

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

COPY
06 JUN 12 21
RESIDENT HEARING VI
REGION VI

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

VOLUME III OF III
TRANSCRIPT OF PROCEEDINGS

HEARD ON THE
9TH, 10TH, and 11TH DAYS OF MAY, 2006
BEFORE SPENCER T. NISSEN,
ADMINISTRATIVE LAW JUDGE

Reported by: HEATHER SCOTT, CSR-RPR

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PROCEEDINGS OF MAY 11, 2006

1
2
3 THE COURT: The hearing will be in order. You
4 may resume the stand, Mr. Majors.

5 And you may proceed, Ms. Dixon.

6 MS. DIXON: Good morning, Your Honor.

7 There's one preliminary matter. It came to the
8 Government's attention that yesterday when
9 Mr. Shipley was crossing Mr. Cernero, he was asking
10 him about a document with certain facilities on that
11 document.

12 It has come to our attention that Mr. Cernero
13 actually did the inspections on that document. It's
14 the only document that we got a favorable ruling on,
15 so it should be easy to identify. So I wanted to
16 bring that to your attention.

17 THE COURT: Okay. And do you recall what
18 identification the exhibit was given to it?

19 MS. DIXON: It was -- it was the exhibit that
20 had one company with multiple facilities.

21 MS. BEAVER: Maybe 61, 62.

22 It was their summary of 60.

23 MS. DIXON: Summary of 60.

24 MR. KELLOGG: That one, as I recall, was
25 admitted into evidence. It was the underlying

1 document, it was the one about Indian facilities.
2 Would it have been 59?

3 MS. DIXON: No.

4 MR. KELLOGG: It's my recollection that he
5 didn't allow the list of all the -- of all the
6 compliance cases, because we were trying to prove a
7 negative.

8 MS. BEAVER: No.

9 MR. KELLOGG: But instead, he allowed us six
10 cases.

11 MS. BEAVER: That's not it.

12 MR. KELLOGG: That's not it?

13 THE COURT: I did allow the summary into
14 evidence, I believe --

15 MS. DIXON: Yeah.

16 THE COURT: -- if that's what you are referring
17 to.

18 MS. DIXON: Right. It was -- it was a company,
19 because the -- there was questioning regarding a
20 mom-and-pop. Farris? Farris. The Farris
21 facilities.

22 MR. KELLOGG: I don't believe we had any
23 documents about Farris.

24 MS. BOYD: They were listed on the summary.

25 MR. KELLOGG: They were listed in the summary,

1 they were included among the printouts in Exhibit 60.

2 MS. BEAVER: The printouts?

3 MR. KELLOGG: Yes, but there wasn't any
4 particular document about it that we have, other than
5 they were included in the list among all the rest of
6 them.

7 MS. DIXON: Okay. If you could allow John to
8 look at it.

9 MR. KELLOGG: Oh, you bet.

10 MS. DIXON: Yeah.

11 MR. KELLOGG: Let me see if I've got a copy of
12 that somewhere.

13 There, that's the summary.

14 MS. BOYD: Sixty-eight is the summary.

15 MS. BEAVER: Yeah.

16 MS. DIXON: Is it this one? This is it.

17 MS. BEAVER: Right. Your Honor, if I may, the
18 document was, in fact, submitted, or you actually
19 admitted the document.

20 My objection was to the relevance and
21 materiality of the discussion of comparing the Farris
22 facility with the case at bar, and you sustained my
23 objection.

24 I made a statement that Mr. Cernero was not the
25 inspector, because it was -- these are Oklahoma

1 facilities, I had no knowledge of who the inspector
2 was. And it has since come to our attention that in
3 fact, even though he's not responsible for Oklahoma,
4 this was a facility in Oklahoma that he had inspected
5 some time ago.

6 And I don't have any of those details, but I
7 made a statement on the record, and -- and we just
8 wanted to clarify my statement.

9 THE COURT: And was an exhibit identification
10 given to that?

11 MS. BEAVER: Yes. There would be -- it's
12 Respondent's Exhibit 68, which Your Honor did, in
13 fact, admit into evidence.

14 THE COURT: Okay. Thank you. You may proceed.

15 *****

16 RE CROSS EXAMINATION

17 BY MS. DIXON:

18 Q Good morning, Mr. Majors.

19 A Good morning.

20 Q So yesterday, you talked about the Longtown facility
21 and the integrity test. Let me ask you a couple of
22 questions; I won't be very long. The purpose of an
23 integrity test is to determine if a tank is sound enough
24 to add a CP system to it, correct?

25 A Yes.

1 Q And if the integrity test determines that the tank is
2 unsound, then the owner would probably need to remove or
3 replace that tank, correct?

4 A Yes.

5 Q The integrity test is important to protect the
6 environment; is that correct?

7 A Yes.

8 Q Now, an integrity test requires the corrosion
9 specialist to do something. The corrosion --

10 A I'm sorry?

11 Q The specialist actually has to go out to a facility
12 and he has to do something, like he has test the soil; is
13 that correct?

14 A During the integrity test, yes.

15 Q And he pulls up the statistical data --

16 A Yes.

17 Q -- is that correct? If you take a look at
18 Complainant's -- is this 69?

19 MS. BEAVER: Respondent's.

20 MS. DIXON: Respondent's? No, let's move on.

21 Let's look at our Complaint, which is now
22 Complainant's Exhibit 7. And you probably don't have
23 that. Let me provide it to you.

24 Permission to approach the witness, Your Honor?

25 THE COURT: Yes.

1 MS. DIXON: I'm showing the witness
2 Complainant's Exhibit CTX-7, which is the Complaint,
3 Compliance Order, and Notice of Opportunity for
4 Hearing.

5 THE COURT: That's okay. Proceed.

6 THE WITNESS: Thank you.

7 Q (By Ms. Dixon:) Mr. Majors, if you could look at
8 Count 20 for me. Now, Complainant's Count 20 is for
9 failure to conduct an integrity test; is that correct?

10 A That is correct.

11 Q And this is more of a performance type count, don't
12 you agree?

13 A I'm sorry? I'm --

14 Q Performance required: A corrosion expert to go out
15 and test the soil. To "conduct" requires you to do
16 something?

17 A Yes.

18 Q And the fact that the records were not provided
19 during EPA's inspection would also be a record violation;
20 is that correct?

21 A Yes, it was a records violation.

22 Q Now, Mr. Majors, Mr. Kellogg made a statement, and
23 I'm paraphrasing. And yesterday I was a little hot under
24 the collar, Your Honor, so let me apologize. So I am
25 paraphrasing because I wasn't paying attention or

1 listening quite as intently as I should have, but if I'm
2 saying it wrong, you know, be sure to correct me.

3 But basically, the gist of it was that RAM had
4 already put in their CP system prior to the integrity test
5 being performed.

6 A Yes.

7 Q And therefore, there was no way that RAM could ever
8 satisfy the requirements of the OCC reg.

9 MR. KELLOGG: Your Honor, I would like to make a
10 slight correction, and Ms. Dixon.

11 MS. DIXON: Thanks.

12 MR. KELLOGG: We do not know whether the test
13 was done or not.

14 MS. DIXON: Oh.

15 MR. KELLOGG: And so I didn't say the test was
16 not done before the CP was installed. I think my
17 gist was that if the tests were not done before the
18 CP system were installed, then that's a violation
19 that we could never correct. But I have not stated
20 that the test wasn't done, because we don't know.

21 MS. DIXON: Said better -- said better than I
22 could.

23 Q (By Ms. Dixon:) So you agreed with that statement,
24 didn't you, with what Mr. Kellogg just said?

25 A Yes. I have no knowledge that one was done.

1 Q But in fact, until the integrity test was done, this
2 was a continuing violation, wouldn't you agree?

3 A They didn't have the documentations, yes.

4 Q Because after all, a violation ceases to be a
5 violation when you do what, Mr. Majors? When does a
6 violation stop being a violation?

7 A When you correct it.

8 Q That's right. Notwithstanding, it seems like RAM is
9 saying that they should be rewarded for doing something
10 after the fact; but Mr. Majors, you would never advise
11 your clients to break the law, would you?

12 A No, I would not.

13 Q And when RAM put in -- if they put in the CP system
14 prior to doing the integrity test of the tank, that would
15 have been breaking the OCC regs; wouldn't that be correct?

16 A I'm sorry, could you --

17 Q If they would have put in the CP system prior to
18 putting in to the integrity test (sic), would that be in
19 compliance with OCC regs?

20 A No, that would be out of compliance.

21 Q And should they be awarded for doing that if they did
22 that?

23 A No.

24 Q Because that sounds like a way to get around
25 complying with the regulations to me. Wouldn't that sound

1 like that to you?

2 A If that was done, yes.

3 Q The test was conducted on 4-13 of '05, correct?

4 A That's -- yes.

5 Q And it looks like that the test was also performed at
6 Citgo Quik Mart and Goodwin's, based upon this exhibit.

7 Have you had an opportunity --

8 A I -- I do not have that in front of me, but I believe
9 that's the two.

10 THE COURT: Again, identify the exhibit,
11 Ms. Dixon.

12 MS. DIXON: This is Respondent's Exhibit 69,
13 "Cathodic Protection Suitability, ASTM G158-98."

14 THE WITNESS: Yes, it is.

15 MS. DIXON: I thought he admitted this
16 yesterday.

17 MS. BOYD: He did.

18 Q (By Ms. Dixon:) And if you turn to the last page,
19 Mr. Majors, it looks like an integrity test was conducted
20 at Goodwin's One Stop, Citgo Quik Mart, and Longtown
21 Citgo.

22 A Based on the invoice, yes.

23 Q Looks like Mr. Cernero missed those two. Do you
24 think that was enforcement discretion? Or it could be an
25 oversight. What do you think, Mr. Majors?

1 A As far as why the tests were done?

2 Q Why they weren't done and why Mr. Cernero missed
3 them.

4 A I don't know.

5 Q I have one more question. If RAM is trying to be
6 responsible and a good environmental actor, what happened
7 to Monroe's integrity test?

8 A I'm sorry? I -- I missed --

9 Q If -- I think yesterday it was -- something during
10 the statement sounded like RAM went back and they -- they
11 fixed Longtown, because that was the environmentally
12 responsible thing to do. And if they were being
13 environmental stewards, what happened to Monroe's
14 integrity test?

15 A From my conversation with RAM, the reason for -- the
16 integrity test done in April were done prior to hiring
17 counsel, prior to even receiving the Administrative Order.
18 RAM was working off of the field notes prepared by
19 Mr. Cernero, and they were trying to respond to some
20 concerns or recommendations he had for them.

21 Q Did he -- in that same inspector report, were
22 concerns noted about Monroe's integrity test?

23 A Yes, there was.

24 Q But Monroe's integrity test has not been done,
25 correct?

1 A Monroe no longer has tanks.

2 MS. DIXON: Thank you. Mr. Majors, you've been
3 a great witness, and I thank you for your honesty.

4 And at this time, Your Honor, I pass the
5 witness.

6 THE COURT: Okay. Do you have any further
7 redirect, Mr. Kellogg?

8 MR. KELLOGG: Yes, Your Honor. May I have just
9 a moment, Your Honor?

10 THE COURT: Yes.

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

13 MR. KELLOGG: I'm ready, Your Honor.

14 THE COURT: Thank you. Proceed.

15 MR. KELLOGG: And may I approach the witness?

16 THE COURT: Yes.

17 *****

18 REDIRECT EXAMINATION

19 BY MR. KELLOGG:

20 Q Mr. Majors, I'm going to hand you Government's book
21 of exhibits, and I'm going to ask you to turn to
22 Government Exhibit 1. Oh, you have it?

23 A Yes, sir.

24 Q Towards the back, beginning at Bates Number 046;
25 Government Exhibit 1, Bates Number 00006.

1 MS. DIXON: Actually, Your Honor, I need to grab
2 that exhibit back from him.

3 MR. KELLOGG: Would you like -- you are welcome
4 to look at mine.

5 MS. DIXON: Sure. Thanks.

6 Q (By Mr. Kellogg:) Thank you. And are you familiar
7 with that document, sir?

8 A I have seen it, yes.

9 Q And can you tell the Court what that is?

10 A It's Mr. Cernero's field notes for Longtown Citgo on
11 February 16, '05.

12 Q That's the notes by the inspector, Mr. Cernero?

13 A Cernero, yes.

14 Q And would you look at two pages over on the back.
15 It's Bates Number 049. Do you have that page, sir?

16 A Yes, sir, I do.

17 Q And is that also part of Mr. Cernero's field
18 inspection notes?

19 A Yes, sir.

20 Q And where did you -- before today, where have you
21 examined this document?

22 A At RAM's headquarters.

23 Q And who provided that to you?

24 A Ms. Twilah Monroe.

25 Q And she had that document in her files?

1 A Yes, she did.

2 Q All right. And would you look on the notes that are
3 written there. And can you tell me if any of those items
4 indicates that an integrity test is -- I can't tell if
5 that -- well, if you find an item that addresses an
6 integrity test.

7 A Bullet number 5 references an integrity test, and it
8 has a dash and then "need".

9 Q "Need"?

10 A Indicated -- yes, sir -- more as needed.

11 Q All right. And what was your understanding of RAM's
12 response to this document?

13 A RAM, on their own accord, went out and had the
14 integrity test done based on this report.

15 Q All right. Now, you are not testifying that if there
16 were a violation, the subsequent integrity test cures it,
17 are you?

18 A No, I'm not.

19 Q That's not your testimony?

20 A No, I'm not.

21 Q Your testimony is simply that had there not been
22 integrity in the past, there wouldn't have been integrity
23 in the time the test was actually done.

24 A Yes, sir, that's correct.

25 Q But there was integrity when the test was done.

1 A There was.

2 Q So there's, I suppose, a presumption that it had
3 integrity when the CP system was installed. And you don't
4 know whether that's true, because you don't have a
5 document.

6 A That's correct.

7 Q But the presumption is that it must have had
8 integrity.

9 A Yes, sir.

10 Q Is this provision about the integrity test, is that
11 something contained in the Corporation Commission's rules?

12 A Not -- not in the rules as of July 15, 2004, no.

13 Q All right.

14 A The rules --

15 MS. DIXON: Of 2005? I'm sorry?

16 THE WITNESS: I'm sorry. The -- the date of the
17 rules for the -- during the inspection, there was
18 nothing in there requiring integrity tests prior to a
19 cathodic protection design.

20 MS. DIXON: Got you.

21 Q (By Mr. Kellogg:) Well, all right. But even if
22 there wasn't a rule requirement, would it be fair to say
23 that regulations for regulating USTs are somewhat complex
24 for the layman?

25 A Yes, sir.

1 Q Complex enough that -- that you make it your job to
2 go around consulting with laymen about how to comply?

3 A Yes, sir.

4 MR. KELLOGG: Thank you. That's all I have,
5 Your Honor.

6 MS. DIXON: Just a couple, Your Honor.

7 THE COURT: Okay.

8 MS. DIXON: Permission to approach the witness
9 again, Your Honor?

10 THE COURT: Yes.

11 *****

12 REXCROSS EXAMINATION

13 BY MS. DIXON:

14 Q Mr. Majors, if you go back to CTX-7, which is
15 Complainant's Complaint, Compliance Order, and Notice for
16 Opportunity for Hearing, and go back to Count 20 for me.

17 A Count 20?

18 Q Uh-huh. Page 33 of 65.

19 A I'm sorry?

20 Q Page 33 of 65.

21 A Okay.

22 Q Could you read that caption for me where it says
23 "Count 20"?

24 A "Failure to Conduct an Integrity Test Prior to
25 Installation of Cathodic Protection System."

1 Q If the Government -- if the Plaintiff was alleging
2 violations for failure to maintain records, don't you
3 think that caption would read "failure to maintain
4 records"?

5 A I wouldn't know.

6 Q Let's turn to page 1 -- I'm sorry -- 34 of 65. And
7 if you could read paragraph 134 and 135 for me.

8 A "At the time of the inspection on February 16th and
9 the records review on February 17, 2005, the Respondent
10 could not verify that the USTs were internally inspected
11 or tested by another approved method to ensure the
12 structural integrity of the steel tanks prior to the
13 installation of the cathodic protection system.

14 Failure to conduct a structural integrity test
15 provided" -- or excuse me -- "prior to the installation of
16 the cathodic protection system is a violation of 40 CFR
17 280.21(b)(2)(i).

18 Q And when you look at paragraph 135, what is that
19 third word? The third word in paragraph 135?

20 A The third word is "conduct."

21 Q Conduct. And Mr. Majors, you also testified that
22 during the EPA's inspection of February 16th and 17th of
23 2004, the OCC reg -- I'm sorry, 2005 -- the OCC regs did
24 not have provisions for integrity tests.

25 A That is correct.

1 Q And in lieu of the state regs being silent, do you
2 know which laws apply, which regulations apply if the
3 state regs are silent?

4 A The federal regulations.

5 MS. DIXON: Thank you. Pass the witness, Your
6 Honor.

7 MR. KELLOGG: ~~Nothing~~ Nothing, Your Honor. Thank you.
8 May this witness be excused?

9 THE COURT: Yes. Thank you, Mr. Majors. You
10 may be excused.

11 And you may call your next witness, Mr. Kellogg.

12 MR. KELLOGG: Your Honor, we call Mr. Richard
13 Heck.

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

16 THE WITNESS: Yes, sir (sic).

17 THE COURT: Raise your right hand. Do you
18 solemnly swear the testimony you are about to give
19 shall be the truth, the whole truth, and nothing but
20 the truth, so help you God?

21 THE WITNESS: Yes, sir.

22 THE COURT: You may be seated.
23
24
25

RICHARD HECK

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

DIRECT EXAMINATION

BY MR. KELLOGG:

Q Good morning, sir.

A Good morning.

Q Would you please state your name and where you live for the record, please.

A My name is Richard Heck, and I live in Allen, Oklahoma.

COURT REPORTER: Last name is Heck?

THE WITNESS: Yes.

Q (By Mr. Kellogg:) Can you spell your name, please.

A My last name?

Q Your last name.

A H-E-C-K.

Q And I apologize, but we have not met till this morning, have we?

A No, we haven't.

Q Would you tell me how you are currently employed Mr. Heck?

A I'm self-employed. I do testing on underground storage tank systems.

1 Q And does your business have a name?

2 A It's Underground Service Company.

3 Q Underground Service Company?

4 A Yes, sir.

5 Q And that's also located in Allen, Oklahoma?

6 A Yes, sir.

7 Q And what is the nature of that business?

8 A Testing -- primarily testing lines and leak detectors
9 of UST systems to ensure that they are not leaking.

10 Q Okay.

11 A The State of Oklahoma requires that to be done
12 annually.

13 Q Very good. And how long have you had that business,
14 sir?

15 A Approximately six years.

16 Q What did you do before you started your business?

17 A I worked for the Corporation Commission.

18 Q The Oklahoma Corporation Commission?

19 A Yes.

20 Q In what capacity, sir?

21 A I was a fuel inspector/supervisor.

22 Q And how long were you a field inspector/supervisor?

23 A Just about five years.

24 Q With the Oklahoma Corporation Commission?

25 A Yes.

1 Q So that would have been in the '90s?

2 A Ninety-six to 2000.

3 Q Ninety-six to 2000? Thank you. What were your
4 duties with the Oklahoma Corporation Commission, sir?

5 A Supervise -- supervising field inspectors, along with
6 doing inspections in a particular territory.

7 Q You inspected UST systems?

8 A Yes, sir.

9 Q For the Corporation Commission?

10 A Yes, sir.

11 Q Tell us how those -- that inspection program worked,
12 from your perspective.

13 A As an inspector -- of course, this was quite some
14 time ago, but as an inspector, I would go out and review
15 records, do a walk-through of the facility for visual
16 inspections, and document any discrepancies that I might
17 find.

18 If you had a clean inspection, then, of course, you
19 signed it off and told them you'd see them next year.

20 Q What would happen if you documented a discrepancy?
21 What was the practice?

22 A Normally, you would identify what the discrepancy
23 was, and give a return date of when they should have that
24 fixed for the inspector to return and verify that the
25 corrections have been made.

1 Q That's something that you would leave with the
2 facility?

3 A Yes, sir; a copy of, yes, sir.

4 Q Your inspection sheet, for example?

5 A Yes.

6 Q All right. And was it a common practice to issue a
7 penalty for that moment of noncompliance that you had
8 observed?

9 A Not normally. That's -- that wasn't common at that
10 time, no.

11 Q All right. And so if you found a violation, you
12 would write it up, and I take it you would explain to them
13 what was wrong?

14 A Yes, you would have to.

15 Q And what they needed to do to correct it?

16 A That is correct.

17 Q All right.

18 A Yes.

19 Q And you give them a compliance time to have it done,
20 the work done, right?

21 A Yes, sir.

22 Q And then would you follow up and go back to see if
23 the work was done?

24 MS. BEAVER: Your Honor, I'd like to object
25 simply to the way that counsel is asking questions.

1 It seems to be leading. I can't -- I can't determine
2 if the witness is testifying or if counsel is
3 testifying.

4 THE COURT: Well, I think you are leading,
5 Mr. Kellogg.

6 MR. KELLOGG: Thank you, Your Honor. I will
7 adjust that; my apologies. He is an expert, and I'm
8 trying to hurry through this, so I'll slow down.

9 THE COURT: I recognize that.

10 Q (By Mr. Kellogg:) After you would leave your
11 inspection sheet with the discrepancies, what would you
12 then do?

13 A As the inspection was done, and any discrepancies
14 identified, a follow-up date was left on the Notice of
15 Violation, which is a different form than what the
16 Inspection Report is.

17 After that time, the return date, be it seven days,
18 14 days, 30 days, whatever the case may be, you would
19 return on or about that date and -- and verify that the
20 corrections have been made.

21 If they have not been made, you'd turn it over to
22 Compliance and let -- and then they would take over from
23 there, and you pretty much could wash your hands of it;
24 it -- it wasn't your concern anymore. It was a Compliance
25 concern up in Oklahoma City.

1 Q All right. And you were no longer involved once
2 compliance got involved; is that right?

3 A To some degree. If -- if a correction had been made
4 through the Compliance, then Compliance would want us to
5 go out and verify that that had been done.

6 Q All right. And do you have any idea of whether that
7 same practice is generally followed today?

8 A It seems to be pretty close. I have -- of course,
9 it's been a while since I have worked there, but from what
10 I see on forms and that sort of thing, it seems to be
11 pretty close to that.

12 Q I want to address and turn your attention, if you
13 would to, please, the violations dealing with Counts 8
14 and 9.

15 And for your information, that involves the Citgo
16 Thrif-T-Mart here in McAlester. And it's involving the
17 EPA's inspection of this facility in February of 2005.
18 This facility was cited for failure to do an annual line
19 leak detector test, and failed to test pressure lines
20 annually.

21 Are you familiar at all with the Citgo Thrif-T-Mart
22 in McAlester?

23 A Yes, sir.

24 Q And have you done any of the line leak or pressure
25 tests at this facility?

1 A Yes, sir.

2 Q Can you tell the Court approximately what years you
3 have done those tests?

4 A Just probably from about 2001 till present.

5 Q All right. Did you do -- well, let's see if I've got
6 an exhibit. There's a black notebook there in front of
7 you, sir, a large notebook with tabs. Would you please
8 find tab number 26 for Respondent's Exhibit 26.

9 A Okay.

10 Q Do you have that document, sir?

11 A Yes, sir.

12 Q Can you tell us what that is, please?

13 A That is a line tightness test result documentation.

14 Q And there's a sec -- there's a couple of pages behind
15 it, right?

16 A Yes, sir.

17 Q And what -- are those -- what do those pages show?

18 A In this book, the second page is a line leak detector
19 test result.

20 Q All right.

21 A And then the third page behind -- or the second page
22 behind the original is another line test documentation
23 result.

24 Q It appears to bear your signature. Is that your
25 signature, sir?

1 A Yes, sir.

2 Q Did you do these tests?

3 A Yes, sir.

4 Q My copy is a little hard to read, and I suspect yours
5 is, too. Can you make out a date on that?

6 A Yes. It was -- well, maybe. This one -- this
7 particular one says 11-14-03.

8 Q And how often are these tests required to be done,
9 sir?

10 A Once a year.

11 Q And RAM, I take it, hired you to do these tests?

12 A Yes, sir.

13 Q All right. Have you returned -- or did RAM hire you
14 to continue that test, as necessary for compliance?

15 A Yes, sir.

16 Q And did you?

17 A Well, I returned on the 11th month of '04, due to the
18 high water table in -- at that particular facility. I
19 couldn't -- I could not remove the leak detectors in order
20 to block the line to do the line test without allowing
21 water to go into the tank.

22 So I called RAM and let them know that and told them
23 I would check back the following month and see if it could
24 be done at that time. So --

25 Q I'm sorry, you said the high water table?

1 A Yes, the ground water table was -- was very high.

2 Q All right.

3 A It was over the top of the tanks at that time. There
4 was -- there was quite a bit of rain those -- November and
5 December of that year. And I couldn't get into the tanks
6 without allowing water to get into the tanks.

7 Q I see. So you were precluded by the rain --

8 A Yes.

9 Q -- and the water tank?

10 A Yes.

11 Q All right. Did you go back and try to get that test
12 done?

13 A Yes. I had went back in December, and the water
14 table was still over the top of the tanks.

15 Q And again --

16 A I called --

17 Q -- did you just stop, or what?

18 A Well, I had -- I had called RAM and told them that
19 unless they wanted their tanks full of water, that we
20 needed to hold off until the water table receded to the
21 point that it could be done.

22 Q But when you went in November of 2004, would that
23 have been timely under the requirements?

24 A Yes.

25 Q All right.

1 A November would have been the due date; yes, sir.

2 Q I'd like you to look at Respondent's Exhibit 24. Do
3 you have that document, sir?

4 A Yes.

5 Q And can you tell me what that is?

6 A That's a line tightness test results for Thrif-T-Mart
7 in McAlester, and leak detector results for the line
8 tightness -- or the leak detector test for the
9 Thrif-T-Mart in McAlester.

10 Q And you did that test, sir, those tests?

11 A Yes, sir.

12 Q And had the water table receded by that time?

13 A Yes, sir.

14 Q And do these tests indicate whether --

15 MS. BEAVER: Objection, Your Honor, to the
16 phraseology of the question. It sounds like it's
17 about to be leading.

18 MR. KELLOGG: You are right. Thank you.

19 Q (By Mr. Kellogg:) And what were the results of your
20 test?

21 A The line test -- all three lines passed the required
22 test.

23 Q Call your attention to Respondent's Exhibit 18. Are
24 you familiar with this document, sir?

25 A This is a Compliance Inspection Report for the

1 Corporation Commission.

2 Q Have you ever seen this document before?

3 A I don't know that I have seen this particular one.

4 Q All right. It appears -- well, are you familiar with
5 this type of document?

6 A Yes, sir.

7 Q And does this document have -- tell us when the
8 Corporation Commission did their inspection.

9 A Yes. It was done on 1-11-05.

10 Q The day after yours?

11 A Yes, sir.

12 Q Did -- did you call the Corporation Commission or
13 anything, or is that just a coincidence that they came out
14 the day after you were there?

15 A I -- I don't think I called them.

16 Q Okay.

17 A If -- if I did, I do not remember.

18 Q Can you tell, from looking at this document, whether
19 the lines passed?

20 A Yes. It shows -- under "piping, leak detection," it
21 shows "line tightness testing," and the last test date --
22 last test pass date of 1-05.

23 Q All right. Thank you, sir. That's all the exhibits
24 I'll ask you to look at. I do have a couple more
25 questions.

1 A Okay.

2 Q You've been an inspector in the UST program, and you
3 are currently an operator of a consulting business that
4 does tests in the UST program, right?

5 A Well --

6 Q Have you ever operated a UST?

7 A Yes, I -- I have owned a convenience store at one
8 time.

9 Q And when was that, sir?

10 A Well, 2001 to March of 2004. No, I'm sorry, 2005.
11 March of 2005.

12 Q About four years?

13 A Yes, sir.

14 Q All right. And where was this facility located?

15 A In Allen, Oklahoma.

16 Q Did it have a name?

17 A Mustang Country Store.

18 Q Okay. And how many USTs -- or how many tanks did it
19 have?

20 A It had three USTs.

21 Q Okay. Tell the Court about your experience as an
22 operator and part of the regulated community for the UST
23 program.

24 MS. BEAVER: Your Honor, I have to object to the
25 relevance at this point, because what the witness has

1 done in the past in his business is not what's on --
2 at issue here.

3 THE COURT: Well, it may not be, but I'm going
4 to overrule the objection.

5 Proceed, Mr. Kellogg.

6 Q (By Mr. Kellogg:) Answer if you may, sir.

7 A Could you repeat the question, please?

8 Q Tell the Court, in general, your experiences as an,
9 UST operator. What was that like?

10 A I really -- I really -- I guess it would be hard to
11 explain. As far as dealing with the Corporation
12 Commission of Oklahoma, it's -- I didn't have any problems
13 with them. They are always polite. Of course, I know
14 these guys, I work around them every day. And as far
15 as -- I didn't have any violations, I don't think.

16 Q All right.

17 A So --

18 MS. BEAVER: Your Honor, again --

19 MR. KELLOGG: That's not what I'm after.

20 MS. BEAVER: -- I have to object because this
21 testimony has no relevance to this case. And it's a
22 broad, general question, "what's your experience,"
23 and it solicits all kinds of testimony that's
24 basically irrelevant. The facts would be different,
25 it's immaterial, it could be misleading.

1 THE COURT: I don't think so. Your objection is
2 overruled.

3 Proceed.

4 MR. KELLOGG: I'll move on, though, Your Honor.
5 Thank you.

6 Q (By Mr. Kellogg:) Let me ask you this, sir: You
7 don't have that business anymore?

8 A No, sir.

9 Q Why not?

10 A Because I just about went broke with it.

11 Q Can you tell us what the profit margin was on retail
12 gasoline sales at the time you owned your facility?

13 A About three or four cents a gallon.

14 Q And that three or four cents a gallon went to you?

15 A No, I had to split it with the distributor.

16 Q What was your share?

17 A Half.

18 Q Half? Since the EPA's inspection in February of
19 2005, has RAM hired you to assist with its ongoing efforts
20 and UST work in Oklahoma?

21 A Yes, sir.

22 Q All right. And are you assisting with all of RAM's
23 stores in Oklahoma?

24 A Yes, sir.

25 MR. KELLOGG: All right. That's all I have.

CROSS EXAMINATION

BY MS. DIXON:

1 Q Morning, Mr. Heck.

2 A Good morning.

3 Q I have heard a lot of good things about you.

4 A You have heard good things about me?

5 Q I have.

6 A That's good. I'm glad to hear it.

7 Q Okay. So you worked for OCC as a fuel inspector and
8 supervisor.

9 A Yes, ma'am.

10 Q But you haven't worked as an inspector or supervisor
11 for OCC in like six years, at least six years?

12 A That's correct.

13 Q And since that time, do you think there's been some
14 inspector training?

15 A Oh, I'm sure; yes, ma'am.

16 Q Have you ever heard enforcement -- the term,
17 "enforcement discretion"?

18 A Yes, I have.

19 Q Could you explain to the Court, what is enforcement
20 discretion?21 A That gives the -- the inspectors have a right, I
22 guess, to initiate action immediately, or give them a
23
24
25

1 little time to get it fixed.

2 Q And with McAlester being a small town, it wouldn't be
3 unusual for an inspector to use enforcement discretion
4 from time to time, would it?

5 A If you're talking -- you're talking state inspectors?

6 Q Right.

7 A It's -- it's pretty much statewide that way; yes,
8 ma'am.

9 Q Right. During your tenure as an inspector at OCC,
10 did you ever use enforcement discretion?

11 A Every day.

12 Q Okay. You testified that you would -- you would see
13 the violation, and you probably would tell them what to
14 do, what was wrong, how to fix it. That's pretty general
15 with a state inspector, as well, wouldn't you agree?

16 A Yes, ma'am.

17 Q And would you tell them where they could get
18 additional assistance if they needed some help?

19 A Yes, ma'am.

20 Q And just to go back and look at Citgo Thrif-T-Mart,
21 you wasn't there with Mr. Cernero during the inspection,
22 were you?

23 A No, ma'am.

24 Q Okay. And if you -- you testified that, you know,
25 there was water -- a lot of water, at least twice before

1 you could actually do the test.

2 A Yes, ma'am.

3 Q Did you bring out a pump at any one of those
4 instances?

5 A No, ma'am.

6 Q And a pump would have allowed you to do what?

7 A Well, would have allowed me to put water from a tank
8 pit on the ground, and you are not supposed to do that.

9 Q Say it one more time.

10 A You are not supposed to pump water out of a tank pit
11 onto the ground.

12 Q Could you pump it into a bucket or something?

13 A Well, you -- it would have took a bunch of them.
14 Probably -- I wouldn't even -- I can't even guess, because
15 we are talking barrels, we are not talking buckets.

16 Q Let me ask you, if you had suspected that a leak was
17 there, what would you have done?

18 A A line leak --

19 Q Yes.

20 A -- I would have suspected? I would have strongly
21 recommended they stop selling fuel at that time.

22 Q Thank you. And let me ask you about the line leak
23 detector test. Could that have been taken at another
24 location? Could it have been taken underneath the
25 dispenser?

1 A I -- that's where I test from; yes, ma'am.

2 Q And I -- just one more question. You testified that
3 you used to own some tanks between the period of 2001 and
4 2005.

5 A Yes, ma'am.

6 Q And you don't have the business anymore because the
7 distributor took the majority of your money?

8 A No, no, no, no.

9 Q What happened?

10 A I just -- I just couldn't make money at it, the
11 entire business, from the selling of pop to selling of
12 gas. We just continued to lose money time after time, and
13 we couldn't get it to turn around. Allen is a very, very
14 small town.

15 Q Uh-huh --

16 A So I --

17 Q -- I can imagine. You've mentioned something about
18 the distributor, though, during your testimony. What was
19 that?

20 A The distributor and I -- I had fuel on consignment
21 with the distributor. Because I owned the tanks and the
22 pumps and he owned the fuel, he would put the fuel in, we
23 would split the profit.

24 Q Okay. And in RAM's case, you know a little bit about
25 their business, right?

1 A A little.

2 Q And in RAM's case, is RAM -- RAM is the distributor
3 at most of their facilities; isn't that correct?

4 A As far as I know, yes.

5 Q And they also own all the Underground Storage Tanks;
6 isn't that correct?

7 A That --

8 Q RAM, at least for the five that's at issue today.

9 A I believe that's correct. Yes, ma'am.

10 MS. DIXON: Pass the witness, Your Honor.

11 And you've been a great witness, too, Mr. Heck.

12 THE WITNESS: Thank you.

13 THE COURT: Anything further, Mr. Kellogg?

14 MR. KELLOGG: Well, yes, Your Honor.

15 *****

16 REDIRECT EXAMINATION

17 BY MR. KELLOGG:

18 Q She asked you about enforcement discretion.

19 A Uh-huh.

20 Q Do you think that means you can waive a violation
21 that you see?

22 A No, that's not what I meant at all. No, sir.

23 Q Well, what discretion do you have when you find a
24 violation, then?

25 A The discretion is to give them time to fix it or send

1 it directly to a compliance coordinator.

2 Q Well, you didn't issue a penalty on the spot?

3 A No, sir. No.

4 Q So your role is more like compliance assistance,
5 isn't it?

6 MS. BEAVER: Objection, Your Honor. This is --
7 it appears to be a very leading question, telling the
8 witness what his role is.

9 THE COURT: Overruled in this case. Proceed.

10 THE WITNESS: I didn't hear him. Did --

11 Q (By Mr. Kellogg:) Your role was more one of
12 compliance assistance, right?

13 A I don't know how to answer that question.

14 Q That's fine.

15 A I don't know if that's a yes or no question or not.

16 MR. KELLOGG: Thank you.

17 Your Honor, that's all.

18 MS. DIXON: Just -- just one question.

19 THE WITNESS: Yes, ma'am.

20 *****

21 RE CROSS EXAMINATION

22 BY MS. DIXON:

23 Q Your role wasn't as compliance assistance as an OCC
24 inspector, was it?

25 A I was a fuel inspector.

1 Q That's right. You were required to go out and
2 inspect those facilities.

3 A Yes, ma'am.

4 MS. DIXON: Pass the witness, Your Honor.

5 MR. KELLOGG: May the witness be excused, Your
6 Honor?

7 THE COURT: Yes. Thank you, Mr. Heck. You may
8 be excused.

9 You may call your next witness.

10 MR. KELLOGG: Yes, Your Honor. Mr. Shipley will
11 call the next witness, Your Honor.

12 THE COURT: Okay.

13 MR. SHIPLEY: Fine. We would like to call
14 Mr. John Cernero, please, sir.

15 THE COURT: You have previously been sworn,
16 Mr. Cernero. I will not swear you again.

17 Proceed.

18 THE WITNESS: I thought I was through.
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JOHN CERNERO

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

DIRECT EXAMINATION

BY MR. SHIPLEY:

1 Q You are used to this.

2 A Yeah.

3 Q Let me ask: Is the book that you have your hands on,
4 the Exhibits 1 through 3 of the Complainant -- 1 through
5 13, I mean.

6 A One through 13, I have, right.

7 Q All right.

8 A Okay.

9 Q Thank you, sir. After you and John Roberts, in
10 February of '05, did the inspection tour of the five
11 facilities of RAM, you all went to RAM's headquarters, did
12 you not?

13 A Yes. The next day we did, yes.

14 Q All right, sir. And with whom did you meet at RAM's
15 headquarters?

16 A I remember meeting with Ms. Twilah Monroe. I really
17 don't remember anyone else there. I know there was other
18 people that came in and out and brought things in and that
19 type of thing, and -- but other than Twilah Monroe, I
20
21
22
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25

1 really don't recollect anybody else, specifically.

2 Q Thank you. And who besides you and Twilah Monroe
3 participated in this meeting?

4 A Mr. Roberts was there.

5 Q The purpose of this meeting, after you had done your
6 investigation, was what, sir?

7 A Basically to get additional documentation to verify
8 compliance. Not all of the records and so forth were at
9 each of the facilities. And since RAM was right there in
10 McAlester, I thought it would be a good idea to at least
11 go to their facility and see what other documentation they
12 may have there that was not at the facility.

13 Q And did you incorporate any of the additional
14 information that you found or documents that you were
15 given while you were at this meeting in your Inspection
16 Report?

17 MS. BEAVER: Your Honor, I'd like to object at
18 this point. The questions that I hear sound like
19 questions that have previously been asked of this
20 witness, both on direct and on cross.

21 MR. SHIPLEY: I don't recall that we have --

22 MS. BEAVER: And it appears to be that this
23 is -- we object to this -- this specific line of
24 testimony as delay and -- undue delay of this
25 proceeding.

1 THE COURT: Mr. Shipley?

2 MR. SHIPLEY: I assure you this is not undue
3 delay, and I recall no questioning of this witness
4 with regard to the documents that he obtained in the
5 post-inspection meeting.

6 MS. BEAVER: The question --

7 MR. SHIPLEY: I have one -- one of the sites in
8 mind, and I have questions that will take me no more
9 than 15 minutes with this gentleman.

10 THE COURT: The objection is overruled.

11 MR. SHIPLEY: In terms of delay --

12 THE COURT: Proceed, Mr. Shipley.

13 Q (By Mr. Shipley:) The purpose of your visit with
14 Mr. Roberts, with Ms. Twilah Monroe in February of '05,
15 was what, sir?

16 A Generally speaking, when I do an inspection, I go to
17 the facility, look at the physical part of the equipment,
18 Underground Storage Tanks, Automatic Tank Gauging;
19 whatever is there, I try to get as much information as I
20 possibly can.

21 I request that they provide me with records. Most of
22 the time, the records that I need are not there;
23 therefore, as a -- to complete my inspection and my review
24 of violations, I must at least go to the company or the
25 main -- their main office, if they have one, and see if

1 they have those documentation, give them an opportunity to
2 provide me with the documentation. I don't feel like my
3 inspection is complete until I do that; or, at least they
4 send me the information that I need.

5 What I was there for at RAM headquarters was to get
6 pieces of documentation that would verify that they were
7 in compliance.

8 If I was looking for -- an example, in they did a
9 line tightness test or tank tightness test and I needed
10 that and it wasn't at the facility, I would want them to
11 at least provide -- give them an opportunity to show me
12 whether they did or didn't. Also to get maybe additional
13 information.

14 Sometimes, the information that I had was -- was not
15 exactly right; if it was a 10,000-gallon tank or a
16 12,000-gallon tank, or was it diesel, was it unleaded,
17 that type of thing, trying to make sure that I had the
18 records straight when I did my inspection.

19 It helps me, and of course, it's also going to help
20 the company, too, because there's no sense in writing up a
21 violation and later on they come back and say, "well, we
22 did have that, and if you would have asked for it, we'd
23 have given you it," that type of thing.

24 Q Yes, sir. And did you give a copy of your inspector
25 observation and report to Ms. Monroe?

1 A Yes. She made a copy of it, yes. I basically wrote
2 down a summary, an observation report on the back of my
3 Inspection Report and said, "here's the things I have
4 observed," that type of thing. And she wanted a copy, and
5 I had no objection to her making copies of it.

6 Q Did she indicate to you that she would take your --
7 observe --

8 MS. BEAVER: Objection, Your, Honor, to the type
9 of question. If this is direct, then Respondent's
10 counsel cannot ask leading questions, and this sounds
11 like a leading question.

12 THE COURT: Well --

13 MS. BEAVER: So.

14 THE COURT: -- I think probably -- well, I'll
15 let Mr. Shipley respond to that.

16 MR. SHIPLEY: Two things, Your Honor. If we --
17 if we wanted to go through this, we could indicate
18 and show that this is a hostile witness under the
19 rules, and I would be able to treat him with leading
20 questions, et cetera, and I did not do that.

21 THE COURT: That's sufficient.

22 MR. SHIPLEY: Thank you.

23 THE COURT: Overrule the objection.

24 MR. SHIPLEY: Thank you, Your Honor.

25 Q (By Mr. Shipley:) I don't, by the way, regard you,

1 sir, as hostile, nor do I intend to treat you that way.
2 That's a legal term with regard to the examination rules,
3 so please don't -- don't take that as an -- as an
4 offensive comment from me.

5 A Okay.

6 Q Thank you. And the comments of Ms. Monroe, did they
7 indicate to you -- did her comments indicate to you that
8 she intended to begin to try to find some of the documents
9 that she might not have in her hands when you asked for
10 them?

11 A I would assume that's what she was wanting it for, to
12 know what the -- what the violation or potential
13 violations were to get working on it. I would assume
14 that's what she wanted it for.

15 Q That she would begin working on the things that you
16 set out as potential violations --

17 A Right.

18 Q -- on the document that you left with her?

19 A That's correct.

20 Q Did she, during -- during the time that you and
21 Mr. Roberts were there, supply you with any documents
22 which augmented your inspection or inspector observation
23 reports at that time?

24 A She did show me several documents; one I can remember
25 was the -- some of the 60-day reporting requirements for

1 the CP test, those type of things. She would show me --

2 Q Uh-huh.

3 A -- the documentation. I don't remember specifically.
4 Basically, as she gave me the documents, if it was there
5 and legitimate, I would say okay, that's fine, and I would
6 check it off my list of things that I didn't have.

7 I was looking for -- I had gaps in my inspection
8 report after I came back from the facility. And, you
9 know, for an example, if I didn't have a test of -- a line
10 test that was done within the 12-month period, I would
11 note that and say that's a potential violation. And I
12 would say, "do you have the latest report of the line
13 tightness test or line leak detector test?"

14 And then she said, "yes, I have that, and I will show
15 it to you, and here it is."

16 And I could say, "okay, there it is. Fine. I'm
17 out -- you know, I'm not going to deal with that
18 particular violation any longer."

19 Q Very good. Thank you, sir.

20 A Uh-huh.

21 Q And one of -- one of these sets of document that you
22 had earlier indicated that you had obtained, before you
23 actually did your field inspection and this meeting, were
24 the copies of the registration for Underground Storage
25 Tank forms from the OCC for these five facilities.

1 A I'm -- I'm -- yes, I had -- I am not sure if I had
2 the full-blown inspect -- registration form, but I -- the
3 State did give me the summary of each facility, so I knew
4 what to look for when I got there.

5 I'm trying to remember if I actually had the
6 full-blown registration form before or after that. But I
7 know at some time, I did finally get all of the
8 registration forms with all the signatures on it so I
9 could -- I could verify that with what the owner has
10 verified to.

11 MR. SHIPLEY: All righty. If I may approach the
12 witness.

13 THE COURT: You may.

14 MR. SHIPLEY: I want to show him what we have
15 marked for identification as Respondent's Exhibit 70,
16 which is one of the registration forms that I wish to
17 ask if he had at the time that he was doing his
18 interview.

19 THE COURT: Proceed.

20 Q (By Mr. Shipley:) The first four pages of this
21 document are the registration for Underground Storage
22 Tanks, OCC form. And these relate to the one site that I
23 want to ask you about, which is the Citgo Thrif-T-Mart in
24 McAlester.

25 Is this the sort of form that you either had at the

1 time or that you subsequently received from OCC regarding
2 the underground tanks at this site?

3 A This would be the type of thing that I would be
4 looking for while I do my investigation of the case. I
5 would -- I would definitely want to get a copy from the
6 State, and I would -- and I emphasize "from the State."

7 Q Yes, sir.

8 A Even though the owner may have a copy of it, I would
9 want to see the one that actually the State had in their
10 files.

11 Q I understand.

12 A So I don't know if I actually got this right here,
13 but I would have got one -- you know, something like this
14 is similar. These attachments, I don't recollect these
15 attachments.

16 Q Right. We don't need to --

17 A Okay.

18 Q -- discuss those, yet.

19 Now, if we would, let me ask you to turn in the
20 brown -- in the brown document --

21 A Okay.

22 Q -- the brown folder there that you have of the
23 Government's exhibits, Exhibit Number 1, and direct your
24 attention to the Bates number 004, 005 -- I'm trying to
25 find which one of these -- which one is this? Do you --

1 are you familiar enough with the Government Exhibit 1 to
2 be able to find the other documents, other than '04 and
3 '05, which had to do with the Citgo Thrif-T-Mart?

4 A The Thrif-T-Mart starts on 14.

5 Q Fourteen? All righty. Thank you very much.

6 All right. On Bates Number 14 in Government's
7 Exhibit 1, continuing through 18, the document which
8 follows 18 is a Registration for Underground Storage Tank
9 form like the form that you have before you in
10 Respondent's Exhibit 70, but it has different information
11 and bears a date two years earlier.

12 And I'd like for you to confirm that for me on Bates
13 number -- Bates stamp 22. This registration form goes
14 from 19 through 22.

15 A Okay. Yeah, this -- the one that you -- Exhibit 70
16 is dated -- signed by Mr. Allford July 20th, 2000.

17 Q Yes, sir.

18 A The one I have is signed December 9th, '98.

19 Q Yes, sir. Now, and I'd like to turn to page 14 of
20 Government's Exhibit 1, which is entitled "U.S Protection
21 Agency (sic), UST Checklist" where we have your summary of
22 the three tanks which are in existence on that site at the
23 time of your inspection.

24 A Right.

25 Q See that?

1 A Yes.

2 Q Thank you, sir. Now, if you compare the information
3 on the registration form that you have for this particular
4 site, the one that is dated in 1998, we see that on
5 page 20 of that form, it would show that there are three
6 tanks, two 10,000-gallon tanks, and one 4,000-gallon tank.

7 A Yes.

8 Q Yet that is not what you have described on 14 --
9 page 14.

10 A Okay.

11 Q Correct?

12 A Well, I was using -- actually, I was using the
13 facility summary. I apparently got that information from
14 them. Let's see, it was a 6, 4, and a 10.

15 Q Yes, sir.

16 A And which is both from the State. So I -- maybe at
17 that time, I did not see that there was -- they had -- on
18 one form from the State, it shows you are right; two
19 10,000 and a 4,000.

20 But on the summary by the State, which was provided
21 to me -- and I'm trying to see if there's a date on
22 that -- which I don't really see a date -- it shows that
23 there was a -- there actually was, at one time, four
24 tanks; two 10,000, a 4,000, and a 6,000-gallon tank;
25 however, one was permanently removed. The 10,000-gallon

1 tank was removed.

2 So as far as I could ascertain on the summary that
3 the State provided to me, there was a 10,000,
4 cathodically-protected steel with lined interior; a
5 4,000-gallon composite steel with Fiberglas; and a
6 6,000-gallon cathodically-protected steel.

7 Q All right, sir.

8 A And that's -- I probably took that information from
9 there, transposed it onto my Inspection Report --

10 Q Yes, sir.

11 A -- or Inspection Summary.

12 Q Yes, sir.

13 A Now, if that's -- you know, at this point, you got
14 conflicting information from the State as to what the size
15 of the tanks are.

16 Q Sure. And what I would like you to do is confirm for
17 me that the tank registration form, which are the first
18 four pages of Respondent's Exhibit 70, actually describe
19 what was existing on-site when you inspected and is
20 reflected in your report on page 14, that being a 10,000,
21 4,000, and 6,000-gallon tank.

22 A Okay. And I understand, also, that 10,000-gallon
23 tank that was permanently closed, it's still there, it's
24 just closed in place.

25 Q Yes, sir.

1 A Yeah.

2 Q The second -- third page of Respondent's Exhibit 70
3 shows that one of the 10,000-gallon tanks was closed on
4 June -- in June of 2000. So that's consistent with your
5 testimony.

6 A Okay. This shows it was temporary out of use; it
7 doesn't say permanently. I'm looking at Exhibit 70, and
8 it shows that three tanks are currently in use as of the
9 date of this registration, but it shows that one of the
10 10,000-gallon tanks -- it shows here "temporarily out of
11 use"; it doesn't say "permanently out of use," so I -- it
12 may be a transition time when you temporarily close it,
13 then you permanently close it.

14 Q Sure. Nonetheless, it shows that there are three
15 active tanks: One 10, one 4, and one 6,000. And that's
16 consistent with the basis --

17 A Okay.

18 Q -- of your report as shown on page 14.

19 A All right. And as you say, I was not -- at least it
20 looks to me that I didn't look at the other full
21 registration that would -- that has shown it was three
22 tanks there, two 10s and one 4,000.

23 However, I will say this, that this registration was
24 filled out by the -- by the Respondent, not by the State.
25 But now, if it's been updated since then, I -- I had asked

1 the State to provide me with their latest registration
2 form. So I don't know what happened on this situation.

3 Q I understand.

4 A Yeah.

5 Q You simply didn't notice when you got the
6 registration form and the complete form here, as shown on
7 page 20, 21, 22, and 23 -- 21 -- 18 through 22, that it
8 didn't match --

9 A Right.

10 Q -- the summary that you have been given.

11 A Correct.

12 Q No problem.

13 A And so it's -- and my recollection was that I didn't
14 have the full registration form when I started doing my
15 inspection. The State provided me with the summary to do
16 my inspection.

17 Now, I will say this; it's not uncommon to have what
18 you see in the field versus what's in the registration
19 forms to be totally different.

20 Q I --

21 A So I mean that's one of the reasons why I do these
22 inspections with the state information and trying to get
23 what's actually there.

24 Q I understand.

25 A Uh-huh.

1 Q And it does take an incredible amount of paperwork --

2 A Uh-huh.

3 Q -- as you earlier pointed out, to get it all right.

4 Let's turn to page 14 of your Inspection Report, with
5 regard to the three tanks.

6 A Okay.

7 Q Tank 1, you have written in a STIP-3 --

8 A Three --

9 Q -- type tank.

10 A Right. And I will say this; when I was doing my
11 inspection at that facility, and I remember this one,
12 there was a -- or there was disagreement with what type of
13 tanks were there; you know, when it was put in.

14 I knew there was supposedly four tanks there, one was
15 abandoned in place, it was explained to me it had some
16 kind of a leak at one time, and I think RAM decided it's
17 not worth messing with this tank, and they permanently
18 closed it.

19 And then there was some other ones that were added
20 later on in that 2001. I was not sure as to what --
21 whether it was a composite, but it was an STIP-3 tank, or
22 what it was. So, you know, I just took my best educated
23 guess and put that down there.

24 Q Fine. Thank you, sir.

25 A Uh-huh.

1 Q Now, that's the 6,000-gallon STIP-3. Now, if we
2 would look over here on your form to the third tank, on
3 the form, which you probably filled out while you were in
4 the field, says, "type of tank installed: Unknown.
5 10,000-gallon tank."

6 And then below that, you have written in, on the
7 third line, a line with a little arrow to the side.

8 A Uh-huh.

9 Q It says, "May 23rd, 1997, Tank Liners, Inc."

10 A Okay.

11 Q I believe. Is that what that says?

12 A Yes. Yeah, that's probably where I got that, from
13 this documentation here.

14 Q As --

15 A I'm assuming that's -- when I was there on the 17th,
16 that information was made available to me, and therefore,
17 I noted it -- that and I was told that when I was there,
18 that one of the tanks was lined, and but I didn't have any
19 particular information as to when it was lined, who lined
20 it, and that type of thing.

21 Q Sure. And if you would turn to the fifth page in
22 Respondent's Exhibit 70, please, sir.

23 A All right.

24 Q As an invoice from Tank Liners, Inc., dated May 23rd,
25 1997, which matches exactly with what you have written in

1 on this form. Does that refresh your memory that Twilah
2 Monroe brought this document to you while you and
3 Mr. Roberts were there, and that caused you to modify what
4 you had seen in the field, changing the type of tank from
5 "unknown" to "lined"?

6 A Yeah, that makes a whole -- I mean I don't remember
7 exactly what happened on this, but it makes a whole lot of
8 sense to me that I was -- I had been in question on what
9 happened on these particular tanks, because normally when
10 you do an inspection, all the tanks are the same, they are
11 put in at the same time, the same type of material; you
12 know, they may have -- the capacity may be different.
13 This is one that had -- you know, it had just so many
14 different odds and ends to it, that it was difficult to
15 try to figure out what it was.

16 Q I sympathize --

17 A Yeah.

18 Q -- with your difficulty, believe me. Nonetheless, it
19 is more likely than not, is it not, sir, that you saw the
20 document that we have now directed your attention to, the
21 Tank Liners, Inc., invoice dated May 23rd, 1997, for two
22 10,000-gallon tanks that matches up with the size.

23 A All right.

24 Q And that that was -- the basis of the information was
25 causing you to modify what is shown on page 14.

1 A Yes.

2 Q Now, if we stick with that, the -- one of the
3 violations of -- at this site, the Citgo Thrif-T-Mart, was
4 that the cathodic protection system, when you turned it
5 on, didn't have high enough voltage to be judged to be
6 effective by you; is that correct?

7 A The Thrif-T-Mart, the electricity wasn't on.

8 Q Right.

9 A There was no -- there was current flowing at that
10 time. And I did turn it on, and it flowed for maybe half
11 a minute, and then it kicked off again.

12 Q Okey-doke.

13 A So it was --

14 Q Nonetheless, it was the lack of an effective cathodic
15 protection system --

16 A Yes.

17 Q -- for all three tanks --

18 A That's correct.

19 Q -- was the basis.

20 A Yes.

21 Q Do STIP-3 tanks and lined tanks need cathodic
22 protection?

23 A Generally speaking, no.

24 Q All right.

25 A If they are STIP-3 tanks, they should be

1 self-sustaining; they wouldn't need an impressed current.

2 Q Then Tank 1 and Tank 3 really wouldn't have required
3 a cathodic protection system to be on anyway, right?

4 A Yeah. Normally, you would not suspect; however, they
5 were included in the impressed current system, as far as I
6 can ascertain; therefore, I had to look at that as a --
7 for whatever reason, I didn't know whether the STIP-3 tank
8 failed and you put it in and had to upgrade it -- or not
9 upgrade; I don't want to use the word "upgrage" -- repair
10 it. There are certain circumstances where owners will,
11 even though the tanks may have been lined, go ahead and
12 add cathodic protection.

13 But generally speaking, you're right, it wouldn't
14 need it, which is kind of baffling to me why it was done.
15 However, there are other components to an Underground
16 Storage Tank system that need to be protected from
17 corrosion.

18 And one of those particular -- you know, whether the
19 tank is fine, there are things like pump manifolds,
20 piping --

21 COURT REPORTER: I'm sorry?

22 THE WITNESS: Things like pump manifolds and
23 piping that were part of this system that had -- that
24 had to be protected.

25 Particularly on the lined tank, even though the

1 tank was lined, and if the assumption was, well, we
2 don't need corrosion protection for the tank, there
3 are metal components that are attached to that tank
4 that the lining has nothing to do with.

5 And therefore -- that was my assumption as to
6 why the impressed current was put on it in the first
7 place, was not just to protect the tanks, it was also
8 to protect the metal -- underground metal components
9 such as pump manifolds and piping.

10 Q (By Mr. Shipley:) Isn't it a fact that the piping to
11 these tanks was PVC plastic?

12 A Probably so, but there are still components that are
13 actually in contact with the tank on the top of the tank
14 that -- give you an example, if it was just one lined tank
15 there, and if it was lined to protect the tank; generally
16 speaking, under the regs, that would be no need to have a
17 CP system on it, because it -- it met the minimum
18 requirements of corrosion protection; however, there are
19 other components that have to be protected from corrosion.

20 Anything that routinely contains product and is in
21 contact with the soil must be cathodically protected, or
22 must have corrosion protection.

23 The tank may be fine with the impressed current or
24 without the impressed current. But my concern was the
25 pump manifold. As a matter of fact, the report that

1 Mr. Heck had done on that particular site indicated the
2 same thing that we found when we were out there, and that
3 was the pump manifold -- and I think it was this tank
4 here -- was low.

5 And that was really what I was -- the violation was
6 particularly for, was the fact that corrosion protection
7 was not being achieved -- it may not have been achieved.
8 It may have been on a tank that was fine, but the
9 corrosion protection for the metal components of the
10 piping that were in contact and routinely contained
11 product were not being protected. And those are just as
12 important to be protected from corrosion as the tanks.

13 Q You indicated the pump manifold was low. And forgive
14 me, but I didn't understand --

15 A -- what a pump manifold is?

16 Q Huh?

17 A You don't understand what a pump manifold is?

18 Q Well, I'm not sure. I think I know what a pump
19 manifold is; I'm not sure what the pump manifold being low
20 is.

21 A Well, the reading -- the reading -- the cathodic
22 protection voltage that was being read on the pump
23 manifold was low, indicating that it was not being
24 protected with a cathodic protection system.

25 Q Now, I --

1 A Okay.

2 Q -- I apologize.

3 A That's okay.

4 Q It's just my ignorance as to the specifics.

5 All righty. Now, if we could show you that the Tank
6 Number 2 was also a STIP-3 and would, therefore, not need
7 any cathodic protection, would that have made -- would
8 this have made any difference in your roughly -- it's
9 almost a \$4,000 tank here that you fined (sic), as I
10 recall, or these three equal -- to failure to properly
11 protect -- or for cathodic protection system to be
12 properly functioning.

13 A Again, I would have to -- I would have to re-review
14 this to look at -- if the tank was protected because it's
15 an STIP-3 tank. I would still have to look at the pump
16 manifold to make sure it was also protected.

17 And again, I really probably would need more time to
18 review this again and see -- look at my notes and see what
19 the situation is.

20 But I do remember this particular one, in that it was
21 very baffling as to why the impressed current was put on
22 in the first place, because one tank was lined, one was an
23 STIP-3 tank. But then in further review of my -- or
24 during the inspection, I realized that the pump manifolds
25 were in contact with the soil; and therefore, that's what

1 was being protected, and not -- not just the -- not just
2 the tanks.

3 Q How much -- how much product can a manifold possibly
4 hold?

5 A The pump manifold is -- is basically the -- the
6 piping configure -- or let me just explain one thing.

7 In a pressurized system --

8 Q Yes.

9 A -- the pumps are not at the dispenser, the pumps and
10 the motor are actually submerged inside the gasoline
11 itself or the diesel. It's a -- it's a turbine type of a
12 pump that actually sits inside the tank.

13 There's a submersible motor, a submersible pump, and
14 it pumps it out of the tank up through what they call a
15 pump manifold; it's basically a valving system.

16 So all of the product that comes out of the tank has
17 to go through the pump manifold, and then it will be
18 diversified (sic) towards the piping, and then into the
19 Fiberglas piping, and then to the dispensers.

20 A pump manifold holds all the product that goes
21 through a system. So if you have a leak in a manifold,
22 it's just as critical as if you would have it in the
23 piping.

24 Q If you had a leak in the pump manifold, would that
25 allow the pump to even function?

1 A Oh, yeah, the pump would still function.

2 Q Fine.

3 A Uh-huh.

4 Q Let's move on. Now, with regard to Tank Number 2 on
5 your form, page 14.

6 A Okay.

7 Q I ask you to turn to the last document in
8 Respondent's Exhibit 70. This is the invoice for W.E.
9 Mack Manufacturing Company, which shows a pump -- I mean
10 pardon me -- a 4,000-gallon STIP-3 tank purchased in May
11 of '97, which I'll ask, for the moment, for you to
12 assume -- we'll offer testimony through this Twilah
13 Monroe -- that this, in fact, is the second tank.

14 Were you convinced that the second tank, also, was a
15 STIP-3, and didn't need cathodic protection, except for
16 the pump manifold? Would that have modified your
17 assessment of the \$12,000 penalty?

18 A No.

19 Q Don't think so? All right.

20 A Here -- here is the -- here is the problem. I
21 remember this now, because the State said it was a
22 composite steel tank, which would not require cathodic
23 protection, if it was actually a true composite or what
24 they call an ACT-100 tank.

25 This indicated that it was an STIP-3 tank. However,

1 one of the -- it would not modify -- my penalty anyway was
2 for the pump manifold. However, there's another --
3 another problem here that has not been addressed by RAM,
4 and that is if you have an STIP-3 tank that is hooked up
5 to an impressed current system, everything is kind of
6 thrown off whack, because you -- that's why it's so
7 important to have a national association of corrosion
8 engineers to design the system; because, in fact, you
9 could end up speeding corrosion up out of an STIP-3 tank
10 if you don't install the impressed current properly.

11 So, you know, and again, I'm getting into more --
12 more technical information than I even want to get into,
13 but it --

14 Q I understand.

15 A -- there's -- it's -- basically, you are putting
16 opposing forces in the system. You should never include
17 an STIP-3 tank in an impressed -- or you shouldn't without
18 it properly being conducted, or you can really mess up the
19 whole system.

20 Which again, it was not my job to decipher everything
21 that was out there. All I knew was that the metal
22 components of the pump manifold had to be protected. And
23 that was my assumption, was maybe that's just what they
24 were trying to do, was protect the metal components of the
25 piping.

1 And it was also verified in the report by Mr. Heck
2 that there was a deficiency at the pump manifolds.

3 Q You said you were trying to protect the piping.
4 We've established the piping was all PVC. So the only
5 thing --

6 A No. Yeah, the only thing we are protecting is there
7 are some -- even though it says that there's Fiberglas
8 piping -- I mean that's what it says, Fiberglas piping --
9 however, the -- the piping from the -- from the tank and
10 the pump manifold is metal; it has to be metal because it
11 takes high pressure right there. The Fiberglas is
12 attached to that metal.

13 Even at the ends, underneath the dispensers, are made
14 of metal, and those are supposed to be protected. The
15 piping between the dispensers and the pump, even though
16 they are Fiberglas, and you are right, would not require
17 any type of corrosion protection, because it is not
18 corrodible. But there are other components that have to
19 be either isolated or protected from corrosion.

20 THE COURT: Well, how practical is it to protect
21 the, as you say, the dispensers and so on with an
22 electric current --

23 THE WITNESS: Cathodic?

24 THE COURT: -- and a cathodic protection --

25 THE WITNESS: Right.

1 THE COURT: -- as compared to the tanks?

2 THE WITNESS: Well, what -- what company -- or
3 what owners and operators do now -- of course, the
4 newer systems, they have what they call dispenser
5 pans underneath the dispensers where it doesn't even
6 come in contact with any soil or water, so they don't
7 even have to have corrosion protection; it's
8 isolated, it's not in contact with soil.

9 But for modifications where there is what they
10 call flex joints that are made of metal are in
11 contact, you can actually add what they call a spike
12 anode or a sack anode; it's just a small little
13 cathodic protection system, self-contained right
14 underneath the dispenser, that does not need any
15 current to it. It's -- it -- it has a -- just like
16 in a motor boat, you have these little cathodic
17 protection devices to prevent rust.

18 They can actually install a unit called a sack
19 anode or a spike anode, and it could be hooked up
20 properly, and it has to be checked every three years,
21 just like other systems. But it's -- it's just a
22 very small -- they could probably install it probably
23 within an hour or so. It's very -- very small
24 operation.

25 THE COURT: Thank you.

1 Q (By Mr. Shipley:) Were you able to see, Mr. Cernero,
2 that the pump manifold was actually touching soil, or is
3 this an assumption?

4 A Yes, I did make -- I did -- I believe I did make that
5 note. That's one of the things I do look for.

6 Q You made a note?

7 A Yes, it was on the unlined -- I'm sorry -- unleaded
8 regular. You have to turn it upside down; I wrote it
9 upside down, but it says -- the STP stands for Submersible
10 Turbine Pump, and water contact -- that means contact --
11 it was in contact with soil and/or water. And I made that
12 note there.

13 Q Just a minute.

14 A Okay.

15 Q This is on 16?

16 A This is on 16, correct.

17 Q All right, sir.

18 A And then also for the diesel, "STP in water." I
19 think it says "covered," so it was in contact with what I
20 call an electrolyte; in other words, soil or water. It
21 was -- it was -- it was in a corrosive atmosphere.

22 Of course, the other one is not in use.

23 Well, then, the one -- the one here that -- the other
24 one here, actually, says, "STP not -- not in soil or
25 water." So apparently, there was -- the premium was not