

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

3 Q (By Ms. Beaver:) Mr. Cernerero, on -- basically, I've
4 handed you my exhibit, and if you could read on page 2, I
5 believe the second paragraph that I have highlighted
6 there. Well, no, the first highlighted passage there.

7 A This one first?

8 THE COURT: Did you identify what that exhibit
9 was, Ms. Beaver?

10 MS. BEAVER: Oh, it's -- it's Complainant's
11 Exhibit 32, CTX-32 consistently with the other --

12 THE COURT: What's the title of it?

13 MS. BEAVER: Oh, the title of the document is
14 "Transmittal of" -- it's a memorandum, it's the
15 "Transmittal of the Final Guidance on the Enforcement
16 Principles Outlined in the 1984 Indian Policy."

17 And it's actually page 3, the second full
18 paragraph there.

19 THE WITNESS: Okay. This one here? Okay.

20 MS. BEAVER: Right.

21 THE WITNESS: It says --

22 MS. BEAVER: And there's just a couple of lines
23 there I'd like for Mr. Cernerero to read.

24 THE WITNESS: Okay. It says, "in keeping with
25 the United States policy of operating within a

1 government-to-government relationship with
2 federally-recognized Indian tribes, and consistent
3 with its trust and responsibility to such tribes, EPA
4 remains committed to working with tribal facilities
5 to enhance human health and the environmental
6 protection."

7 Okay. And there's also a footnote that goes
8 along with that, it says, "Memorandum."

9 Quote: "Government-to-government relations with
10 Native American tribal governments," unquote, from
11 President Clinton to the heads of executive
12 departments and agencies, April 29th, 1994."

13 Q (By Ms. Beaver:) Okay. Thank you. And then on the
14 next page, the following page, and I believe it's the
15 third paragraph there.

16 A Okay. It says, "in those cases where reservation
17 facilities are clearly owned or managed by private parties
18 and there is no substantial tribal interest or control
19 involved, the agency will endeavor to act in cooperation
20 with the affected tribal government, but will otherwise
21 respond to noncompliance by private parties on Indian
22 reservations as the agency would -- would to noncompliance
23 by the private sector elsewhere in the country.

24 "Where the tribe has substantial proper -- pro --
25 proprietary interest in or control over the

1 privately-owned or managed facilities, EPA will respond as
2 described in the first paragraph above.

3 Q Okay. Thank you.

4 A Okay.

5 Q That was the highlighted --

6 A Do you want me to read that, too?

7 Q No, no, no.

8 A Oh, okay.

9 Q That's sufficient, I think, to be responsive to the
10 questions earlier that needed to be clarified, I believe,
11 with the best available evidence.

12 And then I just have, I think, three follow-up
13 questions, Mr. Cernero. Is it part of your job duties to
14 know all of the EPA UST activities in Oklahoma?

15 A No.

16 Q Whose responsibility is it to coordinate EPA
17 inspections with OCC in Oklahoma?

18 A Greg Pashia.

19 Q Whose responsibility is it to give notice to OCC
20 under the MOA of inspections for Oklahoma, or to EPA
21 inspections in Oklahoma?

22 A Greg Pashia.

23 MS. BEAVER: Okay. We have no further
24 questions, so we pass the witness.

25 THE COURT: Thank you. We'll take a brief

1 recess at this time, and then hopefully, if you have
2 any further cross, Mister, it will be kept short.

3 MR. KELLOGG: Your Honor, if it will help,
4 the -- from the perspective of the store owner and
5 the store operator, the elephant is still in the
6 room, the Corporation Commission inspection reports
7 are still there, and we have no further questions for
8 this witness.

9 THE COURT: Okay. Thank you.

10 MS. BEAVER: Was that on the record?

11 THE COURT: Thank you, Mr. Cernero, I'll
12 pronounce your name right after a while.

13 MS. BEAVER: Was that closing argument?

14 THE COURT: You may be excused, and thank you
15 very much for your testimony, which I'm sure was an
16 arduous undertaking. Thank you again.

17 We'll take a 10-minute recess.

18 *****

19 (A break was taken, after which the following
20 continued:)

21 THE COURT: The hearing will be in order. You
22 can call your next witness, Ms. Dixon.

23 MS. DIXON: The Complainant rests, Your Honor.

24 THE COURT: All right. Mr. Shipley, are you
25 prepared to present your first witness?

1 MR. SHIPLEY: I believe Mr. Kellogg is going to
2 present the initial witness, Your Honor.

3 THE COURT: That's satisfactory.

4 You may proceed, Mr. Kellogg.

5 MR. KELLOGG: Your Honor, we call Mike Majors.

6 MR. SHIPLEY: Your Honor, what we might also do
7 to use this break in the action is since we have
8 introduced the Government's new exhibit, we have
9 Exhibit 55, which we have proposed and the Government
10 had not yet agreed to, as well as Respondent's 56,
11 which are two EPA Indian Policy documents.

12 And we would like to see, since we are admitting
13 their document on this subject, whether we can go
14 ahead and take care of the admission of Respondent's
15 55 and 56. The latter, 56, is a September 26, 2005
16 memo from EPA, subject: "EPA Indian Policy."

17 Fifty-five is the Interim Final National Policy
18 Statement for Underground Storage Tank program
19 implementation in Indian Country, dated October 23rd,
20 1995.

21 So we'd like to move the admission of those two
22 documents, as well.

23 MS. DIXON: Your Honor, the EPA just continues
24 with our standing objection. The only reason EPA
25 presented our document was to -- to provide the Court

1 guidance or information, because the testimony had
2 already been put into the record. So even though
3 their documents weren't in, they put the essence of
4 the documents in through the testimony.

5 THE COURT: Well, these, again, appear to be
6 documents on the same order as EPA's Exhibit 32, so
7 I'm going to admit Respondent's Exhibits 55 and 56.

8 MR. SHIPLEY: Thank you, Your Honor.

9 THE COURT: Mr. Major, do you have any objection
10 to taking an oath?

11 THE WITNESS: No, sir.

12 THE COURT: Raise your right hand. Do you
13 solemnly swear the testimony you are about to give
14 shall be the truth, the whole truth, and nothing but
15 the truth, so help you God?

16 THE WITNESS: I do.

17 THE COURT: You may be seated.

18 *****

19 MIKE MAJORS

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

22 DIRECT EXAMINATION

23 BY MR. KELLOGG:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q Would you please state your name for the record and
2 tell us where you live.

3 A Mike Majors. I live in Broken Arrow, Oklahoma.

4 Q What do you do for a living, Mr. Majors?

5 A I am an environmental consultant for the last 15
6 years.

7 Q And what kind of environmental consulting do you do,
8 sir?

9 A Primarily underground storage tanks.

10 Q And who do you do that consulting work for?

11 A GMR & Associates.

12 COURT REPORTER: I'm sorry? G what?

13 THE WITNESS: GMR.

14 Q (By Mr. Kellogg:) And can you tell me where GMR &
15 Associates is located?

16 A Have a corporate headquarters in Oklahoma City and a
17 regional office in Tulsa.

18 Q And you are out of the Tulsa office, right?

19 A Yes, sir.

20 Q And would you please tell the Court what kind of
21 clients you do your consulting work for.

22 A I have worked on approximately 250 underground
23 storage tanks clients, primarily in the leaking
24 underground storage tank. But I have also advised clients
25 on compliance issues.

1 Q Would that be here in Oklahoma?

2 A Yes, and also in Texas.

3 Q And Texas?

4 A Yes, sir.

5 Q Thank you. And part of your advice and counsel to
6 UST owners and operators, you represent clients such as
7 RAM, correct?

8 A Yes, sir.

9 Q All right. And are you also experienced with
10 Oklahoma Corporation Commission's enforcement policies and
11 practices?

12 A Yes, sir.

13 MR. KELLOGG: You have our exhibit. Is there --
14 do you have your Exhibit 30? We have lost, somehow,
15 one of these books. You gave us one.

16 MS. BEAVER: I gave you two. I gave you 1
17 through 29 or 1 through 13, and 14 through 30. We
18 gave you --

19 MR. KELLOGG: Thirty is the Corporation
20 Commission --

21 MS. BEAVER: OCC regs.

22 THE COURT: This can be off the record.

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

25 THE COURT: Okay. On the record.

1 MR. KELLOGG: Okay. Ms. Beaver has provided me
2 a copy of EPA's Exhibit 30, which I just handed to
3 the witness.

4 Q (By Mr. Kellogg:) Are you familiar with that
5 document, sir?

6 A Yes, sir.

7 Q And I believe that's the rules that were in effect
8 sometime in 2004, and at the time of the inspection of the
9 RAM facilities in February of 2005.

10 A That is correct.

11 Q Okay. I'd like you to look at Appendix S in the
12 back. And do you have experience in how Appendix S is
13 used by the Corporation Commission?

14 A Yes, I do.

15 Q All right. Would you please describe how those fines
16 are imposed, in your experience?

17 A Typically, my involvement with the Corporation
18 Commission has been field citations to certain tank owners
19 that have had violations in the past, and which they use
20 the fine amounts stated in Appendix S.

21 Q All right. And the fine amounts stated in
22 Appendix S, are those imposed in the first inspection
23 under these rules?

24 A Typically no, unless it's a severe or deliberate
25 violation that I have seen. Typically, it's handled

1 through a warning; generally a written warning with a --
2 with a period of repair granted. They give them 30 or 60
3 days to correct the problem, and generally, the problem is
4 corrected.

5 Q All right. And you've been retained to examine the
6 EPA's Complaint, and the enforcement and compliance
7 history of RAM in this case, have you not?

8 A Yes, I have.

9 Q And you looked at the Oklahoma Corporation
10 Commission's inspections of RAM, have you not?

11 A Yes, I have.

12 Q And what has been the pattern that you have observed
13 between the Oklahoma Corporation Commission inspections
14 and RAM, sir?

15 A Mr. Roberts has given the -- has given RAM the
16 ability to correct the problems that he's identified
17 during his inspections. And all of the notices of
18 violations that I have seen have been corrected inside the
19 time table set forth by Mr. Roberts.

20 Q All right. And -- and does the Corporation
21 Commission do follow-ups to see that those compliance
22 tests are achieved?

23 A Yes, they do.

24 Q All right. And has that been met in -- in all the
25 cases that you have observed by the Corporation Commission

1 with respect to RAM?

2 A Yes, sir.

3 Q All right. Now, I'd like to look at a few of the
4 counts, and I'll try to take them in order for you.

5 Let's start with the Quik Mart facility here in
6 McAlester. That's just up the road.

7 A Okay.

8 Q Isn't that right? And I wonder, sir, if you took any
9 photographs -- well, first, have you visited that
10 facility?

11 A Yes, sir, I did.

12 Q And about when was that?

13 A September of '05.

14 Q After the inspection, obviously?

15 A Yes, sir.

16 Q Okay. And when you were there in September, did you
17 take any photographs?

18 A Yes, sir.

19 Q And you have a black notebook there with you, sir.

20 And I ask you to look at Respondent's Exhibits 1 --

21 Exhibits 1, 3, and 9. There should be -- let me make sure
22 I'm on the same page you are on.

23 Can you tell us what Exhibit 1 is, sir?

24 A It is a photograph of a site.

25 Q And can you see any of the features of the USTs from

1 this photograph?

2 A Yes, sir. The three tanks identified in Count 1, the
3 north end or the northern fill port caps are visible in
4 the photograph.

5 Q Those would be about the middle, I guess, of the
6 picture?

7 A Yes, sir.

8 Q All right. And Exhibit 2 -- no, not 2 -- 3. Can you
9 tell me what Exhibit 3 is, sir?

10 A That is a photograph of the fill cap -- or excuse
11 me -- the fill port on one of the -- on the north end of
12 one of the tanks identified in Count 1.

13 Q This happens to be the -- now, you've been here and
14 listened to some of the testimony, have you not?

15 A Yes, sir.

16 Q You've heard the testimony that the north fill ports
17 weren't used, allegedly, and one of them had a lock,
18 correct?

19 A Yes, sir.

20 Q And this photograph, Respondent's Exhibit 3, is the
21 fill port that had a lock.

22 A Yes, sir, it does.

23 Q All right. And let's see. Exhibit 9, can you tell
24 me what that photo is, sir?

25 A The same tanks in Count 1 that is the north -- or

1 excuse me -- the southern fill port with the spill bucket
2 installed.

3 Q This is the southern fill port, so this is one that's
4 authorized to be used?

5 A Yes, sir.

6 Q All right. And can you tell from that photograph
7 whether it contained any product?

8 A Yes, sir, there is.

9 Q All right. Now, did you examine the three northern
10 fill ports, the ones that did not contain spill buckets?

11 A Yes, sir.

12 Q And did you notice anything that would discourage the
13 use of those spill buckets -- I'm sorry, the use of those
14 spill ports?

15 A Neither of the fill ports on the north side of the
16 tank were color coded to identify the product in the tank,
17 which would cause some question for a tank driver --
18 excuse me -- a delivery driver to fuel the tanks.

19 Q All right.

20 A There was nothing to indicate what was in the tanks.

21 Q All right. And did you examine the fill ports
22 themselves for any sign that they had been used?

23 A Just a visual inspection.

24 Q And what did you see?

25 A I saw nothing to indicate that there was a -- that

1 they were using the northern fill ports.

2 Q And your covers were not color coded; is that what
3 you said?

4 A Yes, sir, they were not.

5 Q What about the fill ports themselves? Did they have
6 the tags on them, the color codes, so that the driver's
7 would know which product to put in the tank?

8 A No, sir, they weren't.

9 Q None of them had any of those, correct?

10 A That's correct.

11 Q And did you ask anyone at RAM about those fill ports
12 and whether they were used?

13 A I had asked Twilah about the fill ports, and she said
14 that they were not in use during -- during the life of the
15 tanks, since 1990.

16 Q Okay. And you said you asked Twilah. Who would that
17 have been?

18 A Ms. Monroe, an employee of RAM.

19 Q Twilah Monroe?

20 A Yes, sir.

21 Q Thank you. Have you reviewed any Oklahoma
22 Corporation Commission inspection reports for this
23 facility?

24 A Yes, I did.

25 Q And I ask you now to return to Respondent's

1 Exhibit 5. And are you familiar with Exhibit 5, sir?

2 A Yes, sir.

3 Q Can you tell me whether the Corporation Commission
4 believed that a spill bucket was required at this facility
5 on July 15th of '05?

6 A The inspection report indicates that spill
7 containment was provided on the tank.

8 Q It was already there?

9 A Yes, sir, on the tank.

10 Q All right. Oh, on the tank?

11 A It doesn't -- it doesn't specify how many fill ports
12 were, just that spill and overflow protection was in
13 place.

14 Q It was in place?

15 A (Nods head.)

16 Q And now -- well, I'm sorry. All right. Please look
17 at Respondent's Exhibit 6. And that's another inspection
18 report at this facility, correct?

19 A Yes, sir.

20 Q This was a year in advance, and it's prior to EPA's
21 inspection, right?

22 A Yes, sir.

23 Q And did this indicate a noncompliance with spill
24 buckets?

25 A No, sir.

1 Q Now, as they exist today, do you know whether the
2 northern ports have spill buckets on them?

3 A Today, they do have spill buckets on them.

4 Q And do you know approximately when those may have
5 been installed?

6 A Not without looking at my notes; I don't know the
7 date.

8 Q Do you know whether they were installed by July 15th
9 of 2005?

10 A I do not believe they were.

11 Q All right. So even after -- oh, and who did the --
12 I'm looking at Exhibit 5. Do you have that in front of
13 you? Back to Respondent's Exhibit 5. And the inspector
14 on this occasion, what was the name?

15 A John Roberts.

16 Q And that's the same inspector that accompanied the
17 EPA on an inspection of this facility, is it not?

18 A That's my understanding; yes, sir.

19 Q And the northern fill ports didn't have spill
20 buckets, correct?

21 A That's correct.

22 Q And the Oklahoma Corporation Commission still didn't
23 say that it was a violation of that requirement, right?

24 A That's correct.

25 Q Why do you think that is?

1 A Being familiar with RAM and their practices and
2 policies and being familiar with the site, I believe that
3 he was operating under the assumption or the direction
4 from RAM that they only use the southern fill ports due to
5 their location on the property.

6 Q Okay. And is there something about the Corporation
7 Commission rules that -- that would seem to recommend that
8 compliance was achieved without spill buckets on these
9 ports?

10 A May I --

11 Q That would be Rule 2-39, I think, in the Corporation
12 Commission rules. I'm sorry, I don't know the page.

13 A The Corporation Commission Rule 2-39 indicate -- or
14 specifies that the underground storage tanks must have
15 spill and overflow protection on the tanks. It does not
16 indicate on every spill port on a tank.

17 Q On every fill port?

18 A I'm sorry, yes, on every fill port.

19 Q And each tank in use at the Quik Mart here in
20 McAlester had spill and overflow protection, correct?

21 A Yes, sir.

22 Q So you believe, then, that it complied with the
23 rules?

24 A It is my opinion that they -- they do comply with the
25 rules, yes, sir.

1 Q And so that any penalty that should have been
2 imposed, should have been mitigated?

3 A Yes, sir.

4 Q Is there anything about the location of the northern
5 fill ports, just the location themselves, that would also
6 lead you to believe that it's true that they are not in
7 use?

8 A Yes, sir. The northern fill ports are located in two
9 driveways, two of the primary driveways to the facility.
10 In order to get a -- a semi truck in that location, you
11 would have to block or restrict access to the driveway,
12 limiting the ability to get to the pumps and to the stop.

13 Q All right. Thank you. I'd like you to move on to
14 Count 2, briefly. And Count 2 was that, in essence, there
15 were dirty spill buckets at this same Citgo Quik Mart.
16 When you were there, did you also look at the spill
17 buckets that were the subject of this count?

18 A Yes, I did.

19 Q And did you take any photographs of those buckets?

20 A Yes, I did.

21 Q And take a look at Respondent's Exhibit 9 if you
22 would, please. And that's one of them, right?

23 A Yes, sir.

24 Q I think we already went over this. My apologies.
25 Did all of the spill buckets, as the EPA alleges,

1 have material and product in them at the time you were
2 there?

3 A There was product in, I believe, six, yes, sir.

4 Q Okay. Did the -- did those spill buckets still have
5 the capability of retaining additional product in the
6 event of a spill?

7 A Yes, sir.

8 Q The EPA reported, I think, when they inspected in
9 February of 2005, that the spill buckets were full of
10 product and debris. Is that your recollection of the
11 allegation by the EPA?

12 A Yes, sir.

13 Q And do you have an opinion about that, based on what
14 you observed when you made your inspection, subsequently
15 by several months, of course?

16 A I did not observe that the spill buckets were at a
17 hundred percent capacity when we were there. There was
18 still additional room for leaks or spills during the
19 filling process.

20 Q You have -- you have -- you have looked at spill
21 buckets for lots of facilities, not just RAM, have you
22 not?

23 A That's correct.

24 Q And are they always empty and free of debris?

25 A No, sir.

1 Q Have you ever run across some that are completely
2 full and don't have room?

3 A No, I have not.

4 Q All right. So what you saw at RAM when you were
5 there, is that typical of what you have seen at the other
6 facilities you looked at?

7 A I have observed it before; yes, sir.

8 Q If a tank was filled on the day of inspection, is it
9 possible that fill -- I'm sorry, is it possible that a
10 spill bucket might have product in it?

11 A Yes, sir.

12 Q Do you know whether any of the tanks were filled the
13 day that EPA inspected back in February of 2005?

14 A According to the information I received from RAM,
15 yes, sir.

16 Q How do you know that?

17 A I received the monthly release detection information
18 that showed deliveries to the site.

19 Q And what did you find for the date of EPA's
20 inspection?

21 A There were deliveries.

22 Q There were deliveries?

23 A Yes, sir.

24 Q All right. Did you notice, when you were there in --
25 was it September?

1 A Yes, sir.

2 Q Did you notice debris in the spill buckets?

3 A Yes, sir.

4 Q And product?

5 A Yes, sir.

6 Q And roughly, a spill bucket holds about five gallons,
7 I think Mr. Cernero testified to. Would you agree with
8 that?

9 A Yes, sir.

10 Q And what is it about the volume of product that is in
11 a hose from a -- from the tanker truck?

12 A It -- the size of the -- it varies with the size of
13 the hose, but his assessment of between 15, and I think
14 his high end was 25 gallons is reasonable to assume.

15 Q More than five gallons that the spill bucket itself
16 would contain?

17 A Yes, sir.

18 Q But these are proper spill buckets, and I think
19 Mr. Cernero agreed they were, as well; their design, at
20 least was proper for the facility.

21 A Yes, sir.

22 Q Why don't -- what is it about emptying the hoses that
23 doesn't cause the -- that a five-gallon spill bucket is
24 sufficient in capacity to catch spills?

25 A I'm sorry, could you ask me that again?

1 Q Yeah. How does the -- I guess the easiest way is how
2 does the gasoline get from the tank to the hose and into
3 the fill port? Is it pumped in or is it gravity?

4 A It's generally gravity fed.

5 Q And Mr. Cernero testified to that, as well.

6 A Yes, sir.

7 Q You heard that.

8 A Yes, sir.

9 Q And it's correct that -- that most of the hose just
10 drains down into the tank, right?

11 A Yes, sir.

12 Q All right. I'll stop belaboring that point.

13 I would like to -- let's see if I can -- while we're
14 talking about spill buckets -- let me jump around in the
15 counts, because I don't think the order of the counts is
16 necessarily that important.

17 So at Count 10, we are concerned with damage to one
18 spill bucket on one tank. This was Goodwin's One Stop in
19 Hartshorne. And I wonder if you, then, had an opportunity
20 to visit that shop, as well?

21 A Yes, sir, I did.

22 Q All right. And did you take any photographs?

23 A Yes, sir.

24 Q I'd like you to look at Respondent's Exhibit 27 in
25 that black notebook. And can you tell me what that

1 photograph is, sir?

2 A That is a photograph of the Goodwin's One Stop.

3 Q And Exhibit 28, how about that?

4 A That is a photograph of the damaged spill bucket.

5 Q All right. Now, there's -- it looks to me as though
6 there's some reflection in that photograph. Can you
7 recall or tell from the photograph whether that spill
8 bucket was holding any liquids?

9 A Yes, sir, there was product in the spill bucket.

10 Q Product in the spill bucket? And Exhibit 31 -- well,
11 don't need that one yet. Is there a photograph -- well,
12 did the spill bucket -- now, this is the spill bucket, is
13 it not, that the EPA noted was damaged?

14 A Yes, sir.

15 Q Correct? And we haven't disputed that it's damaged.

16 A No, sir.

17 Q Do you know where that damage was located?

18 A Yes, sir. It was located on the top third of the --
19 from the surface. It was located -- located at the top of
20 the spill bucket.

21 Q But it was damaged but still had the ability to
22 contain product?

23 A Yes, sir.

24 Q And this photograph showed it did, obviously.

25 A Yes, sir.

1 Q Thank you. Enough of spill buckets.

2 Now, I want to talk briefly about Count 4. This one
3 is a little complicated, I think, even for me to
4 understand.

5 Count 4 is still back at the Citgo Quik Mart in
6 McAlester, and alleges that RAM should have been using the
7 monthly monitoring method of release detection, and was
8 not. Is that a fair statement of what the allegation is?
9 And if not, please correct.

10 A No, sir. They were using -- based on the age of the
11 tanks and the considering of it being a modification
12 instead of an upgrade, they were using an out-of-date leak
13 detection method, inventory control.

14 Q It was out of date?

15 A Yes, sir.

16 Q But it was inventory -- inventory control method?

17 A Yes, sir.

18 Q And from the perspective of RAM, is that the same
19 method that they would use for, say, the SIR process?

20 A From their perspective, it's the same information
21 collected.

22 Q Were they not doing monthly monitoring, or were they
23 just doing the wrong form of monthly monitoring?

24 A They were doing the wrong form.

25 Q But from the store's perspective, is there a

1 difference?

2 A No, sir. Yes, from the operator of the store, there
3 is no difference. They collect the same information.

4 Q Now, you -- you've been an inspector -- I mean you've
5 been a consultant in the UST program for how long?

6 A Eleven years.

7 Q And is it clear to you that they are using the right
8 or the wrong method in this facility?

9 A It's clear now. The regulations in '98 for the tank
10 upgrades, which we have discussed in this -- in this
11 courtroom -- RAM, at their own discretion, installed an
12 impressed current system -- impressed current cathodic
13 protection system at this facility.

14 They already had a cathodic protection facility on
15 the tanks when they were installed. There was no need to
16 do an impress -- to design and install an impressed
17 current system.

18 Operating under -- I'm taking some assumptions
19 that -- that they considered that an upgrade instead of a
20 modification, and that being an upgrade extended an
21 additional 10 years of using inventory control as monthly
22 leak detection.

23 Q You -- you learned this by talking to the people at
24 RAM?

25 A I'm sorry? Learned what?

1 Q Did you talk to anybody at RAM to get their
2 understanding of that?

3 A Yes, it was considered an upgrade.

4 Q All right. Did that seem unreasonable to you at the
5 time?

6 A No, it did not.

7 Q Today, I guess we've learned that that's not correct,
8 right?

9 A Yes, sir.

10 Q Thank you. Count 7 is Citgo Thrif-T-Mart in
11 McAlester. Have you been to that facility?

12 A Yes, I have.

13 Q And that was also in September?

14 A Yes, sir.

15 Q And did you take any photographs?

16 A Yes, sir.

17 Q Let's start with Respondent's Exhibit 16. Do you
18 recognize that, sir?

19 A Yes, sir. That is the Thrif-T-Mart facility.

20 Q In and of itself, looks like kind of a small store to
21 me. Is that typical of a small gas station/grocery store
22 in Oklahoma?

23 A Yes, sir.

24 Q Okay. And Exhibit 17. Would you refer to that,
25 please, sir. Can you tell me what that is?

1 A That is the rectifier box for the cathodic protection
2 system.

3 Q All right. So at the Thrif-T-Mart, they had a CP
4 system installed, apparently.

5 A Yes, sir.

6 Q All right. And do you have an opinion as to whether
7 it was in operation or whether that CP system was
8 operational?

9 A It was not operational during our site visit.

10 Q Okay. And do you know what the problem was?

11 A Not at the time, no, sir.

12 Q All right. But there was a CP system installed?

13 A Yes, sir.

14 Q Okay. Now, Respondent's Exhibit 18. And you are
15 familiar with this exhibit, sir?

16 A Yes, sir.

17 Q And does that indicate whether the CP system was in
18 operation in January of 2005?

19 A It was in operation.

20 Q Does it tell you anything about the particulars of
21 that system?

22 A It just states that that was running at five amps.

23 Q Five amps?

24 A I'm assuming from the dial on the rectifier. Yes,
25 sir.

1 COURT REPORTER: You're assuming from what?

2 THE WITNESS: I don't know.

3 MR. KELLOGG: Dial on the rectifier.

4 COURT REPORTER: Thank you.

5 Q (By Mr. Kellogg:) And Mr. Majors, I'm asking you to
6 look near the bottom of that inspection sheet, it says,
7 "corrosion control cathodic protection." Do you see that?

8 A Yes, sir.

9 Q And it looks like the one, two, third line over, it
10 says, "amps" look like five-something. Is that what you
11 are referring to?

12 A Yes, sir. That's what I was referring to.

13 Q Do you know whether or not five amps is indicating
14 correct operation or incorrect operation?

15 A It is indicating correct operation.

16 Q But this inspection shows it's indicating correct
17 operation?

18 A Yes, sir.

19 Q Now, isn't the operator obligated to check the
20 corrosion protection system periodically to make sure that
21 it appears to be operating?

22 A Yes, sir, every 60 days.

23 Q Every 60 days?

24 A Yes, sir.

25 Q So if it happened to be tripped, say a month after

1 this date, that wouldn't be a violation of the rules,
2 would it, for the operator not to have looked at it and
3 noticed?

4 A That is correct.

5 Q Because the operator has 60 days in which to go and
6 check it.

7 A Yes, sir.

8 Q Okay. Thank you. Count 12 involves Goodwin's One
9 Stop in Hartshorne.

10 A Okay.

11 Q Have you been there, sir?

12 A Yes, sir.

13 Q And Count 12 deals with failing to take daily stick
14 readings. Do you recall that?

15 A Yes, sir, I do.

16 Q And have you examined any documentation of stick
17 readings for this facility?

18 A Yes, I have.

19 Q And what documents have you examined? And let's see
20 if that's this one. Respondent's Exhibit 65.

21 MR. KELLOGG: And Your Honor, I point out to the
22 Court that this is an exhibit that the EPA has not
23 stipulated to its admissibility. So we are going to
24 offer Exhibit 65.

25 Q (By Mr. Kellogg:) Let me catch up to you. Have you

1 located that, sir?

2 A Yes, sir.

3 Q Can you tell me what that is?

4 MS. DIXON: Once again, Your Honor, EPA objects
5 based upon relevance. We don't believe that this
6 document represents stick reading as -- as required
7 under the OCC regs.

8 THE COURT: Well, let's have some testimony and
9 see what develops here.

10 So proceed with your foundation for this
11 document, Mr. Kellogg.

12 MR. KELLOGG: Thank you, Your Honor.

13 Q (By Mr. Kellogg:) Can you tell me how you obtained
14 this document? Well, first, did you obtain this document?

15 A Yes, sir.

16 Q And how did you obtain it?

17 A It was given to me by Ms. Twilah Monroe.

18 Q And Ms. Twilah Monroe would be whom?

19 A An employee with RAM, Inc.

20 Q And is she the person that keeps UST records for RAM?

21 A Yes, she is.

22 Q Do you know that to be the case?

23 A Yes.

24 Q And when she handed this to you, you believed this to
25 be a UST record --

1 A Yes, sir.

2 Q -- that they maintain --

3 A Yes, sir.

4 Q -- as part of their business?

5 A Yes, sir.

6 Q And did you ask her for a particular record when this
7 was handed to you?

8 A This was provided to me at my request; yes, sir.

9 Q What did you ask for, sir?

10 A I asked for the stick readings for the months
11 preceding -- for the 12 months preceding February of '05.

12 Q For the 12 months preceding February of '05?

13 A Yes, sir.

14 Q Okay. And does this appear to be the stick readings
15 for this facility for the 12 months prior to February of
16 2005?

17 A Yes, sir, it does.

18 MR. KELLOGG: All right. And have you -- now,
19 Your Honor, we would like to ask him about what this
20 document tells us, so I guess that I ask that it be
21 introduced into evidence.

22 MS. DIXON: Your Honor, we are still going
23 through the document.

24 MR. KELLOGG: Oh, I can wait.

25 THE COURT: Is that --

1 MS. DIXON: There's one thing, Your Honor, that
2 we have questions about. If this is the document
3 that John Cernero asked for during his inspection, we
4 are wondering how did it get produced now? Because
5 if this is the same information we were looking back
6 for back in '05, how did it come about?

7 MR. KELLOGG: Your Honor, that seems like she's
8 welcome to ask that on cross examination.

9 MS. DIXON: That's my issue, I don't know that
10 I -- this -- if this document is authentic or not. I
11 don't know where this document came from. So that
12 would be my objection.

13 THE COURT: Yes, well, I understand your
14 objection, and it probably should have further
15 authentication from somebody like Ms. Monroe, but --
16 but is further testimony on that going to be
17 forthcoming Mr. Kellogg?

18 MR. KELLOGG: I will be glad to do that, Your
19 Honor. But I would like to ask him about this
20 exhibit since he's here now.

21 THE COURT: Well, proceed. And the document
22 will be admitted subject to further testimony that it
23 is, in fact, what it purports to be.

24 MR. KELLOGG: Thank you, Your Honor. We will
25 affirm that with Ms. Monroe.

1 Q (By Mr. Kellogg:) Tell me what this document shows
2 you about the stick readings at Goodwin's One Stop in
3 Hartshorne.

4 A The information provided is the typical information
5 you would find in an inventory control or an SIR program.
6 With the purchases -- the beginning inventory purchases,
7 deliveries for the day, essentially, the sales put through
8 the pumps, and then it also gives you your gain and loss
9 at the end, which is what you're concentrating on.

10 Q All right. And does it seem to represent a fair
11 representation of the stick readings that are required for
12 release detection at this facility?

13 A In general, yes, sir.

14 Q Well, in general?

15 A Yes, sir.

16 Q Where is it?

17 A It is by and large that the -- their -- the
18 information is here; yes, sir.

19 Q All right. I gather that from your hesitancy, that
20 it's not completely -- perhaps, it's missing a little
21 piece or so every now and then, maybe?

22 A Yes, sir.

23 Q All right. And is that common in your experience,
24 your 11 years of experience, that strict and absolute
25 compliance of the regulations doesn't always occur?

1 A Yes, sir, that's common.

2 Q Even for stick readings?

3 A Yes, sir.

4 Q How about the possibility of an operator failing to
5 do a stick reading on a dark and stormy night?

6 A I assume that's possible, sir.

7 Q Okay. Thank you. Now, did you, by any chance, count
8 how many stick readings were made or how many were
9 missing?

10 A Yes, sir. I counted the number of -- of stick
11 readings that were missing out of a 365 day year.

12 Q And how many?

13 A Approximately 85.

14 Q All right. So they did miss some?

15 A Yes, sir, they did.

16 Q But this appears normal to you?

17 A It's not uncommon to miss stick readings; no, sir.

18 Q That's a better answer than I asked. Thank you.

19 About through.

20 Count 17 is Monroe's in Eufaula. You have been
21 there, correct?

22 A Yes, sir, I have.

23 Q And Count 20 is Longtown Citgo in Eufaula, and you've
24 been there?

25 A Yes, sir.

1 Q And there's been a lot of testimony about the tank
2 integrity test that has to be done before corrosion
3 protection is installed.

4 A Yes, sir.

5 Q Can you tell me what a tank -- a tank integrity test
6 is. What are the elements of that test?

7 A Well, it looks at the -- basically, the integrity of
8 the tank. And it also looks at certain soil
9 characteristics to determine whether or not cathodic -- an
10 impressed current cathodic protection system would be
11 suitable for the site, with existing tanks in place.

12 Q Okay. Is that something that just any old backhoe
13 operator can do?

14 A No, sir.

15 Q What is required to do that?

16 A A NACE-certified individual would be required to do
17 that --

18 Q All right.

19 A -- testing.

20 Q Is this information that's understood by the clients
21 that you do work for?

22 A I have not typically ran across the suitability study
23 as being sought after from the Corporation Commission.

24 Q Okay. Ask you to turn, if you would, Mr. Majors, to
25 Respondent's Exhibit 61. Do you have that?

1 A Yes, sir, I do.

2 Q Have you examined this document?

3 A Yes, sir.

4 Q Can you tell me what it is?

5 A It is a Cathodic Protection Suitability Study
6 performed on a site in Oklahoma City.

7 Q Oh, in Oklahoma City?

8 A Yes, sir.

9 Q And how does this relate, in your mind, to the RAM
10 situation at Monroe's in Longtown? What does this do --
11 how does this tell you anything about that?

12 A About the Monroe site?

13 Q Yes.

14 A I'm not sure I understand your question.

15 Q I'm not sure I do, either. According to this
16 integrity test conducted on a facility that is not a RAM
17 facility, does it describe the leak-free life expect --
18 expectancy of the tanks?

19 A Yes, sir, it does.

20 Q Where would I find that in Exhibit 61?

21 A On the signature page.

22 Q The back?

23 A Yes, sir, fax -- fax number page 7, up at the top.

24 Q Okay. And is that in the table in the middle of the
25 page?

1 A Yes, sir, it is.

2 Q And tell me the significance of that table, sir.

3 A Okay. The table specifies the capacity of the tanks
4 at the site, the product inside the tanks, the current age
5 of the tanks at the time the suitability study was
6 performed, the expected life -- leak-free life of the tank
7 from that date, and then the probability of corrosion
8 failure in a percentage, and then can cathodic protection
9 be applied.

10 Q All right. And what is the significance -- let's
11 look in a column labeled Number 1. And for age in years,
12 it says 39. And for expected leak-free life, it says 11
13 years, correct?

14 A Yes, sir.

15 Q And then if you look in Column 2, there's the same
16 numbers, 39 and 11, right?

17 A Yes, sir.

18 Q And Column 3 is 26 and 24.

19 A Yes, sir.

20 Q Those three columns, those two numbers in those three
21 columns, add up to 50. Is there some significance to that
22 number 50?

23 A Not that I'm aware of. It may be a standard use for
24 the -- for the type of testing, as far as the average life
25 span of a tank. I --

1 Q Average life span of a tank?

2 A Yes, sir. But I don't know where the number 50
3 originates from.

4 Q Oh, all right. But what does the number 50 mean?

5 A The --

6 Q I'm sorry, I didn't mean to ask you where the number
7 50 comes from. What is the significance of the 50?

8 A Fifty years would be the -- given the age of the
9 tanks being 39 years, and then the additional 11 years
10 beyond the current date, would indicate a life span of the
11 tank for 50 years.

12 Q All right. So is that common, that tanks without
13 corrosion protection have a life span of 50 years, or does
14 it depend on the tank?

15 A It depends on your site and your soil conditions,
16 also.

17 Q Depends on the site and the soil? All right.

18 If a tank, without corrosion protection, has a
19 50-year life span, in your mind, would that represent a
20 major threat to compliance with the rules and a major
21 threat to the environment if the CP system were not
22 operated for six months?

23 A No, sir.

24 Q Thank you. I think that's where I was trying to go,
25 and I apologize for being so awkward in doing it.

1 Now, let's go to Monroe's. And we know that the CP
2 system was to be operated while the tanks were in
3 temporary closure, right?

4 A Yes, sir.

5 Q And the purpose of that, according to Mr. Cernerio, is
6 so that when the tanks were put back in use, they would
7 still have integrity; is that correct?

8 A They would be protected; yes, sir.

9 Q All right. And what happened -- do you know what
10 happened to those tanks at Monroe's?

11 A They have been removed.

12 Q They are not in the ground?

13 A Monroe's? Am I talking about the right site?

14 Q Monroe, yeah, they are not.

15 A In Eufaula? Yes, sir.

16 Q Monroe's in Eufaula.

17 A Yes, sir, they have been removed.

18 Q So their potential threat to the environment from not
19 having CP protection to protect the tank in case it ever
20 got product again in the future is zero, because they are
21 not even in the ground.

22 A Yes, sir.

23 Q When those tanks were removed, do you have an opinion
24 as to whether there had been a release of product at
25 Monroe's?

1 A There was no LUST case activated.

2 COURT REPORTER: There was no what?

3 THE WITNESS: LUST case, acronym. There was no
4 case activated during closure.

5 Q (By Mr. Kellogg:) And what does that mean, sir?

6 A The individuals closing the tank are required to
7 collect native soil samples and ground water, if present,
8 to verify if a release had occurred.

9 These samples were collected and no contamination was
10 found; therefore, no case was opened.

11 Q So there hadn't been a leak at Monroe's?

12 A Apparently not; no, sir.

13 MR. KELLOGG: Okay. That's all the questions I
14 have. Your witness.

15 MS. DIXON: Just a couple of minutes, Your
16 Honor.

17 THE COURT: Yes. I do notice, Mr. Kellogg, that
18 included in Exhibit 61 further down, there are
19 documents relating, apparently, to Quik Mart.

20 MR. KELLOGG: Sixty-one?

21 THE COURT: Yes. It appears to be 61, on
22 page -- the Oklahoma Corporation Commission. Let's
23 see. The document signed by Mr. Allford.

24 MR. KELLOGG: You are correct, Your Honor. Let
25 me see if I can understand. I'm not sure why a CP

1 suitability study for Star Fuel Mart in Norman is
2 coupled with this.

3 MS. BOYD: We asked them to produce all the
4 correspondence.

5 THE COURT: This can be off the record.

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

8 THE COURT: Back on the record.

9 MR. KELLOGG: I now understand that this entire
10 document, 61, was produced by the EPA, and it has
11 more information in here than we needed to explore.

12 THE COURT: Yeah, I see. Okay.

13 MR. KELLOGG: At this time.

14 THE COURT: I was just curious about that.

15 MR. KELLOGG: Sorry, Your Honor.

16 THE COURT: Thank you.

17 MR. KELLOGG: I must confess that I am more
18 confused than you are.

19 *****

20 CROSS EXAMINATION

21 BY MS. DIXON:

22 Q Hi, Mr. Majors. How are you?

23 A Hello, Ms. Dixon.

24 Q Long day, huh?

25 A Yes, ma'am.

1 Q Okay. You have testified that you are a consultant.

2 A Yes.

3 Q When were you hired by RAM?

4 A Early September, 2005.

5 Q After you paid inspection?

6 A I'm sorry? Yes, ma'am.

7 Q It was after you paid inspection and after EPA's
8 complaint is alleged?

9 A Yes.

10 Q You are not an enforcement officer, are you?

11 A No, I'm not.

12 Q And you haven't had any training as an enforcement
13 officer, have you?

14 A No, I have not.

15 Q As an environmental consultant, you don't issue the
16 NOVs, do you?

17 A No, ma'am.

18 Q And you don't issue administrative orders?

19 A No, ma'am.

20 Q And you don't issue field citations?

21 A No, ma'am.

22 Q You don't assess penalties in your job as a
23 consultant, do you?

24 A No, I do not.

25 Q And you weren't present at the time of the EPA's

1 inspection?

2 A No, I was not present.

3 Q So you -- you can't really say what Mr. Cernerero saw,
4 as opposed to seven months later and what you saw.

5 A No, I cannot.

6 Q Let me just ask you your opinion. When someone
7 chooses to operate a particular business, do they hire
8 someone like you if they are not familiar with the regs?

9 A They can.

10 Q And what's -- what's one other way they can kind of
11 update theirselves or educate themselves to what's going on?

12 A They can try it on their own.

13 Q And you were hired when?

14 A I believe it was in early September.

15 Q Okay. I don't know if I caught every little thing,
16 so we're going to probably finish pretty quickly.

17 Goodwin's One Stop, they were doing some type of
18 monitoring, correct?

19 A I'm sorry, what count was that? That helps me
20 remember which site was which.

21 Q Let me --

22 A Is that Hartshorne?

23 Q You know the name? Hold on let me get to the front.
24 Is that the street?

25 A No, the town. I think it was in Hartshorne.

1 Q Okay. Yes, that's it, Hartshorne.

2 A Okay, yes.

3 Q So your testimony is that they were doing some type
4 of monthly monitoring.

5 A Yes.

6 Q However, that monitoring did not include stick
7 readings?

8 A I'm sorry?

9 Q The actual stick readings, or did it?

10 A I'm sorry, I didn't hear you.

11 Q Did the monitoring include them actually doing stick
12 readings?

13 A Yes.

14 Q It did?

15 A Yes.

16 Q Okay. Let's go back to Count 1. And you testified
17 regarding the north fill ports. Now, you've never met
18 Mr. Roberts, have you, the OCC inspector?

19 A No, I have not.

20 Q And you didn't ask Mr. Roberts why he didn't cite RAM
21 for not having fill ports did you?

22 A No, I have not.

23 Q And isn't it possible that he might have used his
24 enforcement discretion?

25 A It is possible; yes, ma'am.

1 Q And let's look at Count 2. Count 2 is where the
2 debris and product was in the spill --

3 A Uh-huh.

4 Q -- buckets. Am I using the right terminology?

5 A Yes, ma'am.

6 Q Now, I notice you have a picture of product in the
7 spill bucket.

8 A Is that Number 9?

9 Q That would be Exhibit Number, yes; Exhibit 9.

10 A Yes.

11 Q You took a picture of product in the spill bucket.

12 A Yes, sir.

13 Q But there's no picture of debris in the spill bucket;
14 is that correct?

15 A With the exception of the cigarette butt.

16 Q And is that because in September, there was -- they
17 had cleaned out the spill buckets?

18 A I don't know if the spill buckets had been cleaned.

19 Q Is this the same condition of the spill bucket when
20 Mr. Cernero went out?

21 A I do not know that.

22 Q Let's look at Count 4. Count 4 is Quik Mart.

23 So basically what happened in Count 4, Mr. Major, RAM
24 was just using the wrong method; is that correct?

25 A Yes.

1 Q Let's talk about Longtown and Monroe; that was Counts
2 17 and 20, I believe. And that's where the agency has
3 alleged that the Respondent didn't have an integrity test.

4 A Yeah. Yes.

5 Q You didn't conduct an integrity test at Monroe, did
6 you?

7 A No, ma'am, I'm not certified to do so.

8 Q And you didn't conduct one in Longtown because you
9 are not certified to do one.

10 A No, I have not.

11 Q For the tanks that you said there -- there wasn't any
12 evidence of spill because -- I mean you went out and did
13 the sample or someone did the sample?

14 A At the closure?

15 Q Right.

16 A Okay.

17 Q You wouldn't expect a leak if the tank was closed,
18 would you? If they were temporary closed, would you
19 expect leaks in them?

20 A No, not during temporary closure, you wouldn't expect
21 leaks, no. But during the life of the tank, you could
22 expect some leaks.

23 At closure, permanent closure, they are required
24 to -- they are required to do soil and ground water sample
25 to determine if a leak had occurred at any time during the

1 past of operation.

2 Q Okay.

3 A That was the testing that was done.

4 Q If the tanks were temporary closed, that means they
5 shouldn't have any product in it, right?

6 A That is correct, yes.

7 Q And so you wouldn't expect to have a leak if the
8 tanks are temporary closed.

9 A That's correct.

10 Q Because they wouldn't have any product in them,
11 correct?

12 A That's correct.

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

14 THE COURT: Do you have any redirect,
15 Mr. Kellogg?

16 MR. KELLOGG: Yes, one -- one item, Your Honor.
17 May I have just a moment, Your Honor?

18 THE COURT: Yes.

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

21 MR. KELLOGG: Thank you. Thank you, Your Honor.

22 THE COURT: Back on the record.
23
24
25

REDIRECT EXAMINATIONBY MR. KELLOGG:

1
2
3
4 Q Mr. Majors, Ms. Dixon asked you about Longtown.

5 A Yes, sir.

6 Q And the problem at Longtown was failure to produce a
7 document that reflected that a tank integrity test had
8 been done before the CP system was installed; is that
9 right?

10 A Yes, sir.

11 Q All right. And if a tank did not have integrity when
12 a CP system was installed, would it still have -- would it
13 have integrity some 10 years later?

14 A No.

15 Q Now, do you have an opinion as to whether this tank
16 at Longtown has integrity today?

17 A I have seen documentation that it does.

18 Q May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 MS. DIXON: Your Honor, EPA objects to this
21 exhibit. First of all, we just received this. I was
22 just handed this document today. I don't know if
23 this document is truthful or not.

24 Because in the prior conversations with the
25 Respondent, we were told one person did the so-called

1 integrity test; now this is a totally new company
2 that we've never even heard of. So this document was
3 just provided to us when he walked over to the table.

4 MR. KELLOGG: I received it last night at 10:00
5 at night, Your Honor. My apologies, and I will bring
6 on Ms. Twilah Monroe --

7 MS. DIXON: Your Honor --

8 MR. KELLOGG: -- to identify it.

9 MS. DIXON: If he had it this morning, at the
10 very least it could have been given to us this
11 morning at 9:00.

12 MR. KELLOGG: True. I wasn't sure I was going
13 to use it until your examination.

14 MS. DIXON: Well, if it shows that an integrity
15 test was done, Your Honor, it goes directly to the --
16 to the case.

17 MR. KELLOGG: Your Honor, this integrity test
18 was done very recently, after EPA's inspection. It
19 wasn't done before the inspection; not trying to
20 offer it as that. In fact, at this particular moment
21 in time, I am not even asking necessarily to offer it
22 into evidence, I just wanted to hand a copy to the
23 witness.

24 MS. DIXON: And again we object, because it was
25 just given to us. I haven't had an opportunity to go

1 through it and see what it says, what it doesn't say.

2 THE COURT: Well, Mr. Kellogg is saying that he
3 didn't have the document, either.

4 MS. DIXON: But your Honor, he had it last night
5 at ten. It could have been provided this morning at
6 nine.

7 MR. KELLOGG: I don't deny that, Your Honor.

8 MS. DIXON: Your Honor, we just want, you know,
9 a fair opportunity to look at it, like any other
10 Complainant or Respondent would. To give it to you
11 at the last minute when you have a witness on the
12 stand, Your Honor, is unfair.

13 THE COURT: Well -- well, what I will do,
14 Mr. Kellogg, is allow you to use this document at
15 this time, and then EPA can examine it over the --
16 over the evening. And then in the morning, we will
17 deal with whether or not it's admissible.

18 MR. KELLOGG: That's imminently fair to me, Your
19 Honor. Thank you.

20 MS. DIXON: Thank you, Your Honor.

21 Q (By Mr. Kellogg:) Mr. Majors, before I give this to
22 you, let me make sure I understand. Last night, we met at
23 RAM's headquarters --

24 A Yes, sir.

25 Q -- did we not?

1 A Yes, sir, we did.

2 Q And we inquired about the integrity of the tank at
3 Longtown, did we not?

4 A Yes, sir.

5 Q And as a result of that inquiry, were you given
6 something to help you form an opinion as to whether the
7 tank had integrity very recently?

8 A Yes, sir.

9 Q Now, let me hand you what's been marked as
10 Respondent's Exhibit 69, and ask you if that's the
11 document you are referring to?

12 A Yes, sir, it is.

13 Q And what is your opinion about the integrity of the
14 tank at Longtown in Eufaula?

15 A I'm sorry, I --

16 Q Yes, take your time and look at it. I know it was
17 late last night.

18 A According to this document, that the site and the
19 tanks are suitable for cathodic protection, an impressed
20 current cathodic protection system.

21 Q Today?

22 A Yes, sir.

23 Q Or actually, I guess at the time this test was done?

24 A I believe it was April of '05.

25 Q April of '05?

1 A Yes.

2 Q That's quite a while ago.

3 A Yes.

4 Q Had you seen this prior to last night?

5 A Yes, sir, I had. I had received it in an e-mail
6 about three weeks ago.

7 Q Three weeks ago?

8 A Yes, sir.

9 Q And that e-mail came from who, sir?

10 A Twilah Monroe.

11 MS. DIXON: Your Honor, that's the very point.
12 They had this document three weeks ago.

13 Q (By Mr. Kellogg:) Well, did you give this document
14 to me last night, sir?

15 A Last night was the first time I had forwarded the
16 document to you.

17 Q Thank you.

18 MR. KELLOGG: Your Honor, we are not trying to
19 play hide the pea here, I mean we are really not. We
20 are scrambling trying to come up with information, in
21 the last minute when we had been working for so many
22 months with the Environmental Protection Agency to
23 try to settle this case.

24 MS. DIXON: Your Honor.

25 MR. KELLOGG: And our activities that were

1 directed towards settlement and now discovery.

2 MS. DIXON: Your Honor --

3 MR. KELLOGG: And all of a sudden, we are --
4 I'll be through in a moment -- all of a sudden, we
5 are thrust into trial mode, and we're scrambling to
6 get information and prepare.

7 MS. DIXON: Your Honor --

8 MR. KELLOGG: And there's nothing -- nothing of
9 ill intent here.

10 MS. DIXON: Your Honor, Respondent and
11 Complainant were never near settlement. We were
12 never near settlement. And if they had this document
13 three weeks ago and their employee of RAM had it,
14 who's a witness here today, then EPA should have been
15 provided that document.

16 THE COURT: I can see that there's no indication
17 that counsel had it or was aware of its existence; is
18 that correct, Mr. Kellogg?

19 MR. KELLOGG: Your Honor, I didn't know this
20 existed until 10:00 last night, while it just stopped
21 raining, in fact.

22 MS. DIXON: Well --

23 MR. SHIPLEY: And it would have been in our best
24 interest to give it to them.

25 MR. KELLOGG: And you know, Judge, if we had

1 MR. KELLOGG: Your Honor, may I take five
2 minutes?

3 THE COURT: Yes.

4 MR. KELLOGG: Thank you.

5 *****

6 (A break was taken, after which the following
7 continued:)

8 THE COURT: The hearing will be in order. You
9 may proceed, Mr. Kellogg.

10 MR. KELLOGG: Thank you, Your Honor.

11 Q (By Mr. Kellogg:) Mr. Majors, the -- technically, I
12 suppose the rule requires a tank integrity test must be
13 done by a certified individual before that certified
14 individual can install a CP -- a corrosion protection
15 system; isn't that correct?

16 A I'm sorry, could you -- could you rephrase -- or
17 could you ask that again? I missed the first part.

18 Q The regulation seems to require that before a
19 corrosion expert can install a corrosion protection
20 system, a certified individual must first conduct a tank
21 integrity test. Is that the issue we're dealing with?

22 A A tank integrity test is required before installing a
23 cathodic -- an impressed current system, yes, sir.

24 Q Thank you.

25 THE COURT: I believe the language is

1 "designed," isn't it, rather than "installed"?

2 "Designed" is in there, somewhere.

3 Q (By Mr. Kellogg:) Mike --

4 A I'm sorry, I didn't --

5 Q -- is that correct? Is the Judge right? I think he
6 is. Before a UST -- a CP system must be designed and
7 installed by a corrosion protection expert, correct?

8 A Yes, sir.

9 Q And there must be a tank integrity test before that
10 system is even designed.

11 A Yes, sir.

12 Q So His Honor is right.

13 A Yes.

14 MR. KELLOGG: Thank you, Your Honor.

15 THE WITNESS: Sorry.

16 THE COURT: Yes.

17 Q (By Mr. Kellogg:) Now, the violation that we really
18 have here, isn't it true that RAM could not produce a
19 document that their corrosion protection expert had
20 performed the tank integrity test before he designed and
21 installed a CP system, right?

22 A There was no document.

23 Q No document?

24 A No, sir.

25 Q Now, if a corrosion protection expert failed to

1 conduct a tank integrity test before designing the system,
2 and then installed it, could compliance with that
3 regulation, on a technical basis, ever be achieved?

4 A No, sir.

5 Q It couldn't, could it?

6 A No, sir.

7 Q But could an owner and operator perform,
8 subsequently, a tank integrity test for the purpose of
9 determining whether he was protecting the environment?

10 A At his own discretion, yes.

11 Q His own discretion?

12 A Yes.

13 Q No requirement to do that.

14 A Not in the regulations.

15 Q Once you miss it, it's forever missed, right?

16 A Yes, sir.

17 MR. KELLOGG: That's all, Ms. Dixon.

18 MS. DIXON: Your Honor, since your ruling, I
19 would prefer to just redirect -- to just recross, I'm
20 sorry -- him in the morning.

21 MR. KELLOGG: That would be a fine time to break
22 for the evening, Your Honor.

23 THE COURT: Yes. I will grant your motion,
24 Ms. Dixon, and we'll adjourn until nine in the
25 morning.

1 And this can be off the record.

2 *****

3 (For further proceedings, refer to Volume III.)

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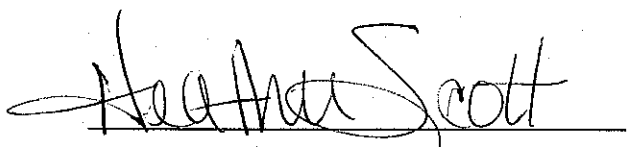
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IN THE MATTER OF)
RAM, INC.,) Docket No.
RESPONDENT) SWDA-06-2005-5301
)

CERTIFICATE OF COURT REPORTER

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

Dated this 22nd day of May, 2006.



HEATHER SCOTT, CSR, RPR

I.D. #01598

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