

HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 98-AFC-4
SUNRISE COGENERATION AND)
POWER PROJECT (SUNRISE))
_____)

CALIFORNIA ENERGY COMMISSION
FIRST FLOOR HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 13, 2000
9:20 A.M.

Reported by:
Valorie Phillips
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Presiding Member

STAFF PRESENT

Gary Fay, Hearing Officer

Bob Eller, Adviser to Vice Chairman Rohy

Shawn Pittard, Adviser to Commissioner Moore

Caryn Holmes, Senior Staff Counsel

Mark Hesters

Rick Tyler

Obed Odemelam

Joe O'Hagan

Diana Peebler

REPRESENTING THE APPLICANT

John P. Grattan, Attorney
Scott A. Galati, Attorney
Grattan & Galati
Renaissance Tower
801 K Street, Penthouse Suite
Sacramento, California 95814

David A. Stein
Radian International
1990 North California Boulevard, Suite 500
Walnut Creek, California 94596

Randall Marx
Joy Rogalla
Thomas Cudzilo
Radian International
10389 Old Placerville Road
Sacramento, California 95827

Kim Worl
Radian International

INTERVENORS

Katherine S. Poole, Attorney, representing CURE
Marc D. Joseph, Attorney, representing CURE
Adams Broadwell Joseph & Cardozo
651 Gateway Boulevard, Suite 900
South San Francisco, California 94080

J. Phyllis Fox
Environmental Management
2530 Etna Street
Berkeley, California 94704-3115

Dennis W. DeCuir, Attorney representing TANC
DeCuir & Somach
400 Capitol Mall, Suite 1900
Sacramento, California 95814-4407

ALSO PRESENT

Seyed Sadredin
San Joaquin Valley Air Pollution Control District
1990 E. Gettysburg Avenue
Fresno, California 93726-0244

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P R O C E E D I N G S

9:20 a.m.

HEARING OFFICER FAY: Good morning.

This is an evidentiary hearing for the Sunrise Cogeneration Power Project. The plan for today is to return to the subject of public health, with the cross-examination of CURE's witness. And then we have some --

MR. JOSEPH: Actually, Mr. Hearing Officer, we were in the midst of Dr. Fox's rebuttal testimony when we broke on Tuesday.

HEARING OFFICER FAY: Okay, so she still has more to go on that?

MR. JOSEPH: Yes.

PRESIDING MEMBER MOORE: I cut her off almost literally in the middle of a sentence.

HEARING OFFICER FAY: Okay, so we'll return to that, and then she'll be available for cross-examination.

And then we have some follow-up matters on worker safety. Then we'll return to air quality, and finally soil and water.

Ms. Holmes.

MS. HOLMES: Excuse me, Hearing Officer Fay, I was wondering whether since there are

1 cross-over questions between worker safety and
2 public health, it would be easier for us to have,
3 perhaps wait to do our cross on both areas for Dr.
4 Fox, do them at the same time, perhaps at the end
5 of worker safety. If that's acceptable --

6 PRESIDING MEMBER MOORE: I think that
7 works just fine. Is that okay with counsel? I
8 mean, it just integrates it --

9 MR. GALATI: Yeah, that's okay with us.

10 HEARING OFFICER FAY: And there's very
11 little else to come in on worker safety other than
12 what Dr. Fox has.

13 MS. HOLMES: I have a few questions of
14 the applicant's witness on direct, and that's it.
15 I don't know whether CURE does or not. And then I
16 have quite a bit of cross-examination of Dr. Fox
17 on both public health and worker safety. I just
18 thought it made more sense to handle all the
19 questions at once.

20 HEARING OFFICER FAY: So you're
21 suggesting that after she finishes this testimony,
22 she can go right into her testimony on worker
23 safety. We'll just hold all cross until after?

24 MS. HOLMES: How the other parties want
25 to conduct their cross is up to them. I'm just

1 saying I'd like to conduct my cross at one time.

2 MR. GALATI: That's fine for us.

3 MR. JOSEPH: I would just remind that we
4 still have pending cross-examination of Mr. Tyler
5 on his testimony that he gave, and so we need to
6 get that out of the way.

7 MS. POOLE: And worker safety cross for
8 applicant.

9 MS. HOLMES: I was unaware that there
10 was anything left for Mr. Tyler other than his
11 rebuttal of Dr. Fox's comments on the health risk
12 assessment that he prepared. That's the only
13 thing that's left.

14 MS. POOLE: We haven't crossed Mr. Tyler
15 on any of the worker safety related issues, or the
16 air quality sampling. We talked about that at the
17 end of Tuesday.

18 PRESIDING MEMBER MOORE: We're going to
19 have to go back and check our notes, because my
20 notes are incomplete on that. So let's just take
21 that under submission and we'll come back to it,
22 and give us a chance to scan what we've got down.

23 Can we go back to then Dr. Fox's
24 testimony where I interrupted her and pick up, get
25 this thread going again.

1 (Pause.)

2 Whereupon,

3 PHYLLIS FOX

4 was resumed as a witness herein and having been
5 previously duly sworn, was examined and testified
6 further as follows:

7 DIRECT EXAMINATION - resumed

8 BY MR. JOSEPH:

9 Q Dr. Fox, I'm going to ask you a few
10 questions about the hazard index from emissions
11 from the turbine. Introduction, identifying the
12 thread that we are about to start pulling.

13 PRESIDING MEMBER MOORE: In that brief
14 pause, counsel, let me just remind everyone lunch
15 will be early today, probably 11:30, so when we
16 get close to 11:30 we'll break at that point. And
17 make sure everybody's back here for the 1:00
18 start.

19 BY MR. JOSEPH:

20 Q Direct your attention to page 17 of your
21 public health testimony. On that page is table 2.

22 A Yes.

23 Q Would you explain what that table shows?

24 A Table 2 is a health risk assessment of
25 normal operating turbine emissions based on the

1 revisions that both staff and the applicant made
2 to their analyses by updating their analyses to
3 include the most recent OEHHA acute REL.

4 Both applicant and staff, when they
5 revised their analysis to use the most recent REL
6 acute index for acrolein, both found that the
7 hazard index was .54.

8 Q And that's line 2 on the table, right?

9 A Yes. That's line 2 on the table. The
10 CAPCOA guidelines that all of the parties relied
11 on states that when the hazard index exceeds .5,
12 that one is to include in the calculation of the
13 hazard index criteria pollutants, specifically
14 ozone, nitrogen oxide, sulfur dioxide and hydrogen
15 sulfide.

16 Neither the applicant nor staff made
17 that calculation, so I provided it in my testimony
18 in table 2 on page 17. The maximum one-hour
19 concentrations that I used came out of the AFC,
20 with the exception of hydrogen sulfide and there I
21 used the average hydrogen sulfide that we
22 measured.

23 That calculation results in an acute
24 hazard index of 3.11, which exceeds the staff's
25 significance threshold for an acute hazard index

1 of 1.

2 Q Now, Dr. Fox, when you said that this is
3 the procedure in the CAPCOA guidelines, were you
4 referring to page 3-38 of the CAPCOA guidelines?

5 A Yes. Page 3-38 which is attachment 2 of
6 my public health testimony reads as follows: The
7 total acute hazard index for respiratory effects
8 should include consideration of background
9 concentrations of criteria pollutants if the total
10 hazard index for the facility exceeds .5.

11 If the total hazard index for the
12 facility exceeds .5, which it does in this case,
13 it's .54, background concentrations of criteria
14 pollutants should be used to calculate a second
15 total acute hazard index.

16 The following criteria pollutants should
17 be included in this calculation: ozone, nitrogen
18 dioxide, sulfur dioxide, sulfates and hydrogen
19 sulfide.

20 I included all of those except sulfate,
21 because there are no sulfate data for this site.
22 When you do that calculation, as I said, you get
23 3.11, which is significant.

24 Q Now, Dr. Fox, one of the drivers for the
25 .54 is acrolein, as I believe you testified. When

1 staff testified they identified acrolein as being
2 an eye irritant, and made certain statements about
3 the appropriateness of using the REL for acrolein
4 here since it is an eye irritant. Do you have a
5 response to that?

6 A Yes, I do. Acrolein is an eye irritant,
7 however it is also a respiratory irritant. And,
8 in fact, all of the guidance that I'm aware of
9 classifies it as a respiratory irritant primarily.

10 For example, the CAPCOA guidelines in
11 attachment 2 to my testimony in table 3-10 on page
12 347 --

13 MS. HOLMES: Sorry, are we on attachment
14 2?

15 DR. FOX: Attachment 2, which is the
16 CAPCOA guideline, page 3-47, which is table 3-10,
17 if you look at acrolein you'll see there is a dot
18 in the column for respiratory irritation.

19 Likewise, take a look at page 3-44,
20 table 3-9, which is the table for chronic toxicity
21 that shows the appropriate target organs for
22 purposes of hazard index assessment, it also shows
23 that for acrolein the appropriate target is
24 respiratory irritation.

25 And then finally in the OEHHA revised

1 acute REL report, which is in attachment 3 to my
2 testimony, if you turn towards the end to page C-
3 4-acrolein, there is a discussion on that page of
4 how OEHHA developed the revised acute REL for
5 acrolein.

6 And that discussion described the study
7 that was done on 36 human subjects. The subject
8 in the study were outfitted with carbon filter
9 respirators so there would be no impact on the
10 respiratory tract, because acrolein is a potent
11 respiratory irritant.

12 The study was designed specifically to
13 determine the effects on eye irritation. That
14 does not mean that respiratory irrigation is not
15 an effect of acrolein. That study isolated eye
16 irritations by blocking the respiratory tract.

17 Normally acrolein is considered to be a
18 respiratory irritant. In fact, it's a potent
19 respiratory irritant. And it is very appropriate
20 to add the REL from acrolein with the REL from
21 other respiratory irritants such as nitrogen
22 dioxide, ozones, sulfur dioxide and hydrogen
23 sulfide, as I did in table 2 of my public health
24 testimony.

25 //

1 BY MR. JOSEPH:

2 Q Dr. Fox, there was testimony about the
3 use of CARB method 430 to sample for acrolein.
4 Are you familiar with CARB method 430?

5 A I am.

6 Q Do you have any response to the
7 criticism of -- do you have any testimony about
8 the appropriateness of the use of CARB method 430
9 for testing acrolein?

10 A I have CARB method 430. CARB method
11 430, and the very first section, section 1.1 under
12 applicability states: This method applies to the
13 determination of formaldehyde and aldehyde
14 emissions from stationary sources.

15 This method was never designed to
16 measure acrolein. It was inappropriately used in
17 the AB2588 source testing procedure in California
18 to measure acrolein. And subsequent to that,
19 based on detailed laboratory studies done by Dr.
20 Freeman at Air Toxics, Ltd., it was found to not
21 be applicable because of the degradation of
22 acrolein hydrozones and acidic DNPH reagent.

23 Q Thank you. Now, Dr. Fox, the thread
24 that we're on and about to wrap up is the
25 emissions from the turbine whose health index is

1 driven by acrolein emissions and which creates the
2 0.54 hazard index.

3 Is there a way to mitigate these
4 acrolein emissions from the turbine?

5 A Yes. In fact, it would be quite easy to
6 mitigate those emissions. 90-plus percent of the
7 acrolein is removed by oxidation catalysts.
8 Oxidation catalysts are commonly used in plants
9 like this.

10 Most of the plants that you all have
11 licensed recently have included oxidation
12 catalysts. For example, LaPaloma, Sutter, High
13 Desert, Three Mountain is proposing one, I believe
14 Pittsburg is using one. I'm not aware of any
15 other project that I've been involved in which is
16 not using an oxidation catalyst.

17 Q Whether or not other projects are using
18 it, an oxidation catalyst you're saying is an
19 effective method to mitigate?

20 A Yes, it is.

21 Q Now, the impacts that it mitigates, are
22 those both start-up emission impacts and steady-
23 state emission impacts?

24 A No. The oxidation catalyst would only
25 omit acute health impacts during normal routine

1 operation. During start-ups and shut-downs, well,
2 particularly during start-ups --

3 Q Excuse me, let me interrupt you. I
4 think you made a mistake in that statement. You
5 said they would emit during normal operations.
6 Let's just try it again so the record is clear.

7 Does an oxidation catalyst mitigate
8 impacts both during start-up and during normal
9 operation?

10 A No. It mitigates impacts during normal
11 operation. However, during start-up the
12 temperatures of the exhaust gas stream are not
13 high enough for the catalyst to work effectively.
14 And it's common in calculations involving start-up
15 to assume zero removal by the oxidation catalyst.

16 Q So the impacts can be avoided during
17 normal operation?

18 A Yes.

19 Q Moving to a different subject now.
20 There's been a lot of discussion about the test
21 methodology which was developed and used for the
22 Avila project, and which CURE used, as well, for
23 this project. And there have been a number of
24 criticisms of that.

25 Would you explain the background that

1 went into developing that test methodology which
2 was used both in Avila and which we used here?

3 A Surely. The Avila situation was a very
4 sensitive and contentious issue. There was a lot
5 of public concern about the effect of proposed
6 remediation project on local businesses and other
7 members of the public.

8 And as a result a large committee of
9 experts from throughout the state representing a
10 wide range of disciplines was assembled. And we
11 spent nearly a year hammering out the sampling
12 protocols and the analysis methods that would be
13 used.

14 Representatives from every agency in
15 California that has jurisdiction over sampling
16 analysis and risk assessment were involved. That
17 includes the local county health department in San
18 Luis Obispo; the local air pollution control
19 district; OEHHA, Office of Environmental Health
20 Hazard Assessment; the California Department of
21 Health Services; the Department of Toxic
22 Substances Control; and CARB.

23 And the result of that work is the
24 community monitoring program in the blue binder
25 that the applicants introduced as an exhibit on

1 Tuesday.

2 Q Now, turning specifically to the testing
3 that was done, would you explain the type of
4 sampling and the question of whether the sampling
5 is continuous or 24-second sampling, and the
6 significance of that?

7 A In the case of Avila we were concerned
8 with assuring that workers and residents were
9 protected continuously during construction
10 activities at the site. And the goal was to
11 develop a system of trigger levels, if you will,
12 which, if exceeded, would trigger an action such
13 as an engineering control on the project, itself,
14 and most severely, even the shutdown of the
15 project to assure that there was no damage.

16 To do that in the case of hydrogen
17 sulfide and the Jerome instrument, we made
18 measurements with the Jerome of three measurements
19 per hour. And we used the average of those three
20 measurements as a representative one-hour average
21 for purposes of comparing with trigger levels.

22 And the trigger levels that we used were
23 level 1, which would lead to intensive sampling,
24 was 50 percent of the acute REL. The acute REL is
25 what we used for the public health assessment

1 here. So we were using 50 percent of that as our
2 first level trigger, based on three 24-second
3 measurements.

4 For level 2, which would trigger
5 engineering controls, we used 75 percent of the
6 acute REL, much lower than what is being used
7 here, as a significant threshold.

8 When we started out we were quite
9 concerned, as the applicants are, that three
10 short-term measurements would create a situation
11 that would result in frequent shut-downs of the
12 project. We expected that there would be pockets
13 of hydrogen sulfide that would show up as peaks
14 and that we would capture them in this 24-second
15 interval which would give a false reading.

16 Hydrogen sulfide is also emitted by
17 diesel construction equipment, so we were
18 additionally concerned that every time a heavy
19 duty truck ran by the instrument that we would get
20 a spike, and it would cause a shutdown in the
21 project.

22 It turns out that those concerns were
23 unfounded. After we had monitored for a month or
24 two we found out that hydrogen sulfide levels were
25 relatively constant, even though there was a great

1 deal of variation in the comings and the goings of
2 equipment.

3 And we demonstrated that based on, at
4 this point, over 70,000 measurements, that three
5 24-second measurements over a one-hour period were
6 quite representative of a one-hour average. And
7 that was the reason that we selected that
8 procedure for use on this project.

9 Most of the data that we report on
10 hydrogen sulfide is based on three 24-second
11 measurements. We averaged those, and we relied on
12 the average.

13 In some cases, just to be sure, we
14 returned to the same spot an hour later and made
15 three additional measurements. And as Dr. Winegar
16 testified, those measurements, separated by an
17 hour, were consistent within the accuracy and
18 precision of the instrument.

19 Q Now, Dr. Fox, Mr. Stein read a passage
20 from page 2-21 of the community monitoring program
21 that says, quote, "exceeding the REL does not
22 automatically indicate an adverse health effect"
23 unquote.

24 What's your response to that quote?

25 A That quote was put in there because, as

1 I stated, we were making 24-second measurements,
2 and the acute REL is based on a one-hour average.
3 And we were concerned that, as I just said, those
4 discrete 24-second measurements may result in an
5 exceedence of the one-hour average which would
6 cause a) public panic, and b) the shutdown of the
7 project.

8 So we wanted to notify the public that
9 just because there was a 24-second exceedence it
10 wasn't necessarily a problem. In fact, elsewhere
11 in the community monitoring plan document it very
12 clearly states that the significance level that
13 was used, or would be used for risk assessment,
14 based on the data we collected, was an acute
15 hazard index of 1.

16 Additionally, in our trigger level
17 process in table 2, I believe it is, selected as
18 significance levels not a hazard index of 1, but
19 50 percent of that in the level 1 case, and 75
20 percent of that in the level 2 case.

21 So we actually used significant
22 thresholds that were lower than a hazard index of
23 one.

24 Q Now, Dr. Fox, Commissioner Moore asked
25 how OEHHA had revised the chronic REL for hydrogen

1 sulfide. There was discussion that OEHHA proposed
2 a chronic REL of 0.6 ppb in October 1997. And
3 Commissioner Moore asked how OEHHA responded to
4 the criticism of that.

5 Could you respond more fully to
6 Commissioner Moore's question?

7 A Surely, I researched it for you. OEHHA
8 originally proposed a chronic REL of .6 for
9 hydrogen sulfide, which myself and many other
10 people felt was too low because it's a lot lower
11 than normal ambient hydrogen sulfide
12 concentrations.

13 So we pulled together data on naturally
14 occurring ambient sources of hydrogen sulfide,
15 like levels of human breath and so on and so
16 forth. Mr. Stein read that passage from the
17 community monitoring program.

18 That information was used in comments on
19 the draft chronic REL for hydrogen sulfide. And
20 based on those comments, OEHHA revised the draft
21 REL from .6 to 6 ppb. In other words, they raised
22 it by a factor of ten.

23 But even with the evidence we put on the
24 record that there were high levels of hydrogen
25 sulfide in the human breath, OEHHA still felt that

1 a chronic REL of 6 ppb was appropriate for
2 hydrogen sulfide.

3 Q And can you compare that to the state
4 one-hour standard?

5 A The state one-hour standard is 30 ppb
6 which is the acute REL that all of the parties
7 used in their work.

8 Q So despite OEHHA's fixing of 6 ppb, in
9 this case you did not use that stricter standard,
10 is that right?

11 A That's right.

12 Q Now, I want to move to the question of
13 the sampling time with the Jerome instrument. Can
14 we put all the discussion, all the controversy
15 about sampling time aside and say what the
16 conclusions are separately from the sampling time
17 issue?

18 A Yes. You can forget all of the
19 discussion about the sampling time because it
20 doesn't affect the bottomline. In our PSA
21 comments on public health we calculated the
22 incremental increase in hydrogen sulfide from a
23 portion of the hydrogen sulfide emissions that
24 would result from the construction of 700 new
25 wells.

1 And those calculations indicated that
2 the incremental increase in hydrogen sulfide would
3 be 30 mcg/cubic meter. That's the increment.

4 In air quality analysis what you
5 ordinarily do is you add the increment to the
6 maximum reported baseline ambient concentration.
7 And in my PSA comments, to make that calculation,
8 I used the maximum recorded average based on three
9 discrete measurements for one sampling period.

10 However, if you throw that out and
11 instead use the average over the entire sampling
12 period you still reach the same conclusion, namely
13 that the state one-hour hydrogen sulfide standard
14 is exceeded.

15 We sampled on two days. On the first
16 day the average hydrogen sulfide concentration was
17 14 mcg/cubic meter. If you add 14 mcg/cubic meter
18 to the increment of 30, you get 44 mcg/cubic
19 meter. The state standard is 42. So you exceed
20 it.

21 On the second day that we went out
22 there, the average of all the measurements we made
23 over the time we were out there, which was in
24 excess of four hours, we got an average H2S
25 concentration of 33 mcg/cubic meter.

1 If you add that to the model increment
2 you get a total of 63 mcg/cubic meter, which again
3 exceeds the state one-hour hydrogen sulfide
4 ambient air quality standard.

5 So, irrespective of all this argument
6 about whether or not a 24-second measurement is
7 representative of a one-hour average or not is
8 really beside the point.

9 Q Dr. Fox, the data you reported is for
10 the measurements taken in the oil fields, rather
11 than in the Low Kern Preserve, is that right?

12 A That's right. And Ms. Fields' testimony
13 on Monday, Monday I believe, in the air quality
14 nonmeteorology testimony there is a statement that
15 we had made measurements in the car, along the
16 highway, and kit fox dens, and all sorts of other
17 inappropriate places.

18 It turns out that if you look at the
19 actual hydrogen sulfide data tables which are in
20 attachment -- where are they -- in an attachment
21 to my public health testimony, there's a column, I
22 believe it's the second column labeled sample.
23 And in that column three letters are used: O for
24 oil field; L for Low Kern, which was the
25 background area; and X for other.

1 And the only measurements we used in our
2 analyses were the ones marked O for oil field. We
3 did not use the Low Kern or the X for other
4 samples in our analysis.

5 Q Dr. Fox, Mr. Tyler stated that
6 instruments should be calibrated immediately
7 before each use. Is that an appropriate protocol
8 for the Jerome instrument?

9 A It's not an appropriate protocol for the
10 Jerome instrument. Mr. Tyler is right that many
11 instruments do require calibration immediately
12 before use, but the Jerome is not one of them. It
13 holds its calibration for quite an extensive
14 period of time.

15 And we demonstrated that in our work at
16 Avila. We had three Jeromes down there that we
17 used continuously, ten hours a day, six days a
18 week. And we have extensive operating history on
19 them, and they do perform according to the
20 manufacturer's specifications.

21 Q When a Jerome instrument goes out of
22 calibration how can you tell?

23 A It reads zero.

24 Q Dr. Winegar testified that carbon
25 disulfide causes a 30 percent interference. And

1 then Mr. Tyler said that a 30 percent error is
2 unacceptably high.

3 Do you have a response to that
4 testimony?

5 A Yes. When you're measuring low levels
6 such as we are here, and by low levels I mean in
7 the ppb range, plus or minus 30 percent accuracy
8 or precision is pretty darn good. You're doing
9 really good if you can get 30 percent.

10 The second point is that virtually ever
11 other hydrogen sulfide measurement method,
12 instrumental measurement method that I'm aware of,
13 nonportable, fixed fence-line sensor types of
14 measurement methods have similar interferences.

15 Hydrogen sulfide is very difficult to
16 measure anyway except by GC photo-ionization
17 detection. And other sulfur compounds, mercaptan
18 and other sulfides interfere with virtually all of
19 the methods. And you have to include different
20 kinds of scrubbers, like glass/wool and impinger
21 solutions in order to try to prevent it.

22 Generally you don't worry about those
23 interferences in ambient air sampling because the
24 concentrations of those other interfering
25 substances like carbon disulfide and dicarbon

1 disulfide and methyl mercaptan and so on and so
2 forth simply aren't present in normal air or the
3 concentrations are so low that they don't cause a
4 problem.

5 The only time that interference from
6 other sulfur compounds becomes an issue is when
7 you're trying to make stack gas measurements where
8 you have high concentrations of other sulfur
9 compounds, or in a work environment where you
10 might find high concentrations of them.

11 But in the oil field I wouldn't expect
12 to find any. At Avila we collected many hundreds
13 of samples in a hydrocarbon contaminated
14 environment and analyzed them for a large number
15 of sulfur compounds, including all of those that
16 interfere with the Jerome and other instruments,
17 and we found basically that none were detected.

18 Q Mr. Tyler testified about his experience
19 working for CARB as a source tester. Could you
20 explain what your understanding of source testing
21 is?

22 A Yes. Source testing means collecting a
23 sample of stack gas from the stack with special
24 equipment. And typically the sample is sent to
25 the lab for analysis.

1 Sometimes you can make a measurement in
2 situ, but it's very different from ambient air
3 sampling. And the main difference is
4 concentrations.

5 Normally when you're sampling from a
6 stack you're dealing with much higher
7 concentrations than you are when you're sampling
8 ambient air.

9 Q Does CARB have a reference method for
10 measuring hydrogen sulfide in ambient air?

11 A No, it does not. It has a reference
12 method for measuring hydrogen sulfide in stack
13 gases.

14 Q There was some discussion about whether
15 the community monitoring program was updated to
16 reflect things that you had learned along the way.
17 Has the CMP been updated?

18 A The CMP was originally published in
19 February of last year. And the introduction of it
20 states it's a living document, and the intent was
21 to learn from our mistakes and update it as we
22 went.

23 The problem is the primary author who is
24 sitting here testifying ended up involved in power
25 plant cases, and has been remiss and has not

1 updated it.

2 We have a large file of internal
3 memoranda and emails that document all the changes
4 that have been made. And starting at the end of
5 January we're going to prepare a final report
6 which will reflect all of the updates to it, such
7 as the change that we talked about in the acrolein
8 sampling method.

9 Q Thank you, Dr. Fox.

10 HEARING OFFICER FAY: Do both parties
11 have cross-examination of Dr. Fox?

12 MR. GALATI: I was under the impression
13 that Dr. Fox would be given an opportunity to go
14 through her worker health testimony. I know staff
15 and I have, I think, both agreed that we'd just
16 cross her one time.

17 HEARING OFFICER FAY: Let's go ahead and
18 do that.

19 MR. JOSEPH: I think it might be
20 appropriate for us to have an opportunity to
21 finish our cross-examination worker safety of
22 staff first. Then we can get back in the
23 appropriate sequence of events.

24 HEARING OFFICER FAY: Who do you plan to
25 cross-examine and for how long?

1 MS. HOLMES: My understanding was that
2 we had completed the cross-examination of our
3 witnesses. I thought that was quite explicit on
4 Tuesday afternoon. We said that Mr. Tyler was
5 testifying on what was submitted on December 17th,
6 as well as what was submitted on January 3rd.
7 They were both introduced into the record.

8 The only reference that I recollect to
9 any postponement of testimony was if Mr. Tyler had
10 rebuttal to offer to Dr. Fox's criticisms of the
11 health risk assessment that he performed. That's
12 the only area that was held over till today.

13 MS. POOLE: I believe we had a debate
14 several times about whether it was appropriate to
15 do public health and worker safety at the same
16 time. Staff expressed its preference to do that.
17 And I stated several times that I would want to
18 cross-examine Mr. Tyler later on Thursday when we
19 were prepared on the worker safety aspects of
20 that.

21 MR. JOSEPH: And Mr. Tyler was asked a
22 couple of times would he be here Thursday for that
23 purpose.

24 MS. HOLMES: He was asked in response to
25 the conversation that we had about the questions

1 that you objected to relative to Dr. Fox's
2 testimony about the health risk assessment.

3 HEARING OFFICER FAY: Let's go off the
4 record a minute.

5 (Off the record.)

6 HEARING OFFICER FAY: On the record.
7 The Committee will allow CURE to conduct its
8 deferred cross-examination of Mr. Tyler, and we'll
9 limit you to the ten minutes that you needed. So,
10 go ahead.

11 MS. POOLE: Thank you.

12 Whereupon,

13 RICK TYLER
14 was recalled as a witness herein and, having been
15 previously duly sworn, was examined and testified
16 further as follows:

17 CROSS-EXAMINATION

18 BY MS. POOLE:

19 Q Mr. Tyler, do you agree that
20 contaminated soil should be removed prior to
21 construction?

22 A If the soil exceeds levels that would be
23 considered inappropriate for worker exposure,
24 under the proper regulatory framework, then I
25 would say yes, it should be removed.

1 Q You testified that EPA's preliminary
2 remediation goals, or PRGs, should not be used to
3 screen a site to determine whether a cleanup
4 should occur, correct?

5 A No. I said that the PRGs should not be
6 used to assess worker exposure, cleanup workers
7 exposure to those contaminants. It should only be
8 used in the context of potential worker exposure
9 subsequent to cleanup.

10 So in other words, the end use of the
11 property. Not during the cleanup process, itself.

12 Q In other words they should not be used
13 to screen a site for cleanup? Is that right?

14 A No. That's not what I said. I said
15 they should not be used to assess worker exposure.
16 In other words the cleanup workers exposure to
17 that.

18 Certainly they can be used as a basis to
19 decide what levels of cleanup are required to
20 render the facility appropriate for the end use,
21 which in this case is an industrial facility with
22 rather limited use.

23 Q Mr. Tyler, I'm going to give you a
24 document which is called Department of Toxic
25 Substances Controls site screening guidance, dated

1 February 24, 1997.

2 Would you please read the highlighted
3 definition of site screening on there, on that
4 first page?

5 A A site screening is an initial review of
6 available information to determine the need for
7 DTSC action at the potential hazardous substances
8 release site.

9 Q Would you turn to page 3 of that
10 document, please. And would you read that
11 highlighted portion?

12 A Okay. Under evaluation it states,
13 "Staff's evaluation of site information will
14 include the identification and review of the
15 following." And then there's five bullets. The
16 last bullet's what you've underlined. "Risk based
17 criteria for comparison of contaminant levels
18 MCLs, preliminary remediation goals, et cetera.
19 Staff will use these factors and professional
20 judgment to determine if DTSC should further
21 investigate known or potential hazardous substance
22 contamination at the site."

23 Q Thank you, Mr. Tyler.

24 MS. POOLE: That's all I have. I think
25 that was even faster.

1 HEARING OFFICER FAY: Gold star.

2 MS. HOLMES: I'm sorry, I missed that.

3 HEARING OFFICER FAY: She said she's
4 through.

5 PRESIDING MEMBER MOORE: That's all.

6 (Laughter.)

7 MS. HOLMES: That's an important thing
8 to know.

9 HEARING OFFICER FAY: Now, my impression
10 is to make --

11 PRESIDING MEMBER MOORE: Now we return
12 to CURE, then, for --

13 HEARING OFFICER FAY: Right, I just want
14 to review this. That we would go now to CURE's
15 direct testimony on worker safety, their follow-up
16 testimony that they filed.

17 Or do you have rebuttal testimony?

18 MS. HOLMES: Let me consult just a
19 moment.

20 (Pause.)

21 MS. HOLMES: Mr. Fay, I think that what
22 I was going to ask Mr. Tyler, what I'm planning to
23 ask Mr. Tyler is rebuttal to the worker safety
24 testimony that she hasn't yet testified to.
25 Perhaps it would be best to wait.

1 HEARING OFFICER FAY: I think so.

2 MS. HOLMES: The other point that I
3 would make is that it might be helpful before CURE
4 testifies to have the applicant get their worker
5 safety testimony over with first, since they are
6 the equivalent of the moving party.

7 HEARING OFFICER FAY: The revision?

8 MS. HOLMES: Yes.

9 MS. POOLE: I'm lost. Are we --

10 PRESIDING MEMBER MOORE: We're getting
11 to the Fox testimony, filed testimony on worker
12 safety. We're trying to understand, at least I
13 think we are, how revisions from the applicant can
14 get on the record so everyone can understand what
15 they are.

16 HEARING OFFICER FAY: And in the event
17 that the revisions, I mean I understand one of the
18 revisions is to a condition of certification. And
19 that would be important to have on the record,
20 since it might affect rebuttal.

21 MS. POOLE: So the applicant will be
22 completing its worker safety testimony?

23 PRESIDING MEMBER MOORE: That's what
24 we're debating right now, and trying to
25 understand.

1 HEARING OFFICER FAY: That was Ms.
2 Holmes' suggestion.

3 MS. POOLE: Yeah, and we concur with
4 that.

5 HEARING OFFICER FAY: So that you know
6 before you testify what state of the applicant's -
7 -

8 PRESIDING MEMBER MOORE: Mr. Galati is
9 about to reach for the microphone and say whether
10 he agrees with that or not.

11 MR. GALATI: We have submitted a revised
12 condition, safety1, in response to what we believe
13 to be direction from the Committee in trying to
14 broaden it.

15 I was not intending to do that in the
16 form of testimony. I can bring Mr. Worl up and
17 have him testify that he believes what he believes
18 about it. And we could then move it in.

19 PRESIDING MEMBER MOORE: Well, that
20 would at least get it on the record.

21 MR. GALATI: And the only other
22 testimony that we had that we were going to ask to
23 be moved into evidence was the declaration of Jim
24 Bunker which was in response specifically to
25 questions from the Committee. And that's all our

1 testimony.

2 PRESIDING MEMBER MOORE: Let's do both
3 of those right now, if I may, and just hold off.
4 And then we'll come straight back to you and go to
5 Dr. Fox's testimony.

6 MS. POOLE: I think that's a good idea.
7 I do want the Committee to be aware that we will
8 be objecting to the introduction of Mr. Bunker's
9 testimony.

10 PRESIDING MEMBER MOORE: Well, --

11 MR. GALATI: Let's go ahead and handle
12 that now.

13 PRESIDING MEMBER MOORE: -- let's do --

14 HEARING OFFICER FAY: Bring the
15 witnesses up.

16 MR. GALATI: I don't have Mr. Bunker
17 available. I have his declaration.

18 PRESIDING MEMBER MOORE: All he has is
19 testimony from Mr. Bunker.

20 HEARING OFFICER FAY: Okay.

21 PRESIDING MEMBER MOORE: Well, let's
22 hear the objection then.

23 MS. POOLE: Mr. Bunker did testify, as
24 the Committee will recall, on December 3rd. At
25 that time he said he was not qualified to discuss

1 the detection limits in the phase 2, nor was he a
2 chemist and was he qualified to read
3 chromatograms.

4 Mr. Bunker's subsequent declaration
5 addresses both of those points. It's based on
6 hearsay with discussions with the lab.

7 We need somebody here who's qualified
8 that we can cross-examine on those points.

9 MR. GALATI: The only thing I would
10 point out is it's no different than Dr. Marty's
11 email attached to her supplemental testimony of
12 which I had no chance to cross-examine, except for
13 the fact that these were specific questions that
14 we were sent back to get.

15 Mr. Bunker coordinated with the lab,
16 educated himself, and has declared under penalty
17 of perjury that that's his opinion. They
18 certainly can bring that up in their brief.

19 PRESIDING MEMBER MOORE: Mr. --

20 MS. POOLE: Dr. Marty never stated that
21 she was unqualified. And --

22 PRESIDING MEMBER MOORE: Part of your
23 objection, counselor, is that the submission by
24 Mr. Galati's witness, whether it factually
25 characterizes what happened at the laboratory or

1 not. That it's coming from an unqualified
2 witness. Does that fairly characterize?

3 MS. POOLE: It's the reading of the
4 chromatogram that we're particularly concerned
5 about, which he addresses in the second part of
6 his declaration.

7 PRESIDING MEMBER MOORE: But in this
8 case, and I will admit I have not read that
9 declaration, so I'm depending on this debate to
10 help educate me here. As I understood Mr.
11 Galati's comment right now, I understood him to
12 say that he was representing -- that his witness
13 was representing laboratory results, where I'm
14 assuming there was a chromatocist who could
15 interpret those. Am I correct?

16 MR. GALATI: You are correct. And
17 rather than -- for every test result that was
18 done, rather than bring in the manufacturer of the
19 Jerome sampler, rather than bring in the person
20 who actually did gas chromatograph reading, or in
21 the case of water testimony, rather than bring in
22 all three lab technicians who touched the lab
23 result to be able to testify all along, these
24 things are supervised and passed up the chain.
25 And that's what was done.

1 PRESIDING MEMBER MOORE: So what you're
2 saying is that there was an analysis done, and
3 that your witness obtained that analysis and is
4 passing it on to us with the characterizations and
5 the analytics of the laboratory?

6 MR. GALATI: Basically what was called
7 into question was an attachment to his report.
8 That, and specifically a couple of points on a gas
9 chromatograph.

10 PRESIDING MEMBER MOORE: I remember that
11 very well.

12 MR. GALATI: At the time Mr. --

13 PRESIDING MEMBER MOORE: I remember Dr.
14 Fox's criticism of it very well.

15 MR. GALATI: At the time Mr. Bunker
16 could not answer that question. Between the time
17 of the hearing he conversed with the laboratory,
18 educated himself on that point, and rendered an
19 opinion which is the opinion he would have
20 testified had he done that before this opinion.

21 PRESIDING MEMBER MOORE: Okay, Mr.
22 Galati, just so that I'm clear and I'm not trying
23 to be dense about this, but what you're telling me
24 is that in this sense he has educated himself in
25 the sense that he knew the question to ask the lab

1 to render, and that what's represented in your
2 submittal is the lab's opinion, not his opinion?

3 MR. GALATI: Well, it is his opinion
4 based upon the lab's opinion. The lab convinced
5 him that the soil gas chromatograph was fine,
6 enough for him to render an opinion.

7 And, yes, it is based on his
8 conversation with the laboratory.

9 HEARING OFFICER FAY: We note CURE's
10 objection and it will be overruled as to receiving
11 Mr. Bunker's declaration. However, because Mr.
12 Bunker is not here and because you've indicated
13 the nature of the testimony is really hearsay, in
14 any case, although with the possible exception it
15 is expert opinion, but he's not here to be cross-
16 examined, so there will be no findings based on
17 this material. But it may be helpful to educate
18 the record.

19 PRESIDING MEMBER MOORE: And let me just
20 add to that, and this goes to CURE's objection, it
21 seems to me that were he to be here for cross-
22 examination it wouldn't change his status as
23 someone qualified or unqualified to represent
24 this. His educational background or his
25 employment background hasn't changed since

1 December 3rd, so he's still the same individual.

2 On the other hand, the information,
3 which I'm just glancing at Mr. Fay's copy here,
4 the information that you've related from the
5 laboratory is useful, I think, in the hearing.
6 And it can help educate me, at least, on this.

7 So, I know we're splitting the baby a
8 little bit on this, but we're not going to be able
9 to rely on this for a finding.

10 HEARING OFFICER FAY: So, noting the
11 objection, did you want to enter this into the
12 record?

13 MR. GALATI: Yes, I would like it marked
14 and identified and entered into the record,
15 please.

16 MS. POOLE: We're happy with that half
17 of the baby. We'll have Dr. Fox address it.

18 (Laughter.)

19 PRESIDING MEMBER MOORE: I hardly ever
20 get that.

21 (Laughter.)

22 HEARING OFFICER FAY: So the declaration
23 of James Bunker, dated January 4th, will be
24 received into evidence over objection, and labeled
25 exhibit 80, 8-0.

1 PRESIDING MEMBER MOORE: And now,
2 counselor, would you like to offer testimony on
3 the change, the conditional change?

4 MR. GALATI: Yes. At this time, Mr.
5 Fay, I'd like to mark for identification a
6 revision of safety1 by Kim Worl.

7 HEARING OFFICER FAY: That's marked for
8 identification as exhibit 81. Have copies been
9 provided to all the parties?

10 MR. GALATI: Yes.

11 MS. POOLE: Although I would like to
12 note that all parties have not had time to review
13 this.

14 PRESIDING MEMBER MOORE: I assume we're
15 all getting it at the same moment?

16 MS. HOLMES: No, that's not correct,
17 Commissioner Moore, I had a copy of this two days
18 ago.

19 HEARING OFFICER FAY: Okay, staff's had
20 this for two days?

21 MS. HOLMES: I did not know it had not
22 been distributed.

23 HEARING OFFICER FAY: Okay, for CURE and
24 for the Committee's help, can you review the
25 changes then?

1 MR. GALATI: Yes. What you have in
2 front of you is staff's original safety1.
3 Everything that is underlined is an addition. And
4 basically the point is to expand upon safety1 to
5 address the conditions that would happen if
6 contaminated soil or crude-impacted soil were
7 encountered during construction.

8 HEARING OFFICER FAY: And if I recall
9 correctly, the Committee went to some length to
10 emphasize that our concern was not so much with
11 testing or with the accuracy of the phase two
12 report, but with a protocol that would insure that
13 if hazardous soils were discovered, that the
14 proper mitigation would take place to protect the
15 workers.

16 Is that in response to that expression
17 of concern?

18 MR. GALATI: That's exactly why this was
19 prepared. And we tried to do it within the
20 framework of an existing condition.

21 PRESIDING MEMBER MOORE: Mr. Galati,
22 when your client hires construction workers, or
23 when they hire a firm that in turn hires
24 construction workers, is there a screening process
25 that goes ahead to pre-identify people who might

1 have a tendency for health problems, to establish
2 some baseline?

3 I guess what I'm thinking about is if
4 you had someone who was asthmatic and was put into
5 the front-line, so to speak.

6 MR. GALATI: I think I'm going to have
7 to have our witness address that. And I would
8 like to break it into two pieces.

9 If a contractor was hired specifically
10 to deal with potentially contaminated soils, for
11 example in this case the removal of the three
12 areas which the applicant has committed to do
13 prior to construction, the answer might be
14 different than if after those were removed and
15 additional material is not suspected, although not
16 ruled out that you can never come in contact with
17 it, the answer might be again different.

18 And this condition addresses the
19 situation where the material of the three areas is
20 removed. And then, as our expert had testified
21 earlier, the unlikely event that additional crude
22 impacted soils are found.

23 So that addresses the situation with the
24 normal grading contractor.

25 PRESIDING MEMBER MOORE: Okay, thank

1 you. Do you have anything to add on -- I just
2 scanned your underlined additions. Does that
3 stand as submitted?

4 MR. GALATI: Yes, I guess I would like
5 Mr. Worl to say he prepared it and lay a
6 foundation.

7 PRESIDING MEMBER MOORE: Good, thank
8 you. Welcome back, Mr. Worl, you are still under
9 oath.

10 MR. GALATI: Yes, Mr. Worl has been
11 previously sworn.
12 Whereupon,

13 KIM WORL
14 was recalled as a witness herein and, having been
15 previously duly sworn, was examined and testified
16 further as follows:

17 DIRECT EXAMINATION

18 BY MR. GALATI:

19 Q Mr. Worl, did you assist in the
20 preparation of revised condition safety1 which has
21 been identified as exhibit 81?

22 A Yes, I did.

23 Q And in your professional opinion does
24 this revised safety1 address any concerns
25 associated with the uncovering of potentially

1 contaminated soil that has not yet been
2 discovered?

3 A I would probably offer one change to
4 item number 1, where I have called out
5 specifically a couple of types of instruments it
6 would be worthwhile to evaluate potential airborne
7 exposures of chemical emissions.

8 Because some of the contaminants that we
9 saw in the three higher areas are more particulate
10 in nature, it would be worthwhile to have an
11 airborne monitor that was capable of measuring
12 particulates in the air, and then setting
13 appropriate criteria for procedures and steps to
14 take in the event that we saw dust clouds or the
15 generation of dust during grading construction.

16 PRESIDING MEMBER MOORE: How would you
17 know where to locate that?

18 MR. WORL: There are several ways to do
19 that. You could either put them actually on the
20 maximum impacted individual, the person sitting on
21 the grader, itself. Or you put it on the spotter,
22 the guy who's directing the grader.

23 PRESIDING MEMBER MOORE: And it moves
24 around?

25 MR. WORL: Oh, yeah, it's a portable

1 monitor. Something you would clip to your belt
2 for instance.

3 PRESIDING MEMBER MOORE: And how often
4 would you read it?

5 MR. WORL: They are set to be -- you
6 could read them, they have a digital or an analog
7 readout. You could read them anytime, or they
8 collect an entire sample through the entire work
9 shift. That's the way they're designed.

10 PRESIDING MEMBER MOORE: And so you'd
11 systematically review the output of that?

12 MR. WORL: Um-hum, you would look at it,
13 you could go to the operator on given time
14 periods. You could also put one downwind of the
15 grading activities. They're a small device, you
16 know, not much larger than a couple of those
17 cassettes, I suppose.

18 PRESIDING MEMBER MOORE: Does it record
19 that data and preserve it?

20 MR. WORL: Yeah, and it can be
21 downloaded into a computer and tracked in that
22 fashion. And you could put several of them around
23 the site.

24 PRESIDING MEMBER MOORE: How much does
25 one of those devices cost? Or do you rent them?

1 MR. WORL: We currently have a couple in
2 our office. I wouldn't want to commit to a price,
3 but they're somewhere -- well, I would estimate
4 they're between \$2000 and \$6000 apiece to buy.

5 PRESIDING MEMBER MOORE: So if we
6 assumed that there's a rental market for these,
7 and we wanted to have 20 of them, and station them
8 at various points around the site -- I made that
9 number up, by the way, didn't come from any other
10 place -- that you could simultaneously or
11 sequentially download that information and get a
12 geometric, if you will, picture of what's
13 happening around the site?

14 MR. WORL: Well, keeping in mind, of
15 course, that those sort of emissions are
16 incredibly influenced by meteorological conditions
17 and activities and the specific type of work
18 that's going on. I mean those variables are
19 tremendous in that situation.

20 PRESIDING MEMBER MOORE: So what you're
21 suggesting is that you add that to what you've
22 just handed us as an addendum, and you're not
23 specifying the number of those, you're simply
24 specifying an appropriate number to analyze that?

25 MR. WORL: Right. If we are really

1 going to monitor potential worker exposures we
2 need to be able to do that to all of the potential
3 contaminants. And the one -- and the first two
4 instruments address more of the volatile
5 components. But we also have potential
6 particulate issues, so we should be -- we'd be
7 remiss not --

8 PRESIDING MEMBER MOORE: And this is a
9 suggestion? The applicant's attorney is aware of
10 this, it didn't just come out on the table right
11 now?

12 MR. GALATI: Yes, and if Mr. Worl will
13 indicate where in the condition he would put that,
14 that might be helpful.

15 HEARING OFFICER FAY: With specific
16 language if you can.

17 MR. WORL: If you look under the number
18 1 there, as we begin to work through that, I think
19 it's in about the last sentence where we have the
20 HSC, we'll have available real time monitoring
21 equipment.

22 For example, photoionization detector, a
23 flame ionization detector, and I would include in
24 that list a real time airborne particulate
25 monitor.

1 PRESIDING MEMBER MOORE: Just during the
2 construction phase?

3 MR. WORL: During the grading and mass
4 grading operations, yes.

5 HEARING OFFICER FAY: And the term is
6 real time -- again?

7 MR. WORL: Airborne particulate monitor.
8 And there's several that are commonly used, and we
9 can probably leave that open as to the particulars
10 and stuff.

11 PRESIDING MEMBER MOORE: Okay.

12 BY MR. GALATI:

13 Q And, Mr. Worl, would you agree that that
14 should be up to the health and safety coordinator
15 on the project site to determine the number and
16 locations of those real time air monitoring
17 equipment?

18 A Yes, as with all of those pieces of
19 equipment, the frequency and the locations of the
20 real time measurements that you would make would
21 be up to that individual

22 Q Because there might be points in time
23 where he may want more for a month, during a
24 particular construction phase, and maybe less
25 during something else?

1 A Yes, during particular aspects of the
2 grading operation they may require each of those
3 instruments be present. And other times they may
4 not be in areas. But they need to be available in
5 order to make those on-the-spot assessments.

6 Q Do you have any other changes to exhibit
7 81?

8 A No, that's, I think, the only change
9 that I saw.

10 PRESIDING MEMBER MOORE: Is your witness
11 available for questioning?

12 MR. GALATI: Yes, he is.

13 PRESIDING MEMBER MOORE: Thank you.

14 MS. HOLMES: I have a couple of
15 questions, thank you.

16 CROSS-EXAMINATION

17 BY MS. HOLMES:

18 Q Good morning, Mr. Worl. Earlier in your
19 testimony that you gave in December you referenced
20 a health and safety plan. Could you explain again
21 very briefly what the health and safety plan is,
22 and how it relates to safety1?

23 A Okay. There would be a number of plans
24 associated with the construction phase. The one
25 that safety1 really dovetails with is what's

1 called the California Injury Illness and
2 Prevention Program.

3 A strong component of that IIPP is a
4 hazard analysis. And we've gone through the
5 process of identifying the potential hazards that
6 these construction workers might encounter. And
7 those can be any sorts of hazards from physical
8 hazard to being run over by a grader, to potential
9 chemical hazards associated with encountering
10 these crude oil impacted soils.

11 What this particular condition requires
12 or sets up is a protocol for how -- a response
13 protocol, essentially, for if crude oil impacted
14 soils are encountered during the grading
15 operations or the mass grading operations.

16 Q So this particular condition does not
17 discuss or affect how the site cleanup prior to
18 construction will be conducted, is that correct?

19 A No, it's purely limited to the mass
20 grading operation. I think the applicant is
21 committed to removing the hot spots as identified
22 in the phase two, and this is subsequent to that.

23 Q Do you know what types of requirements
24 typically apply to workers who are doing the kind
25 of removal action that Texaco has -- excuse me,

1 that Sunrise has agreed to?

2 A I'm sorry, I don't understand that
3 question.

4 Q Are you familiar with the types of
5 requirements that would apply to protect workers
6 during the kinds of cleanup activities that
7 Sunrise has committed to conducting?

8 A Yes. I, myself, have written health and
9 safety plans, and I would estimate 50 to 100
10 health and safety plans for remediation of
11 hazardous waste sites and investigation of
12 hazardous waste sites.

13 The CalOSHA permissible exposure limits
14 are -- or the federal permissible -- PELs are used
15 to evaluate worker exposures to chemicals and
16 hazardous waste sites.

17 Q So a health and safety plan is something
18 that specifically refers when there is some kind
19 of a removal action?

20 A A health and safety plan, it's very
21 prudent to have a health and safety plan when
22 you're removing any type of chemical
23 contamination. There is a specific standard.
24 It's called the HAZWOPER standard, the hazardous
25 waste operations and emergency response standard,

1 that is directed absolutely for the removal of
2 hazardous waste.

3 Q And does it include requirements for
4 workers using protective equipment and other kinds
5 of protective gear, protective clothing, for
6 example, respirators, if that's appropriate?

7 A Yes, that particular standard was
8 designed only for hazardous waste operations, and
9 it has -- requires a health and safety plan with
10 specific sections that discuss air monitoring,
11 personal protective equipment, emergency response
12 procedures, all designed, you know, to protect the
13 workers in the event that hazardous chemicals are
14 encountered.

15 Q Are those standards designed to protect
16 against significant amounts of dermal exposure,
17 inhalation exposure, ingestion exposure?

18 A Those standards are designed to protect
19 against any of the routes of exposures, be it
20 dermal, inhalation, ingestion.

21 Q Thank you. With respect to the
22 construction workers that are the subject of your
23 revised safety1, could you explain how they'll be
24 similarly protected in the event that currently
25 undiscovered contamination is found during the

1 construction process?

2 A I think that's slightly addressed in one
3 of the items that we have here. I just outlined a
4 few of these, the procedures that may be
5 implemented in the event that some of this
6 material is encountered.

7 Those can involve -- typically they're
8 sorted according to engineering controls,
9 administrative controls, or personal protective
10 equipment, with PPE being the last option, due to
11 the problems that creates with workers.

12 But engineering controls can be anything
13 from removing the equipment to a given area upwind
14 of the location of the crude oil impacted soil.

15 Then we could institute administrative
16 controls, which could be almost safe work
17 procedures, about how the machinery and the
18 equipment and the people respond in that fashion.

19 And in the last event we could
20 incorporate personal protective equipment;
21 commonly Tybeck coveralls that would protect quite
22 a bit of the dermal surface area. We could add
23 chemical-resistant gloves. We could add
24 respiratory protection to control the inhalation
25 pathway.

1 Q And is it your belief that the measures
2 that you've just discussed, and also discuss in
3 paragraph four of safety1, will be adequate to
4 protect workers from any adverse health
5 consequences as a result of exposure to
6 undiscovered contaminants?

7 A That is my position, and I'll stand by
8 that.

9 MS. HOLMES: Thank you. Those are all
10 my questions.

11 HEARING OFFICER FAY: All right, before
12 we move to CURE's cross-examination I just want to
13 ask staff counsel, does staff support this
14 revision to safety1, as modified this morning by
15 Mr. Worl?

16 MS. HOLMES: Yes, we do.

17 HEARING OFFICER FAY: All right, thank
18 you. CURE.

19 MS. POOLE: Thank you. May I have just
20 a minute since we've just received this?

21 HEARING OFFICER FAY: Certainly.

22 (Pause.)

23 HEARING OFFICER FAY: Let's go off the
24 record.

25 (Off the record.)

1 HEARING OFFICER FAY: We are back on the
2 record. And, CURE, do you have cross-examination
3 of the applicant's witness?

4 MS. POOLE: Yes.

5 CROSS-EXAMINATION

6 BY MS. POOLE:

7 Q Good morning, Mr. Worl.

8 A 'Morning.

9 Q Will this proposed condition apply to
10 all construction work on the transmission line and
11 other linear facilities?

12 A Could you repeat the question, please?

13 Q Will this condition apply to all
14 construction work on the transmission line and
15 other linear facilities?

16 A As it was prepared, this condition was
17 for the mass grading operations associated with
18 work within the footprint of the facility.

19 Q And when you say within the footprint of
20 the facility, you mean the plant site, itself?

21 A Yes.

22 MR. GALATI: If I could clarify, yes,
23 Mr. Worl prepared the safety1 to include the
24 details. But as safety1 was originally written,
25 it applies to all of the projects, including the

1 linear facilities. And we would agree that if
2 contaminated soils or crude impacted soils were
3 found on a transmission grading that the same
4 procedures would apply.

5 BY MS. POOLE:

6 Q Will the entire condition apply to all
7 linear facilities?

8 A Could you repeat the question?

9 Q Will this entire proposed condition
10 apply to all linear facilities?

11 A Based on the fact that it was built off
12 safety1, which I believe applied to the
13 transmission corridor and the other linear
14 facilities, I would say yes.

15 Q And will it apply to construction
16 activities within the three-quarter mile radius
17 around the plant?

18 A No.

19 Q Does the injury and illness prevention
20 program apply to workers in the three-quarter mile
21 radius?

22 A No.

23 Q Does the personal protective equipment
24 program apply to workers in the three-quarter mile
25 radius?

1 A Not the one we discussed here.

2 Q In safety1 here you've proposed various
3 equipment to measure airborne contaminants. What
4 instrument will be used to measure particulate
5 matter?

6 A There are a variety of instruments which
7 are capable of doing that, and I wouldn't want to
8 commit to any given instrument at this time
9 without having a little more information on the
10 soil types and size of the particulates.

11 An example of an instrument that I have
12 used in the past for particulate monitoring is an
13 instrument called a mini-ram, a laser particle
14 counter.

15 Q Forgive me, I've forgotten. Did you
16 participate in the preparation of the phase two?

17 A No, I did not.

18 Q And what concentration for each of the
19 instruments, the PID, the FID and the particulate
20 monitor will be used to trigger action?

21 A That decision has not been made at this
22 time.

23 Q And you say the HSC will be responsible
24 for assessing potential hazards. What threshold
25 will be used to assess hazards?

1 A The occupational exposure limits
2 established by CalOSHA.

3 Q Who employed the health and safety
4 coordinator?

5 A They would be employed by the contractor
6 constructing the facility.

7 Q Will the contractor constructing the
8 facilities have penalties for late performance?

9 MR. GALATI: I'd object. Goes beyond
10 the scope and this witness is not qualified to
11 answer about what the terms of the contract may be
12 for construction.

13 HEARING OFFICER FAY: Well, without
14 stressing the scope, I think it is beyond the
15 witness' knowledge and ability to testify on.

16 MS. POOLE: Do we have another witness
17 who could address that, because I do believe it's
18 within the scope. It goes to the HSC's
19 motivation.

20 PRESIDING MEMBER MOORE: Well, you can
21 ask the question is there another witness to
22 testify on it, but as far as --

23 MR. GALATI: The answer is no, and I'd
24 point out that other conditions which require, for
25 example, a designated biologist and things like

1 that are employed by the project applicant and/or
2 project contractor. That hasn't been an issue
3 before and it shouldn't be an issue here to get to
4 that level of detail.

5 The fact is there will be a health and
6 safety coordinator and he has specific
7 requirements.

8 HEARING OFFICER FAY: Are the
9 requirements for that job identified somewhere in
10 the safety conditions?

11 MR. GALATI: No, it is not, although
12 he's called the project health and safety officer,
13 which is required by federal law. So, --

14 HEARING OFFICER FAY: Oh, that's a term
15 defined --

16 MR. GALATI: That is a term defined by
17 federal law.

18 HEARING OFFICER FAY: Is that definition
19 referenced in the condition? Staff, do you know?

20 MS. HOLMES: I'm sorry, I missed the
21 question.

22 HEARING OFFICER FAY: Is the term for
23 the health and safety officer, is the definition
24 of the federal law referenced in the condition?
25 Do we have a --

1 MS. HOLMES: I do not know, I --

2 HEARING OFFICER FAY: -- way of
3 measuring the --

4 MS. HOLMES: -- can get an answer to
5 that question for you over the lunch hour.

6 HEARING OFFICER FAY: All right. Is
7 there a reference to any sort of submittal of
8 qualifications to the compliance unit? Mr. Galati
9 mentioned that staff biologists are used -- I
10 mean, hired biologists are used in other
11 conditions.

12 MS. HOLMES: I believe --

13 HEARING OFFICER FAY: Do you have a
14 standard by which this health and safety officer
15 could be judged?

16 MS. HOLMES: My understanding is, and
17 it's only preliminary, that staff does review the
18 qualifications, for example, of the staff
19 biologist of the cultural resources expert because
20 they have expertise in those areas.

21 But it's my understanding that it's
22 CalOSHA that's responsible for setting the
23 criteria for the safety officer. But I can
24 confirm that over the lunch hour and report back
25 to you as to how the compliance unit handles that.

1 HEARING OFFICER FAY: Okay, I think it
2 might be reasonable if something's missing here
3 just to get some comparable reference like we do
4 in other subject areas. Not necessarily to saddle
5 the compliance unit with that determination, but
6 just some reference so it's clear how this officer
7 is judged competent.

8 MR. GALATI: We also will, over the
9 lunch hour, try to help define that and present it
10 to all parties for --

11 HEARING OFFICER FAY: Yeah, I don't
12 think this needs to be a matter of controversy.
13 We just have to be sure that there's a way to
14 judge the competency of the HSC.

15 MS. POOLE: Mr. Fay, --

16 HEARING OFFICER FAY: Sorry to interrupt
17 your line of questioning.

18 MS. POOLE: That's quite all right. I
19 believe my question's slightly different, though.
20 I'm concerned, and I would think the Commission
21 would want to know whether the HSC will be
22 financially penalizing its own employer by
23 carrying out this condition.

24 HEARING OFFICER FAY: Well, I'm not sure
25 this witness is capable of answering that. Maybe

1 counsel can help.

2 MR. GALATI: He's not qualified to do
3 that, to determine that. And I don't have a
4 witness who can address that issue. They
5 certainly can argue that he doesn't in their
6 brief.

7 MS. POOLE: Okay. Shall I move on?

8 HEARING OFFICER FAY: Yeah, please.

9 BY MS. POOLE:

10 Q Again, referring to the instruments in
11 paragraph one, an on-site health and safety
12 coordinator would not be able to measure
13 nonvolatile compounds with this equipment, such as
14 PAHs, would they?

15 A I don't agree with that.

16 Q What instrument would be able to measure
17 nonvolatile compounds?

18 A Based on representative soil
19 concentrations there could be an extrapolation
20 from airborne dust to PAHs, semi-volatiles, in
21 air. Granted, it would be a conservative
22 position, but PAHs at haz waste sites are
23 typically addressed through particulate with
24 conservative safety factors addressed for how much
25 of that material would be present in the

1 particulate form.

2 Q And does that affect your assessment of
3 the particulate matter equipment that would be
4 used?

5 A No, I think you could factor in, based
6 on an extrapolation from the soil concentrations
7 and you could come up with an airborne particulate
8 level of a certain fraction which could contain
9 PAHs.

10 Q What information would you use to
11 determine that soil fraction, PAH soil fraction?

12 A You could use historical data from the
13 site. If that's not available you would step down
14 to a more conservative estimate of representative
15 concentrations of PAHs in crude oil impacted soils
16 from other sites.

17 Q Would an on-site HSC be able to identify
18 contamination from metals?

19 A Through the particulate measurements,
20 the airborne particulate measurements.

21 Q Based on what data?

22 A Based on existing data on the
23 concentrations of metals that we have from the
24 site.

25 Q Was the entire area that will be --

1 where soil will be removed by construction
2 associated with this project assessed for metals
3 concentratoins?

4 A By the entire area I'm not sure what we
5 mean by that.

6 Q I mean areas that will be -- where soil
7 will be disturbed, the project site, linear
8 facilities --

9 A I believe there were a number of
10 samples -- excuse me, go ahead.

11 Q -- the three-quarter mile radius around
12 the project site.

13 A I'm sorry, are we speaking of the three-
14 quarter mile radius or are we speaking of the
15 project site?

16 Q I'm speaking of -- well, why don't we
17 start with the project site and linear facilities.

18 A There is soil data with regards to
19 metals at portions of the site.

20 Q And you use information from that --
21 from those areas you'll use that fraction to make
22 this extrapolation for the entire area that will
23 be disturbed?

24 A We would use representative numbers from
25 what was developed in the soil sampling. I think,

1 as we've mentioned, the highest concentration
2 areas are going to be removed prior to the
3 beginning of excavation.

4 Those numbers could be used as the
5 beginning point for that extrapolation.

6 Q Has the applicant agreed to use those
7 measures?

8 A In what -- to begin to develop the
9 occupational criteria based on particulate
10 concentrations?

11 Q Yeah, in developing the metal
12 concentration based on particulate matter
13 measurements.

14 A I have not discussed that with the
15 client.

16 Q Will equipment operators be HazWOPER
17 trained?

18 A Based on my interpretation of the
19 HazWOPER standard I do not believe that the
20 general excavation personnel need to be HazWOPER
21 trained.

22 Q So they won't be trained?

23 A There will be a fraction of them that
24 will be trained, but the mass population, the
25 general population of them will not be trained in

1 HasWOPER standards.

2 Q Which ones will be?

3 MR. GALATI: Objection, it goes beyond
4 again. No established contract has been made and
5 this witness does not know.

6 HEARING OFFICER FAY: Sustained.

7 BY MS. POOLE:

8 Q You state that in paragraph 4 that
9 procedures will include controlling access by
10 other workers and equipment to the location when
11 hazards are identified.

12 Will construction stop when hazards and
13 identified?

14 MR. GALATI: Object, it's vague and
15 ambiguous. Do you mean all construction? Or do
16 you mean construction within the area?

17 BY MS. POOLE:

18 Q Well, why don't we start with all
19 construction.

20 A I do not see a reason to stop all
21 construction.

22 Q Will construction within the area where
23 a hazard's been identified stop?

24 A Within an immediate area, yes.

25 Q And what do you mean by immediate area?

1 Can you just define that a little bit for me?

2 A I cannot define that sitting here today.
3 That's a judgment that's going to be made by the
4 health and safety coordinator at the site.

5 Q The last subsection of paragraph four at
6 the top of the second page, you or the HSC will
7 not be measuring specific toxic compounds such as
8 benzene, will they?

9 A That really hasn't been selected at this
10 point. The monitors that I listed in the earlier
11 portions are what are called general hydrocarbon
12 screening tools.

13 While they can be closely tuned to
14 represent an individual compound, at this
15 particular site I would use the total
16 concentration of airborne volatiles, and set the
17 response criteria to the more hazardous components
18 of that mix.

19 Q Will excavation workers be required to
20 wear gloves?

21 A General excavation workers may wear
22 abrasive leather-type gloves if they're driving
23 the rigs and doing those things. If they're
24 handling soils, if they get into the areas of
25 recognized soils, that can be one of the

1 escalations in the personal protective equipment
2 that would be taken.

3 MS. POOLE: Thank you.

4 HEARING OFFICER FAY: Okay, anything on
5 redirect, Mr. Galati?

6 MR. GALATI: Yes, I do.

7 REDIRECT EXAMINATION

8 BY MR. GALATI:

9 Q Ms. Poole asked you some questions about
10 oil field workers, do you remember that line of
11 questioning?

12 A Yes.

13 Q Oil field workers in the three-quarter
14 mile radius, are they covered by any protection
15 standards, Mr. Worl?

16 A CalOSHA has a particular standard that's
17 developed just for petroleum workers. It's in
18 title 8, I could pull the reference for you
19 exactly. I don't have it in front of me here.

20 Q Did you review the phase two site
21 assessment?

22 A Yes, I did.

23 Q Have you ever reviewed reports such as
24 the phase two site assessment in your career?

25 A Those types of reports are commonly

1 reviewed when I prepare health and safety plans
2 for hazardous waste operations work.

3 Q And based on the information in the
4 phase two, do you expect to find PAHs on site?

5 A Based on the phase two work I cannot
6 make that call.

7 Q With respect to the three areas that
8 will be removed, after those three areas are
9 removed, do you expect to find metals on site?

10 A There are ambient background
11 concentrations of metals in the soils in Kern
12 County.

13 Q Do you expect to find metals at levels
14 that would require worker protection measures
15 being implemented?

16 A Can you ask that again, please?

17 Q Do you expect to find metals at
18 concentrations that would, for example, trigger
19 some of the worker protection measures in safety1?

20 A My decision to implement some of these
21 things would be based on airborne concentrations.
22 I can't really predict what types of
23 concentrations would become airborne at that
24 point.

25 Q If that is, wouldn't it be appropriate

1 for the health and safety coordinator to make
2 those calls in the field?

3 A That's one of that person's primary
4 roles.

5 Q Based on your review of the phase two
6 site assessment, let me ask you, have you also
7 reviewed the Avila Beach community monitoring
8 plan?

9 A Yes, I have.

10 Q Do you know anything about the Avila
11 Beach cleanup project?

12 A Only I have seen some articles on it.
13 I --

14 MS. POOLE: Goes beyond the scope of
15 cross, I believe. I'm going to object to it.

16 MR. GALATI: My offer of proof would be
17 that she has raised types of equipment. We've
18 heard testimony today about what has been done at
19 Avila Beach, and I want to draw the distinction
20 between the two sites.

21 MS. POOLE: I didn't ask any questions
22 on my cross, nor did Ms. Holmes, about
23 construction used at Avila Beach -- equipment
24 used.

25 HEARING OFFICER FAY: I'm going to

1 sustain the objection.

2 BY MR. GALATI:

3 Q Do you believe in your professional
4 opinion that any additional monitoring equipment
5 is necessary other than what you've identified in
6 revised safety¹ to protect workers?

7 A I believe these instruments, operated in
8 the proper conditions, would be adequate to
9 identify a workplace exposure to chemical hazards.

10 Q If, for example, there was a reading on
11 the FID that was above a trigger mechanism, could
12 you briefly explain to the Committee what steps
13 would be then taken?

14 A I think they're outlined in very brief
15 form in number 4. We would obviously tighten
16 those up to a degree, but if the FID -- and again
17 I don't want to speak in acronyms here, it's a
18 flame ionization detector, it's a method of
19 measuring on a real time basis, or in a laboratory
20 basis, volatiles in the air.

21 If that number exceeded a pre-
22 established trigger criteria, then procedures
23 could involve isolating the particular source;
24 backing equipment and personnel away from that
25 site; moving them to an upwind location. It could

1 involve controlling potential emissions at the
2 source.

3 And at that point we would begin to
4 address the environmental professional who would
5 come in and make a decision about what to do with
6 that particular material.

7 Q And this revised safety¹ requires the
8 health and safety coordinator to coordinate with
9 the environmental professional specified in
10 waste⁴, doesn't it?

11 A Yes, it does.

12 Q So if something were encountered there'd
13 be two professionals looking at the issue?

14 A Yes, the health and safety professional
15 would work the coordinator. That is the
16 individual that would be delegated to assessing
17 occupational exposures.

18 When it comes to evaluating the
19 environmental issues associated with this crude
20 oil impacted soil, the environmental professional
21 would then make those decisions.

22 MR. GALATI: I have no further
23 questions.

24 HEARING OFFICER FAY: Any recross within
25 this -- just within the scope of redirect?

1 MS. POOLE: One recross.

2 RE CROSS-EXAMINATION

3 BY MS. POOLE:

4 Q Is the environmental professional on
5 site?

6 A At times.

7 Q But not required to be on site at all
8 times?

9 A My understanding is that person will not
10 be on site at all times.

11 MS. POOLE: Thank you.

12 HEARING OFFICER FAY: We have half an
13 hour now before lunch. So why don't we begin Dr.
14 Fox's presentation on waste. It may have to be
15 interrupted because of our 1:00 appointment with
16 EPA.

17 MS. POOLE: Worker safety.

18 HEARING OFFICER FAY: Did I say waste?
19 I meant worker safety.

20 MS. POOLE: Staff is finished with
21 worker safety, am I correct in that understanding?

22 HEARING OFFICER FAY: I believe so, but
23 let's hear from them.

24 MS. HOLMES: We had a rebuttal from Mr.
25 Tyler to testimony filed by Dr. Fox.

1 PRESIDING MEMBER MOORE: By Dr. Fox, and
2 you asked us if you could present it following
3 her --

4 MS. HOLMES: Correct.

5 PRESIDING MEMBER MOORE: -- written
6 exposition of that testimony. And I agreed that
7 you could, so --

8 MS. HOLMES: So in essence we have two
9 more sections of direct. We have Dr. Fox's direct
10 testimony on worker safety. And then we'll have a
11 very brief section where --

12 PRESIDING MEMBER MOORE: On the rebut.

13 MS. HOLMES: On the rebuttal from Mr.
14 Tyler.

15 PRESIDING MEMBER MOORE: Okay, fine.
16 Let's take just a very short five minutes then.
17 Five minutes after 11:00 we'll come back in here.

18 (Brief recess.)

19 HEARING OFFICER FAY: All right, CURE
20 you have some follow-up testimony on worker
21 safety.

22 MS. POOLE: Yes, thank you.

23 DIRECT EXAMINATION

24 BY MS. POOLE:

25 Q Dr. Fox, in your testimony regarding

1 worker safety submitted on January 3rd you
2 included a risk assessment. Would you please
3 describe the methodology that you used in the
4 conclusions of that risk assessment?

5 A Yeah, I did a typical risk assessment
6 for a construction worker using the procedures
7 published by EPA for hazardous waste sites which
8 commonly look at the construction worker as a
9 receptor.

10 And I found that the impacts to on-site
11 construction workers would result in both a
12 significant cancer risk and a significant acute
13 hazards risk.

14 Q When you prepared that health risk
15 assessment did you account for an eight-hour-a-day
16 exposure duration?

17 A Yes, I did.

18 Q Would you explain how?

19 A Sure. On table 3 of my January 3rd
20 worker safety testimony, table 3 summarizes the
21 exposure assumptions that I used. And that table
22 shows an exposure duration of 1.25 years, which is
23 15 months. A weekday exposure frequency of 250
24 days a year. And a weekday hours of exposure per
25 hours awake of .5.

1 It's the standard workday exposure
2 scenario.

3 Q Thank you. Staff has included a risk
4 assessment in appendix A to the public health
5 section of the FSA. Does that address your
6 concerns about the exposure of construction
7 workers to contaminated soil?

8 A No, it does not address my concerns for
9 two reasons. First, my concern was and is with
10 the exposure of construction workers who are doing
11 the actual work on the contaminated site.

12 The risk assessment that staff did in
13 appendix A to their public health testimony
14 evaluates the impact of fugitive dust from the
15 construction site on off-site receptors. It did
16 not evaluate the impact of fugitive dust or
17 volatiles on the construction workers, themselves.

18 My second concern is staff's analysis
19 only addressed the inhalation route. In
20 construction worker exposure most of the risk
21 usually arises from ingestion of soils and dermal
22 contact.

23 Of course it depends on the specific
24 chemicals that are involved. And sometimes
25 inhalation can be the dominant exposure route.

1 But in this case it is not.

2 Q Have you reviewed the CalOSHA standards
3 for oil field workers that Mr. Worl just referred
4 to?

5 A Yes, I did. After the December 3rd
6 hearing I got those standards out and I reviewed
7 them. And they basically are designed to protect
8 oil field workers from physical safety hazards
9 rather than exposure to contaminated soil or other
10 contaminants.

11 I couldn't find any evidence that they
12 were designed to protect oil field workers from
13 chemicals.

14 Q And what is your basis for finding that
15 it was standard practice historically to dump
16 drilling muds on the ground?

17 A One of my bases is the 1993
18 environmental impact report on the Elk Hills oil
19 field.

20 Q Have you conducted additional
21 investigation about the soil study contained in
22 the phase two that the applicant has submitted?

23 A Yes, I have.

24 Q And do you have any further conclusions
25 about the detection limits that were used based on

1 that additional investigation?

2 A I do. I confirmed that the detection
3 limit of that study is indeed one microgram per
4 liter, as I formerly testified to; and one
5 microgram per liter equals 1000 micrograms per
6 cubic meter.

7 Q And do you have any thoughts about the
8 appropriateness of that detection limit?

9 A That detection limit is far too high
10 when considering health impacts. It is higher
11 than exposure levels that are ordinarily used.
12 For example, the acute REL, OEHHA's acute REL for
13 benzene, for example, is 780 mcg/cubic meter.
14 This soil gas technique couldn't have found
15 benzene present at that concentration because the
16 detection limit was 1000 mcg/cubic meter.

17 The OEHHA chronic REL for benzene is 71
18 mcg/cubic meter. The soil gas study would not
19 have detected that because the detection limit was
20 1000 mcg/cubic meter.

21 The EPA region 9 PRG for the air
22 exposure route for benzene is .3 mcg/cubic meter.
23 The soil gas study would not have detected that
24 either.

25 Q And what standards are typically used to

1 perform soil gas studies?

2 A In my experience the standards and
3 guidelines that are used to perform soil gas
4 studies are the AFTM standards. And those
5 standards specifically require that detection
6 limits be selected that are appropriate to the
7 purpose of the study.

8 Q And has your additional investigation
9 turned up any more information on chromatographs?

10 A As you will recall last time there was a
11 series of chromatograms that had, in addition to
12 the calibration standards, a number of
13 unidentified peaks. The peaks were often as high
14 as or higher than the injected standard, and they
15 were far higher than the normal instrument
16 background.

17 I have done additional investigation on
18 that point. And I have established that those
19 peaks could not be due to column bleed. And
20 column bleed is a process whereby the
21 chromatographic column degrades with use, and you
22 get a tailing baseline level in your chromatogram.
23 Column bleed never results in discrete peaks, such
24 as those seen on the chromatogram.

25 And I would like to support that with

1 this book I have in my hand. It's by David Rood,
2 R-o-o-d, who is the chief technical guy at J&W
3 Scientific. The J stands for Jennings who was one
4 of the inventers of the capillary column which was
5 used in this work.

6 The book is entitled, A Practical Guide
7 to the Care, Maintenance and Troubleshooting of
8 Capillary Gas Chromatographic Systems, which is
9 what were used in this work. And in this book on
10 page 57 there is a section 4.6.1 which says what
11 is common bleed.

12 MR. GALATI: And I would only object at
13 this point to the extent that we're trying to
14 minimize time, we've got direction from the
15 Committee that we didn't want to litigate the
16 column bleed or the gas chromatographs.

17 And to the extent that she previously
18 testified to what her opinion was about the gas
19 chromatographs and where she could have brought in
20 these books and done that at that time.

21 We could litigate and spend all day
22 litigating the gas chromatographs.

23 HEARING OFFICER FAY: Dr. Fox, the
24 Committee has accepted you as an expert, and as
25 such, it accepts your opinion as expert opinion.

1 And we don't need to know everything that's behind
2 it. And we do need to move on.

3 Can you shorten this up at all?

4 DR. FOX: Surely. My opinion is that
5 the unidentified peaks are definitively not due to
6 column bleed. Column bleed expresses itself as a
7 rather flat raising of the baseline, and it
8 virtually never expresses itself, or at least
9 known to anyone I have seen or any of my own
10 experience, as discrete peaks such as the
11 unidentified peaks in the soil gas study in the
12 phase two.

13 BY MS. POOLE:

14 Q Briefly, what do those peaks represent?

15 A Those peaks represent unidentified
16 volatile organic compounds in the soil gas.

17 Q And, Dr. Fox, we have just received a
18 revised proposed condition regarding worker
19 safety. Do you have any thoughts on that
20 proposal?

21 A I can make a few comments, realizing
22 that this was only handed to me less than an hour
23 ago, and I've tried to read it while other parties
24 were testifying. But I would like to make some
25 comments on it.

1 First, the protocol does not specify any
2 trigger levels for the PID, the FID and the PM10
3 monitoring. Normally you establish a
4 concentration which signifies a potential health
5 impact. And when you reach that concentration it
6 triggers shut-down of the project, or
7 implementation of additional protective measures
8 or what-have-you.

9 The heart of the effectiveness of this
10 kind of program depends on those levels. If the
11 levels are too high the program will not provide
12 any protection at all.

13 Therefore, in my opinion, it's essential
14 that any certification condition which is based on
15 measuring using a mini-ram for particulate matter
16 and PIDs and FIDs must specify trigger levels and
17 they should be subject to review by all the
18 parties in this case. This document does not
19 specify any trigger levels.

20 Mr. Worl testified to the fact that
21 individual chemicals were not going to be
22 measured, for example PAHs and metals are going to
23 be estimated using either site data or other
24 representative data in conjunction with the PM10
25 measurement.

1 What I assume he has in mind is taking
2 the measured PM10 concentrations and taking a
3 measured concentration of say arsenic in the soil
4 and multiplying them together and getting an
5 estimate of what the ambient airborne dust
6 concentration of arsenic is.

7 This is not an acceptable technique for
8 assuring that workers are exposed. And the reason
9 is very simple. The purpose of this kind of
10 program should be to identify previously
11 undiscovered hot spots.

12 And if you use current existing ordinary
13 ambient concentrations to calculate or estimate
14 say arsenic or PM10, and you apply that factor
15 across the board to all of your dust measurements,
16 you're never going to know whether or not you've
17 hit a pocket of arsenic.

18 The whole purpose of a monitoring
19 program is to find previously undiscovered hot
20 spots. And you can't do that by using existing
21 data, which has not been identified here, and
22 multiplying it by a gross indicator like PM10s or
23 VOCs, to come up with a compound specific estimate
24 of an exposure concentration.

25 You have to actually measure the

1 chemicals of concern. For example, in this case
2 polynucleararomatic hydrocarbons, or PAHs, are a
3 chemical of concern because the phase two shows
4 that there's elevated concentrations of heavy
5 hydrocarbon material C-23 and above.

6 Therefore, one would expect to find PAHs
7 at this site. This technique described by Mr.
8 Worl would not allow you to detect hot spots that
9 contained PAHs.

10 There are hand-held portable instruments
11 that you can use to measure PAHs in ambient air.
12 There's one instrument, for example, that I'm
13 familiar with called the PAS2000 that makes
14 ambient measurements of PAHs down to very low
15 level, on the order of 1 microgram/cubic meter.
16 We have been using it at Avila very successfully.

17 And I would like to see it added here as
18 a condition.

19 On the second page of the proposed
20 certification condition there is a requirement, if
21 you will, to determine worker exposure by using 50
22 percent of the CalOSHA permissible exposure limits
23 or PELs.

24 The OSHA permissible exposure limits are
25 based on specific chemicals like benzene or

1 toluene or benzoate pyrine or arsenic. We're not
2 measuring, the applicant is not measuring in this
3 proposed certification condition any of those
4 compounds.

5 Therefore, this is an empty condition.
6 It does nothing. It provides no protection
7 because you're not making any actual measurements
8 of specific chemical compounds.

9 And then finally I'm disappointed on two
10 counts. First, I'm disappointed to see that the
11 proposed certification condition doesn't require
12 any additional monitoring. We know nothing about
13 the concentrations of anything in surface soils.
14 Surface soils are the ones most likely to be
15 contacted.

16 If you don't know anything about what's
17 in the surface soils, I don't understand how you
18 could implement any of these measures.

19 We also don't know anything about the
20 concentrations of many of the chemicals that we
21 are concerned about. We don't know anything about
22 PAHs at this site. We don't know anything about
23 PCBs at this site. We don't know anything about
24 dioxins at this site. We don't know anything
25 about the metal content in soils at this site

1 anywhere except the soils that are going to be
2 removed.

3 So there is no information on which to
4 base this estimation technique that would be used
5 based on VOC and PM10 measurements. We just
6 simply don't know enough.

7 I'm disappointed to see that no sampling
8 at all is going to be conducted in any of the
9 linear corridors, or within the three-quarter
10 mile. We know nothing about what's there.

11 This is not a very significant step
12 forward from where we were on December 3rd.

13 MS. POOLE: Thank you. Before I tender
14 Dr. Fox for cross I'd -- well, first I would like
15 to identify her testimony, the supplemental worker
16 safety testimony submitted on January 3rd as an
17 exhibit.

18 HEARING OFFICER FAY: That will be
19 exhibit 81 -- 82, rather, I'm sorry, exhibit 82 is
20 Dr. Fox's supplemental testimony.

21 MS. POOLE: I have 81 -- well, what is
22 81?

23 PRESIDING MEMBER MOORE: No, 81 was
24 the -- if I'm recalling correctly 81 was the
25 information submittal --

1 HEARING OFFICER FAY: Revised --

2 MS. POOLE: Oh, it's the proposed
3 condition --

4 PRESIDING MEMBER MOORE: -- revised
5 condition.

6 MS. POOLE: -- safety1. Excuse me.

7 HEARING OFFICER FAY: So Dr. Fox's
8 supplemental testimony will be 82.

9 PRESIDING MEMBER MOORE: And before we
10 go any further I will probably have to stop, with
11 Dr. Fox's disappointment, on those items, and take
12 a lunch break.

13 MS. POOLE: May I ask one question
14 before we do that --

15 PRESIDING MEMBER MOORE: Yes.

16 MS. POOLE: -- of Dr. Fox?

17 BY MS. POOLE:

18 Q Could you tell the Committee
19 approximately how many health risk assessments
20 you've conducted or reviewed?

21 A Counsel warned me I was going to be
22 asked that, so yesterday I tried to add them up
23 and I got up to 100 and stopped because I had to
24 prepare for the rest of my testimony. But it's
25 well in excess of 100.

1 Q And have you ever seen on-site workers
2 treated differently from other workers in those
3 health risk assessments, other off-site receptors,
4 excuse me?

5 A I've never seen off-site workers treated
6 any differently than any other member of the
7 public, with the exception of in a cancer risk
8 assessment you have to adjust the exposure
9 durations of a worker. But otherwise, the AB2588
10 CAPCOA guidelines that we have been talking about
11 here for the last couple of days are uniformly
12 applied to all members of the public, whether they
13 are in a business location, otherwise
14 occupationally exposed, or are residents.

15 I have never seen them separated out
16 like staff is proposing here in any other work
17 that I have done.

18 MS. POOLE: Thank you.

19 MR. GALATI: Mr. Fay, I just have one
20 housekeeping matter. Could I please mark for
21 identification and move into the record the
22 testimony previously filed of Mr. Kim Worl, not
23 the supplemental, but I notice from the exhibit
24 list it was not identified and moved in at the
25 last hearing. That is the previously filed

1 written testimony of Kim Worl on worker health and
2 safety.

3 HEARING OFFICER FAY: Okay, that will be
4 identified as exhibit 83. Is there any objection?
5 Hearing none, it's entered at this point.

6 MS. POOLE: I'd also like to move Dr.
7 Fox's testimony into the record.

8 HEARING OFFICER FAY: Any objection. So
9 moved.

10 PRESIDING MEMBER MOORE: All right, I'm
11 going to call time out. Quarter till, be back
12 here at a quarter till, and we have plenty of time
13 for the phone call coming in.

14 Thank you.

15 (Whereupon, at 11:30 a.m., the hearing
16 was adjourned, to reconvene at 12:45
17 p.m., this same day.)

18 --o0o--

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1 I have is the section that we used, that we print
2 off of the internet which is -- I don't have the
3 date. I can get back to you on that.

4 HEARING OFFICER FAY: Okay, so this is
5 on the ARB's website?

6 MS. HOLMES: Yes, it is.

7 HEARING OFFICER FAY: Thank you.

8 MR. JOSEPH: Mr. Fay, could we just take
9 a look at that first?

10 MS. HOLMES: Sure.

11 HEARING OFFICER FAY: Sure.

12 (Pause.)

13 HEARING OFFICER FAY: Hello, can you
14 hear us?

15 MS. LYONS: Yes.

16 HEARING OFFICER FAY: All right. You
17 are linked to an evidentiary hearing at the
18 California Energy Commission on the Sunrise
19 Cogeneration and Power Project. And I'm going to
20 turn it over to Ms. Holmes, the staff counsel,
21 because she has communicated with you.

22 But we wonder if you could identify
23 everybody at that end, please, for the court
24 reporter.

25 MS. LYONS: Sure. This is Ann Lyons,

1 Office of Regional Counsel. I've spoken with
2 Caryn Holmes and made our folks available today.
3 And I'd just like to clarify that what we spoke
4 about was that we would be available for comments,
5 we're not necessarily prepared for cross-
6 examination on some of these issues today.

7 I'm here with Rob Mullaney, who will be
8 our spokesperson for addressing the compliance
9 issues, statewide compliance certification. And
10 Mark Sims is also here. Matt Haber, who will be
11 our spokesperson regarding the ERCs, or emission
12 reduction credits issue. And Ed Pike.

13 MS. HOLMES: Could you spell those
14 names, please, for us, Ann?

15 MS. LYONS: Okay. I'll let each person
16 spell their own name. Ann, A-n-n Lyons,
17 L-y-o-n-s.

18 MR. MULLANEY: And this is Robert
19 Mullaney; it's M-u-l-l-a-n-e-y.

20 MR. SIMS: Mark Sims, M-a-r-k, last name
21 S-i-m-s.

22 MR. HABER: Matt Haber, Haber is
23 H-a-b-e-r.

24 MR. PIKE: Ed Pike, P-i-k-e.

25 MS. HOLMES: Thank you. As we talked

1 about, Ms. Lyons, we had a couple of issues to
2 discuss with you.

3 First of all, EPA wrote a letter that I
4 believe is dated January 5th regarding the
5 sufficiency of some of the offsets that were
6 relied upon by the San Joaquin District in
7 granting the DOC for this project.

8 In addition I have a letter dated
9 January 11th from the EPA regarding the status of
10 certain notices of violations.

11 If you could go through what those
12 issues are and what those mean for the Energy
13 Commission's hearing process we would really
14 appreciate it.

15 MR. HABER: Okay, this is Matt Haber,
16 and perhaps I'll summarize what the issues that we
17 raised are, and their meaning with respect to the
18 Energy Commission process.

19 The first issue that was flagged in our
20 earlier letter related to how credits that were
21 generated before 1990, which is the date of the
22 most recent Clean Air Act amendment, can be used,
23 and what circumstances they can be used as new
24 source review offsets.

25 And we in 1994 issued a policy

1 addressing a number of issues including the use of
2 pre '90 credits. And prior to that EPA's general
3 counsel had advised us that credits generated
4 before 1990 could not be used at all. And
5 subsequent to that general counsel ruled that if
6 those credits were included in the emissions
7 inventory developed for the PM10 plans that were
8 due under the 1990 amendments, if those credits
9 were included in the inventory as a separate
10 growth element, that it would be acceptable to
11 allow those credits to be moved forward.

12 And we communicated that with San
13 Joaquin and other districts since that time.
14 There has been some discussion about the manner in
15 which those credits would be carried forward into
16 the plan, and that matter was somewhat tabled in
17 the mid '90s. In part because of that confusion.
18 And this letter sort of brought that to the table
19 again.

20 Our position at this time is that while
21 we believe our position is as we stated in the
22 January letter is legally correct, and consistent
23 with that '94 memo, we indicated to the districts
24 that we would be willing to put this on the table
25 on hold if they agreed to address it in their

1 plan, this again not approved by EPA, it's not
2 approvable, but if that were properly included in
3 the inventories, to include for the plan to become
4 approvable. That's the first issue.

5 The second issue is a Clean Air Act
6 requirement that any source owner applying for a
7 major new source review permit under the Clean Air
8 Act certifies that all major sources that they own
9 or control within the state are either in
10 compliance or on schedule for compliance for all
11 the units.

12 And we sent the second letter under the
13 schedule that had been addressed between Texaco
14 and San Joaquin didn't meet our basic requirements
15 for what a schedule should contain for a number of
16 reasons that we'll get into later.

17 MS. LYONS: Would you like a little more
18 summary on the compliance issue which Rob was
19 going to address, or do you want to talk about the
20 credit issue first?

21 MS. HOLMES: I think that's up to the
22 Committee to decide. Mr. Fay?

23 HEARING OFFICER FAY: Well, I'm going to
24 defer to the parties. We want to get everything
25 on the record from EPA that could affect the

1 acceptability of the final DOC.

2 MS. HOLMES: Perhaps it would be helpful
3 to hear from the district and see if we can't sort
4 of at least try to come to an understanding of
5 what the differences between the two entities
6 consists of.

7 MS. LYONS: I'm having a little bit of
8 difficulty hearing sometimes, so if you can just
9 be attentive to the speaker.

10 MR. GALATI: This is Scott Galati. I
11 represent the applicant. And my preference would
12 be that EPA get their issues out on the table and
13 then we can let the district respond.

14 MS. HOLMES: So why don't you proceed.

15 MR. MULLANEY: Okay, in terms of the
16 compliance -- this is Rob Mullaney -- there were
17 two settlement agreements that the district
18 entered into with Texaco. The first one was
19 August 30, 1999. And the main issue that we have
20 in terms of compliance with that is the district
21 was addressing an issue at Texaco in which Texaco
22 had disconnected vapor recovery and controls at
23 5000 wellheads in the field.

24 And the way that the district resolved
25 this issue, in addition to getting a penalty, was

1 to set up a permit that required 4300 of the
2 wells, the gases from the wells to be directed to
3 first-line tanks, storage tanks that had control
4 on them.

5 The SIC rule requires 99 percent control
6 at the wellhead, but it does allow the gases to be
7 directed and controlled as they might be at a
8 first-line tank.

9 We have two concerns with it. First, of
10 the 5000 wells, you have just 4300 being directed
11 to the first line tanks, and we don't have
12 sufficient evidence that the first-line tanks will
13 address the emissions from that oil that's
14 directed to it.

15 In other words, there could be residual
16 gas that passes through the first tanks to
17 uncontrolled tanks further down the line. That's
18 for the 4300.

19 In addition, there are 700 oil wells out
20 there which essentially now, under the new
21 district permit, are directed to existing tanks
22 that have no vapor recovery on them at all. And
23 we have no evidence in front of us at this point
24 that the fluids and gas directed from those 700
25 wells is controlled at all.

1 So in other words, what we have at this
2 point with the 5000 wells is uncertain control for
3 4300 of them, and no control at all for 700 of
4 them.

5 And then we moved to a second settlement
6 negotiation that the district has from November of
7 1999, and this addresses a SIC rule that requires
8 vapor recovery from tanks when the liquids in the
9 tanks are above 1.5 psi.

10 And the district had gone out to the oil
11 fields and discovered that the liquids that were
12 in the tanks were above 1.5 psi, and that the
13 tanks had no vapor control on them at all.

14 In settlement of this, what it seems to
15 us that the company has agreed to put in heat
16 exchangers to cool the oil. But we don't have
17 anything in front of us that shows that this has
18 actually brought the psi of the oil below 1.5. In
19 other works, the tanks may still be needing to be
20 controlled. And there does not seem to be
21 anything in place that requires the company to
22 actually show that the oil that they're storing in
23 those tanks is below 1.5 psi.

24 So that's the issue that we have with
25 the second settlement agreement.

1 And I want to emphasize, and this is
2 something I think Ann had started off by saying,
3 we are at the beginning of an investigation into
4 this, and we do not have all of the evidence
5 before us. But we have sufficient concern at this
6 point to raise the issue that we don't see that
7 there's current compliance with the SIC rules, in
8 effect.

9 MS. LYONS: Or I guess I would say that
10 the settlement agreements constitute a schedule
11 which we would be satisfied with as demonstrating
12 compliance.

13 HEARING OFFICER FAY: Ms. Lyons, one
14 thing that we do want to get to at some point,
15 wherever you think it's most appropriate, is
16 exactly what evidence would EPA need to be
17 satisfied on both the question of the ERCs and the
18 question of whether the NOV's have been fully
19 resolved.

20 MS. LYONS: Well, I would like to ask,
21 it might not be a question of evidence, but it
22 might be a question of revising certain things, in
23 other words revision to the consent decrees or the
24 compliance schedule. When we speak of evidence
25 suggests that it's going to determine whether they

1 are in compliance or not.

2 HEARING OFFICER FAY: Well, if it can be
3 resolved with a revision and that that would
4 satisfy EPA, what the Commission would need to
5 know is that EPA is satisfied. And our record has
6 to reflect that the project complies with all
7 laws, ordinances, regulations and standards.

8 And you've put that into question now.
9 What we need to know is what do we need to
10 determine that the project does comply if and when
11 it gets into compliance.

12 MS. LYONS: Okay, and we're certainly
13 happy to give our opinion when we think something
14 is or is not in compliance. I think as far as the
15 statewide certification of compliance or
16 compliance schedule, at this point all we're
17 saying is we need to see the settlement, the
18 injunctive relief provisions of the settlement
19 agreements changed.

20 HEARING OFFICER FAY: Does the
21 settlement agreement affect only the question of
22 the NOVs?

23 MR. MULLANEY: Are you asking -- the
24 settlement agreement, one of them had
25 approximately what, 100 NOVs that it resolved.

1 And there was a penalty paid, and there were
2 several pages of agreements what the company
3 needed to do.

4 So it didn't address just the 5000
5 wellheads. There was a long list of violations
6 that were at issue.

7 HEARING OFFICER FAY: Our concern is
8 only the NOV's that affect the project's ability
9 to, in your opinion, receive a successful final
10 determination of compliance.

11 MR. MULLANEY: Yes. Well, I can tell
12 you at EPA when we issue a notice of violation and
13 proceed to an enforcement action we have two
14 requirements. One is that the penalty that's paid
15 recover economic benefit and more. And the second
16 is that the company either comply currently with
17 the law, or agree to a schedule of compliance.

18 And what we're concerned here is that
19 these settlement agreements, while they did get
20 penalties, did not either require current
21 compliance or include a schedule to insure future
22 compliance.

23 MS. LYONS: And I think the emphasis is
24 on the compliance. I mean even if they do
25 everything in the settlement agreements, we don't

1 think compliance is demonstrated.

2 HEARING OFFICER FAY: So what --

3 MS. LYONS: That's compliance with the
4 SIC rule, specifically.

5 HEARING OFFICER FAY: And what will you
6 need to find that compliance is demonstrated?

7 MR. MULLANEY: It seems at this point
8 what we need in terms of the wells for the August
9 30, '99, we need to have the produced fluid and
10 gases from the 5000 wellheads controlled at 99
11 percent as the SIC requires.

12 And the current information we have in
13 front of us leaves us with a strong sense that
14 that's not the case.

15 So what we would need is at least an
16 enforceable schedule with certain milestones that
17 insures that the produced fluids and gases from
18 the 5000 wells are controlled at 99 percent.
19 That's what we would need for the first one.

20 For the second one we would need an
21 agreement again with enforceable milestones that
22 showed that either all tanks that have fluids with
23 more than 1.5 psi are subject to the vapor
24 recovery and control. Or that there's some way of
25 showing that the company is not putting those

1 types of liquids in that tank.

2 And in neither of those cases right now
3 are we satisfied that the company is able to show
4 that.

5 HEARING OFFICER FAY: I hope you
6 appreciate that what the Commission needs is
7 evidence so that it can make a finding. And I
8 wonder if we could perhaps hear from the district
9 or the applicant on what ideas they have on how
10 this is going to be resolved, and then get your
11 reaction.

12 MR. GALATI: We'd like the district to
13 address those issues.

14 HEARING OFFICER FAY: Okay.

15 MR. SADREDIN: You wish that I address
16 the offset issue first or get into the --

17 HEARING OFFICER FAY: Please identify
18 yourself each time you speak.

19 MR. SADREDIN: This is Seyed Sadredin;
20 I'm the Director of Permit Services with the
21 District, San Joaquin Valley Air District.

22 As far as PM10 issue goes we have no
23 problem with what EPA has offered now that they've
24 had some time to look at this issue further, which
25 is that they're willing to table this issue and

1 make sure we correct the plan to make sure it's
2 presented in a format that they wish to see it.

3 We believe the way it's been presented
4 it's sufficient right now, but certainly since
5 they are the agency that would ultimately have to
6 approve our PM10 plan, we have no problem with
7 making some cosmetic changes, which is really at
8 issue here, to the plan to make sure it's clear
9 that the growth has been included and the PM10
10 offsets have been also included in the plan.

11 MS. LYONS: I don't mean to interrupt,
12 and I'll try not to interrupt unnecessarily,
13 although I think we would be -- I'd like to
14 clarify that we think it's more than cosmetic
15 changes to the plan.

16 MR. SADREDIN: I'd be happy to get into
17 the issue if you'd like to. I've brought some
18 sections from the PM10 plan that we could point
19 out to you, if you like, but I think that all
20 could be avoided by us conceding to make whatever
21 changes they wish necessary in our PM10 plan to
22 make sure those numbers are correct, or reflect
23 that properly.

24 Just quickly, in our plan we show that
25 there are over 400 tons per day of PM10 emissions

1 from various sources. The offsets in question are
2 less than two tons a day. So adding it one way or
3 another, or double even adding it again into the
4 plan we don't think would significantly impact our
5 plan and what we've committed to do in our plan.

6 So, we're willing to defer to EPA on
7 that if we're not able to convince them that it's
8 merely a cosmetic issue at this point.

9 HEARING OFFICER FAY: I'd like to ask
10 both the district and EPA if there is some
11 disagreement on how to calculate this, and it's as
12 small a difference as I gather from the district,
13 if the applicant merely provided what they may see
14 as excess ERCs, but which would completely take
15 care of the worst case scenario, would that
16 satisfy EPA?

17 MR. HABER: Can I clarify the question?
18 Is the question whether if the applicant provided
19 more ERCs whether that would satisfy us?

20 HEARING OFFICER FAY: Yes. So that even
21 if, under the revision to the plan, more ERCs were
22 required, they would already be in place and
23 committed so that regardless of how this is
24 resolved, the Commission would feel confident that
25 there would be adequate emission offsets.

1 MR. HABER: Well, certainly if the
2 applicant were able to provide offsets that were
3 created after 1990, or otherwise creditable, then
4 this issue would be completely resolved from our
5 perspective.

6 MR. SADREDIN: And if I could add, EPA
7 has questioned the particular ERC certificate.
8 Texaco -- or Sunrise has access to a number of
9 other ERC certificates which do not impose the
10 same question. And at the end, I guess worst case
11 scenario would be if we're not able to resolve
12 this, they could just go to a different source of
13 credits and use those.

14 By the way, the same type of credits
15 were used for LaPaloma project which EPA okayed,
16 and the Commission had approved.

17 So, I'm confident that we can resolve
18 these issues. But if we can't, there are plenty
19 of credits. Our district has the largest bank of
20 credits in the state, and they could go to a
21 different source.

22 MS. LYONS: Well, and we'd like to
23 clarify that we still distinguish between the pre
24 1990 credits and post 1990. So to the extent
25 you're including in the largest bank in the state

1 some of the pre 1990 ones, we might have a
2 disagreement on that.

3 HEARING OFFICER FAY: So as long as the
4 applicant provided adequate post 1990 credits to
5 address the full range of possibility on how this
6 issue may be settled, then the Commission could be
7 confident that one way or the other the emission
8 offsets have been addressed, is that correct?

9 MR. HABER: Yes, that is correct.

10 MS. LYONS: Yes.

11 HEARING OFFICER FAY: Okay, thank you.

12 MR. GALATI: I just have one -- can I
13 ask a clarifying question here?

14 With respect to pre 1990 credits, if
15 those credits were adequately shown in the PM10
16 plan in accordance with EPA's wishes, would those
17 be an additional source?

18 HEARING OFFICER FAY: And could the EPA
19 speakers please identify themselves each time
20 before they speak?

21 MS. LYONS: As to the second question,
22 this is Ann, and I think Matt will speak now.

23 MR. HABER: Well, I think we indicated
24 earlier that it could be resolved via the district
25 submission of the plan. It would be far

1 preferable to -- as was suggested earlier, which
2 would be to offer credits that were only post 1990
3 because, as indicated, there is some disagreement
4 about exactly the proper method of showing that
5 those emissions are properly treated in the plan.

6 MS. LYONS: This is Ann. And I'd also
7 like to add that coming to an agreement on that
8 might be time consuming. We usually -- agreeing
9 on plan requirements is much more complex than
10 permits.

11 MR. SADREDIN: Well, just from the
12 district's viewpoint we don't believe that this
13 issue is that critical. Again, I mentioned, we're
14 only talking about less than two tons a day of
15 emissions. So I don't think it would take very
16 long to do that.

17 And just so that your record is correct,
18 we've mentioned pre 1990 here. The critical year
19 here is really pre 1993, not 1990, since the
20 baseline for the PM10 plan is '93. Just so that
21 the record is accurate, I wanted to point that
22 out.

23 MR. GALATI: And if I could just ask,
24 this is Scott Galati again for the applicant, if I
25 could just ask one clarifying question.

1 Is it correct that EPA is willing to put
2 the issue on hold while the plan is worked out
3 with the district?

4 MR. HABER: That is something that we
5 did put on the table a little bit earlier, that's
6 correct. And this is Matt Haber speaking.

7 MR. GALATI: Thank you, Matt.

8 MR. SADREDIN: If I could move to the
9 compliance certification and the NOV issue now.

10 First, I wanted to credit EPA for their
11 letter at least to the extent that it makes it
12 abundantly clear that they've had very limited
13 time to review this issue, and they haven't really
14 been able to look at all the background issues.

15 Mark's reiterated that today, and I
16 think that's very important, because these two
17 cases that we're talking about are extremely
18 complicated. The first one especially when we're
19 talking about capping wells and removing vapor
20 recovery. It took us over a year to analyze the
21 whole data. We had to get geologists involved.
22 It's not as simple as it seems to be.

23 First, in terms of the entire issue, we
24 basically have three reactions to what EPA's
25 position is. First, the district rule that

1 governs this project, the new source review rule,
2 it says that compliance certification has to be
3 made at the satisfaction of the air pollution
4 control officer, not at the satisfaction of the
5 EPA or some outside agency.

6 That is what the law says. However,
7 we're not going to insist on that. We can't make
8 arbitrary decisions, and we're not suggesting that
9 we can just come in here and say, with no
10 evidence, we believe they have met the compliance
11 requirements.

12 The second issue, and really the main
13 issue that EPA's raising, is they do not believe
14 the dates that are in these settlements are firm
15 enough, and therefore that basically they're
16 suggesting that that would invalidate the entire
17 agreement, and you cannot rely on it.

18 And what they're really talking about is
19 that for some of the compliance schedules we have
20 a firm date, but it says at the end of that time
21 period if this source can demonstrate to the air
22 pollution control officer that despite their best
23 efforts, and something out of their control has
24 happened that they're not able to comply with
25 that, then we would be open to negotiating a new

1 date.

2 They're saying that opening basically
3 invalidates this compliance schedule and it's not
4 enforceable and all that. Now, we don't agree
5 with that. But I'm willing to let that issue also
6 go. Let's say they're correct, that those dates
7 are not firm.

8 The bottomline is that those dates in
9 these settlements are really irrelevant to the
10 finding that we have to make in terms of ongoing
11 compliance.

12 First, let's talk about the August 30th
13 settlement. In November when we informed your
14 Commission that the source is now in compliance,
15 all the dates in that compliance schedule had been
16 satisfied already. So whether the dates are firm
17 enough or not, in November they had complied with
18 them. They had already, back in October,
19 installed the vapor recovery on the tanks, the
20 front-line tanks, as we call them, the product
21 from these wells would be routed to.

22 Now, EPA has said well maybe that's
23 really not in compliance. What I need to point
24 out is that after an extensive study of the
25 situation, consulting with all types of experts

1 and so forth, what EPA's basically saying right
2 now is that if what Texaco did was basically they
3 routed some vapors from their wells into these
4 tanks. And they don't think they're being
5 controlled by 99 percent.

6 In fact, our rule, which they're
7 referring to as being in fact in question here,
8 district rule 4401 basically says that you have to
9 control the vapors from the well vent by 99
10 percent.

11 What Texaco did, they closed these well
12 vents so you actually are getting 100 percent
13 control at the well vent, and to the extent that
14 the facility is subject to the rule.

15 EPA makes it sound like as soon as you
16 close the vents, then all the vapors just
17 automatically go to the tank. And that is what we
18 initially thought. That's the basic cursory
19 conclusion that someone could reach if you don't
20 look at what's actually at play here.

21 But after careful study, we don't have
22 here to explain it, basically when you close the
23 vents the vapors go back into the ground and it's
24 not a simply, you know, re-routing up to the
25 tanks.

1 So, we believe that they are in
2 compliance because total closure means 100 percent
3 control. And there is no extra vapors there.

4 Now, we had raised an issue that once
5 you close the vapors there might be some vapors
6 that might get entrained in the liquid. And when
7 you pump this liquid to the tanks, the front-line
8 tanks, those vapors might be evaporated. So we
9 required that they put controls on the front-line
10 tanks, which they have done so.

11 So, as far as that August 30th
12 settlement goes, we believe they were in
13 compliance. All the dates, whether you like them
14 or not, they have come and gone, they're in
15 compliance with that. There is no issue there.

16 Now, they've been asked to test the
17 tanks further down the line to see if it's
18 possible to show a violation. We thought if there
19 are any vapors, as soon as you introduce them to
20 atmosphere in the front-line tanks they would be
21 emitted, so they wouldn't make it down to the 30th
22 tank down the line from the first one. So we did
23 not think there's a likelihood of violation there,
24 but we've asked them to come up with a test method
25 to determine that.

1 Right now there is no test method that
2 we could even use to prove a violation. So we're
3 working on developing a test method with them, and
4 also with an entire -- in fact, EPA, ARB and a
5 number of industry groups are working with us on a
6 committee to develop a test method that we could
7 use in that respect.

8 So from our viewpoint, the first
9 settlement has been resolved. There's no ongoing
10 violation.

11 Now, the second settlement on November
12 24th, again they're raising questions regarding
13 the dates on that not being firm enough.

14 What that settlement entails is we had
15 taken 17 samples -- or sampled 17 tanks and we had
16 found that on two occasions the vapor pressure
17 exceeded the 1.5, which if you go over that you
18 need to have vapor recovery.

19 However, there are some questions on the
20 test method accuracy and so forth, which we, at
21 this point, we were not letting the source get
22 away with those kinds of arguments, even though
23 there is some truth to that argument. But right
24 now the law says there's a specific test method
25 you have to use, and we said as long as you use

1 that test method and you've over that, you need to
2 comply with the rule.

3 So what the source did is they added
4 heat exchangers ahead of these tanks to lower the
5 temperature. The true vapor pressure is dependent
6 on the temperature. They are lowering the
7 temperature of the liquid as it enters the tanks
8 so the vapor pressure remains below 1.5.

9 Now they had all along had a voluntary
10 plan to replace all these old tanks with new
11 tanks. You cannot add vapor recovery to these old
12 tanks because they're not vapor tight and so
13 forth. So they had that plan all along.

14 What is customary in our settlements is
15 that we take some money, usually a monetary
16 penalty, and then occasionally we require some
17 improvements to the plant as a part of the
18 settlement.

19 Now these improvements, we have some
20 dates that they have to comply with, are not
21 necessary to get back in compliance. They are
22 already in compliance because they've lowered the
23 temperature and they've agreed to do a quarterly
24 test to measure the vapor pressure and stay below
25 the 1.5. If they go over 1.5 we'll write them a

1 notice again and deal with that as a separate
2 violation.

3 But as of today we have no evidence that
4 they are back over 1.5. In fact, some of the more
5 recent tests that we've received show that
6 they're, you know, way below the limit. With
7 heavy oil normally you are much under the 1.6
8 limit.

9 So basically those dates, whether you
10 like them or not, are not relevant because they
11 were in compliance. It was a voluntary measure
12 that we added to the settlement, and we gave them
13 some timelines. But again, the timeline says if,
14 despite your best effort, you can't comply with
15 it, we're willing to renegotiate that. But those
16 dates were not necessary to achieve compliance.
17 There is no ongoing violation, and so the
18 technical problem that EPA might have with their
19 one-size-fit-all recipe for compliance schedules
20 doesn't really apply here.

21 MS. POOLE: Mr. Hearing Officer, may I
22 ask a couple clarifying questions?

23 HEARING OFFICER FAY: Sure, the
24 understanding is --

25 MR. SADREDIN: If I could just add --

1 HEARING OFFICER FAY: -- that the EPA
2 representatives are not sworn witnesses, they're
3 speaking -- they're giving comment from their
4 agency. So, ask questions, but no cross-
5 examination.

6 MS. POOLE: I understand that.

7 MR. SADREDIN: Just one quick thing if I
8 could. Everything that I mentioned to you is
9 represented in a letter that we responded to EPA,
10 a January 12th letter that we just sent to them.
11 I'm not sure if EPA has seen it, but it's a letter
12 from our district counsel, Phil Jay, which
13 describes everything that I just mentioned to you,
14 and basically reiterates that these dates are not
15 critical to compliance, and they were just
16 voluntary measures, and that whole technical issue
17 does not apply.

18 So I'd like to -- I guess it's up to the
19 applicant if they want to introduce that letter
20 into evidence.

21 MR. GALATI: I do have a copy and it has
22 been docketed. I'd like to have it marked and
23 moved into evidence.

24 HEARING OFFICER FAY: And could you
25 identify that with some specificity?

1 MR. GALATI: Yes. It's dated January
2 12, 2000, docketed on January 13, 2000. It's a
3 letter to Mr. Matt Haber, entitled, certification
4 of statewide compliance Sunrise Cogeneration
5 project number 981220, signed by Phillip M. Jay,
6 District Counsel. I have a copy.

7 HEARING OFFICER FAY: That will be
8 marked as exhibit 84. Any objection to receiving
9 that into the record?

10 MS. POOLE: Not if we also mark the
11 January 11th letter from EPA as another exhibit,
12 so that the record is complete.

13 MR. GALATI: I have no problem with
14 that. In fact, I have a copy of that and I was
15 going to mark that, too.

16 HEARING OFFICER FAY: Okay, let's give a
17 little more identification to the January 11th
18 letter.

19 MS. LYONS: This Ann Lyons, EPA, and I'd
20 just like to ask a question, which we were
21 wondering would our comments be given a different
22 weight before the CEC if we were to be testifying?
23 Are you giving it less weight because it's a
24 comment rather than a testimony.

25 PRESIDING MEMBER MOORE: This is

1 Michal Moore speaking. I'm the Presiding
2 Commissioner here.

3 And your question to us is if you were
4 in this room would we be giving more credence to
5 your testimony?

6 MS. LYONS: Yes. And that we've been
7 telling you that we're commenting rather than
8 testifying, because actually we thought we didn't
9 have enough time to prepare to, you know, be
10 adequate cross-examined.

11 So, my question is just the fact that
12 we've been stating it was comments rather than
13 testimony, gives them a different weight?

14 PRESIDING MEMBER MOORE: Well, that's a
15 hard judgment call to make. I think in the sense
16 that documents are not here before the Committee
17 in a timely manner, that makes a difference.

18 The fact is that we're making the best
19 use we can of telephony to get your opinions, I
20 think those are not going to be diminished because
21 of distance.

22 But in the sense that things are coming
23 late, have to be digested by all parties in a
24 smaller amount of time, that probably does make a
25 difference, I give you that in all candor.

1 Not that we're going to be able to
2 change at this moment. So, let's keep going.

3 MR. MULLANEY: This is Rob Mullaney. I
4 have some responses to the district. First of
5 all, we did get that letter from the 12th, and the
6 first comment that the district representative
7 made was that the requirement of compliance is
8 under the district rule, only one that has to
9 satisfy the APCO. And we just want to point out
10 that the federal enforceable SIC rule doesn't have
11 anything about satisfaction of the APCO. So that
12 is a complete red herring here.

13 What they really need to do is comply
14 with the federal requirement, and that is the
15 requirement that's at issue here.

16 And why we take our time here to comment
17 is that we're telling you, from the federal
18 perspective, we don't see compliance out there.
19 And we think that in terms of the August '99
20 settlement that the district's willingness to
21 settle it for a monetary penalty without requiring
22 a schedule that shows that the vapors from the
23 wells have been controlled is inadequate.

24 And that's our basic issue. We think
25 that the district is, at this point, completely

1 unaware of where the vapors are going, and that
2 there's been no showing that the vapors go back
3 into the wells rather than being entrained in the
4 liquids. And there's no showing that the vapors
5 from the 4300 wells are controlled at the front-
6 line tanks.

7 If there is a way of showing that, we
8 want to know it, and we want to hear about it.
9 And I think it's something that's still in front
10 of the district in terms of a live enforcement
11 issue.

12 Plus the 700 wells that are being
13 directed to tanks with no controls at all. We
14 have no idea how they could assume that that's
15 being controlled at 99 percent.

16 What happened in this instance is that
17 Texaco basically took out the vapor controls at
18 the wells where they had 99 percent of the vapors
19 being destroyed, and instead they're just sending
20 those vapors somewhere else. And we don't know
21 that they're being controlled anywhere else.

22 And that's the issue, and that's one
23 that's concerning us, and one that we will be
24 investigating, and we wanted to bring before the
25 Commission. So that's one live issue for us.

1 And in terms of the tanks, we are very
2 concerned that again there is no evidence of
3 current compliance with the standard for the
4 tanks. And this is referencing the November 24,
5 '99 issue.

6 So those, to us, are two live compliance
7 issues that we will be looking at. And, for us,
8 when we see a compliance certification that has
9 force of law, it says under penalty of perjury
10 we're in compliance, we're telling you we don't
11 think so. We don't think Texaco's in compliance.

12 PRESIDING MEMBER MOORE: This is Michal
13 Moore again. And I'm, at some point, going to
14 have to rely on some set of documents before I can
15 issue a decision on this.

16 The district is in front of me right now
17 telling me that as far as they're concerned there
18 is compliance. That they've got a record that
19 satisfies them.

20 You just said that you don't believe
21 that. What is the form of a document or an
22 analytical report of some kind that if you looked
23 at it you would say all right, this shows
24 compliance? What is the next step that -- and,
25 again, I'm obviously ignoring the jurisdictional

1 issues here, which we'll have to deal with at a
2 later point -- but, what's the tool, when you
3 finally have it in front of you, it signifies that
4 compliance is there and you're able to sign off on
5 it?

6 MR. MULLANEY: We have authority under
7 the Clean Air Act to ask for information, and
8 that's something that we will be doing in the very
9 near term in this case. We will be looking at the
10 information from Texaco on the settlement, and
11 we'll be checking to see what they are showing us
12 and what their assertions are.

13 But, you know, in terms of compliance,
14 when we have these kind of live issues we would
15 have to get information from the company, review
16 it internally, and then the next step, an
17 enforcement action for us, is to issue a notice of
18 violation.

19 We have separate authority under the
20 Clean Air Act to do that. And, in fact, we've
21 done it repeated with this district in the past
22 when we see that there are problems with
23 settlements that they've entered into where they
24 basically have not gotten compliance.

25 So that's our process, and it's not one

1 that happens instantly.

2 PRESIDING MEMBER MOORE: I'm
3 appreciating that very much. But, let me ask you
4 this, in your most recent set of statements here
5 today, you indicated that you do not find them in
6 compliance, you don't believe that the NOV's have
7 been complied with in a way that satisfies your
8 demands, and yet about three sentences ago you
9 just said you're going to expect information to be
10 coming in from Texaco that you'll review and then
11 make a judgment.

12 Your previous set of statements would
13 sound to me like you made a judgment. So, if you
14 did, what data did you use to make that judgment
15 that doesn't allow you to, or that causes you to
16 want to wait for more data in order to make a
17 different judgment? What set of data are you
18 relying on for the statements that you made about
19 five minutes ago?

20 MR. MULLANEY: We looked at the rule
21 that's what is required at the wellhead, you know,
22 for the August '99 agreement, we looked --

23 HEARING OFFICER FAY: Okay, so your
24 comment is --

25 MR. MULLANEY: -- what the SIC requires,

1 and it requires 99 percent control. And then we
2 look at the 5000 wellheads and we say, okay, where
3 is the 99 percent control coming from. And we see
4 a process that now, instead of where up to say
5 1997 that was all collected at the wellhead and
6 was controlled by a steam generator or something
7 like that, right at the wellhead.

8 Texaco ripped that out completely, and
9 was in complete violation of that rule for a
10 certain period of time. The district takes an
11 enforcement action, issues NOV, says you cannot
12 rip that out.

13 As a settlement they are allowing them
14 then to pipe this stuff from the wellheads to
15 first-line tanks. And what we say is you have to
16 get 99 percent control. How are you doing it?
17 And what we hear back is, well, the vapors are
18 going back into the earth, and they're going to
19 these first-line tanks and they're going to be
20 controlled there, and think that they would go
21 beyond that.

22 That's not good enough for us. We need
23 to make certain that the same level of control
24 that was in place up to 1997 is now in place in
25 the year 2000.

1 We think that --

2 PRESIDING MEMBER MOORE: Okay, let me
3 interrupt you for a second and just make sure that
4 I'm understanding you. And that is that your
5 first set of comments about you don't believe it
6 are process and rule comments. You're commenting
7 generically on the process that the district uses,
8 and the rules that they set up. You don't have
9 data in your hands yet to make a judgment about
10 the Sunrise case in light of the rules that you're
11 not trusting, anyway?

12 MR. HABER: This is Matt Haber. I think
13 maybe if I summarize what Rob said in a slightly
14 different way, is that sources subject to this
15 rule have traditionally complied with it in a
16 certain way that was facially easy to determine if
17 they were complying with it.

18 Texaco, and this is probably irrelevant
19 in this proceeding, but didn't comply with it for
20 a time. And is now, at least for some portion of
21 their wells, is now claiming compliance via a
22 different methodology. And there's no evidence in
23 the record that we have in front of us that that
24 actually does comply with the rules.

25 Given that it is different than anything

1 that has historically been done to show compliance
2 with that rule, the burden is on Texaco to show
3 that to us.

4 Secondarily there's some tanks that I
5 have not heard anybody in the proceedings
6 suggesting that they in compliance at all, that
7 those would be the 700 or so additional wellheads,
8 sorry, not tanks, but wellheads.

9 MR. MULLANEY: Well, there's 700
10 wellheads and they get directed to tanks, but the
11 tanks have no control at all.

12 MR. SADREDIN: Commissioner, if I could
13 just -- I've been trying to be polite with EPA --

14 PRESIDING MEMBER MOORE: Let's continue
15 to be polite. That's a good policy.

16 MR. SADREDIN: Let me just say only if
17 you were not accountable to anyone, and if you
18 didn't feel like you had to actually provide
19 evidence that backs up your statements, you could
20 come here and say we think these guys are in
21 violation.

22 We've spent hours, months, years on this
23 issue, talked to all kinds of experts. I doubt if
24 these individuals have spent more than a couple of
25 days just looking at third-hand information, and

1 they're coming out here and saying we think the
2 district didn't settle these right.

3 I'm confident that once they do their
4 information gathering as they would normally, they
5 would find that these sources are in compliance,
6 and closing your vents is more effective than
7 venting the vapors and controlling them by 99
8 percent.

9 And given all kinds of other issues that
10 are involved in oil production I'm confident that,
11 you know, if they have to back up their word
12 today, obviously they can do it.

13 PRESIDING MEMBER MOORE: Well, I
14 understand that and I appreciate that opinion.
15 You can understand the dilemma, I'm sure, you
16 folks at EPA can understand my dilemma, as well.

17 I've got an applicant who would dearly
18 like to get through this process in something
19 approaching less than the next millennium, and
20 I've got intervenors who've got other cases that
21 they'd like to get on to and the like.

22 So my issue is how to come to a
23 resolution. And what I'm hearing is in spite of
24 the fact that people are differing about their
25 research methodologies, I don't have a document in

1 front of me. And it doesn't sound like I'm going
2 to get a document in front of me that resolves
3 this in any time soon.

4 So, my job is to figure out now how can
5 I come to an agreement about a process that takes
6 us there. And that's why I've been asking what
7 are probably very remedial questions, and I
8 apologize for that, but what I can tease apart out
9 of this is that EPA has had an ongoing dispute
10 with the district about their methodologies for
11 getting compliance.

12 And they're taking that disagreement or
13 that ongoing dispute and applying it in this case,
14 and saying that they don't believe that compliance
15 can be achieved using those rules. But even if it
16 could, the data is not in front of them in a
17 format or in volume to allow them to make the
18 distinction.

19 So, that sounds to me, I mean if I was
20 back doing original research at the university,
21 that would sound to me like two big problems. The
22 first problem, resolve the parametrics of how to
23 get a rule that everybody can agree on. And,
24 second, get the data put into that rule and
25 evaluate it.

1 Am I wrong?

2 MR. MULLANEY: This is Rob Mullaney. I
3 don't know what rule you're referring to. The
4 rule is the one that's in the SIC and it's the one
5 that's been in there since about '92 or --

6 PRESIDING MEMBER MOORE: That's the 99
7 percent rule, right?

8 MR. MULLANEY: 99 percent control, yeah.

9 PRESIDING MEMBER MOORE: But, --

10 MR. MULLANEY: That is in the SIC.

11 PRESIDING MEMBER MOORE: Right, and the
12 district is saying that the circumstances that
13 they have put in place get, in this case, Texaco,
14 Sunrise, into compliance with that number.
15 They're saying we're satisfied that the system
16 that we've set up will get them there.

17 And you're saying, no, it won't. Is
18 that right?

19 MR. MULLANEY: I think that's right.

20 PRESIDING MEMBER MOORE: Okay. Now, if
21 that's right, then that takes us to level one,
22 which is we've got to figure out how you come to
23 an agreement with the district so they can
24 represent, or you can represent to us, that at
25 some point compliance with some -- or methodology

1 that's acceptable can be calculated and
2 replicated, can be applied in this case.

3 We've got to solve that. And that's
4 going to take some amount of time. And I'd like
5 to estimate, or that's the first thing I'd like to
6 tease apart here, is how much time to you suppose
7 it would take to work out a methodology where
8 everybody was on the same bus here? Or is there
9 precedent for this?

10 MR. SADREDIN: Oh, yeah, there is
11 precedent. Usually with EPA it takes years.

12 PRESIDING MEMBER MOORE: No, no, no --
13 (Laughter.)

14 PRESIDING MEMBER MOORE: Again, we'll
15 make every attempt to keep this polite, we use
16 Cambridge rules here.

17 MR. HABER: I guess before we even get
18 to that question, I think there is another
19 question that there is, the district and Texaco, I
20 think, have characterized the methodology on the
21 table for the vast bulk of the wells that comes by
22 this rule. Intense disagreement about that.

23 But one thing I have not heard is how
24 the remainder of the wells, anybody claimed that
25 those wells are made in compliance with the rule

1 at all. I think that's -- issue here.

2 MS. LYONS: That's right, the 700 club.

3 PRESIDING MEMBER MOORE: The 700 club,
4 right. All right. In the case where the district
5 accepts a plan with -- and I believe the term that
6 was used earlier was a plan that had milestones in
7 it, I think I'm using the same term that was out
8 there.

9 Where there's a plan with milestones
10 that are enforceable will EPA accept such a plan
11 as a compliance option?

12 MR. MULLANEY: When we see something
13 like that from the district and there are
14 enforceable measures, yes. We will accept
15 something where there's a compliance plan. That's
16 for certain.

17 We generally, if EPA is taking the lead,
18 that is incorporated in a consent decree that's
19 lodged and given public notice in federal court.

20 PRESIDING MEMBER MOORE: Right.

21 MR. MULLANEY: That's the way that we do
22 it. Districts have different ways of doing it.
23 And yet, that would satisfy us, that type of an
24 approach.

25 PRESIDING MEMBER MOORE: Let me direct

1 one other question to EPA then. You've indicated
2 a few minutes ago in your comments that there have
3 been disagreements with this particular APCD
4 before, is that correct?

5 MR. MULLANEY: Yes, and that actually
6 doesn't have anything to do with this case --

7 PRESIDING MEMBER MOORE: No, I
8 understand that.

9 MR. MULLANEY: -- that when we have
10 problems with a district basically not taking
11 action or taking insufficient action, we have
12 separate authority under the Clean Air Act to file
13 our own action. That's what I was referring to.

14 PRESIDING MEMBER MOORE: Well, okay, and
15 I'm cognizant of the fact that you do have the
16 authority and perhaps the final authority in
17 something of this nature.

18 All I'm trying to get to is the fact
19 that you've had disagreements with this district
20 in the past, and if you have, how did you resolve
21 those? What technique did you use to come to
22 resolution with the district? Did you propose an
23 agreement? Was there a brokered agreement of some
24 kind?

25 MR. MULLANEY: Usually, the ones that I

1 was referring to, we usually end up talking
2 directly with the company, and settling our
3 federal issues with the company by a consent
4 decree. That's what we do. It's sometimes -- the
5 shorthand for that is called over-file.

6 PRESIDING MEMBER MOORE: And do you do
7 it that way just because it's easier, it's more
8 expedient?

9 MR. MULLANEY: Yes.

10 PRESIDING MEMBER MOORE: Okay. So, just
11 again, thinking out loud, assuming that -- let's
12 make the assumption that the company in this case
13 has more incentive to want to settle with you than
14 the district does.

15 And that they're motivated for some
16 monetary reason, perhaps, to want to settle more
17 rapidly than might be afforded them by going
18 through the district. Would they be able to offer
19 up a solution that they would find equivalently,
20 come negotiate with you, and then have you
21 stipulate to that in some consent decree that
22 would then come back and bind the district?

23 MR. MULLANEY: Well, we have -- the last
24 part I missed that you said, that it would come
25 back and bind the district did you say?

1 PRESIDING MEMBER MOORE: Sure. In other
2 words, if you issue a consent decree based on an
3 agreement between you and the company in this
4 case, does it then become something that binds the
5 district?

6 MR. MULLANEY: If the -- the district's
7 not a party at all to it. We file a separate
8 complaint against the company and then settle with
9 the company. If the consent decree has a
10 compliance schedule in it, that requires the
11 district to issue -- it doesn't require the
12 district, but it requires the company to apply for
13 certain permits to control or that type of thing,
14 then we rely on the district to issue the permits.
15 Is that what you're getting at?

16 PRESIDING MEMBER MOORE: It is, and I'm
17 just noting the friendly circumstances in which
18 that would take place.

19 Okay, I think I've got a clearer picture
20 of where you're going. We don't have a set of
21 rules that everybody agrees on, and we don't have
22 a set of data that you've got to work with.

23 Counsel has a question for you.

24 HEARING OFFICER FAY: I have a question
25 of Ms. Lyons. In terms of process if the dispute

1 continues what happens? The district has issued a
2 final DOC. But for what you're telling us, the
3 Commission would rely on that. Under our statute
4 we're authorized to.

5 What formal action would EPA be taking
6 at some later point, either against the applicant
7 or against the district for their DOC?

8 MS. LYONS: Yeah, I can refer -- I'll
9 refer this response to Rob, who's also in the
10 office of regional counsel, Rob Mullaney.

11 MR. MULLANEY: Well, I think that
12 there's two avenues that we could take. The first
13 avenue is we will look at the compliance for the
14 underlying 5000 wells. And if we find that there
15 are grounds for it, we'll issue a notice of
16 violation. We will attempt to negotiate a
17 settlement, or we will file a complaint in federal
18 court.

19 The other thing that we have is that
20 there is a certification here of compliance for
21 this permit. And we may decide, looking at that,
22 that there was not any basis for that
23 certification, and then we would bring an action.
24 Again, we could issue a notice of violation and
25 either bring an action in federal court to

1 invalidate the permit, or we could issue orders,
2 also, after we've issued a notice of violation.

3 So we have separate avenues to
4 enforcement.

5 MS. LYONS: And I guess to clarify we
6 would consider the enforcement action to be raised
7 at the commencement of construction by Sunrise on
8 this project, based on the failure to have an
9 adequate certification.

10 HEARING OFFICER FAY: Thank you. That
11 gives us an idea of what paths you could take.
12 I'm going to let the parties ask any questions
13 that they think would help inform the record at
14 this time.

15 MR. GALATI: This is Scott Galati, I
16 represent the applicant.

17 Did you say if you find a violation you
18 may take those steps, is that correct?

19 MR. MULLANEY: Yes, that's right.

20 MR. GALATI: So you haven't found a
21 violation yet?

22 MR. MULLANEY: No. That's the thing
23 here, and I know that the district representative
24 referred to that. We are not in a position today
25 to issue a notice of violation on that because,

1 believe it or not, we have that standard, and we
2 want to be able to actually prove it. So that's
3 the process that we --

4 (Laughter.)

5 MR. MULLANEY: -- we are about to embark
6 on in this circumstance. And I think we have a
7 concern with the certification here based on the
8 information that we have, and the issues that are
9 unclear to us.

10 And that's what we do enforcement from.
11 That's where we spring from. You know, it looks
12 like there's a problem, we're going to gather
13 information. If it turns out that our initial
14 impressions are backed by the documentary proof,
15 then we issue a notice of violation and go forward
16 with enforcement.

17 So, no, we're not at a point today where
18 we could issue that.

19 MR. GALATI: And it could be as equally
20 likely that you looked at what the district did
21 over the last several years and determined that
22 there was no violation, there was compliance with
23 the rule, is that correct?

24 MR. MULLANEY: I wouldn't say that, not
25 in this case. I don't think it's equally as

1 likely, no.

2 MR. GALATI: On what is that based?

3 MR. MULLANEY: I think the gaps here are
4 pretty striking. And there has to be some
5 explanation put on the table that we haven't had
6 before us yet about this. You know, there's some
7 cases you have a sense that there's grey, that are
8 black-and-white, and I'd put this in the black-
9 and-white category.

10 MS. LYONS: This is Ann. I just want to
11 get some sense of how much longer. A couple of us
12 have other meetings, too.

13 PRESIDING MEMBER MOORE: Yeah, we'll
14 hold it to ten minutes, and we'll stop at that
15 point. So we'll try and get as many questions as
16 we can on the table.

17 MS. LYONS: Okay, we'll stick around for
18 ten minutes --

19 PRESIDING MEMBER MOORE: Let's --

20 MS. LYONS: -- late for his meeting.

21 PRESIDING MEMBER MOORE: Counsel, can I
22 let CURE get some questions?

23 HEARING OFFICER FAY: Yeah.

24 MS. POOLE: I have one quick question
25 for EPA. For the benefit of the folks on the

1 phone, this is Kate Poole for CURE. I just would
2 like to clarify something with you.

3 Pre 1990 ERCs will not meet the
4 requirements of the Clean Air Act until a valid
5 inventory is approved, correct?

6 MR. HABER: I'm sorry, would you restate
7 the question? We had a little bit of a hard time
8 hearing that.

9 MS. POOLE: My question is whether pre
10 1990 ERCs will meet the requirements of the Clean
11 Air Act before a valid inventory is approved?

12 MR. HABER: This is Matt Haber answering
13 that question. I think if you read the 1994 memo
14 requires that the plan include those -- I don't
15 think the memo is specific as to whether the plan
16 has to be approved in order for that to be
17 useable.

18 MS. LYONS: This is Ann. I guess I'd
19 clarify a little bit that we would probably be
20 willing to say that we think something is
21 approvable, or is included in the plan in a way
22 such that it would be okay under this 1994 memo.

23 MS. POOLE: But you can't say that
24 today, right?

25 MS. LYONS: What?

1 MS. POOLE: You can't make that
2 statement today?

3 MS. LYONS: Not on that particular ERC
4 that we are having a problem with.

5 MS. POOLE: Right. So right now, you
6 can't say that the district's approach complies
7 with the Clean Air Act, is that right, with
8 respect to offsets?

9 MR. HABER: Well, we have concerns about
10 it, that's why we sent our January 5th letter that
11 said in this year that it was properly included in
12 the inventory.

13 MS. POOLE: Okay, thanks.

14 PRESIDING MEMBER MOORE: Yes, we have a
15 couple questions from staff counsel.

16 MS. HOLMES: Yes, this is staff counsel
17 Caryn Holmes. I guess just a general question.
18 We've had a lot of discussion and I want to ask a
19 question that may seem fairly obvious but I want
20 to make sure that it's completely clear.

21 In your mind is the DOC that the
22 district has submitted to the Energy Commission in
23 this process a valid DOC?

24 MR. HABER: No.

25 MS. HOLMES: And the process that you

1 talked about initiating to address this issue, how
2 long will that take, do you have any idea?

3 MR. HABER: Well, I think Rob laid out a
4 couple of options to that process that we could
5 take if there were -- ended up agreeing that there
6 were, that a violation -- and the one where we
7 look at as our permit, if the DOC is -- and it's
8 our permit, would be some time into the future
9 because it doesn't get triggered until and unless
10 the company attempts to use the DOC.

11 MS. HOLMES: And that's what you were
12 talking about doesn't begin until construction?

13 MR. HABER: Right, right. And the other
14 process where we look at the underlying rule,
15 itself, could be initiated once we had enough
16 information to say that we thought that was the
17 case.

18 MS. HOLMES: You can understand our
19 concern about issuing a permit when we don't know
20 whether or not it's going to be valid once
21 construction commences. Could you just very very
22 briefly explain the timeline that would be
23 involved in the second process, then, that you
24 were discussing?

25 MR. HABER: I'm sorry?

1 MS. HOLMES: Can you very briefly
2 describe the timeline that would be involved in
3 the second process that you were describing, so
4 that we would avoid this situation of having the
5 Commission potentially issue a permit that we
6 didn't know whether or not it was valid.

7 MR. HABER: Right. But there actually
8 is, before involving that question, -- Matt
9 again -- I think it is possible, and there was a
10 suggestion earlier along those lines that there's
11 a third, or at least a parallel third path that
12 would allow a company to be able to certify
13 compliance in that they had an appropriate
14 compliance schedule independent of whether EPA
15 agreed with that. I think there may be a way to
16 do that.

17 PRESIDING MEMBER MOORE: Ms. Holmes,
18 more questions?

19 MS. HOLMES: No, that's all.

20 PRESIDING MEMBER MOORE: CURE, do you
21 have more questions?

22 MS. POOLE: I have one question for the
23 district representative, but --

24 HEARING OFFICER FAY: We can wait.

25 PRESIDING MEMBER MOORE: Let's hold on

1 that.

2 MS. POOLE: Okay.

3 PRESIDING MEMBER MOORE: Mr. Galati, do
4 you have more questions?

5 MR. GALATI: I just have one question,
6 and this is -- do you have any written guidance --
7 this is to EPA, do you have any written guidance
8 on when interpreting the owner and operator rule
9 as to -- written guidance as to how you look at
10 the structure of the company?

11 MR. HABER: This is Matt Haber again.
12 There's a very large body of guidance that we
13 generally would characterize as defining what the
14 source is, and it's publicly available.

15 MR. GALATI: Is that a regulation?

16 MR. HABER: Our regulation defines it,
17 and then there's a large body of guidance that
18 interprets that regulation.

19 But, in short, our regulation defines
20 the source as everything under common control with
21 the person at hand, or persons under common
22 control, on contiguous or adjacent property, under
23 the same SIC code.

24 MR. GALATI: Nothing would prohibit EPA
25 from investigating or requiring information from

1 TCI independent of Sunrise, is that correct?

2 MR. HABER: TCI being Texaco?

3 MR. GALATI: Yeah, Texaco California,
4 Incorporated.

5 MS. LYONS: This is Ann. I would also
6 just say that the statutory language in section
7 173(a)(3) does refer to the compliance
8 certification demonstrating that all major
9 stationary sources owned or operated by such
10 persons or by any entity controlling, controlled
11 by, or under common control of such person.

12 And I don't know if this exactly answers
13 your question, but it's fairly broad, in my
14 opinion, if you're -- sounds like -- I don't know
15 what the corporate structure is with Texaco and
16 Sunrise, but, you know, if you're under common
17 control, the statutory language, itself, would
18 seem to be inclusive.

19 HEARING OFFICER FAY: Anything further
20 from any of the parties? Okay.

21 This is Gary Fay, I'm the Hearing
22 Officer. And I'd like to thank the people from
23 EPA for giving us your time and your valuable
24 counsel. We are informed by you, and I'd just
25 like to get a number for Matt Haber, if we can, in

1 case the Committee needs to have any further
2 communication with EPA.

3 MR. HABER: A phone number?

4 HEARING OFFICER FAY: Yes.

5 MR. HABER: Okay, that would be (415)
6 744-1254.

7 HEARING OFFICER FAY: Okay, thank you
8 very much.

9 MR. HABER: Thank you.

10 MS. LYONS: Thanks. Bye.

11 HEARING OFFICER FAY: Goodbye.

12 Okay, what we'd like to do is just take
13 a minute and go off the record.

14 (Off the record.)

15 HEARING OFFICER FAY: Mr. Grattan has
16 vigorously urged that while we were off the record
17 that we not let EPA's uncertainties hold up
18 progress on this licensing. And I hope that's a
19 fair characterization summary.

20 I'd like to hear from the other parties,
21 as well. And, by the way, while we were off the
22 record, the Committee proposed deferring the rest
23 of most of our remaining air quality discussion
24 for a later day because we have so much to cover
25 today and so little time.

1 I'm getting the parties' reactions, and,
2 Ms. Holmes, do you have a comment in light of what
3 we've heard?

4 MS. HOLMES: Staff has always
5 recommended that a final DOC that has been agreed
6 to or approved by EPA and ARB be a requirement
7 before we go to hearings. And I see no reason to
8 make a distinction in this case.

9 I understand that EPA does have options
10 available to it, and it may be that at some point
11 when we more fully understand what the issues are
12 and what those options are, we may wish to make an
13 exception to that rule.

14 But I cannot say, sitting here today,
15 that we would change our recommendation that we
16 have a DOC that EPA is happy with for purposes of
17 evidentiary hearings.

18 HEARING OFFICER FAY: Okay, thank you.

19 PRESIDING MEMBER MOORE: And you'd
20 characterize what we've heard as EPA is not being
21 happy, but not only not being happy but
22 basically --

23 MS. HOLMES: That's why I specifically
24 asked the question, do you believe the DOC is
25 valid. And their answer was no.

1 HEARING OFFICER FAY: Okay. And, Ms.
2 Poole?

3 MS. POOLE: We agree with staff.

4 HEARING OFFICER FAY: Okay, any other
5 parties to wade in on this? Does TANC have a
6 comment on this?

7 MR. DeCUIR: No.

8 HEARING OFFICER FAY: Okay.

9 MR. GRATTAN: How about the district?

10 HEARING OFFICER FAY: Yeah, sure, we'd
11 like to hear from the district.

12 MR. SADREDIN: Well, I can't, obviously,
13 you know, argue with your staff's position that
14 they want to hold the progress of this project
15 until the EPA approves. That goes counter to the
16 California regulations where we have local control
17 and local permitting authority. Under the Health
18 and Safety Code, the sole permitting authority for
19 permitting projects has been delegated to us,
20 getting involved in your projects for certain
21 projects.

22 So, that's not something I want to
23 argue. That's what their position is. However, I
24 want to make it abundantly clear to you that what
25 EPA's position today is where we were a year and a

1 half ago, and those violations when we didn't know
2 much about it.

3 I'm confident once that information is
4 provided to them, and we have volumes of
5 information, and they are capable people and they
6 can reach a reasonable conclusion.

7 If you want, we can go somewhat through
8 it as to how we reached the determination that
9 compliance exists. But, one thing that
10 Commissioner Moore was suggesting that maybe there
11 is something that we could work out, some kind of
12 a schedule that Texaco could do what EPA wants.
13 That I can tell you is impossible short of
14 basically ripping out everything that they have
15 there and reinstalling it. That is not something
16 that's going to happen if EPA's view prevails that
17 the methodology that we've agreed to is not okay.
18 And they just basically have to undo, you know,
19 5000 wells. That's not going to happen.

20 But I'm confident the data is there, the
21 scientific data is there that they are in
22 compliance, and to the extent that you want to
23 take that into account, you could say at the risk
24 of EPA at some point being able to prove the
25 violation against the source is very unlikely.

1 Although that threat exists, I think that's a risk
2 that, if I were in your position, I could live
3 with and say that's not going to happen.

4 And based on the fact that they have not
5 presented enough evidence, that, to us, would be
6 something reasonable to do at this point.

7 PRESIDING MEMBER MOORE: Let's go down
8 that road just a little bit, and if they acted
9 against the district, denying the DOC, -- what
10 happens at that point? In your opinion what
11 happens to the DOC?

12 MR. SADREDIN: Well, they don't go after
13 the district. What they would do is go after the
14 source and say you cannot initiate construction.

15 PRESIDING MEMBER MOORE: And so what
16 would happen, if I issued a decision based on that
17 reasonable risk that you just outlined, and for
18 every infinitesimally small risk, of course of
19 something happening, there is some risk of it
20 actually happening, something comes about, what
21 happens to my decision?

22 MR. SADREDIN: If let's say EPA prevails
23 on their viewpoint and they're able to prove a
24 violation. That simply means that the source
25 cannot initiate construction. And they would be

1 subject to federal penalties if they did.

2 So, to the extent that EPA can
3 enforce --

4 PRESIDING MEMBER MOORE: Then my
5 decision would be effectively moot? I would have
6 granted a certificate to something that could not
7 build, could not construct, could not comply?

8 MR. SADREDIN: If EPA was able to make
9 that showing and prevail on that, yeah.

10 PRESIDING MEMBER MOORE: Okay. All
11 right. Mr. Grattan, you want to add something?

12 MR. GRATTAN: Yes. This is a risk, the
13 risk of enforcement against this particular
14 project, the Sunrise project. Should the
15 Commission, in its wisdom, give us a certificate,
16 it's a risk that we obviously would be willing to
17 take.

18 PRESIDING MEMBER MOORE: That you're
19 willing to take. There's a vote of confidence.

20 With that, Mr. Galati, do you have
21 something else to add. I'm very much open to it,
22 otherwise what I'd like to do is take five minutes
23 and confer with my counsel, and I'll tell you what
24 we're going to do.

25 (Brief recess.)

1 PRESIDING MEMBER MOORE: Welcome back to
2 the record. All right. What I'd like to do is
3 tell you that we're going to avail ourselves of
4 the option of going to Mr. Hesters' testimony, and
5 then going on to water today. I'm going to set
6 aside the air quality issues and continue those.
7 We're going to notice a hearing for the 28th, and
8 try and -- or any other day that staff counsel
9 finds equally uncomfortable --

10 (Laughter.)

11 PRESIDING MEMBER MOORE: -- or more
12 uncomfortable, but we'll have to pull Ms. Holmes
13 up for that.

14 It's not a particularly preferable day
15 for me, but anyway, for right now, for planning
16 purposes, that's what I'd like to target.

17 Here's my reasoning. In my mind there
18 is enough of a doubt created by what the EPA
19 representatives have said that I do not want to
20 find myself at the end of this process with a
21 contingent decision. I've been down that road
22 before. It's uncomfortable for the applicant,
23 it's uncomfortable for me. There may be other
24 Commissioners on this Commission who will do that;
25 I won't.

1 So, I just say that at the outset, I
2 don't want to go down that road. I want to wrap
3 this up.

4 Now, I'm not convinced, given the
5 comments that were made by the EPA representatives
6 and the district representative that there is not
7 a possibility to get an agreement. Frankly, I
8 think that there probably is.

9 And so what I would like to do is I
10 would like to reserve the time and go through this
11 when we have everything in hand. And I realize
12 that by pushing it off a bit it creates some
13 pressure, but simultaneously it creates some
14 opportunity for people to negotiate and get an
15 agreement in good faith.

16 My motives are not totally obscure in
17 this, and that is that either I or some of my
18 colleagues are going to be following pretty close
19 on with other cases that will probably be impacted
20 by the current EPA attitudes, or their own
21 process.

22 So, what we do here has to imagine that
23 there are other cases that are going to be
24 following on and be impacted by this. So I have
25 to take that into consideration.

1 I think in all due respect to Mr.
2 Grattan's position, which I do respect, that I can
3 keep from extending the total time allotted to
4 this process by doing it this way. And so I'm
5 trying mightily not to extend out the entire --
6 I'm working within the parameters of my total
7 timeframe in trying to set it up this way.

8 So, not that I'm seeking agreement,
9 because I don't need that today. But I would like
10 you to know that I'm trying to accommodate all the
11 points of view.

12 Now, where I fail may be on the
13 particulars of picking a date. I apologize. I've
14 already done that once over the Christmas holidays
15 and not engendered any friendships over that. So
16 I do the best I can.

17 So, anyway, --

18 HEARING OFFICER FAY: If I could add
19 just a suggestion, I think if we can look to the
20 28th as a continuance of this hearing, and we will
21 hopefully get everything done today except the air
22 quality, and plan to address air quality at that
23 time, even if there is not, you know, an agreement
24 nailed down, we can take the evidence that is
25 available to take and hopefully we will be better

1 informed at that time than we are today on just
2 the size of this problem.

3 And if there are contingencies that
4 remain, perhaps they at least will be defined at
5 that time, as to what conditions must be met, et
6 cetera.

7 Hearing Room A is available on the 28th,
8 and Commissioner Moore is available. What more do
9 we need?

10 So, any comments from the parties on
11 that?

12 MS. HOLMES: I have a question. What
13 exactly would be heard on the 28th? Would it be
14 the rest of the air quality testimony, as well as
15 what's going on with EPA?

16 PRESIDING MEMBER MOORE: Right.
17 Everything that we would have heard in sequence
18 today.

19 MS. HOLMES: I have an additional
20 comments and perhaps a suggestion to offer, and
21 that is that CURE has raised a legitimate point in
22 that they did not get much of an opportunity to
23 review the water quality data request that was
24 filed last Friday.

25 And I think that if you're going to

1 extend the hearing to the 28th, as long as
2 everything can get done on one day, I think it
3 would be fair to provide them with the opportunity
4 to review that and let them present their case on
5 that on the 28th, as well.

6 PRESIDING MEMBER MOORE: In the form of
7 rebut, or --

8 MS. HOLMES: Well, we never actually
9 addressed how the issue was going to come up in
10 terms of responding to the data request, since it
11 went out after our testimony was filed. And you
12 can characterize it as rebuttal testimony. I know
13 that --

14 PRESIDING MEMBER MOORE: And your point,
15 Ms. Holmes, is that rather than have it come up --
16 rather than force them to deal with it today, take
17 the rest of water and let them be open to offer
18 their comments at that time?

19 MS. HOLMES: I guess it truly is in the
20 nature of rebuttal testimony. I mean staff has
21 talked with DTSC, as we discussed off the record,
22 and we're going to be reflecting our conversations
23 with them on the stand. We might as well -- CURE,
24 I think, is entitled to a reasonable period of
25 time to review the data request. And they, quite

1 frankly, haven't had that.

2 So I'm not suggesting postponing
3 anything else. I'm just saying that because the
4 data response came in late --

5 PRESIDING MEMBER MOORE: I agree. It's
6 reasonable. And I should also tell you that we've
7 been wrestling with the question of things have
8 gotten out of sequence a lot. So the record's
9 going to be hard to piece together in terms of a
10 good flow.

11 What I intend to do with that is almost
12 literally to put, instead of cross-references, I'm
13 going to borrow James Burke's pinball book, and
14 use the cross-references in marginalia, if you
15 will, to show the reader where the missing pieces
16 have gotten shifted to.

17 So at least the reader can follow a
18 train and make it through the document. So, since
19 I can't do it in a binary form, I can't hand each
20 of you a diskette and have it on there, I'll do
21 the next best thing, which is that we'll set this
22 up so that you can cross-reference and follow a
23 train of thought as clearly as possible.

24 So, with that, unless there's just some
25 massive complaint, and an indication that my car

1 has something interesting wired to the bottom of
2 it, --

3 (Laughter.)

4 MR. SADREDIN: Can I ask you a question,
5 just from what the district's responsibility or
6 anything that you're asking us to do, did I
7 understand you correctly that you wanted the
8 district and EPA to get together to try to resolve
9 this issue? Or is this just something you're
10 leaving out there for someone to work out?

11 PRESIDING MEMBER MOORE: No. I mean if
12 I have any, you know, if I'm permitted any
13 jawboning at all, then I would admonish the
14 district to open lines of communication with EPA,
15 invite them down, cater a lunch, perhaps, a picnic
16 out in the oil fields, show them what you've done,
17 let them know what your methodology is. You know,
18 get their data cracker out there, and get your
19 algorithms out in front of them, and show them why
20 it works. And let them show you why it doesn't,
21 or something else.

22 The other thing I was going to ask for,
23 and maybe the applicant is the right person to ask
24 for this, is that on the 28th when we come back,
25 could we get an updated table of what the NOV's

1 were? How they got resolved. Yes, no. Whether
2 there are likely to be NOV's that are in dispute.
3 Do we have a scorecard? And maybe a scorecard at
4 that point is 100 to zero, I don't know.

5 But just something so that we can reduce
6 the number of loose ends that we're considering
7 that have got to be settled.

8 MS. POOLE: Commissioner, would it be
9 possible to get that ahead of time if that is
10 something that could come in so that --

11 PRESIDING MEMBER MOORE: How do you
12 define ahead of time? More than an hour or --

13 MS. POOLE: A few days, so that we could
14 take a look at it.

15 PRESIDING MEMBER MOORE: Yeah, as soon
16 as you can. I mean, if it came in -- if the best
17 that can happen is that it comes in on the 28th,
18 then I guess the best I would say is let's all get
19 it at the same time. That may level the playing
20 field. If you get it late, then I ought to get it
21 late, so we're all operating on the same deal.

22 Mr. Galati, I didn't mean to cut you
23 off.

24 All right, well, with your indulgence,
25 let's go take up Mr. Hesters' testimony then.

1 MR. GRATTAN: I believe you asked if
2 there were any massive complaints on water --

3 HEARING OFFICER FAY: Oh, and I didn't
4 see any, and so I --

5 MR. GRATTAN: -- and at the risk of --
6 at the risk -- at the risk of --

7 PRESIDING MEMBER MOORE: -- just rolled
8 on --

9 MR. GRATTAN: -- lodging a massive
10 complaint, the Commission's rules, we're here
11 ready to do water. My understanding is that DTSC
12 has been called, and is prepared to speak.
13 They're here.

14 The Commission's rules 1202(b) require
15 testimony be submitted five days in advance. This
16 was submitted five days in advance.

17 PRESIDING MEMBER MOORE: I had no
18 intention of not taking water.

19 MR. GRATTAN: Water, and the water
20 testing.

21 MS. HOLMES: That's the sole remaining
22 issue that I was referring to. Staff's testimony
23 concluded that there were --

24 MR. GRATTAN: Okay, --

25 MS. POOLE: We received stuff this

1 morning on the water issue. Mr. Galati handed me
2 two documents this morning which goes to that
3 water sampling. You know, we appreciate the
4 unsolicited offer from staff to deal with this
5 later since we have not had a chance to review it,
6 and that --

7 PRESIDING MEMBER MOORE: Okay, if there
8 are -- what did you hand Ms. Poole this morning?

9 MR. GALATI: What I handed Ms. Poole
10 this morning is we handed all the data in as soon
11 as we had it evaluated, and as soon as we got it
12 to us. There is a quality control set of analysis
13 that the laboratory does at the end of the
14 process, and we got those faxed to us last night.

15 That is not the data. The data was
16 given to them immediately when we got it. The
17 test results, and in fact the test results that
18 DTSC relied on and is here to testify, without
19 them having the quality control. As soon as I got
20 it, I gave it, I brought it in.

21 PRESIDING MEMBER MOORE: Okay, so that
22 the testimony that you're going to sponsor today
23 does not, n-o-t, does not rely on any documents
24 that you submitted to Ms. Poole this morning?

25 MR. GALATI: No. We have the test

1 results. We're relying on them to the extent that
2 they put it into issue, as they did with the gas
3 chromatographs, that they weren't followed
4 appropriate protocol, I have that testimony as
5 rebuttal to that.

6 PRESIDING MEMBER MOORE: And your
7 witnesses are prepared to testify that their
8 testimony today did not rely on any supplemental
9 documents that you submitted to Ms. Poole today?

10 MR. GALATI: Correct.

11 PRESIDING MEMBER MOORE: Okay, --

12 MS. POOLE: If I may, Commissioner, the
13 QAQC data is essential to validating the data
14 which we received last Friday. I mean it's --

15 PRESIDING MEMBER MOORE: I think that
16 the easiest way for me to go through this is I
17 really don't want to stop the hearing today on
18 this process. I'm going to leave the back door
19 open so that if it turns out that you can make a
20 case that, in fact, it was core or germane to
21 their arguments, we'll allow a comment on it later
22 on. If not, then I mean if it's just a supplement
23 to, or an addendum to something, then he probably
24 shouldn't have handed it to you today. I don't
25 know.

1 But what I'm going to do is let them get
2 their testimony on the record. We'll revisit your
3 comment from right now. And then figure out
4 whether we can allow unsolicited questioning that
5 Ms. Holmes offered up as a suggestion.

6 Having said that, let's start this.

7 HEARING OFFICER FAY: Let me just review
8 where we are, since we are continuing air quality.
9 We will take Mr. Hesters' testimony and cross-
10 examination of him.

11 CURE informed me that when we left off
12 they had not yet completed their testimony on
13 operations, is that correct?

14 MS. POOLE: That's correct. I don't
15 believe Dr. Fox has begun her operational
16 testimony.

17 HEARING OFFICER FAY: But we have heard
18 from the applicant and staff on operations, but we
19 have CURE's testimony on operations, and all the
20 parties on indirect impacts and cumulative impacts
21 left on air. I just want to keep score here.

22 All right. Ms. Holmes, are you prepared
23 now to put on Mr. Hesters?

24 MS. HOLMES: Yes. Staff would call Mr.
25 Hesters. I believe he was sworn.

1 MR. HESTERS: I've been sworn.

2 HEARING OFFICER FAY: In this case?

3 MR. HESTERS: Yes.

4 HEARING OFFICER FAY: Okay, Mr. Hesters,
5 you're still under oath, then.

6 Whereupon,

7 MARK HESTERS

8 was recalled as a witness herein and having been
9 previously duly sworn, was examined and testified
10 further as follows:

11 DIRECT EXAMINATION

12 BY MS. HOLMES:

13 Q Mr. Hesters, did you prepare the
14 testimony in exhibit 54, I believe, that's
15 entitled appendix B, evaluation of potential
16 emission impacts due to transmission constraints?

17 A Yes, I did.

18 Q And a copy of your qualifications were
19 included in part 2 of the FSA, exhibit 32, is that
20 correct?

21 A Yes, were they in this part, or were
22 they in the part --

23 Q They were in the previous part --

24 A In the previous part, okay.

25 Q And do you have any corrections to make

1 to your testimony today?

2 A No, I don't.

3 Q And are the facts contained in your
4 testimony true and correct to the best of your
5 knowledge?

6 A Yes.

7 Q And do the opinions in your testimony
8 represent your best professional judgment?

9 A Yes.

10 Q And could you very very briefly, given
11 the time constraints we have, please summarize
12 your conclusions.

13 A Sort of blocked that part out.
14 Basically my conclusions were that there are three
15 ways that additional power south of path 15
16 basically in the Kern County area could affect air
17 quality in northern California.

18 One way was by somehow causing an
19 increase in generation in northern California.
20 Another was by shifting generation from plants
21 that -- or resulting in a shift in generations
22 from plants that emit less to plants that emit
23 more.

24 Or shifting generations from plants in
25 what I'll call cleaner districts to plants that

1 are dirtier districts, or closer to being
2 nonattainment areas.

3 My testimony basically says that I don't
4 think that additional generation south of path 15
5 will result in increased generation in northern
6 California, so it won't affect air quality that
7 way.

8 It could result in a shift in generation
9 from one plant to another, but that is the result
10 of decisions -- not decisions, but a result of
11 market impacts on the California electricity
12 market, compared to decisions of members of TANC
13 or other utilities in northern California.

14 Q Thank you. I wanted to ask you just a
15 few brief questions about TANC's testimony. Have
16 you read that testimony?

17 A Yes, I have.

18 Q And on page 4 of that testimony there's
19 a reference to the addition of generation
20 increasing the amount of load that's dropped.

21 Are you aware of whether or not there's
22 any indication that load would, in fact, be
23 dropped?

24 A This is in northern California, or --

25 Q Why don't you read the testimony.

1 MR. DeCUIR: May I ask you to what
2 exhibit or testimony you might be referring? Is
3 that Mr. Salyer or Mr. Larson?

4 MS. HOLMES: That's exhibit 62, that's
5 Mr. Salyer's testimony.

6 MR. DeCUIR: All right, thank you.

7 MR. HESTERS: I remember what this is
8 about now. It says the addition of generation in
9 the Midway area will increase the amount of
10 generation and load that must be dropped during
11 contingency conditions.

12 To my knowledge there aren't any load
13 dropping, what we call ras schemes, or remedial
14 action schemes. There aren't contingencies that
15 would result in load being dropped. Unless they
16 were incredibly extreme contingencies.

17 BY MS. HOLMES:

18 Q In addition there's also discussion in
19 Mr. Salyer's testimony, the use of remedial action
20 schemes for congestion. Is that consistent with
21 your understanding?

22 A No. The remedial action schemes aren't
23 currently used to reduce congestion. They're just
24 used in outage situations.

25 Q And do you believe that remedial action

1 schemes would have any environmental effects given
2 that understanding?

3 A They could have environmental impacts,
4 but they'd be very slight. Most of the
5 contingencies that occur occur for very short
6 periods of time, or in very rare occasions.

7 Q And finally, if path 15 is congested,
8 will the results of that on northwest generation
9 be affected by how many plants are built in
10 southern California?

11 A I'm confused by that question.

12 Q If path 15 is congested, will the
13 congestion's effect on generation in the northwest
14 in turn be affected by how many plants, new plants
15 are built in southern California?

16 A No, once path 15 is congested, it
17 doesn't matter how many plants are built south of
18 path 15. If you're at the limit of the path,
19 you're transferring as much power as you can over
20 that path.

21 MS. HOLMES: Thank you. Those are all
22 my questions.

23 HEARING OFFICER FAY: All right, does
24 the applicant have any cross-examination of Mr.
25 Hesters?

1 MR. GALATI: No questions.

2 HEARING OFFICER FAY: Does CURE have any
3 questions?

4 MS. POOLE: No questions.

5 HEARING OFFICER FAY: TANC.

6 MR. DeCUIR: Thank you very much, Mr.
7 Fay, Members of the Committee and parties.

8 CROSS-EXAMINATION

9 BY MR. DeCUIR:

10 Q Mr. Hesters, when you developed your
11 report here that is dated December 17, 1999, you
12 must have reviewed some information. What was
13 that?

14 A Just in general information? I was
15 mostly basing on my own knowledge having been a
16 resource -- not a resource planner, but working
17 with resource planning at the Energy Commission
18 for several years before I started reviewing
19 transmission systems.

20 Q On page 69 at the very top, the top line
21 of your testimony or your report you indicate that
22 TANC members have their own power supplies which
23 include most of the same types of resources as
24 PG&E accesses.

25 You understand, do you, that the TANC

1 members have their own generating systems, is that
2 correct?

3 A Yes.

4 Q And they largely supply their own loads
5 with their own generating systems that they own,
6 is that correct?

7 A To some degree, if you're talking -- I
8 mean they also rely on imported power from other
9 places, as well.

10 Q And in saying that you can refer for an
11 example to Mr. Salyer's testimony where he
12 referred to the interest that some of the TANC
13 members have in the San Juan power plants near the
14 Four Corners area in New Mexico, is that correct?

15 A Yes.

16 Q And that's an own interest. I suppose
17 there are other, perhaps, contract interests that
18 they might have, for example, there are contracts
19 for federal hydroelectric power with the Western
20 Area Power Administration?

21 A Yes.

22 Q And perhaps typical of the resources,
23 and I'd like you to agree with me, can you -- I
24 don't want to interrupt you if you're trying to
25 speak with your counsel --

1 A No.

2 MS. HOLMES: No.

3 MR. DeCUIR: All right, I'm sorry, I saw
4 you -- it appeared to me that you might be trying
5 to speak, I don't want to interrupt. Okay.

6 BY MR. DeCUIR:

7 Q I'm going to kind of run down some of
8 the typical resources because I think you know
9 that they're out there and you can agree with me
10 that they are.

11 Let's start with Modesto. Mr. Salyer
12 testified about the two different stations which
13 are combustion turbine, natural gas-fired electric
14 stations in the Modesto area.

15 And I suppose you know that Turlock has
16 a combustion turbine, and that there are two
17 combustion turbines located in the Lodi area, and
18 two in Roseville, and two in Alameda, and one in
19 Santa Clara. And I think Redding has a combustion
20 turbine unit, as well.

21 You understand that to be pretty close
22 to what you appreciate as being a fact?

23 A I don't know the exact specifics of
24 where the combustion turbines are, but, yes, I
25 will agree, they own combustion turbines.

1 Q And you would likewise agree that some
2 of the TANC members have interest in geothermal
3 resources in the known Geysers area, is that
4 right?

5 A If you say they do, yes, I assume that.

6 Q Well, you've heard of --

7 A Santa Clara, was it -- I don't remember
8 the specific details, but, yes, I do remember them
9 having some -- I couldn't tell you which company
10 owns specific interests in geothermal plants.

11 Q You're not expected to. I understand.

12 A Okay.

13 Q We're looking at this on a larger
14 grosser basis, I think.

15 A Right, that was the purpose of my
16 report.

17 Q And some of the members have
18 hydroelectric sources, such as the sources
19 described by Mr. Salyer with regard to Modesto and
20 the Turlock Irrigation District. And I suppose
21 you realize that there are other hydroelectric
22 resources that extend to the North Fork Stanislaus
23 project, and then the SMUD Upper American River
24 project. You appreciate that those exist?

25 A I appreciate they exist. I don't know

1 the specifics, but I know that they're there.

2 Q Yes. And to your knowledge, as of
3 today, the members of TANC do not rely on the
4 requirements for electric power to serve their
5 loads on the same sources that PG&E uses, isn't
6 that right?

7 A To say that they don't rely implies that
8 they can't or that they do not --

9 Q No, I'm saying as a matter of fact. As
10 we speak today, as a matter of fact, that TANC
11 members do not rely on the electric generation
12 resources that PG&E uses to serve the TANC member
13 loads, as we speak today.

14 MS. HOLMES: I'm going to object and ask
15 for a brief clarification. Earlier we were
16 talking about types of resources. And now it
17 appears that you're talking about specific
18 generating stations.

19 Could you clarify what you're referring
20 to in your question?

21 MR. DeCUIR: I'm asking if, and I speak
22 here taking into account when I use the word
23 generating resources, I'm speaking of all kinds of
24 generating resources. And we've typified the more
25 significant types of common resource from

1 hydroelectric to combustion turbine driven
2 generators.

3 BY MR. DeCUIR:

4 Q And so what I'm asking you is a question
5 that encompasses all of the resources that we have
6 described as typical of the TANC members'
7 generating systems.

8 A Okay, I agree with you that TANC members
9 currently rely on their own resources. But they
10 do have the option to purchase power from some of
11 the same sources that PG&E gets their power.

12 Q Yes. And to further clarify, would it
13 be correct to say that as far as the requirements
14 to serve load, that the TANC members, as far as
15 you know, do not, as a matter of fact, turn to the
16 resources that PG&E, as you use the word, accesses
17 to serve its customers?

18 A No, they don't. There used to be
19 requirements before the market kicked in where
20 they used to have agreements with PG&E in which
21 PG&E supported them when they couldn't meet their
22 own loads. It's my understanding those agreements
23 are no longer operating.

24 Q It would be correct to say that
25 currently and in the recent past the TANC members

1 have not turned to PG&E for power plant support,
2 for replacement power, let's say, as an example,
3 is that correct?

4 A Yeah.

5 Q Now, when you speak in your report of
6 the decision to take power from particular
7 sources, you speak of it in the sense that there
8 are possibly differences that may be made in the
9 decisions of the TANC members to serve their
10 loads, different decisions than those made by
11 PG&E, what did you mean by that?

12 A What I meant, well, in the context of
13 the report was if PG&E loads were being served by
14 300 megawatts of power over path 15, that the
15 sources that weren't generating in northern
16 California -- sorry -- that -- let's start the
17 other way.

18 When TANC members don't have access to
19 generation south of path 15, they will run
20 resources that are different than would run if
21 PG&E didn't have access to 300 megawatts on path
22 15.

23 Q Well, let's take a specific example,
24 building on the foundation laid by Mr. Salyer when
25 he testified that Modesto, as a member of TANC and

1 a member of MSR Public Power Agency, utilizes and
2 relies on its entitlement to San Juan power from
3 the southwest some states away, it utilizes it to
4 serve that part of its load that is its baseload
5 of traditional customers.

6 If we use that as the foundation for
7 this question, so that's the basic point, the
8 starting point, how do you answer the question of
9 what will happen when congestion prevents Modesto
10 from utilizing the San Juan resource? How does
11 this fit into the context of your description?

12 A That's where Modesto's decision would be
13 different than what I say is PG&E's, but is
14 actually the market.

15 Q And so any other decision, let's say if
16 a decision were for a TANC member to purchase
17 power from the PX because of congestion at Midway,
18 and the PX relied on power generated in northern
19 California because there was congestion at Midway,
20 would it be right to say that just because the
21 TANC members made that decision, and PG&E had made
22 that decision, because they buy all their power
23 from the PX, that a unit which was generating --
24 let's say it's a 1000-megawatt unit -- a unit that
25 was generating 700 to serve the TANC members would

1 have to go up to 1000, wouldn't it?

2 MS. HOLMES: Can you restate the
3 question and --

4 MS. POOLE: Yes, I'm sorry, I was going
5 to --

6 MS. HOLMES: -- a little bit shorter?

7 BY MR. DeCUIR:

8 Q Well, let's make it -- let me see if I
9 can start over again, because I want to try and be
10 clear if I can.

11 If the generation in northern California
12 north of path 15 does not include the loads that
13 are being supplied by imports from south of path
14 15, let's say in the case of Modesto --

15 A I think I know where you're getting.

16 Q Let's see if we can go step by step.
17 The Modesto load, at least 80 megawatts of it, is
18 supplied by its baseload resource in New Mexico.

19 A Over path 15.

20 Q That's right, and while Modesto could
21 supply its needs internally in northern
22 California, north of path 15, and emit pollutants,
23 it does not, and that's the fact that we
24 understand from Mr. Salyer.

25 A It may emit pollutants in Modesto, not

1 in --

2 Q In Modesto.

3 A -- New Mexico where --

4 Q That's right, we didn't have that,
5 whether there were pollutants emitted there or
6 not. It's a coal plant.

7 Now, the question is the next step is
8 because of congestion Modesto, as you know, runs
9 its internal generation.

10 A Okay, can I step in here for a second?

11 Q Yes.

12 A Basically what's happening is you're
13 saying that 80 megawatts that was going to Modesto
14 is now being diverted to PG&E. That's what
15 happens when path 15 is congested, right?

16 Q No. When path 15 is congested, the
17 dispatchers curtail transmission through Midway.
18 And so they back down San Juan generation. That
19 was Mr. Salyer's point.

20 A But where is the power -- I mean the
21 reason path 15 is congested is because it went
22 from -- I'm just throwing out a -- 3000 megawatt
23 limit, it went from 2920 to 3000, right?

24 Q Well, let's assume that path 15 is
25 congested because of Sunrise's 300 megawatts.

1 A Okay.

2 Q Okay? So if we go back over the facts,
3 the 80 megawatts that was to come from San Juan
4 has to be curtailed because of congestion at
5 Midway caused by Sunrise.

6 A Okay.

7 Q And so the TANC member has the first
8 choice, which was described to us before, that Mr.
9 Salyer said they would make, and that is to
10 generate combustion turbine generated electricity.

11 Now you suggest in your testimony that
12 they could make another decision which is to buy
13 or perhaps build, but to buy power generated in
14 northern California, isn't that right?

15 A Yes.

16 Q All right. Now, they had not been
17 buying it in northern California before, correct?

18 A Right.

19 Q And so when they do buy it, they will
20 cause a northern California generator, other than
21 their own, to generate and extra 80 megawatts,
22 isn't that right?

23 A I don't agree. I agree when you look at
24 it purely from Modesto. But the problem is you're
25 ignoring the fact that there's 300 more megawatts

1 coming south to north over path 15, or let's look
2 at just Modesto, let's say it's 80.

3 You're still looking at 80 megawatts
4 coming over path 15 and serving load in northern
5 California.

6 So some other plant had to be backed
7 down. Not Modesto's plant, but some other plant
8 is generating less.

9 Q Aren't you looking at it as though this
10 is just a large pool in the northern California
11 area, but when in fact it's not a pool at all.
12 The fact is, the very fact is that Sunrise
13 generates only to serve a purpose and that is to
14 sell. And it sells to a market or to a customer.

15 And so its power is essentially marked
16 or tagged. It's got a name on it, and it's the
17 customer's name, it's the PX name or it's customer
18 X. And it's not Modesto's power, so it doesn't
19 serve Modesto's load.

20 A It could serve Modesto's load if Modesto
21 went to the PX and it was sent to the PX.

22 MR. DeCUIR: So, I apologize, I don't
23 mean to seem ungracious, we have a lot of ground
24 to cover, and this is air quality impacts, and if
25 we could ask what Mr. Hesters' opinion on the air

1 quality impacts would be, I think that would be
2 helpful.

3 HEARING OFFICER FAY: That's really, Mr.
4 DeCuir, all the Committee's interested in today.
5 I was going to ask you how much longer you have on
6 cross-examination.

7 MR. DeCUIR: I would say I had about
8 another 15 minutes.

9 HEARING OFFICER FAY: I'll give you a
10 maximum of another ten minutes.

11 MR. DeCUIR: Okay.

12 HEARING OFFICER FAY: Just on air
13 quality.

14 BY MR. DeCUIR:

15 Q So effectively, Mr. Hesters, you are
16 suggesting that Modesto or a TANC member has to
17 let their resources lie idle and buy from the PX
18 in order for your conclusions to stand, isn't that
19 right?

20 A No. My main conclusion was that it's a
21 choice. It's not a definite yes or no. And TANC
22 members could choose to run their own resources,
23 or they could choose to buy from the PX.

24 But, that doesn't necessarily mean that
25 there's going to be an air quality impact. I mean

1 to say there's a definite air quality impact, I
2 can't. If there's a choice implied in the impact,
3 TANC members could choose not to have an impact.

4 Q Well, first, Sunrise is generating and
5 causing the congestion and selling into the PX,
6 Sunrise is producing an adverse air quality impact
7 from its 300 megawatts of generation by some
8 measure, isn't that right?

9 A Let somebody who's involved in their
10 offsets and everything else that they've done.

11 Q Well, you provided an opinion on air
12 quality, so --

13 A Right. I mean as far as I know it's a
14 fully offset plant with technically having no
15 impact on air quality in that district. But I
16 know that's not my area of expertise. And I defer
17 to Joy Loyer on that.

18 Q Let's go on if we could. What did you
19 take into account with regard to contingencies
20 when you did this report that is your exhibit?

21 A I didn't take any contingencies into
22 account because they tend to happen over very
23 short periods of time and are rare events.

24 Q And so did you not apply the contingency
25 criteria in establishing your estimate of the

1 operating transfer capability of 3300 megawatts?

2 A I was just using generic numbers for
3 those, just to set an example.

4 Q I see. You did not, in making your
5 conclusion about there being no adverse air
6 quality impacts, take into account the other power
7 plants that are either in the process of being
8 sited, or that are expected to be applied for in
9 the near future, did you?

10 A What I looked at was a case where path
11 15 was congested or not congested. If path 15 is
12 congested it doesn't matter whether there's 20,000
13 megawatts built in Kern County or 2000 megawatts
14 in Kern County. You can only send a certain
15 amount of power over that path.

16 So technically I did account for other
17 plants being involved, being constructed south of
18 path 15.

19 Q And when you spoke on direct examination
20 in answer to questions of your counsel regarding
21 the situation in the northwest, were you saying to
22 us that transfer capability over lines in the
23 northwest does not affect operating transfer
24 capability on path 15?

25 A When we're talking northwest I'm

1 thinking of the COI, California/Oregon Intertie.

2 As far as I know, no, it does not.

3 Q What about south of Bora?

4 A That definitely affects limits on path
5 15.

6 Q On page 68 you say that the three cases
7 that you modeled showed that any increase in
8 imports into northern California over path 15
9 should not cause generation in northern California
10 to increase.

11 Is that statement entirely dependent on
12 TANC members obtaining their requirements that
13 they now supply for themselves from the PX or from
14 Sunrise or from one of these new generators?

15 A No, it does not.

16 Q Where would they obtain their
17 requirements to avoid having to generate more if
18 there's congestion?

19 A Well, basically what I said in my
20 report, if the power over path 15 is flowing to
21 serve the PX or PG&E load, then it's not serving
22 TANC load and TANC members generate. If that TANC
23 power flows and serves TANC load, then power needs
24 to be generated by the PX to serve PG&E loads.

25 It's basically a wash, it's a pool. And

1 if you're sending as much power as you can,
2 importing as much power as you can, then you're
3 necessarily generating as little power as you can.

4 Q And is it your position that the TANC
5 members who have acquired their resources and are
6 paying for it and are concerned about emissions
7 must pay for them, and also pay to get this power
8 out of the PX in that circumstance?

9 MS. HOLMES: I'm going to object, that's
10 totally outside the scope of his testimony as to
11 who pays for the power.

12 HEARING OFFICER FAY: Sustained.

13 MR. DeCUIR: Well, -- all right.

14 BY MR. DeCUIR:

15 Q Is it the case, Mr. Hesters, that it
16 would be now perhaps incorrect to say that this is
17 entirely a question of contractual issues, the
18 topic that we've been speaking of?

19 A I think the impacts are the result of
20 contractual issues. But I don't have the
21 contracts, I have never seen the contracts.
22 That's my opinion.

23 Q If you were the power dispatcher at any
24 one of these entities that are TANC members, and
25 you were faced with a congestion problem at Midway

1 that blocked your resources, would you utilize
2 your own resources into which you invested? Or
3 would you utilize something else?

4 MR. GALATI: I'd have to have --

5 MS. HOLMES: I'm going to --

6 MR. GALATI: -- to lodge an objection,
7 relevance to air quality.

8 BY MR. DeCUIR:

9 Q Well, Mr. Hesters, wouldn't you agree
10 that utilizing the combustion turbine resources,
11 the long list of which you agreed are currently
12 out there, would produce emissions from the
13 combustion of natural gas?

14 A I agree operating those plants or any
15 other plant that combusts natural gas would create
16 emissions.

17 Q And would you agree that that creates an
18 environmental issue of some sort?

19 A I'm going to defer to Joe Loyer to --

20 MS. HOLMES: He didn't sponsor the
21 testimony. He cannot answer the question. If
22 it's outside your knowledge then you have to state
23 that.

24 MR. HESTERS: It's outside my knowledge.

25 //

1 BY MR. DeCUIR:

2 Q Well, if it's outside your knowledge,
3 let's review what you concluded. It seems to me
4 that your conclusion is one that you must have the
5 knowledge you disclaim having to have written
6 this. Because you say here, at most, new power
7 plant development in Kern County will have minor
8 environmental impacts in northern California. And
9 you say, and may have commensurate benefits in
10 southern California.

11 Do you deny having the experience to
12 give that conclusion?

13 A No, but the way you stated the question
14 was not -- no, that's as far as I'll go. I do
15 have the knowledge to say that. When you start
16 talking about changes in specific plants, I don't
17 know emission factors from specific plants.

18 I can say that if generation changes
19 between plants there could be a difference. But I
20 don't expect that to be a big difference.

21 Q What is the --

22 HEARING OFFICER FAY: Okay, Mr. DeCuir,
23 this is the last question.

24 MR. DeCUIR: All right.

25 HEARING OFFICER FAY: Have to wrap it

1 up.

2 BY MR. DeCUIR:

3 Q Is there an adverse environmental effect
4 to having to operate combustion turbines that were
5 otherwise idle because they were reserved as
6 peaking units in an area that is in a
7 nonattainment zone in California?

8 A Possibly, but I don't -- the choice to
9 run those is not -- I don't feel like anybody's
10 being forced to run them. There are other
11 options. That is not the only option.

12 MR. DeCUIR: Is that the last question,
13 Mr. Fay?

14 HEARING OFFICER FAY: Yes, that was the
15 last question.

16 MR. DeCUIR: Okay. May I --

17 HEARING OFFICER FAY: Thank you very
18 much.

19 MR. DeCUIR: Oh, I'm sorry --

20 HEARING OFFICER FAY: That's it.

21 MR. DeCUIR: Well, I was going to say
22 thank you.

23 HEARING OFFICER FAY: Oh, okay.

24 (Laughter.)

25 HEARING OFFICER FAY: You're welcome.

1 And, thank you, Mr. Hesters, you are excused,
2 unless counsel has any redirect.

3 MS. HOLMES: No.

4 HEARING OFFICER FAY: Okay, great.

5 MR. DeCUIR: If I could address one
6 housekeeping matter, --

7 HEARING OFFICER FAY: Yes.

8 MR. DeCUIR: -- and that would be to
9 move the admission of the filed testimony, I think
10 it's exhibit 62, of Gregory E. Salyer, who
11 testified on behalf of the Transmission Agency.

12 HEARING OFFICER FAY: Any objection?
13 All right. Exhibit 62 is moved into evidence.

14 MR. DeCUIR: I hope, Mr. Fay, I got that
15 number correct. That's the one that I --

16 HEARING OFFICER FAY: It is correct, it
17 is exhibit 62. Testimony of Greg Salyer.

18 MR. DeCUIR: Thank you very much.

19 HEARING OFFICER FAY: You're welcome.
20 Okay, we're going to return now to worker safety.

21 MS. POOLE: I believe where we were on
22 worker safety was I was just tendering Dr. Fox to
23 cross.

24 HEARING OFFICER FAY: Okay. Mr. Galati,
25 do you have any cross-examination of --

1 MR. GALATI: Yes, I do, 20 seconds, I
2 think --

3 (Pause.)

4 MR. GALATI: And, Mr. Fay, just for
5 clarification, this is cross-examination of both
6 public health and worker safety, is that correct?

7 MS. POOLE: Didn't the applicant already
8 cross Dr. Fox on public health?

9 MR. GALATI: No, no, we have not.

10 HEARING OFFICER FAY: I guess so, then,
11 yes.

12 MR. GALATI: I don't know? Was I
13 effective?

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

16 (Laughter.)

17 MR. JOSEPH: As effective as usual.

18 MR. GALATI: Yeah, thank you. Then I
19 have none.

20 HEARING OFFICER FAY: And I'll ask the
21 parties, again, to be cognizant of the time limits
22 which are still there, even though we've dropped
23 air quality off.

24 MR. GALATI: Dr. Fox, I'm going to start
25 with public health.

1 degradation or doesn't accurately reflect
2 acrolein, correct?

3 A It was some time in 1999, June or
4 before. I'm uncertain exactly when without
5 checking my records.

6 Q Okay, and the Dr. Freeman report, was
7 that a 1993 report?

8 A Yes.

9 Q And I believe that your counsel showed
10 Dave Stein a report that also suggested that there
11 was some degradation and that was dated 1986, are
12 you familiar with that report?

13 A 1986, correct.

14 Q But you testified that it was widely
15 recognized that acrolein degrades?

16 A It's widely recognized apparently that
17 acrolein degrades, but the knowledge has been slow
18 in developing.

19 Q And, in fact, you testified that you're
20 the one that made CARB aware of the problem when
21 you called them about six months ago, isn't that
22 correct?

23 A That's correct.

24 Q And CARB has not modified test method
25 430, have they?

1 A No, they have not modified it yet.

2 Q Nowhere in the method does it say to
3 please multiple the factor of acrolein by a factor
4 of 10, correct?

5 A CARB method 430 does not measure
6 acrolein.

7 Q So California is without a method to
8 test acrolein?

9 A That's correct.

10 Q Is CARB test method 430 been
11 systematically used in California to test for
12 acrolein?

13 A I wouldn't characterize it as
14 systematically. It has been infrequently used.
15 And the only instances that I'm aware of was for
16 the AB-2588 source test program that took place in
17 the early '90s.

18 Q Okay. And CARB hasn't issued anything
19 telling you that you should not use method 430 for
20 the AB-2588?

21 A No, but they have stated that when the
22 time comes to update it, that they will include
23 that precautionary note in it.

24 Q And so you're engaging in speculation
25 about what the California Air Resources Board is

1 actually going to do?

2 A No, I'm no speculating. I'm reporting
3 the results of telephone conversations.

4 Q And did you have those telephone
5 conversations with the CARB Board?

6 A I don't have them in my hands, no.

7 Q So they were with a staff person at
8 CARB?

9 A Yes, with James Loop.

10 Q Thank you. In your direct testimony on
11 public health you said it didn't matter about the
12 meteorological conditions which data set you use,
13 McKittrick or Fellows, correct?

14 MR. JOSEPH: Objection, that
15 mischaracterizes the testimony. I believe she
16 stated it didn't matter for certain purposes which
17 data set you use. And she was talking
18 specifically about the acute health hazard index.

19 MR. GALATI: Okay.

20 BY MR. GALATI:

21 Q Do you agree that the Fellows is a
22 better data set to use for modeling emissions?

23 A No, I don't agree that it's better.

24 Q Didn't you testify, or in your written
25 testimony didn't you say that the McKittrick data

1 might have a completely 180 degree problem with
2 the flow direction?

3 A It's unclear which data set has the
4 problem. Both data sets actually have problems.
5 The two of them are 180 degrees out of phase with
6 each other.

7 We attempted to resolve the problem by
8 getting the raw data files from the westside
9 operators, but we were --

10 Q And I understand that --

11 A -- denied the data.

12 HEARING OFFICER FAY: Let the witness
13 answer the question.

14 DR. FOX: There's a 180 degree phase
15 shift difference between the McKittrick and the
16 Fellows data set. And there are some other
17 anomalies, as well, with both of the data sets.

18 For example, in California there's a
19 common percent of E&F stability classes. For
20 example, E stability conditions are usually about
21 20 percent of the time.

22 In both of these data sets the relative
23 percentage of E&F conditions are flipped. That
24 fact, together with the 180 degree phase shift,
25 suggests that there is a problem with one or both

1 of these data sets.

2 And we wanted to resolve that issue, to
3 make a reasoned decision on which data set should
4 be used. We attempted to get the raw data. You
5 start with raw data and then you run through an
6 analytical protocol according to EPA guidelines to
7 come up with a modeling file which you then use in
8 your dispersion modeling.

9 But we were denied access to that raw
10 data, so we were never able to resolve the
11 controversies over the data. So I cannot address
12 the question

13 HEARING OFFICER FAY: Do I recall
14 correctly --

15 DR. FOX: -- of which data set is wrong.

16 HEARING OFFICER FAY: Dr. Fox, do I
17 recall correctly that yesterday or on Tuesday you
18 said essentially that the MET data dispute doesn't
19 matter because of the short-term impact?

20 DR. FOX: That's correct, it doesn't
21 matter.

22 HEARING OFFICER FAY: So if CURE is
23 essentially waiving that issue, do we need to
24 belabor that issue about that data?

25 MR. GALATI: Yeah, my point is that with

1 respect to other issues, I wanted to see where
2 they were on the MET data.

3 I'll move to another subject.

4 BY MR. GALATI:

5 Q With respect to the CAPCOA guidelines do
6 they specify that you use maximum or average
7 ambient concentrations?

8 A May I check?

9 Q Yes, please.

10 (Pause.)

11 MR. JOSEPH: Perhaps while she's
12 checking you should clarify use maximum or average
13 for what purpose.

14 MR. GALATI: In the area of public
15 health for calculating hazard index.

16 MR. JOSEPH: Thank you.

17 DR. FOX: I can tell you while I'm
18 looking that it is standard practice --

19 MR. JOSEPH: Find your answer first and
20 then --

21 DR. FOX: I found the answer.

22 MR. JOSEPH: Okay.

23 (Pause.)

24 DR. FOX: On page 3-38 under evaluation
25 of acute noncancer health effects, the potential

1 for acute health effects should be evaluated by
2 comparing the estimated one-hour maximum
3 concentration with the acute REL provided in table
4 3-10. As with the evaluation of chronic noncancer
5 health impacts, the hazard index approach is used.
6 The hazard index for each substance should be
7 calculated using the one-hour maximum
8 concentration.

9 BY MR. GALATI:

10 Q Would you also read the last sentence on
11 that page?

12 A The background concentrations used in
13 the acute hazard index calculation should be
14 representative of the annual average
15 concentrations near the facility being evaluated.

16 Q Thank you. In your direct testimony you
17 referred to, I believe, table 3-9 and 3-10. I
18 think they're on page 344 and 345.

19 MR. JOSEPH: Actually I think she
20 referred to tables on 344 and 347, but go ahead.

21 MR. GALATI: Oh, I'm sorry, 9 keeps
22 continuing.

23 BY MR. GALATI:

24 Q But 344 is --

25 A In the CAPCOA guideline?

1 Q Yes. I'm sorry, do you have that?

2 A Um-hum.

3 Q Okay, on page 3-44, you pointed out the
4 checkmark for respiratory for acrolein?

5 A The X, yes.

6 Q Yeah, that was for the old REL, correct?

7 A This is for chronic toxicity. This is
8 the current REL for chronic toxicity because the
9 scientific review panel has not approved the
10 revised chronic RELs.

11 Q Oh, I see, so when you pointed out that
12 respiratory, that deals with chronic toxicity, it
13 did not deal with acute toxicity?

14 A No, there's another table that deals
15 with acute.

16 Q Is that the -- another question, I would
17 like to direct you to page 347, table 310.

18 A I have it.

19 Q And there you looked at, I think you
20 pointed out that acrolein listed as a toxic end-
21 point there, respiratory irritation on your
22 direct, is that correct?

23 A Correct.

24 Q That's the old REL, isn't it?

25 A Yes.

1 Q Thank you. I think you also referred to
2 the OEHHA report which I believe is attachment 2,
3 C-4 acrolein.

4 MR. JOSEPH: That's attachment 3 to Dr.
5 Fox's testimony.

6 MR. GALATI: I'm sorry, attachment 3 to
7 Dr. Fox's testimony.

8 BY MR. GALATI:

9 Q Do you have that?

10 A Yes, I have it.

11 Q I think you pointed out that the 36
12 subjects were wearing respirators, correct?

13 A Correct.

14 Q So the .19 could not have measured any
15 response to respiratory problems, could it?

16 A That's correct, that's the most
17 sensitive route, and they were trying to isolate
18 eye irritation.

19 Q And so in fact what they did conclude,
20 and the only thing you can conclude from this
21 study, is that .19 is not the acute REL for
22 respiratory irritation?

23 A No, that's not what I conclude from it.

24 Q But would you agree that that number
25 does not represent the acute REL for respiratory

1 irritation?

2 A No, I don't agree with that.

3 Q I think you testified on direct
4 examination about the H2S measurements that you'd
5 taken at Avila Beach.

6 A Yes.

7 Q And you took those with the Jerome
8 device?

9 A With the Jerome and modified TO-14, yes.

10 Q And I think you said over 70,000
11 measurements?

12 A Correct.

13 Q Isn't it true that what that does is
14 validates the Jerome for use at the Avila site?

15 A No.

16 Q I mean, it didn't measure for any
17 interference compounds in the oil fields, did you?

18 A We, at Avila, measured a wide range of
19 other sulfur compounds, and at Avila it turns out
20 it's an area where there are thermal springs.
21 There's a lot of hot springs there.

22 And hot springs are a source of many of
23 the same types of sulfur compounds that you find
24 in the oil fields. And there actually were some
25 other sulfur compounds that were present, like

1 carbon disulfide.

2 Additionally, myself and Dr. Winegar
3 have been involved in a number of other studies
4 where the Jerome was used in different petroleum
5 contamination environments.

6 For example, I have been involved in
7 litigation where the Jerome instrument was used to
8 measure hydrogen sulfide downwind of a refinery.
9 And that data was admitted into a court of law
10 before a jury.

11 Q But you didn't do any validation
12 sampling to insure that the Jerome sampler was
13 measuring accurate H2S measurements in the oil
14 field?

15 A Based on the extensive work that Dr.
16 Winegar has done for Arizona Instruments, I don't
17 feel like there was any need to do that.

18 Q So, --

19 A He is the expert on that instrument.

20 Q So you draw a correlation between the
21 Avila Beach remediation project, which is one of
22 the largest remediation projects in the state, and
23 let's say measurements in the Low Kern natural
24 area, you would expect the instrument to perform
25 the same in those two different environments?

1 A I would expect it to, yes.

2 Q Okay, thank you.

3 MR. GALATI: If I could have just a
4 minute now, I need to find my worker safety stuff.

5 (Pause.)

6 DR. FOX: I'm ready.

7 BY MR. GALATI:

8 Q I want to go to the area of which
9 standard you used, okay. Are you advocating that
10 the RELs should be used for the risk assessment,
11 for now I want to talk about just removing the
12 three areas that the applicant has agreed to
13 remove, I want to call that remediation. Is that
14 fair if I do that?

15 A The three petroleum contaminated areas
16 that are going to be excavated prior to
17 construction?

18 Q Correct, I just want to focus on those.

19 A You're calling that remediation, okay.

20 Q Are you advocating that in order to
21 determine, for example, proper personal protective
22 equipment that you would use the REL for that, for
23 those workers?

24 A I don't believe I advocated that. If I
25 were to evaluate the health impacts on a

1 construction worker from working in that
2 contaminated soil, I would use not RELs, and I did
3 not in my risk assessment in my worker safety
4 testimony. I would use milligram per kilogram per
5 day dose base calculation.

6 Q Okay, now I want to take a step out to
7 assume those three areas are removed. Now we have
8 the construction workers on the Sunrise, just the
9 plant site. Just the plant site. What standard
10 do you use to evaluate that?

11 A The construction workers on the plant
12 site after it's been remediated?

13 Q Correct.

14 A In my original December 17th worker
15 safety testimony --

16 MS. POOLE: Excuse me, I think that's
17 earlier than December 17th.

18 DR. FOX: October 25th?

19 MS. POOLE: That's right.

20 DR. FOX: Thank you. October 25th
21 worker safety testimony, I included a number of
22 attachments from the construction of the federal
23 courthouse on the Southern Pacific Railyard site,
24 which lays out a protocol similar to what I would
25 recommend in this case. And I believe that site

1 is applicable.

2 The federal courthouse site was a
3 petroleum contaminated site that had been fully
4 remediated. And the City of Sacramento
5 implemented that sampling protocol with an
6 environmental professional on site to protect
7 construction workers from undiscovered
8 contamination.

9 The problem is that when you investigate
10 and remediate a site, you clearly can't sample
11 every parcel of soil. So there's always some
12 probability that you're going to run into
13 undiscovered contamination, which may not be
14 discoverable from sight or smell.

15 BY MR. GALATI:

16 Q And wasn't the federal site right around
17 the corner here --

18 A The federal courthouse? Yes, --

19 Q Federal courthouse. Isn't the
20 groundwater about ten feet below the ground
21 surface?

22 A Yes, it's a high water table.

23 Q And wasn't there a known plume in that
24 groundwater that was not fully remediated prior to
25 construction?

1 A There is a plume. It contains
2 chlorinated organics, but I'm not certain that
3 it's underneath the federal courthouse site. And
4 contaminated groundwater was not one of the main
5 concerns that we had when we put that protocol
6 together.

7 Q Didn't DTSC have to approve a permit to
8 be able to pump the groundwater from that site so
9 that they could build a basement? Are you aware
10 of that?

11 A That's marginally true; in this
12 particular area of Sacramento the water table is
13 high, and before you can build you have to
14 dewater. And, in fact, many of the buildings in
15 this area have to be continuously dewatered.

16 Q Right, and DTSC had to approve a permit,
17 meaning there's some hazardous materials in it,
18 correct?

19 A I'm not aware of that.

20 Q Okay. You would agree that groundwater
21 is not ten feet from the site in this case?

22 A I would.

23 Q And you would agree that in this case
24 it's not likely that they're going to hit
25 groundwater during construction?

1 A Yes. The reason we put that protocol
2 together was not due to groundwater.

3 Q Thank you. Now, if I were a Sunrise
4 construction worker after remediation, and I take
5 a step outside the fenceline, what standards would
6 you use to evaluate me then, as far as acute
7 hazard index? What standard would you compare the
8 risk to development?

9 MR. JOSEPH: By take a step you're
10 meaning you're working for somebody else, or
11 you're somebody outside who is just leaving --

12 MR. GALATI: Somebody on the site who
13 has actually taken a step and is outside the
14 fenceline of the project, a Sunrise Cogeneration
15 project worker.

16 DR. FOX: Is this during the
17 construction of the project, or after it's built
18 and during the operation of the plant?

19 BY MR. GALATI:

20 Q During construction. I'm a grading, I'm
21 a backhoe operator.

22 A If it's a backhoe operator that steps
23 out and then goes back on the site, the key is the
24 exposure duration. And if he steps out for an
25 hour to go have lunch and comes back in, I

1 wouldn't even bother to evaluate him.

2 I mean his main exposure would be on the
3 site.

4 Q Okay. Now, during construction if I'm
5 an oil field worker, and I keep saying an oil
6 field, but I mean to say oil field --

7 (Laughter.)

8 BY MR. GALATI:

9 Q I can't help it. And I'm standing not
10 on the project site, but I'm standing right next
11 to the fence of the project site. How would you
12 evaluate that oil field worker?

13 MS. POOLE: And, again, that oil field
14 worker is not employed by --

15 BY MR. GALATI:

16 Q Not employed by Sunrise.

17 A I would evaluate that oil field worker
18 using the CAPCOA guidelines, and the RELs
19 thereunder.

20 Q So you do make a distinction by looking
21 at the occupational situation of the person don't
22 you?

23 A I make a distinction looking at the
24 location of the person with respect to a well-
25 defined fenceline.

1 Q So the Sunrise grading operator you
2 treat with REL when he's stepped outside the
3 fenceline?

4 A If he stepped outside and went back on
5 site to operate his grader, I would do the kind of
6 cancer risk assessment that I did in my testimony.

7 Q Okay, thank you. And you also said that
8 there were going to be significant public health
9 impacts from well drilling, is that correct?

10 A Yes.

11 Q And is it fair to say that the people
12 who are going to be exposed to that are the people
13 drilling the wells?

14 MS. POOLE: Are we back -- we're back to
15 public health now?

16 MR. GALATI: Yeah, I'm sorry, we crossed
17 the line there with her last answer.

18 MS. POOLE: Could you say that question
19 again?

20 MR. GALATI: Yeah, I'm sorry. this is
21 why I think I wanted to put them together because
22 they do overlap.

23 BY MR. GALATI:

24 Q You also found that there's a
25 significant public health risk to oil field

1 workers from well drilling?

2 A Correct.

3 Q Why would you not evaluate them under
4 the same scenario as a grading operator, since
5 they're doing work for the person who's actually
6 causing the emissions?

7 A I did not evaluate the health impacts to
8 the drill rig operators.

9 Q But you did evaluate the impacts for two
10 oil field workers?

11 A I evaluated the impacts of emissions,
12 exhaust emissions from the drill rig for workers
13 in the oil field. I did not evaluate the impact
14 of emissions from the exhaust to a guy on the rig.

15 Q Okay, but why is it different for the
16 guy operating the rig than the guy who goes out
17 and checks the wells while his company is drilling
18 another well?

19 MS. POOLE: Are you talking about
20 workers within the three-quarter mile radius?

21 MR. GALATI: Sure.

22 DR. FOX: I suppose one could evaluate
23 the guy on the rig using the same AB-2588 risk
24 assessment procedures. It causes somewhat of a
25 problem, though, because you can't accurately

1 model the ambient concentrations right at the rig.

2 BY MR. GALATI:

3 Q As a matter of fact, right at the rig
4 you're probably above the acute REL, aren't you?

5 A Oh, yeah, for sure.

6 Q So you wouldn't be able to drill?

7 A He could drill if he had a catalyst on
8 his rig.

9 Q Okay, thank you. Do you recommend on
10 every grading project that every grading project
11 now needs an oxidating soot filter or catalyst?

12 MS. POOLE: What do you mean by every
13 grading project?

14 MR. GALATI: Every project, let's say,
15 that uses at least one scraper, at least one
16 dozer, and maybe a blade.

17 DR. FOX: My opinion, I think we all
18 have oxidation catalysts on our cars now. And
19 based on the August 1998 CARB determination of
20 diesel exhaust as a carcinogen and a toxicant, I
21 believe the regulatory process is headed in the
22 direction of requiring oxidizing soot filters on
23 all pieces of off-road equipment.

24 That's my opinion of where the
25 regulatory process is headed.

1 BY MR. GALATI:

2 Q Do you think that the LaPaloma
3 construction workers are being exposed to
4 inappropriate levels of acrolein for project
5 construction?

6 A I am not aware that there's any well
7 drilling associated with LaPaloma.

8 Q Again, with project construction,
9 grading, during grading?

10 MS. POOLE: I think Dr. Fox has already
11 testified that she didn't work on that project.

12 MR. GALATI: Yeah, but she has an
13 opinion about where the regulatory process is
14 heading, and I'm asking her if it extends to
15 LaPaloma.

16 DR. FOX: The regulatory process hasn't
17 gone there, yet. I told you where it was headed.

18 BY MR. GALATI:

19 Q Regarding the soil vapor study, back on
20 worker safety, regarding the soil vapor study.
21 You testified that the unidentified peaks are
22 probably PAHs?

23 A No, I don't think I did. I believe
24 they're probably Vacuous. PAHs are not volatile.

25 Q Are you advocating that during the

1 entire grading process of the Sunrise project that
2 all the workers should be wearing respirators to
3 protect themselves from VOCs?

4 A If the concentration of volatile organic
5 compounds in soil gas were high enough to pose a
6 health risk I would advocate that the contaminated
7 soil be cleaned up before grading took place.

8 Q Okay, and you heard Mr Worl testify, and
9 we talked about the revised safety1 that the
10 applicant has proposed, correct?

11 A Safety -- yes.

12 Q Okay. And you had a problem that the
13 permissible exposure limits hadn't been set yet?

14 A The trigger levels for the PID, the VID
15 and the mini-Ram have not been set, correct.

16 Q And, in fact, I think you pointed to
17 point number 4, and I'd like to direct your
18 attention to the second page of that. This is
19 exhibit 81.

20 Could you read that into the record?

21 A If worker breathing zone airborne
22 chemical concentrations are identified that exceed
23 established response criteria, e.g., 50 percent of
24 the CalOSHA permissible exposure limits for the
25 highest hazard chemical potentially present, e.g.,

1 benzene, PEL equals 1 ppm, the source will be
2 barricaded and work will be moved to another
3 location until the HFC makes a determination.

4 Q Okay, so it's clear from that part of
5 the condition that we're not talking about just a
6 VID reading. We're talking about setting a
7 response criteria governed by the highest hazard
8 chemical, and 50 percent of that CalOSHA
9 permissible exposure limit?

10 A But you're not measuring benzene.

11 Q But you can do a, as Mr. Worl testified,
12 or do you disagree, that you can have a trigger
13 level on an VID or PID that would then say, hey,
14 oops, I hit something, I'd better do some more
15 work?

16 A So let me repeat back to you what I
17 think I heard. You are proposing to establish as
18 a trigger level for the PID and the VID a response
19 equal to 1 ppm of benzene?

20 Q No, it would be, for example, 50 percent
21 of that.

22 A Fifty percent of that. So, you would
23 calibrate the instrument with a benzene standard,
24 and if the instrument read .5 ppm based on that
25 calibration, that would be your trigger threshold?

1 Q Well, I don't know, and I'll tell you
2 the rules of evidence don't allow me to answer
3 questions. Because if it did I'd tell the
4 Commission exactly what they need to do in this
5 case.

6 (Laughter.)

7 BY MR. GALATI:

8 Q But, for purposes of how we need to
9 properly go here, I need actually to ask you
10 questions.

11 MS. POOLE: I think she's trying to get
12 a clarification.

13 DR. FOX: I'm trying to understand what
14 you're telling me, because the way I read this
15 condition that I just read into the record, what I
16 interpreted this to mean was that you would use,
17 as individual compound trigger levels, 50 percent
18 of the OSHA PEL.

19 And since you're not measuring benzene
20 or any other individual compound, it seems like a
21 hollow criterion to me.

22 MR. GRATTAN: Okay, I'll tell you what,
23 I'm going to bring Mr. Worl back on rebuttal
24 probably, and your counsel can ask him that
25 question.

1 If I may just have a moment to confer
2 with cocounsel?

3 HEARING OFFICER FAY: Sure. Let's go
4 off the record.

5 (Off the record.)

6 HEARING OFFICER FAY: Back on the
7 record. All right?

8 MR. GALATI: I have no further cross-
9 examination.

10 HEARING OFFICER FAY: Right. Ms.
11 Holmes, how long do you think your cross-
12 examination of Dr. Fox will be?

13 MS. HOLMES: Perhaps a half an hour.

14 HEARING OFFICER FAY: Okay.

15 MS. HOLMES: First of all, I gave them a
16 document earlier this afternoon that we'd ask that
17 the Committee take official notice of. And that's
18 been resolved, as were -- I don't believe the two
19 letters from EPA got exhibit numbers, or the
20 letter from the district and the letter from EPA.

21 HEARING OFFICER FAY: Yes, they did.
22 Let me clarify that. The letter from the district
23 to EPA, January 12th, is exhibit 84.

24 And the letter from -- the January 11th
25 letter from EPA to the district is exhibit 85.

1 Any objection to receiving those into
2 the record?

3 MS. HOLMES: No. And I do have a
4 document which Ms. Holmes asked the Committee to
5 take official notice of. We don't have any
6 problem with that. We would like to also ask the
7 Committee, this document on the front page, lists
8 some volumes of the document that it's referring
9 to, and we would just also like to ask the
10 Committee to take official notice of one of these
11 volumes that you click on when you go to this
12 webpage, volume two.

13 HEARING OFFICER FAY: Volume two?

14 MS. POOLE: I'd actually that you take
15 official notice of the whole thing, so we could
16 use it for purposes of writing our briefs.

17 HEARING OFFICER FAY: Okay.

18 MS. HOLMES: That makes sense.

19 HEARING OFFICER FAY: Describe, please,
20 for us what we're taking official notice of?

21 MS. HOLMES: It's a six volume series
22 entitled The Quality Assurance Manual published by
23 the Air Resources Board. I have failed to get the
24 date, as I indicated I would. It's maybe July
25 1990. It's not clear on the cover page of this

1 document if that's the date or not.

2 HEARING OFFICER FAY: Quality Assurance
3 Manual. We take official notice of that.

4 MS. HOLMES: And while we're on
5 procedural matters, I mentioned earlier this
6 morning I had three documents that I wished to
7 have marked and moved into the record.

8 One is the declaration of Gary Walker;
9 another is the declaration of Amanda Stennick;
10 they both go to the landscaping condition that we
11 discussed earlier in the hearing.

12 The third is a document from the
13 LaPaloma project owner to the CEC's compliance
14 office indicating that they are not planning to go
15 forward with ScoNOX.

16 And if you need to get a compliance
17 person down here to authenticate the document, I
18 think we can do that, but I would hope that
19 wouldn't be necessary.

20 MS. POOLE: Are these declarations new,
21 did you say, or these are --

22 MS. HOLMES: These are the declarations
23 that we've been discussing for some time with
24 respect to the fact that the county is not
25 requiring a landscaping plan.

1 MS. POOLE: And these have been
2 docketed?

3 MS. HOLMES: These were docketed on the
4 11th, and I believe they were served.

5 MS. POOLE: January 11th?

6 MS. HOLMES: One was docketed on the
7 7th, one was docketed on the 11th. We've
8 discussed them several times previously in this
9 hearing.

10 MS. POOLE: Okay.

11 MS. HOLMES: My project manager will set
12 me straight. They were docketed on the 12th.

13 HEARING OFFICER FAY: The Walker
14 declaration --

15 MS. HOLMES: Both.

16 HEARING OFFICER FAY: -- or is that one
17 document?

18 MS. HOLMES: There's one declaration
19 from Gary Walker that is one document. There's
20 one declaration from Amanda Stennick --

21 HEARING OFFICER FAY: The Walker
22 declaration is exhibit 86. The Stennick
23 declaration is exhibit 87. And the LaPaloma -- is
24 it a letter?

25 MS. HOLMES: What we docketed is a

1 letter dated November 10, 1999, to Nancy Tronas,
2 compliance project manager. It's from Ray Hanley,
3 the project manager from the LaPaloma Generating
4 Company. And we attached to it the conditions of
5 certification that the letter references to from
6 the LaPaloma decision.

7 HEARING OFFICER FAY: Okay, and that
8 letter and the attachment will be exhibit 88.

9 MR. GRATTAN: And number 87, could you
10 describe 87 again, please?

11 MS. HOLMES: Exhibit 87 is the
12 declaration of Amanda Stennick.

13 MR. GRATTAN: Okay.

14 MS. HOLMES: Attached to the
15 declarations are revisions to the testimony
16 reflecting the change in the landscaping
17 condition.

18 HEARING OFFICER FAY: Have we got word
19 from DTSC yet?

20 MS. HOLMES: It appears that we have
21 DTSC. Should we have the DTSC representatives
22 come to the --

23 HEARING OFFICER FAY: I think so,
24 because if you have half an hour of cross, I just
25 don't want to risk --

1 MS. HOLMES: -- and get this over with?

2 HEARING OFFICER FAY: -- pushing it past
3 5:00.

4 Thank you for coming. Could you give us
5 your name and your job description and your
6 agency?

7 MS. PEEBLER: My agency, I'm Diana
8 Peebler; I'm with the Department of Toxic
9 Substances Control. I'm the Acting Chief of the
10 Resource Recovery Section.

11 I've been there twelve and a half years.
12 I have also been in the waste evaluation unit.

13 HEARING OFFICER FAY: Okay, and can you
14 advise us on the status of your agency's review of
15 this project?

16 MS. PEEBLER: Yeah, we were given some
17 analytical data to look at a few days ago, and I
18 looked at those analytical data and made some
19 conclusions.

20 HEARING OFFICER FAY: And what are they?

21 MS. PEEBLER: I looked at the samples
22 that were presented in the letter dated on January
23 6, 1999. We looked at analytical data produced
24 from laboratories Precision Analytical and Zalco
25 for four-way strains tested for in organics, VOCs

1 and aquatic bioassays.

2 And all the data indicate that none of
3 the samples were hazardous.

4 HEARING OFFICER FAY: And have you drawn
5 any conclusions from that determination?

6 MS. PEEBLER: We conclude that none of
7 the samples, none of the waste streams which were
8 analyzed are hazardous waste.

9 HEARING OFFICER FAY: So does that
10 essentially relieve your agency of involvement in
11 this?

12 MS. PEEBLER: Yes, we have no
13 jurisdiction over nonhazardous wastes. And all of
14 these waste streams were compared with all of the
15 characteristics for hazardous waste found in Title
16 22, which are the criteria for identification of a
17 hazardous waste. And none of them meet that
18 criteria.

19 HEARING OFFICER FAY: Thank you very
20 much. If you don't mind, I'd like to let some of
21 the parties here ask you questions about your
22 determination, and how that was reached.

23 MS. PEEBLER: Okay.

24 HEARING OFFICER FAY: Mr. Galati, do you
25 have any questions?

1 MR. GALATI: Yes. Did you find anything
2 when you reviewed the data that would make you
3 think the data suspect?

4 MS. PEEBLER: No.

5 MR. GALATI: Thank you.

6 HEARING OFFICER FAY: Ms. Holmes?

7 MS. HOLMES: I have no questions.

8 HEARING OFFICER FAY: Ms. Poole?

9 MS. POOLE: Just one question. I just
10 want to clarify, I believe you stated that your
11 decision was based solely on the data attached to
12 the January 6th letter, which was collected by the
13 applicant, is that right?

14 MS. PEEBLER: That was the cover sheet
15 on the booklet of information that I was given.

16 MS. POOLE: Okay, thank you.

17 MS. PEEBLER: Um-hum.

18 PRESIDING MEMBER MOORE: Do us a favor.

19 Could you say your name and spell it for the
20 record, please?

21 MS. PEEBLER: Yes, Diana Peebler,
22 P-e-e-b, as in boy, -l-e-r. I have some business
23 cards if you'd like me to leave them with you.

24 PRESIDING MEMBER MOORE: Our scribe
25 probably would.

1 MS. PEEBLER: Okay.

2 HEARING OFFICER FAY: Mr. Galati, in
3 your opinion does this essentially put to rest the
4 concern about the wastewater?

5 MR. GALATI: Yes, it does, and I do have
6 a diagram, and we have experts that can talk about
7 each of the streams if the Committee is
8 interested, which I think might be helpful to show
9 that we tested everything.

10 But I would like to, at this point
11 there's no need -- the applicant sees no need for
12 the workshop that has been noticed on this issue.

13 HEARING OFFICER FAY: Does the staff see
14 any need for the workshop at this point?

15 MS. HOLMES: No.

16 HEARING OFFICER FAY: Okay. CURE, do
17 you have any input on that?

18 MS. POOLE: Well, we don't know if the
19 issue is resolved because we haven't had a chance
20 to carefully review the data yet. But, you know,
21 we would certainly like to ask the applicant some
22 questions about this.

23 HEARING OFFICER FAY: Well, since the
24 agency with the potential jurisdiction has
25 determined that it's below the threshold and they

1 don't have jurisdiction, perhaps your forum is
2 with DTSC if you want to second-guess their
3 opinion. It sounds like we've heard from them.

4 MS. POOLE: Well, the applicant provided
5 the data, and Ms. Peebler stated that that was the
6 data upon which DTSC's decision was based. So I
7 would like to ask some questions about that data.

8 HEARING OFFICER FAY: Do you have any
9 questions now?

10 MS. POOLE: I certainly could ask those
11 questions now, sure.

12 HEARING OFFICER FAY: Why don't you ask.

13 MS. POOLE: We need a witness.

14 HEARING OFFICER FAY: Oh, I thought you
15 meant asking DTSC.

16 MS. POOLE: No, these are questions for
17 the applicant, not for DTSC.

18 HEARING OFFICER FAY: Okay, I'd just --

19 MR. GALATI: I'd also just point -- oh,
20 I'm sorry.

21 HEARING OFFICER FAY: I'd just like to
22 get a little better clarification. The type of
23 information provided you by the applicant, was it
24 in a form and level of detail that you usually
25 receive for this kind of determination?

1 MS. PEEBLER: Typically we ask when
2 samples are collected for a determination of
3 whether or not a waste is hazardous or not we ask
4 that person collect samples, representative
5 samples pursuant to SW846, which is an EPA
6 document.

7 We also ask that they go to a state-
8 certified lab, which is certified for doing
9 hazardous waste testing.

10 These samples were conducted by two
11 separate state-certified labs.

12 However, typically what we would ask for
13 a minimum of four samples from each waste stream
14 in order to indicate representativeness. We
15 received two samples.

16 So to the extent that they were not
17 four, which is typical, that would be slightly
18 different.

19 HEARING OFFICER FAY: But apparently
20 that was not different enough to make you suspect
21 as to the results?

22 MS. PEEBLER: That's correct. The
23 concentrations in these analytical were so low
24 compared to hazardous waste thresholds, and we did
25 get two samples taken at two different times with

1 accompanying information that indicated that the
2 samples were preserved correctly, transported with
3 chain of custody, that it didn't lead me to
4 believe that they would be suspect.

5 HEARING OFFICER FAY: So, aside from the
6 number of samples taken, was there anything in the
7 sample report that was suspect in your opinion?

8 MS. PEEBLER: The only one thing that we
9 found, which was interesting, is samples that were
10 done by Precision Analytical were date sampled
11 11/15/99. Typically when samples are done they
12 are accompanied by a chain of custody document
13 which indicates who took the samples, what kind of
14 testing was requested for them.

15 The chain of custody document for
16 Precision, let me see if I can find it here --

17 MR. GALATI: And I can actually answer
18 that question. That is one of the pieces of
19 information that we got last night, and that I
20 provided to counsel, it was the chain of custody
21 documentation which was just a, I think there's
22 four or five pieces of paper that say under
23 penalty of perjury I took the sample and I gave it
24 to them.

25 And to the extent that DTSC should rely

1 on that, I don't think it takes evaluation, and
2 I'd like to show that to them.

3 HEARING OFFICER FAY: Is that the type
4 of thing you rely on?

5 MS. PEEBLER: Well, we would look at the
6 chain of custody and make sure that the dates
7 match for when the samples were taken, and then we
8 compare them to the dates on the analytical
9 reports.

10 HEARING OFFICER FAY: Is this something
11 you can do briefly, if provided?

12 MS. PEEBLER: Sure.

13 HEARING OFFICER FAY: Why don't we just
14 take care of that.

15 (Pause.)

16 MS. PEEBLER: Okay, these are chain of
17 custody for the analytical reports I have, yes.
18 And this is the one that was missing that matches
19 this.

20 HEARING OFFICER FAY: And do the dates
21 make sense?

22 MS. PEEBLER: Yes. Because these were
23 collected 11/15/99 and the log-in date for the lab
24 was 11/19/99. And they also have the same, they
25 have matching lab numbers. And they're logged in

1 by Stephen Harris, who is the lab manager at the
2 Precision Analytical.

3 HEARING OFFICER FAY: So does that limit
4 the --

5 MS. PEEBLER: That limits -- yes, that
6 puts --

7 HEARING OFFICER FAY: -- unusual aspects
8 to just --

9 MS. PEEBLER: -- puts my mind at rest
10 for chain of custody, right.

11 HEARING OFFICER FAY: -- the count, the
12 number of samples?

13 MS. PEEBLER: Um-hum.

14 HEARING OFFICER FAY: Okay. Anything
15 further? Any other questions on this?

16 You're done, so thank you very much for
17 coming over and helping us.

18 MS. PEEBLER: You're welcome.

19 MR. GALATI: Thank you.

20 HEARING OFFICER FAY: Okay. We're going
21 to take a five-minute break right now.

22 (Brief recess.)

23 HEARING OFFICER FAY: I believe we just,
24 as a discrete matter, took the comments from DTSC.
25 And now we move to Ms. Holmes' cross-examination.

1 MS. HOLMES: Thank you. Of Dr. Fox,
2 correct.

3 DR. FOX: Yes.

4 CROSS-EXAMINATION

5 BY MS. HOLMES:

6 Q Good afternoon, Dr. Fox.

7 A Good afternoon.

8 Q I guess I'll start with worker safety,
9 since that's what Mr. Galati finished with. I'd
10 like to begin at the first couple of pages of your
11 testimony.

12 If DTSC were to tell this Commission
13 that they're not going to recommend that this site
14 be remediated, would that affect your testimony?

15 A I would have to talk to the DTSC person
16 to assure that they had considered all of the
17 hazards to workers.

18 Q So if DTSC were to look at the phase
19 two, and to conclude that remediation pursuant to
20 the DTSC/CEC MOU was not required, you would
21 disagree with DTSC, is that a fair
22 characterization?

23 A I may or I may not. It would depend on
24 who was doing the evaluation, and what they had in
25 front of them, and whether or not they had

1 considered workers and a whole host of other
2 things.

3 Q Can you think of a situation in which
4 DTSC recommended against further remediation based
5 on the phase two with which you would agree?

6 A A situation in which DTSC -- if DTSC did
7 an appropriate health risk assessment that
8 evaluated worker exposure, I probably would have
9 no problem with it.

10 Q When does DTSC typically recommend that
11 a qualitative health risk assessment be done?

12 A It's pretty site specific. It depends
13 on the contaminants that are present; the nature
14 of exposure that could take place; the receptors
15 and their proximity to the project.

16 And also, in many cases, on community
17 involvement.

18 Q Do they recommend health risk
19 assessments be performed for sites that haven't
20 been designated for cleanup?

21 MS. POOLE: Designated by whom?

22 MS. HOLMES: By the DTSC or by a local
23 agency that's conducting a cleanup.

24 DR. FOX: You mean if there's a site and
25 there's been no regulatory oversight?

1 BY MS. HOLMES:

2 Q No, I'm referring to a site where DTSC
3 or a local agency has done an investigation and
4 concluded that what we've been referring to as
5 remediation is not required.

6 In that circumstance does DTSC typically
7 recommend that a health risk assessment be
8 performed?

9 A This is a case where DTSC has concluded
10 that remediation is not required?

11 A I'm thinking, for example, of the
12 Sunrise case, and I'm wondering about DTSC coming
13 back to the Energy Commission and saying we don't
14 recommend that there be any remediation action
15 taken at this site.

16 In that kind of a situation, based on
17 your experience, does DTSC typically recommend
18 that nonetheless a health risk assessment be
19 conducted?

20 A In that situation I would probably get
21 on the phone with DTSC and --

22 Q I'm not asking you what you do. I'm
23 asking you whether or not DTSC, in situations
24 where it's made a determination that remediation
25 is not required, typically recommends that

1 nonetheless a health risk assessment be performed?

2 A I don't know that I've worked on a site
3 where there was a recommendation for no
4 remediation. So I'm not sure how that would work.

5 Q Thank you. Starting on page 2 of your
6 testimony, you talk about construction worker
7 impacts from contaminated soil.

8 We've heard testimony and we've read
9 testimony --

10 MS. POOLE: Can she get it in front of
11 her, excuse me.

12 DR. FOX: Got it. Page 2?

13 BY MS. HOLMES:

14 Q Beginning on page 2. We heard and have
15 read testimony provided by Sunrise that says that
16 the contaminated soil will be removed prior to
17 construction.

18 So in your discussion that begins on
19 page 2 about construction worker impacts, are you
20 referring to the construction workers that will be
21 on the site after the remediation, or the cleanup
22 that Sunrise has referred to will take place?

23 A I believe the proposed remediation is
24 three areas of petroleum contaminated soil.

25 Q That's correct.

1 A And I believe in my previous testimony I
2 testified to the fact that I didn't think the
3 phase two was adequate to make any conclusions
4 about the balance of the site.

5 So I am talking about, in this case, the
6 site as remediated.

7 Q So you're not referring to the workers
8 that will conduct the remediation, but the
9 construction workers that will be on the site
10 after the cleanup occurs?

11 A Yes.

12 Q Did your analysis address the other
13 workers that were discussed earlier today, the
14 workers in the oil field, or the workers along the
15 transmission line, or other linear facility
16 corridors?

17 A No. I did not look at the impact of
18 remediating the site on off-site workers.

19 Q Thank you. Would you agree that
20 exposure of construction workers will be less as
21 the result of the fact that the three areas
22 designated for cleanup will, in fact, be cleaned
23 up, than it would be if they were not cleaned up?

24 A It should be less to the extent that all
25 the contamination is found.

1 Q And you're not confident that the
2 measures that have been identified by the
3 applicant will identify additional contamination
4 prior to exposure?

5 A No, I'm not confident of that.

6 Q And you believe that there will be
7 additional ingestion of soil by construction
8 workers?

9 A I think that's definitely possible.

10 Q What type of work will these
11 construction workers be engaged in?

12 A A variety of activities.

13 Q Do you anticipate that much of the work
14 that they are conducting will be done by hand in
15 the soil?

16 A No, they will primarily be located on
17 heavy equipment.

18 Q Thank you. I'd like to ask you a few
19 questions about your health risk assessment.

20 On table 1 on page 7 of your testimony
21 the first line has exposure point concentration,
22 do you see that?

23 A Yes.

24 Q Do the numbers for arsenic and cadmium
25 come from the phase two?

1 A Yes.

2 Q Are they the maximum numbers from the
3 phase two?

4 A Yes.

5 Q So they don't reflect any cleanup that
6 might occur?

7 A No.

8 Q Also on the first line your number for
9 the carcinogenic polyaromatic hydrocarbons, which
10 is the first column, --

11 A Yes.

12 Q -- you didn't have measurements from the
13 Sunrise site, did you?

14 A No, I did not.

15 Q So you used measurements from Avila
16 Beach?

17 A Correct.

18 Q And what's the extent of the
19 contamination of Avila Beach?

20 A Avila Beach has crude oil, diesel and
21 gasoline contamination.

22 Q Is it heavily contaminated?

23 A Yes, it's heavily contaminated.

24 Q Thank you. With respect to the last
25 column, hexavalent chromium, my recollection, and

1 correct me if I'm wrong, is that it was just total
2 chrom that was measured, and so you made an
3 assumption about what percentage of that was chrom
4 6. Is my understanding correct?

5 A Yes.

6 Q Do you know what the PRG is for chrom 6
7 for industrial sites?

8 A Not for sure without looking.

9 Q Do you know whether it's higher?

10 A No, I don't.

11 Q Thank you.

12 MS. HOLMES: Okay, I think I'll just
13 move on to public health. And now I have to get
14 that in front of me.

15 BY MS. HOLMES:

16 Q I take it back, I have one additional
17 question on worker safety, and that is do you
18 believe that all construction sites should have
19 the kinds of conditions of certification attached
20 to them that you've recommended for this site?

21 A Only construction sites that one would
22 reasonably expect to have undiscovered
23 contamination in it.

24 Q Thank you. Let's go to everybody's
25 favorite topic of the day, the acrolein

1 emissions -- actually, let's step back for a
2 second. Can we look at your comments on the PSA.
3 You prepared a number of health risk assessments,
4 is that correct?

5 A Correct.

6 Q And my recollection is that you looked
7 at acute effects from power plant construction,
8 acute effects from well drilling, acute effects
9 from turbine operation, acute effects from well
10 operation, and then chronic effects from turbine
11 operation.

12 A Correct.

13 Q Who did you include in the public in
14 that analysis?

15 A In the public? I think there's three
16 residences about 1.3 miles from the site. And oil
17 field workers.

18 Q So that would be any worker across the
19 Sunrise property line that wasn't employed by
20 Sunrise?

21 A Yes.

22 Q And would you include workers employed
23 by Texaco?

24 A Yes.

25 Q Thank you. With respect to the acrolein

1 emission factor, ARB and EPA have emission factors
2 based on some test methods that they've developed,
3 is that correct?

4 MR. JOSEPH: Are you talking about
5 emission factors from --

6 MS. HOLMES: Acrolein.

7 MR. JOSEPH: -- from what --

8 MS. HOLMES: From turbines.

9 MR. JOSEPH: Thank you.

10 DR. FOX: CARB, in their CATEFT database
11 has an acrolein emission factor which I adjusted
12 by multiplying by a factor of 10. I'm not aware
13 that EPA has an acrolein emission factor.

14 BY MS. HOLMES:

15 Q Do you disagree with the ARB acrolein
16 emission factor?

17 A Yes, I do.

18 Q You refer in your testimony -- you refer
19 to a study by Dr. Robert Freeman to justify
20 increasing the acrolein emission factor by a
21 factor of ten, is that correct?

22 A That's correct.

23 Q And in your testimony you state that the
24 problems with this method, referring to the
25 acrolein measurements, were not recognized until

1 this study was done?

2 A That's correct.

3 Q And this was presented to a group in
4 1993?

5 A Yes, the Air and Waste Management
6 Association meeting I believe here in Sacramento.

7 Q And was ARB present at that meeting?

8 A I don't know because I was not present.

9 Q Do you know whether or not they belong?

10 A I'm sure some CARB employees belong to
11 the Air and Waste Management Association.

12 Q Who has recognize these problems now
13 besides yourself?

14 A EPA has explicitly recognized the
15 problems in the most recent version of P011A,
16 which is the standard ambient air test method for
17 aldehydes.

18 Q Does that include --

19 MR. JOSEPH: I don't think she finished
20 her answer.

21 MS. HOLMES: I'm sorry.

22 DR. FOX: CARB's the author of method
23 430 which is for formaldehyde and anthaldehyde,
24 James Loop now recognizes that problem. And many
25 analytical air testing laboratories in California

1 recognize that problem.

2 For example, Air Toxics, Ltd. in
3 Sacramento, Environmental Analytical Services in
4 San Luis Obispo, and Sutro Palmers Lab.

5 BY MS. HOLMES:

6 Q Has ARB recognized the problem?

7 A Pardon me?

8 Q Has ARB recognized it's a problem?

9 A What do you mean, recognized?

10 Q Well, it's the word you used in your
11 testimony. I would assume that a regulatory
12 agency that's responsible for establishing
13 emission factors, would change how they did that
14 if they had recognized the problem.

15 I'm asking you, I guess, if there's been
16 any official action by ARB?

17 A They haven't taken any official action,
18 but I am working with them, and they will be.

19 Q Such confidence is laudable.

20 A I'm hoping that they will be.

21 Q On page 50, also, of your comments on
22 the PSA, which is attachment 1 to your air quality
23 testimony, --

24 MS. POOLE: Air quality or public
25 health?

1 MS. HOLMES: I honestly cannot remember
2 if it's public health. The comments on the PSA
3 that were filed by CURE.

4 MS. POOLE: That's public health.

5 BY MS. HOLMES:

6 Q Did you provide any evidence that, in
7 fact, to support your statement that in fact one
8 to two weeks typically elapse between a sample
9 collection and analysis for these samples?

10 A I didn't provide any evidence in my PSA
11 comments. It was based on source tests that I had
12 in my files and my knowledge of how sampling and
13 analysis is done.

14 Q Thank you. Finally, also on the same
15 page of that attachment in footnote 83, does that
16 footnote indicate to you that in 1996 ARB was
17 using the test that you're saying is not
18 appropriate, the test method that you're saying is
19 not appropriate?

20 A Could you repeat that?

21 Q I'm looking at footnote 83 on page 50.
22 Am I incorrect in reading that as confirming that
23 in 1996 ARB was using the test method that we've
24 been discussing?

25 A In 1996 the CARB person in the emissions

1 inventory branch, whom I think name is Robert
2 Grant, who was the project manager on this project
3 and is not an analytical chemist or a source
4 testing sort of person, was not aware of the
5 problem, nor was his consultant.

6 Q That's not what I asked. I'm asking
7 whether or not the test method that was used in
8 1996 and presented in a final report prepared by
9 ARB?

10 A The test method was used in source test
11 reports done by industry pursuant to AB2588. CARB
12 merely collected the source tests from the local
13 air pollution control districts and compiled them
14 into the CATEFT database.

15 Q Let's go to the issue of the CATEFT
16 database. Are you familiar with the CATEFT
17 database?

18 A Yes.

19 Q Do you know in coming up with an
20 emission factor for acrolein how many different
21 turbines were tested?

22 A I believe it's been awhile since I
23 looked at that, but I seem to recall there were
24 eight or nine separate source tests. And I didn't
25 specifically inventory them for turbine type.

1 Q Did you look at the size of turbines?

2 A My recollection is they were mostly
3 smaller turbines.

4 Q And do you recollect whether or not the
5 acrolein emission factor changed as turbines
6 became larger?

7 A There didn't seem to be any correlation;
8 the numbers were, quite frankly, all over the map.

9 Q Do you recollect what CARB said was the
10 quality of the database for the acrolein emission
11 factor?

12 A No.

13 Q Do you know that CARB gives ratings?

14 A Pardon?

15 Q Do you know that CARB establishes
16 ratings for each emission factor?

17 A Yes, it's largely based on the number of
18 source tests that are included in the average.
19 And they had a large number of source tests.

20 Q Let's turn for a moment to the question
21 of the hazard index that we were discussing this
22 morning.

23 I'd like first of all to turn to
24 attachment 2, which is the CAPCOA guidelines to
25 the public health testimony.

1 With that document in front of you, can
2 you tell me whether or not when you prepared your
3 hazard index you separated the hazard index by
4 toxic end points?

5 A Yes, I believe -- wait a minute, which
6 hazard index?

7 Q Well, I believe you prepared several.

8 MS. HOLMES: If I could have a moment?

9 (Pause.)

10 BY MS. HOLMES:

11 Q Well, you prepared six hazard indices,
12 if that's the correct plural, that we talked about
13 earlier. Did you separate out the toxic end
14 points for those?

15 A I did not do a target organ analysis
16 because in all of those cases the majority of the
17 risk, as your experts have testified to, is due to
18 acrolein. There's no need to separate it out.

19 Q Could you explain why you don't need to
20 separate out -- oh, because the primary issue was
21 the acrolein?

22 A Right. You have a chemical that acts on
23 the heart and a chemical that acts on the brain,
24 and a chemical that acts on the respiratory tract.
25 As a screening basis you normally add them all

1 together, and then if it exceeds one, you go back
2 out and separate out the hazard indices by target
3 organ.

4 In this case there was only one
5 chemical. And in fact, most of the chemicals
6 included were respiratory irritants, so there was
7 no reason to do that.

8 Q So you would agree with the conclusions
9 in the CAPCOA guidelines that the hazard indices
10 should be calculated for each end point, and then
11 they include each chemical that affects that end
12 point?

13 A Yes, I do agree.

14 Q Let's turn then, again, to the REL for
15 acrolein, which I believe is attachment 3. Could
16 you very briefly summarize what you said this
17 morning about the REL for acrolein and respiratory
18 effects, just for perspective?

19 A I believe I said that acrolein is a
20 respiratory irritant.

21 Q And do you believe that the REL that's
22 been established uses respiratory irritation as
23 the end point?

24 A No. It was based on a study in which
25 only eye exposure was looked at.

1 Q And would you agree that the RELs are
2 based on the most sensitive relevant adverse
3 health effect?

4 A That's always the case, yes.

5 Q So isn't respiratory effects at a higher
6 level than the REL for acrolein in the revised
7 edition? Isn't that, in fact, why the REL was
8 lowered, because they went from respiratory
9 effects to the mild eye irritation?

10 A I'm not certain as I sit here what the
11 basis of the previous acrolein REL was. It's
12 important to note, however, that the
13 concentrations that we're dealing with here are
14 more than high enough to not only irritate the
15 eyes, but --

16 Q Well, let's focus --

17 A -- also the respiratory --

18 Q -- let's focus on the REL for a moment.
19 If the REL for acrolein, the new number is based
20 on mild eye irritation, and the REL is based on
21 the most sensitive effect, isn't it true that by
22 definition the REL for acrolein, if it were to be
23 based on respiratory effects, would be higher?

24 A No, I do not agree with that.

25 Q On your hazard index on page 17, you

1 cite staff's revised hazard index of .54. In your
2 testimony you state that criteria pollutant effect
3 should be added to that?

4 A Yes.

5 Q Did you separate out toxic end points
6 when you made that calculation?

7 A No, I did not, because in my opinion all
8 of these chemicals are respiratory irritants.

9 Q Doesn't the REL state that the end point
10 is eye irritation?

11 A The end point and the target organ are
12 two different matters.

13 Q Is there an REL established for
14 respiratory irritation at this point?

15 A Acrolein is a respiratory irritant. I
16 do not know what the corresponding REL would be
17 from that study because the subjects were
18 outfitted with carbon filtered respirators.

19 Q So OEHHA hasn't established an REL for
20 acrolein based on respiratory effects, have they?

21 A No, I don't agree with that.

22 Q Do you know what the old REL was based
23 on?

24 A No.

25 Q Thank you. You engaged in a discussion

1 I think both on Tuesday and today about changes in
2 the chronic REL for hydrogen sulfide, do you
3 recollect that discussion?

4 A Yes.

5 Q Did ARB publish a draft and then people
6 commented on it, and then as a result it was
7 changed?

8 A Yes.

9 Q So they published a draft REL and
10 presumably regulated members of the community,
11 scientists, people like yourself submitted
12 comments?

13 A Correct.

14 Q Has the acrolein emission factor that
15 you're proposing been subject to the same kind of
16 public scrutiny?

17 A No, it hasn't; nor have any of the
18 CATEFT database emission factors.

19 Q Do you know whether or not OEHHA
20 recommends that mitigation be imposed if a hazard
21 index is greater than one?

22 A I don't know what OEHHA's policy is on
23 that.

24 Q Thank you.

25 MS. HOLMES: Can I have just a moment,

1 please?

2 (Pause.)

3 MS. HOLMES: I have no further
4 questions.

5 HEARING OFFICER FAY: Okay. Any
6 redirect?

7 MR. JOSEPH: We will have redirect. Can
8 we have a couple minutes?

9 HEARING OFFICER FAY: Sure.

10 (Pause.)

11 PRESIDING MEMBER MOORE: Yes, we can go
12 off the record and just close it off.

13 (Whereupon, at 4:45 p.m., the afternoon
14 session of the hearing was adjourned, to
15 reconvene at 6:15 p.m., this same day.)

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1 anything to file challenging the testing data.

2 And if they choose to do that, they
3 would file that in writing seven days before the
4 hearing, so that would be on the 21st.

5 MS. POOLE: Let me just clarify that we
6 have some questions basically about the treatment
7 system which will allow us to evaluate the
8 reliability of the data. So that's what our
9 questions will go to.

10 HEARING OFFICER FAY: Okay. Thank you.
11 All right.

12 MR. JOSEPH: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. JOSEPH:

15 Q Dr. Fox, I'm going to ask you some
16 questions about public safety and Ms. Poole will
17 ask you questions about worker safety -- sorry,
18 public health, and Ms. Poole about worker safety.

19 You were asked questions about the
20 CAPCOA guidelines and the fact that those
21 guidelines refer to the old RELs. Does that fact
22 affect the proper procedure for preparing a health
23 risk assessment?

24 A No, it doesn't. The guidelines set
25 forth a calculation procedure or a methodology, if

1 you will, for making the risk assessment
2 calculations. The RELs that are contained within
3 it are separately revised and published by OEHHA.
4 That's why all of the parties to these proceedings
5 use the 1993 CAPCOA guidelines.

6 Q Thank you. What are OEHHA's hazard
7 index targets for acrolein?

8 A The target organs for acrolein for
9 purposes of doing a target organ analysis,
10 according to the OEHHA acute REL document, on page
11 C-2-acrolein are eyes and the respiratory system.

12 Q Dr. Fox, you were asked about the fact
13 that the REL for acrolein was set based on eye
14 irritation. What is the proper procedure for
15 using RELs that are set based on the effect on a
16 single hazard index target?

17 A If you have a chemical that acts on more
18 than one organ system, which is quite common, you
19 can use that REL for each individual organ system,
20 and that's clearly reflected in the CAPCOA
21 guidelines in a table that shows target organs
22 across the top and chemicals down the side.

23 And in many cases there's more than one
24 X in the columns for target organs. And you do
25 the analysis for each one separately.

1 Q Dr. Fox, on page 17 of your public
2 health testimony you have table 2 which contains a
3 calculation of the total acute hazard index. You
4 were asked questions about whether for ozone,
5 nitrous dioxide, sulfur dioxide and hydrogen
6 sulfide you used the average or maximum values.

7 And you responded that you used the
8 maximum values. If you were to use average values
9 would that change the result?

10 A No, --

11 MS. HOLMES: Excuse me, I'm going to
12 object to that question. That was a cross-
13 examination question that was asked by Sunrise,
14 not by staff.

15 MR. JOSEPH: I didn't think I said that
16 it was asked by staff. I thought I just said you
17 were asked.

18 MS. HOLMES: I'm sorry.

19 HEARING OFFICER FAY: Withdraw the
20 objection?

21 MS. HOLMES: I'll withdraw it.

22 BY MR. JOSEPH:

23 Q The question is would that change your
24 conclusion that the acute hazard index exceeds
25 1.0?

1 A No, it would still exceed 1, which would
2 be significant.

3 Q You were asked questions by the
4 applicant about whether workers would be working -
5 - construction workers would be working in the
6 dirt.

7 If the applicant were laying pipe --

8 MS. HOLMES: Excuse me, that was asked
9 by staff.

10 MS. POOLE: That's correct.

11 (Laughter.)

12 MR. JOSEPH: I'll accept that
13 clarification.

14 BY MR. JOSEPH:

15 Q If the applicant were laying underground
16 pipe would construction workers be working in the
17 soil?

18 A Yes, they would be trenching, they would
19 be physically in the soil.

20 Q I'd like to ask you to assume for
21 purposes of this question that there is a
22 correlation in the CATEFT database between turbine
23 size and acrolein emissions.

24 Would you say that any such correlation
25 would be valid?

1 A No, because of the acrolein degradation
2 problem. You would find different concentrations
3 as a function of the holding time and how the
4 sample was handled. So that would override any
5 correlation based on turbine type or turbine size.

6 MS. POOLE: I have some questions about
7 worker safety.

8 REDIRECT EXAMINATION

9 BY MS. POOLE:

10 Q You received some questions about table
11 1 in your worker safety testimony. Why did you
12 use the Avila Beach PAH levels?

13 A I used the Avila Beach PAH levels
14 because I thought that they would be a fair
15 representation or an under-estimate actually of
16 what you'd expect to see at the site.

17 Because at Avila Beach you have three
18 types of contamination. You have crude oil; you
19 have diesel; and you have gasoline.

20 In contrast, at the project site the
21 principal type of petroleum contamination that was
22 found is heavy material, C-23 and higher. And
23 generally the concentration of PAHs are much
24 higher in the heavy material that was found at the
25 site than you would expect to see in normal crude

1 oil, diesel or gasoline.

2 And second, the concentrations of TPH
3 that were found at the Sunrise project site in the
4 three areas that would be remediated are quite
5 high. They're in the range of 40,000 to 70,000
6 milligrams per kilogram, which is 4 to 7 percent.

7 And that's much much higher than most of
8 the PPH contaminated soil that one finds at Avila.

9 Q Did the applicant evaluate PAH levels in
10 the phase two?

11 A No, they did not make any PAH
12 measurements. That's why I was forced to use data
13 from another site.

14 Q Why did you use maximum levels
15 identified in the phase two for the other values
16 in your health risk assessment?

17 A I used maximum levels because there were
18 not many samples. And EPA has specific guidance
19 on when it's appropriate to use maximums as
20 opposed to other measures of tendency.

21 For the purposes of risk assessment one
22 normally calculates what's known as the RME, or
23 the reasonable maximum exposure, which is based on
24 what is referred to as the upper 95 percent, upper
25 confidence limit.

1 That's a value for which 95 percent of
2 the samples would be less. And when you have a
3 small number of samples the upper 95 percent UCL
4 is typically higher than the maximum. So you
5 default to the maximum.

6 And I included in my testimony as an
7 attachment some of the EPA guidance that pertains
8 to that point.

9 Q And finally, do you consider workers on
10 this project's linear facilities to be off-site
11 workers?

12 A No. Workers working for the Sunrise
13 project within the linear facilities corridor
14 would be on-site workers.

15 MS. POOLE: Thank you. We're done.

16 HEARING OFFICER FAY: Does that conclude
17 your redirect? All right. Any recross within the
18 scope of the questions?

19 MR. GALATI: Just on one question.

20 REXCROSS-EXAMINATION

21 BY MR. GALATI:

22 Q Regarding your statement that comparing
23 the Avila Beach to the site, you said that you
24 expected PAHs at the site because heavy crude
25 material was used at the site, is that correct?

1 A As I recall the phase two, the TPH that
2 was found was characterized as C-23 and higher.

3 Q Would you also agree that the heavy
4 crude wouldn't travel very far in the soil from
5 the points in where it was handled at the site?

6 A Yes, I believe we discussed this last
7 time on December 3rd. And to the extent that it
8 was all C-23 material and above, yes. But as I
9 pointed out before, earlier in the development of
10 the oil field, lighter material would have been
11 produced, and it's possible that there could be
12 undiscovered lighter material on the site.

13 MR. GALATI: No further questions.

14 HEARING OFFICER FAY: Staff?

15 MS. HOLMES: I have two quick questions.

16 At least I hope they're quick.

17 RE CROSS-EXAMINATION

18 BY MS. HOLMES:

19 Q First of all in response to a question
20 from counsel, you said that any correlation
21 between acrolein emissions and the turbine size
22 is, and I'm paraphrasing, irrelevant because of
23 the effect of the degradation factor, is that a
24 fair characterization?

25 A Yes.

1 Q Don't you need to know what the
2 magnitude is of the correlation before you can
3 make that kind of a statement?

4 A I assume by magnitude of correlation
5 you're referring to doing a formal correlation
6 analysis and looking at an R-squared and a P-
7 value?

8 Q Well, some sort of an analysis to
9 determine the extent of correlation before you can
10 say that it's irrelevant. Don't you need to do
11 that?

12 A In this case I had the data before me
13 and it was quite scattered. No, I did not do a
14 correlation analysis. And I wouldn't expect to
15 find any correlation anyway.

16 Q Thanks. With respect to the discussion
17 about whether workers would be working in the
18 dirt, you said that they would be laying pipes.

19 How will the trenches for those pipes be
20 dug? By hand, or with machinery?

21 MR. JOSEPH: Objection, the witness
22 didn't testify that workers would be laying pipes.
23 She was asked if underground pipe were laid would
24 workers be working in the dirt.

25 If you want to rephrase your question.

1 BY MS. HOLMES:

2 Q Do you believe that workers will be
3 exposed to contaminated soil as a result of laying
4 pipe in the ground?

5 A Yes.

6 Q And how will those trenches for those
7 pipes be dug?

8 A I am not aware of the construction
9 methods that will be used by the Sunrise project.

10 Q How are trenches for pipelines typically
11 dug? By hand, or through the use of big
12 machinery?

13 A Both techniques would be used. You
14 could use an excavator and you could also have a
15 guy in there laying the material. Depends on the
16 size of the pipeline, what kind of utility it is,
17 there's a lot of factors.

18 MS. HOLMES: I have no further
19 questions.

20 HEARING OFFICER FAY: Anything further?

21 MR. JOSEPH: No.

22 HEARING OFFICER FAY: Let's go to staff
23 now for their rebuttal testimony.

24 MR. GALATI: I --

25 MS. HOLMES: Staff -- I'm sorry.

1 MR. GALATI: I'm sorry. I haven't had a
2 chance to put rebuttal testimony on in worker
3 safety or --

4 HEARING OFFICER FAY: Oh, I'm sorry.

5 MR. GALATI: And I'd just like to ask
6 Mr. Worl a few questions in worker safety.

7 HEARING OFFICER FAY: Certainly.

8 DIRECT EXAMINATION

9 BY MR. GALATI:

10 Q Mr. Worl, you heard Dr. Fox testify that
11 the revision to safety1, which has been marked as
12 exhibit 81, in her opinion, paraphrasing, didn't
13 go far enough? Do you recall that testimony?

14 A Yes, I do.

15 Q Is revision of safety1 intended to be
16 the injury, illness and prevention plan?

17 A No, by no means when this was prepared
18 was that designed to be the entire injury, illness
19 prevention plan. This was really supplemental
20 guidance with regard to how the plan would be
21 prepared in order to cover some of the issues that
22 were brought forth here.

23 So it really is, or will be a
24 considerable amount of additional detail that will
25 supplement each of these items that I pointed out

1 in order for that injury and illness prevention
2 program to be truly effective.

3 The fact that this will be reviewed by
4 the CPM, as well as CalOSHA consultation, I think
5 will lend considerable credibility to how well the
6 plan applies.

7 Q And we've also heard mention of the
8 health and safety plan. Is the health and safety
9 plan like an injury, illness and prevention plan?

10 A It can be. They tend to serve
11 overlapping roles.

12 Q And do you know if a health and safety
13 plan was prepared for the project already?

14 A I believe that a health and safety plan
15 was prepared for the work that was done under the
16 phase two environmental assessment.

17 Q And that was by Mr. Bunker?

18 A I don't believe it was prepared by Mr.
19 Bunker, himself, but a coworker of Mr. Bunker's.

20 Q Okay, and at that time they weren't sure
21 exactly what they would find when they went out
22 and did the drilling program, right?

23 A They based that original, or I guess
24 that health and safety plan on the information
25 that was provided in the phase one environmental

1 assessment.

2 Q And did that require them to have
3 available to them personal protective equipment
4 should they encounter something?

5 A Absolutely. Similar to the things that
6 we brought forward in safety1 here. As
7 information is gained about a site, you begin to
8 be able to refine and focus the particular health
9 and safety issues regarding, for instance,
10 personal protective equipment, the type of
11 monitoring you're going to be doing, the type of
12 worker control practices that will be implemented.

13 So each step you begin to get better and
14 better and closer to the mark.

15 Q How do you think that health and safety
16 plan that was prepared for Jim Bunker's work
17 compared to this health and safety plan?

18 A Well, to the recommendations that I have
19 in safety1, the injury, illness and prevention
20 program that would be developed for the
21 construction effort would build upon the
22 information that was developed in the phase two
23 environmental assessment.

24 It would probably have very similar
25 format to the type of health and safety plan that

1 Jim Bunker used. But we would have, I would say,
2 a vast amount more data with regard to the types
3 of hazards we may encounter, as well as PPE that
4 we may want to use or safe work practices.

5 Q Now I want to turn your attention to,
6 there was some testimony about the oil field
7 CalOSHA standards, and I believe that those are
8 title 8?

9 A Yes.

10 Q Do you remember that testimony from Dr.
11 Fox that those standards didn't protect against
12 chemical exposures?

13 A Yes, I do.

14 Q And do you have any opinions on that?

15 A I have looked over those standards,
16 myself, for that exact same reason, and I have a
17 differing opinion than Dr. Fox in that there are
18 three particular articles in there that deal with
19 exposures to chemicals during that type of work.

20 There's an article on dangerous
21 exposures; there's an article on gas and vapor
22 testing; and there's another article on hazardous
23 substances. Those are all within the particular
24 section on petroleum worker health and safety,
25 which is made up, I think, of 56 different

1 articles.

2 Q Now turning your attention to the soil
3 vapor detection limits. Dr. Fox had testified
4 that the detection limits were too high and
5 therefore the data can't be used.

6 Do you have any opinions on that, and
7 could you expand on the relationship to the
8 personal exposure limits?

9 A It's important when I look at baseline
10 information regarding a waste site is to look at
11 comparisons between detection limits and
12 occupational exposure criteria.

13 In this particular instance the
14 information that we have from the phase two has
15 been brought into question based on the degree of
16 detection that they had for certain compounds.

17 In a petroleum-affected area some of the
18 volatile compounds you would expect would be
19 benzene, toluene, ethylbenzenes and xylenes,
20 components of crude oil.

21 Benzene happens to be the one that has,
22 of those four, happens to be the one that has the
23 lowest permissible exposure limit as defined by
24 CalOSHA, at 1 ppm.

25 Looking at the detection limits that

1 were used for the soil gas study, if benzene had
2 been present at that site, it would have been
3 present and it was present above the detection
4 limit, we would still be about a third of what the
5 permissible exposure limit is according to
6 CalOSHA.

7 So, the fact that we didn't see any
8 VOCs, according to Mr. Bunker, in the phase two
9 EA, doesn't necessarily mean that we would not see
10 concentrations below the permissible exposure
11 limit. If they had shown up even at the detection
12 limit we would have still been well below the
13 permissible exposure limit.

14 Q Dr. Fox testified questioning I believe
15 testing, the dust testing wouldn't be chemical
16 specific. Would the concentrations of arsenic
17 that were, for example, that were seen in the
18 phase two, do you have any opinions about that?

19 A Yeah, I think it's worth clarifying some
20 of the issues on the real time monitoring that
21 goes on at a hazardous waste site.

22 The trigger levels that are set are
23 typically based on the types of instruments that
24 you have measuring the compounds. The two of the
25 three instruments that I mentioned here measure

1 what's called total hydrocarbons for basically any
2 type of volatile organic.

3 You don't speciate. You could speciate,
4 but you really don't go in and say I want to
5 determine the concentration of benzene or toluene
6 or xylene or one of the other ones.

7 You look at that total number, and then
8 you make the conservative assumption, you look at
9 the history of the site and you say, well, what is
10 the compound there that is most toxic according to
11 CalOSHA.

12 In this instance it would be benzene of
13 the volatile organics. And you take the
14 permissible exposure limit for benzene and you set
15 the criteria at, well, if our total analyzers here
16 tell us that there's this much total VOCs in the
17 air, and we assume that that is all benzene, we
18 set our criteria at half the permissible exposure
19 limit.

20 You're making two extremely conservative
21 judgments there. One is that all of that volatile
22 fraction is benzene, the most hazardous one of the
23 volatiles. And then you're adding an additional
24 safety factor in there that you're using half of
25 the PEL.

1 Q And with respect to arsenic?

2 A Well, I think based on the risk
3 assessment that Dr. Fox performed, she took the
4 conservative assumption, and probably
5 appropriately for the data that we had, that
6 arsenic was present in the soil throughout the
7 site. And it's important to know that these three
8 hot spots that were identified, that arsenic
9 concentration came from one of those.

10 But if we assume the arsenic is present
11 throughout the site, it's ubiquitous throughout
12 the site at the highest concentration that it was
13 measured, at 12.8 mg/kg. If we went ahead and
14 extrapolated that concentration into what it would
15 require for an airborne concentration to exceed
16 the permissible exposure limit, you are talking
17 approximately 50 mg/cubic meter of dirt in the
18 air.

19 The CalOSHA nuisance standard for just
20 plain dust in the air is 15 mg/cubic meter. And
21 that is an extremely high concentration of dust,
22 to the point where you probably couldn't see
23 across this room. And 50 mg/cubic meter is four
24 times that basically.

25 So, I think there is, the particulate

1 monitor, if all that arsenic was in the air, would
2 certainly be recognizable using the real time
3 equipment.

4 MR. GALATI: I have no further
5 questions.

6 HEARING OFFICER FAY: Okay. Staff, any
7 cross?

8 MS. HOLMES: No.

9 HEARING OFFICER FAY: CURE?

10 MS. POOLE: Yes, just one second,
11 please.

12 CROSS-EXAMINATION

13 BY MS. POOLE:

14 Q Mr. Worl, will the Commission have a
15 chance to review the health and safety plan before
16 it makes a licensing decision on this project?

17 A No.

18 Q Will the Commission have a chance to
19 review the illness, injury and prevention plan
20 before it makes a licensing decision on this
21 project?

22 A No.

23 Q And will the Commission have a chance to
24 review the personal protective equipment program
25 before it makes a licensing decision on this

1 project?

2 A No. Those documents are going to be
3 reviewed by the CPM as well as CalOSHA
4 consultation.

5 MS. POOLE: Thank you, that's all.

6 HEARING OFFICER FAY: Okay. Thank you.
7 Anything further?

8 MR. GALATI: No.

9 HEARING OFFICER FAY: All right. Now,
10 staff rebuttal.

11 MS. HOLMES: Thank you, I'd like to
12 recall Mr. Tyler.

13 HEARING OFFICER FAY: Mr. Tyler, you're
14 still under oath.

15 DIRECT EXAMINATION

16 BY MS. HOLMES:

17 Q Mr. Tyler, there was one area of
18 questioning which we did not conduct on Tuesday I
19 believe it was.

20 I had asked you whether or not you had
21 an opinion about Dr. Fox's, in essence, assessment
22 of the health risk assessment that you performed.
23 Would you like to walk through that at this time,
24 please?

25 A Yes. One thing I'd like to do just to

1 start with is provide a little bit of
2 clarification. I think there's been a lot of
3 confusion here, and probably still a lot of
4 confusion, about when we have a risk assessment
5 and when we don't.

6 Basically there's two types of
7 industrial work sites. There's a contaminated
8 site that's certified and required to be cleaned
9 up by DTSC.

10 If we have a contaminated site that has
11 been designated and required to be cleaned up,
12 then we do health risk assessments of the site.
13 If we don't have that, in the absence of that we
14 have a general construction site, much like any
15 other construction site where we do grading such
16 as the ones for housing tracts and every other
17 thing that goes on in the world.

18 Under those circumstances we apply OSHA
19 standards only. And even if we did have a
20 facility that required clean up, we would still
21 evaluate the workers doing the clean up as
22 workers. Not through this risk assessment
23 protocol.

24 This risk assessment protocol that's
25 being talked about, the PRGs and everything else,

1 are for end use of the property after it is
2 cleaned up.

3 I'd like to call your attention back to
4 exhibit 48, which is the EPA guidance from region
5 9 on this very subject. And if we could go to
6 page 10 and I'll read you what I have from page
7 10. And it's directly applicable to this
8 facility.

9 And basically where I'm going with this
10 is it's my professional opinion that this site
11 will never be designated to be cleaned up. It is
12 not a hazardous material site. It's not going to
13 be required to have a health risk assessment.
14 Therefore, the only thing that really is
15 applicable to this site are general workplace
16 rules and orders that are administered by CalOSHA,
17 not by anybody else.

18 It starts out by saying generally EPA
19 does not clean up below natural background. In
20 some cases predicted risk assessment based models
21 generate PRG levels that lie within and even below
22 the typical background.

23 Then they give an illustration
24 specifically for arsenic, one of the chemicals
25 that we're dealing with at this site. An

1 illustrative example of this is the naturally
2 occurring arsenic in soils which frequently is
3 higher than the risk based concentration set at 1
4 in 1 million cancer risk.

5 The PRG for residential soils is .39.
6 That's one of the ones that we've been bandying
7 about here. So, in other words, if we were
8 cleaning up a site that was going to be a park or
9 where we were going to have half of downtown L.A.
10 exposed to that concentration, yes, we'd use 1 in
11 a million because there's a significant number of
12 cancer cases that would be predicted based on that
13 level of exposure.

14 Now I go back down to the last statement
15 in that paragraph, which is that this really
16 doesn't matter because even if this soil
17 background is this high, we can make adjustments
18 because EPA's acceptable cancer risk range is
19 between 1 in a million and ten times ten to the
20 negative fourth. There's been no number presented
21 by anybody that approximates ten to the negative
22 fourth.

23 In my opinion this site is a very remote
24 industrial site with no groundwater, possibility
25 of contamination of groundwater. This site is

1 clearly one, as a risk assessor, that I would use
2 a criteria of 10 to the negative fourth. There's
3 a very limited number of workers, very very seldom
4 any other workers even in proximity to the site.
5 There's potential for only very infrequent
6 exposure.

7 So, in sum total I have no basis to
8 believe this site will ever be designated, or that
9 a health risk assessment is at all appropriate or
10 ever would be.

11 Now if I could go down to the next part
12 of that page, they give ambient background
13 concentrations for both chromium and arsenic. The
14 ranges of these backgrounds for the United States
15 and for California are right in line with what
16 we're seeing in the phase two study. And these
17 are in the most contaminated areas that were
18 identified.

19 So, based on this, I can't come to a
20 conclusion that this site would ever be cleaned
21 up, or be required to be cleaned up.

22 Going on from that I'd like to go to
23 another statement that's made under item B in
24 Phyllis' testimony, back to her direct testimony.
25 And that is in the second paragraph in the middle

1 Phyllis alludes again, as she has in many many
2 cases, --

3 HEARING OFFICER FAY: Excuse me, Mr.
4 Tyler. Which set of testimony are you talking
5 about?

6 MR. TYLER: I'm talking about Phyllis'
7 testimony under item B, construction worker
8 exposure.

9 HEARING OFFICER FAY: Which topic?

10 MS. HOLMES: Worker safety.

11 MR. TYLER: Worker safety.

12 HEARING OFFICER FAY: Thank you.

13 MR. TYLER: And in that, the statements
14 made there, Phyllis -- or Dr. Fox alludes to the
15 idea that staff considers one in a million to be a
16 significant risk. That's incorrect. Staff does
17 not --

18 MS. POOLE: I'm sorry, can you point to
19 me where you are? I know you're under B.

20 MR. TYLER: Yes, okay, wait just a
21 second. I might have to go back to the -- oh,
22 page 3.

23 MS. POOLE: And where on page 3?

24 MR. TYLER: Under B, concentration and
25 worker exposure routes.

1 MS. POOLE: I see that, but I don't see
2 what you're referring to.

3 I don't see any reference to a --

4 MR. TYLER: It is -- it's in here --

5 MS. POOLE: -- one in a million --

6 MR. TYLER: -- it's in here, and it's
7 implied throughout the whole --

8 MS. POOLE: Well, I am going to object
9 to that characterization of the testimony if I
10 can't follow where you're getting it.

11 HEARING OFFICER FAY: All right, let's
12 move on --

13 MR. TYLER: Okay, I'm going to go back
14 to simply --

15 HEARING OFFICER FAY: -- arguendo --

16 MR. TYLER: -- stating that staff does
17 not use one in a million as a significance
18 criteria. Staff uses one in a million as a de
19 minimis criteria. A de minimis criteria means
20 that any exposure below that level is
21 categorically acceptable. There's no conditions.

22 Above that level staff will start to
23 examine the potential significance of those
24 exposures. Then staff has to consider how many
25 people might be exposed, who might be exposed.

1 Are they workers, are they the public.

2 That goes back to the other issue that
3 we've been debating for days about who's a worker
4 and who's the public.

5 MS. HOLMES: The reference, I think,
6 that Mr. Tyler was referring to is on page 11.

7 MR. TYLER: And the reason I went to
8 that point is there's a statement there, a typical
9 risk assessment protocol. There is no typical
10 risk assessment protocol applicable to this site.
11 It would only be applicable to this site if it was
12 designated as a required clean up by DTSC.

13 I don't believe -- my professional
14 opinion is that's highly unlikely.

15 BY MS. HOLMES:

16 Q Mr. Tyler, would you like to go through
17 the specific comments --

18 A Then we'll go through items --

19 Q -- that Dr. Fox made about your health
20 risk assessment?

21 A Which start on item C.

22 Q Yes.

23 A Yes, Dr. Fox alluded under item number
24 1, wrong population, that because I had chosen to
25 use the maximum impact location which occurred

1 outside the site boundary, that in fact I
2 considered the wrong population that she
3 considered workers on the site.

4 I think the difference there, and
5 perhaps that wasn't clear on my part, but my
6 understanding is that the maximum exposure that
7 will ever occur anywhere on that site during
8 construction is associated with that maximum
9 impact location.

10 I've heard other arguments to that
11 effect, but when I talked to air quality and the
12 people who did the model to evaluate that, that in
13 fact these concentrations result from the dumping
14 of material into dump trucks, that those cause
15 large emissions from the dump trucks, they're the
16 largest emissions that occur. That those result
17 in the maximum ground level concentrations.

18 I believe that's a conservative
19 assumption of the maximum inhalation exposure that
20 would exist or that's possible -- that's plausible
21 at the site. So I don't believe I considered the
22 wrong population.

23 Then I'd like to go to item 2, wrong
24 exposure routes. Dr. Fox, if we examine her table
25 on the next page, on page 7, you would know

1 immediately by looking at the cancer risk numbers
2 that the total risk, even if this were
3 appropriate, is all driven by inadvertent
4 ingestion and dermal exposure.

5 It's my opinion that there's no
6 plausible reasonable basis for assuming that any
7 significant duration, for any significant duration
8 of time under this type of construction that there
9 would be significant dermal exposure or
10 significant inadvertent ingestion.

11 So, in my opinion those numbers are just
12 not at all appropriate. Even if you were to do
13 this type of analysis, I don't believe there's a
14 plausible mechanism. We've heard a lot of
15 discussion about this. I believe that if you're
16 laying a pipeline you're going to use a backhoe.
17 That, yes, there may be some amount of time that
18 there are workers in contact with the soil, but
19 it's certainly not going to be 1.25 years on a
20 continuous basis. It's going to be very limited.

21 And it's likely to involve full clothing
22 and so on. Not the type of thing that would exist
23 from a gardener working in this environment after
24 some other site for some other use was in place.

25 With regard to item 3, the wrong

1 duration of exposure, I will agree with Dr. Fox
2 that in fact the EPA guidelines do suggest that
3 they used a 30 year exposure duration.

4 That was, basically at the time I did
5 not have all the pages. I'm not really trying to
6 make excuses, but I've never seen a case where
7 they did that. They've always used 70 years.
8 That's why I used 70 years. Every risk assessment
9 document I've ever seen, this appears to be the
10 exception. I agree with what she said.

11 However, that's only a factor of two
12 difference. And it absolutely would not change my
13 conclusions in any way, shape or form.

14 Again, with regard to the wrong PM10
15 concentration, I think it goes back to the same
16 issue about why I chose to use the maximum impact
17 location.

18 BY MS. HOLMES:

19 Q Can you please explain in one sentence
20 why you used the PM10 concentration that you did?

21 A Because my understanding is that the
22 vast majority of the airborne particulate results
23 from the operation of loading graded material into
24 dump trucks. And when you drop it into the dump
25 truck you get relatively large amounts of

1 emissions compared to any other operation that
2 occurs at the site during this type of
3 construction.

4 Q And so you used PM10 levels from the
5 FSA?

6 A Right, from the maximum impact location.
7 So my view was that that was the maximum possible
8 plausible exposure of anybody during construction.

9 Q So even though the maximum level
10 occurred off-site, it was an added conservatism
11 for you to use that number for on-site workers?

12 A That's correct.

13 Q Thank you.

14 A The final thing is there's a discussion
15 about petroleum hydrocarbons. My conclusion is
16 based on what I've read in the phase two study and
17 the cleanup that would be implemented is first
18 off, I don't expect those materials to be present.
19 It's not reasonable to assume that they're present
20 all over the site.

21 For one thing, they're pretty readily
22 recognizable. Crude oil is pretty dark colored,
23 it's pretty easy to see. It's pretty easy to see
24 when you have a contaminated area. As was talked
25 about earlier, it doesn't go very deep in the soil

1 It's not like gasoline or some other light
2 hydrocarbon that seeps in the soil and goes down
3 and down and down and down.

4 So, I don't believe that it's plausible
5 to believe that we are going to somehow have
6 workers inadvertently wallowing in this material
7 while they're doing construction. I just find no
8 basis for that.

9 Q Is it your belief that both the cleanup
10 that Sunrise has referred to and the measures for
11 identification of currently undiscovered
12 contamination of this kind would prevent Sunrise
13 workers, not the remediation workers, from being
14 inadvertently exposed to this material?

15 A Yes, I do. So, I would also point out
16 that there's -- if you look at the table that I
17 pointed to before, table 1, carcinogenic risk
18 construction workers, if you eliminate or come to
19 the conclusion that it's not plausible to have
20 significant dermal exposure, and it's not
21 plausible to have inadvertent ingestion, which I
22 don't believe is really a plausible exposure route
23 in this circumstances, all the inhalation
24 exposures are well below one in a million.

25 Even if I take everything that was

1 stated here and I apply what I believe would be an
2 appropriate level of risk or acceptable risk
3 level, something that I would consider acceptable
4 in this type of environment with this limited
5 number of exposures of workers only, I would use a
6 risk number of ten to the negative four. These
7 are well -- all of the numbers are well below
8 that.

9 Further, I don't believe that if we take
10 the workers outside the fenceline, the oil field
11 workers, that there's any possibility of dermal
12 exposure as a result of what's on the site. They
13 don't go there. So the only possible route of
14 exposure for those individuals would be through
15 inhalation.

16 I believe the same exact analogy applies
17 to the hazard indices. If you eliminate
18 inadvertent ingestion or you come to the
19 conclusion that inadvertent ingestion and dermal
20 exposure are really not plausible routes for this
21 type of facility, you come to the same conclusion.
22 The hazard indices is below significantly.

23 And so in total, if I go to the final
24 results under item 4, results of the screening
25 level analysis, the estimated cancer risk is 6.86

1 in a million. So it's 6.86 times 10 to the
2 negative 6.

3 Again, I could easily come to the
4 conclusion, and any other risk assessor applying
5 reasonable judgment, could come to an assertion
6 that ten to the negative fourth is acceptable.
7 Certainly ten to the negative five, in my opinion,
8 would be very acceptable in this scenario, an
9 industrial site, limited number of people exposed,
10 very remote. This is not downtown L.A. This is
11 not where we do these kind of risk assessments.
12 This is a construction site in the middle of the
13 Kern County Oilfields.

14 That's about all I have to say.

15 MS. HOLMES: Thank you. Mr. Tyler is
16 available for cross-examination.

17 HEARING OFFICER FAY: Thank you.

18 MR. GALATI: No questions.

19 HEARING OFFICER FAY: I assume CURE has
20 some questions.

21 MR. JOSEPH: You assume correctly.

22 Would you give us a minute?

23 (Pause.)

24 HEARING OFFICER FAY: Ready to rock and
25 roll, counselor?

1 MR. JOSEPH: Rock and roll.

2 HEARING OFFICER FAY: Rock and roll.

3 CROSS-EXAMINATION

4 BY MR. JOSEPH:

5 Q Mr. Tyler, are you ready to rock and
6 roll?

7 A Yes, sir, certainly am.

8 Q Okay. You referred a number of times to
9 the fact that it would be a limited number of
10 workers exposed at this site.

11 A That's correct.

12 Q Is it your testimony that workers who
13 work in small groups are required to accept larger
14 risks than workers who work in big groups?

15 A No, it is not.

16 Q So you're saying all workers are
17 deserving of the same protection regardless of the
18 size of the workforce?

19 A Yes, I would agree with that statement.
20 But the number of cancer incidences that result
21 from any group, public or workers, is always
22 related to the number of people exposed. And
23 acceptable risk levels are always tied to the
24 number of potential cancer cases.

25 Q But the risk for each individual person

1 is the same regardless of how many people are
2 exposed, right?

3 A That's correct.

4 Q You said that the risk assessment
5 protocol is applicable only if the site has been
6 designated by DTSC. Suppose the Energy Commission
7 has evidence that DTSC has not had time to act on,
8 should the Energy Commission ignore it?

9 A No. And I don't think that's what I was
10 implying. I think what I was saying is it's my
11 professional judgment that there's nothing that
12 I've seen to date that leads me to believe that
13 DTSC or any other responsible risk assessment
14 professional would find this site to require
15 cleanup.

16 Q You're not saying that the Energy
17 Commission should ignore such evidence if it has
18 it?

19 A That's correct. I don't have that
20 evidence.

21 Q Mr. Tyler, do you know how deep the
22 proposed excavation is for this project?

23 A No, I don't, I'm not familiar with that.

24 Q And finally, would you expect it to be
25 hot during the summer in Kern County?

1 A Oh, definitely.

2 Q But despite that you would expect that
3 construction workers would have no exposed skin?

4 A I would expect that anyone working at a
5 site that's doing a hazardous waste cleanup,
6 removing soils that have already been identified
7 as contaminated, would wear appropriate protective
8 clothing. And that once that's cleaned up, I
9 would still believe that any employer would
10 require all construction workers to wear
11 appropriate clothing during a construction
12 process, regardless of heat.

13 Q Is it your recommendation that the
14 Energy Commission require the applicant to require
15 all the employees working in any grading activity
16 to have no exposed skin?

17 A No, I don't think that's the case.

18 Q So would you agree that it's reasonable
19 to expect that if it's 105 degrees in Kern County
20 and somebody is driving a dozer they might have a
21 little exposed skin?

22 A Yes, I believe that's reasonable. But I
23 also don't believe they would be in direct contact
24 with the soil, if that's the case. They would get
25 their exposure through windblown dust.

1 Q Which might land on their skin?

2 A Correct, but that is not what the
3 exposure estimates are based on in Dr. Fox's.
4 That's based on actual people actually digging in
5 wet soil such as landscapers.

6 Q Well, we'll let Dr. Fox's testimony
7 speak for itself.

8 MR. JOSEPH: That's all we have.

9 HEARING OFFICER FAY: I think that
10 concludes the evidence on worker safety. And now
11 we're ready to move to soil and water.

12 MS. POOLE: Before we do that, I'm sorry
13 we have moved it in. I take it back.

14 HEARING OFFICER FAY: Okay. Mr. Galati,
15 do you have a witness on soil and water resources?

16 MR. GALATI: Yes, I do. I have two.
17 And they both need to be sworn.

18 HEARING OFFICER FAY: Okay, while
19 they're coming up I'll remind everybody that it's
20 my understanding that issues having to do with the
21 testing that we heard addressed today by DTSC will
22 not come up this evening.

23 And if it comes up at all it will be
24 brought up on the 28th.

25 MS. HOLMES: Excuse me --

1 MR. GALATI: Yes, I will not be bringing
2 up the testimony or testing in any way, shape or
3 form. The soil portion will deal with soils. The
4 water portion will deal with water resources.

5 HEARING OFFICER FAY: Okay.

6 MS. HOLMES: That was not my
7 understanding. As I stated earlier, our soils and
8 water witness is prepared to testify as to the
9 results of the testing and what it means to the
10 conclusion in the FSA that was left unsettled.

11 HEARING OFFICER FAY: Well, we'd like to
12 get his corrections to his testimony. And just
13 since CURE was going to bring this matter up, if
14 at all, on the 28th, Mr. Galati suggested that
15 their testimony on that would be more logically
16 linked in time.

17 And perhaps if Mr. O'Hagan could make
18 his corrections to his testimony, but we'll bring
19 him back at that time if we need to, to give any
20 details on the testing.

21 MS. HOLMES: That's fine. We just
22 wanted to make sure that we could get the
23 corrections and the reasons therefore onto the
24 record tonight.

25 HEARING OFFICER FAY: Okay. I think

1 that's reasonable.

2 MR. GALATI: And for the purposes of if
3 we don't have to come back --

4 HEARING OFFICER FAY: Right, --

5 MR. GALATI: -- my witnesses will
6 probably say --

7 HEARING OFFICER FAY: -- so the record's
8 complete.

9 MR. GALATI: -- they agree with those
10 changes.

11 PRESIDING MEMBER MOORE: Fine.

12 MR. GALATI: So, with that, would it be
13 more appropriate to let staff go first?

14 HEARING OFFICER FAY: Probably, sure.
15 Caryn, I think --

16 MS. HOLMES: We're going first?

17 HEARING OFFICER FAY: Yes, --

18 MS. HOLMES: Fine.

19 PRESIDING MEMBER MOORE: Just mostly
20 because you're likely to get an agreement and --

21 MS. HOLMES: Thank you. Staff calls
22 Joseph O'Hagan, who has not testified and needs to
23 be sworn.

24 HEARING OFFICER FAY: Please swear the
25 witness.

1 Whereupon,

2 JOSEPH O'HAGAN

3 was called as a witness herein and after first
4 being duly sworn, was examined and testified as
5 follows:

6 MS. HOLMES: I'd like to mark for
7 identification the soil and water resources
8 portion of the FSA, part 3, testimony of Joseph
9 O'Hagan.

10 HEARING OFFICER FAY: That is exhibit
11 89.

12 MS. HOLMES: Thank you. And did we
13 identify, I cannot recollect, the two filings from
14 the applicant on the water data? Did those
15 receive numbers?

16 MR. GALATI: No, they haven't yet.

17 MS. HOLMES: That would be a good idea
18 since he'll be referring to them.

19 HEARING OFFICER FAY: Okay. Can you
20 identify those for us, Mr. Galati?

21 MS. HOLMES: I can identify the first
22 one. He seems to be scrambling. It's got a cover
23 letter on it from Scott Galati to Ms. Nash. The
24 subject is Sunrise Cogeneration and Power Project,
25 98-AFC-4, response to CEC data request number 3.

1 That's the January 6th filing.

2 There's also a January 4th filing from
3 Scott Galati to Ms. JoAnne Nash. It just says re
4 docket 98-AFC-4. This is their water test
5 results. My understanding is that the January 6th
6 filing incorporates some of the January 4th filing
7 by reference.

8 So, if we wanted to label those
9 sequentially, the January 4th filing would have
10 the first exhibit number.

11 MR. GALATI: Yes, that is correct.

12 HEARING OFFICER FAY: January 4th filing
13 will be exhibit 90; and the January 6th filing is
14 exhibit 91.

15 MS. HOLMES: And I understand that the
16 witness has just provided errata. So perhaps we
17 ought to identify that, as well. That's Sunrise
18 Cogeneration and Power Project, soils and water
19 resources testimony of Joe O'Hagan, errata,
20 January 13, 2000.

21 HEARING OFFICER FAY: Exhibit 92.

22 MS. HOLMES: Thank you.

23 HEARING OFFICER FAY: Mr. Galati, do you
24 have copies of the two exhibits, exhibit 90 and
25 91?

1 MR. GALATI: Yes, I do.

2 HEARING OFFICER FAY: Could we get a
3 copy of each of those?

4 MR. GALATI: Yes, as soon as I lay my
5 hands on it.

6 (Pause.)

7 HEARING OFFICER FAY: Yes, please go
8 ahead.

9 MS. HOLMES: Thank you.

10 DIRECT EXAMINATION

11 BY MS. HOLMES:

12 Q Mr. O'Hagan, do you have in front of you
13 a copy of what has been identified as exhibit 89,
14 your testimony, and exhibit 92, the errata to your
15 testimony?

16 A Yes, I do.

17 Q And were these documents prepared by you
18 or under your direction?

19 A Yes, they were.

20 Q And do you have any additional changes
21 to make to them?

22 A No, I don't.

23 Q Was a statement of your qualifications
24 included in the FSA part 3?

25 A Yes, it was, I believe.

1 Q And are the facts contained in your
2 testimony true and correct to the best of your
3 knowledge?

4 A Yes, they are.

5 Q And do the opinions in your testimony
6 represent your best professional judgment?

7 A Yes, they do.

8 Q And have you also reviewed what has been
9 identified today as exhibit 90 and exhibit 91?

10 A I believe that is the water quality --

11 Q Those are the two water quality filings
12 from the applicant.

13 A Yes, I have.

14 Q Thank you. Could you please briefly
15 summarize your testimony and the effect of
16 exhibits 90 and 91 on the conclusions you reached?

17 A Okay. Briefly, I evaluated the
18 potential impacts of the proposed project on soil
19 and water resources, specifically looking for the
20 potential for the project to cause accelerated
21 erosion and sedimentation; to degrade water
22 quality through spills; through sedimentation, as
23 well.

24 Also through the potential impacts of
25 the project in terms of water supply. The

1 project's getting its water from both the West
2 Kern Water District and from the Texaco oil field
3 operation for produced water.

4 I analyzed the potential impacts for
5 West Kern, both in a project-specific and a
6 cumulative evaluation. West Kern has sufficient
7 groundwater supply, over 200,000 acrefeet in its
8 groundwater bank that they're presently operating
9 that's available to supply the project and their
10 other customers.

11 So I concluded there was no significant
12 impacts to water supply from the project on West
13 Kern. Produced water, of course, is amply
14 abundant. More produced water as generally your
15 oil fields get older. There's certainly no
16 problems there.

17 Texaco is going to have to expand the
18 water treatment facility to accommodate the
19 project. That wasn't a problem.

20 The wastewater question, small
21 wastewater stream from the proposed project will
22 be sent to Valley Waste Buena Vista Facility
23 Number Two, which runs into a series of ponds
24 before injecting it through an injection well
25 under permit from their Division of Oil and Gas.

1 The ponds are separately permitted from the
2 regional water quality control board.

3 The issue came up that potentially the
4 produced water was hazardous or if the produced
5 water wasn't hazardous because of benzene and
6 other inorganic constituent levels that some of
7 the waste streams at the water treatment facility
8 would all produce hazardous material.

9 The waste streams from the water
10 treatment facility include the regeneration brine
11 from the water softening process, and the filter
12 backwash.

13 Texaco provided information that the two
14 documents that were referred to. They provided
15 inorganic and organic constituents as well as a
16 bioassay for the produced water, the softened
17 produced water after it leaves the water treatment
18 facility, regeneration brine flow that goes to
19 Valley Waste, and the filter backwash flow that
20 also goes to Valley Waste.

21 As you heard earlier today Diana Peebler
22 of the Department of Toxic Substances Control had
23 evaluated the information and found that
24 information provided in there indicated that none
25 of those water streams were hazardous and the

1 Department has no jurisdiction over this.

2 The concern staff had had in that regard
3 was that if any of those flows are hazardous,
4 wastewater would not be able to be discharged to
5 Valley Waste. Valley Waste, its permit
6 specifically prohibits them from accepting
7 California-designated hazardous waste.

8 Based on DTSC's evaluation of this, I
9 accept their evaluation, given their expertise,
10 and conclude that it's not hazardous. And the
11 discharge of the cogen's waste streams, as well as
12 those from the water treatment facility are
13 acceptable at Valley Waste, which has sufficient
14 capacity to accommodate those flows.

15 Q And finally, during the air quality
16 portion of the hearing earlier this week
17 Commissioner Moore asked a question about the silt
18 content of the soil.

19 I understand that you've been warned
20 that this question would be coming. Do you have a
21 response to that at this time?

22 A Well, I did look in the predominant soil
23 at the power plant site is, I believe, a sandy,
24 gravely loam. And generally your loam soils are
25 fairly high in silt. So I don't have specific

1 numbers, but it could be anywhere up to 70 percent
2 silt.

3 The other soil present there would have
4 less; generally it's found on steeper slopes. And
5 generally your finer material is eroded away, so
6 generally you find a more coarse material. But it
7 probably has a significant silt content, as well.

8 For the linear facilities the soils
9 range from pure clays to, you know, to gravel,
10 sand and gravel.

11 HEARING OFFICER FAY: Thank you, --

12 MS. HOLMES: Thank you. At this point
13 I'd like to move that exhibits 89 and 92 be
14 admitted into the record.

15 HEARING OFFICER FAY: Any objection? So
16 moved.

17 MS. HOLMES: And Mr. O'Hagan is now
18 available for cross-examination.

19 HEARING OFFICER FAY: Mr. Galati.

20 MR. GALATI: I have two witnesses and
21 they both -- actually I have three witnesses and
22 they all need to be sworn. Can I bring up soil
23 later?

24 HEARING OFFICER FAY: Do you have any
25 cross-examination for Mr. O'Hagan?

1 PRESIDING MEMBER MOORE: Do you have
2 questions for Mr. O'Hagan?

3 MR. GALATI: Oh, I'm sorry, no
4 questions.

5 HEARING OFFICER FAY: Does CURE have any
6 questions?

7 MS. POOLE: Not at this time. Our only
8 questions would go to the data that we will
9 discuss on the 28th.

10 HEARING OFFICER FAY: But, looking over
11 the changes that he has proposed, you have no
12 questions specific to that?

13 MS. POOLE: That's right.

14 HEARING OFFICER FAY: Okay, good. Well,
15 thank you, Mr. O'Hagan.

16 MR. O'HAGAN: Thank you.

17 HEARING OFFICER FAY: Okay, Mr. Galati.

18 MR. GALATI: Okay.

19 HEARING OFFICER FAY: You have two
20 witnesses?

21 MR. GALATI: I have two witnesses on
22 water. Swear them both just in case we need to
23 provide information. And I have a witness on
24 soil. So can I just do water real quick and then
25 bring up soil, do soil.

1 HEARING OFFICER FAY: Please swear the
2 witnesses.

3 Whereupon,

4 JOY ROGALLA and RANDALL MARX
5 were called as witnesses herein and after first
6 being duly sworn, were examined and testified as
7 follows:

8 MR. GALATI: I have Joy Rogalla and
9 Randall Marx on my right.

10 DIRECT EXAMINATION

11 BY MR. GALATI:

12 Q Ms. Rogalla, can you please give your
13 name, address and current employment for the
14 record?

15 A My name is Joy Rogalla, R-o-g-a-l-l-a.
16 I currently work for Radian International, address
17 10 --

18 MR. MARX: I'm Randy Marx, I also work
19 for Radian International. And I've worked about
20 11 years, and part of that time I worked for about
21 11 years at the CalePA with the DTSC and the State
22 Water Resources Control Board.

23 MR. GALATI: Have each of you prepared
24 and previously submitted written testimony in this
25 AFC proceeding?

1 MS. ROGALLA: Yes, I have.

2 MR. MARX: Yes, I have.

3 MR. GALATI: At this time I'd like to
4 mark the testimony on water resources by Joy
5 Rogalla and Randall Marx.

6 HEARING OFFICER FAY: That's exhibit 93.

7 MR. GALATI: Ms. Rogalla, are you
8 sponsoring any exhibits at this hearing?

9 MS. ROGALLA: Yes, I am.

10 MR. GALATI: Please go ahead and list
11 them, and we'll have to identify them as we go.

12 MS. ROGALLA: Okay. These are in
13 addition to what's included in the testimony.
14 These are documents that were previously docketed.
15 There's a number of them, so -- docketed on
16 October 9, 1999.

17 Valley Waste Disposal Company waste
18 discharge requirements. Item 2 a letter from
19 Radian International to the California Regional
20 Water Quality Control Board, Central Valley
21 Region, dated May 26, 1999.

22 MR. GALATI: Okay, thank you. Let me
23 stop there. Mr. Fay, can we just mark each one
24 for identification as we go? The first one was
25 Valley Waste Disposal Company waste discharge

1 requirements docketed on October 9th.

2 HEARING OFFICER FAY: These have not
3 previously been entered?

4 MR. GALATI: No, these are new.

5 HEARING OFFICER FAY: All right. That
6 will be exhibit 94. Could you repeat that
7 designation, please?

8 MR. GALATI: It is the Valley Waste
9 Disposal Company waste discharge requirements,
10 docketed on October 9, 1999.

11 Go ahead.

12 MS. ROGALLA: I'll repeat, item 2 would
13 be a letter from Radian International to
14 California Regional Water Quality Control Board,
15 Central Valley Region, dated May 26, 1999.

16 HEARING OFFICER FAY: That's exhibit 95.

17 MS. ROGALLA: Third item also docketed
18 October 9, 1999, a letter from the California
19 Regional Water Quality Control Board, Central
20 Valley Region to Radian International, dated June
21 2, 1999.

22 HEARING OFFICER FAY: That's exhibit 96.

23 MS. ROGALLA: Next, also docketed on
24 October 9, 1999, permit approval from Division of
25 Oil, Gas and Geothermal Resources for Valley Waste

1 Disposal Company, Water Disposal Project.

2 HEARING OFFICER FAY: That's exhibit 97.

3 MS. ROGALLA: Docketed on November 4,
4 1999, letter dated June 26, 1996, from Robert J.
5 Blanco of the U.S. Environmental Protection Agency
6 to Mr. Michael J. Paque, Executive Director of the
7 Groundwater Protection Council in Oklahoma City,
8 Oklahoma.

9 HEARING OFFICER FAY: Exhibit 98.

10 MS. ROGALLA: Docketed on November 4,
11 1999, memorandum dated August 10, 1987 from M.G.
12 Mefford, State Oil and Gas Supervisor, California
13 Department of Conservation, attaching EPA approval
14 to inject air scrubber waste and water softener
15 regeneration brine into class 2 wells.

16 HEARING OFFICER FAY: Exhibit 99.

17 MS. ROGALLA: Last, docketed November 4,
18 1999, a letter dated January 29, 1997, from
19 William Guerard, California Division of Oil, Gas
20 and Geothermal Resources, to Mr. Ron Pilorin,
21 California Department of Toxic Substances Control
22 re RECRA exempt EMP waste management.

23 HEARING OFFICER FAY: 100.

24 MR. GALATI: These exhibits have
25 previously been marked, so she'll just read those

1 into the record.

2 MS. ROGALLA: Exhibit 1, the AFC,
3 section 8.14; exhibit 2 transmission supplement 2,
4 section 3.14; exhibit 5, responses to CEC data
5 requests, responses 59 through 66 and 98; exhibit
6 6, responses to CURE data requests, responses 20B,
7 item I, 81A through E, and 86 A through E.

8 MR. GALATI: And, Ms. Rogalla, do you
9 have any corrections or modifications -- excuse
10 me, can you affirm your testimony under oath
11 today?

12 MS. ROGALLA: Yes, I can.

13 MR. GALATI: Mr. Marx, can you affirm
14 your testimony under oath today?

15 MR. MARX: Yes, I can.

16 MR. GALATI: Do you have any corrections
17 or modifications to that testimony?

18 MS. ROGALLA: We have one correction in
19 response to Mr. O'Hagan's errata tonight, and that
20 is our final item, item F, review of final staff
21 assessment conditions of certification. We are in
22 agreement with his errata -- with his correction,
23 so our item F no longer applies.

24 MR. GALATI: Okay, and with respect to
25 water resources only, did you find that the

1 project would comply with LORS with respect to
2 water resources, or would have any significant
3 impact on the environment?

4 MS. ROGALLA: We determined that the
5 project would comply with all applicable LORS and
6 would not result in any significant impacts on
7 water resources or water quality.

8 MR. GALATI: The water quality panel is
9 tendered for cross-examination.

10 PRESIDING MEMBER MOORE: Thank you. Ms.
11 Holmes?

12 MS. HOLMES: I have no questions.

13 PRESIDING MEMBER MOORE: Thank you. Ms.
14 Poole?

15 MS. POOLE: I have no questions.

16 PRESIDING MEMBER MOORE: Okay.

17 MR. GALATI: If I may just swear in my
18 soils witness.

19 PRESIDING MEMBER MOORE: Please do. I
20 think your panel's excused.

21 HEARING OFFICER FAY: Please swear this
22 witness.

23 Whereupon,

24 THOMAS CUDZILO

25 was called as a witness herein and after first

1 being duly sworn, was examined and testified as
2 follows:

3 MR. GALATI: On my left is Thomas
4 Cudzilo.

5 DIRECT EXAMINATION

6 BY MR. GALATI:

7 Q Could you please give your name, address
8 and current employment for the record.

9 A You want a home address, or what address
10 do you --

11 Q Work address would be fine.

12 A Work address, okay. My name is Thomas
13 Cudzilo, that's C-u-d-z-i-l-o. I'm a Principal
14 Scientist with Radian Corporation. We're in
15 Rancho Cordova at 10389 Old Placerville Road.

16 Q Have you prepared and previously
17 submitted written testimony in this proceeding?

18 A Yes, I have.

19 MR. GALATI: I'd like to have the
20 testimony of Thomas Cudzilo, soil resources,
21 marked next for identification.

22 HEARING OFFICER FAY: Marked exhibit
23 101.

24 BY MR. GALATI:

25 Q Are you sponsoring any exhibits at this

1 hearing?

2 A Yes, I am. I'm sponsoring exhibit -- a
3 portion of exhibit 1, the AFC and revisions,
4 section 8.9; exhibit 2 in the transmission
5 supplement number 2, it would be section 3.9; and
6 exhibit 5 in the response to CEC data requests,
7 response 67.

8 BY MR. GALATI:

9 Q Can you affirm your testimony under oath
10 today?

11 A Yes, I can.

12 Q Do you have any corrections or
13 modifications?

14 A No, I do not.

15 Q Would you briefly state whether you
16 think the project would have a significant impact
17 on the environment, and whether or not it will
18 comply with LORS?

19 A Based on my review I concluded that the
20 project, its indirect impacts and its contribution
21 to cumulative impacts will not be significant, and
22 the project will be in full compliance with LORS
23 affecting soil resources.

24 Further, I reviewed the final staff
25 assessment and its proposed conditions of

1 certification, and I agree that the soil
2 conditions and run-off control should be monitored
3 during construction.

4 MR. GALATI: At this time I'd like to
5 move in exhibits 94 through 101.

6 HEARING OFFICER FAY: Any objection?
7 So moved.

8 MR. GALATI: The witness is tendered for
9 cross-examination.

10 HEARING OFFICER FAY: Staff?

11 MS. HOLMES: I have no questions.

12 HEARING OFFICER FAY: CURE?

13 MS. POOLE: No questions.

14 HEARING OFFICER FAY: Thank you, that
15 was very nice.

16 PRESIDING MEMBER MOORE: Thank you.

17 HEARING OFFICER FAY: You've been one of
18 the most successful witnesses tonight.

19 (Laughter.)

20 HEARING OFFICER FAY: That concludes the
21 presentation of evidence this evening.

22 MS. POOLE: Hearing Officer Fay,
23 before -- I'm afraid you're going to close the
24 record or do something.

25 We have marked a number of air quality

1 exhibits and haven't moved those in. It's up to
2 the Committee, would you like us to move those in
3 tonight or wait until the 28th?

4 HEARING OFFICER FAY: Why don't we wait
5 until the 28th.

6 MS. POOLE: Fine.

7 HEARING OFFICER FAY: If you don't mind.
8 And I spoke to the parties earlier about a
9 briefing schedule, and if you could get out your
10 calendars and consider the following. I will
11 follow it up with an order if it seems reasonable.

12 I've identified three topic groups.
13 Group A includes all topics other than air
14 quality, public health, biology, soil and water
15 and worker safety.

16 Now, very few of those had disputed
17 issues, but there may be some details that some of
18 the parties might want to address.

19 That group, opening briefs due January
20 24th; reply briefs on February 3rd. I made that a
21 ten-day gap rather than a seven-day gap because of
22 the hearing that intervenes, the gap being between
23 the opening and reply briefs.

24 Topic group B is public health, biology
25 and worker safety. Opening briefs February 3rd;

1 reply briefs February 10th. Again, the opening
2 briefs a little bit later than I would have
3 counted just based on when the transcript will be
4 available, but it was a buffer because of the air
5 quality hearing.

6 And then the final group is topic group
7 C, air quality and water, soil and water
8 resources. Opening briefs February 7; reply
9 briefs February 14.

10 I have checked with our paralegal who
11 handles the transcript contract, and I believe
12 that it's reasonable to guess this transcript will
13 be available in about seven days.

14 MS. POOLE: This transcript?

15 HEARING OFFICER FAY: Yes, tonight's
16 transcript.

17 MS. POOLE: And for air quality and
18 water --

19 HEARING OFFICER FAY: And the previous
20 ones, the previous two days would be available
21 earlier.

22 MS. POOLE: For air quality and water,
23 which has now been scheduled for the 28th, and
24 briefs are essentially due ten days later, when
25 can we expect a transcript from that?

1 HEARING OFFICER FAY: Actually I may
2 have to revise that last date of the briefs. But
3 I do think we can get an expedited transcript on
4 that.

5 PRESIDING MEMBER MOORE: Unless we can
6 speed it along and we can sure try for that.

7 HEARING OFFICER FAY: Yes, --

8 MS. POOLE: Perhaps we can just tie it
9 to a certain period of time after the transcript?

10 HEARING OFFICER FAY: After the
11 transcript comes out.

12 MS. POOLE: Put on the net.

13 HEARING OFFICER FAY: Yes. Well, why
14 don't I just say ten days after the transcript
15 becomes available on the net will be the date
16 opening briefs are due, and then reply briefs
17 seven days later.

18 And we will attempt to get an expedite
19 on that transcript for January 28th.

20 MR. GALATI: And, Mr. Fay, I just want
21 to clarify something on the record here, just so
22 it's abundantly clear and no surprises, is I
23 understand what's going to happen is I'm going to
24 receive, for all intents and purposes, a data
25 request, or a list of interrogatory questions.

1 And those --

2 HEARING OFFICER FAY: By fax tomorrow.

3 MR. GALATI: Right, and I just wanted to
4 be clear that they're about the water and water
5 treatment, but if they get into the detail such as
6 name the manufacturer of one of the pieces of
7 equipment I will not be able to respond to that
8 Tuesday, nor would I think it would be
9 appropriate.

10 So I'm assuming that within reason the
11 questions will be within reason and I will do my
12 best to answer them.

13 HEARING OFFICER FAY: Yes, I think we
14 have to rely on that. My understanding is these
15 questions just go to testing techniques and it's
16 the kind of thing --

17 MS. POOLE: The bulk of the questions
18 are aimed at fully understanding how the treatment
19 process works, and its inputs and outputs, so that
20 we can evaluate the data.

21 HEARING OFFICER FAY: The treatment
22 process that's in place now.

23 MS. POOLE: Right, at the treatment
24 facility.

25 MR. GALATI: I would like to talk about

1 this now. The treatment facility at 222 is a
2 large treatment facility. There are processing of
3 oil that I will not be able to answer any
4 questions related to the produced water and how it
5 is softened or filtered, which are associated with
6 the tests that were performed and turned into soft
7 water to use by the boiler feedwater, be more than
8 happy to respond to.

9 A response was at least attempted to be
10 given in the data request set number 3 that sets
11 forth the different stages that things go through.
12 And there was somewhat of a schematic of the waste
13 streams that are associated, or the streams that
14 are associated with that.

15 So I don't know how much more detailed.
16 And I just wanted to let the Committee know that
17 if it gets very detailed I won't be able to
18 respond to that.

19 PRESIDING MEMBER MOORE: What you're
20 telling us is that you are capable of producing
21 information on the water treatment, but the
22 treatment facility, itself, also handles a number
23 of other types of treatment. And you're letting
24 us know that you can't provide information on any
25 of those other treatment methods or systems?

1 MR. GALATI: Right, very briefly crude
2 oil comes out of the ground with water. The oil
3 is separated. And then the water is separated. I
4 can tell you what happens to the water. I can't
5 tell you what happens to the oil.

6 PRESIDING MEMBER MOORE: Okay.

7 MS. POOLE: Well, what we're concerned
8 about, obviously, is the treatment of the water
9 that's going to supply the HRSGs and the --

10 PRESIDING MEMBER MOORE: Well, it sounds
11 to me like we're on the same page.

12 MS. POOLE: Yeah, this may be a very
13 theoretical conflict, here.

14 HEARING OFFICER FAY: And your questions
15 will pick up from where the answers that are
16 already in the record leave off, correct? You
17 will review the data response that he referred to
18 and the schematic in the --

19 PRESIDING MEMBER MOORE: Right, in other
20 words --

21 HEARING OFFICER FAY: -- testimony --

22 MS. POOLE: That's right, these won't be
23 duplicative of those data requests.

24 HEARING OFFICER FAY: I just wanted to
25 make sure that's understood.

1 MR. GALATI: And, Kate, I encourage you
2 to talk to me about it, too, as we're doing it so
3 we can avoid any objections, if you have any
4 questions or --

5 MS. POOLE: I'll send them to you. Give
6 me a call if you have a problem and we'll try to
7 work it out.

8 MR. GALATI: Okay.

9 HEARING OFFICER FAY: Good.

10 MS. HOLMES: And I'm assuming that these
11 will be faxed tomorrow, they'll also be served and
12 docketed?

13 HEARING OFFICER FAY: They will have to
14 be served, yes.

15 Okay, any other matters before we
16 adjourn?

17 MS. POOLE: One other matter. For the
18 group B briefing schedule you've included biology
19 and worker safety. And the due dates here, well,
20 for biology, we don't have a biological opinion.
21 And I understand from what Fish & Wildlife said,
22 won't have one for awhile.

23 And for worker safety we don't yet have
24 DTSC's thoughts on the phase two. And those
25 issues do impact our assessment of these issues.

1 HEARING OFFICER FAY: The biological
2 opinion, and here I'm making a call based on how
3 we've handled other cases, will be received into
4 the record when it comes. But, we're not going to
5 take additional evidence on it, you know, it will
6 speak for itself.

7 We do have evidence from those agencies
8 on what they think it's likely to be. And if it's
9 contrary in a way that requires some revision,
10 then the Commission would do that.

11 But, it's almost like, so, what. The
12 federal government makes a call and that will
13 change the project if it's different from what the
14 CEC's license says.

15 As to the DTSC report, can staff inform
16 us on when that would come in?

17 MS. HOLMES: I'm sorry, I missed the
18 question. Which report?

19 PRESIDING MEMBER MOORE: The DTSC.

20 HEARING OFFICER FAY: On the soil.

21 MS. POOLE: The DTSC's review of the
22 soil contamination issues.

23 MS. HOLMES: We had a phone conversation
24 with DTSC either late yesterday or earlier today.
25 Given that the hearings are going to be continued,

1 perhaps it would be appropriate to leave the
2 record open for that one issue so that we could
3 hopefully get something in writing or perhaps even
4 a person here to tell us what their conclusions
5 are.

6 HEARING OFFICER FAY: Do you think
7 they'll have their conclusions by the 28th?

8 MS. HOLMES: They gave us tentative
9 conclusions already, so I can't see any reason why
10 they wouldn't have conclusions by the next
11 hearing. So I suggest that we leave the record
12 open on I guess it came out originally under the
13 waste, but it's also worker safety and --

14 HEARING OFFICER FAY: Well, the record
15 will remain open to receive their official
16 expression. And you expect something in writing
17 from them?

18 MS. HOLMES: I don't know if it will be
19 in writing or whether it will be a person who
20 comes and testifies. All we have so far is a
21 phone conversation between DTSC and a staff
22 person.

23 But I will certainly do everything I can
24 to insure that we get one or the other.

25 HEARING OFFICER FAY: We'll leave it

1 open to receive that.

2 MS. POOLE: And the briefing schedule
3 for that issue? The opening briefs are currently
4 due on February 3rd. Can we move that back a bit
5 so we can handle those?

6 HEARING OFFICER FAY: Well, I'm afraid
7 not. I mean that is a discrete item. I think,
8 you know, you can comment on DTSC's position, but
9 that's fairly discrete. It's their call.

10 MS. POOLE: Okay.

11 HEARING OFFICER FAY: It is what it is.
12 And I think if they do send somebody it will
13 probably be handled the same way as what they did
14 today. You'd be able to ask questions about how
15 they reached it, but it probably would not be a
16 sworn witness.

17 Or they may send a report. I don't
18 which would be faster, though. A piece of paper
19 often is a slow way to communicate in government.

20 Okay, any further comments on the
21 briefing schedule? I take your suggestion that as
22 to the last group we will probably have to have
23 that a floating date tied to the availability of
24 that transcript.

25 Okay.

1 MR. GRATTAN: The briefing schedule is
2 acceptable. And understanding that the briefing
3 schedule holds irrespective of whether the
4 biological opinion comes in or the DTSC comments?

5 HEARING OFFICER FAY: Yes. And, you
6 know, that's something that if it's still
7 outstanding at the time the Commission has to
8 consider this whole thing, that's something you
9 might want to address as to why, but I don't think
10 we're going to wait on that.

11 All right, any other last matters?

12 All right, it's about 17 minutes to
13 8:00. I thank you all for being so enduring and
14 patient and we are adjourned.

15 MR. GRATTAN: And the applicant
16 appreciates you going late.

17 MR. GALATI: Thank you.

18 (Whereupon, at 7:38 p.m., the hearing
19 was adjourned, to reconvene Friday,
20 January 28, 2000, at this same
21 location.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, 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 the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2000.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345