

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


PEOPLE OF THE PEOPLE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.	)	PCB No. 13 - 12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC,)	
a Delaware limited liability corporation,)	
)	
Respondent.)	

NOTICE OF SERVICE

To: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, the **PEOPLE’S RESPONSE OPPOSING RESPONDENT’S MOTION TO STRIKE THE AFFIDAVIT OF VALERIY BRODSKY.**

Respectfully submitted,


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Date: June 20, 2014

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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CERTIFICATE OF SERVICE

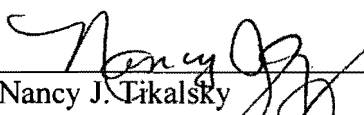
I, the undersigned attorney at law, hereby certify that on June 20, 2014, I served true and correct copies of the **PEOPLE’S RESPONSE OPPOSING RESPONDENT’S MOTION TO STRIKE THE AFFIDAVIT OF VALERIY BRODSKY**, upon the persons and by the methods as follows:

[First Class U.S. Mail]

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Date: May 20, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**PEOPLE’S RESPONSE OPPOSING RESPONDENT’S MOTION TO STRIKE
THE AFFIDAVIT OF VALERIY BRODSKY**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois (“Complainant” or “People”), herein provides its response opposing Nacme Steel Processing, LLC (“Respondent” or “Nacme”) Motion to Strike the Affidavit of Valeriy Brodsky (“Brodsky”)(“Brodsky’s affidavit”) (“Motion to Strike”) (“Response”). In support of this Response, the People state as follows:

I. Introduction

Nacme’s Motion to Strike requests the Illinois Pollution Control Board (“Board”) to strike Brodsky’s affidavit or allow Nacme to take a second deposition of Brodsky on the assertions made in his affidavit and the purported expert opinions stated in it. Nacme also seeks addition time to respond to the People’s Motion for Summary Judgment (“MSJ”).

Nacme’s arguments are twofold: 1. Nacme argues that Brodsky’s affidavit fails to Comply with Supreme Court Rule 191(a); and 2. Nacme argues that Brodsky has not been disclosed as an Expert Witness.

Nacme's arguments must fail. Nacme provides no evidence to support its contentions, and fails to include the complete transcript of Brodsky's Deposition¹, during which it inquired extensively into Brodsky's background and knowledge. Nacme completely ignores the Exhibit F attached to the MSJ subsequent to Brodsky's affidavit, which is the affidavit of Illinois Environmental Protection Agency ("Agency" or "IEPA") records custodian, Thomas Reuter's, certification of the documents attached to Reuter's affidavit as "public documents kept in the file at the Illinois EPA."² Reuter's affidavit demonstrates that Brodsky's Affidavit fully satisfy Supreme Court Rule 191(a) requirement certified documents referenced in Brodsky's affidavit.

For the following reasons stated herein, the Board should deny Nacme's Motion to Strike, deny Nacme's request for additional time to depose Valeriy Brodsky, deny Nacme an extension of time to respond to the People's MSJ, and grant the People's Motion for Summary Judgment.

II. Background

On September 5, 2012, the People filed a one-count Complaint against Nacme alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* ("Act"), at Nacme's steel processing facility located at 429 West 127th Street, Chicago, Cook County, Illinois ("Facility") ("Complaint").³ On March 27, 2014, after the close of discovery, the hearing officer entered an Order setting deadlines for filing of Motions for Summary Judgments to May 16, 2014, Responses to Motions for Summary Judgments to June 16, 2014, and setting this matter for status to June 19, 2014. *See* hearing officer order filed March 27, 2014 herein

¹ Nacme falsely claims that its more than 3 hour deposition of Valeriy Brodsky did not depose Brodsky on his qualifications or methodology used to derive the PTE calculations and emissions factors, and "the like". *See generally*, Brodsky's Deposition attached as Exhibit 2.

² See Exhibit F of People's Motion for Summary Judgment. All certified public records of Nacme's documents are party-opponent admissions. Ill. R. Evid. Rule 801(d)(2) and 803(8).

³ See Complaint attached as Exhibit A of People's Motion for Summary Judgment.

attached as Exhibit 1. On May 16, 2014, the People filed its MSJ, including two affidavits, as Exhibit E "IEPA Brodsky Affidavit" and Exhibit F "IEPA Reuter Affidavit."⁴ However, Nacme failed to file a Motion for Summary Judgment on or before May 16, 2014. Nacme also failed to file its Response to the People's MSJ on or before On June 16, 2014. Instead, on June 5, 2013, Nacme filed its Motion to Strike.⁵

III. Nacme's Motion to Strike the Affidavit of Valeriy Brodsky should be denied.

Nacme fails to support its claim that Brodsky's affidavit does not meet the standards, generally, of Supreme Court Rule 191(a), because the Board is not obligated to a strict interpretation of the Supreme Court Rules, and the affidavit is presented so as to meet the intent of Supreme Court Rule 191(a). For the following reasons, the Board should deny Nacme's Motion to Strike because it meets the standard for affidavits presented as testimony for Motion for Summary Judgment.

A. Legal Standard

Nacme continues to refuse to recognize that the Board, as a quasi-judicial body, is not subject to the Code of Civil Procedure or the Supreme Court Rules. Rather, the Board is subject only its own procedural rules ("Board Procedural Rules") for enforcement matters brought pursuant to Section 31 of the Act, 415 ILCS 5/31, as set forth in Board Procedural Rules Sections 103.100, Ill. Admin. Code tit. 35, § 103.100, and 101.100, Ill. Admin. Code tit. 35, § 101.100, which read as follows:

103.100 Applicability

a) This Part applies to proceedings before the Illinois Pollution Control Board (Board) concerning complaints alleging violations of the Environmental

⁴ See People's Motion for Summary Judgment previously filed with the Board on May 16, 2014.

⁵ See Nacme Steel Processing, LLC's Motion to Strike the Affidavit of Valeriy Brodsky filed with the Board on June 5, 2014.

Protection Act (Act), regulations, and orders of the Board pursuant to Section 31 of the Act.

b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply. *emphasis added*

101.100 Applicability

a) This Part sets forth the rules generally applicable to proceedings before the Illinois Pollution Control Board (Board), and should be read in conjunction with procedural rules for the Board's specific processes, found at 35 Ill. Adm. Code 102 through 130, and the Board's Administrative Rules, found at 2 Ill. Adm. Code 2175. In the event of a conflict between the rules of this Part and those found in subsequent Parts, the more specific requirement applies.

b) The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent. *emphasis added*.

The People brought this matter before the Board for enforcement under Section 31 of the Act.⁶ Keeping this in mind, should the Board look to the Code of Civil Procedure and the Supreme Court Rules for guidance on affidavits for Motion for Summary Judgments, where the Board's Procedural Rules are silent, the People assert that Brodsky's affidavit is well within the Supreme Court Rule 191(a)⁷ requirements.

An affidavit satisfies the requirements of Rule 191(a) if from the document as a whole it appears the affidavit is based on the personal knowledge of the affiant and there is a reasonable inference that the affiant could competently testify to its contents. *Madden v. Paschen*, 395 Ill.App.3d 362, 386 (1st Dist. 2009). Conversely, affidavits offered in support of or in opposition to a motion for summary judgment that merely set forth legal conclusions or opinions without stating supporting facts are insufficient and must be stricken. *F.H. Paschen/S.N. Nielsen, Inc. v.*

⁶ See footnote 3, page 1.

⁷ See footnote 5, page 2.

Burnham Station, L.L.C., 372 Ill.App.3d 89, 92 (1st Dist. 2007). Generally, when only portions of an affidavit are improper under Rule 191(a), a trial court should only strike the improper portions of the affidavit. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill.App.3d 119, 128 (1st Dist. 2003). Finally, when facts in an affidavit are not contradicted by counter affidavit, they must be taken as true notwithstanding contrary unsupported allegations in the adverse party's pleadings. *Lindahl v. City of Des Plaines*, 210 Ill.App.3d 281, 299 (1st Dist. 1991).

B. Arguments

1. Brodsky's statements are neither hearsay but merely factual statements based on personal and special knowledge.

Nacme fails to support its claim that "portions of the affidavit are based not on personal knowledge but on inadmissible hearsay" with its single example in paragraph 4 of Brodsky's affidavit. Nacme incorrectly claims that Brodsky relies on "the manufacture's guaranteed efficiency result" without disclosing the manufacturer or the source of his information that is relied on.

Paragraph 4 of Brodsky's affidavit reads, in relevant part, as follows:

".... I calculated the PTE HCL (before control) on the maximum hourly controlled emission rate and the efficiency of the control at 99.90% efficiency stated in the 2002 Construction Permit⁸ and the 2005 FESOP Application as the manufacturer's guaranteed efficiency result, ... (emphasis added)

Statements are not hearsay, because an out-of-court statement offered to prove its effect on a listener's mind or to show why the listener subsequently acted as he did is not hearsay and is admissible. *People v. Gonzalez*, 379 Ill.App.3d 941, 954 (1st Dist. 2008). To begin, Brodsky specifically states in the introductory paragraph of his affidavit that the statements are facts for

⁸ Due to a Scribner's error, this should read 2002 Construction Permit Application. MSJ Exhibits F2 and F3 are both named 2002 Construction Permit: F2 is mislabeled 2002 Construction Permit and should be 2002 Construction Permit Application as is apparent by the first page Nacme letter to Illinois EPA (Exhibit F3 is properly named the 2002 Construction Permit issued).

which he has personal knowledge and that he could competently testify as a witness at a hearing and should be read accordingly.⁹

Paragraph 4 of Brodsky's affidavit is a statement to show specifically why Brodsky, the permit reviewer, based his calculations on a 99.90% efficiency value of the Facility control equipment. The statement is a statement of fact based on Brodsky's personal knowledge of the numeric percentage he used to represent efficiency control in calculating the potential to emit ("PTE") hydrochloric acid ("HCL") at Nacme's Facility. Then, Brodsky identifies two documents, 2002 Construction Permit Application and the 2005 FESOP Application submitted by Nacme wherein Nacme admits the efficiency value of and name of the manufacturer of the control equipment (Pro-Eco) at the facility.¹⁰ See MSJ Exhibit F2, 2002 Construction Permit Application at pages IEPA FOIA 0378 and 0382; and MSJ Exhibit F10, 2005 FESOP Application at pages NMLP 0319 and 0324. See also MSJ Exhibit F6, September 2005 SOP Renewal Application, page 0950 as cited on page 9-10 of the MSJ.

Clearly, each statement in Paragraph 4 is not hearsay when Brodsky puts forth facts with particularity describing where he obtained the numerical values in documents submitted by Nacme and how he used the values to represent the values used to calculate PTE HCl emissions at the Facility. Thus, the People argue that Brodsky's attestation clause at the introductory paragraph of Brodsky's affidavit applies to each paragraph of the affidavit and that each statement is a fact stated with particularity and based on personal knowledge and not hearsay.

⁹ Nacme's Motion to Strike FN1 claiming Brodsky admitted at deposition that he has no expertise in the review of stack tests is taken out of context. Instead, Brodsky states that he does not review whether stack tests meet the required methodology required by the Clean Air Act, which is assigned to another individual, but reviews the stack tests for emissions results once they are approved to have met the standard methodology for the purposes of reviewing air permit applications. See Brodsky Deposition at pages 61 – 62, 65, 81, 85-93.

¹⁰ See footnotes 2 and 8.

Accordingly, the Board should deny Nacme's Motion to Strike paragraph 4 of Brodsky's affidavit.

2. Brodsky's statements are not vague conclusions but factual statements made with particularity.

Nacme fails to support its claim that Brodsky's affidavit states confusing, vague conclusions. First, Nacme claims that using defined terms that are consistent with the MSJ, wherein Brodsky's affidavit is cited, are confusing. The People fail to see how consistency with the MSJ is confusing. Each defined term or phrase, such as PTE, HCL, FESOP and SOP are clearly defined in the MSJ.

Then, Nacme states "controlled emission rate" is undefined and other technical phrases confusing. Yet in paragraph 4, sentence 1, that contains the phrase at the end of the sentence, the beginning of the sentence reads, "The April 2002 Stack Test results indicate the average HCL emission rate during the stack test to be .217 lbs/hr controlled emission rate." *emphasis added*. The phrase is defined in the phrase preceding the numerical fact in the sentence. "Average" is a common mathematical concept with its regular meaning and does not require a special definition in this context.

Proceeding from there in paragraph 4 of Brodsky's affidavit, it is not difficult to deduce that uncontrolled is the opposite of controlled and that it is "(before control)" as stated in sentence 2 of paragraph 4. The use of the terms "measured" or "assumed" are dictionary definitions that simply provide an all-inclusive qualifier of how controlled emissions may have been determined; either controlled emissions (as defined in paragraph 4) which are measured emissions (as in stack test results referenced in Brodsky's affidavit) or assumed emissions (not measured but manufacturer's guaranteed efficiency results submitted in permit applications referenced in Brodsky's affidavit). Additionally, the citation references to Brodsky's affidavit in

the MSJ provide context for facts stated in Brodsky's affidavit. See MSJ at page 8, ¶3 and page 11, ¶1. Admittedly, technical descriptions can be dense in their particularities when one is not accustomed to reading them, but not difficult to deduce meaning when terms are given their plain meaning and read within the context of the entire description. Consequently, reading paragraph carefully and as a whole the statement is readily understood.

Next, Nacme states Brodsky's "offhand" conclusions about Nacme's PTE make it impossible to counter-affidavit. In fact, there are no "offhand" conclusions about PTE in Brodsky's affidavit. PTE is defined by the Act in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010), as follows:

"POTENTIAL TO EMIT" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA.

Here, Brodsky's affidavit states facts of evidentiary-based numerical values found in documents submitted by Nacme to the Agency¹¹ that he applied to the calculations he made to determine PTE HCL emissions at the Facility as that term is defined by the Act. The calculation Brodsky chooses is from his special knowledge acquired calculating PTE for 19 years for the Agency. Brodsky's affidavit simple states facts and it is up to the Board to make the legal conclusion; to determine whether the undisputed facts about Brodsky's calculations meet the legal definition of PTE.

As a result, the People see no impossibility in a counter-affidavit simply because the particularities of Brodsky's affidavit state undisputable facts about the numerical values and

¹¹ See footnote 2.

calculations Brodsky used and the source of the values used in those calculations.¹² Nacme could provide a counter-affidavit with its own undisputable calculations and sources of the values used in those calculations supported by documentation attached to a counter-affidavit. In the end, it is a legal question for the Board to determine whether the Brodsky's and/or Nacme's calculations meet the legal definition of PTE.

Furthermore, the "method" of calculation is defined in the definition of PTE; a legal question that does not require a complicated mathematical analysis. Rather it is a simply math formula consisting of multiplication and division, as admitted by Brodsky in his Deposition. *See* Brodsky Deposition herein attached as Exhibit 2 at pages 25, 26, and 28.

Lastly, Nacme claims that the statement in paragraph 7 of Brodsky's affidavit lacks particulars as to how and to whom, which reads in pertinent part: "...in December 2005, I informed Nacme that the Agency could issue a FESOP...." Whom is clearly stated in the sentence, "Nacme" which includes whoever represented Nacme to the affiant in December 2005. Stating "how" is irrelevant in Brodsky's affidavit because paragraph 7 of Brodsky's affidavit is cited in the MSJ at page 12, paragraph 2 along with the referenced certified document written by Nacme in 2007 admitting the same fact state in paragraph 7 of Brodsky's affidavit. Clearly, the information was received by Nacme.

Accordingly, the Board should find Brodsky's Affidavit is a series of factual statements based on Brodsky's personal knowledge and laid out with particularity that provide consistency in its use of the defined terms found in the People's MSJ it supports and deny Nacme's Motion to Strike.

¹² The paragraphs in the SMJ citing Brodsky's affidavit related to PTE or emissions calculations reference relevant certified public documents produced under Exhibit F.

3. **Documents Brodsky's affidavit, attached as Exhibit E of the SMJ, relies on are certified copies of the documents attached in the Exhibit F of the MSJ, which are valid evidentiary admissions.**¹³

Nacme fails to support its claim that Brodsky's affidavit fails to attach documents it relies on. All documents referenced in Brodsky's affidavit are certified as public records attached in the Exhibit F of the MSJ directly following Brodsky's affidavit as Exhibit E. People are perplexed as to how more attached affidavit documents can be to an affidavit without unnecessarily attaching duplicate documents to the MSJ. It's not as if Brodsky's affidavit was filed separately from the whole of the MSJ. Although the People admit in hindsight it may have footnoted references to Exhibit F in Brodsky's Affidavit, it fails to see how the People did not attached the certified documents referenced in the affidavit when they are all present in the following exhibit as certified public documents. See MSJ Exhibit List herein attached as Exhibit 3.

The Board should find that Brodsky's affidavit meets this element of Supreme Court Rule 191(a) and deny Nacme's Motion to Strike.

In sum, the People have shown that Brodsky's affidavit is not strictly subject to Supreme Court Rule 191(a), but still meets the standard of Supreme Court Rule 191(a) where Brodsky certifies he can competently testify to the statements based on his personal knowledge, where the facts are stated with particularity, and where certified documents relied upon are attached to the affidavit in a subsequent Exhibit to the MSJ to which Brodsky's affidavit is attached. For all the aforesaid reasons, the Board should deny Nacme's Motion to Strike the Affidavit of Valeriy Brodsky.

¹³ See footnote 2.

III. Nacme's request to depose Valeriy Brodsky on his affidavit should be denied.

Nacme fails to support its assertion that Brodsky is an expert witness and, therefore, it should be allowed additional time to depose Brodsky on the assertions in Brodsky's affidavit because Brodsky is not an expert witness but a lay witness with special knowledge as disclosed by the People, which was discovered by Nacme during Brodsky's deposition; and because Nacme had ample notice and opportunity to depose Brodsky on the contents of Brodsky's affidavit, which address only the People's allegations in its Complaint.

A. Brodsky's statements are not vague opinions of expert testimony.

Nacme claims that Brodsky's affidavit uses "technical analysis based on mathematical calculations ultimately stating, albeit in a vague way, an opinion about NACME's purported potential to emit pollutants from its facility" is based on expert knowledge. People contend that Brodsky's application of PTE HCL emissions to numerical values provide by Nacme's documents submitted to the Agency are based on special knowledge he has acquired after 19 years reviewing and writing air pollution permits for the Agency.

First, by Nacme's own definition of lay witness under Supreme Court Rule 213 (f)(1), "a person giving only fact or lay opinion testimony," and the People's reasoning previously stated in this Response that Brodsky's affidavit states facts, show that Brodsky's affidavit can only be seen as lay testimony.

Second, Nacme fails to define lay opinion or expert opinion. Nacme fails to provide valid arguments when it claims that Brodsky's knowledge of calculating PTE is an "expert" knowledge or opinion, rather than what it may be, a lay opinion or conclusion based on special knowledge. Instead, Nacme incorrectly claims that the PTE HCL emissions calculations for the Facility in paragraphs 3, 4 5 and 10 of Brodsky's affidavit that are "technical analysis based on

mathematical calculations” are vague expert testimony that requires expert knowledge. Rather, the calculations are the application of special knowledge performing simple math of multiplication and division applied to a formula that Brodsky learned during his 19 years working at the Agency calculating PTE.

Illinois courts have found that ‘opinions and conclusions of a non-expert witness are admissible if the witness has special knowledge of and familiarity with a given subject matter.’ *People v. Stamps*, 108 Ill. App. 3d 280, 294, 438 N.E.2d 1282, 1294 (1982)(where a witness was not qualified as an expert witness, but his testimony was admissible for the purpose of explaining certain terms of the trust agreement in order to make the trust comprehensible); *See also State Farm Mutual Auto Insurance Co. v. Short* (1970), 125 Ill.App.2d 97, 260 N.E.2d 415; *Lawson v. Belt Ry. Co. of Chicago* (1975), 34 Ill.App.3d 7, 339 N.E.2d 381, 394-395 (where “an experienced switchman who had worked in close proximity to moving trains for some 11 years, and unquestionably had a special knowledge and familiarity with equipment connected with that employment.” was allowed to testify to the type of boxcar that hit him even though he did not see it). In *Gowdy v. Richter* the court rejected defendant’s argument that testimony about proceeds of a stock sale had ultimately become part of the \$400,000 supplied to a third party conclusionary and therefore not admissible, where it found witness had special role in promotion of the stock and was in the position of knowing which persons were supplying the needed consideration. *Gowdy v. Richter*, 20 Ill. App. 3d 514, 527, 314 N.E.2d 549, 559 (1974). The *Gowdy* court then proceeded to explain that even if the testimony was the witness’ opinion, the fact that the witness had special knowledge of the matter in question qualifies the testimony as an exception to the lay witness opinion rule. *Id.* (citing *State Farm Mut. Auto. Ins. Co. v. Short* (1970), 125 Ill.App.2d 97, 260 N.E.2d 415.) Moreover, in *Bloomgren v. Fire Ins. Exchange* the

court states that records which concern causes and effects, involving the exercise of judgment and discretion, expressions of opinion, or the drawing of conclusions are generally not admissible as exceptions to the hearsay rules “unless they concern matters to which the official would be qualified to testify about at trial.” 162 Ill.App.3d 594, 599 (3rd Dist. 1987).

In this case, Brodsky is uniquely qualified to testify concerning his calculations for PTE HCL emissions at the Facility, which include documents provided by Nacme.¹⁴ Brodsky’s affidavit provides the foundation for his unique position at the Agency as a permit reviewer since 1994 to the present, and as the permit reviewer for Nacme. *See* Brodsky’s affidavit, page 1, ¶1. Brodsky’s affidavit also attests that his duties in this position have and continue to require him to review air permit applications, draft related permits, and ensure his review and drafts are performed in compliance with the Act. *See* Brodsky’s affidavit, page 1, ¶2.

Accordingly, Brodsky employed his special knowledge of 19 years¹⁵ of enforcing the Act to exercise his judgment and discretion when he calculate the PTE HCL emissions at Nacme’s Facility. Like the witness in *Stamps*, the calculations in Brodsky’s affidavit are undisputed facts offered to provide the Board with a better understanding of how he calculated the PTE HCL emissions based on his 19 years of special knowledge calculating PTE as he understands that term is defined under the Act. Ultimately, it is the Board’s jurisdiction to determine whether his calculations do, in fact, meet the definition of PTE in the Act.

Moreover, the calculations used by Brodsky are not vague requiring expert knowledge. In fact, Brodsky states in his deposition, that PTE calculation in this case is simple math. *See* Brodsky Deposition at pages 25, 26, and 28 herein attached as Exhibit 1. Also, in his deposition, Brodsky disclosed his knowledge of how PTE was calculated. *See Id.* page 28.

¹⁴ See footnote 2.

¹⁵ The Clean Air Act initiated ‘major source’ in 1995.

It may take special knowledge of a long time permit reviewer but it does not require an expert to locate numerical representations in stack tests and permit applications and to perform simply calculations for PTE as defined by the Act. Rather, it is a combination of special knowledge to locate stack test emissions results and control efficiency numeric values in permit applications, and the ability to perform simple math of multiplication and division to derive the PTE HCL emissions as defined by the Act for the Nacme Facility. This special knowledge of PTE calculations falls well within the purview of lay witness testimony.

The Board should rule that Brodsky's affidavit does not espouse expert testimony but rather lay testimony with special knowledge of the Act as it relates to reviewing Clean Air Act permit applications and related documents, such as stack test results, in Illinois.

B. Nacme falsely claims it did not have an opportunity to depose Brodsky on the issues as presented in Brodsky's affidavit.

Nacme is disingenuous in its claim that it has not had an opportunity to conduct discovery or depose Brodsky on his special knowledge of PTE and emission factor calculations, his qualifications or methods to make said calculations. In fact, On September 26, 2013 Nacme conduct a more than 3 hour deposition of Valeriy Brodsky, which contained questions regarding Brodsky's qualifications and knowledge of PTE and associated calculations and the numerical factors represented in a PTE calculation.¹⁶ See Brodsky Deposition at pages 12 – 31 herein attached as Exhibit 1.

During Brodsky's Deposition, Nacme questioned Brodsky about manuals and training that assisted Brodsky in his job at the Agency. The deposition included questions about Brodsky's work reviewing permit applications and drafting permits, including calculating PTE, and on his knowledge of stack tests. *Id.* at 59-61. At no time subsequent to the deposition did

¹⁶ See footnote 1.

Nacme request the manuals or training materials it learned Brodsky had in his possession. Yet, Nacme was certainly aware of such documents at Brodsky's Deposition and had through February 28, 2014 to request such documents from the People.¹⁷ Finally, Nacme deposed Brodsky on the documents related to the allegations of the Complaint. *Id.* at 115-151.

Brodsky's affidavit lists facts to his knowledge acquired during his 19 years at the Agency and does not express any opinions. Certainly, Nacme may not like the manner in which Brodsky made his calculations or the numerical values Brodsky used in his calculations from the sources disclosed, but Nacme deposed Brodsky on how calculate PTE and how he completed the calculations with the emissions rate and control efficiencies provide by Nacme.¹⁸

Furthermore, nothing present in Brodsky's affidavit is new information in this matter. In fact, the subject of Brodsky's affidavit relates directly to the People's allegations in its Complaint. Nacme had possession of all the certified copies of documents present in the People's Motion for Summary Judgment, which Brodsky's affidavit relies on, for months before they deposed Brodsky in September 2013.

Finally, Nacme conducted Brodsky's deposition on September 26, 2013 and discovery closed on February 28, 2014. Nacme had more than enough time to bring a motion to request additional time to depose Brodsky if it believed it did not have enough time to depose him on all the material relevant to this matter. Nacme failed to timely request additional time to depose Brodsky either before the discovery closed or after discovery closed but before the filing of a dispositive motion. It is too late where Nacme had ample notice and opportunity to present a discovery motion. Nacme should not be allowed to circumvent the hearing officer's order or the

¹⁷ Discovery closed on February 28, 2014 pursuant to hearing officer order entered on October 23, 2013.

¹⁸ See footnote 1.

general process of an orderly and fair discovery process without good cause. Here, Nacme fails to show it has good cause to request additional time to depose Brodsky.

Accordingly, the Board should rule that Brodsky is a lay witness with special knowledge that Nacme was fully aware of throughout the proceeding and conducted discovery accordingly, and deny Nacme's request for additional time to depose Valeriy Brodsky.

IV. Nacme should not be allowed additional time to file a Response to the People's Motion for Summary Judgment.

Nacme chose to file its Motion to Strike rather than a Response to the People's Motion for Summary Judgment and a counter affidavit and should not be given the opportunity for a second Response to the People's Motion for Summary Judgment. Nacme could have presented a counter affidavit of its lay witness with special knowledge based personal knowledge of the documents Nacme submitted to the Agency when Nacme requested an air pollution permit for its Facility.

It is well within the imagination that two witnesses with special knowledge testify to indisputable facts of numerical values found in documents before the Agency and used in formulas to calculate PTE HCL emissions at the Facility. It is a question of law whether the witnesses interpreted definition of PTE under the Act to derive PTE HCL emissions at the Facility. A question only the Board can resolve and that is appropriate for a Motion for Summary Judgment.

V. Conclusion

The People have shown that Brodsky's affidavit meets the standard of Supreme Court Rule 191(a) and that Brodsky's affidavit is the testimony of a lay witness with special knowledge.

The initial paragraph of Brodsky's affidavit specifically states that the subsequent statements are facts to which he has personal knowledge and can competently testify to at hearing under oath. Paragraphs 1 and 2 of Brodsky's affidavit set the foundation of Brodsky's personal knowledge and the special knowledge he has reviewing permit applications and stack tests, and calculating PTE HCL emissions and emissions factors related to the Nacme Facility during the relevant period of time. Subsequent statements in Brodsky's affidavit are facts stated with particularity to demonstrate what numerical values Brodsky used in his PTE and emission factor calculations and where he found those values in documents submitted by Nacme to the Agency.

Many of the statements in Brodsky's affidavit expand on facts presented in the People's MSJ with citation to Brodsky's affidavit to make the referenced documents comprehensible. Any conclusions that may have been made by Brodsky in choosing a formula for calculating PTE and emissions factors are in light of his special knowledge developed over 19 years applying such calculations while reviewing and drafting air pollution permits for the Agency. As a whole, all Brodsky's affidavit's statements and attached documents to Affidavit F of the MSJ present foundation and facts with particularity based on his personal knowledge and special knowledge as a lay witness in this matter.

Nacme had ample notice and opportunity to depose Brodsky on the subject of the statements in Brodsky's affidavit, which align with the allegations of the People's Complaint and

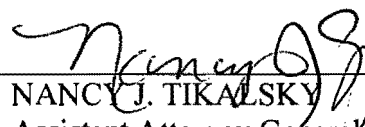
chose not to do so. Instead, Nacme chose to file a Motion to Strike rather than present a Response to the People's Motion for Summary Judgment and a counter affidavit and should not be given the opportunity for a second Response to the People's Motion for Summary Judgment.

For all the reasons set forth in this Response and in the People's Motion for Summary Judgment on All Counts of the People's Complaint, the People respectfully request that the Board deny Nacme's Motion to Strike the Affidavit of Valeriy Brodsky, deny Nacme's request for additional time to depose Valeriy Brodsky, deny Nacme's time to respond to the People's Motion for Summary Judgment, and enter summary judgment in favor of the People on the People's Complaint and against Respondent, NACME STEEL PROCESSING, LLC.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

BY:



NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau
69 West Washington St., Suite 1800
Chicago, Illinois 60602
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ntikalsky@atg.state.il.us

Dated: June 20, 2014

People's Response to Nacme's Motion to Strike Affidavit of Valeriy Brodsky

Filed June 20, 2014

EXHIBIT LIST

EXHIBIT 1	Board Order filed March 27, 2014
EXHIBIT 2	Brodsky Deposition
EXHIBIT 3	People's Motion for Summary Judgment Exhibit List

EXHIBIT 1

Board Order filed March 27, 2014

RECEIVED
CLERK'S OFFICE

MAR 27 2014

ILLINOIS POLLUTION CONTROL BOARD
March 27, 2014

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
NACME STEEL PROCESSING, LLC, a)
Delaware limited liability corporation,)
)
Respondent.)

PCB 13-12
(Enforcement - Air)



ORIGINAL

HEARING OFFICER ORDER

On March 27, 2014, all parties participated in a telephonic status conference with the hearing officer. The parties stated that they now intend to file their respective motions for summary judgment. It was agreed that the motions for summary judgment are due to be filed May 16, 2014. Responses are due to be filed June 16, 2014.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on June 19, 2014, at 9:30 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

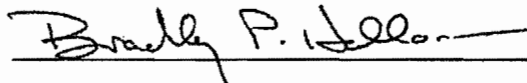
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 27, 2014, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 27, 2014:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
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Illinois Pollution Control Board
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Chicago, IL 60602

EXHIBIT 2

Brodsky Deposition

VALERIY BRODSKY
STATE OF ILLINOIS vs. NACME STEEL

September 26, 2013

Pages 1 to 4

Page 1		Page 3	
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD		1	EXHIBITS CONT'D. PAGE
PEOPLE OF THE STATE OF ILLINOIS,	)	2	18 11-13-00 calculation sheet 104
Complainant,	)	3	19 7-27-00 operating permit 110
vs.	) PCB No. 13-12	4	20 11-13-00 traveler sheet 113
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,	)	5	21 1-10-02 letter 114
Respondent.	)	6	22 4-11-02 calculation sheet 115
		7	23 4-12-02 traveler sheet 121
		8	24 5-20-02 permit denial 126
		9	25 8-21-02 memorandum 127
		10	26 4-16-02 emissions test 130
		11	27 4-4-05 traveler sheet 132
		12	28 4-4-05 calculation sheet 134
		13	29 4-13-05 notice of incompleteness 146
		14	30 9-20-05 notice of incompleteness 148
		15	
		16	(Exhibits not attached. Original exhibits retained by Mr. Walsh and copy sent to court reporter and counsel.)
		17	
		18	
		19	
		20	
		21	
		22	
		23	
		24	
DISCOVERY DEPOSITION OF VALERIY BRODSKY TAKEN OF BEHALF OF THE RESPONDENT SEPTEMBER 26, 2013			
Page 2		Page 4	
1	INDEX	1	BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2		2	
3	QUESTIONS BY: PAGE	3	PEOPLE OF THE STATE OF)
4	MR. WALSH 5	4	ILLINOIS,)
5		5	Complainant,)
6	EXHIBITS	6	vs.) PCB No. 13-12
7	EXHIBIT DESCRIPTION PAGE	7)
8	1 Notice of electronic filing --	8	NACME STEEL PROCESSING,)
9	2 9-28-10 inspection 35	9	LLC, a Delaware limited)
10	3 Lay witnesses disclosure 28	10	liability corporation,)
11	4 1996 construction permit 26	11)
12	5 7-10-95 traveler sheet 40	12	Respondent.)
13	6 2-20-96 traveler sheet 42	13	
14	7 4-15-96 calculation sheet 45	14	
15	8 2-22-00 permit application 50/52	15	DISCOVERY DEPOSITION OF VALERIY BRODSKY,
16	9 3-9-00 fax message 63	16	produced, sworn, and examined on the 26th day of
17	10 2-22-00 traveler sheet 67	17	September, 2013, between the hours of 2:00 P.M.
18	11 4-19-00 fax message 80	18	and 5:14 P.M. of that day, at the offices of
19	12 3-22-00 fax message 82	19	Midwest Litigation Services, 15 S. Old State
20	13 5-15-00 letter & 5-11-00 letter 88	20	Capitol Plaza, Suite 1, Springfield, Illinois
21	14 7-25-00 permit revision application 90	21	62701, before Robin A. Enstrom, a Registered
22	15 8-29-00 letter 94	22	Professional Reporter, Certified Shorthand
23	16 9-13-00 email chain 98	23	Reporter, and a Notary Public within and for the
24	17 9-18-00 violation notice 102	24	State of Illinois.

Page 5

1 APPEARANCES
2
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4 Office of the Attorney General
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19
20 FOR THE IEPA:
21 Illinois Environmental Protection Agency
22 Ms. Maureen Wozniak
23 1021 North Grand Avenue East
24 P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544

Court Reporter:
Robin A. Enstrom, RPR, CSR
Illinois CSR #084-002046
Midwest Litigation Services
15 S. Old State Capitol Plaza
Springfield, Illinois 62701
217.522.2211
800.280.3376

Page 7

1 A. Good afternoon.
2 Q. Let me just -- have you ever had your
3 deposition taken before?
4 A. No. It's first time.
5 Q. Okay. So let me just explain the
6 ground rules to try and make it easy for Robin,
7 our court reporter here today. She's taking down
8 your testimony and my questions, and she can't do
9 both at the same time. So please wait until I
10 finish my question entirely before you respond.
11 A. I understand.
12 Q. And if you could respond verbally --
13 a "Yes," a "No," or whatever -- instead of with a
14 shrug or an "Uh-huh" or something like that.
15 Okay?
16 A. Okay.
17 Q. Thank you. You've just told me that
18 you've never had your deposition taken before.
19 Have you ever testified in any hearing of any
20 sort?
21 A. I participated in public hearings on
22 some of my permits.
23 Q. In some of your what?
24 A. Permits which we were issuing.

Page 6

1 IT IS HEREBY STIPULATED AND AGREED by
2 and between Counsel for the Complainant and
3 Counsel for the Respondent that this deposition
4 may be taken in shorthand by Robin A. Enstrom,
5 RPR, CSR, and Notary Public, and thereafter
6 transcribed into typewriting, with the signature
7 of the witness being expressly reserved.
8
9 * * * * *
10
11 (Deposition began at 1:51 P.M.)
12 VALERIY BRODSKY,
13 of lawful age, having been produced, sworn, and
14 examined on the part of the Respondent, testified
15 as follows:
16 EXAMINATION
17 QUESTIONS BY MR. WALSH:
18 Q. Let the record reflect that this is
19 the discovery deposition of Valeriy Brodsky,
20 taken pursuant to agreement and the applicable
21 provisions of the Illinois Pollution Control
22 Board regulations and Illinois Code of Civil
23 Procedure.
24 Good afternoon, Mr. Brodsky.

Page 8

1 Q. All right. And just for the record,
2 you have an accent --
3 A. Yes.
4 Q. -- and it may be a little difficult
5 for me or the court reporter to understand. So
6 we may ask for interpretation from time to time.
7 A. Absolutely.
8 Q. Do you have any trouble understanding
9 spoken or written English at all?
10 A. No.
11 Q. Not at all?
12 A. I mean, I cannot say at all, but --
13 Q. Okay.
14 A. -- some word I will ask maybe to
15 repeat or express another way.
16 Q. Okay. That's fine. Fair enough.
17 The hearings that you referred to --
18 you said they were public. You participated in
19 public hearings. What does that mean?
20 A. It is standard procedure to send some
21 permits for public notice. Notice is published
22 in local newspaper, and local public, if they
23 have interest, they can request public hearing --
24 Q. Okay. Have you --

Page 9	Page 11
<p>1 A. -- on -- okay.</p> <p>2 Q. Are you done?</p> <p>3 A. Yeah.</p> <p>4 Q. Have you ever testified in an</p> <p>5 enforcement case?</p> <p>6 A. No.</p> <p>7 Q. Have you ever testified in a case</p> <p>8 where the parties were adverse? Where one party</p> <p>9 was demanding something of the other?</p> <p>10 A. No.</p> <p>11 Q. And I assume that that also pertains</p> <p>12 to general lawsuits outside of your job?</p> <p>13 A. Never.</p> <p>14 Q. Never been involved in a lawsuit?</p> <p>15 A. No.</p> <p>16 Q. Okay. Did you review anything in</p> <p>17 preparing for your deposition today?</p> <p>18 A. Briefly, yes.</p> <p>19 Q. What did you review?</p> <p>20 A. Permits which I issued to NAMCE Steel</p> <p>21 during the last several years.</p> <p>22 Q. And when did you look at those?</p> <p>23 A. From our database.</p> <p>24 Q. I'm sorry?</p>	<p>1 Q. Do you have a general idea of what</p> <p>2 the allegations are in the lawsuit?</p> <p>3 A. I would say pretty general idea is</p> <p>4 that operation without proper -- with expired</p> <p>5 permit and without federal enforceable state</p> <p>6 operating permits.</p> <p>7 MR. WALSH: Okay. Did you get that,</p> <p>8 Robin?</p> <p>9 COURT REPORTER: I think so.</p> <p>10 Q. (By Mr. Walsh) Did you meet with</p> <p>11 anybody before your deposition?</p> <p>12 A. What do you mean "with anybody"?</p> <p>13 Related to this matter?</p> <p>14 Q. Yes. I'm sorry.</p> <p>15 A. And in what time span?</p> <p>16 Q. Well, let's make it the -- from the</p> <p>17 beginning of the universe to today. Did you meet</p> <p>18 with anybody about this deposition?</p> <p>19 A. Oh, no. About this deposition, no.</p> <p>20 Q. All right. So you -- regardless of</p> <p>21 time frame, you did not meet with anyone in</p> <p>22 advance of your deposition regarding your</p> <p>23 deposition?</p> <p>24 A. Just some explanation of --</p>
Page 10	Page 12
<p>1 A. From computer database.</p> <p>2 Q. And when did you do that?</p> <p>3 A. Yesterday.</p> <p>4 Q. Yesterday?</p> <p>5 A. Yeah, yesterday. Today a little bit.</p> <p>6 Q. Did you do that by yourself or was</p> <p>7 someone with you?</p> <p>8 A. By myself.</p> <p>9 Q. And you mentioned NACME Steel. You</p> <p>10 understand that NACME Steel has been sued by the</p> <p>11 State of Illinois?</p> <p>12 A. Yes.</p> <p>13 Q. And it's been sued in conjunction</p> <p>14 with a facility that it owns at 429 West 127th</p> <p>15 Street, Chicago, Illinois?</p> <p>16 A. I believe, yes. I do not remember</p> <p>17 exactly address but --</p> <p>18 Q. Okay. We'll get to that. You do</p> <p>19 know that NACME has a facility in Chicago,</p> <p>20 Illinois?</p> <p>21 A. Yes.</p> <p>22 Q. And, to your understanding, that's</p> <p>23 the subject matter of the litigation?</p> <p>24 A. Yes.</p>	<p>1 procedural explanation from our lawyer, from</p> <p>2 Maureen Wozniak.</p> <p>3 Q. Okay. So you met with Ms. Wozniak,</p> <p>4 and she explained to you the procedures --</p> <p>5 A. Yes.</p> <p>6 Q. -- that might -- that might occur in</p> <p>7 a deposition?</p> <p>8 A. Yes.</p> <p>9 Q. Was there anybody else there?</p> <p>10 A. No. We had telephone conversation</p> <p>11 with Nancy.</p> <p>12 Q. With Ms. Tikalsky?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. Thank you.</p> <p>15 How long have you been employed by</p> <p>16 IEPA?</p> <p>17 A. Nineteen-and-a-half years.</p> <p>18 Q. And what is your current title?</p> <p>19 A. Environmental protection engineer</p> <p>20 III.</p> <p>21 Q. Is that the highest grade of</p> <p>22 environmental protection engineer?</p> <p>23 A. Yes.</p> <p>24 Q. How long have you had that title?</p>

Page 13	Page 15
<p>1 A. I believe it was 1998. So 15 years, 2 maybe. 3 Q. And before that, what was your title? 4 A. I started in 1994 as engineer I and 5 couple years later engineer II and then engineer 6 III. 7 Q. And were you employed prior to IEPA? 8 A. Yes. I had one employment in the 9 United States before EPA. 10 Q. And what was that? 11 A. It started as Illiana Technology. 12 Q. Illini? 13 A. Illiana Technology. 14 Q. How is that spelled? 15 A. I-I-I-a-n-a. 16 Q. Okay. 17 A. Technology. 18 Q. And what did they do? 19 A. They produce various electronic 20 devices. Then this company was purchased by 21 Fargo International and then by John Deere. 22 Q. John Deere? 23 A. Yeah. 24 Q. When did you come to the United</p>	<p>1 everything out before you answer. Okay? Thank 2 you. 3 Have you taken any courses or had any 4 education here in the United States? 5 A. I took some courses in environmental 6 matters. 7 Q. Can you tell me what they are? 8 A. I am afraid I cannot remember exact 9 names. 10 Q. When did you take the courses? 11 A. In Illinois EPA. 12 Q. I'm sorry? 13 A. In Illinois EPA. 14 Q. When? 15 A. Oh, when. Last time it was months 16 ago I took courses. We travel to Indiana in 17 National -- what was exact name -- 18 Q. Well, that's all right. I don't need 19 the exact name. 20 A. Yeah. Internal combustion -- 21 Q. Are these -- are these, like, 22 seminars, you mean? Seminar training? 23 A. No. It was training. Just 24 listening, lectures, having tests.</p>
Page 14	Page 16
<p>1 States? 2 A. I came in July 1992. 3 Q. '92? 4 A. Yes. 5 Q. From where? 6 A. From Ukraine. 7 Q. Were you educated in Ukraine? 8 A. Yes. 9 Q. And what college level education do 10 you have -- college and above? 11 A. It's comparable with American master 12 degree. I finish six years of education in 13 engineering field. 14 Q. What kind of engineering? 15 A. Electronic field. 16 Q. Electrical? 17 A. Electrical field. Measuring 18 equipment and techniques. 19 Q. So was that equivalent to an 20 electrical engineering degree -- 21 A. Yeah. 22 Q. -- in the United States, you believe? 23 A. Yeah. 24 Q. Okay. Make sure you wait till I get</p>	<p>1 Q. Okay. Lectures, did you say? 2 A. Yeah. 3 Q. And were these courses where you -- 4 that lasted weeks or -- 5 A. Three days. 6 Q. So these were a few-day courses? 7 A. Yes. 8 Q. And is that -- is that typical of the 9 type of, quote, courses that you took -- 10 A. Yeah. 11 Q. -- have taken in the United States? 12 A. Yeah. One, two days in different 13 places. 14 Q. Okay. And those are in the 15 environmental area, sir? 16 A. Yes, all were environmental. 17 Q. And all related to air? 18 A. Not only. I took general chemistry 19 courses with representatives from in other 20 bureaus. 21 Q. Who do you report to currently at 22 IEPA. 23 A. My immediate manager, Robert 24 Bernoteit.</p>

Page 17

1 COURT REPORTER: Robert?
 2 A. Robert Bernoteit.
 3 MR. WALSH: I'll give you the
 4 spelling on that at the break.
 5 Q. (By Mr. Walsh) What's
 6 Mr. Bernoteit's title?
 7 A. Okay. Now there is some shift in
 8 assignments. So currently he is acting manager
 9 of permit section.
 10 Q. How long has he had that title?
 11 A. Couple months.
 12 Q. And how long have you been reporting
 13 to him?
 14 A. I was reporting to him -- before he
 15 was unit manager, FESOP unit manager, and I was
 16 engineer under him. Now he is acting section
 17 manager. I am acting FESOP unit manager.
 18 Q. And how long have you been reporting
 19 to Mr. Bernoteit?
 20 A. Oh, how long? Approximately from
 21 year 2000. So 13 years.
 22 Q. Okay. The year 2000. 13 years is --
 23 about 13 years. Is that what you said?
 24 A. Yeah. 2000, 2001, when previous

Page 18

1 manager retired.
 2 Q. All right. When did you first become
 3 aware of the NACME facility?
 4 A. Also I believe around year 2000.
 5 Q. And how did you become aware of
 6 NACME?
 7 A. Application for operating permit
 8 renewal, and we issued this permit.
 9 Q. All right. So at the time you became
 10 aware of NACME, it was already a permitted
 11 facility?
 12 A. Yes.
 13 Q. Did you have anything to do with the
 14 earlier permitting?
 15 A. No.
 16 Q. Have you ever been to the NACME
 17 facility?
 18 A. No.
 19 Q. Can you tell me what your current --
 20 well, let's step back.
 21 In 2000 what were your job
 22 responsibilities?
 23 A. Pretty much the same: analysis of
 24 permit application and preparation of permit.

Page 19

1 Q. All right. So in 2000 you pretty
 2 much did the same thing, and that is you would
 3 review permit applications?
 4 A. Yes.
 5 Q. For their technical validity?
 6 A. Yeah. Compliance with environmental
 7 regulations.
 8 Q. Do you have any legal training?
 9 A. No.
 10 Q. So you have an understanding of the
 11 regulations from reviewing them in general?
 12 A. Yes.
 13 Q. Have you taken any courses that
 14 provide legal training with regard to Illinois
 15 environmental regulations?
 16 A. I cannot call it legal training.
 17 It's training in some, let's say, for example,
 18 new source review --
 19 Q. New source review?
 20 A. -- review regulation. It has little
 21 of technical details but a lot of explanations --
 22 not explanation -- of timing -- I would say legal
 23 terms. How to treat facilities on being subject
 24 or not being subject to this particular

Page 20

1 regulation.
 2 Q. Okay. Let me go off the record for a
 3 moment, if I will.
 4 (Discussion off the record.)
 5 Q. (By Mr. Walsh) Okay. So if I
 6 understand correctly, you've taken some courses
 7 that essentially train someone like yourself in
 8 the regulations that you have to interpret and
 9 apply. Is that a fair statement?
 10 A. Yes. Yes.
 11 Q. And how many times have you had such
 12 training, if you recall?
 13 A. For sure I remember one such
 14 extensive training. It was several days. And we
 15 had periodically new regulations introduction to
 16 us with detail explanation of their
 17 applicability, interpretation of regulation by
 18 itself. It happens. I cannot tell how many
 19 times but once in a while.
 20 Q. And you know what the Clean Air Act
 21 Permit Program is; right?
 22 A. Yes.
 23 Q. Do you remember when that first went
 24 into effect -- the Title V permit program?

Page 21	Page 23
<p>1 A. Yes.</p> <p>2 Q. When did that go into effect?</p> <p>3 A. 1995.</p> <p>4 Q. And did you have training at that</p> <p>5 time with regard to the legal requirements of</p> <p>6 Title V?</p> <p>7 A. If it may be called legal. We had</p> <p>8 training in procedural requirements.</p> <p>9 Q. That's fine.</p> <p>10 A. Yeah.</p> <p>11 Q. And that was when?</p> <p>12 A. It was continuous training in 1995,</p> <p>13 '96, when we started working with these type of</p> <p>14 applications.</p> <p>15 Q. '95 and '96?</p> <p>16 A. Maybe -- yeah, '95. Starting '95.</p> <p>17 Q. And have there been continuous</p> <p>18 updates --</p> <p>19 A. Yeah.</p> <p>20 Q. -- through the years?</p> <p>21 A. Especially first several years we had</p> <p>22 continuous training.</p> <p>23 Q. In the first few years?</p> <p>24 A. Yes.</p>	<p>1 2000, 2001, it was different manger.</p> <p>2 Q. Who was that?</p> <p>3 A. Harish Desai.</p> <p>4 Q. Harish Desai?</p> <p>5 A. Yes.</p> <p>6 Q. D-e-s-a-i?</p> <p>7 A. Yes.</p> <p>8 Q. Is he still with the agency?</p> <p>9 A. No. He retired.</p> <p>10 Q. So there are various types of permits</p> <p>11 that you -- permit applications you might review,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. State operating permits?</p> <p>15 A. Yes.</p> <p>16 Q. Federally enforceable state operating</p> <p>17 permits?</p> <p>18 A. Yes.</p> <p>19 Q. And CAAPP permits?</p> <p>20 A. Not CAAPP permits.</p> <p>21 Q. No CAAPP permits?</p> <p>22 A. No.</p> <p>23 Q. So your -- and is this true from 2000</p> <p>24 on to date?</p>
Page 22	Page 24
<p>1 Q. Okay. And then after the first few</p> <p>2 years -- '95, '96, '97, say -- were there</p> <p>3 refresher courses on the program?</p> <p>4 A. I do not recall special courses. It</p> <p>5 was done on the local level. Any updates, new</p> <p>6 significant set -- sets of new regulations -- you</p> <p>7 were informed about them.</p> <p>8 Q. All right. So let's step back to</p> <p>9 your job responsibilities. As I understand it,</p> <p>10 you review permits to determine -- to make a</p> <p>11 recommendation if a permit should issue?</p> <p>12 A. Yes. That's correct.</p> <p>13 Q. And to do that, you compare the</p> <p>14 application to the applicable regulations?</p> <p>15 A. Yes.</p> <p>16 Q. And then you make a recommendation --</p> <p>17 yes, no, or whatever; right?</p> <p>18 A. Not recommendation. I'm drafting</p> <p>19 permit with my conclusions.</p> <p>20 Q. Okay. And then what do you do with</p> <p>21 it?</p> <p>22 A. Present to my manager for his review.</p> <p>23 Q. That would be Bob Bernoteit?</p> <p>24 A. Now it's Bob Bernoteit. Before year</p>	<p>1 A. Yes.</p> <p>2 Q. So you don't look at Title V permit</p> <p>3 applications?</p> <p>4 A. I look in this application, for</p> <p>5 example, when company which operates on the Title</p> <p>6 V decides to change -- to switch to FESOP. So in</p> <p>7 this case we have to use their Title V</p> <p>8 application as source of our information.</p> <p>9 Q. All right. So let me just try and</p> <p>10 get a better understanding. Do you deal with</p> <p>11 major source facility permitting?</p> <p>12 A. Not.</p> <p>13 Q. Well, I think you've already answered</p> <p>14 that you do FESOPs which can be in lieu of a</p> <p>15 CAAPP permit; right?</p> <p>16 A. Yes. You are right. Until FESOP is</p> <p>17 issued, the source is treated as a major.</p> <p>18 Q. Okay. But, I mean, in your -- in</p> <p>19 your permitting work, are you permitting major</p> <p>20 source facilities other than with a FESOP --</p> <p>21 other than with a FESOP?</p> <p>22 A. No.</p> <p>23 Q. Okay. Thank you.</p> <p>24 Do you know what "potential to emit"</p>

Page 25	Page 27
<p>1 means?</p> <p>2 A. Yes.</p> <p>3 Q. What does it mean to you?</p> <p>4 A. Potential to emit means capability of</p> <p>5 the source to emit pollutant -- certain pollutant</p> <p>6 on the maximum operation, presuming maximum</p> <p>7 operation time.</p> <p>8 Q. Okay. I think you said the same</p> <p>9 thing. I'm going to read from the statute and</p> <p>10 see if you agree with me. "Potential to emit</p> <p>11 means the maximum capacity of a stationary source</p> <p>12 so emit any air pollutant under its physical and</p> <p>13 operational design." Is that a correct</p> <p>14 statement?</p> <p>15 A. Yes.</p> <p>16 Q. And how does -- how does one</p> <p>17 determine potential to emit?</p> <p>18 A. As it said in the regulation, we need</p> <p>19 to determine what is physical capacity of the</p> <p>20 source to emit, what are operational physical</p> <p>21 limitation on its operations, and presume maximum</p> <p>22 annual hours of operations.</p> <p>23 Q. So it can be a matter of simple math,</p> <p>24 I think. Do you agree with that?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And as you look at this</p> <p>3 construction permit, do you recall whether this</p> <p>4 was in the permit file?</p> <p>5 A. Which one? This?</p> <p>6 Q. The thing in front of you, yeah.</p> <p>7 Exhibit 4.</p> <p>8 A. It's very possible that it wasn't</p> <p>9 because we're -- I was dealing with operating</p> <p>10 permit, and file for operating permit contains</p> <p>11 only operating permit. So it could be in the</p> <p>12 different file.</p> <p>13 Q. All right. Well, let me direct your</p> <p>14 attention without your knowledge or not -- you're</p> <p>15 familiar with this general format of a</p> <p>16 construction --</p> <p>17 A. Yeah.</p> <p>18 Q. -- permit that's issued by IEPA?</p> <p>19 A. Yes.</p> <p>20 Q. Let me direct your attention to the</p> <p>21 section where it says "Item of Equipment." It</p> <p>22 says "Pickle Line"?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Right?</p>
Page 26	Page 28
<p>1 A. In very simple cases, yes,</p> <p>2 MR. WALSH: Would you mark that as --</p> <p>3 we're on 4.</p> <p>4 (Exhibit No. 4 was</p> <p>5 marked for identification.)</p> <p>6 Q. (By Mr. Walsh) Let me show you</p> <p>7 what's been marked as Exhibit 4.</p> <p>8 A. Okay.</p> <p>9 Q. Have you seen that exhibit before?</p> <p>10 A. Do not recall.</p> <p>11 Q. Let me ask you: You testified that</p> <p>12 you weren't involved with NACME facility prior to</p> <p>13 the year 2000; correct?</p> <p>14 A. No.</p> <p>15 Q. You were not involved?</p> <p>16 A. Yes, I was not involved.</p> <p>17 Q. All right. And when you became</p> <p>18 involved, did you have a permit file of the</p> <p>19 earlier --</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And would that have included</p> <p>22 the various permits already issued?</p> <p>23 A. Yes.</p> <p>24 Q. And applications?</p>	<p>1 A. Yes.</p> <p>2 Q. And then it says "Material</p> <p>3 Throughput" on one column and "Particulate Matter</p> <p>4 Emissions" in another?</p> <p>5 A. Yes.</p> <p>6 Q. And is it correct to say that one</p> <p>7 could determine the potential to emit particulate</p> <p>8 matter emissions from this facility by</p> <p>9 multiplying 8,760 times .72 and dividing by</p> <p>10 2,000?</p> <p>11 A. Yes.</p> <p>12 Q. And that yields the 3.15 tons per</p> <p>13 year; right?</p> <p>14 A. Supposedly, yes.</p> <p>15 Q. Thank you. So the 8,760 hours a</p> <p>16 year -- that's the total number of hours in a</p> <p>17 year?</p> <p>18 A. That's potential.</p> <p>19 Q. All right. But it assumes that the</p> <p>20 source operates continuously; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Let me show you what's previously</p> <p>23 been marked Exhibit 3.</p> <p>24 That's the lay witness disclosure.</p>

Page 29	Page 31
<p>1 Nancy. 2 If you could just flip through that 3 for a moment. Have you seen this document 4 before? 5 A. Do not recall. Or maybe it was in 6 the recent communications about this deposition. 7 I see some -- yeah, maybe I saw it. 8 Q. All right. When you say "the recent 9 communications," you mean the meeting you had 10 A. Yeah. 11 Q. -- with Ms. Wozniak? 12 A. Related to this meeting, yeah. 13 Q. All right. Was something sent to you 14 in advance of your meeting with Ms. Wozniak? 15 A. This kind of document. I believe it 16 was one of the attachment informing me about 17 this -- to this meeting. 18 Q. How many documents were sent to you 19 before you met with Ms. Wozniak? 20 A. No special documents. Just 21 informational, like, kind of this. 22 Q. All right. How many documents like 23 the one in front of you were you provided before 24 meeting with Ms. Wozniak?</p>	<p>1 expected to testify about something that's not 2 already stated here? 3 A. I do not remember that Maureen 4 referred to this particular list, but 5 basically -- basically, yes, about my involvement 6 in dealing with NACME. 7 Q. All right. Let me just go through 8 some background questions. Have you discussed 9 this case with Yasmine Keppner-Bauman? 10 A. NACME in general case. 11 Q. Well, no, this litigation. 12 A. No. 13 Q. Let's stick to the litigation. 14 A. No. 15 Q. All right. 16 A. Excuse me. Litigation? 17 Q. The lawsuit. This lawsuit. The 18 reason we're here today. 19 A. Yes. What is going for years, not 20 today's meeting. 21 Q. Well, no. The lawsuit that brings us 22 here. The complaint that was filed by the state. 23 A. Definitely Yasmine Keppner was 24 involved.</p>
Page 30	Page 32
<p>1 A. No. I cannot recall any other 2 documents. 3 Q. Okay. So you do have a recollection 4 of this lay witness disclosure -- 5 A. Yeah. 6 Q. -- that's in front of you? 7 A. Yes. 8 Q. All right. Look at number 3, if you 9 would. 10 A. Yes. 11 Q. And that's a summary provided by the 12 state of what your expected testimony will be in 13 this case. Can you read that, please, to 14 yourself. 15 A. Okay. 16 Yes, I read. 17 Q. Do you agree that you'll be able to 18 testify to what's stated here? 19 A. Yes. 20 Q. Okay. Is there anything else that 21 you believe you can testify about that's not 22 stated here? 23 A. No. 24 Q. And you haven't been told that you're</p>	<p>1 Q. No. I'm asking have you discussed 2 the lawsuit with her. 3 A. It's hard to say. Yes, I discuss 4 with her. 5 Q. Okay. And when did you discuss it 6 with her? 7 A. Not recently. I do not recall when 8 we had meeting with the company as -- in process 9 of preparation for the meeting, we had some 10 discussions. 11 Q. Are you talking about the meeting 12 that we had in Springfield when myself and others 13 came down to meet with IEPA personnel? 14 A. Yes. Maybe this meeting. And I do 15 not recall significant discussion with her after 16 that. 17 Q. After that? 18 A. Yeah. 19 Q. Okay. Thank you. 20 How about -- excuse me. Bob 21 Bernoteit -- have you discussed the lawsuit with 22 him? 23 A. No. 24 Q. Not at all?</p>

Page 33

1 A. We discuss this matter but technical
2 issues, not lawsuit.
3 Q. All right. How about David
4 Bloomberg?
5 A. No.
6 Q. All right. Now let's just back up,
7 and how many discussions did you say you've had
8 with Yasmine Keppner-Bauman with regard to the
9 NACME facility and any of the issues that might
10 pertain to it?
11 A. It's going on for so many years that
12 I cannot recall how many. There were several, I
13 can tell for sure.
14 Q. Do you recall the last one? Was
15 it -- would that have been the meeting you just
16 talked about?
17 A. It's my guess, yes.
18 Q. So you probably haven't spoken to her
19 about NACME since that meeting?
20 A. Do not recall.
21 Q. Don't recall?
22 A. No.
23 Q. Okay. How about -- same question for
24 Mr. Bernoteit.

Page 34

1 A. Even less with Mr. Bernoteit.
2 Q. And Mr. Bloomberg?
3 A. No.
4 Q. Didn't discuss with him at all?
5 A. (Shook head from side to side.)
6 Q. Do you know who Mr. Bloomberg is?
7 A. Yes. Yes. He change his position
8 also.
9 Q. Everybody's changed position.
10 A. Yeah. So he was previously more
11 involved in this matter, but I do not recall
12 discussions with him.
13 Q. Okay. I know that you've had
14 conversations from time to time with Britt Wenzel
15 of Mostardi Platt; right?
16 A. Yes.
17 Q. Have you had conversations with John
18 DuBrock? Does that name ring a bell?
19 A. No.
20 Q. How about Bob Hendrickson?
21 A. Do not remember.
22 Q. Tom Beach?
23 A. No.
24 Q. William Reichel?

Page 35

1 A. No.
2 Q. Is it -- Bob Wisdom? Does that name
3 ring a bell? Okay. I'm sorry. You have to
4 answer verbally.
5 A. No.
6 Q. Is it correct to say that, other than
7 Mr. Wenzel, you really haven't spoken to anybody
8 about the facil -- dealing on the facility's
9 behalf other than Mr. Wenzel?
10 A. Yes. I remember around year 2005,
11 2006, when they submitted FESOP application, I
12 had communication with some lady working for
13 Mostardi Platt.
14 Q. Do you recall the lady's name?
15 A. No.
16 Q. It wasn't Gail? Was it Gail?
17 A. No.
18 Q. No. All right. Jamie?
19 A. No.
20 Q. I think Jamie is a guy. All right.
21 A. I just saw it yesterday when I go
22 through file but do not recall this name.
23 Q. Let me show you what's previously
24 been marked Exhibit 2. Have you seen that

Page 36

1 document before?
2 A. No.
3 Q. Do you know who Mr. George Ordija is?
4 A. Yes.
5 Q. Who is he?
6 A. He's field inspector in Chicago --
7 Q. And when you say -- I'm sorry.
8 A. He is field inspector in Chicago's
9 field office.
10 Q. Okay. And when you say "field
11 inspector," what does that mean?
12 A. That his responsibility is to visit
13 facilities and check their compliance with
14 permit, with regulations.
15 Q. All right. Can you turn to the
16 second page of this document.
17 A. Yes.
18 Q. Just let me direct your attention
19 down to this text down here.
20 A. Uh-huh.
21 Q. Do you recall having a conversation
22 with Mr. Ordija on or about September 29, 2010?
23 A. No.
24 Q. Do you have -- well, you're saying

Page 37	Page 39
<p>1 you don't recall?</p> <p>2 A. I do not recall this particular</p> <p>3 conversation.</p> <p>4 Q. All right. You're not saying that</p> <p>5 the conversation did not occur?</p> <p>6 A. Oh, no.</p> <p>7 Q. All right. And do you have any</p> <p>8 reason to doubt that he's mistaken when he says</p> <p>9 that he talked to you the day after the</p> <p>10 inspection?</p> <p>11 A. Let me read. I need to read the</p> <p>12 whole --</p> <p>13 Q. Sure. Go ahead.</p> <p>14 A. -- paragraph.</p> <p>15 Q. Uh-huh.</p> <p>16 A. Yes. I agree with this statement.</p> <p>17 Q. You agree with the statement "On the</p> <p>18 day after inspection, the author confirmed with</p> <p>19 Valeriy Brodsky (permit section) that the</p> <p>20 facility was subject to the operating permit and</p> <p>21 not the construction permit"?</p> <p>22 A. Yes.</p> <p>23 Q. And when he says "the operating</p> <p>24 permit," there was only one operating permit in</p>	<p>1 What is a traveler sheet?</p> <p>2 A. It's attachment to permit file which</p> <p>3 allow us to tracks most of steps in processing</p> <p>4 permit application.</p> <p>5 Q. Tracks the steps in a permit</p> <p>6 application?</p> <p>7 A. Yes. In processing permit</p> <p>8 application.</p> <p>9 Q. And that's an internal document --</p> <p>10 A. Yes.</p> <p>11 Q. -- that -- I'm sorry -- that you use</p> <p>12 in your job?</p> <p>13 A. Yes.</p> <p>14 Q. Has that -- have you used them since</p> <p>15 2000?</p> <p>16 A. Oh, yes.</p> <p>17 Q. All right. And what is the purpose?</p> <p>18 You said it tracks something, but what is the</p> <p>19 purpose of the traveler sheet?</p> <p>20 A. I cannot tell you. It's some</p> <p>21 internal procedures for --</p> <p>22 Q. Internal procedure for?</p> <p>23 A. To maintain traveler sheet; so --</p> <p>24 Q. All right. Do you fill out traveler</p>
Page 38	Page 40
<p>1 effect at that time; right?</p> <p>2 A. Yes.</p> <p>3 Q. And that was a state operating</p> <p>4 permit?</p> <p>5 A. Yes.</p> <p>6 Q. And if you look at the front page</p> <p>7 under the -- about right here. See, I have the</p> <p>8 handy yellow -- the highlighting. I didn't put</p> <p>9 that on yours.</p> <p>10 A. I see this number.</p> <p>11 Q. Do you see the permit number</p> <p>12 96020074?</p> <p>13 A. Yes.</p> <p>14 Q. And that indicates a state operating</p> <p>15 permit; right?</p> <p>16 A. Yes.</p> <p>17 Q. And that's the permit -- the</p> <p>18 operating permit he's talking about --</p> <p>19 A. Yes.</p> <p>20 Q. -- in here? Yes?</p> <p>21 A. Yes.</p> <p>22 Q. And that you talked to him about?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. Thank you.</p>	<p>1 sheets?</p> <p>2 A. Pertaining portion. There are</p> <p>3 several people who mark -- make -- record marks</p> <p>4 on the traveler sheet.</p> <p>5 Q. Okay. And it's not a trick question.</p> <p>6 I'm going to show you some traveler sheets in a</p> <p>7 minute. I'm just trying to understand how the</p> <p>8 process works.</p> <p>9 So you're reviewing a permit, say.</p> <p>10 Do you -- after you review the file, do you then</p> <p>11 fill out a traveler sheet to pass on to</p> <p>12 your -- the next step?</p> <p>13 A. It depends. In new traveler sheet,</p> <p>14 it was changed. Yes, we have such mark. On old</p> <p>15 traveler sheet, we put only date when permit was</p> <p>16 ready to be issued.</p> <p>17 Q. All right. Well, let's move to a</p> <p>18 traveler sheet, and maybe I can -- you can help</p> <p>19 me out.</p> <p>20 (Exhibit No. 5 was</p> <p>21 marked for identification.)</p> <p>22 Q. (By Mr. Walsh) All right. Let me</p> <p>23 hand you Exhibit 5.</p> <p>24 A. Yes.</p>

Page 41	Page 43
<p>1 Q. And do you recognize that?</p> <p>2 A. Yes.</p> <p>3 Q. And what do you recognize it to be?</p> <p>4 A. Standard traveler sheet.</p> <p>5 Q. All right. Did you have anything to</p> <p>6 do with the preparation of this traveler sheet?</p> <p>7 A. No. I do not see my initials. It</p> <p>8 was done by another engineer.</p> <p>9 Q. So it predates your familiarity with</p> <p>10 NACME; right?</p> <p>11 A. Yeah.</p> <p>12 Q. All right. Can you tell me: Do you</p> <p>13 recognize the initials on the traveler sheet?</p> <p>14 A. Yes. It's initials of my</p> <p>15 then-manager, Harish Desai.</p> <p>16 Q. Where -- which -- where is that?</p> <p>17 A. Here, Unit Manager.</p> <p>18 Q. Okay. So that's in the middle in the</p> <p>19 Review Action section of the form?</p> <p>20 A. Yes.</p> <p>21 Q. And whose initials are BE or -- at</p> <p>22 the very bottom? BE or PE? Do you know?</p> <p>23 A. This one.</p> <p>24 Q. Yes.</p>	<p>1 than not Exhibit 5, which we just looked at, was</p> <p>2 in the permit file that you inherited?</p> <p>3 A. If it's operating permit, yes, it</p> <p>4 should be in the file.</p> <p>5 Q. And if it's not an operating permit?</p> <p>6 A. Located in the file with this number,</p> <p>7 application number. So if it's construction</p> <p>8 permit, it stays with construction permit file.</p> <p>9 Operating permit usually has -- may have</p> <p>10 significant number of these traveler sheets.</p> <p>11 Q. All right. So when you're looking at</p> <p>12 a permit application for an operating permit as</p> <p>13 opposed to a construction permit, is there any</p> <p>14 need for you to go and look in the construction</p> <p>15 permit file and see what they've already asked</p> <p>16 for in terms of building out whatever they</p> <p>17 ultimately seek to operate?</p> <p>18 A. Usually there is some reason for</p> <p>19 submitting this operating permit application,</p> <p>20 usually through -- related to some revision.</p> <p>21 Q. Yeah. But the question I have is,</p> <p>22 when you get the application for an operating</p> <p>23 permit, are you interested then in going and</p> <p>24 looking at the construction permit file to see</p>
Page 42	Page 44
<p>1 A. No. It's -- it may be made in clerk</p> <p>2 who mailed. I don't know this part.</p> <p>3 Q. All right. And then up at the top,</p> <p>4 in the right-hand corner, there's a scribble</p> <p>5 there. Do you recognize those initials?</p> <p>6 A. No.</p> <p>7 Q. Or the date? No?</p> <p>8 A. No.</p> <p>9 Q. How about in this section, the</p> <p>10 Project Emissions Data section? Do you recognize</p> <p>11 those initials?</p> <p>12 A. No.</p> <p>13 (Exhibit No. 6 was</p> <p>14 marked for identification.)</p> <p>15 Q. (By Mr. Walsh) Let me show you</p> <p>16 what's been marked Exhibit 6, and before I ask</p> <p>17 you about this, these traveler sheets -- would</p> <p>18 they have been in the file that you inherited in</p> <p>19 2000? In the normal course, would they be in</p> <p>20 there?</p> <p>21 A. Yes.</p> <p>22 Q. They would?</p> <p>23 A. Yeah.</p> <p>24 Q. So do you believe that more likely</p>	<p>1 what's in there just to inform yourself about</p> <p>2 what's going on?</p> <p>3 A. It's possible. Not always, but it</p> <p>4 happens.</p> <p>5 Q. Okay. Do you know if you did that in</p> <p>6 this case when you inherited the file in 2000?</p> <p>7 A. I'm pretty sure not because it was</p> <p>8 pretty simple, straightforward case in year 2000;</p> <p>9 so --</p> <p>10 Q. Why was it simple and</p> <p>11 straightforward?</p> <p>12 A. I believe it was just operating</p> <p>13 permit renewal.</p> <p>14 Q. Didn't require a lot of analysis?</p> <p>15 A. No.</p> <p>16 Q. All right. Looking at No. 6, do you</p> <p>17 recognize the document? I think you've already</p> <p>18 told me, so we can kind of shortcut this, that</p> <p>19 you didn't have any -- you didn't have any</p> <p>20 involvement before 2000, and this form is dated</p> <p>21 2-20-96.</p> <p>22 A. Yeah.</p> <p>23 Q. All right. Do you recognize the</p> <p>24 signature in the upper right-hand box?</p>

Page 45	Page 47
<p>1 A. You mean this signature? 2 Q. Yes, sir. 3 A. No. 4 Q. Do you recognize the initials in the 5 next box down? Right here. This here. 6 A. No. 7 Q. And do you recognize the initials -- 8 I think it's Mr. Harish, maybe -- 9 A. Yes. 10 Q. -- in the middle there under Unit 11 Manager? 12 A. Yes. 13 Q. In the Review Action box; right? 14 A. Uh-huh. 15 Q. And then who is it to the right of 16 him? Do you know? 17 A. No. 18 Q. Do you have an idea who his -- it 19 says "Special Review." What does that mean? 20 A. I don't know. 21 Q. Don't know? 22 A. No. 23 (Exhibit No. 7 was 24 marked for identification.)</p>	<p>1 hydrochloric acid. Do you see that? 2 A. Yes. 3 Q. And then there's some calculations 4 down below. Do you see that? 5 A. Yes. 6 Q. Do you know what those calculations 7 mean? 8 A. Yes. 9 Q. What do they mean? 10 A. It's calculation of allowable 11 particulate matter emission, so-called process 12 weight rate emission. 13 Q. So help me out here. Particulates -- 14 would they -- would particulates include 15 hydraulic acid? 16 A. Yes. 17 Q. And how is that -- tell me what 18 particulate form that occurs in. 19 A. It's in a mist, inorganic mist. We 20 treat as particulate matter. 21 Q. Okay. Thank you. So in 1996 the 22 record -- the IEPA's documents reflect a facility 23 was proposing to build a facility that was going 24 to pickle steel and from which there would be</p>
Page 46	Page 48
<p>1 Q. (By Mr. Walsh) Let me show you 2 what's been marked as Exhibit 7 and ask you if 3 you've seen that before. 4 A. No, I didn't see. 5 Q. I'm sorry? 6 A. I didn't see this calculation sheet. 7 Q. All right. You see that this was 8 produced under a Freedom of Information Act 9 request. That's what that stamp means down in 10 the lower right-hand corner. 11 A. Uh-huh. 12 Q. So where in IEPA -- would this have 13 been in the construction permit file, do you 14 believe? 15 A. Yeah. 16 Q. As opposed to the operating permit 17 file? Or could they both be in the same file 18 together? 19 A. Yeah. It says granting construction 20 permit. So it likely was in the construction 21 permit file. 22 Q. Okay. And you'll see that it talks 23 about applicant is requesting a construction 24 permit for a steel picking line consisting of</p>	<p>1 hydraulic acid emissions; is that correct? 2 MR. GRANT: Do you mean hydrochloric? 3 MR. WALSH: Hydrochloric, yes. Thank 4 you. What did I say? 5 MR. GRANT: Hydraulic. That would 6 mess the record up. 7 A. Yes. But -- 8 Q. (By Mr. Walsh) Okay. Go ahead. 9 But? 10 A. Now we treat differently. 11 Q. I understand. 12 A. Yeah. 13 Q. But back in this day -- all right. 14 You've answered the question. Thank you. 15 All right. Let's figure this out 16 here. 17 Let's go back to the traveler sheets 18 that are in front of you. If you could take a 19 look at both of them. Do either of them make any 20 mention of hydrochloric acid, HCL? 21 A. That's correct. 22 Q. No, they do not? 23 A. No. 24 Q. And you remember the -- okay. You</p>

Page 49	Page 51
<p>1 see the number, on Exhibit 6, in the Permit 2 Emissions section? It says 3.15? 3 A. Yes. 4 Q. Okay. What do you interpret those to 5 pertain to? 6 A. It describes actual and potential 7 emissions of total suspended particles. 8 Q. And would that, without saying it, 9 include HCL? 10 A. Yes. 11 Q. So it's your conclusion that the 12 315 -- does it relate -- look at Exhibit 4 for a 13 moment, if you would. 14 A. Yeah. 15 Q. Do you have Exhibit 4 there? So does 16 that 315 -- 3.15, in your mind, relate to the 17 data that's contained on the first page of 18 Exhibit -- 19 A. Yes. 20 Q. -- 4, which is particulate matter 21 emissions; right? 22 A. Yeah. 23 Q. And those particulate matter 24 emissions were in the form of HCL mist. Is that</p>	<p>1 the NACME facility, and you'll understand that -- 2 A. Yes. 3 Q. -- as we -- okay. Thank you. 4 And this is a -- well, it's a joint 5 application; right? 6 A. Yes. 7 Q. Okay. And that means joint 8 construction and operating permit? 9 A. Yes. 10 Q. And so this would have been in your 11 operating permit file. It would have come to 12 you, and you would have kept it in the operating 13 permit file? 14 A. Yes. I should receive both files, 15 construction separate and operating permit. 16 Q. So you would have -- you also would 17 have been given the construction permit file when 18 this facility was assigned to you; is that 19 correct? 20 A. Yes. 21 Q. All right. And this states that it's 22 for a pickle line, proposed pickle line; right? 23 A. Uh-huh. 24 Q. Let me direct your attention down to</p>
Page 50	Page 52
<p>1 your interpretation? 2 A. Yes. 3 MR. WALSH: All right. Mark that, 4 please. 5 (Exhibit No. 8 was 6 marked for identification.) 7 Q. (By Mr. Walsh) All right. I'm 8 showing you a document marked Exhibit 8 and ask 9 you if you recognize that document. 10 A. Already possible that I was dealing 11 with this application. 12 Q. All right. And that was going to be 13 my next question. Do you remember when in 2000 14 you first picked up the NACME file? 15 A. No. 16 Q. But as you look at this, you don't 17 discount that it could have been as of this date, 18 on or about February 22, 2000? 19 A. Yeah, it's very possible. 20 Q. And while we're at it, this does 21 pertain to a facility at 429 West 127th Street; 22 right? 23 A. Yes. 24 Q. Okay. So I'm referring to that as</p>	<p>1 the lower left-hand corner. You see that form 2 designation, APC 200? Way down here. The little 3 print. 4 A. It's cut here. 5 Q. Is it cut off on yours? 6 A. Yeah. But I can recognize it. 7 MR. WALSH: Is it cut off on yours, 8 Nancy? 9 I'm sorry? Well, the official 10 exhibit should have it on there, though, is the 11 problem. All right. 12 Nancy, could I see your copy, please? 13 All right. It doesn't. So I'll be right back. 14 Take a short break 15 (Short recess.) 16 MR. WALSH: All right. What I'd 17 like -- what I'd like to do is replace Exhibit 8 18 with a different Exhibit 8, this one here, 19 because the form number is cut off in the lower 20 left-hand corner. 21 (Exhibit No. 8 was 22 marked for identification.) 23 Q. (By Mr. Walsh) All right. So I'm 24 showing you the replacement Exhibit 8.</p>

Page 53	Page 55
<p>1 And, Nancy, you'll have to just lean 2 over and look at it with him, if you don't mind. 3 MS. TIKALSKY: May I have my old copy 4 back then? 5 MR. WALSH: Sure. 6 MS. TIKALSKY: Thanks. 7 Q. (By Mr. Walsh) All right. Let me 8 ask you about the little designation down in the 9 left-hand corner there. Do you see it, APC 200? 10 A. Yes. 11 Q. What does that mean? Do you know? 12 A. Air pollution control. 13 Q. And is that a form number of a 14 certain type? 15 A. Yes, 200. 16 Q. And what is that form used for? 17 State operating permits? 18 A. For both. It's used for state 19 permits, both construction and operating. 20 Q. All right. Is it used for FESOPs? 21 A. No. 22 Q. Has it ever been used for FESOPs? 23 A. Maybe in the very beginning of Title 24 V program.</p>	<p>1 Q. And that -- what does that mean to 2 you? HCL is hydrochloric acid, but what do the 3 numbers mean, to your understanding? 4 A. Usually we, first of all, look in 5 this number, low line, what is emission rate 6 pounds per hour. 7 Q. Okay. 8 A. And it indicates very low emission 9 rate. 10 Q. And this is at the scrubber outlet; 11 correct? 12 A. Yes. 13 Q. And there's something called a 14 scrubber inlet too; right? 15 A. Yes. 16 Q. What's the difference between the 17 two? 18 A. Inlet usually, to any control device, 19 contains high emission level. Outlet, much 20 lower. It's purpose of control device to 21 decrease emission of some particular pollutant. 22 Q. So the inlet emissions -- the inlet 23 to the scrubber -- are uncontrolled emissions 24 from a facility, a source; right?</p>
Page 54	Page 56
<p>1 Q. Was it at this time, as in February 2 of 2000? 3 A. No. It was already after. 4 Q. And this application proposes to 5 build a pickling line with an emission control 6 device by Pro-Eco. Your understanding is there 7 was a scrubber at the NACME facility; right? 8 A. Yes. 9 Q. And the scrubber, essentially, is an 10 air pollution control device; is that right? 11 A. Yes. 12 Q. And if you turn to the page marked 13 NMLP 0829, it indicates that hydraulic -- 14 hydrochloric acid will be a raw material used at 15 the facility; right? 16 A. Yes. 17 Q. And is proposed that hydrochloric 18 acid emissions will be controlled by the 19 scrubber; correct? 20 A. Yes. 21 Q. And if you look NMLP 0837, there are 22 some figures there for Results. Do you see the 23 section Results? 24 A. Yes.</p>	<p>1 A. Yes. 2 Q. So describe to me, if you would, the 3 steps you went through in reviewing this permit, 4 if you recall. Or if you don't recall, describe 5 to me what you -- 6 A. Yeah. 7 Q. Describe to me what you would 8 normally do when you get a permit application 9 like this back in the year 2000. 10 A. Start from reviewing of list of 11 equipment for which permit is -- 12 Q. Sought? 13 A. -- sought, if I understand it, and 14 then compare it against their current operating 15 permit, if there are any changes or not, and then 16 verifying their emission calculations -- 17 COURT REPORTER: I'm sorry. Start 18 again. "And then" -- 19 A. Verifying their emission 20 calculations -- 21 Q. (By Mr. Walsh) Refine, do you say? 22 A. Verifying. 23 Q. Very fine -- verify. 24 A. Verify.</p>

Page 57

1 Q. Okay. Thank you.

2 A. In this case, I don't need to perform

3 special calculation because all information is

4 provided.

5 Q. All right. What special calculation

6 would you have performed if all the information

7 wasn't provided?

8 A. I need to find related information to

9 this kind of operation to look for source of

10 emission factors. In every case it's different

11 approach based on pollutant content and raw

12 materials being used, expected emission rate.

13 It's hard to describe.

14 Q. Okay. Well -- and then what do you

15 do with that information? What does it help you

16 decide?

17 A. Again, in this particular case

18 only -- let's turn back. When we are dealing

19 with HCL, it's hazardous air pollutant.

20 Q. When you're dealing with a what?

21 A. HCL.

22 Q. HCL? Okay.

23 A. Yes. Not with acid but with gas.

24 HCL --

Page 58

1 COURT REPORTER: Start over. I'm

2 lost.

3 A. Okay.

4 Q. (By Mr. Walsh) HCL.

5 A. When we are dealing with hydrogen

6 chloride emission, abbreviation HCL, because this

7 is hazardous air pollutant, we need to verify

8 that emission from this source cannot exceed

9 major source threshold.

10 Q. And how did you do that in this case

11 working off of this application?

12 A. In this case it's very easy. I

13 multiplied hourly emission rate by potential

14 hours of operation, 8760 hours per year, and

15 receive result much lower than ten tons per year.

16 Q. All right. Can you take -- walk me

17 through how you did that? What did you -- 8760

18 times what? What did you multiply it --

19 A. 0.02.

20 Q. 0.02. So you took the scrubber

21 outlet number and multiplied it by --

22 A. Yes.

23 Q. -- 8760?

24 A. And in this way I determine that

Page 59

1 their actual emission doesn't exceed major source

2 threshold.

3 Q. Okay. Thank you. Is there a manual

4 that you -- that the IEPA has for permit writing?

5 You call yourself a permit writer? Is that what

6 you call yourself?

7 A. Yeah.

8 Q. Okay. Is there a manual that, you

9 know, you can look up and this is how to do it?

10 Like, a cookbook for permit writers? Yes?

11 A. Yes.

12 Q. What's it called?

13 A. Oh, I don't remember. I looked last

14 time maybe during my first year, first couple of

15 years. It's called permit writer manual or

16 something of this kind.

17 Q. So you don't -- you haven't looked at

18 it for a long time --

19 A. Yes.

20 Q. -- because you've been doing this for

21 so long you don't really need to. Is that what

22 you're saying?

23 A. Yeah.

24 Q. Has it been revised from time to

Page 60

1 time?

2 A. Not manual itself. We just receive

3 from time to time new instructions how to deal

4 with some particular situations.

5 Q. And what do you do with those? Do

6 you put them in the manual?

7 A. Yeah. Now we keep it on our

8 computer. It's much more convenient.

9 Q. Well, I understand. But back in 2000

10 through, say, 2005, did you get updates like that

11 to the manual?

12 A. Yeah.

13 Q. And what did you do with them?

14 A. I store in special folder.

15 Q. Special folder?

16 A. Yeah.

17 Q. Okay. So does the manual have, like,

18 a checklist that you go through when looking at a

19 permit?

20 A. Yes.

21 Q. And tell me what the -- tell me what

22 the checklist is. Where do you start and --

23 A. It includes verifying signature on

24 the application, that they're consistent; that

Page 61	Page 63
<p>1 the address on the application is the same as it 2 was on the previous permit. Such administrative 3 type checkoffs. And then going through 4 application forms. I don't remember exact 5 guideline, but idea was to understand what 6 application about and reminder what -- against 7 what regulations should we check different types 8 of emission unit rates. 9 Q. Going back to Exhibit 8, the last 10 page, at the top it says date 5-7-97. Do you 11 recall why the date -- 12 A. Oh, yeah. 13 Q. Do you recall why it says that? 14 A. It's the date when this test was 15 performed. 16 Q. When you say "this test," what do you 17 mean "this test"? 18 A. This is a summary -- typical summary 19 from the stack test. 20 Q. And can you tell me what a stack test 21 is? 22 A. Stack test is instrumental 23 measurements of emission from particular emission 24 units usually done in the stack.</p>	<p>1 please. 2 (Exhibit No. 9 was 3 marked for identification.) 4 Q. (By Mr. Walsh) I'm showing you 5 what's been marked Exhibit 9. Have you had a 6 minute to look at Exhibit 9 there, Mr. Brodsky? 7 A. Maybe. It's addressed to me; so -- 8 Q. Well, that was -- first of all, do 9 you remember a woman named Blythe Cozza? 10 A. No. 11 Q. Do you remember Corporate 12 Engineering, Inc.? 13 A. No. 14 Q. All right. So do you have any doubt 15 that you received this exhibit based on your name 16 being on it? 17 A. No, I don't have such doubts. 18 Q. All right. And do you have any 19 recollection of -- well, let me back up. 20 Do you believe that this submittal 21 was in connection with the joint construction and 22 operating permit that we've just been discussing? 23 A. Yeah. Judging by date, it's very 24 likely that I requested from the company</p>
Page 62	Page 64
<p>1 Q. And is there a particular method that 2 is supposed to be followed -- an EPA method? 3 A. Yes, there is. 4 Q. What -- I'm sorry. What is the EPA 5 method? 6 A. There is set of methods, how to 7 measure air movement velocity, volume, 8 temperature, and what analyzing methods should be 9 used for detecting hydrogen chloride emission. 10 Q. Okay. And do you recall what the EPA 11 back in this era in 2000 -- or let's say '97 -- 12 what the EPA method would have been? Is there a 13 number? 14 A. If -- yes. If it didn't change 15 because I remember recent number is Method 26. 16 Q. Is what? 17 A. Method 26. 18 Q. Method 26? 19 A. 26. 20 Q. And do you agree that, if one does 21 not follow the correct method, the validity of 22 the results could be affected? 23 A. Yes. 24 MR. WALSH: If you could mark that,</p>	<p>1 substantiation of their emission data. 2 Q. All right. Thank you. Who is John 3 Blazes? 4 A. Another permit engineer. 5 Q. Another permit engineer? 6 A. Yes. 7 Q. All right. And why is -- why would 8 he -- if you were -- well, did you take this file 9 over from him? 10 A. It's possible. I remember that he 11 filled in several times manager position when 12 manager was on vacation, was absent. Usually it 13 was John Blazes who -- so it's possible that he 14 assigned this permit to me. 15 Q. All right. And do you have any 16 recollection, looking at the first page, that -- 17 the fax page, do you have any recollection -- did 18 you request information from -- from someone in 19 connection with the permit application? 20 A. It's very likely. I don't remember, 21 but pretty sure that it was this way, that I 22 requested and they presented it. 23 Q. In the Message section, you see it 24 says Pickle Tank No. 1. Then it has some</p>

Page 65	Page 67
<p>1 percentages, HCL, and it looks like temperature?</p> <p>2 A. Yes.</p> <p>3 Q. Is that the kind of information you</p> <p>4 would have asked for in reviewing a permit</p> <p>5 application?</p> <p>6 A. Yes.</p> <p>7 Q. And why would you have asked for that</p> <p>8 information?</p> <p>9 A. Because emission of hydrogen chloride</p> <p>10 is almost exponentially -- depends on the</p> <p>11 concentration and temperature of the acid</p> <p>12 solution in the pickling tank.</p> <p>13 Q. All right. But hadn't you already</p> <p>14 gotten the information from a stack test about</p> <p>15 what the emissions were? We looked at Exhibit 8,</p> <p>16 remember, and it had --</p> <p>17 A. Yes. Yes.</p> <p>18 Q. Okay. So I'm just -- I don't</p> <p>19 understand the process. Why would you be</p> <p>20 asking -- are you just -- is this verification?</p> <p>21 A. Maybe I lack some data on their</p> <p>22 current operations. It's hard to say why I</p> <p>23 requested but --</p> <p>24 Q. And the next page on this, NMLP</p>	<p>1 customers with this data, and in many cases we</p> <p>2 accept manufacturer data.</p> <p>3 Q. All right. But in this case do you</p> <p>4 agree, based on what we've already looked at,</p> <p>5 Exhibit 8, that you didn't have to accept that</p> <p>6 because you had actual stack test results?</p> <p>7 A. Yes.</p> <p>8 MR. WALSH: I've got to take a</p> <p>9 minute. I'm sorry.</p> <p>10 (Short recess.)</p> <p>11 (Exhibit No. 10 was</p> <p>12 marked for identification.)</p> <p>13 Q. (By Mr. Walsh) All right. Let me</p> <p>14 show you what's been marked Exhibit 10.</p> <p>15 Did I give you -- did I hand you a</p> <p>16 copy, Nancy? I'm sorry. Of 0030?</p> <p>17 MS. TIKALSKY: No.</p> <p>18 MR. WALSH: I thought she made two</p> <p>19 copies of each. All right. Well, then, let's</p> <p>20 just go. You'll have to just lean over, if you</p> <p>21 don't mind. Thank you. Let counsel see it.</p> <p>22 Thanks.</p> <p>23 All right. So this is a -- Exhibit</p> <p>24 10 is a traveler sheet; right?</p>
Page 66	Page 68
<p>1 0825 -- and you may already have answered this,</p> <p>2 but do you have a recollection that Mr. Blazes</p> <p>3 was working on this matter and then you worked on</p> <p>4 it? There was a transition?</p> <p>5 A. It's possible. I do not remember.</p> <p>6 Q. All right.</p> <p>7 A. It happens when application cover</p> <p>8 letter is addressed to engineer who previously</p> <p>9 issued permit; so I suspect it was.</p> <p>10 Q. All right. Let me direct your</p> <p>11 attention to that middle paragraph there where it</p> <p>12 says "Please." It says, "Please also note that</p> <p>13 revised emission figures have been established</p> <p>14 based upon a stack test performed by Microbac in</p> <p>15 May 1997." Do you see that?</p> <p>16 A. Okay.</p> <p>17 Q. Right here?</p> <p>18 A. Yeah, I see.</p> <p>19 Q. And then continues, "Originally they</p> <p>20 were based upon published rates from the</p> <p>21 manufacturer." What does "published rates from</p> <p>22 the manufacturer" mean?</p> <p>23 A. Equipment manufacturer may test this</p> <p>24 equipment in production planned and provide his</p>	<p>1 A. Yes.</p> <p>2 Q. We talked about those earlier. And</p> <p>3 in this instance, it does have your initials in</p> <p>4 the Review Action box; correct?</p> <p>5 A. Yes.</p> <p>6 Q. VJB? Those are your initials, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And do you -- do you recognize the</p> <p>9 exhibit? Does it ring a bell?</p> <p>10 A. Standard traveler sheet, but my</p> <p>11 initials.</p> <p>12 Q. Let me just ask you a few questions.</p> <p>13 First of all, there's a notation here, HCL 0.09.</p> <p>14 Do you recall -- what does that mean?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know?</p> <p>17 A. It's emission, potential emission.</p> <p>18 Q. Okay. That's the -- when you say</p> <p>19 "potential emission," are we talking about PTE?</p> <p>20 A. Technically, yes.</p> <p>21 Q. All right. And the section next to</p> <p>22 that has a bunch of check boxes. Yes-no check</p> <p>23 boxes; right?</p> <p>24 A. Yes.</p>

Page 69

1 Q. And what are those designed to do?

2 Why are those there?

3 A. It's supposed to indicate major --

4 applicability of major regulation. Possible

5 applicability of major important regulations.

6 Q. All right. And in this instance --

7 you filled this form out, did you, sir?

8 A. Yes.

9 Q. In this instance, neither "Yes" or

10 "No" are checked; right? "Yes" nor "No."

11 A. Yes.

12 Q. And do you recall why neither is

13 checked? Did you do an analysis of the various

14 lines for applicability? Do you recall?

15 A. We were never instructed to make

16 these marks.

17 Q. Let me show you again Exhibit 6 and

18 7. Do you have those in front of you?

19 A. 7.

20 Q. 6 and 7?

21 A. 6, 7. Yes.

22 Q. All right. Do you see that -- the

23 check boxes there on --

24 A. Oh.

Page 70

1 Q. -- on 6 --

2 A. Yes.

3 Q. -- and 7? And in that instance,

4 they're all checkmarked "No"; right?

5 A. Yeah.

6 Q. I'm sorry?

7 A. Yes, I see.

8 Q. So for whatever reason, the person

9 that filled this traveler sheet out decided that

10 he needed to check -- or did check a box; right?

11 A. Yes.

12 Q. All right. When you filled out this

13 traveler sheet, did you do any analysis to

14 determine whether the source was subject to the

15 new source performance standards?

16 A. Yes, I did.

17 Q. And -- but you didn't check a box?

18 A. No.

19 Q. Okay. Did you do anything to

20 determine whether the source was subject to the

21 National Emission Standards for Hazardous Air

22 Pollutants?

23 A. Yes, I did.

24 Q. Okay. But you didn't check a box;

Page 71

1 right?

2 A. Yeah.

3 Q. All right. And you did not check a

4 box for the line that says, "Is project a major

5 source or major modification?" Right?

6 A. Yes.

7 Q. Did you complete a major source

8 traveler sheet after doing this traveler sheet?

9 A. No.

10 Q. What does "CROPA" mean? C-R-O-P-A?

11 A. It's some coordinated program --

12 COURT REPORTER: It's some what

13 program?

14 A. Coordinated. Coordinated.

15 Q. (By Mr. Walsh) I'm not laughing at

16 you. I'm laughing at the coordinated program.

17 COURT REPORTER: Coordinated program.

18 Thank you.

19 Q. (By Mr. Walsh) All right. Well --

20 A. -- in the different bureaus.

21 Q. In the third box down, do you see the

22 CROPA/FESOP?

23 A. Yes, I see.

24 Q. What does that mean?

Page 72

1 A. Usually -- I don't know why it's

2 FESOP. Usually we mark this box if we had to

3 fill out CROPA letter to another bureau to see

4 if this facility may be subject to their

5 regulation -- bureau of water, bureau of land.

6 Q. All right. Well, it also says

7 "FESOP." What why does it say "FESOP"?

8 A. I don't know.

9 Q. All right. Is it fair to say that,

10 if you would determine that this was a -- that

11 the facility was a major source, you would have

12 taken -- there would have been another track to

13 take after this; right? If you had checked "Yes"

14 for major source, then this seems to suggest that

15 you would have had to complete a major source

16 traveler sheet; right?

17 A. Not exactly. Because if application

18 was submitted for minor source or non-major

19 source, I do not have such right to move them to

20 major source. I could deny this application on

21 the ground not being eligible for non-major

22 source permit.

23 Q. Well, let's assume for a moment that

24 the Exhibit 4 had stated that the emissions were

Page 73	Page 75
<p>1 major, okay, out the stack. If it had indicated 2 that it was more than ten tons per year, you 3 would have then changed tracks; right? It would 4 have been on a different track. You wouldn't 5 have kept looking at it as a state operating 6 permit application. You would have said, "This 7 is the wrong permit application. You need a 8 CAAPP permit or a FESOP because you're a major 9 source." 10 A. Yes. You would tell the company, but 11 I cannot change this application. 12 Q. Okay. Thank you. 13 MS. TIKALSKY: And you were referring 14 to Exhibit 8? 15 MR. WALSH: No. I referred back to 16 Exhibit 4. 17 MS. TIKALSKY: The construction 18 permit? 19 MR. WALSH: Yeah. Now we're on 20 Exhibit 10 but -- 21 Q. (By Mr. Walsh) The initials next to 22 yours, who are those? 23 A. Harish Desai. 24 Q. Those are Harish's?</p>	<p>1 handwriting? 2 A. No, not mine. 3 Q. On this form, which is your 4 handwriting and which isn't? 5 A. Only initials and date. 6 Q. That's it? 7 A. Yes. 8 Q. So who filled out the rest of this 9 form? 10 A. This part is filled by -- 11 Q. The top you're pointing to. 12 A. Yes. Top portion is filled by record 13 unit which receives application, indicate date 14 received, name the company. So this is record 15 unit. 16 Q. All right. So let's just walk 17 through that for a minute. I mail in -- say back 18 in 2000 I mail in an application for a permit, 19 and it's addressed to the IEPA, bureau of air. 20 All right. What happens to it? Who picks it up 21 first? The records unit? 22 A. Yeah. This from mailing room. It 23 comes to record unit of our bureau. 24 Q. All right. And then -- so the record</p>
Page 74	Page 76
<p>1 A. Yes. 2 Q. And in this instance, you're 3 indicating grant; right? 4 A. Yes. 5 Q. And that's to grant a joint 6 construction and operating permit; right? 7 A. Yes. It's marked "Joint." 8 Q. And would it be your assumption that 9 that's the joint application we had looked at, 10 Exhibit 4? 11 A. Exhibit 4. It was received in 1996. 12 So it may be Exhibit -- 13 Q. Yeah. I'm sorry. It's Exhibit 8. 14 Exhibit 8. 15 A. Exhibit 8, yeah. Yeah. 16 Q. All right. And I have to go back and 17 correct the record. The Exhibit 8 is the one 18 that includes the scrubber outlet data that you 19 relied on; right? 20 A. Yeah. 21 Q. What does the "R" mean? Does it mean 22 revised? Revision? 23 A. I don't know. 24 Q. Don't know. Is that your</p>	<p>1 unit in this case filled out the top box; right? 2 A. Yes. 3 Q. And then the next box, who -- who -- 4 is that your writing, the HCL -- 5 A. Yes. 6 Q. It is. Okay. So you -- I'm sorry. 7 Go ahead. 8 A. I forgot to mention also this line 9 when you asked -- 10 Q. Oh, that's fine. 11 A. Yeah. 12 Q. So you did some kind of review and 13 then made a notation HCL 0.09; right? 14 A. It's done when permit is ready to be 15 issued. When permit is approved, that my manager 16 agree with my calculation. After that, we enter 17 this number. 18 Q. All right. So let me just get the 19 timing down. The record unit fills out the top 20 form, and then they hand it down the line; right? 21 A. Yes. 22 Q. With the permit application, 23 presumably? 24 A. Yes.</p>

Page 77	Page 79
<p>1 Q. It travels with it?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And then it comes to a</p> <p>4 permit writer's desk is next?</p> <p>5 A. It comes to unit manager.</p> <p>6 Q. Unit manager, and then he doles out</p> <p>7 the assignments?</p> <p>8 A. Yeah. And he distributes to</p> <p>9 engineers.</p> <p>10 Q. Okay. And, generally, if you had</p> <p>11 already worked on that facility, you're going to</p> <p>12 get whatever comes in the door --</p> <p>13 A. Yes.</p> <p>14 Q. -- on that facility. All right. So</p> <p>15 you're telling me the unit manager looked at this</p> <p>16 first. Who was the unit manager? That's Harish?</p> <p>17 A. Harish Desai.</p> <p>18 Q. All right. And then do you recall</p> <p>19 his having given this to you?</p> <p>20 A. Yes.</p> <p>21 Q. You assume that he did?</p> <p>22 A. I assume, yeah.</p> <p>23 Q. All right. And then you did a</p> <p>24 further review of the application, and you made</p>	<p>1 A. It depends on our general backlog but</p> <p>2 usually two months.</p> <p>3 Q. Okay. Do you recall about -- in the</p> <p>4 year 2000 about how many files you were handling?</p> <p>5 A. No.</p> <p>6 Q. I'm sorry?</p> <p>7 A. No.</p> <p>8 Q. Was it more than 25?</p> <p>9 A. What do you mean 25? Per month? Per</p> <p>10 year?</p> <p>11 Q. Well -- yeah. Well, that's a fair</p> <p>12 question. I guess I'd say within a year how many</p> <p>13 total facilities are you dealing with in terms of</p> <p>14 writing a permit -- reviewing and writing a</p> <p>15 permit for in the year 2000?</p> <p>16 A. Several dozens.</p> <p>17 Q. Several dozen?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any help?</p> <p>20 A. No.</p> <p>21 Q. So you can't delegate it to somebody</p> <p>22 to say, "Here, take this and" --</p> <p>23 A. No. If it's assigned to me, it's my</p> <p>24 responsibility to issue. We receive help for</p>
Page 78	Page 80
<p>1 this notation, HCL 0.09; is that right?</p> <p>2 A. As I mention before, this notation</p> <p>3 was made when permit was ready to be issued.</p> <p>4 Q. All right. So this thing sits in a</p> <p>5 file. Everybody does their thing to it. You're</p> <p>6 working on it. And then when the permit's ready</p> <p>7 to be issued and you had indicated grant there</p> <p>8 down the -- the second to last box --</p> <p>9 A. Yes.</p> <p>10 Q. -- would you have done it on the same</p> <p>11 day, you think? Put that HCL 0.09 in there on</p> <p>12 the same day that you initialed it on 5-15-00?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, I notice that the date --</p> <p>15 the receipt of the traveler sheet would have --</p> <p>16 is that -- that's the same date that the</p> <p>17 application comes in the door, presumably; right?</p> <p>18 A. Yes.</p> <p>19 Q. And it took about three months for</p> <p>20 you to sign off on 5-15-00. Is that a standard</p> <p>21 amount of time?</p> <p>22 A. A little bit too long.</p> <p>23 Q. Little bit too long. What's the</p> <p>24 usual turnaround?</p>	<p>1 stack test analysis. We have special person</p> <p>2 assigned for stack test reviews, basically, is</p> <p>3 all. I do not receive any external help except</p> <p>4 when I need to have stack test review done</p> <p>5 professionally.</p> <p>6 Q. All right. So I think we've seen --</p> <p>7 well, a state operating permit was subsequently</p> <p>8 issued after you did this review; right?</p> <p>9 A. Yes.</p> <p>10 Q. And you did not at any time suggest</p> <p>11 that this facility instead needed a CAAPP permit</p> <p>12 or a FESOP, did you?</p> <p>13 A. No.</p> <p>14 MR. WALSH: Mark that, please.</p> <p>15 (Exhibit No. 11 was</p> <p>16 marked for identification.)</p> <p>17 Q. (By Mr. Walsh) All right. Let me --</p> <p>18 we'll try and move through some of these pretty</p> <p>19 quickly. Do you recognize that document? I know</p> <p>20 it's been a long time.</p> <p>21 A. Yes. I do not recognize, but I see</p> <p>22 addressed to me.</p> <p>23 Q. Yeah. So you don't doubt that you</p> <p>24 received it. There's no reason to believe you</p>

Page 81	Page 83
<p>1 didn't receive it; right? 2 A. Yes. 3 Q. So I'm just trying to get an 4 understanding. From time to time do you -- did 5 you -- do you believe that you requested 6 information from time to time about the -- this 7 facility? 8 A. Yes. 9 Q. All right. And this is probably -- 10 A. A response. 11 Q. A response. Okay. This talks about 12 capture efficiency. Do you know what she's 13 talking about there? 14 A. Yes. 15 Q. What? 16 A. Stack test was performed on the 17 outlet of the scrubber, but we were not sure if 18 all emissions from the pickling tank was picked 19 up by the scrubber. Percentage of emission 20 captured by control device is called capture 21 efficiency. 22 Q. And in this case do you remember what 23 the control efficiency was? 24 A. No. No, I don't remember.</p>	<p>1 A. Do not recall but pretty sure that it 2 was received. 3 Q. All right. And there's a -- somebody 4 had written Region Copy and then crossed it out 5 and put VB. Do you know why that is? 6 A. Yes. All documentation received by 7 our office is also duplicated for regional 8 office. So it means that copy was sent to the 9 regional office and original directed to me. 10 Q. All right. And so your initials 11 VB -- are those your initials there? 12 A. Yes. 13 Q. You wrote that? 14 A. No. 15 Q. No. Somebody else? 16 A. Receiving unit, record unit. 17 Q. All right. So why did they put your 18 initials there? 19 A. Because this fax was addressed to me. 20 So they receive this fax, made copy, sent to 21 regional office original. Just to indicate to 22 whom it should be delivered. 23 Q. Okay. And who at the regional office 24 would it be sent to at that time?</p>
Page 82	Page 84
<p>1 MR. WALSH: All right. I'm sorry. I 2 thought I did a much better job of having 3 multiple copies of this stuff, and I -- fricking 4 ain't here. 5 (Short recess.) 6 (Exhibit No. 12 was 7 marked for identification.) 8 Q. (By Mr. Walsh) Let me show you 9 what's been marked Exhibit 12. 10 MS. TIKALSKY: What is this exhibit? 11 MR. WALSH: Exhibit 12. 12 MS. TIKALSKY: Yeah. I need a copy 13 of this. 14 MR. WALSH: Okay. We'll get you a 15 copy. 16 (Short recess.) 17 Q. (By Mr. Walsh) All right. You've 18 had a chance to look at that Exhibit 12, Mr. 19 Brodsky? 20 A. Just now. 21 Q. Oh, there you go. 22 A. Yeah, I look briefly. 23 Q. All right. Do you recall receiving 24 this?</p>	<p>1 A. In this case it's -- now it's Des 2 Plaines. I do not remember where it was located 3 before, but Chicago's office. 4 Q. And what do they do with it? 5 A. They have exactly the same file as 6 our file with application, with stack test 7 results. So they have copies of all 8 documentation. 9 Q. And are they reviewing it at the same 10 time you are? 11 A. No. 12 Q. They're just copied so they have it 13 in their file? 14 A. Yes. 15 Q. Does anybody read it? 16 A. I don't know. 17 Q. All right. And it states, in the 18 "From" line, operating permit application 19 underneath the line; right? 20 A. Yeah. 21 Q. Is it your conclusion that this 22 relates to the same operating permit application 23 we've been talking about here this morning? 24 A. Yeah.</p>

Page 85	Page 87
<p>1 Q. This afternoon. And it says it's 2 enclosing a stack test of 5-97; correct? 3 A. Yes. 4 Q. And did you ask for a complete copy 5 of the stack test, do you believe? 6 A. No. I never ask for complete copy 7 because it's very big folder, only summary of the 8 results, procedures, production data. 9 Q. All right. Let me direct your 10 attention to FOIA page 0033. You see the middle 11 paragraph there? 12 A. Yes. 13 Q. It says it was -- that it "employed 14 EPA Source Test Method 26A, utilizing Method 5 15 isokinetic traverse schemes"; right? 16 A. Yes. 17 Q. Is that the correct method to use for 18 a stack test during this time period? 19 A. To my knowledge, yes, 20 Q. Was there another method that you 21 think would be equally applicable or applicable 22 at all? 23 A. I don't know such methods which can 24 replace those.</p>	<p>1 these faxes, I tried to determine how much 2 uncontrolled emission was captured by control 3 device. 4 Q. And that was important to you 5 because? 6 A. To know what is actually emitted from 7 the facility. 8 Q. What is actually emitted from the 9 facility? 10 A. Yes. We know that capture deficiency 11 was -- 12 COURT REPORTER: I'm sorry. Start 13 again. 14 A. What was actually emitted from the 15 facility. Because what company presented what is 16 emitted through the stack but uncaptured emission 17 would be emitted to atmosphere. 18 Q. (By Mr. Walsh) And this was -- you 19 wanted this data, the out-the-stack emissions, so 20 that you could determine what kind of emissions 21 limits to put into the permit? 22 A. Yes. 23 Q. The state operating permit we've been 24 talking about?</p>
Page 86	Page 88
<p>1 Q. Let me direct your attention to page 2 0037. That's the scrubber outlet data that we 3 looked at earlier, isn't it? 4 A. Yes. 5 Q. And that was in Exhibit 8, NMLP 0837? 6 A. Yes. 7 Q. Same thing? 8 A. Yes. 9 Q. Now flip to the next page. This 10 time -- this data presents the scrubber inlet, 11 uncontrolled emissions data; right? 12 A. Yes, inlet. 13 Q. And that is in the Results section. 14 If you look at HCL pounds per hour, you'll see 15 22.91, 22.21, 19.12, 21.41; right? 16 A. Yes. 17 Q. And if you back up to page 0036, it 18 contains the same data under the Results column; 19 right? 20 A. Yes, exactly the same. 21 Q. And what did you do with this report? 22 How did it figure into your processing of the 23 permit application? 24 A. At that time I believe, based on all</p>	<p>1 A. Yeah. 2 Q. Okay. 3 (Exhibit No. 13 was 4 marked for identification.) 5 Q. (By Mr. Walsh) All right. I'm 6 showing you what's been marked Exhibit 13 and ask 7 you if you've seen that before. Do you recall 8 receiving that document? 9 A. No. 10 Q. Do you have any doubt that you did 11 receive it? 12 A. Yes, pretty sure I -- 13 Q. It's actually stamped received by the 14 IE -- 15 A. Yeah; so -- 16 Q. May 18, 2000. And this -- if you 17 flip to the second page -- it says "Attention: 18 Val Brodsky"; right? 19 A. Yeah. 20 Q. If you flip to the second page, it's 21 again more data. It looks like a summary of the 22 data of both the inlet and outlet emissions in 23 pounds per hour HCL from the source, the NACME 24 source; right?</p>

Page 89

1 A. Yes.

2 Q. And then it has some efficiency

3 numbers there that -- I think you testified

4 earlier that's the control efficiency of the

5 scrubber --

6 A. Yes.

7 Q. -- it's referring to? That's your

8 understanding?

9 A. No, efficiency 99. -- yes. This is

10 number efficiency.

11 Q. Right. So that 99.92 and so forth in

12 the Efficiency column -- that's the control

13 efficiency of the scrubber?

14 A. Yes.

15 Q. And, again, the second page of the

16 document shows inlet emission -- uncontrolled

17 emissions: 22.91, 22.21, 19.12, 21.41; right?

18 A. Yes.

19 Q. Pounds per hour? I'm sorry?

20 A. Yes.

21 Q. Thank you.

22 All right. Now we're making headway

23 because I'm throwing lots of paper on the floor.

24 All right. Mark that, please.

Page 90

1 (Exhibit No. 14 was

2 marked for identification.)

3 Q. (By Mr. Walsh) I'm showing you

4 what's been marked Exhibit 14.

5 I'm trying to find another copy. You

6 might have to lean in on that one. Oh, here it

7 is.

8 Can you take a look at that document

9 for a minute, Mr. Brodsky?

10 A. Yeah.

11 Q. Do you recognize this document?

12 A. Document itself, I do not recognize;

13 but, again, it's NACME Steel application. At

14 that time it's very likely that it was assigned

15 to me.

16 Q. It's likely that it was assigned to

17 you?

18 A. Yes.

19 Q. Was there anybody else during this

20 time period that was reviewing the permit

21 application at the permit writer level?

22 A. I do not recall that after year 2000

23 anybody else was working.

24 Q. So is that to say that it's unlikely

Page 91

1 that anybody else was reviewing it at the permit

2 writer level?

3 A. Yes. My recollection.

4 Q. Thank you. And to your -- based on

5 your review, what are we looking at here?

6 A. Nothing special. I believe it's just

7 application, pretty much like previous one.

8 Q. All right. So the NACME -- to

9 shorthand it, NACME was looking to revise

10 something about its permit to allow something

11 other than what it was -- had already requested.

12 A. Yes.

13 Q. Is that right?

14 A. Yeah.

15 Q. And they actually did that a number

16 of times through the years; right?

17 A. Yes.

18 Q. Not unusual?

19 A. I would say normal.

20 Q. Normal?

21 A. Yes.

22 Q. And do you recall questions that you

23 had about this revision application or how you

24 handled it?

Page 92

1 A. I could have questions because, if

2 you compare this application with the previous

3 one or with previous permits, they requested

4 higher steel throughput level, and if this level

5 exceeds the level at which facility was tested,

6 they need to retest.

7 Q. All right. So you're saying -- and

8 when you say "tested," you mean the stack test?

9 A. Yeah, stack test.

10 Q. Okay. So you're saying that, if

11 someone wants to put more material through the

12 system and pickle more steel, you would require

13 another test to determine what the emissions are

14 at that higher rate?

15 A. Yes.

16 Q. And was that done, to your knowledge?

17 A. Yes. I remember that at some point

18 around that time we requested to perform stack

19 test. I don't remember if it was related to this

20 application or different one, but somewhere

21 around this time we requested to retest. What

22 was reason -- I remember they built turbo tunnel

23 when we requested them. This is just plain

24 increase in production. But, no, I do not

Page 93	Page 95
1 remember what was exact action on this	1 A. Yes.
2 application.	2 Q. Okay. And did you --
3 Q. And this is a request for revision of	3 A. This is my -- this is manager.
4 the state operating permit application that was	4 Q. Okay. Thank you. That's Harish's?
5 pending; right?	5 A. Yes.
6 A. Yes.	6 Q. The second one. Yours is VJB; right?
7 Q. Are there traveler sheets that would	7 A. Yes.
8 have been created in connection with this	8 Q. And did you initial this before the
9 application?	9 letter went out?
10 A. Oh, yes, should be.	10 A. Pardon?
11 Q. And would they be in your file today?	11 Q. Do you initial it before the letter
12 A. Yes.	12 is sent?
13 Q. And we've already seen you had the	13 A. No. It's on the final letter. I put
14 1997 Microbac stack test in your file at the time	14 my initial.
15 of this revision application; right?	15 Q. So it's your way of approving the
16 A. Yes.	16 letter before it goes out?
17 Q. You had mentioned an installation of	17 A. It's not approval. It's initials of
18 a turbo tunnel. What was that about?	18 my manager.
19 A. Turbo tunnel is capture device.	19 Q. All right. But why do you put your
20 Q. Is it a capture device, or is it	20 initials -- why are your initials on this
21 simply a lid that's put on acid baths?	21 document?
22 A. No, it's device which pick ups all	22 A. It's requirement --
23 emission. It covers the whole pickling tank and	23 Q. But --
24 capture all emission and directs it to the	24 A. -- initial final document.
Page 94	Page 96
1 scrubber.	1 Q. So did you put your initials on there
2 Q. Are there fans or something	2 before this letter went out? It's dated August
3 associated with the turbo tunnel?	3 29, 2000.
4 A. Fan might be in the scrubber itself	4 A. Yes.
5 which creates suction action.	5 Q. All right. And the reason you put
6 Q. Okay.	6 your initials on there was to indicate that you
7 A. It's just enclosed. It's mechanical	7 had read the letter?
8 cover.	8 A. Yes.
9 Q. So it's a physical enclosure --	9 Q. And you didn't have any issues with
10 A. Yes.	10 it?
11 Q. -- for acid baths, and then somehow	11 A. Yes.
12 the vapor is drawn off to the control device. Is	12 Q. Okay. And in August -- on August 29,
13 that --	13 2000, this letter states that the NACME facility
14 A. Yes.	14 may be considered a Title V source. That's a
15 Q. -- how it works? All right.	15 major source; right?
16 (Exhibit No. 15 was	16 A. Yes.
17 marked for identification.)	17 Q. Because it's a -- in close proximity
18 Q. (By Mr. Walsh) Let me show you	18 to Acme Steel; is that right?
19 what's been marked Exhibit 15. Let me direct	19 A. Yes.
20 your attention -- have you had a minute to look	20 Q. And may qualify as a support facility
21 at it?	21 under the regulations; correct?
22 A. Yeah.	22 A. Yes.
23 Q. -- to the second page. Are those	23 Q. And if that were true and as this
24 your initials there in the cc or above the cc?	24 letter asserts, NACME may have needed to get a

Page 97	Page 99
<p>1 major source permit; correct? 2 A. Yes. 3 Q. Instead of a state operating permit 4 which it was waiting to get which was pending; 5 right? 6 A. Yes. Correct. 7 Q. And that letter refers to the 8 operating permit application, the same number 9 we've been talking about all along, 96020074? 10 A. Yes. 11 Q. And do you know why this letter was 12 sent out? 13 A. Yes. 14 Q. Why was that? 15 A. Because without obtaining this 16 information, we couldn't make permit decision, 17 what kind of permit they're eligible for. 18 Q. Do you know why the IEPA sent out a 19 letter that says it's EPA's intent to consider 20 all information available to the Illinois EPA in 21 its review of the application? Had something 22 happened? Do you know? 23 A. Okay. We, permit writers, are 24 supposed to make our permit decision based only</p>	<p>1 A. Yes. 2 Q. And do you have any doubt that you 3 received this e-mail? 4 A. No. 5 Q. Okay. And who is Bob Hutton? 6 A. At that time he worked for source 7 monitoring unit for -- 8 COURT REPORTER: I'm sorry? 9 Q. (By Mr. Walsh) Source monitoring 10 unit? 11 A. And usually he or his subordinates -- 12 usually he, himself, or his subordinates 13 performed review of stack tests. 14 Q. All right. And do you know why 15 you're on this chain here? You and -- well, you. 16 A. Because I was permit analyst for this 17 facility, and it's standard procedure that we 18 receive information about all events happening 19 with facility which is under review if I have 20 this file. 21 Q. And this e-mail relates back to this 22 notion that NACME might be a support facility to 23 Acme and therefore may require a major source 24 permit; is that right?</p>
Page 98	Page 100
<p>1 on the information available from the 2 application. This information wasn't included 3 in the application, but we had reasonable 4 suspicion -- reason -- could expect that these 5 two facilities were tightly connected and it was 6 support facility. 7 Q. So in that letter -- well, I think we 8 already covered that. 9 It doesn't say anything in this 10 letter about NACME being a major source of a 11 hazardous air pollutant in and of itself, does 12 it? 13 A. No. 14 Q. Doesn't say anything about NACME's 15 potential to emit? 16 A. Not yet. 17 (Exhibit No. 16 was 18 marked for identification.) 19 Q. (By Mr. Walsh) Let me show you 20 what's been marked Exhibit 16. Do you see 21 that -- this is an e-mail chain; right? 22 A. Uh-huh. 23 Q. And your name appears in the chain; 24 right?</p>	<p>1 A. No. I do not see. Let me read this. 2 Q. If you read the part under Julie 3 Armitage. 4 A. Yes. This portion -- lower portion 5 pertains to this subject of previous request 6 letter. 7 Q. The support facility concept -- 8 A. Yes. 9 Q. -- right? So at this time, based on 10 the last two exhibits we looked at it, it's fair 11 to say that the IEPA was looking closely at 12 NACME's facility to see if it needed a major 13 source air permit; right? 14 A. Yes. 15 Q. All right. Now, down below you see 16 where -- I guess it's Julie Armitage says, 17 "Please ask Hank for the concentration level that 18 NACME is committed to." Does that mean under the 19 pending state operating permit or under its 20 existing state operating permit? 21 A. I think that question was pertaining 22 to the newly promulgated at that time regulation 23 for pickling operations. 24 Q. Is that the 18 parts per million</p>

Page 101

1 level? Not to exceed 18 PPM?
 2 A. Maybe, yes.
 3 Q. Okay. You're not sure?
 4 A. Yes.
 5 Q. Okay. You are sure?
 6 A. No.
 7 Q. Okay.
 8 A. It's maybe because concentration --
 9 Q. All right. So it says -- it says,
 10 "Ask Hank for the concentration level that NACME
 11 is committed to and the level it must not exceed
 12 as we should craft an alternative citation for
 13 this if our major source theory flops on us."
 14 You see that?
 15 A. Yes.
 16 Q. Did the major source theory flop on
 17 IEPA?
 18 A. Not in the regard to single source
 19 with Acme Steel.
 20 Q. It did or it did not? It flopped?
 21 A. It flopped but not because of being
 22 single source with Acme Steel.
 23 Q. Okay. I'm not sure what that means.
 24 The support facility concept did not play out.

Page 102

1 It was dropped by IEPA; right?
 2 A. Yes. My recollection is because Acme
 3 Steel closed their operations at this time.
 4 Q. That's your recollection?
 5 A. Yes. Or NACME closed their operation
 6 but --
 7 Q. Well, do you recall -- let's just --
 8 I'm going to show you the documents in a minute.
 9 Do you recall that the way it played out was that
 10 the IEPA issued a revised operating permit but
 11 put in a condition that NACME apply for a major
 12 source permit because it was a support facility?
 13 Do you recall issuing that permit?
 14 A. No.
 15 Q. No?
 16 A. No.
 17 Q. All right. I'll show it to you here
 18 in a moment.
 19 (Exhibit No. 17 was
 20 marked for identification.)
 21 Q. (By Mr. Walsh) Let me show you
 22 what's been marked Exhibit 17, and I'll state for
 23 the record there's a bunch of handwriting on this
 24 thing. I don't know where it comes from, but

Page 103

1 this was the only copy that I could readily
 2 locate.
 3 A. Uh-huh.
 4 Q. Have you seen this violation notice
 5 before?
 6 A. Do not recall.
 7 Q. If you look --
 8 A. But --
 9 Q. Go ahead.
 10 A. In general, I should see it because
 11 usually the violation notice are sent to us.
 12 Q. Right. And, as a matter of fact, if
 13 you look at the cc, it says "BOA Permit Section."
 14 Is that you?
 15 A. Yes. More than likely, yeah.
 16 Q. All right. So if this -- if you were
 17 assigned to this facility, which you were --
 18 A. Yeah.
 19 Q. -- in the normal course, this
 20 document would have come to you?
 21 A. Yeah.
 22 Q. And if you flip to Attachment A, NMLP
 23 0698 --
 24 A. Uh-huh.

Page 104

1 Q. -- do you see number 5?
 2 A. Yes.
 3 Q. And that's -- is it your
 4 understanding that that assertion is made in
 5 connection with the support facility theory?
 6 A. I'm not sure. It's maybe just typo.
 7 Q. Well, let me ask you a question.
 8 During year 2000 -- this letter is dated
 9 September 18, 2000. Do you recall anyone ever
 10 asserting that NACME needed a major source permit
 11 because it was a major source in and of itself?
 12 A. In 2000, not. I do not recall it.
 13 Q. You only recall the assertion being
 14 made that it was -- it needed a major source
 15 permit because it was a, quote, support facility?
 16 A. Yes.
 17 Q. Thank you.
 18 (Exhibit No. 18 was
 19 marked for identification.)
 20 Q. (By Mr. Walsh) Let me show you
 21 Exhibit 18.
 22 Nancy, if you could just lean in with
 23 him on that one. It's one of his traveler -- oh,
 24 wait. Let me see. There you go. Thanks.

Page 105	Page 107
<p>1 Do you recognize this document --</p> <p>2 A. Yes.</p> <p>3 Q. -- Mr. Brodsky?</p> <p>4 A. Yeah.</p> <p>5 Q. And this is a -- it's a calculation</p> <p>6 sheet. I misspoke. I said it was a traveler</p> <p>7 sheet. Right?</p> <p>8 A. Yeah.</p> <p>9 Q. And the date says 2-5, and then it</p> <p>10 says -- it's kind of messed up. Is it 2000 or</p> <p>11 2001?</p> <p>12 A. Yes. Extra zero. 2001. Or might --</p> <p>13 Q. Well, let me just --</p> <p>14 A. Yes.</p> <p>15 Q. If you look at date received, it says</p> <p>16 11-13-2000, and then there's a date --</p> <p>17 A. February.</p> <p>18 Q. I'm sorry?</p> <p>19 A. Yes. It's February. So it's 2001.</p> <p>20 Q. So that's 2001.</p> <p>21 A. It cannot precede --</p> <p>22 Q. All right. So you received an</p> <p>23 application for an operating permit revision in</p> <p>24 November, right, of 2000?</p>	<p>1 Q. From the source's perspective?</p> <p>2 A. Yeah. I don't need to contact</p> <p>3 anybody to --</p> <p>4 COURT REPORTER: You don't need to</p> <p>5 contact --</p> <p>6 A. Anybody at the agency to clarify if</p> <p>7 there is something wrong with the facility.</p> <p>8 Q. (By Mr. Walsh) All right. And did</p> <p>9 you write this calculation sheet?</p> <p>10 A. Yes.</p> <p>11 Q. So what's written here is yours?</p> <p>12 A. Yes.</p> <p>13 Q. Now, do you see the last sentence in</p> <p>14 paragraph 3?</p> <p>15 A. Yes.</p> <p>16 Q. It says, "Since DLC" -- what's "DLC"?</p> <p>17 A. Division of legal counsel.</p> <p>18 Q. It says, "Since DLC is not ready to</p> <p>19 substantiate this determination" -- and that's</p> <p>20 the determination that NACME is a support</p> <p>21 facility; right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. -- "Bonnie Sawyer" -- who is</p> <p>24 Bonnie Sawyer?</p>
Page 106	Page 108
<p>1 A. Yes.</p> <p>2 Q. And then in February of 2001, you're</p> <p>3 making some comments in this calculation sheet?</p> <p>4 A. Yes.</p> <p>5 Q. And who does this go to, or is this</p> <p>6 just for your file?</p> <p>7 A. Only -- no. It's in the permit file.</p> <p>8 Stays in permit file.</p> <p>9 Q. Right. But do you send it to someone</p> <p>10 as well?</p> <p>11 A. No.</p> <p>12 Q. Do you send it to Harish?</p> <p>13 A. Oh, yes. I submit it to him with</p> <p>14 permit draft.</p> <p>15 Q. All right. With what?</p> <p>16 A. Permit draft.</p> <p>17 Q. Permit draft. Okay. Now, it says,</p> <p>18 "The traveler sheet has no marks." What does</p> <p>19 that mean?</p> <p>20 A. Traveler sheet -- if company is in</p> <p>21 violation if on the investigation, different</p> <p>22 special marks.</p> <p>23 Q. So having no marks is a good thing?</p> <p>24 A. Yes.</p>	<p>1 A. One of lawyers.</p> <p>2 Q. One of those lawyers?</p> <p>3 A. Yes.</p> <p>4 Q. All right.</p> <p>5 A. Working for DLC.</p> <p>6 Q. -- "recommended deleting the, quote,</p> <p>7 'please note,' end quote, without admitting their</p> <p>8 non-major status (permit is reissued with</p> <p>9 expiration date)."</p> <p>10 Let's just break that down. When it</p> <p>11 says "please" -- "deleting the 'please note,'"</p> <p>12 the "please note" refers to please note you may</p> <p>13 require a -- NACME may require a major source</p> <p>14 permit because it's a -- potentially a support</p> <p>15 facility. That's what it means there; right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And then when it says "without</p> <p>18 admitting their non-major source," you mean</p> <p>19 without conceding that it is not a support</p> <p>20 facility?</p> <p>21 A. Yes.</p> <p>22 Q. Because --</p> <p>23 A. Not so --</p> <p>24 Q. I'm sorry.</p>

Page 109	Page 111
<p>1 A. Well, let me explain. If we agree 2 completely that they are not major source, at 3 that time we would issue lifetime permit, but we 4 issued just operating permit with expiration 5 date. 6 Q. All right. And is the reason that 7 you issued that instead of a lifetime operating 8 permit is because you were uncertain about 9 whether they were or were not a support facility? 10 A. I cannot exactly recall this timing 11 of different events -- 12 COURT REPORTER: I'm sorry. 13 A. I cannot exactly recall the timing of 14 several events around issuance of this permit. 15 Q. (By Mr. Walsh) All right. And then 16 when it says the permit is reissued with 17 expiration date, what does that mean? 18 A. That it's not lifetime operating 19 permit. 20 Q. And when the expiration date comes 21 up, what happens? 22 A. They need to reapply for -- they need 23 to apply for permit renewal. 24 Q. And then you recommended that the</p>	<p>1 A. Yes. 2 Q. And we just talked about how that was 3 later deleted; right? 4 A. Uh-huh. 5 Q. And those are -- I'm sorry? 6 A. Yes. 7 Q. Okay. And your initials appear 8 below -- above the cc designation; right? 9 A. Yes. 10 Q. And I think, as you've already 11 testified, when you initial these things, you 12 initial them before the letter is issued; right? 13 A. Yes. 14 Q. All right. Now, this letter only 15 says that NACME is a potential major source 16 because it's a -- may be a support facility to 17 Acme Steel. It doesn't say it may be a major 18 source for any other reason, does it? 19 A. Yes. 20 Q. Yes, you agree that it does not say 21 for any other reason? 22 A. Yes, I agree. 23 Q. Yes, you what? 24 A. I agree that --</p>
Page 110	Page 112
<p>1 operating permit be revised to delete the "please 2 note" on being subject to Title V and NESHAP; 3 right? 4 A. Yes. 5 Q. And that subsequently happened -- a 6 permit was issued and that was deleted; right? 7 A. Yes. 8 (Exhibit No. 19 was 9 marked for identification.) 10 Q. (By Mr. Walsh) Let me know if 11 anybody needs to take a break. 12 Let me show you what's been marked 13 Exhibit 19. Have you seen this document? Do you 14 recognize that document? 15 A. Yes. 16 Q. And that is an operating permit 17 issued by EPA on October 25, 2000; right? 18 A. Yes. 19 Q. And then just to shortcut it, there 20 was a disagreement between NACME and the IEPA on 21 whether it was or was not a support facility; 22 right? Because this one contains -- if you flip 23 to the page NMLP 0674, that contains that "please 24 note" language, doesn't it?</p>	<p>1 Q. Okay. 2 A. -- that was the only reason for -- 3 Q. All right. Thank you. 4 A. -- potentially being major source. 5 Q. Thanks. While we're on that exhibit, 6 do you recognize the initials and the writing on 7 the lower left-hand corner? 8 A. No. 9 Q. Do you know who BC is? 10 A. No. 11 Q. How about Gary -- 12 A. Beckstead. 13 Q. Do you recognize that name? 14 A. Yes. 15 Q. Who is that? 16 A. He worked for air quality control 17 section. AQPS, air quality planning section. 18 Q. Air quality planning section? 19 A. Yes. And he was engineer. 20 COURT REPORTER: And what was the 21 last name? 22 A. Beckstead. 23 Q. (By Mr. Walsh) It's hard to read, 24 but it looks like it says B-e-c-k-s-t-e-a-d.</p>

Page 113

1 Do agree with that, Mr. Brodsky?

2 A. Yeah.

3 Q. Thank you.

4 (Exhibit No. 20 was

5 marked for identification.)

6 Q. (By Mr. Walsh) Let me show you

7 what's been marked Exhibit 20. And this is

8 another traveler sheet; right?

9 A. Uh-huh. Yes.

10 Q. So that -- in general, as I

11 understand it, when something's received, a

12 traveler sheet is filled out or started, and then

13 it travels along the process with the something;

14 right?

15 A. Yes. That's correct.

16 Q. And we've been talking today about

17 operating permit applications, and would you

18 agree that this is traveling with an operating

19 permit --

20 A. Yes.

21 Q. -- application? Thank you.

22 In the top box -- was that filled out

23 by records like the earlier ones?

24 A. Yes.

Page 114

1 Q. And that "R" there -- that's not your

2 writing?

3 A. No.

4 Q. Okay. Did you -- but your initials

5 are down below in the Review Action --

6 A. Yes.

7 Q. -- portion where you are indicating

8 grant; right?

9 A. Yes.

10 Q. Meaning grant the operating permit?

11 A. Yes.

12 Q. Okay. And in the Project Emissions

13 Data section, again, those check boxes -- yes,

14 no -- those are all unchecked by you; right?

15 A. Yes.

16 MR. WALSH: What time do you have, by

17 the way?

18 COURT REPORTER: I have 4:18.

19 MR. WALSH: 4:18?

20 COURT REPORTER: Yes.

21 MR. WALSH: Okay.

22 (Exhibit No. 21 was

23 marked for identification.)

24 Q. (By Mr. Walsh) I'm showing you

Page 115

1 Exhibit 21. Do you recognize -- take a minute

2 and tell me if you recognize that. Have you seen

3 that letter before?

4 A. I believe, yes. At least I was

5 informed about.

6 Q. And you were informed that the

7 facility was closing for a time?

8 A. Yes.

9 Q. And a stack test had been scheduled

10 to be performed prior to this date; right?

11 A. Yes.

12 Q. And then it was called off because

13 the facility was closing?

14 A. Yes.

15 Q. And then at some later time the

16 facility restarted?

17 A. Yes.

18 Q. Do you recall that?

19 A. Yeah.

20 Q. Okay.

21 (Exhibit No. 22 was

22 marked for identification.)

23 Q. (By Mr. Walsh) I'm showing you

24 what's been marked Exhibit 22. Is that something

Page 116

1 that you drafted?

2 A. Yes.

3 Q. Do you see -- and that was about --

4 on or about 6-26-2001?

5 A. Pardon?

6 Q. That was about June 26, 2001, based

7 on the date of this document? Do you see the

8 date 6-26-2001?

9 A. No. It's April.

10 Q. Am I looking at the wrong document?

11 MS. TIKALSKY: I have your document.

12 Q. (By Mr. Walsh) All right. I gave

13 you a different one. Hold on a minute here.

14 Let's go with that one then. Here,

15 take this. You can hold that one because

16 hopefully we're going to get to it. Now I have

17 to find a copy of it. I may need that back. You

18 may need to look over his shoulder. Yeah, let me

19 use that.

20 MR. GRANT: You want to call it 22?

21 MR. WALSH: Pardon?

22 MR. GRANT: You want to call it 22?

23 MR. WALSH: Yeah, that's fine. Could

24 I have that back? Thank you.

Page 117	Page 119
<p>1 Q. (By Mr. Walsh) All right. This is 2 IEPA FOIA 0122, and it's marked Exhibit 22. Is 3 this something that you filled out? Is it? I'm 4 sorry? 5 A. No. 6 Q. You did not fill out? 7 A. Oh, no, I did. 8 Q. You filled it out? 9 A. Yeah, I already -- 10 Q. Okay. I'm sorry. I didn't hear you. 11 And was about April 12, 2002; is that 12 right? 13 A. Yes. 14 Q. And it relates to a construction 15 permit revision? 16 A. Yes. 17 Q. The permit number -- is that the 18 construction -- a separate construction permit 19 number there? Because the permit number we've 20 been looking at all day has been a 96 number. 21 A. Yes, this is construction. 22 Q. So that's a separate number for the 23 construction -- 24 A. Yeah.</p>	<p>1 A. Approximately at that time -- at the 2 end of '90s it was promulgated, and I don't 3 remember exactly when it was -- effective date of 4 this regulation but approximately around this 5 time. 6 Q. Around the late '90s? 7 A. Yes, late '90s, beginning of 2000. 8 Q. All right. And your -- this is dated 9 April 12, 2002. So it's a number of years after 10 the reg went into effect; right? 11 A. Yes. 12 Q. And you stated a minute ago that you 13 started paying more attention to hazardous air -- 14 hazardous air pollutants. What do you mean by 15 that, "started paying more attention"? Were you 16 paying less attention prior to that? 17 A. Before we didn't have so many 18 NESHAPs. At that time USEPA started promulgating 19 many new NESHAPs covering much more industries 20 which we work with, including this. 21 Q. All right. But as you just 22 testified, the NESHAP for triple C -- subpart 23 triple C is the NESHAP for HCL process facilities 24 and hydrochloric acid regeneration plants; right?</p>
Page 118	Page 120
<p>1 Q. -- permit. All right. 2 Number 2, "The traveler sheet has 3 toxic unit flag." What does that mean? 4 A. Approximately that time we started 5 paying more attention to hazardous air 6 pollutants, and we had special application peer 7 review before signing. They related on possible 8 toxic emissions, hazardous air pollutants 9 emissions, and they marked traveler sheet red 10 flag. 11 Q. All right. So in this case it's 12 referring to NESHAP, which is the National 13 Emission Standard for Hazard Air Pollutants; 14 right? 15 A. Yes. 16 Q. And it says part CCC; right? 17 A. Yes. 18 Q. Subpart CCC? 19 A. Yes. 20 Q. And is that -- that's a Code of 21 Federal Regulation citation; is that right? 22 A. Yes. 23 Q. And how long had that CFR been in 24 effect, if you know?</p>	<p>1 A. Yes. 2 Q. Okay. And you said that already had 3 been in effect since the late '90s; right? 4 A. Yes. Approximately. 5 Q. And in all the documents that we've 6 reviewed today, you had never made a notation 7 that this facility was possibly subject to NESHAP 8 part triple C, did you? 9 A. Yes. 10 Q. You did not? 11 A. I didn't mention before. 12 Q. So is it -- is it fair to say that 13 the USEPA was pushing IEPA to make sure they were 14 doing NESHAP reviews of facilities as these new 15 NESHAP regs came online? 16 A. No, I wouldn't say they were pushing 17 us. They just promulgated new and new NESHAPs, 18 but this particular NESHAP is applicable only to 19 major sources. 20 Q. And -- okay. 21 A. And not enough major source base 22 on being -- 23 COURT REPORTER: I'm sorry? 24 A. Being major source. This NESHAP</p>

Page 121	Page 123
<p>1 regulation is applicable to major sources which 2 actually meet more than ten tons of hazardous air 3 pollutant per year. NACME emission was below ten 4 tons. 5 Q. (By Mr. Walsh) It was below ten? 6 A. Yes. So we didn't treat them as a 7 subject. 8 Q. Okay. How do you know they were 9 below ten? 10 A. Based on previous stack test. 11 Q. Which ones? 12 A. There were several stack tests, and I 13 remember in 2002 there was stack test. I don't 14 remember for what reason. Then we requested this 15 stack test in this construction permit, and all 16 stack test shows that they are not major source. 17 Q. And one of those stack tests was the 18 1997 stack test? 19 A. Yes, starting from '97. Then they 20 repeated. I don't remember in 2002 when they 21 resumed their operations. There were several 22 stack tests which all indicated that they are not 23 actually major source. 24 (Exhibit No. 23 was</p>	<p>1 12-31-05 means? 2 A. Expire. 3 Q. Okay. Do you know what he's 4 referring to? Is Naour -- is that a man or a 5 woman? 6 A. Pardon? 7 Q. Who is Naour? 8 A. Naour. As I said, it's manager of 9 toxic unit. 10 Q. Okay. What's his or her full name? 11 A. Hank Naour. 12 Q. That's a man? 13 A. Yes. 14 Q. Okay. And do you know what expired 15 12-31-05 refers to? 16 A. It's date when this flag will expire 17 automatically if nothing happens. 18 Q. "Flag" meaning someone should pay 19 attention to this -- 20 A. Yes. 21 Q. -- and follow up; otherwise, it's 22 going to disappear? 23 A. Yes. Otherwise, it would go from 24 application to application. It's flag on this</p>
Page 122	Page 124
<p>1 marked for identification.) 2 Q. (By Mr. Walsh) All right. Let me 3 show you Exhibit 23. 4 Nancy, you'll have to lean in on this 5 one. 6 Do you recognize that exhibit? 7 A. Yes. 8 Q. And that's another traveler sheet; 9 right? 10 A. Yes. 11 Q. May I see the exhibit for a moment? 12 Exhibit 23. So is it -- just consistent with our 13 earlier discussion, the first box at the top is 14 filled out by the record section? 15 A. Yes. 16 Q. Okay. Do you know what the notations 17 under the application number mean? 18 A. They refer to this record, yes. 19 Q. PMT and various -- 20 A. PMT. I'm not sure what is it. 21 Sounds permit. Naour was manager of our toxic 22 unit, and this is his -- maybe this is the flag 23 which I referred in this calculation sheet. 24 Q. All right. Do you know what EXP.</p>	<p>1 facility. 2 Q. I see. So someone's supposed to be 3 resolving the flag issue -- 4 A. Yes. 5 Q. -- before the permit process -- or 6 during the permit process -- 7 A. Yeah. 8 Q. -- so it doesn't hang on there; is 9 that right? 10 A. Yeah. I cannot issue permit without 11 talking to Hank Naour to resolve this issue. 12 Q. Okay. And your initials are in the 13 Review Action section again; right? 14 A. Yes. 15 Q. Along with -- is that still Harish? 16 A. Yes, still Harish. 17 Q. On 5-20-02; right? 18 A. It's my date -- yes, his date. 19 Q. All right. And in this instance 20 you're -- well, let's back up. 21 In the Project Emissions Data 22 section, again, none of the check boxes -- yes or 23 no -- are checked; right? 24 A. Usually we mark on the construction</p>

Page 125	Page 127
<p>1 permit changes in the emissions. 2 Q. Okay. But it's true that on this 3 form they're -- none of them are checked 4 either -- 5 A. No. 6 Q. -- right? All right. 7 And in this instance, you have 8 checked the box deny as to -- 9 A. Yes. 10 Q. -- as to the operating permit 11 application. Do you remember why? 12 A. I may have several reasons. 13 Q. Well, let me ask you this: Was it 14 denied because it was not a FESOP permit? 15 A. Possible. It's possible. 16 Q. You don't know? 17 A. No. Or maybe because stack test 18 wasn't performed which was requested by previous 19 construction permit. 20 Q. Okay. Was it denied because you or 21 someone else at IEPA had determined that NACME 22 needed a major source permit? 23 A. Again, I do not remember this 24 particular case, but it's possible.</p>	<p>1 Q. And does this refresh your 2 recollection about why you had checked off deny 3 on your traveler sheet, Exhibit 23? 4 A. Because I issued denial per denial 5 letter. 6 Q. Right. But you couldn't remember why 7 you had done it. I had asked you a number of 8 possibilities, and you said it's possible. Now 9 that you look at Exhibit -- 10 A. Yes. 11 Q. -- 24, do you remember why you denied 12 it? 13 A. Yes. 14 Q. And what was the reason you denied 15 it? Just so the record is clear. 16 A. Because in the previous construction 17 permit we requested the company to perform stack 18 test, and stack test wasn't performed. So we 19 couldn't allow them to operate on the requested 20 conditions. 21 Q. Okay. And is that the only reason? 22 A. Yes. 23 (Exhibit No. 25 was 24 marked for identification.)</p>
Page 126	Page 128
<p>1 Q. It's possible? 2 A. Yes. 3 Q. But you don't remember? 4 A. No. 5 (Exhibit No. 24 was 6 marked for identification.) 7 Q. (By Mr. Walsh) Let me show you 8 what's been marked Exhibit 24, which is IEPA FOIA 9 0123, hopefully. 10 A. Yeah. 11 Q. And this is a permit denial letter; 12 right? 13 A. Yeah. 14 Q. And you initialed it before it went 15 out? 16 A. Yes. 17 Q. And it went out on or about May 2, 18 2002? 19 A. Yes. 20 Q. And it says the reason it's being 21 denied is because there was a condition that an 22 emission test be performed by an approved testing 23 service? 24 A. Yes.</p>	<p>1 Q. (By Mr. Walsh) Let me show you 2 what's been marked Exhibit 25. Do you recognize 3 that? 4 A. Yes. 5 Q. I'm sorry. And what do recognize it 6 to be? 7 A. This is stack test review done by 8 specialist. 9 Q. Done by specialist. You testified 10 earlier that you sometimes -- or you don't 11 yourself review stack tests but you delegate 12 that -- 13 A. Yes. 14 Q. -- to someone who is a specialist in 15 that area, is that right? 16 A. Yes. 17 Q. And was the person that it was 18 delegated to Ken -- 19 A. Erewele. 20 Q. -- Erewele? That's his name? 21 A. Uh-huh. 22 Q. And did you, yourself, delegate it to 23 him? 24 A. It's pretty much automatic procedure</p>

Page 129	Page 131
<p>1 because stack test report even doesn't go to 2 permit section. It goes to compliance unit which 3 perform these stack test reviews. 4 Q. All right. So is it your 5 recollection that you knew this was happening? 6 It didn't come to you, and then you delegated it 7 out, or that it -- how did it go? How did it 8 work procedurally? 9 A. Stack test report arrives to 10 compliance unit, and it's assigned on one of the 11 reviewer. He performs this review, and then we 12 receive copy of the result. 13 Q. You receive a copy -- 14 A. Yes. 15 Q. -- of the results. Okay. 16 And you see the bottom paragraph 17 which reads, "The methodologies and general 18 procedures described in the protocol comply with 19 the testing requirements"? 20 A. Yeah. 21 Q. What testing requirements is it 22 talking about there? 23 A. Testing requirements. It's use of 24 correct test methods, timing, calibration of</p>	<p>1 Ewele -- 2 A. Yes. 3 Q. -- for review? 4 A. I didn't send it. I said he 5 received. If I need additional information, I go 6 to compliance section and pick up this report to 7 look for some additional data. 8 Q. All right. So would this report not 9 even come to your permit file in the normal 10 course? 11 A. We have special file for the facility 12 which stores all tests. 13 Q. Okay. So -- but would this, in the 14 normal course -- let me just ask you: Did this 15 test get sent to you? Do you remember? 16 A. No, I do not remember. 17 Q. And in the normal course, would it be 18 sent to you -- 19 A. No. 20 Q. -- unless you -- only if you asked 21 for it? 22 A. Yes. 23 Q. Thank you. 24 (Exhibit No. 27 was</p>
Page 130	Page 132
<p>1 equipment, a lot of technicalities which -- 2 Q. And the right data is included in the 3 report? 4 A. Yes. 5 Q. All right. And that's necessary for 6 the state to further process the state operating 7 permit that was pending at the time? 8 A. Yes. 9 Q. And it goes on to say, "The 10 compliance section recommends that the BOA accept 11 this test as valid." "BOA" is the bureau of air? 12 A. Exactly. 13 Q. Okay. 14 (Exhibit No. 26 was 15 marked for identification.) 16 Q. (By Mr. Walsh) Let me show you 17 Exhibit 26, and just let me -- we may be able to 18 shortcut this. This is the emissions test that's 19 referred to in the exhibit that we just looked 20 at, Exhibit 25. Is that your understanding? 21 A. Yes. 22 Q. But if I understand your testimony, 23 you probably wouldn't have looked at this in any 24 great detail because you send it to the -- Ken</p>	<p>1 marked for identification.) 2 Q. (By Mr. Walsh) All right. Let me 3 show you what's been marked -- 4 Did I just hand you a copy, Nancy, or 5 no? No. Damn it. 6 Let me show you what's been marked 7 Exhibit 27, and this is a traveler sheet; right? 8 A. Yes. 9 Q. Similar to the others that we've 10 looked at today; right? 11 A. Yes. 12 Q. And the top portion is filled out by 13 the record section? 14 A. Yes. 15 Q. And your initials appear in the 16 Review Action portion? 17 A. Yes. 18 Q. And, again, in the Project Emissions 19 Data, I know that you said that it's normally 20 only with respect to construction permits, but 21 there's no check boxes checked there; right? 22 A. Yes. 23 Q. Now, this one is saying reject, and 24 your initials are there, 4-13-05, and that's</p>

Page 133

1 rejecting an operating permit application; right?
 2 A. Yes.
 3 Q. And then at the bottom, is that your
 4 handwriting?
 5 A. No.
 6 Q. Okay. But that seems to indicate a
 7 copy of a notice of incompleteness -- is that
 8 what it's called?
 9 A. Yes.
 10 Q. -- has been e-mailed; right?
 11 A. Yes.
 12 Q. Whose initials, if you know, are
 13 there? There's a bunch of them.
 14 A. It's the new unit manager, Robert
 15 Bernoteit.
 16 Q. That's Bob Bernoteit now? That's the
 17 RMB?
 18 A. Yes.
 19 Q. Okay.
 20 A. RWB, I believe.
 21 Q. Oh, RWB. And are those initials --
 22 that DES or something there? What's that?
 23 A. No. It says compliance enforcement
 24 section where it's mailed.

Page 134

1 Q. Okay.
 2 COURT REPORTER: What was the last
 3 part? Compliance enforcement section.
 4 A. Yeah. It's address where it was
 5 mailed.
 6 Q. (By Mr. Walsh) And do you recall the
 7 reason that you had checked off reject?
 8 A. No.
 9 (Exhibit No. 28 was
 10 marked for identification.)
 11 Q. (By Mr. Walsh) Let me show you
 12 what's been marked Exhibit 28. Do you recognize
 13 that exhibit?
 14 A. Yeah.
 15 Q. And you prepared it; right?
 16 A. Yes.
 17 Q. On or about April 12, 2005?
 18 A. Yes.
 19 Q. And there's some -- well, I won't
 20 characterize it. Paragraph 3 has a summary of
 21 what the company does; right?
 22 A. Yes.
 23 Q. And it talks about a stack test that
 24 was performed in April of 2002, which I think is

Page 135

1 the one we looked at just a little bit earlier,
 2 Exhibit 26; right?
 3 A. Yes.
 4 Q. All right. And then you note some
 5 calculations and some statistics; right?
 6 A. Yes.
 7 Q. And then at the very end of the
 8 number 3, you say, "It results in HCL PTE
 9 exceeding ten tons per year, dash, major source,
 10 subject to CAAPP, slash, FESOP"; right?
 11 A. Yes.
 12 Q. Is that the first time you had stated
 13 this in writing during this process that started
 14 in 2000?
 15 A. It appears, yes.
 16 Q. Okay. And it also makes a reference
 17 to the 1997 stack test, doesn't it?
 18 A. Yeah, just to compare calculated --
 19 Q. Well, could you just answer my
 20 question?
 21 A. Yes.
 22 Q. And it says, "This number is
 23 consistent with actual measured uncontrolled
 24 emission in the previous stack test performed on

Page 136

1 5-7-97"; right?
 2 A. Yes.
 3 Q. So isn't it correct that -- and it
 4 says, "and submitted with the 2-2000
 5 application"; right?
 6 A. Yes.
 7 Q. So, sir, isn't it correct that in
 8 2000, February of 2000, you knew what the
 9 uncontrolled -- measured uncontrolled emissions
 10 at this facility were, didn't you?
 11 A. Yes.
 12 Q. And from that you could have readily
 13 calculated what the potential to emit of the
 14 facility was, couldn't you?
 15 A. Yes.
 16 Q. You didn't do that, did you?
 17 A. No.
 18 Q. Why?
 19 A. Okay. When USEPA started cleaner air
 20 permit program in 1995, they pretty soon realize
 21 there is huge number of applications. So they
 22 issued so-called transition policy in 1996, which
 23 allowed us to issue state operating permits for
 24 emission sources with actual emissions less than

Page 137	Page 139
<p>1 50 percent of major source threshold regardless 2 on their potential to emit. 3 Q. I'm sorry. Less than 50 percent of 4 what? 5 A. Major source threshold for any -- 6 Q. Okay. So less than five tons in this 7 case? 8 A. Five tons of single HAP. 9 Q. Okay. 10 COURT REPORTER: Single what? 11 A. HAP. Abbreviation for hazardous air 12 pollutant. 13 Then USEPA initially issued it for 14 two years, and then there were two extensions, 15 and I believe in 1999 they issued letter of 16 non-extension of their transition policy. 17 But because of vague language in this 18 memo -- 19 COURT REPORTER: Because of what? 20 A. Vague, non-clear language in this 21 application, we continued to issue such permit 22 for maybe one, two years even after USEPA issued 23 this policy -- not issued policy -- didn't 24 continue this policy.</p>	<p>1 continuing transition policy. 2 Q. Wrongly continuing the transition 3 policy? 4 A. Yes. 5 Q. The transition policy, where -- is 6 that stated in writing somewhere? Is there a 7 memorandum of understanding between USEPA and 8 IEPA on that? 9 A. Yes. 10 Q. There is? 11 A. Yes. On USEPA website, there is 12 transition policy and two extension of the 13 transition policy. 14 Q. Based on the 1997 stack test that we 15 looked at today, did NACME's facility have less 16 than 50 percent of the major source threshold? 17 A. Actual, yes. 18 Q. Of actual emissions? 19 A. Yeah. 20 Q. The letter of non-extension -- that 21 was in 1999, you say? 22 A. Approximately, yes. 23 Q. But it was misinterpreted by whom? 24 You or the agency in general?</p>
Page 138	Page 140
<p>1 And then USEPA corrected us that it 2 was wrong understanding of their recent -- the 3 most recent memo, and we started requiring FESOP 4 application for sources for which just year ago 5 we issued state permits. 6 Q. (By Mr. Walsh) All right. So let's 7 back up for a moment. In February of 2000, did 8 you know that the NACME facility was a major 9 source for hazardous air pollutants? 10 A. Potentially, yes. 11 Q. But you did not require them at that 12 time to get a Clean Air Act Permit Program permit 13 or a FESOP; right? 14 A. Yes. 15 Q. And up until April of 2005, in fact, 16 you never even mentioned that they may need such 17 a permit; is that correct? 18 A. Yes. But we didn't have any 19 correspondence with the company after 2002. 20 Q. Well, be that as it may -- 21 A. Yes. 22 Q. -- between 2000 and 2002, you didn't 23 mention it, did you? 24 A. No. At that time we were wrongly</p>	<p>1 A. I can say by permit section. 2 Q. By the permit section? 3 A. Yes. 4 Q. So who is the permit section? That 5 would include you, obviously? 6 A. Yes. 7 Q. Other permit writers? 8 A. Permit writers, our immediate 9 managers. 10 Q. So that would include Harish? 11 A. Yes. 12 Q. Would it -- did it include Bob 13 Bernoteit? 14 A. He wasn't manager at that time. 15 Q. What was he? 16 A. He was permit engineer. 17 Q. So would he have been observing this 18 misinterpretation of the transition policy as 19 well? 20 A. I think no because he worked for 21 CAAPP unit, unit which deals with actual Title V 22 permits. So transition policy was only for us, 23 for FESOP unit. 24 Q. All right. So you said that "we,"</p>

Page 141	Page 143
<p>1 quote, unquote, continued issuing these 2 transition policy permits -- can we call them 3 that? 4 A. Yes. 5 Q. All right. -- for a couple of years. 6 When did you stop issuing them? 7 A. I can recall 2002. Maybe -- yeah. 8 My best recollection 2002 because in 2003 we had 9 significant increasing FESOP sources for this 10 reason. 11 Q. Okay. Did you ever tell NACME that 12 you were reviewing its permit applications under 13 the USEPA's transition policy? 14 A. No. 15 Q. You never said it verbally? 16 A. No. 17 Q. You never said it in writing? 18 A. No. 19 Q. Is there any document in your file 20 that reflects that you were observing the 21 transition policy with respect to NACME's 22 facility? 23 A. I'm afraid no. 24 Q. But you were?</p>	<p>1 Q. How was it closed? 2 A. It wasn't active. 3 Q. Well, what does it take for a file to 4 be active? 5 A. Application. If company submits 6 application, permits is extracted from the filing 7 room and directed to us. 8 Q. Okay. Do you recall ever sending a 9 letter to any other company, saying, "We 10 misapplied the transition policy with respect to 11 your facility"? 12 Could you read that question back, 13 please. 14 (The requested portion was read 15 back by the court reporter.) 16 A. No. 17 Q. (By Mr. Walsh) So is it correct to 18 say the regulated community in Illinois was 19 pretty much in the dark about EPA's -- or IEPA's 20 mistake on the transition policy? 21 A. Unless they checked it on themselves, 22 yes, 23 Q. Or unless they suddenly received a 24 notice of violation saying they had the wrong</p>
Page 142	Page 144
<p>1 A. Yes, we were following this policy 2 but -- 3 Q. You were wrong in following that 4 policy is what you're saying today? 5 A. For couple of years, yes. 6 Q. And so couple of years. You mean by 7 the end of what? 2002 -- 8 A. Yes. 9 Q. -- you got it right? 10 A. Yes. Approximately 2002. 11 Q. All right. At the end of 2002 did 12 you send any communication to NACME, saying, "Oh 13 by the way, we misinterpreted the regulations, 14 and you" -- "we've given you the wrong kind of 15 permit"? 16 A. No. Until this application, I 17 believe. 18 Q. Until what? 19 A. Until receiving this application we 20 never raise this question. 21 Q. Okay. And why not? 22 A. File was closed. 23 Q. The file was closed? 24 A. Yes.</p>	<p>1 kind of permit, should have had a Clean Air Act 2 Permit Program permit all along? 3 A. I am not aware about such notice of 4 violation, but when they applied for permit 5 renewal revision in similar situations, they 6 receive notice of incompleteness with explanation 7 why they should apply for FESOP. 8 Q. Are there memos or some other form of 9 communication that went out about the transition 10 policy and correcting its misapplication internal 11 to IEPA? 12 A. No. 13 Q. Okay. So did senior management at 14 IEPA know that the permit section was misapplying 15 the transition policy? 16 A. I'm not sure about senior management, 17 but on the level of our FESOP unit, we were told 18 stop applying transition policy. 19 Q. All right. So within your unit the 20 unit managers knew that the transition policy was 21 being misapplied? 22 A. Yes. 23 Q. And do you know? Did Julie Armitage 24 know that the policy was being misapplied?</p>

Page 145	Page 147
1 A. No, I don't know.	1 Q. And, again, this is talking -- or
2 Q. Did Bob Bernoteit know?	2 requesting plant-wide emissions tests be done,
3 A. Now maybe he knows, but at that	3 right, to determine PTE?
4 time --	4 A. No. We do not request stack test
5 Q. Well, no. I meant at that time did	5 We ask them to substantiate their proposed
6 he know?	6 production and emission limitation in the
7 A. Oh, at that time I doubt because he	7 application with stack test results.
8 didn't deal with FESOPs.	8 Q. All right. Well, so it says if -- in
9 Q. What about Mr. Bloomberg?	9 the number 2, the second paragraph, "If emission
10 A. It was pure permit issue; so --	10 calculations demonstrate that actual
11 COURT REPORTER: When we get to a	11 potential" --
12 good spot, could I have a little break?	12 A. Oh.
13 MR. WALSH: Yeah, this is fine.	13 Q. You see that?
14 (Discussion off the record.)	14 A. Yeah.
15 MR. WALSH: On the record. On the	15 Q. All right. So -- but, again, you had
16 record.	16 the 1997 stack test results at the time this
17 Counsel, I have about 15 minutes	17 letter was sent out; right?
18 left. I know we've both been a long way. We've	18 A. Yes.
19 taken short breaks. I'm going to finish up as	19 Q. And you had known since 1997, based
20 quickly as possible. This is obviously an	20 on the data in the '97 -- or since 2000, based on
21 important witness for us, and I'll give you the	21 the '97 report, that the facility had a PTE
22 same leeway with our witnesses if and when the	22 greater than ten tons, right, or greater -- yeah,
23 time comes. I think it's unreasonable for you to	23 greater than the major source threshold; right?
24 say we're leaving if -- you know, because I've	24 A. Yes. But there were a lot of changes
Page 146	Page 148
1 asked for another 15 minutes.	1 at the facility since that time. So we had to
2 MR. GRANT: I haven't said that.	2 rely on the most recent stack test.
3 What I've said is I pointed out that you've used	3 (Exhibit No. 30 was
4 your three hours, and you spent quite a bit of	4 marked for identification.)
5 time on matters that were really collateral. So,	5 Q. (By Mr. Walsh) Let me show you
6 yeah, we'll allow you some more leeway; but, you	6 Exhibit 30. Do you recognize that exhibit?
7 know, frankly this is something you should have	7 A. Yes.
8 planned better.	8 Q. Let me direct your attention to FOIA
9 MS. TIKALSKY: Let's keep it to 15	9 No. 134, 135, 136. Do you recall that there was
10 minutes.	10 a problem with delivery of IEPA's correspondence
11 MR. WALSH: Okay. Thank you. I	11 to NACME?
12 appreciate it.	12 A. No.
13 (Short recess.)	13 Q. You don't?
14 (Exhibit No. 29 was	14 A. No.
15 marked for identification.)	15 Q. So you were unaware that there was
16 Q. (By Mr. Walsh) Okay. Showing you	16 a -- have you seen those pages attached to this
17 Exhibit 29. Do you recognize that exhibit?	17 exhibit?
18 A. Yes.	18 A. I do not recall.
19 Q. Your initials are on the second page	19 Q. You don't recall?
20 right?	20 A. No.
21 A. Yes.	21 Q. All right. Let me direct your
22 Q. So that means that you reviewed it	22 attention to paragraph 3 on the first page. It's
23 before the letter went out; right?	23 again talking about PTE; right?
24 A. Yes.	24 A. Yes.

Page 149	Page 151
<p>1 Q. And "shall be calculated based on the 2 maximum rate of production capacity and year 3 round operations"; right? 4 A. Yes. 5 Q. And, again, at the time this letter 6 went out, you already had the data from 1997, 7 right, that we've already talked about? 8 A. Yes. 9 Q. Now, a suggestion was made by EPA in 10 this various correspondence that, in order to 11 avoid having to go through the Clean Air Act 12 Permit Program process, that the facility might 13 want to consider getting a federally enforceable 14 state operating permit; right? 15 A. Yes. 16 Q. And they, in fact, applied for such a 17 permit; right? 18 A. Yes. 19 Q. And, as matter of fact, one is 20 pending as we sit here; right? 21 A. Yes. 22 Q. And what is the status of that 23 permit? It's been noticed for public review. 24 What's happening with it now?</p>	<p>1 issued for public notice? 2 A. Yes, it was. 3 Q. And did you receive any public 4 comments on it other than from NACME? 5 A. No. 6 Q. Okay. So NACME's are the only 7 comments, and those are still being considered. 8 A. Yes. 9 Q. Is that your testimony? Thank you. 10 Do you have any -- are you 11 responsible for compliance issues -- facility 12 level compliance issues or is your focus -- no. 13 I'm sorry. Go ahead. Answer that question. 14 A. No. As permit engineer I'm not 15 responsible for compliance -- ongoing compliance. 16 Q. All right. So you would not have 17 personal knowledge about whether or not NACME had 18 complied with the terms and conditions of its 19 state operating permit? 20 A. It's correct. I don't know. 21 Q. You wouldn't know if it used the 22 correct HCL concentration percentage in its 23 baths; right? 24 A. Yes. That's correct. We do not</p>
Page 150	Page 152
<p>1 MR. GRANT: Can I interrupt for a 2 second? We've got a pending permit appeal, and 3 I'm just wondering if -- 4 MR. WALSH: There is no pending 5 permit appeal. 6 MS. TIKALSKY: There's not one, no. 7 Not anymore. 8 A. No. 9 MS. TIKALSKY: No 10 MR. GRANT: That case is over with? 11 MS. TIKALSKY: Yeah, it was thrown 12 out. I had it dismissed, yes. 13 MR. GRANT: Okay. I guess I should 14 pay attention. 15 A. So permit is pending for resolving 16 technical disagreement between Illinois EPA and 17 the company on rules applicability. 18 Q. (By Mr. Walsh) What are those 19 disagreements? 20 A. Illinois EPA considers their 21 operation subject to particular new source 22 emission standard and company objects to this 23 applicability. 24 Q. But hasn't the permit already been</p>	<p>1 receive this data. 2 Q. All right. But I'm saying you 3 wouldn't know if it had put in more steel than it 4 was allowed to or not; correct? 5 A. Yes. Correct. 6 Q. I think that's all I have. If I 7 could just have a few minutes, there was a 8 document that I had missed that I wanted to try 9 and find. 10 Well, while I'm looking for that 11 document, when a source like NACME applies for a 12 permit and they ask for assistance in getting 13 through the process, do you consider it part of 14 your job to offer a regulated entity assistance 15 in getting through the regulations and what they 16 have to do? 17 A. Yes. It's standard practice. 18 Q. And you try and do a good job and 19 tell them this is what you need and here's what 20 you need to do? 21 A. I cannot judge my job but -- 22 COURT REPORTER: You cannot what? 23 A. Judge. 24 Q. (By Mr. Walsh) You try?</p>

Page 153

1 A. Yeah. I'm trying to help company.
 2 Q. And did you try and help NACME in
 3 this case or in this instance?
 4 A. I didn't find any problem with NACME.
 5 Q. Okay. I have nothing further.
 6 MR. GRANT: Can you give us one
 7 second?
 8 MR. WALSH: Sure.
 9 MR. GRANT: Let's go outside.
 10 (Short recess.)
 11 MR. GRANT: We don't have any
 12 follow-up. We're good.
 13 COURT REPORTER: Okay. Transcript
 14 orders?
 15 MR. WALSH: Yeah, I'm going to order
 16 one. I'd like a mini and a disc, please.
 17 MR. GRANT: Can we let you know?
 18 COURT REPORTER: Yes.
 19 MR. GRANT: Yeah, we want to reserve
 20 signature now. Are you down here?
 21 COURT REPORTER: Yes.
 22 MR. GRANT: So even if we don't
 23 order, he can go to your place and take a look
 24 through it?

Page 154

1 COURT REPORTER: Yes.
 2 MR. GRANT: Yeah. Okay.
 3 (Deposition concluded at 5:14 P.M.)
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Page 155

1 CERTIFICATE OF REPORTER
 2
 3 STATE OF ILLINOIS)
 4) ss.
 5 COUNTY OF SANGAMON)
 6
 7 I, ROBIN A. ENSTROM, a Registered
 8 Professional Reporter and Certified Shorthand
 9 Reporter within and for the State of Illinois, do
 10 hereby certify that the witness whose testimony
 11 appears in the foregoing deposition was duly
 12 sworn by me; that the testimony of said witness
 13 was taken by me to the best of my ability and
 14 thereafter reduced to typewriting under my
 15 direction; that I am neither counsel for, related
 16 to, nor employed by any of the parties to the
 17 action in which this deposition was taken, and
 18 further that I am not a relative or employee of
 19 any attorney or counsel employed by the parties
 20 thereto, nor financially or otherwise interested
 21 in the outcome of the action.
 22
 23 _____
 24 ROBIN A. ENSTROM
 CSR No. 084-002046

Page 156

1 DEPOSITION ERRATA SHEET
 2
 3
 4 Our Assignment No. 471488
 5 Case Caption: PEOPLE OF THE STATE OF ILLINOIS
 6 vs. NACME STEEL PROCESSING, LLC
 7
 8 DECLARATION UNDER PENALTY OF PERJURY
 9 I declare under penalty of perjury
 10 that I have read the entire transcript of
 11 my Deposition taken in the captioned matter
 12 or the same has been read to me, and
 13 the same is true and accurate, save and
 14 except for changes and/or corrections, if
 15 any, as indicated by me on the DEPOSITION
 16 ERRATA SHEET hereof, with the understanding
 17 that I offer these changes as if still under
 18 oath.
 19 Signed on the _____ day of
 20 _____, 20____.
 21
 22 _____
 23 VALERIY BRODSKY
 24

Page 157	
1	DEPOSITION ERRATA SHEET
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23	SIGNATURE: _____ DATE: _____
24	VALERIY BRODSKY

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23	SIGNATURE: _____ DATE: _____
24	VALERIY BRODSKY

EXHIBIT 3

People's Motion for Summary Judgment Exhibit List

PEOPLE'S MOTION FOR SUMMARY JUDGEMENT

EXHIBIT LIST

- | | |
|-----------|---|
| EXHIBIT A | Complaint |
| EXHIBIT B | Answer |
| EXHIBIT C | Nacme's Admission of Facts |
| EXHIBIT D | Wenzel Deposition |
| EXHIBIT E | IEPA Brodsky's Affidavit |
| EXHIBIT F | IEPA Reuter Affidavit of authenticated documents from IEPA file |
1. Nacme's SOP
 2. 2002 Construction Permit Application
 3. 2002 Construction Permit
 4. April 2002 Stack Test
 5. 2002 Operating Permit Denial
 6. April 2005 SOP Renewal application
 7. April 2005 Notice of Incompleteness
 8. September 2005 SOP Renewal application
 9. September 2005 Notice of Incompleteness
 10. 2005 FESOP application
 11. 2005 CAAPP Notice
 12. December 2006 Stack Test Report
 13. 2007 FESOP application
 14. 2012 Construction Permit