

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Peter Ward, Advisor

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

William Pfanner, Project Manager

Michael Stephens

Mark Lindley

Vince Geronimo

Tuan Ngo

Alvin Greenberg

Brian Bateman

Bay Area Air Quality Management District

APPLICANT

Jeanne Sol,, Deputy City Attorney
City and County of San Francisco

Emilio "Gene" Varanini, Special Counsel
California Power Authority

John L. Carrier, Program Manager
CH2M HILL

Karen Parker

Karen Kubick

Randall Smith

APPLICANT

Steve DeYoung

Tom Lae

Lester Feldman

Susan Gallardo

Robert Cheung

Steve Long

Matt Franck

Gary Rubenstein

INTERVENORS

Robert Sarvey

Michael Boyd
Californians for Renewable Energy

Lynn Brown
Californians for Renewable Energy

ALSO PRESENT

Francisco DaCosta, Director
Environmental Justice Advocacy

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P R O C E E D I N G S

9:02 a.m.

HEARING OFFICER FAY: We're on the record. This is a continuation of the evidentiary hearings for the application for certification of the San Francisco Electric Reliability project; docket number 04-AFC-1.

To my left is Presiding Commissioner James Boyd; and to my right is Associate Commissioner John Geesman. And to Commissioner Boyd's left is his Advisor, Peter Ward. I am Gary Fay, the Hearing Officer on the case.

Before we begin I'd like to just review a few things. As per a request from the staff and all the other parties who were scheduled to present evidence on biology, we will delay taking up the topic of biology until, at the earliest, the end of day, at which time we'll discuss what the needs of the parties are for proceeding on that.

I think many questions that may appear to concern biology will come up to the panels that will address waste management and soil and water resources. So, much of that may be taken care of by then.

1 I'd also like to do a quick run-through
2 for people who are keeping score of the documents
3 that have been filed since our last evidentiary
4 hearing.

5 On May 1, CARE filed a motion for leave
6 to file additional testimony. And that same day,
7 filed objections and a protest to the May 1
8 evidentiary hearing.

9 In addition, the applicant filed
10 supplementary testimony on May 1. And the same
11 day the Commission put out the notice of today's
12 hearing.

13 May 2nd there was another motion to file
14 leave for additional testimony under site
15 contamination and soil and water management; that
16 was from CARE.

17 May 5, notice of evidentiary hearing --
18 I'm sorry, some of these dates seem to be
19 repetitive. May 5, staff response to CARE's
20 objections and a protest regarding the May 1
21 evidentiary hearing.

22 On May 8 Mr. Sarvey filed a response to
23 staff's previous filing. And also on May 8 the
24 Commission issued a notice regarding a full
25 Commission hearing on CARE's appeal of a Committee

1 ruling. And that will be heard on May 24th at the
2 normal business meeting.

3 On May 11th there was a request from
4 CARE to subpoena Mr. Manho Yeung of PG&E. And
5 there was also a request that day or the following
6 day by CARE for a subpoena of Nancy Katyl of the
7 Regional Water Quality Control Board.

8 On May 16th the Water Board objected to
9 the request for subpoena of Nancy Katyl.

10 On May 17th the applicant filed its
11 errata to its supplemental testimony. A page or
12 two was missing, and so they corrected that.
13 Also, May 17th the Committee ruled denying the
14 request for the subpoena of Manho Yeung.

15 May 17th also, the Committee issued an
16 order granting leave for CARE to file the
17 requested additional testimony. May 17th the
18 Committee ruled against CARE on its request to
19 recall witnesses.

20 May 19th, the Committee ruled regarding
21 the subpoena of Water Quality Board witness Katyl.
22 That request for subpoena was denied. May 19th
23 the tentative exhibit list, revised May 2nd, was
24 sent out to all the parties. And we do have extra
25 copies of that that were here on the table.

1 And as I said, May 24th business meeting
2 will take up CARE's appeal of the denial of their
3 motion challenging some of the prior hearings.

4 So, I just wanted to cover those items.
5 There are other things filed in the docket, but
6 these are documents and motions, et cetera, that
7 are more involved with the hearings.

8 I understand that the staff is still
9 waiting on some of their people, but I'll ask if
10 there's any preliminary matters and then we'll get
11 started with the applicant's panel on waste
12 management and soil and water resources.

13 Ms. Sol,, do you have anything
14 preliminary?

15 MS. SOL : The one preliminary matter
16 that I wanted to bring up is, as I noted in an
17 email sent out to the parties, our soil and
18 contamination witnesses are here and they're
19 prepared to answer questions about soil and
20 contamination.

21 So I just wanted to bring to the
22 attention of parties that if they have questions
23 related to contamination, including biology
24 questions or other questions, these are the
25 witnesses who are addressing that topic.

1 You know, it's always hard to parse out
2 what goes where. We submitted these witnesses to
3 cover that topic. And so questions on that topic
4 should be directed to them.

5 HEARING OFFICER FAY: I think you can
6 imagine that this could be difficult if somebody
7 thinks of contamination in the Bay, for instance,
8 as a biology question. But in the process of
9 materials getting into the Bay, or potentially
10 getting into the Bay, might be more appropriately
11 addressed by a soil witness or a waste management
12 witness.

13 So, I think everybody would be best
14 served to try and ask these questions of the
15 panels that we have here today and see if they
16 feel comfortable. I think if they don't they'll
17 inform the record.

18 MS. SOL : Right. And if they don't, we
19 can bring these witnesses back to be available
20 when biology is taken up. They are the witnesses
21 who are addressing this topic.

22 HEARING OFFICER FAY: Okay. Great.
23 Thank you for that offer.

24 MR. RATLIFF: Mr. Fay, related to that,
25 the staff biology witness is Susan Sanders, and

1 she was unable to attend today as we had
2 previously notified you. She is available next
3 week if there is a continued hearing.

4 But my request to the Committee and to
5 the parties is that she not be required to
6 testify. There's nothing, I think, in her
7 testimony that is at issue in this proceeding.
8 And to the extent that the parties are interested
9 in contamination and its effects on the Bay, those
10 questions should be addressed to our soil and
11 water witnesses, Mark Lindley and Michael
12 Stephens. Her testimony doesn't address that at
13 all.

14 And so I would ask the Committee not to
15 require her to attend because I simply don't think
16 there is good reason for her to do so. She is a
17 private consultant, and she's very busy right now
18 working on the bird kill study, avian mortality
19 study related to wind projects. And it would be
20 very inconvenient and probably expensive to have
21 her come down here for a day for what I think will
22 be probably not a very productive session.

23 HEARING OFFICER FAY: Okay. Well, I'll
24 just re-emphasize my suggestion that people try to
25 take full advantage of the witnesses who are here

1 today to ask any questions regarding their
2 concerns about contamination harming the
3 biological resources around the project.

4 MR. RATLIFF: What should I tell her,
5 though, with regard to that? I mean, she will
6 need to know if she's supposed to attend, and I
7 will have to tell her --

8 HEARING OFFICER FAY: Well, I think --

9 MR. RATLIFF: -- before the end of the
10 day.

11 HEARING OFFICER FAY: -- I think we're
12 going to wait on that until later in the hearing.

13 MR. RATLIFF: Okay.

14 HEARING OFFICER FAY: We'll see how it
15 unfolds and we need to be sure that all the
16 parties can get their questions answered by the
17 panels and witnesses that are here.

18 Yes, Mr. Sarvey?

19 MR. SARVEY: I haven't seen any biology
20 testimony from any of the hazardous waste people
21 or the water people, so I'm a little confused how
22 they're going to be -- how they're going to
23 represent biology.

24 HEARING OFFICER FAY: Well, I think it
25 depends on what the question is. And they're just

1 going to have to play it a question at a time.

2 MR. SARVEY: Because we --

3 HEARING OFFICER FAY: But there are
4 questions that they may be able to address, if it
5 has to do with the transfer of pollutants into the
6 Bay, that type of thing.

7 MR. SARVEY: Without prefiled testimony,
8 I mean, it's pretty much at a disadvantage if
9 they're going to start testifying to biological
10 impacts. So, that's my only concern.

11 HEARING OFFICER FAY: Well, I think, in
12 a way this may be helpful to you, if they are
13 willing to answer questions within their
14 expertise, and we'll get this on the record.

15 My understanding is that the biologists,
16 because of the limited nature of the analysis of
17 this brownfield site, have a fairly limited scope
18 in their testimony. And many of the contamination
19 issues might be beyond their understanding and
20 comfort level in testifying.

21 So, I think we should take full
22 advantage of this set of panels today and just see
23 if that can address our needs. And if there's no
24 need to cross-examine witnesses on biology, then
25 that testimony can come in on declaration. But

1 we're going to withhold the ruling on that.

2 MR. SARVEY: Okay, well, that's a major
3 bone of contention for me that they haven't
4 performed the analysis that would allow us to take
5 a good look at biology and uncover all the
6 significant impacts.

7 And that's, like I say, I've been
8 objecting all along to not having the ecological
9 risk assessment performed and the health risk
10 assessment. In fact, I filed a data request over
11 two years ago that remains unanswered.

12 So, you know, I've got a problem with
13 the way we're approaching this. I just wanted to
14 get that on the record. Thank you.

15 HEARING OFFICER FAY: Sure. What I'd
16 like to do is withhold the ruling on this until
17 later, until this panel's addressed these
18 concerns. And then we'll have a discussion about
19 it after that.

20 MR. RATLIFF: Mr. Fay, this raises an
21 issue that I think we're going to address shortly,
22 and in answer to Mr. Sarvey, I guess I could say
23 that our testimony is that the project has no
24 impacts on the Bay. And that is going to be the
25 testimony of our soil and water witnesses.

1 Therefore, for that reason, our biology
2 witness has no testimony regarding impacts on the
3 Bay.

4 There is a related issue of whether the
5 existing contamination of the site, which is a
6 preexisting condition, is having any effect on the
7 Bay. And that will also be addressed in our
8 testimony. But that is not an impact of the
9 project according to our testimony. And that is
10 something that has to be addressed, if at all, by
11 the Regional Board, through its oversight of all
12 remediation efforts at the site.

13 HEARING OFFICER FAY: Okay, thank you.
14 All right, is the applicant prepared to go forward
15 then? And how would you like to do this? Is your
16 panel on waste any different from your panel on
17 soil and water? Or is all together?

18 MS. SOL : There are slight differences
19 to address the noncontamination issues. We can go
20 forward with our waste panel and they include all
21 of the witnesses who can address contamination, as
22 well as any questions that might arise about the
23 treatment of waste.

24 It would be optimal if the contamination
25 issues or questions were addressed to that panel.

1 But we will have our contamination witnesses
2 available also when soil and water comes up.

3 For soil and water we have in addition
4 witnesses who are familiar with the water
5 processes and how water is going to be treated, as
6 well as our witness on soil.

7 But again, the contamination panel is
8 here. And I will not dismiss them until we're
9 done with soil and water, as well.

10 HEARING OFFICER FAY: Great. Okay, why
11 don't we go ahead with your panel on waste
12 management.

13 MS. SOL : Okay. Then I will go ahead
14 and call Karen Parker, Karen Kubick, Randall
15 Smith, Steve DeYoung, Tom Lae and Susan Gallardo,
16 Robert Cheung and Lester Feldman.

17 (Pause.)

18 HEARING OFFICER FAY: Let's go off the
19 record.

20 (Off the record.)

21 HEARING OFFICER FAY: Could the court
22 reporter please swear the witnesses.

23 Whereupon,

24 KAREN PARKER, KAREN KUBICK, RANDALL SMITH

25 STEVE DeYOUNG, TOM LAE, LESTER FELDMAN

1 SUSAN GALLARDO and ROBERT CHEUNG
2 were called as witnesses herein, and after first
3 having been duly sworn, were examined and
4 testified as follows:

5 THE REPORTER: Now, could you each
6 individually go down the line and just state and
7 spell your full names, please.

8 MR. SMITH: Randall Smith, R-a-n-d-a-l-l
9 S-m-i-t-h.

10 MS. KUBICK: Karen Kubick, K-a-r-e-e-n
11 K-u-b-i-c-k.

12 MS. PARKER: Karen Parker, K-a-r-e-e-n
13 P-a-r-k-e-r.

14 MR. FELDMAN: Lester Feldman, L-e-s-t-e-r
15 F-e-l-d-m-a-n.

16 MS. GALLARDO: Susan Gallardo, S-u-s-a-n
17 G-a-l-l-a-r-d-o.

18 MR. CHEUNG: Robert Cheung, R-o-b-e-r-t
19 C-h-e-u-n-g.

20 MR. DeYOUNG: Steve DeYoung, S-t-e-v-e
21 D-e-Y-o-u-n-g.

22 MR. LAE: I'm Tom Lae, T-o-m L-a-e.

23 HEARING OFFICER FAY: Thank you.

24 MS. SOL : Okay, Your Honor, I would
25 like to move for the introduction into the record

1 of a series of documents. I'm going to have Ms.
2 Parker deal with the documents that were submitted
3 prior to the May 1st testimony, so why don't we
4 start with her.

5 I'm also going to have the witnesses
6 give introductory statements, but why don't we
7 start with the documents.

8 DIRECT EXAMINATION

9 BY MS. SOL :

10 Q So, Ms. Parker, on behalf of the panel,
11 do you have before you the April 17th testimony of
12 the City, section on waste management?

13 MS. PARKER: I do.

14 MS. SOL : And under 1C there are a list
15 of documents. Are you familiar with those
16 documents?

17 MS. PARKER: Yes, I am.

18 MS. SOL : Do you have any changes to
19 make to that list of documents?

20 MS. PARKER: I have one to add to this
21 list of documents. It is appendix 8.13A, the
22 final risk management plan, site management plan
23 for the Muni site.

24 MS. SOL : And that was the appendix to
25 supplement A filed on volume 2 of supplement A,

1 dated March 24, 2005, is that correct?

2 MS. PARKER: That's correct.

3 HEARING OFFICER FAY: That's a portion
4 of exhibit 1?

5 MS. SOL : I believe -- yes --

6 HEARING OFFICER FAY: The AFC?

7 MS. SOL : Yes. Would you like me to
8 read through each of the documents, Your Honor, or
9 does --

10 HEARING OFFICER FAY: Yes. And please
11 reference the exhibit numbers.

12 MS. SOL : Okay. So that would be
13 exhibit 3, a portion -- or sorry, a portion of
14 exhibit 3, applicant's response to CEC Staff
15 request data response set 1A; responses to data
16 requests 88 through 90, dated July 6, 2004.

17 Exhibit 9, applicant's response to CEC
18 Staff data request informal data set 3, response
19 to data request 145, dated August 20, 2004,
20 supplement A to the application for certification
21 for the San Francisco Electric Reliability
22 project, volume 1, dated March 24, 2005, section
23 8.13, waste management. And that's exhibit 15.
24 And I apologize, the reference to the document was
25 actually exhibit 50, isn't that correct, Ms.

1 Parker?

2 MS. PARKER: Yes.

3 MS. SOL : Okay. So, it would be also
4 exhibit 15, supplement A to the application for
5 certification for the San Francisco Electric
6 Reliability project, volume 2, dated March 24,
7 2005, appendix 8.13.

8 Then a portion of applicant's response
9 to CEC Staff data request, data response set 3A,
10 response to data request 184, dated June 3, 2005.
11 That's exhibit 19.

12 Applicant's response to CEC Staff data
13 request, informal data response set 6A, responses
14 to data requests 6 through 11, dated July 11,
15 2005. And that's exhibit 29.

16 Applicant's response to Sarvey data
17 request set 1A, dated July 25, 2005, responses to
18 data requests 1-16 through 1-18; and that's
19 exhibit 27.

20 Applicant's comments on the preliminary
21 staff assessment set 1, comments 43, 44 and 70
22 through 74, dated October 12, 2005; and that's
23 exhibit 39.

24 Applicant's response to CEC Staff data
25 request, informal data response set 6D, responses

1 to data requests 6 through 10, dated October 14,
2 2005; and that's exhibit 32.

3 Applicant's response to CEC Staff data--
4 HEARING OFFICER FAY: Excuse me, exhibit
5 40 -- 4-2?

6 PRESIDING MEMBER BOYD: 32.

7 HEARING OFFICER FAY: 32.

8 MS. SOL : 32.

9 HEARING OFFICER FAY: All right.

10 MS. SOL : Applicant's response to CEC
11 Staff data request, informal data response set 6D,
12 response to data requests 6-10; it's an addendum;
13 it's dated October 22, 2005; and that's exhibit
14 33.

15 Applicant's comments on the preliminary
16 staff assessment set 2, comments 70 through 73,
17 dated October 31, 2005; that's exhibit 40.

18 Applicant's comments on the preliminary
19 staff assessment set 3, comment 71, dated November
20 2005; that's exhibit 41.

21 Applicant's comments on the preliminary
22 staff assessment set 4, revised comment 70, dated
23 December 30, 2005; that's exhibit 43.

24 Supplement B to the application for
25 certification for the San Francisco Electric

1 Reliability project dated January 11, 2006,
2 section 3.4 on waste management; that's exhibit
3 16.

4 Applicant's response to CEC Staff data
5 request, informal data response set 9A, responses
6 to data requests soil and water resources; that's
7 9-13 -- sorry, 9-13 and 9-21, dated January 13,
8 2006; that's exhibit 36.

9 Applicant's final field sampling plan
10 dated February 14, 2006; that's exhibit 44.

11 Applicant's comments on the final staff
12 assessment, set 1, comments 19 through 23 and 25
13 through 32, dated March 17, 2006; that's exhibit
14 45.

15 And the applicant's draft field
16 investigation summary report dated March 30, 2006;
17 that's exhibit 42.

18 HEARING OFFICER FAY: Thank you. Go
19 ahead then with your testimony.

20 BY MS. SOL :

21 Q So, Ms. Parker, do you have any
22 corrections or additions to make to these
23 documents?

24 MS. PARKER: Not in addition to the one
25 that I already gave you.

1 MS. SOL : Okay. And with these changes
2 are the facts contained in these documents true to
3 the best of your knowledge?

4 MS. PARKER: Yes, they are.

5 MS. SOL : And with these changes, to
6 the extent there are opinions set forth in these
7 documents, do they represent your professional
8 judgment?

9 MS. PARKER: Yes, they do.

10 MS. SOL : And with these changes do you
11 adopt these documents as your sworn testimony here
12 today?

13 MS. PARKER: Yes, I do.

14 MS. SOL : Okay, I'd like to turn now to
15 the supplemental testimony that was filed on May
16 1st of Ms. Gallardo on behalf of the panel.

17 Do you have before you the testimony
18 that was filed by the City on May 1st that is
19 exhibit 88?

20 MS. GALLARDO: Yes, I do.

21 MS. SOL : And do you have, as well, the
22 errata that was filed on May 17th?

23 MS. GALLARDO: Yes, I do.

24 MS. SOL : Do you have any changes or
25 corrections to make to those documents today?

1 MS. GALLARDO: No, I don't.

2 MS. SOL : And to the extent there are
3 facts in these documents, are they true to the
4 best of your knowledge?

5 MS. GALLARDO: Yes, they are.

6 MS. SOL : And to the extent there are
7 opinions set forth in these documents, do they
8 represent your professional judgment?

9 MS. GALLARDO: Yes, they do.

10 MS. SOL : And do you adopt these
11 documents as your sworn testimony here today?

12 MS. GALLARDO: Yes, I do.

13 MS. SOL : Okay, Your Honor, I would
14 like to proceed with an opening statement by Ms.
15 Parker and an opening statement by Mr. Feldman to
16 address waste management and soil contamination
17 issues.

18 HEARING OFFICER FAY: Proceed.

19 MS. PARKER: Thank you. Construction of
20 the facility will produce primarily nonhazardous
21 wastes such as wood, paper, plastic and metal. In
22 addition, small amounts of hazardous waste will be
23 generated from welding, painting and cleaning of
24 newly installed piping.

25 Stormwater runoff and water from

1 dewatering of excavations will likely be
2 nonhazardous wastes, but will be collected and
3 tested prior to disposal to determine whether they
4 are hazardous.

5 Excavated soil will be assessed to
6 determine whether it can be reused onsite or must
7 be shipped offsite for disposal.

8 A variety of solid and liquid wastes
9 will be generated during operation of the San
10 Francisco Electric Reliability project. Some of
11 the wastes will be nonhazardous material like
12 paper, wood, cardboard, glass, plastic and metal,
13 including packaging materials, broken parts
14 requiring replacement and office and lunchroom
15 wastes generated by the workers.

16 A lesser amount of waste produced will
17 be hazardous waste that will consist of
18 lubricating oil, used oil filters, oily rags and
19 spilled cleanup sorbents, spent catalyst units and
20 possibly cooling tower sludge if it is tested and
21 found to be hazardous. These wastes are similar
22 in nature to those produced by many other
23 industrial and commercial business operations.

24 Wastes will be reused and recycled
25 whenever possible in compliance with the City of

1 San Francisco's stringent recycling goals. In the
2 event that they may not be reused onsite, the
3 wastes will be shipped offsite to one or more
4 commercial waste management operations for
5 recycling or disposal.

6 Possible locations where waste could be
7 shipped for recycling or disposal were evaluated
8 for compliance with state and federal regulatory
9 requirements, the ability to accept and manage the
10 waste, and for future capacity for continued
11 acceptance of the waste.

12 The evaluation of waste to be produced
13 and available options for managing the waste
14 concluded that the SFERP project would not have a
15 significant impact on waste management capacity in
16 the state.

17 In addition, it was determined that the
18 waste would be managed in compliance with all
19 federal, state and local requirements.

20 HEARING OFFICER FAY: Mr. Feldman.

21 MR. FELDMAN: Thank you. Good morning,
22 Commissioners, Staff and members of the public.
23 My name is Lester Feldman; I'm a Principal
24 Scientist with Geomatrix Consultants. And I'm
25 here today with my colleagues, Susan Gallardo and

1 Robert Cheung, to address questions pertaining to
2 waste and soil and water, as they relate to soil
3 and groundwater impacts reported at the proposed
4 San Francisco Electric Reliability project site.

5 I have more than 30 years experience in
6 the development, implementation and consultation
7 related to water resources and toxics and
8 hazardous materials control programs.

9 Prior to my last 12 years at Geomatrix I
10 was the Senior Environmental Specialist at the
11 California Regional Water Quality Control Board,
12 the San Francisco Bay Region, for 20 years, where
13 I was responsible for directing staff in
14 developing and implementing toxic and hazardous
15 materials assessment and control programs covering
16 the nine San Francisco Bay Area Counties.

17 This experience included being the
18 senior board staff liaison on toxic matters with
19 the City and County of San Francisco.

20 And as I stated, I'm here with Susan
21 Gallardo, a registered engineer with considerable
22 Bay Area experience in toxic site assessments;
23 development and implementation of cleanup plans,
24 and risk management measures.

25 I'm also joined by Robert Cheung who has

1 considerable experience in the development and the
2 review of health risk assessments and risk
3 management plans. Robert is highly skilled in the
4 practice of obtaining relevant environmental data
5 in order to best quantify and mitigate the human
6 health and environmental risks.

7 I would like to take this opportunity to
8 briefly describe the major points of the Geomatrix
9 supplemental testimony which was filed on behalf
10 of the City and County of San Francisco on May 1,
11 2006.

12 The areas of our testimony include, one,
13 the regulatory process of the California Regional
14 Water Quality Control Board for toxic site
15 redevelopment; two, the activities that have been
16 completed at the subject site, including our
17 opinion that the human health and environmental
18 issues are manageable.

19 Three, a description of the actions that
20 the City has committed to complete with Water
21 Board and City Department of Public Health
22 oversight; and lastly, fourth, a description of
23 how these specific actions by the City will be
24 designed and implemented to be protective of the
25 offsite and the onsite public to workers and to

1 the San Francisco Bay environment.

2 As to the regulatory process, the
3 regulatory process at the Water Board is well
4 established. And by the state's AB-2061 process,
5 the Water Board is the designated lead oversight
6 and that is administering agency for this
7 particular site.

8 As the lead agency, the Water Board's
9 responsibilities include administering all state
10 and local laws that govern site cleanup;
11 determining the adequacy and extent of cleanup;
12 issuance of necessary authorizations and permits;
13 and following the determination that an approved
14 remedy has been accomplished with the issuance of
15 a certificate of completion.

16 All of these activities are administered
17 after consultation with other regulatory agencies
18 having jurisdiction over cleanup activities at the
19 site, such as the San Francisco Department of
20 Public Health.

21 As the lead agency the Water Board will
22 coordinate with and receive input from the San
23 Francisco Department of Public Health to
24 incorporate article 22A requirements.

25 The City has discussed the process with

1 staff of the Water Board and DPH, and has
2 developed, through AB-2061, the overall regulatory
3 process has been deemed acceptable.

4 Lastly, this process provides the
5 Commission for Commission verification that the
6 requirements of the conditions of certification
7 have been implemented in a manner that is
8 satisfactory. That what has been done and are
9 issues manageable at the site.

10 Substantial environmental investigation
11 has been conducted at the site thus far. The
12 investigations have indicated the character of the
13 environmental impacts at the site. And the site
14 conditions are similar to those found at other
15 fill and industrial properties that front the San
16 Francisco Bay, such as Mission Bay, PacBell
17 Ballpark and numerous other Bay sites with which
18 Geomatrix has had considerable experience.

19 In light of our knowledge from the
20 investigation that has thus far been conducted, we
21 know that there are readily available and commonly
22 applied engineering technologies and controls that
23 can be utilized to address environmental issues at
24 the site. These technologies and controls can be
25 applied following the guidelines of the agencies

1 such as the Water Board, the Department of Toxic
2 Substances Control, the Bay Area Air Quality
3 Management District, and the Department of Public
4 Health at the City.

5 What is the City committed to do: The
6 City is committed to working through the
7 regulatory process that's outlined in our
8 testimony. The City will abide by the existing
9 Muni RMP/SMP, that's risk management plan and site
10 management plan, until a site-specific risk
11 management plan and site management plan are
12 developed for the site.

13 The City will undertake a site-specific
14 health risk assessment and an ecological screening
15 exercise using the USEPA and CalEPA recommended
16 risk assessment methodologies.

17 Ultimately the City will recommend that
18 appropriate and acceptable combination of remedial
19 measures and/or engineering or administrative
20 controls that will be taken to protect workers and
21 the public from the potential exposure to
22 chemicals known to exist in soil and groundwater
23 at the site.

24 These measures will be incorporated into
25 a site cleanup plan, a risk management plan that's

1 applied prior to and during construction, a site
2 cleanup plan during construction, and a site
3 management plan to be implemented into the
4 project's operations on an ongoing basis.

5 These plans will be developed in
6 consultation with the Water Board and Department
7 of Public Health, and will be subject to the
8 approval of the Water Board, and certified by the
9 Commission Staff as to compliance with the
10 Commission's conditions of certification.

11 A timetable for cleanup and other
12 administrative controls would be prepared at that
13 time.

14 More specifically, the site cleanup
15 plan. That will present site-specific cleanup
16 goals and remedial alternatives that are
17 considered and then selected to address
18 incremental human health and ecological impacts
19 identified in the human health risk assessment and
20 the screening level and ecological risk assessment
21 to achieve a less than significant level of
22 impact.

23 The site cleanup plan which is
24 equivalent to the Department of Toxic Substances
25 Control removal action workplan, or RAW, will be

1 developed in compliance with the Water Board and
2 Article 22A, and will detail the program and
3 schedule for implementation of the selected
4 remedies prior to construction.

5 These measures will be reviewed and
6 verified by the Commission Staff as part of the
7 conditions of certification prior to any soil
8 disturbance and prior to any site mobilization.

9 Now, depending on the site conditions
10 the City will update and revise the current Muni
11 risk management plan and site management plan,
12 specifying site-specific management measures that
13 will be taken during construction. And these
14 management measures include, but are not limited
15 to, items such as fencing of the areas with
16 exposed soil; dust control and dust monitoring;
17 soil stockpile management; soil reuse procedures;
18 contingency protocols; construction worker health
19 and safety guidelines; groundwater dewatering
20 procedures; erosion control measures; and
21 stormwater management.

22 The City will enter into a covenant and
23 environmental restriction with the Water Board,
24 bound by the terms specified in the site
25 management plan for long-term operation. Such

1 restrictions in the covenant may include, but are
2 not limited to, restrictions on the use of
3 groundwater for drinking water; preclusion of
4 residential use at the site; and any criteria that
5 are applicable for any future subsurface
6 intrusions after the project is constructed and in
7 operation.

8 The City has agreed to comply with the
9 performance standards of the Commission for human
10 health that are outlined in the Commission Staff's
11 proposed conditions of certification. These
12 conditions address potential health risks to
13 construction workers and offsite receptors during
14 construction; the potential health risk to site
15 workers and the offsite public during future
16 operations of the facility.

17 Any identified threats to San Francisco
18 Bay will be mitigated in accordance with the
19 United States Environmental Protection Agency and
20 the State Water Resources Control Board's approved
21 water quality control plan, and that is the basin
22 plan for the San Francisco Bay that is
23 administered by the Water Board.

24 How will the City's actions be
25 protective of the public, be protective of onsite

1 workers, and be protective of the environment:

2 The City is dedicated to the protection of human
3 health and the environment by prescribing to a set
4 of conditions that would entirely be protective of
5 public health and the environment.

6 The City will prepare a site-specific
7 human health and a screening ecological risk
8 assessment that will be based on standards that
9 are set forth to protect human health, to protect
10 ecological receptors and to protect the
11 environment.

12 These risk assessments will be
13 scientifically based and will provide the basis to
14 evaluate whether remediation, site restrictions
15 and/or construction or design guidelines are
16 needed to insure that the redevelopment of the
17 site protects human health and the environment.

18 The City will follow pertinent state and
19 local ordinances that regulate hazardous materials
20 and potential soil and groundwater impacts. These
21 regulations provide for the safe handling of
22 hazardous materials and hazardous waste during
23 construction and during remedial activities.

24 The various plans described within the
25 Commission Staff's conditions of certification and

1 adopted by the City, and the City's adopted
2 proposed conditions of certification will certify
3 that the project's remediation and management
4 measures will protect workers and the public from
5 exposure to contaminants identified at the site.

6 The Commission's review process will
7 insure that the City complies with these
8 responsibilities that are outlined in the
9 conditions of certification.

10 Thank you for your time in considering
11 the Geomatrix' testimony. Susan and Robert and I
12 are available to answer any questions related to
13 this testimony. Thank you.

14 MS. SOL : The witnesses are available
15 for cross-examination. I think what we'd like to
16 do is have Mr. DeYoung direct the questions to the
17 appropriate witness, since this is a pretty big
18 panel.

19 The contamination obviously needs the
20 contamination witnesses sponsoring the May 1st
21 testimony, so such questions would certainly go to
22 them. But, I think that having Mr. DeYoung manage
23 traffic might be helpful.

24 HEARING OFFICER FAY: All right, fine.
25 Mr. Ratliff, any questions from the staff?

1 MR. RATLIFF: Yes. And, again, I'm not
2 sure who the question goes to, but I suggest it
3 might be Mr. Feldman.

4 CROSS-EXAMINATION

5 BY MR. RATLIFF:

6 Q Because, Mr. Feldman, you just mentioned
7 that there is -- you mentioned the term
8 certificate of completion, which is a final
9 document that the Regional Board can issue. Do
10 you know if the City will seek a certificate of
11 completion from the Regional Board for this
12 property?

13 MR. FELDMAN: The certificate of
14 completion essentially from the Regional Board is
15 something that's granted after activities --

16 HEARING OFFICER FAY: Excuse me, Mr.
17 Feldman, you'll have to speak into the microphone.

18 MR. FELDMAN: The certificate is
19 generally issued after measures are completed,
20 according to the AB-2061 process, the lead agency
21 actions have been accepted -- that lead agency's
22 proposed actions have been completed and are
23 acceptable to the agency. So it's at the
24 completion.

25 MR. RATLIFF: I understand that, but I'm

1 asking do you know if the City intends to seek
2 that certificate of completion at the conclusion
3 of that process?

4 MR. FELDMAN: Yes, the City intends to
5 seek that certification.

6 MR. RATLIFF: The testimony from the
7 applicant also mentions the discovery of
8 hexavalent chromium on the site. Do you know what
9 further activities the applicant -- oh, it's just
10 chromium, I'm sorry, corrected, it's only chromium
11 of undesignated type. Can you tell us what
12 activities the applicant's going to take to try to
13 determine the hazard represented by that chromium?

14 MR. FELDMAN: Let me give the microphone
15 to Robert Cheung to answer that question.

16 MR. CHEUNG: That's all right, I have
17 one down here. To address that question with
18 respect to chromium, the plans are to collect
19 additional data to see if hexavalent chromium is
20 present at the site.

21 MR. RATLIFF: Will that involve further
22 speciation?

23 MR. CHEUNG: I'm sorry, that's correct,
24 that would involve further speciation whether the
25 chromium exists in the hexavalent form.

1 MR. RATLIFF: Has that work been done
2 yet, or is it still to be done?

3 MR. CHEUNG: It has not been done at
4 this time.

5 MR. RATLIFF: Okay. Mr. Feldman, in
6 your discussion you mentioned the performance
7 standards that the staff has proposed. Do you
8 foresee any difficulty in meeting the performance
9 standards that staff proposed in its conditions of
10 certification which the City appears to have
11 mirrored in its proposed conditions of
12 certification?

13 MR. FELDMAN: No, I don't see any
14 problems with meeting those conditions.

15 MR. RATLIFF: Thank you. I have no
16 other questions.

17 HEARING OFFICER FAY: Okay.

18 PRESIDING MEMBER BOYD: I have a
19 question. Mr. Ratliff, I don't know what the
20 appropriate time is, but when will staff -- or
21 will staff respond to the suggested changes in the
22 conditions that the applicant has put before us in
23 this supplemental testimony?

24 MR. RATLIFF: You mean --

25 PRESIDING MEMBER BOYD: Soil and water

1 and waste.

2 MR. RATLIFF: Well, I think I'd like to
3 have the witnesses address that when the panel is
4 up. And I would also like to address it in the
5 statement of counsel before we get started with
6 our presentation.

7 But, yes, we should address that.

8 PRESIDING MEMBER BOYD: Thank you.

9 HEARING OFFICER FAY: All right,
10 anything further, Mr. Ratliff?

11 MR. RATLIFF: No.

12 HEARING OFFICER FAY: Okay. Then we'll
13 move to Mr. Sarvey cross-examining the panel.

14 CROSS-EXAMINATION

15 BY MR. SARVEY:

16 Q A question about the process that you're
17 proposing here, how will the public and
18 intervenors like myself who are involved in the
19 CEC process know the impacts of the soil
20 contamination and that adequate remediation will
21 be provided? What's the public process for our
22 participation as intervenors in the CEC process?
23 This is the CEQA process.

24 MR. FELDMAN: Let me address the
25 question of public participation. It actually

1 occurs at three levels, as I see it. One here at
2 the Energy Commission; two, at the City and County
3 of San Francisco when decisions are made in front
4 of the public.

5 And three, and this particular process
6 that we are discussing today at the Water Board,
7 there are essentially three different approaches
8 to public participation. One is the public forum
9 at the regular regional board meetings where every
10 month the board opens up the meeting to any
11 questions or concerns from the general public
12 about any site. And I believe this site has
13 already been before the Regional Board under the
14 public forum where questions were asked of staff
15 about their participation in this project.

16 Too, at the Water Board there's the
17 ability to have direct contact with Regional Board
18 Staff. The Board Staff has a public telephone
19 number and an email and they are responsible to
20 listen to questions and provide answers, and
21 invite people, the public or concerned agencies,
22 to meet with them and discuss with them their
23 review of certain documents that have been
24 provided to them for review.

25 And thirdly, and I think this is the

1 most important, the evolving public participation
2 program of the Water Board with regard to several
3 items, and the first being that the Water Board
4 has been issuing fact sheets mailed to the public
5 within, I think they use a several-mile radius of
6 the site, and they have the project proponent
7 prepare a fact sheet and prepare a mailing list;
8 and send that fact sheet to the public so that the
9 public is aware of what the Water Board's view of
10 these activities are. And what the Water Board's
11 process will be in these matters.

12 And then also, as far as the Water
13 Board's evolving public participation policy, the
14 Board has been requiring a 30-day review, public
15 review, agency review prior to approval of any of
16 the documents that we talked about today. And
17 those include the site cleanup plan, the human
18 health risk assessment, the ecological risk
19 assessment, the risk management plan and the site
20 management plan which would be, obviously, in
21 effect for the ongoing operations at the facility.

22 So the Board has an elaborate public
23 participation program, as well as public
24 participation programs existing at the City and
25 also at the Commission.

1 MR. SARVEY: Are you familiar with the
2 CEC process?

3 MS. GALLARDO: Who's that -- Steve, do
4 you want to address that?

5 MR. SARVEY: I'm asking the --

6 MR. DeYOUNG: Bob, can you be a little
7 more specific? Who --

8 MR. SARVEY: I'm asking the gentleman
9 that asked a question how myself, as an intervenor
10 in the CEC process, who became involved, to know
11 the impacts of this project. You're going to
12 postpone the knowledge of the impacts of this
13 project till after this license is granted,
14 according to your proposal.

15 My question --

16 HEARING OFFICER FAY: Is that a
17 question, Mr. Sarvey?

18 MR. SARVEY: My question is how am I, as
19 an intervenor, who's allowed to present witnesses
20 and to participate in this process and prove my
21 case, I can't even present a witness because I
22 don't know what the impacts of this hazardous
23 material is.

24 So, my question is how, in the CEC
25 process, am I supposed to participate and know

1 that you're going to fully mitigate this hazardous
2 materials?

3 MR. DeYOUNG: I'll answer the CEC
4 portion of that. As with any condition of
5 certification it'll be handled during the
6 compliance phase of the project. And there is the
7 opportunity for the public to be involved in the
8 compliance phase of the project.

9 MR. SARVEY: Once the license is granted
10 the --

11 MR. DeYOUNG: Correct.

12 MR. SARVEY: -- intervenor status is
13 gone. Now I'm a member of the public. I want to
14 know how, as an intervenor, I'm going to influence
15 the cleanup of this project through the CEC
16 process.

17 MS. SOL : Your Honor, I believe the
18 question has been asked and answered.

19 HEARING OFFICER FAY: Well, it may be
20 beyond the ken of this panel. And, you know, you
21 might want to direct that to staff counsel when
22 staff makes its presentation.

23 But I think the short answer is that, as
24 you know, there's a public process, public access
25 to the compliance process. But, as you point out,

1 it's different than your status as an intervenor.
2 But it is not without access, and you do have
3 recourse to file challenges to the work being done
4 by the compliance staff.

5 MR. SARVEY: How much longer will it be
6 before the health risk assessment and the
7 environmental risk assessment will be completed
8 for this project?

9 MS. GALLARDO: We haven't outlined a
10 specific schedule yet, however there is a schedule
11 with respect to the certificate of certification.
12 And the schedule we will need to meet with the
13 regulatory agencies to kind of work out
14 specifically how we will meet the requirements of
15 our certificate of certification with respect to
16 completing the certain steps in the process.

17 MR. SARVEY: Can you provide me a
18 general date?

19 MS. GALLARDO: I don't have one at this
20 time.

21 MR. SARVEY: Okay. You intend to have
22 this health risk assessment and environmental risk
23 assessment in place before you move soil, is that
24 correct?

25 MS. GALLARDO: That is the process. And

1 the way that we've outlined it in our testimony,
2 basically, you know, the listing of the documents
3 is basically the order of the process.

4 MR. SARVEY: My question is are you
5 going to move soil before you perform this health
6 risk assessment? Are you going to rely on the
7 health risk assessment that's being conducted on
8 the Muni site? Or will you specifically conduct
9 this assessment on this particular piece of
10 property before you move forward?

11 MS. GALLARDO: We will specifically
12 perform the risk assessment and the eco risk
13 assessment on this property before we move
14 forward.

15 MR. SARVEY: But you have no timeline?

16 MS. GALLARDO: I do not have a timeline.

17 MR. SARVEY: Okay. I want to draw your
18 attention to exhibit 27, page 13.

19 MS. SOL : Would you please give us a
20 minute to get that before us?

21 (Pause.)

22 UNIDENTIFIED SPEAKER: What's the page
23 number, again, Mr. Sarvey?

24 MR. SARVEY: Number 13, please.

25 I want to draw your attention to data

1 request 1-17. And I want to ask this question to
2 the Project Manager.

3 Ms. Kubick, over a year ago I issued a
4 data request for a site management plan and a risk
5 management plan for this project. The site
6 management plan and the risk management plan,
7 according to the testimony, still hasn't been
8 conducted.

9 Staff's also been requesting the same
10 information since May 2, 2005; that was over a
11 year ago.

12 Was the delay of this risk management
13 assessment and site management plan a deliberate
14 action by you on behalf of the applicant to avoid
15 full disclosure of the project's environmental
16 impacts to the public and to the Committee as
17 required by CEQA?

18 MS. SOL : Objection, Your Honor, that's
19 argumentative.

20 HEARING OFFICER FAY: Want to rephrase
21 that, Mr. Sarvey, and let's --

22 MR. SARVEY: What's the delay in
23 providing this risk management and site management
24 plan? We need this information for full
25 disclosure.

1 MR. DeYOUNG: Mr. Sarvey, I'll respond
2 to that. Again, we're up here as a panel.

3 MR. SARVEY: Well, she's the project
4 manager, she's responsible for --

5 HEARING OFFICER FAY: Mr. Sarvey, that
6 was laid out ahead of time. They're testifying as
7 a panel and let's let them do so --

8 MR. SARVEY: Well, Mr. DeYoung isn't
9 responsible for making --

10 HEARING OFFICER FAY: -- and then we can
11 rule -- Mr. Sarvey, I'm speaking.

12 MR. SARVEY: Okay, I'm sorry, Mr. Fay.

13 HEARING OFFICER FAY: Let's let them
14 testify as a panel and then the Committee can
15 decide --

16 MR. SARVEY: I'm sorry.

17 HEARING OFFICER FAY: -- if it's
18 appropriate.

19 MR. DeYOUNG: In answer to your question
20 the issue surrounding waste management and
21 potential contamination at the site is an evolving
22 issue, has been an evolving issue. We currently
23 have conditions of certification that require the
24 human health risk assessment and ecological risk
25 assessment to be performed prior to the start of

1 construction at the site. And we will comply with
2 those conditions.

3 MS. KUBICK: I could just add, the Muni
4 RMP/SMP is in effect.

5 HEARING OFFICER FAY: Okay, thank you.
6 Go ahead.

7 MR. SARVEY: That leads to another
8 question. I believe that the other witness said
9 that the Muni RMP/SMP would not be used on this
10 project. They were going to develop their own
11 site mitigation plan and risk management
12 assessment, is that correct?

13 MS. GALLARDO: I'm sorry, --

14 MR. SARVEY: Contradictory to what I
15 heard earlier.

16 MS. GALLARDO: If I can clarify. The
17 RMP/SMP is in effect right now. And I believe, as
18 we mentioned in our testimony, that that will
19 continue to be in effect until we complete the
20 human health risk and ecorisk assessment process.
21 And at that time we will revise as appropriate.
22 And we are calling those our RMP and then the
23 subsequent SMP.

24 MR. SARVEY: And I want to go back to
25 the question I asked you earlier, are you going to

1 move soil before you complete your own specific
2 site management plan and risk management plan at
3 this site, or are you going to use the Muni
4 RMP/SMP?

5 MS. GALLARDO: Yes. If you look at the
6 conditions of certification specifically, we have
7 a timeline that says before mobilization to the
8 site or movement of any soil these documents will
9 be completed.

10 MR. SARVEY: So you don't intend to use
11 the Muni RMP/SMP, correct?

12 MS. GALLARDO: The Muni RMP/SMP are in
13 effect for basic things like keeping the site
14 secure at this time.

15 MR. SARVEY: Okay. Now, calling your
16 attention to page 3 of your May 1st submission,
17 supplemental testimony. I'd like to know who
18 prepared the site background on page 3.

19 MR. CHEUNG: That would be me, Mr.
20 Sarvey.

21 MR. SARVEY: And what sources did you
22 consult in the preparation of the site background?

23 MR. CHEUNG: The AGS report, the final
24 risk management plan, as well as the Dames and
25 Moore 1987 site characterization report.

1 MR. SARVEY: And have you disclosed all
2 environmental damage known by the applicant on
3 this site?

4 MR. CHEUNG: I'm not sure what
5 environmental damage refers to.

6 MR. SARVEY: Well, your site background
7 is purportedly listing all the environmental
8 damage that's occurred on the site, you know,
9 who's occupied it, what activities have taken
10 place on it. Have you disclosed?

11 MS. SOL : Your Honor, I think the
12 question merits some clarification. Are you
13 asking whether we've disclosed the site history as
14 we know it?

15 MR. SARVEY: Exactly.

16 MR. CHEUNG: That is correct, Mr.
17 Sarvey, to the best of our knowledge.

18 MR. SARVEY: Okay. Now, in the last
19 paragraph on page 3 of the site history, you
20 discuss a cement batch plant. The owner of that
21 plant wouldn't happen to be named Pacific Cement,
22 would they?

23 MR. DeYOUNG: Yes, they are.

24 MR. SARVEY: They are?

25 MR. DeYOUNG: Correct.

1 MR. SARVEY: Mr. Fay, I'd like to
2 introduce an exhibit, if I could, please?

3 HEARING OFFICER FAY: You may not do so
4 at this time. This is your time to cross-examine.
5 What is the purpose?

6 MR. SARVEY: The purpose of the exhibit
7 is to disclose additional contamination that the
8 City is not revealing to the Committee and the
9 public.

10 HEARING OFFICER FAY: To ask questions
11 regarding the document?

12 MR. SARVEY: Not ask questions, as an
13 offer of proof that there's contamination on the
14 site --

15 HEARING OFFICER FAY: Okay, --

16 MR. SARVEY: -- that the City has not
17 disclosed.

18 HEARING OFFICER FAY: Then when you
19 offer your direct case you may try to do it at
20 that time. This is your time to cross-examine
21 witnesses.

22 MR. SARVEY: I am going to cross-examine
23 him on the contamination listed in this.

24 HEARING OFFICER FAY: Well, show it to
25 counsel and we'll see if we can make use of it.

1 (Pause.)

2 MR. SARVEY: I would request that I
3 could mark this as an exhibit and ask the witness
4 some questions about it, please.

5 HEARING OFFICER FAY: Okay, you want to
6 describe --

7 MS. SOL : Could I have a minute to
8 review it, please?

9 HEARING OFFICER FAY: Yeah, give counsel
10 a chance to review it, and then we'll have you
11 describe it, Mr. Sarvey.

12 (Pause.)

13 MS. SOL : Actually, would it be
14 possible to have a second copy here, please, for
15 my co-counsel.

16 (Pause.)

17 MS. SOL : Your Honor, I've reviewed
18 this document, and I don't have a problem with its
19 being used for purposes of cross-examination.
20 It's a public document. But, I would like to --
21 it involves more properties than just our
22 property, and many more issues than just the uses
23 on that property.

24 And I'll point out that our testimony
25 does indicate there is a cement batch plant on the

1 property.

2 HEARING OFFICER FAY: Okay. Thank you.

3 Then we will -- if Mr. Sarvey will identify the
4 document, we'll give it an exhibit number.

5 MR. SARVEY: The document is -- the
6 cover page is a news release from City Attorney
7 Dennis Herrera, dated July 21, 2005. It's
8 entitled, Herrera sues defiant polluter on behalf
9 of Port of San Francisco. And attached to that is
10 the City of San Francisco's brief to the Superior
11 Court of the State of California, County of San
12 Francisco.

13 MS. SOL : If I could just correct for
14 the record, it's a complaint.

15 HEARING OFFICER FAY: Okay. That will
16 be marked for identification as exhibit 90.

17 Okay, Mr. Sarvey.

18 MR. SARVEY: I'd like to draw your
19 attention to page 8, paragraph 28, line 10. It's
20 entitled, Pacific Cement's environmental offense
21 at the Pier 80 property.

22 It reads: In the course of conducting
23 operations at the Pier 80 property, Pacific Cement
24 has committed a large number of environmental
25 offenses and legal violations. These include,

1 without limitation, depositing concrete spoils,
2 waste, allowing releases of waste oil diesel fuel,
3 antifreeze, hydraulic oil and other fluids. These
4 violations are further described in paragraph 50."

5 Did the City disclose this information
6 to you, as part of your examination of the site
7 history?

8 MR. DeYOUNG: The Pacific Cement site
9 was addressed in supplement A as either being
10 handled through the proceeding related to the
11 document in front of us, or to be handled as
12 cleanup during the compliance phase of the project
13 prior to the start of construction.

14 And furthermore, the summary that was
15 prepared as part of the additional testimony that
16 you're referring to was a very brief summary. And
17 all of these issues will be, and each of the
18 reports will be further addressed as we prepare
19 documentation to comply with article 22A.

20 MR. SARVEY: Can you show me in
21 supplement A where you revealed this contamination
22 and this issue?

23 MR. DeYOUNG: Can I show you in
24 supplement A where we --

25 MR. SARVEY: Where you revealed the fact

1 that Pacific Cement has been accused of
2 environmental offenses at the Pier 80 property.

3 MS. GALLARDO: While people are trying,
4 thumbing through documents I'd like to just make a
5 statement that the constituents that are listed
6 here, when we did our review at the site we looked
7 at the general data. We didn't look to see if it
8 was generated by Pacific Cement or if it was
9 generated from some other use of the site.

10 We looked at the analytical data. All
11 the constituents that are mentioned here are
12 actually part and parcel to the petroleum
13 hydrocarbons that have been identified at the
14 site. We have considered it and it doesn't really
15 change our approach to the site.

16 HEARING OFFICER FAY: Excuse me, and
17 when you say listed here, you mean in exhibit 90?

18 MS. GALLARDO: Yes, I'm sorry. Item 28
19 on page 8 that's being pointed out. So, I'd just
20 like to clarify that we weren't specific to who
21 created the issue there. We know that it exists.

22 MR. SARVEY: So, I'll ask again, did the
23 City disclose to you that there was contamination
24 by Pacific Cement at that site?

25 MS. GALLARDO: I'm sorry, can --

1 MR. SARVEY: Did the City disclose to
2 you in the site background in your analysis that
3 there was contamination on the site from Pacific
4 Cement?

5 MS. GALLARDO: We have the analytical
6 results that have been generated at the site.

7 MR. SARVEY: But they didn't disclose
8 this to you, correct?

9 MS. GALLARDO: I had not seen this
10 document until now.

11 MR. SARVEY: Okay. All right.

12 MS. KUBICK: I think I'd just like to
13 clarify that it's visible to the eye that Pacific
14 Cement is there and does have stockpile of
15 materials. Our sampling program included boring
16 locations throughout the four acres to really well
17 categorize and characterize that. So we didn't
18 avoid that area; we did sample where Pacific
19 Cement is.

20 PRESIDING MEMBER BOYD: While you
21 weren't aware of this specific complaint, were you
22 aware that there was an issue at the Pacific
23 Cement site involving various kinds of materials?

24 MS. KUBICK: We were aware that the Port
25 was in the process of getting Pacific Cement off

1 the property, and that there had been some issues
2 with how they were maintaining their site and
3 keeping the site, because it's a large area and
4 that they were not pleased with how Pacific Cement
5 was maintaining the location.

6 But other than that, a lot of this was
7 privileged, and there had been some other work
8 ongoing through the Port.

9 HEARING OFFICER FAY: Did the Pacific
10 Cement lease preclude any access on the City's
11 part for taking samples?

12 MS. KUBICK: No. We were allowed to
13 sample where Pacific Cement is.

14 PRESIDING MEMBER BOYD: Let me go on to
15 another question. So going on that site and
16 knowing, as I heard you say, that the Port had
17 problems with the tenant and their operations
18 there, were you aware that there was possibly
19 petroleum products wasted on the soil that could
20 be a problem?

21 MS. KUBICK: Not from the Pacific Cement
22 usage, no.

23 PRESIDING MEMBER BOYD: Okay. No other
24 questions.

25 HEARING OFFICER FAY: Go ahead, Mr.

1 Sarvey.

2 MR. SARVEY: Yeah, I have a question
3 about your sampling technique here. According to
4 what I read here you started your soil samples at
5 six inches below the surface, is that correct?

6 MS. SOL : Mr. Sarvey, could you point
7 us to the document that you're referring to?

8 (Pause.)

9 MR. SARVEY: If you'd like we could move
10 on to CARE's questioning while I locate that, if
11 that pleases the Committee.

12 (Pause.)

13 MR. SARVEY: I'll have to find that
14 testimony. If you'd like to move on to CARE's
15 questioning I'll come back.

16 (Pause.)

17 HEARING OFFICER FAY: Do you have other
18 questions, Mr. Sarvey?

19 MR. SARVEY: Just related to the last
20 question I asked. Could you describe your soil
21 sampling procedure that occurred where the
22 construction trailers were? There was an
23 impermeable layer over that. My understanding is
24 you scraped off four inches, then went three
25 inches under it and sampled dirt, is that correct?

1 MR. DeYOUNG: I'd ask Mr. Lae to respond
2 to that.

3 MR. LAE: Yes, that's correct. There
4 was a layer that was placed by the contractor
5 staging materials there, and clean fill was placed
6 on top of that.

7 MR. SARVEY: And that was the Pacific
8 Cement --

9 MR. LAE: No, that's on the south side
10 of the -- south part of the property.

11 MR. SARVEY: Okay. And did you sample
12 the top four inches of the --

13 MR. LAE: No. We went below that first
14 layer into --

15 MR. SARVEY: So you didn't sample the
16 surface where the --

17 MR. DeYOUNG: I believe the area that
18 you're referring to has construction trailers
19 associated with the Muni project.

20 MR. SARVEY: Um-hum.

21 MR. DeYOUNG: What they did for the Muni
22 project was to place a gravel layer, a permeable
23 membrane to differentiate existing soil from the
24 gravel. We went through the gravel layer and took
25 surface samples of the existing, the pre-Muni

1 soil. And that's at the other end of the
2 facility; that's not in the Pacific Cement area.

3 MR. SARVEY: Throughout the site,
4 though, you started your sampling like six inches
5 below the surface, is that correct? You analysis
6 of your samples, your borings started six inches
7 below the surface?

8 MR. LAE: That's correct, nominally
9 about six inches below the surface.

10 MR. SARVEY: And did you analyze the top
11 six inches of those borings?

12 MR. LAE: No.

13 MR. SARVEY: No. And did you analyze
14 the top six inches of the borings in Pacific
15 Cement area?

16 MR. LAE: It was the same process.

17 MR. SARVEY: Did you take any samples at
18 the Pacific Cement area?

19 MR. LAE: Did we take any samples at the
20 Pacific Cement area?

21 MR. SARVEY: Um-hum.

22 MR. LAE: Yes, we did.

23 MR. SARVEY: Okay, that's all I have.

24 HEARING OFFICER FAY: Okay, thank you.

25 Mr. Boyd, does CARE have cross-examination?

1 MR. BOYD: Yes, Mr. Brown is --

2 HEARING OFFICER FAY: Okay. Mr. Brown?
3 You'll be asking the questions for CARE.

4 CROSS-EXAMINATION

5 BY MR. BROWN:

6 Q Good morning. Dr. Goldberg, --

7 UNIDENTIFIED SPEAKER: These guys
8 just --

9 MR. BROWN: Okay. Do you have a San
10 Francisco --

11 (Laughter.)

12 MR. BROWN: Okay, do you have a San
13 Francisco Bay Regional Water Quality Control
14 Board-approved cleanup plan or remediation
15 investigation report in which there is necessary
16 data to perform an ecological risk assessment on
17 disturbance of onsite contamination of water and
18 soil associated with this project?

19 MR. DeYOUNG: No, we do not yet have an
20 approved plan.

21 MR. BROWN: Are there any other agencies
22 you represent in this proceedings, the CEC, the
23 City and County of San Francisco, the agencies
24 that are subject to requirements of the California
25 Environmental Quality Act, CEQA, for meaningful

1 and informed public participation in this project
2 approval?

3 MS. SOL : Your Honor, I'm not sure I
4 understand whether there's a question, or what it
5 is.

6 MR. BROWN: Are there any CEQA
7 agencies -- are you a CEQA agency?

8 HEARING OFFICER FAY: You mean is the
9 City subject to CEQA?

10 MR. BROWN: Yes.

11 HEARING OFFICER FAY: Okay. Mr.
12 DeYoung, do you --

13 MR. DeYOUNG: Yes.

14 HEARING OFFICER FAY: The answer's yes.

15 MR. BROWN: Why is the CEC and the City
16 deferring public participation in this project,
17 San Francisco Bay Regional Water Quality Control
18 Board approved cleanup plan or remedial
19 investigation report until after the CEC approves
20 this project development in my low-income
21 neighborhood? Is this because my neighborhood is
22 predominately African-American and Samoan? How
23 will the public participate in this process?

24 MS. SOL : Your Honor, the question of
25 how the public will participate in the project has

1 been answered. It's been asked and answered.

2 HEARING OFFICER FAY: It has been asked
3 and answered. And what I'd like to do, Mr. Brown,
4 is see if you may have another chance to get your
5 questions answered when staff counsel goes through
6 the review process and the authority process, the
7 question of where the authority lies, with which
8 agency, that type of thing.

9 So, you'll have to move on.

10 MR. BROWN: Why is the CEC and the City
11 deferring the participation in this project, the
12 human health risk assessment and the ecological
13 risk screening assessment using site-specific
14 groundwater contamination compared to the San
15 Francisco Bay Regional Water Quality Control
16 Board, 203 ESLs, a revised site-specific risk
17 management plan, and a site-specific site
18 management plan? How will the public participate
19 in this process?

20 MS. SOL : Your Honor, I believe that's
21 the same question.

22 HEARING OFFICER FAY: Well, Mr. Brown,
23 by deferred do you mean why are the answers to
24 that question going to be determined after the CEC
25 has acted on the license?

1 MR. BROWN: Yes.

2 HEARING OFFICER FAY: Okay. I think it
3 has been asked and answered, but, Mr. DeYoung, can
4 you briefly give the applicant's position on why
5 some of these tests and analyses will take place
6 after CEC action?

7 MR. DeYOUNG: As we previously stated,
8 as with many of the conditions of certification
9 there are requirements that they be conducted
10 prior to the start of construction. And during
11 that phase, during the compliance phase any of the
12 documentation that is filed with respect to this
13 issue will be available to the public as part of
14 the CEC compliance process.

15 HEARING OFFICER FAY: Okay.

16 MR. BROWN: In the City's March 30, 2006
17 draft field investigation summary report at page 7
18 it states, at section 5.1.9, pH. pH in the soil
19 reported from all samples collected across the
20 site range in the value from 7 to 12.6. The
21 highest value, 12.6, was reported from the SB-25,
22 at five feet below ground surface, BGS.

23 Other values greater than pH of 10 was
24 reported across at both surfaces and subsurface
25 sample locations. The majority of high pH values

1 were reported at surface or of 5 feet BGS samples.

2 Is this high pH material naturally
3 occurring?

4 MR. DeYOUNG: I'd ask Mr. Lae to respond
5 to that.

6 MR. LAE: I think just given the nature
7 of the fill material that is at the site, it's
8 quite possible that it was -- it's from the fill,
9 itself.

10 MR. BROWN: Is that your answer?

11 MR. LAE: Well, whether or not it's
12 naturally occurring or not, I can't really say.

13 MR. BROWN: Why hasn't the City been
14 required to perform a complete characterization of
15 the site with a grid map of more than -- more
16 through a thorough bore and soil vapor samples?
17 Do you agree the whole site needs
18 characterization?

19 MR. DeYOUNG: Could you please rephrase
20 the question?

21 MR. BROWN: Does the site where they
22 want to -- the City wants to put the peakers at,
23 does it need a site characterization, a more
24 thorough site characterization of the site?

25 MS. KUBICK: I can respond to that.

1 This was our site characterization process, and it
2 was very thorough; and it was multiple depths and
3 multiple locations. The answer, this was our site
4 characterization process.

5 MR. BROWN: Is it because Pacific Cement
6 is located on the property, what is the City
7 alleging they have discharge and what is the pH on
8 this material?

9 MS. SOL : Could you -- which material
10 are you referring to?

11 MR. BROWN: The material that was
12 discharged, quote-unquote, by Pacific Cement,
13 including cement material.

14 MR. DeYOUNG: We sampled in the area of
15 Pacific Cement; those results are contained in our
16 final investigation study.

17 MR. BROWN: Okay. About this pH 12.6
18 material, don't you consider it caustic material,
19 a form of soil contamination?

20 MR. DeYOUNG: it's high pH, and I think
21 as Mr. Lae indicated, we don't know if it's
22 naturally occurring or as a result of the fill.

23 HEARING OFFICER FAY: But do you
24 characterize it as caustic? Does this trigger a
25 different handling requirement?

1 MS. GALLARDO: If I may answer that.
2 The information that's been provided through the
3 site characterization, again will be evaluated
4 through the process that we've laid out.

5 So if there's any special handling of
6 materials such, that will be laid out as we work
7 through this process. And 12.6 is caustic.

8 MS. KUBICK: And the purpose of our
9 investigation was to categorize the site,
10 characterize the site for the purpose of
11 construction of the SFERP, not looking at Pacific
12 Cement's activities.

13 HEARING OFFICER FAY: Okay. Go ahead,
14 Mr. Brown.

15 MR. BROWN: Okay. Oh, yeah, isn't this
16 considered a hazardous waste under the Federal
17 Resource Conservation and Recovery Act?

18 MR. DeYOUNG: Actually, soil in situ is
19 not considered a waste. It's not considered a
20 waste until it's destined for disposal.

21 MR. BROWN: Why isn't the pH 12.6
22 material considered the primary contaminants of
23 concern for this area?

24 MS. GALLARDO: I'm not actually sure why
25 you reached that conclusion. In our testimony we

1 point out that there have been many constituents
2 of potential concern at that site, or at this
3 site, that will need to be evaluated.

4 MR. BROWN: What is being done to
5 determine the extent of this contamination?

6 MS. GALLARDO: Again, the site has been
7 characterized; we understand what the constituents
8 are at the site. And we are going to evaluate
9 those through our human health risk assessment and
10 through the eco risk assessment, in conjunction
11 with the regulatory agencies as we march through
12 here.

13 And, again, you know, we're committed to
14 meeting the requirements that, from the Regional
15 Water Quality Control Board, as well as Article
16 22A.

17 MR. BROWN: In the City's May 1, 2006
18 supplemental testimony it states at page 14,
19 chromium 6 is present, would be expected to be
20 reduced to chromium 3 in the soil where anaerobic
21 condition exists. What are the areas of
22 contamination where the soil contamination exceeds
23 pH -- what about the areas where the
24 contamination, where the soil contamination
25 exceeds pH 12.5?

1 MR. CHEUNG: Well, I first want to
2 clarify that we don't have specific information
3 collected from the site whether or not chromium 6
4 is present at the site. That appears to be some
5 additional information that would be required for
6 us to deal with site-specific risk analysis.

7 I had indicated earlier that we would,
8 on behalf of the City we would be collecting
9 additional data to speciate whether or not
10 hexavalent chromium is present at the site. And
11 if it is, then we would carry that through the
12 risk assessment process.

13 In addition, there are mitigation
14 measures to address chromium 6.

15 MR. BROWN: A complete site
16 characterization and -- do you expect anaerobic
17 bacteria to consume any of the hydrocarbons to
18 where they reduce the pH down to below 12.5?

19 MS. GALLARDO: We've not studied that
20 issue at this point.

21 MR. BROWN: A complete site
22 characterization and speciation for chromosome
23 (sic) 6 must be done, do you agree?

24 HEARING OFFICER FAY: Is that chromium
25 6?

1 MR. BROWN: Yeah.

2 MS. GALLARDO: As stated in our
3 testimony we're planning to conduct additional
4 sampling to speciate chromium at the site.

5 HEARING OFFICER FAY: Mr. Brown, we need
6 a brief morning break. What would be a good time?
7 You just have a few more questions?

8 MR. BROWN: Yes.

9 HEARING OFFICER FAY: Okay. Go ahead.

10 MR. BROWN: Is the site property part of
11 the Port property?

12 MR. DeYOUNG: Yes.

13 MR. BROWN: Is the site considered
14 public trust land held in trust for maritime use
15 only?

16 MS. GALLARDO: No.

17 MR. BROWN: Is the proposed project a
18 maritime use?

19 MS. SOL : Objection, Your Honor, that
20 calls for a legal conclusion.

21 HEARING OFFICER FAY: Okay, that's
22 sustained.

23 MR. BROWN: Okay.

24 HEARING OFFICER FAY: We don't have a
25 panel of legal experts here.

1 MR. BROWN: Okay.

2 HEARING OFFICER FAY: You can argue that
3 in your brief, although the answer to the question
4 makes your followup question irrelevant, since
5 they said it's not limited to --

6 MR. BROWN: Okay, thank you.

7 HEARING OFFICER FAY: -- maritime use.
8 Anything further?

9 MR. BROWN: No.

10 HEARING OFFICER FAY: That's it. Okay.

11 MR. BROWN: Thank you.

12 HEARING OFFICER FAY: We're going to
13 take a ten-minute break, and we will be back on
14 the record in ten minutes.

15 (Brief recess.)

16 HEARING OFFICER FAY: All right, we're
17 back on the record and CARE has indicated that
18 they have concluded their cross-examination of the
19 panel.

20 Ms. Sol,, do you have any redirect?

21 MS. SOL : I have a few questions, Your
22 Honor.

23 HEARING OFFICER FAY: Okay.

24 MS. SOL : Your Honor, shall I proceed?

25 HEARING OFFICER FAY: Yes, please do.

1 MS. SOL : Okay.

2 REDIRECT EXAMINATION

3 BY MS. SOL :

4 Q Is the high pH that is present on the
5 site unusual in industrial sites?

6 MS. GALLARDO: The high pH isn't
7 necessarily unusual, and given the fact that there
8 is a cement plant at this site, it's not unusual
9 that you would find the high pH there.

10 Additionally, this is a fill site that
11 has materials from various sources. So, you can
12 have naturally occurring soil, you could have
13 limestone; it's got a high pH.

14 So, again, the high pH isn't necessarily
15 an unusual situation.

16 MS. SOL : And are there mitigation
17 measures available to address any concerns that
18 would arise from high pH?

19 MS. GALLARDO: Yes. And, again, what I
20 want to emphasize is that the high pH isn't
21 necessarily a detrimental condition. However, if
22 you're, let's say for instance your goal is that
23 you're concerned about sediment with high pH
24 running off the site, then there are measures that
25 you could take to prevent that from occurring.

1 And those measures could include maybe
2 some soil removal; they could include some
3 capping; they could include, you know, other
4 management issues for stormwater.

5 MS. SOL : Okay. And if hexavalent
6 chrome were found to be present on the site, are
7 there mitigation measures available to achieve the
8 health-based standards that the City is proposing
9 in its conditions of certification?

10 MS. GALLARDO: Again, with hexavalent
11 chromium it's relatively unstable in the
12 environment, particularly in a reducing
13 environment that we likely have at this site due
14 to the existence of petroleum and because you're
15 in a marine environment.

16 So, naturally it's likely that if
17 hexavalent chromium is present at the site that it
18 is reducing to trivalent chromium. However, you
19 can enhance those conditions so that you can
20 reduce it. And, of course, there is always the
21 option of removing impacted soil if necessary.

22 MS. SOL : And so there are mitigation
23 measures available to address the condition if
24 there happens to be?

25 MS. GALLARDO: Absolutely.

1 MS. SOL : Thank you. I have no further
2 questions.

3 HEARING OFFICER FAY: Okay. Any
4 recross, Mr. Ratliff?

5 MR. RATLIFF: No.

6 HEARING OFFICER FAY: Mr. Sarvey? And
7 that is, of course, limited to the scope --

8 MR. SARVEY: Right, right.

9 HEARING OFFICER FAY: -- of the
10 redirect.

11 RE-CROSS-EXAMINATION

12 BY MR. SARVEY:

13 Q What level of hexavalent chromium would
14 render this site unusable?

15 MS. GALLARDO: That's actually a health
16 risk assessment question, although I have to say
17 that because there are mitigation measures that
18 are available, I don't think that there's likely
19 any level of hexavalent chromium that would render
20 it unusable.

21 MR. SARVEY: There's no level that would
22 make it unusable, is that what you just stated?

23 MS. GALLARDO: Again, there are
24 mitigation measures that are available for which
25 we would address the hexavalent chromium, if

1 present.

2 MR. SARVEY: If you decide that there is
3 a sufficient amount of hexavalent chromium on the
4 property to excavate, where would that soil be
5 taken to?

6 MS. GALLARDO: It depends on the
7 characterization of the soil for disposal
8 purposes. And depending on the profile of that
9 material, there are facilities, class I, class II
10 and III facilities where it potentially could go.

11 MR. SARVEY: Thank you, that's all.

12 HEARING OFFICER FAY: Okay. And, Mr.
13 Brown, any recross?

14 MR. BROWN: Yes.

15 MR. BOYD: This is Mr. Boyd

16 RE-CROSS-EXAMINATION

17 BY MR. BOYD:

18 Q On the pH question you were saying that
19 the chromium would tend to change from chromium 6
20 to --

21 MS. SOL : Objection, Your Honor, that
22 mischaracterizes the testimony, I believe.

23 MR. BOYD: I thought I heard her say
24 that it would change because of the presence of
25 reducing, reduction at the site.

1 HEARING OFFICER FAY: Why don't you
2 phrase it as a question. Just --

3 MR. BOYD: Okay. The question is what
4 mechanism would result in a reduction of chromium
5 6 to chromium 3 that's present at the site?

6 MS. GALLARDO: In a reducing environment
7 chromium 6 becomes trivalent chromium. And in
8 most environmental conditions, and by that I mean
9 not at an environmental site, but in environmental
10 conditions, chromium 6 in soil is relatively
11 unstable and naturally reduces to trivalent
12 chromium.

13 MR. BOYD: And when you say reduction,
14 does that mean because there's some sort of acidic
15 property of the soil that reduces it?

16 MS. GALLARDO: No, it's not an acidic
17 property; it really has to do with the presence of
18 electron receptors or not.

19 MR. BOYD: In a high pH soil over 12.5
20 would that occur?

21 MS. GALLARDO: Again, at this particular
22 site we have petroleum in the soil which creates a
23 reducing condition, so, yes, it could occur.

24 MR. BOYD: Even where it's 12.5 pH or
25 greater?

1 MS. GALLARDO: Yes.

2 MR. BOYD: Okay, thank you.

3 HEARING OFFICER FAY: Anything further?

4 Okay, anything further, Ms. Sol,?

5 MS. SOL : No, Your Honor.

6 HEARING OFFICER FAY: Okay, then does

7 the Committee have any questions?

8 PRESIDING MEMBER BOYD: No questions.

9 HEARING OFFICER FAY: Okay, I just have
10 a couple things.

11 Is it clear to the applicant which
12 agency will have the final authority in approving
13 of your site handling plan?

14 MR. DeYOUNG: Mr. Feldman.

15 MR. FELDMAN: Excuse me? I didn't hear,
16 excuse me.

17 HEARING OFFICER FAY: Is it clear to the
18 applicant which agency will have the ultimate
19 authority in approving your site cleanup plan?

20 MR. FELDMAN: The site cleanup plan will
21 be approved ultimately by the Water Quality
22 Control Board, but ultimately it has to meet the
23 condition of certification and thus verified by
24 the Commission as being appropriate to meeting
25 those conditions of certification.

1 HEARING OFFICER FAY: Okay. And can you
2 tell us why, if it's true, it appears from the
3 testimony that borings were not sampled within the
4 first six inches on the site, why is that?

5 MR. LAE: That's a typical sampling
6 method to not take just the specific surface, just
7 below surface. That's a typical sampling
8 approach.

9 HEARING OFFICER FAY: And what is the
10 reason for that being a typical sampling approach?

11 MR. LAE: Just, that's just -- I'm not
12 sure to tell you the truth, sir.

13 HEARING OFFICER FAY: Okay. Anybody
14 else have a response?

15 MR. CHEUNG: The primary purpose of the
16 sampling plan was to collect representative data
17 of site conditions. Typically near-surface from
18 zero feet to six inches below grade you may be
19 getting other stuff that may have it early
20 deposited from, wind, erosion or other operations.

21 And going back to the purpose of the
22 sampling was to try to assess the conditions of
23 soil impacted from historical use.

24 HEARING OFFICER FAY: From historical
25 use?

1 MR. CHEUNG: From historical operations
2 for soil uses.

3 HEARING OFFICER FAY: Now, what if you
4 wanted to know the condition of the soil that
5 would be disturbed during construction? Wouldn't
6 you need information on the first six inches for
7 that purpose?

8 MR. CHEUNG: Yes, you do. We have data
9 collected at multiple depths that would be
10 representative of what construction activities
11 will dig, go into.

12 MS. GALLARDO: If I may add to that.

13 HEARING OFFICER FAY: Sure.

14 MS. GALLARDO: Typically when you do a
15 sampling program and I don't know the specifics of
16 the protocols that were used on this sampling
17 program, but when you take your sample it's from
18 zero to six inches. Or, you know, maybe it's from
19 two to eight inches, or something like that.

20 And that is intended to give an idea of
21 what the conditions are in the surface soil. It
22 doesn't necessarily mean it's right at that, you
23 know, air-to-surface interface.

24 And when you're going through and you're
25 doing site construction activities, you know,

1 typically you need to grade the site. You are
2 going to be, you know, moving that top six inches
3 of soil.

4 So to represent it in that soil column
5 is appropriate.

6 HEARING OFFICER FAY: So, you anticipate
7 that information about that soil will be available
8 prior to soil disturbance?

9 MS. GALLARDO: The information about
10 that soil is already available based on the
11 sampling program that was conducted.

12 HEARING OFFICER FAY: Thank you. That's
13 all I have. Anything further, Ms. Sol,?

14 MS. SOL : No, Your Honor.

15 HEARING OFFICER FAY: Okay. I thank the
16 panel for your testimony and you are excused for
17 the moment. And it's up to you and your counsel
18 how you want to physically change your situation,
19 but, Mr. Ratliff, are you situated so you can
20 testify and present your panel?

21 MR. RATLIFF: I'm not going to testify.

22 (Laughter.)

23 HEARING OFFICER FAY: So your panel
24 can --

25 (Pause.)

1 HEARING OFFICER FAY: While the
2 witnesses are getting settled, Mr. Ratliff, are
3 you initially going to give us an overview of the
4 legal situation --

5 MR. RATLIFF: I do want to make a
6 statement of counsel. It is not testimony. It is
7 an attempt to explain, I think, the legal context
8 for the testimony that follows.

9 And in doing so I hope to answer some of
10 the questions that have been asked this morning.

11 HEARING OFFICER FAY: Okay. Please go
12 ahead.

13 MR. RATLIFF: Well, let me get my
14 witnesses up here first. Let me see, do we have
15 Vince here?

16 (Pause.)

17 HEARING OFFICER FAY: Would the court
18 reporter please swear the panel.

19 Whereupon,

20 ALVIN GREENBERG, MICHAEL STEPHENS,
21 MARK LINDLEY and VINCE GERONIMO
22 were called as witnesses herein, and after first
23 having been duly sworn, were examined and
24 testified as follows:

25 COURT REPORTER: Would you please

1 individually state and spell your names for the
2 record.

3 DR. GREENBERG: Alvin Greenberg, last
4 name spelled G-r-e-e-n-b-e-r-g. And I have been
5 previously sworn in these proceedings.

6 MR. STEPHENS: Michael Stephens, last
7 name S-t-e-p-h-e-n-s. And I haven't been sworn in
8 previously.

9 MR. LINDLEY: Mark Lindley,
10 L-i-n-d-l-e-y. I haven't been previously sworn
11 in.

12 MR. GERONIMO: Vince Geronimo, V-i-n-c-e
13 G-e-r-o-n-i-m-o.

14 MR. RATLIFF: Mr. Fay, these are the
15 witnesses that we have today in this panel.
16 They're for the issue of soil and water and also
17 for waste management.

18 Three of the witnesses are for soil and
19 water; Mr. Greenberg is for waste management. Mr.
20 Lindley, Mr. Geronimo and Mr. Stephens are for
21 soil and water.

22 Before I ask the preliminary questions
23 and we hear the summary of testimony I would like
24 to briefly go into the legal background for what
25 we're doing here today. And that is that

1 basically the issue of sight cleanup and
2 remediation involves two statutory overlays. They
3 are, like I say, they overlap but they're not
4 entirely consistent, or they aren't entirely, I
5 should say, coincident.

6 The first one is the Energy Commission's
7 Warren Alquist Act, by which the Commission is
8 designated the lead agency for CEQA purposes; and
9 by which one of the duties of the Energy
10 Commission is to disclose and to provide
11 mitigation for any significant impacts to the
12 environment.

13 And we're used to thinking, I think, at
14 the Energy Commission that that's pretty much the
15 end of it, because our statute has got very
16 preemptive language which makes the Energy
17 Commission a permit in lieu of all in lieu
18 permits, or all other state and local permits.
19 And so typically the Energy Commission provides
20 the only mitigation and the only requirements that
21 go along with any aspects of the things that
22 pertain to impacts on, and the mitigation of
23 impacts that have to do with power plant
24 licensing.

25 But when we get to site remediation we

1 have another statute which is also very sweeping
2 in its preemptive nature, and that is the unified
3 agency review of hazardous materials release site
4 statute. That's in Health and Safety Code; it was
5 referred to earlier by the previous panel as the
6 26260 or 2601 statute, 26260 and the statutes that
7 follow are the statutes that address the concept
8 of an administering agency for site cleanup.

9 And in this case, and I think this is
10 unusual in our case, we do have a CalEPA-
11 designated administering agency. Administering
12 agencies under the statute can be either the
13 Department of Toxic Substances Control or they can
14 be the Regional Boards. And there are criteria in
15 the statute determining which of these agencies,
16 when the Regional Boards are so designated.

17 In this particular situation the
18 Regional Board was designated by CalEPA in 1999 to
19 be the administering agency.

20 When you have an administering agency
21 its powers are very preemptive. It's supposed to,
22 notwithstanding any other state or local law, it's
23 supposed to manage the remediation of the site and
24 the characterization of the site. It is the final
25 authority with regard to all of those issues.

1 And so you have two statutes which
2 purport to be preemptive which apply here. And
3 we're trying to make them work, and I think we
4 have. Keep in mind that the differences that the
5 Energy Commission's role and its attempts here are
6 to explain project impacts and project mitigation.
7 And this is permit related. CEQA is triggered by
8 the application for permit in our case.

9 With regards to the administering agency
10 there is no permit relationship requirement. When
11 you have had a toxic release on land it creates a
12 duty for cleanup, and the administering agency has
13 authority whether or not there is a permit
14 application. This is an ongoing, preexisting duty
15 to address impacts on property or pollution on
16 property that may be entirely preexisting of any
17 permit application.

18 And that is the case here, as well,
19 where you have had, over a long period of time,
20 industrial pollution of a brownfield site. You
21 have existing pollution and potentially existing
22 impacts which, for instance there could be seepage
23 from this site to the Bay that exists now. We
24 don't know that. That's one of the things that
25 we're requiring an assessment to determine.

1 But in any case, for those preexisting
2 impacts the authority for that kind of remediation
3 and the authority for addressing those issues is
4 entirely with the Regional Board.

5 Now, for the issues that have to do with
6 project impacts such as public health and such as
7 worker safety, the Energy Commission does have a
8 role. It has to make sure that any impacts from
9 that project are addressed such that public health
10 is protected. And we think we've done that.

11 So the duty of the staff here, and the
12 purpose of our role so far, is to provide complete
13 disclosure of the site and its characteristics.
14 It's to require mitigation that protects public
15 health and worker safety. And it's also to try to
16 make -- to sort of respect the remediation role of
17 the administering agency, but while working with
18 that agency to make sure that any performance
19 standards that we adopt for environmental
20 protection are observed.

21 And what we've done to achieve this is
22 as follows: We have required further site
23 characterization of the existing site in
24 consultation with the Regional Board.

25 We have -- and that's the draft sampling

1 plan that was referred to earlier today. That was
2 a plan where the Regional Board and the Energy
3 Commission, in consultation with DTSC, agreed upon
4 a site characterization plan to more fully
5 characterize pollution on the site.

6 Secondarily, we've collaborated with the
7 Regional Board on discussing the menu of potential
8 mitigations that may be required for the site.

9 And these are mitigations that we don't know if
10 they will be required, but we at least know the
11 range of those mitigations; and they're discussed
12 in our testimony. These are not exotic or new
13 things. Things such as hot spot removal or the
14 treatment of pumped water.

15 In addition to that we have proposed
16 conditions that require the documents that will be
17 used by the Regional Board for its site cleanup
18 plan. That includes the health risk assessment,
19 the screening ecological risk assessment and a
20 site management plan.

21 And we've also required, before there
22 can be any disturbance of soil or site
23 mobilization we've required that the applicant
24 receive a site cleanup plan, what is called a site
25 cleanup plan, by the Regional Board, which will

1 set forth the mitigation that will be required to
2 fully clean up the site.

3 Or alternatively, if based on all of
4 these studies the Regional Board determines it
5 appropriate, a no-further-action letter.

6 Finally, we have required performance
7 standards which are protective of public health
8 and worker safety, and we have basically gotten
9 consent from the Regional Board, an agreement with
10 the Regional Board that those standards are ones
11 that they would have enforced.

12 Finally we have proposed a memorandum of
13 understanding with the Regional Board to make sure
14 that we can participate with the Regional Board,
15 and along with other agencies, such as the
16 Department of Toxic Substances Control, in making
17 sure that the site cleanup plan, if required, will
18 include all of the necessary mitigation to protect
19 public health to the performance standards that we
20 are requiring.

21 Finally, I also want to address the
22 issue of nomenclature. And I think, Mr. Fay, you
23 referred to that earlier. If you look at the
24 staff's conditions they look rather different than
25 the applicant's conditions. And there's a reason

1 for that. The terms used are different. I think
2 that's the biggest difference.

3 And I don't think that there is a
4 substantive conflict between any of those
5 conditions, and the witnesses can address that.
6 But when we wrote our conditions we were still
7 trying to figure out what the terms -- what the
8 different documents are called.

9 And unfortunately, there's no
10 consistency within the different agencies as to
11 what different documents are called. DTSC has its
12 own terms; the State Board has its terms; and each
13 of the Regional Boards apparently have their own
14 terms.

15 And so when we wrote it we were using
16 DTSC terms and State Board terms; terms that we
17 had gotten through discussions with the State
18 Board about what these documents should be called.

19 I think the applicant, having the
20 possibility of filing their testimony, their
21 supplemental testimony at a later date, was able
22 to use the nomenclature which is more familiar to
23 the Regional Board. And I think that's the more
24 appropriate set of terms.

25 And what we propose to do is file a

1 document which melds the applicant's conditions of
2 certification with our own so we can get those
3 terms consistent.

4 And finally, we requested that the
5 Regional Board, Mr. Steve Hill, participate in
6 today's hearing. He had conflicts with other
7 meetings that prevented him from participating.
8 But I will attempt to solicit written comment from
9 the Board about the awareness of the Board's --
10 the Board Staff's awareness of what the Energy
11 Commission has done and is doing. And a statement
12 that it agrees with our approach.

13 HEARING OFFICER FAY: Mr. Ratliff, you
14 indicated that you've entered an MOU with the
15 Regional Board and DTSC, is that --

16 MR. RATLIFF: We have not entered one.
17 We have proposed one and we're still working out
18 the details.

19 HEARING OFFICER FAY: Okay. Well, if
20 and when that is completed would you make it
21 available to the record?

22 MR. RATLIFF: Certainly.

23 HEARING OFFICER FAY: But in the
24 meantime I think it would be very helpful to get a
25 statement from a responsible representative of the

1 Water Board as to their support of the approach
2 that the staff and applicant are taking.

3 In addition, you characterized the
4 differences between your conditions of
5 certification and those of the applicant. Is the
6 difference in terms the only difference that
7 remains? In other words, if we adopt verbatim the
8 language of the conditions of certification in
9 these areas that applicant has proposed, is staff
10 in agreement with that?

11 MR. RATLIFF: My understanding, and I
12 think this is really best addressed to our
13 witnesses, is that they are the same. We had some
14 discussions about that trying to determine whether
15 or not they were the same as the staff witnesses'.
16 We discussed this together.

17 We believe they are. We don't believe
18 there's any difference. But I would rather have
19 our witnesses address that.

20 HEARING OFFICER FAY: Okay. Anything
21 further, then?

22 MR. RATLIFF: No. I perhaps should do
23 some preliminary questions before we start.

24 HEARING OFFICER FAY: Mr. Boyd, what's
25 the nature of your question?

1 MR. BOYD: We would like to object to
2 the fact that you're not producing the Regional
3 Water Quality Control Board witness. We had
4 requested a witness, and the Committee directed a
5 witness to appear. We'd like to object and
6 request that that witness be called at a later
7 date when he is available. Perhaps we could deal
8 with the biological resource issue at that time
9 since the witness wasn't available today, and we
10 did have some questions on biological resources.

11 So, --

12 HEARING OFFICER FAY: I'm not sure of
13 the relationship with those two questions.

14 MR. BOYD: There's no relationship.

15 HEARING OFFICER FAY: Okay, but I do
16 understand --

17 MR. BOYD: I'm just saying --

18 HEARING OFFICER FAY: -- your --

19 MR. BOYD: I'm just saying I'm objecting
20 to the fact that you guys requested a witness, and
21 apparently they're not here. And we have
22 questions that we can't ask now. And really,
23 something in writing isn't going to give us an
24 opportunity to do that, since, you know, we would
25 like the real person here. And we thought that

1 was going to be the case.

2 HEARING OFFICER FAY: Okay, do you want
3 to -- are you prepared to indicate the nature of
4 the things you would ask the Water Board witness
5 if they were here?

6 MR. BOYD: I have a list of questions if
7 you want me to go over what the questions, some of
8 the questions were.

9 HEARING OFFICER FAY: Are you willing to
10 submit that to the record? Rather than take time
11 now I think if you've got the questions written
12 out, that would help us. Or you can file it, if
13 you plan to file an objection and a request to
14 have that witness present, you could --

15 MR. BOYD: Well, I'd rather have the
16 witness present. And I understand that biological
17 resources, the reason I brought up the biological
18 resources question, my understanding their witness
19 wasn't available today for that --

20 HEARING OFFICER FAY: That's correct.

21 MR. BOYD: -- issue, as well. So if
22 we're going to have to come back, possibly come
23 back --

24 HEARING OFFICER FAY: And we may have to
25 come back for a number of other topics, too.

1 MR. BOYD: For other reasons, why not,
2 you know, --

3 HEARING OFFICER FAY: But I want to hone
4 in on your reason for the --

5 MR. BOYD: -- I'd rather have the real
6 body here, is what I'm saying, than to do it in
7 writing.

8 HEARING OFFICER FAY: Are you willing to
9 submit the nature of the questions you would ask
10 the Water Board if the Committee were to require a
11 Water Board witness to be here?

12 MR. BOYD: Certainly. If you require
13 him to be here, I'm totally willing to provide you
14 the nature of the questions that we're going to
15 ask.

16 HEARING OFFICER FAY: Why don't you file
17 that.

18 MR. BOYD: I will after today.

19 HEARING OFFICER FAY: Okay, good.

20 MR. BOYD: I'd be happy to file that.

21 HEARING OFFICER FAY: Good, thank you.

22 MR. BOYD: Do you want me to file a
23 formal written objection, too?

24 HEARING OFFICER FAY: The objection you
25 don't need to file. I would just like to

1 understand what exactly you would like to ask the
2 witness if a witness for the Water Board was
3 produced, so we understand exactly the nature of
4 your concerns.

5 MR. BOYD: Well, our concern is
6 basically the same as we've been raising which is
7 basically our understanding is that the Regional
8 Board, like the CEC, are all CEQA agencies. And
9 that CEQA requires a meaningful and informed
10 public participation in whatever the process is
11 that's going before that agency.

12 In this case it's the remedial
13 investigation and the remedial action plan. And
14 associated reports of human health risk
15 assessment, ecological risk assessment and so on.
16 We want to know what -- that's why we asked the
17 witness to be there so they could talk about their
18 SLIC (phonetic) program, how the public
19 participation is involved in that. And then to
20 ask specific detailed questions about the project
21 site and what the role of the Regional Board has
22 been.

23 And basically based on the objection
24 they filed, it appears that they're saying that
25 they don't have anything to review yet from the

1 applicant. And I was planning on asking Dr.
2 Greenberg about that in a little bit.

3 But, in any case, that's the same
4 questions we're basically asking all the witnesses
5 were the ones that we were going to ask the
6 Regional Board witness, except for specific
7 details that apply to the Regional Board.

8 HEARING OFFICER FAY: That's fine. I
9 don't need anything further, thank you. All
10 right, any --

11 MR. RATLIFF: Mr. Fay, if I may, we
12 would like -- we agree with Mr. Boyd, we would
13 like to have Mr. Hill here, as well. But, as Mr.
14 Hill pointed out when I asked him to come, he
15 doesn't really want to be cross-examined and he
16 doesn't have any testimony for this agency. So he
17 was afraid that he would be cross-examined, I
18 think, because he asked that question.

19 His idea, his notion of the role here is
20 that they're an advisory sister agency. And that
21 when they get the documents that we're requiring
22 they'll have something to say about them. But
23 those documents have not yet been provided. In
24 fact, they have not yet been required. They're in
25 our conditions of certification.

1 So, they feel like it would be premature
2 to try to give conclusions about documents that
3 don't exist yet, or that they haven't seen yet.
4 They're probably -- I hope they're forthcoming
5 soon from the applicant.

6 But I also want to emphasize something
7 else, though, that may have gotten lost in my
8 statement, and that is that I think you'll hear
9 our witnesses testify today that there is no
10 impact from this project on the Bay. And, in
11 fact, the construction of this project would
12 probably be ameliorative to any existing impact on
13 the Bay because the applicant is proposing to cap
14 it.

15 In other words, that is not a CEQA
16 impact that we are proposing to either examine or
17 mitigate. That is a preexisting impact that has
18 got to be addressed by the Regional Board. And
19 they will do so based upon the results of the
20 ecological risk assessment that we are requiring.

21 So we haven't got any testimony about
22 impacts on the Bay because there is, according to
23 our witness, no impact on the Bay from the
24 project.

25 So that's what I'm trying to emphasize,

1 our biological witness isn't going to be very
2 useful on this because she hasn't provided any
3 testimony about an impact on the Bay from the
4 project.

5 So, if she were to come, that kind of
6 question would not be within the scope of her
7 testimony.

8 HEARING OFFICER FAY: Shifting back to
9 the Water Board, I think that it would be helpful
10 to have input from the Water Board, one, to
11 establish their support of the approach that the
12 staff and the applicant are pretty much in
13 agreement with.

14 And, two, to clarify what some of the
15 parties have raised, what is their access to the
16 process by which the Water Board would approve
17 various steps for this site, when all the
18 information is available.

19 Now, there may be other ways to do that,
20 but obviously having somebody from the Water Board
21 with authority answer the question would help.

22 We're not going to decide that right
23 now, so we can move ahead. But I think those two
24 points are the most valuable to the Committee.

25 So, why don't we go ahead and present

1 your witnesses.

2 MR. RATLIFF: Okay.

3 MR. SARVEY: Can I make a comment, Mr.
4 Fay? Mr. Fay, can I make a comment?

5 HEARING OFFICER FAY: Very briefly, Mr.
6 Sarvey.

7 MR. SARVEY: Yeah. Mr. Ratliff here
8 said that the Regional Water Quality Board witness
9 didn't want to appear because they didn't have the
10 studies and they didn't want to be cross-examined.
11 And this is the same dilemma that we're facing as
12 intervenors.

13 We can't even present witnesses because
14 we don't have any ecological risk assessment; we
15 can't present a biologist; we don't have a risk
16 management assessment, so I can't bring in my
17 experts.

18 And once this license is granted all
19 this is going to be determined outside the CEC
20 process. And that's not the nature of the CEC
21 process, to get full disclosure of all significant
22 impacts. And we have nothing but speculation
23 here. We're saying, oh, we don't know if there's
24 damage to the --

25 HEARING OFFICER FAY: I understand your

1 position. All right, let's go ahead with the
2 witness panel.

3 MR. RATLIFF: Yes.

4 DIRECT EXAMINATION

5 BY MR. RATLIFF:

6 Q Mr. Greenberg -- Dr. Greenberg, did you
7 prepare the testimony, I believe it's exhibit 46,
8 which is in the final staff assessment, titled,
9 waste management?

10 DR. GREENBERG: Yes, I did.

11 MR. RATLIFF: And did you also
12 contribute to the staff supplemental testimony on
13 toxics and waste management, soils and water,
14 filed April 10th, exhibit 47?

15 DR. GREENBERG: Yes, I did.

16 MR. RATLIFF: And also the errata to
17 that testimony filed April 17th, exhibit 49?

18 DR. GREENBERG: Yes, I did.

19 MR. RATLIFF: Is that testimony all true
20 and correct to the best of your knowledge and
21 belief?

22 DR. GREENBERG: Yes, it is.

23 MR. RATLIFF: Do you have any changes to
24 make at this time?

25 DR. GREENBERG: Not at this time.

1 MR. RATLIFF: And, I'll ask collectively
2 of our three soil and water witnesses, Mr.
3 Geronimo, Mr. Lindley and Mr. Stephens, did you
4 collaboratively contribute to the final staff
5 assessment, exhibit 47, in the area of soil and
6 water.

7 MR. GERONIMO: Yes.

8 MR. LINDLEY: Yes.

9 MR. STEPHENS: Yes, I did.

10 MR. RATLIFF: And is that testimony true
11 and correct to the best of your knowledge and
12 belief?

13 MR. STEPHENS: Yes, it is.

14 MR. GERONIMO: Yes.

15 MR. LINDLEY: Yes.

16 MR. RATLIFF: And do you have any
17 changes to make in your testimony?

18 MR. STEPHENS: No, I don't.

19 MR. LINDLEY: No, I don't, but I think
20 Vince may have.

21 MR. GERONIMO: I do have one change.
22 It's kind of a matter of soil and water. It's in
23 exhibit 46.

24 MR. RATLIFF: Could you tell us the
25 page?

1 MR. GERONIMO: On page 4.9-11, first
2 full paragraph following the soil and water table
3 2. I ask that it be removed, including the table
4 that it contains, which is the constituent and
5 effluent table.

6 MR. RATLIFF: Okay, we're talking about
7 page 4-9 -- 4.9-11, and that's at the lower half
8 of the page, the last full paragraph plus the
9 table that follows it?

10 MR. GERONIMO: That's correct.

11 MR. RATLIFF: Okay. And can you briefly
12 state why you're deleting that?

13 MR. GERONIMO: The Electric Reliability
14 Plant will not use steam generated approach that's
15 applicable to the boiler facilities in 40CFR423.
16 So it's no longer -- it's not needed.

17 MR. RATLIFF: Okay, would that change --
18 is your testimony true and correct to the best of
19 your belief?

20 MR. GERONIMO: Yes, it is.

21 MR. RATLIFF: Okay. I would ask Mr.
22 Greenberg to first go through, I think he has a
23 short presentation that he will make about waste
24 management, and I would ask him to do that at this
25 time.

1 DR. GREENBERG: If it's okay, Mr.
2 Ratliff, I'd like to also give about a 30-second
3 rendition of some of my qualifications that are
4 certainly pertinent and relevant to upcoming
5 questions perhaps by intervenors.

6 I have a PhD in chemistry and three
7 years of post-doctoral work in toxicology. I
8 served for three and a half years in CalOSHA in
9 the enforcement branch, and two years on the
10 CalOSHA Standards Board, appointed by the Governor
11 of California.

12 I served on the initial site mitigation
13 advisory committee to the then toxic substances
14 control program which developed the methodologies
15 for site characterization and for human health
16 risk assessment.

17 I then was appointed by the first CalEPA
18 Secretary Jim Strock to the DTSC overview
19 committee, where we conducted over a nine-month to
20 one-year period in overview of all programs within
21 the newly designated Department of Toxic
22 Substances Control.

23 I've conducted site mitigation and
24 health risk assessment at over 50 sites, both
25 federal Superfund, state Superfund, in and out of

1 the State of California.

2 With that we'll go forward to my
3 presentation and the conclusions in waste
4 management, which also involve the generation of
5 solid and hazardous waste during construction and
6 operations, not just the contamination on the
7 site, is that any of this waste, including site
8 contamination, would not result in significant
9 impacts to either workers on the site, or to the
10 general public offsite if the proposed conditions
11 of certification are implemented.

12 During operation impacts there
13 mitigation involving nonhazardous solid waste and
14 hazardous waste and there are some conditions of
15 certification that would require the applicant to
16 prepare solid waste and hazardous waste management
17 plans as per SB-40.

18 One of the noteworthy public benefits is
19 that the applicant has committed to recycling
20 goals that far exceed SB-14 requirements. And
21 this not only decreases the impact on landfills,
22 but it also decreases the impact in the community
23 by obviating the need to have any type of waste
24 trucks going to and from the facility.

25 Requirements in the proposed conditions

1 of certification require regarding site
2 contamination initially included waste management-
3 6, which was a request by staff that the applicant
4 provide full site characterization. The applicant
5 has already done this, according to a sampling and
6 analysis plan that was reviewed and approved by
7 staff and by the Regional Board Staff; and with
8 comment from Department of Toxic Substances
9 Control.

10 This sampling was conducted during
11 February of 2006. The sampling and analysis plan
12 had been docketed, was on the Commission website
13 at least three weeks prior to the start of
14 sampling analysis. So it was available for
15 comment by the public.

16 We are now requiring in an existing
17 proposed conditions of certification a site-
18 specific human health risk assessment and an
19 ecological risk screening assessment. These two
20 things the applicant has agreed to, and this is
21 what will drive any remediation.

22 I would like to briefly mention some of
23 the waste management and other conditions of
24 certification that will insure protection of the
25 public. There are a total of ten conditions of

1 certification found either in air quality section,
2 worker safety section or in waste management that
3 will address protection of workers and the public
4 due to the subsurface contaminants and surface
5 contaminants on this site.

6 Waste-1, for example is that a
7 registered professional engineer or geologist will
8 have full authority by the project owner to
9 oversee earth-moving activities that have a
10 potential to disturb contaminated soil.

11 Waste-2 will allow that individual to
12 inspect any potential hazardous waste encountered
13 on the site, or at linear facilities. So this
14 addresses the waterlines and gaslines, et cetera.
15 And designate or describe and require any sampling
16 to confirm the nature and extent of any
17 contamination that somehow escaped during the --
18 or escapes the notice during our site
19 characterization. So this is an additional layer
20 of insurance that after the site characterization,
21 after site mobilization has already occurred, the
22 site has been remediated already, we still are
23 requiring scrutiny of this site to prepare against
24 any contingency.

25 Moving on then, let me briefly mention

1 the four air quality conditions of certification.
2 That's AQSC-1 and -2, AQSC-3 and AQSC-4. These
3 add construction mitigation manager and mitigation
4 plan. The applicant must have somebody out there
5 as a construction mitigation manager. They have
6 to develop a plan.

7 Air quality SC-3 is the construction
8 fugitive dust control approach -- or plan. And
9 then AQSC-4 is the response that is required if
10 any visible plume is noticed under certain
11 parameters. And that would mean if it gets too
12 far from the location where the plume is being
13 generated, but yet stays onsite. Or if there's
14 any plume visible at all that is starting to go
15 offsite. This plan will detail what has to be
16 done, such as additional dust control methods
17 including shutting down activities.

18 Finally, there is also the worker safety
19 condition which is proposed condition of
20 certification number 4, where the CEC will have
21 its own observer onsite during site remediation,
22 during construction. This is a safety monitor
23 reporting to the CBO, chief building official,
24 who, of course, reports to the Commission's
25 compliance unit.

1 And that individual, the safety monitor,
2 will ride herd on worker safety and make sure that
3 all the conditions of certification that would
4 protect workers and the offsite public are indeed
5 being implemented from our perspective, and not
6 just the perspective of the applicant's monitor.

7 So waste-6 will require that human
8 health risk assessment, an ecological risk
9 screening assessment, a site cleanup plan and a
10 site-specific risk management plan. This is
11 consistent with the applicant's proposal for
12 changing waste-6. We've gotten rid of old waste-
13 6, which required site characterization; so this
14 is now new waste-6.

15 And I will provide for the Committee a
16 written writeup after the end of this hearing
17 today that will meld these two together.
18 Basically I am accepting everything that the
19 applicant has --

20 HEARING OFFICER FAY: Excuse me, Dr.
21 Greenberg, by these two, you mean the applicant's
22 language and the staff language?

23 DR. GREENBERG: Yes. I'm sorry for
24 that. The applicant's language is something that
25 I accept. Right now the only thing that I would

1 change is just some editorial words to make sure
2 something is abundantly clear. But other than
3 that, it will be word-for-word with what the
4 applicant is proposing.

5 They have, I think, presented it in a
6 very logical format. And so there will be a
7 waste-6, a waste-7, the site management plan, and
8 the certification. And they'll add in waste-9 is
9 the -- these are the risk management goals, the
10 cleanup goals, the protection of workers and
11 offsite public during remediation and during
12 construction that counsel Ratliff alluded to
13 earlier.

14 The Regional Water Board has accepted
15 these, also. These are consistent with CalEPA
16 risk management goals.

17 With that, then I'll entertain
18 questions.

19 MR. RATLIFF: Well, Mr. Greenberg, maybe
20 I can be the first to ask some. If there is
21 remediation at the site, it will be required by
22 the Regional Board in what's called a site cleanup
23 plan, is that correct?

24 DR. GREENBERG: That is correct.

25 MR. RATLIFF: And could you tell us what

1 kinds of measures might be taken to clean up that
2 site?

3 DR. GREENBERG: Right, --

4 MR. RATLIFF: Assuming they are
5 required.

6 DR. GREENBERG: Yes. In my experience
7 this site does not present anything unusual as far
8 as hazardous waste sites go around the state or
9 even some of them I'm familiar with around the
10 country.

11 There can be only a limited number of
12 remedial actions that can be taken. And I have
13 catalogues some of those and mentioned some of
14 those, not only in supplemental testimony, but in
15 the original final staff assessment.

16 And these would include removal of some
17 hot spots. What we term a hot spot is an area of
18 soil that contain particularly high levels of say
19 PAHs, polynuclear aromatic hydrocarbons, or
20 arsenic. And that soil then would be removed,
21 transported to either a hazardous waste treatment
22 facility or a disposal facility.

23 Confirmatory sampling would then be
24 taken at the edges of the removal area to confirm
25 that you've got the whole hot spot.

1 Alternatively, there can be soil gas remediation.
2 There has been some toxic substances in vapor form
3 found in soil gas at the site. This could be a
4 soil vapor extraction referred to as SVE.

5 There's also contaminants in the
6 groundwater, principally polynuclear aromatic
7 hydrocarbons. And those can be removed by pumping
8 and treating.

9 You can have a combined system where
10 you're pumping and treating the groundwater,
11 removing contaminants, and at the same time
12 removing contaminants from the soil gas.

13 I'm not saying at this time which one
14 the Regional Board will choose. But there are a
15 limited number of remedial actions that can be
16 proposed. They are aware of them; we're aware of
17 them. We have discussed those as companion
18 agencies, and we're all pretty much onboard as to
19 what they might come up with.

20 MR. RATLIFF: And if those remedial
21 actions are used, is it your opinion that you
22 would expect public health to be protected?

23 DR. GREENBERG: Yes. I not only expect
24 it, but it would be required. And as I mentioned,
25 the City's going to have its monitor there, and

1 we're going to have our monitor there.

2 MR. RATLIFF: And that would be true for
3 worker safety, as well?

4 DR. GREENBERG: That is correct.

5 MR. RATLIFF: Okay, thank you. I also
6 would like to ask Mr. Lindley to summarize for the
7 soil and water witnesses his testimony.

8 I think Mr. Lindley may also have a
9 brief --

10 MR. LINDLEY: I have actually some
11 slides I can put up.

12 MR. SARVEY: Are we addressing soil and
13 water and hazardous materials at the same time?

14 MR. RATLIFF: Yes, this panel is
15 addressing both.

16 MR. SARVEY: We didn't do that with the
17 applicant, did we?

18 HEARING OFFICER FAY: No, we didn't, and
19 we'll be returning to the applicant's --

20 MR. SARVEY: Oh, okay.

21 HEARING OFFICER FAY: -- testimony on
22 soil and water.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER FAY: And I'm sorry for
25 the confusion. Staff preferred doing it this way.

1 And we'll just have to see. It may be a challenge
2 for the record, but --

3 MR. SARVEY: Because I needed to ask the
4 applicant some questions on soil and water, and
5 then address the staff. So maybe the staff can
6 still be available after --

7 HEARING OFFICER FAY: Mr. Ratliff, is
8 that --

9 MR. RATLIFF: I'm sorry?

10 HEARING OFFICER FAY: Can the staff
11 continue to be available?

12 MR. RATLIFF: I haven't consulted with
13 them. You mean available --

14 HEARING OFFICER FAY: All right, well,
15 that's --

16 MR. RATLIFF: When do you mean?

17 HEARING OFFICER FAY: Let's see what
18 your needs are later. Why don't you go ahead.

19 MR. RATLIFF: Our decision to combine
20 these witnesses, it was, I think, for everyone's
21 convenience because they're all addressing the
22 issue of remediation, which I think is the
23 principal issue of concern to the intervenors.
24 And it's certainly the issue that goes to the
25 issue of public health.

1 MR. BOYD: We don't object, we just want
2 our opportunity to do soil and water on the
3 applicant, that's all.

4 HEARING OFFICER FAY: We understand.

5 (Pause.)

6 MR. LINDLEY: I'm Mark Lindley. Michael
7 Stephens here, and Vince Geronimo and I prepared
8 the testimony, the final staff assessment for soil
9 and water resources. Based on the information
10 that was provided by the applicant, and that we've
11 gathered from sister agencies, we have determined
12 that potential soil and water impacts from the
13 proposed project will be mitigated to less than
14 significant levels provided that the conditions of
15 certification that we recommended are implemented.

16 The proposed project will comply with
17 all laws, ordinances, regulations and standards
18 related to soil and water resources.

19 Just a quick overview of our staff
20 assessment, the project's proposed for a site on
21 Port of San Francisco property. This site is
22 comprised of fill material and historic Bay lands.
23 This site is very close to San Francisco Bay. And
24 surface water and groundwater currently flow
25 towards the Bay.

1 Historically, the site was used by the
2 Western Pacific Railroad, as we know, for
3 maintenance, lubrication fueling. Currently it's
4 being used, or I guess it's in the process of
5 being vacated by a concrete batch plant.

6 We know that the site is impacted by
7 petroleum hydrocarbons, polynuclear aromatic
8 hydrocarbons, VOCs, metals from these previous
9 land uses. And there's the potential that this
10 existing contamination could be migrating towards
11 San Francisco Bay. And it could pose an impact to
12 marine life.

13 In our staff assessment we examined
14 potential impacts to soil and water resources. We
15 looked at wind erosion, water erosion and
16 sedimentation and determined that through the use
17 of BMPs that are required in the drainage erosion
18 sediment control plan and SWPPPs that are included
19 in soil and water conditions 1 and 2, that those
20 impact could be mitigated.

21 We also, due to the existing
22 contamination at the site, we wanted to be sure
23 that San Francisco Bay would be protected, so we
24 have asked for a treatment control BMP that will
25 enable the applicant to collect construction

1 stormwater, that runoff before it leaves the site.
2 And test that water to make sure that it meets
3 certain standards before it's discharged to San
4 Francisco Bay.

5 Potential soil and groundwater
6 contamination from leaks during construction or
7 leaks of chemicals during operations can be
8 mitigated through the use of spill prevention
9 BMPs.

10 What that is pumped from excavations on
11 the site during construction will be treated and -
12 - well, treated if necessary. It'll be tested and
13 discharged to the combined sewer system under
14 limitations by the San Francisco Department of
15 Public Works.

16 Post-construction stormwater from the
17 site will be discharged to San Francisco Bay and
18 it'll go through a vegetative swale, which is a
19 BMP under the Port's NPDES permit and their
20 existing stormwater pollution prevention plan.

21 We looked at water supply and treatment,
22 although I'm not sure -- I'm sure we're going to
23 have a discussion with the applicant and then with
24 staff, as well, on water supply and treatment. I
25 know right now we're getting into the soil

1 contamination issue.

2 I'm not sure if Dick thinks I should go
3 through this at this point, or wait till our
4 next --

5 MR. RATLIFF: Why don't you summarize it
6 just very briefly.

7 MR. LINDLEY: Okay. We looked at water
8 supply and treatment at the project. The primary
9 water source for the project is going to be
10 reclaimed water from the Southeast Water Pollution
11 Control Plant.

12 This wastewater is treated to secondary
13 standards. It's going to be used for process
14 water, equipment rinse water, that kind of stuff.
15 It's reclaimed water will be treated through a
16 tertiary treatment process onsite to Title 22
17 standards.

18 The project is proposing to use a system
19 that includes ultra-filtration, disinfection and
20 reverse osmosis.

21 These plans will be reviewed by the
22 Department of Health Services, the Regional Board,
23 to determine their adequacy.

24 The site's also going to include a dual
25 plumbing system that will prevent mixing of

1 treated wastewater with the potable supplies.
2 That plan will be reviewed by the Department of
3 Public Works.

4 This site will use potable water as a
5 backup supply. The use of this potable water
6 supply will be limited to 50 acrefeet per year --
7 excuse me, 50 acrefeet over any three-year period.

8 A compliance project manager is going to
9 monitor water use, both the potable water source
10 and the reclaimed water source.

11 And wastewater discharge will be to the
12 combined sewer system under limitations set forth
13 by SFPUC.

14 We've included conditions of
15 certification that covers each of these
16 requirements.

17 So now the issue of the day seems to be
18 the existing soil and groundwater contamination.
19 We had the applicant do some initial testing in
20 2005 and then they followed that up with a more
21 complete characterization of soil and groundwater
22 in February 2006.

23 We've determined that the soil and
24 groundwater is impacted by TPH, polynuclear
25 aromatic hydrocarbons and metals at levels that

1 greatly exceed the Regional Board's screening
2 levels. PAH levels at the SFERP site in one
3 particular hot spot are considerably higher than
4 they were at the neighboring Muni site.

5 And the results of the investigation
6 show that groundwater is contaminated by petroleum
7 hydrocarbons throughout the site and also at the
8 down gradient monitoring boring hole that's
9 located closest to San Francisco Bay. This
10 indicates that this contamination could be moving
11 towards the Bay and could pose significant
12 ecologic risk.

13 Remedial measures beyond the cap and
14 maintain approach that are being used at the Muni
15 site may be required. These measures could
16 include, as Alvin described, hot spot removal. If
17 it goes beyond that it could potentially include
18 groundwater and/or soil vapor extraction and
19 treatment. That kind of a measure may extend into
20 the operation of the plant.

21 Staff has provided supplemental
22 testimony and the applicant has also followed up
23 with their supplemental testimony. And I think
24 that the two parties have pretty much reached an
25 agreement to an approach.

1 The applicant has provided language in
2 their soil and water-6 which is also concurrent
3 with waste-6, that it requires a human health risk
4 assessment, an ecological assessment, a site
5 cleanup plan and a risk management plan. And
6 staff has reviewed that, and from the soil and
7 water side we are okay with the language that the
8 applicant has proposed.

9 The applicant has also proposed a long-
10 term site management plan and certification report
11 as part of soil and water-7. And risk levels to
12 protect human health in soil and water-13.

13 The bottomline with this issue is that
14 remedial actions will include measures to limit
15 impacts to soil and water resources both during
16 like implementation of these remedial actions and
17 looking out into the future. These remedial
18 actions are going to address environmental/
19 ecological risks. And they would be protective of
20 the health of the onsite workers and the offsite
21 receptors.

22 And I'm available for questions.
23 Michael Stephens here to help out, and Vince, as
24 well.

25 HEARING OFFICER FAY: Okay. Mr.

1 Ratliff, before we allow cross-examination of the
2 panel, did you want to move any of the testimony
3 and other documents into evidence?

4 MR. RATLIFF: Yes. I would move that
5 those portions of waste management and soil and
6 water portions of exhibit 46, as well as exhibit
7 47, and exhibit 49 go into evidence.

8 HEARING OFFICER FAY: Is there
9 objection? All right, hearing none, so moved.

10 And, again, before we go on, I'm jumping
11 back now, but I'm not sure, Ms. Sol,, if you moved
12 all the exhibits that you named in your long list.
13 And just to be safe, do you want to do that at
14 this time?

15 MS. SOL : I would like to move those
16 documents into evidence.

17 HEARING OFFICER FAY: Okay. And I heard
18 no objection earlier. Is there any objection to
19 the documents and exhibits that the applicant
20 moved?

21 MR. SARVEY: I object to the May 1st
22 submission as incomplete and misleading by the
23 applicant in the site description.

24 HEARING OFFICER FAY: What part of it?

25 MR. SARVEY: In the site description.

1 HEARING OFFICER FAY: In the site
2 description.

3 MR. SARVEY: Misleading and incomplete
4 by the applicant. I'd like to have --

5 HEARING OFFICER FAY: And what is the
6 basis for that?

7 MR. SARVEY: I'd like to have that
8 stricken. They didn't disclose the Pacific Cement
9 violations that they're alleging to the Commission
10 or to the public, so I'd like to have it stricken.

11 HEARING OFFICER FAY: Okay, do you want
12 to respond, Ms. Sol,?

13 MR. BOYD: We'd also agree with that.

14 MS. SOL : Your Honor, we indicated that
15 Pacific Cement is present at the sampling that was
16 done on the site was done in February 2006. The
17 complaint was filed in July of 2005. And so our
18 sampling indicates the contaminants that are
19 present in the soil.

20 We did not list, you know, what releases
21 could have happened by each of the uses on the
22 property because there was to be a sampling plan.
23 And a sampling plan was undertaken which shows
24 what, in fact, is on the property.

25 HEARING OFFICER FAY: Okay. We're going

1 to overrule that objection because the critical
2 aspect is the constituents in the soil that are
3 being sampled, not who caused it to happen.

4 MR. SARVEY: What about the top six
5 inches?

6 HEARING OFFICER FAY: Well, you have
7 your ruling.

8 MR. BOYD: They didn't sample.

9 HEARING OFFICER FAY: That's --

10 MR. BOYD: Gary, would you have the
11 record reflect that CARE also objected for the
12 same reasons as Mr. Sarvey?

13 HEARING OFFICER FAY: Okay, the record
14 reflects we have objections from CARE and Mr.
15 Sarvey on that issue and the Committee's overruled
16 it.

17 All right, any other objections to the
18 list of applicant's exhibits? All right, then we
19 will accept all those as listed in applicant's
20 testimony.

21 Okay, I'm sorry for the interruption,
22 Mr. Ratliff. Let's go ahead. I just wanted to be
23 sure we had that in.

24 MR. RATLIFF: If I could ask one last
25 direct question before I turn over the panel to

1 cross-examination.

2 BY MR. RATLIFF:

3 Q I'd like to ask Mr. Greenberg if he
4 could answer the question that was just asked,
5 what is the importance of the first six inches of
6 surface material, and whether failure to sample
7 that creates a problem for the site
8 characterization.

9 DR. GREENBERG: Thank you, Mr. Ratliff.
10 Because I would like to reassure the public that
11 when doing site characterization sometimes you do
12 sample at the surface and sometimes you don't.
13 This is a clear case where you don't.

14 Because I did inspect the site. I was
15 there several times, and I was there during the
16 initial first day of sampling.

17 We know what's on the surface. It's
18 cement dust, old cement dust and it's, in fact,
19 there's a lot of it there and there's piles of it
20 there. It would serve no useful purpose to analyze
21 the surface because we already know what's there,
22 and it has to be dealt with.

23 What we wanted to know was what was
24 below that artificial layer. There is fill there.
25 We want to know what's in the fill, the historical

1 fill. This was an artificial placement as a
2 result of very sloppy conditions at that cement
3 plant.

4 So, it would have served no useful
5 purpose. We really wanted to know what was below
6 that. And we already know the answer, there's
7 cement there. And the borings certainly bore that
8 out, pardon the pun.

9 MR. RATLIFF: Okay, with that I would
10 like to make the witnesses available for cross-
11 examination.

12 HEARING OFFICER FAY: Okay. Ms. Sol,,
13 any questions for the panel?

14 MS. SOL : I had one question for Mr.
15 Greenberg.

16 CROSS-EXAMINATION

17 BY MS. SOL :

18 Q Mr. Greenberg, you testified that with
19 the remedial measures that you gave as examples,
20 you would be assured that there would be no
21 significant impacts from this project.

22 If the City commits to a health-based
23 standard, and it is shown that something less than
24 the remedial measures that you listed are what's
25 needed to achieve that standard, would that

1 similarly make you comfortable that the project
2 would have no significant impacts?

3 DR. GREENBERG: Yes, indeed, Ms. Sol,.
4 I only gave a few examples, not all of them. And
5 certainly if the health-based decision were to
6 include a remedial action different from what I
7 had mentioned, I would be still very comfortable
8 with what it was that you selected.

9 And the CPM does have -- the compliance
10 project manager will have the opportunity to
11 review it and approve it.

12 MS. SOL : Thank you, Mr. Greenberg.

13 HEARING OFFICER FAY: Is that all you
14 have, Ms. Sol,, for the panel?

15 MS. SOL : Yes.

16 HEARING OFFICER FAY: Okay. Then we'd
17 move to Mr. Sarvey but he has stepped out. Is
18 CARE prepared to go forward with cross-examining
19 this panel?

20 MR. BROWN: I'm going to ask the same
21 questions.

22 CROSS-EXAMINATION

23 BY MR. BROWN:

24 Q Mr. Greenberg or any other CEC
25 witnesses, do you have -- Mr. Greenberg, I'm

1 asking the same questions I asked before, so do
2 you or any other witnesses, CEC witnesses, do you
3 have a San Francisco Bay Regional Water Quality
4 Board-approved cleanup or remedial investigation
5 report in which there is necessary data to perform
6 and ecological risk assessment on disturbed, on
7 onsite contamination of water and soil associated
8 with this project?

9 DR. GREENBERG: This is Alvin Greenberg
10 responding. No. There is no Regional Board
11 decision on this or opinion yet, other than, of
12 course, informal advice given to us as a sister
13 agency.

14 MR. BROWN: Are any of the agencies you
15 represent in these proceedings, the CEC or the
16 City and County of San Francisco agency, that are
17 subject to the requirements of the California
18 Environmental Quality Act for a meaningful and
19 informed public participation in this project
20 approval?

21 DR. GREENBERG: This panel represents
22 the California Energy Commission, and yes, it is,
23 indeed, under the CEQA laws. And this is the
24 functional equivalent of a CEQA EIR. That is, the
25 staff assessment is the functional equivalent of

1 the EIR.

2 MR. BROWN: Why is the CEC and the City
3 deferring public participation in this project,
4 San Francisco Bay Regional Water Quality Board
5 approved cleanup plan remedial investigation
6 report until after the CEC approves this project
7 development in my low-income neighborhood? is it
8 because the neighborhood is predominately African-
9 American and Samoan? How will the public
10 participate in this process?

11 DR. GREENBERG: The Energy Commission
12 process does not discriminate against any group.
13 And we are not deferring all of this to after
14 certification. I think that it would be
15 appropriate to point out that this is not a
16 precedent where some of the activities involving
17 site contamination at a proposed power plant site
18 are deferred until after certification.

19 A applicant sometimes needs to know
20 whether they have a project in order to go
21 forward, which can be very expensive, depending on
22 the site, activities. It would not be prudent,
23 certainly, to go forward if there was no project.
24 So first there really should be a project.

25 Second of all, there has been ample

1 opportunity for the public to participate in this
2 process through staff workshops, through the
3 posting of the sampling and analysis plan on the
4 Commission's website.

5 Third of all, post-certification for
6 conducting remedial activities has been done in
7 previous siting cases, most recently the Morro Bay
8 case with Duke Energy.

9 Fourth, the Regional Water Board's own
10 public participation process is extensive and will
11 give the public ample opportunity to comment on
12 the site cleanup plan, the human health risk
13 assessment, certification, et cetera.

14 MR. BROWN: Okay. Why is the CEC and
15 the City deferring public participation in this
16 project's human health risk assessment and
17 ecological risk screening assessment using site-
18 specific groundwater concentrations compared to
19 the San Francisco Bay Regional Water Quality
20 Control Board, 2005 ESL a revised site specific
21 risk management plan and a site management plan.
22 How will the public participate in this process?

23 DR. GREENBERG: My previous answer also
24 applies to this question.

25 MR. BROWN: In the City's March 30,

1 2006, draft field investigation summary reported
2 at page 7 it states in section 5.1.9, talks about
3 pH. pH in the soil reported from all samples
4 collected in the area across the site range in a
5 value from 7 to 12.6. The highest value, 12.6,
6 was reported from SB-25, five feet below ground
7 surface BGS.

8 Others value greater than pH of 10 were
9 reported across at both surface and subsurface
10 sample locations. The majority of the high pH
11 values were reported at the surface of -- or five
12 BGS samples.

13 Is this high pH material naturally
14 occurring?

15 DR. GREENBERG: The question is, is it
16 naturally occurring. And the answer is probably a
17 mixture of natural occurring and also some of the
18 cement that is certainly at the northern portion
19 of the site, and may also have migrated or drifted
20 to the middle and central portions of the site.

21 Quite frankly, I'm surprised not that
22 there is some alkaline materials on this site, but
23 that it wasn't more extensively found on the site,
24 and that the pH wasn't even a little bit higher
25 than 12.5.

1 This is commonly found at many cleanup
2 sites. It is not really a primary concern, as we
3 certainly know how to deal with these types of
4 soils.

5 MR. BROWN: Just to go back on that, now
6 you said cleanup sites pertaining to for example.
7 What type of cleanup would you be referring to?

8 DR. GREENBERG: Well, the cleanup plan,
9 sir, could be a mixture of leaving it in place and
10 capping. Could also include removal of hot spots.
11 It could include some onsite treatment or offsite
12 treatment. It also could include some soil vapor
13 extraction and groundwater treatment.

14 MR. BROWN: Why hasn't the City been
15 required to perform a complete characterization of
16 the site with the grid map and more thorough bore
17 and soil vapor samples? Do you agree the whole
18 site needs characterization?

19 DR. GREENBERG: It was at my urging and
20 request and with a proposed condition of
21 certification that has since been removed that the
22 City did, indeed, conduct this sampling and
23 analysis. I believe this is a very thorough site
24 sampling plan. It was reviewed and approved by
25 myself. It was reviewed and approved by the

1 Regional Water Board Staff.

2 This is only a four-acre site. And if
3 one were to just combined the number of samples,
4 the analytes, those are the contaminants, sampled
5 for and the various depths, add those up and
6 compare it to other sites of much greater size,
7 you'll find that this site is more than adequately
8 characterized.

9 And it was not necessary to put a grid
10 down and sample on 100-foot or greater grids
11 because there was already some preliminary data
12 from the soil borings that were taken in August of
13 2005 for soil characterization for construction.
14 And those were analyzed as both some discrete
15 samples and some composites.

16 So, we already had some existing site
17 information and one of the tenets of site
18 characterization is to utilize that data to
19 determine where you want to place additional
20 samples. So, it's known as directed sampling as
21 opposed to a random sampling.

22 And we wanted to make sure we had
23 groundwater sampled that would be down-gradient of
24 the site, and we wanted to make sure that we had
25 some other samples near some previously identified

1 hot spots, and we wanted to make sure we had
2 samples in the southern portion of the site where
3 soil borings for construction purposes had not
4 been obtained.

5 So I think it's a very well
6 characterized site.

7 MR. BROWN: Okay. And is it because
8 Pacific Cement is located on that property? What
9 is the City alleging they have discharged and what
10 is the pH of that material?

11 DR. GREENBERG: Well, I can't speak to
12 what the City is alleging in that case. Samples
13 were obtained from the northern portion of the
14 site where Pacific Cement exists. And regardless
15 of whether Pacific Cement is in violation of air
16 pollution rules, or of other hazardous waste
17 requirements, I wanted to make sure the entire
18 site, including that portion with Pacific Cement,
19 was adequately characterized. And it was.

20 MR. BROWN: About this pH 12.6 material,
21 don't you consider the caustics -- this caustic
22 material a form of soil contamination? Isn't this
23 considered hazardous waste under the Federal
24 Resource Conservation and Recovery Act?

25 DR. GREENBERG: Yes, I consider it

1 caustic. And, yes, if it's going to be removed
2 and placed in a landfill, it is considered a
3 (indiscernible) of waste.

4 MR. BROWN: What is being done to
5 determine the extent of this contamination?

6 DR. GREENBERG: The extent of the
7 contamination has been determined with adequate
8 precision to propose remedial action. If it turns
9 out that a proposal to remove some soil from the
10 site, there will be additional what we term
11 confirmatory sampling to insure that the hot spot
12 has been removed.

13 But there is enough information for the
14 applicant to prepare a soil cleanup plan after
15 producing a human health risk assessment.

16 MR. BROWN: In the City's May 1, 2006
17 supplemental testimony it states on page 14,
18 chromium-6, CR6, if present, would be expected to
19 be reduced to CR3 in the soil of anaerobic
20 conditions exist. What about areas of
21 contamination where the soil contamination exceeds
22 pH 12.5?

23 DR. GREENBERG: Well, first of all, when
24 it comes to chromium-6 we don't know that there's
25 any chromium-6 there. And I do agree with the

1 analysis, the written analysis, conducted by the
2 applicant that there is most likely what we call
3 reducing conditions there.

4 And chromium-6, hexavalent chromium, is
5 so very reactive that particularly under reducing
6 conditions it will be reduced to chromium-3. In
7 other words, plus 6 to plus 3 is a reduction; it's
8 a gain of three electrons.

9 Under these alkaline conditions I would
10 guess that those are -- that's helping reducing
11 conditions as opposed to it being an oxidizing
12 condition. There's other evidence on the site
13 that shows that it's under anaerobic conditions.

14 But nevertheless, because I pointed out
15 to the City that a few values of chromium, total
16 chromium, were above the average for the site,
17 they sort of stuck out as higher levels, outlyers,
18 if you will, and was concurrent with some high
19 values of nickel, as well, that maybe some past
20 plating operations that involved plating of
21 chromium, which would be hexavalent chromium at
22 the time, and nickel could possibly result in some
23 chromium being in the hexavalent form.

24 Now, the City, or the applicant rather,
25 has two options. They can go and take some

1 additional samples, because the original samples
2 are long past the shelf life for reanalyzing and
3 speciating for chromium. So take some additional
4 samples and speciate to see what's hexavalent
5 chromium and what's trivalent chromium.

6 Or they could make an assumption
7 consistent with Office of Environmental Health
8 Hazard Assessment and Department of Toxic
9 Substances Control methodologies that a certain
10 percent is hexavalent chromium, and include that
11 value in their human health risk assessment.

12 They've chosen the proper path, and that
13 is to go back and take a few more samples and
14 analyze the chromium present and speciate it for
15 hexavalent chromium or trivalent chromium.

16 And so I really don't expect to find
17 hexavalent chromium, but nevertheless we want to
18 make sure. And I asked the City to do this and
19 they agreed to it.

20 MR. BROWN: I'd like to ask you about
21 the soil vapor extraction and the use of the soil
22 vapor extraction. Where has it been used and how
23 long did it take to clean the contaminated soil?

24 DR. GREENBERG: Soil vapor extraction
25 has been used extensively and is ongoing. I

1 worked on several sites in the Bay Area. One most
2 recently up in Santa Rosa. It's used extensively
3 in Silicon Valley. It's used as Superfund sites
4 in southern California. And just about every
5 state of the Union.

6 It depends on how long it takes to reach
7 your risk management goal, which in this case
8 would be a 10 to the minus 5th cancer risk for
9 workers on the site, and a hazard index less than
10 1.0.

11 Given the relatively low levels of soil
12 gas, or of constituents found in the soil gas, and
13 the localization of that, which is primarily in
14 the southern part of the site, I would expect this
15 not to last very long at all.

16 But it would be conjecture at this point
17 for me to say that it would last six months or a
18 year, but I doubt if it would last more than a
19 year.

20 MR. BOYD: Okay, this is Mike Boyd. I
21 have a couple questions.

22 CROSS-EXAMINATION

23 BY MR. BOYD:

24 Q Dr. Greenberg, I have in front of me a
25 copy, which was docketed, of the objection to the

1 request for subpoena of Nancy Katyl, California
2 Regional Water Quality Control Board. Did you see
3 a copy of that?

4 DR. GREENBERG: Yes, I have it in front
5 of me.

6 MR. RATLIFF: I'd object to any
7 questions that are outside of the witnesses'
8 testimony. If they are within the witnesses'
9 testimony and they relate to that, that's fine;
10 but, --

11 MR. BOYD: Well, that's what I'm asking
12 about.

13 MR. RATLIFF: Okay, sorry.

14 HEARING OFFICER FAY: Let's let him ask
15 the question.

16 MR. BOYD: Go ahead?

17 HEARING OFFICER FAY: Go ahead.

18 MR. BOYD: On the bottom of the page
19 they're talking about materiality and then it
20 says, CARE argues that supplemental testimony is
21 identified and need to identify and implement the
22 specific remedial and/or risk management measures
23 that should be applied to the site through the
24 appropriate regulatory process, but defers the
25 performance of the human health risk assessment

1 screening level, ecological risk assessment,
2 development of a site cleanup plan and risk
3 management plan until after the project's
4 development approval is granted by the CEC."

5 And the Board, in response says, However
6 the Water Board has not approved a cleanup plan or
7 identified any measures to be applied at the site.
8 The Water Board has not received the pending
9 remedial investigation report. Ms. Katyl has only
10 reviewed raw data that are inadequate to allow any
11 determination about corrective action measures."

12 And this is the important part: Her
13 testimony regarding cleanup at this point would be
14 purely speculative."

15 Dr. Greenberg, is your testimony also
16 purely speculative?

17 DR. GREENBERG: Mr. Boyd, no, it is not.

18 MR. BOYD: So, how can you say that?
19 What evidence do you have that it isn't
20 speculative. Do you have any specific evidence
21 that you can point to? I mean if they don't have
22 a plan that they've reviewed and you've already
23 stated that you don't have a Regional Water
24 Quality Control Board-approved remedial
25 investigation or a, you know, action plan, what

1 evidence do you have that it isn't speculative?

2 DR. GREENBERG: Well, first of all, Mr.
3 Boyd, the Regional Board is entitled to its own
4 opinion on this. And sometimes the Commission
5 Staff will disagree. Certainly the Department of
6 Toxic Substances Control sometimes disagrees with
7 the Regional Water Quality Control Board. You can
8 have difference of opinions.

9 Right now I am testifying, and I
10 specifically took 30 seconds out in the beginning
11 to talk about my experience and training to point
12 out that it's my years of training that allow me
13 to make this -- to give this testimony. And it is
14 not speculative unless I come out and say that I
15 feel that it would be speculation.

16 This is not an unusual site, Mr. Boyd.
17 There is nothing here that is so special. The
18 contaminant levels are not extraordinarily high,
19 certainly when you compare them to other sites
20 that I have been involved in.

21 And, again, you know, I'm certainly not
22 going to criticize the Regional Board. I don't
23 think the Regional Board would criticize us.

24 MR. BOYD: So when you say it's not
25 unusual, do you mean it's not unusual for a site

1 containing hazardous waste?

2 DR. GREENBERG: Oh, yes, that's what I
3 mean.

4 MR. BOYD: Okay, --

5 DR. GREENBERG: An industrial brownfield
6 site. Just about all of them have some hazardous
7 waste. I've worked on a number of sites in San
8 Francisco and this does not stand out as anywhere
9 close to being really really bad.

10 MR. BOYD: And which agency has
11 jurisdiction over the site characterization, the
12 remedial investigation and the remedial action
13 plan? Is it the California Energy Commission or
14 the Regional Water Quality Control Board?

15 MR. RATLIFF: Object on the grounds that
16 this is a question that calls for a legal
17 conclusion. And I've already offered that
18 conclusion. So my feelings are hurt, as well.

19 (Laughter.)

20 MR. BOYD: I apologize. At least I got
21 your name right.

22 HEARING OFFICER FAY: Well,
23 notwithstanding Mr. Ratliff's offended feelings,
24 that objection is sustained.

25 MR. BOYD: Okay, my other question is I

1 had filed a motion to file additional testimony on
2 May 11th on the topic under site contamination of
3 soil and water and waste management. Did you see
4 that, Dr. Greenberg? It's the one with the
5 pictures in it.

6 My understanding is the Committee
7 approved that, accepting that testimony that I
8 filed with this, is that true?

9 HEARING OFFICER FAY: The testimony
10 filed with it, was you were allowed -- you were
11 given leave to file it.

12 MR. BOYD: Okay, thank you; just wanted
13 to confirm that.

14 HEARING OFFICER FAY: Yeah, that's
15 correct.

16 MR. BOYD: Okay, Dr. Greenberg, I
17 brought an extra copy for you in case you want to
18 look at it.

19 (Parties speaking simultaneously.)

20 DR. GREENBERG: Did Mr. Sarvey do that?

21 MR. BOYD: Yeah, no, Mr. Brown, I think.

22 (Laughter.)

23 HEARING OFFICER FAY: Mr. Ratliff, do
24 you need a copy?

25 MR. RATLIFF: I'd like a copy if I

1 could, please.

2 MR. BOYD: Okay, if you look on the
3 second picture, -- no, it's the third picture. It
4 has a caption below. It says: Toxic conditions
5 surround workers." You could look at that?

6 DR. GREENBERG: Yes, I see it.

7 MR. BOYD: Do you see in the background
8 there, there's like tanks that kind of look like
9 an upside down capsule.

10 DR. GREENBERG: Yes, I do.

11 MR. BOYD: To your knowledge is that the
12 Pacific Cement facility?

13 DR. GREENBERG: Seeing as how I have
14 been on the site, this photograph does appear to
15 include those structures that are on the Pacific
16 Cement site.

17 MR. BOYD: Okay. Now, you said in your
18 testimony I thought I heard that you did take
19 samples there?

20 DR. GREENBERG: I did not specifically.
21 I observed --

22 MR. BOYD: Or the City, the City took
23 samples there?

24 DR. GREENBERG: The applicant's experts
25 did, indeed, take samples of the Pacific Cement

1 site.

2 MR. BOYD: Was that sample below or
3 above six inches?

4 DR. GREENBERG: They started at six
5 inches.

6 MR. BOYD: Okay.

7 DR. GREENBERG: Below ground surface.

8 MR. BOYD: To your knowledge is there
9 any sort of plastic cap on the property?

10 DR. GREENBERG: That part of the power
11 plant site, I believe there is not a plastic
12 liner, a plastic cap.

13 MR. BOYD: Is there a plastic liner on
14 other portions of the site that you're aware of?

15 DR. GREENBERG: Of the power plant site,
16 yes.

17 MR. BOYD: Okay. Now, also you notice,
18 mainly these pictures were of the Muni site.
19 You're aware that there's a project going on at
20 the Muni site, too, aren't you?

21 DR. GREENBERG: Yes, I am aware.

22 MR. BOYD: Do you know -- and in this
23 picture here it's pretty obvious that they're
24 moving soil, isn't it? At least you see standing
25 water in the pictures, too, don't you, present?

1 DR. GREENBERG: I would say yes.

2 MR. BOYD: Okay. Do you know whether or
3 not the City has a permit from the Regional Water
4 Quality Control Board to discharge surface water
5 to the Bay?

6 DR. GREENBERG: Yes, I'm aware.

7 MR. BOYD: Do they? Yes or no?

8 DR. GREENBERG: My understanding is no,
9 they do not.

10 MR. BOYD: Okay, thank you. That's all
11 my questions.

12 HEARING OFFICER FAY: Okay, that
13 concludes CARE's questioning of the staff's panel.
14 We still have to get to Mr. Sarvey's questions,
15 but we'd like to take a break for lunch.

16 Mr. Sarvey, can you give us an estimate
17 of how long your --

18 MR. SARVEY: About an hour.

19 HEARING OFFICER FAY: Well, all right,
20 we will take a one-hour break for lunch and return
21 at 1:15.

22 (Whereupon, at 12:17 p.m., the hearing
23 was adjourned, to reconvene at 1:15
24 p.m., this same day.)

25 --o0o--

1 AFTERNOON SESSION

2 1:18 p.m.

3 HEARING OFFICER FAY: All right. Please
4 take your seats, we're back on the record. And
5 we're going to continue with Mr. Sarvey's cross-
6 examination of the staff panel on waste management
7 and soil and water resources.

8 MR. BOYD: Okay, Gary, would this be the
9 time, before we start to talk about Martin Homec.
10 He's here, and I was going to hand out this stuff.

11 HEARING OFFICER FAY: Oh, yeah, why
12 don't you state your concern about Mr. Homec's
13 testimony.

14 MR. BOYD: Okay. I have Mr. Martin
15 Homec here. He was going to provide testimony
16 which we prefiled on the alternatives section. He
17 provided testimony on the airport alternative.
18 And he --

19 HEARING OFFICER FAY: When was that
20 filed, Mr. Boyd?

21 MR. BOYD: It was posted on the 27th on
22 the website. I submitted it on the 23rd. Of
23 April.

24 HEARING OFFICER FAY: Okay, why don't
25 you pass that out. Mr. Ratliff, did you receive

1 that?

2 MR. RATLIFF: Yes.

3 HEARING OFFICER FAY: Okay. Ms. Sol,?

4 MS. SOL : Yes.

5 HEARING OFFICER FAY: Just go ahead and
6 pass it out. Mr. Sarvey, you can begin.

7 MR. SARVEY: Okay.

8 CROSS-EXAMINATION

9 BY MR. SARVEY:

10 Q Mr. Lindley.

11 MR. LINDLEY: Yes, sir.

12 MR. SARVEY: Have you done any of your
13 own groundwater sampling at the site?

14 MR. LINDLEY: No, I have not.

15 MR. SARVEY: So you strictly relied on
16 the applicant's data?

17 MR. LINDLEY: Yes, I have.

18 MR. SARVEY: Okay. And in your direct
19 testimony you stated that as long as the applicant
20 follows the conditions of certification you
21 believe that the project won't have any
22 significant impact, is that correct?

23 MR. LINDLEY: Yes, that is correct.

24 MR. SARVEY: Dr. Greenberg, Mr. Boyd
25 asked you previously if the City had a permit to

1 discharge water to the Bay, and I believe you
2 answered they did not, is that correct?

3 DR. GREENBERG: That is correct.

4 MR. SARVEY: Does the City, acting as
5 Muni, have a permit to disturb soil on that site?

6 DR. GREENBERG: I think you -- Mr.
7 Sarvey, if you could clarify a permit from whom?

8 MR. SARVEY: Do they have a permit from
9 the Regional Water Quality Board to disturb soil
10 at that site?

11 DR. GREENBERG: Not to my knowledge.

12 MR. SARVEY: Do they need one?

13 MR. RATLIFF: Object on the grounds the
14 question calls for a legal conclusion.

15 HEARING OFFICER FAY: Sustained.

16 MR. SARVEY: From the pictures that Mr.
17 Boyd gave you is it obvious to you that they are
18 moving soil on that site?

19 DR. GREENBERG: Yes, it is obvious.

20 MR. SARVEY: Okay. And in your contact
21 with the Regional Water Quality Board are you
22 aware of any dust mitigation measures that the
23 applicant has violated on the Muni site, as an
24 agent of Muni?

25 DR. GREENBERG: I am not aware of any

1 violations by the City PUC or Muni on that site,
2 you know, as found by any other agency. No, I am
3 not aware.

4 MR. SARVEY: Are you sure?

5 HEARING OFFICER FAY: Asked and
6 answered. Move on, Mr. Sarvey.

7 MR. SARVEY: Okay. Are you aware if the
8 applicant, as Muni, has violated any risk
9 management plan or site management plan on that
10 site contained in the waterfront EIR, the southern
11 waterfront?

12 That's a different question.

13 MR. RATLIFF: The question relies on
14 facts which are not in evidence.

15 MR. SARVEY: I'm asking Dr. Greenberg if
16 he has any personal knowledge.

17 MR. RATLIFF: No, you said are you aware
18 that.

19 MR. SARVEY: Do you have any personal
20 knowledge, Dr. Greenberg?

21 HEARING OFFICER FAY: I'll allow the
22 question; go ahead.

23 DR. GREENBERG: Mr. Sarvey, I want to
24 make it very clear that, you know, what you're
25 asking me. Are you asking me of personal

1 knowledge that an agency has found a violation?

2 MR. SARVEY: Yes.

3 DR. GREENBERG: Then my answer is I'm
4 not aware of any agency finding any violation at
5 the Muni site.

6 MR. SARVEY: Are you aware of anybody
7 that's reported a violation at that Muni site?

8 DR. GREENBERG: No, I'm not aware of
9 anybody that has reported a violation at the Muni
10 site.

11 MR. SARVEY: Okay, thank you. Dr.
12 Greenberg, in your testimony on page 2 of exhibit
13 47 it states: No fate (phonetic) and transport
14 analysis of onsite contamination has been
15 conducted as yet by the applicant, therefore it is
16 uncertain if soil and groundwater contamination
17 poses a significant risk to San Francisco Bay, is
18 that correct?

19 DR. GREENBERG: That is correct.

20 MR. SARVEY: So at this point, any
21 conclusion that there's been contamination would
22 be speculative, is that correct?

23 DR. GREENBERG: That there's been
24 contamination in the Bay?

25 MR. SARVEY: Um-hum.

1 DR. GREENBERG: I wouldn't term it as
2 speculative. We are asking that a ecological
3 screening assessment be conducted that may or may
4 not, depending on the outcome of that, include
5 some fate (phonetic) and transport modeling.

6 MR. SARVEY: Your conditions state that
7 the project owner will be required to prepare a
8 health risk assessment and a site risk management
9 plan to estimate the risk to workers.

10 Have you conducted a cumulative
11 assessment of the soil, or the PM impacts from
12 both the San Francisco Electric Reliability
13 project and the Muni site in combination?

14 DR. GREENBERG: No, I have not.

15 MR. SARVEY: Okay. Do you plan on
16 placing any conditions in the conditions of
17 certification to insure that there is no overlap
18 of those emissions?

19 DR. GREENBERG: Yes, there are already
20 conditions of certification that will insure that
21 there will be an insignificant contribution to
22 risk from the SFERP site. The Commission does not
23 have authority over the Muni site.

24 MR. SARVEY: There's several other Port
25 projects that are being constructed near the

1 SFERP. Have you done a cumulative analysis of the
2 dust concentrations and their assessment to worker
3 health and public health?

4 DR. GREENBERG: No, I have not.

5 MR. SARVEY: How long, on the average,
6 does it take for a applicant to provide you with a
7 risk management plan and a site management plan
8 after you've requested it?

9 DR. GREENBERG: Mr. Sarvey, it varies.
10 I'd say sometimes we get that within a month or
11 two after a data request.

12 MR. SARVEY: And is it true that you
13 filed a data request I believe it was on May 2,
14 2005, over a year ago, requesting this
15 information?

16 DR. GREENBERG: That is correct.

17 MR. SARVEY: Earlier we were discussing
18 the Regional Water Quality Board was supposed to
19 appear and they chose not to because they don't
20 have the information that we possess or have a
21 health risk assessment or a site management plan.

22 MR. RATLIFF: I object, Mr. Fay, on the
23 grounds that the Regional Board has told me that
24 they had conflicts that kept them from attending
25 today.

1 HEARING OFFICER FAY: Sustained.

2 MR. SARVEY: I guess I'd have to cross-
3 examine Mr. Ratliff here to get to the bottom of
4 that, so how do we proceed, Mr. Fay?

5 HEARING OFFICER FAY: Well, why don't
6 you just ask the question instead of making a
7 statement?

8 MR. SARVEY: To Mr. Ratliff? He's the
9 one who provided the testimony --

10 HEARING OFFICER FAY: Well, you started
11 making a statement as to why the Regional Board
12 did not --

13 MR. SARVEY: Well, Mr. Ratliff
14 provided -- I don't want to characterize the
15 testimony earlier, but he said the Regional Water
16 Quality Board, one of the reasons they declined to
17 come is because they didn't have enough
18 information to determine whether the proposed
19 mitigation --

20 HEARING OFFICER FAY: I don't think that
21 accurately characterizes it, but if that's the
22 nature of your question, I'm not -- I don't know
23 if Dr. Greenberg knows the answer.

24 MR. RATLIFF: Well, yeah, I guess I'd
25 just object on the grounds of relevance. I don't

1 see where this is relevant to anything in Mr.
2 Greenberg's testimony.

3 HEARING OFFICER FAY: Do you want to tie
4 it in?

5 MR. SARVEY: Sure.

6 Dr. Greenberg, in my hand here I have a
7 letter from the Department of Toxic Substances
8 Control; it's dated November 22, 2005. And it's
9 addressed to Bill Pfanner. And it's on the
10 website; it's part of the docket.

11 I'd like to hand it to you and have you
12 read comment number three on page 2 of that
13 document, please.

14 MR. RATLIFF: Mr. Fay, I'm not going to
15 object because I don't know what the question is
16 yet, but I would point out that this is the same
17 letter, I believe, that was introduced at the last
18 hearing about which questions were asked. And I
19 would just like to not have a bunch of questions
20 that have already been asked, asked again of the
21 same witness.

22 MR. SARVEY: It's a different letter.

23 MR. RATLIFF: Can I get a copy of the
24 letter?

25 MR. SARVEY: You bet.

1 HEARING OFFICER FAY: Go ahead and ask
2 your question.

3 BY MR. SARVEY:

4 Q Could you read that, comment number
5 three there, Dr. Greenberg?

6 DR. GREENBERG: Comment number three of
7 a letter dated November 22, 2005: The preliminary
8 staff assessment references documents not in
9 DTSC's files. These include a risk management
10 plan and safety management plan. As DTSC does not
11 have a copy of the risk management plan or safety
12 management plan, we cannot evaluate whether these
13 measures would be sufficient for this site."

14 MR. SARVEY: You don't have a risk
15 management plan or a safety management plan
16 prepared, do you, Dr. Greenberg?

17 DR. GREENBERG: For this site, no. But
18 I believe, Mr. Sarvey, please excuse me for
19 elaborating, but I would like to clarify, that I
20 believe they're referring to documents that were
21 provided to us by the applicant that concerned the
22 Muni site.

23 Because at the time of this letter the
24 applicant was proposing to essentially piggyback
25 the SFERP site on the existing Muni risk

1 management plan and site management plan.

2 And I believe the DTSC was referring to
3 those plans that are in existence. They have
4 since received copies of those plans.

5 MR. SARVEY: Regarding the soil
6 contamination on the proposed waterline, do you
7 know if that proposed waterline has any portions
8 of it that are Bayward of the high tide?

9 DR. GREENBERG: This sounds like a
10 question for one of the soils and waters men.

11 MR. SARVEY: Okay.

12 MR. LINDLEY: Mark Lindley here. And
13 the water supply line does cross properties that
14 are Bayward of the historic high tide.

15 MR. SARVEY: And does that subject the
16 recycled water pipeline to the Mayor ordinance?

17 MR. LINDLEY: Yes, the linear -- that
18 linear would be subject to the Mayor ordinance.

19 MR. SARVEY: And what are the
20 requirements of the Mayor ordinance for that?

21 MR. LINDLEY: It would be similar to the
22 requirements for the existing site, in that -- and
23 I think this has been brought up by the applicant
24 in their AFC, that you would have to produce a
25 human health risk assessment, the ecological risk

1 assessment, site mitigation plan that would be
2 part of the site cleanup plan.

3 And I believe it would apply if more
4 than 50 cubic yards of material was to be
5 disturbed, which I'm not -- it's not clear to me
6 that that would be the case Bayward of the high
7 tide line.

8 But I do think the applicant is planning
9 on covering linears in their SMP/RMP documents.

10 MR. SARVEY: So if it is, then those
11 requirements will be -- they'll have to meet all
12 those requirements of the Mayor ordinance, is that
13 correct, if they move over 50 cubic yards?

14 DR. GREENBERG: Yes.

15 MR. SARVEY: Okay. Mr. Lindley, it's
16 your testimony on page 4.9-18, it states that the
17 applicant estimated that soil loss due to wind
18 erosion during construction would result in
19 approximately 6.7 tons of PM10 emissions. But
20 with best management practices the PM10 emissions
21 could be lowered to 2.6 tons per year.

22 In your professional opinion do those
23 estimates seem reasonable?

24 MR. LINDLEY: Yes, they do.

25 MR. SARVEY: Dr. Greenberg, we had a

1 discussion on worker safety. And I believe that
2 you had taken the position that PM emissions will
3 be negligible or insignificant. Does that 2.6
4 tons per year sound negligible or insignificant to
5 you?

6 DR. GREENBERG: No, it doesn't. But,
7 once again, the combination of the air quality
8 conditions of certification, the waste management
9 conditions of certification that are proposed, if
10 adopted by the Commission, will result in no
11 visible emissions.

12 And if there is a visible emission it
13 will be immediately attenuated or operations would
14 cease. And there will be monitors on the site
15 from both the applicant and from Commission Staff.

16 MR. SARVEY: But you do believe there
17 will be emissions, is that correct?

18 DR. GREENBERG: Negligible. Below a
19 level of significance. So, yes, there will be
20 some. They will be few and far between. And they
21 will be immediately addressed.

22 MR. SARVEY: So do you believe that the
23 2.6 tons is an over-estimate that the applicant
24 has modeled here?

25 DR. GREENBERG: The applicant has

1 modeled 2.6 tons from the site during remediation
2 and construction activities?

3 MR. SARVEY: That's correct.

4 DR. GREENBERG: That's an over-
5 estimation.

6 MR. SARVEY: And do you have an
7 estimate?

8 DR. GREENBERG: No, I don't have an
9 estimate.

10 MR. SARVEY: Okay. Mr. Lindley, your
11 testimony on page 4.9-7 states that the 100-year
12 tide has the potential to impact the current SFERP
13 site, is that correct?

14 MR. LINDLEY: What page is that on?

15 MR. SARVEY: 4.9-7.

16 MR. LINDLEY: Could you repeat that
17 question, please?

18 MR. SARVEY: Your testimony on page 4.9-
19 7 states that the 100-year tide has the potential
20 to impact the current SFERP site, is that correct?

21 MR. RATLIFF: Which paragraph are you
22 talking about?

23 MR. LINDLEY: I'm not sure that that --

24 MR. SARVEY: -- flooding and tsunami
25 on --

1 MR. GERONIMO: Yeah, I see the section.
2 So I guess I could answer this. It could be
3 affected because of the high tide with wind and
4 wave, which hasn't been determined for the site.

5 What we do know about the area is
6 there's a recorded high tide at 9.25. That
7 measurement did not include wind and wave runup.

8 Because the site, itself, lies at -- I
9 know it's in here somewhere -- 13 feet above sea
10 level at its lowest location, I believe, maybe,
11 it's a corner property, there's the potential that
12 a high tide in combination with wind and wave and
13 the sheer proximity of the site, itself, could be
14 affected by adverse Bay conditions.

15 MR. SARVEY: Would a rise in sea levels
16 have the potential to exacerbate this problem?

17 MR. GERONIMO: Would a rise in sea
18 level, as determined by? I guess if you're just
19 saying that sea level rise into the future could
20 make these conditions worse, that's true.

21 MR. SARVEY: Okay. In your professional
22 opinion is there any reason to believe that sea
23 levels may be rising globally?

24 MR. GERONIMO: Well, from what I've
25 read, I believe that the scientists who have

1 determined that there will be sea level rise know
2 more than me. And if I agree with them, then I
3 guess I do believe that sea level will rise.

4 MR. SARVEY: Okay.

5 MR. LINDLEY: I'd like -- could I make a
6 quick point here?

7 MR. SARVEY: Sure.

8 MR. LINDLEY: I think what you have
9 going on here is you have a couple of things. One
10 is that the 100-year high tide, including the
11 effects of wind/wave runup can be as high as 13
12 feet above mean sea level.

13 However, at the SFERP site you're
14 several hundred feet from the shoreline of San
15 Francisco Bay. And wind/wave runup cannot
16 propagate that far into the shoreline of San
17 Francisco, off of San Francisco Bay.

18 When you look at the effects of
19 wind/wave runup, I mean that would be immediately
20 adjacent to the Bay. But once water gets up above
21 that shoreline, that's, I think, protected by rip-
22 rap there, those wind waves would be dissipated by
23 the rip-rap at the shoreline.

24 So that's why we've come to the
25 conclusion that we don't expect that 100-year high

1 tide to affect the site.

2 Sea level rise, it's basically between
3 the 20-year epoch that ended in 1988, and then the
4 most recent 20-year epoch. It was measured at
5 about two-tenths of a foot at the Golden Gate.

6 So we have a measurable increase in sea
7 level rise over the past 20 years at two-tenths of
8 a foot. It's not clear how quickly whether that
9 sea level rise will accelerate or continue at that
10 rate, but based on the last 20 years you're
11 looking at about two-tenths of a foot.

12 MR. SARVEY: So considering those facts
13 would it be prudent to locate this project at
14 another site and provide some sort of mitigation
15 like building up the property to prevent flooding?

16 MR. LINDLEY: I don't think at this time
17 that would required. I suppose if sea level rise
18 accelerates that would be something that we would
19 look at on down the line. But at this point in
20 time, and with the levels of sea level rise that
21 we've measured in the last 20 years, it's not
22 something that I would require.

23 MR. SARVEY: On page 4.9-17 of your
24 testimony, you state that the applicant believes
25 that soil loss from water erosion during

1 construction at the SFERP site, with mitigation,
2 could be reduced to .6 tons per year.

3 In your professional opinion, is that
4 reasonable?

5 MR. LINDLEY: Yes, that is.

6 MR. SARVEY: Okay. Your testimony has
7 also been -- it also states that given the
8 existing contamination at that site, transport of
9 eroded sediments could lead to significant water
10 quality impacts to the San Francisco Bay, is that
11 correct?

12 MR. LINDLEY: Yes, that is correct.

13 MR. SARVEY: Have you done any sampling
14 between the site and the -- any groundwater
15 sampling between the site and the Bay to determine
16 how far that contaminated water has migrated from
17 the site?

18 MR. LINDLEY: There was the -- the
19 applicant collected one soil boring that is at the
20 far northeastern corner of the site. And the
21 intent of locating that soil boring at that
22 location was to get a feel for whether or not
23 contamination was migrating towards the Bay.

24 Could I back up and add one point to the
25 previous question?

1 MR. SARVEY: Sure.

2 MR. LINDLEY: When it comes to soil loss
3 from the site, that estimate of .5 to .6 tons per
4 year was based on using BMPs along the site at,
5 you know like straw bales, mulch, those kinds of
6 things. Typical BMPs that you would use to treat
7 erosion at the source.

8 And to mitigate for any potential
9 impacts from soil migrating from the site, we've
10 also asked and included in our conditions of
11 certification that the project employ a treatment
12 control BMP that would be at the downstream end of
13 the site that would allow for samples to be
14 collected; and to determine whether or not there
15 are any adverse impacts to that water before it's
16 released to San Francisco Bay.

17 So that's how we covered the potential
18 for if some soil leaves the site, it would be
19 captured in this ultimate treatment control BMP.
20 And we're thinking of like a medium filtration
21 type BMP, or potentially a sediment basin that
22 would only discharge to the Bay and under some
23 kind of a pumping condition.

24 MR. SARVEY: The Muni metro site that's
25 adjacent to the SFERP, and construction will be

1 occurring at the same time as the SFERP. Have you
2 done a cumulative analysis to determine impacts to
3 water quality from both of these projects
4 together?

5 MR. RATLIFF: I think that, again, is --
6 if Mr. Sarvey wants to put on evidence that
7 construction will occur at the same time, he can
8 do so. But I'm not going to ask our witnesses to
9 assume that that's the case. I don't know,
10 certainly, that that's the case.

11 It's my understanding the Muni site is
12 currently under construction and that the project
13 will be built next year, so.

14 HEARING OFFICER FAY: Well, yeah, let's
15 let the witnesses answer, if they know about the
16 timing of the project.

17 MR. GERONIMO: And is this just a
18 stormwater question, a stormwater runoff question?

19 DR. GREENBERG: I believe it's a
20 construction question. Mr. Sarvey, you haven't
21 directed it to anyone here, so there may be
22 multiple answers.

23 But my information is that there will
24 not be concurrent site mobilization and soil
25 movement; that the Muni site will be done with

1 their site preparation activities and soil
2 movement by the end of the summer. And then it
3 will be just building construction on the site.

4 And that certainly site mobilization or
5 any remediation prior to site mobilization on the
6 SFERP site will be months after that. So there
7 will not be concurrent soil disruptions on the
8 sites.

9 HEARING OFFICER FAY: Anything further,
10 Mr. Sarvey?

11 MR. SARVEY: Yes. On page 4.9-34, under
12 agency comments, it states that the Department of
13 Toxic Substances Control sent you a letter quite
14 awhile ago requesting an evaluation of impacts
15 from dewatering activities related to groundwater
16 contamination disposal.

17 Have you performed that analysis?

18 MR. LINDLEY: As I understand it, the
19 applicant has proposed to test this water, the
20 water that's pumped from excavations at the site
21 during construction, to test that water. If
22 necessary, treat that water. And it will be
23 ultimately discharged to the City's combined sewer
24 system.

25 There are standards in Public Works

1 Code, Article 4.1 that defines peak concentrations
2 or constituent levels for that water before it can
3 be discharged to the combined sewer system. And
4 the City is required to meet those standards.

5 MR. SARVEY: On page 4.9-35 of your
6 agency comments, it says, the Bay Conservation and
7 Development Commission sent a letter requesting
8 that the CEC include a requirement that the SFERP
9 accommodate public access across the proposed
10 vegetative swale. What mechanism have you
11 provided to accommodate public access across the
12 swale?

13 MR. LINDLEY: We added a condition of
14 certification; that's condition of certification
15 soil and water-12. The applicant has agreed to
16 this condition of certification. If BCDC decides
17 to extend the Bay Trail across the future
18 vegetative swale, the City and County of San
19 Francisco have agreed to work with BCDC to either
20 build some kind of a bridge or provide a culvert
21 crossing at the end of that swale through the BCDC
22 jurisdiction to facilitate a Bay Trail crossing.

23 MR. SARVEY: And could you provide a
24 condition that insures that that bridge will
25 accommodate access for handicapped individuals?

1 MR. LINDLEY: We haven't at this time.
2 I'm sure there will be, you know, -- I'm not sure,
3 I would imagine that any plans for a bridge
4 crossing would be reviewed by BCDC. I think
5 that's even included in our condition of
6 certification. I imagine there would also be
7 reviewed by the building department of San
8 Francisco. And I would assume that ADA access
9 would be included in that plan.

10 MR. SARVEY: So you're not familiar with
11 their requirements?

12 MR. LINDLEY: I'm not sure that we've
13 included that directly in our condition, but I
14 think that it would be covered. I'm sure BCDC
15 would, I think BCDC has to approve any plans, and
16 I'm sure that they would consider that a --

17 HEARING OFFICER FAY: Mr. Sarvey, all
18 this is right in front of me in black and white.
19 Let's not ask questions that are literally
20 answered in the testimony.

21 MR. SARVEY: Well, it doesn't say
22 anything about handicapped access, Mr. Fay.

23 HEARING OFFICER FAY: Well, okay, but --

24 MR. GERONIMO: The grassland swale's a
25 pretty low profile --

1 MR. SARVEY: I'm just trying to insure
2 that, you know, --

3 MR. GERONIMO: Well, you're not going to
4 need a lot of cover to go over a grassland swale.
5 So, the bridge, itself, can be relatively flat.
6 It doesn't need to arch or not meet the ADA
7 standards that the Bay Trail even has for their
8 requirements.

9 So, you know, it's a Bay Trail issue and
10 it's also probably something that needs to be
11 discussed with the Board as far as what their
12 requirements are for ADA. It's outside of my
13 expertise, but I can at least assure you that the
14 swale, itself, is relatively shallow and not very
15 wide, and a low-profile bridge can probably go
16 over the top.

17 MR. SARVEY: Thank you. That's all I
18 have.

19 HEARING OFFICER FAY: Okay, thanks. Mr.
20 Ratliff, any redirect?

21 MR. RATLIFF: No.

22 HEARING OFFICER FAY: Okay. Then does
23 the Committee have any questions? Okay. Well, we
24 thank the panel. And ask Ms. Sol, if she's ready
25 to put on her witnesses on soil and water

1 resources. I think we'd better go to that.

2 MS. SOL : Sure.

3 HEARING OFFICER FAY: Actually, before
4 we do that, let me ask Mr. Sarvey, we have you
5 listed under waste management for having
6 testimony. Do you have testimony?

7 MR. SARVEY: My expert would not appear
8 without a risk management and a site management
9 plan, so, no, I don't have one.

10 HEARING OFFICER FAY: Okay. Just wanted
11 to confirm that.

12 All right, Ms. Sol,. Now, is this the
13 same panel that will be returning, or much the
14 same?

15 MS. SOL : Much the same. In addition
16 there's Mr. Matt Franck. I will object to the
17 extent that the same question that's already been
18 asked is asked again. But to the extent that
19 there are questions relating to water, this panel
20 is prepared to address them.

21 HEARING OFFICER FAY: Sure.

22 (Pause.)

23 HEARING OFFICER FAY: We have a few
24 witnesses who have not appeared before. Please
25 swear them.

1 MS. SOL : Yes, there's two new
2 witnesses, Mr. Matt Franck and Mr. Steve Long.
3 Whereupon,

4 MATT FRANCK and STEVE LONG
5 were called as witnesses herein, and after first
6 having been duly sworn, were examined and
7 testified as follows:

8 Whereupon,

9 KAREN PARKER, KAREN KUBICK, RANDALL SMITH

10 STEVE DeYOUNG, TOM LAE, LESTER FELDMAN

11 SUSAN GALLARDO and ROBERT CHEUNG

12 were recalled as witnesses herein, and having been
13 previously duly sworn, were examined and testified
14 further as follows:

15 COURT REPORTER: Please individually
16 state and spell your full names.

17 MR. FRANCK: Matt Franck, M-a-t-t
18 F-r-a-n-c-k.

19 MR. LONG: Steve Long, S-t-e-v-e
20 L-o-n-g.

21 MS. SOL : And the qualifications of
22 these witnesses were provided as attachment to the
23 City's prehearing conference statements.

24 I'm going to begin with the soil
25 testimony. We have soil and agriculture testimony

1 sponsored by Mr. Long; and then we have the water
2 resources and water supply pipelines testimony
3 sponsored by a panel.

4 DIRECT EXAMINATION

5 BY MS. SOL :

6 Q So, Mr. Long, let me begin with you. Do
7 you have before you exhibit 15, which is -- no,
8 sorry -- the testimony of the City that was filed
9 on April 17th?

10 MR. LONG: Yes, I do.

11 MS. SOL : Okay. And under agriculture
12 and soil introduction C, there are a number of
13 exhibits listed which I'm going to read to you.

14 The first is applicant's response to CEC
15 Staff request data response set 1A, response to
16 data request 53, dated July 6, 2004; that's
17 exhibit 3.

18 Second is supplement A to the
19 application for certification for the San
20 Francisco Electric Reliability project volume 1,
21 dated March 24, 2005, section 8.9, that's
22 agriculture and soils; that's exhibit 15.

23 Applicant's response to CEC Staff data
24 request, data response set 3A final, responses to
25 data requests 185 through 187, dated June 3, 2005;

1 and that's exhibit 19.

2 Applicant's response to CEC Staff data
3 request, data response set 3C, response to data
4 request 187, dated July 19, 2005; and that's
5 exhibit 21.

6 Applicant's comments on the preliminary
7 staff assessment set 1, comment 53, dated October
8 12, 2005; that's exhibit 39.

9 Applicant's response to CEC Staff data
10 request, data response set 3F, response to data
11 request 187, dated January 11, 2006; that's
12 exhibit 24.

13 Supplement B to the application for
14 certification for the San Francisco Electric
15 Reliability project, dated January 11, 2006,
16 section 3.9; and that's exhibit 16.

17 And applicant's response to CEC Staff
18 data request, informal data response set 9A,
19 responses to data requests soil and water
20 resources 9-21, which is dated January 13, 2006;
21 and that's exhibit 36.

22 Are you familiar with those documents?

23 MR. LONG: Yes, I am.

24 MS. SOL : Do you have any changes or
25 corrections or updates to make to any of those

1 documents?

2 MR. LONG: I provided revised tables for
3 the supplement A, application for certification.
4 Those are the revised calculations for wind and
5 water erosion.

6 MS. SOL : You have those available
7 today, I believe?

8 MR. LONG: Yes, I do.

9 MS. SOL : And can you explain what the
10 reason is for those updates, and what the result
11 is?

12 MR. LONG: The revised unified soil loss
13 equation, the model was revised -- the online
14 models were revised to allow for site-specific
15 conditions to be input. And so I used the newer
16 model to see if there was any differences from my
17 original analysis.

18 And for the wind erosion I discovered an
19 error in my calculation related to the
20 effectiveness of mitigation, and so I revised
21 those numbers.

22 But the changes in both these tables did
23 not alter my conclusion as to the overall effect
24 of the project.

25 MS. SOL : Can I distribute those

1 corrected tables?

2 HEARING OFFICER FAY: Please.

3 (Pause.)

4 BY MS. SOL :

5 Q Okay, and with those corrections, to the
6 extent there are facts set forth in these
7 documents, are they true to the best of your
8 knowledge?

9 MR. LONG: Yes.

10 MS. SOL : And to the extent there are
11 opinions set forth, do they represent your
12 professional judgment?

13 MR. LONG: Yes, they do.

14 MS. SOL : And do you adopt those
15 documents as your sworn testimony here today?

16 MR. LONG: I do.

17 MS. SOL : I'd like to move to introduce
18 those documents into the record.

19 HEARING OFFICER FAY: Including this
20 revised estimate of soil loss by water and wind
21 erosion?

22 MS. SOL : Yes, Your Honor.

23 HEARING OFFICER FAY: And that will be
24 identified, that revision will be identified as
25 exhibit 91. Is there objection to receiving all

1 those exhibits? Mr. Boyd, you're objecting?

2 MR. BOYD: No, I have a question on --
3 clarify what change, from what? Because I didn't
4 have it in front of me when she was -- when he was
5 talking about what he changed.

6 HEARING OFFICER FAY: The exhibit 91
7 revises his tables that are referred to. And he
8 said he did not change his conclusion as to
9 significance of impacts, but it does update, based
10 on recalculation.

11 MR. BOYD: Right. I just wanted to know
12 what the previous numbers were that changed. What
13 it went from to --

14 HEARING OFFICER FAY: Well, when he
15 testifies we'll ask him to --

16 MR. BOYD: I can ask him that then?

17 HEARING OFFICER FAY: -- clarify that.
18 Any objection to receiving these? Okay, hearing
19 none, they're entered into the record at this
20 point.

21 MS. SOL : Okay, I'm going to move along
22 then to the water sections.

23 BY MS. SOL :

24 Q Mr. Franck, I'm going to ask you on
25 behalf of the panel on water to review with me the

1 documents listed under water resources, water
2 supply pipelines prior filings. Do you have that
3 list before you?

4 MR. FRANCK: Yes.

5 MS. SOL : Okay, and that includes
6 supplement and response to data adequacy comments
7 on the application for certification for the
8 SFERP, questions on water resources, dated April
9 16, 2004; that's exhibit 2.

10 Applicant's response to CEC Staff
11 request data response set 1A, responses to data
12 requests 50, 53 and 55, dated July 6, 2004; that's
13 exhibit 3.

14 Applicant's response to CEC Staff
15 request data response set 1B, responses to data
16 requests 92 through 95, 97 through 106 and 112,
17 that's dated July 12, 2004; exhibit 4.

18 Applicant's response to CEC Staff data
19 request, informal data response set 3, responses
20 to data request 131, 133, 137 and 139 through 144,
21 dated August 20, 2004; that's exhibit 9.

22 Supplement A to the application for
23 certification for the San Francisco Electric
24 Reliability project, volume 1, dated March 24,
25 2005, section 7, that's the water supply pipeline

1 section, and section 8.13, that's the waste -- no,
2 sorry, there's a correction there, is that
3 correct? It should be section -- which section
4 number is that?

5 MR. FRANCK: I'm sorry, it's water
6 supply pipelines 8.14 --

7 MS. SOL : Okay, --

8 MR. FRANCK: Excuse me, water resources.

9 MS. SOL : -- water resources, so it
10 should be the water resources section, which is
11 section 8.14; and that's exhibit 15.

12 Then applicant's response to CEC Staff
13 data request data response set 3A, final responses
14 to data requests 185 through 192, dated June 3,
15 2005; that's exhibit 19.

16 Applicant's response to CEC Staff data
17 request informal data response set 6A, responses
18 to data requests 6-1 through 6-11, dated July 11,
19 2005; that's exhibit 29.

20 Applicant's response to CEC Staff data
21 request data response set 3C, response to data
22 request 187, dated July 19, 2005; that's exhibit
23 21.

24 Applicant's response to Sarvey data
25 request set 1A, dated July 25, 2005, data requests

1 1-19 through 1-22; and that's exhibit 27.

2 Applicant's response to CEC Staff data
3 request informal data response set 6B, response to
4 data request 6-9, dated August 10, 2005; that's
5 exhibit 30.

6 Applicant's response to CEC Staff data
7 request informal data response set 6C, response to
8 data request 6-12, dated August 25, 2005; exhibit
9 31.

10 Applicant's comments on the preliminary
11 staff assessment set 1, comment 43 through 61 and
12 71 through 72, dated October 12, 2005; exhibit 39.

13 Applicant's response to CEC Staff data
14 request informal data response set 6D, response to
15 data request 6-10, dated October 14, 2005; that's
16 exhibit 32.

17 Applicant's response to CEC data request
18 informal data response set 6D, response to data
19 request 6-10 addendum, dated October 22, 2005;
20 that's exhibit 33.

21 Applicant's comments on the preliminary
22 staff assessment set 2, comments 45, 52, 54, 57,
23 60, 70, 71 and 72, dated October 31, 2005; and
24 that's exhibit 40.

25 Applicant's comments on the preliminary

1 staff assessment set 3, comments 45 and 71, dated
2 November 11, 2005; that's exhibit 41.

3 Amendment to the project description,
4 vegetative swale, dated November 18, 2005; that's
5 exhibit 17.

6 Amendment to the project description,
7 process and cooling water supply, dated December
8 20, 2005; that's exhibit 18.

9 Applicant's response to CEC Staff data
10 request data response set 3F, response to data
11 request 187, dated January 11, 2006; that's
12 exhibit 24.

13 Supplement B to the application for
14 certification for the San Francisco Electric
15 Reliability project, dated January 11, 2006;
16 that's exhibit 16.

17 Applicant's response to CEC data request
18 informal data response set 9A, responses to data
19 requests soil and water resources 9-1 through 9-12
20 and 9-14 through 9-21, dated January 13, 2006;
21 that's exhibit 36.

22 Applicant's response to CEC Staff data
23 request informal data response set 9B, revised
24 responses to data requests soil and water 9-2 and
25 9-17, dated January 19, 2006; exhibit 37.

1 Applicant's final field sampling plan
2 dated February 14, 2006; exhibit 44.

3 Applicant's comments on the final staff
4 assessment set 1, comments 19 through 26, 29
5 through 32, dated March 17, 2006; that's exhibit
6 45.

7 Applicant's comments on the final staff
8 assessment set 2, comments 2-1 and 2-2, dated
9 March 24, 2006; that's exhibit 13.

10 And applicant's draft field
11 investigation summary report, dated March 30,
12 2006; that's exhibit 42.

13 Do you have any changes or corrections
14 to make to those documents?

15 MR. FRANCK: No.

16 MS. SOL : To the extent there are facts
17 in those documents, are they true to the best of
18 your knowledge?

19 MR. FRANCK: Yes.

20 MS. SOL : To the extent there are
21 opinions, do they represent your professional
22 judgment?

23 MR. FRANCK: Yes.

24 MS. SOL : And do you adopt those
25 documents as your sworn testimony here today?

1 MR. FRANCK: Yes.

2 MS. SOL : I'd like to move to have the
3 documents identify by Mr. Franck introduced into
4 the record.

5 HEARING OFFICER FAY: Is there
6 objection? Hearing none, so moved.

7 MS. SOL : Okay, I would like to have
8 Mr. Long and Mr. Franck give the opening
9 statements on their topics.

10 MR. FRANCK: Thank you. We have
11 prepared this opening statement to briefly
12 summarize and clarify key points regarding the
13 water supply and disposal system and potential
14 impacts to water resources.

15 The project requires water for cooling
16 towers, NOx emission control and other processes.
17 The source of this water will be the City's
18 southeast water pollution control plant, one of
19 the City's major wastewater treatment plants.

20 Following treatment at the wastewater
21 plant a portion of the treated effluent would be
22 diverted to the SFERP site rather than flowing to
23 the Bay.

24 At the site the source water would be
25 further treated to meet the State Department of

1 Health Services standards for recycled water.
2 Also known as Title 22.

3 The onsite treatment process would
4 consist of ultra-filtration, disinfection and
5 reverse osmosis, all within a fully enclosed
6 facility that would be operated in accordance with
7 state standards for such facilities. There would
8 be an onsite storage tank for treated water.

9 Following use for plant processes, the
10 water would be discharged into the City's combined
11 sewer system and treated at the southeast water
12 pollution control plant.

13 In our analysis we have demonstrated
14 that the plant's discharge into the combined sewer
15 system would meet City water quality standards for
16 wastewater disposal.

17 We have letters from the City
18 authorizing diversion of the treated effluent and
19 subsequent disposal back into the combined system.

20 MR. LONG: The SFERP would be
21 constructed on previously developed urban land
22 that had been originally filled along the margin
23 of the Bay. Subsequent geotechnical
24 investigations have indicated that the fill on
25 that site ranges from about 21 to 30 feet in

1 thickness over the site.

2 Preliminary estimates of soil losses by
3 wind and water erosion were prepared. However, it
4 is expected that actual soil losses will be
5 addressed by the proposed mitigation measures that
6 include construction BMPs and proper planning
7 documents such as the stormwater pollution
8 prevention plans.

9 Water erosion estimates have been
10 revised to reflect the latest model updated. And
11 the wind erosion table has been revised to correct
12 a mistake in the spreadsheet related to the
13 efficiency of the mitigation measures. The
14 changes and the results of the new analysis did
15 not alter the conclusion about the significance of
16 the impacts.

17 MR. FRANCK: Stormwater runoff from the
18 project site would be routed into a vegetative
19 swale that would treat the surface runoff prior to
20 discharge to the Bay. Plant runoff from equipment
21 drains would be routed through an oil/water
22 separator and discharged into the combined sewer
23 system.

24 Good housekeeping practices to minimize
25 onsite pollution would be implemented in

1 accordance with the Port of San Francisco
2 stormwater quality program.

3 During construction of all project
4 features the plant and its linear facility,
5 stormwater quality would be maintained by
6 implementing an erosion and sediment control plan,
7 which is part of the state-required stormwater
8 pollution prevention plan.

9 The erosion and sediment control plan
10 will include required best management practices
11 such as filter fabric fences, fiber rolls and
12 onsite detention to insure that no contaminated
13 runoff reaches the Bay. We have prepared a
14 preliminary erosion and sediment control plan
15 dated January 2006 which will be updated and
16 refined by the construction contractor.

17 Thank you.

18 MS. SOL : And with that, the witnesses
19 are available for cross-examination.

20 HEARING OFFICER FAY: Okay. The entire
21 panel? I assume the entire panel?

22 MS. SOL : Yes, the contamination
23 witnesses are also available, and if a question
24 comes up that is appropriately addressed in soil
25 and water, they will be available to answer

1 questions.

2 HEARING OFFICER FAY: Okay, fine. Mr.
3 Ratliff?

4 MR. RATLIFF: No.

5 HEARING OFFICER FAY: No questions,
6 okay. Mr. Sarvey.

7 CROSS-EXAMINATION

8 BY MR. SARVEY:

9 Q The new table 8.9-5, which one of you
10 prepared that table?

11 MR. FRANCK: Just a moment.

12 MR. SARVEY: Okay, now you've concluded
13 that wind erosion from this project is going to
14 increase to 3.4 tons, is that correct?

15 MR. FRANCK: Let me ask one point of
16 clarification. Table 8.9-5 -- okay, there we go.

17 MR. LONG: That would be the table that
18 I prepared.

19 MR. SARVEY: And you've concluded
20 there's going to be an increase in PM emissions,
21 is that correct?

22 MR. LONG: Actually, the increase is in
23 the total suspended particulates, not just the PM
24 fraction.

25 MR. SARVEY: Well, did you do an

1 analysis to decide what portion of it would be
2 PM10?

3 MR. LONG: The assumptions are stated in
4 the text. It is assumed that PM10 makes up a
5 proportion of the total suspended particulates.
6 So there wasn't a specific analysis for onsite
7 conditions. But those assumptions were stated in
8 the AFC.

9 MR. SARVEY: And you provided this
10 information to the applicant's air quality witness
11 so he could revise his construction impacts, is
12 that correct?

13 MR. LONG: My understanding is that the
14 air quality experts prepared their own separate
15 analysis using a different method all together.

16 MR. SARVEY: Okay. In section 8.14.9
17 under cumulative impacts, stormwater --

18 MR. LONG: Mr. Sarvey, could you direct
19 me specifically to the document you're referring
20 to?

21 MR. SARVEY: It would be the AFC.

22 MR. FRANCK: That's in supplement A, the
23 water resources section.

24 MR. SARVEY: Supplement A, section
25 8.14.9.

1 MS. SOL : Mr. Sarvey, I'm sorry, I
2 didn't quite hear; is that 8.14-9?

3 MR. SARVEY: Yes.

4 MS. SOL : Okay.

5 MR. LONG: I'm sorry, I'm still trying
6 to locate where you're directing my question.

7 MR. SARVEY: I can just read it to you
8 if that would help.

9 MR. LONG: Once again, just the section
10 number, if you please?

11 MR. SARVEY: 8.14.9.

12 MS. SOL : Okay, so that would be on
13 page 8.14-21? Is that --

14 MR. SARVEY: Yeah, it would be on page -
15 - the part I'm referencing is 8.14-22 under
16 stormwater there.

17 MR. FRANCK: Yes.

18 MR. SARVEY: It says the project would
19 not change the volume rate of stormwater generated
20 from the site. As part of the project the site
21 would be covered by 100 percent impervious
22 surfaces and discharge stormwater runoff to the
23 City's combined sewer system.

24 That's no longer true, is it?

25 MR. FRANCK: That's correct; this

1 section was prepared prior to the swale
2 supplement.

3 MR. SARVEY: So, we need to change your
4 testimony in that respect, is that correct?

5 MR. FRANCK: Yes. A lot of the water
6 testimony was prepared prior to some of the final
7 changes that were made.

8 For example, the swale supplement was
9 exhibit 17, which supplements the water supply
10 testimony. I don't know if I needed to mention
11 that earlier.

12 MR. SARVEY: One of your references
13 listed on page 8.14-25 is the San Francisco
14 southern waterfront supplement EIR.

15 MS. KUBICK: On which page?

16 MR. SARVEY: That would be page 8.14-25.

17 MR. FRANCK: I'm sorry, the last page I
18 have is 8.14-23.

19 MR. SARVEY: So as part of your
20 references you used the San Francisco southern
21 waterfront supplemental EIR, is that correct?

22 MR. FRANCK: Yes.

23 MR. SARVEY: And in that document did
24 you happen to read page 109?

25 MR. FRANCK: I don't recall that

1 specific.

2 MR. SARVEY: It states, at the full
3 buildout in the project area stormwater runoff
4 will increase 29 percent due to the paving of
5 about 60 acres.

6 Have you done a cumulative analysis to
7 assess the impacts from this increase in runoff
8 for water contamination or any other environmental
9 concern?

10 MS. SOL : Objection, Your Honor. We
11 would like to see a copy of the document that Mr.
12 Sarvey is referring to.

13 HEARING OFFICER FAY: Can you help the
14 witness out here? And, Mr. Sarvey, on all these
15 questions, of course this goes for everybody, we
16 really need complete reference to a document so
17 that all the parties, especially the witness being
18 questioned, can go to the document quickly and
19 efficiently.

20 MR. SARVEY: Well, part of the problem
21 here is this was actually listed as an exhibit,
22 but it hasn't been provided to anybody but myself.
23 So, that's part of the problem.

24 HEARING OFFICER FAY: You're saying it
25 wasn't served?

1 MR. SARVEY: Pardon me?

2 HEARING OFFICER FAY: You're saying it
3 was not served?

4 MR. SARVEY: This is an exhibit under
5 air quality, under the data responses they only
6 issued me a CD of it, which cost me \$100 to have
7 it transposed into this particular document right
8 here. And I would actually like to have it
9 introduced as an exhibit.

10 HEARING OFFICER FAY: I thought you said
11 it was an exhibit.

12 MR. SARVEY: But I've only got this one
13 copy, because I only wanted to spend \$100 once.

14 HEARING OFFICER FAY: All right, well,
15 you're going to have to be sure that the witness
16 and counsel have seen this.

17 MR. SARVEY: Pardon me?

18 HEARING OFFICER FAY: You ought to make
19 a copy available to counsel and the witness.

20 MR. SARVEY: Well, shouldn't the
21 applicant be providing these copies, since it's
22 his --

23 HEARING OFFICER FAY: Well, I mean as to
24 this question.

25 (Pause.)

1 HEARING OFFICER FAY: Ar you prepared to
2 respond?

3 MR. FRANCK: Yes. Can the question be
4 repeated, please?

5 HEARING OFFICER FAY: Would you repeat
6 the question, Mr. Sarvey?

7 MR. SARVEY: I said the document on page
8 109 states that a full buildout in the project
9 area stormwater runoff will increase by 29 percent
10 due to the paving of about 60 acres.

11 Have you done a cumulative analysis to
12 assess the impacts from this increased runoff for
13 water contamination or any other environmental
14 concern?

15 MR. FRANCK: We have evaluated
16 cumulative effects in section 8.14-9 of the
17 supplement A, which is exhibit 15. The analysis
18 was qualitative. We looked at the effects on
19 stormwater as referred to in the question, our
20 project along with other reasonably potential
21 future projects in the area, which includes other
22 development of the Port.

23 We are following the Port's stormwater
24 program, because we are part of Port property. We
25 don't expect individual cumulative stormwater

1 impacts for this particular project because we
2 discharge stormwater to the vegetative swale. And
3 our impacts are not necessarily cumulative along
4 with these other projects that are discussed.

5 I do want to mention that the Port
6 stormwater program is designed to minimize the
7 incremental, what might be small effects from all
8 of the individual projects going on at the Port.
9 And by participating in that, I believe that we
10 are participating in a mitigation measure for
11 cumulative impacts.

12 HEARING OFFICER FAY: Mr. Franck, could
13 you just identify the document that you reviewed
14 before answering that.

15 MR. FRANCK: This is the San Francisco
16 Southern Waterfront Final Supplemental
17 environmental Impact Report prepared by the San
18 Francisco Planning Department.

19 HEARING OFFICER FAY: Is it dated?

20 MR. FRANCK: Yes, it was certified, the
21 supplemental EIR was certified on February 15,
22 2001.

23 HEARING OFFICER FAY: Thank you. Okay,
24 go ahead, Mr. Sarvey.

25 MR. SARVEY: So, this project was not

1 evaluated under that EIR?

2 MR. FRANCK: I didn't review the project
3 description for that EIR to determine whether or
4 not the specific project was considered or not.

5 MR. SARVEY: Okay. On page 8.14-12 of
6 your testimony. It says the Islas Creek is also
7 listed as an impaired water body due to sediment
8 contaminated with ammonia, chlordane, et cetera,
9 et cetera. And then it says that the City has not
10 accepted the list and findings that the source of
11 this impairment is attributed to industrial point
12 sources and combined sewer outflows.

13 It says the City disagrees with the
14 Regional Water Quality Board. Can you tell us
15 anything about the progress of these discussions
16 or this dispute?

17 MR. FRANCK: I'd like to defer that
18 question, perhaps, to one of the other panelists.

19 MR. SARVEY: Okay.

20 HEARING OFFICER FAY: Mr. DeYoung, are
21 you sorting this out for us? Who will answer that
22 question?

23 MR. DeYOUNG: We're sorting it out.

24 HEARING OFFICER FAY: Okay.

25 MS. KUBICK: I guess the comment is we

1 don't know the specific nature of that dispute
2 with the Regional Water Quality Control Board.
3 Within the PUC there are groups that monitor
4 outflow and put certain conditions and limitations
5 on dischargers and have worked to do creek
6 restoration and increase the level of treatment of
7 our outflows for wastewater.

8 But that's a separate -- that's actually
9 having to do with the southeast water pollution
10 control plant and overflows and how that
11 functions, and what's operating when. So, it's
12 out of the context of the project.

13 HEARING OFFICER FAY: Does that answer
14 your question, Mr. Sarvey?

15 MR. SARVEY: Yes. They don't know, I
16 understand.

17 Have you taken any groundwater samples
18 between the site and the Bay?

19 MR. DeYOUNG: We did not evaluate that
20 for the water resources section. I believe it was
21 evaluated -- I'd like to direct that to Mr. Lae.

22 MR. LAE: Yes, we did.

23 MR. SARVEY: And did you disclose that
24 anywhere in your testimony?

25 MR. LAE: Yeah, the results of those

1 groundwater samples were presented in the draft
2 field investigation summary report.

3 MR. SARVEY: Between the site and the
4 Bay?

5 MR. LAE: There was one location that
6 was just basically at the edge, the northeast edge
7 of the site.

8 MR. SARVEY: But still onsite, correct?

9 MR. LAE: Yes.

10 MR. SARVEY: Okay, so the answer is you
11 haven't taken any, is that correct?

12 MR. LAE: That's correct.

13 MR. SARVEY: Thank you. That's all.

14 HEARING OFFICER FAY: Okay. Mr. Boyd.

15 And we want to be sure that you understand the
16 changes --

17 MR. BOYD: That's why I'm --

18 HEARING OFFICER FAY: Okay.

19 CROSS-EXAMINATION

20 BY MR. BOYD:

21 Q Okay, let's start with 8.9-5. I'm
22 looking at your original table 8.9-5 and new
23 revised table.

24 MR. LONG: Yes.

25 MR. BOYD: And I noticed that you

1 increased the amount of mitigation, I mean it's
2 negligible except for where I see the site area,
3 you've increased it .34 to .57. And the laydown
4 area, .73 went to 1.217. And it looks like the
5 trench went up from .0015 to .0125.

6 Can you explain to me why you increased
7 the amount of mitigation -- why you find the
8 increased amount of mitigation?

9 MR. LONG: What I've done is I've
10 changed, on the original table inadvertently I had
11 said that the reduction from mitigation effects
12 would reduce the amount of soil generated by .7,
13 so the multiplying factor is actually .31 minus .7
14 in the first table. That number should have
15 actually been .5. So it changes the multiplier;
16 instead of .3 in the second table, it's .5.

17 So the mitigated TSP should be exactly
18 half of the unmitigated TSP under that assumption
19 of 50 percent efficiency.

20 MR. BOYD: Okay, I see it, yeah. Okay,
21 so it was just a mistake in the beginning when you
22 first --

23 MR. LONG: In those last three numbers,
24 yeah.

25 MR. BOYD: I got'cha. Okay. The other

1 table, table 8.9-3, I don't have a copy in front
2 of me of the original. Can you tell me what
3 changed there?

4 MR. LONG: The model that's available on
5 the National Resource Conservation Service site
6 was updated to allow someone to actually put in
7 site-specific information; in particular, the soil
8 map, the map to soil unit from the NRCS soil
9 survey, they updated their databases so that you
10 could now go in and say, okay, if I'm here at this
11 location and I have this particular mapped soil
12 unit, I can now put that one directly in.

13 Prior to that, I had to use a
14 generalized soil profile that what I would do is I
15 would use a generalized soil profile that matched
16 the site soils as nearly as possible.

17 But then when I subsequently had the
18 ability to put the specific unit in, that's why I
19 revised the calculation to see how that changed.

20 MR. BOYD: Okay, so you just had more
21 current information?

22 MR. LONG: I had more current
23 information and I just reran the model to double
24 check it.

25 MR. BOYD: Okay, I don't know

1 specifically who, which expert to ask, so I'll
2 just leave it up to you guys to decide who wants
3 to answer it. Do any of you know if the City has
4 an NPDES permit, a discharge permit for the Muni
5 site?

6 MS. SOL : Objection, Your Honor, that's
7 irrelevant to this project.

8 MR. BOYD: We're talking about water,
9 aren't we? And soil.

10 HEARING OFFICER FAY: What is the
11 relevant to this project, Mr. Boyd?

12 MR. BOYD: Well, I'm just trying to find
13 out what permits the City has or doesn't have. I
14 mean if they can discharge to the Bay without a
15 permit, there's nothing preventing them
16 discharging to this site. Or the soil and the
17 contaminated water to move to the Muni site to the
18 project site.

19 HEARING OFFICER FAY: Well, is there any
20 foundation that this is or could --

21 MR. BOYD: Well, I was also going to ask
22 the same question about if the City has given that
23 type of permit to the Pacific Cement, the other
24 facility on -- I'm trying to find out what's
25 permitted and what's not.

1 HEARING OFFICER FAY: We'll allow it if
2 the witnesses know about the permits --

3 MR. BOYD: That was my followup
4 question, too, was about Pacific Cement. If
5 you're aware of any permits from the Regional
6 Water Quality Control Board for discharging soil
7 or water from either the Muni site or the Pacific
8 Cement site into the Bay.

9 MS. SOL : Into the Bay or into our
10 site?

11 MR. BOYD: Well, I was, when I asked
12 about the Muni site I was talking about the Bay.
13 Because I don't believe that you need a Regional
14 Water Quality Control Board permit to discharge
15 from the Muni site to your project site. But I do
16 believe that you need one for discharging into the
17 Bay.

18 HEARING OFFICER FAY: Let's just see if
19 any of the witnesses know.

20 MS. SOL : Okay.

21 MS. KUBICK: The City has discharge
22 permits with the Regional Board for each of the
23 wastewater plants. The Port has a permit with the
24 Regional Board, a blanket permit for Port
25 property.

1 HEARING OFFICER FAY: And that would
2 include the Muni site?

3 MS. KUBICK: It would be the Port, all
4 of the Port lands, yes.

5 MR. BOYD: Okay, my other questions are
6 related to one of the exhibits, the applicant's
7 final field sampling plan dated February 14, 2006.

8 The first question is the fact it states
9 a final field sampling plan, was there a
10 preliminary field sampling plan?

11 (Public Address Announcement.)

12 (Parties speaking simultaneously.)

13 HEARING OFFICER FAY: Okay.

14 MS. KUBICK: Again, are we on?

15 MR. BOYD: I was asking --

16 HEARING OFFICER FAY: Yes, back on the
17 record. Yeah, you ought to repeat the question,
18 please.

19 MR. BOYD: Basically the question is you
20 had a final field sampling, but did you have a
21 preliminary field sampling plan?

22 MS. KUBICK: Yes, there were actually
23 several versions of draft sampling plans that were
24 then generated. After reviewing it with the
25 Regional Board and the CEC, we were able to

1 generate a final sampling plan.

2 MR. BOYD: So that sort of led to my
3 second question. You developed this sampling plan
4 in consultation with the Regional Board, you said,
5 and with the CEC Staff, I assume? Is that true?

6 MS. KUBICK: The sampling plan was
7 developed by our project team as a preliminary.
8 And was submitted to CEC Staff. We then got some
9 feedback, and this was all on the docket. Then we
10 actually were called to a sit-down with the
11 Regional Board and further reviewed the plan.
12 Issued another draft for comment and review. And
13 all of the agencies came to the conclusion that we
14 were on track. And that resulted in the final
15 sampling plan, which then we executed.

16 MS. SOL : Your Honor, and for the
17 record, the revised summary work plan dated
18 December 23, 2005, was submitted and distributed
19 to the service list. And a draft field sampling
20 plan, dated January 24, 2006, was submitted on
21 January 24, 2006, and served on the service list.

22 HEARING OFFICER FAY: Thank you.

23 MR. BOYD: Can you tell me if, or why
24 not, there was no public participation or
25 intervenor participation in the developing of the

1 field sampling plan?

2 MS. KUBICK: Our processes are actually
3 quite public; and this particular proceeding is
4 amazingly public. Every document that we generate
5 goes out onto the docket and is available. I
6 don't believe we received any public comments back
7 on either the preliminary sampling plan, maybe the
8 second version of the preliminary sampling plan,
9 or even the final sampling plan. And there were
10 amounts of time after those documents were put
11 out, several weeks prior to when we were actually
12 able to get onto the site, prior to our actual
13 work occurring onsite after the final sampling
14 plan had been issued.

15 MR. BOYD: Would it surprise you to know
16 that we, as intervenors, and also members of the
17 public, had no knowledge that this sampling plan
18 was being prepared until the prehearing conference
19 in this proceeding?

20 HEARING OFFICER FAY: Let's take that as
21 a rhetorical question, Mr. Boyd, and move on.

22 MR. BOYD: That's fine. Just to break
23 up the monotony, -- never mind, I'm done.

24 HEARING OFFICER FAY: Okay, thank you.
25 And before -- well, any redirect, Ms. Sol,?

1 MS. SOL : No, Your Honor.

2 HEARING OFFICER FAY: Okay. Before we
3 leave this topic, and I want to be inclusive and
4 include waste management as well as soil and
5 water, we have a request by Francisco DaCosta to
6 make a public comment. Mr. DaCosta, do you have a
7 microphone? Please spell your name for the record
8 and make your statement.

9 MR. DaCOSTA: Commissioners, my name is
10 Francisco DaCosta, F-r-a-n-c-i-s-c-o, Francisco,
11 Da, D-a, C-o-s-t-a, DaCosta.

12 I am the Director of Environmental
13 Justice Advocacy. I also represent the interests
14 of the first people of this area, the Miwok Melone
15 (phonetic).

16 And I'm going to address two issues.
17 I'm going to address the issues of the community
18 and I'm also going to address the issues of
19 quality of life issues. And I'm going to try to
20 link it to some of the deliberations that took
21 place today.

22 As much as the City and the San
23 Francisco Public Utilities Commission would like
24 to state that they have involved the community at
25 large, the southeast sector, into this

1 deliberations, I want to state very clearly that
2 they have not.

3 And I can say this because I have made
4 every attempt to attend all the critical meetings,
5 including the meetings of the CEC, at great
6 expense.

7 What's happening in the southeast sector
8 is that some so-called experts who have no
9 compassion and who are not connected with the
10 constituents of the Bay View/Hunter's Point, who
11 are mostly people of color, are really interested
12 in a hidden agenda.

13 I say this because as the Director of
14 Environmental Justice Advocacy, I have gone at
15 great lengths to participate in every empirical
16 data study connected with transmission lines, with
17 the San Francisco Port Authority, and with other
18 matters that, as I said, address quality of life
19 issues.

20 You have heard experts here make some
21 very general statements. It is a fact that the
22 Regional Water Board has not addressed the state
23 of affairs as it pertains to our watershed. This
24 particular site has been polluted from the days
25 when there was a Santa Fe, leading to the Southern

1 Pacific Company, leading to the Cattelus Company,
2 leading to Pacific Cement.

3 I was once at a San Francisco Port
4 Commission meeting when one of the owners of
5 Pacific Cement came at this meeting and stated
6 that they made a mistake; that they had bulldozed
7 cement and other rubber into the Bay.

8 So what I'm stating to you,
9 Commissioners, is there's an ongoing process here
10 where toxicity of the worst order is flowing into
11 the Bay. And the Regional Water Board has done
12 nothing about it. And I'm saying this because
13 four years ago, and three years ago I sent in
14 complaints to the Department of Toxic Substances
15 Control. And Charlene Williams and the other
16 directors at the top know exactly what I'm saying.

17 I have addressed the concerns that have
18 been deliberated here in over 40 articles, in over
19 40 articles, and will continue to do it on my
20 website and in the media.

21 In conclusion, Commissioners, this City
22 and the San Francisco Public Utilities Commission
23 have blood on their hands. We do not need this
24 three combustion turbines. Thank you very much.

25 HEARING OFFICER FAY: Thank you for your

1 comments, Mr. DaCosta.

2 Okay, then that concludes our taking of
3 testimony on soil and water resources unless CARE
4 or Mr. Sarvey have affirmative testimony in that.
5 Assuming the same challenge that you had on waste
6 management.

7 Okay. Let's take a five-minute break,
8 and the parties prepare themselves for
9 presentations on air quality.

10 (Brief recess.)

11 HEARING OFFICER FAY: Mr. Ratliff, you
12 raised earlier a concern about having to bring
13 your biology witness in for limited purposes. And
14 we note that there's no issue between the staff
15 and the applicant on biological resources. And
16 that no testimony was filed by any other party,
17 although other parties have indicated an interest
18 in brief cross-examination.

19 So, why don't you express that again,
20 why you think it's not necessary to have a witness
21 here.

22 MR. RATLIFF: Well, I'm hoping that with
23 the forbearance of the intervenors we won't be
24 required to call Ms. Sanders. I don't think her
25 testimony is frankly going to be of interest or of

1 use to them in any way.

2 And even without the forbearance I would
3 ask the Committee to not require Ms. Sanders to
4 come. She's a consultant. It will cost the state
5 a lot of money and she doesn't really have any --
6 no one has ever identified at any time, either at
7 the prehearing conference or subsequent to it, any
8 quarrel with her testimony. So I don't think she
9 would be coming to testify on anything that's at
10 issue.

11 The only related issues which have been
12 raised at any point had to do with the remediation
13 of the Bay and she has no testimony on that issue.
14 And, as I say, that's because our testimony is
15 that the project has no impact on the Bay.

16 So, I would ask that you not make her
17 come down here because I just don't think it would
18 be productive or a good use of the state's
19 resources.

20 ASSOCIATE MEMBER GEESMAN: Am I correct
21 in anticipating that you would object to any
22 questions of her under cross-examination that
23 would be on the scope of her testimony?

24 MR. RATLIFF: Yes.

25 ASSOCIATE MEMBER GEESMAN: Yes. I guess

1 I've got a curiosity as to what the intervenors
2 would hope to achieve by crossing her.

3 HEARING OFFICER FAY: And before we get
4 to that argument can I confirm that, Ms. Sol,, you
5 plan to have your biology witnesses here, is that
6 right?

7 MS. SOL : I can have my biology witness
8 here; and he's prepared to answer questions about
9 his testimony. But as I clarified this morning,
10 he is not the witness on the contamination and the
11 impact of the contamination.

12 HEARING OFFICER FAY: Right.

13 MS. SOL : And to the extent that
14 questions get asked as to that topic, I will
15 object.

16 HEARING OFFICER FAY: Understood. So if
17 there are questions regarding, for instance, the
18 offsets, regarding the butterfly, et cetera, there
19 will be witnesses here to address those things
20 within the scope of their own testimony.

21 The question is what need do you have,
22 either Mr. Sarvey or CARE, to have staff's witness
23 here?

24 MR. SARVEY: Is it possible to have the
25 staff witness available by phone so we don't have

1 to bring her out here?

2 MR. RATLIFF: Well, I can't answer that
3 because I don't know if phone is one of the ways
4 the Committee wants to have testimony. But, in
5 any case, again, is there anything within the
6 scope of her testimony that you would question her
7 about.

8 MR. SARVEY: Well, my basic question,
9 I'll be right up front about it, how was your
10 analysis hampered because you didn't have a fate
11 (phonetic) and transport analysis of contaminants
12 to the Bay, you know?

13 MR. RATLIFF: Well, she's not going to
14 answer those questions, so there's no point in
15 having her come down here. I mean, she's not
16 going to answer them because it's outside the
17 scope of her testimony.

18 MR. SARVEY: No, but I mean she can --

19 MR. RATLIFF: Yeah, I can answer for
20 her, in other words, to that extent.

21 MR. SARVEY: Well, you testified
22 earlier, Dick, so we're going to try to avoid
23 that.

24 MR. RATLIFF: No, I didn't. I'm just
25 telling you -- I'm telling you where the border is

1 for her testimony. It's --

2 MR. SARVEY: No, I understand. But what
3 I'm saying is, you know, all I want to ask her,
4 and she can submit it in writing, make a
5 declaration out of it, but I just want to know,
6 you know, how can you say that there's no impacts
7 to biological resources when you don't have a fate
8 (phonetic) and transport analysis for the
9 contamination to the Bay.

10 And obviously all she can say is, I
11 don't have a biological analysis because that's
12 the bottomline.

13 MR. RATLIFF: Well, look, we'll
14 stipulate we don't have a fate and transport
15 analysis for the Bay. You don't have to have her
16 here to say that.

17 MR. SARVEY: You're absolutely right.

18 HEARING OFFICER FAY: And then that's
19 your --

20 MR. SARVEY: That's the gist of the
21 question.

22 HEARING OFFICER FAY: -- that's the gist
23 of it, okay.

24 MR. SARVEY: I just want to know how it
25 hampered her analysis not having --

1 HEARING OFFICER FAY: That clarifies it.

2 MR. SARVEY: -- not having the
3 information she needed to make the analysis.

4 HEARING OFFICER FAY: Okay, that
5 clarifies it.

6 MR. SARVEY: You know, she's supposed to
7 be identifying impacts, but how can she if she
8 doesn't have the information. So that's the whole
9 crux of my wanting her here. And she can do that
10 under declaration.

11 MR. BOYD: Gary, can I say something?

12 HEARING OFFICER FAY: Sure.

13 MR. BOYD: So, I'm having a hard time
14 understanding what the value of the testimony is
15 if you don't have -- basically I have the same
16 problem with my -- I was going to produce Dr.
17 Smallwood as a witness, but he's basically told me
18 no, he can't provide me any testimony because he
19 doesn't have all the analysis that he needs, the
20 data that he needs to provide me any testimony of
21 value.

22 HEARING OFFICER FAY: Right, the
23 difference is --

24 MR. BOYD: What's the difference between
25 him and --

1 HEARING OFFICER FAY: -- Ms. Sanders had
2 the analysis she needed, in her opinion, to do a
3 complete analysis for the staff's FSA.

4 The question is does she have to be here
5 in person, or can the record rely on her
6 declaration, as we have in many other subject
7 areas. And based on what Mr. Sarvey has said
8 there's nothing in her testimony that would
9 address his questions.

10 And so, based on that, I don't see why
11 we need to have the witness here.

12 MR. BOYD: Okay, now, we're just talking
13 about staff's witness. We're not talking --

14 HEARING OFFICER FAY: That's correct.

15 MR. BOYD: -- about the applicant's
16 witness?

17 HEARING OFFICER FAY: That's correct.

18 MR. BOYD: And I'm not clear on the
19 applicant's witness' testimony, where is this
20 testimony on biological resources? Is that part
21 of the supplemental testimony?

22 HEARING OFFICER FAY: No, it was filed
23 with their primary testimony.

24 MR. BOYD: Or part of the 17th? Can you
25 point me to where the biological resource

1 testimony is?

2 MS. SOL : There's two components. The
3 first is the supplement A includes the biology
4 testimony. The second thing is that the testimony
5 on contamination explains how risks to the Bay are
6 going to be addressed.

7 I made it clear before these hearings
8 that if people had questions about that, about the
9 impact of contamination on the Bay, our
10 contamination witnesses were prepared to address
11 them.

12 MR. BOYD: Are you stating that your
13 contamination witnesses are qualified to act as
14 biological resource witnesses?

15 MS. SOL : They are qualified to discuss
16 ecological risk assessments, and how such a risk
17 assessment and the process that we outlined will
18 insure no significant impacts on the Bay. And
19 that is what their testimony does. And they were
20 available here for cross-examination on that
21 topic.

22 MR. BOYD: I guess what I'm asking is
23 are your witnesses biologists?

24 MS. SOL : I believe one of my witnesses
25 is a biologist.

1 MR. BOYD: Okay.

2 MS. SOL : If you look at Mr. Cheung's
3 r, sum,, he has a degree in biology, and he's also
4 an expert on ecological risk assessments and how
5 you mitigate impacts on ecosystems.

6 MR. SARVEY: Okay, --

7 HEARING OFFICER FAY: So it appears that
8 this area is being adequately -- this area being
9 biological resources, as the staff has narrowly
10 conceived it, is being addressed in their written
11 testimony; and that none of the parties have
12 cross-examination that would compel the presence
13 of that witness here on the 31st.

14 MR. BOYD: Well, I have no objection as
15 long as staff's willing to stipulate, as Dick
16 said, to the fact that their testimony isn't
17 related to the contamination issue.

18 HEARING OFFICER FAY: Well, yeah, he
19 just made that clear.

20 MR. RATLIFF: I just said that, and I
21 also said earlier why. We have testified that
22 this project does not have an impact on the Bay.
23 That was what our soil and water witness testimony
24 was. That being the case --

25 MR. SARVEY: I didn't hear that

1 testimony.

2 MR. RATLIFF: -- we don't need to
3 analyze it under biology, because it --

4 MR. SARVEY: I didn't hear that.

5 MR. RATLIFF: -- simply doesn't happen.

6 HEARING OFFICER FAY: Yeah, okay.

7 MR. RATLIFF: We have tried to clarify
8 that there are such things as preexisting
9 pollution in the site which may be affecting the
10 Bay. Those are not project impacts; they are not
11 subject to our CEQA analysis. They are subject to
12 the Regional Board's cleanup.

13 MR. BOYD: Well, you're disturbing
14 stuff, so --

15 HEARING OFFICER FAY: We've spent enough
16 time on this --

17 MR. BOYD: Okay, that's fine. Thank
18 you.

19 HEARING OFFICER FAY: -- and staff is
20 saving public resources by being efficient this
21 way. Now we want to save everybody else's time
22 and move forward so we can address air quality.

23 MR. SARVEY: Will we have the
24 applicant's biology witness available?

25 HEARING OFFICER FAY: We have -- Ms.

1 Sol,, there's no change in your plans to provide
2 witnesses on the 31st, is there?

3 MS. SOL : No.

4 HEARING OFFICER FAY: Okay.

5 MR. SARVEY: That's fine.

6 MR. BOYD: That's fine.

7 HEARING OFFICER FAY: So, we'll let the
8 applicant go forward with their panel on air
9 quality, then.

10 MS. SOL : Thank you. I'd like to call
11 Mr. Gary Rubenstein, please.

12 HEARING OFFICER FAY: Please swear the
13 witness.

14 Whereupon,

15 GARY RUBENSTEIN

16 was called as a witness herein, and after first
17 having been duly sworn, was examined and testified
18 as follows:

19 COURT REPORTER: Please state and spell
20 your full name for the record.

21 MR. RUBENSTEIN: My name is Gary
22 Rubenstein, G-a-r-y R-u-b-e-n-s-t-e-i-n.

23 DIRECT EXAMINATION

24 BY MS. SOL :

25 Q Good afternoon, Mr. Rubenstein. Do you

1 have before you the testimony that the City filed
2 on April 17th?

3 A Yes, I do.

4 Q Okay. On the section on air quality,
5 first of all it indicates that Mr. Rubenstein's
6 qualifications were contained in appendix A to the
7 prehearing conference statement of the City and
8 County of San Francisco.

9 Do you have before you section C which
10 includes a list of documents?

11 A Yes, I do.

12 MS. SOL : I'm going to go through those
13 documents beginning with the application for
14 determination of compliance and authority to
15 construct, which was filed with the Bay Area Air
16 Quality Management District dated March 18, 2004;
17 that's exhibit 1.

18 Supplement and response to data adequacy
19 comments on the application for certification for
20 the San Francisco Electric Reliability project
21 dated April 16, 2004, section 2.1 on air quality;
22 that's exhibit 2.

23 Applicant's response to CEC Staff data
24 request set 1A, dated July 6, 2004, responses to
25 data requests 2 through 4 and 6 through 11; that's

1 exhibit 3.

2 Applicant's response to CEC Staff data
3 request, informal set 6A, dated July 11, 2005,
4 responses 6-1 and 6-2.

5 Applicant's response to CEC Staff data
6 request, informal set 3, dated August 20, 2004,
7 responses to data requests 148 through 149; that's
8 exhibit 9.

9 Application for determination of
10 compliance and authority to construct filed with
11 the Bay Area Air Quality Management District,
12 dated March 15, 2005; that's exhibit 14.

13 Supplement A to the application for
14 certification for San Francisco Electric
15 Reliability project, dated March 24, 2005, section
16 8.1 on air quality and appendices 8.1A through
17 8.1F; that's exhibit 15.

18 Applicant's response to CARE data
19 request set 3, dated June 9, 2005, responses to
20 data request 3.3-1 through 3.3-3.

21 Applicant's comments and objections to
22 Sarvey data request dated July 5, 2005, comments
23 regarding data requests 2 and 3; that's exhibit 5.

24 Applicant's response to Sarvey data
25 request set 1A, dated July 25, 2005, responses to

1 data requests 1-2, 1-3, 1-5 and 1-6; that's
2 exhibit 27.

3 Applicant's air quality mitigation and
4 community benefits plan dated August 4, 2005;
5 exhibit 38.

6 Applicant's response to Sarvey data
7 request set 1B, dated October 6, 2005, responses
8 to data request 1-3; that's exhibit 28.

9 Applicant's comments on the preliminary
10 staff assessment set 1, comments 12 through 23,
11 and comment 38, dated October 12, 2005; that's
12 exhibit 39.

13 Applicant's comments on the preliminary
14 staff assessment set 2, comment 15, dated October
15 31, 2005; that's exhibit 40.

16 Applicant's comments on the final staff
17 assessment set 1, comment 1-11, dated March 17,
18 2006; that's exhibit 45.

19 And then there's a series of
20 correspondence and other materials which comprise
21 exhibit 56.

22 BY MS. SOL :

23 Q Do you have any changes, corrections or
24 additions to make to these documents?

25 A No, I do not.

1 Q Are the facts contained in these
2 documents true to the best of your knowledge?

3 A Yes, they are.

4 Q And to the extent there are opinions set
5 forth in these documents, do they represent your
6 professional judgment?

7 A Yes, they do.

8 Q And do you adopt these documents as your
9 sworn testimony here today?

10 A Yes, I do.

11 MS. SOL : I would like Mr. Rubenstein
12 to give an opening statement, please.

13 MR. RUBENSTEIN: Thank you.

14 HEARING OFFICER FAY: Before he does,
15 would you like to move these documents?

16 MS. SOL : Oh, I'm sorry. Yes, I'd like
17 to move for those documents to be introduced into
18 the record.

19 HEARING OFFICER FAY: Any objection?
20 Hearing none, so moved.

21 Go ahead, Mr. Rubenstein.

22 MR. RUBENSTEIN: Thank you, Mr. Fay.

23 Good afternoon. I'm going to first
24 summarize my direct testimony and then take just a
25 few minutes to discuss issues that have been

1 raised by some of the intervenors in various
2 filings since the bulk of my testimony was
3 prepared.

4 With respect to the San Francisco
5 Electric Reliability project, it's my opinion that
6 in the area of air quality the project will meet
7 all applicable laws, ordinances, regulations and
8 standards.

9 In addition, I believe that there will
10 be no unmitigated significant air quality impacts
11 associated with the project based on the project
12 design, as well as mitigation measures proposed by
13 both the applicant and the Commission Staff.

14 Let me explain a little bit further why
15 I have these opinions. With respect to compliance
16 with laws, ordinances, regulations and standards,
17 I believe that SFERP's compliance is evidenced by
18 the issuance of a final determination of
19 compliance by the Bay Area Air Quality Management
20 District. That document goes through in a great
21 deal of detail explaining how the project will
22 satisfy all of the Bay Area District's air quality
23 requirements.

24 With respect to the lack of any
25 significant unmitigated impacts under CEQA, I

1 addressed that question looking at both local and
2 regional air quality impacts.

3 Local air quality impacts are addressed
4 through several different means. First is the use
5 of best available control technology to insure
6 that project emissions are minimized to the extent
7 feasible. In addition, we performed an air
8 quality impact analysis, taking a look at project
9 impacts in the local vicinity. That analysis was
10 reviewed both by the Bay Area Air Quality
11 Management District and by the Energy Commission
12 Staff. All of these analyses reached the same
13 conclusion, that there were no significant
14 impacts.

15 In addition, we prepared a localized
16 cumulative air quality impact analysis, taking a
17 look at air quality impacts, both of this project,
18 as well as other reasonably foreseeable projects,
19 based on information we obtained from the Bay Area
20 Air Quality Management District regarding projects
21 that were, if you will, in the pipeline. This
22 analysis also demonstrated no significant impacts
23 associated with this project.

24 We also performed a screening level
25 health risk assessment, looking both at project

1 construction and project operation, which
2 confirmed that there were no significant health
3 impacts associated with the project, something
4 that will be discussed in more detail in the
5 public health section.

6 And then finally, we addressed local
7 impacts by a particularly localized focus in the
8 area of air quality mitigation measures, something
9 I'll get into more in just a minute.

10 In addition to looking at local air
11 quality impacts, we also took a look at regional
12 air quality impacts. Regional air quality impacts
13 were addressed in four different ways.

14 First was through the use of best
15 available control technology, which in addition to
16 minimizing local air quality impacts, also reduces
17 the burden that a project places on air quality
18 within the air basin.

19 We also performed a number of cumulative
20 air quality impact analyses that were provided in
21 supplement A, as well as in one or two of the data
22 responses, taking a look at the project impacts in
23 the context of both other sources within the San
24 Francisco Bay Area and in San Francisco. And also
25 specifically in the context of impacts in

1 combination with Potrero and Hunter's Point Power
2 Plants.

3 Regional impacts are also addressed
4 through the health risk assessment. When one
5 insures that the local health risk impacts are
6 significant, one can also conclude that there's no
7 significant regional impact, as well.

8 And finally, regional air quality
9 impacts were addressed through a mitigation
10 program which I'll next discuss.

11 There are several elements to the air
12 quality mitigation program for this project.
13 First, this includes the provision of emission
14 offsets, as required under the Bay Area District's
15 regulations. Offsets were provided in excess of
16 what the Bay Area District requires to insure that
17 we mitigated increases in emissions of both NOx,
18 oxides of nitrogen, and volatile organic
19 compounds, or VOCs, from the project.

20 Although this mitigation is mandated by
21 the Bay Area District, we went one step further
22 and because of concerns within the community, we
23 obtained access to emission reduction credits
24 generated locally at the Potrero Power Plant to
25 provide yet a local, or local focus to the

1 mitigation.

2 The second element of the air quality
3 mitigation program was an enhanced street-cleaning
4 program. That program was proposed as the result
5 of extensive discussions with community members
6 regarding the issue of air quality impacts and
7 potential mitigation.

8 The process that led up to this proposal
9 is discussed in the air quality mitigation and
10 community benefits plan, which is exhibit 38. The
11 last page of that document lists all of the
12 different meetings that were held with community
13 representatives and a variety of interest groups
14 in the community in developing the mitigation
15 plan.

16 The mitigation plan had objectives that
17 were initially designed in consultation with
18 community members. Initially there was a list of
19 47 potential air quality mitigation measures that
20 were gradually narrowed down through a series of
21 focus groups and community meetings.

22 The resulting proposed measure, the
23 enhanced street-cleaning program, is just not a
24 matter of moving dust, it involves using enhanced
25 street cleaners certified by the South Coast Air

1 Quality Management District that are essentially
2 vacuum sweepers. The focus here is on removing
3 dust levels from the street, not cleaning the
4 gutters. And consequently represents a different
5 application of what we see in most urban areas
6 every day, but it's focused on reducing the dust
7 levels.

8 It provides substantially in excess of
9 one-to-one mitigation, I believe it's close to
10 two-to-one mitigation for the project's PM10
11 impacts. And I believe that this, in addition,
12 addresses any potential issues that might have
13 been raised regarding the very minor sulfur
14 dioxide emissions from the project, and whether
15 those are adequately mitigated or not.

16 Finally, this particular mitigation
17 program targets a real ground-level source of
18 health-affecting emissions which is urban road
19 dust. Urban road dust is not just soil; it
20 includes a variety of different compounds,
21 including brake linings, tire tread wear, just
22 almost anything you can imagine that goes into the
23 air in an urban environment will end up on our
24 roadways. Consequently, I believe that this is an
25 extremely effective and beneficial mitigation

1 measure.

2 In addition to that, that program, the
3 City went a step further. As I indicated, this
4 program already mitigates the PM10 impacts by
5 roughly a factor of two-to-one. Because there
6 were a number of mitigation measures that the
7 community expressed support for, but which we
8 believe the Energy Commission Staff would not
9 grant us credit for, if you will, this mitigation,
10 the City proposed two additional mitigation
11 measures to address community concerns.

12 These include an extensive tree-planting
13 program, which is probably one of the most
14 requested mitigation measure during the community
15 meetings. And, as well, an indoor air quality
16 program focusing on reducing potential impacts of
17 indoor air quality, asthmatics, and especially
18 children.

19 These two measures were selected in
20 addition to the enhanced street-cleaning program.
21 Again, after extensive discussions with community
22 groups. Once again these measures provide a very
23 local focus; they meet the mitigation objectives.
24 But, as I said earlier, because the benefits of
25 these two measures are not quantifiable, and

1 therefore were not acceptable to the Commission
2 Staff, we're proposing them in addition to the
3 enhanced street-cleaning program because we
4 believe the benefits are very real and are
5 important to the community.

6 Having made that proposal, the CEC Staff
7 then went another step further, beyond the step
8 further we had already taken, and requested that
9 we provide additional mitigation for PM2.5 air
10 quality impacts.

11 I would simply point out that the Bay
12 Area District is a designated attainment area for
13 the federal PM2.5 standard. And although it's a
14 designated nonattainment area for the state PM2.5
15 standard, in fact there had been no exceedances of
16 that standard for the last three years. And the
17 three-year average, which is the basis for
18 compliance, was below the state standard in 2005
19 for the first time.

20 Nonetheless, we did work with the
21 Commission Staff. Commission Staff proposed, and
22 we agreed to, a wood stove/fireplace retrofit
23 program. Again, this element of the mitigation
24 program continues to have a community focus.

25 However, based on the work we had done, and the

1 community discussions we had had, we were
2 concerned about the feasibility of generating
3 sufficient PM2.5 credits using that specific
4 measure.

5 Consequently, we proposed, and the
6 Commission Staff agreed to, a backup mitigation
7 measure to address PM2.5 impacts, which is the
8 surrender of additional sulfur dioxide emission
9 reduction credits. That backup is completely
10 essential from the City's perspective to provide
11 certainty that we can live up to the commitment of
12 complying with the conditions of certification.

13 There are several additional issues that
14 were raised in a variety of filings by
15 intervenors. I'm just going to touch on a few of
16 them right now.

17 One was a question regarding the use of,
18 quote, "old" unquote, emission reduction credits
19 for the project. This concern, in my opinion,
20 misstates EPA policy completely. EPA's policy is
21 that older offsets, and the jargon here is pre-
22 1990 emission reduction credits, are valid
23 provided the credits are properly accounted for in
24 the Agency's air quality planning programs.

25 Old emission reduction credits are good.

1 They are not bad. It means that someone reduced
2 emissions a long time ago and we've been reaping
3 the benefit of that cleaner air for a long time.
4 Consequently the notion that there's something
5 wrong with using older emission reduction credits
6 as mitigation, I think, represents a
7 misunderstanding of the incentives that are
8 provided when you have a program like that.

9 The emission reduction credit program is
10 part of a programmatic mitigation system
11 established by local air districts throughout
12 California. And, in fact, emission reduction
13 credits are kept, if you will, on the books as if
14 the emissions were continuing to be admitted until
15 the credits are surrendered, requiring the air
16 districts to plan and reduce emissions going
17 forward by just a little bit more to make sure
18 they can still demonstrate attainment.

19 In addition, emission reduction credits
20 have been accepted by the Energy Commission as
21 mitigation in innumerable siting cases.

22 And finally, the use of these older
23 emission reduction credits, when necessitated by a
24 community-driven requirement for this mitigation,
25 which is that we used local emission reduction

1 credits.

2 And so the choice was either address the
3 community's concerns and use local credits, which
4 were older in nature, or ignore the community's
5 concern, go out and find newer credits which may
6 have been from some other part of the Bay Area.
7 The City, in my opinion, properly chose to defer
8 to the community's concerns in this case.

9 And then finally the community benefits
10 program provides, in my opinion, substantial
11 mitigation, but no credit at all is provided
12 because the reductions are simply not quantifiable
13 using any traditional means.

14 A second issue that's been raised
15 regarding air quality has to do with the
16 particulate emission rate for the turbines of 3
17 pounds an hour, as was originally proposed, versus
18 2.5 pounds per hour, as required by the District's
19 final determination of compliance and staff's
20 proposed conditions of certification.

21 This issue is a little ironic from my
22 perspective. The reason why the emission rate was
23 reduced was because of a comment letter by one of
24 the intervenors to the Bay Area District on the
25 preliminary determination of compliance asking

1 that the emission rate be reduced because of a
2 precedent set, in that intervenor's opinion, with
3 another project.

4 The Bay Area District acquiesced in that
5 request. The City, after reviewing available
6 data, acquiesced in that request. And now that
7 same intervenor is suggesting that the reduction
8 was improper. So I'm not quite sure how we get it
9 right.

10 But in any event, I believe that the
11 lower emission rate is technically feasible; it is
12 supportable; it has been demonstrated in data
13 provided, in fact, by the same intervenor in his
14 comments to the Bay Area Air Quality Management
15 District last fall. The City and County of San
16 Francisco are comfortable with either particular
17 emission rate. Compliance is not expected to be
18 an issue. Actual PM10 emission levels from these
19 turbines are expected to be much lower than 2.5
20 pounds per hour.

21 A third issue that's been raised in
22 several different fora has to do with cumulative
23 impacts from other projects, in combination with
24 the San Francisco Electric Reliability project.
25 Cumulative air quality impacts have been evaluated

1 in this case any number of different ways.

2 There was an air quality impact analysis
3 included with supplement A that added project air
4 quality impacts on top of background levels. Also
5 in supplement A was a localized cumulative air
6 quality impacts analysis that looked at additional
7 reasonably foreseeable projects in combination
8 with the SFERP. Those additional reasonably
9 foreseeable projects were identified based on
10 criteria approved by the Commission Staff with
11 data generated by the Bay Area Air Quality
12 Management District.

13 In addition there was a regional
14 cumulative air quality impacts analysis included
15 with supplement A which evaluated this project in
16 the context of regional emissions of ozone and PM
17 precursors. And also in the context of a variety
18 of alternative operating scenarios for the Potrero
19 and Hunter's Point Power Plants.

20 And then finally in response to data
21 requests we reviewed additional project EIRs,
22 documenting this in data responses, for potential
23 cumulative construction impacts. And we concluded
24 that because each of these EIRs demonstrated that
25 there would be no significant construction-related

1 impacts from any individual project, and given the
2 short-term nature of construction air quality
3 impacts in any event, that the timing was too
4 speculative to analyze any of these impacts
5 quantitatively, but we could draw the qualitative
6 conclusion that since all of these projects were
7 going to be mitigated, in terms of their
8 construction impacts, that there would be no
9 significant cumulative impacts that we could
10 identify as well.

11 Finally, and in conclusion, I believe
12 that there's no evidence of any significant
13 cumulative air quality impacts with respect to
14 either project construction or operation, and that
15 the mitigation that's being proposed for the
16 project insures that there are no significant
17 impacts either from the project individually, or
18 cumulatively.

19 One more issue that's been identified
20 has been the question of an appropriate ammonia
21 slip level for the project. As has been discussed
22 in numerous other CEC siting cases within the Bay
23 Area District, this particular District is
24 generally ammonia rich. And consequently any
25 further reductions in ammonia emissions below the

1 10 parts per million level established by the Bay
2 Area District will not produce corresponding
3 further reductions in ambient PM10 concentrations,
4 or ambient 2.5 concentrations.

5 Consequently, since there were no
6 significant impacts that warrant additional
7 mitigation, and in any event, reducing ammonia
8 emissions would not reduce those impacts, I don't
9 believe that there's any basis for proposing a
10 lower level.

11 And then finally there's an issue that's
12 been raised with respect to various local
13 monitoring programs. The City and County of San
14 Francisco have now participated in two different
15 ambient monitoring studies within this community
16 to address community concerns.

17 Those include the Bay Camp program
18 conducted jointly with the Bay Area Air Quality
19 Management District and the California Air
20 Resources Board, as well as an additional
21 monitoring program recently completed by the SFPUC
22 focusing on specific monitoring locations within
23 southeast San Francisco.

24 Both studies indicate that in general
25 the Bay Area District's monitoring station at

1 Arkansas Street generates data which is
2 representative of community impacts. And that
3 while some statistics from some sites on some days
4 are higher than Arkansas Street, on at least as
5 many days they're lower than the Arkansas Street
6 measurements.

7 In my opinion 5 to 10 percent variations
8 in measured values between one site or another are
9 not indicative of any significant differences
10 given the uncertainties in ambient monitoring of a
11 resolution of the techniques that are available.

12 And I don't believe that there's any evidence
13 to the contrary in the record so far.

14 In conclusion, it's my opinion that the
15 project complies with all air quality related
16 laws, ordinances, regulations and standards. The
17 project will not result in any significant
18 unmitigated air quality impacts on either a local
19 or regional level. And that the project will not
20 result in unhealthy air levels under any operating
21 conditions, under any weather conditions, at any
22 location, based on the extremely conservative
23 analyses that have been done to date.

24 And that completes the summary of my
25 testimony.

1 HEARING OFFICER FAY: And just to
2 clarify, Mr. Rubenstein, is it correct that with
3 the staff's filing of this errata, exhibit 48,
4 that the applicant is in full agreement with the
5 staff's conditions of certification?

6 MR. RUBENSTEIN: That's correct.

7 HEARING OFFICER FAY: Is the witness
8 available?

9 MS. SOL : Yes, Your Honor.

10 HEARING OFFICER FAY: Okay. Mr.
11 Ratliff.

12 MR. RATLIFF: No questions.

13 HEARING OFFICER FAY: All right, Mr.
14 Boyd, let's go to you first, or to CARE.

15 CROSS-EXAMINATION

16 BY MR. BOYD:

17 Q Okay, first I wanted to ask you, Gary,
18 were you aware that as part of the field sampling
19 report that the applicant prepared that they had
20 disclosed the presence of asbestos on the site?

21 A Yes.

22 Q Do you know or do you have knowledge if
23 the applicant has applied to the Air District for
24 a dust control plan to deal with the potential
25 disturbance of asbestos at the site?

1 A To the best of my knowledge that dust
2 control plan has not been filed with the Bay Area
3 District as of yet.

4 Q Do you know if they intend to?

5 A My expectation, based on how this is
6 dealt with in other construction projects, is that
7 it will be filed prior to the commencement of
8 construction.

9 Q Before they disturb anything basically?

10 A Before they disturb anything that would
11 be subject to the Air Resources Board's air toxic
12 control measure.

13 MR. BOYD: Has the Air District got a
14 witness here, too, today?

15 MR. RATLIFF: The Air District is here,
16 yes.

17 MR. BOYD: Okay, so maybe that's a
18 better question for them.

19 HEARING OFFICER FAY: Well, will the
20 staff make somebody available from the Air
21 District?

22 MR. RATLIFF: Yes. The Air District is
23 present and will testify when the staff witnesses
24 testify.

25 HEARING OFFICER FAY: Okay.

1 MR. BOYD: Okay.

2 BY MR. BOYD:

3 Q Did I hear you right that the ERCs from
4 the Potrero project are from 1985? Is that true?

5 A You didn't hear me say that.

6 Q Well, when is the ERCs created for --

7 A It was sometime in the 1980s.

8 Q Okay, sometime in the 1980s. And can
9 you explain to me how that actually will reduce
10 the impact of -- the ERCs are basically to offset
11 the production of certain criteria pollutants from
12 the plant, correct? So, is it PM -- is this
13 for -- what's the ERC mitigating? Which criteria
14 pollutant?

15 A I was going to ask you what you were
16 talking about. We discussed ERCs in two
17 particular contexts. One is the ERCs that will be
18 surrendered to satisfy the District's offset
19 requirements; and then the second are the ERCs
20 that the City has proposed as a backup mitigation
21 measure to address the CEC Staff's concerns
22 regarding PM2.5 impacts.

23 Q Okay, so I'm not talking about PM2.5.
24 Is this ERC for, for example, sulfur oxides or --
25 and NOx? Or that's leaving the PM2.5 issue aside.

1 A Leaving the PM2.5 issue aside, the ERCs
2 are NOx emission reduction credits that are being
3 provided to satisfy the Bay Area District's
4 requirements for offsets for ozone precursors.

5 Q Okay, so can you explain to me how, if
6 the plant's going to put out NOx emissions, how
7 ERCs from the 1980s are going to reduce the impact
8 of those NOx emissions on the surrounding
9 community in the region?

10 A I did explain that in my opening
11 statement. I'll summarize it again. The ERC
12 program is essentially a large-scale mitigation
13 program managed by the Bay Area Air Quality
14 Management District. It is designed to encourage
15 facility operators to shut down sources or retire,
16 reduce emissions from sources before they're
17 required to do so.

18 And as a result the offset program is
19 designed to stimulate advances in reducing
20 emissions by providing this credit. Those credits
21 are discounted at the time that they are issued,
22 so that, for example, for every 100 pounds of
23 emission reductions that occur, somebody may only
24 get anywhere between 20 and 80 pounds worth of
25 credits.

1 That incentive program is combined with
2 the District's air quality planning process
3 whereby for every 100 pounds of emission reduction
4 credits the District issues, until that credit is
5 surrendered by someone, the District assumes those
6 100 pounds of emissions are continuing into the
7 air.

8 And they still have to demonstrate
9 attainment with state and federal air quality
10 standards with those higher levels.

11 Consequently those emission reduction
12 credits, as I said, are part of a system that
13 makes sure that as new sources are built that air
14 continues to get cleaner.

15 And that's the way in which I believe
16 that it mitigates the project impacts.

17 Q So ERCs are part of federal regulatory
18 program under the Clean Air Act?

19 A They're part of both the state and
20 federal regulatory program under the Clean Air
21 Act.

22 Q And how does that reconcile with CEQA's
23 requirements that you mitigate adverse impacts on
24 the environment?

25 A Well, there are two elements to that.

1 First, with respect to the ERCs that were
2 surrendered to deal with both the NOx and VOC
3 impacts from the project, in that context I think
4 it's appropriate to look at those mitigation --
5 those emission reduction credits as a mitigating
6 project feature. Which is to say the Bay Area
7 District's rules require that mitigation's
8 provided and consequently a basic part of the
9 project design results in no remaining significant
10 impacts for ozone precursor emissions.

11 Looking separately at the question of
12 additional PM2.5 mitigation, clearly the surrender
13 of SOx emission reduction credits to address that
14 concern goes beyond the requirements of the Bay
15 Area District, but it still fits within the same
16 regulatory scheme.

17 Q But it's up to the Commission, the CEC,
18 to make a determination whether those ERCs
19 mitigate the CEQA impacts, not the Air district,
20 isn't that true?

21 A That's correct. And as I said earlier,
22 in numerable proceedings throughout California the
23 CEC has, in fact, found that emission reduction
24 credits, being part of this programmatic
25 mitigation program, are sufficient to mitigate

1 impacts under CEQA.

2 Q Okay, I was going to ask some questions
3 about selective catalytic reduction versus SCNOx
4 emission control technology.

5 Ammonia is used as a reactant in the
6 selective catalytic reduction process, isn't that
7 true?

8 A That's correct.

9 Q And isn't one of the byproducts of that
10 type of emission control the production of what's
11 called ammonia slip out of the stack?

12 A I wouldn't technically call it a
13 byproduct, but, yes, ammonia slip does result from
14 the use of selective catalytic reduction systems.

15 Q And now is there a potential for that
16 ammonia slip to react with other criteria
17 pollutants like NOx, for example, to form what's
18 called secondary formation of fine particulates?

19 A In theory that's true; but as I
20 indicated in my summary statement a little while
21 ago now, the Bay Area has been shown to be, for
22 the most part, ammonia rich. And as a result,
23 changes in ammonia emission rates from projects
24 such as this are not expected to have any
25 significant impact one way or another on PM10

1 formation in the Bay Area.

2 Q Now, the other technology, SCONOx, does
3 it use ammonia as part of the emission control
4 technology?

5 A It uses other chemicals; it does not use
6 ammonia.

7 Q And so it wouldn't produce any ammonia
8 slip, right?

9 A That's correct, it does not produce any
10 ammonia slip.

11 Q And has there been any reported
12 byproduct like the secondary formation of
13 particulate matter associated with the use of
14 SCONOx technology?

15 A It's my understanding that the
16 byproducts associated with SCONOx are generally
17 water pollutants rather than air pollutants.

18 Q And as you stated earlier, -- as you
19 agreed earlier, the Commission's responsible for
20 determining the mitigation for CEQA impacts. If
21 one produces fine particulates and the other
22 doesn't, why didn't the applicants select the more
23 environmentally protective technology?

24 A First of all, I didn't say, and I don't
25 agree with the statement, that one produces more

1 particulates than the other. I believe that the
2 particulate impacts in both systems are
3 essentially the same.

4 The reason why the City selected
5 selective catalytic reduction instead of SCONox
6 largely has to do with concerns about reliability,
7 particularly for a peaking facility that's
8 designed to be available at a very high level and
9 extremely responsive to demands placed upon the
10 City's electrical system.

11 Q Now, are you basically making the same
12 argument that Dr. Greenberg made about the long
13 amount of time for maintenance of the facility?
14 Is that what -- I'm not trying to paraphrase what
15 you're saying, I'm just trying to determine if
16 you're in agreement with what Dr. Greenberg's
17 assessment was.

18 A My concern about reliability may be the
19 same as Dr. Greenberg's; I'm not sure that we ever
20 reviewed the same data.

21 I'm particularly focused on two
22 elements. One was the inability of a SCONox
23 system located at a facility near the Los Angeles
24 Airport to come into compliance with its permit
25 limits after several years of trying. I'm not

1 sure they're in compliance yet. I haven't heard
2 anything about this facility--

3 Q Is that the Vernon facility?

4 A No, it's not the Vernon facility.
5 Vernon's not near the Los Angeles Airport.

6 The second concern relates to a system
7 that's been installed at the City of Redding
8 where, after several years of operation, they have
9 now gotten to the point where the unit has to be
10 shut down and the catalysts removed and cleaned
11 three times per year. Essentially once every four
12 months.

13 Which is, in my mind, an excessive
14 amount of maintenance for a pollution control
15 system, particularly one that was originally
16 intended to require a shutdown and cleaning only
17 once per year.

18 And it's those two issues that lead to
19 my concerns about the appropriateness of using the
20 SCONox system in this particular application.

21 In addition, I'd point out that none of
22 the facilities operating with SCONox anywhere in
23 the country, to the best of my knowledge, are
24 simple cycle units operating with the exhaust
25 temperatures that these units have.

1 Q Do you know how many hours the
2 applicants are projecting this facility to run a
3 year?

4 A The facility is designed to allow a
5 total of 12,000 operating hours for the three
6 units combined.

7 Q That's 12,000 out of approximately 36 --
8 what's the number of hours in a year? It's like a
9 third of the year, right?

10 A No, it's closer to half the year.

11 Q Half the year. So you don't think a half
12 a year is enough time for them to regenerate the
13 catalysts, for example on the weekends if they
14 needed to, during offpeak?

15 A It's not a question of whether that's
16 sufficient time. It's a question of whether you
17 want to take the gamble that the weekend you pick
18 to do the shutdown is going to be a weekend where
19 you're not going to have an upset in the
20 transmission grid leaving you without a reliable
21 backup system.

22 It's not clear to me that if the SCONox
23 system were used and that kind of shutdown
24 frequency was required, that a conclusion would be
25 made that having three units would be sufficient.

1 Q I also heard that they use hydrogen gas
2 as part of the regeneration process, is that true
3 for SCONOX?

4 A Actually when I said there were other
5 chemicals that were used in SCONOX I was thinking
6 of hydrogen. Hydrogen is used for the continuing
7 regeneration; a small amount of natural gas is put
8 through a reformer; hydrogen is generated and that
9 hydrogen is used on a continuous basis to provide
10 regeneration of the catalyst.

11 The reason why that's necessary is that
12 without regeneration the SCONOX catalyst literally
13 has a life of on the order of 10 to 20 minutes.
14 And the hydrogen is used to provide continuous
15 regeneration. And that works until the levels of
16 contamination build up and in which case the
17 catalyst physically has to be removed and
18 literally washed and then retreated.

19 And that's the events that I indicate
20 occurs now with the longest running system in
21 California; and that's a frequency of about once
22 every four months.

23 Q So does this use a large quantity of
24 hydrogen gas?

25 A I'm not sure how you would evaluate

1 whether it's large or not. I'm not sure what kind
2 of number you would be thinking of.

3 Q Is this, I don't know if you know the
4 answer to this, is this part of the Governor's
5 hydrogen highway program in any way?

6 A I'm fairly certain it is not.

7 Q Okay. I wanted -- the next questions
8 are related to the community benefit, the
9 development of community benefit program.

10 A Yes.

11 Q Can you tell me what community member
12 groups participated? You alluded to the fact that
13 there were -- consulted with several community
14 member groups. I was just curious about who
15 you're talking about.

16 MS. SOL : Objection, Your Honor. I'd
17 just like to point out that there is an EJ panel
18 and an EJ community benefits panel that could
19 answer the question. Mr. Rubenstein can answer as
20 far as he knows, but some of the members of the
21 other panel could supplement whatever Mr.
22 Rubenstein has to say.

23 MR. BOYD: Which other panel?

24 MS. SOL : When the environmental
25 justice topic is taken up there is going to be a

1 panel; it's going to include both just straight EJ
2 witnesses and also the people who were involved in
3 the development of the community benefits.

4 HEARING OFFICER FAY: We'll overrule the
5 objection to the extent that Mr. Rubenstein can
6 speak to --

7 MR. BOYD: Whatever he knows, --

8 HEARING OFFICER FAY: -- what he knows.

9 MR. BOYD: -- that's fine.

10 MR. RUBENSTEIN: In exhibit 38, which is
11 the air quality mitigation and community benefits
12 plan, the last page of that document, which is
13 attachment A, is a list of the organizations
14 visited in preparing that plan.

15 I participated in several, but not all,
16 of these meetings. But the list includes open
17 houses held both in Potrero Hill community and
18 Bayview Hunter's Point. It included discussions
19 and presentations to the Bay View Hunter's Point
20 Public Advisory Committee, their health and
21 environment and land use subcommittees, the Bay
22 View Hunter's Point Rotary Club, the Building
23 Owners and Management Association, Central
24 Waterfront environment advisory group; the
25 Department of the Environmental Policy

1 subcommittee; the District 10 Council; the
2 Dogpatch Neighborhood Association, the Potrero
3 Boosters, the Potrero Hill and Dogpatch neighbors
4 open house, the Power Plant task force at a number
5 of different meetings, the San Francisco Planning
6 and Urban Research Association.

7 Public presentations before the Port
8 Commission and the Public Utilities Commission;
9 and Public Utilities Commission Energy Citizens
10 Advisory Committee; the Sierra Club, both their
11 energy committee, subcommittee and the Bay Area
12 Energy Committee meetings. Town hall meeting
13 organized by Supervisor Sophie Maxwell. And
14 presentations before the Southeast Facility
15 Commission and the Southern Waterfront Advisory
16 Committee.

17 Q Can I see those? You talked about that
18 one of the things they were recommending was
19 something about tree planting? Can you describe
20 what actual -- what's being offset by planting
21 trees, as far as the air pollution criteria
22 pollutants, sulfur oxides, PM, anything, what are
23 you offsetting with the tree planting?

24 A I don't believe I indicated that
25 anything was being offset by a tree planting

1 program. I simply indicated that a tree planting
2 program was one of the most often requested
3 mitigation programs during the course of community
4 meetings and workshops.

5 And there are some in the community who
6 believe that the tree-planting programs will
7 provide air quality benefits. But, in any event,
8 the principal reason for the tree-planting program
9 was because it was requested by residents of the
10 community.

11 Q I guess Ronald Reagan wouldn't have
12 agreed with that. How about the indoor air
13 quality program; is that the same issue, basically
14 several of the community groups recommended that
15 as one of the community benefit programs?

16 A That was --

17 Q But on the other hand, you haven't
18 identified that to reduce any actual emissions?

19 A The indoor air quality program, I think,
20 frankly is one of the most effective mitigation
21 measures ever to come before the Commission,
22 because it focuses specifically on pediatric
23 asthma.

24 The requests that I heard from the
25 community weren't articulated as we need an indoor

1 air quality program as much as we need to do
2 something about our children having so much
3 frequency of incidence of asthma.

4 Asthma is -- well, first of all, let me
5 start by saying indoor air quality levels,
6 particularly for pollutants that can exacerbate
7 asthma are typically much higher than outdoor air
8 quality levels, which is why we focused on the
9 indoor air quality program.

10 The program that we're talking about
11 includes providing improved home ventilation
12 systems, both for cooking and bathroom vents;
13 carpet cleaning and/or replacement programs; the
14 purchase or providing of grants or subsidies for
15 advanced cleaning tools for home use, such as
16 hepafilter systems for vacuum cleaners for
17 families that have children that have asthma.

18 As well as increased educational
19 programs so that parents have a better
20 understanding of things they can do to help better
21 protect their children.

22 And roughly \$500,000 of mitigation funds
23 will be used to support this program. I believe
24 someone from the San Francisco Department of the
25 Environment who is going to be on the

1 environmental justice panel will be able to
2 discuss the program in more detail.

3 Q Will any of those two programs last the
4 life of the project?

5 MS. SOL : Sorry, I didn't hear that
6 question.

7 HEARING OFFICER FAY: Will they let the
8 life of the project --

9 PRESIDING MEMBER BOYD: Will they last
10 the life of the project.

11 BY MR. BOYD:

12 Q Will any of those two programs last the
13 life of the project?

14 A I'm not sure I could predict how long
15 the trees will last. And with respect to the
16 indoor air quality program, the hope is that
17 certainly the educational benefits and the quality
18 of life improvements will last for a long time.

19 As I said, we have not attempted to
20 quantify any of the benefits associated with
21 either of those two programs.

22 Q Now, how about the street-sweeping
23 program, did that come out of the community
24 benefit discussion with the community members? Or
25 is that something that applicant developed on

1 their own?

2 A Yes, that also came out of the community
3 discussions and it was one of three or four
4 programs that were ultimately found to meet the
5 objectives of the mitigation program. And was the
6 one that appeared to be the most viable from the
7 technical perspective. And the one for which we
8 could best quantify the emission reductions and
9 thereby address the Energy Commission Staff's
10 concerns, as well as the community's concerns.

11 Q Well, what value is the street sweeping
12 during the PM season, i.e., foggy winter months?

13 A Well, at anytime that you're going to
14 have high dust levels for road traffic it's going
15 to provide a benefit. And the impacts of rainfall
16 in terms of dampening streets are maybe three or
17 four days. Consequently, you know, in between
18 rainstorms the program is going to be effective.

19 In addition, by maintaining the streets
20 at a lower dust level you're going to insure that
21 year-round the PM10 and PM2.5 levels are going to
22 be reduced to the extent possible.

23 Q Now, my question is, I heard you mention
24 that there's now -- there's going to be, one of
25 the community benefit programs is going to be a

1 wood stove program, which is something new. Is
2 that -- can you describe that in more detail, what
3 level of reductions you're attempting to achieve
4 with the wood stove program?

5 A Actually it's not new. It was one of
6 the programs that was included in the original
7 list of 47 that were discussed at the various
8 community workshops and meetings. It was also one
9 of the final four candidates that the City
10 identified as satisfying its criteria.

11 This measure was selected by the Energy
12 Commission Staff to address their additional
13 concerns regarding PM2.5 benefits. And the City
14 agreed to a condition of certification requiring
15 this program, provided the use of emission
16 reduction credits was available as a backup.

17 Q Now, in your opinion, of the four
18 programs that now we've mentioned, the tree
19 planting, the indoor air quality, the street
20 sweeping and the wood stove program, which, in
21 your opinion, would be the most effective in
22 meeting the Commission's duties to mitigate the
23 impacts of the PM emissions from the project?
24 Which of those four would be the most effective
25 program?

1 A I'm not sure I could answer that
2 question because you've asked me to assess what
3 the Commission's duties --

4 (Public Address Announcement.)

5 HEARING OFFICER FAY: Okay, let's go
6 back on the record.

7 MR. BOYD: He was trying to answer.

8 HEARING OFFICER FAY: Do you have the
9 question in mind?

10 MR. RUBENSTEIN: I do. And as I said, I
11 don't think I can answer the question as it was
12 posed, because it's asking me to put myself in the
13 role of deciding what the Commission's
14 responsibilities are under CEQA with respect to
15 mitigation.

16 You know, in terms of which program I
17 think is simply the most effective from an overall
18 perspective of air quality public health there's
19 no doubt in my mind that it's actually the indoor
20 air quality program. But I recognize that from a
21 regulatory perspective it's simply very difficult
22 to quantify benefits in a way that would enable
23 the Commission to document that impacts have been
24 mitigated.

25 And so, you know, while I think

1 personally and professionally that the indoor air
2 quality programs are the most effective, I think
3 that the combination of programs, the street-
4 cleaning program as the primary mitigation
5 measure, and then the combination of the wood
6 stove and fireplace retrofit program with a backup
7 of emission reduction credits, that combination
8 probably represents the package that best
9 addresses the Commission's need to not only
10 achieve real mitigation, but also to be able to
11 document and quantify the benefits that are
12 achieved.

13 BY MR. BOYD:

14 Q My final question is did the City
15 consider any diesel vehicle retrofits or diesel
16 conversion to natural gas retrofits as an
17 alternate community benefit program?

18 A Yes. The City considered a number of
19 those amongst the 47 mitigation measures that were
20 evaluated in detail.

21 Q And did you have a opportunity to
22 evaluate the effectiveness of that type of offset?
23 Or they were just like picking and choosing, and
24 then told you which ones to evaluate?

25 A No, I participated in the evaluation.

1 The evaluation was based on a number of criteria.
2 Effectiveness was only one of the measures.

3 The objectives of the mitigation program
4 are set forth in exhibit 38 and we used those in
5 the context of a matrix of mitigation measures.

6 And those objectives included providing
7 an air quality benefit in the communities affected
8 by the project; the ability to provide
9 quantifiable emission reductions and track the
10 benefits; the capability of the City to implement
11 the mitigation measure; technical feasibility of
12 the measure; the uniqueness of the measure,
13 meaning showing that the measure was not
14 duplicative of existing local, state or federal
15 control programs; and the cost effectiveness.

16 And in that context none of the diesel
17 reduction programs managed to pass all of those
18 tests.

19 Q Okay, thank you.

20 MR. BOYD: I'm done.

21 HEARING OFFICER FAY: Okay. Mr. Sarvey,
22 you have some questions of the witness?

23 MR. SARVEY: Yes, I do.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q Mr. Rubenstein, I'd direct your
4 attention to page 8.13-4 (sic).

5 A Of what document?

6 Q Of the supplement A, exhibit 15.

7 A I'm sorry, can you tell me the page
8 number again?

9 Q 8.1-34.

10 A Thank you. Okay, I have that page in
11 front of me now.12 Q Okay. On that page of your testimony
13 you state that the meteorological data used in
14 this analysis were collected at the Potrero Power
15 Plant monitoring station adjacent to the project
16 site. This data set was selected to be
17 representative of meteorological conditions at the
18 site, and to meet the requirements of the USEPA.19 I'm a little confused here. This power
20 plant isn't adjacent to the Potrero Power Plant
21 site, is it?22 A In the context of meteorological data,
23 if it's not literally adjacent it's very very
24 close.

25 Q That wasn't just a mistake in your

1 testimony carried over from the previous AFC?

2 A You know, it might have been. But,
3 again, in the context of meteorological data, the
4 fact that this is now literally blocks away
5 doesn't have any significant bearing on the
6 validity of that statement or its analysis.

7 Q And you say blocks away. My
8 understanding it's like .4 miles, is that correct?

9 A Yeah, further down on that page it
10 indicates that it's less than half a mile away.

11 Q Okay. So on page 8.1-5 of your
12 testimony you state that the data shows that on
13 the average the state and federal ozone air
14 quality standards have not been exceeded in the
15 area in the past ten years.

16 Were you aware that on October 12, 2004
17 the Bay View monitoring station recorded a one-
18 hour state violation?

19 A Are you referring to the Bay Camp
20 monitoring station?

21 Q The Bay View Hunter's Point, San
22 Francisco Hunter's Point monitoring station. I'm
23 handing you a printout from the Air Resources
24 Board.

25 A I'm sorry, is there some document in

1 particular you're trying to refer to?

2 Q Yeah.

3 A Okay, now that I have that in front of
4 me, can you restate your question?

5 Q Were you aware that on October 12, 2004
6 the Bay View monitoring station recorded a one-
7 hour state violation?

8 A At the time that I prepared supplement A
9 I'm not sure that I was aware of that, because I'm
10 not sure the 2004 data were available yet.

11 Q Do you know of any other one-hour ozone
12 violation that's occurred in the project area in
13 the last ten years?

14 A I'd have to take a look at more data
15 that I have available in front of me to make that
16 statement. One thing that I do know is that on
17 the table that you handed out in the notes section
18 it indicates that an exceedance is not necessarily
19 a violation. So the fact that there was one
20 measurement at .096 ppm does not, in and of
21 itself, indicate a violation. I'd have to look
22 further to see whether that was the case or not.

23 Q Is that the highest measurement recorded
24 in the last ten years in the project area?

25 A The .096 value?

1 Q Yeah.

2 A I don't know because I haven't taken a
3 look at, at least not recently, at the other data
4 that was collected in 2005.

5 Q Now, attached to that document that I
6 gave you there's PM2.5 daily maximum average
7 values that I submitted as an exhibit.

8 A Um-hum.

9 Q And is it clear to you that the monthly
10 average at the San Francisco Hunter's Point
11 monitoring station is higher than the San
12 Francisco station on all four months?

13 A For this one statistic and for just
14 these four months that would have been the case.

15 Q So do you have any data that refutes the
16 assertion that the air quality at San Francisco's
17 Hunter's Point is worse than at the Arkansas
18 Street monitoring station?

19 A I'm sorry, are you asking me if I have
20 any data?

21 Q Yeah, earlier you said that you felt
22 that the sites were comparable. My testimony is
23 that the average monthly value of PM is higher at
24 San Francisco's Hunter's Point as opposed to the
25 Arkansas Street. And I was asking if you had any

1 data to refute that assertion?

2 A I do, and the only reason I'm hesitating
3 is we've not provided any detailed analyses that
4 are in the record. But the answer is yes, I do
5 have data that show, for example for one-hour SO2
6 impacts, for one-hour NO2 impacts, for one-hour CO
7 impacts, for eight-hour CO impacts, for annual NO2
8 impacts, for all of those pollutants, and annual
9 PM10 impacts, for all of those pollutants the
10 Arkansas Street readings are higher than at Bay
11 View Hunter's Point.

12 As well as for a number of parameters
13 and pollutants the reverse is true. And when I
14 take a look at all of the data my conclusion is
15 that the two stations are generally showing
16 consistent results.

17 Q And what pollutant have you found in
18 your analysis here that actually provides an
19 impact to the Bay View and the Potrero
20 communities? Was it CO?

21 A I'm sorry, I didn't understand the
22 question.

23 Q What pollutant in your analysis have you
24 decided actually exceeds state or federal
25 standards and provides an impact to these

1 communities? Is it CO, NO? Or is it PM2.5?

2 A Well, it's not PM2.5 because there
3 haven't been any recorded violations of PM2.5 air
4 quality standard for some time. So I'm not quite
5 sure of the context of your question.

6 Q Okay, I'll move on. Now, the first
7 handout I gave you from the top four hourly ozone
8 measurements, California Air Resources Board, the
9 ozone violation occurred October 12th. Is that in
10 the ozone season?

11 A In the Bay Area that's probably at the
12 very tail end of the ozone season.

13 Q Okay. And the coverage here on that
14 year was 23 percent of the year, is that correct?

15 A Twenty-three percent of the year for
16 that particular monitoring station.

17 Q Okay, thank you. In appendix 8.1B, --

18 A I'm sorry, 8.1?

19 Q Appendix 8.1B, which is your modeling
20 analysis.

21 A Yes.

22 Q Why are you using wind data from 1992
23 for the Potrero Power Plant and not some more
24 recent data?

25 A I don't believe that there were any more

1 recent meteorological data that met EPA and
2 District requirements in terms of quality and
3 completeness.

4 Q There wasn't any at the Arkansas Street
5 monitoring station?

6 A I'm fairly certainly that the Bay Area
7 District does not collect modeling quality
8 meteorological data at the Arkansas Street
9 station.

10 Q So, your testimony is there weren't more
11 current years available?

12 MS. SOL : Asked and answered, Your
13 Honor.

14 HEARING OFFICER FAY: Well, I'd like to
15 get that clarified. I'm not sure he precisely
16 answered it.

17 MR. RUBENSTEIN: Recent is not the only
18 criteria. The data have to be, and in fact, in my
19 professional opinion, recent isn't very much of a
20 criterion. The data have to be complete and meet
21 EPA and District quality criteria. And I don't
22 believe that there were more any -- let me restate
23 that again -- I don't believe that there were any
24 more recent meteorological data sets that met
25 those criteria that were available at the time we

1 prepared this application.

2 BY MR. SARVEY:

3 Q In terms of complete, isn't it normal to
4 use three years of meteorological data in an
5 analysis?

6 A Actually if available the recommended
7 guidance is that you use five years of
8 meteorological data. But the data are supposed to
9 meet completeness criteria, which are -- I'm doing
10 this from memory -- some were between 90 and 95
11 percent coverage for the entire year, which is a
12 fairly stringent data quality requirement that
13 most MET data collection programs cannot meet.

14 Q And you used only one year of
15 meteorological data in your analysis, is that
16 correct?

17 A My recollection is that the data
18 collection at Potrero was part of a special study
19 that was conducted by the plant owner at that
20 time. And I don't believe they collected a
21 multiyear data set. But I'm not certain of that.

22 Q So it was just one year, then?

23 A So what was just one year?

24 Q You only used one year of meteorological
25 data, is that correct?

1 A I believe that's correct, yes.

2 Q Okay. Did you use the 1992 data because
3 it yielded the best results for your project?

4 A No.

5 Q Looking at your wind speed data on page
6 B1 of appendix 8.1B, the wind speeds during the
7 first quarter are less than 2 miles an hour over
8 50 percent of the time. Is that conducive to
9 PM2.5 formation?

10 A I don't think that wind speeds, per se,
11 have any relevance with respect to PM2.5 formation
12 one way or another. Lower wind speeds will result
13 generally in lower emissions of dust, if you will,
14 but i'm not recalling any mechanism through which
15 wind speed plays a role in how PM2.5 is formed in
16 the atmosphere.

17 Q Then the highest levels of PM2.5 don't
18 occur in stagnant conditions, is that what you're
19 saying?

20 A That is not what I'm saying. You asked
21 a question specifically about wind speeds and
22 their relationship to PM2.5. PM2.5 levels in the
23 San Francisco Bay Area are typically highest in
24 the wintertime, and to the best of my recollection
25 the meteorological condition that most influences

1 that is the inversion height rather than the wind
2 speed.

3 As it happens, the lower inversion
4 heights in the Bay Area are well correlated with
5 low wind speeds, so that they both tend to occur
6 at the same time. But, the higher concentrations
7 are largely driven by the inversion height and not
8 by the wind speed.

9 Q On page B-5 in appendix 8.1B, you have a
10 picture of a large Muni maintenance building next
11 to the SFERP. Can you tell me how close that
12 building is to the SFERP fenceline?

13 A Not off the top of my head. Not without
14 getting out a ruler.

15 Q In table 8.1B-3 you list some model
16 impacts but you failed to identify what that
17 pollutant is, or could you tell me what that table
18 refers to?

19 A Are you referring to the table at the
20 top?

21 Q Yes, the very top table, 8.1B-3.

22 A The table at the very top of -- table
23 8.1B-3 has a number of tables embedded in it. The
24 table at the very top --

25 Q The very top is the one. I'm sorry.

1 A -- is a table showing the unit impacts.
2 And that's a metric used in dispersion modeling
3 that is independent of pollutant.

4 Q So that doesn't --

5 A The impacts for the individual
6 pollutants are shown further down on the same
7 page.

8 Q Okay. In your table further down the
9 page it appears that at low loads your emission
10 concentrations are much higher, is that correct?

11 A No, I wouldn't agree with that as a
12 general statement. Sometimes they're higher,
13 sometimes they're lower.

14 Q Okay. During startups and shutdowns is
15 the dispersion of contaminants not as high as it
16 is during normal full-load operation?

17 A For these turbines that's probably a
18 correct statement.

19 Q Okay. In appendix 8.1A, page B-19,
20 would you turn to that, please.

21 A I'm sorry, did you say appendix 8.1A?

22 Q B-19, page B-19 of appendix 8.1. I
23 guess that would be 1B, I'm sorry, I apologize.
24 Exhibit 15.

25 Now that has your 24-hour average PM10

1 concentrations for the SFERP, that's correct?

2 A That's correct.

3 Q There's no isopleth on that page like
4 there is on the other page. Is there a reason
5 that that's not there?

6 A I'm not sure I understand your question
7 because I'm looking at the page you're referring
8 me to and I see isopleths there.

9 Q The ones that were given us and the ones
10 that are on the website -- here, I'll hand you my
11 page so you can take a look at it.

12 A Oh, B-19.

13 Q Yes.

14 A I'm sorry, I was on the wrong page.
15 Yes, the reason why there are no isopleths there
16 is because all of the impacts for this particular
17 case were below 2 mcg/cubic meter. That's shown
18 at the bottom of -- in the paragraph that's at the
19 bottom of the graphic.

20 Q So, that was the reason you didn't put
21 any isopleths on there?

22 A Yes, all of these charts have the same
23 scale, and in order to enable an easy comparison
24 between the different cases that are being
25 evaluated and the impacts from SFERP by itself

1 were so low that there were no isopleths generated
2 on the scale.

3 Q So, could you turn back to page B-17.
4 On that page you seem to have isopleths. Is there
5 a reason there's isopleths on this one and not the
6 other one?

7 A This is the same chart but with the
8 isopleths presented. The chart on page B-19 is
9 part of a series that is looking at different
10 combinations of power plant operations.

11 Q So, on page B-19 how are we supposed to
12 know where the highest impacts occur from the 24
13 hours PM10 concentration?

14 A Well, for this particular case of the
15 project alone you would know that by flipping back
16 two pages and looking at page B-17.

17 Q Okay. And then at the bottom of that
18 page you said the highest modeled concentration is
19 less than 2 mcg/cubic meter, that's correct?

20 A On page B-17 it's more specific. It
21 indicates that it's 1.2 mcg/cubic meter.

22 Q Okay. Could you turn to page B-21 for
23 me, please. That figure is 24-hour average PM10
24 concentrations for the Potrero 3 unit?

25 A Yes.

1 Q You don't have any isopleths on that
2 one, either. Is there a reason for that?

3 A Yes. Because for this scenario, which
4 is looking only at Potrero unit 3, the highest
5 model impacts are also less than 2 mcg/cubic
6 meter.

7 Q Can you tell me where the highest
8 impacts occur from that Potrero 3 unit?

9 A You're referring to the highest 24-hour
10 average PM10 impacts?

11 Q Yes, sir.

12 A Sorry?

13 Q Yes, sir.

14 A No, I can't from the material that I
15 have here.

16 Q Okay, so you don't have any copies in
17 color with isopleths so the Committee and the
18 public can compare the PM2.5 impacts of the
19 Potrero project to the SFERP?

20 A This is not the Potrero project that is
21 the subject of this graph --

22 Q Potrero 3, excuse me, Potrero 3.

23 A It's only one of the four generating
24 units at Potrero.

25 Q Okay.

1 A It's only Potrero 3.

2 Q And then at the bottom of both isopleths
3 it states that PM2.5 concentrations, and that'd be
4 isopleth on B-21 and B-19 that PM2.5 is less than
5 2 mcg/cubic meter, is that correct?

6 A That's correct.

7 Q Okay, so ---

8 A The notes at the bottom of both of those
9 pages say that.

10 Q So the maximum 24-hour PM2.5 impacts from
11 these projects are similar?

12 A No. They're both less than 2 mcg/cubic
13 meter at the peak on a 24-hour average basis.

14 Q All right. Now, according to your
15 testimony, and this is in the purpose and need
16 section, and I'm assuming it's your testimony, it
17 says that the Potrero project emits less PM2.5 per
18 megawatt than the SFERP, is that correct?

19 MS. SOL : Can you point us to where in
20 the testimony you're referring to, please?

21 MR. SARVEY: Sure. Yeah, I can do that.

22 BY MR. SARVEY:

23 Q On page 3-7 of the purpose and need
24 you've got a section entitled the SFERP will
25 facilitate the reduction of NOx emissions and

1 thereby reduce other environmental effects and
2 support environmental justice.

3 A Yes, I see that statement, but I don't
4 see the statement that you made asking your
5 question.

6 Q Well, the question, I'll ask you again,
7 is the Potrero unit 3 emits less PM2.5 per
8 megawatt than the SFERP, is that correct?

9 A As I believe is discussed in the
10 paragraph on the very next page, the pounds per
11 megawatt hour numbers for Potrero 3 are the actual
12 average emissions from that unit; whereas the PM10
13 pounds per megawatt hour from SFERP are the
14 maximum potential emissions.

15 On a pounds per megawatt hour basis I
16 expect that the two units, in fact, would be
17 roughly comparable because the SFERP emissions
18 particulates would be much lower than the maximum
19 allowable.

20 Q Do you have any data supporting that?

21 A Actually, it's my recollection, Mr.
22 Sarvey, that you provided some of my data
23 supporting that conclusion --

24 Q The data I provided --

25 A -- in comments that you --

1 Q -- doesn't support that.

2 A -- I'm sorry, could I finish answering
3 the question?

4 Q I'm sorry, I apologize.

5 A I believe that you provided some of my
6 data supporting that conclusion in your comments
7 submitted to the Bay Area District on the PDOC
8 last year when you encouraged them to reduce the
9 particulate levels from 3 down to 2.5 pounds per
10 hour.

11 Q And as the air quality expert for the
12 Los Esteros project, didn't you request that the
13 Los Esteros project be, the PM2.5 emission limit
14 be increased from 2.5 to 3, is that correct?

15 A I had made that proposal initially
16 because of one set of test results and the desire
17 by my client in that proceeding to be more
18 conservative in terms of risk.

19 However, as I believe you're well aware,
20 that request was withdrawn and the project was
21 ultimately approved based on a 2.5 pound per hour
22 emission rate. And it was that project and that
23 approval that was the basis of your letter to the
24 Bay Area District in this proceeding seeking a
25 lower emission rate, as well.

1 In any event, notwithstanding what the
2 permit limits are, it's my opinion that
3 particulate emission levels from units of this
4 type are generally well under 1 pound per hour,
5 which is the basis for my conclusion that the
6 pounds per megawatt hour of PM10 from SFERP would
7 be about the same or perhaps lower than those from
8 Potrero 3.

9 Q Well, I'll ask you one more time. Do
10 you have any data that you could show us that
11 would prove that?

12 MS. SOL : Asked and answered, Your
13 Honor.

14 MR. SARVEY: Okay, I withdraw it.

15 HEARING OFFICER FAY: Sustained.

16 MR. SARVEY: I withdraw it.

17 BY MR. SARVEY:

18 Q Since you performed your analysis on the
19 cooling tower emissions, the water source has
20 changed. Did you revise your analysis to reflect
21 that change?

22 A I have to confess I'm not remembering
23 the answer to that question. I'd have to double
24 check. I do remember that the water source
25 changed. It's my recollection that we did look at

1 that and concluded that the previous analysis was
2 sufficiently conservative, but I'd need to double
3 check that before I could make that statement
4 affirmatively.

5 Q Do you recollect how the TDS of the
6 reclaimed water for the new water supply compares
7 to the TDS of the old water supply?

8 A Not off the top of my head, I don't.

9 Q Okay. The Energy Commission's asserted
10 the salinity of the new water supply is higher.
11 Do you agree with that?

12 A I don't have any knowledge one way or
13 another in whether the salinity is higher or not.
14 It doesn't necessarily equate to whether the
15 original analysis we did, based on a specified TDS
16 level, remained conservative. And the reason is
17 that another element that goes into our analysis
18 is the cycles of concentration for the water in
19 the cooling tower.

20 Q On page 8.1-21 of your testimony on LORS
21 for this project, you mention the San Francisco
22 Board of Supervisors ordinance number 124-01, and
23 resolutions 827-02 and 458-03. Are you familiar
24 with those ordinances?

25 A I'm sorry, I'm still trying to find the

1 page. What page were you referring to?

2 Q I'm sorry, 8.1-21. Exhibit 15.

3 A Yes, I see that now. So could you
4 restate your question for me, please?

5 Q Sure. On page 8.1 of your testimony, -
6 21, on LORS for this project you mention the Board
7 of Supervisors ordinance 124-01, resolutions 827-
8 02 and 458-03. Are you familiar with those
9 ordinances?

10 A In general I am, yes.

11 Q Okay. In the Maxwell ordinance what are
12 the requirements to the siting of new generation
13 in southeast San Francisco?

14 A I'd need to review the ordinance again
15 to refresh my memory. We have another witness on
16 the environmental justice panel who is more
17 familiar with the ordinance than I am. So if
18 you'd like I can go ahead and summarize it, but it
19 may be better to put that question over to another
20 witness.

21 Q Well, if she's here I'm willing to have
22 her come up and explain it.

23 MR. RATLIFF: Mr. Fay, as a point of
24 order I know that the Maxwell ordinance is multi-
25 paragraphs and I would like to, you know, the hour

1 given what it is, and the fact that we have
2 another panel waiting to testify, could I just
3 suggest that we let the ordinance say what it says
4 and ask questions about the ordinance, if there
5 are any that are relevant. And not, you know,
6 waste a lot of time reading the ordinance.

7 HEARING OFFICER FAY: Yeah, I think
8 that's valid. Mr. Sarvey, let's just cut to the
9 chase on these questions, okay?

10 MR. SARVEY: Okay, sure.

11 HEARING OFFICER FAY: We're not playing
12 got-you. We want to develop information.

13 MR. SARVEY: Okay.

14 BY MR. SARVEY:

15 Q In the Maxwell ordinance does it require
16 that real-time emission reductions are to be
17 advocated by City officials over ERCs, is that
18 your understanding of it?

19 MS. SOL : Mr. Sarvey, maybe you can
20 point us to where in the Maxwell ordinance it
21 states that.

22 MR. SARVEY: I'm just asking him if that
23 is his understanding of it.

24 MS. SOL : Well, I agree with Mr.
25 Ratliff that the ordinance says what it says. The

1 interpretation of the ordinance is a legal
2 conclusion.

3 MR. SARVEY: Okay. Well, actually my
4 interpretation comes out of your prehearing
5 conference statement for the Potrero 3 project.
6 I'm assuming you're going to object if I try to
7 bring that up. So, that's why I'm trying to get
8 his -- the information from him rather than go
9 through multiple objections over the content of
10 that.

11 HEARING OFFICER FAY: Why don't you just
12 ask what his recommendation to his clients is in
13 terms of implementing the Maxwell plan?

14 MR. SARVEY: Well, Mr. Fay, his
15 testimony is that this project complies with all
16 ordinances and regulations, and if he doesn't know
17 the ordinances and regulations, how can he make
18 that statement?

19 HEARING OFFICER FAY: Well, there's lots
20 of ordinances, you know, --

21 MR. SARVEY: Pardon me?

22 HEARING OFFICER FAY: Let's be
23 realistic. You're putting him on the spot here,
24 for one. If you think that's important we'll take
25 the time for him to look at it.

1 MR. SARVEY: Would you like me to move
2 on? I'll take that up in environmental justice
3 with the appropriate witness, is that what you're
4 recommending?

5 HEARING OFFICER FAY: I'm not sure it's
6 an environmental justice issue. This is --

7 MR. RATLIFF: Well, it may or may not
8 be, but it isn't a LORS issue because the Maxwell
9 ordinance, by its own terms, applies to the City,
10 itself. I mean it's not -- it's an ordinance
11 which the City will enforce if, in fact, it's
12 abridged.

13 So when they go to the Board of
14 Supervisors with this project, I suppose the
15 Maxwell ordinance will be enforced.

16 MS. SOL : And I'll point out that in
17 addition the precise words of the ordinance are
18 that relate to fossil fuel powered generation at
19 Potrero Hill Power Plant. The City has
20 acknowledged that the general precepts are ones
21 that the City would like to meet. But the
22 specific directives relate specifically to a power
23 plant, a fossil fuel power plant at Potrero Hill
24 Power Plant.

25 MR. SARVEY: Well, I guess we're going

1 to engage in a legal argument --

2 HEARING OFFICER FAY: Okay, let's move
3 on.

4 MR. SARVEY: -- so I'll move on.

5 HEARING OFFICER FAY: Let's move on.

6 BY MR. SARVEY:

7 Q On page 8.1-1 of your testimony you
8 state that the City recognizes that there will be
9 PM10 impacts from the SFERP in both Potrero and
10 Bay View Hunter's Point, is that correct?

11 A 8.1-10?

12 Q Yeah, 8.1-1.

13 A Sorry.

14 (Pause.)

15 MR. RUBENSTEIN: Yes, I see that
16 sentence in there.

17 BY MR. SARVEY:

18 Q Okay. In your cumulative analysis in
19 appendix 8.1F you use background data from 2000 to
20 2003 from the Arkansas Street monitoring station,
21 is that right?

22 A You're referring to the cumulative
23 impacts analysis?

24 Q Yeah, it's in table 8.1F-4 as a
25 footnote.

1 A Yeah, the column called current
2 background comes from that data source from 2001
3 to 2003.

4 Q Okay, thank you. On July 25, 2005 you
5 responded to my data request 1-4 which requested a
6 copy of CEQA documents on the Illinois Street
7 bridge. In response to my request you sent me the
8 Board of San Francisco southern waterfront EIR,
9 which you list as attachment AQ1-4A and addendum
10 AQ1-4B. And that's this document I'm holding
11 here.

12 Did we have an exhibit number for that?

13 HEARING OFFICER FAY: No. Identify it
14 again for me.

15 MR. SARVEY: It's the San Francisco
16 southern waterfront final supplemental
17 environmental impact report.

18 HEARING OFFICER FAY: Okay. For
19 identification that's exhibit 92.

20 MR. SARVEY: 92, okay.

21 HEARING OFFICER FAY: Will you provide a
22 copy of that, or is this just for identification?

23 MR. SARVEY: I'll get you a copy. I
24 only have one and I'm going to need it to --

25 HEARING OFFICER FAY: At least give us a

1 note on the exact title.

2 MR. SARVEY: I've got the CD of it,
3 which is what they gave me, but I had to --

4 HEARING OFFICER FAY: Well, I just need
5 the exact title in writing.

6 MR. SARVEY: I'll get you a copy. Okay.

7 BY MR. SARVEY:

8 Q So, in data request 1-6 I asked you to
9 perform a cumulative air analysis of all the
10 project's emissions and discuss the environmental
11 justice implications of these project in
12 conjunction with the SFERP. You didn't perform a
13 operational cumulative air quality analysis, did
14 you?

15 A That's not correct. We performed a
16 number of cumulative air quality impact analyses
17 related to project operations. I summarized those
18 in my testimony summary much earlier this
19 afternoon.

20 Q Okay. Well, I'll restate that question.
21 In the San Francisco southern waterfront final
22 supplemental EIR, which the SFERP is located in
23 the middle of, did you include in your cumulative
24 analysis any of the projects that are listed in
25 there from this document that you gave me? You

1 said you did perform a construction analysis.

2 A I'm sorry, I'm now confused again about
3 your question. Are you asking whether we did an
4 analysis that included the operations of the
5 Illinois Street bridge and the Muni maintenance
6 facility?

7 Q Well, specifically the Muni maintenance
8 center, the Illinois Street bridge, Pier 70,
9 Mission Valley Rock, Boady Gravel, RMC Pacific,
10 IST Resources, BP Aggregates and the additional
11 emissions from the Port's expansion of marine and
12 train emissions.

13 A Okay, because in the context of data
14 request 1-6 you were asking something completely
15 different.

16 Q No, no, I wasn't. You answered
17 something completely different.

18 A Well, if I can --

19 Q I tried to compel that analysis later on
20 but was denied by the Committee. But did you
21 include any of those projects that I just listed?

22 A No.

23 Q Okay. Now, in my hand is page 166 of
24 the southern waterfront SEIR. Under significant,
25 unavoidable effects, and that's dealing with those

1 projects that I listed to you. Do you have that
2 in your hand?

3 A No, I do not.

4 Q Could you read that into the record for
5 me?

6 MS. SOL : Your Honor, I don't see why
7 we should take the time to read something into the
8 record.

9 HEARING OFFICER FAY: Yeah, let's
10 just --

11 MR. SARVEY: Okay, well, it's --

12 HEARING OFFICER FAY: -- we all have a
13 copy of that; you've referred to it. Move along.

14 MR. SARVEY: It says the project would
15 contribute to a potentially significant cumulative
16 regional impact on air quality. And because daily
17 and annual volumes of criteria pollutants --

18 HEARING OFFICER FAY: We said we won't
19 read it. You can ask your questions, Mr. Sarvey.

20 MR. SARVEY: Okay.

21 BY MR. SARVEY:

22 Q So the conclusion of the EIR is that it
23 will have a significant cumulative impact on air
24 quality. Shouldn't you have included that in your
25 cumulative analysis, since this project is smack

1 dab in the middle of all these other projects?

2 A Well, first of all, from this one page I
3 can't tell what the project is that was being
4 addressed, whether it was all of the developments
5 within the southern waterfront SEIR or just one of
6 the specific projects that it looked at.

7 In any event, the cumulative impacts
8 analysis that we used relied on information we
9 obtained from the Bay Area Air Quality Management
10 District who provided us with information about
11 applications for projects that it had received
12 subsequent to the time period covered by the
13 ambient air quality data that we used.

14 And the use of any other information
15 regarding other projects identified in this
16 southern waterfront EIR, which was, I believe, a
17 programmatic EIR, would have been too speculative
18 for us to actually quantify and include in a
19 quantitative analysis what the impacts would be.

20 In addition, this particular page and
21 this one paragraph that you've handed to me talks
22 specifically about diesel particulate as being the
23 source of the conclusion that impacts are
24 significant and SFERP is not a source of diesel
25 particulate matter except for a short period

1 during construction.

2 And then finally, with the mitigation
3 program we've proposed, recognizing that the
4 document you've handed to me is very specifically
5 referring to PM10, I'd simply restate what I said
6 earlier, which is that we are mitigating our PM10
7 impacts by roughly a factor of two.

8 It's quite possible that we're
9 mitigating the impacts from their project, as
10 well. I don't really know.

11 But in any event, we are certainly
12 mitigating our project, I believe, sufficiently to
13 where there would not be any remaining cumulative
14 impact, as well as no significant impact from the
15 project alone.

16 Q The next page I have here is page D.7 of
17 the appendix from the southern waterfront SEIR.
18 And it outlines the 24-hour average for a total
19 PM10 for Port and industry group projects. Is
20 that specific enough data for you to do a
21 cumulative analysis?

22 MR. SARVEY: I'll withdraw the question.

23 BY MR. SARVEY:

24 Q In your preparation of your cumulative
25 air analysis did you speak to the applicant about

1 projects that they were pursuing in the project
2 area?

3 A As I've indicated earlier, the approach
4 we took for cumulative impacts was to prepare a
5 protocol that was submitted with the original
6 application for this project. And then comply
7 with that protocol.

8 And that protocol specifically
9 identified consultations with the Bay Area Air
10 Quality Management District regarding reasonably
11 foreseeable projects of a type that might result
12 in cumulative air quality impacts.

13 So we did not separately contact the
14 City and County of San Francisco. Instead relying
15 on any data we obtained from the Bay Area District
16 to indicate whether there were facilities that
17 warranted inclusion in the cumulative impacts
18 analysis.

19 Q What's the typical amount of time it
20 takes for the startup and shutdown of these
21 turbines?

22 A I assume that your question is referring
23 to a routine startup, is that correct?

24 Q Yes.

25 A Depending on the conditions of the

1 turbine, typically that would be anywhere from 15
2 to 30 minutes between the time that fuel flow is
3 initiated to the turbine and when the turbine is
4 producing electricity in compliance with its
5 emission limits.

6 Q In your testimony in the overview of the
7 analytical approach to estimating facility impacts
8 on page 8.1-21 is it true that emission control
9 systems will not be fully operational during all
10 operations except startups and shutdowns?

11 A I'm sorry, there were too many negatives
12 in your question. The statements --

13 Q I'm sorry, I'll restate it for you.
14 There was a few too many negatives. That was
15 triple negatives.

16 In your testimony on the overview of
17 analytical approach to estimating facility
18 impacts, and that's on page 8.1-21, you state that
19 emission control systems are not fully operational
20 during startups and shutdowns, is that correct?

21 A No. What I state is that emission
22 control systems will be fully operational during
23 all operations except startups and shutdowns.

24 Q Okay. So, the gist of the question is
25 that they're not fully operational during startups

1 and shutdowns, that's correct?

2 A Right. They're not fully operational --

3 Q Okay.

4 A -- during startups and shutdowns.

5 Q How do startups and --

6 HEARING OFFICER FAY: Let's go off the
7 record a second.

8 (Off the record.)

9 BY MR. SARVEY:

10 Q How do startups and shutdowns affect
11 fuel usage? Do they use more fuel during startup
12 and shutdowns or less?

13 A On an absolute basis, fuel use during a
14 startup is lower than fuel use during baseload
15 operation.

16 Q Okay. So your annual facility operation
17 will be limited to the equivalent of 12,000 full
18 load hours per year through annual heat input
19 limit. Does this mean the project could run more
20 than 12,000 hours if fuel usage is lower than the
21 fuel usage for the 12,000 full load hours?

22 A It means that it could operate for more
23 than 12,000 calendar hours provided it was in
24 compliance with all of its emission limits and the
25 annual heat input limit.

1 Q You calculated maximum annual emissions
2 for this operations using a four hours as a
3 maximum number of hours for startup and shutdowns,
4 is that correct?

5 A We calculated the maximum expected daily
6 emissions based on an assumption of four hours per
7 day of startups and shutdowns, that's correct.

8 Q Doesn't the FDOC allow you five hours of
9 startup and shutdown?

10 A Yes, it does.

11 Q Why would this project need five hours
12 of startup and shutdown if the turbine can start
13 up and shut down in 15 minutes?

14 A Well, first of all, the question you
15 asked me earlier was what the typical startup and
16 shutdown sort of duration was, and I answered that
17 it was 15 to 30 minutes, not 15. That can vary
18 substantially depending on the condition of the
19 engine in terms of how long it's been shut down
20 prior to the startup, as well as other factors.

21 Whether a facility requires five hours
22 per day for startups or not for each unit is
23 frankly irrelevant from an air quality
24 perspective. We had done our analysis based on
25 four hours. The District added an additional

1 measure of conservatism by bumping that up to five
2 hours per day.

3 Both analyses show compliance with the
4 District's rules. And so in terms of the air
5 quality analysis there's really no difference
6 between the two.

7 Q Has the FDOC eliminated the annual
8 limitation of 250 hours per year of startup and
9 shutdown activity?

10 A I don't believe that there is a limit on
11 the number of annual hours of startups and
12 shutdowns in the permit -- in the final
13 determination of compliance.

14 Q Is there a limit on the number of
15 startups and shutdowns annually?

16 A I'm not seeing one. I believe there is
17 just a limit on the annual emissions and the
18 annual fuel consumption.

19 Q So startups and shutdowns are virtually
20 unlimited in this project?

21 A No, that's not correct. They are
22 limited through the limitation on annual
23 emissions.

24 Q On what? The limitation on what? I'm
25 sorry, I didn't hear you.

1 A The limitation on annual emissions
2 that's contained in condition 21 of the revised
3 final determination of compliance.

4 Q Okay, I got about ten more questions,
5 but I'll ask them later, and we can move on to
6 somebody else. I'll ask them in environmental
7 justice or something, squeeze them in there.

8 HEARING OFFICER FAY: Any redirect, Ms.
9 Sol,?

10 MS. SOL : No.

11 HEARING OFFICER FAY: Okay. Thank you,
12 Mr. Rubenstein.

13 MR. RUBENSTEIN: Thank you, Mr. Fay.

14 HEARING OFFICER FAY: And, Mr. Ratliff,
15 we'll move quickly to the staff's air quality
16 panel.

17 MR. RATLIFF: Yes. The staff has three
18 witnesses, one for -- the staff divides, as you
19 know, it's topic into air quality and public
20 health, but the questions, of course, usually go
21 across that boundary.

22 The air quality witness is Mr. Tuan Ngo;
23 and the public health witness is Dr. Goldberg --
24 Greenberg, I'm sorry.

25 (Laughter.)

1 MR. RATLIFF: And the Air District
2 witness is Brian Bateman.

3 HEARING OFFICER FAY: Could you repeat
4 the Air District witness' name, please.

5 MR. RATLIFF: Brian Bateman.

6 HEARING OFFICER FAY: And so they're
7 testifying on both topics, air quality and public
8 health, at this time?

9 MR. RATLIFF: Yes.

10 HEARING OFFICER FAY: Okay.

11 MR. RATLIFF: We will have them all
12 together. I think Dr. Greenberg has been sworn,
13 but Tuan Ngo has not been sworn and Mr. Bateman
14 has not been sworn.

15 HEARING OFFICER FAY: Please swear the
16 witnesses.

17 Whereupon,

18 ALVIN GREENBERG
19 was recalled as a witness herein, and having been
20 previously duly sworn, was examined and testified
21 further as follows:

22 Whereupon,

23 TUAN NGO
24 was called as witnesses herein, and after first
25 having been duly sworn, was examined and testified

1 as follows:

2 COURT REPORTER: Please state and spell
3 your --

4 HEARING OFFICER FAY: The District is
5 not appearing as a witness?

6 MR. BATEMAN: Yes. I thought it was
7 going to be individually.

8 HEARING OFFICER FAY: Oh, no.

9 Whereupon,

10 BRIAN BATEMAN
11 was called as a witness herein, and after first
12 having been duly sworn, was examined and testified
13 as follows:

14 COURT REPORTER: Now individually would
15 you please state and spell your full names.

16 MR. NGO: My name is Tuan Ngo spelled
17 T-u-a-n; my last name N-g-o.

18 MR. BATEMAN: My name is Brian Bateman,
19 B-r-i-a-n B-a-t-e-m-a-n.

20 MR. RATLIFF: I'd like to go very
21 quickly through each individual.

22 DIRECT EXAMINATION

23 BY MR. RATLIFF:

24 Q Mr. Ngo, did you prepare the portion of
25 the staff's testimony entitled air quality?

1 MR. NGO: I did.

2 MR. RATLIFF: And is that testimony true
3 and correct to the best of your knowledge and
4 belief?

5 MR. NGO: I believe so.

6 MR. RATLIFF: Do you have any changes to
7 make to it at this time?

8 MR. NGO: No.

9 MR. RATLIFF: And, Dr. Greenberg, did
10 you prepare the public health testimony in the
11 FSA, staff FSA?

12 DR. GREENBERG: Yes, I did.

13 MR. RATLIFF: Is that testimony true and
14 correct to the best of your knowledge and belief?

15 DR. GREENBERG: Yes, it is.

16 MR. RATLIFF: Do you have any changes to
17 make in it?

18 DR. GREENBERG: No, I don't.

19 MR. RATLIFF: And, Mr. Bateman, you're
20 appearing on behalf of the Air District. Could
21 you very briefly state what your position is there
22 and the time that you've worked there, please?

23 MR. BATEMAN: Yes. I'm the Director of
24 Engineering at the Air District; and I've worked
25 there for about 25 years.

1 MR. RATLIFF: And did you oversee the
2 production of the final determination of
3 compliance for the District?

4 MR. BATEMAN: Yes.

5 MR. RATLIFF: And can you speak to any
6 issues that arise in that regard?

7 MR. BATEMAN: Yes.

8 MR. RATLIFF: And I wanted to thank you
9 very much for coming today.

10 I'd like to start with Mr. Ngo and ask
11 him to very briefly summarize the high points of
12 the air quality -- oh, I'm sorry -- yes, summarize
13 the air quality testimony.

14 And then I would like to ask Dr.
15 Greenberg to do the same for the public health
16 testimony.

17 MR. NGO: Good afternoon, Commissioner
18 Boyd and Commissioner Geesman and member of the
19 Committee. Staff have conducted analysis for
20 potential impact of air contaminant from this
21 projects, both during construction and operation
22 of the project.

23 Staff also review for compliance whether
24 the project will comply with all applicable law,
25 ordinance, rule and regulation --

1 (Public Address Announcement.)

2 HEARING OFFICER FAY: Okay, let's go.

3 Back on the record.

4 MR. NGO: Anyway, staff investigate and
5 makes a recommendation on mitigation measure to
6 negate the potential impacts due to construction
7 and operation of the facility.

8 During the -- after the analysis staff
9 also found that the project ozone precursor
10 emission will be mitigated with the provided
11 emission reduction credit.

12 The project will utilize all state of
13 the art control equipment that are qualified as
14 best available control technology defined by the
15 Bay Area Air Quality Management District and the
16 EPA.

17 The project would also cause no new
18 violation of the ambient air quality for NO₂, SO₂
19 or carbon monoxide. The project PM₁₀ emission
20 will be mitigate with implementation of the
21 street-sweeper program proposed by the City.

22 The project fine particulate matter
23 emission, or PM_{2.5}, will be mitigated with the
24 City-proposed street-sweeper program in
25 combination with a wood stove/fireplace

1 replacement or the surrender of oxide of sulfur
2 emission reduction credits.

3 The District have provide staff with a
4 final determination of compliance with a set of
5 condition to insure that the project will comply
6 with all applicable District rule and regulation.

7 Staff believe that the project potential
8 impact on air quality will be mitigate to a level
9 of less than significant with the implementation
10 of the staff-recommended condition of
11 certification AQSC-1 to number 12; and the
12 District-recommended condition of certification
13 AQ1 to 42.

14 That conclude the staff presentation.

15 MR. RATLIFF: At least for Mr. Ngo.
16 Perhaps we could go to Dr. Greenberg at this
17 point.

18 DR. GREENBERG: Thank you. And let me
19 first thank the Commission and the Hearing Officer
20 for any indulgence you can give to me regarding
21 time. I do want to reassure you that you do have
22 the first call on my time if it's necessary for me
23 to come here on May 31st. I shall do so. I do
24 have other Commission business down at the Port of
25 Long Beach which is almost as important as these

1 hearings.

2 I will move on in my presentation and
3 want to point out just a few things. One, I
4 conducted an independent assessment of the public
5 health risks due to facility emissions. This
6 would be three gas turbines and a two-cell cooling
7 tower.

8 The results of my calculation are shown
9 here in the lower table. The results of the
10 applicant's health risk assessment are shown in
11 the upper table. You can see that the numbers are
12 very close. I found just a slightly higher
13 individual cancer risk. Yet, of course, it's much
14 orders of magnitude lower than the significance
15 level.

16 And so it makes it very easy for me to
17 state that there would be no significant risk of
18 cancer or of noncancer effects as a result of
19 operations of this facility if it were built.

20 This is a map showing my modeling
21 results which used the HARP program, the hot spots
22 analysis and reporting program. Here is the
23 maximum cancer risk located just east of the
24 facility; and that's the .073 to the -6.

25 The applicant found that the maximum

1 cancer risk was actually at a different location,
2 and that was -- let's see if I can find that --
3 the applicant found it right here. That's both
4 the chronic point of maximum impact and the cancer
5 point of maximum impact. And theirs was at .046
6 times 10 to the -6.

7 This may probably be due to slight
8 variations in the modeling program that the
9 applicant used versus with the HARP program shows.

10 Up here is the existing Potrero power
11 plant point of maximum cancer impact. And it's
12 about ten miles away. I put that on here to show
13 that there is no overlap of the maximum predicted
14 cancer risk from the SFERP power plant with the
15 existing Potrero power plant.

16 And the same thing occurs with the acute
17 and also the chronic noncancer points of impact.
18 The maximum ones do not overlap between those two
19 power plants.

20 I also conducted a detailed public
21 health cumulative risk assessment. That included
22 20 different facilities, including the SFERP site,
23 Potrero power plant, all emission sources, all
24 their turbines.

25 The Hunter's Point plant which now has

1 been closed, the Southeast Water Pollution Control
2 plant, dry cleaners, gasoline service dispensing
3 stations, et cetera. A total of 50 sources were
4 plotted in the HARP program. That's one of the
5 beauties of the HARP program that you can put in
6 all these sources and produce an isopleth here
7 showing any overlap, if it exists.

8 I believe this is the first utility by a
9 state agency or anyone, for that matter, using the
10 HARP model in a cumulative risk assessment. So
11 this is a quantitative risk assessment, the first
12 time the Energy Commission Staff has provided on,
13 as opposed to a qualitative one.

14 And, once again, what we are finding is
15 from the SFERP site there is no significant
16 overlap at all. Now, yes, there would be some
17 overlap, but way way down there in the 10 to the -
18 12, or 10 to the -13 cancer risk range. Nothing
19 showing any significance whatsoever.

20 Indeed, what we did find out is that
21 there was some significant overlap due to other
22 sources in the area between those other sources,
23 such as the dry cleaners and the southeast water
24 treatment plant. Those, however, have nothing to
25 do with the SFERP site, and indeed, the risk due

1 to the SFERP emissions would contribute only .4
2 percent to the total risk estimated at the
3 residence located nearest the SFERP compared to
4 .37 in a million calculated for emissions from 20
5 facilities, including the SFERP.

6 So basically what I'm saying here is
7 that a quantitative, cumulative health risk
8 assessment, looking at 40 different sources from
9 over 20 different locations, shows the power plant
10 will not have any significant cumulative impact in
11 the area.

12 The risks that are there already are not
13 being further increased by this power plant to any
14 significant extent at all.

15 We have just one proposed condition of
16 certification, that's public health-1, and that
17 will address a cooling water management plan to
18 control potential growth of Legionnella bacteria.

19 And that concludes my summary of public
20 health assessment.

21 MR. RATLIFF: Mr. Bateman, can you
22 briefly summarize the conclusions of the final
23 determination of compliance?

24 MR. BATEMAN: Yes. Good afternoon,
25 Commissioners. I will keep my summary very brief.

1 The Air District's determination of
2 compliance was an evaluation of the proposed
3 project in terms of compliance with applicable air
4 quality rules and regulations that the Air
5 District implements and enforce.

6 And there are a number of different
7 rules and regulations that come into play with a
8 project like this. Most notable of those are the
9 District's new source review rule requirements.

10 And specifically the requirements were a
11 case-by-case best available control technology
12 determination. For this project BACT is required
13 for NOx, CO, precursor organics, SO2 and PM10
14 emissions. There are also our offset requirements
15 that have been previously mentioned.

16 In terms of our rules and regulations
17 the only pollutant that triggered these
18 requirements was NOx.

19 We also have a requirement for a health
20 risk screening analysis. This is for noncriteria
21 pollutants that still may have some toxic impacts.
22 That analysis indicated similar results to what
23 Dr. Greenberg concluded in terms of the cancer and
24 noncancer project risks.

25 And in conclusion, the Air District

1 determined that all applicable requirements be met
2 by the proposed project if the project lives
3 within the permit conditions that we've identified
4 in the FDOC.

5 That's all I have.

6 MR. RATLIFF: With that, the witnesses
7 are available for cross-examination. But I would
8 like to move in the exhibits that they're
9 sponsoring. That includes their portions of the
10 final staff assessment in exhibit 46; a very
11 minimalistic errata, which is exhibit 49 -- errata
12 to the air quality testimony; and exhibit 53,
13 which is the preliminary determination of
14 compliance; exhibit 54, which is the November 22nd
15 final determination of compliance; and exhibit 55,
16 which is the revised final determination of
17 compliance issued on January 19, 2006.

18 HEARING OFFICER FAY: Any objection?

19 All right, so moved.

20 The panel is available for cross-
21 examination. Ms. Sol,, any questions?

22 MS. SOL : No questions.

23 HEARING OFFICER FAY: Okay. And, Mr.
24 Boyd, you indicated no questions?

25 MR. BOYD: No, I have no questions of

1 Tuan on air quality.

2 HEARING OFFICER FAY: Okay.

3 MR. BOYD: I stipulated on the air
4 quality section.

5 HEARING OFFICER FAY: All right. You
6 have some --

7 MR. BOYD: I did have public health
8 questions.

9 HEARING OFFICER FAY: Okay. Keep in
10 mind, --

11 MR. BOYD: I only have one -- should be
12 quick.

13 HEARING OFFICER FAY: Right. We have
14 very few minutes left. Go ahead.

15 MR. BOYD: Thank you.

16 CROSS-EXAMINATION

17 BY MR. BOYD:

18 Q Dr. Greenberg, in performing your risk
19 assessment, did your risk assessment incorporate
20 any risk associated with the presence of the --
21 the potential presence of contamination on the
22 site? Or is your risk assessment limited to the
23 risks associated with the emissions from the
24 project, the emissions from the operations of the
25 project?

1 DR. GREENBERG: Mr. Boyd, it was the
2 latter. This is looking at emissions from the
3 project. As I mentioned, the three turbines and
4 also the two cooling tower cells.

5 Under the waste management issues when I
6 was looking at the soil contaminants that's when I
7 did a risk assessment in regards to that.

8 So the two are not combined because you
9 are not going to have any project operation
10 emissions while there is site mobilization and
11 construction going on.

12 MR. BOYD: But your risk assessment did
13 include construction impacts, also?

14 DR. GREENBERG: No, it did not. Again,
15 you're not going to have them at the same time as
16 operations.

17 MR. BOYD: So it's purely the
18 operational risks --

19 DR. GREENBERG: Right, what I've shown
20 there in my quantitative cumulative air modeling,
21 rather, assessment and health risk assessment, is
22 operational impacts.

23 MR. BOYD: Okay, that's all I have.
24 Thank you.

25 HEARING OFFICER FAY: Okay. Mr. Sarvey.

1 CROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q Yeah, Dr. Greenberg, you did a nice
4 analysis there and you included a lot of sources,
5 dry cleaners, bathtubs, everything. Did you
6 include any of the projects that I mentioned
7 before from the San Francisco southern waterfront
8 EIR?

9 DR. GREENBERG: No, I did not, Mr.
10 Sarvey. There are some sources that are close to
11 it, as you can tell, on this map. And, of course,
12 my staff assessment lists their addresses and the
13 sources.

14 But I believe if you ask specifically
15 about a particular one I can answer that.

16 MR. SARVEY: Did you include any of
17 the -- did you include any like the industry and
18 Port emissions that are expected to occur under
19 the San Francisco southern waterfront EIR? The
20 cancer risk involved there?

21 DR. GREENBERG: Are you talking about
22 the shipboard emissions, or emissions from a ship?

23 MR. SARVEY: We don't have a lot of
24 time. I'm going to hand you this page D.8 from
25 the southern waterfront EIR. It lists cancer risk

1 is 7.48 for the year 2003 and 8.96 the year 2015.
2 I don't think you included any of that in your
3 analysis.

4 MR. RATLIFF: Mr. Fay, I'm not going to
5 object to the question, but I do want to note that
6 it isn't particularly easy to answer questions
7 when you don't have anything but one page out of
8 quite a voluminous document.

9 For instance, the two pages that we were
10 supplied earlier, I couldn't tell if those were
11 construction emissions or if those were
12 operational emissions. I couldn't tell what the
13 project was. It's very difficult to know what the
14 underlying document actually states when you're
15 just given one page at a time.

16 MR. SARVEY: Okay, I'll move on --

17 HEARING OFFICER FAY: Well noted. And,
18 you know, the witnesses, I think, can qualify
19 their answers if they're uncomfortable with the
20 position they're put in.

21 MR. SARVEY: I'll move on. Give me that
22 page back, Alvin. Thank you, sir.

23 BY MR. SARVEY:

24 Q Dr. Greenberg, if the applicant chooses
25 to adopt ASQC-11, which is the seasonal mitigation

1 for PM2.5, will that trigger the need for an
2 additional analysis on your part?

3 DR. GREENBERG: No.

4 MR. SARVEY: Mr. Hill, earlier I asked
5 Mr. Rubenstein was there any limitation on
6 startups and shutdowns for this facility.

7 DR. GREENBERG: Who are you asking that
8 question to?

9 MR. SARVEY: Oh, I'm sorry, Mr. Hill
10 isn't here. Mr. Bateman, I'm sorry. I prepared
11 for Mr. Hill.

12 MR. BATEMAN: The startups and shutdowns
13 are limited in terms of the overall daily and
14 annual emission rates.

15 MR. SARVEY: The ARB guidance, which
16 happens to be an exhibit in this project, says
17 that the District should address all phases of
18 plant operations and minimize startups and
19 shutdowns. Do you have any plan -- or limit
20 emissions from startups or shutdowns -- do you
21 have any plan in your FDOC here to limit those
22 emissions on a daily, hourly basis?

23 MR. BATEMAN: There are emission limits
24 for startup and shutdown in the permit, in the
25 FDOC.

1 MR. SARVEY: But no daily ones?

2 MR. BATEMAN: I'm sorry?

3 MR. SARVEY: Are there daily --

4 MR. BATEMAN: Yes.

5 MR. SARVEY: -- and hourly ones?

6 MR. BATEMAN: Yes, both.

7 MR. SARVEY: And do you have a plan to
8 limit the emissions from startup and shutdown in
9 your FDOC?

10 MR. BATEMAN: Well, it's really up to
11 the project and the permit holder to meet those
12 conditions.

13 MR. SARVEY: What number did you use to
14 calculate sulfur emissions from this project, as
15 far as the sulfur content of the fuel?

16 MR. BATEMAN: Okay, and I think the
17 answer to that question depends on the averaging
18 period that we're talking about. For the annual
19 average SO₂ emissions, the sulfur content
20 assumption was .33 grains per hundred standard
21 cubic feet.

22 MR. SARVEY: Okay. The document I
23 referenced to you before, the ARB guidance
24 document, on page 12 says the permit should
25 include conditions to address SO_x emission levels

1 and to require that the levels be determined using
2 the upper limit of the sulfur content specified in
3 the natural gas supplier contract.

4 Did you do that in the FDOC?

5 MR. BATEMAN: Yes, for the hourly
6 emission rates it's based on an hourly max. The
7 annual figures it's based on a more representative
8 average.

9 MR. SARVEY: So on the annual emissions
10 you didn't comply with that guidance?

11 MR. BATEMAN: I believe we did comply
12 with it.

13 MR. SARVEY: Well, it says to use the
14 upper limit. Did you use the upper limit --

15 MR. RATLIFF: Asked and answered.

16 MR. SARVEY: -- of one grain -- did you
17 use the upper limit of one grain for the annual
18 emissions?

19 MR. BATEMAN: No.

20 MR. SARVEY: Okay, thank you.

21 HEARING OFFICER FAY: We'll allow the
22 question.

23 MR. RATLIFF: For clarification I would
24 like to point out to the Committee that the CARB
25 guidance is just that, it's a guidance. It has no

1 mandatory effect. It's not adopted as a
2 regulation.

3 HEARING OFFICER FAY: Thank you.

4 BY MR. SARVEY:

5 Q In your response to my comment number
6 five on the PDOC you state that the District's
7 offset requirements are not intended to mitigate
8 local impacts such as NO2 and nitrogen deposition
9 impacts, is that correct?

10 MR. BATEMAN: Correct.

11 MR. SARVEY: Mr. Hill (sic), normally in
12 modeling analyses how many years of meteorological
13 data do you use?

14 MR. BATEMAN: Between one and five
15 years, depending on what's available for the site.

16 MR. SARVEY: If the applicant were to
17 propose real-time NOx emission reductions as
18 opposed to ERCs would the District accept that?
19 If they could quantify it, would the District
20 accept that under their rules?

21 MR. BATEMAN: If they meet all the
22 criteria for ERCs, yes.

23 MR. SARVEY: So in your professional
24 opinion would real-time emission reductions from
25 the various District's NOx reduction programs be

1 more beneficial to the low-income community than
2 ERCs created in 1985?

3 MR. BATEMAN: Depends on the nature of
4 the credits, I suppose. Where they came from, the
5 magnitude, et cetera.

6 MR. SARVEY: If they were local?

7 MR. BATEMAN: Theoretically.

8 MR. SARVEY: Okay. Intervenor CARE
9 appealed to the Bay Area Air Quality Management
10 District Hearing Board. Can you tell us what the
11 outcome of that was?

12 MR. RATLIFF: Object on the grounds of
13 relevance.

14 HEARING OFFICER FAY: We're not going to
15 allow that question. Move on.

16 MR. SARVEY: Not going to allow it?

17 HEARING OFFICER FAY: It's a matter of
18 record. We're not going to use our time to go
19 over things that are a matter of public record.

20 MR. SARVEY: Okay. The FDOC was
21 appealed to the Bay Area Air Quality Management
22 District Hearing Board. What was the reasoning
23 for not accepting authority on the FDOC?

24 MR. BATEMAN: What was the hearing
25 board's ruling?

1 MR. SARVEY: Yeah, the hearing board --

2 MR. BATEMAN: Is that the question?

3 MR. SARVEY: -- ruled that they didn't
4 have jurisdiction at the CEC --

5 MR. BATEMAN: I think you've answered
6 the question.

7 MR. RATLIFF: I'm going to object on the
8 grounds of relevance, again. And as you have
9 pointed out, these are all a matter of public
10 record. If they want to put them in their briefs,
11 the intervenors can. But there's no point in
12 going into what happened at the hearing board on a
13 procedural issue.

14 HEARING OFFICER FAY: It's been ruled
15 on. That's sustained. I think -- use your
16 limited time on different things.

17 BY MR. SARVEY:

18 Q Mr. Ngo, is it your professional opinion
19 that the LM6000 turbines in this project may
20 exceed the 2.5 pounds per hour limitation that's
21 proposed in the FDOC?

22 MR. NGO: Could be.

23 MR. SARVEY: Are you concerned that
24 since there's no continuous emission monitoring
25 for PM2.5 emissions that there may be unmitigated

1 PM2.5 from this project?

2 MR. NGO: I believe (inaudible)
3 monitoring system, it will work if you use the
4 natural gas monitoring system, the oxygen sensor
5 and the NOx SCR system, feedback system and the
6 data logger would be able to maintain the gas
7 turbine in perfect, tip-top condition.

8 So if once they meet that PM2.5 in the
9 source test, and we have no reason to believe that
10 beside a upset condition, that we have no reason
11 to believe that the PM10 and PM2.5 emission from
12 the facility or from the turbine, itself, will
13 exceed that limit.

14 MR. SARVEY: So if source tests reveal
15 the project can't meet its 2.5 pounds per hour
16 limit, would you support a condition to compel the
17 applicant to provide additional mitigation?

18 MR. NGO: Yes. I want to add a little
19 bit to it.

20 MR. SARVEY: Sure, go ahead.

21 MR. NGO: We have some concern over the
22 PM, new PM10 emission limit of 2.5 pounds per
23 hour, and we have been discuss with District
24 Staff. The only problem was that the District
25 determination, again what I'm saying,

1 determination of best available control technology
2 would mean that whatever available achievable in
3 practice for that particular turbine or particular
4 equipment have to be apply on all the other
5 equipment with the same type.

6 So what we were hoping to see is that
7 if -- hoping that this project will meet that 2.5,
8 and we don't have any more problem. But if the
9 project proven up to -- consecutive source test,
10 during the initial source test, if they don't need
11 it, we wanted to work with the District and the
12 City to see if we can have that emission limit
13 increased. And because of that increase we would
14 have to ask the City to provide additional
15 mitigation to insure that the staff conclusion in
16 the final staff assessment is still valid.

17 MR. SARVEY: I have quite a few
18 questions left. I'm done with the other two
19 witnesses. Would you like to bring Mr. Ngo back,
20 or should I just continue?

21 HEARING OFFICER FAY: I don't anticipate
22 bringing the panel back, so you'll have to --

23 MR. SARVEY: I just would need Mr. Ngo;
24 I wouldn't need the other two.

25 HEARING OFFICER FAY: Well, that's, I

1 guess, up to Mr. Ratliff.

2 MR. RATLIFF: I'm reluctant to let Dr.
3 Greenberg go, particularly if any of the questions
4 are cross-over questions, or might need more
5 appropriately answered. But, you're pretty
6 positive that these are all --

7 MR. SARVEY: There are all air --

8 MR. RATLIFF: -- questions only for air
9 questions?

10 MR. SARVEY: -- questions. They're not
11 public health questions.

12 DR. GREENBERG: I'll still stay.

13 MR. RATLIFF: That being the case, then,
14 certainly Dr. Greenberg should feel free to leave,
15 I suppose.

16 PRESIDING MEMBER BOYD: I heard him
17 volunteer to stay, so, move on.

18 MR. SARVEY: Okay. I just didn't want
19 to keep everybody here forever.

20 BY MR. SARVEY:

21 Q You used the applicant's analysis of
22 cumulative impacts contained in appendix F of
23 supplement A, is that correct, Mr. Ngo?

24 MR. NGO: Yes, I did.

25 MR. SARVEY: Okay. And your conclusion

1 is that the results of the analysis show that PM10
2 cumulative impacts to the project and others on
3 the area can be significant?

4 MR. NGO: Yes.

5 MR. SARVEY: Did staff encourage the
6 City to limit ammonia emissions to the lowest
7 possible extent while maintaining NOx emission
8 limits?

9 MR. NGO: Can you repeat the question
10 again?

11 MR. SARVEY: Did staff encourage the
12 City to limit ammonia slip emissions to the lowest
13 extent possible?

14 MR. NGO: Yes, we did.

15 MR. SARVEY: And do you believe it's
16 feasible to limit ammonia emissions from this
17 project to 5 ppm?

18 MR. NGO: This project, itself, no, I
19 don't think so. I would hope that they could meet
20 5 ppm; we just want to minimize the ammonia
21 emission to the minimum.

22 However, this project is operated, is
23 not in the continuous mode. It operate on call
24 from somebody, Cal-ISO, they call for. And what
25 they do is that -- and the name of the project

1 spell for itself, this is a reliable project. And
2 if you can't have that reliability, you can't
3 operate the facility. Therefore we did not really
4 want to push that hard to reducing ammonia
5 emission. And we conclude that the project 10 ppm
6 ammonia slip is the best available control -- I
7 mean the lowest emission rate for this facility.

8 However, I want to -- I'm sorry, I want
9 to also want to comfort the Committee that even
10 though the 10 ppm ammonia slip, it is a condition,
11 but we don't expect the facility to operate at
12 that level. In other words, we are expecting the
13 facility operate at about between less to 1, to
14 about 2 ppm ammonia slip.

15 So even though the 10 ppm sound like a
16 big number, but we don't expect the project to get
17 that high.

18 MR. SARVEY: I submitted a document
19 called the CARB's NOx control report to the
20 Legislature. Did you see in that document that a
21 simple cycle power plant in Massachusetts is
22 permitted and has achieved a 6 ppm ammonia slip
23 with a 2.5 ppm NOx limit?

24 MR. NGO: Again, again, it just what I'm
25 just refer back to my previous answer. My

1 qualification for it was that even though we have
2 a 10 ppm limit we are not expect the facility to
3 operate at that level during normal conditions.
4 So even though the other facility are the same
5 facility that was somewhere else that operate at a
6 lower level, I have full confidence that this
7 facility will be at that level if it is the same
8 equipment.

9 It should not change the number of the
10 condition based on -- I mean the numbers specified
11 in the condition; it's just a number. It's a high
12 number so that they won't go over. Doesn't mean
13 that they operate at that level.

14 MR. SARVEY: Your testimony on page 4.1-
15 26 states that overall PM emissions have increased
16 since 2000, is that correct?

17 MR. NGO: What page, again?

18 MR. SARVEY: It's 4.1-26.

19 MR. NGO: Okay. What your question?

20 MR. SARVEY: Is it your testimony that
21 overall PM emissions have increased since 2000?

22 MR. NGO: Oh, I see. I want to refer
23 you back to the air quality figure 3 where we
24 provide a -- we were providing the PM10
25 concentration that are collected in the Arkansas

1 station, monitor station.

2 All the way from 1991 up to most recent
3 2004. And there will be peak and valley of those
4 measurements each year. But the overall, the look
5 at the statistically analysis then you will see
6 there was a slight trend of PM10 emission decrease
7 over the years in 1991 up to today.

8 MR. SARVEY: Do you agree with the
9 applicant's analysis that construction impacts for
10 PM10 could be as high as 14.2 mcg/cubic meter?

11 MR. NGO: Yes.

12 MR. SARVEY: Your condition AQSC-3
13 requires the City to erect a eight-foot-high
14 temporary fence surrounding the construction site
15 and laydown area to lessen PM impact due to the
16 construction of the facility.

17 MR. NGO: Right.

18 MR. SARVEY: Will this increase PM
19 concentrations inside the fenceline?

20 MR. NGO: No.

21 MR. SARVEY: No? Okay. The liner will
22 absorb it, then?

23 MR. NGO: No. What it does is the thing
24 about construction, emission during construction
25 is not because they don't have no stack, they lie

1 on the ground.

2 And what it does is when the wind induce
3 the particulate to fugitive emission. And what it
4 does is that when we have a plastic fence built to
5 that level of about eight foot long, what we -- my
6 experience, or my expertise, or I guess my best
7 guess, my educated guess was to say, well, all the
8 emission went, all the fugitive dust when it comes
9 to that point it will stop and drop down just like
10 it happen in the cyclone. When it impacted it was
11 stopped; and then it lose the moment and then it
12 diffuse that momentum to drop it out of sight.

13 The whole purpose of that to prevent
14 emission from the construct site to escape the
15 site and cause a problem from the roadway and
16 public.

17 MR. SARVEY: Thank you, Mr. Ngo. That's
18 all.

19 HEARING OFFICER FAY: So that's it,
20 then?

21 MR. SARVEY: That is.

22 HEARING OFFICER FAY: Mr. Ratliff, any
23 redirect?

24 MR. RATLIFF: No.

25 HEARING OFFICER FAY: Okay. The hour is

1 late and I'm afraid that there's just not time to
2 go to the applicant's witnesses on public health.

3 MS. SOL : What about the air quality
4 testimony of the intervenors?

5 MR. SARVEY: I'll be back.

6 HEARING OFFICER FAY: Pardon me?

7 MR. SARVEY: I'll be back.

8 HEARING OFFICER FAY: Mr. Sarvey will be
9 back. I guess --

10 MR. SARVEY: We can get me next on the
11 31st.

12 MS. SOL : I don't have any questions at
13 the moment, but I don't see Mr. Powers here.
14 So, --

15 HEARING OFFICER FAY: Well, it was
16 Sarvey and Powers, I believe. Were you going to
17 be the witness on that, Mr. Sarvey?

18 MR. SARVEY: Yes, I was. Mr. Powers
19 couldn't make it.

20 HEARING OFFICER FAY: Yeah, --

21 MR. SARVEY: I have a declaration for
22 him, though.

23 HEARING OFFICER FAY: Do you want to
24 submit -- well, I guess you have cross-examination
25 or --

1 MS. SOL : Well, I just believe that if
2 the testimony has both witnesses' names on them,
3 then they should both be available for cross-
4 examination.

5 I don't have a problem with the
6 testimony being introduced as Mr. Sarvey's
7 testimony. But I believe that if somebody else's
8 name is on it, as well, that person should be
9 prepared to appear.

10 HEARING OFFICER FAY: Okay. Well, do
11 you plan to have Mr. Powers here?

12 MR. SARVEY: I will attempt to have him
13 here on the 31st.

14 HEARING OFFICER FAY: Okay.

15 MR. SARVEY: I'll attempt to have him
16 here for you.

17 HEARING OFFICER FAY: Or we may just
18 have to remove him from the testimony.

19 Our next meeting is here on May 31st,
20 but it is in the auditorium and not in this room.
21 And I want to thank everybody for putting in a
22 long day and staying late. Thank these witnesses.
23 You're excused.

24 Any last-minute items before we --

25 MS. SOL : Your Honor, just a question.

1 I had my witnesses prepared to stay into the
2 evening tonight, and I know that a lot of people
3 that involves childcare and et cetera. Do you
4 expect that on the 31st we'll be going beyond
5 5:30?

6 HEARING OFFICER FAY: I do not. We're
7 going, you know, we're virtually through with air
8 quality. A little bit more on that. We've got
9 public health, EJ and alternatives and biology.

10 Frankly, I think we will not need to go
11 into the night. But the garage closes pretty soon
12 anyway, so we're pretty much constrained by some
13 other factors, too.

14 So I don't anticipate making
15 arrangements to go late. If that changes I'll
16 certainly let the parties know, you know.

17 MS. SOL : Okay, then just as a matter
18 of courtesy I would like to let people know if
19 they need to make some --

20 HEARING OFFICER FAY: I think that's
21 very reasonable.

22 ASSOCIATE MEMBER GEESMAN: You would
23 envision the 31st as our last day of evidentiary
24 hearings?

25 HEARING OFFICER FAY: At this point

1 that's what I envision.

2 Does anybody know anything that would be
3 to the contrary? Okay. Yeah. I think both
4 myself and the parties familiar with the testimony
5 would react if it was otherwise.

6 I really think we can get done in
7 another long day.

8 Okay. Thank you, all. We're adjourned.

9 (Whereupon, at 5:32 p.m., the hearing
10 was adjourned, to reconvene at 9:00
11 a.m., Wednesday, May 31, 2006, in the
12 Auditorium of this same location.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, 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 27th day of May, 2006.