

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
for the Morro Bay Power Plant ) 00-AFC-12  
Project )  
\_\_\_\_\_ )

1055 MORRO AVENUE  
MORRO BAY, CALIFORNIA

TUESDAY, JANUARY 29, 2002

9:15 a.m.

Reported by:  
James A. Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Commissioner, Presiding Member

William J. Keese, Chairman, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Gary Fay, Hearing Officer

Terry O'Brien, Adviser to Chairman Keese

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

Kae C. Lewis, Project Manager

Alvin J. Greenberg

APPLICANT

Christopher T. Ellison, Attorney

Jeffery D. Harris, Attorney

Ellison, Schneider and Harris

Andrew L. Trump, Director of Business Development  
Western Region

Robert E. Cochran, II, Project Manager

Duke Energy North America

Peter Okurowski, Senior Associate  
California Environmental Associates

Eric G. Walther

James M. White

Brent Alyn Waggener

INTERVENORS

Henriette Groot, President  
Bonita L. Churney, Attorney  
Bryan Cave  
Pamela Soderbeck  
Gordon Hensley  
Coastal Alliance on Plant Expansion

ALSO PRESENT

Robert Schultz, City Attorney  
City of Morro Bay  
Steven J. Elie, Attorney  
Musick, Peeler, Garrett, LLP  
representing City of Morro Bay

John Rohrer  
Consultant to City of Morro Bay

Jeffery Jones, Chief  
City of Morro Bay Fire Department

Mandy Davis

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P R O C E E D I N G S

9:15 a.m.

PRESIDING MEMBER MOORE: We are convened as the Committee of the California Energy Commission for docket 00-AFC-12. And we're in our first set of evidentiary hearings in Morro Bay. And we will proceed with three days of hearing this week and three days of hearing next week to consider items that have previously been published.

The Committee consists of Commissioner Keese, the Chairman of the Energy Commission, who is second from my right. Gary Fay, our Hearing Officer, who is on my right. Terry O'Brien, the Advisor to the Chairman, who is on the far right. For those of you who don't know me, I'm Michal Moore. I am the Presiding Member of the Committee that's considering this.

For the applicant, can I ask you to introduce your team for the record, please.

MR. HARRIS: Hi, I'm Jeff Harris. I'm here on behalf of Duke. To my left is Eric Walther, who will be our first witness. I'll have our other witnesses introduce themselves when their subject matters come up.

1                   To my right is Peter Okurowski, who is  
2                   also with Duke. And everybody else will be a  
3                   witness we'll introduce later.

4                   PRESIDING MEMBER MOORE: Thank you very  
5                   much. For the staff, Kae.

6                   MS. LEWIS: I'm Kae Lewis, Project  
7                   Manager. And to my right is Caryn Holmes, Staff  
8                   Counsel. And our witness is Dr. Alvin Greenberg.

9                   PRESIDING MEMBER MOORE: Thank you. And  
10                  for the intervenors, City of Morro Bay.

11                  MR. ELIE: Good morning, Steven Elie on  
12                  behalf of the City. And Rob Schultz will join me  
13                  later.

14                  PRESIDING MEMBER MOORE: Thank you. And  
15                  for the intervenors Coastal Alliance on Plant  
16                  Expansion, CAPE.

17                  MS. CHURNEY: Good morning, Bonita  
18                  Churney and Brian Cave representing the Coastal  
19                  Alliance on Plant Expansion. And with me is the  
20                  President of the Coastal Alliance, Henriette Groot  
21                  to my right. And to my left Pamela Soderbeck, who  
22                  will be assisting me.

23                  PRESIDING MEMBER MOORE: Thank you very  
24                  much. And Ms. Dutton, is Ms. Dutton here as an  
25                  intervenor? All right, I know that she will be

1 for some of the later items.

2 Mr. Fay, the floor is yours.

3 HEARING OFFICER FAY: Thank you. Just  
4 by way of background, this is the second set of  
5 evidentiary hearings for the proposed Morro Bay  
6 Power Plant project.

7 On December 24th of last year the  
8 Committee issued written notice of the hearings  
9 for today, and that is January 29th through  
10 January 31st. And then again February 5th through  
11 the 7th, as well as a scheduling conference to  
12 take place on January 31st.

13 That document, the notice, also  
14 contained filing dates for the various testimony  
15 required to be presented.

16 In addition to the November 2001 staff  
17 assessment and the AFC document submitted by the  
18 applicant, and various supplements. Other filings  
19 relevant to today include staff's FSA part two,  
20 filed December 19th, particularly the cultural  
21 resources section. Errata to the final staff  
22 assessment dated December 11th and identified as  
23 exhibit 116. I believe there's errata two,  
24 additional testimony for the final staff  
25 assessment part one, dated December 14th. And

1 applicant's and intervenors' group two testimony  
2 that was filed on January 15.

3 The purposes of these formal evidentiary  
4 hearings are to establish the factual record  
5 necessary to reach a decision in this case. This  
6 is done through the taking of written and oral  
7 testimony, as well as exhibits from the parties.

8 These hearings are more structured than  
9 the Committee conferences we've had in the past,  
10 and the informal staff workshops, which many of  
11 you have attended.

12 The party sponsoring a witness today  
13 shall briefly establish the witness'  
14 qualifications; and have the witness orally  
15 summarize the prepared testimony before requesting  
16 that the testimony be moved into evidence.  
17 Relevant exhibits may be offered into evidence at  
18 that time, as well.

19 At the conclusion of a witness' direct  
20 testimony, the Committee will provide the other  
21 parties an opportunity for cross-examination,  
22 followed by redirect and recross-examination as  
23 appropriate.

24 At the conclusion of each topic area we  
25 will provide an opportunity for public comment on

1 that topic.

2 The parties are encouraged to  
3 consolidate the presentations by witnesses and/or  
4 cross-examination to the greatest extent possible  
5 in order to minimize duplication and to conserve  
6 hearing time.

7 Before we begin I'd like to point out a  
8 few things, especially for any lay participants in  
9 the audience. Please realize that unless you have  
10 prefiled testimony for your witness, as directed  
11 in the hearing order, you will not be allowed to  
12 have the witness testify.

13 Please don't be repetitive in asking  
14 questions of witnesses. Several different parties  
15 interested in the same matters should consolidate  
16 their presentations or questioning where possible.

17 Questioning must be limited to relevant  
18 matters within the scope of the witnesses'  
19 testimony. Don't argue with a witness. Don't  
20 testify while cross-examining a witness. When  
21 asking a question refer to a specific page of the  
22 witness' testimony and/or exhibit.

23 Direct testimony must be of matters  
24 within the witness' personal knowledge. There are  
25 different rules for witnesses who qualify as

1 experts. Experts, by virtue of their education  
2 and/or experience, are allowed to render expert  
3 opinion based on the studies, reports, et cetera.

4 Now, we have a few preliminary matters  
5 before we get started. And our first topic for  
6 today is waste management. But before we get into  
7 that I'd like to ask the parties on behalf of the  
8 staff, which witnesses of the Air District they  
9 will be interested in cross-examining.

10 I believe in the notice sent to you  
11 there was a listing of Air District witnesses.  
12 And, Ms. Holmes has a more detailed list of all  
13 the Air District people who are participating here  
14 testifying.

15 But as a courtesy to the District we'd  
16 like to know who the parties need to cross-examine  
17 so that we don't ask the entire District Staff to  
18 come here, and then only to be not asked any  
19 questions, and thereby lose time keeping the air  
20 clean for the rest of us.

21 So, I'd like to begin with the  
22 applicant. Do you know, Mr. Harris, who from the  
23 Air District?

24 MR. HARRIS: I know Ms. Soderbeck is  
25 listed here, so that's part of CAPE's.

1 HEARING OFFICER FAY: Right, Ms.  
2 Soderbeck is not with the Air District. That was  
3 a typographical error.

4 MR. HARRIS: Right. Okay. Mr. Willie,  
5 I think, is the one who prepared the FDOC; would  
6 probably be able to answer all of our questions.  
7 I think that's correct. We don't have a lot of  
8 questions for the Air District. And I think since  
9 he prepared the document, he'd be sufficient for  
10 our purposes.

11 HEARING OFFICER FAY: Thank you.  
12 Coastal Alliance.

13 MS. CHURNEY: We would definitely need  
14 to cross-examine Mr. Willie again because he was  
15 primarily responsible for the District's  
16 documents. He would probably suffice for our  
17 purposes, as well.

18 HEARING OFFICER FAY: Great. And the  
19 City?

20 MR. ELIE: The City will defer to the  
21 other parties on that.

22 HEARING OFFICER FAY: Okay. Thank you.

23 PRESIDING MEMBER MOORE: Wait, back to  
24 staff.

25 MS. LEWIS: The District witnesses were

1 going to be testifying with staff as part of a  
2 panel. At least that's the way it's been done in  
3 the past. And the District had contacted me and  
4 asked me to identify which of the seven or eight  
5 people that prepared the DOC needed to be present  
6 at the hearings.

7 It sounds to me as though I'm safe in  
8 telling them that only Mr. Willie needs to show up  
9 next week?

10 PRESIDING MEMBER MOORE: I believe  
11 that's right.

12 MS. LEWIS: Thank you.

13 HEARING OFFICER FAY: Subject to your  
14 professional opinion about how direct should be  
15 handled, but as you've heard, Mr. Willie is the  
16 only one that they plan to cross-examine.

17 MS. LEWIS: Thank you.

18 HEARING OFFICER FAY: We'll just leave  
19 it up to you if there's any other members of the  
20 District you feel should be there. I think that's  
21 fine to conserve the District's resources.

22 Okay, the next item is a motion filed by  
23 the staff -- or an objection filed by the staff to  
24 the applicant's correction regarding hazardous  
25 materials.

1                   And, Mr. Harris, why don't you just  
2                   briefly summarize the correction you filed, and  
3                   then we'll go to the staff.

4                   MR. HARRIS: Thank you. Give me a  
5                   minute here, I was prepared to go to waste, so --  
6                   actually, I've read staff's objection. Let me  
7                   first start by explaining basically the  
8                   information we've provided.

9                   The filing we made on the 22nd really  
10                  corrected about five different things in one  
11                  paragraph of our testimony, and the primary  
12                  corrections relate to distances for the hydrazine  
13                  modeling that we performed.

14                 I know folks were served with that  
15                 document. The changes basically are, I think,  
16                 five. The line 108 feet was changed to 81 feet.  
17                 The one-fourth became one-fifth; 998 feet became  
18                 763 feet. And then we added the word "also does  
19                 not reach" and then the nearest residences.

20                 Those are the corrections that were  
21                 made. They were made in response to our review in  
22                 preparation for this hearing of the modeling. We  
23                 found in looking at the modeling results, the  
24                 basic, just so you know, the basic actual air  
25                 related to the vapor pressure of aqueous

1 hydrazine, which is one of the inputs into the  
2 model. That's why those numbers changed.

3           You will notice that they didn't change  
4 dramatically. It's not an order of magnitude  
5 change. It's a change of small percentages. But  
6 we wanted to make those corrections because that  
7 represents the best information, and it's true and  
8 correct, in the opinion of the witness.

9           And so I think as a threshold matter we  
10 absolutely have to change those numbers because  
11 otherwise we'll be asking our witness to testify  
12 to testimony he knows not to be true and correct.  
13 And so I think that threshold issue is easily  
14 dealt with.

15           We, in addition to changing those  
16 numbers, provided some additional information,  
17 some supplemental material we provided as  
18 supporting information. That was attached to the  
19 information that went out.

20           I would characterize those things as  
21 workpapers. I think that's exactly what they are.  
22 They describe the basic process we went through to  
23 determine and check the numbers, and that's where  
24 we discovered the error.

25           The distances are the appropriate

1 distances, and we corrected those distances now  
2 with the correction.

3 We felt that providing that additional  
4 information, the supplemental information, would  
5 give people more than they actually needed. We  
6 thought that that was a benefit to them. But if  
7 there's a problem with that supplemental  
8 information, we should talk about that.

9 We also provided it electronically to  
10 the folks who had email service, the input files,  
11 because the staff had requested -- well, let me  
12 back up. Staff had suggested that they would need  
13 those, that information to do their analysis. And  
14 so we provided that electronically. Again, I  
15 would put that in the category of workpapers that  
16 were provided as background.

17 But that, I guess in a nutshell, is the  
18 basis of the correction. I'm prepared to have our  
19 witness, at the appropriate time, talk about the  
20 substance of that correction, but I won't do that  
21 here.

22 HEARING OFFICER FAY: Okay. And, staff,  
23 you filed an objection to that.

24 MS. HOLMES: Right. I'd like to give a  
25 little bit of background. Staff has been

1 expressing concern about the project's proposed  
2 use of hydrazine since it first was filed. Our  
3 experience has been in other cases that other  
4 applicants are using the nonhazardous  
5 alternatives.

6 In fact, we had a data request on March  
7 19th, in which we requested that the applicant  
8 model release of hydrazine because of our  
9 concerns. And on April 30th the applicant  
10 responded by saying modeling was not required.  
11 And they, in fact, never did provide the modeling  
12 to us.

13 As a result, when we prepared our FSA we  
14 did a modeling run. We discussed our results. We  
15 identified the model. We identified the inputs  
16 and identified the outputs. That was filed on  
17 November 15th.

18 As everybody knows, the schedule for  
19 this proceeding has been quite tight, although  
20 other parties have had over two months to review  
21 our testimony and prepare their testimony in  
22 response, we have had less than two weeks to  
23 prepare response to the other parties' testimony.

24 When we received the applicant's  
25 testimony for this phase of the hearings we had

1 already developed a schedule for working with our  
2 witnesses that would allow us to timely respond  
3 and prepare any rebuttal that was necessary, and  
4 not interfere with work on other siting cases.

5 Dr. Greenberg, who is a consultant to  
6 the Energy Commission, completed his review and he  
7 met with the CEC Staff on January 22nd. At that  
8 time we discussed the fact that the applicant's  
9 testimony included modeling results. And we  
10 determined that we simply could not address it  
11 because Duke had chosen not to identify the model;  
12 not to identify the inputs; not to identify the  
13 outputs. These are not workpapers; this is  
14 critical data that staff needs in order to be able  
15 to evaluate the accuracy of the model results.

16 Several days later Duke provided what  
17 they're calling corrections, but in fact it is  
18 this critical underlying data that was missing.  
19 Dr. Greenberg did not receive a copy of it until  
20 late in the evening on the 23rd, and has not had a  
21 chance since that time to review the files that  
22 were provided and conduct an evaluation.

23 Thus, if the data were to be admitted  
24 the Committee and the public would not be able to  
25 receive the benefit of any independent evaluation

1 on the new information.

2 It's highly technical information. The  
3 analysis is subject to significant changes as a  
4 result of minor changes in input. The results can  
5 vary significantly depending upon the input. And  
6 staff believes it would be inappropriate to accept  
7 it into evidence without our independent  
8 evaluation.

9 More importantly, it would reward Duke,  
10 which is a sophisticated applicant with extensive  
11 technical resources, for waiting until the last  
12 minute to provide critical information. It's  
13 important to note that Duke hasn't provided any  
14 explanation as to why they couldn't provide it in  
15 a timely fashion.

16 We believe that the Committee and the  
17 public will be ill served by allowing Duke to file  
18 late, and avoid the scrutiny that is staff's  
19 responsibility to provide. And we encourage the  
20 Committee to not allow this evidence into the  
21 record.

22 PRESIDING MEMBER MOORE: Ms. Holmes, you  
23 would suggest then that we would hold off, and not  
24 allow it until such time as it's been  
25 independently vetted by the Energy Commission consultant?

1 MS. HOLMES: That's the Committee's  
2 decision. The Committee could either simply not  
3 accept the evidence today and that would be the  
4 end of it. We'd rest on the record that you have  
5 before you, which consists of the applicant's  
6 testimony, staff's testimony, except for the late-  
7 filed information from the applicant.

8 In the alternative you could direct  
9 staff to go back and do an evaluation of the  
10 applicant's modeling results. I don't know  
11 whether there would need to be discovery on that  
12 or not. But that's within the Committee's  
13 discretion.

14 PRESIDING MEMBER MOORE: You're in the  
15 process of doing that very thing right now,  
16 though, right? Your consultant is prepared to  
17 evaluate the report that he got late on the night  
18 of the 23rd?

19 MS. HOLMES: My consultant is prepared  
20 to testify today as to what he would need to do in  
21 order to conduct that evaluation, as well as the  
22 weight that he would recommend that the Committee  
23 give the evidence without that evaluation.

24 PRESIDING MEMBER MOORE: All right.

25 MR. HARRIS: Commissioner, if I could --

1                   PRESIDING MEMBER MOORE:  Yes.

2                   MR. HARRIS:  -- briefly respond.  First  
3                   off, I want to point out that the hydrazine  
4                   modeling that was undertaken by staff is not  
5                   something that's required by LORS.

6                   If you look at the LORS they will tell  
7                   you there are certain types of chemicals that  
8                   require offsite consequences.  Ammonia obviously  
9                   is one of those chemicals.  Hydrazine is not.

10                  So the modeling that was done by staff  
11                  is not something that's required by LORS.  And so  
12                  in a sense we are responding here to an additional  
13                  analysis that was done by staff.  And I want to  
14                  make sure we're very clear on that point.

15                  In terms of where we can go from here,  
16                  you know, I think first off is the threshold  
17                  matter.  That absolutely the Committee must allow  
18                  the witness to correct the numbers in the  
19                  testimony.  Because those numbers are -- the  
20                  correction to those numbers will make this  
21                  testimony true and correct to the best of the  
22                  witness' knowledge.  And so, as threshold matter,  
23                  I think at a minimum the Committee has to allow us  
24                  to do that.

25                  Beyond the additional analysis, you

1 know, if the Committee decides they don't want to  
2 allow the additional documentation that we filed,  
3 the supplemental material, the workpapers, we're  
4 okay with that result.

5 If the staff wants the benefit of those  
6 workpapers and if the staff wants the benefit of  
7 taking a look at our modeling analysis, we're okay  
8 with that result, as well.

9 I would, I guess, leave it to your  
10 discretion. Dr. Walther will be here again next  
11 week, as well. But if your decision today is that  
12 the workpapers don't come in, and that the  
13 corrections are allowed to be made, that's a  
14 decision we're willing to live with.

15 PRESIDING MEMBER MOORE: Let me turn  
16 back to Ms. Holmes for just a moment. How do you  
17 respond to that rejoinder as far as just the  
18 corrections go? Do you still maintain that those  
19 corrections reflect the use of a model that you're  
20 not aware of?

21 MS. HOLMES: We didn't object to  
22 introduction of the modeling results initially.  
23 We had, as I said, planned to simply provide our  
24 own testimony as to the lack of usefulness, if you  
25 will, or uselessness of results when there's no

1 evaluation of the inputs in the modeling that was  
2 done to create them.

3 So, I certainly don't want to be in a  
4 position of saying that we're requesting somebody  
5 to testify to something that they know is  
6 incorrect.

7 PRESIDING MEMBER MOORE: So, in other  
8 words, the suggestion that was just made by Mr.  
9 Harris for submission of the corrections, and  
10 potentially ignoring the workpapers, as he's  
11 referring to them, you don't object to that  
12 technique?

13 MS. HOLMES: No.

14 PRESIDING MEMBER MOORE: At this point,  
15 you what I'm going to do is I'm going to withhold  
16 a decision on this until after I've heard the  
17 testimony of the other witness. Because I  
18 understand your witness will comment on what's  
19 been submitted so far. So I think I'd rather be  
20 able to ask some more questions. So I will just  
21 put this on ice and we'll come back to it a little  
22 bit later.

23 HEARING OFFICER FAY: All right. Any  
24 other preliminary matters before we get started  
25 today?

1 MS. CHURNEY: If I might, Bonita Churney  
2 appearing for the Coastal Alliance. I noticed on  
3 the exhibit list that was distributed this morning  
4 that none of the Coastal Alliance's exhibits have  
5 made it to the list.

6 And our list was submitted along with  
7 our written testimony in a timely manner. So,  
8 although we have no exhibits scheduled for today's  
9 sessions, I would hope that that could be  
10 corrected by tomorrow when we do have exhibits and  
11 declarations scheduled.

12 HEARING OFFICER FAY: Okay, it would be  
13 helpful if you'd submit that in writing, as the  
14 applicant has done, and staff has -- on the list  
15 of exhibits.

16 MS. CHURNEY: It was submitted with the  
17 written testimony on a list.

18 HEARING OFFICER FAY: I see, all right.  
19 Well, if you have another copy that would help us  
20 out.

21 MS. CHURNEY: We'll provide that to you.

22 HEARING OFFICER FAY: My apologies for  
23 not --

24 PRESIDING MEMBER MOORE: Right, and let  
25 us see it during the break and we'll work to get

1 it in.

2 HEARING OFFICER FAY: Yeah, this is  
3 really a matter of convenience for the parties  
4 that we have these all listed, so that when  
5 somebody rattles off a three-paragraph title on  
6 some scientific paper we can all find it and not  
7 have to remember the entire title.

8 MS. CHURNEY: And secondly, we had  
9 reserved time for cross-examination on waste  
10 management, and we're not listed as having  
11 reserved time. So I do not want to be preempted  
12 from our cross-examination this morning.

13 PRESIDING MEMBER MOORE: Okay.

14 HEARING OFFICER FAY: You got --

15 PRESIDING MEMBER MOORE: I'm sorry.

16 HEARING OFFICER FAY: You reserved that  
17 at the prehearing conference?

18 MS. CHURNEY: Yes.

19 HEARING OFFICER FAY: Okay.

20 MR. HARRIS: Question on CAPE's  
21 exhibits. Maybe there's just a communication  
22 issue here. They were -- there was prefiled  
23 testimony by CAPE, I assume? And there are  
24 attachments to that prefiled testimony?

25 So is the issue here that those

1 attachments are -- they will all be marked as one  
2 exhibit? That's what I'm guessing is going on  
3 here.

4 MS. CHURNEY: No.

5 MR. HARRIS: But other new exhibits that  
6 CAPE has that were not prefiled?

7 MS. CHURNEY: There were independently  
8 listed exhibits, including responses to data  
9 requests, for example, that had not previously  
10 been designated by the applicant, that we wanted  
11 to be sure to have into the record.

12 MR. HARRIS: Can we talk about this  
13 during a break? I want to make sure we have  
14 everything.

15 PRESIDING MEMBER MOORE: Well, I think  
16 we will because we'll see the list, because I  
17 haven't seen what the intervenors are talking  
18 about. So I'm going to withhold judgment on that  
19 until I see the copy of the list.

20 HEARING OFFICER FAY: And what I'm  
21 talking about is just putting in writing on a list  
22 the exhibits that have already been properly  
23 filed, and that people intend to introduce. I'm  
24 not talking about new exhibits.

25 MR. ELIE: Mr. Fay, Steven Elie, the

1 City.

2 HEARING OFFICER FAY: Yes.

3 MR. ELIE: The prefiled testimony we  
4 filed for these hearings is not listed. In other  
5 words the prefiled testimony of Mr. Rohrer and  
6 Chief Jones, which we submitted in a timely  
7 manner. It's not on here. I don't see Duke's  
8 testimony for these hearings listed on this list,  
9 yet, either.

10 HEARING OFFICER FAY: On the exhibit  
11 list?

12 MR. ELIE: Right. So I don't know if  
13 that's just an oversight, or we should just raise  
14 it when we get to the witness' testimony?

15 HEARING OFFICER FAY: Well, if you want  
16 it marked for exhibit, please do so. We --

17 MR. ELIE: Okay.

18 HEARING OFFICER FAY: -- as much as we  
19 could --

20 MR. ELIE: Okay.

21 HEARING OFFICER FAY: -- to try to save  
22 some of that mad-dash notetaking.

23 MR. ELIE: The last set of hearings the  
24 prefiled testimony was on the list, so that's why  
25 I was confused. But we'll just --

1 HEARING OFFICER FAY: Okay, yeah,  
2 just --

3 MR. ELIE: As witnesses come up, --

4 HEARING OFFICER FAY: If you would mark  
5 the exhibit, and please make clear, and you might  
6 mention that it does not appear on the tentative  
7 exhibit list. And call our attention to it.

8 MR. ELIE: Thank you.

9 HEARING OFFICER FAY: Okay. Any other  
10 preliminary matters? Okay, I'd like to begin  
11 taking evidence on the topic of waste management.  
12 Mr. Harris, are you prepared?

13 MR. HARRIS: Yes, thank you. Can I ask  
14 that the witness be sworn. We have one witness on  
15 this category, Mr. Eric Walther.

16 HEARING OFFICER FAY: Would the witness  
17 please stand and be sworn.

18 Whereupon,

19 ERIC G. WALTHER  
20 was called as a witness herein, and after first  
21 having been duly sworn, was examined and testified  
22 as follows:

23 MR. HARRIS: Thank you.

24 //

25 DIRECT EXAMINATION

1 BY MR. HARRIS:

2 Q Dr. Walther, would you please state your  
3 name again for the record.

4 A Eric Walther.

5 Q And what subject matter testimony are  
6 you here to sponsor today?

7 A Waste management.

8 Q And were the documents that are part of  
9 your testimony part of the prefiled testimony?

10 A Yes.

11 MR. HARRIS: And those documents would  
12 include exhibit 4, previously marked; exhibit 22,  
13 previously marked -- and I'm reading from the  
14 second page of Dr. Walther's prefiled testimony --  
15 and exhibit 51, which was previously marked, as  
16 well.

17 MS. HOLMES: Excuse me, this is the  
18 testimony that doesn't have a number, Hearing  
19 Officer Fay, the prefiled testimony of Duke I  
20 don't believe has a number. It would be useful  
21 for us if we could get that identified.

22 MR. HARRIS: She's a step ahead of me,  
23 but she's correct. I also wanted, at this point,  
24 to mark into evidence our prefiled testimony for  
25 these issues that was filed on the 22nd, and ask

1 that that be assigned a number.

2 PRESIDING MEMBER MOORE: Let's call just  
3 a short time out here, and we'll go off the  
4 record. And let us sort through.

5 (Brief recess.)

6 HEARING OFFICER FAY: All right, we're  
7 back on the record, and we'll get Mr. Harris to  
8 describe the first exhibit today.

9 MR. HARRIS: The exhibit that is in  
10 question here is the prefiled testimony of the  
11 applicant; it was filed on the 15th. It's  
12 approximately 100 pages, plus or minus.

13 It includes all the subjects for the  
14 group two hearings. And so what I'd like to  
15 request is that we mark that entire exhibit as one  
16 exhibit number, and I will move into evidence the  
17 portion of that one exhibit related to waste  
18 management.

19 HEARING OFFICER FAY: And can you tell  
20 us what the title on that cover page is?

21 MR. HARRIS: Give us just a second.  
22 Surprisingly it's called applicant's testimony on  
23 group two issues.

24 (Laughter.)

25

1 HEARING OFFICER FAY: Thank you. And  
2 that will be exhibit 134.

3 MR. HARRIS: Thank you. All right, that  
4 was a little more difficult than it needed to be.  
5 We'll move on now.

6 PRESIDING MEMBER MOORE: Are you  
7 prepared to move that into evidence at this time?

8 MR. HARRIS: Actually, I would move all  
9 four if that's appropriate at this time. I was  
10 going to wait until the end of our direct  
11 testimony, but whatever you prefer.

12 PRESIDING MEMBER MOORE: Why don't you  
13 wait until the end of the direct.

14 MR. HARRIS: Okay, we'll do it that way.

15 BY MR. HARRIS:

16 Q Moving back to Dr. Walther, do you have  
17 any changes, corrections or clarifications to your  
18 testimony?

19 A Yes. The refinements are that in  
20 attachment 2 to the prefiled testimony there was  
21 the site designation committee of the California  
22 Environmental Protection Agency resolution 0102,  
23 which as of December 13, 2001, now carries the  
24 signature of the Chair, Don Johnson, on the 13th  
25 of December.

1                   So it's an executed resolution.

2                   Q     Okay, so that's simply the executed copy  
3     of that document that was prefiled, is that  
4     correct?

5                   A     Correct.

6                   MR. HARRIS:   And we have distributed  
7     copies of that executed document to the Committee  
8     and to the other members present.   We may have one  
9     or two extra copies, but again basically it's the  
10    same document with the signatures attached.

11                  BY MR. HARRIS:

12                  Q     We have a second correction, is that  
13    correct?

14                  A     Correct.   In the prefiled testimony you  
15    will find towards the back of it, and I can go  
16    through each instance, where the expression  
17    remedial investigation with capital letters, work  
18    plan with capital letters, should be replaced by  
19    simply workplan with a small letter, without the  
20    RI in front of it.

21                               The distinction is that a remedial  
22    investigation workplan is a more formalized  
23    document under the more formalized process of  
24    California Superfund sites, and for the purpose of  
25    this project and waste management, as agreed to in

1 meetings between all the relevant agencies, the  
2 applicant, PG&E, the process will be more informal  
3 and characterized more accurately as just a  
4 workplan, or workplans.

5 Q So essentially the change here is to  
6 take out that capitalized term remedial action  
7 investigation workplan and replace it with the  
8 word workplan with a small "w". And that is so  
9 that we are not using the same terminology as used  
10 in another regulatory setting? Basically to avoid  
11 confusion?

12 A Correct.

13 Q So we'd make that change globally  
14 throughout the testimony?

15 A The only distinction is in going through  
16 the testimony one must be careful that early there  
17 are a couple of quotations of the FSA where the  
18 capitalized expression was used, and that would  
19 remain the same, because those are quotations from  
20 the CEC Staff's FSA.

21 Q Dr. Walther, with those corrections and  
22 clarifications were the documents prepared either  
23 by you or at your direction?

24 A Yes.

25 Q And the facts stated therein true to the

1 best of your knowledge?

2 A Yes.

3 Q Are the opinions therein stated your  
4 own?

5 A Yes.

6 Q And do you adopt this as your testimony  
7 for this proceeding?

8 A Yes.

9 Q Your qualifications were filed with your  
10 testimony. But will you still briefly review your  
11 qualifications for the Committee?

12 A Briefly, I obtained my bachelor of  
13 engineering physics degree from Cornell  
14 University. And that was followed by a master of  
15 science and doctorate of philosophy degree in  
16 atmospheric science from the State University of  
17 New York at Albany.

18 Since then I've been working in the  
19 field for 32 years, of which approximately the  
20 first 15 were oriented to research; and the  
21 following 17 years were oriented to consulting for  
22 industry and for government.

23 The service on assignments and projects  
24 for government included the National Science  
25 Foundation, National Academy of Sciences, National

1 Academy of Engineering, the U.S. Environmental  
2 Protection Agency, National Park Service and the  
3 United Nations.

4           During that time, especially since 1985,  
5 which therefore would be the last 17 years or so,  
6 I developed scientific protocols and calculations  
7 for solid and liquid hazardous and nonhazardous  
8 waste; worked on Superfund sites, including in  
9 California the famous McCall Superfund site; and  
10 operating industries, landfill in the Los Angeles  
11 area; and numerous investigations of less  
12 important or less highlighted contamination of  
13 soil and groundwater.

14           Q     Thank you. Will you now please provide  
15 a short summary of your testimony.

16           A     The testimony that is before you, and to  
17 keep it brief, it's important to note that this  
18 subject, like the other two we're going to discuss  
19 today, is occurring at a plant that already has an  
20 excellent record of decades of waste management.

21                     In fact, the first unit came on line in  
22 May 1955. And in complying with LORS, which have,  
23 of course, evolved over the years, this plant,  
24 compared to others that come before the  
25 Commission, has a long record of high performance

1 in both waste management and the other subjects  
2 we'll discuss.

3 In that context it is important to note  
4 that this specific project has features that build  
5 on that experience, which is to retain the same  
6 trained personnel, retain the same procedures that  
7 have been proven effective, and to continue those  
8 into simply slightly different plant environment,  
9 as one goes from the current boiler technology to  
10 combined cycle technology.

11 The FSA, we believe, did an excellent  
12 review and we concur with the FSA conclusion that  
13 there will be no significant impacts caused by the  
14 project of its waste management practices through  
15 any of its phases.

16 We'll discuss a few details on the  
17 actual conditions of certification. But the  
18 project, indeed, complies with all LORS and will  
19 have no significant impacts on waste management.

20 Q I want to spend the bulk of our time  
21 talking about the suggested changes that you've  
22 made for the conditions of certification. And so  
23 beginning on, I think, page 10 of your testimony  
24 is where we start talking about those conditions.

25 And so let's just go through them in

1 order, if we could. Let's start with WASTE-2, and  
2 your suggested revisions and clarifications for  
3 WASTE-2.

4 A Or, to keep a positive note, WASTE-1 is  
5 fine.

6 (Laughter.)

7 DR. WALTHER: So, moving on to WASTE-2,  
8 on this beautiful day I think we should look for  
9 the bright lights that occur, both in our work,  
10 and in the real world.

11 WASTE-2 we believe is stated in a way  
12 that could be improved because it is stating  
13 fundamentally a goal we agree with. And that, of  
14 course, is to maximize recycling, minimize waste  
15 generation.

16 The very nature of the project, itself,  
17 does that right up front, because one of its  
18 features in going to combined cycle technology is  
19 that the overall waste generation is being reduced  
20 a dramatic amount compared to the amount of waste  
21 that's required with boiler technology.

22 So, in this specific condition we'd  
23 recommend that in the wording it should have as a  
24 statement a stated goal that waste be recycled to  
25 the maximum extent practicable as determined by

1 the CPM.

2 We believe the numerical inclusion of  
3 numbers is really not appropriate, because numbers  
4 like these, of course, reflect a true performance  
5 that's already going to exist in the sense of  
6 reducing the overall waste flow by 83 percent.  
7 And, in fact, numerically the waste generation is  
8 going to go from approximately 4230 tons per year  
9 down to 630 tons per year.

10 So of the remainder Duke will be  
11 applying as advanced techniques as are cost  
12 effective to continue to pursue the goal.

13 In the actual wording, if one goes to  
14 WASTE-2 we recommend the following, and this is in  
15 the testimony, so at any point -- I don't need to  
16 read them, but I'll just at least excerpt:

17 Prior to the start of the project the  
18 owner shall prepare and submit to the CPM for  
19 review and approval a waste management plan for  
20 each of the following four project bases, which to  
21 us is an important distinction. Demolition of the  
22 existing fuel oil tanks; construction of the new  
23 power plant; demolition of existing power  
24 generation facilities; operation of the new power  
25 plant.

1                   And then it follows, just as in your  
2                   wording, each plant shall contain at a minimum the  
3                   following. And the first two items are  
4                   description of the expected waste streams, and I'm  
5                   not reading every word, methods of managing waste  
6                   with treatment, waste testing methods.

7                   And then the third bullet we recommend  
8                   in that portion of the condition be as I noted  
9                   earlier, a stated goal that the project owner will  
10                  continue to actively pursue waste minimization and  
11                  recycling and a description of measures to be used  
12                  in that pursuit.

13                 BY MR. HARRIS:

14                 Q     You covered a lot of ground there.  
15                 Let's go back and briefly summarize the points.  
16                 And actually I think you may want to discuss the  
17                 first point you made about excluding hazardous  
18                 waste from the recycling requirement.

19                 Could you go over that requirement?

20                 A     It's important in discussing waste to  
21                 occasionally note right on front whether it's  
22                 hazardous or nonhazardous. Hazardous waste should  
23                 be excluded from this kind of numerical condition  
24                 because the nature of hazardous waste and the  
25                 technologies that are available is that they will

1 not be subject to such reductions. And, in  
2 general, hazardous waste will tend to go off to  
3 class one landfills.

4 It's nonhazardous wastes that are far  
5 more realistically subject to the kinds of levels  
6 of minimization and reduction that are talked  
7 about, whether or not numbers are included in the  
8 condition.

9 Q Okay, so summarizing again, you've got  
10 three specific suggestions. Number one, excluding  
11 hazardous waste from the recycling requirement,  
12 correct?

13 A Correct.

14 Q Number two, excluding the specific  
15 percentages that are put forth in the proposed  
16 condition and replacing that with a suggested goal  
17 of maximizing recycling, correct?

18 A Correct.

19 Q And the third one is having that  
20 condition recognized the four distinct phases of  
21 this project that are set forth in your testimony,  
22 the demolition of the existing fuel tank,  
23 construction of the new power plant, demolition of  
24 existing power plant and the operation of the new  
25 power plant, is that correct?

1           A     Correct.

2           Q     Okay, those are the three proposed  
3 changes for WASTE-2. Can we move on to WASTE-3  
4 now.

5                     WASTE-3, can you briefly describe your  
6 suggested refinements for there?

7           A     As mentioned earlier in the refinement  
8 or clarification, the terminology workplan with a  
9 small "w" we believe is more appropriate to the  
10 circumstances of this project.

11                    There also should be clear notation that  
12 there are two workplans, not one, and that's  
13 because it's important to separate the  
14 demolitions. The first is of the onsite fuel  
15 tanks. And the second is of the existing power  
16 generation facilities, including the three stacks.

17                    There is some more detailed discussion  
18 of various techniques of sampling analysis that we  
19 get into, if necessary. But at the moment I think  
20 if the wording of the condition is recognizing  
21 this workplan; and also an important distinction  
22 is the role of the DTSC, which as noted earlier in  
23 attachment B, under the California Environmental  
24 Protection Agency the DTSC is now the  
25 administering agency for the soil remediation.

1                   And it should be clear in everybody's  
2 mind the roles of the CEC in certifying this  
3 plant, and many aspects of it, general demolition,  
4 construction, operation; and not for that to be  
5 confused with the CEC and the DTSC's role with  
6 respect to the contamination of prior operation  
7 under PG&E.

8                   And the parties to this, including the  
9 CEC Staff, have all met, including on November  
10 14th, to actually work on these issues; come to  
11 agreement on how it's going to evolve. And so all  
12 the parties involved, I think, are on the same  
13 page.

14                   But the condition needs to clearly  
15 state, for example, that both workplans shall be  
16 provided to the DTSC, the administering agency,  
17 for review and approval; and to the CPM for  
18 information.

19                   This is to keep these roles from getting  
20 confused, and otherwise getting cross-wise with  
21 regulatory requirements.

22                   And then there are similar  
23 clarifications in the verification. And we can go  
24 through it word-by-word, whatever is best.

25                   Q     I think we don't need to, we've got the

1 written testimony. But let me go through a  
2 summary again, if we can.

3 First off, you suggested that again, as  
4 we said at the beginning of the testimony, that  
5 the term remedial investigation workplan, the RI  
6 workplan be replaced simply by the word workplan,  
7 is that correct?

8 A Correct.

9 Q You've also suggested secondly that the  
10 condition recognize two distinct demolitions,  
11 demolition of the existing tank farm and  
12 demolition of the existing facility after  
13 construction of the new cogeneration facility?

14 A Correct.

15 Q You've identified clarification on  
16 DTSC's role as administering agency, is that  
17 correct?

18 A Correct.

19 Q And then various other language changes  
20 which applicant will specify in their brief on  
21 this matter, is that correct?

22 A Correct.

23 Q Thank you. Let's move through the next  
24 ones rather quickly. On five and six you just  
25 have, I think, one brief comment.

1           A     WASTE-4 is okay.

2                     (Laughter.)

3           MR. HARRIS: I'm an attorney; I always  
4 look at the bad side, right? The good stuff goes  
5 by fine. You're correct, WASTE-4 is fine.

6 BY MR. HARRIS:

7           Q     WASTE-5 and 6 are actually minor, as  
8 well. Could you identify your proposed changes  
9 there, proposed clarifications?

10          A     Consistent with the distinction made in  
11 WASTE-3 about the appropriate roles of the  
12 different agencies, WASTE-5 should note that the  
13 DTSC, as the administering agency, will provide  
14 remediation, guidance and disseminate information  
15 to all the other parties, including other  
16 regulatory agencies, PG&E, Duke and the City of  
17 Morro Bay.

18                     WASTE-6 similarly needs to note that the  
19 DTSC will, as the administering agency, be  
20 provided the remediation schedule, and will, of  
21 course, continue to disseminate information to all  
22 of the parties.

23          Q     Okay, thank you. And then we'll move on  
24 to WASTE-7. I think this is an important one.  
25 So, go ahead.

1           A     WASTE-7 deals with a goal that everybody  
2 agrees to, all parties, that the demolition of the  
3 fuel oil tanks, the demolition of the power  
4 generating facilities is to be done with the least  
5 possible impact.

6                     At the same time the demolitions  
7 actually are providing one of the greatest  
8 opportunities for recycling and reuse. When the  
9 power generation facilities are taken down and the  
10 basement opened, the basement is available for a  
11 large volume of the waste that came down from  
12 other structures, such as the stacks.

13                    The schedule has been compressed at  
14 least once, if not twice, along the way, in order  
15 to provide the City with a minimum period of time  
16 where there would be demolition debris even  
17 available for view and possibly cause a visual  
18 impact.

19                    So the way the condition is worded, it  
20 has to be careful. Right now it says the project  
21 owner shall insure that all waste, rubble and  
22 debris is removed promptly from the site, or that  
23 it is hidden from view from the site fenceline.  
24 We certainly agree with the concept, but it must  
25 not be misinterpreted as applying to, so to speak,

1 every point of time along the way, each day, each  
2 week.

3 It obviously needs to apply to the end  
4 state. Because, in fact, to satisfy the other  
5 needs of minimum visual impact and reuse and  
6 recycling, one has to do things like take the  
7 stacks down early. Immediately there's a great  
8 visual advantage and benefit. But immediately  
9 there's a large rubble pile, which will be made as  
10 small as possible, covered as much as possible.

11 But it also can't be artificially  
12 lowered to some height of 10 or 20 feet, because  
13 then it's lateral extent from the amount of volume  
14 that's in the stacks and the generation facilities  
15 would take up so much area it would compromise  
16 other aspects of the project like laydown and  
17 things like this.

18 So the wording of the condition needs to  
19 recognize that so that misinterpretation cannot  
20 get in there either through the role of a CPM or  
21 any other party who would be interested.

22 One way to reword it: The project owner  
23 shall seek to minimize the view of demolition  
24 waste from the community consistent with  
25 maximizing the recycling of such waste in the

1 construction of the new power generation  
2 facilities.

3 Q So the overall goal of your suggested  
4 changes and clarifications basically is to allow  
5 those materials to remain onsite so they can be  
6 recycled, is that correct?

7 A Correct. With a balance between those  
8 different issues and possible impacts.

9 MR. HARRIS: Okay, I think that will  
10 serve as our summary of our direct testimony. I  
11 would, though, at this time, like to move into  
12 evidence the documents that we've previously  
13 identified. Those would be exhibit 4, exhibit 22,  
14 exhibit 51 and the recently marked group two  
15 testimony, exhibit 134, that portion of 134 that  
16 is prefiled as the waste testimony.

17 HEARING OFFICER FAY: Is there  
18 objection?

19 MS. HOLMES: No objection from staff.

20 HEARING OFFICER FAY: All right.

21 MR. ELIE: No objection from the City  
22 assuming Mr. Harris means the portions that were  
23 referenced in the witness' testimony. You don't  
24 want to put in all of exhibit 4?

25 HEARING OFFICER FAY: He said waste

1 management --

2 MR. HARRIS: Just that portion.

3 MR. ELIE: Okay, sorry, I didn't hear  
4 that.

5 MR. HARRIS: That's correct.

6 HEARING OFFICER FAY: Okay, I hear no  
7 further objections, then? All right. So entered.

8 Is Mr. Walther available for --

9 MR. HARRIS: He's available for cross-  
10 examination.

11 HEARING OFFICER FAY: Okay. Staff.

12 MS. HOLMES: No questions.

13 HEARING OFFICER FAY: No questions. How  
14 about the City?

15 MR. ELIE: Thank you.

16 CROSS-EXAMINATION

17 BY MR. ELIE:

18 Q Dr. Walther, have you reviewed the  
19 testimony of John Rohrer, the City's expert?

20 A Yes, I have.

21 MR. ELIE: Actually, Mr. Fay, maybe now  
22 is a good opportunity for me to get a number for  
23 that. It is the testimony of John Rohrer,  
24 R-o-h-r-e-r, on behalf of the City of Morro Bay,  
25 regarding environmental issues which include waste

1 management, soil and water resources.

2 It was submitted in a timely manner with  
3 four exhibits for today's hearings.

4 HEARING OFFICER FAY: All right, that  
5 will be exhibit 135.

6 MR. ELIE: Thank you.

7 MS. HOLMES: Can I ask a question of  
8 clarification? Is that all four pieces of  
9 testimony, or is --

10 MR. ELIE: That's actually one piece of  
11 testimony with four exhibits to the testimony.

12 MS. HOLMES: Okay, thank you.

13 MR. ELIE: I'd just as soon have that as  
14 all one exhibit if that's all right. Thank you.

15 BY MR. ELIE:

16 Q Dr. Walther, did you consider as set  
17 forth in Mr. Rohrer's testimony the Morro Bay  
18 municipal code, zero pollution tolerance?

19 A In our work on waste management both the  
20 AFC and the testimony, we were very careful to  
21 distinguish that the wastes that were already  
22 there, in other words under PG&E early period,  
23 should not be confused with the waste generated  
24 from the project.

25 And so we believe that that policy and

1 some of the municipal codes that were quoted are  
2 going to certainly be adhered to in the sense of  
3 LORS for the project; but certainly did not  
4 confuse those with the earlier -- I should say  
5 remediation of the earlier contamination.

6 Q But as far as you're aware the  
7 contamination that exists is there on the property  
8 in the City of Morro Bay, correct?

9 A Oh, any contamination that's in that  
10 soil right now is there, it's within the city  
11 limits.

12 Q Okay. Did you, at all, in your  
13 testimony consider the city water emergency as  
14 referenced in Mr. Rohrer's testimony, exhibit 135?

15 A Considered it in the sense that we  
16 didn't believe that any of the project activities  
17 were going to compromise the emergency water  
18 ordinance or policy, whichever it is.

19 Q So you drew that conclusion?

20 A Without writing it, yeah. I'm afraid it  
21 was part of the thought process rather than  
22 written into the AFC or testimony.

23 Q Did you at all consider the City's  
24 desalination plant?

25 A I'm not familiar with the City's

1 desalination plant.

2 Q Do you know that it exists, or you  
3 totally didn't even know there was one?

4 MR. HARRIS: Can I ask -- I don't see  
5 this in the prefiled testimony, so I'm not sure  
6 where we're going with desalinization, so --

7 PRESIDING MEMBER MOORE: Well, actually  
8 the witness has answered the question, he doesn't  
9 know anything about it. And so I'm not sure.

10 MR. ELIE: Well, I'm just trying to  
11 figure out whether he didn't consider the desal  
12 plant, or he doesn't even know there was one.

13 PRESIDING MEMBER MOORE: What's the  
14 relationship of the desalinization plant to this?

15 MR. ELIE: The desal plant has wells  
16 that are within 1000 feet of the anticipated new  
17 plant. And under the above-ground tanks. And it  
18 has --

19 MR. HARRIS: This is all news --

20 MR. ELIE: -- it has to do with the  
21 City's water supply.

22 PRESIDING MEMBER MOORE: The  
23 significance of the 1000 feet? You haven't filed  
24 anything that would give us a parametric to judge  
25 what you're saying against. I have no idea, at

1 least officially, what the consequence of 1000  
2 feet or 5000 feet or any other number means in  
3 this context.

4 Do you have testimony that you've  
5 already filed on this?

6 MR. ELIE: No.

7 PRESIDING MEMBER MOORE: Then I'm not  
8 sure how we can deal with the line of your  
9 questioning. Why don't you go back to cross of  
10 the direct testimony that's already on the record.

11 MR. ELIE: Okay, that's fine.

12 BY MR. ELIE:

13 Q Dr. Walther, if you could turn to page 2  
14 of exhibit 134, your testimony. Specifically the  
15 paragraph which begins: The phase one ESA  
16 identified, et cetera. Do you see that paragraph?

17 A Sure.

18 Q The phase one site assessment actually  
19 identified approximately 20 environmental issues,  
20 is that right?

21 A Go on, yes.

22 Q But only six of them were identified for  
23 further investigation?

24 A A number of them have been resolved.

25 Q Okay. Now, the phase two that's

1 referenced in the following paragraph, that did  
2 not investigate under the above-ground tanks,  
3 correct?

4 A Correct.

5 Q And it also does not investigate under  
6 the existing plant, correct?

7 A Correct.

8 Q So, it's possible that there's  
9 contamination that exists which is unidentified by  
10 either the phase one or the phase two?

11 MR. HARRIS: I want to object on the  
12 basis it calls for speculation. Anything's  
13 possible.

14 HEARING OFFICER FAY: All right, we'll  
15 sustain that.

16 BY MR. ELIE:

17 Q You don't know one way or the other at  
18 this point, correct?

19 A Beyond the obvious materials that are  
20 placed below fuel oil tanks, which are there  
21 intentionally, we know of no other contamination.

22 Q Now are you aware of the Regional Water  
23 Quality Control Board concerns as expressed in  
24 exhibit B to exhibit 135, with respect to the Moss  
25 Landing project?

1                   MR. HARRIS: I'm sorry, can you help us?  
2           Is that exhibit B to Mr. Rohrer's testimony?

3                   MR. ELIE: Correct.

4                   MR. HARRIS: Okay, give us a minute,  
5           please.

6                   DR. WALTHER: Yes, familiar with the  
7           exhibit.

8           BY MR. ELIE:

9                   Q     PG&E is not represented in these  
10          proceedings, correct?

11          A     Not that I know of.

12          Q     Duke is the applicant responsible party?

13          A     Correct.

14          Q     If you could go to still on page 2, --

15          A     Where on page 2?

16          Q     The last paragraph, second sentence,  
17          talking about --

18          A     Testimony?

19          Q     Your testimony, exhibit 134.

20          A     Yes.

21          Q     Just want to be sure that we understand  
22          what was and was not part of the phase two. Is it  
23          correct that the phase two did not characterize,  
24          for example, the impacts to soil and groundwater  
25          under the above-ground tanks?

1 A Correct.

2 Q And did not consider impacts to soil and  
3 groundwater under the rock borders, transformers  
4 or other permanent structures?

5 A Underneath, no. In close proximity,  
6 yes.

7 Q And did not consider the impact to soil  
8 and groundwater under active RCRA units?

9 A Correct.

10 Q That would be triggered when those were  
11 closed?

12 A Correct.

13 Q If you could go to page 6 of your  
14 testimony, exhibit 134. Specifically the last  
15 paragraph. The paragraph that starts with: The  
16 project construction areas.

17 Is it true that the remediation  
18 requirements associated with the tanks may  
19 significantly alter the project timeline? In  
20 other words, if the DTSC, if there is  
21 contamination found, depending on DTSC's  
22 requirements, that could alter the timeline?

23 A Alter the timeline of the remediation,  
24 but not necessarily alter the timeline of the  
25 overall project.

1 Q In what sense do you mean that?

2 A There is adequate time in the current  
3 planning so that between tearing down tanks,  
4 looking underneath them, remediating whatever is  
5 necessary, getting approvals from the agencies  
6 for, we'll call it closure, that that can be  
7 accomplished adequately before other aspects of  
8 the project need to proceed.

9 Q So are you agreeing that Duke would need  
10 DTSC closure or approval before beginning  
11 construction where the above-ground tanks are  
12 right now?

13 A Certainly in some of the areas because  
14 of the actual layout.

15 Q On page 7 of your testimony, exhibit  
16 134, under the heading demolition of onsite fuel  
17 oil tanks, maybe it's implicit in here, but I  
18 didn't see it in your testimony. What will be the  
19 disposition of contaminated soil if any is found?

20 A Contaminated soil would most likely go  
21 to a class two landfill.

22 Q And that's contemplated in -- would that  
23 be something that would come under the DTSC  
24 oversight? Or is that something that's part of  
25 this Commission's process?

1           A     The DTSC would approve the plan for the  
2 disposal of that soil.

3           Q     If you could go to page 12 of your  
4 testimony, exhibit 134. And specifically the  
5 first full paragraph, talking about the November 1  
6 meeting.

7                     Have you had any discussions with anyone  
8 from PG&E as to the impact of the bankruptcy on  
9 this project?

10          A     No.

11          Q     Are you aware of the agreement between  
12 Duke and PG&E being part of the record in these  
13 hearings as to cleanup?

14          A     I'm aware of the sales agreement's  
15 existence, but not the question of whether it's an  
16 exhibit, or its exhibit number.

17          Q     And you say in here responsibility for  
18 the conduct of remediation remains with PG&E,  
19 which is consistent with the long-term ownership  
20 of the site prior to the sale to Duke in 1998.

21                     That refers to a private contract  
22 between Duke and PG&E, correct?

23          A     Correct.

24          Q     Regarding your testimony on page 12  
25 concerning COC WASTE-3, specifically the first

1 indented paragraph. You're recommending that the  
2 condition, the last sentence specifically, be  
3 reworded. And I was wondering if I could rewrite  
4 that for you, that last sentence? See if you  
5 agree or not.

6 Just tell me if you would agree with  
7 this or not. If this is an accurate  
8 recharacterization of what you're saying in the  
9 last sentence which begins with: If presale.

10 Duke shall be responsible to assure that  
11 PG&E complies with all regulatory directives and  
12 LORS regarding remediation of soil and groundwater  
13 contamination.

14 MR. HARRIS: I'm going to object to the  
15 question to the extent it asks for a legal opinion  
16 from a nonlegal witness.

17 PRESIDING MEMBER MOORE: So, let me see  
18 if I can clarify. Like Jeopardy or something, if  
19 you rephrase that and you said, is this what you  
20 mean, --

21 MR. ELIE: That's my question.

22 PRESIDING MEMBER MOORE: -- you read  
23 that and you said is that what you meant, is that  
24 what you meant?

25 DR. WALTHER: I would have to listen to

1 his words very carefully one more time to answer.

2 PRESIDING MEMBER MOORE: Let's ask him  
3 to repeat it one more time and see if he's saying  
4 what you mean.

5 MR. ELIE: I'll adopt that.

6 BY MR. ELIE:

7 Q Is this what you mean: Duke shall be  
8 responsible to assure that PG&E complies with all  
9 regulatory directives and LORS regarding  
10 remediation of soil and groundwater contamination?

11 MR. HARRIS: I'd restate my objection  
12 that it asks for a legal opinion.

13 DR. WALTHER: I could only kibbutz on  
14 that. It truly in my mind is a legal question.

15 PRESIDING MEMBER MOORE: Okay, that's  
16 sustained.

17 MR. ELIE: That's all the questions I  
18 have for this witness. Thank you, Dr. Walther.  
19 And it's nice to see another SUNY Albany grad.

20 (Laughter.)

21 HEARING OFFICER FAY: Coastal Alliance.

22 CROSS-EXAMINATION

23 BY MS. CHURNEY:

24 Q Dr. Walther, what is meant by your  
25 statement on page 9 of your prefiled testimony

1 that waste management issues will continue to be  
2 simplified and reduced in magnitude because spill  
3 oil is no longer shipped to the Morro Bay Power  
4 Plant, transferred to storage tanks, nor used in  
5 the generation of electricity?

6 Do you see where that is?

7 A On page 9, which paragraph?

8 Q It's the first paragraph.

9 A Okay, okay. I believe that the  
10 completely terminated use of fuel oil, transfer  
11 oil, displacement oil and all equipment associated  
12 with it and all activities associated with it  
13 simplifies the new project.

14 Q But hasn't that been true for the last  
15 six years? I mean is that even a consideration, I  
16 guess, is my question.

17 A It's not a practical consideration for  
18 operating the current or the future plant at that  
19 location.

20 Q Is the demolition of the offsite tank  
21 farm already a commitment by Duke?

22 A Of the offsite tank farm?

23 Q Correct.

24 A I have not paid a lot of attention to  
25 the status of that. I expect it to happen.

1           Q     Do you know whether that is a part of  
2     the project?

3           A     Definitely not.

4           Q     Regarding Duke's proposed modifications  
5     on page 10 to WASTE-2, Duke opposes any recycling  
6     goal for hazardous materials. And my question is  
7     why couldn't Duke, or shouldn't Duke be required  
8     to recycle all hazardous materials that are in  
9     fact recyclable under current technology?

10          A     Duke will recycle hazardous materials as  
11     it makes sense. We just don't believe that this  
12     is the appropriate place to state it in a  
13     conditions of certification. It will happen with  
14     the realities of waste management out there.

15          Q     So you are committing Duke to recycle  
16     all hazardous materials that under current  
17     technology can be recycled, is that correct?

18          A     Your wording has to be looked at more  
19     carefully.

20                 MR. HARRIS: I was going to object to  
21     the question being vague and ask you to restate  
22     it.

23     BY MS. CHURNEY:

24          Q     I guess I would just like confirmation  
25     that it is Duke's intent to recycle all hazardous

1 materials that can be recycled under current  
2 technology.

3 MR. HARRIS: And I'm going to restate my  
4 objection. Can you clarify the last part of your  
5 question. Do you mean technologically feasible in  
6 a lab somewhere? Or do you mean feasible as a  
7 practice under state law? Or something in  
8 between?

9 MS. CHURNEY: That they have --

10 MR. HARRIS: Can you help us out?

11 MS. CHURNEY: I'm sorry, that Duke has  
12 identified, itself, as technologically feasible.

13 DR. WALTHER: The spirit of the  
14 questions you're asking I have absolutely no doubt  
15 about since I communicate with people at Duke all  
16 the way from operating folks up to executives. So  
17 there's no question of the spirit.

18 But the way you state your question has  
19 to be very careful because can, will are still  
20 cost effective measured items in a business  
21 enterprise.

22 BY MS. CHURNEY:

23 Q Let me just refer you to what you've  
24 already, I believe, indicated in your testimony,  
25 and that is the hazardous materials related to the

1 SCR catalyst, and the oily water. And that's  
2 referenced in the application for certification.

3 Now, with those two hazardous wastes in  
4 mind only, again my question is will Duke recycle  
5 those materials which have been identified as  
6 feasible to recycle, even though they're  
7 hazardous?

8 A I guarantee you that anything that was  
9 put into the AFC tables where we labeled the  
10 amounts, the kinds, which are hazardous, which are  
11 nonhazardous, which will be treated onsite, which  
12 will be treated offsite, will be done exactly as  
13 it says in those tables.

14 Q Thank you. Turning to WASTE-3 now.  
15 What is meant by the sentence in the second  
16 paragraph on page 12: Duke is responsible for any  
17 contamination that may have occurred since the  
18 sale, but intends to facilitate the remediation of  
19 presale contamination through its role as current  
20 owner of the site?

21 A What it means is already happening.  
22 That Duke is actively participating in meetings  
23 with PG&E, DTSC, the Water Board, the CEC was  
24 involved in some of the same get-togethers.  
25 Because it's in Duke's self interest to facilitate

1 the process, help it happen, encourage all parties  
2 to move as fast as possible so that, indeed, the  
3 demolition and then the remediation of soil  
4 thereunder is accomplished as fast as possible.

5 Q Does Duke intend to perform all  
6 necessary remediation even if PG&E should fail to  
7 perform under its contractual agreement?

8 MR. HARRIS: I'm going to object again.  
9 It's asking for a legal opinion.

10 PRESIDING MEMBER MOORE: Sustained.

11 BY MS. CHURNEY:

12 Q Does Duke have any concerns about the  
13 ability of PG&E legally or financially to perform  
14 its remediation obligations?

15 MR. HARRIS: Again, I'll restate my  
16 objection.

17 MS. CHURNEY: I don't think that calls  
18 for a legal conclusion.

19 PRESIDING MEMBER MOORE: No, it doesn't  
20 call for a legal conclusion, but it calls for a  
21 conclusion about the capability of PG&E. And I'm  
22 not going to presume that they have direct  
23 knowledge of that, or frankly are in a position to  
24 comment.

25 I think if you confine your comments to

1 what they're capable of performing you're going to  
2 get a clearer answer.

3 MS. CHURNEY: I think it calls for  
4 whether they have concern, whether it's, you know,  
5 what it is based upon I think they can, if they  
6 feel more comfortable to identify. I'm not asking  
7 for knowledge that they don't have.

8 DR. WALTHER: I personally have no  
9 concern that PG&E will carry out its  
10 responsibilities in a timely manner.

11 BY MS. CHURNEY:

12 Q And what is that response based upon?

13 A Based on the fact that PG&E is one of my  
14 customers in general, and although I'm not an  
15 exact accountant of all their activities,  
16 everything I see indicates that they will  
17 accomplish this job just fine.

18 Q Do you believe that Duke's shortened  
19 construction demolition schedule will allow  
20 adequate time for the necessary protocols to be  
21 established and followed by both Duke and PG&E for  
22 any necessary remediation?

23 A I believe that the timetable that's  
24 being set in those meetings with all those parties  
25 present will be adequate.

1 MS. CHURNEY: No further questions.

2 PRESIDING MEMBER MOORE: Thank you. Is  
3 there any redirect?

4 MR. HARRIS: No.

5 PRESIDING MEMBER MOORE: All right, the  
6 Hearing Officer has some questions and then we're  
7 going to take a short break.

8 HEARING OFFICER FAY: Actually I believe  
9 all my questions have been addressed by the other  
10 parties, so I have no other questions.

11 Let's take a ten-minute break, and  
12 return promptly.

13 (Brief recess.)

14 MS. HOLMES: Excuse me, I think we'd  
15 like to have our witness testify on waste.

16 PRESIDING MEMBER MOORE: I'm sorry, you  
17 know what's happened is Mr. Fay, in absentia, has  
18 been watching the tapes and he's adopted my style  
19 of simply bypassing the staff anytime they don't  
20 have a witness. And leaping straight to the  
21 intervenors. It's time-tested.

22 (Laughter.)

23 HEARING OFFICER FAY: Thank you, Ms.  
24 Holmes, for that --

25 MS. HOLMES: Just a reminder.

1 (Parties speaking simultaneously.)

2 HEARING OFFICER FAY: All right, let's  
3 move to the staff's witness now.

4 MS. HOLMES: Thank you. Staff's witness  
5 on waste is Dr. Alvin Greenberg, and he needs to  
6 be sworn.

7 HEARING OFFICER FAY: Please swear the  
8 witness.

9 Whereupon,

10 ALVIN J. GREENBERG  
11 was called as a witness herein, and after first  
12 having been duly sworn, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MS. HOLMES:

16 Q Dr. Greenberg, did you prepare the waste  
17 management section of what has been identified as  
18 exhibit 115?

19 A Yes, I did.

20 Q And was a statement of your  
21 qualifications included therein?

22 A Yes.

23 Q Are the facts contained in that  
24 testimony true and correct?

25 A Yes.

1           Q     And do the opinions contained in that  
2     testimony represent your best professional  
3     judgment?

4           A     Yes, they do.

5           MS. HOLMES:  At this point I'd like to  
6     move that the waste management portion of exhibit  
7     115 be introduced.  Or do you want to wait until  
8     the end?

9           PRESIDING MEMBER MOORE:  Why don't you  
10    move it after he's finished.

11          MS. HOLMES:  Okay, thank you.

12    BY MS. HOLMES:

13          Q     Dr. Greenberg, Duke has stated that the  
14    design life of this facility is approximately 30  
15    years.  If the project were to operate in excess  
16    of 30 years would that change your conclusions  
17    about significant impacts or sufficiency of  
18    mitigation?

19          A     No, it would not.

20          Q     What I'd like to do now is to walk  
21    through the changes that were discussed earlier  
22    this morning by Duke.  Why don't we just go  
23    through them one by one.

24                 On WASTE-2, Duke has proposed three  
25    items.  The first is that hazardous waste be

1 specifically excluded. What's your response to  
2 that recommendation?

3 A I would not agree with that  
4 recommendation. While it is true what they have  
5 said in their paragraph following that  
6 recommendation on page 10 of their exhibit, that  
7 AB-939, the Integrated Waste Management Act of  
8 1989 does refer to solid waste as opposed to  
9 hazardous waste, there are other hazardous waste  
10 reduction and recycling requirements which would  
11 require Duke to prepare a hazardous waste  
12 management plan. And identify recycling and  
13 source reduction options.

14 I believe that it is important to  
15 maintain a stated goal for all waste, not just  
16 solid waste.

17 Q And let's move right on to the next  
18 issue, which is the stated goal. Staff had  
19 recommended specific numerical goals be included.  
20 And Duke has proposed deleting those numerical  
21 goals. Do you support that change?

22 A No, I don't. And the reason is that  
23 while, again it is true what Duke says, that these  
24 goals are for local agencies, the solid waste  
25 authority for the Morro Bay area indicated that

1 they are such a small community that they could be  
2 overwhelmed by a major industrial source of waste.

3 And therefore, I think it's appropriate  
4 for this particular project, in both its  
5 demolition waste and its operations waste, to  
6 assist the local waste management authority in  
7 achieving their 50 percent solid waste goals for  
8 recycling by having that as a goal for this  
9 particular project.

10 Q Will you also support allowing the CPM  
11 to make a decision that an alternative level is  
12 appropriate if Duke can demonstrate that the goal,  
13 as stated in the proposed condition, is  
14 infeasible?

15 A Yes. I think that's a very good way of  
16 dealing with the proposal from Duke.

17 Q Okay, thank you. And lastly, with  
18 respect to WASTE-2 there's a recommendation from  
19 Duke that the plans be divided into four project  
20 phases. Is that a change that you support?

21 A Yes, I do. I think that this is  
22 clarifying language and it's a good idea.

23 Q Let's move on to WASTE-3. First of all  
24 there's a discussion about having two plans  
25 prepared, rather than one. Is that a change that

1 you are in favor of?

2 A Yes.

3 Q Secondly there's a discussion in here  
4 that it actually spills over into other areas that  
5 have been raised having to do with the  
6 responsibility for cleanup and completion of  
7 cleanup and DTSC's role.

8 How does staff propose that the  
9 Committee direct Duke to deal with cleanup with  
10 respect to the timing of the construction phase of  
11 the project?

12 A Well, first of all, I think it's  
13 important that staff's intent here is that there  
14 be coordination between Duke and PG&E over the  
15 PG&E responsible sites of contamination.

16 And if we could really focus on the  
17 bottomline, and that is staff's concern that there  
18 be no construction activities involving any type  
19 of movement of hazardous waste and soils, any  
20 soils that might contain hazardous waste, or  
21 building any part of the project on top of soils  
22 that have contamination, that could clarify this  
23 issue.

24 So I would agree with what Duke is  
25 proposing here on page 12 of their exhibit if we

1 had a sentence added to that that in effect said,  
2 that in no event shall construction commence that  
3 involves movement of contaminated soil or  
4 construction on contaminated soil until the CPM  
5 determines that all necessary remediation has been  
6 accomplished. That's the goal that we're looking  
7 for.

8 Q Thank you. In addition, Duke  
9 recommended some minor change with respect to  
10 WASTE-5 and WASTE-6. Does staff oppose those  
11 changes?

12 A Not at all, we agree with those.

13 Q And what is your response to Duke's  
14 proposed change for WASTE-7?

15 A Upon further review of visual proposed  
16 condition of certification 4, I would recommend  
17 that we delete WASTE-7 and just go with VIS-4,  
18 that's the proposed conditions of certification  
19 Visual 4.

20 Ms. Holmes, if I may go back to number  
21 two, I -- I'm sorry -- the proposal to WASTE-3, I  
22 also have no problem with removing the reference  
23 to remedial investigation workplans or RI  
24 workplans, and just going with the small "w"  
25 workplans.

1                   I'm pleased that there is a designated  
2                   lead agency on the site now.  When, of course,  
3                   staff wrote this there had not been a designated  
4                   agency at that time.

5                   Q     Thank you.  Let's turn now to the City's  
6                   testimony which is contained in exhibit 135.  
7                   Again, similar to what we discussed a little while  
8                   ago with respect to WASTE-3, the City has  
9                   requested that a condition be imposed that insures  
10                  that cleanup requirements are met before  
11                  construction.

12                  Is it your testimony that the proposed  
13                  changes that you discussed with respect to WASTE-3  
14                  address that concern?

15                  A     Yes, it is.

16                  Q     And the City has also asked that any  
17                  Commission decision recognize the City's zero  
18                  tolerance policy as an applicable standard.  Do  
19                  you agree with that?

20                  A     Yes, I do.

21                  Q     And then finally I believe the City has  
22                  asked to be allowed to have a role in reviewing  
23                  remediation plans.  Is that something you can  
24                  support?

25                  A     Yes, I think we should include the City,

1 as well.

2 Q Okay, thank you.

3 MS. HOLMES: Those are all the questions  
4 I have for direct.

5 PRESIDING MEMBER MOORE: Thank you. For  
6 the applicant, cross-exam?

7 MR. HARRIS: We have no questions, thank  
8 you.

9 PRESIDING MEMBER MOORE: Great. Any  
10 questions from the City?

11 MR. ELIE: Ms. Holmes may have taken  
12 away all my questions. Let me just look real  
13 quick.

14 PRESIDING MEMBER MOORE: Sure.

15 MR. ELIE: No questions.

16 HEARING OFFICER FAY: That's great.  
17 Coastal Alliance.

18 CROSS-EXAMINATION

19 BY MS. CHURNEY:

20 Q You just indicated that if the plant  
21 operates in excess of 30 years none of your  
22 conclusions would change. But in reaching that  
23 conclusion did you take into account your  
24 testimony on pages 3.9-5 and -6 where you note and  
25 discuss the impacts of the new plant on existing

1 waste disposal facilities? And specifically that  
2 the local facilities are expected to operate only  
3 until 2020 and 2034.

4 So, in those cases those waste disposal  
5 facilities will be closed prior to the expiration  
6 of 30 years, and certainly after the 30 years.

7 A Yes, I did. And it's really a matter of  
8 professional judgment as to whether or not these  
9 waste facilities will be able to operate beyond  
10 those stated dates, as well as whether or not  
11 there will be the opening of newer waste  
12 facilities over the next 30 years.

13 Certainly it's been my professional  
14 experience that things do change. I've had the  
15 experience in a couple of landfills which, as they  
16 approached their legal life, made plans and these  
17 plans were approved for expansions. And those  
18 things do happen.

19 Plus there will be a continued effort on  
20 recycling and source reduction, as I've indicated,  
21 is necessary through their waste management plans.

22 Q And why isn't staff making Duke the  
23 responsible party for all remediation to be done  
24 in connection with the project?

25 MS. HOLMES: I'm going to object to that

1 question since the staff is not responsible for  
2 designating responsible parties.

3 PRESIDING MEMBER MOORE: Sustained.

4 HEARING OFFICER FAY: Well, in terms of  
5 the witness, yes. But, Ms. Holmes, why don't you  
6 just take a moment and explain for the record why  
7 this breaks down.

8 MS. HOLMES: I'm not even sure I  
9 understand the question. What staff has  
10 recommended in the proposed conditions of  
11 certification as modified by Dr. Greenberg this  
12 morning is to make sure that the contamination is  
13 dealt with.

14 In other words, if there is a time lag  
15 and PG&E, for perhaps the reasons that CAPE has  
16 suggested earlier this morning, is unable to  
17 complete the remediation in a timely fashion, the  
18 CPM would not allow construction to go forward  
19 until the remediation is complete.

20 In other words, we don't want to get  
21 involved in the fact that there's already been a  
22 site designation committee that has designated  
23 DTSC as the lead agency. PG&E has  
24 responsibilities. There's a number of issues  
25 going on with respect to hazardous waste

1 management.

2 We're just trying to make sure that the  
3 site, that there's no construction on the site  
4 until waste issues or hazardous materials issues  
5 are appropriately addressed.

6 I don't believe that -- staff's not  
7 responsible for designating who does what. We're  
8 simply trying to insure that the problem is  
9 addressed before construction commences.

10 MS. CHURNEY: So staff feels comfortable  
11 that the current conditions and the protocols in  
12 place would prevent Duke from rushing the  
13 construction after demolition of the tank farm  
14 before remediation had occurred?

15 MS. HOLMES: I believe that Dr.  
16 Greenberg can testify as to how he believes that  
17 condition would, in fact, do that. And that would  
18 be an appropriate question to ask him.

19 HEARING OFFICER FAY: Yeah. The reason  
20 I asked Ms. Holmes to comment is obviously there  
21 is different jurisdiction here. You have an  
22 existing facility; you have an existing agency to  
23 deal with hazardous materials.

24 The Energy Commission deals with power  
25 plant siting. And we cannot ignore existing

1 jurisdictions.

2 Dr. Greenberg, do you have the question  
3 in mind?

4 DR. GREENBERG: I certainly do, and that  
5 is indeed the intent, my intent and staff's intent  
6 here. That while we perhaps cannot address the  
7 complex legal question that you have raised, we  
8 can address the net result of that.

9 And that is structures that can be built  
10 on the site or construction activity such as earth  
11 removal and grading, that do not involve or impact  
12 on any hazardous waste investigation can be done.

13 But when it comes to further  
14 investigation and remediation of hazardous waste  
15 on the site, we want to assure you that our intent  
16 is that that will not be done until the site is  
17 adequately remediated.

18 MS. CHURNEY: Thank you.

19 HEARING OFFICER FAY: Any further  
20 questions? Any redirect?

21 MS. HOLMES: No redirect.

22 HEARING OFFICER FAY: All right.

23 MS. HOLMES: We do want to move our  
24 exhibit into evidence at this time. The waste  
25 management portion of exhibit 115.

1 HEARING OFFICER FAY: Any objection?

2 All right, so moved.

3 Now, thank you, Dr. Greenberg. Excused  
4 on this topic.

5 And now we'll move to the City.

6 MR. ELIE: Yes, the City calls John  
7 Rohrer. He needs to be sworn.

8 HEARING OFFICER FAY: Please swear the  
9 witness.  
10 Whereupon,

11 JOHN ROHRER  
12 was called as a witness herein, and after first  
13 having been duly sworn, was examined and testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. ELIE:

17 Q Please state your name, spelling your  
18 last name.

19 A My name is John Rohrer, R-o-h-r-e-r.

20 Q Thank you. Mr. Rohrer, what's your job?

21 A I'm a hydrogeologist with Conex H2O  
22 Science.

23 Q Would you give us a thumbnail of your  
24 qualifications and experience?

25 A Brief qualifications are I obtained a

1 bachelor of science degree in geological sciences  
2 from Lehigh University. And then followed that  
3 with a master of science in hydrology,  
4 specializing in subsurface hydrology, from the  
5 University of Arizona.

6 And have over seven years experience as  
7 environmental consultant. And recently have, in  
8 the State of California, been involved in at least  
9 one Superfund site investigation and remedial  
10 action; and several numerous tens of  
11 investigations in remedial characterizations.

12 Q By whom have you been retained and for  
13 what purpose?

14 A I've been retained by the City of Morro  
15 Bay to comment on portions of the waste management  
16 section, and later soil and water resources  
17 portions of the application for certification.

18 Q What did you review in preparation for  
19 your written and oral testimony?

20 A In preparation for today and other  
21 parts, I have reviewed portions of the application  
22 for certification, the preliminary staff  
23 assessment, the final staff assessment and  
24 comments to date by other experts and witnesses.

25 Q Now, exhibit 135 is your written

1 testimony with exhibits that we have submitted.

2 Are the facts stated therein true and correct to

3 the best of your knowledge?

4 A Yes, except I would change the title in  
5 that the testimony does not involve soil and water  
6 resources.

7 Q So it's just on waste management?

8 A It's predominately on waste -- or it is  
9 on waste management, yes.

10 Q One major concern that you have is  
11 something that's been talked about a little bit  
12 this morning is responsible party. Would you give  
13 a summary of your testimony in that respect?

14 A In summary it's been briefly covered  
15 today by both Dr. Walther and Dr. Greenberg. In  
16 general I would say that the role between PG&E and  
17 Duke as far as responsibility for contamination  
18 needs to be clarified as part of the conditions of  
19 certification what happens as already suggested in  
20 WASTE-3 would probably be appropriate.

21 And in general, the concern comes about  
22 from an April 27, 2001 letter that is attachment,  
23 I believe, B to my testimony; which basically  
24 covers an experience by the Regional Water Quality  
25 Control Board with the Moss Landing Power Plant,

1 where even though there were -- DTSC was lead  
2 agency, there were meetings to talk about remedial  
3 investigation and workplans.

4 Even though all that happened the  
5 Regional Board expressed some concern over the  
6 timeline, as outlined in the letter by the  
7 Regional Board. Some portions of what was  
8 dictated by the Regional Board, in that they  
9 allowed certain soil levels to remain in the soil,  
10 certain levels of contamination to remain in the  
11 soil, that was contingent on groundwater  
12 monitoring occurring.

13 As stated in the letter that groundwater  
14 monitoring had not occurred at the time that the  
15 letter had been written. And that's where the  
16 connection between the applicant in some way,  
17 shape or form, being held that regardless of the  
18 responsibility for the cleanup, whether it's  
19 PG&E's or Duke's, is irrelevant. But before  
20 construction activities commence that the closure  
21 recommendations, or that appropriate investigation  
22 of remediation are carried out before basically  
23 construction begins, where you can't go back and  
24 re-remediate the soil if it's underneath a new  
25 power plant or a new area of the plant.

1 Q Now -- I'm sorry, go ahead.

2 A I would say that what's been suggested  
3 by Dr. Greenberg is very close to what the City  
4 would like to see in there to make sure that that  
5 happens.

6 Q So if the final conditions of  
7 certification included the essence of Dr.  
8 Greenberg's testimony today, you'd be more  
9 comfortable?

10 A Yes, if there was a specification that  
11 whether it's the CPM or whoever it is, the main  
12 specification should be that construction  
13 activities are not allowed to commence until --  
14 and it may not be that closure is met in terms of  
15 the remediation -- but that the regional board,  
16 the DTSC, and I guess that will be through the  
17 DTSC as they're now the lead agency, that the  
18 regulatory agencies are comfortable that that  
19 construction activity can commence.

20 It may not be that there's full closure  
21 at a particular portion, there may be ongoing  
22 groundwater remediation that may not involve  
23 actually digging out the soil underneath an area.  
24 But, yes, that condition includes some sort of  
25 actual checkoff by somebody involved in the

1 process, whether it's the CPM, that would be  
2 appropriate.

3 Q Have you finished your summary on the  
4 responsible party issue?

5 A Yes.

6 Q Okay. You also had testimony on LORS  
7 and the Morro Bay Municipal Code. Why don't you  
8 summarize that testimony?

9 A Generally the LOR that's applicable that  
10 was not included in the waste management section  
11 refers to the City of Morro Bay's zero tolerance  
12 policy, which generally is contained in two parts  
13 of the City of Morro Bay's Municipal Code.

14 And it was recently used related to some  
15 contamination with a former Shell Station at  
16 Highway 40, Main Street, and Highway 1.

17 The LOR was actually cited in the soil  
18 and water resources section. It would be  
19 acceptable to take that citation and move it into  
20 the waste management section. The waste  
21 management section, that was where it's more  
22 applicable.

23 And it relates to the fact that the City  
24 has certain powers related to any threat or  
25 nuisance related to their ability to provide

1 groundwater to their citizens. That would mean  
2 that they have some sort of regulatory authority  
3 in a case, if there is confirmed groundwater  
4 contamination that may threaten their water  
5 resources.

6 Q And the City has, in fact, declared a  
7 water emergency?

8 A The City is under a water emergency  
9 still related to that other issue.

10 Q What are the alternative sources of  
11 water for the City?

12 A The reason an emergency was declared is  
13 partially related to the fact that that particular  
14 wellfield, the Morro Wellfield, which was  
15 threatened by MTBE contamination, represents a  
16 fair portion of the City's reserve for drought or  
17 emergency supply.

18 The City generally is provided water  
19 through the State Water Project. And any other  
20 source, if the Project should be interrupted or  
21 did go down actually for regular maintenance,  
22 their alternatives are the Morro Wellfield, the  
23 Chorro Wellfield, which has pumping restrictions  
24 related to flow.

25 And then also now part of the settlement

1 agreement with Shell Oil as far as that other  
2 project is the desalination plant is being  
3 basically was in a state where it could not be  
4 operated, and is coming up to that state where it  
5 could be operated.

6 So there are other water resources, but  
7 the Morro Wellfield represented one of those water  
8 resources which is partially why the emergency was  
9 declared.

10 Q And we'll bring this up more in your  
11 testimony on soil and water resources. But just  
12 for clarification of why we're going there this  
13 morning, the desal plant brings in water from  
14 wells?

15 A Correct. One of the primary sources of  
16 water for the desalination plant is seven wells  
17 located generally along the Embarcadero.

18 Q And what is the proximity of those wells  
19 to the above-ground storage tanks?

20 A It depends exactly on which well. There  
21 are five wells that are operational. But  
22 basically one well is to the east of the plant  
23 entrance, and the others are to the west. And  
24 they're less than 1000 feet from sort of the  
25 center of the above-ground tank area.

1 Q Thank you.

2 MR. ELIE: Do you want me to move the  
3 exhibit now, or wait until we're done with cross?

4 HEARING OFFICER FAY: Why don't you go  
5 ahead and move it in.

6 MR. ELIE: I'd move that exhibit 135 be  
7 admitted into evidence.

8 HEARING OFFICER FAY: Any objection?

9 MS. HOLMES: No objection.

10 MR. HARRIS: No.

11 HEARING OFFICER FAY: All right, it's  
12 received into evidence.

13 MR. ELIE: The witness is available.

14 HEARING OFFICER FAY: Mr. Harris, do you  
15 have any questions of the witness?

16 MR. HARRIS: A few, yes.

17 CROSS-EXAMINATION

18 BY MR. HARRIS:

19 Q Let me start with probably the most  
20 unsavory question of all. Are you an attorney?

21 A I'm not an attorney.

22 Q Okay. So in your testimony, your  
23 testimony should not be construed as offering  
24 legal opinions, is that correct?

25 A That is correct.

1           Q     Thank you.  Let's talk about your  
2           testimony on the responsible party.  You've  
3           mentioned basically that you want to see a  
4           protocol put in place similarly described by Dr.  
5           Greenberg.

6                     Are you asking for anything that's  
7           different than existing law currently?

8                     MR. ELIE:  Objection, calls for a legal  
9           conclusion.  He just told them he wasn't a lawyer.

10                    MR. HARRIS:  Let me restate the  
11           question.

12                    HEARING OFFICER FAY:  Restate the  
13           question.

14                    MR. HARRIS:  Touch,.

15                    (Laughter.)

16           BY MR. HARRIS:

17           Q     Given your vast understanding of the  
18           regulatory scheme, outside of the legal context,  
19           in that regulatory scheme are you asking for  
20           anything that is outside the existing scheme that  
21           you've testified about?

22                    MR. ELIE:  Same objection.

23                    HEARING OFFICER FAY:  Well, Mr. Harris,  
24           let's narrow this to his familiarity with that  
25           scheme.  And it's clearly not a legal conclusion.

1                   MR. HARRIS: I can rephrase if it helps.

2           BY MR. HARRIS:

3           Q     Are there any additional requirements  
4           that are created by this process, by the Energy  
5           Commission process, so in other words other than  
6           the LORS compliance you've analyzed, are there  
7           additional regulatory compliance that arise  
8           strictly out of the fact that this project is  
9           before the Energy Commission that you're aware of?

10          A     As I am aware, and as was the case at  
11          Moss Landing, there's the water code and other  
12          applicable regulations that are, I believe, the  
13          responsibility right now of DTSC in this  
14          particular case. So I think that answers it. The  
15          answer is probably no.

16          Q     Okay, thank you. In terms of the City  
17          of Morro Bay's zero tolerance policy, you've  
18          mentioned in your testimony Morro Bay codes, and I  
19          think it's chapter 18.14, is that correct?

20          A     That's correct.

21          Q     And did I hear you say there were two in  
22          play there? What's the other one?

23          A     Well, it's two sections. Sorry. It's  
24          two sections of that same chapter.

25          Q     And I'm sorry, what's the second

1 section?

2 A The second section is section 13.0430,  
3 which is related to the water -- it's not water  
4 district, but the water utility's ability to serve  
5 customers.

6 Q Okay. Now, again, taking a look at your  
7 prefiled testimony on the top of page 4 of my  
8 version, I hope I have the same as you.

9 A We'll find out.

10 Q Right above the citation for chapter  
11 18.14.

12 MR. ELIE: I think it's 8.14.

13 MR. HARRIS: I'm sorry, 8.14.

14 MR. ROHRER: Correct.

15 BY MR. HARRIS:

16 Q That section, before the indented quote  
17 it says: This is the section that relates to  
18 public nuisance law, is that correct?

19 A That's correct.

20 Q Okay, so again you're dealing with  
21 nuisance and not something in a regulatory  
22 setting. That's the citation you've provided, is  
23 that correct?

24 A That's correct, it's a portion of the  
25 City of Morro Bay Municipal Code.

1 Q That relates to nuisance?

2 A That relates to nuisance, yes.

3 Q Thank you. The next paragraph down  
4 after the indentation, 13.04.030, that's the other  
5 section that you've cited, is that correct?

6 A That's correct.

7 Q And at the end of that paragraph, the  
8 very last word there is the word misdemeanor. So  
9 anybody who violates is guilty of a misdemeanor.  
10 So is that section then a criminal law  
11 section?

12 MR. ELIE: Objection, calls for a legal  
13 conclusion.

14 PRESIDING MEMBER MOORE: Yeah, if you  
15 want to ask him whether that is the one he's  
16 referring to because it's explicit, then I think  
17 that's fair game. But to ask him to draw the  
18 conclusion that his lawyer might draw is probably  
19 out of bounds.

20 MR. HARRIS: Okay. I just wanted to see  
21 whether he cited to a misdemeanor provision or  
22 not. So let me ask the question separately, then.

23 BY MR. HARRIS:

24 Q That provision, is that, to your  
25 understanding, a true and correct restatement of

1 that provision?

2 A I believe so.

3 Q Thank you.

4 MR. HARRIS: I think that's it for me.

5 PRESIDING MEMBER MOORE: Thank you.

6 HEARING OFFICER FAY: Okay, does the  
7 staff have any questions of the City's witness?

8 MS. HOLMES: No.

9 HEARING OFFICER FAY: Does CAPE have any  
10 questions?

11 MS. CHURNEY: No.

12 HEARING OFFICER FAY: Any redirect?

13 MR. ELIE: No redirect.

14 HEARING OFFICER FAY: Okay, thank you  
15 very much, Mr. Rohrer.

16 MR. ROHRER: Thank you.

17 HEARING OFFICER FAY: You're excused.

18 We do not have any testimony from the Coastal  
19 Alliance on waste management, is that correct?

20 MS. CHURNEY: That is correct.

21 HEARING OFFICER FAY: Okay, good. We  
22 just want to be sure we're not leaving anybody  
23 behind.

24 So what we want to do during the  
25 hearings is after each topic area give the public

1 a chance to make any comments regarding that topic  
2 area.

3 So, for instance, if you came this  
4 morning to voice your concerns about waste  
5 management, you don't need to stay till the end of  
6 the day. You can make those comments now.

7 So, I'd like to ask if there's any  
8 public comment on the topic of waste management.  
9 Okay, I see nobody indicating that they'd like to  
10 speak on that subject, so that will close our  
11 taking of evidence on the topic of waste  
12 management for the project.

13 And now we'd like to move --

14 CHAIRMAN KEESE: I would just like to  
15 say that I hope this has set the tone for the rest  
16 of this hearing, because I believe we've had very  
17 responsible testimony by all of the parties and in  
18 all aspects, the preliminary testimony, the  
19 responses.

20 And I believe I've seen a coming-  
21 together to try to solve issues here. So I think  
22 if that sets the tone for the rest of this process  
23 I will be very pleased.

24 Thank you for all the parties.

25 HEARING OFFICER FAY: Thank you. We'd

1 now like to move forward and take evidence on the  
2 topic of hazardous materials. The Committee has  
3 considered the staff objection, and subject to the  
4 provision that Mr. Harris made of withholding his  
5 backup material and simply presenting the  
6 corrections as corrections to testimony, we will  
7 move forward.

8 But we'll afford the staff the right of  
9 rebuttal at their option a month from now in the  
10 next set of hearings. And if they choose to  
11 exercise that, applicant will return with their  
12 witness.

13 MS. HOLMES: I'm sorry, I didn't  
14 understand the ruling. Is the evidence, the  
15 attachments to the corrections, are those being  
16 admitted?

17 HEARING OFFICER FAY: Not at this time.

18 MS. HOLMES: Thank you.

19 HEARING OFFICER FAY: However, staff  
20 does have the option of reviewing that material  
21 and returning with rebuttal testimony if they  
22 wish. And if the one-month timeframe is not  
23 adequate, you'll need to let us know.

24 But at the time that you are able to  
25 come back, applicant will be required to bring

1 their witness.

2 MS. HOLMES: All right. Staff then will  
3 let the Committee know how it intends to proceed.  
4 I don't know that I can let you know that by the  
5 end of this week at the scheduling conference, but  
6 I feel fairly confident by the end of hearings  
7 next week I will be able to let you know what we  
8 propose.

9 HEARING OFFICER FAY: Okay, --

10 MS. HOLMES: Thank you.

11 HEARING OFFICER FAY: -- let's do that.

12 All right.

13 MR. HARRIS: Mr. Fay, point of  
14 clarification. So we come back a month from now,  
15 and that would be strictly limited to the issue of  
16 the modeling and the attachments. It wouldn't be  
17 the entire --

18 HEARING OFFICER FAY: That's right.

19 MR. HARRIS: -- subject matter, is that  
20 correct?

21 HEARING OFFICER FAY: Rebuttal would be  
22 limited to the objection that staff raised.

23 MR. HARRIS: Okay.

24 HEARING OFFICER FAY: And I want to make  
25 a caveat in terms of a month from now, if staff is

1 able to respond and that timeframe doesn't work,  
2 then the Committee will be receptive to what their  
3 time needs are. But right now I'm anticipating  
4 that any rebuttal would occur then.

5 MS. HOLMES: Does that mean that those  
6 attachments will come into evidence at the next  
7 set of hearings?

8 HEARING OFFICER FAY: That's not clear  
9 at this time.

10 MR. HARRIS: If I could, my  
11 understanding would be that they have been  
12 numbered, but you could take them out. They  
13 haven't been moved into evidence, and that's the  
14 Committee's decision.

15 Also, further, if I could, one more.  
16 It's my understanding that staff could look at  
17 those and decide that they don't want to cross-  
18 examine.

19 PRESIDING MEMBER MOORE: Right.

20 MR. HARRIS: And we would close at that  
21 point.

22 PRESIDING MEMBER MOORE: That's right.

23 HEARING OFFICER FAY: That's correct.

24 MR. HARRIS: Okay.

25 HEARING OFFICER FAY: All right, with

1 that understanding, Mr. Harris, are you prepared  
2 to move ahead on

3 MR. HARRIS: I am. I have actually one  
4 witness for direct; and then I have two more  
5 witnesses available for cross. So, the cross-  
6 examination will be as a panel.

7 I guess what I'd like to do is have  
8 those other two witnesses sworn right now. I'll  
9 have Dr. Walther walk me through the original  
10 beginning portion. Once he gets his  
11 qualifications I'll stop and ask the other  
12 witnesses to provide briefly their qualifications,  
13 as well. And then we'll continue on, if that's  
14 okay.

15 HEARING OFFICER FAY: All right. Will  
16 the witnesses please stand and be sworn.

17 MR. HARRIS: Dr. Walther doesn't need to  
18 be sworn again, is that correct?

19 HEARING OFFICER FAY: Yes.

20 Whereupon,

21 ERIC G. WALTHER  
22 was called as a witness herein, and having been  
23 previously duly sworn, was examined and testified  
24 further as follows:

25 //

1 Whereupon,

2 JAMES WHITE and BRENT A. WAGGENER

3 were called as witnesses herein, and after first

4 having been duly sworn, were examined and

5 testified as follows:

6 MR. HARRIS: Thank you. Again, we'll

7 begin with Dr. Walther.

8 DIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q Would you again state your name for the  
11 record.

12 DR. WALTHER: Eric Walther.

13 MR. HARRIS: And what subject matter  
14 testimony are you here to sponsor today?

15 DR. WALTHER: Hazardous materials  
16 management.

17 MR. HARRIS: And were the documents  
18 you're sponsoring previously identified in your  
19 testimony?

20 DR. WALTHER: Yes.

21 MR. HARRIS: I direct your attention to  
22 page 16 of the testimony. The exhibits there are  
23 exhibit 4, exhibit 37, exhibit 47, exhibit 51,  
24 exhibit 73, exhibit 90, exhibit 134, which is our  
25 testimony for this group of items.

1                   And I will also ask that the correction  
2                   be given a number, but not moved into evidence,  
3                   subject to the discussion we just had previously.

4                   HEARING OFFICER FAY: The correction  
5                   will be exhibit 136, marked for identification.

6                   MR. HARRIS: Thank you.

7                   BY MR. HARRIS:

8                   Q       Are there any changes, corrections or  
9                   clarifications for your testimony?

10                  DR. WALTHER: Just one refinement to  
11                  table 2, which was part of the testimony. In the  
12                  spirit of Chairman Keese, the gasoline line item  
13                  will not be present in the project. There will  
14                  not be a dispensing facility for gasoline as part  
15                  of the project.

16                  MR. HARRIS: So the correction, then, is  
17                  on table 2 to delete the cell that refers to  
18                  gasoline, is that correct?

19                  DR. WALTHER: Correct.

20                  MR. HARRIS: And also just for  
21                  clarification the correction that was previously  
22                  marked 136, that has a change to a paragraph in  
23                  your testimony on page I think it's 27, is that  
24                  correct?

25                  DR. WALTHER: Correct.

1                   MR. HARRIS: All right. With those  
2 changes acknowledged, do you have any other  
3 changes or corrections or clarifications?

4                   DR. WALTHER: No.

5                   MR. HARRIS: Now, were these documents  
6 prepared either by you or at your direction?

7                   DR. WALTHER: Yes.

8                   MR. HARRIS: And are the facts stated  
9 therein true to the best of your knowledge?

10                  DR. WALTHER: Yes.

11                  MR. HARRIS: Are the opinions stated  
12 therein your own?

13                  DR. WALTHER: Yes.

14                  MR. HARRIS: And do you adopt this as  
15 your testimony for the proceeding?

16                  DR. WALTHER: Yes.

17                  MR. HARRIS: Dr. Walther has provided  
18 his qualifications previously. I'd actually ask  
19 the other two witnesses now to introduce  
20 themselves and then provide just a very brief  
21 summary of their professional and educational  
22 qualifications. I'll start with Mr. James White.

23                         James, can you introduce yourself,  
24 please and cover your qualifications.

25                         MR. WHITE: Again my name is James

1 White. I have a degree in biochemistry from  
2 CalPoly State University. For the last ten years  
3 I've worked at the Morro Bay Power Plant; the  
4 first five years as the plant chemist; next five  
5 years as the environmental scientist for the  
6 facility responsible for all aspects of  
7 environmental compliance, including hazardous  
8 materials management.

9 Recently I have a new position as Duke  
10 Energy's Regional Environmental Manager.

11 MR. HARRIS: Thank you. I'd like to  
12 turn now to Mr. Waggener. Would you introduce  
13 yourself and briefly state your qualifications.

14 MR. WAGGENER: My name is Brent  
15 Waggener. I'm a degreed nuclear engineer. I have  
16 a license in fire protection engineering. And I  
17 also have a project management professional  
18 certification.

19 I've been in the power industry working  
20 in the engineering capacity and project management  
21 capacity for over 20 years.

22 MR. HARRIS: Thank you. I'd like to  
23 return to the direct testimony of Dr. Walther.

24 Dr. Walther, will you please provide a  
25 short summary of your testimony for the Committee.

1 DR. WALTHER: As with waste management,  
2 an important distinction for this project is that  
3 it's been operating safely with the use of  
4 hazardous materials since 1955.

5 The staff there are going to continue  
6 with their proven ability to handle the hazardous  
7 materials safely.

8 Numerous meetings have been held with  
9 the Fire Department, Chief Jeff Jones and his  
10 consultant, Jim Hunt. And they have definitely  
11 confirmed that over these many years I'll call it  
12 things have been run right for hazardous materials  
13 and the project will go through what we're going  
14 to discuss in a little while, safety management  
15 plans subject to their review, which includes  
16 their responsibilities on hazardous materials as a  
17 Fire Department. And we'll be talking about their  
18 fire protection a little bit later in the other  
19 subject.

20 The project has direct features which  
21 are a benefit on hazardous materials, because  
22 there's no such thing as operating a power plant  
23 without hazardous materials. And therefore the  
24 key, just like in all of our use of gasoline and  
25 other hazardous materials, is to it safely. To

1 make sure people are trained; that the equipment  
2 is right; that it's used right; and you end up  
3 with a safe environment just like at the local  
4 gasoline station.

5 This project selected aqueous ammonia as  
6 its choice versus the more dangerous anhydrous  
7 ammonia for the use of SCR and NOx control. This  
8 project uses sodium hypochlorite for biofouling  
9 control. It's used safely at a low concentration.  
10 And we can always discuss details, but it will  
11 also have a safety management plan.

12 This project desires to use hydrazine  
13 under the unique circumstances that this project  
14 has used aqueous hydrazine, not to be confused  
15 with anybody's familiarity with solid hydrazine as  
16 a rocket propellant. But it will use aqueous  
17 hydrazine safely as it has at least since 1962.

18 And we will talk about some of the  
19 provisions of why all of that that I just  
20 discussed is safe.

21 The design features of the plant on a  
22 physical basis, besides those choices of  
23 materials, includes a location of the aqueous  
24 ammonia, storage, and unloading facility almost  
25 dead in the center because that's the safest

1 place. It is most distant from the boundaries and  
2 the community.

3 The aqueous ammonia and the aqueous  
4 hydrazine have not just primary, not just  
5 secondary, but unlike many plants, full tertiary  
6 containment. Because the aqueous ammonia has not  
7 only its storage tank, not only the concrete basin  
8 around it, but a tertiary underground vault  
9 covered by even a fourth measure of the use of  
10 industrial grade polymer balls that reduce the  
11 evaporation even if there were liquid dropped down  
12 by over 90 percent.

13 The aqueous hydrazine is in a unique  
14 facility, itself. It not only has a stainless  
15 steel 304 tote that is almost indestructible with  
16 rounded corners. I would be hard pressed to even  
17 think how it could be hurt. And with indented  
18 fittings to make sure they can't be knocked off.

19 It sits in a complete secondary concrete  
20 containment on which wall is built a tertiary  
21 building. And United States Environmental  
22 Protection Agency has made crystal clear that in  
23 an enclosure of that nature they would allow that  
24 the indeed vaporization of volatilization that  
25 could take place is reduced by another factor of

1 ten.

2 Which is why the hydrazine, as it's been  
3 used, and will be used in the new project, even if  
4 it's a slightly rebuilt facility, but the same  
5 design concepts, it cannot reach the community,  
6 period. Simple.

7 We can go through modeling details later  
8 on, but already the United States Environmental  
9 Protection Agency and the California Office of  
10 Environmental Services have made crystal clear in  
11 their regulations that if you use aqueous  
12 hydrazine in quantities less than 1000 pounds,  
13 which is the situation here, there is no need for  
14 an offsite consequence analysis.

15 The reason that both the federal and  
16 state agencies made that decision is because they  
17 know from their own modeling and experience that  
18 when you operate below those thresholds you cannot  
19 reach distances that would be threats to a  
20 community, and therefore they don't require an  
21 offsite consequence analysis.

22 Therefore, the discussion of modeling is  
23 probably moot. But modeling was done.

24 The design features are pretty much  
25 that. And so at this point I think the testimony

1 could really move to specific changes, what we  
2 would recommend, in the conditions of  
3 certification.

4 We certainly agree with CEC Staff in the  
5 FSA that with the use of the safety management  
6 plans, which need to be reviewed and commented on  
7 by the Fire Department, that there will be no  
8 significant impacts in the use of these materials.  
9 And we will get more detail on each condition.

10 MR. HARRIS: Thank you. I want to come  
11 back to a couple of the issues you raised towards  
12 the end of your testimony, but let's go through  
13 each of your suggested changes to the conditions  
14 of certification.

15 We'll start with HAZ-1 and your  
16 testimony, I think, begins on page 28.

17 DR. WALTHER: That is simply a clerical  
18 modification of the appendices that were provided  
19 in the FSA to make sure that HAZ-1 refers to  
20 appendix D, not appendix C.

21 MR. HARRIS: Okay. So simply a  
22 typographical error and you want to correct that,  
23 point that out so it can be corrected?

24 DR. WALTHER: In HAZ-1.

25 MR. HARRIS: Right.

1 DR. WALTHER: I'll have to just look up  
2 the exact sentence. It's a short condition.  
3 First sentence, second line, appendix C simply  
4 becomes appendix D.

5 MR. HARRIS: Okay, so it's  
6 typographical, purely.

7 Let's move to HAZ-2. Now you've made  
8 some recommendations of clarifications there, as  
9 well. Can you describe those for the Committee  
10 please.

11 DR. WALTHER: HAZ-2 was stated in a way  
12 that I believe simply could use improved English  
13 in the way that the CPM, who has review and  
14 approval authority of the risk management plan,  
15 would look at, and the applicant, the project  
16 owner, would review the San Luis Obispo County,  
17 it's actually the Department of Health --  
18 Environmental Services.

19 When they review the document we're  
20 recommending that the wording simply say that Duke  
21 will reconcile the comments of the San Luis Obispo  
22 County Health Agency Division of Environmental  
23 Health, rather than as it's currently worded, that  
24 the owner shall include all recommendations.

25 MR. HARRIS: And that's basically to get

1 to the idea of review and comment, is that  
2 correct?

3 DR. WALTHER: Correct.

4 MR. HARRIS: Okay. Let's move then if  
5 we can to HAZ-3 and the comments there.

6 DR. WALTHER: On HAZ-3 we believe that  
7 the concept of the safety management plan is  
8 fundamental. So does the Morro Bay Fire  
9 Department and their consultant, Jim Hunt.

10 We believe that HAZ-3 should simply be  
11 expanded and be consistent with regulations so  
12 that aqueous ammonia, aqueous sodium hypochlorite,  
13 which are already in it, are simply joined by  
14 aqueous hydrazine. All subject to the same  
15 requirements.

16 And the Fire Department has told us that  
17 whatever chemical we go with, as long as there are  
18 adequate safety management plans, and they are  
19 involved in the review and comment, because  
20 indeed, the Fire Department has been responsible  
21 for the community in the sense of that hazardous  
22 material for decades. And believe that they have  
23 accomplished their responsibility appropriately.

24 MR. HARRIS: Okay, so the proposed  
25 change is to add into that sentence aqueous

1 hydrazine in between or in addition to aqueous  
2 ammonia and the aqueous sodium hypochlorite.

3 DR. WALTHER: Correct.

4 MR. HARRIS: Thank you. Let's move now  
5 to condition 4. What are your comments there?

6 DR. WALTHER: Condition 4 is a  
7 recommendation for just slight simplification.  
8 The current condition has three codes for storage  
9 tanks: the ASME pressure vessel code; ANSI case  
10 61.6 code; API 620 code.

11 On Moss Landing we already ironed this  
12 out. The only code that's appropriate to the tanks  
13 that are being proposed for aqueous ammonia is the  
14 API 620. We're not dealing with pressurized tanks  
15 such as anhydrous ammonia. So although it was all  
16 inclusive, we don't need the other two codes  
17 specified.

18 MR. HARRIS: Okay, thank you. And then  
19 finally the comments on HAZ-7.

20 DR. WALTHER: HAZ-5 is okay. HAZ-6 is  
21 okay. HAZ-7, we believe that staff has properly  
22 concluded in their errata to eliminate HAZ-7.

23 MR. HARRIS: So you agree with that  
24 deletion?

25 DR. WALTHER: Yes.

1                   MR. HARRIS: Okay, I want to go back  
2                   just a little bit to the discussion we had about  
3                   the modeling and the issues related to the aqueous  
4                   hydrazine.

5                   You made a statement in your testimony  
6                   that I want you to kind of expand upon, that the  
7                   modeling here was almost moot from your  
8                   perspective.

9                   Again, can you explain whether offsite  
10                  consequences are typically done for hydrazine?

11                  DR. WALTHER: As I mentioned, the  
12                  agencies, U.S. Environmental Protection Agency,  
13                  under section 612(r) of the Clean Act and the  
14                  implementing regulations, and the Office of  
15                  Emergency Services of California have clear  
16                  guidance documents for numerous hazardous  
17                  materials of the thresholds beyond which you would  
18                  have to do an offsite consequence analysis in the  
19                  preparation either of an AFC, in our case, under  
20                  CEC regulations and guidance from staff, or for a  
21                  risk management plan.

22                  Aqueous ammonia, we exceed the  
23                  threshold; the modeling is done. You've got the  
24                  results, it's in the AFC.

25                  For hypochlorite, for hydrazine and some

1 other hydrogens used in the power plant, and it  
2 also does not exceed the criteria set by those  
3 agencies. Modeling is not needed.

4 We acknowledge, as counsel for staff  
5 noted, that they had asked for modeling, but given  
6 the regulatory structure, despite their interest,  
7 we did not think modeling was required, so we did  
8 not initiate it.

9 The only reason we did any modeling at  
10 all is that CEC Staff elected to model.

11 MR. HARRIS: So this Committee then  
12 could make a decision on this case without any  
13 reference to any modeling, let alone the issues  
14 related to which model is correct and the input  
15 files?

16 DR. WALTHER: I believe so. In fact, I  
17 believe the Committee, the Commission would be on  
18 firmer ground to make the decisions based on  
19 fundamental regulatory structure of what materials  
20 do require even modeling at all versus no  
21 modeling. Because otherwise testimony gets into  
22 the details of modeling and one expert maybe  
23 disagreeing with another. And we certainly can do  
24 that if you'd like, but I don't believe there's  
25 any need to.

1           Hydrazine is, in the Morro Bay case, a  
2 proven acceptably safe managed material. There  
3 could be other power plants that you decide  
4 otherwise with perhaps staff from other companies  
5 who are not experienced in hydrazine, and make a  
6 different decision.

7           But for Morro Bay I think it's simply a  
8 continuation of an acceptably safe practice. No  
9 different than your willingness, under regular  
10 principles, of accepting that hydrogen is used in  
11 power plants, aqueous ammonia is used in power  
12 plants, aqueous sodium hydrochloride is used in  
13 power plants. And those are just some of  
14 hazardous materials that are required to operate a  
15 power plant.

16           MR. HARRIS: I want to move on to the  
17 discussion of the alternative chemical, the  
18 carbonylhydrazide.

19           CHAIRMAN KEESE: May I ask a question  
20 while you're there. How much hydrazine, what is  
21 the quantity that's stored?

22           DR. WALTHER: The actual quantity of  
23 hydrazine is less than 1000 threshold, and it  
24 doesn't exceed 990 pounds in a particular tote  
25 that is provided by industrial vendors for aqueous

1 hydrazine at 35 percent concentration.

2 MR. HARRIS: I wanted to talk a little  
3 bit about carbohydrazide, and I hope I've got that  
4 correct. Eric, if you could fix -- you've been  
5 working on me all week on that one.

6 By way of background, there was a point  
7 at which Duke felt that the hydrazine issue,  
8 hydrazine was not going to be needed. We were  
9 willing to capitulate on that issue. And we  
10 acknowledged to staff that from their perspective  
11 there may have been a change in position on that.

12 But let me explain the context of that,  
13 and ask you -- actually ask you to explain the  
14 context for that.

15 Duke has had some experience with the  
16 alternative chemical, carbohydrazide, at other  
17 facilities. Can you briefly describe that  
18 experience and why that has led you to recommend  
19 the use of aqueous hydrazine?

20 MS. HOLMES: I want to object to that  
21 question. Applicant has known since May that we  
22 were proposing the use of this alternative. If  
23 they wish to raise questions about its suitability  
24 or efficacy, it could have done so in their  
25 testimony. They chose not to do that. And they

1           should not be allowed to come in at this late  
2           moment and raise those kinds of questions at this  
3           time. It's complete inappropriate.

4                       HEARING OFFICER FAY: Well, we're trying  
5           to get to the truth here, and it's unclear to me  
6           why this puts staff at a disadvantage. You see  
7           this as unfiled testimony?

8                       MS. HOLMES: I believe that, if I  
9           understand Mr. Harris' question correctly, he's  
10          now going to ask Dr. Walther to testify as to why  
11          staff's proposal for use of the alternative would  
12          not be a good idea for Duke.

13                      This is information that they could have  
14          provided at any point in the proceeding because  
15          we've been proposing the use of this alternative  
16          since last May.

17                      To bring in concerns, or to raise  
18          concerns about the efficacy of the alternative at  
19          the day of the hearing is completely unfair.

20                      HEARING OFFICER FAY: Well, counsel,  
21          we're going to overrule your objection and let  
22          this in. And we'll, you know, take it into  
23          account in terms of the weight of the testimony.

24                      They certainly have an opportunity to  
25          cross-examine your witness on that matter, anyway,

1 when your testimony is introduced.

2 MS. HOLMES: Then I would ask the right  
3 to reserve cross-examination on this issue later.  
4 The problem -- perhaps I'm not being clear -- the  
5 problem is that we could have prepared to address  
6 this issue had we known it was going to be an  
7 issue. I'm not sure that Dr. Greenberg has done  
8 the research necessary to address that question  
9 now.

10 The problem is that it's coming in very  
11 late, and we don't have a chance to evaluate it.  
12 And we're expected to simply accept Duke's  
13 assertions about the alleged problems with the use  
14 of the alternative.

15 HEARING OFFICER FAY: Let's go ahead and  
16 ask you to hold your request until after you have  
17 cross-examined their witnesses, presented your  
18 testimony, and had your witness cross-examined.  
19 Then, if you wish, you can raise this again and  
20 the Committee will consider whether to give you  
21 another opportunity to bring this up.

22 All right, Mr. Harris, go ahead.

23 MR. HARRIS: I actually, first off,  
24 didn't make a big deal out of this, and so  
25 respecting counsel's concerns, I'm going to

1 withdraw that last question and ask that we turn  
2 to page 3.2-11, in the FSA. And this will be in  
3 the form of rebuttal testimony.

4 The first paragraph or the first  
5 sentence of that section says: Staff believes  
6 that suitable alternatives exist to the use of  
7 aqueous hydrazine, one of which is carbohydrazide.

8 I would like to ask my witness for his  
9 professional opinion as to why that alternative  
10 put forth in the staff's testimony is not an  
11 appropriate alternative in this case.

12 DR. WALTHER: Carbohydrazide clearly  
13 exists, clearly is used in other cases, and  
14 clearly in Duke corporate experience has problems  
15 and costs associated with it. We have specific  
16 information on the problems it has caused at other  
17 plants.

18 Morro Bay, and I can go into more  
19 details, but Morro Bay has the unique  
20 circumstances of successfully and safely using  
21 hydrazine which all the professional chemists, no  
22 matter which plant they operate, whether they have  
23 a carbohydrazide plant or a hydrazine plant,  
24 acknowledge is the simplest, most effective  
25 chemical for oxygen scavenging.

1                   So Morro Bay, with its unique  
2                   circumstances, should not be simply arbitrarily  
3                   forced to another chemical when it can be duly  
4                   demonstrated that at this plant it has a long safe  
5                   operating history. It is the most efficient way  
6                   to operate. It does not offer a threat to  
7                   guarantees on HRSGs by -- because of flow  
8                   accelerated corrosion or cation conductivity  
9                   problems.

10                   And therefore, in this specific case,  
11                   hydrazine is a reasonable choice. We're not  
12                   trying to make the case that hydrazine should be  
13                   used in all power plants that might be proposed  
14                   before you in the future.

15                   MR. HARRIS: So in your professional  
16                   judgment, then, carbonylhydrazide is not a viable or  
17                   good alternative for this project at this site?

18                   DR. WALTHER: Correct.

19                   MR. HARRIS: I think that's all I have  
20                   for this witness.

21                   HEARING OFFICER FAY: All right.

22                   MR. HARRIS: I would move exhibits 4,  
23                   37, 47, 51, 73, 90, that portion of 134 that  
24                   relates to the hazardous materials management, and  
25                   I will not move the correction at this point.

1 HEARING OFFICER FAY: All right, keeping  
2 in mind that the corrections have not been moved,  
3 is there any objection to moving the testimony  
4 proposed into evidence?

5 MS. CHURNEY: Could I get a  
6 clarification on one of those exhibits? Exhibit  
7 51 references a July 25, 2001 response to  
8 hazardous materials data requests 1 through 5.  
9 And I could not find it as part of the proposed  
10 PSA conditions of certification docketed on that  
11 date.

12 HEARING OFFICER FAY: You could not find  
13 it on the master log on the webpage?

14 MS. CHURNEY: It's not a part of the  
15 primary exhibit referenced, which is the PSA  
16 conditions of certification. It looks like that  
17 might possibly be a part of exhibit 73.

18 MR. HARRIS: Actually, 51 is Duke's  
19 comments on the PSA. It's not the PSA, itself.  
20 And so we filed comments on the PSA --

21 MS. CHURNEY: Right, okay, I'm sorry,  
22 right.

23 MS. HOLMES: Are we talking about  
24 exhibit 51?

25 MS. CHURNEY: Yes.

1 MR. HARRIS: Yes.

2 MS. HOLMES: My understanding was that  
3 exhibit 51 was Duke Energy's proposed conditions  
4 of certification that were docketed on the 15th?

5 MS. CHURNEY: The second bullet point.

6 HEARING OFFICER FAY: Have we got a  
7 clarification on that?

8 MS. HOLMES: Can we go off the record?

9 HEARING OFFICER FAY: Yeah, let's go off  
10 the record.

11 (Off the record.)

12 HEARING OFFICER FAY: We've reviewed  
13 corrections to the exhibit list that need to be  
14 made regarding exhibit 51 and exhibit 73. And Mr.  
15 Harris will get back to us with the complete list  
16 of exhibits he's moving after we take our lunch  
17 break.

18 Lunch is right next door. We'll take a  
19 45-minute lunch break and return here at 12:30.

20 (Whereupon, at 11:51 a.m., the hearing  
21 was adjourned, to reconvene at 12:30  
22 p.m., this same day.)

23 --o0o--

24

25

## 1 AFTERNOON SESSION

2 12:38 p.m.

3 PRESIDING MEMBER MOORE: We are back on  
4 the record following our luncheon break. And  
5 we're going to continue now. The applicant has  
6 finished their direct on hazardous waste  
7 management -- hazardous materials, sorry. And  
8 we'll proceed to cross-examination.

9 HEARING OFFICER FAY: And before we do  
10 that, we'd like a little clarification from the  
11 applicant on the question of the two exhibits.

12 MR. HARRIS: Okay, yes, there was a  
13 typo, I'm on page 16 of the testimony, on exhibit  
14 51. The fourth word PSA, it's not a word, but  
15 that language should come out, so it would read  
16 Duke Energy's proposed conditions of  
17 certification.

18 On that same item, the second bullet  
19 should simply be deleted. That should not have  
20 appeared there originally. So, delete that second  
21 bullet all together. That's probably the simplest  
22 way to handle that.

23 So, with that I would move exhibits 4,  
24 37, 47, 51, 73, 90, and that portion of 134 that  
25 relates to hazardous materials handling; and then,

1 of course, 136 is still to be determined at a  
2 later date. That's the correction that we filed  
3 that's still outstanding.

4 HEARING OFFICER FAY: Is there any  
5 objection?

6 MS. HOLMES: No objection.

7 HEARING OFFICER FAY: Okay. We'll enter  
8 those into the record. And that concludes your  
9 direct presentation?

10 MR. HARRIS: Yeah. Just one quick  
11 comment. We'll make the witnesses available for  
12 cross-examination as a panel. I would ask that  
13 the questions be directed to Dr. Walther; he will  
14 be able to answer, I think, most of those.

15 To the extent that he has nuances that  
16 he'd like to have some help with, the other two  
17 witnesses are available for that purpose.

18 HEARING OFFICER FAY: That should be  
19 helpful. Okay, Ms. Holmes.

20 MS. HOLMES: No questions.

21 HEARING OFFICER FAY: No questions. The  
22 City.

23 MR. ELIE: Thank you. Can we mark as  
24 next in order for identification the following  
25 document, testimony of Jeff Jones on behalf of the

1 City of Morro Bay regarding hazardous materials  
2 management and worker safety and fire protection,  
3 submitted timely for this phase of hearings.

4 HEARING OFFICER FAY: Okay, that would  
5 be exhibit 137.

6 MR. ELIE: Thank you.

7 CROSS-EXAMINATION

8 BY MR. ELIE:

9 Q Dr. Walther, have you reviewed exhibit  
10 137, Chief Jones' testimony?

11 DR. WALTHER: Yes.

12 MR. ELIE: Anything in his testimony on  
13 the hazardous materials area that you disagree  
14 with?

15 MR. HARRIS: Actually, --

16 (Laughter.)

17 MR. ELIE: Is that too broad a question,  
18 counsel?

19 MR. HARRIS: Yeah, maybe. Can we be a  
20 little more specific, please.

21 MR. ELIE: Absolutely. I like open-  
22 ended questions like that.

23 Is Duke committed to supporting the  
24 existing operational agreement between the City  
25 and Duke?

1 DR. WALTHER: Yes.

2 MR. ELIE: And you expressed that as  
3 Duke's representative at a meeting with Chief  
4 Jones and Mr. Hunt?

5 DR. WALTHER: Yes.

6 MR. ELIE: And is it your testimony that  
7 Duke is agreeable to modify the conditions of  
8 certification under hazardous materials to include  
9 the City of Morro Bay Fire Department's ability to  
10 review and comment upon all plans?

11 DR. WALTHER: Yes.

12 MR. ELIE: And do you have any objection  
13 to what we've proposed as HAZ-8, compliance with  
14 paragraph 16.1 of the agreement to lease between  
15 the City and Duke, which is exhibit 95 in these  
16 proceedings?

17 DR. WALTHER: We would recommend that  
18 the spirit of that condition be actually conducted  
19 through private agreements that are both in place  
20 and will continue to be evolved through the lease  
21 agreement rather than become a CEC condition of  
22 certification.

23 MR. ELIE: And why is that?

24 DR. WALTHER: We believe that the City  
25 is already under one form of support; that there

1 will be a substantial additional form of support  
2 during the construction years. That the lease  
3 agreement, along with many other items, will cover  
4 that adequately. And that the subjects of  
5 hazardous materials and fire protection are  
6 covered in those. And that it need not be  
7 enfolded into a specific CEC certification.

8 MR. ELIE: Although we've had some  
9 testimony from Mr. Trump on this issue in other  
10 areas, that still is a draft agreement, correct?  
11 It hasn't actually been signed?

12 DR. WALTHER: That is correct.

13 MR. ELIE: No further questions.

14 HEARING OFFICER FAY: Okay, Coastal  
15 Alliance.

16 DIRECT EXAMINATION

17 BY MS. CHURNEY:

18 Q Dr. Walther, you mentioned a little bit  
19 earlier in your testimony that there are problems  
20 and costs associated with using carbohydrazide.  
21 And you didn't go into detail.

22 I would like to know if one of the  
23 issues that Duke has with the use of  
24 carbohydrazide is that it's more expensive than  
25 the alternative aqueous hydrazine.

1 DR. WALTHER: It is more expensive.  
2 That's simply one of several factors.

3 MS. CHURNEY: What are the other  
4 factors?

5 DR. WALTHER: Number two, it is Duke's  
6 direct operating plant experience in similar units  
7 elsewhere that the use of carbonylhydrazide does  
8 include the impact of flow accelerated corrosion,  
9 increased cation conductivity. Not that these  
10 problems are, so to speak, an immediate danger to  
11 the plant, but they cause cost problems, and they  
12 threaten warranties of specific equipment like the  
13 HRSGs. They're expensive items that one would  
14 prudently in an industrial environment not want to  
15 fall out of warranty.

16 MS. CHURNEY: Turning to your testimony  
17 on page 20, the last paragraph, what are the  
18 engineering design features that remove the chance  
19 of terrorism attack causing the significant  
20 offsite impact?

21 DR. WALTHER: Terrorism has associated  
22 with it the idea that you could quickly release a  
23 chemical and hurt people. The whole design of the  
24 aqueous ammonia and the aqueous hydrazine systems,  
25 which are the specific materials that would be

1 most likely to even occur to the mind of a  
2 terrorist, are already analyzed completely under  
3 federal and state regulations to be an almost  
4 impossible, in fact in some ways impossible,  
5 release to begin with.

6           The requirements under federal and state  
7 law is that the complete contents of either  
8 container is released instantaneously into an  
9 atmosphere that can't even exist, called F  
10 stability, with a wind speed of approximately 1.5  
11 meters per second, at the highest temperature  
12 that's ever been recorded in the last three years.

13           Mother Nature -- as an atmosphere  
14 physicist, and I know I can tell you, that cannot  
15 occur in the real world. But the point is it's an  
16 analytical protocol that assures, under absolutely  
17 the worst thing that could ever happen in the real  
18 world, because the protocol goes beyond the real  
19 world, that indeed, with the design features in  
20 this particular project, you can't get hydrazine  
21 or aqueous ammonia concentrations to the public in  
22 any damaging concentrations.

23           MS. CHURNEY: Well, don't your  
24 assumptions underlying your testimony, aren't they  
25 that a terrorist attack or a catastrophic event

1 would not involve both tanks of ammonia?

2 DR. WALTHER: It doesn't matter because,  
3 indeed, the nature of the actual distances which  
4 were put together for this analysis and the size  
5 of the containments, now if you take what a  
6 terrorist can do in both magnitude and the time  
7 that the material would be released, you don't all  
8 of a sudden end up hurting the community as if  
9 they had bazooka-ed both tanks. It just doesn't  
10 come out.

11 MS. CHURNEY: Your assumption is, it  
12 seems to me in my reading, and correct me if I'm  
13 wrong, but your assumption is that only one of  
14 these tanks are going to release in a catastrophic  
15 event?

16 DR. WALTHER: That's the actual  
17 regulations for the analysis. That's correct.

18 MS. CHURNEY: Isn't a worse case  
19 analysis, though, the release of both tanks?

20 DR. WALTHER: You could certainly  
21 conceptualize a release of both tanks, but once  
22 you come to a release of both tanks, call it  
23 terrorism, you're no longer bound by federal and  
24 state rule of protocol for analysis.

25 So then you have to ask the next

1 question. Okay, if they somehow attack both tanks  
2 what might the attack do in a release rate. So  
3 you end up with a change in other variables, and I  
4 could go back and model, if the applicant asked  
5 me, to, all sorts of scenarios that any of us  
6 could think up.

7 And it's my judgment that we would have  
8 gone beyond reason to do so.

9 MS. CHURNEY: Are these tanks located  
10 right next to each other? Are they within a  
11 reasonable proximity so if one tank gets damaged  
12 or destroyed, it's likely that the other tank  
13 will, as well?

14 DR. WALTHER: The tanks, as I mentioned  
15 earlier, are centrally located in the facility, so  
16 there's no better location as far as where on the  
17 site.

18 The tanks are no closer than at least  
19 one diameter -- it's a horizontal cylinder, so one  
20 diameter away from each other.

21 The normal loss of one would not cause  
22 the loss of another. So now you have to start  
23 going into explosives kinds of scenarios. And at  
24 the moment I don't think that's prudent.

25 MS. CHURNEY: Your modeling also took

1       into account, I believe, and this is the federal  
2       modeling, as I understand it, a wind speed of 1.5  
3       m/s, and I don't know what --

4               DR. WALTHER: Meters per second.

5               MS. CHURNEY: Okay, thank you. And  
6       that, I take it, was because that's what the  
7       standards provide, a wind speed. Did you look at  
8       wind speeds higher than that in your analysis?  
9       That's the first part of my question.

10              The second part would be have you, in  
11       your analysis, considered typical wind speeds in  
12       Morro Bay?

13              DR. WALTHER: If you remember in the AFC  
14       there's a worst case, and there's an alternative  
15       scenario. The alternative scenario is built on  
16       what we believe could reasonably be a scenario  
17       that one might even expect to possibly happen.

18              It contains meteorological variables  
19       which are truly based on the real world. Average  
20       wind speed that's really occurring there; average  
21       stability that's really occurring there, things  
22       like that.

23              MS. CHURNEY: But isn't your analysis  
24       simply based on what the federal standards  
25       provide, which is the 1.5?

1 DR. WALTHER: For the worst case  
2 scenario the input conditions are exactly what  
3 both the state and the federal regulations  
4 require.

5 MS. CHURNEY: But have you considered  
6 what actually occurs here in Morro Bay?

7 DR. WALTHER: Other runs were not done.

8 MS. CHURNEY: Is there a need for  
9 aqueous ammonia if the plant uses SCONOx as  
10 opposed to SCR technology?

11 DR. WALTHER: No.

12 MS. CHURNEY: On page 26 of your  
13 testimony you discuss the use of urea pellets as  
14 an alternative to aqueous ammonia. And you note  
15 that the use of urea pellets potentially doubles  
16 or triples from aldehyde emissions. But that some  
17 urea pellets do not contain formaldehyde.

18 Focusing on your use of the word some,  
19 does this mean that there are also urea pellets on  
20 the market that do not have this downside of  
21 containing formaldehyde?

22 DR. WALTHER: The vendors tell me that  
23 both kinds of pellets exist.

24 MS. CHURNEY: And would it be possible  
25 for Duke to use the pellets that do not contain

1 formaldehyde?

2 DR. WALTHER: Certainly. It's just that  
3 there are other problems that would not lead me to  
4 recommend it.

5 MS. CHURNEY: Are you familiar with  
6 Duke's response to data request 5 on hazardous  
7 materials management, and this was a data request  
8 dated July 25, 2001. And it's part of exhibit 73  
9 that we were just discussing that there was some  
10 confusion about.

11 DR. WALTHER: Yes.

12 MS. CHURNEY: Duke notes in that data  
13 request that additional truck deliveries and the  
14 greater volume of the pellets would have to be  
15 stored, but there's no mention of the formaldehyde  
16 issue in that data request response.

17 Do you know why that concern wasn't  
18 addressed there if it is indeed an issue of  
19 concern for Duke?

20 DR. WALTHER: That particular data  
21 request focused more on the amounts and the  
22 traffic associated problems of dealing with far  
23 more material coming to the site.

24 MS. CHURNEY: Is there a cost difference  
25 in using urea pellets versus the aqueous ammonia

1 for Duke?

2 DR. WALTHER: I don't have the costs in  
3 my mind.

4 MS. CHURNEY: You don't know one way or  
5 the other?

6 DR. WALTHER: I don't. I'd have to look  
7 into that again.

8 MS. CHURNEY: Compared to all of the  
9 anticipated truck traffic to the new plant, what  
10 percent increase would there be if urea pellets  
11 were to be utilized as opposed to aqueous ammonia?

12 DR. WALTHER: Instead of one truck, a  
13 tank truck for aqueous ammonia every three days,  
14 you would end up with at least two trucks per day  
15 carrying solid pellets. Or at least a factor of  
16 six or so.

17 MS. CHURNEY: And this would be with an  
18 offsite storage facility for the pellets? I mean,  
19 they're bringing the pellets in from offsite  
20 storage?

21 DR. WALTHER: Well, the vendor would  
22 bring them in from wherever their manufacturing or  
23 distribution location would be. And to some  
24 extent, a reasonable supply for several days would  
25 be near the units onsite.

1 MS. CHURNEY: Duke's response to data  
2 request number 5 goes on to address the necessity  
3 of an onsite chemical process plant a substantial  
4 complexity. But you don't mention this in your  
5 testimony. Is this still an issue of concern to  
6 Duke?

7 DR. WALTHER: Yes.

8 MS. CHURNEY: Is it an impossibility to  
9 meet this requirement, or just an inconvenience  
10 for Duke?

11 DR. WALTHER: It is a chemical process  
12 plant that is substantial in its requirements to  
13 get the ammonia out of the urea form and into the  
14 vaporized form to go to the SCR. And there are  
15 very few plants in America, certainly not of this  
16 particular design, that are using it. Therefore,  
17 I don't think it's a prudent decision for Duke to  
18 experimentally do it.

19 MS. CHURNEY: I don't have any further  
20 questions.

21 HEARING OFFICER FAY: All right, thank  
22 you. Any redirect, Mr. Harris?

23 MR. HARRIS: No, thank you.

24 HEARING OFFICER FAY: Then let's move to  
25 the staff witness on hazardous materials.

1 MS. HOLMES: Staff's witness is Dr.  
2 Alvin Greenberg. His testimony is contained in  
3 the hazardous materials section of exhibit 115;  
4 and there was also errata filed as part of exhibit  
5 116 on December 11th.

6 HEARING OFFICER FAY: Dr. Greenberg has  
7 been previously sworn and remains under oath.

8 DR. GREENBERG: Thank you.

9 DIRECT EXAMINATION

10 BY MS. HOLMES:

11 Q Dr. Greenberg, did you prepare the  
12 hazardous materials sections of exhibit 115 and  
13 the errata in exhibit 116?

14 A Yes, I did.

15 Q And are the facts in those two pieces of  
16 testimony true and correct?

17 A Yes, they are.

18 Q And do the opinions in that testimony  
19 represent your best professional judgment?

20 A Yes, they do.

21 Q Thank you. I'd like to ask you a  
22 question similar to the one that I asked you with  
23 respect to waste, and that is that Duke has stated  
24 that the project's design life was or is 30 years.  
25 If the project were to operate longer than that,

1 would that affect your conclusions about  
2 significance of impacts or sufficiency of  
3 mitigation, if it were to operate longer than 30  
4 years?

5 A No, it would not affect my conclusions.

6 Q Thank you. I'd like to turn briefly to  
7 some of the discussion that you heard earlier this  
8 morning about the use of carbohydrazide as a  
9 substitute for the hydrazine.

10 Can you briefly, for purposes of  
11 providing an overview, describe what staff's  
12 fundamental approach is in reviewing the use of  
13 hazardous materials in power plants?

14 A I'd be happy to. As described in both  
15 the PSA and the FSA under the section of  
16 methodology that staff uses to assess hazardous  
17 materials use and management at a proposed power  
18 plant, one of the first things that I do is look  
19 to see whether or not there is a safer alternative  
20 material, or hazardous material that can be used.

21 That is one of the fundamental goals,  
22 and that is to offer a choice if the applicant has  
23 not taken that choice, to use a safer alternative  
24 chemical.

25 Q And did you find that in this situation?

1           A     Yes, I did.

2           Q     And I think we don't need to add that  
3 we're talking about the use of a substitute for  
4 the hydrazine.

5                     Are you aware of whether or not other  
6 plants or other facilities in the state use  
7 carbohydrazide as an oxygen scavenger?

8           A     Yes, I am.

9           Q     And are you aware of whether or not  
10 they're doing so successfully?

11           A     I have not been aware of any problems  
12 with using carbohydrazide. I have been reviewing  
13 over 40 proposed power plants in the State of  
14 California as a consultant for the California  
15 Energy Commission, and each one of those has  
16 proposed, and is using, after their certification,  
17 carbohydrazide. And I have not heard of any  
18 problems with using aqueous carbohydrazide instead  
19 of aqueous hydrazine.

20           Q     You're not aware of any requests for  
21 amendments to those licenses?

22           A     No, I'm not.

23           Q     And you're not aware of any problems  
24 with warranties for those projects?

25           A     That's true, I'm not aware of any

1 problems with warranties.

2 Q Can you think of anything that would  
3 make this project different from those projects?

4 A No, I can't. I'm certainly willing to  
5 find out if there is a problem. I think that  
6 staff would be very interested. I know I would be  
7 personally if there is indeed a problem.

8 Perhaps then we can use this one-month  
9 period to look at the modeling to also look at the  
10 alleged problems that Dr. Walther has made mention  
11 of.

12 I think we should know if there is. It  
13 could be that it may be operator error. I mean  
14 there's a lot of issues that this could raise.  
15 And it may not be the carbonylhydrazide, itself, but  
16 we'd like to know.

17 Q Thank you.

18 MS. HOLMES: Hearing Officer Fay, I  
19 don't know if you want this taken as testimony or  
20 not. We'd like the opportunity, at some point, to  
21 identify the type of information that would be  
22 required for us to evaluate this further.

23 If you want me simply to ask Dr.  
24 Greenberg and take it as evidence, that's fine.  
25 Or if you'd rather wait till we're off the record

1 at some point, that's also fine. I leave it up to  
2 you.

3 HEARING OFFICER FAY: And about how long  
4 would that take, counsel?

5 MS. HOLMES: I think it's just one  
6 question.

7 HEARING OFFICER FAY: Please go ahead.

8 BY MS. HOLMES:

9 Q Dr. Greenberg, what type of information  
10 would you need from Duke in order to evaluate the  
11 claims that you heard this morning?

12 A Again, really briefly, certainly the  
13 exact type of facility, the power plant; the exact  
14 chemicals that are used along with the  
15 carbonylhydrazide. The actual physical layout of the  
16 piping system. And instructions to operators.  
17 And probably a few others, but that's just right  
18 off the top of my head.

19 Q Thank you.

20 A You know, mixing ratios, et cetera.

21 Q Turning to the discussion of modeling  
22 that was held earlier this morning, you heard  
23 reference to regulatory thresholds below which no  
24 modeling is required. Do you believe it's  
25 appropriate or prudent to rely on those thresholds

1 to justify a decision not to model release  
2 impacts?

3 A Well, I certainly recognize those are  
4 indeed the regulatory thresholds of the USEPA and  
5 the CalARP program, that 1000 pounds of hydrazine  
6 or greater requires an offsite consequence  
7 analysis and an RMP.

8 I don't believe that those thresholds  
9 are appropriate. And, in fact, the staff of the  
10 Energy Commission has consistently stated that  
11 when it comes to a toxic end-point we do not  
12 follow the recommended USEPA or CalARP program  
13 toxic end-points for say aqueous ammonia, which is  
14 the ERPG2, which was 200 parts per million, and  
15 was lowered a year and a half ago to 150 parts per  
16 million. We rely on 75 parts per million as a  
17 toxicological end-point.

18 Same thing with aqueous hydrazine or  
19 even, you know, from the nonaqueous form of  
20 hydrazine, the RPG2 is different from what I  
21 recommended in the PSA and the FSA.

22 So we do an independent analysis. And  
23 sometimes we agree with USEPA and a sister state  
24 agency, and sometimes we don't. We have a duty  
25 under CEQA to provide what we consider to be a

1 health protective level.

2 There's also a question, counselor, and  
3 I hope this is in response to your question --

4 Q So does Mr. Harris, I'm sure.

5 A Yeah, -- as to --

6 (Laughter.)

7 DR. GREENBERG: -- as to whether or not  
8 the threshold of 1000 pounds is actually exceeded  
9 or not, there are references within the documents  
10 before you to indicate that maybe it's slightly  
11 over, maybe it's slightly under. But certainly  
12 that needs to be reconciled.

13 BY MS. HOLMES:

14 Q Is it your testimony that a facility  
15 could use hydrazine in a level that's below the  
16 thresholds and nonetheless create a significant  
17 impact in a spill?

18 A Yes. I want to emphasize what I stated  
19 in my final staff assessment. Any spill or  
20 release of hydrazine or aqueous hydrazine is a  
21 serious matter, to be taken very seriously.

22 And as the applicant's expert had so  
23 eloquently stated in their example of how they use  
24 aqueous ammonia because it's safer than anhydrous  
25 ammonia, and how they use aqueous sodium

1       hypochlorite because its safer than using gaseous  
2       chlorine, it is again my recommendation that they  
3       use something safer than aqueous hydrazine. That  
4       they use the aqueous carbohydrazide.

5               Carbohydrazide is a white crystalline  
6       powder, it is a solid. And it is mixed with  
7       water. So there is no impact of offsite  
8       consequences, either if there's a spill on the  
9       site or during a transportation accident.

10              Should the modeling that the applicant  
11       has attempted to present today show that it was  
12       done correctly and that there would be no offsite  
13       consequence as a result of an onsite spill of  
14       aqueous hydrazine, it still raises the issue of a  
15       transportation accident resulting in a release,  
16       however small. That's a serious matter.

17              Q     Thank you. Earlier this morning there  
18       was testimony from Dr. Walther about his belief  
19       that the hydrazine has been safely in use since  
20       1955. You were in the room for that discussion?

21              A     Correct.

22              Q     And he also discussed the fact that the  
23       safety that he's attributing to Duke's use of  
24       hydrazine has to do with the fact that there are  
25       multiple levels of containment available at the

1 project site, is that correct?

2 A That's correct.

3 Q And can you tell us whether or not in  
4 your experience in fact that containment always  
5 occurs?

6 A I toured the facility one time. And  
7 when I was shown the aqueous hydrazine storage  
8 structure I noted that the doors were wide open,  
9 and there was no one around who was actively  
10 involved in either loading or unloading. And so  
11 someone had just mistakenly left the door open.

12 If you want to look at it statistically,  
13 a hundred percent of the times that I viewed the  
14 aqueous hydrazine storage structure the doors are  
15 left open. But it's only one out of one case.

16 Nevertheless, it's that sort of error  
17 that could occur. And indeed has occurred at this  
18 particular location.

19 Q Thank you. I'd like to move now to a  
20 discussion on page 26 of the applicant's testimony  
21 on transportation of aqueous hydrazine. Do you  
22 have that in front of you?

23 A Yes, I do.

24 Q Do you believe that this information  
25 provides you with sufficient information to agree

1 with the conclusion that there are no risks  
2 associated with aqueous hydrazine?

3 A No, it is not sufficient.

4 Q In order to evaluate the accuracy of the  
5 conclusions that are contained in here, what  
6 additional information would you need?

7 A Well, I'd certainly like to know which  
8 database they searched. It's stated here it's a  
9 DOT, and that's Department of Transportation,  
10 database. And I'd really like to know what  
11 exactly -- which exact database.

12 I'm familiar with a number -- there's  
13 around three hazardous materials, maybe even four,  
14 hazardous materials accidental release databases.  
15 The DOT database that I'm familiar with is  
16 inadequate for this type of search.

17 One usually searches, at the very least,  
18 the national response center database, which is  
19 operated by the Coast Guard, U.S. Coast Guard.  
20 And, in fact, when I searched that database I  
21 found that there was at least one incident  
22 recently, in the year 2000, in the State of  
23 Pennsylvania, when one of these totes, these 350  
24 gallon totes, leaked through its valves, even  
25 though the valves are recessed, and caused a spill

1 of ten gallons of hydrazine.

2 It wasn't aqueous hydrazine, but it was  
3 hydrazine liquid. And, you know, it raises the  
4 question of was that the same type of tote as used  
5 for aqueous hydrazine; and what were the  
6 circumstances.

7 And that's what I would like to see  
8 here, the same answers to their search that I'd  
9 like to have answered, myself, with more time for  
10 my search.

11 Where did this happen in California;  
12 under what circumstances; what were the physical  
13 surroundings; what was the database, et cetera.

14 Q Thank you.

15 A So I can't arrive at any conclusion  
16 based upon what they've provided.

17 Q Now I'd like to take the opportunity to  
18 walk through the corrections or suggested changes  
19 that Duke and the City of Morro Bay have made to  
20 the proposed conditions of certification.

21 Let's start with Duke's recommendations;  
22 with respect to HAZ-1, I'm assuming that you don't  
23 have any problems with the correction of the  
24 clerical error?

25 A Safe assumption.

1           Q     With respect to HAZ-2, they have  
2 suggested language changes to make more explicit  
3 the role of the San Luis Obispo County. Is that  
4 something that you can support?

5           A     Well, I think as long as there is the  
6 compliance project manager approval in there, I  
7 can support this. There certainly should be  
8 reconciliation.

9                     But consistent with every other power  
10 plant application for certification, staff does  
11 recommend that the CPM have approval.

12          Q     Thank you. And I would suspect, based  
13 on your previous testimony, that you would not  
14 support including aqueous hydrazine back into HAZ-  
15 3 as Duke has suggested?

16          A     Not at this time, no. I am not  
17 convinced of its need nor of its safety.

18          Q     Thank you. And with respect to HAZ-4,  
19 Duke had some suggested changes with respect to  
20 the specification of tanks. Do you have any  
21 problems with what Duke has proposed there?

22          A     I have no problems with that at all.  
23 The condition of certification did say one code or  
24 the other, and they just want to get rid of the  
25 first code and keep the second one in there.

1 That's fine with me.

2 Q Thank you. Next, let's turn to exhibit  
3 137, which is from the City of Morro Bay.

4 Actually I believe some of -- no, that's correct.

5 The City of Morro Bay recommended that  
6 HAZ-1 through -6 all allow for City comment on any  
7 plans. Is that something that the staff is  
8 supportive of?

9 A Yes, indeed.

10 Q Okay, in addition, the City of Morro Bay  
11 has recommended that there be a new condition of  
12 certification that references a condition from the  
13 agreement to lease having to do with Duke's  
14 reimbursement to the Fire and Police Departments.  
15 Is that something that staff supports?

16 A Well, this is a little bit more complex,  
17 in that what they're proposing here is much more  
18 far ranging than what was in worker safety 3. And  
19 I thought we were going to handle that in worker  
20 safety, but I guess we'll handle --

21 Q It's covered in both sections of the  
22 City of Morro Bay's testimony. If you'd rather  
23 wait till worker safety we can discuss it then,  
24 that's fine.

25 A The Committee's pleasure.

1           Q     That's fine. I'll just move on to the  
2           last one, then. Finally, I think the City of  
3           Morro Bay has recommended that HAZ-7, which had to  
4           do with hydrazine plan, be reinstated; staff had  
5           recommended rather that it be eliminated, it be  
6           taken out as a result of the fact that we were  
7           recommending that the Committee require Duke to  
8           use the nonhazardous alternative.

9                     I'm assuming that you don't want to see  
10          the condition imposed again?

11          A     That's correct.

12          Q     Thank you.

13                     MS. HOLMES: I think those cover all of  
14          the topics that the parties raised with respect to  
15          the conditions of certification. So with that  
16          I'll make the witness available for cross-  
17          examination.

18                     PRESIDING MEMBER MOORE: Good, thank  
19          you, counselor. I have one question before we  
20          start, Dr. Greenberg, and that is, is there a peer  
21          reviewed literature that is distinct from the  
22          hazardous review or the accident reports  
23          literature that you cited that's available to  
24          scientists? Is there a body of peer-reviewed  
25          literature that could be consulted on these kind

1 of things?

2 DR. GREENBERG: Yes, sir, there is. And  
3 it is included in my staff assessment. It's not  
4 specific for a particular chemical. It's more  
5 generic for all hazardous material deliveries, for  
6 example. So there is peer-reviewed in the  
7 scientific literature databases of transportation  
8 accidents.

9 PRESIDING MEMBER MOORE: Okay, so --

10 DR. GREENBERG: There's also for fixed,  
11 for storage tanks.

12 PRESIDING MEMBER MOORE: That translates  
13 to the same database that you've been talking  
14 about, saying three databases that you were  
15 talking about?

16 DR. GREENBERG: The three databases I'm  
17 talking about are not scientifically peer-reviewed  
18 articles. Instead these are governmental agency  
19 databases that talk about the specific chemical  
20 involved.

21 PRESIDING MEMBER MOORE: Thank you. All  
22 right, cross-examine. Mr. Harris.

23 MR. HARRIS: Actually I think just one  
24 question, hopefully, and maybe no follow-ups.

25 CROSS-EXAMINATION

1 BY MR. HARRIS:

2 Q Is it a fair statement, then to say  
3 having heard your discussion, that the area of  
4 disagreement between the applicant and the staff  
5 is really down to the question between  
6 carbonylhydrazide and hydrazine? Is that basically  
7 the one outstanding issue, recognizing it has many  
8 facets, but is that the last outstanding issue?

9 A Yes, that's a fair assessment.

10 MR. HARRIS: I have no further  
11 questions.

12 HEARING OFFICER FAY: All right, does  
13 the City have questions?

14 (Pause.)

15 MR. ELIE: No questions.

16 HEARING OFFICER FAY: Okay. Coastal  
17 Alliance.

18 CROSS-EXAMINATION

19 BY MS. CHURNEY:

20 Q I'd just like to confirm then, if my  
21 understanding of what Dr. Greenberg has testified  
22 is correct, and that is staff is now recommending  
23 a condition of certification that carbonylhydrazide  
24 be used as opposed to hydrazine, is that correct?

25 A That is correct.

1           Q     On page 3.2-9 of the FSA part one, the  
2           last paragraph, you describe the worst case  
3           scenario. Assumed was the catastrophic failure of  
4           one of the two storage tanks resulting in the  
5           release of 30,000 gallons of aqueous ammonia  
6           instantaneously.

7                     And staff concludes that all  
8           concentrations exceeding 75 parts per million are  
9           confined to the project site, 916 feet from the  
10          storage tanks, themselves.

11                    Would this conclusion be the same if  
12          both tanks were to fail at once?

13           A     Probably not, but I would have to model  
14          that to be sure.

15           Q     And I take it then that this case was  
16          not considered by staff in its analysis?

17           A     That is correct, and that is consistent  
18          with how we address the risk of upset at all CEC-  
19          certified power plant locations.

20           Q     In your opinion is there an adequate  
21          margin of safety provided between the 916 feet and  
22          the residence which is at 984 feet from the tanks?

23           A     Yes.

24           Q     On page 3.2-17 regarding the City of  
25          Morro Bay's comment 4, the City indicated that it

1 wanted ammonia on demand, that is the urea  
2 pellets. And on page 3.2-18, staff finds that  
3 this is a viable alternative.

4           Would staff support the use of this  
5 alternative?

6           A     What I was talking that it's a viable  
7 alternative is with the understanding that there  
8 were some bench-scale testing, as well as an  
9 actual implementation of the use of the generation  
10 of ammonia -- the use of these pellets for the  
11 generation of ammonia, at least one facility in  
12 the country.

13           It is true what the applicant's expert  
14 has stated in his testimony, both written and  
15 orally, that this does not necessarily lead to the  
16 conclusion of this being possible or even  
17 recommended for a power plant with certain, you  
18 know, performance criteria.

19           Strictly from the standpoint of  
20 generating ammonia, my statement holds. But I  
21 believe that the applicant would probably agree  
22 with that, as well. But when it comes to  
23 performance and running a power plant and the  
24 reliability issues there, I make no comment on  
25 that.

1 Q Thank you.

2 PRESIDING MEMBER MOORE: You're  
3 finished?

4 MS. CHURNEY: Yes, thank you.

5 PRESIDING MEMBER MOORE: Thank you.

6 HEARING OFFICER FAY: Any redirect, Mr.  
7 Harris?

8 MS. HOLMES: That would be me.

9 HEARING OFFICER FAY: I'm sorry.

10 (Laughter.)

11 (Parties speaking simultaneously.)

12 HEARING OFFICER FAY: Actually I have  
13 some questions of Dr. Greenberg before we go to  
14 redirect.

15 On the City's proposal they recommend on  
16 page 2 that Morro Bay should also retain the  
17 ability to review and accept any safety plans.

18 Now whether that is concerning aqueous  
19 hydrazine or carbohydrazine, is it staff's  
20 position that while City comment is appropriate,  
21 and you agree with that, that its ultimate  
22 approval is up to the CPM? Do I understand that  
23 correctly?

24 DR. GREENBERG: You're not going to  
25 object? It calls for a legal conclusion.

1 MS. HOLMES: I don't object to the  
2 person who's going to rule on the objection.

3 (Laughter.)

4 HEARING OFFICER FAY: Can you help us on  
5 that --

6 MS. HOLMES: Yeah, that's consistent.  
7 Staff has always recommended that when it's a  
8 local government issue, that the local government  
9 have the ability to review and comment, but that  
10 the final authority should rest with the CPM.  
11 That's consistent with the jurisdiction of the  
12 Commission set out in Public Resources Code 25500.

13 DR. GREENBERG: My answer precisely.

14 HEARING OFFICER FAY: Thank you. And I  
15 don't recall that you were asked to comment on the  
16 City's recommendation for HAZ-8. Does the staff  
17 have a position on that?

18 MS. HOLMES: I believe that gets back to  
19 the question of the agreement to lease language.  
20 So we'll address that -- it's the same issue that  
21 will come up in worker safety, and since Dr.  
22 Greenberg's testimony on impacts is in worker  
23 safety, we'll just wait.

24 HEARING OFFICER FAY: Okay. Now, any  
25 redirect, Ms. Holmes?

1 MS. HOLMES: None.

2 HEARING OFFICER FAY: Okay, thank you.

3 Then we'll move to the City. Are you prepared to  
4 put on your testimony on hazardous --

5 MR. ELIE: Yes, Chief Jones.

6 HEARING OFFICER FAY: Okay, I believe  
7 Chief Jones needs to be sworn as a witness.

8 MR. ELIE: Yes.

9 HEARING OFFICER FAY: Could you please  
10 stand? Mr. Court Reporter, please swear the  
11 witness.

12 Whereupon,

13 JEFFERY JONES

14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 MR. ELIE: Thank you.

18 DIRECT EXAMINATION

19 BY MR. ELIE:

20 Q At the risk of being mundane and  
21 workmanlike, would you state your name and spell  
22 your last name.

23 A Jeffery Jones. Common spelling,  
24 J-o-n-e-s.

25 Q You're the Fire Chief for the City of

1 Morro Bay?

2 A That's correct.

3 Q How long have you had that job?

4 A Approximately ten years.

5 Q In connection with these proceedings and  
6 the Duke Power Plant in general, would you  
7 describe your responsibilities as the Chief of the  
8 Morro Bay Fire Department.

9 A As the Chief of the Fire Department my  
10 job is to work with the community to assure that  
11 the businesses and residents within the community  
12 operate in a safe manner.

13 It's also my job to try to protect the  
14 safety of the residents of the City of Morro Bay  
15 and also the emergency workers who may be called  
16 to the site.

17 Q Are you also responsible for enforcing  
18 the Uniform Fire Code?

19 A Yes, I am.

20 Q Exhibit 137 is your testimony in these  
21 proceedings on the issues of hazardous materials  
22 management and worker safety and fire protection.  
23 Was that testimony prepared by you or at your  
24 direction?

25 A Yes, it was.

1           Q    Is it true and accurate to the best of  
2 your knowledge?

3           A    Yes, it is.

4           Q    Is the testimony contained in exhibit  
5 137, at least the opinions portion of it, are  
6 those your own opinions?

7           A    Yes, they are.

8           Q    In general is it fair to say that the  
9 Morro Bay Fire Department is, for lack of a better  
10 word, happy with Duke's commitments in the  
11 agreement to lease and the recent meetings  
12 referenced in your testimony?

13          A    Well, I'd like to qualify my response in  
14 that the agreements that you've referred to that  
15 have been referred to are draft letters supporting  
16 a draft agreement.

17                   And the concern I have, you know, with  
18 regard to the support we've received thus far is  
19 that with or without various agreements, what's  
20 important to the City is that the Fire Department  
21 has the ability to do our job as part of the CEC  
22 process.

23          Q    And what specifically are you referring  
24 to when you say ability to do your job in the CEC  
25 process?

1           A     The conditions that are contained in  
2           what we're recommending as HAZMAT-8, or HAZ-8, it  
3           talks about the agreement to lease and the various  
4           reimbursement agreements that are contained  
5           therein.

6                     Again, those are not formal nor firm  
7           agreements. And without those in place, then we  
8           don't have the ability, as we are currently  
9           staffed or equipped, to mitigate the impacts of  
10          the construction of the plant.

11          Q     So that's a cross-over for both  
12          hazardous materials and worker safety?

13          A     That's correct.

14          Q     Okay. Then also you had in your  
15          testimony some discussion about the City's ability  
16          to review and comment on various plans. Would you  
17          expand upon that?

18          A     My role as the Fire Chief is to assure  
19          that, as I mentioned, the processes that are used  
20          within the City are consistent and compliant with  
21          the Uniform Fire Code, which is a state law.

22                     The Uniform Fire Code directs the Fire  
23          Chief or his designee the authority to enforce  
24          that code. It's important to the City that we see  
25          the various documents that relate to hazardous

1 materials, understanding the CPM is involved, and  
2 also in our County, that the CUPA agency for the  
3 County is our San Luis Obispo County, is our  
4 environmental health department.

5 But there are some components of the  
6 Fire Code that are not necessarily regulated by  
7 the CUPA.

8 Q You also have requested the  
9 reinstatement of HAZ-7. Would you explain your  
10 reasoning for that?

11 A Bullet point 6 specifically in HAZ-7 is  
12 the only point in the section on hazardous  
13 materials that refers to any sort of support and  
14 any other operational agreements between the  
15 applicant and the City of Morro Bay to mitigate  
16 problems or the impacts of the plant to the City.

17 So it's important to the City to have  
18 HAZ-7 complete with bullet 6 as a part of the CEC.

19 Q Would you be satisfied with the content  
20 of bullet 6 contained in another condition of  
21 certification, if that would fit?

22 A Yes, I would, provided it was broadened  
23 to include all chemicals contained within their  
24 hazardous materials management plan.

25 Q Do you have some concerns about the use

1 of carbonylhydrazine?

2 A It's my belief or understanding that  
3 there's some concerns about the transport of  
4 carbonylhydrazine with regard to the Department of  
5 Transportation or DOT regulations.

6 Understanding that, and also then  
7 looking at the long-standing use of the aqueous  
8 hydrazine currently on the plant, we felt that the  
9 workers were trained in and familiar with the use  
10 of aqueous hydrazine, and that there have been no  
11 reported incidents at the plant to our knowledge.

12 And with that in mind, it may be better  
13 to stay with a chemical that people are familiar  
14 with onsite.

15 Q And is it your recommendation to the  
16 Commission that HAZ-7 be reinstated if aqueous  
17 hydrazine or carbonylhydrazine are used?

18 A Yes. Correct.

19 Q You can save the rest for worker safety  
20 unless there's something you want to add to your  
21 testimony.

22 A No, again, you know, a lot of discussion  
23 was about agreements and draft agreements, and  
24 commercial agreements, but again, from the City's  
25 perspective, the CEC proceedings and the FSA need

1 to enable us to do our job with regard to  
2 mitigation of any plant impacts.

3 And failing those agreements being  
4 finalized, or not having any ability within the  
5 FSA to enforce successful completion of those  
6 agreements that leaves us in a position where  
7 we're not able to perform the services we'll need  
8 to perform.

9 Q And in your last answer, your reference  
10 to FSA, did you mean to say conditions of  
11 certification?

12 A I'm sorry, that's correct.

13 Q Thank you.

14 MR. ELIE: I would move the admission of  
15 exhibit 137 into evidence.

16 HEARING OFFICER FAY: Any objection? So  
17 moved.

18 MR. ELIE: The witness is available.

19 HEARING OFFICER FAY: All right. Mr.  
20 Harris?

21 CROSS-EXAMINATION

22 BY MR. HARRIS:

23 Q Actually a question of clarification. A  
24 couple of issues that kind of overlap between  
25 worker safety and fire protection and hazardous

1 materials, and so with that said I may have  
2 additional questions when we get to that section,  
3 but I just want to make sure that I understood you  
4 correctly.

5 Your concern about those agreements is  
6 that the draft agreements, and you'd like to see  
7 those principles, that's what you're concerned  
8 about.

9 Let me ask the question. Are you  
10 concerned that the --

11 (Laughter.)

12 BY MR. HARRIS:

13 Q -- the principles that are in the  
14 appendix that Duke referenced, and the principles  
15 that are in the agreement to lease, that those  
16 principles ultimately get put into an enforcement  
17 agreement, is that what you're looking for?

18 A That's correct.

19 Q Okay.

20 MR. HARRIS: I think that's the only  
21 question I have for you at this point.

22 HEARING OFFICER FAY: All right. Staff?

23 MS. HOLMES: Staff doesn't have any  
24 cross-examination.

25 HEARING OFFICER FAY: Okay. CAPE?

1 MS. CHURNEY: No cross-examination.

2 HEARING OFFICER FAY: All right. Any  
3 redirect?

4 MR. ELIE: No.

5 HEARING OFFICER FAY: Okay. Thank you,  
6 Chief.

7 PRESIDING MEMBER MOORE: He was looking  
8 at Ms. Holmes, just to be consistent --

9 (Parties speaking simultaneously.)

10 (Laughter.)

11 HEARING OFFICER FAY: Okay, thank you.

12 And, again, we have no testimony from Coastal  
13 Alliance on hazardous materials.

14 And so now we'd like to take up --

15 MS. HOLMES: Mr. Hearing Officer, I  
16 failed to request that the hazardous materials  
17 portions of exhibits 115 and 116 be moved into  
18 evidence, so I'd like to do that.

19 HEARING OFFICER FAY: Okay. Any  
20 objection? Staff has moved and we direct that  
21 provisions of exhibits 115 and 116 be entered into  
22 evidence.

23 Before we go to worker safety we want to  
24 ask if there's any member of the public who would  
25 like to comment on hazardous materials management?

1 Okay, I see no indication.

2 Our next topic for evidence is worker  
3 safety and fire protection. And we'll ask Mr.  
4 Harris if he has a witness on that.

5 MR. HARRIS: Yes, I'd like to take the  
6 same approach in this section and have Dr. Walther  
7 present most of our testimony. We'll keep the  
8 panel available for cross-examination, if need be.  
9 Again, we would throw the water on the ground and  
10 then ask that questions be directed through Dr.  
11 Walther on cross.

12 So, switching binders now I think we're  
13 ready to go.

14 DIRECT EXAMINATION

15 BY MR. HARRIS:

16 Q Once again, please state your name for  
17 the record.

18 A Eric Walther.

19 Q And what subject matter testimony are  
20 you here to sponsor today?

21 A Worker safety and fire protection.

22 Q And were the documents that are part of  
23 your testimony identified in your prefiled  
24 testimony?

25 A Yes.

1 Q And those documents would be exhibit 4,  
2 exhibit 51, exhibit 109, exhibit 125 and a portion  
3 of this testimony, exhibit 134.

4 And nothing related to cellphones.

5 (Laughter.)

6 BY MR. HARRIS:

7 Q Those are the documents you previously  
8 identified?

9 A Yes.

10 Q Thank you. Are there any changes,  
11 corrections or clarifications for your testimony?

12 A No, except for the tiniest of typos that  
13 I found, that even my counsel didn't see, on page  
14 51, second paragraph, third line, the sentence was  
15 supposed to read: Consistent with that described,  
16 rather than consistent with the described. They  
17 don't get any smaller in that clarification.

18 Q Okay, with that small clarification,  
19 we'll move forward. Were these documents prepared  
20 either by you or at your direction?

21 A Yes.

22 Q And are the facts stated therein true to  
23 the best of your knowledge?

24 A Yes.

25 Q Are the opinions stated therein your

1 own?

2 A Yes.

3 Q And do you adopt this as your testimony?

4 A Yes.

5 Q We're going to ask you to skip your  
6 qualifications and please provide a short summary  
7 of your testimony.

8 A As with the two previous subjects, waste  
9 management and hazardous materials management,  
10 worker safety and fire protection has a history at  
11 this existing plant that goes back to May 1955,  
12 and the close involvement of the City of Morro Bay  
13 Fire Department during that entire period.

14 The record of the plant is excellent.  
15 It easily beats industry average when it comes to  
16 accidents. Rarely did they have anything more  
17 than a finger being cut a little bit or some back  
18 pain.

19 The project is designed to continue all  
20 the current elements that exist in the safety and  
21 health program, injury and illness prevention  
22 programs, emergency response programs, and a  
23 number that are listed in the testimony.

24 All of those will be continued. The  
25 same people, the same protocol, the same meetings,

1 safety meetings, a variety of other practices are  
2 going to be continued.

3 As a result of that, the project will  
4 have no significant impacts, and we agree with the  
5 FSA conclusion to the same effect.

6 Q Let's talk about the suggested  
7 clarifications to the conditions of certification.  
8 Start with WorkerSafety-1, it's one page 49 of  
9 your testimony.

10 Can you briefly describe the  
11 clarifications you're seeking there?

12 A The clarification is simply a structural  
13 use of the terms that already is shown in  
14 WorkerSafety-2, and simply that safety and health  
15 is the superset of which injury and illness  
16 prevention is a subset.

17 And so we simply recommend that the  
18 wording be changed slightly that would be  
19 parallel, but WorkerSafety-1 deals with demolition  
20 and construction, and WorkerSafety-2 that we'll  
21 get to deals with operation.

22 And so the wording we believe that would  
23 be appropriate is the project owner shall submit  
24 to the CPM a copy of the project demolition and  
25 construction safety and health program containing

1 the following. And then it lists the five  
2 programs that come beneath it.

3 The injury and illness prevention  
4 program, personal protective equipment program and  
5 exposure monitoring program shall be submitted to  
6 the CPM For review and approval concerning  
7 compliance with applicable safety orders, which we  
8 believe are the appropriate programs that have to  
9 do with CalOSHA and safety orders.

10 And then the final sentence would be  
11 reworded that the fire protection and prevention  
12 plan and emergency action plan shall be submitted  
13 to the Morro Bay Fire Department for review and  
14 comment prior to submittal to the CPM for review  
15 and approval.

16 And as stated in the testimony so I  
17 don't have to read it again, the verification  
18 would be consistently worded.

19 Q Okay, so basically, you know, rename the  
20 plan to reflect the proper terminology; rewrite  
21 the last sentence to allow review and comment  
22 authority from Morro Bay; and review and approval  
23 for the CPM. And then make the according  
24 corrections in the verification, is that correct?

25 A Correct.

1           Q     If that's all on 1, let's move now to  
2     WorkerSafety-2.

3           A     WorkerSafety-2 is straightforward. We  
4     believe that maintenance is simply a part of  
5     operations, so it could be simplified to just call  
6     it the operation safety and health program, or the  
7     operation of maintenance safety and health  
8     program.

9                     It would have the appropriate six  
10    subprograms under safety and health; injury and  
11    illness, exposure monitoring, emergency action,  
12    hazardous materials management, fire protection  
13    and prevention, personnel protective equipment.

14                    On the second part of WorkerSafety-2, to  
15    be consistent with agency responsibilities we  
16    believe the emergency action plan should go to the  
17    Fire Department rather than to CalOSHA. And so we  
18    simply recommend that the wording be that the  
19    operation, injury and illness prevention program  
20    and the personal protective equipment program  
21    shall be submitted to the CalOSHA consultant or  
22    consultation service for review and comment  
23    concerning compliance with all applicable safety  
24    orders.

25                    And the operation fire protection and

1 prevention plan and the emergency action plan  
2 shall be submitted to the Morro Bay Fire  
3 Department for review and comment prior to  
4 submittal to the CPM for review and approval.

5 Q Okay, so by way of summary again,  
6 rewording the name to be consistent with  
7 WorkerSafety-1 is the first proposal, is that  
8 correct?

9 A Well, correct, correct, now that the  
10 WorkerSafety-1 changed to the recommended.

11 Q Okay. And then basically the subplan  
12 was referred to the wrong agency, and so it should  
13 be the Fire Department and not CalOSHA, is that  
14 correct?

15 A On that specific one, correct.

16 Q Okay. Let's move now to WorkerSafety-3.  
17 What are you comments there?

18 A WorkerSafety-3 gets back to the issue we  
19 just discussed a little bit before of the  
20 appropriate distinction between the CEC  
21 involvement with any private agreements that occur  
22 between the City and the applicant having to do  
23 with appropriate resources and support of the City  
24 and the Fire Department for fire protection and  
25 hazardous materials services.

1                   And our request is that the final  
2                   wording of the condition show a consistency with  
3                   the agreement already that's described in AFC  
4                   appendix 6.10-5, theoretically was exactly the  
5                   same as 6.17-2, except it physically didn't appear  
6                   in the AFC publication, but it's in 6.10-5. And  
7                   it's titled, meeting public service needs in the  
8                   City of Morro Bay.

9                   And so as long as the agreements,  
10                  including the lease agreement with it's paragraph  
11                  16.1 and what's in the appendix are all  
12                  consistent, including what the current agreement  
13                  is, then that's, I believe, the way it should go.

14                 Q     So that the basic recommendation there  
15                  is that the plant be developed consistent with  
16                  both that appendix that you referenced and the  
17                  principles that the Fire Chief described for the  
18                  agreement to lease?

19                 A     Exactly.

20                 Q     And that's the end of Worker-3. I think  
21                  you've dealt with responses on the HAZ-8 issue  
22                  there, so I think, unless there's anything else, I  
23                  think that's it for this witness.

24                 MR. HARRIS: And I would first off move  
25                  the documents into evidence. The exhibits 4, 51,

1 109, 125 and that portion of 134 related to worker  
2 safety and fire protection.

3 HEARING OFFICER FAY: Any objection?  
4 Hearing none, so moved.

5 MR. HARRIS: And I'd make the witness  
6 available for cross-examination -- make the panel  
7 available for cross-examination.

8 HEARING OFFICER FAY: All right. Just  
9 as a reminder, please identify the panel.

10 MR. HARRIS: Actually I'll ask the panel  
11 members to identify themselves, again. James,  
12 please.

13 MR. WHITE: James White, Regional  
14 Environmental Health and Safety Manager.

15 MR. WAGGENER: Brent Waggener, Project  
16 Manager -- Demolition.

17 HEARING OFFICER FAY: Thank you. We'll  
18 ask the staff if they have any questions.

19 MS. HOLMES: No cross-examination.

20 HEARING OFFICER FAY: Okay, does the  
21 City have any cross of this witness panel?

22 MR. ELIE: Briefly, thank you.

23 //

24 //

25

## CROSS-EXAMINATION

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BY MR. ELIE:

Q Dr. Walther, going back to WorkerSafety-2 and your proposed changes there, wouldn't it also be appropriate for Morro Bay Fire Department to review the operation hazardous materials management program? That was not listed in your changes.

A Yes, that would be also appropriate for review and comment.

Q Yes, okay. Just to clarify part of your earlier testimony about the track record here. Isn't it accurate that at some point in the early '90s and before that time the plant actually had its own fire department? It did not use the resources of the Morro Bay Fire Department?

A Correct, they had their own fire brigade.

Q Until when was that?

A I don't know the exact year, but I'm sure the panel does.

(Laughter.)

MR. WHITE: I actually don't recall the exact date, but it was the late '90s.

PRESIDING MEMBER MOORE: Late '80s --

1           MR. ELIE: Early '90s, maybe, '91, '92,  
2 is that --

3           MR. WHITE: Since I started in 1991  
4 there was still a fire brigade when I wa there, so  
5 early '90s.

6 BY MR. ELIE:

7           Q     Dr. Walther, or whoever on the panel, I  
8 guess, looking at page 46 of your testimony, in  
9 the second paragraph there's a reference to design  
10 changes in the underground fire water piping  
11 network. Do you see that?

12           DR. WALTHER: Yes.

13           MR. ELIE: Is there any such design  
14 change presently contemplated, or is that just  
15 something you're anticipating. If you need to do  
16 one, then we'd go through a process.

17           DR. WALTHER: There will be physical  
18 changes to the arrangement in order to get fire  
19 protection to the placement of the new facilities.  
20 But detailed engineering has not been done yet.

21           MR. ELIE: And those detailed  
22 engineering plans would be among the items which  
23 would be submitted for review and comment, and  
24 possibly approval of the Morro Bay Fire  
25 Department?

1 DR. WALTHER: Yes.

2 MR. ELIE: If you could turn to page 48  
3 of the testimony, which is exhibit 134.  
4 Specifically to the paragraph just above  
5 operational impacts, Furthermore, there's a  
6 reference to resources for the City, et cetera.

7 Is that essentially a reference to the  
8 agreements between Duke and the City?

9 DR. WALTHER: Yes.

10 MR. ELIE: And that's contained in a  
11 draft letter from Mr. Trump to the City, as well  
12 as the agreement to lease?

13 DR. WALTHER: Yes.

14 MR. ELIE: That's all the questions I  
15 have for this witness.

16 Oh, sorry -- I apologize. We had a  
17 discussion earlier about HAZ-1 through 6 and the  
18 City's review and comment on plans. That would  
19 apply to both WorkerSafety-1 and 2, as well,  
20 correct?

21 DR. WALTHER: Yes.

22 MR. ELIE: Thank you. No further  
23 questions.

24 HEARING OFFICER FAY: Okay. CAPE?

25 MS. CHURNEY: No questions.

1 HEARING OFFICER FAY: Thank you. Any  
2 redirect, Mr. Harris?

3 MR. HARRIS: No.

4 HEARING OFFICER FAY: All right. Thank  
5 you. We'll turn now to the staff.

6 MS. HOLMES: Staff's witness on worker  
7 safety is Dr. Alvin Greenberg.

8 (Off-the-record comments.)

9 DIRECT EXAMINATION

10 BY MS. HOLMES:

11 Q Dr. Greenberg, do you have in front of  
12 you the worker safety and fire protection portion  
13 of exhibit 115?

14 A Yes.

15 Q And was that testimony prepared by you  
16 or under your direction?

17 A Yes.

18 Q And are the facts contained in that  
19 testimony true and correct to the best of your  
20 knowledge?

21 A Yes.

22 Q And do the opinions represent your best  
23 professional judgment?

24 A Yes.

25 Q Thank you. I think what we'll just do

1 is walk real quickly through the proposed changes  
2 that we've heard discussed so far. Let's start  
3 with Duke's proposed changes. Duke had made some  
4 suggestions with respect to WorkerSafety-1.

5 First of all, do you have any objections  
6 to the changes that they have recommended in terms  
7 of how the plan is organized?

8 A No objections at all.

9 Q And did you have proposed changes to  
10 the -- excuse me, did you have any objections to  
11 the proposed language regarding the role of the  
12 CPM that allows the CPM to review and approve  
13 after Fire Department review and comment?

14 A Do you want to rephrase that, counsel?

15 (Laughter.)

16 BY MS. HOLMES:

17 Q There's proposed language on the top of  
18 page 50 regarding the role of the CPM in reviewing  
19 and approving plans after Fire Department review  
20 and comment. Do you have any objection to those  
21 proposed changes?

22 A No, I don't.

23 Q Thank you. And similarly they have  
24 proposed changes with respect to the verification  
25 that's in the next paragraph on page 50.

1           A     I don't have any problems with how  
2     applicant has proposed to reword this particular  
3     proposed condition of certification.

4           Q     Thank you.  And I'm suspecting that you  
5     don't have any objections to the similar changes  
6     in organization with respect to WorkerSafety-2?

7           A     As far as the organization, no, I don't  
8     have any problem in removing the word maintenance.  
9     These two worker safety proposed conditions of  
10    certification predate a lot of us.  They're time  
11    honored.  And it's about time we revised them, and  
12    the applicant has come up with some good  
13    suggestions on reorganizing them.

14          Q     Thank you.  Do you have a comment with  
15    respect to Duke's proposal to delete the reference  
16    to CalOSHA in WorkerSafety-2?

17          A     Yes.  It really should not be a major  
18    issue, but the emergency action plan is required  
19    by CalOSHA regulations.  And, again, in the time  
20    honored tradition of having these plans reviewed  
21    by CalOSHA consultation service, which is not the  
22    enforcement branch of CalOSHA, we suggest that the  
23    CalOSHA consultation service still review the  
24    emergency action plan.

25                    This is, however, a sophisticated

1 applicant. They have these plans, many of these  
2 plans, already in place for the existing facility.  
3 And so it's not a very big issue right now whether  
4 CalOSHA consultation service reviews them or not.

5 Again, it's traditional, and it's  
6 something that past applicants have found to be  
7 useful.

8 Q So would it be your recommendation that  
9 you would let CalOSHA decide as to whether or not  
10 they want to review this portion of the plans?

11 A I'd let the consultation service of  
12 CalOSHA decide that. And, of course, I would  
13 support the City of Morro Bay Fire Department get  
14 to review all these plans and comment on them.

15 Q Thank you. Finally, with respect to  
16 WorkerSafety-3, and I believe this ties back to  
17 the City's proposal for, I think it's HAZ-8 or  
18 HAZ-7, regarding reimbursement basically of the  
19 City for costs that may be associated with  
20 providing fire protection, what is your reaction  
21 to the proposal both of Duke in its direct  
22 testimony on this subject, and to the City of  
23 Morro Bay and its direct testimony on hazardous  
24 materials?

25 A Yeah, I have a little bit of a problem

1 in substituting the language that they are  
2 proposing. The language they are proposing  
3 addresses issues other than worker safety and fire  
4 protection.

5 The staff's proposed, or my proposed  
6 language in WorkerSafety-3 is more narrowly  
7 focused, and really just addresses the issues that  
8 I raised in the hazardous materials management  
9 section and the worker safety and fire protection  
10 section.

11 It also clarifies the statement that I  
12 had made just a few moments ago, the last two  
13 sentences, that the CPM will review and approve  
14 all plans after receiving comments from the Morro  
15 Bay Fire Department. And that the CEC will give  
16 highest consideration to comments received by the  
17 Morro Bay Fire Department.

18 So it makes clear in writing that the  
19 intent here is that all these plans should indeed  
20 be reviewed and commented on by the Morro Bay Fire  
21 Department, that the CPM will give the Morro Bay  
22 Fire Department's comments a great, you know, very  
23 great weight.

24 I feel uncomfortable in attaching the  
25 proposed language here, 16.1 on page 3 of 5 of

1 exhibit number 137 in place of my suggestion,  
2 because it's overly broad and covers more issues,  
3 such as police protection, which is not really  
4 covered in worker safety, fire protection and  
5 hazardous materials management.

6 Q Thank you. Let's turn now to the City's  
7 comments. I believe I understood you earlier to  
8 say that with respect to WorkerSafety-1 and 2, you  
9 support the City having a review role for those  
10 plans?

11 A Yes, indeed.

12 Q And in addition the City had asked that  
13 there be explicit recognition of the fact that the  
14 City of Morro Bay is responsible for enforcing the  
15 Uniform Fire Code. Is it your testimony that  
16 we've already provided that recognition in our  
17 testimony?

18 A Yes, we did. It's explicitly stated  
19 under the LORS discussion in the testimony.

20 Q Thank you.

21 MS. HOLMES: I think that that covers  
22 the areas that the other parties raised. So with  
23 that I will make Dr. Greenberg available for  
24 cross-examination.

25 HEARING OFFICER FAY: Okay, and do you

1 want to introduce that portion --

2 MS. HOLMES: I always seem to forget.

3 Yes, the worker safety portion of exhibit 115.

4 HEARING OFFICER FAY: And was there  
5 anything in 116 that affected that?

6 MS. HOLMES: No, 116 was errata, had the  
7 hazardous materials errata, but there was nothing  
8 from --

9 HEARING OFFICER FAY: Okay, is there any  
10 objection? Okay, that will be entered at this  
11 point.

12 And, Dr. Greenberg is available for  
13 cross-examination. Mr. Harris?

14 MR. HARRIS: Yes, just a couple  
15 questions on the issue, the last issue,  
16 WorkerSafety-3.

17 CROSS-EXAMINATION

18 BY MR. HARRIS:

19 Q Your language has a lot of concepts in  
20 there. I guess I'm looking for some kind of  
21 common ground here.

22 The appendix we have, reference 16 --  
23 6.17-2, is that right? It's 6.10-5. Those  
24 appendices had several concepts about fire  
25 protection.

1           You're right, they are broader than just  
2 worker safety and fire protection. They deal with  
3 other issues. But, you know, as to the concepts  
4 related to worker safety in there, I think the  
5 intent is to include those concepts.

6           So my question --

7           MR. HARRIS: Thank you, Caryn. She gave  
8 me the when-are-you-going-to-ask-a-question look.

9 BY MR. HARRIS:

10          Q     My question is, is your intent to  
11 incorporate those concepts into a condition more  
12 than the specific outside agreements?

13          MS. HOLMES: I'm sorry, can you just be  
14 a little more specific about which concepts. The  
15 appendix is quite a few pages long. Maybe if you  
16 could just explain what you think they mean and  
17 state it in the question, it would be easier for  
18 him to answer.

19          PRESIDING MEMBER MOORE: This is  
20 Jeopardy.

21          (Laughter.)

22          MR. HARRIS: It is Jeopardy and I am  
23 well on caffeine, so let me try again.

24 BY MR. HARRIS:

25          Q     Within the appendix we've referenced

1           there are a number of concepts that relate to  
2           worker safety.  There are sections actually  
3           labeled worker safety.

4                         And I guess what I'm getting at here is  
5           that we're suggesting that those concepts be  
6           developed post-certification through agreement of  
7           the parties, Morro Bay and the City of Morro Bay  
8           and Duke.

9                         So do you have any objection to the idea  
10          that post-certification those parties would sit  
11          down together and work through the concepts that  
12          are set forth in the agreement to lease language  
13          referenced by the City and the appendix referenced  
14          by the applicant?

15                        A     I might not have any objection, but I  
16          might prefer a different approach in that perhaps  
17          we can have a melding of my proposed WorkerSafety-  
18          3 with your proposal and just taking out the  
19          worker safety, fire protection and hazardous  
20          materials sections.  And put it in more explicitly  
21          there pre-certification.

22                        Q     Always want to pull forward, don't you,  
23          Alvin?

24                                 (Laughter.)

25          //

1 BY MR. HARRIS:

2 Q Because the intent of the language, I  
3 think, is to narrow the worker safety issues just  
4 to the worker safety provisions of the agreement  
5 to lease, and the worker safety provisions of the  
6 appendix.

7 So, I wanted to work at a conceptual  
8 level with that. Would your problems, I guess, be  
9 solved post-certification if all that's subject to  
10 review of the CPM?

11 Q Yes.

12 Q Okay.

13 MR. HARRIS: I think that's all I have  
14 at this point, thanks.

15 HEARING OFFICER FAY: Okay. Does the  
16 City have any questions?

17 MR. ELIE: Briefly.

18 CROSS-EXAMINATION

19 BY MR. ELIE:

20 Q Is it fair to say, Dr. Greenberg, that  
21 you're happy with WorkerSafety-3 as you drafted  
22 it?

23 A Yes.

24 (Laughter.)

25 //

1 BY MR. ELIE:

2 Q If you could go to page 3.10-3 of your  
3 testimony on the LORS section of the local. Would  
4 you be amenable to a clarification with respect to  
5 the reference to the California Fire Code that  
6 would be as adopted by the City, including  
7 appendices?

8 A No problem at all with that.

9 MR. ELIE: I think that's where we had a  
10 little -- that's what Jeff Jones was testifying  
11 about. That's all the questions I have.

12 HEARING OFFICER FAY: Thank you. CAPE?

13 MS. CHURNEY: No questions.

14 HEARING OFFICER FAY: Okay. Ms. Holmes?

15 MS. HOLMES: Very good, on the last  
16 witness, no redirect.

17 HEARING OFFICER FAY: Thank you, Dr.  
18 Greenberg, you're excused.

19 All right, we move now to the City's  
20 witness on worker safety and fire protection.

21 MR. ELIE: Chief Jones is our witness  
22 again on worker safety --

23 HEARING OFFICER FAY: Chief Jones has  
24 previously been sworn and remains under oath.

25 //

1 DIRECT EXAMINATION

2 BY MR. ELIE:

3 Q Chief Jones, we'll dispense with the  
4 preliminaries and just get right to the meat of  
5 it.

6 The City's requesting review and comment  
7 on worker safety, correct?

8 A That's correct.

9 Q One and 2. And the City requests that  
10 WorkerSafety-3 remain as is?

11 A That's correct.

12 Q Why is that?

13 A The WorkerSafety-3 and the proposed  
14 language from the Duke proposal refers back to  
15 previous documents. And the language we believe  
16 that's in the original WorkerSafety-3 is much  
17 clearer in regard to what it covers, what's  
18 covered under the -- in the language and it's not  
19 directing us back to another document elsewhere.  
20 So we feel it's one-stop-shopping, and the most  
21 specific characterization of what would occur with  
22 regard to providing for worker safety.

23 Q Would your testimony in the hazardous  
24 materials management section relating to paragraph  
25 16.1 of the agreement to lease and its proposed

1 incorporation be the same here in worker safety?

2 A Yes.

3 Q Same issues. Anything else on worker  
4 safety that I haven't touched upon?

5 A I agree with Dr. Greenberg's inclusion  
6 of all six of the plans for review by the Fire  
7 Department.

8 Q Anything else?

9 A No.

10 MR. ELIE: The witness is available.  
11 I've already moved in the exhibit, I presume it  
12 all went in at once?

13 HEARING OFFICER FAY: Yes. Okay. Mr.  
14 Harris.

15 MR. HARRIS: No questions.

16 HEARING OFFICER FAY: Staff.

17 MS. HOLMES: No questions.

18 HEARING OFFICER FAY: CAPE?

19 MS. CHURNEY: No questions.

20 HEARING OFFICER FAY: Okay, any  
21 redirect?

22 (Laughter.)

23 MR. ELIE: Irving Younger is speaking to  
24 me when he said, shut up and sit down.

25 HEARING OFFICER FAY: Okay, thank you

1 very much.

2 We have had no testimony filed by CAPE  
3 on this, so that concludes our taking of evidence  
4 on the topic of worker safety and fire protection.

5 Are there any matters that we need to  
6 discuss or that the parties would like to put  
7 before the Committee before we adjourn?

8 MS. HOLMES: I'm wondering whether would  
9 it be appropriate to discuss how we're going to  
10 address the hydrazine issue at the next set of  
11 hearings. I think we're going to need some sort  
12 of -- it seems to me that there's two specific  
13 issues.

14 One has to do with the modeling inputs  
15 and outputs. And the other has to do with the  
16 information that Duke produced for the first time  
17 today indicating that there may be problems with  
18 the use of the alternative. And we discussed the  
19 types of information that we would need.

20 Perhaps it would be best to go off the  
21 record. We could discuss a schedule for how it's  
22 going to get dealt with, and get something  
23 established that we can then put back on the  
24 record.

25 HEARING OFFICER FAY: Yeah, what I think

1 I'd recommend is that the parties take this into  
2 account and the Committee would strongly recommend  
3 that you discuss this among yourself off the  
4 record. And come prepared on Thursday to make a  
5 recommendation.

6 MS. HOLMES: Okay.

7 HEARING OFFICER FAY: Even if it's not a  
8 unified recommendation.

9 I also want to announce that we have a  
10 scheduling change for next Tuesday. The notice  
11 stated that the hearing next Tuesday would begin  
12 here at 9:00 a.m. We're going to have to change  
13 that to begin at 1:00 p.m.

14 So, next Tuesday's hearing we're  
15 scheduled to take up cultural resources. That  
16 will begin at 1:00 p.m. And we will go late.  
17 We'll try to make it a full day. So our lunch  
18 break will be really at dinnertime.

19 MS. CHURNEY: So it is likely that air  
20 quality will be begun on that date?

21 HEARING OFFICER FAY: Yes, my guess, my  
22 best guess is that we probably will begin --

23 PRESIDING MEMBER MOORE: It's our  
24 intention to do that.

25 HEARING OFFICER FAY: As it was before.

1           Instead of ending at 5:00 we'll go --

2                       PRESIDING MEMBER MOORE:  Shift into --

3                       HEARING OFFICER FAY:  -- another three  
4           hours or so.

5                       MS. CHURNEY:  I have a question about  
6           the course of proceedings tomorrow.  And that is  
7           if noise and vibration does not take up the full  
8           morning, is it the Committee's intent to launch  
9           right into traffic and transportation in the  
10          morning?  Or would you take a break until the  
11          afternoon for that?

12                      HEARING OFFICER FAY:  If noise and  
13          vibration is concluded earlier than say 11:30 or  
14          something like that, I think we would just try to  
15          move forward rather than take a lunch break.

16                      MS. CHURNEY:  Our sole witness, Mr.  
17          Crawtcher, is a school teacher, and he would need  
18          to make arrangements for a substitute teacher  
19          today for either in the morning or the afternoon,  
20          if we can limit it to that.

21                      But another way that we might be able to  
22          handle this is if counsel for Duke is agreeable to  
23          stipulate that his testimony may be received.  
24          It's really offered solely to raise two fact  
25          issues that we believe neither staff nor Duke took

1 into consideration, because they happened quite  
2 recently, as recently as last week, with respect  
3 to a school closing.

4 And we raise it so that those impacts,  
5 to find out whether those impacts have -- could be  
6 taken into account.

7 HEARING OFFICER FAY: Do you know, Mr.  
8 Harris, off the bat, whether you can --

9 MR. HARRIS: I think we're going to want  
10 to cross-examine the witness. So, --

11 HEARING OFFICER FAY: I think it's safe  
12 to say that that witness would not -- I mean that  
13 is the last witness on transportation. And I  
14 think it's very unlikely that we'd get there  
15 before the afternoon.

16 MS. CHURNEY: So if he gets a substitute  
17 for his afternoon session --

18 PRESIDING MEMBER MOORE: I think  
19 afternoon.

20 MS. CHURNEY: -- fine.

21 HEARING OFFICER FAY: Yes.

22 MS. CHURNEY: Thank you.

23 HEARING OFFICER FAY: Yes. And it's up  
24 to you to decide whether you think he needs to  
25 hear the applicant's direct testimony, et cetera,

1 from the very beginning of that topic area.

2 But he would be the last witness in that  
3 topic area.

4 MS. CHURNEY: Thank you.

5 HEARING OFFICER FAY: And I'd also, just  
6 in general, for all the scheduling questions that  
7 are going to be coming up on Thursday, I'd  
8 encourage the parties to speak amongst yourselves  
9 so that what you bring to the Committee is as  
10 informed as possible, and we don't spend a lot of  
11 time, you know, discussing or arguing about  
12 scheduling on Thursday afternoon.

13 But we do have some significant changes  
14 in the schedule that have been proposed by Duke,  
15 and responded to by staff. And so we'll be  
16 addressing those on Thursday afternoon.

17 MS. CHURNEY: So that scheduling will  
18 include scheduling with respect to marine  
19 biological and water resources, is that correct?

20 HEARING OFFICER FAY: That's right. And  
21 what I've asked of -- I've asked a response from  
22 CAPE as to whether they would still oppose hearing  
23 the topic of soil and water resources at a  
24 different time than biological resources. And we  
25 hope to get a response by Thursday.

1           Other parties have indicated that we may  
2           be able to go forward on soil and water resources,  
3           land use and visual in mid March, reserving  
4           alternatives and biological resources for a later  
5           time.

6           So that is the type of thing we're going  
7           to discuss Thursday afternoon.

8           MR. ELIE: At the risk of stealing your  
9           job, I think you may have omitted one section of  
10          the hearing on worker safety, not that there's  
11          going to be any, but public comment.

12          HEARING OFFICER FAY: Oh, thank you for  
13          reminding me. That's all right. We like --

14          MS. CHURNEY: One further question.

15          HEARING OFFICER FAY: -- having you keep  
16          a check on it. Yes?

17          MS. CHURNEY: With socioeconomics being  
18          the only topic scheduled for Thursday, does the  
19          Committee believe that the scheduling conference  
20          will begin in the morning, as opposed to again  
21          putting that off until the afternoon?

22          CHAIRMAN KEESE: If you look at our  
23          schedule here, you booked seven hours today, and  
24          we're getting away with four. You booked eight  
25          hours for tomorrow. And I think it was five hours

1 for Thursday, if I recall, four and a half hours  
2 for Thursday.

3 So, it would --

4 PRESIDING MEMBER MOORE: The bottomline  
5 is it's likely to happen just after lunch.

6 CHAIRMAN KEESE: So that's what it would  
7 look like --

8 PRESIDING MEMBER MOORE: It won't be the  
9 morning.

10 CHAIRMAN KEESE: Unless everybody is  
11 folding on socioeconomic.

12 HEARING OFFICER FAY: Right. Obviously  
13 we're relying on the estimates the parties gave us  
14 in terms of scheduling.

15 MR. ELIE: But if we do get done at  
16 11:00, we'll start the scheduling conference,  
17 right?

18 HEARING OFFICER FAY: Yes, if it's that  
19 early, we should.

20 Okay, and now, thanks to the reminder,  
21 I'm going to ask the public if they have any  
22 comments on worker safety and/or fire protection.

23 Yes?

24 MS. DAVIS: Actually I don't have a  
25 comment, it's a question.

1 (Parties speaking simultaneously.)

2 HEARING OFFICER FAY: Why don't you come  
3 up and introduce yourself, please state your name.

4 MS. DAVIS: I'm Mandy Davis, and it's  
5 just a question. It's a question about  
6 scheduling, because I have to go on a business  
7 trip, but I have some information as a member of  
8 the public to present on air quality.

9 So, is there a specific time -- and when  
10 do you guys, do you always take it at the end of  
11 all of the rest, right? So should --

12 HEARING OFFICER FAY: I think, while  
13 we'd normally take it at the end, it's unclear  
14 exactly when that will be. So, I guess I would  
15 tell you that you could probably make your comment  
16 either on February 5th or 6th and be comfortable  
17 that we will be here those days.

18 The 7th, if things go very quickly, it's  
19 possible we won't go on to the 7th.

20 MS. DAVIS: Okay, the other question I  
21 have is it may be relatively expensive material,  
22 and can I present that to you as formal evidence,  
23 or what are my capabilities?

24 HEARING OFFICER FAY: Well, I'll refer  
25 you to the Public Adviser and --

1 MS. DAVIS: Okay.

2 HEARING OFFICER FAY: -- she can give  
3 you guidance on that.

4 MS. DAVIS: All right, but I can hand it  
5 over to somebody at that --

6 HEARING OFFICER FAY: Oh, yes.

7 MS. DAVIS: Okay, great, thank you.

8 HEARING OFFICER FAY: Any other  
9 comments, questions? All right, Ms. Mendonca, if  
10 you could help Ms. Davis that would be great.

11 All right. We thank you all for being  
12 so efficient today, and we'll see you tomorrow  
13 morning. We are adjourned.

14 (Whereupon, at 2:07 p.m., the hearing  
15 was adjourned, to reconvene at 9:00  
16 a.m., Wednesday, January 30, 2002, at  
17 this same location.)

18 --o0o--

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## CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of February, 2002.

JAMES RAMOS

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