

1 A Not for the annual inspection, no.

2 Q Okay. Has he ever, in lieu of coming out and  
3 actually doing a records review, simply calling you and  
4 asking you, "are your records in order?"

5 A Well, I mean he -- he's not -- I mean he asks me for  
6 an inspection or, you know, a certain facility -- he's  
7 referring to a certain facility when he calls or asks me,  
8 "are the records ready."

9 Q Okay. Thank you so much.

10 A Uh-huh. I appreciate your time.

11 \*\*\*\*\*

12 REDIRECT EXAMINATION

13 BY MR. SHIPLEY:

14 Q I just have one question. With regard to what you  
15 just described on direct, and what counsel has had you  
16 testify to, are the contacts with Mr. John Roberts of the  
17 OCC much more frequently, say, than on an annual basis?

18 A Yes.

19 Q And this -- would you characterize this as compliance  
20 assistance by OCC to you?

21 A Yes.

22 MR. SHIPLEY: Thank you. We have no further  
23 questions.

24 THE COURT: Thank you, Ms. Monroe. You may be  
25 excused.

1                   You may call your next witness.

2                   Mr. Kellogg?

3                   MR. KELLOGG: Your Honor, we have one more  
4 witness, but I really need a break.

5                   THE COURT: I see. Okay. We'll -- we'll take a  
6 10-minute recess.

7                   MR. KELLOGG: Thank you.

8                                   \*\*\*\*\*

9                   (A break was taken, after which the following  
10 continued:)

11                   THE COURT: Okay. The hearing will be in order.  
12 You may call your next witness, Mr. Kellogg.

13                   MR. KELLOGG: Thank you, Your Honor. We call  
14 Mr. Ron Allford.

15                   THE COURT: Do you have any objection to taking  
16 an oath, Mr. Allford?

17                   THE WITNESS: No, sir.

18                   THE COURT: Raise your right hand.

19                   Do you solemnly swear the testimony you are  
20 about to give shall be the truth, the whole truth,  
21 and nothing but the truth, so help you God?

22                   THE WITNESS: Yes, sir.

23                   THE COURT: You may be seated.

24

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RONALD ALLFORD

was called as a witness, and after having been  
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KELLOGG:

- 1 Q Good morning, sir.
- 2 A Good morning.
- 3 Q Would you please state your name for the record.
- 4 A Ronald Allford.
- 5 Q Would you spell your last name, sir.
- 6 A A-L-L-F-O-R-D.
- 7 Q All right. And where do you reside, Mr. Allford?
- 8 A 1428 Timber Lane, here in McAlester.
- 9 Q All right. And are you associated with a company  
10 known as RAM, Incorporated?
- 11 A Yes, sir, I'm the president.
- 12 Q The president of the company?
- 13 A Uh-huh.
- 14 Q And is that a corporation, or a partnership, or what  
15 is RAM?
- 16 A It is a corporation, a straight corporation.
- 17 Q All right. And that is the Respondent in this  
18 proceeding that we are here for today, is it not?
- 19 A Yes, sir.
- 20
- 21
- 22
- 23
- 24
- 25

1 Q All right. And can you -- can you tell me if the RAM  
2 Corporation is involved in the UST business?

3 A Yes, sir.

4 Q And how is RAM involved in the UST business? What is  
5 it that your company does with UST?

6 A We're in the petroleum marketing business, selling  
7 gasoline and diesel, propane.

8 Q I'm sorry?

9 A Gasoline, diesel, solvents, propane, kerosene.

10 Q Is propane part of the UST program?

11 A No, it is not; no, sir.

12 Q All right. And so you're not a --

13 A I take that back; I do have underground propane in  
14 domestic tanks, but we haven't installed any.

15 Q Your involvement with USTs, then, is not as an  
16 installer of tanks?

17 A No, sir.

18 Q Or a tester of tanks?

19 A No, sir.

20 Q Or installation of corrosion control systems?

21 A No, sir.

22 Q You're in the sales business for gasoline.

23 A That's correct.

24 Q All right. And the gasoline that you sell -- have  
25 you ever sold gasoline to the federal government?

1 A Yes, sir.

2 Q And how are you listed with the federal government  
3 for selling gasoline?

4 A We are categorized as a small business.

5 Q Small business?

6 A Yes, sir.

7 Q Well, how many employees do you have, Mr. Allford?

8 A We normally have around 80 to 85 employees. We have  
9 quite a bit of turnover each year because of the nature of  
10 our business, but we do have normally that many at one  
11 time.

12 Q Tell the Court, if you would, please, a little more  
13 about the turnover. You said the nature of the business,  
14 you have quite a bit of turnover.

15 A Well, the --

16 Q Explain that a little bit.

17 A In the convenience store industry nationally, it's a  
18 trend that there is maybe four or five turns per employee  
19 per store a year. So we're in that business, and we incur  
20 the same challenges.

21 Q You said four or five turns?

22 A Yes, sir.

23 Q What does that mean, "turns"?

24 A That means that you may have an employee changing or  
25 turning over every three months.

1 Q All right.

2 A Three to four months.

3 Q How about the managers?

4 A The managers are normally more solid, more stable,  
5 and we have a couple of people that have been with us for  
6 six or eight years.

7 Q All right. And -- excuse me. Are you familiar with  
8 the Complaint that EPA filed in this matter?

9 A Yes, sir.

10 Q And that Complaint names several facilities, doesn't  
11 it?

12 A Yes, sir.

13 Q And those facilities that are named in the Complaint,  
14 you are familiar with all five of those?

15 A Yes, sir.

16 Q Does RAM own all five of those facilities?

17 A Yes, sir.

18 Q Does RAM's employees operate all five facilities?

19 A No, there are -- there are two with -- there are  
20 marketers in the facility, and they sell our products.

21 Q All right. And the marketers, are they also -- do  
22 they have your managers?

23 A I beg your pardon?

24 Q You said you have managers that have a little more  
25 stable --

1 A Well, those are at our salaried operations. Now,  
2 these other people run their own operations; that's at the  
3 Thrif-T-Mart and Goodwin's in Hartshorne.

4 Q So of the five facilities named in the EPA's  
5 Complaint, Goodwin's and Thrif-T-Mart are not operated by  
6 your employees, because they have Marketing Agreements?

7 A That's correct.

8 Q So that leaves the Citgo Quik Mart.

9 A And Longtown.

10 Q Longtown in Eufaula, and Monroe's in Eufaula.

11 A Monroe's is closed. We have taken the tanks out.

12 Q All right. But before the tanks were out, it was  
13 your employees that operated --

14 A No, sir, that was -- that was a dealer there. That  
15 was a traditional service station when we were marketing  
16 gas, and it's no longer in business.

17 Q Okay. When we come back from the lunch break, I'm  
18 going to want to talk to you about the Quik Mart here in  
19 McAlester, about how it came to be that there were no  
20 spill buckets on the fill ports.

21 But I think, Your Honor, that it would make better  
22 sense to keep the testimony in line with what I'm going to  
23 ask him to do, to defer this portion for a moment till  
24 after lunch.

25 But I would like to ask you about the spill

1 buckets at not only the Quik Mart in McAlester, but  
2 all of the facilities named in the Complaint that you  
3 operate, as to what happens when they fill up with  
4 product or material.

5 Do you know what I'm talking about, sir? The  
6 spill buckets on the fill ports that may collect  
7 debris or product.

8 A Okay. They are -- they are -- they have a  
9 five-gallon capacity. I mean if they are filled -- if the  
10 tank is filled and runs over into that, that's the  
11 capacity of that overflow bucket.

12 Q All right.

13 A So hopefully that doesn't normally happen very often,  
14 but it can happen.

15 Q It can happen?

16 A Yes, sir.

17 Q Have you put in place any mechanisms to train or  
18 instruct your employees about the maintenance requirements  
19 for spill buckets?

20 A Yes, sir. We -- we tell all the store employees and  
21 our truck drivers about taking due care in watching what  
22 they are delivering, and what has been delivered, and they  
23 are supposed to maintain the buckets in a clean fashion, a  
24 clean manner.

25 Q And is this a task that you handle yourself, or have

1           you delegated that to Ms. Twilah Monroe, in her capacity?

2    A           We have a lady named Susan Bone that helps me.

3           COURT REPORTER:   Who?   What was her name?

4           THE WITNESS:   Susan Bone:   B-O-N-E.

5           And then Twilah has also discussed this with  
6           different people and drivers.

7    Q           (By Mr. Kellogg:)   Do you know how often you have to  
8           conduct this kind of instruction and training?

9    A           Well, we tell them all.   We -- we hope that they will  
10           listen and hope that they will adhere to the mandate of  
11           the government, and take care in what they are doing.

12   Q           But the turnover has an effect on that, as well?

13   A           Sure.   Yes, sir.

14   Q           What about your drivers?   Is there a turnover in  
15           drivers, too?

16   A           Yes, sir.

17   Q           And so you also need to keep instructing your  
18           drivers?

19   A           That's correct.

20   Q           And they are the ones that make fuel deliveries, I  
21           guess, to these facilities.

22   A           Yes, sir.

23   Q           Your Honor -- well, let's go to -- I want to visit  
24           with you about compliance with the UST regulations for  
25           RAM, and then I'll come back to Quik Mart after lunch, all

1 right?

2 Do you try to -- well, tell me how you react to the  
3 Oklahoma Corporation Commission's regulations. What is  
4 your business posture about dealing with the OCC's  
5 regulations?

6 A Whenever we are mandated to do anything about a  
7 repair or to come into compliance, we do it. We do what  
8 we are told or instructed per written request.

9 Q Do you rely on being told what to do?

10 A Yes, we do. We rely on the inspector, normally  
11 Mr. Roberts. We also have some locations outside of this  
12 area and we do the same there. We always allow them or  
13 request them to tell us when we have something that's  
14 needed, and we always come into compliance immediately,  
15 calling the repair people that are capable of rectifying  
16 the situation.

17 Q All right. Now, sometimes, you do have to hire an  
18 expert, don't you?

19 A Yes, many times.

20 Q What kinds of experts do you hire?

21 A Well, you have to hire people that work on pumping  
22 equipment, submerged pumps and dispensers, electronic  
23 dispensers, and then, of course, the people that are  
24 technically trained to manage the tank and line systems,  
25 the CP systems; we hire all of that done.

1 Q Have you ever heard of NACE certification?

2 A Yes, sir.

3 Q Are you NACE certified?

4 A No, sir.

5 Q Are you a certified tank installer?

6 A No, sir.

7 Q Are you certified to test lines and leaks?

8 A No, sir.

9 Q All right. Are you familiar with a company called  
10 Visual Inspections?

11 A Yes, sir.

12 Q And how do you -- how do you know Visual Inspections?

13 A Well, when it was mandated that the cathodic systems  
14 be installed, we got lists from the State of Oklahoma of  
15 authorized and certified companies, and they were one of  
16 them. And they called us and made a proposal, and we  
17 hired them to put in these cathodic systems.

18 Q Did -- do you recall whether you asked or directed  
19 Visual Inspections with any of the specific criteria for  
20 the installation of CP systems?

21 A Well, they -- they presented their qualifications to  
22 us that shows their NACE certifications and their  
23 engineering qualifications and their background and  
24 experience.

25 A man named Ed Sack, and the other man that was --

1 has given us his certification.

2 COURT REPORTER: Ed what?

3 THE WITNESS: Ed Sack: S-A-C-K.

4 Q (By Mr. Kellogg:) All right. And you haven't  
5 attended the testimony before today, have you?

6 A No, sir, I haven't.

7 Q Do you know anything about what must be done before a  
8 corrosion protection system can be installed?

9 A Well, we relied on their expertise to -- to do that,  
10 to do all testing and qualification of the -- of the  
11 installation of this equipment.

12 Q You -- they are the experts, and they are certified.

13 A That's correct.

14 Q You give them a job to do and you expect them to do  
15 it, right?

16 A Yes, sir, that's right.

17 MR. KELLOGG: I'm sorry for the leading  
18 questions. I didn't know how else to get around it.

19 MS. BEAVER: Yeah.

20 Q (By Mr. Kellogg:) Do you -- do you try to avoid  
21 compliance with the OCC's regulations?

22 A No, sir.

23 Q Have you ever instructed Twilah not to make some  
24 repair or alteration or change that the OCC has requested?

25 A Absolutely not.

1 Q Would you ever conceive of doing such a thing?

2 A No, sir.

3 Q All right. You are not trying to avoid compliance.  
4 Do you think the OCC treats you fair, compared to your  
5 competition?

6 A Probably so. Twilah deals with them more than I do.

7 Q You don't really deal directly with the OCC much?

8 A Not as much as she has.

9 Q Of course, I guess Twilah needs to come to you to  
10 sign the purchase orders and things for equipment and so  
11 on.

12 A Yes, sir.

13 Q Do you yourself ever interact with Mr. John Roberts  
14 of the OCC?

15 A Periodically, yeah. I have known John all my life.

16 MR. KELLOGG: All right.

17 I'm sorry, Your Honor. May I take just a  
18 moment?

19 THE COURT: Yes.

20 Q (By Mr. Kellogg:) Now, you knew that the EPA had  
21 come and inspected in February of 2005, right?

22 A Yes, sir.

23 Q And how did you learn that?

24 A I think Twilah told me. I can't recall exactly how I  
25 learned, but I think that's right.

1 Q Did you accompany any of the inspections?

2 A No, sir.

3 Q Were you there when the EPA and John Roberts had  
4 their meeting with Twilah Monroe? Were you present at the  
5 meeting?

6 A No, sir.

7 Q So I take it sometime after that, I take it  
8 Ms. Twilah Monroe told you the EPA had inspected.

9 A Yes, sir.

10 Q Did Ms. Monroe have any requests of you following  
11 that inspection?

12 A Well, I think we discussed the -- the things that  
13 need to be done to bring things up current, as far as all  
14 of their -- their requests and orders.

15 Q All right. And you handled that in the same fashion  
16 that you did the normal OCC inspections, right?

17 A She -- she started talking to the contractors almost  
18 immediately.

19 Q Okay. Did you tell Ms. Monroe not to address any of  
20 the items that EPA had asked for?

21 A Absolutely not.

22 Q All right. And then I take it -- I guess in August  
23 of last year, you received a document in the mail from the  
24 EPA, the Complainant in this case.

25 A Yes.

1 Q And can you tell the Court what your reaction was  
2 when you saw that Complaint?

3 A Well, I was astonished, to say the least.

4 Q And what was astonishing about that?

5 A Well, the amount of the fine.

6 Q From the time of the inspection in February of 2005  
7 until you received the Complaint in August of 2005, had  
8 the EPA contacted you to inquire about the status of the  
9 work on the items addressed in the Complaint?

10 A Not to my knowledge, unless they called Twilah. I'm  
11 not sure about that. I don't think so.

12 Q Do you recall whether Twilah Monroe mentioned to you  
13 that EPA called and inquired about the status?

14 A She may have.

15 Q She may have, but you don't know?

16 A I can't recall.

17 Q Okay. Did you --

18 A It was an ongoing effort to bring everything up to --  
19 up to --

20 Q All right.

21 A -- current status, I know that.

22 Q Did you separately require Twilah to send any  
23 information to EPA about your progress on complying with  
24 the items identified during the inspection?

25 A I'm sorry?

1 Q Did you ask Twilah to send anything to EPA about the  
2 status of how you were addressing items in their  
3 inspection?

4 A I -- I think she did what she was told, or expected  
5 to do the whole time that this --

6 Q I understand. But did you, yourself, have Twilah  
7 contact the EPA about progress that was made?

8 A I don't recall. I don't think so.

9 Q Did you contact EPA about problems?

10 A I don't think so.

11 Q Okay. And I'm sorry to be a little awkward about  
12 that, but I wanted to get a feel for whether you were in  
13 ongoing discussions with the EPA after the inspection and  
14 before the Complaint. And to your knowledge, that was not  
15 the case?

16 A I don't think so.

17 Q All right. You said that you are not trying to avoid  
18 compliance. Is there -- is there a way that you would  
19 like to be treated?

20 A We would like to be treated the same as everyone  
21 else.

22 Q You would like to be treated the same as anyone else?

23 Let's look, if you would, at Respondent's Exhibit 68.  
24 And sir, there is a black notebook at the table, and there  
25 should be a tab at the end marked Respondent's Exhibit 68.

1 A Okay, sir.

2 Q Do you see that exhibit, sir?

3 A Yes, sir.

4 Q And are you familiar with that exhibit?

5 A I have -- I have seen it; yes, sir.

6 Q You looked at it last night, did you not?

7 A Yes, that's correct.

8 Q And I think the night before.

9 A Yes, sir.

10 Q And I asked you to -- in your looking at that  
11 exhibit, do you believe that you have been treated just  
12 like everyone else?

13 A No, sir, I sure don't.

14 Q I ask you to turn to page 2 of that exhibit. And  
15 there are -- and can you tell the Court whether any of  
16 those facilities there on page 2 are under common  
17 ownership?

18 A The first five are all under -- were under the same  
19 ownership.

20 Q Let me make sure I'm understanding what you are  
21 saying. Quick Shop in Holdenville, Oklahoma.

22 A Yes, sir.

23 Q James's Service Station in Holdenville, Oklahoma.

24 A Yes, sir.

25 Q Gary's Service Station in Wewoka.

1 A Yes, sir.

2 Q Quick Way in Wetumka.

3 A Yes, sir.

4 Q The Village in Holdenville, Oklahoma.

5 A Yes, sir.

6 Q Those five are under common ownership?

7 A Yes.

8 Q And who is that owner?

9 A That owner was a lady named Kathy Camp.

10 Q Can you spell the name?

11 A C-A-M-P.

12 Q Now, turn to page 4. And you see yourself listed,  
13 right, your company?

14 A Yes, sir.

15 Q Would you say that RAM has been treated the same as  
16 Kathy Camp?

17 A Absolutely not, sir.

18 Q Let me ask you another question, sir -- I'm through  
19 with Exhibit 68. Your business of petroleum marketing,  
20 you are in competition with others, are you not?

21 A Yes, sir.

22 Q And is that a -- describe that level of competition  
23 for me.

24 A Well, it's extremely competitive. We have -- within  
25 the last few years, there have been more and more mass

1 merchandisers get into the gasoline business, such as  
2 Murphy's of Wal-Mart, and the Target stores, and other  
3 large marketers in the cities. And in Oklahoma,  
4 especially, we also compete with the Indian tribes.

5 Q Indian tribes? Are there any Indian-owned facilities  
6 in the area where you have stores?

7 A Here in McAlester there's one, yes, sir. The Choctaw  
8 Indians.

9 Q And would that be the Choctaw Travel Center?

10 A Yes, sir, that's correct.

11 Q Is that -- well, how close is that to -- don't you  
12 have two stores here in McAlester, Quik Mart and  
13 Thrif-T-Mart that are in this Complaint?

14 A Yes, sir.

15 Q And how close is the Choctaw Travel Center to, say,  
16 the Thrif-T-Mart?

17 A It's about a mile and a half south on 69 highway.

18 Q Okay. Now, I -- just driving around as a citizen, I  
19 know that prices on gasoline stations always seem to be  
20 fairly close, and they go up and down constantly. Is the  
21 pricing of the retail sales of gasoline one of the  
22 elements of competition that you have?

23 A Absolutely, yes, sir.

24 Q All right. And how does the Choctaw -- does the  
25 Choctaw Travel Center affect your competition in any way?

1 A Yes, it does. It's impacted it tremendously the last  
2 three or four years. The Thrif-T-Mart has lost about  
3 25 percent of its -- of its fuel volume, and about the  
4 same on the inside sales; 25 to 30 percent of the inside  
5 sales. And I attribute that much to the competition of  
6 the Indian tribes.

7 Q Okay. What about the price of gasoline? Tell me how  
8 that works with the Indian facilities.

9 A Well, the Indians are not under the same rules as  
10 other marketers not on Indian lands, and so they don't  
11 have to comply with the same laws and regulations that  
12 other marketers do.

13 Q What about the pricing of Indian gasoline sales on  
14 Indian facilities?

15 A Again, there is a Fair Trade Law in Oklahoma, and  
16 they don't have to comply to that same legislation.

17 Q When you -- when you adjust the price, the retail  
18 price of your gasoline sales, who is it that you have to  
19 look to to compete with?

20 A Well, we have -- we have to be competitive. No  
21 matter what our margins are, we have to sell at a  
22 competitive price or the same price as your competitors,  
23 or you'll lose volume.

24 Q And is there a leader of the pack that, say, lowers  
25 their prices before anyone else?

1 A I would say, in many instances, it is the Choctaw  
2 Indians.

3 Q Many instances?

4 A Yes, sir.

5 Q But not all?

6 A Not all, but many.

7 Q And are there other such Indian facilities in the  
8 area besides the Choctaw Travel Center here in McAlester?

9 A There are many, all up and down 69 Highway from  
10 Durant, to Atoka, to Stringtown, Wilburton, Muskogee,  
11 Okmulgee, Shawnee, Seminole, Wewoka, Ada. They are  
12 everywhere.

13 Q Do these Indian facilities serve only Native  
14 Americans, or anybody that walks in?

15 A The general public.

16 Q The same customers you have?

17 A That's correct.

18 Q So these Indian tribes are in direct competition to  
19 you?

20 A That's correct.

21 Q Now, not thinking about Indians, necessarily, what is  
22 your understanding of -- well, what do you understand  
23 about how Indian petroleum UST facilities are regulated?

24 A Well, I know that they are not regulated by the  
25 Oklahoma Corporation Commission. They have no right to go

1 in and legislate or define what's being done or not being  
2 done on -- on Indian properties.

3 Q All right. And is that different than the rest of  
4 the petroleum marketing community?

5 A Yes, sir.

6 Q How they are being treated?

7 A Yes, sir.

8 MR. KELLOGG: Your Honor, I'd like to take a  
9 lunch break and then resume with a specific line of  
10 questioning about the Quik Mart in McAlester.

11 THE COURT: Okay. We will do that. Recess for  
12 one hour.

13 \*\*\*\*\*

14 (A lunch break was taken, after which the  
15 following continued:)

16 THE COURT: The hearing will be in order. You  
17 may resume the stand, Mr. Allford.

18 MR. SHIPLEY: Your Honor, while he is resuming,  
19 may we inquire as to whether the Court will allow a  
20 two-minute closing argument?

21 THE COURT: Yes. If you request a closing  
22 argument, I will allow it, yes.

23 MR. SHIPLEY: Thank you.

24 THE COURT: You may proceed, Mr. Kellogg.

25 MR. KELLOGG: Thank you, Your Honor.

\*\*\*\*\*

DIRECT EXAMINATION (CONT'D.)BY MR. KELLOGG:

1  
2  
3  
4 Q Good afternoon, Mr. Allford.

5 A Good afternoon.

6 Q We are back from a lunch break. You recognize you  
7 are still under oath, do you not?

8 A Yes, sir.

9 Q And you haven't been here before, but there has been  
10 some testimony about a couple of things. There was  
11 testimony about a spill at the bulk plant, and there's  
12 some testimony about the spill buckets being missing on  
13 some of the ports at the Citgo Quik Mart in McAlester.

14 You are familiar with both of those, are you not,  
15 sir?

16 A Yes, sir.

17 Q All right. Let me talk about the spill at the bulk  
18 plant. Was there a spill sometime in December of 2004?

19 A Yes, sir.

20 Q Is the bulk plant a UST system?

21 A No, it's not. No, sir.

22 Q And you said there was a spill. And that -- that  
23 bulk plant holds product and fuel, right?

24 A That's correct, yes, sir.

25 Q And about how much fuel hit the ground?

1 A A hundred and fifty gallons.

2 Q Okay. And what happened as a result of that spill?  
3 Didn't the EPA come and investigate that?

4 A Yes, sir.

5 Q What did they ask you to do?

6 A Well, we had to do remediation in our bulk plant  
7 facility, and had to get an environmental specialist to  
8 make assessments of the -- of the area where the product  
9 could have contaminated upland spring -- upland streams.

10 Q Okay. And you had to do some compliance work, too;  
11 is that right?

12 A That's correct. Yes, sir, we hired environmental  
13 consultants and remediation experts to --

14 Q Okay.

15 A -- handle that for us.

16 Q And did you cooperate with those officials in that  
17 process?

18 A Yes, sir.

19 Q All right.

20 A Fully; yes, sir.

21 Q And did they ultimately or eventually send you any  
22 kind of a penalty order?

23 A Yes, sir.

24 Q And about how much did they ask for?

25 A They asked for about \$11,000, I think.

1 Q Okay. Did you retain a lawyer to defend against  
2 that?

3 A No, sir, we didn't.

4 Q Okay. You cooperated with the EPA in that spill?

5 A Yes, sir.

6 Q And did you ultimately settle that case with EPA?

7 A Yes, sir.

8 Q Was it for 11,000 or something else?

9 A It was about \$6,900, I think.

10 Q Okay. And now I want to turn your attention to the  
11 Quik Mart here in McAlester. You did receive the  
12 compliance order from the EPA directing -- addressing the  
13 spill buckets or lack of spill buckets on the north ports  
14 at that Citgo Quik Mart, correct?

15 A Yes, sir.

16 Q And was there anything else those spill buckets  
17 addressed in the order, the Compliance Order that the EPA  
18 directed you to do?

19 A Yes, sir.

20 Q And what was that?

21 A That was to put spill buckets on the north ports of  
22 the tanks at the Quik Mart.

23 Q And did you put those spill buckets on?

24 A Yes, sir.

25 Q Okay. Do you know about what it cost to put those

1 spill buckets on?

2 A I think about \$1,600 or \$1,800.

3 Q Okay. Now, you own that -- that service station, and  
4 you operate it both, correct?

5 A Yes, sir.

6 Q And did you own and operate it when it was first  
7 built, when those tanks were first put in the ground?

8 A Yes, sir.

9 Q When those tanks were put in the ground, did the  
10 Oklahoma Corporation Commission have any involvement in  
11 that?

12 A He was there almost every day during the  
13 construction; during the construction of the tanks and the  
14 lines, he was there.

15 Q I'm sorry, you said he was there?

16 A John Roberts, the local OCC inspector.

17 Q So he actually observed the installation?

18 A Yes, sir, gave us recommendations and told us what to  
19 do, in certain instances.

20 Q And you followed his recommendations?

21 A Yes, sir.

22 Q Okay. Do you remember whether he told you at that  
23 time that you needed to install spill buckets on the north  
24 ports?

25 A He did -- he said that that wasn't necessary.

1 Q Oh, he said it was not necessary?

2 A Yes, that's correct.

3 Q Okay.

4 A We had to have -- had to have spill overfill buckets  
5 on each tank.

6 Q And did you?

7 A Yes, we did.

8 Q And where are those buckets located?

9 A They are south of those other ports, the outlets that  
10 we had to put the spill buckets on for the EPA.

11 Q Okay. Did OCC then approve those tanks?

12 A Yes, they did.

13 Q Now, I'd like to ask you whether there was any  
14 physical impediments -- any physical impediments to a tank  
15 truck using those north ports to put product into those  
16 tanks?

17 A Yes, sir. It's extremely difficult to use those  
18 north ports. The transports are all equipped with  
19 unloading valves on the right side.

20 Q Okay.

21 A And the way the store is configured on that  
22 particular lot, and where these tanks are lying on the  
23 lot, it's almost impossible to use those north ports.

24 I spoke to a driver that's been with me 30 years last  
25 night. And he said to his knowledge, no one has ever

1 unloaded product in those north ports.

2 Q Okay. And you said it's extremely difficult, but  
3 that doesn't mean it's absolutely impossible.

4 A Oh, no, you could -- it could be done.

5 Q But it's not practical?

6 A It's not practical.

7 Q Well, would it be helpful to the Court to have a  
8 drawing or an illustration to show the layout of the store  
9 in relationship to the ports to help the Court understand  
10 what you are describing?

11 A I can do that.

12 Q And can you make such a drawing?

13 A I don't know if you will be able to sell it, but I  
14 can --

15 Q Your Honor, may the witness approach the easel?

16 THE COURT: Yes.

17 Q (By Mr. Kellogg:) Let me hand you a pen,  
18 Mr. Allford, and ask you, if you could, to draw a  
19 schematic drawing of the Quik Mart station, and show the  
20 location of the tanks, the spill ports, the driveways, and  
21 any other features that you think would be helpful to  
22 understand the problem with using those ports.

23 A (Drawing:) Okay. This is Carl Albert Parkway, the  
24 street right here in front of the building here.

25 Q Let me turn this -- I'm sorry.

1 A Approximately a mile and -- a mile and a quarter or  
2 so east of here on the south side of the road.

3 THE COURT: That's satisfactory. I can see.

4 A Okay. This is the corner of 14th, this is 14th  
5 Street, and this Carl Albert Parkway.

6 Okay. The entrances into the -- into the store on  
7 Carl Albert are approximately 50 feet wide. The same over  
8 here; we have two 50s over here on 14th Street.

9 There's a sign -- there's a sign pole and a flag pole  
10 constructed right here in this corner. The tanks sit back  
11 about 40 feet or so inside the property line. They are  
12 12,000-gallon tanks.

13 The submerged tank system, they have pumps in the  
14 tanks; that means they push the product to the islands  
15 where the product is dispensed. They are on the north  
16 end. And due to the -- this is where the fill buckets  
17 were not installed on the north side.

18 Q Can you show which side is north on that drawing?

19 (The witness replies by drawing on the board.)

20 A This is west and this is east. Again, I don't think  
21 you will be able to sell it. But the south ports are  
22 where we were instructed and told we needed to put the  
23 overfill buckets. That's what we did.

24 The building is right here.

25 The trucks turn off of Carl Albert Parkway and come

1 in pointed to the east.

2 Q Sir, could we perhaps use this --

3 A Okay. If a truck turns in here, again, the unloading  
4 ports are over here on the right side. So it's virtually  
5 impossible, because -- because of this set back and the  
6 corner layout here where there's shrubbery and so forth,  
7 landscaping, it's impossible for a truck to get around  
8 here and go far enough into the island, which sits almost  
9 straight in front of these other ports.

10 So the truck had always, for the last 16 years,  
11 turned in off of Carl Albert Parkway. They -- they pull  
12 under the end of the canopy next to the building.

13 This is the building here.

14 So they unload over here on the right side into these  
15 tanks, if that's enough said. But that's -- it's -- the  
16 length of these trucks is such that it's -- it's virtually  
17 impossible to come in from any angle and get to where you  
18 could unload from the right side, so we haven't done that.

19 There's instances when we've opened up the tanks that  
20 there was moisture and water in the tanks that we had to  
21 remove, and we have done that. But -- but we haven't  
22 unloaded with large trucks into these other ports. And we  
23 were told by the OCC that that was sufficient.

24 Q All right. Thank you, Mr. Allford.

25 MR. KELLOGG: I'm going to mark this as

1 Respondent's Exhibit 71, Your Honor.

2 THE COURT: Okay.

3 MR. KELLOGG: And ask that be admitted.

4 MS. DIXON: No objection.

5 THE COURT: Exhibit -- Respondent's Exhibit 71  
6 is admitted into evidence.

7 Q (By Mr. Kellogg:) One last question, and I'll  
8 finish.

9 The -- at this station, there was a temporary closed  
10 tank involved; the tank, at least, you weren't using, and  
11 also Monroe's. Only the tanks weren't empty, they had  
12 product in them. Did you know those tanks had product in  
13 them?

14 A Well, we -- we'd instructed drivers to remove the  
15 product. And I was explaining to you at noon, when you  
16 put a hose down in to extract this product, I mean there's  
17 an extreme amount of pressure, and sometimes those hoses  
18 will curl up with that pressure.

19 And the product discontinued as far as coming out of  
20 the pump, and so they assumed that they were out of  
21 product. And so that's I think -- assume that's what  
22 happened.

23 Q You say "pressure." I have that that's a suction  
24 line?

25 A It's a suction line. And again, it will -- with the

1 flexible hose, they will curl up. And many times, we do  
2 that, we'll use the measuring stick to make sure that  
3 doesn't happen.

4 We will affix the stick to the hose and then put it  
5 down in the tank to remove the product or water, if  
6 there's water in the tank that needs to be removed.

7 Q Sure.

8 A And that way, it will -- it will stay in place. And  
9 that's probably what happened. I -- we -- we thought all  
10 the product was removed at Eufaula, but it was only, I  
11 think Twilah said, 60 or 65 gallons.

12 Q Okay.

13 A And then this other tank, we weren't -- we weren't  
14 aware of it, but we have used it.

15 Q That represents your money, doesn't it?

16 A Yeah, that's a lot of money.

17 Q Gasoline sitting there.

18 A It's several dollars.

19 Q So that sounds like an honest mistake, right?

20 A It was a mistake.

21 MR. KELLOGG: Your witness.

22 \*\*\*\*\*

23 CROSS EXAMINATION

24 BY MS. DIXON:

25 Q Good morning.

- 1 A Good morning. Good afternoon.
- 2 Q Oh, afternoon for sure. We've had a long day.
- 3 Okay. Now, it's your testimony that you owned two
- 4 facilities and you leased two facilities, and one has been
- 5 closed, correct?
- 6 A That's correct.
- 7 Q And you own Citgo Thrif-T-Mart?
- 8 A We -- now that's where you -- we have a marketer.
- 9 Q Oh, okay.
- 10 A We don't operate there.
- 11 Q So you own Citgo Quik Mart?
- 12 A Yes -- yes, ma'am.
- 13 Q And Longtown?
- 14 A That's correct.
- 15 Q And Citgo Thrif-T-Mart is a marketer.
- 16 A Yes.
- 17 Q And Monroe is closed.
- 18 A Monroe's is closed.
- 19 Q And Goodwin is a marketer.
- 20 A Goodwin's is a marketer.
- 21 Q Got it. Okay, and your mother is actually the owner
- 22 of Goodwin's, correct?
- 23 A Yes.
- 24 Q But RAM is able to lease Goodwin's, even though RAM
- 25 doesn't own it?

1 A That's correct.

2 Q Okay. Now, you are a graduate of the University of  
3 Tulsa, I hear.

4 A That's right.

5 Q Go Golden Hurricanes.

6 A How are you --

7 Q What was your major?

8 A Marketing.

9 Q Marketing?

10 A What's your connection?

11 Q Oh, I'm from Tulsa. How many facilities does RAM  
12 own?

13 A How many facilities?

14 MR. KELLOGG: Your Honor, if I could ask  
15 clarification, are you asking about UST facilities?

16 MS. DIXON: Facilities generally. I think you  
17 have characterized Mr. Allford as a little-old store  
18 owner, or something like that. So I want to see if  
19 he's a little-old store owner.

20 MR. KELLOGG: He owns some cattle, as well, but  
21 I think we could -- if we are interested in UST  
22 facilities, we should ask him how many UST facilities  
23 he has.

24 Q (By Ms. Dixon:) How many UST facilities do you own?

25 A That I own?

1 Q Uh-huh.

2 A Nine, probably. Nine, I believe. I have to think.  
3 Let's see.

4 Q Approximately, that's good.

5 A Let's just say nine or 10.

6 Q Nine or 10. How many -- okay. In addition to being  
7 the owner of nine or 10 UST facilities, do you also have  
8 lease properties, or is that included in your testimony  
9 regarding ownership? The leased property, did you include  
10 that as part of what you owned?

11 A Yes, ma'am.

12 Q Okay. But you are also a distributor of gasoline?

13 A Yes, ma'am.

14 Q And of gasoline dispensing equipment. What's going  
15 on with the gasoline dispensing equipment?

16 A Well, that's -- we are just referencing the equipment  
17 used to merchandise the gasoline.

18 Q Do you own those -- that equipment?

19 A Yes, we own that equipment.

20 Q Okay. And your marketers and/or dealers are required  
21 in their contract to use RAM's gasoline?

22 A I'm sorry?

23 Q Do you require your marketers and your dealers to use  
24 your gasoline?

25 A Yes, ma'am.

1 Q And of course, they use your dispensing equipment, as  
2 well.

3 A Yes, ma'am.

4 Q Yeah. You testified that under EPA's small business  
5 policy -- I mean under EPA, you are distinguished as a  
6 small business owner.

7 A Absolutely.

8 Q That's based on the number of employees?

9 A Yes, ma'am.

10 Q You also testified you wanted to be treated like  
11 everyone else, and that's certainly understandable. I can  
12 understand that.

13 And let me ask you to take a look at what has been  
14 entered into the record as Respondent's Exhibit 68.

15 Yeah, it should be in there. You found it already,  
16 Mr. Allford?

17 A Yes, ma'am.

18 Q Okay. And if you look at the first page, there's  
19 about 10 Farris facilities on there. You testified about  
20 this document earlier.

21 A I didn't testify anything about the Farris  
22 facilities.

23 Q Okay. Will you look at the 10 Farris facilities?

24 A Yes, I see them.

25 Q And it looks like EPA inspected 10 of these, which is

1 way more than the five that they inspected for you, isn't  
2 it?

3 A Yes, ma'am.

4 Q And field citations were issued in all of these 10  
5 cases it looks like; is that true?

6 A That's true.

7 Q Based upon the number of penalties?

8 A Yes.

9 Q But you don't know if all of these were records  
10 violations, did you?

11 A They were what?

12 Q Records violations. All of the -- all of the 10  
13 facilities for Farris with the field citations were --

14 A I don't know the specifics of the citations, no.

15 MR. KELLOGG: I'm sorry, I think from her  
16 question, she's assuming facts in evidence. We don't  
17 know what the violations were, exactly. We only know  
18 what was listed in the documents in Respondent's  
19 Exhibit 60.

20 MS. DIXON: Exactly.

21 MR. KELLOGG: So perhaps the question should be  
22 whether these were records violations.

23 MS. DIXON: Well, no, exactly. You testified  
24 that you wanted to be treated the same, but if you  
25 don't know the facts regarding this case, it's

1           irrelevant. Because the facts will tell you whether  
2           or not you were treated the same.

3           But let's go on.

4    Q           (By Ms. Dixon:) Specifically, let's talk about the  
5           Indian facilities. Do you know if EPA has ever inspected  
6           the Choctaw facility?

7    A           No, I don't.

8    Q           And so you don't know the results of any Inspection  
9           Reports?

10   A           No, ma'am.

11   Q           It could be quite possible that if EPA has inspected  
12           Choctaw, they were in full compliance. That's possible,  
13           isn't it?

14   A           That's possible, sure.

15   Q           Do you know EPA's policy on Indian facilities?

16   A           No, I do not.

17   Q           So you don't know that it's based upon Constitution  
18           and treaties and government-to-government status?

19   A           I assume.

20   Q           Let's talk about other facilities that's located like  
21           in Muskogee, Okmulgee, Ada, Tahlequah, Bartlesville,  
22           Chouteau. You don't know if these other facilities have  
23           been inspected by EPA, do you?

24   A           No, I do not.

25   Q           And you don't know if there's a future inspection

1 that may lead to enforcement actions against them.

2 A I don't know that; no, ma'am.

3 Q Training. Mr. Allford have you ever sent any of your  
4 employees to get compliance assistance training for USTs,  
5 Underground Storage Tank?

6 A I don't recall.

7 Q Did you know that there's available training,  
8 compliance assistance training?

9 A I think I read that, yes.

10 Q And you yourself have never been to any compliance  
11 assistance training?

12 A I have been to seminars.

13 Q You have been to seminars?

14 A Yes, ma'am.

15 Q Great. Which ones?

16 A I don't recall exactly. I think I have been to  
17 Oklahoma City and Tulsa.

18 Q Okay. Until EPA's inspection and Complaint, you  
19 didn't have a full-time environmental consultant on staff,  
20 did you?

21 A Absolutely not.

22 Q So Ms. Monroe pretty much had a lot of the duties.

23 A She dealt with experts, with people that are  
24 professionals.

25 Q So you would hire people in?

1 A Hire --

2 Q But for the day-to-day operations, Ms. Monroe did  
3 most of that?

4 A Yes.

5 Q The north fill ports of the Citgo Quik Mart, your  
6 testimony is you never intended to use these?

7 A We never used them.

8 Q Never used them?

9 A That -- I qualified that earlier by saying we took  
10 water and other products out at this time.

11 Q Do you intend to use them now?

12 A No, we -- it's not feasible to use them, normally.

13 Q So --

14 A You would have to go to great lengths to use them at  
15 all.

16 Q Right. So you could have probably capped those fill  
17 ports, couldn't you, tanks?

18 A No. Well, no. I think it was require -- see, that's  
19 where the submerged pumps are, at that same end.

20 Q So it was -- it was impossible for you to permanently  
21 cap these?

22 A We don't want to permanently cap them.

23 Q Because it would mess up some other process in your  
24 operations?

25 A Possibly; yes, ma'am.

1 Q Okay. But there were no signs or anything that  
2 indicated to a driver not to use these fill ports, right?

3 A Well, earlier, they -- they weren't color coded; our  
4 other tanks were color coded and we always gave  
5 instructions, if it was a common carrier, to use those  
6 specific ports that were south, straight into the  
7 building.

8 Q Uh-huh.

9 A And our drivers all knew that. They were instructed  
10 as such. And just like I earlier said, I have one driver  
11 that's been with me 25 years, another one 30, and they  
12 never used those.

13 Q Right. Were there any signs that said, "don't use  
14 north fill ports"?

15 A No, ma'am.

16 Q Now, the -- I don't think you testified to this, so I  
17 may have to go on.

18 Let's talk about Goodwin's. And you mentioned that  
19 the lease property -- you really don't have any dealings  
20 with the day-to-day operations for those, right?

21 A Oh, I help, yes.

22 Q Oh, you do help?

23 A Uh-huh, when needed.

24 Q And you enter into Marketing Agreements regarding  
25 your third-party contractors, marketers, lease, dealers?

1 A I beg your pardon?

2 Q Do you have Marketing Agreements --

3 A Yes.

4 Q -- with these individuals?

5 A Yes, ma'am.

6 Q And I believe you were here for Ms. Monroe's  
7 testimony?

8 A Yes, ma'am.

9 Q And in her testimony, she mentioned that in addition  
10 to your Marketing Agreement, you give them EPA's, "Doing  
11 Inventory Control Right."

12 A (Nods head.)

13 Q And have we looked at the Marketing Agreement for  
14 Goodwin's? And let me figure out which one that is.

15 MR. KELLOGG: Forty-six.

16 MS. DIXON: Forty-six? Forty-eight.

17 MR. KELLOGG: Forty-eight?

18 MS. DIXON: Uh-huh.

19 MR. KELLOGG: I was close.

20 THE WITNESS: Which -- which one is it?

21 Q (By Ms. Dixon:) It's Respondent's Exhibit 48; I'm  
22 sorry.

23 Okay. This agreement was entered into between RAM  
24 and -- I don't know, Benny Mattioda?

25 A Mattioda.

1 Q Mattioda? I'm going to mess that up. And  
2 Mr. Mattioda --

3 A Mattioda.

4 Q Mattioda? Okay, at the time of the agreement with  
5 Mister -- say it one more time.

6 A Mattioda.

7 Q Mattioda. Mattioda. Let me spell that: Mattioda.  
8 At the time of the Marketing Agreement with  
9 Mr. Mattioda, at the time of EPA's inspection, the  
10 Marketing Agreement with Mr. Mattioda had expired; isn't  
11 that correct?

12 A I -- I'm -- I'm not sure.

13 Q Well, let's go to the first page.

14 A Okay.

15 Q This agreement -- oh, go ahead and read it, under  
16 "Term" -- under "Term". First page, Section 1.

17 A Well, it also says, "under their option to extend the  
18 term," and it automatically renews if he doesn't cancel.

19 Q Did he -- did he extend it?

20 A Yes, he -- that's what he told me; he wanted to  
21 continue on, and he did until his -- his uncle has it now.

22 Q And so is there another agreement to this one?

23 A Another agreement?

24 Q Right.

25 A I'm not -- I'm not sure.

1 Q To demonstrate that he extended the document?

2 A I'm not sure. I don't see one.

3 Q Did you do one?

4 A I don't think so. We may not have. I don't know.

5 Q Okay.

6 A I'm not sure.

7 Q Well, go ahead and look at Exhibits 47. And which  
8 one is -- let me just ask you: The Marketing Agreement  
9 also has "Doing EPA's Inventory Control;" is that right?

10 MR. KELLOGG: That's 46.

11 MS. BOYD: That's 46.

12 MS. DIXON: That's 46? Okay. I thought in your  
13 exhibit, you had one behind --

14 MS. BOYD: In 46.

15 MS. DIXON: It's just 46?

16 MS. BOYD: That's correct.

17 Q (By Ms. Dixon:) Okay. So in your Marketing  
18 Agreement that I have now, there's nothing to indicate  
19 that Mr. Mattioda actually read the EPA's 'Doing Inventory  
20 Control Right," document, is there?

21 A I know that he did.

22 Q But is there anything that indicated that in this  
23 document?

24 A I'm not sure, ma'am.

25 Q Well --

1 A We went over that in detail. I remember Twilah  
2 sitting in our -- in our kitchen where we have our meeting  
3 room, and she went over the whole process.

4 Q Well, let's just look at the Marketing Agreement,  
5 Respondent's Exhibit 48.

6 A I've got --

7 Q And let's see if there's anything in here that  
8 references EPA's "Doing Inventory Control Right," that  
9 specific document.

10 A Well, in Paragraph C on page 2.

11 Q Paragraph C on page 2? Uh-huh. Does it -- does it  
12 say "EPA's Doing Inventory Control Right"?

13 A It says "to conduct all operations hereunder in  
14 strict compliance with all applicable laws."

15 Q But it doesn't specifically name the document, does  
16 it?

17 A Not that document, but that's not a requirement of  
18 the law.

19 Q Right, right. And let me see. You also mentioned,  
20 if we go to the CP systems under EPA's Count 13 -- which  
21 facility is that? Let's see. Oh, let me take that out of  
22 there. Failure to test CP systems.

23 MS. BEAVER: Fourteen. Fourteen.

24 MS. DIXON: Fourteen? That's Monroe's.

25

1 (An off-the-record conversation was held, after  
2 which the following continued:)

3 MS. DIXON: Hold on one moment, Your Honor,  
4 because I'm getting confused myself, now.

5 THE COURT: Off the record.

6 (An off-the-record conversation was held, after  
7 which the following continued:)

8 MS. DIXON: Okay, okay. Let's move on.

9 THE COURT: Back on the record.

10 Q (By Ms. Dixon:) Now, you testified -- because I am  
11 getting a little confused now -- with Mr. Kellogg, that  
12 when you put some tanks in -- I think it was at Citgo Quik  
13 Mart. You put some tanks in and Mr. Roberts was there  
14 watching you.

15 A That's correct.

16 Q And he told you to go ahead and put them in. Are you  
17 aware that at the time those tanks were being put in, that  
18 the federal rules were in effect?

19 A Again, that's what we relied on, the OCC and  
20 Mr. Roberts, to make sure that we complied with all rules  
21 and regulations.

22 Q So did you, at any time, ever look at the federal  
23 rules to determine what the rules were?

24 A I hired professionals to do this.

25 Q Did you hire Mr. Roberts to do this?

1 A I did not hire Mr. Roberts; he was there.

2 Q Okay.

3 A Regularly.

4 Q Okay. And then the last thing I want to mention, you  
5 mentioned something about a spill at one of your  
6 facilities.

7 A Yes, ma'am.

8 Q And this was a Clean Water Act violation, wasn't it?

9 A I assume so.

10 Q And it went into the waters of the United States.

11 A I don't think it made it to any creeks, is my  
12 understanding.

13 Q But it was one spill?

14 A One spill.

15 Q One location?

16 A One location.

17 Q And you settled it?

18 A We settled it. To my -- the best of my knowledge, we  
19 have.

20 Q I think you have.

21 A I guess we have.

22 MR. KELLOGG: He thought he had.

23 THE WITNESS: Shoot, I don't know.

24 Q (By Ms. Dixon:) Okay. And then one more question,  
25 then I'm through.

1           We -- you mentioned the fact that product that was  
2 left in one of your tanks, and you had instructed your  
3 drivers to remove all that product. At any time, did you  
4 ever go out or have anyone else to go out to see if they  
5 had, indeed, removed all that product?

6 A           Well, I assumed that it was all --

7 Q           But you never actually checked?

8 A           I didn't go personally and check it.

9           MS. DIXON: That's it.

10           I pass the witness, Your Honor.

11           Thank you so much, sir.

12           THE WITNESS: Thank you.

13           MR. KELLOGG: That's all I have, Your Honor.

14           And may the witness be excused?

15           THE COURT: Yes. Thank you, Mr. Allford.

16           THE WITNESS: Thank you, sir.

17           THE COURT: You may be excused.

18           MR. KELLOGG: Let me retrieve this exhibit for  
19 you, Your Honor.

20           Thank you, Mr. Allford.

21           With that -- I'm sorry. With that, Judge, the  
22 Respondent rests.

23           THE COURT: I assume this concludes the  
24 evidentiary presentation in this proceeding; is that  
25 correct, Ms. Dixon?

1 MS. DIXON: Yes, Your Honor.

2 THE COURT: Well, thank you. If you will hand  
3 that to the court reporter.

4 I have already indicated what the briefing time  
5 is, which the initial briefs will be due 45 days  
6 after receipt of the transcript, and then reply  
7 briefs will be due 30 days after service -- and I  
8 emphasize "service" -- of the summation of the  
9 opposing party. And at that point, this case will be  
10 ready for decision.

11 So thank you very much, Ladies and Gentlemen.

12 This hearing is adjourned.

13 MR. KELLOGG: Your Honor -- go ahead, Chuck.

14 MR. SHIPLEY: Your Honor --

15 THE COURT: Yes, that's right, you -- you wanted  
16 to make a two-minute closing argument.

17 MR. SHIPLEY: Yes, sir.

18 THE COURT: Strike the close, then.

19 MR. SHIPLEY: All right. I appreciate the  
20 Court's allowing us to do this, and I will keep it  
21 extremely brief, as I indicated.

22 This -- this case, as we have suggested to you,  
23 is extraordinary, and we believe is violative of  
24 substantive due process when it comes to the  
25 assessment of the fine in comparison to the

1 transgressions shown.

2 First, we begin with the fact that the  
3 Memorandum of Agreement, Exhibit 52, we believe in  
4 the -- in light of the fact that EPA has the burden  
5 of establishing this case, and that EPA has granted  
6 the primary authority -- and you can read into this  
7 agreement -- that they have acknowledged OCC has one  
8 of the best programs in their entire region in terms  
9 of enforcing USTs.

10 They have admitted and testified to the fact  
11 that USTs in Oklahoma are visited each and every  
12 year, every one of them, by OCC.

13 OCC has established one of the best programs of  
14 compliance assistance that can be shown in any of the  
15 states in this region.

16 They have a -- EPA has acknowledged that they  
17 have never advised the State of Oklahoma that the job  
18 being done by the OCC was substandard --

19 MS. BEAVER: Your Honor, I'm sorry to have to  
20 object during closing, but these seem to be  
21 assertions that are not at all what were testified to  
22 today. We have never testified that the OCC has the  
23 best program in our nation. And --

24 MR. SHIPLEY: I didn't say in the nation. I  
25 didn't say in the nation.

1 MS. BEAVER: And this last statement -- you said  
2 among all the states. And this last statement is  
3 totally -- we never said that EPA never advised OCC  
4 of things. We had a witness who did not have that  
5 information because it wasn't his responsibility to  
6 have that information.

7 THE COURT: Well, this is argument, Ms. Beaver.  
8 So proceed, Mister --

9 MR. SHIPLEY: Shipley.

10 THE COURT: Mr. Shipley. We'll get that right  
11 after a while.

12 Anyway, proceed, Mr. Shipley.

13 If you wish to point these things out in your  
14 brief monologue, you may do so, Ms. Beaver.

15 Proceed.

16 MR. SHIPLEY: Thank you, Your Honor. Legally,  
17 EPA has the right to do inspections and enforcement.  
18 But before they do, in the state of Oklahoma, they  
19 have to give a minimum of 10 days' notice to the OCC.

20 They have offered no testimony, no record of  
21 anyone who did so. They had the gentlemen who they  
22 say it was his job to do so, Mr. Pashia, on the  
23 stand. He never established that he did so.

24 There was nobody from OCC put on who  
25 acknowledged that they received that 10 days' notice.

1           We believe that the -- the inspection and  
2 enforcement is unlawful in this instance, due to the  
3 failure to show that they gave notice.

4           And at a minimum, as set out in the MOA, this is  
5 in violation of the policy of EPA, because it says in  
6 this memo, Memorandum of Agreement, on page 10, "it's  
7 EPA's policy with regard to federal enforcement not  
8 to take such action where a state has taken  
9 appropriate enforcement action."

10           The failure to take -- and appropriate  
11 enforcement action was never offered in testimony in  
12 this case.

13           We move on to the emphasize -- the emphasis of  
14 the substantive due process violation here by the  
15 standard of shocking the conscience.

16           When you see that there is no testimony,  
17 documentary or verbal, that a drop of product hit the  
18 ground in all of these violations, yet we have, by a  
19 factor of 30 times, paid a larger fine over the past  
20 five years of any UST in -- in the state of Oklahoma.

21           This is a remarkable and shocking situation.  
22 When EPA, by their own acknowledgement, posts all of  
23 their record of fines for guidance to the regulated  
24 community: "If you transgress, this is what is  
25 likely to happen to you."

1           If EPA were to have levied a fine of \$4,000 in  
2 this case, it would be a record. \$4,000 would be a  
3 record in the state of Oklahoma for the past five  
4 years for any enforcement by EPA for UST violations.

5           The testimony has shown that RAM has been  
6 cooperative with both OCC and EPA. RAM has been  
7 respectful, RAM has listened to and followed the  
8 guidance given by OCC, even -- and EPA, even before  
9 RAM had a clue that an atomic bomb was going to be  
10 dropped on them, which they found out in August.

11           This effort shows that they have consistently  
12 spent money, listened to, and tried to follow  
13 directions for both the state and the federal  
14 government, along these very complicated lines.

15           This amounts, Your Honor, to a crucifixion, not  
16 an enforcement action. And it is violative of  
17 substantive due process and astoundingly off the  
18 mark.

19           Thank you for your time.

20           THE COURT: Okay. Thank you. Do you wish any  
21 rebuttal argument?

22           MS. DIXON: No, Your Honor. We will waive  
23 argument until the post-hearing briefing.

24           THE COURT: I see. Well, one thing I think I  
25 will say before we close, is that I don't believe the

1 Memorandum of Agreement confers any rights on third  
2 parties.

3 Now, maybe there's no language in there that  
4 specifically says that. I know some of the  
5 Memorandums of Understanding or agreements with the  
6 states dealing with enforcement of environmental  
7 statutes do have such language.

8 So again, thank you very much. And this hearing  
9 is adjourned.

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11 . END OF PROCEEDINGS  
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IN THE MATTER OF )  
RAM, INC., ) Docket No.  
RESPONDENT ) SWDA-06-2005-5301  
)

CERTIFICATE OF COURT REPORTER

I, Heather Scott, Certified Shorthand Reporter in the State of Oklahoma, do hereby certify that the foregoing transcript in the above-styled case is a true, correct, and complete transcript of my shorthand notes of the hearing in said cause.

Dated this 22nd day of May, 2006.



HEATHER SCOTT, CSR, RPR

I.D. #01598

Heather Scott  
Oklahoma Certified Shorthand Reporter  
Certificate No. 1598  
Exp. Date: December 31, 2006