

0001

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 ---o0o---

4

5 JEAN RATTO LARKIN, et al.,)

6 Plaintiffs,)

7 vs.) NO. 691609-9

8 DESERT PETROLEUM, INC., a,)

9 California corporation, et al.,)

10 Defendants.)

11

12

13

14 DEPOSITION OF LAWRENCE SETO

15 TUESDAY, SEPTEMBER 8, 1992

16

17

18

19

20

21

22

23

24

25

NOON & PRATT BAY AREA

0002

1

2

3

4

5

6

7

8

9

10 Deposition of LAWRENCE SETO, taken on behalf
11 of Defendants, at 1221 Broadway, 21st Floor,
12 Oakland, California, commencing at 12:50 p.m.,
13 Tuesday, September 8, 1992, before Leland Batara,
14 C.S.R. 3759, pursuant to Notice.

15

16

17

18

19

20

21

22

23

24

25

NOON & PRATT BAY AREA

0003

1 APPEARANCES OF COUNSEL:

2

3 FOR PLAINTIFFS:

4

5 FITZGERALD, ABBOTT & BEARDSLEY

6 BY: RICHARD T. WHITE, ESQ.

7 ROBERT F. CAMPBELL, ESQ.

8 1221 Broadway

9 Oakland, California 94612

10

11

12 FOR DEFENDANT PHILLIPS PETROLEUM:

13

14 PAUL, HASTINGS, JANOFSKY & WALKER

15 BY: NORMAN A. DUPONT, ESQ.

16 555 South Flower Street, 22nd Floor

17 Los Angeles, California 90071

18

19 FOR DEFENDANT TOSCO CORP.:

20

21 WASHBURN, BRISCOE & McCARTHY

22 BY: CATHERINE E. CUTLER, ESQ.

23 55 Francisco Street, Sixth Floor

24 San Francisco, California 94133

25

NOON & PRATT BAY AREA

0004

1 APPEARANCES OF COUNSEL (CONTINUED):

2

3 FOR DEFENDANT TEXACO REFINING AND MARKETING, INC.:

4

5 McCUTCHEN, DOYLE, BROWN & ENERSEN

6 BY: ROBERT MORGAN GILHULY, ESQ.

7 1331 North California Boulevard

8 ~~Post Office Box V~~

9 Walnut Creek, California 94596

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NOON & PRATT BAY AREA

0005

1

I N D E X

2

3 TUESDAY, SEPTEMBER 8, 1992

4

5 WITNESS

EXAMINATION

6

7 LAWRENCE SETO

8

9

(BY MR. DUPONT)

10

10

(BY MS. CUTLER)

96

11

(BY MR. GILHULY)

122

12

(BY MR. DUPONT)

125

13

(BY MS. CUTLER)

130

14

15

16

17

18

19

20

21

22

23

24

25

NOON & PRATT BAY AREA

0006

1

DEPOSITION EXHIBITS

2

LAWRENCE SETO

3

NUMBER

DESCRIPTION

IDENTIFIED

4

1

Deposition subpoena

11

5

6

2

Industrial Inspection Form

23

7

8

3

Underground Tank Closure 26

9

Modification Plans Larkin/Haz

10

Mat 02/24/92 050 to 062

11

12

4

Photocopy of business cards

33

13

Larkin/Haz Mat 02/24/92 026

14

15

5

Trace Analysis Laboratory, Inc.

38

16

Larkin/Haz Mat 02/24/92 044

17

through 049

18

19

6

Letter to Mrs. Jean Larkin

42

20

Larkin/Haz Mat 02/24/92

21

038 and 037

22

23

7

LRA Environmental

44

24

Larkin/Haz Mat 02/24/92 072

25

through 126

NOON & PRATT BAY AREA

0007

1

DEPOSITION EXHIBITS

2

LAWRENCE SETO

3

NUMBER

DESCRIPTION

IDENTIFIED

4

5

8

Letter to Mrs. Jean Larkin

48

6

Larkin/Haz Mat 02/24/92 036

7

8

9

Letter to Mrs. Jean Larkin

50

9

Larkin/Haz Mat 02/24/92 032

10

11

10

Fax Transmittal Larkin/Haz

53

12

Mat 02/24/92 008 through 019

13

14

11

Handwritten notes

55

15

Larkin/Haz Mat 02/24/92 071

16

17

12

Handwritten notes

58

18

Larkin/Haz Mat 02/24/92 005

19

20

13

Handwritten notes

60

21

Larkin/Haz Mat 02/24/92

22

027 and 028

23

24

14

Fax Transmittal Larkin/Haz

69

25

Mat 02/24/92 025, 023, 024

NOON & PRATT BAY AREA

0008

1

DEPOSITION EXHIBITS

2

LAWRENCE SETO

3

NUMBER

DESCRIPTION

IDENTIFIED

4

5

15

Letter to Mrs. Jean Larkin

70

6

Larkin/Haz Mat 02/24/92 020

7

8 16

Letter to Mrs. Jean Larkin 74

9

Larkin/Haz Mat 02/24/92 022

10

11

17

Message slip Larkin/Haz

76

12

Mat 02/24/92 021

13

14

18

Letter to Alameda County

78

15

Health Care Services

16

Larkin/Haz Mat 02/24/92

17

006, 063 to 070

18

19

19

Letter to Mrs. Jean Larkin

83

20

Larkin/Haz Mat 02/24/92 004

21

22

20

Letter to Mr. Larry Seto

84

23

Larkin/Haz Mat 02/24/92 003

24

25

21

Message slip dated 8/14

93

NOON & PRATT BAY AREA

0009

1

DEPOSITION EXHIBITS

2

LAWRENCE SETO

3

NUMBER

DESCRIPTION

IDENTIFIED

4

5

22

Summary Report from

96

6

Exceltech, May, 1990

7

8

23

Letter from ITT Hartford 109

9

dated 1-29-92

10

11

24

Letter dated 4-24-86 to

115

12

Ms. Jean Larkin

13

14

25

Contact Log dated 8-18-92

122

15

16

26

Handwritten notes

126

17

18

19

20

21

22

23

24

25

NOON & PRATT BAY AREA

0011

1 A. Environmental Health.

2 Q. Environmental Health.

3 You are --

4 A. Hazardous Material, either one.

5 Q. If we use Environmental Health --

6 A. Uh-huh.

7 Q. Your offices are still at 80 Swan

8 Way, Room 200 in Oakland?

9 A. Yes.

10 Q. And you are here in response to a
11 subpoena that my office has served upon the County
12 of Alameda Environmental Health unit; is that
13 correct?

14 A. Yes.

15 MR. DUPONT: Mr. Seto, I'd like to have
16 marked as Exhibit 1, the deposition subpoena
17 addressed to you, and this is a copy of the
18 original.

19 (The document referred to was
20 marked as Defendants' Exhibit 1 for
21 identification, and is annexed hereto.)

22 BY MR. DUPONT:

23 Q. Mr. Seto, let me indicate to you that
24 Exhibit 1 is a copy of the subpoena that I believe
25 was served on your office, and requested certain

NOON & PRATT BAY AREA

0012

1 documents.

2 You brought your file here with you
3 today?

4 A. Yes.

5 Q. And that file you've handed over to
6 Catherine Cutler?

7 A. Yes.

8 Q. And that's the entirety of the file
9 that you have at the Environmental Health unit?

10 A. Yes.

11 Q. All right. We may go through some of
12 those documents later, as I explained to you
13 before we formally commenced this deposition.

14 My office has previously obtained
15 through the California Public Records Act certain
16 documents that I'd like to start questioning you
17 with, and then later on, if there are some
18 additional documents in your file, we may ask you
19 about those later on.

20 A. What I gave you was the -- the
21 documents from the file of Hazardous Material.
22 We also have an operations unit that might have
23 files for the restaurant at the site at one time;
24 most likely not, but the file that I have here is
25 what we have at Hazardous Material Division.

 NOON & PRATT BAY AREA

0013

1 Q. Now, you said there was an operations
2 unit that --

3 A. Well, operations deals with
4 restaurant inspections, that kind of thing.

5 Q. All right.

6 A. Swimming pools.

7 Q. I don't know that this property
8 recently was used for either those purposes, but
9 I don't know all of the uses of the property, but
10 thank you.

11 Mr. Seto, you had your deposition
12 taken before?

13 A. Yes.

14 Q. You are aware that the oath is a
15 solemn one, and has the same force and effect as
16 if you were in a court of law?

17 A. Yes.

18 Q. And let me, since you are familiar
19 with the procedures, just very briefly go through
20 a few of the rules for today's purposes.

21 First, you understand that it's
22 important that I get your best and most complete
23 information. If you don't understand one of my
24 questions, if I misuse a technical term, or phrase
25 something that doesn't make sense to you, will you

NOON. & PRATT BAY AREA

0014

1 please tell me?

2 A. Uh-huh.

3 Q. You understand that I do not want you
4 to guess today. If you'd have to just completely
5 speculate, please tell me "I'd have to guess," and
6 that will tell me that you can't really answer
7 that particular question.

8 "On the other hand, if you have an
9 estimate, you know, that it might be between 10 or
10 12 feet in width or length, I am entitled to your
11 reasonable estimate. And you can again tell me
12 that it is an estimate rather than a precise
13 number, but I am entitled to an estimate, if you
14 have one, of certain things.

15 You also understand that it's
16 important for the court reporter that you give a
17 verbal answer. A nod of the head, a shrug of
18 the shoulders, can be interpreted in different
19 fashions.

20 Could you give me your date of
21 birth.

22 A. May 15th, 1951.

23 Q. And is there any reason, physical or
24 mental, why you cannot give your full and complete
25 testimony here today?

NOON & PRATT BAY AREA

0015

1 A. No.

2 Q. Mr. Seto, do you have a college
3 degree?

4 A. Yes.

5 Q. And where did you get your degree?

6 A. Cal State Long Beach.

7 Q. And what did you get your degree in?

8 A. Chemistry and criminalistics.

9 Q. And criminalistics?

10 A. Yes.

11 Q. What is the field of criminalistics?

12 A. Crime lab; work in the crime lab.

13 Q. Was your field in chemistry in a
14 particular subject, field of chemistry?

15 A. No. Just general chemistry.

16 Q. Do you have any postgraduate degrees?

17 A. No.

18 Q. Have you taken any training or
19 courses or seminars in the environmental field?

20 A. Yes.

21 Q. Could you describe for me, briefly,
22 what types of courses or seminars you've taken in
23 the environmental field?

24 A. I've taken a number of courses
25 dealing with remediation of soil and ^{ground} wild water.

NOON & PRATT BAY AREA

0016

1 I've also taken courses on ~~plumbing~~
2 inspections, health and safety issues.

3 Q. And were these seminars or courses
4 that you took, courses that you took in
5 conjunction with your job at Alameda County
6 Hazardous Materials unit?

7 A. Yes.

8 Q. Briefly, prior to your work at
9 Alameda County Health Care Hazardous Materials --
10 I will try and refer to Hazardous Materials --
11 what line of work were you engaged in prior to
12 that time?

13 A. Prior to coming to Alameda County, or
14 prior to coming to Hazardous Materials?

15 Q. Prior to coming to Alameda County.

16 A. I was a production supervisor at an
17 ink ^{plant} ~~plant~~.

18 Q. At what plant?

19 A. At an ink plant, Cal-Ink Plant
20 Company in Berkeley.

21 Q. And what types of things did you do
22 as production supervisor?

23 A. I oversaw the daily operations,
24 production of printing ink and paints.

25 Q. Did you have occasion to be involved

NOON & PRATT BAY AREA

0017

1 in any environmental issues, such as air emissions
2 from printing --

3 A. Not really. There was an
4 environmental compliance officer at the plant.

5 Q. But you did not fill that position?

6 A. No.

7 Q. And how long did you work at Cal-Ink
8 Company, approximately; what years?

9 A. 1981 to 198 -- no, 1980 I think it
10 was; 1980 to 1982.

11 Q. I guess I should have asked this
12 earlier. When did you graduate from Cal State
13 Long Beach?

14 A. 1974.

15 Q. Between 1974 and 1980, what did you
16 do?

17 A. I worked at a -- as a protein
18 fractionator at Cutter Laboratories for about four
19 or five months.

20 And then I worked as a chemist at
21 Macaulay Foundry in Berkeley for approximately
22 four years.

23 And then I went to Houston Police
24 Department in the crime lab before going to
25 Cal-Ink.

NOON & PRATT BAY AREA

0018

1 Q. What does a protein fractionator do?

2 A. I worked with blood plasma; separated
3 out the proteins from the blood plasma, and used
4 that for making immunization.

5 Q. As a chemist from Macaulay Foundry --
6 could you spell the Macaulay for me?

7 A. M-A-C-A-U-L-A-Y.

8 Q. What did you do as a chemist for
9 Macaulay Foundry?

10 A. I was a quality control chemist, and
11 I analyzed metal castings for the percentage of
12 alloy.

13 Q. Did you have occasion at Macaulay
14 Foundry to be involved with any disposal of metals
15 or metal waste products?

16 A. No.

17 Q. Approximately, what years were you at
18 Macaulay Foundry?

19 A. Probably '75 to '78.

20 Q. And then you went to the Houston
21 Police Department?

22 A. Right. From '78 to '79.

23 Q. And what work did you do at the
24 Houston Police Department?

25 A. I worked in their crime lab,

NOON & PRATT BAY AREA

0019

1 primarily analyzing control substance.

2 Q. And then you came back to the Bay
3 Area and worked at Cal-Ink Company?

4 A. Uh-huh.

5 Q. In 1982, did you have occasion to go
6 to work for Alameda County?

7 A. Right.

8 Q. What was your first job at Alameda
9 County?

10 A. Chemist. I worked -- started out as
11 a chemist.

12 Q. And what did you do as a chemist for
13 Alameda County?

14 A. I analyzed alcoholic beverages for
15 alcohol contents, and meat samples for fat
16 content, and also duration.

17 Q. Was that under a particular
18 department or division of the County?

19 A. Right. Department of Environmental
20 Health.

21 Q. How long did you remain as a chemist
22 for Alameda County?

23 A. I was there for four years; until
24 about 1986.

25 Q. What did you do then?

NOON & PRATT BAY AREA

0020

1 A. Then I went over to Hazardous
2 Materials.

3 Q. What was your title when you started
4 with Hazardous Materials?

5 A. Hazardous Material specialist.

6 Q. At some point in time, did you become
7 a senior hazardous materials specialist?

8 A. Right. "About four years ago, 1988."

9 Q. Besides the change in title, and
10 perhaps some money associated with the change of
11 title, did your job duties change from when you
12 were hazardous materials specialist to a senior
13 hazardous materials specialist?

14 A. Yes.

15 Q. Could you tell me, first of all, what
16 your job duties were as a hazardous materials
17 specialist?

18 A. To perform inspections at facilities
19 that store or dispose of hazardous materials and
20 hazardous waste.

21 Q. What do your duties consist of as a
22 senior hazardous materials specialist?

23 A. Besides the duties of hazardous,
24 materials specialist, I have two people that
25 report to me on a day-to-day basis, you know,

 NOON & PRATT BAY AREA

0021

1 daily activities.

2 Q. In addition to performing inspections
3 of facilities that store or --

4 A. Dispose.

5 Q. -- dispose of hazardous materials, do
6 you also have any involvement in the supervision
7 of remediation of sites that have been determined
8 to be contaminated?

9 A. Right. Right. I don't know what
10 you mean by "supervision," but I have oversight.
11 You know, besides doing inspections, we have
12 oversights of sites that are on an ongoing
13 remediation or investigation who are also involved
14 in underground tank inspection.

15 Q. And when you say you have oversight
16 of sites that are ongoing remediation, what sorts
17 of things do you do as oversight?

18 A. As far as oversights, I observe the
19 underground tank removal. We are present at the
20 site when one of the tanks is removed from the
21 ^{ground} wells, ~~the position of the tank,~~

22 We also, after we come back to the
23 office, we record what we saw. We wait for lab
24 analysis to determine whether the site was
25 impacted or not. We work with the property owner

NOON & PRATT BAY AREA

0022

1 and consultants, his or her consultants, and other
2 regulatory agencies so that the site will be
3 meeting the environmental regulations.

4 Q. Now, in 1986, when you started as a
5 hazardous materials specialist, did you ever go
6 out and observe an underground storage tank
7 removal?

8 A. Not in 1986. At that time, the
9 program was just in its infancy stage, and all
10 we did, primarily, was perform general inspections
11 of the facility that generate the hazardous waste,
12 and emergency response.

13 Q. Do you know if in 1986, anyone from
14 the fire department of the City of Oakland would
15 go out and witness an underground tank removal?

16 A. I don't know.

17 Q. Is there a branch of the fire
18 department in the City of Oakland that deals with
19 supervising underground storage tanks?

20 A. There is fire prevention that -- that
21 goes out to the site when there is an underground
22 tank removal.

23 Our department didn't get involved
24 with underground tank removal until approximately
25 1987, I believe; 1987, 1988. That's when we

NOON & PRATT BAY AREA

1 actually started going out to the site.

2 I can't speak for the fire
3 department. So I don't know if they were doing
4 it or not prior to us getting involved with the
5 program.

6 MR. DUPONT: Let me have marked as Exhibit
7 2, a multipage document of the Alameda Fire
8 Department, Industrial Inspection Form. I have
9 this form as a one, two, three four, five --
10 six-page form.

11 Let me represent to you, Mr. Seto,
12 that we got this from the Alameda Fire
13 Department --, "we" being my law firm -- and we've
14 marked it at the bottom with a little label,
15 "Larkin/Alameda Fire Department," and given it a
16 number, starting -- this particular document
17 happens to be 29 in the series of documents that
18 we got; and, for some strange reason, the pages
19 appear to be not contiguous. So there is 29, 30,
20 and then, in our Bates numbering series, 35, 33,
21 32, 31 and, for some reason, 89.

22 (The documents referred to were
23 marked as Defendants' Exhibit 2 for
24 identification and are annexed hereto.)

25 MR. DUPONT: For the record, this Alameda

NOON & PRATT BAY AREA

0024

1 County Fire Department form is entitled an
2 "Industrial Inspection Form;" references 1628
3 Webster Street, and lists, at least on the top of
4 the form, an entity known as "Foreign Auto
5 Specialists."

6 Q. Mr. Seto, my first question is: Have
7 you ever seen any forms like this?

8 A. No.

9 Q. Do you know if there's an Alameda
10 Fire Department as opposed to a City of Oakland
11 Fire Department?

12 A. Yeah. City of Oakland has their own
13 fire department.

14 Q. Were you aware of some entity on some
15 portion of the property at 1628 Webster Street
16 known as Foreign Auto Specialists?

17 A. No.

18 Q. Were you ever aware of an entity at
19 1628 1/2 Webster Street known as Johnny's Body
20 Shop?

21 A. No.

22 Q. Are you aware of where 1628 1/2
23 Webster Street is, compared to 1628 Webster
24 Street?

25 A. No.

NOON & PRATT BAY AREA

0025

1 Q. Now, we'll get to it in a couple of
2 minutes, Mr. Seto, but your file reflects that in
3 1989, there was a removal of an underground tank,
4 or an underground waste oil tank, I believe.

5 Do you know if that underground tank
6 was removed at 1628 Webster or 1628 1/2 Webster?

7 A. The address that I have of my file is
8 1628.

9 Q. But did you actually go out there and
10 see where the waste oil tank was removed from?

11 A. I was there at the site when they
12 removed it, when there was a -- when the closure
13 plan was submitted to our office. It identified
14 the address as 1628.

15 So when I went out there, I just
16 assumed it was 1628. I don't know if it was
17 1628 or 1628 1/2, but the closure plan came to
18 our office identifying 1628 Webster Street.

19 Q. Have you ever seen any fire
20 department forms entitled "Service Station
21 Inspection Forms" for 1628 Webster Street?

22 A. No.

23 MR. DUPONT: I think you mentioned a closure
24 plan.

25 Let me have introduced as Exhibit 3,
NOON & PRATT BAY AREA

1 a multipage document on the stationery of Alameda
2 County Environmental Health, Hazardous Materials
3 Division, a document entitled "Underground Tank
4 Closure/Modification Plans," bearing date of --
5 well, a signature date by Mrs. Jean R. Larkin of
6 March 28, 1989; also bearing an accepted stamp at
7 the top with the apparent initials "L.S.," March
8 31, 1989.

9 (The documents referred to were
10 marked as Defendants' Exhibit 3 for
11 identification and are annexed hereto.)

12 BY MR. DUPONT:

13 Q. And again, Mr. Seto, let me indicate
14 that this is a document that our office, my law
15 firm's office, obtained from Alameda County prior
16 to today's deposition.

17 My first question is: Do you
18 recognize what we marked as Exhibit 3?

19 A. Yes.

20 Q. What is Exhibit 3?

21 A. (Witness nods head.)

22 Q. What?

23 A. Oh, okay.

24 Q. "Yes"?

25 A. It's an underground tank closure/

NOON & PRATT BAY AREA

0027

1 modification plan.

2 Q. Was that the plan you were referring
3 to a few minutes ago as the plan that identified
4 the location of the waste oil tank at 1628
5 Webster?

6 A. Yes.

7 Q. You got that plan on or about March
8 of 1989?

9 A. Yes.

10 Q. And the stamp with the approval
11 signature, or acceptance signature at the top,
12 that is your initials "L.S."?

13 A. Yes.

14 Q. And you read the plan?

15 A. Yes.

16 Q. You stamped it "accepted"?

17 A. Yes.

18 Q. Did you do anything else at that
19 particular time with this closure plan for the
20 waste oil tank?

21 A. No. I added some additional
22 requirements that goes into the plan, Item No.
23 13, and I initialed it.

24 Q. Any other items that you added?

25 A. I also -- looks like my writing, but

NOON & PRATT BAY AREA

0028

1 I didn't initial it. It looks like No. 17.

2 Q. Can you tell me what modification is
3 in that exhibit?

4 A. Well, it looks like it was left
5 blank. It was left blank.

6 And No. 17 asks to identify what
7 contaminants are being sought. So I wrote in --
8 wrote in for the "==" for the property owner and
9 for the contractor what needs to be identified.

10 Q. And that was?

11 A. Total oil and grease.

12 Q. "TOG."

13 A. Volatile organic compound.

14 Q. "VOC."

15 A. Total petroleum hydrocarbon.

16 Q. Which you abbreviated "TPH."

17 A. "TPH," right.

18 And after I made those additions,
19 then I accepted the plan.

20 Q. Now, you said you also added
21 something in Item No. 13.

22 Is that your handwriting for the
23 "Tank or Area"?

24 A. Yes.

25 Q. And the areas you initialed were

NOON & PRATT BAY AREA

1 under "material sampled" and "location and depth"?

2 A. Yes.

3 Q. You did not supply the information in
4 the first two columns, the tank capacity or the
5 historic contents?

6 A. No.

7 Q. Do you know when the waste oil tank
8 was, in fact, removed from -- and I am going to
9 refer to this now as either "the 1628 Webster
10 Street property," or I may simply refer to it as
11 "the property."

12 Will you understand that usage?

13 A. Yes.

14 Q. You actually visited the property
15 when the tank was removed?

16 A. Yes.

17 Q. And do you know, approximately, what
18 date the tank was removed from the property?

19 A. April the 4th, 1989.

20 MS. CUTLER: Counsel, I just wanted to have
21 noted for the record that Mr. Seto informed me,
22 just before the deposition began, that he looked
23 through the files that he brought with him today
24 prior to the deposition, and he has made some
25 notes on his review of that file, and apparently

0030

1 he is referring to those notes to answer some of
2 your questions now.

3 MR. DUPONT: Right.

4 Q. And you have a two-page yellow sheet
5 of paper?

6 A. Right.

7 Q. Which are your notes?

8 A. Right.

9 Q. Based on your review of the file?

10 A. Uh-huh.

11 Q. When you went out to the property
12 that you understood to be 1628 Webster Street,
13 what did you observe?

14 A. I observed the tank being removed
15 from the -- out of the ground. I don't have the
16 notes right here that identifies the condition of
17 the tank, or I can't tell you what the condition
18 of the tank was.

19 Q. Do you know if those notes still
20 exist somewhere?

21 A. I do not know.

22 Q. But it would have been your practice,
23 typically, to have made notes at the time of the
24 tank removal?

25 A. Now, it is. Back then, I can't

NOON & PRATT BAY AREA

0031

1 remember. That was when our program was in its
2 infancy stage, and I can't remember if I took
3 notes or not at that time.

4 Q. Let me refer you back to Exhibit 3;
5 and, if I can, there is a diagram on what we have
6 numbered as -- our Bates number is number 59. It
7 appears to be a diagram there.

8 ~~Does that diagram look at all~~
9 familiar to what you saw on April 4, 1989, when
10 you went out to visit and see the tank removal?

11 A. As far as the location of the waste
12 oil tank in relation to the shop building, it
13 appears to be correct.

14 Q. Now, you said "the shop building."
15 What sort of a building --

16 A. The mechanic's shop building.

17 Q. Did the building appear to you to
18 look like a mechanic's shop?

19 A. I can't -- I can't remember. I just
20 remember it was a building.

21 Q. You can't say if it was a service
22 station or a mechanic's auto repair shop?

23 A. I can't remember. I just remember it
24 was a building.

25 Q. There was only one tank that was

NOON & PRATT BAY AREA

0032

1 removed when you saw it?

2 A. When I was there, there was only one
3 tank, when I saw it.

4 Q. Do you remember the capacity of the
5 tank?

6 A. Well, from the document's contents,
7 it was 550 gallons.

8 Q. Aside from the document, do you have
9 an independent recollection as to whether it
10 was --

11 A. No, no. I have to go with the
12 document.

13 Q. All right. You have seen waste oil
14 tanks in a 280-gallon size; have you, sir?

15 A. Yes, most likely, I've seen a
16 280-gallon tank.

17 Q. And based on what you saw of a
18 280-gallon, do you have any recollection as to
19 whether the tank that you saw pulled in 1989 from
20 this property was larger, same size, smaller?

21 A. I can't remember.

22 Q. All right,

23 A. I've done so many tanks, it's just
24 impossible.

25 Q. Do you know if there was anyone else,

NOON & PRATT BAY AREA

0033

1 on April 4 of 1989, who was taking notes about the
2 tank pulled?

3 A. There were other people at the site.
4 I believe in the file I have their card, who was
5 available.

6 MR. DUPONT: Let me have marked as Exhibit
7 4, I believe, a one-page document that appears to
8 be a photostat of various business cards.

9 THE WITNESS: Oh, okay.

10 MR. DUPONT: Some of which are marked
11 "4-4-89," and which we have marked in our Bates
12 production as Larkin/Haz Mat, for Hazardous
13 Materials, page 26.

14 (The document referred to was
15 marked as Defendants' Exhibit 4 for
16 identification and is annexed hereto.)

17 BY MR. DUPONT:

18 Q. Do you recognize Exhibit 4?

19 A. Yes, the cards.

20 Q. And were all those cards, the cards
21 of people who were present at the site on April 4,
22 1989?

23 A. Of the six cards, there are six
24 names, four of them have the date 4-4-89; two
25 of them doesn't.

NOON & PRATT BAY AREA

1 The two that doesn't have the date on
2 them, I do not know when I got them, those cards.

3 The cards dated 4-4-89, most likely I
4 got them when I was there at the site from these
5 individuals.

6 Q. And just for the record, the cards
7 that bear the initials "4-4-89" are a Martin
8 Rasmussen from Erickson, Inc.; a Robert A.
9 Nicholson from LRA Environmental; a Marvin Helms
10 H-E-L-M-S, who is with Alameda Fire Department,
11 Bureau of Fire Prevention, and then a Michael
12 Stover with Environmental Labs, Inc.

13 Is that correct?

14 A. Yeah.

15 Q. And to the best of your recollection,
16 were those, at least those four people, there at
17 the site for the pulling of the waste oil tank
18 when you were there?

19 A. I remember Robert Nicholson being
20 there; and, most likely, the other three gentlemen
21 being there. There were about four of us there,
22 four or five individuals, seeing the tank pulled.
23 But I remember Nicholson being there for sure.

24 The other three individuals, most
25 likely they were there, because I know there was

NOON & PRATT BAY AREA

1 about four, five or six of us there.

2 Q. Now, on Mr. Nicholson's card, there
3 are some handwriting in addition to the date of
4 4-4-89.

5 Is that your handwriting, Mr. Seto?

6 A. Yes.

7 Q. Could you read for me what it says?

8 A. "Consultant for buyer."

9 Q. And do you recall who the buyer was?

10 A. No.

11 Q. Did Mr. Nicholson give you that
12 information?

13 A. If he did, I don't remember.

14 Q. Do you know, offhand, if anyone else
15 gave you that information?

16 A. No.

17 Q. Do you know how far down they had to
18 dig before they found the waste oil tank that was
19 removed on April 4, 1989?

20 A. No. I don't think -- I think just
21 the standard depth. I don't think it was anything
22 extraordinary.

23 Q. Realizing that you've seen -- is it
24 correct that you've seen hundreds of tank pulls
25 during your occupation?

NOON & PRATT BAY AREA

1 A. Right. Probably -- probably a
2 hundred, couple hundred.

3 Q. Realizing that you've seen at least
4 a hundred, do you remember anything out of the
5 ordinary about the tank pull at the Webster Street
6 property on April 4, 1989?

7 A. No.

8 Q. "Did you have any discussions with"
9 anyone about whether there were gasoline storage
10 tanks on this same piece of property on that day?

11 A. I can't recall; but, you know, if it
12 appears that the site was a former gas station,
13 then most likely I probably would have thought of
14 that question, but I can't -- I can't remember
15 even what the building looked like.

16 But, normally, I would bring that up
17 if I was to go to a tank pull, and it appears to
18 be a former gas station, and we are only pulling
19 out the waste oil tank, then I would ask: Was
20 this a former gas station? If it was, you know:
21 What's the status of the former gasoline tank?
22 But, normally, I would ask that question.

23 So, like I said earlier, I can't even
24 remember what the building looked like.

25 Q. Let me refer you back to Exhibit 3,

 NOON & PRATT BAY AREA

0037

1 and Item 13, and under the category "Historic
2 Contents," there is a description "waste oil."

3 Do you recall now asking anyone, at
4 the time of the tank pull, whether this tank had
5 been used for anything other than waste oil prior
6 to that five -- immediate five-year-past time
7 period?

8 A. No, I don't remember.

9 Q. Is information about historic use
10 something that you would typically accept what's
11 written on the form, unless you had some other
12 reason to suspect otherwise?

13 A. Yes. Yes, that's true.

14 Q. Prior to reviewing the waste oil tank
15 closure plan that's Exhibit 3 in March of 1989, do
16 you ever recall being out at the Webster Street
17 property, either 1628 or 1628 1/2 Webster, for any
18 reason?

19 A. No, I don't recall being there.

20 Q. I haven't seen anything in the
21 documents that we previously obtained from your
22 office that would indicate that some other person
23 from the Hazardous Materials office of Alameda
24 County was there prior to March of 1989.

25 Did your review of the file show any

NOON & PRATT BAY AREA

0038

1 dates earlier than March, '89?

2 A. No, not in our Hazardous Materials
3 office; no.

4 Q. What's the next thing you recall
5 concerning this property?

6 A. You're talking about the underground
7 tank removal?

8 Q. Yes.

9 A. I got the soil results, soil samples
10 results. When the underground tank was removed,
11 there were, I believe, two soil samples that were
12 taken underneath the tank during the removal.

13 MR. DUPONT: Let me have marked as Exhibit
14 5, a set of sample results on the stationery of
15 Trace Analysis Laboratory, Inc. -- TAL is their
16 acronym -- bearing a date of April 24, 1989, and
17 bearing a, I believe, received stamp from Alameda
18 County Hazardous Materials of 5-5-89.

19 And my particular copy of this
20 document also has some handwriting at the bottom
21 of the first page; and I have this as a six-page
22 document, with Bates numbers from our office of
23 Larkin/Hazardous Material 44 through 49.

24 (The documents referred to were
25 marked as Defendants' Exhibit 5 for

NOON & PRATT BAY AREA

1 identification and are annexed hereto.)

2 BY MR. DUPONT:

3 Q. Mr. Seto, do you recognize Exhibit 5?

4 A. Yes.

5 Q. Is the received stamp at the bottom
6 corner of Exhibit 5 that of Alameda County
7 Hazardous Materials?

8 A. It appears to be.

9 Q. And the handwriting on Exhibit 5, is
10 that your handwriting?

11 A. Yeah, it looks like it.

12 Q. And can you read for me what that
13 handwriting says?

14 A. "Request a plan of correction."

15 Q. And there is a date by the
16 handwriting?

17 A. Right.

18 Q. And can you read that date?

19 A. "5-25."

20 Q. Do you know what the reference to
21 "request a plan of correction" refers to; and what
22 you meant when you put that handwriting on this
23 sample results?

24 A. After I looked at the soils results,
25 it appeared that the soil was impacted with diesel

0040

1 oil grease, and smaller amounts of similar
2 constituents of gasoline.

3 Therefore, I wanted to remind myself
4 to contact the property owner to ask for a plan of
5 corrections to remediate the situation at the
6 site.

7 Q. Mr. Seto, did you come to any
8 conclusions, as of May of 1989, as to the source
9 of the soil contamination that you saw reflected
10 in the results that are marked as Exhibit 5?

11 A. No.

12 Q. Did you come to any conclusion about
13 the length of time from which these materials had
14 started to spill?

15 A. No.

16 Q. Is the reason you came to no
17 conclusion because you, as a regulator, are not
18 concerned with sources per se; you are more
19 concerned with remediation?

20 A. No. As a regulator, we are concerned
21 with the source and the remediation. I didn't
22 come to any conclusion, because there wasn't
23 enough data available to draw conclusions.

24 Q. Some point after May of 1989, did
25 you come to a conclusion about the source of the

NOON & PRATT BAY AREA

0041

1 contamination at the 1628 Webster property?

2 A. No.

3 Q. Why is that?

4 A. There haven't been enough data
5 generated that I've seen that's been available
6 to our office where we could draw that kind of
7 a conclusion, or any conclusion.

8 Q. And, similarly, with the question
9 of for how long there has been some release of
10 diesel, oil and grease and lesser amounts of
11 gasoline, have you at any day, up till today, come
12 to a conclusion about how long ago that release
13 must have started?

14 A. No.

15 Q. Is that, again, because there isn't
16 sufficient data that you've seen to make such a
17 determination?

18 A. Right.

19 MS. CUTLER: I am sorry, was that "yes"? I
20 didn't hear.

21 THE WITNESS: Yes.

22 MS. CUTLER: "Yes"?

23 THE WITNESS: There isn't sufficient data.

24 MR. DUPONT: Let me have marked as Exhibit
25 6, a two-page document dated June 30, 1989,

NOON & PRATT BAY AREA

1 addressed to Mrs. Jean Larkin, Pacific Properties;
2 Re: 1628 Webster Street, bearing the typed
3 signature of Rafat A. Shahid, Chief, Hazardous
4 Materials Program, bearing the typed notation
5 below that "RAS:LS; mnc."

6 The second page of which has a
7 photostat of a certified mail receipt for this
8 particular letter.

9 These are Bates numbered by my office
10 Larkin/Haz Mat 38 and 37.

11 (The documents referred to were
12 marked as Defendants' Exhibit 6 for
13 identification and are annexed hereto.)

14 BY MR. DUPONT:

15 Q. Do you recognize that letter, Mr.
16 Seto?

17 A. Yes.

18 Q. Do the initials down at the bottom,
19 "RAS:LS," indicate that you were the author of
20 this letter?

21 A. Yes.

22 Q. "LS" being your initials?

23 A. Yes.

24 Q. And Mr. Shahid signed this letter on
25 behalf of the Hazardous Materials Program?

NOON & PRATT BAY AREA

1 A. Yes.

2 Q. Is Mr. Shahid your direct boss?

3 A. Presently?

4 Q. At that time.

5 A. Yes.

6 Q. Who is your direct boss at this time?

7 A. Airu, A-I-R-U, Levi.

8 Q. L-E-V-I?

9 A. L-E-V-I, right.

10 Q. What was your purpose in preparing
11 this letter to Mrs. Jean Larkin?

12 A. To ask her to submit to us a plan of
13 corrections that would identify how they were
14 going about doing an investigation to determine
15 the extent of contamination at the site, because
16 because of soil samples results.

17 Q. So you were, in essence, asking for a
18 plan that would describe further investigation to
19 the undertaking by someone?

20 A. Right.

21 Q. And do you recall getting such a
22 plan?

23 A. Yes.

24 MR. DUPONT: And let me have marked as
25 Exhibit 7, a multipage document on the stationery

1 of LRA Environmental; a second page of which is a
2 letter dated July 24, 1989 to a Mr. Jeff Larkin;
3 Subject: Plan of correction, and it appears to
4 have various enclosures.

5 This has been Bates numbered by my
6 office as Larkin/Hazardous Materials pages 72
7 through 125 or 126; 126 looks like.

8 (The documents referred to were
9 marked as Defendants' Exhibit 7 for
10 identification and are annexed hereto.)

11 BY MR. DUPONT:

12 Q. Mr. Seto, have you had a chance to
13 look at what we've marked as Exhibit 7?

14 A. Yes. Briefly.

15 Q. And do you recognize it?

16 A. Yes.

17 Q. Is that the plan of correction that
18 was submitted to your office?

19 A. I believe so.

20 Q. There is some handwriting at the top
21 of that page, "7-27-89," and initials.

22 Do you recognize that?

23 A. I'm looking for my copy.

24 Q. Do you have a slightly different
25 version of the plan? Let me go back past the

NOON & PRATT BAY AREA

0045

1 cover letter.

2 A. I think this cover letter was sent
3 to me from -- from the plan. Maybe this cover
4 letter's supposed to go with it.

5 Do you have my file?

6 I've seen this letter. I didn't
7 know -- okay. It came in together. What had
8 happened, as I told Catherine, earlier, when
9 other people are looking through the file, and
10 some of the things weren't put back in order.

11 I don't know what signature -- whose
12 signature that is.

13 Q. Who, the handwriting at the top?

14 A. The "7-27-89."

15 Q. All right. Do you have a copy of the
16 letter of July 24, 1989, minus the signature on
17 the first page?

18 A. Yes.

19 Q. And that is a letter that is in your
20 files?

21 A. Yes.

22 Q. Then, do you also have separately a
23 document entitled "Preliminary Plan of Correction
24 Waste Oil Tank"?

25 A. Yes.

NOON & PRATT BAY AREA

1 Q. Is that the plan of correction that
2 you reviewed in or about summer of 1989?

3 A. Yes.

4 Q. Now, you said your copy of the
5 report -- does your copy of the report have
6 handwritten notes, numbers, pages of the plan of
7 correction?

8 A. No, there is no handwritten notes. I
9 have a page that -- take that back. There is one
10 page of handwritten note.

11 Q. All right. Is that the only page
12 upon which you have handwritten notes in the plan
13 of correction?

14 A. Yes.

15 Q. And could you identify -- it appears
16 to relate to Step 2 of the plan of correction.

17 MS. CUTLER: What page are we on?

18 MR. DUPONT: It's Bates No. 79 in my Bates
19 numbered copy.

20 THE WITNESS: It's page 2.

21 BY MR. DUPONT:

22 Q. Or Step 2?

23 A. Or Step 2; that's right.

24 I'm just trying to see if these
25 exactly have the same notes.

0047

1 Q. You have at least two copies?

2 A. I have two copies. Probably what
3 happened is, I looked at this one and made my
4 notes in this one, and I didn't make notes in this
5 one.

6 Q. All right.

7 A. I am just checking to be sure. They
8 didn't number the page, so it's hard to --

9 Q. That's one of the reasons we put our
10 law firm page numbers on it.

11 A. Yeah. See, on this copy, there is
12 no -- this one here doesn't have a note.

13 Q. All right. On the copy that does
14 have notes, are those your notes?

15 A. That's my handwriting, yes.

16 Q. And it is next to the top paragraph
17 that is entitled "Step 2" on this document?

18 A. Right.

19 Q. Which, for the reference, is Bates
20 reference 79 under the Bates page series of
21 documents.

22 What does the handwritten note say?

23 A. I was downgrading direction.

24 Q. Besides writing that handwritten
25 note, do you recall any discussions with Robert

NOON & PRATT BAY AREA

1 Nicholson, or anyone else at LRA Environmental,
2 concerning how they determined the downgrade of
3 direction at this property?

4 A. No.

5 MR. DUPONT: Let me have marked as Exhibit
6 8, a one-page letter on the stationery of Alameda
7 County Hazardous Materials Program dated August
8 22, 1989, addressed to Mrs. Jean Larkin, bearing
9 the typed signature of Rafat A. Shahid, S-H-A-H-I-D.
10 This is Bates number Larkin/Haz Mat 36.

11 (The document referred to was
12 marked as Defendants' Exhibit 8 for
13 identification and is annexed hereto.)

14 BY MR. DUPONT:

15 Q. Mr. Seto, do you recognize Exhibit 8?

16 A. Yes.

17 Q. Again, that has the typed initials
18 "LS" at the bottom.

19 A. Uh-huh.

20 Q. Did you prepare this letter?

21 A. Yes.

22 Q. What was your purpose in preparing
23 this particular letter?

24 A. Accepted the work developed by LRA,
25 with the stipulation that the monitoring well be

0049

1 installed in the verified downgradient direction.

2 Q. And by "verified," you meant you
3 wanted some further indication in any subsequent
4 submittal of establishing that it was indeed the
5 downgradient direction?

6 A. Yes.

7 Q. Do you recall what happened next in
8 connection with any work at the Webster Street
9 property?

10 A. I think they went ahead and started
11 doing their investigation and excavation, I
12 believe.

13 Q. You are looking at some notes.
14 Do you have a next entry date after
15 August 22, 1989?

16 A. I just have another step was taken
17 on February 28, 1990.

18 Q. Before we get to that, Mr. Seto,
19 are you familiar with a company known as ENSCO,
20 E-N-S-C-O? Have you ever heard of that --

21 A. Yes.

22 Q. -- consultant before?

23 A. Yes.

24 Q. I believe it is now correct that they
25 are known as Exceltech.

NOON & PRATT BAY AREA

0050

1 Does that ring any bells with you, as
2 well?

3 A. Yes.

4 Q. Do you know when ENSCO first began
5 any work in connection with the Webster Street
6 property?

7 A. No. I have to look in the file to be
8 sure when -- when I first got a report from them.

9 MR. DUPONT: All right. Would you mind if I
10 looked at your files for a moment?

11 Let the record reflect that the
12 witness has just handed me a file.

13 Let me have marked as Exhibit 9,
14 a document which appears to be a copy of the
15 document in the file dated November 28, 1989.
16 It's a letter to Mrs. Jean Larkin from the
17 Hazardous Materials Program, bearing the signature
18 of Larry Seto.

19 (The document referred to was
20 marked as Defendants' Exhibit 9 for
21 identification and is annexed hereto.)

22 BY MR. DUPONT:

23 Q. Mr. Seto, do you recognize what we
24 have marked as Exhibit 9?

25 A. Yes.

NOON & PRATT BAY AREA

0051

1 Q. That is your signature?

2 A. Yes.

3 Q. And what was your purpose in
4 preparing Exhibit 9?

5 A. Evidently, there was an addendum that
6 was -- to the workplan, the original workplan, and
7 that addendum was dated November the 21st 1989,
8 and it was prepared by ENSCO Environmental.

9 So I was approving the workplan, or
10 this addendum.

11 Q. Do you have a copy of the addendum in
12 your files?

13 A. No, I don't have a copy.

14 Q. Is this the first time that you
15 recall seeing ENSCO being involved with this
16 Webster Street property?

17 A. I believe so.

18 Q. Do you have any understanding of how
19 ENSCO came to be involved in addition to LRA
20 Environmental in connection with this property?

21 A. No.

22 Q. Is the next item that you have put
23 down on your notes a water sample taken in
24 February of 1990?

25 A. Uh-huh.

NOON & PRATT BAY AREA

1 MR. DUPONT: Why don't we take about a
2 five-minute break.

3 MR. CAMPBELL: Sure.

4 (There was a brief recess.)

5 MR. DUPONT: Back on the record.

6 Q. I think you had just indicated,
7 before we took our break, that you had some notes
8 concerning a "water" sample that was "taken in"
9 February of 1990. Is that correct, Mr. Seto?

10 A. Yes.

11 Q. And what do you recall about the
12 water sample that was taken in February, 1990?

13 A. Looking through the file, water
14 sample was taken in February of 1990. The water
15 sample contained up to 8600 parts per million
16 of low-boiling hydrocarbon, high-boiling to
17 mid-boiling-range hydrocarbon, and 96 parts per
18 million of Benzene, and 16 parts per million of
19 oil and grease.

20 Q. And what did you do after receiving
21 that water sample?

22 A. Results?

23 Q. Results, yes.

24 A. I don't think -- as far as writing
25 another letter, I don't think I wrote another

NOON & PRATT BAY AREA

1 letter until about a year later.

2 Q. Who sent you the water sample
3 results?

4 A. It's probably the lab -- I'm not even
5 sure where the water sample came from, whether it
6 came from the monitoring well, or whether it was a
7 ^{grab} ~~grass~~ sample that was taken during the
8 excavation.

9 I just got a water sample. I don't
10 know where --

11 Q. Was this from Sequoia Lab?

12 A. Sequoia Lab, yeah.

13 MR. DUPONT: Let me have marked as Exhibit
14 10, a multipage document which begins with a fax
15 transmittal form dated March, 19, 1990 to Mr.
16 Ariu, A-R-I-U, Levi L-E-V-I, and purports to
17 reflect various soil and water samples taken,
18 apparently, all on February 28, 1990.

19 My copy of Exhibit 10 bears Bates
20 numbers Larkin/Hazardous materials 8 through 19.

21 (The documents referred to were
22 marked as Defendants' Exhibit 10 for
23 identification and are annexed hereto.)

24 THE WITNESS: The files all not in
25 chronological order anymore. It was when I

0054

1 brought it in and Xeroxed, and I am trying to put,
2 as you were asking me, everything in chronological
3 order. It's not in chronological order, so --
4 yeah, this is the report.

5 BY MR. DUPONT:

6 Q. And those are the February results?

7 A. Right.

8 Q. Including the water sample result
9 that you were just discussing with us?

10 A. Uh-huh.

11 Q. Do you recall discussing these
12 results with anyone at the Hazardous Materials
13 Program?

14 A. I don't recall. It could be I
15 discussed it with Ariu, because it's addressed to
16 Ariu, but I don't remember.

17 Q. Do you recall discussing it with any
18 representative of the Larkins?

19 A. I think later on, in May of that
20 year, we had a meeting; the Larkins and their
21 consultant and I had a meeting in my office, and
22 most likely this was brought up.

23 Q. Before that meeting, do you recall
24 ever hearing that someone had found an underground
25 tank on the property that had been filled with

NOON & PRATT BAY AREA

1 cement?

2 A. I hadn't heard, but when I was
3 looking through the file, there was notes in the
4 file that indicated that there was a call that
5 came into our office.

6 MR. DUPONT: Let me have marked as Exhibit
7 11, a one-page handwritten set of notes that
8 appears to be a piece of note paper; photostated
9 to it, a note on the stationery of Katherine
10 Chesick, C-H-E-S-I-C-K, dated 2/13, addressed to
11 Ariu, referencing an apparent call from a John
12 Rigter, R-I-G-T-E-R, ENSCO, calling about 1628
13 Webster. And this is Bates number Larkin/Haz
14 Mat 71.

15 (The document referred to was
16 marked as Defendants' Exhibit 11 for
17 identification and is annexed hereto.)

18 BY MR. DUPONT:

19 Q. Mr. Seto, do you know a Katherine
20 Chesick?

21 A. Yes.

22 Q. Who is she?

23 A. She is a senior hazardous materials
24 specialist.

25 Q. Works in the same office as you do?

NOON & PRATT BAY AREA

0056

1 A. She used to.

2 Q. In 1990, did she work in the same
3 office as you?

4 A. Evidently, or in '92 -- yeah, she
5 probably did. She transferred to ^{Household} Hazardous
6 Materials unit about a year and a half ago; year,
7 year and a half ago, but I believe at the time she
8 was still part of our unit.

9 Q. In 1990, was Ariu Levi the head of
10 the Hazardous Materials Program?

11 A. Well, he is the supervisor. I don't
12 know if he was a senior at the time, or he was a
13 supervisor at the time.

14 Q. But he would have been someone that
15 Katherine Chesick would have reported to, if she
16 was still at your office in Swan Way in early
17 1990?

18 A. I can't even say that, because this
19 could have just been from one specialist to
20 another.

21 Q. Do you recognize that handwriting as
22 that of Katherine Chesick?

23 A. No, but I am just assuming
24 that because it's on her stationery and it's
25 signed "Katherine" that it's hers.

NOON & PRATT BAY AREA

1 Q. Do you recall any discussions
2 with Mr. Levi at any point in time about a
3 cement-filled underground storage tank?

4 A. No.

5 Q. Do you recall any discussions with
6 Katherine Chesick concerning a cement-filled
7 underground storage tank?

8 A. No.

9 Q. Do you recall any discussions with a
10 John Rigter of ENSCO concerning a cement-filled
11 underground storage tank at this property?

12 A. I don't recall. I don't have any
13 notes of it.

14 Q. Do you have any recollection of
15 discussions with anyone concerning the
16 cement-filled underground storage tank at the
17 Webster Street property?

18 A. I can't remember discussing it
19 specifically with anybody, but I know that in
20 March -- in May, when was this? February? Maybe
21 a couple of months later, I had a big meeting with
22 the Larkins and the consultants; and, most likely,
23 I would imagine if it was there, they would have
24 mentioned it during the meeting.

25 Q. Right.

NOON & PRATT BAY AREA

1 A. But, you know, I don't remember it
2 off the top of my head.

3 MR. DUPONT: Let me have marked as Exhibit
4 12, a one-page set of handwritten notes dated
5 4-23, beginning with the first line "Mr. and Mrs.
6 Larkin informed me that they found more," end of
7 first line. This is Bates number Larkin/Haz Mat
8 005

9 (The document referred to was
10 marked as Defendants' Exhibit 12 for
11 identification and is annexed hereto.)

12 BY MR. DUPONT:

13 Q. Mr. Seto, do you recognize that
14 handwriting?

15 A. Yes.

16 Q. Is it yours?

17 A. Yes.

18 Q. Did you make these notes on or about
19 April 23, 1990?

20 A. Yes. Well, I guess it was 1990. I'm
21 sure it was. It doesn't say 1990, but it appears
22 to be 1990.

23 Q. Do you recall whether Mr. and Mrs.
24 Larkin called you or met with you?

25 A. I believe -- just from memory, I

1 believe Mrs. Larkin called me; but, you know,
2 what -- wait a minute. Wait a minute.

3 You know what I remember, I think --
4 I think they may have come to the office. I'm not
5 sure. I'm not sure. I remember one time they
6 came to the office, but I don't know if it was Mr.
7 or Mrs. Larkin. I can't really be sure.

8 Q. All right.

9 A. I know one of them -- they did come
10 to the office. I spoke to them, I believe.

11 Q. Do you recall in any more detail,
12 than is conveyed in that note, what type of
13 additional contamination the Larkins informed you
14 they had discovered at the Webster Street
15 property?

16 A. No.

17 Q. Do you recall if they indicated if
18 it was diesel, oil and grease, petroleum
19 hydrocarbons?

20 A. I can't remember. I remember -- you
21 know, like I said, they found more contaminants in
22 the area where the former tanks used to be. I
23 can't remember what the contaminants were.

24 Q. After getting this information from
25 Mr. and Mrs. Larkin, however you got it, whether

0060

1 it was face-to-face or over the phone, did you do
2 anything?

3 A. We had a meeting, and we met on May
4 the 10th or May the 16th in my office.

5 MR. DUPONT: Let me have marked a
6 handwritten set of -- two pages of notes as
7 Exhibit 13; the first page of which is dated
8 5-16-90, and bears Bates numbers "Larkin/Haz Mat"
9 27 and 28.

10 (The documents referred to were
11 marked as Defendants' Exhibit 13 for
12 identification and are annexed hereto.)

13 BY MR. DUPONT:

14 Q. Do you recognize the handwriting on
15 Exhibit 13?

16 A. Yes.

17 Q. Is that yours?

18 A. Yes.

19 Q. Were these your notes of the May 16,
20 1990 meeting?

21 A. Yes.

22 Q. And the meeting was at your offices
23 at the Hazardous Materials?

24 A. Yes.

25 Q. And were all the attendees listed on

NOON & PRATT BAY AREA

0061

1 page 1 of this report?

2 A. Yes.

3 Q. Was there anyone who was in
4 attendance who you did not list on page 1 of this
5 report?

6 A. I believe everybody that was in
7 attendance is listed.

8 Q. Do you know who called this meeting?

9 A. I can't remember now.

10 Q. Do you remember how long it lasted?

11 A. No.

12 Q. The first full sentence under the
13 list of people who were attending indicates: "We
14 were informed contamination was discovered on-site
15 that extended out to Pacific Avenue and Webster
16 Street."

17 Who provided that information to you?

18 A. It's either the Larkins or their
19 representative from Exceltech.

20 Q. Was Mr. Stone doing most of the
21 speaking for Exceltech?

22 A. I don't remember.

23 Q. Do you remember whether it was Mrs.
24 Larkin or Mr. Larkin who was doing the speaking on
25 behalf of the Larkins?

NOON & PRATT BAY AREA

1 A. I don't remember.

2 Q. Who informed you that 3,000 cubic
3 feet of soil had been excavated out of the ground
4 that was impacted with gas, diesel and waste oil?

5 A. I was informed at the meeting. I
6 can't remember whose mouth it actually came out of.

7 Q. All right. The next sentence:
8 "Larry informed them for safety purposes, the
9 excavation can be backfilled with," what is that
10 word?

11 A. "Clean."

12 Q. "Clean fill after soil samples are
13 taken at a minimum of 200," is that "square feet"?

14 A. Uh-huh.

15 Q. Do you recall anything about the
16 discussion of the need to backfill the excavated
17 area?

18 A. I don't know whether this meeting, or
19 we had another meeting. I know we met at the
20 site, and we talked about backfilling.

21 Q. Were you concerned that backfilling
22 be done as soon as possible?

23 A. Yes, because of safety reasons.

24 Q. What were the safety reasons that
25 motivated you to request that backfill be done as

1 soon as possible?

2 A. Well, from my understanding, if I
3 remember correctly, they had excavated the site
4 all the way up to the street, sidewalk, street
5 area, and there was concern that the sidewalk
6 might be starting to cave in because there was no
7 support.

8 Q. Do you recall, with respect to the
9 soil that had been excavated, whether anyone told
10 you where that soil had been taken?

11 A. You mean --

12 Q. For disposal.

13 A. No.

14 Q. Do you recall any discussion, by
15 anyone present at the May 16, 1990 meeting, as to
16 why a decision had been made to excavate the soil
17 as opposed to attempting some type of in-place
18 treatment?

19 A. No.

20 Q. Do you recall any discussion at the
21 May 16, 1990 meeting about the mixtures, gas,
22 diesel and waste oil that had contaminated the
23 soil?

24 A. Say that again?

25 Q. What I am trying to find out, Mr.

1 Seto, is if you recall at this May 16, 1990
2 meeting, any discussion along the lines of: Well,
3 it was mostly waste oil; or it was mostly gas; or
4 it was mostly diesel that we found in the soil; or
5 some sort of indication of the predominance of one
6 or more than one of these three contaminants at --

7 A. No, I don't remember.

8 Q. Now, the last sentence on page 1 of
9 your notes, "The other," is that "wells"?

10 A. "Walls."

11 Q. "Walls are to the property line, or is
12 ND." Is that "non-detect"?

13 A. "Non-detect," right.

14 Q. On the second page of your
15 handwritten notes, there is a sentence that
16 begins, "I also informed them before they" and
17 that word fades out on my copy. Is that "begin
18 remediation"?

19 A. No. "Before they bioremediate, they
20 have to determine whether the soil is hazardous."

21 Q. Do you recall any discussion of the
22 type of bioremediation that was going to be
23 undertaken at this site?

24 A. No.

25 Q. Do you recall if there was any

0065

1 proposal to inject some type of microbes into the
2 soil to accelerate bioremediation?

3 A. No. I can't recall that.

4 Q. Do you recall if there were any
5 proposals to aerate the soil in order to ensure
6 bioremediation?

7 A. I can't recall.

8 Q. Do you recall reaching any
9 conclusion, in your capacity as the senior
10 hazardous materials specialist at Alameda County
11 dealing with this property, as to whether
12 bioremediation was a feasible remedy for the site?

13 A. I have to -- you know, I have to rely
14 on my notes.

15 You are asking this question during
16 the course of our meeting?

17 Q. Initially, yes. During the course of
18 this meeting, do you recall coming to any
19 conclusions as to whether this site was suitable
20 for bioremediation?

21 A. No, I don't recall.

22 Q. Do you recall, at any point in time,
23 coming to any conclusions about whether this site
24 was suitable for bioremediation?

25 A. Bioremediation is one of the viable

NOON & PRATT BAY AREA

0066

1 options for gasoline diesel waste fill. I can't
2 recall specifically whether I looked in detail at
3 the site, but I would think that would be a viable
4 option to look at. Whether it's going to work or
5 not, that's where a consultant would have to take
6 samples and do a pilot study.

7 Q. Do you recall ever seeing a pilot
8 study with respect to the feasibility of
9 bioremediation of the site?

10 A. You know, bioremediation of soil
11 containing gasoline, diesel or waste oil, they
12 have to prove the effect on a number of occasions.

13 Q. Yes. At this specific site, do you
14 ever recall receiving a pilot study showing that
15 at this site bioremediation would work?

16 A. No, I don't recall.

17 Q. Now, the last full sentence, "Mr.
18 Rigter and Larry."

19 A. Yes.

20 Q. Is that you?

21 A. Yes.

22 Q. "Told Mr. Larkin separately it would
23 be best to install three wells for a more complete
24 investigation for later use in their possible
25 litigation."

NOON & PRATT BAY AREA

0067

1 Did I read that correctly?

2 A. Yes.

3 Q. What do you recall discussing with
4 Mr. Larkin about the installation of three wells
5 at the site?

6 A. Just that we talked three wells you
7 have triangulation that would enable you to
8 determine the ^{gradient}~~grading~~ direction, so you could look
9 to see which way the groundwater is moving.

10 Q. Do you recall any discussion by
11 anyone about possible litigation with respect to
12 the site?

13 A. Well, I put down the word
14 "litigation," so evidently that must have come up
15 during the meeting.

16 Q. Do you have any recollection of that
17 subject now?

18 A. No.

19 Q. Do you have any recollection of any
20 discussion of Desert Petroleum at any meeting with
21 the Larkins?

22 A. Most likely, the name came up. I
23 can't recall; but, you know I've been informed
24 that they were the previous property owner.

25 Q. And other than that, do you have any

NOON & PRATT BAY AREA

0068

1 other recollection about Desert Petroleum's role
2 at the 1628 Webster Street property?

3 A. No.

4 Q. Do you have any knowledge with
5 respect to any activities carried on by Tosco
6 Corporation with respect to the 1628 Webster
7 Street property?

8 A. No.

9 Q. Do you have any any knowledge with
10 respect to any activities or operations conducted
11 by Phillips Petroleum Company at the 1628 Webster
12 Street property?

13 A. No.

14 Q. Do you have any knowledge with
15 respect to the operations or activities by Tide-
16 water Oil Company with respect to the 1628 Webster
17 Street property?

18 A. No.

19 MR. GILHULY: Or Texaco.

20 BY MR. DUPONT:

21 Q. Do you have any knowledge of any
22 activities carried on by Texaco, Inc. in
23 connection with the 1628 Webster Street property?

24 A. No.

25 MR. DUPONT: Let me have marked as Exhibit

NOON & PRATT BAY AREA

1 14, a three-page document beginning with an
2 Exceltech facsimile cover page, May 17, 1990,
3 addressed to Larry Seto, from Randy Stone of
4 Exceltech.

5 After the facsimile cover page, my
6 copy of this document has a letter dated May 17,
7 1990; and attached thereto, an apparent brochure
8 from an entity with respect to FortiFlex, the
9 trademark name with respect to a type of
10 polyethylene cover.

11 (The documents referred to were
12 marked as Defendants' Exhibit 14 for
13 identification and are annexed hereto.)

14 MR. DUPONT: Also, for the record, this
15 bears production numbers Larkin/Haz Mat 25, 23 and
16 24, in that order.

17 BY MR. DUPONT:

18 Q. Mr. Seto, do you recall seeing
19 Exhibit 14 prior to today?

20 A. Yes.

21 Q. And did you first receive it on or
22 about May 17, 1990?

23 A. Yes.

24 Q. Was this the confirming letter that
25 you expected from Mr. Stone based on the May 16,

0070

1 1990 meeting?

2 A. Yes.

3 Q. Did you do anything after receiving
4 this letter?

5 A. I can't recall. Most likely, I
6 probably contacted Mr. Stone.

7 MR. DUPONT: Let me have marked as Exhibit
8 15, a letter from Mr. Seto to Mrs. Jean Larkin
9 dated May 21, 1990, regarding the 1628 Webster
10 Street property. This is a one-page document with
11 the production number Larkin/Haz Mat 20.

12 (The document referred to was
13 marked as Defendants' Exhibit 15 for
14 identification and is annexed hereto.)

15 BY MR. DUPONT:

16 Q. Do you recognize Exhibit 15 as a
17 letter you sent to Mrs. Larkin on or about May 21,
18 1990?

19 A. Yes.

20 Q. And was this the response that you
21 had to Mr. Stone's fax letter of May 17, 1990?

22 A. Yes.

23 Q. Now, you reference in your letter
24 "confirmatory samples."

25 Do you recall what type of

NOON & PRATT BAY AREA

0071

1 confirmatory samples you understood Exceltech
2 would be taking?

3 A. Soil samples. Soil samples.

4 Q. And do you have any understanding of
5 what these additional soil samples would seek to
6 confirm?

7 A. The presence of contaminants that had
8 been found earlier at the site.

9 Q. Now, the soil, or at least a certain
10 amount of the soil had already been excavated by
11 the time of your meeting of May 16, 1990; is that
12 correct?

13 A. Yes.

14 Q. Were the confirmatory samples
15 designed to determine if there was any
16 contamination left after the soil had been
17 excavated?

18 A. That's true. That's right.

19 Q. So, in fact, if Exceltech had gotten
20 the complete amount of confirmatory samples, would
21 find that there was non-detects, or very, very low
22 amounts of any gas, waste oil or diesel in the
23 soil; is that correct?

24 A. Wait. You said "right amount"?

25 Q. Very low amounts or no amounts.

NOON & PRATT BAY AREA

1 Let me rephrase the question.

2 If Exceltech had excavated to the
3 limits of the contamination, then you would expect
4 that the confirming samples would show non-detects
5 in the soil?

6 A. Right. Non-detects or ^{background} ~~back~~ brown.

7 Q. Jumping back for a moment to the May
8 16, 1990 meeting, I didn't see any reference in
9 that meeting to groundwater remediation.

10 Do you recall any discussion at the
11 May 16, 1990 meeting concerning groundwater
12 remediation?

13 A. I can't remember.

14 Q. As of May 16, 1990, you had received
15 the soil and groundwater samples from Sequoia; is
16 that correct?

17 A. When did I receive the --

18 Q. Let me refer you back to Exhibit 10.

19 A. Okay. Yes.

20 Q. And based on Exhibit 10, did you have
21 any conclusion as to whether the groundwater was
22 contaminated beneath this property?

23 A. Well, after looking at the report, it
24 appears that the groundwater had impacted, and
25 that some type of investigation should be

1 performed.

2 Q. All right. Now, do you recall any
3 discussion with the Larkins, after the receipt of
4 these results -- and the facsimile cover page, at
5 least, is dated March 19, 1990 -- concerning
6 further investigation of the groundwater at the
7 site?

8 A. I probably did, because on our
9 meeting on my notes, it identified as we are
10 asking them to put in groundwater monitoring
11 wells.

12 Q. Aside from recalling in the May 16,
13 1990 meeting that you were asking to put in
14 groundwater wells, do you recall anything else at
15 the May 16, 1990 meeting with respect to further
16 investigation or remediation of the groundwater
17 underlying the Webster Street property?

18 A. Look at my notes.

19 Q. And your handwritten notes of the May
20 16 meeting are Exhibit 13?

21 A. What was the question again, please?

22 Q. Aside from asking the Larkins to
23 install some groundwater monitoring wells, do you
24 recall any other discussion about investigation or
25 remediation of the groundwater underlying the

1 Webster Street property?

2 A. No, not that I recall.

3 Q. After the May 16, 1990 meeting, do
4 you recall any discussions with the Larkins, or
5 any representatives of the Larkins, concerning
6 further investigation or remediation of the
7 groundwater?

8 A. Specifically in that area, I don't
9 recall.

10 MR. DUPONT: Let me have marked as the next
11 exhibit, a one-page letter dated June 14, 1990,
12 bearing the signature of Larry Seto, addressed to
13 Mrs. Jean Larkin; Re: 1628 Webster Street. This
14 document is a one-page document with the Bates
15 number Larkin/Haz Mat 22.

16 (The document referred to was
17 marked as Defendants' Exhibit 16 for
18 identification and is annexed hereto.)

19 BY MR. DUPONT:

20 Q. Do you recognize Exhibit 16 as a
21 letter you wrote on June 14, 1990 to Mrs. Larkin?

22 A. Yes.

23 Q. What was your purpose in writing this
24 letter to Mrs. Larkin?

25 A. To inform her that the property

1 should be backfilled immediately for safety
2 reasons and for liability purposes on her part.

3 I believe there might have been a
4 complaint coming into the office attributed to
5 that. I can't remember, but I remember meeting
6 out there with her.

7 Q. Now, there is a reference to a
8 meeting on, I believe, June 5, 1990?

9 A. Right.

10 Q. Was that a meeting at the Webster
11 Street property?

12 A. Right. At the property, and I think
13 Mr. Stone was there, too, if I remember correctly,
14 that I referenced with the cc.

15 Q. Do you not recall the meeting on June
16 5, 1990?

17 A. No, I can't remember.

18 Q. Do you know how that meeting came
19 about?

20 A. I believe it was because of the
21 complaint, but I can't remember exactly, but I
22 had to -- yes, something tells me that somebody
23 complained about the situation out there, that it
24 was unstable.

25 Q. The "situation" being excavated area

NOON & PRATT BAY AREA

0076

1 up to the --

2 A. Sidewalk.

3 Q. -- point of the sidewalk?

4 A. Right. Sidewalk and the street.

5 Q. Do you recall what response you
6 received after sending your letter of June 14,
7 1990?

8 A. I can't remember. I have to look at
9 the file.

10 MR. DUPONT: Let me see if I might show you
11 a document that would refresh your recollection.

12 THE WITNESS: I'm sure you would.

13 MR. DUPONT: Let me have marked as Exhibit
14 17, a a photostat of a one-page telephonic message
15 for LS from Mr. Randy of Exceltech dated July 2,
16 1990. This bears production number Larkin/Haz Mat
17 21.

18 (The document referred to was
19 marked as Defendants' Exhibit 17 for
20 identification and is annexed hereto.)

21 BY MR. DUPONT:

22 Q. Mr. Seto, do you recognize that as
23 a telephonic message slip used at the Hazardous
24 Materials Program?

25 A. Yes.

NOON & PRATT BAY AREA

0077

1 Q. The "LS" is yourself?

2 A. Yes.

3 Q. "Randy" is Randy Stone of Exceltech?

4 A. I would guess that.

5 Q. Do you recall receiving a message
6 from someone at Exceltech in early July, 1990 that
7 the soil at the Webster Street property had been
8 backfilled?

9 A. Yeah. That's what it says in the
10 message.

11 Q. Does that refresh your recollection?

12 A. No, but it looks like it's from my
13 office.

14 Q. You have no reason to think that
15 that's not a correct copy of a telephonic message
16 slip from your office?

17 A. Right.

18 Q. Do you recall getting some further
19 set of sample results from Randy Stone of
20 Exceltech in the summer of 1990?

21 A. No. I don't recall getting the
22 results.

23 MR. DUPONT: Let me see if I could refresh
24 your recollection with a multipage document,
25 beginning with a letter dated July 2, 1990 to the

NOON & PRATT BAY AREA

1 Hazardous Materials Program; Attention: Larry
2 Seto, bearing the typed signature of Randy Stone
3 of Exceltech. This document bears production
4 numbers Larkin/Haz Mat 6 and 67, 68, 69, 70, 65,
5 63, 64 and 66.

6 (The documents referred to were
7 marked as Defendants' Exhibit 18 for
8 identification and are annexed hereto.)

9 THE WITNESS: I am trying to see if I have
10 the same that you've got. That's my writing.

11 BY MR. DUPONT:

12 Q. Mr. Seto, let me indicate that the --
13 does your copy have a facsimile cover sheet?

14 A. Yeah, I believe -- I don't know if
15 this is actually -- March 19th. You know, I don't
16 think I have the letter, but I don't have the
17 results.

18 Q. All right. Do you have somewhere in
19 your file a set of Sequoia Analytical results?

20 A. Yes. It's for -- this might be it.
21 June 18th.

22 What happened is so many people
23 looked through this file, and I am trying to see
24 if June 18th is a sample.

25 Q. Here. I have a set of June 18

1 results.

2 A. May 29th?

3 MR. GILHULY: Yes.

4 THE WITNESS: Okay. Here it is.

5 How many pages do you have? Three?

6 Two pages and a -

7 BY MR. DUPONT:

8 Q. I think we have --

9 A. Four pages. Three lab pages of lab
10 results.

11 Q. And a chain of custody.

12 And if you notice, Mr. Stone's letter
13 refers to 6-18-90 results; Mr. Stone's July 2
14 letter.

15 A. Let's see.

16 Q. "At that point, we re-excavated the
17 area, and sampled (6-18-90 results."

18 A. Okay. What were you mentioning there
19 now?

20 Q. Well, do you also have in your file a
21 set of --

22 A. A sample of 6-18?

23 Q. 6-18, three pages of lab results with
24 a one-page chain of custody?

25 A. Here it is, 6-18.

NOON & PRATT BAY AREA

0080

1 Q. It should be three pages and a chain
2 of custody.

3 A. Yup. Here we go.

4 This is 1990; right?

5 Q. 1990, yes.

6 A. Put this in order. This goes here.
7 February. Here's June 14th.

8 Let me take a few minutes to put --

9 MR. DUPONT: Sure. Why don't we go off the
10 record for a moment.

11 (Discussion off the record.)

12 BY MR. DUPONT:

13 Q. Mr. Seto, before we broke, I have
14 placed in front of you Exhibit 18, which was a
15 July 2, 1990 letter from Randy Stone to you, which
16 purported to enclose certain test sample results.

17 Do you recall at least getting the
18 cover letter from Randy Stone?

19 A. Yes.

20 Q. And there is some handwriting on the
21 first page of the cover letter.

22 Is that your handwriting?

23 A. Yes.

24 Q. Could you read me what you noted on
25 the first page of Exhibit 18?

NOON & PRATT BAY AREA

0081

1 A. "Need Randy to identify sampling
2 point with a plot plan. In addition, other areas
3 show contamination other than the sample
4 005-4523." And I think it says "We, these areas
5 are included in the excavation."

6 I don't know what I was trying to say
7 there, but I --

8 MR. GILHULY: "Were these?"

9 THE WITNESS: "Were these." Could have
10 been. May have been "Were these areas included in
11 the excavation," with a question mark.

12 BY MR. DUPONT:

13 Q. With respect to a plot plan to
14 identify the sampling locations, do you ever
15 recall receiving a plot plan?

16 A. No.

17 Q. And why were you interested in
18 receiving a plot plan?

19 A. So I could identify the sampling
20 location.

21 Q. There is a reference in some of the
22 sampling to east 1, East 2.

23 Do you know what those points have --
24 what reference they have with respect to the 1628
25 Webster Street property?

NOON & PRATT BAY AREA

1 A. See, that is the reason why you need
2 your sampling plan, because I don't know what is
3 north, south, east or west. And what they might
4 determine to be north, somebody else might
5 determine to be west or east.

6 So for clarification, you always have
7 to have a sampling plan, with the arrow showing
8 the direction and the exact sampling location.

9 Q. Do you recall communicating your
10 request of a plot plan back to Mr. Randy Stone of
11 Exceltech?

12 A. Yes. No, wait a minute.

13 I can't recall. This note is dated
14 7-5-90.

15 I can't remember if I communicated or
16 not. I'm not sure if I wrote this note, because I
17 talked to him on July 5th; or I left a note to
18 remind myself to contact Randy.

19 Q. All right. Do you have anything in
20 your file after July 5 that indicates a further
21 communication with Mr. Stone?

22 A. No.

23 Q. Is the next communication in your
24 file a letter of May, 1991?

25 A. To Mrs. Larkin.

NOON & PRATT BAY AREA,

1 MR. DUPONT: Let me have marked as Exhibit
2 19, a one-page letter dated May 24, 1991 from
3 Larry Seto to Mrs. Jean Larkin; regarding the 1628
4 Webster property. And this bears production
5 number Larkin/Haz Mat 00 4.

6 (The document referred to was
7 marked as Defendants' Exhibit 19 for
8 identification and is annexed hereto.)

9 BY MR. DUPONT:

10 Q. Mr. Seto --

11 A. Yes.

12 Q. -- that's your signature on Exhibit
13 19?

14 A. Yes.

15 Q. What was your purpose in sending
16 Exhibit 19?

17 A. I evidently have reviewed the file,
18 1628 Webster Street, and notice it to be
19 incomplete.

20 Therefore, I am looking for Mrs.
21 Larkin, so I could get a complete chronological
22 history of the site.

23 Q. Do you recall receiving a response
24 from Mrs. Larkin?

25 A. Yes.

1 MR. DUPONT: And let me have marked as
2 Exhibit 20, a one-page letter dated June 3, 1991
3 to Mr. Larry Seto, from Mrs. Jean Larkin; Re:
4 1628 Webster Street.

5 (The document referred to was
6 marked as Defendants' Exhibit 20 for
7 identification and is annexed hereto.)

8 BY MR. DUPONT:

9 Q. Do you recognize that letter?

10 A. Yes.

11 Q. And is that the date stamp of 1991
12 June --

13 A. 4th.

14 Q. -- 4th your date stamp?

15 A. Yes.

16 Q. Did you do anything after receiving
17 this letter?

18 A. No, I don't believe so. I think
19 after she responded back to the letter -- I mean,
20 after she responded back with this letter, you
21 know, I don't believe I did anything.

22 Q. As of early June, 1990, was the
23 Hazardous Materials Program satisfied with the
24 state of remediation at the property at 1628
25 Webster Street?

0085

1 A. I don't -- you know, we don't have
2 the complete chronology that was supposedly sent
3 to us in June of 1990.

4 So it's difficult for me to say right
5 now, you know, without that report.

6 I don't know how far remediation
7 went. We don't have the final report on the
8 site. You know, I can't say that the county is
9 satisfied with the remediation. From my
10 understanding, there's still soil that was
11 excavated out from the site that's still on-site.

12 As far as what's left in the ground,
13 the contaminants left in the ground, I don't know
14 how much is still left in the ground.

15 And as far as the groundwater, I
16 don't think that they've been sending us reports.
17 We haven't received any reports, as far as fully
18 monitoring.

19 So there is still a lot of questions
20 that needs to be answered before we can come up
21 with a decision.

22 Q. Do you know if monitoring wells have,
23 in fact, been installed, as was discussed in the
24 May 16, 1990 meeting?

25 A. I'm not sure.

NOON & PRATT BAY AREA

1 Q. Was the last time you visited the
2 site in June of 1990, when you believed you had
3 the complaint about the possible instability of
4 the sidewalk due to the excavation?

5 A. Right. That's the last time I was
6 there.

7 Q. When you were there at that time, did
8 you observe any groundwater monitoring wells on
9 the property?

10 A. I didn't go on the property. You
11 know, we stood on the sidewalk. So, you know, if
12 there was a monitoring well in there, I didn't see
13 it.

14 Q. In the course of your business at the
15 Hazardous Materials Program for Alameda County,
16 you've seen numerous groundwater monitoring wells
17 before?

18 A. Yes.

19 Q. Is it correct to say that you have
20 some level of confidence that if you saw a cap for
21 groundwater monitoring, you'd know what it was?

22 A. Sometimes they're a little bit more
23 difficult than others; sometimes they're not all
24 that obvious.

25 Q. As you sit here today, without

1 further data on the groundwater monitoring well,
2 you cannot say one way or the other as to whether
3 the Hazardous Materials Program is or is not
4 satisfied with the scope of groundwater
5 remediation at the site; is that correct?

6 A. Well, to the best of my knowledge,
7 there isn't any evidence of groundwater
8 remediation.

9 As far as whether there is any
10 monitoring going on, I am not sure if that --
11 that's even being implemented at this time.

12 What needs to be done is, groundwater
13 investigation needs to commence so that we could
14 determine whether the groundwater has been
15 impacted or not at the site.

16 Q. Mr. Seto, are you familiar with the
17 term "lead agency" in environmental cleanups?

18 A. Yes.

19 Q. What does the term "lead agency" mean
20 to you?

21 A. In this particular case, the Alameda
22 County Environmental Agency has taken a lead in
23 overseeing the cleanup.

24 The final write-off, as far as
25 whether the site is clean or not, is up to the

1 State Regional Water Quality Control Board.

2 Up until the time a write-off, you
3 know, the County's taking the lead in overseeing
4 the cleanup.

5 Q. And that would be in this case the
6 Hazardous Materials group?

7 A. Right. But any time the State wants
8 to take over overseeing the site, that's their
9 prerogative.

10 Q. Jurisdictionally, that would be their
11 prerogative; but in terms of the current
12 situation, the Hazardous Materials Program of
13 Alameda County is the lead agency?

14 A. The lead agency, yes.

15 Q. Mr. Seto, are you aware of any facts
16 that lead you to conclude that there was an
17 intentional release of gasoline or diesel or waste
18 oil on the property?

19 A. An intentional act?

20 Q. Yes.

21 A. I'm not aware of it.

22 Q. In 1986, do you know if there were
23 any Alameda County regulations regarding how to
24 close an underground storage tank?

25 A. Not that I'm familiar.

NOON & PRATT BAY AREA

1 Q. Were you aware if there were any
2 state regulations in 1986 on how to close an
3 underground storage tank?

4 A. There might have been, but I'm not
5 familiar with it.

6 Q. Did you have any discussions with any
7 representative of Desert Petroleum Company
8 regarding the removal of underground storage tanks
9 at the 1628 Webster Street property?

10 A. No, not that I recall.

11 Q. And you understand in my question by
12 "representative of Desert Petroleum," I meant to
13 include Lou Carpia, or any lawyer for Desert
14 Petroleum?

15 A. Right.

16 Q. And your answer is still the same,
17 you are not aware of any discussions?

18 A. Right.

19 Q. There was a reference in your notes
20 earlier to a cemented underground storage tank.

21 There was a reference in the note by
22 Ms. Chesick to Mr. Levi.

23 A. Right.

24 Q. Do you ever recall finding out what
25 happened to that cemented or cement-filled

0090

1 underground storage tank?

2 A. No.

3 Q. Do you know whether it's still on the
4 property or not?

5 A. I don't know. It could be.

6 Q. Let me refer you back to Exhibit 7,,
7 which is the LRA preliminary plan of correction,
8 and refer you to Bates page 78.

9 And let me direct your attention to
10 the middle of the page, which talks about chemical
11 analysis of the soil samples.

12 A. Uh-huh.

13 Q. Now, are you aware of any reports
14 of chlorinated hydrocarbons being found at the
15 Webster Street property?

16 A. I think on one of the reports, they
17 might have showed some type of chlorinated --
18 1,4-Dichlorobenzene in a soil sample that was
19 taken on April the 24th, 1989.

20 Q. Is this the TLA report?

21 A. TAL.

22 Q. TAL report.

23 Do you know is 1,4-Dichlorobenzene a
24 solvent, to your knowledge?

25 A. I'm not sure what it's used for; but,

NOON & PRATT BAY AREA

0091

1 most likely, it's a solvent.

2 Q. This was a report of soil samples
3 taken in or around the waste oil tank?

4 A. Yes, there was -- on the fill end,
5 there were 610 parts per million of
6 1,4-Dichlorobenzene was detected in the soil; and
7 in the vent end, the soil sample there contained
8 50 parts per million of 1-4-Dichlorobenzene.

9 Q. Let me refer you back to Exhibit 7
10 again. In the chemical analyses, there is a
11 reference to Item No. 6: Method 8270, and then it
12 refers to PCB's, PNA's, PCP and Creosote.

13 PCP stands for phentochloralphenol;
14 is that correct?

15 A. Yeah, most likely.

16 Q. And are you aware of any soil samples
17 showing any phentochloralphenol or any Creosote
18 being found at this site?

19 A. No, I don't believe so.

20 Q. Are you aware of any soil samples
21 showing any PCB's, polychlorinated bipheynyls,
22 B-I-P-H-E-Y-N-E?

23 MR. GILHULY: B-I-P-H-E-N-Y-L.

24 THE WITNESS: Not with what information we
25 have in our file.

NOON & PRATT BAY AREA

1 BY MR. DUPONT:

2 Q. All right. What about PNA's; what
3 are those?

4 A. Polynucleararomatics.

5 Q. Are you aware of any soil samples
6 showing any polynucleararomatics?

7 A. No. This isn't the final report for
8 the site, I believe. It's the June of 1990
9 report.

10 Q. Now, the final report for the site,
11 is your information on the final report of the
12 site based on the reference in Mrs. Larkin's June,
13 1991 letter back to you, referencing a June, 1990
14 report?

15 A. Yes.

16 Q. Do you ever recall getting a June,
17 1990 final report for this site?

18 A. I can't recall, but I don't -- we
19 don't have it.

20 Q. And other than the reference in Mrs.
21 Larkin's letter of 1991, do you have any other
22 references in your file to a final report of June,
23 1990?

24 A. No. I think there was one, I think,
25 on my notes or something. I read somewhere, where

0093

1 Randy Stone said he was going to send me a final
2 report.

3 Q. Well, let me refer you back to a
4 prior exhibit, if I could, sir.

5 A. You know, it might have been on a
6 meeting in May.

7 Q. Yes. Exhibit 13 page 2, you will
8 note at the very top, "Randy Stone of ENSCO will
9 submit a complete report after he gets all data
10 in."

11 Do you see that at the very top of
12 page 2 of Exhibit 13?

13 A. Yeah.

14 Q. Is that the note you were referring
15 to?

16 A. Right. Right.

17 Q. Do you ever recall seeing a complete
18 report from Randy Stone?

19 A. No.

20 MR. DUPONT: Let me have marked as Exhibit
21 21, a half-page telephone Xeroxed form to LS dated
22 8-14 from Mrs. Larkin regarding 1628 Webster
23 Street, Alameda,

24 (The document referred to was
25 marked as Defendants' Exhibit 21 for

NOON & PRATT BAY AREA

1 identification and is annexed hereto.)

2 MR. DUPONT: And let me just indicate, for
3 counsel's clarification, this was one of the
4 documents that Catherine Cutler had copied by your
5 offices this afternoon, Bob.

6 She had it copied with two phone note
7 messages. One of them I have introduced as a
8 prior exhibit; that's the 7-2-90 exhibit; and I
9 didn't want to have two pages with the same
10 exhibit all over again.

11 So what I have done is just
12 introduced the other half of the page, which is an
13 8-14, I believe, '89. We may be able to date it
14 more precisely, "telephone message slip to LS from
15 Mrs. Larkin."

16 MR. CAMPBELL: This is Exhibit No. 21?

17 BY MR. DUPONT:

18 Q. Do you recognize Exhibit 21?

19 A. Yes.

20 Q. And do you recall a discussion with
21 Mrs. Larkin concerning the need to confirm the
22 downgradient direction?

23 A. Most likely, I spoke to her. It
24 sounds like I -- I indicated that I asked Mrs.
25 Larkin. So I spoke to her on the 15th.

NOON & PRATT BAY AREA

0095

1 Q. Now, this bears a date of 8 --

2 A. 8-15, probably, '89, because I
3 remember seeing a letter of July 24th, 1989.

4 Q. And that's the same date as Exhibit
5 7, which is July 24, 1989?

6 A. Yes.

7 Q. And you have a copy of, at least the
8 first three pages of "Exhibit 7," the letter in your
9 file?

10 A. Yeah.

11 Q. Is that correct?

12 A. Yeah, I have it.

13 Q. All right. Do you recall what Mrs.
14 Larkin said in response to you in connection with
15 your call of August 15, 1989?

16 A. No, I can't remember.

17 MR. DUPONT: Why don't we take about a
18 three-minute break. I just need to review some of
19 my notes here, and I believe I may be complete, or
20 very close to completed with my examination.

21 (There was a brief recess.)

22 MR. DUPONT: Back on the record.

23 Let me have marked as Exhibit 22, a
24 multipage report on the stationery of Exceltech,
25 Summary Report for Jean Larkin dated May, 1990.

NOON & PRATT BAY AREA

1 (The documents referred to were
2 marked as Defendants' Exhibit 22 for
3 identification and are annexed hereto.)

4 BY MR. DUPONT:

5 Q. And my first question, Mr. Seto, is:
6 Have you ever seen this document prior to today?

7 A. No, not that I recall.

8 Q. Is there any copy of that document in
9 your file that you brought with you today?

10 A. No.

11 MR. DUPONT: I have no further questions.

12 THE WITNESS: Oh. Okay.

13 MR. DUPONT: I have no further questions of
14 Mr. Seto, and I tender him to cross-examination.

15 MS. CUTLER: I do have a number of
16 questions. I need just a moment or two to review
17 my notes.

18 (There was a brief recess.)

19

20 EXAMINATION

21 BY MS. CUTLER:

22 Q. Mr. Seto, I am Catherine Cutler from
23 the firm of Washburn, Briscoe & McCarthy, and I
24 represent Tosco Corporation in this case. I won't
25 represent to you that I have just a few questions,

NOON & PRATT BAY AREA

0097

1 because that is probably not the case. I've got
2 more than just a few.

3 You mentioned earlier that you were
4 present at the site for the removal of the waste
5 oil tank.

6 A. Yes.

7 Q. What did you see when the tank was
8 first removed?

9 A. Unfortunately, I didn't take any
10 notes, so I can't recall the condition of the
11 tank.

12 Q. Do you have any recollection at all
13 of whether there were any defects in the tank such
14 as corrosion, rust or holes?

15 A. No.

16 Q. You have no recollection?

17 A. No.

18 Q. You mentioned, also, that you have
19 reviewed in preparation for this deposition the
20 file that you brought with you today.

21 A. Uh-huh.

22 Q. Did you also review any other
23 documents or files in preparation for this
24 deposition?

25 A. No.

NOON & PRATT BAY AREA

1 Q. Did you have any conversation with
2 anyone, including plaintiff's counsel, before this
3 deposition?

4 A. Who is plaintiff's counsel?

5 Q. Mr. Campbell and Mr. Dick White of
6 this law firm.

7 A. Not that I recall. I get a lot of
8 phone calls, but I don't think I spoke to anybody
9 from your firm.

10 Q. Does Mr. Levi share responsibility
11 with you for overseeing activities at this
12 particular site?

13 A. Mr. Levi, right now, is the
14 supervisor, but I don't know if he oversaw the
15 site.

16 I was the one that initially started
17 with the tank removal, and then the Alameda area
18 was transferred to another individual. And I
19 can't even remember who it was, but it might have
20 been Ariu, or it might have been Katherine.

21 Q. I noted in reviewing the file that
22 you brought with you today, that the very first
23 date on the document in that file is the date on
24 Exhibit 3, that says "accepted March 31, '89,"
25 which you previously testified is your

0099

1 handwriting.

2 A. Right.

3 Q. Did the agency have a file pertaining
4 to this file before March of 1989?

5 A. I didn't see anything. I just
6 checked the file before I came in, if there was
7 anything else in the file that wasn't in my
8 folder, and I didn't find anything else.

9 When you say "agency," you're talking
10 about the whole health agency, or you're talking
11 about Hazardous Materials Division?

12 Q. I am talking about the entire agency,
13 whether it was the Hazardous Materials Division or
14 another division.

15 A. I could only speak for the Hazardous
16 Materials Division; and, as far as the Hazardous
17 Materials Division, we don't have any prior --
18 prior to March of '89, when I approved the
19 underground tank closure/modification plans.

20 I don't know what that business, or
21 that property might have some other kind of
22 business with the Health Department, and they
23 had gone there at an earlier time.

24 So I can't speak for the whole
25 agency. I can only speak for my division.

NOON & PRATT BAY AREA

0100

1 Q. Other than the training and special
2 courses which you mentioned to Mr. Dupont that you
3 had taken, do you hold any other professional
4 licenses or certificates or registrations?

5 A. No.

6 Q. Other than the courses that you
7 mentioned to Mr. Dupont, have you had any special
8 training relating to underground storage tanks?

9 A. Yes.

10 Q. And that training was what?

11 A. I've had a number of different kind
12 of training. Some have been with the Regional
13 Quality Control Board; some of it has been with
14 the State Water Resources Control Board. It would
15 have been in-house.

16 I might have taken a class even at
17 U.C. Extension, taken a number of classes dealing
18 with underground tank remediation.

19 Q. And it's correct to say that you
20 first became involved with this particular site
21 around March of '89?

22 A. Yes, with the underground tank
23 closure.

24 Q. At that time, had anyone else at the
25 agency been responsible for overseeing any,

NOON & PRATT BAY AREA

1 activities over at that site, to your knowledge?

2 A. No, not to my knowledge.

3 Q. Do you know whether anyone at the
4 agency would have been responsible for overseeing
5 activities at the site between 1976 and 1979?

6 A. '76, '79?

7 I wouldn't know.

8 Q. Do you recall how you first found out
9 about potential contamination at this particular
10 site?

11 A. Most likely, from the lab report, the
12 sample that was taken from the two soil sample
13 results that were taken underneath the tank when
14 the underground tank was removed.

15 Q. And when you mentioned the samples,
16 are you speaking now of the Trace Analyses
17 Laboratory samples that are set forth in Exhibit
18 5?

19 A. It's not in order.

20 Q. Would you like the question read
21 back?

22 A. No.

23 Yeah, this is it.

24 Q. In the course of your testimony
25 today, I believe that you have mentioned two

1 particular site visits that you personally were
2 involved with. One was, I believe, the May 16th,
3 1990 visit, and you also mentioned a later
4 possible visit in June of 1990.

5 Other than those two visits, have you
6 ever visited the site on any other occasion?

7 A. The two times that I have been to the
8 site was when the tank removal in April '89, and
9 the time I went out to the site with Mrs. Larkin
10 and Randy Stone. That was when, back -- those are
11 the only two times.

12 Was that back in -- there is a
13 letter. Yeah, June the 5th. I was there in April
14 of 1989 and June the 5th, 1990. Those are the
15 only two times.

16 Q. Okay. Thanks for correcting me.

17 The May 16th reference I just made --

18 A. That was at my office.

19 Q. Right. And during the course of your
20 role in overseeing activities at this particular
21 site, now you've testified that you did have
22 certain direct communications with the owners of
23 the property; is that right?

24 A. Yes.

25 Q. When was the very first time that you

1 had any direct communication, either verbally or
2 in writing, with one of the owners of the
3 property?

4 A. Most likely, it's the letter that I
5 wrote to Mrs. Larkin in June, June 30th.

6 Q. Are you referring to Exhibit 6?

7 A. I guess I should be looking at the
8 exhibits.

9 Exhibit 6. Right. That's my first
10 correspondence in writing with them.

11 Q. To your knowledge, prior to the time
12 of your communication with Mrs. Larkin on June
13 30th, 1989, as reflected in Exhibit 6, did you
14 have any other direct communication, either in
15 writing or verbally, with any of the property
16 owners for this site?

17 A. Prior to June 30th?

18 Q. That's right.

19 A. Not that I recall, unless it's in my
20 notes. I don't believe so.

21 Q. Has anyone at any time ever expressed
22 an opinion to you as to the source of the
23 contamination at the site?

24 A. I believe the Larkins had told me
25 that there were gas stations at one time on the

NOON & PRATT BAY AREA,

1 other corner, on the -- in that corner, but I
2 don't recall if they said that it was -- that the
3 contamination was coming from off-site.

4 I know we had a discussion, and we
5 were just talking about all different possible
6 sources of contamination.

7 Q. Was this a discussion between you and
8 Mrs. Larkin?

9 A. I can't remember was that between us,
10 or her consultant was also present.

11 Q. Do you remember when this discussion
12 was?

13 A. No.

14 Q. Was anything else said about the fact
15 that there had been potentially other gas stations
16 at that corner?

17 A. I can't remember. I just remember
18 that we were just talking about where the
19 different sources of possible contamination, where
20 it had come from.

21 This is after, I think, the
22 excavation, there was more contamination.

23 Q. At any time, did any of the property
24 owners ever tell you that they suspected the
25 source of the contamination at this site came from

1 off-site?

2 A. No, I can't remember.

3 Q. At any time, have you expressed an
4 opinion to the property owners at the site, or to
5 anyone acting on their behalf, including their
6 attorneys, as to what an acceptable level of
7 contamination at that site would be?

8 A. "Would you" ask the "question" again?"

9 MS. CUTLER: Sure. Would you read it back
10 please.

11 (The reporter read the pending
12 question.)

13 THE WITNESS: No, I don't think so

14 BY MS. CUTLER:

15 Q. At any time, have you ever discussed
16 any action levels that the county would require
17 for petroleum hydrocarbon in the material with the
18 property owners, or anyone acting on their behalf,
19 including the attorneys?

20 A. Yeah. Let me go back to the original
21 question. I think that when you -- not in notes,
22 but we had meetings. We talked about cleanup.
23 Our policy is the cleanup should be ~~be~~
24 non-detectible^{rv} background level.

25 Now, I don't have that down in my

NOON & PRATT BAY AREA

1 notes that I said that, but that is normal policy,
2 to bring that up when we talk about cleanup
3 levels.

4 And I am sure that with the
5 discussions that I had with Mrs. Larkin's
6 consultants, I must have said that during the
7 course of, you know, our conversation. I am sure
8 I would have said that, because I'm sure that
9 would have come up, but I just don't recall.

10 Q. Now, a moment ago you said that your
11 current policy is that the cleanup should be to a
12 non-detectible background levels.

13 Is that a policy as of 1990?

14 A. No. That's the policy that goes back
15 as far as when I got involved with the program.

16 Q. How far back was that?

17 A. It probably started in 1988;
18 somewhere around that area, 1988, when we started
19 getting involved with remediation.

20 Q. Based on your testimony today, would
21 it be accurate to state that before March of 1989,
22 you never discussed with the property owners, or
23 anyone acting on their behalf, any action levels
24 that the county would require for petroleum
25 hydrocarbon in the soil?

1 A. Prior to March of 1989?

2 Q. Yes.

3 A. March of 1989?

4 Q. March of 1989, I will represent to
5 you, is the date of the very first document in the
6 agency file that you brought with you today. It's
7 the date of Exhibit 3.

8 A. Oh. Oh, okay. That's when I
9 approved the underground tank closure plan.

10 Q. Do you have the question in mind?

11 A. I think the question is prior to
12 March of 1989, have I discussed with the Larkins
13 any type of remediation or action level.

14 MS. CUTLER: Would you read back that
15 question again.

16 (The reporter read the pending
17 question.)

18 THE WITNESS: Right. I didn't talk to the
19 property owner, or any other party prior to March
20 of 1989.

21 BY MS. CUTLER:

22 Q. Same question as to anyone else.

23 A. I can't speak for anybody else in my
24 agency. I don't know, you know -- we have a
25 number of people in the agency, so I don't know

NOON & PRATT BAY AREA

1 who got -- I don't know. I could only speak for
2 myself.

3 Q. Would it be accurate, though, to say
4 that there is nothing in your files pertaining to
5 the site that would reflect any conversation like
6 that?

7 A. Right.

8 Q. And during the course of your role in
9 overseeing activities at this site, did you ever
10 communicate, either verbally or in writing, with
11 the attorneys for the property owners?

12 A. Not that I recall.

13 Q. And from my last question, when I
14 said attorneys for the property owners, I include
15 the Fitzgerald, Abbott & Beardsley firm, as well
16 as any other law firms that the property owners
17 may have hired.

18 A. I don't believe I've been in contact
19 with any attorneys; only consultants.

20 Q. Do you have any knowledge of what the
21 costs have been to date regarding the
22 investigative actions that have been taking place
23 at this site?

24 A. No.

25 Q. Do you have any knowledge of what

0109

1 potential future costs for investigation and/or
2 remediation would be for this site?

3 A. No.

4 Q. Did you ever do any investigation of
5 the age of the gasoline that had allegedly been
6 released at this particular site?

7 A. No, not that I recall. I don't know
8 if the lab did it, if they determined if it's aged
9 gas or fresh gas, or they determined how long --
10 no, not that I am aware of.

11 Q. Do you have any knowledge as to
12 whether the property owners have ever received any
13 payment from an insurance company in connection
14 with investigating or remediating this particular
15 site?

16 A. I don't know.

17 MS. CUTLER: I'd like to have marked as
18 Exhibit 23, a letter that is in the file that you
19 brought with you today dated January 29, 1992 on
20 stationery from ITT Hartford to the Alameda County
21 Health Care Services.

22 (The document referred to was
23 marked as Defendants' Exhibit 23 for
24 identification and is annexed hereto.)

25 BY MS. CUTLER:

NOON & PRATT BAY AREA

0110

1 Q. Looking over this particular exhibit,
2 Mr. Seto, have you ever been contacted by any
3 representative of ITT Hartford pertaining to this
4 site?

5 A. I haven't personally, no.

6 Q. Has someone else at the agency been
7 contacted by ITT Hartford?

8 A. Possibly. There is -- like I said
9 earlier, there's been other people working on this
10 case, and I know that outside personnel has come
11 into review the file, and there's been a couple of
12 other people that's been working on the case since
13 I started.

14 So it could be that they came in. I
15 know that there's been two or three people that
16 have come in from the outside; some were
17 attorneys; possibly one of them is the insurance
18 company, but they didn't contact me, though.

19 Q. Does this exhibit in any way refresh
20 your recollection as to whether you have any
21 knowledge of the property owners ever receiving
22 any insurance payments pertaining to this site?

23 A. No. I don't know if they received
24 any payment or not.

25 Q. Other than Mr. Rafat Shahid and Mr.

NOON & PRATT BAY AREA

0111

1 Ariu Levi and yourself, is there anyone else at
2 the agency that has had responsibility for
3 overseeing activities at this site?

4 A. It could have been Kevin Kinsley.

5 Q. Would you spell that please?

6 A. Kevin K-E-V-I-N, and Kingsley,
7 K-I-N-S-L-E-Y.

8 Also, there would have been Katherine
9 Chesick. I'm not sure -- you know, I am not sure
10 if she was involved or not, but she might have
11 been.

12 And Juliet -- I don't even know her
13 last name. It's a new person. Her name is
14 Juliet. I'm not even sure of her last name, but
15 it could have been --

16 Q. Would it be fair to state, though,
17 that you are the person with the primary
18 responsibility for this particular site?

19 A. At one time I was. And then the case
20 was given over to Juliet, and -- but Ms. Larkin
21 has requested that I be kept on the case, because
22 I am the most familiar with it.

23 But as far as actual assignment, it
24 should be with Juliet.

25 Q. When was the case transferred to

NOON & PRATT BAY AREA

0112

1 Juliet?

2 A. Probably about six months ago.

3 Q. And you mentioned that Mrs. Larkin
4 requested that you stay on the case; is that
5 correct?

6 A. Well, just as far as -- as I guess
7 custodial records and, you know, because I'm the
8 most knowledgeable. But it's up to the supervisor
9 to determine whether I am going to stay on the
10 this case or not, because I am working in another
11 area right now.

12 Q. And is that decision still being
13 made, or has it been made?

14 A. It's still not clear yet.

15 Q. Okay. Other than the waste oil tank
16 that you saw removed from the site, did you ever
17 see any other tanks removed from the site?

18 A. Not me.

19 Q. Do you have any knowledge at all of
20 any product leaks occurring at this site in the
21 past -- let me rephrase that question.

22 Do you have any knowledge of any
23 specific product leaks occurring at the site?

24 A. Well, there were detection of
25 gasoline diesel waste oil and some chlorinated

NOON & PRATT BAY AREA

0113

1 solvent. I don't know what it is. It's
2 1-4-Dichlorobenzene, I believe it was.

3 So there has been a leak onto the
4 site.

5 Q. Would it be accurate, if I were to
6 summarize your testimony, saying that you suspect
7 leaks is because of sample results that you have
8 seen, but that you don't have any personal
9 knowledge of specific spill events or release
10 events at the site?

11 A. Right.

12 Q. Do you have any knowledge of any tank
13 testing ever being performed at this site by
14 anybody?

15 A. No.

16 Q. Do you have any knowledge as to the
17 use of this particular property prior to April of
18 1989, when the waste oil tank was removed?

19 A. No.

20 Q. Let's assume for the moment that by
21 August of 1986, all automotive operations and gas
22 station operations at this particular site had
23 ceased.

24 Assuming those facts, would there
25 be any need for a waste oil tank to be on that

NOON & PRATT BAY AREA

1 property after August of 1986?

2 A. Well, whether there is a need or not,
3 a lot of times underground tanks are left at the
4 site. They are abandoned, because of the fact
5 that people just don't want to pull them out,
6 whether there is a need or not.

7 I can't speak for the previous
8 parties that might have owned the property prior
9 to 1986. So I don't know.

10 Q. In your opinion, if a waste oil tank
11 was abandoned in August of 1986, should that tank
12 have been removed in the exercise of due care
13 before April of 1989?

14 A. If the tank -- as the law reads now,
15 if the tank was not intended to be put back in
16 operation within 12 months, 10 to 12 months, it
17 should be removed.

18 Back at the time in 1989, that law
19 was in effect, so there were a lot of tanks that
20 were being left in the ground after the lessee
21 moved out, or the property owners sometimes
22 transferred property.

23 So, you know, back a few years ago,
24 there were tanks left in the ground. Whether it
25 was intentional or not, it's hard to say.

1 Q. Have you had any occasion at all to
2 deal with Desert Petroleum personnel, or any
3 representative from Desert Petroleum with regard
4 to this particular site?

5 A. Not that I recall.

6 Q. Have you ever heard of anyone named
7 Jesus Fernandez or Louie Gomez?

8 A. No.

9 Q. Mr. Seto, I am handing to you what
10 I'd like marked as Exhibit No. 24.

11 (The document referred to was
12 marked as Defendants' Exhibit 24 for
13 identification and is annexed hereto.)

14 MS. CUTLER: And take moment to look over
15 that exhibit.

16 This a letter dated April 24, 1986,
17 addressed to Ms. Jean Larkin, and signed by J.D.
18 Rutherford.

19 Q. Have you ever seen this letter
20 before?

21 A. No.

22 Q. Mr. Seto, setting aside that exhibit,
23 in 1986, to your knowledge, did the County have an
24 established action level for remediating petroleum
25 contamination?

1 A. Not that I know of; not in 1986.

2 Q. Mr. Seto, to your knowledge, is it
3 common practice that action levels for remediating
4 a site would be negotiated between a party that's
5 doing the remediation and your agency?

6 A. Yes.

7 Q. Have you ever heard of someone named
8 George Navone, N-A-V-O-N-E?

9 A. No, I don't believe so.

10 Q. Have you ever heard of someone named
11 William or Bill Wagner, W-A-G-N-E-R?

12 A. Who is he affiliated with? I don't
13 know. There is a lot of -- there is a lot of
14 names. A lot of people call me up. I get a lot
15 of calls, and, you know, names sound familiar, but
16 I don't know what capacity. If I hear, you know,
17 what capacity, maybe I could remember, but right
18 now I would have to say no.

19 Q. During the course of your involvement
20 with this particular site, since March of '89, do
21 you recall ever being told by anyone that this
22 particular site was to be used as a site for a
23 commercial complex to be built?

24 A. No, I don't remember that.

25 Q. Would it be accurate to say that you

0117

1 have no knowledge from any source of any events
2 pertaining to this property that would have
3 occurred from 1976 through 1979?

4 A. Right now, I don't think our office
5 has anything in that time period.

6 Q. So my statement would be accurate,
7 then?

8 A. '76 to '79?

9 Q. Yes.

10 A. (Witness nods head.)

11 Q. Is that "yes"?

12 A. Right. Right. Yes.

13 A. Don't nod your head.

14 MR. GILHULY: Speak.

15 BY MS. CUTLER:

16 Q. And forgive me if you've already
17 answered this question, but beginning from 1989,
18 when you first became involved in the site, do you
19 have any personal knowledge of any activities
20 conducted at this site by Tosco Corporation?

21 A. No.

22 Q. And based upon your testimony of
23 your experience with this site, would it also be
24 accurate to say that you have no personal
25 knowledge of any facts indicating any spills,

NOON & PRATT BAY AREA

0118

1 leaks or unauthorized release that occurred at
2 this site prior to 1989?

3 A. Can you read that back, please.

4 (The reporter read the pending
5 question.)

6 THE WITNESS: Well, the contamination that
7 we were able to detect from the soil sample that
8 were taken during the underground tank removal in
9 April, 198 indicates that there has been some type
10 of release on the premises. It most likely
11 occurred prior to April the 4th, 1989. When that
12 occurred, I don't know.

13 BY MS. CUTLER:

14 Q. Now, I understand from your testimony
15 that you suspect those events from the samples
16 that you have seen.

17 I am asking specifically if you have
18 any personal knowledge of spill events or leak
19 events prior to 1989.

20 A. You know, has a report been filed
21 with our department?

22 Q. That would be one way about
23 knowledge.

24 A. The first time our office became --
25 got knowledge that there was a leak in the

NOON & PRATT BAY AREA

1 property was during the tank removal.

2 Q. So my statement is correct, then?

3 A. I am not sure if I really
4 understand. I am not -- I am not sure if I
5 understand the question, the way you are asking.
6 I think the way you are answer -- the way you are
7 asking the question, the way I am hearing it may
8 be a little different.

9 Maybe you should read it again.

10 MS. CUTLER: Let's go off the record. .

11 (Discussion off the record.)

12 MS. CUTLER: Let's go back on.

13 Q. Mr. Seto, other than conclusions that
14 you may have drawn, based upon your review of
15 samples obtained at this site, is it accurate to
16 state that you don't have any personal knowledge
17 of any fact that would indicate any specific
18 spills, specific leak, or specific unauthorized
19 release that might have occurred at this site
20 prior to March of '89?

21 A. Yes.

22 Q. Referring you now back to Exhibit 22,
23 which is the Exceltech summary report dated May of
24 1990, I have a couple of questions pertaining to
25 that particular exhibit.

1 Directing your attention, Mr. Seto,
2 to page 2 of that report, which I noted is not
3 paginated, there is a notation "Phase 1 Work
4 Schedule and Objective. Item 1: Re-excavate the
5 contaminated soils placed back into the waste oil
6 tank excavation by the previous contractor."

7 Do you see that reference in the
8 report on page 1?

9 A. Page 2 -- oh, page 1.

10 Okay. I'm sorry. .

11 Q. Do you see that Item 1 there on that
12 page?

13 A. Yes.

14 Q. Do you have any knowledge as to what
15 this Item 1 pertains to, Mr. Seto?

16 A. No. What was the question again?
17 I'm sorry. You read the -- you read this Item 1;
18 you asked me a question. What was the question?

19 Q. Do you have any knowledge as to what
20 this item pertains to?

21 A. Well, the way it reads, I would
22 imagine that the previous contractor that put the
23 contaminated soil back into the pit after the
24 underground tank was removed. At least that's the
25 way it sounds.

1 MR. DUPONT: Move to strike as speculation.

2 BY MS. CUTLER:

3 Q. Have you ever had any discussions
4 with anyone about a previous contractor placing
5 contaminated soil back onto the site?

6 A. Back on the site or into the
7 excavation?

8 Q: Either into the excavation or back
9 onto the site.

10 A. I don't recall any conversation
11 that -- that the contaminant soil was put back
12 into the excavation. That doesn't mean it didn't
13 happen. I don't recall. I don't have any notes
14 of that.

15 But I do know from correspondence in
16 my file that some of the contaminated soil is
17 still left on the site. I don't believe any of
18 the contaminated soil has been taken off-site.
19 It's been excavated out of the ground, but it's
20 stockpiled on the sites.

21 Q. Have you ever told the property
22 owners, or anyone acting on their behalf, to
23 demolish a building on the property?

24 A. No.

25 MS. CUTLER: I'd like to have marked as

NOON & PRATT BAY AREA

0122

1 Exhibit 25, one page of handwritten notes from the
2 file that you brought with you today dated August
3 18, 1992, and entitled "Contact Log" from Scott
4 White to Juliet Shin, S-H-I-N.

5 THE WITNESS: Oh, okay. That's Juliet's
6 last name.

7 (The document referred to was
8 marked as "Defendants' Exhibit 25" for
9 identification and is annexed hereto.)

10 BY MS. CUTLER:

11 Q. Okay. Would this be the same Juliet
12 that you were mentioning before?

13 A. Right. Yeah, that's her.

14 Q. Handing you Exhibit 25. Do you
15 recognize the handwriting on this exhibit?

16 A. No.

17 MS. CUTLER: That's all I have for right
18 now.

19

20 EXAMINATION

21 BY MR. GILHULY:

22 Q. Mr. Seto, I will keep you just for a
23 few more minutes.

24 A. Okay.

25 Q. My name is Robert Morgan Gilhuly, and

NOON & PRATT BAY AREA

1 I am representing Texaco, as I told you earlier.

2 I was looking through this Exceltech
3 report, which is Exhibit 22. I believe that's in
4 front of you. And it seems to indicate that the
5 groundwater level is quite close to the surface in
6 Alameda; is that correct?

7 A. It wouldn't be surprising.

8 Q: Do you know whether the site that we
9 are talking about here on Webster Street, whether
10 the contamination of that site has affected any
11 drinking water aquifer?

12 A. I don't know for a fact, no.

13 Q. Is there a drinking water aquifer
14 that you are aware of in that area?

15 A. I'm not aware of one, but that
16 doesn't mean that there isn't one, because -- I
17 don't know who would that have information, or who
18 is in charge of the drinking water. It would be
19 the Regional Board.

20 Q. Is there no one within your
21 department who would be more knowledgeable about
22 that issue?

23 A. Well, maybe the inspector, who is
24 working that area right now, might know. But the
25 Regional Water Quality Control Board, Zone 7,

1 Water District Alameda County, Regional Water
2 District, those two agencies would probably be the
3 best to determine whether there's drinking water
4 aquifers in the area.

5 Q. As far as you know, there is nobody
6 in your office who is more knowledgeable about the
7 effect of this site on any drinking water aquifer
8 that might be out there, is that right?

9 Let me just explain. You said you
10 don't know that this is having any effect on any
11 drinking water aquifers out there.

12 Does that reflect the department's
13 knowledge, or am I just --

14 A. No. That is me.

15 Q. -- or am I asking --

16 A. You could be asking the wrong person.

17 Another division of our department,
18 they test the drinking water, and they --
19 operations might know of the well in Alameda.

20 I don't know if there's any wells in
21 Alameda or not, myself.

22 Q. You said earlier that this case --
23 you told me off the record that this case was
24 basically on the back burner.

25 Was that at the time that this was

1 transferred to Juliet Shin, or was it --

2 A. Yes. More or less when I got a
3 letter from Mrs. Larkin, identifying that they
4 have run out of money. It's been more or less put
5 on the back burner because of the fact that, you
6 know, without any money, there's not much more she
7 could do; and we have other cases that were just
8 more detrimental to the environment and public
9 health.

10 MR. GILHULY: I do understand that, and
11 that's all the questions I have.

12 Thank you very much.

13 Do you have anything in addition?

14 MR. DUPONT: Yes. I have one thing
15 additional.

16

17 FURTHER EXAMINATION

18 BY MR. DUPONT:

19 Q. Let me show you another piece of
20 paper that came from your files; ask you if you
21 recognize any of the handwriting on that page.

22 A. I believe that's from Tom peacock,
23 who is the supervisor of the local oversight
24 program, who Juliet works for; Juliet Shin works
25 for. I believe that's his handwriting.

NOON & PRATT BAY AREA

1 Q. Right. Well, let me have marked,
2 then, as the next exhibit in order, 26 -- well,
3 what I have is a one-page document. It appears to
4 be --

5 A. No. That's just left over -- was
6 that --

7 Q. It appears to have on the other side
8 a --

9 A. Recycled paper.

10 MR. DUPONT: A recycled paper, but it
11 appears to be at the very top "Mrs. Larkin." The
12 next line is "Clean-site. Larry Seto's name
13 circled. There does not appear to be a date.
14 And that is Exhibit 26.

15 (The document referred to was
16 marked as Defendants' Exhibit 26 for
17 identification and is annexed hereto.)

18 BY MR. DUPONT:

19 Q. And for the record, now that we have
20 marked Exhibit 26, you were telling Tom Hughes --

21 A. Peacock, P-E-A-C-O-C-K.

22 Q. And he is Ms. Shin's supervisor?

23 A. Supervisor, right.

24 Q. Is he in the Hazardous Materials
25 Department?

0127

1 A. Yes.

2 Q. Is he in a particular part of the
3 Hazardous Materials Department?

4 A. Yeah. He is the supervisor of the
5 local oversight program.

6 Q. Local oversight --

7 A. Oversight program.

8 Q. Have you ever spoken with Mr. Peacock
9 concerning this --

10 A. No.

11 Q. -- Webster Street property?

12 A. Not that I recall, no.

13 Q. Do you know how it would come to be
14 that Mr. Peacock would take a call as opposed to
15 Ms. Shin with respect to the Webster Street
16 property?

17 A. It could have been she was out of the
18 office, because he is her supervisor and he took
19 the call.

20 Q. Has Mrs. Larkin ever told you that
21 the property is now clean?

22 A. She's never told me that.

23 Q. Now, there is a reference here, it
24 appears to be, "What records other three corners,"
25 question mark, "one still operating."

NOON & PRATT BAY AREA

1 Do you have any recollection of any
2 discussion of an operating gasoline service
3 station in one of the other three corners of --
4 adjacent to this property?

5 A. I haven't been by the property in a
6 long time. I don't know if there's an operating
7 gas station.

8 Q. My question was perhaps slightly
9 broader, Mr. Seto.

10 It was: Do you ever recall any
11 discussions about there still being an operating
12 gasoline service station on one of the corners
13 adjacent to this property?

14 A. I know we had talked about at one
15 time gas stations that were on the corners,
16 adjacent corners of the property.

17 Now, whether -- I can't remember
18 specifically talking about any one that is
19 operating.

20 Q. Now, you had discussed with me at the
21 beginning of your testimony, wanting to make sure
22 that when a monitoring well was put on the Webster
23 Street property, that it was verification that at
24 least one of the wells that was put on there was
25 upgradient.

NOON & PRATT BAY AREA

0129

1 Do you recall that discussion?

2 A. That's in the notes.

3 Q. Right.

4 A. I had recommended that one be
5 upgraded, upgradient; two possibly downgraded,
6 two, three.

7 Q. What is the purpose of putting one
8 well upgradient?

9 A. Well, to determine -- well, it's
10 helping the triangulation, and also determine if
11 there is material coming from other source other
12 than the site itself, or maybe if it's coming from
13 another portion of the site.

14 Q. And you don't know if a well was, in
15 fact, installed in upgradient position, given your
16 file?

17 A. No.

18 Q. So you can't tell whether some
19 portion of the contamination that's observed in
20 the Webster Street property is coming from an
21 off-site source or not; is that correct?

22 A. Right.

23 MR. DUPONT: No further questions.

24 MS. CUTLER: I have just two more.

25

NOON & PRATT BAY AREA

FURTHER EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. CUTLER:

Q. Mr. Seto, do you have any knowledge as to whether or not the Regional Water Quality Control Board is currently actively investigating activities on this particular site?

A. I do not know.

MS. CUTLER: That's all.

MR. GILHULY: Do you have any?

MR. CAMPBELL: I have no questions.

MR. DUPONT: Let's go off the record for a second.

(Discussion off the record.)

MR. DUPONT: Mr. Seto, we have discussed off the record a proposed stipulation so that this transcript can be read and reviewed by you, and then returned to my office, and let me state that that agreement for the record.

You have a question?

THE WITNESS: Yeah. You said 30 days. What about 45?

MR. DUPONT: Well, we don't have a trial date, on the one hand; on the other hand, it may be important for some motion work or others.

I mean, is it at all possible for

NOON & PRATT BAY AREA

1 you -- I don't think this is going to be a
2 terribly long transcript.

3 THE WITNESS: Because what happened, my work
4 schedule's pretty tight. I have been on vacation.

5 MR. DUPONT: Okay. Let's do 45.

6 THE WITNESS: I am really backed up at the
7 office.

8 MR. DUPONT: All right. The stipulation is
9 that the original will be mailed by the court
10 reporter to Mr. Seto; that he will have 45 days
11 from the date he receives it to review it, sign
12 it; that he may not have it notarized; can be
13 signed under penalty of perjury under the laws of
14 the State of California; that he will return the
15 original, in a self-addressed envelope that the
16 court reporter will provide to him, to my office.

17 I will retain the original; make it
18 available to all counsel upon timely notice, to be
19 deemed at least 24 hours facsimile notice for any
20 motions, hearings, and other purposes; that if not
21 so signed and executed, a certified copy may be
22 used in lieu of the original for all purposes,
23 including trial; that the court reporter is
24 relieved of his obligations under the Code of
25 Civil Procedure for retaining the original.

NOON & PRATT BAY AREA

1 And that is the proposed stipulation.

2 MR. CAMPBELL: That's fine.

3 MR. DUPONT: So agreed.

4 MS. CUTLER: So agreed.

5 MR. DUPONT: Thank you very much.

6 (Time noted: 4:45 p.m.)

7

8 I, LAWRENCE SETO, hereby declare
9 under penalty of perjury that the foregoing
10 transcript is true and correct.

11 Executed on , 1992,

12 at , California.

13

14 -----

15 LAWRENCE SETO

16

17

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA) ss.
2 CITY AND COUNTY OF SAN FRANCISCO)

3

4 I hereby certify that the witness in
5 the foregoing deposition, LAWRENCE SETO, was by me
6 duly sworn to testify to the truth, the whole
7 truth and nothing but the truth, in the
8 within-entitled cause; that said deposition was
9 taken at the time and place herein named; that the
10 deposition is a true record of the witness's
11 testimony as reported by me, a duly Certified
12 Shorthand Reporter and a disinterested person, and
13 was thereafter transcribed into typewriting by
14 computer.

15 I further certify that I am not
16 interested in the outcome of the said action, nor
17 connected with, nor related to, any of the
18 parties in said action, nor to their respective
19 counsel.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 25th day of September, 1992.

22

23

LELAND BATARA, C.S.R., 3759

24

25

0134

1 MR. LAWRENCE SETO SEPTEMBER 28, 1992
2 C/O DEPARTMENT OF ENVIRONMENTAL HEALTH
3 HAZARDOUS MATERIALS PROGRAM
4 80 SWAN WAY, ROOM 200
5 OAKLAND, CALIFORNIA 94621
6 RE: LARKIN vs. DESERT PETROLEUM
7 DEPOSITION OF: LAWRENCE SETO
8 TAKEN ON: TUESDAY, SEPTEMBER 8, 1992

9 Dear Mr. Seto:

10 Enclosed is the original transcript of your
11 deposition. Please read it and if you find any
12 errors or changes you wish to make, cross out the
13 word(s) in error with a pen and insert the
14 correction above. Also put your initials beside
15 all corrections.

16 Do not change any of the questions.

17 After completing your review, please sign
18 the transcript and return it to NORMAN A. DUPONT,
19 ESQ. in the enclosed self-addressed envelope.

20 If you have any questions, feel free to call.

21 NOON & PRATT BAY AREA

22 CERTIFIED DEPOSITION REPORTERS

23 cc: ORIGINAL ONE EMBARCADERO CENTER, SUITE 360

24 cc: ALL COUNSEL SAN FRANCISCO, CALIFORNIA 94111

25 (415) 362-6666

NOON & PRATT BAY AREA