

IPASS, INC.

September 21, 2016

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Office of Civil Rights
Helena Wooden-Aguilar (wooden-aguilar.helena@epa.gov)

Title VI Complaint

**Lee County School District: High School Siting at Imperial Parkway Bonita Springs,
Florida**

Dear U.S. Department of Education Office for Civil Rights:

We represent IPASS, Inc. a Florida Not for Profit Corporation. IPASS alleges that the Lee County School District (LCSD), a recipient of financial assistance from the USDOE, has violated Title VI of the Civil Rights Act of 1964 (Title VI) that will have a disparate discriminatory impact on students of color and race by siting a new Title I high school that has predominantly (more than

50%) Hispanic and Black student population in Bonita Springs Florida on a parcel of land that is contaminated by asbestos and diesel fuel, and the site is also located next to an extremely high-volume traffic roadway, federal Interstate I-75 generating additional air pollution.

LCSD receives federal funds from Title I, Part A (Title I) of the Elementary and Secondary Education Act (ESEA) provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families.

Placing a new school that will serve a student class population of predominantly (greater than 50%) Hispanic and Black students on a contaminated site is a discriminatory act based on race and color. The new high school will serve the following current student population:

Statistics for 2014-2015¹ (statistics for 2015-16 not available yet)

Bonita Springs Elementary
Hispanic: 93.9%
Economically Disadvantaged: 97.2%

Spring Creek Elementary
Hispanic: 82%
Economically Disadvantaged: 89.3%

Bonita Middle Center for the Arts
Hispanic: 61.3%
Economically Disadvantaged: 75.3%

Bonita Springs Preparatory and Fitness Academy:
Hispanic: 46.4%
Economically Disadvantaged: 60.5%

Bonita Springs Charter School
Hispanic: 35.6%
Economically Disadvantaged: 49%

Statistics for Lee County - 2015-16
White: 42.6%
Hispanic: 38.2%
Black: 14.6%
Two or More Races: 2.7%
Asian: 1.7%

¹ <http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1415/main1415.cfm>
http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1415/schl1415.cfm?dist_number=36
total number of students in Bonita Springs 3,714
total number of minority students in Bonita Springs 2,307

Siting the new high school on the Imperial Parkway site would expose the predominantly minority student population to additional pollution and health risks.

This is a discriminatory act and violates Title VI and USDOE's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability), EPA's Title VI regulations, 40 C.F.R. Part 7, and the U.S. Department of Education's (USDOE) Title VI regulations, 34 C.F.R. Part 100.

The Title VI regulations prohibit, among other things, race, color or national origin discrimination in school siting decisions. As noted in EPA Schools website, "Children are particularly sensitive to air pollution, because their respiratory systems are not fully developed, they are more active, and they breathe more rapidly than adults. Children also are more likely than adults to have asthma."

The selection of this school site, upon which evidence of prior contamination exists, and the assessment and remediation of contamination at this site stem from two deficiencies:

1. *Inadequate due diligence on the part of school districts.*

Without the involvement of lending institutions in acquiring property for school construction, school boards have less incentive to perform rigorous due diligence. By requiring site investigations as a condition for loans on acquiring property, banks and other lenders have served as de facto environmental detectives. To protect their own investments and to avoid liability, lenders have played a key role in the discovery of contaminated properties, helping to ensure that proper site characterization and cleanup are carried out. But in recent cases in Chicago and Los Angeles, the acquisition of property for schools was funded by public money, without the involvement of lending institutions. **It would appear that due diligence was not conducted with the same scrutiny as would be the case in private property transactions.**

2. *School district self-certification of remediation cleanup.*

A major flaw in the system is when school districts have both the responsibility and authority for cleaning up site contamination and for certifying that the cleanup has been properly completed before the school facility is constructed. School districts often do not have expertise in site assessment and cleanup, and there may well be conflicts of interest within the school district. As a recent California audit documented, pressures to get a school up and running to meet enrollment needs may influence how contaminated sites are characterized, **leading to less stringent cleanups.**

This complaint is timely. The contaminated Imperial Parkway site was selected from a list of other (non-contaminated) school sites by the LCSd within the last 180 days, but to our knowledge the real estate contract for the purchase and sale of the site has either not yet closed or only recently closed. The school has not yet been constructed.

The site has not been adequately tested for these and other potential contaminants and the testing that was conducted was incomplete. State of Florida Department of Environmental Protection records are incomplete. Subsequent recent site assessment testing for asbestos materials was not

adequate to ensure that the site has been fully remediated. There has been insufficient state and federal oversight of assessment and remediation activities on the site. A report titled *Soil Assessment Report Imperial Parkway Property* dated July 4, 2016 was prepared by the same consulting firm that performed a Phase I Environmental Site Assessment (Phase I ESA) in November 2015, the consulting firm was again hired directly without a proper selection procedure by the School Board. This July 4, 2016 Report utilized and described a methodology for soil sampling that is not adequate to assess potential asbestos contamination.

The consulting firm that performed a “practical sampling plan” was improperly constrained under a very limited budget provided by the School Board, relied on its own inadequate Phase I ESA site reconnaissance activities, and did not perform a thorough visual inspection of the entire property.

The attached sworn statement from a Spanish speaking worker who was employed during the assessment of asbestos materials that indicates that the asbestos materials may exist in other locations on the site. In light of the known asbestos that was present on the property, the site selection assessment and documentation were inadequate to protect students. Both the phase I and phase II report was inadequate under ASTM Environmental Audit standards. No phase III environmental audit has been conducted or requested by the School Board prior to the site selection of this contaminated site next to a major highway generating high volumes of traffic and additional air pollutants.

According to the Soil Assessment Report, no obvious cementitious pipe or pipe fragments or other potential asbestos-containing material (ACM) were observed during the Phase I ESA. In the Phase II ESA, samples were collected in a general grid pattern that divided the site into twelve sections. The soil sampling methodology implemented encompassed a random collection of soil samples from the surficial layer from each section and laboratory analysis of 12 composited samples from a property that is 76 acres in size. This is roughly only one analyzed sample for every six acres of land, and clearly inadequate given the circumstances.

Moreover, no special assessment emphasis (no test pits greater than 6” with sampling or additional sampling was) was given to areas previously documented as impacted with ACM. Additional investigation should have been conducted in the three areas where the burial and piling of ACM occurred. The scope of the soil assessment applied the same level of scrutiny in the areas that were previously documented as impacted as in the areas that were not previously documented as impacted with asbestos. The soil sampling methodology for assessment of ACMs should not have focused on discrete sample locations. A few surficial soil samples, even if properly composited and analyzed, cannot fully represent surface, subsurface or air environmental conditions.

The School District of Lee County should have, but did not, notice a request for proposals to interested bidders (consultants) with a detailed scope of work to adequately assess the property. Public sector procedures to conduct environmental assessment work should be transparent, thorough and open to the public in order. This process was not. When counties or governmental agencies are truly interested in finding out what the true environmental conditions are on real estate properties, they commonly rely on one consultant to design a scope of work that can meet the objectives for the purchase, and then, on yet other independent consultant chosen through open bidding process to complete the implementation of a well-designed scope of work that is vetted through state and federal regulatory oversight, not unilateral self-regulation by the LCSD.

The first rule of environmental site assessment for contaminated sites is to obtain a full three dimensional (vertical and horizontal) assessment as to the extent of contamination. Originally, only a phase 1 paper environmental audit was performed here. A full phase II or phase III environmental audit was not performed, even for asbestos, much less any other potential contaminants for the entire parcel. No full vertical site assessment to depths of more than 6" or horizontal assessment of, and throughout, the entire parcel, and no full site rehabilitation completion order from DEP or EPA for full clearance of the site has been obtained to our knowledge.

Prior to selection and use of contaminated sites for the proposed school, guidance should have been sought from State and Federal regulators and other stakeholders. A comprehensive site assessment including a Conceptual Site Model (CSM) is necessary and proper for a school site. The CSM would have taken into consideration the past, present and future use of the site as it is a representation of site related information of contamination sources, receptors and exposure pathways. The CSM of a comprehensive site assessment would have provided a framework for identifying how potential receptors such as workers during construction and school children may be exposed to remaining asbestos or other contaminants in the present or in the future.

The United States Environmental Protection Agency provides a framework for investigating and characterizing potential for human exposure from asbestos contamination in outdoor soil and indoor dust at contaminated sites. Due to the scientific and technical issues associated with the investigation of human exposure and risk from asbestos, a framework for a comprehensive site assessment should be used by risk assessment managers when performing investigations of asbestos sites. In addition to soil, a combination of dust and air samples has to be analyzed to fully characterize exposure.

The School District and School Board must understand that asbestos fibers in outdoor soil released from source materials, including remnants of asbestos materials, have the potential for inhalation. Inhaled asbestos can increase the risk of developing illnesses such as lung cancer, mesothelioma, pleural fibrosis, and asbestosis. These risks of airborne pollution are compounded by the nearby high-traffic federal interstate highway I-75 which also generates air pollution in close vicinity to the proposed school site on Imperial Parkway.

Based on the exposure to asbestos and other hydrocarbon contaminants and air pollutants, the subject site should not be considered a potential school site regardless of a comprehensive contamination assessment which will have limitations and risks that have not been fully assessed.

According to a 2005 report titled *Building State Schools: Invisible Threats, Visible Actions* by the Child Proofing Our Communities Campaign and Center for Health, Environment & Justice, Florida is a state with school siting laws and one of only five (5) states with a policy that prohibits a school district from using a certain site for a school location due to health and safety concerns with regard to point sources of pollution, prior land uses and other general environmental conditions.

On February 11, 1994, Executive Order 12898 was issued to direct Federal agencies to incorporate the achievement of environmental justice into their mission. Accompanying that Executive Order was a Presidential Memorandum stating, in part:

“In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the

environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”

Presidential Memorandum to Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

In August 2011 the Environmental Justice Internal Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities.

As noted above, the site has not been adequately tested for these and other potential contaminants, and the testing that was conducted was incomplete.

The attached sworn statement from a Spanish speaking worker who was employed during the assessment and remediation of asbestos materials from the soil indicates that the asbestos materials may exist in other locations on the site, and has not been fully remediated. Federal OSHA complaints during the site assessment and remediation for asbestos can no longer be located by Lee County. Subsequent recent site assessment testing for asbestos materials was not adequate to ensure that the site has been fully remediated.

Respectfully submitted,

/s/ Ralf Brookes Attorney
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July 7, 2016

Ralf Brookes, Esq.
1217 East Cape Coral Parkway # 107
Cape Coral, Florida 33904

**Subject: Hawthorne Property/Imperial Parkway
AirQuest Project #11068**

Dear Mr. Brookes:

AirQuest Environmental, Inc. (“AirQuest”) reviewed a map indicating the latest sampling locations at the Hawthorne property at Imperial Parkway. The map seems to indicate a grid system used as part of a sampling plan for the collection of samples for asbestos and petroleum hydrocarbon analysis at the subject property. The map provided sufficient information to indicate that samples would be collected only from the surface; a limited number of samples (five samples) from each of the twelve cells of a grid system for a total of sixty (60) samples, and a plan to have the samples composited, not in the field, but at the laboratory.

This sampling plan does not adequately assess asbestos concerns at the site, which is primarily accomplished by a thorough visual inspection of the entire property and does not focus on discrete soil sampling locations. A few surficial soil samples, even if properly composited and analyzed, cannot properly represent surface or subsurface environmental conditions.

Additionally, due to the piling and burial of asbestos cement piping and potential disturbance of soils during an abatement conducted at the subject property, it is important to determine if asbestos is present in the soils at depths greater than surficial levels (surface to 3 and sometimes 6 inches of depth). Based on the documents reviewed, a comprehensive site characterization was not conducted. Although additional detailed information as to the purpose of this latest sampling may have accompanied the map, the map itself seems to indicate that it is for confirmatory purposes.

For sites such as this proposed school site, guidance must be sought from professionals and from State and Federal regulators and other stakeholders. It is important to develop a Conceptual Site Model (CSM) that takes into consideration the past, present and future use of the site as part of a comprehensive site assessment. A CSM is a representation of

site-related information regarding contamination sources, receptors and exposure pathways. The CSM will provide the framework for identifying how potential receptors may be exposed to asbestos or other contaminants in the present or in the future. Also, since there will be activities during potential construction at the site (e.g., excavation, trenching), Activity-Based Sampling (ABS) and Stationary Sampling are recommended assessment practices for assessing short and long term exposures associated with workers during construction and later students and residents of the adjacent areas.

Should you have any questions or require additional information, please do not hesitate to contact either myself, or Traci Boyle at (954) 792-4549.

Sincerely,
AirQuest Environmental, Inc.



Sid Duque, PG
Senior Project Manager



Traci-Anne Boyle, CIH
Licensed Asbestos Consultant, AX-60



LOCAL NEWS

DEP investigating possible asbestos violations by construction company

By Charlie Whitehead

Posted: Dec. 26, 2007



Posen Construction workers say they were ordered to handle hazardous asbestos pipe without protective gear and then ordered to dump it illegally at a new lake south of Alico Road.

In sworn statements Posen employees and former employees say their jobs were threatened if they refused to handle the dangerous material.

"If we question the instructions there are plenty of people looking for truck driving jobs," said truck driver Virginia Brown in a sworn statement taken in November.

Brown heard that from crew leader Linda Darnall, she said, who swore she got the instruction from her boss, Michael Schook.

"They've harassed the hell out of me," said Darnall, who claimed she was terminated after she complained and went for lung X-rays and tests.

"People are sick. People are being harassed. People are being fired. I am livid."

Other Posen workers said they were instructed to cut up the asbestos pipe with saws and crush it.

"There were lots of dust particles in the air," said Jonathan Herman.

The workers said they were not offered protective gear. Asbestos is a fiber that when inhaled can cause long-term breathing problems. Crushing or cutting it creates an airborne hazard. It's also a hazardous material requiring specific disposal procedures.

Herman said he was spotting for an equipment operator who removed the pipe from the ground.

The various statements claim the pipe, owned by Lee County Utilities and removed during the widening of Alico Road near U.S. 41, was crushed and cut up at the site. Truck drivers claim they were ordered to dump the material at a newly created lake south of the new Alico Road near 41, and that equipment operators pushed the asbestos into the lake.

Department of Environmental Protection officials confirmed they are investigating, and sent warning letters to Posen, Lee County and the Florida DOT before Christmas advising of possible violations of the law.

"We have investigated and we have sent the warning letter," DEP spokeswoman Audrey Wright said. "They have replied and asked for a meeting after the holidays."

During that meeting more investigating will take place, DEP's Sherrill Culliver said.

"The letter states a possible violation," he said. "We're not in a position to say there is or isn't."

Lee County officials got interested when Posen employees took their complaints to them.

"Every day phone calls come in about something," said Tony Pellicer of the water resources division. "I read the statements, but I wasn't there. I do know Posen subsequently instituted asbestos-handling training. They didn't have it before."

Schook was arrested in August as a fugitive from Michigan, wanted for six felony counts of violating water protection rules. In September he was charged with similar violations here and paid a \$500 fine. Those charges stemmed from Bonita Springs complaints of improper stormwater handling at the Imperial Parkway job.

"My guys were exasperated," Bonita City Manager Gary Price said. "We're watching them constantly."

Price said his engineers tell him there's asbestos buried on the south side of the Imperial River where Posen built the embankment for the new bridge.

"My guys say it's some of the Alico stuff," he said.

Pellicer said Schook was convicted in February of environmental degradation in Michigan, and was fined for improper handling of asbestos.

Schook could not be reached for comment. Lloyd Lambrix, Posen's southwest Florida division manager, declined comment.

"I'm on vacation now," he said. "We're shut down for Christmas. Call the county or someone. I don't want to comment right now."

Pellicer said the county knew the old asbestos utility lines were there, and Posen's contract included removal and proper disposal. He said when the employee complaints reached him he requested copies of disposal receipts for the asbestos. Though the county had paid for the removal several months earlier the disposal receipts were dated after the request was made.

"It got to the point I said this is for DEP," he said.

Jim Lavender, the county public works director, laid out the situation in a report for commissioners this week.

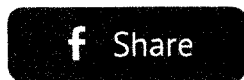
"We intend to watch them very carefully," he said. "I'd say they have things they have to answer for." Nevertheless Posen is in line for yet another big county contract. The company is the low bidder ? by several million

dollars ? with a \$25 million offer to widen Summerlin Road and build a new overpass at College Parkway.

"I asked the attorney," Lavender said."He said there was no problem and I signed off on the blue sheet. They've been quick and they've been cheap."

Darnall said Posen looked for reasons to fire her, even removing her from her truck and ordering immediate drug testing, which she passed, she said. She was fired after an accident in a company vehicle. She said she's contacted Occupational Health and Safety Administration about the working conditions and has equal opportunity complaints pending.

"I'm so mad. I picked up and moved down here from Michigan to help this company get started here," she said. "I don't care if my name gets out. They've already done to me what they can do."



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IN RE:

ASBESTOS

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EXAMINATION UNDER OATH OF: ALFREDO PEREZ CASTILLO

DATE: June 24, 2016

TIME: 5:50 p.m. to 6:48 p.m.

LOCATION: 16175 Old US 41
Fort Myers, Florida 33912

TAKEN BY: Ral Brookes, Esquire

REPORTER: Christi K. Cole,
Certified Professional
Court Reporter

ACCURATE REPORTERS, LLC
(239) 245 8695
1617 HENDRY STREET Suite 306 Fort Myers, FL 33901
5659 STRAND COURT Suite 109 Naples, FL 34110

1 APPEARANCES:

2 RALF BROOKES, ESQUIRE
3 1217 Cape Coral Parkway East
4 Number 107
5 Cape Coral, FL 33904
6 (239) 910 5464

7 Also Present:

8 DEBRA FOSSELMAN
9 KATHERINE ORTEGA (Spanish Interpreter)

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I N D E X

WITNESS: PAGE:

ALFREDO PEREZ CASTILLO

EXAMINATION (Through Interpreter) 4
BY MR. BROOKES

EXHIBIT	DESCRIPTION	PAGE:
Exhibit No. 1	Asbestos Certificate	5
Exhibit No. 2	Site Map	5
Exhibit No. 3	Photograph	5
Exhibit No. 4	Photographs	14
Exhibit No. 5	Photographs	16

1 THEREUPON,

2 KATHERINE ORTEGA,

3 was duly sworn to act as interpreter and to accurately
4 translate from the English language to the Spanish
5 language all questions propounded to the following
6 witness and to accurately translate from the Spanish
7 language to the English language the answers to such
8 questions.

9 THE INTERPRETER: I do.

10 * * * * *

11 THEREUPON,

12 ALFREDO PEREZ CASTILLO,

13 having been first duly sworn through the
14 aforementioned interpreter, upon his oath, testified
15 as follows:

16 THE WITNESS: Yes.

17 EXAMINATION (Through Interpreter)

18 BY MR. BROOKES:

19 Q Okay. What is your full legal name?

20 A Alfredo Perez Castillo.

21 Q Okay. Is this a copy of your asbestos
22 certification?

23 A Yes.

24 MR. BROOKES: I'm going to mark it as Exhibit
25 Number 1.

1 (Exhibit No. 1, Asbestos Certificate, was
2 marked or identification.)

3 BY MR. BROOKES:

4 Q Okay. And do you recognize this location?

5 A Yes.

6 MR. BROOKES: I'm going to mark that as
7 Exhibit Number 2.

8 (Exhibit No. 2, Site Map, was marked or
9 identification.)

10 BY MR. BROOKES:

11 Q And did you ever work at that location?

12 A Yes.

13 Q When did you work there?

14 A I started around August the 4th. I was in
15 2009. I was there for a few months, but I don't
16 recall exactly or how many.

17 Q And in what part of the site did you work?
18 I you could circle with a pen the general locations.

19 A In that area.

20 Q Okay. And is this a close up photograph of
21 that area?

22 A Yes.

23 MR. BROOKES: I'll mark that as Exhibit
24 Number 3.

25 (Exhibit No. 3, Photograph, was marked or

1 identi ication.)

2 BY MR. BROOKES:

3 Q And what was your job in this location?

4 A Our work there was just to ind asbestos,
5 just to ind out i the area was contaminated or not.

6 Q And was part o your job, then, to remove
7 asbestos that you ound?

8 A Yes, because they were determined to ind out
9 i there was a contaminated area there. And we had to
10 remove pieces o asbestos.

11 Q Was the area with the asbestos marked?

12 A No, we were just digging out o you know,
13 out o scratch. We didn't have any any idea. We
14 was just rattling and just looking, seeking di erent
15 areas until we could ind, you know

16 Q Were you told

17 A pieces o

18 Q to stay within

19 A pieces o stu .

20 Q one area or your work?

21 A Yeah. The thing is that we had a speci ic
22 area where, supposedly, there were the remains o
23 you know, the pieces that they knew there was an
24 area, speci ic area, where, supposedly, you know,
25 there was contamination in it.

1 Q Was the area staked out?

2 A Not at the very beginning when we first got
3 there.

4 Q Okay. Could you draw with this pen on
5 Exhibit 3 the area that you were working within to
6 look for asbestos?

7 A At the beginning, we started like in this
8 area around here; and then we started to kind of
9 spread out a little bit to see how far. But we
10 concentrated our work in this central area.

11 Q Did you ever leave the central area and
12 notice asbestos anywhere else on the property?

13 A Yes, of course. Well, sometimes, yeah, they
14 would just tell us to look around, and sometimes it
15 just we would do it like, you know, or run, or to
16 get like a free lunch or something. And I, myself,
17 found quite a good amount of asbestos around.

18 Q Where on this aerial, maybe could you show
19 me on the aerial where you found asbestos in other
20 locations on the property?

21 A This this area right here. The outer
22 side, here and here.

23 Q Could you put an A next to that, and a B next
24 to that?

25 A (Witness complies.)

1 Q Thank you. Did you report finding asbestos
2 in that area to anyone?

3 A Yes, o course, the supervisor, the one that
4 was, you know, leadering (sic) our group. One day it
5 was raining a lot, so we had to leave. And then
6 but we came the day a ter. And a ter the rain, we
7 ound like, you know, the sand kind o spreads out
8 a ter the rain, and the asbestos was pretty clear,
9 out, like pretty much alive.

10 It kind kind o stands out. There's not
11 con usion when you ind it. It has this color, kind
12 o like this. So when it rains when it rains, it
13 stands out pretty easily. So it's very visible. You
14 can see it pretty easily.

15 Q Okay. And who was the supervisor that
16 he (sic) told about this additional asbestos?

17 A The one that was like our leader. Nava, I
18 think was his last name.

19 Q Salvador Nava?

20 A Nava. Nava. Salavador. Salvador Nava.

21 Q And what did they tell you about the asbestos
22 in areas A and B?

23 A I don't know about that, because they used to
24 talk and meet with this (sic) inspectors that would
25 come. On two occasions, one o the inspectors told me

1 to look or asbestos, and I brought more asbestos to
2 him.

3 Q Did they expand the clean up area after that?

4 A What do you mean "expand"?

5 Q Did you have to clean up the asbestos in the
6 areas marked A and B?

7 A We did not clean anything. We were just
8 looking for asbestos. We wanted to prove that there
9 was contamination in the area. There was another team
10 that would come and clean. They were cleaning the
11 area. So they would come and take care of that.

12 Q Okay. Was the asbestos that you identified
13 in areas A and B put in any reports?

14 A I don't know. I don't think so. My my
15 job was to just find as much asbestos as possible. So
16 I would bring it to them; they would take pictures of
17 it.

18 Q What instructions were you given?

19 A Our our work was just to check, check
20 around, seek keep seeking for asbestos and make
21 sure that they it was proved that there was
22 asbestos there.

23 Q Were you supposed to delineate the area that
24 had asbestos?

25 A What do you mean "delineate"?

1 Q Were you supposed to mark the geographic area
2 that had asbestos?

3 A Yes, we would use some type o tape to mark
4 it. But it was only in this area you know what I
5 mean the area where we were working.

6 Q Was there asbestos in other areas besides
7 where you were working?

8 A Yes. There was around this area here,
9 this was a I don't know how to call it in
10 English it was like a ditch, like a ditch.

11 Q Could you circle that area

12 A All o this

13 Q with a pen?

14 A border had asbestos, this area right here.
15 Because there was like dirt that was kind o pushed
16 away there. So there was like a little mound. But
17 there was a ditch next to it.

18 Q Okay. Anywhere else?

19 A There was asbestos all over the place there.
20 All this area that we worry about, there was asbestos
21 there.

22 Q Is it beyond these squares and rectangles
23 that are drawn on the photo?

24 A Yes, all this area here. All this area had
25 asbestos.

1 Q Okay. And how long did you work on this
2 site?

3 A I don't remember exactly. I know it was or
4 a few months, but I wouldn't be able to tell you two,
5 three, four months. I don't know. I do remember that
6 we stopped at some point, and I don't remember I
7 don't know really why. It was like they were not
8 decided what they would do over there. So when we
9 came back, there was like a mound of dirt. There
10 wasn't

11 THE INTERPRETER: Let the interpreter clarify
12 something.

13 THE WITNESS: There was equipment. There was
14 equipment there, like a backhoe, like a real big
15 backhoe. There was a man. There was a man.
16 There was a water truck truck. Sorry, truck.

17 So when we came back, we came like to check
18 if after that mound that they kind of formed
19 there, this hill, if they had picked up the
20 asbestos or not. So our job there was to look for
21 more asbestos. That's what we were trying to
22 find, more asbestos. And we did find more
23 asbestos.

24 BY MR. BROOKES:

25 Q After the truck made the mound?

1 A (Nodding head.)

2 Q Again, was this all over the site, or let
3 me ask you not a leading question.

4 Where did you see it after the truck pushed
5 the mound up?

6 A In the surroundings. In the surroundings of
7 that mound. Because they wanted to know if they had
8 let some. And they you know, like on the mound,
9 there were like big pieces, like big pieces. The
10 biggest pieces were on like around the mound. But
11 in the outer areas, there were little pieces.

12 Because we have this thing that's what I
13 told you before that if we found additional
14 asbestos, they would give us like a free lunch or
15 something. So we kind of would walk around and go
16 outside, you know, the area.

17 Q Okay.

18 A We we didn't have to bring much. We would
19 just bring like three, our pieces, and then they
20 would take pictures, and then

21 Q And how much asbestos was out in these outer
22 areas? Was there a lot, or just a little?

23 A Yeah, because the thing is that it was it
24 seemed like it was like grounded, ground. It was
25 grinded. It was ground. So there were like debris.

1 Q Like grinded?

2 A All that was

3 MR. BROOKES: Like grind like grinded?

4 THE INTERPRETER: Grinded, yeah.

5 MR. BROOKES: Like co ee?

6 THE INTERPRETER: Yeah, right, exactly.

7 MR. BROOKES: Okay.

8 THE WITNESS: So it was like debris. And
9 they kind o grind all o this debris. You know,
10 they become little pieces. So we could ind like
11 bigger pieces, small pieces.

12 BY MR. BROOKES:

13 Q Okay. Was it very di icult to ind them?

14 A Yes. At least the little ones, we really had
15 to pay attention to those. The bigger ones, you could
16 see it pretty easily.

17 Q Okay. Were you using just naked eye, or
18 magni ying glasses?

19 A No, just naked eye. Because there is no
20 doubt; the color is very distinctive.

21 Q And what hours did you work? How long did
22 you spend there on the day you were working?

23 A We would start around 7:00, 7:30. We would
24 inish around 3:00 or 3:30.

25 Q Did you work other locations, or just this

1 site?

2 A Just there.

3 Q Okay. And who was your employer/company?

4 A I don't remember the name right now. I do
5 remember that our leader was Salavador.

6 Q Was it Southeast Abatement?

7 A Something like that. I don't quite remember
8 well.

9 Q Okay. Did you wear any protective equipment?

10 A No, not really. Sometimes we would wear like
11 a white kind o jumper; but it was only when the
12 inspectors would come. Other than that, we would not.

13 Q When would the inspectors come?

14 A Sometimes only when they would come to
15 inspect. Almost at the end, lately, there was an
16 inspector there almost daily, but it just was only at
17 the end.

18 (Exhibit No. 4, Photographs, was marked or
19 identi ication.)

20 BY MR. BROOKES:

21 Q Okay. I'm going to show you some photographs
22 on Exhibit Number 4. And they're numbered 1
23 through 6. Can you describe what we're seeing in the
24 photos one by one?

25 A This is the place where we were working at.

1 This is the equipment I mentioned that was picking up.

2 This is the mound, a little house where

3 Q The mound is in number 1?

4 A Yes.

5 Q And then the house is in number 5?

6 A This is like a little house that Salavador
7 would bring and kind o assemble there in order to be
8 under, you know, the shade or a while.

9 Q And what did they do there?

10 A We would take breaks, and we would be
11 under it.

12 Q And did they have to do any decontamination
13 in that tent?

14 A No, actually, there was never a place located
15 there or decontamination, which there should have
16 been; but there was never such a place. They had like
17 a small equipment like to kind o use it, but it
18 was never done the way we were supposed to do it. It
19 was just this was just used like to be on you
20 know, in the shade.

21 Q Okay. And what is in picture number 4?

22 A This is like a machine to measure the air.
23 It's not something that was there at the beginning; it
24 was more towards the end.

25 Q Did you have to wear a machine on your body

1 to measure the air?

2 A I remember that we used that one day, yes.

3 Q One day?

4 A One day. We were wearing something right
5 here.

6 Q Which is I think he's pointing at
7 his (sic) shoulder?

8 A The little equipment goes here, and then you
9 have like a hook around here.

10 Q So equipment on your belt, and then a hook on
11 your shirt?

12 A Yes.

13 Q And that what about the other days?

14 A A ter, they started using those measuring
15 devices.

16 Q They stopped using the personal devices?

17 A Yeah, only i i an inspector would come,
18 then we would. But you can see in the picture that.
19 Only i the inspector would come, and we had to kind
20 o measure something, make some test, then we would
21 wear it. But, or example, right here, we're working
22 and we we don't have anything.

23 (Exhibit No. 5, Photographs, was marked or
24 identi ication.)

25 BY MR. BROOKES:

1 Q Is this these I put a number this is
2 Exhibit Number 5 with some more photos. Which one
3 are you pointing to now, number 7?

4 A Yeah, that's when the mound was already up
5 there. And it had rained a lot, so you could see a
6 lot o asbestos there.

7 Q Is that him (sic)

8 A And that's

9 Q in the photograph?

10 A Yeah, that's me.

11 Q Okay. Can you circle yourself in the
12 photograph?

13 A (Witness complies.)

14 Q Okay. In the back?

15 A Yes, this one here, the one with

16 Q Put an arrow to your head. Yeah, draw an
17 arrow.

18 A Arrow.

19 Q An arrow. You're so close. Okay. Thank
20 you. And what are you doing in that picture?

21 A Yeah, the mound was already there, so I was
22 showing them that there was more asbestos.

23 Q Is this him (sic) in photograph 8?

24 A Yes.

25 Q Can you put an arrow to yourself there?

1 A (Witness complies.)

2 Q And what is he (sic) doing in that picture?

3 A Looking or more asbestos.

4 Q Is that a rake that he's (sic) using?

5 A A rake in order to

6 Q And how deep

7 A kind o , yeah, move dirt around.

8 Q How deep would you go digging with the rake?

9 A Just just you know, just on top. Just
10 on top. We don't go

11 Q On the sur ace?

12 A under. Yeah, sur ace. Yeah, we don't go
13 underneath, no.

14 Q Okay. And did this back loader spread the
15 soil or you be ore you searched it with the rake in
16 number 6?

17 A No, that was used or the mound in order to
18 create that mound.

19 Q The mound that we see in number 1?

20 A Uh huh. We would select an area, and then he
21 would start, you know, piling up.

22 Q And what's happening in number 9?

23 A That is the water truck that I mentioned
24 be ore. It spreads water to avoid the dirt not to
25 go to go up in the air, because we need to work

1 with the wet dirt.

2 Q Is this a mound in number 9, or a piece o
3 the mound?

4 A Yeah, he he gushes water there irst so
5 that we can work on it, and then that area later.

6 Q Who is this lady in number 7?

7 A She used to work there with us, but I don't
8 remember her name.

9 Q Okay. And is that her also in number 5?

10 A She would come and go. I don't know i she
11 was an inspector. But she used to go there pretty
12 o ten.

13 Q But her job was not the same as his (sic)
14 job?

15 A No.

16 Q Okay. What is photograph number 10?

17 A That's one o the locations where they would
18 get rid o the debris. So there were like big big
19 stones and things.

20 Q Is this stone marked with some kind o paint?

21 A Yes.

22 Q And what was the paint or?

23 A Those marks are there because there was
24 asbestos there, too.

25 Q Okay.

1 A So there were areas marked.

2 Q And what's happening in photographs 11
3 and 12?

4 A Those are the trucks loading. But when that
5 happens, we were about we were about to leave. At
6 the beginning we were there when the trucks came; but
7 once we finished the job, I do know that they had to
8 take that mound the mound away from there.

9 Q Okay.

10 A They had to take the dirt, the mound of dirt,
11 away.

12 Q And when you were there, how many trucks were
13 coming to the site?

14 A Well, I wouldn't know. I never counted that.
15 That was not my job. But I know that there were about
16 10 to 12. The thing is that by the time they would
17 have to load and unload and come back actually, to
18 be honest, I really don't know.

19 At the beginning, there were like one or two;
20 but then again, since they took so long from going and
21 coming, there was a big you know, a long distance.
22 There were about 10 or 12. I don't know. I never
23 dealt with that, so I don't.

24 Q Does the asbestos look different after a
25 rain?

1 A No, it didn't look different; it's just, it
2 was very easy to locate because it's like the rain
3 cleans it out so you can really see it.

4 Q Okay.

5 A You can see it pretty easily.

6 Q And you were trained to identify the asbestos
7 in your in your class?

8 A Yes, in that in that class, yes.

9 Q In the class, were you also trained in safety
10 or asbestos?

11 A Uh huh.

12 Q Yes?

13 A Yes.

14 Q And is this the safety vest in picture
15 number 7 that you were given to wear at the job?

16 A That was not really for our safety there;
17 it's for for for the traffic, you know, because
18 there was going to be equipment there. There was
19 going to be a truck I mean, trucks coming and
20 going.

21 Q So for trucks to see you?

22 A Uh huh.

23 Q But no equipment was given or a mask or
24 was let me withdraw.

25 Was any was any mask did they give you

1 a mask or a respirator? Any other body equipment?

2 A No, they never gave us anything like that.

3 You see the pictures. That's the way we used to work.

4 Q Is this your own clothes that you're wearing
5 at the job?

6 A Yes, o course.

7 Q And did they give you any jumpsuit to wear?

8 A No, no, they wouldn't give us anything. I
9 you see this picture here

10 Q Number 5, yeah, I see.

11 A that lady, she's wearing her own clothes.
12 She's just, you know, using equipment like a routine.
13 But that actually doesn't solve anything.

14 Q Did you wash your clothes in your own washing
15 machine at home?

16 A O course.

17 Q So the clothes you wore at the job site you
18 wore home, and then you washed them in your own home?

19 A Yeah, I would drive in my own car with those
20 clothes and would go.

21 Q Okay.

22 A The only thing that we would remove was
23 were our boots, because we were yeah, there was
24 like water, and, you know, we had to use boots or it.

25 Q And did you leave your boots at the job site,

1 or in your truck? What happened to the boots?

2 A In my trunk.

3 Q Okay.

4 THE COURT REPORTER: Trunk or truck?

5 THE INTERPRETER: Trunk.

6 BY MR. BROOKES:

7 Q Was another worker there named Elvin?

8 A Yes.

9 Q And they call him Elvin Cuba?

10 A Cubille.

11 THE INTERPRETER: Cubille, C U B I L L E.

12 BY MR. BROOKES:

13 Q Okay. And how many workers were there?

14 A We were always at least three there.

15 There was a week that Cubille just couldn't make it,
16 so they brought another guy. But I don't remember his
17 name. At the end, i I remember correctly, we were
18 two, only, Salvador and I.

19 Q Could you describe or me how you did the
20 job, and what you would do when you ound the
21 asbestos?

22 A Our job there was just to ind asbestos, just
23 to prove that there was asbestos there.

24 Q So did you use your rake and look with your
25 eye?

1 A Yes. Well, yeah, we kind o raked the dirt
2 around, and then we would ind it.

3 Q And when you ound it, did you put a lag in
4 the ground?

5 A No, I would pick it up. We would put it in a
6 bag, and we we would take we would take it
7 and back then, we didn't have that little house
8 there, or tent, and we would just leave it there,
9 so or the inspectors to take a look at. We would
10 put it in a special bag or asbestos and we would tie
11 it up.

12 Q How would they know which piece o asbestos
13 came rom where on the site?

14 A It would depend on the area we were working
15 on. For example, i we were working in a speci ic
16 place, we would be raking around, and then we would
17 select. But we were always concentrated in this area,
18 a little bit over here, a little bit over there. But
19 it was just the whole area.

20 Q But they didn't record on the bag, it was
21 ound in like sector A 1?

22 A No.

23 Q Okay. Were all the samples mixed together?

24 A Yes.

25 Q Okay.

1 A Yeah, we would or example, I would start,
2 you know, gathering parts and put them all in the bag.
3 Once the bag was full, I would just close it and would
4 start with another one.

5 Q And so if asbestos was found in that
6 location, then the equipment would come and push it
7 into the mound; is that what happened?

8 A Yes, yes, if we were working in a specific
9 area, once we could prove somehow that there was
10 asbestos there, we would bring everything together to
11 the mound, yeah.

12 Q Was there just one mound, or many mounds?

13 A Just one.

14 Q Okay. And that's in shown in number 1?

15 A Yeah, just one mound.

16 Q Now, it looks like that there's some grass
17 growing on the mound. Was there grass always growing
18 on that mound?

19 A Yes, because we stopped at some point. I
20 wouldn't I wouldn't be able to tell you or how
21 long: one week, two weeks. But, yeah, it was halted.
22 And after a while we started again, after we were told
23 that, well, they were going to take that mound away.

24 Q So is it correct to say in the beginning
25 there was no grass; but then after you stopped, there

1 was enough time or the vegetation to grow, and then
2 you started up again?

3 A Uh huh, si.

4 Q Did he (sic) ever find pipe fragments?

5 A That's what asbestos is.

6 Q Okay. What was the biggest piece that he
7 (sic) found? Can he show in his hand?

8 A Like this big, smaller, smaller, until up
9 to this size.

10 Q So no more than a couple of hands full?

11 A Yes.

12 Q Okay. All the way down to the ground up
13 like coffee grinds?

14 A Yes.

15 Q Was there cattle or cows in the site?

16 A Yes, yeah, we have to kind of scare them away
17 in order to work. Yeah, we had to scare them away in
18 order to be able to work.

19 Q Would they ever walk right through your work
20 area?

21 A Oh, yeah, of course. Because they knew
22 vegetation, you know, it was

23 THE COURT REPORTER: I'm sorry?

24 THE WITNESS: They knew vegetation that grew
25 up there, it was very yummy for them. So I'm

1 saying, i I'm contaminated, those poor animals
2 are very contaminated, too, because they were
3 there with us all the time. In the morning when
4 we got there, we had to scare them away all the
5 time.

6 BY MR. BROOKES:

7 Q Did they lock the area with a fence?

8 A No, it's totally way open. When we scare
9 them away, they would come to this area right where
10 the the vegetation is right here. Because, you
11 know, there was shade there, so

12 Q Did you ever see anyone, any people, on the
13 site, or evidence that kids were using it when you
14 weren't working?

15 A No.

16 Q Any ATV bikes?

17 A No.

18 Q Okay. Any armers?

19 A No, no. Everybody that I saw there was
20 related to the job somehow.

21 Q Okay. Was there anyone cutting grass in the
22 area?

23 A No. The truck guy, or example, he used to
24 work there without protection at all, the one that
25 moved the mound, or, you know, removed dirt or stu .

1 How do you call this this this here?

2 THE INTERPRETER: Don't ask me.

3 THE WITNESS: You mentioned the name be ore.

4 MR. BROOKES: I'm going to take a five minute
5 bathroom break. I'll be right back. We're almost
6 done.

7 (A break was held.)

8 BY MR. BROOKES:

9 Q Is Salvador Nava, was he your supervisor?

10 A Yes.

11 Q Did Salvador Nava ever tell you not to go
12 outside your area to look for asbestos?

13 A He used to tell us that the area of work was
14 that specific concentrated in that area.

15 Q Were you allowed to go to other portions of
16 the property outside your work area to look for
17 asbestos?

18 A No, we had to work in a specific area.

19 Q And how about were you allowed to look on
20 the roadways, the dirt roads that came into this work
21 area?

22 A No, just in this area only.

23 Q Okay. Do you have any concerns for your own
24 health as a result of working on this site?

25 A Well, yes, yes, of course. Actually, I need

1 to see a specialist because it's been our months
2 about our months since I started to kind o have like
3 a cough, a constant cough, like a cold that never goes
4 away. But it's not a cold; it's just coughing and
5 coughing and coughing.

6 Q Okay. And he's he has have you been
7 tested yet?

8 A I'm in the process to be seen by a lung
9 specialist.

10 Q Okay. When you le t this site on your very
11 last day, was the site cleaned up then?

12 A When we withdrew rom the area, there were
13 only trucks there, trucks to remove the mound o dirt.

14 Q Did you ever go back a ter the trucks removed
15 the mound o dirt?

16 A No, I didn't come back go back a ter that.

17 Q Did any o the other workers you worked with
18 go back, a ter the mound was removed, to see i the
19 asbestos was all gone?

20 A I don't know what Salvador did, because we
21 was you know, he was in charge in that company.
22 But I don't know. The other guys were not documented,
23 undocumented, so

24 Q Undocumented in terms o asbestos
25 certi ication?

1 A No, that they were sent back to their
2 countries.

3 Q Oh, undocumented or alien status?

4 A Yes.

5 Q And who which were those guys? Was that
6 Cu Cub Elvis (sic)?

7 A Elvin Cubille. I don't remember the name o
8 the other guy. They are back to their countries.

9 Q I think there's one other name mentioned in
10 this report. Let me see i I can ind it.

11 A Yeah, there were other guys working there at
12 some point. Because like one day Elvin couldn't make
13 it, or the other guy couldn't make it, so but
14 Salvador and I, we were always there.

15 Q Okay. Do you remember a man named Michael
16 Schook?

17 A No.

18 Q Okay. Leigh Simmons?

19 A No, I don't remember.

20 Q That's okay.

21 A It's been it's been years, you know.

22 Q I'm just checking some names that are on the
23 report. A Sherrill Culliver?

24 A No.

25 Q Okay. Do you know an Eric Goeller?

1 A I do remember Salvador because he was our
2 boss.

3 Q Okay. Do you remember anyone named Eric
4 Goeller, G O E L L E R?

5 A Is that an inspector?

6 Q I think some kind o

7 A Yeah, that sounds amiliar.

8 Q Maybe a sampler. Like a sampler, maybe?

9 A Uh huh.

10 Q Someone named Robbie?

11 THE INTERPRETER: What's the name?

12 BY MR. BROOKES:

13 Q Robbie, like Rob, Robbie, Robbie.

14 A I I might remember. But, no, I'm not
15 sure.

16 Q Okay. Is the woman in picture 5 Leigh
17 Simmons?

18 A She might be. I don't remember her name.

19 Q Okay. Did you ever see

20 A And she speaks English only, so

21 Q Did you ever see the owner o the property?

22 A No.

23 Q Do you know where the asbestos in the trucks
24 was going?

25 A I heard that supposedly they would be

1 taken they used to take them to Okeechobee, a
2 speci ic location where it was supposed to be taken
3 to. There were only two locations where they could
4 get rid o the contaminated product, like in Daytona
5 or Okeechobee.

6 Q Okay. Is there anything else you remember
7 about the time you were working there?

8 A I don't remember much more. It's been so
9 long.

10 MR. BROOKES: Okay. I think that's it.

11 Thank you very much.

12 (Examination Under Oath concluded at
13 6:48 p.m.)

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CERTIFICATE OF OATH

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STATE OF FLORIDA)

COUNTY OF LEE)

I, the undersigned authority, certify that
KATHERINE ORTEGA personally appeared before me and was
duly sworn.

WITNESS my hand and official seal this 27th day
of June, 2016.



Christi K. Cole
Notary Public State of Florida
My Commission No: EE 860147
Expires: February 15, 2017

Personally Known: Yes
OR Produced Identification: _____
Type of Identification Produced: _____

CERTIFICATE OF OATH

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STATE OF FLORIDA)

COUNTY OF LEE)

I, the undersigned authority, certify that
ALFREDO PEREZ CASTILLO personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 27th day
of June, 2016.



Christi K. Cole
Notary Public State of Florida
My Commission No: EE 860147
Expires: February 15, 2017

Personally Known: _____

OR Produced Identification: Yes

Type of Identification Produced: FL ID Card

1 REPORTER'S EXAMINATION UNDER OATH CERTIFICATE

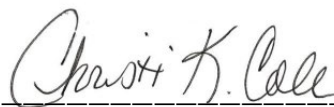
2
3 STATE OF FLORIDA)

4 COUNTY OF LEE)

5
6 I, Christi K. Cole, Certified Professional Court
7 Reporter and Notary Public in and for the State of
8 Florida at Large, certify that I was authorized to and
9 did stenographically report the Examination Under Oath
10 of ALFREDO PEREZ CASTILLO; that a review of the
11 transcript was not requested, and that the transcript
12 is a true and complete record of my stenographic
13 notes.

14 I further certify that I am not a relative,
15 employee, attorney, or counsel of any of the parties,
16 nor am I a relative or employee of any of the parties'
17 attorneys or counsel connected with the action, nor am
18 I financially interested in the action.

19
20 DATED this 27th day of June, 2016.

21
22 

23 _____
24 Christi K. Cole, Court Reporter
25

RETRA TRAINING SERVICES

Florida Approval #149-0001008

113 S. Diston Avenue
Tarpon Springs, FL 34689
1-727-938-5439

Alfredo Perez Castillo

2185 Greenbush Cir. #101, Naples, FL 34112

Has successfully completed the Required Training for Asbestos Accreditation
as required by TSCA Title II.

Asbestos Worker Refresher (Spanish) FL4723

024936

Certification Number: F

July 11, 12-18, 19

Course Date:

July 19, 2009

Exam Date:

July 19, 2010

Expiration Date:

Tarpon Springs, FL

Course Location:

Name

Instructor:

John Wilson
Course Administrator

Castillo
EXHIBIT NO. *1*
6-24-10
CHRISTI COLE

SITE LOCATION MAP



Drawing not to scale

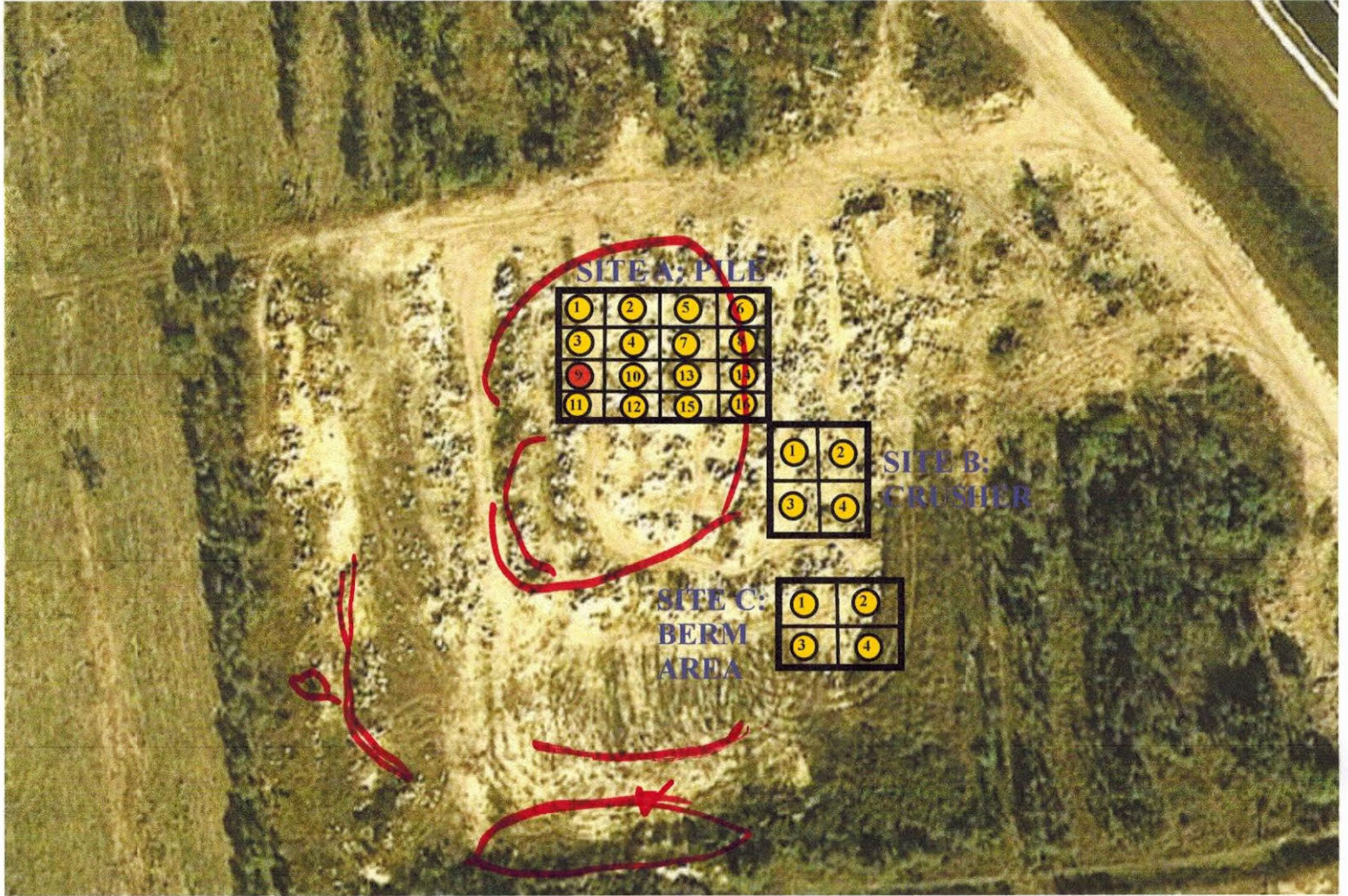
**Tex Development Site
Bonita Springs, Florida**

**Environmental Services Division
American Management Resources Corporation
5230 Clayton Court, Fort Myers, Florida 33907**



Castillo
EXHIBIT NO. 2
6-24-16
CHRISTI COLE

AMRC
Services for the Environment



Site A=Removed contaminated pile
 Site B=Suspected crusher location
 Site C=Berm Area

● =Sample Location
 ● =Sample #9: Positive for Chrysotile & Crocidolite

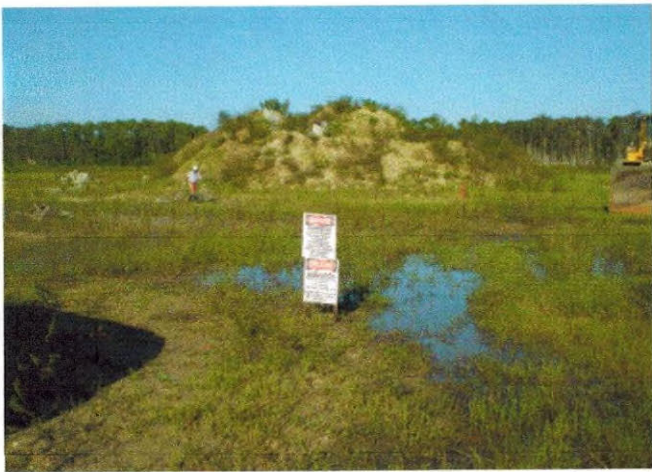
Castillo
 EXHIBIT NO. 3
 6-24-16
 CHRISTI COLE



① Photo 1. Tex Development site Bonita Springs, FL. AMRC project # 09-071616-AC



② Photo 2. Tex Development site; South / East berm.



③ Photo 3. Contaminated pile and area warning signs.



④ Photo 4. Area air monitoring during soil removal.



⑤ Photo 5. Decontamination and Re-hydration station.



⑥ Photo 6. Loader spreading soil to be surveyed for asbestos fragments.

Castillo
EXHIBIT NO. 4
6-24-16
CHRISTI COLE



7

Photo 7. Workers utilizing hand tools to survey soil for asbestos fragments.



8

Photo 8. Workers surveying soil for asbestos fragments.



9

Photo 9. Water truck utilized to keep soil wet during removal.



10

Photo 10. Asbestos fragments identified and removed.



11

Photo 11. Contaminated soil disposed of in transport truck.



12

Photo 12. Waste manifest given to each truck leaving the site, and recorded daily.

Castillo
EXHIBIT NO. 5
6-24-16
CHRISTI COLE