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FREDERIC R. TOOKER  
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January 25, 1995

Lawrence Seto  
Alameda County Health Care  
Services Agency  
80 Swan Way, Room 200  
Oakland, CA 94621

RE: Navone v Larkin

Dear Mr. Seto:

Per stipulation by Counsel, enclosed for your review, correction and signature is the original transcript of your deposition, reported on January 17, 1995, in the above-entitled matter.

Please return the original to this office within fourteen (14) days of receipt. A self-addressed stamped envelope is enclosed.

Sincerely,

Tooker & Antz



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

---oOo---

GEORGE NAVONE,	)
	)
Plaintiff,	)
	)
vs.	)
	)
AGNES LARKIN, aka JEAN RATTO	)
LARKIN; JEFFREY RATTO; ROBERT	)
RATTO; JESUS FERNANDEZ; LUIS L.	)
GOMEZ; DESERT PETROLEUM, INC., a	)
California corporation; PHILLIPS	)
PETROLEUM COMPANY, a Delaware	)
corporation; TOSCO CORPORATION,	)
a Nevada corporation; TEXACO,	)
INC., a Delaware corporation;	)
and DOES 1 through 100,	)
inclusive,	)
	)
Defendants.	)

ORIGINAL

No. 697547-0

DEPOSITION OF

LAWRENCE SETO

Tuesday, January 17, 1995

Reported by: JANICE A. BADASCI

CSR No. 6367, RPR-RMR, CRR

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I N D E X

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MS. NICHOLS	92

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1 BE IT REMEMBERED that, pursuant to Subpoena, and  
2 on Tuesday, January 17, 1995, commencing at the hour of  
3 10:17 a.m. thereof, at Fitzgerald, Abbott & Beardsley,  
4 1221 Broadway, 21st Floor, Oakland, California, before me,  
5 JANICE A. BADASCI, a Certified Shorthand Reporter in and  
6 for the State of California, personally appeared  
7  
8 LAWRENCE SETO,  
9 called as a witness by the Defendants, who, having been  
10 first duly sworn, was thereupon examined and testified as  
11 hereinafter set forth.

11 ---oOo---

12 APPEARANCES

13 LAW OFFICES OF MARK M. GARAY, 425 California  
14 Street, Suite 1800, San Francisco, California 94104-2203,  
15 represented by MARK M. GARAY, Attorney at Law, appeared as  
16 counsel on behalf of the Plaintiff.

17 DAVIDOVITZ & YARON, 111 Pine Street, Twelfth  
18 Floor, San Francisco, California 94111-5614, represented  
19 by LISA COHEN, Attorney at Law, appeared as counsel on  
20 behalf of the Defendant Desert Petroleum, Inc.

21 McCUTCHEN, DOYLE, BROWN & ENERSEN, Three  
22 Embarcadero Center, San Francisco, California 94111,  
23 represented by JOHN D. EDGCOMB, Attorney at Law, appeared  
24 as counsel on behalf of the Defendant Texaco Refinery and  
25 Marketing, Inc., a Delaware corporation.

1 PAUL, HASTINGS, JANOFSKY & WALKER, 555 South  
2 Flower Street, Twenty-Third Floor, Los Angeles, California  
3 90071-2371, represented by NORMAN A. DUPONT, Attorney at  
4 Law, appeared as counsel on behalf of the Defendants  
5 Phillips Petroleum Company; Agnes Larkin, aka Jean Ratto  
6 Larkin; Jeffrey Ratto; and Robert Ratto.

7 WASHBURN, BRISCOE & McCARTHY, 55 Francisco  
8 Street, Suite 600, San Francisco, California 94133,  
9 represented by SANDI L. NICHOLS, Attorney at Law, appeared  
10 as counsel on behalf of the Defendant Tosco Corporation.

11 Also present for partial proceedings: ROBERT  
12 CAMPBELL, Attorney at Law, Fitzgerald, Abbott & Beardsley.

13 ---oOo---

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EXAMINATION BY MR. DUPONT

MR. DUPONT: Q. Good morning, Mr. Seto. My name is Norman Dupont, and I represent Phillips Petroleum Company in a lawsuit entitled Navone versus Larkins and others.

You have had your deposition taken before, Mr. Seto?

A. Yes.

Q. And you are appearing here today on behalf of the Alameda County Department of Environmental Health?

A. Yes.

Q. And you were subpoenaed to bring documents with you here today; correct?

A. Correct.

Q. And you have brought those files with you here today?

A. Yes.

Q. There appear to be roughly three manila envelopes that you have brought in with you today. Can you tell me if those manila envelopes are organized in any particular fashion or manner?

A. No. Not really. With the exception of one of them I believe has confidential information in there.

Q. And the confidential information you believe was submitted by whom?

1           A.    Well, it's part of the file.  When a party makes  
2 a request to our office for information concerning a site,  
3 confidential information that's required that we keep  
4 separately is put in a separate file.

5           Q.    All right.  And can you tell me which file  
6 contains the confidential information?

7           A.    This one here (indicating).

8           Q.    All right.

9                    For the record, let me identify the file that  
10 the witness has just -- just so I can identify what you've  
11 designated.

12                   There is a file folder -- manila file folder  
13 marked LOP 37116.  Is the number 3 --

14           A.    This other file is also named --

15                    NS. NICHOLS:  Or "b."  3716b.

16                    THE WITNESS:  Oh, "b."  This one is "a."

17                    MS. NICHOLS:  This is "a."  I believe that's "a"  
18 and "b."

19                    MR. DUPONT:  Q.  Does the number 3716 have any  
20 particular designation in terms of the County Department  
21 of Environmental Health?

22           A.    That's inventory control number.

23           Q.    All right.  And the inventory control number for  
24 property located at 1628 Webster Street in Alameda is  
25 3716?



1 A. Uh-huh. Yes.

2 Q. And does the LOP designation mean anything?

3 A. It identifies the local oversight program.

4 Q. And LOP is an acronym for Local Oversight  
5 Program?

6 A. Yes.

7 Q. And you've handed me -- within that manila  
8 envelope there's a document or a submanila envelope  
9 entitled "Confidential."

10 At the request of Mr. Seto, I'm not opening  
11 that.

12 And there is also a copy of a subpoena from me  
13 to Mr. Seto requiring his appearance at 10:00 a.m. this  
14 morning in today's deposition.

15 And there is also a note of a billing for  
16 services of a service requester Robert F. Campbell of  
17 Fitzgerald, Abbott & Beardsley have attached to this  
18 confidential file.

19 Since the witness has indicated it is his  
20 department policy not to disclose these things --

21 Is that correct?

22 A. On a site search, I -- to be honest with you, I  
23 don't know in a situation like this where, you know,  
24 subpoena. I don't know if you guys have <sup>a right</sup> ~~to write~~ to look  
25 at it or not.

1 I know that if a person off the street comes in  
2 or a person makes a request to look at our files through  
3 the public records and health and safety codes, there <sup>are</sup> ~~is~~  
4 certain items we're supposed to exclude as far as what we  
5 can allow to be released with the Public Records Act.

6 MR. GARAY: By way of voir dire, Norm, if I can  
7 ask a few questions.

8 What to the best of your knowledge are the items  
9 you typically would not permit someone off the street to  
10 view?

11 THE WITNESS: Usually it's notes, interoffice  
12 notes, memos from one <sup>person</sup> ~~place~~ to another. And also location  
13 of inventory, of hazardous material, hazardous waste, site  
14 maps. You know, the Health and Safety Code requires that  
15 that be kept confidential. Site maps.

16 MR. GARAY: The site maps specifically?

17 THE WITNESS: Yeah.

18 MR. GARAY: And the interoffice notes and memos,  
19 are there duplicate copies of those in the other files  
20 that you've provided?

21 THE WITNESS: Yeah. I think there's some in  
22 there.

23 MR. GARAY: So there are some of them in the  
24 files that you provided, and yet there may be others in  
25 the "Confidential" file that you have not provided?

1 THE WITNESS: Right. In the "Confidential," to  
2 be honest with you, I didn't even go through that, because  
3 I didn't put that file together.

4 I haven't been the custodian of these files for  
5 the last few years, so that file was put together by  
6 another staff person in my office.

7 MR. DUPONT: Q. Was that Juliette Shin,  
8 S-h-i-n?

9 A. It could have been. I'm not sure. I know she  
10 has worked on this case most recently.

11 MR. GARAY: Are you familiar with the specific  
12 section of the Health and Safety Code which prohibits the  
13 viewing of the information which you have reflected exists  
14 or you think exists in the "Confidential" file by parties  
15 seeking information?

16 THE WITNESS: I'm not familiar with it offhand,  
17 no.

18 MR. DUPONT: Let me do this. Let me suggest as  
19 follows.

20 There are two files that this witness has  
21 indicated we can clearly copy without any reservation.

22 Q. Is that correct? And those are the other two  
23 files sitting next to you?

24 Why don't we at least initially proceed to have  
25 those copied forthwith. And we can discuss amongst

1 ourselves at a break or an appropriate other time how to  
2 appropriately handle this "Confidential" file. Because,  
3 frankly, I've never encountered this particular situation.

4 MS. NICHOLS: You know, if I could interrupt for  
5 a second, I've run into this recently in another case, and  
6 my understanding is that without litigation and without a  
7 formal subpoena, legal subpoena for records, certain  
8 documents will be maintained as confidential.

9 And those include -- and Mr. Seto, you can  
10 correct me if I go astray here -- architectural drawings,  
11 contractors' reports because of copyright issues; certain  
12 correspondence, you know, intracounty or intradepartment  
13 correspondence.

14 But I have been told by County Counsel in  
15 another county that as long as a subpoena is served in  
16 litigation, rather than just a Public Records Act request,  
17 that those documents are no longer privileged, as long as  
18 any party who would be interested in protecting the  
19 copyright or whatever is a party to the litigation.

20 And we have Mr. Navone's lawyer here, we have  
21 the Larkins' lawyer here, and anybody else who can  
22 arguably have some input into those documents.

23 So it's my guess that those documents are not  
24 confidential and that we could see them.

25 But I think what I would ask Mr. Seto to do

1 before we not put those together with these other two  
2 folders of documents for copying now is maybe just a call  
3 to his office to confirm --

4 THE WITNESS: Okay.

5 MS. NICHOLS: -- that, given the fact these are  
6 being produced pursuant to a subpoena, that we would then  
7 have a right to see them.

8 MR. GARAY: Certainly I would join that, Sandi.  
9 And, also, I think request that Mr. Seto go through the  
10 "Confidential" file, at least to make sure, since he  
11 hasn't assembled it, that there aren't documents in there  
12 he typically would not consider confidential, because  
13 those would naturally come out.

14 MR. DUPONT: Go off the record for a second.

15 (Off-the-record discussion.)

16 MR. GARAY: I think that's a fine way to  
17 proceed. He should look through the confidential right  
18 now before we start so we don't have to beat the same  
19 ground again later.

20 MR. DUPONT: Sure.

21 MR. GARAY: See if some of the notes are in the  
22 other files, if --

23 MR. EDGCOMB: Why doesn't he do that after Norm  
24 marches through the other stuff?

25 MR. GARAY: There might be something in there

11

1 that would bring us back to the same stuff.

2 MR. EDGCOMB: What I'm saying is it may all be  
3 duplicate.

4 MR. DUPONT: Right.

5 MR. EDGCOMB: And he will know better what is  
6 already out if we go through it first.

7 MR. DUPONT: Let me go back on the record.

8 I will return to the witness the manila file  
9 folder marked LOP 3716 sub "b"; with the request Mr. Seto,  
10 in light of the subpoena, make a call to his office at an  
11 appropriate break and determine whether, given the  
12 subpoena, we will be allowed to copy this particular file  
13 which he's indicated would be confidential, at least in  
14 certain circumstances.

15 And I will place that back to the witness.

16 Q. Now, Mr. Seto, you've also brought with you two  
17 other files. Could you tell me --

18 MR. GARAY: May I interrupt briefly?

19 When Mr. Seto makes the call, if he could  
20 ascertain the section of the Health and Safety Code which  
21 prohibits the viewing of the confidential information,  
22 then counsel here can verify that they either share that  
23 opinion or dispute it in some way.

24 MR. DUPONT: All right.

25 Q. You have two other file folders with you,

1 Mr. Seto. Could you briefly explain generically what's in  
2 those two file folders.

3 A. This file labeled LOP 3716a is the file  
4 pertaining to the investigation at the site.

5 MR. DUPONT: And for the record, let me just  
6 identify the subfiles within 3716a.

7 First there is a manila file folder, which  
8 appears to have in it a copy of an Exceltech summary  
9 report, also marked as Exhibit 22 in Mr. Seto's deposition  
10 in the fall of 1992; along with a copy of a subpoena  
11 regarding that deposition.

12 And certain other notes, correspondence, and  
13 materials. Along with a series of business cards, some of  
14 which were marked as Exhibit 7 to Mr. Seto's deposition in  
15 1992.

16 The file folder, the first file folder, does not  
17 have a label on it.

18 The second file folder is labeled "1628 Webster,  
19 Alameda, Unocal station," and appears to have a start with  
20 a proof of service of a deposition subpoena, unlabeled in  
21 any fashion, followed immediately next by a underground  
22 storage tank cleanup fund claim number 01263 on a letter  
23 dated 1993.

24 And there is other materials, including notes,  
25 handwritten notes, and other materials going from a period

1 of roughly 1990 and '91 through 1993. Along with a phone  
2 log with two referenced phone calls, apparently with --  
3 between someone and Bob Campbell.

4           The third separate item in the file is a LRA  
5 preliminary plan of correction for waste oil tank. The  
6 preliminary plan of correction does not appear to have a  
7 specific date on it, but I believe we can establish the  
8 date.

9           There also appears to be a second copy of the  
10 LRA preliminary plan of correction in this second file  
11 folder.

12           And I guess, for my purposes, the first LRA  
13 preliminary plan of correction appears to have certain  
14 handwritten notations on it.

15           The second one, my brief perusal -- and I will  
16 be happy to allow any other counsel to peruse it -- does  
17 not appear to have handwritten notations.

18           So for purposes of saving myself some copying  
19 charges, I am not going to copy second copy of the LRA  
20 plan. It appears to be unmarked, although if any other  
21 counsel wishes to have it copied, they may do so.

22           But I am going to have marked the two manila  
23 file folders and the one LRA preliminary plan of  
24 correction for waste oil tank. It appears to have  
25 handwritten notations on it.



1           And I will undertake to make those arrangements  
2 forthwith.

3           There is another file --

4           MR. GARAY: I think you might have misspoken.  
5 You said you will mark those and make arrangement. I  
6 think you meant you will copy those?

7           MR. DUPONT: Copy those; correct.

8           Q. There is another file folder, Mr. Seto, that you  
9 brought with you.

10          A. Yes. This is my -- a copy of my deposition that  
11 was taken a few years ago, in ~~Exceltech Corp.~~

12          Q. Let me, just for the record, indicate that first  
13 there is a cover letter to Mr. Larry Seto from a legal  
14 assistant at Fitzgerald, Abbott, & Beardsley, purporting  
15 to enclose the draft declaration of Larry Seto; and  
16 Exhibit A, the Exceltech summary report.

17                   There is a draft, unsigned declaration of  
18 Mr. Larry Seto, purporting to be in the Larkin versus  
19 Desert Petroleum, Inc., case.

20           MR. GARAY: I'd like to have that copied.

21           MR. DUPONT: All right.

22                   There is a copy of the Exceltech summary report  
23 dated May 1990, with a cover transmittal letter dated May  
24 29, 1990, from Randall Stone to the law firm of Golden,  
25 Stefan, S-t-e-f-a-n, Ellenberg & Toby, attention

15

1 Mr. George C. Rogers. That bears at the bottom of it an  
2 "Exhibit A" stamp, and apparent reference to the cover  
3 letter from Fitzgerald, Abbott, & Beardsley.

4 And then there is a copy of Mr. Seto's  
5 deposition taken in the Larkin action of September 29 --  
6 September 8, 1992. There are a few highlighted markings.

7 And I will be happy to allow counsel to review  
8 the highlighted markings of Mr. Seto's deposition  
9 transcript.

10 By the way, Exhibit A -- strike that.

11 The Exceltech summary report dated May 1990,  
12 which has also got an "Exhibit A" designation at the  
13 bottom, from my brief perusal appears to be unmarked with  
14 any handwriting, although there does appear to be some  
15 underlining of certain sentences.

16 And I guess, given that underlining, I'd like to  
17 have this copy of the Exceltech summary report copied as  
18 well.

19 MS. NICHOLS: You want that one copied?

20 MR. DUPONT: Yes. It has some underlining here.  
21 And rather than -- and is that counsel --

22 MR. GARAY: Do you wish to copy the pages that  
23 are underlined?

24 MR. DUPONT: I'd like to copy the whole thing so  
25 we avoid issues of authentication on this sort of thing.

1 MR. GARAY: Okay.

2 MR. DUPONT: Q. Now, Mr. Seto, you also have  
3 some handwritten -- one-page yellow handwritten notes.  
4 Are those handwritten notes that you created?

5 A. Yes. These are the same notes that you've  
6 copied before (indicating). And I just added one little  
7 item here when the case was transferred to the local  
8 oversight program.

9 Q. All right.

10 A. These were what I was going to use if you ask me  
11 about certain things.

12 Q. All right.

13 A. If you'd like to copy these again, you're  
14 welcome to do that.

15 MR. DUPONT: I think we probably do want to copy  
16 those one-page handwritten notes prepared by Mr. Seto.

17 It's now approximately 10:35. Let me go off the  
18 record so I can make appropriate arrangements for copying  
19 of the items that I've determined that I wish to have  
20 copies of.

21 And if any other counsel determine that they  
22 wish to copy other items, they should let me know at their  
23 earliest convenience.

24 Off the record.

25 (Break taken from 10:38 to 11:01 a.m.)

1 MR. DUPONT: Back on the record.

2 Q. Mr. Seto, you've had an opportunity to consult  
3 with counsel for County of Alameda with respect to the  
4 "Confidential" file.

5 Can you now tell me what your understanding is  
6 of your counsel's position with respect to releasing that  
7 file?

8 A. We <sup>can</sup> ~~could~~ release all this information.

9 There was one letter here that was addressed to  
10 Juliette Shin that -- that's confidential. It's stated at  
11 the top "Confidential." It's written by Mr. Campbell.

12 MR. GARAY: What's the date of it, please?

13 THE WITNESS: August 13th, '93.

14 If he has no problem with releasing it or having  
15 it copied, then we don't, either.

16 MR. DUPONT: Q. All right. Well, that we can  
17 deal with separately.

18 Let me indicate that the rest of the file that  
19 the witness has handed me contains, A, a copy of my  
20 subpoena for today's deposition, which I do not intend to  
21 get copied; B, a copy of a billing for services to Robert  
22 Campbell for apparent copies of materials, which I do not  
23 intend to copy. And then various other materials  
24 addressed to Juliette Shin from Robert F. Campbell,  
25 purporting to transmit materials.

1           And also, then, a copy of what appear to be a  
2 number of documents apparently -- apparently Bates  
3 numbered in the Larkin litigation, Bates numbered 10391  
4 through 10440.

5           A copy of a lease beginning in 1927, which I do  
6 not intend to have copied.

7           A copy of a transmittal of executed agreements,  
8 dated June 10, 1947, Bates Nos. 403, 404, 405.

9           A lease dated May 1947, Bates pages 406, 407,  
10 408.

11           A copy of minutes dated June 20, 1947, Bates  
12 pages 20.

13           A copy of a service station equipment inventory  
14 for May 1947, Bates pages 409.

15           A copy of a July 28, 1949, request for  
16 permission to install tanks, dated Bates page 379.

17           A copy of a lease renewal document, Bates pages  
18 18, 19.

19           A copy of a page of another lease renewal  
20 document, Bates page 14.

21           A copy of a document entitled "Service Station  
22 Number 70153."

23           Exhibit A, purporting to depict a gasoline  
24 service station.

25           MR. GARAY: May I look over your shoulder?

19

1 MR. DUPONT: Yeah.

2 Apparently undated diagram.

3 Copies of a service station inventory dated  
4 October 30, 1950, Bates pages 10376, -377, -378.

5 Copy of a 1952 letter to Angelo P. Ratto, Bates  
6 pages 390.

7 Copy of service station equipment inventory for  
8 May 1957, Bates pages 111, 112.

9 Copy of a one-page otherwise unidentified  
10 document, Bates page 383, referencing Tidewater Oil  
11 Company Service Station, with a date issued of January 19,  
12 1966.

13 An assignment agreement from Tidewater to  
14 Phillips, Bates pages 499, 500, 501, 502, 503, 504, 505,  
15 506, 507, 508, 509, 510, 511, 512, 513 through 518.

16 Letter from Phillips to Angelo Ratto, Bates  
17 pages 126 to 127.

18 Diagram of a service station, not identified by  
19 year or in particular by who created the diagram that I  
20 can see offhand.

21 Copy of Phillips' responses to plaintiff's first  
22 set of special interrogatories in the Larkin action, with  
23 copies of pages 80, 81, 82, 83, 84, and 85 thereto.

24 Copies of certain documents attached thereto,  
25 identified as Phillips-Larkin eight thirty-one through one

20

1 one one, one thirty-one.

2 Copy of service station inspection form, Bates  
3 page 373, 374.

4 Phillips-Larkin invoice, eight thirty-one,  
5 ninety-two, one ninety-two, one ninety-four.

6 Notice of assignment to Tosco, Bates page 215.

7 An assignment agreement from Tosco from Phillips  
8 to -- from Phillips to Tosco, Bates page 40054, 400055,  
9 -56, -57, -58, -59, -60.

10 Letter dated April 24, 1986, from Desert to  
11 Mrs. Larkin, Bates page 10241, with attached results.  
12 10242.

13 Copy of an Exceltech summary report dated May  
14 1990, with handwritten interlineations.

15 Copy of a fax transmittal report to R.V. Levi  
16 (pronouncing) or Levi (pronouncing).

17 THE WITNESS: Levi.

18 MR. DUPONT: Levi of Alameda County Department  
19 of Environmental Health; dated March 19, 1990, purporting  
20 to attach analytical results and chain of custody of  
21 Sequoia Analytical.

22 And a map purporting to depict copies of an  
23 Anaematrix, Inc., report to an Ensco Environmental  
24 Services, Inc.; dated February 22, 1990, with attached  
25 report summary and data sheets labeled "Results," pages 1

21

1 through 5, with quality assurance pages 1, 2, 3; and a  
2 chain of custody, one page.

3           That whole stack of stuff I do not intend to  
4 have copied for my purposes.

5           MR. GARAY: I'd like a copy of that.

6           MS. COHEN: I'd like a copy of it, too.

7           MR. DUPONT: You can have it copied at your own  
8 expense.

9           MS. NICHOLS: Yeah. I don't want a copy of  
10 those.

11           MR. DUPONT: These are all documents that have  
12 been produced previously.

13           And I guess these other materials --

14           MR. GARAY: Why don't we send it all down to the  
15 copy service, and I'll just -- you can ask them to make  
16 fewer copies of that stack that you don't want.

17           MR. DUPONT: The rest of this material I guess  
18 I'll have copied, just for the fun of it.

19           And I do not intend to copy, by the way, either  
20 a copy of my subpoena or the billing for services. So I'm  
21 going to put those back in things I do not want copied.

22           MR. GARAY: Mr. Seto, just for clarity's  
23 purposes, how many pages is the letter, Mr. Campbell's  
24 letter?

25           THE WITNESS: Six.



1 MR. GARAY: Thank you.

2 MR. DUPONT: Q. Mr. Seto, you are a senior  
3 hazardous materials specialist with the Alameda County  
4 Department of Environmental Health?

5 A. Yes.

6 Q. And if I refer to it as "Environmental Health,"  
7 you'll understand what I'm referring to?

8 A. Yes.

9 Q. And are you currently in charge of overseeing  
10 any investigation or remediation with respect to the  
11 property known as 1628 Webster Street?

12 A. No.

13 Q. Who currently has that responsibility?

14 A. It has just been recently transferred over to  
15 Eva Chu.

16 Q. Eva --

17 A. Chu, C-h-u.

18 Q. And formerly before Eva Chu, who had it?

19 A. It's my understanding Juliette Shin.

20 Q. And at one point in time did you have  
21 responsibility for oversight of the 1628 Webster Street  
22 property?

23 A. Yes.

24 Q. And when this property was transferred to the  
25 local oversight program, did you cease having

1 responsibility?

2 A. Yes.

3 Q. And the transfer of the local oversight program,  
4 do you recall when that occurred?

5 A. I believe it was in January of '92. It was in  
6 my notes, but my notes are being copied.

7 Q. Copied. All right. We can look at those notes  
8 to confirm.

9 And initially when it was transferred to the  
10 local oversight program, Juliette Shin was involved?

11 A. I'm not sure.

12 When I transferred<sup>ed</sup> over to the local oversight  
13 program, the supervisor in that program determines who is  
14 given the case. So I don't know if there was a person  
15 that was involved with the case before Juliette got it.

16 Q. All right. And in your position as a senior  
17 environmental health specialist -- is that the correct  
18 title?

19 A. No. My correct title is Senior Hazardous  
20 Materials Specialist.

21 Q. Senior Hazardous Materials Specialist.

22 Do you recall when you first became involved  
23 with any work concerning the 1628 Webster Street property?

24 A. I got involved when they removed the underground  
25 tank, the waste oil tank at the site.

1 Q. Right.

2 Let me show you, sir, a document that I think we  
3 discussed briefly at your first deposition, which is a  
4 application for an underground tank closure. It is  
5 Exhibit 3 to Mr. Seto's deposition taken in the Larkin  
6 case in 1992.

7 Sir, I'm going to show you this document which  
8 was previously marked in your deposition in 1992. Ask you  
9 to confirm on reviewing it that that is your accepted and  
10 your initials by the "accepted" stamp on that plan.

11 A. Yes.

12 Q. And do you recall any involvement with the 1628  
13 Webster Street property prior to reviewing this  
14 application which you accepted on March 31, 1989?

15 A. No. This is the first time I had any dealings  
16 with this site.

17 Q. And the last time you had any dealings with this  
18 site would have been at the time that it was transferred  
19 over to the local oversight program?

20 A. Right. That's right.

21 Q. Now, with respect to the waste oil tank removal,  
22 were you present at the time of the waste oil tank  
23 removal?

24 A. Yes.

25 Q. And let me show you Exhibit 4 to your prior

25

1 deposition. That's a exhibit that purports to have  
2 various business cards copied on it.

3           And let me direct your attention to the business  
4 card for LRA Environmental. It's the second one down in  
5 the left-hand column.

6           A.    Yes.

7           Q.    Do you see that?

8           A.    Yes.

9           Q.    And you noted there "consultant for buyer" under  
10 the name of Mr. Nick Olson. Is that your handwriting?

11          A.    Yes.

12          Q.    Would that reflect some information that you  
13 received from Mr. Nicholson on or about April 4, 1989?

14          A.    I either received it from Mr. Nicholson or  
15 someone at the site.

16          Q.    And were you aware at that time that George  
17 Navone was the prospective ground lessor for this  
18 property?

19          A.    No.

20          Q.    Do you recall having any dealings with either a  
21 buyer or a ground lessor for the 1628 Webster Street  
22 property by the name of George Navone?

23          A.    No.

24          Q.    Do you ever recall having any discussions with  
25 anyone you understood to be a buyer of this property with

1 respect to whether they would be allowed to obtain a  
2 permit to construct some improvements on this property?

3 A. I don't remember a conversation like that, no.

4 Q. Now, in the normal course of your business as a  
5 senior hazardous materials specialist, do you have  
6 occasion to tell the permit department for the City of  
7 Alameda not to issue a permit?

8 A. Can you ask that question again?

9 MR. DUPONT: Could you repeat the question?

10 (Question read back.)

11 MR. DUPONT: Q. Let me rephrase that question,  
12 Mr. Seto.

13 Have you ever as a senior hazardous materials  
14 specialist told the City of Alameda permit department not  
15 to issue a permit to construct on a particular parcel?

16 A. No.

17 Q. Have you had any discussions with any  
18 representative of the City of Alameda permitting  
19 department in which you told them that a permit to  
20 construct had to be placed on hold?

21 A. No.

22 Q. Do you believe it is within your purview or  
23 powers as a senior materials specialist to instruct the  
24 City of Alameda to place a permit to construct on hold?

25 A. Are you talking about at this particular site?

1 Q. Yes.

2 A. Because At this particular site, I'm not  
3 involved with the investigation of cleanup at this time.  
4 ~~So~~ I wouldn't have any involvement as far as whether a  
5 permit should be issued or not, or whether more  
6 investigation or remediation needs to be done, because I  
7 haven't been working on it for a couple of years.

8 Q. Let me focus on 1989.

9 You indicated that your first involvement would  
10 have been your review of the underground tank closure  
11 plans in or about the end of March.

12 A. Yes.

13 Q. And then you witnessed the removal of the waste  
14 oil tank on or about April 4, 1989; correct?

15 A. Yes.

16 Q. During all of 1989, that year that you were  
17 involved at 1628 Webster Street, do you recall any  
18 discussion with the City of Alameda permit department in  
19 which you told them "place a permit to construct on hold"?

20 A. No.

21 Q. During 1990, do you recall any discussion with  
22 the City of Alameda building department in which you told  
23 them "place a permit to construct on hold for 1628 Webster  
24 Street"?

25 A. No.

1 Q. Now, I'd like, sir, if I could, just to get a  
2 better idea of what happened after the waste oil tank that  
3 you saw removed was removed.

4 First of all, you've seen a number of tanks,  
5 both waste oil tanks and other tanks, being removed from  
6 properties; is that correct?

7 A. Yes.

8 Q. Could you tell me if it's more than a hundred  
9 tanks that you've seen removed, in your experience?

10 A. It's more than a hundred tanks.

11 Q. And do you recall the removal of this particular  
12 waste oil tank on or about April 4, 1989?

13 A. I remember being there. I remember being there.

14 Q. Other than that, I think I asked you at your  
15 deposition in 1992 whether you recalled anything out of  
16 the ordinary.

17 A. Right.

18 Q. Do you recall now as you're sitting here today  
19 anything out of the ordinary in the removal of that waste  
20 oil tank?

21 A. No.

22 Q. You did receive certain results with respect to  
23 -- after the waste oil tank had been removed; is that  
24 correct?

25 A. Uh-huh.

1 Q. And let me show you what was marked as Exhibit 5  
2 to your deposition. And down at the bottom there's some  
3 handwriting dated approximately May 25. Do you see that  
4 handwriting?

5 A. This (indicating)?

6 Q. That's apparently a court reporter's stamp.

7 A. Okay. May 25.

8 Oh, okay. Yeah.

9 Q. Is that your handwriting?

10 A. Yes.

11 Q. And does that say "request a plan of  
12 correction"?

13 A. Yes.

14 Q. And, in fact, you received a plan of correction  
15 from the Larkins; correct?

16 A. Yes.

17 Q. And let me, just so we make sure we're talking  
18 about the same document, show you what at least I  
19 understand to be the plan of correction. And this is  
20 Exhibit 7 from your deposition in 1992. It begins with a  
21 LRA Environmental cover sheet, followed immediately by a  
22 letter dated July 24, 1989, addressed to Mr. Jeff Larkin.

23 And let me show you what was previously marked  
24 as Exhibit 7 in your first deposition, Mr. Seto.

25 A. Uh-huh.



1 Q. And ask you to take a moment to look at that.

2 A. (Reviewing document.)

3 Q. And at the top of Exhibit 7, page 2, there's  
4 some handwriting with a date and a time. 7/28/89; do you  
5 see that?

6 A. 7/27/89.

7 Q. 7/27/89.

8 Do you know if that's your handwriting?

9 A. No. That's not my handwriting.

10 Q. But in any event, is that the plan of correction  
11 that you received from the Larkins' consultant at that  
12 time, LRA in caps Environmental?

13 A. Right. Uh-huh.

14 Q. And let me direct your attention, Mr. Seto, to  
15 page 3 of the letter. And it shows that LRA Environmental  
16 copied various individuals on the letter. And let me  
17 direct your attention to a Bill Wagner, George Navone &  
18 Associates. Do you see that?

19 A. Yes.

20 Q. Do you recall ever meeting Bill Wagner?

21 A. No.

22 Q. If I told you that Bill Wagner was a  
23 representative of George Navone & Associates, the ground  
24 lessor of this property, would that assist in refreshing  
25 your recollection in any way?

31

1 MS. NICHOLS: I'm just going to ask, Mr. Dupont,  
2 I believe he is a potential ground lessee of the subject  
3 property. I think you've been referring to him as a  
4 ground lessor.

5 MR. DUPONT: Q. Let me rephrase the question,  
6 because, once again, brighter counsel than I have pointed  
7 out an error.

8 If I told you -- and let me represent to you  
9 that Mr. Bill Wagner was at this time acting as a  
10 representative of George Navone & Associates, who were a  
11 ground lessee for the 1628 Webster Street property.

12 Would that refresh your recollection in any way  
13 as to whether you ever met Mr. Wagner?

14 A. No.

15 Q. Do you recall ever speaking with Mr. Bill  
16 Wagner?

17 A. No.

18 Q. Do you recall ever telling Mr. Bill Wagner that  
19 he could not get a permit to construct his development for  
20 1628 Webster Street as of mid July 1989?

21 A. No.

22 Q. Do you ever recall speaking to a Mr. Bill Wagner  
23 at any point in time and telling him that he could not  
24 obtain a permit to construct at 1628 Webster Street in  
25 Alameda?

1 A. No.

2 Q. Do you ever recall speaking with anyone who  
3 identified themselves as having a ground lease or being a  
4 developer for 1628 Webster Street and telling them they  
5 could not get a permit?

6 A. No.

7 Q. Let me next direct your attention to Exhibit 8  
8 in your prior deposition, which is a letter from Rafat,  
9 R-a-f-a-t, A. Shahid for the hazardous materials program,  
10 to Mrs. Jean Larkin, re 1628 Webster Street.

11 And Mr. Seto, is the initials at the bottom  
12 under the typed thing, under the typed signature say "RAS:  
13 LS: MNC"? Do you see those typed initials?

14 A. Yeah. Uh-huh.

15 Q. And does the "LS" mean that you prepared a draft  
16 of this letter for your boss at that time, Mr. Shahid?

17 A. Right.

18 Q. And I noticed you copied -- you show a cc to  
19 Bill Wagner, comma, developer.

20 A. Right.

21 Q. Do you know how you came to copy Mr. Wagner on  
22 this letter?

23 A. No. As a matter of fact, when I look at it now,  
24 I guess I somehow got his name. I don't know -- I don't  
25 recall any conversation with him or how I got --

1 Q. Well, is it correct that you saw his name on the  
2 LRA report?

3 A. Yeah. That's right. And I would most likely  
4 copy the same people.

5 Q. But seeing this document does not refresh your  
6 recollection that you ever had a in-person meeting with  
7 Bill Wagner?

8 A. No.

9 Q. Do you ever -- seeing this document, does it  
10 refresh your recollection you ever had a phone  
11 conversation with Bill Wagner?

12 A. No.

13 Q. Now, after the -- and does this letter, Exhibit  
14 8 to your prior deposition, does this letter confirm that  
15 the plan of correction as submitted by LRA Environmental  
16 on behalf of the Larkins was acceptable to the department  
17 as of August 22, 1989?

18 A. Yes.

19 Q. And is it also your recollection that thereafter  
20 -- strike that.

21 Do you recall if the Larkins or their  
22 consultants continued to perform some work after August  
23 22, 1989?

24 A. Yes.

25 Q. And you had a handwritten page of notes that you

1 had noted some of the things that had gone on.

2           Would that be your best personal summary of what  
3 went on after August 22, 1989?

4           A.    Yes.

5           MR. DUPONT:  Let me take about a two-minute  
6 break and see if at least that document is copied, because  
7 it might be appropriate to speed that up with respect to  
8 the chronology that I want to understand for Mr. Seto.

9           So let's go off the record, take a two-minute  
10 break.

11           (Break taken from 11:32 to 11:42 a.m.)

12           MR. DUPONT:  Let me have marked as Exhibit 1 to  
13 Mr. Seto's deposition here today a one-page handwritten  
14 set of notes that begins with the first line "U" period  
15 "G" period "T" period, removal plan approved on 3/31/89,  
16 paren, 1 dash 550 gal, g-a-l, period, waste oil tank,  
17 closed paren.

18           That's the first line of the handwritten notes.

19           Let the record reflect that I'm returning the  
20 original of the handwritten notes back to Mr. Seto.  And  
21 this will -- the copy will be marked as Exhibit 1.

22           (Defendants' Exhibit 1 was marked for  
23 identification.)

24           MR. DUPONT:  In the interest of expediency, I do  
25 not have copies of Exhibit 1 for counsel, but I will

1 undertake to provide it within the next day of Exhibit 1.

2 MR. GARAY: I'm sorry. I lost you because I was  
3 looking for something else.

4 What, Norm, will Exhibit 1 be?

5 MR. DUPONT: It's the one-page set of  
6 handwritten notes by Mr. Seto that began "U" period "G"  
7 period "T" period, removal plan, approved on 3/31/89.

8 MR. GARAY: Has that been made a prior exhibit  
9 in anybody's depo?

10 MR. DUPONT: Not that I know of. I believe  
11 Mr. Seto indicated in his testimony earlier today that a  
12 copy of that document was provided earlier, but I'm not  
13 sure it was marked in his deposition taken in 1992.

14 Let the record reflect that I've placed what the  
15 court reporter has marked as Exhibit 1 to Mr. Seto's  
16 deposition in front of him.

17 Q. Mr. Seto, can you identify Exhibit 1 for me?

18 A. Yes.

19 Q. Did you prepare Exhibit 1?

20 A. Yes.

21 Q. What was your purpose in preparing Exhibit 1?

22 A. To outline some of the events that occurred  
23 while I was handling the case.

24 Q. Did you keep Exhibit 1 in the files of the  
25 Department of Environmental Health?

1 A. Yes.

2 Q. And did you attempt in preparing Exhibit 1 to be  
3 as accurate as you could be with respect to the items that  
4 you noted on Exhibit 1?

5 A. Yes.

6 Q. And is it your habit in certain underground  
7 storage tank cases where there is litigation to prepare  
8 items such as Exhibit 1? That is, a summary of events  
9 while you were overseeing the project?

10 A. Yes.

11 Q. And in those cases when you do prepare them, you  
12 keep them with the file related to that case; correct?

13 A. Yes.

14 Q. Now, if I could borrow the original while you're  
15 looking at what's been marked as Exhibit 1, the third line  
16 down, you indicate "two soils samples from removal  
17 detected up to," and then you list various numbers.

18 A. Yes.

19 Q. Then you have an entry for August 22, 1989. And  
20 let me see if I can read that so we can speed things up.

21 Larkin's apostrophe "S" work plan accepted, with  
22 the condition that the "M" period "W" period be installed  
23 in the verified down gradient direction.

24 Did I read that correctly?

25 A. Yes.

1 Q. And "M" period "W" period means monitoring well?

2 A. Yes.

3 Q. And then on -- you have an entry on 2/28/90,

4 which indicates water sample contained up to 8000 ppb.

5 Low/med period "b" period "p" period hydrocarbons, and 96

6 ppb benzene, and 16 ppm oil and grease.

7 Did I read that note or figure for 2/28/1990

8 correctly?

9 A. I believe that should be 8600 parts per billion.

10 Q. 8600.

11 And the reference to low/med period "b" period

12 "p" period hydrocarbons, is that low to medium what; boil

13 point?

14 A. Yeah. Uh-huh.

15 Q. And could you explain for a nonchemist such as

16 myself what a low to medium boiling point hydrocarbon is,

17 to your understanding?

18 A. A lower boiling hydrocarbon would be more

19 volatile, and it would evaporate a lot faster than the

20 higher boiling point.

21 Q. Now, you also have an entry for May 16, 1990,

22 that says meeting held in my office. An approximate 3000

23 cubic feet of soil have been excavated containing gas,

24 comma, diesel and waste oil, period. Required minute,

25 m-i-n, of one well, comma, recommended three wells,



1 period.

2 Did I read that correctly?

3 A. Yes.

4 Q. And does this reflect your notes of a meeting  
5 that you had with the Larkins on or about May 16, 1990?

6 A. Yes.

7 Q. And at that meeting were you informed that the  
8 Larkins had removed approximately 3000 cubic feet of soil  
9 from the property?

10 A. Yes.

11 Q. And I think we discussed previously in your  
12 earlier deposition your -- or someone's notes of that  
13 meeting, and I want to make sure that I got that correct.

14 Let me refer you, sir, to what was marked as  
15 Exhibit 13 in your deposition, a two-page set of  
16 handwritten notes dated 5/16/90.

17 A. (Reviewing notes.)

18 MR. DUPONT: Let the record reflect the witness  
19 is perusing the document, Exhibit 13, from the 1992  
20 deposition.

21 MR. EDGCOMB: I think we're trying to give --

22 (Off-the-record discussion.)

23 MR. DUPONT: Back on the record.

24 Q. Mr. Seto, have you had a time to review what was  
25 marked as Exhibit 13 to your 1992 deposition?

1 A. Yes.

2 Q. Are those your handwritten notes?

3 A. Yes.

4 Q. Did you prepare them at or about the time you  
5 had your meeting with the Larkins and their consultant?

6 A. Yes.

7 Q. And was it your habit to prepare notes of  
8 meetings on a project that you had oversight responsibility  
9 for?

10 A. Yes.

11 Q. And if you prepared notes of meetings, did you  
12 keep them in the file for that project?

13 A. Yes.

14 Q. And that was a practice that you followed on a  
15 normal practice, whether it be a 1628 Webster Street  
16 project or another project that you had responsibility  
17 for?

18 A. Yes.

19 Q. And the notes reflect that there were two  
20 representatives of Exceltech present, together with  
21 Mr. Jeffrey Larkin, Mrs. Jean Larkin, yourself, and Susan  
22 Hugo of Hazardous Material.

23 At the time, who was Susan Hugo?

24 A. Susan Hugo at the time was working in my unit  
25 with me.

1 Q. But as of May 1990, you still had responsibility  
2 for the 1628 Webster Street project; correct?

3 A. Yes.

4 Q. And aside from what's written here, do you  
5 recall anything in particular that the Larkins, Mr. Larkin  
6 or Mrs. Larkin, said to you at the May 16, 1990, meeting?

7 MR. GARAY: Objection. The question is vague.  
8 It's ambiguous. It assumes by the question that what is  
9 written here is what the Larkins told him. And the  
10 witness hasn't testified to that. So it lacks foundation  
11 and assumes facts not in evidence.

12 MR. DUPONT: Q. Mr. Seto, lawyers are entitled  
13 to make objections, as I'm sure you've noted in other  
14 depositions. Let me try to rephrase the question, just so  
15 we don't have a trivial argument over the question.

16 At this meeting on May 16, 1990, do you recall  
17 anything in particular that the Larkins said to you, as  
18 opposed to their consultant?

19 A. No.

20 Q. Do you recall being informed that the Larkins  
21 had removed a certain amount of soil as of the May 16,  
22 1990, meeting?

23 A. Yes.

24 Q. And at that point do you recall telling the  
25 Larkins that the soil should not have been removed, from

1 the perspective of the Alameda County Department of  
2 Environmental Health?

3 MR. GARAY: Vague as to the date.

4 MR. DUPONT: Q. Mr. Seto, you can go ahead and  
5 answer that question.

6 THE WITNESS: Could you repeat the question  
7 again?

8 (Question read back.)

9 THE WITNESS: No.

10 MR. DUPONT: Q. And do you recall the Larkins  
11 agreeing as a result of this meeting to submit certain  
12 confirming samples about the walls of the excavation that  
13 was sought?

14 A. Yes.

15 Q. Let me place in front of you what was marked as  
16 Exhibit 14 to your prior deposition, which is a three-page  
17 document beginning with a fax transmittal from Exceltech  
18 to your attention.

19 And if you could just take a look and confirm  
20 that you did receive that document from Exceltech on  
21 behalf of the Larkins.

22 MR. GARAY: What number exhibit is that, Norm?

23 MR. DUPONT: Fourteen.

24 MR. GARAY: To his prior deposition?

25 MR. DUPONT: Yes.

1 MR. GARAY: And the question is does he recall  
2 receiving this?

3 MR. DUPONT: Yes.

4 MR. GARAY: On or about the time that the date  
5 indicates?

6 MR. DUPONT: The question is the question.

7 THE WITNESS: (Reviewing exhibit.)

8 MR. GARAY: I don't recall the question. Maybe  
9 we should have it read back, then.

10 MR. DUPONT: Will you please read back the  
11 question?

12 (Question read back.)

13 THE WITNESS: I received a letter, but I can't  
14 remember if I received this fax sheet on the lining  
15 material.

16 MR. DUPONT: Q. And that is what was placed in  
17 order as page 3 of Exhibit 14?

18 A. (Reviewing document.)

19 Q. Well, in any event, the portion of Exhibit 14  
20 you do recall receiving is the fax cover page and a letter  
21 dated May 17, 1990; is that correct?

22 A. Yes.

23 Q. And after receiving that letter, you wrote a  
24 response back to Mrs. Larkin?

25 A. I can't remember.

1 Q. All right. Let me show you Exhibit 15, and ask  
2 if that refreshes your recollection that you wrote a  
3 response back to Mrs. Larkin.

4 A. (Reviewing document.)

5 Yes.

6 Q. And at some point in time did you also receive a  
7 summary report from Exceltech concerning this project?

8 A. Yes. After I gave my deposition, the last  
9 deposition.

10 Q. You received a summary report?

11 A. Right.

12 Q. Do you recall ever seeing the summary report  
13 prior to your last deposition in 1992?

14 A. No.

15 (Documents delivered.)

16 Q. Let me direct your attention to the summary  
17 report, which was marked in your first deposition as  
18 Exhibit 22, and place that in front of you.

19 Again, please take as much time as you need to  
20 look at it. I'm going to specifically reference you to  
21 some items on pages 8 and 9, so you may want to pay  
22 particular attention to that. But, obviously, if you need  
23 to look at any other pages, you should feel free to do so,  
24 Mr. Seto.

25 A. (Reviewing document.)

1 Okay.

2 Q. Mr. Seto, you've had an opportunity to review at  
3 least pages 8 and 9 of the summary report?

4 A. Yes.

5 Q. And at the bottom of page 8, it states, "To  
6 date, over 3000 cubic yards have been excavated."

7 Does that comport with your recollection of what  
8 the Larkins or their consultant told you at the May 16,  
9 1990, meeting?

10 A. Yes.

11 Q. And it also says that "this soil in the  
12 northwest corner of the property adjacent to Pacific still  
13 have soil contamination that will need to be addressed in  
14 the future."

15 Do you recall some discussion of the northwest  
16 corner of the property next to Pacific in the May 16,  
17 1990, meeting?

18 A. Yeah. Vaguely.

19 Q. And was there some problem with going out on the  
20 street at that corner, or concern about sidewalks  
21 collapsing?

22 A. Yes.

23 Q. Now, also, the report in the next paragraph on  
24 page 9 says, In talking with Larry Seto of the ACEDH --  
25 that's all capitalized -- comma, we agreed that

1 backfilling would, w-o-l-d, be feasible based upon criteria  
2 outlined in a letter dated May 17, 1990, paren, appendix  
3 D, closed paren.

4 First of all, that horrid acronym, ACEDH, is  
5 that Alameda County Environmental Health, or Environmental  
6 Department of Health?

7 A. Yeah. I guess that's -- I'm not the one that  
8 wrote the letter, but it sounds good.

9 Q. And aside from the typographical error in the  
10 spelling of the word "would," do you recall discussing  
11 with Exceltech or someone that backfilling based on  
12 certain things that they set forth in their letter of May  
13 17th would be acceptable?

14 MR. GARAY: Vague and ambiguous as to date.

15 THE WITNESS: (Reviewing document.)

16 MR. GARAY: And leading.

17 THE WITNESS: Could you repeat the question  
18 again?

19 MR. DUPONT: Q. Yes.

20 If you could reread the question, please.

21 (Question read back.)

22 THE WITNESS: I believe that's how it went.

23 MR. DUPONT: Q. That's as best you can recall  
24 it at this point in time?

25 A. I know that what -- what is clear in my mind is



1 the reason why I gave them approval to backfill was  
2 because of safety reasons, because of the concern with the  
3 sidewalk losing its integrity; that the excavation had  
4 reached ~~to~~ the boundary lines of the property, and there  
5 was safety concerns.

6 Q. Do you recall telling or informing Exceltech  
7 that, due to these safety concerns, it was important to  
8 backfill and close that particular hole?

9 A. Yeah. At least in that area.

10 I can't -- I have to look at my notes.

11 But I know one of the main criteria that I used  
12 in allowing them to close up that excavation was because  
13 of safety reasons, not because it was cleaned up.

14 Q. Now, there's a reference on -- in paragraph 4 of  
15 page 9 -- let me read it to you.

16 Comma, however, comma, Mr. Seto agreed with  
17 Exceltech that the most important aspect was to close the  
18 excavation and proceed with site development while  
19 monitoring the groundwater, period, closed quote.

20 Do you recall discussing the need to do some  
21 sort of monitoring of groundwater at the May 16, 1990,  
22 meeting?

23 A. I have to look at my notes. Most likely, we  
24 probably talked about all different type of options for  
25 investigation. You know, monitoring the groundwater would

1 probably be one of them, because that's normal.

2 Q. As of May 1990, Mr. Seto, had you come to any  
3 conclusion about what options would not work for this  
4 site?

5 A. Prior to 1990?

6 Q. No. We're now in the March to May 1990 time  
7 period. And that's the time period that I'm addressing.

8 A. Okay.

9 Q. If you need to, you can put your -- let me show  
10 you your chronology sheet, which is Exhibit 1 to this  
11 deposition.

12 As of May 1990, had you come to any conclusions  
13 about what options would not work for the 1628 Webster  
14 Street property?

15 A. No.

16 Q. Is it fair to say that as of May 1990, you were  
17 still willing to consider a variety of options for  
18 investigating and cleaning up the 1628 Webster Street  
19 property?

20 A. Yes.

21 MR. DUPONT: Let me have marked as Exhibit 2 to  
22 Mr. Seto's deposition a multi-page document, which  
23 consists of a cover letter from Mary Beth Butler, legal  
24 assistant, Fitzgerald, Abbott & Beardsley; a declaration  
25 of Larry Seto stamped "draft"; and a proposed exhibit

1 thereto labeled "Exhibit A," which is a Exceltech summary  
2 report for Jean Larkin, dated May 1990, which has an  
3 "Exhibit A" stamp.

4 MS. NICHOLS: What is the date of the  
5 transmittal letter?

6 MR. DUPONT: The transmittal letter is November  
7 17, 1993. And I would also note for the record that it  
8 appears to have a "received" stamp dated November 17,  
9 1993, at 4:34 p.m.

10 (Defendants' Exhibit 2 was marked for  
11 identification.)

12 MR. GARAY: One more time. Sorry. Exhibit No.?

13 MR. DUPONT: Two.

14 MR. GARAY: It's the cover letter and --

15 MR. DUPONT: The draft declaration and the  
16 proposed Exhibit A.

17 MR. GARAY: As well as the Exceltech report?

18 MR. DUPONT: It's an Exceltech summary report,  
19 but it has a different series of pages. It also has a  
20 cover letter of May 25, 1990. That cover letter was not  
21 enclosed in Exhibit 22. And it also has more pages than  
22 Exhibit 22. It appears to have various appendices.

23 Q. Mr. Seto, did you receive a copy of that  
24 document on or about November 17, 1993?

25 A. Yeah. Uh-huh.

1 Q. Did you do anything with it?

2 A. No. Not right away.

3 Q. Did you ever do anything with it, aside from  
4 putting it in your file?

5 A. No. I just kind of briefly scanned at it and  
6 then put it away, put it in the file.

7 Q. Did you ever sign a declaration on behalf of  
8 anybody in the Larkin versus Desert Petroleum, Inc.  
9 lawsuit?

10 A. No.

11 Q. And do you recall having any discussions with  
12 anyone at the Fitzgerald, Abbott & Beardsley firm after  
13 receipt of this?

14 A. No.

15 (Off-the-record discussion.)

16 MR. DUPONT: Let me have marked as Exhibit --

17 (Off-the-record discussion.)

18 MR. DUPONT: First of all, let me indicate for  
19 the record that I'm going to return to Mr. Seto certain  
20 original documents from his files that he handed me this  
21 morning. And I'm going to place them on top of his  
22 deposition transcript and leave them in front of him  
23 there.

24 Let me have marked as Exhibit 3 to Mr. Seto's  
25 deposition -- wait a second. Strike that.

1           Rather than marking Exhibit 3, let me show the  
2 witness what was Exhibit 18 to his 1992 deposition.

3           Just for counsel's convenience, Exhibit 18 is a  
4 letter of July 2, 1990, to Alameda County Healthcare  
5 Services, Department of Environmental Health, Attention  
6 Larry Seto. Subject, Lab Results. Signed by Randy Stone  
7 of Exceltech, Inc., showing a copy to Jean Larkin.

8           THE WITNESS: (Reviewing document.)

9           MR. DUPONT: Q. And Mr. Seto, you received a  
10 copy of Exhibit 18?

11          A. Yes.

12          Q. And that's your handwritten note at the top,  
13 dated July 5, 1990?

14          A. Yes.

15          Q. And just to make sure I read that note, does it  
16 say "need Randy to identify sampling point with a plot  
17 plan," period. "In addition," comma, "other areas show  
18 contamination, other than sample 005 - 4523," period.  
19 "We" something "areas all included in the excavation."

20                 Can you read that word?

21          A. I wish I could tell you. I'm not sure what I  
22 was trying to say there. Evidently, what I was thinking  
23 and what I wrote down didn't come out the same.

24          Q. By "Randy" in the first sentence, you're  
25 referring to Randy Stone?

1 A. Randy Stone, right.

2 Q. Of Exceltech.

3 And was it true --

4 A. I'm not sure what I was trying to say there.

5 There was something also on my mind. I wrote it real  
6 quick. What was on my mind didn't come out in writing the  
7 same way.

8 Q. In any event, was it correct that as of July 2,  
9 1990, you were still having discussions with Randy Stone  
10 of Exceltech about what you needed to -- for your  
11 information with respect to the cleanup at 1628 Webster  
12 Street?

13 A. Right. I was through discussing with Randy  
14 Stone.

15 Q. And as of July 1990, had you reached an opinion  
16 that the Larkins were not properly investigating the 1628  
17 Webster Street?

18 MR. GARAY: I'm sorry. Can I have the question  
19 read back, please, before an answer?

20 MR. DUPONT: Yeah. Sure.

21 (Question read back.)

22 MR. DUPONT: Q. Let me try and rephrase the  
23 question.

24 As of July 1990, did you have an opinion that  
25 the Larkins were in good faith attempting to investigate

1 the contamination at 1628 Webster Street?

2 A. Yes.

3 MR. GARAY: What was that question and answer  
4 again, please?

5 MR. DUPONT: Could you reread the question and  
6 answer?

7 (Question and answer read back.)

8 MR. DUPONT: Q. And going back to Exhibit 1, if  
9 you could place that in front of you for a moment, sir.  
10 That was the one-page copy of your handwritten notes.

11 A. This one here? You want --

12 Q. I want the exhibit.

13 I want him to read from the exhibit when he's  
14 testifying.

15 A. I think you had it, because I have the original.

16 Q. You may be right, sir.

17 Let's go off the record for a second while I try  
18 to find Exhibit 1.

19 (Off-the-record discussion.)

20 MR. DUPONT: Back on the record.

21 Q. And based on Exhibit 1, can you tell me when  
22 this indication was turned over to the LOP, or Local  
23 Oversight?

24 A. January 13th, '92.

25 Q. And after January 13th, 1992, you had no

1 personal involvement with the 1628 Webster Street site;  
2 correct?

3 A. Correct.

4 MR. DUPONT: I have no further questions of the  
5 witness.

6 MR. GARAY: What was that date?

7 MR. DUPONT: It was January 13, 1992.

8 MR. GARAY: Thank you.

9 (Break taken from 12:28 to 12:42 p.m.)

10 EXAMINATION BY MS. COHEN

11 MS. COHEN: Q. Mr. Seto, I introduced myself  
12 earlier. I'm Lisa Cohen.

13 When you began work for the Alameda County  
14 Healthcare Services as a hazardous materials specialist in  
15 1986, do you recall who your supervisor was?

16 A. Rafat Shahid.

17 Q. Other than Rafat Shahid, who else did you report  
18 to back in 1986?

19 A. Ed Howell.

20 Q. Could you spell that for me, please?

21 A. H-o-w-e-l-l.

22 Q. What was Ed Howell's title?

23 A. He was a Senior Hazardous Materials Specialist.

24 Q. Was there anybody else in your department that  
25 you reported to at that time in '86?



1           A.    I reported to Ed.  He was my direct supervisor.  
2 And Rafat was his supervisor.  And he was the chief of the  
3 department, or chief of the division.

4           And then the director -- the environmental  
5 health director at the time was Gerry Winn.

6           Q.    How do you spell Gerry Winn's last name?

7           A.    I think G-e-r -- that's his first name, but  
8 Winn, W-i-n-n.

9           Q.    Back in 1986 were there any outside agencies  
10 that you used to report to in connection with your work?

11          A.    The Department of Health Services and Regional  
12 Water Quality Control Board.

13          Q.    Is that the Alameda Department of Environmental  
14 Health Services?

15          A.    No.  This is the State Department of Health  
16 Services.

17          Q.    Was there any particular person that you used to  
18 speak to with the State Department of Health Services?

19          A.    We gave them copies of our letters.  We cc'd  
20 them.

21          Q.    What types of letters would you cc them?

22          A.    At that time it was all correspondence from our  
23 division, from the hazardous materials division.  The copy  
24 automatically went to the Department of Health Services  
25 and Regional Water Quality Control Board.

1 Q. Would that include interdepartmental letters?

2 A. No.

3 Q. So were these letters to property owners --

4 A. Property owners, yes; consultants.

5 Q. So other than cc'ing copies of correspondence to  
6 the State Department of Health Services and the Regional  
7 Water Quality Board, were there any other types of  
8 communications that you had on a regular basis with them  
9 back in '86?

10 A. No. Other than that. Maybe when they had some  
11 training, they might invite us to come along.

12 Q. So is it fair to say in any communications you  
13 would have had with either the State Department of Health  
14 Services or the Regional Water Quality Board would have  
15 been -- would be documented in letters that are cc'd to  
16 them?

17 A. Most likely, yes. But I know for a fact that  
18 Regional Board, a lot of their files is missing. So we  
19 might have sent them a copy five or six years ago, but it  
20 may or may not be there.

21 MR. GARAY: Move to strike as speculation.

22 MS. COHEN: Q. What I'm asking is if there is a  
23 record of any -- strike that.

24 Any communications that you would have had with  
25 either the State Department or the Regional Water Quality

1 Board would have been through the cc'd letters only?

2 A. Could you repeat the question?

3 Q. Were your only communications with the State  
4 Department of Health Services and the Regional Quality  
5 Board through these letters that were cc'd to them, if you  
6 know?

7 A. We communicate by phone, so the only  
8 communication wasn't by just letters. There would be  
9 communications by phone. And sometimes, you know, there  
10 might be a note written. Sometimes, you know, there isn't  
11 a note written. So communications both in writing and  
12 verbal.

13 Q. Okay. Was it your practice when you  
14 communicated with either of these departments verbally to  
15 make a note of it in the file?

16 A. Depending on the nature of the conversation and  
17 if it pertained to a site. Sometimes, if it's a general  
18 question that I had to go to them about, you know -- if  
19 the conversation I had with the other regulatory agencies  
20 pertained to a certain site, I would normally put a note  
21 in the file.

22 Q. Okay. Do you have personal knowledge of when  
23 the Alameda Department of Environmental Health first began  
24 keeping records concerning underground storage tank  
25 removal?

1 A. No, I don't.

2 Q. Do you have any idea what year that may have  
3 been, if you know?

4 A. I know our hazardous materials division got  
5 involved with the removal, actually going out to the site  
6 and watching them removing tanks, somewhere around 1988.

7 Q. Okay. So do you have any -- so then is it  
8 correct you don't have any knowledge of any records being  
9 kept concerning underground storage tank removal by the  
10 Alameda Department of Environmental Health prior to 1988  
11 when it began its involvement?

12 A. There might be records, and I'm not sure.

13 There might be reports coming in to our office  
14 prior to 1988 identifying that there has been a removal or  
15 removal was scheduled.

16 But we didn't go all of the time, because we  
17 didn't have the personnel. And so there may be some  
18 records.

19 But as far as us, personnel from the health  
20 department, from the Department of Environmental Health  
21 being present during the tank removal, that didn't start  
22 until about 1988.

23 Q. Okay. Well, do you yourself have personal  
24 knowledge that the Department of Environmental Health  
25 began keeping records of underground storage tank removal

1 at any particular time? If you know.

2 A. Yeah. I don't know when the department started  
3 keeping records on underground tank removal.

4 Q. Okay. Do you know when the department began  
5 keeping records of soil samples taken from underground  
6 storage tank removals?

7 A. No.

8 Q. Do you have knowledge of when the Alameda County  
9 Fire Department first began keeping records concerning  
10 underground storage tank removal?

11 A. No.

12 Q. Do you have personal knowledge of when the  
13 Alameda County Fire Department first began keeping records  
14 of soil sample test results concerning underground storage  
15 tank removal?

16 A. No.

17 Q. Do you have knowledge of any Alameda County  
18 agency that maintained records concerning underground  
19 storage tank removal prior to 1987?

20 A. Could you repeat the question?

21 MS. COHEN: Could you read it back, please?

22 (Question read back.)

23 THE WITNESS: No.

24 MS. COHEN: Q. Do you have any knowledge of any  
25 Alameda County agency that maintained records concerning

1 soil sample test results on underground storage tank  
2 removal before 1987?

3 A. No.

4 Q. I've reviewed your deposition transcript from  
5 your last deposition, and in reading that, it's my  
6 understanding that you had no direct communications with  
7 anybody that identified themselves as a Desert Petroleum  
8 employee or representative concerning the subject  
9 property; is that correct?

10 A. Yes.

11 Q. Did you ever have any communications directly  
12 with any Desert Petroleum employee or representative at  
13 any time?

14 A. Yes.

15 Q. When was that?

16 A. That's going back a few years. Maybe five or  
17 six years ago concerning a site I believe it was in San  
18 Leandro.

19 Q. So that communication had nothing to do with the  
20 site that's the subject of this litigation?

21 A. No.

22 Q. Okay. Is that the only communication you've had  
23 with them?

24 A. That I could remember.

25 Q. But you've nevertheless never had any direct

60

1 communications with Desert Petroleum concerning this site  
2 at 1628 Webster Street?

3 A. Correct.

4 (Norman Dupont exiting deposition proceedings.)

5 Q. Do you have personal knowledge of when Alameda  
6 County first established an action level for remediating  
7 petroleum contamination?

8 A. Alameda County never established a action level  
9 for contaminated sites. Alameda County only enforced the  
10 State's regulations and guidelines. So the county per se  
11 doesn't have its own ordinance or own regulations. We  
12 enforce the State's regulations.

13 Q. Okay. Do you have knowledge of when the State  
14 first enacted an action level for remediating petroleum  
15 contamination?

16 A. No.

17 Q. My understanding is that your first contact with  
18 this property was in 1989; is that right?

19 A. Yes.

20 Q. And is it correct to say that you have no  
21 personal knowledge concerning any events or activities  
22 occurring on the property between 1979 and 1986?

23 A. Right.

24 Q. And is it correct that you have no knowledge  
25 from any source concerning any specific events pertaining

1 to the property that would have occurred between 1979 and  
2 1986?

3 A. Correct.

4 Q. You brought with you a file that was marked  
5 "Confidential."

6 A. Yes.

7 Q. And Mr. Dupont went through some of the  
8 documents that were contained in that file.

9 And one of the documents was a letter dated  
10 April 24, 1986, from John Rutherford to Jean Larkin. John  
11 Rutherford of Desert Petroleum. It was Bates stamped  
12 10241. Would you like to --

13 A. Yes. I'm not familiar with that letter.

14 MR. GARAY: Let's find it.

15 (Off-the-record discussion.)

16 (Mr. Dupont entering deposition proceedings.)

17 (Last question and answer read back.)

18 MS. COHEN: Q. Mr. Seto, this particular letter  
19 from Desert Petroleum was marked as an exhibit to your  
20 deposition previously as Exhibit No. 24.

21 And at your deposition, you mentioned that you  
22 had never seen that letter previously.

23 A. Right.

24 Q. Okay. And also contained in the "Confidential"  
25 file is a document dated March 4, 1986, enclosing soil



1 sample results by Trace Analysis Laboratory, performed for  
2 Desert Petroleum.

3           Is today the first time that you've ever seen  
4 that document?

5           A.    Which one is that now; 1986, the lab results  
6 from 1986?

7           Q.    It was contained in the "Confidential" file that  
8 you brought here today.

9           A.    I don't know. I can't -- you know, I'm going to  
10 have to look at it.

11          Q.    Okay.

12          A.    I, you know -- I don't want to speculate, but I  
13 -- I'm going to have to look at it.

14          Q.    All right.

15                Let's go off the record, then.

16                (Off-the-record discussion.)

17          MS. COHEN: All right. Back on the record.

18          Q.    Mr. Seto, I'm going to show to you the April 24,  
19 1986, letter that I referred to; and the March 4, 1986,  
20 Trace Analysis Lab report, which were Bates stamped 10241  
21 and 10242 in the "Confidential" file that you brought here  
22 today.

23          A.    (Reviewing document.)

24          Q.    You didn't assist in preparing the  
25 "Confidential" file that you brought here today; is that

1 correct?

2 A. Correct.

3 Q. That file was prepared by Juliette Shin?

4 A. I'm not sure who prepared it. It wasn't me.

5 Q. Okay. All right. And is today the first time  
6 that you've reviewed that "Confidential" file?

7 A. Yes.

8 Q. Is today the first time that you see that Trace  
9 Analysis Laboratory report dated 1986?

10 A. Correct.

11 Q. And you previously saw the Desert Petroleum  
12 letter in connection with your last deposition, correct,  
13 or no?

14 A. This one here?

15 Q. Uh-huh.

16 A. I guess. If you showed it to me at my last  
17 deposition, then I saw it, too.

18 Q. That would have been the only time you saw;  
19 right?

20 A. Yeah.

21 Q. Okay. Do you have any personal knowledge of  
22 when the Department of Environmental Health received that  
23 letter from Desert Petroleum, obtained a copy of it?

24 A. No.

25 Q. And do you have any knowledge of when the

1 Department of Environmental Health Services obtained a  
2 copy of the 1986 Trace Analysis report?

3 A. No.

4 Q. And do you know who provided the Department of  
5 Environmental Health with a copy of either the '86 Desert  
6 letter or 1986 Trace Analysis report?

7 A. No.

8 Q. Okay. That's all that I have. Thank you,  
9 Mr. Seto.

10 MR. DUPONT: Let's go off the record for a  
11 second.

12 (Off-the-record discussion.)

13 EXAMINATION BY MR. GARAY

14 MR. GARAY: Q. Good morning, Mr. Seto. I'm  
15 Mark Garay. I represent George Navone, the plaintiff in  
16 this case. I'll try to make this quick and get you out of  
17 here.

18 Can you tell me if you were familiar with the --  
19 utilized action levels for petroleum contamination in 1986  
20 in Alameda County?

21 MS. COHEN: Objection. Lacks foundation.

22 THE WITNESS: I wasn't familiar with it at '86.

23 MR. GARAY: Q. When did you first become  
24 familiar with the utilized action levels for petroleum  
25 contamination in Alameda County?

1 A. I'm not familiar -- I'm not sure what you mean  
2 by "utilize."

3 Q. Okay. Let me try to clarify.

4 When did you first join the haz-mat department?

5 A. In 1986.

6 Q. 1986 when you joined the haz-mat department,  
7 were you trained?

8 MS. NICHOLS: Objection. Vague and ambiguous.  
9 Overbroad.

10 MR. GARAY: Let me restate the question.

11 Q. Did you receive any training or education as  
12 part of coming on board with the department?

13 A. Yes.

14 Q. Can you describe that for us?

15 A. The training at the time was related to  
16 performing hazardous-waste-generated inspections and  
17 emergency response.

18 Q. And what would you categorize as the hazardous  
19 waste generation part of it; what would that encompass?

20 A. That encompassed going to facilities that handle  
21 hazardous material and hazardous waste, and to verify that  
22 they're handling and storing it and disposing of it in  
23 accordance to regulations at that time.

24 Q. I see. Now, did you ever subsequent to that  
25 time receive any training or education in interpreting

1 soil test results?

2 A. I was trained as a chemist. My background is  
3 chemistry. So I've looked at lab reports for a number of  
4 years before even coming to the county.

5 As far as when I was first trained on how to  
6 look at lab results, I -- it was before I came to the  
7 county. Maybe not specifically for soil results, but for  
8 the contaminants that you would find in the, you know, in  
9 these underground petroleum tanks. I've known how to do  
10 that prior to coming to the county or being employed by  
11 the county.

12 Q. So by 1986 it's fair to say you already knew how  
13 to do that?

14 A. Yes.

15 Q. And you testified earlier, I believe, in  
16 response to a question that at -- that the County of  
17 Alameda enforced the State regulations relative to  
18 contamination action levels; is that correct, or am I  
19 misstating your testimony?

20 A. Yeah. It's correct. What we do is we enforce  
21 the State standards and the State's guidelines.

22 Q. Are you aware of what the State's guidelines for  
23 those levels of contamination was in 1986?

24 MS. NICHOLS: Objection. Vague and ambiguous.

25 MS. COHEN: Asked and answered.

1 MR. GARAY: Let me rephrase it. The  
2 objection's's correct.

3 Q. In 1986 were you familiar that State guidelines  
4 existed?

5 A. No.

6 Q. When did you first become aware that State  
7 guidelines existed?

8 MR. EDGCOMB: I'm going to object as being  
9 overbroad. Guidelines as to what?

10 MR. DUPONT: Join.

11 MS. COHEN: Join.

12 MR. GARAY: Q. When did you first become aware  
13 that State guidelines relative to petroleum contamination  
14 of soil existed?

15 A. Approximately 1988.

16 Q. How did you become aware of that in 1988?

17 A. Our department got -- our department was --  
18 entered into an agreement with the State to enforce their  
19 regulations as far as underground tank removals and site  
20 remediation, site investigation.

21 Q. Do you recall when in 1988 that agreement  
22 occurred?

23 A. That's just an approximation; somewhere around  
24 1988. It could have been maybe 1987 or 1989; somewhere in  
25 that period, time frame.

1 Q. During the period of time that's reflected in  
2 your files that you produced today relative to the 1628  
3 Webster Street property -- strike that.

4 At the time that you worked on the Webster  
5 Street property, were you familiar with the State  
6 guidelines?

7 A. Yes.

8 Q. Okay. To the best of your recollection, what  
9 were the State guidelines for action levels -- strike  
10 that.

11 What does the term "action level" mean?

12 MR. DUPONT: Objection. Vague and ambiguous.

13 As to what?

14 THE WITNESS: Yeah. I'm not sure, you know,  
15 what you mean by "action level."

16 MR. GARAY: Q. Okay. Earlier today I thought I  
17 heard you in your testimony use the term "action levels  
18 for contamination."

19 A. Uh-huh.

20 Q. Can you tell me what you meant when you stated  
21 "action levels for contamination"?

22 MS. NICHOLS: I'm going to object to the extent  
23 I'm not sure that the witness ever used the term "action  
24 levels."

25 MR. DUPONT: Join.

1 MR. GARAY: Q. Can you answer the question?

2 A. I'm not even sure if I used "action level."

3 The county, what we do is we followed guidelines  
4 that's determined by the State Regional Water Quality  
5 Control Board. There's a document out now that identifies  
6 what should be done in cases resulting in release  
7 associated with underground tank.

8 Back in 1989 -- or I'm not sure if the document  
9 was printed yet, but there was guidelines as far as  
10 cleaning up a site.

11 Q. Were the guidelines that -- did those guidelines  
12 that you're referring to back in 1989 exist also in 1988?

13 A. I'm not sure, you know. Back in that time  
14 period, in the latter '80's, things were changing fast.  
15 And, you know, one month you might hear this is what the  
16 board says. Another month you have a meeting with the  
17 board, and then they change it.

18 Q. In 1989, the guidelines that you described that  
19 existed then, what levels did those guidelines indicate  
20 for the level at which your department would take action  
21 to cause the remediation of a property to occur?

22 MS. NICHOLS: Lacks foundation.

23 MR. EDGCOMB: I'm going to object to this whole  
24 line of questioning, that the guidelines say what they  
25 say. If you want to ask him about it, it would be helpful



1 if you had them.

2 MR. DUPONT: Join in both objections.

3 MS. COHEN: Join.

4 MR. GARAY: Q. Can you answer the question?

5 A. Well, I don't have the guidelines in front of  
6 me. So we're going back, what, five years. And it's  
7 changed since then.

8 So I -- at this time I feel kind of  
9 uncomfortable answering that question because it's being  
10 recorded; and what I say now, as far as my recollection,  
11 may not be exactly what it was back then.

12 Normally, back then, the board was conservative.  
13 They would require cleanup if there was any detectable  
14 amount of contaminants. And the cleanup level should be  
15 nondetect or background level.

16 Q. What does that term means, Mr. Seto, "background  
17 level"?

18 A. In some areas, the neighboring properties or the  
19 whole neighborhood may have some contamination in there.  
20 Such as around Nimitz freeway, for example, you're going  
21 to have higher lead concentration than if you were up,  
22 say, maybe in the Oakland hills in a woody area, in a  
23 residential area.

24 So there's going to be some parts of the town  
25 that may have higher contaminants in the soil than other

1 parts. So you have to look at the background level.

2 Q. Did you at any time do a review of the  
3 background level of the 1628 Webster Street property?

4 A. No.

5 Q. I'd like to refer your attention to a two-page  
6 document, which Mr. Dupont has had copied from your  
7 "Confidential" file, and which we will make the next  
8 exhibit in your deposition here today. That would make it  
9 Exhibit 3, if I'm not mistaken.

10 MS. NICHOLS: Wait. That is the original.

11 MR. GARAY: Oh.

12 MR. DUPONT: Let me see if I can get a copy  
13 made.

14 MR. GARAY: Thank you.

15 (Off-the-record discussion.)

16 MR. GARAY: Let's mark it, please.

17 (Defendants' Exhibit 3 was marked for  
18 identification.)

19 MR. GARAY: Q. Could you take a look at this  
20 for a moment, please, Exhibit No. 3.

21 A. (Reviewing exhibit.)

22 Q. Could I have it back so I can refer to it?

23 A. (Complies.)

24 Q. Thank you.

25 On the second page of Exhibit 3, I'd like to

1 show you three sample -- indications of three samples and  
2 those sample results. And I'd like to have you take a  
3 look at those.

4 A. (Reviewing document.)

5 Q. Can you tell from the results that are stated on  
6 that second page what they purport to be?

7 MS. COHEN: Objection. Vague and ambiguous.  
8 Lacks foundation.

9 MR. DUPONT: A further objection, insofar as  
10 you're asking this witness to be a human highlighter of a  
11 document that he's testified he doesn't recall ever seeing  
12 until today; and has no other --

13 MR. GARAY: I never, never want to ask anyone to  
14 be a human highlighter.

15 Q. Why don't you take a look at page 2, Mr. Seto,  
16 and tell me what you understand it to be.

17 MS. NICHOLS: Objection. Lacks foundation.  
18 Calls for speculation.

19 MR. DUPONT: Join.

20 MS. COHEN: Join.

21 THE WITNESS: (Reviewing document.)

22 It just says "Volatile Hydrocarbons," and it  
23 gives numbers, milligrams per kilograms.

24 MR. GARAY: Q. If you refer to page 1, please,  
25 Mr. Seto, and read it.

1 A. (Complies.)

2 MS. COHEN: Object to the witness reading the  
3 document. It speaks for itself.

4 Are you asking him to read it into the record or  
5 to read it to himself?

6 MR. GARAY: To himself.

7 THE WITNESS: (Further reviewing document.)

8 MR. GARAY: Q. Does page 1 in any way help  
9 clarify for you the -- what the information on page 2  
10 purports to be?

11 MS. NICHOLS: Calls for speculation.

12 MS. COHEN: Join.

13 MR. DUPONT: Join.

14 THE WITNESS: Part -- page 1 is this person's  
15 interpretation of these numbers and the regulations.

16 MR. GARAY: Q. Okay. And reading the test  
17 results that you see on page 2, would you be of the  
18 opinion in 1988 that those results were below action  
19 levels?

20 MS. COHEN: Objection. Lacks foundation. Calls  
21 for speculation.

22 Are you asking him to speculate as to what the  
23 person who drafted the letter was trying to convey when  
24 they drafted it as to their state of mind?

25 MS. NICHOLS: Calls for expert witness opinion.

1 MR. DUPONT: I join in the objections.  
2 MS. COHEN: Join.  
3 MR. DUPONT: I further join in the complete  
4 irrelevance of asking the witness to evaluate a document  
5 generated in 1986 with respect to what it purports to say  
6 in 1986, based on 1988 standards.  
7 MR. EDGCOMB: Join in all those objections.  
8 MS. NICHOLS: Right.  
9 MS. COHEN: Join.  
10 MR. GARAY: Q. Can you answer the question?  
11 A. 1988 the tank wasn't removed yet. My  
12 involvement wasn't until 1989.  
13 Q. I understand. I'm asking you for your  
14 recollection in having worked in the department in 1988  
15 whether those test results reflected on page 2 in your  
16 experience at the department would have been below action  
17 levels.  
18 MS. COHEN: Objection. It's vague and  
19 ambiguous.  
20 He's already said that he doesn't know what you  
21 mean by the term "action level." We don't know what year  
22 we're talking about interpreting these numbers; in '86,  
23 '88, '89. It's irrelevant.  
24 MR. DUPONT: Join.  
25 THE WITNESS: Yeah. These numbers here identify

1 there's some contamination. The author of this letter,  
2 his opinion and my opinion differs as far as whether  
3 remediation's required.

4 MR. GARAY: Q. I understand. I'm asking for  
5 your opinion.

6 A. My opinion, if I saw this, I would ask for more  
7 information.

8 Q. What type of information would you ask for?

9 MS. NICHOLS: Calls for speculation. Vague and  
10 ambiguous as to time.

11 Are you asking the witness now in 1995 what he'd  
12 ask for or what he would have asked for in 1986?

13 MS. COHEN: This entire line of questioning is  
14 irrelevant, unless you can at least supply the witness  
15 with what the relevant regulations were at the time, which  
16 presumably he would have followed as an employee of the  
17 department.

18 MR. GARAY: Q. You just stated, Mr. Seto, that  
19 you would have asked for more information.

20 When you stated that, did you have this in mind  
21 in 1988, that you would have asked for more information,  
22 or conversely that presently you would have asked for more  
23 information?

24 A. It's hard to go back, what, six years, something  
25 like that, and remember what the regulations are because

1 of the -- I've been working with audit -- more recent  
2 regulations for the last number of years.

3 To go back six years and say definitively that  
4 these were regulations back in 1986, I just can't do that.

5 MS. COHEN: I'd like to further object to the  
6 question.

7 MR. GARAY: He's already answered.

8 MS. COHEN: Well, his answer is based on  
9 speculation, in that the question was an inadequate  
10 hypothetical.

11 MR. GARAY: Q. No one wants you to guess,  
12 Mr. Seto. No one wants you to speculate. We want to get  
13 your accurate recollection. And I understand that it's  
14 difficult to remember events from six years ago. So if  
15 you don't recall, it's perfectly okay for you to answer  
16 you don't recall.

17 THE WITNESS: I don't recall.

18 MR. GARAY: Q. Great.

19 You don't recall the regulations in 1988; is  
20 that correct?

21 A. That's true.

22 Q. And how many sites -- do you recall how many  
23 sites you were involved in processing in 1988?

24 MS. NICHOLS: Objection. Vague and ambiguous.

25 MR. DUPONT: Join.

1 MS. COHEN: Join.

2 THE WITNESS: I don't know what you mean by  
3 "sites" or "processing." You used the word "processing."

4 MR. GARAY: Q. How many active files were you  
5 working on in 1988?

6 A. Are you referring to remediation sites? Are you  
7 referring to sites that I had inspected? You know, I'm  
8 not sure what you mean.

9 Q. Fair enough.

10 Let's start with the category of "remediation  
11 sites" first.

12 MS. NICHOLS: In 1988?

13 MR. GARAY: Correct.

14 THE WITNESS: It could have varied from maybe 20  
15 to about a hundred. At one time I had up to a hundred  
16 sites, but I don't know -- it was in the latter part of  
17 the '80's or early part of 1990's that I had up to a  
18 hundred sites. So it's anywhere between probably 20 to up  
19 to a hundred or more.

20 MR. GARAY: Q. Now, do you remember or do you  
21 recall whether in 1989 you were aware that there was a  
22 proposed retail development project for the site at 1628  
23 Webster Street?

24 A. I can't remember.

25 Q. And correct me if I'm wrong, you testified



1 earlier when Mr. Dupont was taking your deposition that  
2 you don't recall ever having met Mr. Bill Wagner; is that  
3 correct?

4 A. Correct.

5 Q. And you also testified that you don't recall  
6 ever having spoken to Mr. Wagner; is that correct?

7 A. Correct.

8 Q. Did you ever learn, Mr. Seto, that there was a  
9 proposed retail development project for the 1628 Webster  
10 Street property?

11 A. No. Not that I recall.

12 Q. Other than today, of course.

13 A. Right.

14 Q. Did you ever have any discussions with either  
15 the -- strike that.

16 Did you ever have any discussions in 1988 or  
17 1989 with the City of Alameda building department  
18 regarding the 1628 Webster Street property?

19 A. No. Not that I recall.

20 Q. Did you ever have any discussions in 1988 or  
21 1989 with the City of Alameda planning department  
22 regarding the 1628 Webster Street property?

23 A. Not that I recall.

24 Q. In --

25 A. Going back, I vaguely remember -- and I don't

1 even know if there's notes -- that somebody -- I'm not  
2 sure if the City -- somebody I remember talking to about  
3 trying to beautify the property, you know, because it was  
4 kind of like an eyesore with a big excavation hole in the  
5 ground.

6 Q. Uh-huh.

7 A. But I can't remember who it was.

8 Q. Did your department in 1988-1989 have any sort  
9 of a communication dialogue by way of memos or letters to  
10 the building department in the City of Alameda?

11 MS. NICHOLS: Overbroad.

12 MR. DUPONT: Object to the butchery of the  
13 English language in the phrase "communication dialogue."

14 MR. GARAY: Q. Do you understand the question,  
15 Mr. Seto?

16 A. No.

17 Q. Let me rephrase it for you.

18 In 1988 and 1989, was it customary for your  
19 department to occasionally communicate with the building  
20 department for the City of Alameda?

21 A. Yeah.

22 Q. Okay. And in 1988-1989, was it customary for  
23 your department to occasionally communicate with the  
24 planning department of the City of Alameda?

25 A. My department has two big divisions. One is the

1 hazardous materials division, and the other is the  
2 operations division, which performed restaurant  
3 inspections and recreational inspections.

4 I am not that familiar with the operations  
5 division of our department. But it's my understanding  
6 that they had quite a bit of communication with the  
7 planning department. Not so much so with the hazardous  
8 materials division.

9 Q. Okay. And do you know if the City of Alameda in  
10 1988 and 1989 had a public works department?

11 A. I don't know.

12 Q. In 1988 and 1989, if you -- strike that.

13 Had the building department of the City of  
14 Alameda in 1988-1989 inquired about the environmental  
15 condition -- inquired of you or your department of the  
16 environmental condition of the 1628 Webster Street  
17 property, what would you have reported to them?

18 MS. NICHOLS: Calls for speculation. Improper  
19 hypothetical. Assumes facts not in evidence.

20 MS. COHEN: Join.

21 MR. DUPONT: Join.

22 MR. EDGCOMB: Join.

23 THE WITNESS: In 1988, we didn't even have a  
24 file, I don't believe, on the site. So if they had asked  
25 me any questions in 1988, I would have told them, "We

1 don't even have a file, so I don't know what's going on at  
2 the site."

3 MR. GARAY: Q. And in 1989, same question.

4 MS. NICHOLS: Same objection.

5 MS. COHEN: Join.

6 MR. DUPONT: (Gesturing.)

7 THE WITNESS: I would tell them what's in the  
8 file. That's all I could do.

9 MR. GARAY: Q. And I assume the same would be  
10 true of 1990; is that correct?

11 A. Yes.

12 Q. And to the best of your recollection, Mr. Seto,  
13 during the course of those three years, '88, '89, and '90,  
14 no such inquiry was made of you; is that correct? To be  
15 clear, by the City of Alameda planning department or  
16 building department?

17 A. Correct.

18 Q. Now, was there anyone else at your department to  
19 whom such an inquiry could have been made in those years?

20 MR. DUPONT: Speculation.

21 MS. NICHOLS: Join.

22 MR. GARAY: Q. I don't want you to speculate.  
23 Only if you know. Answer the question if you know. If  
24 you don't, say you don't know.

25 A. There's always a possibility. I don't know.

1 Q. The possibility that you mentioned, what would  
2 that -- who would that encompass?

3 MR. DUPONT: Calls for gross speculation.

4 MR. GARAY: Q. Let me back up and ask you a  
5 question that might help get to an answer.

6 And that is, who else in your department would  
7 have knowledge of the files that you were working on?

8 MS. NICHOLS: In 1988?

9 MR. GARAY: Q. In 1988, '89, and '90.

10 MR. DUPONT: Objection. Vague and ambiguous as  
11 to "knowledge."

12 Are you asking who knew what cases he was  
13 assigned to or who had actually read the files?

14 MR. GARAY: Q. Who would have knowledge of the  
15 substance of the files that you were working on?

16 A. During that time frame, there was people that  
17 came to the department and left the department. So I --  
18 it's hard for me to answer.

19 It could -- the best answer is that anybody in  
20 our department could have been, you know, asked to provide  
21 information to the City of Alameda. If I was on vacation,  
22 if I was out of the office the date a request came in, I  
23 don't know.

24 If you want an answer, I would say anybody that  
25 was working in the hazardous materials division during

1 that time frame could have gotten a request.

2 Q. So how many people were working in --  
3 approximately how many people were working in the  
4 hazardous materials division during those years?

5 A. About 10 to 12 people.

6 Q. Okay. And I assume from your answer, then, that  
7 each of those people had access to the files?

8 A. Yes.

9 Q. Is that correct?

10 Do you know, Mr. Seto, whether any monitoring  
11 wells had ever been installed at the property at 1628  
12 Webster Street?

13 A. No.

14 Q. Is the answer that you don't know or is the  
15 answer that no wells have been installed?

16 A. I don't know if any wells had been installed at  
17 1628 Webster Street.

18 Q. As of the time that you transferred the file out  
19 of your domain, had any wells been installed as of that  
20 time?

21 A. Not that I recall.

22 Q. And that would have been sometime in 1991? Can  
23 you refresh me as to the date, please?

24 A. I believe it was January 13th, '92.

25 Q. '92. Okay.

1 Exhibit 13 of your prior deposition was referred  
2 to earlier.

3 MR. DUPONT: It should be sitting in the group  
4 of exhibits in front of the witness.

5 (Documents located.)

6 MS. NICHOLS: What is it?

7 MR. GARAY: I've got his prior depo.

8 THE WITNESS: Here's 13.

9 MR. GARAY: Q. At the time that you prepared  
10 Exhibit 13 -- or on the date on which you prepared Exhibit  
11 13 would be more correct, which appears to be May 16th of  
12 1990 -- is that the date that you read up in the upper  
13 right-hand corner?

14 MS. NICHOLS: Left-hand corner.

15 THE WITNESS: Yes; right.

16 MR. GARAY: Left-hand corner, right.

17 THE WITNESS: That time frame, right.

18 MR. GARAY: Q. At that time were you aware of  
19 what the water gradient at the property at 1628 Webster  
20 Street was?

21 A. No.

22 Q. Have you ever subsequent to that date become  
23 aware of what the gradient is?

24 A. No.

25 Q. I asked you earlier, I believe, to look at some

1 notes while we were off the record that are marked "Phone  
2 Log" at the top, 1628 Webster Street, Alameda in  
3 parentheses, which come from your "Confidential" file.  
4 And I asked you to identify whether that was your  
5 handwriting.

6 Is this your handwriting?

7 A. No.

8 Q. Do you know whose handwriting it is; do you  
9 recognize it?

10 A. No. No.

11 Q. Okay.

12 MR. DUPONT: Just for clarification of the  
13 record, I believe that the phone log notes that you've  
14 referred to did not come from the so-called "Confidential"  
15 file but came from one of the other manila file folders  
16 that the witness brought here today.

17 THE WITNESS: It's inside the folders of one of  
18 the -- maybe in this one. Is this -- yeah. Here it is.  
19 This is it.

20 MR. GARAY: Q. I'd like to refer you to the  
21 copy of your deposition which you brought with you today.

22 And I'd like you to go through it, if you would,  
23 page by page. And at certain pages you have made  
24 notations on it by highlighting in yellow various lines of  
25 testimony.



1           Can you please indicate for the record which  
2 page and which line numbers are highlighted. And then I  
3 will ask you some questions about them.

4           A.    I notice it's highlighted, but I don't remember  
5 me being the person that highlighted these areas.

6           Q.    Okay. Do you have reason to believe you were  
7 not the person that highlighted them?

8           A.    I don't know who else looked through the file,  
9 so I can't really say. I don't -- when I was reviewing my  
10 deposition before coming here today, I noticed the  
11 highlighting. And I was wondering myself who was  
12 highlighting it.

13          Q.    And the post-its that appear on your deposition,  
14 did you place those on there?

15          A.    Not that I recall.

16          Q.    All right. May I have the deposition back,  
17 please?

18                   Thank you.

19                   Off the record for a second.

20                   (Off-the-record discussion.)

21           MR. GARAY: Q. Do you know, Mr. Seto, today  
22 whether or not the site at 1628 Webster Street has been  
23 remediated?

24           A.    I don't know.

25           Q.    In 1988 when you approved the preliminary work

1 plan -- I believe it was in May, if I'm not mistaken --

2 MR. DUPONT: Try August of 1989.

3 MR. GARAY: Correct. August of 1989.

4 MR. GARAY: Q. Was a schedule established for  
5 the remediation of the property?

6 MS. NICHOLS: Objection. Vague and ambiguous.  
7 Calls for speculation.

8 MR. DUPONT: Join.

9 MS. COHEN: Join.

10 THE WITNESS: I'm going to have to -- you know,  
11 I would have to look at the work plan. I can't remember.

12 MR. GARAY: Q. Okay. Why don't you do that.  
13 You brought that with you today?

14 A. Yeah.

15 (Reviewing work plan.)

16 MS. NICHOLS: Is your question whether the LRA  
17 Environmental preliminary plan of correction for the waste  
18 oil tank, whether that document includes plan of  
19 corrections? Is that what -- that's what the witness is  
20 going to respond to your question?

21 MR. GARAY: Q. Do you understand the question?

22 A. I'm kind of confused now. I think you're asking  
23 me about a remediation schedule time frame.

24 Q. Correct.

25 A. I never saw a remediation schedule.

1           At the time when I was involved, I was asking  
2 for an investigation, you know. They needed to perform an  
3 investigation to determine the extent of the  
4 contamination, both laterally and vertically, before you  
5 could even become -- before you could even design some  
6 kind of remediation and a remediation time frame.

7           Q.    So the work plan that you approved in August of  
8 1989 was a plan for further investigation, not for the  
9 remediation of the property?

10          A.    Right. I was just approving a plan of  
11 investigation, or phase I.

12          Q.    Okay. Did you ever approve a work plan to  
13 remediate the property?

14          A.    No. Not that I recall.

15          Q.    Do you know if a work plan to remediate the  
16 property was ever submitted for your approval?

17               MR. EDGCOMB: I'm going to object to the extent  
18 the use of the word "remediate" is vague and ambiguous in  
19 the context of this property.

20               MR. DUPONT: Join.

21               MR. GARAY: Q. You've used the word "remediate"  
22 before. Can you explain what you meant by it?

23          A.    Well, remediate means that a cleanup being  
24 performed, some type of cleanup is being done at the site.

25               In this case, I was asking the property owners

1 at the time to determine the extent of contamination. And  
2 in doing so, they did excavate some soils to determine the  
3 lateral extent of contamination and the vertical extent of  
4 contamination.

5 In doing that, excavating the soil and taking it  
6 out of the ground, that in itself is a remediation. But  
7 at the same time, the main -- my main concern at the time  
8 was both -- my primary concern was to determine the extent  
9 of contamination and to get the source of contamination  
10 out of the ground, if possible.

11 Q. And did the property owners ever complete their  
12 investigation --

13 MS. NICHOLS: Calls for speculation.

14 MR. GARAY: Q. -- of the property?

15 MS. NICHOLS: Calls for speculation.

16 MR. DUPONT: Join.

17 MS. COHEN: Join.

18 THE WITNESS: I don't know. Because, like I  
19 said, back in 1992, the case was transferred over to the  
20 local oversight, and another individual was working on the  
21 site. So I don't know what happened after that.

22 MR. GARAY: Q. So at least up to 1992 the  
23 property owners had not completed their investigation of  
24 the property?

25 MR. EDGCOMB: Objection. You're saying "their

1 investigation." There's no foundation as to what "their  
2 investigation" is or was.

3 MR. DUPONT: Join.

4 MS. COHEN: Join.

5 MR. GARAY: Let me rephrase the question. I  
6 think the objection is valid.

7 Q. You requested that the property be investigated;  
8 is that correct?

9 A. I requested that an investigation should  
10 commence, because there was evidence of a release of a  
11 property.

12 Q. And that investigation, in fact, was commenced;  
13 is that correct?

14 A. Yes.

15 Q. And in 1992 you were replaced on this file; is  
16 that correct?

17 A. In 1992, the file was transferred to another  
18 individual.

19 Q. Yes. And up to that point in 1992 when the file  
20 was transferred, the investigation had not yet been  
21 completed; is that correct?

22 A. Correct.

23 Q. Okay. Have you had occasion while you were with  
24 the department before 1992 to approve remediation plans?

25 A. Yes.

1 Q. On how many occasions did you approve a  
2 remediation plan?

3 (Norman Dupont exiting deposition proceedings.)

4 MS. NICHOLS: Irrelevant.

5 THE WITNESS: I don't know. Probably a hundred.

6 MR. GARAY: Q. And would that typically be a  
7 decision that you would make on your own, or did you need  
8 to have some input from another person at the department,  
9 such as perhaps a supervisor or someone else?

10 MS. NICHOLS: During what time frame?

11 MR. GARAY: Nineteen -- let's narrow it down to  
12 1989, 1990.

13 THE WITNESS: Normally I would work  
14 independently. If I had questions, I could go to a  
15 supervisor.

16 MR. GARAY: Q. Did you ever have any questions  
17 about the 1628 Webster Street property that you consulted  
18 your supervisor about?

19 A. Not that I recall.

20 Q. Okay.

21 I have no further questions.

22 EXAMINATION BY MS. NICHOLS

23 MS. NICHOLS: Q. I have just a couple of  
24 follow-up questions.

25 Mr. Seto, my name is Sandi Nichols, and I

1 represent one of the defendants in this case.

2           You had previously testified with respect to  
3 Exhibit 13 that it was your custom and practice to make  
4 notes of a meeting that you had with respect to a  
5 particular site; is that correct?

6           A.    Yes.

7           Q.    And it was also your custom and practice in the  
8 1989-1990 time frame to keep notes in the file of any  
9 telephone conversations you had with respect to a  
10 particular site; correct?

11          A.    Sometimes.  It just depends on how relevant it  
12 was to the case.

13          Q.    If it related to the cleanup of a particular  
14 piece of property, would that be relevant?

15          A.    Yeah.  It would be relevant.

16          Q.    If it related to problems concerning the ability  
17 of the property owner to use the property because of  
18 contamination, would that be relevant?

19               MR. GARAY:  I'm sorry.  Can I have that question  
20 read back, please?

21               (Question read back.)

22               MR. GARAY:  I have an objection.

23               Vague, ambiguous, not defined as to time, not  
24 defined as to the property, hypothetical, and calls for  
25 speculation.

1 MS. NICHOLS: Q. You can answer the question.

2 (Norman Dupont entering deposition proceedings.)

3 A. I don't know if I would put it in or not. My  
4 main concern when I work on my cases is just to get the  
5 site remediated. That's the ultimate goal. First to  
6 start the investigation and to remediate the site if it  
7 needed remediation.

8 As far as whether there's going to be a  
9 development there, whether it's going to be a vacant lot  
10 really is a different matter that, you know, I don't  
11 really need to get into.

12 My main purpose is to ask for an investigation  
13 of a -- if an investigation appears to be necessary at the  
14 site, and then a remediation.

15 Q. Do you recall ever meeting with anyone regarding  
16 the subject property, and not keeping a record of that  
17 meeting in your files?

18 A. Yes.

19 Q. And when was that?

20 A. I met with the consultant and I believe one of  
21 the property owners at the site one time, and that was  
22 when we were talking about backfilling excavation.

23 Q. And you did not keep a record of that site  
24 visit?

25 A. No. I didn't see any notes in the file.



1 Q. Do you recall who the property owner was that  
2 you met with?

3 A. I believe it was Mrs. Larkin, but I know there  
4 are two individuals.

5 One was the consultant, and I believe he wrote  
6 me a letter identifying he was there. So a consultant was  
7 there. And there was one of the property owners, and I  
8 believe it was Mrs. Larkin.

9 Q. And you recall this meeting was documented in a  
10 letter from the consultant to you?

11 A. Yes. I believe so. Yeah. In his letter in  
12 May.

13 Q. Okay. Referring you to --

14 MR. DUPONT: There's a fax cover sheet page,  
15 Sandi, that has an exhibit number with that.

16 There you go.

17 MS. NICHOLS: Okay.

18 Q. Referring you to what's previously been marked  
19 here to your first deposition as Exhibit 14, do you recall  
20 the May 17, 1990, letter from Mr. Stone to you as being  
21 the letter documenting that meeting?

22 A. Yes.

23 Q. Other than that one meeting that you just  
24 mentioned at the site, do you recall any other meeting  
25 that you had with anyone involved with this property that

1 is not documented in your files?

2 A. (Reviewing document.)

3 I think that might be the only meeting.

4 Q. Okay.

5 I have no further questions.

6 (Break taken.)

7 MR. DUPONT: Let's go off the record for a  
8 second.

9 MR. GARAY: Before we go off the record, there's  
10 one more matter.

11 There's the letter, Bob Campbell's letter, that  
12 I'd like to see before we let the witness go.

13 MS. NICHOLS: Well, have we talked to  
14 Mr. Campbell yet?

15 MR. GARAY: He was in here. He told me he  
16 didn't think he had any objections.

17 But John Edgcomb wanted to have it done in front  
18 of all counsel. I think we should do that.

19 MR. DUPONT: Bob Campbell was in here?

20 MR. EDGCOMB: I didn't --

21 THE COURT REPORTER: Are we on the record?

22 MS. NICHOLS: No.

23 (Off-the-record discussion.)

24 (Robert Campbell present.)

25 MR. DUPONT: Back on the record.

1 I think Bob Campbell has reviewed the letter,  
2 and it's my understanding that he believes it contains  
3 attorney work product, and is not willing to waive the  
4 confidentiality.

5 Is that correct, Bob?

6 MR. CAMPBELL: That's correct.

7 MR. GARAY: Why don't you give the letter back  
8 to the witness, it goes back in the file, and we'll take  
9 this up in court.

10 MR. DUPONT: Sure.

11 MR. GARAY: Yeah.

12 (Document handed to the witness.)

13 (Robert Campbell exiting deposition  
14 proceedings.)

15 MR. DUPONT: Also, while we're on the record,  
16 Mr. Seto, let me give you the original of your other file,  
17 which was the so-called "Confidential" file folder.

18 We copied various documents out of that. And  
19 let me see. I have some documents that were copied  
20 generally, and then all other documents were at  
21 Mr. Garay's request to be copied, for which I understand  
22 he owes me \$24.80. And I believe these are all documents  
23 inside the file folder that you requested to be copied.

24 MR. GARAY: Thank you, Mr. Dupont.

25 You know, I'm willing to take this issue up in

1 court and bring the witness back for another deposition,  
2 but how could Mr. Campbell assert work product when he has  
3 disclosed it to someone?

4 MR. DUPONT: (Gesturing.)

5 That's his position.

6 MR. EDGCOMB: There's also that confidentiality  
7 statute, whatever that provides.

8 MR. GARAY: Which he hasn't asserted.

9 MR. EDGCOMB: I think he did just assert it.

10 MR. GARAY: We'll take it up in court.

11 MS. NICHOLS: I think we should meet and confer  
12 first, so you have authorities that say you get it, you  
13 should let us know what they are.

14 MR. GARAY: I don't have to deal with you.  
15 Mr. Campbell is the one who asserted the privilege.

16 MR. DUPONT: Well, if you want to give me a copy  
17 of the authority, since I'm co-counsel for the Larkins at  
18 this point in time, I'll convey them to Mr. Campbell.

19 With respect to the review and signature of  
20 Mr. Seto's deposition, let's me propose that the  
21 stipulation be the same stipulation that we entered  
22 yesterday evening with respect to Volume I of Ms. Diaz.

23 And for the witness, let me tell you what that  
24 is.

25 That we would propose that the original of the

1 transcript be mailed directly to Mr. Seto's office.

2 Still at 80 Swan?

3 THE WITNESS: No. We've moved. We're at 1131  
4 Harbor Bay Parkway -- it's in my card -- in Alameda.

5 MR. DUPONT: That the original be sent to that  
6 address to Mr. Seto's attention.

7 That he have 14 calendar days after receipt of  
8 it to review, make any corrections.

9 That can be done under penalty of perjury, and  
10 you need not have it notarized.

11 And that he will be provided a enclosed,  
12 self-addressed envelope; to return it to the court  
13 reporter's custody and control.

14 And the court reporter will make it available to  
15 any counsel for pretrial or trial purposes upon 24 hours'  
16 notice.

17 That if not so signed under penalty of perjury  
18 within that time period, then a certified copy may be used  
19 in lieu of the original for all purposes.

20 MR. DUPONT: I'd like to have 30 days to review  
21 it.

22 MR. DUPONT: Yeah. The difficulty is we have  
23 currently a trial date set for February the 10th. And  
24 while Mr. Garay is seeking to get an extension on that, at  
25 this point in time, we do not have any trial date other

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1 than the 10th. And that's what we have to work up  
2 against.

3 So, you know, even the 14th -- even 14 days is  
4 sort of stretching it. And that's the only reason we're  
5 asking you to do it in 14 days.

6 MR. GARAY: You know, before we let this witness  
7 go, I'd like to call Larry Blazer, the D.A., and see if we  
8 can work this out.

9 MS. NICHOLS: You can't work out with the D.A.,  
10 because you have the attorney asserting the privilege.

11 MR. GARAY: No. The documents here are under  
12 subpoena. The attorney can assert whatever he wants, or  
13 he can go and get a protective orders if he wants. The  
14 document is here. It's the department's document. It's  
15 not the attorney's document. When he put it in the mail  
16 and sent it to this department, it ceased being his  
17 document.

18 MS. NICHOLS: It didn't cease being his work  
19 product. And I think you have to establish some showing  
20 that you can get around whether it's in this case a  
21 qualified privilege for that work product or not. You  
22 still have to make the showing of good cause that your  
23 interest in it outweighs the attorney's interest in  
24 protecting his work product.

25 MR. GARAY: I note your objection. I'm just

1 going to take a minute here to call him.

2 MS. NICHOLS: What I'm saying is, Mark, it's not  
3 going to make a difference for today, because Bob Campbell  
4 has asserted it. If he has to go to court to get a  
5 protective order, then I suppose he would do that before  
6 you go forward and ask the witness any questions about  
7 this document.

8 MR. GARAY: (Making phone call.)

9 MR. EDGCOMB: We should probably get Bob back in  
10 here.

11 (Off-the-record discussion.)

12 (Lunch break taken at 2:10 p.m.)

13 (Afternoon session resumed at 3:00 p.m.)

14 (George Yaron present.)

15 (Robert Campbell present.)

16 MR. GARAY: Let's go on the record.

17 Q. Mr. Seto, have you spoken to your attorney  
18 regarding the production of this letter?

19 A. I spoke to Larry Blazer, who is a deputy  
20 district attorney with the district attorney's office for  
21 Alameda County.

22 Q. And are you at liberty now to produce the letter  
23 to me?

24 A. No. Not at this time.

25 Q. Have arrangements been made for a later

1 production of the letter?

2 A. Yes.

3 Q. Could you indicate what those arrangements are,  
4 please?

5 A. Robert Campbell has until Friday to file a  
6 restraining order against --

7 MR. DUPONT: Or protective order.

8 THE WITNESS: Or protective order to prevent the  
9 release of this letter from our department to counsel.

10 And if the order isn't filed by noon on Friday,  
11 then counsel can have a copy of this letter.

12 MR. GARAY: Q. Have you ever read the letter?

13 A. No.

14 Q. Do you know how it came into your file?

15 A. No. It's addressed to Juliette Shin.

16 Q. Okay. Thank you.

17 No more questions.

18 MR. DUPONT: No further questions.

19 Thank you, Bob.

20 (Robert Campbell exiting deposition  
21 proceedings.)

22 MR. GARAY: Let the record reflect that Robert  
23 Campbell of the Fitzgerald Abbott firm was here for that  
24 statement.

25 We have a pending stipulation with respect to



1 the review and signature of this portion of Mr. Seto's  
2 deposition. Since it was so long ago, let me try and --

3 MR. EDGCOMB: I'll say so stipulated.

4 MS. NICHOLS: So stipulated.

5 MR. GARAY: So stipulated.

6 MR. DUPONT: John, did you agree?

7 MR. EDGCOMB: Yes.

8 MR. DUPONT: All right. With respect to the  
9 review and signature.

10 And I think that's it for you; yes or no?

11 THE WITNESS: You were saying something about a  
12 stipulation on --

13 MR. DUPONT: On the review and signature; the  
14 process for which the deposition transcript will be  
15 transmitted to you, that you will be able to sign it under  
16 penalty of perjury.

17 THE WITNESS: Okay.

18 MR. DUPONT: That stuff.

19 THE WITNESS: Okay. Within ten days or  
20 whatever?

21 MR. DUPONT: Fourteen.

22 MS. NICHOLS: Fourteen.

23 THE WITNESS: Fourteen. Okay.

24 MR. DUPONT: Right. Of your receipt.

25 THE WITNESS: Okay.

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MS. NICHOLS: Thank you very much.  
MR. DUPONT: Thank you.  
(Deposition adjourned at 3:03 p.m.)

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(Signature of Witness.)

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CERTIFICATE OF DEPOSITION OFFICER

I, JANICE BADASCI, CSR 6367, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me and thereafter transcribed by me or under my direction into typewriting; that the foregoing is a full, complete, and true record of said testimony; and that the witness was given an opportunity to read, correct, and sign said deposition and to subscribe same.

I further certify that I am not of counsel nor attorney for either or any of the parties in the foregoing deposition and caption named, or in any way interested in the outcome of the cause named in said caption.

  
DEPOSITION OFFICER

I hereby certify this copy is a true and exact copy of the original

\_\_\_\_\_  
DEPOSITION OFFICER

Dated:

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

GEORGE NAVONE,

PLAINTIFF (S),

-vs-

AGNES LARKIN, aka Jean RATTO  
LARKIN,

DEFENDANT(S).

No. 697547-0

**RECORDS and/or EXHIBITS**

**PERTAINING TO:**

DEPOSITION OF LAWRENCE SETO

January 17, 1995