

1997

V-1 Oil Company v. Department of Environmental Quality Division of Environmental Response and Remediation, and the State of Utah: Brief of Petitioner

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

V-1 OIL COMPANY,	:	
Respondent/Petitioner,	:	
v.	:	Case No. 970315-CA
	:	Priority 14
THE DEPARTMENT OF	:	
ENVIRONMENTAL QUALITY,	:	
DIVISION OF ENVIRONMENTAL	:	
RESPONSE AND REMEDIATION, and	:	
THE STATE OF UTAH,	:	
Petitioners/Respondents.	:	

PETITIONER'S BRIEF

Petition For Review of Proceedings and Final Order
Issued By The Utah Solid and Hazardous Waste Control Board
On April 21, 1997

Jeff Utley, Chairman

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**UTAH COURT OF APPEALS
BRIEF**

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STATEMENT OF APPELLATE JURISDICTION

The Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. § 63-46b-16(1) (1988) and Utah Code Ann. § 78-2a-3(2)(a) (1994).

ISSUES PRESENTED **and** **STANDARD OF REVIEW**

The issues presented for consideration by the Court are:

Issue #1: Whether the findings of fact of the hearing panel are supported by substantial record evidence. R. 901, 890, 000024, 000034.¹

Standard of Review for Issue #1: As to issues of fact, the Board's findings must be supported by substantial evidence when viewed in light of the whole record before the court. Utah Code Ann. § 63-46b-16(4)(g)(1988); *King v. Industrial Commission of Utah*, 850 P.2d 1281, 1285 (Utah App. 1993); *Grace Drilling Co. v. Board of Review of the Industrial Commission*, 776 P.2d 63 (Utah App. 1989).

Issue #2: Whether the Board's Order was sufficient on its face under *Adams v. Board of Review of Industrial Commission*, 821 P.2d 1 (Utah App. 1991). R. 901; 000024.

Standard of Review for Issue #2: The findings must be sufficiently detailed to demonstrate that the Board properly arrived at the ultimate factual findings and has properly applied the governing rules of law to those findings. *Adams v. Board of*

¹ All references to the Record will commence with "R." References to Petitioner's Addendum bound separately and submitted herewith, commence with a series of "0's."

Review of Industrial Commission, 821 P.2d 1 (Utah App. 1991); Utah Code Ann. § 63-46b-16(4)(h)(iv).

Issue #3: Whether the Board's findings and ultimate conclusions were arbitrary and capricious. R. 901, 890; 000024, 000034.

Standard of Review for Issue #3: Whether the findings are adequate is a legal determination, reviewed under a correction of error standard, and requires no deference to the Board. *King v. Industrial Commission of Utah*, 850 P.2d 1281, 1285 (Utah App. 1993). The findings must be articulated with sufficient detail, and include enough subsidiary facts to disclose to the reviewing court the steps taken to reach the agency's ultimate conclusion. *Harken Southwest Corp. v. Board of Oil, Gas and Mining*; 920 P.2d 1176 (Utah 1996); *U.S. West Communications, Inc. v. Public Service Commission*, 901 P.2d 270 (Utah 1995). R. 901, 890.

Issue #4: Whether the Utah Underground Storage Tank Act and/or the federal regulations at 40 C.F.R. part 280, affirmatively require an owner/operator of underground storage tanks to abate and take corrective action of off-site impacts prior to a determination of the owner/operators responsibility for the condition? R. 901, 890; 000024, 000034.

Standard of Review for Issue #4: As to issues of general law, the appeals court reviews agency interpretations under a correction of error standard without deference to the agency. Utah Code Ann. § 63-46b-16(4)(d)(1988); *Niederhauser Ornamental & Metal Works Co. v. State*, 858 P.2d 1034 (Utah App. 1993); *King v.*

Industrial Commission of Utah, 850 P.2d 1281, 1285 (Utah App. 1993). As to issues of agency-specific law, the appeals court will determine whether the Legislature explicitly granted discretion to the agency to interpret or apply statutory language at issue and if such a grant exists the court will review the decisions based on an abuse of discretion standard. *King v. Industrial Commission of Utah*, 850 P.2d 1281, 1291 (Utah App. 1993); Utah Code Ann. § 63-46b-16(4)(h)(i).

Issue #5: Whether the Board's conclusion that the Notice of Noncompliance was properly issued was consistent with due process requirements. R. 901; 000024.

Standard of Review for Issue #5: Due process considerations are questions of general law reviewed under the correction of error standard without deference to the agency's determination. *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 28 (Utah App. 1991).

Issue #6: Whether under the residuum rule there was sufficient competent evidence presented at the hearing to support the agency's findings and conclusions of law. R. 901, 890; 000024, 000034.

Standard of Review for Issue #6: Issues regarding the legal sufficiency of evidence is reviewed under a correction of error standard, giving no deference to the agency's decision. *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 28 (Utah App. 1991).

DETERMINATIVE STATUTES AND RULES

The applicable statutes are contained in:

- (1) Utah Code Ann. § 19-6-401, *et seq.*, Utah Underground Storage Tank Act, attached herewith in Appellant's Addendum at 000013-23.
- (2) Utah Administrative Rule 311-202.
- (3) 40 C.F.R. Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST), attached herewith in Appellant's Addendum at 000001-12.

STATEMENT OF THE CASE

A. Nature of the Case.

This appeal seeks appellate review of the Findings of Fact, Conclusions of Law and Order issued by the Utah Solid and Hazardous Waste Control Board on April 21, 1997, following a hearing held before the Board on February 13, 1997, wherein the Board determined that V-1 was the source of free petroleum product entering the sewer system on Whitney Avenue at approximately 1400 South and 350 West and upheld the Executive Secretary's Emergency Order and Notice of Non-compliance finding that V-1 was the responsible party and must take abatement, investigative and corrective action to remedy the off-site contamination as identified on hearing exhibits 15 and 18.

B. Course of Proceedings Below and Disposition at the Agency.

On January 19, 1996, the Kent P. Gray, Executive Secretary (UST) issued an *Emergency Order to Abate and Order to Investigate and Perform Corrective Action In re: V-1 Oil Company Free Product in the Sewer, Facility No. 4001217, Release Site EFTX, pursuant to the Utah Underground Storage Tank Act, Title 19, Chapter 6, Part 4* (Emergency Order). R.007; 000115-119.

Six days later, on January 25, 1996, the Executive Secretary issued a Notice of Noncompliance with the Emergency Order and Notice of Intent to Take the Lead and Use Public Money ("Notice of Noncompliance"). R.010; 000120-122.

On February 1, 1996, V-1 Oil Company submitted its Request for Agency Action pursuant to Utah Code Ann. § 63-46b-3(1)(b). R.014. More than a year later, on

February 13, 1997, the Board heard oral arguments at a scheduled hearing into the matter and rendered its decision, more than two months later, on April 21, 1997. R.567-901; 0000034-112. The Order upholds the issuance of the Emergency Order and the Notice of Noncompliance, orders V-1 to allow DERR representatives to implement all procedures necessary to inspect and sample V-1's facility and the monitoring wells located on-site and off-site, and orders V-1 to take any additional abatement, investigative and corrective action that is necessary and appropriate with regard to the contamination identified in the State's Exhibits 15 and 18. R.890; 0000024-34.

On May 20, 1997, Respondent timely filed its Petition for Review of the proceedings and the Board's Order in the matter of *In re: Emergency Order to abate and Order to Investigate and Perform Corrective Action In re: V-1 Oil Company Free Product in Sewer*; Facility No. 4001217, Release Site EFTX and Notice of Noncompliance pursuant to § 63-46b-16. On August 25, 1997, the Utah Solid and Hazardous Waste Control Board issued its Order denying V-1's Motion to Stay pending judicial review of the Board's April 21, 1997 Order. R.1094.

On October 21, 1997, the Court of Appeals denied V-1's Motion to Stay enforcement of the Board's Order pending judicial review of that Order.

STATEMENT OF FACTS

1. V-1 owns and operates a service station located at 1478 South 300 West ("the station") which is an area within Salt Lake City which is primarily commercial/industrial. R.555.

2. There are currently two (2) coated steel underground storage tanks on the premises and operated by V-1. A 10,000 gallon tank is used to store unleaded gasoline, and a 6,000 gallon tank for super unleaded gasoline. R.555.

3. The Utah Underground Storage Tank Act, Utah Code Ann. § 19-6-412 requires that "[e]ffective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility. The Executive Secretary shall issue a certificate of compliance if:

- (a) the owner or operator has a certificate of registration;
- (b) the petroleum storage tank fee has been paid;
- (c) all state and federal statutes, rules, and regulations have been substantially complied with; and
- (d) all tank test requirements of section 19-6-413 have been met.

000018. At all times relevant hereto the V-1 tanks were covered by a Certificate of Compliance issued by the Executive Secretary (UST) pursuant to the requirements of the Utah Underground Storage Tank Act. R.680, 319, 225; 000087.

4. On December 5, 1995, two (2) additional underground storage tanks were removed from the V-1 station site. R.897; 000083. Neither tank had been piped or otherwise connected to any product dispensers at the V-1 station. R.280. The excavation of the tanks was attended by representatives of the DERR. R.279-80. No free phase product was discovered during the tank excavation. R.266-280, 384.

5. Pursuant to the requirements of 40 C.F.R. § 280.43 [adopted and incorporated by reference in the Utah Administrative Code R311-101-1(1992)], the V-1 300 West station uses the "Inventory control" method of release detection . R.553, 530.

6. Since implementing the EPA inventory control method for release detection in approximately 1990, V-1 has not had a reportable loss, that is, one which exceeded 1 percent of its throughput plus 130 gallons for more than two consecutive months, until October 1995. R.716; 000078.

7. In October, November and December 1995, V-1's inventory control records indicated a inventory loss of unleaded gasoline. On November 30, 1995, the unleaded gasoline dispensers were taken out of service. Pursuant to federal and state regulations, on December 4, 1995, V-1 reported a "suspected" leak to Jim Thiros of DERR and was instructed to confirm the incident following excavation and inspection of the system. R.687-685; 000085-86.

8. On December 5, 1995, the area around the unleaded gasoline dispensers was excavated and inspected. R.685; 000086. The excavation was observed by DERR representatives. R.685, R.280. No free phase petroleum product was observed. A second excavation occurred on December 26, 1995 and a delivery system line was replaced with a stainless steel line and the tank was placed back in service. R.680-81; 000087.

9. Inventory records for October, November and December 1995 showed an inventory loss of between 649 and 2200 gallons.² There was no free product observed during the excavations of the delivery system in December 1995. R.680-685; 000085-87.

10. On January 19, 1996, the Executive Secretary (UST) issued an *Emergency Order to Abate and Order to Investigate and Perform Corrective Action In re: V-1 Oil Company Free Product in Sewer, Facility No. 4001217, Release Site EFTX, pursuant to the Utah Underground Storage Tank Act, Title 19, Chapter 6, Part 4* ("Emergency Order"). R.007-9. The Emergency Order provides that "[a] recent and/or ongoing petroleum release from V-1 is the source of the free product infiltrating the sewing line;" and ordered V-1 to "investigate ... remove and abate free product threatening to impact or impacting the sewer" and to implement a corrective action plan. R.009; 000113.

11. On January 19, 1996, immediately following receipt of the Emergency Order, V-1 retained TriTechnics Corporation, a state certified environmental consultant to investigate and determine if the free product entering the sewer line on Whitney Avenue originated from the V-1 property. R.716; 000078. V-1 also entered into negotiations with Southern Pacific Lines to negotiate a right of entry for access to the property adjoining and between V-1 for the purpose of investigating the off-site impact alleged to be the result of V-1's recent product loss which occurred between October and December, 1995. R.708-710; 000079-80.

² The volume of inventory lost was an issue before the Board but is not raised on appeal.

12. TriTechnics, V-1's environmental consultant did not find that V-1 was responsible for the free product in the sewer on Whitney Avenue. R.655, 644; 000093-96.

13. However, six days later, on January 25, 1996, the Executive Secretary (UST) issued a Notice of Noncompliance with the Emergency Order to Abate and Order to Investigate and Perform Corrective Action ("Notice") for V-1's failure to immediately undertake removal and abatement of the free product impacting the sewer line. The Notice further stated that the Executive Secretary would use public monies to take abatement, investigative and corrective action, which costs may be recovered from V-1. R.010-13.

SUMMARY OF THE ARGUMENT

On January 19, 1996, the Executive Secretary (UST) issued an Emergency Order finding that the V-1 Oil Company station located at 1478 South 300 West was responsible for free phase petroleum product entering the sewer system on Whitney Avenue. R.007. It is undisputed that V-1 immediately contacted an environmental consultant to investigate whether V-1 was responsible for the free product in the sewer and to prepare the initial site reports in a timely fashion. R.897. However, six days following the issuance of the Emergency Order, on January 25, 1996, the Executive Secretary (UST) determined that V-1 "failed to demonstrate that V-1 has performed initial abatement required" by the Emergency Order which directed V-1 to abate the release pursuant to Utah Admin. Code (incorporating by reference 40 C.F.R. Part 280 [Notice of Non-Compliance]. 010.

The Code of Federal Regulations, 40 C.F.R. Part 280 provides in pertinent part:

When required by the implementing agency, owners and operators of UST [underground storage tank] systems must follow the procedures in § 280.52 to determine *if* the UST system is the source of off-site impacts.

40 C.F.R. §51; 000010. The Emergency Order issued by the Executive Secretary on January 19, 1996 was very specific as to the "off-site impact" involved. R.007 The Executive Secretary stated, "[a] recent and/or ongoing petroleum release from V-1 is the source of the free product infiltrating the sewer line [on Whitney Avenue]. Where an off-site impact is the basis for suspecting a specific owner/operator of responsibility, the regulations require that the owner/operator perform a "site-check." 40 C.F.R. § 280.52(3); 000010.

(b) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owner and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

40 C.F.R. § 280.52(b); 000010. The Code of Federal Regulations does not affirmatively require an owner/operator of underground storage tanks to abate and take corrective action of off-site impacts prior to a determination of the owner/operators responsibility for the condition.³

³ Where the reviewing court can derive the legislative intent in the statute from "traditional methods of statutory construction, the agency's interpretation will be granted

V-1 Oil Company and the sewer line impacted by the free product is separated by 200 feet of soil and property. R.483. A large portion of that property belongs to Southern Pacific Lines.⁴ R.708-710; 000079. The entire area is primarily commercial/industrial. R.555. On January 12, 1996, A & A Contractors, located on Whitney Avenue, complaint of smelling "thinner" in a floor drain. R.262; 000203. The basis of this suspicion was the fact that there were paint shops located nearby. R.256; 000207.

Rick Bright, of the Salt Lake Division of Public Utilities, examined the sewer along Whitney Avenue and discovered a "gasoline or oil substance" on the water. R.871; 000039. No tests were performed to verify the identity of the substance. R.871, 857; 000039, 43. Moreover, LEL [lower explosive level] testing revealed no explosive hazard in the sewer. R.857, 000043. However, it was determined by the DERR that the product in the sewer must have come from V-1 Oil, because the sewer was "down gradient," according to a regional ground flow map and because it was a known source of contamination. R.843, 804. Mr. Hanson testified, "it was pretty obvious to us [who the source of the contamination was]."

no deference and the statute will be interpreted in accord with its legislative intent." *King v. Industrial Commission of Utah*, 850 P.2d 1281, 1287 (Utah App. 1993).

⁴ The Southern Pacific property has since been acquired by Union Pacific Railroad. R.307.

V-1 consultants, TriTechnics Corporation, discovered, however, that it was not quite so obvious. TriTechnics placed 8 monitoring wells on the V-1 property and intended to place several additional monitoring wells on the Southern Pacific property. R.708-10; 000078-80. V-1 entered into negotiations with Southern Pacific to negotiate a right of entry for access to the adjoining property for the purpose of determining whether V-1 was responsible for the sewer contamination. R.708-710; 000079-80. On January 30, 1996, V-1 was informed by Southern Pacific that the Utah DERR had informed them that V-1's work plan would not be approved. R.492, 496. Since an approved work plan was necessary to obtain a right of entry, V-1 was denied access to investigate. R.492.

The investigation conducted on V-1 property, however, did not confirm that V-1 was the source of any free product in the sewer on Whitney Avenue. R.644; 000096. TriTechnics performed direct groundwater measurements and discovered that the groundwater flow was clearly to the northeast. R.650, 465; 000094, 000170. In fact, the gradient was significant. R.616; 000103. In addition, there were no conduits to carry petroleum from V-1 to Whitney Avenue. R.804; 000056. Without such conduits, even *assuming* for purposes of this argument that the groundwater were to the northwest, it would take more than two years for the petroleum to migrate through the soils, across the Southern Pacific property and into the sewer. R.895; 000029. The DERR argued that the contamination was the result of a "series" of releases at the V-1 station. R.895. However, there was no legally competent or credible evidence presented to support such

a theory and, again, it would necessarily require that the groundwater flow be to the northwest. Finally, the DERR argued that no other property in the area could be the source, citing that only V-1 was clearly up-gradient from the sewer.

On February 13, 1997, V-1 and the DERR presented the evidence gathered from the investigations to the Utah Solid and Hazardous Waste Control Board. On April 17, 1997, the Board upheld the Emergency Order and the Notice of Non-compliance. However, the Board's decision is clearly contrary to the substantial weight of evidence presented when viewed in light of the whole record before the Court. *King v. Industrial Commission of Utah*, 850 P.2d 1281, 1285 (Utah App. 1993), Utah Code Ann. § 63-46b-16(4)(g)(1989)). In addition, the Board's refusal to acknowledge the uncontradicted testimony regarding the groundwater gradient is arbitrary and capricious. *U.S. West Communications v. Public Service Commission of Utah*, 901 P.2d 270, 275 (Utah 1995). Further, the findings of fact are merely a recitation of contradictory evidence and the conclusions of law are so inadequately detailed that it prevents meaningful appellate review. Many of the factual findings are based on testimony that has been mischaracterized or not supportable by legally competent evidence and are, therefore, arbitrary and capricious. Therefore, the Board's Order should be reversed and an Ordered entered finding that the Board's factual findings are not supported by substantial evidence, are arbitrary and capricious and are insufficient as a matter of law and should be reversed. The Board has erroneously interpreted or applied the requirements of 40 C.F.R. part 280 and V-1 has been substantially prejudiced by entry of the Board's Order.

ARGUMENT

I. THE BOARD ERRED IN ITS DETERMINATION THAT V-1 WAS RESPONSIBLE FOR THE FREE PRODUCT IN THE SEWER AND THAT THE EMERGENCY ORDER AND NOTICE OF NON-COMPLIANCE WERE PROPERLY ISSUED.

A. The Board Erred In Its Determination That V-1 Failed To Properly Respond To The Off-Site Impact As Mandated By 40 C.F.R. PART 280.

The Utah Solid and Hazardous Waste Control Board's factual findings must be supported by substantial evidence when viewed in light of the whole record before the Court. *King v. Industrial Commission of Utah*, 850 P.2d 1281, 1285 (Utah App. 1993), Utah Code Ann. § 63-46b-16(4)(g)(1989)). Substantial evidence has been defined by this Court as that "quantum and quality of relevant evidence" as "reasonable minds might accept as adequate to support a conclusion." *Grace Drilling Co. v. Board of Review*, 776 P.2d 63, 68 (Utah App. 1989). "'Substantial evidence' is more than a mere scintilla." *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1581 (10th Cir. 1994). "Evidence is not substantial if it is overwhelmed by other evidence, or if it constitutes mere conclusion." *Id.* (citations omitted). The Utah Solid and Hazardous Waste Control Board's Order is based on Findings of Fact and Conclusions of Law made by the Board following an evidentiary hearing on February 13, 1997. R.901; 000024. However, the Board's findings of fact were contrary to the substantial weight of evidence presented.

The Board held that the Emergency Order, issued by the Executive Secretary (UST) on January 19, 1996 "was properly issued under Utah Admin. Code R311-202,

which incorporates by reference 40 CFR Part 280." R.896, 000031. However, the Code of Federal Regulations, Part 280 states:

When required by the implementing agency, owners and operators of UST [underground storage tank] systems must follow the procedures in § 280.52 to determine *if* the UST system is the source of off-site impacts.

40 C.F.R. §51; 000010. The Emergency Order issued by the Executive Secretary on January 19, 1996 was very specific as to the "off-site impact" involved. R.007 The Executive Secretary stated, "[a] recent and/or ongoing petroleum release from V-1 is the source of the free product infiltrating the sewer line [on Whitney Avenue]. Where an off-site impact is the basis for suspecting a specific owner/operator of responsibility, the regulations require that the owner/operator perform a "site-check." 40 C.F.R. § 280.52(3); 000010.

(b) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owner and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

40 C.F.R. § 280.52(b); 000010.

It is undisputed that V-1 responded immediately to the Emergency Order and, as required by the state and federal regulations, contracted with a state certified environmental consultant to commence an investigation to determine whether V-1 was

responsible for the free product in the sewer as required by the regulations.⁵ R.716, 656. As a result of the investigation performed by TriTechnics Corporation the environmental consultant concluded that V-1 was not the source of the free product on Whitney Avenue as alleged by the Executive Secretary. George Condrat testified:

QUESTION: After you finished your investigation, were you able to conclude a response, whether V-1 was responsible for free product in the sewer based on your investigation and reviewing Delta's?

COND RAT: Well, I guess I can't say who is responsible for that free product. I do not know that. Based on the information that I have, I don't see the connection between V-1 and the contamination on Whitney Avenue."

R.644; 000096.

Contrary to the finding of V-1's environmental consultant, however, the Board concluded that the evidence did support the Executive's Secretary's conclusion that V-1 was the source of the free product entering the sewer along Whitney Avenue. The Board's decision is based upon findings of fact recited in its final Order. The Supreme Court of Utah has stated, "[t]his Court has stressed that it is 'essential that the Commission make subsidiary findings in sufficient detail that the critical subordinate factual issues are focused on and resolved in such a fashion as to demonstrate that there is a logical and legal basis for the ultimate conclusions.'" *U. S. West Communications, Inc. v. Public Service Commission of Utah*, 882 P.2d 141, 145 (Utah 1994). **B**

⁵ The State confirmed in closing argument that "V-1 did do everything it could, on its own property." R.594; 000108.

The Board's Finding That V-1 Was Up-Gradient From The Sewer On Whitney Avenue Is Contrary To Substantial Record Evidence And Ignores Uncontradicted, Competent, Credible Evidence.

The Board concludes, in its "Findings of Fact," that

"V-1 is located approximately 200 feet from the sewer line and 240 feet from A & A. Regional groundwater flow maps indicate that V-1 is up-gradient from the point at which the contamination was entering the sewer line."

R.898; 000026. And again, under "Conclusions of Law and Reasons for Decision," the Board states:

"[a] groundwater flow map provided to DERR indicated that the direction of the regional groundwater flow is slightly northwest in the direction of the Jordon River ... This is the direction from V-1 to the point where there is petroleum entering the sewer."

R.895; 000029. This finding is not only against the weight of substantial evidence, but completely ignores the only competent, scientific evidence presented at the hearing. "We will reverse the Board's decision only if we determine that it was 'based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court.'" *Harken Southwest Corporation v. Board of Oil, Gas and Mining*, 920 P.2d 1176, 1180 (Utah 1996)(citations omitted). "Nonetheless, in evaluating the sufficiency of the evidence, we will not sustain a decision which ignores uncontradicted, competent, credible evidence to the contrary." *Id.*

George Condrat, a registered professional geological engineer in the State of Utah,⁶ testified, that groundwater gradient was *clearly* to the northeast based on the data collected. R.650, 465; 000094, 000170. Further, in response to cross-examination by state counsel, Mr. Condrat testified,

"[t]he information we have which is the monitor wells that are installed here, there's a clear gradient to the northeast and it's a good one foot difference in groundwater over something like a hundred feet. That's significant gradient. So, I believe the gradient is clear, at least for the data that we have."

R.616; 000103.

The only evidence offered with regard to the Board's finding, that groundwater flow is slightly to the northwest, was submitted by Delta Environmental Consultants, Inc. in the form of a regional groundwater flow map. R.843, 000046. The record clearly states that the state environmental consultants did not test the groundwater flow:

HUTTON: Okay. Did you test to determine what the groundwater flow was in that area?

HANSON: We did not. The sampling technique we used doesn't provide good information for that. We did do a record search of the sites in the area and also got a regional groundwater flow [map].

R.111; 000062.

The only evidence presented to the Board in support of its finding that "groundwater flow is lightly northwest in the direction of the Jordan River ... the

⁶ R.657; 000093.

direction from V-1 to the point where there is petroleum entering the sewer," was presented by the Delta Environmental Consultants in its Subsurface Investigation Report dated February 15, 1996 which states:

The direction of ground water movement is *assumed* to be to the northwest, following the topography.

R.200. The Board completely ignored uncontradicted, competent and credible evidence to the contrary. *See Harken*, 920 at 1180. Direct groundwater measurements taken from monitoring wells placed on the V-1 property and along 300 West show a clear elevation difference sloping to the northeast. R.649-50; 000094-95.

State witnesses repeatedly confirmed that the *only* direct measurement of groundwater flow was performed by V-1's consultant which established that the groundwater flow from the V-1 property was *clearly* to the northeast and not "slightly northwest ... the direction from V-1 to the point where there is petroleum entering the sewer." In addition to Mr. Hanson, a project manager with the Division of Environmental Response and Remediation, and the state environmental consultant, Delta Environmental Consultants, Inc., Paul Zahn, section manager for the Utah LUST program also testified:

QUESTION: Is there an exhibit that we have before us right now that looks or that graphs the top of that water table for this site?

ZAHN: The only data we have is in V-1's hearing brief, TriTechnics reports ...

R.727; 000075.

Mr. Zahn also testified that it was not uncommon at a site for groundwater to flow in different directions. R.731; 00074. However, he readily admitted that he had conducted no tests in the area of Whitney Avenue and 300 West to dispute the evidence presented by Mr. Condrat regarding groundwater flow in the area. R.727, 000075. Mr. Zahn presented only speculation and comparisons with unrelated, irrelevant sites. *Id.* When Mr. Condrat was challenged with the question of whether the groundwater could flow in more than one direction, as proposed by DERR, the geological engineer stated:

"based on the information we have here, it does not show that. For that to occur, I would expect that there would have to be some localized sync or some localized condition which would cause such a strong change in groundwater flow over the distance of what we have here."

R.649; 000095. Mr. Condrat further stated, during cross-examination:

"The information we have which is the monitor wells that are installed here, there's a clear gradient to the northeast and it's a good one foot difference in groundwater over something like a hundred feet. That's significant gradient. So, I believe the gradient is clear, at least for the data that we have."

R.616; 000103. The evidence is clearly undisputed that the groundwater flow on the V-1 property is to the northeast. "Evidence is not substantial if it is overwhelmed by other evidence, or if it constitutes mere conclusion." *Olenhouse v. Commodity Credit Corp.* 42 F.3d 1560, 1581 (10th Cir. 1994).

Clearly, the Board's conclusion that V-1 is "up-gradient from the point at which the contamination was entering the sewer line," or that "the groundwater flowed in a slightly northwest direction" from V-1 to the sewer on Whitney Avenue is not "resolved

in such a fashion as to demonstrate that there is a logical [or] legal basis for the ultimate conclusions." *U.S. West Communications*, 882 P.2d at 144.

In addition, the Board's refusal to acknowledge the uncontradicted testimony regarding the groundwater gradient is arbitrary and capricious. *U.S. West Communications v. Public Service Commission of Utah*, 901 P.2d 270, 275 (Utah 1995).

"The law does not invest the Commission with any such arbitrary power to disbelieve or disregard uncontradicted, competent, credible evidence, as it appears to have done here."

Id. (quoting *Jones v. California Packing Corp.*, 244 P.2d 640, 644 (Utah 1952) *cf.* *DeVas v. Noble*, 369 P.2d 290, 293 (Utah 1962) ("arbitrary and unreasoning distortions of justice could occur if courts were permitted to ignore credible and uncontradicted evidence."))

This arbitrary disregard of the determined groundwater flow also impacts the Board's finding that "eight of the [UST facilities located in the general area of the sewer line] appeared to be down-gradient from the release," and further ignores the evidence regarding conduits from any or even all of the identified LUST suites. R.251-2.

C. A Finding That V-1 Is Responsible For Free Product In The Sewer Is Contrary To The Facts In The Record And Is Arbitrary And Capricious.

Even assuming, *arguendo*, that the groundwater flow from V-1 was in the "direction of the point where there is petroleum entering the sewer," the record evidence does not support a finding that V-1 was the source of that free product, or even whether the product was, in fact, petroleum. Again, the Board failed to make subsidiary findings

in sufficient detail that the critical subordinate factual issues are focused on and resolved. There is no logical or legal basis for the ultimate conclusion. *See U.S. West Communications*, 882 P.2d at 144-45. The facts presented do not support the Board's ultimate conclusion that V-1 was responsible for the free product in the sewer.

(1) The State Failed To Provide Any Evidence In Support Of Its Conclusion, Adopted By The Board, That The Product In The Sewer Was Gasoline.

The Board held, in its "Findings of Fact," that a "video revealed a release of free-product-phase petroleum entering the sewer line at about 117 feet east from the second manhole west of 300 West." R.898; 000026. This finding was based on the testimony of Rick Bright, waste water collections manager for Salt Lake Public Utilities, who testified that he responded on January 12, 1996 to a customers report that there was a "heavy gasoline smell in his building." R.873; 000039. However, the documentary evidence indicates that the customer, Bob Smith, reported the "smell of thinner in a floor drain." R.262; 000203. This basis of this report was that paint shops were located "nearby." R.256; 000207. In fact, according to the map prepared by Delta Environmental Consultants, there is a paint shop directly up-gradient from A & A Contracts on Whitney Avenue. R.071; 000214. Mr. Bright concluded, however, that the smell was gasoline invading the sewer system. R.262, 873, 000203, 000039. Mr. Bright testified that he opened a manhole into the sewer system and "could see a sheen of some product on the water at that time." R.873; 000039. He stated, "I've seen petroleum in

a sewer system before and it looked like gasoline or oil substance in there." R.871; 000039. Although Mr. Bright took a sample of the "product," no tests were ever run to determine what the "product" was. R.871, 857; 000039, 43. Moreover, the tests that were conducted in the sewer system did not confirm the presence of any of the explosive vapors as alleged in the Executive Secretary's Emergency Order. R.857, 007; 000115, 000043. On the contrary, Mr. Bright testified that direct testing of the sewer system, prior to any flushing, revealed "that at that point it didn't register, it registered basically .01 on our gas detector." R.857, 000043. "That's really not much of a detectable measure." R.857, 000043. Further, Mr. Bright stated that they were not able to identify exactly where the vapors [in the customers business] were actually coming from; nor did they identify where along the sewer pipeline the contaminant originated or entered the line. R.861; 000042. There was no record evidence of any "build-up of petroleum fumes in the sewer..." as alleged in the Board's Order, and no evidence that the fumes invading the A & A building were, in fact, gasoline fumes. "[A]dministrative bodies may not rely upon findings that contain only ultimate conclusions." *Adams v. Board of Review of Industrial Commission*, 821 P.2d 1, 6 (Utah App. 1991).

(2) It Would Take At Least Two Years For Petroleum To Migrate From V-1 To Whitney Avenue.

The Board further found that V-1 was the "source" of the free product entering the sewer based on the following "Conclusions of Law and Reasons for Decision:"

DERR records revealed that in the previous ten years there had been at least six reports of contamination or leaks on the V-1 property. DERR records did not indicate that any of the contamination had been remediated.

[T]wo paved-over tanks had been removed from the V-1 property in December 1995, one month before the release in the sewer. Both tanks contained liquid contaminated by petroleum, and soils in the area around the tanks were contaminated with petroleum.

R.895; 000029. Also included under "Findings of Fact" but not included under "Reasons for Decision," was the finding that V-1 had lost "approximately 2,298 gallons" from its petroleum inventory during the months of October, November and December 1995 from a reported line leak which was repaired in December 1995. R.897; 000027. Although the volume of petroleum lost from V-1's inventory was in dispute before the Board, V-1 does not raise it on appeal. This Court has previously stated that "where two reasonable, yet conflicting, conclusions could have been reached, [we] simply accord deference to the agency [findings]." *King*, 850 P.2d at 1285. The finding is, however, relevant to the issue of whether that petroleum loss could have impacted the sewer system on Whitney Avenue as free product.

First, both the DERR environmental consultant and TriTechnics, the V-1 environmental consultant agreed that the inventory loss and the removal of the two underground storage tanks "one month before the release in the sewer" was irrelevant to the investigation unless that fresh release could find a pathway to the sewer system on Whitney Avenue.

As a part of the V-1 investigation, TriTechnics Corporation measured groundwater velocity and soil type to determine whether the inventory loss and/or the removal of the underground storage tanks could create a migration of free product through 200 feet of soil to the Whitney Avenue sewer system. The investigation revealed that the soil was made up of "fine-grained soils (primarily lean clays)."⁷ R.483. The groundwater horizontal velocity was measured at 0.4 feet per day. R.650; 000094.

At the hearing before the Board Mr. Condrat testified:

Q: And how long would it take if something did migrate, how long would it take for it to get over to Whitney Avenue [from the V-1 station]?

A: Well, I would say that for it to move from where dispenser number 4 was to Whitney Avenue, if we assume the gradient -- this same gradient was the same, but it was rotated and pointed in that direction, it would take about two years.

R.648-49; 000095. Mr. Douglas Hanson of the DERR similarly testified, the time that it would take for contamination to migrate through the soil from the V-1 property, across the Southern Pacific property, into the sewer on Whitney Avenue would take considerably longer than the one month that had passed since the December 1995 confirmed release. R.804; 000056.

⁷ Delta Environmental Consultants described the regional geology as consisting of "interfingered alluvium eroded from the nearby Wasatch Mountains and lake sediment deposits from former Lake Bonneville. The lake deposits consist of silty clay to clay layers with interbedded silt deposits." R.200.

(3) There Were No "Conduits" To Carry Petroleum To The Whitney Avenue Sewer.

Both environmental consultants concluded that the only way a "fresh release" could move to the sewer on Whitney Avenue from the V-1 Oil station on 300 West, *assuming* the critical element of northwest gradient or groundwater flow, was to follow a shortcut or "conduit" to the sewer. However, there was no "conduit" that traveled from V-1 and connected with the sewer line on Whitney Avenue.

Mr. Condrat testified:

Q: Did you investigate other possible pathways since you ruled out migration since groundwater was going to the northeast? Did you investigate any other possible pathway?

A: Well, we were, of course, looking at shortcuts, conduits that might potentially take product off of the V-1 site such as fill, backfill around utility lines. And that's why we put in these two monitor wells here ... One was a water line and one was a sewer line that went off site.

Q: And what did you find?

A: We found no free product there.

Q: ...did you determine that those were conduits of any sort for this product?

A: No, we don't believe those were conduits.

Q: ...which direction does the sewer line run from V-1?

A: Sewer line comes out of the store [east] and jogs a little bit to the south and comes out to the middle of the street [300 West], and then it joins the main sewer

line which goes to the north here. This circle here is the starting point of the manhole on Whitney Avenue, so there is no connection of the sewer line on Third West with Whitney Avenue.

R.647-48; 000095. Douglas Hanson of the DERR also testified that there were no shortcuts or conduits from V-1 that connect with Whitney Avenue to carry a fresh release of free petroleum product to the Whitney Avenue sewer system:

"Initially, we thought that the most likely pathway of migration would be maybe a sewer lateral or something else that hooked into V-1's facility and property, and thought that it probably had been a new release. But there was no connection between the sewer line and the V-1 Oil property which suggests that the time that it would take for the contamination to migrate from the V-1 property into the sewer would have been considerably longer than had it been a fresh release, so would have most likely been an older release."

R.804; 000056.

By eliminating a conduit from V-1 Oil to the Whitney Avenue sewer system, it necessarily returns the investigator to groundwater velocity and gradient. Again, the Board must rely on the unsupported assumption that the groundwater gradient from the V-1 property is to the northwest rather than to the northeast as established by direct measurement of the monitoring wells installed across the V-1 property and on 300 West.

(4) There Is No Reliable Evidence Of A "Series" Of Releases Occurring At V-1.

There is no reliable record evidence to support the Board's finding that "in the previous ten years there have been at least six reports of contamination or leaks on the

V-1 property." R.895. This finding implies six *separate* incidents or releases of petroleum at the V-1 station. There is no such competent evidence available. "We will reverse the Board's decision [] if we determine that it was 'based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court.'" *Harken*, 920 P.2d at 1180.

The Board's Order states in its "Findings of Fact," "DERR records indicate that: in 1985, a line leak was reported at V-1..." R.898; 000026. The only support for such an allegation was the unsupported and inadmissible testimony regarding a report filed "with the local fire department that there had been a line leak at the facility in November of 1985." R.841; 000047. Neither the alleged report, nor the individual who made the allegation was available at the hearing for examination. R.809-41. "Despite the flexibility of administrative hearings in admitting legally inadmissible hearsay evidence, due process requires minimal safeguards, including an opportunity to cross-examine witnesses." *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 29 (Utah App. 1991). [T]he more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. *Id.* There is a "strong element of unfairness" where there is no opportunity to cross examine the witness or challenge the veracity of documentary evidence. *See Id.* . We have formalized these protections in the requirement of confrontation and cross-examination. They have ancient roots. *Id.*

Mr. Gary Huskinson, President of V-1 Oil Company, testified that he had been with the company for almost 36 years at the time of the administrative hearing. R.715. Mr. Huskinson testified that he was not aware of any such release occurring in 1985. R.714. Mr. Huskinson further testified that he was unaware of any "reportable" release of petroleum at the V-1 station prior to the loss in December 1995.⁸ Mr. Huskinson did testify that in July 1990, Eaton Metals noticed some staining contamination at the station around the fill pipes and indicated on a LUST report to the DERR that a probable overfill-spill must have occurred. R.294; 000193. The report of contamination dated February 6, 1991 was the result of the DERR's testing and soil samples taken from the excavation site and investigation of the "spill" identified by Eaton Metals in July 1990. R.293. Examination of Mr. Huskinson by the Board confirmed that this "release" resulted in the removal of two or three yards of contaminated soil. R.702; 000081. The DERR presented no evidence to dispute Mr. Huskinson's testimony.

The further references by the Board to contamination found at the facility during various inspections does not support a conclusion that each time the testing occurred the results documented a separate, distinct incident or release. On the contrary, there was

⁸ The Code of Federal Regulations states:

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the implementing agency within 24 hours, or another reasonable time period ... (1) spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons ...

R.528; 000008.

absolutely no evidence before the Board to even establish what the source of the contamination occurring at the V-1 station was. There was no competent, reliable evidence of a "series of releases" occurring at the V-1 station.

Moreover, there is no evidence that the contamination identified at the V-1 station is in a "free product" phase, again, even assuming that the groundwater moved from V-1 in the direction of Whitney Avenue. R.615. The V-1 environmental consultant testified that TriTechnics was specifically hired to prepare a site check of conditions at V-1 and to determine whether V-1 was the source of free product on Whitney Avenue by installing monitoring wells on V-1 property and the adjoining Southern Pacific property which lays directly between V-1 and the impacted sewer system.⁹ R.656. Although the UDERR circumvented V-1's attempts to investigate the contamination on the Southern Pacific property, as well as place monitoring wells to verify gradient and groundwater flow, the investigation that was conducted on V-1's property did not reveal the presence of free product which could have impacted the sewer on Whitney Avenue. R.490-501, 656-644; 000094, 000123-35. The monitoring wells revealed no free product moving along a buried pipeline or other conduit. R.654; 000093. Monitoring well 5 was

⁹ On January 19, 1996, V-1 contacted the Southern Pacific Lines to negotiate a Right of Entry Agreement for access to the adjoining property for the purpose of investigating the alleged off-site impact. A TriTechnics crew was scheduled to begin drilling the site when V-1 counsel was contacted by Curt Dominicak and informed that the Utah UDERR had called and informed Southern Pacific that UDERR did not intend to approve V-1's drilling work plan and was, therefore, forced to deny V-1 access to investigate the property and grant right of entry to the UDERR. See Correspondence from Southern Pacific, R.492,496; 000123-35.

installed right at the location of the dispenser leak which occurred in December 1995 - there was no free product. R.654; 000093. Investigation of the records maintained from the excavation of the two underground tanks in December 1995, also revealed that the tanks were not the source of free-phase petroleum. R.653; 000094. The samples taken from the site at the time of the excavation revealed that the contaminants were "dissolved in water, but these levels are low enough that I would not say that this indicates product, it's just some dissolved levels of BTX" and no indication of free product."

Testimony of George Condrat, R.652-51; 000094.

Douglas Hanson of the DERR did not dispute this testimony, nor did the state present any evidence that the free product migrated from V-1 to Whitney Avenue. On the contrary, Mr. Hanson's explanation of the migration of free product was pure conjecture and speculation. He testified:

Q: How would [the contamination] turn into free product?

A: Well, contamination will migrate with the water itself, and a couple of things can happen. If you have a single spill incident, that petroleum can actually migrate sort of as a mass all on its own and go between different phases, by which -- I mean to say, it can go into the water, it can go into the soil surface, it can collect on the top of the water as what we call free phase. And depending on the amount of contamination that's there, it can exist in any of those various phases.

R.803. However, "for that to happen, you would have to have a gradient to move the contamination..." R.625; 000101. Moreover, if the groundwater gradient did flow to the northwest and the product did, indeed, migrate over time from a source some 200 feet

distant, "I would expect there to be some significant residual contamination on V-1."

R.625; 000101. Mr. Condrat testified:

"what happens when you have a petroleum release is that the petroleum will get bound up in the soil above the water table, or even below the water table. It does not mix well with the water. A small portion of it will dissolve in the water, but by and large, the gasoline or petroleum product will remain as a separate phase. Usually what you find is that the contamination levels are highest near the point of release, and they hang around for a long time. And as you move from the point of release, the concentrations diminish.... there were a few exceptions, but by and large, the highest concentrations are in this area [the Southern Pacific property to Whitney Avenue] not on V-1's property."

R.646. The Board inquired,

Q: [i]f there was no flow to the northwest, then what's creating the plumb [sic] that we see in Exhibit 15 ... there are portions of the plumb [sic] that's heading off to the northwest, unless there was some component of flow that's going towards the northwest?

A: There's a possibility that there's been past contamination of the Southern Pacific property...

Q: Still though, even if the contamination originated on Southern Pacific property, that plumb [sic] map would indicate that there's a flow direction to the northwest, wouldn't it?

A: It indicates that there's contamination that extends in that direction. How it gets there isn't necessarily by flow, it could have got [sic] there by spillage.

R.628-29; 000100.

The Board's finding in this regard does not resolve the factual issue. The Board merely makes an unsupported ultimate conclusion that the Southern Pacific property was "looked at" and apparently discarded as a source of free phase petroleum product. R.894; 000030. "Administrative bodies may not rely upon findings that contain only ultimate conclusions." *Adams v. Board of Review of Industrial Commission*, 821 P.2d 1, 6 (Utah App. 1991)(quoting *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 31 (Utah App. 1991). *Cf Boston First National Bank v. County Board of Equalization*, 799 P.2d 1163, 1166 (Utah 1990)(agency expertise is not a substitute for making adequate findings).

II. THE BOARD'S CONCLUSION THAT THE SOUTHERN PACIFIC PROPERTY IS NOT THE SOURCE OF THE CONTAMINATION IS NOT SUPPORTED BY THE FACTS AND IS ARBITRARY AND CAPRICIOUS.

The Board's Order states under "Conclusions of Law and Reasons for Decision" that "DERR also looked at the Southern Pacific property located between V-1 and the sewer line ... visual inspections were limited by snow piles, but the limited inspection revealed no surface staining... Inquiries were made of Southern Pacific representatives and DERR records were reviewed... Neither confirmed that any underground storage tanks had ever been located on the property." R.894. However, there is no factual support in the administrative record for the Board's conclusion. *See Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575 (10th Cir. 1994).

Record evidence shows that benzene contamination is higher on the Southern Pacific property than anywhere on the V-1 property. R.246-49; 000212-15. Testimony

confirmed that "[w]hen you have a release ... you would expect the concentrations to be highest near where the release is." R.612. V-1 station manager, Hal Wasden, testified that the Southern Pacific property had recently been used for refueling of diesels and trucks parked on the property and later, Rick Warner Ford and the city used the property during the winter months to dump snow on. R.674-5; 000088. "At times the snow depth exceed[ed] 15 feet, loading the snow and the garbage" on the Southern Pacific site. R.674-5; 000088. Further, Mr. Wasden also testified that there was a trench running through the Southern Pacific site with "water standing there most of the time." R.675. Despite the Board's stated "finding," the testimony of witnesses at the hearing does not support a conclusion that there was no visual staining on the site, only that no one could see whether there was staining or not. Mr. Hanson of the DERR testified that "[t]here was nothing I could observe at the site. At the time there was some snow cover, but some exposed surface as well, nothing was apparent." R.773, 000064. Mr. Zahn of the DERR stated that there was no *inspection* of the area for surface staining. R.720; 000077.

In *Olenhouse v. Commodity Credit Corporation*, 42 F.3d 1560 (10th Cir. 1994), the administrative agency mischaracterized testimony that the witness "could not remember" what he had been told by the state, to be "evidence" that the Farmers in the dispute had not been misinformed by the state. *Id.* at 1578-79. The Tenth Circuit Court stated that mischaracterized testimony "is not evidence" of what the Farmers were told. *Id.* Similarly, the testimony that no one inspected for staining, or no one was able to

inspect for staining, on the Southern Pacific property does not support the ultimate conclusion that none was present.

In addition, there was absolutely no evidence to support the Board's conclusion that there were never any underground storage tanks located on the property. Rather, the testimony was:

Question: And how about the Southern Pacific property, what -- do we have any records as to what if anything is buried under the Southern Pacific property?

Mr. Hanson: We don't.

Question: Does Southern Pacific even know what's buried under their property?

Mr. Hanson: I don't know what they know.

R. 750-51. This Court has previously stated that it would be arbitrary and capricious for an agency to base its decision on factual findings that are not supportable by legally competent evidence. *Tolman*, 818 P.2d at 33. The Tenth Circuit Court has stated that the "arbitrary and capricious standard requires an agency's action to be supported by the facts in the record." *Olenhouse*, 42 F.3d at 1575. The Board's conclusions are against the substantial weight of evidence in the record as well as arbitrary and capricious. "Agency Action must be set aside 'if the agency relied on factors which Congress has not intended for it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product

of agency expertise.'" *Id.*(quoting *Motor Vehicle Mfrs. Assn. v. State Farm Insurance Company*, 463 U.S. 29, 43 (1983)). Such is the case here.

III. THE BOARD'S FACTUAL FINDINGS ARE NOT SUPPORTABLE BY LEGALLY COMPETENT EVIDENCE AND ARE, THEREFORE, ARBITRARY AND CAPRICIOUS.

"Under the residuum rule, all hearsay and other legally inadmissible evidence admitted by an agency is set aside by the reviewing court." *Id.* "There must then remain some 'residuum of legal evidence competent in a court of law,' to support the agency's findings and conclusions of law." *Id.* "If there is not a residuum of legally competent evidence remaining, the agency action is reversed." *Id.* The Board's Order relies heavily on the finding that the groundwater flow is to the northwest. This is clearly an erroneous finding, against the substantial weight of competent, credible, uncontroverted evidence. "It would be arbitrary and capricious for the [Board] to base its decision upon factual findings that are not supportable by legally competent evidence." *Id.* A finding that the groundwater flow is to the northwest is, therefore, arbitrary and capricious and must be set aside. Neither is the Board's finding that V-1 has sustained a "series" of releases, or that the Southern Pacific property had no surface staining, or that Southern Pacific or Denver & Rio Grande Railroad had never had underground storage tanks on the property, based on legally competent evidence. "If there is not a residuum of legally competent evidence remaining, the agency action is reversed." *Id.*

When reviewing the agency's explanation, the reviewing court must determine whether the agency considered all relevant factors and whether there has been a clear

error of judgment. *Olenhouse*, 42 F.3d at 1574. If the agency has entirely failed to consider an important aspect of the problem or offered an explanation for its decision that runs counter to the evidence presented, the agency action must be set aside. *Id.* The Board's decision is contrary to the evidence. In order for the Board to reach its ultimate conclusion it has ignored and disregarded uncontroverted, credible evidence. It is apparent that the Board's decision must be set aside.

CONCLUSION

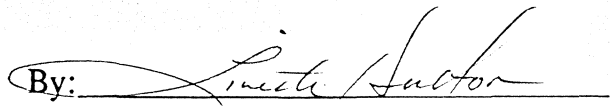
Based on the foregoing, V-1 Oil Company respectfully requests that this Court reverse the Utah Solid and Hazardous Waste Control Board's Findings of Fact Conclusions of Law and Order dated April 17, 1997.

REQUEST FOR ORAL ARGUMENT

Counsel for V-1 Oil Company, Respondent/Petitioner in this matter, believes that oral argument is appropriate because the issues are extremely fact intensive and oral argument would assist the Court's understanding of these issues.

DATED this 24th day of November, 1997.

STIRBA & HATHAWAY

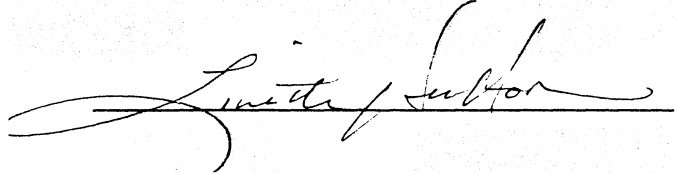
By: 
PETER STIRBA
LINETTE B. HUTTON
Attorneys for V-1 Oil Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 1997, I caused to be served a true and correct copy of the foregoing PETITIONER'S BRIEF to the following, using the method indicated below:

M. M. Hubbell
Assistant Attorney General
160 East 300 South, 5th Floor
P. O. Box 140873
Salt Lake City, UT 84114-0873

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile

A handwritten signature in cursive script, appearing to read "Linda J. Subor", written over a horizontal line.

ADDENDUM

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Tab A

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

(c) *Record retention.* The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

[57 FR 41612, Sept. 10, 1992, as amended at 58 FR 26426, May 3, 1993]

§ 279.75 Notices.

(a) *Certification.* Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he must obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified EPA stating the location and general description of used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in § 279.61(a).

(b) *Certification retention.* The certification described in paragraph (a) of this section must be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

Subpart I—Standards for Use as a Dust Suppressant and Disposal of Used Oil

§ 279.80 Applicability.

The requirements of this subpart apply to all used oils that cannot be recycled and are therefore being disposed.

§ 279.81 Disposal.

(a) *Disposal of hazardous used oils.* Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this part must be managed in accordance with the hazardous waste management requirements of parts 260 through 266, 268, 270 and 124 of this chapter.

(b) *Disposal of nonhazardous used oils.* Used oils that are not hazardous wastes and cannot be recycled under this part must be disposed in accordance with

the requirements of parts 257 and 258 of this chapter.

§ 279.82 Use as a dust suppressant.

(a) The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in paragraph (c) of this section.

(b) A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 of this chapter or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

(c) *List of States.* [Reserved]

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

Subpart A—Program Scope and Interim Prohibition

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APPENDICES TO PART 280

APPENDIX I TO PART 280—NOTIFICATION OF UNDERGROUND STORAGE TANKS (FORM)

APPENDIX II TO PART 280—LIST OF AGENCIES DESIGNATED TO RECEIVE NOTIFICATION

APPENDIX III TO PART 280—STATEMENT OF SHIPPING TICKETS AND INVOICES

AUTHORITY: 42 U.S.C. 6912, 6991, 6991a, 6991c, 6991d, 6991e, 6991f, and 6991h.

SOURCE: 58 FR 37194, Sept. 23, 1993, unless otherwise noted.

Subpart A—Program Scope and Interim Prohibition

§ 280.10 Applicability.

(a) The requirements of this part apply to all owners and operators of UST systems as defined in § 280.12 except as otherwise provided in paragraph (b), (c), and (d) of this section. A UST system listed in paragraph (c) of this section must meet the requirements of § 280.11.

(b) The following UST systems are excluded from the requirements of this part:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a *de minimis* concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) *Deferrals*, Subparts B, C, D, E, and G do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems;

(2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A;

(4) Airport hydrant fuel distribution systems; and

(5) UST systems with field-constructed tanks.

(d) *Deferrals*. Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.

§ 280.11 Interim prohibition for deferred UST systems.

(a) No person may install an UST system listed in § 280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corro-

sion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

NOTE: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.

§ 280.12 Definitions.

Aboveground release means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

Ancillary equipment means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

Belowground release means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

Beneath the surface of the ground means beneath the ground surface or otherwise covered with earthen materials.

Cathodic protection is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

Cathodic protection tester means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such person

must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Compatible means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

Connected piping means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

Consumptive use with respect to heating oil means consumed on the premises.

Corrosion expert means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Dielectric material means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

Electrical equipment means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

Excavation zone means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit or trenches into which the UST system is placed at the time of installation.

Existing tank system means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(b)(1) Either a continuous on-site physical construction or installation program has begun; or,

(2) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

Farm tank is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

Flow-through process tank is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

Free product refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water.)

Gathering lines means any pipeline equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Hazardous substance UST system means an underground storage tank

system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

Heating oil means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

Hydraulic lift tank means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

Implementing agency means EPA, or, in the case of a state with a program approved under section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.

Liquid trap means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

Maintenance means the normal operational upkeep to prevent an underground storage tank system from releasing product.

Motor fuel means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

New tank system means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced

after December 22, 1988. (See also "Existing Tank System.")

Noncommercial purposes with respect to motor fuel means not for resale.

On the premises where stored with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

Operational life refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.

Operator means any person in control of, or having responsibility for, the daily operation of the UST system.

Overfill release is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

Owner means:

(a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

Person means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

Petroleum UST system means an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Pipe or Piping means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

Pipeline facilities (including gathering lines) are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

Regulated substance means:

(a) Any substance defined in section 101(14) of the Comprehensive Environ-

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mental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Release means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST into ground water, surface water or subsurface soils.

Release detection means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

Repair means to restore a tank or UST system component that has caused a release of product from the UST system.

Residential tank is a tank located on property used primarily for dwelling purposes.

SARA means the Superfund Amendments and Reauthorization Act of 1986.

Septic tank is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

Storm-water or wastewater collection system means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treat-

ment is designated to occur. The collection of storm water and wastewater does not include treatment elsewhere incidental to conveyance.

Surface impoundment is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

Tank is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

Underground area means an underground room, such as a basement, lar, shaft or vault, providing enclosure space for physical inspection of the interior of the tank situated on or at the surface of the floor.

Underground release means any below ground release.

Underground storage tank or system means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of 1,000 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*); or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(n) Storm-water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

Upgrade means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

UST system or *Tank system* means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

Wastewater treatment tank means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Subpart B—UST Systems: Design, Construction, Installation and Notification

§ 280.20 Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

(a) *Tanks.* Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

NOTE: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or according to guidelines established by the implementing agency; or

NOTE: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite, or

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NOTE: The following industry codes may be used to comply with paragraph (a)(3) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraphs (a)(4)(i) for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a) (1) through (4) of this section.

(b) *Piping.* The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

NOTE: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(C) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or guidelines established by the implementing agency; or

NOTE: The following codes and standards may be used to comply with paragraph (b) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

NOTE: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with paragraph (b)(3) of this section.

(4) The piping construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in

paragraphs (b) (1) through (3) of this section.

(c) *Spill and overfill prevention equipment.* (1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternative equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1) (i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

(d) *Installation.* All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (d) of this section:

(i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

(e) *Certification of installation.* All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance on the UST notification form in accordance with § 280.22.

(1) The installer has been certified by the tank and piping manufacturers; or

(2) The installer has been certified or licensed by the implementing agency; or

(3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(4) The installation has been inspected and approved by the implementing agency; or

(5) All work listed in the manufacturer's installation checklists has been completed; or

(6) The owner and operator have complied with another method for ensuring compliance with paragraph (d) of this section that is determined by the implementing agency to be no less protective of human health and the environment.

[53 FR 37194, Sept. 23, 1988, as amended at 56 FR 38344, Aug. 13, 1991]

§ 280.21 Upgrading of existing UST systems.

(a) *Alternatives allowed.* Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under § 280.20;

(2) The upgrading requirements in paragraphs (b) through (d) of this section; or

(3) Closure requirements under subpart G of this part, including applicable requirements for corrective action under subpart F.

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(b) *Tank upgrading requirements.* Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) *Interior lining.* A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of § 280.33, and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of § 280.20(a)(2) (ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with § 280.43 (d) through (h); or

(iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of § 280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the implementing agency to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2) (i) through (iii) of this section.

(3) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of § 280.33; and

(ii) The cathodic protection system meets the requirements of § 280.20(a)(ii), (iii), and (iv).

NOTE: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum Year Life Extension of Existing Steel Underground Tanks by Lining Without the Application of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Tanks"; and

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(c) *Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet requirements of § 280.20(b)(2) (ii), (iii), and (iv).

NOTE: The codes and standards listed in note following § 280.20(b)(2) may be used to comply with this requirement.

(d) *Spill and overfill prevention equipment.* To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in § 280.20(c).

§ 280.22 Notification requirements.

(a) Any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit in the form prescribed in appendix I to this part, a notice of existence of such tank system to the state or local agency or department designated in appendix II of this part to receive such notice.

NOTE: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify

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ify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in appendix I of this part.

(b) In states where state law, regulations, or procedures require owners to use forms that differ from those set forth in appendix I of this part to fulfill the requirements of this section, the state forms may be submitted in lieu of the forms set forth in Appendix I of this part. If a state requires that its form be used in lieu of the form presented in this regulation, such form must meet the requirements of section 9002.

(c) Owners required to submit notices under paragraph (a) of this section must provide notices to the appropriate agencies or departments identified in appendix II of this part for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(d) Notices required to be submitted under paragraph (a) of this section must provide all of the information in sections I through VI of the prescribed form (or appropriate state form) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must also provide all of the information in section VII of the prescribed form (or appropriate state form) for each tank for which notice must be given.

(e) All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

- (1) Installation of tanks and piping under §280.20(e);
 - (2) Cathodic protection of steel tanks and piping under §280.20 (a) and (b);
 - (3) Financial responsibility under subpart H of this part; and
 - (4) Release detection under §§280.41 and 280.42.
- (f) All owners and operators of new UST systems must ensure that the in-

staller certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in §280.20(d).

(g) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section. The form provided in appendix III of this part may be used to comply with this requirement.

Subpart C—General Operating Requirements

§280.30 Spill and overfill control.

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with §280.53.

§280.31 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that

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routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) *Frequency.* All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency; and

(2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with §280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required in paragraph (c) of this section; and

(2) The results of testing from the last two inspections required in paragraph (b) of this section.

§280.32 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and

Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

§280.33 Repairs allowed.

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substance. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 63, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representative or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(d) Repaired tanks and piping must be tightness tested in accordance with §280.43(c) and §280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d) (1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in § 280.43 (d) through (h); or

(3) Another test method is used that is determined by the implementing agency to be no less protective of human health and the environment than those listed above.

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with § 280.31 (b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

§ 280.34 Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

(a) *Reporting.* Owners and operators must submit the following information to the implementing agency:

(1) Notification for all UST systems (§ 280.22), which includes certification of installation for new UST systems (§ 280.20(e)).

(2) Reports of all releases including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);

(3) Corrective actions planned or taken including initial abatement measures (§ 280.62), initial site characterization (§ 280.63), free product removal (§ 280.64), investigation of soil and ground-water cleanup (§ 280.65), and corrective action plan (§ 280.66); and

(4) A notification before permanent closure or change-in-service (§ 280.71).

(b) *Recordkeeping.* Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion

protection equipment is not used (§ 280.20(a)(4); § 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (§ 280.31);

(3) Documentation of UST system repairs (§ 280.33(f));

(4) Recent compliance with release detection requirements (§ 280.45); and

(5) Results of the site investigation conducted at permanent closure (§ 280.74).

(c) *Availability and Maintenance of Records.* Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the implementing agency; or

(2) At a readily available alternative site and be provided for inspection to the implementing agency upon request.

(3) In the case of permanent closure records required under § 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the implementing agency if they cannot be kept at the site or an alternative site as indicated above.

Subpart D—Release Detection

§ 280.40 General requirements for all UST systems.

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in § 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method except for methods permanently installed prior to that date, must be capable of detecting the leak rate or

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quantity specified for that method in the corresponding section of the rule (also shown in the table) with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Method	Section	Date after which Pd/Pfa must be demonstrated
Manual Tank Gauging.	280.43(b)	December 22, 1990.
Tank Tightness Testing.	280.43(c)	December 22, 1990.
Automatic Tank Gauging.	280.43(d)	December 22, 1990.
Automatic Line Leak Detectors.	280.44(a)	September 22, 1991.
Line Tightness Testing.	280.44(b)	December 22, 1990.

(b) When a release detection method operated in accordance with the performance standards in § 280.43 and § 280.44 indicates a release may have occurred, owners and operators must notify the implementing agency in accordance with subpart E.

(c) Owners and operators of all UST systems must comply with the release detection requirements of this subpart by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown.	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

Now tanks (after December 22) immediately upon installation.

P=Must begin release detection for all pressurized piping as defined in § 280.41(b)(1).

RD=Must begin release detection for tanks and suction piping in accordance with § 280.41(a), § 280.41(b)(2), and § 280.42.

(d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subpart must complete the closure procedures in subpart G by the date on which release detection is

required for that UST system in paragraph (c) of this section.

[53 FR 37194, Sept. 23, 1988, as amended FR 17753, Apr. 27, 1990; 55 FR 23738, Ju 1990; 56 FR 26, Jan. 2, 1991]

§ 280.41 Requirements for petro UST systems.

Owners and operators of petro UST systems must provide release detection for tanks and piping as follows:

(a) *Tanks.* Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 through (h) except that:

(1) UST systems that meet the performance standards in § 280.20 (b), may use tank tightness testing (conducted in accordance with § 280.43(c)) at least every 5 years after the tank is installed or upgraded under § 280.21(b), whichever is later;

(2) UST systems that do not meet performance standards in § 280.20 (b), may use monthly inventory controls (conducted in accordance with § 280.43(a) or (b)) and annual tank tightness testing (conducted in accordance with § 280.43(c)) until December 22, when the tank must be upgraded under § 280.21 or permanently closed under § 280.71; and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with § 280.43(b)).

(b) *Piping.* Underground piping routinely contains regulated substances must be monitored for release in a manner that meets one of the following requirements:

(1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with § 280.44(a); and

(ii) Have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a

tightness test conducted at least every 3 years and in accordance with § 280.44(b), or use a monthly monitoring method conduct in accordance with § 280.44(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (i) The below-grade piping operates at less than atmospheric pressure;
- (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (iii) Only one check valve is included in each suction line;
- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with paragraphs (b)(2) (i)-(iv) of this section to be readily determined.

§ 280.42 Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

- (a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in § 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.
- (b) Release detection at new hazardous substance UST systems must meet the following requirements:
 - (i) Secondary containment systems must be designed, constructed and installed to:
 - (I) Contain regulated substances released from the tank system until they are detected and removed;
 - (II) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
 - (III) Be checked for evidence of a release at least every 30 days.

NOTE.—The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

- (2) Double-walled tanks must be designed, constructed, and installed to:

- (i) Contain a release from any portion of the inner tank within the outer wall; and
- (ii) Detect the failure of the inner wall.
- (3) External liners (including vaults) must be designed, constructed, and installed to:
 - (i) Contain 100 percent of the capacity of the largest tank within its boundary;
 - (ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and
 - (iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).
- (4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with § 280.44(a).
- (5) Other methods of release detection may be used if owners and operators:

- (i) Demonstrate to the implementing agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in §§ 280.43(b) through (h) can detect a release of petroleum;
- (ii) Provide information to the implementing agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,
- (iii) Obtain approval from the implementing agency to use the alternate release detection method before the installation and operation of the new UST system.

§ 280.43 Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of § 280.41 must be conducted in accordance with the following:

- (a) *Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted

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monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

- (1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- (2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (4) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
- (5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
- (6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.

- (b) *Manual tank gauging.* Manual tank gauging must meet the following requirements:

- (1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;
- (2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
- (3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (4) A leak is suspected and subject to the requirements of subpart E if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one loss)	Monthly standard (average of four)
550 gallons or less	10 gallons	5 gallons.
551-1,000 gallons	13 gallons	7 gallons.
1,001-2,000 gallons	26 gallons	13 gallons.

- (5) Only tanks of 550 gallons or nominal capacity may use this as sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in § 280.43(a). Tanks greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.
- (c) *Tank tightness testing.* Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while counting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) *Automatic tank gauging.* Equipment for automatic tank gauging tests for the loss of product and conducts inventory control must meet the following requirements:

- (1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product and
- (2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of § 280.43(a).
- (e) *Vapor monitoring.* Testing or monitoring for vapors within the soil gas the excavation zone must meet the following requirements:
 - (1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
 - (2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring device located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e) (1) through (4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(f) *Ground-water monitoring.* Testing or monitoring for liquids on the ground water must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f) (1) through (5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) *Interstitial monitoring.* Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be

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installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) *Other methods.* Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The implementing agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the implementing agency on its use to ensure the protection of human health and the environment.

§ 280.44 Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of § 280.41 must be conducted in accordance with the following:

(a) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an

audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square line pressure within 1 hour. An audit of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(b) *Line tightness testing.* A test of piping may be conducted only if it can detect a 0.1 gallon per hour rate at one and one-half times the operating pressure.

(c) *Applicable tank methods.* Any of the methods in § 280.43 (e) through (h) may be used if they are designed to detect a release from any portion of underground piping that routinely contains regulated substances.

§ 280.45 Release detection record keeping.

All UST system owners and operators must maintain records in accordance with § 280.34 demonstrating compliance with all applicable requirements of this part. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 1 year, or for another reasonable period of time determined by the implementing agency, from the date of installation;

(b) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing conducted in accordance with § 280.41 must be retained until the next test is conducted; and

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the service work is completed, or for another reasonable time period determined by the implementing agency. Any schedules required for calibration and maintenance provided by the release detection equipment manufacturer must be maintained for 5 years from the date of installation.

Subpart E—Release Reporting, Investigation, and Confirmation

§ 280.50 Reporting of suspected releases.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in § 280.52 for any of the following conditions:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,

(c) Monitoring results from a release detection method required under § 280.41 and § 280.42 that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

§ 280.51 Investigation due to off-site impacts.

When required by the implementing agency, owners and operators of UST systems must follow the procedures in § 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the implementing agency or brought to its attention by another party.

§ 280.52 Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under § 280.50 within 7 days, or another reasonable time period specified by the implementing agency, using either the following steps or another procedure approved by the implementing agency:

(a) *System test.* Owners and operators must conduct tests (according to the requirements for tightness testing in § 280.43(c) and § 280.44(b)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with subpart F if the test results for the system, tank, or delivery piping indicate that a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with subpart F;

(2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

§ 280.53 Reporting and cleanup of spills and overfills.

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and begin corrective action in accordance with subpart F in the following cases:

(1) Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the implementing agency, or that causes a sheen on nearby surface water; and

(2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR part 302).

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or another reasonable amount specified by the implementing agency, and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, or another reasonable time period established by the implementing agency, owners and operators must immediately notify the implementing agency.

NOTE: Pursuant to §§ 302.6 and 305.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

Subpart F—Release Response and Corrective Action for UST Systems Containing Petroleum and Hazardous Substances

§ 280.60 General.

Owners and operators of petroleum and hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

§ 280.61 Initial response.

Upon confirmation of a release in accordance with § 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of release or within another reasonable period of time determined by the implementing agency:

(a) Report the release to the implementing agency (e.g., by telephone or electronic mail);

(b) Take immediate action to prevent any further release of the regulated substance into the environment; and

(c) Identify and mitigate fire, explosion, and vapor hazards.

§ 280.62 Initial abatement measures and site check.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must perform the following abatement measures:

(1) Remove as much of the regulated substance from the UST system as necessary to prevent further release to the environment;

(2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable State and local requirements;

(5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by § 280.52(b) or the closure site assessment of § 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with § 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

§ 280.63 Initial site characterization.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in §§ 280.60 and 280.61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site check required under § 280.62(a)(5); and

(4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under § 280.64.

(b) Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the implementing agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency.

§ 280.64 Free product removal.

At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, State and Federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(d) Unless directed to do otherwise by the implementing agency, prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(3) The type of free product recovery system used;

(4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(5) The type of treatment applied to, and the effluent quality expected from, any discharge;

(6) The steps that have been or are being taken to obtain necessary permits for any discharge; and

(7) The disposition of the recovered free product.

§ 280.65 Investigations for soil and ground-water cleanup.

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) Free product is found to need recovery in compliance with § 280.64;

(3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under §§ 280.60 through 280.64); and

(4) The implementing agency requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

(b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with the schedule established by the implementing agency.

§ 280.66 Corrective action plan.

(a) At any point after reviewing information submitted in compliance with §§ 280.61 through 280.63, the implementing agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for response to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the implementing agency. Alternatively, owners and operators must, after fulfilling the requirements in §§ 280.61 through 280.63, choose to submit a corrective action plan for response to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency, and must modify their plan as necessary to meet that standard.

(b) The implementing agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the implementing agency should consider the following factors as appropriate:

(1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) The hydrogeologic characteristics of the facility and the surrounding area;

(3) The proximity, quality, and current and future uses of nearby surface water and ground water;

(4) The potential effects of residual contamination on nearby surface water and ground water;

(5) An exposure assessment; and

(6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the implementing agency.

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menting agency, owners and operators must implement the plan, including modifications to the plan made by the implementing agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the implementing agency.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

(1) Notify the implementing agency of their intention to begin cleanup;

(2) Comply with any conditions imposed by the implementing agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the implementing agency for approval.

§280.67 Public participation.

(a) For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The implementing agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the implementing agency may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The implementing agency must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and

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termination of that plan is under consideration by the implementing agency.

Subpart G—Out-of-Service UST Systems and Closure

§280.70 Temporary closure.

(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with §280.31, and any release detection in accordance with subpart D, Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in §280.20 for new UST systems or the upgrading requirements in §280.21, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with §§280.71-280.74, unless the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with §280.72 before such an extension can be applied for.

§280.71 Permanent closure and changes-in-service.

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c)

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of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The required assessment of the excavation zone under §280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with §280.72.

NOTE: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section, and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard . . . Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

§280.72 Assessing the site at closure or change-in-service.

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the na-

ture of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in §280.43 (e) and (f) is operating in accordance with the requirements in §280.43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated ground water, or free product or a liquid or vapor is discovered under paragraph (a) of this section, or by another manner, owners and operators must begin corrective action in accordance with subpart F.

§280.73 Applicability to previously closed UST systems.

When directed by the implementing agency, the owner and operator of a UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subpart if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

§280.74 Closure records.

Owners and operators must maintain records in accordance with §280.34 that are capable of demonstrating compliance with closure requirements under this subpart. The results of the excavation zone assessment required by §280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

(a) By the owners and operators who took the UST system out of service;

(b) By the current owners and operators of the UST system site; or

(c) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

Subpart H—Financial Responsibility

SOURCE: 53 FR 43370, Oct. 26, 1988, unless otherwise noted.

Tab B

(b) In resolving claims made under Subsection (5)(a), the court shall allocate costs using the standards in Subsection 19-6-310(2).

(6) This section takes precedence over conflicting provisions in this chapter regarding agreements with responsible parties to conduct an investigation or cleanup action. 1991

PART 4

UNDERGROUND STORAGE TANK ACT

19-6-401. Short title.

This part is known as the "Underground Storage Tank Act." 1991

19-6-402. Definitions.

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a release from an underground storage tank or petroleum storage tank, or to limit or reduce, mitigate, or eliminate the damage caused by that release.

(2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any person.

(4) "Certificate of compliance" means a certificate issued to a facility by the executive secretary:

(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and

(b) listing all tanks at the facility, specifying which tanks may receive petroleum and which tanks have not met the requirements for compliance.

(5) "Certificate of registration" means a certificate issued to a facility by the executive secretary demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:

(a) registered the tanks; and

(b) paid the annual underground storage tank fee.

(6) (a) "Certified underground storage tank consultant" means any person who:

(i) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions, or advice relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged; and

(ii) has submitted an application to the board and received a written statement of certification from the board.

(b) "Certified underground storage tank consultant" does not include:

(i) an employee of the owner or operator of the underground storage tank, or an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and that markets petroleum products or manages underground storage tanks; or

(ii) persons licensed to practice law in this state who offer only legal advice on underground storage tank management, release abatement, investigation, corrective action, or evaluation.

(7) "Closed" means an underground storage tank no longer in use that has been:

(a) emptied and cleaned to remove all liquids and accumulated sludges; and

(b) either removed from the ground or filled with an inert solid material.

(8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for all or any of the following:

(a) cleanup or removal of the release;

(b) containment or isolation of the release;

(c) treatment of the release;

(d) correction of the cause of the release;

(e) monitoring and maintenance of the site of the release;

(f) provision of alternative water supplies to persons whose drinking water has become contaminated by the release; or

(g) temporary or permanent relocation, whichever is determined by the executive secretary to be more cost-effective, of persons whose dwellings have been determined by the executive secretary to be no longer habitable due to the release.

(9) "Costs" means any monies expended for:

(a) investigation;

(b) abatement action;

(c) corrective action;

(d) judgments, awards, and settlements for bodily injury or property damage to third parties;

(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

(f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.

(10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.

(11) "Dwelling" means a building that is usually occupied by a person lodging there at night.

(12) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.

(13) "Executive secretary" means the executive secretary of the board.

(14) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.

(15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

(16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section 19-6-405.3.

(17) "Operator" means any person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.

(18) "Owner" means:

(a) in the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and

(b) in the case of any underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, any person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

(19) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

(20) "Petroleum storage tank" means a tank that:

(a) (i) is underground;

- (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq.; and
- (iii) contains petroleum; or
- (b) is a tank that the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.
- (21) "Petroleum Storage Tank Account" means the account created in Section 19-6-405.5.
- (22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
- (23) "Property damage" means physical injury to or destruction of tangible property including loss of use of that property.
- (24) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or petroleum storage tank. The entire release is considered a single release.
- (26) (a) "Responsible party" means any person who:
 - (i) is the owner or operator of a facility;
 - (ii) owns or has legal or equitable title in a facility or an underground storage tank;
 - (iii) owned or had legal or equitable title in the facility at the time any petroleum was received or contained at the facility;
 - (iv) operated or otherwise controlled activities at the facility at the time any petroleum was received or contained at the facility; or
 - (v) is an underground storage tank installation company.
- (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not include:
 - (i) any person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:
 - (A) primarily to protect his security interest in the facility; or
 - (B) as a fiduciary or custodian under Title 75, Uniform Probate Code, or under an employee benefit plan; or
 - (ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Section 9601(20)(D).
- (c) The exemption created by Subsection (b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.
- (d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "foreclosure on property and postforeclosure activities," under this part shall be in accordance with 40 CFR 300.1100, National Contingency Plan.
- (e) The terms "participation in management" and "indicia of ownership" as defined in 40 CFR 300.1100, National Contingency Plan, include and apply to the fiduciaries listed in Subsection (26)(b)(i)(B).
- (27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.
- (28) "State cleanup appropriation" means the money appropriated by the Legislature to the department to fund

the investigation, abatement, and corrective action regarding releases not covered by the fund.

(29) "Underground storage tank" means any tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq., including:

- (a) a petroleum storage tank;
- (b) underground pipes and lines connected to a storage tank; and
- (c) any underground ancillary equipment and containment system.

(30) "Underground storage tank installation company" means any person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.

(31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the executive secretary.

(32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

1997

19-6-402.5. Retroactive effect.

(1) The Legislature finds the definitions in this part prior to the passage of this act did not clearly set forth procedures for identifying responsible parties and interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification regarding procedures for allocating responsibility for the costs of investigation, abatement, and corrective action as required under this part.

(3) It is the intent of the Legislature that this part imposes liability as determined under this part retroactively to any release of petroleum or any other regulated substance subject to investigation, abatement, or corrective action under this part.

1992

19-6-403. Powers and duties of board.

(1) (a) The board shall regulate underground storage tanks and petroleum storage tanks by applying the provisions of this part and by making rules for:

- (i) certification of tank installers, inspectors, testers, and removers;
- (ii) registration of tanks;
- (iii) administration of the petroleum storage tank program;
- (iv) format and required information regarding records to be kept by tank owners or operators who are participating in the fund;
- (v) voluntary participation in the fund for above ground petroleum storage tanks and tanks exempt from regulation under 40 C.F.R., Part 280, Subpart (B), and specified in Section 19-6-415, and
- (vi) certification of underground storage tank consultants, including requirements for minimum education or experience, which rules shall recognize the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, as meeting the education requirements for certification, but shall require proof of experience that meets certification requirements.

(b) The board shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, adopting requirements for underground storage tanks contained in Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq., and other future applicable final federal regulations.

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(2) The board shall ensure that the rules made under the authority of Subsection (1) meet federal requirements for the state's assumption of primacy in the regulation of underground storage tanks, as provided in Section 9004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq. 1997

19-6-404. Powers and duties of executive secretary.

(1) The executive secretary shall administer the petroleum storage tank program established in this part.

(2) As necessary to meet the requirements or carry out the purposes of this part, the executive secretary may:

- (a) advise, consult, and cooperate with other persons;
- (b) employ persons;
- (c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
- (d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
- (e) collect and disseminate information;
- (f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
- (g) review plans, specifications, or other data;
- (h) represent the state in all matters pertaining to interstate underground storage tank management and control, including, with the concurrence of the executive director, entering into interstate compacts and other similar agreements;
- (i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:
 - (i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and
 - (ii) the executive secretary determines that:
 - (A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and
 - (B) the contract or agreement will be practical and effective;
- (j) take any necessary enforcement action authorized under this part;
- (k) require an owner or operator of an underground storage tank to:
 - (i) furnish information or records relating to the tank, its equipment, and contents;
 - (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or
 - (iii) provide access to the tank at reasonable times;
- (l) take any abatement, investigative, or corrective action as authorized in this part; and
- (m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.

(3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions made by the executive secretary under this part shall be made to the board. 1997

19-6-405. Repealed. 1992

19-6-405.3. Creation of Petroleum Storage Tank Loan Fund — Purposes — Loan eligibility — Loan restrictions — Rulemaking.

(1) There is created the revolving loan fund entitled the Petroleum Storage Tank Loan Fund.

(2) The sources of monies for the loan fund are:

- (a) appropriations to the loan fund;
- (b) principal and interest received from the repayment of loans made by the executive secretary under Subsection (3); and

(c) all investment income derived from money in the fund.

(3) The executive secretary may loan, in accordance with this section, monies available in the loan fund to persons to be used for:

(a) upgrading petroleum storage tanks and associated piping with corrosion protection, or spill and overfill prevention equipment as necessary to meet the federal deadline required under 40 CFR 280.21;

(b) replacing underground storage tanks; or

(c) permanently closing underground storage tanks.

(4) A person may apply to the executive secretary for a loan under Subsection (3) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the loan fund.

(5) The executive secretary shall consider loan applications under Subsection (4) to meet the following objectives:

(a) support availability of gasoline in rural parts of the state;

(b) support small businesses; and

(c) reduce the threat of a petroleum release endangering the environment.

(6) Loans made under this section shall:

(a) be for no more than \$45,000 for all tanks at any one facility;

(b) be for no more than \$15,000 per tank;

(c) be for no more than 80% of the total cost of:

(i) upgrading a tank and associated piping to meet requirements of 40 CFR 280.21;

(ii) replacing the underground storage tank; or

(iii) permanently closing the underground storage tank;

(d) have a fixed annual interest rate of 3%;

(e) have a term no longer than ten years;

(f) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (7); and

(g) comply with rules made by the board under Subsection (7).

(7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board shall make rules establishing:

(a) form, content, and procedure for loan applications;

(b) criteria and procedures for prioritizing loan applications;

(c) requirements and procedures for securing loans;

(d) procedures for making the loans;

(e) procedures for administering and ensuring repayment of loans, including late payment penalties; and

(f) procedures for recovering on defaulted loans.

(8) The decisions of the executive secretary in loaning money from the loan fund and otherwise administering the loan fund are not subject to Title 63, Chapter 46b, Administrative Procedures Act.

(9) The Legislature shall appropriate monies for administration of the loan fund to the department from the loan fund.

(10) The executive secretary may enter into agreements with public entities or private organizations to perform any tasks associated with administration of the loan fund. 1994

19-6-405.5. Creation of restricted account.

(1) There is created in the General Fund a restricted account known as the Petroleum Storage Tank Restricted Account.

(2) All penalties imposed under this part shall be deposited in this account. Specified program funds under this part that are unexpended at the end of the fiscal year lapse into this account.

(3) The Legislature shall appropriate the money in the account to the department for the costs of administering the petroleum storage tank program under this part. 1997

19-6-406. Repealed. 1992

19-6-407. Underground storage tank registration — Change of ownership or operation — Civil penalty.

(1) (a) Each owner or operator of an underground storage tank shall register the tank with the executive secretary if the tank:

- (i) is in use; or
- (ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the executive secretary of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the executive secretary of the completed installation within 60 days following the installation of an underground storage tank.

(2) The executive secretary may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1).

(3) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5. 1997

19-6-408. Underground storage tank registration fee — Processing fee for tanks not in the program.

(1) The department may assess an annual underground storage tank registration fee against owners or operators of underground storage tanks that have not been closed. These fees shall be:

- (a) billed per facility;
- (b) due on July 1 annually;
- (c) deposited with the department as dedicated credits;
- (d) used by the department for the administration of the underground storage tank program outlined in this part; and
- (e) established under Section 63-38-3.2.

(2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee of:

- (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document submitted to the division for review; and
- (ii) on and after July 1, 1998, a processing fee established under Section 63-38-3.2.

(b) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2) (a) shall be paid for each document submitted.

(c) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The executive secretary shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.

(5) (a) The executive secretary may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this subsection are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The executive secretary may not reissue the certificate of compliance until full payment under this subsection is made to the department.

(d) The executive secretary may waive any penalty assessed under this subsection if no fuel has been dispensed from the tank on or after July 1, 1991. 1997

19-6-409. Petroleum Storage Tank Trust Fund created — Source of revenues.

(1) (a) There is created an expendable trust fund entitled the Petroleum Storage Tank Trust Fund.

(b) The sole sources of revenues for the fund are:

- (i) petroleum storage tank fees under Section 19-6-411;
- (ii) underground storage tank installation company permit fees under Section 19-6-411;
- (iii) the environmental assurance fee paid under Section 19-6-410.5; and
- (iv) costs recovered under this part.

(c) Interest earned on fund monies shall be deposited into the fund.

(2) Fund monies may be used to pay:

- (a) costs as provided in Section 19-6-419; and
- (b) for the administration of the fund and the environmental assurance program and fee under Section 19-6-410.5.

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

(4) The executive secretary may expend monies from the fund for:

- (a) legal and claims adjusting costs incurred by the state in connection with claims, judgments, awards, or settlements for bodily injury or property damage to third parties;
- (b) costs incurred by the state risk manager in determining the actuarial soundness of the fund; and
- (c) other costs as provided in this part.

(5) For fiscal year 1997-98, money in the Petroleum Storage Tank Trust Fund, up to a maximum of \$2,200,000, may be appropriated by the Legislature to the department as nonlapsing funds to be applied to the costs of investigation, abatement, and corrective action regarding releases not covered by the fund and not on the national priority list as defined in Section 19-6-302. 1997

19-6-410. Repealed. 1997

19-6-410.5. Environmental assurance program — Participant fee.

(1) There is created an Environmental Assurance Program. The program shall provide to participating owners and operators, upon payment of the fee imposed under Subsection (3), assistance with the costs of investigation, abatement, and corrective action regarding releases at facilities participating in the program, to the extent provided under Section 19-6-419.

(2) Participation in the program is voluntary.

(3) (a) There is assessed of all participants in the program the greater of:

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(i) an environmental assurance fee of $\frac{1}{2}$ cent per gallon on all petroleum delivered to any tank participating in the program; or

(ii) an environmental assurance fee of \$250 annually for each tank participating in the program.

(b) The department shall deposit revenue from the fee in the Petroleum Storage Tank Trust Fund.

(c) Revenue collected under this section shall be used solely for the purposes under Section 19-6-409.

4) (a) The department shall by rule establish procedures and due dates for payment of the fee.

(b) The rules shall include provisions that:

(i) if the fee is not paid on or before the due date established by rule, the department may impose a late penalty of \$60 for each facility for which the fee is overdue,

(ii) the fee and the late penalty accrue interest at 12% per annum,

(iii) if the fee, the late penalty, and all accrued interest are not received by the department within 60 days of the due date established by rule, the eligibility of the owner or operator to receive payments for claims against the fund lapses, and

(iv) in order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3)

1997

19-6-411. Petroleum storage tank fee for program participants.

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows

(a) on and after July 1, 1990, through June 30, 1993, an annual fee of

(i) \$250 for each tank

(A) located at a facility engaged in petroleum production, refining, or marketing, or

(B) with an annual monthly throughput of more than 10,000 gallons, and

(iii) \$125 for each tank

(A) not located at a facility engaged in petroleum production, refining, or marketing, and

(B) with an annual monthly throughput of 10,000 gallons or less

(b) on and after July 1, 1993 through June 30, 1994, an annual fee of

(i) \$150 for each tank

(A) located at a facility engaged in petroleum production, refining, or marketing, or

(B) with an average monthly throughput of more than 10,000 gallons, and

(iii) \$75 for each tank

(A) not located at a facility engaged in petroleum production, refining, or marketing, and

(B) with an average monthly throughput of 10,000 gallons or less, and

(c) on and after July 1, 1994, an annual fee of

(i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000 gallons or less,

(ii) \$150 for each tank in a facility with an annual facility throughput rate of more than 400,000 gallons, and

(iii) \$150 for each tank in a facility regarding which

(A) the facility's throughput rate is not reported to the department within 30 days after

the date this throughput information is requested by the department; or

(B) the owner or operator elects to pay the fee under this subsection, rather than report under Subsection (1)(c)(i) or (ii).

(2) (a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank installation company shall pay to the department the following fees to be deposited in the fund.

(i) an annual fee of.

(A) \$2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date, or

(B) \$4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date, and

(ii) \$200 for each underground storage tank installed in the state, to be paid prior to completion of installation

(b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed

(3) (a) Fees under Subsection (1) are due on or before July 1 annually

(b) If the department does not receive the fee on or before July 1 the department shall impose a late penalty of \$60 per facility

(c) (i) The fee and the late penalty accrue interest at 12% per annum

(ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive payments for claims against the fund lapses on the 61st day after July 1

(iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3)

(4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per annum

(ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1

(b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at 12% per annum

(ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed

(c) The executive secretary may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.

(5) If the state risk manager determines the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the petroleum storage tank and underground storage tank installation company permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The provisions of this subsection take precedence over all other provisions of this section:

(a) when a petroleum storage tank is initially registered with the executive secretary, the department shall assess and collect a petroleum storage tank fee of \$250 from the owner or operator for that fiscal year; and

(b) the department may not assess any other petroleum storage tank fee from the owner or operator for that fiscal year.

(7) The executive secretary may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(8) (a) Each petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part, shall be issued a form of identification, as determined by the board under Subsection (8)(b).

(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of petroleum storage tanks or underground storage tanks under Subsection (8)(a) that qualify for a certificate of compliance under this part. 1997

19-6-412. Petroleum storage tank — Certificate of compliance.

(1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.

(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.

(2) The executive secretary shall issue a certificate of compliance if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;

(c) all state and federal statutes, rules, and regulations have been substantially complied with; and

(d) all tank test requirements of Section 19-6-413 have been met.

(3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.

(4) The executive secretary may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.

(5) The executive secretary shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).

(6) If the owner or operator electing to participate in the program has a number of tanks in an area where the executive secretary finds it would be difficult to accurately determine

which of the tanks may be the source of a release, the owner may only elect to place all of the tanks in the area in the program, but not just some of the tanks in the area. 1997

19-6-413. Tank tightness test — Actions required after testing.

(1) The owner or operator of any petroleum storage tank registered prior to July 1, 1991, must submit to the executive secretary the results of a tank tightness test conducted:

(a) on or after September 1, 1989, and prior to January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or

(b) on or after January 1, 1990, and prior to July 1, 1991.

(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, must submit to the executive secretary the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.

(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the executive secretary at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.

(4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:

(i) correct the problem; and

(ii) submit evidence of the correction to the executive secretary.

(b) When the executive secretary receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the executive secretary shall:

(i) approve or disapprove the correction; and

(ii) notify the owner or operator that the correction has been approved or disapproved.

(5) The executive secretary shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.

(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D. 1997

19-6-414. Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.

(1) If the executive secretary determines that any of the requirements of Subsection 19-6-412(2) and Section 19-6-413 have not been met, the executive secretary shall notify the owner or operator by certified mail that:

(a) his certificate of compliance may be revoked;

(b) if he is participating in the program, he is violating the eligibility requirements for the fund; and

(c) he shall demonstrate his compliance with this part within 60 days after receipt of the notification or his certificate of compliance will be revoked and if participating in the program he will be ineligible to receive payment for claims against the fund.

(2) If the executive secretary determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the executive secretary shall send written notice to the owner or operator that the owner's or operator's certificate of compli-

ance is revoked and he is no longer eligible for payment of costs from the fund.

(3) Revocation of certificates of compliance may be appealed to the executive director. 1997

19-6-415. Participation of exempt and above ground tanks.

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if it:

- (a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;
- (ii) is used for storing heating oil for consumptive use on the premises where stored; or
- (iii) is used for any oxygenate blending component for motor fuels;

(b) complies with the requirements of Section 19-6-412;

(c) meets other requirements established by rules made under Section 19-6-403; and

(d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

(2) An above ground petroleum storage tank may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:

(a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;

(b) complies with the requirements of Section 19-6-412; and

(c) meets other requirements established by rules made under Section 19-6-403. 1997

19-6-415.5. State-owned underground tanks to participate in program.

Any underground storage tank owned or leased by the state of Utah and subject to the financial assurance requirements established by division rule shall participate in the program. 1997

19-6-416. Restrictions on delivery of petroleum — Civil penalty.

(1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(8).

(2) Any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The executive secretary shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank or underground storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank or underground storage tank that is identified in compliance with Subsection 19-6-411(8) and rules made under that subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411. 1996

19-6-416.5. Restrictions on underground storage tank installation companies — Civil penalty.

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank

without having a valid underground storage tank installation company permit.

(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per underground storage tank.

(3) The executive secretary shall issue a notice of agency action assessing a civil penalty of \$500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1). 1994

19-6-417. Use of fund revenues to investigate certain releases from petroleum storage tank.

If the executive secretary is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund. 1997

19-6-418. Recovery of costs by executive secretary.

(1) The executive secretary may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;

(b) any amount required to be paid by the owner under this part which the owner has not paid; and

(c) costs of collecting the amounts in Subsections (a) and (b).

(2) The executive secretary may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release. 1992

19-6-419. Costs covered by the fund — Costs paid by owner or operator — Payments to third parties — Apportionment of costs.

(1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release shall be covered as provided under this section.

(2) The responsible party shall pay:

(a) the first \$10,000 of costs; and

(b) (i) all costs over \$1,000,000, if the release was from a tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an average monthly facility throughput of more than 10,000 gallons; and

(ii) all costs over \$500,000, if the release was from a tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an average monthly facility throughput of 10,000 gallons or less.

(3) If money is available in the fund and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs from the fund in an amount not to exceed:

(a) \$990,000 if the release was from a tank:

(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and

(b) \$490,000 if the release was from a tank:

(i) not located at a facility engaged in petroleum production, refining, or marketing; and

(ii) with an average monthly facility throughput of 10,000 gallons or less.

(4) The total costs of tank releases regarding any responsible party that may be paid in any fiscal year by fund monies are:

(a) \$990,000 for a responsible party of one to 99 petroleum storage tanks; or

(b) \$1,990,000 for a responsible party of 100 or more petroleum storage tanks.

(5) (a) In authorizing payments for costs from the fund, the executive secretary shall apportion monies first to legal, adjusting, and actuarial expenses incurred by the state; expenses incurred in investigation, abatement action, and corrective action; and then to payment of judgments, awards, or settlements to third parties for bodily injury or property damage.

(b) The board shall make rules governing the apportionment of costs among third party claimants. 1997

19-6-420. Releases — Abatement actions — Corrective actions.

(1) If the executive secretary determines that a release from a petroleum storage tank has occurred, he shall:

(a) identify and name as many of the responsible parties as reasonably possible; and

(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

(2) Regardless of whether the tank generating the release is covered by the fund, the executive secretary may:

(a) order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan; and

(b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the executive secretary, the executive secretary may take any one or more of the following actions:

(i) subject to the conditions in this part, use monies from the fund, if the tank involved is covered by the fund, or state cleanup appropriation to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.

(3) (a) Subject to the limitations established in Section 19-6-419, the executive secretary shall provide monies from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the executive secretary; and

(ii) the executive secretary approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the executive secretary for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the executive secretary that the abatement action was reasonable and timely in light of circumstances, the executive secretary shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the executive secretary within 24 hours of the abatement action taken.

(4) (a) If the executive secretary determines corrective action is necessary, the executive secretary shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the executive secretary shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the executive secretary shall consider the following:

(i) the threat to public health;

(ii) the threat to the environment; and

(iii) the cost-effectiveness of alternative corrective actions.

(5) If the executive secretary approves the corrective action plan or develops his own corrective action plan, he shall:

(a) approve the estimated cost of implementing the corrective action plan;

(b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund monies to be allocated to an owner or operator to implement a corrective action plan; and
(ii) subject to the limitations established in Section 19-6-419, provide monies from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The executive secretary may not distribute any monies from the fund for corrective action until the owner or operator obtains the executive secretary's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the executive secretary and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

(i) the owner or operator submits the corrective action plan to the executive secretary within seven days after beginning corrective action; and

(ii) the executive secretary approves the corrective action plan.

(7) If the executive secretary disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.

(8) If the executive secretary disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the executive secretary may:

(a) develop his own corrective action plan; and

(b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the executive secretary shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.

(b) If the executive secretary determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order. 1997

19-6-421. Third party payment restrictions and requirements.

(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the executive secretary shall authorize payment from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:

(a) (i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or

(ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and

(b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.

(2) The executive secretary shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419. 1997

19-6-422. Participation by state risk manager in suit, claim, or settlement.

(1) If a suit is filed or a claim is made against a responsible party who is eligible for payments from the fund for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the state risk manager and his legal counsel may participate with the responsible party and his legal counsel in:

- (a) the defense of any suit;
- (b) determination of legal strategy and any other decisions affecting the defense of any suit; and
- (c) any settlement negotiations.

(2) The state risk manager shall approve any settlement between the responsible party and a third party before payment of fund monies is made.

1992

19-6-423. Claim or suit against responsible parties — Prerequisites for payment from fund to responsible parties or third parties — Limitations of liability for third party claims.

(1) In order to be eligible for payments from the fund, if a responsible party receives actual or constructive notice of an occurrence likely to give rise to a claim, that a suit has been filed, or a claim has been made against him for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the responsible party shall:

- (a) inform the state risk manager immediately of the occurrence, suit, or claim;
- (b) allow the state risk manager and his legal counsel to participate with the responsible party and his legal counsel in:
 - (i) the defense of any suit;
 - (ii) determination of legal strategy and any other decisions affecting the defense of any suit; and
 - (iii) any settlement negotiations; and
- (c) conduct the defense of any suit or claim in good faith.

(2) The executive secretary may not authorize payment of fund monies for any judgment or award to third parties unless the state risk manager:

- (a) indicates that he was not prevented from participating in the defense of the suit; and
- (b) approves the settlement.

(3) In making payments to third parties from the fund pursuant to Section 19-6-421, or in funding a corrective action plan pursuant to Section 19-6-420, the executive secretary may not pay an award or judgment or fund a corrective action plan to the extent that it imposes any liability or makes any payment for:

- (a) obligations of a responsible party under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) bodily injury to an employee of the responsible party arising from and in the course of his employment or to the spouse, child, parent, brother, sister, heirs, or personal representatives of that employee as a result of that bodily injury;
- (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) property damage to any property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of the owner or operator except to the extent necessary to complete a corrective action plan;
- (e) bodily injury or property damage for which the responsible party is obligated to pay damages only by reason of the assumption of liability in a contract or agreement, other than a contract or agreement entered into to meet the financial responsibility requirements of Subtitle I of the Resource Conservation and Recovery Act,

42 U.S.C., Section 6991c, et seq., or this part, or regulations or rules made under either of them;

(f) bodily injury or property damage for which the responsible party is liable to a third party solely on account of personal injury to the spouse of that third party;

(g) bodily injury or property damage caused by a release from a petroleum storage tank covered by the fund or the cost of a corrective action plan, where the total amount previously paid by the executive secretary to compensate third parties or for funding a corrective action plan in respect to that same accidental release from the covered tank equals \$990,000; or

(h) bodily injury or property damage caused by a release from a petroleum storage tank covered by the fund or the cost of a corrective action plan when the total amount previously paid by the executive secretary to compensate third parties or for funding corrective action plans in respect to releases from tanks of any one responsible party during any fiscal year equals \$990,000 for a responsible party regarding one to 99 petroleum storage tanks or \$1,990,000 for a responsible party regarding 100 or more petroleum storage tanks.

1997

19-6-424. Claims not covered by fund.

(1) The executive secretary may not authorize payments from the fund unless:

- (a) the claim was based on a release occurring during a period for which that tank was covered by the fund;
- (b) the claim was made:
 - (i) during a period for which that tank was covered by the fund; or
 - (ii) (A) within one year after that fund-covered tank is closed; or
 - (B) within six months after the end of the period during which the tank was covered by the fund; and

(c) there are sufficient revenues in the fund.

(2) The executive secretary may not authorize payments from the fund for an underground storage tank installation company unless:

- (a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;
- (b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and
- (c) there are sufficient revenues in the fund.

(3) The executive secretary may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.

(4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the executive secretary may authorize payments from the fund as provided in this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

1997

19-6-424.5. Apportionment of liability — Liability agreements — Legal remedies.

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the executive secretary may:

- (a) issue written orders determining responsible parties;
- (b) issue written orders apportioning liability among responsible parties; and
- (c) take action, including legal action or issuing written orders, to recover costs from responsible parties, includ-

ing costs of any investigation, abatement, and corrective action performed under this part

- (2) (a) In any apportionment of liability, whether made by the executive secretary or made in any administrative proceeding or judicial action, the following standards apply

(i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release, and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release relative to other responsible parties

- (b) (i) The burden of proving proportionate contribution shall be borne by each responsible party

(ii) If a responsible party does not prove his proportionate contribution, the court, the board, or the executive secretary shall apportion liability to the party based on available evidence and the standards of Subsection (a)

(c) The court, the board, or the executive secretary may not impose joint and several liability

(d) Each responsible party is strictly liable for his share of costs

(3) The failure of the executive secretary to name all responsible parties is not a defense to an action under this section

(4) The executive secretary may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party

(5) The executive secretary and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a)

(a) have been notified in writing by either the executive secretary or the responsible party of the proposed agreement, and

(b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement

- (6) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court

(b) In resolving claims made under Subsection (a) the court shall allocate costs using the standards in Subsection (2)

- (7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order

(b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order

- (8) (a) If the executive secretary obtains less than complete relief from a party who has resolved his liability under this section, the executive secretary may bring an action against any party who has not resolved his liability as determined in an order

(b) In apportioning liability, the standards of Subsection (2) apply

(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order

(9) (a) An agreement or order determining liability under this part may provide that the executive secretary will pay for costs of actions that the parties have agreed to perform, but which the executive secretary has agreed to finance, under the terms of the agreement or order

(b) If the executive secretary makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority 1994

19-6-425. Violation of part — Civil penalty — Suit in district court.

(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than \$10,000 per day for each day of violation

(2) The executive secretary may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located

(3) The department shall deposit the penalties collected under this part in the Petroleum Storage Tank Restricted Account created under Section 19-6-405 5 1997

19-6-426. Limitation of liability of state — Liability of responsible parties — Indemnification agreement involving responsible parties.

(1) This part is not intended to create an insurance program

(2) The fund established in this part shall only provide funds to finance costs for responsible parties who meet the requirements of this part when releases from petroleum storage tanks occur

(3) The assets of the fund, if any, are the sole source of monies to pay claims against the fund

(4) The state is not liable for

(a) any amounts payable from the fund for which the fund does not have sufficient assets,

(b) any expenses or debts of the fund, or

(c) any claim arising from the creation, management, rate-setting, or any other activity pertaining to the fund

(5) The responsible parties are liable for any costs associated with any release from the underground storage tank system

(6) This part does not preclude a responsible party from enforcing or recovering under any agreement or contract for indemnification associated with a release from the tank or from pursuing any other legal remedies that may be available against any party

(7) If any payment is made under this part, the fund shall be subrogated to all the responsible parties' rights of recovery against any person or organization and the responsible parties shall execute and deliver instruments and papers and do whatever else is necessary to secure the rights. The responsible parties shall do nothing after a release is discovered to prejudice the rights. In the event of recovery by the fund, any amount recovered shall first be used to reimburse the responsible parties for costs they are required to pay pursuant to Section 19-6-419

(8) Parties who elect to participate in the fund do so subject to the conditions and limitations in this section and in this part 1997

19-6-427. Liability of any person under other laws — Additional state and governmental immunity — Exceptions.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:

19-6-427

(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or

(b) the liability of any person for costs incurred except as provided in this part.

(2) In addition to the governmental immunity granted in Title 63, Chapter 30, Utah Governmental Immunity Act, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct. 1991

19-6-428. Eligibility for participation in the fund.

(1) All owners and operators of existing petroleum storage tanks that are covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.

(2) Any new petroleum storage tanks installed after May 5, 1997, or tanks eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.

(3) All owners and operators of petroleum storage tanks who elect to not participate in the program, including by the use of an alternative financial assurance mechanism, shall comply with this Subsection (3) in order to subsequently participate in the program:

(a) perform a tank tightness test and site check, including soil and groundwater samples to demonstrate no release of petroleum exists or adequate remediation of releases as required by board rules;

(b) remit to DEQ all tank fees and environmental assurance fees which would have been collected, including an amount equal to any interest which would have accrued on those monies on and after May 5, 1997, or from the date of cessation of participation in the program; and

(c) comply with the requirements of this part. 1997

19-6-429. False information and claims.

(1) Any person who presents or causes to be presented any oral or written statement, knowing the statement contains false information, in order to obtain a certificate of compliance is guilty of a class B misdemeanor.

(2) (a) Any person who presents or causes to be presented any claim for payment from the fund, knowing the claim contains materially false information or knowing the claim is not eligible for payment from the fund, is subject to the criminal penalties under Section 76-10-1801 regarding fraud.

(b) The level of criminal penalty shall be determined by the value involved, in the same manner as in Section 76-10-1801. 1997

PART 5

SOLID WASTE MANAGEMENT ACT

19-6-501. Short title.

This part is known as the "Solid Waste Management Act." 1991

19-6-502. Definitions.

As used in this part:

(1) "Governing body" means the governing board, commission, or council of a public entity.

(2) "Jurisdiction" means the area within the incorporated limits of a municipality, special service district,

municipal-type service district, county service area, or all of the territorial area of a county not lying within a city or town.

(3) "Long-term agreement" means an agreement or contract having a term of more than five years and less than 50 years.

(4) "Public entity" means a county, municipality, special service district, or county service area created under Title 17A, Chapter 2, Independent Special Districts, and a municipal-type service district created under Title 17, Chapter 34, Municipal-type Services to Unincorporated Areas.

(5) "Resource recovery" means the separation, extraction, recycling, or recovery of usable materials, energy, fuel, or heat from solid waste and the disposition of it.

(6) "Short-term agreement" means any contract or agreement having a term of five years or less.

(7) "Solid waste" means all putrescible and nonputrescible materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owner's needs at the time of discard or rejection, including garbage, refuse, industrial and commercial waste, sludges from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition, and construction debris, discarded automobiles and offal, but not including sewage and other highly diluted water carried materials or substances and those in gaseous form.

(8) "Solid waste management" means the purposeful and systematic collection, transportation, storage, processing, recovery, and disposal of solid waste.

(9) "Solid waste management facility" means any facility employed for solid waste management, including transfer stations, transport systems, baling facilities, landfills, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, plants and facilities for compacting, composting, or pyrolyzation of solid wastes, incinerators and other solid waste disposal, reduction, or conversion facilities, and facilities for resource recovery of energy consisting of (a) facilities for the production, transmission, distribution, and sale of heat and steam, and (b) facilities for the generation and sale of electric energy to a public utility or municipality or other public entity which owns and operates an electric power system on March 15, 1982, and for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States; provided, that solid waste management facilities are not a public utility as defined in Section 54-2-1. 1991

19-6-503. Powers and duties of public entities.

Subject to the powers and rules of the department, the governing body of each public entity may:

(1) supervise and regulate the collection, transportation, and disposition of all solid waste generated within its jurisdiction;

(2) provide solid waste management facilities to handle adequately solid waste generated or existing within or without its jurisdiction;

(3) assume, by agreement, responsibility for the collection and disposition of solid waste whether generated within or without its jurisdictional boundaries;

(4) enter into short or long-term interlocal agreements with other public entities, with public agencies as defined in Title 11, Chapter 13, Interlocal Cooperation Act, with private persons or entities, or any combination of them, to provide for or operate solid waste management facilities;

(5) levy and collect taxes, fees, and charges and require licenses as may be appropriate to discharge its responsi-

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Stirba and Hathaway

BEFORE THE UTAH SOLID AND HAZARDOUS
WASTE CONTROL BOARD

IN RE: Emergency Order to Abate	:	
and Order to	:	
Investigate and Perform Corrective	:	FINDINGS OF FACT
Action In re: V-1 Oil Company Free	:	CONCLUSIONS OF LAW
Product In Sewer.	:	AND ORDER
Facility No. 4001217	:	
Release Site EFTX	:	

This matter came before the Utah Solid and Hazardous Waste Control Board ("Board") for formal hearing on February 13, 1997 based upon V-1 Oil Company's ("V-1") Request for Agency Action to review the January 19, 1996, Emergency Order to Abate and Order to Investigate and Perform Corrective Action ("Order") In re: V-1 Oil Company Free Product In Sewer, Facility No. 4001217, Release Site EFTX, and the January 25, 1996 Notice of Non-compliance ("Notice"), both issued by the Executive Secretary. Linnette B. Hutton appeared on behalf of V-1, and Melissa M. Hubbell represented the Executive Secretary and the Division of Environmental Response and Remediation ("DERR" or "Division"). A quorum of Board members was present and voted on the motions resulting in this order. The hearing was conducted under the authority of Utah Code Ann. § 63-46b-8 of the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-1 et seq. (1953, as amended), and Utah Admin. Code R311.

The Board, having considered the testimony, exhibits and arguments of

counsel, voted to uphold the Emergency Order to Abate and Order to Investigate and Perform Corrective Action and the Notice of Non-compliance, and voted to deny V-1's Request to Voir Dire the Board members, for the reasons on that day orally assigned. The Board hereby issues its written findings of fact, conclusions of law, statement of reasons and ORDER as required by Utah Code Ann. § 63-46b-12 with regard to said Request for Agency Action.

FINDINGS OF FACT

1. V-1 Oil Company owns or operates V-1 Oil, an underground storage tank (UST) facility which has been located at 1478 South 300 West, Salt Lake City, Utah since the early 1970's. V-1 had four USTs on-site until December 1995, when two (previously paved-over) USTs were removed. The two remaining USTs were installed in 1980.

2. On Friday, January 12, 1996, A & A General Contractors ("A & A"), located at 328 West Whitney Ave. (1455 South), complained to Salt Lake City Public Utilities ("SLCPU") about odors and vapors in the A & A building. The SLCPU determined that the source of the fumes was petroleum flowing through a sewer line on Whitney Ave. near the A & A building. In response, SLCPU flushed the sewer line with water. On the following Monday, January 15, 1996, A & A contacted the SLCPU again to complain about a strong concentration of petroleum vapors in the building, and that the vapors were causing A & A employees to become sick. SLCPU again flushed the sewer lines. On Tuesday, January 16, 1996, A & A contacted SLCPU for a third time concerning petroleum vapors in the

building. SLCPU flushed the sewer lines and contacted the Division of Environmental Health of the Salt Lake City/County Health Department ("County Health").

3. SLCPU and County Health inspected the sewer line and made a video of the inside of the sewer. According to a SLCPU representative, the video revealed a release of free product-phase petroleum entering the sewer line at about 117 feet east from the second manhole west of 300 West. The release was reported to DERR.

4. SLCPU and DERR continued to flush a large volume of water through the sewer from January 1996 until June 1996, when a sleeve was installed in the sewer by DERR representatives. The flushing prevented the build-up of petroleum fumes in the sewer and the A & A building.

5. A review of DERR records revealed that there had been fourteen UST sites in the general vicinity of A & A. Thirteen of the sites are no longer in use, with the USTs at these sites having been closed between 1967 and 1992. The only nearby UST site still in use is V-1.

6. V-1 is located approximately 200 feet from the sewer line and 240 feet from A & A. Regional groundwater flow maps indicate that V-1 is up-gradient from the point at which the contamination was entering the sewer line.

7. DERR records indicate that: in 1985, a line leak was reported at V-1; in July, 1990, petroleum contamination was found at the facility; on February 6, 1991, a consultant for V-1 reported contamination of the V-1 property; on

December 16, 1991, DERR found petroleum contamination on the V-1 facility, and on-site groundwater tests taken on the same day confirmed the presence of petroleum contaminants.

8. In December 1996, V-1 removed the two paved-over USTs. One tank was found to contain approximately 50 gallons of liquid contaminated by petroleum. The other tank was found to contain approximately 500 gallons of liquid contaminated by petroleum. The soils in the area around the tanks were found to be contaminated with petroleum, and one of the tanks had several holes in it.

9. According to V-1 reports, in October, November and December 1995, petroleum shortages of approximately 2,298 gallons were shown in the inventory records. V-1 reported that a line leak was repaired in late December 1995.

10. On January 19, 1996, the Executive Secretary issued the Emergency Order to Abate and Order to Investigate and Perform Corrective Action In re: V-1 Oil Company Free Product In Sewer, Facility No. 4001217, Release Site EFTX, finding that V-1 was responsible for the release into the Whitney Ave. sewer line, and ordering V-1 to take immediate abatement, investigative and corrective action

11. After the Order was issued, V-1 retained a company to investigate whether V-1 was the source of the contamination entering the sewer on Whitney Ave. V-1's consultant submitted a report in a timely fashion as ordered, but the report did not completely comply with the Order. V-1 did not outline a plan to conduct any abatement activities to lessen the impact to the surrounding area as

required in the Order. V-1 has not participated in abatement actions currently being taken by SLCPU or DERR.

12. On January 25, 1996, the Executive Secretary notified V-1 that due to V-1's refusal to take abatement action in the face of an imminent, direct and substantial threat to the public health and environment, DERR would use public monies and commence abatement, investigative and corrective action.

13. DERR and its consultant/contractor, Delta Environmental Consultants, installed 39 geo-probe borings to measure petroleum contamination in soils along 300 West Street, Whitney Avenue and 1500 South Street and on the Southern Pacific property between V-1 and A & A. V-1 and its consultant/contractor, TriTechnics Corporation, installed eight monitoring wells on the V-1 property to measure petroleum contamination in groundwater. Levels of benzene and total petroleum hydrocarbons (TPH) were measured and reported to DERR in written reports submitted by both Delta and TriTechnics.

CONCLUSIONS OF LAW AND REASONS FOR DECISION

THE EMERGENCY ORDER

1. On January 16, 1996, a release of petroleum into the Whitney Ave. sewer was reported to DERR and confirmed by DERR representatives in an on-site visit. DERR representatives reviewed DERR files and found that there had been two UST facilities near the area of the contamination: a facility northeast of the site of the contamination where there is now a Zions Bank and the V-1 facility southeast

of the contamination. The USTs that had been located at the Zions Bank site were closed in the 1960's and were located down-gradient from the release. Experts for both the DERR and V-1 agreed that the USTs at the Zions Bank site were not likely to be the source of the contamination.

2. Video camera examination of the sewer line by SLCPU showed that the contamination was entering the sewer 117 feet east from the second manhole west of 300 West at a point less than 200 feet from the V-1 facility. A groundwater flow map provided to DERR indicated that the direction of the regional groundwater flow is slightly northwest in the direction of the Jordan River. This is the direction from V-1 to the point where there is petroleum entering the sewer.

3. DERR records revealed that in the previous ten years there had been at least six reports of contamination or leaks on the V-1 property. DERR records did not indicate that any of the contamination had been remediated.

4. Additionally, two paved-over tanks had been removed from the V-1 property in December 1995, one month before the release in the sewer. Both tanks contained liquid contaminated by petroleum, and soils in areas around the tanks were contaminated with petroleum.

5. DERR determined that based upon the above factors it was unlikely that the contamination came from a source other than V-1. To further confirm this likelihood, DERR looked at other possible sources in the vicinity of the contamination. A records review indicated that thirteen other UST facilities had been located in the general area of the sewer line, and that none of these facilities

had been used since 1993. All of the sites were farther from the sewer than V-1 and eight appeared to be down-gradient from the release. Based upon the ground water flow records, the only site (other than V-1) that appeared to be clearly up-gradient from the release was closed in 1982 and no contamination was found at the facility.

6. DERR also looked at the Southern Pacific property located between V-1 and the sewer line. Visual inspections were limited by snow piles, but the limited inspection revealed no surface staining. Inquiries were made of Southern Pacific representatives and DERR records were reviewed. Neither confirmed that any underground storage tanks had ever been located on the property.

7. DERR and its consultant/contractor, Delta Environmental Consultants, installed 39 geo-probe borings to measure petroleum contamination in soils along 300 West Street, Whitney Avenue and 1500 South Street and on the Southern Pacific property between V-1 and A &A. V-1 and its consultant/contractor, TriTechnics Corporation, installed eight monitoring wells on the V-1 property to measure petroleum contamination in groundwater. Levels of benzene and total petroleum hydrocarbons (TPH) were measured and reported to DERR in written reports submitted by both Delta and TriTechnics.

8. On January 19, 1995, the Executive Secretary issued the Emergency Order to Abate and Order to Investigate and Perform Corrective Action In re: V-1 Oil Company Free Product In Sewer, Facility No. 4001217, Release Site EFTX, which required V-1 to investigate and abate the release and also to submit initial

abatement and site check reports and a corrective action plan based upon a schedule set out in the order. The Board concludes that the geo-probe and monitoring well data, as well as the other factors set forth above, supports the Executive Secretary's finding that V-1 is a source of the petroleum contamination found on the V-1 property and which entered the sewer line on Whitney Avenue. The Board concludes that the Emergency Order was properly issued under Utah Admin. Code R311-202, which incorporates by reference 40 CFR Part 280.

9. Utah Code Ann. § 19-6-404 states that in order to meet the requirements or carry out the purposes of the Underground Storage Tank Act, the Executive Secretary may issue notices and orders and take any necessary enforcement action authorized by the Act. Utah Code Ann. § 19-6-420 states that if a release from a petroleum storage tank has occurred, the Executive Secretary shall identify and name as many of the responsible parties as reasonably possible, and that he may order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan. The Board concludes that the Executive Secretary complied with all of the requirements of the Underground Storage Tank Act in issuing the Emergency Order.

THE NOTICE OF NON-COMPLIANCE

10. The Emergency Order was delivered to V-1 on January 19, 1996. V-1 submitted site characterization reports for the V-1 property, but did not take any abatement action or investigate any of the other affected areas. V-1 did not investigate the release of free product into the sewer line or take any action to

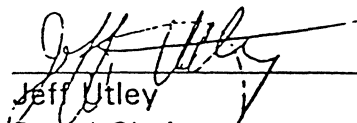
remove and abate free product threatening to impact or impacting the sewer line.

11. Therefore, the Board concludes that the January 25, 1995, issuance of the Notice of Non-compliance, informing V-1 that DERR would use public monies to take abatement, investigative and corrective action, was authorized by Utah Code Ann. § 19-6-420 (2) (b), and was properly issued.

ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Reasons for Decision, it is hereby ORDERED: (1) that the January 19, 1996, Emergency Order to Abate and Order to Investigate and Perform Corrective Action In re: V-1 Oil Company Free Product In Sewer, Facility No. 4001217, Release Site EFTX, and the January 25, 1996 Notice of Non-compliance, both issued by the Executive Secretary, are hereby upheld; (2) that V-1 is ordered to allow DERR representatives to implement all procedures necessary to inspect and sample V-1's facility and the monitoring wells located on site and off-site; and (3) that V-1 is ordered to take any additional abatement, investigative and corrective action that is necessary and appropriate with regard to the contamination identified on hearing exhibits 15 and 18.

Dated this 17 day of April, 1997.



Jeff Utley
Board Chairman

Notice of the Right to Apply for Reconsideration or Review

Within 20 days after the date that a final order is issued in this matter by the Utah Solid & Hazardous Waste Control Board, any party shall have the right to apply for reconsideration with the Board, pursuant to Utah Code Ann. § 63-46b-13. The request for reconsideration should state the specific grounds upon which relief is requested and be submitted in writing to the Board, at 168 North 1950 West, P.O. Box 144840, Salt Lake City, Utah 84114-4840. A copy of the request must be sent by mail to each party by the person making the request. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of an order.

Notice

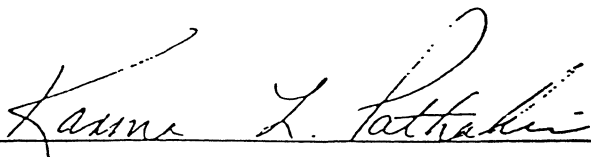
Judicial review of this Order may be sought in the Court of Appeals under Utah Code Ann. §§ 63-46b-16 by filing a proper petition within thirty days after the date shown on the attached mailing certificate for this Order.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be MAILED a true and correct copy of the foregoing ORDER this 31st day of April, 1997 to the following:

Linnette B. Hutton
STIRBA & HATHAWAY
Suite 1150
215 South State Street
Salt Lake City, Utah 84111

Melissa M. Hubbell
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84144-0873



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Within 20 days after the date that a final order is issued in this matter by the Utah Solid & Hazardous Waste Control Board, any party shall have the right to apply for reconsideration with the Board, pursuant to Utah Code Ann. § 63-46b-13. The request for reconsideration should state the specific grounds upon which relief is requested and be submitted in writing to the Board, at 168 North 1950 West, P.O. Box 144840, Salt Lake City, Utah 84114-4840. A copy of the request must be sent by mail to each party by the person making the request. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of an order.

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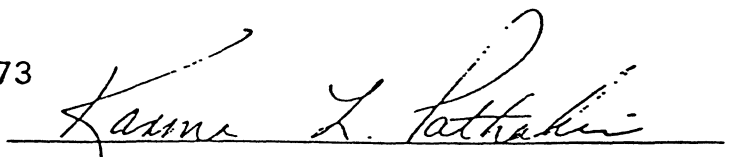
Judicial review of this Order may be sought in the Court of Appeals under Utah Code Ann. §§ 63-46b-16 by filing a proper petition within thirty days after the date shown on the attached mailing certificate for this Order.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be MAILED a true and correct copy of the foregoing ORDER this 21st day of April, 1997 to the following:

Linnette B. Hutton
STIRBA & HATHAWAY
Suite 1150
215 South State Street
Salt Lake City, Utah 84111

Melissa M. Hubbell
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84144-0873



Tab D

BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD
FOR THE STATE OF UTAH

IN RE:)	
V-1 CIL, MOTION FOR VOIR)	
DIRE EXAMINATION OF THE)	
DESIGNATED HEARING PANEL)	FACILITY NO. 4001217
&)	RELEASE SITE EFXT
HEARING)	
_____)	

HEARING HELD: FEBRUARY 13, 1997

SALT LAKE CITY, UTAH

INTERMOUNTAIN COURT REPORTERS
5980 South Fashion Blvd.
Murray, Utah 84107
263-1396

File No. 21397

Reported By:
LINDA J. SMURTHWAITE, CSR, RDR

000034

1 APPEARANCES:

2 CHAIRMAN: JEFF UTLEY

3

4 BOARD MEMBERS:

5 KITT FARREL-POE

6 RICHARD WHITE

7 CAROL WITHROW

8 JOE MELLING

9 DIANNE R. NIELSON

10 JOSEPH K. MINER, M.D.

11 RUTH LUNDGREN

12 GAYLE STEVENSON

13 MICHAEL A. FAUCETT

14

15 FOR THE STATE: MELISSA HUBBELL, ESQ.

16 FOR V1 OIL: LYNETTE HUTTON, ESQ

17

18

19

20

21

22

23

24

25

1 SALT LAKE CITY, UTAH, FEBRUARY 13th, 1997, 8:00 a.m.

2 MR. UTLEY: Good morning. We'll get started.

3 Everybody's ready, looks like we have all the Board

4 members here. We're missing a couple, but I think

5 that's all that's going to be here today. Good morning

6 to counsel, staff.

7 Before we get started I'd like to read a statement

8 that outlines why we're here, and some of the procedures

9 that we'll follow today.

10 This hearing is being held at the request of V1 Oil

11 Company for the purpose of hearing its request for

12 agency action in response to the emergency order to

13 abate an order to investigate and perform emergency

14 action issued to V1 by the executive secretary on or

15 about January 19, 1996.

16 This hearing is to be conducted as a formal hearing

17 under R311 of the Utah Administrative Code and the Utah

18 Administrative Procedures Act Title 63 Chapter 46 (b) of

19 the Utah Code Annotated.

20 Evidence will be received as provided by Utah Code

21 Annotated Section 63-46 B-6, and Utah Administrative

22 Code Section R 311-210-16.

23 All testimony, if offered as evidence to be

24 considered in reaching a decision on the merits, shall

25 be given under oath. Any person testifying at this

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1 hearing may be asked questions by the Board and by the

2 parties to the proceeding. Parties will be allowed to

3 introduce evidence and cross examine witnesses, make

4 arguments, and otherwise participate as appropriate

5 under the rules.

6 Comments and questions should be confined to the

7 subjects at hand. Comments and questions that are not

8 pertinent to the subject of the hearing will be ruled

9 out of order. Since this hearing is being recorded, all

10 participants should identify themselves when speaking for

11 the first time for the record. A transcript will be

12 prepared following the hearing, if requested, by --

13 provided by the Administrative Procedures Act.

14 The order of procedure and presentation of evidence

15 will be as follows: The executive secretary and staff

16 will present the information that formed the basis for

17 the issuance of the emergency order to abate, and order

18 to investigate and perform corrective action. V1 may

19 then present the basis for its objections to the orders

20 and then any rebuttal evidence will be received. After

21 receipt of the evidence, the Board will make a decision

22 to uphold, modify or rescind the orders. The Board will

23 then issue a written order stating its decision, as

24 required by Utah Code Annotated Section 63-46 B-10.

25 Are there any questions or preliminary matters to be

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1 addressed before we proceed other than the request for
 2 voir dire examination? Okay.

3 I guess at this point we need to address -- before
 4 we do that, I want to remind the Board and the parties
 5 that we set aside an hour and-a-half for each party to
 6 present their evidence and facts. And we've allocated
 7 an hour to the Board to ask questions, so keep that in
 8 mind as we ask questions and discuss the matter. The
 9 Board can certainly ask questions to counsel or
 10 witnesses as we proceed. And we have some timekeepers
 11 over here that's going to try to keep time for the Board
 12 as well as the parties.

13 So before we get started we need to address the
 14 request for voir dire examination made by V1. I've
 15 asked Rick to try to explain what that means, so the
 16 Board members have a good understanding of what that
 17 request means. Rick?

18 MR. RATHBUN: Thank you Mr. Chairman. I'll be
 19 brief, I don't want to steal the thunder from the
 20 parties' attorneys. Just by way of introduction, this
 21 was filed with the Board and I recommended to the Board
 22 chairman that this be handled right up front the first
 23 thing this morning.

24 MR. UTLEY: Before we do that, did everybody get a
 25 copy of the request and response from the attorney

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1 general?

2 MR. RATHBUN: Okay. As I was going to say, and that
 3 was filed recently and faxed to all board members with
 4 the exception of Ruth who just received it this morning,
 5 but it was short enough so all of you have had a chance
 6 to read it.

7 There was a request for examination of the
 8 designated hearing panel filed by V1 and a response to
 9 that that was filed by the executive secretary which you
 10 should also have a copy of. And I will let the
 11 attorneys speak for themselves with respect to the
 12 grounds for this. But just by way of brief
 13 introduction, it is a preliminary issue that I think the
 14 Board needs to address and decide upon before proceeding
 15 with this hearing.

16 And since voir dire is a term you probably heard
 17 used in connection with civil practice and criminal
 18 practice, but typically in trials, it is a term
 19 springing, I believe, from French and Latin that means
 20 something on the lines of "speaking the truth", which is
 21 used for purposes of screening jurors in jury trials.
 22 And so it appears then that this request, as it reads,
 23 is directed to this board. And in essence, V1 would
 24 like the opportunity to ask questions of the Board
 25 members in connection with some concerns that V1 has.

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1 And beyond that, I don't think it's appropriate for me
 2 to comment on that. We'd probably best now hear from
 3 Ms. Hutton, and Ms. Hubbell on the issues.

4 MR. UTLEY: Thank you, Rich. Ms. Hutton?

5 MS. HUTTON: Thank you ladies and gentlemen, thank
 6 you for being here. The voir dire examination that V1
 7 has asked to be considered is based on the fact that the
 8 law presumes bias in certain relationships. Now,
 9 although voir dire is normally associated with an
 10 examination of jurors, it is directed to people,
 11 individuals who are fact finders in a process. In this
 12 particular process, although the Board is going to be
 13 the judges in this matter, they are also fact finders,
 14 and in a fact finder, or fact finder situation, that
 15 raises the specter of possible bias in certain
 16 relationships.

17 There's no question that V1 has a relationship with
 18 this agency. They have sued and been sued several times
 19 and it has created a relationship that raises this
 20 concern. The rules of Civil Procedure and the rules of
 21 criminal procedure set out this presumption in
 22 relationships, legal relationships, business
 23 relationships, social relationships, anything that might
 24 create a possible animosity or lack of objectivity in
 25 the fact finding process.

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1 And that's what our motion is based on, and I don't
 2 think too much more needs to be said about that, but
 3 that's the basis of our motion.

4 MS. NIELSON: Could I ask a question? To your
 5 understanding if we were to deny the motion, what other
 6 recourse does your -- do you have in this matter?

7 MS. HUTTON: Well, of course any time that there is
 8 a concern of bias among fact finders we can take an
 9 appeal, and that would be our only recourse since this
 10 is our final process here before the Board. We would
 11 just have to take an appeal on that basis.

12 MS. NIELSON: Thank you. Okay.

13 MR. UTLEY: Any other questions from the Board? Ms.
 14 Hubbell?

15 MS. HUBBELL: This request is completely and
 16 absolutely inappropriate, it was ill timed and it is
 17 baseless. Ms. Hutton has presented nothing to show that
 18 there is any relationship or any bias. This could be
 19 equivalent to going to any court and saying Judge, you
 20 have to answer questions before you can sit in judgment
 21 of this case.

22 Now, there are procedures, if you do have a basis
 23 for believing that there is a relationship or believing
 24 that there might be bias, for asking a judge to recuse
 25 himself, and in most cases the judge will agree to do

1 that. In this case there's been no demonstration of any
2 bias, no reason to ask that anyone recuse themselves.
3 Those procedures were not followed at all. Ms. Hutton's
4 just saying -- coming up here and saying I want to
5 question you all as if you were witnesses or something
6 other than the judicial body you are. None of you are
7 employed by the division, none of you have any special
8 relationship with the division, all of you are
9 independently appointed. You're from different facets
10 of the community. You represent different ideas, and
11 it's just like anybody, it's a fair and impartial body.
12 The fact that other matters may have been heard by this
13 board, and I'm not sure they are because the Board
14 changes, and the other V1 hearing we had was in front of
15 a presiding officer. As to the best of my knowledge,
16 all the Board's heard is a rehearing and that was a
17 number of years ago. Many of you may be new. In fact,
18 I know some of you are new members since then.
19 Some of you may never have heard anything of V1.
20 But the fact that you had, if you had, would not
21 necessarily be prejudicial. Judges can hear cases from
22 parties several times, and unless in some way they show
23 prejudice or they're involved in the case as a party
24 rather than as an adjudicator, there is no reason to
25 presume bias or a relationship.

1 have, that I would be concerned about what kind of
2 precedent this would set. And, you know, I think the
3 Board has been very conservative, very objective in the
4 decisions they've made. And I would be concerned about
5 it. It would almost question some of the integrity of
6 some of the Board members in this case. And as I've
7 watched the Board members operate, I think the Board
8 members have been very up-front and very conservative if
9 they felt they didn't have the ability to make a fair
10 and impartial decision.
11 So, I would recommend strongly to the Board that we
12 would deny this request and proceed. Dianne?
13 MS. NIELSON: Mr. Chairman, I would concur with what
14 you say, and remind the Board that we already have
15 procedures in place for identifying any time when there
16 may be a conflict of interest, it's a disclosure
17 procedure. And in some cases with the boards of this
18 sort, that means you recuse yourself from the voting,
19 but you participate in the discussion. And other times
20 there has been a participation in the voting and the
21 discussion, but just a disclosure of that interest.
22 These boards are established at state law and when they
23 were established, they were established with a variety
24 of representation because that was deemed to be the
25 expertise that we needed to be able to make decisions

1 And so I think this motion should be denied, I think
2 it's offensive and inappropriate.
3 MR. UTLEY: Thank you, Ms. Hubbell. I wanted to
4 make a couple comments to lead off the discussion. This
5 board is appointed by the governor and confirmed by the
6 senate, and it is a board that represents the public.
7 There are several of us that represent certain segments
8 of industry, if you will, and certain segments of the
9 public. But, you know, we're an independent board.
10 There's a lot of scrutiny, there's a lot of thought that
11 goes into the Board members before they are nominated.
12 And I think that provides protection for all parties
13 that come before this board. Each one of us brings a
14 little different viewpoint.
15 But in doing that, as I've seen the Board operate
16 over the years, the Board has been very conservative in
17 trying to, if there is a conflict of interest or bias,
18 then the Board members have been very conservative and
19 stated that, their concern about a conflict of interest
20 or bias. I think we've tried to, over the years, be
21 very conservative and offer all parties every
22 opportunity to present their case and I think that the
23 Board has been very conservative in the rulings they
24 have made and tried to be very fair.
25 So, though I understand the concern that V1 may

1 about rulemaking, about policy for the division, and
2 about issues of appeal that would be coming before the
3 Board.
4 So, the reason all of you are here is because you
5 bring particular expertise in these fields and it's
6 expertise that we need on this sort of a board. There
7 is a procedure for identifying and disclosing any
8 potential conflicts, and that's a procedure that has
9 worked in the past in which board members, as you point
10 out Mr. Chairman, have been good to use. And so I would
11 simply emphasize that I concur. This is a strength of
12 the Board to have that sort of expertise, and there is
13 already a procedure in place for handling any concerns
14 of interest with particular board members.
15 MR. UTLEY: Any other comments? We do need to rule
16 on this. Entertain a motion if a Board member would
17 like to make a motion.
18 MR. STEVENSON: I suspect if Rick would answer
19 affirmatively we're more like a judge than a jury and
20 voir dire does not apply to a judge, then certainly I
21 would concur it would not apply to us. If that's a
22 simplification, I apologize, but is that more like what
23 we are?
24 MR. RATHBUN: I think that's a fair
25 characterization. You're a fact finder. Technically

1 juries in jury trials are fact finders as well, but this
2 board sits along the lines of an administrative judge
3 panel, and I have never heard of a voir dire
4 examination.
5 MR. STEVENSON: Then, Mr. Chairman, I move that we
6 disallow the request.
7 MR. UTLEY: Thank you, Gayle.
8 MR. MELLING: I second.
9 MR. UTLEY: Thank you, Joe. Any other discussion?
10 All right. All in favor of the motion say aye. (Aye)
11 any opposed? (None) Thank you.
12 Ms. Hutton, in all fairness to you and your clients,
13 would you like to elaborate on any specific concerns
14 that you had that called you to raise this request?
15 MS. HUTTON Well, I do want to say that there is no
16 specific accusation leveled against any member of the
17 Board that anyone is prejudiced. It's my obligation and
18 my duty as an attorney for V1 to make sure that this is
19 a fair tribunal. It's part of due process to guarantee
20 to a client they have a fair tribunal and we have
21 concerns that a relationship has arisen between the
22 agency and V1 that raises the concern that someone may
23 not be as objective as they could be, and that's the
24 basis of our concern.
25 MR. UTLEY: Okay. Thank you. With that I think

1 we'll proceed. The executive secretary is going to go
2 first, so Melissa?
3 MS. HUBBELL: I would like to state just for the
4 Board, that with the amount that you people are paid for
5 showing up here and the amount of the demands that the
6 agency puts upon you, and the time you have had to put
7 into this, any relationship that's built up is probably
8 one of more of animosity and regret for having ever
9 volunteered for this or been appointed to it than
10 prejudice in the division's favor. I'm going to keep my
11 opening comments brief because we don't have a lot of
12 time and I want to get to my witnesses.
13 You've been submitted a huge stack of papers from
14 both sides and I know that with your usual
15 conscientiousness you have all gone through them and
16 that you now know a lot from reading that brief. And I
17 would like to say that it's my opinion that V1's brief
18 is as full of holes as its tanks have proven to be. I'd
19 like to just point out a few problems I had with it.
20 They refer to something called unavoidable losses.
21 These are actually losses that should have been reported
22 as releases and we'll be demonstrating that to you.
23 When they failed -- they refer to a failed tank
24 tightness test that was actually what would have been
25 considered under the regulations, a confirmed release,

1 and what they call over fill or spill is also considered
2 a release.
3 When they say that there have been no confirmed
4 releases, that's just semantics. They may not have
5 reported or abated the releases, but there have been
6 numbers of what we would consider confirmed releases on
7 their property.
8 They also talk a lot about how no free product was
9 found on their property, but they never talk about
10 contamination. You don't have to have gasoline running
11 along or just under the ground to have that ground
12 saturated and contaminated.
13 Finally, just to sort of comment on the veracity of
14 their brief, they refer to, several times in the brief,
15 two tanks that were removed from their property, and
16 they say those tanks were never piped or connected. And
17 in doing so, they refer to a case in the footnote of
18 V1's case as if that were the authority that found that
19 those tanks were never connected. First, let me say,
20 whether those tanks were removed -- if you look at
21 Exhibit 5 in the report, it says that there were five or
22 six pieces of pipe 6 to 10 feet long buried next to the
23 tanks. Admittedly it didn't say it was connected, but
24 it was buried with the tanks.
25 Further, since I was involved in that V1 case I

1 didn't remember the Court having found the tanks were
2 never used. I looked it up and what that case says is
3 V1 claims that it never connected the third or fourth
4 tank to product dispensers, nor used either tank for any
5 purpose. Doesn't say they weren't connected, it says V1
6 claims they weren't connected. And further on in
7 footnote nine of that brief, it says, "Furthermore,
8 there is evidence that supports a finding that V1 at
9 some point used the third tank to store unleaded
10 gasoline." So, I'm not going to comment further on
11 that, I just thought you should be aware.
12 And I'd like to call my first witness, and that is
13 Rick Bright.
14 MR. UTLEY: I'll swear you in. Raise your right
15 hand.
16 RICHARD Bright
17 was duly sworn, was examined and
18 testified as follows:
19 THE WITNESS: Yes.
20 MR. UTLEY: Thank you.
21 DIRECT EXAMINATION
22 BY MS. HUBBELL:
23 Q. Could you state your name for the record?
24 A. My name is Rick Bright.
25 Q. And what is your position?

1 A. I'm currently the waste water collections
2 manager for Salt Lake Public Utilities.
3 Q. Were you called a year ago concerning a smell?
4 A. Yes.
5 Q. Who were you called by?
6 A. Bob Smith for A&A Contractors.
7 Q. What was his report?
8 A. His report at that time was there was a heavy
9 gasoline smell in his building so strong that he had to
10 send the employees home.
11 Q. Okay. Could you tell me what you did?
12 A. At that point we flushed the system with our --
13 we have what's called jetter trucks or high pressure
14 trucks. We flushed the system at that time and it
15 relieved the problem for a while.
16 Q. What do you mean by the system?
17 A. The sewer system, the sewer collection system.
18 Q. Why did you flush the sewer system?
19 A. Because we noticed when we opened the manholes
20 that we could see a sheen of some product on the water
21 at that time.
22 Q. Okay. Where is A & A located?
23 A. It's approximately 328 West Whitney Avenue.
24 Q. Okay. I'm going to get one of our maps. Is
25 Whitney -- and this is A & A General Contractors. Would

1 MR. UTLEY: 18, all right. Thank you.
2 MS. HUBBELL: All those maps look alike.
3 Q. Okay. Did you ever go down in a manhole?
4 A. Yes.
5 Q. And what did you find down there?
6 A. We observed -- I actually observed a gasoline
7 smell. At that time we took a sample. This was the
8 second time we had noticed it, I'm sorry.
9 Q. Okay. It was reported a second time?
10 A. It was actually reported three times.
11 Q. Okay. And you went down and did you take a
12 sample?
13 A. We took a sample and turned it over to the Salt
14 Lake County health department at the time.
15 Q. What did the sample -- I know you didn't have
16 tests done, but what did the sample look like to your
17 layman's eyes, not as an expert?
18 A. It looked like there was a sheen, and I've seen
19 petroleum in a sewer system before and it looked like
20 gasoline or oil substance in there. At that time when I
21 took the sample the Hazmat team, hazardous materials
22 team and the County Health Department, they all
23 basically observed the same thing when they were there.
24 Q. Did you take a videotape of the sewers?
25 A. Yes, we did.

1 you say that's an accurate representation of where
2 A & A's located?
3 A. Yes.
4 Q. Could you show me on there where the sewer is
5 located?
6 A. The sewer is located right here.
7 Q. Okay.
8 A. Along Whitney Avenue, that's correct.
9 Q. Okay. Where is the manhole you looked --
10 A. No, the manhole we looked in was right here.
11 Q. Okay. Where does the sewer line -- does it end
12 anywhere?
13 A. It ends just west of 300 West, that's the very
14 beginning, actually, of the line.
15 Q. Okay. Thank you.
16 MR. UTLEY: Can you identify that exhibit for the
17 Board members?
18 MS. HUBBELL: This is an exhibit that I believe is
19 marked in your packets as about 17, 18, 19, somewhere in
20 there. This is actually identified in the booklet as
21 showing the area, but it also shows us where everything
22 is.
23 MR. UTLEY: Exhibit 15.
24 MS. HUTTON: 18, it's right here.
25 MS. HUBBELL: It is 18.

1 Q. I'm going to show that videotape now, if Jeff
2 and you, Rick, could move over a little. If you could
3 watch this. I'll ask you once we show a little bit of
4 it. (Showing video)
5 MS. HUTTON: Melissa, did he prepare this video?
6 What is the qualification to Mr. Bright currently?
7 MS. HUBBELL: Did you prepare this video, Mr.
8 Bright?
9 A. Yes, I did.
10 Q. I was going to have him identify it when it
11 started. Is this the video you prepared, Mr. Bright?
12 A. Yes.
13 Q. I'm going to fast forward.
14 MR. WHITE: Which direction are we going?
15 THE WITNESS: From west to east.
16 MR. WHITE: So you are starting from the second
17 manhole toward that? You are going upstream?
18 THE WITNESS: That's correct.
19 MR. WHITE: Okay.
20 THE WITNESS: Against the flow, yes.
21 MR. WHITE: Okay.
22 BY MS. HUBBELL:
23 Q. Would you identify what we are seeing now Mr.
24 Bright?
25 A. What we noticed -- it's going quite fast there,

<p style="text-align: right;">Page 21</p> <p>1 but --</p> <p>2 Q. I'm sorry, I've probably got it still on fast</p> <p>3 forward.</p> <p>4 A. At this point --</p> <p>5 Q. I'll rewind it a little.</p> <p>6 A. If you look to either side of it you'll see a</p> <p>7 darker substance floating on the water, and coming up</p> <p>8 you'll notice the substance to the left and right which</p> <p>9 is floating.</p> <p>10 MS. NIELSON: Just stop that.</p> <p>11 THE WITNESS: I don't know --</p> <p>12 MS. NIELSON: Have the witness explain what it is</p> <p>13 we're seeing here and then we could watch it.</p> <p>14 MS. HUBBELL: Okay, if I can do that.</p> <p>15 MS. NIELSON: We're just trying to understand.</p> <p>16 BY MS. HUBBELL:</p> <p>17 Q. If you could sort of tell them what they are</p> <p>18 seeing Mr. Bright?</p> <p>19 A. If you look to the left or right of that turn</p> <p>20 buckle you see that's shining in front of you. You'll</p> <p>21 notice a substance floating on the water there, and it</p> <p>22 appeared to be the same substance when we visually</p> <p>23 looked at it in the manhole, just west of A&A</p> <p>24 Contractors.</p> <p>25 MR. WHITE: Rewind it back to about 95 feet and let</p>	<p style="text-align: right;">Page 23</p> <p>1 means there are no other businesses or homes tied on</p> <p>2 that segment of the sewer system.</p> <p>3 MS. NIELSON: Counsel, could you have Mr. Bright</p> <p>4 show us on the map roughly what that range was from? I</p> <p>5 think it was about 90 or 95, 127.</p> <p>6 THE WITNESS: This segment of pipe from here to what</p> <p>7 we call the flush tank are the very beginning of the</p> <p>8 sewer system on this line. It's about 320 feet, if I</p> <p>9 recall the footage, so that would be somewhere in the</p> <p>10 neighborhood of probably right in here.</p> <p>11 MS. NIELSON: And you were going west or going</p> <p>12 east?</p> <p>13 THE WITNESS: We were going from this point heading</p> <p>14 east.</p> <p>15 MS. NIELSON: Okay, thank you.</p> <p>16 MR. UTLEY: Let me ask a couple of questions. Were</p> <p>17 there any storm events during this time or do you</p> <p>18 recall?</p> <p>19 THE WITNESS: I don't recall. I think there was</p> <p>20 snow on the ground if I recall right.</p> <p>21 MR. UTLEY: No storms?</p> <p>22 THE WITNESS: I really don't recall.</p> <p>23 MR. UTLEY: Around that time. As you looked through</p> <p>24 sewers with the camera, there may be times where you</p> <p>25 have material clinging to the wall of the pipe. The</p>
<p style="text-align: right;">Page 22</p> <p>1 it run normal.</p> <p>2 MS. HUBBELL: Okay.</p> <p>3 MS. HUTTON: Melissa, it might be easier --</p> <p>4 THE WITNESS: Again, you can see the substance, the</p> <p>5 darker substance floating on the water. And the</p> <p>6 manhole, as we observed that, again, west of A & A</p> <p>7 Contractors, it was a continuous sheen on the water, it</p> <p>8 never did go away as we were just watching it.</p> <p>9 BY MS. HUBBELL:</p> <p>10 Q. Mr. Bright --</p> <p>11 A. You can see as we stopped the camera, it pushed</p> <p>12 some of that substance back up the line. You can also</p> <p>13 see small traces of it coming down through that joint.</p> <p>14 Q. Did you see that?</p> <p>15 A. Over the joint.</p> <p>16 MR. WHITE: Could you back up to that again.</p> <p>17 MS. HUBBELL: Okay, I'm going to try.</p> <p>18 A. See the droplets of material, of material</p> <p>19 coming down through there as we stopped the camera?</p> <p>20 Q. Mr. Bright, this continues on for a while.</p> <p>21 Rather than watching it, can you tell us if you saw</p> <p>22 product after that point there?</p> <p>23 A. Really we didn't notice much product after that</p> <p>24 area. And I might want to add that there are no active</p> <p>25 service connections further than about this point, which</p>	<p style="text-align: right;">Page 24</p> <p>1 substance that we saw floating on the water, I would</p> <p>2 assume would be some kind of a hydrocarbon substance?</p> <p>3 You typically see some of that material hanging on walls</p> <p>4 in the sewer, and in a storm event you have a lot of</p> <p>5 material washing off roads and things like that that get</p> <p>6 in to the sewer and some of that stuff can hang on to</p> <p>7 the pipe walls. Did you see anything like that as you</p> <p>8 looked through the sewer?</p> <p>9 THE WITNESS: No, I didn't. Again, it's the very</p> <p>10 beginning of the sewer system and there is no -- this is</p> <p>11 a sanitary sewer system where there is no inlet for</p> <p>12 runoff water from the streets.</p> <p>13 MR. UTLEY: Okay. All right. Thank you.</p> <p>14 BY MS. HUBBELL:</p> <p>15 Q. Mr. Bright, what action did you take to</p> <p>16 alleviate the problem with the petroleum product in the</p> <p>17 sewer?</p> <p>18 A. At that point we hooked a fire hose to the</p> <p>19 nearest fire hydrant which is in front of A&A</p> <p>20 Contractors, and we ran it to the far east manhole at</p> <p>21 this point. Again, the fire hydrant is here in front of</p> <p>22 A&A, ran the hose and hooked it into the manhole and</p> <p>23 continued to flush it.</p> <p>24 Q. How long did you continue to flush it?</p> <p>25 A. The first time we flushed it for approximately</p>

1 four hours, and again the smell had went away. We
 2 diluted it to the point where it wasn't a problem at
 3 that time, at that point.
 4 Q. But it came back?
 5 A. It came back.
 6 Q. And then what did you do?
 7 A. Again, we flushed it again for another four
 8 hours, figuring that it was, again, something that was
 9 isolated, and then it went away.
 10 Q. Did it come back?
 11 A. Came back again the very next day. This time
 12 frame is approximately five days. Started on a Friday,
 13 went through Monday and at Tuesday of the next week we
 14 continued flushing from that point until we were
 15 requested from the State to stop the flushing.
 16 Q. How long was the time period over which you
 17 flushed?
 18 A. If I can read this, I've got a document here.
 19 Q. Okay. This is not a document I was able to
 20 present to the Board, I just got it this morning. I
 21 won't ask that it be admitted into evidence. He can
 22 state what he sees on it.
 23 It's an invoice for the Department of Public
 24 Utilities?
 25 A. Would you like me to read the whole thing?

1 Q. Just read the time period.
 2 A. Okay. This is a billing for hydrant meter to
 3 Whitney Avenue from January 25, 1996, to June 11, 1996,
 4 which totaled \$17,964.72.
 5 MS. HUTTON: I'm going to object to even referring
 6 to this document since V1 has not had an opportunity to
 7 see it, investigate it, determine what it has to do
 8 with, where the water was used, what it was used for.
 9 We don't have any basis for believing that this applies
 10 to this particular situation, and I would object to the
 11 admission of it into evidence.
 12 MS. HUBBELL: I'll point out, I showed it to counsel
 13 and she nodded agreement.
 14 MS. HUTTON: I'm only agreeing to having seen it
 15 just now, but not to whether or not it's -- not as to
 16 its integrity.
 17 MS. HUBBELL: I have -- how long did they flush the
 18 sewers, that time period? Was it going continuously?
 19 A. 24 hours a day, 7 days a week.
 20 Q. Okay.
 21 MS. HUBBELL: I have no further questions of Mr.
 22 Bright.
 23 MR. UTLEY: Hold on a second, I have a couple
 24 questions. As far as the objection goes and the
 25 document Mr. Bright, can you identify who created the

1 document?
 2 THE WITNESS: Yes. Delta Environmental
 3 Consultants. Got an address.
 4 MS. HUBBELL: Mr. Bright, wasn't it sent to them?
 5 THE WITNESS: Yes, this was from our department
 6 sending to them for a billing statement of our costs.
 7 MS. HUBBELL: Would that have been created in the
 8 usual course of business?
 9 THE WITNESS: That's correct, public utilities,
 10 yes.
 11 MR. UTLEY: I guess I would agree with Ms. Hutton,
 12 they hadn't had a chance to review it so I won't allow
 13 it as evidence.
 14 MS. HUBBELL: Okay.
 15 Q. To the best of your knowledge how many months
 16 did they continue flushing?
 17 A. Approximately five and-a-half months.
 18 Q. Okay. Thank you.
 19 EXAMINATION
 20 BY MR. UTLEY:
 21 Q. Mr. Bright, could you again just detail the
 22 distances as we looked at that tape, and outline it on
 23 your diagram up there to the best of your knowledge?
 24 A. Yeah. Without having actual survey references,
 25 I'm going to guess it's somewhere right in this area

1 here.
 2 Q. How many feet?
 3 A. About 100 feet.
 4 Q. About 100 feet?
 5 MS. HUBBELL: For the record I'd note that is the
 6 area pretty much directly in front of A & A
 7 Contractors.
 8 THE WITNESS: Yes.
 9 MR. UTLEY: Okay.
 10 Q. And as you went past how far did you run your
 11 camera up the line?
 12 A. Ran it to the entire length of this manhole.
 13 Q. Okay. And as you got up to the other manhole
 14 you didn't see material?
 15 A. No. Actually, we probably started at about
 16 140, 50 feet east of this manhole, we stopped noticing
 17 any product coming in or any product in the pipe.
 18 Q. Okay. If this was a sanitary sewer, were you
 19 able to identify where the vapors were coming from in
 20 A&A Contractors' building?
 21 A. Where they were coming from?
 22 Q. Yeah, which inlet, floor drain or whatever?
 23 A. Really we couldn't. At the time it was so
 24 strong, he couldn't identify it. After months of his
 25 investigating he found that in the wall, in one of his

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1 walls there had been a cleanout cap left off, and a lot
 2 of the time when he was experiencing the smell it was in
 3 the attic or over the weekend it was in the entire
 4 building.
 5 Q. Okay. Most cases you'd have a P-trap or
 6 something like that that prevents any kind of material
 7 coming back up from the sanitary sewer?
 8 A. That would be in a floor drain or that type,
 9 right.
 10 Q. So you weren't able to identify exactly where
 11 the vapors were coming from, what inlet?
 12 A. No. No.
 13 Q. Okay.
 14 MR. UTLEY: Dianne?
 15 MS. NIELSON: Mr. Bright, when you said we flushed
 16 the sewer, were you personally involved in that and
 17 on-site doing that or was that with individuals who
 18 reported to you?
 19 THE WITNESS: I was personally involved in the
 20 initial setup, and then I had members of my crew daily
 21 checking that.
 22 MS. NIELSON: Okay. So, but you would have been
 23 responsible for knowing that there was water that was
 24 being used to flush the system?
 25 THE WITNESS: Yes.

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1 MS. NIELSON: And when you do that, is that
 2 typically done by the public works people for the city
 3 or do you hire contractors?
 4 THE WITNESS: Public utilities, yes, that's
 5 typically done by us, yes.
 6 MS. NIELSON: Thank you.
 7 MR. FAUCETT: Mike Faucett. The question I had was,
 8 are these lines breached in some fashion someplace that
 9 would allow this product in? Is there anyway -- you
 10 brought your camera up, but it didn't really show where
 11 the product was originating from, any kind of crack, any
 12 kind of groundwater pressure causing an inflow of
 13 material through a breach of that pipe or something like
 14 that?
 15 THE WITNESS: It's hard to locate that. You have a
 16 joint, those are -- it's called a vitrified tile pipe
 17 and they have joints in the pipe every three feet, so it
 18 was -- that's why we were going so slow with the camera,
 19 we were very intense on trying to locate something
 20 coming in to the pipe. We couldn't really identify
 21 where it was coming in. We did notice it, about 120 or
 22 30 feet or so that we stopped noticing that there was
 23 any of the sheen of the product on the water.
 24 So, we had basically determined that from the
 25 manhole to about 140 feet east is where it was coming

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1 in.
 2 MR. FAUCETT: But it could have been coming in
 3 either the inlet pipes, the side ports we saw, or it
 4 could have been a breach in the main pipe?
 5 THE WITNESS: Yes, that's possible. But let me
 6 point one thing out, that those little inlets you are
 7 talking about, there's only about two that were actually
 8 active. Those were stubs or factory stubs as we call
 9 them, so there weren't actual openings in the pipe, it
 10 was a stub for future use for that pipe.
 11 MR. FAUCETT: When you got to the actual active
 12 inlets you didn't see material coming out of those?
 13 THE WITNESS: We didn't, no.
 14 MR. FAUCETT: So the most likely thing is that the
 15 material is built up in the groundwater, you have
 16 external pressure higher than the internal pressure in
 17 the pipe and the material seeps into the pipe?
 18 THE WITNESS: That's what we're determining, yes.
 19 MR. FAUCETT: Thanks.
 20 MR. UTLEY: Mr. Bright, how deep is the pipe?
 21 THE WITNESS: It's about 7 feet deep.
 22 MR. UTLEY: And you said you didn't have analysis of
 23 the material?
 24 THE WITNESS: We did not.
 25 MR. UTLEY: Any other questions? Ms. Hutton?

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1 EXAMINATION
 2 MS. HUTTON: Yes, thank you.
 3 Q. Mr. Bright, you said that someone from A & A
 4 reported smelling petroleum gasoline in their building?
 5 A. Yes.
 6 Q. Am I correct in saying that?
 7 A. Yes.
 8 Q. I'm going to hand you what's been designated as
 9 State's Exhibit 8; could you tell us what the customer
 10 complained of in that report?
 11 A. Customer smelled thinner in the floor drain.
 12 Q. Okay. So he complained of smelling thinner.
 13 What is thinner?
 14 A. I'm taking it as a paint thinner.
 15 Q. Okay. And that's what he had actually called
 16 about.
 17 You said that you could -- you saw a sheen on the
 18 water; what exactly is a sheen? What does that mean?
 19 A. To me, that would mean a separation of two
 20 substances along the water.
 21 Q. And you said you were the waste water
 22 collection manager?
 23 A. That's right.
 24 Q. Do you have qualifications for determining
 25 hydrocarbons, split hydrocarbons?

1 A. I don't.
 2 Q. Okay. And then you said that when you got into
 3 the manhole you observed a gasoline smell. Did you test
 4 that? What you were seeing, after you took the video
 5 and you had observed this what you were seeing, whatever
 6 it was that we were seeing in this video, did you test
 7 to see what it was?
 8 A. We didn't.
 9 Q. Did you test to see if there were any vapors in
 10 the sewer system?
 11 A. Yes.
 12 Q. And when did you do the testing on the vapors?
 13 A. The testing was done actually the first time
 14 that we had noticed the product when I had sent one of
 15 my crew members down there
 16 Q. And who was that crew member?
 17 A. Kim Rigby.
 18 Q. And what did Mr. -- is that a Mr.?
 19 A. Mr., yes.
 20 Q. And what did Mr. Rigby discover?
 21 A. He found that at that point it didn't register,
 22 it registered basically .01 on our gas detector.
 23 Q. What does that mean, what is .01?
 24 A. That's really not much of a detectable measure
 25 Q. When we're referring to .01 on your monitor,

1 there, it says that Mr. Rigby measured .02, I believe;
 2 is that correct?
 3 A. Yes.
 4 Q. And when we're saying that, we're saying
 5 essentially two percent; is that correct?
 6 A. Two parts per million, yes.
 7 Q. What does that mean? So you're measuring two
 8 percent of the lower explosive levels?
 9 A. Right.
 10 Q. What does that mean to us?
 11 A. Well, it just means that we're measuring to see
 12 what the level, whether or not it's at a level that is
 13 explosive.
 14 Q. Okay. Now, in the video at, and I don't
 15 remember exactly where, but at about 130 feet or maybe
 16 further along you see an open lateral which would -- do
 17 you recall seeing that?
 18 A. I do.
 19 Q. And it's, I don't know what, do you know where
 20 on that video that lateral would be?
 21 A. I don't without really reviewing or having
 22 notes.
 23 Q. And measuring?
 24 A. And measuring.
 25 Q. But it would be someplace east of A & A

1 for the sake of a little clarity, what kind of a monitor
 2 are you referring to, what are you testing?
 3 MS. HUBBELL: If I could, since you are asking him
 4 to recall, why don't you give him the document you are
 5 referring to so he can use that to refresh his memory.
 6 MR. UTLEY: Is this an exhibit in our evidence?
 7 MS. HUBBELL: Yes, Exhibit 8.
 8 MS. HUTTON: It's the same one I referred to a
 9 moment ago that says that the customer was complaining
 10 of thinner.
 11 MR. UTLEY: Okay.
 12 THE WITNESS: Would you repeat that question?
 13 BY MS. HUTTON:
 14 Q. For sake of clarity, you mentioned that you
 15 were using a device to -- that tested .01. What was
 16 that device, and what kind of a test are you running?
 17 A. We were running a test for LEL which is lower
 18 explosive level or H2s which is a -- I can't recall
 19 right off the top of my head. These are tests that we
 20 run in the sewer system to detect oxygen deficiencies,
 21 explosive levels or hydrogen sulfate. And that detector
 22 is something that the industry has put out for the use
 23 in the sanitary sewer system.
 24 Q. So, what you are saying, and I believe it's
 25 noted on that document in the context or in the text

1 Contractors; is that correct?
 2 A. That's possible, yes.
 3 Q. So it's someplace between where you began at
 4 the second manhole, and this manhole here?
 5 A. Un-huh.
 6 Q. Someplace in there. Okay. Did you test -- did
 7 you view that lateral with your video?
 8 A. Yes, we would have, because we had the entire
 9 line.
 10 Q. Just the opening?
 11 A. I think so.
 12 Q. Were you able to go in it and see if there was
 13 anything?
 14 A. No.
 15 Q. Did you see anything dripping from that?
 16 A. No.
 17 Q. Okay.
 18 A. Did I see anything dripping?
 19 Q. That you identified as product, not water?
 20 A. No.
 21 Q. Did you see water dripping from it?
 22 A. I think we did.
 23 Q. Okay. Now, you also said that you flushed for
 24 four hours, then you returned the next day. The next
 25 day, do you recall what the next day was?

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1 A. If I recall the next day, are we referring to
 2 the first time?
 3 Q. Well, you just said a moment ago that you --
 4 after the report and you discovered this product and you
 5 could smell this petroleum smell, that you flushed the
 6 system?
 7 A. Right.
 8 Q. And did it for about four hours; is that
 9 correct?
 10 A. Yes, that's right.
 11 Q. And that took care of it, you thought?
 12 A. Right.
 13 Q. But then the next day you came back and --
 14 A. The next day meaning Monday.
 15 Q. Okay. That's what I was wondering, the next
 16 day being Monday. Okay.
 17 Then you said on Tuesday you began flushing it
 18 continuously; is that correct?
 19 A. Right.
 20 Q. Now, continuously, somebody was monitoring this
 21 for 24 hours a day?
 22 A. No, no one was monitoring it 24 hours a day.
 23 Q. Okay. How often was it being monitored?
 24 A. It was being monitored several times a day,
 25 just spot checks.

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1 Q. Okay. And to your understanding there was
 2 water running through it continuously?
 3 A. Yes.
 4 Q. How much water, do you know?
 5 A. It wouldn't be the gallons per minute.
 6 Q. Well, the little hose, I was out there and the
 7 little hose that was going into the sewer system with
 8 those cloth -- like the firemen use?
 9 MS. HUBBELL: Are you testifying or are you asking a
 10 question?
 11 BY MS. HUTTON:
 12 Q. I'm going to ask a question. When it was
 13 flushing continuously, was that -- did it make that hose
 14 inflate?
 15 A. Yes.
 16 Q. Or did it stay flat?
 17 A. It inflated the hose.
 18 Q. So did the hose remain inflated the entire time
 19 to your knowledge?
 20 A. To my knowledge it did, yes.
 21 Q. Okay. And you said that this hose remained
 22 inflated for five months?
 23 A. Approximately.
 24 Q. Okay. Okay, that's all I have.
 25 MS. HUBBELL: I have no further questions for Mr.

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1 Bright.
 2 MR. UTLEY: Anything from the Board? Thank you, Mr.
 3 Bright.
 4 MS. HUBBELL: I'd like to call Doug Hanson.
 5 MR. UTLEY: I'll swear you in Mr. Hanson, please
 6 raise your right hand.
 7 DOUGLAS HANSON
 8 was duly sworn, was examined and
 9 testified as follows:
 10 THE WITNESS: Yes, sir.
 11 MR. UTLEY: Thank you.
 12 DIRECT EXAMINATION
 13 BY MS. HUBBELL:
 14 Q. Would you state your name for the record?
 15 A. Doug Hanson.
 16 Q. What is your position?
 17 A. I am an environmental engineer and a project
 18 manager with the PST section with DERR.
 19 Q. What are your duties?
 20 A. I mostly manage projects from their inception
 21 dealing with underground storage tanks that have leaked,
 22 both in a financial sense and in a technical oversight.
 23 MR. UTLEY: Can you make sure to speak up?
 24 THE WITNESS: Sure.
 25 MR. UTLEY: Thank you.

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1 BY MS. HUBBELL:
 2 Q. Mr. Hanson, were you called last year by the
 3 Salt Lake City concerning a leak in a sewer?
 4 A. The department received a call, it was actually
 5 directed to Paul Zahn and I later become involved.
 6 Q. Could you tell me how that occurred?
 7 A. Ted Diamond of the Salt Lake County Health
 8 Department gave us a call and indicated that they had
 9 had a problem with some petroleum vapors in a sewer, and
 10 he called basically to find out what assistance we could
 11 give him in that regard.
 12 Q. Okay. What did you do?
 13 A. Well, first of all myself and another project
 14 manager, Kristen Kelly, went out to the site where Rick
 15 Bright and Ted Diamond were actually in the process of
 16 taking the video we just saw. Did a site visit, got a
 17 feel for the area that we were concerned with, and took
 18 some pictures of the work that the gentlemen were doing
 19 and talked with Bob Smith of A & A Contractors to get a
 20 feel for what had gone on in his building.
 21 Q. What had gone on in his building?
 22 A. He complained that the previous Friday he had
 23 had some problems with his employees actually getting
 24 sick, not being able to work. And he told us that he
 25 had contacted the Public Works Department or Public

1 Utilities Department to investigate. And according to
2 my recollection, he had actually sent some of his
3 employees home because they had become ill. And they
4 actually had worked, I believe, that Saturday as well,
5 and had noticed vapors. And then Monday, again they
6 called because they were having the same problem again.
7 The problem seemed to go away as long as they flushed
8 the lines and when they stopped the next day again,
9 Tuesday, which is the day we were contacted, the vapors
10 were building up again.

11 Q. Okay. What did you identify as the source of
12 the vapors?

13 A. Well, there was obviously a petroleum smell as
14 we got on the site, it wasn't just contained to the
15 sewers and the manhole. The smell was like gasoline,
16 and we could smell it almost immediately upon getting
17 out of our vehicle and we could smell it on the street.
18 The sewer obviously had, as we've seen in the video,
19 obviously had a layer of petroleum product on the
20 surface.

21 Q. How did you know it was petroleum?

22 A. The smell, coloration, it's obvious.

23 Q. Did you see samples of it?

24 A. I did. There was a sample that Ted Diamond
25 had, and I believe Rick Bright actually took the sample,

1 if I remember correctly.

2 Q. You remember removing the sample?

3 A. Removed the sample from the sewer line itself,
4 and there was a conglomeration of free product forming
5 on the -- both on the surface of the glass container
6 itself, and on the surface of the water in the
7 container.

8 Q. After you went out and confirmed to the best of
9 your knowledge that there was free product in the sewer,
10 what did you do?

11 A. Well, we did a search here in-house on our data
12 base that we maintained that has a list of all of the
13 leaking underground storage tanks or are LUST sites, and
14 also underground storage tank facilities in the area.
15 And we looked both at those that had releases, those
16 that were not known to have had releases, and those that
17 were open to determine who could potentially be
18 responsible for the contamination in the area. --

19 Q. I believe you prepared a blowup showing those
20 sites?

21 A. Yeah.

22 MR. UTLEY: Could you tell us what exhibit this is?

23 MS. HUBBELL: What?

24 MR. UTLEY: Could you tell us which exhibit this
25 is?

1 MS. HUBBELL: I believe it is 14.

2 MS. NIELSON: This is what 14 looks like for us.

3 MS. HUBBELL: He just prepared it from a
4 photograph.

5 MS. HUTTON: Is this something that's going to be
6 admitted, because it's not like our map here that is
7 Exhibit 14, this is completely different.

8 MS. HUBBELL: If you could identify what you
9 prepared this from.

10 THE WITNESS: This is the same area, it's a regional
11 map of the area, and the locations that are indicated
12 here are the same as those here. The one here is
13 computer generated so that we can actually give it some
14 clarity. As you can tell this is a dark copy. As we
15 reduced it it got darker and darker and darker so we
16 needed to clarify by putting in --

17 MS. HUTTON: Again, I would have to object to the
18 admission of something that has never been presented to
19 either V1 or counsel.

20 MS. HUBBELL: If I could continue with what I was
21 starting to say.

22 Q. Is this basically the same as Exhibit 14
23 showing the streets and the locations of areas except in
24 this it's an aerial view showing buildings while on that
25 you've left the buildings off for the sake of clarity?

1 A. Exactly.

2 Q. Did you prepare this?

3 A. I did.

4 Q. This exhibit we have here, you did?

5 A. Yes.

6 Q. Did you prepare Exhibit 14?

7 A. I did.

8 Q. Are there any differences, to the best of your
9 knowledge, between Exhibit 14 and this exhibit here
10 other than the fact that this shows buildings while that
11 one only shows streets?

12 A. There are not.

13 Q. Are the dimensions accurate?

14 A. The dimensions on this one are off of the state
15 GIS database.

16 Q. You mean off Exhibit 14?

17 A. Off of 14, yeah. And there are some
18 differences in the streets themselves as far as, for
19 example, Whitney Avenue is not straight as it actually
20 is on the data base. It doesn't show it straight
21 running east and west, whereas on this map it does show
22 that.

23 MS. NIELSON: Mr. Chairman, I appreciate the
24 advantage of that but it's too far away for us to see
25 anyway, and we do have a map as part of our exhibits.

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1 It would be a lot easier for me if we could just work
 2 off of what we've got in the exhibits.
 3 MS. HUBBELL: That's why we enclosed the maps.
 4 MS. NIELSON: It seems to me we're running into a
 5 concern with exhibits, and if we are referring to the
 6 exhibits that we have before us, it seems to us it could
 7 be easier for us to make some -- to be able to follow
 8 along, so I'm just -- for our clarity could we use this
 9 exhibit rather than that one?
 10 MS. HUBBELL: Certainly.
 11 Q. Mr. Hanson, which would you prefer to use?
 12 A. Either way, just give me a copy of this other
 13 one and we can talk about it.
 14 Q. What did this schematic that you looked at
 15 reveal to you?
 16 A. Well, the first thing we found when we did our
 17 search on our database is there are no open operating
 18 LUST, or UST facilities in the area besides V1 Oil. The
 19 other tanks have all been removed and I don't have the
 20 matrix I created, but I believe the latest one was in
 21 1991, that's also in the exhibits.
 22 Q. What matrix would that be?
 23 A. It's just a spread sheet, the following page.
 24 Q. Oh, okay.
 25 MS. NIELSON: Is that the same thing we have with

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1 our exhibit?
 2 MS. HUBBELL: Yes, that's part of 14.
 3 THE WITNESS: You can see that I included the date
 4 the tanks were removed or closed at the prior -- at the
 5 other facilities in the area.
 6 MR. UTLEY: Melissa, can you have Mr. Hanson tell us
 7 what this status means?
 8 THE WITNESS: What the LUST status means is closed,
 9 open or non LUST. So, what that means from our
 10 standpoint is, if it's closed or open then it has been
 11 reported there was a release at that site. A non LUST
 12 means that no release was ever reported at the
 13 facility.
 14 MR. UTLEY: Okay.
 15 BY MS. HUBBELL:
 16 Q. Okay. By closed, what do you mean?
 17 A. What closed means is from a technical
 18 perspective is that we had a release, and it has been
 19 remediated sufficiently to be protective of human health
 20 in the environment.
 21 Q. And open means?
 22 A. Means that it's still in process.
 23 Q. Okay. And non would mean there had never been
 24 a report?
 25 A. Exactly.

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1 Q. Okay. Could you tell me what your analysis of
 2 the map and of the sites in the area led you to
 3 conclude?
 4 A. The only source in this area of this
 5 contamination we could find in the area was V1 Oil.
 6 Q. Was that simply based on the fact they were the
 7 only still operating one?
 8 A. No, we looked at historical records, status of
 9 the other sites in the area, ones that were opened and
 10 closed. We looked also at the direction of groundwater
 11 flow regionally in the area, and based on those
 12 conclusions and the fact that there was -- they had had
 13 previous releases at the site, it was pretty obvious to
 14 us.
 15 Q. What did you check to find out what groundwater
 16 flow was?
 17 A. A couple of different sources. We looked both
 18 at the facilities that we had groundwater data for in
 19 the area, and we also requested from our consultant,
 20 Delta Environmental, that they provide us with a
 21 regional groundwater flow map.
 22 Q. Okay. What did that show?
 23 A. The trend in the area is that the groundwater
 24 flows generally towards the west to the northwest.
 25 Q. All right. If you could show me on the map the

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1 location of V1 and the location of where you found the
 2 petroleum was most prevalent in the sewer?
 3 A. V1 Oil is right here, and we found the
 4 contamination in this general area, 117, 10 feet,
 5 something on that order, and from this manhole which
 6 would put it in this general area.
 7 Q. Okay. Now, it's my understanding from your map
 8 that where that Zions Bank is, there were some tanks
 9 there across the street practically from V1. Why didn't
 10 you assume those would be a source of contamination?
 11 A. Those tanks were closed in the 60's, 1967, and
 12 back at that time when they closed the tanks, they
 13 basically filled them with water and then put sand in
 14 them to push the water out. Once the water was gone
 15 then the tank was considered properly closed and
 16 displaced all the volume in the tank. And if the tanks
 17 were closed at that time, which our records show 1967,
 18 there's no likelihood of that being an issue.
 19 Q. Okay. So you checked on the status of any
 20 other facility that could have been a source, and you
 21 checked on the gradient of the ground. What else did
 22 you check on?
 23 A. Well, we looked at just the past history of
 24 releases at the facilities that were in the area.
 25 Q. What did that past history show you?

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1 A. Well, there's been a series of releases that
 2 have been reported at the V1 facility, and a series of
 3 compliance issues that --
 4 MS. HUTTON: I object because there's no evidence
 5 that there's been a series of releases.
 6 MS. HUBBELL: I'll get to that.
 7 MS. HUTTON: I'd like that first.
 8 BY MS. HUBBELL:
 9 Q. What evidence did you have that there was a
 10 series of releases?
 11 A. According to our files that we maintain here,
 12 there was a report filed in 1985, November of 1985, with
 13 the local fire department that there had been a line
 14 leak at the facility.
 15 Q. Is that considered a release?
 16 A. That is.
 17 Q. Under what --
 18 MS. HUTTON: I have to object, we have nothing that
 19 has been presented relative to this testimony.
 20 MS. HUBBELL: You have the documents in the --
 21 MS. HUTTON: Would you like to tell us where those
 22 things are?
 23 MS. HUBBELL: If you could refer to Exhibit 1. Look
 24 on the second page.
 25 MS. HUTTON: Which Exhibit?

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1 MR. UTLEY: Exhibit 1. Second page.
 2 BY MS. HUBBELL:
 3 Q. What does that say at the top?
 4 A. The first line says 1985, line leak was
 5 discovered and reported to the Salt Lake fire
 6 department. Pipe was replaced and pressure tested at
 7 100 PSI for 30 minutes.
 8 Q. Okay. If you could refer to the first page.
 9 MS. HUTTON: Excuse me, but what is this document
 10 that has been indicated page two of Exhibit 1?
 11 MS. HUBBELL: These have been accepted as part of
 12 the hearing, they are in the hearing briefs. If you
 13 wanted to object to them you could have done that at a
 14 previous time.
 15 MS. HUTTON: Could we establish who prepared this
 16 and what the basis of this information was?
 17 THE WITNESS: This was prepared by the previous
 18 project manager, Shelly Quick.
 19 MR. UTLEY: Let me, Melissa, interrupt for a
 20 minute. All these exhibits, have you stipulated both
 21 parties that they would be introduced as evidence?
 22 MS. HUBBELL: We had discussions, we haven't written
 23 a stipulation, but we had discussions concerning what
 24 documents we would be submitting and we would be
 25 submitting hearing briefs with attachments. There have

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1 been no objections. These were submitted to opposing
 2 counsel on the 28th of February.
 3 MS. HUTTON: I think that any time documents are
 4 submitted as a hearing brief, they still must undergo
 5 the basic establishment of what they are, what their
 6 background is and whether they can be accepted into
 7 evidence. Being presented as information in a hearing
 8 brief is different from being presented and accepted
 9 into evidence. They still have to have -- they still
 10 have to have a basis for their evidentiary integrity.
 11 MS. HUBBELL: At the December 12th meeting a
 12 discussion was held concerning the fact that this
 13 hearing was to be limited to two hours per side with an
 14 hour and-a-half for presentation and half an hour for
 15 questioning by the Board. At that time, it was decided
 16 that we would present documents to the Board prior to
 17 that, that we would agree to submit documents. We had a
 18 meeting and submitted those documents to try to --
 19 admittedly Ms. Hutton is correct, in that in a hearing
 20 where we have weeks on end I could go into each document
 21 and verify where it came from. I could have Ms. Quick
 22 come in and testify as to what happened when she was
 23 project manager before.
 24 But my understanding was that we had an agreement
 25 that we would submit relevant documents beforehand in

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1 order to abbreviate this matter. Ms. Hutton has had
 2 these documents for some time and she has never
 3 contacted me to discuss the documents, or to discuss the
 4 Board's initial order that we would submit documents
 5 beforehand. I think this is just a delaying tactic that
 6 could drag this hearing out for weeks, and is in
 7 complete contravention of the Board's initial order and
 8 Ms. Hutton's and my initial agreement with the Board.
 9 MR. UTLEY: Well, I think it's fair to form a basis
 10 as we go through these exhibits and explain what --
 11 where they're from. But also, I do think you had an
 12 opportunity to review these exhibits, and as they were
 13 passed out to the Board, the Board -- you know, as we
 14 reviewed these, I guess we had the impression they would
 15 be used in this hearing and accepted as the exhibits.
 16 So I guess the question is you had an opportunity to see
 17 them.
 18 MR. HUTTON: I'm not objecting to the use of this
 19 exhibit, what I'm objecting to is the veracity of the
 20 statement. We don't know who made this statement or
 21 what evidence it is based upon. And I don't think that
 22 it establishes evidence of anything, other than it was a
 23 statement made on a piece of paper belonging to
 24 apparently a prior project manager, but the integrity of
 25 the evidence is at issue.

1 MR. UTLEY: Okay. *Hubbell*
 2 MR. HUTTON: And I'm saying that this is a document
 3 that was formulated in the course of work, and had I
 4 realized that these documents would be challenged, I
 5 would have had Ms. Quick here to testify, but I don't
 6 because none of these documents have been objected to.
 7 MR. UTLEY: Yes. I think it's fair that, Melissa,
 8 we try to form a basis for the documents and have some
 9 explanation of where they come from, how they were put
 10 together.
 11 MS. HUBBELL: Well, I don't have a problem with
 12 that. What I'm saying is I can't have the people here
 13 to testify that they prepared the documents in the
 14 course of their work, because -- but I can have Mr.
 15 Hanson testify as to who he received it from and how he
 16 received it.
 17 MS. HUTTON: I would be more than happy to stipulate
 18 to the fact that this was probably prepared by somebody
 19 in the normal course of their business, what I'm
 20 objecting to is the basis for that information, that's
 21 what I'm objecting to.
 22 MR. UTLEY: Okay. Go ahead and proceed Melissa.
 23 BY MS. HUBBELL:
 24 Q. Could you tell me what the document on top of
 25 that is?

1 A. That's a spill report that was received by this
 2 department.
 3 Q. Okay. Since it was received by Mr. Moore, I'll
 4 have him testify concerning it. What is the next
 5 Exhibit 2?
 6 MR. UTLEY: Before we go on, let me ask a question.
 7 When it says a 985 line leak, do you have any idea
 8 whether that was above ground, below ground, where was
 9 it in the system?
 10 THE WITNESS: It doesn't say in the report. It's my
 11 understanding it was part of the UST system and they're
 12 underground.
 13 MR. UTLEY: Okay, thank you.
 14 BY MS. HUBBELL:
 15 Q. Could you tell me what Exhibit 2 is?
 16 A. Dated February 6, 1991, it's a report submitted
 17 to Ms. Quick of this department by Delta Geotechnical
 18 Consultants.
 19 MS. HUTTON: Again, this was something we have
 20 talked about. V1 is objecting to the presentation of
 21 evidence that is pending before, actually, this
 22 tribunal, but in another matter. The evidentiary and
 23 integrity of this document is still in question. There
 24 has been no decision in that case. It is part of the
 25 notice of violation that is currently pending before the

1 Utah Supreme Court on the issue of the recusal of Mr.
 2 McKnight.
 3 So, all of this evidence is pending decision in
 4 another case, and we're going to object in the entirety
 5 in reference to anything pending in another case.
 6 MS. HUBBELL: That is absurd. The idea that
 7 documents that are involved in another issue could not
 8 be brought into this issue would stymie the entire
 9 judicial system across this entire country. The fact
 10 that Mr. McKnight's role in the system here has anything
 11 to do with documents that were submitted in the normal
 12 course of events to this department, is totally
 13 irrelevant. The only issue before the Supreme Court is
 14 Mr. McKnight and his ability to function as
 15 administrative hearing officer. It has nothing to do
 16 with the qualities of that case. That case has never
 17 been adjudicated and the fact that that case exists in
 18 no way interferes with the ability of this board to look
 19 at evidence concerning this leak. And there is no
 20 continuing objection to that.
 21 Once again, this was never mentioned to me.
 22 MR. UTLEY: Dianne, do you have a comment? Rick?
 23 I agree, I don't think that because it's involved in
 24 another litigation it should bar the use here. Again, I
 25 think counsel had an opportunity to look at these

1 exhibits, and I guess as we again reviewed these
 2 exhibits, the Board felt that these were exhibits agreed
 3 to by both parties that could be used in the trial. So
 4 I'm really struggling with your raising objections at
 5 this point.
 6 MS. HUTTON: Well, my understanding was never that
 7 we were going to present evidence or hearing briefs that
 8 would be assumed right up front that everything we said
 9 in them or everything we presented to the Board was
 10 admissible evidence. Most of it is argument, and at no
 11 time can argument of counsel be represented as evidence
 12 in any case.
 13 MS. HUBBELL: These are not arguments of counsel,
 14 they are documents.
 15 MR. UTLEY: Let her finish.
 16 MS. HUTTON: Excuse me, Ms. Hubbell. Every piece of
 17 evidence has to have an evidentiary basis, a basis in
 18 fact and where we can find out where that fact came
 19 from, and that's what I'm objecting to. I want to make
 20 sure that the objection is on the record. If you want
 21 to allow us to go forward utilizing this evidence, I
 22 just want it known we object to the use of evidence that
 23 is pending in another case that has not been decided on
 24 as to its meaning, and what its meaning is in that case,
 25 let alone what its meaning is to this case.

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1 MR. UTLEY: You were aware this document was going
 2 to the Board members, were you not?
 3 MS. HUTTON: I was aware this piece of documentation
 4 was going to the Board members.
 5 MR. UTLEY: Okay.
 6 MS. HUBBELL: I would like --
 7 MR. UTLEY: Dianne?
 8 MS. NIELSON: Well, I guess my understanding would
 9 be that if there were concerns about the information
 10 within the document, that that would be something that
 11 we could hear in cross questioning of the witness or of
 12 the documents that are being used here. Rick, I guess
 13 I'm looking to you. Isn't that the appropriate use of
 14 time?
 15 MR. RATHBUN: It's time for me to weigh in as board
 16 counsel. I agree with that, if a document is admissible
 17 -- that issues with respect to the accuracy of the
 18 contents of the document are still at issue can still be
 19 challenged on cross-examination or rebutted by other
 20 evidence and the like. So you are right. The Board
 21 needs to think of this, though, in two levels. One is
 22 first, the admissibility of the document, and second,
 23 how you use it, how much weight you give it and the
 24 like. And frankly, I think sitting here and listening
 25 to this discussion, I'm struggling with the

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1 admissibility issues and I wish counsel, both counsel
 2 would clarify that, because I'm concerned about an
 3 appropriate and a proper record here.
 4 If both attorneys agreed and stipulated, or at least
 5 agreed to come in with a stipulation to this board,
 6 doesn't have to be written, it can be oral, that the
 7 exhibits that were marked prior to today's hearing and
 8 were presented this morning should be admissible, then
 9 that ends at least the admissibility question and they
 10 can talk about the weight of it and whether it's
 11 accurate or not.
 12 But without that stipulation, I agree with some of
 13 the comments of Ms. Hutton, that the contents of a
 14 packet doesn't necessarily mean, just because it was
 15 presented to the Board or distributed to other parties
 16 without a written objection, they should be admissible.
 17 They have to have a foundation for admissibility, such
 18 as, you know, a witness to testify about the contents or
 19 at least someone to say they came from business records
 20 which should be admissible under hearsay.
 21 So, I don't know, I'm just concerned about that. I
 22 think we need to clarify that issue. If it was a
 23 stipulation with respect to these various exhibits which
 24 were sent to the Board, then fine. Otherwise, I think
 25 the Board needs to be careful and only use documents

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1 that are properly offer and admitted.
 2 MS. HUBBELL: Mr. Rathbun, prior to this hearing
 3 today, at the December 12th meeting, if you look at the
 4 transcripts of that you will discover that the Board did
 5 suggest we meet and stipulate to as many documents as we
 6 felt each side would put before the Board on the 21st of
 7 February. Ms. Hutton and I met.
 8 MR. UTLEY: January.
 9 MS. HUBBELL: January, I'm sorry. We met and
 10 discussed what documents we would be submitting. We
 11 agreed on the documents, and then we each submitted --
 12 we didn't go through the documents, we each said we
 13 would have a hearing brief with attachments. My
 14 understanding was that we had stipulated to the
 15 documents, and that if Ms. Hutton had any problem, she
 16 had received those documents by February 28th, and she
 17 could have contacted me at that point.
 18 My understanding was the whole reason we did that
 19 was to avoid the very impasse we have today of this
 20 type. I have submitted 30 documents, and if I have to
 21 bring in witnesses to verify every single one, I'm not
 22 going to be able to do it in an hour and-a-half. And
 23 the same, I'm sure, goes with Ms. Hutton and her
 24 documents, if I want to make objections to every single
 25 one of them. But, you know, my understanding is that

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1 these were stipulated to, that that was what the Board
 2 asked us to do and that is what we did.
 3 MR. RATHBUN: Let me say, I wasn't at that board
 4 meeting, but I agree with you, generally speaking. This
 5 board asked the parties to try to streamline things.
 6 It's likely at that board meeting, according to the
 7 minutes you just referred to, that that was suggested,
 8 that the parties get together and stipulate to the best
 9 that they can, to the extent they can to the
 10 admissibility of various documents so we don't have to
 11 bring in a string of witnesses to identify and
 12 authenticate every document. That's all true.
 13 I'm just sitting here listening to this discussion
 14 this morning, and I hear a difference of opinion between
 15 counsel as to whether that stipulation was agreed to,
 16 and I just think this board needs to get it on the
 17 record and get it clear as to whether both parties
 18 agreed to the submission of these documents and
 19 admissibility of these documents or not.
 20 MS. HUTTON: Well --
 21 MR. RATHBUN: Both counsel.
 22 MS. HUTTON: I think from what both of us have said
 23 there's obviously been a misunderstanding about what we
 24 intended to be stipulated to as an admission of
 25 documentation. It's common practice to prepare hearing

1 briefs and to support your argument with documentation.
2 And I do not object to that process. That's obviously
3 something we all do. But, to assume, therefore, that we
4 do not object to the integrity or what those things
5 actually mean, does not support the conclusion of any
6 kind of stipulation.

7 Yes, I will be happy to stipulate to the fact that
8 this is a document that was prepared in the normal
9 course of business, but as to what it shows and its
10 integrity, I do not stipulate to that. And, moreover, I
11 do not stipulate to the basis that it was used upon. I
12 mean, this is fundamental to another controversy,
13 another dispute that has not been resolved.

14 MR. UTLEY: I don't think that has an impact on this
15 particular case Ms. Hutton, it has to stand or fall on
16 its own merits in this particular case.

17 MS. HUTTON: Well, as long as it is used for the
18 limited purpose of whatever value it may have to this
19 tribunal, that's fine. But as to its integrity and what
20 it means, that's something that has to be established.

21 MR. RATHBUN: The question then is, let me just jump
22 in, is V1 willing to stipulate to the admissibility of
23 these documents, keeping in mind, and the Board
24 recognizes that agreeing to its admissibility just by
25 stipulation doesn't concede by -- doesn't mean a

1 me prior to this, that what we were submitting to the
2 Board stood as it was.

3 MR. UTLEY: Do you have a comment?

4 MS. NIELSON: I think what I heard a minute ago was
5 an agreement in terms of -- I don't want to misstate
6 this in terms of admissibility -- of both the exhibits
7 that are provided by the state and the exhibits that are
8 provided by the plaintiff that are referenced in their
9 hearing briefs. Is that correct? And when I -- and I
10 don't mean to used admissibility in the legal sense. Am
11 I correct though, that there is not an argument about
12 these exhibits being before this board and being
13 admitted?

14 MS. HUTTON: That's correct.

15 MS. NIELSON: As part of the hearing we are
16 conducting today?

17 MS. HUTTON: That's correct.

18 MS. NIELSON: So arguments about whether they are
19 being used in another case really aren't pertinent. The
20 issue that I hear is of some debate as to how that
21 document, how the information in the document is being
22 used to support the case that is being presented or
23 argued.

24 MS. HUTTON: Correct. Its relevancy in this
25 dispute.

1 concession as to V1 as to the accuracy or contents of
2 the documents. All that is still subject to challenge
3 by V1.

4 MS. HUTTON: Well, of course we do acknowledge that
5 these briefs were intended for everybody's review to
6 read the argument and rely on these documents to support
7 that argument. But whether or not it means what the
8 argument says it means is for the fact finder to
9 determine for himself.

10 MR. HUBBELL: I'd like to object to the fact that
11 despite the fact that in the hearing, or the initial --
12 when the initial order was issued, the word stipulation
13 was used. We were told to stipulate to the documents.
14 That I met with Ms. Hutton, that my understanding was
15 that we had stipulated. She's had these documents for
16 several weeks. I'm not going to object to how the Board
17 looks at them, but I do object to the fact that she's
18 waiting until we're here before this tribunal trying to
19 present our cases in an hour and-a-half. And I hope all
20 of Ms. Hutton's cross-examination and objections are
21 being taken from her time rather than mine because, you
22 know, this wasn't intended to be part of the way this
23 was done.

24 My understanding was that if she had a problem with
25 documents or objections, that she should have contacted

1 MS. NIELSON: Okay. Can we recognize for the record
2 then that the documents are admissible and get back to
3 the discussion which I think we were having 10 minutes
4 ago which is a discussion on what the document is
5 purported to state relative to what we're doing here,
6 and can we talk about objections relative to that rather
7 than the admissibility of documents?

8 MS. HUBBELL: I'd love to get on.

9 MR. UTLEY: I guess that's the way I view it as
10 well. I think we need to make it clear for the record
11 that counsel, both counsel stipulate that these exhibits
12 are admissible, and in your cross-examination you can
13 certainly question the accuracy and facts presented by
14 the documents. But, if they're not, if you can't
15 stipulate to that, that they are not admissible, then as
16 I reviewed this, these exhibits, I reviewed it with the
17 intent of using them to form some basis of what my
18 opinion or decision would be. And if that's not the
19 case, then I don't know what we'd do.

20 The Board members need to be provided with the
21 information that they can use to formulate their
22 opinions, and if you're not agreeing to these exhibits,
23 then this is not accurate information that they can
24 use.

25 MS. HUTTON: Well, let's just establish the

1 foundation of every piece of every document that's
2 coming in. I'm not saying that we're objecting to its
3 use by the panel as support for argument. But, what its
4 foundation and integrity is in this case, is still a
5 question and has to be substantiated in this dispute.
6 MS. NIELSON: Maybe that's what we ought to focus on
7 as we go forward is a discussion of what the information
8 is in the documents and how it relates to the statements
9 and testimony that are being provided.
10 MS. HUBBELL: I will do my best within the time
11 constraints, but you know, my understanding is that this
12 is not what our time was meant to be spent doing and
13 that's the very reason we submitted these documents in
14 advance.
15 Q. Mr. Hanson, can you identify Exhibit 2?
16 MR. RATHBUN: Just for clarification of the record,
17 I heard something from Ms. Hutton that gives me concern,
18 because I only want clarification. Are the parties in
19 agreement that admissibility as stipulated to, not
20 accuracy or, you know, the degree of weight that should
21 be given to the documents, but admissibility? And the
22 reason I'm concerned is Ms. Hutton made a comment about
23 each document needs foundation, and foundation to me as
24 a lawyer means foundation for admissibility, not weight
25 of the evidence, so I want some clarification.

1 document, and is it admissible either by stipulation or
2 under a hearsay exception and the like.
3 So, again, are these documents stipulated by the
4 parties as admissible? And again, still recognizing if
5 both parties' answer is yes, the Board recognizes that
6 the accuracy of the documents and the weight of the
7 contents of the documents are at issue and will be
8 considered by the Board, and the stipulation doesn't
9 concede accuracy or weight by either party.
10 The fundamental question is, are they stipulated to
11 be admissible and usable in this hearing?
12 MS. HUTTON: Well, I think it's going to boil down
13 to what the Board decides, but I think we're losing
14 sight of what the issue here is. The order that was
15 issued was to abate free product. This document that's
16 prepared in 1991 doesn't substantiate anything. It
17 certainly does not substantiate free product and we find
18 it is irrelevant, and it is objectable as admissible in
19 this particular hearing because its relevancy and the
20 basis for what it shows has never been established.
21 MS. NIELSON: Could I -- Mr. Chairman, I think what
22 we're now having is the very discussion that I would
23 hope we would have as part of a case and cross
24 examination of a case in terms of whether -- I mean,
25 what the statement of facts is is that it isn't a report

1 And I think she said in response to questions from
2 his Nielson, that she would admit to their use and
3 admissibility, just not stipulate to their weight or
4 accuracy, which I think is assumed as the position of
5 all the parties in a situation like this. Is that the
6 agreement, that they are admissible, just not --
7 MS. HUTTON: Well, yes, as regards to support for
8 argument as is submitted in any brief to any tribunal.
9 But as to its foundation, and its admissibility as to
10 the integrity of that particular document, we do
11 object. This particular one, and I'll say it again, we
12 object to because it is also the basis of another case
13 that has not been resolved, so its weight as a piece of
14 evidence is still in question.
15 MR. RATHBUN: Again, I heard two things there.
16 Weight as a piece of evidence; I think this board is
17 probably in agreement that's at issue here. And that's
18 what the Board needs to view and to decide with respect
19 to every piece of evidence and every bit of testimony.
20 Again, foundation to me means not just foundation for
21 the accuracy of the tests that were done, namely was the
22 test equipment calibrated properly, and were the jars
23 samples were taken in clean and the like. But
24 foundation to me as a lawyer, again, gets back to the
25 admissibility issue. Namely, is this an authentic

1 of free product, it says it's a report of
2 contamination. And I think that's a discussion this
3 board should have, but we've got to get on with it if
4 we're gonna do that. We have to agree the exhibits we
5 have before us can be used and accepted in, and the
6 attorneys for both sides agree that we will accept these
7 documents for this, for the purposes of this hearing.
8 And then I would like to hear the discussion from
9 whoever is introducing the document, and whoever wants
10 to comment on the document in this proceeding as to why
11 they think it does or doesn't make the point that it's
12 being presented for. This board is intelligent enough
13 to have read this information, and the issues in terms
14 of contamination and being free product. And all those
15 words are words that we're familiar with.
16 So, I guess I would like a clarification that the
17 documents are being accepted for the purposes of this
18 hearing of the plaintiff's documents, or the state's
19 documents and V1's documents, and that we get on with
20 the discussion of what those documents say. And if
21 there are disagreements in terms of whether they really
22 say what they're purporting to say, that we deal with
23 that as part of this discussion.
24 MR. UTLEY: I agree. I think we need to have an
25 agreement by both parties that the exhibits that were

1 presented to us by both parties are admissible. If
2 they're not, then I don't see how we can proceed because
3 the Board was presented information with that intent and
4 if that's not the intent and there's not agreement by
5 both parties, then I don't know how we can proceed.
6 We'll go back to square one I guess.

7 MS. HUTTON: Can we proceed on the terminology that
8 Miss Nielson proposed, that they be accepted for
9 purposes of argument rather than a stipulation that they
10 are admissible as evidence just as Miss Nielson says?

11 MR. RATHBUN: As board Counsel, let me say I don't
12 think that's a wise move by the Board. I think the
13 Board needs to make an administrative record that's
14 based on admissible evidence, not some vague concept of
15 we'll accept it for purposes of argument, but won't
16 admit it. I mean, either admit it or you don't, and if
17 you don't, if it's not admissible, the Board chairman is
18 right, we need to reconsider how we go forward with this
19 proceeding. Either reconvene at a later date with a
20 stipulation, or reconvene at a later date with more time
21 so the parties can bring in the necessary witnesses to
22 authenticate each of the exhibits they intend to
23 introduce.

24 MS. HUBBELL: My understanding was that we had a
25 stipulation, that was what the Board told us to do.

1 That's what we did to the best of my knowledge and
2 nothing that Ms. Hutton has done up until today has led
3 me to believe otherwise. That's all I can say. I don't
4 have the witnesses here to authenticate and verify every
5 document because I thought we were following the Board's
6 order in stipulating to documents. That's why I called
7 you, Ms. Hutton, and set up a meeting to discuss it.
8 That's why I got the documents to her in advance.

9 MS. HUTTON: I will stipulate to admissibility of
10 this particular document and we'll use it and let the
11 Board itself determine what weight it should be given in
12 this particular situation. Let's go with that.

13 MS. HUBBELL: This document? Are we going to have
14 to go through this for 20 minutes on every document?

15 MR. UTLEY: Let me ask. I think you stipulated to
16 all the exhibits, Ms. Hutton?

17 MS. HUTTON: I can't blanketly stipulate to every
18 document that is here. I think that I have to retain
19 the -- well, the obligation and duty to determine that
20 based on how it is being presented by the state. To
21 just say that blanketly I will stipulate to the
22 admission of every piece of evidence, no, I won't do
23 that.

24 MR. UTLEY: Did you not have a chance to review
25 them?

1 MS. HUTTON: I have reviewed them. And as I
2 reviewed it, as I say the entire board reviewed it, it
3 was my understanding that these documents were being
4 presented as argument, and that their foundation and
5 their veracity would be tested as is every document.

6 MR. UTLEY: But they are labeled as an exhibit?

7 MS. HUTTON: We often do that. I have a copy of the
8 transcript right here.

9 MR. STEVENSON: Mr. Chairman?

10 MR. UTLEY: Go ahead.

11 MR. STEVENSON: If the integrity of the document is
12 in question, and I still hear counsel for V1 Oil
13 indicating that, and that there is no acceptance of
14 these documents and for the basis, and we're asked to
15 make a decision on the basis of the documents, it's
16 foolishness for us to continue. We just do not have a
17 basis for making a decision because the decision could
18 be challenged on the basis of the document integrity.

19 I would certainly feel like we just need to start
20 over and get this thing decided before we waste any more
21 time in terms of the discussion. It is just fruitless
22 for us to spend our time this way.

23 MS. HUTTON: Well, I agree. And I don't mean to
24 take the Board's time on arguing over this particular
25 document, but this particular document represents

1 another dispute that is pending before this board. And
2 for V1 to just lay down and say okay, let's bring
3 everything in that is at dispute in another case
4 consideration, and I will stipulate to its weight and
5 foundation, I don't think that that's appropriate. And
6 I would not be doing my client any service by making
7 that stipulation, and I can't do that. I don't think
8 it's relevant to a determination in this case. I have
9 copies --

10 MS. HUBBELL: No, I object to that.

11 MS. FARRELO-POE: I don't know what case you're
12 talking about. I have no prior familiarity to it. This
13 is the fourth board member who has told you that your
14 problem with this has no relevancy at this meeting, get
15 that clear. We are going to examine all of this, and
16 we're going to allow that. Now, you knew about this two
17 weeks ago, we knew about it two weeks ago, let's decide
18 right now, are we going to use this information or not?
19 Because this is not gonna go on any more. This has gone
20 on for half an hour. We have four people who have told
21 you that this information is allowable today, and it's
22 going to be allowable today.

23 MS. HUTTON: Okay, that's what I've said before,
24 that is your decision, not my decision.

25 MR. STEVENSON: If it's going to be challenged

1 there's no point.

2 MS. NIELSON: Mr. Chairman, I would like to suggest
3 as we proceed that the Board consider that the exhibits
4 that were provided by both V1 and by the state are
5 acceptable exhibits in the context that you described
6 them legally, because you do that better than I do, for
7 this hearing. And that if there is a concern, as Ms.
8 Hutton has pointed out, with a document that's being
9 used in another case, that she be allowed to voice that
10 objection. But that the Board, in terms of going
11 forward here, be able to rely on these exhibits and pay
12 attention to the concerns that are raised in terms of
13 what the exhibit, the purpose of the exhibit in this
14 case is.

15 And I don't know how to explain that. I think
16 that's what Ms. Hubbell is trying to do. You know, if
17 there are going to be objections, obviously the
18 attorneys have the right to raise those. But I think
19 that we need to recognize that the exhibits were
20 accepted, they have been put before the Board, and if
21 there are technical concerns with the exhibit, you know,
22 then we can consider those and we can hear rebuttal as
23 part of the hearing today.

24 MS. HUBBELL: If it reassures Ms. Hutton, what I was
25 attempting to establish with this witness, and I thought

1 it was pretty clear, that factual or non factual, is
2 this the basis upon which he relied in making his
3 determinations in this case. I was -- I do not recall
4 asking him as to the -- whether he had taken these
5 samples or how accurate they were, but simply what
6 information he was relying on in making his following
7 determinations. You know, I don't know how that would
8 affect another proceeding in any way.

9 MR. UTLEY: Well, again, I think we need to have a
10 clear record, Ms. Hutton. If exhibits were provided by
11 both parties, or are stipulated to, they are
12 admissible. And if you want to raise objections about
13 the content as we proceed, that's fine. If they're not,
14 if you're not in agreement they are admissible, then I
15 think we ought to end the hearing now, and go back to
16 square one and get both parties together and try to
17 stipulate on what exhibits are admissible.

18 MS. HUTTON: Might I suggest that we go ahead and
19 find out what this document is being used for then? I
20 just wanted to be sure that my objection is on the
21 record.

22 MR. UTLEY: Okay.

23 MS. HUBBELL: At great length.

24 MS. WITHROW: Mr. Chairman, does --

25 MR. RATHBUN: I guess we need to -- as board

1 Counsel, I'm concerned that we establish an appropriate
2 record. And again, if we're going to use documents or
3 any other tangible piece of evidence as an exhibit, it
4 has to be properly admitted. And before we go forward I
5 think we need to have either a stipulation to that
6 effect that these documents are admissible, or without a
7 stipulation, we may want to reconsider and just
8 reconvene this at a later date. I think what Ms. Hutton
9 just said is that she may be willing to consider such a
10 stipulation, not necessarily at this point enbank or
11 whatever the term is for the entire group of exhibits,
12 maybe on a one by one basis. Maybe we'll have to go
13 through them and as a document or exhibit referred to,
14 we'll just have to, you know, one by one, ask for that
15 stipulation.

16 If that's workable it's a little more -- takes more
17 time than to say all 30, or however many there are, are
18 stipulated to at this point in time.

19 MS. LUNDGREN: 30 here.

20 MR. RATHBUN: If she's reserving that stipulation we
21 either stop this and reconvene at a later date, or go
22 forward with it in mind that we need to get that
23 stipulation at some point in time, as to the
24 admissibility of each of the exhibits. That's worth --
25 it's a little more laborious.

1 MS. HUBELL: I have a concern about reconvening this
2 at a future date. The basis of this entire hearing is
3 an emergency order. Initially when I came to the Board
4 in December, I asked that this be scheduled in January,
5 because of my concerns that as the water flow moves
6 down, that we could have further problems with
7 contamination, whatever the source of contamination is.
8 And, you know, I'm not trying to sway in that way, but
9 you know, if the Board's going to find it's not V1 today
10 we need to know and find out who it is. But my concern
11 is timewise we need to deal with this.

12 MR. UTLEY: Richard?

13 MR. WHITE: I believe that, to the best of my
14 knowledge, I assume all of this is a discussion because
15 nothing has yet been admitted as evidence, and we're
16 trying to get something, various counsel is trying to
17 get something admitted as evidence.

18 If I understand the process right, someone can
19 propose that something be admitted as evidence, opposing
20 counsel can object to that, the Board then makes a
21 decision whether or not that's admitted as evidence.
22 And evidence can be admitted purely on the basis of that
23 evidence, as I understand, and we are allowed to give
24 varying degrees of weight to that evidence. And that
25 can be so noted as evidence is admitted. So, I think

1 Ms. Hutton's concerns have been amply stated, and
 2 perhaps the best thing is to move on and admit evidence
 3 as it -- or have proposals given for admission of
 4 evidence, let objections be raised, then the Board makes
 5 a decision as to whether or not something is going --
 6 whether or not an objection is going to be overruled and
 7 whether or not something is going to be admitted as
 8 evidence and move on. And we, as board members, should
 9 be periodically reminded that we are to give the
 10 appropriate weight to evidence, if there are objections
 11 that are brought up that may have some basis, but still
 12 felt that it ought to be admitted. We ought to be
 13 reminded, perhaps, that we should give it the
 14 appropriate weight, because I doubt that with 30
 15 exhibits from the state and two reports and 8 or 10
 16 exhibits and a couple of reports from V1, there's ever
 17 gonna be a stipulation that these are all admissible
 18 without objection.

19 So I think we should just move on. I think --
 20 again, I have not yet heard any counsel propose to admit
 21 evidence, and that needs to be -- probably as we proceed
 22 through exhibits opposing counsel needs to object and we
 23 need to weigh that, and in 30 seconds make a decision
 24 and move on.

25 MR. RATHBUN: I agree with Mr. White, and I think

1 presented and then some of that is ultimately not
 2 admitted, even though we have all reviewed it, I don't
 3 think that creates a big problem from the procedural
 4 standpoint. It probably creates a time problem in
 5 having to go through all 30 exhibits, all 45 exhibits
 6 total here. But, from a procedural standpoint I don't
 7 think it's a problem that we looked at something that
 8 ultimately we may not get, and those things are even
 9 discussed and ultimately not admitted as evidence. I
 10 don't think -- from my understanding, it doesn't create
 11 a procedural problem.

12 MR. RATHBUN: I agree that's that's done all the
 13 time in courts where something is discussed and offered
 14 and ultimately not admitted. That in itself doesn't
 15 taint the proceedings or ruin the proceedings. But
 16 again, the Board has reviewed the things that were
 17 presented to the Board. Those things were submitted by
 18 the attorneys, without objection by the attorneys in the
 19 sense of objections to, you know, submitting it to the
 20 Board as part of the package. But the objections as to
 21 the admissibility in this hearing still have to be ruled
 22 upon. And maybe the way to proceed then is go ahead and
 23 take our chances with, you know, discussion and
 24 introduction of exhibits which ultimately aren't
 25 admitted, because it happens all the time. But I just

1 it's probably the right way to go forward. Let's just
 2 go forward and take each exhibit on its own. My only
 3 concern there though with that procedure, is I want the
 4 board to have a good record and I want a fair hearing to
 5 the parties. I don't wish to see this board use and
 6 consider and hear discussion of exhibits which are not
 7 ultimately admissible evidence. And that's a problem,
 8 because as Ms. Hutton said, she wants to reserve
 9 objections which is certainly within her rights and her
 10 client's rights. But if they're reserved pending
 11 hearing how the exhibits are used and how they are
 12 discussed, we run the risk of having heard how they're
 13 used and how they're discussed. And then there's the
 14 objection raised on admissibility, ruling by the Board
 15 that it's not admissible, then we've had a long
 16 discussion and use of evidence which is ultimately found
 17 as not admissible by the Board. That puts -- kind of
 18 puts us in a dilemma.

19 MR. UTLEY: The problem is all the Board members
 20 reviewed these exhibits as they prepared for this
 21 meeting today. To me, if we have objections to the
 22 evidence and to these exhibits, then I have a real
 23 problem with that.

24 MR. WHITE: That's not unusual though, is it? I
 25 mean, in hearings such as this that all the evidence is

1 -- it puts the Board in a bit of a bind in a sense that
 2 they are going to hear testimony from witnesses about
 3 these exhibits before ruling on the admissibility.

4 MS. NIELSON: Mr. Chairman, what we will not be
 5 hearing, based on what I understood from Ms. Hubbell, is
 6 the foundation for the document. In other words, the
 7 witness who's using the documents is the one that
 8 prepared it, etcetera, etcetera. Whatever those
 9 discussions are. So, if Ms. Hutton has a problem in
 10 terms of the foundation of the document, then she needs
 11 to let us know when we're first discussing it. If
 12 there's a response or a concern in terms of the way the
 13 information in the document is being presented to us as
 14 part of the argument, then the counter-posing attorney
 15 needs to let us know or needs to, through their question
 16 and cross-examination, raise that issue and help us to
 17 understand the weight and balance we ought to put to
 18 that document.

19 I think we need to proceed and I think we need to
 20 hear those issues. And as we proceed, I think we're
 21 going to get a sense of whether we've got a lot of
 22 problems in terms of foundation, which are the things
 23 that take longer to establish, foundation of documents.
 24 But we all agreed going in that we had an hour
 25 and-a-half on each side for argument and that meant

1 presentation and interpretation of evidence and that's
2 what this is about.
3 MR. UTLEY: I don't know how the rest of the Board
4 feels. I guess we can proceed and see how it goes.
5 MS. NIELSON: Do you need that in the form of a
6 motion?
7 MR. RATHBUN: No.
8 MR. UTLEY: I don't think so.
9 MS. HUBBELL: I no longer have any idea of what the
10 time factors are right now. I mean, we're supposed to
11 have an hour and-a-half each and I don't know how much
12 of my hour and-a-half I have.
13 MR. UTLEY: Well, I think we're going to --
14 MR. RATHBUN: We went --
15 MS. NIELSON: Easily 45 minutes.
16 MR. RATHBUN: 40 minutes on the most recent
17 discussion by my count. The examination of Mr. Hanson
18 was started around 9:00, was going on until about 9:25,
19 and this discussion about the objections started around
20 9:25 and it's after -- almost 10:05, so it's been about
21 40 minutes. I'm not sure how we'll charge that time to
22 the various parties, but we've got plenty of time
23 remaining this morning. We'll proceed and figure out
24 how to allocate that time.
25 BY MS. HUBBELL:

1 know if Mr. Hanson would know.
2 THE WITNESS: The letter itself, if you read the
3 next paragraph, gives you an identification of the
4 area. Sample number one was taken from the backfill,
5 southeast corner inside the excavation, and number four
6 was taken from monitoring well which was installed on
7 the V1 property site.
8 MR. UTLEY: Okay.
9 THE WITNESS: I think they were within the exhibits,
10 indications of where those would be.
11 BY MS. HUBBELL:
12 Q. Could you look at Exhibit 3. Would you
13 identify the document?
14 A. It's the laboratory report from the state
15 health lab, Utah Department of Health Laboratory
16 Services.
17 Q. Where did you find these documents?
18 A. These documents are in the state's case file
19 for V1 Oil.
20 Q. Does this indicate the sampling site?
21 A. On the document itself, yes, it says V1 Oil.
22 Q. All right. What did this document indicate to
23 you?
24 A. Again, we find there's water samples here that
25 indicate Benzene, Toluene, Ethylbenzene, Xylenes and

1 Q. Would you look at Exhibit number 2, Mr.
2 Hanson. Would you tell me what that document is?
3 A. It's a letter, report from Delta Geotechnical
4 Consultants indicating some samples, results of some
5 samples they took at the V1 property.
6 Q. Who was this prepared by?
7 A. Ted Thatcher, Theodore R. Thatcher is the
8 signature on the bottom.
9 Q. Who was it sent to?
10 A. It was sent to Shelly Quick of this department.
11 Q. Ms. Quick, you indicated earlier, was the
12 project manager on this case before you?
13 A. Prior project manager, un-huh.
14 Q. What did this document indicate to you?
15 A. Well, it's -- apparently there were two samples
16 that were collected, and the results of those samples,
17 according to the letter, indicate that they found
18 contamination on the site.
19 Q. On the V1 site?
20 A. Un-huh.
21 Q. Okay. Could you go on to Exhibit 3?
22 MR. UTLEY: Before you do that Ms. Hubbell, can I
23 ask where we have identification of where sample one --
24 where test hole one and test hole four are?
25 MS. HUBBELL: Other than on the V1 property, I don't

1 Naphthalene that are above the maximum contamination
2 levels.
3 Q. When was this document created?
4 A. The date of analysis was December 18th of 1992.
5 Q. Does it indicate a collection date?
6 A. December 16th, same year.
7 Q. Who directed it?
8 A. Shelly Quick.
9 Q. All right. The following documents all appear
10 to be dated on the 10th of January, '95, is that
11 correct?
12 A. In the same -- yes.
13 Q. Okay. What date do they indicate they were
14 collected?
15 A. The 4th of January, same year.
16 Q. And who were they collected by?
17 A. Again, Shelly Quick.
18 Q. And where were they collected?
19 A. Various locations on the V1 property,
20 specifically from the tank -- let me see. Actually,
21 these are all from an abandoned tank that was located on
22 V1's property.
23 Q. All right. What do these documents indicate to
24 you?
25 A. Again, there was contamination present, samples

1 as high as 1800 parts per million of TPH were found in
2 that tank.

3 Q. What is TPH?

4 A. Total petroleum hydrocarbon.

5 Q. Okay. These documents refer to Benzene, what
6 is Benzene?

7 A. Benzene is a chemical that the most common use
8 for a majority of people is they see it in gasoline they
9 use in their vehicles.

10 Q. Okay. Could you look at Exhibit number 5; what
11 is this document?

12 A. It's a closure memorandum written by two
13 environmental scientists in this department.

14 Q. What all is contained in Exhibit 5, if you
15 could just give me a brief description?

16 A. It's an inspection report dealing with the
17 closure, removal of some abandoned tanks on the V1
18 facility.

19 Q. Okay. Was testing done at that time?

20 A. There was testing done at that time.

21 Q. What does the report indicate the tests showed?

22 A. Again, contamination above the maximum
23 contamination levels found at the site.

24 Q. Okay. Are these all documents -- did you refer
25 to these documents after the petroleum in the sewer was

1 Q. You think this may have been building up for a
2 while?

3 A. Yes.

4 Q. How would it turn into free product?

5 A. Well, contamination will migrate with the water
6 itself, and a couple of things can happen. If you have
7 a single spill incident, that petroleum can actually
8 migrate sort of as a mass all on its own and go between
9 different phases, by which -- I mean to say, it can go
10 into the water, it can go into the soil surface, it can
11 collect on the top of the water as what we call free
12 phase. And depending on the amount of contamination
13 that's there, it can exist in any of those various
14 phases.

15 And as petroleum contamination would build up, it
16 would move between those phases until -- if you got a
17 high enough concentration it would come out of the
18 dissolved phase, out of the absorbed phase and into what
19 we call a free product phase, and would collect where it
20 had an opportunity to. In this case, on the water in
21 the sewer.

22 Q. Okay.

23 MR. UTLEY: Quick question. Did you try to
24 calculate the groundwater velocity?

25 THE WITNESS: It has been done. In fact, one of the

1 reported to you?

2 A. We did, they were in the file.

3 Q. What did these documents indicate to you?

4 A. Well, there was a known contamination source in
5 the proximity of the sewer line that had been impacted.

6 Q. And what did that indicate?

7 A. That V1 Oil was the most likely source of the
8 impact to the sewer.

9 Q. Now, the fact that it was free product in the
10 sewer, would that indicate to you that it was just a
11 spill that had just occurred and traveled across this
12 property and run into the sewer?

13 A. There would be several different potential
14 pathways of migration, different ways that that
15 contamination would get from the V1 property into the
16 sewer line. Initially, we thought that the most likely
17 pathway of migration would be maybe a sewer lateral or
18 something else that hooked into V1's facility and
19 property, and thought that it probably had been a new
20 release. But there was no connection between the sewer
21 line and the V1 Oil property which suggests that the
22 time that it would take for the contamination to migrate
23 from the V1 property into the sewer would have been
24 considerably longer than had it been a fresh release, so
25 would have most likely have been an older release.

1 exhibits is a report by TriTechnics, and they measured
2 it.

3 MR. UTLEY: Okay. Thank you.

4 BY MS. HUBBELL:

5 Q. The accumulation of information was discussed.
6 The gradient, the status of other USTs, the amount of
7 contamination that had been found over time at the V1
8 station, what did all of that indicate to you?

9 A. That V1 was the source of the contamination
10 that we found.

11 Q. Did you find any indication that the
12 contamination could have come from another source?

13 A. We investigated several other sources. Again,
14 the exhibit with the map of the area, we looked at the
15 different sites in the area.

16 Q. How about the property next to V1?

17 A. The Zions Bank property?

18 Q. No. Right here.

19 A. The railroad? We did conduct --

20 Q. This is Southern Pacific property right here,
21 I'll indicate on the map that's between V1 and A&A?

22 MR. UTLEY: So that --

23 MS. NIELSON: That's Exhibit 18?

24 MR. UTLEY: Where are you pointing at Melissa?

25 MS. HUBBELL: V1 is here in the lower right hand

1 corner, A&A's towards the middle, and between them is
2 Whitney Avenue and Southern Pacific Property.

3 Q. Did you look at the Southern Pacific Property?

4 A. We didn't see any evidence there had ever been
5 tanks on the site. And subsequent investigations, soil
6 samples that we collected, we found no contamination,
7 shallow contamination which would indicate that there
8 hadn't been any surface spills in the areas we've
9 sampled. And we did look into that and never found any
10 evidence that would lead us to think that Southern
11 Pacific was responsible.

12 MR. UTLEY: For the record can you identify that
13 exhibit Melissa?

14 MS. HUBBELL: This exhibit? I think we've already
15 identified it, isn't it 15?

16 MS. NIELSON: 18

17 MS. HUBBELL: 18, I'm sorry. 18.

18 Q. The information you've just given me, this the
19 basis upon which you issued or recommended that an
20 emergency order be issued to V1?

21 A. Yes.

22 Q. What happened after the emergency order was
23 issued?

24 A. Well, in the order we required V1 Oil to
25 respond within 24 hours to let us know their intent.

1 Q. And what did that report indicate to you? Did
2 it comply with what the order required?

3 A. Basically all the report indicated to us was
4 that V1 saw no need to abate any release, and basically
5 they didn't. They indicated that any problems on their
6 own property had been taken care of, but there was no
7 willingness to do anything about the sewer itself.

8 Q. Who issued that report?

9 A. That was TriTechnics.

10 Q. What was the date of that report?

11 A. I believe it was exhibit --

12 Q. I don't think it's one of my exhibits.

13 A. It was the first of the two reports, and it was
14 -- it was the last week of January, but I can't
15 remember the exact date.

16 Q. Okay. But it was issued by TriTechnics?

17 A. Un-huh.

18 Q. After you read the report, what had TriTechnics
19 done?

20 A. Basically just summarized what they were told
21 were the events that had taken place on the facility,
22 including reported shortage of inventory of about 2300
23 gallons of fuel, and some activities related to having
24 repaired a line in that respect, and also the removal of
25 the tanks.

1 Q. Did they respond?

2 A. No, they did not.

3 Q. What happened then? What would you do if they
4 didn't respond, first of all?

5 A. That we would abate the problem and conduct the
6 investigation on our own.

7 Q. Did you?

8 A. We did.

9 Q. No, I mean when they didn't contact you?

10 A. No, no. In fact, well, that was -- would have
11 been Saturday. We left the 24 hour response lying in
12 line in the order so they could call and let us know
13 their intent. And on Monday morning they were contacted
14 by counsel, I believe, to see what their intent was, and
15 they decided to proceed with the order.

16 Q. And what were you told?

17 A. We received a fax from V1's counsel indicating
18 that -- I don't remember the exact contents of that fax,
19 but basically indicating that they had contacted a
20 consultant and would be working with them.

21 Q. Okay. Did you later receive from them,
22 documentation concerning what their consultants had
23 done?

24 A. We did receive a report from the consultant a
25 week after we issued the order.

1 Q. Did the report do anything to dissuade you from
2 believing that V1 was the source of the contamination?

3 A. No.

4 Q. How did it affect your opinion?

5 A. Well, basically it was a restatement of the --
6 some of the facts that we already had and that we had
7 found contamination of closure, that there was evidence
8 of another release, but actually it only added to our
9 feeling that V1 was the only potential source of the
10 contamination.

11 Q. Have you read the hearing brief submitted by
12 V1?

13 A. I have.

14 Q. Have you looked at it closely?

15 A. I don't have it memorized.

16 Q. In it it referred to LEL levels that were very
17 very low, or not in existence when they did their
18 testing; could you explain that to me?

19 A. The tests that were conducted by TriTechnics
20 were after the sewer had been flushed, and constant
21 flushing was going on at the time they took their
22 measurements. Basically all that did was show that the
23 method of temporary abatement for the product in the
24 sewer line was effective, in that flushing of the sewer
25 was keeping the levels down.

1 Q. Okay. They, in that brief, referred to a
2 number of incidents where there was spillage or
3 inventory losses, things like that. What did that
4 indicate to you?

5 A. Again, just reaffirmed our knowledge of past
6 instances at the facility in that there had been
7 contamination at the property.

8 Q. Are those considered releases or what are they
9 considered when they have those inventory losses, those
10 tests, leak tests and staining and some of the others?

11 A. Any evidence of a release, a confirmed release,
12 it's visual evidence, and any kind of -- basically with
13 inventory control, if in the first month you find you
14 are over or short above the amount that's allowed, it's
15 considered a suspected release and needs to be
16 reported. And then the second one, it -- whether you
17 are over or short again, if you're over or short more
18 than allowed, again, it's considered a confirmed
19 release.

20 Q. Okay. After you received the report from
21 TriTechnics that indicated to you that they didn't
22 appear to be abating or intended to abate, what did you
23 do?

24 A. There was a lot of communication between us and
25 V1 counsel trying to determine exactly what direction

1 they were going to go with the order, and what they
2 intended to do. Numerous discussions were held, and --

3 Q. What did you decide to do on that basis, or
4 what did they indicate? What did the discussions tell
5 you?

6 A. We asked them if they intended to abate the
7 release into the sewer, and our response -- their
8 response was that until they were proven or felt that
9 they had proven for themselves that they were the
10 responsible party, they weren't going to take any
11 abatement action in the sewer.

12 Q. All right. And did you decide to wait and let
13 them do their investigations?

14 A. No. We indicated to them that we would be
15 taking the lead for that abatement process, that we
16 would continue to flush the sewer line as a temporary
17 solution until a more permanent solution could be
18 achieved. And we took over the investigation aspect of
19 the order for the investigation that's conducted off the
20 V1 Oil property.

21 Q. Did you ever consider working with V1 and
22 working together to do this?

23 A. We tried to. I was personally banned from
24 speaking with their consultants. I was willing to
25 discuss work plans, discuss what types of activities

1 were most appropriate for the site. And in fact,
2 numerous correspondence took place in regards to that.
3 And initially, it's my understanding that the
4 restriction was placed on that communication between me
5 and V1's consultant, TriTechnics, by counsel early on.
6 And several times in phone conversations with V1 counsel
7 we requested that I be able to, and in written
8 correspondence as well, that I be able to have contact
9 with them and work with them, and that permission was
10 never granted.

11 Q. Was there any way they would let you
12 communicate with TriTechnics?

13 A. No.

14 Q. I mean, no method at all?

15 A. Well, through counsel. Through counsel we
16 could. I could talk to our counsel, our counsel could
17 talk to their counsel, and then they could talk to
18 TriTechnics.

19 Q. Would that have made it difficult to work with?

20 A. Very difficult.

21 Q. Was the Benzene or would Benzene or petroleum
22 product leaking in to the sewer present a health risk?

23 A. It would. In fact, that's probably the major
24 concern of this situation. We know that the people who
25 work for A&A had problems with nausea, and had to stop

1 working. Bob Smith indicated that he had had to send
2 employees home on several occasions, because they were
3 unable to work because of the fumes that were in the
4 building.

5 Q. Okay. When you received -- it's my
6 understanding you later received reports from
7 TriTechnics and Delta that are part of the exhibits in
8 the two different briefs.

9 A. We did.

10 Q. Did you analyze the data in those briefs, or
11 those documents?

12 A. Those documents, we did. In fact, some of the
13 data has been summarized for a visual.

14 Q. Could you explain for the Board what that
15 indicates?

16 A. Sure. What we've done is included both the
17 information that our consultants, Delta Environmental,
18 collected and TriTechnic's consultants for V1, and made
19 what's called a contour map or a concentration contour
20 map for a visual idea of kind of what we're looking at
21 at the site. And as you can see --

22 MR. UTLEY: I guess for the record you are pointing
23 to Exhibit 18?

24 THE WITNESS: Exhibit 18. As you can see we found
25 contamination. This is the soil map, if I'm not

1 mistaken.

2 MS. HUBBELL: It is.

3 MR. UTLEY: Yes.

4 THE WITNESS: We have both the soil and the
5 groundwater maps, and they are very similar. As you can
6 see, there's soil contamination which extends beginning
7 at the V1 property all the way across the railroad
8 property and into the public right-of-way under Whitney
9 Avenue, and up to the sewer lateral. You can see that
10 both V1's consultants, TriTechnics, and Delta
11 Environmental were able to find basically clean samples
12 beyond this area, so we have definition of the plume and
13 extent of the contamination.

14 MR. UTLEY: Can you tell us how they were able to
15 determine that? What device or technique did you use?

16 THE WITNESS: The contouring or how they --

17 MR. UTLEY: The measurements.

18 THE WITNESS: The samples were taken with a geoprobe
19 for the Delta reports, and --

20 MR. UTLEY: Tell me what a geoprobe is.

21 THE WITNESS: What a geoprobe is, is it's a direct
22 push, basically a hollow sample collection. What
23 they'll do is they'll go down a certain depth that we're
24 interested in getting a sample at, and they screen the
25 soil using a method similar to what Rick talked about.

1 It's called an OVM, or organic vapor monitor, and what
2 they will do is look to see where contamination exists
3 in the sample, and those logs -- what we call them,
4 boring logs, are noted in the reports that have been
5 submitted both by Delta, in this case, and TriTechnics
6 also included boring logs in theirs.

7 MR. UTLEY: Thank you.

8 THE WITNESS: Is that enough?

9 BY MS. HUBBELL:

10 Q. Okay. Why don't you show the other map which
11 you could refer to, it's Exhibit 15?

12 A. Exhibit 15 is basically the same type of a map.

13 MR. UTLEY: One question on 18 quickly. Did you
14 explain what the different circles were for?

15 THE WITNESS: I'm sorry. These are what we call
16 isoconcentration lines which basically means this is
17 where we found different levels of contamination, and
18 kind of isolates it where you find hot spots and where
19 you find -- where the contamination actually exists.
20 The area outside of these contours, all the
21 contamination was below .8 parts per million in the soil
22 for Benzene. And actually these samples here, if you
23 look at one of the other exhibits, probably 17 or 16 has
24 the actual numbers printed on those for your reference
25 as well.

1 MR. UTLEY: So the numbers in these contours are
2 identified as the two and the three?

3 THE WITNESS: Exactly. The two and the three mean
4 three parts per million were found here and two parts
5 per million found here and .8.

6 MR. UTLEY: Okay. Thank you.

7 THE WITNESS: This is basically the same thing with
8 the groundwater concentrations of Benzene in the area.
9 Again, you can see that the contamination begins in this
10 area, extends across the Southern Pacific property and
11 into the area of the impacted sewer line. Again, what
12 we see is that we're able to get clean samples in the
13 perimeter and the contamination begins here and extends
14 across the property.

15 Again, that's a combination of the data collected by
16 TriTechnics and by Data Environmental.

17 MR. UTLEY: The numbers located on these contour
18 lines I take it are --

19 THE WITNESS: This is 10,000 parts per billion of
20 Benzene. That's again Benzene. And 10,000, 2000, and
21 100 parts per billion.

22 BY MS. HUBBELL:

23 Q. What do these maps indicate to you?

24 A. What they indicate to me, is that we've had a
25 release or series of releases at the V1 property which

1 is migrating, and moving in this direction, and that
2 that accounts for contamination of this area from back
3 in this area to the northwest.

4 Q. Have you included or have we included in the
5 exhibit what the levels were on this map?

6 A. We have, there's another exhibit.

7 Q. I think 17?

8 A. I'm not sure whether it's 16 --

9 Q. 17 is soil, so that would be 16?

10 A. If Exhibit 16 is a summary of both the Benzene
11 and includes also TPH concentrations -- actually,
12 numbers detected at a different monitoring points.

13 MR. UTLEY: Could you explain what TPH is?

14 THE WITNESS: Total petroleum hydrocarbon.

15 Basically what that does is account for -- we are kind
16 of measuring for what we call the lighter Benzene,
17 Dormalin (sic), the light stuff in gasoline. TPH pretty
18 much accounts for everything else you find in petroleum
19 products, so it's kind of a lump sum of all other
20 constituents that make up petroleum.

21 BY MS. HUBBELL:

22 Q. What action did you eventually take to abate
23 the petroleum products going into the sewer lines?

24 A. We hired a contractor to what we call sleeve
25 the sewer, which basically what it is is we take a

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1 polymer, it's a double walled polymer that they actually
 2 run down the length of the sewer that seals off any
 3 cracks that might exist in the sewer, and prevents
 4 anything from infiltrating in that manner. We did that
 5 in June of last year.
 6 Q. Is that a permanent solution?
 7 A. For this piece of pipe. As a contamination
 8 migrates, there's potential for impact further down
 9 gradient. We've only addressed this section of pipe
 10 from the manhole that Rick talked about, back to this
 11 manhole up here which is where the lateral, or this
 12 sewer line begins.
 13 Q. I have no further questions.
 14 MR. FAUCETT: It looks like the sewer line was
 15 acting as a conduit of the product. Once it got to that
 16 point it had a flow?
 17 THE WITNESS: Actually it can. You find different
 18 materials in this area. Usually they backfill the sewer
 19 line with gravel or sand or something else and the flow
 20 tends to be greater.
 21 MR. FAUCETT: So now that you blocked the entry
 22 would it most likely now travel down?
 23 THE WITNESS: Yeah, most likely, because you've
 24 blocked one pathway. It's gonna take another to
 25 continue to move, so eventually it will move down,

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1 yeah.
 2 MR. UTLEY: I've got a couple of questions for you.
 3 Do you know what A & A contractors do?
 4 THE WITNESS: They're a general contractor, so they
 5 do various types of contracting work. I don't know
 6 other than that.
 7 MR. UTLEY: Okay. Did any other businesses complain
 8 of hydrocarbon vapors in their buildings?
 9 THE WITNESS: No, they were the only ones.
 10 MR. UTLEY: Okay. Were you able to discern where
 11 the vapor was coming from since this is a sanitary
 12 sewer? Again, what opening?
 13 THE WITNESS: They noticed it mostly in the bathroom
 14 initially so we knew it was connected with -- somehow
 15 with the plumbing. And they actually went through piece
 16 by piece in their building and tore it apart and tore
 17 apart the plumbing until they made sure all the P traps
 18 were operating properly and the cleanouts were working.
 19 MR. UTLEY: Did they find any, to your knowledge,
 20 find any P traps that weren't full?
 21 THE WITNESS: Not that I know of. But they did note
 22 that one of the cleanouts was very -- seemed to be the
 23 source of the infiltration and they got very high
 24 readings. We had Delta monitoring over there so that
 25 they could be sure that these people were safe. And

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1 they did isolate one of the P traps, I mean one of the
 2 cleanouts that seemed to be the problem.
 3 MR. UTLEY: Okay. Because these lines are put in
 4 the gravel beds, and based on some of my experience it
 5 does provide a conduit for materials to travel a long
 6 ways.
 7 THE WITNESS: We did investigate, also, the sewer
 8 lateral between A & A, you know, the material around the
 9 sewer.
 10 MR. UTLEY: Around it?
 11 THE WITNESS: They put in a grout curtain (sic) to
 12 prevent migration up that sewer lateral so we didn't
 13 have any problems in the basement.
 14 MR. UTLEY: I guess my question is, in your
 15 experience have you seen material travel long
 16 distances? In other words, how far did your search go
 17 out and can hydrocarbons travel half a mile along this
 18 conduit?
 19 THE WITNESS: A long conduit can travel quite a
 20 distance. It doesn't travel nearly as far in the tight
 21 clays we found at the site.
 22 MR. UTLEY: But the lines are in a sand bed which
 23 provides -- it may not get into it, but may be able to
 24 travel a long ways along the pipe. I looked at your
 25 diagram, it looks to me like you have done some

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1 investigation around the pipe both up gradient and down
 2 gradient to rule that possibility out?
 3 THE WITNESS: We tried to look at the samples or
 4 take samples along any utilities that would exist below
 5 or under Third West and along Whitney Avenue, and
 6 basically we got -- anything north of the sewer lateral
 7 we found to be clean, samples north of the sewer
 8 lateral, and then down gradient as you can see on the
 9 exhibit, I'm not sure which one, 17 I think, 16, you can
 10 see the concentrations decrease fairly quickly as you
 11 move down gradient. So it seems or appears to be the
 12 area of impact.
 13 MS. HUBBELL: Perhaps, could you indicate to Mr.
 14 Utley where the sewer line begins on this one?
 15 THE WITNESS: The sewer line has no tie into Third
 16 West at all. It begins right at this point. This is
 17 the head of the sewer line, and then it flows this way.
 18 MS. HUBBELL: For the record I'll indicate that
 19 that's what, maybe 20 feet down Whitney Avenue, or --
 20 THE WITNESS: Right here.
 21 MS. HUBBELL: In the middle of Committee Avenue?
 22 THE WITNESS: I guess it's about a hundred feet.
 23 MS. HUBBELL: A hundred feet down.
 24 MR. UTLEY: Okay. Did you take any groundwater
 25 elevation measurements around the sewer?

1 THE WITNESS: We just used the geoprobe so it's
2 difficult to get accurate groundwater elevation
3 information. But according to Delta, the groundwater
4 appeared to be at about 79 feet.

5 MR. UTLEY: Was it depressed there versus the
6 surrounding area?

7 THE WITNESS: They didn't actually take samples in
8 the fill material itself. The sewer people are a little
9 apprehensive about you drilling in their pipes and
10 things.

11 MR. UTLEY: I can understand that. Did you see any
12 cracks in the sewer line?

13 THE WITNESS: No visible cracks, but the makeup of
14 that type of pipe -- it's just a vitrified clay, and to
15 my knowledge it's been a while since they were put in,
16 and they're not the most durable pipes that there are.
17 A hairline fracture would be enough, separation of the
18 spigot would be enough to allow some infiltrate.

19 MR. UTLEY: But you've not seen anything like that.

20 THE WITNESS: Nothing real visible.

21 MR. UTLEY: Mike probably asked this question, I
22 didn't hear the answer fully. But has there been, since
23 you sealed the pipe, has there been any additional
24 monitoring data on the other side down gradient of the
25 pipe to see if the hydrocarbons are migrating?

1 THE WITNESS: We are currently in the process of
2 installing permanent wells.

3 MR. UTLEY: You have no data?

4 THE WITNESS: We have no data at this point.

5 MR. UTLEY: Thank you.

6 MS. FARRELL-POE: Do you know what the numeric
7 criteria for Benzene in groundwater is?

8 THE WITNESS: Five parts per billion.

9 MS. FARRELL-POE: Five parts per billion?

10 THE WITNESS: Or micrograms per liter.

11 MR. UTLEY: Did you have a question?

12 MR. FAUCETT: I was gonna ask the interim measure
13 for remediation of this site. What would you expect in
14 normal cases, say somebody did take responsibility for
15 the problem, what would have been their interim measure
16 for corrective action?

17 THE WITNESS: Well, we talked with counsel for V1
18 about that, and asked if they would pay for continuing
19 to flush the sewer line, pick up the cost of it until
20 they could actually do something more permanent, and
21 they refused until they had proven sufficiently.

22 MR. FAUCETT: And to stop the flow of materials,
23 that would have stopped it?

24 THE WITNESS: That would have stopped the flow into
25 the sewer.

1 MR. FAUCETT: It wouldn't have stopped the migration
2 of the materials to recover or remediate that?

3 THE WITNESS: The contamination is fairly extensive
4 so we would probably have to use a combination of
5 technologies. We could do -- I don't know, I don't know
6 what would be the best at this point without doing some
7 feasibility studies or something. We could look into
8 actually putting a grout curtain in like we did on the
9 lateral sewer itself, something of that nature, and that
10 would prevent migration through the fill material
11 anyway. But we have to address that main body of the
12 contamination somehow, and --

13 MR. FAUCETT: Pump and treat?

14 THE WITNESS: Pump and treat is not really good in
15 tight soils. It may be our only option. We would have
16 to investigate different remedial technologies.

17 MR. UTLEY: Mr. Hanson, I have one more question.
18 Did you do any other additional testing other than BTX
19 like you did to try to identify the material was
20 gasoline versus diesel versus motor oil?

21 THE WITNESS: Based on the BTX numbers it's very
22 evident it's gasoline and the TPH range.

23 MR. UTLEY: How can you say that? How do --

24 THE WITNESS: High degree of Benzene to other
25 constituents. In addition, I don't have the Delta

1 report in front of me, but typically the lab will
2 identify what they feel the contamination is when they
3 send it back. And it's my belief that they identified
4 it as gasoline. I don't remember to be quite honest.
5 That would be what we would have.

6 MR. UTLEY: Okay. Thank you

7 (Whereupon a recess was taken.)

8 MR. UTLEY: We ought to reconvene.

9 MS. HUBBELL: Does anyone have any more questions
10 for Mr. Bright? Because if they don't Mr. Bright, the
11 first gentleman I called, he's had his fill of
12 litigation for this week, and he would like to leave if
13 there are no questions.

14 MR. UTLEY: Any other questions for Mr. Bright?
15 Okay.

16 MS. HUBBELL: All right.

17 MR. UTLEY: If that's all right with you.

18 MS. HUTTON: That's fine. I would like to say I do
19 think Mr. Bright should have to stay here and
20 participate with all the rest of us.

21 MR. BRIGHT: Appreciate that invitation, but --

22 MR. UTLEY: Let's reconvene, and Mr. Hanson you are
23 still under oath. Ready for the Board's questions?

24 MR. WHITE: I have some, but I'll wait until after
25 the cross.

1 MR. UTLEY: Okay. Anybody else? Okay, Ms. Hutton.
 2 MS. HUTTON: Thank you.
 3 Q. Okay. Mr. Hanson, I believe that quite a while
 4 ago when you first started testifying, you said that
 5 there was an obvious smell on the street when you went
 6 out to check A & A after the complaint, and that there
 7 was a colorization that you noticed; do you recall that?
 8 A. The colorization in the water.
 9 Q. Okay. But you recall testifying to that?
 10 A. Un-huh.
 11 Q. Okay. And what you were saying was you noticed
 12 coloration on the water?
 13 A. Un-huh.
 14 Q. Did you say --
 15 MR. UTLEY: Excuse me, can you please speak up.
 16 THE WITNESS: Un-huh.
 17 MR. UTLEY: Answer yes or no.
 18 BY MS. HUTTON:
 19 Q. I believe early on, you said that the street
 20 had a layer of petroleum on it; do you recall saying
 21 that?
 22 A. I did not say that.
 23 Q. Okay. So what you were saying was the water
 24 had a layer?
 25 A. Yes.

1 Q. How did you determine that it was petroleum?
 2 A. By the smell, by its look, it's obvious it was
 3 petroleum.
 4 Q. Okay. Did you sample it to determine what type
 5 of petroleum it was?
 6 A. We did not take a sample and have it analyzed
 7 out of the sewer, no.
 8 Q. Okay. Did you take any tests on the property
 9 anywhere to identify the nature of the product that you
 10 were seeing?
 11 A. On which property?
 12 Q. Anywhere, anywhere that you say you had done
 13 the testing. Did you take any samples of -- you said
 14 you didn't take any samples of the product that you saw
 15 in the sewer, but did you take samples any place near
 16 the sewer or of the vapors in the A & A contractors that
 17 you could use to identify what the product was?
 18 A. There weren't samples that were indicated here
 19 that were taken.
 20 Q. I mean that would identify what was actually in
 21 the sewer system?
 22 A. Nothing from the sewer itself.
 23 Q. Okay.
 24 A. We did later take air samples from the A & A
 25 building.

1 Q. And when were those air samples taken?
 2 A. They were covered in one of the Delta reports.
 3 That would have been after we took over the
 4 investigation.
 5 Q. What did your air samples show?
 6 A. There were levels of petroleum contamination in
 7 the building vapors.
 8 Q. Did you identify where those were coming from?
 9 A. Just with -- again, as I explained before, we
 10 used an OVM, and sniffed around the building and
 11 isolated it to the cleanout that was in question.
 12 Q. Okay. Did you test to determine what the
 13 groundwater flow was in that area?
 14 A. We did not. The sampling technique we used
 15 doesn't provide good information for that. We did do a
 16 record search of the sites in the area and also got a
 17 regional groundwater flow.
 18 Q. Okay. So your groundwater that -- the
 19 determination you made as to groundwater flow was based
 20 on topography and regional maps?
 21 A. Not topographical maps, agrogeologic (sic)
 22 happenings which were groundwater elevations from
 23 existing wells in the area, and those maps could be --
 24 there's one in the exhibit.
 25 Q. Okay. What was the groundwater level at that

1 time?
 2 A. The groundwater level was, I think as we talked
 3 about before, we used a geoprobe and based on what Delta
 4 found it was approximately 7 feet.
 5 Q. Okay. Now, you also said, I believe, that
 6 during Delta's test that they tested to determine at
 7 what level the contamination occurred as far as how
 8 close to the surface of the ground; is that correct?
 9 A. Yes, they -- you'll find that in the boring
 10 logs, there's what's called PID readings off on the side
 11 of the boring logs.
 12 Q. Okay. I may have overlooked it, but could you
 13 tell me where the exhibit is that says that tests were
 14 done to determine ground level, where the contamination
 15 -- to determine what level the contamination began?
 16 A. It's in the Delta reports, if you look in the
 17 Delta report entitled Subsurface Investigation Report,
 18 do you have that?
 19 Q. Yes, this big one?
 20 A. In appendix C out to the side there's PID
 21 values, has the field head space reading.
 22 MR. UTLEY: Could you identify that for the record?
 23 THE WITNESS: It's in the Delta report, entitled
 24 Subsurface Investigation Report.
 25 MS. HUBBELL: Dated February 15th.

1 MR. UTLEY: Okay.
 2 MS. HUTTON: I think their concern is, is it one of
 3 these exhibits?
 4 MS. NIELSON: It's appendix A.
 5 THE WITNESS: Actually C.
 6 MS. NIELSON: In our handouts it's Exhibit appendix
 7 A.
 8 THE WITNESS: Within the report of Appendix C you
 9 can see some buildings. For example, GP 2 which is the
 10 first one which is on the property for Southern
 11 Pacific. Is everyone there?
 12 MS. HUBBELL: Is it breathing zone reading ND?
 13 MS. HUTTON: This is what it looks like, does that
 14 help?
 15 MS. LUNDGREN: What's the title?
 16 MR. STEVENSON: Boring log.
 17 MS. NIELSON: Breathing zone reading.
 18 THE WITNESS: And there's a series of them, starting
 19 GP 1, GP 2, and GP 3. Those are all samples that were
 20 taken on the --
 21 MR. UTLEY: Let me ask counsel, both counsel, has
 22 this been identified as an exhibit?
 23 MS. HUBBELL: My understanding was that we agreed
 24 these were. The technical reports from TriTechnics and
 25 Delta were exhibits.

1 MS. NIELSON: Does it have an exhibit number, I
 2 think is our concern?
 3 MS. HUBBELL: No.
 4 MS. NIELSON: Can we put a number on it for the
 5 purposes of this hearing so we know what we are
 6 referencing?
 7 MS. HUBBELL: 31 and 32?
 8 MS. HUTTON: That's fine.
 9 MS. NIELSON: 31 for Appendix A, and 32 for Appendix
 10 B. Thank you.
 11 MR. UTLEY: Labeled as Executive Secretary's
 12 Exhibits 31 and 32.
 13 MS. HUBBELL: Thank you.
 14 MR. UTLEY: Okay, Ms. Hutton.
 15 BY MS. HUTTON:
 16 Q. Mark that myself. Okay. Anyway, so this test
 17 here, this soil boring log was done to determine the
 18 level at which the contamination began?
 19 A. Basically it's a field screening method that
 20 allows you to get relative concentrations of
 21 contamination.
 22 Q. So, at what level are you telling us that it
 23 began?
 24 A. Well, you look at GP 1, for example, the
 25 contamination on there both on their field screening and

1 on their head space analysis, and the difference between
 2 those two is with the field screening. What they do is
 3 they collect the sample in usually a plastic tube
 4 basically, and then they slit the tube over and run this
 5 PID, photo ionization detector, which counts basically
 6 how much contamination is present down the inside of
 7 this tube to get a reading of how much contaminated
 8 vapor is coming off the sample. And then what a field,
 9 what a head space reading is they actually put a sample
 10 in the jar, let it warm up and open the lid slightly and
 11 stick the probe inside so they can collect a sample off
 12 of that. And what you usually expect to see is when
 13 you've collected a sample, put it in the jar, allowed
 14 the stuff to come off the soil, heat up, and volatilize,
 15 you are gonna get a little higher reading with the head
 16 space reading. And that's basically for the most part
 17 what you see here. With GP 1, the first significant --
 18 actually I didn't find any really significant
 19 contamination of the soil at GP 1. You look at GP 2,
 20 the first significant hits were at about -- the head
 21 space was conducted at four to eight feet, and that's
 22 when they first started seeing it, so it was at a bit of
 23 depth.
 24 Q. Okay. Let me ask you something before you go
 25 on.

1 A. Sure.
 2 Q. On this first page that I guess is marked GP 1,
 3 it has environmental sample and it's kind of marked out
 4 in black, is that where the sample was taken?
 5 A. That's the general location, yeah.
 6 Q. Where was the sample taken up here at the top
 7 where it says, field head space? Was a sample taken up
 8 here at the top?
 9 A. I'm not understanding your question.
 10 Q. Was a sample taken up here?
 11 A. They were collected continuously.
 12 Q. Why does it say environment --
 13 A. This is where the sample that went to the
 14 laboratory was taken.
 15 Q. Okay. So, you're saying that up here a sample
 16 was taken, but it wasn't sent to the lab?
 17 A. It was analyzed with this field method I've
 18 just discussed.
 19 Q. Okay.
 20 A. Using the PID.
 21 Q. Okay. This was something that was done out in
 22 the field?
 23 A. Un-huh.
 24 Q. Okay. And where were these samples taken?
 25 A. Where were --

1 Q. Designated places on the property, do we have a
2 map of that?
3 A. Actually, if you look in the top corner of the
4 diagram there's an indication of where that sample was,
5 also in Exhibits 15 through 18 those locations are
6 specified as well as on this map up here.
7 Q. I see. Okay. So --
8 MR. UTLEY: Could I ask, for the Board's knowledge,
9 can you show us, for example, where GP 1 is on Exhibit
10 18?
11 THE WITNESS: Sure. If you look on your map it
12 shows it's up in the corner of basically Third West and
13 Whitney and that's indicated on this map right here. GP
14 2 is that here, three, four, five.
15 MR. UTLEY: Okay, thank you.
16 BY MS. HUTTON:
17 Q. Okay.
18 Did you make a record or did you look to determine
19 whether there was any ground surface staining?
20 A. There was nothing I could observe at the site.
21 At the time there was some snow cover, but some exposed
22 surface as well, nothing was apparent.
23 Q. Well -- okay. Now, also earlier you said that
24 you had investigated previous releases. In fact, I
25 think you said several previous releases; is that

1 correct?
2 A. Un-huh.
3 Q. Okay. I'm going to show you what has been
4 identified by the state in their hearing brief, and it's
5 Exhibit number 1, and I believe that Ms. Hubbell
6 referred to it before. It's right here at the first,
7 and may I hand this to him?
8 A. I think I've got it.
9 Q. Oh, okay, good. This is dated 7/13/1990.
10 Could you tell me what it says under type of release?
11 A. It says overfill and spill.
12 Q. Okay. And then can you -- you see down there
13 where it says describe?
14 A. Tanks tested, contamination and fill pipes,
15 around fill pipes, etcetera, noted.
16 Q. Does it indicate on there that a release was
17 confirmed?
18 A. Staining and visible evidence of contamination
19 is considered a release, yes.
20 Q. Okay. Are you familiar with the federal
21 regulations, Mr. Hanson?
22 A. Un-huh.
23 Q. Are you familiar with Federal Regulation 40 CFR
24 28.53, it's called Reporting and Cleanup of Spills and
25 Overfills?

1 A. May I see a copy?
2 Q. There's a copy of it, it is Exhibit A on V1's
3 brief, and it is found at page 977. So, it's kind of
4 just three pages from the end of it, subheading number
5 one?
6 A. Okay.
7 Q. It says, "Spill or overfill of petroleum that
8 results in a release to the environment that exceeds 25
9 gallons or another reasonable amount specified by the
10 implementing agency or that causes a sheen on nearby
11 surface water", and that's where we'll end. And that is
12 supposed to be reported and cleaned up; is that correct?
13 A. That's correct.
14 Q. Is there an indication on this document that
15 you're relying on that there was any release on the
16 environment of greater than 25 gallons?
17 A. There's no specified amount.
18 Q. Okay. The next document that was referred to,
19 does it document any release on this? This is the
20 document that we had a lengthy discussion about whether
21 or not it was admissible. Does that document provide
22 any documentation as to whether or not a release
23 occurred at V1?
24 A. It doesn't address a specific release, just the
25 presence of contamination.

1 Q. Okay. It doesn't document any release, okay.
2 MS. HUBBELL: Excuse me?
3 THE WITNESS: I said specific release, it does
4 document contamination.
5 BY MS. HUTTON:
6 Q. But it doesn't document a specific release?
7 A. Huh-huh.
8 Q. Is there anything else that we can direct our
9 attention to that confirms a release that occurred prior
10 to October, 1995, that exceeded the federal guidelines
11 of 25 gallons or more?
12 A. Just what we've talked about previously, the
13 contamination that was found on the site both in the
14 monitoring well and in the tanks and the excavation and
15 so forth.
16 Q. Okay. And let's address that. Now, when the
17 original order to abate and investigate and take
18 corrective action was first issued, that notice was to
19 abate, investigate and correct free product at Whitney
20 Avenue; is that correct?
21 A. Whitney Avenue and the surrounding area, yes.
22 Q. No, I think that the order says, and if you
23 don't recall let me -- it is D, Exhibit D on V1's. Can
24 you find it?
25 A. Un-huh.

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1 Q. Okay. The emergency order says, to abate and
 2 order to --
 3 MR. UTLEY: Where are you reading from?
 4 MS. HUTTON: It's D, and it's the Executive
 5 Secretary's emergency order and it's D right at the top,
 6 it says --
 7 MR. UTLEY: What page?
 8 MS. HUTTON: The very first page.
 9 MR. UTLEY: Our first page on Exhibit D shows a
 10 letter from the attorney general.
 11 MS. HUTTON: Oh, okay, then it's the third page
 12 down. Sorry.
 13 MR. UTLEY: Under findings of fact?
 14 MS. HUTTON: Right, right. The heading, right at
 15 the top.
 16 MR. UTLEY: Okay.
 17 MS. HUTTON: It says, emergency order to abate and
 18 order to investigate and perform corrective action In
 19 Re: V1 Oil Company, free product in sewer. Is that a
 20 correct statement of what we find there?
 21 A. I think you read it.
 22 Q. Okay. Did V1 investigate?
 23 MS. HUBBELL: I think that question could probably
 24 be more specific.
 25 BY MS. HUTTON:

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1 Q. Did V1 comply with the -- well, did they begin
 2 to do an investigation when this order came out to your
 3 understanding, to your knowledge?
 4 A. They submitted a report within a week which
 5 detailed some investigation, yes.
 6 Q. Do you recall from the order, and I'm -- what
 7 the date was that V1 was required to submit their first
 8 site characterization? I think at page 3 of that same
 9 document, Subsection C it said, second sentence down,
 10 remove and abate free product threatening to impact or
 11 impacting the sewer line by January 23rd, and submit a
 12 report of your activities by January 30th; is that
 13 correct?
 14 A. That's correct.
 15 Q. And V1 -- well -- V1 did do an investigation;
 16 is that -- are you saying that V1 did do an
 17 investigation?
 18 A. They submitted a report that detailed some of
 19 the findings that they had, yes.
 20 Q. Okay. And from the documents that we have
 21 submitted to the Board and to the division, the date of
 22 that submission was January 30th?
 23 A. I believe so. I don't have the document in
 24 front of me, but --
 25 Q. I have the -- I believe the date of the initial

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1 abatement report is the 23rd?
 2 A. They did submit one on the third and then again
 3 a more complete report on the 30th.
 4 MR. UTLEY: Does the Board have, or is that
 5 introduced as evidence?
 6 MS. HUBBELL: TriTechnics.
 7 MS. HUTTON: They're the TriTechnics report.
 8 MS. HUBBELL: I don't believe she included the one
 9 on the 23rd.
 10 MS. HUTTON: No. The 30th, the one on the 23rd and
 11 the 30th are virtually identical and the one in March --
 12 you have the 30th and the one in March. And the one
 13 that I'm referring to is the 30th, and that's the
 14 smaller one of the two you have.
 15 MR. WHITE: There was one submitted on the 23rd?
 16 MS. HUTTON: There was one submitted on the 23rd.
 17 MR. UTLEY: What Exhibit is that, the 30th report
 18 from TriTechnics?
 19 MS. HUTTON: It doesn't have a number, but they were
 20 submitted along with the hearing report and references
 21 are made to them.
 22 MR. WHITE: We have that, at least I got it. We
 23 don't have the January 23rd?
 24 MS. HUTTON: No, no January 23rd.
 25 MR. UTLEY: It was submitted earlier then?

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1 MS. HUTTON: See that big clip on yours?
 2 MR. UTLEY: Yes.
 3 MS. HUTTON: At the back there are two more clips
 4 and those are the TriTechnics reports.
 5 MR. UTLEY: We need to number them. How do you want
 6 to identify them?
 7 MS. HUTTON: Let's call them then V1's Exhibit J and
 8 K, how about that?
 9 MS. NIELSON: Which one is which?
 10 MS. HUTTON: The small one, the 30th is J, and March
 11 22, K. That's the bigger one.
 12 Q. Okay. Anyway, V1 conducted an investigation.
 13 Part of that investigation was a request that they
 14 investigate the entire area which would be north and
 15 east between V1 and the sewer system; is that correct?
 16 A. That's correct.
 17 Q. And do you recall what happened to the
 18 investigation V1 was supposed to conduct on Southern
 19 Pacific, the Southern Pacific property and that's the
 20 property between V1 and the sewer system?
 21 A. Yeah. What aspect of the investigation are you
 22 concerned with?
 23 Q. Did V1 conduct an investigation on Southern
 24 Pacific property?
 25 A. No. On the 25th we had a conversation with

1 counsel for V1, and it was decided that V1 would take
2 the lead for investigating their own property, and that
3 we would take abatement action for the sewer and
4 investigate the surrounding area.

5 Q. And who made that decision?

6 A. It was a discussion between V1 counsel, and
7 counsel for DERR.

8 Q. You are saying V1 counsel concurred with the
9 department that the division would take the lead in
10 investigating the Southern Pacific Railroad property?

11 A. That was my understanding from the conversation
12 we had, yes.

13 Q. So, V1's attempt to gain a right of entry on
14 the Southern Pacific property to place monitoring wells,
15 that would have been contrary to your understanding?

16 A. At that point we had not been told. Prior to
17 that point we had never been told what V1 had
18 envisioned. We had never seen any type of work plans,
19 we had never received any information from them as to
20 how their investigation was going to proceed.

21 Q. Can you tell me what date V1's work plan was
22 due?

23 A. There was no work plan required.

24 Q. Well, under the order on page 3 it says, submit
25 a report of your activities on January 30th. Do you

1 recall if a work plan was submitted with a report that
2 was included on January 30th?

3 A. I don't recall.

4 Q. Do you recall that V1 attempted to gain
5 right-of-way access to Southern Pacific Railroad, and
6 began that negotiation on January 19th; do you recall
7 that?

8 A. I was not informed of when V1 instigated
9 negotiations with Southern Pacific.

10 Q. But you were aware that V1 had been negotiating
11 for right of entry with Southern Pacific to put in
12 monitoring wells; is that correct?

13 A. At some point I became aware of that, yes.

14 Q. On what date did you call Southern Pacific
15 railroad?

16 MS. HUBBELL: You are making an assumption he did
17 call Southern Pacific railroad.

18 BY MS. HUTTON:

19 Q. Did you call Southern Pacific Railroad?

20 A. We had contact, I don't remember whether they
21 contacted me first or whether I contacted them.

22 Q. Okay. And when you spoke, do you recall when
23 that was?

24 A. We spoke on several occasions.

25 Q. Do you recall an occasion when Southern Pacific

1 Railroad told you that V1 Oil Company had just
2 negotiated a right of entry with them on their property?

3 A. I was never told they had negotiated a right of
4 entry, no.

5 Q. Do you recall telling Southern Pacific Railroad
6 that you were not going to approve V1's work plan?

7 A. I never told them that.

8 Q. Then, if Southern Pacific Railroad wrote a
9 letter to counsel for the Division of Environmental
10 Response or Remediation saying that you told them that
11 you were not going to approve V1's work plan, that that
12 would be an inaccurate representation of what you said?

13 A. That would. I told them that I had not seen a
14 work plan to approve.

15 Q. Okay. I'll direct the Board's attention to
16 V1's exhibit that is submitted, it is H. And there's
17 three letters there, so it would make that letter begin
18 on page 5. Do you see that, Mr. Hanson?

19 A. I do.

20 Q. And in the second paragraph do you see mid
21 paragraph, it says, "We do ask for a work plan and we do
22 ask the work plan be approved by whatever agency is
23 involved if there is such involvement. Mr. Dominique,
24 who is the property manager for Southern Pacific, was
25 informed that the state would not be approving V1's work

1 plan."

2 Was that you?

3 MS. HUBBELL: What is this? I'm not finding this
4 letter in my --

5 MS. HUTTON: It is H.

6 MR. UTLEY: Southern Pacific letterhead, February
7 26th.

8 MS. HUTTON: It's addressed to Melissa Hubbell.

9 MS. HUBBELL: February 26th. Oh, okay.

10 BY MS. HUTTON:

11 Q. And it is in response to Ms. Hubbell's request
12 that she be provided with correspondence between
13 Southern Pacific and myself. Would that be you that
14 Southern Pacific is referring to that told them that our
15 work plan wasn't going to be approved?

16 A. The reference would be to me.

17 MS. HUBBELL: Excuse me, where does it say a work
18 plan wasn't approved?

19 MS. HUTTON: Middle paragraph, one, two, three,
20 fourth line down. It says, "We do ask for a work plan."
21 5th sentence down, "Mr. Dominique was informed that the
22 state would not be approving V1's work plan."

23 MS. HUBBELL: Okay, H.

24 MS. HUTTON: Okay?

25 Q. And that has reference to a work plan that was

1 not due until January 30th; is that your understanding?
 2 A. I don't know that a work plan was due at any
 3 point.
 4 Q. Okay. Why did you decide that you wouldn't
 5 approve V1's work plan?
 6 A. I did not decide I would not approve V1's work
 7 plan, that's his interpretation.
 8 Q. So Southern Pacific's letter is inaccurate?
 9 A. That's his interpretation of our conversation.
 10 Q. Okay. So, if Mr. Dominique called V1 and told
 11 them that their work plan was not going to be approved,
 12 so they were denying them right of entry, that wouldn't
 13 be an accurate statement of what you said?
 14 A. I had not told him I would not approve the work
 15 plan.
 16 Q. Okay. Notwithstanding, V1 continued to do an
 17 investigation on their own property; is that correct?
 18 A. That's correct.
 19 Q. Okay. And you also said earlier that you had
 20 done, or Delta had done several LEL levels; is that
 21 correct? Did you say the LEL levels were taken of the
 22 area?
 23 A. In the building, just in the building, correct.
 24 Q. Okay. But no additional LEL levels were taken
 25 in the sewer system?

1 A. No. We continued to flush, and once that was
 2 apparent that was keeping the problem to a minimum, we
 3 continued to do that. We felt it would be unwise to
 4 stop that process.
 5 Q. Okay. Now, one more thing that I wanted to
 6 make sure that I covered. You said that V1 refused to
 7 abate the free product in the sewer system.
 8 A. That's correct.
 9 Q. Did V1 say that they were refusing to abate
 10 free product if their investigation revealed they were
 11 responsible?
 12 A. No, they did not.
 13 Q. They said they would remove the free product?
 14 A. Once they sufficiently found that they were the
 15 source, that's correct.
 16 Q. Okay. Also, you said that you were forbidden
 17 to call V1's counsel, or forbidden to call anyone but
 18 V1's counsel -- what was it you just said?
 19 A. I was not allowed to have contact with V1's
 20 consultants.
 21 Q. Consultants. Were you forbidden to call V1's
 22 counsel?
 23 A. No.
 24 Q. Okay. Okay. That's all I have.
 25 MR. UTLEY: Okay. Thank you. Any questions from

1 the Board?
 2 MS. NIELSON: Mr. Chairman, just a clarification.
 3 Within both parties' exhibits, there's the February
 4 26th, 1996, letter from Southern Pacific, but there's
 5 also a January 30th, but it says 1995. I am assuming
 6 that that's an error on the part of Southern Pacific and
 7 it's really a 1996 letter, is that correct?
 8 MS. HUBBELL: That's correct, that letter was sent
 9 to me and I did receive it. If they wrote it in January
 10 30th, 1995, that would be a miracle.
 11 MS. NIELSON: Okay, thank you.
 12 MR. UTLEY: Any other questions for Mr. Hanson?
 13 EXAMINATION
 14 MR. WHITE: I have some questions.
 15 Q. You indicated, Mr. Hanson, earlier that the
 16 Zions bank site was not considered a potential source of
 17 contamination primarily, as I understand, because the
 18 tanks were closed in 1967. And that because of that you
 19 base your conclusion primarily on that time frame?
 20 A. Based on the fact they had been closed over 20
 21 years, yes, or approximately 20 years.
 22 Q. Isn't it still possible now if contamination
 23 had occurred there, given the fine grain nature of those
 24 soils, that there would still be contamination?
 25 A. You could be persistent, but not very likely I

1 wouldn't think.
 2 Q. Then you also talked about the lack of shallow
 3 soil contamination. And Ms. Hutton took you through a
 4 portion of the Delta, February 15th, Delta Environmental
 5 report. If you want to refer to that I think it's --
 6 you said it was Appendix C of that report.
 7 There are a number of geoprobe locations where there
 8 were elevated PID concentrations near the surface, at
 9 least the upper samples that were collected. It appears
 10 those upper samples were collected at a depth or upper
 11 measurements were collected at a depth of about two
 12 feet. If you want to look at GP 4, it would appear to
 13 me there's fairly high concentrations, shallow as
 14 compared with the concentrations of depth at GP 7, GP 8,
 15 GP 9. Wouldn't those indicate that there's at least
 16 some contamination? You don't have a sample submitted
 17 to a lab, but wouldn't that indicate there was some
 18 contamination?
 19 A. There was some. A couple of those were over a
 20 hundred, which is high, and a typical flag number.
 21 Q. If I look at -- if you compare, for instance,
 22 GP 4, look at the sample, the measurements that were
 23 taken at two feet, and then you've got measurements
 24 taken at five feet that were comparable to the
 25 measurements at two feet, the five foot measurements

1 were taken right above the sample that was submitted to
2 the lab, and so we do have some lab data to compare
3 with.

4 I'm just not so sure that your assumption is totally
5 valid, that there were no signs of spills. And the data
6 would indicate, at least to me, that there is a
7 potential for there having been some shallow
8 contamination on that property that may need to be
9 investigated.

10 Ms. Hutton also talked with you a little bit about
11 the emergency order. If you've got a copy of that handy
12 there, if you don't have a copy handy, if you can find
13 one.

14 MS. HUTTON: The order is at D, Exhibit D.

15 MR. WHITE: Exhibit D of V1?

16 MS. HUTTON: Yes.

17 MR. WHITE: On page 3 of that order, which is where
18 the order is actually given, prior to that it's mostly
19 legal mumbojumbo, but on page 3 there's a list of --
20 beginning on page 3, a list of several items that V1 is
21 ordered to do. And I just wanted to be clear as to
22 which ones of those items were complied with.

23 As I understand, there was a document submitted on
24 January 23rd. I assume that that -- I haven't seen that
25 document, but I assume that would satisfy item A; is

1 that correct?

2 A. Yes, sir.

3 Q. Item B apparently, if I understood the
4 discussion right, item B was satisfied by the January
5 30th report of -- from TriTechnics; is that correct?

6 A. That's correct. The one difference I might
7 indicate with A is that they didn't discuss any
8 intention to perform abatement of the product in the
9 sewer. And it was an abatement, initial site
10 characterization report.

11 Q. Okay. So, it was basically just the site check
12 report portion of that document; is that correct?

13 A. Yes, and they did talk about abatement of
14 further releases on their own property.

15 Q. Did they talk, in that report, in that January
16 23rd report about -- I've heard it referenced that V1
17 had indicated that they would abate if it was found that
18 they were the source; did they indicate that?

19 A. I don't recall if that was in the report, but
20 that was at least spoken in correspondence.

21 Q. That was your understanding, at least at that
22 time. Item C, under the order, was basically covering
23 the investigation of free product in the sewer, and
24 abating that free product. I'm assuming that was not --
25 has not been satisfied?

1 A. No.

2 Q. Item D, submitting an investigation for soil
3 and groundwater clean up within 60 days. Does that
4 March 22nd, 1996, subsurface investigation report, did
5 that satisfy item D?

6 A. Yes.

7 Q. And I'm assuming the corrective action plan in
8 item B, implementation of that plan in item F have not
9 been taken care of; is that correct?

10 A. No.

11 Q. So, out of the order, A, B and D have been
12 complied with, C, E and F have not?

13 A. And G.

14 Q. And G is just giving them a telephone number
15 that at three a.m. in the morning they can make a phone
16 call to if they so choose?

17 MS. NIELSON: Can I clarify that? I think what I
18 heard was A, B and D, there were reports submitted, but
19 what I heard was in A, that Mr. Hanson indicated that
20 the report did not include everything that you felt it
21 had to?

22 THE WITNESS: It didn't discuss their decision to
23 abate the free product in the sewer. There was no
24 discussion of any abatement having taken place in the
25 sewer.

1 MS. NIELSON: Okay.

2 BY MR. WHITE:

3 Q. But my understanding was that he acknowledged
4 that it's always been his understanding that they would
5 do that if they determined the source?

6 A. After we received the report that's when we
7 asked for clarification.

8 Q. So, are you --

9 A. That's when we had the understanding.

10 Q. Are you satisfied that A has been taken care of
11 under the assumption that V1 -- A has been taken care of
12 to the point that we know -- that we don't know whether
13 V1 is the source of the contamination? I don't know,
14 that's pretty --

15 MS. HUBBELL: I might point out the last sentence of
16 A says, immediate abatement is required given the
17 imminent and substantial threat to the public health and
18 the environment. And I think -- don't let me
19 mischaracterize you Mr. Hanson, but what I think Mr.
20 Hanson is saying, that the report that was submitted on
21 the 21st did not say that this immediate abatement was
22 going to be taken care of, and that in later
23 conversations it was indicated that immediate abatement
24 would not be done.

25 THE WITNESS: That's correct.

1 MR. WHITE: It's the 23rd I believe, not the 21st.
 2 But, you have been led to believe that they are willing
 3 to abate if they determine that they are the source?
 4 A. That's correct.
 5 Q. Okay. So, it would appear to me that the basic
 6 concern about the order would still hinge items C, E and
 7 F. The abatement issue in item A is taken care of in
 8 the abatement requirement in C if they had determined
 9 that it was -- that they are the source. And it sounds
 10 like whether they addressed abatement or not you have
 11 since been led to believe they would be willing to abate
 12 if they determine they are the source; is that correct?
 13 A. That's correct.
 14 Q. You also mentioned in Ms. Hutton's questioning,
 15 you had not seen any staining on the surface, but there
 16 was some snow on the surface at the time of your initial
 17 visit. Have you been back since?
 18 A. Not to conduct any investigation since the
 19 first, that was January of last year.
 20 Q. But since the snow cover was gone you
 21 haven't --
 22 A. I have not.
 23 Q. -- really been back to notice?
 24 A. No.
 25 Q. Okay. That's all of my questions.

1 MS. HUTTON: Could I clarify one thing that Mr.
 2 Hanson just said?
 3 MR. UTLEY: Sure.
 4 EXAMINATION
 5 BY MS. HUTTON:
 6 Q. In response to something that counsel just
 7 indicated, number A, that says abatement is required
 8 given the immediate and substantial threat. Didn't you
 9 earlier say this was not -- that you didn't feel this
 10 was a result of an immediate leak, but a migration over
 11 time?
 12 A. I think the comment was that the immediacy
 13 wasn't immediate release, but the threat was immediate.
 14 Q. Okay.
 15 A. So, does that clarification --
 16 Q. Sure. One more question. You also said in
 17 response to Mr. White's inquiry, that the tanks on the
 18 Zions property were closed 30 years ago; is that
 19 correct?
 20 A. Actually I said about 20, but it would have
 21 been in '67.
 22 Q. How do we know that?
 23 A. We did a records search, it's in the Delta
 24 report and that was the indication that came back.
 25 Q. Okay. Are you referring to this tank site in

1 V1?
 2 A. It was included in one of Delta's reports and
 3 I'm not sure if I can find it right offhand. They
 4 commissioned an investigation, historical real estate
 5 investigation of the area be conducted.
 6 Q. I believe the information was that the gas
 7 station that was there closed down, but there was no
 8 indication as to whether or not the tanks, anything had
 9 been done with the tanks; is that correct?
 10 A. I don't recall.
 11 Q. And on this historical analysis of tank sites
 12 in V1, item 13 which is right next door to A & A, it
 13 says, facility ID N/A. I assume that means not
 14 applicable. LUST status N which, according to the
 15 legend, is non LUST, but under tanks it says question
 16 mark. Then there's a little thing saying that they were
 17 removed. What does that little thing mean?
 18 A. Approximately 1967.
 19 Q. Do we have any documentation that those tanks
 20 were removed?
 21 A. Not that I know of.
 22 Q. Okay. And how about the Southern Pacific
 23 property, what -- do we have any records as to what if
 24 anything is buried under the Southern Pacific property?
 25 A. We don't.

1 Q. Does Southern Pacific even know what's buried
 2 under their property?
 3 A. I don't know what they know.
 4 Q. Do you recall whether Southern Pacific acquired
 5 the property from Denver Rio Grande?
 6 A. I don't.
 7 Q. Okay. And also -- let's see. Just -- well, I
 8 think that's west down Committee. I was gonna say left,
 9 but that wouldn't be very good, west down Whitney Avenue
 10 you have marked a legend number 6 which is Vickers
 11 Trucking. And that is in red and it says open. What
 12 does that mean?
 13 A. That means that is a current LUST site.
 14 Q. And on the -- on this legend it indicates that
 15 Vickers Trucking, that these tanks were removed in 1990;
 16 is that correct?
 17 A. That is correct.
 18 Q. Do you have any idea of how the trucking
 19 company was conducting their business in 1994 without
 20 their tanks?
 21 A. I have no idea what Vickers Trucking is doing.
 22 Q. Do we have any documentation of that tank
 23 removal?
 24 A. We do.
 25 Q. Okay.

1 A. It's in the LUST files.
 2 Q. Do we have it as part of this proceeding? Do
 3 we have anything we can rely on to determine the removal
 4 of those tanks?
 5 A. No, not in the exhibits.
 6 Q. Okay. Thank you.
 7 MR. UTLEY: Just for the record, you were quoting
 8 from Exhibit 14; is that correct?
 9 MS. HUTTON: Yes, it is 14. And then the second
 10 page of it has a list, and that's kind of what I was
 11 referring to, Zions Bank at number 13, some little
 12 symbols I wanted to clarify.
 13 MS. NIELSON: Mr. Chairman, a clarification. Mr.
 14 Hanson, can you or someone direct me to the exhibit that
 15 is the initial abatement and site check report of
 16 January 23rd?
 17 THE WITNESS: I don't believe that was included; is
 18 that correct?
 19 MS. HUTTON: No, I left it out because of the
 20 volume. I can get that for you, it's just like the one
 21 that was submitted on the 30th, but not quite as
 22 thorough. If you want that I may even have it here, but
 23 it's the same report only not quite as in-depth.
 24 MS. NIELSON: Well, I guess the reason I ask is
 25 because I'm hearing some differences, maybe that's the

1 way to classify it. I don't want to prejudice the
 2 discussion. I'm hearing different things from Mr.
 3 Hanson, I think, about whether what was submitted on the
 4 23rd met the requirements of the order. And I guess I
 5 would like some clarification from the State that either
 6 what they received on January 23rd, 1996, met the
 7 requirement of Part A of the order, or if it did not.
 8 Also, some understanding of why it didn't, or an
 9 opportunity to look at the document myself.
 10 MS. HUBBELL: Could you address that, Mr. Hanson?
 11 THE WITNESS: I can, and maybe it comes down to the
 12 difference between A and C, in that C, we're actually
 13 requiring they do the abatement in the sewer, and in A,
 14 we're requiring a report in part on initial abatement.
 15 And since that abatement didn't take place, A
 16 subsequently could not apply completely.
 17 MS. NIELSON: So let me see if I understand. What
 18 you are saying is in C, that we required them to
 19 investigate the release of the free product into the
 20 sewer line and remove and abate free product threatening
 21 to impact or impacting the sewer line by the 23rd of
 22 January, and you are saying they did not do that?
 23 A. That did not happen, so that portion of A could
 24 not be reported on.
 25 Q. What you are saying then, in A, is that you

1 asked them to perform an initial abatement and site
 2 check and submit an initial abatement and site check
 3 report by the 23rd, in accordance with the data. They
 4 submitted a report to you on the 23rd?
 5 A. That is correct.
 6 Q. Did that report include a site check, and can
 7 you very briefly tell me what a site check is?
 8 A. It did include a site check, and I actually --
 9 we have a standard format. At the time we had a
 10 different format than we currently do, and TriTechnics
 11 did call and ask specifically which portions of that to
 12 include. And apart from the abatement, it did include
 13 -- that includes a review of inventory records and
 14 historical.
 15 Q. Inventory records from?
 16 A. Inventory, gasoline.
 17 Q. Sales, deliveries?
 18 A. Exactly, that kind of thing. In addition, a
 19 search of historical information about the site and the
 20 surrounding area.
 21 Q. Okay.
 22 A. Basically is what they require.
 23 Q. Okay. A, required them to immediately perform
 24 an initial abatement. Did they perform? And then to
 25 give you a report and tell them, tell you what they did,

1 I think?
 2 A. That's correct.
 3 Q. Did they perform any abatement?
 4 A. No abatement took place in the sewer, no.
 5 Q. Well, this isn't just the sewer, this -- I
 6 think this just says --
 7 A. It says abatement, it's not specific.
 8 Q. Are there other things besides?
 9 A. They did list -- there were some circumstances
 10 that occurred on their property and they did prevent
 11 future releases. There had been a line leak they
 12 reported and they did repair that which would be
 13 considered abatement.
 14 Q. And they had done that earlier?
 15 A. They had done that.
 16 Q. When did that leak occur?
 17 A. In December, I believe.
 18 Q. Okay. With respect to the concerns covered by
 19 this emergency order, did V1 perform any abatement
 20 beyond what had been performed in the past in response
 21 to this emergency order?
 22 A. No, they did not.
 23 Q. By January 23rd?
 24 A. By January 23rd.
 25 Q. What about by January 30th?

1 A. No, they did not.
 2 Q. Okay. Has, to the best of your knowledge, has
 3 V1 performed any abatement to date relative to this
 4 emergency?
 5 A. Not that I'm aware of.
 6 Q. Thank you.
 7 MR. UTLEY: Any other questions for Mr. Hanson?
 8 Thank you, Mr. Hanson.
 9 MS. HUBBELL: I have some.
 10 MR. UTLEY: Oh.
 11 EXAMINATION
 12 MS. HUBBELL: I had a few more.
 13 Q. Mr. Hanson, why did you decide it was unlikely
 14 that it was -- the source was this station that was here
 15 in 19 -- closed in 1967?
 16 A. Well, at first it seemed unlikely that a
 17 station that had been out of service that long, over 30
 18 years, could provide such a significant impact. And
 19 then our subsequent investigations indicated that we got
 20 clean samples taken north of the sewer line, indicating
 21 that the contamination basically ended south of the
 22 sewer.
 23 Q. So was there contamination here, by 13, 20, 19?
 24 A. I don't remember what the levels were, but if
 25 they were they were negligible.

1 MS. NIELSON: That's on the north side?
 2 THE WITNESS: That's on the north side, and you can
 3 look in Exhibit, I believe, 17 and 18 which show exactly
 4 what those levels of contamination that we found were.
 5 BY MS. HUBBELL:
 6 Q. How about 23 here?
 7 A. 23 was clean as well, so.
 8 Q. That's the well right here, between -- okay.
 9 Now, V1 has indicated and there's some dispute,
 10 you've stated that you certainly told Southern Pacific
 11 you hadn't received a work plan, and I think the letter
 12 indicates -- the letter of Ms. Hutton's indicates they
 13 only wanted it to give permission to test to one party,
 14 but the result is V1 didn't test on Southern Pacific's
 15 property. Now, is there -- did V1 do any testing or did
 16 they have their firm do any of the testing on Whitney
 17 Avenue?
 18 A. No.
 19 Q. Could they have tested on Whitney Avenue?
 20 A. Sure.
 21 Q. Did we do anything to stop them from testing on
 22 Whitney Avenue?
 23 A. No.
 24 Q. How about up here in this property, did they do
 25 any testing up here?

1 A. Not that I'm aware.
 2 Q. Did we do anything to stop them from testing
 3 there?
 4 A. No.
 5 Q. As has been alleged. How about 18 here, have
 6 they done any testing over here?
 7 A. Not that I'm aware.
 8 Q. Was anything done to stop them from testing in
 9 this area?
 10 A. No.
 11 Q. How about down in this area here? We've done
 12 some tests on Third and they have done some tests on
 13 Third. Was there anything to stop them from testing on
 14 Ultratech or on 15th South?
 15 A. No.
 16 Q. So, in other words, the fact that we kept them
 17 from Southern Pacific allegedly, or the fact that
 18 Southern Pacific only decided to allow one group to test
 19 on their property, didn't stop them from testing
 20 anywhere else but simply right here?
 21 A. That's correct.
 22 Q. Okay. Now, V1 counsel referred you to this
 23 statute concerning reporting and cleanup of releases and
 24 overfills. Does this concern -- does this address, if
 25 you have release of less than 25 gallons, does that mean

1 you can just let it go? Do applicants have to do
 2 anything about it?
 3 A. No.
 4 Q. What are you required to do?
 5 A. Clean it up.
 6 Q. But I thought this said that you only have to
 7 report it if it exceeds 25 gallons?
 8 A. You have to report it if it exceeds 25
 9 gallons. You are still required to clean up the release
 10 and remove the contamination.
 11 Q. So, is it still a release if it's less than 25
 12 gallons?
 13 A. Sure.
 14 Q. What constitutes a release?
 15 A. Any petroleum that escapes into the
 16 environment.
 17 Q. So, how long do you have to clean it up after
 18 you've let that 25 gallons or whatever onto the ground
 19 or wherever?
 20 A. It's my understanding it's 24 hours, but I'm
 21 not clear on that.
 22 Q. Okay. Why didn't you -- V1, you told them, you
 23 said that we need a report saying you're going to abate
 24 it and they said, if I can condense this, that once we
 25 know we're responsible, then we'll abate. Why didn't

<p style="text-align: right;">Page 149</p> <p>1 you say okay, we'll wait?</p> <p>2 A. Because we did have the vapors in the building,</p> <p>3 and even when we were flushing the sewer, according to</p> <p>4 Bob Smith, they were still experiencing some vapors in</p> <p>5 the building all the way up until the time we actually</p> <p>6 installed a lining in the sewer, so there was some</p> <p>7 potential human health risks we were concerned about.</p> <p>8 Q. Since that release was reported, have you had</p> <p>9 concerns about it continuing?</p> <p>10 A. We have. In fact, we are in the process of</p> <p>11 monitoring the migration of the contamination. We're</p> <p>12 installing wells on Whitney Avenue so that we can</p> <p>13 monitor the progression of the contamination as it moves</p> <p>14 downstream.</p> <p>15 Q. Are you sampling on Southern Pacific's</p> <p>16 property?</p> <p>17 A. We are in the process of working on an access</p> <p>18 agreement to install wells there as well.</p> <p>19 Q. Are you sampling on V1's property?</p> <p>20 A. We've requested access to their property to</p> <p>21 sample their wells and have been denied access at this</p> <p>22 point.</p> <p>23 Q. Okay.</p> <p>24 A. And I might add, that since V1 installed the</p> <p>25 wells that are in the public right-of-way, we tried to</p>	<p style="text-align: right;">Page 151</p> <p>1 A. We asked and there was no -- the person I</p> <p>2 talked to was not aware of any, but --</p> <p>3 Q. But they weren't sure?</p> <p>4 A. But they weren't sure.</p> <p>5 Q. Have you found any indication since then, in</p> <p>6 the testing you did there, the problems you put in</p> <p>7 etcetera, that there was a likelihood there were tanks</p> <p>8 there?</p> <p>9 A. We haven't found any tanks there, no.</p> <p>10 Q. Okay. Have you found like any hot spots that</p> <p>11 indicated that a tank was there at some point?</p> <p>12 A. No.</p> <p>13 Q. I don't think I have any further questions.</p> <p>14 EXAMINATION</p> <p>15 MR. UTLEY: Couple of quick ones, Mr. Hanson.</p> <p>16 Q. Did V1 give you any reason why you were denied</p> <p>17 access?</p> <p>18 A. It did, but I don't remember.</p> <p>19 Q. Okay.</p> <p>20 A. We were told that they weren't sure whether the</p> <p>21 wells even existed, and we have since found that they</p> <p>22 do.</p> <p>23 Q. Okay. Do we know what Southern Pacific used</p> <p>24 the property for, or I suppose if I bought it from D&RG,</p> <p>25 do you know what they used it for in the past?</p>
<p style="text-align: right;">Page 150</p> <p>1 get their permission to sample those wells also, so we</p> <p>2 aren't able to sample those.</p> <p>3 Q. Okay. Just one more thing and then I'll let</p> <p>4 you go. Now, we talked about some of the other stations</p> <p>5 that had been in the area, and that V1 was the only one</p> <p>6 that's operating. And you said you sampled here and</p> <p>7 didn't find contamination. Well, there were stations on</p> <p>8 this side of V1, did you find contamination coming in</p> <p>9 that direction that could have been the cause of this?</p> <p>10 A. We did not.</p> <p>11 Q. That is to the east. How about to the west,</p> <p>12 did you find samples or did the wells you drilled all</p> <p>13 along here, 39 through 35, did you find contamination</p> <p>14 that could have been the cause of this release?</p> <p>15 A. We did not.</p> <p>16 Q. How about to the south in these wells that you</p> <p>17 put in, 34, and 33, could they have caused the</p> <p>18 contamination that was flowing here?</p> <p>19 A. No.</p> <p>20 Q. Do you think that any of these other things</p> <p>21 could have caused the contamination?</p> <p>22 A. I don't.</p> <p>23 Q. Did you ask -- did you discuss at all with</p> <p>24 Southern Pacific whether they had tanks located on their</p> <p>25 property?</p>	<p style="text-align: right;">Page 152</p> <p>1 A. I don't.</p> <p>2 Q. We have no information what the past use was?</p> <p>3 A. No.</p> <p>4 MR. UTLEY: Okay. Thank you.</p> <p>5 Anything else?</p> <p>6 Thanks, Mr. Hanson.</p> <p>7 For the record, because of our previous discussion,</p> <p>8 I wanted to read off the list of exhibits that we've</p> <p>9 talked about and ask counsel if they want those exhibits</p> <p>10 introduced into evidence, if we can get agreement on</p> <p>11 introducing those into evidence. So, here we go.</p> <p>12 I have that we've discussed Exhibit 1, this is</p> <p>13 Executive Secretary's Exhibits 1, 2, 3, 5, 14, 15, 16,</p> <p>14 18, 31 and 32.</p> <p>15 MS. HUBBELL: I also have on my list, 8, 10, 13 and</p> <p>16 28.</p> <p>17 MS. NIELSON: I've got 8.</p> <p>18 MS. HUBBELL: 8 was with Mr. Bright.</p> <p>19 MR. UTLEY: What were those, 8, 10 and 13?</p> <p>20 MS. HUBBELL: 10, I believe Ms. Hutton discussed</p> <p>21 with Mr. Bright.</p> <p>22 MS. HUTTON: No, it wasn't 10, that was 3, or --</p> <p>23 MR. HUBBELL: Okay, strike 10.</p> <p>24 MR. UTLEY: Strike 10.</p> <p>25 MS. HUBBELL: No, not 13. 14 we did discuss, that</p>

1 was this.
 2 MR. UTLEY: So the only one I left off was 8?
 3 MS. HUBBELL: 8, and -- oh, we referred to 28, it is
 4 our groundwater flow map.
 5 MR. UTLEY: 28?
 6 MS. HUBBELL: Un-huh.
 7 MR. UTLEY: Okay. And then also Rick made a comment
 8 we did discuss 17 as well.
 9 MR. RATHBUN: Mr. Hanson recently mentioned that the
 10 data was on Exhibits 18 and 17, and that was the first
 11 time I heard 17 mentioned.
 12 MS. HUBBELL: I think he said 15 through 18.
 13 THE WITNESS: I gave the whole range, all the maps
 14 that show the contours and concentrations.
 15 MR. UTLEY: Okay. So we'll include 17. They'll be
 16 14 through 17. Okay. We have the rest.
 17 MS. HUTTON: Would you go through the numbers
 18 again?
 19 MR. UTLEY: Okay. 1, 2, 3, 5, 8, 14, 15, 16, 17,
 20 18, 28, 31, 32.
 21 MS. HUBBELL: And the Delta report -- oh, they are
 22 31 and 32.
 23 MR. UTLEY: And then for V1's exhibits, I have A, D,
 24 J, and K, and H.
 25 MR. RATHBUN: Those were the letters, Southern

1 to 35 minutes -- more than that, about 36 or eight
 2 minutes of board questioning, plus the unallocated 40
 3 minute discussion on evidentiary matters. The Board
 4 will have to decide how we want to allocate the Board
 5 question time, and allocated 40 minutes of time. So the
 6 parties know at this point in time the Executive
 7 Secretary used 73 minutes, V1 has used 45.
 8 MR. UTLEY: Okay, thank you. Proceed.
 9 MS. HUBBELL: I'd like to call Paul Zahn.
 10 MR. UTLEY: Raise your right hand.
 11 PAUL ZAHN
 12 was duly sworn, was examined and
 13 testified as follows:
 14 THE WITNESS: I do.
 15 MR. UTLEY: Thank you.
 16 BY MS. HUBBELL:
 17 Q. Would you state and spell your name?
 18 A. Paul Zahn, Z-a-h-n.
 19 Q. What is your position?
 20 A. I'm a section manager for the leaking
 21 underground tank program for the state.
 22 Q. And what does that involve?
 23 A. I manage seven scientists and engineers who are
 24 responsible for overseeing cleanups and remediation of
 25 leaking and underground storage sites.

1 Pacific letters.
 2 MS. HUTTON: And I believe D was the letter from
 3 Southern Pacific.
 4 MR. UTLEY: A, D, J, K and H. D as in dog.
 5 MS. HUTTON: Okay. Or Delta in this case. Can we
 6 admit those into evidence?
 7 MS. HUBBELL: I would like to have mine admitted
 8 into evidence.
 9 MS. HUTTON: Yes. May I add, for the limited
 10 purposes that they were presented in testimony.
 11 MR. UTLEY: Thank you. Call your next witness. Do
 12 you want to summarize the time here, Rick?
 13 MR. RATHBUN: Yeah, let me -- we just took another
 14 two or three, four minutes of board discussion. Let me
 15 check with the official time keeper, just a second,
 16 please.
 17 For the record, I've been trying to keep my own
 18 notes about the running total of times used and we also
 19 have another staff member keeping time, and his notes
 20 and mine are very much in agreement. I think within a
 21 minute or two over the last three and-a-half hours. It
 22 appears at this point the Executive Secretary has used a
 23 running cumulative time of 73 minutes. V1 has used
 24 minutes, that includes direct or cross-examination,
 25 opening statements and the like. And then there is 32

1 Q. What's your educational background?
 2 A. I have a master's and a bachelor's degree in
 3 geology.
 4 Q. Okay. Does your oversight have -- do you deal
 5 with different kinds of sites and oversee them and
 6 investigate them?
 7 A. Yes. Before I was a section manager I was a
 8 project manager. I was responsible for probably over
 9 300 sites during the course of five years that I worked
 10 as a project manager. As a section manager, I review
 11 sites that are ready to close out. I'm also involved
 12 with technical issues with the staff as the technical
 13 position that I am in right now, in that I do give staff
 14 advice and answer questions concerning technical issues.
 15 Q. Okay. What has come up over the course of this
 16 hearing is a question -- have you read the Delta
 17 reports?
 18 A. Yes.
 19 Q. Have you read the TriTechnics reports?
 20 A. Yes.
 21 Q. Then you will have noted that while Delta,
 22 going by the groundwater flow, says that the groundwater
 23 goes this way, TriTechnics says it's going this way; am
 24 I characterizing that right?
 25 A. That's correct.

1 Q. That's my layman's --
 2 MS. NIELSON: For the record can you indicate rather
 3 than saying "this way"?
 4 BY MS. HUBBELL:
 5 Q. That Delta said that the groundwater flows
 6 northwest and that TriTechnics has said that it flows
 7 northeast?
 8 MR. UTLEY: On Exhibit 18.
 9 BY MS. HUBBELL:
 10 Q. On all of the exhibits. Could you explain that
 11 discrepancy to me?
 12 A. Yeah. Let me -- I'll stand up and kind of wave
 13 my arms a little bit on this.
 14 Q. There's a white board over here if you want to
 15 use it.
 16 A. I may. There's been over 40 samples and logs
 17 taken at this site. The intent was to find where this
 18 plume is. In reviewing the reports, again this is a
 19 culmination of all the reports, but in review of this
 20 they have done a good job of outlining where the
 21 contamination is. The next question is, okay, if you
 22 have a blob of contamination, where's the source?
 23 Where's it coming from? You would expect the source
 24 would be within this plumb somewhere.
 25 And so I looked at some of the bore logs, at some of

1 the information, and as Mr. White pointed out, in some
 2 of the geoprobe samples that were taken in this area,
 3 there was organic vapors found in some of the samples.
 4 But, one thing they didn't note was they didn't note any
 5 staining. You'd expect that in a source area. One area
 6 they did find staining, and this is referred to in the
 7 TriTechnics report, is MW 5. That's the only place in
 8 any of the samples they reported any staining in the
 9 upper portion of the soil column.
 10 So, how do you explain getting these vapors in this
 11 area? One explanation, probably most logical, is you
 12 have fairly high concentrations on the groundwater. As
 13 the contamination moves along the groundwater it will
 14 volatilize up into the soil, specifically in the clays.
 15 It will stay there a while. I also contacted Delta
 16 Environmental who did the geoprobe sampling, because I
 17 had some concerns about this, too. And I asked them,
 18 you know, Was there any visual evidence that there was
 19 staining in these samples? What do you suspect this
 20 was? And they concurred what I -- what they told me
 21 was, again, it was probably vapors in the soil, wasn't
 22 related to the contamination. Unfortunately it didn't
 23 take samples. It would have been nice to have taken
 24 soil samples there.
 25 So, based upon this evidence it shows that this is

1 potentially the only source that the investigation
 2 showed of how you get this plumb in this area.
 3 Whether TriTechnics did sampling or did groundwater
 4 measurements, that showed the progression of groundwater
 5 to the northeast. It's only based upon one sampling
 6 event. I think if we see more sampling we may see a
 7 little bit different gradient in the groundwater for
 8 one. The groundwater there is really shallow and so you
 9 wouldn't expect -- you would expect the contamination
 10 would be moving in different directions over time. It's
 11 fairly common. We see it on several sites where the
 12 contamination moves 180 degrees opposite of each other
 13 in the valley. We have other sites where the
 14 contamination on one site can actually, depending upon
 15 where you have another site, could move in two different
 16 directions. An example is -- let's see, Rick Warner
 17 Ford Truckland which is about a block and-a-half from
 18 the site.
 19 Q. Is that listed on Exhibit 14, Rick Warner? I
 20 think you'll find it as number one on Exhibit 14.
 21 A. Rather than -- I don't know if this will be
 22 admissible or not. I took the liberty of taking some
 23 photocopies of the groundwater gradient from that site.
 24 That kind of illustrates how you can get, depending upon
 25 where you are on the site, you can get different

1 directions on the groundwater.
 2 MS. HUBBELL: I'll ask.
 3 MR. UTLEY: These are on what sites?
 4 THE WITNESS: This is the Truckland, Rick Warner
 5 Truckland site, it's on the corner of Hope. Let's see.
 6 MS. NIELSON: Number one on Exhibit 15?
 7 THE WITNESS: 13th South and Fourth West. What that
 8 shows, depending upon where you are on the site, the
 9 contamination will go in two different directions,
 10 either to the north or to the west.
 11 MS. HUBBELL: If you object, he'll draw it on the
 12 board as best he can.
 13 MS. WITHROW: Mr. Chairman, can I make a comment? I
 14 don't see any discrepancy, I don't see what the problem
 15 is. You could have a gradient going to the northeast,
 16 and another gradient going to the northwest. And
 17 there's no discrepancy there for me.
 18 THE WITNESS: That's what this map shows.
 19 MS. HUBBELL: If that's what this would show, I'm
 20 asking you if we can submit it to the Board or not.
 21 MS. HUTTON: Go ahead.
 22 MS. HUBBELL: She said that's all right. So --
 23 MS. HUTTON: I have no idea what this is supposed to
 24 represent. I haven't seen it before, but --
 25 MS. HUBBELL: Either have I and it's all Greek to

1 me.
 2 MS. HUTTON: We can see what it can show.
 3 THE WITNESS: Okay.
 4 BY MS. HUBBELL:
 5 Q. Could you explain this for us?
 6 MR. UTLEY: I think we can number it Exhibit number
 7 33, and after we talk about this we can agree or
 8 disagree to show it as evidence.
 9 MS. HUTTON: I did want to point out that as Ms.
 10 Hubbell's so artfully informed the Board, we also agreed
 11 that any document that was going to be presented after
 12 January 28th was supposed to be exchanged with counsel
 13 before the Board meeting.
 14 MS. HUBBELL: That is true. We did not know Paul
 15 was producing this until this morning, so.
 16 THE WITNESS: I apologize.
 17 MS. HUBBELL: I apologize.
 18 MR. UTLEY: Everybody gets a copy? Okay.
 19 THE WITNESS: What this map shows, if you turn it
 20 over in this direction, you'll -- I can't look at a map
 21 unless I'm looking to the north, up is north to me. As
 22 you can see, 13th South is on the north side, and Fourth
 23 West is on the west side of the site. What these lines
 24 indicate that are handwritten on there are iso -- they
 25 are equal elevations on the groundwater at those

1 locations. So each one of those lines represents equal
 2 elevations of groundwater at the site.
 3 As you can see, it's based upon monitoring data on
 4 the site. I went and looked at the site. This site has
 5 several -- well, about a year and-a-half worth of
 6 sampling data and this was consistent throughout the
 7 year and-a-half that this gradient was coming there.
 8 MS. HUTTON: Excuse me, I'm going to object now
 9 because I have had an opportunity to look at this map.
 10 The gradient is not the same as in our location. It's
 11 also a substantial distance away from the Whitney Avenue
 12 area. We're talking about a topographical or -- I don't
 13 know, even know how to say it. It's flat. If you look
 14 on the corner this is not similar or even compatible
 15 with the area that we're concerned with, and I'm going
 16 to object to even its continued consideration in this
 17 matter, because I don't think it has any relevance to
 18 what was happening on Whitney Avenue.
 19 THE WITNESS: I'm not trying to say that. What I'm
 20 trying to say is this is an example of where
 21 contamination can go in two different directions whether
 22 it represents that site or not.
 23 MS. HUTTON: The example has to be similar or
 24 compatible with the area under question, and this isn't
 25 similar or compatible with the area that we are

1 concerned with.
 2 MS. NIELSON: Yeah.
 3 MS. HUBBELL: I will take back the maps if Ms.
 4 Hutton objects. I don't care if you look at them. What
 5 I'm trying to have Mr. Zahn testify to is the simple
 6 geological fact that you can have wells flowing in
 7 different directions at the same site, and I don't think
 8 we need that map to explain it.
 9 MS. NIELSON: Is there an exhibit that we have
 10 before us right now that looks or that graphs the top of
 11 that water table for this site?
 12 THE WITNESS: The only data we have is in V1's
 13 hearing brief, TriTechnic's reports that start out -- if
 14 you look at the tab that says Figures.
 15 MS. NIELSON: Where?
 16 THE WITNESS: On the V1 brief.
 17 MS. NIELSON: Which one, which TriTechnics?
 18 MR. UTLEY: January 30th or March?
 19 THE WITNESS: March.
 20 MR. UTLEY: Figures.
 21 THE WITNESS: It's in Figures, looks like Figure 3.
 22 And again, this gradient, based upon only one sampling
 23 event, and given the fact we do see quite a bit of
 24 difference in gradient over time, over several sites,
 25 even within this, you know within this area similar to

1 this or even within the state itself, that 65 degrees is
 2 about what the difference is in the direction of
 3 groundwater from what that is to where the sewer is.
 4 And that's not outrageous to have that much difference
 5 in the groundwater gradient direction.
 6 MS. HUBBELL: Okay.
 7 Q. Now, is this the document you are speaking of?
 8 A. Yes.
 9 Q. That's the TriTechnics report that tends to
 10 show it's going that way.
 11 MS. NIELSON: Okay. Then I guess as my follow-up,
 12 what was the basis for the identification earlier of a
 13 gradient to the northwest?
 14 MS. HUBBELL: If you look at Exhibit 29, this is --
 15 shows the groundwater flow directions on this map here,
 16 and --
 17 MR. WHITE: That's 28.
 18 MS. HUBBELL: I'm sorry, there's a little black
 19 circle, that's the site. And the groundwater maps tend
 20 to show it's flowing, everything's flowing toward --
 21 you'll notice down the middle there's this crooked
 22 little line, that's the Jordan River, so everything is
 23 flowing northwest, according to this map, towards the
 24 Jordan River. Okay?
 25 Q. Could you, Mr. Zahn, if you could, is there

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1 more you need to explain about the topography?
 2 A. Actually, based upon that there is no evidence
 3 that there is another source. The fact that the
 4 groundwater is well within reason of being -- it's
 5 questionable that it always goes to the northeast, very
 6 questionable. There is no break in the plume. We do
 7 see different concentrations within the plume that may
 8 suggest there's been more than one release, but it looks
 9 like the source is the V1 property.
 10 Q. Okay. You said there was a consistent sample,
 11 what does that mean, the sample that TriTechnics took?
 12 A. I'm not -- you mean the staining sample?
 13 Q. No. You said the sample that showed them that
 14 went in this direction, what --
 15 A. Oh, it was actually -- they -- this determined
 16 the elevation of the groundwater within all the wells
 17 there, to determine which way the groundwater is
 18 flowing.
 19 Q. They looked at all the wells but just on one
 20 day?
 21 A. Yes.
 22 Q. Okay. Now, and that's just -- they just
 23 sampled here; isn't that correct?
 24 A. Yeah.
 25 Q. And I guess right up there. But that doesn't

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1 include all of this?
 2 A. You're not getting the full picture.
 3 Q. Okay. So just limited to this little property
 4 right here?
 5 A. Yes.
 6 Q. And could that slight gradation that they found
 7 towards the east accomplish some account for some of the
 8 contamination up here?
 9 A. I'm not sure what -- yeah, yeah.
 10 Q. I'm saying it is contaminated to the northeast
 11 but not beyond that further, but for right here?
 12 A. Yeah. What it does show is the contamination
 13 in this area. There is an area right here where there
 14 is contamination still fairly high, but not as high as
 15 the contamination in this area or this area. But -- in
 16 fact, this is free product, that alone would suggest
 17 that there has been more than one release, and that free
 18 product does kind of move in blobs. It doesn't
 19 necessarily stay in one place and develop from there, it
 20 does move together.
 21 MS. HUBBELL: I have no further questions.
 22 EXAMINATION
 23 MR. UTLEY: Couple of questions, Mr. Zahn.
 24 Q. Is there anything in geology that would trap
 25 hydrocarbon, or over the 30 years that would not allow

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1 it to flow or flow very slowly with the groundwater?
 2 A. The clays in this area -- in fact, the test
 3 done by TriTechnics to get the hydroconductivity would
 4 suggest it's pretty slow unless there's a preferential
 5 pathway. You would think it would be several years.
 6 Q. In your opinion, if you had a spill 30 years
 7 ago would you still see evidence of this product given
 8 the geology?
 9 A. Yeah. We do find -- for example, there's a
 10 site in St. George I've been involved with that has
 11 concentrations of free product and we know there hasn't
 12 been a gas station in the area for 50 years, or since
 13 1950.
 14 Q. Okay. Let me ask you again, I asked Mr. Hanson
 15 this, but some of that data we've seen, BTX data, his
 16 comment was he was convinced it was gasoline. Do you
 17 share that same agreement? How do you know it's not
 18 diesel? How do you know it's not motor oil or train
 19 oil? What makes you sure that it's gasoline that's
 20 showing up?
 21 A. Petroleum, the BTX are common components of
 22 petroleum, and usually what you find is higher
 23 concentration for gasoline than you would for -- in that
 24 higher end of the hydrocarbon realm, chain. And in
 25 fact, actually what you see is there's a distinguishable

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1 signature in the chromatograms. What happens is they
 2 run samples and determine the concentrations based on
 3 the peaks in the -- I'm not a chemist so I'll explain it
 4 in my limited geological way.
 5 With gasoline what you find is there's higher
 6 concentrations in the lighter ends, basically between C
 7 -- I think it's C 9 and C 12. So that's where the
 8 majority of the contamination is, as far as the
 9 hydrocarbons. With diesel you find it in longer chain
 10 hydrocarbons, so we don't see these, we don't see any
 11 signatures that would suggest any diesel at this point.
 12 And in talking with Delta Environmental, they concurred
 13 with that.
 14 MR. UTLEY: Okay. To your knowledge are there
 15 chromatograms on this facility?
 16 THE WITNESS: I don't know if there was actually in
 17 the report, I think there was.
 18 MS. HUTTON: There are no chromatograms produced in
 19 this Delta.
 20 THE WITNESS: There wasn't in there?
 21 MS. HUTTON: No.
 22 MR. WHITE: There are in the TriTechnics reports.
 23 MR. UTLEY: That's fine. If you don't -- to your
 24 knowledge, if you don't know if there is, I'll --
 25 THE WITNESS: I thought I saw it. Was it in -- it

1 was in actually the TriTechnics' report, actually is
2 where it shows up in.

3 MR. UTLEY: Do you have a reference on that?

4 THE WITNESS: Appendix A of the report, I believe.

5 MS. HUTTON: March 22nd, Appendix D. It's the fat
6 one.

7 THE WITNESS: Appendix D of the March 22nd report,
8 and you can see that the signature on the -- for
9 example, on -- let's see.

10 MR. UTLEY: That's not --

11 THE WITNESS: On page two, chromatogram on page two
12 you see the peaks are really high on the front end of
13 the chromatogram.

14 MR. UTLEY: Yeah, but --

15 THE WITNESS: That's generalities.

16 MR. UTLEY: The column they are using looks like it
17 has -- well, there's different things. Okay. Thank
18 you. Any other questions?

19 MR. MELLING: Mr. Zahn, question. It indicates in
20 the report that there's some wells close by, but they
21 were irrigation. Was there any evaluation as to whether
22 these had been pumped and what that does to the
23 gradient?

24 THE WITNESS: I don't remember in the report. I
25 know they didn't do any sampling.

1 looked, so is that correct?

2 A. There may be some stuff previous to that that I
3 don't recall that's in the file.

4 Q. But nobody looked along here for visual
5 staining?

6 A. There was no indication there was any visual
7 staining.

8 Q. Okay. That's all I have.

9 EXAMINATION

10 MS. HUBBELL: I have one question.

11 Q. Was there any indication on the Southern
12 Pacific Railroad, the samples taken from there, not soil
13 samples, was there an indication that the petroleum
14 could have come from an above ground source?

15 A. There was no indication in the file that would
16 suggest that.

17 Q. In soil samples?

18 A. There was no staining in the samples. There
19 was no noted staining in the samples of the logs, of the
20 logs I should say.

21 Q. So you are saying that, if I understand, in the
22 dirt there was no staining, it was clean to a certain
23 level and then you started finding --

24 A. They did find contamination around where the
25 groundwater level was.

1 MR. MELLING: They don't refer to it in here, but I
2 was wondering if there was other data that showed that?

3 THE WITNESS: I'm not sure.

4 MR. UTLEY: Anything else? Ms. Hutton

5 EXAMINATION

6 MS. HUTTON: Just a couple questions.

7 Q. You said earlier that there was no evidence of
8 visual staining?

9 A. Except for in monitoring well number five.

10 Q. When did you do the visual inspection of this
11 area?

12 A. I based it upon my review of the report.

13 Q. Do you recall Mr. Bright saying that they
14 didn't inspect the area for visual staining?

15 A. I'm talking about in the well log of number
16 five.

17 Q. But no visual staining on the -- no one
18 inspected the surface of the ground for the visual
19 staining?

20 A. Other than what was detected on the leak in
21 December, I think it was December of '95.

22 Q. Just in that one spot?

23 A. Yes, that's the only reference in the
24 information that I have in the file.

25 Q. Okay. That's the only place that anybody even

1 Q. But not above?

2 A. There was no indication of that.

3 Q. Okay. Thank you.

4 EXAMINATION

5 MS. HUTTON: Just wanted to clarify one thing.

6 Q. Did they look for that? I think that was --
7 did they look for staining in the testing?

8 A. The staining of -- they usually note, as you'll
9 notice, they usually note the staining when it occurs.

10 When you look at the TriTechnics reports in monitoring
11 wells 1, 2, and 3, they will see vapor, reference to
12 showing vapors, but they don't note any staining until
13 you get to monitoring well number 5. It's not --
14 usually when they go and do samples, like they were
15 putting continuous samples in all of these, they would
16 usually note that.

17 Q. So you are saying there was no staining evident
18 or no notation of staining?

19 A. There was no notation.

20 Q. Okay. One more question. You said there was
21 no indication any place in the study of any other
22 product but gasoline; is that correct?

23 A. That's not true. Actually, there is some
24 samples that were taken in number 38, I think it's 38
25 and 37. And if I recall correctly, those actually were

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1 -- well, I'm not sure, but I think they were typed as
 2 heavier petroleum, like an old waste well or something.
 3 Q. Hydraulic fluid?
 4 A. Probably something in that neighborhood.
 5 Q. Okay. That's all.
 6 MR. UTLEY: Any questions for Mr. Zahn from the
 7 Board? Okay. Thank you.
 8 MS. HUBBELL: I'm going to rest for now, subject to
 9 rebuttal.
 10 MR. UTLEY: Ms. Hutton?
 11 MS. HUTTON: Okay, thank you.
 12 First, I would like to point out, as I did earlier,
 13 that this case is about due process. This order that
 14 was issued ordered investigation, abatement and free
 15 product removal. Our constitution guaranties every
 16 citizen a right to be heard and defend itself before it
 17 is ordered by the state to prove its own innocence, and
 18 that's what is at issue here. There is not substantial
 19 evidence at the time that this was issued on January
 20 19th, to point to any responsible party. And having
 21 said that, I will call Mr. Gary Huskinson.
 22 MR. UTLEY: I'll swear you in.
 23 GARY HUSKINSON
 24 was duly sworn, was examined and
 25 testified as follows:

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1 THE WITNESS: I do.
 2 MR. UTLEY: Thank you.
 3 EXAMINATION
 4 BY MS. HUTTON:
 5 Q. Sir, would you please state and spell your name
 6 for the record?
 7 A. Gary D. Huskinson. G-a-r-y, H-u-s-k-i-n-s-o-n.
 8 Q. Mr. Huskinson, could you tell us what your
 9 position with V1 Oil Company is?
 10 A. I'm the president of the oil company, V1 Oil.
 11 Q. Okay. And you have heard all of the evidence
 12 that has so far been presented. When did you first
 13 learn of the state's allegations that V1 was responsible
 14 for free product leaking in to the sewer?
 15 A. From our attorney Peter Stirba. I think he
 16 faxed a letter that DERR had sent to him. I believe it
 17 was early January.
 18 Q. Okay. I don't have a copy of that, but I
 19 believe it's -- is it your understanding that was when
 20 Mr. Stirba received the order?
 21 A. Yes.
 22 Q. So that would be January 19th?
 23 A. I believe he let me know that same day, yes.
 24 Q. Okay. When did you hire TriTechnics
 25 Environmental Corporation?

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1 A. They were contacted that same day to try to
 2 determine the source.
 3 Q. And at that time you had them go ahead and
 4 begin an investigation, using the state's order as a
 5 guideline?
 6 A. Yes.
 7 Q. Okay. How long have you been using the
 8 inventory control method of keeping track of your
 9 inventory at the station?
 10 A. I really don't know how long, I started with
 11 the company almost 36 years ago, and we were doing it --
 12 sticking the tanks every day then, sometimes night and
 13 morning. And we've been doing that before then, before
 14 I came and since then.
 15 Q. So, when the federal government started this
 16 underground storage tank inventory control guideline,
 17 did you have to do anything differently in order to, you
 18 know, abide by those regulations?
 19 A. Yes, we had to make a separate report for each
 20 tank rather than by product, which we'd been doing in
 21 the past.
 22 Q. When did you start doing that type of inventory
 23 control?
 24 A. I can't remember when the regulations came out,
 25 but shortly thereafter.

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1 Q. So around 1990, or the late '80's?
 2 A. Yes.
 3 Q. Are you aware of any releases occurring at the
 4 Salt Lake station on Third West prior to October,
 5 November of 1995?
 6 A. No.
 7 Q. What about this indication on a document that
 8 has been referred to that says July of 1990, how did it
 9 come about that that report was prepared, and I will
 10 show you a copy of it if I can find it. Oh, here it
 11 is. It's Exhibit 1 in the state's brief.
 12 Do you know what this testing was for, Mr.
 13 Huskinson?
 14 A. Well, we were required to test the tanks, but
 15 at this time we were also putting in overspill and
 16 overfill protection and they had to uncover the top of
 17 the tank in order to do this. And I believe it was
 18 Eaton Metals noticed some staining contamination there
 19 and I believe they're the ones that reported a release.
 20 Q. What was done if anything at the time this was
 21 discovered?
 22 A. My understanding was that they took the
 23 contaminated soils out and put in new soils and did the
 24 concrete work to put in the overspill and overfill
 25 protection.

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<p>1 Q. Was there an investigation conducted at that</p> <p>2 time to determine the contamination there?</p> <p>3 A. It was all done by Eaton Metals, yes.</p> <p>4 Q. Was there any free product discovered in this</p> <p>5 area when that investigation was taken?</p> <p>6 A. No.</p> <p>7 Q. Okay. With regard to the inventory, the type</p> <p>8 of inventory that V1 uses, do you know what the federal</p> <p>9 requirement is for maintaining that inventory control</p> <p>10 for recording and reporting inventory losses?</p> <p>11 A. Yes.</p> <p>12 Q. Could you tell us what that is?</p> <p>13 A. We reconcile sales with the measurements, our</p> <p>14 tank sticks daily, check it for water. We do it weekly,</p> <p>15 but it's required monthly by the regulations. And then</p> <p>16 we compare at the end of the month. If the difference</p> <p>17 between your inventory is more than one percent of the</p> <p>18 sales plus 130 gallons for two possible in a row you are</p> <p>19 supposed to report it.</p> <p>20 Q. Is it uncommon for you to have a loss one day,</p> <p>21 or a shortage one day, and an overage the next day?</p> <p>22 A. Certainly, specifically near delivery time.</p> <p>23 When you get a delivery of gasoline it just naturally</p> <p>24 cools off or shrinks when you're moving it, and so when</p> <p>25 it goes in to the tank it's going to show shorter than</p>	<p>1 you weren't at the station during this period of time,</p> <p>2 were you?</p> <p>3 A. No.</p> <p>4 Q. Where do you stay?</p> <p>5 A. My office is in Idaho Falls.</p> <p>6 Q. Okay. Did you come down during the</p> <p>7 investigation that was taking place in 1996, January, at</p> <p>8 all?</p> <p>9 A. Yes.</p> <p>10 Q. And when were you here? When did you visit the</p> <p>11 station?</p> <p>12 A. I didn't bring my work reports or anything like</p> <p>13 that, so -- I'm not sure which day, but it was during</p> <p>14 the week.</p> <p>15 Q. Was the line being flushed?</p> <p>16 A. Sewer line?</p> <p>17 Q. The sewer line, yeah.</p> <p>18 A. When I was there on two or three different</p> <p>19 occasions, there wasn't any water going through that</p> <p>20 line.</p> <p>21 Q. Okay. And how many different days do you</p> <p>22 recall having been in the area?</p> <p>23 A. At least twice during January.</p> <p>24 Q. Okay. After you received the emergency order</p> <p>25 did you authorize a work plan with TriTechnics?</p>
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<p>1 it would the next day or after it has time to stabilize,</p> <p>2 but the product is there.</p> <p>3 Q. When you talk about shortage, how much can it</p> <p>4 appear to be short, just by adding new product?</p> <p>5 A. Oh, it's quite common to be 200 gallons on a</p> <p>6 delivery of 9,000.</p> <p>7 Q. Okay. Now, at the time in October of 1995, at</p> <p>8 the time that you had someone come out to do tank</p> <p>9 tightness tests in November, had it been two months that</p> <p>10 -- had you had two months of loss on your inventory, or</p> <p>11 shortage?</p> <p>12 A. No.</p> <p>13 Q. Why did you decide after only 30 days that you</p> <p>14 would go ahead and have the lines and the tanks tested?</p> <p>15 A. It appeared there was more of a shortage than</p> <p>16 was common, so we thought we should do a tank tightness</p> <p>17 and line tightness test at that time.</p> <p>18 Q. Okay. And then, who was it that went ahead and</p> <p>19 called someone to investigate this loss, or shortage?</p> <p>20 A. I don't know whether I did or whether our</p> <p>21 regional manager called the AES. They're a tank and</p> <p>22 line tightness testing firm that we've used company wide</p> <p>23 to perform that test.</p> <p>24 Q. Okay. I'll have the station manager go ahead</p> <p>25 and testify about what happened during that time, since</p>	<p>1 A. Yes.</p> <p>2 Q. And you did that --</p> <p>3 A. Through counsel.</p> <p>4 Q. And what did that work plan include?</p> <p>5 A. Site characterization.</p> <p>6 Q. What about a drilling plan, were they going to</p> <p>7 prepare any investigation on the property?</p> <p>8 A. I'm sorry, ask that question.</p> <p>9 Q. Okay. Well --</p> <p>10 A. I didn't understand the question.</p> <p>11 Q. Did you authorize TriTechnics to drill</p> <p>12 monitoring wells or do any other studies on the</p> <p>13 property?</p> <p>14 A. Yes.</p> <p>15 Q. Was that done?</p> <p>16 A. Yes.</p> <p>17 Q. Was it done on the Southern Pacific property?</p> <p>18 A. No. We attempted to get authorization from</p> <p>19 Southern Pacific and get an insurance policy and a work</p> <p>20 plan submitted, and with this sort of thing that</p> <p>21 TriTechnics were doing, the work plan. And I think we</p> <p>22 had all that in order to get permission to go on when</p> <p>23 Southern Pacific said that the state was not going to</p> <p>24 approve our plan.</p> <p>25 Q. In fact, did V1 Oil Company get insurance to</p>

1 cover Southern Pacific and send it on to them?
 2 A. Yes.
 3 Q. That insurance policy that V1 obtained after a
 4 period of -- that's Exhibit 6 and it's the 4th document
 5 down. It was the insurance that was required to gain
 6 right-of-way?
 7 MS. HUBBELL: Exhibit 6?
 8 MS. HUTTON: No, the 6th page down, it's on -- it's
 9 G, 1, 2, 4 pages down, sorry.
 10 MS. HUBBELL: This is the document dated January
 11 30th, 1996?
 12 MS. HUTTON: Yes.
 13 MS. NIELSON: Explain again which?
 14 MS. HUTTON: It's G, and then if you go down four
 15 pages, the very last page in that.
 16 MR. UTLEY: Certificate of insurance.
 17 MS. HUTTON: Certificate of insurance.
 18 Q. It was sent, and did you actually see a copy of
 19 this?
 20 A. I'm not sure, but I had the understanding it
 21 was sent to them.
 22 Q. Sent directly to Southern Pacific?
 23 A. Yes.
 24 Q. Okay, that's all I have.
 25 MS. NIELSON: A question about the variances. I

1 think you testified, and please correct me if I'm
 2 stating this incorrectly, stating this wrong, have you
 3 found it was not unusual to see slight variances in the
 4 amounts of fuel that were put into the tank versus what
 5 you would find if you stuck the tank at some later date,
 6 assuming there had been nothing withdrawn from it?
 7 A. Yes.
 8 Q. And --
 9 A. But we do -- well, we're only closed on
 10 Sundays, so we're constantly selling out of it.
 11 Q. So help me understand the process. You stick
 12 the tank once a day?
 13 A. Yes.
 14 Q. Okay. And then what happens when you get a
 15 delivery of fuel?
 16 A. We try to have the deliveries delivered before
 17 opening of business so it doesn't interrupt our flow.
 18 Q. And then the -- does the delivery truck
 19 identify an amount of fuel that they have put into that
 20 tank? Do they have some sort of a gauge?
 21 A. Yes. Well, they're loaded with a meter at the
 22 refineries, and then they give us a bill of lading
 23 showing what that is because they have different
 24 compartments in the tank for unleaded or premium or
 25 whatever.

1 Q. Then do you stick the tanks after they deliver
 2 product to you?
 3 A. Yes.
 4 Q. Okay. So, you might see variations. Do those
 5 vary in the summer time versus winter time? Do you see
 6 more of that in the summer than in the winter?
 7 A. It could happen any time, because the refinery
 8 may have product that's real warm when we pick it up,
 9 and when it's delivered -- and most of the product
 10 underground is about 40 degrees, and so it does cool and
 11 it has to stabilize and it cools while it's moving
 12 through the hoses in to the tanks.
 13 Q. So, as you look at your records or someone who
 14 knew what they were looking at would look at your
 15 records, would they find that there was some average
 16 error in sticking that that would carry through all
 17 those records?
 18 A. Yes, it could be 200 gallons short on one day
 19 and it may come back, part of that the next day, and
 20 part of it the next day, but over a months' time it's
 21 very accurate.
 22 Q. Okay. So, what's that number, is it 200
 23 gallons roughly, do you think?
 24 A. On a load, about that.
 25 Q. If you balanced it out over a month it ought to

1 come out even?
 2 A. Yes, unless the last day of the month was a
 3 delivery day.
 4 Q. Okay. And please excuse me because I don't
 5 want to -- I don't want to attribute something to you
 6 that you didn't say. But in Exhibit 6 that we have from
 7 the state's exhibits, there's a report in November and
 8 December, I think that's '95. There was 1100 and 1197,
 9 almost 1200 gallons short in two different tanks. Is
 10 that an accurate representation?
 11 A. No, we only have one, it was the same shortage.
 12 Q. The same tank, different months? Okay. Are
 13 those numbers, is that accurate? Was there that much
 14 missing?
 15 A. Well, there's a lot of reasons for variance.
 16 So, for instance, if we suspect a leak in a tank, we'll
 17 stick it at night and again in the morning when there
 18 isn't anything coming out of it, and see if there's a
 19 difference. If there isn't a difference, we're pretty
 20 satisfied that the tank is okay. Then we need to test
 21 the lines.
 22 Q. Okay. And so, did you do that when -- well,
 23 first of all, did you recognize, yourself, that shortage
 24 of this, or differences in the records of this magnitude
 25 that existed for November and December of '95?

1 A. This is unusual, yes.
 2 Q. But those were numbers, I mean, these are
 3 numbers that you agreed to?
 4 A. Yes, there is a tolerance, because there's a
 5 lot of reasons why it could be off a few hundred
 6 gallons. For instance, the meters in a gas pump, the
 7 longer they go the more they tend to give away product,
 8 so you could be giving some away with each sale. The
 9 stick goes -- if it's slanted one way or another, if a
 10 different person takes that measurement it could be off
 11 a little bit. So there's a lot of little reasons why it
 12 could be off some, but 1112 gallons is unusual, so we
 13 did the tightness test.
 14 Q. So, you agree that your records show 1100 or
 15 1200 gallons that were off for November, and then again
 16 for December, those two different times, so that's about
 17 2300 gallons all together?
 18 A. Yes.
 19 Q. Not above the -- I mean, that's if you take
 20 that tolerance factor into consideration, it's not that
 21 much, but total we had a difference of that between
 22 sales.
 23 MS. NIELSON: Okay.
 24 MS. HUTTON: Just for your information, the document
 25 you're referring to is not the inventory control that

1 detector that's back near the tank, the people doing the
 2 testing indicated that it was leaking back into the tank
 3 rather than a leak in the line, and so we were shut down
 4 for about a week. And when they came back with that
 5 explanation we started operating again. But we found --
 6 still showed an unusual shortage near the end of
 7 December, so we said something else is wrong and we went
 8 and repaired the leak in the bottom of about -- where
 9 well number five is.
 10 MR. FAUCETT: A leak in the bottom of the tank?
 11 THE WITNESS: In the line.
 12 MR. FAUCETT: In the line?
 13 THE WITNESS: There's a general leak down by the
 14 elbow going up to the dispenser pump.
 15 MR. FAUCETT: Okay.
 16 MS. HUTTON: Again, if it helps, the station manager
 17 can clarify a lot of these questions, so --
 18 MR. UTLEY: Do you have leak detectors installed on
 19 the lines?
 20 THE WITNESS: Yes.
 21 MR. UTLEY: Okay.
 22 THE WITNESS: They did not fail.
 23 EXAMINATION
 24 BY MR. WHITE:
 25 Q. You indicated earlier that there was, prior to

1 was maintained at the station that is based on sticking,
 2 those documents are found at Exhibit C, and I'll admit
 3 those as soon as the station manager has had an
 4 opportunity to testify.
 5 MS. NIELSON: Okay. What are the totals, the
 6 differences in Exhibit C? I'm sorry, I apologize, I was
 7 in the wrong set.
 8 MS. HUTTON: If you'll allow me, they'll make more
 9 sense if the station manager can go over those with you
 10 and explain to you how that occurred.
 11 MS. NIELSON: That's something you're going to do in
 12 just a minute? Okay. Maybe I ought to reserve the rest
 13 of my questions until we talk to the station manager, I
 14 apologize, I didn't mean to get ahead.
 15 MR. UTLEY: Any other questions of the Board
 16 members?
 17 MR. FAUCETT: Just so I get my line of what's going
 18 on, what you said is that you found an unusual variance
 19 between the amount of material that was short. You said
 20 okay, we'd better go in and do some tightness and
 21 fitness testing. You did this and you found there was
 22 some leaks and then after that you went and repaired
 23 it?
 24 THE WITNESS: No. The first tightness test we did,
 25 the tanks were tight. The line indicated that our leak

1 -- where are my notes? Here. That you were not aware
 2 of any releases at the site prior to the
 3 October/November time period, 1995?
 4 A. There again I'm using the definition of a
 5 release of 25 gallons.
 6 Q. Okay. You then referred to -- you then
 7 referred to a -- you were referring to Exhibit 1 of the
 8 State's Exhibits where you think explained that there
 9 was some equipment upgrade that was going on back in
 10 July of 1990?
 11 A. That's true.
 12 Q. And that in the course of that equipment
 13 upgrade Eaton Metals, I think you indicated, had found
 14 there was some soil staining, that that soil was removed
 15 and clean soil was put back in?
 16 A. Yes.
 17 Q. Do you know what the quantity of the release
 18 was that would have caused that staining?
 19 A. I don't. I don't believe there was over two or
 20 three yards of soil taken out and replaced.
 21 Q. There was a -- so there was a release, just not
 22 a reportable release?
 23 A. Yes. I would suspect it was a transport driver
 24 that had over filled or something.
 25 Q. But you do agree there was a release, there was

1 some staining?
 2 A. There was some sustaining there, yes.
 3 Q. It may not have been reportable, but there was
 4 a release. Then we also heard testimony earlier that
 5 there was apparently a line leak that was reported to
 6 the Salt Lake fire department back in 1985. Are you
 7 aware of anything about that?
 8 A. I'm not.
 9 Q. Do you still have the same station manager now
 10 that you had in 1985?
 11 A. No.
 12 Q. So he's not going to know anything about it
 13 either?
 14 A. No.
 15 Q. Do you recollect anything about something back
 16 in the mid 80's?
 17 A. I don't recollect.
 18 Q. Okay. That's all I have.
 19 MR. UTLEY: Anything else? Ms. Hubbell?
 20 MS. HUBBELL: No.
 21 MR. UTLEY: I think in all fairness to our recorder,
 22 and the Board we're going to try to break this off.
 23 It's evident we are not going to get finished and we may
 24 have to continue after our board meeting and have lunch
 25 and continue on after the Board meeting.

1 MS. HUTTON: Okay.
 2 MR. UTLEY: Go ahead and proceed.
 3 MS. HUTTON: All right. I'll call my next witness
 4 then.
 5 MR. WHITE: We haven't had cross.
 6 MR. UTLEY: They said they didn't.
 7 MS. HUBBELL: I indicated no.
 8 MS. HUTTON: Thank you.
 9 I'll call Mr. Hal Wasden, station manager.
 10 HAL WASDEN
 11 was duly sworn, was examined and
 12 testified as follows:
 13 THE WITNESS: I do.
 14 MR. UTLEY: Thank you.
 15 BY MS. HUTTON:
 16 Q. Would you like to state your name and spell it
 17 for us, and tell us your position with V1 Oil?
 18 A. My name is Hal Wasden, H-a-l, W-a-s-d-e-n, I'm
 19 the station manager for V1 Oil at 1478 South 300 West.
 20 Q. And how long have you been the location manager
 21 or station manager?
 22 A. I started in November of 1991.
 23 Q. Now, you have heard the state say in -- well,
 24 in their brief when -- have you read the state's brief?
 25 A. Yes, I read through it, I haven't memorized it,

1 but I read through it.
 2 Q. Okay. And one of the things that we noted when
 3 we were going through was, I may have it marked so I can
 4 direct your attention, I think it -- it's in the first
 5 paragraphs between two, three, and four. I think it's
 6 referred to several times, but the state says that Mr.
 7 Ted Diamonte of the Salt Lake County health department
 8 spoke with you on January 16th. Do you recall that?
 9 A. Yes, I do.
 10 MR. UTLEY: Could you specify that.
 11 MS. HUTTON: Let me see if I can find the exact --
 12 of course I didn't write it down. This is the state's
 13 brief, and it would be -- well, paragraph 15 starts it
 14 off.
 15 MR. UTLEY: Page number 5 paragraph 15?
 16 MS. HUTTON: Right, and that's where Mr. --
 17 MR. UTLEY: Excuse me, does everybody have that
 18 hearing brief, first page of the packet?
 19 Okay. Continue.
 20 MS. HUTTON: Okay.
 21 Q. Do you recall when Mr. Diamonte came to talk to
 22 you, or do you know if he came to talk to you?
 23 A. Yes, I recall he came and talked to me.
 24 Q. What was the substance of that conversation, do
 25 you recall it?

1 A. I was running the station and this gentleman
 2 came to the window. It's not a walk in operation, he
 3 came to the window and stated that we were leaking gas,
 4 our tanks were leaking gas into the sewer and we needed
 5 to stop it. And I -- we had just had the tanks tight --
 6 the tightness tests on the tanks, and I explained to
 7 him, I said, Our tanks are not leaking, we have just had
 8 the tests run on the tanks.
 9 Q. Did he identify himself?
 10 A. He did not identify himself the first time at
 11 the window. There was a bunch of activity to the north
 12 of us on the Southern Pacific property. There were a
 13 bunch of individuals out there, and he went back to talk
 14 to the individuals that were there with him. He then
 15 came back and identified himself as Ted Diamonte from
 16 the Health Department, and I asked him for a business
 17 card, which he did not have at that time, but he took
 18 one of the other colleagues and wrote his name on the
 19 business card. He explained, then accused us again. He
 20 didn't ask, he accused us by saying, Your tanks are
 21 leaking gas into the sewer. We have a problem over on
 22 Whitney Avenue.
 23 I explained we did not have a tank that was leaking
 24 gas. And he said, What about the new excavation to the
 25 south of your building? And I explained at that time

1 that we had just removed two tanks that were old tanks
 2 that had never been used, they had never been hooked
 3 up. They pulled them out less than a month since that
 4 happened and, you know, the asphalt was still very
 5 black, you could tell there was excavation. He left and
 6 went back over with the group and they continued to
 7 work. And then about two hours later he brought me one
 8 of his cards back, you know, that he had been picked up
 9 and gave it to me which I then forwarded to counsel.
 10 Q. Did you tell -- did you ever tell Mr. Diamonte
 11 that the tanks that V1 was using were new?
 12 A. No. We had the new tests on the tanks and the
 13 only reference to new was the new excavation to the
 14 south end of the building.
 15 Q. Okay. Now, you reference the new asphalt over
 16 the excavation area. When did the excavation take
 17 place?
 18 A. That was about December, first part of
 19 December, first, second, third, right in that area.
 20 Q. Okay. Why was that excavation done?
 21 A. It was ordered by the state. We were to remove
 22 two tanks that had been put in years earlier in
 23 anticipation of use, and then the gentleman that put
 24 them in had died or -- I mean, it was -- they had been
 25 forgotten about, but never had been hooked up. They

1 were just in the ground.
 2 Q. Were those new tanks?
 3 A. They were used tanks purchased years ago.
 4 Q. During this excavation and removal of those two
 5 tanks, were there representatives there from the agency
 6 from the Division of Environmental Response and --
 7 A. Yes, there was.
 8 Q. Do you recall who they were?
 9 A. Bill Moore who is in the hearing room, and a
 10 Jim Thiros, I think his name was. Ms. Hubbell was there
 11 on and off, and two or three other representatives, I
 12 can't remember.
 13 Q. Okay. Do you recall that at the time this
 14 excavation took place that representatives of the
 15 division said that there was a strong smell of
 16 petroleum?
 17 A. Yes, on the --
 18 MS. HUBBELL: Which excavation are you referring
 19 to?
 20 MS. HUTTON: The excavation he was just explaining
 21 to us about that occurred in December of 1995.
 22 MS. HUBBELL: Okay, because I have a problem with
 23 that. Jim Thiros wasn't even working in that division
 24 any more, and in one of the exhibits, I think it refers
 25 to who was there and it was neither Mr. Moore or Mr.

1 Thiros, it was Gary Harris and David Wilson in Exhibit
 2 5. I don't understand -- I'll admit I did stop by
 3 there, but I think there's a problem here and I just
 4 wondered if perhaps your witness is confusing this with
 5 one of the other two times that we were there, when I
 6 was with Mr. Thiros and Mr. Moore, and we were sampling
 7 the contents of those tanks.
 8 MS. HUTTON: No, I don't think he is mistaken
 9 because I spoke with Mr. Thiros and Mr. Moore on that
 10 very day.
 11 MR. UTLEY: I'll allow you to continue. Melissa,
 12 you can raise that question on cross-examination.
 13 BY MS. HUTTON:
 14 Q. When this excavation took place, did any
 15 representative from the Department of Environmental
 16 Response or Remediation tell you or say to you that
 17 there was a strong odor of petroleum when the excavation
 18 was going on?
 19 A. The odors that were explained as they were
 20 pulling the tanks out was, there was a heavy petroleum
 21 odor, more in the line of a hydraulic fluid than a gas
 22 line.
 23 Q. Do you recall who that was that said that to
 24 you?
 25 A. I remember it being Mr. Moore.

1 Q. Okay. And did he indicate which tank or where
 2 in the excavation that this strong odor was coming from?
 3 A. The odor was strongest to the south tank that
 4 was removed on the southern part, closer to the building
 5 to the south of us.
 6 Q. So, if I may, that would be over here?
 7 A. Closer over in this area. This tank was being
 8 removed.
 9 Q. On this diagram can you show the Board where
 10 these tanks were located?
 11 A. The tanks were located furthest to the south.
 12 There were two furthest south tanks removed. The two
 13 tanks that are in current use are located closer to the
 14 store, so there was basically four tanks in line, and
 15 the two furthest away from the building on the south
 16 side were the ones that were removed.
 17 Q. So it was the south tank on the south side this
 18 odor was noted?
 19 A. The strongest odor.
 20 Q. What was that odor, did you say?
 21 A. More like a hydraulic fluid.
 22 Q. Has V1 ever sold, stored or dealt in hydraulic
 23 fluid?
 24 A. No.
 25 Q. Has V1 ever kept it on its premises?

1 A. No.

2 Q. Do you know any place where someone has kept
3 hydraulic fluid on their premises?

4 A. The building to the south of us that is now
5 Ultratech used to be a body shop, CS & T, I think was
6 the name. When they first started -- they have a
7 hydraulic lift in there. Prior to removing those tanks,
8 I was friends with one of the guys that worked over
9 there and asked if I could pull my car in on the lift to
10 repair an exhaust pipe. He stated that the lift only
11 went up about three feet at the present time, that the
12 fluid was leaking out of their tank and so it was not in
13 use at that time.

14 Q. And given this time period we're talking about,
15 at the end of December, '95, when did that occur?

16 A. It was -- my car needed to be licensed in
17 December, so it was in December.

18 Q. Of 1995?

19 A. '95, yes.

20 Q. Okay. Now, again, let's see if I can find
21 where it is. On page 4, paragraph 11, there is a
22 statement there, and I know you don't have it in front
23 of you, but we've talked about this, where it says, The
24 V1 gasoline manager, Hal Wasden, claimed there has been
25 no product loss. Do you recall the conversation with a

1 appropriate to ask Mr. Wasden if he made such a
2 statement.

3 MS. HUBBELL: I'm not objecting, I'm just stating
4 that it is Mr. Bright that's listed here.

5 MS. HUTTON: Can I go on now?

6 Q. How do you monitor your inventory, Mr. Wasden?

7 A. We stick the tanks on a daily basis, and then
8 when a delivery comes in we stick the tanks at the
9 beginning of the delivery and stick the tanks at the end
10 of that delivery, and it's noted on the delivery slip.
11 And then we reconcile that, the sticking of the tanks to
12 sales based on flow of product through the meters that
13 are on each of the dispensers.

14 Q. Okay. And when you justified your inventory
15 records, how do you go about justifying that?

16 A. I take the reported sales, the dispenser --
17 what is dispensed through the dispenser, and I take the
18 amount left in each tank at night from the sticking of
19 the tanks. We take those readings, look at a table that
20 is provided on the side of the tanks and we subtract the
21 amount of sales from the inventory in the tank. If
22 there's more sales than what is left, you have an
23 overage. If you have less, it's a shortage.

24 Q. Do you determine under federal regulations what
25 constitutes overage?

1 state employee where you told them you had never had --

2 MS. HUBBELL: Excuse me, this doesn't say a state
3 employee. I think if you read it it says Salt Lake
4 corporation representative.

5 MS. HUTTON: I'm sorry.

6 Q. Has any city representative ever come to you
7 and asked you if you'd had an inventory loss?

8 A. No.

9 Q. And so if someone said that -- it doesn't say
10 who you said this to, so did you tell anybody that came
11 to you that you had no product loss?

12 A. The only individual that I talked to from the
13 city was this Ted Diamonte who accused us and stated
14 that our tanks were leaking gas. And I stated to him
15 that our tanks were not leaking because they had just
16 been tested.

17 MS. HUBBELL: With respect to your characterization,
18 Ms. Hutton, I'd like to point out it references Exhibit
19 10 and lists the name. And in fact, it says Mr. Bright,
20 who I'm sure you could have questioned about the
21 veracity of this statement, whether he was there. But
22 you know, it doesn't say state employee as you were
23 implying.

24 MS. HUTTON: Thank you. But since it references a
25 statement that Mr. Wasden said, I think it's more

1 A. You take flow-through for the whole month and
2 at the end of the month you take one percent of the
3 flow-through, add 130 gallons to that for a variance,
4 and then that is the tolerance. If you have an amount
5 over that or less than that amount, then you have an
6 overage or shortage. If it's within the tolerance,
7 you're within the guidelines.

8 Q. And is determining what constitutes an overage
9 or shortage and shrinkage, is that set out any place in
10 the federal guidelines?

11 A. I think it's at API. I don't have it, I
12 believe the API report.

13 Q. Exhibit B on our hearing brief, and it's called
14 bulk liquid stock control at retail outlets.

15 MR. UTLEY: Ms. Hutton, if you can wrap up in a
16 couple minutes, that would be great. If you can't, we
17 should break.

18 MS. HUTTON: Yes, why don't we break, he's got a
19 lot.

20 MR. UTLEY: The Board meeting is noticed at 1:30 so
21 it's important we conduct it at 1:30.

22 MS. HUTTON: It would be better to break now and
23 continue.

24 MS. NIELSON: My same admonition that board members
25 not discuss this among themselves or with anyone else.

1 MR. UTLEY: Thank you.
 2 (Whereupon a lunch recess was taken until 3:00 p.m.)
 3 MR. UTLEY: Are we ready? Okay. I think Mr.
 4 Huskinson was still on the stand.
 5 MS. HUTTON: Before I call him back I had an ex
 6 parte communication with Mr. Rathbun and Mr. Utley, and
 7 was informed that we're down to 15 minutes. I have Mr.
 8 Wasden and Mr. Condrat who is the TriTechnics individual
 9 that is going to be testifying, and would respectfully
 10 request that we be given additional time to present both
 11 of those witnesses.
 12 MS. NIELSON: How much more time is that?
 13 MS. HUTTON: Hopefully no more than a half an hour.
 14 MS. HUBBELL: I won't object if I have extra time,
 15 I'm down to two minutes. If you guys like, I can talk
 16 faster. You remember that approved oil, how fast I
 17 talked there. I can talk even faster than that now.
 18 MR. UTLEY: I certainly recognize in all fairness we
 19 need to give you more time to cross. Ms. Hutton, you
 20 have 15 minutes left and I would sure encourage you to
 21 try. I think we can give you another 15 minutes if
 22 that's reasonable so you have a total of 15 minutes for
 23 your next two witnesses.
 24 MS. HUTTON: We'll give it our best shot.
 25 MR. STEVENSON: Mr. Chairman, I maybe not be around

1 for the decision.
 2 MR. UTLEY: We're getting late in the day where
 3 several board members have some other time constraints,
 4 so we need to try to stick to it the best we can. I'll
 5 remind you you are still under oath.
 6 BY MS. HUTTON:
 7 Q. In the interest of time I am just going to give
 8 him some documents and have him explain to the Board
 9 about the inventory.
 10 Mr. Wasden, would you please explain to us what
 11 these represent and what you discovered?
 12 MS. HUBBELL: We've had long debates over objections
 13 on documents, so I'm going to ask you to establish
 14 foundation on these also.
 15 MS. HUTTON: Okay.
 16 MS. HUBBELL: There's no more reason for them to
 17 have veracity than mine have.
 18 MS. HUTTON: These are included under section --
 19 MS. HUBBELL: I think your witness should probably
 20 testify to them.
 21 MS. HUTTON: Okay. I'm just going to instruct the
 22 Board, they're under Section Tab C in V1's memo and
 23 they're inventory records.
 24 MR. UTLEY: Did everybody get that? Information in
 25 what V1 submitted under Tab C.

1 THE WITNESS: These are the monthly calender
 2 inventory records on the unleaded tank, which is
 3 dispensers one and four. It shows the inventory
 4 starting at the beginning of the month.
 5 MS. HUBBELL: Who made these records?
 6 THE WITNESS: I made these records, ma'am. This
 7 form was provided for us back in the end of 1994, as a
 8 record keeping inventory for the EPA, that we needed to
 9 keep track of our inventory on a monthly basis per
 10 tank.
 11 BY MS. HUTTON:
 12 Q. Who provided you with those forms?
 13 A. The regional office provided me with the forms
 14 that we used.
 15 Q. And you completed these forms yourself?
 16 A. I complete these forms on a daily basis. It
 17 shows -- the first column is the inventory, the
 18 beginning of the month for the day. The next is gallons
 19 delivered, gallons pumped for the day, and then the
 20 total of that. And then on the right side you have the
 21 sticking of the tanks, then the gallons off of the
 22 chart. And then the inventory, whether it's a plus or a
 23 minus, and then we show the days that we checked the
 24 water. Then those are my initials HW on the side.
 25 First one is October. As we went through the month

1 of October we got to the end of the month, the allowable
 2 was 630. Our shortage for the month was 927, so we were
 3 about 200 and -- about 300 gallons, 297 gallons short
 4 for the month. You'll notice on the next one, it was
 5 November, we started November, but the first day of
 6 November we were over 170 gallons, so that would lead
 7 you to think that there was -- something was off because
 8 we were way over when we started in November. At the
 9 end of November we were over. We were short a total of
 10 25 gallons for the end of November.
 11 Q. Since that was two months in a row, did you
 12 report a suspected shortage to the DERR?
 13 A. Yes, as indicated down there where it says, if
 14 off two months in a row, notify as soon as possible. I
 15 then notified home office, my regional manager, and
 16 called counsel to say that we were off two possible in a
 17 row. ADS was notified to come down and provide some
 18 tank test tightness testing and testing the lines. They
 19 arrived on the 30th of November, which was the last day
 20 of November, and again their tests both tanks passed the
 21 tightness test, but the line on the dispenser for the
 22 unleaded lost pressure slowly. It was losing pressure
 23 so we then shut down the system. We just -- the tanks
 24 were tight. We left the product in the tank and then
 25 started selling unleaded gas out of the super dispenser

1 and that's why there's no change in inventory from the
2 first of December through the 6th of December. It was
3 at that time we were then excavating those two tanks
4 that were taken out of the ground, so we excavated
5 around the lines to test the lines themselves to see where
6 the leak or why it was losing pressure.

7 Q. When did this excavation take place?

8 A. It was over a period of about three days,
9 basically the 4th, 5th, and 6th.

10 Q. What else was going on at the station at the
11 time you excavated these things?

12 A. We were taking out the two tanks that had been
13 ordered by the state. The two tanks we referred to
14 earlier. They were being removed at that time also. So
15 we had state people, health department, we had Harper
16 Construction and V1 personnel on-site.

17 Q. Did any representative from the state or
18 Division or this agency, did they observe the excavation
19 of these lines and these tanks?

20 A. Yes.

21 Q. Did these individuals identify themselves to you?

22 A. Bill Moore was there, and we were showing him
23 what we were doing at the time as we were going over
24 because we knew we had a line that was --

25 MS. HUBBELL: I'm not sure what dates he's talking

1 about.

2 THE WITNESS: December 4th, 5th, and 6th of 1990 --

3 MS. HUBBELL: You were also working on the lines as
4 well?

5 THE WITNESS: Okay. At the time we were taking out
6 the tanks we excavated over where the lines come out of
7 the tank. It runs over to the dispenser, and then there
8 was a T at that point in time by dispenser number 4.
9 The one line goes then clear along by the island over to
10 dispenser number one. We broke the line at that T and
11 pressure tested the lines. The line from the T over to
12 the dispenser number one held pressure. I would note at
13 this time these lines were drained also at that time,
14 which can have an effect upon your inventory because
15 you're draining. It can effect it almost 50 gallons
16 every time you drain those lines back into the tank.
17 That's in the guidelines of the API.

18 Q. And what was determined about this incident,
19 did anyone -- did you decide if there was a leak in the
20 system?

21 A. We then tested the lines for number -- on the
22 dispenser number 4, and it lost pressure very very
23 gradually. The explanation that we came up with at that
24 point in time is that there was a -- sometimes a little
25 grain of sand can get stuck in the valve and let the gas

1 from the line drain back into the tank itself. So you
2 lose pressure off of the line. And the leak detectors,
3 you know, you have to power back up to get the pressure
4 in the line. And that was the explanation we came up
5 with because we could find no leak in the line at that
6 point in time.

7 Q. It wasn't an environmental leak?

8 A. No.

9 Q. Back into the tank?

10 A. None in the soil when we were digging by the
11 dispenser and it was determined and --

12 Q. Was there any staining of the soil?

13 A. No.

14 Q. No free product?

15 A. No free product in the soil.

16 Q. How long was the system shut down?

17 A. It was shut down until -- we didn't bring it
18 back on line until the 7th of December, so for six days.

19 Q. Then what happened in December?

20 A. In December you'll notice I changed the form
21 and added one additional line. Before, we had to get to
22 the end of the month before we came up with the total,
23 so I added an extra line on this report so that I could
24 keep track on a daily basis to track the loss of -- get
25 an idea on a daily basis how our inventory was being

1 effected.

2 We showed a loss the first day, and continued on
3 under the assumption that we were losing gas back into
4 the tank through a bad valve. On the 20th of December,
5 I called home office and I called the regional manager
6 and I called counsel and said our inventory is still
7 declining. And I then called in Petroleum Equipment
8 Company to have them come back out and to repair this,
9 what we assumed was the bad valve in the pump that is in
10 the tank. And Petroleum Equipment came out and
11 proceeded to do some -- basically replaced everything
12 but the casing in the pump.

13 Q. So then you went back on line; is that
14 correct?

15 MS. HUBBELL: I haven't been hearing dates.

16 THE WITNESS: This is December, I said December
17 20th.

18 MS. HUBBELL: I'm sorry.

19 THE WITNESS: I'm still here on the 20th where we
20 were shut down again. We've brought the system up, we
21 would replace something, bring it back up, test for
22 pressure and it would slowly lose, so we would drain the
23 lines again, replace another part of the pump that we
24 thought maybe was defective, bring the system back up on
25 line, and it continued to slowly decline.

1 We then drained the system again. We replaced
2 everything but the casing, brought the system back on
3 line, and it still continued to lose pressure. We again
4 shut the system down, shut the no led pumps down, left
5 the product because the tanks were tight. I then called
6 DSI which is Dale's service for them to come in and do
7 an extensive test. We excavated out and they came down
8 that same day and it was determined that they broke the
9 line again and tested it again, and the line to the
10 dispenser number one still held, but they were losing
11 pressure into dispenser four. And that's when we dug up
12 underneath the island and found the pin hole leak on the
13 back of the joint on dispenser number four.
14 Q. Did you find contaminated soil under dispenser
15 number four?
16 A. Not down low, but as you got closer up and got
17 into the soil up where the leak was, we found a little
18 bit of gas, maybe six inches in to the soil which was
19 then taken out and removed.
20 Q. That was removed and hauled away?
21 A. Yes.
22 Q. Can you -- well, was that line replaced,
23 repaired and replaced?
24 A. The line from the T was then because the new
25 system requires fiberglass lines. They have to be cold

1 regarding whether or not those tanks have been removed?
2 A. All during -- a lot.
3 MS. HUBBELL: I'd like some more foundation. What
4 you are asking for is speculation. You're not saying
5 how long he's been at the station, you're not telling
6 me --
7 THE WITNESS: We established that in the beginning.
8 I started in November of '91.
9 MS. HUBBELL: '91, all right. But these tanks were
10 -- our records show '67, you know. I'm --
11 MR. UTLEY: If you have an objection, raise the
12 objection. We'll rule on it Melissa. And if you want
13 to ask him --
14 MS. HUBBELL: I am objecting to this. I'm objecting
15 to this on the basis of foundation. There was some
16 earlier testimony as to what this garage mechanic next
17 door told him and I didn't object to that hearsay. But
18 I object to this unless they have got documentation or
19 something.
20 BY MS. HUTTON:
21 Q. Mr. Wasden, the state has indicated that Zions
22 removed their tanks in 1967, but there is no
23 documentation. Do you happen to have an understanding
24 whether or not that tank -- there are tanks on the Zions
25 property?

1 packed, heat packed and held for 24 hours to bring them
2 on line. That line was then broke right at the T and
3 completely replaced with fiberglass up into dispenser
4 four.
5 Q. Can you estimate at all what you think your
6 inventory loss was for this time period?
7 A. Based on the number of times we drained the
8 system in December -- by draining it, putting product
9 back into the tank and retesting it, it was at least
10 four times the system was drained. If you figure 50
11 gallons, all of December's shortage could be explained
12 just by draining the system. But based on my inventory
13 and the system and the area around the pumps, I think
14 that we probably lost somewhere in the neighborhood of
15 about 300 gallons total.
16 Q. During this entire time, were these tanks
17 covered by a certificate of compliance?
18 A. Yes.
19 Q. Okay.
20 A. And posted at the -- it's posted.
21 Q. We've heard testimony about other possible
22 sources around this area. Are you aware -- are you
23 familiar with the Zions Bank area?
24 A. Yes.
25 Q. Do you have -- have you heard information

1 A. We have a lot of accounts in the area who come
2 in and observe some of the activities in the area. The
3 old timers who have been there all state that the tanks
4 are still in the ground and why don't they go over and
5 dig where the tanks really are.
6 Q. Is it your understanding there are tanks still
7 over there?
8 A. Based on a number of the customers who we have
9 accounts with that come in and get fuel, there are still
10 tanks in the ground.
11 Q. Okay. There's also information on that
12 calendar, Exhibit number 14, regarding Vickers. I
13 believe it's number 6 on the calendar, I mean on the
14 map.
15 MR. UTLEY: Table.
16 MS. HUTTON: On the tables. Yes, 6.
17 Q. I think it's designated as open, and that the
18 tanks were removed in 1990. Does that comport with your
19 memory?
20 A. Vickers didn't move out of that facility until
21 '94, when they moved out on 21st South.
22 Q. Were they still using storage tanks?
23 A. From the people that work there, were coming up
24 there, yes.
25 MS. HUBBELL: I object to this again. Once again

1 it's just speculation. You're not even telling me who
2 these people are, what your relationship was, whether --
3 what their basis was. You're saying that we said the
4 tanks at Zions Bank were removed, when we said they were
5 closed. We said they were closed in place and not
6 removed. I mean, could we get this straight?
7 MS. HUTTON: On State's Exhibit number 14 it
8 indicates for Zions Bank, removal date.
9 MS. HUBBELL: If you'll recall the testimony, it
10 doesn't -- it just says there 1967, last used. That's
11 not saying it was removed. He's saying it was closed
12 that date. Did you testify -- you know, ask the
13 witness, he testified that the tanks were still there.
14 MR. UTLEY: We'll note the objection, Melissa. I
15 recall that the witness said that he felt they were
16 filled with sand and water, and that's the way they were
17 closed out back in those days. But it does show removal
18 date, so it's conflicting evidence. I think hearsay
19 evidence, I guess is the way I understand it, is
20 allowed, so.
21 MS. HUBBELL: Usually only to back up documents that
22 have been put in or some other verifiable source. It's
23 not allowed to stand on its own.
24 MS. HUTTON: Under the law, hearsay evidence is
25 admissible.

1 MS. HUBBELL: It needs to be taken for the credit,
2 for what verification it has is my understanding.
3 MR. RATHBUN: The Board can attribute whatever
4 weight to that evidence they want, just like any other
5 piece of evidence. But under UAPA, hearsay evidence is
6 admissible. That is correctly stated. It says evidence
7 should not be excluded merely because it's hearsay.
8 MS. NIELSON: Could I clarify? Irregardless, if V1
9 has already testified that based on their consultant's
10 reports the transport direction for groundwater in the
11 area was north, northeast, it doesn't seem to me as if
12 either of these sites are likely candidates for the
13 sewer line.
14 MS. HUTTON: That will become clear when Mr. Condrat
15 tells you about the sewer system in that area.
16 MS. NIELSON: Okay. Thank you.
17 BY MS. HUTTON:
18 Q. One more question. Was the Southern Pacific
19 property being used during this time period by another
20 company?
21 A. Yes.
22 MR. UTLEY: which time period?
23 MS. HUTTON: When this, the contamination was
24 occurring in the sewer.
25 MR. UTLEY: In the last year or so?

1 MS. HUTTON: Yeah.
2 Q. Who was the company that was using the Southern
3 Pacific land?
4 A. From what time period? The time I started in
5 '91 on, or?
6 Q. Well, prior to the time that we had this
7 contamination in the sewer.
8 A. Can I stand and show the map? This area here,
9 Southern Pacific shows as their property. There is
10 contest of ownership. The individual that owns the
11 building over here contests that he owns this property
12 and has leased it out. The lay of the ground there is
13 basically where they took the tracks out. There was a
14 trench that runs down there that there's water standing
15 there most of the time.
16 From about this level here it's asphalt and it
17 slopes back to the northwest. Lines and Designs had the
18 property until about '93, when they quit leasing this
19 area and Nevada Sand and Gravel leased it. And for
20 about a year they had all of their diesels and trucks
21 parked in here. They were fueling their vehicles, they
22 would come in at night and the vehicles were then fueled
23 here.
24 MR. UTLEY: How were they fueled?
25 THE WITNESS: Those trucks, the ones that they have

1 that have the tanks.
2 MR. UTLEY: Tankers?
3 THE WITNESS: Bobtail with various tanks on. They
4 come in and fuel them here. After Nevada Sand and
5 Gravel pulled out of that, Rick Warner and the city used
6 this property and during the winters in the heavy
7 snowfall for the last three years, they have used this
8 property to haul snow, all of the snow around Rick
9 Warner's dealerships up here is all loaded on dump
10 trucks and brought down here. Then they bring in front
11 end loaders and at times the snow depth will exceed 15
12 feet, loading the snow and the garbage. And when it
13 melts it's a mess over there.
14 MR. UTLEY: Okay.
15 THE WITNESS: They were using it as late as last
16 winter.
17 BY MS. HUTTON:
18 Q. Are there above ground petroleum tanks in this
19 area?
20 A. There are two right behind. Again, I'll
21 stand. Behind Diamond's Electric there's a building
22 there and there are two tanks right at the back of
23 Diamond's building.
24 Q. Okay. That's all that I have.
25 MR. UTLEY: Thank you.

1 MS. NIELSON: I had a question before about the
2 records and I understand that this is the witness that
3 might help me understand those overages and underages?
4 MS. HUTTON: Correct.
5 MS. NIELSON: When you -- excuse me. I guess it's
6 in C. You were describing the records and sticking the
7 tanks, and then at the end of the month there's a total
8 gallons pumped and you've got gallons over and under.
9 THE WITNESS: Un-huh.
10 MS. NIELSON: Okay. And then can you help me
11 understand -- I guess I'm looking at October, but it
12 looks like it works for any of them. The leak check
13 number, there's a 500, and then there's a, I guess, plus
14 or minus 630; what do those represent?
15 THE WITNESS: If you notice the total gallons pumped
16 right above that is 50,034. You take one percent of
17 that which is 500 gallons, and then you add to that the
18 variance that the API report allows which is 130
19 gallons.
20 MS. NIELSON: Okay.
21 THE WITNESS: So then you have an allowable figure,
22 plus or minus an area to work within that you can be
23 over or you can be short, up to 630 gallons over or
24 short, and be within the guidelines.
25 MS. NIELSON: Okay. There was another document, an

1 always under rather than not over each of these months?
2 MS. LUNDGREN: It was over in January?
3 THE WITNESS: It was over 92 in January.
4 MS. LUNDGREN: 92 over?
5 THE WITNESS: It was 92 over.
6 MR. MINER: But all the others were major unders,
7 even though you have an allowable. That looks like it
8 would be of concern.
9 MS. HUTTON: This is the time period when they were
10 experiencing that problem with their line, and that's --
11 those are the only documents that we submitted, we
12 didn't do a background.
13 MR. UTLEY: I wanted to ask -- help me understand.
14 October was 927 gallons short, November 629, and
15 December 742. Yet, you think you leaked 300 gallons
16 out, is your best estimate. And you said the line
17 drained back into the tank because the leak detector was
18 not working properly. If that happened though, the
19 inventory would show back up in your tank and I have a
20 hard time understanding --
21 THE WITNESS: The flow through would be different.
22 MR. UTLEY: This is inventory in your tank though,
23 isn't that right?
24 THE WITNESS: I'm using the figures out of the API
25 reports that --

1 API document that you referred us to in Section B, and
2 it talks about, However, a tank variance generally
3 shouldn't exceed a half a percent, .5 percent. Is that
4 the same variance that we're calculating here when
5 you --
6 THE WITNESS: I don't think we're dealing with the
7 same things. This is flow through, this is gallons
8 pumped flowed through the dispenser.
9 MS. NIELSON: I guess what I was reading, it's a
10 section called magnitude of normal losses and I was
11 trying to understand what the value of --
12 THE WITNESS: That would apply to your tank
13 tightness tests.
14 MS. NIELSON: Okay.
15 THE WITNESS: Not the flow through.
16 MS. NIELSON: Not the flow through variation, okay.
17 So if it is -- if, for instance, the 630 and then you
18 had a differential of 927, if it's more than 630 then
19 that's a concern for you?
20 THE WITNESS: That's where you note that it was over
21 or under, yes, and that was the first of the month that
22 we had a -- we were in the yes column and above the
23 allowable limit.
24 MS. NIELSON: Okay.
25 MR. MINER: Isn't it some concern that they're

1 MR. UTLEY: No. I'm asking, on your inventory
2 record -- the way I interpret this is your inventory was
3 927 gallons short in October; is that correct?
4 THE WITNESS: Yes.
5 MR. UTLEY: And then in November it was 629 gallons
6 short; is that correct?
7 THE WITNESS: The total, yes.
8 MR. UTLEY: Yeah, that's inventory. And then in
9 December it was 742 gallons short; is that correct?
10 THE WITNESS: Yes.
11 MS. HUTTON: Well, but the shortage is calculated
12 with flow through plus 130 gallons.
13 MR. UTLEY: I'm not looking at the flow through.
14 What I'm concerned about is the inventory that shows up
15 in the tank. And the way I read this, is each time the
16 inventory was short -- now, you talked about the
17 material draining back from the line through the flow
18 detector. If that's the case, it's gonna show up in the
19 tank.
20 THE WITNESS: Depending upon when you stuck the
21 tank, if you stuck the tank prior to it.
22 MR. UTLEY: To me that would reconcile itself the
23 next month, though.
24 MS. NIELSON: Or the next time you stick it.
25 MR. UTLEY: It should reconcile itself. So, if I'm

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1 viewing this, it looks like maybe we lost or you lost 13
 2 -- almost 2300 gallons.
 3 MS. HUTTON: That's why that API record indicates
 4 that every time that you fill the lines and then have to
 5 drain them back into the tank you experience a
 6 shrinkage.
 7 MR. UTLEY: Where does that material in the line
 8 go? It went back into the tank.
 9 MS. HUTTON: It went back into the tank.
 10 MR. UTLEY: Would it not show up in the tank
 11 inventory?
 12 MS. HUTTON: It causes a shrinkage of the total
 13 petroleum product.
 14 MR. UTLEY: Why does it cause that?
 15 MS. HUTTON: Why does it cause that? I guess
 16 temperature. There's several reasons listed for why
 17 that occurs.
 18 MR. UTLEY: Well --
 19 MS. HUTTON: If you look at the API documents that's
 20 included as B, it indicates that every time you move a
 21 product you're going to result in shrinkage which is why
 22 whenever you repair a line and drain it back into the
 23 tank, you end up experiencing a shrinkage and resulting
 24 loss.
 25 MR. UTLEY: Well, yeah. I don't agree with that

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1 necessarily because once it's in the tank in the ground
 2 the only thing that causes a loss -- it doesn't change
 3 temperature very much. Once it's in the ground it isn't
 4 gonna change temperature very much, so you can have a
 5 constant volume. So, I mean, do you have any other
 6 explanation? I just have difficulty understanding how
 7 you can say or estimate --
 8 THE WITNESS: What we found at the time we dug up to
 9 repair the dispenser, just that time.
 10 MR. UTLEY: So you don't really have an idea where
 11 this 2300 gallons went?
 12 THE WITNESS: I don't think it was anywhere near
 13 that.
 14 MR. UTLEY: Okay. Thank you. Do you have further
 15 questions, Dianne?
 16 MS. NIELSON: No.
 17 MR. FAUCETT: I have exactly the same issue, it
 18 seems like we have just -- it can't be created nor
 19 destroyed, it's still in the system, so it should be
 20 accountable someplace.
 21 MR. UTLEY: Okay.
 22 MR. FAUCETT: But at the same time we've set a
 23 range. There's between 300 and 2300 gallons that was
 24 lost out of the system between this period of time, is
 25 that a fair statement?

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1 THE WITNESS: Fair statement.
 2 MR. UTLEY: Okay.
 3 MS. FARREL-POE: Well, I'm actually having some
 4 troubles reconciling the TriTechnics's report and I'm
 5 referring to Exhibit J, page 6. There's also a
 6 reference to it in State's Exhibit 6, and it looks like
 7 it's a document that we didn't get that was submitted by
 8 TriTechnics which might have been the 23rd, the January
 9 23rd report in which your consultants indicated that you
 10 lost 1100 gallons in November, and nearly 1200 gallons
 11 in December, which is a far cry from the 25 gallons in
 12 November and the 327 gallons as listed in these sheets,
 13 and I'm having a hard time with your own consultants
 14 saying you lost that much.
 15 THE WITNESS: I don't know what documents you are
 16 looking at. I don't know what she is referring to, I
 17 don't have those documents.
 18 MS. HUTTON: I think the inventory that you are
 19 referring to is inventory that was maintained in Idaho
 20 Falls, and that is a conversion of records that were
 21 taken from the station. They're not the records that
 22 were maintained --
 23 MS. HUBBELL: This is the TriTechnics report she is
 24 referring to.
 25 MS. HUTTON: Right.

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1 MR. UTLEY: Be specific, Kitt, so we all
 2 understand.
 3 MS. FARRELL-POE: If you would refer to Exhibit J of
 4 V1.
 5 MS. NIELSON: The abatement.
 6 MS. FARREL-POE: Page 6.
 7 MS. LUNDGREN: We labeled something J.
 8 MS. FARREL-POE: Can someone share this with our
 9 witness?
 10 MR. UTLEY: Which Exhibit J where? Which page?
 11 MS. FARREL-POE: Page 6.
 12 MR. UTLEY: Page 6.
 13 MS. HUBBELL: I think I've got a copy here.
 14 MS. FARREL-POE: There's also a similar reference,
 15 if we go to State's Exhibit Number 6, there's two
 16 references to these numbers. The State Exhibit Number
 17 6, if you look at the very bottom of the page it has V1
 18 propane/abatement dot dot. And it almost appears, and
 19 it has the very same layout as the V1 Exhibit J, so it
 20 seems to me that maybe this is actually a V1 document of
 21 an earlier era, one of the ones we didn't get because I
 22 did check K, and they're saying that there are tank
 23 inventories and they are referring to the 10,000 gallon
 24 unleaded, and the 6,000 gallon premium. And they said
 25 that the unleaded gasoline dispensing system is unknown,

1 but the tank inventory records for November and December
 2 indicate 1,101, and 1,197 gallons short respectively.
 3 And I'm having a difficult time understanding.
 4 THE WITNESS: I think I can explain that one, okay?
 5 On the monthly records we maintain at the station for
 6 the EPA, they are done on a monthly basis. The records
 7 that the company maintains, they run their month from
 8 the 25th of the month through the 26th of the month --
 9 through the 24th of the next month. So when someone
 10 sends the report down, their records are on their
 11 monthly closing which is the 25th through the 24th of
 12 the next month, so they would be using, you know, a
 13 different calendar of events. They would be including
 14 -- like their November would be part of October and
 15 November, and their December would be part of November
 16 and December. I don't know, are those records -- does
 17 that help you out?
 18 MS. FARRELL-POE: To a degree. So, let's see.
 19 THE WITNESS: Also, there was, and I don't have that
 20 and I -- during the month of November, in our deliveries
 21 we stick the tanks prior to delivery and just after
 22 delivery. I had noted in one of those deliveries that
 23 the gallons, the inches shown converted back to the
 24 chart, that we were shorted about 500 gallons on one of
 25 our deliveries, which would account for a lot of the

1 loss of the inventory that we should have had.
 2 MS. FARREL-POE: Do you --
 3 THE WITNESS: I don't have that one specific, I
 4 would have to go back and --
 5 MS. FARREL-POE: Okay.
 6 MR. UTLEY: So is that noted on your chart here, did
 7 you say?
 8 THE WITNESS: No, it's not.
 9 MR. UTLEY: But it did happen?
 10 THE WITNESS: It happened. The one tanker and the
 11 load it came in with, taking the inches that were at the
 12 beginning of the -- beginning of delivery and the inches
 13 after delivery, we were shorted 500 gallons in the no
 14 led on one of the deliveries, and I noted that and sent
 15 it into the region.
 16 MR. MINER: Mr. Chairman, that wouldn't create a
 17 shortage in your records here, you just note that you
 18 got 500 gallons less, it doesn't show a loss.
 19 THE WITNESS: It would show up immediately in here
 20 as a shortage because --
 21 MR. MINER: Of delivery, but not a shortage of loss.
 22 THE WITNESS: It would show a shortage of inventory.
 23 MR. MINER: A shortage of what? It went in, but not
 24 a shortage of loss because you would show immediately
 25 that you got 500 gallons short, so that wouldn't show

1 any loss.
 2 THE WITNESS: Well, if your delivery shows you got
 3 so many gallons and you've added it in here, the ticket
 4 says so much and you've added it in when you stick the
 5 tank.
 6 MR. MINER: Your sticking would show you didn't get
 7 it.
 8 THE WITNESS: And that would show a major loss
 9 shortage.
 10 MR. MINER: So you would know it wasn't a loss
 11 through a leak, it was a shortage in delivery so it
 12 wouldn't be totaled in your losses.
 13 MR. FAUCETT: Wouldn't it show up in one of these
 14 columns here? Would it be 500 minus?
 15 THE WITNESS: It wouldn't show up 500, you could be
 16 over so it could be 390 or one of those.
 17 MR. UTLEY: Any other questions down there, Joe?
 18 MR. MINER: That's all.
 19 MR. UTLEY: Rich?
 20 MR. WHITE: This may be purely coincidental, though
 21 I doubt it. But the numbers that Kitt was referring to,
 22 November and December numbers in the TriTechnics report,
 23 total up to 2298 gallons. The shortages in the
 24 inventory records for October, November, and December
 25 total up to 2298 gallons. So, there must have just been

1 some -- I don't know if there was problems in how they
 2 were reporting start and cut-off dates, as Mr. Wasden
 3 indicated, but basically both records indicate a
 4 shortage the latter part of the year of 2300, of
 5 approximately 2300 gallons.
 6 MR. UTLEY: Okay.
 7 MR. WHITE: I had a couple of questions. One, you
 8 noted prior to the break for lunch that one of the state
 9 employees had indicated that there was a -- when the old
 10 tanks were removed from the site back in the early part
 11 of December of '95, that there was an odor of what they
 12 described as a heavy hydrocarbon. Did you notice any
 13 odors?
 14 THE WITNESS: Yes, it smelled like hydraulic fluids.
 15 MR. WHITE: And have you, in your experience in
 16 dealing with petroleum hydrocarbons, have you ever been
 17 around a weathered gasoline or weathered diesel,
 18 something that's been in the ground a number of years to
 19 know what that odor smells like?
 20 THE WITNESS: An old tank?
 21 MR. WHITE: Well, just any kind of a problem that's
 22 in the soil, whether it leaked from a tank or someplace
 23 else, but that may have been in the soil for a number of
 24 years.
 25 THE WITNESS: No.

<p style="text-align: right;">Page 229</p> <p>1 MR. WHITE: So you're not acquainted with what that</p> <p>2 odor smells like?</p> <p>3 THE WITNESS: No.</p> <p>4 MR. WHITE: So you can compare that with that to</p> <p>5 know if it was the same type of an odor?</p> <p>6 THE WITNESS: All I know is it was based on -- was</p> <p>7 the smell of what it reminded us of at the time.</p> <p>8 MR. WHITE: You mentioned the Ultratech Engineering</p> <p>9 building that's just to the south of you. That was the</p> <p>10 location of where the hydraulic lift was, and that they</p> <p>11 had indicated that they had a leak out of their tank,</p> <p>12 their hydraulic fluid tank.</p> <p>13 Was there any indication that they had any gasoline</p> <p>14 storage tanks or diesel storage tanks on their</p> <p>15 property?</p> <p>16 THE WITNESS: None that I know of.</p> <p>17 MS. NIELSON: Could I ask for clarification? Did</p> <p>18 you indicate they had a leak of the tank or a leak in</p> <p>19 the system? I guess I thought I understood it was a</p> <p>20 leak in the system that meant that the hydraulic lift</p> <p>21 did not work, and that they couldn't raise your car up?</p> <p>22 THE WITNESS: It was only good up to three feet, but</p> <p>23 there's a holding tank for the fluid, from what I</p> <p>24 understand, that when the lift goes down the oil goes</p> <p>25 back in.</p>	<p style="text-align: right;">Page 231</p> <p>1 MR. WHITE: Ever smell any odors around A & A?</p> <p>2 THE WITNESS: No. Every time we went over to the</p> <p>3 sewer I couldn't smell any odors at all from the sewer.</p> <p>4 MR. WHITE: And you couldn't smell anything when you</p> <p>5 went back where they said this is where we could really</p> <p>6 smell things?</p> <p>7 THE WITNESS: I never went into the building.</p> <p>8 MR. WHITE: You didn't go into their building.</p> <p>9 Okay.</p> <p>10 MR. UTLEY: Any other questions for the Board?</p> <p>11 MS. NIELSON: One more question. The two tanks that</p> <p>12 I'm understanding are between your two current tanks and</p> <p>13 between that building to the south, there were two</p> <p>14 tanks, am I correct, that those were being excavated,</p> <p>15 removed about the same time that you say you were</p> <p>16 working on these lines?</p> <p>17 THE WITNESS: At the same time.</p> <p>18 MS. NIELSON: Okay. Were those tanks -- I think I</p> <p>19 read in here and I guess I'm having a hard time finding</p> <p>20 the document, but I think I understood that at least one</p> <p>21 of those tanks had product pumped out of it, and I don't</p> <p>22 remember about the other. Can you tell me, was that</p> <p>23 work that was being done by someone that was working for</p> <p>24 V1?</p> <p>25 THE WITNESS: Harper Construction was the general</p>
<p style="text-align: right;">Page 230</p> <p>1 MS. NIELSON: But did he say there was a leak in the</p> <p>2 tank or in the system?</p> <p>3 THE WITNESS: In the system.</p> <p>4 MS. NIELSON: Because there could be leaks in piping</p> <p>5 above the tank that would cause the hydraulic system not</p> <p>6 to work.</p> <p>7 THE WITNESS: He just said there was a leak in the</p> <p>8 system.</p> <p>9 MS. NIELSON: So you're not meaning for us to imply</p> <p>10 that there was a leak in the container that held the</p> <p>11 oil?</p> <p>12 THE WITNESS: No.</p> <p>13 MS. NIELSON: Okay, thank you.</p> <p>14 MR. WHITE: But you're not aware of any gasoline</p> <p>15 that's stored on the Ultratech --</p> <p>16 THE WITNESS: No.</p> <p>17 MR. WHITE: -- property?</p> <p>18 THE WITNESS: No.</p> <p>19 MR. WHITE: And did you ever smell the odors that</p> <p>20 were in the vicinity of the sewer line that's out in</p> <p>21 Whitney Avenue?</p> <p>22 THE WITNESS: No.</p> <p>23 MR. WHITE: Did you ever go over to A & A and smell</p> <p>24 the odors that were there?</p> <p>25 THE WITNESS: Not in their building, no.</p>	<p style="text-align: right;">Page 232</p> <p>1 contractor who contracted that out.</p> <p>2 MS. NIELSON: Can you tell me what they found in</p> <p>3 those tanks as they pulled them out or what they found</p> <p>4 around the tanks?</p> <p>5 THE WITNESS: What they pumped out of the tank was</p> <p>6 mostly water. That that was, you know, the one had</p> <p>7 about 500 gallons of water, the other one was about 50</p> <p>8 gallons that they pumped.</p> <p>9 MS. NIELSON: And mostly water. Did they do</p> <p>10 analysis of it?</p> <p>11 THE WITNESS: Yes, they took analysis there. It's</p> <p>12 been discussed, I know I've heard that.</p> <p>13 MS. HUBBELL: Exhibit 5 of the State's exhibits.</p> <p>14 MS. NIELSON: Thank you very much. I appreciate</p> <p>15 that.</p> <p>16 MS. HUTTON: And excuse me, Mr. Condrat will explain</p> <p>17 to you about the results of those tests.</p> <p>18 MS. NIELSON: Okay.</p> <p>19 MR. UTLEY: Anything else Melissa? Do you want to</p> <p>20 cross?</p> <p>21 MS. HUBBELL: No.</p> <p>22 MR. UTLEY: No other questions? Mr. Wasden can</p> <p>23 stand down. Thank you.</p> <p>24 MS. HUTTON: Okay. I'll call George Condrat.</p> <p>25 MR. UTLEY: I'll swear you in George.</p>

1 GEORGE CONDRAT
2 was duly sworn, was examined and
3 testified as follows:
4 THE WITNESS: I do.
5 MR. UTLEY: Have a seat. I do want to make the
6 Board aware that TriTechnics, we do do some work company
7 wide with TriTechnics, but I don't think it would
8 influence any decision or opinion we might have, but we
9 have a business relationship with their company.
10 BY MS. HUTTON:
11 Q. Mr. Condrat, would you please state your name
12 for the record and then explain what your position is
13 here?
14 A. George Condrat, C-o-n-d-r-a-t. I'm the office
15 manager of TriTechnics, Salt Lake City office.
16 Q. What is your educational background and
17 position with TriTechnics?
18 A. I have a professional degree, geological
19 engineer from the Colorado School of Mines and a BS
20 degree from the University of Utah. I'm a registered
21 professional geological engineer in the State of Utah.
22 Q. And were you hired by V1 Oil Company to do an
23 investigation on your property?
24 A. Yes.
25 Q. Back in 1996. And could you tell the Board

1 what exactly you were supposed to do for V1?
2 A. We were to prepare site abatement and site
3 check report and do a site investigation.
4 Q. And was that in response to an emergency order?
5 A. Yes.
6 Q. Okay. And what were you assigned to establish?
7 A. Well, the site conditions at the site.
8 Q. Well, were you also asked to determine whether
9 they were responsible for free product?
10 A. Yes, we were asked by V1's attorneys whether
11 the -- whether we could say whether or not the material
12 found along the sewer was V1's or not.
13 Q. Okay. And when were you hired by V1?
14 A. I believe we were first contacted on January
15 19th of 1996.
16 Q. And what did your investigation consist of?
17 A. Well, initially we went to the site and
18 interviewed Hal Wasden and looked the site over. We
19 went over and visually inspected the sewer site. We
20 installed groundwater monitoring wells. We worked with
21 the attorneys on preparing a plan for installing
22 monitoring wells, both on V1 and on adjacent land
23 including the Southern Pacific property. We contracted
24 the surveying of the elevation of the monitoring wells,
25 we sampled the monitoring wells, we tested them for

1 permeability, and we prepared three reports.
2 Q. And what were you able to determine in your
3 investigations as to the free product on Whitney Avenue?
4 A. Well, we actually never found any free
5 product. We viewed the videotape in which we see a
6 black material floating on it, but we in fact have never
7 found any free product there.
8 Q. And were you able to tell what the black
9 material in the video was?
10 A. When we came to the site it was already being
11 abated by flushing out the sewer and we never really
12 observed the free product itself.
13 Q. Okay. And in your investigations, can you tell
14 us what you looked at as far as determining this free
15 product?
16 A. Well, we, as a result of not getting on the
17 Southern Pacific property, we focused our investigation
18 starting on the V1 property and moving out away from the
19 V1 property to see if we could trace the extent of
20 contamination and free product.
21 So, we initially started by installing a series of
22 monitor wells on their property. We did it in two
23 phases. The first phase being mostly on the property,
24 and then the second phase being along Third West
25 street. During the course of that we actually never

1 found any free product in any of the wells that we
2 installed other than 1/100ths of a foot in monitor well
3 6 which is located northeast of V1's property along and
4 within the street right-of-way.
5 Q. Do you have a diagram that you wanted to use or
6 can you use this one, if that would help?
7 A. Here's V1's property, and we installed several
8 monitor wells. I don't know if this is exactly to
9 scale, but we put monitor wells 1, 2, and 3 along the
10 northwest property line of V1. We installed monitor
11 well 4, which was along a water line which left the
12 property. We were focusing on that to determine whether
13 there was a conduit along a buried pipeline that would
14 carry free product or contamination off of V1's
15 property.
16 We put in monitor well 8 here, which is along a
17 sewer line that extends from the store to the sewer line
18 that's in the street. That sewer line then goes to the
19 north. And then we put in a monitor well 6 which is
20 located not on V1's property, but in a northeast --
21 northeast of it near the intersection with Whitney and
22 Third West Street. Monitor well 5 was installed right
23 at the location of the dispenser number 4 which had the
24 pinhole leak in the line that went to it.
25 Q. Did you also look at the records from the

1 excavation of the two tanks that we've referred to as
 2 the two abandoned tanks?
 3 A. Yes, I have. Of course, that is -- this is
 4 where the active tanks are, the ones that were being
 5 used to fuel the islands, and then to the south of that
 6 is where the excavation was made in December, 1995, for
 7 the older tanks.
 8 Q. Now, can you tell us what you found with regard
 9 to that? There was some testimony earlier that said
 10 that some documents submitted by the state indicated
 11 that there was contamination. It's Exhibit number one.
 12 No, wrong. It's Exhibit number 3. And there's several
 13 pages of it 2, 3, 4, 5, 6 and 7. For the sake of
 14 clarification, if you look at the first one dated '92,
 15 that was taken from a groundwater monitoring well. It's
 16 all the following documents that were taken from tank
 17 number 4.
 18 I'll hand those to you. Was this -- were these
 19 samples that are showing contamination, were they taken
 20 from the environment?
 21 A. Well, from looking at the reports themselves,
 22 it's difficult to say where they're coming from, but I
 23 looked at these and also at what I believe is Exhibit 1
 24 which is a narrative discussion. And based on that, I
 25 would surmise that these were samples taken from a

1 tank. It says V1-5 and V1-6 tanks, so I would presume
 2 this was one or both of the tanks that were located
 3 south of the active tanks. This is January '95.
 4 Q. And what conclusions did you reach after
 5 looking at this and the documentation about the
 6 inventory loss in November? Can you tell us what your
 7 opinion is about your ultimate findings?
 8 A. Well, it's my opinion that there is some BTX in
 9 the -- dissolved in the water, but these levels are low
 10 enough that I would not say that this indicates product,
 11 it's just some dissolved levels of BTX and is not
 12 product here.
 13 Q. And how does that relate to your investigation
 14 generally of this area and the free product on Whitney
 15 Avenue?
 16 A. Well, I believe the state's alleged that the
 17 contamination on Whitney Avenue could have come from
 18 these tanks, but all the information that I've seen
 19 indicates that they weren't used, at least that's what
 20 the testimony has been. One tank contained water when
 21 it was excavated in December. That would indicate to me
 22 at 500 gallons of water that it was tight. There were
 23 samples taken, these are the samples that were taken
 24 from one or both of those tanks, which indicates that
 25 there might have been some dissolved BTX but no product

1 in that tank. That tank we'd presume was tight because
 2 it contained water. There were no observed holes in the
 3 tank.
 4 The other tank, when it was pulled, the records say
 5 that there were three dime sized holes in the bottom of
 6 the tank. There were a few inches of water in that
 7 tank, but there was sampling done of the water that was
 8 in the excavation. That's not these samples here. But
 9 it had relatively low levels of BTX also, and no
 10 indication of free product.
 11 Q. Okay. Now, you also said that you put
 12 monitoring wells in. What was the purpose of the
 13 monitoring wells, and what did they show you?
 14 A. Well, we put in the monitor wells to determine
 15 what the subsurface conditions were. We also put them
 16 in with the idea that if free product or free product
 17 abatement was necessary, we could use these wells to
 18 recover free product when we first came in. We were
 19 expecting to find free product, given some of the
 20 reported possible losses from the active tanks. But in
 21 fact, we installed the wells and we found no free
 22 product other than the one well, monitor well 6 which
 23 had 100th of a foot.
 24 Q. What did you find with regard to groundwater
 25 gradient and estimated velocity of groundwater flow?

1 A. Well, we did sludge tests to measure the
 2 permeability of the aquifer. So if you have the highly
 3 permeable aquifer, water will flow through it much more
 4 rapidly. So we made that measurement. We made
 5 measurements of what the elevation of the water table
 6 is, and with this information we can estimate what the
 7 velocity of groundwater flow was. I believe it's in one
 8 of the exhibits, but I calculated .4 feet per day
 9 velocity.
 10 Groundwater gradient, as has been stated before, is
 11 clearly to the northwest based on the data we
 12 collected. It's one of the exhibits there. I guess
 13 I've got a blow up of one of the --
 14 Q. Let me get this for you.
 15 MR. WHITE: Just for clarification, I think you said
 16 that the groundwater was clearly flowing on the
 17 northwest. I think you meant northeast?
 18 THE WITNESS: That's correct.
 19 MS. HUTTON: I'm going to get that and show you
 20 that.
 21 A. These three drawings are just blow-ups of the
 22 drawings that are in the previous TriTechnics' reports.
 23 This shows a map of the groundwater levels, so each one
 24 of these lines is a line of equal elevation. And what
 25 they show is the water table sloping to the northeast.

1 And this large arrow shows that direction. It shows
 2 there's about an elevation difference of about a foot
 3 between our southern most well here, and the well here.
 4 It's quite uniform gradient, and I would not
 5 characterize that as a flat gradient one foot in a
 6 hundred.
 7 MS. HUTTON: The third page down. All right.
 8 Okay.
 9 Q. Now, we earlier heard some testimony that
 10 potentially the groundwater could be flowing in more
 11 than one direction. Can you tell us what your opinion
 12 is about that?
 13 A. Well, based on the information we have here, it
 14 does not show that. For that to occur, I would expect
 15 that there would have to be some localized sync or some
 16 localized condition which would cause such a strong
 17 change in groundwater flow over the distance of what we
 18 have here.
 19 Q. And how long would it take if something did
 20 migrate, how long would it take for it to get over to
 21 Whitney Avenue?
 22 A. Well, I would say that for it to move from
 23 where dispenser number 4 was to Whitney Avenue, if we
 24 assume the gradient -- this same gradient was the same,
 25 but it was rotated and pointing in that direction, it

1 would take about two years.
 2 Q. Okay. Did you investigate other possible
 3 pathways since you ruled out migration since groundwater
 4 was going to the northeast? Did you investigate any
 5 other possible pathway?
 6 A. Well, we were, of course, looking at shortcuts,
 7 conduits that might potentially take product off of the
 8 V1 site such as fill, backfill around utility lines.
 9 And that's why we put in these two monitor wells here
 10 and they were -- I know I'm repeating myself.
 11 One was a water line and one was a sewer line that
 12 went off site.
 13 Q. And what did you find?
 14 A. We found no free product there.
 15 Q. Okay. So did you determine that those were
 16 conduits of any sort for this product?
 17 A. No, we don't believe those were conduits.
 18 Q. Okay. Did you find -- which direction does the
 19 sewer line run from V1?
 20 A. Sewer line comes out of the store and jogs a
 21 little bit to the south and comes out to the middle of
 22 the street, and then it joins the main sewer line which
 23 goes to the north here. This circle here is the
 24 starting point of the manhole on Whitney Avenue, so
 25 there is no connection of the sewer line on Third West

1 with Whitney Avenue.
 2 Q. Did you have an opportunity to look at Delta's
 3 environmental report?
 4 A. Yes, I looked at two.
 5 Q. And did Delta's environmental report, did it
 6 confirm a finding of any free product?
 7 A. I don't recall any free product noted in their
 8 report.
 9 Q. Okay. You also noted some correlations between
 10 the findings of Delta and your findings with regard to
 11 the data reported by the state in their concentrations
 12 between what you found on V1, and what was found in the
 13 Southern Pacific area and Whitney Avenue.
 14 Could you go through that with us?
 15 A. Okay. Well --
 16 Q. The measured concentrations?
 17 A. We measured soil concentrations and samples
 18 that were removed when we drilled the monitor wells, and
 19 we also sampled the completed monitor wells and took
 20 analyses of the water. I don't find any major
 21 discrepancy between what Delta found and what we found.
 22 Our data, to me, is compatible.
 23 Q. Okay. What about -- tell us about what you
 24 determined from the concentrations that were found along
 25 Whitney Avenue as compared to the concentrations at the

1 dispenser, would they lead you to believe that one
 2 should be higher than the other, or --
 3 A. Well, generally -- well, what happens when you
 4 have a petroleum release is that the petroleum will get
 5 bound up in the soil above the water table, or even
 6 below the water table. It does not mix well with the
 7 water. A small portion of it will dissolve in the
 8 water, but by and large, the gasoline or petroleum
 9 product will remain as a separate phase. Usually what
 10 you find is that the contamination levels are highest
 11 near the point of release, and they hang around for a
 12 long time. And as you move away from the point of
 13 release, the concentrations diminish. What we have
 14 observed at this site is that the concentrations on the
 15 V1 property are lower in many respects than the
 16 concentrations that are found along the sewer line here
 17 and then on some of the points on Whitney Avenue. I
 18 believe that Benzene in the soil samples, the highest
 19 concentrations anywhere found in either the -- all the
 20 investigations were in this vicinity here, along Whitney
 21 Avenue. They were higher than what we've seen on the V1
 22 property, the same with the groundwater. There were a
 23 few exceptions on Xylene and Ethylbenzene, but by and
 24 large the highest concentrations are in this area here,
 25 not on V1's property.

1 Q. Okay. What about other possible sources? You
2 indicated in your report that you thought that they were
3 somewhat limited, why is that?

4 A. Well, the original Delta report commissioned
5 the study of nearby potential sources. They confined
6 their study to a one block area. Since then we have
7 heard that the state's gone back and looked at other
8 LUST sites that are in their records, but there are
9 other potential sources out here, and I don't think that
10 they have been fully looked into.

11 Q. Can you tell us, for example, what they are?
12 You looked at the video. Did you -- was there anything
13 in the video that led you to believe that there might be
14 another conduit to this area?

15 A. Well, before, you know, I talked about it, and
16 what I saw in the video. I did note that in our
17 records, and also in one of the appendices of the Delta
18 report, that there are some drawings of the sewer line.
19 Those drawings show the laterals. Those drawings show
20 laterals coming off. They don't show where they go
21 particularly, but they do show where there are
22 laterals. There's a lateral that would be going to this
23 building. There would be a lateral that would
24 correspond to the sewer line that would go to this
25 building. There would be a lateral on that drawing that

1 would correspond to A & A, and there's a lateral that's
2 shown going off in this direction here. I don't know
3 where that lateral goes, but I would expect there was at
4 one time some sort of building or facility off this way
5 that that lateral went to.

6 In looking at the video there is a location on the
7 video where, as you start to approach the end of the
8 line here at about the right distance corresponding to
9 that drawing, there is a lateral that looked to me like
10 it was open and going in this direction to the north.

11 Q. Would that take it right past that Zions area?

12 A. Well, it was to the left as you're moving
13 here. So to the north, and it was in that -- going in
14 that direction.

15 MR. UTLEY: Think about wrapping up your questions.
16 BY MS. HUTTON:

17 Q. Okay.

18 After you finished your investigation, were you able
19 to conclude a response, whether V1 was responsible for
20 free product in the sewer or who was responsible for
21 free product in the sewer based on your investigation
22 and reviewing Delta's?

23 A. Well, I guess I can't say who is responsible
24 for that free product. I do not know that. Based on
25 the information that I have, I don't see the connection

1 between V1 and the contamination on Whitney Avenue.

2 MS. HUTTON: That's all I have.

3 MR. UTLEY: I have a couple questions, Mr. Condrat.
4 The two tanks that were removed, how do you suppose, or
5 do you have a best guess how the water got in those
6 tanks?

7 THE WITNESS: I don't know.

8 MR. UTLEY: Okay. How do you think BTX would get in
9 the water in those tanks if there was no product in
10 those tanks?

11 THE WITNESS: I don't know where those tanks came
12 from or whether they were used tanks. If they were used
13 tanks they might have had some residual hydrocarbons in
14 them. There is BTX in the ground in the V1 site, that's
15 clear, and what we could be seeing is that BTX.

16 MR. UTLEY: If the one tank supposedly did have
17 holes in it, by that answer you would suggest that some
18 water infiltrated, came from the groundwater to the
19 tank. I understand one tank did have holes and that
20 might happen, but the other tank supposedly didn't have
21 any holes?

22 THE WITNESS: According to the records one contained
23 500 gallons of water. The water level in that
24 excavation was quite low, so I would -- since that tank
25 is holding water, I would presume it was tight.

1 MR. UTLEY: Okay.

2 THE WITNESS: The other one clearly had holes in it
3 and only had a few inches of water in it.

4 MR. UTLEY: Okay. Without access to Southern
5 Pacific land, how can you say with confidence that the
6 groundwater flow was not in that direction?

7 THE WITNESS: Well, I can only base my opinion based
8 on the information we have. I believe it's clear on the
9 V1 property the direction of groundwater flow is to the
10 northeast, as I've shown it. I don't have direction
11 information on what is to the northwest.

12 MR. UTLEY: But you don't know what the elevation,
13 groundwater elevation is to the northwest?

14 THE WITNESS: Nobody's measured that to my
15 knowledge.

16 MR. UTLEY: Okay. Do you have an opinion what
17 caused the fumes in A&A's building?

18 THE WITNESS: I can only guess.

19 MR. UTLEY: Take a guess.

20 THE WITNESS: I would guess there were fumes coming
21 through the sewer from product in the -- in that sewer
22 line.

23 MR. UTLEY: From the work that you've done and
24 reviewed, do you agree the contamination cut off at the
25 sewer line there, like it's a pretty dramatic, you know,

1 drop off?

2 THE WITNESS: Based on Delta's report and based on
3 my experience, the sewer line there is probably leaking,
4 and so it forms a location where the groundwater isn't
5 going past it. And so, based on the Delta information,
6 it doesn't look like it goes past the sewer line in this
7 area here. However, they haven't looked very carefully
8 at the area to the east of there. There's really a lack
9 of information, and one possibility is, is that if there
10 is a lateral extending off to the north, that it's
11 another conduit. And even though there may not be
12 product going into the sewer through the sewer line, it
13 could be moving along the outside of the sewer line and
14 moving down into this area.

15 MR. UTLEY: Let me ask you: If in fact the sewer
16 line was leaking, in your opinion would it cause an
17 artificial depression in the groundwater level and may
18 cause an artificial flow in that direction?

19 THE WITNESS: Yes. It acts as a drain.

20 MR. UTLEY: Right.

21 THE WITNESS: So I'm sure that locally there's a low
22 spot.

23 MR. UTLEY: And so?

24 THE WITNESS: How low that is compared to, you know,
25 adjacent to it, I don't know. There at least would be

1 some small area there.

2 MR. UTLEY: So even though your data shows the
3 groundwater flow to be going northeast, that there was a
4 drain there, then in your opinion could some of the
5 groundwater flow go that way?

6 THE WITNESS: Locally, I would guess that
7 groundwater would be moving from a couple of different
8 directions towards that. How far that extends in this
9 direction, I don't know.

10 MR. UTLEY: Can you offer an opinion?

11 THE WITNESS: I would guess, based on the strong
12 gradient we have here, there isn't two directions of
13 flow that I would -- it would be my opinion that the
14 groundwater in this area is going this way, and the
15 groundwater direction out here would be something --
16 could be something different based on what that's doing.

17 MR. UTLEY: So in your opinion it's more localized
18 than it would necessarily reach that far away?

19 THE WITNESS: I don't think so, based on our monitor
20 wells.

21 MR. UTLEY: Okay. Thank you.

22 MS. NIELSON: when you examined the Delta
23 environmental reports, did you take a look at the soil
24 boring logs that they had provided as part of that
25 report?

1 THE WITNESS: Yes.

2 MS. NIELSON: There are groundwater levels noted in
3 those reports. Are those consistent, if you were to
4 look onto the Southern Pacific and beyond where those
5 wells are located, are those consistent with the data
6 that you collected for V1?

7 THE WITNESS: Yeah, I think generally. The depths
8 are similar.

9 MS. NIELSON: Did you plot those out to determine if
10 there was a change in gradient, or as you moved over to
11 the north and to the west from there? Where did your
12 study --

13 THE WITNESS: I did not try to do that.

14 MS. NIELSON: Do you have any opinion about whether
15 that --

16 THE WITNESS: The ground is pretty flat off in that
17 direction, a little bit of difference in the ground
18 elevation or the --

19 MS. NIELSON: Let me clarify.

20 THE WITNESS: Measuring it would not be reliable.

21 MS. NIELSON: Okay. So your concern was the
22 subsurface and with the surface elevation?

23 THE WITNESS: Right.

24 MS. NIELSON: Okay.

25 THE WITNESS: We would maybe have a depth

1 measurement, but that doesn't tell me what the elevation
2 of the water is.

3 MS. NIELSON: Okay. When you prepared your January
4 30th report, '96 report for V1, on page 12 of that
5 report you included conclusions and recommendations
6 regarding additional site characterization and abatement
7 activities, as well as abatement measures. To the best
8 of your knowledge, was any or all of that work
9 conducted?

10 THE WITNESS: We were prepared to go into the street
11 on Whitney Avenue, but we did not because we weren't
12 given any authorization to do that.

13 MS. NIELSON: Okay. This was the recommendation
14 about collecting the sewer water sample?

15 THE WITNESS: Okay. We had contemplated taking a
16 sewer water sample and we did not do that. We actually,
17 through counsel, asked if the water would be turned off
18 in the sewer for a while to let the natural groundwater
19 and end product come in there so we could sample it, but
20 with the flushing going on we didn't feel we could get a
21 sample of the free product or whatever it was coming in
22 to the sewer.

23 MS. NIELSON: Okay. So even though you thought that
24 was a good recommendation, the conditions just were
25 never right to do that?

1 THE WITNESS: That's correct.
 2 MS. NIELSON: Okay. And what about the monitoring
 3 points?
 4 THE WITNESS: We put in the monitoring points that
 5 we had planned to do.
 6 MS. NIELSON: And those are the wells that you
 7 indicated to us earlier?
 8 THE WITNESS: Right. Although prior to January
 9 30th, we were still working under the impression we
 10 would put in additional wells on the Southern Pacific
 11 property.
 12 MS. NIELSON: Is there any reason there weren't
 13 wells constructed to the west or south or directly east
 14 of the UST locations?
 15 THE WITNESS: We were focusing our investigation
 16 actually on the known pin hole leak at dispenser number
 17 4, so basically we were starting with that being the
 18 source, and then moving out from there to determine if
 19 there was going to be free product.
 20 MS. NIELSON: Okay. Are those monitoring wells
 21 still being sampled to the best of your knowledge?
 22 THE WITNESS: I'm not aware of any work that's gone
 23 on subsequent to the work that we did the first of --
 24 MS. NIELSON: So you haven't closed out the wells or
 25 conducted any additional sampling?

1 THE WITNESS: I would suspect there are. I don't
 2 know. I don't know of any subsequent sampling?
 3 MS. NIELSON: Your recommendation is included.
 4 Removal of any encountered free product in excess of an
 5 eighth of an inch, and by pumping free product and
 6 groundwater into a holding tank, an additional soil and
 7 groundwater remediation as necessary. Did you conduct
 8 any of those.
 9 THE WITNESS: We had in mind that that would be a
 10 potential method of abating the contamination that's in
 11 the ground at Whitney Avenue, and we had contemplated
 12 there would be free product found on the V1 property.
 13 So that would be what we would have done if we had found
 14 free product.
 15 MS. NIELSON: Okay. Is there any abatement that's
 16 going on right now based on the testimony that was
 17 identified on the V1 property?
 18 THE WITNESS: I'm not aware of any.
 19 MS. NIELSON: You're not conducting any?
 20 THE WITNESS: No.
 21 MS. NIELSON: Okay. Thank you.
 22 MS. LUNDGREN: Is your company still serving V1? Is
 23 your contract over?
 24 THE WITNESS: We were contracted to do the work
 25 that's in the reports, and we wrapped up that work.

1 Then subsequent to that, I was asked to prepare for this
 2 hearing.
 3 MS. LUNDGREN: Okay. About how long was the period
 4 that you were serving?
 5 THE WITNESS: Our report was completed in March, I
 6 believe. We had a little bit of follow up.
 7 MS. LUNDGREN: Last year.
 8 THE WITNESS: That's correct.
 9 MS. LUNDGREN: Was it a team?
 10 THE WITNESS: We had follow-up to get rid of some of
 11 the other soil.
 12 MS. LUNDGREN: Was it a team effort or were you a
 13 one man task?
 14 THE WITNESS: well, I manage the work in the
 15 office. I had a fellow that works for me that directed
 16 much of the day-to-day activities, and there's at least
 17 four other people that worked on the job.
 18 MS. LUNDGREN: Okay.
 19 MR. UTLEY: Richard?
 20 EXAMINATION
 21 MR. WHITE: I have a few questions.
 22 Q. You mentioned that the -- going back to the 500
 23 gallons of water that was in one tank, now, you
 24 indicated that tank was tight. How do you suppose that
 25 water got into the tank?

1 A. I don't know. Often times when tanks are put
 2 in the ground they're partially filled with water to
 3 keep them from floating if the groundwater rises. So it
 4 might have been put in there originally, I don't know.
 5 Q. Isn't it equally possible that water got into
 6 the tank because the tank wasn't tight and it was
 7 floating -- flowing into the tank from outside?
 8 A. The groundwater would have had to have been
 9 quite a bit higher, since the other tank was empty or
 10 had another few inches. So, I would expect if there was
 11 a leak in the other tank, that would have been higher up
 12 on the tank where that water wouldn't have leaked out.
 13 Q. I'm talking about the 500 gallon tank now. Is
 14 there -- down at the bottom, what's the elevation of the
 15 bottom of that tank with respect to the water table?
 16 A. I don't have that exact information. I know
 17 that the state did inspect the tanks and did note full
 18 in the one tank and not in the other.
 19 Q. I think you indicated there were three dime
 20 size holes and you don't know what the bottom of that
 21 elevation was on that with respect to the groundwater?
 22 A. I was not onsite when these were excavated.
 23 I'm only telling you what I looked at in the exhibits.
 24 Q. You noted that --
 25 MS. HUTTON: Excuse me, Mr. White, Mr. Wasden knows

1 that information if you want to ask him.
 2 MR. WHITE: Yeah, do you know?
 3 MR. WASDEN: The bottom of the tank was 11 feet when
 4 we pulled them out, okay? The water table at the time
 5 we pulled it out was at about nine feet.
 6 MR. WHITE: So these tanks were below the water
 7 table?
 8 MR. WASDEN: Below the water table line. The
 9 individual -- one of the individuals from V1 noted when
 10 the tanks were put in the ground they put 500 gallons of
 11 water in them to level them, so when they settle them in
 12 and, you know, that keeps the tank balanced so it
 13 doesn't, you know, float or go --
 14 MR. WHITE: The tanks were installed in the earlier
 15 80's, as I recall.
 16 MR. WASDEN: I don't know when the tanks were put in
 17 the ground. But there was -- the tanks, the water level
 18 on the side of the tank was about two feet above the
 19 bottom of the tank when they pulled them out.
 20 MR. WHITE: Right.
 21 (Examination con't of Mr. Condradt).
 22 Q. Now, you also talked about, I believe, in
 23 looking at State's Exhibit number 3, which were the
 24 samples, that you assumed from the description the
 25 sample location came from the tanks, interior of the

1 tanks themselves. That this was the water that was in
 2 the tanks prior to 500 gallons being removed from one
 3 tank and 50 gallons being removed out of the other. You
 4 indicated that those showed relative -- I believe you
 5 said relatively low levels of BTX. You're aware, I'm
 6 assuming though, that those levels are significantly
 7 higher than drinking water concentrations which are
 8 often used as an indicator of whether or not there's
 9 contamination present?
 10 A. Those concentrations are in the solubility
 11 ranges of BTX, so to me they don't indicate there's free
 12 product in those.
 13 Q. I'm not asking that. Are those concentrations
 14 significantly in excess of typical standards that you
 15 would be comparing with to say if the groundwater is
 16 contaminated?
 17 A. They would be, as you say, in the range of
 18 being above the remediation levels generally accepted.
 19 Q. Okay. Now, we also -- you talked about, I
 20 believe it was, monitoring well 6 was the only
 21 monitoring well that was installed that contained free
 22 base hydrocarbons; is that correct?
 23 A. Correct.
 24 Q. Do you have any idea where those free base
 25 hydrocarbons came from?

1 A. I don't know. There's a disconnect between
 2 what we've seen on the V1 property and that 100th of a
 3 foot and monitoring well 6.
 4 Q. You mean a disconnect in the --
 5 A. That there's not a clear, continuous
 6 concentration gradient towards that. That's kind of out
 7 there by itself. It's near an old -- it's near an
 8 underground telephone line, and it's possible that they
 9 collected there because of backfill or difference in
 10 soil condition at the telephone line.
 11 Q. You're saying it may have come from an off site
 12 down -- up gradient source?
 13 A. I don't know.
 14 Q. If that was the case then you would expect to
 15 have seen, I assume, significantly higher concentrations
 16 at monitoring well 7 and monitoring well 8 that are
 17 south of there?
 18 A. If contamination came from the dispenser number
 19 4, or from the underground storage tanks, or the old
 20 underground storage tank area, I would expect that we
 21 would have some preferential movement along the utility
 22 lines, which we put these other monitor wells in to look
 23 for, and we did not see that, if it was free product in
 24 that.
 25 Q. Monitoring well six is directly down gradient

1 according to the water level, and directly down gradient
 2 from the site; isn't that true?
 3 A. Yes.
 4 Q. So, it is reasonable to expect that the
 5 contamination at monitoring well six originated from the
 6 site?
 7 A. I think that's possible.
 8 Q. And there was free base hydrocarbons in the
 9 monitoring well when you first sampled that, is that
 10 correct?
 11 A. Yes.
 12 Q. So it seems to indicate to me, free base
 13 hydrocarbons were discovered in the course of the
 14 investigation, and that there is a reasonable chance
 15 that those free base hydrocarbons originated on the
 16 site?
 17 A. At monitoring well six?
 18 Q. Yes.
 19 A. That's correct.
 20 Q. Why then was nothing done to try to better
 21 delineate if in fact -- you mentioned that there
 22 appeared to be a disconnect, lower concentrations up
 23 gradient from there. Why was nothing done to try to
 24 better define what that problem, what that disconnect
 25 was and whether or not that free product originated on

1 the site?

2 A. Well, we weren't commissioned to do that work.

3 Q. Did V1, or V1's counsel or anybody indicate to
4 you why there was no additional work that was going to
5 be done to pursue that?

6 A. I don't recall them saying why, other than they
7 wanted to get the current issues settled before they
8 moved into something else.

9 Q. Of course it would seem that if the current
10 issue was an emergency order dealing with free product,
11 that free product would be a current issue. But I
12 recognize as a consultant also, that you have certain
13 limitations that are placed on you, your work, but that
14 would seem that that was an issue that should have been
15 addressed.

16 You also talked about the potential for varying
17 directions in groundwater flow, and indicated that your
18 water level data indicated a flow to the northeast.
19 Delta's report had discussed an assumed flow direction.
20 They didn't have any water level data to, local water
21 level data to base their assumption on.

22 If there was no flow to the northwest, then what's
23 creating the plumb that we see in the Exhibit 15, which,
24 I think, is the blow up version that's hanging on the
25 wall there? How would you explain that? There are

1 portions of the plumb that's heading off to the
2 northwest, unless there was some component of flow
3 that's going towards the northwest?

4 A. I don't know where it came from.

5 Q. You'd indicated --

6 A. There's a possibility that there's been past
7 contamination of the Southern Pacific property; I don't
8 know that as a fact.

9 Q. Still though, even if the contamination
10 originated on Southern Pacific property, that plumb map
11 would indicate that there's a flow direction to the
12 northwest, wouldn't it?

13 A. It indicates that there's contamination that
14 extends in that direction. How it gets there isn't
15 necessarily by flow, it could have got there by
16 spillage.

17 Q. I guess --

18 A. It's also defined by just two points, really.

19 Q. No, there's actually, I believe, multiple
20 points in there.

21 A. Well, this oblong feature here shows two points
22 within it. The rest of them are right along the sewer.

23 Q. Yeah, well, I -- I mean I would beg to differ.
24 I think there's probably 12 or 15 points out there that
25 indicate that general direction off to the northwest.

1 And as you implied, there's probably -- it may be a moot
2 point whether or not groundwater is flowing to the
3 northwest from a potentiometric surface map. What
4 matters is whether or not contaminants are flowing, and
5 how they get there is not so important as the depth and
6 where they originate.

7 Do you have any evidence that would suggest that
8 groundwater contamination did not exist on the V1
9 property prior to your involvement, prior to the line
10 leak that was discovered at, I think it was dispenser
11 number 4? Do you have any evidence that there was no
12 groundwater contamination prior to that time?

13 A. I don't have such information.

14 Q. You indicated that it would take about two
15 years to migrate from the V1 property to Whitney Avenue,
16 to the sewer if contamination was flowing in that
17 northwestern direction. You don't have evidence then
18 that there was no contamination two years prior to, or
19 some longer period of time prior to your initial
20 involvement?

21 A. No.

22 Q. So it is possible that if there was groundwater
23 contamination on the site from some prior activity, that
24 that -- and there was a pathway to the northwest, it is
25 possible that the groundwater contamination from the

1 site could have migrated to the sewer?

2 A. Which sewer?

3 Q. To the sewer in Whitney Avenue, this
4 underground water contamination. I didn't understand my
5 question after I asked it so I don't expect you to
6 understand it.

7 If groundwater contamination existed on the V1
8 property for a period of two years, and if there was a
9 pathway to the northwest, it could travel from the V1
10 property to the sewer line on Whitney Avenue; is that
11 correct? That's the way I understood your testimony.

12 A. I don't think I testified as to what you said.

13 Q. You indicated that it would take about two
14 years for groundwater to flow that direction?

15 A. That's correct.

16 Q. Assuming that there is a -- that there was
17 prior contamination on the site prior to the leak at
18 dispenser number 4, that the leak at dispenser number 4
19 actually occurred sometime in the later part of 1995,
20 but that there was some prior groundwater contamination
21 at the site, it is possible that as long as it was there
22 for a period of at least two or three years that it
23 could have migrated toward it been encountered by the
24 sewer on Whitney Avenue?

25 A. For that to happen you would have to have a

1 gradient to move contamination, and we don't see -- the
2 other line of evidence that I've looked at here is the
3 concentrations are much higher, particularly as you get
4 closer to the sewer line there, than we see on the V1
5 property. And I would expect there to be some
6 significant residual contamination on V1 if in fact it
7 had moved from the V1 property to the sewer line on
8 Whitney Avenue.

9 Q. If I look at that Exhibit 15 that's hanging up
10 there -- there's probably some other exhibit that shows?

11 MR. UTLEY: I think that's 18 that's up there but
12 15 --

13 MR. WHITE: No, I think that's -- I think that's --

14 THE WITNESS: This says Benzene and groundwater.

15 MR. UTLEY: That's correct it, you're right.

16 MR. WHITE: I believe that Exhibit 16 is going to
17 give us the individual groundwater contamination data.
18 I will admit there's that circle of higher concentration
19 in between, out on the Southern Pacific property, but if
20 I look at Benzene concentrations in monitoring well one
21 at 4200 and 60 micrograms per liter, and Benzene out by
22 the sewer, 5900 micrograms per liter, GF 22 300, I see
23 concentrations that are similar, even though there are
24 higher concentrations.

25 Is it your -- have you ever -- I guess I should say,

1 is it your professional experience that you have ever
2 been involved in a site where you saw similar types of
3 concentrations where you had a disconnect, if you will,
4 or higher concentrations in down gradient areas or at
5 the source that were still -- that could still be
6 attributed to a leak or spill or something at a source,
7 at an individual source, and that those concentrations
8 often did not just decrease in the down gradient
9 direction, but that you had, in some cases, increases in
10 concentrations in the down gradient direction? I guess
11 I'm asking if that's really that unusual?

12 A. I'm going through my database here trying to
13 think of if I've seen that. I don't recall seeing
14 something that is this variable. We do have 4600 in
15 monitoring well 2 for Benzene, and we have 17,000 GP 9
16 -- 19,000 GP 12, that's --

17 Q. Recognizing the variations in the sampling
18 methods between the monitoring wells where the data
19 obtained from the monitoring wells are probably a bit
20 more rigorous from the data obtained from the geoprobe
21 holes, does that really -- does that surprise you? Does
22 that -- is that something that you would find totally
23 incomprehensible, or is that something that is
24 potentially still a source of contamination from V1?

25 A. We can rule it out, but it's not my

1 experience.

2 Q. Thank you. You also indicated that by and
3 large petroleum will remain as a separate phase. If you
4 get free phase hydrocarbons that hit groundwater, that
5 it will remain as a separate phase. I assume that's
6 only if the volume of the leakage is large enough or the
7 rate is fast enough that you can sustain a free phase
8 condition over some distance. That it is not unusual to
9 have leakage that where your entire plumb is dissolved
10 or a significant portion of your plumb is dissolved?

11 A. It would have to be a fairly small release for
12 it to dissolve and just move away. Almost inevitably
13 the free product will get bound up in the soil particles
14 or remain as little blobs and not move with the
15 groundwater. Only that portion of the gasoline or oil
16 that does dissolve will start to migrate. So, it's true
17 that the dissolved portion will migrate and sometimes
18 you'll get little blobs of -- particularly in higher
19 permeability settlements where there's fairly large
20 openings, we get little tiny particles of actually free
21 phase moving, but generally you'll get a significant
22 amount bound up in the soil, or floating on the water
23 table left behind. You just don't see it unless it's
24 very small quantities, just dissolve up in the
25 groundwater and then move away as kind of a plumb.

1 Q. And that material from the soil would continue
2 to act as a source; is that correct?

3 A. Yes.

4 Q. You indicated you talked about the sewer
5 laterals, particularly I believe you talked about a
6 sewer lateral heading to the north toward the Zions
7 property. Do you have any indication from any of the
8 data you've looked at, that the plumb that's depicted on
9 Exhibit 15 would have been contributed to by
10 contamination on the Zions property?

11 A. I would not expect this area down here to have
12 come from something like Zions, Zions Bank. If there's
13 something there, that would potentially have moved along
14 the sewer line backfill and have moved along this sewer
15 line here.

16 Q. There are sample points, I believe, along there
17 that indicate that there is no significant contamination
18 along that sample line, along that sewer line; is that
19 correct?

20 A. The sewer line runs pretty much along the
21 center of the street. There are sample points that are
22 along the side of the street in the grassway. They
23 don't show anything. But there's really not much in the
24 way of any sample point along the sewer line here
25 between the end of the sewer and where we start to pick

1 up the contamination here.

2 Q. You've got GP 17, GP 18?

3 A. Those are not in the backfill.

4 Q. They are immediately adjacent to it. As I
5 recall, one of the state's witnesses indicated they
6 couldn't drill through the backfill because of concerns
7 about poking through the line, but -- is it possible --
8 one last question, and I've heard attorneys say this for
9 decades, but one last question.

10 You indicated that the sewer line probably acts as a
11 drain. Groundwater is flowing in to the sewer line, and
12 so there are likely -- there's likely a depression in
13 the water table near the sewer line. You didn't venture
14 a guess as to how far back away from the sewer line that
15 would actually be if that groundwater would flow. But I
16 think, if I understood your testimony right, you did say
17 it would affect groundwater flow locally, at least
18 around the sewer line. That there is a likelihood that
19 groundwater is going to flow a direction other than to
20 the northeast when you get near that sewer line; is that
21 correct?

22 A. Correct.

23 Q. Okay.

24 MR. MELLING: On the groundwater, do you know why
25 that fluctuates in that area.

1 THE WITNESS: Well, the groundwater usually
2 fluctuates everywhere. It fluctuates in response to
3 changes in precipitation. Groundwater in this area
4 generally moves upward. It will fluctuate with -- in
5 the summer due to vapor transportation. Actually, water
6 is taken out of the ground.

7 MR. MELLING: And I understand all that. I wonder
8 if you've looked at the records of what that fluctuation
9 is?

10 THE WITNESS: We have essentially one sampling
11 event, one water level measurement.

12 MR. MELLING: So you don't. The other question that
13 goes along with that, if that is fluctuating, and I
14 don't know what it's doing now, it just fluctuates about
15 20 feet a year. As that goes down, you're saying that
16 that residue will stay in the soil. What happens when
17 it comes up, does it flow?

18 THE WITNESS: I wouldn't expect 20 feet a year,
19 maybe two feet a year is what my experience is on how
20 much the water level would vary in a site like this.
21 And when that happens, if there is free product, water
22 table drops down, free product may slowly migrate down
23 and then the water table goes back up and it kind of
24 smears the contamination around.

25 MR. MELLING: But you haven't looked at the Division

1 of Water Resources' USGS data to know what that
2 fluctuates?

3 THE WITNESS: They wouldn't have the information
4 that would tell us what the fluctuation is at this
5 site. They would have deeper wells. They are on a
6 different schedule of fluctuation than the shallow
7 groundwater on a site like this.

8 MR. FAUCETT: Did you do any research like the site
9 has been in existence since 1970, and now there's two
10 tanks that were taken out that were never connected, and
11 then the tanks that are used, are those original tanks
12 from the original site back in 1970, is that
13 something --

14 THE WITNESS: I can't testify as to that.

15 MS. HUBBELL: I think that's a fact in the
16 TriTechnics report, is the age of the tanks.

17 MR. FAUCETT: Okay.

18 MS. HUBBELL: The TriTechnics report, the January
19 30th, reports there are two coded steel underground
20 storage tanks on-site, a 10,000 gallon tank which
21 contains unleaded gasoline, and a 6,000 gallon tank
22 which contains premium unleaded. Both tanks were
23 installed in 1980. Would that be -- I mean, would you
24 like to --

25 THE WITNESS: Well, I believe you -- we put together

1 the abatement report, the site check and abatement
2 report, and in the course of doing that we would have
3 interviewed V1. And I believe that's where we would
4 have gotten the information.

5 MR. FAUCETT: So there had to be tanks previous to
6 that that were removed, been in existence since 1970.
7 Is it possible for this type of concentration to stay in
8 the ground from, in your opinion, from the 1970s to --
9 or late '70s to today?

10 THE WITNESS: Yeah, I believe that these
11 constituents can stay in the ground for many years, and
12 could be looking at hydrocarbons that have been there
13 for many many years.

14 MR. UTLEY: Let me ask you one quick question,
15 George. Have you ever seen hydrocarbons migrate
16 upgradient, up through to the soil, and go up gradient
17 on the groundwater?

18 THE WITNESS: Yes. Sometimes if there's a large
19 release it can create its own gradient and cause a mound
20 and go up gradient. And there is a phenomena known as
21 dispersion where it can move in a direction which is not
22 the same as the groundwater flow.

23 MR. UTLEY: Okay.

24 EXAMINATION

25 MS. HUBBELL: My turn. How long do I have? I'm

1 sorry.

2 Q. You indicated at the beginning of your
3 testimony, that testimony about the state's contending
4 this is a release -- that these were release tanks that
5 were removed, am I correct?

6 A. My understanding is that that was a potential
7 release that you were alleging.

8 Q. Well, I don't know where you got that
9 information because we've never talked before, and I
10 don't think you've had any contact with my client, is my
11 understanding. But what the state is alleging is that
12 V1's owned this station since 1971, and we've gone
13 through a series of known releases we've had on the
14 property that we regard as confirmed releases under the
15 statute. Those date back to 1985.

16 We don't know what happened when the tanks were
17 exchanged, etcetera, and V1 doesn't either. But isn't
18 it true that it's possible that this could be caused,
19 and some of the variances and problems could be caused
20 by a series of releases over a period from 1971 until
21 1995, and that that could affect some of the
22 fluctuations, and it's not just a two year old release
23 from these tanks here?

24 A. Well, certainly there's a lot of information we
25 don't know, but based on what we do know, their gradient

1 is to the northeast, and --

2 Q. No. You're testifying that the gradient on the
3 V1 property is to the northeast. We don't know what the
4 gradient here is?

5 A. Right.

6 Q. Okay. So, based on the fact that you know the
7 gradient flow is here, and there's actually a great deal
8 of contamination here, but not knowing -- I'd rather you
9 didn't assume the gradient's the same all the way. You
10 don't know?

11 A. I don't know what the gradient is there.

12 Q. In fact, earlier you said that, when I had
13 characterized it as flat, that it wasn't really flat
14 because there was like a one foot difference in a
15 hundred feet. But then later on you characterized it as
16 flat to a board member. Maybe you could tell me which
17 it is?

18 A. The information we have which is the monitor
19 wells that are installed here, there's a clear gradient
20 to the northeast and it's a good one foot difference in
21 groundwater over something like a hundred feet. That's
22 significant gradient. So, I believe the gradient is
23 clear, at least for the data that we have.

24 Q. On the V1 property?

25 A. On the V1 property.

1 Q. You still didn't answer my question. Couldn't
2 this be the result of a series of releases dating back
3 20 some years?

4 A. It could be, if there were releases and the
5 groundwater moved in that direction.

6 Q. So it is a possibility that that could be, and
7 based on your data you can't say that that's not
8 possible?

9 A. I can only tell you what I know.

10 Q. Okay. You said something about the levels of
11 Benzene in the tank and whether they constituted free
12 product. What about TPH levels; what level does that
13 have to be reached before it's considered?

14 A. Well, TPH is a measurement of a whole series of
15 compounds, so you can't relate it to a specific
16 solubility or a specific component. So you really can't
17 say what that -- you can't make a direct relationship
18 between TPH and whether there's a free product or not.

19 Q. If the level is 1,000 -- is 11,800, that
20 wouldn't constitute sufficient --

21 A. 11,800 what?

22 Q. TPH, parts per million?

23 A. There's no way I can say that that's free
24 product or not because there could be many different
25 compounds with varying solubilities that would

1 contribute to that.

2 Q. Okay. Now, you said something about testing
3 along here. Now, why didn't you test along here as to
4 when you had questions as to whether there was a source
5 up here?

6 A. We weren't asked to determine the source, we
7 were asked to determine whether V1 was responsible,
8 whether we could say V1 was responsible for that. It
9 wasn't in our scope of work.

10 Q. So, you weren't asked to test up here. You
11 also said something about testing the water samples in
12 the sewer, but that -- and you asked counsel about that
13 -- but you ended up not testing it. Did you ever
14 contact the division and ask them about that, if you
15 could test, if they could turn off the hoses long enough
16 for you to sample?

17 A. We requested that through counsel.

18 Q. You requested it through your counsel?

19 A. Correct.

20 Q. So you don't even know if your counsel or V1's
21 counsel -- essentially, wouldn't it have been quicker to
22 just go through calling the division and asking them?

23 A. I think we were under the constraints that your
24 people were, that the attorneys run the show and we work
25 at their direction.

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1 Q. So you were following V1's counsel's directions
 2 in not contacting the division?
 3 A. Our understanding is that they would make the
 4 communications.
 5 Q. Okay. You were under their instructions not to
 6 contact the division?
 7 A. Correct.
 8 Q. Okay. In 1992, there was -- there were some
 9 samples taken of a water well that's on the -- water
 10 monitoring well that's on the V1 property. And in 1992,
 11 this was in December, those concentrations -- the people
 12 who did the testing, according to Exhibit 1, said that
 13 the well was purged and sampled. There was a visible
 14 petroleum sheen observed and a strong petroleum odor
 15 present in the well, and the analytical reports
 16 showed --
 17 MS. HUTTON: Excuse me, where are you reading?
 18 MS. HUBBELL: Exhibit 1, this page, last paragraph.
 19 MS. HUTTON: Okay.
 20 BY MS. HUBBELL:
 21 Q. I will be referring to Exhibit 3, the top page
 22 now, which says that the results showed 57,000 parts per
 23 million; is that correct -- 5,700 parts per billion of
 24 Benzene, 9,300 parts per billion of Toluene. You've got
 25 it there. Would you say that was significant

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1 contamination in the water monitoring well?
 2 A. It doesn't indicate to me there's free product
 3 there. There is contamination, it's above tier one,
 4 that sort of thing.
 5 Q. Is it significant contamination? I'm not
 6 asking -- there's been a big distinction drawn today
 7 about free product. Now, for free product to be coming
 8 out here, it wouldn't have to be flowing in swarms
 9 across the ground, would it? It could build up in the
 10 ground, a concentration, and come out later as free
 11 product, couldn't it?
 12 A. When you have a release, you know, you would
 13 expect the concentrations to be highest, and near where
 14 the release is.
 15 Q. I'm not asking you that. I'm trying to keep
 16 this brief, so just tell me, isn't it possible for free
 17 product to be in the soil, for the soil to be
 18 contaminated, for it to not be free product, for there
 19 to be contamination in the soil to come out as free
 20 product?
 21 A. Once it's solubilized then it's not gonna come
 22 out of the water and then become free product.
 23 Q. I'm saying come out of the soil as free
 24 product?
 25 A. If free product migrates and then becomes bound

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1 up in the soil, and later the soil or the water rises,
 2 it's possible for free product that's above the water to
 3 then all of a sudden become free product on the water
 4 table itself.
 5 Q. So, the heavy duty contamination can leave free
 6 product without having to be free product the entire
 7 time?
 8 A. Well, if there's heavy duty contamination, it
 9 could be bound up in the soil. And if the water rose,
 10 you might then see the manifestation of the free product
 11 at a later point in time.
 12 Q. So the fact that this is not free product, but
 13 just really heavy duty contamination, doesn't mean that
 14 it's something else. It's not okay, it's not running
 15 across the ground, but this is heavy contamination?
 16 A. These are dissolved levels of these
 17 constituents, these are dissolved.
 18 Q. That didn't say it is or it is not heavy.
 19 Would you drink a glass of this?
 20 A. No, I would not.
 21 Q. Okay. Okay. I think that's all I have to ask
 22 this gentleman. I would like to call Mr. Moore,
 23 briefly.
 24 MR. UTLEY: Anyone have any other questions for Mr.
 25 Condrat?

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1 (Whereupon a recess was taken.)
 2 MR. UTLEY: We need to make this as brief as
 3 possible and do closing.
 4 MS. HUBBELL: I will.
 5 MR. UTLEY: I think we need to go on, our reporter
 6 is about worn out.
 7 WILLIAM MOORE
 8 was duly sworn, was examined and
 9 testified as follows:
 10 THE WITNESS: I do.
 11 BY MS. HUBBELL:
 12 Q. Mr. Moore, you took that sample I was just
 13 talking about in 1992?
 14 A. Yes, I was there and helped Shelly Quick take
 15 those samples, and labeled them and sent them up to a
 16 lab.
 17 Q. The other witness didn't want to characterize
 18 that as heavy duty contamination, all they -- he did say
 19 he wouldn't drink it. Would you characterize it as
 20 heavy contamination?
 21 A. Definitely very high groundwater contamination.
 22 Q. Okay. There have been some statements made
 23 concerning your presence, and I believe your comments
 24 regarding substances at the December, 1995, removal of
 25 the tanks?

1 A. Yes, I've heard that.
 2 Q. Were you present there?
 3 A. No, I was not. I had other engagements on that
 4 day.
 5 Q. Where were you?
 6 A. I don't exactly recall, but I know I had
 7 another appointment. I don't remember exactly where I
 8 was.
 9 Q. So you didn't --
 10 A. Right around that time period I was going on
 11 vacation to Washington state. I don't remember if I was
 12 still in town, had another appointment or was on that
 13 trip.
 14 Q. You didn't make the statements that were
 15 attributed to you?
 16 A. I wasn't even on-site for removal.
 17 Q. Okay. You were onsite a couple of times for
 18 sampling. What was your observations of the samples
 19 that were taken in, I think, January, 1995, and
 20 December, 1992?
 21 A. We had taken samples. I can't remember which
 22 dates were which, but I had taken samples with Shelly
 23 Quick. And the monitoring well onsite, we had at that
 24 time noticed and verified a metal access port which we
 25 assumed to be a third tank, and documented that. Later

1 we came back with an order to gain access to that tank
 2 and sampled that tank which is tank number 3. And at
 3 that time, sampled tank number 3. We verified a fourth
 4 tank, and --
 5 Q. Do you recall what was in the tank?
 6 A. Very high levels of petroleum hydrocarbons and
 7 water.
 8 Q. How about when you sampled the other tank, were
 9 you present then?
 10 A. I don't recall.
 11 Q. I won't ask you about that then. I'm going to
 12 ask you very, very, very, very, very briefly, have you
 13 reviewed the inventory control records submitted by V1?
 14 A. Yes, I have.
 15 Q. And you've listened to the testimony concerning
 16 inventory control?
 17 A. Correct.
 18 Q. Could you briefly tell us if you saw any
 19 problems with the inventory control methods or the
 20 accuracy of them?
 21 A. There's a major problem in the accuracy of the
 22 inventory control method. They are supposed to be
 23 measured every one eighth of an inch accuracy. If you
 24 look on the chart on all three -- all four of the months
 25 that were presented and I reviewed, there's only one

1 measurement of one eighth of an inch in any particular
 2 month. Most the measurement numbers are rounded off to
 3 one inch increments, and a few of them to half inch
 4 increments.
 5 With that type of measurement, if they were doing
 6 one eighth inch of measurements appropriately, there
 7 should be a preponderance of one, just due to the
 8 probability and statistics. When we see that, it's
 9 obvious they were not measuring very accurately on their
 10 inventory control which translates over into their
 11 inventory control which is not very accurate.
 12 The other occasions were indications that when they
 13 did the total overages and shortages and they calculated
 14 their allowables for several months in a row, their
 15 overages from October and November and December were
 16 over their allowables. And after the second month of
 17 confirming levels over the allowables, they're supposed
 18 to report it to the division.
 19 The fact that they're over the allowables at all
 20 should send up -- even for one month -- should have sent
 21 up their own alarm that they should start to
 22 investigate. The allowable calculated at one percent
 23 plus 130 gallons is reporting quantity only, it is not
 24 an allowed leak rate.
 25 Q. Okay.

1 A. Is there anything else?
 2 Q. There was mention that there was movement and
 3 fillage and non fillage of pipes and all that, and that
 4 that could account for just huge differences including
 5 50 gallons to fill the pipes and things like that.
 6 Could you tell me what your understanding is?
 7 A. With inventory control, since you're measuring
 8 the tank and you're running -- comparing that against
 9 meters of what went through to the dispenser, if you
 10 have product that drains back into the tank, it is
 11 accounted for as part of the inventory control. It is
 12 not lost, has not gone through the tank, has not gone
 13 through the meter, so it can not show up in the
 14 discrepancies on the inventory control.
 15 Q. What about that 50 gallons that fill the pipe,
 16 does that account for that or would it even take 50
 17 gallons to fill a pipe?
 18 A. For a long run of pipe, it probably takes 50
 19 gallons.
 20 Q. You've been to the V1 station?
 21 A. That particular type station you're probably
 22 dealing with 20 gallons or something thereabouts. But,
 23 that would have to have been run through the dispenser
 24 for it to be accounted for in inventory control as a
 25 loss. If it just flowed back through any valve, back

1 into the tank, it would not show up as a loss in the
 2 inventory control.
 3 MS. HUBBELL: I think that's all I have.
 4 MR. UTLEY: Quick question, Mr. Moore. Do you agree
 5 you usually see a higher concentration of contamination
 6 near the origination of the spill?
 7 THE WITNESS: You can, but not necessarily there --
 8 if there's been multiple releases.
 9 MR. UTLEY: Have you ever seen, in your career or
 10 your experience, where sludge of contamination will
 11 flow, or do you usually see it trail off? In other
 12 words, you see a high concentration of material move
 13 through the groundwater.
 14 THE WITNESS: I've been in this program for the last
 15 13 years or since the inception of this program as the
 16 first major project manager on the LUST, the first LUST
 17 site, and particularly in that site we saw very strong
 18 examples of that very same thing happen.
 19 MR. UTLEY: Okay. One last question. Why didn't
 20 you try to measure groundwater elevation and establish
 21 groundwater flow?
 22 THE WITNESS: I'm in the underground storage
 23 compliance section, I'm not in the LUST section any
 24 more. But six years ago I split off and started on the
 25 enforcement section where I mostly deal with an

1 expertise in tightness testing methods, inventory
 2 control, in that realm.
 3 MR. UTLEY: Would you have an opinion why the
 4 division didn't do that?
 5 THE WITNESS: Probably because all they had
 6 initially -- when they first go in they usually use a
 7 geoprobe and they're not very conducive for measuring
 8 groundwater levels. You need to actually put full
 9 ground monitoring wells in which is what I understand
 10 you are doing now. You need better information first
 11 before you accuse somebody, so they want to get the
 12 initial information first to support their accusations.
 13 MR. UTLEY: Okay. Thank you.
 14 MS. LUNDGREN: Is it possible that there are records
 15 of any kind of verification that can tell who was
 16 present when those tanks were removed, or who might have
 17 done this kind of work, or whose been out to that site
 18 the most? I'm kind of confused.
 19 THE WITNESS: which set of tanks?
 20 MS. LUNDGREN: Well --
 21 THE WITNESS: I know who was there on tanks three
 22 and four, I assigned Gary Harris and Dave Wilson of, you
 23 know, of my section to go out and witness that and there
 24 is a report in the files.
 25 MS. HUBBELL: I think Exhibit number 5 mentions

1 those, who were there.
 2 MS. LUNDGREN: I know they mentioned that you
 3 were --
 4 THE WITNESS: I wasn't there. I don't know who was
 5 there.
 6 MR. UTLEY: Did you have a comment, Mr. Hanson?
 7 MR. HANSON: Just on the question about why we
 8 didn't establish groundwater flow. The initial
 9 objective of our investigation was just that, to find
 10 out where the contamination existed, to find the extent
 11 of the contamination, and there's no way we could have
 12 put in 40 groundwater monitoring wells to measure the
 13 groundwater gradient. It would have been very cost
 14 prohibitive, so we did use the geoprobe technology which
 15 allows us to collect a large number of samples in a
 16 short amount of time.
 17 MR. UTLEY: Thank you.
 18 MR. HANSON: Particularly in a populated area, or a
 19 dense area where you have storm water sewer systems, you
 20 have all kinds of utilities going through the area.
 21 Contamination doesn't necessarily flow according to
 22 groundwater gradients. You have to define the area of
 23 plumb, so it's...
 24 MR. FAUCETT: There was only, I believe it was 6
 25 monitoring wells. You were talking about 40

1 established. In your opinion do you think their
 2 analysis established a groundwater flow? Do you agree
 3 with their analysis of the groundwater flow?
 4 THE WITNESS: I agree with their analysis of
 5 groundwater flow on the very eastern side of the V1
 6 property because you have, as you can see, you have a
 7 conduit along 300 West. It's the sewer drain system.
 8 MR. FAUCETT: But if they could do --
 9 THE WITNESS: It's gonna be just like on Whitney
 10 Avenue there, it's gonna be going towards that drain and
 11 you're gonna have two dual source drains.
 12 MR. FAUCETT: But they were able to establish it
 13 with six wells or something like that. Can the state do
 14 the same with six or so wells established?
 15 THE WITNESS: I'm not in that section any more.
 16 MS. HUBBELL: I assume if we installed the same type
 17 of wells, but right now we're having trouble getting
 18 access to the Southern Pacific property. We have been
 19 negotiating with them for several months to get on
 20 there, and -- you know, we have to have permission.
 21 THE WITNESS: I'm the senior scientist in the
 22 division of the underground storage tank branch anyway,
 23 but I have been out of the LUST section where I have the
 24 knowledge. But I don't know the particular case close
 25 enough when it comes to the LUST issues.

1 MR. FAUCETT: Okay.
 2 MR. UTLEY: Any other questions? All right. Thank
 3 you, Mr. Moore. I guess we are ready for closing
 4 arguments. Did you have any questions, Ms. Hutton, of
 5 Mr. Moore?
 6 MS. HUTTON: I didn't think I had any more time.
 7 MR. UTLEY: You don't, so.
 8 MS. HUBBELL: I'm going to try to keep it really
 9 brief. We're here today because we issued an emergency
 10 order. We issued that emergency order based on every
 11 ounce of evidence we could get at that time, and
 12 confirm. Believe me, my clients did not want to issue
 13 an emergency order against V1 unless they were
 14 absolutely sure that V1 was the source. So they looked
 15 at every bit of information, they looked at schematics,
 16 you saw that earlier, telling every site that had been
 17 around there, and the possibility it could come from
 18 that site.
 19 They looked at the directions it could have come
 20 from. Now, admittedly there is some dispute about which
 21 direction it did -- this ground does go in, and I'm not
 22 gonna fight them. V1 does, since they say it goes
 23 northeast. But our information showed that it goes
 24 northwest towards the Jordan River, which is the way
 25 things tend to go, towards the low spot. We had that

1 information.
 2 We had a video demonstrating free product in the
 3 sewer. We had one operating station in this whole
 4 vicinity around there that we did not know -- all we
 5 know about V1's station is that we really don't know for
 6 sure -- we know there have been a lot of confirmed
 7 releases. We know every time we've been allowed on
 8 their property, we have found gross contamination in
 9 their water wells, in their tanks, and everywhere else.
 10 We know that we're not finding that contamination from
 11 any other source in the area.
 12 We know that the infiltration of the sewer line was
 13 between V1 and the building where the odors were. We
 14 knew that they had recently reported a failed line
 15 tightness test and that we even thought it could have
 16 been a more recent spill from the removal of the tanks.
 17 And it's just with gathering more information that we
 18 have come to believe that it could have occurred any
 19 time in the past number of years.
 20 And we knew that they had had innumerable petroleum
 21 releases which had never been remediated, never been
 22 abated, never had anything done to them. And based on
 23 all of that, we felt that we had sufficient evidence to
 24 issue an emergency order asking V1 to step in and deal
 25 with this matter.

1 We have never had any evidence since that time to
 2 indicate that we should change our minds, or there could
 3 be any other source for that contamination. We have
 4 looked at samples on every side and we can't find that
 5 other source. We have looked at the surface of Southern
 6 Pacific. Admittedly there is some testimony there might
 7 have been people loading gasoline off trucks here, but
 8 there's no staining on the surface of the soil that
 9 shows that could have seeped in there.
 10 We have looked at this contamination here in the
 11 groundwater, and here in the soil. And to any logical
 12 mind that says it starts here and it's going here and
 13 coming out here and flowing down here, down the sewer.
 14 There's no basis to change our mind.
 15 Now, when we stepped in and took over, we had
 16 numerous conversations with counsel for V1. We had it
 17 with counsel for V1 because we were forbidden to contact
 18 V1 or TriTechnics. And counsel said, we will abate when
 19 it's proven that we're the source. Well, we had free
 20 product in the sewer, people going home sick. We didn't
 21 have time to wait until V1 confirmed -- how long it was
 22 until they decided it was confirmed that they were the
 23 source, so we had to step in.
 24 We called them several times. In the files there
 25 are letters documented between counsel, between the

1 executive director, between Sandra Alan even saying, you
 2 know, will you step in? There are letters in there
 3 saying if you'll come in with your hoses and take over
 4 running the water down the sewers. They wouldn't do
 5 that either. We had to step in. This was an emergency
 6 situation and there was an emergency order issued. V1
 7 did not comply with it. They were given every chance to
 8 comply. If we wanted to be precipitous when they didn't
 9 phone at the 24 hour number that they were given in item
 10 G on the order, we could have stepped in then. We
 11 didn't. We called them on the phone. We said, Are you
 12 gonna do this? And they said, We are. We said, Oh,
 13 good, we're glad you're gonna do it. And we kept doing
 14 that. It reached a point that something's got to be
 15 done. That has got to be stopped. We had to take over.
 16 And even at that point we said, If you want to come in,
 17 if you want to help us, if you want to work together,
 18 we'll do it. And they never took us up it. There was
 19 nothing precipitous about any of this.
 20 V1 is the source of the contamination, there's no
 21 question there. V1 refused to deal with it in an
 22 adequate way. There's no question there. We have bent
 23 over backwards to do everything we could. We were
 24 forced to go and we were forced to deal with it. We
 25 have been forced to carry this whole thing, but

1 thankfully people are safe, the emergency was abated.
 2 And for now, as of today, it's dealt with. We don't
 3 know about the future. Thank you.
 4 MR. UTLEY: Thank you.
 5 MS. HUTTON: I know that everyone is tired and sick
 6 of hearing us argue. But I do just want to remind the
 7 Board that this is an issue of due process. That the
 8 emergency order says abate, investigate and remove free
 9 product. Nowhere in our constitution does it say that
 10 you prove yourself innocent, and then we'll talk about
 11 the rest of it. That's not how it works. And in this
 12 situation, there is also no place in the federal
 13 regulations, and Utah statutes adopted the federal
 14 regulations in their entirety, 40 CFR Section 280, and I
 15 believe Exhibit A to V1's hearing brief, nowhere in
 16 there will you find a provision that says, An
 17 owner/operator must first correct whatever problem there
 18 is, and then investigate. No, it says, An
 19 owner/operator will investigate to determine if it is
 20 the source of an offsite impact.
 21 Now, I think we have a problem here. What they are
 22 asking for is backwards. They're saying, you fix it,
 23 and then if you need more time, find out if it was your
 24 fault. Well, there's no provision in the law for such a
 25 determination as that. In fact, that's what every

1 citizen is protected against. The state cannot come in
 2 to you and say you are guilty, if you think you're not,
 3 then you tell us why. And that's the situation here.
 4 Now, just a moment ago we heard that there's no
 5 evidence that there was a surface spill because there
 6 was no staining on the ground. The testimony is that
 7 nobody looked at the ground, nobody knows if there was
 8 staining on the ground. Part of the problem is because
 9 there was 15 feet of snow on that ground at the time.
 10 Now, what happened to whatever might have spilled on the
 11 surface of the ground when that snow melted? I think
 12 that we would have found a substantial amount of snow
 13 runoff, a lot of water, and a lot of whatever got dumped
 14 out of those tankers, if such were the case. And I
 15 don't know that. But if such were the case, it went
 16 someplace when that snow melted, and it's not for me to
 17 speculate as to what that place was.
 18 But there was also no investigation and has been no
 19 investigation for what, 20 years or more, as to what
 20 happened to the tanks on the Zions property. Where is
 21 the lateral going to the sewer? It's clearly open, you
 22 can see it in the video. There are a lot of places that
 23 it could be coming from. There are above ground tanks
 24 on the other side of Third West. And V1 did everything
 25 it could to investigate whether it was responsible. But

1 it is not responsible for finding out if Haloway (sic)
 2 Transports across the street is responsible, or Zions or
 3 Vickers down on 4th West. And remember, Vickers
 4 Trucking is down gradient from where this was entering
 5 the sewer. If it was Vickers contaminated site, which
 6 is marked on the map as a LUST site, and that is
 7 directly northwest of this sewer line, why wasn't that
 8 area looked into?
 9 We have absolutely no explanation as to why the area
 10 that was admittedly down gradient from the ground flow
 11 was not looked into. I think we have a lot of problems
 12 here, and all we are asking is that V1 be given the same
 13 opportunity as every other citizen in this state, that
 14 they be given an opportunity to be heard and defend
 15 itself before being accused of some violation. And
 16 that's why we're asking to have a dismissal of the order
 17 to abate, take corrective action, as well as the order
 18 of non compliance. Thanks.
 19 MR. UTLEY: Okay.
 20 MS. HUBBELL: One minute?
 21 MR. UTLEY: Pardon me?
 22 MS. HUBBELL: One minute for my response, since I
 23 gave up my other time. First of all, if you look at the
 24 order, you'll see the section we refer to is in the
 25 Federal Regulations, it's 280.62, which is not the

1 same. It's not release investigation and confirmation
 2 steps. This is initial abatement measures and site
 3 checks. It says upon confirmation of a release, or
 4 after a release is identified in any other manner,
 5 owners and operators must perform the following initial
 6 response actions within 24 hours of a release, or within
 7 another reasonable period of time determined by the
 8 implementing agency. We gave them a series of steps,
 9 but everything we did is fully in accordance with the
 10 release response for a release. Particularly, we gave
 11 them more time than otherwise might have been, even
 12 though this was an emergency situation.
 13 Concerning staining on the ground, well I don't know
 14 if there was 15 feet of snow on the ground at that time
 15 because I didn't go out there. But if there was 15 feet
 16 of snow on the ground and people have been offloading
 17 petroleum to cause that kind of smell, I think you would
 18 have seen some mark in the snow, you know, yellow stain
 19 or something showing, with all that gasoline that had
 20 gone into the snow and into the ground.
 21 V1 did do everything it could, on its own property.
 22 But it never indicated any willingness to do anything on
 23 anybody else's property, and that was our concern. Our
 24 concern is not and never had been in hassling or
 25 persecuting V1 in any way, shape or form. We were

1 trying to protect the public. We acted to protect the
2 public and we did protect the public to the best of our
3 ability.

4 If the building is on fire and that fire has been
5 reported, you don't send the fire department out there
6 and they immediately stop and go door to door going
7 anybody in here playing with matches? Whose matches are
8 these? You follow the smoke, you follow the flames, and
9 you put the fire out and then you deal with the other
10 things.

11 We followed the smoke, we followed the gasoline, we
12 followed the smell, we put the fire out. We ran the
13 water through the sewer to put this out, and every bit
14 of evidence we found since then only supports what we
15 have already stated, which is V1 is the source.

16 I would ask you to uphold the order of the executive
17 secretary and I would ask you to find that the action of
18 the division in stepping in to abate this emergency
19 situation was correct. And I thank you for your time.
20 And I'm gonna pass out because I just talked as fast as
21 I can.

22 MR. UTLEY: For the record, a couple of exhibits
23 that we need to admit into evidence. In addition to the
24 ones I read earlier, I've noted V1 Exhibits G, C and B,
25 and then be Executive Secretary Exhibit 6. Is there any

1 problem admitting those into evidence?

2 MS. HUBBELL: We already admitted five.

3 MR. UTLEY: Yeah.

4 MS. NIELSON: Yes.

5 MR. UTLEY: Is there any problem admitting those
6 into evidence? And the other question is, did we ever
7 come to resolution on remaining exhibits? Are they not
8 admitted as evidence, or they are?

9 MS. HUBBELL: Since they haven't been referred to
10 I'll let them stay as part of the hearing brief.

11 MS. HUTTON: I would agree with that, since they
12 haven't been referred to, just as support for the
13 hearing brief.

14 MR. UTLEY: All right. Thank you. Anybody want to
15 jump out and start the debate?

16 MR. STEVENSON: I'd like to jump out.

17 MR. WHITE: I'll offer my two bits. I think in my
18 perspective there's been problems, if you will, from
19 both sides. I think V1 did respond. I'm not sure they
20 responded enough. I don't slight V1 for wanting to know
21 if they were the source of the release before they
22 launched into abatement.

23 I am concerned though that when they did their
24 investigation that they did stop at their boundary. I
25 recognize the problems with getting onto the Southern

1 Pacific property, but they could have easily gone out
2 onto Whitney Avenue. That is where the problem was
3 seen, and it would have made sense to me to get out in
4 to Whitney Avenue to do some investigating. Not knowing
5 what's happening in between, across the Souther Pacific
6 property admittedly, but I think they should have gotten
7 out to Whitney Avenue. It's clear to me Zions property
8 isn't a source. Vickers isn't a source. As you
9 indicated, Vickers is down gradient not up gradient. I
10 don't think we need to worry about those properties.

11 The only one that's really still a bit confusing to
12 me is that Southern Pacific property, and whether or not
13 there is -- whether or not that is a potential source.
14 I think it's clear that if it is a potential source it
15 is not the only source. The data would indicate that
16 there is free product out in the environment that has
17 been -- that has originated from the V1 property as
18 indicated by monitoring well 6. Whether or not we're
19 looking at two different plumbs, that we have one
20 originating from the V1 property, another originating
21 from the Southern Pacific property, isn't clear.

22 The data, the geoprobe data would indicate that
23 there is some shallow contamination on the Southern
24 Pacific property. That needs to be further evaluated
25 right now. It's really not clear to me that V1 is

1 definitely the source of the contamination in the
2 sewer. All of the evidence would suggest that there's a
3 reasonable likelihood in my mind that's the case, but
4 with that unknown, without having the shallow samples
5 from the Southern Pacific property, shallow soil
6 samples, there's still a potential that the Southern
7 Pacific property, past uses of that property have
8 contributed to this problem, and that what we're looking
9 at there are in fact two different plumbs that may merge
10 at some point.

11 V1 may have some responsibility, but without the
12 shallow surface soil data from the Southern Pacific
13 property, it's a little bit difficult for me to say that
14 V1 is the primary source. Those are my concerns.

15 MR. UTLEY: Yeah. I had a few comments too. One,
16 that looking at the inventory data, it's pretty clear to
17 me they had some loss, somewhere around 2200 gallons at
18 least from that time period, may have been some others.

19 But I have a hard time not knowing that the
20 groundwater flow, you know -- I can believe the evidence
21 and understand the evidence to show the groundwater flow
22 to the northeast and not having data to show the
23 groundwater flow going to the northwest, is difficult.
24 I wish we ever had that data. I wish we had that
25 groundwater flow data.

1 Contamination is found on the site. Granted, the
2 high level is developed in the water, but it's not
3 necessarily evidence of free product. And I guess from
4 my experience I've got to believe that you generally do
5 see high contaminations near a spill, and it tends to
6 fall off somewhat as you move down gradient. We don't
7 have a lot of data what happened on the Southern Pacific
8 site, and some of the shallow geoprobe borings did show
9 some significant contamination of the soil which kind of
10 leads me to believe there is some spills on the Southern
11 Pacific property.

12 So it's -- I've got to agree with you Rich, I don't
13 think it's a real clear cut case. There's some pieces
14 of data that's missing that I wish we had.

15 MR. WHITE: If I could just say, I don't have a
16 particular problem with the variation in the data. I've
17 been involved in sites where I have seen non typical
18 concentrations in groundwater in down gradient
19 directions, where I have seen discontinuities in free
20 phase hydrocarbons where it's obvious that we have free
21 phase hydrocarbons at the down gradient end. Nothing in
22 the middle, and additional pockets of free phase
23 hydrocarbons. I don't really have a problem with the
24 data the way they are presented. But that could easily
25 indicate that V1 is the source for all that

1 contamination. My concern is just not knowing what
2 happened on that Southern Pacific property, and whether
3 or not that has also contributed to this problem. And
4 if that's the primary source of the problem at the
5 sewer, then having V1 abate that is not appropriate.
6 And we just don't know.

7 MR. UTLEY: Dianne?

8 MS. NIELSON: Mr. Chairman, I think there's
9 reasonable information that's been provided today to
10 suggest that V1 could have been the source of the
11 contamination and the free product that's provided in
12 the -- that showed up in the sewer line, and that has
13 been evidenced in soil and groundwater sampling both on
14 and off their property and onto the Southern Pacific
15 property.

16 The issue before this board isn't an apportionment
17 of liability for remediation. The issue before this
18 board is an emergency order, and abatement action that
19 was needed to be taken. And I think, I believe on the
20 basis of the evidence that's been provided that it was
21 reasonable for the division to issue the emergency
22 order, and require V1 to take action to abate,
23 investigate, and conduct corrective action based on that
24 information. While they have done that on their
25 property in terms of investigation, testimony shows in

1 fact they haven't even done any or at least the
2 individuals who identified the problem here, have not
3 been directed to take any further action even within
4 that property in terms of abatement.
5 I think the Division also indicated that they are in
6 the process of trying to regain access to the this site,
7 and to do some work that we're discussing including the
8 groundwater flow. I would like to make a motion unless
9 there is other comment.

10 MR. MINER: I have a comment. I agree with Dianne
11 and the others previously. I agree there's more data
12 we'd like to have, but really there's no evidence that
13 significant contamination has come from the Southern
14 Pacific property. That needs to be investigated more.

15 But I don't think we have anything to show that
16 there's been anything, anything significant from there.
17 I think that we do have a good record of lots of
18 releases through the years from V1, several thousand
19 gallons, at least a few thousand, couple of thousand at
20 least, that coincide with this incident. It's pretty
21 obvious right there that they should have at least
22 suspected that they could well have been the source of
23 this problem. Therefore, when they were asked to do
24 this, take these emergency measures, I think they should
25 have done more.

1 MR. UTLEY: Comments from fellows down there?

2 MR. FAUCETT: One thing that's interesting, I think
3 it's hard to determine without some of that data the
4 groundwater flow and so forth. But from personal
5 experience, I've seen even groundwater flows change
6 within different rain water events. And even if you
7 were to go and characterize that groundwater, depending
8 on construction, whether different water elevations
9 effect it one way or another, can't change groundwater
10 flow. Could have been different, the groundwater flow
11 could have been different 20 years ago, 30 years ago, 19
12 years ago. Could have been part of the plumb at that
13 time.

14 Also, today's gradient, obviously they have done
15 some analysis that shows it's going into a different
16 direction. I think the one consistent is the materials
17 flowing in the two directions, that the people feel that
18 the groundwater flow moves -- the state feels the
19 original groundwater flow is to the northwest, V1
20 believes it's to the northeast. And I think there's
21 enough data to support both of those arguments at this
22 point, and there's nothing to say that that changed with
23 groundwater elevation, with construction in the area,
24 with what's going on over the years. So I just think
25 the preponderance of the evidence here is that the

1 material is coming from the V1 property.
 2 MR. UTLEY: Anybody else?
 3 MR. STEVENSON: I was just gonna say I feel like the
 4 man who's accused of stealing a mule, and when he was --
 5 MR. UTLEY: How is that Commissioner?
 6 MR. STEVENSON: When he was in court, the attorney
 7 got him off. But after the court the attorney said,
 8 Now, tell me, did you steal that mule? And he said,
 9 Well, I thought I did but after listening to you I'm not
 10 sure.
 11 Now, I think the attorneys have done a remarkable
 12 job and I just wanted to say that much for them and
 13 their witnesses. And it is not one of those automatics
 14 in my mind, it's very difficult. For me, I thought I
 15 had a judgment, and then I wasn't sure, and then I got
 16 back on the other side and I got more concerned. But I
 17 do tend to believe that as some have expressed, that
 18 more should have been done by V1, and while there are
 19 some questions, it would still seem to me the division
 20 acted responsibly in terms of making their best judgment
 21 from the evidence they had in terms of issuing that
 22 order for the protection of the health and welfare of
 23 the people. And I think they acted responsibly in that
 24 regard, and it would be hard for me to, in a sense, not
 25 support that kind of a decision.

1 MR. UTLEY: Thank you. Ruth, anything to add?
 2 MS. LUNDGREN: I'm having a little problem so I
 3 guess not.
 4 MR. UTLEY: Okay. One other comment. From the data
 5 that the 2300 gallons that I see are gone, that was in
 6 the later part of '95, and it would be almost impossible
 7 to have that material impact the sewer. And given the
 8 rate at which groundwater flows, it's not nearly enough
 9 time anyway. Anybody else? Kitt?
 10 MS. FARREL-POE: Refresh my memory about exactly
 11 what we're doing, what decision we need to make today.
 12 MR. UTLEY: We'll have Rick do that since he's --
 13 MR. RATHBUN: What's before you is a request for
 14 agency action which asks that the order that was issued
 15 by the Executive Secretary, and the date is January
 16 19th, 1996, be denied, or has the language -- I have to
 17 look at the request for agency action, but basically
 18 wants you to withdraw or eliminate the efficacy of the
 19 order.
 20 Let's look at their language here. V1 asks you to
 21 dismiss the actions instituted in the emergency order,
 22 as well as the notice of non-compliance with the
 23 emergency offered. So the question, I guess, before you
 24 is whether or not you sustain the issuance of the
 25 emergency order by the Executive Secretary, and

1 noncompliance.
 2 MR. WHITE: So there's two different issues.
 3 MS. LUNDGREN: What are the ramifications of those
 4 two things? And maybe counsel can address that. We
 5 hear that it's an emergency order, yet quite a bit of
 6 time has passed and there's other work that's been done,
 7 so that's a good question. What are the ramifications?
 8 MR. UTLEY: Counsel like to comment on that?
 9 MS. HUBBELL: Well, first of all we'd like to have
 10 the emergency order upheld because we took a lot of
 11 action based on that emergency order and our belief in
 12 that. Second, we're still trying to gain access to the
 13 property, just to V1's properties and Southern Pacific.
 14 You can't do anything about Southern Pacific. And the
 15 big problem there is, I guess, they just sold out to
 16 Union Pacific, and we're having problems because of
 17 that.
 18 But we intend to gain access there and on Whitney
 19 Avenue, and we'll do more testing and discover what the
 20 status of the whole thing is. We're still trying to get
 21 on V1's property to discover what has occurred there in
 22 the past year. Additionally, while this problem has
 23 been abated, in that there's no longer free product
 24 flowing down the sewer, we don't know what's happening
 25 here. We need to find that out. There has to be

1 remediation of the ground, you know. There's all sorts
 2 of ramifications further down the road. Right now we
 3 have sort of put everything out. But before that's
 4 considered a clean, closed site or a cleaned up LUST
 5 release, lots of things have to be done.
 6 MR. UTLEY: Okay. Ms. Hutton, do you have a
 7 comment?
 8 MS. HUTTON: That has always been V1's concern with
 9 the emergency order too, although it has been
 10 characterized as an emergency order even at the time V1
 11 was prepared to go forward on Southern Pacific property
 12 and put in monitoring wells and find out where in fact
 13 free product may have been coming from, if it was
 14 there. No one has ever done that, and now a year has
 15 gone by and we're concerned about whether or not it was
 16 even an emergency at the time.
 17 MS. HUBBELL: I think we've had testimony on this,
 18 this is testimony, we discussed what was done.
 19 MR. UTLEY: Let her finish, Melissa.
 20 MS. HUTTON: Anyway, what I was just saying is
 21 that's part of our concern as well. We don't really
 22 know exactly what the purpose or where the direction was
 23 of the emergency, and why they went forward with it in
 24 that respect. And if in fact it was an emergency, why
 25 not address it the same way as the building was

1 addressed, and put in some kind of a block so this
2 wouldn't occur. But I don't think that, although as
3 everyone has said, V1 should have been done more. I
4 think that it's very clear under the law and under the
5 statutes that what they did is what they were required
6 to do, what was necessary to determine whether or not
7 they were the responsible party.

8 MR UTLEY Okay. Dianne?

9 MS NIELSON I'd like to make a motion, Mr.
10 Chairman I would move that the Board uphold the
11 executive order, uphold the notice of non-compliance,
12 and order V1 to allow the Division of Environmental
13 Response representatives to implement all procedures
14 necessary to inspect and sample V1's facility, and the
15 monitoring wells located onsite and offsite to the
16 extent that V1 controls them And that V1 be ordered to
17 take the abatement, any additional abatement,
18 investigative and corrective action that is necessary
19 with regard to the contamination that's been identified
20 on Exhibits 15 and 18 I believe the ones we dealt with
21 today in terms of water and groundwater that were the
22 subject of the emergency order, and notice of
23 non-compliance

24 MR MINER I second that Mr Chairman.

25 MR UTLEY Thank you, Joe Any other discussion?

1 STATE OF UTAH)

2

3 COUNTY OF SALT LAKE)

4

5

6 I, Linda J Smurthwaite, Certified Shorthand

7 Reporter, Registered Professional Reporter, and notary

8 public within and for the county of Salt Lake, State of

9 Utah do hereby certify

10 That the foregoing proceedings were taken before me

11 at the time and place set forth herein, and was taken

12 down by me in shorthand and thereafter transcribed into

13 typewriting under my direction and supervision.

14 That the foregoing pages contain a true and correct

15 transcription of my said shorthand notes so taken.

16 In Witness Whereof, I have subscribed my name this

17 28th day of February, 1997

18

19

LINDA J SMURTHWAITE
CERTIFIED SHORTHAND REPORTER

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1 All right. All those in favor of the motion say aye.
2 (Aye) Do I have any opposed?

3 MR WHITE No.

4 MS LUNDGREN No.

5 MR UTLEY I vote no as well. All right, motion
6 carries. Anything else? Thank you.

7 (Whereupon the matter was concluded.)

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Tab E

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



RECEIVED

JAN 23 1996

Stirba and Hathaway

JAN GRAHAM
ATTORNEY GENERAL

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of staff

January 19, 1996

Faxed & mailed

Peter Stirba
Linette Hutton
STIRBA & HATHAWAY
215 South State, #1150
Salt Lake City, Utah 84111

Re: Emergency Order on V-1

Dear Peter:

Attached you will find an emergency order concerning a leak or spill from the V-1 property. It is of vital importance that this matter be taken care of immediately, because the contamination is ongoing and presents a threat to the public health and the environment.

My client is proceeding forward as quickly as possible to allay this problem. In the meantime Salt Lake City is having to flush water through the sewer line to avert the possibility of an explosive build up of vapors. Because of the threat of an explosion and the toxicity of the vapors in the A & A building, the City is forced to continue to flush the system and monitor the situation 24 hours a day.

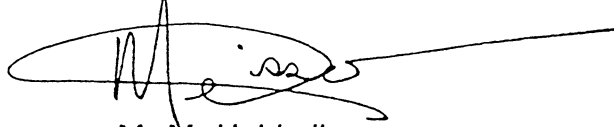
DERR has contacted Southern Pacific and requested access to its property adjoining V-1. Doug Hansen of DERR has spoken with Kirk Dominic (303-812 5944), a representative of Southern Pacific in Denver. Mr. Dominic has stated that Southern Pacific is willing to work with V-1 to facilitate an access agreement.

It is my understanding that Ted Diamant of Salt Lake City/County Health Department contacted a V-1 representative and was instructed to notify Sam Bennion of the problem. Apparently Mr. Bennion was contacted and has not responded. V-1 has apparently been aware that there is a problem for two days. Despite this I have asked my client to give V-1 until Tuesday the 23rd to respond,

in order to assist V-1 as much as possible under the circumstances. However, this fact does not lessen the imminence of the emergency, or the burden that responding to the emergency has heretofore imposed upon the City and DERR. I would ask that your client respond as quickly as possible. If your client cannot respond sooner than January 23rd, they must respond on the 23rd.

Please contact me or Doug Hansen (801-536-4100) if you need further information.

Sincerely,



M. M. Hubbell

CC:
Kent Gray
Doug Hansen

RECEIVED
JAN 23 1996
Stirba and Hathaway

THE EXECUTIVE SECRETARY (UST)
OF THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

Emergency Order to Abate and Order to Investigate and Perform Corrective Action
In re: V-1 Oil Company Free Product In Sewer. Facility No. 4001217. Release Site
EFTX

The Executive Secretary (UST) of the Utah Solid and Hazardous Waste Control Board ("Executive Secretary") issues this Emergency Order to Abate and Order to Investigate and Perform Corrective Action ("Order") pursuant to the Utah Underground Storage Tank Act, Utah Code Ann., Title 19, Chapter 6, Part 4.

I. FINDINGS OF FACT

1. On Friday, January 12, 1996, A & A General Contractors ("A & A"), located at approximately 328 West 1455 South (Whitney Avenue) complained to Salt Lake City Public Utilities ("City") about strong concentrations of vapors in A & A's building. The City concluded that the vapors were petroleum and determined based on vapor levels that there was a potential for explosion. The City made the assumption that petroleum had been dumped in the sewer and flushed the sewer lines.
2. On Monday, January 15, 1996, A & A again contacted the City to complain about a strong concentration of petroleum vapors in its building. The City flushed the lines for three hours.
3. On Tuesday, January 16, 1996, A & A contacted the City again concerning the petroleum vapors in the building. The City flushed the sewer lines and contacted the County Health Department, Division of Environmental Health ("County Health Department"). The City and the County Health Department investigated the complaint and determined that the petroleum vapors were infiltrating A & A's building through the sewer lines.
4. On Tuesday, January 16, 1996, the City and the County Health Department used a video camera to inspect the sewer line in the vicinity of 1455 South and 300 West. The video inspection disclosed free product petroleum entering the sewer line at about 117 feet east from the second manhole west of 300 West. The City and the County Health Department reported the petroleum infiltration to the Department of Environmental Quality, Division of Environmental Response and Remediation ("DERR") and to the Executive Secretary (UST) of the Utah Solid and Hazardous Waste Control Board ("Executive Secretary").
5. V-1 Oil Company, a.k.a. V-1 Propane ("V-1"), owns or operates V-1 Oil, a facility located at 1478 South 300 West, Salt Lake City, Utah, which has been assigned Facility ID # 4001217 by the Division of Environmental Response and Remediation.

000115

6. V-1 has admitted to owning and operating two underground storage tanks which contain petroleum at the above facility.

7. The two underground storage tanks are regulated under the Utah Underground Storage Tank Act.

8. The two underground storage tanks located at the V-1 facility are the only known underground storage tanks being used in the area around A & A and the sewer line which has been found to contain free product petroleum.

9. A recent and/or ongoing petroleum release from V-1 is the source of the free product infiltrating the sewer line. This conclusion was reached after an investigation and is based upon the following: (a.) the video demonstrated that free product petroleum was found entering the sewer line at a point less than 200 feet of the V-1 facility; (b.) investigations, which were conducted at a location between V-1 and A & A, found free product petroleum entering the sewer line; (c.) infiltration of the sewer line was found to be on the northwest gradient from V-1 which is the general direction of groundwater flow; (d.) V-1 is the only known underground storage tank facility in the area; (e.) V-1 representatives recently reported a failed line tightness test; (f.) recently, V-1 was required to remove two abandoned underground storage tanks from the facility, during the removal, significant petroleum product contamination was observed at the facility; and, (g.) V-1 has had prior petroleum releases at the facility which have not been remediated. On or about February 6, 1991, and again on or about December 16, 1992, the DERR performed tests at the V-1 facility. These tests revealed extremely high levels of contamination from petroleum products. V-1 has not remediated this contamination.

10. The release of free product petroleum as described in paragraphs one through four above, presents a direct, imminent and substantial threat to the public health and the environment. The build up of petroleum vapors in a sewer line may cause an explosion. If the fumes build up in a building, they could be ignited for example; by a pilot light on a furnace, stove or water heater. In an attempt to allay this threat, the Salt Lake City Water Department is flushing large quantities of water through the sewer lines to dilute the concentration of petroleum. The Fire Department has had to monitor the volatility levels of the fumes. The City has been required to keep staff employees at the site of the sewer infiltration twenty-four hours a day to monitor the vapors to insure that the vapors do not reach explosive level. Further, constituents in petroleum are a proven human carcinogen and a release of petroleum into the groundwater would present a risk to public health.

II. CONCLUSIONS OF LAW

11. V-1 is regulated by the Utah Underground Storage Tank Act. Pursuant to Utah Code Ann. § 19-6-420, the Executive Secretary may order the owner or operator to take abatement, investigative or corrective action. If the owner or operator fails to take the abatement, investigative or corrective action ordered by the Executive Secretary, the Executive Secretary may use monies from the petroleum storage tank fund or from the

state cleanup appropriation to perform abatement, investigative or corrective action. Id. Additionally, the Executive Secretary may commence enforcement proceedings, and may also recover costs from the owner or operator, responsible parties and other persons who contributed to the release. Id. and Utah Code Ann. § 19-6-418.

12 .This Order is issued pursuant to the Utah Underground Storage Tank Act, Title 19, Chapter 6, Part 4, Utah Code Ann. An order issued pursuant to the Underground Storage Tank Act is exempt from the procedures set forth in the Utah Administrative Procedures Act ("UAPA") pursuant to Utah Code Ann. § 63-46b-1(2)(k)(1995).

III. ORDER

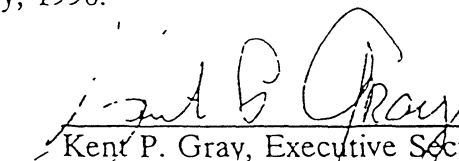
NOW WHEREFORE, the Executive Secretary ORDERS V-1 to:

- a. Immediately perform an initial abatement and site check and submit an Initial Abatement and Site Check Report by Tuesday, January 23, 1996, pursuant to Utah Admin. Code R311-202 which incorporates by reference 40 C.F.R. 280.62. Immediate abatement is required given the imminent & substantial threat to the public health and the environment.
- b. Immediately perform an initial site characterization by Tuesday, January 23, 1996. Submit an Initial Site Characterization Report by Tuesday, January 30, 1996, pursuant to Utah Admin. Code R311-202 which incorporates by reference 40 C.F.R. 280.63.
- c. Investigate the release of free product into the sewer line on 1455 West in Salt Lake City, Utah, and remove and abate free product threatening to impact or impacting the sewer line by January 23, 1996, and submit a report of your activities by January 30, 1996, pursuant to Utah Admin. Code R311-202 which incorporates by reference 40 C.F.R. 280.52 and 280.64.
- d. Investigate and submit an Investigation for Soil and Groundwater Cleanup Report within 60 days from the date of this Order, pursuant to Utah Admin. Code R311-202 which incorporates by reference 40 C.F.R. 280.65.
- e. Submit a Corrective Action Plan within 90 days from the date of this Order, pursuant to Utah Admin. Code R311-202 which incorporated by reference 40 C.F.R. 280.66.
- f. Implement corrective action in accordance with the Corrective Action Plan within 30 days of the date the Executive Secretary approves the Corrective Action Plan, pursuant to Utah Admin. Code R311-202 which incorporates by reference 40 C.F.R. 280.66.
- g. Telephone the DERR duty officer at (801) 536-4123 (pager 241-0871) within 24 hours of receipt of this Order and notify him whether or not you will comply with this Order and confirm the notification in writing.

This Order is effective immediately. Please hand deliver the submittals required in paragraphs a, b, and c, by the date referenced to the Executive Secretary and to Doug Hansen, Project Manager, at The Division of Environmental Response and Remediation, 168 North 1950 West, 1st floor, Salt Lake City, Utah, or fax the January 23, 1996, submittals to the same individuals at (801)359-8853 and also mail the January 23, 1996, submittals to P.O. Box 144840, Salt Lake City, Utah 84114-4840. Hand deliver or mail all other submittals to the individuals at the addresses above. If you do not telephone within 24 hours of receipt of this Order and notify the duty officer (pager 241-0871) of your intent to comply or if Doug Hansen (801-536-4454) and the Executive Secretary do not receive the submittals within the required time or if the submittals are not adequate to demonstrate sufficient abatement of the free product, the Executive Secretary will use public monies from an appropriate source to take abatement, investigative and corrective action and may recover the cost of doing so from you. In addition, the Executive Secretary may seek civil penalties from you if you fail to comply.

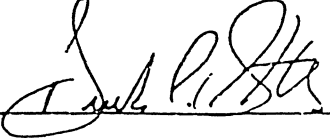
This Order shall become final if not contested within 30 days after the date issued. Failure to timely contest an initial order waives any right of administrative contest, reconsideration, review or judicial appeal. You may contest this order by filing a request for agency action, as specified in Utah Code Ann. § 63-46b-3 of the, with the Utah Solid and Hazardous Waste Control Board ("Board"). The Board's street address is 168 North 1950 West, 1st Floor, Salt Lake City, Utah, 84116. The Board's mailing address is P.O.Box 14880, Salt Lake City, Utah 84114-4840. You must also deliver a copy of your request to contest this Order to the Executive Secretary who is at the same address.

Dated this 19th day of January, 1996.

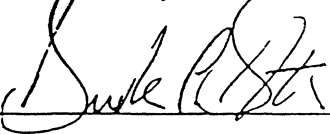

Kent P. Gray, Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board

CERTIFICATE OF SERVICE

On this 19 day of January, 1996, I caused to be hand delivered this Order to Peter Stirba, Stirba & Hathaway, Attorneys for V-1, 215 South State Street, #1150, Salt Lake City, Utah 84111.



On this 19 day of January, 1996, I mailed this Order to John W. Rowley, Registered Agent, V-1 Oil Company, a.k.a. V-1 Propane, 4424 South 700 East Suite 210, Salt Lake City, Utah 84107.



On this 19 day of January, 1996, I faxed this Order to Idaho Falls, Idaho at (208) 522-1452 and to Peter Stirba, Stirba & Hathaway, Attorneys for V-1 at (801) 364-8355.



On this 19 day of January, 1996, I hand delivered this Order to V-1 at 1478 South 300 West, Salt Lake City, Utah by leaving a copy with _____

Tab F



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF ENVIRONMENTAL RESPONSE AND REMEDIATION

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

Kent P. Gray
Director

166 North 950 West
P.O. Box 144840
Salt Lake City, Utah 84114-4840
(801) 536-4100 Voice
(801) 359-8853 Fax
(801) 536-4114 T.D.D.

ERRA-009-96

January 25, 1996

V-1 Oil Company, a.k.a. V-1 Propane
John Rowley, Registered Agent
4424 South 700 East, Suite 210
Salt Lake City, Utah 84107

V-1 Oil Company, a.k.a. V-1 Propane
1478 South 300 West
Salt Lake City, Utah (Hand Delivered)

V-1 Oil Company, a.k.a. V-1 Propane
Fax No. (208) 522-1452, Idaho Falls, Idaho

Re: V-1 Oil Company Free Product in Sewer, Facility No. 4001217, Release Site EFTX,
Notice of Noncompliance with Emergency Order to Abate and Order to Abate and
Perform Corrective Action Issued January 19, 1996 and Notice of Intent to Take
Lead and Use Public Money.

Dear V-1 Oil Company, a k a V-1 Propane:

On January 19, 1996, the Executive Secretary (UST) of the Utah Solid and Hazardous Waste Control Board ("Executive Secretary") issued an Emergency Order to Abate and Perform Corrective Action ("Order") to V-1 Oil Company, a.k.a. V-1 Propane ("V-1"). The Executive Secretary issued the Order because free product petroleum entering the sewer line at about 117 feet east from the second manhole west of 300 West presented, and continues to present, a direct, imminent and substantial threat to public health and the environment. Exposure to petroleum vapors present a risk to public health. Petroleum contains known carcinogens. The build-up of petroleum vapors in a sewer line may cause an explosion. Buildings near the sewer line may be subjected to rising concentrations of fumes which could be ignited by a pilot light on a furnace, stove or water heater or by people smoking. As set forth in the Order, the occupants of one building have already reported strong concentrations of petroleum vapors. The City of Salt Lake ("City") has been flushing water through the sewer lines to dilute the concentrations of petroleum



000126


Page 2

and has been monitoring the site of the sewer infiltration daily to insure that the vapors do not reach an explosive level.

In response to the Order, V-1 filed an Abatement Measures Report ("Report") with the Executive Secretary on January 23, 1996. The Report fails to demonstrate that V-1 has performed initial abatement as required by Paragraph a and c of the Order which directed V-1 to abate the release pursuant to Utah Admin. Code R311-202 (incorporating by reference 40 C.F.R. 280.62). Section 280.62(a)(3) of the C.F.R. requires owners and operators, such as V-1, to monitor and mitigate fire and safety hazards posed by vapors or free product that has entered sewers and basements. Section 280.62(a)(6) requires owners and operators to begin free product removal. The Report does not indicate that V-1 has monitored and mitigated fire and safety hazards, but merely repeats the actions the City is taking as described in the Order. The Report also fails to indicate that V-1 has begun free product removal. On Thursday, January 25, 1996, by fax and by phone, Linette Hutton counsel for V-1 indicated to Sandra Allen, attorney for the Division of Environmental Response and Remediation that V-1 was unwilling to immediately undertake abatement. This reveals that V-1 is also failing to comply with paragraph c which required V-1 to investigate free product into the sewer line and to remove and abate free product threatening to impact and impacting the sewer line by January 23, 1996.

Based on the foregoing concerning V-1's failure to sufficiently comply with the Order, and because of the direct, imminent and substantial threat to public health and the environment, the Executive Secretary will use public monies from an appropriate source to take abatement, investigative and corrective action. As outlined in the Order, the Executive Secretary may recover these costs from V-1.

Sincerely,



Kent P. Gray, Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board

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Page 3

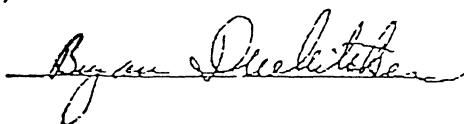
CERTIFICATE OF SERVICE

On this ____ day of January, 1996, I mailed this letter re: V-1 Oil Company Free Product in Sewer, Facility No. 4001217, Release Site EFTX, Notice of Noncompliance with Emergency Order to Abate and Order to Abate and Perform Corrective Action Issued January 19, 1996 and Notice of Intent to Take Lead and Use Public Money to the following:

Peter Stirba
Stirba & Hathaway
Attorneys for V-1 Oil Company
215 South State Street, Ste 1150
Salt Lake City, Utah 84111

John W. Rowley
Registered Agent for V-1 Oil Company, aka V-1 Propane
4424 South 700 East
Suite 210
Salt Lake City, UT 84107

On this 25th day of January, 1996, I faxed this letter re: V-1 Oil Company Free Product in Sewer, Facility No. 4001217, Release Site EFTX, Notice of Noncompliance with Emergency Order to Abate and Order to Abate and Perform Corrective Action Issued January 19, 1996 and Notice of Intent to Take Lead and Use Public Money to: V-1 Oil Company, a.k.a. V-1 Propane, Idaho Falls, Idaho at (208) 522-1452 and to Peter Stirba, Stirba & Hathaway, Attorneys for V-1 at (801) 364-8355.



000121

Tab G

FILE COPY



A PROFESSIONAL LAW CORPORATION

215 SOUTH STATE STREET • SUITE 1150
SALT LAKE CITY • UTAH 84111
TELEPHONE: 801 364-8300
FACSIMILE: 801 364-8355

TELECOPIER TRANSMISSION SHEET

January 29, 1996

4:30 p.m.

TO: Kurt Dominick
SOUTHERN PACIFIC REAL ESTATE ENTERPRISES
(303) 812-5961

FROM: Linette B. Hutton, Esq

THIS TRANSMISSION TOTALS 17 PAGES INCLUDING THIS COVER SHEET.

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or if any problems occur with transmission, please notify us immediately by telephone at (801) 364-8300. Thank you.

Re: Right of Entry Agreement

Dear Kurt:

As discussed, I am attaching a copy of V-1 Oil Company's Abatement Measures Report submitted on January 23, 1996 pursuant to DEQ's Emergency Order of January 19, 1996. Tables, figures and appendices are not included in this fax due to number and quality. If there is anything specific you would like to review please contact me and I will see if we can send a legible copy.

000123

Kurt Dominicak
January 29, 1996

Page 2

In addition, I contacted TriTechnics regarding the requested "drilling work plan." Dennis Riding, the Project Engineer, indicates that he does not have his drafting plan completed, but has prepared a hand-drawn map with tentative locations plotted on the railroad property. I hope this is satisfactory. I will, of course, provide the final work plan when it is made available, hopefully some time tomorrow, Tuesday, January 30, 1996.

Finally, I have reviewed the proposed agreement for right of entry, forwarded to Peter Stirba of our firm on January 22, 1996. It is agreeable as prepared, I don't believe any changes are necessary. I have contacted V-1's insurance agent to provide a certificate of insurance as required under section 3 of the agreement. He indicates that he will fax same some time tomorrow and send the original by mail. Also, we will forward copies of all reports relevant to the railroad property as they become available.

Please contact me if you have any additional concerns or questions. Thank you for your assistance in this matter.

Sincerely,



Linette Bailey Hutton

LBH pk
Enclosures
cc Gary Huskinson

000124

CALCULATION/WORK SHEET

SHEET _____ OF _____

Legend:



Tentative drilling location*

*Utility clearances are now in progress, as well as other inquiries that will establish final drilling locations

PROJECT:

PREPARED BY:

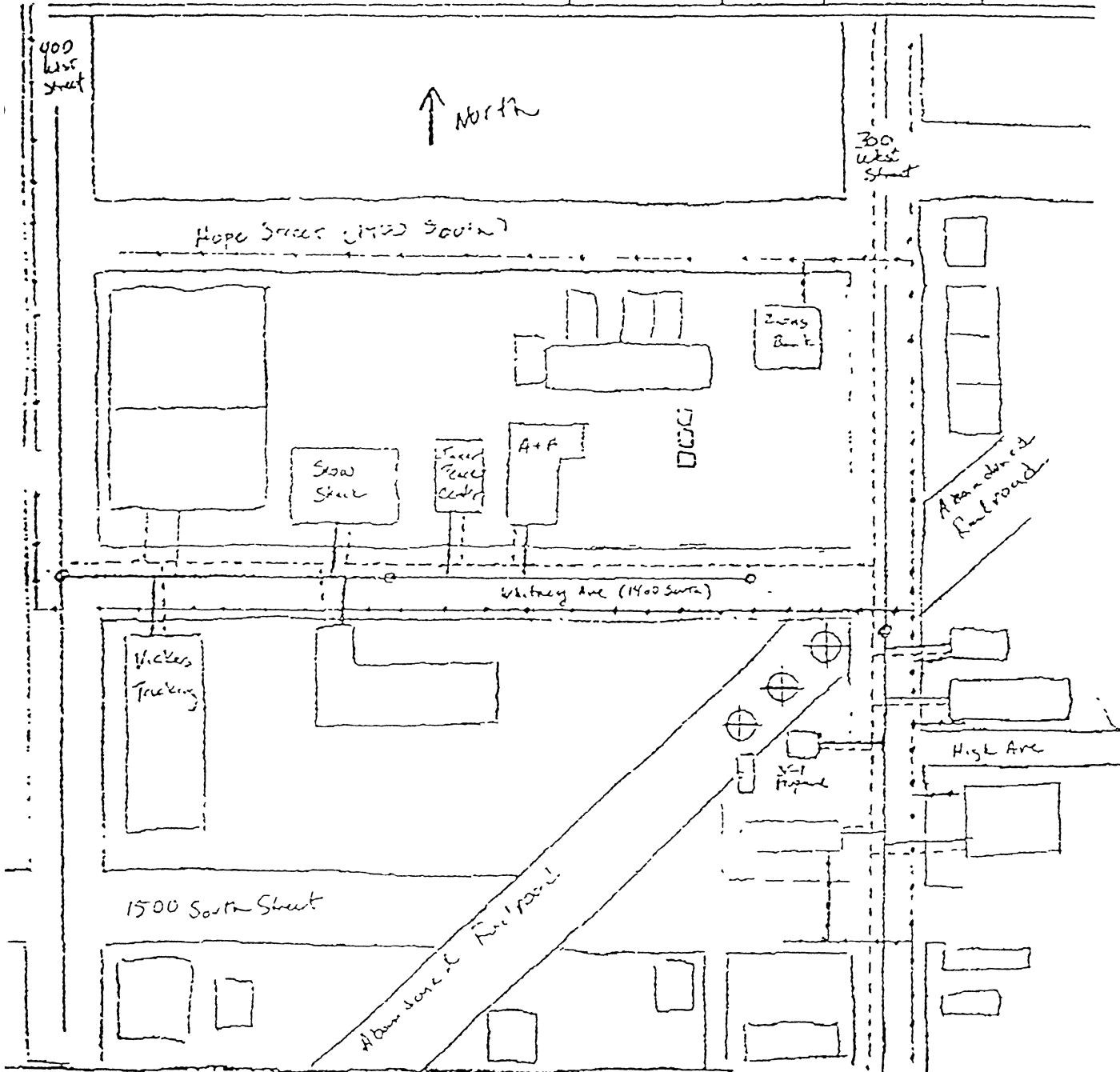
MM-

DATE:

1-26-96

CHECKED BY:

DATE:



Legend

- Sewer line up to hole
- - - - - Underground Culinary Water Line
- Underground Gas Line

Abatement & Initial Site Characterization Rep

Techniques
Logo

Area Map

000125

CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

01/30/96

JULI

Superior Insurance Service
4424 South 700 East
P.O. Box 17437
Salt Lake City

UT 84117-

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A OLD REPUBLIC INSURANCE
COMPANY LETTER B
COMPANY LETTER C
COMPANY LETTER D
COMPANY LETTER E

COPY

INSURED

V-1 OIL COMPANY ETAL
P.O. BOX 2438

Idaho Falls

ID 834032436

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	HML20672	04/05/95	04/05/98	GENERAL AGGREGATE \$ 2000000
	X COMMERCIAL GENERAL LIABILITY				PRODUCTS COMPROP AGG \$ 1000000
	CLAIMS MADE X OCCUR				PERSONAL & ADV INJURY \$ 1000000
	OWNERS & CONTRACTORS PROT				EACH OCCURRENCE \$ 1000000
A	X STOP GAP-WY(LIM.\$100,000)	HML20672	04/05/95	04/05/95	FIRE DAMAGE (Any one fire) \$ 50000
					MED. EXPENSE (Any one person) \$ 5000
A	AUTOMOBILE LIABILITY	HML20672	04/05/95	04/05/98	COMBINED SINGLE LIMIT \$ 1000000
	ANY AUTO				BODILY INJURY (Per person) \$
	X ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE \$
	X MIXED AUTOS				
	X NON-OWNED AUTOS				
	Garage Liability				
A	EXCESS LIABILITY	HZU026542	04/05/95	04/05/98	EACH OCCURRENCE \$ 4000000
	X UMBRELLA FORM				AGGREGATE \$ 4000000
	OTHER THAN UMBRELLA FORM				
	WORKER'S COMPENSATION				STATUTORY LIMITS
A	AND	HC83844	07/01/95	07/01/98	EACH ACCIDENT \$ 500000
	EMPLOYERS' LIABILITY				DISEASE - POLICY LIMIT \$ 500000
					DISEASE - EACH EMPLOYEE \$ 500000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/SPECIAL ITEMS

ON ALL OPERATIONS BY OR ON BEHALF OF THE INSURED SUBJECT TO THE TERMS & CONDITIONS OF THE ABOVE POLICIES.

SOUTH PACIFIC REAL ESTATE ENTERPRISES IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS PROPERTY LOCATED AT 1478 SOUTH 300 WEST, S.L.C., UT.

CERTIFICATE HOLDER

SOUTH PACIFIC REAL ESTATE ENTERPRISES
ATTN: STEVE GORDON
P. BOX 5482
D. R. CO 80217

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

000126

ist-it* Fax Note

7671

Date 1/30/96 # of pages 1

LYNETTE HUTTON

From VADEN TITNEY



RECEIVED

FEB 02 1996

Stirba and Hathaway

Southern Pacific Lines

Environmental Operations

1860 Lincoln Street, P.O. Box 5482, Denver, Colorado 80217

Curtis L. Dominicak
Manager Environmental Field Operations

(303) 812-5944
FAX (303) 812-5961

January 30, 1995

VIA FACSIMILE

Ms. Linette B. Hutton, Esq.
Stirba and Hathaway
215 South State Street, Suite 1150
Salt Lake City, Utah 84111

Re: V-1 Oil Company
Right of Entry Agreement for 300 West and Whitney Avenue, Salt Lake City, Utah

Dear Ms. Hutton:

On behalf of your client, V-1 Oil Company, you requested access to the Southern Pacific Transportation Company ("SP") property referenced above to install three ground water monitoring wells and collect subsurface soil and ground water samples. The purpose of the sampling was to investigate the potential source and extent of the gasoline free product reportedly entering the sanitary sewer line in Whitney Avenue.

As you know, Mr. Doug Hansen of the Utah Department of Environmental Quality Division of Environmental Response and Remediation (the "State") has also requested access to this property for a similar investigation. I spoke to Mr. Hansen earlier this afternoon about your request and the State's request for access to the property, and I informed him that SP was prepared to grant access to either party to conduct the investigation. Mr. Hansen stated that he preferred that the State lead the investigation. Given the public health concerns regarding seepage of the gasoline into the sewer line, Mr. Hansen expressed concern that V-1 Oil Company could not expeditiously conduct the investigation and subsequent remediation.

As you can understand, SP wants to simplify its involvement and facilitate this investigation by granting access to only a single party. Therefore, SP has decided to execute a "Grant of Access to Property" to the State and not execute the Right of Entry Agreement to V-1 Oil Company that we have been discussing.

000127

Ms. Linette B. Hutton, Esq.

January 30, 1996

Page 2

If you have any questions I can answer, you may call me at (303) 812-5944.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis L. Dominicak". The signature is fluid and cursive, with the first name "Curtis" and last name "Dominicak" clearly distinguishable.

Curtis L. Dominicak

Manager Environmental Field Operations

CLD/cld

cc: Timothy Smith, Chief Environmental Affairs Officer
Kathy Snead, SP Law Department
Gary Hunt, SP Real Estate Enterprises

000128

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



RECEIVED

FEB 01 1996

Stirba and Hathaway

JAN GRAHAM
ATTORNEY GENERAL

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of staff

January 31, 1996

Faxed & mailed

Linette Hutton
STIRBA & HATHAWAY
215 South State, #1150
Salt Lake City, Utah 84111

Re: Emergency Order on V-1

Dear Ms. Hutton:

I have reviewed your letter to Kent Grey dated January 31, 1996. This letter consists of nothing but misinformation and "facts" that are untrue and not attributed. If your client had been as prompt in taking abatement action as in sending disingenuous letters, these problems would not exist.

I have spoken with Doug Hansen of DERR. He did not tell Curt Dominicak that DERR would not approve V-1's drilling work plan. He told Mr. Dominicak that he had not approved or disapproved the work plan because he had never seen the work plan. In fact, no one at DERR has ever seen V-1's drilling work plan because such a plan has never been submitted.

Your letter does not state with whom TriTechnics supposedly spoke about the video, however, it was not Mr. Hansen, project manager of the V-1 site. In fact, Mr. Hansen has not spoken to anyone from TriTechnics since counsel for V-1 informed DERR that the State was not allowed to contact or work with V-1's consultant.

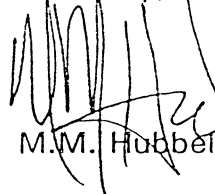
Your letter also refers to "investigations prior to this event" which have "confirmed other possible contaminors (sic)." You neglect to mention who performed the investigations, what they showed, who the contaminators were and

of what the contamination consists. Therefore, you provide no basis or evidentiary support for this claim. DERR has performed investigations in the area and has found no other source of contamination. V-1 is the only underground storage tank operator in the area and the only facility that has lost over 2,200 gallons of petroleum in the past two months.

When V-1 finally, under Order of the Court of Appeals, removed the abandoned tanks, the soil was found to be contaminated. The fact that free product was not flowing from the abandoned tanks does not mean that there was no significant contamination at V-1's facility. In fact, the state laboratory reports have shown levels of contamination at three times the allowable amount. Finally, the site has not been completely remediated as you claim. The site has not been closed.

On the afternoon of Thursday, January 25, 1996, you were verbally informed that due to your refusal to take abatement action, DERR was forced to take over abatement of the contamination. This was confirmed by facsimile of a notice of non-compliance on the same date. Any action that your client may have taken after they were informed that DERR would take over the abatement, investigation and clean-up, they choose to take despite notification.

Sincerely,

A handwritten signature in black ink, appearing to be 'M.M. Hubbell', written over a horizontal line.

M.M. Hubbell



RECEIVED

FEB 29 1996

Stirba and Hathaway

Southern Pacific Lines

1860 Lincoln Street • Suite 601 • Denver, Colorado 80295
(303) 812-5785 • Facsimile (303) 812-5794

Kathleen M. Sneed
General Attorney

Law Department

February 26, 1996

Melissa Hubble, Esq.
Utah State Attorney General's Office
50 South Main Street
Suite 900
Salt Lake City, Utah 84144

Re: V-1 Oil Company Right of Entry Agreement for
300 West and Whitney Avenue, Salt Lake City, Utah

Dear Ms. Hubble:

Your request that you be provided with a copy of the letter that Mr. Dominicak sent to Ms. Hutton has been referred on to me.

You must understand that we prefer, obviously, not to become involved in the middle of this dispute between the State and V-1 Oil. It is our usual practice, however, to only deal with one party on a site. We do ask for a work plan, and we do ask that the work plan be approved by whatever agency is involved if there is such involvement. Mr. Dominicak was informed that the State would not be approving V-1's work plan.

I am sending along a copy of the letter to you and I am also copying Ms. Hubbell on this letter. In the future, we will be corresponding with both parties on our correspondence, as we do not want to be put in the position of siding with either party in what appears to be a dispute when we have no first-hand information as to what is going on.

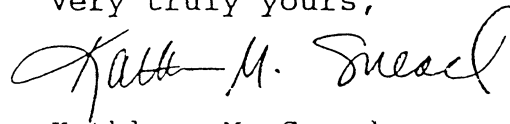
If either you or Ms. Hubble have any questions on the above, please contact me directly. In the future, however, I do not want my client contacted by any attorneys and you should consider

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Melissa Hubble, Esq.
February 26, 1996
Page 2

that Mr. Dominicak is represented by me and any contacts you wish to have with Mr. Dominicak should come through me.

Very truly yours,

A handwritten signature in cursive script, reading "Kathleen M. Snead". The signature is written in dark ink and is positioned above the printed name.

Kathleen M. Snead

KMS/skd

cc: Curtis Dominicak
Steve Gordon
Lynette B. Hutton, Esq.

000132



STIRBA AND
HATHAWAY

A PROFESSIONAL LAW CORPORATION

215 SOUTH STATE STREET • SUITE 1150
SALT LAKE CITY • UTAH 84111
TELEPHONE: 801 364-8300
FACSIMILE: 801 364-8355

LINETTE BAILEY HUTTON

February 1, 1996

VIA FACSIMILE

Melissa M. Hubbell
Assistant Attorney General
50 South Main Street, Suite 900
Salt Lake City, Utah 84144

Re: Emergency Order

Dear Melissa:

I am in receipt of your recent facsimile responding to V-1 requests to re-instate its ability to investigate this matter.

The information provided to V-1's counsel, by Messrs. Gordon and Dominicak of Southern Pacific Environmental Operations, regarding their conversation with Doug Hansen and V-1's pending access agreement to railroad property, is inconsistent with that presented in your recent correspondence. This denial of access to the railroad property, as previously noted, makes it impossible for V-1 to proceed with its investigation or to comply with the Emergency Order.

V-1 will, however, continue to investigate and take corrective action on its own property to which it has been limited. As you know, this does not allow V-1 to adequately address the requests under the Order. In addition, V-1 and its expert, TriTechnics, will cooperate in providing and sharing information, samples and assist in any observations necessary to bring this situation to a satisfactory close.

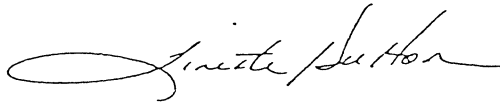
000120

Melissa M. Hubbell
February 1, 1996

Page 2

To prevent further miscommunications between V-1 and the State, please direct all inquiries to this office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linette B. Hutton". The signature is fluid and elegant, with a large initial "L" and a long, sweeping underline.

Linette B. Hutton

LBH:pk
cc: Gary Huskinson

000134

TRANSMISSION-REPORT

TIME : FEB 01 '96 19:26
TEL NUMBER : 8013648355
NAME : STIPIN : HATHAWA

IBP	DATE	TIME	DURATION	PSS	TO	DEPT.CODE	MODE	STATUS
130	FEB.01	19:25	01:06	03	8015068290		ET	OK

Tab H

**ABATEMENT AND INITIAL
SITE CHARACTERIZATION REPORT**

for
V-1 Propane
Salt Lake City, Utah

January 30, 1996

Prepared by:

TriTechnics Corporation
Salt Lake City, Utah

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EXECUTIVE SUMMARY

On December 26, 1995, a leak in a pipe running from the unleaded gasoline underground storage tank (UST) to a dispenser island was discovered at the V-1 Propane gasoline station located at 1478 South 300 West in Salt Lake City. The steel piping was removed and replaced with stainless steel piping that same day. The gasoline leak was suspected when November gasoline inventory records showed a loss from the unleaded gasoline UST system. Use of the unleaded gasoline UST system was discontinued in mid-November and was not resumed until after the leak had been found and repaired.

Two 6,000 gallon UST's were removed from the site on December 5, 1995. The removed tanks had never been used and were not connected to any product delivery system according to V-1 personnel. Free product was not observed on groundwater in the tank excavation which indicates that the removed tanks were not a source of such contamination.

On January 16, 1996, petroleum free product was reported entering the sanitary sewer about 117 feet east of the second manhole on Whitney Avenue west of 300 West Street. It has not been determined whether this free product originated from the V-1 Propane release in November. Salt Lake City is currently monitoring and flushing the sewer line at the point where free product is entering the sewer in order to avert the possibility of an explosive build-up of vapors.

1.0 INTRODUCTION

V-1 Propane (V-1) retained TriTechnics Corporation (TriTechnics) to prepare an Abatement Measures Report for the gasoline release at the V-1 Propane station at 1478 South 300 West (the "Site", Figure 2). This report has been prepared in accordance with the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (DERR) regulations and guidance.

1.1 FACILITY AND LUST IDENTIFICATION

The V-1 Propane gasoline station (Facility ID No. 4001217) is located at 1478 South 300 West, at the north end of Section 13, Township 1 South, Range 1 West, in Salt Lake City, Salt Lake County, Utah.

1.2 TYPE OF FACILITY

The site is a gasoline and propane retail service station and convenience store.

1.3 CURRENT AND PRIOR TANK USE

There are two coated steel underground storage tanks (UST's) on the site; a 10,000 gallon tank which contains unleaded gasoline and a 6,000 gallon tank which contains premium unleaded gasoline. Both tanks were installed in 1980. Two 6,000 gallon UST's were removed from the site on December 5, 1995. The removed tanks had never been used. The UST Closure Notice for both tanks is included in Appendix A.

1.4 RELEASE SOURCE AND DETECTION

A gasoline inventory loss from the unleaded UST system in November, 1995 prompted V-1 personnel to hire AES Intermountain, Inc. (AES) on November 30, 1995 to perform a tank product dispensing system pressure test. Pressure test results indicated a leak in the system. The unleaded gasoline UST system was consequently closed for service. AES suspected that the system's leak detector valve was defective and that gasoline was leaking back into the tank from the piping system. The leak detector valve was replaced on December 22, 1995 and the product dispensing system was retested. The product dispensing system pressure test again failed. Dale's Service Inc. (DSI) was hired by V-1 to find the leak in the system and repair it. DSI found a leak in the pipe running from the unleaded UST to dispenser #4 where the pipe entered the dispenser. The leaking section of steel pipe was removed and replaced with a stainless steel line on December 26, 1995. Use of the unleaded gasoline UST system was resumed after the pipe was repaired. The leak detector valve and pipe replacement receipts are included in Appendix B.

Two 6,000 gallon UST's were removed from the site on December 5, 1995. The removed tanks had never been used and were not connected to any product delivery system according to V-1 personnel. Benzene, toluene, ethylbenzene, and xylene (BTEX) and total petroleum hydrocarbon (TPH) concentrations were measured in groundwater samples taken at the time of the tank excavation, but no free product was observed. This indicates that the removed tanks were not a source of free product contamination. Groundwater quality data from the excavation for tank removal is shown in Table 1, and groundwater analytical data are included in Appendix C.

On January 16, 1996, free product petroleum was reported entering the sanitary sewer buried beneath Whitney Avenue. The point of entry into the sewer line was reported to be about 117 feet east of the second manhole on Whitney Avenue west of 300 West Street. It has not been determined whether this free product originated from the V-1 Propane release in November.

1.5 STATE NOTIFICATION

Notification of a suspected release was made to DERR on December 4, 1995 by Linette Hutton with Stirba & Hathaway Professional Law Corporation. Notification of a confirmed release was made to DERR on December 26, 1995 by Bob Horton with V-1 Propane.

2.0 SITE DESCRIPTION

2.1 TOPOGRAPHIC MAP

The Site is located on the northwest corner of the intersection of 1455 South (Whitney Avenue) and 300 West Streets. The Site location and regional drainage are shown on Figure 1

2.2 AREA MAP

The Site boundaries, surrounding streets and buildings, and underground utilities are shown in Figure 2.

2.3 SITE MAP

The Site is shown on Figure 3. The V-1 facility consists of two block store buildings, a gasoline sales office and a propane sales office, with a paved asphalt parking lot. Asphalt pavement is also placed around the two dispenser islands. Concrete is placed over the two UST's.

The UST and product dispensing systems consist of one 10,000 gallon UST which contains unleaded gasoline and one 6,000 gallon UST which contains premium gasoline. The UST's are located south of the gasoline sales office and the dispenser islands are located east of the gasoline office.

Utilities underlying the site include culinary water and sanitary sewer.

3.0 ENVIRONMENTAL SENSITIVITY

3.1 GROUNDWATER DEPTH

The depth of the groundwater at the site was 6.55 feet on January 22, 1996. The depth was measured in monitoring well TH-1 (Figure 3). No measurable free product was found in the monitoring well.

3.2 NATIVE SOIL TYPE

Soil at the site area is classified as sandy clay with gravel (CL/ML). The Unified Soil Classification (USC) sample was taken from the excavation pit after the tank removal in December, 1995. The USC analytical data is included in Appendix C.

3.3 ANNUAL PRECIPITATION

Normal annual precipitation measured at the Salt Lake City Airport over the past 30 years is 16.20 inches (USDA National Agricultural Statistics Service, 1995).

3.4 MUNICIPAL PRODUCTION WELL DISTANCE

The nearest municipal production well is owned by the Salt Lake City Corporation and is 3000 feet to the southeast of the site. A Utah Department of Natural Resources, Division of Water Rights diversion plot showing all municipal production wells within a 5000 foot radius from the site is shown in Appendix D.

3.5 OTHER WELL DISTANCES

There are 25 wells within a 0.25 mile radius of the site. Well uses include domestic, stockwatering, and irrigation. The well distances and directions from the site are listed in Table 2. A Utah Department of Natural Resources, Division of Water Rights diversion plot showing all municipal production wells within a 0.25 mile radius from the site is shown in Appendix E.

3.6 SURFACE WATER DISTANCE

The nearest surface water is the Jordan River and is 4000 feet from the site. A Utah Department of Natural Resources, Division of Water Rights diversion plot showing surface waters within a 5000 foot radius from the site is shown in Appendix F.

3.7 POPULATION DENSITY

The population for the 1.41 square mile area containing the site is 2,744 with a population density of 1947.6 people per square mile (United States of America Census Report, 1990).

3.8 DISTANCE TO UNDERGROUND UTILITY LINES

The V-1 sanitary sewer line runs from the gasoline office east for approximately 20 feet, southeast for another 35 feet, and then northeast for approximately 75 feet to the sanitary sewer main extending north and south beneath the middle of 300 West Street (Figures 1 and 2). The sewer line depth is unknown.

The sanitary sewer main beneath Whitney Avenue begins about 100 feet from 300 West Street and runs west to the sanitary sewer line extending north and south beneath 400 West Street (Figure 2). The sewer main is located approximately 130 feet north V-1 site boundary. The sewer main is 6 to 7 feet deep.

The V-1 culinary water line runs from the gasoline office southeast for approximately 75 feet to the culinary water main extending north and south beneath the middle of 300 West Street. A culinary water main also extends east and west beneath the north side of Whitney Avenue and connects into water mains running beneath 300 and 400 West Streets (Figures 1 and 2). The Whitney Avenue culinary water line is about 125 feet from the V-1 boundary. The culinary water line depths are unknown.

There are no underground gas lines running beneath the V-1 site. Underground gas lines extend north and south beneath the east side of 300 West Street and east and west beneath the south side of Whitney Avenue (Figure 2). The gas line depths are 18 to 30 inches. Both gas lines are approximately 100 feet from the V-1 site boundary.

There are no underground telephone lines running beneath the V-1 site. Underground telephone lines extend north and south beneath the west side of 300 West Street and east and west beneath the north side of Whitney Avenue (Figure 2). All telephone lines are 24 inches deep. The 300 West Street telephone line is about 15 feet from the V-1 site boundary and the Whitney Avenue telephone line is about 100 feet from the V-1 site boundary.

There are no underground electrical lines running beneath the V-1 site or the V-1 site area (Figure 2). The nearest underground electrical line is 640 feet to the east at High Street.

4.0 NATURE OF RELEASE

4.1 TYPE AND AMOUNT OF PRODUCT RELEASED

Unleaded and premium unleaded gasolines are stored in a 10,000 gallon UST and a 6,000 gallon UST, respectively. The amount of gasoline released from the unleaded gasoline dispensing system is unknown, but tank inventory records for November and December indicate 1,101 and 1,197 gallons short, respectively. These volumes include any gasoline truck delivery shortages. Unleaded gasoline inventory records are included in Appendix G.

4.2 CAUSE AND LOCATION OF RELEASE

The gasoline release occurred from a pipe running from the unleaded gasoline UST to dispenser #4. Pin-size holes were found in the pipe at the point where it entered the dispenser.

4.3 UST SYSTEM CONDITION

The steel pipe line between the unleaded UST and dispenser #4 was removed and replaced with a stainless steel line.

4.4 CONTAMINATION DETECTION AND SAMPLING LOCATION

No free product was observed in the pipeline trench by V-1 or DSI personnel during removal and replacement of the leaking piping. No soil samples were collected from the pipeline trench.

No free product was observed in the excavation pit after the UST's were removed in December. Groundwater samples were collected at the north and south ends of the excavation pit and a soil sample was collected for Unified Soil Classification in the middle of the excavation pit. All samples were collected at a depth of 10 feet. Sampling sites are shown in the UST Closure Notice included in Appendix A.

On January 16, 1996, free product petroleum was reported entering the sanitary sewer at about 117 feet west of the second manhole on Whitney Avenue west of 300 West Street. It has not been determined whether this free product originated from the V-1 Propane release in November. Lower explosion limit (LEL) measurements were taken on January 23, 24, 26, and 29, 1996 by TriTechnics personnel from both the first and second sewer manholes on Whitney Avenue west of 300 West Street. LEL measurements were below detection limits (<4%) in both of the sewer manholes each time that measurements were made.

5.0 ABATEMENT MEASURES

5.1 RELEASE SOURCE ABATEMENT

When gasoline inventory records indicated that gasoline was being lost from the unleaded gasoline UST system, the system was closed for testing and repairs. The product dispensing system was pressure tested and the UST was tightness tested. When a leak was discovered in the pipe between the UST and a dispenser, the leaking section of pipe was replaced with a stainless steel line. UST usage was resumed after the pipe was repaired. Product dispensing system pressure and UST tightness test results are included in Appendix H.

Additional site characterization to determine the extent of contamination is proceeding.

The two UST's removed from the site had never been used and were not connected to any product delivery system according to V-1 personnel. Free product was not observed at the time of the excavation which would have indicated that the removed tanks were a source of free product petroleum contamination. Consequently, free product abatement measures were not necessary at the time of tank removal.

Salt Lake City is currently monitoring and flushing the sewer line at the point where free product is entering it in order to avert the possibility of an explosive build-up of vapors.

5.2 INSPECTION AND FREE PRODUCT REMOVAL

Visual inspection for contamination in the excavated pipeline trench and around the dispenser was performed by V-1 and DSI personnel at the time of piping excavation and repair. Free product was not observed at that time (Wasden, 1996, Personal Interview).

Visual inspection for contamination in the UST excavated pit was performed by V-1, DSI, and DERR personnel at the time of the recent tank removal. Free product was not observed, and so free product abatement was not necessary (Wasden, 1996, Personal Interview).

5.3 STATE AND LOCAL AGENCY NOTIFICATION

Notification of a suspected release was made to DERR on December 4, 1995 by Linette Hutton with Stirba & Hathaway Professional Law Corporation. Notification of a confirmed release was made to DERR on December 26, 1995 by Bob Horton with V-1 Propane.

5.4 CONTAMINATED ZONE SAFETY HAZARD CONTROL

Safety in the contaminated zone at the excavated piping trench and around the dispenser was controlled by V-1 personnel. Barricades were placed around the zone until the pipeline was repaired and the parking area resurfaced. Excavated soil was returned to the pipeline trench before the area was resurfaced (Wasden, 1996, Personal Interview).

Safety in and around the UST removal excavation was also controlled by V-1 personnel. Barricades were placed around the excavated area until the pit was backfilled and resurfaced (Wasden, 1996, Personal Interview). Excavated soil was used to backfill the pit. Water that had collected in one of the excavated tanks and water used to wash the tanks was removed from the site and treated for disposal by Advanced Petroleum Recycling.

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6.0 CONTAMINATION REMOVAL

6.1 EXCAVATED SOIL VOLUME

Excavated soil from the leaking pipeline repair was returned to the pipeline trench before the area was resurfaced. Excavated soil from the UST removal was used to backfill the pit after the tanks were removed (Wasden, 1996, Personal Interview).

6.2 SAMPLING RESULTS AFTER EXCAVATION

A soil sample was collected from the middle of the UST excavation pit at a depth of 10 feet for Unified Soil Classification after the tanks were removed. Soil at the site area is classified as sandy clay with gravel (CL/ML). The sampling site is shown in Appendix A and the USC results are included in Appendix C.

No soil samples were collected from the pipeline trench during the leaking pipeline repair.

6.3 CONTAMINATED WATER VOLUME

Water that had collected in one of the excavated tanks and water used to wash the tanks was removed from the site and treated for disposal by Advanced Petroleum Recycling. Total volume of water removed was 550 gallons. The Advanced Petroleum Recycling water removal invoice is include in Appendix H. No other ground or surface water was removed from the site.

6.4 REMAINING CONTAMINATION

The type, volume, concentration, and movement of contamination remaining is unknown. Additional site characterization to determine the extent of contamination is proceeding.

7.0 SAMPLE QUALITY ASSURANCE AND QUALITY CONTROL

7.1 SAMPLING PROCEDURE

Groundwater and soil samples from the UST excavation pit were collected by Lawnie Mayhew (Utah Sampler #GS0583) with Harper Contracting, Inc. following UDERR sampling guidelines.

7.2 SAMPLE ANALYSIS

All groundwater and soil samples were taken to Chemtech-Ford Analytical Laboratories in Murray, Utah. Groundwater samples were analyzed for benzene, ethylbenzene, toluene, total xylene (BTEX) and total petroleum hydrocarbons (TPH) by methods EPA 624 and SW846 8015 Modified. The soil sample was collected for Unified Soil Classification.

7.3 UNIFIED SOIL CLASSIFICATION SAMPLE

A soil sample was collected from the middle of the UST excavation pit at a depth of 10 feet for Unified Soil Classification after the tanks were removed. The sampling site is shown in Appendix A and the USC results are included in Appendix C.

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8.0 CONCLUSIONS AND RECOMMENDATIONS

Additional site characterization and abatement activities may be necessary to determine extent and movement of the released gasoline. Characterization investigations will begin on or about January 31, 1996 and will include:

- Determination of the continued presence or absence of free product in the sewer on Whitney Avenue by collecting a sewer water sample for BTEXN and TPH analysis.
- The installation of about 10 monitoring points to determine if free product is present and whether the free product originated from the V-1 property. Monitoring points will be installed along underground utility lines that may act as preferential pathways and at several other locations estimated to be downgradient of the leak location in the gasoline line. Investigation will start near the leak location and will move outward from that point.

Recommended abatement measures include:

- Removal of any encountered free product in excess of 1/8-inch thick by pumping free product and groundwater to a holding tank for treatment.
- Additional soil and groundwater remediation as deemed necessary.

9.0 REFERENCES

United States of America Census Report, 1990, National Bureau of the Census, Washington, DC.

USDA National Agricultural Statistics Service, 1995, Utah Agricultural Statistics, USDA National Agricultural Statistics Service, Washington, DC.

Wasden, H. W., 1996, V-1 Propane 300 West Store Gasoline Manager, Personal interview, January 22, 1996.

SUBSURFACE INVESTIGATION REPORT

for
V-1 Oil Company
Salt Lake City, Utah

March 22, 1996

Prepared by:

TriTechnics Corporation
Salt Lake City, Utah

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EXECUTIVE SUMMARY

Eight groundwater monitoring wells were drilled and installed at the V-1 Oil Company site located at 1478 South 300 West to assess subsurface soil and groundwater conditions at the site. Emphasis was given to potential separated-phase hydrocarbons (free product) migration pathways in choosing the locations of the monitoring wells. The wells were located along sewer and culinary water service lines to the V-1 station, along the north property line, and at the location of the piping leak repaired in late 1995.

Groundwater flow was determined to be toward the northeast based on elevation survey data and groundwater depths in the wells. The groundwater horizontal gradient is 0.008 feet per foot. Concentrations of volatile organic compounds in groundwater were highest at well MW-6, located at the furthest distance from the site northeast of the V-1 station in the public right-of-way along 300 West Street. Well MW-6 was also observed to show 0.01 feet of free product in the well, and was the only well to show measurable free product during this investigation.

Subsurface soils were identified as lean clay in field observations, and this finding was confirmed by independent laboratory testing.

1.0 INTRODUCTION

V-1 Oil Company (V-1) retained TriTechnics Corporation (TriTechnics) to perform subsurface investigation activities and to prepare a Subsurface Investigation Report for a gasoline release at the V-1 gasoline station located at 1478 South 300 West (the "site", Figure 1). This report has been prepared in accordance with the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (DERR) regulations and guidance.

1.1 FACILITY AND LUST IDENTIFICATION

The site (Facility ID No. 4001217) is located at 1478 South 300 West, at the north end of Section 13, Township 1 South, Range 1 West, in Salt Lake City, Salt Lake County, Utah.

1.2 HYDROGEOLOGIC SETTING AND SITE HISTORY

The V-1 site is a gasoline and propane retail service station and convenience store located in the central part of the Salt Lake Valley. The site is underlain by fine-grained, unconsolidated sediments that occur as valley fill in areas proximal to the mountains that border the perimeter of the Salt Lake Valley. Shallow groundwater occurs in the unconfined aquifer composed of these fine-grained soils, and is found at depths of less than 10 feet beneath the site.

There are two coated steel underground storage tanks (UST's) at the site; a 10,000 gallon tank which contains unleaded gasoline and a 6,000 gallon tank which contains premium unleaded gasoline. Both tanks were installed in 1980. Two unused and abandoned 6,000 gallon UST's were removed from the site on December 5, 1995. A gasoline inventory loss from the unleaded UST system in November 1995 prompted V-1 personnel to hire AES Intermountain, Inc. (AES)

on November 30, 1995 to perform a tank product dispensing system pressure test. Pressure test results indicated a leak in the system. The unleaded gasoline UST system was consequently closed for service. AES suspected that the system's leak detector valve was defective and that gasoline was leaking back into the tank from the piping system. The leak detector valve was replaced on December 22, 1995 and the product dispensing system was retested. The product dispensing system pressure test again failed. Dale's Service Inc. (DSI) was hired by V-1 to find the leak in the system and repair it. A leaking section of steel pipe was identified, removed and replaced with a stainless steel line on December 26, 1995. Use of the unleaded gasoline UST system was resumed after the pipe was repaired.

On January 16, 1996, petroleum free product was reported entering the sanitary sewer buried beneath Whitney Avenue. The point of entry into the sewer pipeline was reported to be about 117 feet east of the second manhole on Whitney Avenue west of 300 West Street. The first manhole west of 300 West Street on Whitney Avenue is located approximately 180 feet northwest of the V-1 fuel piping leak repaired in December 1995.

1.3 PURPOSE AND SCOPE OF INVESTIGATION

The purpose of this investigation has been to assess soil and groundwater conditions beneath the V-1 site, and especially to investigate for the presence of free product or separated-phase hydrocarbons. The scope of work included drilling soil borings and installing monitoring wells in eight locations at the site and in the public right-of-way east of the site, sampling soil and groundwater, performing chemical and physical testing of soil and groundwater, performing slug tests on three of the new wells at the site, and surveying the site to determine the local direction of groundwater flow.

2.0 METHODOLOGY

2.1 PERMITTING

The subsurface investigation at the V-1 site included drilling and installation of monitoring wells to depths of no more than 15 feet. The Utah Division of Water Rights does not require permits for monitoring or observation wells completed at depths of less than 30 feet. Three of the wells were drilled in locations along the west side of 300 West Street, in the public right-of-way. The Salt Lake City Engineering Division was contacted for permits for these wells, and a traffic control plan was filed with the Salt Lake City Division of Transportation. Copies of these documents are included in Appendix E.

2.2 RATIONALE FOR INVESTIGATIVE METHODS

Hollow-stem auger drilling is commonly employed for investigation of soil and groundwater conditions at underground tank sites. The advantages of the method include minimal surface disturbance and restoration requirements, and minimal disruption of traffic flow and station operations. The installation of monitoring wells allows for assessment of groundwater flow direction and gradient by direct measurement, and also allows for ongoing monitoring for separated-phase hydrocarbons on the water table, if present.

Since the site is underlain by fine-grained soils (primarily lean clays), monitoring well locations were chosen along potential migration pathways in fill materials that are commonly associated with buried utilities and pipelines (wells MW-4, MW-6, MW-7, and MW-8). Three locations ~~were~~ also placed along the north property line to monitor for potential groundwater impacts downgradient from the V-1 fuel storage and dispensing facilities (wells MW-1, MW-2, and MW-3). One monitoring well (MW-5) was placed at the location of the fuel piping leak that was

repaired in December, 1995, to investigate for soil and groundwater impacts from the leak.

2.3 WELL INSTALLATION

Monitoring wells were installed in each of the eight soil borings drilled at the site. The borings were advanced to approximately 15 feet depth, and then monitoring wells were constructed at a depth of 14 feet. Wells MW-1 through MW-4 were completed with four-inch diameter schedule 40 PVC well construction materials that included flush-threaded bottom caps, factory-slotted well screen with 0.020-inch aperture slots, blank well casing, and locking caps secured with padlocks. Silica sand filter pack (grade 16-30) was placed around the well screen to a depth of three feet below finished grade, and hydrated bentonite chips were used to seal the annular space from three feet to one foot depth. A traffic-rated, flush-mounted, locking surface casing was set in concrete to complete the installation at finished grade, to protect the well from damage.

Monitoring wells MW-6 through MW-8 were completed with two-inch diameter PVC materials to a depth of 14 feet. The placement of silica sand (grade 10-20) filter pack and bentonite seal materials, locking cap and surface casing were as described above for the four-inch diameter wells.

Soil boring/monitoring well logs are included in Appendix A, and include as-built drawings of well construction as well as logs of samples collected and soils encountered during drilling.

Drill cuttings and purge water from sampling the monitoring wells at the site was collected and placed in drums for temporary storage. The soil cuttings and purge water will be taken to E. T. Technologies in Salt Lake City for disposal.

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The benchmark chosen for the elevation survey is located at the northeast corner of the site at the property corner. The property corner survey monument is a nail-and-washer benchmark placed near the middle of the north driveway from 300 West Street in the asphalt at the edge of the concrete apron.

Well development was done prior to groundwater sampling, and consisted of bailing purge water from each well casing until pH and conductivity measurements of the well water were stable (generally three casing volumes).

2.4 SOIL CONDITIONS AND SAMPLING

Soils encountered and sampled during drilling activities were almost exclusively lean clays. Beneath the surface asphalt and subbase fill materials, clay extends across the site to the total depths penetrated during drilling. The clay is locally silty with occasional pebbles from depths of about one to three feet. At the depth of groundwater, the soil is lean clay (CL) as classified under the Unified Soil Classification System (USCS). Samples of these soils were submitted to an independent geotechnical laboratory for classification, and the results of these tests are consistent with field observations. The geotechnical laboratory testing results are included in Appendix C.

Soil staining from hydrocarbons was observed only in boring MW-5 at a depth of five feet, at the location of the piping leak that was repaired at the end of 1995. Hydrocarbon odors were noted in many of the soil samples collected, however, and field observations are described on the drill logs. Soils were also screened in the field for volatile organics using the "headspace" technique. This technique uses a sample split obtained during drilling; the sample split is sealed in a glass mason jar and gently heated in ambient sunlight or other heat source for several minutes. Then the headspace air trapped inside the jar is tested for the presence of volatile organics with a portable photoionization detector. The

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results of field headspace screening tests are shown on the drill logs in Appendix A.

Soils below the depth of the water table were also lean clay, but the consistency of the clay changes to more fat clay (CH) near the bottom of the borings.

Soil samples for laboratory analysis were collected with an 18-inch California sampler during drilling. Soil was transferred from the sampler to glass jars with teflon lids provided by the analytical laboratory. Vinyl gloves were worn by field personnel during sample collection, and sample jars were filled to leave no obvious air voids. Samples were labeled and placed on ice immediately after collection, and were chilled to four degrees C temperature until delivered to the analytical laboratory. Samples were collected by Dennis Riding, GS-0148, and Kurt Alloway, GS-0907, of TriTechnics and were kept in a secure location under chain of custody until transported to the laboratory. The laboratory selected for soil and groundwater analyses was Mountain States Analytical, a Utah-certified analytical laboratory. Reports of laboratory analyses and chain of custody forms are included in Appendix D.

The drill rig and all down-hole equipment were steam cleaned prior to beginning drilling operations, and following boring completion to ensure that no cross-contamination between borings could occur. Soil samplers were steam cleaned between samples, and vinyl gloves were discarded after each sample.

2.5 GROUNDWATER CONDITIONS AND SAMPLING

Groundwater conditions were observed during drilling and monitoring well installation, and subsequently during sampling of the wells. Separated-phase hydrocarbons (free product) was not observed in any of the wells located at the V-1 property. Well MW-6 located in the public right-of-way northeast of the site

was found to have 0.01 feet of free product on March 5, 1996. The wells were checked for free product using an MMC oil/water interface probe. The interface probe is able to measure a free product thickness of 0.01 feet or more in monitoring wells. Figure 2 is a map of hydrocarbon thickness in the wells drilled for this investigation, showing the measured thickness of free product at MW-6.

Static water level measurements were made in each of the wells on March 5, 1996. An electronic water level indicator (Keck or Solinst) was used to measure the depth to groundwater in each well with an accuracy of 0.01 feet. Water level measurements were used to calculate purge volumes for well development and sampling. Table 1 lists the results of water level measurements in the monitoring wells.

The monitoring wells were developed and sampled with disposable, HDPE bailers and disposable bailer twine. Measurements of pH and conductivity were first obtained after bailing the first casing volume from each well and again for subsequent casing volumes until these parameters stabilized (generally after bailing three casing volumes). Purge water was contained in drums at the site for later disposal at E. T. Technologies. Groundwater samples were collected by bailing after purging the well, using a disposable valve bailer attachment designed for sampling volatile organic compounds. Groundwater samples were collected in 40 ml vials supplied by the analytical laboratory. Vials used for volatiles analyses were preserved with hydrochloric acid; vials used for TPH microextraction analyses were not preserved, in accordance with laboratory procedures. Sample handling procedures and personnel for groundwater sampling were the same as those described above for soil sampling.

03-16-96

3.0 RESULTS

3.1 SOIL ANALYSES

Soil samples were analyzed by the laboratory for volatile organic compounds (benzene, toluene, ethylbenzene, xylenes, and naphthalene) by EPA method 8020, and for total petroleum hydrocarbons (TPH) by EPA method 8015, modified, as required by DERR regulations and guidance. Results of the laboratory analyses are summarized in Table 2. and laboratory reports are included in Appendix D.

The highest concentrations of volatile organic compounds and total petroleum hydrocarbons were found in soil from boring MW-3 at a depth of 5.0 to 6.5 feet. The total petroleum hydrocarbons concentration for this sample was 1,750 mg/kg, and volatile organics for the sample totaled 76.5 mg/kg.

3.2 GROUNDWATER FLOW

The direction of groundwater flow beneath the site based on static water levels and on elevation survey results is toward the northeast, at a horizontal gradient of 0.008 feet per foot. Figure 3 is a water table contour map showing the direction of groundwater flow and the measured water table elevations in each well.

Slug tests were performed at three of the wells to estimate aquifer hydraulic conductivity beneath the site. The results of these tests are included in Appendix B. These results indicate that aquifer hydraulic conductivity is in the range of 13.3 to 19.5 feet per day. These conductivities were obtained for the four-inch diameter wells MW-1, MW-3 and MW-5, but must be considered to be preliminary and subject to further testing for confirmation.

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3.3 GROUNDWATER ANALYSES

Groundwater samples were analyzed by the laboratory for volatile organic compounds (benzene, toluene, ethylbenzene, xylenes, and naphthalene) by EPA method 602, and for total petroleum hydrocarbons by EPA method 8015, modified, as required by DERR regulations and guidance. Results of the laboratory analyses are summarized in Table 3, and laboratory reports are included in Appendix D.

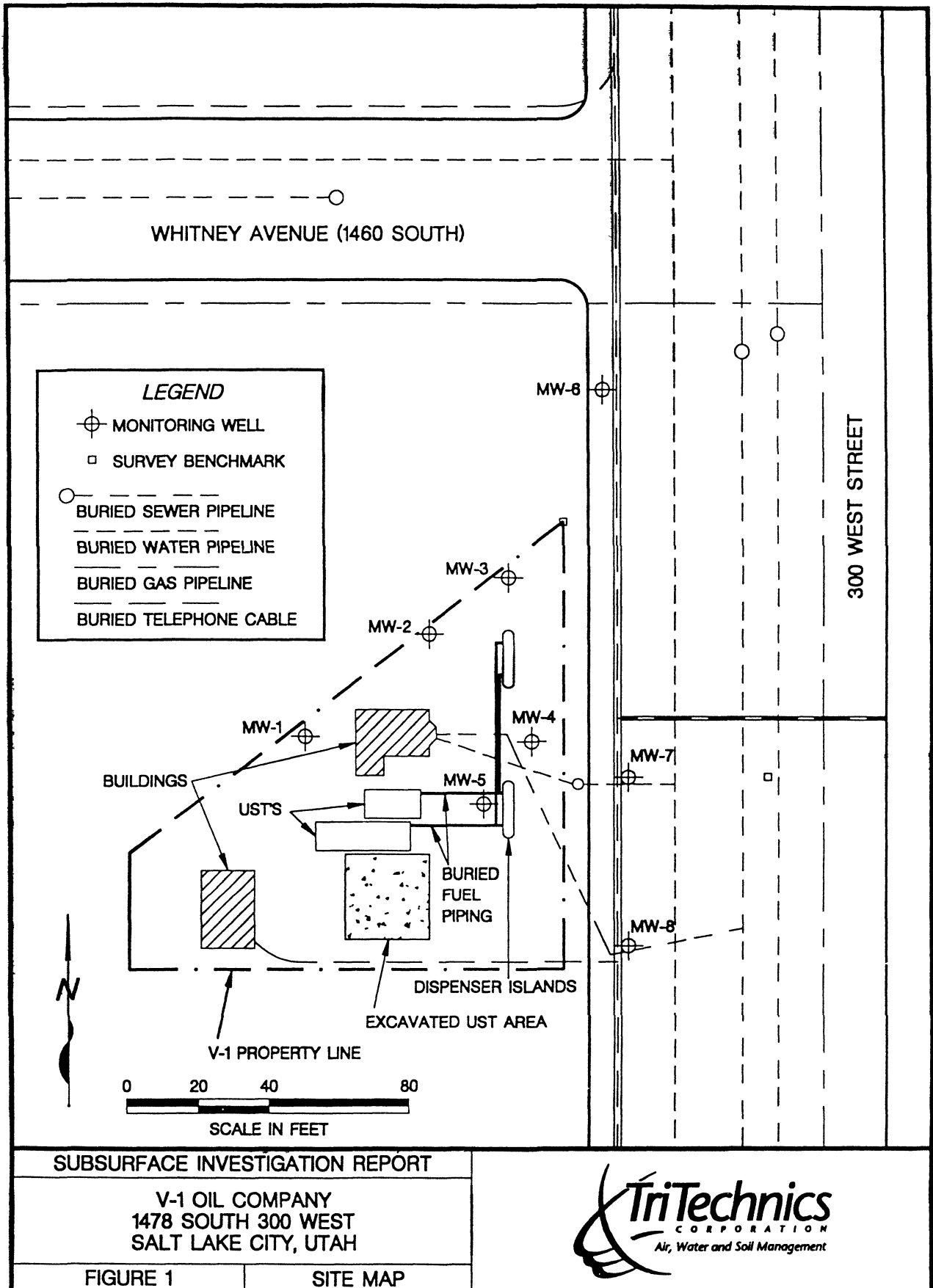
The highest benzene concentration in groundwater was measured at well MW-6, northeast of the V-1 site, at 11.0 mg/l benzene. Figure 4 is a map of groundwater benzene concentrations in the monitoring wells. A lower benzene concentration of 5.26 mg/l was found in well MW-5 at the location of the piping leak repaired at the end of 1995.

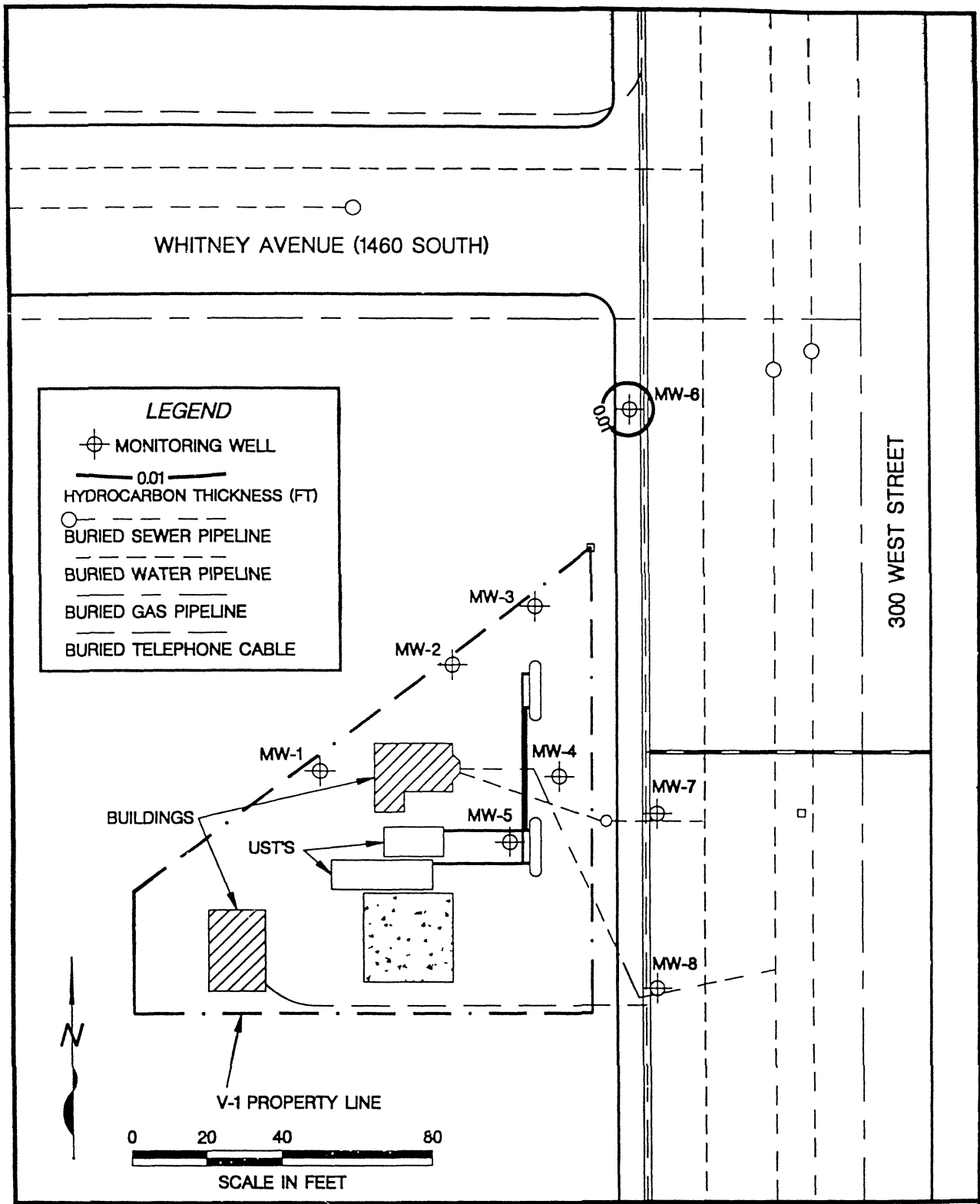
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4.0 CONCLUSIONS

The results of this investigation indicate that groundwater flow beneath the V-1 site at 1478 South 300 West is toward the northeast. Monitoring wells were drilled at the site and along possible migration pathways associated with buried utilities at the V-1 site and along the west side of 300 West Street. Low concentrations of petroleum compounds were found in groundwater in the wells placed along the sewer and culinary water service piping to the station (wells MW-4, MW-7 and MW-8), but higher concentrations were found in groundwater beneath the piping leak at well MW-5 and especially northeast of the site at well MW-6. Well MW-6 is the only well to show a measurable thickness of free product among the monitoring wells checked during this investigation. Soils beneath the site are lean clay, as confirmed by independent laboratory testing as well as field observation.

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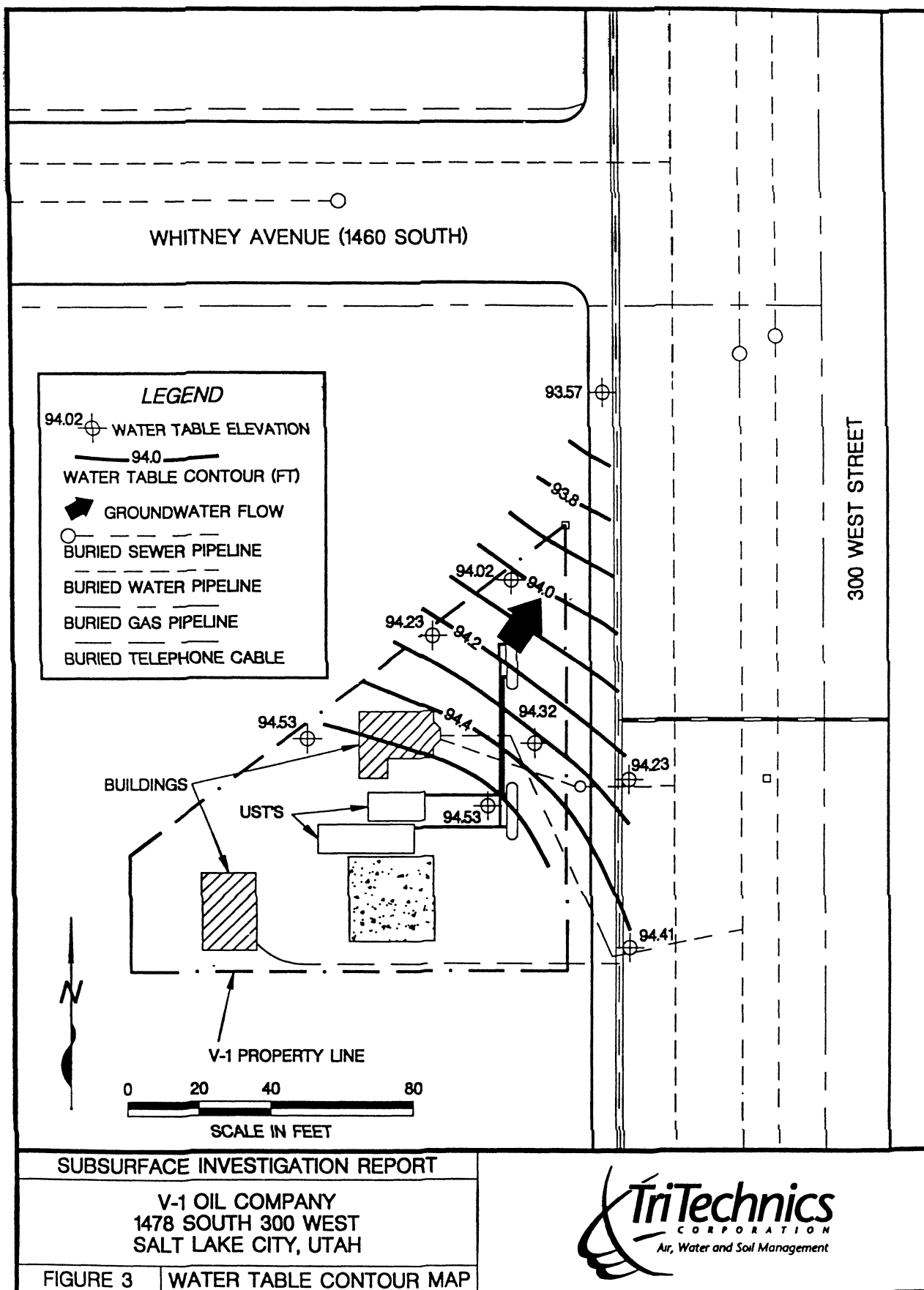


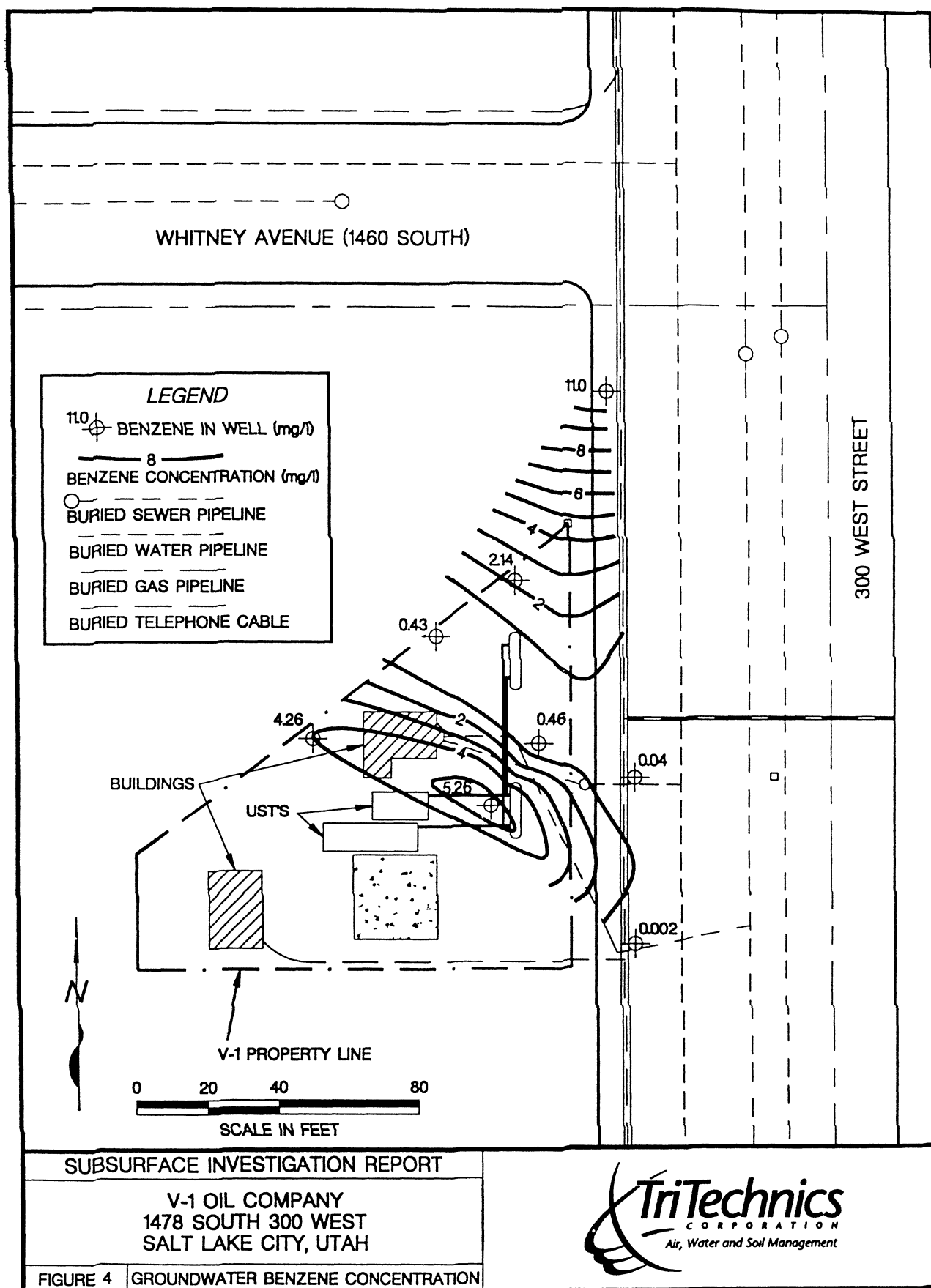
SUBSURFACE INVESTIGATION REPORT

V-1 OIL COMPANY
1478 SOUTH 300 WEST
SALT LAKE CITY, UTAH

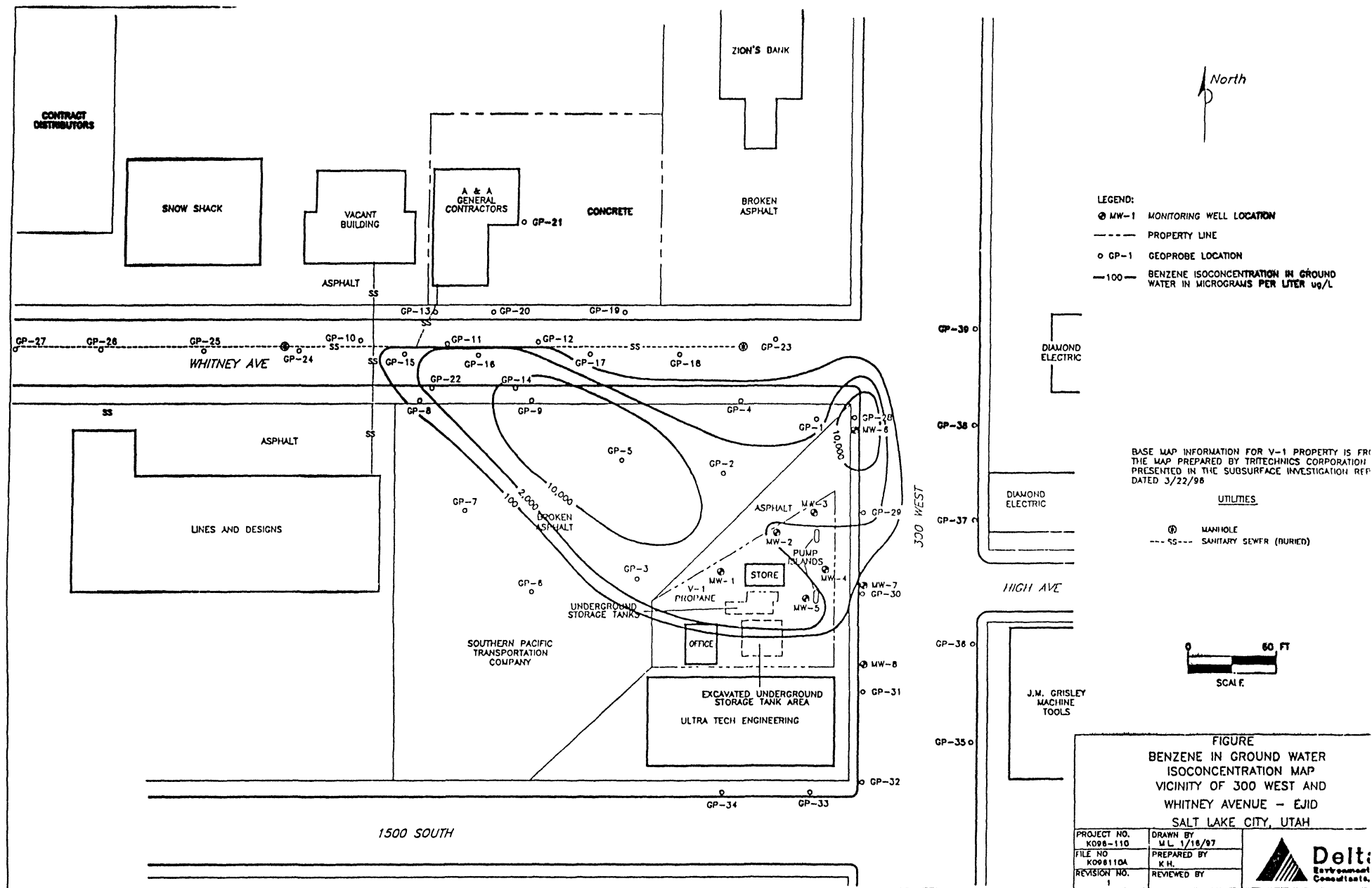
FIGURE 2 | HYDROCARBON THICKNESS MAP



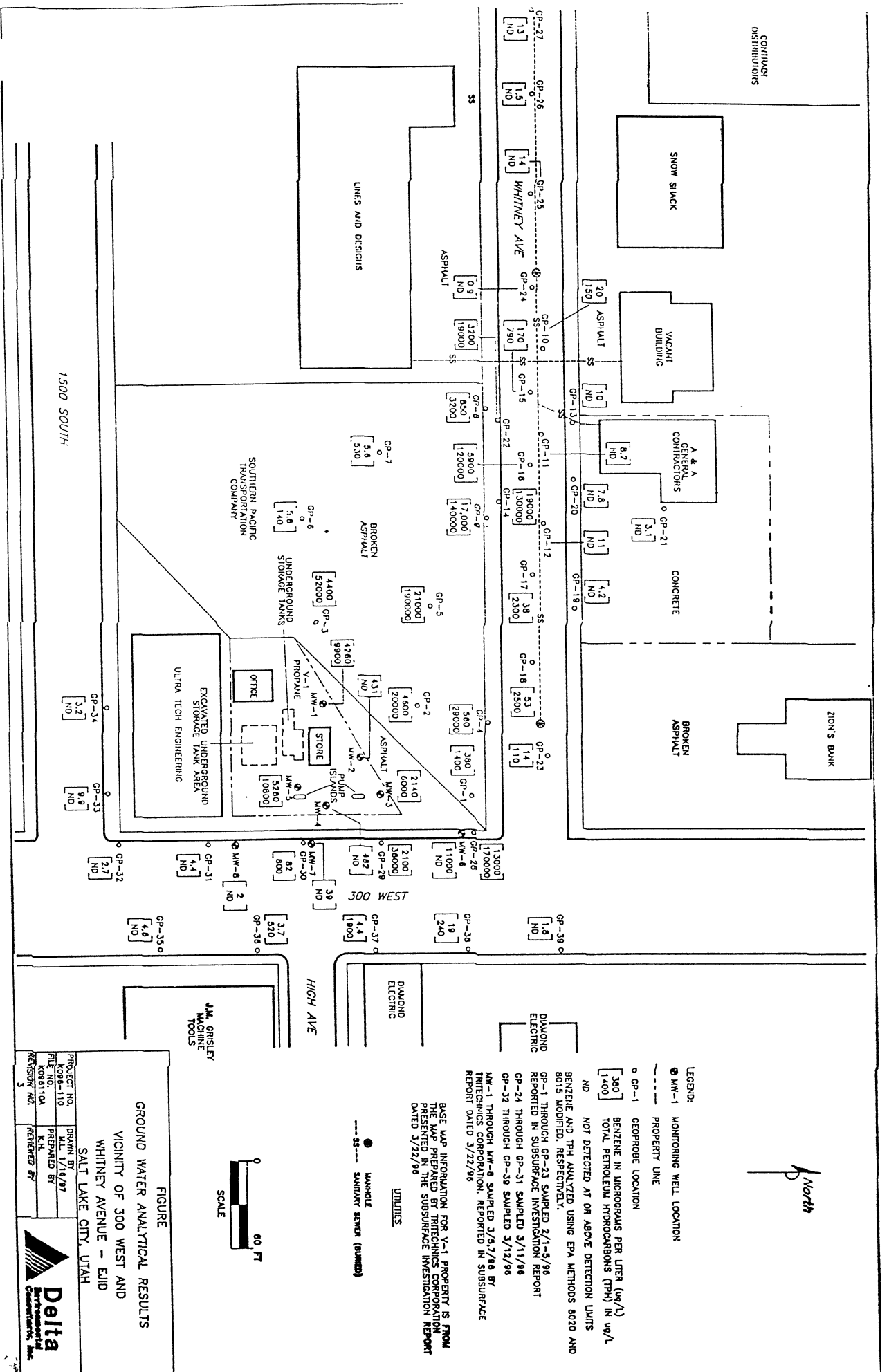




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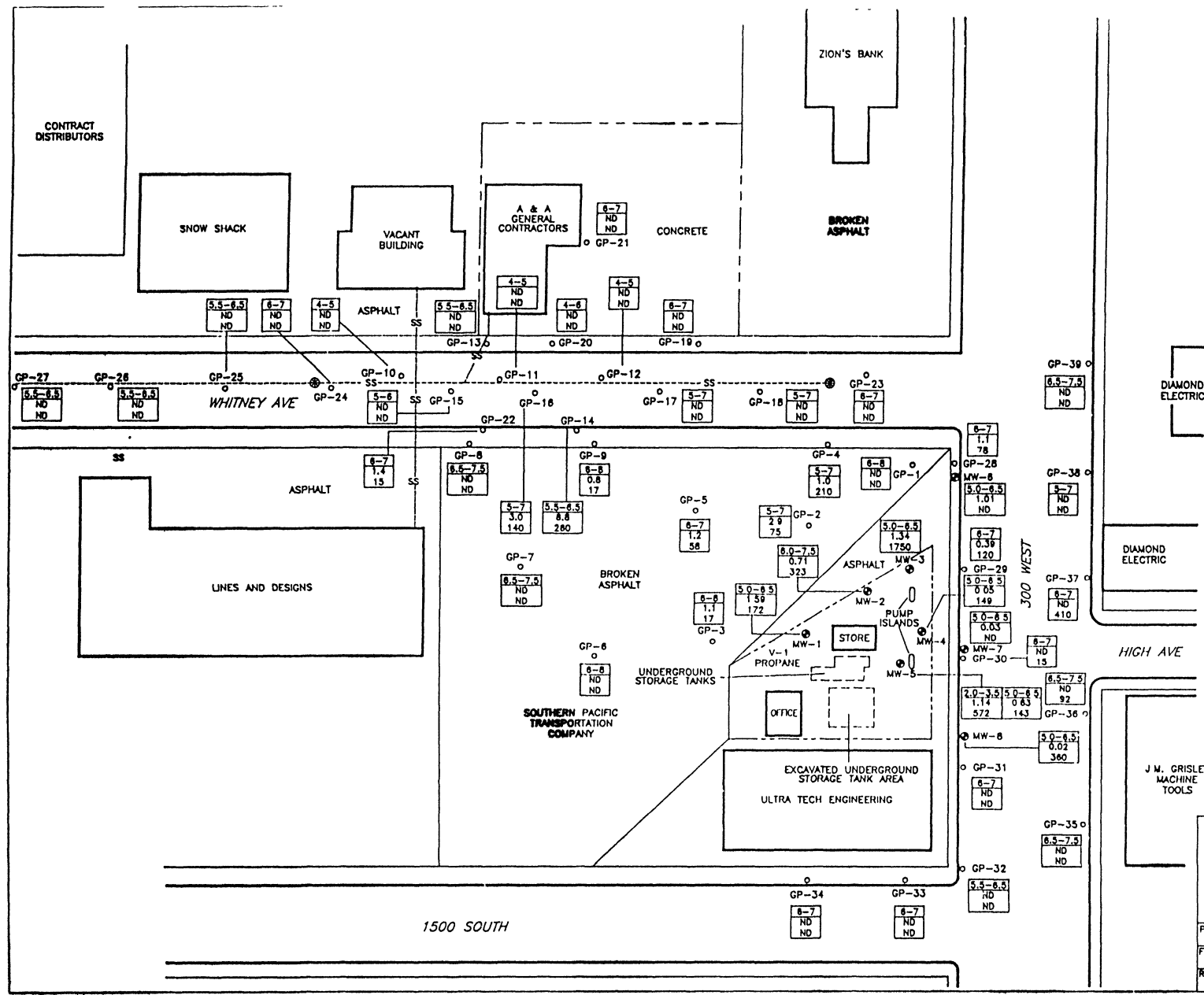


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LEGEND:

- MW-1 MONITORING WELL LOCATION
- PROPERTY LINE
- GP-1 GEOPROBE LOCATION

6.5-7.5
ND
ND

DEPTH OF SAMPLE INTERVAL IN FEET BELOW GRADE
BENZENE IN MILLIGRAMS PER KILOGRAM (mg/Kg)
TOTAL PETROLEUM HYDROCARBONS (TPH) IN mg/Kg
ND NOT DETECTED AT OR ABOVE METHOD DETECTION LIMIT
BENZENE AND TPH ANALYZED USING EPA METHODS 8020 AND 8015 MODIFIED, RESPECTIVELY.
GP-1 THROUGH GP-23 SAMPLED 2/1-5/98
REPORTED IN SUBSURFACE INVESTIGATION REPORT
GP-24 THROUGH GP-31 SAMPLED 3/11/98
GP-32 THROUGH GP-39 SAMPLED 3/12/98
MW-1 THROUGH MW-8 SAMPLED 2/1,2/98 AND 3/1/98
BY TRITECHNICS CORPORATION. REPORTED IN SUBSURFACE INVESTIGATION REPORT 3/22/98

BASE MAP INFORMATION FOR V-1 PROPERTY IS FROM THE MAP PREPARED BY TRITECHNICS CORPORATION PRESENTED IN THE SUBSURFACE INVESTIGATION REPORT DATED 3/22/98

UTILITIES

● MANHOLE
--- SS --- SANITARY SEWER (BURIED)

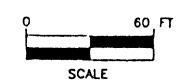
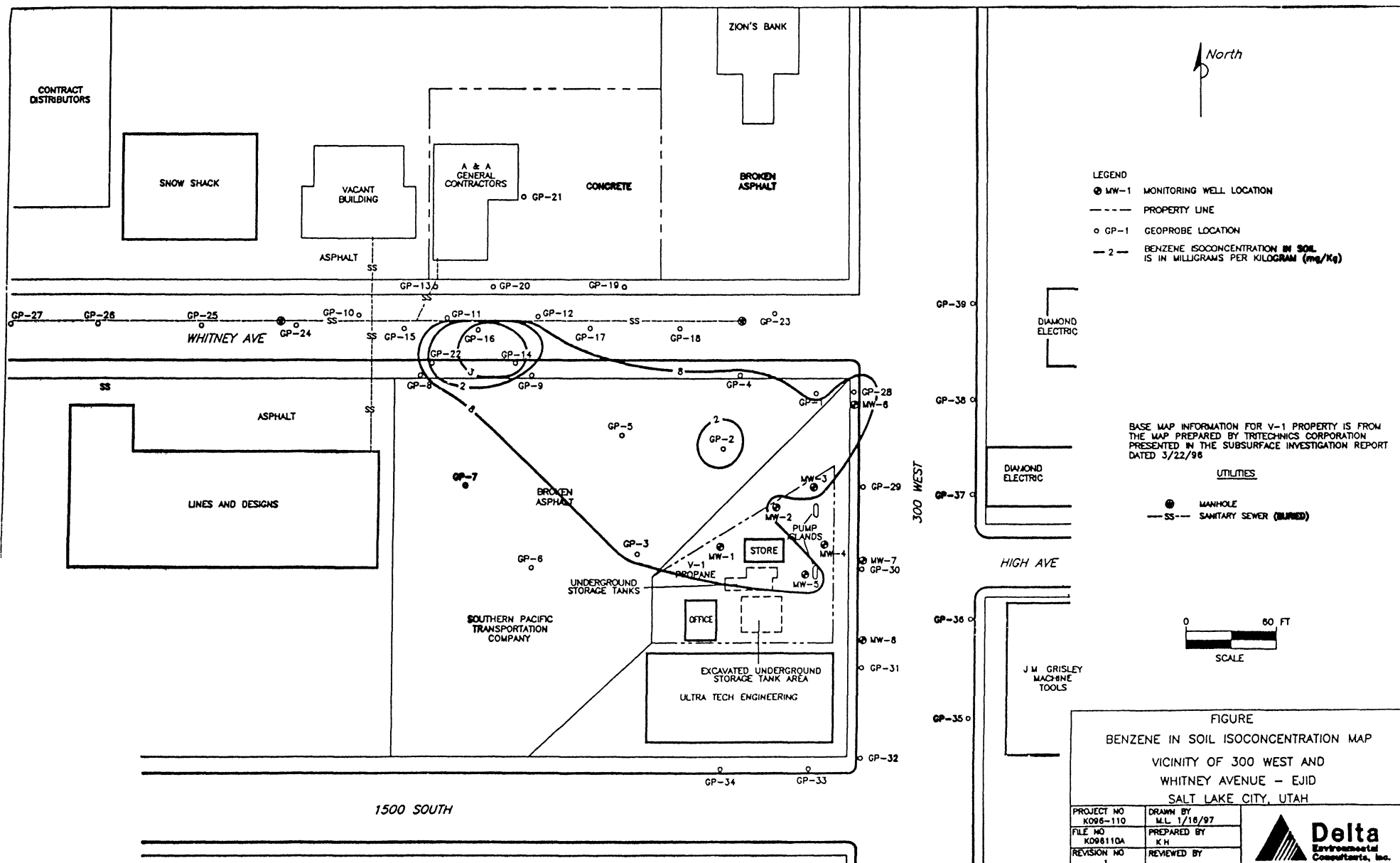


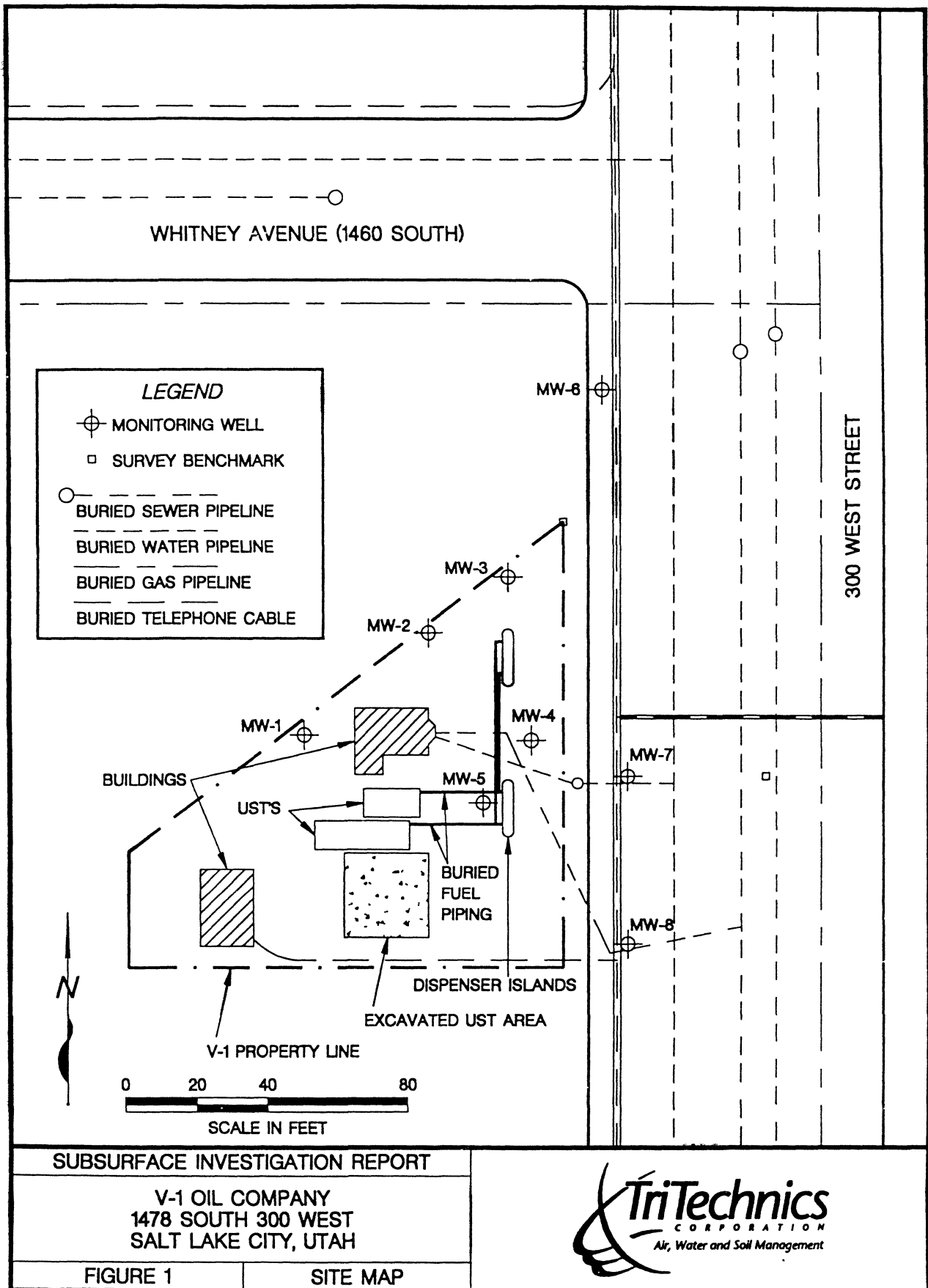
FIGURE
SOIL ANALYTICAL RESULTS
VICINITY OF 300 WEST AND
WHITNEY AVENUE - EJID
SALT LAKE CITY, UTAH

PROJECT NO. K098-110	DRAWN BY M.L. 1/16/87
FILE NO. K098110A	PREPARED BY K.H.
REVISION NO. 4	REVIEWED BY

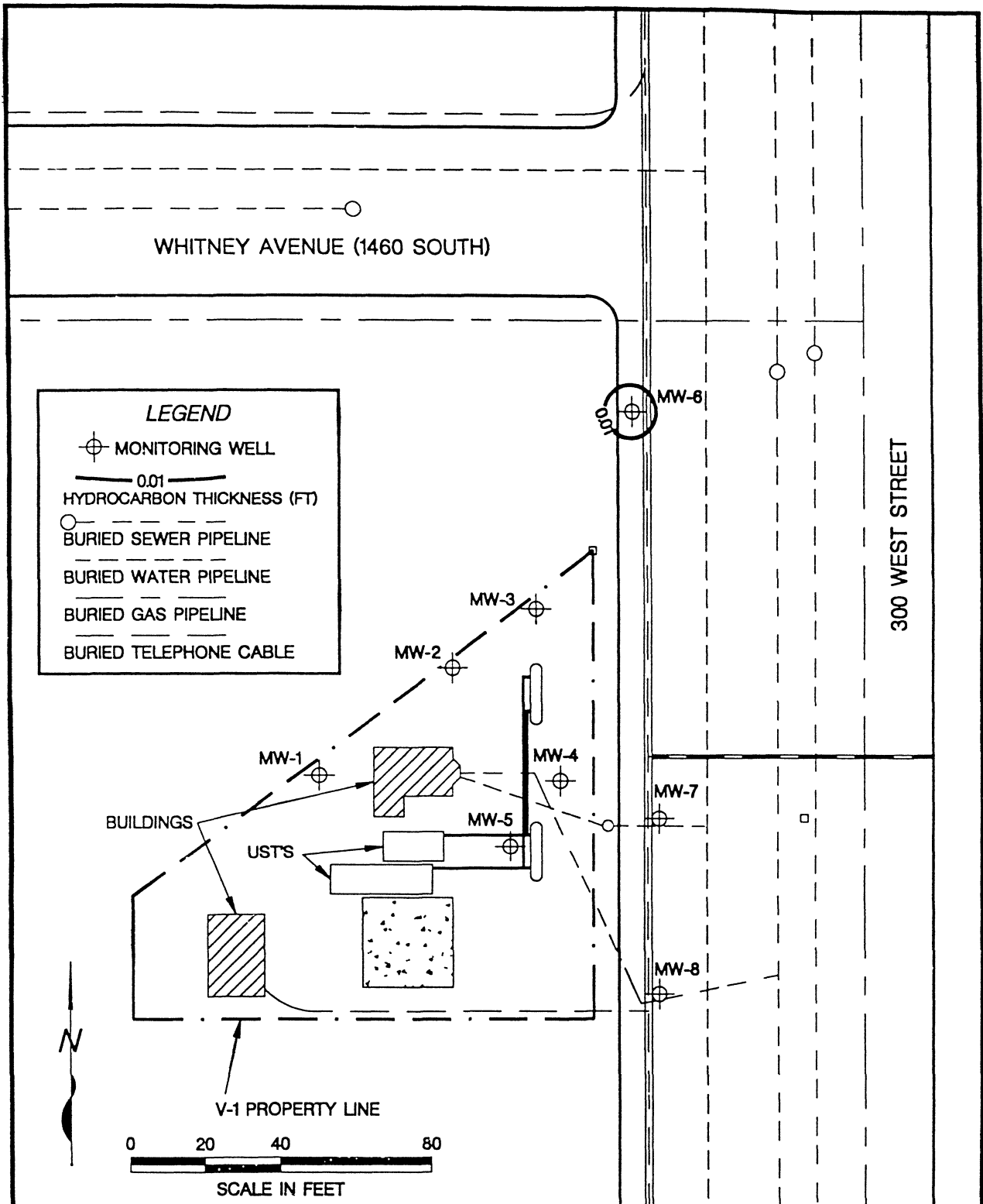


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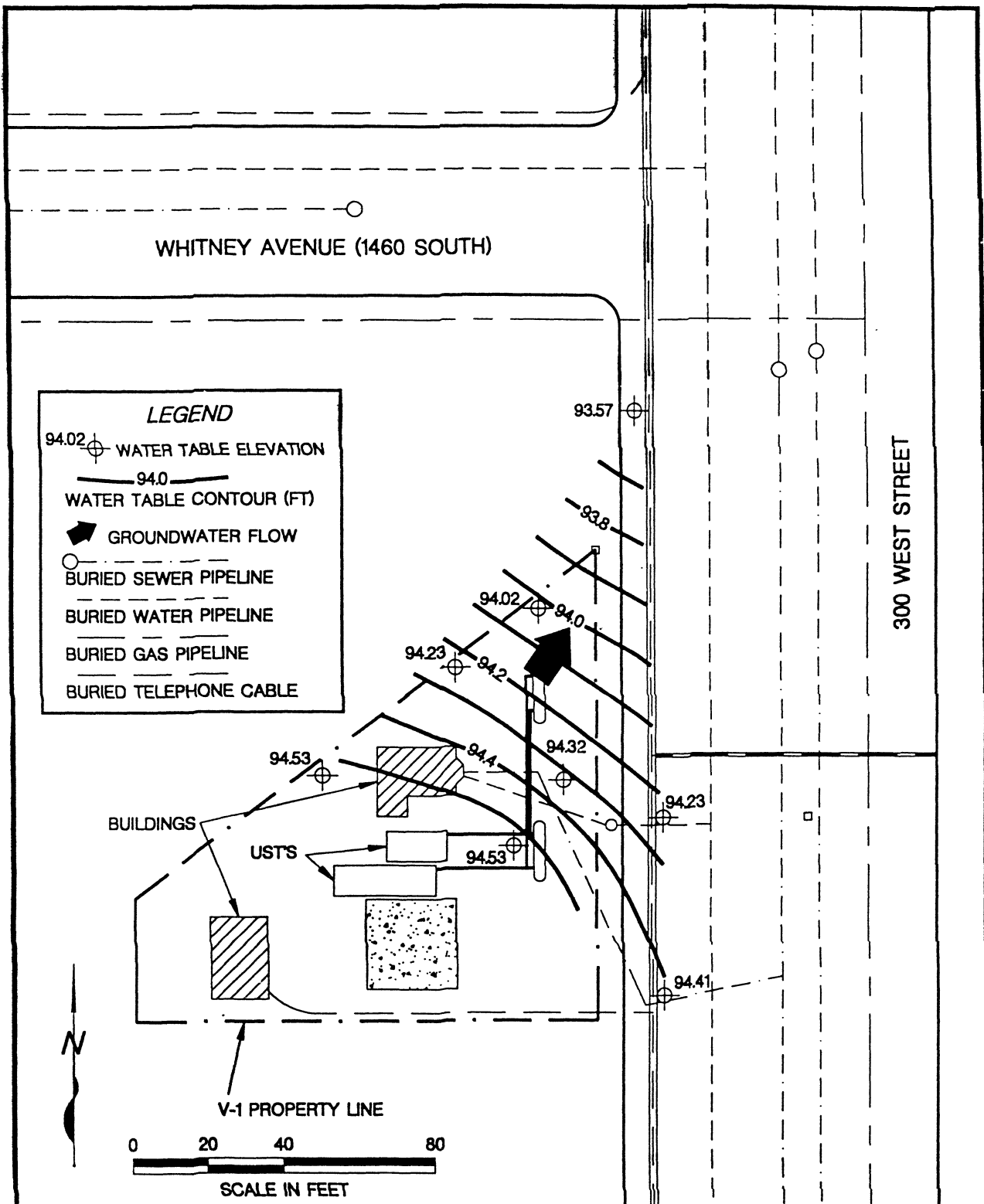


SUBSURFACE INVESTIGATION REPORT

V-1 OIL COMPANY
1478 SOUTH 300 WEST
SALT LAKE CITY, UTAH

FIGURE 2 | HYDROCARBON THICKNESS MAP



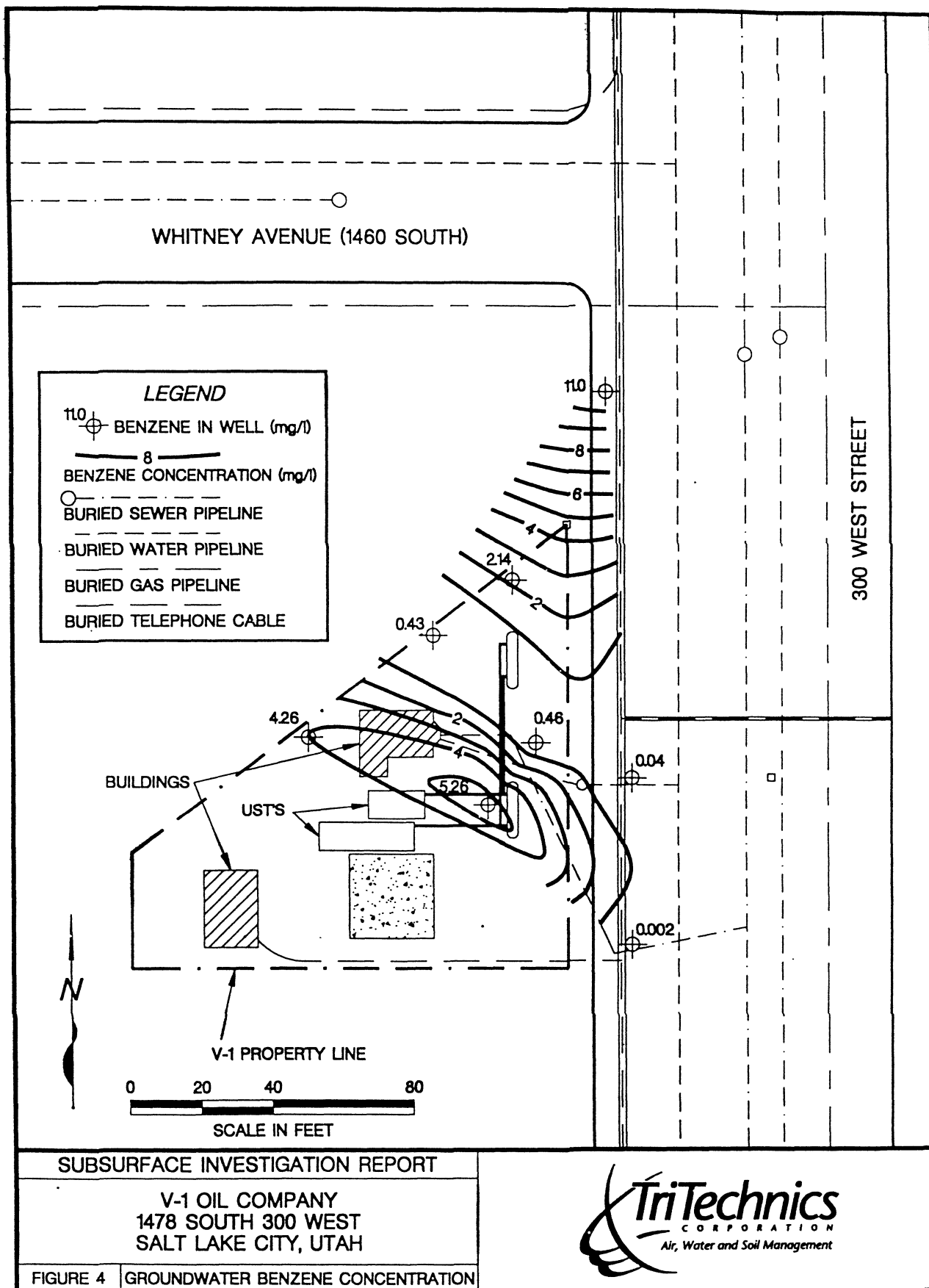


SUBSURFACE INVESTIGATION REPORT

V-1 OIL COMPANY
1478 SOUTH 300 WEST
SALT LAKE CITY, UTAH

FIGURE 3 WATER TABLE CONTOUR MAP





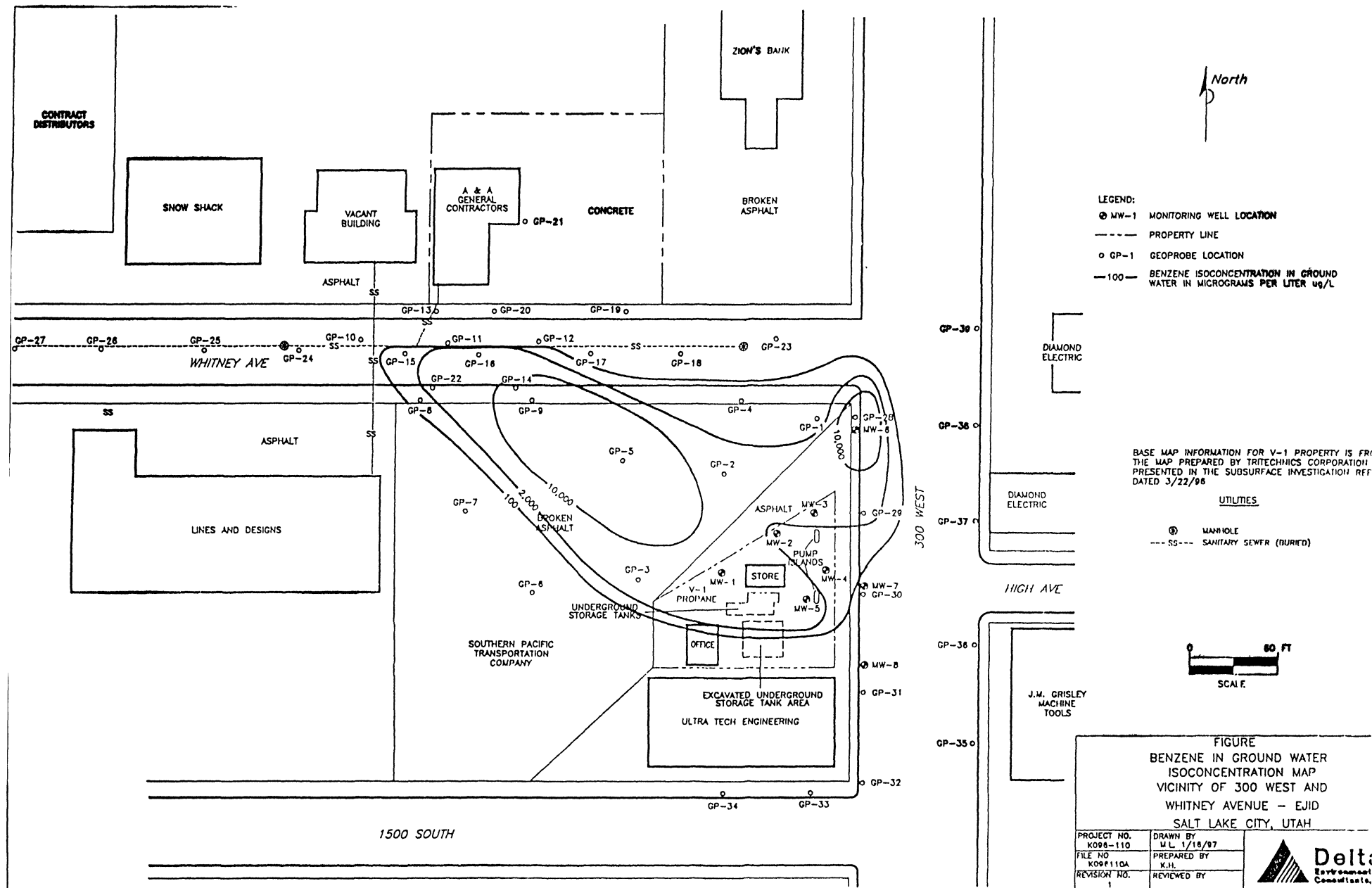
SUBSURFACE INVESTIGATION REPORT

V-1 OIL COMPANY
1478 SOUTH 300 WEST
SALT LAKE CITY, UTAH

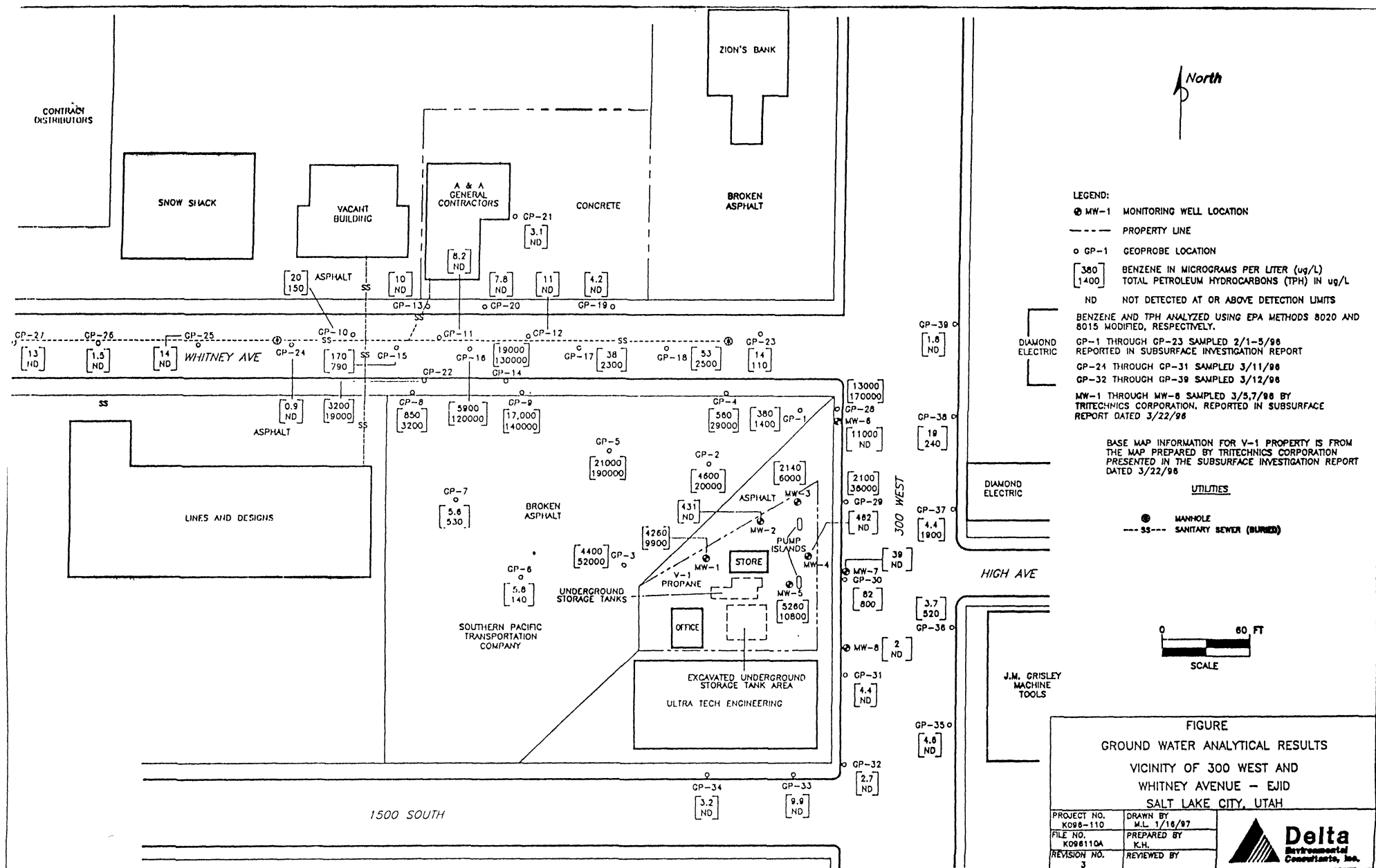


FIGURE 4 GROUNDWATER BENZENE CONCENTRATION

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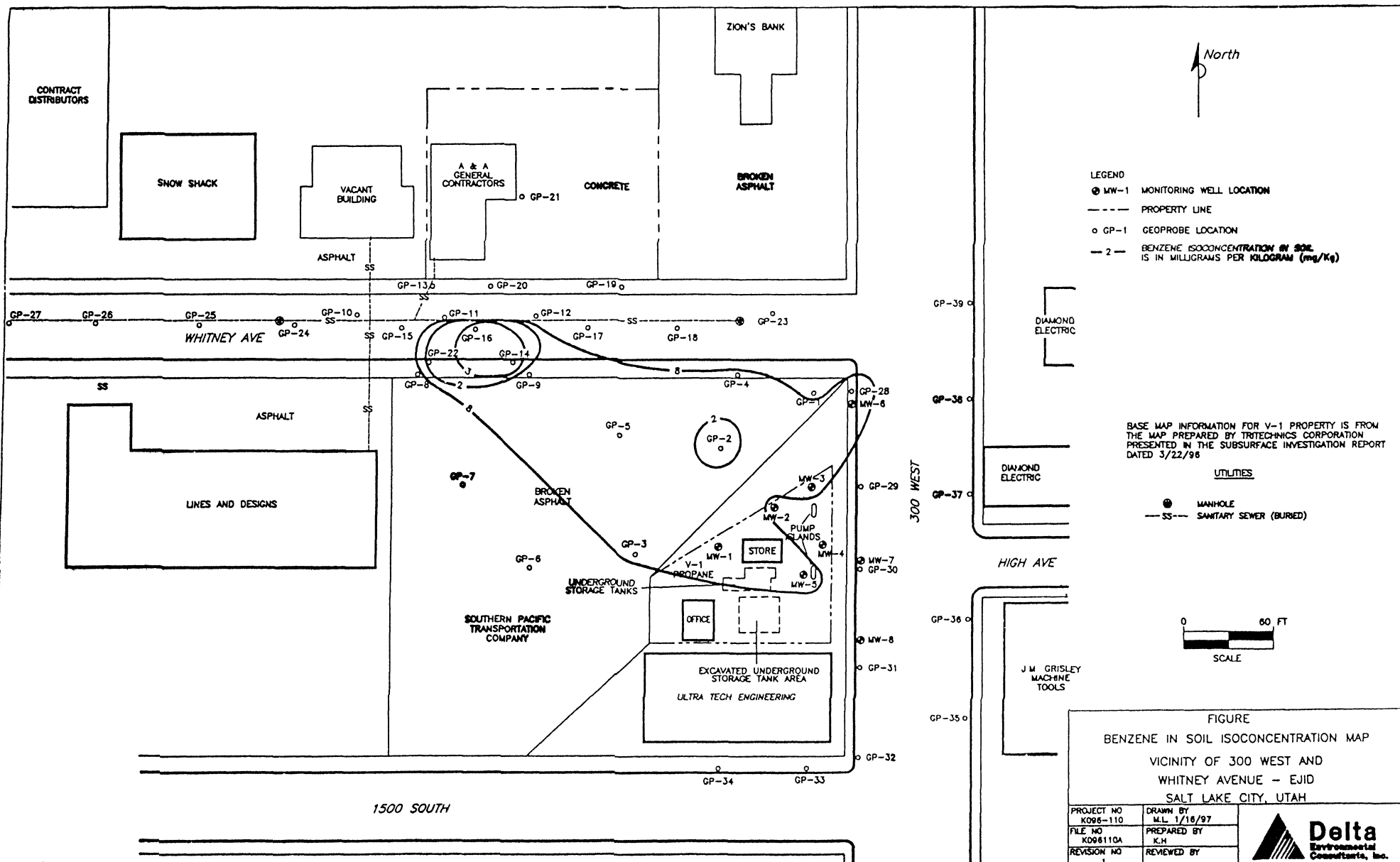


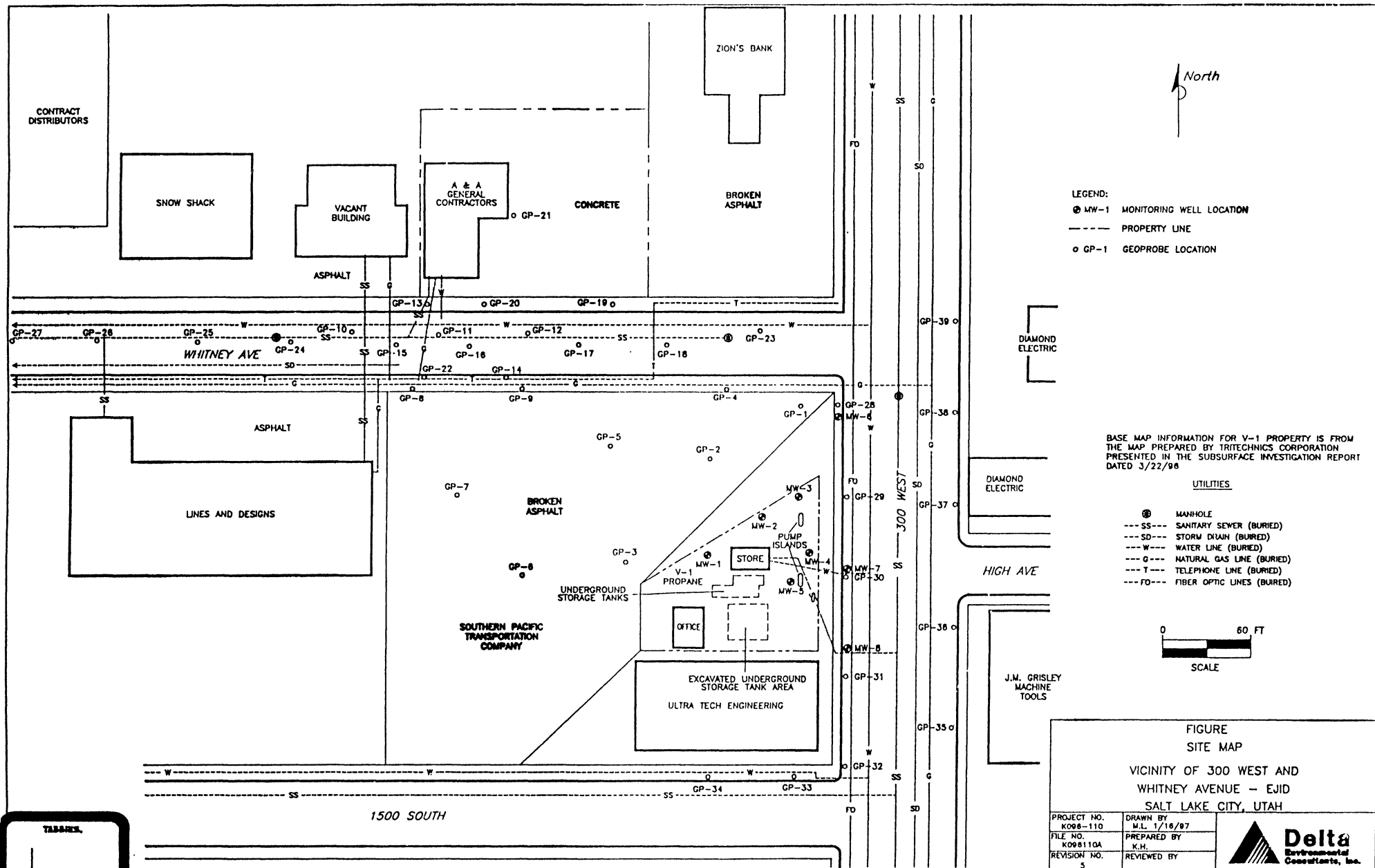
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TABLES,
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EXHIBIT

V-1 Oil, Facility ID # 4001217

Tank #	Age (years)	Size (gallons)	Product	Date C of C issued	C of C Number	Date of lapse or revoke
1	15	10,000	gasoline	7-24-91	C48488-2	never
2	15	6,000	gasoline	7-24-91	C48488-2	never
3	25	6,000	gasoline	never	NA	NA
4	25	6,000	gasoline	never	NA	NA

JAN 19 96 FRI 12:50

DELTA ENV CONSULTANTS

FAX NO. 001 261 0060

P. 01/03

Ref. 11.44

FAX TRANSMITTAL FORM



448 East 6400 South, Suite 100
Salt Lake City, Utah 84107
(801) 261-8006
(801) 261-8068

Providing a Competitive Edge

TO: DOUG HANSEN

COMPANY: DERR

DATE: 1/19/96 FAX #: _____

SUBJECT: GROUND WATER FLOW MAPS - V-1

DELTA PROJECT #: _____ # OF PAGES TO FOLLOW: 2

FROM: KATHY HARRIS

MESSAGE:

This is a generalized ground water flow direction map and a depth to ground water map.

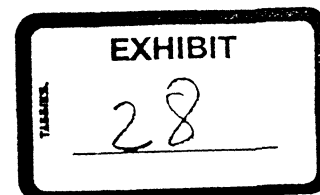
The direction of the flow is likely west to slightly northwest in the direction of the Jordan River. However, if the area is predominantly clay, transport of hydrocarbons with ground water flow is likely a secondary method of transport. The primary method of transport is likely backfill material surrounding utilities or roadbase material above the clay.

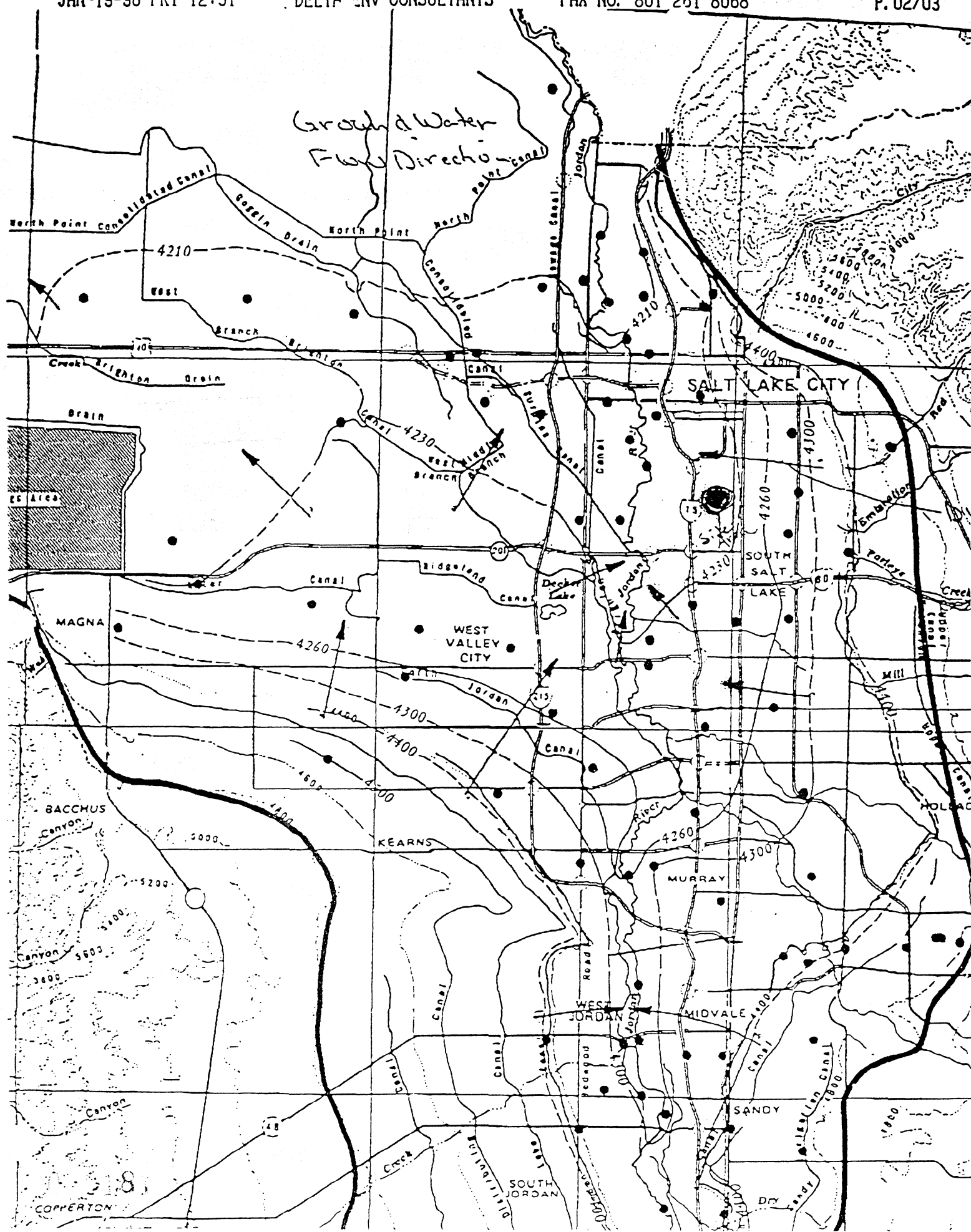
The depth to ground water probably ranges in the 5 to 10 foot depth

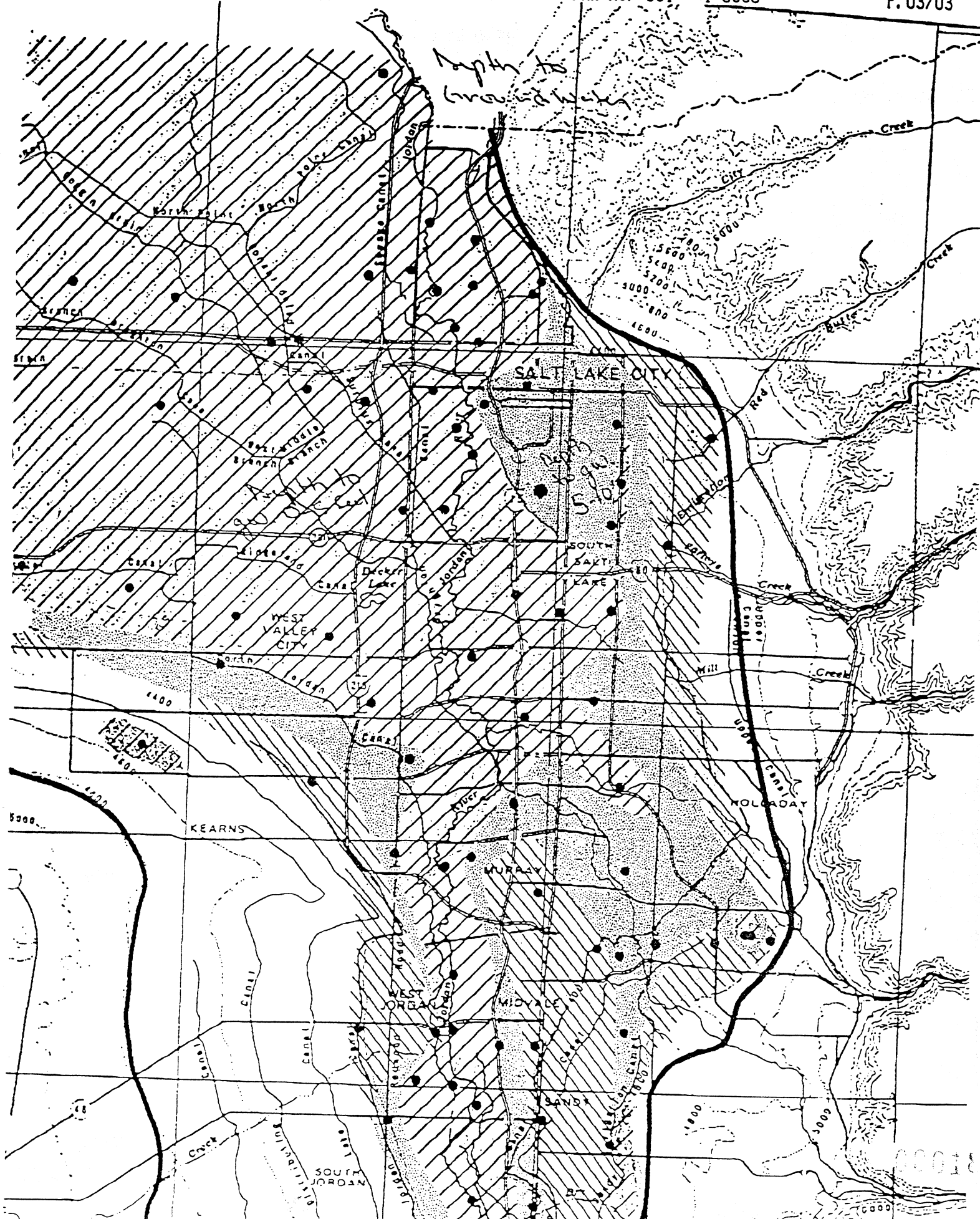
UTAH DEPARTMENT OF
ENVIRONMENTAL QUALITY

JAN 18 1996

DIV. OF ENVIRONMENTAL
RESPONSE AND REMEDIATION







Tab I

RESEARCH REPORT BS96-4

HISTORICAL RECORD RESEARCH -- SALT LAKE
CITY (WHITNEY AVENUE), UTAH:
CONTAMINATION SEARCH WESTSIDE, SALT
LAKE CITY, UTAH

DELTA ENVIRONMENTAL PROJECT # K-096110

by

CHARLES E. HUGHES

FOR

DELTA ENVIRONMENTAL CONSULTANTS
SALT LAKE CITY, UTAH

BASELINE DATA, INC.
1053 SOUTH STATE STREET
OREM, UTAH

FEBRUARY 1996

APPENDIX E

APPENDIX F

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ABSTRACT

Baseline Data, Inc. (BDI) has completed a historical records search and research to determine the cause and extent of ground water contamination in and around the industrial area bordered by 300 west, 400 west, 1400 south, and 1500 south, along the westside of Salt Lake City, Utah. This one block industrial section of Salt Lake City was examined for potential contributors to the groundwater contamination and vapors found in 328 West Whitney Ave. (A & A Contractors).

The records were searched back to the early 1930s. The area was a mixed neighborhood consisting of residences and businesses. Much of the business in the area consisted of automotive repair and truck maintenance facilities. Only two gas stations have shown up in the city directory search: The V-1 Self Serve Gas Station located at 1478 South 300 West (1972 - present), and a service station located at 1404 South 300 West. This latter gas station was operated by many different owners since the early 1930s until the mid 1960s. It was located on the same site as the current Zion First National Bank. A more detailed discussion of each block/street is found in the pages that follow.

HISTORICAL RECORD RESEARCH -- AREA SURROUNDING WHITNEY AVE. SALT LAKE CITY, UTAH: CONTAMINATION SEARCH, ONE BLOCK AREA AROUND WHITNEY AVE, SALT LAKE CITY, UTAH

INTRODUCTION

During the period of January-February, 1996, Baseline Data, Inc. (BDI) completed a historical record search and research investigating the potential causes of ground water contamination and hazardous vapors in the vicinity of Whitney Ave. between 300 and 400 West, Salt Lake City, Utah. This search was requested by Ms. Kathy Harris, of Delta Environmental Consultants, Salt Lake City, Utah.

The historical research and record search was carried out by Ms. Kathleen M. Hughes. The report was written by Charles E. Hughes a principal with BDI. This project was carried out in conjunction with Delta Environmental Consultants project # K-096110.

LOCATION

This project lies between 300 and 400 West and 1400 and 1500 South in the westside industrial area of Salt Lake City, Utah. The project area lies in Township 1 South, Range 1 West, Section 13, Salt Lake County.

BRIEF CULTURAL OVERVIEW

SALT LAKE CITY

The historical overview for the project area is reflected in the early settlement and development of this industrial section of Salt Lake City, Salt Lake County, and the State of Utah as a whole. This region of the state has often been referred to as the "Crossroads of the West." It is in this section of the West where migrations of Eastern peoples dispersed along the different routes traveling farther west, south and north. The Salt Lake Valley has been the

central hub of transportation and communication corridors for the western United States.

Salt Lake County was initially settled in 1847 when the first Mormon pioneers entered the Salt Lake Valley. The Mormon pioneers, led by their leader Brigham Young, arrived in the valley on July 24, 1847, after a long trek across the plains departing from Council Bluffs, Iowa. Leaving religious persecution, the Mormons sought refuge in the Rocky Mountains. Hoping to escape any outside distractions they settled in the isolated Salt Lake Valley. This isolation however, only lasted a few short years. The discovery of gold in California in 1849 ended the isolation that Brigham Young sought.

Initial settlement in the County began in the downtown area and quickly spread out from there. On January 28th, 1850 an act was passed "An Ordinance Providing for the Location of Counties and Precincts Therein Named etc." By this act Great Salt Lake County was named as one of the six original counties of the State of Deseret. Originally the county comprised "all that portion of country known as the Valley of the Great Salt Lake, and lying south of Stony Creek."

The history of Salt Lake County is directly connected to that of Utah and the cities within its boundaries. The county is only 764 square miles, but contains the most densely populated region of the state (Roylance 1962). The county was originally named Great Salt Lake County, after the Great Salt Lake to the northwest, and remained so until 1868, when it was officially shortened to Salt Lake County. Salt Lake City was founded in 1847 when the Mormon pioneers, fleeing persecution, entered the valley in July of that year. The county was organized in January 1850 under the proposed State of Deseret. However, the state's constitution was rejected by Congress, and the Territory of Utah was established by Act of Congress in the same year. As the first county, it has maintained the seat of state and territorial government from the beginning (except from 1855 to 1856, when Fillmore was the capital).

The winter of 1847-48 was mild and some settlements expanded out from the original city center before the end of 1847, notably to the north near Bountiful in Davis County, where Peregrine Sessions wintered with some cattle. In the Salt Lake Valley, William G. Young located a ranch in the Pleasant Green area, living in a cave a mile west of Mill Stone Point. (Utah Historical Records Survey, 1941).

Salt Lake County has developed from an agricultural region (1847-1860s) to an industry-mining-railroad complex (1870-1930s) to a commercial center (1930s to present). When the Mormons first occupied the valley in 1847, they immediately started to plow the soil and plant crops and orchards throughout the area.

South Salt Lake also broke the pattern. This town was an out-growth and development of Salt Lake City. As the area and the demand for services grew, the city of South Salt Lake was organized in August of 1950. Thus South Salt Lake does not have an extensive history of its own but is tied to the growth and development of Salt Lake City and County.

As the R.L. Polk city directories indicate the project area changed from largely residential to industrial after WW II. The area became much more industrial as the automotive industry (automotive repair) began to take over the region.

RESEARCH METHODOLOGY

In our effort to determine potential causes of contamination a number of public records were researched and searched. The county offices in Salt Lake City, Utah, were thoroughly examined including the recorder, assessor, and plat departments. These offices helped to uncover the past occupants of some of the lots in the area. The University of Utah library was used to examine the Sanborn Fire Insurance maps of the area. The Salt Lake City offices were helpful in understanding the downtown development process and uncovering those businesses that have since disappeared and were able to shed some additional light on the developments taking place in the area.

RESEARCH RESULTS

A thorough search through the above mentioned repositories turned up a number of potential contamination PRPs. These sources are listed in table 1.

TABLE 1: POTENTIAL CONTAMINATION SOURCE LOCATIONS

300 West

Source: Name	Date	Location
Intermountain Batteries	1985-1972	1427 South 300 West
V-1 Self Serve Gas Station	Present-1978 1975-1972	1478 South 300 West
Cowboy Oil Company	1978-1975	1478 South 300 West
Scott Machinery Co.	1973-1969	1404 South 300 West
Van's Truck Stop	1968-1967	1404 South 300 West
Frampton's 66 Service	1966-65	1404 South 300 West
Roy Thomas 66 Service	1965-1962	1404 South 300 West
Burt Buzz 66 Service	1962-1960	1404 South 300 West
Wagstaff Oil Company	1960-51	1404 South 300 West
Ballard Service Station	1949-1940	1404 South 300 West

This area along 300 West between 1400 and 1500 South had a number of machine shops and automotive repair and parts stores. Residential houses were dotted along the street but began to completely disappear by the 1960s. The current address of Zion Bank is 1420 South, however, this parcel included 1404 South the location of a gas station from 1940 until 1967.

Whitney Avenue

There do not appear to be any sites along Whitney avenue that would classify as potential contamination sources. The area has been completely industrial since the early 1960s. A coal company, Huntington Coal Company was located at 319 West Whitney ave. in 1935. No record of any other business were found until the mid 1950s.

1500 South

No businesses have been located that would classify as potential sources of contamination. Like the rest of the area, this street developed into a primarily industrial region during the mid 1960s.

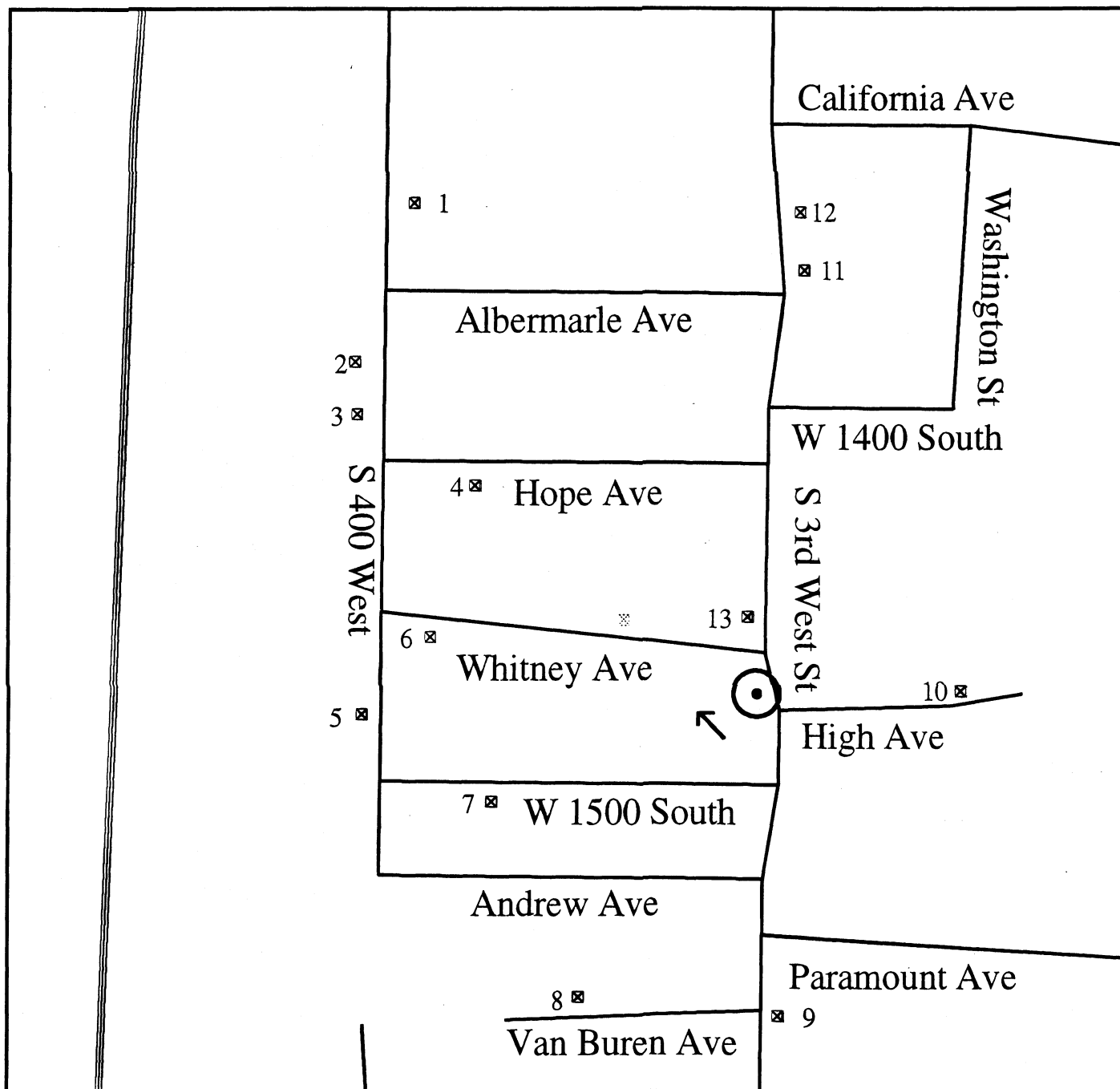
CHAIN OF TITLE: V-1 Gas Station (1478 South 300 West)

Date	Instrument	Grantor	Grantee
2/9/71	Warranty Deed	E.H. Throndsen & wf. Lola	V-1 Oil Company
4/14/66	Warranty Deed	Conrad Throndsen & wf. Hjordis	Hjordis Throndsen & son E.H. Throndsen
9/17/42	Warranty Deed	Ivar Engh & wf. Clarese	Conrad Throndsen & wf. Hjordis
9/17/31	Warranty Deed	Charles Nave & wf. Ruth	Ivar Engh & wf. Clarese
5/13/30	Warranty Deed	Wasatch Investment Company	Charles Nave
1/12/24	Warranty Deed	Fletcher Lucas Investment Co.	Wasatch Investment Co.
1/11/24	Warranty Deed	Bert Winger & wf. Leona	Fletcher Lucas Investment Co.
3/21/11	Warranty Deed	Josephine Winberg & husb. A.W.	Bert Winger
6/12/09	Warranty Deed	O. Bourbon	Josephine Winberg

SUMMARY









Only two potential contamination source locations were discovered during the course of this search. The V-1 gas station (1478 South) and a number of different gas station owners all located at 1404 South. The area has been an industrial region for the last 30 years. Primary businesses located in the area are automotive parts and repair of one kind or another.

Tab J



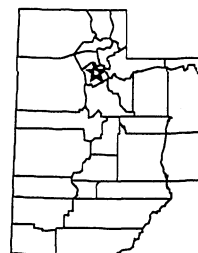
V-1 Oil Vicinity LUST Sites

Legend

- | | | | |
|---|-------------|---|-------------|
|  | Interstate |  | Closed |
|  | City Street |  | Non LUST |
|  | V-1 Oil |  | Regional GW |
|  | A&A | | |
|  | Open | | |

Approximate Scale

1" = 298.92 Feet



UDEQ

Division of Environmental
Response and Remediation

Tank Sites Near V-1Oil

No.	Site Name	Address	Facility ID	LUST Status	Tanks	Removal Date	Last Used
1	Rick Warner	1365 S. 400 W.	4000799	C	20	all by 7/31/91	7/31/91
2	Deseret Heating	1396 S. 400 W.	4001568	O	1	7/9/90	1/1/73
3	Burbidge Concrete	1398 S. 400 W.	4000109	O	3	6/23/90	5/1/93
4	Holzmueller	375 W. Hope Ave.	4001859	N	1	2/25/92	2/25/92
5	Western Trailer	1490 S. 400 W.	4001802	C	1	4/12/91	4/12/91
6	Vicker's Trucking	375 W. Whitney Ave.	4001571	O	4	3/12/90	3/12/90
7	Jack's Alignment	371 W. 1500 S.	4000442	C	1	4/1/89	4/1/89
8	Schoppe Company	352 Van Buren	4000917	C	1	10/31/88	10/31/88
9	Olson Construction	1549 S. 300 W.	4000669	N	1	12/20/89	6/1/82
10	Firmage trust	234 W. High Ave.	4002073	N	2	~1961	1961
11	Rasband Diesel	1365 S. 300 W.	4001891	C	2	10/8/92	10/8/92
12	Kraft Inc.	1361 S. 300 W.	4000489	N	1	3/1/70	3/1/70
13	Zion's Bank	1404 S. 300 W.	N/A	N	?	~1967	~1967

LUST RELEASE/SPILL REPORT

SITE No. Assigned 04-18-FXT
 ID No. 4001217
 Inspector Assigned Shelley

Date Received 7/13/90
 Date Assigned 7-13-90
 Date Confirmed _____

Received by WZ Moore Time 9:32

Party Reporting NAME Ken Fullmer, TH-0007 Phone: _____
 PRP NAME _____ Phone: _____
 Location NAME V-1 Propane Phone: _____
 STREET 1478 S. 300 W CITY: SLC

Type of Release: _____ Piping; _____ Tank; ☒ Overfill; ☒ Spill; _____ Unknown
 Release Date(s) (approx. or discovered) 7/12/90
 Substance: ☒ Gas; _____ Diesel; _____ Other, Specify _____
 Estimated Amount: unk Method of Determination _____

Impacts
 Fumes: _____ Home _____ Business _____ Utility _____ Outdoor ☒ Soils _____ Water _____
 Product: _____ Groundwater _____ Surface Water _____ Land Surface _____ Utility _____
 Damage: _____ Health _____ Evacuation _____ Biotic _____ Drinking Water _____ Property _____
 Describe Tank tested tight, but contamination and
fill pipes, etc. noted.

Actions Taken: _____
John Scribner - NEW Manager
Go per Jim Thiers 2-10-92
V-1 in ~~gas~~

AGENCIES NOTIFIED: ☒ HEALTH DIST; ☒ FIRE; _____ EPA; OTHER _____
 Staff Recommendations _____

Order Ren sch 7-20-90



February 6, 1991

RECEIVED

FEB 11 1991

U.S. DEPARTMENT OF THE INTERIOR

Ms. Shelly Quick, Environmental Health Scientist
Bureau of Environmental Response
288 North 1460 West
Salt Lake City, Utah 84116

Subject: V-1 Propane, LUST Site AFXT
300 West 1478 South
Salt Lake City, Utah

Delta Job No. 2553

Dear Shelly:

Here is the lab data from two samples we felt were most impacted at the site.

	<u>Sample #1</u> (Test Hole 1 @ 3')	<u>Sample #4</u> (Test Hole 4 @ 7')
TPH ppm	119	390
BTEX ppm		
Benzene	<0.050	<0.115
Ethylbenzene	<0.050	0.541
Toluene	<0.050	<0.115
Xylene	0.669	7.290

Sample #1 was taken from the backfill at the southeast corner, just inside the excavation. Sample #4 was taken from the monitoring well, split spoon soil samples, in the center of the excavation.

We will characterize the nature of the problem and submit a remediation plan as soon as possible.

A note of historical interest: Apparently, the contractor only opened sufficient small holes (about 4 feet by 4 feet) to tighten fittings, leak test and add overfill protection. Evidence suggests that the entire excavation was not fully opened. Consequently, the soil that the contractor "aerated" and replaced in the excavation was only a portion of the soil impacted by the overfill and top leaks.

00019

EXHIBIT

V-1 Propane, LUST Site AFXT
Salt Lake City, Utah
February 6, 1991

Page 2

I will keep you posted on further developments. If you have any questions, please give me a call.

Sincerely,

DELTA GEOTECHNICAL CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read 'Theodore R. Thatcher', with a long horizontal flourish extending to the right.

THEODORE R. THATCHER
Principal Environmental Engineer

TRT/amh

cc: Mr. Craig Kennedy, V-1 Propane

000195

Delta

DICK HANSEN

(WATER)

Ref 1797009328

Send Report To: (PLEASE PRINT) U.S. Program

Name or Agency: Division of Environmental Response & Remediation LAB NO. _____

Address: 1950 W. North Temple 2nd Floor

City, State, Zip: Salt Lake City UT 84113

Phone Number: (801) 936-4100

STATE OF UTAH DEPT. OF HEALTH
DIVISION OF LABORATORY SERVICES
46 North MEDICAL DRIVE
Salt Lake City, Ut. 84113
(801)584-8400

COST CODE: _____

Account # _____

Field # _____ DATE COLLECTED 12-16-92 Time Collected (24hr. Clock) 4:15 pm

Collected By: Shelly Quick Sampling Site: V-1 G11

SAMPLE USED FOR: DRINKING: _____ ENVIRONMENTAL: ☒ OTHER: _____

Analyst: J. Oman Date Rec'd _____ Date Analyzed: 12/18/92

Amt. Purged 0.05 (MDL based on 5ml purge vol.) Dilution: 100

Compound

ug/L

PQL/RESULTS

Benzene	0.40	5700.
Toluene	0.60	9300.
Ethylbenzene	1.10	810.
Xylenes	0.70	12,600.

OTHER: Naphthalene 310.

U - Analyzed for but not detected.

J - An estimated value for a compound
at a value less than the PQL, but
greater than zero.

B - Found in the blank.

Analysis Certified By: R Date: 1/4/93

LAB USE ONLY: 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27
28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56
57-58-59-60-61-62-63-64-65-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-85-83-84-85-86
87-88-89-90-91-92-93-94-95-96-97-98-99-100

BOTTLES REQUIRED: (2) 40ml GLASS VIALS
NO HEADSPACE-LID MUST BE LINED WITH TEFLON

IF YOU WANT TPH(TOTAL PETROLEUM HYDROCARBONS)
YOU WILL NEED 2 MORE VIALS. SAME AS ABOVE

CHAIN OF CUSTODY

EXHIBIT

000101

3

Cost Code: 367

METHOD BTEX

Lab # 9500074

GC/MS

Send Report To:

V-1-1 IN TANK V-1 OIL
SHELLY QUICK/DEQ-DERR-UST-LUST
168 N 1950 W
SALT LAKE CITY, UT 84116

Utah Division of Laboratory Services
46 North Medical Drive
Salt Lake City, UT 84113

Date/Time Collected: 01/04/95 14:50

Sample Matrix: Water

Collected By: SHELLY QUICK

Sampling Site: _____

Description of Sampling Point: V-1-1 IN TANK V-1 OIL

Analyst: J. Oman

Date Received: 01/05/95

Date Analyzed: 10 Jan 95

Amt. Purged: 5 ml

(MDL based on 5ml purge vol.)

Dilution: _____

Compound	MDL/Results	ppb
Benzene	0.5	U
Toluene	0.5	U
Ethylbenzene	0.5	U
Xylenes	0.5	U
Napthalene	1.0	U

U- Analyzed for but not detected.

J- An estimated value or a value
less than the detection limit
but greater than zero.

B- Found in the blank.

Analysis Certified By: T LAMOREAU

Date: 1/13



000197

Cost Code: 367

METHOD BTEX

Lab # 9500073

GC/MS

Send Report To:

V-1-5 & V-1-6 IN TANK V-1 OIL
SHELLY QUICK/DEQ-DERR-UST-LUST
168 N 1950 W
SALT LAKE CITY, UT 84116

Utah Division of Laboratory Services
46 North Medical Drive
Salt Lake City, UT 84113

Date/Time Collected: 01/04/95 15:07

Sample Matrix: Water

Collected By: SHELLY QUICK

Sampling Site: _____

Description of Sampling Point: V-1-5 & V-1-6 IN TANK V-1 OIL

Analyst: J. Oman

Date Received: 01/05/95

Date Analyzed: 10 Jan 95

Amt. Purged: 0.001 ml

(MDL based on 5ml purge vol.)

Dilution: 5000

Compound

MDL/Results ppb

Benzene	500	3600
Toluene	500	6800
Ethylbenzene	500	<500
Xylenes	500	4100
Napthalene	1000	<500

U- Analyzed for but not detected.

J- An estimated value or a value
less than the detection limit
but greater than zero.

B- Found in the blank.

Analysis Certified By: _____

T. LAMOREAUX

Date: 1/13

000195

Cost Code: 367

METHOD BTEX

Lab # 9500072

LC 1443

Send Report To:

V-1-3 & V-1-4 IN TANK V-1 OIL
SHELLY QUICK/DEQ-DERR-UST-LUST
168 N 1950 W
SALT LAKE CITY, UT 84116

Utah Division of Laboratory Services
46 North Medical Drive
Salt Lake City, UT 84113

Date/Time Collected: 01/04/95 14:55 Sample Matrix: Water
Collected By: SHELLY QUICK Sampling Site: _____
Description of Sampling Point: V-1-3 & V-1-4 IN TANK V-1 OIL

=====
Analyst: J. Oman Date Received: 01/05/95 Date Analyzed: 10 Jan 95
Amt. Purged: 0.001 ml (MDL based on 5ml purge vol.) Dilution: 5000
=====

<u>Compound</u>	<u>MDL/Results ppb</u>	
Benzene	500	4900
Toluene	500	12900
Ethylbenzene	500	1700
Xylenes	500	17400
Napthalene	1000	<500

U- Analyzed for but not detected.

J- An estimated value or a value
less than the detection limit
but greater than zero.

B- Found in the blank.

Analysis Certified By: T. LAMOREAU

Date: 1/13

000199

Cost Code: 367

METHOD TPH
Total Petroleum Hydrocarbon

Lab # 9500073

Send Report To:

V-1-5 & V-1-6 IN TANK V-1 OIL

SHELLY QUICK/DEQ-DERR-UST-LUST

168 N 1950 W

SALT LAKE CITY, UT 84116

Utah Division of Laboratory Services

46 North Medical Drive

Salt Lake City, UT 84113

Date/Time Collected: 01/04/95 15:07

Sample Matrix: Water

Collected By: SHELLY QUICK

Sampling Site: _____

Description of Sampling Point: V-1-5 & V-1-6 IN TANK V-1 OIL

=====

Analyst: _____ Date Received: 01/05/95 Date Analyzed: _____

=====

Compound

MDL/Results ppm

TPH

30 1800

U- Analyzed for but not detected.

Analysis Certified By: T. LAMOREAUX

Date: 1/13

020260

Cost Code: 367

METHOD TPH
Total Petroleum Hydrocarbon

Lab # 9500072

Send Report To:

V-1-3 & V-1-4 IN TANK V-1 OIL
SHELLY QUICK/DEQ-DERR-UST-LUST
168 N 1950 W
SALT LAKE CITY, UT 84116

Utah Division of Laboratory Services
46 North Medical Drive
Salt Lake City, UT 84113

Date/Time Collected: 01/04/95 14:55 Sample Matrix: Water

Collected By: SHELLY QUICK Sampling Site: _____

Description of Sampling Point: V-1-3 & V-1-4 IN TANK V-1 OIL

=====

Analyst: _____ Date Received: 01/05/95 Date Analyzed: _____

=====

<u>Compound</u>	<u>MDL/Results ppm</u>
TPH	300 11800

U- Analyzed for but not detected.

Analysis Certified By: T. LAMOREAUX

Date: 1/13

000201

Cost Code: 367

METHOD TPH
Total Petroleum Hydrocarbon

Lab # 9500074

Send Report To:

V-1-1 IN TANK V-1 OIL
SHELLY QUICK/DEQ-DERR-UST-LUST
168 N 1950 W
SALT LAKE CITY, UT 84116

Utah Division of Laboratory Services
46 North Medical Drive
Salt Lake City, UT 84113

Date/Time Collected: 01/04/95 14:50

Sample Matrix: Water

Collected By: SHELLY QUICK

Sampling Site: _____

Description of Sampling Point: V-1-1 IN TANK V-1 OIL

=====
Analyst: _____ Date Received: 01/05/95 Date Analyzed: _____
=====

Compound

MDL/Results ppm

TPH

0.3

U

U- Analyzed for but not detected.

Analysis Certified By: T. LAMOREAU

Date: 1/13

000202

Tab K

Reported to: Rick Bright
Emergency: Yes [] No []

RFS No. _____

SALT LAKE CITY SEWER UTILITIES REPORT ON SEWER TROUBLE CALLS

Report Received By: Tina Date: 1-12 1996Reported by: Bob Smith Time: 12:05Address: 328 W. Whitney Ave Phone: _____

Nature of Trouble:

just smell a trimmer in
floor drainINVESTIGATED BY: R. Bright / K. Righty Date: 1/12/96 Time: 12:40

Trouble Found:

checked out the call at 328 Whitney opened the manhole cover
at about 330 west and noticed a gas line smell in the manhole
we then inserted our gas detector and got a reading of .02 on
the L.E.L. but the smell was very strong so I had K. Righty to bring
some hose to hook to the nearest fire hydrant and proceeded to flush the
line, we continue for about 3 hours until about 3:30pm. and it seem to
take care of the smell.

(Maintenance work performed, list number of men, trucks, and
equipment and materials used and overtime.)

R. Bright 3328 3/4
K. Righty 3396 3^{hr}

EXHIBIT

Salt Lake City Corporation
Record of Complaint

1. Name/Agency registering complaint RICK BRIGHT
SIC CORP.
2. Telephone number _____
3. Date/Time of call 1-12-96
4. Person taking call ELGIN DYER
5. Briefly summarize nature of complaint:
FUEL IN COLLECTION LINES IN VICINITY OF
VI GAS STATION.
6. Other agencies notified _____
7. Summarize action taken VISITED WITH HAL WARDEN
GASOLINE MANAGER AT VI. I EXPLAINED TO HIM
THE PROBLEM WE HAVE BEEN FINDING IN THE
AREA WITH FUEL IN THE SEWER. A PRODUCT MASS
BALANCE IS DONE DAILY. NO PRODUCT LOSS HAS
OCCURRED ACCORDING TO MIC WARDEN.
STEVE KAUTENBACH

EXHIBIT

000204

10

Reported to: Rick Bright
Emergency: Yes [X] No []

RFS No. _____

SALT LAKE CITY SEWER UTILITIES REPORT ON SEWER TROUBLE CALLS

Report Received By: Peggy Date: 1-16 19 96
Reported by: Bob Smith Time: 8:30 a.m.
Address: 328 W Whitney Phone: 484-7070

Nature of Trouble:
gasoline spill in sewer line
again
people in building getting
sick from the smell

INVESTIGATED BY: R. Bright Date: 1/16/96 Time: 8:45 AM

Trouble Found:

checked out main line and found the gasoline product in the
main line again, so I got K. Bright on site to start flushing the line
to remove the free product infiltrating into the line, I also called for
David T. Goss to come on site to release and try to locate where it was
coming into the line. I also called the County health dept Ted Dickman.
he came on site and investigated it and as he called. Haz Mat to have
them come down to the site so we could have them investigate because

(Maintenance work performed, list number of men, trucks, and
equipment and materials used and overtime.)

at how strong the smell was they came quick, monitored the line and
advised us to continue to flush the line until the problem was resolved.
also Ted Dickman asked that we continue until the problem was resolved.
I then contacted Jeff McManis and Leroy Hester to inform them of
the situation, we all agreed to continue to flush we also met with
Ray Hansen of the State of UT to inform the state of the problem
and informed them that we would continue until problem was taken over by
the state of Utah.

000000

EXHIBIT

SALT LAKE CITY
SERVICE LINE WORK ORDER

REPORT NO. CR1851V0 2:37 PM

REPORT DATE 01/25/96

WORK ORDER NO. 920147

INITIATED DATE 01/25/96

INITIATED TIME 14:36

ACTIVITY CL
PROJECT

CLEAN (Main lines only)

PROBLEM

PRIORITY

INITIATED BY BON G GARY BOND

STREET ADDRESS 328 W WHITNEY AV S/L ID 3531483

CITY SALT LAKE CITY STATE UT ZIPCODE 84115

S/L LOCATION BETWEEN MANHOLES AND

SEWER TAP ADDR # OF TAPS 1

CLEANOUT LOC PIPE TYPE SIZE 0

SERVICE TAP LOC 0 FEET FROM MANHOLE

SPECIAL INSTRUCTIONS

COMMENTS: FLUSH LINE

FOUND: ROOTS ___ GREASE ___ SOLIDS ___ OTHER ___ CLEAR ___

SERVICE LINE CONDITION- OUR PORTION ___ OWNERS PORTION ___
OWNERS NOTIFIED? ___REMARKS *State wants to start reimbursement as of 1/25/96*

JOB CLASS	HOURS	EQUIPMENT	HRS/MILES	MATERIALS	QTY USED
124 K. Ripg.	1	3318	1/2 hr		
25) Band	1	3328	1/2 hr		
26 Band	1	3318	1/2 hr		
24 Band	1	3318	1/2 hr		

DATE COMPLETED _____ HOURS _____ SIGNED _____ NO _____
TIME COMPLETED _____
FIELD NOTES:

030206

Check hose flushing line on Whitney ave and continue flushing line until the state of Utah takes over the project Delta environment is the Sub Contractor Bob Smith at AA Contractor Called 2-2-96 that the gasoline smell was strong again. Contact with him at that time they were drilling at the time I discussed increasing the rate. He said that he didn't think that would help and thought that the phase of gasoline was 1-1-1. He said the drillers said he had gotten

A & A General Contractors, Inc.

328 West Whitney Avenue
P. O. Box 651367
Salt Lake City, Utah 84165-1367
(801) 484-3700 or 484-7070 Estimating
FAX (801) 484-1122

January 17, 1996

Doug Hansen
Utah State Health Department

Subject: Gas Leak

Gentlemen;

On Thursday afternoon January 11, 1996 we noticed an unusual smell near our rest rooms. At first we thought it was paint thinner from one of the nearby paint shops.

The smell was stronger on Friday the 12th so we contacted Salt Lake Public Works. They identified gasoline in the sewer system and flushed the line from the east manhole. The smell in our building was reduced. On Monday the 15th (a state holiday we work on) the smell was back even stronger so we contacted Rick Bright of Salt Lake Public Works at home and he brought in a crew that flushed the system again.

Over the next few days by trial we determined that without the added water in the sewer the concentration quickly increased by at least three times, to an intolerable level. At least one employee missed work because of illness from the vapors on January 16, 17 and 25. A fire hose was run from the nearest fire hydrant in order to maintain a continuous flow in the sewer and we set up an exhaust fan to vent the gas coming from the walls of our rest rooms. The situation was somewhat stabilized for a number of days and the experts believed that the vapors were entering our building through the soil surrounding our sewer line.

We began additional testing on February 7 and on the 8th opened a wall of our restroom. We discovered that a pipeline clean out hole had been left open in the wall of the buildings sewer system by the plumbing contractor. We thought this had solved the problem but the vapors continued to enter the building and we had employees miss work on February 9, 13 and 16. This increased the possibility that the vapors were entering around the pipe not through it.

On February 23, 1996 after opening all of the plumbing walls in the building we found and closed the last opening to the system in our shop area. This ended the contamination of the building but the vents on the roof continued to smell strongly of gas until after the sewer line in the street was lined in June.

Sincerely,

Robert W. Smith
Robert W. Smith/Project Manager

EXHIBIT