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ENVIR. APPEALS BOARD

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August 2, 2006

VIA FEDEX

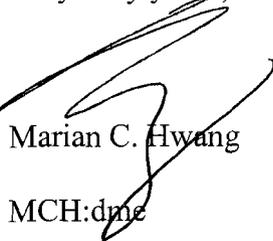
U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, DC 20005

Re: In the Matter of Environmental Protection Services, Inc.
TSCA Appeal No. 06-01

Dear Clerk of the Board:

Enclosed please find for filing in the above-captioned matter the original and six copies of Respondent/Appellant Environmental Protection Services, Inc.'s Motion to Strike Portions of Attachment 2 of the Environmental Protection Agency's Response.

Very truly yours,



Marian C. Hwang

MCH:dme

Enclosures

cc: Regional Hearing Clerk – U.S. EPA Region III
Honorable Carl C. Charneski
Cheryl L. Jamieson, Esquire – U.S. EPA Region III
Lee A. Spielman, Esquire – U.S. EPA Region II
John J. Ruggero, Esquire – U.S. EPA Region III

BALT01:1107652v1|K24070-000002|8/2/2006

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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2006 AUG -3 AM 10: 02

ENVIR. APPEALS BOARD

In re:)
)
ENVIRONMENTAL PROTECTION)
SERVICES, INC.)
)
Docket No. TSCA-03-2001-0331)
)

TSCA Appeal No. 06-(01)

**RESPONDENT/APPELLANT ENVIRONMENTAL PROTECTION SERVICES,
INC.'S MOTION TO STRIKE PORTIONS OF ATTACHMENT 2 OF THE
ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE**

Respondent/Appellant, Environmental Protection Services, Inc. ("EPS"), by its undersigned counsel, moves, pursuant to 40 C.F.R. § 22.16, to strike portions of Attachment 2 of the United States Environmental Protection Agency (the "EPA") Response to EPS' Appeal of Initial Decision, filed on June 30, 2006. EPA erroneously asserts that Appellant EPS misleadingly cited the record, which EPS did not. Specifically, EPS states as follows:

1. The EPA attached to its Response to EPS' Appeal an attachment, identified as Attachment 2, which incorrectly alleges that EPS misleadingly cited the record in its appellate brief, and encourages the Board to disregard portions of EPS' brief and its references to certain exhibits.

2. The EPA's allegations, in Attachment 2 of its Response, that EPS misleadingly cited the record is patently false, as numerous references cited by EPA in its Attachment were indeed admitted by the Administrative Law Judge (ALJ) as part of the record.

3. Accordingly, the EPA's allegations of any impropriety are itself misleading, and should be struck from Attachment 2.

- A. Page 20 of Appellant's Brief – EPS cited REX 2 at (C0000559). Despite the EPA's suggestion otherwise in Attachment 2, C0000559 is the correct page reference to part of EPS's Commercial Storage Approval. EPS admits that this reference should have been made to CEX 2, as opposed to REX 2.
- B. Page 24 of Appellant's Brief – EPS cites to REX 560. The EPA claims that REX 560 was not admitted as evidence in the proceeding below. While REX 560 was later changed to REX 570, REX 560 was in fact admitted by the ALJ. See Aug. 22, 2003 Transcript, Volume IX, page 37, attached as **Exhibit 1**.
- C. Page 27 of Appellant's Brief – EPS cited to CEX 500. EPA notes, however, "Appellee's exhibits ended at #74, therefore it cannot be CEX 500. However if Appellant's [sic] meant to cite as REX 500, this is also inaccurate as REX 500 was not admitted." EPS admits that there was no CEX 500, and that EPS intended to refer to REX 500, otherwise known as Exhibit 28. Exhibit 28 was admitted by the ALJ on August 21, 2003. See Aug. 21, 2003 Transcript, Volume VIII, page 237, attached as **Exhibit 2**.
- D. Pages 90, 117, and 123 of Appellant's Brief – EPS cited to REX 480. Despite the EPA's allegation to the contrary, this document, which is Ann Finnegan's draft report, was admitted by the ALJ on

August 21, 2003. See Aug. 21, 2003 Transcript, Volume VIII, page 137, attached as **Exhibit 3**.

- E. Pages 101 and 128 of Appellant's Brief – EPS cited to REX 476. Despite the EPA's contention that this document was only admitted in part, the transcript from August 20, 2003 makes clear that REX 476 was admitted in its entirety. See Aug. 20, 2003 Transcript, Volume VII, page 64, attached as **Exhibit 4**.
- F. Page 104 of Appellant's Brief – EPS cited to REX 479. The ALJ admitted every page of REX 479, except for one. See Aug. 20, 2003 Transcript, Volume VII, page 70, attached as **Exhibit 5**. The reference that EPS cites to in REX 479 pertains to the portion of the exhibit that was admitted.

WHEREFORE, EPS asks the Board to strike the following portions of Attachment II to the EPA's Response: a) all references under Section 1 entitled "Appellant's Citations to exhibits not admitted," except for the reference to page 147; and b) the references to page numbers 90, 101, 104, 117, and 128 under Section 2 entitled "Appellant's Citations to exhibits admitted in part without references to specific pages.

Respectfully submitted,

Environmental Protection Services, Inc.
By Counsel



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Counsel for Appellant,
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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
ENVIRONMENTAL PROTECTION SERVICES, INC.)	TSCA Appeal No. 06-(01)
)	
Docket No. TSCA-03-2001-0331)	
)	

* * * * *

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August 2006, service of the foregoing ENVIRONMENTAL PROTECTION SERVICES, INC.'s MOTION TO STRIKE PORTIONS OF ATTACHMENT 2 OF THE ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE, was made by overnight express mail delivery to the following:

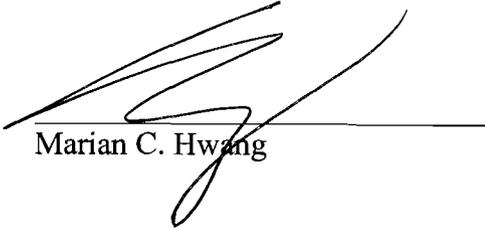
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Marian C. Hwang

1 Q. Okay.
 2 And -- and what's the significance of this
 3 Uniform Hazardous Waste Manifest that we're looking at
 4 under -- under Tab 514?
 5 A. All right. Well, again, that's a -- this
 6 shows a shipment from ACTI to EPS and a -- nine
 7 containers. If you go to the next page up there,
 8 that's the continuation sheet and listing the bar code
 9 numbers -- all right? -- then also lists the type. If
 10 you look under there, there's a column that's type.
 11 And that's type 6.
 12 Q. And at the bottom that says, "drums of oil"?
 13 A. Yes. Yeah.
 14 Q. Okay.
 15 A. We have broken down -- this was back in '99.
 16 But we have about 22 or 23 different categories of
 17 different types of waste, anyway, that we might be
 18 receiving. Now, if you were to go back and compare
 19 the bar codes and if you go back to the -- which would
 20 be 121 --
 21 Q. That's Tab 513.
 22 A. Okay. Tab 513.
 23 Q. Okay.
 24 A. -- you will see going under "Item," anyway,

1 and coming down four columns, you start with -- you
 2 can barely read it, but it's "drums of oily water."
 3 Q. Okay.
 4 And that's four rows down; is that right?
 5 A. Yeah, four rows down. Excuse me.
 6 Q. Okay.
 7 A. And if you look at the -- that whole column
 8 coming down and then go over to the bar code column,
 9 like the first one being 38591 [sic], then 38592
 10 [sic], and if you go back to that continuation sheet,
 11 you'll see that's -- those items anyway.
 12 Q. Okay.
 13 Mr. Reed, I -- I don't mean to correct you,
 14 but the bar code on what I'm looking at says, I think,
 15 "318591" and --
 16 A. Yeah.
 17 Q. -- and "318392" [sic]?
 18 A. No. They're all -- that's -- that's all 5:
 19 592, 593, 594.
 20 Q. All right. I stand corrected. Thank you. I
 21 just wanted to clarify that.
 22 And on -- on your manifest continuation sheet,
 23 those bar codes numbers match up?
 24 A. Yes. Yeah.

1 Q. Now, to your understanding on Page 121 of
 2 Tab 513, this sheet that you sent to EPS [sic], all of
 3 those units that we've just talked have asterisks; is
 4 that correct?
 5 A. Yes. Yeah. The ones.
 6 Q. Okay.
 7 And so to your knowledge, did EPA in its
 8 totals weight for the 2nd of November include those
 9 bar codes in its transformer inventory?
 10 A. Yes. Yeah. Based on Scott McPhilliamy's
 11 testimony because if you look at the bottom of the
 12 sheet, the gross total, and then the running weights
 13 of 5880 and the gross total of 29,920, that, he
 14 testified, was his handwriting he added up.
 15 And I checked, and if I add it up too, I get
 16 the same thing including those.
 17 Q. Okay.
 18 Was that Mr. Rice or Mr. McPhilliamy that
 19 testified that?
 20 A. Mr. McPhilliamy.
 21 Q. And the two sheets that we just looked at
 22 behind Tab 514 seem to show that those, in fact, were
 23 not transformers and they were disposed of by EPS off
 24 site; correct?

1 A. Off site, yes.
 2 MR. KROPP: Your Honor, I would like
 3 to move the admission of the deposition of Scott
 4 McPhilliamy.
 5 THE COURT: Do I have that? I know I
 6 have Dr. Smith, Mr. Rice --
 7 MR. KROPP: And you now have
 8 Mr. McPhilliamy.
 9 THE COURT: I just hope my three-hole
 10 punch doesn't break. Thank you.
 11 * * *
 12 (Discussion held off the record.)
 13 * * *
 14 THE COURT: Mr. Kropp, what's the
 15 number on this, the McPhilliamy deposition?
 16 MR. KROPP: This will be
 17 Respondent's -- let's make it 560.
 18 THE COURT: Ms. Jamieson,
 19 Respondent's 560, any objection?
 20 MS. JAMIESON: No objection,
 21 Your Honor.
 22 THE COURT: Okay.
 23 560 is ADMITTED [later changed to 570].
 24 MR. KROPP: And Your Honor, I'd also

1 like to move the admission of the two documents behind
 2 Tab 514, which are the hazardous waste manifest and
 3 the EPS manifest continuation sheets for the drums of
 4 oil. And I apologize. They do not have a Bates
 5 number on them.
 6 THE COURT: Okay.
 7 514, any objection?
 8 MS. JAMIESON: No, Your Honor.
 9 THE COURT: Okay.
 10 Respondent's 514 is ADMITTED, and that's a
 11 two-page exhibit; correct?
 12 MR. KROPP: Yes, that's correct.
 13 Q. (By Mr. Kropp) Mr. Reed, let's talk about how
 14 EPA or anyone else can determine the PCB content or
 15 classification -- PCB classification of a transformer.
 16 Do the regulations handle this issue?
 17 A. The regulations that, you know, have in effect
 18 since the start first -- they were changed somewhat
 19 with the Mega Rule, but you're talking about pole
 20 mount distribution transformers that are -- that are
 21 mineral oil filled.
 22 Q. Yes.
 23 A. Up until the -- up until the Mega Rule,
 24 anyway, if you had an untested transformer, and you

1 had the assumption rules; so you must determine that
 2 it's 50 to 499. All right?
 3 Now you have the -- the in-use classification,
 4 which was 761.2, which -- which was added in the Mega
 5 Rule that has tied that assumption rule to the "in
 6 use" that basically allows you, if it's 1980 or newer,
 7 to assume that it's less than 50 and if it's older
 8 than that, to assume that it's 50 to 499.
 9 If you do not -- if you have a mineral
 10 oil-filled transformer, at any rate, unless you have a
 11 test on it, you cannot assume that it's greater than
 12 500; you must assume that it's less than 500.
 13 Q. So can -- can EPA or anyone else assume that a
 14 transformer is more than 500 parts per million for the
 15 purposes of -- of classifying it under the
 16 regulations?
 17 A. No. No, not without specific --
 18 Q. Now, the data -- (inaudible).
 19 A. -- data on the mineral oil transformers.
 20 Q. And -- and that's covered under Regulation
 21 40 CFR 761.2; is that correct?
 22 A. Yes.
 23 Q. Mr. Reed, we've been talking about Count I
 24 since we started our -- our discussion yesterday. And

1 I guess to summarize, you've indicated that you don't
 2 believe that Count I was valid for several reasons,
 3 including that you properly notified under
 4 761.65(g)(9) of the increase in the storage trust --
 5 A. Yes.
 6 Q. -- the amounts;
 7 A. (Witness moves head in an affirmative
 8 response.)
 9 Q. That under 761.20(c) and 761.79, most -- the
 10 vast majority of the units on -- in storage at EPS on
 11 both 15 July and 2 November were not subject to the
 12 maximum storage capacity limits in your approval; is
 13 that correct?
 14 A. Yes.
 15 Q. And that the trust fund, regardless of whose
 16 numbers you believe in terms of inventory, was always
 17 sufficient, more than sufficient, to cover up any
 18 remediation, which is the purpose, underlying purpose
 19 of having the trust fund in the first place.
 20 A. Yes.
 21 Q. Okay.
 22 MR. KROPP: Your Honor, I'm going to
 23 move into another area, and I wonder if we might take
 24 a five-minute break.

1 THE COURT: Well, we'll break for ten.
 2 * * *
 3 (Brief break)
 4 * * *
 5 THE COURT: Okay. We'll go back on the
 6 record.
 7 Q. (By Mr. Kropp) Mr. Reed, before we leave
 8 Count I and start talking about Count II, let me ask
 9 you: Mr. Rice testified with regards to Count III in
 10 the hearing that he couldn't accept EPS data on PCB
 11 concentrations because it wasn't verifiable and in
 12 part because it was handwritten. And I notice that
 13 the chart that we looked at behind Tab 513, Bates 119,
 14 -20 and -21 is all handwritten information from EPS;
 15 correct?
 16 A. Yes.
 17 Q. Did anyone at EPA ever tell you that that
 18 chart that we looked at which was handwritten was not
 19 acceptable because it wasn't verifiable or because it
 20 was handwritten?
 21 A. No.
 22 Q. Okay.
 23 Let's talk a bit about Count II of the
 24 Complaint.

1 Mega Rule, anyway, they -- there was major changes,
2 anyway, made. And one that they put in under
3 761.65(g)(9) was that if you're just changing the
4 amount of waste you're storing at the facility -- all
5 right? -- that, obviously, there's -- if there's any
6 change needed, it's needed in the financial part, and
7 as long as you put the -- have the financial part in
8 place, then all you needed to do was notify the agency
9 within our region of that modification, how much
10 you're going to store.

11 MR. RUGGERO: Objection, Your Honor.

12 THE COURT: What's -- on what grounds
13 for an objection?

14 MR. RUGGERO: He's testifying as to
15 what the rule requires, and the rule speaks for
16 itself, and I'm -- I think it's actually a confusing
17 explanation.

18 THE COURT: Well, the rule might speak
19 for itself, but -- but Mr. Reed is testifying as to
20 his interpretation of -- of a rule that he's trying to
21 comply with, so I think it's essential for us to
22 understand what he believes the rule says. So
23 overruled.

24 Q. (By Mr. Kropp) Mr. Reed, would you take a

1 notebook, but with those tabs.

2 THE COURT: Okay.

3 MR. KROPP: Oh, I think this -- this
4 may be it.

5 THE COURT: I think that might be your
6 copy.

7 THE WITNESS: No, I -- well, is this
8 mine?

9 MR. KROPP: That's yours.

10 THE WITNESS: All right.

11 THE COURT: And -- can you hold on one
12 second, please.

13 MR. KROPP: Ms. Hwang reassures me that
14 she put one up there.

15 THE COURT: Okay. Let's go off of the
16 record.

17 * * *

18 (Discussion held off the record.)

19 * * *

20 THE COURT: Okay. Back on the
21 record.

22 Q. (By Mr. Kropp) Mr. Reed, do you recognize the
23 document that's behind Tab 500?

24 A. Yes. Yeah. This is a -- the document part

1 look at the document that's in the notebook. It
2 should have a Tab No. 500.

3 A. Yes.

4 MR. KROPP: And Your Honor, for the
5 purpose of, I hope, clarification, this document --
6 it's -- is the same as Respondent's Exhibit R-028. It
7 was part of the prehearing exchange of exhibits.

8 We have put them into this notebook because
9 we're dealing just with the counts through this
10 testimony. And so I have got these all tabbed in a
11 series from 500 to 556 or so, but -- but many of these
12 documents are the same as exhibits that are already
13 either in the record or part of the prehearing
14 exchange.

15 THE COURT: Okay. I -- I don't
16 have -- unless I am mistaken somehow, the last
17 document I have is 490. I have the tabs for the
18 documents, but I don't have them. Did I misunderstand
19 you?

20 MR. KROPP: It's in a different
21 notebook, Your Honor.

22 MS. HWANG: It's a different notebook.
23 It's in a smaller --

24 MR. KROPP: It's another black

1 of the -- the front part of the document and the
2 letterhead.

3 Q. Okay.

4 And -- and what is this document?

5 A. This was the notification notice that I made,
6 you know, in accordance to the regulations advising
7 them, the agency, of a -- of a change in the amount of
8 PCB waste that would be at the facility.

9 Q. Now, my understanding of the rule is that if
10 you -- if you change the size of the storage area that
11 you're going to have, you actually have to have an
12 approval from the regional administrator.

13 Is -- do I misunderstand?

14 A. But you're modifying the facility, you know,
15 making changes to the facility, modifying it, that's
16 a -- here we were only applying to change the --
17 notifying to change the waste storage. There was no
18 changes made to the -- to the facility is why. It's
19 strictly a change in -- in PCB waste.

20 Q. So this July 19th, '99 letter to Ms. Bobbie
21 Wright -- in fact, I guess, the third line down says,
22 "The additional volume stored does not require any
23 modification of the existing facility."

24 A. No.

1 Q. And -- and does that mean that literally you
2 didn't do anything to the EPS building in order to
3 make it able to handle more -- higher volumes of the
4 waste?
5 A. No, we did nothing to the facility.
6 Q. If you have a PCB-commercial storage approval,
7 as EPS does and did, in addition to the regulations
8 requiring physical elements in the permit, what
9 happens financially?
10 A. Well, financially, you have to have -- we
11 discussed, I think, yesterday quite a lot -- there's
12 different forms of -- of financial mechanisms per the
13 regulations that you, essentially -- ours was set up
14 with a trust fund.
15 Q. Okay.
16 But why do we care about finances anyway?
17 A. Well, the reason is, if you were to close the
18 facility, that there is basically broken down, you
19 could say, maybe into two elements, adequate funds to
20 handle the waste and adequate funds to do a cleanup
21 of -- of the PCB storage area.
22 Q. So essentially what -- what's happening under
23 the EPA program is that you have a commercial storage
24 permit, and if you got hit by a pretzel truck or

1 worth that were necessary for cleaning up the amount
2 in the '94 storage permit were in this trust fund?
3 A. Yes. Yeah.
4 Q. Okay.
5 Can you -- can you decide you don't want to
6 play anymore and call the bank and say, "I want my
7 money back"?
8 A. We can't do it. The only way that that money
9 could ever come back to us is we would have to have
10 the facility closed and cleaned up. But if we were to
11 go out of business -- I mean, we have no control over
12 the fund.
13 Q. Does that mean that that trust is an
14 irrevocable trust?
15 A. Yes. Yeah.
16 Q. Okay.
17 Behind Tab 500 is a document, Bates
18 No. R-000898, and I wonder if you can tell me if you
19 recognize that document.
20 A. Yes. Yeah. That's -- that was part of the
21 letter, the attachments, the changes, if I'm looking
22 in the right place.
23 Q. And I -- I see under the description of
24 modifications it says, "Change in volume of PCB waste

1 something and couldn't do business anymore and your
2 heirs walked away from the plant, what happens?
3 They've got -- EPA or some authority has money?
4 A. The EPA has -- in our case, it's a trust fund.
5 The EPA has control over the trust fund to do that
6 cleanup rather than using dollars from the general
7 public or taxpayers.
8 Q. Okay.
9 Mr. Reed, did you put money into some kind of
10 a trust fund or piggy bank or something to do this?
11 A. Yes. Yeah. We -- as part of the regulatory
12 scheme, we set up a trust fund that we had to do back
13 in '94 that over a three-year period we contributed,
14 you know, one third, one third, one third.
15 Q. What does that mean?
16 A. Well, there was -- we established how many
17 dollars were needed -- all right? --
18 Q. Okay.
19 A. -- to do the -- to do that. You know,
20 basically, what I'm saying, like a two-stage cleanup
21 of the facility and the waste. And we contributed
22 each year 33 percent into that fund. And then it was
23 fully funded in the third year.
24 Q. Okay. So by '96 or '97 the full dollars'

1 stored, no modification to facility"?
2 A. Yes.
3 Q. And is that what we were talking about before,
4 the fact that you didn't do anything? All you did was
5 what, pour -- put more money in the trust?
6 A. Well, the fund was -- the fund over the years,
7 under the control of the bank, the fund value had
8 raised in level, anyway. So we didn't -- you know, we
9 didn't need to do anything.
10 Q. Okay.
11 Can you take -- well, no, I tell you what, I
12 need to ask a question.
13 MR. KROPP: Is Respondent's Exhibit 28
14 in the record?
15 THE COURT: Yes, it is.
16 Q. (By Mr. Kropp) That being the case, Mr. Reed,
17 could you take a look at the document behind Tab 501,
18 which is also part of Exhibit R-028.
19 A. Yes. Okay.
20 Q. How do you know -- how did you know how much
21 money you needed to provide in this irrevocable trust
22 for EPA in order to make sure or ensure that there was
23 enough money in the trust to clean up the fund if EPS
24 went out of business?

1 A. You do an estimate -- estimate of what you
2 think. You know, like when we first did this back in
3 '94 what you might have for PCB waste at that point
4 in time, also what was the cost of disposal for PCB
5 waste back at that time.

6 Then you also have -- you have a building that
7 has, you know, a certain physical storage area, and
8 what does it take to clean up that. And you're sort
9 of dealing with two different elements, anyway. And
10 then you -- you look at what -- how much physically
11 could you stick in this space?

12 It's almost like you have a suitcase. How
13 much can you put in this suitcase? And so you sort of
14 factor that in. All right? And that -- actually that
15 was done by -- personally by myself, anyway. Then you
16 went -- then you go through a formal permit
17 processing.

18 Q. Under -- on Page R-000903, in 6.0 it says,
19 "Closure cost estimates."

20 Can you -- can you take me through how you got
21 those numbers?

22 A. We looked at -- at that point we were just
23 looking at -- at weights, anyway -- all right? --
24 first, and looked at 100,000 pounds. All right? And

1 And if you go over to Page R-000905, I see
2 several numbers on there. There's a subtotal and a
3 contingency and a total. Is the -- the subtotal of
4 \$134,159 the amount that you estimated, based on
5 having those increased capacities on hand at the time?

6 A. Yes. All the categories that are there.

7 Q. Why did you add a 15 percent contingency?

8 A. That's a -- that's a requirement in the permit
9 scheme, regulatory scheme.

10 Q. Okay.

11 And so what -- what was, in 1999, the total
12 cost, per your estimate, of remediating the site with
13 the significant increased capacities on site?

14 A. Right. That's \$154,283.

15 Q. Mr. Reed, we're going to -- we're going to
16 talk about the documents later, but just to kind of
17 close this aspect up, do you recall the amount of
18 money that was in the trust fund as of that date when
19 you filed that notification?

20 A. Yeah, as of that date, it was attached -- or
21 it's the first page of the letter, anyway, there was
22 \$184,585. And that was the value of the trust fund.

23 Q. So if you had had in July of 1999 the
24 increased capacities that you filed the notice for on

1 with the process, you separate and send it out, we're
2 looking at, you know, approximately a \$20,000 cost.
3 And we did the same thing with capacitors and the
4 fluid. So we go through, basically, item by item --
5 all right? Like, the first item, 840 units, drained,
6 you know.

7 And so we look at what's the current market
8 prices at that -- at that point, anyway, and estimate
9 that in. And then at the end of this you add a 15
10 percent increase, and so on. So it's --

11 Q. So --

12 A. That's the sort of a process you are
13 following.

14 Q. So as of the date that you've notified EPA,
15 the numbers that you put down here on the sheet are
16 all, then, current estimates of what it would take to
17 remediate that site; is that correct?

18 A. Yeah. If you had all the -- all the items
19 that were in there at the same -- the same time, in
20 other words, you put this item, this item, this item,
21 and you added that all together, you have a cost for
22 all those items, and then you also have the remedial
23 cleanup of the facility.

24 Q. Okay.

1 site, there would have been enough money in that trust
2 fund to remediate the site and do everything that was
3 necessary under the regulations even with the
4 increased capacities?

5 A. Yes.

6 Q. And there would be some money left over;
7 right?

8 A. Yes.

9 Q. Can you take a look at the -- at Tab 502. And
10 that's the same as Complainant's Exhibit 2, which I
11 believe is in the record.

12 Do you recognize that document?

13 A. Yes. Yeah. This is the permit that -- the
14 renewal permit -- all right? -- from the original '94
15 permit that was issued on September 29th, 1998.

16 Q. Okay.

17 What kinds of materials are the subject of
18 this approval?

19 A. PCB waste.

20 Q. And the permit is to do what?

21 A. The permit is to, in other words, commercially
22 store things that fall within the commercial storage,
23 the regulatory scheme.

24 Q. And is there a difference between commercial

1 Q. Okay.
 2 A. It's just --
 3 Q. Mr. Reed, I was just trying to get you to
 4 testify back to the documents that Ms. Finnegan was
 5 referring to so --
 6 A. Well, she was referring to the Certificates of
 7 Disposal.
 8 Q. Okay.
 9 MS. HWANG: I'll move on, Your Honor.
 10 Q. (By Ms. Hwang) What else is different in this
 11 report, Mr. Reed, from the prior draft?
 12 MS. JAMIESON: Your Honor, I'm just
 13 going to object. The prior draft isn't admitted, and
 14 he's entering testimony into the record, and now he's
 15 comparing it with the draft that's not admitted.
 16 THE COURT: Okay. That's a good
 17 point. I mean, the draft was provided by the
 18 Government to Respondent, but the draft, at least for
 19 the purpose it was offered initially, was rejected as
 20 an exhibit.
 21 Do you need to refer to that draft, Ms. Hwang,
 22 or can we just move on and focus on the provisions of
 23 the final report?
 24 MS. HWANG: We can move on,

1 are TSCA and nonTSCA. The Certificates of Disposal in
 2 here are per 761, unless we're using some other
 3 foreign country's standard, if they have 761.
 4 Q. And you're saying that the CDs that were being
 5 used by G&S do not conform with the TSCA in 761?
 6 A. They do conform, that they've been using --
 7 this paper says they don't conform.
 8 Q. And what about the manifesting issues? Are
 9 there any concerns there in Paragraph 5?
 10 A. Well, I've already documented, again, in
 11 Paragraph 2, it's the same way. No shipments were
 12 made on hazardous waste manifests; so Paragraph 5 is
 13 basically irrelevant.
 14 Q. Now, as I understand it -- and -- and we, in
 15 part, reviewed this chart yesterday in its draft form,
 16 but that testimony has been stricken -- but directing
 17 your attention to the chart that was provided by -- in
 18 the final version that is in this report, does this
 19 information -- does this information provide only the
 20 items or the units received by G&S that were strictly
 21 for resale?
 22 A. Supply -- repeat that.
 23 Q. The units that are identified in this chart,
 24 is this the -- do these units -- do they include all

1 Your Honor.
 2 Q. (By Ms. Hwang) Mr. Reed, in your review of
 3 this inspection report that we received yesterday, did
 4 you arrive at any concerns with regard to EPA's
 5 findings with regard to G&S and its resale of units?
 6 A. Repeat the question again.
 7 Q. In your review of Region II's report of G&S,
 8 did you have -- do you have any concerns with regard
 9 to the conclusions and findings reached by Region II
 10 as to its findings with respect to G&S?
 11 A. Yes. I -- going back, again, my comment on
 12 Page 2, there is the oil drained from surplus
 13 transformers commercially stored.
 14 Q. And --
 15 A. That full paragraph. Going forward to Page 4,
 16 No. 4 and 5, that are outlined.
 17 Q. And what in particular do you have a concern
 18 with regard to Item 5?
 19 A. It doesn't meet the regulatory requirements
 20 and is inaccurate factualwise.
 21 Q. What does not meet the regulatory
 22 requirements? What does the --
 23 A. You can't distinguish between -- there is no
 24 such distinction between Certificates of Disposal that

1 of the items that G&S received for resale? Do you
 2 know?
 3 A. This is -- this is the list that compares to
 4 the paperwork that we did yesterday. They're not --
 5 they're not for resale. I mean, it's the same list
 6 that we covered before.
 7 Q. So it tracks the list that are on those
 8 letters that were sent to Ms. Finnegan back on
 9 December 9, 1999?
 10 A. Yes. And all the paperwork that we've been
 11 covering.
 12 MS. HWANG: Your Honor, at this time we
 13 move to admit Region II's finalized report, dated
 14 February 2, 2001, which I would have added in
 15 substitution of the draft report at the end of
 16 Exhibit 480.
 17 THE COURT: Well, I'm going to keep the
 18 draft report in the record, and I have Bates Nos. 5153
 19 through and including 5158, and inasmuch as that
 20 draft has been rejected -- and the record will explain
 21 why -- so it includes the original, I guess, as the
 22 last Bates number in 480?
 23 MS. HWANG: 480.
 24 THE COURT: And how do you want to

1 mark -- mark this, as a dash A, or --
 2 MS. HWANG: That would be fine,
 3 Your Honor, if you want to mark it as --
 4 THE COURT: Well, I'll take any mark
 5 that you suggest.
 6 MS. HWANG: You want to mark it as
 7 5158-A.
 8 THE COURT: Okay. 5158-A.
 9 MS. HWANG: 5158-A. And then did you
 10 want to -- does Your Honor want to mark the other two
 11 sets of pages by letter?
 12 THE COURT: I don't think that we need
 13 to. It's a one, two, three, four, five -- a six-page
 14 report; correct?
 15 MS. HWANG: Yes, Your Honor.
 16 THE COURT: So I think it's
 17 sufficiently identified. So it's a part of
 18 Exhibit 480, the six-page report beginning with Bates
 19 No. 5158-A.
 20 Ms. Jamieson, do you have any objection to
 21 this being admitted?
 22 MS. JAMIESON: Your Honor, I just
 23 would like to check the attachment page for one
 24 moment --

1 THE COURT: Sure.
 2 MS. JAMIESON: -- with my co-counsel.
 3 No, I have no objection, Your Honor.
 4 THE COURT: Okay.
 5 The report is ADMITTED. [of 480]
 6 MS. HWANG: Your Honor, the next
 7 housekeeping item at Exhibit 405, we received earlier
 8 testimony yesterday from Mr. Reed with regard to a
 9 chart that he prepared on the hours of operation of
 10 G&S Technologies' furnace, based on some data he had
 11 received.
 12 Complainant had raised a question that it did
 13 not have the backup data to determine the reliability
 14 and to be able to verify the accuracy of the
 15 information that was reflected on that chart. So I
 16 would just like to ask Mr. Reed a couple of questions
 17 and then introduce the backup data that should simply
 18 be added to the back of that exhibit.
 19 THE COURT: When did that data become
 20 available?
 21 MS. HWANG: Your Honor, it -- it,
 22 obviously, has been available to my client.
 23 THE COURT: But in the form that you
 24 have it right now?

1 MS. HWANG: It became available to me
 2 this morning. We got it -- I mean, obviously, it was
 3 in our client's office. It had to be just retrieved,
 4 which it was.
 5 THE COURT: Okay. But what time was
 6 that information prepared? Because it's 1:30. I
 7 wonder why -- why didn't you give it to EPA earlier so
 8 that they could look at it?
 9 MS. HWANG: I just received copies of
 10 it this morning, Your Honor.
 11 THE COURT: Well, this morning, I know,
 12 but it's 1:30.
 13 MS. HWANG: We --
 14 THE COURT: I mean, I just don't want
 15 any -- I think it would have been helpful for you to
 16 give this supporting information to EPA earlier so
 17 that we don't have to waste time if they have to look
 18 at it. Maybe they don't want to look at it. I don't
 19 know. But if you can give them a copy now.
 20 MS. HWANG: Sure. I would be happy to.
 21 MS. JAMIESON: Your Honor, this is of a
 22 significant technical nature. We don't have time to
 23 prepare. About this document, I have never seen it
 24 before.

1 THE COURT: Well, why don't you take a
 2 look at it now, and I guess --
 3 MS. HWANG: What we can do,
 4 Your Honor -- I don't mean to interrupt. Since
 5 Mr. Kropp has to go on in a short while, I just have a
 6 few more documents, perhaps we can use that as a
 7 break between, and let Mr. Kropp continue. And then
 8 at some point we can just go back. And quite frankly,
 9 I was just going to have my client identify the
 10 document. I'm not going to have him go through these.
 11 THE COURT: But you are
 12 going to move it into evidence; right?
 13 MS. HWANG: Yes, Your Honor.
 14 THE COURT: So that's a big item and if
 15 it's very technical -- it's a really big item, at
 16 least to the other side. So we better deal with it
 17 now before the witness testifies. But you're
 18 representing that this -- this information ties in
 19 with the Exhibit 405, was it?
 20 MS. HWANG: I believe it was -- yes,
 21 Your Honor, 405.
 22 THE COURT: 405.
 23 Ms. Jamieson, when you're ready to talk about
 24 the document, let me know. I have a question for

1 A. Well, not -- on this at least -- well, on my
2 copy, it appears that the whole right column is bolded
3 on this -- this printout done by the lab so --
4 Q. I see.
5 A. It's different than the other ones that we
6 looked at. Page 4 of 7, which is 3508, on the top you
7 have an 822-part-per-million unit. The second one
8 down has the designation WEC-756. Then on 3505,
9 which is page 7 of 7, you have the date by the lab
10 manager of 8/23/99; you have a unit WEC-822 by the
11 client ID. Again, that would be Warren Electric
12 Co-op, what they're abbreviating their name. 1443
13 parts per million -- so your three units are -- are
14 there.
15 Then you als -- also we looked at that. You
16 have -- under 3513, 3512, 3514, you actually have a --
17 a column that's the date out of service with this
18 equipment, along with listing the serial numbers and
19 then the -- the WEC numbers.
20 MS. HWANG: Your Honor, at this time,
21 Respondent moves to admit 4 -- Exhibit 471. So it
22 will be documents Bates Nos. 3515, 3501, 3502, 3503,
23 3504, 3514, 3513, 3512, 3511, 3510, 3509, 3508, 3507,
24 3506, 3505.

1 THE COURT: Ms. Jamieson?
2 MS. JAMIESON: No objection,
3 Your Honor.
4 THE COURT: All right.
5 Respondent's Exhibit 471 is ADMITTED.
6 And also, too, this is to pick up on what I
7 said yesterday. With respect to 3515, the witness did
8 comment on handwritten notes with respect to the
9 documents.
10 With this exhibit and similar exhibits to the
11 -- I don't intend to consider any handwritten notes
12 unless there's a reliable indication in the record as
13 to who wrote those notes. So I'm looking at 3515 and,
14 for example, an asterisk that says "none resold." It
15 means nothing to me. I -- I won't consider it.
16 Okay?
17 MS. HWANG: Thank you, Your Honor.
18 Q. (By Ms. Hwang: Mr. Reed, just going back to
19 the terms of the bill of lading as reflected on 3515,
20 there's no indication on its face that it's for
21 resale; is that correct?
22 A. No. There's nothing. There's nothing typed
23 in or handwritten in the normal place for a resale.
24 Q. Turning your attention to Exhibit 472,

1 please.
2 MS. HWANG: Can I just have a moment to
3 confer with co-counsel?
4 THE COURT: Sure.
5 MS. HWANG: Cheryl, is there a document
6 in --
7 MS. JAMIESON: I'm not your co-counsel.
8 MS. HWANG: Sorry.
9 * * *
10 (Laughter)
11 * * *
12 THE COURT: Counsel, I need to see the
13 magistrate judge's secretary. So we'll take a -- a
14 ten-minute break. We'll go ahead and do that right
15 now.
16 * * *
17 (Brief break)
18 * * *
19 MS. HWANG: Your Honor, I'm going to
20 skip over 472 for the moment --
21 Q. (By Ms. Hwang) -- and go to Exhibit 473,
22 Mr. Reed, which are a series of documents relating to
23 Cinergy Kau Kauna, Bates Nos. 3329, 3330, 3333, 3332,
24 3331, 3334, 3335, 3336.

1 Do you have those documents, Mr. Reed?
2 A. Yes.
3 THE COURT: I'm sorry, Ms. Hwang. What
4 exhibit are we on?
5 MS. HWANG: Exhibit 473. We're just
6 skipping over 472.
7 THE COURT: All right. I know we were
8 here late last night, and so I'm very careful before I
9 say this. I don't see that I have it. I have 472,
10 and the next tab is 476.
11 MS. HWANG: The very bottom.
12 THE COURT: Excuse me. Is there
13 somewhere else where I could find it or what --
14 MR. KROPP: It's at the bottom.
15 MS. HWANG: Your Honor, someone told me
16 it's at the bottom of the binder.
17 But is it marked 476?
18 MR. KROPP: 473.
19 THE COURT: Oh. I see. It's -- it's
20 in hidden behind the last tab. I just --
21 MS. HWANG: I'm sorry, Your Honor. I
22 see it.
23 THE COURT: Okay. I see that it's out
24 of order.

1 MS. HWANG: Do you want me to review
2 those Bates numbers again, Your Honor?
3 THE COURT: Sure.
4 MS. HWANG: 3329, 3330, 3333, 3332,
5 3331, 3334, 3335, and 3336.
6 Q. (By Ms. Hwang) Mr. Reed, did -- did you have
7 occasion to obtain these documents?
8 A. Yes. Yeah. This is a --
9 Q. And from what source?
10 A. Region II, EPA FOIA request.
11 Q. Then the markings -- the handwritten notations
12 on the documents as you provided them to counsel, were
13 these markings on the original documents as you
14 received them?
15 A. Yes.
16 Q. And you made no markings as to those documents
17 that you provided to counsel?
18 A. No.
19 MS. JAMIESON: Your Honor, we need to
20 check. Is this -- are you certain you haven't done
21 this document previously with nine -- with the nine
22 units written on the bottom?
23 MS. HWANG: Wait. They were originally
24 in chronological order, I think.

1 Q. (By Ms. Hwang) Mr. Reed, do you believe this
2 to be -- I think it's different.
3 A. Let me see.
4 * * *
5 (Discussion held off the record.)
6 * * *
7 Q. (By Ms. Hwang) Mr. Reed, you can refer to
8 Exhibit 420.
9 A. Yes. Yeah.
10 Q. This might be the same one.
11 A. Yes. Yeah. I would say it is a -- a repeat.
12 Q. Okay.
13 A. What's this?
14 Q. So we will -- we'll skip over to --
15 (inaudible).
16 COURT REPORTER: Skip over to what?
17 MS. HWANG: Well, actually, we're going
18 to skip back to 473, which should be a three-page
19 document. But I think the exhibit binders have only
20 two pages, 3145 and 3149. I'd like to just add one
21 more document in that package.
22 MS. JAMIESON: You have, Marian --
23 excuse me, again, but you're stating 473? Are you
24 stating 473?

1 MS. HWANG: No. 472.
2 MS. JAMIESON: 472. Okay. I thought
3 you said 473.
4 MS. HWANG: Which should be our Bates
5 Nos. 3145, 3149, and if I could ask you to enter a
6 third page, 3147. This is -- again, is 7242. I'm
7 sorry. I should have said, "472."
8 THE COURT: I'll just -- 472?
9 MS. HWANG: Yes, Your Honor.
10 THE COURT: Hold on.
11 MS. HWANG: Yes, Your Honor.
12 It just needs to be added to the back of that
13 binder package.
14 Q. (By Ms. Hwang) Mr. Reed, are you familiar
15 with these documents, the three documents in the
16 binder?
17 A. Yes. Yeah. This is the --
18 Q. How did you come to acquire these documents?
19 A. FOIA, Region II.
20 Q. And have you made any changes to these
21 documents?
22 A. No.
23 Q. What do these documents reflect with regard
24 to -- to commercial storage and/or manifesting

1 matters?
2 A. Well, all these are -- apparently, Ms. Anne
3 Finnegan had asked for confirmation on the back in the
4 inspection reports of the units being disposed. She'd
5 asked for the CDs and the inspection reports.
6 Apparently this is a response which she got
7 from G&S Technologies Equipment. On 3149 it lists --
8 it was for the shipment February 19th, 1999. And it
9 lists the lab number; the PCBs, you know; and the
10 total weight in kilograms.
11 And then on 3147, apparently, the bill of
12 lading shipment for March the 10th, 1999; and it
13 lists all the units that were greater than 50 and
14 then the total kilograms for those units, which is
15 3,227 kilograms. So they were confirming to her that
16 the units had been disposed.
17 Q. Were these regulated units?
18 A. Yes. Yeah.
19 Q. Shipped -- G&S had been a commercial storer?
20 A. Yes.
21 Q. Is there any evidence of manifesting here?
22 A. No. They're -- they're citing the bill of
23 ladings.
24 Q. So the bill of ladings are referenced up above

1 but no reference to manifesting?
 2 A. Correct.
 3 MS. HWANG: At this time, Your Honor,
 4 we move for admission of Exhibit 472.
 5 THE COURT: Any objection?
 6 MS. JAMIESON: No, Your Honor.
 7 THE COURT: Okay.
 8 Respondent's Exhibit 472 is ADMITTED. All
 9 right.
 10 Q. (By Ms. Hwang) Moving to 474, this bears
 11 Bates Nos. 3177 and 3178.
 12 Mr. Reed, do you recognize this document?
 13 A. Yes. Yeah. These are, again, a FOIA request
 14 of Region II.
 15 Q. Do you know whose -- strike that.
 16 This is a handwritten memo?
 17 A. Yes.
 18 Q. Who is it from?
 19 A. Well, it says Anne -- to Jay Spector, he's the
 20 counsel of -- General Counsel of G&S and it's from
 21 Anne Finnegan.
 22 Q. And there are a series of questions and
 23 appears to be questions and answers?
 24 A. Yes. Yeah.

1 Q. What information is referenced in this written
 2 note with regard to the receipt of -- of units by G&S?
 3 A. Well, the first -- you have the two questions
 4 on the top, if -- if -- one, if the utilities are
 5 selling the transformers to G&S for resale, why are
 6 the utilities getting a CD and not -- or a Certificate
 7 of Disposal? You know, the "CD" is abbreviated for
 8 "Certificate of Disposal."
 9 If you were selling something for resale and
 10 it's going to be resold, you wouldn't be getting a
 11 Certificate of Disposal when the Certificate of
 12 Disposal is tied to CFR 70 -- 761 and the disposal
 13 requirements.
 14 And then the -- the second question, if the
 15 utility retains any amount of control over voice and
 16 decision-making on these transformers; so obviously
 17 she is interested in finding out if the utilities
 18 still have some control over the fate of these
 19 transformers.
 20 Q. And what is the general information that
 21 she -- she obtains and -- and records in this memo?
 22 A. Yeah. She records under the "A," or the
 23 answer, that G&S is buying the equipment, G&S pays for
 24 them, does the analysis, and makes the decision on

1 use.
 2 Then she says G&S only rebuilds under 50.
 3 And then she goes on to say that everything
 4 from 50 to 500 is drained and the carcass is disposed
 5 of on-site and processed.
 6 And then she says that any units over 500, the
 7 original owner sends G&S a manifest to send it for
 8 disposal, which would fall in line with the paperwork
 9 that we've just been reviewing, anyway.
 10 And the original owner is the generator and
 11 pays for the disposal. So she's confirming that the
 12 original owner is the generator. So then when --
 13 essentially, when the stuff is stored at G&S, they're
 14 a commercial storage because they're not the generator
 15 of the -- the material.
 16 Q. And so apparently, with regard to the 50 to
 17 500 PPM units, he doesn't make any reference that
 18 they're being manifested by G&S; is that --
 19 A. Yeah. There's no --
 20 Q. -- the discussion there?
 21 A. -- no discussion there of manifesting.
 22 Q. What about on the next page? Is there any
 23 discussion with regard to the control issue?
 24 A. Well, she -- she writes down, you know,

1 apparently it's a "tricky issue if the original owner
 2 retains control, and G&S may really be handling it for
 3 them commercially" -- all right? -- "especially if the
 4 original owner pays for disposal."
 5 And then she has this -- the note "Spector" on
 6 the side. "Usually transformers for surplus come in
 7 untested. Customer wants it that way," with a
 8 question. "Transformers for disposal are all tested
 9 before they come on-site."
 10 She's already stated that it's over 50 they
 11 are coming in for disposal.
 12 Q. So according to at least this note, it's
 13 suggesting that G&S is asserting that if it's for
 14 disposal, all are tested before they come on-site to
 15 G&S.
 16 Is that what they're suggesting?
 17 A. Yes. Yeah.
 18 Q. Have you found that to be the case?
 19 A. No. The whole policy is to dispose of
 20 anything greater than 50, either at G&S or through the
 21 Safety Kleen if it's greater than 500.
 22 Q. In the documents that we've been looking at
 23 this morning, the units that were -- that were
 24 designated for disposal, were all of those tested

1 before they had come on-site?

2 A. No. They were all -- they're all untested
3 because they're all tested at G&S's lab.

4 MS. JAMIESON: Your Honor, I object to
5 the question and the answer. There's no foundation
6 laid for that type of testimony.

7 THE COURT: I'm going to sustain the
8 objection. If -- well, I think we're having a
9 balancing of -- of a necessity for foundation and a
10 need to move this hearing along. But I guess of the
11 two, foundation wins out; so Ms. Hwang, we will need
12 more foundation on some of these questions.

13 MS. HWANG: Um --

14 THE COURT: But also, too, I want to
15 let both parties know that the testimony with respect
16 to these exhibits, I don't know how much weight a
17 witness's testimony will be given if -- if they're
18 speculating on what a company does or doesn't do. I'm
19 going to examine the testimony in the context of the
20 particular exhibit.

21 Go ahead, Ms. Hwang.

22 Q. (By Ms. Hwang) Mr. Reed, this morning we've
23 been -- and yesterday we reviewed a lot of those
24 shipping records from different utilities, co-ops to

1 would just have confirmed records.

2 Q. And -- and in fact, we looked at a lot of
3 lab's data. The lab data was from which laboratory
4 company? Do you recall?

5 A. That's G&S's -- it's the lab there at G&S's
6 facility.

7 Q. What's -- what's the name of that lab?

8 A. Transformer Lab -- Transformer Lab Service.

9 Q. And that was G&S's lab?

10 A. Yeah. It's located at the same facility,
11 Transformer Lab Services, 1800 Harrison Avenue --
12 that's G&S's location -- Kearny, New Jersey.

13 Q. And in many instances those lab reports are
14 dated after the shipment date?

15 A. Yes. Yeah.

16 Q. Going back to page -- or Bates Page
17 No. R-3178, there's a reference to Ms. Finnegan
18 attempted to perhaps arrange a meeting with
19 Mr. Spector at G&S. And I believe there's a reference
20 to Dave, when he gets back from Puerto Rico.

21 Do you know whether such a meeting took place
22 later on?

23 A. Yes. Based on the FOIA request, yes.

24 MS. HWANG: Your Honor, at this time,

1 G&S with the bills of lading, lab data, shipping
2 sheets.

3 Is it -- do you recall all of --

4 A. Yes.

5 Q. -- the shipping dates --

6 A. Right.

7 Q. -- from that Cinergy? Duquesne?

8 A. (Witness moves head in an affirmative
9 response.)

10 Q. In the review of those documents, did you see
11 any instance in which the testing had be -- had
12 been -- excuse me. Strike that.

13 In your review of those documents or
14 recollection of those documents, did you see any
15 instance in which the testing had been done before G&S
16 received those units?

17 A. No. There's no -- there's no test results
18 provided by the customer, which is standard in the
19 industry. The customers aren't testing the units.

20 Q. So there was no testing done before those
21 units came on-site to G&S?

22 A. None that's in the -- none that's in the
23 record, that's aside from the normal conditions, they
24 would not be tested. If they had tested them, you

1 we move to admit Exhibit 474.

2 THE COURT: Ms. Jamieson, 474?

3 MS. JAMIESON: I have no objection,
4 Your Honor.

5 THE COURT: All right. 474 is
6 ADMITTED.

7 MS. HWANG: Moving to Exhibit 475 --
8 let me -- let me do one housekeeping matter first.

9 About three quarters into it, there are these
10 statements of decommissioned equipment lists. The --
11 the one -- I guess it's around the series Bates 3295,
12 329 -- 3296 -- I'm sorry -- 3295.

13 Do you see that there? I need to give you
14 another page that has to be added into it.

15 Do you have 3295?

16 MS. JAMIESON: No -- yeah, we have it.

17 MS. HWANG: The next one you don't
18 have, that 3296.

19 MS. JAMIESON: Yeah, right.

20 MS. HWANG: I'll just give you that.

21 * * *

22 (Discussion held off the record.)

23 * * *

24 MS. HWANG: Your Honor, in that

1 Exhibit 475 after 3295 is this document (indicating).
 2 It's a copy of the same document.
 3 The documents in this exhibit are 3284, 3283,
 4 3285, 3286, 3287, 3289, 3288, 3290, 3291, 3292, 3293,
 5 3294, 3295, through and including 3302.
 6 Q. (By Ms. Hwang) Mr. Reed, do you see those
 7 documents?
 8 A. Yes.
 9 Q. Have you seen these documents before?
 10 A. Yeah. These are FOIA requests from
 11 Region II.
 12 Q. And there's some notes, and in fact, some of
 13 the documents are handwritten. Did you make any
 14 changes in these documents before you provided the
 15 copies to me?
 16 A. No.
 17 Q. These documents reflect a shipment of units
 18 around October 13, 1999 from Southside Electrical
 19 Cooperative to G&S Motor Equipment.
 20 Is Southside Electrical a -- a co-op?
 21 A. Yeah, they're a co-op that's located in
 22 Virginia.
 23 Q. So they're not a major utility?
 24 A. No. They're not an investor-owned utility;

1 A. 3283, the next page, I -- there's a column
 2 PCB -- PCB/PPM level, and you have one that says "17,"
 3 and one you have less than 2 minus 2, less than 2.
 4 And there's a note under the "pumping" and "loading."
 5 It says, "Resale," "Resale." So it may be the two
 6 units.
 7 On 3286 you have a 675 PPM level, this is
 8 3286. Then down on the unit, which is Lab No. 48, you
 9 have a PCB unit greater than 500, designated there or
 10 located there on the paper. You have the whole list
 11 again, the typical list of the units with the serial
 12 numbers, and so on.
 13 On 3291, you have, I think -- it's the first
 14 time we've seen this, but you have a statement of
 15 decommissioned equipment. And decommissioned
 16 equipment would be to remove the oil and dispose of
 17 the unit. And that's dated 10/13/99. Then you have a
 18 list, again, of the equipment.
 19 Q. So when you do commissioning -- when you
 20 decommission, that's a permanent disposal?
 21 A. Yeah. Yes. Yeah. With -- in the disposal
 22 industry it would be. You would be using --
 23 "decommissioning" you are removing the oil and
 24 disassembling the unit and processing it.

1 they're a small co-op.
 2 Q. With regard to this shipment involving
 3 125 transformers for evaluation, what, if anything,
 4 did you observe with regards to the compliance status
 5 of the manifesting requirements?
 6 A. Well, on the -- on the shipping paper, first
 7 paper, 3284, just looking there quickly, they're
 8 noting that one unit's over 500, and five units are
 9 between 50 and 499. So that's --
 10 Q. That's --
 11 A. -- that should have been a manifest violation.
 12 Q. And they're regulated units?
 13 A. Right. The date on the top, 10/13/99, at that
 14 point G&S had notified as a commercial storer. And
 15 it's past November 21 so --
 16 Q. And is there anything on here indicating that
 17 the units are for resale?
 18 A. No. Other than the note that two of them were
 19 resold. Two -- there's a little note that says "Two
 20 units for resale."
 21 Q. Okay.
 22 And the --
 23 A. Now, if you --
 24 Q. Go ahead.

1 Q. Should certificates of disposal have been
 2 issued for these units if they were regulated units?
 3 A. Yes. Yeah, for regulated units. Now, I see
 4 on lab -- I see 3299 on -- is that PCB unit, anyway,
 5 675 parts per million.
 6 Q. And I believe the lab here now has begun to
 7 asterisk items that are over 50 PPMs; is that right?
 8 A. Yes. It appears, yeah. It appears on the
 9 sheets that's what they are doing.
 10 MS. HWANG: Your Honor, at this time
 11 we move the admission of 475.
 12 THE COURT: Ms. Jamieson, any objection?
 13 MS. JAMIESON: No objection,
 14 Your Honor.
 15 THE COURT: No objection?
 16 MS. JAMIESON: No.
 17 THE COURT: Okay.
 18 475 is ADMITTED, Ms. Hwang.
 19 Q. (By Ms. Hwang) Mr. Reed, going to
 20 Exhibit 476, Bates Nos. 3306, 3316, 3307, through
 21 and including R-3315.
 22 Do you see those documents there?
 23 A. Yes.
 24 Q. And have you seen these documents before?

1 A. Yes. They're the FOIA requests of Region II.
 2 Q. And the writing on the documents as you
 3 provided to me and counsel, were on the originals; is
 4 that correct?
 5 A. Yes.
 6 Q. And you made no alterations to these
 7 documents?
 8 A. No.
 9 Q. Mr. Reed, these documents reflect -- appear to
 10 reflect -- relate to a shipment on October 18th, 1999,
 11 involving -- from -- to G&S. Can you describe for me
 12 what manifesting and/or other issues you identified
 13 from this package of documents?
 14 A. Yeah. There's no -- in this package I
 15 don't -- on the shipment there's no manifest to G&S or
 16 bill of lading.
 17 Q. I'm -- I'm sorry. Mr. Reed, I -- could you
 18 repeat your answer?
 19 A. Yeah. I said I don't see the bill of lading
 20 or any manifest in this paperwork here.
 21 Q. Is there anything in here to suggest whether
 22 there was a disposal or resale?
 23 A. Well, you have -- let's see. There's no --
 24 actually, this one I don't think -- there's not a CD

1 either.
 2 You do have in the -- the one thing you do
 3 have in -- on 3316 -- 3316 you have the Uniform
 4 Hazardous Waste Manifest, you know, at this point
 5 identified from G&S Motor Equipment coming to Safety
 6 Kleen for the one unit.
 7 And under the additional description where you
 8 would -- would write this information, they have the
 9 Peco Energy. And then they have the serial number
 10 there for a number off that transformer. It's a GE
 11 37.5 kVA unit 13-45629 for 2003. So they're iden --
 12 identifying the one container, the one PCB transformer
 13 being shipped from G&S.
 14 Q. And that was one that was over 500?
 15 A. That was over 500. There's no manifest
 16 showing that one coming in.
 17 Q. And again, the PPM levels are particular units
 18 that are designated on the attached sampling date
 19 sheets as well as from Transformer Lab Services'
 20 analytical reports?
 21 A. Yes. Yeah. You have right -- right. Lab
 22 results dated 10/27/99.
 23 MS. HWANG: At this time, Your Honor,
 24 we move to admit Exhibit 476.

1 THE COURT: Any objection?
 2 MS. JAMIESON: No, Your Honor.
 3 THE COURT: Okay.
 4 Respondent's 476 is ADMITTED.
 5 Q. (By Ms. Hwang) Mr. Reed, if I can direct your
 6 attention to Exhibit 477 at Bates Nos. 3304, 3303,
 7 3347, 3346, 3338, 3339, through and including 3345.
 8 A. What page is that, again?
 9 Q. This is Exhibit 477.
 10 A. 477. Okay.
 11 Q. This is a shipment dated around November 2nd,
 12 1999.
 13 Have you seen these documents before, sir?
 14 A. Yes. Yeah. This is, again, a FOIA request of
 15 Region II.
 16 Q. And did you make any alterations to these
 17 documents prior to providing them to counsel?
 18 A. No.
 19 Q. Did you make any alterations to any of the
 20 documents you provided to counsel, to your knowledge,
 21 that were used in the prehearing information
 22 exchanges?
 23 A. No. Not -- not ones that were obtained to
 24 FOIA. If I generated, the document I might have but

1 not on FOIA.
 2 Q. Okay.
 3 Mr. Reed, referring you to Exhibit 477, can
 4 you tell me, based on your experience what, if any,
 5 manifesting violations are manifested in these
 6 documents?
 7 A. You have -- again, you have units -- you know,
 8 units greater than 500. If I look at 3304, you have
 9 G&S, you know, manifesting to Safety Kleen, which is
 10 appropriate on their manifest going to Safety Kleen,
 11 but the equipment -- they have it under "J," official
 12 description, Southside -- South -- Southside -- excuse
 13 me -- Electrical Co-op. They listed the serial
 14 number, and there's no documentation that that was
 15 ever manifested from Southside to -- to G&S.
 16 Q. So we don't know exactly -- is there any
 17 information in this package that says when G&S
 18 received this particular unit?
 19 A. Let's see. We have sample date. No. I would
 20 say we don't have anything in this package.
 21 Q. So this was a regulated unit, and there's no
 22 manifest; is that correct?
 23 A. Correct. Correct.
 24 Q. And the sampling data is attached to this

1 MS. JAMIESON: No objection,
 2 Your Honor.
 3 THE COURT: Okay.
 4 478 is ADMITTED.
 5 Q. (By Ms. Hwang) Mr. Reed, referring you to
 6 479, bearing Bates No. R-139, through and including
 7 141 --
 8 MS. HWANG: Your Honor, we did
 9 actually -- I think we had this admitted into evidence
 10 yesterday --
 11 THE WITNESS: Yes.
 12 MS. HWANG: -- with the exception of
 13 the last page, 6913.
 14 THE COURT: You're saying 479?
 15 MS. HWANG: Yes, Your Honor.
 16 THE COURT: Okay. Right. We had --
 17 MS. HWANG: We did not admit the last
 18 page.
 19 THE COURT: That's correct.
 20 Q. (By Ms. Hwang) Mr. Reed, referring to
 21 Exhibit 480 --
 22 A. Yes, I have it.
 23 Q. And these would be documents bearing Bates
 24 Nos. R-2824, 6914, 6915, 6916, 5163, 5154, 5155, 5156,

1 PCB test sheets, and then the record of final
 2 disposition of equipment and the oil.
 3 So how she -- it doesn't list anything here
 4 what she received, but she's -- it shows how she put
 5 it in here. And then below that she has for all
 6 "in-service transformers" in parenthesis [sic]
 7 received since April 1, 1999. So she's asking for
 8 April 1, 1999 to be sent by 12/10/99.
 9 Q. What does -- she's got that in quotes. What
 10 does, quote, "in-service transformer" mean?
 11 A. In -- if the transformer was still in -- you
 12 know, in service, it would be in service at the -- you
 13 know, these are pole mounts. It would be in service
 14 at the utility delivering energy to some customers.
 15 Q. So is there such a thing as an in-service
 16 transformer, I mean, that would be received by a waste
 17 disposal facility?
 18 A. Not in the disposal, not in the regulatory
 19 service. There is no such thing.
 20 Q. And going to the next page, it completes the
 21 list of information requested. At least it says, "No
 22 documents taken at inspection"?
 23 A. Yes. Right.
 24 Q. So does it appear -- does there appear to be

1 5157, and 5158.
 2 Do you see those documents?
 3 A. Yes.
 4 Q. How did you come to obtain these documents?
 5 A. This was a FOIA request again of Region II.
 6 Q. And what does it relate to?
 7 A. Well, at the top it says, "Notice of
 8 Inspection." Then after that, it has "meeting,"
 9 anyway. And it's dated 11/18/99. It's signed by --
 10 at the bottom Anne Finnegan.
 11 COURT REPORTER: Signed by who?
 12 THE WITNESS: Anne Finnegan and Jay
 13 Spector.
 14 Q. (By Ms. Hwang) The reference to a meeting on
 15 top, that was handwritten; right? That wasn't written
 16 by you?
 17 A. No. No.
 18 Q. And going to the next page on 6914, were
 19 documents provided by G&S to EPA?
 20 A. Well, they're asking -- see, this is a receipt
 21 of documents -- all right? -- standard form the EPA
 22 uses, "Receipt for Samples and Documents." And the
 23 first item she's asking for, incoming bill of ladings
 24 and analysis sheet, which, you know, are basically the

1 any information being requested with regard to G&S's
 2 operations of its scrap metal furnace?
 3 A. Well, the sheet that -- no.
 4 Q. And is there any information in which EPA,
 5 Region III was requesting G&S for information as to
 6 the units it had in storage at any given time?
 7 A. Region III or --
 8 Q. Region II.
 9 A. No.
 10 Q. If I could have you refer, Mr. Reed, to the
 11 attached report draft, it bears Bates Nos. 5053
 12 through and including 5158.
 13 A. (Witness complies.)
 14 Q. Where did you -- how did EPS come to obtain a
 15 copy of this document?
 16 A. This came from a FOIA request from USEPA,
 17 Region V.
 18 Q. Region V?
 19 A. Region V.
 20 Q. Is that out of Chicago?
 21 A. Yeah.
 22 Q. And how is it that Region V had a copy of this
 23 draft report, if you know?
 24 A. Region V did an inspection on G&S, and when