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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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ANNE ANDERSON, et al.

vs

CRYOVAC, Division of W. R. Grace & Co.;  
W. R. GRACE & CO.; JOHN J. RILEY COMPANY,  
Division of Beatrice Foods Co.; BEATRICE  
FOODS CO.

Civil Action  
No. 82-1672-S

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Continued deposition of VINCENT FORTE,

taken on behalf of the Plaintiffs, pursuant to the  
applicable provisions of the Federal Rules of Civil  
Procedure, before Valerie T. Wong, Notary Public within  
and for the Commonwealth of Massachusetts, at the  
offices of Schlichtmann, Conway & Crowley, 171 Milk  
Street, Boston, Massachusetts, commencing at 1:40  
o'clock P.M. on Tuesday, July 23, 1985.

1  
2 **Appearances:**

3 Jan Richard Schlichtmann, Esq.  
4 Schlichtmann, Conway & Crowley  
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6 Boston, Massachusetts  
7 for the Plaintiffs.

8 William J. Cheeseman, Esq.  
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12 for the Defendant W. R. Grace & Co.

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15 60 State Street  
16 Boston, Massachusetts  
17 for the Defendant Beatrice Foods Co.

18 William F. Looney, Jr., Esq.  
19 Looney & Grossman  
20 50 Congress Street  
21 Boston, Massachusetts  
22 for the Deponent.  
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I N D E X

<u>Deposition of:</u>	<u>Direct</u>	<u>Cross</u>
Vincent Forte	2-4	--

EXHIBITS

<u>Number:</u>		<u>Page:</u>
2	Site plan.	2-17

1  
2 MR. CHEESEMAN: We have brought  
3 Mr. Forte back for a further deposition because I  
4 understand you want to ask additional questions of  
5 several witnesses who have already been deposed as  
6 a result of new information which you believe was  
7 brought to light by Al Love, and I have agreed it  
8 is appropriate that you can have a chance to ask  
9 these witnesses additional questions. I would ask  
10 you to avoid as much as possible going back over  
11 material that was already covered during the first  
12 day of deposition.

13 MR. SCHLICHTMANN: I will not go back  
14 over anything unless the testimony has changed.

15 MR. LOONEY: We still have the same  
16 stipulations on this one?

17 MR. SCHLICHTMANN: Yes.

18  
19 VINCENT FORTE,  
20 a witness called by the Plaintiffs, first having  
21 been duly sworn, on oath deposes and says as  
22 follows:

23 Direct Examination  
24

25 Q (By Mr. Schlichtmann) Mr. Forte, you have had an

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opportunity to read your transcript of the deposition testimony that you previously gave?

A Yes, I did.

Q In reading that over, is there anything in particular that you wish to add to or clarify in any testimony you gave as recorded in that transcript?

MR. CHEESEMAN: Let me interrupt. For the record, I will object to the form of that question. We do have corrections to the first transcript. Unfortunately, I have not had time to have them typed up; the notes are back in my office. I would suggest that we provide you with those corrections in written form.

MR. SCHLICHTMANN: Okay.

MR. CHEESEMAN: The witness has not reviewed it recently and cannot answer that kind of open-end question.

Q Mr. Forte, I am not asking for typographical errors or those type of things. Is there anything in substance, anything in particular, you wish to add to or clarify in reviewing your deposition, any substitutive changes that come to mind?

1  
2 MR. CHEESEMAN: Why don't Mr. Looney,  
3 Mr. Forte and I go out in the hall for a second?

4 MR. SCHLICHTMANN: Fine.

5 (Recess)

6 MR. CHEESEMAN: I should have  
7 anticipated that question. I understand you to be  
8 asking whether the witness has remembered something  
9 new, particularly in the way of disposal incidents  
10 at the plant, that he had not testified to  
11 previously or testified to inaccurately. For your  
12 information, there are no such new memories or  
13 changes of testimony or corrections.

14 When the corrections are prepared, they  
15 are minor matters of ambiguities or clarifying the  
16 meaning of ambiguities, spelling, and a little bit  
17 of clarification of what I think was understood,  
18 on the record anyway, that in the 1980s when the  
19 manifesting system had gone into effect there was  
20 considerable and additional material received from  
21 divisional headquarters in South Carolina.

22 MR. SCHLICHTMANN: Okay.

23 MR. CHEESEMAN: I mention that in  
24 particular because you had asked some questions  
25 about the extent to which headquarters had

1  
2 supplied information or instructions, and I think  
3 the witness had understood you were not asking  
4 about the 1980s.

5 There is no new or additional information  
6 about disposal activity at the plant or the  
7 preparation of the letter to the EPA.

8 MR. SCHLICHTMANN: Okay. Those state-  
9 ments are made on behalf of Mr. Forte, right?  
10 Because I know he is separately represented and I  
11 want to make sure.

12 MR. CHEESEMAN: I am simply explaining  
13 for your benefit and the benefit of the record in  
14 summary fashion what the situation is as I under-  
15 stand it. If you would like the witness to answer  
16 a question about the nature of the corrections, I  
17 don't object to that.

18 MR. SCHLICHTMANN: I am happy to have  
19 your representation taken on behalf of the  
20 witness. I don't want to prejudice --

21 MR. LOONEY: This is the deposition of  
22 the corporation; that is what the notice said.

23 MR. SCHLICHTMANN: It is?

24 MR. CHEESEMAN: I am not sure you're  
25 right about that, Bill. I have not looked at it

1  
2 for a while.

3 MR. SCHLICHTMANN: Well, I don't want to  
4 put anyone in difficulty. You have made those  
5 representations and I want to know if they will be  
6 ascribed to Mr. Forte.

7 MR. LOONEY: Ask him that.

8 MR. SCHLICHTMANN: I want to save time.  
9 As his attorney, are you happy to take those  
10 representations by Mr. Cheeseman on behalf of your  
11 client or do you want to have him say it in his  
12 own words?

13 MR. LOONEY: As far as I'm concerned,  
14 I looked over the changes, proposed changes, and I  
15 see nothing bold, new, dramatic or interesting  
16 about it.

17 MR. SCHLICHTMANN: Okay.

18 Q For the record, Mr. Forte, you have heard  
19 Mr. Cheeseman make certain representations on the  
20 record, as well as your own counsel, and assuming  
21 your attorneys will allow me, is that essentially  
22 your testimony in your review of your testimony?

23 A I think so.

24 Q Your testimony of the previous deposition?

25 A I think so.

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Q Essentially then, other than corrections you made, and which will be supplied to me, there is nothing, in reviewing the deposition, that you wish to add or clarify of a significant nature having to do with disposal practices or the matters you testified to in that previous deposition?

A No, sir.

Q Now, Mr. Forte, have you had any conversations with Mr. Stewart after your last deposition up until today?

MR. CHEESEMAN: It was on March 27, 1985.

MR. SCHLICHTMANN: Thank you.

MR. CHEESEMAN: Do you mean about any subject?

MR. SCHLICHTMANN: Anything at all.

MR. CHEESEMAN: Knowing they both work in South Carolina?

MR. SCHLICHTMANN: I don't know if they work together.

A I don't remember.

Q Do you think you may have had some conversation with Mr. Stewart since your last deposition up until today?

A I don't think so.

1  
2 Q You can't remember any?

3 A No.

4 Q Have you had any conversation with Mr. Shalline  
5 since your last deposition?

6 A Yes.

7 Q How many conversations have you had?

8 A Just asked him how he felt.

9 MR. LOONEY: How many?

10 THE WITNESS: I've been up there twice,  
11 so say two times.

12 Q Do you know approximately when that was?

13 A I have been up there three or four times.

14 Q You have been up to the Woburn plant three or four  
15 times?

16 A Yes.

17 Q What were the occasions that brought you there?

18 A Business.

19 Q Concerning the Woburn plant?

20 A Right.

21 Q Did it have anything to do with this litigation?

22 A I was up there once with counsel.

23 Q You were going to be deposed and it was  
24 rescheduled?

25 A Yes.

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Q Other than meeting with counsel?

A It was for business.

Q Business related to this litigation?

A Business unrelated to this litigation.

Q Now, on the occasions you talked to Mr. Shalline, did you discuss anything having to do with this litigation or the matters involved with this litigation?

A Other than to encourage him and, you know, mental attitude, how he felt and that sort of thing. There was no specific discussions with respect to the litigation.

Q Now, in the last deposition I showed you several documents which had been received into evidence and which had been censored or portions were blocked out. Since that time I have received many of those documents and they have not been censored.

Have you had an opportunity since that deposition to look, to review the documents that, the same documents reviewed at the last deposition which are now in uncensored form?

MR. CHEESEMAN: I will object to that question. I think the use of the word "censored"

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is argumentative and inflammatory.

MR. LOONEY: Are they actually in evidence?

MR. CHEESEMAN: They were marked as exhibits.

If you refer to them as being with certain material deleted, I would have no problem.

MR. SCHLICHTMANN: Let me rephrase the question.

Q At the last deposition, Mr. Forte, I showed you some documents where certain material was deleted; do you remember that?

A Yes.

Q Now, since that time I have been supplied copies of those documents in their undeleted form, in their natural form. I am asking if you have had an opportunity to review those documents that I showed you at the last deposition in their undeleted form.

A No, I haven't.

Q You have not?

A No, I have not.

Q Mr. Forte, do you ever recall having discussions with Mr. Manzelli at any time concerning the

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excavation of any area to the rear of the plant for the disposal of material or drums at the plant?

A Yes. I think I answered that question in my original deposition.

Q You had specific conversation with Mr. Manzelli concerning that?

A I am pretty sure I said I did.

Q Other than that one conversation you testified to in your other deposition, do you recall any other conversation with Mr. Manzelli concerning the excavation of an area to the rear of the plant for disposal of drums or material?

MR. CHEESEMAN: You're asking about any time?

MR. SCHLICHTMANN: Yes.

A As far as excavating beyond the excavation I testified to?

Q Yes.

A Not about any other excavation.

Q Mr. Forte, as you sit here today, has your memory been revived or have you remembered anything concerning the disposal of waste material at the plant to which you have not already given

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testimony in your previous deposition?

MR. CHEESEMAN: Well, I am afraid I have to object to that question because the prior deposition is 295 pages long. I don't think we want to sit here and read all that right now.

MR. SCHLICHTMANN: No.

MR. CHEESEMAN: If you phrase the question in terms of whether he is presently aware of --

Q Are you presently aware of any disposal activity which took place at the W. R. Grace plant which you did not testify to previously at your earlier deposition?

MR. CHEESEMAN: That is not what I meant when I raised my objection.

MR. SCHLICHTMANN: What is that?

MR. CHEESEMAN: If you ask him if he is presently aware that he did not previously testify to disposal incidents that he remembers, then I won't object to the question.

MR. SCHLICHTMANN: Okay.

MR. CHEESEMAN: Does he presently have in mind any disposal incidents that he does not remember testifying to previously.

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2 MR. SCHLICHTMANN: Fine.

3 Q Do you have in your mind now, are you aware of any  
4 incidents of disposal that took place at the Grace  
5 plant that you don't believe you testified to  
6 previously?

7 A I'm not aware.

8 Q I am going to show you a document and ask you  
9 examine that. That is a site plan of the Grace  
10 plant which was submitted in July of 1974.

11 A Okay.

12 MR. CHEESEMAN: You don't know if this  
13 was an as-built plan, do you, Jan?

14 MR. SCHLICHTMANN: No. This is the one  
15 they submitted for permission to do the  
16 construction.

17 Q Are you familiar with that document? Have you  
18 ever seen it before?

19 A I don't recall seeing it.

20 Q You were in charge of the plant during 1974?

21 A Yes, I was.

22 Q Do you remember reviewing any document concerning  
23 the construction of the second addition to the  
24 plant prior to the construction of the second  
25 addition?

1  
2 A I probably was involved in the preparation of the  
3 RCA for the expansion, for the number of square  
4 feet.

5 Q In looking at that document --

6 MR. LOONEY: The question was whether  
7 you remember.

8 THE WITNESS: I was involved in the RCA  
9 for the expansion.

10 Q Were you involved in the construction of the first  
11 addition of the plant in 1966?

12 A I was involved in the preparation of the RCA.

13 Q Were you involved in the construction of the ware-  
14 house in 1970?

15 A Yes.

16 Q Now, in looking at that document, does that refresh  
17 your recollection as to whether you saw documents  
18 similar to that prior to the construction of the  
19 second addition?

20 MR. CHEESEMAN: Do you remember?

21 A I don't remember.

22 Q In looking at that document, it does not refresh  
23 your recollection about seeing anything, any  
24 documents similar to that?

25 A I don't remember.

1  
2 MR. SCHLICHTMANN: Let me have that  
3 marked as an exhibit.

4 (Site plan, marked Exhibit  
5 No. 2.)

6 Q In examining that plan, do you see where it  
7 indicates where the second addition is to be  
8 constructed?

9 A Yes.

10 Q Is that essentially as you remember the plans for  
11 the second addition?

12 A Yes.

13 MR. CHEESEMAN: You're asking him --

14 MR. SCHLICHTMANN: Based upon his memory.

15 MR. CHEESEMAN: -- if this is  
16 consistent with plans he saw previously?

17 MR. SCHLICHTMANN: That he has seen or  
18 his familiarity with the construction of the  
19 second addition.

20 MR. CHEESEMAN: With the actual  
21 building?

22 MR. SCHLICHTMANN: Yes.

23 THE WITNESS: I recall it as being a  
24 rectangular addition to the end of the plant.

25 Q Have you seen that plan where it shows in the

1  
2 middle of that block an existing manhole where the  
3 second addition is going to be constructed over?

4 MR. CHEESEMAN: You're referring to the  
5 little square in the cross exterior that says  
6 "relocate exist manhole?"

7 MR. SCHLICHTMANN: Right.

8 A I see it.

9 Q Are you familiar with the fact that prior to the  
10 building of the second addition there existed in  
11 that area of the plant a manhole to carry off  
12 storm water drainage?

13 MR. CHEESEMAN: I guess you added  
14 enough qualifications that I have to object to the  
15 question. I understand that you're asking if he  
16 remembers seeing a manhole out there.

17 MR. SCHLICHTMANN: Seeing it or being  
18 familiar with the fact that a manhole existed  
19 where the second addition is now built for the  
20 carrying off of storm water.

21 MR. CHEESEMAN: Don't assume there was  
22 actually one there unless you know.

23 A I'm not aware of a manhole.

24 Q You're not familiar with that?

25 A No.

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Q Are you familiar with the fact there is existing now, that the manhole was moved in the construction of the second addition and exists now outside the second addition essentially as shown?

A My own personal knowledge?

Q Yes.

MR. CHEESEMAN: I object to the question insofar as it assumes there was a manhole in back of the first addition.

MR. SCHLICHTMANN: All right.

Q Are you aware --

MR. CHEESEMAN: Ask him whether there is one out there now.

Q Are you aware there is a manhole out there now, outside the second addition, which would be for carrying off storm water drainage?

MR. CHEESEMAN: You're asking a compound question as to whether there is a manhole and what its purpose is. I would object to the question for that reason.

Q Are you aware of that?

A I was not personally aware.

Q Is this a surprise to you as I tell you today there is such a manhole outside the second

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addition?

MR. CHEESEMAN: I object. I don't understand why it would be relevant whether it is a surprise or not.

MR. SCHLICHTMANN: It would be a surprise if he never knew before.

Q Are you surprised by that fact?

MR. CHEESEMAN: I object. Go ahead.

A No, I'm not.

Q You had no knowledge up until today, up until I told you, there is such a manhole?

A Personally?

Q Yes.

A No.

Q Do you have any knowledge of how the storm water drainage system is layed out at the plant as it exists now?

MR. CHEESEMAN: When you say storm water, are you asking now about drainage from the parking lot and the ground area or about roof drainage?

MR. SCHLICHTMANN: Roof drainage.

MR. CHEESEMAN: He is asking if you're familiar with the setup at the plant for getting rid of roof water, rain water off the roof.

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A As far as I know, it goes through the roof drains and out the drains to the sides of the plant; that is all I know.

Q Looking at Forte Exhibit 2, would you be able to indicate what you mean when you say "sides of the plant?"

MR. CHEESEMAN: He is asking you, as I understand it, if you know where the rain water from the roof comes off the roof.

MR. SCHLICHTMANN: Right.

MR. CHEESEMAN: Do you know?

Q Do you have any idea?

A Do I know?

Q Yes.

A I will have to answer no.

MR. CHEESEMAN: He is asking now if you have some idea.

THE WITNESS: I have some idea.

Q Tell us what your idea is.

A I believe it comes off the roof drain and goes down a trench here and a trench there (Indication) to the swamp area.

Q Is it your understanding that is essentially how the roof drain system worked from the beginning of

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the plant's existence?

A Can I give an opinion?

MR. CHEESEMAN: He asked if --

THE WITNESS: Do I know for sure?

MR. CHEESEMAN: That is the first question.

Q What is your idea?

MR. CHEESEMAN: Objection.

Q Is that your basic idea of how the system worked in the past until the present?

MR. CHEESEMAN: If you have an idea.

A I believe so.

Q Based upon what you know about the plant and your spending time at the plant and observing things at the plant, is it your belief that throughout the time you were associated with the plant the roof drainage was drained off and essentially went to the rear of the plant along the two drainage ditches in the north and south?

A I believe so.

Q Now, are you aware that the roof water drainage would go into a pipe and that the pipe would carry the roof water drainage to one of the two ditches?

A I don't know that for a fact.

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Q But you did have in your mind that the roof water drainage did go to both of the ditches?

A I believe so.

Q Now, are you aware as to whether that system had to be moved every time a new addition went up on the plant?

A I do not know that.

Q Are you aware that the system uses catch basins or manholes to collect storm water and to redirect the flow into a particular direction?

A I wasn't aware of that, of the system or how it was designed.

Q Do you have any knowledge at all there existed on the plant catch basins or manholes for the collection of storm water drainage?

A I know of one for sure, which is the office parking area.

Q Would you point that out on the map, on Forte Exhibit 2?

A Right there (Indication).

Q Other than that manhole, are you aware of any others?

A No.

MR. CHEESEMAN: He pointed to an area of

1  
2 the parking lot in the northeast corner of the  
3 parking lot.

4 THE WITNESS: Wait a minute. I'm mixed  
5 up. I want to change that.

6 Q All right.

7 A Right there (Indication).

8 Q Why don't you --

9 MR. CHEESEMAN: He is now referring to  
10 an area --

11 MR. SCHLICHTMANN: Do you want to mark it,  
12 Bill?

13 MR. CHEESEMAN: Do you want me to put an  
14 X there?

15 MR. SCHLICHTMANN: He can mark it.

16 MR. CHEESEMAN: Put a little X where  
17 you're referring to.

18 THE WITNESS: About here (Indication).

19 MR. CHEESEMAN: He marked a little  
20 squiggle near the word "parking."

21 Q Is that a manhole?

22 A It is a manhole cover.

23 Q Why don't you put an "M" there?

24 MR. CHEESEMAN: Is it a manhole or  
25 grating?

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2 THE WITNESS: One or the other. I don't  
3 recall.

4 Q Why don't you --

5 A It is a metal plate.

6 MR. CHEESEMAN: I'll just put in MH.

7 Q Now, other than that manhole, you're not familiar  
8 there existed at the Woburn plant at any time a  
9 manhole at any other location on the plant?

10 A No.

11 Q And you're not aware at some time in the past a  
12 manhole or catch basin existed underneath the  
13 first addition and/or underneath the second  
14 addition?

15 A No.

16 Q Or existed to the rear of the second addition?

17 A No.

18 Q To your knowledge, Mr. Forte, at any time in the  
19 past in the Woburn plant are you aware whether or  
20 not waste material or waste liquid was ever poured  
21 down any manhole that existed on the W. R. Grace  
22 property at any time in the past?

23 A I'm not aware of it.

24 Q Are you aware whether or not any waste material,  
25 waste liquid was poured down manholes at any time

1  
2 in the past on the Grace property?

3 A I thought I answered that.

4 MR. CHEESEMAN: That was just asked and  
5 answered.

6 THE WITNESS: Is that another question?

7 MR. CHEESEMAN: If the witness under-  
8 stands it as the same question, it will be the  
9 same answer.

10 Q Same answer?

11 A Same question, same answer.

12 Q Are you aware at any time in the past that the  
13 drains in the inside, inside the building of the  
14 W. R. Grace plant in Woburn, were at any time in  
15 the past used to dispose of waste material or  
16 waste liquid?

17 MR. CHEESEMAN: Floor drains inside the  
18 plant?

19 MR. SCHLICHTMANN: Yes.

20 A No. The only area I know of is the passivating  
21 area.

22 Q You do know or you are aware of an area in which  
23 floor drains were used to dispose of waste liquid  
24 or waste material?

25 A Whatever was used for cleaning.

1  
2 Q What particular area was this waste material or  
3 waste liquid disposed of?

4 A In the cleaning area.

5 Q Would you be able to indicate on that map where  
6 the area existed?

7 A It is hard to pinpoint it.

8 MR. CHEESEMAN: If what you are  
9 referring to is the passivating area, I think we  
10 know what that is.

11 Q There is an area you're familiar with in which  
12 waste material or waste liquid was disposed of; is  
13 that right?

14 A Cleaning liquids.

15 Q Cleaning liquids?

16 A Yes.

17 Q And that was the passivating area?

18 A Right.

19 Q Other than the passivating area, are you aware at  
20 any time in the past whether or not floor drains  
21 were used to dispose of waste material or waste  
22 liquid at the Woburn plant?

23 A No, I'm not.

24 Q And the passivating area is the area raised off  
25 the floor?

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A Yes.

Q That is essentially in the center of the plant?

A Well, it is more toward the back, more toward the office area. I would not say it was center.

Q That is the only area where waste material or waste liquid was disposed of in the plant?

A To my knowledge.

MR. CHEESEMAN: Inside.

Q Inside down floor drains?

A To my knowledge.

Q How many drains in the passivating area were used, do you know?

A I have no idea.

Q At least one drain was used?

A Went down the drain. I know there is a drain in that area.

Q For what period of time was that drain in the passivating area used that you're familiar with?

A I don't know for sure; quite a long time.

Q Was it used in the 1960s to your knowledge?

A Oh, yes.

Q Was it used from the beginning of the 1960s?

MR. CHEESEMAN: From the time the plant was first built?

1  
2 MR. SCHLICHTMANN: Yes.

3 A Early '60s, yes.

4 Q And it was used throughout the 1960s?

5 A Yes.

6 Q Was it used in the 1970s?

7 A Yes.

8 Q Was it used in the 1980s to your knowledge?

9 A Yes.

10 Q At any time did that practice stop to your  
11 knowledge?

12 A Using the passivating area?

13 Q Using floor drains for disposal of waste material  
14 or waste liquid.

15 A To my knowledge, we have been using the passivating  
16 area to clean metals throughout that period of  
17 time.

18 Q Up to the present?

19 A Not every day, just from time to time. We used it  
20 from time to time when we had to clean.

21 Q Up to the present time?

22 A Right. I'm not there that often, you know, and I  
23 can't say when I'm not there.

24 Q How would you characterize that waste liquid? What  
25 was it composed of, do you know?

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MR. CHEESEMAN: If you know.

A I don't know.

Q You said it was cleaning solution?

A A cleaner for welds and stainless steel.

Q Are you familiar with the chemical they used to clean those welds?

A No.

Q Was it Okite?

A Could have been.

Q Do you know?

A I don't know.

Q Do you know if any of the waste liquid that was poured down that drain contained solvents of any kind?

A I don't know.

Q You don't know?

A I don't know.

Q Has that liquid, to your knowledge, ever been checked to determine what was going down that drain?

MR. CHEESEMAN: You're asking about a chemical analysis?

MR. SCHLICHTMANN: An analysis of any kind.

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A I don't know.

Q You're not familiar with that?

A I don't know. I testified in the previous deposition about measuring --

Q The ph levels?

A -- things going down the drain, but I don't know where the -- which area we were testing, whether it was that area or some other place in the plant. I do know that we did that and I testified to that.

Q Now, the disposal of waste liquid, did you understand that to be normal waste liquid produced during the passivating process or were other waste liquids put in there from other processes other than having to do with passivating?

A As far as I know, the passivating liquid.

Q Who authorized the use of that drain for the pouring down of those waste liquids that you're familiar with?

A No one had to authorize that at all. It was a function of the manufacturing of equipment.

Q To your knowledge, was that drain ever used for the disposal of any kind of waste oils?

A I don't know.

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Q To your knowledge, was it authorized that waste oils be disposed of down the drain in the passivating area?

A I don't know.

Q Do you have any idea as to whether waste oils are used in the passivating process, or whether oils are used in the passivating process?

A I don't know.

Q So you wouldn't know whether waste oils at any time went down the drain in the passivating area?

A No.

Q And you wouldn't know if that was authorized to be done or not?

A No.

Q Who would have knowledge concerning whether waste oils were allowed to be disposed of down the drain in the passivating area?

A I have no idea.

Q Would it have been Paul Shalline's responsibility?

A I don't know if anyone authorized it.

Q I will show you an aerial photograph that has been marked Barbas Exhibit 4. That is an aerial photograph of the plant as it existed in 1966.

A I have to put my glasses on.

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2 MR. CHEESEMAN: This is before the ware-  
3 house and either of the additions.

4 Q Have you had an opportunity to examine the aerial  
5 photograph?

6 A Is it before the first addition?

7 Q Yes.

8 A Yes.

9 Q Do you see the Grace plant located in that aerial  
10 photograph?

11 A Evidently.

12 Q In examining that photograph, do you see to the  
13 rear of the Grace plant what appears to be drainage  
14 ditches running to the north and south?

15 MR. CHEESEMAN: I think that is east and  
16 west.

17 MR. SCHLICHTMANN: One is north and --

18 MR. CHEESEMAN: East and west.

19 A Are you talking about right here (Indication)?

20 Q Right here (Indication).

21 A Okay.

22 Q Are those two drainage ditches to the east of the  
23 plant running north and south?

24 MR. CHEESEMAN: Running --

25 Q Running east but in a northerly direction and

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southerly direction.

MR. CHEESEMAN: I still think you have it wrong, but we know what you're talking about.

Q Two drainage ditches to the east of the plant, one in the north part of the property and one on the south part of the property?

A I see these two lines; yes.

Q To your knowledge, at any time did any disposal activities take place in those drainage ditches?

MR. CHEESEMAN: You're asking him what he observed now?

A Not to my knowledge.

Q Whether or not you observed it, do you have any knowledge those two drainage ditches were used to dispose of waste at any time?

A Not to my knowledge.

Q Do you see some writing in red and blue to the rear of the plant?

A Yes, sir.

Q That handwriting, I believe, is by Mr. Barbas.

A Uh-huh.

Q Those are notations made by him during his deposition.

A Uh-huh.

1  
2 Q To your knowledge, sir, was the area indicated by  
3 those red and blue marks, were those areas that  
4 at any time, to your knowledge, were used for the  
5 disposal of waste liquid or waste material or  
6 waste solvents?

7 MR. CHEESEMAN: You're asking if he  
8 observed it?

9 MR. SCHLICHTMANN: To his knowledge, if  
10 he has any knowledge.

11 MR. CHEESEMAN: You have to define the  
12 word "knowledge," Jan.

13 MR. SCHLICHTMANN: Let me do observe  
14 first.

15 Q Did you ever observe that area at any time being  
16 used for the disposal of waste liquid or waste  
17 solvent?

18 A No, I have not.

19 Q Do you have any knowledge whether that area was  
20 ever used in the past for the disposal of waste  
21 liquid or waste solvent?

22 A No.

23 MR. CHEESEMAN: Before you answer that,  
24 in past depositions you have defined the word  
25 "knowledge" to mean personal observations or

1  
2 direct knowledge as opposed to hearsay. I wonder  
3 what sense you're using the word in now.

4 Q What I mean is whether you got an indication  
5 through any of the senses that that area was used  
6 at some point in the past for the disposal of  
7 waste liquid or waste solvent.

8 A All right.

9 Q When I use "to your knowledge," did you ever  
10 receive information through your senses, excluding  
11 any information which you may have received  
12 through the attorney-client relationship. Do you  
13 understand what I mean? In other words, if you  
14 received --

15 MR. CHEESEMAN: Do you mean apart from  
16 things like the fact that we dug up some drums out  
17 in back a couple of years ago?

18 MR. SCHLICHTMANN: If that forms part  
19 of his knowledge, I want to know that.

20 MR. CHEESEMAN: If you have seen stuff  
21 dug up or people have told you that material was  
22 buried out there.

23 MR. SCHLICHTMANN: Exclusive of your  
24 attorneys.

25 MR. CHEESEMAN: Or if they poured stuff

1  
2 out there, other than what your lawyers have told  
3 you.

4 A Just what I testified to in the original deposition.

5 Q What is that? What do you remember testifying to?

6 A I checked into the discussion we had on the pit.  
7 This is the original building, so I don't know the  
8 relationship, whether this circle would be, you  
9 know, where we dug up the hole; I can't answer if  
10 the circle is the same exact spot. If it isn't, I  
11 have no knowledge of it.

12 Q I want you to examine the photograph and examine  
13 the location of the circle in relationship to the  
14 building.

15 A Uh-huh.

16 Q Will you agree with me, based upon your knowledge  
17 of the plant's construction history, the first  
18 addition is essentially covered, is covering the  
19 area which has a red or blue mark on it?

20 A I don't know what the scale is. I have no idea.

21 MR. CHEESEMAN: It is pretty clear the  
22 first addition would not have covered it.

23 MR. SCHLICHTMANN: Covered some of it.

24 MR. CHEESEMAN: Maybe.

25 MR. SCHLICHTMANN: First and second

1  
2 additions would have covered it.

3 MR. LOONEY: Is there a question pending?

4 Q Mr. Forte, in examining the aerial photograph, do  
5 you see the red marks and blue marks?

6 A Yes, sir.

7 Q Mr. Barbas had testified in his earlier deposition  
8 that the area he marked on there was used to  
9 dispose of waste liquid and solvents by himself  
10 and Mr. Meola.

11 MR. CHEESEMAN: I am not sure that is  
12 what he was testifying to on that. If you could  
13 ask the question without the representation as to  
14 what Mr. Barbas's testimony was, I think it would  
15 be easier.

16 MR. SCHLICHTMANN: He did say that.  
17 But I agree we should not quibble.

18 Q Was that area indicated on the aerial photograph,  
19 to your knowledge, to the rear of the main  
20 building prior to the construction of the first  
21 or second addition, was the area indicated by  
22 those red and blue marks an area ever used for the  
23 disposal of waste liquid or waste solvents to your  
24 knowledge?

25 MR. CHEESEMAN: You mean did he ever

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hear anyone say so?

A Not to my personal knowledge.

Q Have you heard anything to the effect that that area had been used in the past for the disposal of waste liquid or waste solvent?

A (Pause).

MR. CHEESEMAN: He is asking you now whether you ever heard anyone say so other than lawyers, including hearsay. Has anyone at the plant ever told you or anyone else, apart from lawyers --

MR. LOONEY: How about paralegals?

MR. SCHLICHTMANN: Anyone from a law firm.

MR. CHEESEMAN: I don't think he is asking about what you may have seen in other people's depositions.

THE WITNESS: Ask the question again.

Q Do you have any knowledge as to whether or not that area has ever been used in the past, as indicated in the aerial photograph with the red and blue marks to being the area to the rear of the main building prior to the construction of the first and second additions, was ever used for

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the disposal of waste liquid or waste solvent?

A I have no knowledge of it.

Q Is it fair to say any knowledge you have concerning the use of that area would have come from the reading of depositions in this case?

A Yes.

Q Other than that, other than the reading of depositions and what witnesses have said in the depositions, do you have any other knowledge as to whether or not that area was used in the past for disposal of waste liquid or waste solvent?

MR. CHEESEMAN: The area marked on the photograph?

MR. SCHLICHTMANN: By the red and blue markings.

A I don't recall anything like that.

Q Now, the area to the rear of the main building, which was later to be covered by the first addition, you're familiar with that area?

A Yes.

Q You know there was an addition put on the main building?

A Yes.

Q That was an addition that went on in 1966?

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2 MR. CHEESEMAN: That is not the one  
3 described in Exhibit 2.

4 A Yes.

5 MR. LOONEY: Is it your memory it was put  
6 on in 1966?

7 THE WITNESS: I don't remember the year.

8 Q Mid '60s?

9 A Yeah.

10 MR. LOONEY: Does that sound about right?

11 THE WITNESS: Yes.

12 Q Now, prior to construction of that first addition,  
13 the area on which the first addition was later to  
14 be constructed, did you have any knowledge as to  
15 whether that area underneath the area that was  
16 later to become the first addition was ever used  
17 in the past for the disposal of waste solvent or  
18 waste liquid?

19 A No, I have no knowledge.

20 Q I am going to show you Barbas Exhibit 2. I would  
21 ask you examine that, which is an aerial photo-  
22 graph taken in March of 1974.

23 A This is March of 1974?

24 MR. SCHLICHTMANN: Is it?

25 MR. CHEESEMAN: That is what it says.

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Q Do you recognize that as a picture of the Grace plant as it essentially looked after the construction of the first addition and before the second addition?

A Looks like it.

Q Now, you will see a red mark there where it says PS and M1?

A Uh-huh.

Q And there is a circle?

A Uh-huh.

Q That area limited by the circle, the red circle, do you have any knowledge as to whether in the past prior to the construction of the second addition that area was ever used for disposal of waste liquid or waste solvent?

A Not to my knowledge.

Q You have no knowledge of that?

A No, sir.

Q You're familiar with the area behind the first addition which was later to be construction of the second addition?

MR. CHEESEMAN: He is just asking if you're familiar with the area where the second addition was built.

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A Yes.

Q At any time in the past did you have any knowledge the area which was later to become the area upon which the second addition was constructed, whether at any time waste liquid or waste solvent was disposed of on that ground?

A Not to my knowledge, my personal knowledge.

Q Did you hear anything about that other than what you read in depositions in this case?

A No, I did not.

Q Now, do you see in that picture the drainage ditch that runs to the east of the main building on the south side near the warehouse?

A Yes.

Q Do you see some of the drainage ditch runs along the warehouse itself?

MR. CHEESEMAN: I object to you asking a lay witness to interpret aerial photographs, particularly this one where it is very hard to distinguish the shadow of the warehouse to features on the ground.

Q There was a drainage ditch on the warehouse side of the property?

A Yes.

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Q Are you familiar with the fact at some point in the past that drainage ditch ran along part of the warehouse?

A No.

Q You have no memory of that?

A No.

Q You don't remember?

A No, I don't.

Q I will show you Barbas Exhibit 5 and ask you examine that.

MR. CHEESEMAN: April 11, 1975 is the date.

Q Do you see that?

A Yes, sir.

Q Do you recognize that as a picture of the plant as it essentially looked after the construction of the second addition?

A Looks like it.

Q And do you see on that photograph there is a red mark there, a circle with PS in it?

A Yes, sir.

MR. CHEESEMAN: That one says PS (Indication).

MR. SCHLICHTMANN: What is this one

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(Indication)?

MR. CHEESEMAN: M1.

Q Do you see the circle with M1?

A Yes.

Q And you see the one with PS?

A Yes.

Q Do you have any knowledge that area to the rear of the second addition, which is limited by those circles in that aerial photograph, whether that area at any time was used in the disposal of waste liquid or waste solvent?

A Not to my knowledge.

Q To your knowledge --

MR. CHEESEMAN: You are again excluding deposition testimony?

Q Except what you learned through reading the deposition testimony?

A Yes, sir.

Q Now, you're familiar with the area to the rear of the second addition that is now covered with peastone?

A I'm aware of --

MR. CHEESEMAN: Forgetting the photograph, he is asking if you remember the area in

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back of the plant that has peastone on the ground.

THE WITNESS: Yes.

Q You remember that?

A I have seen it.

Q Are you familiar with when that peastone was put on the ground?

A Personally?

Q Yes.

A No.

Q Are you aware that peastone was put on the ground in 1979?

MR. CHEESEMAN: I believe that is incorrect.

MR. SCHLICHTMANN: Mr. Barbas said that.

MR. CHEESEMAN: I am just telling you that.

MR. SCHLICHTMANN: All right.

Q Are you familiar at some time the peastone was put in that area?

A Yes.

Q Do you know how far back that peastone was put down?

A No.

MR. CHEESEMAN: How far back, do you --

MR. SCHLICHTMANN: I mean years.

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2 MR. LOONEY: I thought you meant how far  
3 behind the area.

4 Q Do you know how many years back?

5 A I don't know.

6 Q You don't know?

7 A No.

8 Q Do you know whether it was a couple of years back,  
9 five years?

10 MR. CHEESEMAN: I don't mean to be cute,  
11 I understand that the reroofing of, I think, the  
12 warehouse occurred in 1981 and it was the old  
13 stone from the roof that was put on the ground;  
14 that is my best understanding but I will not  
15 testify to it.

16 Q Do you remember when the warehouse was reroofed in  
17 1981 that peastone was placed on the ground  
18 between the warehouse and the second addition?

19 A I do not know of my own personal knowledge. I  
20 learned since that it was from the roof.

21 Q You have no knowledge of that?

22 A Personally at the time, no.

23 Q You never authorized the placement of the peastone  
24 in the area between the warehouse and the second  
25 addition, did you?

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A No, I did not.

Q Were you aware peastone was placed there prior to learning it was placed there between the warehouse and the second addition?

MR. CHEESEMAN: That is contradictory. You mean before he learned it from someone else did he see it?

MR. SCHLICHTMANN: Why don't we try it that way.

A I saw it.

Q You never authorized it?

A I didn't even think about it; no.

Q Do you know who authorized it?

A No, I don't.

Q You don't know?

A I don't know who authorized it.

Q You don't know how it got there?

A No.

I know who was in charge of putting it on the new roof.

Q Who was that?

A Ulf Norden.

Q Ulf Norden?

A Yes.

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Q Was he working under you in 1981?

A Yes.

Q But you have no recollection of ever discussing that matter with Mr. Norden or anyone else?

A Absolutely not.

Q Now, in examining that aerial photograph, Barbas Exhibit 5, do you see an area in the northeast corner of the property which is somewhat rectangular and does not appear to be any vegetation?

MR. CHEESEMAN: Marked BS on the exhibit.

MR. LOONEY: Is that the one you mean? There is no point of reference as to what it is.

MR. SCHLICHTMANN: Well, I am sure he knows what the directions are.

MR. LOONEY: Do you?

Q Is that the northeast corner of the property?

A Well, I see what you're pointing to.

MR. LOONEY: Do you know that to be the northeast corner?

THE WITNESS: I'm not sure.

Q With your attorney's permission, can we assume it is the northeast?

MR. CHEESEMAN: We have been identifying

1  
2 it as the northeast corner.

3 MR. LOONEY: You have my permission to  
4 assume for the moment it is the northeast corner.

5 Q Do you have any information whatsoever as to any  
6 activity that took place in the past in that  
7 particular area of the property in which the ground  
8 was excavated for any reason?

9 A No.

10 Q You have no knowledge?

11 A No.

12 Q Would you look in the middle of the picture, middle  
13 of the property?

14 MR. CHEESEMAN: You're referring to the  
15 circle marked S?

16 MR. SCHLICHTMANN: Yes.

17 A Can I look at the date of this?

18 Q It's April of 1975.

19 MR. CHEESEMAN: This is about six months  
20 after the completion of the second addition,  
21 according to the marking on the back of the picture  
22 from the aerial photograph company.

23 Is this the swamp?

24 MR. SCHLICHTMANN: Yes; the swampy area.

25 (Pause)

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3 MR. CHEESEMAN: The witness is indicat-  
4 ing he is unable to determine from examining the  
5 aerial photograph exactly where the demarcation  
6 between the swampy area and solid ground is. For  
7 reasons like that, I have objected all along to  
8 having lay witnesses interpret aerial photographs.

9 (Pause)

10 MR. CHEESEMAN: What is the question?

11 Q The question is: Do you see the middle of the  
12 property? Do you see another area where there is  
13 white in the middle of the property which has a  
14 circle in the middle of it?

15 A Yes.

16 Q Do you have any knowledge of any activity which  
17 took place in that area of the property in which  
18 involved any excavation?

19 MR. CHEESEMAN: I object again because  
20 of the difficulty of a lay witness interpreting  
21 distances in relationship on aerial photographs.

22 If you understand what that area is,  
23 you may answer the question.

24 A What was the question?

25 Q Do you have any knowledge that any excavation took  
place?

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A No.

Q In that area of the property?

A No.

Q Do you have any knowledge any excavation took place in the middle of the property, essentially in the area indicated in that aerial photograph?

MR. CHEESEMAN: You're asking about excavation prior to the date of this photograph?

MR. SCHLICHTMANN: At any time.

MR. CHEESEMAN: Including when we dug up the drums?

MR. SCHLICHTMANN: Yes.

A This is not the area where drums were dug up.

MR. CHEESEMAN: He is asking you --

Q What you know about any excavation.

MR. CHEESEMAN: If you can figure out by looking at the photograph exactly where the circle is on the ground and whether you ever saw or heard of any hole being dug in that location, excluding the hole we dug up two years ago.

MR. SCHLICHTMANN: Right.

A Mr. Schlichtmann, the only hole I know is the one we dug up. If that is the hole we dug up, it is -- It is over here (Indication).

1  
2 Q The only knowledge you have any area on the  
3 property was ever excavated at any time for the  
4 disposal of waste material was the hole which  
5 Geo-Environmental dug up in 1983?

6 MR. CHEESEMAN: That was a hole we took  
7 stuff out of.

8 Q Which drums were excavated and contaminated soil  
9 was removed.

10 A To my knowledge, that is the hole.

11 Q To your knowledge, there is no other area on the  
12 property which was excavated for the disposal of  
13 waste material or waste liquid?

14 A I don't recall any other hole.

15 Q Mr. Forte, did you ever authorize the excavation  
16 of any area on the property for the disposal of  
17 waste material, waste liquid or drums?

18 A I don't remember doing that.

19 Q At any time?

20 A At any time.

21 Q Now, I will show you Kelly Exhibit 1 and ask you  
22 examine that.

23 MR. CHEESEMAN: March of 1974. This is  
24 before the second addition was put on.

25 Q Mr. Kelly made a mark on that photograph, the

1  
2 letter A and a blue line.

3 MR. CHEESEMAN: This is Paul Kelly.

4 MR. SCHLICHTMANN: Which is the one in  
5 the middle?

6 MR. CHEESEMAN: B.

7 Q To your knowledge, was a trench at any time dug in  
8 the area indicated in that photograph with the blue  
9 line for the disposal of drums?

10 MR. CHEESEMAN: Are you asking him,  
11 among other things, if that is the approximate  
12 location of the pit where we dug up the drums?

13 Q In examining that photograph, I am asking you  
14 whether you have any information or knowledge that  
15 that area indicated on that aerial photograph with  
16 the blue line and letter B was ever excavated in  
17 the past for the disposal of drums.

18 MR. CHEESEMAN: You mean before or  
19 after this photograph was taken?

20 MR. SCHLICHTMANN: Yes.

21 MR. CHEESEMAN: I object to the question  
22 insofar as it asks for a lay witness to interpret  
23 an aerial photograph.

24 A I am not aware of any other hole or pit other than  
25 the one we dug up.

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Q In June of 1983?

A Whatever the date was.

Q I will show you Sergi Exhibit 4 and ask you examine that. That is a picture of the property in June of 1979.

A All right.

Q And that is the way the property essentially looked in 1979 after the construction of the first or second addition and the warehouse?

MR. CHEESEMAN: That is about five years after the construction.

A Yes, sir.

Q I draw your attention to this feature on the photograph (Indication).

A Uh-huh.

Q I ask you examine that.

A Uh-huh.

Q Do you have any knowledge whatsoever that at any time in the past that area was used for the disposal of waste material or waste liquid or drums?

MR. CHEESEMAN: That is an area marked A on Exhibit 4A, which is the overlay.

A It is the pit area we dug up. I don't know about

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that.

Q Now, are you aware -- You keep referring to this pit area that was excavated by Geo-Environmental in June of 1983.

A Yes.

Q Did you have knowledge that that area was dug and waste drums were disposed of in that area prior to there being an excavation by Geo-Environmental in June of 1983?

A We had dug a pit and emptied drums. We answered that in the EPA letter.

Q Prior to your receiving the letter from the EPA in January of 1982, did you have any knowledge prior to that time that such a pit had been dug for the disposal of drums or waste material?

A I do not recall any pit.

Q That was the only time you became aware of that, after the EPA sent the letter and an investigation was undertaken?

A Yes, sir.

Q Sergi Exhibit 4A is an aerial photograph with a blue circle?

A Who is that?

MR. CHEESEMAN: Victor Sergi.

1  
2 THE WITNESS: Okay.

3 Q Exhibit 4A is a blue circle with the letter B in  
4 it. Do you have any knowledge that that area was  
5 at any time excavated for the disposal of waste  
6 material or waste liquid or drums?

7 A It was not the pit we previously discussed. I am  
8 not aware of it.

9 Q You're not aware?

10 A No.

11 Q And this area which has the blue circle and the  
12 letter C in Sergi Exhibit 4A, do you have any  
13 information or knowledge as to whether any  
14 excavation activity took place in the past in that  
15 area?

16 A No, sir.

17 Is that bare (Indication)?

18 MR. CHEESEMAN: The witness, by his  
19 asking me if that is bare, is unable to determine  
20 the area on the aerial photograph, which is why I  
21 objected. And I understand that I can reserve  
22 those objections?

23 MR. SCHLICHTMANN: There's no question  
24 about that.

25 Q I am asking you to examine this area circled blue

1  
2 with white spots on the picture. Do you have any  
3 knowledge as to whether that area had any  
4 excavation activity in the past?

5 A Not to my knowledge.

6 Q Mr. Forte, do you have any knowledge at all as to  
7 whether at any time during the construction of the  
8 first or second addition that waste material was  
9 allowed to be disposed of at the construction  
10 site?

11 MR. CHEESEMAN: Can I have that read  
12 back?

13 MR. SCHLICHTMANN: I'll say it again.

14 Q Do you have any knowledge that during the  
15 construction of the first or second addition, that  
16 at any time during the construction of those two  
17 additions, Mr. Forte, that waste liquid was  
18 allowed to be disposed of at the construction  
19 site?

20 MR. CHEESEMAN: Do you mean on the  
21 actual ground?

22 MR. SCHLICHTMANN: Yes.

23 MR. CHEESEMAN: Being cleared for the  
24 building?

25 MR. SCHLICHTMANN: Yes.

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A Absolutely not.

Q You have no knowledge about that?

A No knowledge.

Q Do you have any knowledge that during the construction of the first addition, Mr. Forte, that the old drain pipe was excavated that used to carry off the roof water drainage from the main building?

A No knowledge.

Q You have no knowledge of that?

A No knowledge.

Q Do you have any knowledge that the old manhole that was used to carry off roof water drainage was excavated during the construction of the first addition?

A No knowledge.

Q None at all?

A (Witness nods in the negative).

Q No knowledge that the manhole used to carry off roof water drainage was excavated during the construction of the second addition?

A No knowledge.

Q And you have no knowledge whether any waste material was buried at the construction site

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during the construction of the first or second addition?

A You said outside the pit?

Q Yes; outside of that area that was excavated by Geo-Environmental.

A You're talking about the expansions?

Q Yes.

A No knowledge.

Q Do you have any knowledge that at any time during the construction of the warehouse that waste material or waste liquid was allowed to be disposed of at the construction site?

A No knowledge.

Q No knowledge at all?

A At all.

Q Do you have any knowledge at any time that paint sludges or material containing paint sludges were disposed of in the trench that ran along the warehouse?

A No knowledge.

Q At all?

A No personal knowledge.

MR. SCHLICHTMANN: Well, I think I'm done.

2-61

(Whereupon the deposition was  
adjourned at 2:45.)

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J U R A T

I, VINCENT FORTE, have read  
the foregoing transcript of  
testimony and the same  
contains a true and accurate  
recording of my answers given  
to the questions therein set  
forth.

Signed under the pains and  
penalties of perjury this  
\_\_\_\_\_ day of  
\_\_\_\_\_, 1985.

\_\_\_\_\_  
VINCENT FORTE

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss.  
COUNTY OF NORFOLK )

I, Valerie T. Wong, Notary Public within  
and for the Commonwealth of Massachusetts, do hereby  
certify:

That VINCENT FORTE, the witness whose  
deposition is hereinbefore set forth, was duly sworn by  
me and that such deposition is a true record of the  
testimony given.

I further certify that I am not related  
to any of the parties to this action by blood or  
marriage, and that I am in no way interested in the out-  
come of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my seal of office this 2nd day of  
August, 1985.

*Valerie T. Wong*  
NOTARY PUBLIC

My Commission Expires:  
November 5, 1987.

J U R A T

I, VINCENT FORTE, have read  
the foregoing transcript of  
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\_\_\_\_\_, 1985.

\_\_\_\_\_  
VINCENT FORTE

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