

**PLEASANT PRAIRIE PLAN COMMISSION MEETING
VILLAGE HALL AUDITORIUM
9915 39TH AVENUE
PLEASANT PRAIRIE, WISCONSIN
3:00 P.M.
August 20, 2012**

A special meeting for the Pleasant Prairie Plan Commission convened at 3:00 p.m. on August 20, 2012. Those in attendance were Thomas Terwall; Michael Serpe; Donald Hackbarth; Wayne Koessl; Jim Bandura; John Braig; Andrea Rode (Alternate #2) ; Larry Zarletti; and Judy Juliana (Alternate #1) . Also in attendance were Mike Pollocoff, Village Administrator; Tom Shircel, Assistant Village Administrator; Jean Werbie-Harris, Community Development Director; and Peggy Herrick, Assistant Zoning Administrator.

1. CALL TO ORDER.

2. ROLL CALL.

Tom Terwall:

Let the record show we have a quorum.

3. CITIZEN COMMENTS.

Tom Terwall:

If you're here for the item that's the only issue on the agenda tonight which is the public hearing, we would ask that you hold your comments until the hearing is held so that your comments can be included as an official part of the record. However, if you're here for an item not on the agenda, want to raise an issue or ask a question, now would be your opportunity to do so. We would ask that you step to the microphone and begin by giving us your name and address. Is there anyone wishing to speak under citizens' comments?

4. OLD BUSINESS

A. CONTINUED PUBLIC HEARING AND CONSIDERATION OF A REVOCATION OR SUSPENSION OF CONDITIONAL USE PERMIT #01-11 that was approved by the Village Plan Commission on June 25, 2001 that allows BP Amoco to operate the gasoline station and convenience store located at 10477 120th Avenue. This hearing specifically relates to the written complaint filed by the Village Zoning Administrator regarding BP Amoco's noncompliance with the terms of said Conditional Use Permit and their violation of Village Ordinance Section 420-145 G., as it relates to "standards for conditional uses" and specifically Section 420-38 D., Water Quality Protection performance standards.

- i. Petition shall be read into the record by the Plan Commission Chairman.**
- ii. Plan Commission Chairman shall hear and receive evidence and sworn testimony.**
- iii. Public comments.**

- iv. Recommendation shall be given by the Zoning Administrator.**
- v. Plan Commission shall vote on an action.**

Tom Terwall:

With that I'll read the complaint into the record to begin the hearing. Dated June 12, 2012 regarding the Zoning Administrator complaint and notice of conditional use permit violation and order to correct violation for the BP Amoco Station #3789, 10477 120th Avenue in the Village of Pleasant Prairie.

According to the Village of Pleasant Prairie/Kenosha County public access records, VIDHYA Corp VIII, Inc. is the legal owner of the property located at 10477 120th Avenue, which is further identified as Tax Parcel Number 92-4-122-302-0130 in the Village of Pleasant Prairie. Currently, the BP Amoco gasoline station operates at the referenced location but only with the expressed written approval and authority of Conditional User Permit #01-11 approved by the Village Plan Commission on June 25, 2001. The purpose of this letter is to document a written complaint filed by the Village Zoning Administrator regarding BP Amoco's noncompliance with the terms of the conditional use permit and the violation of Village Ordinance Section 420-145 G., as it relates to standards for conditional uses and specifically Section 420-38 D., water quality protection performance standards.

BP Amoco has been found to be in violation of the following Zoning Ordinance Section 420-38 D. water quality protection performance standards to be enforced: (11) Water quality protection. (a) No activity shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that would be likely to run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness or be harmful to human, animal, plant or aquatic life.

Recent inspections and photographic documentation over the past year revealed that the BP Amoco property has illicit discharges or petroleum releases into the drainage ditch adjacent to the property that have occurred and continue to occur from the property which also drain out to the adjacent property impacting the water quality and resulting in potentially both soil and water contamination.

This complaint, having been filed on June 12, 2012, alleges ongoing noncompliance with the terms of the conditional user permit for this property. You are hereby ordered to correct the outstanding zoning violations as noted in this letter within 30 days which would be July 13, 2012. If the ongoing contamination is not stopped and the soil and water cleaned up within the prescribed 30 day time period, the Village will initiate the revocation or suspension of the conditional use permit. As such, the Village Plan Commission will schedule an open hearing within 45 days of the date of the complaint and will be conducting a hearing regarding this matter pursuant to the general outline set forth in Zoning Ordinance Sections 420-145 and 420-147.

The date for the public hearing is being set for Monday, July 16, 2012 at 5 p.m. at the Village Hall Auditorium at 9915 39th Avenue, Pleasant Prairie, Wisconsin. You or your representative should attend this hearing. Upon a find that the standards, regulations and conditions set forth in the granting of the conditional use permit has been violated, the Plan Commission may suspend

the conditional use permit and the use of the premises as a gas station until such time as there is compliance with the standards, regulations and conditions imposed with said permit, or the Plan Commission may revoke the conditional use permit. If you have any questions please contact me directly at 262-925-6717. Sincerely, Jean M. Werbie, Village Zoning Administrator, Village Planner and Community Development Director.

As you'll recall, that's when the hearing was initiated, and at that time upon the request of the attorney for BP Amoco we granted a 30 day delay to give him an opportunity to get up to speed on what the charges were which brings us to this meeting today. So at this point I'm going to call on the Mrs. Werbie to bring her testimony. Jean, with that, I want to ask you to please swear that you'll tell the truth, the whole truth and nothing but the truth so help you God.

Jean Werbie-Harris:

Yes, I do.

Tom Terwall:

Please state your name, address and title please.

Jean Werbie-Harris:

My name is Jean M. Werbie-Harris. I'm the Village Zoning Administrator, Village Planner and Community Development Director for the Village of Pleasant Prairie, 9915 39th Avenue, Pleasant Prairie, Wisconsin.

With that, as part of the public hearing record this evening I have compiled a listing of comments, overview, exhibits and information that I'd like be placed in part of the record. And while I am just presenting my brief overview just to set the stage or set the aspects of what we're talking about for the Plan Commission, I'm going to have my assistant Peggy just run through some of the photos of just the site itself over the last year and a half or so while I present the overview. And then we'll start presenting all the exhibits for the record.

As part of the overview, on Monday, July 16, 2012 at 5:00 p.m. at the Village of Pleasant Prairie Village Hall, a hearing was scheduled before the Plan Commission. That hearing, as you indicated, was continued until tonight, August 20, 2012. And this is to consider a possible suspension or revocation of the VIDHYA Corp. VIII, Inc. also known as BP Amoco, 10477 120th Avenue, conditional use permit, which is their operation permit in Pleasant Prairie. The Village was made aware of illicit discharges of petroleum products into the drainage ditch adjacent to the BP Amoco and Culver's property east of Corporate Drive along the south side of Highway 165.

The complaint was filed by the Village's Fire and Rescue Chief Paul Guilbert on April 26, 2011. As noted in the complaint, the discharges are creating soil and ground water contamination. The BP Amoco owners received a State order dated April 27, 2011, and a letter dated May 18, 2011 from the Wisconsin Department of Natural Resources and the Wisconsin Department of Commerce requiring BP to develop and implement a plan to remove and clean up the contamination caused by the discharge. Since that time several contacts including letters and meetings have been made notifying the BP station owners of the steps that need to be taken to

both stop the discharge and to remediate the contamination. To date the discharge continues to take place.

On March 22, 2012, the Village engineering department started issuing daily citations for the illicit discharges. As of August 15, 2012, a total of 125 citations have been issued to date totaling over \$84,000. Each day that the violation deadline was not complied with the BP station owners were issued a \$676 citation by the Village Engineer. The Village has repeatedly outlined specific actions that the owners of the BP station needed to take along with respective deadline for communicating any progress that they had made.

After many discussions with the Village Engineer, Mike Spence, this spring on June 12, 2012 I made the determination to file and to document a formal written performance standards zoning complaint based upon the situation. As the Zoning Administrator, the seriousness of this violation and the owner's noncompliance has resulted in a hearing being set before the Plan Commission to consider the revocation or suspension of the BP Amoco conditional use permit. The conditional use permit grants conditional approval and permission to operate the gas station.

What I'd like to do now is go through each of the exhibits. On your thumb drives and your computer these exhibits are also shown there, and so I'm not going to read through every single detail of all the exhibits. I'm just going to briefly put forth a summary. If you're looking for more of the detailed information, you can certainly click on that particular exhibit. Please note that most of these exhibits with the exception of the last exhibits of the last few weeks have already been provided to the petitioner's attorney as part of an open records request.

So I'll read forth the exhibit numbers and the exhibit, and then just provide, again, a few sentence summaries for each of the exhibits. The first exhibit, Exhibit 1, in April of 1989 Lakeview corporate Park Declaration of Development Standards and Protective Covenants dated 4-17-89. The declaration set forth the standards and protective covenants of the park which includes land owned and occupied by the gas station. The following sections of the declarations specifically address compliance with zoning, nuisances and illegal discharges. Article II, Section 2.1 compliance with zoning, Section 2.2 nuisances, and Section 2.3 hazardous waste. Article VI, Section 6.3 deals with stormwater drainage. And Article X, Section 10.2 maintenance and repair. The BP Amoco site is in violation of these previous sections.

Exhibit 1a, January of 2007, the updated Lakeview Protective Covenants were recorded at the Register of Deeds office.

Exhibit 2, April 5, 1989, the Village Zoning Ordinance Article XVIII, conditional uses, Sections 420-141 through 147. Section 420-147 suspension or revocation of the permits states: Upon a complaint filed with the Zoning Administrator alleging noncompliance with the terms of the conditional use permit by any interested party, or upon the motion of the Zoning Administrator, the Plan Commission shall schedule an open hearing within 45 days of the filing of the complaint and shall conduct a hearing pursuant to the general outline set forth in 420-145. Upon a finding that the standards, regulations and conditions set forth in granting the conditional use permit have been violated, the Plan Commission may suspend the conditional user permit until such time as there is compliance with the standards, regulations and conditions imposed with said permit, or the Plan Commission may revoke the conditional use permit.

Any continued operation after a suspension or revocation of such permit shall be deemed a violation of this chapter and subject to the fines set forth in 420-150 of this chapter. This action of the Commission may be appealed pursuant to Chapter XVIII, Article X of the Village Code. Such appeal shall be filed with the Zoning Administrator within 30 days after final action taken by the Plan Commission. Any failure to revoke a conditional use permit for past violations shall not operate as a waiver of the right to suppress future violations.

Exhibit 3, August 5, 1991, the Village conditional use permit grant #91-001. The Village Board of Trustees adopted conditional use permit grant 91-001 which permitted the construction and operation of a BP Amoco gas station and convenience store on the site located at 10477 120th Avenue in the Village of Pleasant Prairie subject to compliance with certain specific conditions and compliance with all Village ordinances.

Exhibit 4, June 25, 2001, Village conditional use grant #01-11. The Village Plan Commission adopted conditional use permit grant 01-11 which permitted the reconstruction and operation of the Amoco Oil Company gas station convenience store on the site located at 10477 120th Avenue in the Village of Pleasant Prairie subject to compliance with certain specific conditions and compliance with all of the Village ordinances.

Exhibit 5, July 2, 2001, BP Amoco planned unit development Ordinance #01-32 adopted July 2, 2001. The Village Board of Trustees adopted the BP Amoco planned unit development Ordinance 01-32 on July 2, 2001. This PUD sets forth specific conditions and provided modifications to the zoning ordinance for BP to construct and operate the gas station and convenience store subject to the Village approved site and operational plans and subject to compliance with certain specific conditions and all of the Village ordinances.

Exhibit 5a, in September of 2008 Kenosha County land records information documentation. The land records information indicates the purchase of the gas station by VIDHYA Corp, VIII, Inc., also known as BP Amoco, 10477 120th Avenue from Amoco. A deed was recorded in September of 2008 with the Kenosha County Register of Deeds office.

Exhibit 6, June 9, 2009, email correspondence between the Village Engineer and Village Fire and Rescue Chief. The email was from Michael Spence, PE, Village Engineer, to Fire Chief Paul Guilbert regarding a telephone call that Mike has received from the owner of the Culver's Restaurant Ed Rich. It was regarding a strong gassy smell and possible spill from the BP gas station in the ditch line area along the south side of Highway 165. The same complaint had been reported a day earlier by We Energies. This email was then forwarded to Frank Bennett, Wisconsin Department of Commerce Retail Petroleum Inspector.

Exhibit 7, June 11, 2009, email correspondence between Linda Michalets and Frank Bennett. Email from Linda Michalets, Senior Hydrologist, Site Review Section of the Wisconsin Department of Commerce to Frank Bennett and copy to the Village Fire and Rescue Department regarding possible leakages and problems at the BP Amoco site. The conclusion was that We Energies had been recently digging in the area of residual soil contamination from previous hot spots on the gas station site area which was identified as a closed site. No digging by restrictive covenant was allowed to occur at the gas station site in the identified areas. The hot spot area holes were filled in by We Energies.

Exhibit 8, March 22, 2011, State Order letter from Frank Bennett. State Order sent to Dixit Patel from an inspection completed on 3-17-11 by the State Inspector Frank Bennett. The order

identified that four tanks being used or out of service tanks were not properly permitted, and the certificate of insurance had not been provided to the State.

Exhibit 9, April 21, 2011, Village staff email correspondence. A summary of this email was sent by Assistant Zoning Administrator Peggy Herrick to Fire Chief Paul Guilbert and Village Engineer Michael Spence regarding a telephone complaint received by Culver's owner Ed Rich. He indicated that the grass in the ditch line adjacent to the restaurant was dead. He wanted to know if BP had a spill or a leak and what would cause the grass to die in this area of the ditch line drainageway.

Exhibit 10, April 25, 2011, Village staff email correspondence. This was an email from Fire and Rescue Chief Paul Guilbert to Peggy Herrick, Assistant Zoning Administrator, regarding the complaint filed by Ed Rich of Culver's. As indicated in the email, and this is in quote, Mr. Rich in showing us the ditch line within the State Trunk Highway 165 right of way, identified an area of dead grass along with a shiny stream of water running and pooled. The dead grass and the shiny water began at the storm water discharge pipe in the northeast corner of the BP property, a gas station adjoining to Culver's property, and continued east to the culvert that runs under Corporate Drive. Photographs were taken by Village Engineering Technician Eric Cunado.

Also on April 25, 2011 as part of Exhibit 10, the Pleasant Prairie Fire Chief Paul Guilbert notified the Wisconsin Department of Natural Resources, going to be referred to now as Wisconsin DNR, that soil and potential ground water contamination had been detected at and adjacent to the BP Amoco site as noted in the email.

Exhibit 11, April 27, 2011, email correspondence between Frank Bennett and Fire and Rescue Chief. The email from Frank Bennett, State Certified Inspector with the Department of Commerce to Chief Guilbert confirming the message sent to the Chief. We need to refer to Exhibit 12 which is the next as part of the discussion and the attachment.

Exhibit 12, April 27, 2011, State Order letter from Frank Bennett. This was a State Order sent from Frank Bennett, State Certified Inspector with the Wisconsin Department of Commerce, to summarize the site violations included the diesel dispenser had a leak, and the dispenser needs to be cleaned and functionality tests need to be performed. Dispenser pumps needed to be fitted with penetration fittings. The dispenser nozzle were leaking from the tank. There was a slow leak from another tank. There were loose fittings, bolts and connectors on another tank. Sumps needed to be tested for leaks. The diesel probe did not alarm when tested, and the probe needed to be repaired or replaced.

The letter further stated that the following have not been verified for complains. One, equipment for measuring product levels; two, automatic tank gauging equipment and precision tightness testing; three, interstitial monitoring equipment; and four, sensors to detect leaks, lines and pumps. Also secondary containment sumps installations were needed to prevent the release of liquids.

Exhibit 13, May 4, 2011. This is email correspondence and memorandum from Linda Michalets to Scott Ferguson. Linda Michalets, Department of Commerce, sent an email to Scott Ferguson of the Wisconsin DNR with copies to the Village Fire and Rescue Chief and the Village Engineering Technician Eric Cunado. The email discusses a brief site history for the closed Department of Commerce case and information concerning petroleum issues at the station since

2006. The memorandum documents that the Department of Commerce was called to the BP site on April 26, 2011 because petroleum product from the station was observed in the drainage ditch on the northeast corner of the property. Evidence indicates that the petroleum observed is not likely from the release or the same mechanism as the closed Commerce case.

While at the site on April 26, 2011, petroleum odor and a slight sheen was noticed in the storm sewer catch basin on the north side of the property. This catch basin is directly upgrading of the outfall pipe to the drainage ditch. The retail petroleum inspector is requiring a tightness testing of the dispenser sumps in addition to fixing the leaking union under the diesel dispenser and pumping out the one inch layer of product from the diesel sump.

The site history of the closed Commerce case is as follows. A, a petroleum release was reported on September 9, 1999. The source of the release was a leaking flex connector that was discovered at an unleaded gas underground storage tank, USED, basin sump. B, inventory records indicated a loss of 623 gallons of gasoline. Most of the product was siphoned from the tank basin sump back into the USED. C, Delta pumped 12,000 gallons of gasoline contaminated water from an excavation at the northwest corner of the USED basin during the flex connector repair. D, Delta started site soil and ground water investigation in June of 2000. A total of nine ground water monitoring wells were installed with a total of 15 soil borings advanced on the site. E, a second release was reported in February 2001 when Delta reported that an undetermined quantity of premium unleaded gas was released from the piping run between the southernmost former pump island dispenser.

F, the station building and pump island canopy was replaced in 2001. The pump islands and the pumping runs were replaced. The diesel USED was removed and reinstalled in a tank basin separate from the gasoline UMTS. And the new storm sewer was installed and the site graded. G, Commerce approved the case closure on December 20, 2006. H, a deed restriction regarding the case closure was recorded, and a two foot soil barrier along with landscaping were installed to prevent erosion and/or deterioration of the site and in order to prevent direct contact with residual soil contamination.

Exhibit 14, May 17, 2011, email from Michael Madison of Interstate Pump and Tank to Sam Shitansh. Email is regarding the State Order from the Wisconsin Department of Commerce and Wisconsin DNR regarding the grass kill in the highway ditch. The consultant indicated that a tentative schedule of June 6th was set in order to begin hydrostatic testing on all pumps. The process will include inspection of all sumps, removal and disposal of any residual product in any sump and hydrostatic testing of all sumps. Notification of Frank Bennett to be on the site. Pump out the soap and water into the existing driveway. The email also indicated that the tank and the line testing would be coordinated with Tanknology. Repairs to the sensors and diesel pumps was accomplished, and that there would be complete notification to all parties.

Exhibit 15, May 18, 2011. This is the Wisconsin DNR letter to VIDHYA Corp VIII, Inc. The letter from Victoria Stovall, Environmental Program Association of the Remediation and Redevelopment Program of the Wisconsin DNR to Dixit Patel informing BP Amoco that they are responsible for investigating and restoring the environment under 292.11 of the Wisconsin Statutes known as the Hazardous Substances Spills Law. The letter to BP Amoco was regarding the reported contamination and their legal responsibilities and steps to investigate and clean up the contamination. The Wisconsin DNR gave the BP owners the following schedule. A, within 30 days by June 20, 2011 to submit written verification that an environmental consultant is hired;

B, within 60 days by July 21, 2011 to have the consultant submit a work plan schedule for the investigation; C, within 30 days of completing the site investigation submit the site investigation report to the State and other administrative authorities; and D, complete the corrective actions in accordance with Section 292.11 (3) of the Wisconsin Statutes.

On May 23rd an email from Frank Bennett, Department of Commerce Petroleum Inspections to Michael Madison thanking him for the update which detailed specifics about inspections of all pumps, removal and disposal of any residual product in any sump and hydrostatic testing of all sumps. And I'm referring back to Exhibit 13 for that email follow-up.

Exhibit 16, June 6th and June 7th. This involves an email trail correspondence between parties. The email from Eric Cunado, Engineering Technician of the Village to Frank Bennett, Department of Commerce Petroleum Inspections and others which was a reminder notification to Mr. Patel of the need to hire a private environmental consultant and to complete the soil testing because of the reported sheen still coming from the water drain in the ditch line along Highway 165.

The initial email as discussed by Frank Bennett and Eric Cunado included the following actions to be taken initially. A, empty or pump out oily water waste out of the sump into barrels for owner to properly dispose of; B, inspect the piping and the sump, adjustments/corrections to be made if necessary; C, clean up the sump area, empty oil sump water again into barrels; and D, fill sump with fresh water and perform hydrostatic test for at least one hour.

Shanna Laube-Anderson of the Wisconsin DNR indicated in the email trail that, in quotes, I would highly suggest that if you are concerned with the sheen in the culvert that no water be used for testing or pumped prior to testing being discharged to the surface. All if it should be contained. If there is an ongoing sheen on the water in the drainage ditch then there as likely been a release to the environment that will need to be addressed with more than this tightness testing. The owner has been sent a responsible party letter which informs them that they need to hire a consultant to collect soil and/or ground water samples to define the extent and degree of contamination at the property, end quote.

Exhibit 17, June 13, 2011, Moraine Environmental, Inc. letter to Dixit Sultana. Letter proposal from Moraine Environmental, Inc. addressed to Dixit Sultana, VIDHYA Corp VIII, Inc. recommending a scope of work to eliminate the contamination and clean up the BP Amoco site. The proposal for the subsurface soil and ground water investigation for BP station included drilling eight Geoprobe and convert them to temporary ground water monitoring wells, collect two soil samples per boring or a total of 16 soil samples based upon organic vapor meter screening device. Prepare site map, boring logs, bore hole abandonment and other documentation as required by the Wisconsin DNR. Other details are set forth in the proposal.

Exhibit 18, June 13, 2011. This is actually the exact same letter from Moraine Environmental, Inc., but this was addressed to Sophia Patel.

Exhibit 19, June 17, 2011. Email from Frank Bennett, Department of Commerce to Priti Patel. The email questioned the latest issue of cleaning the water from the spill buckets and the tank top sumps.

Exhibit 20, June 21, 2011, Moraine Environmental, Inc. invoice and report to Dixit Sultana. The invoice and report were prepared by Moraine Environmental, Inc. soil along with samples and analysis. The invoice description described the site visit and the collection of one soil sample and one surface water sample from the north storm water ditch adjacent to Highway 165. The company analyzed the gasoline range organics, diesel range organics, petroleum volatile organic compounds and lead in soil and the PVOCs in the surface water. Results yielded a mix of gasoline with six times higher concentration of diesel fuel. The proposal recommended obtaining a bio pile permit when the ditch is excavated with the disposal at the Waste Management Pheasant Landfill in Wilmot, Wisconsin.

Exhibit 21, June 22, 2011, letter proposal from Interstate Pump & Tank to Dixit Sultana, VIDHYA Corp VIII, Inc. The letter proposal addresses petroleum products escaping in the storm sewer and existing the property. The proposal addresses the installation of booms in order to ensure that the sheen is absorbed and to eliminate further downstream contamination directly down gradient of the BP property.

Exhibit 22, August 10, 2011, past copies of past due invoices from Moraine Environmental, Inc. As noted on the past due invoices one soil and one water sample was taken in the north ditch line which revealed that there was six times higher concentration of diesel fuel at the sample location.

Exhibit 23, August 10, 2011, investigation report of the petroleum released to the north drainage ditch area adjacent to the BP gas station from Moraine Environmental, Inc. The report outlines the three potential sources of the petroleum contamination in the north drainage ditch area. One, a release from the previous underground storage tank system; two, a release from the existing underground storage tank system; and/or three, a release from the incidental petroleum spills. The report of the laboratory analysis was also included with the exhibits.

And I'd just like to highlight that there are six different sub-exhibits that I'll go through right now. The first is Exhibit 23a which is basically the site location map in relation to I-94 and proximity to Highway 165 in the Village. The next is Exhibit 23b, and this is a site aerial map showing petroleum release locations. Exhibit 23c, Figure 2, is the site map and the boring locations. As you can see they're on the north side adjacent to Highway 165. Exhibit 23d, Figure 3, is the estimated extent of the contamination to soil that exceeds the RCLs. Exhibit 23e is the aerial photo showing boring locations and the temporary well. Exhibit 23f, Figure 4, the extent of ground water contamination.

As part of that Exhibit 23 Moraine recommended the following. A, with a mobile camera inspect and photograph the interior lining of the catch basins and the storm services. Repair any breaks and caulk any of the openings where petroleum surface water runoff could enter the system. B, install an oil/water separator device within the eight inch storm water discharge line down gradient from all catch basins on the property. C, following installation and startup of the oil/water separator, excavate the contaminated soils from the north drainage ditch area, load and transport the contaminated soil to the Pheasant Run bio pile facility located in Wilmot, Wisconsin, collect confirmation soil samples after the excavation is complete to ensure that all of the contaminated soil was removed, place clean soil in the excavated area as backfill, and place topsoil and seed and mulch. Prepare a final report for the Wisconsin DNR. And, D, as a precaution continue to maintain a set of petroleum booms across the ditch near the outfall to further protect the ditch from further releases.

Exhibit 24, September 9, 2011, letter from the Wisconsin DNR to the owner of the BP Amoco. The letter reminds BP to evaluate and document the vapor intrusions pathways for the BP gas station.

Exhibit 25, October 19, 2011. These are invoices from Interstate Pump & Tank, Inc.

Exhibit 26, November 17, 2011. These are Village staff meeting notes from the November 17, 2011 meeting. Village staff meeting with BP Amoco representatives was held regarding the many problems on the site, specifically illicit discharges, soil and ground water contamination. The staff discussed the Wisconsin DNR enforcement orders and the BP Amoco's lack of follow through on the matters. The consensus was that Quality Environmental Services Jack Yan would review the site, complete a report, prepare a plan and then make recommendations with the work to be completed within 45 days. Jack Yan indicated that the corrective actions part of the plan would include that booms would be installed to contain the oily petroleum mixture, contaminated soils would be removed from the Wisconsin DOT as this work is being done in the Wisconsin DOT right of way and from the Village, and that an oil/water separator would be installed.

Exhibit 27, November 29, 2011, a letter to Dixit Patel identifying the corrective action plan from Quality Environmental Solutions. The plan discussed the sources of release and the corrective actions to be taken. One, to install an orange fence and/or caution tape around the impacted area at the north drainage ditch. This will limit the access to the areas. Two, remove the impacted materials and dispose of the excavated materials to an approved landfill. Confirming soil samples will be collected to verify the remediation status. The excavated areas will be properly restored by a skilled landscape worker. Three, install a new set of booms across the ditch near the outfall to prevent future petroleum releases. Inspect the condition of the booms and replace them when it becomes necessary.

Number four, install an oil/water separator device. The oil/water separator is a proven device which can effectively separate and remove oil mass from water. By installing this device future petroleum release to the drainage ditch can be eliminated. The oil/water separator consists of a separator, sludge trap, probe and control devices. Five, to ensure proper installation, a civil, electric and mechanic drawing should be prepared and approved. The oil/water separator can be installed by a licensed plumber. Number six, once the oil/water separator is properly installed, an operations and maintenance plan, and O&M plan, will be developed for BP gas station employees. And, number seven, prepare a final report to the Wisconsin DNR.

Exhibit 28, December 1, 2011, Village staff meeting notes with BP Amoco representatives regarding the meeting to discuss the many ongoing problems on the site including illicit discharges, soil and ground water contamination on the site, and the store operations issues. The BP consultant discussed a follow-up to the action plan, and this is provided in the staff notes. The BP consultant noted that BP Amoco needs to comply with the Wisconsin DNR defined owner responsibilities regarding the soil and water contamination in the ditch line. The BP Amoco consultant, Jack Yan, discussed plans and a strategy to address cleanup, take additional samples, remove contaminated soil, replace soak booms, install an oil and water separator and obtain permits. The goal now was to have all the work completed by April 2012.

Exhibit 29, December 29, 2011. A notice of zoning violation was sent by the Community Development Director to Dixit Patel. The notice addresses the violations of unsightly debris, outside storage, obstructing public safety views from the windows into the store and a lack of

maintenance on the site, building conditions, maintenance of facility operations concerns. The oil petroleum residue and the sheen was still present in the ditch line at the time that the photographs were taken by the Zoning Administrator on December 8, 2011.

Exhibit 30, January 11, 2012, BP Amoco site photographs were taken by Village staff on January 11, 2012. These photographs depict the soaked oil booms and continuing illicit discharge at the BP Amoco site. These photographs were taken by Eric Cunado, the Engineering Tech for the Village on January 11, 2012.

Exhibit 31, January 31, 2012. A letter was sent to the Village from Pete Wood, Wisconsin DNR, to the Village Engineer. The letter confirmed that the discharge of the petroleum contaminated water from BP gas station is not authorized under a waste water discharge permit. Thus, this discharge is considered an illicit discharge. The Wisconsin DNR encourages the Village's enforcement under Chapter 299 of the Village Municipal Code.

Exhibit 32, February 23, 2012. This is a compliance order issued by Michael Spence the Village Engineer to Dixit Patel. The letter addresses the illicit discharges pursuant to the Wisconsin DNR order and the order by the Village to eliminate the illicit discharge and abate or remediate the storm water pollution and the contamination hazard and to restore the property. The letter also requires that an action plan be put together and that penalties would follow if immediate action is not taken.

Exhibit 33, March 2, 2012, Fire and Rescue Department inspection violation report notes. The violation notes indicate that there is still an illicit discharge and leakage and contamination that needs to be cleaned up. It's a violation on the site.

Exhibit 34, this is an email trail correspondence covering the dates of March 1st, 5th, 6th and 12th of 2012. The email is from the BP insurance company to Ms. Sophia Patel forwarded to Michael Spence, Village Engineer. The initial email discussed a claim for the detailed items to deal with respect to the contamination problem including the re-piping and filtration wall inside the tanks to solve the contamination problem. Mike responded that a clear path needed to be presented that outlined the actions that would be taken to solve the problem of the illicit discharges as soon as possible. Specifically, they needed to have a corrective action plan outlining the detailed plan, the narrative and the specific schedule to correct the violations needed to be provided to the Village. Also, this matter would be a continued violation in the engineer's mind.

Exhibit 35, March 5, 2012, email and copy of the International Products Specialists estimate. The estimate was provided to the Village Engineer for an oil and water separator.

Exhibit 36, March 22, 2012, a copy of citation 1160012. The Village Engineer began issuing citations to BP Amoco. A total of 66 citations were issued between March 22nd and May 24, 2012.

Exhibit 37, March 30, 2012, letter to the Village Engineer outlining recommendations for a corrective action plan. The Village Engineer received a letter from Jack Yan, Quality Environmental Solutions, outlining a corrective action plan and schedule. The cleanup actions to be implemented include: A, pump out any residual petroleum products from the tank field and containment pans near pump islands using a vacuum pump truck; B, QES will frequently inspect the site; C, replace a new set of booms in the ditch area to absorb the petroleum products; D, to

install a free product recovery trench sump pit near the storm water discharge pit; E, install a sump or four six-inch monitoring wells inside the trench; F, place absorb pads or booms inside the sump or monitoring well; G, inspect the sump and the monitoring well; H, obtain access permit from the Wisconsin DOT and then remove the impacted materials from the drainage ditch and properly dispose of them; and I, conduct preventative actions.

Exhibit 38, April 5, 2012, the liquor license inspection report. The liquor license inspection report was completed by Jean Werbie-Harris, Zoning Administrator, Community Development Director. Three issues remained on the site for the license, debris on the site, the illicit discharge site cleanup, and why the pumps were still being bagged on the site.

Exhibit 39, April 5, 2012, letter from Michael Spence to Jack Yan. The letter to the BP consultant reiterated the corrective actions plan and the schedules that BP Amoco was supposed to be following with the monthly reporting requirements.

Exhibit 40, May 1, 2012, email sent by Michael Spence to owner and to Jack Yan, QES and BP owners. The emails reminded them that a progress report is due.

Exhibit 41, May 4, 2012, email sent by Michael Spence to the owner and Jack Yan, QES and BP owners. Emails send refer to Exhibit 40.

Exhibit 42, May 7, 2012, a State conditional approval letter regarding the upgrade of the four existing underground storage tanks. A conditional approval from the Wisconsin Department of Safety and Professional Services Plan was sent to VIDHYA Corp VIII, Inc. for the replacement of existing underground piping and sump sensors.

Exhibit 43, May 15, 2012, memorandum from Michael Spence to the Village Administrator and the Village Clerk. The memo outlined the compliance order and the reasons for issuing citations to BP Amoco.

Exhibit 44, May 22, 2012, email from Frank Bennett, Department of Commerce, to Bill Danforth, Uni-Pump. The email was sent to verify that the soil samples were being correctly done. Also, Exhibit 44, May 22, 2012 an email from Shanna Laube-Anderson, Wisconsin DNR, to Frank Bennett and Bill Danforth. The email discussed the sampling procedures.

Exhibit 45, May 31, 2012, email from and response to Jack Yan outlining the corrective action plan items that have not yet been addressed by BP Amoco. The items in the email included: A, install a new set of booms in the ditch area to absorb the petroleum products by April 13, 2012; B, install a free product recovery trench sump near the storm water discharge point and a monitoring well inside the trench; C, QES personnel will inspect the sump and the monitoring well once per month for residual products; D, obtain work in the right of way permit from the Wisconsin DOT; and E, provide evidence of regular tests of tank tightness and line leaking. Also, the issue of potential contamination within the drainageway needs to be addressed.

Exhibit 46, June 12, 2012, memorandum from Michael Spence to the Village Administrator, Village Clerk and the CD Director providing an update to the compliance order. The memo outlined an update to the compliance order and the reasons for issuing the citations to BP Amoco, and that the actions taken in those matters were not being addressed between April 13th and June 11, 2012.

Exhibit 47, June 12, 2012, complaint and notice of conditional use permit violation letter to Dixit Patel sent by regular and certified mail. This complaint documents the filing of the written complaint by the Zoning Administrator regarding BP Amoco's noncompliance with the terms of the conditional use permit and the violation of Ordinance Section 420-145 G. as it relates to the standards for conditional uses and specifically Section 420-38 D. water quality protection and performance standards.

The notice of complaint that was filed was sent by myself, Jean Werbie-Harris, to the owners on June 12, 2012. The complaint that follows in my staff memo right now is the same complaint that the Village Plan Commission read into the record to start this hearing this evening. So I'm not going to re-read that complaint, but I just offer it as part of the record this evening, and it's already included.

The one thing I'd like to highlight that I bolded in the letter to the owners is that upon a finding that the standards, regulations and conditions set forth in the granting of the conditional use permit have been violated, the Plan Commission may suspend the conditional use permit and the use of the premises as a gas station until such time as there is compliance with the standards, regulations and conditions imposed with said permit. Or, the Plan Commission may revoke the conditional use permit.

Now I'd like to continue with Exhibit 48, June 15, 2012, Fire and Rescue Inspection Report. Fire Inspector Dave Cooper witnesses pressure on piping testing, and this is included in his Fire Inspection Report.

Exhibit 49, June 19, 2012, email from Michael Spence to Jack Yan. This email indicated that the illicit discharge matter is a continuing event and that responses to May progress reports were not received. I'm also going to reference you back to Exhibits 40 and 41. Also on June 19, 2012 an email from Jack Yan to Mike Spence that he is out of town and he'll be back June 20, 2012. And then next on June 22, 2012 a telephone conversation between Jack Yan and Mike Spence, an email discussed the progress or lack thereof.

Exhibit 50, June 27, 2012, a notice was sent out to all interested parties regarding a public hearing before the Plan Commission to consider the suspension or revocation of the conditional use permit for BP Amoco.

Exhibit 51, June, 2012, Village newsletter article regarding BP Amoco illicit discharges and citations.

Exhibit 52, July 2, 2012, monthly progress report to Mike Spence received from Jack Yan. This is a report that summarized activities performed for the month.

Exhibit 53, July 5th through the 9th of 2012. These are email correspondence reports to Mike Spence received from Jack Yan and the owner on the monthly report. The email indicated that the cleanup actions are still deficient. Detailed schedule of specific tasks have not been provided, and there is no information on soil testing results. Again, the email trails between July 5th through the 9th are included in that exhibit.

Exhibit 54, July 9, 2012, field notes, manifests and soil sampling testing results were faxed to Michael Spence from Jack Yan, and there are 23 pages of these results.

Exhibit 55, July 9, 2012, a documented daily inspection log and photos taken by the engineering staff were provided to the Village Zoning Administrator.

Exhibit 56, July 9, 2012, obtained a copy of the Village Municipal Court log regarding citations issued to Dixit Patel. The first citation was issued back on March 22, 2012.

Exhibit 57, July 11, 2012. The staff reviewed Municipal Court transcript tape from the initial appearance by Dixit Patel, and then we listed, or excuse me, we attached a copy of the citations log as provided to us by the Village's Municipal Court Clerk.

Exhibit 58, April 25 through July 12, 2012. And I'd like to direct your attention to these photos. The Village's engineering staff took these photos over an extended time period. And Peggy is just going to continue to scroll through these photos. Each of them have been dated and documented. As you can see, over the time frame we still were having some significant problems with respect to the oil slick, the contamination, the dead grass and the other things that were initially found on the site in the previous year which are now – I think these initial photos are from 2011. But, again, these photos run from April 25, 2011 through July 12, 2012.

The Village staff was out there numerous times in order to document the situation. I think what you will find or what you'll see in the photographs is if there's a little bit more precipitation you're going to see that there's more drainage, water running in the ditch line, and you're going to see that there is more of that slick look from the oily residue in the ditch line. Peggy is going to continue going through the photos, and I'm just going to go through the next four or five exhibits while you're still going through those photos, because these are basically pdfs and other exhibits or the record.

Exhibit 59, July 12, 2012, these are at the end of this listing of photographs. They were actually photographs that were taken by the Village staff of work being conducted in the State DOT's right of way without obtaining first any permits from the DOT. BP Amoco began excavation of the discharge area within the State highway right of way. They began soil sampling and replaced sod in the excavated area. Again, this is July 12, 2012. The work was done without submitting an approved plan to the Village, without first obtaining Wisconsin DOT work in the right of way permits, and without Wisconsin DNR approvals. As referenced in the site closure, restrictive covenants requirements from the previous site contamination, the Wisconsin DNR was to be provided notification prior to doing any digging in accordance with the barrier maintenance plan on file for the site.

Also, on July 12, 2012 the Village staff met with BP Amoco, owners, and their attorney Michael McTernan. The attorney indicated that he would request a continuance at the July 16, 2012 Plan Commission hearing in order to afford him the opportunity to meet with his clients and to start going through some of this information.

Exhibit 60, July 12, 2012, the Village received a letter from attorney Joseph Puchner from Quarles & Brady which outlines that the BP Amoco property is in violation of the Lakeview Corporate Park declarations. The following sections of the Lakeview Corporate Park declarations, Article II, Section 2.2 nuisances and 2.3 hazardous waste; Article VI, Section 6.3 storm drainage, and Article X, Section 10.2 maintenance and repair. The letter also outlines

WisPark LLC's authority to enforce the covenants and that BP Amoco has 30 days to remedy the violations and to bring the property into compliance with the declarations.

July 16, 2012 as part of Exhibit 61, the Village Plan Commission hearing notice agenda for the suspension or revocation of the BP Amoco conditional use permit. The hearing was adjourned to today, Monday, August 20, 2012 at 3:00 p.m.

Exhibit number 62, July 17, 2012. An email was received from Ed Rich, the owner of Culver's. The email is regarding his concerns about the contamination due to the discharges and the operations of the BP Amoco store. He had requested that his email be read into the record. In quote, we as business owners in this community are responsible to comply with City, State and federal law. I would only hope that my neighbor, BP Amoco, as anyone else as a business owner would not only want to comply with the law, but to do what is right for the safety and security of our guests, employees and the community we serve. It has been my experience for the 11 years in the business that Jean Werbie, as have other officials in this community, has always been fair and yet consistent when situations arise in addressing or resolving any matters that have come up.

As anyone is aware my neighbor BP Amoco was discharge gasoline through their storm sewer earlier this year which destroyed and contaminated the ground in the ditch line along Highway 165. I'm happy to see that BP Amoco seems like they are addressing this issue but would ask the engineering department in conjunction with the Wisconsin Department of Natural Resources to delineate what steps are required to properly clean, remove, remediate and test the affected areas to ensure that all soil contamination is removed and replace. Since the contaminated discharge ran down the entire ditch line would all soil along this area need to be tested and removed and replaced if contaminated? We at Culver's take much pride in our facility, landscape and the guests and the community we serve and can only ask that BP Amoco would consider the same. We have won many awards over the years in our landscape and take much pride to make our entire place feel inviting to our guests. It is my feeling that BP Amoco, McDonald's and Culver's are the first, yet sometimes a last impression we leave guests that visit our community, and it's our responsibility to ensure that it's appealing to where they want to come back, visit, do business and possibly reside.

My management team and I have heard numerous concerns from guests regarding their operational matters with BP Amoco. As a business owner I am always willing to work and to try to help others. I can only hope that BP Amoco will comply and resolve all the matters with the City, the Village, and take the necessary steps to be in full compliance. I also hope that the Village will follow through in enforcing any noncompliance by BP Amoco to ensure and to protect our standards and property values. I want to thank everyone involved with allowing me this opportunity to share my viewpoint. End quotes.

Exhibit 63, July 18, 2012. The Village Engineer sent up a followup compliance order of the continuing illicit discharge to VIDHY Corp VIII, Inc., Dixit Patel. The order reiterated the requirements of the compliance order and the status of the actions taken by BP Amoco.

It looks like we probably have another 60 pictures, but we're going to jump ahead to Exhibit #64. Exhibit 64 dated July 18, 2012. The Village engineering staff documented an oily sheen which appeared to be in the ditch following an overnight rain with photographs. This photo verified that the excavation of the soil and the placement of sod over the illicit discharge area completed by

BP Amoco on July 12th and 13, 2012 was only a surficial repair to the illicit discharges in the ditch line and likely has not corrected the violation.

Exhibit 65, and this is dated July 19, 2012. The Village engineering staff documented again an oily sheen which remained in the ditch following a recent overnight rain with a photograph. This photo, again, now July 19, verified that the excavation of the soil and the placement of the sod over the illicit discharge area completed by BP Amoco on July 12th and 13, 2012 was only a surficial repair to the illicit discharges in the ditch line and likely has not corrected the violation.

Exhibit 66, July 24, 2012. The Village engineering staff again documented an oily sheen which remained in the ditch at the outfall pipe following overnight rain with additional photographs. This photo verified again that the excavation of the soil and placement of the sod over the illicit discharge area completed by BP Amoco was only a surficial repair to the illicit discharges and likely did not correct the problem or the violation.

Exhibit 67, July 24, 2012. An open records record email notifying the Village department heads that Attorney McTernan would be at the Village Hall on July 26th to review the Village documents regarding the BP Amoco property.

Exhibit 68, July 25, 2012. The Village Engineer sent a followup compliance order of the continuing illicit discharge to VIDHYA Corp VIII, Inc., Dixit Patel, along with several citations for the referenced violations. The citations are attached in the exhibit. As of July 25th there have been 125 citations issued to date totaling \$84,500. August 6, 2012 the Village formally hired D.J. Burns from Drake Environmental to serve as an environmental consultant to the Village regarding this matter.

Exhibit 69, August 15, 2012. Photographs were taken by the Village Engineer of the soil water sampling at the BP Amoco ditch line. As witness by the Village Engineer, Mike Spence, D.J. Burns with Drake Environmental conducted soil and water sampling at the discharge pipe in the ditch line along Highway 165 and photographs were taken. A soil and water analysis is being conducted on the samples by the Village's consultant.

Exhibit 70, August 15, 2012. Email and documents that were provided by BP Amoco Attorney in connection with his client's request to install a groundwater remedial treatment system at its BP station.

Those are the exhibits that I have compiled to date, Mr. Chairman and members of the Plan Commission. At this time I would like to introduce our Village Attorney, Tim Geraghty, and he would like to bring some additional testimony by some additional witnesses of the Village. And so I'll introduce Tim Geraghty.

Tim Geraghty:

Thank you. At this time I'd like to present a couple of witnesses and their testimony if that's acceptable, Mr. Chairman. First I'd like sworn in Doug McElmury.

Tom Terwall:

Mr. McElmury, do you swear that the testimony you're about to give to be the truth, the whole truth and nothing but the truth so help you God?

Doug McElmury:

I do.

Tom Terwall:

Give us your name and address and position please.

Doug McElmury:

My name is Doug McElmury. I'm the Fire and Rescue Chief for the Village of Pleasant Prairie, 8044 88th Avenue, Pleasant Prairie, Wisconsin. I'd like to highlight just specifically a comment on four of the exhibits here that were shown to you and how they relate specifically to this situation. Going back to Exhibit #6, that would have been the email dated June 9, 2009. And that would have been where Mike Spence emailed Chief Guilbert that he had received a call from Ed Rich, the owner of Culver's, talking about the gassy odors from the excavations in the We Energies' ditch. And when they checked with them We Energies crew thought that it appeared to be petroleum in the soil. And they had contacted the DNR as had the We Energies employees the day before.

Going on to Exhibit 7 on June 11, 2009, that details the – it shows the email from Linda Michalets who is the senior hydrogeologist for at that time the Department of Commerce. And she specifically states in there that the site where the gassy excavations were previously identified as contaminated, and the gas closure in 2006 stipulated that no digging was allowed without first notifying Commerce. And then she also stated that she was planning to mail the specific, this barrier maintenance plan to the current BP owner which would have been the current owners. And this previous contamination is further referenced in Exhibit 27 as we get further on.

If we jump ahead then to Exhibit #9, and that would be the current complaint, and that is where Ed Rich from Culver's next door to the east of BP Amoco again had talked to Peggy Herrick, the Assistant Zoning Administrator and Planner, and he stated that he saw that there was dead grass in a ditch. Specifically, all the grass from the ditch line is alive and well except for the area adjacent to the drain and the ditch going down towards Culver's. He thought it was quite strange that the grass be dead only in this one location.

And then on Exhibit 10 dated four days later on April 25, 2011, when the Chief and Engineering Technician Eric Cunado went out to the site they found that Ed Rich had showed them in the ditch line on the right of way the area identified of very dead grass along with a shiny stream of water both running and pooled. And the dead grass and shiny water began at the storm water discharge pipe at the northeast corner of the BP station and it continued east. However, the grass to the west of the discharge pipe was specifically bright green and lush, quite dissimilar to the other grass. That's all I have.

Tim Geraghty:

No questions, Mr. Chairman. Next I'd like to ask Michael Spence, the Village Engineer, to testify.

Tom Terwall:

Mr. Spence, do you swear that the information you will give will be the truth, the whole truth and nothing but the truth so help you god?

Mike Spence:

I do.

Tom Terwall:

Give us your name and address and title please.

Mike Spence:

My name is Michael Spence. I'm the Village Engineer for the Village of Pleasant Prairie. The address is 9915 39th Avenue, Pleasant Prairie. I'd like to expand on a little more information on the exhibits that Jean Werbie-Harris referred to in your testimony, specifically, Exhibit 27, which was a corrective action plan that was provided to the owner by Quality Environment Solutions. In that plan, the engineer had indicated that it was his opinion that the source of the release was weathered petroleum products in the tank field most likely attributed to historic overfills in the 1990s. He also noted that the tank field piping conduits were all surrounded by granular materials which basically act as a migration pathway for water. And during high precipitation or a high water table the weathered petroleum products leached into the water and then are discharged through to the drainage ditch. It's basically a manmade migration pathway.

He also recommended at that time to restrict access to the area, remove all the materials and install controls to prevent the release of future contaminants. He also recommended that an operation and maintenance plan for addressing these controls be implemented and a number of other implementations.

On Exhibit 31 I received a letter from Pete Wood from the Wisconsin DNR indicating that he was made aware of complaints of illicit discharges. He noted in his letter to me that any discharge to a municipal storm sewer system that is not composed entirely of storm water is considered an illicit discharge unless that discharge would be authorized by a waste water discharge permit. The discharge of petroleum contaminated water from BP station is not authorized under our waste water discharge permit, thus this is considered illicit discharge. This also mirrors the Village's ordinance where anything that's not strictly made up of storm water is not to be allowed to be discharged into any ditch.

On Exhibit 32 I sent a compliance order to the owner. The purpose of that was to, again, make the owner aware of the provisions of our ordinance. And I also by that order ordered the owner to eliminate the discharge and cease and desist violating the discharge practices and operations and also ordered him to abate or remediate the storm water pollution or contamination hazards and restore the affected property. In that order I asked them to provide us a plan and a schedule for these actions by March 6, 2012 and also indicated that if that was not done they would be subject to violations in accordance with our municipal ordinance.

Exhibit 34 actually I gave the owner several extensions up until March 19th to provide the information to me. The owner did provide some quotes for facilities to me, however they are very hard to read and understand. I had suggested that they give me information through an environmental engineer but that did not happen. It should be noted that one of the quotes that they gave me, now again this is in March of this year, was for an oil/water separator which was a treatment device that was recommended by both of the owners' environmental engineers over the past year. That quotation was dated February 29th I believe of this year. Again, I'm trying to establish that we had given them a number of chances to provide solutions and a plan. And, again, I had specifically asked for a specific schedule with start and end dates and indicating the urgency to comply.

Exhibit 37, I received another letter from Jack Yan from Quality Environmental Solutions which reaffirmed a corrective action plan and schedule. Again, he reiterated that the drainage ditch was his belief was impacted by weathered petroleum products in the tank field. The corrective action plan had two goals, to clean up the impacted area and to prevent any future illicit discharges. So in this letter he indicated some cleanup actions as well as preventative actions. The cleanup actions were to install a treatment system, it could be an oil/water separator, it could be something else to be installed and also some monitoring wells. Also realized that they needed to obtain a permit from the Wisconsin Department of Transportation. Preventative actions recommended were to install new pipeline and pumps. As you recall in previous testimony the supply piping was, indeed, replaced, however that was a preventative action item and was not necessarily taken to address the actual cause of the discharge.

On Exhibit 39, on April 5th I responded to the corrective action plan by the owner's environmental engineer specifically verifying the steps that he was to take so there was a clear understanding of what he was supposed to do. In addition, I asked for a monthly report to be provided on the first of every month. The report was to detail the activities performed in the last month and the findings and then the plan for the following month. And, again, I reiterated failure to abide by this schedule and reporting procedure would result in the resumption of citations for illicit discharges.

Then there's a series of emails, Exhibits 40 and 41, where May 1st came and went which was the date for the first monthly report. Nothing was submitted. I indicated – I actually sent an email I think on May 1st indicating that a report was due. I did not get anything.

And then finally I did receive a report on June 1st. Again, there were a number of deficiencies in the report. All along I had asked for definitive proof of what was being done. I wanted to see sample results, I wanted to see a plan. And the minimum amount of information was being provided.

Exhibit 43, in my memo to the Village Administrator, again, I summarized what was supposed to have occurred and the fact that I hadn't received a timely or monthly progress report.

Exhibit 45, again, it was an email to environmental engineer for the owner, again, indicating that a corrective action plan there was a number of things that still had not been addressed. He had originally – now this email that I'm referring to now as dated May 31st. He had indicated previously that a new set of booms, these are the treatment devices that absorb the petroleum in the ditch, those were supposed to be installed April 13th. Again, as of May 31st that was not

accomplished. Again, we talked about a free product recovery treatment system was supposed to be implemented by May, on or before May, that was not done.

Evidence and inspection and monitoring for residual products was not provided at that point. Also, a permit for work in the right of way from the Wisconsin Department of Transportation was not provided. And also I had asked for regular evidence or evidence of testing and of tank tightness. That was not provided. In addition, I indicated that the potential contamination within the drainageway needs to be addressed. This particular drainage ditch continues onto the east to a protected environmental conservation area. And, again, as a continuing I keep reinforcing that the discharge was continuing.

Exhibit 49, again, in my correspondence with the environmental engineer he submitted a report on June 1st. Again, I asked for substantiation that the residual petroleum products had been pumped out. I had not received that. I had not received any inspection reports from him. I had asked for copies of soil sampling results. And then he had indicated that the owner will initiate the remaining tasks. I had indicated that that wasn't sufficient. I needed to know what the tasks are and when they were going to occur. I had indicated that past experience is that the owner has disregarded all previous schedules. Again, I referred to the treatment system, tank testing, tightness testing and the fact that there was still a sheen in the ditch. And, again, I reiterated at that time that the contamination in the drainageway that leads to the conservation area still needed to be addressed.

On July 2nd I received another letter from Jack Yan of Quality Environmental Solutions. Again, it was a monthly report. I did receive some sampling results that were not – they were just raw data that were compared to any particular limits. On July 5th I responded to the monthly report, again, asking for additional documentation. I asked for inspection reports, I asked what – they did replace booms at that point. I asked what was the disposition of the replaced booms. I wanted to make sure they were disposed of properly.

Tim Geraghty:

Mr. Spence, if I could, can you refer to the exhibit numbers just so we're clear?

Mike Spence:

I'm sorry, Exhibit 53.

Tim Geraghty:

Okay, and the letter dated July 2, 2012 you talked about was Exhibit 52?

Mike Spence:

Exhibit 52, I'm sorry.

Tim Geraghty:

Thank you. So now you're reading from Exhibit 53?

Mike Spence:

Right.

Tim Geraghty:

Thank you.

Mike Spence:

Again, based on the July 1st monthly report, again, there were a number of issues that, again, hadn't been addressed. Again, I talked about a treatment system. That was my point all along that the discharge was continuing. Even though we were provided bits and pieces of information that work was being done, the key item there is the fact that the discharge was continuing and there was nothing being done to stop the discharge. Again, I indicated the fact that they needed to get a permit from the DOT to do work. Again, I reiterated the fact that contamination within the drainageway needs to be addressed, and the extent of the contamination needed to be determined. In other words, testing had to be done so we know the overall extent of the contamination. That was Exhibit 53.

I did receive some information, Exhibit 54, as I said. These were sampling results. These sampling results do indicate gasoline range organics which typically should not be found in a ditch. Those were provided to me.

Exhibit 63 I sent another letter. This was after the work that was done without permit on July 12th indicating, again, that the illicit discharge was supposed to be eliminated. We inspected the property. This was I believe six days after the dirt was taken out and it was re-sodded we still saw a sheen on the site. At that point I indicated to the owner that I had repeatedly asked for sampling and testing and for a remediation plan. At that point I also said in the absence of a written plan it cannot be concluded with any certainty that all the contaminated material was removed. In other words when the contractor was out there on July 12th I had no idea as to the extent of the material that was removed. Matter of fact, I have not seen any sampling results. I know their environmental engineer was taking samples at that time, but there's been no results provided at that point.

So I continue to issue citations, and I also would like to introduce an Exhibit 71. Could you go to that table, Peggy, please? This is a table of analytical results supplied by the owner's environmental engineer in information that was submitted to me by the owner's counsel last Wednesday. I just want to draw your attention the GRO is gasoline range organics. The DRO is diesel range organics. Again, these numbers should not be present in a ditch. And just to point out these are samples from the owners, a sample result from the owner's environmental engineer. This sample was taken August 7th, and this was after they've told us that they have cleaned up the site. Also, you can see the VOCs, that stands for volatile organic compounds, those are elements that are present in petroleum products. That sample location and date, those are the sample results, that column. And then the NR140 is the preventative action limit. In other words, that's a limit that when you have an organic that exceeds that, that starts raising a flag that you have a problem.

And then finally the last column is the environmental standard. That is what's not supposed to be exceeded. As you can see in this sampling result, benzene is probably 16 times the limit of the environmental standard of 5, it's 74.4. Naphthalene is at 155 which is, again, over the limit of 100. So I just wanted to point out that these are samples from a couple weeks ago that still indicate in my opinion and that of our environmental engineer that the discharge is continuing. I think that's about all I have for now.

Wait, I guess one other thing. Peggy, do you want to go to the other sample, the other slides? They were number tables. I think they're right next to that one. Yeah, okay. This is also sampling results from Moraine Environmental. That was the environmental engineer that did testing back in June of last year. And, again, I refer to this DRO and GRO. As you can see those numbers are very high. The diesel fuel is actually six times more prevalent than gasoline in the north drainage ditch. Benzene is, again, is at 1,250 micrograms per liter which is well above the standard of 5. Can you go to the next slide please? Toluene, again, is nearly twice the standard. And trimethylbenzene is probably almost four times the standards. So I just wanted to share those results with you.

Tim Geraghty:

Mr. Spence, part of the exhibits that you referred to were pictures. Were those pictures taken by you and your staff?

Mike Spence:

Yes, they were.

Tim Geraghty:

And they're part of the regular record of your engineering department?

Mike Spence:

Yes.

Tim Geraghty:

And out of the information you've provided to us, does it show that there's a discharge from the property at 10477 120th Avenue of petroleum products?

Mike Spence:

Yes.

Tim Geraghty:

And are they above the accepted limits allowed under Village ordinances?

Mike Spence:

Yes.

Tim Geraghty:

And what are the accepted limits under Village ordinances?

Mike Spence:

The accepted – well, under Village ordinance there should be no discharge of any non-storm water material into a ditch. So any concentrations of diesel, gasoline fuel or volatile organic compounds that comprise petroleum products would not be allowed per our ordinance.

Tim Geraghty:

I have no further questions.

Tom Terwall:

I have a question here. At what point if the Plan Commission has questions? Should we wait until the end or should we raise them?

Tim Geraghty:

I would prefer, Mr. Chairman, that you wait until the end, then if you want to recall witnesses to testify you may do so to ask questions.

Tom Terwall:

Thank you.

Tim Geraghty:

Thank you. Next the Village would like to call D.J. Burns.

Tom Terwall:

Raise your right hand, sir. Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

D.J. Burns:

I do.

Tom Terwall:

Need your name and address and position.

D.J. Burns:

Daniel J., D.J., Burns. I reside at N105W7585 Chatham Street in Cedarburg, Wisconsin. And I am the President and Project Director of Drake Consulting Group.

Tom Terwall:

Thank you.

Tim Geraghty:

Mr. Burns, do you have any degrees or experience in environmental matters?

D.J. Burns:

I've been an environmental consultant for approximately 22 years. Again, I was educated at St. Norbert College in De Pere, Wisconsin. Got a bachelor's degree there. I attended University of Wisconsin-Madison for graduate level courses as well as the Western Michigan University in Kalamazoo, Michigan.

Tim Geraghty:

And is it correct that you were hired by the Village on August 6, 2012?

D.J. Burns:

My firm was retained by the Village on that date.

Tim Geraghty:

I'm going to refer to Exhibit 31 which is a letter from the State Department of Natural Resources Peter Woods to Mike Spence. Could you explain what that letter means as far as an illicit discharge?

D.J. Burns:

Peter Woods is the Water Resources Engineer for the Wisconsin Department of Natural Resources. I believe in this correspondence he was pointing out to Engineer Spence of the Village that it was his opinion and by definition that an illicit discharge basically was defined as a discharge that contained anything other than straight storm water from a site to a discharge point or a conveyance point. In the second paragraph of the letter it basically states that per federal, State and local storm water regulations any discharge to a municipal storm sewer system that is not I presume is what he meant to say that is not composed entirely of storm water is considered a prohibited illicit discharge unless the discharge is authorized under a waste water discharge permit. Earlier I think Engineer Spence indicated that there was no such waste water discharge exemption offered in this particular case.

Tim Geraghty:

Next, Mr. Burns, I'd like to draw your attention to Exhibit 71. That's a water sample analytical results which was provided to the Village Engineer by the attorney for the property owner. Can you go through that for us please and what that says?

D.J. Burns:

Basically table one was prepared to identify the results of the owner's environmental consultant's analytical testing. What I understood that they did was on approximately August 7, 2012 the service station owner's environmental consultant went out to the ditch line and obtained a water sample presumably from the outfall or the discharge point located right near the ditch. I presume then that they took that sample and submitted to an analytical laboratory to determine whether or not there was any petroleum constituents present within that discharge water.

Based on our firm's review of the analytical test report that came back it appeared that they had requested testing for GRO or gasoline range organics to see if those were present in the water. Also tested for DRO which is diesel range organics. That comes from diesel fuel or fuel oil. And then they also performed tests I believe for petroleum volatile organic compounds, again, benzene, ethylbenzene, toluene, xylenes, those types of compounds that are typically found within petroleum products.

As we reviewed the data, and again we have to look at it subject to when the analytical laboratory took these samples in there was what I consider a data problem or a quality control problem. When you take a sample as an environmental consultant it's imperative that you put that sample on ice so that it doesn't volatilize or lose its potency. In this particular event the laboratory that was conducting the test marked on their chain of custody that the sample was received at approximately 14 degrees Celsius, that's about 54 degrees. That's far in exceedance of the laboratories typical allowance which is 0 to 6 degrees Celsius. Even with that problem that the sample wasn't placed on ice to prevent volatilization, the data up here in this table shows to me that there is petroleum, there are petroleum compounds present in the discharge to that ditch. That shouldn't be there if you go back to Engineer Woods representation of storm water coming out of an outfall like that. It should just be storm water. So to our firm this represents some kind of evidence, empirical evidence based on the owner's own environmental consultant's report or analytical testing report that there's something beyond just storm water flowing out into that northern ditch.

Tim Geraghty:

I have no further questions, Mr. Chairman. Mr. Chairman, the Village has no further witnesses. At this time we'd ask that all of the testimony and the exhibits provided be admitted into the record as evidence in support of the petition.

Tom Terwall:

So ordered.

Don Hackbarth:

Second.

Tom Terwall:

Is there anybody in the audience wishing to testify in this matter? Yes, sir. Mr. McTernan. Give us your name and address for the record and your position.

Michael McTernan:

Attorney John Michael McTernan, attorney with the law firm of Alia, DuMez, Dunn & McTernan, S.C., 6633 Green Bay Road, Kenosha, Wisconsin. I'm the attorney hired by the property owner at this location and was so on or about July 12, 2012. What I think is imperative, and do you need to swear me in?

Jean Werbie-Harris:

Could you swear him in?

Tom Terwall:

Attorneys need to be sworn, too?

Tim Geraghty:

If they're providing testimony. If they're just asking questions they don't have to, Mr. Chairman.

Tom Terwall:

Do you swear the testimony you will give will be the truth, the whole truth and nothing but the truth so help you God?

Michael McTernan:

I do. As was noted in the evidence that was presented, my client purchased this property in September of 2008 from BP Amoco. What I think is important to understand and to take a step back in time and to understand how BP Amoco was built at this location, as was presented as testimony in 1991 BP Amoco built a gas station here. It was on this site for ten years. And as was glossed over in the testimony, and I do have with me Don Gallo, an attorney with Reinhart who is going to testify on behalf of my client, my client Dixit Patel and Sophia Patel, the owners of the property, our consultants that are here that have done analysis of this site along with Uni-Pump, the representative who installed improvements that were done at the site.

And also to give you some historical background of what is going on at this location, and while it may seem at first blush that people may say the easy solution here is just to close down BP Amoco's gas station at this corner because this will resolve the problem. I'm going to present evidence and testimony today and present documentation that since it was first brought to the attention of my client he has spent upwards of \$200,000 to \$300,000 of his own personal money

trying to address and resolve every single possible issue there is with this site, and he's not stopping, and he committed to fixing the issue that is presented at his site.

But what I think is so important and what everyone is losing track of is two important things that occurred in the history of this site. And while it was included in reference to a memo that was presented as one of the items in the presentation of information, I present you an exhibit dated May 4, 2011, and it's a memorandum from the Department of Commerce from Linda Michalets, and I've probably butchered her name, site review section dealing with the closed Commerce petroleum cases at the current site located at 10477 120th Avenue. And I provide this as evidence, I don't know where you want me to present this first document. Tim do you want it?

Tim Geraghty:

You can just leave it up there. I believe it's the same as what is Exhibit 13 that's already been presented.

Michael McTernan:

Correct, Exhibit 13 is in evidence, but what is starkly missing from Exhibit 13 is the historical information where this site had two discharge issues, and I don't believe it's complete because the copy I had only had the two pages that detail the report. And the things that I need to highlight to the Plan Commission is that 1999 a contaminated gas spill occurred on the site. DNR and Department of Commerce were aware of it. Gasoline spilt on the site, contamination occurred on the site. And then in February of 2001, two years later, another gasoline spilled on the site. The property was contaminated. Those didn't happen during my client's ownership. Those happened over ten years ago on the second one and over 13 years ago on the first one.

What's important about that site and the issues that occurred at that time that are referenced in the back half of the Commerce's memorandum is that the site is contaminated. The site as was presented to this Plan Commission I'm certain it was addressed. As was offered into testimony in the summer of 2001 when BP Amoco came to this Plan Commission and said I want to tear down my site, and I want to build another site. I want to take all the pump islands out, I want to take the pipes out, I want to take the dispensers out, I want to take the canopy down and I want to tear the building down. I remember when it was torn down. It was torn down, and it had been contaminated on two separate occasions.

In that contamination if you read the report and if you read the documentation that's supplied with it, the Department of Commerce and the DNR examined this site and made the owner, BP Amoco at the time, remove portions of the soil that were contaminated. However, there were significant portions of this property that the DNR and the Department of Commerce mandated they remain on site and they can't be moved. Specifically, and if you look at the Department of Commerce's comments that were made in exhibits that are presented to this body, in June of 2009 and in April of 2011 when We Energies was excavating in this area they were excavating in areas that the DNR and the Department of Commerce had said they can't be disturbed. What happened? We had a site that was capped. It was contaminated and capped. And as the exhibit that you can read through there was a detailed deed restriction that the owners at BP Amoco entered into in connection with the Department of Commerce that forever restricted the site because there's known contaminants on the site and there's known contaminants in the ditch.

Commerce knew about it. DNR knows about it. The DOT knows about it, and it happened right in this drainage ditch.

You look at the details of it and right at the discharge point where this storm sewer was discharging We Energies was there digging, and they smelled a gassy substance. It's not surprising because there is known contaminants in the soil there. As the experts are going to come up and testify, they're going to identify the reports and all the sampling that is done including the experts who sampled on August 7th in order to figure out where in question that the property has shown this sheen coming from and what is the best possible solution given the fact that we are dealing with a site that has been previously contaminated 13 and 11 years ago, and that is known right to this date as contaminated. Now, what's most important about it is the fact that the DNR and Commerce have asked the property owners to leave it intact and leave it on site. And if you look at the deed restrictions that are noted on the record, part of the action plan that was discussed was – a barrier maintenance plan had to be in effect by leaving dirt and grass covered on the site in order to keep the gassy smell and the contamination where it's at.

Now, that's the history of this site. It's something that everyone knows about exists. And as the clients will testify they have found the locations on site including at the location where this drainage ditch discharged is contaminated. If you go back even in the Department of Commerce's reports it says, and I quote on page two, that Delta Environmental, the environmental company that was engaged to investigate this issue, stated that they determined that the underground storage sump was connected directly to a storm water sewer, presumably with plans submitted by the Village of Pleasant Prairie before 2001, and that at times there was a discharge from the diesel sump directly into the ditch in 1999. Of course, this site is contaminated. Of course you're going to dig and the soils in this location you're going to find contaminated soil.

In 2006 the site was closed and there was known contaminants left intact. And I provide the reports to you to show you this is exactly known to everybody and I assume the Village of Pleasant Prairie when the Village approved in 2001 a complete rebuild of this site. As the Department of Commerce highlighted they discussed the fact that during the razing of the building they uncovered contaminated soil, and following DNR and Department of Commerce processes removed the impacted contaminated soil that they dug up, transported it to waste systems, withdrew as Ms. Werbie testified, they extracted contaminated soil ground water that had gasoline contaminants in it, and that was treated and removed from the site.

So then they rebuilt in 2001. There hasn't been any reported leaks at all to this day on that site that has entered the environment from the gasoline operations, period, none. I present as evidence all the environmental reports that have been presented to this case. From Moraine, August 10, 2011, from Quality Environmental on November 29, 2011, from Quality Environmental on March 30, 2012, from Quality Environmental on May 31, 2012, from Quality Environmental on July 2, 2012, reports submitted to Mr. Michael Spence on July 9, 2012, additional reports that were submitted to me identifying the ditch area where it's contaminated and they know it's contaminated where soils samples were taken that we know are contaminated, reports drafted from Quality Environmental to the Wisconsin Department of Transportation identifying the soil that was removed from the DOT.

Tim Geraghty:

Excuse me, Mr. Chairman, can we have those numbered or marked in some way just so if it's going to be referred to –

Michael McTernan:

If you want I'll mark them alphabetically, and I'll just start marking them A through and I'll continue.

Tim Geraghty:

That would be fine, just so we refer to an alphabet so in the record we'll be able to see which exhibit.

Tom Terwall:

So ordered.

Michael McTernan:

First one, A, is the Department of Commerce complete report; second one, B, is Moraine Environmental August 10th; C is Quality Environmental on November 29th; D is Quality Environmental on March 30th; E is Quality Environmental on May 31st; F is Quality Environmental on July 2nd; G is Mr. Spence's facsimile from Quality Environmental with field notes, manifest and soil sampling test results; H reports provided to me from the north ditch area that was excavated with soil samples; I is a July 26th Quality Environmental Solutions report to the Wisconsin Department of Transportation; J is the July 26, 2012 report to the Wisconsin Department of Natural Resources; K is the August 1st report summarizing the work that has been done by the site by Quality Environmental to Mr. Spence; L is Midwest Engineering Services that has overseen all of Mr. Yan's work that has done the investigation to come up with the system that he proposes will resolve this issue of the sheen coming out of the ditch, and we'll get to that in a minute; M is a design that has been submitted to the Village for review and comment on a carbon filtration system to install in the drainage ditch to address this sheeny substance.

Tim Geraghty:

Mr. McTernan, was there an earlier exhibit you referred to as well.

Michael McTernan:

I did A. That was a full complete report from the Department of Commerce.

Tim Geraghty:

Okay, thank you.

Michael McTernan:

But what all of these reports indicate, and I understand and I agree, we can agree, and I feel for Mr. Spence, someone trying to do his job and asking and begging the consultant to provide him

information. That's all he did. All he asked was can you provide me the information on a timely basis. And he did what any one of us would have done. We would have contacted the consultant and said you need to get me this information. I agree it was not timely. But what I don't agree with is any of these reports indicate that at any time did my client have a discharge of gasoline of any type from his system to the environment. Period. None. All these reports from Moraine who says not a single leak has been detected from the site that has entered the environment. From all of Mr. Jack Yan's reports from Quality Environmental Solutions not a single leak has occurred from the gasoline operations that has entered the environment.

What they all say is that you have a site that had contamination, and there's something going on that is causing contamination, or there's something going on that is causing this sheen to hit the ditch. It was first noted, as you noted, on June of 2009 when We Energies dug up this contaminated deed restricted land they shouldn't have been touching without contacting the DNR. But they did. What did they do? The DNR came in as you were told and they said you need to cover the ditch pursuant to the State ordered investigation as per your notes. And if you look at the exhibits it clearly indicates cover the site.

On April 2001 the We Energies was back as noted. Again, Chief Guilbert was there and he stated We Energies was digging in the soil and they unearthed contaminated soil. Of course they did. This site is deed restricted. You're not allowed to be digging in this area. And, of course, you are going to see and smell. What is odd and what has occurred and what the consultants will testify to is simultaneous to this occurrence you're seeing this sheen come across the ground water out of these pipes, and no one knows why. Operated from 2001 until 2011 and you start to notice there's a sheen coming out of the discharge pipe. No one knows why. What I think is imperative and what we need to understand and what I'll present as evidence to the body is all of the work that has been done since this was first reported. And we'll bring up the experts, we'll bring up the consultants and the parties that did the work so they can explain everything that has been done to the site.

But when this was first reported it was April of 2011. Commerce was involved because of the ditch digging by We Energies. And at the same parallel time there was a leaking union observed in the diesel dispenser on my client's property. No one testified and there's no evidence that the leaking ever entered the environment. To the contrary in 2001 BP Amoco spared no expense and installed a double walled dispenser system that completely contained any leaks from any pipes on site in basins. None of it ever left the site. So as was reported and as the evidence we'll present to you the leaking union that was observed in the diesel dispenser was contained in a sump as the exhibits will show, and we can walk through every one of the exhibits.

Starting with Exhibit 7 that has been presented, and you read Exhibit 7 in June 11, 2009 it turns out We Energies dug in the exact spots that have residual soil contamination. I turn your attention to Exhibit 7 fourth line down that starts Hi Again, Frank, fourth line down. It turns out We Energies dug in the exact spots that have residual soil contamination. This is from the Department of Commerce. This isn't something that my client has done. He hasn't discharged illicit gasolines into the environment.

I turn to what is marked as Exhibit 8. Exhibit 8 solely is an exhibit dated March 22nd that states my client has provided proof of insurance to his tanks. He complied with this request as a operator had failed to provide with his insurance, which he has because he tried to make a claim

with his insurance company that these tanks have issues, and he sought insurance coverage for this issue, but he has insurance, and the State was satisfied with this report.

And now you turn to Exhibit 9, and it brings up the 2011 issue. Again, we have an area where there now is, while it was unearthed and we have an issue, if you go to Exhibit 14, Mike at Interstate Pump and Tank who was hired by client states, and you can read the memo, and it's to Frank Bennett at the Department of Commerce. As requested by Frank Bennett at the Department of Commerce and the DNR at our meeting at the site regarding grass kill in the ditch way, we have set a tentative schedule of June 6, 2011 to begin hydrostatic testing of all sumps. The process will include inspection of all sumps, removal and disposal of any residual product in a sump. Hydrostatic testing of all sumps, DISP and STP, notification of Frank Bennett to be on site if he chooses, pump out all the soil, water onto the existing driveway.

As it further states, the tentative schedule and move slightly weather dependent, Sam I understand during our telephone conversation last week with Frank that you indicated you were handling the requested tank and line testing with Tanknology. Tanknology was hired subsequent to this email, and I have the records to support that all the tank testing and all the hydrostatic testing and all the work that was requested by the Department of Commerce was done and not one incident did it show that there was any environment – the environment was every impacted by contamination from the operations of the gasoline station. Not one.

It further goes on the repairs to the sensors and the diesel pump had been accomplished. And if you read the State order, which is Exhibit 12, it has five items. The diesel dispenser had a one inch product and a one inch water in the pan. Have the leak repaired and the dispenser cleaned. That is how this state of the art system is designed to work, to trap the product, keep it in a dispenser pan and not allow it into the environment. It never left the site. The diesel probe did not alarm when tested, have the probe repaired, replaced. As you'll note when the reports are provided the probes were fixed and they were replaced. Item 3, after the diesel test, repair test all lines and leak detectors including gasoline. Pursuant to Tanknology's reports that I'll provide as evidence they were all tested, all verified they were either operational, and the items that were needed to be addressed were repaired. Must schedule and complete an annual equipment calibration verification. Again, that was conducted. And the final thing is the ground is too wet. Before June 15, 2011 have all the gas and diesel dispenser sumps hydrostatically tested for a minimum of one hour to verify the product doesn't leak into the ground. Again, I will provide you that evidence that it never leaked into the ground. Never.

And the experts will be here to testify that what occurred next is my client hired the consultants. They hired Moraine to investigate, what is the issue. As Moraine identified, he stated the petroleum released into the environment appears to be from an existing compliant USED system. It has never indicated that the release ever occurred from operations of the gasoline station. What ensured from there is my client taking the time and sitting down with Moraine Environmental, spending close to \$10,000 for him to test the site and say, huh, looks like this is a dirty site you inherited that is having some contamination through a ditch.

One of the suggestions is to put an oil/water separator. Now, I'll provide you that the idea of an oil/water separator is a very rudimentary old technology on how you deal with contaminations flowing from a site. As the environmental experts will testify, it is something to address when you have free product gasoline spills in the environment. It works like a grease pit like you have

in a restaurant. Grease will sit on top, gasoline will sit on top, water will flow on the bottom, and it separates out the product that is contaminant and let the water pass through.

My client wasn't content to simply say let's go throw in something to resolve this problem. I wanted to have this thing fixed permanently. And with the leaks that were happening on some of the sensors he contacted the tanking experts and the gentleman from Uni-Pump and asked him in connection with this why don't we accelerate the replacement of all of our line sets in the property. They're uncertain what the issue is. They're saying it's coming from past environmental issues potentially. And in connection with this as they're looking at options on how to address it, they get a letter which is marked as Exhibit 24 from the DNR on September 9, 2011 that if you look at Exhibit 24 that tells them they must also assess the vapor intrusion pathway. What is that? Well, that's as was reported is the granular area around the pipes and to see if there's any indication that you're having an intrusion of ground water contaminating the site from these areas.

What does my client do? Do you simply go spend \$30,000 or \$40,000 that was proposed on a report to throw an oil/water separator and walk away from the site? No. He hires an environmental consultant, and he hires Uni-Pump, and he spends \$155,000 replacing all of his lines to 21st century technology that exceeds the standards required for his site? Why? Two things. One, he can address the occasional failures that are seen that are being replaced with the inspections that are being done by the Department of Commerce. And, two, he can inspect the system to find out what is causing this out of the blue little shine, sheen coming through the water in the discharge ditch.

He provides that information and, again, I don't fault Mr. Spence for throwing his arms up in the air and saying what do we do. But as is presented to the Village and as noted on Exhibit 25 Interstate Pump and Tank go through all of the possibilities if you look at Exhibit 25 to identify all the work that was done on the site. Investigated isolation sump pump clean up and repair of RUL and PUL line leaks. There were a total of three new leaks found at the time within dispensers at items number 34 and number 78. There were two leaks on RUL piping and one leak on PUL piping. All leaks were observed and were within dispenser containment sumps. The system was operating exactly how it's designed so no contaminant petroleum leaves the site. It doesn't even leave the system.

So what goes on as he expends in his October 19, 2011 he pays several thousand dollars to make these adjustments and repairs to the site, and at the same time the consultants are telling him as noted on Exhibit 25, if you turn to – you go back and Interstate Pump and Tank has a report of June 22nd to furnish and install booms in the area of the property in order to trap this environmental – this sheen that is coming on because they cannot figure out what is going on. There is no indication that any tanks are losing petroleum. Matter of fact, when they look at the petroleum, and the consultants will tell you, it's not free product. They test it and they test it and they test the lines and they test the site. There is no free product, what is known as free – there's no gasoline leaching into the soil. This is, as all indications, 10, 12, 15 year old contaminated dirty soil that is somehow getting to the ditch and we don't know how because it hasn't gone in 10 years.

So what does my client do? He's not satisfied with simply putting an oil/water separator, so he meets with the consultants and he informs the Village, as noted, on November 17, 2011 if you look at the notes it clearly says this will take months to resolve. And it is noted that they are

looking at putting an oil/water separator. That was the idea that if this is truly some sort of dispensable dirty soil that is entering in we'll grab it with an oil/water separator. The problem is the more testing they do and the more work they do they realize that the owner wants to resolve permanently any problems happening on the site. So he instructs the consultant to engage the Uni-Pump to completely bid out and get ready to replace all the lines.

And what does he do in November of 2011? As you noted when you were on there he shut all his pumps down that had any indication of internal leaks inside the system. They were closed. He shut his diesel tanks down, he shut his premium tank down, he shut his unleaded tank. He left the only tank open was the one unleaded tank on the far west side of the property that service those front islands. That was it. He fenced them off. The consultant he hired said we need to fence off the area by the ditch, and until we can determine and rip the ground up and examine what is causing this issue, let's quarter off, and as the consultants were recommending to him, boom them and wrap the site in yellow fencing as you saw the photos. My client's not an environmental consultant. That's what Moraine and that's what Quality Environmental Solutions is telling him to do so he does.

And he shuts his gasoline station in essence down but to one product, unleaded gasoline? Why? Because he's a responsible citizen looking at this trying to figure out how to address this problem. He's not burying his head in the sand. He's not ignoring it. He continues to go on during the winter filing as was noted in the exhibits that were provided to you he files a request with BP Amoco where he bought the site and asks for investigation of what happened here. What happened in 1999 and 2001 that must be the cause of this because the owner has never discharged gasoline in the site. There's no reports it's ever happened. And all the consultants that keep looking at the site they don't find any discharged gasoline into the environment from his operations at all. But he still has the sheen and the gook that is coming there down the ditch that he knows is an issue.

So what does he do? He goes and he provides the Village, as the Village has notes, and if you look at the exhibits he reports to them pursuant to a meeting in December of 2011 he meets with the Village and they indicate on December 1st Exhibit 28 the drawings are for review constructing, inspecting and it will be at least three months by April that a plan will be in place to try to address this issue. This is not a simple fix where you just literally go to Menard's, buy a device and throw it in the ground and there the problem is solve. This is something the consultants is going to take time.

He then spends, and he reports as was in the meeting on December 1st the meeting notes indicate he plans on paving the parking lot, which he does. He plans on maintaining the booms and drums on site. As they get soaked he will replace them, and the consultant is assisting him during these winter months. And it reports, if you look on page three of the notes from the Village meeting, it states the issues resod, restore cannot be done until spring May. Not going to do this in December. Not going to be able to do this in January. And I understand Mr. Spence is looking for monthly reports. But if you go all the way back in December when the consultants are meeting with the Village they're telling them we're working on this. This is going to be a very long process. We want to fix it, we don't want to just mask it. As the consultants are going to tell you an oil/water separator could have been put in, yes. Could have been done by April/May.

As the consultants are going to tell you all it would have done was taken away probably the sheen from the water. Instead they look at this as saying how do we dispense and be able to be

comfortable knowing that what you're going to do when you put in a carbon filtration system is going to discharge clean water. And that's what the plan that they've been working on after they completed a complete rebuild of the entire petroleum system, putting in brand new lines all the way to the dispensers, state of the art technology with new sensors throughout the whole site that Uni-Pump installed, and all along as the DNR had requested and the Department of Commerce had requested test the site. Let us know if you find anything that is providing you evidence on how we're seeing the sheen into the ditch.

And he continues to spend this money and continues to do the work as noted in the exhibits that are provided to the Village. And if you look at Exhibit 42 it takes time working with the State of Wisconsin. I understand that. Client had moved forward fast to get this work done so the minute spring hit, the frost got out of the ground, he could install the new system. Finally on May 7th as Exhibit 42 notes the Department of Commerce approved, and if you look at the bullet points, replacement of the existing underground product piping with double wall fiberglass piping with tank and dispenser sumps for attended retail fueling. Stage II vapor recovery remain operational.

The client is doing something that isn't even required. None of the consultants are saying this needs to be done. None of the consultants are saying your petroleum system is causing this leak. But my client says I don't care. I have an issue that is parallel. I'm having a couple failures and some parts that are starting to fail on me. Updated maintenance is forthcoming on these products. Let's eliminate and let's investigate as the DNR has requested the entire operation of the gas station, and let's dig the entire site up that these pipes are located. So he does. No one is telling him he needs to do it. The consultants aren't saying this is mandated. None of the consultants indicate or even remotely identify that the delivery system is leaking any gasoline into the site. None. To the contrary. There's no indication anywhere that any petroleum ever entered the property. It was all contained in the system.

So, yes, May 2007 he begins completely rebuilding the site. The petroleum system takes until, and I could be wrong on the exact date, but probably July 12th. The complete site is rebuilt. At that time the client isn't represented by counsel. I wasn't involved. I'm sure my client wished he would have hired me a while earlier, but he gets a notice from the Village. And the client does what probably any property owner would do when he gets a notice from the Village that indicates specifically dated on June 12th he has 30 days in order to remediate the soil and remove the contamination. So he tells his consultant now they're telling me I've got to get rid of the dirty soil. I have completely inspected, I have completely replaced all the piping in the site.

He has conducted reports, and if you look at the gas station logs, Exhibit 55 of the Village logs, in June 21, 2012 there's still a slight residue seen in the discharge. On June 22, 2012, again, no rain, slight residue. On June 25, 2012 faint [inaudible] no rain, slight residue. On June 26, 2012 surface scum on top, no evidence of any residue. On June 27th, again, surface scum on top, no reference of residue. On June 28th scum on surface, no oily sheen. June 29th, dry weather. June 30th surface scum on top. July 5th small puddle water at the end of the pipe. July 6th dry weather, small puddles in area. July 7th dry weather, small puddles in area. My client is nearing completion of the complete rebuild of his system. So what does he do? He has this notice that is served on him by the Village, clean your site. It mandates you have 30 days.

Accordingly, he goes ahead and he hires these consultants and he tells them we need to remediate the site, we have until, to do the math, I think it's July 15th he has to remove the contaminated soil. His consultants, they hire Willkomm excavation, he goes to the manifest logs which I have

here that he hires and delivers to the waste fill with proper tracking, testing the soil, and he completely removes the contaminated soil in the ditch. He follows the processes, prepares his reports for the DNR for submission, and completely represents as you see the site today completely handles removing the soil from the site.

And he believes are we done? No. We have to address this potential sheen that may be coming back. Well, the consultants look at it and saying that given the facts and all the tests they been doing over the last three months in order to identify the issues of this problem, they don't see any free product flowing from the site, some natural gasoline or diesel fuels. Never. An oil/water separator consultants are going to tell you that's what it addresses if you have what's known as free product coming from the site. You don't. The report that was submitted to the property that shows that there's contamination on the site, yeah, those were I believe borings done on the property that show that there's benzene and other chemicals. But the consultants are going to tell you those are very weathered, old, decomposing compounds. It's not fresh gasoline.

As a result, the consultants say we shouldn't put in an oil/water separator. The solution to this problem is to put in a carbon filtration system. And as the consultants will explain to you, it's a system where you install a product in the storm water ditch in the drain tile just before it hits the ditch, and you literally stop all flow of water. You pump it into a basin. You pump the water in through a carbon filtration system, and then you discharge clean water into the ditch. Again, that's the proposal that they are working towards. They are committed to having that done. They are spending the money to have that designed. An initial draft has been provided to the Village for comment, and I know it was only last week we submitted it to the Village. But we're expediting materials and have already contacted the DNR and the Department of Commerce I believe to get permits in place so we can install this as soon as possible. It takes time, though. The Department of Commerce and the DNR are not going to respond in two days. Just as it took the Department of Commerce some extended period of time to even get a permit on May 7, 2012 to replace the piping in the ground.

All in all my client has spent upwards between \$200,000 and \$300,000 trying to address the sheen that is coming from this discharge pipe, and not a single expert is telling him it's because your operation of a gas station. And I think that's the key piece here. The consultants are going to tell you shut down his gas station, close him, that isn't going to solve this issue. The problem we have is we have a site from 1999 to 2001 when Plan Commission approve a new station here, and the DNR and Department of Commerce told him to leave the contamination in the property on site. The solution as the experts are saying is to treat the water before it leaves by adding this last piece of equipment now that everything else has been upgraded.

Shutting him down doesn't give him the operational dollars to continue to do this. This is no small task. I don't have the final cost numbers, but I'm sure it's going to cost tens of thousands of dollars to add this last piece. I mean this is a client that is committed to this property and committed to make these changes. As anyone who has visited the site lately he's already gone head and re-asphalted or sealed his entire parking lot. He's added new concrete pads around the islands. He's in the process and submitted to the Village a new landscaping plan now that he has addressed the issues of rebuilding this site. He is making improvements and modifications to his site to be a great neighbor in the Village of Pleasant Prairie.

Not that it has any relevance, but it is important in the greater scheme of our business is that he generates over a million dollars in tax revenue to the State of Wisconsin. His gasoline sales are

90 percent to citizens of the State of Illinois because it's cheaper to buy gas in Wisconsin than it is in Illinois. Illinois has a State gas tax. Wisconsin doesn't. I believe it's approximately 20 cents a gallon. So by then you have property owners that are visiting this site and shopping at this site and filling up. He wants to continue to comply with the requirements of the Village. He will continue to take whatever it takes to address this issue. And he has consultants that are continuing to work for him to address this and conclude this and have it done right. Not just eliminate the apparent sheen from the site but eliminate the problem completely. Something he bought, granted, he bought an as is site back in '08 and he's committed to resolving it. But there's no active illicit discharge from this property owner that is discharging petroleum into the drainage ditch. It's not happening.

And with that I'd like to turn over to the consultants who can give you a background of what is exactly going on. The first person I want to bring is from Uni-Pump and give you some photos of what he's done to the site in the past several months addressing the delivery system.

Tom Terwall:

Sir, would you raise your right hand? Do you swear that the testimony you give will be the truth, the whole truth and nothing but the truth so help you God?

Bill Danforth:

I do.

Tom Terwall:

I need your name, address and title please.

Bill Danforth:

My name is Bill Danforth, sales consultant with Uni-Pump, Inc. The address is N59W14508 Bobolink Avenue in Menomonee Falls, Wisconsin. Approximately back in March of this year when I was approached by Mr. Patel to come up with a plan and numbers for replacing the piping. He had half the station closed down, so obviously we could see it was urgent that he needed to get the station operational again. So then upon inspecting the site and putting together numbers, speaking with Frank Bennett with the Department of Commerce, he also told me at that time to make sure that we touch base with Mr. Spence to let him know what we would be doing.

Not being aware of the magnitude of the problems that had been going on here prior to coming on Board back in March, we put together proposals and tweaked those proposals a little bit, and then it was late in April that we actually had the contracts and submitted our permits to the Department of Commerce, or now it's called the Department of Professional Services and Safety. So what we ended up doing here was replacing the product lines and the containment sumps underneath the dispensers. In fact you can kind of see here in the photo that's up there the containment sump is right next to the dispenser there, and that's where the piping goes into that sump, and then from there it goes up and into the dispenser so that any leaks within that piping or connection going to the dispenser would be contained.

Now, the old system that we took out also was a double walled contained system, but it was of a flexible piping material, and there were no joints in the pipe underground. All the joints were in a contained area. And the old system did have issues with leaks occurring within that containment system which is one of the reasons that he had half of his station shut down was because those product lines failed. There's also an electric leak detection and monitoring system inside the store which monitors all these lines, and that's actually what shut down the lines and wouldn't allow him to operate those once they detected those leaks. Again, all of that stuff was contained.

Anyways, as we broke concrete and uncovered the existing piping, one of the first things that we're always taught to observe is using your senses, mainly your nose, what do you smell. And I must say that these product line trenches the whole length of the canopy we did not smell anything, no gasoline smell, no petroleum smell whatsoever when we excavated this. We did notice when we got back to the tank area that there was some slight smell. Again, the tank area is the existing tank area from the '90s when the original stuff was involved.

That said I guess that's kind of what we found. The new system we put in, again, is double wall. It's rigid pipe. It's a lot more heartier, and it's more tolerant to the new compounds and the new chemicals within the petroleums, so it should last him well, well into the future.

Michael McTernan:

I'm going to show you some of the work on this photo that explains the work that you did –

--::

Attorney McTernan you need to grab the microphone [inaudible].

Bill Danforth:

Basically the lines run from the tanks. On top of each tank is a containment sump. Inside that containment sump is the submersible pump, it goes down into the tank. Through the side of the containment sump the product line exits the side of the containment sump. And there's a seal that goes in place that's bolted into the wall of the containment sump, and then where the piping goes through the seal then there's hose clamps that go on to clamp that so that anything that gets into the containment – it's to prevent water from getting into the containment sump, and it's also to prevent if gasoline should leak inside the sump to prevent it from getting out into the environment.

Michael McTernan:

At any time did you notice that there was any contamination that leaked out of the containment site when you were replacing and upgrading all the lines?

Bill Danforth:

No, none whatsoever. Like I said, the only smell that we could even smell or notice was in the tank hole excavation around the tanks and not from the sumps. In fact, one of the problems that they have with sumps if it wasn't installed properly the concrete on top in the driveway needs to

be sloped up where those openings are so that rainwater runs away from them. If it's left flat rainwater gets in through the manhole and then can enter the sump through the top. Even though there's a seal on there sometimes those wear out. So a lot of times when you get rain you get rainwater in the top. That's why we do the hydrostatic testing also is to test those seals to make sure that if anything is in there that it can't get out and, likewise, nothing can get in. They were tight.

Michael McTernan:

And I know you weren't involved in the original material, but in June of 2011 until you came on site there were an enormous amount of work and testing that was done with Quality Environmental, Willkomm Excavation. You had done work on the site, and these included reports of all the work you did on the site that are included in these quotations. [Inaudible] that was there pumping out any soil?

Bill Danforth:

The tanks are buried. They're eight foot diameter tanks, and they're buried six foot deep. In other words there's six feet of soil on top of the tanks, so that means the bottom of the tank excavation or the bottom of the tank hole is approximately 14 feet down. Actually it's just a tad over 14 feet. The water table when we arrived on the site in early June, beginning of June to start – end of May, beginning of June the existing water table in that tank area excavation was 4 foot below the top of the concrete. Which means that the water table was two feet above the top of the tanks and two feet up on that sump, okay, on the containment sump where the submersible pump is. And, therefore, if those seals had been in question there water would be coming in when those get pumped out or cleaned out – the rain water had gotten in there, when that got pumped out if those seals had been in question you'd actually see water coming in from around there or it would come back.

Michael McTernan:

At any point in time and during those issues where you had water that was actually above the top of these submersible sumps was there any indication that any of this product that was contained in the site leaked into the property?

Bill Danforth:

No, there was none, no.

Michael McTernan:

Also in this packet is all the invoices of Futura and Republic Services when they came to remove any contaminated soil that was on site as required by the DNR and Commerce as well.

Bill Danforth:

Correct. Our excavating a lot of the pea gravel that was removed was stored a lot of it we re-used. Anyplace where there was soil that we actually excavated, like when we got closer to the tanks because our new piping run was going to be a little bit different than the existing piping run,

so we had to actually take soil out which is near the tank hole. And that soil that we did take out was impacted but that's old because the new piping was nowhere near that. So that soil had been impacted from years ago.

Michael McTernan:

But you properly had that hauled away?

Bill Danforth:

Yes, that was all sampled and tested and hauled away to a licensed landfill.

Tim Geraghty:

Mr. Chairman, I just ask they're referring to documents again that they be marked as exhibits.

Michael McTernan:

I'm going to mark this entire packet, Tim. It has all the invoices and expenses obtained and all the work that was done on the site as one large exhibit, and I am on Exhibit N as in Nancy. And it's a copy of all the invoices and all the testing of all the companies that have done work on the site dating back to June of 2011 to the present addressing this site.

Bill Danforth:

So that was really about it. The soils that we took out we have to do it by the book. You set down a sheet of plastic, and you stockpile the contaminated or impacted soils on that plastic. And then once you're done with your excavating then you have that hauled away to a licensed landfill. So that was all done. And then pea gravel stone was reused, was clean. I mean it was stone. Stone doesn't hold contamination.

Michael McTernan:

And this is just a photograph of the work that you did by the new sensor and the connections inside the submersible pump?

Bill Danforth:

That's correct, yes.

Michael McTernan:

Next I present Attorney Don Gallo from Reinhart who was also hired by the property owner to address this issue.

Tom Terwall:

Did you say attorney?

Michael McTernan:

Yes.

Tom Terwall:

I need you to raise your right hand. Do you swear that the testimony you're about to give will be the truth, the whole truth and nothing but the truth so help you God?

Don Gallo:

I do.

Tom Terwall:

Need your name and address and your position, sir.

Don Gallo:

Thank you. My name is Don Gallo. My address is 1386 South Highway 83, Hartford, Wisconsin. And my position is an attorney and an engineer. I'm just going to tell you a little bit about my background.

Tom Terwall:

Please do.

Don Gallo:

I've been involved in this case about 30 days, and I'm really just going to give you an opinion of where I think the case is at and where I think we need to head. I've been an engineer since 1975. I graduated with a BS in civil and a masters in chemical and environmental. I practiced as an engineer for CH2M Hill, the people that did the deep tunnel project. I worked on milorganite design and Jones Island Plant. I went to law school at Marquette, graduated in 1990 and have practiced environmental law since 1990.

I represented the Petroleum Marketers and Convenience Store Association throughout the State of Wisconsin since 1990 so about 22 years. And I sat on the original NR 700 which is the cleanup regulations. I was the represented for the advisory committee for the original cleanup rules. That's soil and ground water. I also was an advisor to the PECFA program, Department of Commerce since day one, 1990 through current through COMM 47. And I was the Chair of the Petroleum Storage Committee for COMM 8, originally it was COMM 8 in 1990, and throughout this past year for the petroleum storage regulations. So COMM 8, COMM 10, those all developed as the double wall piping and implementation of the new upgraded storage system regulations.

I currently represent Petroleum Marketers, too, and one of the issues that we're working on is incompatibility problems with ethanol and how that's affecting materials that were installed in the late '80s and early '90s. It's I suspect a sensor problem as a result of incompatibility. We have certain types of dual wall piping that are disintegrating because of incompatibility, dissolving with ethanol. And we're working with US EPA. So predominantly that's what I do. I work on petroleum storage systems.

I'm going to shift now to my analysis of where we are in this case and some of the facts that I've observed. First of all, this is a BP station. I've had 50 to 100 BP stations where I've had litigation with BP on the extent of cleanup. It doesn't surprise me that it's dirty and I think it's historic. It's probably older than what has been documented. There was a Department of Commerce exhibit that was referred to earlier where there were two reported spills. But I can tell you there were an infinite number of spills due to leaking of the piping systems, and the old systems always leaked. So this site is fairly dirty I'm convinced of that based on the data.

The site is also a clay site which is a big red flag to me because clay absorbed the contamination and it's slow to release. The piping trenches throughout the site are fringe drains, because the piping has to be bedded in pea gravel so it's draining the site. And as I pointed out to Michael when I first started this case I said, well, this site is going to be dirty for a long time because it's like trying to get soap out of a sponge. It just keeps coming. Now, we could dig up the entire site and that wouldn't be cost effective. So the real issue – and I want to clarify something. This is not technically storm water. It's ground water. If it's water and it's below the surface by definition in Wisconsin it's ground water. It's coming through the storm water system, and it's not necessarily coming through the piping system. It's probably from what I can observe it's traveling along the bedding around the pipe, and that's the conveyance system. I've worked with D.J. and D.J. can agree with that.

So the real issue in this case – and, first of all, I'm not being critical of anything the Village did because there's a known problem in this ditch. No question about it. It's how do you deal with it. And do a degree we've been in panic mode, the Village as well as the station owner and the DNR. We've been in panic mode because of the significant discharge to the ditches. And this is not to be underestimated or trivialized. There is significant discharges to the ditches. And one of the things that really bothers me is we have quite a variance in the documentation and the photos of the kinds of discharges that we're seeing. I can understand why somebody would recommend the oil/water separator early on because there was significant degraded oil and gas a diesel fuel that was being discharged to that ditch. It was heavy end oils, and that would be perfect for an oil/water separator. But as Michael points out that's a fairly rudimentary type of treatment. It's a separator.

What we are most recently experiencing is dissolved fraction in the ground water. And so when I say dissolved we really need a treatment system like carbon that is an absorber and that sucks the petroleum out of the dissolution of the water. It's really a polishing system much like you would have on your faucet and you replace the carbon vessels. The problem that we're really having now is how to size that vessel because as Pat – there was an analysis that as put up and you referred to it, that was a grab sample from the ditch just for us to get a feel for how do you size this system and what are the concentrations that we're seeing.

The loading on the carbon is a function of concentration and flow, so it's a mass unit loading to the carbon. And what we thought we would do is oversize the vault so that we had flexibility to either enlarge or reduce the size of the carbon vessels and the pre-treatment units as well. There's a seal-like resin that separates the gross contamination as a pre-treatment step to the carbon unit. And so when I said we were in a panic mode we're not in a panic mode anymore. What we really should be doing is thinking. And we have to slow this down and figure out how to solve this problem. Because we all agree we have a problem, and like it or not we're in it together.

So I would encourage you to slow it down a little bit and make sure we put in the right treatment system and the right design. As we see it, as Pat and I see it, and Pat is going to speak next, we have this drainage system, the piping system, that's coming in and collecting in the storm water system into the ditch. So we're going to try to capture it at that point with some clay cutoff walls and a sump. And then a duplex pump system or maybe even a triplex system so that when you have dry weather flows you just have a small pump like a ten gallon per minute pump running through your carbon. And when you have wet weather flows where there's significant rain water and high ground water table you could have the first, second and maybe even the third pump operating so it's a flow system, and it regulates the flow through the carbon system.

But we really have to design this right because if we undersize the carbon will be spent too quickly and have to be replaced too often. If we oversize it the carbon will plug and foul with biological material. So we're at a stage now where I think we're looking at a polishing step. But we have a dirty site, there's no question about it. And as Michael pointed out it's not due to the current owner's operation. That's all been tested and upgraded and replaced. So that's my view on how this system is currently operating and how we need to move forward on this. But we need cooperation from – and I think we do have cooperation from the DNR. I've talked to the DNR, they're very interested in solving this problem. And I know the Village is as well. And so we just need to work together and pull this together.

Closing down the station really doesn't help, it probably hurts because we need the cash flow of the business to continue to fund the cleanup system. Closing it down won't stop the contamination. It's just going to be leaching essentially out the storm sewer. I'd be happy to answer any questions now or later.

Tom Terwall:

Perhaps later. Thank you.

Don Gallo:

Thank you.

Michael McTernan:

Pat Patterson has been also retained by the client in order to oversee all the work that has been done and provide a recommendation on how to address this. So, Pat?

Tom Terwall:

Raise your right hand, sir. Do you swear the testimony you'll give will be the truth, the whole truth and nothing but the truth so help you God?

Pat Patterson:

Yes.

Tom Terwall:

Give me your name and address and your position please.

Pat Patterson:

Pat Patterson with Midwest Engineering Services, address 821 Corporate Court, Waukesha, Wisconsin. I came on board about the same time Don did, about a month ago hire as an additional consultant to review the work that was performed by Delta, Moraine and QES, Quality Environmental Solutions, and then basically get together and basically come up with a solution like Attorney Gallo indicated. Based upon my review it looks like old gasoline associated with former releases from the property, a heavier type of material, diesel waste oil.

And what we did we came up with an in situ activated carbon vessel system. Attorney Gallo actually went over most of it so I don't want to dwell on it too much. We basically contacted Carbon Air, and the sample that I used or actually submitted to Carbon Air was one that Moraine Environmental collected I believe in the north ditch line back I think in June, 2011 when they initially came onto the site. And I believe that actually had the highest concentrations of petroleum contamination in regards to ground water on the property.

I actually don't know what else to talk about. What we came up with is basically a schedule in regards to what to do out in the property. First off we'd like to try to clean the existing storm water system. Just if there's any petroleum contaminants in that system we clean that out, and then following that we'd like to have a licensed plumber come in and actually use a bore scope camera to look through the system to see if there is any damaged areas and if there are repair then, because that could be contributing to the contaminants that are coming off the property from the weathered gasoline.

Following that, and we're actually in the process of discussing this with the DNR, we need to prepare documentation to obtain a Wisconsin pollution discharge elimination system permit, which is a WPDS permit in regards to being able to treat the shallow ground water that's associated with the granular material around that storm water system. And then once it's treated it will be treated below DNR – actually the preventive action limits that were discussed and the enforcement standard limits that were discussed in regards to ground water, the system will be designed to bring the water that comes out of the system back into the – we're going to reconnect it into the storm system, and it will be treated water so it will be clean water.

And we also are going to have a monitoring schedule. Typically the DNR requires, and of course this will potentially change with the DNR review, typically they have used sample weekly for six weeks, and then after that if everything is okay then it's monthly sampling event. And if it's ongoing, which I'm assuming this is going to be ongoing because of the residual contamination that's on the property, and if the test results come back from the monitoring are still below

standards, they may actually extend it out so it could be every three months, six months or whatever on that. So that's basically what we're going to be doing, an ongoing sampling protocol once the system is installed.

And I've also actually discussed getting bids from Willkomm Excavating who is actually going to be arranging for the plumber for the plumbing of the system and all that. I think that's about it.

Michael McTernan:

What kind of time line [inaudible].

Pat Patterson:

I'm just shooting from the hip here in regards to the cleaning of the system itself, two or three weeks, and then probably at the same time go in and do the camera in regards to scoping this system. And that would be within that would be within that two to three weeks. The repair if there are any damaged pipes in that area I kind of allotted maybe like a, because I'm assuming they'll have to have permits through the Village in regards to doing the repair, I was going like with probably a four week time, probably less, I'm not sure.

In regards to preparing the documentation for the discharge permit I'll look at that a week. We're going to be then subsequently submitting that documentation to the DNR, and I'm allotting probably six weeks for the DNR to respond to my submittal, and hopefully they approve it right away. There's a potential that we can actually get that expedited, but sometimes the DNR is difficult to work with and may not allow that.

In regards to once it's approved by the DNR we'd be contacting the City in regard to obtaining the correct permits to do the installation of the system on the property. This system is going to be on the property so it's not really associated with the DOT right of way. So we don't have to go to the DOT in regards to getting a permit from them. And then following approval from the City or the Village, excuse me, we're probably looking at a five week time frame for the installation of the system if everything goes as planned. I didn't total that up. There is some time in there that it will take to do the work.

And then, of course, the sampling is going to be ongoing. Based upon my review of all the environmental services or the investigations performed out there, there's a lot of residual contamination on the property in the soils, and the water is going to pull that out of the soils and it's always going to be in the ground water so it's going to be ongoing. I think that's about it.

Michael McTernan:

And my last question. Have you reviewed all these reports from the environmental consultants and have any of the indicated that the property owner has been discharging petroleum products from his site into the environment?

Pat Patterson:

No, no.

Michael McTernan:

In closing, we just continue to look for the Village to work with the consultants and the engineers and the attorneys that we have hired in order to resolve, and we're committed to resolve this issue. My client is here, understands the severity of it and has all along, and has relied on some consultants that have been very slow to act. I can assure you I have been retained to see this through to its completion and I will. Mr. Gallo has been retained and so has Mr. Patterson, and if there's any assistance we need from Uni-Pump we will be utilizing their services to get this done.

In that same breath my client is very well aware of the Village's consultant and is more than willing to continue to work with the Village and share all of the information we have as we submit simultaneously with the government bodies and with the Village of Pleasant Prairie as well. We just need time as outlined by the consultants to finish this project that has taken much longer than anybody anticipated or desired. So in that context I ask the Plan Commission to grant this additional time to have this resolved and under conditions that you see fit that need to be done we're willing to comply with it. If there's something more you need from us or commitments from my client he is here as well, and he is willing to do whatever it takes in order to get this issue resolved.

Tom Terwall:

Thank you. Two questions, Jean. First of all, are we facing a 6 p.m. deadline for a Village Board meeting? I mean if this is going to go on a while are we going to have to reconvene?

Mike Pollocoff:

There is a six o'clock Board meeting that would occur as soon as that the Board is able to meet and this meeting is done. I guess it would be a matter if you wanted to reconvene to another date, ask more questions, or to look at any exhibits that have been provided to you in order to make a judgment.

Tim Geraghty:

If I could suggest, Mr. Chairman, just to make sure that whatever testimony you need from the witnesses today is finished today so they don't have to come back on another evening.

Tom Terwall:

I agree.

Michael McTernan:

The only suggestion I had is if we did continue that we'd be more than willing to enter into a consent order to have this resolved that the Plan Commission would have to approve, and in the meantime the Village, their engineer, staff and our engineers could work with them on a consent order that mandates what would be acceptable to the Village and hopefully the Plan Commission. And we'd love to take the time to do that.

Tom Terwall:

And before we let your extra witnesses go I'm going to open it up to questions from the Commissioners. I would ask that we begin with questions only to the defense since the witnesses for the prosecution for the Village – excuse my mispeak. Go ahead, John.

John Braig:

Just a comment regarding rescheduling. How much of an agenda does the Village Board have tonight? I see that all but one of them are here. If this meeting continues for another half hour or so I think it would be easier to resolve the matter now. If it looks like it's going to involve more than that then maybe we should reschedule.

Mike Pollocoff:

I would just as soon give the witnesses here and the Commission while this is fresh in your mind the opportunity to ask the questions of them irrespective of the time. I can't say that would take too long.

Tom Terwall:

Then I'll begin the questions. I have no questions for the owner's people, but I do have a question for Mr. Spence. Do we think that the only source or that the only outflow of this contamination is that ditch that runs along the side of 165? Or, are we seeing evidence of contamination in other places? The reason I ask that is I think it makes a whole lot of sense to try to get all the contaminants out of that storm water ditch, but if it's leaching other places as well is that going to solve those problems?

Mike Spence:

Mr. Chairman, one of the things that I've asked for over the past six months is sampling results that have been taken in that area. So it's difficult to answer with any certainty the extent of the contamination. I believe that the results from Moraine, for example, do indicate contamination right by the discharge point, but I haven't seen any testing results further down the ditch to see if there's contamination there as well.

Tom Terwall:

Thank you. I have one comment. I'm inclined to agree with Attorney McTernan that you probably should have been hired a long time ago. And not only you but some of the consultants as well. I think what we have here is a failure to communicate. I think there's been a fair amount of work that's gone on that the Village was never made a party to. And I think that's a good portion of the frustration is that from the Village's perspective we didn't think anything was being done. Fines were being run up and run up and run up and nothing was being done to show that there was any work going on. So I think that's a concern. Jerry, you had a comment? Raise your right hand, sir. Do you swear to tell the truth?

Jerry Franke:

To tell the truth if I'm going to ask a question?

Tom Terwall:

Yes, so help you God?

Jerry Franke:

Jerry Franke, 5824 Pilgrim Way, Racine. Just one question. Was the Village aware that BP Amoco prior to its sale had had environmental issues here?

Mike Pollocoff:

Not to my knowledge.

Jerry Franke:

And my second part of that question is aren't they culpable for some of this condition if it's been demonstrated that they were the original creators of the pollution?

Mike Pollocoff:

The Village can deal with the property owner, that's our relationship with the property owner. To whatever extend there's a relationship between BP and the current owners that's going to be a civil matter. But in looking at the deed restriction that was placed on there the Village was not a party to that.

Jerry Franke:

It's a shame that a property can get this contaminated and there's no public knowledge to adjacent property owners. Thank you.

Tom Terwall:

You're right there, Jerry. I want to do some more research, but if it's true that the DNR and the State said this is a contaminated site, the only way you're going to fix it is you better cap it and sell it I have a real problem with that. There's got to be some documentation. Go ahead, John.

John Braig:

Somewhere in these exhibits, and I've been looking for it, when BP went and rebuilt that station they trucked out how many tons of contaminated dirt from that site, and how many thousand gallons of contaminated water did they take out of there? I think it was in – I've been looking in the exhibits and I forget which one it's in. Do you remember those figures, Jeans, I'm sorry.

Jean Werbie-Harris:

It's Exhibit 13. It's the Department of Commerce letter. We do have it. All of the details are in that letter and in that exhibit, and it does go on to talk about the site history and the restrictive covenant and the responsible party and the no dig area. So it does go into all those details when the property was purchased by the Patels.

John Braig:

My point is at that time that site had to be fairly clean or the DNR would not let them –

–:

No.

Wayne Koessler:

Don't say no. If they hauled tons of contaminated soil out and pumped a lot of water out. And I have a question of you, too, attorney. When did the State of Wisconsin not have a gas tax anymore?

Michael McTernan:

I mentioned it's higher, there's a higher gas tax in Illinois.

Wayne Koessler:

No, you said there was no gas tax.

John Braig:

You said no gas tax, that's correct.

Michael McTernan:

That was a misspeak on my part. I meant that the State of Wisconsin gas tax was lower than the State of Illinois gas tax. I apologize. And Exhibit A does give the details that you were reciting, and it's 2,800 tons of contaminated soil, but there was deed restrictions. That's the part of Exhibit A that I presented.

Jean Werbie-Harris:

It's my Exhibit 13 and your Exhibit A.

Michael McTernan:

My Exhibit A, because Exhibit A that I had showed that significant contamination remained on site and was part of a deed restriction that was entered in by Delta Environmental Consultants and restricted on the property and recorded. And that deed restriction was placed on October 13, 2006 before my client purchased the property.

Larry Zarletti:

Does the Village have proof that the contamination is coming from the site and not from a previous contamination? I don't know who can answer that.

Mike Spence:

The results that we've seen have indicated that – let me back up. Moraine Environmental put in monitoring wells on the site, not in the ditch but on the site. There's a monitoring well that's just very near the outfall. There's monitoring results from that monitoring well that indicate that there is petroleum related products that were in the ground water on that site.

Larry Zarletti:

Okay, I understand that. I think everyone has agreed that the site is contaminated. The question that I have is does the Village have any evidence to indicate that that contamination is something since the current owner took over or something that could have been in the ground since the first time the recognized there was contamination?

Mike Spence:

I would have to refer back to the environmental engineers. That particular question has never been – I haven't seen results that indicate whether it's from a previous –

Larry Zarletti:

Pre-existing or not?

Mike Spence:

Right.

Larry Zarletti:

I guess to me that makes a huge difference. I mean on the face of this early on in the testimony I was a little agitated that how could a person sit still while this contamination ran free all over the property. And as I heard the defense of that is that it was capped, it was contaminated, it's no surprise, it was disturbed at some point, and now we have this contamination issue and there are things in progress to get to the bottom of whatever it is that's causing the problem. So my thought process would be if, in fact, we had evidence to believe that it was caused since it was capped and has nothing to do with pre-existing condition, I would concur that we need to be a little more aggressive. Well, we should be aggressive anyway.

However, what I'm saying in this case is if, in fact, the owner is now working to get the problem solved that is a problem that was pre-existing that he inherited, then I think I take a little different look and a different approach to how much time we're going to give to get this done. And it does

appear to me that things are being done, and I agree with the Chair that this should have probably started long before. And I think the time lapse here is what has really aggravated everyone and caused the Village a substantial amount of extra work. And for that I'm not happy. However, moving forward and so we can get to a place of some resolve here, I would absolutely support giving some more time to get this thing taken care of rather than shutting down a station unless we have absolutely proof that the station is causing the problem and wasn't willing to fix it.

Wayne Koessl:

If we can go to Exhibit 13 and scroll down to soil and ground water removal during the razing and rebuilding. They hauled 2,807 of gasoline contaminated soil and approximately 30,160 thousand gallons of gasoline contaminated water. I can't believe there's much contamination left in that site after that.

John Braig:

I'm looking for a little more information. The Commerce Department closed this case in December of 2006 and capped it. The suggestion that I got out of this is they acknowledge that there's still some contamination on the site and they don't want it disturbed anymore, but it was sufficiently cleaned. If you leave it capped and don't disturb it things should be alright. But we've got an awful lot of evidence that indicates there's a pretty good oil slick that's flowing through this system.

I'm going to direct my question to Mr. Gallo. I can appreciate that as you excavate in an area which has natural soils and clays and formed something of a seal, after excavation especially with the addition of pea gravel to protect pipe and so on, you in effect are putting in a drainage system which as I understand it must be leading to this outfall pipe. So I'm going to ask you with what appears to be literally hundreds of fuel spill prior to change of ownership, and a lot of this is flushed out, are you suggesting that there's still an awful lot of contamination?

Don Gallo:

Oh, yeah.

John Braig:

In which case what's wrong with our boys in Madison if they permitted this thing not to be cleaned up in the first place.

Don Gallo:

You have to understand the politics.

Tom Terwall:

We don't have time for that, sir.

Don Gallo:

Yeah, exactly. Let me try to clear up a couple points. Mr. Zarletti he asked a really good question, and there's a way to prove that it's old. There are certain compounds, toluene, ethylbenzene, benzene that comprise gas. And they degrade at different rates. So when you take a sample you can look at the concentrations and you can age the gas because of different rates of degradation. D.J. definitely knows this. That weathered gas may be PECFA eligible. I've opened up a number of PECFA cases where Commerce has closed the site. And this is a matter of economy. They close a lot of sites, and some of them they didn't get it right on. This may be one of them. They left too much in place, it's continuing to be a problem, but we can probably prove that it's old gas. And it's highly weathered, that's why it's looking like diesel as well. Gas weathers to a fingerprint that's similar to diesel. So I think that's the question.

Now, with regard to it must be clean because they've hauled so much away, it's actually a small amount that they actually hauled away compared to a lot of sites, and particularly clay sites. Sand and gravel sites get dirty fast but they clean up fast. Clay sites take forever. This example of getting soap out of a sponge is exactly what we've got here. It's going to continue to leach for a long time. This carbon system or any treatment system is going to be permanent, permanent with regard to 20 or 30 years of operation.

Michael Serpe:

I don't disbelieve any one of the witnesses' testimony, whether it be on the Village's side or on the gas station's side. I guess what concerns me, and a lot of good testimony was heard tonight, was what mainly concerned me is the lack of cooperation that the Village received from the gas station owner as all of this is going on. The total ignorance to \$84,000 worth of citations to me that's pretty significant. I don't know, maybe it isn't to a lot of people, but it is to me. And if we were to grant some time for this site to be cleaned up or to be monitored, how much more is the Village going to be ignored by the gas station owners for the future that we're going to have to come back here and maybe reconvene for another hearing for a revocation on the conditional use?

I'd like to think that they're going to be cooperative. I'd like to think that this site could be cleaned up. I think Mr. Gallo made to me a lot of sense in what he told us tonight. To be honest with you when I was looking and heard the amount of fines that were levied on BP I figured this company doesn't care. They just don't care. Maybe I've been convinced to look at this thing a different way. But if everything that was said tonight is true about never any leaks since this ownership has been there since it's been rebuilt and this is all old contamination, then I have to agree again with Mr. Gallo is the best way to do this is clean up the site because that's not going to change.

Jim Bandura:

I kind of agree with Mike here. Mr. Gallo, you brought up a good point. Where would a chain of custody come in on this? Because you said you could possibly reopen a site.

Don Gallo:

Oh, yeah, we've done that. With Department of Commerce you can reopen the site. And the standard closure letter does have a reopener paragraph in it for the DNR to reopen the site. Mike and I were just talking. This is a suggestion. The way to proceed is we could work with the Village staff to craft a consent decree that has a schedule, milestones and some penalties in it, and that's the way to get it done. That will put a gun to our head, but we'll have a negotiated schedule that we can track.

Jim Bandura:

And I'm leaning towards that because, like Mike says, to just ignore the Village I have a problem with that. And this started back a year plus ago, and as an owner I would want to make sure that I wouldn't be put in a position that I am in now because not answering any concerns with the Village, if the Village is knocking on your door there must be something wrong. Or maybe not necessarily wrong but they're trying to notify you of some issues. So I believe that more cooperation with the Village here and your clients is greatly needed.

Don Gallo:

There's no question about that.

Jim Bandura:

I've got another question of Mr. McTernan. You gave us a number of exhibits. Are there manifests for the hauling away of all the contaminated soil?

Michael McTernan:

There are. And in the packet of materials provided to the Village are all the manifest bills of all the tracking of all the contaminants of anything that was removed from the site. And I've got to stress to you that Mr. Dixit Patel takes this extremely seriously. He had hired several different consultants and had come to me saying obviously my consultants are failing me. I am faced with tens of thousands of dollars of fines. I need help because my consultant is obviously not answering Mr. Spence and providing him the information he needs. He's not an engineer. He is panicked about this. He calls me day and night. He meets at my office on Fridays at eight o'clock at night to sit down to find a solution.

And what I have done is immediately hired Mr. Gallo, immediately hired our own team of consultants that I know will be responsive and provide Mr. Spence and everyone in the Village every single thing they want, and it will be a resolution that we will get to that everyone will be satisfied with. And that is why when Mr. Dixit Patel hired me he said, Mike, do whatever you need to be done I will do. Get it done. And that's why I'm here before you asking you to allow us that opportunity to fix this permanently.

Jim Bandura:

And as Tom said it's unfortunately that you weren't in on it early on.

John Braig:

A question of Mr. Gallo. You indicated that there might have been some error in the process of the Commerce Department approving capping and closing out the case. Could you give us a little insight as to who and what their qualifications are and what criteria goes into that type of evaluation and judgment?

Don Gallo:

I'm happy to do that. They, being DNR and Commerce, have closed more than 5,000 sites, maybe closer to 7,000 petroleum storage sites over the last 10 or 15 years. Out of that group they have to make decisions on how clean is clean, whether it's clean enough that it will naturally attenuate over time. And those are the kinds of decisions they're making, and they're hydrogeologists just like D.J. and Pat, and they're just making a professional decision.

The problem that I see with BP sites, BP has a lot of horsepower and they have a lot of sites, and they put a lot of pressure on the regulatory agencies to close their sites out. I see it all the time with major oil, because major oil moved out of the retail business about ten years ago. They sold all of these stations to the jobbers, people like us that are working those stations. And so they were getting out of Dodge. And with regard to Jerry Franke's question why can't we go after BP? They had documents that were very well written, so you bought as is and you indemnify them if this becomes a future problem. So it's going to be tough to back after BP. We got a problem, we got to fix it.

Tom Terwall:

Is there still PECFA money available?

Don Gallo:

Yes.

Tom Terwall:

Are you still collecting money for that?

Don Gallo:

Yeah, two cents for every gallon. That generates \$90 million a year. The legislature has taken all but \$4 million a year for other purposes.

Tom Terwall:

I hear you. Larry?

Larry Zarletti:

Mr. Chairman, I think no matter what has taken place to this point it has become incredibly clear to me that Mr. Patel the Village has his attention clearly. And I believe that he is paying and going to pay for his lack of attention to the Village's request to get moving on this. So with that said I don't know if a motion is in order for us to give some more time to get this squared away now that we can see the wheels are fully in motion or what the next thing would be.

Tim Geraghty:

Mr. Chairman, I think before any action is taken we need to close the hearing part of it and the evidence. Before you do that I would like an opportunity to have Mike Spence give some more testimony.

Tom Terwall:

Thank you. You're still under oath.

Mike Spence:

Yes. I just wanted to make a couple comments regarding the picture that the owner's attorney has painted as far as his willingness to cooperate. My request for information were repeatedly denied, and at no instance was I ever contacted by the owner as far as was I being served well by his consultants. I also wanted to indicate that his most recent consultant, Quality Environmental Solutions, indicated all the work he was doing was just pro grata that he wasn't being paid by the owner but he felt compelled to try to respond to my request. So I'm a little frustrated at the picture that's been presented as far as an owner that's willing to cooperate. When I was asking for reports on what was going to happen or what had happened and what was going to happen, the owner balked at having to spend money on reports. I just wanted to clear up that picture there.

Tim Geraghty:

Mr. Spence, just a couple of questions. One of the issues that came up was downstream testing. Has there been any soil samples or anything on, for example, the ditch alongside Culver's and farther downstream? Have you ever been provided with those results.

Mike Spence:

I have not been provided with any results.

Tim Geraghty:

And have you requested those results?

Mike Spence:

I have requested results repeatedly.

Tim Geraghty:

Is it fair to say that you've been requesting that testing since May or June of 2011?

Mike Spence:

That would be a little bit extreme. But I would say at least since the beginning of this year I've been requesting that. And just another point, again, the attorney has indicated that this process is timely, and I'm not going to dispute that. But my very first letter asked them for a plan and a schedule. I never said that the schedule had to be short. I never dictate any timing, nor did I dictate any form of treatment. I wanted to see a plan. Nothing was ever provided. Well, I should say that. Nothing was provided in a timely manner.

Tim Geraghty:

Did Quality Environmental Solutions at one time recommend an oil/water separator and indicate to you that they would be installing that?

Mike Spence:

They recommended an oil/water separator as did Moraine. They both recommended some form of capture of the product onsite prior to discharge.

Tim Geraghty:

No further questions.

John Braig:

Again, a question of Mr. Gallo. You made the suggestion that hopefully we would reach a decision not to revoke the conditional use permit but rather develop a workable plan with some dates and some penalties and stuff together. I sense, myself and maybe some of my Commission members, a bit of aggravation that the rules and regulations and requirements of the Village were pretty much ignored for some time. I also sense that there could possibly be a turn. So if this group decides to grant an extension, could you put an idea of how much time we'd be talking about and what would be accomplished at the end? Are we talking days, weeks, months?

Don Gallo:

Well, when you say an extension there's two steps. First we have to work out a consent order and that's going to take two to three weeks probably. Is that reasonable?

Michael McTernan:

I would think so.

Don Gallo:

And then frankly we could do this in pretty short order if we didn't have to get so many permits, and that's the only thing I can't control. Now, we have a good relationship with the DNR, and this is a high profile situation. I talk to Pete Woods the other day, he said he would push the permit. He actually told me a lady in Milwaukee at the DNR to work with and he said he would call her. So that's the biggest issue. How long is it going to take to do permits? We already have sizing on the system, the design. We'll have to put it together but we have a conceptual design. So it's just review time. But I have a feeling most of the – even the Village, the State agencies are focusing on this project and they'll try to accelerate it. But I'm worried about getting this done before the ground freezes. We've got to get going, and we already are going.

Wayne Koessl:

Mr. Chairman, I'm going back to Exhibit 13. That is not a very big site out there. I don't know what the acreage is, but it's got to be probably less than an acre, and they pumped 5,000 gallons of ground water and 38,000 gallons of contaminated gasoline water and 28 tons of contaminated soil. I think we're doing an injustice to our staff and to the Plan Commission and the Village ordinances that we have here. I'm going to vote for revocation tonight when it comes up.

Michael Serpe:

Just a question. Monitoring of the site can that be done in the dead of winter?

Voices:

Yes.

Michael Serpe:

Weather has no effect on it?

Jean Werbie-Harris:

Can you come up to the microphone please?

Tom Terwall:

Give us your name again please.

Pat Patterson:

Pat Patterson, Midwest Engineering Services. We actually have in the preliminary designs we have heaters that we're going to install so the system does not freeze. And we're actually going to have sample ports for sampling the effluent of that.

Michael Serpe:

Thanks. I have one other question. If a revocation were to take place and they were closed down, what happens to the site?

John Braig:

It continues to bleed.

—:

Yeah, it would continue to bleed.

Mike Pollocoff:

The Village still would have to pursue action against the property owner and whoever would assume ownership of that lot. If it went back to the bank or it reverted to somebody the problem doesn't go away. We have no substantive information that's been provided to us up until two days ago as to what we're dealing with. We'd be looking to get that squared away.

Tim Geraghty:

Mr. Chairman, just a point of order. I'm not sure if Mr. Pollocoff was sworn in.

Mike Pollocoff:

I wasn't sworn in.

Tom Terwall:

Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

Mike Pollocoff:

I do.

Tim Geraghty:

And do you certify that the testimony you've previously given is all true and correct to the best of your knowledge?

Mike Pollocoff:

Yes, I do.

Michael Serpe:

Let's say the revocation were to take place and it was turned over to a new owner, and lo and behold the sheen is still there. Would that lead to evidence that there hasn't been a petroleum leak while these people have owned it and the petroleum leak took place at the original BP station before it was reconstructed. If there was that much gas and diesel fuel leaking into the ground for a long period of time, I don't know that the amount of ground that they took out of there was enough and how deep did that go and how far did it travel? Ask the people in Jackson, Wisconsin, they might be able to help you on that, I don't know.

Jim Bandura:

Question to Mr. Gallo regarding the taking out of all of the spoils why wouldn't they have set up monitoring wells on the site at that time to monitor the ground water and the contamination if they wanted it just left there? Why wouldn't there be monitors on that site?

Don Gallo:

Keep in mind this is a clay site. You can have a monitor right next to a tank, if it's six feet away it may not sense any contamination. If you move it two or three feet it could pick it up. Clay sites are hard to monitor. And so not only is this storm sewer a conduit but every trench on that site is a conduit. So you really have to –

Jim Bandura:

And that's understandable. However, I still feel that it could be monitored in some respect.

Don Gallo:

Oh, yeah.

Jim Bandura:

And to our counsel here for the Village monitoring, having some monitoring done down site is in my mind would be helpful for me.

Don Gallo:

Oh, definitely. That would be what should be done, down gradient monitoring points. That's very common.

Jim Bandura:

Before I do anything on this I'd like an outline of what the next steps are, what we can do to resolve this because I'm not comfortable with anybody's testimony here that makes me feel like I can make a decision right now.

Don Gallo:

The devil's in the detail. You need to really pound out a thorough consent decree. I've got a ton of examples.

Tom Terwall:

Jim, I'm inclined to agree with you. I guess I'm not ready to shut him down because if we do shut him down I want to make sure that the site is going to get cleaned up. But I guess I'm in favor of providing an opportunity for both the Village and their attorney and Mr. McTernan and his staff to see if they can come back with a recommendation to the Plan Commission on whether or not the proposal that Mr. McTernan is making is viable or not. And if they can convince us then that's what I'm in favor of doing.

Jim Bandura:

And I agree. I think we really need to set a quick time line for both sides to get this done. It just needs to – not two months, three months, four months down the road. I mean less than 30 days. Something has to be done because our environment down there we've got wetlands down there and that ditch leads right to it so something really has to be done here.

Wayne Koessl:

I have one comment, Mr. Chairman. I'm sure when they hauled out 2800 tons of contaminated soil they did not replace it with clay.

Larry Zarletti:

Mr. Chairman, the Village has tools in place to deal with non-responsive people. So we've given this owner 125 tickets, \$84,000 in fines, and I'm not saying you should remove any of them. All I'm saying is for 30 years I was a cop, and anytime I made a traffic stop the thought I had in my head was I'm either going to give them a ticket or I'm going to chew them out. I'm really not going to do both. Either the ticket's going to do the talking or I'm going to do the talking and get a message across to the person. We've ticketed the man 125 tickets. Guess what? He had them coming. He didn't respond. That's what's in place for the Village. I have no problem with that. I do have a problem doing that and then shutting him down, then there's no money coming in for him to keep the people who are going to attempt to fix the problem. So I say we gave him the ticket, let's hold his foot to the fire, and let's get this project done.

Tim Geraghty:

Mr. Chairman, before you close the public comments I do want to have one more witness that I do want to recall if that's possible, D.J. Burns.

Tom Terwall:

Sure.

Mike Pollocoff:

I think you've got another one who wants to speak, too.

Tom Terwall:

Did we close the public hearing?

—:

No, you didn't close it yet.

Tim Geraghty:

So before you do I just want to make sure that Mr. Burns can testify at this point.

Tom Terwall:

Do you swear that the testimony you're about to give will be the truth, the whole truth and nothing but the truth so help you God?

Edward Rich:

I do.

Tom Terwall:

Give us your name, address and position.

Edward Rich:

Good afternoon. My name is Edward Rich. I'm the owner and operator of the Culver's in Pleasant Prairie and, wow, a lot of information today. I just want to thank the City and everybody involved for their thoroughness and assuring me as a property owner and a business owner that you're protecting my interest in trying to maintain the level of professionalism in our community.

I feel for the owner of BP Amoco. I'm sure you wake up in the morning where we're here to service our community and service our guests, and the last thing you want is an incident or accident that can cause problems for other people. But I think really the reality is how we handle the situation. It's our character and how we resolve the matter and that's what's important. I look if there's a situation that takes place in the beginning and it was challenging when I decided to build in Pleasant Prairie. Your sign ordinance, corporate says, wow, my gosh, how are you ever going to do this? Are you sure you're in the right community, and I was in question.

But when I learned more and more about the professionalism and maintaining the integrity of what this community is all about I'm just proud to be here. And I learned, and I'll just share with the owner at BP, when issues come up and you don't know, you don't have to get lawyers but just

go to the City and talk to the engineers, talk to Mike Pollocoff or get ahold of people. They're very welcome and they're very willing to help you because there's a lot of things I don't know either. It's an unfortunate situation that took place. But questions come up and there's a lot of issues as we're trying to address and make the right resolution for the site.

But my question for you is I kind of feel like a victim. I didn't do anything, but I have this effluent, and my question is how is that going to be dealt with? Who is going to pay that cost? How is that going to be regulated? That's where I need your help. What are we going to do? Sir, with all due respect, the attorney made a comment that for all these years there's been a sheen. I'll tell you if you look at the picture that happened I've been there, we watch our property, we walk it, there's never been a situation where there's been dirt and you look further down on BP Amoco and it's grass. It's obvious that something took place.

I just hope that the City and BP Amoco – I'm impressed that you've got some people that can help you deal with this situation and get it resolved. I'm a business owner, I'll help you out any way I can. But the concern I have is if this site was contaminated before I never knew about it. And now what value does that do to my property if I ever elect to sell the business? And maybe a question you can help is do I really own that? Is that a right of way? Is that owned by the State, that ditch line, or is that on my – or am I responsible for that?

Tom Terwall:

That's in the State right of way, isn't it, Mike?

Mike Pollocoff:

Well, you know, yeah, that right of way is in there. It doesn't go to the curb that you own, but you have to locate the corner. Really one of the questions that's going around in my mind is digging that occurred in the right of way versus digging that occurred on the property. We don't have any survey information or anything.

Edward Rich:

But that ditch line that supposedly one of the maps I saw –

Mike Pollocoff:

That's the State –

Edward Rich:

– that's potentially contaminated.

Mike Pollocoff:

That's a State drainageway.

Tom Terwall:

Thank you very much. Jean, you had another witness?

Jean Werbie-Harris:

Yes, we'd like to recall D.J. Burns.

Tom Terwall:

You're still under oath, Mr. Burns.

Tim Geraghty:

Mr. Burns, you've heard all the testimony today, and obviously this discharge has been going on for quite some time. Are there any interim treatments that were possible without permits? Is there anything that could have been done to limit that without an extensive permitting process?

D.J. Burns:

Are you saying going forward from this point on?

Tim Geraghty:

Or could have been done in the past or going forward from this point on?

D.J. Burns:

I think as Attorney Gallo and Engineer Patterson pointed out is that originally some consultants working for the owner had talked about this oil and water separator, and I generally agree that that's maybe not the best technology for that. They appear to have been proposing to Engineer Spence a mechanism by which they would treat this discharge and bring it to a no pollution at the end of the pipe level by utilizing carbon. What carbon would do as Attorney Gallo had done is it basically polishes this water and mix or petroleum and water that's going through the pipe or in the granular material under the pipe. It polishes up or cleans out the benzene, the ethylbenzene, the toluene, the xylenes, that type of thing.

I recognize that the type of system that Attorney Gallo is talking about on a permanent basis would take quite a bit to permit, work through with Engineer Spence, get all of the Village approvals, but there exists treatment technologies, they're basically called modular treatment technologies or modular units, that would be packed full of carbon that this discharge water could be run through prior to the actual installation and operation of a long-term treatment system.

Now, I think both Attorney Gallo and Engineer Patterson, if you nod you head, say that there is a technology that exists in that format that could be implemented immediately so as to allow them to meet the discharge limits that are inherent in the Village's own ordinances saying don't let any of this contaminant reach the ditch. So, again, they could bypass or route through the existing

pipng system, shoot this into the modular treatment system and then discharge back into the ditch with some monitoring in place. It would be up to the Village to impose what conditions that might be. But I think then they could discharge clean water prior to the installation of a permanent system. That's an option that I think the Village could consider.

Jim Bandura:

If I may. I like that option. I think that to get it in place quickly is a good option to try and resolve some of the downstream stuff. But one of the things is I really would like to find out how far this has gone downstream and how close it is past the Culver's and into the wetlands. I'd like to know what's happening at the wetlands right now. Because this makes no sense to have this kind of problem. So to that I would recommend us with your side and our side putting a time line together and bringing this back to the Plan Commission for further discussion on this with the caveat that something is put in place right away as you mentioned. So I'm leaving it up to the other Commissioners for their input.

Tom Terwall:

Are we done with the testimony? I'm going to close the public hearing.

Michael McTernan:

I have one thing before we do. Just a note, and it's already in the exhibits. Exhibit 23, the Moraine consultant report on August 10, 2011 emphatically states underlined, highlighted, bold, no petroleum releases from the tanks or from the double walled piping system have ever directly – let me repeat. No petroleum releases from the tanks or from the double walled piping systems directly to the environment have been identified.

And moreover to answer your question in connection, and I know Mike Spence is probably looking for this report that has been provided to us, Exhibit K provides an identification and exhibit that identifies, and also to address issues by the property owner of the Culver's, that sampling has been done along the ditch, and you can't see the map, but on the exhibit it provides the testing and the soil sampling that was done every three to four feet along the ditch all the way to the Culver's site. And the only contamination that exceeded levels was found was in this contaminated zone. As you went past sampling three, four and five, the reports, you look at and I'm not an engineer, I can't look at it – I believe the samples will identify that the problem was very highly isolated along the ditch line in front of the discharge pipe. Mr. Gallo?

Don Gallo:

This is reported as a spill. So to close it out with DNR you have to evaluate all the offsite impacts including not only the ditch in front of Culver's but the impacts to the wetlands.

Tom Terwall:

So are you saying that has been done –

Don Gallo:

No.

Tom Terwall:

– or that it should have been done?

Don Gallo:

Some of it has been done, but it has to be done before DNR will issue a case closure on this new release. So there's a new release open on this site, and to address the concerns of offsite impacts that will have to be resolved with the DNR for closure.

Tom Terwall:

Good.

Michael McTernan:

And the final piece, and I apologize Mr. Koessl for misspeaking when I was identifying Wisconsin taxes collected, and I should have looked directly at my notes. Just so you understand where my numbers are coming from, the site generated approximately \$1.1 million in tax revenue to the State of Wisconsin last year, \$100,000 in C store, convenience store, retail tax, \$60,000 approximately in inspection fees to the State of Wisconsin, and a Wisconsin fuel tax of \$915,300 last year. So my numbers that I was listing when I was telling you that \$1.1 million in tax revenues are collected on the sale of gasoline and store merchandise is payable to the State of Wisconsin, the reason I was mentioning those dollar amounts and why 90 percent of the customers are from Illinois is because our taxes are lower on gas than in Illinois. That was my misstep. If I said it wrong I apologize. That was my mistake.

Wayne Koessl:

Thank you, but in due respect don't mean a thing to me. I'm only concerned about the contamination on that site and what it's doing to the business park, the tenants in there and everything else.

Michael McTernan:

And I agree, and my client is committed to having that resolved. Thank you.

Wayne Koessl:

I don't think he really has been.

Tom Terwall:

Anything further?

Tim Geraghty:

We have no further evidence to present.

Tom Terwall:

Then I'm going to close the public hearing. The only thing left now is there's an issue before the Plan Commission. We can either vote to suspend the conditional use permit, or we can vote to revoke the conditional use permit –

Tim Geraghty:

Mr. Chairman, I hate to interrupt, but the ordinances do say that the next step is really a recommendation by the Zoning Administrator before there's a decision.

Tom Terwall:

Excuse me. Thank you.

Tim Geraghty:

I'm just following the requirements of the ordinance.

Tom Terwall:

Thank you.

Jean Werbie-Harris:

Mr. Chairman and members of the Plan Commission, as the Zoning Administrator and after listening to all the testimony and the evidence and everything that's been presented this evening, I am recommending that the public hearing be continued in order to give the Village staff and attorneys our time to be able to review the information that just came to us late last week, as well as to sit down and to have BP Amoco's attorney draft a consent order which can be reviewed and commented on by the Village staff prior to the next Plan Commission meeting. What I'd like to do is I'd like to set a special Plan Commission meeting on September 17th at 1:00. That is the third Monday of September where we can consider this consent order.

I have to that as a Zoning Administrator I understand the concerns. The staff has been very frustrated due to the lack of compliance as well as the lack of communication. Specifically some of the things that I'm going to be looking for on behalf of the Village are the assurances that this work is going to be completed in a timely manner, that the work is going to be completed per their schedule, that there will be weekly or bi-monthly meetings with the Village staff to let us

know exactly where they are with respect to the process of complying with the regulations, the timing of the permitting and just keeping the Village informed of exactly what steps that they are going to be taking. So those are some of the things that we're going to want to see in this consent order that is being drafted.

Also before BP Amoco's attorneys and representatives leave I would like to get copies of Exhibits A through N from them this evening before they leave so that we can make it as part of our record. I added up the weeks, and it looks like the original consultant identified 20 weeks to do the work from the submittal of the schedule all the way to getting the work done. And I would like to see as we're working through this, the staff and their staff and their attorneys, that maybe we could refine that a little bit since we will be coming into the winter months within a 20 week time period.

Tom Terwall:

Thank you.

Mike Pollocoff:

I have just a couple minor modifications to Jean's recommendations. One is I recommend we continue the meeting, not the public hearing.

Jean Werbie-Harris:

Okay.

Mike Pollocoff:

As I see this coming about the staff is going to need to look over their documents, evaluate the engineering that's going on with this, but I'd really like to given our history with the property owner I'd like to see letters of engagement of contracts so that we know the people we're dealing with are, in fact, retained and have an agreement to do the work and complete it. So as we work on this document we know we're dealing with somebody who is going to be able to finish this project or get it through to completion so that we don't have a stop. Because if we look at the 17th we're basically looking at a five month process going into six months. I think the goal would be not to be at a point where everybody has to throw their hands up and say we can't dig until next May or something like that. That would be my additions to Jean's recommendation for us to proceed to move this onto another step.

Don Hackbarth:

Could we also insist that they put booms down there that no more contamination gets on Mr. Rich's property, that it's replaced regularly.

Jim Bandura:

Right, with the charcoal filter system that was mentioned earlier.

Mike Pollocoff:

I guess I'd defer to their counsel and see if they're willing to do that.

Michael McTernan:

My consultants are more than willing to work with your consultant immediately in the interim to immediately start working on a solution. And in that packet are the contracts with our environmental consultant. I've included that as well because I knew that was an issue that you wanted. But my consultant will work with them immediately and agree to a plan to take care of doing it immediately before we even start working on the final agreement.

Don Hackbarth:

I don't care about consultants. I'm just saying we don't want more stuff going on Ed's property.

Michael McTernan:

I understand.

John Braig:

The hearing is still open?

Tom Terwall:

I closed the hearing.

John Braig:

No, you didn't, you let Jean.

Jean Werbie-Harris:

The hearing is closed.

John Braig:

Okay, comment. This has been trying in many ways. I'm terribly frustrated with what information the staff has presented. I see the position of this group is one of trying to resolve a problem, not being punitive, which means we really can't look at what's happened, we've got to look at where we're going from here. I'd like some assurance, more than what we've heard, I don't know if we can ask for it, but I'd be willing to go for a continuance, but would it be possible to ask for a bond that if when this has not reached the kind of conclusion we want we can collect some money and pay to clean up the job ourselves?

Tom Terwall:

I think you just shut him down.

John Braig:

Well, but then we still have a site with a big expense hanging over it. If we ask for a bond we could get some money to cover the cost of remediation.

Michael Serpe:

I don't think he's paid for any of the \$84,000.

John Braig:

He hasn't paid anything yet. We're hurting like mad. We're going into a bigger hole.

Wayne Koessl:

What size bond would you want?

—:

A couple million.

Michael McTernan:

Your Honor, just so you know, in the consent decree we will stipulate the dollars if we're not performing. We will work that into the agreement. We'll work something to satisfy the Village concerns. We know that is a concern so we will work that in.

Tom Terwall:

If we haven't done so I'm going to close the public hearing. I thought I had done that before.

Wayne Koessl:

The second time.

Tom Terwall:

It's close now. Go ahead, Jim.

Jim Bandura:

With that I would make a recommendation as so stated by Ms. Werbie and staff with the attorneys working together to get something in place quickly. I would recommend to hold off on this for another meeting.

John Braig:

Continue the meeting. What date did you suggest, Jean, for continuing the meeting?

Jean Werbie-Harris:

Monday, September 17th at 1:00.

Michael Serpe:

I'll second Jim's motion but I won't be here for that, I'll be in Atlanta.

Tom Terwall:

There's a motion and a second to continue this hearing until September 17th at 1 p.m. to reconvene.

Tim Geraghty:

Point of clarification, Mr. Chairman, I think just the hearing has been closed, it would just be the meeting that would be continued?

Tom Terwall:

Right, that's correct. All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed?

Wayne Koessl:

Aye, I'm opposed?

Tom Terwall:

Let the record show one opposed.

5. ADJOURN.

Tom Terwall:

A motion to adjourn is in order.

John Braig:

So moved.

Larry Zarletti:

Second.