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 2014-2015** (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%

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1 [http://doeweb-prd.doc.state.fl.us/eds/nclbspar/year1415/main1415.cfm](http://doeweb-prd.doc.state.fl.us/eds/nclbspar/year1415/main1415.cfm)  
2 [http://doeweb-prd.doc.state.fl.us/eds/nclbspar/year1415/schl1415.cfm?dist_number=36](http://doeweb-prd.doc.state.fl.us/eds/nclbspar/year1415/schl1415.cfm?dist_number=36)  
3 total number of students in Bonita Springs 3,714  
4 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 I 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
DEP investigating possible asbestos violations by construction company

By Charlie Whitehead

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."
IN RE:

ASBESTOS
__________________________________________

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 5659 STRAND COURT
Suite 306 Suite 109
Fort Myers, FL 33901 Naples, FL 34110
APPEARANCES:

RALF BROOKES, ESQUIRE
1217 Cape Coral Parkway East
Number 107
Cape Coral, FL 33904
(239) 910 5464

Also Present:

DEBRA FOSSELMAN
KATHERINE ORTEGA (Spanish Interpreter)
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**WITNESS:**

ALFREDO PEREZ CASTILLO

**EXAMINATION (Through Interpreter)**

BY MR. BROOKES
THEREUPON,

KATHERINE ORTEGA,

was duly sworn to act as interpreter and to accurately translate from the English language to the Spanish language all questions propounded to the following witness and to accurately translate from the Spanish language to the English language the answers to such questions.

THE INTERPRETER: I do.

* * * * *

THEREUPON,

ALFREDO PEREZ CASTILLO,

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

THE WITNESS: Yes.

EXAMINATION (Through Interpreter)

BY MR. BROOKES:

Q Okay. What is your full legal name?

A Alredo Perez Castillo.

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

A Yes.

MR. BROOKES: I'm going to mark it as Exhibit Number 1.
(Exhibit No. 1, Asbestos Certificate, was marked or identification.)

BY MR. BROOKES:

Q  Okay. And do you recognize this location?
A  Yes.

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

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

BY MR. BROOKES:

Q  And did you ever work at that location?
A  Yes.

Q  When did you work there?
A  I started around August the 4th. I was in 2009. I was there or a few months, but I don't recall exactly or how many.

Q  And in what part of the site did you work?

I could circle with a pen the general locations.
A  In that area.

Q  Okay. And is this a close up photograph of that area?
A  Yes.

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

(Exhibit No. 3, Photograph, was marked or
identication.)

BY MR. BROOKES:

Q    And what was your job in this location?

A    Our work there was just to identify asbestos, just to
      find out if the area was contaminated or not.

Q    And was part of your job, then, to remove
      asbestos that you identified?

A    Yes, because they were determined to find out
      if there was a contaminated area there. And we had to
      remove pieces of asbestos.

Q    Was the area with the asbestos marked?

A    No, we were just digging out and you know,
      out of the ground. We didn't have any idea. We
      were just rattling and just looking, seeking different
      areas until we could identify, you know

Q    Were you told

A    pieces of

Q    to stay within

A    pieces of stuff.

Q    one area or your work?

A    Yeah. The thing is that we had a specific
      area where, supposedly, there were the remains of
      you know, the pieces that they knew there was an
      area, specific area, where, supposedly, you know,
      there was contamination in it.
Q  Was the area staked out?
A  Not at the very beginning when we first got there.
Q  Okay. Could you draw with this pen on Exhibit 3 the area that you were working within to look or asbestos?
A  At the beginning, we started like in this area around here; and then we started to kind of spread out a little bit to see how far. But we concentrated our work in this central area.
Q  Did you ever leave the central area and notice asbestos anywhere else on the property?
A  Yes, of course. Well, sometimes, yeah, they would just tell us to look around, and sometimes it just we would do it like, you know, or un, or to get like a free lunch or something. And I, myself, found quite a good amount of asbestos around.
Q  Where on this aerial, maybe could you show me on the aerial where you found asbestos in other locations on the property?
A  This is this area right here. The outer side, here and here.
Q  Could you put an A next to that, and a B next to that?
A  (Witness complies.)
Q  Thank you. Did you report finding asbestos
in that area to anyone?

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

It kind of stands out. There's not
con usion when you find it. It has this color, kind
o like this. So when it rains when it rains, it
stands out pretty easily. So it's very visible. You
can see it pretty easily.

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

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

Q  Salvador Nava?


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

A  I don't know about that, because they used to
talk and meet with this (sic) inspectors that would
come. On two occasions, one o the inspectors told me
to look or asbestos, and I brought more asbestos to him.

Q: Did they expand the clean up area a ter that?
A: What do you mean "expand"?

Q: Did you have to clean up the asbestos in the areas marked A and B?
A: We did not clean anything. We were just looking or asbestos. We wanted to prove that there was contamination in the area. There was another team that would come and clean. They were cleaning the area. So they would come and take care of that.

Q: Okay. Was the asbestos that you identi ied in areas A and B put in any reports?
A: I don't know. I don't think so. My job was to just find as much asbestos as possible. So I would bring it to them; they would take pictures of it.

Q: What instructions were you given?
A: Our work was just to check, check around, seek keep seeking or asbestos and make sure that they it was proved that there was asbestos there.

Q: Were you supposed to delineate the area that had asbestos?
A: What do you mean "delineate"?
Q  Were you supposed to mark the geographic area that had asbestos?
A  Yes, we would use some type o tape to mark it. But it was only in this area you know what I mean the area where we were working.
Q  Was there asbestos in other areas besides where you were working?
A  Yes. There was around this area here, this was a I don't know how to call it in English it was like a ditch, like a ditch.
Q  Could you circle that area
A  All o this
Q  with a pen?
A  border had asbestos, this area right here. Because there was like dirt that was kind o pushed away there. So there was like a little mound. But there was a ditch next to it.
Q  Okay. Anywhere else?
A  There was asbestos all over the place there. All this area that we worry about, there was asbestos there.
Q  Is it beyond these squares and rectangles that are drawn on the photo?
A  Yes, all this area here. All this area had asbestos.
Q Okay. And how long did you work on this site?

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

THE INTERPRETER: Let the interpreter clarify something.

THE WITNESS: There was equipment. There was equipment there, like a backhoe, like a real big backhoe. There was a man. There was a man. There was a water trunk truck. Sorry, truck.

So when we came back, we came like to check i a ter that mound that they kind of formed there, this hill, i they had picked up the asbestos or not. So our job there was to look or more asbestos. That's what we were trying to ind, more asbestos. And we did ind more asbestos.

BY MR. BROOKES:

Q A ter the truck made the mound?
A (Nodding head.)

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

Where did you see it a ter the truck pushed the mound up?

A In the surroundings. In the surroundings o that mound. Because they wanted to know i they had le t some. And they you know, like on the mound, there were like big pieces, like big pieces. The biggest pieces were on like around the mound. But in the outer areas, there were little pieces.

Because we have this thing that's what I told you be ore that i we ound additional asbestos, they would give us like a ree lunch or something. So we kind o would walk around and go outside, you know, the area.

Q Okay.

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

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

A Yeah, because the thing is that it was it seemed like it was like grounded, ground. It was grinded. It was ground. So there were like debris.
Q  Like grinded?
A  All that was
MR. BROOKES: Like grind like grinded?
THE INTERPRETER: Grinded, yeah.
MR. BROOKES: Like co ee?
THE INTERPRETER: Yeah, right, exactly.
MR. BROOKES: Okay.
THE WITNESS: So it was like debris. And they kind o grind all o this debris. You know, they become little pieces. So we could ind like bigger pieces, small pieces.
BY MR. BROOKES:
Q  Okay. Was it very difficult to ind them?
A  Yes. At least the little ones, we really had to pay attention to those. The bigger ones, you could see it pretty easily.
Q  Okay. Were you using just naked eye, or magnifying glasses?
A  No, just naked eye. Because there is no doubt; the color is very distinctive.
Q  And what hours did you work? How long did you spend there on the day you were working?
A  We would start around 7:00, 7:30. We would finish around 3:00 or 3:30.
Q  Did you work other locations, or just this
site?
A Just there.
Q Okay. And who was your employer/company?
A I don't remember the name right now. I do remember that our leader was Salavador.
Q Was it Southeast Abatement?
A Something like that. I don't quite remember well.
Q Okay. Did you wear any protective equipment?
A No, not really. Sometimes we would wear like a white kind o jumper; but it was only when the inspectors would come. Other than that, we would not.
Q When would the inspectors come?
A Sometimes only when they would come to inspect. Almost at the end, lately, there was an inspector there almost daily, but it just was only at the end.

(Exhibit No. 4, Photographs, was marked or identification.)

BY MR. BROOKES:
Q Okay. I'm going to show you some photographs on Exhibit Number 4. And they're numbered 1 through 6. Can you describe what we're seeing in the photos one by one?
A This is the place where we were working at.
This is the equipment I mentioned that was picking up. This is the mound, a little house where

Q The mound is in number 1?
A Yes.

Q And then the house is in number 5?
A This is like a little house that Salavador would bring and kind o assemble there in order to be under, you know, the shade or a while.

Q And what did they do there?
A We would take breaks, and we would be under it.

Q And did they have to do any decontamination in that tent?
A No, actually, there was never a place located there or decontamination, which there should have been; but there was never such a place. They had like a small equipment like to kind o use it, but it was never done the way we were supposed to do it. It was just this was just used like to be on you know, in the shade.

Q Okay. And what is in picture number 4?
A This is like a machine to measure the air. It's not something that was there at the beginning; it was more towards the end.

Q Did you have to wear a machine on your body
to measure the air?

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

Q One day?

A One day. We were wearing something right here.

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

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

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

A Yes.

Q And that what about the other days?

A A ter, they started using those measuring devices.

Q They stopped using the personal devices?

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

(Exhibit No. 5, Photographs, was marked or identification.)

BY MR. BROOKES:
Q Is this these I put a number this is Exhibit Number 5 with some more photos. Which one are you pointing to now, number 7?

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

Q Is that him (sic)

A And that's

Q in the photograph?

A Yeah, that's me.

Q Okay. Can you circle yourself in the photograph?

A (Witness complies.)

Q Okay. In the back?

A Yes, this one here, the one with

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

A Arrow.

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

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

Q Is this him (sic) in photograph 8?

A Yes.

Q Can you put an arrow to yourself there?
A   (Witness complies.)
Q   And what is he (sic) doing in that picture?
A   Looking or more asbestos.
Q   Is that a rake that he's (sic) using?
A   A rake in order to
Q   And how deep
A   kind o , yeah, move dirt around.
Q   How deep would you go digging with the rake?
A   Just just you know, just on top. Just
on top. We don't go
Q   On the sur ace?
A   under. Yeah, sur ace. Yeah, we don't go
underneath, no.
Q   Okay. And did this back loader spread the
soil or you be ore you searched it with the rake in
number 6?
A   No, that was used or the mound in order to
create that mound.
Q   The mound that we see in number 1?
A   Uh huh. We would select an area, and then he
would start, you know, piling up.
Q   And what's happening in number 9?
A   That is the water truck that I mentioned
be ore. It spreads water to avoid the dirt not to
go to go up in the air, because we need to work
with the wet dirt.

Q  Is this a mound in number 9, or a piece of the mound?
A  Yeah, he gushes water there first so that we can work on it, and then that area later.

Q  Who is this lady in number 7?
A  She used to work there with us, but I don't remember her name.

Q  Okay. And is that her also in number 5?
A  She would come and go. I don't know if she was an inspector. But she used to go there pretty often.

Q  But her job was not the same as his (sic) job?
A  No.

Q  Okay. What is photograph number 10?
A  That's one of the locations where they would get rid of the debris. So there were like big big stones and things.

Q  Is this stone marked with some kind of paint?
A  Yes.

Q  And what was the paint or?
A  Those marks are there because there was asbestos there, too.

Q  Okay.
A  So there were areas marked.
Q  And what's happening in photographs 11 and 12?
A  Those are the trucks loading. But when that happens, we were about to leave. At the beginning we were there when the trucks came; but once we finished the job, I do know that they had to take that mound away from there.
Q  Okay.
A  They had to take the dirt, the mound of dirt, away.
Q  And when you were there, how many trucks were coming to the site?
A  Well, I wouldn't know. I never counted that. That was not my job. But I know that there were about 10 to 12. The thing is that by the time they would have to load and unload and come back actually, to be honest, I really don't know.

At the beginning, there were like one or two; but then again, since they took so long going and coming, there was a big gap, you know, a long distance. There were about 10 or 12. I don't know. I never dealt with that, so I don't.
Q  Does the asbestos look different after a rain?
A  No, it didn't look different; it's just, it was very easy to locate because it's like the rain cleans it out so you can really see it.

Q  Okay.

A  You can see it pretty easily.

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

A  Yes, in that class, yes.

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

A  Uh huh.

Q  Yes?

A  Yes.

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

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

Q  So or trucks to see you?

A  Uh huh.

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

Was any mask did they give you
a mask or a respirator? Any other body equipment?
   A No, they never gave us anything like that.
You see the pictures. That's the way we used to work.
   Q Is this your own clothes that you're wearing at the job?
   A Yes, of course.
   Q And did they give you any jumpsuit to wear?
   A No, no, they wouldn't give us anything. I you see this picture here
   Q Number 5, yeah, I see.
   A that lady, she's wearing her own clothes.
She's just, you know, using equipment like a routine.
But that actually doesn't solve anything.
   Q Did you wash your clothes in your own washing machine at home?
   A Of course.
   Q So the clothes you wore at the job site you wore home, and then you washed them in your own home?
   A Yeah, I would drive in my own car with those clothes and would go.
   Q Okay.
   A The only thing that we would remove was were our boots, because we were yeah, there was like water, and, you know, we had to use boots or it.
   Q And did you leave your boots at the job site,
or in your truck? What happened to the boots?
   A  In my trunk.
   Q  Okay.

THE COURT REPORTER:  Trunk or truck?

THE INTERPRETER:  Trunk.

BY MR. BROOKES:
   Q  Was another worker there named Elvin?
   A  Yes.
   Q  And they call him Elvin Cuba?
   A  Cubille.

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

BY MR. BROOKES:
   Q  Okay. And how many workers were there?
   A  We were always at least three there.
   There was a week that Cubille just couldn't make it, so they brought another guy. But I don't remember his name. At the end, I remember correctly, we were two, only, Salvador and I.
   Q  Could you describe or me how you did the job, and what you would do when you ound the asbestos?
   A  Our job there was just to ind asbestos, just to prove that there was asbestos there.
   Q  So did you use your rake and look with your eye?
A Yes. Well, yeah, we kind of raked the dirt around, and then we would ind it.

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

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

Q How would they know which piece of asbestos came rom where on the site?

A It would depend on the area we were working on. For example, if we were working in a specific place, we would be raking around, and then we would select. But we were always concentrated in this area, a little bit over here, a little bit over there. But it was just the whole area.

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

A No.

Q Okay. Were all the samples mixed together?

A Yes.

Q Okay.
A: Yeah, we would — or example, I would start, you know, gathering parts and put them all in the bag. Once the bag was full, I would just close it and would start with another one.

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

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

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

A: Just one.

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

A: Yeah, just one mound.

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

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

Q: So is it correct to say in the beginning there was no grass; but then a ter you stopped, there
was enough time or the vegetation to grow, and then you started up again?

A Uh huh, si.

Q Did he (sic) ever ind pipe ragments?

A That's what asbestos is.

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

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

Q So no more than a couple o' hands ull?

A Yes.

Q Okay. All the way down to the ground up like covee grinds?

A Yes.

Q Was there cattle or cows in the site?

A Yes, yeah, we have to kind o' scare them away in order to work. Yeah, we had to scare them away in order to be able to work.

Q Would they ever walk right through your work area?

A Oh, yeah, o' course. Because they knew vegetation, you know, it was

THE COURT REPORTER: I'm sorry?

THE WITNESS: They knew vegetation that grew up there, it was very yummy or them. So I'm
saying, I'm contaminated, those poor animals
are very contaminated, too, because they were
there with us all the time. In the morning when
we got there, we had to scare them away all the
time.

BY MR. BROOKES:

Q Did they lock the area with a fence?
A No, it's totally way open. When we scare
them away, they would come to this area right where
the vegetation is right here. Because, you
know, there was shade there, so

Q Did you ever see anyone, any people, on the
site, or evidence that kids were using it when you
weren't working?
A No.

Q Any ATV bikes?
A No.

Q Okay. Any armers?
A No, no. Everybody that I saw there was
related to the job somehow.

Q Okay. Was there anyone cutting grass in the
area?
A No. The truck guy, or example, he used to
work there without protection at all, the one that
moved the mound, or, you know, removed dirt or stu
How do you call this  this  this here?

THE INTERPRETER: Don't ask me.

THE WITNESS: You mentioned the name be ore.

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

(A break was held.)

BY MR. BROOKES:

Q  Is  Salvador Nava, was he your supervisor?
A  Yes.

Q  Did Salvador Nava ever tell you not to go
outside your area to look  or asbestos?
A  He used to tell us that the area o  work was
that spec ic  concentrated in that area.

Q  Were you allowed to go to other portions o
the property outside your work area to look  or
asbestos?
A  No, we had to work in a spec ic area.

Q  And how about  were you allowed to look on
the roadways, the dirt roads that came into this work
area?
A  No, just in this area only.

Q  Okay. Do you have any concerns  or your own
health as a result  working on this site?
A  Well, yes, yes, o course. Actually, I need
to see a specialist because it's been our months
about our months since I started to kind of have like
a cough, a constant cough, like a cold that never goes
away. But it's not a cold; it's just coughing and
coughing and coughing.

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

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

Q Okay. When you left this site on your very
last day, was the site cleaned up then?

A When we withdrew from the area, there were
only trucks there, trucks to remove the mound of dirt.

Q Did you ever go back after the trucks removed
the mound of dirt?

A No, I didn't come back go back after that.

Q Did any of the other workers you worked with
go back, after the mound was removed, to see if the
asbestos was all gone?

A I don't know what Salvador did, because we
was you know, he was in charge in that company.

But I don't know. The other guys were not documented,
undocumented, so

Q Undocumented in terms of asbestos
certification?
A  No, that they were sent back to their
countries.

Q  Oh, undocumented or alien status?
A  Yes.

Q  And who which were those guys? Was that
Cu  Cub  Elvis (sic)?
A  Elvin Cubille. I don't remember the name o
the other guy. They are back to their countries.

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

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

Q  Okay. Do you remember a man named Michael
Schook?
A  No.

Q  Okay. Leigh Simmons?
A  No, I don't remember.

Q  That's okay.
A  It's been it's been years, you know.

Q  I'm just checking some names that are on the
report. A Sherrill Culliver?
A  No.

Q  Okay. Do you know an Eric Goeller?
A I do remember Salvador because he was our boss.

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

A Is that an inspector?

Q I think some kind o

A Yeah, that sounds amiliar.

Q Maybe a sampler. Like a sampler, maybe?

A Uh huh.

Q Someone named Robbie?

THE INTERPRETER: What's the name?

BY MR. BROOKES:

Q Robbie, like Rob, Robbie, Robbie.

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

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

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

Q Okay. Did you ever see

A And she speaks English only, so

Q Did you ever see the owner o the property?

A No.

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

A I heard that supposedly they would be
taken they used to take them to Okeechobee, a specific location where it was supposed to be taken to. There were only two locations where they could get rid of the contaminated product, like in Daytona or Okeechobee.

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

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

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

Thank you very much.

(Examination Under Oath concluded at 6:48 p.m.)
CERTIFICATE OF OATH

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

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
REPORTER'S EXAMINATION UNDER OATH CERTIFICATE

STATE OF FLORIDA)
COUNTY OF LEE)

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

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

DATED this 27th day of June, 2016.

____________________________
Christi K. Cole, Court Reporter
RETRA TRAINING SERVICES

Alfredo Perez Castro

Asbestos Worker Refresher (Spanish) FL4723

Course Date: July 11, 2019
Exam Date: July 15, 2019
Expiration Date: July 19, 2020
Course Location: Tarpon Springs, FL

Certification Number: F-024938
Instructor: John Wilson

Florida Approval 11-18-08

Ft. 722-739-7946

113 S. Dixie Avenue
Tarpon Springs, FL 34689

has successfully completed the Refresher Training for Asbestos, as required by OSHA Title 29.
Site A = Removed contaminated pile
Site B = Suspected crusher location
Site C = Berm Area

○ = Sample Location

= Sample #9: Positive for Chrysotile & Crocidolite
Photo 1. Tex Development site Bonita Springs, FL. AMRC project # 09-071616-AC

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

Photo 3. Contaminated pile and area warning signs.

Photo 4. Area air monitoring during soil removal.

Photo 5. Decontamination and Re-hydration station.

Photo 6. Loader spreading soil to be surveyed for asbestos fragments.
Photo 7. Workers utilizing hand tools to survey soil for asbestos fragments.

Photo 8. Workers surveying soil for asbestos fragments.

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

Photo 10. Asbestos fragments identified and removed.

Photo 11. Contaminated soil disposed of in transport truck.

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