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APPENDIX G

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DRAKE CHEMICAL SUPERFUND SITE  
SITE HEARING

TRANSCRIPT OF PROCEEDINGS

PRESENT: ROBERT MARTIN, Ombudsman  
GREGG CRYSTALL  
MIKE WELCH  
BILL HUDSON  
DAVID MODRICKER  
MIKE OGDEN  
GEORGE DUMBOR  
DAVID POLISH

DATE: MARCH 3, 1998, 1:45 P.M.

PLACE: DRAKE CHEMICAL PLANT  
LOCK HAVEN, PA 17745

**ORIGINAL**

NICOLE L. MATTERN  
NOTARY PUBLIC

1           MR. MARTIN: This is the meeting on the  
2 record with the national ombudsman in connection with  
3 the Drake Chemical superfund site in Lock Haven,  
4 Pennsylvania.

5           I am Robert Martin, the national ombudsman,  
6 and I am meeting with Gregg Crystall of our Region 3  
7 offices and also representatives of the State Department  
8 of Environmental Protection with Pennsylvania and the  
9 Army Corps of Engineers, our partner at the Drake  
10 Chemical site.

11           There may be issues that these gentleman wish  
12 to raise with me, but the essential issue which I wish  
13 to raise with them are the allegations made by a former  
14 employee here at the Drake site, I believe a contract  
15 employee of the Corps of Engineers, Mr. Kurt Davis, who  
16 submitted an affidavit to legal counsel for review not  
17 only by my office, but by EPA as well.

18           What I would like to do is go over, I guess,  
19 point by point the issues he did raise. And I don't  
20 know who the most appropriate party is.

21           MR. CRYSTALL: Before we start with the  
22 actual point by point, I just wanted to make a comment  
23 for the record as well, that Mr. Davis met with the  
24 Department of Justice, Office of General Counsel,  
25 myself, Mr. Yowell, Welch, and some attorneys from DEP.

1           They were with Commissioner Bottorf, Bill  
2 Smedley, and Mick Harrison. And we had the regional  
3 managers, Tom Voltaggio, Abe Ferdas, and others on a  
4 conference call to discuss the specifics of Kurt's  
5 affidavit. So we have contacted him, and we understand  
6 the issues he raised.

7           MR. MARTIN: When was that meeting held?

8           MR. CRYSTALL: Last Friday, the 27th of  
9 February.

10          MR. MARTIN: And that meeting was held in --

11          MR. CRYSTALL: In Williamsport, Pennsylvania,  
12 in an attorney's office who was associated with Mick  
13 Harrison.

14          MR. MARTIN: I don't have the actual  
15 affidavit before me, but I do have the regional and  
16 Corps of Engineers responses.

17          MR. CRYSTALL: Do you got that, Mike?

18          MR. MARTIN: You have the actual affidavit?

19          MR. OGDEN: I have a copy. Let's make a copy  
20 of that.

21          MR. MARTIN: Let the record show we'll be  
22 reviewing a copy of the affidavit that Mr. Davis  
23 submitted for consideration to EPA and the Office of  
24 Ombudsman.

25          MR. OGDEN: Do you need a copy of this as

1 well because that was attached? It's the letter to  
2 Carol Browner from Congressman Peterson, Senator  
3 Santorum, and Senator Specter.

4 MR. OGDEN: A point of clarification, Mr.  
5 Martin. You mentioned that Mr. Davis was a contract  
6 employee, that's not totally accurate. He was what we  
7 call a term employee. He was a federal employee hired  
8 for a particular term. It was a 13-month term.

9 He doesn't work for us now primarily because  
10 that term expired, and we chose not to bring him back  
11 when that expired in November, I believe, of '97.

12 MR. MARTIN: Okay. What was he hired to do  
13 for the Corps during his tenure?

14 MR. OGDEN: We have -- the responsibility to  
15 provide oversight is one of the responsibilities here.  
16 Mr. Davis' responsibility was initially to be what we  
17 call the lead construction representative on the night  
18 shift.

19 That short description would be, he was the  
20 highest graded construction rep that we had. We had  
21 three people on that shift. And what we did was ask  
22 Kurt to be the liaison, if you will, between the night  
23 shift crew and the day shift supervisors.

24 His responsibilities, as would be anyone's,  
25 in that quality assurance construction representative

1 role would be to provide the oversight of the actual  
2 operations at the field level, anywhere from operation  
3 of the waste water treatment plant, the excavation in  
4 the exclusion zone itself, transport of the material up  
5 to the feed prep building, the processing through the  
6 plant itself, up to the ash handling building, and then  
7 once that we got test results back, the disposition of  
8 that back to the site as a backfill material.

9 I noticed in the affidavit, and I tried to  
10 clarify a little bit in our memorandum of the record, is  
11 that Mr. Davis was not really a supervisor. That has a  
12 particular connotation in the government.

13 He did not have any supervisory  
14 responsibilities. He was a construction representative,  
15 a supervisor in the sense that in our role as a Corps of  
16 Engineers, we have a supervisory role over the  
17 contractor.

18 MR. MARTIN: Did he have any staff which  
19 reported to him?

20 MR. OGDEN: No.

21 MR. MARTIN: He did not, okay.

22 MR. MODRICKER: There were two lower grade  
23 employees that worked on that same shift.

24 MR. MARTIN: Okay.

25 MR. OGDEN: Now, he was on the night shift,

1 and I don't know the exact dates, for a period of  
2 probably two months or so, Dave, and then he was  
3 reassigned to the day shift and worked -- and at that  
4 point, he had no one working for him at all.

5 He actually worked -- he did not even have  
6 any of the lead responsibilities. That was a  
7 responsibility of Mr. Ricard, I don't remember the exact  
8 dates, Dave, do you?

9 MR. MODRICKER: No, but we can find them  
10 easily.

11 MR. MARTIN: What are Mr. Ricard's  
12 responsibilities?

13 MR. OGDEN: Mr. Ricard is really the -- he is  
14 the lead supervisor -- not supervisory, he's the lead  
15 construction rep for all the shifts. He works the day  
16 shift. He would be responsible to collect the shift  
17 reports from all the different construction reps of all  
18 the different shifts and to consolidate those reports  
19 into one daily report that we -- that documents all the  
20 activities that are occurring on the site.

21 We use that to supplement our contractors  
22 reports for all the different activities that are  
23 occurring as well as all the chemical analyses and  
24 chemical sampling that's occurring.

25 MR. MARTIN: And how many shifts are there?

1           MR. OGDEN: We have three shifts, 24 hours a  
2 day, seven days a week during the trial burn. We  
3 anticipate that we're going to continue to do that, you  
4 know, mirror that during the production burn as well.

5           MR. MARTIN: And for each shift, a report was  
6 prepared?

7           MR. OGDEN: Yes. We have -- each  
8 construction rep would be responsible to prepare his  
9 portion of the shift report. Those would be  
10 consolidated into one what we call a daily quality  
11 assurance report.

12          MR. MARTIN: And the shift reports and the  
13 daily report were all prepared by the Corps of  
14 Engineers?

15          MR. OGDEN: We prepared a report, those shift  
16 reports and quality assurance reports, and our  
17 contractor prepares an independent report, what he calls  
18 our -- in our term or vernacular would be a quality  
19 control report.

20                 So we marry the quality report with the  
21 quality assurance report, and they become the activity  
22 reports for the day.

23          MR. MODRICKER: I'm just going to make a  
24 clarification that at times we have assistance from  
25 Montgomery Watson. And during those times, if they act

1 in a quality assurance role, they will also prepare and  
2 attach a quality assurance shift report.

3 MR. MARTIN: The contractor you mentioned,  
4 would that be OHM?

5 MR. OGDEN: OHM, yes.

6 MR. MARTIN: Okay. I just wanted to make  
7 that clear. The shift reports and the daily reports,  
8 the daily report is a compilation of the QA and QC --

9 MR. OGDEN: Say that again.

10 MR. MARTIN: Is the daily report a  
11 compilation of the QA and QC reports for the day?

12 MR. OGDEN: Yes.

13 MR. MARTIN: Are those reports here at the  
14 repository or the Drake site?

15 MR. OGDEN: They're not at the repository.  
16 They're here on site. They're fairly lengthy,  
17 voluminous, however you say that, voluminous.

18 MR. MARTIN: Very big.

19 MR. OGDEN: Very big. Because they do -- a  
20 daily report may look as thick as an inch thick,  
21 primarily because it does include all of the test  
22 results for all the sampling that may have occurred that  
23 day.

24 And if you got -- if it's a day that we've  
25 done air sampling, say, at the perimeter off site water

1 sampling at the water treatment plant, ash sampling, all  
2 of those reports would be included in that daily report.

3 So we have not included those in the  
4 repository at this time. They are available to whoever  
5 wants to look at them, but they're just so big that we  
6 haven't put multiple copies in multiple locations.

7 MR. MARTIN: We'll let the record show the  
8 reports are present at the site and are available. I  
9 may want to review those. Not necessarily today, but --

10 MR. CRYSTALL: We can probably pull the ones  
11 out that you would be interested to look at if you need  
12 them.

13 MR. MARTIN: Okay.

14 MR. OGDEN: Or samples, whatever you might  
15 want.

16 MR. CRYSTALL: Can I just suggest when we go  
17 down issue by issue, maybe we can do it -- let me take a  
18 stab at it first. The responses that we sent to the  
19 senators and congressman were more scaled back in terms  
20 of our -- or compared to what the Corps did.

21 The Corps offered us full explanations, which  
22 they gave us this morning, which you have now and the  
23 public has. But we actually got the information that  
24 the Corps sent us last week and offered some more  
25 shorter-to-the-point explanations without going into so

1 much detail.

2 And maybe if you need the Corps to expand on  
3 what we give you, and if you wanted to do that now that  
4 they're here, you can take a look at that at your  
5 convenience afterwards. But let me take the first stab  
6 at it.

7 MR. MARTIN: At this juncture, then, what I  
8 would like to do is proceed with the issues raised in  
9 the affidavit as Gregg Crystall has suggested, he can go  
10 ahead and provide a brief explanation of each issue.  
11 And if I have specific questions, perhaps the Corps can  
12 join in with details.

13 MR. CRYSTALL: Sure.

14 MR. OGDEN: That's fine.

15 MR. CRYSTALL: The first issue that Mr. Davis  
16 brought up was the inability of our sampling method to  
17 achieve the contract detection limit for  
18 beta-naphthylamine. And he questions whether the steam  
19 from the incinerator may contain dust, which would be a  
20 source of fugitive emissions.

21 The contract that was signed with OHM, and  
22 which OHM left with MRI, Midwest Research Institute to  
23 do the air sampling, MRI indicated that they would be  
24 able to achieve a very low detection limit of  
25 beta-naphthylamine using the method that they suggested.

1 I believe that level -- well, I'm not even  
2 going to say what the level is. I don't want to  
3 misspeak with levels. The Corps can get to that if you  
4 need it.

5 We realized during the trial burn phase -- I  
6 realized during the trial burn phase, MRI brought it to  
7 our attention prior to that, that they couldn't reach  
8 the detection limit that they were contracted to do.

9 In fact, what we did realize is we can detect  
10 beta-naphthylamine at a level which is less than the  
11 State average toxic guideline level of 19 micrograms per  
12 liter of beta-naphthylamine; we definitely can determine  
13 that that's the only regulatory level out there.

14 And we were confident we did that during the  
15 trial burn and prior to the trial burn to measure at the  
16 perimeter of the site. What we did after the trial burn  
17 was over is we got the quality assurance folks and  
18 chemists from MRI, from the Corps, and from OH together,  
19 along with folks from our region, to figure out the best  
20 way of monitoring beta-naphthylamine at the perimeter.

21 Our goal at EPA Region 3 was to be able to  
22 detect beta-naphthylamine at a level at the fence line  
23 at this site that would be protective of public health.  
24 What level can someone stand out at the site for two  
25 full years of burn and be safe at, what do we need to

1 detect at the fence line?

2 Working with the Occupational Safety and  
3 Health Administration, OSHA, talking to the folks who  
4 formulated their Method 93 for beta-naphthylamine  
5 sampling were able to modify that to allow us to be --  
6 reach a level of detection of beta-naphthylamine at the  
7 fence line that is protective of public health, and that  
8 is what we are using right now.

9 MR. MARTIN: Is that one part per million?

10 MR. CRYSTALL: No. Actually, it is .008  
11 micrograms per cubic liter of BNA, beta-naphthylamine,  
12 is what we can detect to. Our understanding is we're  
13 talking about a .02 microgram per liter is the level we  
14 needed to see. So we're actually seeing a level that's  
15 protective of public health perimeter.

16 MR. OGDEN: You keep mentioning microgram per  
17 liter. -- It's cubic meter. That's a big difference.

18 MR. CRYSTALL: Yes. That's a big difference,  
19 yes. Thank you. And that's pretty much our response.  
20 We had problems initially, we could not, and we won't  
21 achieve that contract.

22 But as partners, DEP, EPA, the Corps and OH  
23 has developed this method which we feel is a real good  
24 method to evaluate beta-naphthylamine at those low  
25 levels, and that's what's instituted now and will be

1 throughout the production burns at the site.

2 That's our response to the first part of the  
3 issue. The second part is we believe that the steam  
4 coming from the ash after we quench it with water to  
5 cool it down a little bit is not considered a fugitive  
6 emission.

7 I know there's other information. These are  
8 important issues that Mr. Davis brought up, and these  
9 are things that we knew about before he brought them up,  
10 and we've been addressing since he brought them up and  
11 since before he brought them up.

12 And one of the things that we even talked  
13 about this morning was there is something we can use to  
14 capture particulates from the steam if it looks like  
15 it's a regulatory problem.

16 You know, perception-wise, we're not going to  
17 touch it. If there's steam there and we're confident  
18 it's clean, it's not a fugitive emission. We're fine  
19 with that, and we're fine with all of the safety  
20 procedures instituted by OH and approved by the Corps.

21 If it's an issue where we see particulates in  
22 the steam, we're talking a possible regulatory issue now  
23 that DEP would have concern with, we're prepared if we  
24 see that regularly to address it.

25 But our position right now is that just

1 because there's steam coming from the wet ash, doesn't  
2 mean it's a particulate problem where people are being  
3 exposed to beta-naphthylamine. That is where EPA stands  
4 on the response right now, and I'm sure Mike and Dave  
5 can expand if you need it.

6 MR. MARTIN: Did Mr. Davis ever prepare one  
7 of the shift reports during his tenure with the Corps?

8 MR. OGDEN: Yes, he prepared shift reports.

9 MR. MARTIN: Did he ever note in his shift  
10 reports his perception that there was a problem with  
11 fugitive emissions?

12 MR. OGDEN: Yes. As a matter of fact, he was  
13 one of the first ones to come to us from the field staff  
14 to say that I think that there is a -- he had a concern  
15 that we -- he didn't talk specifically about the testing  
16 method.

17 But he was talking about the steam issue and  
18 that he was concerned initially, as I recall, that we  
19 had downgraded that pad area, the incinerator TDF pad  
20 from Level C, which would be requiring that you wear a  
21 respirator to Level D. He was concerned we didn't have  
22 a method that would test it.

23 Now, you got to go back a little bit in  
24 history, that was before we had the OSHA 93 method, and  
25 we were in the process of trying to validate the

1 contract specified TO-13 method to get it down to the  
2 very low levels that MRI had initially thought they  
3 could hit.

4 When they couldn't reach that -- we were in  
5 that method validation process, method detection limit  
6 process, that's the time frame when Kurt came and said  
7 if you can't tell me what it is, then how can you tell  
8 me that there's not a problem?

9 We were at the point of knowing that  
10 something that was well below the State's PA/ATG number  
11 of 19, we knew we could -- that we had numbers that were  
12 very, very good in that area, ten times better than  
13 that, you know, one to two micrograms per cubic meter.

14 So we knew that based on the criteria that  
15 had been initially established, that we didn't have a  
16 problem. But the concern was, when you sit down and say  
17 you're looking at a target that's .001, and that was the  
18 initial target that MRI had established, and we were at  
19 2, you know, Kurt's concern that he raised, and it was a  
20 valid one, is that what's the prognosis if you're in  
21 between there some place. That's when we got --

22 MR. CRYSTALL: And that's specifically his  
23 concern. He realized in the meeting Friday, and he  
24 understands that the industrial hygienist for OH and the  
25 Corps had certified this as an area you don't need

1 respiratory protection.

2 His contention was but you can't tell me  
3 exactly how much beta-naphthylamine is there, and he's  
4 right, at that point we couldn't; therefore, I'm wearing  
5 a respirator. That's Kurt's position. He came out and  
6 said that Friday. And that was his position.

7 MR. OGDEN: What we did at that point was, as  
8 Gregg said, we went to the effort -- we already had  
9 initiated the effort with MRI to evaluate that. We went  
10 back and started asking the question, okay, let's make  
11 the assumption that we're not going to be able to hit  
12 the target at .001, what is the level that we really  
13 have to have?

14 Is the State's level of 19, you know, the ATG  
15 value of 19 micrograms per cubic meter, is that a good  
16 number? So we had the toxicologist and all those folks  
17 wrestle with the number, and they came up with what we  
18 felt was a pretty substantially much lower number than  
19 what the State's ATG level might be.

20 MR. CRYSTALL: Which is where we came out  
21 that we're actually analyzing and detecting  
22 beta-naphthylamine at a thousand times less than we  
23 needed to regulatory, 10,000 times less than we needed  
24 to regulatory.

25 MR. MARTIN: With respect to the State level.

1 MR. CRYSTALL: ATG, which is the only  
2 regulatory level we have. But we are protective of  
3 public health at the level we can't find it at.

4 MR. OGDEN: So the answer that we gave  
5 ultimately after a month or more of going through those  
6 generations, the answer we got back to Kurt was that the  
7 fact that you have steam on the pad, is not necessarily  
8 a fugitive emission, by definition, it's not.

9 Are we protective of worker health and  
10 safety, again, we ended up at that point, we were  
11 defaulting back to No. 1, the State's ATG values, but  
12 also going back to the OSHA numbers and the NIOSH  
13 numbers.

14 And so we went back through our industrial  
15 hygiene folks, those people who we hold responsible to  
16 make sure that our workers are protected to make sure  
17 that we had followed all the published and non-published  
18 criteria to make sure that we were protecting our people  
19 at safe levels.

20 They assured us that we were. Based on that,  
21 we established the procedure that we would go ahead and  
22 upgrade the pad to Level D -- or I'm sorry, downgrade  
23 it, not upgrade it.

24 And the concerns -- of course we had some  
25 operating perimeters out there. We have industrial

1 hygiene sampling that goes on routinely whenever there's  
2 operations going on on the pad. It's a plethora of  
3 different things, wipe samples and air monitoring and  
4 the like.

5 And if, in fact, we have any indications that  
6 we need to upgrade to Level C or higher, we do.

7 MR. CRYSTALL: And there's reasons to make  
8 sure, that want to make sure, that people are wearing  
9 the appropriate level of protection on the site. It's a  
10 very cramped site. There's a lot of equipment and  
11 people cramped into nine acres.

12 There's a lot of areas, especially at night,  
13 that are in shadows and dark and you really can't see.  
14 And, quite frankly, a respirator limits your visibility  
15 considerably in situations like that.

16 And OSHA recommends, and our agency follows  
17 the guidelines that if you don't need it, don't use it  
18 because it's sometimes more dangerous to have protection  
19 you don't need than not to use the protection.

20 And that is pretty much the basis of, I  
21 guess, where the Corps came to tell Kurt if you don't  
22 need the respirator, then we don't want you to wear it  
23 out there. It's pretty much that is the justification  
24 for it. If it's not needed, don't use it. There's a  
25 risk in using it if you don't need it.

1 MR. MARTIN: Yeah. When did MRI recognize  
2 that they could not meet the original contract air  
3 monitoring?

4 MR. OGDEN: Back up. The contract did not  
5 specifically identify any limits. What the contract  
6 clearly established was -- I forget the wording in here,  
7 Dave, you got to help me.

8 MR. MODRICKER: They specified a sampling  
9 method, the contract specified --

10 MR. OGDEN: And an action level.

11 MR. MODRICKER: The contract specified a  
12 sampling method and an action level. It specified a  
13 sampling method of TO-13. And it specified an action  
14 level of the PA/ATG value of 19 micrograms per cubic  
15 meter. That's what the contract specified.

16 MR. OGDEN: And part of the procedures that a  
17 lab would do, though, what happened was that that method  
18 did not have a method detection limit for  
19 beta-naphthylamine, BNA.

20 MR. MODRICKER: Based on other -- this is my  
21 understanding. Based on other semi-volatile compounds,  
22 the subcontractor lab estimated a detection limit for  
23 BNA, beta-naphthylamine, to be .001 micrograms per cubic  
24 meter.

25 In the monthly reports that that

1 subcontractor prepared -- I may be getting more  
2 technical than I need to.

3 MR. MARTIN: Please go ahead.

4 MR. CRYSTALL: Your question is, we had a  
5 memo from MRI in the file about nine months or so before  
6 we actually took -- before EPA and DEP took aggressive  
7 action to try to fix it.

8 But during that time frame, the Corps and OH  
9 were working with MRI to try to develop this. I came in  
10 on the project right before the trial burn, and I wasn't  
11 aware of these things. I did become aware when it  
12 became a more prioritized issue in terms of our  
13 perception.

14 MR. MODRICKER: MRI did not necessarily  
15 report that they could not meet the detection limit.  
16 What they reported --

17 MR. OGDEN: The estimated detection limit.

18 MR. MODRICKER: The estimated detection  
19 limit. What they reported was that they were having  
20 difficulty recovering a surrogate compound that is  
21 spiked on the puff XAD resin.

22 MR. MARTIN: This is the amino surrogate  
23 compound for detecting BNA?

24 MR. CRYSTALL: Right.

25 MR. MODRICKER: Yes. There was a surrogate

1 recovery issue; because the surrogate recovery was lower  
2 than what was estimated or anticipated, it called into  
3 question the detection limit, and that's when we began  
4 investigating issues concerning recovery of the compound  
5 and doing studies to improve the recovery of the  
6 compound.

7 MR. OGDEN: We realized at that point we were  
8 pushing science. We were really pushing science. Not  
9 only were we looking to see angles on the head of a pin,  
10 but, you know, the change in the pocket of the angel on  
11 the head of a pin.

12 And that's when we got EPA and DEP and said  
13 wait a second, we know we can see it ten times less than  
14 what the Pennsylvania ATG value is, around one and a  
15 half to two micrograms per cubic meter.

16 But because we're getting such low recovery,  
17 we can't guarantee that we're ever going -- that we're  
18 going to be able to see it at .001 micrograms per cubic  
19 meter. So we did a bunch of bench scale recoveries in  
20 trying to get down to .001, trying to use different  
21 surrogates.

22 And when we realized that we weren't going to  
23 get any better than around 2, that's when we said, well,  
24 we need to start looking for other methods. So we got  
25 our air chemists and MRI's air chemists and EPA went out

1 and basically scoured industry to try to find out if  
2 there was another method that's available.

3 Again, realizing that we were well within the  
4 regulatory requirements, but now that this issue had  
5 been raised that, you know, there's this published  
6 estimate out there of .001, is that -- should we be  
7 going and looking for more -- a better system.

8 Even when we found the OSHA 93 method, what  
9 we found is that we had to modify that method to be able  
10 to use large volume recovery as opposed -- it was really  
11 established for small volume recovery for BNA, a little  
12 different analysis procedure, but with some adjustments,  
13 we would have been able to.

14 We did bench scale testing on that, and my  
15 recollection -- and that's when we came up with the .008  
16 micrograms per cubic meter.

17 MR. CRYSTALL: We had a goal to meet, we had  
18 a level from the toxicologist that we wanted to make  
19 sure we can detect that or --

20 MR. OGDEN: So back to your original  
21 question, though, you know, did Kurt prepare anything?  
22 Yes, he prepared some general comments initially, just  
23 issues of concern to him that when I'm walking on the  
24 pad -- as we were downgrading, when I walk on the pad, I  
25 have a concern that I may get doused with steam and that

1 ash -- his concern was really more along the lines of I  
2 have a -- it wasn't with those low recovery issues.

3 It was more, you know, a gut feeling I have  
4 ash that's supposed to be at 55 parts per billion when  
5 -- to be able to be clean. Now, he's talking -- he  
6 started to mix his metaphors here a little bit.

7 But he was talking about ash that didn't  
8 pass. And since I have now ash that doesn't pass, could  
9 it possibly be that I have steam or vapor of something  
10 semi-volatile that is going to be dangerous to me?

11 That was the other reason we got our chemists  
12 and industrial hygiene people to come back and start  
13 doing some mass balance equations to say is that a  
14 problem, if I had beta-naphthylamine, worse case of, you  
15 know, a thousand parts per billion, what's the potential  
16 to say steam stripped beta-naphthylamine out of that ash  
17 and is that a problem?

18 Again, the response that we got back from our  
19 chemist was that that's not a problem at all. The only  
20 problem you might have is if you have particulates that  
21 were really ingrained in the steam.

22 MR. MODRICKER: Then we did steam sampling.

23 MR. OGDEN: Then we did steam sampling, which  
24 pretty much proved that beta-naphthylamine in the steam  
25 is non-detect.

1 MR. MARTIN: Perhaps this is a fairer  
2 question for MRI, but had MRI ever achieved a detection  
3 level for BNA at the 001 level elsewhere, at other  
4 sites?

5 MR. OGDEN: No.

6 MR. MARTIN: So had they ever -- what was  
7 their experience with respect to detecting BNA at other  
8 sites in the air monitoring networks?

9 MR. OGDEN: I don't know. That would  
10 probably be a fairer question for them.

11 MR. MODRICKER: Yes, it would be.

12 MR. OGDEN: I know that -- at least I got the  
13 impression in talking to MRI, that during their  
14 procedures to establish this detection limit, that at  
15 least the people we were talking to didn't seem to have  
16 any experience.

17 You got to understand that the -- they have  
18 lots of experience. But even now -- let's say EPA  
19 establishes a method to recover volatiles or  
20 semi-volatiles that there are, you know, hundreds or  
21 thousands of those chemicals that they don't necessarily  
22 go out and establish a method of detection on it for  
23 that particular compound.

24 They establish it for a family of compounds.  
25 So the fact that there was not a detection limit for BNA

1 is not surprising. They didn't seem to be -- in talking  
2 to the Corps air chemists, they were not surprised that  
3 there was not a method detection limit established  
4 already, a published method limit established for BNA.

5 MR. MARTIN: Thank you. Going back to Mr.  
6 Davis again, and his observations on the issue of  
7 fugitive emissions from the site, when he worked during  
8 his shift near the TDF pad, besides observing what he  
9 deemed fugitive emissions, did he ever report any  
10 incident or incidents in which he had difficulty  
11 maintaining his Level C respirator, Level C safety  
12 equipment?

13 MR. OGDEN: I don't know. I guess I would  
14 have to go back and look at the reports for those. Does  
15 that ring a bell with you?

16 MR. MODRICKER: I'm going from memory; I  
17 don't recall Kurt Davis discussing with me concerns that  
18 his Level C respirator wasn't working; is that the  
19 question?

20 MR. MARTIN: Yes, that's the question.

21 MR. CRYSTALL: Unless he wasn't allowed to  
22 use it.

23 MR. MARTIN: Well, that's a different  
24 question.

25 MR. MODRICKER: Unless there's an issue of

1 wearing the respirator standing in the steam and how  
2 effective that is, that may be a concern that he had,  
3 but I don't recall.

4 MR. CRYSTALL: It would surprise me that  
5 someone who goes to the OSHA 40-hour training would not  
6 know how to fix their respirator or go to the supervisor  
7 -- not go to the supervisor and have it fixed. I don't  
8 understand that question.

9 MR. OGDEN: I would have to review the file.  
10 I don't recall that as an issue ever with Kurt or  
11 actually, with anyone else.

12 MR. MODRICKER: Yes, that's the best answer I  
13 could probably give for the record. I don't remember.  
14 I would have to check.

15 MR. MARTIN: I guess the precise question  
16 would be with respect to his respirator in Level C when  
17 he worked during the shift near the TDF area, did he  
18 ever report that his respirator had ruptured, that his  
19 carbon filter unit become fully absorbed, did that ever  
20 occur to your knowledge during his tenure?

21 MR. OGDEN: Don't know.

22 MR. MODRICKER: Once again, I don't recall  
23 off the top of my head. I would have to check. If that  
24 happens, they are instructed to report it and  
25 specifically to the health and safety officer that's on

1 duty.

2 That's the procedure that someone's supposed  
3 to take if they get breakthrough with the respirator,  
4 any employee anywhere on site.

5 MR. MARTIN: Okay.

6 MR. MODRICKER: And that should be documented  
7 if an employee reports breakthrough. Is that something  
8 you need me to check on?

9 MR. MARTIN: Yes please. Was Mr. Davis ever  
10 asked not to wear his respirator, his Level C protective  
11 equipment?

12 MR. OGDEN: That's a good question. He asked  
13 if -- after we went through these discussions about the  
14 steam, he was still not satisfied with the answer. He  
15 went to our industrial hygienist at the Baltimore  
16 District.

17 The response he got from the industrial  
18 hygienist was -- and at the same time I had gone to the  
19 industrial hygienist and asked kind of a little  
20 different question.

21 And my question was, please review the OHM's  
22 industrial hygiene protocols and their decision to  
23 downgrade on the pad and tell me if that's a good  
24 decision or not.

25 At the same time, my understanding is that

1 Mr. Davis went to the industrial hygienist and asked a  
2 similar question and also if he could continue to wear  
3 his respirator.

4 When the answer came back, the industrial  
5 hygienist gave me an answer and also gave a similar  
6 answer to Mr. Davis. And the answer was that in the  
7 industrial hygiene business, you never, ever deny  
8 someone the opportunity to be more protective.

9 And he also reported that the procedures that  
10 OHM was using to determine the downgrade, the level of  
11 protection on the pad, and that's primarily what we're  
12 talking about is in this area where's there's steam on  
13 the pad.

14 MR. MARTIN: The TDF pad?

15 MR. OGDEN: The TDF pad. I'm sorry. That  
16 those procedures were, in fact, good procedures. And as  
17 an industrial hygienist, he agreed with the level to  
18 downgrade that OHM had established.

19 At that point, as one of the site  
20 supervisors, you know, I met with Mr. Davis and said I  
21 have a concern that we have as a Corps employee in your  
22 oversight role that we want to be -- No. 1, we want to  
23 be safe.

24 I've got a -- I've got two industrial  
25 hygienists now who tell me that we are at the

1 appropriate level of protection, and knowing that OSHA  
2 has got -- you know, their recommendations are always to  
3 stay at the recommended level of protection, and the  
4 fact that since you are the Corps of Engineers person on  
5 site, that there is a perception that we're telling you  
6 one thing and telling the workers something else.

7 MR. MARTIN: Meaning the OHM --

8 MR. OGDEN: The OHM, yeah, the workers on the  
9 pad that are also working right next to Mr. Davis. At  
10 that point, what I told him is that I wasn't going to  
11 force him to wear or not wear a respirator, but that our  
12 Corps policy was going to be we were going to follow  
13 OHM's established procedures for health and safety at  
14 this site.

15 And that if he didn't want to wear a  
16 respirator, he wouldn't have to go on the pad. Now, as  
17 a supervisor, I need him to go on the pad, and so I  
18 would have to review his, you know, the need to have  
19 somebody who's working for me that is not in the areas  
20 that I needed him to go into.

21 Now, that's a decision that we are very clear  
22 with all the people, I'm sure with Mr. Davis as well,  
23 that when we go out onto the project, that it is a  
24 hazardous waste site and there were going to be  
25 situations you're going to get into that are going to be

1 potentially hazardous, but you have to go there, that's  
2 part of your function, part of why you're hired.

3 So what I tried to be was very clear with Mr.  
4 Davis that the decision was his if he wants to go on the  
5 pad or not. But if he were to go on the pad, I expected  
6 him to follow OHM's guidance for protection.

7 That was the last I heard of it. He did not  
8 wear his respirator on the pad from there on. I think  
9 that was pretty close -- I'd have to go back and check  
10 the dates, but we were probably within a month or two of  
11 finalizing the trial burn. Does that sound -- do you  
12 recall having any other conversations?

13 MR. MODRICKER: I had a conversation with  
14 Kurt, but it was somewhat different than yours.

15 MR. OGDEN: That was the last one I remember  
16 having with him.

17 MR. MODRICKER: I don't know if mine was  
18 before or after your conversation with him.

19 MR. OGDEN: I don't know if that clarifies  
20 your --

21 MR. MARTIN: Well, that helps. Do you want  
22 to share yours or do you want to --

23 MR. MODRICKER: Sure. He basically  
24 approached me with a concern of wearing a respirator on  
25 the pad and whether or not he would receive hazard duty

1 premium for wearing a respirator.

2 When you wear a respirator in the exclusion  
3 zone, you get a premium pay of 25 percent for wearing a  
4 respirator. When Kurt approached me on the subject, I  
5 also either referred him to or discussed the same  
6 subject with our industrial hygienist, Charlie Bragdon,  
7 with the Baltimore District.

8 And basically, what I ended up telling Kurt  
9 is that the industrial hygienist for OHM and the Corps  
10 have indicated that the downgrade to Level D is  
11 appropriate. It's backed up with the testing, the  
12 analytical testing and whatnot.

13 As far as wearing his respirator, I basically  
14 told him what I understood our CIH to say, which was I'm  
15 not going to tell you you can't wear it. But I will  
16 tell you that you're not required to wear it, and as  
17 such, you will not get hazard duty pay if you wear a  
18 respirator in an area that you're not required to.

19 It would be equated to me sitting here  
20 wearing a respirator in a support zone and just because  
21 I put it on, doesn't mean I get hazard duty pay for that  
22 shift. Those were my discussions with Kurt on the  
23 subject.

24 MR. OGDEN: And I didn't have those  
25 conversations with Kurt, but I had a similar

1 conversation with Charlie Bragdon as well. So there was  
2 an issue of pay associated with this, aside from just  
3 the whole idea of wearing the respirator.

4 MR. MARTIN: I understand that, and I'll let  
5 the record show that.

6 MR. CRYSTALL: We took care of Issue 5, I'll  
7 tell you that.

8 MR. MARTIN: To finish this first issue  
9 raised in his affidavit, the issue of a dust laden  
10 steam, correct me if I'm wrong, was that sampled at all?

11 MR. CRYSTALL: The dust in the steam?

12 MR. MARTIN: Yeah.

13 MR. CRYSTALL: I believe it was.

14 MR. OGDEN: Yes, it was.

15 MR. CRYSTALL: And I don't think we found  
16 beta-naphthylamine in those samples.

17 MR. OGDEN: Right. It was non-detect in the  
18 three valid samples that we collected, as well as in the  
19 TO-13 sampling that we had done earlier.

20 MR. CRYSTALL: Another check we also had in  
21 this area is the instruments that were in this area, the  
22 machinery that was in this area when after it's used  
23 gets a wipe test.

24 The workers that are in this area that come  
25 into contact with the ash and the waste feed where

1    beta-naphthylamine is, wear detection patches underneath  
2    their gloves to see if there's been any type of  
3    infiltration through their protective clothing.

4                   And I don't believe he found any workers who  
5    -- there was one hit one time, I believe, someone who  
6    had a beta-naphthylamine hit under a glove.

7                   MR. MODRICKER: I'm not aware of that.

8                   MR. CRYSTALL: Okay. Well, there might have  
9    been. I don't recall hearing more than one. And the  
10   only other time we found beta-naphthylamine was off  
11   Michelin tires on the trucks that come in. For some  
12   reason, Michelin tires showed beta-naphthylamine when  
13   you tested it.

14                   MR. OGDEN: They did some sampling to verify  
15   that that was what we call a false positive.

16                   MR. CRYSTALL: Right, it was. It wasn't from  
17   the site. It was related to the actual make-up of the  
18   tire.

19                   MR. MODRICKER: That was typically -- just to  
20   clarify it, that was typically on the tires was a wipe  
21   test on tires of loaders or equipment leaving the  
22   exclusion zone that had been de-coned.

23                   And that's part of the de-con procedure is to  
24   verify that there's no beta-naphthylamine left that you  
25   haven't cleaned off that's leaving the site. That's

1 where the issue came up with the tires and the false  
2 positives.

3 MR. CRYSTALL: And as we are now, we don't  
4 think fugitive emissions in terms of dust from the steam  
5 generated by cooling the ash down is a problem. We have  
6 seen it on an occasion. We don't think it's a regular  
7 occurrence.

8 If it looks like it's going to be a regular  
9 occurrence, we're prepared to put something on it to  
10 capture the particulates coming from the steam. And as  
11 I mentioned earlier, if it's just a perception that  
12 there's a lot of steam coming from this area, that's  
13 just a perception.

14 MR. MARTIN: Who did the sampling for the  
15 dust particulate in the steam; was that MRI?

16 MR. OGDEN: Yes, I believe.

17 MR. MODRICKER: Dust particulate.

18 MR. MARTIN: That's going back to the earlier  
19 question, the dust laden steam.

20 MR. OGDEN: The steam sample that we did with  
21 Method 5, did MRI do that?

22 MR. MODRICKER: Yeah, MRI did the analytical,  
23 and we had it oversight by the Corps and, I think, Focus  
24 was out there also.

25 MR. MARTIN: Was that with the use of PID

1 instruments?

2 MR. MODRICKER: That was an impinger system.  
3 I believe it was a Method 5 --

4 MR. MARTIN: Impinger solution?

5 MR. OGDEN: Right, very similar to the way we  
6 did some of our stack sampling.

7 MR. MODRICKER: Is that the testing you were  
8 referring to?

9 MR. MARTIN: Yes. Theoretically, if there  
10 were a problem with vapor emissions from the ash  
11 stockpiles, what could be done to address that? Even if  
12 you had remarked earlier it's just a perception problem,  
13 what could be done?

14 MR. OGDEN: You're asking about the stockpile  
15 or are you talking about the --

16 MR. CRYSTALL: A vapor problem or a  
17 particulate problem?

18 MR. MARTIN: Well, maybe, you know, fill me  
19 in.

20 MR. CRYSTALL: Well, the particulate problem  
21 is easy. You can get something -- some type of scrubber  
22 to get the particulates out and make sure it's just  
23 steam going off.

24 In terms of the actual presence of volatile  
25 chemicals coming off in the steam, I don't see how

1 something that's been subjected to close to 1800 degrees  
2 coming out to 800 to 900 degrees would have a  
3 volatilization problem.

4 MR. MODRICKER: The reason we're probably  
5 hesitating is you're talking about steam coming off the  
6 ash piles, and I think maybe what you're talking about  
7 is where the predominant steam is coming up, which is  
8 off of the last conveyer before you put that ash in a  
9 big pile. I mean, that's where you predominantly have  
10 the steam.

11 MR. MARTIN: Well, it could be both. But I  
12 recognize that predominantly more steam will come off of  
13 your conveyer with the ash.

14 MR. CRYSTALL: We had volatile, semi-volatile  
15 steam as well for certain things. I'm not totally sure,  
16 but I think we did.

17 MR. MODRICKER: I know we tested it for BNA.  
18 I would have to go back and see what other compounds we  
19 looked for in the steam.

20 MR. MARTIN: The average temperature of the  
21 ash --

22 MR. OGDEN: I'm reading here, Mr. Martin, on  
23 some of our response, you know, what we talk about is we  
24 do additional industrial hygiene both personnel and area  
25 samples around the ash conveyers, around the ash

1 handling building to characterize worker exposure, okay,  
2 not necessarily in the steam, but around the area.

3 That IH sampling includes volatile compounds,  
4 halogenated hydrocarbons, Fenac, semi-volatiles, metals,  
5 and particulates. To date, those industrial hygiene  
6 samples around the ash handling conveyers and  
7 incinerator pad have been at levels below the detection  
8 limits for BNA.

9 And in addition, the analytical results for  
10 other constituents have been below the NIOSH threshold  
11 limit value for TLV.

12 MR. MODRICKER: And that is not the TO-13  
13 sampling of the steam. But that is additional sampling  
14 that was done in and around the area by a different  
15 method.

16 MR. OGDEN: And this is the method I was  
17 talking about before that we asked OHM to incorporate ---  
18 we didn't ask them. When they asked us to downgrade on  
19 the pad, it was with their understanding that in order  
20 to do that, they were going to have to continue to do  
21 monitoring on the pad to be able to verify that, in  
22 fact, there was not a problem.

23 MR. MARTIN: That you could sustain Level D  
24 conditions.

25 MR. OGDEN: That you could sustain Level D

1 conditions, exactly. So that's what these are all  
2 about. What Mr. Davis asked specifically about was how  
3 can you prove to me that there's not a problem in the  
4 steam.

5 That's when we went out and developed or  
6 modified a method to actually sample steam because these  
7 methods would not -- it's very difficult to sample steam  
8 just because of its, you know, make-up.

9 You can get it to condense, but once it  
10 condenses, you don't know if you've lost any  
11 particulates. I would have to get a chemist to explain  
12 it. But the way they explain it to me, it's very  
13 difficult to do.

14 MR. MARTIN: The average temperature of the  
15 ash, would you say for the most part, that was 800 to  
16 900 degrees?

17 MR. MODRICKER: When it comes out of the  
18 breach.

19 MR. CRYSTALL: The issue then is with this  
20 whole thing, we did a trial burn which encompassed a  
21 four-month period, five-month -- well, four plus months.

22 Part of the design of that was to come out  
23 with levels of fenac and beta-naphthylamine and other  
24 chemicals that we can backfill on the site. And part of  
25 it was to push the emissions control system on the

1 incinerator by changing different temperatures and  
2 parameters at the kiln and secondary combustion chamber  
3 -- part of the trial burn was to mimic worse case  
4 emissions scenarios.

5 Another part of the trial burn was to meet  
6 the backfill criteria and show that the incinerator can  
7 do it. During that part of the operation, we realized  
8 that there's a relationship between the number -- the  
9 degree of the material coming out of the kiln in clumps  
10 and the number -- the level of fenac and  
11 beta-naphthylamine we have in the ash.

12 And we realized that if the ash gets up to  
13 the 800- to 900-degree level, we're very likely to have  
14 the lay-down criteria met to allow us to backfill.

15 I don't know if you can say there was an  
16 average temperature in the whole trial burn phase,  
17 because part of that we knew we weren't going to meet  
18 the backfill criteria because the kiln wasn't high  
19 enough to actually burn off everything, but that would  
20 give us a certain situation that we needed to monitor  
21 anyway in case something happened in real life doing it.

22 MR. MARTIN: Was the problem a kiln issue or  
23 was the problem a moisture content in the soil?

24 MR. CRYSTALL: Both. We had added lifters in  
25 the kiln, putting little shelves in there to make it

1 more like a tumble dryer to break things up.

2 Part of it was we expected the moisture  
3 content to be in the range of 13.5 percent, and it was  
4 above that. It was about 15 or higher.

5 MR. MARTIN: Was it ever as high as 18 to 20?

6 MR. CRYSTALL: I believe it could have been.

7 MR. OGDEN: Yes.

8 MR. CRYSTALL: Part of the trial burn was to  
9 optimize feed rates and see what we can do. And there  
10 was an opportunity to mix in corncobs as well as cement  
11 kiln dust to see how that would work in the combustion  
12 mechanics.

13 Corncobs get real hot real quickly and they  
14 mix in with the stuff, and we're hoping that that can  
15 generate some heat to help dry out the material and burn  
16 out the chemicals.

17 Cement kiln dust absorbs water and is  
18 virtually inert and will take out some of the moisture  
19 from the material we're concerned with. So we did a lot  
20 of that optimization as well before we actually did the  
21 regulatory risk assessment testing phase of the trial  
22 burn; we did the optimization phase to try to figure out  
23 what we need to see in the kiln, retention time in the  
24 kiln, temperature in the kiln, and temperature in the  
25 secondary combustion chamber for the emissions, but kiln.

1       temperatures to get an ash that will meet the backfill  
2       criteria consistently, which takes care of another one  
3       of his issues.

4                   And we felt we met that with a typical  
5       operating feed rate; with a typical temperature that we  
6       expect to maintain in the kiln, we feel we can clean the  
7       site up.

8                   MR. OGDEN: When I explained this to a lot of  
9       the folks that I work with, I use my race car analogy  
10      and that is, you don't take an Indianapolis car and just  
11      put it into the race without running some test laps with  
12      it.

13                   That's what we were doing in this  
14      optimization period, just trying to run it through its  
15      paces, push the limits, if you will, to make sure that  
16      we knew what it would do and put it under different  
17      scenarios, as Gregg said, add some kiln dust, et cetera.

18                   MR. MARTIN: Why don't we go to issue two.

19                   MR. CRYSTALL: Okay. Issue two, we might  
20      have covered a little bit of. Again, we don't feel it's  
21      going to be a persistent problem. It may be an  
22      occasional scenario that we see particulates in the  
23      steam.

24                   If it appears that it's going to be a  
25      persistent problem, DEP is prepared to tell us that it's

1 a regulatory issue. And if it is something like that,  
2 we will take care of the particulates.

3 MR. OGDEN: One of the things that Kurt might  
4 have done here, too, is --

5 MR. CRYSTALL: The design of the incinerator  
6 initially had this whole enclosure of the west ash drag  
7 to totally eliminate steam.

8 MR. OGDEN: Not to eliminate steam.

9 MR. CRYSTALL: Eliminate particulates. I'm  
10 sorry. Kurt's question in the affidavit was why didn't  
11 we follow the contract and put all of these protective  
12 devices on -- to the extent practical?

13 When we got to the point where we were  
14 looking at this in the trial burn phase, we realized  
15 that it's not a problem. We didn't need to.

16 MR. OGDEN: And I have a question for Dave,  
17 and it's really -- because I was under the impression  
18 that it wasn't necessarily something that OHM planned to  
19 do, but it was something that they put into their  
20 drawings in the event that we need to do it, that they  
21 would have the space allocated for that particular piece  
22 of equipment.

23 MR. MODRICKER: Let me clarify that. To the  
24 best of my understanding, in their work plans that they  
25 submit to us, there was not a scrubber called out on the

1     back of the wet ash drag. In their detailed drawings,  
2     which include P & ID drawings, piping, instrumentation  
3     drawings, mechanical drawings, electrical drawings, and  
4     whatnot, which were not required to be given to us by  
5     contract, but which we requested and which we reviewed.

6             There were indications, clouds drawn, clouds  
7     on the drawings to show the ability to put a wet dust  
8     collection system. We never required it. OHM never  
9     told us they planned on using it.

10            If you get into some of their earlier  
11     detailed design drawings, and you will see some mention  
12     of it in some form or another. That's the best way I  
13     can answer that.

14            MR. CRYSTALL: The site didn't feel we needed  
15     it. And one of the things we're looking at now is if it  
16     becomes a persist problem that we see, we're going to  
17     put it in.

18            MR. MARTIN: So it's still possible to  
19     engineer that?

20            MR. CRYSTALL: Yes.

21            MR. OGDEN: But as Gregg said, we haven't  
22     felt the need to do it. Our State permit says if we  
23     have visible fugitive emissions at that location, that  
24     we're supposed to take action. It doesn't say we're  
25     supposed to take action to eliminate.

1           It doesn't say that we have to have zero  
2 emissions at that point. What we do is, again, if it  
3 becomes a question of what is a fugitive emission --

4           MR. MARTIN: Yes, I was about to ask you for  
5 my benefit, the definition of that.

6           MR. OGDEN: The definition really comes out  
7 of the State regulation. Steam, by definition, is not a  
8 fugitive emission. Visible dust that is in the steam  
9 would be considered -- dust that would overflow --

10          MR. CRYSTALL: It's a non-controlled release  
11 of a hazardous substance. The stack emissions are  
12 controlled when we shut the feed off. That's not a  
13 fugitive. That's where the emission is supposed to be.  
14 A puff of smoke from the kiln would be a fugitive  
15 emission.

16          A cloud of dust from the ash after it gets  
17 cooled would be a fugitive emission. It's not  
18 controlled. That's pretty much what the definition is.  
19 EPA wise, we --

20          MR. MODRICKER: Or any visible release from  
21 the stockpiles.

22          MR. OGDEN: That's uncontrolled.

23          MR. CRYSTALL: Correct. That's right.

24          MR. OGDEN: So what we got here in the steam,  
25 and again it becomes kind of a fine line, is the steam

1 by itself is not a fugitive emission. But if it happens  
2 to be capturing particulates and taking it with it, then  
3 that may be considered a fugitive emission.

4 So one of the things we do is we watch the  
5 steam as it comes off the wet ash drag. One of the  
6 things that we had done during this down time is we  
7 tried to make the wet ash drag even more efficient than  
8 it was before by limiting -- by controlling that area  
9 where steam might be visible on the pad.

10 And so we've really consolidated that area,  
11 if you will, into that one single point where the steam  
12 is going to come off the wet ash drag before it gets  
13 carried to the ash handling building, basically the ash  
14 storage facility.

15 So right now, it's a matter of we do all our  
16 IH sampling for particulates and everything else. We  
17 have our perimeter monitors that run on a monthly basis  
18 basically to monitor for particulates.

19 But at that particular instant, it's really  
20 the matter of the operator and any inspector who's  
21 walking around to say is that steam or is that dust in  
22 the steam?

23 MR. MODRICKER: I'll add to that -- first of  
24 all, the best thing I could do is give you a copy out of  
25 the State's air quality -- Chapter 122 where it defines

1 fugitive emissions. From there I would interpret it to  
2 say that steam in and of itself from the incineration  
3 process is not a fugitive emission.

4 Visible dust from the incineration process  
5 itself could be considered a fugitive emission, and you  
6 have to take measures to control it.

7 In the stockpile area, what would be  
8 considered a fugitive emission, to my understanding,  
9 would be visible dust going beyond the property line.  
10 Prior to getting there, we instruct the contractor to  
11 take measures to minimize dust in the exclusion zone.

12 And if it gets dry, and you see a scuff of  
13 dust from a dozer, even if it's not going beyond the  
14 edge of the property, you go out and take measures to  
15 control it. And that's my understanding of the intent  
16 of the fugitive emissions.

17 MR. MARTIN: However, if dust were visible  
18 within steam plume, would that be considered a fugitive  
19 emission?

20 MR. OGDEN: Yes, and we would take steps,  
21 then, to control that dust, knock it down with more  
22 spray, or whatever. The Cadillac version, which is the  
23 thing that's been kind of laid out, designed, but not  
24 built is this steam scrubber which would basically scrub  
25 the steam of any particulate that might be in it,

1 collect it, and handle that as a separate entity.

2 MR. MODRICKER: You may be getting into a  
3 matter of degree and judgmental calls when you start  
4 saying is there dust in the steam? You're probably  
5 talking about a matter of degree.

6 MR. MARTIN: As you noted earlier, whoever is  
7 responsible on site at the time would have to make a  
8 judgment call.

9 MR. MODRICKER: Yes.

10 MR. OGDEN: It's one of the reasons we asked,  
11 and the State is good, they got an inspector that's  
12 going to be out here several times a week, and we're  
13 very involved with the State in trying to make sure that  
14 we're not in violation of the equivalency document, to  
15 make sure that our people have the same interpretation  
16 as the State inspection team would.

17 MR. MARTIN: Does the air equivalency permit  
18 incorporate by reference, then, the State definition of  
19 fugitive emissions?

20 MR. WELCH: Yes. And we've been here --  
21 we've had some of the same staff here for going on ten  
22 years, and we have not noted a singular fugitive  
23 emission violation to date.

24 We've asked them to make modification to the  
25 system that they've done. These other engineering

1 abilities are out there, but quite frankly, and the  
2 State's position is to have them available.

3 But I mean, even though we're only putting 10  
4 percent towards this at this point, why spend 10 percent  
5 to straighten up a perception problem? If there's a  
6 violation, that's something different.

7 MR. OGDEN: Right. And that's the  
8 operational approach that we've taken.

9 MR. MARTIN: Thank you. Let's go to the next  
10 issue.

11 MR. CRYSTALL: The third issue, there's a  
12 number of different things here. If I may quickly,  
13 persistent difficulty in obtaining control of the quench  
14 flow in the evaporative cooler that is essential to  
15 minimize dioxin formation.

16 First of all, we don't think there was a  
17 persistent problem. There was a problem. We have fixed  
18 nozzles and changed nozzles out on the quench flow, and  
19 we don't think there will be another problem.

20 We feel the most important part of the quench  
21 flow is to minimize the catastrophic destruction, the  
22 bag house. In effect, what it does is it also decreases  
23 the temperatures quickly enough as to minimize formation  
24 of dioxins.

25 So he is right in what he says there, but we

1 feel it's more important to protect the bag house and  
2 the whole air emission system than minimize formation of  
3 dioxin because we don't think there is any dioxin coming  
4 out here that's going to affect anyone.

5 MR. OGDEN: If I could add, the one thing we  
6 don't want to have out there is the high potential for a  
7 fire in the bag house.

8 MR. CRYSTALL: Right.

9 MR. OGDEN: That could be catastrophic and  
10 very damaging to the environment.

11 MR. CRYSTALL: So we don't think we have  
12 difficulty. There was a problem; we think it's fixed.  
13 Fugitive emissions resulting from the flooding of quench  
14 tower bottom and resulting spills onto the thermal  
15 destruction facility.

16 Evidently, Mr. Davis has seen a situation  
17 where there was too much water used to quench the ash,  
18 and that led to puddles around the ash and that was  
19 washed into the lagoon for the waste water treatment  
20 plant to take care of. And that was an occasion he  
21 noted. That is not the norm.

22 The design is to put enough water on there to  
23 cool the steam -- to cool the ash from the 800 to 900  
24 degrees it comes out of the kilns.

25 MR. OGDEN: Not the ash. We're talking about

1 the quench tower, so we're cooling gases.

2 MR. CRYSTALL: Okay. Sorry. What was the  
3 problem with that then?

4 MR. OGDEN: The question here is really you  
5 got the quench tower, is that the gases are at 1800  
6 degrees when they cross over into the evaporative  
7 cooler. And what we need to be able to do is add enough  
8 water to be able do cool the gases from 1800 degrees to  
9 450 degrees thereabouts, get them cool enough to enter  
10 the bag house.

11 And the design is such that you evaporate the  
12 water that you add so that it's in essence a dry bottom  
13 at the bottom of the --

14 MR. MARTIN: So you start at 1800 up here,  
15 and as you work your way down, you hit the 400?

16 MR. OGDEN: Right. Now, when you say work  
17 your way down, the retention time in the gases in the  
18 evaporative cooler is what?

19 MR. MODRICKER: Retention in the evaporative  
20 cooler is --

21 MR. OGDEN: Not a long time.

22 MR. MODRICKER: I don't know. Short.

23 MR. OGDEN: Less than ten seconds is my  
24 understanding.

25 MR. MODRICKER: And the quench process, is my

1 understanding, if you're talking about how quick we  
2 quench it, we're talking fractions of a second.

3 MR. OGDEN: You're talking about a very, very  
4 short time to be able to have the gases go from 1800 to  
5 450 degrees. And so you're talking about -- when he  
6 says there's a problem, it's a challenge.

7 I wouldn't put it as a problem. What we want  
8 the contractor to do is air on the side of having it too  
9 wet. Make sure that there's enough water in there  
10 because if you don't get the temperature down to 450  
11 degrees, you have the potential for a bag house fire,  
12 you have an automatic cutoff and you have a TRV opening.

13 We want to minimize the TRV openings, so we  
14 would rather live with a puddle at the bottom of the  
15 evaporative cooler than a TRV opening and a shutdown of  
16 the system.

17 MR. WELCH: What actually you're hearing is  
18 people trying to guess what Mr. Davis' problem is,  
19 because he couldn't dialogue that to us Friday. The  
20 position that we've taken is every drop of water that's  
21 processed through that evaporative cooler goes into our  
22 water treatment plant which we regulate the discharge  
23 off and, in fact, monitor for fenac and  
24 beta-naphthylamine. There is no fugitive emission while  
25 operating a wet bottom evaporative cooler.

1           MR. MODRICKER: And that's a good summary.  
2 And I would like to -- for what it's worth, I'm going to  
3 add to it also because No. 1, the wet material is not a  
4 fugitive emission on the pad. What we're talking about  
5 is probably more than anything else a housekeeping  
6 issue.

7           Originally, we had feed screws on the bottom  
8 of the evaporative cooler to carry away any particulate  
9 that may accumulate on the bottom. When they were  
10 cooling the gases, there's times when it was wet down  
11 there, and this would drip down, and they would collect  
12 it in a sump.

13           What they've done is they've installed some  
14 piping on the bottom of the cooler to more conveniently  
15 convey that to a sump. It is not a fugitive emission.

16           MR. OGDEN: As Mike said, it ultimately ends  
17 up at our waste water treatment plant. It is treated  
18 and controlled at that location.

19           MR. MARTIN: Next point.

20           MR. CRYSTALL: TRV openings associated  
21 fugitive emissions. Our risk assessment took into  
22 account 12, 5-minute openings of the TRV and 36 one half  
23 openings of the TRV, assuming that, you know, as  
24 protocol, as soon as the TRV pops open, the feed is  
25 stopped, plus whatever is there goes right out to the

1 TRV and into the atmosphere.

2 The risk assessment evaluates those amounts  
3 openings. We expect there will be unplanned TRV  
4 openings in the event there's a lightening storm, the  
5 power goes out, the fan goes off, the TRV opens.

6 There's other ways that it opens as well. If  
7 the quench tower is not cooling off things fast enough,  
8 it will open. There's also planned TRV openings where  
9 we fully stop feed and purge the kiln of all  
10 contaminated material before we open the TRV. That's  
11 pretty much where we stand. It will happen. It's --

12 MR. MARTIN: Are those all included within  
13 the estimate?

14 MR. CRYSTALL: The planned TRV openings we  
15 feel will not release anything. Everything is purged so  
16 that is not included in the risk assessment. But those  
17 again, they happen routinely for maintenance. And all  
18 the feed is shut off and the material purged from the  
19 kiln.

20 MR. MARTIN: Okay.

21 MR. OGDEN: The plan would be, we have our  
22 system interlock checks that we go through to make sure  
23 that if, in fact, the power would be interrupted, that  
24 the TRV would open. So we have a periodic check where  
25 we -- kind of like a fire drill, if you will.

1                    But as Gregg said, we make sure that the  
2 system is purged, and we do the interlock check and open  
3 the TRV. And again, it's a matter of just maintenance.

4                    MR. CRYSTALL: The next point, a frequent  
5 shutdown and startup and associated increases in  
6 emissions of fluids. I don't understand that at all.  
7 And I don't think Kurt was able to elaborate further  
8 than that's what he thinks would happen.

9                    We don't start the feed in this unit until  
10 the kiln and secondary combustion chamber are at  
11 operating temperatures. And we don't shut the heat off  
12 until everything is out of the kiln.

13                   MR. WELCH: His description on Friday was  
14 more to the fact that we gave a disclaimer in the air  
15 equivalency document during the heat-up, we would accept  
16 the increase in NOX, nitrous oxides and normal  
17 volatilization gases not related to incineration, but to  
18 the combustion of the oxygen and the natural gas.

19                   And that was what he described Friday was  
20 that the more you start it and shut it down, the more  
21 you have that discharge of NOX. The reason it was  
22 started and stopped repeatedly was because we were going  
23 through testing. That is something that was accepted as  
24 a natural phenomenon of combustion.

25                   MR. OGDEN: So what he was bringing up is you

1 would have that in any boiler plant.

2 MR. WELCH: That's what he said on Friday.

3 MR. OGDEN: I apologize. I wasn't at the  
4 meeting on Friday. Thank you, Mike.

5 MR. MARTIN: Address the next point, Gregg.

6 MR. CRYSTALL: I'll let Dave and Mike do  
7 that. There was one documented incident, a problem with  
8 a PH meter.

9 MR. OGDEN: Yeah, as Gregg said on the last  
10 one, I don't know what Kurt means by repeated problems  
11 here: We had one incident, one single indent with the  
12 scrubber PH probe. It's well-documented. We did our  
13 notification to EPA and the State.

14 I don't know how much you want to get into  
15 that particular incident. But we -- as a result of it,  
16 we changed some operating procedures on site. The  
17 problem, I think, stemmed from the fact that we were  
18 trying to calibrate a piece of equipment while we were  
19 in operation.

20 And the procedure is we're not going to  
21 calibrate those key pieces of monitoring equipment while  
22 we're in operation anymore.

23 MR. WELCH: We've duplicated the probe, and  
24 we issued a notice of non-compliance for that. And we  
25 investigated it and felt that it was a reasonable

1 explanation that they were using litmus tests; they  
2 actually did not -- they were out of caustic, but the  
3 water that was still in the tower still had a non-basic  
4 element to it because of the residual caustic.

5 MR. OGDEN: That's true.

6 MR. MARTIN: Why don't we go to down to Issue  
7 4.

8 MR. CRYSTALL: This issue stems from the fact  
9 that the water used to be sprayed onto the ash coming  
10 out of the kiln was one third water from blowdown of the  
11 scrubber and two thirds city water supply.

12 Kurt's explanation pretty much is blowdown  
13 water, by definition, is enriched with chemicals. Why  
14 would you use that to put on the ash? Is it  
15 contaminating your ash and is any spilled water on  
16 excess water that remains around the ash considered a  
17 fugitive emission?

18 If it is, are you allowed to throw it right  
19 back into the lagoon that goes to the waste water  
20 treatment plant? That's pretty much his issue. Again,  
21 we feel we've taken samples of the scrubber water; we've  
22 taken samples of the ash; we don't believe that it is a  
23 problem.

24 By design, we're not supposed to have puddles  
25 of water. During the optimization phase, there might

1 have been. We don't feel it's going to be a persistent  
2 problem. But then again, even if there was a puddle of  
3 water around the, the waste water treatment plant can  
4 handle what's coming in.

5 We have sampled the in fluid to the waste  
6 water treatment plant for dioxin, as well as the carbon  
7 that is used in waste water treatment plant for the  
8 presence of dioxin, in order to get contracts to dispose  
9 of the carbon or regenerate the carbon.

10 And we've come up with non-detects to one  
11 part per billion level. We don't believe there's  
12 dioxin. In fact, we had a professional engineer's  
13 report which we can make available to you today, Bob,  
14 which shows exactly how small a fraction of dioxin could  
15 possibly get to the waste water treatment plant or  
16 through it.

17 Again, we don't think this is an issue  
18 anymore, the blowdown scrubber water that you have to do  
19 that, to clean the scrubber water.

20 MR. OGDEN: And we sampled that scrubber  
21 water before we -- we have sampled. Basically, I'm  
22 looking here, sampling it for volatiles, semi-volatiles,  
23 fenac and metals. And the analytical results are  
24 typically below the detection limits for volatiles,  
25 semi-volatiles and fenac.

1                   But we do have some trace amounts of metals,  
2 but they've all been detected at acceptable limits for  
3 us. And then again, as Gregg said, we take that  
4 blowdown water, and we blow it onto the ash -- first  
5 it's diluted as it's mixed with the city water, and then  
6 it's blown down onto the ash, and then the ash again is  
7 sampled before it goes back into the -- so if we were  
8 adding any volatile or semi-volatiles that would end up  
9 back in the hot zone, if you will, the exclusion zone  
10 for retreatment.

11                   But what we're getting from our engineers,  
12 whatever, is that the amounts would be so low that they  
13 really would have no appreciable -- they would have no  
14 appreciable addition to the ash material.

15                   MR. MODRICKER: And operationally, we sample  
16 the scrubber water because we want to confirm that it's  
17 not contaminating the ash. If it does, then we have to  
18 reprocess that ash. That's not cost effective, and we  
19 don't want to do that. So I mean -- I think the real  
20 answer is we sample the scrubber water, we sample the  
21 ash after the scrubber water is applied.

22                   MR. CRYSTALL: You know what; I asked the  
23 question this morning of Dave and of Mike, and I think  
24 you guys are double checking the answer maybe, if we  
25 didn't use one third scrubber water for the bottom ash

1 and we used all city water, what would we do with the  
2 scrubber water?

3 And my understanding is it would go through  
4 the waste water treatment plant anyway. It's being  
5 double checked by the folks that need to check it at  
6 DEP, but that's pretty much what would happen to it. So  
7 we're saving us the third cost of water.

8 The next issue, I guess -- that covers the  
9 fourth issue, I think. The fifth issue we talked about,  
10 which is the issue of Kurt wearing a respirator or not.

11 MR. OGDEN: I think we've addressed that.

12 MR. CRYSTALL: Yeah, I think we did,  
13 too.

14 MR. OGDEN: I wouldn't have anything to add.

15 MR. MARTIN: Let's go to six.

16 MR. CRYSTALL: Kurt's position here is he  
17 would rather have seen us reach a steady state feed in  
18 the incinerator and then worry about what we need to do  
19 with the kiln to meet the ash.

20 We'd let it run for 40 tons per hour, 45 tons  
21 per hour for a couple weeks. And from that steady state  
22 feed rate that we know will work mechanically, what do  
23 we need to do to get backfilled to the level, and that's  
24 where he's thinking. He explained that to us Friday.

25 What we have done in the trial burn, as we've

1 explained numerous times to a lot of people, is our  
2 intention was not to meet the backfill criteria of the  
3 ash throughout the trial burn. It was to optimize feed  
4 rates, to make sure our emissions control system works  
5 under circumstances that would mimic worse case  
6 emissions.

7 It was to collect data for the risk  
8 assessment. And part of it was to show that we can meet  
9 the backfill criteria at a typical burn rate, which we  
10 feel we did.

11 The contract with OHM has a percentage of  
12 time in there for backfilling material -- I mean, for  
13 reburning material so it can reach the backfill  
14 criteria.

15 The risk assessment takes into account almost  
16 25 percent of the time of the two years is backfill --  
17 reburn time to meet the backfill criteria. We included  
18 the reburn time of ash that did not meet the criteria to  
19 lay it down on the site as part of the risk assessment  
20 in the time frame.

21 And that's as simple as that. Our goal was  
22 not to show we can meet backfill levels every run. Our  
23 goal was to show that under typical runs, we can usually  
24 meet it, and we think we did that.

25 MR. OGDEN: During the trial burn process, I

1 don't want to make it sound like everything went, you  
2 know, like peaches and cream. We did have discussions  
3 with OHM -- we, the Corps, EPA, with OHM about what's  
4 the appropriate way to go through the trial burn  
5 process. How much time should we spend optimizing, how  
6 much time should we spend trying to make sure that we  
7 have ash that meets the backfill criteria and all the  
8 other parameters that we have to do.

9           We had a lot of discussions about that. And  
10 I'm only suggesting that Kurt was possibly involved in  
11 some of those discussions and may have taken that to  
12 mean that we, the Corps, were unhappy with OHM's trial  
13 burn plan.

14           But we did ultimately approve their trial  
15 burn plan after having lots of internal discussions  
16 about, you know, what's the best way to skin the cat, we  
17 ultimately agreed and all got on the same page. Now,  
18 I'm not sure if Kurt was involved in those final  
19 decisions or not.

20           Quite frankly, he wasn't involved in a lot of  
21 the decisions. He wasn't a decision maker at that  
22 point. But we probably -- I'm sure we solicited some  
23 opinions.

24           MR. CRYSTALL: We had a lot of people in  
25 these decisions. We had EPA Region 3, our incinerator

1 expert RECRA, we had EPA headquarter folks from ORD, we  
2 had ERT, we had the Corps' Center for Excellence ---

3 MR. OGDEN: Center of Expertise out of Omaha.

4 MR. CRYSTALL: They were involved at that  
5 point. DEP was involved at that point, not only Mike's  
6 folks, but the air quality folks.

7 MR. WELCH: We disagreed with it actually.

8 MR. CRYSTALL: Yes, you did disagree.

9 MR. WELCH: We went on the record that we  
10 wanted it tested harder. We wanted them to stretch the  
11 envelop even further, so they actually maintained a more  
12 conservative approach than what we would have had them  
13 do.

14 MR. CRYSTALL: Right. We had out Dorothy  
15 Cantor, who was our field science advisor until she took  
16 her sabbatical, as well as managers and partners. So it  
17 wasn't just a decision that OH made that everybody said  
18 okay, okay.

19 We were adjusting ideas up until the last day  
20 of the trial burn, in all honesty, in terms of making  
21 sure we get the most out of the time we had to burn.

22 MR. MARTIN: At this juncture with injecting  
23 maybe lime solution in the kiln and the other  
24 engineering adjustments you've made, you should be able  
25 to reach an optimal, you know, residence time and all

1 that.

2 MR. CRYSTALL: Yes.

3 MR. MARTIN: I guess empirically you'll know  
4 in a few days where you're going to be at with the ash  
5 putdown requirement.

6 MR. CRYSTALL: And we feel that it will  
7 fluctuate with the seasons. It's wet now; we might have  
8 to have a different setup than it will be in the middle  
9 of the summertime when things start to dry out in terms  
10 of feed rate, the exact kiln temperature and retention  
11 time.

12 MR. MODRICKER: A lot of it, as you've  
13 mentioned, is a function of the moisture in the soil.  
14 Obviously, the wetter the soil is, the more BTU's you  
15 have to burn, the longer and harder it is to get the  
16 soil up to temperature.

17 So we want to ensure that we meet the air  
18 equivalency requirements for all the emissions coming  
19 out of the stack. We don't want to constrain ourselves  
20 during that testing period and limit ourselves to the  
21 through put because the material is very wet.

22 -- We limit our through put and then have the  
23 opportunity that we may have dryer material and not be  
24 able to process it like we could because we set  
25 ourselves at this low feed rate.

1           So I think what you're hearing is the idea  
2 was to optimize all the different conditions.

3           MR. OGDEN: We wanted to see how big the box  
4 could be, to establish the limits of the box so that we  
5 could -- under conditions that we could anticipate, in  
6 dry conditions or wet conditions, that we would have  
7 parameters established as to what conditions that we  
8 could meet in terms of air quality and ash quality under  
9 various conditions, whether it be soil moisture or  
10 temperature or whatever.

11           MR. MARTIN: Last question.

12           MR. CRYSTALL: Last question that he had or  
13 that you have?

14           MR. MARTIN: Well, that I have. Did Mr.  
15 Davis ever raise during his tenure any issue with  
16 respect to the calibration of the CEM monitoring unit?

17           MR. MODRICKER: He was involved in witnessing  
18 CEM calibrations.

19           MR. MARTIN: Is that done on a daily basis?

20           MR. MODRICKER: Daily. There's daily  
21 calibrations of the continuous emission monitors. And  
22 we have made some modifications to it since his  
23 departure, tenure, whatever. I'm not sure what issues  
24 he's talking about. If you could elaborate on them, I  
25 might be able to answer the question better.

1           MR. MARTIN: Well, he may have raised a  
2 calibration issue that, you know, the unit did not meet  
3 the calibration specifications, you know, on a  
4 particular day. I don't know if that came up in the  
5 meeting with the lawyers or not.

6           MR. CRYSTALL: Mike, do you recall that?

7           MR. WELCH: Well, you know what's curious,  
8 and apparently, at the close of our meeting, one of the  
9 questions that was asked of Kurt is do you have any  
10 other concerns, criticisms, interests that we need to  
11 look at?

12                   And after a lengthy look at Mr. Harrison, he  
13 said no. So I mean, I don't remember that ever being  
14 raised in any of our discussions. Plus, when we had all  
15 of our air people out here, they went through all of the  
16 calibrations and stuff because we wanted to be sure that  
17 our stack people were satisfied with them. So it would  
18 be a new issue to me.

19           MR. MODRICKER: Let me say that we have had  
20 people with much more expertise than Kurt Davis from  
21 both the Corps, the State, the contractor, EPA out here  
22 specifically to review CEM calibrations and the  
23 performance of that system.

24                   And the experts that have reviewed it, are  
25 confident in its ability to perform. That's probably

1 the best way I can answer it. If you ask me if he's  
2 ever had concerns or issues, he probably has, but I  
3 don't know specifically what they are.

4 MR. MARTIN: Did he ever mention, I think its  
5 termed a "drift report" having to do with the operation  
6 of a CEM unit?

7 MR. MODRICKER: I don't recall him mentioning  
8 it to me, but I do know that there was a calibration  
9 drift done on the instrument. And it was a relative  
10 accuracy testing on the instrument.

11 MR. MARTIN: That's done on a daily --

12 MR. MODRICKER: No, there are specific --  
13 when I use the terms "calibration drift" and "relative  
14 accuracy," that's typically the testing that you have an  
15 outside firm come in and do. And typically you do that  
16 when you begin has waste feed when you're starting to  
17 certify and use the instruments.

18 Now, there is daily calibrations that are  
19 done by technicians on site to ensure that you're within  
20 the acceptable ranges that are established for the  
21 instrument. Does that answer your question?

22 MR. MARTIN: Yeah.

23 MR. MODRICKER: I'm not quite sure what his  
24 issue is.

25 MR. MARTIN: Yeah, that helps. I think when

1 he prepared -- contributed to his shift report,  
2 operation of the CEM unit may have been an issue in one  
3 of those reports. And apparently, there's a written  
4 report, I don't know if it's separate from the shift  
5 report or part of it, where drift calculations are made.

6 And he reported or alleged that there were  
7 times when those were not done or left vacant or blank  
8 on the report forms.

9 MR. MODRICKER: Yeah, I'm not familiar with  
10 the issue.

11 MR. CRYSTALL: Can you pull that information?

12 MR. MODRICKER: We can certainly pull  
13 reports. It may be difficult to find the specific  
14 issue, not knowing what it really is, but we can review  
15 it. CEM's are calibrated daily.

16 MR. OGDEN: Before an instrument is put into  
17 service, we have certain tests, drift reports, drift  
18 tests, et cetera, that we do to make sure that those  
19 pieces of equipment work. And the calibration of those  
20 is really just using calibration gases to make sure that  
21 it's in -- that it's basically measuring the right stuff  
22 in the right ranges.

23 MR. WELCH: Bob, would you be suggesting that  
24 they try and locate something like that without having  
25 anything more specific than that to go on?

1           MR. MARTIN: Not unless that information or  
2 data is already part of the shift report. I'm not  
3 familiar with the basis for reporting --

4           MR. MODRICKER: Daily reports include the  
5 calibration that was done for the CEM's that day; that's  
6 part of the report.

7           MR. MARTIN: Then that would be, I think,  
8 what's relevant.

9           MR. OGDEN: We can certainly look at the  
10 daily reports and see if there's anything highlighted in  
11 Kurt's shift report that identifies a concern he raised  
12 about CEM's and --

13           MR. MARTIN: And drift analyses not being  
14 done.

15           MR. OGDEN: Yeah, whatever, anything relating  
16 to CEM that he highlighted as a concern.

17           MR. MARTIN: Just a theoretical question. In  
18 the event of a power failure, the materials which remain  
19 in the secondary combustion chamber, the temperature  
20 remaining in the SCC, is that sufficient to destroy the  
21 contaminants in the SCC in the event of a power failure?  
22 Let's say the power failure --

23           MR. OGDEN: Let's back up. What ends up  
24 happening with a power failure, you have an automatic  
25 waste feed cutoff.

1           MR. MARTIN: Right. But you still got  
2 material in your chambers.

3           MR. OGDEN: Well, in the SCC what you have is  
4 basically gases, okay.

5           MR. WELCH. With a short residence time and a  
6 high temperature in there --

7           MR. OGDEN: What's going to happen is the gas  
8 it going to go straight up the stack. It's not going to  
9 go through the downstream pollution control pieces of  
10 equipment.

11          MR. MARTIN: Is there any, in other words,  
12 untreated particulate matter which may come up the stack  
13 during power loss?

14          MR. OGDEN: You would have the potential for  
15 that, of course; you know, the fact you've got  
16 particulates that are now not -- they don't have the  
17 opportunity to go through the bag house. You have acid  
18 gases that don't get a chance to go through the scrubber  
19 unit.

20          MR. MODRICKER: I think that's what's  
21 addressed in the risk assessment. Those are the types  
22 of events you're talking about. The theoretical  
23 residence time in the secondary combustion chamber is a  
24 minimum of two seconds.

25          MR. MARTIN: Okay.

1 MR. MODRICKER: The minimum gas temperature  
2 in the secondary is a minimum of 1801 degrees.  
3 Obviously, the refractory in that secondary combustion  
4 chamber is very, very hot, and it takes a long time to  
5 cool down.

6 But I don't think anyone here can tell you  
7 exactly what the temperature is in that secondary. Yes,  
8 when you stop the waste feed, there's material that  
9 remains in the front end of the system in the kiln. And  
10 yes, the thermal relief vent, as its design, opens and  
11 it's a vent, so it's going to, by natural draft, draw  
12 air through that hot chamber.

13 If you're looking at an event, it would be a  
14 short duration event that you may see the particulates  
15 coming out right when the stack opens. I think that's  
16 why they're addressed in the durations in the risk  
17 assessment.

18 MR. MARTIN: Just operationally, what would  
19 the reignition time be for the unit, assuming you had a  
20 power fluctuation or outage?

21 MR. MODRICKER: It depends on why you have an  
22 outage.

23 MR. MARTIN: Okay. If lightning struck.

24 MR. MODRICKER: If a lightning strike  
25 knocked out the power to the site, your thermal relief

1 vent would open, okay, you would go out and start your  
2 emergency backup generator. And it may be approximately  
3 five minutes before you regain power to --

4 MR. OGDEN: Reset all your electrical  
5 systems.

6 MR. MODRICKER: Right. To close that thermal  
7 relief vent, you have to have enough power to get your  
8 ID fan running. So if you had a scenario where your ID  
9 fan broke, you're not going to get the system back up  
10 and running that quickly. But the example you gave  
11 would be much quicker.

12 MR. OGDEN: One of our operational  
13 considerations is if, in fact, we're in the middle of a  
14 lightening storm, and correct me if I'm wrong, at least  
15 we were looking at it at one point to stop --  
16 potentially stop haz feed if we're in a situation where  
17 there's a high probability of a lightening strike.

18 So we stop haz waste feed in those situations  
19 because we don't -- and we go into a hot hold scenario.  
20 And then when that thunderstorm alert passes, we would  
21 start haz feed again.

22 MR. MARTIN: Is there a pilot light for  
23 ignition on the system? And if so, is that shielded  
24 from high winds?

25 MR. OGDEN: How do we light those things?

1 MR. WELCH: It's arc lit, is the way I  
2 understood it. It's not pilot lit, that's how I  
3 understood it.

4 MR. OGDEN: That's my understanding, too, but  
5 I've never gone out and checked it.

6 MR. MODRICKER: I'm going to say, for the  
7 record, I don't know. I would have to check.

8 MR. OGDEN: That was my understanding as  
9 well, Mike, but I've never seen it.

10 MR. WELCH: It's an electric start.

11 MR. DRUMBOR: Whether it is PC electric or  
12 arc.

13 MR. MARTIN: Which can be initiated by  
14 computer from the control trailer?

15 MR. WELCH: Yes.

16 MR. MODRICKER: That would make sense.

17 MR. MARTIN: Thank you. That's all the  
18 questions I have. Do you guys want to continue or --

19 MR. WELCH: I have a couple comments. I have  
20 a 4:00 meeting. I guess I'm going to start out by  
21 probably showing a little frustration. I bring forth a  
22 unique situation. And I am not only the regulator here,  
23 who is in charge of this project from the State of  
24 Pennsylvania, but I'm a resident, family and the whole  
25 bit.

1           I think I would have really welcomed an  
2 opportunity, maybe, the State of Pennsylvania would have  
3 to have more input to you while you were preparing your  
4 draft and interim. We have expended and extended an  
5 enormous wealth of oversight to this project,  
6 unprecedented at any NPL site in the State of  
7 Pennsylvania.

8           I've got four staff assigned to this site.  
9 There's not a singular NPL site in the State of  
10 Pennsylvania that has a State staff assignment. Now,  
11 that came from the government's office. I didn't elect  
12 to have my staff be here.

13           We have brought out the mobile analytical  
14 lab, which is one of only two in the country. It's here  
15 today, as a matter of fact. And we certainly arranged  
16 that long before you were here, so it wasn't just  
17 convenient to have you here.

18           MR. MARTIN: Is that like the ERT Taggart  
19 unit?

20           MR. WELCH: Yes. We had them operate two  
21 years ago. We've had them operate every time we've had  
22 a complaint from the community. We had them operate  
23 when we were trying to differentiate the odors between  
24 the RECRA site next door and the superfund site.

25           We had them here during the risk and trial

1 burn. We brought out our entire stack test team. They  
2 were resident during the test and trial burn. We're  
3 sampling here today for the next seven days. They'll be  
4 back in four weeks and sample for another seven days.

5 We have added, actually, two mass  
6 spectrometers to the unit for this trip because there  
7 was claims that we weren't picking up the molecular end  
8 of the scale that was relevant here, which we didn't  
9 agree with, but we wanted to prove that they were wrong.

10 I think what I want to bring forward residing  
11 here is that you're not hearing the perspective of the  
12 community. And that for whatever reason, it appears  
13 that the timing of your visit is very untimely for  
14 everyone involved.

15 MR. MARTIN: Meaning today?

16 MR. WELCH: Yes. My supervisor would at some  
17 time at your convenience, if you ever do come back up  
18 here, would enjoy sitting down with you to share with  
19 you some of his perspectives.

20 But I think what we want to come across to  
21 you with is that we've looked at the draft report that  
22 you've done, we have been in the position of regulator  
23 and we've actually stopped the project for some period  
24 of time because we were concerned with some of the  
25 situations that were happening here.

1                   We went through a formal partnering evolution  
2 where we were given authority that -- I'm not sure that  
3 we wanted it, but we were given it. Mr. Voltaggio and  
4 Gregg and the Corps and everyone has committed to  
5 allowing us to have that equal say in the decisions that  
6 are made here.

7                   We have elevated everything that has been  
8 spoken here at this table. The risk assessment, we've  
9 had peer review outside of what anyone else here has  
10 done. The peer review, we participated in.

11                   We have sat through all of that, and we still  
12 cannot see where the continuance of any more testing,  
13 any more development of machinery, where there's been a  
14 shortfall.

15                   Our responsibility as the State is to ensure  
16 that the air that comes out of the stack meets our  
17 emission standards. And that the water that's  
18 discharged into Bald Eagle Creek meets the standards of  
19 the State.                   Probably the weakest part of our  
20 agency is the Occupational Health and Safety aspects,  
21 which we have relied on OSHA to report to us on.

22                   In your report, you've mention a couple other  
23 things that I thought I would just bring you up to date  
24 on and that was when I was referring over at the city  
25 building about maybe bringing some things to closure.

1           You had mentioned the AC & C site at the  
2 lower end of the airport. We've completed our --

3           MR. MARTIN: Is that the --

4           MR. MODRICKER: Munroe Farms.

5           MR. WELCH: We completed our investigation.  
6 We had Westinghouse Remedial Services come out and  
7 complete a semi-phase two. Basically, we didn't confirm  
8 what the allegations were that there was a collection of  
9 -- a disposition site of drums there.

10           What we did find, through some of the  
11 analyticals, was the disposal of sludges that was  
12 permitted in '72 is now causing groundwater pollution.

13           We have met with American Color and Chemical,  
14 and they have agreed to undertake the full assessment  
15 characterization and remediation of the property. So at  
16 least something we've brought to somewhat of a closure  
17 in our mind, a closure as far as curiosities and  
18 questions. The Taggart field site, which was another --

19           MR. MARTIN: I just want to thank the State  
20 for undertaking that investigation at the Munroe farm  
21 site. In my -- I think it was interim report, what I  
22 wanted to ensure was that we continue to help the State  
23 as much as possible, not only with the technical  
24 expertise, but with money as well.

25           But I do recognize that the State took the

1 lead on that, and I would thank the State for that. You  
2 found no drums?

3 MR. WELCH: We found pieces of drums. We  
4 found portions of the drums. I think what you need to  
5 be aware of is that everything we found was in the  
6 trenches that had been identified in not only the  
7 magnetometer study but also in the maps that had been  
8 drawn back in the '70's as to where they were going to  
9 dispose of their aniline sludges.

10 What we found was some lab wastes. We found  
11 some pieces of drums, buckets. We found, I believe,  
12 four intact drums, intact to the point that they were at  
13 least holding a shape of product.

14 We analyzed them all. We didn't find  
15 anything dramatic in the sludges with the exception of  
16 maybe some hazardous levels of arsenic. But what we did  
17 find was hazardous constituents in the groundwater, and  
18 they directly relate to the aniline dyes.

19 We tried to fingerprint that site to Drake so  
20 that we could break that. And we, in fact, found  
21 nothing that related us to Drake. And I think that the  
22 fact that AC & C has stepped forward and is trying to  
23 commit to doing a cleanup in a non-adversarial manner  
24 probably lends to that being a correct assumption.

25 Taggart field was one of the other sites.

1 That was the baseball field site at the end of the road.

2 That was a site that they had brought forward.

3 We went out, and we did soil testing. We  
4 found a groundwater monitoring well in the field. We  
5 tested that. All of that came back negative, non-detect  
6 for anything.

7 We went to the nearby resident that they had  
8 contacted and, in fact, sampled his basement, sampled  
9 the groundwater in his basement. And that all came back  
10 negative with the exception of a soap product that we  
11 found and a Merthiolate which is a by-product of  
12 plastics.

13 MR. MARTIN: Was this the Yost basement?

14 MR. WELCH: No, it was Yohn, I think Yohn.

15 MR. CRYSTALL: Yost is the Mayor.

16 MR. WELCH: Mr. Yohn, I think is his name.

17 MR. MARTIN: Let the record show it was not  
18 Yost.

19 MR. WELCH: I guess what I want to bring  
20 forward is that we're going to be here long after you're  
21 going to your next site and that these folks are --  
22 we're responsible for the operation and maintenance, the  
23 care of the property. We're ensuring the ARARS are met.

24 And what we really are pleading to you is to  
25 incorporate as much of what we feel is unbiased, because

1 it certainly seems that this community has hinged their  
2 last hope on this ombudsman report.

3 I mean, we're talking about at the public  
4 meeting after the employees of the government and the  
5 employees of OHM left, there was a corps of probably 25  
6 people, which is truly the corps that believes that this  
7 is the wrong remedy.

8 But they're just hanging on the thread that  
9 you're going to stop this project. And that's why I  
10 asked this morning whether -- my confusion was whether  
11 you would be coming out with a technical recommendation  
12 or how exactly that worked.

13 Because that's how important it is to us that  
14 all of the information that we've tried to give you gets  
15 into the reports for balance, if nothing else.

16 And anything that we can give you to satisfy  
17 that or to fulfill a question you have, we stand ready  
18 to do. But the timing is just -- it's hard to believe  
19 that the day before we're going to start that you come  
20 out.

21 MR. MARTIN: Well, let me make clear, for the  
22 record, I was not aware of the decision to commence  
23 operations tomorrow. I mean, as I explained earlier,  
24 there's an ombudsman process, and there's a superfund  
25 decision-making process. And unfortunately, the twain

1 doesn't meet at times with the EPA.

2 I have to complete my process. I will do  
3 that. But as far as knowing that we were going to start  
4 burning in the morning and me being here today, I didn't  
5 know that.

6 MR. WELCH: And I give you the benefit of the  
7 doubt on it, but I think after sitting through the  
8 public meeting, sitting through the tirades of  
9 Commissioner Bottorf and of A.I.R., that they are having  
10 regular contact with you, I mean, this is what they are  
11 purporting, Bob, and none of us seem to be having any.

12 It certainly weighs the scales towards  
13 something that's not balanced. And after the meeting a  
14 week ago Tuesday night when they were pressing Tom  
15 Voltaggio for when are you going to start this unit, you  
16 know, there was people standing up saying that we're  
17 going to contact the ombudsman to see that that stops.

18 So I mean, it certainly is a perception that  
19 you're going to battle.

20 MR. MARTIN: And that perception, for the  
21 record, exists nationwide. There are various groups in  
22 various communities in our region all over the United  
23 States that make that argument persistently to Agency  
24 management. That kind of statement is always made.

25 I have to go. But I do appreciate the

1 significant contribution of the Commonwealth of  
2 Pennsylvania with this project.

3 MR. WELCH: That's all I have.

4 MR. CRYSTALL: I just wanted to give you a  
5 letter we sent to Commissioner Bottorf of February 25  
6 from Tom Voltaggio, which explains a couple of his  
7 alternate technologies that he's banking on so much.

8 One of the companies is bankrupt and the  
9 other one -- the closed loop system that is being used  
10 in New Bedford, Massachusetts, which EPA has told us  
11 from Region 1 they're using, which isn't a closed loop  
12 system, which requires an after burner to make sure  
13 dioxin and furans don't get emitted.

14 That is a very comprehensive letter that  
15 Frank Vavra helped draft up for Tom's signature. This  
16 was a commitment Tom made in the public meeting that we  
17 would evaluate the technologies brought forth to us from  
18 A.I.R.

19 These are the two that they brought forth.  
20 We have talked with our experts. There is no such thing  
21 as a closed loop system, a fully closed loop system.

22 MR. OGDEN: We confirmed that with our  
23 experts.

24 MR. CRYSTALL: We had Mick Harrison and  
25 A.I.R. people stand up in public meetings saying do what

1 Region 1 does. They changed their decision. They're  
2 going to use the eco-logic system, and they're not.  
3 They haven't decided it yet.

4 That I think would be interesting since your  
5 final report is going to address alternate technologies.  
6 We have other information as well to back that up.

7 MR. MARTIN: So A.I.R. propounded to  
8 alternate technology?

9 MR. CRYSTALL: Well, actually, they gave us  
10 three. They gave us the mobile in situ treatment unit,  
11 which was a ditch with a heating element and the guy  
12 wanted to come on the site and show us how we can clean  
13 up the site with no problem, which from everybody's  
14 account, we feel you need to drag an incinerator behind  
15 this unit for it to work because there's no emissions  
16 controls at all.

17 They're just going to put hot heating  
18 elements into the soil, and that's okay. The other was  
19 the Molten Metal Technology, that company is bankrupt  
20 now. And the one is the eco-logic, which was the closed  
21 loop hydrocracking system, similar to a petroleum.

22 A distillery would use hydrogen gas to pretty  
23 much absorb the chemicals and then that needs to be  
24 taken care of. I questioned whether the people  
25 suggesting we use this really want hydrogen tanks on

1 this site.

2 It's a lot more dangerous, we feel, than  
3 incineration. Another issue, which I think you're going  
4 to address in the final report, is an emergency response  
5 plan/evacuation plan.

6 I would ask that you talk to -- well, you  
7 don't need to talk to him, but Rick Goodbrod is the  
8 director of the division of emergency service system for  
9 the county and he has come forth in public to say that  
10 there is a valid county emergency response plan which  
11 incorporates and cites specific health and safety and  
12 emergency response considerations and is absolutely  
13 workable.

14 We have the emergency response folks from the  
15 county come to every weekly meeting. We've had on-site,  
16 full scale exercises with ambulances and fire trucks and  
17 everything else with all the city/county responders.

18 We've actually -- EPA as well as OHM, has  
19 trained county and city emergency responders in OSHA  
20 training and HAZWOPER training, its hazardous waste  
21 operations and emergency response training for  
22 specifically conditions we have here.

23 And I honestly believe that the response  
24 community knows the real problems that could happen at  
25 this site which are related to the liquid oxygen tanks,

1 and equipment handling problem where a drum of sodium  
2 hydroxin at the treatment falls off a back -- falls off  
3 a forklift or something like that and busts open; those  
4 things are the real problems which they have a grasp on.

5 We have county emergency responders as well  
6 as the city manager and the commissioners on a  
7 notification system for when we have planned TRV  
8 openings to let them know that this isn't an emergency,  
9 it's not a problem, it's planned.

10 As well as when there's an unplanned TRV  
11 opening, Mr. Goodbrod we have on -- the director of  
12 emergency services for the county. This is a situation  
13 we really don't expect it to be a problem, as you were  
14 aware, but there is an unplanned opening if anyone asks.

15 So all the notification procedures are in  
16 place for emergency response. The county's emergency  
17 response plan has evacuation plans for the City of Lock  
18 Haven.

19 Everybody in the response community and Lock  
20 Haven, the EMT'S as well as fire departments are aware  
21 of these and how our site relates to the rest of the  
22 city in terms of what would happen.

23 We are part of the emergency response plan.  
24 If something happens, we get to be evacuated like  
25 everybody else. So there is not a finalized county

1 emergency response plan. And my impression or reason  
2 why it's not, is because of the county commissioners  
3 need to sign it, and they have not to this day.

4 But the response community is satisfied with  
5 the plan, and I think that's the most important part.

6 MR. MARTIN: Okay.

7 MR. CRYSTALL: I think that's important for  
8 you to know. It's something that we're beat-up on. We  
9 don't have a final county emergency response plan.  
10 Well, you won't sign it.

11 MR. MARTIN: That lies with the county  
12 commissioners?

13 MR. CRYSTALL: It's their responsibility to  
14 approve it.

15 MR. OGDEN: Or to raise some question as to  
16 what --

17 MR. WELCH: Well, they have a yes vote, a no  
18 vote, and an abstention; one of the commissioners won't  
19 vote on it.

20 MR. MARTIN: To respond to your earlier  
21 concern, and I would like to for a moment, I know you  
22 got to run to your meeting, about communications with  
23 the -- what I call the petitioners, the A.I.R. group.

24 Early on in the ombudsman case here at Drake,  
25 there was more extensive communication with petitioners

1 in the early stages of the ombudsman case. That is  
2 fairly typical.

3 As I move to closure in the ombudsman  
4 process, I favor written comments, and I favor meetings  
5 on the record. So the close kind of communication you  
6 noted earlier, generally happens in the beginning and  
7 certainly not at this juncture.

8 And I've handled many cases, some of which  
9 involve states as aggrieved parties that have come to me  
10 about EPA. And it's -- this is no different than those  
11 cases.

12 MR. WELCH: I was letting -- I know you've  
13 heard it before, but the perception is that it still  
14 exists. And I mean, I think that's part of what feeds  
15 their process that if they felt that their constituents  
16 were losing hope, that their numbers would --

17 MR. CRYSTALL: In fact, Bob, Rusty has come  
18 out in public meetings, and I'll say this because he's  
19 come out in public saying that the reason you have not  
20 finalized your report is because you're afraid for your  
21 life.

22 MR. MARTIN: Afraid for my life?

23 MR. CRYSTALL: Right. And that's the reason  
24 you don't come up to Lock Haven or finalize your report.  
25 And how do you know that, Rusty? I know. I have good

1 sources. We know. And it's things like that that are  
2 being said in public.

3 Rusty and A.I.R. have threatened members of  
4 different groups here. They've gone to local small mom  
5 and pop businesses -- the Smedley's have, not Rusty, the  
6 Smedley's have and they've said if we see you allow OHM  
7 or Army Corps of Engineers to patronize your  
8 establishment, we're going to picket you.

9 They've gone to a County Farm Bureau meeting,  
10 which you'll hear about tonight, and they've said if you  
11 don't agree to help us get this project stopped, we're  
12 going to follow your milk trucks to your distributor and  
13 tell them that they shouldn't use it because it has  
14 dioxin in it.

15 They're actually threats, not physical  
16 threats, although maybe you have different stories about  
17 that, but they're economic threats, and they're threats  
18 that are getting some people upset.. And as far as I'm  
19 concerned, it's definitely not above the board play on  
20 their part.

21 I feel that as federal employees and state  
22 employees, we have to be honest; we can't lie; we can't  
23 exaggerate, but I have not seen that coming from A.I.R.  
24 I've seen -- discussions I've had with the Smedley's  
25 which have put issues to bed totally changed around and

1 brought two years later.

2 This public meeting we had on February 10,  
3 they started talking about beer cans they found in  
4 January a year ago. They started talking about how we  
5 informed the five people they swear were taking drugs  
6 and drinking on site, that we told them that they were  
7 going to be tested and they were able to clean  
8 themselves up.

9 The next time they said well, we know you  
10 just took chlorine tablets and put them under their  
11 fingernails and that spiked their urine test so they  
12 couldn't find anything.

13 Then it was well, you just had chlorine  
14 bleach in a canister, a vile in your arm, and you  
15 sprayed it out into the bottle and that masks whatever  
16 you have.

17 And it's things like that that they're saying  
18 in public which just are so absurd. But all it does is  
19 it rowels up the rest of the A.I.R. members. You know,  
20 as you know from two Septembers ago, the seven-hour  
21 meeting, we just got blasted with a six and a half hour  
22 meeting, which was almost the same.

23 You know, there's a position that A.I.R. has,  
24 that Mick Harrison, that Green Peace has that are just  
25 totally opposite of EPA's current views of things.

1           On the dioxin reassessment, there's a -- it  
2 hasn't been finalized yet because EPA believes it should  
3 be one way where folks from Green Peace and certain  
4 industries feel we should have another way of measuring  
5 dioxin or calculating reference to those exposures  
6 versus incremental for exposures.

7           There's a lot of things that don't have  
8 answers. Mick Harrison asked the chair of our  
9 Williamsport peer review whether there's anyone on the  
10 panel, including the chair, who can say there's a level  
11 of dioxin that can be emitted that will not harm  
12 infants.

13           One person said I can say it can harm them,  
14 and I can say it can't harm them. There's really two  
15 schools of thought. We realize that. We've come out  
16 publicly and tried to explain that.

17           But I've been told by Bill Smedley and Vickie  
18 Smedley that they don't care what science says, this  
19 incinerator is not going to happen here.

20           So one of the reasons I asked you that  
21 question at the Environmental Advisory Committee if  
22 there's closure from your point of view, do you have to  
23 stop having to listen to these folks? There won't be  
24 closure. We know that.

25           It doesn't matter what science says. It

1 doesn't matter that we sent the response to Senator  
2 Specter saying that we don't feel your final report has  
3 any implications for us starting earlier.

4 And my understanding is the Senator was  
5 amenable to that. He accepted that response. It's not  
6 like he's ready to get Carol Browner fired because her  
7 staff decided they didn't want to monitor the Senator's  
8 request. He accepted that.

9 Congressman Peterson did not send us a letter  
10 not asking us to wait for your final report before we  
11 start. He asked us to please prioritize this report  
12 since the site is such a high priority. That letter is  
13 still somewhere in Tim Fields's office for signature.

14 So it's not exactly how it's always  
15 characterized against us. There's at least two sides to  
16 each story, and we feel we have the documented records  
17 of the high road; we really do.

18 That's all I wanted to say. I appreciate you  
19 coming out here. I felt it was very important that you  
20 got a chance to talk with the State, the City  
21 Environmental Committee and the Farm Bureau because they  
22 will not speak out in a public meeting when there's 75  
23 people supporting A.I.R., they will not stand up and say  
24 anything. It's a fact.

25 MR. MARTIN: Well, thank you for arranging

1 it.

2 MR. CRYSTALL: I'm glad you were able to  
3 come.

4 MR. MODRICKER: I have one question and a  
5 short comment. And you may have answered this at this  
6 morning's meeting. But is it typical for you to prepare  
7 a report based on allegations of a group without  
8 consulting the other parties that are involved, in other  
9 words those that are being alleged against? That's my  
10 question, and then I have a comment.

11 MR. MARTIN: Allegation of a -- I missed --

12 MR. MODRICKER: Whatever nature. In other  
13 words, there was the draft report that came out, and  
14 I'll make my comment now, that was very frustrating and  
15 somewhat damaging for people here at the site and the  
16 people involved in trying to get the site cleaned up.

17 The report was prepared and presented, and it  
18 appeared to just parrot a lot of concerns that the  
19 A.I.R. group had without people like EPA and the State  
20 and the Corps and the contractor and a lot of people  
21 that were involved in the process being involved and  
22 talking with you. So I guess that's my comment --

23 MR. OGDEN: And it didn't come out as a  
24 statement of a complaint. It came out as an endorsement  
25 at the national level, national ombudsman has -- I

1 concur that these are real problems out here.

2 MR. MODRICKER: That's how it appeared.

3 MR. CRYSTALL: That is the way that we  
4 interpreted it, and I interpreted it. And I talked with  
5 a number of other people, and they say if you look at  
6 what the words say, Mr. Martin is saying these are the  
7 allegations presented to him, you're not supporting the  
8 allegations.

9 And it is frustrating and damaging  
10 individually and personally when you read something like  
11 that. In all honesty, I was devastated when I saw that  
12 because I just couldn't believe you bought everything  
13 they said.

14 But then Voltaggio and the lawyer -- look  
15 what the lawyer said, Karen Kraus, these are the  
16 allegations presented to Bob Martin, not the allegation  
17 Bob Martin is presenting to Tim Fields.

18 MR. MODRICKER: Being completely unfamiliar  
19 with the process, is that typically what --

20 MR. MARTIN: To be clear, and then maybe you  
21 can comment, no, there was no endorsement either in the  
22 report or by me personally of the allegations made by  
23 A.I.R., either, in the interim report or in the draft  
24 final report. Now, if it came across that way, I regret  
25 that.

1           MR. MODRICKER: It certainly came across that  
2 way as to a number of people involved in the project.  
3 So then my comment is, having gone through this process,  
4 if there are concerns in the final report that we have  
5 not yet had an opportunity to respond to, to provide you  
6 information or don't know about being new to the  
7 process, ask them that we be able to be involved in that  
8 process.

9           MR. MARTIN: Done.

10          MR. MODRICKER: Thank you. That's all I  
11 have.

12          MR. MARTIN: Thank you very much.

13          (The meeting concluded at 4:00 p.m.)

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CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that his copy is a correct transcript of same.

Nicole L. Mattern, Notary Public  
Beavertown, Berks County, PA  
My Commission Expires 05/24/99  
Member, Pennsylvania Association of Notaries

*Nicole L. Mattern*  
Nicole L. Mattern  
Notary Public

My commission expires  
on May 24, 1999

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APPENDIX H

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MEETING OF THE  
PENNSYLVANIA COUNTY FARM BUREAU  
LOCAL EXTENSION OFFICE  
WITH ROBERT MARTIN,  
NATIONAL OMBUDSMAN FOR THE EPA,  
PERTAINING TO THE  
DRAKE CHEMICAL INCINERATOR  
TRANSCRIPT OF PROCEEDINGS

DATE: MARCH 4, 1998, 10:12 A.M.

PLACE: ROUTE 64  
MILL HALL, PENNSYLVANIA

ORIGINAL

P R O C E E D I N G S

MR. ROBERT MARTIN (NATIONAL OMBUDSMAN):

This is a meeting with Bob Martin, National Ombudsman for EPA, and the Clinton County Farm Bureau. Thank you all for having me here. I hope I don't take up too much of your night. I know you're very busy and I'm sure you work very hard.

As I mentioned earlier, I just want to make sure I've heard what you think I need to hear and what I need to know as I finish what I do at the end of this month. I am scheduled to finish my final report on Drake by March 31, which will be distributed to obviously EPA, both at the headquarters and the regional level, and also to everyone who has an interest in this project as well.

I am interested in the remark you made just a moment ago about the moss bags and the sampling. Is that something that you care to make for the record just so we can tie down what the concern is there?

MR. THOMAS BOSSERT: The moss bags or other things monitor what is coming down from the air.

MR. MARTIN: Right.

MR. BOSSERT: Of course what affects moss bags theoretically would affect our land, and it appears that -- the moss bags or whatever kind of leaves, maple leaves or what have you, are good indicators of what is

1 there and what isn't there. And our concern is that we  
2 know what happens on our land. The data collected from  
3 them apparently is pretty accurate. I'm not in that  
4 field. I don't know for sure, but I think there is  
5 background data sufficient at this time that if we see  
6 indicators from testing that is done in the future, as per  
7 the last conversation, how soon can we expect results?  
8 With that data I think it is the basis for our position as  
9 to who is responsible for contamination, -- and that was  
10 the position we assumed as PFB in this case; that we don't  
11 think we can stop you. We think we have a concern, a  
12 legitimate concern. Down river people are going to suffer  
13 if that stuff gets away, I'm sure. Therefore, we didn't  
14 stand in front of this project. We only stand where we  
15 want to have somebody responsible for the liability that  
16 it could create.

17 MR. MARTIN: That's the reason we are here.

18 MR. BOSSERT: And I think that the whole  
19 setup at this point in time is going to show us that. I'm  
20 confident, and I think PFB and the County is confident,  
21 that that data is going to show us what we need to see.  
22 And we're -- I'm satisfied, and I don't know, but I guess  
23 everybody else can speak for themselves. I think we've  
24 been on point with this position for -- how long has it  
25 been? I don't know. We've been pounding this subject

1 around for a long time.

2 MS. COREENA MEYER: Three years.

3 MR. BOSSERT: I guess three years. So  
4 we're prepared to listen at this point in time, and what  
5 we hear dictates to us what we do as individuals and in  
6 the best interest of the Farm Bureau. So we're listening  
7 and very, very attentive as to what the moss says and what  
8 the leaves say, which I think are novel in idea and  
9 apparently are being accepted in the community -- in that  
10 scientific community very well. So we're kind of  
11 impressed with the fact that some of these ideas are  
12 initiated here, which is not unusual for us. We always  
13 have good ideas.

14 MR. GREG CRYSTALL: Can I put it into  
15 context for Bob for a minute? My name is Greg Crystall.  
16 I'm from EPA. This pretty much resulted from  
17 conversations with Peter Cosmyer about sampling farm  
18 products, milk, produce----

19 MS. MEYER: Meat.

20 MR. CRYSTALL: Meat, vegetables. And the  
21 Farm Bureau, after hearing that idea, thought there was  
22 some merit in doing something like that; but then with the  
23 Department of Agriculture and the State Department of  
24 Agriculture and the State Farm Bureau, the Department of  
25 Environmental Protection, and some other folks, it was

1 decided that the best way to do the particular sampling  
2 that we needed to protect the farmers' interests, to get  
3 background data, and to see if there was some way to  
4 monitor, was not to actually put numbers related to dioxin  
5 levels in Clinton County products, because no other county  
6 in the state has numbers associated with it. Right away,  
7 it was, well, Clinton County has this. Everybody has  
8 this. And we didn't even start the project yet. So in  
9 order to avoid that, we came up with the idea with Dick  
10 Leah from the Corps of Engineers and a waterways  
11 experimental station in Mississippi and two Penn State  
12 professors from State College, and I guess the pathology  
13 department, to sample moss bags around the community. We  
14 ended up that we have over two years of background now on  
15 dioxin and metals, the moss bags, and two seasons of maple  
16 leaves that we've sampled for background. And we've  
17 committed to continue this fifty-five day moss bag  
18 rotation and analysis through the project, and after the  
19 project, to protect the interests of the farmers in  
20 Clinton County.

21                   This is something that our opponents say  
22 was a back door deal, a back room deal, that totally  
23 disrespected anything that Peter Kostmayer had in mind,  
24 but these are the folks that needed the thing to happen,  
25 and I think that they are satisfied with the efforts we're

1 taking to protect them. So that's just to put it in  
2 perspective.

3 MS. MEYER: Can I add to that?

4 MR. CRYSTALL: Please.

5 MS. MEYER: The reason we went the route we  
6 did with the moss bags and the maple leaves, and the  
7 actual moss that was on the ground, was after speaking  
8 with these Penn State professors, Dr. Davis and Dr.  
9 Skelley, we had them do a little bit of research into what  
10 products could be tested that would have background  
11 testing elsewhere within the United States to compare it  
12 to. And we found that milk and meat and vegetables were  
13 not going to provide a comparison. The only thing would  
14 be the leaves and the mosses. The moss bags were brought  
15 into play because they're a natural conductor. And we  
16 felt that there was no way we wanted to put individual  
17 farmers lives on the line and leave them hanging in the  
18 air while everybody sat nice and tight in their nests.  
19 That was not fair to us. We were pushed to this, -- to do  
20 the testing and do whatever to protect ourselves because,  
21 and I'll lay it on the line for you, AIR went to some of  
22 the processing plants and tried to get them not to take  
23 Clinton County products, which, you know, if you want to  
24 talk about a back room deal, -- we'll lay it on the line.  
25 That's a back room deal.

1 MR. MARTIN: I understand.

2 MS. MEYER: The back room deals that  
3 they're talking about took place at the Department of  
4 Agriculture, and you can ask me anything, and I will tell  
5 you. These guys know, I'm up front. I will not feed you a  
6 line and hope and pray that it's right. I'll tell you the  
7 facts. EPA was there, DEP, Penn State, the Department of  
8 Agriculture. Senator Korman's office was there. A  
9 representative from Mike Hanna's office was there. The  
10 Pennsylvania Farm Bureau, the State, and Clinton County  
11 Farm Bureau Local. And we had a number of meetings down  
12 there to decide what direction we wanted to go. We were  
13 approached to join the lawsuit with AIR. We decided that  
14 that was not going to help us in any way. If it failed  
15 everybody was a loser. This was the only way that we  
16 could not only protect the farming community, but protect  
17 the community as a whole. That's why we went the route we  
18 went. And you were at -- at the meeting you were at I was  
19 there, and I even have -- it's taped. I have it at home.  
20 We did bring up the testing. And, you know, the people  
21 who want the testing don't have anything to lose in that  
22 department. They don't have farms. They eat and drink  
23 from the grocery store. They don't have anything to lose.  
24 But they wanted to force us into a position by scaring us,  
25 and for awhile it looked like, you know, that may be the

1 route we would have to take, because we had, you know, a  
2 processing plant writing letters; and, after contacting  
3 them, it wasn't what was being said to me. It was that  
4 they were concerned because they were only hearing one  
5 side of the story. After hearing both sides of the story  
6 we assured them that with this testing anything that  
7 spiked was going to raise our attention, and that Penn  
8 State was working on it. That assured them that if there  
9 were any problems they could come to us. And I haven't  
10 received a call since.

11 But, to be perfectly honest with you, we  
12 don't believe in joining the lawsuit. We never did. I  
13 mean, we thought about it, but we knew that it was not  
14 going to work for us. So we went this route and I think  
15 it was the best thing we ever did. We've been threatened.  
16 We've had -- I've had numerous, numerous phone calls just  
17 irate, -- because when certain people don't get their own  
18 way, and they feel that we're gaining the respect of the  
19 agencies, they get angry. And we even had an AIR member  
20 come to our board meeting and sit there and tell us that  
21 they were going to follow our milk trucks, get milk out of  
22 these milk tankers and test it; and, if they couldn't do  
23 that, they were going to go to the processing plants, get  
24 their disbursal routes, and test the milk off the shelves.  
25 So go give you an idea of radical, -- that's radical. So

1 does that give you a little bit of an idea of what we've  
2 dealing with?

3 MR. MARTIN: Yes, it does.

4 MR. BOSSERT: I don't think -- I should add  
5 that I don't think PFB has ever been in a position that we  
6 thought that we had to take reprisals against anyone in  
7 the process.

8 MS. MEYER: No.

9 MR. BOSSERT: People did what they wanted  
10 to do, but I don't think -- if somebody was offended, I  
11 don't think this organization ever felt that we were in a  
12 position that we would want to take reprisals or contest  
13 it. You do what you want to. We do what we want to do.  
14 That's the feeling I have. Again, here I end up speaking  
15 for the Pennsylvania Farm Bureau, and I don't want to  
16 assume that vest at this point in time. But I don't think  
17 we ever got into that muckraking situation.

18 MS. MEYER: The only letter that we ever  
19 wrote in that was in contradiction -- I mean, we left the  
20 paper say -- we left them say whatever they wanted. And I  
21 do have a copy of the response letter to comments made in  
22 the paper by AIR and by Rusty Bottorf, that we did  
23 contradict that. There was one rebuttal letter that went  
24 out, and that clearly stated our position; and they  
25 basically left us alone after that. We had just had

1 enough.

2 MR. DAVID SNOOK: That was the letter to  
3 the editor.

4 MS. MEYER: That went in under a letter to  
5 the editor and it was -- it stated our position very  
6 clearly. And what I really don't enjoy is the, "Well the  
7 Farm Bureau is doing this. The Farm Bureau is doing  
8 that." We have not had any contact with Rusty or with AIR  
9 since Vickie came and gave her spiel at that board  
10 meeting. And I really get upset about the fact that they  
11 have no clue what we're doing, but they'll spout and say,  
12 "They're doing this and they're doing that." They have no  
13 idea.

14 MR. MARTIN: And when was the last time AIR  
15 sat down with you? Last year, I imagine, or before that?

16 MS. MEYER: I couldn't tell you.

17 MR. SNOOK: September or October.

18 MS. MEYER: It was September or October of  
19 just this past year and it was -- it was horrendous, and I  
20 can tell you right now that it was----

21 MR. CRYSTALL: That was one meeting I  
22 missed too.

23 MS. MEYER: Lucky you!

24 MR. BOSSERT: I think in retrospect in this  
25 process -- I think the Pennsylvania Farm Bureau is one of

1 the organizations that has looked at this process in the  
2 right fashion, in a positive way, and I think our efforts  
3 are going to stand as an effort in this process. It is an  
4 ongoing effort, and which I think it is the only  
5 organization in the area that has something in mind like  
6 that. The others are -- if they're defeated they're done.  
7 This process that we have adopted and are advocating is an  
8 ongoing process that continues, and will continue post-  
9 burn, which is very beneficial to this community. And I  
10 think in time the various people in this community are  
11 going to realize the effort that the Pennsylvania Farm  
12 Bureau did here, that it was the right thing to do, and  
13 that it was the positive thing to do, and that it has  
14 lasting effects and implications. I think the  
15 Pennsylvania Farm Bureau should be proud of themselves in  
16 this county.

17 MR. MARTIN: So you all decided to select  
18 moss bags as an indicator for dioxin contamination?

19 MS. MEYER: That was from Penn State. Penn  
20 State said that --- and we're trusting them because they  
21 are the scientific force that is in this area, and they  
22 know what they're doing.

23 MR. BOSSERT: The criterias were an  
24 independent collection agency.

25 MS. MEYER: Right.

1 MR. BOSSERT: That was one of the  
2 criterias, -- and up front in our negotiations, and we  
3 advocated that. It came out of one of those meetings, the  
4 think tank type thing that we had, and it came to a point  
5 that it had to be an independent agency collecting them,  
6 and I think that's still the way it stands, -- Penn State  
7 University.

8 MR. MARTIN: Penn State will collect the  
9 moss bags then?

10 MR. CRYSTALL: With Dr. Leah, with Dick  
11 Leah. They go out with him. They consult with him. They  
12 come to the meetings with the board and help explain  
13 things.

14 MR. MARTIN: Okay. Is there now then a set  
15 of pretrial burn data from the moss bags?

16 MR. CRYSTALL: Yes.

17 MR. MARTIN: Is there a set of data during  
18 the operation of the trial burn?

19 MS. MEYER: Yes. There are six before the  
20 trial burn; three sets during; and five sets after. So  
21 there are enough sets to do a comparison, and the numbers  
22 are not spiking anywhere. I mean, there was one count  
23 where it did, but that was from the----

24 MR. SNOOK: The hospital incinerator.

25 MR. CRYSTALL: The airport, -- the

1 airport----

2 MS. MEYER: No, that was the----

3 MR. CRYSTALL: The metals at the airport.

4 MS. MEYER: No. That -- before they coated  
5 the wires.

6 MR. CRYSTALL: We hung the moss bags on I  
7 guess galvanized steel rail at the hospital and we got a  
8 high hit of zinc. That was the problem. The only  
9 statistically significant dioxin that we found was located  
10 at the hospital.

11 MS. MEYER: And they have their own  
12 incinerator. They have a medical waste incinerator. That  
13 is from what -- 19 -- 60 something.

14 MR. CRYSTALL: It has no air pollution  
15 controls really.

16 MS. MEYER: Right, and it operates under  
17 the regulations set forth when it was put into place.

18 MR. MARTIN: Right.

19 MS. MEYER: So it's not operating under  
20 current regulations.

21 MS. CRYSTALL: Do you want a full set of  
22 the moss bag data and everything like that as well?

23 MR. MARTIN: That would be helpful.

24 MS. CRYSTALL: Okay.

25 MR. MARTIN: The next interval then for

1 collection of the moss bag data is forty-five days from

2 -----

3 MR. GEORGE DRUMBOR: The last samples were  
4 collected the week of February 9th and 10th. He was in  
5 town for a public meeting because they were collecting----

6 MR. CRYSTALL: And those should be  
7 available in June I would imagine.

8 MR. DOTTERER: There is a conflict in my  
9 recollections here. Help me. The meeting was sometime  
10 ago and you people were outlining where you had these  
11 tests -- the moss bags. You had a diagram there down  
12 along the creek, -- and the hospital, and various places  
13 around here. Well, the report that AIR put out finally in  
14 Williamsport was that you had no local testing -- if not  
15 Williamsport.

16 MS. MEYER: That's the air monitoring.

17 MR. CRYSTALL: That's weather data from the  
18 air monitoring.

19 MR. DOTTERER: Weather data.

20 MR. CRYSTALL: And the fact is, we used six  
21 months of Lock Haven data, and we used six months of  
22 Williamsport data, and then some area----

23 MR. DOTTERER: Because I remember from what  
24 I read there, they were saying you weren't using local----

25 MR. CRYSTALL: That's what they've been

1 saying for the last four years and----

2 MR. DOTTERER: No local testing conditions.

3 MR. CRYSTALL: We have not used a full year  
4 of local meteorological conditions to run the air models.

5 MR. DOTTERER: They were talking about air.

6 MR. CRYSTALL: Air modeling. That -- I  
7 think we've beat that one to death in all honesty.

8 MS. MEYER: That doesn't deal with the moss  
9 bags.

10 MR. DOTTERER: Well, that's not the way I  
11 remember it though. I must have had it wrong.

12 MS. MEYER: Well, AIR might have claimed  
13 that, but all of this data, -- the Penn State professors  
14 go out and help collect it. They know where it's at. All  
15 of the moss bag data and all of the statistical data that  
16 we get is from right here. It's from Penn State.

17 MR. DOTTERER: Well, I remember they were  
18 emphasizing in these reports about collecting information  
19 from Williamsport and over----

20 MR. CRYSTALL: And over Phillipsburg and  
21 Pittsburgh.

22 MR. DOTTERER: Yeah----

23 MR. CRYSTALL: Weather data.

24 MS. MEYER: Weather data.

25 MR. DOTTERER: But they said you were not

1 collecting data from the local area here.

2 MR. CRYSTALL: Well, they generalized like  
3 that. We didn't collect weather data, but we've got all  
4 of this other data from this area.

5 MR. DOTTERER: Okay.

6 MR. MARTIN: Well, Greg, just for the  
7 record, maybe we could clarify that. Where are the moss  
8 bags? I mean, how many moss bags----

9 MR. CRYSTALL: There are four moss bag  
10 collection stations which are located in Clinton County.  
11 One of them is at the airport right near the Monroe Farms  
12 site.

13 MR. MARTIN: The Piper Airport?

14 MR. CRYSTALL: Yes. One of them is in  
15 Castanea. There is one at the hospital, -- and the other  
16 one was----

17 MR. BOSSERT: Haggens [phonetic]----

18 MR. DRUMBOR: It's the high school athletic  
19 field. It's at Fourth Street at the railroad track.

20 MR. MARTIN: But there are moss bags at  
21 each of the----

22 MR. CRYSTALL: At each of the air stations  
23 as well. There are separate moss bag locations and there  
24 are also moss bags at each of our air sampling stations.

25 MR. MIKE OGDEN: The four that you cited

1 were the four air sampling stations.

2 MR. CRYSTALL: Right, and there's four  
3 other----

4 MR. OGDEN: And then there are four more  
5 more distant in the community. There is one at McElhatten  
6 adjacent to the Army Reserve Center. There are two  
7 roughly along Bald Eagle Creek along -- I believe it's  
8 Youngsdale----

9 MS. MEYER: Youngsdale Road.

10 MR. OGDEN: Youngsdale Road, over at Bald  
11 Eagle Creek -- Castanea.

12 MR. OGDEN: We have all that on a map, Bob,  
13 that we can get for you very easily and it will identify  
14 those. The key point is that there are four independent  
15 locations, and then there are four that are co-located  
16 with the station -- what I call the monitoring -- the air  
17 monitoring stations that we've got established with MRI  
18 and OHM. And the intent there is to at some point try to  
19 correlate, if we can, the data that comes from the MRI and  
20 OHM stations, and see if there is some way we can  
21 correlate with the moss bags that are co-located at those  
22 locations.

23 MR. MARTIN: I just wanted to make it clear  
24 for the record that the moss bag stations are in the  
25 community.

1 MS. MEYER: And the date that you're  
2 looking for is with our June meeting of 1997 -- was when  
3 she came, and it was Vickie Sempley [phonetic], and she  
4 tape recorded -- she's got a tape recording of what she  
5 said to us. But she even threatened to -- she said that  
6 they had enough people that they could boycott all of the  
7 farm products grown in the county, and she really did a  
8 number. And I heard it all on the phone between her and  
9 Bill for forty-five minutes before we even got to the  
10 board meeting. So -- anybody who knows me knows that I  
11 will not be threatened. It doesn't work that way. And I  
12 said -- she wanted me to bring it to the board. And I  
13 said, "No. If you want to do it, you do it yourself."  
14 And she was very angry and very upset, and she wanted  
15 apologies and she wanted us to make decisions that night,  
16 -- and that's not the way we work. And she slammed the  
17 door when she left and was not happy.

18 MR. MARTIN: In the early stages of the  
19 public participation process for Drake was it the AIR  
20 group who asked, I believe it was Administrator Cosmyer,  
21 to sample the dairy----

22 MS. MEYER: That was a decision -- we had  
23 talked about it -- because at that point I was the liaison  
24 between the Farm Bureau and AIR, and they had talked to me  
25 about it; and I had asked Peter Cosmyer if that would be

1 possible. I did not say that was what we wanted done. I  
2 asked if that was a possibility. And then AIR went forth  
3 and asked him themselves, and asked Roy Schrock if they  
4 would definitely do that. And that took somebody  
5 volunteering to do that, -- which wasn't going to happen.  
6 I mean, nobody wanted to put their farm on the line. We  
7 even considered having some of the farms tested with a  
8 number system, with concealed, you know, names, so it  
9 wouldn't be associated with a particular farm, but it was  
10 still up for -- you know, anybody could get that  
11 information if they subpoenaed it, and those people would  
12 be in trouble if anything showed up. So we thought, you  
13 know, it's not fair to pinpoint or to point your finger at  
14 any one person. Let's do a generic community testing that  
15 would have a comparison value in the scientific community,  
16 and where they would have other data to go back to and to  
17 look at. And that is where Penn State came in, and they  
18 were the ones who suggested that this was the only thing  
19 that they could come up with that was going to work.  
20 That's why we went with that.

21 MR. MARTIN: Okay.

22 MS. MEYER: If -- one of the things Dave  
23 and I have talked about is, -- you know, they keep saying  
24 about how they want milk tested, and they want milk  
25 tested, and if that's the case, then maybe they should

1 test breast milk, which is one of their biggest concerns.  
2 One of their biggest concerns is the babies and the breast  
3 milk. If they want to do that, why don't they test breast  
4 milk?

5 MR. MARTIN: So you suggested that back to  
6 AIR?

7 MS. MEYER: No, no. They -- we just  
8 discussed this at a public meeting.

9 MR. MARTIN: Okay.

10 MS. MEYER: Dave and I discussed this.  
11 But, see, they've not contacted us personally.

12 MR. MARTIN: Um-hunh, okay.

13 MS. MEYER: They've had other people  
14 contact us and say, "Will you meet with us? Will you meet  
15 with Frank Harrison? Can we come to your house?" -- No.  
16 It's -- if they want to meet with us, they can call and  
17 talk to us. You know, we're human beings. So we -- both  
18 Dave and I have decided that we will decline, unless they  
19 have contacted us personally, and then we'll discuss how  
20 we want 'em to do that.

21 MR. MARTIN: Thank you.

22 MS. MEYER: Okay?

23 MR. MARTIN: Thank you. I just wanted to  
24 get a sense clearly of how all of this started and where  
25 it is today with respect to the moss bags and the AIR

1 issue. Thank you.

2 MS. MEYER: Are there any questions that  
3 you have for us as far as contradicting views? Questions  
4 that you've been asked? Or information that you've gotten  
5 that might pertain to us that we have no idea about?

6 MR. MARTIN: Well, I'm just curious. I did  
7 get one formal communication from you all in November of  
8 '96 or October of '96.

9 MS. MEYER: It would have been a little  
10 while -- a long time ago.

11 MR. MARTIN: Or September of '96, -- a long  
12 time ago, yes.

13 MS. MEYER: It would have been in '96,  
14 yeah.

15 MR. MARTIN: Yeah, concerns about the risk  
16 assessment. You had some concerns then. Are there any  
17 concerns now?

18 MS. MEYER: I think through having Greg  
19 involved at this point -- we have brought all of our  
20 concerns to him, and all of those have been addressed.  
21 Back when Roy was in charge of this project we had a lot  
22 of problems, and that's where most of that stemmed from --  
23 was, you know, trying to get all that hashed out. And as  
24 Greg will tell you, if we have any problems we come to  
25 him. We outline 'em and we say, "Okay, tell us what

1 you're going to do about this." And I think he's been  
2 pretty up front with us, and we've been real up front with  
3 him about what we expect to see happen; and so far, so  
4 good.

5 MR. SNOOK: Okay. Then I guess at this  
6 point I'd like to say that we'd like to see this burn get  
7 started and over with, and if it meant that we need to cut  
8 the times back per hour so that there was an emissions  
9 coming up the stack, that that's what we need to do, --  
10 but just get it done. -- Because when you dig it up and  
11 put it on the pile -- do it, and get it done anyhow.

12 MR. MARTIN: Do you all have any questions  
13 for me?

14 MS. MEYER: Your other meetings today, were  
15 they similar to this one? Were they along the same lines  
16 of the informational process, getting you pretty much up-  
17 to-date and reformed about what has been happening?

18 MR. MARTIN: Well, especially with the Lock  
19 Haven Environmental Advisory Council. They had a number  
20 of questions of how EPA does various things, the  
21 processes, the Super Fund Program, and the Ombudsman  
22 process and whatnot, and we responded to those. That's  
23 generally what that was about. And then this afternoon I  
24 met for a fairly long time with Greg and the Corps of  
25 Engineers and the State about some operational concerns

1 raised by a former employee at the Drake Facility late  
2 last week. So that's what we did this afternoon.

3 MS. MEYER: Okay. I do have one very  
4 direct question.

5 MR. MARTIN: Um-hunh.

6 MS. MEYER: One of the things that I've  
7 caught some flack on is AIR's accusation that your final  
8 report is being held up because there is information in  
9 that that EPA doesn't want out. I don't believe there's  
10 any truth to that, but that's what's coming back to me.  
11 Is your final report being held up?

12 MR. MARTIN: No, the final report is not  
13 being held up. I have set the schedule for completion of  
14 the final report.

15 MS. MEYER: Okay.

16 MR. MARTIN: And that is March 31. And the  
17 reason behind that date is that I wanted to review the  
18 trial data. It seemed like a sensible thing to do.

19 MS. MEYER: Boy, did he get himself in over  
20 his head.

21 MR. MARTIN: Two, to review the risk -- to  
22 critique the risk assessment by the peer reviewers.

23 MS. MEYER: Um-hunh.

24 MR. MARTIN: And, three, to have an  
25 opportunity to come up and meet with you folks on the

1 record all around on the issues.

2 MS. MEYER: Okay.

3 MR. MARTIN: And then go final.

4 MS. MEYER: Okay, because that was one of  
5 the things that was brought to me, -- was, okay, "AIR says  
6 this, and you haven't brought anything up on this  
7 information. Where do you think this fits?" And I wanted  
8 to make perfectly clear that we would never want to see  
9 that happen. Your report needs to get out as soon as you  
10 can possibly get it out. I think that's going to be one  
11 of the -- that's been one of the catches, that there's so  
12 much -- so many rumors that go around about why it's being  
13 held up, and why it's not done yet, -- that I wanted to  
14 get a very clear answer on that, and that way I can clear  
15 some things up with some people I have to go back to.

16 MR. MARTIN: Well, I'm glad you asked me.  
17 You can say that you got it from the horse's mouth.

18 MS. MEYER: Okay, cool. I'm not hard to  
19 get along with. Does anybody else have anything for Bob?

20 [No response by any member.]

21 MR. MARTIN: Okay. Thank you. I think we  
22 go off the record.

23 [The Clinton County Extension Pennsylvania Farm Board  
24 meeting concluded at 8:52 p.m., March 3, 1998.]

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**C E R T I F I C A T I O N**

I hereby certify as the closed microphone stenomask reporter, that the foregoing proceedings were taken by me, and thereafter reduced to typewritten form by me, and that this transcript is a true and accurate record to the best of my ability.

**GREENE REPORTING SERVICE**

By: Stephen W. Greene  
**Stephen W. Greene,**  
**Court Reporter**

APPENDIX I

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MEETING OF THE  
CLINTON COUNTY BOARD OF COMMISSIONERS  
FOR  
DISCUSSIONS WITH ROBERT MARTIN,  
NATIONAL OMBUDSMAN FOR THE EPA  
PERTAINING TO THE  
DRAKE CHEMICAL INCINERATOR  
TRANSCRIPT OF PROCEEDINGS

BOARD MEMBERS: DANIEL VILELLO  
MILES KESSINGER  
DEAN BOTTORF

DATE: MARCH 4, 1998, 10:12 A.M.

PLACE: CLINTON COUNTY COURTHOUSE  
LOCK HAVEN, PENNSYLVANIA

**ORIGINAL**



1 would be obviously the decision has been made by EPA,  
2 Region III, to go ahead with this project irregardless of  
3 the status of your report. As far as the Clinton County  
4 Commissioners, unless someone has changed their mind, we  
5 are on record asking EPA to stand their ground -- I'm  
6 sorry, to wait until after your report is released. In  
7 your experience as EPA's Ombudsman, have you seen this  
8 situation in the past where the agency starts the project  
9 that you're investigating or is it usually the other way  
10 around? The way that would make more sense is that your  
11 report comes out and people get a chance to discuss it  
12 before any activities take place.

13 MR. MARTIN: To be fair, the answer to that  
14 question is, I've been doing this function for about five  
15 years. This is not the first incineration project which I  
16 have reviewed that EPA has undertaken. It probably won't  
17 be the last either. In most cases when I've been asked to  
18 intervene it has been in midstream at an EPA Superfund  
19 Incineration Project. This may be one of two cases that I  
20 was asked to intervene before operations commenced. I  
21 think the decision to proceed with the incineration was  
22 memorialized by Regional Administrator McCabe two days  
23 ago. Greg, is that correct?

24 MR. GREG CRYSTALL: Yes.

25 MR. MARTIN: He signed a decision document

1 to go forward.

2 MR. BOTTORF: Okay. I guess my question  
3 is, is that typical? Have you seen that happen before in  
4 your job? Have you seen this situation take place before  
5 since you've been Ombudsman?

6 MR. MARTIN: The only case I can compare  
7 this to was a Superfund Incineration Case in Texas in  
8 which incineration had not yet begun, but site operations  
9 did go forward while my review was pending -- and  
10 incineration had not begun. Does that answer your  
11 question?

12 MR. BOTTORF: Yes.

13 MR. VILELLO: Mr. Martin, I had heard  
14 several times that you had an initial report that was  
15 presented and I heard some different terminology as to  
16 what took place with that initial report as to whether it  
17 was being reviewed or censored or whatever. I'd like you  
18 to speak on that, if you could, as to what happened to the  
19 original report that we have not received?

20 MR. MARTIN: Okay. I assume you're  
21 referring to my May 8, 1997 Interim Ombudsman Report?

22 MR. VILELLO: I'm not sure of the date.

23 MR. MARTIN: There were two. There was a  
24 May 8 report and then there's an August report which was  
25 released as a draft final report by EPA.

1 MR. VILELLO: Okay.

2 MR. MARTIN: The May 8 report, I  
3 understand, was released by the Agency in late August or  
4 September of last year as it was written. The May 8  
5 report was held by the Agency from May 8 through about  
6 September. If I recall, it was probably held about a  
7 hundred days. The reasons the Agency held the May 8  
8 report -- there were several. There were remarks from the  
9 Agency that the May 8 report contained factual errors,  
10 misstatements of fact and technical inaccuracies, so the  
11 May 8 report was remanded back to me. I reviewed those  
12 remarks. There were two factual errors in the report. I  
13 believe one error was a statement attributed to former  
14 Regional Administrator Cosmyer -- that was misstated and  
15 attributed to him. And secondly, there was an inaccuracy  
16 about how the tests for dioxins at sites of your -- what  
17 we call RCRA, Resource Conservation Recovery Act, and  
18 rules that had been promulgated under RCRA. Those errors  
19 were corrected. There were no misstatements of fact in  
20 the interim report. I proceeded to go forward as I  
21 normally would in an ombudsman's process to a final  
22 report. That is why I issued a draft final report August  
23 of last year which did contain comments that I did receive  
24 from our Office of General Counsel, the Environmental  
25 Response Team, and Region III as well. I am proceeding to

1 finish my Ombudsman Final Report and that will be done by  
2 March 31st.

3 MR. VILELLO: I'll come back later, but I  
4 think we can start.

5 [Gestures to recognize a speaker.]

6 MR. CARL RUMBALSKI: My name is Carl  
7 Rumbalski. I would just like to go on record as saying  
8 that if your report is going to be done by March 31st, I  
9 don't know what the big rush is by getting started right  
10 now. My question to you is, being that you're an expert  
11 in this area and you're familiar with the type of  
12 materials that are manufactured as that incinerator runs,  
13 it is breaking down over two hundred and fifty poisonous  
14 compounds. I'm told that some of these, or many of these  
15 can reform and even form into new compounds. Reading the  
16 report on the burn, it indicated that there are such  
17 compounds as chlordane, DDT, lead, mercury that will be  
18 going into the atmosphere. Now, EPA tells us that minute  
19 quantities of this stuff kills. This stuff is  
20 accumulative. It doesn't break down very fast in the  
21 environment. A lot of chemists and scientists don't know  
22 what the time frame is on it, but I feel that it's very  
23 dangerous releasing this kind of chemical into the  
24 environment, this hazardous chemical, because it's going  
25 to affect wildlife, livestock, drinking water, and

1 eventually, human health. Unless we are absolutely sure  
2 that this is safe and it's the best solution, I don't  
3 think you should move ahead with it.

4 I believe that elected officials and  
5 everyone along the way that has had something to say about  
6 it needs to live up to their responsibilities and give a  
7 true statement on whether they feel that this is the best  
8 choice. If they can't say that, and a newer technology  
9 hasn't come along that's better for the release of these  
10 terrible chemicals at a lower rate then it will be over  
11 the next two years-----

12 MR. VILELLO: Sir, do you have a question?

13 MR. RUMBALSKI: Yes, the question is,  
14 should it be done?

15 MR. VILELLO: Thank you.

16 MR. MARTIN: So your question is, "Should  
17 the incineration go forward?"

18 MR. RUMBALSKI: Yes.

19 MR. MARTIN: Let me be clear about what my  
20 status is within the Agency. I am not a decision making  
21 official within the Environmental Protection Agency. As  
22 to my expertise in the area, I do have subject matter  
23 expertise, but let me also be clear, I am not a scientist  
24 or a chemist or a chemical engineer. One of the reasons  
25 that my final report will be completed at the end of March

1 is because I wanted the opportunity to review our Peer  
2 Reviewer's comments, our independent Peer Reviewer's  
3 comments and Risk Assessment. I understand that their  
4 final report has not yet been released. I am not certain  
5 what stage of preparation it's at either, but I will be  
6 reviewing their written comments. So, that answer to your  
7 question is, it would be premature for me as Ombudsman to  
8 make a finding until I'm done and I'll be done at the end  
9 of the month.

10 MR. VILELLO: Does that answer your  
11 question?

12 MR. RUMBALSKI: Not exactly. -- But then  
13 I would like to ask Mr. Crystall a question. Did you wish  
14 to proceed -- based on all the information that I have  
15 given and the information that Mr. Martin has given, do  
16 you feel that you, in a clear conscience based on your  
17 responsibility to the community, are justified in moving  
18 forward?

19 MR. GREG CRYSTALL: Yes, I do.

20 MR. RUMBALSKI: And if you aren't, who's  
21 responsible to pay the bill?

22 MR. CRYSTALL: What bill?

23 MR. RUMBALSKI: Medical bills or other  
24 problems that occur from chemical, caustic chemicals,  
25 poisons.

1 MR. CRYSTALL: We don't believe there's  
2 going to be any problems that occur.

3 MR. RUMBALSKI: Because you don't believe  
4 it, that doesn't mean it's not going to happen. -- And  
5 if it does, what happens then?

6 MR. CRYSTALL: [No response.]

7 [Mr. Vilello recognizes another speaker.]

8 MR. AL SPETH: My name is Al Speth. I'm a  
9 public spirited citizen. I've listened to this for two  
10 years. I've seen what I consider mumbo-jumbo scientific  
11 proof and I don't intend to listen any longer. I'm going  
12 to leave the meeting; but, my question is, how soon will  
13 this project be done so we can get this thing behind us?

14 MR. CRYSTALL: We're hoping we'll be out of  
15 -- we'll be stopping the feed within eighteen months to  
16 two years. Then we'll take six months to take the thing  
17 apart and get out of here.

18 MR. SPETH: Is there any scientific proof  
19 that's been presented to show if there's been any  
20 respiratory cancer or anything else?

21 UNIDENTIFIED SPEAKER: Yes.

22 MR. SPETH: No, I'm asking the ombudsman.

23 MR. MARTIN: You are going to allow that  
24 question?

25 MR. VILELLO: Yes.

1 MR. MARTIN: Okay. The straight answer to  
2 that question is that I understand that there is a  
3 separate agency that deals with health effects, the Agency  
4 for Toxic Substances and Disease Registry. I do not  
5 believe that they've completed their final report either  
6 and I, you know, can't say until they do. I've been in  
7 consultation with them and I will be talking to them  
8 before I finish this month.

9 MR. SPETH: [Addressing the audience.]  
10 Have a good time.

11 [Mr. Speth departs conference room.]

12 MR. VILELLO: [Recognizes a speaker.] Back  
13 in the corner.

14 MR. TOM BIRCH: My name is Tom Birch. In  
15 following -- everybody's report who is finished seems to  
16 be on either one side or the other. There's the people  
17 who are either directly paid by the federal government or  
18 whose jobs are funded by the federal government that say  
19 that this thing is the greatest thing since sliced bread.  
20 Then there's the other people who are either academics or  
21 have been retained by AIR, and they say that this thing is  
22 going to kill us. Now, assuming that each one of them has  
23 at least some expertise in the matter, my question is, is  
24 the science that this thing is based on so fuzzy that  
25 nobody knows what they're talking about or, if it is not

1 that fuzzy, who's lying?

2 MR. VILELLO: I'm not sure that's a  
3 question. Is that a formal question you're asking? Who's  
4 lying?

5 MR. BIRCH: It's got to be either one way  
6 or the other. Either the science is concrete and we can  
7 determine what's going to happen -- in which case one side  
8 or the other is jerking my chain or the science is so  
9 fuzzy that we don't know what the hell's going to happen.

10 MR. VILELLO: I'll leave it to you, Mr.  
11 Martin, if----

12 MR. DEAN BOTTORF: EPA's lying. I answered  
13 the question. Is that a good enough answer? EPA is  
14 lying.

15 MR. BIRCH: I'd like Mr. Martin to respond  
16 to that.

17 MR. MARTIN: Okay. I can only respond on  
18 the basis of what I do, okay? -- And I will. What I do  
19 is to take my series of complaints from citizens, or it  
20 could be any person that feels that, let's say, a wrong is  
21 being done and things are too fuzzy. I then work that  
22 through my process. My process includes going back to  
23 EPA, to our regional office, to experts in headquarters to  
24 get their take of that complaint. I also go to experts  
25 who do work for the citizens' group. I look to their

1 expertise as well. I try to get both sides of the  
2 question. I try to get all sides of the question, because  
3 what I have found in doing this job for five years is that  
4 in a lot of cases there is more to a problem than what  
5 both sides bring to it. My process is going to take until  
6 the end of March. I have to review the Peer Reviewer's  
7 comments. I had reviewed technical elements provided by  
8 the experts who work with the AIR group. I found those to  
9 be good comments. I'm in a deliberative process and I'm  
10 going to be done at the end of the month.

11 UNIDENTIFIED SPEAKER: I have a comment and  
12 a couple of questions. One,-----

13 MR. VILELLO: Introduce yourself, please.

14 MS. ROSE REEDER: I'm sorry, Rose Reeder.  
15 If EPA has invited experts in in an effort to be complete  
16 and thorough, then it seems only logical that we wait  
17 until all the reports from the experts are finished. To  
18 go forward without the reports being finished negates the  
19 whole process. If you haven't heard the comments and Mr.  
20 Martin hasn't had a chance to evaluate them, what was the  
21 purpose? Was it a farce? Was it to appease us? What was  
22 the purpose? There is no completion here.

23 The other thing is for Mr. Crystall. Your  
24 opinion is based on science, is that correct, that this is  
25 safe?

1 MR. CRYSTALL: Yes.

2 MS. ROSE REEDER: Okay. -- Based on  
3 science then Phen-Fen and thalidomide were safe. A number  
4 of years later we were left with horrible, horrible  
5 results -- permanent heart damage, children grossly  
6 deformed. Mr. Crystall, if your science turns out to be  
7 inaccurate, what will you do for us?

8 MR. CRYSTALL: I'm not an attorney. I  
9 don't know what to do. I'm not a policymaker and I don't  
10 know what will happen.

11 MS. ROSE REEDER: You're willing to go  
12 ahead even though there are many credible scientists who  
13 say there are serious health concerns here, yours and  
14 ours. Both sides have said that. You're willing to go  
15 ahead based on the assumption that science is one hundred  
16 percent accurate.

17 MR. CRYSTALL: I never said that science is  
18 one hundred percent accurate, but I'm willing to go ahead  
19 based on the information that I've been given and I have  
20 seen and that my experts from all the different agencies  
21 have told me.

22 MS. ROSE REEDER: I've heard some of your  
23 experts raise unanswered questions. Now, to me----

24 MR. CRYSTALL: There are a lot of  
25 unanswered questions that have no answers and we believe--

1 --

2 MS. ROSE REEDER: Right. So to me -- let  
3 me just say this. If the unanswered questions prove to be  
4 damaging, is there any cost to you personally? Will you  
5 get sick or is it just Lock Haven left holding the health  
6 bag?

7 MR. CRYSTALL: I don't think there's going  
8 to be any problem with the project that----

9 MS. ROSE REEDER: See, that's easy for you  
10 to say that, but----

11 MR. VILELLO: Excuse me, Rose, we're----

12 MS. ROSE REEDER: I know you're limited  
13 with time.

14 MR. VILELLO: No, I'm not limited. I could  
15 do this for the next ten hours, but I really would  
16 appreciate the questions though be directed to Mr. Martin  
17 today for the two hour period that he has allotted to us.  
18 I think it's most important. We've been waiting for him  
19 to come to this community for a long time.

20 MS. ROSE REEDER: Yes, okay. Thank you  
21 very much. I ask you the same question based on the lack  
22 of absolute security in science, the absolute assuredness  
23 that it will be safe and based on questions that have been  
24 able to be answered, questions coming from both sides --  
25 what can you do for Lock Haven or what are you thinking

1 about the unanswered questions and us being left with the  
2 health effects after OHM is long gone? I mean, EPA is a  
3 protection agency and they were sure thalidomide was safe.  
4 I don't want to be left with something like that.

5 MR. MARTIN: To respond, yes, we are the  
6 Environmental Protection Agency and our vision is to  
7 protect human health and environment -- at least in the  
8 Superfund Program I think that's why we're there. I know  
9 from a cursory review of some of the comments by the Peer  
10 Reviewers to the Risk Assessment that there were questions  
11 about whether risk is evaluated by an absolute point at  
12 the margins. That's a valid concern that I intend to  
13 address in my final report. I want to speak to process  
14 next. The interim report I believe was clear that, at  
15 least as far as the ombudsman process goes, I felt the  
16 process should be complete before operations were  
17 commenced. I want to also be clear that that does not  
18 represent the position of EPA.

19 MS. ROSE REEDER: My basic question is that  
20 if there are serious -- and this came from the Peer  
21 Review, EPA's Peer Review, if there are serious questions  
22 that are apparently unable to be answered and have --  
23 there are definite scientific ramifications that are very  
24 serious for children's health, how can you even make a  
25 marginal assessment? How can they even make a marginal

1 assessment that it's safe when the question can't be  
2 answered? The only answer will be the result.

3 MR. MARTIN: That's precisely the kind of  
4 issue I have to deal with in my report.

5 MS. ROSE REEDER: So, again, we should wait  
6 until your final report comes through. I mean --

7 MR. MARTIN: I can only say again that I am  
8 not a decision making official within the Environmental  
9 Protection Agency.

10 MS. ROSE REEDER: Yes, I understand. Thank  
11 you.

12 MR. VILELLO: Mick had his hand up first.

13 MR. MICK HARRISON: Good morning. I'm Mick  
14 Harrison, the attorney for AIR. I have some questions for  
15 the Ombudsman and I think we'll elicit some information  
16 unknown to the Commissioners and unknown to the community.  
17 However, I don't want to preempt other people's questions,  
18 so at your discretion when you think I've gone long enough  
19 down my list, just ask me to sit down and perhaps I can  
20 come back later and finish.

21 MR. VILELLO: I think that would be good.

22 MR. HARRISON: All right. Mr. Martin, have  
23 you received information recently in your inquiry from a  
24 former government supervisor at the Drake site?

25 MR. MARTIN: Yes, I have.

1 MR. HARRISON: All right. Did the former  
2 supervisor indicate to you that he had observed fugitive  
3 emissions occurring during operations of the Drake  
4 incinerator?

5 MR. MARTIN: Yes, he did.

6 MR. HARRISON: Did the supervisor indicate  
7 to you that he had a concern regarding the potential for  
8 beta-naphthylamine, BNA, or other toxic contaminants being  
9 present in those fugitive emissions?

10 MR. MARTIN: Yes, he expressed concerns  
11 about not only fugitive emissions, but about content of  
12 those emissions.

13 MR. HARRISON: Did the witness relate to  
14 you an incident in which, while wearing a respirator on  
15 the site, this supervisor experienced breakthrough of  
16 chemical vapors so that he was breathing them inside of  
17 the mask?

18 MR. MARTIN: He expressed an incident in  
19 which his respiration, yes, was broken through and  
20 compromised.

21 MR. HARRISON: And he indicated that he  
22 smelled chemical vapors at that time?

23 MR. MARTIN: Yes, he did.

24 MR. VILELLO: Mick.

25 MR. HARRISON: Yes, sir?

1 MR. VILELLO: Mr. Martin is not on trial  
2 here.

3 MR. HARRISON: No, no.

4 MS. REEDER: We know.

5 MR. HARRISON: I understand.

6 MR. VILELLO: I want to make sure that the  
7 people that want to ask questions to----

8 MR. HARRISON: Unfortunately, I'm in a  
9 position to know some of this, and the people that come in  
10 here are not, and neither are you at this moment. That's  
11 because the witness has chosen not to go public in a news'  
12 release.

13 MR. VILELLO: Right. Okay, I guess you  
14 realize that that's your decision how you want to handle  
15 that.

16 MR. HARRISON: Yeah, I understand. That's  
17 fine.

18 MR. VILELLO: Yes, Mr. Crystall?

19 MR. CRYSTALL: I do have something. The  
20 witness' Affidavit is a public document that was sent over  
21 to us by Senators Spector, Santorum and Congressman  
22 Peterson. It is public information, as is the Region III,  
23 Army Corps of Engineer's Response to all of the  
24 allegations in that Affidavit. It's in the repositories.

25 MR. VILELLO: And that's what you're

1 referring to?

2 MR. HARRISON: Well, I don't know -- I  
3 presume I know what he's referring to and I assume it's  
4 the same witness. However, the Affidavit he's referring  
5 to is a two page affidavit prepared for Senator Spector in  
6 a twenty-four hour turnaround. The information that I'm  
7 referring to is information given to the Ombudsman in a  
8 three hour interview on the record with a court reporter  
9 that went well beyond that two page affidavit, some of  
10 which Mr. Crystall doesn't know has been testified to,  
11 although he may know, from his own sources, the content.  
12 So referring to that affidavit or the Army Corps' Response  
13 is not sufficient to address the points I'm making today.

14 MR. CRYSTALL: I was referring to the  
15 Affidavit, plus a meeting that we were in with Mr.  
16 Harrison and the person in question and some other folks  
17 last Friday.

18 MR. HARRISON: I appreciate that  
19 clarification, Greg, but the information given to the  
20 Ombudsman goes beyond both of those sources of your  
21 information.

22 MR. MARTIN: If I can interject?

23 MR. VILELLO: Yes, please.

24 MR. MARTIN: Just so everyone knows,  
25 because I want this to be open about what has occurred

1 with this former employee at the Drake site. He did come  
2 forward. An affidavit was prepared by counsel and  
3 submitted to Senator Spector. I understand there was a  
4 meeting last week with the former employee and counsel and  
5 lawyers for the Department of Justice and EPA as well as  
6 the Region III technical staff. I have reviewed the  
7 Affidavit. I found what was expressed in the Affidavit  
8 was critical to an Ombudsman Review of the Drake  
9 Incineration Project. That is why on Monday evening we  
10 did an on the record, a privileged meeting, with counsel  
11 and the former employee. I wanted to explore what was  
12 presented in the Affidavit and cover relevant issues.  
13 Now, after that I did hold an on the record meeting,  
14 yesterday afternoon, with the Corps of Engineers of the  
15 State of Pennsylvania, and Mr. Crystall as well, to review  
16 that Affidavit and relevant information that was presented  
17 before yesterday. I am going to take into consideration  
18 in the final report not only the Affidavit, but all of the  
19 information provided by the witness on Monday evening on  
20 the record and also all responses of Region III of the  
21 State of Pennsylvania, and the Corps of Engineers. I will  
22 also be reviewing all of the documents that still need to  
23 be reviewed with respect to the site operations before  
24 coming to any findings and conclusions in the final report  
25 which, as I said, will be done at the end of the month.

1 That's pretty much what I have to say on that.

2 MR. HARRISON: I understand that. My  
3 purpose here, Commissioners, is not to -- I understood  
4 the process as Mr. Martin outlined it before I started  
5 asking my questions, and I continue to understand it after  
6 his explanation, but the point of my questions is to let  
7 the Commissioners know and the public know what  
8 information has been relayed to the Ombudsman from, what I  
9 think would be considered by some, a source in between  
10 EPA, advocates of the incineration process on one side,  
11 and AIR, opponents of the incineration process on the  
12 other. This information being relayed by a former  
13 government supervisor at the Drake site, who has to my  
14 knowledge nothing to gain by saying anything other than  
15 the truth -- and perhaps, has something to lose by telling  
16 the truth about it. Nonetheless, he's had the courage to  
17 do that and put this information on the record. My  
18 understanding is that this witness' testimony in his  
19 affidavit to the government in the meeting that he had  
20 with the government, and to Mr. Martin in that meeting  
21 with the court reporter, all of this was intended to be on  
22 the record and publicly available unless the witness said  
23 to some official, " I wish this to be kept confidential."  
24 That's my understanding of the witness' intent. He does  
25 not seek publicity. He does seek to have known what

1 happened at the site from his perspective. My purpose in  
2 asking a few additional questions is so that you know what  
3 he wants you to know. It may be a few days before this  
4 transcript becomes available for you to know. In the  
5 meantime this incinerator is operational. So I, with your  
6 permission, have a few more questions to bring that  
7 information out. If you'd rather I can just tell you what  
8 it is.

9 MR. VILELLO: I was just going to say --  
10 I'm not sure, but if you know something just present it.

11 MR. HARRISON: With your permission, I'll  
12 do that.

13 MR. VILELLO: I'm not sure that Mr.  
14 Martin's going to be involved with what you know.

15 MR. HARRISON: Whatever is most efficient  
16 for you.

17 MR. BOTTORF: Just say it. You're the  
18 expert.

19 MR. HARRISON: And Mr. Martin can correct  
20 me if I'm wrong. The witness has brought to my attention,  
21 and I understand to the Ombudsman's attention, the  
22 following problems and observations.

23 One, that during a majority of the time  
24 when the incinerator was burning during the shakedown  
25 trial period the ash coming from the incinerator after

1 processing, meaning the processed soil, failed to meet the  
2 contract criteria for removal of BNA from the soil.

3 The witness also indicates that flameouts  
4 have occurred in the incinerator from time to time.

5 The witness also indicates that what are  
6 called "kiln puffs", a release of combustion gases and  
7 particulate, from the combustion zone either at the kiln  
8 seal or between the primary and secondary combustion  
9 chambers have occurred on the site.

10 The witness has indicated that the quote,  
11 "automatic waste feed cutoff system," unquote, which is  
12 designed to stop waste feed through the incinerator during  
13 operation when a combustion condition or an air pollution  
14 control condition goes out of compliance, that that quote,  
15 "automatic waste feed cutoff system," unquote, is not  
16 automatic. It is basically set to allow a sixty minute  
17 delay before waste feed is cut off, during which time the  
18 machine continues to operate in noncompliance unless an  
19 operator manually decides to shut down. The witness  
20 indicates that there have been occasions which there have  
21 been decisions by operators to take action to allow  
22 continued operation of the incinerator in a noncompliant  
23 condition even beyond the sixty minute period.

24 The witness has identified frequent  
25 operating flaws in the rapid quench component of the air

1 pollution control device. The rapid quench is the device  
2 designed to cool the combustion gases quickly to minimize  
3 dioxin formation. The witness indicates that this  
4 particular air pollution control device has been  
5 problematic. There's been difficulty controlling the  
6 quench flow and controlling the combustion gas temperature  
7 for dioxin minimization, including frequent flooding of  
8 the quench where liquid actually comes out the bottom of  
9 the quench, which is not in the design of the equipment.

10 The witness indicates that the scrubber air  
11 pollution control device has had several incidents where  
12 it operated in noncompliance in terms of PH, the acidity  
13 level.

14 The witness also indicates, for the  
15 reasons that I've stated and reasons which I haven't yet  
16 spoken of, but which you'll see eventually in the  
17 transcript, that he told Mr. Crystall, who is with us  
18 today, after the public meeting on the Risk Assessment  
19 with EPA's experts -- he told Mr. Crystall that the  
20 incinerator will not work. The witness reports that Mr.  
21 Crystall replied to him, "I know." Now, essentially it's-

22 ---

23 MR. VILELLO: Mr. Harrison, again, this is  
24 all public record?

25 MR. HARRISON: Not yet.

MR. VILELLO: But it will be soon?

1 MR. HARRISON: It will be, but I would  
2 think you would want to know today since the machine is  
3 burning hazardous waste. -- But if you wish to cut me  
4 off----

5 MR. VILELLO: No, I'm not trying to cut you  
6 off. I'm just trying to understand where we're going in  
7 reference again to the fact that we have Mr. Martin here.

8 MR. HARRISON: I understand. I'll do this  
9 as quickly as I can. I want you to know that the  
10 Ombudsman knows this now -- that it will be addressed  
11 eventually in his report along with other information that  
12 he receives----

13 MR. VILELLO: Okay----

14 MR. BOTTORF: May I ask a question -- or  
15 not?

16 MR. VILELLO: Yes, I'm just trying to-

17 MR. BOTTORF: I want to ask a question of  
18 Greg Crystall since this is -- is that true, Greg, that  
19 you would say that?

20 MR. CRYSTALL: I talked to Curt and I asked  
21 him if he thought it was going to work. He said he  
22 doesn't think they have the right people out here. He  
23 said that one of his concerns was if it was going to work  
24 or not -- that's a concern that it had to work.

25 MR. BOTTORF: What did you say?

1 MR. CRYSTALL: I didn't say specifically,  
2 "I know it's not going to work." -- I would never say  
3 that. I said one of the big concerns was whether it was  
4 going to work or not. Everything looks right Risk  
5 Assessment-wise. We've just got to make sure it works.

6 MR. BOTTORF: Okay -- so, somebody's lying.

7 MR. VILELLO: Mr. Harrison, Mr. Martin has  
8 the information that you're -- or is about to receive the  
9 information that you have now?

10 MR. HARRISON: He has received it.

11 MR. VILELLO: You have received it? Do you  
12 want to respond to the information?

13 MR. HARRISON: There's a bit more of it.

14 MR. VILELLO: I understand, but most of us  
15 in this room probably aren't going to understand what it's  
16 all about or----

17 UNIDENTIFIED SPEAKER: The sooner he gets  
18 on with it the sooner we'll be done.

19 MR. VILELLO: Excuse me.

20 MR. HARRISON: It won't take much longer --  
21 you know, five minutes.

22 MR. VILELLO: Okay. Since you know all of  
23 the information that is being presented, do you want to  
24 respond to it?

25 MR. MARTIN: Well, I think Mick should be

1 allowed to finish with his summary of the information that  
2 was, and is, being presented from the witness. My process  
3 is such that I have to, and have taken, this information -  
4 - and will take more, not only from the witness, but from  
5 the actual records as I said before. I have to do that  
6 and receive what he has said as allegations. I will, and  
7 already have, met with our Regional staff, the State of  
8 Pennsylvania Corps of Engineers. I may do so again after  
9 reviewing relevant site documents. I have remarked  
10 earlier, and I will say it again, I have received the  
11 information. I view the information at this juncture as  
12 allegations. Some of those allegations have been  
13 addressed, orally and in writing, by the Region. Some may  
14 not have been addressed in detail. I can make no findings  
15 for final recommendations until I am done with my process.  
16 That's the end of the line.

17 MR. VILELLO: Okay, go ahead.

18 MR. HARRISON: Thank you for that  
19 clarification. I just wanted to clarify with the  
20 Ombudsman that when he says that some of the allegations  
21 by the new witness have been addressed by information by  
22 the Corps or EPA, I take it, Mr. Martin, that that means  
23 you received their information, but it doesn't mean you've  
24 made a finding as to whether the issue has been resolved?

25 MR. MARTIN: That's correct, but what I do

1 want to note for the record is that the Affidavit has been  
2 responded to by EPA.

3 MR. HARRISON: I think that's clear and I  
4 think it's also clear that the Agency has not had the  
5 benefit of the testimony given to Mr. Martin Monday  
6 evening.

7 The additional information presented to Mr.  
8 Martin and to me from the witness included that fugitive  
9 dust is being released on the site in steam, perhaps  
10 otherwise, and that this is evidenced by the discoloration  
11 created by the dust from residue left on the buildings and  
12 equivalent in the direction the wind blows when the steam  
13 is released with the dust.

14 The witness indicates that he raised a  
15 concern with his supervisors after observing ash, after  
16 having left the incinerator, being dumped on soil yet to  
17 be burned in the stockpile -- which was to be taken from  
18 for the Risk Trial Burn process. He raised the concern  
19 that there might be a mixing of the already burned ash  
20 with the yet to be burned soil prior to the trial burn,  
21 the Risk Burn. He reported to his immediate supervisor,  
22 and he dismissed his concern essentially by saying, "So  
23 what if they are mixing it?" Later the supervisor  
24 insisted that the witness' opinion was his own and that  
25 mixing had not occurred of ash and soil. The witness

1 refused to offer such an opinion stating that he was not  
2 certain that mixing had not occurred.

3 The witness indicates that he reported  
4 fugitive emissions on a daily basis in his shift report  
5 which then became the basis for daily reports -- or should  
6 have become the basis for daily reports. He is not aware,  
7 however, whether the daily reports actually acknowledged  
8 fugitive emissions that he reported in his shift report.

9 MR. BOTTORF: Is that a felony if someone  
10 does that?

11 MR. HARRISON: I'd rather not speak of that  
12 myself at this moment because of my imminent filing of a  
13 civil law suit and certain rules of ethics for attorneys  
14 that I won't go into, but I understand your concern.

15 There are other concerns the witness has  
16 expressed, but these are some of the highlights. We'll  
17 try to make the detailed information available to the  
18 Commissioners when we obtain it in the transcript. Then  
19 perhaps later, after other people have asked their  
20 questions, I have two or three questions specifically for  
21 the Ombudsman.

22 MR. VILELLO: Thank you, Mr. Harrison.

23 [Mr. Vilello recognizes a speaker.]

24 MS. MARY ELLEN MCGOWAN: Mr. Martin, I'm  
25 Mary Ellen McGowan. I'm the Treasurer of AIR. I

1 represent -- work with the money of approximately three  
2 thousand people who have contributed to our work in  
3 addition to large sums of money from various groups in the  
4 community who are not identified, but... I kind of ache  
5 for you in your position. As a school teacher involved  
6 with different political fields and pools, I feel like  
7 I've had a tiny, tiny bit of what your job is -- just a  
8 tiny, tiny bit.

9 I'm really frightened now with the  
10 experience I've had over the past few years because I've  
11 lost trust in my government. You stand as our  
12 representative -- the only representative, right?

13 MR. MARTIN: Yes.

14 MS. MCGOWAN: And your job is just --  
15 humongous, and I trust in you from what I've heard of you,  
16 but I ache for the position you find yourself in. I thank  
17 God there are people like you who will take that position.  
18 I just wanted to comment on that.

19 MR. VILELLO: Thank you, Mary Ellen.

20 [Mr. Vilello recognizes a speaker.]

21 UNIDENTIFIED SPEAKER: I just have a  
22 question that----

23 MR. VILELLO: Introduce yourself.

24 MS. ELIZABETH REEDER: I'm Elizabeth  
25 Reeder. I'm going to talk a few sentences and then ask my

1 question. I've lived in the area all my life, as well as  
2 my mother. She moved into the high-rises right beside the  
3 incinerator. Years back -- early because of respiratory  
4 problems, my mother quit smoking about ten years ago. My  
5 mother, since the trial burn, has needed to give herself  
6 breathalyzer treatments at night. My mother now needs  
7 oxygen. She's swelling up in her ankles. She's not  
8 getting enough oxygen in her blood, okay? That's probably  
9 a blessing for what is about to happen.

10 Nobody seems to have a conscience in EPA,  
11 and I'd like to know where I can send the medical bills?  
12 She lives in low-income housing. I do, too. I'm only  
13 able to work part-time. I have a boyfriend with cancer  
14 who I'm supporting at times. I need to know someone's  
15 address, because I don't think it's going to improve. I  
16 can pray, but I don't think anyone really cares and -- I  
17 find that kind of appalling. Can you answer my question?

18 MR. MARTIN: Well, I believe I understand  
19 your concern and----

20 MS. ELIZABETH REEDER: Do you?

21 MR. MARTIN: Well, you may disagree.

22 MS. ELIZABETH REEDER: I have one parent  
23 left. That's all I have to say. Go ahead.

24 MR. MARTIN: The Region and EPA do not  
25 believe at this time that there are any health effects

1 that are caused by the Drake Project.

2 MS. ELIZABETH REEDER: If I hear that one  
3 more time I'm going to gag. Okay?

4 MR. MARTIN: As far as health effects and  
5 resulting medical bills, I honestly do not believe there  
6 is any financial recourse available from EPA for that.  
7 There have been pilot projects sponsored by ATSDR that  
8 seek to open medical clinics next to superfund sites for  
9 the health effects caused, which may be caused, by those  
10 sites. That is all I'm aware of. Okay?

11 MS. ELIZABETH REEDER: Okay. I have one  
12 more question. Since the EPA wants to persist in using my  
13 mother as a guinea pig, whether they like it or not, that  
14 is the situation, and I can't afford to move her. I want  
15 to know how the elderly are going to be able to go to the  
16 store which happens to be behind them? It's their only  
17 way if they don't have a car, which most of them don't, to  
18 get groceries. How are they going to be able to get  
19 groceries without having to breathe toxins? Is someone  
20 going to afford [sic] their taxis to go to somewhere safer  
21 to shop?

22 MR. MARTIN: Well, I can only remark again.  
23 I'm not necessarily representing the position of the----

24 MS. ELIZABETH REEDER: Yeah, but these are  
25 just things I wonder everyday when I'm trying to relax.

1 MR. MARTIN: The Agency does not believe,  
2 again, that health effects are resulting as a result of  
3 the Drake site.

4 MS. ELIZABETH REEDER: Right -- and I'm not  
5 frightened. I'm enlightened.

6 MR. MARTIN: But I also want to note that I  
7 believe the Peer Reviewers were concerned about asthma,  
8 asthma conditions here in the area and the potential  
9 exacerbation of those asthma conditions as a possible----

10 MS. ELIZABETH REEDER: How about congestive  
11 heart failure?

12 MR. MARTIN: From the Drake incineration,  
13 -- that is a concern which they noted and I will be  
14 addressing that.

15 MS. ELIZABETH REEDER: Okay. Thank you.

16 MR. VILELLO: I'm not sure who was next.

17 MS. JOYCE NUTTALL: I'm Joyce Nuttall. I  
18 was surprised to find out, and I've attended many of the  
19 meetings, maybe all of them in the last few years. I was  
20 surprised to find out that there is water being discharged  
21 off the site. I didn't find that out until the public  
22 meeting that AIR put on at the beginning of the month. I  
23 don't remember that being addressed in either the first  
24 Risk Assessment, which we----

25 MR. VILELLO: Joyce, I didn't hear your

1 concern, I'm sorry. The door opened. So what did you  
2 just find out?

3 MS. NUTTALL: That water is being  
4 discharged off the site. I didn't know that that was  
5 happening. Did you all know that they were discharging  
6 water off the site -- as my Commissioners?

7 MR. VILELLO: I understood they had a water  
8 treatment plant that was treating all water on site. What  
9 they do with it after they treat it -- I would assume they  
10 have to dispose of it in some manner. I don't----

11 MR. MARTIN: Can we get that in the form of  
12 a direct question?

13 MR. VILELLO: Yes, please.

14 MR. MARTIN: Is the question that waste  
15 water----

16 MS. NUTTALL: No. Actually what they told  
17 me at their public meeting, the last meeting, is that  
18 there is waste water being discharged off the site and  
19 that after they do whatever they do to it, it's discharged  
20 into Bald Eagle Creek. Do I have that correct?

21 MR. CRYSTALL: Through a sanitary sewer  
22 that goes into Bald Eagle Creek.

23 MS. NUTTALL: I asked quite a few  
24 questions, very specific questions, about how they test  
25 it----

1 MR. CRYSTALL: Uh-hunh.

2 MS. NUTTALL: What they test it for? What  
3 their findings were. Friday afternoon they dropped these  
4 off in my office. This was my answer. [Holds up a file  
5 of documents.] They said specifically that they would  
6 give me an answer to all my questions before they began  
7 burning. In this large packet which looks impressive,  
8 four pages relate to part of one of my questions. They  
9 did not answer what they're testing for and what their  
10 findings are. What it does say in here is that they  
11 discharge approximately -- well, a little over three  
12 hundred thousand gallons per month into Bald Eagle Creek  
13 of water. They didn't tell me what they have found in  
14 those three hundred thousand gallons, what they test for  
15 specifically, and what they're findings are. They did  
16 give me a copy of their permit from the state that says  
17 what they have to test for and the limits that they're  
18 allowed to be within. When I do the math from this  
19 permit, from your numbers, what I find is that they're  
20 allowed to discharge three pounds of lead per month into  
21 Bald Eagle Creek. They're allowed to discharge up to  
22 eighty-two grams of BNA, beta-naphthylamine, into Bald  
23 Eagle Creek per month. It may be more because that's just  
24 based on this average amount of water of three hundred  
25 thousand gallons. But that's what they have discharged to

1 date without the incinerator burning full time. It's  
2 obviously going to be more. They said specifically, and I  
3 was very specific in asking specific questions, I wrote my  
4 questions down and I gave them to the person that they  
5 indicated -- which was George Drumbor of Lewis, Allen, and  
6 Hamilton, Inc. We have a videotape with my questions on  
7 it. They said specifically, and I heard them and many  
8 others heard them, that they would answer my questions  
9 before the burn started. I was very clear about asking  
10 that question and getting an answer. They haven't  
11 answered my questions and the burn has started. Are they  
12 allowed to do that?

13 MR. MARTIN: So, if I could?

14 MR. VILELLO: Yes.

15 MR. MARTIN: If I could recapitulate, your  
16 direct question is, "Is waste water being discharged from  
17 the Drake site as per the conditions of the permit?" In  
18 other words, you were reading off the document, "So many  
19 grams of this-----"

20 MS. NUTTALL: That's just what they're  
21 allowed to discharge, but my question also included, "What  
22 are you actually discharging? What are your test  
23 results?" They do not provide me with that information.

24 MR. MARTIN: And you do not know what it is  
25 being tested for?

1 MS. NUTTALL: That's right.

2 MR. MARTIN: Is that something that you  
3 want to respond to now or later?

4 MR. MIKE OGDEN: This is Mike Ogden of the  
5 Corps of Engineers. I thought that I gave all the  
6 information and I tried to answer your questions as I  
7 interpreted them. The information you have there is I  
8 think some of the data, if not all of the data, that we  
9 have provided. We do have -- we probably provided you  
10 with a copy of the permit that we have from the state.  
11 That is the components that we test for, a list of those.  
12 We have had, to my knowledge, no exceedences of any of the  
13 permit conditions. The permit -- as far as the actual  
14 results, I guess I misunderstood. I didn't realize that  
15 you wanted copies of all of that. That would be a  
16 formidable undertaking. I need to talk to Greg and find  
17 out how we want to go about doing that, but that is  
18 something -- we have all that documented, and it would  
19 probably fill a file cabinet with all the testing that  
20 we've done for the water treatment plant. If that's what  
21 you're looking for, then we can talk about getting that  
22 information to you.

23 MS. NUTTALL: I was very specific. I  
24 didn't ask for your opinion about----

25 MR. OGDEN: I didn't realize that you

1 wanted the results of every test.

2 MS. NUTTALL: Yes.

3 MR. OGDEN: You want----

4 MS. NUTTALL: I want to know exactly what  
5 is in the water that you're discharging into Bald Eagle  
6 Creek, how you're doing the tests, what standards you use,  
7 so that I know that there is quality assurance. Do you  
8 send your test method -- is this an approved test method?  
9 I want to know if you're doing this.

10 MR. OGDEN: I can tell you that all of the  
11 testing that we do is quality assured by DEP, that we have  
12 the State's Water Quality folks that come and they visit  
13 us. They do water quality assurance on all of our test  
14 procedures. They review all of our reports. We review --  
15 I'm sorry, the tests are run by OHM. We, the Corps,  
16 review all of those and we have quality assurance that's  
17 done by the State Water Quality folks. They come out and  
18 do split samples, as does the Corps take split samples of  
19 all----

20 MS. NUTTALL: So then I would like to have  
21 the results of not only the tests that OHM does, but of  
22 results that are from the split samples. -- Externally.

23 MR. OGDEN: So you're looking for----

24 MS. NUTTALL: I think it's really  
25 unfortunate that you misunderstood my questions. I went

1 to the effort of writing my questions down.

2 MR. OGDEN: I'll go back and review that,  
3 and one of the things that I need to go back and do then -  
4 - typically, we when we get into a copy of documents of  
5 that magnitude, there's a cost. I need to get with Greg  
6 on that and find out if EPA is willing to forego the cost  
7 of reproduction of that magnitude of documents.

8 MS. NUTTALL: Oh, come----

9 MR. OGDEN: It's a formality. The Freedom  
10 of Information Act requires that I ask the question. I've  
11 got to go back -- I'm not saying I can't do it, obviously  
12 we can. We just need to----

13 MS. NUTTALL: But what you actually said --  
14 not you personally, but an EPA representative, said that  
15 you would furnish me with all the information that I asked  
16 for before you went ahead. Well, I understood Mr. Crystal  
17 say this morning that the burn has started and I don't  
18 have the information that I asked for. I was very clear  
19 and very specific.

20 MR. OGDEN: My only comment is that I think  
21 that it's an unfortunate misunderstanding, -- that I  
22 misunderstood----

23 MS. NUTTALL: Then I think you should stop  
24 the burn until I have that information.

25 [Meeting is interrupted by applause from

1 the audience.]

2 MS. NUTTALL: I would say to my  
3 Commissioners that they said they would do something, and  
4 they didn't, and I would ask----

5 MR. BOTTORF: We asked them not to run the  
6 incinerator until Bob Martin's report came out, too, but -  
7 - you know...

8 MS. NUTTALL: Well, maybe if all these  
9 things pile up...

10 MR. VILELLO: Could I again -- we're  
11 already in our first hour, or over, and I would like to  
12 see the questions addressed to Mr. Martin. I really think  
13 that it's important that he give us his input today  
14 publicly.

15 MS. NUTTALL: Do I have any recourse, Mr.  
16 Martin?

17 MR. MARTIN: Do you have recourse?

18 MS. NUTTALL: Do I have any recourse? They  
19 said one thing and they've done another.

20 MR. MARTIN: Yes. You always have a  
21 recourse.

22 MS. NUTTALL: Please tell me what it is.  
23 Would that be through your office?

24 MR. MARTIN: Yes. We will work with the  
25 Region and the Corps of Engineers----

1 MS. NUTTALL: Thank you.

2 MR. MARTIN: To acquire the information.

3 MS. NUTTALL: To acquire -- but can't they  
4 shut the incinerator down because they said they would  
5 give me all the answers to my questions before they  
6 commenced the burn and they didn't do that? Do I have  
7 that kind of recourse?

8 MR. MARTIN: Well, two points there. One,  
9 I'm not sure what they said----

10 MS. NUTTALL: Right, you weren't there.

11 MR. MARTIN: And what you heard.

12 MS. ROSE REEDER: We have it on videotape.

13 MR. MARTIN: Okay, I've not seen that or  
14 heard that as of this moment. Two, I'm not aware of any  
15 legal requirement that if they failed to furnish  
16 information for consideration, then that it does not  
17 operate.

18 MS. NUTTALL: So then they're not legally  
19 required to do what they say they're going to do?

20 MR. MARTIN: Well, those are two different  
21 points. They may be legally required, for example, under  
22 the Freedom of Information Act for your request that you  
23 referred to earlier, to provide certain information that  
24 you have asked for. That's one requirement. I'm not  
25 aware of any pending requirement that if they don't do

1 that the incinerator does not operate.

2 MS. NUTTALL: Thank you. I'm pleased that  
3 you're here.

4 MR. VILELLO: Wait, no. [Recognizes a  
5 speaker.] Behind you, ma'am.

6 MS. DIANE BIRCH: My name is Diane Birch.  
7 You mentioned a few minutes ago that they put clinics up  
8 next to superfund sites. Why, if the EPA thinks that the  
9 superfund site is safe, why would someone put up a clinic?

10 MR. MARTIN: Is that your question?

11 MS. BIRCH: Yes.

12 MR. MARTIN: I'll tell you what I know  
13 about the pilot effort that was begun by EPA and ATSDR.  
14 Does everyone know what ATSDR is?

15 [Audience makes general affirmative  
16 response.]

17 MR. MARTIN: Okay. A pilot effort was  
18 begun several years ago to put up three or four health  
19 clinics near these communities with superfund sites. That  
20 was done because of health threats that were caused by the  
21 sites before remediation, or effective remediation, of the  
22 contamination at the sites. EPA and ATSDR recognized that  
23 there were health threats to people living next to  
24 uncontrolled sites over so many years. They thought that  
25 by not only remediating the site, but also by establishing

1 a health presence it would be more effective delivery----

2 MS. BIRCH: Do you honestly feel that this  
3 Superfund site is faultless -- that it is running  
4 perfectly? And that there's no need for the ATSDR or  
5 whatever -- that there's no need for the clinic? Is it  
6 running as safely as you think it is? Can you honestly  
7 answer that question, that the incinerator is running as  
8 safely as you'd want it to?

9 MR. MARTIN: I intend to honestly answer  
10 that question in the final report.

11 MS. BIRCH: Well, could I ask my question?

12 MR. VILELLO: Again----

13 MS. BIRCH: Mr. Crystall----

14 MR. VILELLO: Again, I'm just -- for the  
15 amount of time we have----

16 MS. BIRCH: That's all I need, is a small  
17 answer from him.

18 MR. VILELLO: Okay.

19 MS. BIRCH: Mr. Crystall, yes or no?

20 MR. CRYSTALL: Do I think the incinerator  
21 is running as safely as it could be right now?

22 MS. BIRCH: Yes.

23 MR. CRYSTALL: Yes, I do.

24 MS. BIRCH: Yes, you do?

25 MR. CRYSTALL: Yes.

1 MS. BIRCH: Do you think that we need a  
2 clinic next to the incinerator?

3 MR. CRYSTALL: That's not my call at all.

4 MS. BIRCH: Then you aren't faultless  
5 there. You aren't telling people that the incinerator is  
6 going to run perfectly. You don't know that for sure.

7 MR. CRYSTALL: As good as we can get it to  
8 run, it'll run.

9 MS. BIRCH: Right. You can't tell us it's  
10 going to run----

11 MR. CRYSTALL: There is expected downtime  
12 in an incinerator. There's expected problems that will  
13 happen, but we believe it's being run safely.

14 MS. BIRCH: I have one more question of Mr.  
15 Martin. All of this stuff that the incinerator is allowed  
16 to put into Bald Eagle Creek, why should we have to live  
17 with any of it? Why should we have to live with any beta-  
18 naphthylamine, any of that stuff going in our creek?

19 MR. MARTIN: The answer to that is I have  
20 not specifically seen the permit conditions for discharge  
21 of waste water.

22 MS. BIRCH: Okay. Thank you.

23 MR. VILELLO: Thank you. I'm not trying to  
24 overlook you, Rose, but----

25 MS. ROSE REEDER: It'll be quick.

1 MR. VILELLO: Okay.

2 MS. ROSE REEDER: Joyce, is mercury on that  
3 permit? My question -- she can check it. I was there and  
4 -- how many of you were at the meeting and we all heard  
5 different people including Greg -- is it Greg Voltaggio?

6 UNIDENTIFIED SPEAKER: Tom.

7 MS. ROSE REEDER: Tom Voltaggio say, "Yes  
8 indeed, I will answer your questions before the burn." I  
9 asked very specific questions and wrote them down. He has  
10 not even gotten back to me in any way, shape, or form.  
11 One of my major questions was the same as what Joyce asked  
12 -- and yes, she asked that and, yes, they told her they  
13 would get back to her with all the answers, and it was  
14 very clear. Things that aren't answered are things that  
15 didn't want to be answered in my opinion. -- But in  
16 their own Risk Assessment from their own Peer Reviews they  
17 talked about excessive mercury, well beyond the reference  
18 dose, being emitted into the air. They went back and did  
19 some other tests and used different benchmarks and then  
20 said, "Well, it wouldn't be that great." However, in my  
21 opinion any mercury that is emitted -- and a certain  
22 percent will fall into the water, any amount is not  
23 acceptable. Mercury goes right to the fish, it goes right  
24 into the food chain because they breathe it through their  
25 gills. It's immediately taken up by whoever eats it

1 whether it's an eagle or a human being. Mercury is not on  
2 that list. They will definitely be emitting it through  
3 the air. The scrubber water's coming down. It should be  
4 treated in the water even if it's a minute amount. I  
5 think that needs to be addressed. I don't think their  
6 permit is adequate for the water testing. And if, in  
7 fact, lead and BNA and these other things are being -- a  
8 certain amount is being allowed to go through and it's  
9 going directly into our water, then the process is  
10 actually polluting faster than if it was left alone. This  
11 stuff would just inch and biodegrade as it inched towards  
12 the water. Do you have a comment on that?

13 MR. MARTIN: I have a question on that.

14 MS. ROSE REEDER: Okay.

15 MR. MARTIN: Is there a discharge  
16 requirement on mercury in the permit or what does----

17 MR. OGDEN: I don't have the permit.

18 MS. ROSE REEDER: This happened at the  
19 other meeting also.

20 MR. VILELLO: Wait----

21 MS. ROSE REEDER: No, I have to ask this.  
22 I said specifically and I -- now, you were the one that  
23 answered it. What is permitted? What things are you  
24 testing for? No one in the room, despite the great number  
25 of people, no one could tell me what was permitted. I

1 asked if dioxin was permitted and you said, "No." We  
2 talked about mercury. No one knew: Mercury is the up and  
3 coming danger according to the Department of Interior at  
4 these sites. Mercury is the up and coming danger because  
5 it goes into the food chain so quickly. Mercury is the  
6 greatest threat to threatened species like the eagle and  
7 the osprey according to government reports that I have.  
8 So -- I'm sorry that I interrupted your question.

9 MR. MARTIN: Oh, no. That's okay. What  
10 I'm trying to determine is that we have an issue that  
11 should be responded to.

12 MR. OGDEN: I'd have to review the record  
13 later.

14 UNIDENTIFIED SPEAKER: Why not now?

15 MS. ROSE REEDER: They don't know, that's  
16 why not now.

17 MR. VILELLO: Carl, you better introduce  
18 yourself again for the record.

19 MR. RUMBALSKI: Carl Rumbalski. To get  
20 back to the mercury issue, I spoke about it earlier, and  
21 Mr. Speth had criticized -- that we weren't experts and we  
22 had no scientific basis for what we're doing. I'd like to  
23 ask Mr. Crystall does EPA have regulations and limits on  
24 the discharge of mercury into the environment? Do you  
25 know that?

1 MR. CRYSTALL: I would imagine that there  
2 are regulations that do limit that.

3 MR. RUMBALSKI: You "imagine" that. --  
4 For lead and chlordane and DDT?

5 MR. CRYSTALL: I know DDT is not allowed to  
6 be used or produced anymore.

7 MR. RUMBALSKI: Okay. I'm a lay person and  
8 I know DDT and chlordane are not allowed and I know  
9 there's limits on lead. I would like you people who are  
10 the experts and are discharging this to know about it.

11 For Mr. Ogden, I would like to see that you  
12 answer the questions that were put forth to you in  
13 writing, and I would also like you to list any chemicals  
14 that are being discharged that we don't know about, that  
15 we don't have the names of that are on that site or that  
16 are manufactured in the process of the burn that go into  
17 that water, because I don't understand how you can legally  
18 discharge into the water whether you have a permit or not.  
19 That's not only water to wildlife, it's drinking water for  
20 large communities in Pennsylvania. Discharging up to  
21 three pounds of mercury -- was it mercury or lead? I  
22 believe it was lead -- it's very hard to accept. I feel  
23 that if we would move forward with this kind of technology  
24 and you pointed out, Mr. Crystall, that you are going to  
25 do the best and it's going to work, but you don't really

1 say that it is going to be safe. You haven't really  
2 concluded that it is safe for the environment. It's a  
3 gamble and I just don't feel like gambling with human  
4 lives is something that we should do at this time. We  
5 need better research. We need the report to come in from  
6 Mr. Martin to be carefully examined. We need complete  
7 lists of what's going into the waterways and what's going  
8 up into the air in our environment. It is our water and  
9 you people who are working to protect the citizens -- I  
10 wish you would do your job.

11 [Extended applause from the audience.]

12 MR. VILELLO: That is Mr. Martin's job.  
13 That's why he's here today and hopefully, he'll be taking  
14 this information back and addressing each and every  
15 concern.

16 [Mr. Vilello recognizes a speaker.]

17 MS. MCGOWAN: I have a question for Mr.  
18 Martin. Your report has been delayed for whatever  
19 reasons. I don't think it has any reflection on you, but  
20 I have a question here. This gentleman said that in order  
21 to answer Joyce Nuttall's questions he would have to get a  
22 file cabinet full of reports. Is that how you are given  
23 information when you ask a question? Do you have to go  
24 through files of reports?

25 MR. MARTIN: I'd like to address the

1 earlier comment. The earlier comment is, "Why is the  
2 report being done at the end of this month?" I wanted an  
3 opportunity to review the Trial and Risk Burn data for one  
4 thing. Two, I also wanted an opportunity to review the  
5 Peer Reviewer's comments. Three, I wanted an opportunity  
6 to come up here on the record to meet with people who are  
7 concerned about the project. I am going to hold one more  
8 public hearing on March 16th here in Lock Haven to give  
9 everyone one more bite of the apple so-to-speak before I  
10 do my final report.

11 To respond to your question now about, "Do  
12 I receive file cabinets full of documents?" Yes. I  
13 review boxes, file cabinets, you name it. Yes.

14 MS. MCGOWAN: You're not given a summary  
15 of, "This is how much lead went out per month or per week  
16 or whatever?" Your not given summarized facts that you  
17 can use?

18 MR. MARTIN: I review both summaries and  
19 boxes full of documents.

20 MS. MCGOWAN: Are summaries available for  
21 something like this then that Joyce Nuttall could use for  
22 her information?

23 MR. MARTIN: Is the question, "Is that kind  
24 of information available to me as I go to my final  
25 report?"

1 MS. MCGOWAN: Yes.

2 MR. MARTIN: Yes, it is.

3 MS. MCGOWAN: Then it should be available  
4 to citizens, am I right? -- Not a file full of reports  
5 that would take a month to consolidate?

6 MR. MARTIN: Generally I believe it should  
7 be, but there may be Freedom of Information Act concerns.  
8 That's a legal requirement. Greg, do you want to respond  
9 to that?

10 MR. CRYSTALL: All of the files and/or  
11 summaries that are available to Bob are available to the  
12 public. Everything that Bob has gotten from us is in the  
13 public repositories.

14 MS. MCGOWAN: So all Joyce has to do is go  
15 to the repository and go through the cases and cases there  
16 to find that information, sir? Is that correct?

17 MR. OGDEN: Not all of the reports are --  
18 that we've generated on a daily basis are in the public  
19 repositories.

20 MS. MCGOWAN: You don't have a summary  
21 report even with the information she needs?

22 MR. OGDEN: We don't necessarily prepare a  
23 summary report for all of the tests that we run.

24 MS. MCGOWAN: For what's going out in the  
25 water?

1 MR. OGDEN: Not necessarily.

2 MS. MCGOWAN: Thank you.

3 MS. BIRCH: Why not?

4 MR. BIRCH: We pay for them. We ought to  
5 be able to see them.

6 MR. VILELLO: We're going to keep on the  
7 same mode that we've been in here.

8 [Mr. Vilello recognizes a speaker.]

9 UNIDENTIFIED SPEAKER: Mr. Martin, I have  
10 just one----

11 MR. VILELLO: Would you please introduce  
12 yourself?

13 PASTOR JOYCE GENSIB: Oh, my name is Pastor  
14 Joyce Gensib. My question is not legal, it's not -- I'm  
15 deeply concerned that every time we have a meeting, every  
16 time we go through this, every time we present facts all  
17 we get from EPA is, "We don't have that information." The  
18 comment I just heard over here is, "We'll give you the  
19 answer later." We asked not to have the burn until we got  
20 the information and the burn is going to happen because  
21 they didn't understand our question. What recourse do we  
22 as citizens have? When I was at the EPA meeting and I  
23 said to them, "We're telling you we don't want it. What  
24 more do you want from us?" They told us that we're just a  
25 small contingency. What am I as a citizen of this

1 country, living in this land -- am I being told that I  
2 have no rights to what I breathe and to what my loved ones  
3 breathe and to what happens to me?

4 MR. MARTIN: The answer to that question  
5 is, no, I don't think we can tell you that----

6 PASTOR GENSIB: But we're being told it.  
7 It's been rammed in our throats. What recourse do we have  
8 as citizens to get the information we're asking for  
9 instead of being told, "We'll give it to you later?" When  
10 I sat at that meeting which went until 2:00 in the  
11 morning, I left after being told I was a contingency, that  
12 no matter what I was saying, it had no value. They were  
13 going to do what they were going to do. Even if you tell  
14 me that three and ten million will die, what if that one  
15 is me? Or what if that one is my grandchild? Am I  
16 supposed to accept that they're just a statistic and not a  
17 valuable person to anybody but me? When are we going to  
18 be listened to? That's what I want to know. How dare  
19 they tell us they don't know to a question that's  
20 important? How dare they run this when they don't know  
21 the answers to our questions?

22 MR. MARTIN: If I can respond?

23 PASTOR GENSIB: I'd like you to respond,  
24 please, because I'm concerned personally.

25 MR. MARTIN: Okay. You are valuable, and

1 what you say has value, and I am listening. Your recourse  
2 is on the record. That is why I am here on the record, so  
3 that all of this is noted. You have recourse with the  
4 Region and the Corps of Engineers itself to get the  
5 information you have asked for. If it's not provided,  
6 please come through me and my office.

7 PASTOR GENSIB: I sat at a meeting when  
8 concerns were raised. Statistics that even I, a lay  
9 person, could understand and have concern over. When they  
10 were asked to give an answer, they would not answer. They  
11 didn't have the information or they would tell us that it  
12 wasn't prevalent [sic]. When we asked why health studies  
13 weren't done before this burn so we could have a balance,  
14 we weren't given a reason why it wasn't. It just wasn't.  
15 What they're doing, as far as I'm concerned as a lay  
16 person, is just running over us and they're going to do  
17 what they want to do. Is this the land that I'm living  
18 in? Is this the government of the people when I have no  
19 recourse and my voice has no value? Even my Commissioners  
20 that I vote for are deciding that what's important for  
21 this community is not important for its people? I am a  
22 little distressed. If I wasn't serving a community of  
23 people that I have to take care of, I would probably ask  
24 to be moved. But, since your burn is covering six  
25 thousand miles, no matter where I go I'm going to get the

1 fallout. I'm going to get the fallout, so I have no place  
2 to go to save my life or to save the lives of my young  
3 ones. That distresses me. That distresses me. When a  
4 answer [sic] is given at a meeting, "Who's watching over  
5 us to make sure everything is right?" And you get the  
6 answer, "God," don't mock God. That makes me angry.  
7 Don't mock God because God is watching. God help us if  
8 we're lying.

9 [Extended applause from the audience.]

10 MR. VILELLO: Do you want to respond to  
11 that, Bob?

12 MR. MARTIN: I have no response.

13 MR. VILELLO: Okay. I want to give  
14 everybody chances to ask questions. Yes, in the back of  
15 the room? Please introduce yourself.

16 MS. TOMA FORESMAN: My name is Toma  
17 Foresman. I very much agree that this process has gone on  
18 a long time and it was supposed to be a democratic process  
19 on each person. If I'm to tell my children that their one  
20 voice means something, we need to know that every voice  
21 put together means something even more than their one  
22 voice. If I send them to school to take a test or to  
23 answer questions, they need material in order to answer  
24 those questions. My question to you and to EPA and to  
25 everyone else that decided to begin this burn -- there's a

1 lot of unanswered questions; and for you, you've not been  
2 able to totally answer things today because you're not  
3 finished with your report. Would it have not been better  
4 suitable for the burn to wait a few more weeks and for you  
5 to have come to the community after March 31st and say,  
6 "I'm able to answer your questions to the best of my  
7 ability because I do have all the information?" Wouldn't  
8 that have been a better thing to do and why can that not  
9 be done?

10 MR. MARTIN: That's a policy decision to  
11 give you a direct answer. There are two different  
12 processes at EPA. There's the Superfund decision making  
13 process which was moved forward at the site with the  
14 commencement of the burn, and there's the Ombudsman  
15 process. I think the Agency was very clear. The two are  
16 parallel. They don't intersect. They're parallel. In my  
17 own process of what I do, I can tell you in other cases  
18 that the ombudsman's recommendations have resulted in  
19 changes in operations at sites.

20 MS. FORESMAN: Then should they not work  
21 together like teachers work together to educate our  
22 children or commissioners need to work together for their  
23 community or whatever...

24 MR. MARTIN: That's a very reasonable  
25 point----

1 MS. FORESMAN: Should they not work  
2 together?

3 MR. MARTIN: That's a very reasonable  
4 point, but it's also a policy issue which needs to be  
5 resolved by the Agency itself and perhaps, even the  
6 Congress.

7 MR. VILELLO: Mrs. Bottorf?

8 MS. SANDY BOTTORF: My name's Sandy  
9 Bottorf. I think that you should know that at our last  
10 EPA meeting our attorney, Mick Harrison -- it was almost  
11 at the end of the meeting, he said to Mr. Voltaggio, "What  
12 would it take for you not to burn?" He said, "If I can  
13 prove to you tonight that this should not burn, that this  
14 would be harmful to people, will you not burn?" He just  
15 sat there with a blank look on his face. Mick Harrison  
16 repeated the question, "If I can prove to you that this is  
17 harmful to people in this area -- if I can prove that to  
18 you tonight, will you not do this burn?" He never  
19 answered him. Mick was so frustrated he left the room.  
20 There wasn't anything he could have said to that man. He  
21 was going to burn and that was all there was to it.

22 [Mr. Vilello recognizes a speaker.]

23 UNIDENTIFIED SPEAKER: Bob, I want to thank  
24 you for your involvement----

25 MR. VILELLO: Bill, Bill -- introduce

1 yourself.

2 MR. BILL SMEDLEY: Bill Smedley, for the  
3 record.

4 MR. VILELLO: Thank you.

5 MR. SMEDLEY: AIR sent me to Times Beach,  
6 Missouri and St Louis to meet with you two years ago to  
7 ask for your involvement. We were hoping that your  
8 involvement here with the Drake Superfund Incinerator  
9 would have more meaning in the long run than it seemed to  
10 have to the citizens who were fighting the Times Beach  
11 Incinerator Project. I read your comprehensive report  
12 that you prepared for the citizens of that area and,  
13 frankly, was disappointed that the Agency didn't move on  
14 more of your recommendations. We've communicated with  
15 citizens' groups around the country who distrust their  
16 government as much as we do, who are as afraid as we have  
17 been with the ongoing operations with the sites in their  
18 communities, and have also documented the problems with  
19 the incinerators that they were fighting and also  
20 documented the treatment that they received from the  
21 Regional Offices of the EPA.

22 We hope that your final report can be  
23 completed as soon as possible. We hope that the Agency  
24 allows you to release the report uncensored, in its  
25 entirety, to the public. We feel that that should have

1 been done with the first report. A hundred days to hold  
2 that report was totally unacceptable. If there were  
3 inaccuracies in that report it should have been released  
4 with the statement that those inaccuracies existed and  
5 have those inaccuracies be identified.

6 As you know, we've been a watchdog group on  
7 this Agency. We intend to continue to be that watchdog.  
8 We're suspicious for good reason. You've seen a lot of  
9 the documentation that we've produced about problems on  
10 this site. This recent person that has come forward is  
11 the third person that has worked on this site that's come  
12 forward with serious concerns about safety conditions on  
13 this site and operations on this site. We had hoped after  
14 the first person came forward that EPA would do something  
15 to remedy this situation. We're very disappointed that  
16 they have chosen to start the incinerator today in light  
17 of your final report not being released, the final report  
18 from ATSDR not being released, and against the requests of  
19 our State Senators and Congressman Peterson.

20 My question to you -- my first question to  
21 you is, if the executive branch of this country doesn't  
22 listen to citizens and the legislative branch of this  
23 country passes laws denying citizens jurisdiction in the  
24 court system -- in the federal court system, at the very  
25 least denying our due process, where are we to go if we

1 have no other recourse? Where, as citizens of this  
2 country, do we go but to your office acting as an  
3 independent government agency? If we can't get recourse  
4 from you after the legislative/executive branch has failed  
5 us, what recourse do we have? What recourse do any  
6 citizens in this country have as we watch the loss of our  
7 rights?

8 MR. MARTIN: I think in this case I know  
9 you've been involved in litigation to stop the burn at the  
10 Drake site. I'm aware on behalf of that litigation of the  
11 results. You are correct that the law does not permit  
12 lawsuits to stop -- a remedy at a superfund site which EPA  
13 has selected and has gone forward. You may continue to go  
14 to your congressional delegation obviously, but the Office  
15 of Ombudsman has become an "office of last resort," to be  
16 frank, for citizens who feel that they can go nowhere else  
17 to be heard effectively and to have changes made. I will  
18 continue to do that job.

19 MR. SMEDLEY: We appreciate your  
20 involvement in doing that job. We felt -- and I  
21 personally felt, from the beginning that your heart is in  
22 the right place. I've told you before, and I'll tell you  
23 once again, that you're the only person in the EPA that I  
24 feel I trust. I hope you don't let that trust down. I  
25 hope you don't let this community's trust down. I have

1 one more question for you that I would like to defer to  
2 AIR's attorney to ask. This is the wishes of myself and  
3 of also the three thousand people in Central Pennsylvania  
4 that have financially supported AIR for the past three and  
5 a half years.

6 MR. HARRISON: Mr. Martin, the question  
7 that I have for you on behalf of AIR is that you received  
8 information on Monday evening of this week from a former  
9 government supervisor of the Drake site. He has  
10 identified to you specific observations of problems at the  
11 site with the operation of the incinerator. He has  
12 identified the occurrence of fugitive emissions at the  
13 location of the incinerator. He has informed you that he  
14 believes the incinerator will not work. He told you that  
15 in a conversation with the Project Manager, Greg Crystall,  
16 that Mr. Crystall himself said, "I know. I know it won't  
17 work." You have information from expert scientists from  
18 us, and some from EPA's experts, indicating emissions and  
19 nonconservative assumptions in the Risk Assessment. If  
20 you walk out to the site this morning while it's burning  
21 contaminated soil you can see fugitive steam coming from  
22 locations other than the stack as we speak. In the  
23 documents given to you by the former government supervisor  
24 of the site, you have documentation that Phenac is in the  
25 dust found in the uncontrolled area, on the work area, on

1 the pad at the site. We have considerably more  
2 information. We have information from EPA's own Risk  
3 Assessment that the mercury emissions will cause a risk by  
4 EPA's own calculations of eight to sixteen times too high  
5 by their own standard for environmental effects. You have  
6 documentation from me, my clients, that the EPA lied to  
7 the community about not having a reference dose, a danger  
8 level, for dioxin. I've given you the documents showing  
9 EPA's reference dose for dioxin which means that their  
10 Risk Assessment is fatally flawed. What I ask you today  
11 on behalf of my clients is, given this information and  
12 more, given your statement today that you've not made your  
13 own conclusions yet about the nature and extent of  
14 problems at the site, that you today make an immediate  
15 recommendation to the EPA to hold off on burning any waste  
16 at this incinerator until you've had a chance to finish  
17 your investigation and make your final report, because the  
18 evidence given to you by the former supervisor and others  
19 is significant enough so that you cannot rule out the  
20 possibility that come the end of March when your  
21 conclusions are final that you may conclude that current  
22 operations are either illegal or excessively dangerous or  
23 both. So I ask you today in your role as the Ombudsman --  
24 and I understand that you can make any recommendation any  
25 time you wish, and I petition you under the United States

1 Constitution, which is still our right, to make that  
2 recommendation today.

3 MR. MARTIN: I will respond in two ways.  
4 One, in the Interim Report I did recommend that they not  
5 proceed with operations until I was done with my report.  
6 The Agency declined. Two, I have received allegations  
7 from the witness and information supporting the  
8 allegations. I have not yet fully reviewed the documents  
9 with which I have been provided. I have not also  
10 researched the documents that I need to look at before I  
11 can determine the merit of those allegations and the  
12 supporting information. I have to do that. I will do  
13 that, obviously, before my final report is prepared. I  
14 will do that as soon as possible, but until I do so I am  
15 not in a position to make a final recommendation.

16 MR. HARRISON: If I could just clarify my  
17 question. I want to be clear, Mr. Martin, and you're free  
18 to deny my request, but my request is not for you to make  
19 a final recommendation today. That is not my request. I  
20 request that you make a preliminary recommendation to hold  
21 off on the burning of hazardous waste because of the  
22 information brought to your attention which may lead you  
23 to conclude when your investigation is finished that  
24 operation of the incinerator is either illegal or unsafe  
25 or both. I just want to be clear as to what my question

1 is and I would like a direct answer to it. If you wish to  
2 say, "No, I will make a preliminary recommendation," I  
3 would just like you to say so for the record. If you're  
4 undecided, I would like you to say that for the record.  
5 If you're willing to do it, I would certainly like you to  
6 say that for the record.

7 MR. MARTIN: The answer to the question is  
8 I am not decided right now because I do need to review the  
9 information that supports the allegations provided by the  
10 witness. I will need to consult with the Corps, the  
11 State, and the Region. I of course am prepared to make  
12 preliminary recommendations either way as soon as possible  
13 once I review that information. That will happen in the  
14 immediate future. I do not believe it will wait until  
15 March 31.

16 MR. HARRISON: Okay. Thank you.

17 [Mr. Vilello recognizes a speaker.]

18 MR. DAVID DICOSMO: David DiCosmo from WYOU  
19 Television. Sir, if I understand you correctly, you did  
20 say you made a preliminary request to hold off until your  
21 report was complete. Has anything changed to make you  
22 change that preliminary request?

23 MR. MARTIN: No. There have been -- in  
24 fact in view of some of the more recent information I  
25 would have preferred that site operations not commence

1 until completion of the Ombudsman process. But again, EPA  
2 has made a decision to go forward for several reasons  
3 which I believe are listed in a letter to the Pennsylvania  
4 Congressional Delegation, among others.

5 MR. VILELLO: Any other questions from  
6 anybody else that has not asked a question yet? Just a  
7 minute, Rose. -- Yes, ma'am?

8 MS. KATHY PETER: My name is Kathy Peter.  
9 The one thing that we were always after was the truth.  
10 Our community -- we have fear within us for lack on your  
11 part, the EPA, of the truth. I think with the judgment --  
12 what I really want to say is that our fear is nothing like  
13 the fear that you should have with God and what you're  
14 doing to this community and all around. That's all I have  
15 to say.

16 [Applause from the audience.]

17 MR. VILELLO: Okay, Rose?

18 MS. ROSE REEDER: EPA has chosen to just  
19 ignore Senator Spector's request to hold off on the burn.  
20 You made a preliminary request that there are enough  
21 concerns to wait to burn. I'm not aware of all the new  
22 information that's come out the last few days. Are those  
23 allegations, if they prove to have even seventy-five  
24 percent truth, are they serious enough to recommend a  
25 further stronger recommendation to hold off on the burn?

1 MR. MARTIN: The answer to that is it's  
2 possible, but I also want to say it's premature----

3 MR. ROSE REEDER: I understand that. I  
4 just wondered are they enough that if they prove true, are  
5 they serious enough to have merit and be of great concern?  
6 It sounds like they are to me. The other question is if  
7 they've ignored someone as important as our elected  
8 officials -- and we've had Senator Spector and Congressman  
9 Peterson and a number of other elected officials, which is  
10 a representation of our democracy, and if in the final  
11 analysis you also feel it's unsafe and your are a national  
12 representative for us, -- can they choose to ignore you,  
13 number one? And if they choose also to ignore you, what  
14 does that tell us? What should we do? What can we do?  
15 Can they ignore you?

16 MR. MARTIN: Well, yeah. Let me be clear.  
17 I've said it before and I'll say it again. I am not a  
18 decision making official within the EPA. However, I do  
19 find facts and make recommendations to EPA based on those  
20 facts. EPA is free to ignore or decline recommendations  
21 from me. However, to be fair, I think EPA has said in  
22 many letters to many people that if I presented any  
23 substantive concerns about safety of the incineration unit  
24 or the health of citizens around that unit, they would  
25 stop operations.

1 MS. ROSE REEDER: Is that right, Mr.  
2 Crystall? If the recommendation is not to burn, you will  
3 stop?

4 MR. CRYSTALL: Mr. Martin recommends to Tim  
5 Fields, Assistant Administrator in Washington, and if he  
6 tells us to implement the recommendation or stop, we'll  
7 stop.

8 MS. ROSE REEDER: Would Mr. Woods [sic] go  
9 by a recommendation----

10 MR. CRYSTALL: Mr. Fields?

11 MS. ROSE REEDER: Yes, Mr. Fields.

12 MR. CRYSTALL: I imagine -- it's his  
13 option, Bob, whether he accepts recommendations from your  
14 report or not?

15 MR. MARTIN: Correct.

16 MR. CRYSTALL: And it is his job to accept  
17 the recommendations or not?

18 MR. MARTIN: Correct.

19 [Mr. Vilello recognizes a speaker.]

20 MS. LINDA RITTER: I'm Linda Ritter. I  
21 would just like to say, Mr. Martin, that I am not  
22 insulting you actually, but I would be in your place  
23 insulted if my recommendations were not accepted. What is  
24 the point of having an Ombudsman? It's very disrespectful  
25 of the EPA if they do not follow your recommendations and

1 adhere to it. I realize -- I don't want to put you on the  
2 spot as saying anything right now, but I can't see the  
3 point in having you -- if you -- or anybody in your  
4 position, you're the liaison -- so if they don't honor  
5 your recommendations, what's the point in having your job?

6 [After a short pause, Mr. Martin smiles and  
7 shrugs his shoulders.]

8 [Laughter from the audience.]

9 MS. RITTER: No, I meant -- let's give the  
10 EPA more money and just dismiss your job.

11 MS. ROSE REEDER: No, I want you to stay,  
12 Mr. Martin.

13 MS. RITTER: No, no. You know I personally  
14 want you here because I pray for honesty and integrity. I  
15 know God's presence is in this room. There are a very,  
16 very few -- you being one of the very few that I'm very  
17 sure is filled with honesty and integrity, and I deeply  
18 respect you because you're not in a very easy position. I  
19 appreciate that. I'm very grateful for you. I respect  
20 you. I want you to know that.

21 MR. MARTIN: Thank you.

22 MS. RITTER: You're one of the very few  
23 that I know that is filled -- one of the representatives,  
24 you know, people who are representing us, the small peons.

25 [Mr. Vilello recognizes a speaker.]

1 MR. GIL BLACK: I'm Gil Black of  
2 Organizations United for the Environment, OUE, and I'm  
3 also representing the Sierra Club. We were able to defeat  
4 commercial hazardous waste incinerators around the country  
5 especially over in Gregg Township. That was mainly on an  
6 economic basis I have to admit. Nobody really paid much  
7 attention to our scientific information, but I was at the  
8 February 10th meeting, and it seems to me that it was  
9 reported there that Pat Costner of Greenpeace had reported  
10 at the February 2 meeting that she had found in EPA's own  
11 Risk Assessment that they reported -- the EPA reported  
12 more dioxin in the bottom ash than had been reported in  
13 the fly ash. The bottom ash when you're doing a soil burn  
14 is what goes back on site. Is that -- wouldn't that be a  
15 reason to stop this burn?

16 MR. MARTIN: The answer is, I have reviewed  
17 Dr. Costner's statement in connection with the Risk  
18 Assessment, and I think the bottom ash issue with dioxin  
19 in bottom ash, but I have not yet reviewed what we call  
20 our Final Responsive Summary issued by the Region to that  
21 analysis. I can't give you a final answer until I've done  
22 that. I just got that yesterday -- last night.

23 MR. BLACK: This soil burn seems to be  
24 creating dioxin, because the people from EPA have said  
25 they have taken two hundred samples on site and found no

1 dioxin, and now they're going to put dioxin in.

2 MR. MARTIN: Greg, do you want to respond  
3 to that?

4 MR. CRYSTALL: The levels of dioxin found  
5 in the kiln ash and the fly ash are well below background  
6 levels in this area.

7 MR. BLACK: That's not a sufficient answer.

8 MR. VILELLO: Tom, did you have one? --  
9 Back there in the corner?

10 MR. BOTTORF: That's not true, Greg. You  
11 didn't read the Risk Assessment correctly.

12 MR. BIRCH: My name's Tom Birch. The first  
13 meeting that was held at Uhlmer Planetarium with the EPA,  
14 I asked Roy Schrock and Tom Voltaggio directly in the  
15 worst case scenario, "If this thing goes boom in the night  
16 and contaminates everything and we lose our livelihood,  
17 people are getting sick, what are we supposed to do?" The  
18 question was referred to the legal counsel that they  
19 brought with them. His response consisted of two words,  
20 "Sue us." How do we do that? I mean we've lost our  
21 livelihood. We're faced with astronomical medical bills,  
22 and we have no money coming in, and yet we're supposed to  
23 go and hire an attorney to sue the federal government to  
24 get back our tax money in response to a problem they spent  
25 our tax money to create in the first place. I'm sorry,

1 but I don't get this. Now, we go to the courts and they  
2 say, "No. You can't sue us," because they're protected by  
3 this umbrella shield. How does this work?

4 MR. MARTIN: Well, I'm not in a position to  
5 advise you legally as to what your rights are, but there  
6 are considerations of sovereign immunity with the United  
7 States government. Perhaps Mr. Harrison is in a better  
8 position than what I am as to your legal rights and  
9 recourses.

10 MR. HARRISON: If I could answer that  
11 question? First of all, with the sovereign immunity  
12 question, the government has waived sovereign immunity per  
13 a law which you will find in the U.S. Code entitled  
14 Section 6961, it's called the Federal Facilities  
15 Compliance Act. What it says is that the federal  
16 government must comply like everyone else to state and  
17 federal environmental laws. They're not exempt. They're  
18 not immune. It's true that if the government poisons you  
19 through this process, you can consult with an attorney and  
20 they can advise you on how to sue for damages, but there  
21 is no remedy at that point in time to bring back your  
22 health or your family's health or in some cases certain  
23 harm to your property or wildlife. That harm will be  
24 done. The only question would be is there enough money in  
25 the world to repay that loss? The federal and state

1 environmental laws which EPA is bound to follow like  
2 everyone else, as is the Corps and OHM, are intended to  
3 prevent that type of harm, not to force you to sue after  
4 the fact. We're going to put this system to the test  
5 tomorrow when we file our suit in State Court. We'll see  
6 whether the State Court is closed to us in an attempt to  
7 prevent this harm from continuing. I certainly hope that  
8 the door is not closed. All we're asking is a chance to  
9 prove our case in a fair fight in front of an unbiased  
10 judge and we're willing to have EPA put on their evidence,  
11 like we will. That's the best I can tell you. We'll know  
12 shortly just how closed the door is, and if it is closed  
13 tomorrow then our only recourse will be to wait until we  
14 have been poisoned and try to document the source of the  
15 poisoning in this world which is already over-polluted,  
16 and then try to get damages which can't repay us for the  
17 loss in the first place.

18 MR. BIRCH: My understanding of the effects  
19 of the things that AIR fears are going to be produced by  
20 this incinerator will not be felt for twenty, thirty,  
21 forty, fifty years down the road. Okay? That's a long  
22 time to accumulate evidence. There's a lot of other  
23 things that could come into play that a sharp attorney  
24 could say, "No, that could cause it, too." It just  
25 strikes me that the system is out of whack, you know? The

1 deck is really stacked against us. We're paying for it on  
2 both ends. I think it's a damned pitiful way to run a  
3 country.

4 MR. VILELLO: Over here, Mary Ellen?

5 MS. MCGOWAN: Mr. Martin, Greg Crystall  
6 said that there's a Mr. Fields that you give your report  
7 and recommendation to -- just one person in EPA? That's  
8 not reviewed by some group of experts within EPA?

9 MR. MARTIN: I provide my report -- was  
10 that the question?

11 MS. MCGOWAN: Yes. What is the process  
12 when you provide your report to Mr. Fields?

13 MR. MARTIN: I provide my report to Mr.  
14 Fields, Timothy Fields, Jr. He is the Acting System  
15 Administrator for the Office of Solid Waste and Emergency  
16 Response. That office controls the Superfund Program  
17 nationwide. He in turn reports to the Administrator of  
18 the Environmental Protection Agency. I give my report to  
19 Mr. Fields and in his discretion he then shares the  
20 findings and recommendations of that report with our  
21 Regional Office and with other people in EPA Headquarters.

22 MS. MCGOWAN: But it comes down to his  
23 making the decision, or Carol Brown, or both?

24 MR. MARTIN: I guess the simplest answer to  
25 that is that the buck goes to Mr. Fields. Of course he

1 reports to the Administrator.

2 MR. VILELLO: We have ten minutes left of  
3 Mr. Martin's time. We'll go through this last round of  
4 questions and -- I forget your name already, I'm sorry.

5 PASTOR GENSIB: That's okay. Pastor Joyce  
6 Gensib again. Mr. Martin, I have a personal question for  
7 you. Having seen how our bureaucracy works, how  
8 unencumbered are you to make a fair and just report  
9 without any pressure, undue pressure, being put upon you  
10 as to your continued employment, as to your, you know --  
11 safety? How unencumbered are you by the bureaucracy to  
12 allow you to make a free and honest report?

13 MR. MARTIN: The answer is this is a very  
14 pressure filled job----

15 PASTOR GENSIB: Uh-hunh.

16 MR. MARTIN: Obviously. I will make a free  
17 and unencumbered report.

18 PASTOR GENSIB: We do trust you, but I know  
19 how bureaucracy is, and I would be concerned as to what  
20 undue pressure is on you.

21 MR. MARTIN: I understand.

22 MR. VILELLO: Good question. One last  
23 question. Go ahead.

24 MS. BIRCH: Diane Birch. It is -- it has  
25 been told that Furman Foods and Lay's Potato Chips are no

1 longer going to buy any produce from Clinton County.

2 MR. BOTTORF: That's not what they said.  
3 That's not what they said. They didn't say they wouldn't  
4 buy. Furman Foods is on record saying that they still  
5 require testing of produce for dioxins. We should make  
6 that clear before -- I didn't want you to go the whole way  
7 there.

8 MS. BIRCH: Never mind.

9 MR. VILELLO: I'm going to----

10 MR. BOTTORF: Why don't we go till twelve?  
11 That's six minutes.

12 MR. VILELLO: Don't you want to give us an  
13 opportunity to speak? Do you want to say anything?

14 MR. BOTTORF: Uh -- no, but Mick does.

15 MR. VILELLO: Okay. Mr. Harrison?

16 MR. HARRISON: A few last points. I have  
17 two or three questions for the Ombudsman and there were a  
18 few things I failed to note to you from the new witness  
19 that I think you should know.

20 The new witness information first. The new  
21 witness indicates that the air monitoring system on the  
22 perimeter of the site has been relied on to tell the  
23 community that nothing toxic is essentially leaving the  
24 site like beta-naphthylamine. The witness indicates that  
25 he has reviewed monthly reports indicating that that air

1 monitoring system does not work and has not worked from  
2 day one. He also indicates that the contractor or  
3 contractors knew from day one that that air monitoring  
4 system did not work as designed using the method required  
5 in the contract, but they continued to install that and  
6 use it knowing that. That's his information.

7           The second point. He identifies the fact  
8 that the water from the scrubber air pollution control  
9 device after it is spent, after it has been used, to go  
10 through the combustion gases is sprayed on the bar mash  
11 which creates steam and fugitive emissions which will have  
12 contaminants not just from bar mash, but from the scrubber  
13 water and the combustion gases as well.

14           He also indicates that the contractor  
15 knowingly burned during the shakedown trial period at a  
16 high rate of feed after he knew that burning contaminated  
17 soil at that rate of feed would not remove the  
18 contaminants of BNA and phenac essentially from the soil.  
19 He raised that concern. His concern was dismissed and  
20 they continued to burn at the rate for quite a period of  
21 time anyway.

22           My questions for the Ombudsman are -- you  
23 indicated earlier that one of the reasons for the delay in  
24 the release of your initial report, your May report, was  
25 an indication of two technical errors in that report which

1 you identified -- or at least partially identified. Were  
2 there, in addition, other reasons which delayed the  
3 report, and was one of those reasons that EPA had a  
4 concern that your report would create legal problems for  
5 EPA?

6 MR. MARTIN: I think those -- let me go  
7 back. I answered earlier that the May 8 report was  
8 initially held and then remanded back to me because there  
9 were concerns about technical errors, technical  
10 inaccuracies, and misstatements of fact which may result  
11 or might have resulted in legal problems, yes.

12 MR. HARRISON: Okay, but were there -- was  
13 it clear to you that the legal concerns that the Agency  
14 expressed in holding your report were limited only to what  
15 they considered technical inaccuracies or might they have  
16 had legal concerns about what was accurate in your report?

17 MR. MARTIN: My understanding was the  
18 report was remanded because of what was in the four  
19 corners of the report.

20 MR. HARRISON: The entire report?

21 MR. MARTIN: Yes, the entire interim  
22 report.

23 MR. HARRISON: And not just the two  
24 inaccuracies that you identified?

25 MR. MARTIN: Correct.

1 MR. HARRISON: All right. Now, in your  
2 initial May report you had recommended that the Drake site  
3 be retested for dioxin and some related compounds. Is  
4 that correct?

5 MR. MARTIN: I think the interim report  
6 recommended that the feed be sampled for dioxin.

7 MR. HARRISON: The feed coming from the  
8 soil on the site?

9 MR. MARTIN: Correct.

10 MR. HARRISON: And in the report that was  
11 finally released in August that recommendation was  
12 deleted. It was no longer present, is that correct?

13 MR. MARTIN: The draft final report did not  
14 contain the recommendation that the site soil be sampled  
15 for dioxins before going into the incinerator. That's  
16 correct.

17 MR. HARRISON: Now, did you receive  
18 information from EPA that convinced you that your  
19 recommendation to have additional dioxin testing in the  
20 feed was technically inaccurate and without a basis?

21 MR. MARTIN: I think the Region, in written  
22 comments to my office, felt that there was not a  
23 sufficient basis to test.

24 MR. HARRISON: The Region felt that way,  
25 but my question to you is, did you receive information

1 that convinced you, not the Region, convinced you, -- the  
2 Ombudsman, that your initial recommendation was without a  
3 technical basis -- retesting for dioxins in the feed? MR.  
4 MARTIN: In the draft final report I believe I recommended  
5 that we issue a fact sheet which describes why that was  
6 not necessary. Now, I don't know to this day whether or  
7 not the fact sheet was issued or not. I would like to  
8 also respond that in my view the issues in both the  
9 interim report and the draft final report are not  
10 foreclosed. -- So it's not a settled issue.

11 MR. HARRISON: To be clear, your final  
12 report which is yet to come may still include, or not, the  
13 recommendation to do additional testing for dioxins?

14 MR. MARTIN: It may.

15 MR. HARRISON: It may. All right. With  
16 all due respect, Mr. Martin, and shared respect of the  
17 clients has been expressed for your efforts in person,  
18 but, nonetheless, I've asked you a direct question and  
19 have yet to get a direct answer. My question was: Did you  
20 feel as the Ombudsman receiving information from the  
21 Region that you lack a technical basis for your original  
22 recommendation that dioxin testing be redone in the feed  
23 at the Drake site?

24 MR. MARTIN: And the answer is I think in  
25 the interim report. One of the technical errors

1 identified was a misunderstanding of how dioxin was tested  
2 for at the site in my interim report. Okay?

3 MR. HARRISON: I understand that as far as  
4 it goes.

5 MR. MARTIN: So this process is  
6 evolutionary. I did not foreclose that issue.

7 MR. HARRISON: I understand. So do I take  
8 your answer to be that the Region identified a legal issue  
9 regarding how dioxin must be tested for, but did not  
10 convince you that there were not other bases in science --  
11 perhaps risk concerns, that might justify additional  
12 dioxin testing?

13 MR. MARTIN: I think the reason identified  
14 a misunderstanding of the tests for determining whether  
15 the dioxin was present at the site or not.

16 MR. HARRISON: I understand.

17 MR. MARTIN: After that was identified I  
18 decided to go with the recommendation in the draft final  
19 report that the fact sheet be done explaining why testing  
20 for dioxin in the soils before going through the  
21 incinerator was not necessary.

22 MR. HARRISON: I understand. I'm just  
23 trying to determine what your reason was for making that  
24 change that you concluded that there was no technical  
25 basis for requesting the dioxin testing? -- That you

1 lacked a technical basis for requesting it?

2 MR. MARTIN: That issue is not foreclosed.  
3 I don't know how else to----

4 MR. HARRISON: I take that to be that that  
5 was not your reason for making the change? I'm just  
6 trying to get an answer to my question.

7 MR. MARTIN: Maybe I don't understand the  
8 question.

9 MR. HARRISON: Okay, I'm sorry. I thought  
10 I was clear. If there is a scientific reason for testing  
11 for dioxins at the Drake site -- for example, that initial  
12 evidence indicates dioxin may be present and perhaps at  
13 levels of concern, who decides for the moment the legal  
14 question whether an additional higher destruction  
15 efficiency level might be required, a 69 requirement for  
16 burning dioxin -- put that aside, okay? What I'm trying  
17 to get at is are there other reasons such as the simple  
18 danger of burning dioxin and emitting it into the  
19 environment through the stack related reputed emissions,  
20 does not that technical basis remain as a basis for  
21 justifying your initial request for dioxin testing or have  
22 you eliminated that basis yourself?

23 MR. MARTIN: From a technical perspective?

24 MR. HARRISON: Yes -- not a legal one.

25 MR. MARTIN: From a technical perspective -

1 - during the remedial investigation and feasibility  
2 process, site soils were tested. I believe there were  
3 forty-three samples and maybe two hits for a compound  
4 known as PCP----

5 MR. HARRISON: Pentobarbital.

6 MR. MARTIN: Yes. There may have been an  
7 issue with respect to the compound known as Silvex  
8 [phonetic] as well. The Region expressed, in a memorandum  
9 done by Mr. Vavra, that there was no technical basis to be  
10 concerned about dioxin at the site. I know that AIR  
11 believes otherwise, so that is an issue in contention.  
12 That's an issue in the Ombudsman's report.

13 MR. HARRISON: It's still open in your  
14 mind?

15 MR. MARTIN: It's still open in my mind.

16 MR. HARRISON: All right.

17 MR. MARTIN: As it's open in yours.

18 MR. HARRISON: One last question on this  
19 issue. When you were given Mr. Vavra's report were you  
20 given a document represented as the Weston Summary of  
21 Dioxin Testing in the past at the Drake Site and the last  
22 sheets that were attached to the Weston Report, were you  
23 provided that information?

24 MR. MARTIN: I don't recall that I have the  
25 Weston analysis. I have Mr. Vavra's analysis.

1 MR. HARRISON: I understand that.

2 MR. MARTIN: But I am getting the Weston  
3 analysis from the administrative record.

4 MR. HARRISON: I understand that, but we'll  
5 provide it to you in any case. Let me point out for the  
6 Commissioners' benefit and your benefit that my reading of  
7 that attachment -- which was apparently not provided to  
8 your office, indicates that in 1983 and '84 samples were  
9 taken at the Drake site and analyzed for dioxin by the  
10 EPA. They were analyzed for in buildings, tanks and in  
11 soil. They found very high levels of dioxins including  
12 over a thousand parts per billion of 2378 tetra-dioxin,  
13 the most toxic type, in a tank in a building. They found  
14 hundreds of parts per billion in the building, and they  
15 found hundreds of parts per billion of 2378 tetra in soil  
16 using a gas chromatograph electron capture technique which  
17 Mr. Vavra and Weston described as a "screening technique."  
18 They then sent these same samples apparently off to  
19 another lab to use mass spectrometer readings, PCMS  
20 technology, saying that was a more precise method. Mr.  
21 Vavra's conclusions based on the Weston summary of this  
22 data was that the follow-up analysis for dioxin was non-  
23 detect in the soil and in the building. That's not the  
24 truth. You wouldn't know it unless you read that report  
25 that should have been attached to Mr. Vavra's memo that

1 wasn't given to you. What that report attached to that  
2 memo says is that they had problems cleaning up the  
3 samples, they had interferences and the results from the  
4 laboratory technicians was that the analysis was  
5 indeterminable in the follow-up tests -- not non-detect,  
6 but indeterminable. That's true for the soil testing as  
7 well, which means that the best evidence on the record at  
8 the moment, which EPA has been misleading you about, is  
9 that there are hundreds of parts per billion of dioxin or  
10 perhaps a dioxin-like compound in the soil at the Drake  
11 site, and the attempts to disprove that by follow-up  
12 testing failed. They still don't know whether the initial  
13 results were right or whether the results were right for  
14 another similar compound or whether they were wrong. In  
15 the meantime, they're telling the public that the results  
16 were zero. You need to understand that and the  
17 Commissioners need to understand that.

18 MR. MARTIN: Well, I note your concern for  
19 the record. I will deal with that issue in my final  
20 report and I will consult with the Region on that issue.

21 MR. VILELLO: Thank you, Mr. Martin.  
22 Again, I appreciate your concerns and I appreciate  
23 everything that you've done along the way to try to make  
24 this incineration project as safe as it can be for the  
25 public of this community. I just have a few comments. I

1 understand that the burn began today and I find it  
2 unbelievable that it has started without this final  
3 report. It just causes more distrust, when all along we  
4 thought we would have Mr. Martin's report. I'm just  
5 convinced this community has to be convinced that it is  
6 safe and I don't think they've done that yet. They've had  
7 since 1988 -- the DEP and the EPA has had since 1988 to  
8 convince this community that this project would be safe  
9 and they haven't done that. I find that sad. But, the  
10 DEP is the state's environmental watchdog and they better  
11 do the best job they can for this community. I hope we  
12 can all sit here next year at this time and believe that  
13 they have done that.

14                   Again, Mr. Martin, a lot of faith is being  
15 put in your report, your final report, and I wish you  
16 well.

17                   MR. MARTIN: Thank you.

18                   PASTOR GENSIB: Mr. Vilello, I know that  
19 there isn't time, but I have a concern. I hear your  
20 comment now. I heard you say yesterday that you were at  
21 the site, you looked around----

22                   MR. VILELLO: Yes, we were.

23                   PASTOR GENSIB: They took you on a tour,  
24 and everything was fine, and you were behind this.

25                   MR. VILELLO: What did you hear? I'm

1     sorry, but what did you hear I said?

2                     PASTOR GENSIB:  That you took a tour of the  
3     site yesterday----

4                     MR. VILELLO:  Yes, I did -- not yesterday,  
5     but last week.

6                     PASTOR GENSIB:  Okay -- that you were  
7     content with what you saw, that it was safe to burn and  
8     you were behind the burn.  Today you're telling us that  
9     you're concerned.  Are you going to change tomorrow?  
10    Where are you?

11                    MR. VILELLO:  I didn't change.  I'm not  
12    changed at all.  I said -- I toured the site----

13                    PASTOR GENSIB:  You have gone on record  
14    against AIR for what AIR is standing for.  I am a member  
15    of AIR because of my concern against the incinerator.  I'm  
16    not as learned as some of the AIR members.  I'm also not  
17    as emotionally involved as they are.  I am concerned as a  
18    citizen.  As a citizen I'm asking you as a Commissioner to  
19    make a firm stand somewhere, not today be with us and  
20    tomorrow against us.  We're not sure where you are.

21                    MR. VILELLO:  I appreciate the two  
22    questions you asked by the way.  I thought they were the  
23    best questions of the day.  I have stood in the same  
24    position.  I said from day one that the incinerator has to  
25    be safe.  We have to be convinced that it's safe.  I've

1 always stood there.

2 Last Wednesday when we toured the  
3 incinerator I looked at the physical components of the  
4 incinerator. They showed me the workings of the  
5 incinerator, the safeguards. As a contractor I was  
6 impressed. Am I not allowed to be impressed? I believe I  
7 am. The actual workings of the incinerator I believe are  
8 fairly adequate. Now, will it safely incinerator the  
9 dirt? I do not know. So, I've never changed my position.

10 PASTOR GENSIB: We just need our  
11 Commissioners -- you're the leaders for us. You're our  
12 elected officials. We need you to be our watchdogs for  
13 us, and not override what we're saying.

14 MR. VILELLO: I'm not -- this is an exact  
15 example of local government getting a black eye for big  
16 government's decisions. We, as Commissioners, cannot  
17 override the decision.

18 PASTOR GENSIB: Local government -- big  
19 government needs local government before big government  
20 gets their bucks.

21 MR. VILELLO: I won't argue with that.

22 PASTOR GENSIB: And local government needs  
23 the people in order to be the local government, so we need  
24 to know that who we're putting in office are going to be  
25 representatives, honest representatives, for our welfare.

1 Not for what EPA's going to do for this community, not for  
2 what the government is going to give this community, but  
3 that we're going to be safeguarded in our community.  
4 That's my concern and that's what I want from you as my  
5 government agent. I don't care what the federal  
6 government is going to give you in bucks. I want to know  
7 that I can breathe air. I want to know I can live. I  
8 want to know that you're watching over my welfare. That's  
9 what I need to be assured of from you as my elected  
10 officials. Can you give me that guarantee?  
11 Will you go on record giving me -- me personally, Pastor  
12 Joyce Gensib, that guarantee?

13 MR. VILELLO: The question is?

14 PASTOR GENSIB: Will you give me a  
15 guarantee that you're working for me -- for me?

16 MR. VILELLO: I am working for everybody --  
17 both sides of the issue. I am trying to----

18 PASTOR GENSIB: Even if I am just a little  
19 contingency that don't count according to EPA?

20 MR. VILELLO: I never said that. If that's  
21 what they----

22 PASTOR GENSIB: No, the EPA did.

23 MR. VILELLO: I'm very concerned. I've  
24 been involved with this issue for two years.

25 PASTOR GENSIB: Then, Mr. Vilello, I'll be

1 watching very carefully, and believe me, I'll be calling  
2 your office if I don't----

3 MR. VILELLO: It pleases me that you are  
4 watching, and I will be there.

5 PASTOR GENSIB: We may get on very intimate  
6 terms.

7 MR. VILELLO: Thank you.

8 [Laughter from the audience.]

9 MR. VILELLO: Again, your questions were  
10 the best questions I heard today and I appreciate you  
11 coming.

12 MR. BOTTORF: I would just like to finish  
13 by saying that there are so many reports still out there,  
14 not just Bob Martin's report, so many reports that are out  
15 there and unanswered that anybody that supports a burn  
16 without those final reports also has to support getting  
17 rid of the agencies that produced the reports. Doesn't  
18 that make sense? If ATSDR's final report is not released,  
19 what good are they? Let's cut the waste. Okay? If Bob  
20 Martin's report doesn't need to be looked at -- I'm sorry,  
21 Bob, but you must go also.

22 [Laughter from the audience.]

23 MR. BOTTORF: If our Senators can't tell  
24 government agencies what to do, we've got big problems in  
25 this country because that same thing happened in Iraq and

1 happens in China. This government agency -- and by the  
2 way, I'd like to see Mr. Crystall on the stand. He  
3 answered a question today. He said that he'd never told  
4 our witness that this incinerator didn't work. But what  
5 does our witness have to gain? What does this new witness  
6 have to gain by saying that Mr. Crystall did say that?  
7 Nothing. So, Mr. Crystall I'll be looking forward to  
8 seeing you on the stand, sir. I think you should invite  
9 your children up for the burn. Where are they? I'm  
10 disgusted with my government. That's the bottom line.

11 MR. MILES KESSINGER: Mr. Martin, you say  
12 your report is going to be finished on March 31st. Are we  
13 going to then wait for another hundred day delay before  
14 EPA decides to release it or don't you have any control  
15 over that?

16 MR. MARTIN: I don't have any control with  
17 it's distribution.

18 MR. KESSINGER: So you could finish your  
19 report on the 31st of March and we may not know anything  
20 until next March 31st?

21 MR. MARTIN: I can't speculate.

22 MS. ROSE REEDER: Can your office  
23 personally send a copy to our Commissioners so that there  
24 isn't any in between persons delaying it -- your final  
25 report?

1 MR. MARTIN: The procedure has been  
2 submission to the Assistant Administrator for review of my  
3 recommendations and findings and decision making. He has  
4 the authority to distribute.

5 PASTOR GENSIB: Am I understanding you, Mr.  
6 Martin, that you're working to protect us? You're our  
7 Ombudsman, right?

8 MR. MARTIN: Yes.

9 PASTOR GENSIB: But you submit your report  
10 to your Regional Director and then he decides who gets the  
11 reports even though you're really working for us?

12 MR. MARTIN: Yes. I'm the National  
13 Ombudsman, but----

14 PASTOR GENSIB: Then what is the purpose of  
15 you working for us if your boss can say, "Well, they're  
16 not getting the report. We'll decide who gets the  
17 report?"

18 MR. KESSINGER: I think that's quite evident  
19 when a U.S. Senator couldn't even get the report.

20 PASTOR GENSIB: Uh-hunh. Government of the  
21 people, for the people, but run by a few people.

22 MS. MCGOWAN: How come CNN got the report,  
23 but with some of the information blacked out? What do  
24 they have that we don't have?

25 MR. VILELLO: Again, thank you all. Thank

1 you, Mr. Martin. We anxiously await your report.

2 [The Clinton County Commissioners' Public Meeting  
3 concluded at 12:07 p.m., March 4, 1998.]

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5 C E R T I F I C A T E

6 I hereby certify, as the closed microphone  
7 stenomask reporter, that the foregoing proceedings were  
8 taken by me, and thereafter reduced to typewritten form by  
9 me, and that this transcript is a true and accurate record  
10 to the best of my ability.

11  
12 C&J REPORTING

13  
14 By: Connie L. Cataldo

15 Connie L. Cataldo

16  
17 Dated: March 9, 1998-