Q. As opposed to tires?

22 A. Right.

23 Q. How was the drill rig mounted?

24 A. It was mounted on an ATV Chassey

1 meaning that the Chassey had large diameter width
2 tires so it could get to locations on the site that
3 a conventional truck monitored rig could not access.

4 Q. The drill is run by a gasoline engine?

5 A. Yes.

6 Q. And there was a smoke stack on the
7 drill rig or exhaust, correct?

8 A. Yes.

9 Q. Now, in your test pit investigation,
10 did you attempt to identify the depth in the test
11 pit from which a putrescent odor was detected?

12 A. I did not attempt to take any exact
13 depths during the test pit investigation simply
14 because it was not safe to stand close enough to the
15 test pit to obtain an accurate measurement.

16 Q. And, in fact, you personally cannot
17 tell the difference between naturally occurring
18 putrescent odor and a putrescent odor that's
19 emanating from rotting garbage or something to that
20 effect, correct?

21 A. I did not attempt to discern the origin
22 of the putrescent odor.

23 Q. Okay. My question to you is, you
24 cannot tell the difference between naturally

1 occurring putrescent odors and putrescent odors that
2 originate from rotting garage, correct?

3 A. Correct.

4 Q. Okay. And, in fact, during this
5 investigation when you note putrescent odors, you
6 have not attempted to differentiate it, correct?

7 A. Correct.

8 Q. But in reviewing your field log and any
9 notes you took at the time, isn't it fair to say it
10 is your conclusion that any putrescent odors you did
11 note at the site came from naturally occurring
12 putrescent odors -- putrescent material such as
13 leaves and wood?

14 A. That's reasonable, yes.

15 Q. Okay. Do you recall a conversation
16 with Mr. McGuigan from Emcon sometime in 1996 when
17 Mr. McGuigan asked you whether or not you had
18 attempted to differentiate between naturally
19 occurring organic odors and putrescent odors
20 originating from rotting garbage during your
21 investigation of the site?

22 A. I do not recall a conversation about
23 that.

24 Q. And at no time did you tell

1 Mr. McGuigan that you, in fact, could differentiate
2 between naturally occurring putrescent odors and
3 those odors originating from rotting garbage,
4 correct?

5 A. I don't recall a specific conversation
6 discussing that, no.

7 Q. I'm sorry.

8 At no time did you tell him that, correct?

9 A. Correct.

10 Q. Now, you decontaminated the augers
11 during your investigation, correct?

12 A. I personally did not decontaminate the
13 auger. That was performed by the drill crew.

14 Q. Okay. Were the augers decontaminated
15 during your investigation?

16 A. Yes.

17 Q. Did you decontaminate the augers after
18 your sampling at each location?

19 A. Not necessarily after sampling each
20 location because they had -- I don't know exactly --
21 approximately 100 feet of augers in five foot
22 lengths.

23 Typically, we went 15 to 20 feet;
24 therefore, they could do several locations without

1 having to clean to do another location. So actual
2 augers themselves weren't necessarily decontaminated
3 after each hole, but each set of augers that was
4 used in a new hole had been decontaminated since the
5 last time they were used.

6 Q. Is it fair to say the augers were
7 decontaminated in mass?

8 A. Yes.

9 Q. In other words, you would decontaminate
10 more than one auger at a time?

11 A. Correct.

12 Q. When you ran out of augers, you'd go
13 decontaminate some augers, or the drill team would
14 decontaminate some augers?

15 A. Not necessarily. It's dependent upon a
16 convenient time to do it.

17 Q. Okay. Now, the decontaminated augers
18 were stockpiled either in the centralized
19 decontamination area of the site, correct?

20 A. Yes.

21 Q. Or placed back on the drill rig in the
22 racks?

23 A. Yes.

24 Q. And the racks are vertical racks on the

1 front end of the drill rig, correct?

2 A. Yes.

3 Q. And they were exposed to the air,
4 correct?

5 A. Yes.

6 Q. And to the elements?

7 A. Correct.

8 Q. And if you decontaminated these augers
9 in mass or in groups of more than one, you didn't
10 necessarily utilize the auger immediately after it
11 had been decontaminated, correct?

12 A. Correct.

13 Q. That auger might be placed back on the
14 rack and left on the front of the drill rig for a
15 period of time, correct?

16 A. Yes.

17 Q. Now, you said the drill team
18 decontaminated the augers. Did they -- did the
19 drill team also -- strike that.

20 Isn't it correct that the drill team also
21 carried the augers from the decontamination area
22 back to the drill rig?

23 A. Yes.

24 Q. Isn't it also true that the drillers do

1 not change their gloves on a regular basis?

2 A. They probably did not change their
3 gloves after every single borehole, no.

4 Q. And, in fact -- strike that.

5 The drill team did not change their gloves
6 as often as you changed your gloves, correct?

7 A. Yes.

8 Q. You changed your gloves after every
9 sampling episode, correct?

10 A. Yes.

11 Q. Or at least that was your standard
12 procedure, correct?

13 A. Correct.

14 Q. And that was your intended procedure?

15 A. Correct.

16 Q. Because if you don't change your gloves
17 between every sampling event, there is the potential
18 to cross contamination, correct?

19 A. That's true.

20 Q. Who cleaned the hydropunch?

21 A. Either the drillers or myself cleaned
22 the hydropunch.

23 Typically, they would steam clean it after
24 usage, and then I would give it an individual

1 washing. There's a brush that's made to go inside
2 the auger, which I used to wash after they had steam
3 cleaned it.

4 Q. Did you -- did you wash the hydropunch
5 on every occasion with the brush?

6 A. Probably. I didn't record whether I
7 did or not.

8 Q. And did the drillers also participate
9 in the cleaning of the hydropunch on every occasion?

10 A. Likely, yes.

11 Q. So every time the hydropunch was
12 decontaminated, it was touched by the drillers,
13 correct?

14 A. Prior to it being decontaminated, yes.
15 After they had completed steam cleaning it, I would
16 take it, do my own cleaning with the deionized water
17 and the rinse, set it up for the next boring, and
18 then personally put it on the rack with the clean
19 augers.

20 Q. Now, in drilling your hydropunch, you
21 had two methods of collecting hydropunch water
22 samples at the site, correct? That's a yes or no
23 answer.

24 A. Actually, there is only one; however,

1 in some instances we drill a second boring next to
2 the original boring and did not sample it. The
3 reason for that being --

4 MR. STICK: Your Honor, could you instruct the
5 witness to be responsive. I intend to ask him
6 questions, but I do intend for his answers to be
7 responses.

8 THE HEARING OFFICER: Mr. Heuer, it will go a
9 little faster if you just respond to what Mr. Stick
10 asked you and not add additional information.

11 BY MR. STICK:

12 Q. Isn't it true that in some instances
13 after you had completed your soil sampling you
14 dropped the hydropunch through the same auger that
15 you had extracted your soil sample from, correct?

16 A. Correct.

17 Q. And in other instances, you offset from
18 the auger location soil sample and drilled a new
19 auger location specifically for the hydropunch,
20 correct?

21 A. Yes.

22 Q. So those were two different methods
23 that you utilized in the field for water collection,
24 correct?

1 A. When you say by method, there's
2 actually two separate hydropunch for collecting a
3 sample. That hydropunch method was the same.
4 However, in some instances, no, we did not collect
5 soil samples from the same borehole that we
6 collected the water sample from.

7 Q. Okay. Isn't it true that you offset
8 and drilled auger locations specifically for the
9 hydropunch at location B-1, B-4, B-13, B-17, B-20,
10 and B-21?

11 A. Yes.

12 Q. And at all other locations, you
13 utilized the method where you simply extracted your
14 soil sample and then dropped the hydropunch down
15 through the auger at the same location where you had
16 extracted your soil sample, correct?

17 A. Yes.

18 Q. Mr. Heuer, how many drilling
19 investigations have you conducted for Emcon or for
20 any other consultant during your career?

21 A. I don't know the exact amount, but I'll
22 say a minimum of 50.

23 Q. How many of those 50 drilling episodes
24 did you receive lab results that indicated no

1 detects at every location for every constituent
2 testing?

3 A. I don't know.

4 Q. Has that ever happened?

5 A. Yes.

6 Q. It's very rare though, isn't it?

7 A. It's very rare simply because when we
8 do an investigation, we have reason to believe that
9 there is some kind of problem with the soil or
10 ground water which is the reason we're out there in
11 the first place.

12 It's rare that I'll do an environmental
13 investigation --

14 THE HEARING OFFICER: Mr. Heuer, I think you've
15 answered the question.

16 THE WITNESS: Okay.

17 BY MR. STICK:

18 Q. Can you identify any investigation by
19 name of the site where you have gotten no detects
20 for every sample location in every constituent
21 testing?

22 A. Yes.

23 Q. What is the name of that location?

24 A. It was a site in Milwaukee. I believe

1 the name of the site was the former Pabst Vehicle
2 Maintenance Facility.

3 Q. Now, that would depend, would it not,
4 on what your detection limits were, correct?

5 A. Detection limits and the type of
6 analysis that was done.

7 Q. Okay. Is that the only site you
8 recall?

9 A. In the last several years, yes. That's
10 the only one I recall.

11 Q. So that's the only one you recall,
12 correct?

13 A. Yes.

14 Q. When you were taking your photographs
15 of the site, did you make any attempt to show the
16 scale of the items that you were photographing in
17 the photographs?

18 A. No.

19 Q. And you did not measure any of the
20 items at the site either while you were
21 photographing them or at any other time, correct?

22 A. Correct.

23 Q. You talked about this track backhoe.
24 That is a greased piece of equipment, correct?

1 A. I'm sure the moving joints are greased,
2 yes.

3 Q. And the only efforts that you made to
4 prevent the backhoe from contaminating the site was
5 to check for leakage on a weekly basis
6 approximately, correct?

7 A. Approximately, yes.

8 Q. Is that correct? That was the only
9 effort you made to prevent the backhoe from
10 contaminating the site?

11 A. Yes.

12 Q. And you don't know whether the backhoe
13 operator checked for leaks any more frequently than
14 that, correct?

15 A. Correct.

16 Q. And at no time during your
17 investigation of the Stearns Road site did you check
18 the all-terrain vehicle on which the drill rig was
19 mounted for leaks, correct?

20 A. I did not formally check the drill rig,
21 no.

22 Q. And you don't know for a fact whether
23 the driller or the driller's helpers checked the
24 all-terrain vehicle for leaks at any time during

1 your investigation, correct?

2 A. Correct.

3 Q. And you kept no entry in your log
4 regarding your checks of the backhoe, correct?

5 A. Correct.

6 Q. Let me refer you to Complainant's
7 Exhibit No. 19.

8 Do you have that in front of you?

9 A. They're not numbered. If you could
10 tell me what it is.

11 Q. It's the boring logs, logs of the
12 boring.

13 A. Oh.

14 Q. Mr. Heuer, isn't it correct that there
15 was never an auger refusal at any of your boring
16 locations at this site?

17 A. That's correct.

18 Q. And that would tell you, would it not,
19 that the auger never encountered any items in the
20 soil large enough to force an auger refusal or to
21 cause an auger refusal, correct?

22 A. Correct.

23 Q. Okay. Let me refer you to the test pit
24 investigation.

1 In identifying items in your log discovered
2 during your test pit investigation, you only
3 attempted to log non-soiled materials, correct?

4 A. I believe I described soil types that I
5 noted, but as far as discussion of fill materials
6 that was a separate issue as far as non-soiled
7 materials.

8 Q. So in the column captioned fill
9 material, you made no attempt to log in soil that
10 was found in the test pits?

11 A. Right.

12 Q. In the fill, correct?

13 A. Correct.

14 Q. So you did not log, for instance, clay
15 when the test pit showed clay in the fill?

16 A. That would have been in the fill soil
17 type column.

18 Q. Okay. The order of the items from the
19 top to bottom in your chart has no connection and no
20 correlation to the depth at which any of those items
21 were found, correct?

22 A. Correct.

23 Q. And, in fact, you did not make an
24 attempt to identify at what depth items were found,

1 correct?

2 A. Correct.

3 Q. And while you were logging the items
4 found in the test pits back in March of 1995, you
5 made no effort to estimate percentages of the fill
6 material comprised of any particular item, correct?

7 A. Correct.

8 Q. At the time you were doing your
9 investigation; is that correct?

10 A. Correct.

11 Q. Is it fair to say you were more likely
12 to photograph larger items that you found in the
13 fill material?

14 A. Yes.

15 Q. Isn't it true that you have no specific
16 recollection of any concrete in the test pits which
17 exceeded two feet by two feet in size?

18 A. Correct. I did not attempt to measure
19 any of the items that came out of the test pits.

20 Q. And you have no specific recollection
21 of any concrete in the material -- in the test pits
22 which exceeded two feet by two feet, correct?

23 A. Correct.

24 Q. And you have no specific recollection

1 of any bituminous found in the test pits which
2 exceeded six inches at their largest dimension,
3 correct?

4 A. Correct.

5 Q. Let me refer you to Complainant's
6 Exhibit No. 22.

7 Now, you excavated a number of test pits at
8 the site that contain nothing other than soil
9 material, correct?

10 A. Correct.

11 Q. And those test pits were test pits E,
12 that was one where there was nothing other than fill
13 material correct or soil material?

14 A. On the test pit summary, it does say
15 wood fragments. That, however, may have been the
16 item we discussed earlier that we found in the
17 deposition. It may have been carried over from the
18 column before.

19 Q. Do you have a recollection that the
20 entry for wood fragments in the test pit E summary
21 is in error?

22 A. I would have to check it against the
23 field notes, and I don't have a copy of those in
24 front of me.

1 MR. STICK: Your Honor, can I take a moment to
2 get his field notes? I think I have a copy.

3 THE HEARING OFFICER: Yes. Off the record.

4 (Discussion had off
5 the record.)

6 THE HEARING OFFICER: Back on the record.

7 MR. STICK: Can I approach the witness, your
8 Honor.

9 THE HEARING OFFICER: Yes, you may.

10 MR. STICK: Your Honor, I only have one copy of
11 this. Can I mark this as Respondents'
12 Exhibit No. --

13 THE HEARING OFFICER: 12.

14 MR. STICK: -- 12.

15 THE HEARING OFFICER: Yes.

16 MR. STICK: And I apologize --

17 MR. KNIPPEN: Your Honor, we're out of
18 Respondents' stickers now.

19 THE HEARING OFFICER: (Indicating).

20 (Respondents' Exhibit No. 12
21 marked for identification,
22 9/25/97.)

23 MR. STICK: Counsel, would you like to see it?

24 MR. MAKARSKI: Yeah. Let me just see what page

1 it is, field boring log. Okay. Thanks.

2 MR. STICK: Karen?

3 MS. O'CONNELL: Thanks.

4 BY MR. STICK:

5 Q. Mr. Heuer, let me show you what we've
6 marked as Respondents' Exhibit No. 12 for
7 identification purposes.

8 Do you recognize that document?

9 A. Yes.

10 Q. Are those your field notes with respect
11 to the test pit investigation?

12 A. Yes.

13 Q. Would you check your entry for test
14 pit E?

15 A. Wood is not noted. Wood fragments are
16 not noted.

17 Q. Okay. So test pit E was the test pit
18 where you found nothing but clean soil, correct?

19 A. Correct.

20 Q. And the description of test pit E that
21 is noted on Complainant's Exhibit No. 22 is at least
22 partially in error, correct?

23 A. Correct.

24 Q. Let me refer you to Complainant's

1 Exhibit No. 22, and if you can keep your field notes
2 handy also, I'd appreciate it.

3 I'll refer you to the description under
4 test pit J. First of all, with respect to
5 Complainant's Exhibit No. 22 under the description
6 for test pit J, do you see an indication that there
7 was a slight putrescent odor?

8 A. On the test pit summary, it says slight
9 putrescent; however, in the field note, it said no
10 odor.

11 Q. Okay. So referring to Respondents'
12 Exhibit No. 12, your field notes, you would agree
13 with me that Complainant's Exhibit No. 22 is in
14 error with respect to the description of slight
15 putrescent odor at test pit J?

16 A. Yes.

17 Q. Now, let me refer you to test pit L.
18 Is there an indication that there was any
19 putrescent odor at test pit L in your field notes?

20 A. No.

21 Q. Mr. Heuer, those three errors were
22 errors that were raised in your deposition, correct?

23 A. Yes.

24 Q. And those in part were the errors that

1 you're talking about on the stand on direct when you
2 said certain issues came up in your deposition,
3 correct?

4 A. Correct.

5 Q. So those were known to you before
6 today?

7 A. Yes.

8 Q. Now, test pit G was also a test pit
9 where you found nothing but clean soil, correct?

10 A. Correct.

11 Q. And test pit P was another test pit
12 where you found nothing but clean soil?

13 A. Correct.

14 Q. And test pit Q was another test pit
15 where you found nothing but clean soil, correct?

16 A. Correct.

17 Q. At test pit S location, you also have
18 found nothing but clean soil, correct?

19 A. Correct.

20 Q. At test pit Y you found nothing but
21 clean soil, correct?

22 A. Correct.

23 Q. And at test pit DD you found nothing
24 but clean soil, correct?

1 A. Correct.

2 Q. You found nothing but clean soil at
3 test pit JJ, correct?

4 A. Correct.

5 Q. And you found nothing but clean soil on
6 test pit LL, correct?

7 A. Correct.

8 Q. And you found nothing but clean soil at
9 test pit MM, correct?

10 A. Correct.

11 Q. Now, at test pit U, can you check your
12 field notes for test pit U? Strike that.

13 Mr. Heuer, at test pit D, isn't it correct
14 that in excess of 99 percent of the material
15 excavated at test pit D was clean soil?

16 A. Yes.

17 Q. And isn't it correct that at test pit F
18 in excess of 99 percent of the material excavated at
19 that test pit was clean soil?

20 A. Yes.

21 Q. Okay. And the only other items you
22 found at test pit F were wood fragments, correct?

23 A. Correct.

24 Q. At test pit H, isn't it correct that 99

1 percent of the material excavated at test pit H was
2 clean soil?

3 A. Yes.

4 Q. And the only other items you located or
5 identified at test pit H were wood fragments?

6 A. Yes.

7 Q. In excess of 99 percent of the material
8 excavated at test pit I was clean soil, correct?

9 A. Yes.

10 Q. And test pit I was at least 15 feet
11 deep, correct?

12 A. I didn't mark down the approximate
13 depth. It's at least greater than five feet because
14 I noted there was asphalt and concrete fragments in
15 the upper five feet. I didn't make an effort to
16 determine depths on the test pits.

17 Q. Do you recall having your deposition in
18 this case?

19 A. Not regarding this particular test pit,
20 no.

21 Q. Do you recall having a deposition in
22 this case?

23 A. Yes.

24 Q. And do you recall being asked the

1 following questions and giving the following answers
2 during your deposition, Page 169, Line 6, question,
3 let me refer you to test pit I, and I will also show
4 you deposition Exhibit No. 31 which is a photocopy
5 of three photographs from test pit I. And first of
6 all, can you tell me how deep that test pit was
7 dug?

8 Answer, based on photograph B, I'm going to
9 say it is at least 15 feet deep.

10 Do you recall being asked that question and
11 giving that answer during your deposition?

12 A. I don't recall it, but it sounds
13 accurate.

14 Q. Do you have any reason to believe you
15 didn't give that answer?

16 A. No.

17 Q. Okay. Regardless of whether you were
18 asked that question and answered that during your
19 deposition that it sounds accurate, test pit I was
20 at least 15 feet deep, correct --

21 A. Yes.

22 Q. -- as you sit here today?

23 Referring you back to test pit H, that test
24 pit was 20 feet deep, correct?

1 test pit S. But I just want to clarify, test pit S
2 was one of the test pits where there was nothing but
3 clean soil found, correct?

4 A. Correct.

5 Q. Okay. By the way, there were a couple
6 test pits where you did not find fill, correct?

7 A. Yes.

8 Q. And those were test pits EE; is that
9 correct?

10 A. Yes.

11 Q. And you did not find fill material at
12 test pit FF, correct?

13 A. Right.

14 Q. You did not find fill material at test
15 pit GG, correct?

16 A. Correct.

17 Q. You did not find fill material at test
18 pit HH, correct?

19 A. Correct.

20 Q. And you did find fill material at test
21 pit II, correct?

22 A. Correct.

23 Q. In excess of 99 percent of the material
24 excavated at test pit W was clean soil, correct?

1 A. Correct.

2 Q. In excess of 99 percent of the material
3 excavated at test pit X was clean soil, correct?

4 A. Correct.

5 Q. In excess of 95 percent of the material
6 excavated at test pit Z was clean soil, correct?

7 A. Correct.

8 Q. In excess of 99 percent of the material
9 excavated at test pit AA was clean soil, correct?

10 A. Correct.

11 Q. Text pit AA was 18 feet deep, correct?

12 MR. TUCKER: Michael, which one?

13 MR. MAKARSKI: AA.

14 MR. STICK: AA.

15 MR. TUCKER: Thank you.

16 BY THE WITNESS:

17 A. Approximately.

18 BY MR. STICK:

19 Q. In excess of 99 percent of the material
20 excavated at test pit BB was clean soil, correct?

21 A. Correct.

22 Q. In excess of 99 percent of the material
23 excavated at test pit CC was clean soil, correct?

24 A. Correct.

1 Q. Isn't it correct that you cannot
2 dispute that 100 percent of the soil at test pit U
3 was -- 100 percent of the excavation at test pit U
4 was clean soil?

5 A. No, not at test pit U. I believe I
6 said that was 100 percent either fill or crushed
7 stone which would not be considered -- I would not
8 consider soil.

9 Q. Okay. So there we're having a debate
10 over whether crushed stone constitutes soil
11 material, correct?

12 A. Correct.

13 Q. You would agree with me that 100
14 percent of the material excavated at test put U
15 constituted either stone or soil, correct?

16 A. No. I noted concrete, asphalt, and
17 clay tile fragments in the fill materials at test
18 pit U.

19 Q. Let me refer you to your field notes
20 for test put U.

21 A. Okay. And I'll refer you to --

22 MR. STICK: Your Honor, could I approach and
23 have this marked as the next exhibit which I believe
24 is Respondents' 14.

1 THE HEARING OFFICER: Fourteen. Okay.
2 (Respondents' Exhibit No. 14
3 marked for identification,
4 9/25/97.)

5 BY MR. STICK:

6 Q. Mr. Heuer, let me show you what has
7 been marked Respondents' Exhibit 14 for
8 identification purposes.

9 Do you recognize that as a photograph of
10 test pit U?

11 A. Yes.

12 Q. Okay. Do you see in the background a
13 pile of excavated material?

14 A. Yes.

15 Q. And do you see in the foreground
16 various stones?

17 A. Yes.

18 Q. Okay. Do you see any concrete in the
19 fill material that was excavated?

20 A. There's a large chunk of something at
21 the base of that pile slightly to the right which is
22 probably a chunk of concrete, but at this scale,
23 that's difficult to determine.

24 Q. Referring to your field notes for test

1 pit U, are you 100 percent convinced that -- well,
2 strike that.

3 You're not 100 percent convinced that the
4 concrete and asphalt that you noted were found in
5 the test pit as opposed to around the surface
6 outside the test pit, correct?

7 A. Correct.

8 Q. Okay. So you cannot dispute the fact
9 that 100 percent of the material excavated from test
10 pit U constituted clean soil, correct?

11 A. My only disagreement with that would be
12 the description of clean soil.

13 Q. Let me rephrase that.

14 You cannot dispute that 100 percent of the
15 material excavated from test pit U constituted soil?

16 A. I wouldn't describe crushed stone as
17 soil.

18 Q. Are you positive -- you can't be
19 positive from looking at that picture and from
20 reviewing your field notes, however, that crushed
21 stone was actually found in that test pit, correct?

22 A. Not based on the field notes, no.

23 Q. And not based on the photographs,
24 correct?

1 A. Correct.

2 Q. Okay. So would you agree with me that
3 you cannot contest that 100 percent of the material
4 excavated at test pit U constituted soil?

5 A. Correct.

6 Q. Thank you.

7 Let me refer you to your field notes again
8 for test pit U. Do you see any notation there for
9 petroleum solvent in the fill?

10 A. No. All I have noted is odor and PID
11 equals 19.

12 Q. So you noted an odor, but you did not
13 note in your field notes anything regarding
14 petroleum or solvent in the fill material, correct?

15 A. Correct.

16 Q. Petroleum is different from solvent,
17 correct?

18 A. Correct.

19 Q. Okay. So when you put the slash there
20 in your Complainant's Exhibit No. 22, I believe,
21 your test pit description for test pit U, the intent
22 was to say either/or, correct?

23 A. It was a generic description.

24 Q. But in the description under odor for

1 test pit U, you have entered in Exhibit No. 22,
2 Complainant's Exhibit No. 22, petroleum/solvent.

3 Do you see that?

4 A. Yes.

5 Q. And that's an indication that's
6 either/or, correct?

7 A. Yes.

8 Q. And there is no such thing as petroleum
9 solvent?

10 A. Some petroleum products are used as
11 solvents, naphtha, for instance.

12 Q. But that's not what you're referring to
13 here?

14 A. No, I couldn't --

15 Q. Well, that's a yes or no answer.

16 A. No.

17 Q. Now, when you were in the field, you
18 could not identify that as a petroleum odor,
19 correct?

20 A. I may not have noted it. I don't
21 recall whether I noted it in the field or not.

22 Q. Well, you did not note it in the field
23 as a petroleum odor, correct?

24 A. I did not write it down, no.

1 Q. And that's because you could not in the
2 field determine that it was a petroleum odor,
3 correct?

4 A. Correct.

5 Q. And you cannot in the field determine
6 that it was a solvent odor, correct?

7 A. Correct.

8 Q. Referring you to test pit A, in excess
9 of 75 percent of the material excavated from test
10 pit A was clean soil, correct?

11 A. Correct.

12 Q. Test pit A was approximately eight feet
13 deep, correct?

14 A. Correct.

15 Q. In your description in your field note
16 for test pit A, you did not note any logs, correct?

17 A. I did not write down logs, no.

18 Q. Let me refer you to Complainant's
19 Exhibit No. 23.

20 Do you have that in front of you?

21 A. Mine aren't numbered.

22 MR. TUCKER: Would that be the photos, the first
23 set of photos?

24

1 BY MR. STICK:

2 Q. The photos, the first set of photos,
3 first set of photos.

4 A. Okay.

5 Q. Let me refer you to photograph 23-J.

6 MR. TUCKER: Which I believe is No. 9

7 BY MR. STICK:

8 Q. Okay. That's a photograph from test
9 pit A, correct?

10 A. Correct.

11 Q. And in your direct examination and in
12 your photographic log, the first page of Exhibit 23,
13 you refer to a log having been found at test pit A.

14 Do you recall that?

15 A. Correct.

16 Q. Okay. That log was not noted in your
17 field notes, correct?

18 A. Correct.

19 Q. And, in fact, what you had referred to
20 in your direct examination as a log in that
21 photograph is, in fact, a branch, correct?

22 A. Possibly, yes.

23 Q. Would you agree with me that your field
24 notes are correct in noting a branch as opposed to a

1 log?

2 A. Yes.

3 Q. In excess of 75 percent of the material
4 excavated test pit B constituted clean soil,
5 correct?

6 A. Correct.

7 Q. And in excess of 75 percent of the
8 material excavated from test pit C constituted clean
9 soil, correct?

10 A. Correct.

11 Q. Now, at test pit C, you identified wire
12 and an aluminum can, correct?

13 A. Correct.

14 Q. You saw only one aluminum can at test
15 pit C, correct?

16 A. Correct.

17 Q. And you have no reason to believe that
18 you saw more than one piece of wire at test pit C,
19 correct?

20 A. Correct.

21 Q. Would it be fair to say that the
22 aluminum can and the wire constituted less than one
23 percent of the material excavated at test pit C?

24 A. Yes.

1 Q. In excess of 90 percent of the material
2 excavated from test pit J constituted clean soil,
3 correct?

4 A. Correct.

5 Q. And you saw no more than one metal rod
6 at test pit J, correct?

7 A. Correct.

8 Q. And you saw no more than one piece of
9 metal strapping at test pit J, correct?

10 A. Correct.

11 Q. Test pit J was approximately eight feet
12 deep, correct?

13 A. Correct.

14 Q. Would you agree with me that the one
15 piece of metal rod and the one metal strap
16 constituted less than one percent of the material
17 excavated at test pit J?

18 A. Yes.

19 Q. In excess of 90 percent of the material
20 excavated at the test pit K location was clean soil,
21 correct?

22 A. Correct.

23 Q. And you identified only one C and P
24 piping located at test pit K, correct?

1 A. Correct.

2 Q. Would you agree with me -- strike
3 that.

4 If in excess of 90 percent of the material
5 excavated at test pit K constituted clean soil,
6 would you agree with me that the one piece of metal
7 strapping and the one corrugated metal pipe
8 constituted less than one percent of the material
9 excavated at test pit K?

10 A. Yes.

11 Q. In general, Mr. Heuer, is it correct
12 that unless you identified more than one item in
13 your test pit logs, we can conclude that you only
14 found one item of those listed in each log?

15 A. Yes.

16 Q. In excess of 95 percent of the material
17 excavated from test pit M constituted clean soil,
18 correct?

19 A. Correct.

20 Q. Would you agree with me that the
21 corrugated metal pipe, metal cable, and red plastic
22 coated wire that you identified as having been
23 located at the test pit M location constituted less
24 than one percent of the material excavated at that

1 location?

2 A. Yes.

3 Q. In excess of 90 percent of the material
4 taken out of test pit N constituted clean soil,
5 correct?

6 A. Correct.

7 Q. Would you agree with me -- strike
8 that.

9 Isn't it correct that you found only one
10 piece of metal banding at test pit N?

11 A. Correct.

12 Q. And would you agree with me then that
13 that one piece of metal banding constituted less
14 than one percent of the material excavated at test
15 pit N?

16 A. Correct.

17 Q. In excess of 99 percent of the material
18 excavated at test pit O constituted clean soil,
19 correct?

20 A. Correct.

21 Q. That test pit was 20 feet deep,
22 correct?

23 A. Correct.

24 Q. And in excess of 85 percent of the

1 material excavated from test pit R constituted clean
2 soil, correct?

3 A. Correct.

4 Q. At the test pit R location, isn't it
5 correct that you did not photograph a tire?

6 A. Correct.

7 Q. And you did not photograph the saw
8 blade, correct?

9 A. Correct.

10 Q. In excess of 99 percent of the material
11 excavated at test pit T constituted clean soil,
12 correct?

13 A. Correct.

14 Q. And in excess of 90 percent of the
15 material excavated at test pit V constituted clean
16 soil, correct?

17 A. Correct.

18 Q. At that test pit, you identified only
19 one piece of metal strapping, correct?

20 A. Correct.

21 Q. And only one piece of wire, correct?

22 A. Correct.

23 Q. Would you agree with me that the one
24 piece of metal strapping and the one piece of wire

1 constituted less than one percent of the material
2 identified at the test pit V location?

3 A. Yes.

4 Q. In excess of 90 percent of the material
5 taken from test pit KK constituted clean soil,
6 correct?

7 A. Correct.

8 Q. You identified and observed only one
9 piece of Styrofoam at the test pit KK location,
10 correct?

11 A. Correct.

12 Q. And you identified and observed only
13 one piece of metal strapping at the test pit KK
14 location, correct?

15 A. Correct.

16 Q. You identified only one rubber tube at
17 the test pit KK location, correct?

18 A. Correct.

19 Q. And you identified only one piece of
20 metal cable at the test pit KK location, correct?

21 A. Correct.

22 Q. Would you agree with me that the PVC
23 pipe fragments, the rubber tube, the metal
24 strapping, the metal cable, and the Styrofoam that

1 you have identified at the test pit KK location
2 constituted less than one percent of the material
3 excavated at that location?

4 A. Yes.

5 Q. In excess of 90 percent of the material
6 excavated at the test pit J location constituted
7 clean soil, correct?

8 A. Yes.

9 Q. And in excess of 80 percent of the
10 material excavated at the test pit L location
11 constituted clean soil, correct?

12 A. Correct.

13 Q. Mr. Heuer, does Respondents' Exhibit 13
14 truly and accurately reflect your testimony and your
15 recollection regarding the percentages of the soil
16 material excavated at each of these respective test
17 pits?

18 A. Yes. Again, they're approximate but
19 yes.

20 MR. STICK: Your Honor, I move for admission of
21 Respondents' Exhibit No. 13 into evidence.

22 THE HEARING OFFICER: Any objection?

23 MR. TUCKER: No objection.

24 THE HEARING OFFICER: May I see 13?

1 MR. TUCKER: I should note, Mr. Hearing Officer,
2 the page references to the deposition are made on
3 that document, and I'm taking that counsel's --
4 again, as he did with us -- references are
5 accurate.

6 MR. STICK: Yeah. And if you have an objection
7 to those, we can strike them.

8 MR. MAKARSKI: That's all right.

9 MR. KNIPPEN: We can strike those from the
10 exhibit. That's not a problem.

11 MR. MAKARSKI: It doesn't affect us one way or
12 the other.

13 THE HEARING OFFICER: Mr. Heuer, the percentages
14 that you've testified to and that are listed on this
15 document, you arrived at those at your deposition?

16 THE WITNESS: Yes.

17 MR. HEARING OFFICER: And they're your estimates
18 of the percentages of the various materials?

19 THE WITNESS: At my deposition, I stated that it
20 was very difficult to do with any degree of
21 accuracy, but because I was pressed into giving an
22 approximation, I did so.

23 THE HEARING OFFICER: All right. Respondents'
24 Exhibit 13 is admitted.

1 MR. STICK: Thank you, your Honor.

2 BY MR. STICK:

3 Q. Mr. Heuer, while we're on that point,
4 at your deposition when you were making those
5 estimates, you were given all the photographs
6 regarding each of those test pits, and you had the
7 benefit of your test pit field notes, correct?

8 A. Correct.

9 Q. And you were asked to state a safe
10 approximation --

11 A. Correct.

12 Q. -- on the percentage of soil?

13 And in each of those instances, you stated
14 a percentage that you felt very comfortable with,
15 correct?

16 A. Correct.

17 Q. Okay. Mr. Heuer, during your
18 investigation of sites other than the Stearns Road
19 site, what is your normal practice as far as boring
20 shavings or the spoiled material from drilling a
21 borehole?

22 How is that dealt with during your
23 investigation?

24 A. How do we manage the cuttings that come

1 out of the borehole?

2 Q. Yes.

3 A. It depends on the site. If we suspect
4 that the material may be hazardous, we may put it in
5 drums depending on the type of site.

6 If it's a site that's used, say, a gas
7 station that's paved, leaving soil lying around
8 would be an eyesore. We'd put that material in,
9 say, a 55-gallon drum until we got the analytical
10 results back, and we would deal with the cuttings at
11 that time.

12 Q. And if it's a site that's unpaved, and
13 you are very comfortable even before you get the
14 analytical results back that there is no harm or
15 very little harm that could arise from any potential
16 contamination of a site, you would leave the
17 shavings or cuttings on site, correct?

18 A. Particularly right next to the
19 borehole, yes.

20 Q. But that's only a practice that you
21 utilized when you are comfortable that the
22 analytical results, which you have not yet gotten,
23 are not going to show serious contamination of the
24 site, correct?

1 A. True. In this particular case --

2 Q. Well, that's a yes or no answer.

3 And in this case, in fact --

4 THE HEARING OFFICER: Wait. Answer the initial
5 question first. I didn't hear it.

6 MR. STICK: Sorry.

7 THE WITNESS: I said yes.

8 THE HEARING OFFICER: All right. Thank you.

9 Now continue.

10 MR. STICK: Thank you, your Honor.

11 BY MR. STICK:

12 Q. And in this case, the boring cuttings
13 were, in fact, left on the site, correct, the
14 Stearns Road site?

15 A. Yes.

16 Q. And that is because you did not
17 anticipate any potential threat to the environment
18 or human health and safety associated with leaving
19 those cuttings on site and exposed, correct?

20 MR. MAKARSKI: I object to that. It's not
21 consistent with what the earlier testimony was, and
22 I think it's his conclusion.

23 THE HEARING OFFICER: So what's your objection?

24 MR. MAKARSKI: I think it's Mr. Stick's

1 conclusion. It's a series of speculations.

2 MR. STICK: Your Honor, my question is, does he
3 agree with that conclusion.

4 THE HEARING OFFICER: All right. Objection
5 overruled.

6 Mr. Heuer?

7 BY THE WITNESS:

8 A. The decision to leave the cuttings next
9 to the borehole was made prior to the investigation
10 being started in a meeting with myself and the
11 people who were acting as project managers on the
12 project.

13 BY MR. STICK:

14 Q. Okay. But the decision to leave those
15 shavings on site was based upon your conclusion and
16 the conclusion of others at Emcon that those
17 materials would not pose any threat to the
18 environment or to human health and safety, correct?

19 MR. TUCKER: Objection as to whether or not he
20 would know what other people at Emcon thought.

21 BY MR. STICK:

22 Q. Let me rephrase the question.

23 Your decision in the field to leave those
24 shavings on site was based upon your conclusion that

1 those shavings did not pose a threat to human health
2 or the environment, correct?

3 MR. MAKARSKI: My objection is that his answer
4 was he decided before he went to the field, and this
5 question assumes he decided it at the field.

6 THE HEARING OFFICER: All right.

7 MR. STICK: I think he had to have made a
8 decision even if he was instructed to do something.
9 He made an independent decision in the field, and
10 I'm asking him for the basis of that decision.

11 THE HEARING OFFICER: All right. Overruled.

12 Go ahead and answer the question.

13 BY THE WITNESS:

14 A. I did not make a decision to have the
15 cuttings taken off site while I was out there. I
16 did not change that because I saw no reason to do
17 that.

18 BY MR. STICK:

19 Q. And the reason you saw no reason to was
20 because you did not believe those shavings posed a
21 threat to human health and the environment, correct?

22 A. Correct.

23 Q. And if you had feared or suspected that
24 those shavings might pose a threat to human health

1 and the environment, you would have played it safe
2 and you would have transported them off site to a
3 secure location, correct?

4 A. I likely would not have transported
5 them off site. It's likely I would have made a
6 phone call back to that office to discuss the
7 situation and take it from there.

8 Q. And you would have placed them in a
9 drum perhaps and left them on site, correct?

10 A. Or perhaps transported them to a
11 central location and placed them on plastic,
12 something like that, possibly.

13 Q. Now, the material excavated from your
14 test pits was all backfill in the site, correct?

15 A. Correct.

16 Q. None of the material excavated during
17 your test pit investigation was transported off
18 site, correct?

19 A. Correct.

20 Q. None of that material was segregated in
21 any manner on site, correct?

22 A. Correct.

23 Q. All of that material was backfilled
24 back into the pits from where it had come, correct?

1 A. Correct.

2 Q. And all of that material was re-buried
3 at the site by Emcon, correct?

4 A. Correct.

5 Q. Now, the test pit excavation material,
6 isn't it correct that you would not have backfilled
7 that material if you had any concern whatsoever that
8 that material posed a threat to human health and the
9 environment; isn't that correct?

10 A. I have to qualify when you say by an
11 "immediate threat."

12 Q. Well -- okay.

13 If you had any concerns that that material
14 caused an immediate threat to the environment, you
15 certainly would not have backfilled it, correct?

16 A. Once again, that was a decision made
17 prior to us going out in the field. But if I had
18 seen something that I thought would cause an
19 immediate threat, perhaps I would have made a phone
20 call to the office and decided on a different course
21 of action.

22 Q. Mr. Heuer, if you had any concern
23 whatsoever that that material caused or had the
24 potential to cause an immediate threat to the

1 environment or to human health, isn't it true that
2 you would not have backfilled that material to the
3 site?

4 A. Yes.

5 Q. Okay. Now, isn't it also true that if
6 you had any concern whatsoever that that material
7 caused -- had the potential to cause any threat to
8 human health and the environment, you would not have
9 backfilled that material at the site, correct?

10 A. Correct.

11 Q. And that's regardless of whether you
12 perceived it to be an immediate threat or a
13 potential threat in the future, correct?

14 A. Correct.

15 MR. STICK: Your Honor, may I have 15 seconds.
16 I need to try to find another portion of his field
17 notes?

18 (Brief pause.)

19 (Respondents' Exhibit No. 15
20 marked for identification,
21 9/25/97.)

22 MR. STICK: Your Honor, may I approach the
23 bench, please?

24 MR. HEARING OFFICER: Yes.

1 MR. STICK: I've marked Respondents' Exhibit 15,
2 which I intend to present to the witness. I
3 apologize. That's another document I only have
4 one copy of.

5 MR. TUCKER: Mr. Stick, what's that number
6 again?

7 MR. MAKARSKI: Fifteen.

8 MR. STICK: Fifteen.

9 MR. TUCKER: Thanks.

10 MR. STICK: My I approach the witness?

11 THE HEARING OFFICER: Yeah.

12 BY MR. STICK:

13 Q. Mr. Heuer, let me present you with
14 Respondents' Exhibit 15 for identification
15 purposes.

16 Do you recognize that document?

17 A. Yes.

18 Q. Are those your handwritten field notes
19 from your --

20 A. With the exception of --

21 THE HEARING OFFICER: Wait. Wait. Don't talk
22 over each other.

23 Are those your handwritten field notes?

24

1 BY THE WITNESS:

2 A. With the exception of the first two
3 pages, yes.

4 BY MR. STICK:

5 Q. Okay. The first two pages are pages
6 that were prepared by Mr. Vincent, correct?

7 A. Correct.

8 MR. STICK: Your Honor, I inadvertently gave him
9 two pages that were not his field notes. I can
10 either rip those off and present a new exhibit or
11 deal with it on the record.

12 MR. MAKARSKI: Well, it's on the record that
13 those two pages don't apply. It's all right with
14 us.

15 THE HEARING OFFICER: All right.

16 BY MR. STICK:

17 Q. Mr. Heuer, let me refer you to your
18 field notes for March 23rd, 1995.

19 A. Okay.

20 Q. Now, on the morning of March 23rd, you
21 performed the water sampling at the B-6 location,
22 correct?

23 A. Correct.

24 Q. Your field notes indicate that at

1 7 o'clock on that morning you and your field crew
2 continued decontamination activities, correct?

3 A. Correct.

4 Q. And isn't it correct that on that
5 morning of March 23rd, you and the field crew were
6 decontaminating the augers and rods and hydropunches
7 that you had -- well, strike that.

8 Isn't it true that on March 23rd, 1995,
9 you and your crew were continuing to decontaminate
10 certain equipment that you had started
11 decontaminating the afternoon before?

12 A. Correct.

13 Q. And you don't know whether the
14 hydropunch was steam cleaned on March 22nd in the
15 afternoon or on March 23rd in the morning, correct?

16 A. Correct.

17 Q. And if, in fact, the hydropunch had
18 been cleaned on March 22nd, it was then stored on
19 the site overnight, correct?

20 A. Correct.

21 Q. And you don't know where it would have
22 been stored, correct? Strike that.

23 You don't know whether the hydropunch if it
24 had been decontaminated the night before was stored

1 in the vehicle racks on the cleaning pad at the
2 central location or on top of the pile of augers,
3 correct?

4 A. Correct.

5 Q. And you would agree with me that it
6 is conceivable that the equipment that was
7 decontaminated on March 22nd in the afternoon and
8 stored on the site overnight picked up contamination
9 over the evening?

10 A. Correct.

11 Q. Let me refer you to your field notes
12 from March 24th, and your water sampling activities
13 at location B-12.

14 A. Okay.

15 Q. Preliminarily, you don't know for sure
16 whether the water you encountered at location B-12
17 constituted ground water or water that was perched
18 in the fill material, correct?

19 A. Correct.

20 Q. And that's partly because the sand
21 parting that you encountered at location B-12 was
22 less than one inch thick, correct?

23 A. Correct.

24 Q. In other words, the water bearing unit

1 at location B-12 was less than an inch thick?

2 A. Correct.

3 Q. And, in fact, you're not sure with any
4 degree of scientific certainty that when you took
5 your water sample at B-12 you even hit that seam of
6 water, correct?

7 A. I believe it's noted on the boring
8 log. I'm not sure I understand your question.

9 Q. Let me ask you another question.
10 Could you define perch water?

11 A. Perched is typically defined as water
12 in a somewhat permeable material above a relatively
13 unpermeable material.

14 Q. Okay. And perched water does not
15 necessarily have to be ground water, correct?

16 A. Correct.

17 Q. In this instance, you don't know
18 whether the water encountered at B-12 was ground
19 water or perched water that was not interconnected
20 with the ground water table, correct?

21 A. Correct.

22 Q. Now, you took your VOC samples from
23 your original B-12 water sample on the afternoon of
24 March 24th, correct?

1 A. Correct.

2 Q. And then you attempted to take another
3 water sample in order to sample PNAs, correct?

4 A. Correct.

5 Q. On the afternoon of March 24th,
6 correct?

7 A. Yes.

8 Q. And you were unable to obtain enough
9 water at the B-12 location to allow you to sample
10 for the PNAs, correct?

11 A. Correct.

12 Q. So you left the hydropunch and the
13 auger in the ground overnight, correct?

14 A. Correct. Actually, it was several
15 days. I believe that was a Friday.

16 Q. March 24th was a Friday, correct?

17 A. Correct.

18 Q. And, in fact, you left it in the ground
19 until March 28th?

20 A. Correct.

21 Q. And in the intervening period, there
22 was some rainfall, correct?

23 A. Yes.

24 Q. And on the morning of March 28th, it

1 was raining, correct?

2 A. Yes.

3 Q. And you and your crew went to the
4 Stearns Road site.

5 Do you recall that?

6 A. Yes.

7 Q. Now because it was raining, you allowed
8 your crew to leave, correct?

9 A. Correct.

10 Q. And you by yourself then took a sample
11 at the B-12 location which you intended to have
12 analyzed for PNAs, correct?

13 A. Correct.

14 Q. And then shortly thereafter, within the
15 course of an hour, you took a duplicate sample at
16 the B-12 location of the water which you intended to
17 have sampled for PNAs, correct?

18 A. Correct.

19 Q. Let me just clarify.

20 The hydropunch -- when you took your B-12
21 PNA sample and duplicate sample, the hydropunch had
22 been in the ground for over three and a half days,
23 correct?

24 A. Correct.

1 Q. Now, you did not remove the hydropunch
2 from the auger between your B-12 original sample on
3 March 28th and your B-12 duplicate sample less than
4 an hour later, correct?

5 A. Correct.

6 Q. And, therefore, you did not steam clean
7 the hydropunch, correct?

8 A. Correct.

9 Q. But you also did not steam clean the
10 baler, correct?

11 A. Correct.

12 Q. And it was your standard practice to
13 steam clean the baler between each sampling episode,
14 correct?

15 A. Correct.

16 Q. And the reason on March 28th that you
17 did not steam clean the baler between your original
18 B-12 sample and the duplicate B-12 sample was
19 because the steam cleaning equipment was not at the
20 site, correct?

21 A. Correct.

22 Q. And the reason the steam cleaning
23 equipment was not at the site was because you had
24 allowed your crew to leave for the day, correct?

1 A. Correct.

2 Q. It was also your standard practice at
3 the Stearns Road site and in other investigations to
4 change your gloves between each sampling event,
5 correct?

6 A. Correct.

7 Q. And on this particular occasion on
8 March 28th, it is very likely that you did not
9 change your gloves between the original B-12 sample
10 and the duplicate B-12 sample, correct?

11 A. Correct.

12 Q. Now, your original B-12 water sample
13 results showed nondetects for all PNAs, correct?

14 A. Correct.

15 Q. In other words, in your original B-12
16 sample there were no PNAs detected at the B-12
17 location?

18 A. Correct.

19 Q. Less than an hour later, the B-12
20 duplicate reported to show PNAs, correct?

21 A. Correct.

22 Q. Now, do you recall in your deposition
23 being asked how you could explain that?

24 A. Yes.

1 Q. And do you recall that I asked you how
2 you could explain that?

3 A. Yes.

4 Q. And do you recall that your answer to
5 me when that question was initially posed to you was
6 that there were two potential explanations.

7 Do you recall that testimony?

8 A. Generally.

9 Q. Do you recall that your first
10 explanation was cross contamination?

11 THE HEARING OFFICER: Just a second.

12 MR. MAKARSKI: If you're going to refer to
13 that -- in the first place, I don't know why -- it
14 doesn't seem that he's impeaching him.

15 THE HEARING OFFICER: Right. I don't know if
16 you're impeaching him. If you are, this is improper
17 impeachment.

18 MR. STICK: Okay. Let me withdraw that
19 question.

20 BY MR. STICK:

21 Q. Mr. Heuer, the best explanation for why
22 you had divergent results at the B-12 location for
23 PNAs is the potential for cross contamination,
24 correct?

1 A. No.

2 Q. Would you agree with me -- strike
3 that.

4 Would you agree with me that that is the
5 first explanation you would give?

6 MR. MAKARSKI: Objection.

7 THE HEARING OFFICER: Right. I think that you
8 need to ask him some questions for evidentiary
9 purposes here as opposed to referring back to what
10 he might have said several months ago.

11 BY MR. STICK:

12 Q. Mr. Heuer, you would agree with me that
13 cross contamination is a potential explanation for
14 the divergent results you obtained at B-12 and B-12
15 duplicate locations for PNAs, correct?

16 A. Correct.

17 Q. Okay. And would you also agree with me
18 that lab error is a potential explanation, correct?

19 A. Correct.

20 Q. Okay. Now, would you agree with me
21 that those are the two best explanations?

22 A. No.

23 Q. Okay. Do you recall in your deposition
24 being asked for an explanation?

1 A. Yes.

2 Q. Okay. I'm going to refer you to
3 Page 229.

4 Would you agree we this, Mr. Heuer, that
5 the explanation you gave in your direct examination
6 of a rechargeable location is not a viable
7 possibility?

8 MR. MAKARSKI: Objection.

9 THE HEARING OFFICER: Overruled.

10 BY THE WITNESS:

11 A. Could you repeat that? I'm not sure I
12 understand.

13 MR. STICK: Would you read that question back?

14 (Record read.)

15 BY MR. STICK:

16 Q. Let me rephrase the question.

17 Would you agree with me that the two
18 possibilities that you have explained to me just
19 now, cross contamination and lab error, are, in
20 fact, the only two possibilities that you can think
21 of --

22 A. No.

23 Q. -- viable possibilities for potential
24 explanation for the B-12 test results?

1 A. No.

2 Q. Do you recall being asked the following
3 questions and giving the following answers in your
4 deposition, Page 229, Line 2?

5 Question, if you are resampling from the
6 same ground water and on the first sample you get no
7 detection, you would assume the second sample you're
8 going to get no detection, correct?

9 Answer, correct.

10 The only way to explain that is some form
11 of contamination to the second sample, correct?

12 Answer, it is possible.

13 Question, now that is the only way to
14 explain it; is that not correct?

15 Answer, that's a possibility. It could
16 have been a problem with the laboratory in analyzing
17 either one of those samples, but, yes, that's a good
18 possibility.

19 Do you recall being asked those questions
20 and giving those answers in your deposition?

21 A. If it's in there, I must have said it,
22 yeah.

23 Q. Do you recall being asked that question
24 and giving --

1 MR. MAKARSKI: Your Honor, I object.

2 THE HEARING OFFICER: Wait, wait. Stop. Don't
3 talk over each other, please.

4 The question has been asked.

5 Do you recall those?

6 BY THE WITNESS:

7 A. I don't recall the exact questions. In
8 general, I recall that line of questioning, yes.

9 THE HEARING OFFICER: All right. Now, your
10 objection?

11 MR. MAKARSKI: I don't think it's impeaching
12 him. He said it's a possibility.

13 MR. STICK: Your Honor, the impeachment --

14 THE HEARING OFFICER: That will be an inference
15 to be drawn.

16 MR. STICK: So his objection is overruled?

17 THE HEARING OFFICER: I'm not sure there was a
18 true objection there. To the extent that it needs
19 to be ruled, it's overruled.

20 The board will draw its own conclusions.

21 BY MR. STICK:

22 Q. Mr. Heuer, at the time I posed that
23 question to you in your deposition, you did not give
24 me as a possibility the explanation you gave during

1 your direct examination, correct?

2 MR. TUCKER: Objection. As to the possibility
3 of what?

4 MR. STICK: The possibility of a recharge of
5 that location --

6 MR. TUCKER: Of that --

7 MR. STICK: -- causing divergent test results.

8 MR. MAKARSKI: My objection --

9 THE HEARING OFFICER: Wait. Please, one or the
10 other of you object. I would prefer that.

11 MR. MAKARSKI: That question wasn't asked, what
12 are all the possibilities or was recharge a
13 possibility. He asked him specifically is this a
14 possibility. He said yes. He didn't limit himself
15 to just those.

16 THE HEARING OFFICER: All right. That's also
17 noted for the record. The objection is overruled.

18 Answer the question, please.

19 BY THE WITNESS:

20 A. Could you repeat the question?

21 THE HEARING OFFICER: Read the question back.

22 MR. STICK: Actually, I'll -- I'll repeat it.
23 The question may have been a little horrible.

24 THE HEARING OFFICER: All right.

1 BY MR. STICK:

2 Q. Mr. Heuer, at that time I asked you
3 the question in your deposition to explain to me
4 potential possibilities for the divergent results
5 at the B-12 location, you did not give me as a
6 possibility the explanation that you gave Mr. Tucker
7 during your direct examination today, correct?

8 MR. MAKARSKI: Objection. That was not the
9 question that was asked in the deposition.

10 THE HEARING OFFICER: I believe this is
11 something that you'll have to go back out on
12 redirect. I don't think it's an objectionable
13 question.

14 Answer, Mr. Heuer.

15 BY THE WITNESS:

16 A. At that time, I apparently did not
17 offer another alternative.

18 BY MR. STICK:

19 Q. Thank you.

20 Now, Mr. Heuer, referring to your field
21 notes for March 28th, 1995, prior to your sampling
22 at the B-12 location for PNAs, when was the most
23 recent steam cleaning of the hydropunch logged?

24 A. The most previous decontamination I

1 have is at 9:40 a.m. on the 24th.

2 Q. With the hydropunch?

3 A. I don't discuss the hydropunch
4 specifically. That's the last decontamination
5 procedure that I noted. It was following B-10.

6 Q. When is the most recent time that you
7 noted in your field notes that the hydropunch had
8 been decontaminated prior to your sampling at B-12?

9 A. That I specifically noted the
10 hydropunch steam or that I wrote it down?

11 Q. Yes.

12 A. Okay. 1:25 p.m. on the 23rd.

13 Q. And you noted the hydropunch was
14 decontaminated on the 23rd after which sampling
15 episode?

16 A. B-9.

17 Q. Okay. Did you note in your field notes
18 that the hydropunch was decontaminated after the
19 B-12 water samples or B-10 water samples?

20 A. Not specifically noted, no.

21 Q. Did you note in your field notes that
22 the hydropunch was decontaminated after the B-11
23 water samples?

24 A. We did not collect water samples from

1 B-11.

2 Q. Did you place the hydropunch in the
3 auger and put it in ground at B-11?

4 A. No.

5 Q. Now, the pond sediment samples that you
6 collected at the Stearns Road site were collected by
7 way of using the bucket on the backhoe, correct?

8 A. Correct.

9 Q. And you didn't take any particular
10 measures to ensure that the hydraulic fluid and
11 grease from the backhoe did not contaminate pond
12 sediment samples, correct?

13 A. Nothing specific, no.

14 Q. And you don't specifically recall
15 whether you extracted the pond sediment samples
16 directly from the bucket or whether the bucket was
17 dropped on the ground and you extracted the sample
18 off the ground, correct?

19 A. I don't recall specifically. That's
20 correct.

21 Q. And you did not arrange for the
22 cleaning of the bucket between pond sediment
23 sampling episodes, correct?

24 A. Correct.

1 Q. Let me refer to you Complainant's
2 Exhibit No. 23. That's the first group of
3 photographs.

4 A. Okay.

5 Q. Mr. Heuer, let me refer you to
6 photograph 23-B, which is the first photograph.

7 A. Yes.

8 Q. You would agree with me that if that
9 piece of metal rod was for some reason buried in a
10 semitruck load of fill material it would be very,
11 very difficult for anyone to notice that rod once
12 the semi had dumped its load, correct?

13 A. If it was buried inside a pile of --
14 yes.

15 Q. It is small enough, wouldn't you agree,
16 that it would be very difficult to identify and
17 segregate that piece of metal out of a semitruck
18 load of fill material?

19 A. Correct.

20 Q. And would you agree with me that the
21 pipe depicted in photograph 23-C would be very
22 difficult to identify and segregate out of a
23 semitruck load of fill material if it was buried in
24 that load, correct?

1 A. Correct.

2 Q. Would you agree with me that that is
3 true with respect to all the items identified in
4 Complainant's Exhibit 23?

5 A. Correct.

6 Q. You would agree with me that if any of
7 those items were buried within a semitruck load of
8 fill, it would be very, very difficult to identify
9 them and segregate them out of the material once the
10 truck had emptied its load, correct?

11 A. Correct. I'd like to clarify by
12 saying I've never attempted the procedure you're
13 discussing. So I really have no idea how that would
14 be done.

15 Q. You've never attempted to identify and
16 segregate out material in a truckload?

17 A. Correct.

18 Q. Okay. You've never attempted to do
19 that with material this small, correct?

20 A. I've never attempted to segregate
21 material out of a truckload of anything.

22 Q. Okay. Let me refer you to the
23 photographs found in Complainant's Exhibit No. 24.

24 Would you agree with me that it would be

1 very difficult to identify any of the items depicted
2 in any of the photographs in Complainant's Exhibit
3 No. 24 in a semitruck load of fill material?

4 A. Yes.

5 Q. All of those materials, the items
6 depicted in Exhibit 24, are relatively small items,
7 correct?

8 A. Correct.

9 Q. And it would be very difficult even if
10 you identified them to segregate them out of the
11 fill material of a semitruck load of fill, correct?

12 MR. TUCKER: Objection, your Honor, to the
13 extent that he has knowledge or experience of
14 segregating materials; otherwise, he's speculating.

15 THE HEARING OFFICER: Well, I believe --

16 MR. TUCKER: It calls for speculation.

17 THE HEARING OFFICER: I believe the witness has
18 already said that he has no experience with
19 segregating from trucks, so. . .

20 MR. STICK: Well, he does have experience with
21 these items because he photographed them, and I
22 think he's competent to answer that question.

23 THE HEARING OFFICER: I think the objection is
24 sustained.

1 BY THE WITNESS:

2 A. Okay.

3 THE HEARING OFFICER: No.

4 MR. TUCKER: You don't have to answer.

5 BY MR. STICK:

6 Q. Mr. Heuer, the bucket size on the
7 backhoe used for the Stearns Road investigation was
8 approximately three feet wide by five feet long by
9 two and a half feet deep, correct?

10 A. That would be a guess.

11 Q. Is that a good approximation?

12 A. Yes.

13 Q. Okay. And the maximum reach in the
14 backhoe was 20 feet, correct?

15 A. Correct.

16 Q. Mr. Heuer, were you a geologist at the
17 time you conducted the Stearns Road site
18 investigation for Emcon?

19 A. I believe that was my title at the
20 time, yes.

21 Q. Mr. Heuer, did you remove the engine
22 block off site from the Stearns Road location?

23 A. I did not.

24 Q. Did you leave it on the site?

1 A. I never touched it.

2 Q. Where is it on the Stearns Road site
3 where you say you saw that engine block?

4 A. I noted in the report that it was near
5 test pit S.

6 Q. You don't have any understanding of how
7 that engine block came to be located there, correct?

8 A. Correct.

9 Q. Okay. And you don't know when that
10 engine block came to be located at the Stearns Road
11 site, correct?

12 A. Correct.

13 Q. Do you know whether that engine block
14 is still at the Stearns Road site?

15 A. I do not know.

16 MR. STICK: Your Honor, I'm going to have a few
17 photographs I'd like to mark and show to the
18 witness.

19 THE HEARING OFFICER: All right.

20 (Respondents' Exhibit

21 No. 16 - 31 marked

22 for identification,

23 9/25/97.)

24 MR. STICK: If I may approach the bench with

1 those.

2 THE HEARING OFFICER: Okay.

3 MR. TUCKER: Mr. Hearing Officer, I think
4 Mr. Stick, as he previously stated, has only the one
5 set. So I'll look over the witness's shoulder at
6 the same time, if that's all right with you and
7 Mr. Stick.

8 THE HEARING OFFICER: All right.

9 MR. STICK: Yes, that's fine.

10 MR. TUCKER: Thank you.

11 MR. STICK: Your Honor, these are marked
12 Respondents' Exhibits 16 through 31.

13 May I approach the witness, your Honor?

14 THE HEARING OFFICER: Yes.

15 BY MR. STICK:

16 Q. Mr. Heuer, let me show you what's been
17 marked as Respondents' Exhibit No. 16 for
18 identification purposes.

19 Do you recognize that photograph?

20 A. It's a photograph of a test pit. In
21 the back, I have it marked as test pit A.

22 Q. Is that a test pit photograph that you
23 took?

24 A. Yes.

1 Q. During your investigation of the
2 Stearns Road site, correct?

3 A. Correct.

4 Q. And does that photograph fairly and
5 accurately portray the pit of the excavation at test
6 pit A?

7 A. Yes.

8 Q. Let me show you what's been marked as
9 Respondents' Exhibit No. 17.

10 Do you recognize that document?

11 A. Yes. That's a photograph of test
12 pit B.

13 Q. Okay. Does that photograph -- did you
14 take that photograph?

15 A. Yes.

16 Q. And does that photograph fairly and
17 accurately reflect the excavated pit at test pit B
18 at the time of your investigation of the site?

19 A. Yes.

20 Q. Thank you.

21 Let me show you what's been marked as
22 Respondents' Exhibit No. 15 -- I'm sorry, 18.

23 Do you recognize that photograph as a
24 photograph you took at the Stearns Road site?

1 A. Correct.

2 Q. What is that photograph of?

3 A. That's test pit C.

4 Q. Okay. Does that photograph fairly and
5 accurately reflect the excavated pit at test pit C
6 at the Stearns Road site?

7 A. Yes.

8 Q. Let me show you what's been marked as
9 Respondents' Exhibit No. 19.

10 Is that a photograph you took at the
11 Stearns Road site?

12 A. Yes.

13 Q. Could you tell me what that photograph
14 depicts?

15 A. That's test pit D.

16 Q. Does that photograph fairly and
17 accurately reflect the excavated pit at test pit D
18 at the Stearns Road site?

19 A. Yes.

20 Q. Let me show you what's been marked as
21 Respondents' Exhibit No. 20 for identification
22 purposes.

23 Is that a photograph you took at the
24 Stearns Road site?

1 A. Correct.

2 Q. What is that photograph of?

3 A. That's test pit J.

4 Q. Does that photograph accurately and
5 fairly reflect the excavated pit the test pit J at
6 the Stearns Road site that you excavated?

7 A. Yes.

8 Q. Let me show you what's been marked as
9 Respondents' Exhibit No. 21 for identification
10 purposes.

11 Is that a photograph you took at the
12 Stearns Road site during your investigation?

13 A. Yes.

14 Q. And what does that photograph depict?

15 A. Test pit K.

16 Q. Does that photograph accurately and
17 fairly represent the excavated pit at test pit K
18 during your investigation of the site?

19 A. Yes.

20 Q. Let me show you what's been marked as
21 Respondents' Exhibit No. 22 for identification
22 purposes.

23 Is that a photograph you took at the
24 Stearns Road site?

1 A. Correct.

2 Q. What does that photograph depict?

3 A. Test pit L.

4 Q. Does that photograph fairly and
5 accurately reflect the excavated pit at test pit L
6 at the Stearns Road site?

7 A. Correct.

8 Q. Let me show you what's been marked as
9 Respondents' Exhibit No. 23 for identification
10 purposes.

11 Is that a photograph you took at the
12 Stearns Road site?

13 A. Correct.

14 Q. What does that photograph depict?

15 A. Test pit M.

16 Q. Does that photograph fairly and
17 accurately reflect the excavated pit at test pit M
18 during your investigation of the Stearns Road site?

19 A. Yes.

20 Q. Let me show you what's been marked as
21 Respondents' Exhibit No. 24 for identification
22 purposes.

23 Is that a photograph you took at the
24 Stearns Road site?

1 A. Correct.

2 Q. What does that photograph depict?

3 A. Test pit N.

4 Q. Does that photograph fairly and
5 accurately depict the excavated pit at test pit N
6 during your investigation of the Stearns Road site?

7 A. Yes.

8 Q. Let me show you what's been marked as
9 Respondents' Exhibit No. 25 for identification
10 purposes.

11 Is that a photograph you took at the
12 Stearns Road site?

13 A. Yes.

14 Q. What does that photograph depict?

15 A. Test pit O.

16 Q. Does that photograph fairly and
17 accurately depict the excavation at test pit O
18 during your investigation of the site?

19 A. Yes.

20 Q. Let me show you what's been marked as
21 Respondents' Exhibit No. 26 for identification
22 purposes.

23 Is that a photograph you took at the
24 Stearns Road site?

1 A. Yes.

2 Q. What does that photograph depict?

3 A. Test pit R.

4 Q. Does that photograph fairly and
5 accurately reflect the pit excavated at test pit R
6 during your investigation of the Stearns Road site?

7 A. Yes.

8 Q. Let me show you what's been marked as
9 Respondents' Exhibit 27.

10 Do you recognize that photograph?

11 A. Yes.

12 Q. What does that photograph depict?

13 A. It's a piled soil taken from test
14 pit V.

15 Q. Is test pit V one of the test pits
16 excavated in the lake area?

17 A. Yes.

18 Q. Does that photograph fairly and
19 accurately reflect the excavated material from test
20 pit V?

21 A. Yes.

22 Q. Let me show you what's been marked
23 as Respondents' Exhibit 28 for identification
24 purposes.

1 Do you recognize that photograph?

2 A. Yes.

3 Q. Is that a photograph you took of the
4 Stearns Road site?

5 A. Yes.

6 Q. What does that photograph depict?

7 A. That is the backhoe collecting a sample
8 from what I call test pit Y.

9 Q. Does that photograph truly and
10 accurately reflect the backhoe sampling or excavated
11 material at test pit Y?

12 A. Yes.

13 Q. How far is that backhoe -- where is
14 that backhoe located in the photograph?

15 A. It's approximately 50 feet from the
16 edge of the shoreline.

17 Q. And when you say "50 feet from the edge
18 of the shoreline," it is 50 feet into the pond area
19 or lake area, correct?

20 A. Correct.

21 Q. And is that where test pit Y was
22 excavated?

23 A. Yes.

24 Q. Do you see that the tracks on the

1 backhoe are at least partially submerged in the
2 water area?

3 A. Yes.

4 Q. Now, those tracks have greasing points,
5 don't they?

6 A. I suppose so.

7 Q. Well, those tracks on that backhoe are
8 lubricated from time to time, correct?

9 A. That would be a good assumption.

10 Q. Okay. Did you take any steps to ensure
11 that the lubricated grease fittings on the backhoe
12 tracks did not contaminate the water at the Stearns
13 Road site?

14 A. No.

15 Q. Let me show you what's been marked as
16 Respondents' Exhibit No. 29 for identification
17 purposes.

18 Is that a photograph you took at the site?

19 A. Yes.

20 Q. What does that photograph depict?

21 A. I believe we're facing south. I
22 believe I took this photograph from the top of a
23 sand and gravel stockpile looking south across the
24 site.

1 Q. What was your purpose in taking that
2 photograph?

3 A. The general condition of the site when
4 we were out there.

5 Q. Does that photograph accurately and
6 fairly depict the site as it appeared to you during
7 your investigation?

8 A. That portion of the site, yes.

9 Q. Okay. Let me refer you back to Exhibit
10 No. 28.

11 I think you testified earlier that the
12 bucket may also have lubricating points on it,
13 correct?

14 A. Correct.

15 Q. And are there also hydraulic lines on
16 the outside of the bucket of the backhoe?

17 A. At the top of the bucket, at the
18 connection, yes.

19 Q. How close are those hydraulic lines to
20 the water?

21 A. In this photo, my guess is a foot.

22 Q. Okay. Can you be sure that the
23 hydraulic lubrication is not in contact with water?

24 A. No, I can't.

1 Q. Okay. Let me show you what's been
2 marked as Respondents' Exhibit 30 for identification
3 purposes.

4 Is that a photograph you took at the
5 Stearns Road site during your investigation?

6 A. Yes.

7 Q. And what does that photograph depict?

8 A. That's a photograph for approximately
9 the west central portion of the site on top of a
10 soil stockpile looking north.

11 Q. Does that photograph fairly and
12 accurately depict the Stearns Road site as it
13 existed during your investigation?

14 A. Yes.

15 Q. Let me show you what's been marked as
16 Respondents' Exhibit 31 for identification
17 purposes.

18 Is that a photograph you took of the
19 Stearns Road site?

20 A. Yes.

21 Q. What does that photograph depict?

22 A. This is a photograph, I believe,
23 standing on top of a sand and gravel stockpile, the
24 north half of the site viewing east.

1 Q. Does that photograph accurately and
2 fairly reflect that portion of the site as it
3 existed during your investigation?

4 A. Yes.

5 Q. Now, you'll notice there's quite a bit
6 of red soil material in this photograph, isn't
7 there?

8 A. I would call that brown.

9 Q. Brown.

10 Do you see the base of the stockpile?
11 Wouldn't you agree that that material was somewhere
12 between brown and red?

13 A. Okay.

14 Q. Would it surprise you if red soil was
15 found on the Stearns Road site -- strike that.

16 Based upon this photograph, it would not
17 surprise you, would it, if some of the excavations
18 at the Stearns Road site disclosed red soil
19 qualities?

20 A. I believe the material similar to what
21 you see in this photograph I described as brown. I
22 would describe it as brown in my boring logs or test
23 pit summaries.

24 Q. Would it surprise you if the material

1 that had that same color was found at locations on
2 the Stearns Road site?

3 A. Well, this is on the Stearns Road site.

4 Q. Would it surprise you if material had
5 that color were found in test pits on the Stearns
6 Road site?

7 A. No.

8 MR. STICK: Your Honor, I have no further
9 questions.

10 THE HEARING OFFICER: Miss O'Connell?

11 MS. O'CONNELL: No questions, your Honor.

12 THE HEARING OFFICER: Redirect?

13 MR. TUCKER: One moment, please, your Honor.

14 MR. MAKARSKI: Can we have one second?

15 THE HEARING OFFICER: Sure.

16 (Brief pause.)

17 THE HEARING OFFICER: Back on the record.

18 MR. TUCKER: Nothing, Mr. Hearing Officer.

19 THE HEARING OFFICER: Okay. Mr. Heuer, do you
20 have your test pit summary in front of you,
21 Exhibit 22?

22 THE WITNESS: Yes.

23 THE HEARING OFFICER: And then you have your
24 percentage of excavated fill material, Respondents'

1 Exhibit 13, that would be your deposition
2 testimony?

3 THE WITNESS: I don't have that here, no.

4 (Hearing officer tendered
5 documents to the witness.)

6 THE HEARING OFFICER: Just to clarify, on TPU,
7 test pit U, on your summary you say fill soil type,
8 gray crushed stone?

9 THE WITNESS: Yes.

10 THE HEARING OFFICER: And then on your other
11 summary you say 100 percent of soil.

12 Are you saying gray crushed stone is soil?

13 THE WITNESS: No. We had that discussion
14 earlier about what was soil and what wasn't.

15 I don't believe there was anything in there
16 that was formerly a native soil. The crushed stone
17 I referred to I believe was something similar to,
18 say, a road base, something that would be obtained
19 from the quarry where the rock was blasted and
20 crushed. It would be more of a construction
21 material than a soil.

22 THE HEARING OFFICER: Okay. Well, your test pit
23 summary, Complainant's Exhibit 22, on test pit U --

24 THE WITNESS: Yes.

1 THE HEARING OFFICER: -- you list gray crushed
2 stone.

3 Is that what was brought out from that test
4 pit?

5 THE WITNESS: Yes.

6 THE HEARING OFFICER: Now, again looking at
7 Complainant's Exhibit 22, test pit A, when you say
8 fill materials, you list there what you found in
9 that pit brought up by the bucket, correct?

10 THE WITNESS: Yes.

11 THE HEARING OFFICER: Now, that column of
12 information does not correspond exactly with what
13 you wrote down in your field notes; is that
14 correct?

15 THE WITNESS: I believe that it does. I believe
16 the discrepancy was with the summary photo page
17 where I called something a log. I said a log at one
18 spot and a branch at -- it said branch in the fill
19 materials. It said log on the photographic summary.

20 THE HEARING OFFICER: Okay. So is it your --
21 okay.

22 Taking a look at this photo, what did you
23 testify that was (indicating)?

24 THE WITNESS: Plastic.

1 THE HEARING OFFICER: A plastic bucket or just a
2 piece of plastic?

3 THE WITNESS: A piece of plastic sheeting
4 probably.

5 MR. KNIPPEN: Your Honor, what number was that?

6 THE HEARING OFFICER: I was going to tell you.
7 It's Complainant's Exhibit 24-B.

8 MR. KNIPPEN: Thank you.

9 MR. HEARING OFFICER: And then on your boring
10 log, the heading of the paper is Wehran Envirotech.

11 Who is Wehran Envirotech?

12 THE WITNESS: At the time the investigation was
13 performed, the company name was Wehran Envirotech.
14 They have since been purchased by Emcon. We are now
15 Emcon.

16 THE HEARING OFFICER: All right. So the
17 investigation was started as Wehran?

18 THE WITNESS: Correct.

19 THE HEARING OFFICER: And then completed as
20 Emcon?

21 THE WITNESS: I believe we were Wehran the
22 entire time. This was approximately two and a half
23 years ago.

24 THE HEARING OFFICER: Well, these Complainant's

1 Exhibits 20 and 21 show Emcon down at the bottom.

2 THE WITNESS: Okay. I believe what may have
3 happened was that --

4 THE HEARING OFFICER: Just a second.

5 And the lab report is address to Ted
6 Denning, Wehran/Emocon. So I just want you to
7 explain so if there's a discrepancy in that.

8 THE WITNESS: For the purposes of all these
9 exhibits, they're both the same company. We were
10 probably in a transition phase at that time. That's
11 the best I can tell you.

12 THE HEARING OFFICER: Okay. Thank you.

13 MR. TUCKER: Sir, could I ask a question off the
14 record?

15 MR. HEARING OFFICER: Let's go off the record.

16 (Discussion had off
17 the record.)

18 THE HEARING OFFICER: Let's go back on the
19 record.

20 Mr. Stick?

21 MR. STICK: Yes. For the record, your Honor, I
22 would like to move for the introduction into
23 evidence of Respondents' Exhibit Nos. 16 through
24 31.

1 THE HEARING OFFICER: Any objection?

2 MR. TUCKER: No objection.

3 THE HEARING OFFICER: All right. Respondents'

4 Exhibits 16 through 31 are admitted.

5 MR. MAKARSKI: Are we finished with the

6 witness?

7 THE HEARING OFFICER: Yes.

8 Mr. Heuer, you may step down.

9 (Witness excused.)

10 THE HEARING OFFICER: All right. Let's go off

11 the record again.

12 (Discussion had off

13 the record.)

14 MR. HEARING OFFICER: Back on the record.

15 We finished and excused Mr. Heuer. We've

16 had some off-the-record discussions.

17 At this time, you don't have any more

18 witnesses, do you?

19 MR. MAKARSKI: No, sir, we do not.

20 THE HEARING OFFICER: All right. So we will

21 adjourn today. We are scheduled for October 21st,

22 22nd and 23rd back here at the DuPage County

23 Courthouse, and I believe we're in a different

24 room. I think we're in 2016 --

1 MR. MAKARSKI: I think that's correct.

2 THE HEARING OFFICER: -- unless that's changed.
3 And we'll try to start at 9:30 again.

4 MR. STICK: There were a couple of exhibits I
5 wanted to move into evidence, and if we can take
6 care of that now, I'd appreciate it. If not, if you
7 prefer to do it at the next session --

8 THE HEARING OFFICER: Let's do it right now.

9 MR. STICK: I'd like to move for the admission
10 of Exhibit No. 12, Respondents' Exhibit 12, which is
11 the handwritten field boring log -- the handwriting
12 test pit summaries.

13 MR. TUCKER: No objection.

14 MR. STICK: And I would like to move for the
15 admission of Respondents' Exhibit No. 15 with the
16 exception of the first two pages, Mr. Heuer's
17 handwritten field notes.

18 Now, he identified in his examination the
19 first two pages were not his notes and except for
20 the fact that it's already been identified, I
21 don't -- I would not be moving that into evidence.

22 THE HEARING OFFICER: All right.

23 MR. TUCKER: And noting that those first two
24 pages are not being admitted, no objection.

1 MS. O'CONNELL: No objection.

2 THE HEARING OFFICER: All right. Those two
3 exhibits, Respondents' Exhibits 12 and 15, are
4 admitted.

5 MR. STICK: Your Honor, Respondents' Exhibit 11,
6 you said that was from yesterday?

7 THE HEARING OFFICER: Yes. It was the Emcon
8 testing site map.

9 MR. STICK: Okay. And Respondents' Exhibit
10 No. 14 was from today, but in my notes I had
11 forgotten what that was.

12 THE HEARING OFFICER: I had it was a photo of
13 test pit U.

14 MR. STICK: Okay. Thank you, your Honor.

15 MR. MAKARSKI: Now, the administrative law judge
16 will have all the exhibits?

17 THE HEARING OFFICER: Right. I will take -- I
18 will collect them all and take them and bring them
19 back next time.

20 MR. MAKARSKI: I think we already have all of
21 ours up there with you.

22 THE HEARING OFFICER: Okay.

23 MR. MAKARSKI: Now, we don't have -- about
24 getting the copies --

1 THE HEARING OFFICER: Okay. Is there anything
2 else we need on the record at this point?

3 MR. MAKARSKI: Not for us, your Honor.

4 MR. STICK: No, your Honor.

5 MS. O'CONNELL: Nothing.

6 THE HEARING OFFICER: All right. Thank you.

7 This hearing is recessed until
8 October 21st.

9 Thank you.

10 (Whereupon, these were all the
11 proceedings had in the
12 above-entitled matter on
13 September 25, 1997.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, KIM M. HOWELLS, CSR, do hereby state
5 that I am a court reporter doing business in the
6 City of Chicago, County of Cook, and State of
7 Illinois; that I reported by means of machine
8 shorthand the proceedings held in the foregoing
9 cause, and that the foregoing is a true and correct
10 transcript of my shorthand notes so taken as
11 aforesaid.

12

13

14

KIM M. HOWELLS, CSR
Notary Public, Cook County, IL.

15

16

17

SUBSCRIBED AND SWORN TO
18 before me this _____ day
19 of _____, A.D., 1997.

19

20 Notary Public

21

22

23

24