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September 2, 2021

BY EMAIL (foster.anne@epa.gov)

Anne Foster, Office of Regional Counsel
Superfund Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street
Dallas, TX 75270

Re: San Jacinto River Waste Pits, Southern Impoundment, Harris County, TX
(SSID No. 06ZQm EPA ID No. TXN00060661) ("Site"), Unilateral Administrative
Order for Remedial Action for the Southern Impoundment, Docket No.
CERCLA 06-05-21 ("Order")


Dear Anne:

Enclosed with this letter is the response of International Paper Company ("International Paper") to the Order ("Response") pursuant to Paragraph 57 of the Order. The Response is being submitted to you by email, as confirmed at the August 23, 2021 conference and in the written comments regarding that conference. As set forth in the Response:

Subject to [its objections to the requirement that its intent to comply with the Order be "irrevocable" and to Paragraph 58's limitation on its sufficient cause defenses to those that are contained in this Response and are based on facts that exist on or prior to the Effective Date] and its other objections and defenses to the Order, which are set forth below in International Paper's Reservations of Rights and Statement of Sufficient Cause Defenses (collectively, "Sufficient Cause Defenses") and without admitting any of the "Findings of Facts" in Section IV of the Order ("Findings") or waiving its objections and defenses with respect to the "Conclusions of Law and Determinations" in Section V of the Order ("Conclusions of Law"), International Paper hereby notifies EPA pursuant to Paragraph 57 of the Order of its intent to comply with the Order.

Anne Foster
September 2, 2021
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Sincerely,

A handwritten signature in blue ink that reads "Sonja A. Inglin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sonja A. Inglin

Enclosure

cc: Steven J. Ginski (steve.ginski@ipaper.com)
Philip J. Slowiak (Philip.Slowiak@ipaper.com)
John F. Cermak (jcermak@cermaklegal.com))

**RESPONSE OF INTERNATIONAL PAPER COMPANY
("RESPONSE")
TO
UNILATERAL ADMINISTRATIVE ORDER FOR
REMOVAL ACTION, U.S. EPA REGION 6, CERCLA
DOCKET NO. 06/05/21
("ORDER")**

September 2, 2021

On August 5, 2021, the United States Environmental Protection Agency, Region 6 ("EPA") issued the Order, directing International Paper Company ("International Paper" or "Respondent"):

to perform ... operate, maintain and monitor the effectiveness of the [Final 100% Remedial Design - Southern Impoundment (Amended April 2021) ("Final Southern Impoundment RD")] and... support EPA's periodic review efforts; all in accordance with the [Statement of Work attached to the Order ("SOW")], [the Final Southern Impoundment RD] and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW.

Order, ¶ 62. The Order was signed by Wren Stegner, Director, Superfund and Emergency Management Division, Region 6, U.S. Environmental Protection Agency.

On August 16, 2021, pursuant to Paragraph 54 of the Order, International Paper requested a conference with EPA to discuss the Order. That conference ("Conference") took place on August 23, 2021. On August 30, 2021, pursuant to Paragraph 55 of the Order, International Paper submitted written comments with respect to the Order ("Written Comments") to EPA. On August 31, 2021, John Meyers of EPA issued a letter to International Paper ("August 31 Letter") declining to address issues raised by International Paper at the Conference and in its Written Comments and also stating that September 2, 2021 would be the effective date of the Order ("Effective Date").

International Paper's Statement Regarding its Intent to Comply with the Order

Paragraph 57 of the Order states that on or before the Effective Date, International Paper "shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order." It also states that International Paper's written notice under Paragraph 57 "shall describe, using facts that exist on or prior to the Effective Date, any 'sufficient cause' defenses asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3)." Order, ¶ 58.

International Paper objects to both the requirement that its intent to comply with the Order be "irrevocable" and to Paragraph 58's limitation on its sufficient cause defenses to those that are contained in this Response and are based on facts that exist on or prior to the Effective Date. Subject to those objections and its other objections and defenses to the Order, which are set

forth below in International Paper's Reservations of Rights and Statement of Sufficient Cause Defenses (collectively, "Sufficient Cause Defenses"), and without admitting any of the "Findings of Facts" in Section IV of the Order ("Findings") or waiving its objections and defenses with respect to the "Conclusions of Law and Determinations" in Section V of the Order ("Conclusions of Law"), International Paper hereby notifies EPA pursuant to Paragraph 57 of the Order of its intent to comply with the Order.

International Paper's Reservations of Rights and Statement of Sufficient Cause Defenses

International Paper objects to the Order on the grounds it is contrary to law, arbitrary and capricious, deprives International Paper of its due process rights, and is not factually supportable. In this Response, International Paper has made a good faith effort to identify and present sufficient cause defenses, but it objects to the requirement that it identify in this Response all of its sufficient cause defenses. International Paper therefore reserves its right to assert or raise additional sufficient cause defenses and to rely on facts in support of such defenses, whether or not such facts exist as of the Effective Date.

In providing its intent to perform the Order, on the terms and subject to the qualifications set forth above, International Paper reserves its rights pursuant to Section 106(b)(2)(C), (D) and (E) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"): (1) to petition EPA for reimbursement from the Hazardous Substance Superfund ("Fund") of costs incurred pursuant to the Order, together with interest; and (2) to the extent EPA fails or refuses to grant all or part of the petition, to file an action against EPA in federal court seeking reimbursement from the Fund.

International Paper also asserts as a basis for its Sufficient Cause Defenses as to the Order and otherwise reserves and is not waiving, any of its objections, rights and defenses with respect to the remedy selected by EPA in its October 11, 2017 Record of Decision ("ROD") for the San Jacinto River Waste Pits Superfund Site ("Site"), including that EPA's determinations and actions as reflected in the ROD do not comply with CERCLA and the National Contingency Plan, 40 C.F.R. § 300, *et seq.* and were arbitrary, capricious and otherwise not in accordance with law or factually supportable. In that regard, International Paper incorporates by reference the comments submitted to EPA on behalf of International Paper as part of the remedy selection process, including without limitation, those set forth in its comments on EPA's Proposed Remedial Action Plan ("PRAP") for the Site submitted January 12, 2017 (titled "Comments of International Paper Company and McGinnes Industrial Maintenance Corporation on U.S. Environmental Protection Agency Region 6 Proposed Remedial Action Plan," together with Appendices A to J to such comments) and supplemental comments submitted October 6, 2017 (by letter dated October 6, 2017 from John F. Cermak, Jr. to EPA, enclosing two technical reports and two memoranda).

I. EPA lacks the authority to compel International Paper to "irrevocably" commit to perform the Order.

The Order states that International Paper's intent to comply must be "irrevocable." Order, ¶ 57. It further provides that International Paper's failure to provide such a notice of

intent within the required time period “shall, as of the Effective Date, be treated as a violation of this Order . . .” *Id.* at ¶ 58.

Section 106 of CERCLA, 42 U.S.C. § 9606 (“Section 106”) does not contain any requirement that the recipient of a unilateral administrative order “irrevocably” commit to perform the order. EPA therefore lacks the authority to require that International Paper’s notice of intent to comply with the Order be irrevocable. Given that, EPA has no basis to treat a response to the Order that is not “irrevocable” to be a violation of the Order.

II. Even if EPA had the authority to require that International Paper’s notice of intent to comply with the Order be “irrevocable” (which as set forth above, it cannot), any such requirement with respect to the Order would be arbitrary, capricious and deprive International Paper of its due process rights.

As set forth above, EPA does not have the authority to require that International Paper’s notice of intent to comply with the Order be “irrevocable.” Even if it did have such authority, any such requirement with respect to the Order would be arbitrary, capricious and deprive International Paper of its due process rights. International Paper lacks any means of determining at this time the full scope and nature of the obligations which EPA may seek to impose on it under the Order. The scope of those obligations will be defined in part by the requirements EPA seeks to impose in connection with its review and approval of deliverables pursuant to the SOW. *See* Order, ¶ 62 (Respondent is to “perform . . . operate, maintain and monitor the effectiveness of the [Final Southern Impoundment RD] and . . . support EPA’s periodic review efforts; all in accordance with . . . *all EPA-approved, conditionally approved, or modified deliverables as required by the SOW.*” (emphasis added)). In addition, the Order seeks to impose on International Paper long-term and undefined obligations to “operate, maintain and monitor the effectiveness of” the Final Southern Impoundment RD and to “support EPA’s periodic review efforts.” *Id.*

III. CERCLA does not authorize EPA to require the recipient of a Section 106 order to describe its sufficient cause defenses or to limit those defenses to facts that exist as of the Effective Date.

International Paper objects to the requirement in Paragraph 58 of the Order that it identify in this Response all of its sufficient cause defenses. First, CERCLA does not authorize EPA to require a respondent named in a unilateral administrative order issued pursuant to Section 106 to describe its “sufficient cause” defenses. Second, CERCLA does not limit a respondent’s “sufficient cause defenses” to facts that exist as of the “effective date” of an order issued pursuant to Section 106. As such, and as set forth above, International Paper reserves the right to amend this Response and to assert or raise any “sufficient cause” defense. It also reserves the right to rely on any facts in support of its “sufficient cause” defenses, whether or not included or referred to in this Response or whether or not such facts exist as of the Effective Date.

IV. Respondent does not admit (and for the most part disputes) the Findings and the Conclusions of Law, which are not supported by the Findings.

International Paper does not admit the Findings contained in the Order, and disputes many of them. Many of the Findings are one-sided, lack evidentiary support or do not fairly describe events or information. The Findings contain a number of purported “findings” regarding (a) the alleged liability of International Paper with respect to the Site and specifically the Southern Impoundment (as defined by EPA), (b) the remedy selected for the Site, and specifically the Southern Impoundment, and (c) the source of and impacts from dioxins, to which International Paper objects. In particular, International Paper objects to those findings on which EPA relies as the basis of its Conclusion of Law in Paragraph 52 of the Order that conditions in the Southern Impoundment constitute a “threat to public health or welfare or the environment” or may constitute an “imminent and substantial endangerment to the public health or welfare or the environment.”

International Paper objects to the Conclusions in Paragraph 52 of the Order on the basis that they are neither supported by or justified by the Findings or consistent with applicable law. In particular, International Paper objects to EPA’s conclusion in Paragraph 52(c) that it is a liable party under CERCLA with respect to the Site and the Southern Impoundment, in 52(f) that “conditions at the Southern Impoundment constitute a threat to public health or welfare or the environment,” . . . based on the referenced factors in the ROD, or in 52(h), that “[t]he conditions described in ¶¶ 14-24 and 28-41 of the Findings of Fact . . . may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the . . . Southern Impoundment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).”

V. EPA acted arbitrarily and capriciously in deciding to issue the Order solely to International Paper and not to name other potentially responsible parties (“PRPs”) in the Order.

EPA issued the Order only to International Paper. It did not name McGinnes Industrial Maintenance Corporation (“MIMC”), which has previously been determined by EPA to be a responsible party under CERCLA with respect to the Southern Impoundment. It also did not name Musgrove Towing Services, Inc. (“Musgrove Towing”), which owns real property that comprises much of the area referred to in the Order as the Southern Impoundment. In failing to include these other PRPs in the Order, EPA acted arbitrarily, capriciously and contrary to law and in a manner that is not in accord with its own policies and guidance.

In the case of MIMC, EPA’s decision not to include MIMC in the Order in effect has let it “off the hook,” even though EPA has previously concluded that it is a responsible party with respect to the Southern Impoundment. International Paper cooperated by performing work in the Southern Impoundment that EPA had ordered both it and MIMC to perform (under its November 2009 Unilateral Administrative Order requiring that MIMC and International Paper conduct a remedial investigation and feasibility study for the Site). It also performed the work that resulted in EPA approval of the Final Southern Impoundment RD; that work was performed under the April

2018 Administrative Order on Consent for Remedial Design (referenced in Paragraph 5 of the Order) to which both International Paper and MIMC are parties.

Consistent with its enforcement policies, EPA should not have punished a cooperating party (International Paper) by inexplicably failing to name MIMC in the Order, a party that openly defied EPA's orders to perform the RI/FS and the RD for the Final Southern Impoundment. It is International Paper, the cooperating party, that now alone is responsible to implement the Final Southern Impoundment RD and alone faces liability for civil penalties and treble damages under the Order. The basis on which EPA could have and should have named MIMC in the Order was set forth in a letter dated July 6, 2021, a copy of which is attached as Exhibit 1 to this Response and incorporated by reference in this Response.

EPA has no rational or supportable basis for declining to name MIMC in the Order, and in letting MIMC "off the hook," acted in a manner contrary to the goals and objectives of CERCLA.

Musgrove Towing owns the real property on which of the Southern Impoundment is located ("Musgrove Property"). The implementation of the Final Southern Impoundment RD will require both access and the imposition of environmental restrictions and other proprietary controls on the Musgrove Property. In addition, the investigative activities undertaken by International Paper identified a variety of materials on the Musgrove Property that were apparently disposed of on the Musgrove Property long after any paper mill waste associated with a predecessor to International Paper was placed there, and EPA has made a finding to that effect in Paragraph 10 of the Order. EPA has named Musgrove Towing as a PRP and should have also named it in the Order. EPA apparently did not name Musgrove Towing in the Order because it is engaged in discussions with Musgrove Towing regarding an ability to pay ("ATP") settlement. But EPA's guidance on ATP settlements is clear that a PRP seeking such a settlement is not relieved of its other obligations such as access. *See Memorandum on General Policy on Superfund Ability to Pay Determinations* (September 30, 1997) at 2-3.

In this situation, Musgrove Towing's obligations also extend to the obligation to consent to the imposition of applicable land use and other restrictions and proprietary controls on the Musgrove Property and to carry out obligations related to maintaining and monitoring their effectiveness. EPA has not only not named Musgrove Towing in the Order, but in requiring that International Paper "monitor, maintain, enforce and annually report on all Proprietary Controls required under this Order" (Order, ¶ 67.e) has effectively and improperly sought to transfer to International Paper obligations that rest with Musgrove Towing.

VI. The Order is procedurally and legally defective in failing to provide International Paper an opportunity for pre-enforcement review.

The Order is procedurally defective and unenforceable in failing to afford International Paper an opportunity for pre-enforcement review. *See Order at ¶ 95* ("No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h)").

International Paper cannot refuse to comply with the Order without exposing itself to significant daily civil penalties as well as treble damages. The Order therefore places International Paper in a situation in which it may conclude that it has little alternative but to comply. The coercive nature of the Order, coupled with the lack of pre-enforcement review, constitutes a violation of International Paper's constitutional right to due process.

In addition, any right to review that International Paper may have under Section 113(h) of CERCLA is illusory. Section 113(h)(3) allows a party that performs a Section 106 order to file a petition for reimbursement from the Fund to recover costs it incurred to perform the order. The right to recovery under Section 113(h), however, is narrowly circumscribed and is not the equivalent, from the perspective of due process, of pre-enforcement review. A petition under Section 113(h)(3) also cannot be brought until "after completion of the required action." The determination as to whether the "required action" is complete is one that rests in EPA's discretion. The Order requires International Paper not only to perform the Final Southern Impoundment RD but also to "operate, maintain and monitor" its effectiveness and to "support EPA's periodic review efforts." Order, ¶ 62. The "required actions" under the Order therefore may not be "complete" for potentially decades, which effectively renders meaningless even the limited right to review available under Section 113(h)(3).

VII. The Order is arbitrary, capricious and contrary to law to the extent it seeks to impose responsibility on International Paper for conditions which are the result of the acts or omissions of third parties.

International Paper objects to the Order as arbitrary, capricious and contrary to law, insofar as it seeks to impose on it any obligations which are not the legal responsibility of International Paper and are the result of acts or omissions of others. These others include, without limitation, MIMC, Musgrove Towing (particularly with respect to other waste), and Southwest Shipyards, Inc., which was identified in the ROD (at p. 8) as having conducted operations in a portion of the area comprising the Southern Impoundment.

To the extent that the Order imposes liability on International Paper to address conditions that are the result of acts and omissions or releases associated with the activities of a third party, it is without adequate legal basis and is improper. Moreover, this imposition of liability on that basis is contrary to, and deprives International Paper of the benefit of, the third party defense under Section 107(b)(3) of CERCLA.

VIII. International Paper objects to the Order to the extent it compels it to perform work inconsistent with or which enlarges the scope of the Final Southern Impoundment RD.

International Paper's intent to comply under the Order, as set forth in this Response, is based on the scope of the required work being defined by the Final Southern Impoundment RD. International Paper objects to the Order as arbitrary, capricious, and contrary to law, to the extent that EPA seeks to compel it to perform work that is inconsistent with or enlarges the scope of the Final Southern Impoundment RD.

The “Scope of the Remedy,” as set forth in Paragraph 1.3 of the SOW, references and incorporates the Final Southern Impoundment RD. It also, however, describes certain elements of the ROD that EPA, in its directives to International Paper in the development of the Final Southern Impoundment RD, has interpreted. In that regard, the Final Southern Impoundment RD provides for the use of a depth-weighted average (“DWA”) concentration of dioxins to define the areas to be excavated (to the ten-foot depth referenced in the ROD) to meet the cleanup level of 240 nanograms per kilograms. *See* Southern Impoundment RD, ¶ 1.1. It also defines the boundaries of the areas to be excavated (and to be investigated during sampling performed as part of the RD) as not extending beyond the boundary of the New Lost River property and beyond the boundary of Market Street. *See* Final Southern Impoundment RD, ¶5.1.4. With respect to Applicable or Relevant and Appropriate Requirement (“ARAR”) for Texas Surface Water Quality Standards (“TSWQS”), and based on EPA’s assessment of available analytical methods for detecting dioxins in waste water, the Final Southern Impoundment RD determined that no analytical methods existed to demonstrate that there had been “no discharges” exceeding the TSWQS, and directed that compliance with the TSWQS would be determined using the minimum level of the EPA-approved method. *See* Final Southern Impoundment RD, ¶5.5.1.4.

IX. International Paper is not liable under the Order with respect to any federally permitted releases or any releases authorized or permitted pursuant to state law.

To the extent International Paper is liable for any release or threatened release of hazardous substances at the Southern Impoundment, which International Paper denies, it is not liable for any release or threatened release that constituted a federally permitted release as defined in Section 106(j) of CERCLA, 42 U.S.C. § 9607(j). Similarly, it has no liability to the extent any such release or threatened release constitutes a release authorized by statute, ordinance, regulation, or rule of a state, regional or local agency or government, or by a permit, license or similar authorization from such an agency.

International Paper therefore objects to being required to perform any work to implement the Final Southern Impoundment RD or other work under the Order with respect to any federally permitted release or any releases authorized or permitted by state law.

X. International Paper is not liable under the Order for actions taken pursuant to local, state, or federal authority.

In undertaking to perform the Order, International Paper is not liable for any acts or omissions undertaken by or at the direction or sufferance of local, state or federal authorities, including, without limitation, any acts or omissions that occur in accordance with permits, regulations, ordinances, statutes, and laws applicable at the time of the acts or omissions at issue. In performing the Order, International Paper will be acting at the direction of EPA to implement the Final Southern Impoundment RD, which is based on the “excavation” remedy for the Southern Impoundment that was selected by EPA in the ROD.

International Paper objected to the selected Southern Impoundment remedy as being unnecessary and urged EPA to select an alternative remedy which would have left impacted soils in place and would not have required the treatment and discharge of waste water. It may not be possible to implement EPA's selected remedy for the Southern Impoundment – which requires the treatment and discharge of waste water – without discharging waste water containing constituents at levels that may exceed applicable standards under the TSWQS and other state, local and federal laws and regulations. As acknowledged by EPA in defining ARARs applicable to the Final Southern Impoundment RD, it was setting a compliance standard with respect to the applicable TSWQS that reflects the available analytical methods. It also may not be possible to operate the waste water treatment system for the Southern Impoundment remedy so that no “releases” ever occur.

As a result of the above, any surface water “releases” which may occur in implementing the Final Southern Impoundment RD will be entirely EPA's responsibility.

XI. EPA lacks any legal basis to order Respondent to pay response costs or interest on such costs.

The Order provides that International Paper is obligated to pay EPA “all Response Costs incurred by the United States regarding this Order,” together with interest from the date a demand for payment is made. Order, ¶¶ 82 and 83. EPA is not authorized by Section 106, or any other law, to impose on International Paper the obligation to pay EPA's response costs or any obligation to pay interest on such response costs running from the date of a demand for payment by EPA.

In addition, Paragraph 83 of the Order provides that the accrual of interest is in addition to “such other remedies or sanctions available to EPA by virtue of Respondent's failure to make timely payments under this Section.” EPA lacks the authority to order International Paper to pay response costs. It therefore has no enforceable “remedies or sanctions” available to it by virtue of any “failure to make timely payments” of its response costs or accrued interest on such response costs.

XII. EPA has no legal basis to order Respondent to “demonstrate financial assurance.”

The Order requires International Paper to “secure financial assurance, initially in the amount of \$9,932,000 (‘Estimated Cost of Work’).” Order, ¶ 70. EPA is not authorized by Section 106 or other law to require International Paper to provide financial assurance, whether in the amount of the Estimated Cost of Work or in any other amount.

XIII. There is no legal basis for EPA to order Respondents to provide insurance.

Paragraph 79 of the Order requires that International Paper provide insurance, including naming the United States as an additional insured, with “respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order.” This insurance is to protect the interests of the United States, which is to be named as an additional insured, and is

required to meet certain requirements that are not commercially reasonable. EPA lacks the authority under Section 106 or any other law to require International Paper to provide insurance and to do so on the terms set forth in the Order.

XIV. The Order violates International Paper’s due process rights, and is arbitrary, capricious and contrary to law, to the extent that the Order, and EPA in implementing the Order, imposes deadlines on it that cannot reasonably be met.

International Paper objects to the extent that the Order, or EPA in implementing the Order, imposes deadlines on it that cannot reasonably be met, as violations of its due process rights and as arbitrary, capricious and contrary to law. Certain such deadlines apparent on the face of the Order were identified during the Conference and addressed in the Written Comments, including the obligation to complete and report to EPA on “best efforts” to obtain access and consent to proprietary controls within 30 days from the Effective Date (Order, ¶ 68) and to make other submissions related to proprietary controls, the first of which is due 120 days from the Effective Date, before the scope of the necessary controls and subject properties will have been identified (Order, ¶ 67). EPA’s August 31 Letter dismisses the good faith concerns raised by International Paper, at the Conference and in its Written Comments, regarding the timing of such deadlines, leaving International Paper to seek any necessary relief from those deadlines through requests to EPA to modify the Order based on “new information.” August 31 Letter at 4-5.

The August 31 Letter also summarily dismissed concerns noted at the Conference about whether the “construction” phase of the remedial action could begin by November 2022 and its ability to submit more than a preliminary schedule for the remedial action in the Remedial Action Work Plan (“RAWP”)¹ and states that EPA “expects” that the pre-construction sampling, completion of which will directly impact the timing for initiation of the construction phase, will begin in November 2021. August 31 Letter at 4. That “expectation” on the part of EPA may or may not be realistic given the deadlines set in the Order for the submission of a work plan for the pre-construction sampling (due as part of the Remedial Action Work Plan) and because it depends on the timing of EPA’s final approval of the work plan. The position of EPA on these issues related to the schedule serve to underscore International Paper’s concern and objection to deadlines being imposed on it by EPA under the Order that cannot reasonably be met.

XV. International Paper objects to the Order as arbitrary, capricious and contrary to law, to the extent it seeks to impose compliance obligations on it that are more appropriately the responsibility of Musgrove Towing or other property owners within the Southern Impoundment and are unlimited in scope and time.

In the case of the Order, it requires International Paper not only to perform the Final Southern Impoundment RD but also to “operate, maintain and monitor” its effectiveness and to “support EPA’s periodic review efforts.” Order, ¶ 62. These obligations are effectively unlimited in time and undefined in scope, and therefore impose obligations on International Paper which are

¹ EPA makes statements in the August 31 Letter regarding timing related to certain tasks required by the Order that International Paper anticipates addressing as part of the proposed schedule to be included in the RAWP.

so overbroad and open-ended as to render the Order arbitrary, capricious and contrary to law. With respect to the Five Year Review process, EPA lacks the authority to compel International Paper to “support EPA’s periodic review efforts.”

Specifically with respect to “Proprietary Controls,” the Order imposes on International Paper the obligation to “monitor, maintain, enforce and annually report on all Proprietary Controls required under this Order.” Order, ¶ 67.e. Separately, the SOW describes the “Scope of the Remedy” as requiring non-disturbance of areas with the Southern Impoundment. SOW, ¶ 1.3. Any such obligations rest with and should be imposed by EPA on property owners that are subject to the Proprietary Controls, and not on International Paper. That is particularly the case with Musgrove Towing, given its status as a PRP.

XVI. The Order’s attempt to require International Paper to perform additional work at the Site is unlawful and renders the Order unenforceable.

Paragraph 61.a.(2) of the Order provides that EPA’s Project Coordinator has the “authority to . . . direct *any necessary response action* when he or she determines that conditions *at the Site* constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.” (emphasis added). This provision is not limited to the Southern Impoundment, and even to the extent that it is, International Paper cannot be ordered to perform any additional work under this or any other provision of the Order to the extent that any such additional work is not consistent with CERCLA, the National Contingency Plan or the Final Southern Impoundment RD. Any attempt by EPA to expand the scope of the work required under the Order would be arbitrary and capricious and would violate International Paper’s due process rights.

Any effort to impose on International Paper the obligation to perform additional work is also objectionable to the extent that EPA does not also impose those same obligations on MIMC and other PRPs. Even if and also because imposing any such obligation on International Paper under the Order would subject it, but not MIMC and others, to civil penalties and treble damages.

XVII. International Paper objects to the Order to the extent International Paper does not have, and cannot reasonably obtain, access to locations or consents that are necessary to implement the Order.

International Paper objects to any work required to be performed under the Order to the extent it requires access or other consents of third parties which it cannot reasonably obtain. If EPA is unable to provide such access or consents, International Paper may be in a position in which it may not be able to meet specific obligations imposed by the Order. With respect to necessary access, the Order requires that any access agreements include various provisions, together with a commitment on the part of the party providing access not to use his, her or its property “in any manner that EPA determines will pose an unacceptable risk to human health or the environment due to exposure to Waste Material or interfere with, or adversely affect the implementation, integrity or protectiveness of the Remedial Action, including the restrictions listed in ¶ 66.b (Land, Water or Other Resource Use Restrictions).” Order, ¶ 66. These provisions could

be obstacles to International Paper's ability to obtain the necessary access rights. Similar concerns exist with respect to the nature and scope of the "Proprietary Controls" required by the Order.

XVIII. The Order is void for vagueness.

International Paper objects to the Order to the extent that it contains provisions that are subject to multiple interpretations and are therefore vague, ambiguous, and unenforceable. This includes the definition of terms contained in Paragraph 7 of the Order, as well the inconsistent use and definition of terms elsewhere in the Order.

XIX. The Order is arbitrary, capricious and contrary to law because it does not contain a *force majeure* clause.

The Order does not include a *force majeure* clause that would relieve International Paper from complying with the Order as a result of events that are beyond its control. Paragraph 80 of the Order provides that International Paper can under certain circumstances seek relief from deadlines and requirements under the Order, but any such relief is at the discretion of EPA and is limited in its scope. In the absence of a *force majeure* clause, International Paper is potentially subject to daily civil penalties and treble damage if it is delayed or unable to perform the Order due to circumstances beyond its control (including those related to required access). International Paper reserves the right to raise and rely on *force majeure* events that arise in carrying out the activities under the Order as justification for its inability to perform obligations under the Order.

XX. The Order was not issued by an official authorized by law to issue an order under Section 106.

The Order was issued by Wren Stegner, as the Director of the Superfund and Emergency Response Division, Region 6. Mr. Stegner is not an official who is authorized by law to issue a unilateral administrative order under Section 106. The Order therefore is legally invalid.

Section 106(a) vests the President of the United States with the authority to issue administrative orders under that section. Pursuant to Executive Order 12580, former President Reagan delegated his authority to the EPA Administrator. Executive Order No. 12580, A4(d)(1), 52 Fed. Reg., 2923 (January 23, 1987). The EPA Administrator then purportedly redelegated this authority to the Regional Administrators. EPA Delegation Order No. 14-14-B (September 13, 1987). Executive Order 12580, however, limits the redelegation authority of the EPA Administrator by providing that such functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department agency with his consent. Executive Order No. 12580, A11(g), 52 Fed. Reg. 2923 (January 23, 1987), as amended. EPA's Regions are clearly neither Executive departments nor Executive agencies. Thus, the purported redelegation from the EPA Administrator to the Regional Administrators was not authorized by Executive Order 12580.

A Regional Administrator's lack of authority to issue Section 106 orders was recognized in *Industrial Park Devel. Co. v. EPA*, 604 F. Supp. 1136 (E.D. Pa. 1985). In *Industrial Park*, the

plaintiff, Industrial Park Development Company (“IPDC”), sought a preliminary injunction to block EPA access to IPDC’s property. EPA had previously issued a unilateral Section 106 order to IPDC and alleged that pursuant to that order it had, *inter alia*, the right to access the property. *Id.* at 1142. IPDC contested the validity of the Section 106 order, arguing that the Regional Administrator lacked the legal authority to issue such an order. The court noted that “[a]ccording to the December 12, 1984 Section 106 Order, authority under CERCLA was redelegated to the Regional Administrator, but this court has reservations about the legitimacy of this further delegation.” *Id.* Although the court ultimately denied injunctive relief because IPDC failed to establish an irreparable harm required for injunctive relief, the court held that based on the IPDC’s legal authority argument, IPDC had made a “strong demonstration of its success on the merits.” *Id.* at 1144.

The Order was not issued by the Regional Administrator, but by the Director of the Superfund and Emergency Response Division in Region 6, to whom EPA asserts that the Regional Administrator’s authority was further delegated “by Delegation Nos. R6-14-14A and R6 14-14B and the Region 6 Realignment: General Redelegation.” Order, ¶ 1. The Regional Administrator lacked the authority to make this redelegation, and the Order, therefore, is void *ab initio*.

Exhibit 1 to the Response



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Sonja A. Inglin
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July 6, 2021

BY EMAIL

Anne Foster
U.S. EPA, Region 6
1201 Elm Street
Suite 500
Mail Code: ORCDS
Dallas, TX 75270-210

Re: San Jacinto River Waste Pits Superfund Site ("Site")

Dear Anne:

This letter addresses why the United States Environmental Protection Agency ("EPA"), in any unilateral administrative order ("UAO") it issues with respect to the Southern Impoundment Remedial Action ("RA"), should name McGinnes Industrial Maintenance Corporation ("MIMC").¹

As you know, all of the work to date related to the Southern Impoundment has been performed solely by International Paper. That work has been performed under the November 2009 UAO with respect to the remedial investigation and feasibility study for the Site ("2009 RI/FS UAO") and under the April 2018 Administrative Order on Consent for Remedial Design.

In 2010, when EPA first required that work under the 2009 AOC RI/FS include an investigation of the Southern Impoundment, MIMC argued that it had no responsibility for the Southern Impoundment and could not be required to perform that work. In July 2010, there was an exchange of emails between MIMC's counsel and EPA Regional Counsel Barbara Nann about MIMC's connection to the Southern Impoundment. A copy of those emails is attached as Exhibit 1. In her July 8, 2010 email, Ms. Nann rejected MIMC's position, noting that "[a]t this point, EPA has 7 documents showing a link between MIMC and the pits south of 1-10, many of them from MIMC's business records." MIMC's counsel subsequently submitted to the EPA Remedial Project Manager and Ms. Nann, a letter dated September 10, 2010, summarizing the

¹ There are others associated with the Southern Impoundment that should also be named in any UAO with respect to the Southern Impoundment RA, in particular, Musgrove Towing Service, Inc. This letter, however, focuses on the need to name MIMC in any such UAO.

reasons why MIMC did not regard itself to have any responsibility for the Southern Impoundment. A copy of that letter is attached as Exhibit 2. Ms. Nann responded to MIMC's September 10, 2010 letter in a letter dated October 8, 2010, again rejecting MIMC's position. A copy of that letter is attached as Exhibit 3.

MIMC subsequently declined to participate in any investigative activities in the Southern Impoundment in a letter to EPA dated October 21, 2010, a copy of which is attached as Exhibit 4. International Paper then performed the RI/FS for the Southern Impoundment, albeit on the basis that MIMC was also obligated to perform that work. It has also completed the remedial design for the Southern Impoundment under the April 2018 AOC referenced above.

MIMC's contention is that the area south of Interstate 10 (the location of the Southern Impoundment) was used for the disposal of paper mill waste for several months in 1965 by a different contractor, Ole Peterson Construction Company ("Ole Peterson"), and that MIMC, after it entered into an assignment dated September 14, 1965 of the contract between Champion Papers, Inc. ("Champion") and Ole Peterson ("Assignment"), was only involved in the disposal of waste in a different location (the Northern Impoundment). MIMC asserted in its October 21, 2010 letter that Ole Peterson was "wholly unrelated to MIMC," that operations in the Southern Impoundment "were unrelated to the operations of MIMC in the [Northern Impoundment]," and that the only commonality between the Southern Impoundment and the Northern Impoundment was that Champion waste was disposed of in both locations. Exhibit 4 at pp. 3 and 4.

These statements are wholly at odds with the documentary record and a sworn statement taken by EPA in 2008 from one of MIMC's original incorporators, George Lowery.² MIMC's claims that it had no involvement with activities in the Southern Impoundment and that its activities were "wholly unrelated" to the Southern Impoundment do not survive scrutiny, for the reasons that include those set forth below.

- Disposal activities in the Southern Impoundment by Ole Peterson apparently began in about June 1965. Ole Peterson had entered into an April 29, 1965 contract with Champion to dispose of certain waste from Champion's Pasadena Texas mill ("Champion-Ole Peterson Contract"). A copy of the Champion-Ole Peterson Contract is attached as Exhibit 5.
- Even as Ole Peterson began disposing of the waste in the Southern Impoundment, it was recognized that a larger additional disposal location would quickly be required. As of June 1965, efforts were ongoing to secure an additional disposal location, focusing on the property that now comprises the Northern Impoundment. Those efforts included obtaining approval from the Harris County Department of Health to dispose of the waste material in that location, and resulted in the Health Department's issuance of a June 11, 1965 letter approving that location as a disposal site. That letter is attached as Exhibit 6.

² The statement is attached as Exhibit 10.

- MIMC was not incorporated until August 31, 1965, as reflected in its Articles of Incorporation attached as Exhibit 7.³ But it is clear that Lawrence and Virgil McGinnis, who were incorporators, shareholders and also officers of MIMC, were involved in the project by early August and well before MIMC was incorporated.
 - In early August 1965, Virgil McGinnes acquired the Northern Impoundment property that would be needed to continue the disposal activities under the Champion-Ole Peterson Contract. The deed for the property, a copy of which is attached as Exhibit 8, was signed on August 3, 1965 by M. Michael Gordon and Frank F. Spata, who had owned the property since 1943. The deed was subsequently recorded on August 18, 1965.
 - As reflected in that deed, Virgil McGinnes acquired title to the property as “Virgil McGinnes, Trustee,” presumably anticipating the formation of MIMC and its assumption of the Champion-Ole Peterson Contract.
 - During August 1965, Ole Peterson encountered financial difficulties that on August 18, 1965, resulted a federal tax lien against it. A copy of the tax lien, which was served on Champion, is attached as Exhibit 9.
 - One of the initial directors and incorporators of MIMC, George Lowery, gave a 2008 sworn statement to EPA (“Statement”), a copy of which is attached as Exhibit 10.⁴ Mr. Lowery noted that Virgil McGinnes, recognizing the opportunity associated with the contract with Champion, had started supplying Ole Peterson with funds during the summer in an effort to in effect “keep the contract alive” long enough to transfer the contract to MIMC. *See, e.g.*, Statement at 18:15-21, 27:14-24; 37:15-3:2 and 43:14-20.
 - Mr. Lowery’s testimony is corroborated by a handwritten note dated August 19, 1965 from Champion’s records (PAS 009729), a copy of which is attached as Exhibit 11. That handwritten note reflects that Ole Peterson will “get funds from Mr. McGinnes to satisfy Ole Peterson’s tax levy.”
- On September 15, 1965, MIMC entered into an assignment of the Champion-Ole Peterson Contract, a copy of which is attached as Exhibit 12 (“Assignment”). As the assignee of the Champion-Ole Peterson Contract and with ownership of the Northern Impoundment having been secured, MIMC was in a position to engage in the deposit of waste in the Northern Impoundment over the subsequent months.

³ In MIMC’s Articles of Incorporation (Exhibit 7), they are identified in Article Nine of members of MIMC’s initial Board of Directors and in Article Ten as two of its incorporators.

⁴ In MIMC’s Articles of Incorporation (Exhibit 7), Mr. Lowery is identified in Article Nine of as one of the initial members of MIMC’s Board of Directors and in Article Ten as one of its incorporators.

- MIMC also appears to have been concurrently engaged in maintaining and managing conditions in the Southern Impoundment, including seeking regulatory approval in 1966 to discharge liquids from ponds at the Southern Impoundment. MIMC's October 21, 2010 letter acknowledges that request on MIMC's part. *See* Exhibit 4 at p. 5. The letter then asserts that MIMC "has not found evidence that it actually conducted any discharge or other activities at the South Impoundment," which is irrelevant even if it were accurate because MIMC's other actions clearly demonstrate it was engaged in management and control of the Southern Impoundment.
- In April 1966, the Texas Department of Health ("TDH") conducted an investigation related to disposal activities that was documented in a memorandum dated May 6, 1966, a copy of which is attached as Exhibit 13 ("TDH Memorandum"). This inspection occurred at a time when MIMC was seeking regulatory approval for yet another disposal site, located in Galveston County, and demonstrating to the applicable regulatory authorities that existing disposal sites were being appropriately managed and maintained was critical to obtaining that approval.
- The TDH investigation included a site visit on April 22, 1966, with three representatives of MIMC (including Virgil McGinnes) in attendance. The site visit included inspection of the ponds in the Southern Impoundment. As documented in the TDH Memorandum:
 - The ponds in the Southern Impoundment were inspected and were observed to contain water that was three to five feet deep.
 - A MIMC representative present during the site visit, A. E. Kimball, had a "minnow bucket type of container" that was submerged in the water in the Southern Impoundment pond and had fish in it, and Mr. Kimball "reported that they had been there for several weeks."
 - The fish that Mr. Kimball had placed in the pond were observed to be "in good condition."
 - Water samples were collected during the site visit, including from the "old pond" at the Southern Impoundment, which were then analyzed by TDH for pH, BOD, and other characteristics.

TDH Memorandum (Exhibit 13) at p. 3.

- On July 21, 1966, MIMC applied to the Texas Water Pollution Control District ("TWPDC") to discharge a combination of "stabilized waste water and rain water" from a pond in the Southern Impoundment. MIMC's letter to the TWPDC is attached as Exhibit 14. The letter stated that "a tabulation showing the characteristics of the water to be released and a map giving the location of the pond" were attached. It also noted that "[t]he owner of the property has requested an early return of this facility for his own use

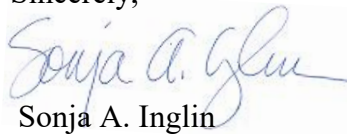
and we need to take advantage of the hot summer months for maximum drying of the contents.”

- In a July 29, 1966 letter to MIMC, a copy of which is attached as Exhibit 15 (“July 29, 1966 Letter”), TWPCD authorized MIMC to discharge water from ponds within the Southern Impoundment. The July 29, 1966 Letter stated that the TWPCD “would not oppose” emptying of the ponds “in any reasonable manner.” It added that it was the TWPCD’s “firm understanding” that the ponds “will not be used again for the storage of waste material.”
- On August 5, 1965, the TWPCD informed MIMC, in a telephone call with Lawrence McGinnes, that “no further discharges should be made” from the Southern Impoundment holding pond. This telephone conversation is documented in a TWPCD memorandum, a copy of which is attached as Exhibit 16. The memorandum reflects that Mr. McGinnes stated that no discharge had been made in response to the July 29, 1966 Letter. There is no indication in the TWPCD memorandum, however, that during this call Mr. McGinnes denied or disclaimed any MIMC connection to or involvement with the Southern Impoundment.

The above demonstrates that MIMC has no credible basis for disclaiming any involvement or responsibility for the Southern Impoundment and should be named in any UAO regarding the Southern Impoundment RA. International Paper reserves the right to further supplement the information set forth in this letter regarding MIMC’s role at and connection with the Southern Impoundment.

We are available to respond to any questions you may have regarding the above and the enclosed documents.

Sincerely,



Sonja A. Inglin

Enclosures

EXHIBIT

From: Nann.Barbara@epamail.epa.gov
To: [Axe, Al](#)
Cc: [Cermak, John F.](#); [Inglin, Sonja A.](#)
Subject: RE: FW: San Jacinto Document
Date: Thursday, July 8, 2010 1:26:36 PM
Attachments: [ATT00001.gif](#)
[ATT00002.gif](#)

I don't think that the agency needs to hash out whether MIMC operated the pits south of 1-10. The documents speak for themselves. Though I would like to add that I don't think there is a disagreement that waste stopped being placed in the southern pit in September 1965. The issue hinges on whether there was some maintenance of the pits south of 1-10/site operations from September 1965 until August or September 1966 by MIMC. The May 1966 TDH Memo does mention that the pits no longer took waste but it also documents TDH discussion with MIMC regarding MIMC's request to discharge of wastewater from the pits directly into the waterway as opposed to boating it offsite for disposal. TDH mentioned that MIMC not Champion would have to apply for the discharge permits. The May 1965 memo also documents the sampling of the wastewater of the 3 pits. Then 2 months later there is a document from MIMC requesting a discharge permit from the waste pond south of 1-10 citing the sampling from the May 1966 TDH Memo. I also wanted to correct the impression your email made that the MIMC connection with the waste pit south of 1-10 is limited to the discharge permit request. At this point, EPA has 7 documents showing a link between MIMC and the pits south of 1-10 many of them from MIMC's business records. At this point there is enough information to justify looking for the pit south of 1-10. We can discuss MIMC's relationship with the southern pit at a later date.

Barbara A. Nann
Assistant Regional Counsel
EPA Region 6 (6RC-S)
1445 Ross Avenue
Dallas, TX 75202
phone: (214) 665-2157
fax: (214) 665-6460
nann.barbara@epa.gov

RE: FW: San Jacinto Document

Axe, Al

to: Barbara Nann

07/07/2010 10:21 AM



Cc: "Cermak, John F.", "Inglin, Sonja A."

Barbara,

The only information that we are aware of relative to a connection between MIMC and the pond south of 1-10 are the 3 documents that you have seen - (1) the July 21, 1966 application to discharge from the pond; (2) TWPCD's July 29, 1966 authorization to discharge; and (3) the August 5, 1966 internal TWPCB

memorandum that I sent you yesterday.

The only other document that mentions MIMC and the pond south of I-10 is the May 1966 Texas Department of Health memorandum which describes the southern pond as the "older site" and states on page 2 that the "older site was used prior to McGinnes Corp. taking over the operation". The TDH memo also states on page 1 that the waste disposal "operation has been carried out since approximately 1 year ago with the first operation begun in June of 1965. This work was done by Ollie Peterson Construction Co., with the McGinnes Corp. taking over and beginning operation on September 13, 1965."

Thus, a fair reading of this TDH memo is that Ollie Peterson operated the south pond and MIMC operated the north ponds. If the TDH had any information indicating that MIMC was involved in operations south of I-10, the agency could have easily said so in the May 1966 report but instead, they seemed to say just the opposite.

We are not aware of any document that states that MIMC operated a pond south of I-10. The only basis upon which EPA could take the position that MIMC operated the southern pond is the submittal of the July 21, 1966 one page letter to the TWPCB requesting authorization to discharge water from the pond.

The letter does not state that water had already been discharged from the pond or that MIMC was involved in operations at the pond. The letter indicates that the owner of the property on which the pond was located had requested MIMC to dewater the pond because the owner wanted to use the property for some other purpose. This statement in the letter does not say anything about past operations at the site.

The most direct statement about past operations at the site is contained in the TDH report, which states that operations south of I-10 had ceased "prior to McGinnes Corp. taking over the operation." This statement is further supported by (1) the statement in the July 29, 1966 TWPCB letter that "It is our firm understanding that the pond will not be used again for the storage of waste material" and (2) the statement in the August 5, 1966 internal TWPCB memo that water had not been discharged from the pond south of I-10 pursuant to the July 29, 1966 authorization.

EPA's current position that the pond south of I-10 was operated by MIMC is merely speculation. A 1966 letter requesting authorization to discharge water is not equivalent to actually carrying out any operations at the site. MIMC was a construction contractor and there is no reason to believe that MIMC had not simply been asked by the owner of the property south of I-10 to seek an authorization to dewater the pond, particularly since MIMC had experience in working with the state agency. The best evidence is that MIMC had absolutely no involvement in waste operations at the site south of I-10.

We appreciate in advance your thoughtful consideration of this matter. Please do not hesitate to call if you have any questions. Al

Albert R. Axe, Jr.

Direct: (512) 370-2806

Fax: (512) 370-2850

profile link: <http://www.winstead.com/Attorneys/aaxe>

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]

Sent: Wednesday, July 07, 2010 7:35 AM

To: Axe, Al

Cc: 'Cermak, John F.'; 'Inglin, Sonja A.'

Subject: Re: FW: San Jacinto Document

Thanks Al for the letter. It still doesn't relieve MIMC from operations of the south pit. The 8/5/66 interoffice communication memo at the Texas Pollution Water Control Board last sentence refers that no discharge should be made from MIMC's holding pond (pond south of 1-10). It doesn't seem to indicate that MIMC had no control of the holding pond south of 1-10. The 7/21/66 letter that you are referring to that you believe shows MIMC acting on behalf of the owner to discharge into the waterway in fact states "The owner of the property has requested the early return of this facility for his own use and we need to take advantage of the hot summer months for maximum drying of the contents." That statement indicates that the owner of the property has not used the facility. There is no connection that the owner has requested the discharge. The only thing that the owner has requested is the return of the use of facility for his own use. You can infer from the letter and the statement made by Virgil McGinnes that MIMC had some sort of right to use the facility or control of this facility in 1966 (prior to turning it back over to the owner) otherwise they would not have the capacity to ask for authorization to discharge from the facility (impoundment south of 1-10).

These are not the only MIMC documents which reference the southern pit. Frankly, most all MIMC documents turned over to EPA reference this third pit. Initially when EPA reviewed the documents, EPA was confused that the three pits mentioned in the documents were referencing 3 pits north of 1-10. Based on aerial photos, EPA thought there are 3 pits north of 1-10. It was only after review of the business records and the government records did it become clear that the documentation of the three pits was for the 2 pits north of 1-10 and the 1 pit south of 1-10.

If you have any other documentation that you believe to further illuminate the issue, I encourage you to turn over the document.

Barbara A. Nann
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Dallas, TX 75202
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nann.barbara@epa.gov

FW: San Jacinto Document

Axe, Al to: Barbara Nann

07/06/2010 06:41 PM



Cc: "Cermak, John F.", "Inglin, Sonja A."

Barbara,

In response to your email, attached please find a TWPCB interoffice memo regarding a telephone discussion between the writer (an employee of the TWPCB) and Lawrence McGinnes during which the

writer directed him to not make any discharges from the impoundment south of I-10 to Old River until the matter had been discussed further with the TWPCB. In the attached memo, the writer notes that Mr. McGinnes represented to him during the call that no discharges had been made pursuant to the authorization granted by the TWPCB. We have found no MIMC record indicating that any discharge was ever made to Old River from this impoundment. We have also not found any documents indicating that this impoundment was involved in any joint operations between Champion and MIMC. In fact, the letter submitted by MIMC requesting authorization to release water from this impoundment indicates that MIMC had been requested to submit the application by the owner of the property on which the impoundment was located (not Champion) because the owner wanted to return his property to another use.

Please let me know if you have any questions regarding this matter. Thanks. Al

Albert R. Axe, Jr.

Direct: (512) 370-2806

Fax: (512) 370-2850

profile link: <http://www.winstead.com/Attorneys/aaxe>

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]

Sent: Wednesday, June 30, 2010 4:08 PM

To: Axe, Al

Subject: San Jacinto Document

Al,

On today's call you referenced a communication between the state of Texas to MIMC documented in a letter regarding the discharge of wastewater from the second pond where MIMC states they had not yet discharged the wastewater from the pond. Could you please provide me that document? I don't believe EPA is in possession of that communication.

Thanks,
Barbara

Barbara A. Nann
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[attachment "AUSTIN_1-#602097-v1-TWPCB_Memo.PDF" deleted by Barbara Nann/R6/USEPA/US]

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EXHIBIT 2

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512.370.2850 FAX
winstead.com

direct dial: 512.370.2806
aaxe@winstead.com

September 10, 2010

***Via Email and
Certified Mail Return Receipt Requested***

Mr. Stephen Tzhone
Remedial Project Manager
U.S. Environmental Protection Agency, Region 6
Superfund Division (6SF-RA)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Ms. Barbara A. Nann
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
Superfund Division (6RC-S)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: San Jacinto River Waste Pits Superfund Site; Unilateral Administrative Order for Remedial Investigation/Feasibility Study; U.S. EPA Region 6, CERCLA Docket No. 06-03-10

Dear Ms. Nann and Mr. Tzhone:

The U.S. Environmental Protection Agency ("EPA") Region 6 has notified McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company, identified as the Respondents in the above-referenced Unilateral Administrative Order ("UAO"), that it has information that indicates an additional impoundment is located south of I-10. This information indicates that the additional impoundment contains material similar to that disposed of in the two impoundments located within the 20.6 acre tract of land north of I-10 that is included within the definition of "Site" in the UAO. EPA has directed the Respondents to take surface and subsurface soil samples in and around this additional impoundment south of I-10 to determine the nature and extent of any actual or threatened releases.

MIMC denies any responsibility for the additional impoundment located south of I-10 and contends that the area south of I-10 where this impoundment may be located is a separate "facility" or "site" under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Therefore, MIMC respectfully declines to participate in the sampling activity south of I-10. As further support for MIMC's position, please consider the following:

1) The additional impoundment located south of I-10 ("South Impoundment") is not located on property that is contiguous to the 20.6 acre Virgil C. McGinnes, Trustee property ("McGinnes Tract") on which the waste impoundments that are the subject of the UAO and associated RI/FS are located.

2) The South Impoundment is separated from the McGinnes Tract by property owned by the State of Texas/Texas Department of Transportation ("TxDOT"). Recent sampling conducted on the TxDOT right-of-way supports MIMC's contention that waste constituents from the McGinnes Tract have not migrated from the McGinnes Tract, across the TxDOT right-of-way, to the area south of I-10 where the South Impoundment is thought to be located. Thus, the South Impoundment does not represent an area where waste constituents from the McGinnes Tract have come to be located.

3) According to the May 1966 Texas Department of Health report on the waste disposal operations of Champion Paper Company's Pasadena Paper Mill, the South Impoundment is a separate waste disposal area (referred to in the report as the "older site") that was used for the disposal of waste from June 1965 to September 1965. The work at the South Impoundment was performed by the Ole Peterson Construction Company, with MIMC taking over operations on September 13, 1965 at the "newer site" (i.e., the McGinnes Tract) located north of I-10. As stated in the report, "the older site was used prior to McGinnes Corp. taking over the operation . . ." Available evidence indicates that waste was disposed of at the "newer site" between September 13, 1965 and early May 1966.

4) The disposal of wastes generated by the same company on two separate tracts of land does not make the two tracts part of the same "site" or "facility" under CERCLA. If this were the case, every Champion Pasadena Paper Mill waste disposal location could be considered part of the same site. This is not consistent with CERCLA or EPA's rules and guidance adopted pursuant to CERCLA.

5) The UAO requires the Respondents to respond to or remedy the release or threatened release of hazardous substances, pollutants or contaminants at or from the "Site". Since the South Impoundment is a separate disposal area, not impacted by the release or threatened release of hazardous substances, pollutants or contaminants from the McGinnes Tract, MIMC maintains that the impoundment is not subject to the UAO and should not be included in the investigation being conducted jointly by the Respondents.

Mr. Stephen Tzhone
Ms. Barbara A. Nann
September 10, 2010
Page3

Please let me know if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert R. Axe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Albert R. Axe, Jr.

cc: John Cermak
David Keith

Idle

EXHIBIT 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

October 8, 2010

Albert R. Axe, Jr.
Winstead PC
401 Congress Avenue
Suite 1200
Austin, TX 78701

RE: Sampling of Southern Waste Pit
Unilateral Administrative Order for Remedial Investigation and Feasibility Study
CERCLA Docket No. 06-03-10
San Jacinto River Waste Pits Superfund Site near Pasadena, Harris County, Texas

Dear Mr. Axe:

This letter is in response to your September 10, 2010, letter declining to sample in and around an additional waste pit south of I-10 located within the Remedial Investigation and Feasibility Study (RI/FS) Area of Concern.

Upon review of your letter, EPA's order to sample the southern waste pit under the Unilateral Administrative Order for Remedial Investigation and Feasibility Study (UAO), CERCLA Docket No. 06-03-10 stands. The EPA does not agree with the statements stated in your letter justifying McGinnes Industrial Maintenance Corporation's (MIMC) refusal to sample the southern waste pit. If you believe you have additional information for EPA to consider as to why MIMC should not participate in the sampling of the southern waste pits, EPA is willing to meet with you to discuss this information.

If you have any questions concerning this matter, please contact me at (214) 665-2157.

Sincerely,

A handwritten signature in cursive script that reads "Barbara A. Nann".

Barbara A. Nann
Assistant Regional Counsel

EXHIBIT 4

Albert R. Axe
direct dial: 512.370.2806
aaxe@winstead.com

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

October 21, 2010

Mr. Stephen Tzhone, Remedial Project Manager
U.S. Environmental Protection Agency, Region 6
Superfund Division (6SF-RA)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Via Certified Mail

Ms. Barbara A. Nann, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
Superfund Division (6RC-S)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Via Certified Mail

*Re: Response Regarding Sampling of Southern Impoundment
San Jacinto River Waste Pits Superfund Site, Harris County, Texas
Unilateral Administrative Order, CERCLA Docket No. 06-03-10 ("UAO")*

Dear Stephen and Barbara,

This letter is being submitted on behalf of McGinnes Industrial Maintenance Corporation ("MIMC") in response to (i) the October 8, 2010 letter from the U.S. Environmental Protection Agency ("EPA") to the undersigned responding to the September 10, 2010 letter written on behalf of MIMC regarding the sampling of a waste pit south of I-10 ("South Impoundment"), and (ii) the October 7, 2010 letter from EPA Region 6 to Dr. David Keith regarding notification of alleged non-compliance with the above-referenced UAO. The alleged non-compliance relates to the failure of MIMC and International Paper Company ("IP") to incorporate comment number four of EPA's August 26, 2010 comments into the Remedial Investigation/Feasibility Study ("RI/FS") Work Plan ("WP"). EPA's comment number four also related to the performance of surface and subsurface sampling of the South Impoundment.

The UAO was sent to MIMC and IP (collectively referred to as the "Respondents") pursuant to a letter dated November 20, 2009 and became effective on the same date. The UAO requires the Respondents to conduct an RI/FS for the above-referenced Site. Under Section IX of the UAO, the "Site" is defined as:

"the San Jacinto Waste Pits Superfund Site located in Pasadena, Harris County, Texas, encompassing approximately 20.6 acres, partially submerged, tract of land bounded on the south by Interstate Highway 10, on the east by the San Jacinto River main channel, and on the north and west by shallow water off the River's main channel and depicted generally on the map attached as Appendix B."

Paragraph 53 of the UAO describes the work required to be conducted by the Respondents. Specifically, the "Remedial Investigation" and the "Feasibility Study" are defined as follows:

The Remedial Investigation ("RI") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. (emphasis added).

The Feasibility Study ("FS") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. (emphasis added).

Thus, the work required to be conducted by the Respondents under the UAO consists of an investigation of the conditions at the Site, as defined in the UAO, and those areas contaminated by hazardous substances, pollutants or contaminants from the Site.

Subject to certain defenses, Respondents notified EPA of their intent to comply with the UAO and have proceeded in good faith to do so. The recent directive from EPA, however, to conduct a surface and subsurface investigation of the South Impoundment is beyond the scope of the UAO and appears to be based on a faulty legal premise.

Based on our discussions with IP representatives and IP's October 18, 2010 letter regarding this subject, IP has stated that it is willing to conduct the South Impoundment investigation. This is not surprising given that (i) IP is legally responsible for the waste disposal practices of Champion Paper Company and (ii) Champion used the South Impoundment for the disposal of its wastes. The same clarity that exists relative to IP's responsibility for the South Impoundment does not exist with respect to MIMC's involvement with this impoundment. Therefore, as stated in MIMC's September 10, 2010 letter, MIMC respectfully declines to participate in this investigation. The reasons for this are more fully set out below.

Even though MIMC will not participate in the investigation of the South Impoundment, the language that EPA has directed the Respondents to include in the RI/FS WP pursuant to its comment number four is being added to the WP and a revised WP is being submitted to EPA by the Respondents' Project Coordinator. The inclusion of this language in the WP does not constitute an admission by MIMC that the investigation of the South Impoundment is within the scope of the RI/FS required by the UAO. To the contrary, for the reasons stated in this letter, MIMC continues to maintain that this investigation is not covered by the UAO and that MIMC has no responsibility for the South Impoundment.

I. An Investigation of the South Impoundment is not covered by the UAO.

As previously noted in various letters, phone calls, and emails between MIMC and EPA Region 6, MIMC asserts that the South Impoundment is separate from and unrelated to the "Site," as defined in the UAO. The definition of "Site" is contained in Section IX of the UAO and is set out above. This definition provides that the Site is bounded on the South by I-10. Paragraph 7 of the UAO further provides that the Site includes the 20 acre tract of land located north of I-10 (referred to herein as the "Tract") where certain hazardous substances were disposed of, "as well as wherever those hazardous substances have been deposited, placed, or otherwise come to be located." This definition is consistent with the scope of the Remedial Investigation and the Feasibility Study described in Paragraph 53 of the UAO (as set out above), both of which require the Respondents to address "contamination" or "hazardous substances, pollutants or contaminants" at or from the Site.

In previous correspondence, MIMC has noted that no evidence currently exists demonstrating that the hazardous substances from the Tract have been "deposited, placed, or otherwise come to be located" at the South Impoundment. To the contrary, the sampling data resulting from the soil sampling conducted by the Respondents on the Texas Department of Transportation ("TxDOT") right of way ("ROW") that separates the Tract from the area south of I-10 where the South Impoundment is located, tend to show that the wastes from the Tract have not impacted the area where the South Impoundment appears to be located. (These data are discussed in more detail below.)

Additionally, the May 1966 Texas Department of Health report (the "TDH Report") regarding the waste disposal operations of Champion Paper Company's Pasadena Paper Mill suggests that wastes that may be found at the South Impoundment, if any, would be the result of waste disposal operations conducted by Champion Paper Company and the Ole Peterson Construction Company ("Ole Peterson"). Ole Peterson is wholly unrelated to MIMC, and the operations by Champion and Ole Peterson south of I-10 were unrelated to the operations of MIMC at the Tract, which is the subject of the UAO and RI/FS. As stated in the TDH Report: "The older site [referring to the South Impoundment] was used prior to McGinnes Corp taking over the operation and appears to consist of a pond covering between 15 and 20 acres. The new (and present) site [referring to the Tract] consists of an estimated 20+ acres, of which slightly

less than 15 are being used. This area contains two ponds.” TDH Report at page 2. A copy of the TDH Report is attached hereto as **Exhibit 1** and incorporated herein by reference.

In addition to the express language of the UAO itself, recent case law suggests that it is appropriate to consider two separate tracts of property as separate “facilities” under CERCLA where the properties have different owners and are reasonably or naturally divided into multiple parts or functional units. In *U.S. v. Washington State Department of Transportation*, WL 2698854 (W.D. Wash., July 7, 2010) (“*WSDOT*”), the court analyzed the scope of the word “facility” under CERCLA. The term “facility” is used instead of “site” in CERCLA and is defined to include “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.” 42 U.S.C. § 9601(9). A copy of the *WSDOT* case is attached hereto as **Exhibit 2** for your convenience.

Of particular relevance and importance to this matter, the court noted that “CERCLA was not intended to place the cost of the clean up on persons who are not responsible for the contamination.” *Id.* at *5. In this case, since MIMC had no known involvement in the disposal of Champion waste in the South Impoundment, the efforts by EPA to include this area in the Site subject to the UAO and require MIMC to incur the cost of investigating this area runs counter to the intent of CERCLA.

The court also noted that even though two properties could be considered “facilities” under CERCLA since hazardous substances are located on both properties, “that does not mean the two sites combine into one site to form a single facility.” *Id.* This is also particularly relevant to this case as EPA appears to be directing that the South Impoundment be investigated under the UAO merely on the basis that hazardous substances (i.e., Champion wastes) are located on both properties.

In *WSDOT*, the court found that the area which the U.S. wanted to designate as a single Superfund site included properties of several different owners and that there appeared to be no common purpose among the different owners. The court further noted that the properties in question were reasonably or naturally divided into multiple parts or functional units. As such, the court found that the properties in question should be considered separate facilities. *See id.*

As noted in our previous conversations with EPA Region 6, it is undisputed that the Tract and the South Impoundment are owned by different persons or entities. Additionally, the TDH Report states that the Tract and the South Impoundment were each operated by separate and unrelated operators—the South Impoundment by Ole Peterson and the Tract by MIMC. There is no evidence that the owners and/or operators of the Tract and the South Impoundment ever shared a common purpose. They appear to have been separately owned and operated at different points in time, with the only commonality being that Champion waste was disposed of in each. Furthermore, because the TxDOT ROW and I-10 separate the two locations, the Tract and the South Impoundment location are reasonably and naturally divided into separate areas. Therefore, based on these facts, the definition of the “Site” in the UAO, and the court’s holding in *WSDOT*,

the South Impoundment area is a separate facility from the Tract. Therefore, EPA's direction to MIMC and IP to investigate the South Impoundment under the existing UAO is ultra vires, arbitrary and capricious.

While MIMC has acknowledged that it requested authorization to discharge water from the South Impoundment in 1966, MIMC has not found any evidence that it actually conducted any discharge or other activities at the South Impoundment. MIMC has requested, and it again respectfully requests, that EPA Region 6 reveal to MIMC any evidence that it may have to demonstrate operation of the South Impoundment by MIMC. Moreover, in light of the October 18, 2010 letter from IP's counsel to EPA regarding this subject, MIMC respectfully urges EPA to send another CERCLA Section 104(e) request for information to IP requesting copies of all documents upon which IP's counsel bases his statement that "there is a basis for requiring MIMC to also perform the South Pit investigation under the UAO, given (among other things) the historical information that suggests that MIMC was involved in managing [sic.] area known as the 'south pit' . . .".

II. Validated sampling data confirm the information previously submitted to EPA regarding the apparent lack of connection between the Site and the South Impoundment.

In a September 3, 2010 letter sent to EPA Region 6 by Anchor QEA on behalf of the Respondents, Anchor cited to various data, including certain preliminary dioxin data from sampling at the TxDOT ROW north of the South Impoundment, to suggest that no releases or threatened releases from the South Impoundment have occurred. Moreover, as stated in the September 10, 2010 letter from Winstead PC to EPA Region 6 on behalf of MIMC, such data also suggests that waste constituents from the 20.6 acre Tract, on which the waste impoundments that are the subject of the UAO and associated RI/FS are located, have not migrated from the Tract, across the TxDOT ROW, to the South Impoundment.

Recently, Respondents submitted to EPA the final validated data from the soil sampling of the TxDOT ROW. The validated dioxin data are virtually identical to the preliminary data noted in the September 3 and September 10 letters discussed above, the one difference being the 2, 3, 7, 8 TCDD result for Sample Location TxDOT 010 which dropped to 5.37 ng/kg dw. A figure showing the locations of the soil samples and the final validated 2, 3, 7, 8 TCDD test results is attached hereto as **Exhibit 3** and incorporated herein by reference.

The new, validated data reveal the possible presence of some 2, 3, 7, 8 TCDD from the Tract at low concentrations, on the portion of the TxDOT ROW located north of I-10, particularly in Sample Nos. TxDOT 003, TxDOT 004 and TxDOT 005. The results for the samples taken from the TxDOT ROW south of I-10, however, revealed primarily background levels of dioxin. Sample No. TxDOT 010 showed an extremely low concentration of 2, 3, 7, 8 TCDD that may be associated with the impoundments on the Tract. The location of this sample is immediately south of the Tract whereas the location of the South Impoundment, based on the drawing of the impoundment contained in the TDH Report, is southwest of the Tract and close to

the Old River. The sample result for TxDOT 009, the sample location closest to the South Impoundment, was 0.55 J ng/kg dw, the “J”-flag denoting that the 2, 3, 7, 8 TCDD value is so low that the laboratory could not guarantee the value reported. Thus, the available sampling data do not support the notion that hazardous substances have migrated from the Tract impoundments to the area of the South Impoundment.

III. The disposal of Champion waste in the South Impoundment does not mean that the South Impoundment is part of the Site.

The October 7, 2010 notice of deficiency states that the Respondents are in noncompliance with the UAO because they did not incorporate EPA’s comment number four into the RI/FS WP. Comment four provides as follows:

“(4) Add new section and language specified:

6.1.8 Soil Investigation

USEPA has information that indicates an additional impoundment is located south of I-10. This information indicates the additional impoundment contains material similar to that disposed of in the two impoundments located north of I-10. Surface and subsurface soil samples will be taken in and around these impoundments to determine the nature and extent of any actual or threatened releases.”

EPA’s comment appears to be based on the false premise that because Champion waste was placed in both the Site impoundments and the South Impoundment, they are both part of the same Site under the UAO. This interpretation of the UAO ignores the express definition of “Site” in the UAO and potentially subjects MIMC to expansive liability for any area where “material similar to that disposed of in the two impoundments located north of I-10” may be disposed of. MIMC cannot be responsible for every Champion Pasadena Paper Mill sludge disposal location that has been constructed or used since the mill’s inception in 1937. Moreover, under the existing UAO (as explained above), MIMC is only responsible for conducting an RI/FS with respect to the Champion waste disposed of at the Tract, including areas where that waste has come to be located. MIMC is committed to conducting an investigation consistent with EPA guidance that addresses areas where this waste is located. In contrast, however, EPA’s comment four directs a surface and subsurface investigation of the South Impoundment based merely on the fact that “similar” material is located there. This is beyond the scope of the UAO.

It is MIMC’s desire to continue to work with EPA in completing the requirements of the UAO in a fair manner. In that regard, MIMC remains committed to investigating the Tract and defining the extent of contamination resulting from the wastes disposed of at that location. Based on the information that we have reviewed, it appears clear that MIMC was not involved in any waste disposal operations at the South Impoundment and therefore should not be asked by

Mr. Stephen Tzhone
Ms. Barbara Nann
October 21, 2010
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EPA to incur the additional costs associated with conducting a surface and subsurface investigation of that impoundment. If you have any questions or comments, please feel free to contact me at 512-370-2806.

Very truly yours,

A handwritten signature in black ink, appearing to read "Albert R. Axe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Albert R. Axe, Jr.

AA:jtf
Enclosures

cc: John Cermak
David Keith

EXHIBIT 1

EX-107
SUB
FEB 1966

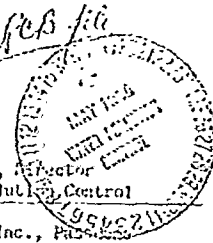
STATE DEPARTMENT OF HEALTH
AUSTIN TEXAS

INTER-OFFICE

FROM: Stanley W. Thompson, P.E.
Regional Engineer

TO: D.F. Saththorst, P.E., Inspector
Division of Water Pollution Control

SUBJECT: Investigation of Industrial Waste Disposal - Champion Paper, Inc., Pasadena, Texas



Following a request from Hugh Yantis, Assistant Executive Secretary of the Water Pollution Control Board, the writer and Sanitarian John Kadd contacted officials of the Champion Paper, Inc., Pasadena, Texas, and made an investigation of the present waste disposal practices of the company. This investigation was made on April 22, 1966.

Persons contacted during the course of the investigation included:

Mr. J.L. Henderson	-	Champion Paper	
Mr. A.J. Navarre	-	"	
Mr. V.C. McGinnis	-	McGinnis Industrial Paint Corp.	
Mr. George Laurie	-	"	(Secy-Treas)
A.E. Kimball	-	"	(Gen. Manager)

The mailing addresses of the companies are:

Champion Papers, Inc., P.O. Box 872, Pasadena, Texas 77501

McGinnis Ind. Paint Corp., 201 N. Richey, Pasadena, Tex 77502

In addition to the above, Sanitarian Bob Douglass of the Harris County Health Department, Air and Stream Pollution Section, was contacted in the absence of Dr. W.A. Quebedeaux, Chief of the Section. Mr. Douglass was unable to assist in the inspection.

General

The investigation covered the present practice of disposal of settled solids from the Champion Paper processes, a practice which is carried out by the McGinnis Ind. Paint Corp. This practice consists of the removal of the settled material from the secondary ponds at Champion plant, the transporting of the material by barge to an area adjacent to the San Jacinto River (near Hwy 73), and the unloading from the barge into ponds which have been forced by levees. This operation has been carried out since approximately 1965, with the first operation begun in June of 1965. This work was done by the Ollie Peterson Construction Co., with the McGinnis Corp. taking over and beginning operation on September 13, 1965.

This particular type of operation is carried out in a cycle of sorts. The ponds at Champion are allowed to fill with the material (or one full and the other approaching it) and hauling is then begun on the full pit. At the time of the inspection, both pits had been cleaned with about 5 barge loads (est. by Mr. McGinnis) left to remove. This would complete the operation until the ponds are again full - which is expected to be sometime later this year.

SIGNED _____

Quality of Material Removed

An analysis of the material was not available, but officials of Champion indicated that the material was neutral in pH, non-toxic, and primarily fibrous. The dried material resembled a cheaper grade of cardboard - such as used in egg cartons, etc. Mr. McGinnis reported that he had used it successfully for sitting for his equipment in the disposal site.

The material appears to solidify rapidly and Mr. Henderson reported that a vertical wall can be cut in the ponds while removing it and that the wall will stand. It was also reported that after the material has set a short time, that water will not penetrate it - that rain water will stand over it. It was further reported that grass can be started on the dry material and that it will spread rapidly, thus further cutting off water.

The material is removed by use of jetting (using waste water from the third set of ponds) and is reported to be removed with a solid content of 25% to 30%.

Quantity of Material

It was estimated by Mr. Henderson that complete cleaning of the two ponds would result in removal of about 135,000 cubic yards of the material. The barges used in the operation will hold about 1000 yards and three barges are used. This allows one barge to be in the process of being filled, one to be in the process of being unloaded, and one to be in transit. About 6 hours is required for the complete operation. Two shifts have been in operation to allow an average of 6 barge loads per day to be hauled.

Mr. Henderson stated that the material was accumulating at Champion at an estimated rate of 1 barge load per day.

Disposal Site

As mentioned, the disposal site is adjacent to the San Jacinto River at the Hwy 73 Bridge with the older site on the south side of the Highway and the newer site on the North side. The older site was used prior to McGinnis Corp taking over the operation and appears to consist of a pond covering between 15 and 20 acres. The new (and present) site consists of an estimated 20+ acres, of which slightly less than 15 are being used. This area contains two ponds.

One of the ponds has been filled and the second is nearly full. Levees on the first pond appear to be in good shape, with possibly slight seepage, while the second pond needs additional work on the levees. According to Mr. McGinnis, wet weather has prohibited the proper completion of the levees and additional work is to be done as soon as possible.

The two new ponds are connected with a drain line to allow the flow of excess water (including rain water) from pond #1 to pond #2, where it collects near the barge unloading area. At the present time, this water is pumped back into the barges and returned to the Champion Paper plant where it is passed through the last settling ponds and discharged to the Channel with the rest of the plant effluent. This particular operation will be mentioned later in the report.

Danger to River

According to available information, the river is not subject to flooding which might wash out the levees - that is, subject to flooding from rainfall without the aid of a storm such as Carla. In that event, the disposal area might well be covered with water.

It also appears that the material will solidify after being in the ponds a short time and there would be no danger of pollution from seepage. The only water is that which does separate from the solid material and rainfall.

Excess Water & Its Disposal

At the present time, the excess water plus rainfall which collects in the pond area is pumped into the barges and is carried back to Champion Paper and discharged through the final settling ponds. According to Mr. Henderson and Mr. Edgman, this operation is not economical and they are very interested in finding out if the water could be discharged into the River at the disposal site. The main trouble in the removal of water being that the solidification of the material and the draining of the top water would allow the discharge of more wastes to the area.

An example of this is the older area (South of the Hwy), where the water ranges from 3 - 5 feet deep. Mr. Kimball had a minnow bucket type of container submerged in this water with fish in it and reported that they had been there for several weeks. These fish (or minnows) were in good condition.

Quality of Excess Water

Samples were collected of the water in the various pits and submitted to the Austin State Dept of Health Laboratory for analysis. The samples and their results are as follows:

<u>Point of coll</u>	<u>pH</u>	<u>BOD</u>	<u>Sulphates</u>	<u>Chlorides</u>	<u>S.S</u>	<u>D.O.</u>	<u>Col</u>
#1 - New Pond #2 - near pt of return to Barge	7.8	1590	5	790	213	0	220
#2 - New Pond #1	7.4	> 2,500	31	470	324	0	110
#3 - San Jacinto River - near barging pt	7.3	2.5	78	465	36	4.4	
#4 - Old Pond - South of Hwy 73	8.3	8.0	50	2060	20	2.2	110

In general appearance, samples #1 and #2 were very dark with #4 somewhat lighter. The water from the older pond (Sample #4) had been undisturbed for some 6 to 7 months.

Continued

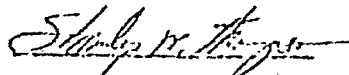
Officials of both companies were most anxious to work something out regarding this method of waste disposal. It appears that several things are to be considered in the matter.

1. The type of waste involved is not easy to get rid of, there is a large amount of the waste, and there will be an even larger amount in the future. This larger amount will be due to the new, and more efficient, waste treatment equipment that is to be provided by Champion Paper.
2. Very large tracts of land would be required for extended operation of this type, and this land would need to be accessible to barges - so on major rivers or streams. Apparently, the company officials feel that they can return to the area after a period of time and deposit additional material. This would be necessary to get the full benefit from the land.
3. There is no market for such material for use as fill material.
4. It also appears that continued operation would depend on the ability to return the water off the ponds to the adjacent stream rather than return it to the plant.

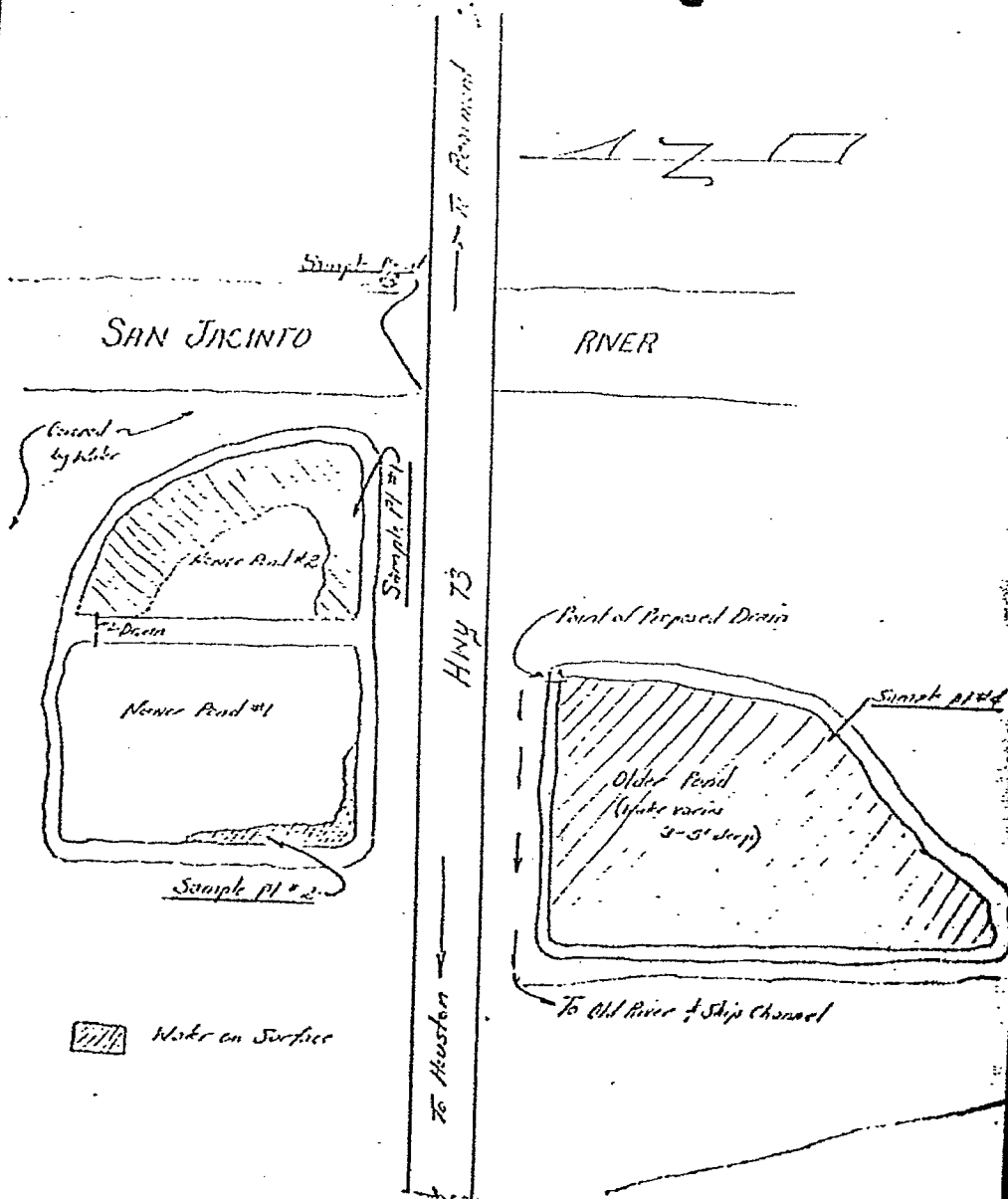
The operation and the need for submitting an application for a permit from the EPCB was discussed with Mr. Henderson and Mr. McGinness, and it is understood that such a permit would be obtained by Mr. McGinness rather than by Champion. There is apparently the thought, or plan, that Mr. McGinness would obtain the permit and handle the wastes from Champion under contract (the present set-up) and then also take care of such other industrial wastes that he might be able to handle (not from Champion).

It is the writer's understanding that nothing was to be done in the way of a permit application until the results of the sample analyses were received. At that time, the company officials would get in touch with the EPCB and its staff to discuss the matter further and get the thinking of the Board in light of the sample results. By that time, the companies should also have information regarding the chemical content of the material. It was felt that this would be the best approach to the matter since the present cycle of operation was essentially completed and time would be available to either obtain a permit for the operation - or work out a different method of disposal - prior to the need for renewed removal of the waste material.

Respectfully submitted,



Stanley W. Thompson, P.E.
May 6, 1966



DISPOSAL AREA
WASTE FROM CHAMPION PAPER, INC

EXHIBIT 2

Loislaw Federal District Court Opinions

U.S. v. WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (W.D.Wash. 7-7-2010)

UNITED STATES OF AMERICA, Plaintiff and Counterclaim Defendant, v.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, Defendant and

Counterclaimant.

Case No. 08-5722RJB.

United States District Court, W.D. Washington, at Tacoma.

July 7, 2010

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

ROBERT BRYAN, District Judge

This matter comes before the Court on Plaintiff's Motion for Partial Summary Judgment on Liability Re: Coal Tar Contamination (Dkt. 80). The Court has considered the motion, responses, and the relevant documents herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

This is a CERCLA suit brought by the United States against the Washington State Department of Transportation ("WSDOT") to recover costs incurred in responding to releases of hazardous substances into the Thea Foss and Wheeler Osgood Waterways ("Waterways"), which are within the Commencement Bay/Nearshore Tidelands Superfund site ("CB/NT Superfund site" or "CB/NT"). Dkt. 80, p. 6-9. Defendant WSDOT is alleged to own or operate parcels of land ("Tacoma Spur Property") near the Waterways and within the CB/NT Superfund site. Dkt.

Page 2

80, p. 9-11, Dkt. 86, p. 5-6. On the Tacoma Spur Property, WSDOT built South A Street to connect downtown Tacoma with Dock Street and the waterfront. Dkt. 86, p. 2. WSDOT encountered a high water table during the construction of South A Street and built a "French drain system" to protect the roadway from water damage. *Id.* The French drain system connected to the street's stormwater drain, which then connected with the City of Tacoma storm sewer system. *Id.* The City of Tacoma storm sewer system eventually drains into the Thea Foss Waterway through the "West Twin" drain at the head of the waterway. *Id.*

WSDOT alleges that the Washington State Department of Ecology discovered that coal tar had migrated through the soil into the French drain system and into a catch basin. Dkt. 86, p. 3. The United States alleges that the drainage system installed by WSDOT acted as a pathway for coal tar to be funneled into the Thea Foss Waterway, thus contaminating the Waterways. Dkt. 80, p. 7.

On December 2, 2008, the United States filed this suit seeking recovery of response costs incurred in the cleanup of the Waterways under CERCLA. Dkt. 1. On May 27, 2010, the United States filed this motion for partial summary judgment regarding coal tar contamination. Dkt. 80. The United States is seeking judgment as to liability for coal tar contamination under CERCLA. *Id.*

II. DISCUSSION

A. LEGAL STANDARDS

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. **56(c)**. The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the

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burden of proof. *Celotex Corp. v. Catrett*, **477 U.S. 317, 323** (1985). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, **475 U.S. 574, 586** (1986) (nonmoving party must present specific, significant probative evidence, not simply "some metaphysical doubt."). See also Fed.R.Civ.P. **56(e)**. Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors Association*, **809 F.2d 626, 630** (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The court must consider the substantive evidentiary burden that the nonmoving party must meet at trial — e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elect. Service Inc.*, **809 F.2d at 630**. The court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The nonmoving party may not merely state that it will discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elect. Service Inc.*, **809 F.2d at 630** (relying on *Anderson*, *supra*). Conclusory, non specific statements in affidavits are not sufficient, and "missing facts" will not be "presumed." *Lujan v. National Wildlife Federation*, **497 U.S. 871, 888-89** (1990).

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), **42 U.S.C. § 9601 et seq.**, was enacted to facilitate "expeditious and efficient cleanup of hazardous waste sites." *Carson Harbor Village, Ltd. v. Unocal Corp.*, **270 F.3d 863, 880** (9th Cir. 2001). Its secondary purpose is to hold responsible parties accountable for cleanup efforts. *Id.* CERCLA accomplishes these goals by imposing strict liability on owners

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and operators of facilities where releases of hazardous substances occur. *Id.* at 870. This liability is joint and several, subject to statutory defenses set forth in **42 U.S.C. § 9607(b)**. See *California v. Montrose Chemical Corp. of California*, **104 F.3d 1507, 1518** n. 9 (9th Cir. 1997).

To recover its costs for engaging in response actions, the EPA must prove: (1) the site at which the actual or threatened release of hazardous substances occurred constitutes a "facility" under **42 U.S.C. § 9601(9)**; (2) there was a "release" or "threatened release" of a hazardous substance; (3) the party is within one of the four classes of persons subject to liability under **42 U.S.C. § 9607(a)** [CERCLA section 107(a)]; and (4) the EPA incurred response costs in responding to the actual or threatened release. *U.S. v. Chapman*, **146 F.3d 1166, 1169** (9th Cir. 1998); *United States v. Northeastern Pharmaceutical & Chemical Co., Inc.*, **810 F.2d 726, 743** (8th Cir. 1986) ("NEPACCO"); **42 U.S.C. § 9607(a)(4)(A)** (defendants may be held liable for "all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan"). A party may be

a potential responsible party under CERCLA section 107(a) if they fall under one of four categories: current owner and operator – section 107(a)(1); former owner or operator – section 107(a)(2); arranger – section 107(a)(3); or transporter – section 107(a)(4). 42 U.S.C. § 107(a). The United States is arguing that WSDOT is liable under section 107(a)(1) or (2), but is reserving any other theories of liability (i.e. liability under sections 107(a)(3) & (4)). Dkt 80, p. 18 n. 3.

B. OWNER/OPERATOR LIABILITY

Under CERCLA section 107(a)(1), a party may be liable if it is the owner and operator of a vessel or a facility.
42 U.S.C. § 9607(a)(1). The term "facility" means (A) any building, structure, installation, equipment, pipe or pipeline . . . or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
42 U.S.C. § 9601(9). Additionally, a party may be liable if at the time of disposal of any hazardous

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substance it owned or operated any facility at which such hazardous substances were disposed of. 42 U.S.C. § 9601(a)(2).

Plaintiff argues that WSDOT has admitted the first three elements in its answer and discovery responses, and that the fourth element is established by undisputed factual evidence that WSDOT is the current owner of the Tacoma Spur property. Dkt. 80, p. 19. Plaintiff also states that there is undisputed factual evidence that establishes that WSDOT was the owner and operator of that property and of the DA-1 drainage system^[fn1] at the time that system disposed hazardous substances into the Waterway. *Id.* Therefore, Plaintiff contends, the Defendant is liable under CERCLA Section 107(a) as the current owner of contaminated property and as the owner and operator of that property at the time of discharge. Dkt. 80, p. 18.

Defendant responds by asserting that it is not the owner or operator of the facility at the time the United State incurred costs. Dkt. 86, p. 5. Defendant asserts that the clean up by the United States involved the Thea Foss Waterway, not the Tacoma Spur Property, where no response costs were incurred, and that the Tacoma Spur Property is not the subject of the suit. Dkt. 86, p. 5-10. Defendant next argues that even if the highway property were a facility, WSDOT is not the owner of that property; the State of Washington is the owner. Dkt. 86, p. 11. Finally, the Defendant asserts that operation of the French drain for the purpose of removing groundwater does not make WSDOT an operator under CERCLA. *Id.*

This motion regarding the issue of liability appears to partly turn on the scope of the word "facility." Under CERCLA Section 107(a)(1), the owner and operator of a vessel or a facility is a liable party. Under CERCLA Section 107(a)(2), any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous

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substances were disposed of is potentially responsible. Plaintiff contends that "ownership of one portion of a 'facility' – whose boundaries are defined by the extent of contamination, not by property lines – is sufficient to establish liability for response costs at that facility as a whole." Dkt. 80, p. 19. Plaintiff argues, in essence, that the entire CB/NT Superfund site is a facility and that Defendant owns property within that Superfund site. *See Id.* Defendant asserts the opposite argument; that the CB/NT Superfund site is not a facility for purposes of this action, the facility at issue is the Thea Foss and Wheeler Osgood Waterway, which is not owned nor operated by the Defendant. Dkt. 86, p. 9-11.

While there is no directly relevant case law in the Ninth

Circuit, the case of *U.S. v. Township of Brighton*, 153 F.3d 307 (6th Cir. 1998), is particularly instructive. The *Brighton* case involved a 15 acre plot in Brighton Township. *Brighton*, 153 F.3d at 310. The land was owned by Vaughan Collett, and later by Jack Collett. *Id.* The Township of Brighton contracted with Vaughan Collett to use his land as a dump for the town's residents. Specifically, three acres in the southwest corner of the property were used as the township dump. *Id.* In 1994, the United States brought suit against both the township and Jack Collett to recover response costs under CERCLA after clean up of hazardous waste on the Collett property. *Brighton*, 153 F.3d at 312. The district court found that Collett and the township were jointly and severally liable for the full amount of the response costs. *Id.* The township appealed the decision and argued that the Brighton Township dump comprised only three acres in the southwest corner of the 15 acres Collett property. *Id.* Therefore, the township argued, the government should have defined the bounds of the site in a way that excluded the township dump, which did not contain hazardous waste. *Id.*

The *Brighton* court noted that CERCLA defines the term "facility" as "any site or area where hazardous substances has been deposited, stored, disposed of, or placed, or otherwise

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come to be located." *Brighton*, 153 F.3d at 312 (citing 42 U.S.C. § 9601 (9) (B)). The *Brighton* court stated that:

[their] task is to determine how broadly or narrowly the bounds of the "site" may be drawn. At one extreme, the entire Collett property (or the entire county for that matter), could be defined as a facility based on the presence of a hazardous substance in one portion of it. At the other extreme, the facility could be defined with such precision as to include only those specific cubic centimeters of Collett's property where hazardous substance were deposited or eventually found. The first approach obviously would sweep too broadly, the second too narrowly.

Brighton, 153 F.3d at 312. The court stated that the "words of the statute suggest that the bounds of a facility should be defined at least in part by the bounds of the contamination." *Brighton*, 153 F.3d at 313. However, the court stated, "an area that cannot be reasonably or naturally divided into multiple parts or functional units should be defined as a single 'facility,' even if it contains parts that are non-contaminated." *Id.* The *Brighton* court concluded that the entire Collett property was one facility because Collett used the entire property as a dump. *Id.* The *Brighton* court supported this conclusion by stating that the facts show that local household and commercial dumping was largely, but not completely, limited to the southwest corner of the property; that refuse was moved around on the property; and that Collett placed materials from non-residents and industries in other parts of the site. *Id.* Finally, the *Brighton* court noted that "[i]f the township was only connected to the southwest corner, the appropriate place to draw that distinction is in the divisibility analysis [of CERCLA], not in the bounding of the facility." *Id.*

In this case, the United States defines facility as encompassing the entire CB/NT Superfund site, while WSDOT defines facility as either the Waterway or the Tacoma Spur Property. The United States' asserted definition of facility is too broad. If the Court was to adopt the United States' definition of facility, then liability could be imposed broadly and on persons not reasonably related to the contamination. In other words, a property owner whose property does not contain hazardous substance but is within such a "facility" could be found to

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be an owner of the facility and thus liable under CERCLA for

response costs. CERCLA was not intended to place the cost of clean up on persons who are not responsible for the contamination. See *U.S. v. Bestfoods*, 524 U.S. 51, 56 (1998) ("those actually responsible for any damage, environmental harm, or injury from chemical poisons may be tagged with the cost of their actions.")

Under CERCLA, facility means any building, structure, installation, equipment, pipe or pipeline, or "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located."

42 U.S.C. § 9601 (9) (A) & (B). Under the plain meaning of the statutory provision, both the Waterways and the Tacoma Spur Property could be considered facilities since hazardous substances are located at both sites. However, that does not mean the two sites combine into one site to form a single facility. In the *Brighton* case, the site at issue was owned by one person, Jack Collett. Moreover, the *Brighton* court found that the entire site was used for a common purpose, a dump. In this case, the CB/NT Superfund site appears to include the properties of several different owners, including WSDOT, and there appears to be no common purpose among the different owners. Excluding other properties and focusing on only the Waterways and the Tacoma Spur Property, it still appears that there are different owners and different purposes. Moreover, the Waterways and the Tacoma Spur Property are reasonably or naturally divided into multiple parts or functional units. For these reasons, the Waterways and the Tacoma Spur Property should be considered separate facilities.

Since they are separate facilities, the next step is to determine which facility might impose liability on the Defendant. It has not been argued nor evidence presented that WSDOT owns or operates the Waterways. Even if the Court assumes that WSDOT does own and operate the Tacoma Spur Property, it does not necessarily mean that it is liable as an owner or operator of a facility under CERCLA. The United States incurred response costs here in the Waterway,

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but not on the Tacoma Spur Property. The United States has not argued nor asserted that it has incurred response costs on the Tacoma Spur Property.

The law is unclear as to whether CERCLA requires that the response costs be incurred on the property owned or operated by a defendant, but CERCLA's purpose is to assign the cost of remediation to the party actually responsible for any damage, environmental harm, or injury. See *Burlington Northern and Santa Fe Ry. Co. v. United States*, 129 S.Ct. 1870, 1874 (2009) ("The Act was designed to promote the 'timely cleanup of hazardous waste sites' and to ensure that the costs of such cleanup efforts were borne by those responsible for the contamination"); *U.S. v. Bestfoods*, 524 U.S. 51, 56 (1998) ("those actually responsible for any damage, environmental harm, or injury from chemical poisons may be tagged with the cost of their actions."). CERCLA provides for liability to attach in four ways; current owner and operator, former owner or operator, arranger, and transporter. 42 U.S.C. § 9607 (a). CERCLA section 107(a) (1) states that the owner and operator of a facility is liable for response costs. *Id.* A facility is any building, structure, installation, equipment, pipe or pipeline . . . or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located. 42 U.S.C. § 9601 (9). If the Court was to take the view that response costs need not be incurred on the facility owned and operated by the defendant, then liability may be imposed on persons not related to the contamination, which is not the purpose of CERCLA. Under a broad reading of the requirements of CERCLA as is advocated by the Plaintiff, a person owning and operating a building close to the clean up site (i.e. the Waterways) may be considered an owner and operator of a facility under CERCLA whether or not that person was responsible

for contamination of the clean up site. The Court believes that this is not what CERCLA intended. The Court believes a better interpretation of the requirements of CERCLA is that for liability to attach to WSDOT under CERCLA section 107(a)(1), it must be the owner or operator of the facility in which the

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United States incurred a response cost. To allow otherwise would expose a party to liability under CERCLA for merely holding property that fit the definition of facility whether or not that party had any actual responsibility in contamination. While this interpretation of CERCLA section 107(a)(1) may seem narrow, it carries out the purpose of CERCLA by allowing liability to attach to persons who dispose of hazardous materials into the environment under CERCLA section 107(a)(3) or (4), but allows persons not responsible for contamination to be free of liability. In this case, WSDOT is not the owner or operator of the Waterways, and there were no response costs incurred on the WSDOT owned Tacoma Spur Property. Therefore, the United States' motion for summary judgment as to the CERCLA section 107(a)(1) should be denied.

The foregoing analysis also applies to CERCLA section 107(a)(2) former owner or operator liability.

Futhermore, the hazardous substance in this motion is coal tar and the facility is the Tacoma Spur Property. It is undisputed that coal tar was disposed of at the Tacoma Spur Property. However, the United States argues that the coal tar contaminated the Waterways through the drainage systems installed at the Tacoma Spur Property. Dkt. 80, p. 21-22. WSDOT contends that Waterways contamination is not due to the coal tar being disposed of through the drainage system. Instead, WSDOT argues that contamination resulted from urban stormwater runoff. Dkt. 86, p. 20. There appears to be a genuine issue of material fact as to whether coal tar was disposed of which resulted in removal and remedial actions costs. As such, the United States' motion for summary judgment as to CERCLA section 107(a)(2) should be denied.

For the foregoing reasons, the Plaintiff's motion for partial summary judgment as to liability under CERCLA sections 107(a)(1) & (2) should be denied. Since summary judgment as to liability under CERCLA sections 107(a)(1) & (2) is denied, the Court declines to address the arguments regarding affirmative defenses.

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C. NONMUTUAL OFFENSIVE COLLATERAL ESTOPPEL

The United States contends that WSDOT has fully litigated its liability in connection with the Tacoma Spur Property and drainage system in Washington State Superior Court and lost. Dkt. 80, p. 26. The United States argues that under the doctrine of "issue preclusion," the state's court's judgment and finding of fact and law are conclusive against WSDOT. *Id.* The United States specifically cites *Pacificorp Env'tl. Remediation Co. v. WSDOT*, No. 07-2-10404-1 (Wash. Super. Ct. April 30, 2009) to support its argument that the issue of liability is precluded in this litigation. Dkt. 27, p. 27. WSDOT responds by arguing that judgment regarding a state law does not apply to a federal issue, and that federal law regarding collateral estoppel applies, not state law. Dkt. 86, p. 12-20.

Nonmutual offensive collateral estoppel is estoppel asserted by a nonparty to an earlier action to prevent a defendant from relitigating an issue previously decided against the defendant. *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326-332 (1979). Trial courts are given broad discretion to determine when collateral estoppel should be applied. *Id.* at 331. "The general rule should be that in cases where a plaintiff could easily have joined in the earlier action or where . . . the application of offensive estoppel would be unfair to a defendant, a trial judge

should not allow the use of offensive collateral estoppel." *Id.* The *Parklane* court stated that application of offensive collateral estoppel may be unfair if: (1) the first action was for small or nominal damages and that future suits are not foreseeable; (2) the judgment relied upon as a basis for the estoppel is itself inconsistent with one or more previous judgments in favor of the defendant; or (3) the second action affords the defendant procedural opportunities unavailable in the first action that could readily cause a different result. *Id.* at 330-31. Finally, the *Parklane* court notes that the defendant must have had a full and fair opportunity to litigate. *Id.* at 328.

In this case, it would be unfair to the Defendant for the Court to apply offensive estoppel.

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In the Superior court case, the issue was whether the Defendant violated the Model Toxics Control Act ("MTCA") RCW 70.105D, et seq., not whether it violated CERCLA. The United States has admitted that the MTCA was "heavily patterned" after CERCLA, but it is not identical to CERCLA. See Dkt. 80, p. 27 n. 9. Therefore, the issues presented in this case may be different from the Superior court case. Moreover, there are defenses or exemptions in CERCLA that are not found in the MTCA. It would be unjust not to allow the Defendant to avail itself of these defenses. Finally, WSDOT has not had the opportunity to fully and fairly litigate the CERCLA claims. The Superior court case only litigated MTCA claims. For the foregoing reasons, nonmutual offensive collateral estoppel should not be applied in this case and the Plaintiff's motion for partial summary judgment should be denied.

III. ORDER

The Court does hereby find and **ORDER**:

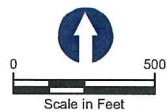
(1) Plaintiff's Motion for Partial Summary Judgment on Liability Re: Coal Tar Contamination (Dkt. 80) is **DENIED** only insofar as the motion was based on CERCLA section 107(a) (1) & (2); and

(2) The Clerk is directed to send copies of this Order to all counsel of record and any party appearing *pro se* at said party's last known address.

DATED this 7th day of July, 2010.

{fn1} The Plaintiff uses the nomenclature "DA-1 drainage system" in its filings. The Court will use the nomenclature "Tacoma Spur Property" generically to refer to both the drainage system and above ground structures.

EXHIBIT 3



- Preliminary Site Perimeter
- RI Sediment Station, May 2010
- TCRA Soil Station, August 2010

FEATURE SOURCES:
 Aerial Imagery: 0.5-meter January 2009 DOQQs - Texas Strategic Mapping Program (StratMap), TNIS

Figure 1
 2,3,7,8-TCDD (ng/kg dw) in Sediments Collected
 for the RI, and in Soil Collected for the TCRA
 SJRWP Superfund/MIMC and IPC

EXHIBIT 5

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of January, 1965, by and between CHAMPION PAPERS INC. ("Champion") and OLE PETERSON CONSTRUCTION CO., INC. ("Contractor");

W I T N E S S E T H:

1. Scope of Work. This Agreement shall cover the removal by Contractor of pulp and paper mill waste sludge material from Champion's waste basins located generally to the west of its main plant facilities in Pasadena, Texas, and adjacent to the south bank of the Houston Ship Channel. Contractor has inspected and is familiar with such facilities and with the nature of such sludge. Contractor has agreed with Champion to furnish all labor, supervision, materials and equipment necessary to perform such work, to procure at its own expense a tract of land acceptable to Champion to be used by Contractor for depositing such sludge and to transport such sludge by barge from Champion's facilities to said tract of land.

2. Term. The term of this Agreement shall be for a period of six (6) years from the date hereof unless sooner terminated as hereinafter provided.

3. Quantity. During the first year of the term of this Agreement, Contractor shall remove from Champion's waste basins 135,000 cubic yards of sludge (or more or less than such amount as may be agreed upon by the parties) and during each of the succeeding five (5) years of the term of this Agreement Contractor shall remove at Champion's request up to 75,000 cubic yards per year of waste sludge in such quantities and at such times as Champion may designate. The yardage of sludge removed shall be determined by an engineer selected by Champion and acceptable to Contractor who shall make his determination of the volumes, in each basin prior to commencement of work by Contractor and at such times

thereafter as agreed upon by Champion and Contractor. Champion and Contractor shall bear equally the cost of all such determinations by the engineer.

4. Payment.

(a) Champion shall pay Contractor for work performed under this Agreement in accordance with the following schedule of base prices:

(1) During the first year of this Agreement for the first 100,000 cubic yards removed from the waste basins at \$2.09 per cubic yard and for each cubic yard in excess of 100,000 cubic yards removed from the waste basins at \$2.00 per cubic yard.

(2) Thereafter, for up to 75,000 cubic yards per year, at a price per cubic yard not to exceed \$1.98 for the second year; not to exceed \$1.88 for the third year; not to exceed \$1.85 for the fourth year; not to exceed \$1.83 for the fifth year; and not to exceed \$1.78 for the sixth year.

(b) Payments will be made by Champion upon receipt of a weekly invoice, verified by Champion's representative, indicating the amount of sludge removed from the basin. Such invoices shall be based upon the number of barge loads removed times a nominal 500 cubic yards per barge at the applicable base price set out in the schedule in paragraph 4(a) above.

(c) At intervals to be agreed upon by Contractor and Champion (but at least once each year) the actual volume of sludge removed from the basin shall be determined and a billing and payment adjustment shall be made in accordance with the

actual volume removed. If the actual volume removed is in excess of the volume established in 4(b) above (using a nominal 500 cubic yards per barge) Champion shall be invoiced for one-half (1/2) this difference in yardage times the applicable base price set out in 4(a) above. If the actual volume removed is less than that established by the nominal 500 cubic yard per barge formula, the full difference in yardage computed at the applicable base price shall at Champion's option be deducted from future payments by Champion or shall be billed directly to Contractor.

(d) Champion will retain 15% of each invoice amount for final payment within thirty (30) days after each year of the term of this Agreement upon completion by Contractor of the work requested to be performed during such year in a satisfactory and workmanlike manner and subject to Contractor's furnishing Champion satisfactory evidence of the full payment of all bills for labor, materials, tools and equipment used in the performance of the work hereunder for such year.

5. Termination. This Agreement may be terminated without cause at any time by either party on one hundred and twenty (120) days' prior written notice to the other party. In such event Contractor shall continue to perform and render his services hereunder up to the date of such termination.

6. Independent Contractor. In performing work hereunder Contractor will act in all respects as an independent contractor and will have full right and authority to determine the means and methods of carrying out the work.

Contractor agrees to protect and save Champion harmless from any damages, costs, expenses, liabilities, claims or asserted liabilities resulting from or arising out of anything done by or on behalf of Contractor hereunder, including

specifically any damage or injury to the property of Champion and any claims or liabilities asserted by any employee of Champion or by any other person, whether or not associated with Champion. Contractor shall furnish Champion with proper evidence that Contractor has obtained and maintains in full force and effect during the term hereof, or any extension, insurance covering the risks and in the amounts as follows:

(a) Workmen's Compensation - Statutory; Employers Liability - \$100,000. (b) Contractors Public Liability: Bodily Injury - \$100,000 each person, \$300,000 each occurrence and \$100,000 property damage. (c) Automobile Public Liability: Bodily Injury - \$100,000 each person, \$300,000 each occurrence and \$100,000 property damage.

7. General Provisions.

(a) Contractor shall endeavor to commence work hereunder within thirty (30) days from the date hereof but in any event shall begin work within sixty (60) days from the date hereof.

(b) Contractor is familiar with the Pasadena plant site of Champion and with the waste basins which are the subject matter of this Agreement. The sludge to be removed by Contractor is not considered by the parties to be inherently harmful or dangerous but it is recognized that any spillage of the sludge would create an untidy condition and impede the use of the road or ground upon which such spillage occurred. Contractor agrees to adapt its equipment to be used in operations hereunder so as to prevent such spillage and agrees, on request of Champion, to furnish such labor and equipment as may be necessary to clean up any sludge spillage within the Pasadena plant site of Champion.

(c) It is expected that Contractor will employ barges, draglines, bulldozers, trucks and other equipment in performing the work hereunder. Before moving any heavy equipment over or about the plant site of Champion, either to or from or

around the waste basins, Contractor will give Champion reasonable advance notice of the nature of such equipment and the proposed route of such movement. Contractor will comply with any reasonable requirements of Champion with respect to such movement. No such requirements by Champion, nor Contractor's compliance therewith, nor Champion's failure to make any specific requirement shall relieve Contractor of his obligations with respect to such movement or his liability for damage attributable thereto.

(d) In going to and from the job site area Contractor shall follow such routes through the plant site as may be designated by Champion.

(e) At any time or from time to time during the term of this Agreement, Champion or other persons claiming under Champion or acting for or under agreement with Champion may have property on or about the area of operations under this Agreement or may be carrying on activities on or about such area. Contractor will comply with any reasonable requests of Champion regarding the scheduling of work by Contractor so as to minimize interference with or from others or risk of injury to persons or damage to property on the premises. Contractor shall perform all work in such manner as to cause a minimum of interference with Champion's operations and the operations of other persons on the premises, shall take all necessary precautions (including those required by Champion's operating and safety regulations set forth in Exhibit "A" attached hereto) to protect the premises and all other persons and property thereon from damage or injury and shall assume the responsibility for the taking of such precautions by Contractor's employees, agents, licensees, permittees and subcontractors. Upon completion of the work to be performed hereunder Contractor shall restore the levees, basins and premises of Champion to the

condition existing prior to commencement of the work and shall leave the premises clean and free of all tools, equipment, waste materials and rubbish.

(f) Contractor shall secure and keep in effect all permits and licenses required in connection with the performance of the work covered hereby and shall comply with all governmental laws, rules and regulations, whether Federal, State or local, pertaining thereto.

(g) Contractor shall during the term hereof and for a reasonable period thereafter maintain auditable records of all charges pertaining to this Agreement and make such records available to Champion upon its request.

(h) Contractor shall diligently and carefully perform all work required hereunder in a good and workmanlike manner and all equipment used by Contractor shall be in good working condition and capable of performing its intended work in an efficient and satisfactory manner. Contractor shall comply with any request by Champion that Contractor remove from the premises any defective or unsatisfactory equipment.

8. Assignability. This Agreement shall not be assignable by Contractor nor shall Contractor subcontract any of the work to be performed hereunder without the prior written consent of Champion.

9. Amendment. This instrument represents the entire agreement between the parties hereto and may not be changed, altered or modified in any respect except by an instrument in writing signed by both parties hereto.

WITNESS THE EXECUTION HEREOF, effective as of the day and year first above written.

CHAMPION PAPERS INC.

By 

OLE PETERSON CONSTRUCTION CO., INC.

By 

PAS 009791

CHAMPION PAPERS INC.

TEXAS DIVISION

EXHIBIT "A"

OPERATING & SAFETY REGULATIONS

1.0 INSPECTION AND COORDINATION OF WORK

It is understood and agreed to by the Contractor that the work will be subject to the coordination and inspection by Champion's designated representative. Champion's representative shall at all times have complete access for the inspection of the work and materials and/or equipment purchased by the Contractor for the work.

2.0 SANITATION AND DRINKING WATER FACILITIES

The Contractor shall furnish his employees, sub-contractors, agents, etc. sanitation facilities and drinking water unless otherwise specified by Champion.

3.0 ELECTRICAL CONTROL ROOMS

The Contractor, his employees, sub-contractors, agents, etc. shall not enter into an electrical control room unless accompanied by a Champion electrician.

4.0 ROPE AND BROOMS

The Contractor shall take such steps as necessary to ensure that there is no hemp or sisal rope, or straw brooms brought into or used in mill site area by his employees, sub-contractors, agents, etc.

5.0 SAFETY AND FIRE REGULATIONS

The Contractor, his employees, sub-contractors, agents, etc. shall adhere in all respects with Champion Maintenance & Utilities Department Safety Code, 1958 Edition, and with all posted safety, fire and traffic regulations. In addition, special attention shall be given to the following items:

5.1 Safety hats will be worn at all times by Contractors' and sub-contractors' personnel, including welders.

5.2 All electrical tools, boom equipment and mechanical digging or concrete breaking equipment shall be properly grounded while in use.

PAS 009792

CHAMPION PAPERS INC.
TEXAS DIVISION
EXHIBIT "A"
OPERATING & SAFETY REGULATIONS
Page 2

- 5.3 Contractor shall furnish and display proper safety warning and overhead danger signs as necessary to caution all personnel of dangers present due to construction.
- 5.4 Contractor shall furnish and ensure that employees utilize eye protection. Gas masks will be furnished by the Contractor where there is a possible danger to his personnel from escaping gases.
- 5.5 Permits shall be obtained daily from Champion's representative prior to any work involving equipment.
- 5.6 All equipment, tanks and pipelines shall be made safe and properly tagged before any work is done.
- 5.7 All couplings, flywheels, belts, chains and sprockets, sheaves, fan blades, shafts, etc. will have guards before operating.
- 5.8 The Contractor shall provide for a continuous clean up of work area at all times. Work area must be free from accumulation of waste and rubbish. Upon completion of a work day and/or the work being performed, the Contractor shall restore the work area to the same degree of neatness as when the work commenced. Contractor to furnish necessary equipment and/or receptacles to remove waste and rubbish from job site unless otherwise specified by Champion.
- 5.9 Smoking will be allowed in designated areas only.
- 5.10 Any violation of safety regulations or operating regulations will automatically result in stoppage of work until corrected. The Contractor upon receipt of Champion's written notice shall dismiss any Contractor personnel found guilty of violating any safety regulations.

PAS 009793

EXHIBIT 6



Copy to Henderson

L. A. SANDRIST, M.D., M.P.H.
Sanitary Engineer

HARRIS COUNTY HEALTH UNIT
3005 FALCON DRIVE, BOX 200
HOUSTON 10, TEXAS

Phone SA 6-7700
Cable SA 6-7700

June 11, 1965

Beck Engineering
201 North Richey
Pasadena, Texas

Attention: Mr. Bobby Burns

Gentlemen:

The location of the proposed spoil pond, which is located on the west bank of the San Jacinto River just north of the Highway 73 bridge, seems to be ideal for the purpose for which you intend to use it. This is particularly so since the bottom and sides, or dikes, are composed of clay, which should render it practically impossible for seepage to escape and enter into the San Jacinto River.

I would like to remind you again that your waste handling operation should be done in a manner which would not allow any liquid waste to leave the property and escape into the river. We believe this could be done easily, but of necessity would require some careful handling.

Sincerely yours,

W. A. Quabbe

W. A. Quabbe, Ph.D.
Director
Air and Water Pollution Control Section

WAG/pl

PAS 009781

EXHIBIT 7

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Roger Williams
Secretary of State

Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Articles of Incorporation for MC GINNES INDUSTRIAL MAINTENANCE CORPORATION (filing number: 21670600), a Domestic Business Corporation, was filed in this office on August 31, 1965.

It is further certified that the entity status in Texas is in existence.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on November 07, 2005.



A handwritten signature in black ink that reads "Roger Williams".

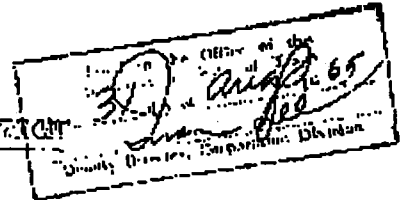
Roger Williams
Secretary of State

958830



ARTICLES OF INCORPORATION

MC GINNES INDUSTRIAL MAINTENANCE CORPORATION



We the undersigned natural persons of the age of twenty-one or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Business Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation is MC GINNES INDUSTRIAL MAINTENANCE CORPORATION.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose or purposes for which the corporation is organized are:

1. To buy, sell, and deal in goods, wares, merchandise, services, in any manner, description or kind, either at wholesale or retail, without any limitations in any respect as to the goods, merchandise or services, not in violation of laws.
2. To manufacture, produce, prepare, acquire, at wholesale and retail, distribute, export, import, dispose of, and generally deal in and with goods, wares, merchandise, services, and properties of all kinds, and substitutes thereof, and the products and by-products thereof, and all articles used or useful in connection with any thereof; and to carry on the

business of merchants, and any trade or business incident thereto or connected therewith, not in violation of laws.

3. To acquire by lease, purchase, gift, devise, contract, concession, or otherwise, and to hold, own, develop, explore, exploit, improve, operate, lease, enjoy, control, manage, or otherwise turn to account, mortgage, grant, sell, exchange, convey, or otherwise dispose of, restricted to within two miles outside of any village, township, or corporate city limits, any and all real estate, lands, options, concessions, grants, land patents, franchises, rights, privileges, easements, tenements, estates, hereditaments, interests, and properties of every kind, nature and description, whatsoever, not in violation of laws.

4. To print, publish, edit, distribute, to revise, to write, to create, to direct, delineate, produce, paint, draw, engrave, and any other arts which pertain to the expression of ideas on any kind of material or surface and in general exercise without limitations, skill in performance, experience, study, observation, knack, human contrivance, ingenuity, science, knowledge, crafts, to the extent now or hereafter permitted by law.

5. To enter into, make and perform contracts of every kind and description with any person, firm, association or corporation, municipality, body politic, county, country, territory, state, government, or colony, or dependency thereof, to the extent now or hereafter permitted by law.

6. To adopt, apply for, obtain, register, produce, take, purchase, exchange, lease, hire, acquire, secure, own, hold, use, operate, contract, or negotiate for, take licenses or other rights in respect of, manufacture under, introduce, sell, assign, collect the royalties on, mortgage, pledge, create liens upon, or otherwise dispose of, deal in, and turn to account, letters patent, patents, patent rights, patents applied for or to be applied for, designs, trademarks, trade names and symbols, labels, distinctive marks and indications of origin or ownership, copyrights, syndicate rights, inventions, discoveries, devices, instruments, machines, improvements, modifications, licenses, processes, data, and formulae of any and all kinds granted by, or recognized under or pursuant to the laws of the United States of America, or of any other country or countries whatsoever, and with a view to the working and development of the same, to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated, directly or indirectly, to effectuate these objects.

7. To contract for the erection, construction, or repair of any building, structure, or improvement, public or private, and to erect, construct, or repair same or any part thereof, and to acquire, own, or prepare for use any materials for said purposes.

8. To sell, construct, or erect engineering or other structures and to contract for the construction and erection of such structures.

9. To establish and maintain a drilling and dredging business with authority to own and operate drilling rigs, dredges, machinery, tools and apparatus necessary in the boring or otherwise sinking of wells, or the making of excavations, in the search for or production of oil, gas, or other minerals, water or other natural resources, and the purchase and sale of goods, wares, and merchandise and services used or useful for such business.

10. To prospect for, develop, mine, produce, acquire, store, refine, process, beneficiate, manufacture, and market natural resources of any kind or all kinds.

11. To mine for, produce, manufacture, refine and deal in oil, gas, salt, sulphur or other minerals and natural resources and all products and materials used or useful in such business.

12. To purchase or lease or otherwise acquire rights in lands in any locality for the purpose of prospecting for the obtaining oil, gas, salt, sulphur, or other minerals, and natural resources; and to that end, to drill, or cause to be drilled, wells, or sink, or cause to be sunk, shafts for mining, and to buy, lease, or otherwise acquire drilling rigs or other machinery or apparatus necessary to fully accomplish said purposes; and if oil or any other minerals or other natural resources are found, then to market or otherwise utilize same.

13. To engage in the business of developing, purchasing, selling, manufacturing, compounding, refining, distributing,

importing, exporting, exploiting and using, and to develop, purchase, sell, manufacture, compound, refine, distill, treat, prepare, analyse, synthesize, produce, and in every way deal in and with chemicals of every kind, chemical materials, substances and products, including hydrocarbons, petrochemicals, petroleum products and by-products, acids, alkalis and salts, their compounds and derivatives, and also derivatives, materials, products, substances and combinations produced or manufactured therefrom, including solids, liquids, and gases of all kinds; to engage in the separation or reduction or treatment of solids, liquids and gases into their constituents; to develop, produce, and utilize and deal in and with chemical combinations of all kinds.

14. To engage in the leasing, renting, and selling of dredges and other equipment of all kinds, including, but without limitation, the furnishing by contract or otherwise of motor cranes, dredges, derricks, jacks, trucks, or other equipment, the manufacture, construction, sale, or otherwise dealing in and with any and all machines, tools, materials, equipment and devices used or useful in such business, the conduct of research and experiments relating thereto and the obtaining in any manner of title or right to use of, or the licensing or sale to others of, licenses, patents, copyrights, or secret processes, or secret processes relating thereto.

15. To contract for the unloading, moving, or erection of manufacturers' equipment and to lease or rent by contract

or otherwise any and all equipment necessary to unload, move or erect manufacturers' heavy equipment.

16. To sell, construct or erect equipment and to contract for the construction and erection of such equipment.

17. In general, to do any or all the things set forth, or are permitted by general powers of corporations of the State of Texas, or any other state, territory, country, or government, to the same extent as natural persons might or could do and in any part of the world, as principals, agents, contractors, or otherwise, within or without the State of Texas, either alone or in the company with others, and to carry on any other business in connection therewith, whether manufacturing or otherwise, and to do all things not forbidden, and with all the powers conferred upon corporations by the laws of the State of Texas.

ARTICLE FOUR

In furtherance and not in limitation of the general powers conferred by the laws of the State of Texas, and the objects and purposes herein set forth, it is expressly provided that this corporation shall also have the following powers, viz.:

1. To acquire, and to make payment therefor in cash or the stocks, bonds, or notes of the corporation, or by undertaking or assuming the liabilities and obligations of the transferor, or in any other way, the good will, rights and property, the whole or any part of the assets, tangible or intangible, and to undertake or assume the liabilities of, any person, firm, association or corporation, to hold or in

any manner dispose of the whole or any part of the property so purchased, to conduct in any lawful manner the whole or any part of the business so acquired and to exercise all of the powers necessary or convenient for the conduct and management thereof.

2. In the carrying out of its lawful purposes, to enter into, make and perform contracts of every kind with any person, firm, association or corporation, municipality, body politic, county, country, territory, state, government, or colony, or dependency thereof.

3. To act in any state, territory, district, or possession of the United States, or in any foreign country, in the capacity of agent or representative for any individual, association, corporation, or other legal entity, respecting any business, the purpose of which is similar to the purposes set forth in Article Three hereof.

4. To acquire (by purchase, exchange, lease, hire, or otherwise), hold, use, sell, assign, lease, and grant the absolute interest in and to, and license or sublicense in respect of, franchises, indeterminate permits, certificates of convenience and necessity, certificates of authority, letters patent, patent rights, licenses, privileges, inventions, improvements, processes, copyrights, trademarks and trade names.

5. To enter into any arrangement for sharing profits, union of interest, reciprocal association, or cooperative association with any corporation, association, partnership, individual, or other legal entity, for the carrying on of any

business, the purpose of which is similar to any of the purposes set forth in Article Three hereof, and to enter into any general or limited partnership, the purpose of which is similar to any such purpose.

6. To execute from time to time such general and specific powers of attorney to such persons as the Board of Directors of this corporation may approve, granting to such persons all powers, either in the United States, or elsewhere, which the Board of Directors of this corporation may deem proper and to revoke any such powers of attorney as and when the said Board of Directors may desire.

ARTICLE FIVE

The aggregate number of shares which the corporation shall have authority to issue is Ten Thousand (10,000) shares of common stock, without nominal or par value.

ARTICLE SIX

This corporation will not commence business until it has received for the issuance of its shares consideration of the value of One Thousand (\$1,000.00) Dollars consisting of money, labor done, or property actually received.

ARTICLE SEVEN

The following provisions shall be applicable in the conduct of the affairs of this corporation:

1. No holder of shares, or of any rights or options to purchase shares, of the corporation, as such, shall have any preemptive or preferential right to subscribe for or acquire any shares of any class of the corporation or any obligations

convertible into shares of the corporation, whether now or hereafter authorized, and no holder of shares of any class, as such, shall have any right to acquire any shares which may be held in the treasury of the corporation; all such additional treasury shares or any such convertible obligations may be sold for such consideration, at such time and to such persons as the Board of Directors may from time to time determine. Any such shares or convertible obligations which the corporation may determine to offer for subscription to holders of stock of the corporation may, as the Board shall determine, be offered to holders of any class or classes of shares exclusively or to holders of all classes of shares and, if offered to more than one class of shares, in such proportions as between said classes of shares as the Board, in its discretion, may determine. As used in this paragraph, the expression "convertible obligations" shall include, but without limitation, any notes, bonds, debentures, or other evidence of indebtedness to which are attached or with which are issued warrants or other rights to purchase shares of the corporation of any class or classes.

2. The shareholders of this corporation shall not cumulate their votes at any election for directors.

3. No contract or other transaction between the corporation and any other corporation shall be affected or invalidated by the fact that any one or more of the directors of this corporation is or are interested in or is or are a director or directors or officer or officers of such other corporation,

and no contract or other transaction between the corporation and any other person or firm shall be affected or invalidated by the fact that any one or more directors of this corporation is a party to, or are parties to, or interested in, such contract or transaction; provided that in each such case the nature and extent of the interest of such director or directors in such contract or other transaction and/or the fact that such director or directors is or are a director or directors or officer or officers of such other corporation is disclosed at the meeting of the Board of Directors at which such contract or other transaction is authorized or is otherwise known to the other members of the Board present at such meeting.

ARTICLE EIGHT

The post office address of the initial registered office is Route 1, Box 586, Alvin, Texas, and the name of its initial registered agent at such address is Virgil C. McGinnes.

ARTICLE NINE

The initial Board of Directors shall be composed of three (3) members, whose names and addresses are:

Virgil C. McGinnes, Route 1, Box 586, Alvin, Texas
Lawrence P. McGinnes, Route 1, Box 584, Alvin, Texas
Geo. H. Lowry, 9805 Larston Street, Houston 55, Texas

The above-named directors shall serve until the first annual meeting of shareholders or until their successors be elected and qualified.

ARTICLE TEN

The names and addresses of the incorporators of this

corporation are:

Virgil C. McGinnes, Route 1, Box 586, Alvin, Texas
Lawrence P. McGinnes, Route 1, Box 584, Alvin, Texas
Geo. H. Lowry, 9806 Larston Street, Houston 55, Texas

IN WITNESS WHEREOF, we have hereunto set our hands this
the 20th day of August, 1965.

Virgil C. McGinnes
Virgil C. McGinnes
Lawrence P. McGinnes
Lawrence P. McGinnes
Geo. H. Lowry
Geo. H. Lowry

THE STATE OF TEXAS §

COUNTY OF HARRIS §

I, Barbara Wright, a notary public, do
heretby certify that on this the 20th day of August,
1965, personally appeared before me VIRGIL C. MCGINNES,
LAWRENCE P. MCGINNES and GEO. H. LOWRY, who being by me
first duly sworn, severally declared that they are the per-
sons who signed the foregoing document as incorporators and
that the statements therein contained are true.

Barbara Wright
Notary Public in and for
Harris County, T e x a s

Barbara Wright



EXHIBIT 8

70 1016
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C144263GENERAL WARRANTY DEED

DEED RECORDS

Vol 6037 Page 352

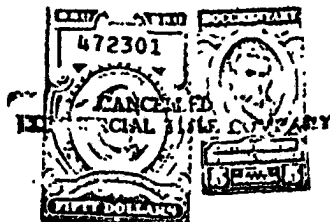
THE STATE OF TEXAS |
COUNTY OF HARRIS |

KNOW ALL MEN BY THESE PRESENTS:

730

THAT M. MICHAEL GORDON, a single man, and FRANK F. SPATA (the latter, not joined herein by his wife for the reason that the hereinafter conveyed property does not form or constitute any part of his business or residence homestead), of the County of Harris, State of Texas, (hereinafter called Grantors), for and in consideration of the sum of TEN (\$10.00) DOLLARS to them in hand paid by VIRGILL C. MCGINNES, TRUSTEE, (hereinafter called Grantee), the receipt and sufficiency of which is hereby acknowledged and confessed and the further consideration of the execution and delivery by Grantee of its one promissory note (sometimes referred to herein as "Indebtedness"), of even date, in the principal sum of FORTY THOUSAND AND NO/100 (\$40,000.00) DOLLARS, payable to the order of Grantors in quarter-annual installments of ONE THOUSAND (\$1,000.00) DOLLARS each, plus the interest accrued on the unpaid principal balance at the rate of six (6%) per cent per annum, the first of such installments of principal and interest to become due and payable on the 1st day of November, 1965, and a like installment to become due and payable on the 1st day of each and every succeeding calendar months of February, May, August and November thereafter until the full amount of principal and interest is paid, the whole of such note, if

036-27-0274



DEED RECORDS
VOLUME 6037 PAGE 353

036-27-0275

not sooner paid, being due and payable on or before the 1st day of August, 1972 A.D.; such note containing the usual accelerating maturity, past due interest and attorney's fees clauses.

Have GRANTED, SOLD and CONVEYED and by these presents do GRANT, SELL and CONVEY unto the Grantee, of the County of Harris, State of Texas, the following described real property, to-wit:

TWENTY (20) acres of land out of that certain 190.8 acre tract, in the J. T. Harrell Survey, Abstract 330, Harris County, Texas, and which 190.8 acre tract was conveyed by Edward Shields, et ux, to M. Michael Gordon, et al, by deed dated November 15, 1943, and recorded in Volume 1297, Page 16, of the Deed Records of Harris County, Texas, and which Twenty (20) acre tract is more particularly described as follows:

BEGINNING at a stake on the North Edge of Market Street Road right of way at the Southeast corner of the G. M. Farmer 80 Acre Tract and the Southwest corner of the said 190.8 acre tract;

THENCE North along the East line of said G. M. Farmer 80 Acre Tract to a 3/4" iron pipe set in the Northerly right of way line of State Highway No. 73, at 377 feet;

THENCE with a curve to the right along said right of way line, with a central angle of $21^{\circ} 12'$, and a radius of 1910 feet, a distance of 706.67 feet to end of curve;

THENCE South $62^{\circ} 55'$ East with said Northerly right of way line 931.17 feet to an iron pipe and the PLACE OF BEGINNING of the herein described Twenty (20) acre tract;

THENCE North $27^{\circ} 05'$ East 740.5 feet to an iron pipe for corner;

THENCE South $62^{\circ} 55'$ East 1425.75 feet to an iron pipe set in the West Bank of the San Jacinto River;

THENCE Southerly with the meanders of the West Bank of the San Jacinto River, South $45^{\circ} 55'$ West 81.85 feet;

DEED RECORDS
VOLUME 6137 PAGE 354

036-27-0276

THENCE South 64° 04' West 830.02 feet to an iron pipe set in the Northerly right of way line of State Highway No. 73.

THENCE North 62° 55' West with the Northerly right of way line of State Highway No. 73, 900 feet to the PLACE OF BEGINNING.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the Grantee, its successors, and assigns FOREVER. And Grantors do hereby bind themselves, their heirs, executors and administrators to WARRANT AND FOREVER DEFEND, all and singular, the premises unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

To secure the payment of the Indebtedness herein, the Vendor's Lien is retained upon the real property herein conveyed, as well as Superior Title reserved, until such note evidencing the Indebtedness is fully paid according to its face, tenor and effect when this deed shall become absolute, such Indebtedness being further and additionally secured in its payment by a Deed of Trust, with power of sale, this day executed and delivered by Grantee to O. F. HORN, Trustee, for the use of the holder, or holders, thereof.

This conveyance is made by Grantors and accepted by Grantee subject to all mineral reservations set forth in instruments recorded in the pertinent records of Harris

County, Texas and affecting the property herein conveyed.

EXECUTED at Houston, Texas, this 3d day of
August, 1965 A.D.

M. Michael Gordon
M. Michael Gordon

Frank F. Spata
Frank F. Spata

DEED RECORDS
Vol 60:37 Ind:355

202

036-27-0277

THE STATE OF TEXAS |
|
COUNTY OF HARRIS |

BEFORE ME, the undersigned authority, on this
day personally appeared M. MICHAEL GORDON and FRANK F.
SPATA, known to me to be the persons whose names are
subscribed to the foregoing instrument, and acknowledged
to me that they executed the same for the purposes and
consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3d
day of August, 1965 A.D.



Lucas M. Dugas
Notary Public in and for
Harris County, T e x a s

DEED RECORDS

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036-27-0278

STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me, and was
duly RECORDED, in the Volume and Page of the named
RECORDS of Harris County, Texas, as stated hereon by
me, on

AUG 18 1965



Peterson
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
Peterson
COUNTY CLERK
HARRIS COUNTY, TEXAS

AUG 18 10 15 AM 1965

M. MICHAEL GORDON, ET AL	TO	OLE PETERSON CONSTRUCTION COMPANY, INC.	GENERAL WARRANTY DEED	<i>Return to: S.S. & Clendon, Jr 2131 - First City National Bank, Building, Houston, Tex</i> M. MICHAEL GORDON ATTORNEY AT LAW SAN JACINTO BUILDING HOUSTON, TEXAS
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EXHIBIT 9

Form 663 U. S. TREAS. DEPARTMENT - INTERNAL REVENUE SERVICE
REV. 4-5-51 OFFICE OF FEDERAL TAX LIES UNDER INTERNAL REVENUE LAWS

DISTRICT Austin, Texas SERIAL NUMBER HO 5-1886 Heath

Pursuant to the provisions of Sections 4321, 4322, and 4323 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which, after demand for payment thereof, remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer.

NAME OF TAXPAYER

Ole Peterson Construction Co., Inc.
RESIDENCE OR PLACE OF BUSINESS

201 N. Ritchey, Pasadena, Texas 77502

CLASS OF TAX (Item Return Form No.) (a)	PERIOD ENDED (b)	ASSESSMENT DATE (c)	IDENTIFYING NUMBER (d)	UNPAID BALANCE OF ASSESSMENT (e)
941	63 06	8-13-63	74 1463252/	9,341.53
TOTAL				9,341.53

PLACE OF BIRTH

HARRIS COUNTY

WITNESS my hand at KATYHOON, TEXAS

the 18th day of August 19 65

DISTRICT DIRECTOR OF INTERNAL REVENUE

BY (Signature)

TITLE

B. L. PRINNEY

GEORGE STEPHENSON

NOTE: Certificate of officer authorized by law to make acknowledgments is not essential to the validity of Notice of Federal Tax Lien G.C.M. 26419, C.A. 1959-51, 135.

PART 1- To be retained by recording office

PAS 009707

Pursuant to the provisions of Sections 6021, 6022, and 6023 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue Laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the lien of said taxes, together with penalties, interest, and costs thereon may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer.

NAME OF TAXPAYER

Oie. Peterson Construction Co., Inc.
RESIDENCE OR PLACE OF BUSINESS

201 N. Rietzky, Pasadena, Texas 77502

CLASS OF TAX (Tax Return Form No.) (a)	PERIOD ENDED (b)	ASSESSMENT DATE (c)	IDENTIFYING NUMBER (d)	UNPAID BALANCE OF ASSESSMENT (e)
941	65 06	8-13-65	74 1493252	9,241.53

COPY

PLACE OF FILING

HARRIS COUNTY

FORM 9

9,241.53

WITNESS my hand at HOUSTON, TEXAS

on this

the 18th day of August, 1965

DISTRICT DIRECTOR OF INTERNAL REVENUE

BY (Signature)

TITLE

E. L. PHINNEY

CHIEF SUPERVISOR

NOTE: Certifications of officer authorized by law to take acknowledgment is not essential to the validity of notice of Federal Tax Lien G.C.M. 26419, C.A. 1960-51, 1201.

PART 1-Is not retained by recording office

PAS 009738

EXHIBIT 10

1 McGINNES INDUSTRIAL MAINTENANCE CORPORATION

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INTERVIEW OF GEORGE LOWERY

7

JUNE 25, 2008

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24 Transcribed by Barby D. Black, CSR

25 Transcription date: September 4, 2008

ABC COURT REPORTERS 214.303.0ABC (0222)



9076106

MIMC-HC076108

1 MR. WERNER: This is Bob Werner, and I'd the
2 individuals that are here to state their names.

3 MR. CEDILOTE: Marshall Cedilote, Texas
4 Commission on Environmental Quality.

5 MR. LOWERY: George Lowery.

6 MR. WERNER: And you're with who?

7 MR. LOWERY: (Indiscernible) Contractors,
8 Inc.

9 MR. WERNER: And you at one time worked
10 for ...

11 MR. LOWERY: For McGinnes Brothers.

12 MR. WERNER: Was it McGinnes Brothers or
13 McGinnes Industrial Maintenance Corporation?

14 MR. LOWERY: That was a long time ago. I was
15 either on McGinnes' payroll or McGinnes Industrial
16 Maintenance. I honestly don't recall.

17 MR. WERNER: And then Al.

18 MR. AXE: I'm Al Axe here representing
19 McGinnes Industrial Maintenance corporation.

20 MS. WALKER: Joan Walker with Waste
21 Management.

22 MR. WERNER: That's Waste Management of Texas
23 or Waste Management, Inc.?

24 MS. WALKER: Just Waste Management.

25 MR. WERNER: And I'm Bob Werner. I'm with

1 the EPA. And today is Wednesday, June 25th, and it's
2 approximately 3:30 or 3:20, yeah.

3 MALE VOICE: 3:20.

4 MR. WERNER: And everybody understands I have
5 a tape recorder on. Am I correct?

6 MALE VOICE: Correct.

7 MS. WALKER: Yes.

8 MR. WERNER: And, Mr. Lowery, **if** at any time
9 you would like me to turn this off for anything, I'll turn
10 it off. If something's unclear, let me know, and I'll turn
11 it off at that time.

12 I'm going to kind of go through some of the
13 things that we talked about before because these are notes
14 that I had made in College Station, and I want to be sure
15 that I did not make some misunderstandings. You'd
16 indicated you are seventy-one years of age now, right?

17 MR. LOWERY: That's correct.

18 MR. WERNER: And you're going to be
19 seventy-two in August of next year?

20 MR. LOWERY: That's correct.

21 MR. WERNER: What is --

22 MR. LOWERY: This year.

23 MR. WERNER: -- your birth date?

24 MR. LOWERY: August 6th, '36.

25 MR. WERNER: Okay. And at one time you'd

1 indicated you were a member of the initial three member
2 board of directors for McGinnes Industrial Maintenance
3 Company.

4 MR. LOWERY: That's correct.

5 MR. WERNER: Is this correct? Do you
6 remember the other two persons?

7 MR. LOWERY: It would be Mr. Virgil McGinnes,
8 I would think.

9 MR. WERNER: Okay. But Virgil McGinnes --

10 MR. LOWERY: Virgil McGinnes.

11 MR. WERNER: -- was one?

12 MR. LOWERY: Lawrence McGinnes.

13 MR. WERNER: Okay.

14 MR. LOWERY: Myself.

15 MR. WERNER: Okay. And are either of the
16 other two directors, as far as you know, are they still
17 alive?

18 MR. LOWERY: No. They're both deceased.

19 MR. WERNER: Both deceased. Okay.

20 MALE VOICE #1: I'm sorry. Did Roland
21 McGinnes have anything to do with the company?

22 MR. LOWERY: At a later date, I would -- yes.
23 I would say that Roland probably came on three to five
24 years after the inception of the company. He was
25 eventually made (indiscernible).

1 MALE VOICE #1: Do you know if he's still
2 living or is he deceased?

3 MR. LOWERY: I think Roland's still alive.

4 MALE VOICE #1: Okay.

5 MR. LOWERY: I saw him at a funeral. We'd
6 see each other at funerals. Three or four years ago, I saw
7 him.

8 MR. WERNER: Did he ever mention where he was
9 living now?

10 MR. LOWERY: As far as I know, he always
11 lived down around Hitchcock.

12 MR. WERNER: And the -- do you remember
13 approximately when it was that the McGinnes Industrial
14 Maintenance Company came into existence?

15 MR. LOWERY: 1965.

16 MR. WERNER: '65?

17 MR. LOWERY: I went to work for them in 1965.

18 MR. WERNER: Okay. And when you went to work
19 with them, in what capacity were you at that time?

20 MR. LOWERY: Well, I was actually hired by
21 McGinnes Brothers to be their office manager, accountant.
22 That sort of overlapped. McGinnes Industrial Corporation
23 and McGinnes Equipment Corporation, two different entities.

24 MR. WERNER: Okay. There was an entity
25 called McGinnes Industrial of Houston. Do you recognize

1 that name?

2 MR. LOWERY: It was -- not to my knowledge.

3 I mean, it was chartered in Texas, but I've never heard it
4 mentioned McGinnes Industrial -- McGinnes Industrial
5 Maintenance Corporation is all I've ever called it.

6 MR. WERNER: McGinnes Industrial Maintenance
7 Corporation or Company?

8 MR. LOWERY: I think corporation. McGinnes
9 Industrial Maintenance Corporation.

10 MR. WERNER: All right. It's registered with
11 the state with -- as company.

12 MR. LOWERY: It may have been --

13 MR. WERNER: Nevertheless, it is a
14 corporation recognized by the state.

15 MR. LOWERY: I always -- I always referred to
16 it as a corporation.

17 MR. WERNER: And one question as McGinnes,
18 the name. It's your understanding it's spelled
19 M-c-g-i-n-n-e-s or M-c-g-i-n-n-i-s?

20 MR. LOWERY: E-s.

21 MR. WERNER: E-s is the correct spelling.

22 MALE VOICE: (Indiscernible)

23 MR. WERNER: Okay. Very good. You had
24 indicated that McGinnes Industrial or Mr. McGinnes had an
25 exclusive contract with Champion Paper Mill in Pasadena to

1 haul sludge from the paper mill to other locations. Is
2 this correct?

3 MR. LOWERY: That's correct. McGinnes
4 Industrial Maintenance had that -- Corporation.

5 MR. WERNER: Okay.

6 MR. LOWERY: I mean had that contract.

7 MR. WERNER: You've mentioned a Mr. Jim
8 Henderson with Champion that helped Mr. McGinnes put the
9 contract into effect.

10 MR. LOWERY: They worked together. Jim
11 Henderson was the plant manager at that time. In the mid
12 '60s, he was the plant manager for Champion.

13 MR. WERNER: Champion, okay. Do you know if
14 McGinnes Industrial or Mr. McGinnes had been taking any of
15 the sludge from Champion prior to the mid '60s or do you
16 think that initiated everything as far as the hauling
17 contract's concerned?

18 MR. LOWERY: I don't really know. I came
19 aboard in August of '65; and at that point in time, I don't
20 think they had been hauling any sludge. There was a
21 company that was in Pasadena that had a con -- as a matter
22 of fact, had a contract with Champion prior to McGinnes,
23 and then he hauled industrial sludge.

24 It was called Ole Peterson Corporation. It's
25 not existent now. Ole Peterson Maintenance Corporation,

1 and they were owned by a real shady character. I'm not
2 going to mention his name. He's deceased and been
3 deceased. But they had that contract basically doing the
4 same thing before McGinnes Industrial came on the scene.

5 MR. WERNER: Do you have any idea of where
6 they would haul that mill waste?

7 MR. LOWERY: I have no idea.

8 MR. WERNER: Okay. So whatever waste they
9 might have taken from Champion, you have no knowledge --

10 MR. LOWERY: No, sir.

11 MR. WERNER: -- of where it might have gone
12 to?

13 MR. LOWERY: I'm not even sure they were, but
14 I know that was -- McGinnes' interest into Champion -- I
15 mean to the paper plant was through Ole Peterson.

16 MR. WERNER: I don't understand.

17 MR. LOWERY: It's O-l-e, P-e-t-t-e-r- --
18 P-e-t-e-r-s-o-n. He was a guy that was just a wheeler
19 dealer out in Pasadena that put -- he put together packages
20 here and packages there, you know.

21 He sort of obtained this contract and had it
22 rolling. It was -- like I say, at that point in time, I,
23 you know, don't know whether they were handling it all.

24 MR. WERNER: So Mr. McGinnes felt that they
25 could more properly dispose of the sludge under this

1 arrangement?

2 MR. LOWERY: I suppose so.

3 MR. WERNER: Okay. And do you happen to know
4 if this Mr. Jim Henderson is still alive or where he might
5 be now?

6 MR. LOWERY: I feel that Mr. Henderson's got
7 to be deceased because he -- when I was a young man, he was
8 an old man in my eyes. He was probably my age or a little
9 bit older. But I feel like Mr. Henderson's got to be
10 deceased.

11 MR. WERNER: Okay. Did he live in the
12 Pasadena area?

13 MR. LOWERY: I have no idea. I would think
14 he would, you know, because that's where he worked at.

15 MR. WERNER: But he was the plant manager,
16 and that's really the only thing you know about him. Is
17 that correct?

18 MR. LOWERY: Except he's a fine man.

19 MR. WERNER: Okay. Very good.

20 MR. LOWERY: A gentleman.

21 MR. WERNER: You indicated before the
22 contract that Champion had with McGinnes Industrial
23 Maintenance was from '65 till the early '70s, when Gulf
24 Coast Waste Disposal came into existence. Is that correct?

25 MR. LOWERY: Correct. '70 or '71.

1 MR. WERNER: Okay. I believe Gulf Coast was
2 recognized as an entity in '69. Was it '69 that McGinnes
3 worked with Gulf Coast or is this not until '70 or '71?

4 MR. LOWERY: '71 sticks in my mind real
5 strongly. We terminated -- since terminated the contract
6 with Champion and got a new contract with Gulf Coast Waste
7 Disposal Authority.

8 MR. WERNER: Okay. The contract with
9 McGinnes and Champion was terminated, and then it became
10 between Champion and Gulf Coast --

11 MR. LOWERY: No. Between McGinnes and Gulf
12 Coast. In other words, I don't know what the -- the
13 mechanics of it was, but our contract with Champion was
14 transferred, and our contract with Gulf Coast Waste
15 Disposal Authority began.

16 MR. WERNER: So McGinnes was actually doing
17 the work, you might say, but the contract was between Gulf
18 Coast and Champion?

19 MR. LOWERY: No, sir. The way I understood
20 it was that the new contract in '70 or '71 was that it was
21 a contract between McGinnes Industrial Maintenance
22 Corporation and Gulf Coast Waste Disposal Authority; and as
23 I understand it, Gulf Coast had taken over the disposal.

24 I don't know what the arrangement was between
25 Gulf Coast and Champion. They may have had a contract.

1 I'm sure they probably did. But our contract, to the best
2 of my memory, was between us and Gulf Coast Waste Disposal
3 Authority.

4 MR. WERNER: The contract was between
5 McGinnes and Gulf Coast.

6 MR. LOWERY: Gulf Coast.

7 MR. WERNER: And what was the basis for
8 McGinnes Industrial to continue moving waste from Champion?

9 MR. LOWERY: Because Gulf Coast took over
10 that facility.

11 MR. WERNER: They took over the Champion --

12 MR. LOWERY: That's the way I understand it.
13 They took over that facility. In other words, I think Gulf
14 Coast came on the scene and began to kind of just gobble
15 up, you know, the different entities and everything.

16 MR. WERNER: Is there a possibility that Gulf
17 Coast was actually operating in the Washburn Tunnel
18 facility? Does that name --

19 MR. LOWERY: Well, I don't think they
20 operated all -- you know, Champion was still, you know,
21 distributing the product or by-product, waste product into
22 the pits in some way.

23 It was the jurisdiction of Gulf Coast Waste
24 Disposal. I'm not 100 percent sure, but I'm -- I'm almost
25 certain that our contract -- when I left there in 1977, it

1 was with Gulf Coast Waste Disposal Authority.

2 MR. WERNER: But McGinnes was actually doing
3 the hauling, but the contract was between McGinnes and Gulf
4 Coast. Is that correct?

5 MR. LOWERY: Somewhere along '70, '71, it
6 was -- it was all changed.

7 MR. WERNER: Okay. And I know I'm being
8 redundant.

9 MR. LOWERY: That's okay. I mean, I feel
10 pretty certain about that, that it was all changed. Gulf
11 Coast actually began to come on. And I'm going by memory,
12 but that lagoon there at Champion sort of became an
13 accumulation point for other industrial (indiscernible) .

14 I don't know exactly how it was all done and
15 everything, but it sort of became an accumulation point of
16 material. I didn't get into the workings of how Gulf Coast
17 was put together, but I always considered they were sort of
18 a state-sponsored entity or something. Is that true?

19 MR. WERNER: Yes, it is. Yes, it is. Before
20 Gulf Coast came into existence, the contract was strictly
21 between Champion and McGinnes Maintenance Industrial
22 Company. Where did McGinnes actually take the waste from
23 Champion to?

24 MR. LOWERY: They took it down to the ship
25 channel, across West Bay, and up (indiscernible) to their

1 disposal site.

2 MR. WERNER: Okay. Now, is that an area
3 that's just on the north side of the I-10 bridge?

4 MR. LOWERY: No, no. This is in Galveston
5 County. This is -- it's out in Galveston County where they
6 had built their lagoons and everything, where they had
7 their storage tanks, storage ponds on the coastal line.

8 MR. WERNER: Oh, this is down near --

9 MR. LOWERY: Yeah. I think it's -- yeah.
10 It's near Hitchcock.

11 MR. WERNER: Okay. When they first started
12 though before they had those built, did they temporarily
13 for a short period of time haul waste from the Champion
14 facility to that location just on the north side of the
15 I-10 bridge where it crosses over to San Jacinto bridge?

16 MR. LOWERY: (Indiscernible) piece of
17 property Mr. McGinnes bought. I think he said he bought as
18 a trustee.

19 MR. WERNER: Right.

20 MR. LOWERY: I don't quite understand that.
21 But I think McGinnes went out and put some -- some pylons
22 down and made what are called dolphins to moor your barges
23 because they used Southwest Barge Fleet which is right
24 across I-10. They used them for all their repairs.

25 McGinnes would take their barges down there

1 because they had -- they were in such bad shape. They
2 would take them down there and moor them there. This
3 property is on the other side of -- I guess the north side
4 of I-10.

5 MR. WERNER: Right, right.

6 MR. LOWERY: And they would, you know, moor
7 the barges there until Southwest Barge Fleet could repair
8 them and everything, you know.

9 MR. WERNER: Okay. I'm going back on some
10 notes that I made about the contract. You'd indicated
11 that -- when you said that he, for a very temporary short
12 period of time until the pits in the Galveston area near
13 Hitchcock were completed, they were taking the sludge from
14 Champion Paper Mill to that location just north of the I-10
15 bridge, on the same property that Mr. McGinnes as trustee
16 had purchased and had dumped waste there for a period -- a
17 short period of time. Is that correct?

18 MR. LOWERY: Well, I -- I never saw them do
19 this. Like I say, they were taking barges down there and
20 mooring them, you know. And how they unloaded, I don't
21 know. Like I say, these dredges down in Galveston County
22 (indiscernible) . But as far as, you know, unloading them
23 on that property (indiscernible).

24 MR. WERNER: I remember when I talked with
25 you before, you'd indicated that you could see the piles of

1 sludge that were -- that had been deposited at that
2 location.

3 MR. LOWERY: I said that. I know that you
4 can see the levees.

5 MR. WERNER: Right.

6 MR. LOWERY: For years, you could see the
7 levee above -- you know, still above the water, and then
8 finally it just -- it subsided or disappeared.

9 MR. LOWERY: Right. You'd indicated --

10 MR. LOWERY: But I don't -- I don't think
11 I've ever seen piles of sludge out there.

12 MR. WERNER: You'd indicated -- I'll rephrase
13 that question. You'd indicated that you could see the
14 levees --

15 MR. LOWERY: The levees --

16 MR. WERNER: -- right across. But you'd also
17 indicated that for a short period of time, they had dumped
18 sludge from Champion in that location until the pits were
19 ready in the Galveston areas, but that was just for a short
20 period of time. Was that correct?

21 MR. LOWERY: Well, I don't know. I mean,
22 like I said, all I ever saw was when they -- the barges
23 there waiting on getting them repaired and everything.

24 MR. WERNER: If the barges were being brought
25 to that location from Champion, what could have possibly

1 been done with the sludge other than dumping it in that
2 location?

3 MR. LOWERY: I don't know. Like I said, this
4 is just about the time I came onboard with the company.

5 MR. WERNER: Right.

6 MR. LOWERY: And the first trip I ever made
7 and actually observed the site was when we went down to the
8 new site at Galveston and -- in preparation.

9 It goes kind of back to where Ole Peterston
10 Corporation was handling this before McGinnes took it, and
11 I don't know -- that's a possibility that's where he took
12 his. I do not know the locations of his, but he was doing
13 the same -- the same process of eliminating this material.

14 MR. WERNER: Going back to -- I'm being kind
15 of redundant, but I want to be clear.

16 MR. LOWERY: That's all right.

17 MR. WERNER: You started in 1965, correct?

18 MR. LOWERY: Yeah.

19 MR. WERNER: The contract with Champion
20 Paper -- between Champion Paper and McGinnes, was that in
21 '65 or was that before you --

22 MR. LOWERY: No. It was sometime after -- I
23 came and worked for McGiness, I think, in August of '65.
24 When I came onboard, Ole Peterson Corporation and Plant
25 Maintenance Corporation were a couple of companies that

1 stayed in trouble all the time. And the best I remember,
2 they were doing -- there were some things going on, and
3 Mr. Henderson wanted them out of there.

4 McGinnes had done some work for Champion over
5 the years, and it was just sort of a natural, you know,
6 entree into doing the work. But the material -- when I
7 came to work for McGinnes, Ole Peterson was still handling
8 the product.

9 Bobby Burns at McGinnes Equipment
10 (indiscernible) . He put out these lagoons and stirred all
11 this liquid up so he could pump it out. This material was
12 being removed before I came onboard. For how long, I don't
13 know.

14 MR. WERNER: Going back again, when that
15 contract was signed by Mr. McGinnes and Mr. Henderson with
16 Champion, at that time, was the -- the material that was
17 being taken from Champion put in barges that belonged to
18 Mr. McGinnes or McGinnes Industrial?

19 MR. LOWERY: Ask me that again.

20 MR. WERNER: Okay. At the time the contract
21 was initiated between Champion and McGinnes Industrial, is
22 that the time that materials started to get picked up in
23 the barges that belonged to McGinnes?

24 MR. LOWERY: I want to say that that's my
25 memory. Whenever I came onboard, Bobby -- yeah. Bobby

1 Burns is his name. Ole Peterson, he was handling the
2 sludge. Do you have a date when McGinnes entered into that
3 contract with Champion? I don't recall.

4 MR. WERNER: No. No, we don't.

5 MR. LOWERY: I don't think probably six
6 months after -- I came in August of '65. I'm going to say
7 it was probably six months after I was working that
8 McGinnes entered into the contract with Champion.

9 MR. WERNER: Okay.

10 MR. LOWERY: And during this period of time
11 that the sludge was being removed by Ole Peterson, Plant
12 Maintenance Corporation was kind of an associated company
13 in everything.

14 MR. WERNER: Was that being --

15 MR. LOWERY: It was being, you know -- I
16 honestly don't know enough because I was an accountant, and
17 I kind of had to baby-sit Plant Maintenance Corporation and
18 Ole Peterson just to keep the IRS from locking -- closing
19 the doors and everything.

20 They were trying to keep the contract alive
21 till McGinnes could get a contract. It was probably six
22 months after I came onboard that McGinnes had entered into
23 the contract with Champion.

24 MR. WERNER: You said before that McGinnes
25 had four barges. Is this correct?

1 MR. LOWERY: Yes, four or five.

2 MR. WERNER: Okay. They had actually maybe
3 five barges?

4 MR. LOWERY: I'm going from memory now. We
5 rented four for years and put them in the yards. I think
6 we finally bought them.

7 MR. WERNER: Of the four or possibly five
8 barges, did they always keep two barges at the Champion
9 dock to haul sludge in?

10 MR. LOWERY: That was the game plan because
11 once it would get full, they -- they got to be
12 (indiscernible). So that was the game plan they had so
13 they could -- they had some moorings down there that used a
14 winch to pull the barges. They'd pull one out and put
15 another one in place and everything.

16 MR. WERNER: Now, initially when that
17 contract was being put in place and sludge was being taken
18 from Champion and put into barges that belonged to or being
19 leased by --

20 MR. LOWERY: McGinnes.

21 MR. WERNER: -- McGinnes, were those barges
22 ever moved to that location of the I-10 bridge and the San
23 Jacinto River?

24 MR. LOWERY: Yes, because, like I said,
25 Southwest Barge Fleet was right across I-10 where McGinnes

1 bought that land. And so there would be barges waiting to
2 get in line to get repaired over at Southwest Barge.

3 MR. WERNER: But the barges were being filled
4 at Champion and moved to that location. Wouldn't it be
5 reasonable to assume that they'd have to be emptied before
6 they would be taken back to Champion?

7 MR. LOWERY: They probably would be emptied
8 before they'd be taken to -- to that piece of property I'm
9 talking about. I would say they would be emptied because
10 they would be taken to be repaired, you know.

11 MR. WERNER: Okay. So am I correct in saying
12 that you physically did not see the barges of Champion
13 being unloaded at that location?

14 MR. LOWERY: Yes.

15 MR. WERNER: But I am correct in saying that
16 you know that the barges did go from Champion Paper Mill to
17 that location?

18 MR. LOWERY: I would -- I would think. Like
19 I said, I wasn't involved in the mechanics of the company.
20 But I would think the barges would have -- at this point in
21 time were probably going down to Galveston and being
22 emptied and brought back.

23 If they're bringing them down and getting
24 them repaired, they're going to be emptied. I mean,
25 they're going to be emptied before they get there.

1 MR. WERNER: My notes indicate that you had
2 said the barges that McGinnes had were being moved to that
3 location north of the I-10 bridge, the property that was
4 purchased by McGinnes in the name of McGinnes Trustee, and
5 they would be unloaded there only for a short period of
6 time until the area down in Galveston was ready.

7 MR. LOWERY: If I said that, I don't really
8 remember.

9 MR. WERNER: Okay.

10 MR. LOWERY: The only thing I do know
11 (indiscernible) the barges we had were in pretty shape. We
12 were always having to go down to Southwest Barge Fleet, and
13 they'd put -- put them in their fleet and work on them.

14 So I know he bought that property across the
15 road, and we would have, you know, a couple of barges
16 there, you know, waiting to be repaired. But normally the
17 barges were pumped out, you know.

18 They were emptied when they were taken there.
19 They'd take them in and put them on a ramp and pull them
20 out of the water and repair them, you know.

21 MR. WERNER: If -- do you think it's
22 reasonable to assume if you can find waste at that location
23 at the same time the waste came from Champion, it is
24 reasonable to assume that there must have been some of
25 those barges that were unloaded at that location?

1 MR. LOWERY: I would say that's reasonable.

2 MR. WERNER: Did you ever have an opportunity
3 to smell any of the sludge that was picked up by -- from
4 Champion Paper Company?

5 MR. LOWERY: I've been there, yeah. At
6 Champion, it stunk. I mean, it -- the product stunk.

7 MR. WERNER: Well, how -- how would you
8 describe the smell of this sludge?

9 MR. LOWERY: I don't know how it would -- it
10 was bad enough around -- of course, you know, the big tanks
11 were all built -- all built with an EPA discharge permit
12 and everything, but we had people around that area who
13 fussed about the smell.

14 So we took -- McGinnes put hay bales and
15 spread them all around the top of the levees. We actually
16 took about five gallons -- 55-gallon drums of this citrus
17 smelly concentrate, and they would go in there and, you
18 know, make it smell wonderful, you know.

19 MR. WERNER: This was the area down in
20 Galveston?

21 MR. LOWERY: Yeah, in Galveston.

22 MR. WERNER: Did they ever do that at the
23 property that was under the name of McGinnes Trustee?

24 MR. LOWERY: I don't know.

25 MR. WERNER: Okay. Do you remember when it

1 was that the pits in Galveston were initially constructed
2 or ready to receive material?

3 MR. LOWERY: No, and I don't think --
4 somebody, whoever, you know, owns them ought to have that
5 information, you know, because it was all done through --
6 Brown & Root was -- we engaged Brown & Root to build the
7 lagoons according to the requirements set out by the EPA.

8 I know Mr. McGinnes and a guy named Bob
9 Milweed with Brown & Root would go to Austin every two or
10 three months and prepare a report, I guess, for the EPA at
11 that time or the Texas -- Texas Water Quality Board. I
12 don't know what it is.

13 But they would go up there, and, you know, we
14 had one fixed discharge point that was permitted after
15 everything settled for a while and everything.

16 MR. WERNER: Okay. I'm going by my notes.
17 McGinnes Corporation was chartered on August 25 of 1965,
18 and the deeds show that Mr. McGinnes purchased a certain
19 twenty acres -- a 20-acre parcel of land located north of
20 the I-10 Highway bridge.

21 MR. LOWERY: Say that -- say that again.

22 MR. WERNER: The -- the deed was executed on
23 August 3rd, 1965.

24 MR. LOWERY: On the -- on the land?

25 MR. WERNER: Yes. And, of course, this was

1 just a comment; but it seemed that because both events
2 occurred during the same time, it might be reasonable to
3 assume that it was purchased for the purpose of temporarily
4 disposing the waste that was picked up from Champion.

5 Again, you've said you've not seen it, but
6 that was just reasonable to assume. Concerning the
7 ownership of the property, was that actually an asset of
8 the corporation, of McGinnes Industrial Corporation?

9 MR. LOWERY: I believe it was.

10 MR. WERNER: You believe it was. Now, did --
11 were any improvements made there that could be depreciated?
12 Do you remember that?

13 MR. LOWERY: I don't think (indiscernible).
14 The bulkheads -- it wasn't really bulkheads. It was a
15 cluster of pylons. But other than that, I don't think
16 there were any improvements.

17 MR. WERNER: The pylons you're talking about
18 that you would actually be able to tie up a barge to, is
19 that correct?

20 MR. LOWERY: Yes.

21 MR. WERNER: Do you remember if any dredging
22 had ever been done on that property that's north of the
23 I-10 bridge that Mr. Henderson had purchased? Mr. --

24 MR. LOWERY: McGinnes.

25 MR. WERNER: -- Mr. McGinnes had purchased?

1 If any pits had ever been constructed there.

2 MR. LOWERY: There were levees put up. Like
3 I said, you could see them from the highway over there.

4 MR. WERNER: Okay. Do you know who
5 constructed those levees?

6 MR. LOWERY: I would think probably
7 Mr. McGinnes did.

8 MR. WERNER: Do you have any idea of why
9 levees would be constructed other than to put waste into
10 them?

11 MR. LOWERY: Well, if I would have them, what
12 I would have attempted to have done -- knowing Mr.
13 McGinnes, he attempted to do it to try to reclaim the land.

14 As a matter of fact, all -- right just to the
15 west, there were acres and acres and acres of land that was
16 reclaimed by -- of highway debris and anything else to be
17 reclaimed immediately west of that property there,
18 reclaimed acres of land by just pushing, you know, dirt
19 from different highway jobs (indiscernible) out there and
20 build it up.

21 And the only thing -- you can build a levee
22 around it and pump it out, pump the water out, and then try
23 to backfill it. It'll reclaim the land. Like I said, just
24 knowing his -- his kind of thinking, I mean, that's what I
25 would do because that could be valuable land at that

1 particular location.

2 MR. WERNER: Would it seem reasonable to you
3 that if the kind of sludge that came from Champion Paper
4 Company was found within the boundaries of those levees on
5 the property just north of I-10 that Mr. McGinnes had
6 purchased was the same type of waste that came from
7 Champion? Would it seem reasonable to assume that McGinnes
8 Industrial Maintenance Company might have dumped some of
9 the same waste in those pits?

10 MR. LOWERY: Yes.

11 MR. WERNER: But, again, you've not seen it
12 yourself?

13 MR. LOWERY: No, sir.

14 MR. WERNER: Okay.

15 MR. LOWERY: And you said a while ago I said
16 I saw (indiscernible) above the water. I don't think I
17 ever said that.

18 MR. WERNER: No, you did not.

19 MR. LOWERY: I saw -- I saw the levees down
20 there, but I didn't know --

21 MR. WERNER: Levees.

22 MR. LOWERY: -- what they were up to.

23 MR. WERNER: You specifically said that you
24 had not actually witnessed personally yourself.

25 MR. LOWERY: And the nature of this product

1 in the old pits down at (indiscernible) which is acres and
2 acres and acres. You probably (indiscernible). I've seen
3 Lawrence McGinnes drink water out of it on TV just to show
4 everybody that, you know, ducks can live there. It's
5 environmentally sound.

6 But the nature of that material, it -- it
7 settles out, and you've got rainwater -- you always have a
8 foot or two of rainwater on top of the water. You won't
9 see the sludge.

10 MR. WERNER: The property that is north of
11 the I-10 bridge, the property that McGinnes had purchased
12 as McGinnes Trustee, are you aware of any other company
13 that had ever dumped or tossed any material on that site?

14 MR. LOWERY: No, sir, not -- in fact, I could
15 only speculate. Like I said, I don't know where Ole
16 Peterson -- but I know they had the contract. They were
17 removing the sludge prior to my coming to work for the
18 company.

19 And I don't think probably four or five
20 months after I came to work for the company because the
21 fact is that Mr. McGinnes was trying to keep them afloat
22 till he could get the contract. What I did -- I went over
23 there, and literally the IRS was shutting their doors and
24 everything. I was so (indiscernible) with all of them.

25 When I first worked at McGinnes, they had

1 been hauling the sludge. How long, how many years, how
2 many months, I don't know. But they were still active when
3 I first went to work for McGinnes Brothers.

4 MR. WERNER: Is there a possibility that that
5 company could have hauled waste from Champion and deposited
6 that on the same piece of property that McGinnes Industrial
7 Maintenance Company or McGinnes Trustee became the owner?

8 MR. LOWERY: I have no idea. Like I say, if
9 there was -- if they were removing it, then it was going
10 somewhere.

11 MR. WERNER: Someplace. Okay.

12 MR. LOWERY: He had a contract. Ole Peterson
13 had a contract with Champion.

14 MR. WERNER: Okay. Do you have any idea of
15 how long before 1965 he had a contract?

16 MR. LOWERY: No, sir.

17 MR. WERNER: And Brown & Root, you said, had
18 done the actual construction of the levees in the Galveston
19 area.

20 MR. LOWERY: The engineering. McGinnes did
21 all the -- McGinnes Brothers did all the construction on
22 the levees.

23 MR. LOWERY: So McGinnes Brothers, if they
24 built the levees there in the Galveston area, they possibly
25 could have built the same levees on the property that

1 Mr. McGinnes had purchased.

2 MR. LOWERY: (Indiscernible)

3 MR. WERNER: Is there a probability of those
4 levees that were on the property that McGinnes owned just
5 north of the I-10 bridge, is it possible those levees were
6 there before Mr. McGinnes had purchased the property?

7 MR. LOWERY: I have no idea.

8 MR. WERNER: But if the aerial photographs
9 show there were no levees, it's safe to assume that
10 McGinnes Brothers had built the levees. Would that be
11 reasonable?

12 MR. LOWERY: That's the grounds for them
13 buying it. It's obvious that somebody put them up, you
14 know. Like I said, Mr. McGinnes, he was a pro at making
15 money. (Indiscernible) and Mr. McGinnes would have bought
16 this land because he could get it for nothing.

17 He's the kind of guy that would put a levee
18 around it. You see signs all the time, fill
19 (indiscernible) stuff like that.

20 Like I say, just to the west of it, literally
21 acres of that marshland and all that area were filled in.
22 You probably couldn't do it today with all the rules and
23 regulations. Back then, you could.

24 MR. WERNER: Again, I'm being redundant. But
25 if you've got the levees, and within the levees, the same

1 kind of waste is found there as the same kind of waste
2 material that would come from Champion, it's safe to assume
3 that somebody dumped Champion waste at that location?

4 MR. LOWERY: Yes.

5 MR. WERNER: I have a picture I'd like to
6 show you. Now, this is a picture -- and I can't give you
7 the date. I don't know. But this is a picture of the area
8 down close to Hitchcock --

9 MR. LOWERY: Uh-huh.

10 MR. WERNER: -- where the pits were
11 constructed on the property that McGinnes Industrial
12 Maintenance Company was taking waste from Champion to. Do
13 you recognize any of these features?

14 MR. LOWERY: Of course that's (indiscernible)
15 canal here, but the discharge point -- the first pit --
16 since I left there, we had began to, you know, work our way
17 to the inlets here. But when I -- I'd say this is probably
18 maybe the first ditch right over there where the original
19 discharge formed, but I'm not sure on that.

20 MR. WERNER: Okay. So this is -- this is a
21 canal coming in. You're saying you believe these were on
22 the right side as you're going in.

23 MR. LOWERY: Yes, sir.

24 MR. WERNER: Is this correct?

25 MR. LOWERY: I think they were.

1 MR. WERNER: Okay.

2 MR. LOWERY: And we had a dredge sitting here
3 that dredged the material out.

4 MR. WERNER: And during the time that you
5 were -- when did you say you left?

6 MR. LOWERY: ,77 •

7 MR. WERNER: ,77 • Okay. In 1977. When was
8 the last time that you actually visited this location in
9 Galveston?

10 MR. LOWERY: I visited -- I can't remember
11 when we first opened the up. I visited when we first
12 started down there. That was probably, goodness gracious,
13 when -- do you have the date they were building them? Do
14 you have anything on that? Probably '68, '69, '70,
15 somewhere in there.

16 MR. WERNER: I have an article that I picked
17 up from the local newspapers, and this indicates -- I'm
18 just going to read this and correct me if there's something
19 you don't understand.

20 The Hitchcock City Commission passed on
21 second meeting Friday night -- this article is dated
22 December 30 of 1967, and it says the Hitchcock City
23 Commission passed on the second meeting Friday night an
24 ordinance annexing another section of land south of town,
25 completely taking the area now being used as waste storage

1 pits.

2 So when they say, "Now being used as waste
3 storage pits," does it mean reasonable to assume that it's
4 ongoing?

5 MR. LOWERY: Yes, sir.

6 MR. WERNER: This paves the way for an
7 ordinance regulating what can and cannot be stored in the
8 City of Hitchcock. The annexed strip includes the land
9 extending from out into the bay inland, taking in a good
10 part of Carraca --

11 MR. LOWERY: Carraca.

12 MR. WERNER: -- Carraca Lake and hitting on
13 the edge of Carraca Bayou, extending back into West Bay.
14 The storage pits are being used by McGinnes Industrial
15 Maintenance Company of Houston. Again, you don't --

16 MR. LOWERY: They're just -- they're just
17 associating us with Houston, but we were in Houston. I've
18 never -- I've never heard -- I referred to it as McGinnes
19 Industrial Maintenance

20 MR. WERNER: Okay.

21 MR. LOWERY: I always thought it was a
22 corporation.

23 MR. WERNER: Well, you're correct. It is a
24 corporation. As a storage unit for water -- oh, paper
25 mill. The company is under contract with Champion Paper

1 Company, dash, (indiscernible) of Houston. The area has
2 been in pollution controversy for some time.

3 McGinnes says the waste is stored in pits and
4 will not pollute the water in the area. The pits were
5 filled well over a year ago. Okay. So if this paper is
6 dated September -- December 30th of '67, that would
7 indicate at least over twelve months.

8 MR. LOWERY: Okay.

9 MR. WERNER: So that'd be sometime in '66.

10 MR. LOWERY: Well, initially before we ever
11 put the first piece of equipment on the property, I went
12 down with Mr. Kimball. He's dead now. Mr. Kimball -- and
13 with -- that's before McGinnes ever came on the scene.

14 He would -- and with Mr. McGinnes. He had a
15 little boat (indiscernible). We all tried it out. We went
16 out there and just sort of got out and kind of walked
17 around and looked at everything.

18 Maybe Bob Milweed of Brown & Root was us.
19 And then beyond that, I made a couple of trips down over
20 the years on our tugboat. We had a tugboat, Kingfisher.
21 One of the guys on the boat was a friend of mine. We
22 actually grew up together.

23 So I would make the rounds with the tugboat
24 just to visit with him and get a good meal. And we'd go
25 down there, and I saw it a few times. But, you know, it's

1 not something -- it's not too much to look at.

2 MR. WERNER: Did Mr. McGinnes ever make any
3 mention of the fact that he might be involved in the
4 ownership of that property or did you just assumed that it
5 was his property to begin with? Do you have any knowledge
6 of the ownership of the property? Again, we're talking
7 about the Galveston property.

8 MR. LOWERY: Yeah.

9 MR. WERNER: The property north of I-10.

10 MR. LOWERY: I'm thinking it was all -- this
11 property was all tied to Howe's Bayou Ranch.

12 MR. WERNER: Okay.

13 MR. LOWERY: Which Mr. McGinnes had an
14 interest in.

15 MR. WERNER: Okay. So you're aware that he
16 did have some right to actually put this facility in there?

17 MR. LOWERY: Uh-huh.

18 MR. WERNER: Okay.

19 MR. LOWERY: And actually that's from my
20 memory again, but I think that -- well, I know MIMC,
21 McGinnes Industrial, paid, I think, Howe's Bayou Ranch
22 royalties.

23 MR. WERNER: Was it royalties or would it be
24 rent?

25 MR. LOWERY: Well, it was -- I think it was

1 based on cubic yards. I'm not sure exactly. But I was
2 thinking it was royalties, some -- some reached agreement
3 between McGinnes Industrial Maintenance because they were
4 the partner with Howe's Bayou Ranch.

5 MR. WERNER: Okay. Going back again on the
6 property that's north of the I-10 bridge, if we can see
7 from this newspaper -- and, again, I'm not trying to this
8 paper is something we can rely on because a reporter only
9 knows what he's told.

10 But if this is indicating that this was built
11 at least the year before -- this is dated December
12 of --

13 MR. LOWERY: '66.

14 MR. WERNER: -- '67. That means the pits in
15 the Howe's Bayou area were filled December of '66 or
16 sometime before. Now, we've got a period of time between
17 1965, when Mr. McGinnes acquired the property north of the
18 I-10 bridge --

19 MR. LOWERY: Uh-huh.

20 MR. WERNER: -- and until the first pit was
21 constructed. During that time period, McGinnes Industrial
22 Maintenance Corporation, Company, was hauling waste from
23 Champion. Is this correct?

24 MR. LOWERY: That's correct, when they
25 entered into the contract. I don't know the first date

1 they started hauling material, you know, but ...

2 MR. WERNER: So, again, it seems reasonable
3 to assume that if these pits were not constructed until
4 sometime late in '69 and --

5 MR. LOWERY: '67.

6 MR. WERNER: Correct, '66. Yeah. Sometime
7 between '66, the end of '66 and between '65, when
8 Mr. McGinnes acquired the property, there's a high
9 likelihood that the type of waste that came from Champion
10 that's been found on that site actually was brought to the
11 site by McGinnes Industrial. Is that reasonable to assume?

12 MR. LOWERY: It could very well be.

13 MR. WERNER: Again, since you've not seen it,
14 you don't know, but that's the assumption. But if the
15 sludge is there, it got there somehow.

16 MR. LOWERY: Uh-huh.

17 MR. WERNER: Is this correct to say?

18 MR. LOWERY: Yes.

19 MR. WERNER: And if we can show pictures that
20 there were no levees on that property before
21 Mr. McGinnes or McGinnes Industrial acquired the property,
22 it's probably reasonable to assume that that sludge could
23 not have been put into those -- those levee areas.

24 Again, that seems reasonable to assume.
25 That's an assumption. I think you can see what I'm trying

1 to getting at.

2 MALE VOICE: (Indiscernible)

3 MR. WERNER: That's true. Well, I think what
4 is of interest -- and, again, this is all recorded. But
5 what's of interest, even if you did not physically see
6 sludge from Champion being put into those areas, if the
7 sludge was put into those areas after McGinnes Industrial
8 Maintenance Company acquired that property, it really is
9 immaterial who put it there by certain law.

10 It's kind of a catch twenty-two situation,
11 but are you aware of any place that McGinnes Industrial
12 Maintenance Corporation could have disposed of the waste
13 from Champion other than this area that we're talking about
14 here down to Howe's Bayou?

15 MR. LOWERY: No, sir. Keep in mind, I went
16 to work for them in August of '65. I'm almost sure -- I
17 sort of what I call baby-sitted Ole Peterson and Plant
18 Maintenance Corporation at 201 North Richie in Pasadena.

19 They were involved with the contract. It was
20 a matter of trying to keep them afloat long enough to
21 transfer the contract over to McGinnes -- McGinnes
22 Industrial.

23 And the way this is all started and how I
24 kind of got into it, when Mr. McGinnes hired me -- Mr.
25 McGinnes was the kind of guy that he -- he made money, and

1 Ole Peterson and this Bobby Burns -- he's dead now, been
2 dead for a long time.

3 But he was the kind of guy that if he had a
4 big check come in from Champion -- and he owed everybody in
5 the country, including the IRS -- he would go down and
6 buy -- he would go down to Galveston Cadillac and buy
7 himself a new Cadillac and buy his wife a new Cadillac.

8 The IRS was going to close the doors. So
9 what Mr. McGinnes started doing, Mr. McGinnes was actually,
10 I guess you'd call it factoring. The is the way it all
11 started. He was factoring Bobby Burns' accounts
12 receivable.

13 Bobby Burns would sell him his invoice for
14 ninety cents on the dollar, some big invoices. He worked
15 for Champion removing the sludge and pay McGinnes
16 Industrial -- Mr. McGinnes would pay ninety cents on the
17 dollar.

18 That's what he wanted, and that's pretty
19 standard factoring. He'd pay him ninety cents on a dollar
20 of these invoices. But Mr. McGinnes began to -- began to
21 see the magnitude of the money that Bobby Burns was
22 handling. So, you know, consequently he had done work with
23 Champion Paper before. McGinnes Brothers had.

24 Mr. McGinnes knew Mr. Henderson. So it was
25 logical that he got involved. But that's how it all

1 started, just the factoring of Ole Peterson's, you know,
2 invoices at ninety cents on the dollar.

3 MR. WERNER: When again do you think the
4 contract was initially put in place between McGinnes
5 Industrial Maintenance Company and Champion Paper?

6 MR. LOWERY: Well, probably -- it was
7 probably in the mill when I got there in '65. Like I say,
8 Bobby Burns was still -- Ole Peterson still had the
9 contract, had his (indiscernible) and his equipment out
10 there.

11 To be honest with you, I don't recall whether
12 he got barges or whether he used tanker trucks. I want to
13 think that he was using tanker trucks, to be honest with
14 you. As a matter of fact, I think he used vacuum trucks.

15 MR. WERNER: Vacuum trucks.

16 MR. LOWERY: But that's just my memory too,
17 but -- and in my mind's eye, I'd say it seems like it was
18 probably a year before McGinnes got the contract finalized
19 with Champion.

20 MR. WERNER: It was how long again? I'm
21 sorry.

22 MR. LOWERY: I'd say by the end of '65. I
23 just don't remember.

24 MR. WERNER: '65.

25 MR. LOWERY: Because I'm -- I'm going by the

1 amount of time I spent over at 201 North Richie, ole
2 Peterson's office. I was up there about six months. And
3 then once the contract was transferred, I didn't need to go
4 and keep the IRS off of them. So I went back to McGinnes.

5 MR. WERNER: So there's a period from the end
6 of '65 until late 1966 that McGinnes was picking up sludge
7 and putting it someplace it until this was ready.

8 MR. LOWERY: Uh-huh.

9 MR. WERNER: Then when Howe's Bayou was
10 ready, then it would start transporting sludge over there.

11 Can you think of any other place that
12 McGinnes Industrial Maintenance could have taken sludge
13 from Champion other than that property that's north of I-10
14 until this location at Howe's Bayou was ready to accept
15 waste?

16 MR. LOWERY: No, sir, I don't. There's only
17 one man that might know, and he's dead too. He was -- I
18 don't -- (indiscernible) in Houston for the Harris
19 County -- Dr. Quibodeaux. This is way before y'all's time.

20 But Dr. Quibodeaux was somewhat bothered by
21 everything McGinnes was doing there at the onset. I can
22 remember that. He was Harris County pollution control.
23 Dr. Quibodeaux.

24 MALE VOICE #1: Harris County?

25 MR. LOWERY: Harris County.

1 MALE VOICE #1: Can you spell his name?

2 MR. LOWERY: Quibodeaux. It's Q-u -- it's
3 like Thibodeux, Louisiana, but it's Quibodeaux, Q-u-i
4 something. Dr. Quibodeaux, he was -- he was the guy that,
5 you know, you had to -- he was sort of the head cheese
6 on --

7 MS. WALKER: Q-u-i-b-a --

8 MR. LOWERY: Quibodeaux.

9 MS. WALKER: -- d-e-a-u-x.

10 MR. LOWERY: That's close.

11 MR. WERNER: I think the question I can think
12 of is that -- and, again, I'm summarizing this. But you're
13 saying that the contract -- whatever contract there was
14 between McGinnes Industrial Maintenance Company and
15 Champion went into effect basically close to the end of
16 1965. Is that correct?

17 MR. LOWERY: I'm guessing -- I'm guessing how
18 long I was over at Ole Peterson's facilities, and I kind of
19 associate them continuing that contract until -- by the
20 time I, you know, left their facility.

21 MR. WERNER: And from that time until late
22 '69, sometime in late '69, McGinnes Industrial Maintenance
23 Company was picking up sludge?

24 MR. LOWERY: '66.

25 MR. WERNER: '66.

1 MR. LOWERY: Yeah.

2 MR. WERNER: Thank you. In 1966 McGinnes
3 Company was picking up sludge in barges from Champion and
4 taking it someplace; and at that time, the Howe's Bayou was
5 not available to accept waste.

6 MR. LOWERY: But, you know, the thing I
7 remember -- I recall the levees being down there. I recall
8 the barges being down there because, like I said, we had to
9 work on them next door.

10 I never recall -- I never recall seeing a
11 dredge down there at that facility, and these barges
12 are -- I don't know how many cubic yards they hold or
13 gallons or anything. But I'm not -- in my mind's eye, I'm
14 just thinking I never recall ever seeing a dredge down
15 there.

16 MR. WERNER: Well, would they use a dredge to
17 get the sludge out of the barge?

18 MR. LOWERY: It was (indiscernible) Howe's
19 Bayou Ranch. It was such a large amount. You -- you
20 couldn't take a little pump. I mean, it's got to be
21 something that would really put out some fluid.

22 MR. WERNER: Okay. Now, the other company
23 you're talking about that had been hauling sludge from
24 Champion before McGinnes, you said you thought they had
25 used vacuum trucks.

1 MR. LOWERY: Yeah. There again, I'm thinking
2 that's something Bobby Burns could have had, and I'd
3 heard -- see, what we did with McGinnes, they had to dilute
4 this material to get it so they could pump it.

5 But it seems to me like I was told that --
6 that Bobby Burns would use vacuum trucks. There again, I
7 never went down to the facility. I never recall him ever
8 (indiscernible) barges.

9 MR. WERNER: Had you worked at all for Bobby
10 Burns?

11 MR. LOWERY: No.

12 MR. WERNER: Well, you were talking about
13 trying to keep the IRS --

14 MR. LOWERY: I was not on his payroll, but
15 the main thing way was I just tried to keep him out of
16 trouble with the IRS. I made sure he made his payable
17 deposits, income tax withheld, and all that kind of stuff.

18 This guy, for lack of a better word, was an
19 out-and-out crook, and he (indiscernible) behind the shop
20 one day. He had a goon working for him, I'll tell you.

21 MR. WERNER: Well, the -- again, the location
22 that's north of I-10 is not accessible by vehicle. The
23 only way that you can gain access to the property that I've
24 seen is from the water side. So even if he had had vacuum
25 trucks, I don't see there's any way he could have drive --

1 MR. LOWERY: No. What I'm saying is the
2 vacuum trucks he would have had would have been at
3 Champion's facility. It had nothing to do with the
4 property north of the -- I'm talking about he -- you know,
5 these vacuum trucks -- and I'm going from memory. And, you
6 know, where would you haul it to, you know.

7 MR. WERNER: Well, what I was trying to get
8 at is if you can't drive to that facility, I don't think a
9 vacuum truck could have deposited waste from Champion onto
10 that property. I think the only way you could deposit
11 waste on that property north of I-10 is coming from the
12 river side. I didn't see any roads at all.

13 MR. LOWERY: No. You can see some, you know,
14 maps twenty years ago or -- how long has that been now,
15 thirty or forty years ago. But I think you'd see a whole
16 different make of that whole area because the dredge and
17 the levees were, you know, visible from the road for years.

18 But that whole (indiscernible) subsided
19 there, not just -- subsided. And so I think at one time,
20 it was probably obtainable to, you know, drive up and walk
21 out and walk around the levees and everything. But if
22 you'd seen a picture forty years ago, I think you'd see a
23 different -- a whole different story about that whole
24 general --

25 MR. WERNER: Oh, yeah.

1 MR. LOWERY: -- shoreline there.

2 MR. WERNER: (Indiscernible). Can you think
3 of any other questions?

4 MALE VOICE 1: I just want to be clear on --
5 on a couple of points. There was -- if the pits here in
6 Howe's Bayou were filled sometime in, say, as late as 1966,
7 you know, according to the dates of the paper, and Gulf
8 Coast Waste Disposal Authority did not come into existence
9 until 1969 by some act of the legislature or whatever that
10 was, and they couldn't have their facility built there at
11 Washburn Tunnel in Pasadena for some period of time.

12 So in that interim, McGinnes was taking waste
13 from Champion Paper down to Howe's Bayou Ranch. Do you
14 feel that it's -- it's more than likely that these two
15 impoundments here were the first ones right there by the
16 barge canal? I mean, if you had -- north is this area.

17 MR. LOWERY: Oh, yes. Uh-huh.

18 MALE VOICE: So you -- you feel that those
19 are the first two impoundments, and then they just
20 gradually started working their way back?

21 MR. LOWERY: At least (indiscernible), yeah.

22 MALE VOICE: Right.

23 MR. LOWERY: Yeah. We started, and the
24 original discharge point, as far as I know in the years
25 that I was involved, continued to be the discharge point in

1 one particular place. They had to pump -- pump everything
2 back through it. But, yeah, it was right there off of the
3 canal. It was just -- the first levee, I want to say, was
4 right here.

5 MALE VOICE 1: So you -- you think that waste
6 from or sludge, whatever you want to call it, from Champion
7 was -- was put into these impoundments?

8 MR. LOWERY: Uh-huh.

9 MALE VOICE #1: Okay. That's all I wanted to
10 ask.

11 MR. WERNER: When we talked before, you had
12 said that these initial impoundments, the only material
13 that went in there was material that McGinnes had brought
14 in exclusively from Champion. I want to be sure.

15 MR. LOWERY: That's correct. That's all I've
16 ever known from the original lagoon there at Washburn
17 tunnel.

18 MR. WERNER: Okay. And so I would be safe in
19 saying the same material that's here, the same
20 characteristics, if it came from Champion and the same
21 characteristics are in the material at the property that's
22 north of the I-10 bridge, it's safe to assume that it had
23 to come from Champion?

24 MR. LOWERY: (Indiscernible)

25 MR. WERNER: Because the characteristics of

1 all that material would be identical; but, again, you've
2 not seen yourself the material being dumped --

3 MR. LOWERY: No, sir.

4 MR. WERNER: -- on that property. Okay.

5 MR. LOWERY: I never recall ever seeing a
6 dredge there, you know. I know that Southwest Barge Fleet
7 did a lot of our work. And also the barge line people we
8 rented from, they opened a facility right next door to
9 Southwest Barge Fleet. We'd go out there and visit them
10 from time to time about barges, but that's all I recall.

11 MR. WERNER: I'm drawing a map here.
12 Here's -- this is north, and this is San Jacinto coming up
13 like this. The property that Mr. McGinnes owns is -- or
14 McGinnes -- Trustee for McGinnes Industrial Maintenance
15 Company owns is in this area.

16 The -- the location you're talking about that
17 was doing the barge repair, that was over here on the south
18 side of the bridge, right?

19 MR. LOWERY: That's correct.

20 MR. WERNER: Okay. Why would they be tying
21 up barges on the north side if repair work would be done on
22 the south side?

23 MR. LOWERY: Because at Southwest Barge
24 Fleet, it was and still is, I think, busy, busy, busy.
25 You've got to call them. They can't get to you right now.

1 It's like a barber shop. You've got to sit down and wait,
2 you know, sometimes.

3 And so what -- I know what Mr. McGinnes and
4 them would do. They had some -- this is more of a
5 rectangular pond. I remember that. They had some clusters
6 of pylons out here. They would bring -- tie the barges
7 along here.

8 And then when Southwest Barge Lines got to
9 them, they had what they called a switch boat. They would
10 come over and get them and put them in line. And then,
11 like I say, they ultimately -- people from New Orleans
12 would come by next door to Mr. Hillard's -- Bill Hillard
13 ultimately opened up a facility there, a rental -- barge
14 rental facility there.

15 MR. WERNER: Okay.

16 MR. LOWERY: But that's just -- you know,
17 they'd need repairs. You can't use them anymore. So you'd
18 bring them over here and park them until they can get them
19 in to repair them.

20 MR. WERNER: If -- if McGinnes had four, you
21 said maybe five barges, and the arrangement with Champion
22 was they would always keep two barges at the -- at the
23 Champion dock, that means -- and when they would move the
24 barges, they would use the tug to always pull two barges at
25 one time. Am I correct in saying that?

1 MR. LOWERY: Well, McGinnes would always pull
2 one -- one tugboat -- I mean one barge. They would have
3 one down getting it unloaded, take one down, and leave it
4 to get unloaded. They'd have to leave it.

5 I've got kind of a sequence in my mind to
6 pick up an empty barge, come back to Champions, pick one
7 that's full, leave this one.

8 That would leave them two here at Champions a
9 lot of times, you know, because they -- what they couldn't
10 afford to do was to have a barge full there at Champion.

11 They had to keep pumping it somewhere, and so
12 they -- it was a pretty smooth operation. It had to be.
13 But your question was what I knew or -- ask me another one.

14 MR. WERNER: Okay. The question is, when the
15 barges are at Champion and if it's just one barge taken at
16 a time, that means there's always going to be two barges at
17 the Champion dock.

18 MR. LOWERY: That's the intent.

19 MR. WERNER: There will be two other barges
20 someplace. What was the approximate time to get from
21 Champion to this location north of I-10?

22 MR. LOWERY: I have no idea, but I wouldn't
23 think it'd be over two hours.

24 MR. WERNER: Okay. And if it's two hours and
25 the barge is full --

1 MR. LOWERY: Unless the one here would be
2 empty, I'd say when they -- when they would bring them here
3 for repairs, it's because it got either -- it got a hole in
4 it, and it's leaking real bad, or it's got -- you had to
5 change the (indiscernible) protection.

6 They call them anodes on these barges, and
7 they've got to be changed pretty regularly, and that's just
8 part of the routine maintenance.

9 McGinnes would bring them in and have them --
10 Southwest Barge Fleet would pull them out of the water and
11 change all the anodes on them or repair the -- and a lot of
12 times, there was holes in the (indiscernible).

13 MR. WERNER: Well, if -- if the barge was
14 moved from Champion and they couldn't take the waste to
15 Howe's Bayou because it was not ready, where else could
16 they take the waste?

17 MR. LOWERY: I have no idea. The only way a
18 barge would end up here, I think, you know, for repairs
19 would be after it was emptied and then brought it down
20 there. They're not going to get it repaired when it's full
21 of sludge.

22 MR. WERNER: I guess we go back to the same
23 point. If you're not actually seen material dumped here,
24 but there's no place else to dump it, and the same kind of
25 material that's here comes from Champion, again, it's just

1 the only reasonable thing to assume that somebody put that
2 material at this location. Do you have any questions?

3 MALE VOICE #1: As far as their barges and
4 moving stuff back and forth, did McGinnes own tugs too?

5 MR. LOWERY: One tugboat.

6 MALE VOICE #1: One tugboat. Okay.

7 MR. LOWERY: And there was times where we had
8 to have any of them repaired, and we would (indiscernible) .

9 MALE VOICE #1: It sounds like
10 (indiscernible).

11 MR. LOWERY: The boat was on the water
12 twenty-four hours a day.

13 MR. WERNER: When you were working at
14 McGinnes, did you ever meet a fellow by the name of Captain
15 Roberts?

16 MR. LOWERY: Yeah, Jack.

17 MR. WERNER: Jack Roberts. Okay. Did he
18 ever do any work for McGinnes Maintenance -- Industrial
19 Maintenance Company?

20 MR. LOWERY: I'm thinking of the tugboat
21 captain. I can't remember that. It seems like Roberts was
22 one of the -- over the period of years that I was there, we
23 **had several captains.**

24 MR. WERNER: Okay.

25 MR. LOWERY: But it seemed like one -- but he

1 (indiscernible) McGinnes Industrial Maintenance
2 Corporation.

3 MR. WERNER: Was there ever a case where he
4 had actually -- actually moved barges from Champion to this
5 location or any location?

6 MR. LOWERY: Not that I would know of.

7 MR. WERNER: Was there ever a case where a
8 barge might have broken loose and actually hit the bridge,
9 and he was apt to file an insurance claim for McGinnes?

10 MR. LOWERY: Never heard it.

11 MR. WERNER: Okay. You don't remember that.
12 Okay.

13 MR. LOWERY: Now, we've -- we've had barges
14 sit out here and sink, you know, while they was tied on the
15 moors waiting to get repaired. We had them sit out there
16 and sink.

17 I can tell you this much. I have actually
18 gone out with a three-inch pump and -- from time to time
19 took a pump out to the guys who would pump the barge out
20 that was sitting out there. You'd have to tie it up with
21 mooring, and it'd sink, you know.

22 MR. WERNER: Do you ever remember a case
23 where a barge was partially sunk and it breaking loose and
24 smashing into the I-10 bridge?

25 MR. LOWERY: No. I was -- I was heavily

1 involved with McGinnes' insurance. (Indiscernible)

2 maritime. But as far as I know, we never had a claim.

3 MR. WERNER: Do you remember who the

4 insurance company was?

5 MR. LOWERY: Bill Purifoy was the -- was my

6 agent. Bill Purifoy.

7 MS. WALKER: What was that?

8 MR. LOWERY: P-u-r-i-f-o-y. Bill's still

9 alive. Bill Purifoy, but -- with a major marine company.

10 Well, we shopped for insurance every year. We just always

11 tried to get a fair price because marine insurance is

12 pretty expensive.

13 MR. WERNER: Was Home Insurance one of the

14 insurers?

15 MR. LOWERY: That does not sound familiar.

16 MR. WERNER: Okay. And what was Bill's last

17 name again? Purifoy, P-u-r-i --

18 MR. WERNER: P-e-r-i.

19 MR. LOWERY: P-u-r-i.

20 MR. WERNER: P-u-r-i.

21 MR. LOWERY: F-o-y, Purifoy.

22 MR. WERNER: And what --

23 MR. LOWERY: And he may have an insurance --

24 he's older than I am; but the last I heard, he was still

25 active in this business and everything.

1 MR. WERNER: And --

2 MR. LOWERY: Bill Purifoy. And like I said,
3 I haven't talked to Bill in years. I just heard indirectly
4 that was still kicking.

5 MR. WERNER: Was he an independent agent?

6 MR. LOWERY: Yes, sir.

7 MR. WERNER: So he wrote policies for a
8 living.

9 MR. LOWERY: I want to say it started with a
10 Z. Like I said, we changed our insurance --

11 MR. WERNER: Zurich?

12 MR. LOWERY: One year we had Zurich, but I
13 handled all the insurance, and we -- we had some airplanes
14 too that we had some accidents with. But we never had a
15 barge accident that I knew of. After I left, they could
16 have because McGinnes continued after I left.

17 MR. WERNER: Where was his office located?

18 MR. LOWERY: Oh, goodness. Man, I don't
19 know. He'd usually come to my office. He would always
20 come to my office. (Indiscernible). I haven't talked to
21 Bill in a long time.

22 MR. WERNER: But he's -- he's an independent
23 agent?

24 MR. LOWERY: He was, yeah.

25 MR. WERNER: Was. Okay.

1 MR. LOWERY: Because we would shop our
2 insurance every year with different companies. I think one
3 year Zurich -- we were insured with Zurich.

4 MALE VOICE #2: Speaking of running down
5 maybe contact information, do you -- do you have any
6 contact information for Roland McGinnes?

7 MR. LOWERY: No. I haven't talked to Roland
8 in a long time. The one thing -- the first time you called
9 me, you know, you sort of -- you walk in and you get a
10 recording and start talking about something that happened
11 forty years ago, you know, it sort of shakes you.

12 And my first inclination was to start trying
13 to get ahold of Roland and then try to get ahold of Dolores
14 McGinnes, but I said no. What I don't want to do is start
15 he said, she said, and we said, and they said.

16 And I just didn't want to get it started so,
17 I haven't called them. And I know Dolores McGinnes and
18 think the world of her, but she knows absolutely
19 tee-totally nothing about this operation.

20 I mean, she was totally removed from the
21 company. But I just made a point not to start, you know,
22 confabbing with everybody. Roland's a super, super fine
23 guy. I feel like he's still alive. He's younger than I
24 am.

25 MR. WERNER: The barges, again, would be

1 taken up to the I-10 property, north of I-10. Is there any
2 way that they could remove sludge from those barges without
3 some sort of crane or -- or some way to -- to take that
4 material out of the barge?

5 MR. LOWERY: The only way I would know
6 (indiscernible) you couldn't use a -- like a drag bucket or
7 something like that. The only -- the only way I know that
8 you could unload it the way they unloaded it, and that's
9 with the dredge.

10 I never recall seeing a dredge. But like I
11 said, I'm not -- you know, I wasn't out there every day.
12 When I was involved with Ole Peterson, you know, I was in
13 their office at 201 North Richie. But the only way I know
14 to remove that sludge would be with a dredge, and I
15 never -- I never recall seeing a dredge down there.

16 MR. WERNER: Do you know approximately how
17 long it would take to load up one barge at the Champion
18 facility?

19 MR. LOWERY: I think maybe twelve hours.
20 There again, that was a long time ago.

21 MR. WERNER: So a barge would be loaded in
22 twelve hours and then have to be moved out. Well, you'd
23 have two there. So basically every day, you'd have two
24 barges in, and they'd be replaced?

25 MR. LOWERY: And I would say two barges a day

1 would probably be what about the cycle was with McGinnes,
2 you know.

3 MR. WERNER: That's pretty fast turnaround on
4 barges.

5 MR. LOWERY: Well, like I say, I wish I had
6 all the records. There's records somewhere on all this,
7 you know, but I have no idea where. On -- on everything,
8 on the lagoons when they were permitted and all that stuff.
9 I have no idea where they'd be at.

10 MR. WERNER: If it takes -- do you remember
11 about how long it would take to move a barge from the
12 Champion facility down to Howe's Bayou?

13 MR. LOWERY: I made the run on the tugboat.
14 It seems like it's a ten, twelve-hour trip.

15 MR. WERNER: Okay.

16 MR. LOWERY: It's a pretty long trip.

17 MR. WERNER: A ten-hour trip.

18 MR. LOWERY: You know, I can go as a bird --
19 the crow flies. Actually you've got to go out to West Bay
20 underneath the causeway and back, and then it goes to the
21 canal (indiscernible) miles or the knots and everything
22 because I've had enough boats run seven or eight knots,
23 seven knots.

24 MR. WERNER: And it would take about maybe
25 twelve hours to load a barge. Assuming they were using the

1 dragline to unload a barge, about how long do you think it
2 would take?

3 MR. LOWERY: No. They wouldn't use a
4 dragline. They'd use a dredge.

5 MR. WERNER: A dredge, okay. What's the
6 difference between a dragline and a dredge?

7 MR. LOWERY: A dredge is just a big vacuum
8 cleaner. It's got a big suction head that you drop down in
9 the (indiscernible) and then pull the barge up alongside
10 it, and the dredge has, you know, a cable contact that
11 drops that suction head down in the barge.

12 They'd kick the engines, and then discharge
13 is caught in an enclosed (indiscernible). It's a big --
14 big vacuum. It vacuums the barges out. A dragline has got
15 teeth on the bucket and everything. It's just
16 (indiscernible). These are called hopper barges.

17 MR. WERNER: Well, it would probably be a lot
18 quicker to unload it than it would to load it.

19 MR. LOWERY: I think -- I think it would be.

20 MR. WERNER: Okay.

21 MR. LOWERY: You could with the loading --
22 the loading process is -- it's not just a matter of driving
23 up and bringing your barge up and just opening a valve.
24 Literally this lagoon at Champion was probably 200 -- about
25 200 and maybe 300 by 300, and the material's from one side

1 to the other.

2 They had to actually take a dragline with a
3 big -- kind of a big board apparatus they'd throw out there
4 and pull that sludge in towards the -- towards another
5 dragline that had a big bucket which scooped it up and put
6 it in a big hopper.

7 So it was sort of a loading process that took
8 as much time as anything. Then you had bring to the
9 material to you, and this material was usually pretty
10 thick. It was a big operation to get the material to the
11 barge and in the barge.

12 MR. WERNER: Okay. That was -- so twelve
13 hours there and a turnaround -- could they do that with
14 just one tug?

15 MR. LOWERY: That's all we ever had. I'm
16 telling you, they could take a barge up there -- every once
17 in a while we'd have a problem with our boat, and we'd have
18 to rent one. We had one boat, Kingfisher, a big boat.

19 They would get the (indiscernible) and take
20 one up there and leave it to get dredged out, pick one up,
21 and head back there with it, get there, and put it in line
22 and unload it, and then pick up an empty. But it -- it's a
23 seven days a week job.

24 MR. WERNER: As far as Howe's Bayou, if it's
25 ten hours one way --

1 MR. LOWERY: I'm just speculating. I mean,
2 this was years ago. I made a run on the tugboat a few
3 times, and I was ready to get back home.

4 MR. WERNER: Mosquitoes get you?

5 MR. LOWERY: Pretty boring after a while.

6 MR. WERNER: I'm just thinking -- let's say
7 it's even just eight hours, eight hours one way. It's
8 going to take a while to dock it. The tug's going to have
9 to come back.

10 If we're talking about a 16-hour round trip
11 and we're going to load those barges, each one in twelve
12 hours, that's a fast turnaround.

13 MR. LOWERY: Well, I mean, they did it. We
14 had one boat, Kingfisher. It was a beauty, lots of power.

15 MR. WERNER: The -- the pumping process, was
16 that a relatively small unit that you'd be able to mix the
17 water and then wash the sludge out of the barge?

18 MR. LOWERY: No. The barge itself was
19 actually on a -- I mean, the dredge itself was actually
20 mounted on a small barge so it could maneuver, you know,
21 around. But the material, when it come from Champion, they
22 diluted it.

23 In order to get it in this hopper and feed it
24 down this long chute into the barge, it had to be diluted
25 somewhat so when it got down to the disposal site, they'd

1 put in suction there and just (made a noise). It would
2 just come to it.

3 MR. WERNER: So you could unload it.

4 MR. LOWERY: You could unload it a whole lot
5 quicker.

6 MR. WERNER: Okay.

7 MR. LOWERY: Because it, you know, was
8 thinner.

9 MR. WERNER: Well, that -- that unit where
10 you could suck it out, was that a separate barge or was
11 that --

12 MR. LOWERY: No. It's a separate -- the
13 dredge was on a separate barge, small barge.

14 MR. WERNER: Okay. And --

15 MR. LOWERY: Probably thirty foot long maybe
16 and fifteen foot wide.

17 MR. WERNER: So that barge -- that smaller
18 barge would stay at the location all the time, and those
19 barges --

20 MR. LOWERY: That's correct.

21 MR. WERNER: -- would be brought in.

22 MR. LOWERY: That's correct.

23 MR. WERNER: Is there a chance that could
24 have been anywhere near the I-10, and you might not have
25 seen it?

1 MR. LOWERY: I have no idea. I've never --
2 I've never really thought about it until we started talking
3 about it. I've never seen the dredge down there.

4 MR. WERNER: Okay.

5 MR. LOWERY: If it was, I didn't pay any
6 attention. I just never recall seeing the dredge down
7 that. I know the man that run it.

8 MR. WERNER: Is he still alive?

9 MR. LOWERY: I'm sure -- Dan Anderson.
10 He's -- he was older than me. There again, I'm about the
11 only person left that's alive, so you better hurry up.

12 (Laughter)

13 MR. WERNER: I appreciate you talking -- when
14 you talk about old, I can -- I can relate real well to
15 that.

16 MR. LOWERY: Oh, you're just a kid.

17 MALE VOICE #1: If I could ask a couple of
18 questions about the tug, Kingfisher. Were they -- was
19 McGinnes still using that at the time you left the company?

20 MR. LOWERY: Yes.

21 MALE VOICE #1: Do you know -- I mean, I
22 don't know a lot about the whole marine transportation
23 thing. So what happens to tugs when they get old? Do they
24 get scrapped somewhere? Do you know?

25 MR. LOWERY: Yeah. You just can keep

1 refurbishing them and refurbishing and rebuild engines and
2 keep it painted and just run and run and run. But I'd
3 venture to say it's probably run its course by now.

4 MR. WERNER: And you said that when it was in
5 the shop or things got really busy, you would rent one from
6 someone. Do you recall names or companies that you rented
7 from?

8 MR. LOWERY: Yeah. There was a guy that
9 lives in Prairieland, Green Tees. It's a subdivision of
10 Prairieland. I want to think -- the name just come to me.
11 It was G&H Towing. We -- we -- we rented a tugboat every
12 once in a while from G&H Towing.

13 MALE VOICE #1: Do you recall the names of
14 anyone?

15 MR. LOWERY: No. No, I don't. There again,
16 he was older than I was too. He was pretty wealthy. I
17 can't remember -- I can't remember his name.

18 Very seldom did we rent a barge, but we had
19 to every once in a while. Those engines run, you know, day
20 in and day out. You've got to rebuild them, you know,
21 maybe once every couple of years.

22 MR. WERNER: Let me ask from an accounting
23 standpoint. Obviously you cannot depreciate land, but you
24 can depreciate improvements. Are levees considered
25 improvements, as far as you know, that you can depreciate?

1 MR. LOWERY: I've never heard of it.

2 MR. WERNER: So if a levee is constructed,
3 would you ever be able to recover that cost, or was that
4 just a capital expenditure, and that property has that much
5 more money tied up into it?

6 MR. LOWERY: (Indiscernible)

7 MR. WERNER: I guess what I'm getting at is
8 if McGinnes Brothers actually built the levees, if the
9 photographs would show that they weren't there before --

10 MR. LOWERY: Uh-huh.

11 MR. WERNER: -- and they were after, then
12 McGinnes Brothers would have had a cost to actually put
13 those levees in position or construct those levees.

14 Is that something that from an accounting
15 standpoint you would have depreciated?

16 MR. LOWERY: No. The way -- the way McGinnes
17 operated, he'd have sent a dragline operator out there with
18 a small dragline. They'd have done twenty acres a week,
19 and it just -- it's some other job (indiscernible).

20 Knowing him, he's not going to set up -- I
21 know -- I mean, I did the books, and we had to capitalize
22 that (indiscernible).

23 MR. WERNER: So it was just basically an
24 expense --

25 MR. LOWERY: And probably McGinnes Brothers

1 absorbed the expenses, you know.

2 MR. WERNER: Okay, okay. Can you think of
3 anything?

4 MALE VOICE #2: So McGinnes Brothers was a
5 separate corporation that was in existence --

6 MR. LOWERY: Yeah. They went in business in
7 1936, I think.

8 MALE VOICE #2: McGinnes Brothers --

9 MR. LOWERY: '36. I'm pretty sure it was
10 '36.

11 MALE VOICE #2: And was that -- was that a
12 construction company?

13 MR. LOWERY: Yeah. Basically heavy
14 earthmovers.

15 MALE VOICE #2: Okay.

16 MR. LOWERY: Dragline contractors more than
17 anything. We did dragline work all over the southeast
18 United States.

19 MALE VOICE: What -- what do you mean by
20 dragline work?

21 MR. LOWERY: Well, the draglines -- of
22 course, you don't see a whole lot of them anymore, but it's
23 a machine with a long boom on it, you know, a long boom and
24 a bucket. And they're sort of antiquated now because
25 everybody's gone to hydraulic track hoes, and it's, you

1 know, faster and easier to run.

2 But there's still a need for a dragline on
3 these -- you know, a lot of these big, big waterways all
4 over the country. McGinnes, when I went to work for them,
5 we were working in Florida.

6 When I left, they worked in Oklahoma,
7 Kentucky, Tennessee, all over the southeastern United
8 States. But it's just -- it's a way to move dirt.

9 MALE VOICE #2: So when you initially went to
10 work, you were working for McGinnes Brothers?

11 MR. LOWERY: When McGinnes Brother hired me
12 (indiscernible) they needed, you know, somebody to watch
13 the finance and books and everything. Going from memory, I
14 can't recall whether I was on MCIM's payroll or whether I
15 was on McGinnes Brothers' payroll.

16 MALE VOICE #2: Okay. But when you went to
17 work in August of 1965, that was -- I was wondering if you
18 were working for a McGinnes company before 1965.

19 MR. LOWERY: No.

20 MALE VOICE #2: That's when you started
21 working for one of the McGinnes companies. Okay. And you
22 were one of the three original board of -- members of the
23 board of directors?

24 MR. LOWERY: Just what you said a while ago,
25 and I assume I probably was. I don't know -- I don't

1 recall.

2 MR. WERNER: I checked the --

3 MR. LOWERY: But there's something that
4 probably would show that.

5 MR. WERNER: Yeah. I checked the articles of
6 corporation, and he was one --

7 MR. LOWERY: Yeah. I think I was secretary
8 and treasurer too, I believe.

9 MR. WERNER: I don't remember the position.
10 I just --

11 MR. LOWERY: Yeah. I dealt with the bookwork
12 and everything.

13 MALE VOICE #2: Were you a shareholder?

14 MR. LOWERY: Yes, I was. Mr. McGinnes gave
15 me -- when I went to work for them -- I was working at
16 (indiscernible) as a CPA, and Mr. McGinnes wanted me to
17 come work for them. He promised -- gave me ten percent of
18 the stock in MIMC.

19 MALE VOICE #2: Okay. So were there just --
20 were the three board members the only three shareholders of
21 the company?

22 MR. LOWERY: No. There was Mr. McGinnes --
23 well, he gave me ten percent. He gave Mr. Kimball
24 (indiscernible). He gave Mr. Kimball ten percent because
25 he -- he more or less ran the operation.

1 And he kept the rest of it, and he -- his
2 son, Lawrence, he was always reluctant to pass -- to give
3 much stock into his son's hands. I don't -- something
4 happened.

5 But basically I had ten percent. Mr. Kimball
6 had ten percent, and McGinnes owned the other eighty
7 percent. I thought Mr. McGinnes had most of that.

8 MALE VOICE #2: So Mr. McGinnes which is --

9 MR. WERNER: Virgil.

10 MR. LOWERY: Yeah, Virgil.

11 MALE VOICE #2: He owned eighty percent?

12 MR. LOWERY: I'm going to -- I feel like he
13 did. I know that the McGinnes family owned the other
14 eighty percent, but I'm thinking that he was very
15 reluctant, Virgil McGinnes, to get rid of his stock.

16 MALE VOICE: Lawrence (indiscernible) a board
17 member. Was his son a board member?

18 MR. LOWERY: Yes.

19 MALE VOICE #2: Do you remember how many
20 employees there were at McGinnes?

21 MR. LOWERY: Industrial Maintenance, the
22 tugboat crew was probably four. Maybe seven or eight.

23 MALE VOICE #2: Seven or eight employees.
24 And do you know if any of those employees are still alive?

25 MR. LOWERY: Roland McGinnes, I would think,

1 is still alive. But Roland came -- I'm just going by
2 memory again, but Roland came on -- he had worked at a big
3 dragline company, (indiscernible) engineering. He came
4 onboard five, six, seven years after MIMC was under way.

5 MALE VOICE #2: No one other than Roland that
6 you know of?

7 MR. LOWERY: I can't think of anyone.

8 MALE VOICE #2: Okay. Do you remember Karen
9 Russell?

10 MR. LOWERY: Yes.

11 MALE VOICE #2: Was she an employee of MIMC?

12 MR. LOWERY: No. I think she was employed
13 with McGinnes Brothers. There again, I don't know
14 (indiscernible) years and years ago.

15 MALE VOICE #2: Is she still there?

16 MR. LOWERY: No, she's not. She's with
17 Dolores' company (indiscernible).

18 MR. WERNER: Am I correct in saying that Miss
19 Russell started to work with the McGinnes operations --

20 MR. LOWERY: Yeah.

21 MR. WERNER: -- in the '70s?

22 MR. LOWERY: I want to say somewhere in the
23 '70s.

24 MR. WERNER: So it was -- was it after --
25 then it would have been after McGinnes started taking the

1 waste to Howe's Bayou?

2 MR. LOWERY: Yes, sir. I'm almost -- almost
3 sure of that. I'd say Karen probably came to work for
4 McGinnes in the early '70s and stayed a very good, faithful
5 employee. And then whenever Lawrence died, well, his wife
6 took over (indiscernible) which Lawrence owned
7 (indiscernible).

8 She still runs it, I understand. You may
9 know. I don't know. But she -- she's got to be in her
10 seventies, but she's still running the company.

11 MALE VOICE #2: Dolores, she was the wife?

12 MR. LOWERY: She was the wife of Lawrence
13 McGinnes.

14 MALE VOICE #2: Lawrence.

15 MR. LOWERY: And Karen works for her.

16 MALE VOICE #2: And when did you leave MIMC?

17 MR. LOWERY: I left in '77.

18 MALE VOICE #2: And when you left, did you
19 sell your shares of the stock in MIMC?

20 MR. LOWERY: I sold my stock to Lawrence in
21 1971. I quit for one week in 1971. I got perturbed and
22 quit, and then Lawrence was quick to latch on to my stock,
23 and he gave me a good price for it. I went back to work a
24 week later.

25 MR. WERNER: The unit McGinnes had to

1 actually pump the material out of the barges, did they
2 acquire that about the same time that the contract went
3 into place where they were hauling waste from Champion?

4 MR. LOWERY: No. They had those dredges, I
5 think, a long time before. Lawrence McGinnes was pretty
6 much a genius in a lot of ways. He -- he actually designed
7 one dredge -- two dredges called Apache and one called
8 Dixie.

9 When I came to work for them, they already
10 had them. They used them on the (indiscernible) canal or
11 something like that. So they had barges when I went to
12 work.

13 MR. WERNER: Did they have more than one?

14 MR. LOWERY: Two barges.

15 MR. WERNER: Two barges that could actually
16 pump the material from the barges. Were most of them about
17 the same size?

18 MR. LOWERY: No. The Apache dredge was --
19 that's the name of it. The Apache was probably a
20 12-inch -- what they called a 12-inch dredge. And the
21 Dixie was probably about a 10-inch. It doesn't sound like
22 much difference, but it's a whole lot of difference in
23 amount of volume you can pump.

24 MR. WERNER: And would the barges that those
25 dredges sit on, were they the same size?

1 MR. LOWERY: Probably Dixie was a little bit
2 smaller. It's a little smaller dredge. If I were going to
3 guess -- you know, they're not for navigation. They're
4 just to move around, relocating around. But the Dixie
5 dredge was smaller than the Apache dredge.

6 MR. WERNER: Okay. Would they -- did they
7 keep -- when they started using the Howe's Bayou, did they
8 have both of those dredges down there at that location?

9 MR. LOWERY: I don't recall. All I remember
10 is seeing one down there.

11 MR. WERNER: One. Okay.

12 MR. LOWERY: They might have sold one. When
13 I left the company, all I recall is having one down there.

14 MR. WERNER: Would I be correct in saying
15 that you'd actually seen the operation of Howe's Bayou as
16 frequently or infrequently as you'd seen the operation at
17 the location north of the I-10 bridge?

18 MR. LOWERY: Total? I went down when they
19 first -- went Brown & Root was engaged to design
20 (indiscernible) they actually designed it according to EPA
21 at the time or the Texas Quality Board. I made a trip down
22 there at that point in time; and then beyond that, I've
23 made a couple of trips on a tugboat just to visit and have
24 a meal with them.

25 I signed their paychecks. So I thought I'd,

1 you know, go out with them and everything. But I made two
2 or three trips down there. At the time that I made our
3 trips down there, we (indiscernible), you know.

4 The dredge was over, I guess, the levees over
5 there, but that's all there was. I never -- as it
6 progressed over the years, I never went back down there.

7 MR. WERNER: And the area you're pointing to
8 is as you go in -- this is immediately on your right side?

9 MR. LOWERY: Right. This is the causeway
10 over here.

11 MR. WERNER: And as far as the times you'd
12 actually been to the location north of the I-10 bridge,
13 would you say other than just driving on the bridge across,
14 had you ever actually been to the site or just --

15 MR. LOWERY: Yes. I carried three-inch pumps
16 down there, from my shop down there when they had a large
17 wait in to get to Southwest Barge Lines to get it repaired.
18 These hopper barges have a double pull, you know.

19 You've got to push between the bottoms and
20 all that stuff, and there have been times that I've carried
21 a three-inch pump down there, and Dan Anderson -- they used
22 to keep to that barge afloat (indiscernible).

23 So -- and then over there at Southwest Barge
24 Fleet, we spent a lot of money with them. I was over there
25 quite a bit with Mr. Hillard. And then we rented the

1 barges from these people. So I was out there, you know, a
2 fair amount of time.

3 MR. WERNER: But that's on the south side of
4 the I-10 bridge.

5 MR. LOWERY: South side. But like I said,
6 when I carried a three-inch pump. I actually carried it
7 out here (indiscernible).

8 MR. WERNER: Let's turn this over.

9 MR. LOWERY: Yeah. Oh, yeah. It was
10 accessible. At this point in time, it was accessible. At
11 this point in time when this thing was first -- the levee
12 was first built, this was accessible.

13 You could drive right through it because I
14 had a Volkswagen. That's what I had when I got out
15 college. That's when I carried that three-inch pump out
16 there. I parked right here, and I carried a pump around
17 here for Mr. Kimball and Dan Anderson.

18 But they would -- they had the barges moored
19 right in here, and they would pump them out, you know.
20 They'd pump the water out.

21 MR. WERNER: So they pumped the barges --
22 pumped them out from here?

23 MR. LOWERY: Uh-huh.

24 MR. WERNER: Is there a chance that any of
25 that water pumped out could have had sludge from Champion?

1 MR. LOWERY: Well, I -- you know, I have no
2 idea. You know, the barges were old. Like I said, they'd
3 been there probably from the start. (Indiscernible) take a
4 big -- does a lot of damage on a barge.

5 MR. WERNER: Yeah.

6 MR. LOWERY: But they would have to wait --
7 get in line over at Southwest. Once you let a barge
8 completely sink, you've got a real problem. You want to
9 keep it a little bit afloat before that happens.

10 I don't know why they didn't always have a
11 three-inch pump down there, but I know I made several trips
12 down there to carry a three-inch pump.

13 MR. WERNER: Sometimes you kind of pump
14 out -- if there would be any residue in here, you would
15 pump it out?

16 MR. LOWERY: Well, like I said, a hopper
17 barge that's built, it's got an outer shell, and it's got a
18 little inner liner.

19 MR. WERNER: Right.

20 MR. LOWERY: This would hold your fluids in
21 here, and then this right here is your (indiscernible)
22 right here, and the hatch is here. What would they do is
23 (indiscernible) like that.

24 They would, you know, pump **it** out and keep **it**
25 (indiscernible) and everything. But as far as any -- any,

1 for lack of a better word, contamination that could get to
2 the inner hopper -- because we had to have them repaired
3 sometimes -- (indiscernible).

4 It's a possibility that some of this material
5 in here -- of course, this barge, when it gets here, it's
6 empty. I mean, it's brought in empty to get repaired. But
7 the material that was in there, you know, the residue might
8 could, you know, get through a hole or a crack. I know a
9 lot of times, they had to clean those things out.

10 MR. WERNER: I know I kind of alluded to this
11 before, but if the pits at Howe's Bayou did not go into
12 existence --

13 MR. LOWERY: I know what you're asking, and
14 (indiscernible).

15 MR. WERNER: -- the waste had to go
16 someplace. It had to go someplace. Are you aware of any
17 other location other than Howe's Bayou or possibly this
18 location that's on the north side of the highway --

19 MR. LOWERY: No, sir.

20 MR. WERNER: -- they could have taken any
21 kind of waste from Champion?

22 MR. LOWERY: Not that I know of. But like I
23 said, Mr. McGinnes is the kind of guy that -- you know,
24 Mr. McGinnes was a pretty tight person. He didn't tell you
25 everything. He -- particularly his son.

1 He actually -- he told his son -- he, I
2 think, kind of put me between him and his son a lot of
3 times because he -- he just didn't want -- I don't know.
4 He was a very private man, and I -- you know, he'd tell you
5 what he wanted you to know.

6 MR. WERNER: Is this son that he didn't want
7 to give the stock to?

8 MR. LOWERY: Well, yeah, I guess so.
9 Lawrence is -- he's a wonderful person. But like I said,
10 he was -- you know, he was -- he liked to play, had his
11 planes and yachts.

12 MALE VOICE #1: Lawrence did?

13 MR. LOWERY: Yeah.

14 MALE VOICE #2: May I ask one question?

15 MR. WERNER: Please.

16 MALE VOICE #2: In the 1965, '66 time frame,
17 if you can still remember back then, did you go to the
18 property I -- what we call the I-10 site during that time
19 frame?

20 MR. LOWERY: Yes.

21 MALE VOICE #2: And what was going on at that
22 site during that time frame?

23 MR. LOWERY: Well, I know that they built the
24 levees. I know that (indiscernible) when they built them
25 and then put the moors in here. I think -- I'm not sure

1 about that, but I think 100 marine (indiscernible).

2 Then they had these dolphins put in. There
3 is where -- at the time I went -- the trips I made down
4 there in my Volkswagen with the pump because the thing was
5 fixing to sink, and they would -- and so, you know, it
6 wasn't an everyday occurrence, but I went -- I made several
7 trips down there, you know, just to rescue the barge, you
8 might say.

9 MALE VOICE: You don't remember any sort of
10 waste disposal going on at the site?

11 MR. LOWERY: No, and I don't -- I don't
12 remember seeing a dredge. That's the thing. I just do not
13 recall ever seeing a dredge down there.

14 MALE VOICE #2: Okay.

15 MR. WERNER: Were you ever -- do you remember
16 any kind of smell of materials here?

17 MR. LOWERY: I don't recall. Like I say,
18 normally this material, even though it was hauled off to
19 the ranch. If you go there right now -- of course, I've
20 haven't been there in years. You may have been. Have you?

21 MALE VOICE #1: We were there this morning.

22 MR. LOWERY: Okay.

23 (Voices speaking simultaneously)

24 MR. LOWERY: Probably it's glazed over water,
25 isn't it?

1 MALE VOICE #1: Yeah.

2 MR. LOWERY: It's got water on it and
3 cattails and things like that. Normally what you see after
4 a while with this material, you don't smell it because
5 it's -- it gets some rainwater on top of it and gets
6 cattails in it.

7 Like I say, you know, there's a -- there was
8 a guy down in Hitchcock, a doctor -- I'm sure if you read
9 that newspaper.

10 MALE VOICE: Crawford.

11 MR. LOWERY: Yeah, Dr. Crawford. Oh, he was
12 after Mr. McGinnes all the time. They were after him so
13 bad, so Lawrence had Channel 13 come down there
14 (indiscernible) water out of the lagoon, ducks flying over
15 it and everything, you know.

16 MALE VOICE #2: What was he drinking?

17 MR. LOWERY: He drank the water out of the
18 lagoon and said that --

19 MALE VOICE #2: He drank the water out of the
20 lagoon?

21 MR. LOWERY: Yeah, yeah, the water --
22 rainwater that had settled off of the sludge and

23 **everything.**

24 MALE VOICE #2: Would the sludge harden?

25 MR. LOWERY: Yes, I think it would, you know.

1 If you (indiscernible), I think that stuff would solidify
2 pretty good. As a matter of fact, I'm going from memory
3 too.

4 But it seems like -- y'all probably know this
5 from your observations, but it seems like once these
6 lagoons are filled, they do solidify. I think
7 (indiscernible). Did y'all -- did y'all observe that?

8 MR. WERNER: One thing you had said was --
9 when we talked before was that at Howe's Bayou, the -- the
10 levees were built, and sludge would build up to a certain
11 point where it was decided that that was the maximum --

12 MR. LOWERY: (Indiscernible)

13 MR. WERNER: -- to cap it off. You'd cap it
14 off, and you'd have the next levee built, and then you'd go
15 to the next one. So basically as one area would be filled,
16 you'd go on to the next one.

17 MR. LOWERY: That's correct.

18 MR. WERNER: And that's it.

19 MR. LOWERY: And it wouldn't be -- it
20 wouldn't be capped off immediately because it was just too
21 wet. But over a period of time, it would solidify to some
22 degree. I'm going from memory, but I think that you'll
23 probably find a lot of these lagoons are capped off with
24 clay because that's all stiff clay down there.

25 MALE VOICE #2: Going back to the

1 (indiscernible), do you happen to recall -- you said

2 Southwest Barge --

3 MR. LOWERY: Yeah.

4 MALE VOICE #2: -- was operating a piece of
5 property south of the I-10 bridge. Do you recall what
6 other businesses or operations were in existence next to
7 the McGinnes site?

8 MR. LOWERY: Nothing. I don't think there's
9 anything. As a matter of fact, you know, the last time I
10 saw it, actually I think the shoreline, if you want to call
11 it the waterline, was somewhere -- you couldn't identify
12 where the levee was at.

13 But all of it here -- this was all
14 (indiscernible), and probably (indiscernible) because it's
15 a large debris. They had lots and lots of highway surplus,
16 you know, dirt, culverts, and things.

17 I remember seeing for years they just kept
18 pushing this -- and I think since then, they've actually
19 come in and built a couple of buildings on the thing.

20 This is built -- I think this is all pretty
21 open. Now, this side has Southwest Barge Fleet, and there
22 was a big pipeline company that had a lot of cranes -- they
23 may still be there -- lots of -- a big pipeline contractor
24 back in here.

25 But then people that we rented barges from --

1 I just can't think of the name -- came over here. I think
2 maybe it's Buy -- Buy Lo Barge Lines. But they built a
3 facility.

4 MALE VOICE #2: What was the name of the
5 company?

6 MR. LOWERY: It's Buy Lo Barge Lines. I may
7 be wrong.

8 MALE VOICE #2: Buy Lo.

9 MR. LOWERY: Throughout New Orleans
10 originally.

11 MALE VOICE #2: Okay.

12 MR. LOWERY: They had so much business over
13 in Houston, they went ahead and moved the facility over
14 there. I just can't remember the name. I used to know the
15 guy real well.

16 I'm probably getting Buy Lo mixed up -- Odie
17 Masterson has a barge company called Buy Lo Barge Lines
18 (indiscernible) spelled backwards. I don't think that's
19 the name of it. I can't recall.

20 MALE VOICE #2: Say that again.

21 MR. LOWERY: Buy Lo Barge Lines is
22 (indiscernible), you know, backwards. Ole Peterson -- Odie
23 Masterson, you know, the big -- the big chemical company in
24 St. Louis. I know we had some business with them.

25 Oh, what's the name? It wasn't Masterson.

1 It's a big chemical company. But anyway, they owned Buy Lo
2 barge Lines. I can't remember. I'm seventy-two years old.
3 I can't remember everything.

4 MALE VOICE #2: Well, I can't remember what
5 happened yesterday. Do you recall if there was any waste
6 disposal operations going on, on the Southwest Barge
7 property?

8 MR. LOWERY: No, I don't think so. I know
9 they -- they washed lots and lots of barges out there, you
10 know. I doubt -- I think they're still open and operating
11 under the same rules and regulations they did then, you
12 know.

13 MALE VOICE #2: Do you recall who was the --
14 who was the person that y'all dealt with? I guess -- is
15 there anyone that you know that may still be alive at
16 Southwest?

17 MR. LOWERY: Bill -- Bill Hillard owned it,
18 and -- and there again, he was older than me. Bill
19 Hillard, H-i-l-l-a-r-d.

20 MALE VOICE #2: Bill Hillard.

21 MR. LOWERY: Uh-huh.

22 MALE VOICE: Southwest Barge, and he -- you
23 don't know whether he's alive or not?

24 MR. LOWERY: No, sir, I don't. There again,
25 he -- he seemed like an old man to me at the time and

1 everything. So ...

2 MR. WERNER: Now, just -- just for
3 clarification, the area we're talking about, Southwest
4 Barge and this other -- whatever the name is --

5 MR. LOWERY: Yeah.

6 MR. WERNER: -- that is located on the south
7 side --

8 MR. LOWERY: South side.

9 MR. WERNER: -- of I-10.

10 MR. LOWERY: Right.

11 MR. WERNER: And the site is located on the
12 north side, and the other property you're talking about
13 is -- that was totally undeveloped at that time is also on
14 the north side, but it's on the east -- west side --

15 MR. LOWERY: West side.

16 MR. WERNER: West side, the back side.

17 MR. LOWERY: Now, I think since then -- since
18 they filled it, I think they've come in and put in a --

19 MR. WERNER: There's --

20 MR. LOWERY: Some kind of building.

21 MR. WERNER: Right now. And the direction of
22 the flow of the water at this point is going from south --

23 MR. LOWERY: North to south.

24 MR. WERNER: North to south. So even though
25 southwest is on the south side, even if they would wash

1 material out of the barges, if it were affected, the water
2 would go in a southerly direction.

3 MR. LOWERY: Yeah.

4 MR. WERNER: I guess there's the possibility
5 they can bring the material on the north side of the
6 highway, but it's unlikely they would bring the same kind
7 of material on the north side of the highway that came from
8 Champion. That's — that's the issue, and that material
9 has a very distinct characteristic.

10 MALE VOICE #2: Do you happen to remember,
11 Mr. Lowery, if MIMC had contracts with any other companies
12 other than Champion?

13 MR. LOWERY: Until they changed it to Gulf
14 Coast later on, but no. Champion Paper was the only one we
15 had a contact with.

16 MALE VOICE #2: So to the best of your
17 knowledge, MIMC didn't dispose any other waste --

18 MR. LOWERY: To the best of my knowledge,
19 (indiscernible) was Champion Paper. Now, what -- after
20 Gulf Coast took -- took over -- and I'm going by memory
21 again. But I think when Gulf Coast took over, I think
22 there may be some more material (indiscernible).

23 I don't know. They were there. Their whole
24 idea was they were going to have sort of a central
25 collection facility for everything.

1 MALE VOICE #2: That would be in the 1970s.

2 MR. LOWERY: I'm -- I'm going to say '70.
3 '71.

4 MR. WERNER: Early '70s. There's something
5 called the Washburn Tunnel. Is that -- were they separate
6 pits?

7 MR. LOWERY: (Indiscernible)

8 MALE VOICE #2: Right. The Washburn Tunnel
9 facility is, to the best of my knowledge, the Gulf Coast
10 Waste Disposal Authority waste facility where waste was
11 collected there from different industries around that area.

12 And -- but I don't -- I've never seen aerial
13 photographs or anything of Champion in historical
14 photographs that show lagoons, ponds, whatever you want to
15 call them, where this sludge
16 was -- where the sludge was stored. The sludge was
17 draglined to load onto the barge.

18 MALE VOICE #1: The Washburn Tunnel was a
19 separate facility.

20 MR. WERNER: That's the question. I was
21 thinking that's a separate facility. They're -- they're
22 next door to each other.

23 MALE VOICE #2: Okay. They're separate, and
24 Champion was there -- Champion was there long before Gulf
25 Coast Waste built that -- they didn't call it the Washburn

1 Tunnel facility.

2 MR. LOWERY: Oh, so Gulf Coast made -- built
3 their own lagoon.

4 MALE VOICE 2: I don't know what their
5 treatment system is, but they have their own -- some
6 treatment system where they collect waste from local
7 industries and bring it down to, you know, treat it, and
8 then it would be shipped out by (indiscernible).

9 MR. WERNER: Along that same issue is a very
10 good point. When Gulf Coast -- before Gulf Coast came into
11 existence, there was strictly an agreement, a contract
12 between McGinnes Industrial Maintenance Company and
13 Champion, and Champion was the only company that McGinnes
14 was only barging waste. Is this correct?

15 MR. LOWERY: Yes.

16 MR. WERNER: When Gulf Coast came into
17 existence and the contract was transferred not between
18 Champion and McGinnes, but it was then between Gulf Coast
19 and Champion. Is this correct?

20 MR. LOWERY: Yeah. I mean, what -- what went
21 on between Champion and -- and Gulf Coast, I don't know.
22 But I do know that sometime -- I'm going to say the early
23 '70s, '71, our contract was terminated with Champion, and
24 we were in a new contract. It was the same money and
25 everything, but it was Gulf Coast Waste Disposal Authority.

1 MR. WERNER: But there had to be some kind of
2 written document between Gulf Coast and Champion.

3 MR. LOWERY: There may very well be.

4 MR. WERNER: McGinnes was out of the picture.

5 MR. LOWERY: Yeah.

6 MR. WERNER: But McGinnes was actually doing
7 the hauling but being paid by Gulf Coast.

8 MR. LOWERY: That's correct. McGinnes
9 actually had a contract with Gulf Coast.

10 MR. WERNER: Okay. The question is, during
11 that time period when -- when McGinnes was hauling, but the
12 contract allowed them to be paid by Gulf Coast, did
13 McGinnes haul -- continue hauling the waste directly from
14 Champion to Howe's Point or was the waste from Champion
15 mixed with other material at Washburn --

16 MR. LOWERY: No.

17 MR. WERNER: -- and then hauled out?

18 MR. LOWERY: You know, there again -- you
19 know, the longer I worked for McGinnes -- in 1971
20 (indiscernible). In 1971, they made me vice president and
21 general manager of McGinnes Brothers.

22 And from that point on, from 1971, I believe,
23 (indiscernible) Delta Airlines to Nashville or Memphis on a
24 Sunday and might get home on the next Saturday. So I
25 got -- after 1971, I was totally basically out of the

1 operation, but ask your question again.

2 MR. LOWERY: Well, I guess the case in point
3 is these initial pits that are located at Howe's Point,
4 they were in use at the time only by McGinnes, only with
5 waste from Champion.

6 MR. LOWERY: Yes, if it changed after 1971,
7 but I don't think it did. I would have heard about it.
8 The only place that McGinnes -- like I say, one of these
9 captains -- you mentioned Captain Roberts. You know, those
10 guys were there, and they know what went on.

11 But one of them lived somewhere right on the
12 Louisiana line over here, and I can't remember his name.
13 But anyway, you know, as far as I know, the only place that
14 McGinnes ever -- ever pumped those barges was there at
15 Champions.

16 MR. WERNER: Okay. And if waste here has the
17 same characteristic as the waste here, and that's the same
18 characteristic of the waste that comes from Champion, kind
19 of isolating it down, somebody took it there. Whether you
20 actually saw somebody, somehow it got there, I guess, is
21 the issue.

22 MALE VOICE #2: In the 1965, '66 time frame
23 did MIMC have an engineering firm that it did a lot of work
24 with MIMC?

25 MR. LOWERY: Yeah. Brown & Root engineered

1 the disposal sites on Howe's Bayou.

2 MALE VOICE: Were there any other companies
3 that you worked with (indiscernible)?

4 MR. LOWERY: McGinnes Brothers. I mean, we
5 worked with all the major engineering companies, contracts
6 totally removed from MIMC. We worked with a lot of
7 engineering companies.

8 MALE VOICE #2: Do you remember any names?

9 MR. LOWERY: Well, it's the same ones I
10 worked with (indiscernible). Like I say, it was just --
11 like the work I do, I go out and, you know, get a set of
12 plans and go to work. They didn't have -- they didn't
13 engage -- ever engage the services (indiscernible). All
14 they did was do the work.

15 MALE VOICE #2: I was just wondering if there
16 was engineering firms that were engaged to do work at the
17 site. Do you recall?

18 MR. LOWERY: No, I do not. I do know that at
19 the time all this was going on that Dr. Thibodeaux -- that
20 was the name you heard. He was the bridge pollution man.
21 I heard his name a lot.

22 MALE VOICE #2: You mentioned earlier -- you
23 were talking about Ole Peterson.

24 MR. LOWERY: Plant Maintenance.

25 MALE VOICE #2: Ole Peterson stayed in

1 trouble all the time. Bobby Burns.

2 MR. LOWERY: Yeah, yeah.

3 MALE VOICE #2: You said Ole Peterson and
4 something else.

5 MR. LOWERY: Plant Maintenance Corporation.
6 Plant Maintenance Corporation. It was just something he
7 could (indiscernible), you know, kite checks and things
8 like that.

9 MALE VOICE #2: So Plant Maintenance
10 Corporation was a separate company from Ole Peterson?

11 MR. LOWERY: Yes. He knew --

12 MALE VOICE #2: But it was all one and the
13 same?

14 MR. LOWERY: Yeah. He knew how to play it.

15 MR. WERNER: It's Plant Maintenance
16 Corporation?

17 MR. LOWERY: They were (indiscernible).

18 MALE VOICE #2: You mentioned MIMC rented
19 barges, I guess, from a New Orleans company.

20 MR. LOWERY: Uh-huh. And again --

21 MALE VOICE #2: Do you remember what that
22 company was?

23 MR. LOWERY: No. I'll -- I'll think of it,
24 and then ultimately we ended up buying barges.

25 MALE VOICE #2: Do you remember what year?

1 MR. LOWERY: No. What we did -- we had them
2 on a lease purchase option. I'm going from memory. I have
3 no idea. These lease purchases are a three or four-year
4 period, you know, and these barges were pretty old too.

5 MR. WERNER: How long would you depreciate
6 those barges over the years?

7 MR. LOWERY: I don't remember that. Five,
8 ten years. It was short-lived (indiscernible).

9 MR. WERNER: Rust out so fast. During --
10 during the time you had actually been with McGinnes
11 Brothers or McGinnes Industrial Maintenance Company, did
12 they have to actually buy a new barge to replace any of the
13 old barges or were they always being repaired?

14 MR. LOWERY: I don't think we ever bought any
15 new barges, but I think -- I think there was a period of
16 time that I was involved that we probably bought a couple
17 of good used barges, maybe buy them out of a rental fleet,
18 more than likely this rental fleet we rented from.

19 MR. WERNER: So it wasn't necessarily the
20 same four or five you started with that were there --

21 MR. LOWERY: You'd send them back to the
22 rental fleet because, you know, they were wore out, and
23 they'd give you some more. Like I say, I was involved in,
24 you know, from '65, and then I got pretty well moved over
25 to McGinnes Brothers in '71. So during that period of time

1 I feel like MIMC -- that we owned the barges. We owned the
2 tugboat.

3 MR. WERNER: And on the site north of the
4 river, north of the I-10 bridge, where you're talking about
5 where they would tie the barge up, what was that term?

6 MR. LOWERY: I called them dolphins.

7 MR. WERNER: Is that the same thing as a
8 pylon?

9 MR. LOWERY: Yeah, pylon.

10 MR. WERNER: Okay.

11 MR. LOWERY: You usually put a -- maybe a
12 dozen in a clustered kind of form (indiscernible). It's
13 just a mooring device. I think probably they had put them
14 in there. They could pull the barge and tie it off, you
15 know.

16 MR. WERNER: When they would -- when they
17 would unload barges at Howe's Point or Howe's Bayou, did
18 they have the same type of mooring to be able to hold those
19 barge in a position to unload it?

20 MR. LOWERY: No. The barge -- the dredge
21 itself was only probably -- maybe a 30-foot by 15-foot
22 barge, and they had what they call a (indiscernible).
23 They'd drop all four corners or maybe just on one end.

24 They could actually drop this big pipe in the
25 ground. They'd kind of sink it in the ground to hold that

1 bar steady, and then the other bar -- the big barge would
2 come right along and tie off on it.

3 When they had pylons down there, I can't
4 remember, but I know they would -- the levee would be right
5 here, and your canal would be over here. The canal -- we
6 actually called it McGinnes Industrial Barge Canal.

7 We would have the dredge in right here, and
8 the barge would come right alongside it here. It'd be a
9 little bit longer, and it'd come alongside here. The
10 dredge would -- they drop this snorkel, you might, say, or
11 vacuum. You would have a discharge (indiscernible) the
12 levee and pump it out like that.

13 MR. WERNER: So was that the normal
14 arrangement? The dredge would sit between the barge and
15 the pit they were going to pump it into?

16 MR. LOWERY: This barge would have to be able
17 to pump.

18 MR. WERNER: Now, I was at the site a couple
19 of days ago, and I noticed that if you come back up the
20 river --

21 MALE VOICE #2: I-10.

22 MR. WERNER: Yes, I-10.

23 MR. LOWERY: Oh, okay.

24 MR. WERNER: Come up I-10, and you'd be on
25 the north side of the property, of the site. If you've got

1 a barge or anything back here, this is not visible from the
2 highway.

3 MR. LOWERY: No. The pylon they had was over
4 on this side.

5 MR. WERNER: Right.

6 MR. LOWERY: On the deep water side, you
7 know.

8 MR. WERNER: But if you had a barge here, to
9 have it unloaded, it would not even be visible from the
10 highway --

11 MR. LOWERY: Right.

12 MR. WERNER: -- based on what I could see
13 when I was out there. So if a barge was up front basically
14 on the -- on the east side of the property, it would be
15 visible from the highway as you're going across the ten
16 bridge. But if the barge is being unloaded back here, as
17 you're going across the highway, you would never see that.

18 MR. LOWERY: I can almost tell you -- this is
19 going from memory, but yeah. I don't think you can do it
20 today. I don't think you can get -- the San Jacinto's
21 River's got some depth to it.

22 You get out here -- at one time, this was
23 almost marshland. I don't believe you could then or now
24 even think about getting a loaded barge back over here.

25 MR. WERNER: Okay.

1 MR. LOWERY: You would have to dig a channel
2 to do it, but I -- I don't think there's any way you could
3 have then or you could now get -- like I say, I haven't
4 looked at it in years, but I don't think you could get a
5 barge loaded, you know.

6 MR. WERNER: (Indiscernible)

7 MR. LOWERY: Yeah, (indiscernible).

8 MR. WERNER: You'd something about earlier
9 that when you'd bring a pump over here, you'd come over
10 with your Volkswagen. Would you actually drive into this
11 area?

12 MR. LOWERY: I'd usually -- there was a
13 bridge right along here. You could get down below the
14 bridge and probably still can. Used to, you could drive
15 right down here, and this was -- they built that levee out
16 here.

17 MR. WERNER: Right.

18 MR. LOWERY: You could actually have the
19 barge up here, and they'd -- I'd take the pump and get
20 it -- you could actually walk on dry land, walk on the
21 levee, and walk over here. They'd have a gangplank or
22 something. I can't remember.

23 MR. WERNER: But am I correct in saying you
24 could not actually drive from the highway down into this
25 property or could you drive --

1 MR. LOWERY: No, no. You -- you could
2 actually drive down underneath the I-10 bridge and -- and
3 actually come to this point right here.

4 MALE VOICE #2: Was that like a parking lot?

5 MR. LOWERY: Well, it was just -- it was just
6 surrounded by water and everything, you know, but that's
7 about as far as you could go.

8 MR. WERNER: Was there just like water and
9 marsh in this area?

10 MR. LOWERY: Uh-huh.

11 MR. WERNER: You could -- okay. But now the
12 levees, like you said, identify -- you've got this one
13 large area with the levee, and then you've got these other
14 areas over here that have levees.

15 MR. LOWERY: Yeah, just -- just -- it's just
16 a levee around the four -- four, you know, legs around
17 here.

18 MR. WERNER: Yeah. The aerial photos show
19 this, and then they also show basically two more down here.
20 One is --

21 MR. LOWERY: Again, all I -- you know, all I
22 recall is it was just a leveed-in piece of property.

23 MR. WERNER: Okay.

24 MR. LOWERY: I didn't ever surmise it in my
25 mind being -- being twenty acres of levee, but they leveed

1 the whole thing.

2 MR. WERNER: I think we had (indiscernible)
3 draw an official map of the site.

4 MALE VOICE #1: Boy, if you're going to ask
5 me to draw an official map of the site, that's ...

6 MR. LOWERY: Since this job -- since I left
7 McGinnes years ago, I've been right over here somewhere.
8 There was a guy (indiscernible) dragline somewhere out in
9 here on a barge, and he was dredging this area right here,
10 you know, pulling the material up and then loading it out
11 on a dump truck and hauling it out. He was actually doing
12 a dredge job with a dragline.

13 MR. WERNER: There's a lot of sand being
14 taken out of this area right now.

15 MR. LOWERY: As a matter of fact, I know the
16 guy that was doing.

17 MALE VOICE #2: I wish I had brought my
18 aerial photographs that I had of this site, but this --
19 this is the river, and this is I-10, and this would be
20 the -- the impoundment, the -- the levee area.

21 From an aerial photograph, I believe 1973,
22 it's pretty clear that there's one -- this is a really bad
23 drawing -- over here one levee of -- that shows material in
24 it, and you can see the walls distinctly.

25 Then there's a C-shaped one over here and

1 then one kind of inside of it. So that's just what the --
2 the photograph shows, and I was wondering if you had -- and
3 you've already answered it.

4 (Voices talking simultaneously)

5 MR. LOWERY: I just remember seeing a
6 (indiscernible).

7 MALE VOICE #2: I think you've already
8 answered this question. You wouldn't know any sort of
9 process or why it would be configured that way?

10 MR. LOWERY: No.

11 MALE VOICE #2: Getting back to the pylons or
12 dolphins --

13 MR. LOWERY: Yes.

14 MALE VOICE #2: -- if they were there when --
15 when McGinnes quit using the property there by the I-10
16 bridge, would they be obligated to take those out or
17 would -- do you feel the remains of them would still be in
18 the ground?

19 MR. LOWERY: I have no idea.

20 MALE VOICE #2: Okay. All right. And
21 that -- I'm just wondering because --

22 MR. LOWERY: I have no idea.

23 MALE VOICE #2: -- for future investigation,
24 I want to know if someone's putting a bore hole down if
25 they're going to hit one of those.

1 MR. LOWERY: Yeah.

2 MALE VOICE #2: That'd be good to know.

3 Okay.

4 MR. LOWERY: Have y'all -- have y'all cored
5 this or bored this or anything --

6 MALE VOICE #2: Well, we --

7 MR. LOWERY: -- to know what depth?

8 MALE VOICE #2: Back in 2005, we -- I believe
9 it was 2005. We collected some sediment samples in the
10 former impoundment area. So we didn't really core down.
11 We got somewhere two to three feet down. But, you know, we
12 didn't -- that was as deep as we went.

13 MR. LOWERY: So you -- you know the sludge is
14 at least two feet deep. Is that what you're saying?

15 MALE VOICE #2: That's -- yeah. It is -- I
16 don't know that you could say that. It's not, you know,
17 getting -- getting a sediment sample isn't, you know, a
18 definitive way of telling, you know, at least --

19 MR. LOWERY: How deep it is.

20 MALE VOICE #2: -- how deep it is. It's --
21 yeah. It's hard to say. But within -- within that two or
22 so feet of sample that we collected, we did find material
23 that is indicative of a paper mill.

24 MR. WERNER: So to answer that -- we take the
25 samples that are normally two feet, three feet, six inches.

1 MALE VOICE #2: We collect as far -- as deep
2 as we can get the -- the coring tool to get a good
3 historical, you know, representation of -- of -- you know,
4 as much as we can see.

5 MR. WERNER: So if it's not done to the depth
6 of fifteen or twenty feet --

7 MALE VOICE: No.

8 MR. WERNER: -- you're just basically getting
9 the materials out and testing it. That's it.

10 MR. LOWERY: How big those levees were,
11 again, that -- that wouldn't be considered (indiscernible) .
12 It seems like it never was four or five-foot, six-foot max
13 with the levees out here. You've been there.

14 MR. WERNER: This is just without knowing.
15 But if it was considered to be a location that would
16 temporarily be used to put waste from the paper mill until
17 Howe's Bayou was ready, there would be no reason to build a
18 high levee because by the time the bayou would be ready,
19 even a low levee, they -- they would probably not fill it
20 up.

21 So without being there, that's just a
22 surmise, and that's it. But that might explain why the
23 levees are low.

24 MALE VOICE #2: I just want to kind of get
25 back to what you exactly remember about the site when you

1 were out there. You did see the levees.

2 MR. LOWERY: Yeah. The small levee I call
3 it.

4 MALE VOICE #2: And can you give me an
5 approximation of the area that the levees surrounded?

6 MR. LOWERY: The area or --

7 MALE VOICE #2: The area.

8 MR. LOWERY: Twenty acres, it would hold
9 32,000 cubic yards. It would hold 32,260 cubic yards per
10 foot. Twenty acres, it would hold 32,260 cubic yards per
11 foot. It's five-foot deep, 161,300 cubic yards.

12 MALE VOICE #2: So the (indiscernible) acres
13 side, that levee --

14 MR. LOWERY: No. I don't know that for a
15 fact. Like I say, when I saw it, I just -- that was, you
16 know, kind of what it looked like. I didn't -- I didn't
17 think the whole thing was leveed in, but I don't know.

18 MALE VOICE #2: Okay. So you don't remember.

19 MR. LOWERY: But I mean the whole twenty
20 acres are leveed in. That's what I mean.

21 MR. WERNER: I don't -- I don't believe the
22 whole twenty acres itself was. There was a levee within
23 the twenty.

24 MALE VOICE: (Indiscernible)

25 MR. LOWERY: There's a levee within the

1 twenty acres. Actually, I don't quite remember this, but
2 you see pictures of this right here.

3 MALE VOICE #2: Right, and I was just going
4 to suggest this -- on your computer, do you have access to
5 Google Earth or something so we could -- if we could see
6 just for your benefit as far as an area of how big this
7 would cover, we could see it from the air because in high
8 enough photographs you can still see the levee -- the
9 impoundment walls. So if you wanted to see that, we could
10 try that if you wanted to.

11 MR. LOWERY: I think all the girls are gone.
12 I'm not sure.

13 MALE VOICE #2: Okay.

14 MR. LOWERY: We can open the door and see if
15 (indiscernible) at the front desk.

16 MALE VOICE #2: Do you have somewhere --

17 MR. LOWERY: No. It's nothing all that
18 critical.

19 MR. WERNER: He wants to go to church.

20 MR. LOWERY: It's too late now. Nobody
21 there? Okay.

22 (Voices speaking simultaneously)

23 MR. LOWERY: She -- she could put it over
24 there. I'm computer stupid.

25 MALE VOICE #2: I'm fine. I'm just

1 suggesting it because --

2 MALE VOICE 1: To refresh his memory as to
3 what --

4 MALE VOICE 2: You never know. Let me try to
5 run through the rest of my questions.

6 MR. LOWERY: Sure.

7 MALE VOICE #2: When you were working with
8 MIMC and Champion (indiscernible) --

9 FEMALE VOICE: (Indiscernible)

10 MR. LOWERY: What was it you wanted to try to
11 do? He wanted to try pull something off the computer.

12 FEMALE VOICE: I don't have it turned on.
13 I'll turn it back on.

14 MALE VOICE #2: You mentioned that you had a
15 plant manager. There was a Mr. Henderson.

16 MR. LOWERY: Jim Henderson.

17 MALE VOICE #2: Do you remember any other
18 people at Champion that you were in contact with or working
19 with at the time --

20 MR. LOWERY: Yes.

21 MALE VOICE #2: -- that we might be able to
22 talk to?

23 MR. LOWERY: I was thinking about it a while
24 ago. I'll think of it in a minute. Yeah. He was younger
25 than -- well, he was older than me too, but he was younger

1 than Mr. Henderson. He lives up in East Texas somewhere, I
2 heard.

3 I will think of his name in a minute. I'll
4 think of it. He was the plant manager or, you know,
5 operations manager, you might say. Oh, golly. It'll
6 come -- I'll think of it.

7 MALE VOICE #2: That'll be helpful if we
8 could get in touch with someone.

9 MR. LOWERY: Yeah, and he would be the only
10 person that might still be around that, you know, would
11 know what went to

12 MALE VOICE #2: There are some deed records
13 (indiscernible) owned by Virgirl McGinnes as trustee. Do
14 you recall whether when you were doing the books for MIMC,
15 was that piece of property considered an asset of MIMC or
16 was it McGinnes Brothers?

17 MR. LOWERY: I'm almost certain it was MIMC.
18 I'm not 100 percent sure, but I feel like it was. And I
19 want to say it cost \$50,000, but I'm not sure. Forty or
20 \$50,000.

21 MALE VOICE #2: You don't remember for sure,
22 but you think it might?

23 MR. LOWERY: It just seemed like it was forty
24 or \$50,000. It seemed like an awful lot back then.

25 MALE VOICE #2: You mentioned a person with

1 Brown & Root that you worked with.

2 MR. LOWERY: Bob --

3 MALE VOICE #2: Milweed?

4 MR. LOWERY: Bob Milweed. Bob Milweed, and I
5 don't know how to spell it. M-i-l-w-e-e-d, I think. I'm
6 pretty sure he's -- he's gone. He was in World War II with
7 Mr. McGinnes' -- Mr. McGinnes lost a brother in the war.
8 He was on a flight -- the same flight with his brother.
9 He's eighty-five plus.

10 MALE VOICE #2: Do you remember anyone else
11 at Brown & Root?

12 MR. LOWERY: Bob -- Bob Millweed pretty
13 well -- him and Mr. McGinnes walked the permits through.
14 You know, they're the ones that went to Austin to all the
15 meetings, what I call walk -- walk the permits, discharge
16 permits and all that stuff. I'll think of the name. I
17 just can't remember names.

18 MALE VOICE #2: And you said that you would
19 try to locate Bill Purifoy?

20 MR. LOWERY: Yeah. I'll try. Like I say, if
21 there's a bridge -- if a barge got to a bridge, it's after
22 I worked there. Like I say, I --

23 MR. WERNER: Do you happen to remember a
24 barge at Champion being overloaded and sinking in the dock
25 at the Champion facility?

1 MR. LOWERY: I don't recall that.

2 MR. WERNER: Okay.

3 MR. LOWERY: We -- we had barges that went --
4 I think went down in Galveston sometime. It pumped out
5 (indiscernible). We had some barges that settled to the
6 bottom, you know.

7 MR. WERNER: Did you ever have to file --
8 while you were there with McGinnes, did you ever have to
9 file a claim, insurance claim for a barge that had caused
10 damage or sank?

11 MR. LOWERY: As far as I recall --

12 (Cell phone interruption)

13 MR. LOWERY: Like I say, I handled the -- the
14 insurance for McGinnes over a long period of time,
15 particularly marine and aviation, and I -- I just do not
16 recall a claim of any kind.

17 MR. WERNER: And that was from the time you
18 started in '65 up to the time you left?

19 MR. LOWERY: I left in '77, uh-huh.

20 MR. WERNER: Okay.

21 MR. LOWERY: I just do not recall an
22 insurance claim of any kind.

23 MR. WERNER: Okay. And especially a barge
24 breaking loose from the pylons in this area and coming into
25 the I-10 bridge.

1 MR. LOWERY: I cannot think of any claims.

2 MALE VOICE #2: Would the insurance policies
3 you had cover the property on I-10?

4 MR. LOWERY: I wouldn't think so. The big
5 concern you have on maritime law is, you know, you wind up
6 suing under maritime law rather than workmen's comp because
7 there's no limits — statutory limits.

8 That was always my concern. But as far as
9 any insurance on the property itself, I'm going to say no.
10 I didn't -- I didn't have insurance on it. You didn't
11 think about things like that then. McGinnes -- you know,
12 McGinnes Industrial had, you know, liability insurance, you
13 know.

14 MR. WERNER: But as best you can remember,
15 there was nothing that you can remember actually
16 depreciating -- depreciation associated with the property.
17 It was just a capitalized expenditure?

18 MR. LOWERY: Well, the -- the land itself was
19 capitalized, and the levee -- like I said, the levee was
20 dug. I don't know when it was dug, but -- and I kept books
21 for both McGinnes and MIMC. Some of that was so trivial.
22 Mr. McGinnes would send a dragline operator out there
23 (indiscernible) . So it's an expense.

24 MR. WERNER: Okay. So it would go on the
25 books as an asset, and that's it. Okay.

1 MALE VOICE #2: And Bill Hillard was with
2 Southwest Barge. Do you remember -- I can't remember
3 whether you said he was still alive.

4 MR. LOWERY: Bill Hillard, he was older than
5 me at the time. The establishment's still there, Bill
6 Hillard, and --

7 MALE VOICE #2: Southwest Barge is still
8 there?

9 MR. LOWERY: I think they're still there and
10 operational if they haven't been sold out by now, you know.

11 MR. WERNER: There's a -- we were there
12 yesterday, and there's -- I don't know if it's Southwest --
13 I didn't look at the name, but there's a big maintenance
14 facility right in this area. So it could be exactly who
15 you're talking about.

16 MR. LOWERY: Yeah. If you can find them -- I
17 just -- you know, somebody here might could know on what's
18 going on around here more than I do (indiscernible). But
19 that's the only person I know out there.

20 MR. WERNER: And what was that name again?

21 MR. LOWERY: Bill Hillard, H-i-l-l-a-r-d.

22 MR. WERNER: Okay. Do you all have any
23 questions?

24 MS. WALKER: The article in regard to
25 Hitchcock and the land, where was that?

1 MR. WERNER: It came from the newspaper. It
2 is -- you're welcome to make a copy.

3 MR. LOWERY: Prior to Mr. McGinnes' death, he
4 was in the process of selling that property.
5 (Indiscernible).

6 MR. WERNER: This is from Galveston News.

7 (Voices talking simultaneously)

8 MR. WERNER: This particular issue is
9 December 30th of 1967.

10 MR. LOWERY: But he passed away just about
11 the time he told me he was getting ready to do that.

12 MS. WALKER: (Indiscernible)

13 MR. WERNER: Pardon?

14 MS. WALKER: (Indiscernible)

15 MR. WERNER: Well, I ran two copies because
16 it's such a bad copy. This is actually a double page, and
17 we didn't have a very good copy of it. It's the same
18 thing. It's just --

19 MS. WALKER: (Indiscernible)

20 MR. WERNER: Right.

21 MALE VOICE #2: Can you tell me again,
22 Mr. Lowery -- I think you said G&H Towing.

23 MR. LOWERY: Yes.

24 MALE VOICE #2: Or G&H Tug.

25 MR. LOWERY: It was G&H -- G&H Towing.

1 G and H, initial G and H, Towing. The other guy -- there
2 was one (indiscernible) that we used. The other guy I told
3 you a while ago I was thinking about lives out in
4 Prairieland at Green Tes.

5 His name is Brooks, Mr. Brooks. That's all I
6 remember. He was very wealthy, owned a bunch of boats and
7 everything, played golf all the time. We rented from him
8 every once in a while.

9 MALE VOICE #2: And he's with a different
10 company that you mentioned?

11 MR. LOWERY: Yes, he is. I wished I could
12 (indiscernible). I used to keep all kinds of records.

13 MALE VOICE #2: Do you have records
14 (indiscernible)?

15 MR. LOWERY: No. I said I wish I did. I had
16 a world of records. I'm kind of a bug for keeping records
17 and everything, you know. But no, I don't -- I don't have
18 any records.

19 MALE VOICE #2: Where is -- where is G&H
20 Towing?

21 MR. LOWERY: It's up here in Houston. They
22 may still be around, G&H Towing.

23 MALE VOICE: Can you remember anything else
24 about the property at I-10 that may be important to us?
25 Anything at all?

1 MR. LOWERY: No, not offhand. Like I say, I
2 remember -- I remember seeing a levee. I remember seeing
3 the dolphins. I remember seeing a barge tied up there, you
4 know, but I not remember seeing a dredge out there.

5 MALE VOICE #2: (Indiscernible)

6 MR. LOWERY: Do what?

7 MALE VOICE #2: Waste disposal there.

8 MR. LOWERY: I never -- if there was, I never
9 was a witness to it. And like I say, just thinking back, I
10 don't remember seeing a dredge. Of course, you know, when
11 I'd go and take a pump out, I was just ready to get out and
12 get back.

13 MALE VOICE #2: What were other ways of
14 possibly disposing of it and unloading the barges?

15 MR. LOWERY: That's the only way I would know
16 how to do it because a hopper barge, you can't -- you can't
17 put a bucket in there and start dragging it out because
18 you'd rip the bottom out of it and everything, and you'd
19 have a real problem.

20 I would say they would have to be pumped out.
21 Now, Bobby Burns -- like I said, Bobby Burns, from the time
22 of August when I was baby-sitting those two companies for
23 about six months, material was being removed during this
24 time, and that was before -- Mr. McGinnes is the one who
25 brought the barges onboard.

1 I'm just going back from memory, but it seems
2 like there were vacuum trucks. They had a lot of volume to
3 take somewhere, you know.

4 MALE VOICE #2: The vacuum trucks would
5 have --

6 (Voices speaking simultaneously)

7 MR. LOWERY: (Indiscernible) and suck it out,
8 you know.

9 MALE VOICE: So it's possible there could
10 have been --

11 MR. LOWERY: And -- and I'm not saying -- I
12 mean, it's a very good possibility during that first six
13 months that I was with MIMC or McGinnes Brothers and would
14 baby-sit that company, they were removing sludge then, but
15 I didn't ever go down to the facility and witness it. But
16 I don't recall -- I would have known if they had tugboats
17 and barges.

18 MR. WERNER: To clarify the questions asked
19 and kind of the question I'd asked earlier, would it be
20 possible for a vacuum truck -- do you know what a vacuum
21 truck is? Okay. Would it be possible to get a vacuum
22 truck into this area?

23 MR. LOWERY: I don't -- I don't really know.
24 I guess it depends on what the tide does and everything. I
25 just don't know whether you could get one in there or not.

1 MR. WERNER: Well, with the tide --

2 MR. LOWERY: That particular area is
3 subsiding, has been subsiding (indiscernible).

4 MALE VOICE #2: In 1965, '66, was the I-10
5 side covered with water other than this area where you used
6 to park your car?

7 MR. LOWERY: Yeah, yeah. There's water
8 pretty much all around this and probably still is. As a
9 matter of fact --

10 MALE VOICE #2: But the twenty acres wasn't
11 covered with water.

12 MR. LOWERY: No. It had -- you know, it has
13 a levee around and probably has a little water in it, you
14 know.

15 MALE VOICE #2: Do you remember water being
16 inside the levee?

17 MR. LOWERY: I never paid attention unless
18 you pump it out. It'd start making water, you know, if you
19 dig down very -- five, six foot, probably groundwater, you
20 know. It would just come up.

21 Like I say, you know, it's a question I've
22 asked every time. Is there no records left of -- as far as
23 the dates that the boats were bought, the barges were
24 bought and all that kind of stuff. There ought to be some
25 records of that somewhere.

1 MR. WERNER: Those would be records of the
2 company, and that was so long ago it's not (indiscernible) .

3 MR. LOWERY: That's true.

4 MR. WERNER: So we're really dealing with
5 historical information that we can -- that we can point to
6 what's happened, and I really think the primary issue is
7 there's material at that location that meets the same
8 characteristics as the other location. Somebody put it
9 there.

10 MALE VOICE #2: Here's what I'm trying to
11 figure out, Mr. Lowery. To the extent there is waste on
12 that property and we used the sampling out there, could it
13 be -- I was wondering if there would be waste there from
14 companies other than McGinnes. It sounds like you don't
15 know.

16 MR. LOWERY: I can almost emphatically say
17 any material that McGinnes hauled in barges came from --
18 through 1977 came from the lagoons there at Champion Paper.
19 Now, what was brought to that lagoon after Gulf Coast took
20 over -- really what I heard was Gulf Coast took over that
21 thing and made it sort of a collection center, and I heard
22 they had actually brought the pipe from Crown Central over
23 there.

24 I've wondered myself, you know -- I know that
25 we worked a long time with the EPA to get this discharge

1 permit, you know, for this effluent over here. And then
2 when Gulf Coast came on -- this is memory -- of bringing a
3 different product into the lagoon.

4 I often wondered about, you know -- Gulf
5 Coast is a state-sponsored agency, and the EPA's involved
6 in the discharge permit, and everybody (indiscernible)
7 going on. But I think there's a possibility the
8 characteristics of the material started changing when Gulf
9 Coast came aboard, but I don't know that.

10 MALE VOICE #2: But before Gulf Coast came
11 onboard, it would have been Champion waste.

12 MR. LOWERY: Absolutely, absolutely.

13 MR. WERNER: We've touched on this before;
14 but when you left, by the time you left, would I be safe in
15 saying that at least one of these levees had been closed
16 off?

17 MR. LOWERY: Oh, I think a lot more than
18 that. Like I said, I went out here initially before we
19 ever built the first levee, made a couple of trips down
20 there on the tugboat, but -- and even then they had already
21 began this McGinnes Barge Canal because we went up in the
22 barge canal on the boat.

23 About the time I left in 1977, probably -- I
24 don't know how long it continued after I left with
25 McGinnes. But when I left McGinnes, there was a whole

1 network of lagoons all the way up -- how far here, I don't
2 know.

3 MR. WERNER: But these were the originals,
4 and they would only have Champion waste in them.

5 MR. LOWERY: That's correct, and anything
6 else that was done up through 1977 with the change of
7 players.

8 Like I said, when I did come out in the
9 tugboat and made a run up in here, this -- they already had
10 a network of lagoons that were finished and topped off and
11 were probably working on these -- I guess there's a lagoon
12 back in here. But they've been dumping in here for -- from
13 '67 to '77 or ten years.

14 MR. WERNER: The levees themselves were all
15 actually constructed by McGinnes Brothers. The engineering
16 was done by --

17 MR. LOWERY: Brown & Root.

18 MR. WERNER: -- Brown & Root. And the
19 engineering -- would I correct in saying the engineering
20 was a particular width and height; and then after that,
21 McGinnes Brothers made sure that they built the successive
22 levees to the same standard?

23 MR. LOWERY: Uh-huh.

24 MR. WERNER: Okay.

25 MR. LOWERY: Brown & Root was involved in

1 that thing all the years I was there. Any time they got
2 ready to -- I guess it was a particular -- a particular
3 design that EPA had or whatever. They built according to
4 the standards set by the EPA or the Texas Water Quality
5 Board or whoever it was.

6 MR. WERNER: So are you saying that he
7 decided to build a new levee impoundment, and Brown & Root
8 would design it?

9 MR. LOWERY: They designed a whole network
10 initially; and then over a period of time, you know, you
11 double your the capacity. I'm sure that they had them
12 involved in that too.

13 MR. WERNER: I see.

14 MR. LOWERY: But Bob Milweed was around a
15 long time with Mr. McGinnes and even after Roland McGinnes
16 come onboard. Like I said, Roland, as far as I know, is
17 still alive. When Roland came onboard, well, he -- he
18 would go to the meetings with Mr. McGinnes and with Bob
19 Milweed.

20 MR. WERNER: Did you ever attend any of the
21 meetings in Hitchcock when --

22 MR. LOWERY: No, no.

23 MR. WERNER: -- discussions were going on?

24 MR. LOWERY: No, no. Like I said,
25 Mr. McGinnes had a way sometimes of keeping you out of his

1 business when he wanted you out of his business. He had an
2 ongoing battle with Mr. Parker, you know. He and
3 Mr. Parker had bad blood anyway, I think, so they were at
4 each other's throat, you know.

5 MALE VOICE #2: Do you remember the four or
6 five barges (indiscernible)?

7 MR. LOWERY: Yeah. Once we -- I think we
8 started off with probably four barges.

9 MALE VOICE #2: Did those barges have
10 particular names? Do you remember?

11 MR. LOWERY: No. It was like one, two,
12 three, four, something like that. That's how we kept up
13 with them for cost records and repairs and any insurance
14 and all that stuff. They actually, I think, probably had
15 some sort of legal number to give the insurance company,
16 you know.

17 MR. WERNER: And the -- the barge time from
18 Champion to the I-10 site was about two to three hours?

19 MR. LOWERY: Yeah. I'm just -- I'm just
20 guessing. I can't imagine it being any more than that
21 coming down the ship channel and getting out into the
22 (indiscernible) . I wouldn't think it'd be over three
23 hours.

24 MR. WERNER: And the estimated time between
25 Champion and Howe's Bayou was maybe eight to ten hours?

1 MR. LOWERY: Yeah.

2 MR. WERNER: It was a longer distance.

3 MR. LOWERY: A much longer distance.

4 MALE VOICE #2: Mr. Lowery, I think you've
5 been a very patient man. I appreciate your time. I'm
6 probably remembering -- I'm probably forgetting the most
7 question I need to ask you. Can I -- can I call you if I
8 think of something?

9 MR. LOWERY: Sure. You bet. I'll give you a
10 card. Any one of you can.

11 MALE VOICE: I pulled up on Google if you
12 wanted to see --

13 MR. LOWERY: Okay.

14 MALE VOICE: -- how big an area these things
15 are.

16 (Voices speaking simultaneously)

17 MALE VOICE: You can get a sense of that.

18 MR. WERNER: We're turning the tape off.

19

20

21

22

23

24

25

1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 THIS IS TO CERTIFY THAT I, BARBY D. BLACK, a
4 Certified Shorthand Reporter in and for the State of Texas,
5 reported in shorthand, to the best of my-ability as I was
6 not physically present at the time the recordings were made,
7 and that the above and foregoing 120 pages contain a full,
8 true, and correct transcript of the said recordings except
9 where indicated by "indiscernible."

10 Certified to on this the 4th day of SepLember,
11 2008.

12
13 **1?-c\M st**

14 Expiration Date: 12/31/08
15 Firm Registration No. 491
16 The Nathaniel Barrett Building
17 903 East 18th Street, Suite 11j
18 Plano, Texas 75074
19 Phone: (214) 303-0222
20 Fax: (214) 303-0202
21
22
23
24
25

EXHIBIT 11

Bill Rabbitt

8-19-65

Perma-Engineering - may fold -

IRS - may not want heavily mortgaged
equipment.

Shutdown Ole Peterson today - expects
to start up tomorrow.

Burns advised Bill Rabbitt ^{that} Ole Peterson
would not invoice CPI this week -

so IRS would not attack monies due

He plans to get funds from IRS
to satisfy Ole Peterson levy -

EXHIBIT 12

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS §

THAT, OLE PETERSON CONSTRUCTION COMPANY, INC., a Texas corporation, acting herein by J. R. Burns, Jr., its President, duly authorized by appropriate action by its Board of Directors, (hereinafter called "Assignor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations paid by MC GINNEY INDUSTRIAL MAINTENANCE CORPORATION, a Texas corporation (hereinafter called "Assignee") has assigned and transferred and does hereby assign and transfer to the Assignee all right, title and interest of Assignor in and to that certain agreement dated April 29, 1965, executed by Champion Papers Inc. with Assignor covering the removal of pulp and paper mill waste sludge from the plant site of Champion Papers Inc. on the Houston Ship Channel in Pasadena, Texas, which contract is executed on behalf of Champion Papers Inc. and approved under its Purchase Order No. 123959, this assignment being subject to all terms and conditions of said agreement, with the express understanding and agreement on the part of Assignee herein, as evidenced by its joining herein, to assume and become liable for all covenants and agreements of the Assignor under and by virtue of said contract.

This contract shall cover and include all accounts receivable now owing by Champion Papers Inc. to the Assignor herein and Champion Papers Inc. is hereby authorized and empowered to make payment to Assignee for such accounts receivable and invoices which now remain unpaid, together with all retainage now held by Champion Papers Inc. for the account of the

Assignor and Assignee hereby directs the payment of all such retainage direct to McGinness Industrial Maintenance Corporation, 5019 Briggs Road, Houston, Texas 77021.

This assignment is made in further consideration of the agreement by assignee to waive and hold harmless the assignor of and from all future liability, covenants and obligations contained in said contract; and the assignee expressly agrees to pay and discharge all outstanding bills and accounts for labor performed and supplies and materials furnished assignor in connection with the work required under said contract.

McGinness Industrial Maintenance Corporation hereby accepts the terms and conditions of the above-mentioned contract and agrees to be bound by its terms and provisions of said contract and this assignment.

This assignment is made with the express understanding and agreement that it will become effective only upon approval of this assignment by Champion Papers Inc. by endorsement hereon; and it is expressly agreed that such approval and endorsement shall in no way release the Assignor or the Assignee from the obligations of said contract.

IN WITNESS WHEREOF, Ole Peterson Construction Company, Inc. and McGinness Industrial Maintenance Corporation have caused this assignment to be executed this 15th day of September, 1965.

OLE PETERSON CONSTRUCTION COMPANY, INC.

BY [Signature]

President

McGINNESS INDUSTRIAL MAINTENANCE CORPORATION

APPROVED:

CHAMPION PAPERS-INC.

BY [Signature]

President

BY [Signature]

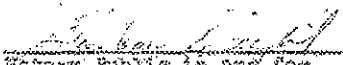
September 10, 1965

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this day personally appeared J. R. BURNS, JR., President of OLD PETERSON CONSTRUCTION COMPANY, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office on this the 10th day of September, 1963.


Notary Public in and for
Harris County, Texas

Barbara Wright

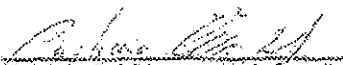
Barbara Wright

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this day personally appeared L. P. MC GINNIS, President of MC GINNIS INDUSTRIAL MAINTENANCE CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office on this the 10th day of September, 1963.


Notary Public in and for
Harris County, Texas

Barbara Wright

EXHIBIT 13

STATE DEPARTMENT OF HEALTH
AUSTIN TEXAS
INTER-OFFICE



FROM: Stanley W. Thompson, P.E., Regional Engineer
TO: D.F. Smitherst, P.E., Director
Division of Water Pollution Control
SUBJECT: Investigation of Industrial Waste Disposal - Champion Paper, Inc., Pasadena

Following a request from Hugh Yantis, Assistant Executive Secretary of the Water Pollution Control Board, the writer and Sanitarian John Kidd contacted officials of the Champion Paper, Inc., Pasadena, Texas, and made an investigation of the present waste disposal practices of the company. This investigation was made on April 22, 1966.

Persons contacted during the course of the investigation included:

Mr. J.L. Henderson	-	Champion Paper	
Mr. A.J. Navarro	-	"	
Mr. V.C. McGinnis	-	McGinnis Industrial Maint. Corp.	
Mr. George Laurie	-	"	(Secy-Treas)
A.E. Kimball	-	"	(Gen. Manager)

The mailing addresses of the companies are:

Champion Papers, Inc., P.O. Box 872, Pasadena, Texas 77501
McGinnis Ind. Maint. Corp., 201 N. Ritchey, Pasadena, Tex 77502

In addition to the above, Sanitarian Bob Douglass of the Harris County Health Department, Air and Stream Pollution Section, was contacted in the absence of Dr. M.A. Quebedeaux, Chief of the Section. Mr. Douglass was unable to assist in the inspection.

General

The investigation covered the present practice of disposal of settled solids from the Champion Paper processes, a practice which is carried out by the McGinnis Ind. Maint. Corp. This practice consists of the removal of the settled material from the secondary ponds at Champion plant, the transporting of the material by barge to an area adjacent to the San Jacinto River (near Hwy. 73), and the unloading from the barge into ponds which have been formed by levees. This operation has been carried out since approximately 1965 ago with the first operation begun in June of 1965. This work was done by the Ollie Peterson Construction Co., with the McGinnis Corp. taking over and beginning operation on September 13, 1965.

This particular type of operation is carried out in a cycle of sorts. The ponds at Champion are allowed to fill with the material (or one full and the other approaching it) and hauling is then begun on the full pit. At the time of the inspection, both pits had been cleaned with about 5 barge loads (est. by Mr. McGinnis) left to remove. This would complete the operation until the ponds are again full - which is expected to be sometime later this year.

SIGNED _____

Quality of Material Removed

An analysis of the material was not available, but officials of Champion indicated that the material was neutral in pH, non-toxic, and primarily fibrous. The dried material resembled a cheaper grade of cardboard - such as used in egg cartons, etc. Mr. McGinnis reported that he had used it successfully for padding for his equipment in the disposal site.

The material appears to solidify rapidly and Mr. Henderson reported that a vertical wall can be cut in the ponds while removing it and that the wall will stand. It was also reported that after the material has set a short time, that water will not penetrate it - that rain water will stand over it. It was further reported that grass can be started on the dry material and that it will spread rapidly, thus further cutting off water.

The material is removed by use of jetting (using waste water from the third set of ponds) and is reported to be removed with a solid content of 25% to 30%.

Quantity of Material

It was estimated by Mr. Henderson that complete cleaning of the two ponds would result in removal of about 135,000 cubic yards of the material. The barge used in the operation will hold about 1000 yards and three barges are used. This allows one barge to be in the process of being filled, one to be in the process of being unloaded, and one to be in transit. About 6 hours is required for the complete operation. Two shifts have been in operation to allow an average of 6 barge loads per day to be hauled.

Mr. Henderson stated that the material was accumulating at Champion at an estimated rate of 1 barge load per day.

Disposal Site

As mentioned, the disposal site is adjacent to the San Jacinto River at the Hwy 73 Bridge with the older site on the south side of the Highway and the newer site on the North side. The older site was used prior to McGinnis Corp taking over the operation and appears to consist of a pond covering between 15 and 20 acres. The new (and present) site consists of an estimated 20+ acres, of which slightly less than 15 are being used. This area contains two ponds.

One of the ponds has been filled and the second is nearly full. Levees on the first pond appear to be in good shape, with possibly slight seepage, while the second pond needs additional work on the levees. According to Mr. McGinnis, wet weather has prohibited the proper completion of the levees and additional work is to be done as soon as possible.

The two new ponds are connected with a drain line to allow the flow of excess water (including rain water) from pond #1 to pond #2, where it collects near the barge unloading area. At the present time, this water is pumped back into the barges and returned to the Champion Paper plant where it is passed through the last settling ponds and discharged to the Channel with the rest of the plant effluent. This particular operation will be mentioned later in the report.

Danger to River

According to available information, the river is not subject to flooding which might wash out the levees - that is, subject to flooding from rainfall without the aid of a storm such as Carla. In that event, the disposal area might well be covered with water.

It also appears that the material will solidify after being in the ponds a short time and there would be no danger of pollution from seepage. The only water is that which does separate from the solid material and rainfall.

Excess Water & Its Disposal

At the present time, the excess water plus rainfall which collects in the pond area is pumped into the barges and is carried back to Champion Paper and discharged through the final settling ponds. According to Mr. Henderson and Mr. McGinness, this operation is not economical and they are very interested in finding out if the water could be discharged into the river at the disposal site. The main thing in the removal of water being that the solidification of the material and the draining of the top water would allow the discharge of more wastes to the area.

An example of this is the older area (South of the Hwy), where the water ranges from 3 - 5 feet deep. Mr. Kimball had a minnow bucket type of container submerged in this water with fish in it and reported that they had been there for several weeks. These fish (or minnows) were in good condition.

Quality of Excess Water

Samples were collected of the water in the various pits and submitted to the Austin State Dept of Health Laboratory for analysis. The samples and their results are as follows:

Point of coll	pH	BOD	Sulphates	Chlorides	S.S	D.O.	Color
#1 - New Pond #2 - near pt of return to large	7.8	1590	5	790	213	0	220
#2 - New Pond #1	7.4	> 2,500	31	470	324	0	110
#3 - San Jacinto River - near barging pt	7.3	2.5	78	465	36	4.4	
#4 - Old Pond - South of Hwy 73	8.3	8.0	50	2060	20	2.2	110

In general appearance, samples #1 and #2 were very dark with #1 somewhat lighter. The water from the older pond (Sample #4) had been undisturbed for some 6 to 7 months.

Company

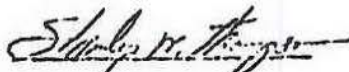
Officials of both companies were most anxious to work something out regarding this method of waste disposal. It appears that several things are to be considered in the matter.

1. The type of waste involved is not easy to get rid of, there is a large amount of the waste, and there will be an even larger amount in the future. This larger amount will be due to the new, and more efficient, waste treatment equipment that is to be provided by Champion Paper.
2. Very large tracts of land would be required for extended operation of this type, and this land would need to be accessible to barges - so on major rivers or streams. Apparently, the company officials feel that they can return to the area after a period of time and deposit additional material. This would be necessary to get the full benefit from the land.
3. There is no market for such material for use as fill material.
4. It also appears that continued operation would depend on the ability to return the water off the ponds to the adjacent stream rather than return it to the plant.

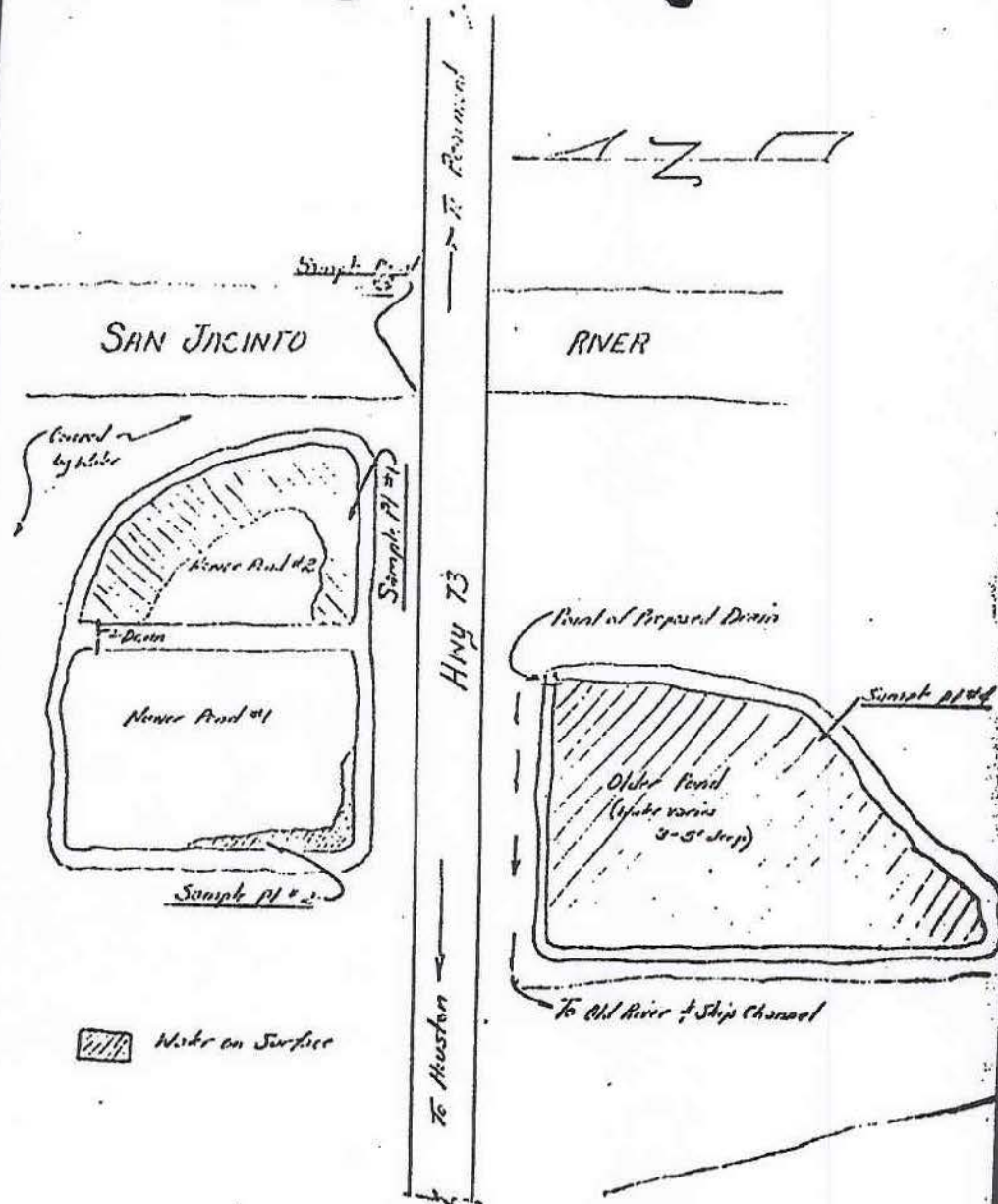
The operation and the need for submitting an application for a permit from the WCA was discussed with Mr. Henderson and Mr. McGinnes, and it is understood that such a permit would be obtained by Mr. McGinnes rather than by Champion. There is apparently the thought, or plan, that Mr. McGinnes would obtain the permit and handle the wastes from Champion under contract (the present set-up) and then also take care of such other industrial wastes that he might be able to handle (not from Champion).

It is the writer's understanding that nothing was to be done in the way of a permit application until the results of the sample analyses were received. At that time, the company officials would get in touch with the WPCB and its staff to discuss the matter further and get the thinking of the Board in light of the sample results. By that time, the companies should also have information regarding the chemical content of the material. It was felt that this would be the best approach to the matter since the present cycle of operation was essentially completed and time would be available to either obtain a permit for the operation - or work out a different method of disposal - prior to the need for renewed removal of the waste material.

Respectfully submitted,



Stanley K. Thompson, P.E.
May 6, 1966



DISPOSAL AREA
WASTE FROM CHAMPION PAPER, INC

EXHIBIT 14

McGinnes Industrial Maintenance Corporation

201 NORTH MICHEY • PASADENA, TEXAS 77502 • GR 3-8587

WPCB



July 21, 1966

Texas Water Pollution Control Board
1100 West 49th Street
Austin, Texas 78756

Attn: Mr. Hugh C. Yantis, Assistant Executive Secretary

Gentlemen:

In line with our recent discussion, permission is hereby requested for the release of a combination of stabilized waste water and rain water accumulated in a holding pond adjacent to Old River and Interstate Highway 10.

Attached is a tabulation showing the characteristics of the water to be released and a map giving the location of the pond.

The owner of the property has requested the early return of this facility for his own use and we need to take advantage of the hot summer months for maximum drying of the contents.

Your early consideration of this request will be appreciated.

Yours very truly,

MCGINNES INDUSTRIAL MAINTENANCE CORP.


V. G. MCGINNES
Vice President

VCM:bgt
Enclosures

CHARACTERISTICS OF WASTE WATER
IN
ORIGINAL DISPOSAL SITE
South of Highway 10

Characteristic	12-29-65	4-22-66	State Test 4-22-66	5-25-66	6-29-66	Zone I Objective
pH	7.9	8.2	8.3	7.7	7.3	6.5 - 10.5
BOD, ppm	79	< 14	8	38	13	50
Chloride, ppm	3036	2070	2060	1664	1935	-
Alkalinity, ppm	803	-	-	-	525	-
Dissolved Oxygen, ppm	0.4	7.8	2.20	0.3	6.3	-
Total Suspended Solids, ppm	114	36	20	140	50	105
Volatile Suspended Solids, ppm	-	30	13	-	44	52
Dissolved Solids, ppm	-	4224	4871	3364	4232	-
Sulfate, ppm	-	54	50	43	43	-
COD, ppm	-	196	-	-	283	320
Color, ppm	-	65	110	138	150	-
Temperature, °F					94	

Disposal operations terminated at this location about September 14, 1965.

*Sample not fixed in field at time of collection.

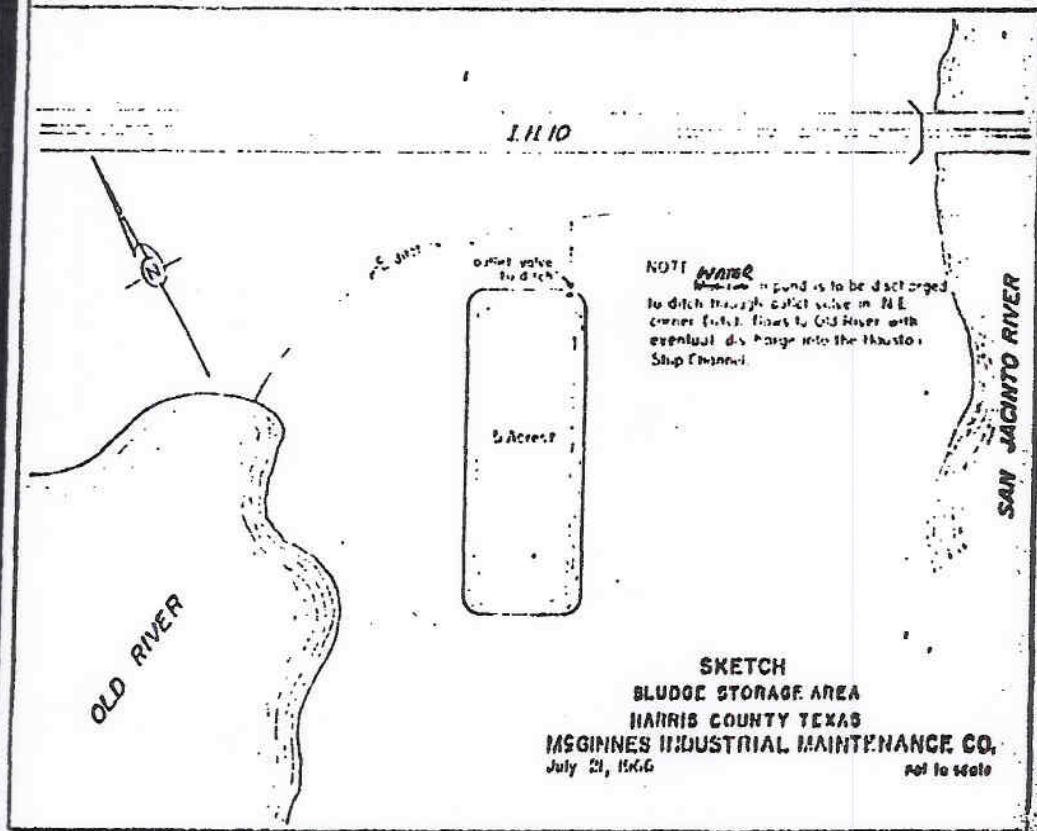
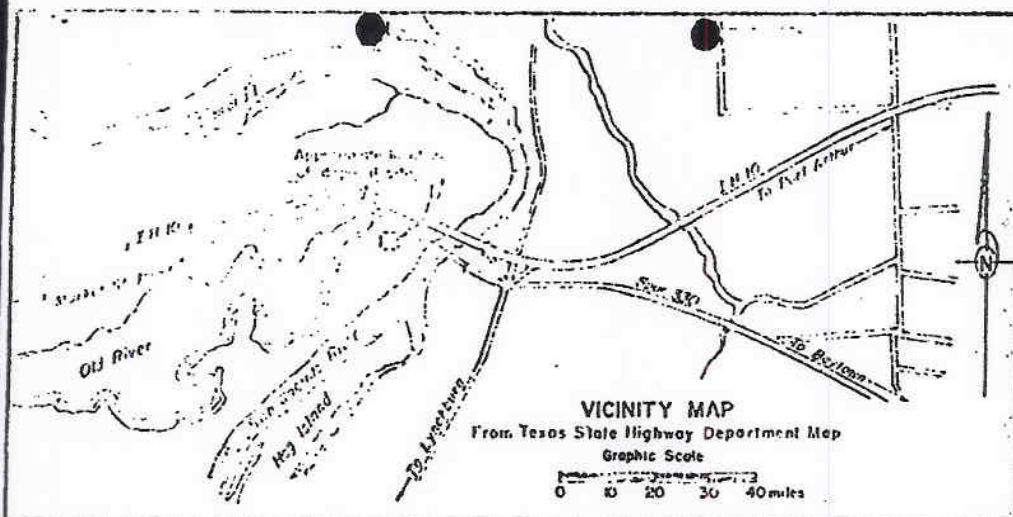


EXHIBIT 15



Texas Water Pollution Control Board

JOE G. MOORE, JR., CHAIRMAN
T. F. ANDERSON, VICE-CHAIRMAN
BEN RAMSEY
HOWARD V. ROSE

1100 WEST 49TH STREET
AUSTIN, TEXAS 78756

SAM E. WOHLFORD
J. C. PEAVY, M.D.
J. WELDON WATSON

July 29, 1966

Re: Holding Pond
Harris County, Texas

McGinnes Industrial Maintenance Corporation
201 North Richey
Pasadena, Texas 77502

Attention: Mr. V. C. McGinnes

Gentlemen:

This is in response to your letter of July 21, 1966 whereby you have requested permission to release a combination of stabilized waste water and rain water from a holding pond adjacent to Old River and Interstate Highway 10.

Based on our observation of the area from the air, and on the analytical data submitted with your letter, this Board would not oppose the emptying of the ponds in any reasonable manner. It is our firm understanding that the pond will not be used again for the storage of waste material.

In view of the fact that those ponds are located in Harris County, you may wish to ascertain whether local county officials have any interest in your proposed waste discharge.

We trust the above is satisfactory to you, and if you have any questions, please let us know.

Very truly yours,


Hugh L. Yantis, P.E.
Assistant Executive Secretary

HCY:eb

ccs: Brown & Root
State Health Department
Region IV
Joe Resweber
Harris County Health Department
Local Health Services

Id West:10 0002 20 Jun 02 2005 01:15PM

FRX NO. : 2814850539

FROM: ROBERTS

EXHIBIT 16



[Handwritten signature]

TEXAS WATER POLLUTION CONTROL BOARD
AUSTIN TEXAS

INTER-OFFICE

FROM: Kinnan Golemon TO: Files

SUBJECT: McGinnes Industrial Maintenance Corporation

Acting on verbal order of D. F. Smallhorst, Executive Secretary of the Texas Water Pollution Control Board, the writer called McGinnes Industrial Maintenance Corporation concerning this office's letter of July 29, 1966. Mr. V. C. McGinnes was out of the office and the writer talked to Mr. Lawrence McGinnes. The writer informed Mr. McGinnes that no further discharges should be made from the holding pond located adjacent to Old River and Interstate Highway 10 until this matter has been discussed fully with the TWPCB. Mr. McGinnes stated that no discharges had been made pursuant to the July 29, 1966 letter.

Pursuant to the request of Mr. D. F. Smallhorst, Executive Secretary of the TWPCB, the writer called Dr. W. A. Quebedeaux of the Harris County Health Department informing him of this writer's telephone conversation with Mr. Lawrence McGinnes, in which Mr. McGinnes was informed that no further discharges should be made from the McGinnes Industrial Maintenance Corporation's holding pond located adjacent to Old River and Interstate Highway 10 in Harris County, Texas.

RKG:lg

Signed: *RKG*

Date: August 5, 1966