

ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,)

DEC 30 2008

Complainant,)

STATE OF ILLINOIS
Pollution Control Board

-vs-)

PCB 00-211

TOYAL, INC. f/k/a ALCAN-TOYO
AMERICA, INC., a foreign
corporation,)(RCRA
Enforcement)

Respondent.)

REPORT OF PROCEEDINGS taken before Tamara
Manganiello, Registered Professional Reporter and
Notary Public, at 375 West Briarcliff Road,
Bolingbrook, Illinois, commencing at the hour of
9:00 a.m. on the 10th day of December, A.D., 2008.

ILLINOIS POLLUTION CONTROL BOARD
MR. BRADLEY P. HALLORAN, HEARING OFFICER
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(312) 814-8917

A P P E A R A N C E S:

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
ENVIRONMENTAL BUREAU
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BY: MR. CHRISTOPHER J. GRANT
MS. VANESSA VAIL

Appeared on behalf of the Complainant;

DRINKER, BIDDLE & REATH, LLP,
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

BY: MR. ROY M. HARSCH
MS. YESENIA VILLASENOR-RODRIGUEZ

Appeared on behalf of the Respondent.

1 HEARING OFFICER HALLORAN: Good
2 morning, everyone. My name is a Bradley
3 Halloran. I'm a hearing officer with the
4 Illinois Pollution Control Board. I'm also
5 assigned to this matter entitled People of
6 the State of Illinois, Complainant, versus
7 Toyal, Inc., formerly known as Alcan-Toyo
8 America, Inc., a foreign corporation. Our
9 docket number is PCB 00-211.

10 It's December 10th, 2008. It's
11 approximately 9:00 a.m. This hearing was
12 noticed up for December 10th and 11th and
13 will continue as necessary.

14 Again, this hearing was scheduled
15 in accordance with the Illinois Environmental
16 Protection Act and the Pollution Control
17 Board rules and procedures. It will be
18 conducted according to procedural rules found
19 at Sections 101 and 103 of the Board's rules.

20 And as most of you know, I will
21 not be making the ultimate decision in the
22 case. My job today is to ensure the hearing
23 goes smoothly and rule on any evidentiary
24 matters that may arise.

1 When this hearing is finished, be
2 it today or tomorrow, the Board will take a
3 look at the transcript, the record, and any
4 post-hearing briefs and render its decision.

5 In this matter the Board rendered
6 a decision on August 9th, 2001, where it
7 accepted a stipulation and proposal for the
8 settlement on most counts. And the pertinent
9 part of the order, Page 2 of the order,
10 reads, the Board knows that the stipulation
11 of proposal for partial settlement only
12 pertains to Counts III through VII of the
13 complaint.

14 Counts I and II concerning air
15 pollution violations under the Act and Board
16 regulations are still before the Board for
17 future considerations.

18 Before we begin, we have a couple
19 of issues that may need to be taken care of
20 or at least vented on record.

21 On December 8th, 2008, I became
22 privy to an e-mail from Respondent's counsel
23 and Complainant's counsel regarding an issue,
24 I believe it was pre-filed testimony or

1 narrative testimony that Mr. Harsch was going
2 to offer today.

3 It appears that the Complainant
4 was not going to accept it, so we set up a
5 status conference for yesterday at
6 10:00 a.m., again, voicing their concerns
7 regarding this issue.

8 At that time I ruled that I would
9 take it as an offer of proof, but I would
10 also say that I would revisit it today,
11 December 10th, at the hearing.

12 And I believe there was another
13 issue that came up. Mr. Grant raised one,
14 but I said we'd particular it up tomorrow.

15 With that said, Mr. Harsch, could
16 you comment on your narrative testimony that
17 you wish to offer today?

18 MR. HARSCH: Yes. For the record, my
19 name is Roy Harsch. I'm an attorney with
20 Drinker, Biddle & Reath. With me today is I
21 Yesenia Villasenor-Rodriguez, who is my
22 associate in this matter, as well.

23 She has prepared a written motion
24 pursuant to your direction, Mr. Hearing

1 Officer, and --

2 HEARING OFFICER HALLORAN: Thank you.

3 MR. HARSCH: -- we've provided copies
4 of that written motion this morning to
5 Complainant.

6 Do you want me to essentially
7 reargue it or are we just going to rely on
8 the --

9 HEARING OFFICER HALLORAN: If you
10 could just give a summary of your argument as
11 to why you wish to offer it.

12 MR. HARSCH: One, it -- unfortunately,
13 this issue came up on Monday as we were
14 finalizing the narrative testimony. I had a
15 communication with Mr. Grant indicating to
16 him that we would be getting that testimony
17 to him. That was consistent with my
18 associate's conversation with Ms. Vail last
19 Friday, as well.

20 Your hearing officer order from
21 our previous status clearly indicates that we
22 were preparing written narrative testimony,
23 there was no surprise on that. But on Monday
24 I was informed by Mr. Grant that they would

1 not accept ever the use of written testimony
2 as he didn't believe it was provided for
3 under the rules of evidence.

4 I believe, with all due respect to
5 Complainant's attorneys it is a common Board
6 occurrence, it is clearly provided for under
7 the Board's procedural rules and, frankly, as
8 I explained yesterday, given, and as I've
9 told Mr. Grant on Monday, our written
10 testimony essentially is less than
11 approximately 30 pages including the
12 background material of the witnesses.

13 I, frankly, don't find -- think it
14 would have taken very long to review it nor
15 would he have found anything in it
16 objectionable. So, obviously, it was coming
17 in several days before the hearing when I
18 offered to do it. We would have provided it
19 to the State, but at his direction he told me
20 that he didn't want to see it because he was
21 going to object to it and it wouldn't be
22 fair, so I didn't send it to him.

23 The witnesses would testify that
24 they prepared this testimony, that we got

1 together on Monday, which was the first day
2 that we really could, that they were still
3 drafting testimony over the weekend and we
4 finalized it on Monday.

5 So that's the sum and substance of
6 our position. We think that the use of
7 written testimony will greatly speed this
8 hearing. The State would be free -- as far
9 as I'm concerned, we could recess today while
10 they would review the written testimony. And
11 if there are any objections to parts of it, I
12 will gladly discuss it with them off the
13 record and try to resolve it and take those
14 issues out and ask narrative questions
15 regarding those issues if they have an
16 objection so they can object to my question.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Harsch. That was pretty much my
19 recollection of what transpired yesterday
20 morning at 10:00 a.m. during the telephone
21 status conference. Mr. Grant?

22 MR. GRANT: Yeah, we'll maintain our
23 objection. We -- just as an initial point,
24 although, Mr. Harsch had discussed and

1 including at Board statuses that he was going
2 to provide some sort of a summary of
3 testimony, at least that was my understanding
4 of what he was saying, of his witnesses to
5 help expedite, you know, this, today's
6 hearing, and try to get it done as quickly as
7 possible, I never -- I was never advised
8 until Monday that they planned on, in lieu of
9 having witnesses on the stand, submit written
10 testimony. And, frankly, it does violate
11 standard rules of evidence especially where
12 the witnesses are in the courtroom.

13 HEARING OFFICER HALLORAN: What
14 violates?

15 MR. GRANT: To submit a written
16 statement in lieu of testimony, it's like an
17 affidavit. The only way that I'm aware that
18 you could put in written testimony and use it
19 as evidence at trial is through use of a
20 discovery deposition.

21 HEARING OFFICER HALLORAN: Have you
22 looked at the rules that I directed you to
23 yesterday?

24 MR. GRANT: Yes. I was saying the

1 standard rules of evidence --

2 HEARING OFFICER HALLORAN: We're
3 before the Illinois Pollution Control Board,
4 Section 101.626, written testimony. And
5 Mr. Harsch represented that the witnesses
6 were going to be here to be cross examined
7 pursuant to that section.

8 MR. GRANT: Yes. But that section
9 also provides that that information be
10 provided -- the written testimony be provided
11 to the opposing party, given a reasonable
12 time to interpose objections to that written
13 testimony at which point that issue goes
14 before the Board. That's what that rule
15 provides.

16 And, also, it's my understanding
17 that the submission of written testimony is
18 used in rulemaking proceedings before the
19 Board, may even be in certain permit appeals
20 upon agreement or stipulation, but I'm
21 unfamiliar with it ever being used in an
22 enforcement case.

23 HEARING OFFICER HALLORAN: You're
24 incorrect. I have accepted it many times in

1 enforcement cases. And I don't mean to cut
2 you off, but written testimony, my
3 understanding is there's approximately, I
4 don't know, 35, 38 pages here and he
5 represented that he offered to provide it to
6 you as early as Monday and you refused.

7 You know, 48 hours for 38 pages I
8 don't think is unreasonable. But you may
9 proceed, Mr. Grant.

10 MR. GRANT: I have not seen it. I
11 mean, for him to say that I had the
12 opportunity to see it by getting it 48 days
13 (sic) before trial when I'm putting together
14 exhibits, when we're arranging for our
15 witnesses to come up for accommodations and
16 last minute details, that's essentially
17 disclosing testimony.

18 We've had interrogatories in this
19 case since about 2000. That's essentially
20 disclosing testimony 48 hours beforehand.
21 It's just unfair and it's unnecessary, too.
22 There's no prejudice to Toyal when they have
23 their witnesses here who can testify under
24 oath as, you know, to the identical things

1 just with some questioning and answering, so
2 I can hear the questions, so I can interpose
3 objections if they're improper questions or
4 if there's no basis for the question or
5 anything like that or relevance or anything
6 like that, we can do that here today. And I
7 don't think it's going to delay anything at
8 all because, frankly, I'm calling two of
9 these witnesses in my case before they even
10 put their case on.

11 HEARING OFFICER HALLORAN: Okay. And
12 that's my thought, too. They're going to be
13 here and it's just going to take longer. But
14 I'm, to say the least, befuddled that the
15 Complainant -- and it's been going -- I think
16 before I even mentioned it in my hearing
17 office order December 1st it had been talked
18 about orally at conference calls regarding
19 narrative testimony, written testimony, that
20 kind of stuff and there was no objection, no
21 question, nothing like that.

22 Again, it is a little belated
23 filing this written testimony or presenting
24 it. But, again, I think, you know, there was

1 ample time. And, again, I am a bit befuddled
2 that this is happening. I thought we had all
3 our ducks in a row, but then, again, I was
4 wrong again.

5 But the key word in Section
6 101.626 states that written testimony may be
7 introduced by a party in a hearing only if
8 provided to all of the parties. Well, in
9 this case it was not provided simply because
10 the Complainant did not want to see it.
11 Mr. Harsch offered to provide it, but the
12 Complainant turned them down.

13 So in that case I will take -- the
14 narrative testimony, I believe, is attached
15 to Toyal's written motion to include
16 witnesses' narrative testimony, I will take
17 it as an offer of proof and we can move
18 forward from there. Again, I am a bit
19 disappointed.

20 But, in any event, attached to --
21 I'm going to mark Toyal's motion to include
22 witnesses' narrative testimony as Hearing
23 Officer Exhibit 1 and the attached exhibits,
24 Exhibit B, Exhibit C, D --

1 MS. VILLASENOR-RODRIGUEZ: They were
2 all included as Attachment B. I didn't
3 separate them.

4 HEARING OFFICER HALLORAN: All right.
5 I'll accept the Respondent's Exhibit B, the
6 narrative testimony of Barry Van Hoose,
7 Raymond J. Malmgren, Steve Anderson, and I
8 believe that's it, I'll take that as
9 Respondent's Exhibit B as an offer of proof
10 and the Board can do with it as it must.

11 MR. HARSCH: Mr. Hearing Officer, I
12 think in the last minute copying there are --

13 HEARING OFFICER HALLORAN: You know
14 what, I'm sorry, the staples came apart.
15 Here's some more. Dennis Debrodt's
16 testimony, and that's it.

17 MS. VILLASENOR-RODRIGUEZ: And Steve
18 Anderson.

19 HEARING OFFICER HALLORAN: I mentioned
20 him.

21 MR. HARSCH: And Mr. McClure, as well.

22 HEARING OFFICER HALLORAN: I don't
23 have that.

24 MS. VILLASENOR-RODRIGUEZ: I'll give

1 you a copy of that.

2 HEARING OFFICER HALLORAN: There was
3 another issue that was somewhat broached by
4 the Complainant, but I said we'd take it up
5 today. Is this an appropriate time or should
6 we address it when the time arises?

7 MR. GRANT: I'd like to address it
8 now. I've got a written motion that I did on
9 my basement computer last night. They have a
10 copy of it.

11 Also, on December 8th at about
12 3:00 o'clock p.m. we were provided with what
13 purported to be a supplement to the previous
14 disclosed expert testimony by Mr. Chris
15 McClure. Mr. McClure was deposed on his
16 expert opinion on November 6th at which time
17 there was a discussion about possibly
18 supplementing the opinion.

19 Now Mr. Harsch and I have
20 different recollections of that and my
21 recollection is contained in my motion.
22 Although, I do admit that he -- basically,
23 what I understood was at the deposition it
24 was -- it's in the record where neither party

1 had used the cost of a device that was --
2 that heretofore had not really been
3 discussed, which was a vacuum skid condenser
4 or we called it a vacuum unit or something
5 like that and using it in either party's
6 economic benefit expert opinion.

7 I recall Mr. Harsch stating that
8 he was going to, you know, possibly
9 supplement the expert opinion with some
10 information regarding hazardous waste. But
11 as I put in my motion, he may well have
12 raised this issue, as well.

13 We also --

14 HEARING OFFICER HALLORAN: You put it
15 in your motion?

16 MR. GRANT: It's in the motions before
17 you, basically my recollection of what
18 happened.

19 HEARING OFFICER HALLORAN: Okay. This
20 is Toyal's motion?

21 MR. GRANT: I'm sorry. I'm giving you
22 theirs. Here's mine.

23 HEARING OFFICER HALLORAN: Thanks.

24 MR. GRANT: So there was a possibility

1 of supplementing expert -- the expert
2 disclosure. We reserved the right or stated
3 that we may -- that we might amend our expert
4 report to include additional interests from
5 the time that the report was done.

6 We never did that, never got
7 around to do it and basically considered that
8 we'd waive that because if we didn't do it in
9 a timely fashion, certainly it would have
10 been unfair for us to try to supplement our
11 disclosed expert opinion after the deposition
12 had been taken.

13 And neither did we receive
14 anything from opposing counsel regarding
15 supplementing his expert opinion until
16 December 8th. On December 8th we were
17 provided with a report. The report itself
18 was dated December 1st and it essentially
19 tried to add an additional \$1.1 million or
20 almost \$1.1 million of expense, which they're
21 going to claim against economic benefit of
22 noncompliance.

23 Navigant Consulting, who is
24 Toyal's expert witness, has been on this case

1 since at least 2005. We've had numerous
2 meetings, we've had disclosures when
3 Mr. McClure, who is the current expert
4 witness, took over. We had to wait for his
5 new opinion, that caused a delay in taking
6 depositions and getting a hearing in this
7 case. That report was finally provided on
8 August 20th and that was the report that
9 was -- that he was deposed on.

10 It's our position that providing
11 such a significant amendment to an expert
12 opinion two days before hearing, especially
13 when Toyal had the report on December 1st, to
14 provide to us on December 8th and to try to
15 use it in testimony today is unfair.

16 We've not had an opportunity to
17 depose Mr. McClure on this additional
18 information and it's significant enough that
19 there's a substantial risk of prejudice to us
20 if he's allowed to testify as to his amended
21 report or this stuff that's inside, which is
22 this vacuum skid condenser, claiming it as
23 some sort of economic benefit.

24 So that's basically what we're

1 asking, that this be kept out and that he not
2 be allowed to testify as to this new piece of
3 equipment that we just learned about.

4 HEARING OFFICER HALLORAN: For the
5 record, I'm going to mark this as Hearing
6 Officer Exhibit No. 2. Mr. Harsch?

7 MR. HARSCH: I believe you have a copy
8 of our motion with respect to that item, as
9 well. If not, Yesenia, please provide a copy
10 to the Hearing Officer.

11 HEARING OFFICER HALLORAN: Thank you.

12 MR. HARSCH: Again, Mr. Hearing
13 Officer, as Mr. Grant indicated during the
14 day of deposition, we discussed this issue.
15 The deposition transcript shows that. The
16 figure is stipulated to by counsel of 1.1
17 approximate million dollars for the skid
18 condenser.

19 The State was told how it was
20 going to be used by Mr. McClure.

21 Mr. McClure's report clearly reserves the
22 right to modify it to add that in, that was
23 explained. We had -- I believe I thought we
24 had an agreement with Counsel to do that.

1 The report is dated December 1st.
2 Mr. McClure is prepared to testify that he
3 didn't change the date. That was the date
4 that he provided the report to us for us to
5 review. He completed the review and provided
6 it to the State the day we completed the
7 review. There's really no surprise here.

8 It essentially is a plug-in, a
9 cost figure and the BEN model produces an
10 economic value that we would then subtract.
11 And that's set forth and shown in the
12 attachment to the motion.

13 I might also point out that I was
14 never informed -- they didn't have any
15 objection to it -- that the State would not
16 be amending its expert report. And I was
17 provided a copy of what purported to be the
18 State's final report on Monday, as well, from
19 Counsel. That's basically where we are.

20 Mr. McClure can either include it
21 as a -- allow the witness to respond that he
22 updated the report or the witness simply can
23 explain what he did under oath and what the
24 effect of it would be if it were included in

1 his expert report.

2 The facts have been clearly before
3 the State all along. They've been aware of
4 the cost of this unit for a long time. So I
5 believe that it is fair and they are not
6 actually prejudiced by this.

7 HEARING OFFICER HALLORAN: Obviously,
8 I was not privy to this alleged agreement
9 regarding the issue we're discussing now.

10 Secondly, all prehearing motions
11 were due to be filed on or before
12 November 10th, 2008, and here we are again.
13 I have a feeling I should start setting
14 hearings and then canceling them because I
15 know something is going to come up,
16 especially like cases of this ilk.

17 You know, I think it may be
18 somewhat of a surprise to the State regarding
19 this new BEN calculation and so what I'm
20 going to do is I'm going to grant the
21 Complainant's motion to exclude the late
22 disclosed expert opinion, but I will take it
23 as an offer of proof when the witness takes
24 the stand and starts talking about the new

1 numbers. The Complainant can make an
2 objection then and we'll proceed accordingly.

3 MR. HARSCH: Thank you, Mr. Hearing
4 Officer.

5 HEARING OFFICER HALLORAN: Thank you,
6 Mr. Harsch.

7 Complainant, your case in chief or
8 do you want to do an opening?

9 MR. HARSCH: Yeah, I think we will.
10 But before we do that I'd like to exclude
11 witnesses.

12 HEARING OFFICER HALLORAN: Okay.
13 Mr. Harsch?

14 MR. HARSCH: I object to that. There
15 was no advance notice of any intent to
16 exclude witnesses. Since today is the first
17 I'm aware of that, it's not -- I've been
18 doing Board enforcement cases for a long time
19 and I don't believe that excluding witnesses,
20 unless there's a valid reason, is something
21 that we normally would do.

22 HEARING OFFICER HALLORAN: Mr. Grant?

23 MR. GRANT: Every case that I've done,
24 whether in court or in a Board enforcement

1 hearing, we've made the motion and it's been
2 granted as a matter of course as --

3 HEARING OFFICER HALLORAN: I'm sorry,
4 what was the last part, granted as a matter
5 of course?

6 MR. GRANT: In my experience, it's
7 granted as a matter of course upon one
8 party's request.

9 HEARING OFFICER HALLORAN: Before the
10 Board?

11 MR. GRANT: Before the Board and in
12 court that's been my experience, yes.

13 HEARING OFFICER HALLORAN: Is that all
14 you have to offer?

15 MR. GRANT: Yes.

16 HEARING OFFICER HALLORAN: Mr. Harsch,
17 how many of your witnesses are experts?

18 MR. HARSCH: We have designated --
19 really, the only factual issue is the expert
20 witness with respect to the BEN model. We do
21 have Mr. Anderson here who is an outside
22 consulting engineer and will be testifying to
23 the various permit compliance issues.

24 HEARING OFFICER HALLORAN: I'm sorry,

1 his name was?

2 MR. HARSCH: Steve Anderson.

3 HEARING OFFICER HALLORAN: So that's
4 basically the only expert that --

5 MR. HARSCH: And Mr. McClure, who is
6 our designated financial expert.

7 HEARING OFFICER HALLORAN: I'm going
8 to grant the State's motion in as far as
9 Mr. Anderson and Mr. McClure can remain in
10 the hearing room and the rest can sit out in
11 the hallway and have a seat and come back
12 when called. Thank you. Sorry.

13 MR. GRANT: Mr. Styzens is my first
14 witness. Can he just remain through the
15 opening statement?

16 HEARING OFFICER HALLORAN: Can he
17 remain where?

18 MR. GRANT: Should I have him leave
19 for the opening statement? He'll be the
20 first witness to be called.

21 HEARING OFFICER HALLORAN: Mr. Harsch?

22 MR. GRANT: I'll withdraw that. Gary,
23 why don't you step out?

24 MR. HARSCH: I don't see any -- there

1 is no basis stated. I know you've ruled, but
2 there is no reason given for this.

3 You had directed that motions
4 regarding the hearing were supposed to have
5 been filed ahead of time. There was nothing
6 stated and nothing -- no motion filed and
7 nothing stated with respect to this issue at
8 our last status call.

9 HEARING OFFICER HALLORAN: I agree
10 with you, Mr. Harsch. Some motions are a
11 little different than others. These are
12 usually made at the time of the hearing.

13 And, again, Mr. Grant should have
14 brought it up earlier. I don't know. Again,
15 I think I should set these hearings,
16 especially this kind, and then cancel them
17 because all these issues come up. I don't
18 understand it.

19 But in any event, my ruling
20 stands. Mr. Grant, would you do your
21 opening, please?

22 MR. HARSCH: Would you like -- I don't
23 care if Mr. Styzens stays.

24 MR. GRANT: It's fine. I mean, this

1 is going to be very brief and then we'll
2 bring him up.

3 MR. HARSCH: Do you care if my -- if
4 Mr. McClure and Mr. Anderson stay?

5 MR. GRANT: That's fine.

6 MR. HARSCH: Thank you.

7 MS. VAIL: Good morning. My name is
8 Vanessa Vail and I represent the State of
9 Illinois. The People of the State of
10 Illinois are before the Illinois Pollution
11 Control Board due to Respondent Toyal's
12 significant length of time of noncompliance
13 that resulted in eight years of volatile
14 organic material emissions to the atmosphere.

15 This case originally was filed on
16 May 31st, 2000, as a joint Resource
17 Conservation and Recovery Act and air
18 pollution enforcement case. And since that
19 filing, the case has proceeded through
20 settlement of the six RCRA hazardous waste
21 counts in an opinion order dated August 9th,
22 2001. And what remains are air pollution
23 violations that continued for eight years.

24 The State will present evidence

1 that Toyal operated its business in violation
2 of the law for eight years. It was not until
3 three years after Section 219.986 of the
4 Illinois Administrative Code was in effect
5 that Toyal only just installed its air
6 pollution control equipment. And it was not
7 until five years after that that Toyal was
8 able to demonstrate compliance in its overall
9 reduction in uncontrolled VOM emissions of at
10 least 81 percent from each of its emission
11 units. In other words, the State will
12 present evidence that shows Toyal conducted
13 its operation in violation of the law for
14 eight years.

15 In addition, the People will offer
16 testimony from its expert witness who will
17 discuss his range of calculations relative to
18 Toyal's delayed cost of installing and
19 connecting the necessary pollution control
20 equipment.

21 The State will address the gravity
22 component of an appropriate penalty that
23 should be assessed by the Board in the
24 State's brief. Based on the facts that will

1 be presented in this hearing, the People of
2 the State of Illinois will request that the
3 Illinois Pollution Control Board find
4 Respondent, Toyal America, Incorporated, in
5 violation of the Illinois Environmental
6 Protection Act.

7 In addition, the Complainant
8 requests that the Board assess a penalty that
9 includes the Respondent's economic benefit
10 due to its delayed cost of installing the
11 necessary pollution control equipment and
12 additionally includes a gravity component as
13 presented by the People of the State of
14 Illinois. Thank you.

15 HEARING OFFICER HALLORAN: Thank you,
16 Ms. Vail. Mr. Harsch?

17 MR. HARSCH: The State is absolutely
18 correct. Toyal America, Inc., had a great
19 amount of difficulty in demonstrating
20 compliance with the subject VOM rules
21 following the installation of the control
22 device recommended by their environmental
23 consulting firm, as will be shown this
24 morning.

1 We basically do not have any
2 disagreement with the State with respect to
3 the various permit applications, permits that
4 have been granted and the time that the stack
5 test was actually conducted in the
6 demonstration of compliance.

7 Toyal submitted a Title V permit
8 application, as will be shown today, that
9 listed them as being out of compliance and
10 they proceeded to implement a compliance
11 program retaining what they believe to be
12 competent environmental consultants that
13 advised them on how to proceed.

14 There are a number of complicating
15 factors that impact their compliance schedule
16 and we will present those today. The key is
17 that Toyal did begin to operate their control
18 device in December of 1998 and continued to
19 operate the control device through and until
20 it was replaced following the successful
21 passing of the stack test and the granting of
22 a FESOP permit.

23 There were a number of
24 construction permits that were applied for

1 and granted by the Illinois Environmental
2 Protection Agency that extended the
3 compliance schedule, as we will present
4 today. So the State was well apprised of the
5 problems that Toyal was having in
6 demonstrating compliance as it moved forward.
7 And that's basically the story.

8 The economic benefit we will
9 present today we believe does not exist
10 because of an offset that is provided for
11 consistent with the guidance that US EPA has
12 developed in how to calculate economic
13 benefits. So we do not believe that Toyal
14 has, in fact, incurred an economic benefit.
15 They actually had a substantial negative cost
16 and we will likewise address the gravity
17 component in our briefs.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Harsch. Pursuant to the motion to
20 exclude, I see a person who walked in and is
21 sitting next to Assistant Attorney General
22 Paula Wheeler. Are you a witness, sir?

23 MR. POWERS: No.

24 MR. GRANT: This is Mr. R.J. Powers.

1 He's an assistant attorney general in the
2 environmental crimes division. He's just
3 here to observe.

4 HEARING OFFICER HALLORAN: Thank you.
5 With that finished, Mr. Grant?

6 MR. GRANT: Well, we're through with
7 our opening. At this point I'd like to move
8 Complainant's Exhibit 17 into evidence.
9 Exhibit 17 is Toyal's responses to the
10 State's request for the admission of facts.

11 MR. HARSCH: We have no objection.

12 HEARING OFFICER HALLORAN: Thank you.
13 Complainant's Exhibit No. 17 admitted.

14 MR. GRANT: And my first witness will
15 be Mr. Gary Styzens.

16 HEARING OFFICER HALLORAN: Good
17 morning, Mr. Styzens. You look familiar.
18 Have a seat and Tammi will swear you in.

19 MR. GRANT: Before we do that, can I
20 do one thing?

21 HEARING OFFICER HALLORAN: We can go
22 off the record for a second.

23 (Brief pause.)

24 HEARING OFFICER HALLORAN: Okay.

1 (Witness sworn.)

2 WHEREUPON:

3 GARY STYZENS

4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Grant

8 Q. Mr. Styzens, could you state your name
9 for the record, please?

10 A. Gary Styzens, S-T-Y-Z, as in zebra,
11 E-N-S.

12 Q. Where are you employed?

13 A. Illinois Environmental Protection
14 Agency.

15 Q. And what office do you work out of?

16 A. I'm in the finance and administration
17 section of the Illinois EPA in Springfield.

18 Q. Is that in Springfield?

19 A. Yeah, Springfield, Illinois.

20 Q. What is your current position?

21 A. I'm the State of Illinois EPA's
22 economic benefit analyst and financial analyst.

23 Q. Aside from your State salary as an
24 analyst, are you being provided with any additional

1 compensation for your testimony here today?

2 A. No.

3 Q. Please tell me a little bit about your
4 educational background beginning with your
5 undergraduate degree.

6 A. I went to Southern Illinois University
7 in Carbondale and received in 1980 a bachelor's in
8 forestry and environmental sciences.

9 And then I proceeded to -- because
10 I was working towards a master's in business
11 administration, after 1980 I spent a year-and-a-half
12 or so taking core business courses, junior and
13 senior level business courses in order to qualify
14 for entry into the SIU Carbondale master's in
15 business administration program.

16 Then I proceeded to enter the
17 master's in business administration program at SIU
18 Carbondale and in 1983 received a master's degree in
19 business.

20 Q. What sort of course work did you take
21 pursuant to obtaining your MBA?

22 A. As part of my MBA?

23 Q. Yes. What sort of courses did you
24 take?

1 A. I took general business courses
2 covering all the different aspects of business
3 including economics, accounting, finance,
4 management, business administration, mathematics,
5 statistics, things of that nature.

6 Q. Since obtaining your MBA have you
7 obtained any other professional designations?

8 A. Yes. In 1988 I sat for the certified
9 internal auditor exam and received a certified
10 internal auditor designation in 1988.

11 Q. What is a certified auditor
12 designation?

13 A. A certified internal auditor, it's
14 similar to the certified public accountant except
15 it's a concentration -- instead of just in
16 accounting, it's a concentration in internal
17 auditing where you sit for a two-day exam and
18 receive upon completion of the exam a certification
19 as an expert internal auditor. And, again, it's
20 similar to a CPA.

21 Q. If you could turn to Exhibit 20 in the
22 white book?

23 MR. GRANT: May I approach the
24 witness?

1 HEARING OFFICER HALLORAN: You may,
2 Mr. Grant.

3 MR. HARSCH: I would like to take a
4 brief recess, Mr. Hearing Officer. I need to
5 compare Exhibit 20 -- which I was only
6 provided a copy of on Monday, it was not
7 included in the written materials that I got
8 from the State prior to that -- versus the
9 expert report that was previously provided to
10 me and which was an exhibit to the deposition
11 to make sure that that is the same document.
12 They are not in the same order. I just need
13 to take a few more minutes to go through and
14 make sure that there aren't any changes.

15 HEARING OFFICER HALLORAN: Your
16 request is granted, Mr. Harsch. Again, ducks
17 in a row. We'll go off the record for five
18 minutes.

19 (Brief pause.)

20 HEARING OFFICER HALLORAN: We're back
21 on the record. Mr. Harsch has just reviewed
22 a resume, I believe, of Gary Styzens that was
23 handed to him. It was, I think, a different
24 one than originally given. Mr. Harsch?

1 MR. HARSCH: Mr. Hearing Officer, I
2 have no objection to the resume, we were
3 previously provided the resume, we were
4 provided the State's economic benefit report
5 prior to the deposition, I have the
6 deposition exhibits. And what was delivered
7 to me on Monday by Mr. Grant, what I thought
8 was the amended report, turns out, in fact,
9 to be an amended expert report because it's
10 got one extra page.

11 And it's not just my copy, it's
12 also the copy that my witness has that was
13 included in his three-ring binder. So the
14 reports are not the same.

15 And given the State's position
16 with respect to my economic report revision
17 that we likewise provided the State on
18 Monday, I find this to be a little
19 surprising.

20 HEARING OFFICER HALLORAN: So your
21 representation is the State provided you with
22 a BEN economic benefit report prior to depositions
23 and then, again, on December 8th they
24 provided another one but it appears to be an

1 amended expert report?

2 MR. HARSCH: It has one additional
3 page.

4 MR. GRANT: I assume by that he means
5 everything else is identical. I can't really
6 explain it. We e-mailed this report. This
7 report is has been unchanged since March
8 29th, 2006, when it was provided to these
9 guys.

10 And if there's one extra page on
11 it that he didn't have for use at the
12 deposition, I suggest we just pull it out. I
13 have no objection to doing that.

14 HEARING OFFICER HALLORAN: Do you have
15 any objection to that, Mr. Harsch? It seems
16 reasonable.

17 MR. HARSCH: Again, pursuant to the --
18 I hate to rehash the issues, but this just
19 goes to show that we were submitting economic
20 reports pursuant to our agreement on Monday
21 to each other. It appears the State is
22 willing to object to ours.

23 HEARING OFFICER HALLORAN: Well, I
24 understand that, Mr. Harsch. But given that

1 the supplemental, I believe, BEN numbers are
2 a little different than if you merely delete
3 a page from which you have in your hands, it
4 seems like everything else is the same except
5 the one page. I don't agree with it at all.
6 I'm with you on that, Mr. Harsch. I don't
7 understand it.

8 MR. HARSCH: I've made my point.

9 HEARING OFFICER HALLORAN: You have.

10 MR. HARSCH: I don't -- it's a piece
11 of backup information. Mr. Styzens will be
12 free to explain that he used it.

13 Mr. Grant, it is what it is. Ask
14 him a question about it and let's proceed.
15 If he wants to rely on it in going forward,
16 it's not going to prejudice --

17 MR. GRANT: I understand. I do also
18 want to say that this report in its current
19 form, paginated the way that it is, was
20 e-mailed to them on Monday. It's identical,
21 except for this one page, to what he's had
22 for a couple of years.

23 And I handed -- a copy of this
24 exhibit was hand-delivered to him. I want to

1 make the point for the record that we had not
2 seen any of Toyal's exhibits until this
3 morning when we were handed a binder, so
4 we've done everything we can to try to avoid
5 problems in this case.

6 HEARING OFFICER HALLORAN: I think
7 next time, given what's going on here, I'm
8 going to -- all discovery ceases 365 days
9 before the hearing. You know, I guess I'm
10 saying that tongue-in-cheek, but...

11 So, Mr. Harsch, you have no
12 objection --

13 MR. HARSCH: No, I do not, sir.

14 HEARING OFFICER HALLORAN: -- to
15 Exhibit 20 is it?

16 MR. GRANT: Yeah.

17 MR. HARSCH: Exhibit 20 is -- I have
18 no objection to their using Exhibit 20 in its
19 present form. In its present pagination,
20 it's different than what was provided to me
21 and with an extra page that was not provided.
22 And I have absolutely no objection to the
23 entry of his resume, which is part of the
24 Exhibit 20.

1 HEARING OFFICER HALLORAN: Okay. Your
2 observations are noted on the transcript.
3 Thank you, Mr. Harsch. Mr. Grant, you may
4 proceed.

5 MR. GRANT: Thank you.

6 BY MR. GRANT:

7 Q. Mr. Styzens, I think you said that
8 your current position is economic benefit analyst
9 and manager; is that correct?

10 A. That's correct.

11 Q. What do your current duties include?

12 A. I am a financial analyst for the State
13 of Illinois. I have a 25-years background in
14 internal auditing for the State of Illinois.

15 And, basically, I perform a
16 general financial analysis for the Illinois
17 Environmental Protection Agency and I also
18 specialize in performing economic benefit analyses
19 for the Agency.

20 Q. And you're familiar with the concept
21 of economic benefit of noncompliance?

22 A. Yes.

23 Q. Is that what you said?

24 A. Yes.

1 Q. Have you provided expert and opinion
2 testimony on economic benefit of noncompliance in
3 enforcement cases?

4 A. Yes.

5 Q. Can you name a few of the cases that
6 you've testified in?

7 A. Well, I've been before the Board --
8 the Pollution Control Board, I believe, three times
9 now in the Pan Handle pipeline back in 2001, then I
10 did an ESG Watts landfill case, I think, like in '03
11 and then most recently, Community/Pruim Landfill
12 within the last few weeks, performed an economic
13 benefit analysis overview in that case.

14 I had one case that went before
15 the circuit court called New Landing Utilities. And
16 then I've had several cases, seven, eight cases that
17 I've -- including some of those that I've done
18 depositions at on economic benefit.

19 Q. And in each of those cases did you
20 testify as an opinion witness on economic benefit?

21 A. Yes.

22 Q. What does the term economic benefit of
23 noncompliance mean to you?

24 A. Well, economic benefit is a financial

1 principle that uses basic financial principles. It
2 was -- the economic benefit was somewhat developed
3 by the US EPA. It's considered the cornerstone of
4 their enforcement program. It's critical to
5 encourage compliance.

6 What it seeks to do is identify
7 delayed and avoided expenditures related to
8 environmental compliance issues with the goal of
9 leveling the financial playing field with those
10 companies that comply with environmental regulations
11 in an efficient, timely manner against those
12 companies that obtain a financial advantage by
13 delaying or avoiding expenditures associated with
14 environmental compliance.

15 Q. How do you conduct an economic benefit
16 analysis?

17 A. Basically, as the economic benefit
18 analyst for the Illinois Environmental Protection
19 Agency, I am provided with requests from the
20 Agency's chief legal counsel through the Attorney
21 General's Office to provide objective, independent
22 assessments of economic benefit.

23 And, basically, as far as economic
24 benefit goes, you have to analyze it on a

1 case-by-case basis. Each case stands on itself.
2 Each case has unique types of situations to analyze.
3 And what you try to do is usually I am provided
4 financial information from the Attorney General's
5 Office and the Illinois EPA attorneys. Much of it,
6 some of it comes from the noncompliant entity.

7 I'm basically focusing in on
8 identifying through a noncompliance period -- that
9 is usually supplied by the Attorney General's
10 Office -- a noncompliance period to identify how the
11 noncompliant entity had a financial advantage by
12 delaying or avoiding capital expenditures.

13 So what I do is analyze the case
14 to try to identify those avoided or delayed
15 expenditures that provided the noncompliant entity
16 with an opportunity to invest in other areas besides
17 environmental compliance.

18 Q. In your analysis do you employ the
19 concept of the time value of money?

20 A. As I said, economic benefit analyses,
21 which again is the cornerstone of US EPA's penalty
22 policy, is based on basic financial principles that
23 you learn in college.

24 One of the main ones is the time

1 value of money, which recognizes that money has
2 value over time because it can be invested and you
3 can obtain a return on that investment.

4 Q. Mr. Styzens, have you prepared an
5 economic benefit analysis for this case?

6 A. Yes, I have.

7 Q. If you can look to the document we've
8 been discussing marked Plaintiff's Exhibit 20 dated
9 March 29th, 2006, do you recognize that?

10 A. Yes. That's the economic benefit
11 estimate that I developed for the Toyal case.

12 HEARING OFFICER HALLORAN: I'm sorry,
13 Counsel, is that Exhibit 20 did you say?

14 MR. GRANT: Yes. It's should be
15 behind the resume.

16 HEARING OFFICER HALLORAN: Thank you.

17 BY MR. GRANT:

18 Q. After performing this analysis did you
19 form an opinion estimating the total economic
20 benefit of noncompliance which accrued to Toyal
21 America, Inc., from alleged violation of the
22 regulation requiring 81 percent control of VOM
23 emissions?

24 A. Yes.

1 Q. And what was the dollar amount your
2 estimate?

3 A. For the noncompliance period, I
4 estimated that the economic benefit obtained by
5 Toyal by delaying and avoiding expenditures to be
6 \$316,449.

7 Q. Please describe in general the method
8 you used in performing this specific analysis.

9 A. As I kind of alluded to previously, I
10 was able to -- from information provided to me
11 through the Attorney General's Office and the
12 Illinois EPA attorneys and some of it through the
13 Toyal Corporation I was able to identify delayed and
14 avoided expenditures that were associated with the
15 noncompliance issue at hand.

16 Then I simply took that
17 information and analyzed it over the period of
18 noncompliance in order to identify an economic
19 benefit that was associated with delaying and
20 avoiding those expenditures.

21 Q. Does your analysis consider both
22 avoided and delayed costs?

23 A. Yes.

24 Q. Okay. Can you explain the difference

1 between avoided and delayed costs?

2 A. For delayed costs, usually the
3 noncompliant entity has to make expenditures to
4 implement a pollution control system. And by
5 examining the noncompliance period you're able to
6 evaluate that the noncompliant entity should have
7 spent money to implement the compliant system at a
8 period earlier in time to come into compliance on
9 time and in a reasonable amount of time from when
10 the noncompliance was identified. And, eventually,
11 usually towards the end of the noncompliance period
12 those expenditures are eventually spent.

13 So what you do is analyze that
14 delayed period when the money should have been spent
15 at the beginning of the noncompliance period and
16 compare that to when the money was eventually spent
17 to achieve compliance. So, basically, you're
18 recovering the investment interest earnings for that
19 delayed period on the capital expenditure.

20 Now the avoided expenditure is
21 slightly different because what you're saying there
22 is during the noncompliance period, the noncompliant
23 entity is totally avoiding spending money, usually
24 periodic money or annual dollars on maintenance,

1 utilities, things of that nature that occur
2 periodically or every year.

3 And in that instance, that money
4 that's avoided totally by the noncompliant entity,
5 of course they have an advantage over the companies
6 that spend that money. And in that case you're
7 analyzing the information and recovering not only
8 the interest earnings on that, but also the
9 principal because they've avoided that activity each
10 year and will not be able to make that up.

11 Q. Can you look at Page 1 of Exhibit 20?
12 It makes reference to an earlier opinion with a much
13 higher estimate; do you see that?

14 A. Yes.

15 Q. Can you explain why you reduced your
16 estimate from that number to the current number?

17 A. When I initially analyzed the
18 financial information -- there was a subsequent
19 meeting with Toyal after my initial analysis where
20 we met in Chicago with Toyal and during that meeting
21 I was provided additional information or
22 understanding that Toyal happened to take a
23 two-phase approach to coming into compliance with
24 the environmental regulations. They made

1 expenditures in two different periods.

2 So my initial analysis assumed
3 that the entire eight-year period was noncompliant
4 from I believe it was -- well, there was like a
5 seven or eight-year period that they were
6 noncompliant.

7 When I found out that there was a
8 two-phase approach, I had to split the period into
9 two distinct periods because there was some
10 expenditures made earlier in the noncompliance
11 period of approximately \$720,000 in Phase I and then
12 several years later there was another set of
13 expenditures for compliance of around \$440,000.

14 So it simply was recognizing the
15 fact that Toyal had a two-phase approach to
16 compliance rather than what I initially thought was
17 a one-phase approach.

18 Q. And was the capital cost information
19 provided to you by Toyal?

20 A. Yes. There was, I think, a 2003
21 letter to Gardner that -- a firm called Gardner to
22 the Attorney's General's Office, I believe to Chris
23 Grant, where Toyal provided information on project
24 costs for implementing the RCO in two phases and

1 also the Navigant information also included
2 financial information on delayed and avoided
3 expenditures.

4 Q. The Navigant report that you're
5 referring to, that's Navigant Consulting, Toyal's
6 economic benefit consultants; is that correct?

7 A. Yes.

8 Q. And in your opinion you appear to use
9 two interest rates. Let me ask you first where did
10 you come up with the interest rate that you used for
11 delayed capital expenditures?

12 A. I was able to review some financial
13 reports from Toyal and gain some additional
14 information that they used some kind of industrial
15 performance bonds or industrial bonds to come into
16 compliance with the RCO activity.

17 So I was able to use the interest
18 rate associated with those performance bonds in
19 order to provide for an estimate of the cost of
20 capital that Toyal used to come into compliance.

21 Q. In your opinion you use -- for
22 interest on unpaid penalty, you use the prime rate
23 of interest; where did you get that?

24 A. Well, again, I'm just -- once you come

1 to the end of the noncompliance period and you're
2 examining the investment opportunity that the
3 noncompliant entity had, you're trying to estimate
4 the cost of capital as a benchmark on the
5 opportunity the company had to invest in other
6 activities rather than pollution compliance.

7 Once the noncompliance period is
8 over with and at that point in time the entity has
9 achieved compliance, but should provide an economic
10 benefit penalty payment to the state if it's
11 applicable, from that point forward when the date
12 that the penalty should have been paid, I bring that
13 figure forward through time and basically just try
14 to use a benchmark time value of money and I use the
15 prime lending rate as just a time value of money
16 that -- similar to how that would affect your
17 mortgage rates and your credit card rates. It's
18 just a good benchmark of what the value of money is
19 through time.

20 Q. If you can turn to Page 2, I think
21 that you mentioned in changing your opinion
22 originally that there were two sets of expenditures.
23 Is that what you refer to on Page 2 as Phase I and
24 Phase II?

1 A. Yes.

2 Q. Let me ask you to turn to Page 3 of
3 Exhibit 20? Do you have it?

4 A. Yes.

5 Q. Okay. Can you tell me what does this
6 spreadsheet represent?

7 A. This is the economic benefit analysis
8 of avoided expenditures relating to the annual
9 operating costs for Phase I activities for the RCO,
10 you know, the compliance system that Toyal was
11 trying to implement.

12 Q. Can you describe how you calculated
13 this, how you used this spreadsheet?

14 A. Some of the information on the avoided
15 annual recurring costs were maintenance and
16 operational costs I received from Toyal from their
17 Gardner letter to the Attorney General dated in
18 2003.

19 And then I took that information
20 that I received from the Attorney General and Toyal
21 and added a little bit more, I think it's 12,500
22 more of annual operating expenditures, avoided
23 expenditures dealing with maintenance costs and
24 staffing costs that would be needed to properly

1 maintain and operate an RCO type of system that they
2 implemented in Phase I.

3 Q. Is this similar to the method that
4 you've used in prior cases in calculating economic
5 benefit, stating the Pipeline case?

6 A. Yes.

7 Q. Is it similar to the method that was
8 used by Toyal's expert, Chris McClure?

9 A. As far as how Navigant, the expert for
10 Toyal, examined the financial benefits that occurred
11 for delaying/avoiding expenditures for compliance,
12 from that aspect of analyzing the economic benefit
13 for delaying and avoiding expenditures, it's similar
14 to what the Navigant expert did.

15 I came up with a total of around a
16 little over 300,000 and Navigant's two attempts to
17 also estimate economic benefit from delayed and
18 avoided expenditures also were right around 300 to
19 350, I think somewhere in there. So we both pretty
20 much had a similar estimate of economic benefit
21 related to avoiding and delaying expenditures.

22 Q. Can you please turn to Page 5 of
23 Exhibit 20 and can you explain what this sheet
24 represents?

1 A. Yes. This focuses in on the delayed
2 expenditures in Phase I. That information on the
3 bottom of Column F there, \$781,129, was information
4 provided through the Attorney General and through
5 Toyal and their expert about the amount of money
6 that Toyal spent on Phase I of implementing the RCO
7 system and trying to obtain compliance with
8 environmental regulations.

9 Q. If you could look to cell number H14
10 on Page 5? Can you tell me what that represents?

11 A. That basically, again, is examining
12 for the Phase I implementation time period for
13 expenditures for the delayed investment in the RCO.

14 Column H gives you the before-tax
15 benefit because what we're after at the very end of
16 this is the net after-tax benefit is what we
17 recover. So that's the before-tax benefit in Column
18 H.

19 Q. And in cell number N14, does that
20 represent your estimate of the benefit -- after-tax
21 benefit accruing to Toyal from the delayed capital
22 costs in Phase I?

23 A. Yes. On the bottom of Column N, the
24 \$33,642 is, again, the interest investment

1 opportunity and benefit that Toyal achieved by
2 delaying investment in a pollution control system
3 during the period in Phase I, which was March of '95
4 through the end of 1998.

5 Q. Please turn to Page 7. Does this
6 represent your estimate of avoided costs from
7 failure to fully control emission sources until
8 February 23rd, 2003?

9 A. This is a partial estimate of that.
10 This particular spreadsheet, from talking with IEPA
11 attorney Robb Layman, there was a discussion that
12 some of the operating -- annual operating costs that
13 were avoided would be increased slightly, I think
14 about 5 percent annually, because eventually in
15 Phase II of the RCO project this system became
16 larger and more complex and would require some
17 additional operating costs. So this was a slight
18 adjustment in the estimate of avoided operating
19 costs.

20 The bottom of Column J there, the
21 \$19,157 adds to that calculation of avoided
22 operating costs.

23 Q. Can you please turn to Page 9? Can
24 you explain what this spreadsheet represents?

1 A. Yes. This is the second phase
2 analysis of the delayed investment of moneys to
3 achieve compliance at Toyal, Phase II investment.

4 Again, this information, the
5 bottom of Column F there, the \$470,887 is the
6 delayed expenditures for compliance that I --
7 information received, I believe, from the -- again,
8 the Gardner letter in 2003. And, also, the Navigant
9 analysis information had a similar figure in there
10 for second phase delayed expenditures.

11 MR. HARSCH: May I ask a clarifying
12 question? I believe when he's referring to
13 the Navigant report, he's referring to not
14 the report prepared by Mr. McClure but the
15 previous Navigant report?

16 MR. GRANT: Correct. Yeah, that's a
17 good question.

18 BY MR. GRANT:

19 Q. When you refer to Navigant report,
20 obviously, this opinion is dated March 29th, 2006.
21 You would have received that Navigant report prior
22 to that; isn't that true?

23 A. Yes. There was two Navigant reports.
24 There was the initial estimate and then a subsequent

1 estimate, so I'm using both of those documents. But
2 the initial Navigant estimate --

3 MR. HARSCH: That was Exhibit 3 to
4 your deposition. It's the report dated
5 November 22nd, 2005.

6 MR. GRANT: Yeah. It's Pat McGrath's
7 from Navigant, I believe.

8 THE WITNESS: Correct.

9 BY MR. GRANT:

10 Q. So when you refer to using in this
11 estimate the figures that you used to calculate this
12 estimate was based on Mr. McGrath's prior --

13 A. Primarily. I thought that the second
14 approach was very similar to that, as well.

15 Q. But as far as calculating these
16 numbers --

17 A. Correct.

18 Q. -- if you did it in 2006, you wouldn't
19 have the Mr. --

20 A. Correct.

21 Q. -- McClure's subsequent report?

22 A. It was the first Navigant report.

23 MR. HARSCH: Thank you.

24 HEARING OFFICER HALLORAN: Thank you.

1 BY MR. GRANT:

2 Q. And, again, on Page 9, is \$75,056 your
3 estimate of the net economic benefit of
4 noncompliance from delay in the Phase II
5 expenditures?

6 A. Yes.

7 Q. Can you turn to Page 11, please, and
8 generally describe Page 11?

9 A. That's simply my analysis of economic
10 benefit associated with the simple compound interest
11 related to -- at the end of the noncompliance period
12 there's an estimate of economic benefit for both
13 delayed and avoided expenditures. But that ended
14 somewhere in 2003.

15 So I'm simply beginning to bring
16 that penalty payment amount forward through time at
17 the bank loan prime loan rate as a measure of time
18 value of money, begin to move the -- what should be
19 the potential payment of the penalty and economic
20 benefit through time. And it basically added
21 \$25,674 of interest through 2005, which was the end
22 point of when I did this initial analysis.

23 Q. And is your estimate of economic
24 benefit from unpaid penalty \$25,674?

1 A. Yes.

2 Q. Now if you had carried that forward
3 through today, interest on unpaid penalty to the
4 date of this hearing, that number would be higher,
5 wouldn't it?

6 A. Yeah. It'd probably be about 30,000
7 or so higher.

8 Q. But you haven't performed that
9 analysis?

10 A. No, I have not.

11 Q. If you can turn back to Page 2 of
12 Exhibit 20? If you look down to your estimate
13 number of \$316,440, is this just a result of adding
14 up all of those individual penalty segments that
15 you've described so far?

16 A. Yes.

17 Q. And is this your estimate of the
18 economic benefit of noncompliance accruing to Toyal
19 to a reasonable degree of economic certainty?

20 A. Yes.

21 Q. Let's go to the second Navigant
22 report, Mr. McClure's report. Have you seen that?

23 A. Yes.

24 Q. How does that differ from your

1 opinion?

2 A. Well, from my review of the Navigant
3 report, both the first one and the second one,
4 again, when I reviewed the report they appeared to
5 be using similar approaches to analyze the economic
6 benefit associated with delayed and avoided
7 expenditures for compliance. I came up with a
8 similar estimate of economic benefit, you know,
9 somewhere around 300,000 or so.

10 So from the standpoint of
11 identifying the financial advantage that Toyal
12 received for delaying avoided capital expenditures
13 necessary for environmental compliance, the
14 approaches between Navigant and myself are similar.

15 Q. What is your opinion of their use of
16 the risk-free borrowing rate?

17 A. This is a common topic in discussion
18 of US EPA's economic benefit process. The
19 literature I've read, you know, over the last
20 ten years in some of the litigation cases, the
21 information I received on the best interest rate to
22 use when possible would be a company-specific rate,
23 when actually looking at a case-by-case basis what
24 was the cost of capital or the cost of raising funds

1 for environmental compliance, what was the corporate
2 rate for raising those funds.

3 That's why I used the -- Toyal's
4 bond rates that they provided to me in their
5 financial statements because the most accurate
6 estimate of economic benefit is going to be using
7 the actual cost of capital that the corporation
8 used.

9 The risk-free rate is not an
10 appropriate measurement of time value of money
11 because really the only entity that operates in a
12 risk-free type of investment arena is the United
13 States Government. Companies like Toyal and other
14 corporations, there's a concept of business risk.

15 Business is risky and when
16 corporations go out to raise funds, whether it's by
17 stocks or issuing bonds or borrowing from banks,
18 there's a risk-related approach to identifying what
19 rate the corporation is going to be able to achieve
20 in raising capital. And companies like Toyal are
21 not able to obtain the risk-free rate in raising
22 capital. And I've seen this discussed in the
23 literature that the risk-free rate is not an
24 appropriate rate to use.

1 Q. You included a labor and maintenance
2 factor in your avoided costs; isn't that correct?

3 A. Yes.

4 Q. And Mr. McClure's report does not
5 include that?

6 A. Correct.

7 Q. Why do you think that including a
8 labor and maintenance cost is appropriate?

9 A. Well, that whole concept on, you know,
10 what costs you include in environmental -- I'm
11 sorry, in economic benefit analysis deals with
12 opportunity costs.

13 And in this particular case, since
14 Toyal did not have a fully operating good
15 environmental control system in place for up to
16 eight years, in order to -- once the RCO began to
17 become operational, Toyal would have to pull staff
18 from other areas to operate and maintain that
19 system.

20 There's information contained from
21 Toyal that the RCO required significant amount of
22 operating and maintenance costs. And by shifting
23 staff from one area of the company to another,
24 there's an opportunity cost associated with that

1 because a competitor that was trying to be compliant
2 would have to hire staff to run the pollution
3 control system. So there's a value to the staff
4 that they had -- that Toyal had shifted from one
5 area the agency -- I'm sorry, one area of the
6 organization to the other.

7 In other words, by pulling
8 maintenance people from other areas, that does not
9 allow the staff to maintain the equipment that they
10 may have been working on outside of the pollution
11 control system. So there's a value to that. It's
12 appropriate to analyze that opportunity cost in the
13 economic benefit analysis.

14 Q. Is that a basic economic assumption?

15 A. Yes. Incremental cost analysis and
16 economic -- I mean, opportunity costs are some of
17 the basic financial principles that are involved in
18 economic benefit analysis.

19 Q. And in Mr. McClure's report, that's
20 the second Navigant report, did you note the
21 application of a foregone benefit to reduce the
22 economic benefit of noncompliance?

23 A. Yes.

24 Q. What's your opinion of that?

1 A. Can you rephrase the question?

2 Q. Sure. Based on your experience in
3 evaluating economic benefit and your knowledge of
4 the facts in this particular case, do you believe
5 that Toyal's economic benefit can be reduced by a
6 theoretical foregone benefit?

7 A. No.

8 Q. And why do you believe that to be
9 valid?

10 A. Well, I've been doing economic benefit
11 analysis now for ten years, worked on many cases.
12 When you do an economic benefit analysis, you have
13 to do it on a case-by-case basis. Each case has
14 different areas to analyze, different variables.

15 I have never in ten years seen a
16 case where an appropriate rebate was -- that a
17 rebate was appropriate in the economic benefit
18 analysis due to this negative economic benefit type
19 of approach that some of the companies that are
20 noncompliant use.

21 There is always an economic
22 advantage and a financial advantage to delaying and
23 avoiding capital expenditures in pollution control
24 equipment. I've never seen a situation where there

1 was not a financial advantage to delaying and
2 avoiding capital expenditures on pollution control
3 equipment, which is what I'm focusing in on.

4 Q. Are you familiar with the facts of
5 this case?

6 A. Yes.

7 Q. And are you familiar with the alleged
8 period of noncompliance?

9 A. Yes.

10 Q. Based on your knowledge of the case,
11 do you believe that Toyal made a good-faith effort
12 to come into compliance prior to or on March --

13 MR. HARSCH: I'll object. There's
14 been no foundation for this question. The
15 witness is here principally and only to
16 testify with respect to the economic benefit
17 in terms of a good faith -- what constitutes
18 a good-faith effort.

19 This witness has no background, no
20 training with respect to engineering issues
21 or compliance issues. All the foundation has
22 been simply with respect to the economic
23 issue. He simply is not qualified to give
24 that opinion.

1 MR. GRANT: I'll tell you what, I'll
2 withdraw the question at this time.

3 HEARING OFFICER HALLORAN: Okay.

4 MR. GRANT: And if it becomes
5 relevant, I'll ask it again.

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Grant.

8 MR. GRANT: That's all I have.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Grant. Mr. Harsch?

11 MR. GRANT: Excuse me, if I can just
12 real quickly, I wanted to move his report and
13 resume into evidence.

14 MR. HARSCH: I have no objection.

15 MR. GRANT: That's Exhibit 20.

16 HEARING OFFICER HALLORAN: Okay.
17 Complainant's Exhibit No. 20 is accepted into
18 evidence, no objection. Mr. Harsch, you were
19 going to say something?

20 MR. HARSCH: Can we have a short break
21 while I confer with my expert?

22 HEARING OFFICER HALLORAN: Five, ten?

23 MR. HARSCH: Five, ten.

24 HEARING OFFICER HALLORAN: Okay.

1 We'll be back here in ten minutes.

2 (Whereupon, after a short
3 break was had, the
4 following proceedings
5 were held accordingly.)

6 HEARING OFFICER HALLORAN: We're back
7 on the record. Mr. Harsch, cross exam
8 Mr. Styzens.

9 CROSS EXAMINATION

10 By Mr. Harsch

11 Q. Good morning, Mr. Styzens. You really
12 only get involved in the cases that aren't settled
13 by the Agency; isn't that correct?

14 A. That is not totally correct.

15 Q. Given the number of cases you
16 testified to, I believe that you mentioned that
17 you've been involved in four cases on trial?

18 A. Four cases that have gone to trial,
19 but I've been involved in others.

20 Q. Okay. You do not specifically use the
21 BEN model for calculating economic benefit; is that
22 correct?

23 A. Well, that's an awkward statement
24 because, you know, getting back to my previous

1 answer, I mean, I'm involved -- there have been
2 instances at the EPA where, you know, I've been
3 involved in, you know, the tail end of some
4 settlement processes and the EPA attorneys used the
5 BEN model to some extent. So, you know, I have some
6 exposure to it there.

7 But for the analysis that I do
8 for -- that move past the settlement stage I do not
9 use the BEN model.

10 Q. And is my understanding correct that
11 the Illinois Environmental Protection Agency lawyers
12 in settling cases use the BEN model?

13 A. The US EPA designed the BEN model to
14 really be -- and the associated BEN manual that
15 deals with the BEN model is primarily used as a tool
16 for the Attorney General and Illinois EPA attorneys
17 to help settle environmental compliance cases
18 regarding economic benefit and penalties. So it's
19 primarily a settlement tool is what it was designed
20 for.

21 Q. So the answer is the Illinois
22 Environmental Protection Agency lawyers and the
23 Attorney General's lawyers use the BEN model to
24 calculate economic benefits in the cases that

1 settle?

2 A. For settlement, yes.

3 Q. And do you have any idea of the ratio
4 between the number of cases that settle versus the
5 number of cases that litigate?

6 MR. GRANT: I'm going to object to the
7 extent that he's asking -- I understand what
8 you're saying. I'm wondering if you could
9 rephrase it? I'm afraid that we're getting
10 into -- toward settlement discussions.
11 That's my objection.

12 MR. HARSCH: In a deposition he said
13 it was 20 percent.

14 MR. GRANT: Okay. I apologize. I
15 withdraw my objection.

16 BY MR. HARSCH:

17 Q. Just to quicken this up, I believe you
18 state in your deposition it was approximately
19 1 percent of the cases go to litigation?

20 A. Well, that was a rough estimate. But,
21 yeah, my point being that, you know, most of the
22 cases associated with noncompliance in the Agency
23 appear to be handled and settled by the Attorney
24 General and division of legal counsel attorneys and

1 that I'm brought in on a small percentage of cases
2 that move past the settlement with the one little
3 nuance of once in a while near the end of the
4 settlement process they've asked for my advice here
5 and there.

6 Q. But, I mean, whether it's 99 versus 1,
7 it's a large percentage of the cases?

8 A. Correct.

9 Q. Thank you. You mentioned a couple of
10 times literature that you've reviewed and federal
11 guidance. Is the federal guidance the document
12 entitled Clarification of the Use of Appendix I of
13 the Clean Air Act Stationary Source Civil Penalty
14 Policy prepared by US EPA dated July 23, 1995?

15 A. That's one of the documents. I think
16 there's an updated version of that. It's primarily
17 the same. There might be one more updated version
18 of that one. But that's one of the documents that I
19 use as a foundation.

20 Q. I think you provided this document to
21 me at your deposition. I can show you.

22 (Brief pause.)

23 BY MR. HARSCH:

24 Q. These pages are not numbered. This is

1 the document that you gave me a copy of at your
2 deposition that you said you relied on?

3 A. Yes.

4 Q. If I show you what -- under the
5 section preliminary deterrence amount, A, economic
6 benefit component, 1, benefit from delayed costs,
7 would you read this paragraph that I've marked?

8 (Witness peruses
9 document.)

10 THE WITNESS: Okay.

11 BY MR. HARSCH:

12 Q. Doesn't that document then direct that
13 the BEN manual is to be utilized in calculating
14 these particular costs?

15 A. My understanding is as it pertains to
16 developing a settlement in process.

17 Q. And then turning the, benefit from
18 avoided costs, again, if you would read what I've
19 marked?

20 (Witness peruses
21 document.)

22 THE WITNESS: Okay.

23 BY MR. HARSCH:

24 Q. Similarly, the document directs that

1 for avoided costs you also should use the
2 methodology in the BEN user manual in Appendix A; is
3 that correct?

4 A. Well, for settlement purposes. But it
5 does allude -- begins to allude that once you get
6 out of the settlement process, you need to hire a
7 financial expert to help explain and estimate
8 economic benefit.

9 MR. GRANT: Mr. Hearing Officer,
10 before you ask another question, I wonder if
11 I can -- those were provided to us, but I
12 think I left them in the car. Are you going
13 to use them, those two binders?

14 MR. HARSCH: Yes.

15 MR. GRANT: Okay. Can I just have
16 two minutes?

17 HEARING OFFICER HALLORAN: Two
18 minutes. Off the record.

19 (Brief pause.)

20 HEARING OFFICER HALLORAN: Mr. Harsch.

21 MR. HARSCH: At this point in time I'd
22 like to pose an additional exhibit for
23 addition at the end of our exhibit list
24 booklet that we've given you, Mr. Hearing

1 Officer.

2 And rather than doing this entire
3 document that's an inch thick, Mr. Grant and
4 I, I think, have agreed that we'll do the
5 cover letter -- or the cover of it,
6 clarification of the use of Appendix 1 of the
7 Clean Air Act stationary source civil penalty
8 policy dated July 23rd, 1995, and the two
9 pages that I had the witness examine.

10 HEARING OFFICER HALLORAN: Sure, that
11 would be fine. No objection, Mr. Grant?

12 MR. GRANT: No objection.

13 HEARING OFFICER HALLORAN: So that
14 would be Respondent's Exhibit 27.

15 MR. HARSCH: And we'll provide you
16 with copies of it at a later date.

17 HEARING OFFICER HALLORAN: Don't let
18 me forget.

19 BY MR. HARSCH:

20 Q. In response to several of your
21 questions you referenced competitors and leveling
22 the playing field and cost advantage. Do you know
23 who the competitors of Toyal are?

24 A. Well, it's not just competitors, it's

1 leveling the financial playing field within the
2 industry with companies that have to comply with
3 similar type of regulations that are associated with
4 using certain types of chemicals. And, of course,
5 it's also important to level the financial playing
6 field down to the immediate competitors.

7 Q. Do you know who Toyal's competitors
8 are?

9 A. No.

10 Q. Do you know if they have to comply
11 with the same rules?

12 A. The question is kind of --

13 Q. Do you know if they have to comply
14 with the same VOM rules?

15 A. It's still a vague question. Rephrase
16 the --

17 Q. Do you know if the competitors have to
18 comply with a similar VOM rule requiring 81 percent
19 of all capture and control?

20 MR. GRANT: I think I'm going to
21 object at this point. I think Mr. Styzens
22 testified that he did not know who their
23 competitors were, so there's no way he can
24 answer this question.

1 HEARING OFFICER HALLORAN: I'm sorry,
2 Mr. Grant, you think that Mr. Styzens
3 testified to --

4 MR. GRANT: Well, he was asked whether
5 he knew who their competitors were and he
6 said no. And the follow-up question
7 essentially is does he know whether they have
8 to comply with the same environmental
9 regulations. There's no way he can answer
10 the question.

11 HEARING OFFICER HALLORAN: It sounds
12 like Mr. Styzens can't answer the question.
13 I think he gave you his answer, Mr. Harsch.

14 MR. HARSCH: Fine.

15 BY MR. HARSCH:

16 Q. You testified that you had never seen,
17 in the cases that you've been involved in, the use
18 of negative avoided costs as that term is used --
19 negative economic benefit as that term was used in
20 the Navigant report; is that correct?

21 A. State the question one more time,
22 please.

23 Q. Based on the cases you've been
24 involved in, you have not seen the concept of a

1 negative economic benefit?

2 A. No. That's not correct.

3 Q. You are familiar with the BEN user's
4 manual and have reviewed it?

5 A. I've reviewed it. I'm not an expert
6 on the BEN model and I'm not expert as far as the
7 BEN manual, but I'm an expert on economic benefit
8 analysis.

9 Q. And as part of Exhibit 22, which is
10 attached to, in binder one, the Navigant
11 August 20th, 2008 report, BEN manual, isn't it? You
12 reviewed that report? You've testified this
13 morning, the Navigant's --

14 A. Briefly, I reviewed it, yes.

15 MR. GRANT: Are you using the report,
16 too?

17 MR. HARSCH: No, just the BEN manual.

18 BY MR. HARSCH:

19 Q. I draw your attention to Page 3-11.
20 Would you read the paragraph that I've marked?

21 (Witness peruses
22 document.)

23 THE WITNESS: Okay.

24 HEARING OFFICER HALLORAN: Mr. Harsch,

1 is this Respondent's Exhibit 22?

2 MR. HARSCH: It's the --

3 MS. VILLASENOR-RODRIGUEZ: We have
4 binders, so let me give you those. That's
5 the other part of Exhibit 22. So Exhibit 22
6 is a report and these are all the exhibits
7 that are referenced in the report. So I will
8 give you that.

9 MR. GRANT: Exhibit 22 is Chris'
10 report?

11 MR. HARSCH: Do you want to go off the
12 record and we can explain it?

13 MR. GRANT: Yeah.

14 HEARING OFFICER HALLORAN: We're off
15 the record.

16 (Whereupon, a discussion
17 was had off the record.)

18 HEARING OFFICER HALLORAN: Back on the
19 record.

20 BY MR. HARSCH:

21 Q. Have you read that paragraph?

22 A. Yes.

23 Q. This document obviously will speak for
24 itself because it will be moved into evidence in the

1 future. But doesn't the BEN manual at that section
2 reference the credit for O&M cost savings, heat
3 recovery, product or byproduct recovery and so
4 forth?

5 A. Only from the standpoint that it
6 requires that information to not only be directly
7 related to the pollution control system but it also
8 requires those costs to be documented.

9 So there's a reference to that
10 information, but the critical aspects of that
11 paragraph are documentation and a direct
12 relationship to that activities.

13 Q. But the concept is covered in the BEN
14 manual?

15 A. What concept is that?

16 Q. The negative economic costs.

17 A. The BEN manual does mention the
18 concept of negative economic benefit.

19 Q. And if I direct your attention to Page
20 4-3 (sic), example seven entitled compliance is
21 cheaper than noncompliance?

22 MR. GRANT: Can I have one second,
23 please?

24 MR. HARSCH: Sure.

1 MR. GRANT: That was 4 dash --

2 MR. HARSCH: Six.

3 MR. GRANT: Four dash six?

4 MR. HARSCH: Same thing we pointed out
5 at the dep.

6 MR. GRANT: Okay.

7 BY MR. HARSCH:

8 Q. And, again, isn't this a specific
9 example of the situation where the manual references
10 the situation where as a result of compliance the
11 violators can recover material or reduce operating
12 maintenance costs and, in fact, the cost may be a
13 negative number?

14 A. Can I have the document in front of me
15 when I answer?

16 HEARING OFFICER HALLORAN: Sure.

17 BY THE WITNESS:

18 A. Can you state the question again?

19 BY MR. HARSCH:

20 Q. Isn't that in the BEN manual an
21 example of the concept similar to that that Navigant
22 used for calculating a negative economic benefit?

23 A. No, I wouldn't say it's similar to
24 what Navigant used. It's just portraying here that

1 if -- that there's the potential that if a
2 noncompliant corporation makes good faith efforts,
3 prudent business practices, attempts compliance
4 within a quick short period of time, six to twelve
5 months let's say, that there are certain
6 case-specific related activities that you could look
7 at related to potentially items that would make some
8 minor adjustments to economic benefit.

9 Q. Without belaboring the point in great
10 detail, can you point me anywhere in that section
11 that talks about good-faith efforts, short
12 compliance periods, minor adjustments to economic
13 benefit or any of the other qualifications that you
14 put on that paragraph?

15 A. I mean, your whole line of
16 questioning -- I'm an economic benefit analyst. I'm
17 not a BEN manual analyst.

18 So when I look at the BEN manual,
19 I look at it from the perspective of an expert in
20 economic benefit analysis. It's clear here that the
21 US EPA, when they wrote this BEN manual, it was
22 designed for a BED model and it was designed for
23 settlement negotiations.

24 I mean, right here where it says

1 be wary of such negative economic benefit results,
2 exclamation mark. Why is that in there? Because
3 I'm an expert and I don't rely just on this manual
4 because it's really a small focus of this manual.

5 When the US EPA says be wary of
6 this negative economic benefit result, it's because
7 I have to look at the entire -- over and over again,
8 whether it's in the manual or the Federal Register
9 or the US EPA penalty guidance, they over and over
10 talk about the company has to show that they're
11 being reasonable, the company has to show that they
12 used prudent financial management activities, they
13 have to show that they're being responsible, they
14 have to show that they are showing good faith.

15 And if goes over and over again in
16 the guidance for economic benefit, you have to do it
17 on a case-by-case basis. That is why they put in
18 here be wary of such negative economic benefit
19 results, exclamation mark. Because the training
20 that I've received over ten years, I understand what
21 that means, you have to look at it as a case-by-case
22 basis, you have to level that financial playing
23 field, you have to look at quite a few activities
24 associated with the noncompliance issue, the delayed

1 and avoided expenditures before you could even begin
2 to look at if there's any potential for a credit
3 situation or a negative BEN. So that's why I say
4 that. That one sentence is what leads me to that.

5 Q. It's not specifically set forth in the
6 manual, it's your interpretation based on your
7 experience?

8 A. No.

9 Q. I think that made the point. Can you
10 point to any specific -- you've referenced where
11 this guidance is set forth in the US EPA penalty
12 policy and the other documents you just cited. Can
13 you point to those documents anywhere where that
14 specific guidance is given by US EPA?

15 A. Yes.

16 Q. Which one would you like to look at?

17 A. Leveling the Financial Playing Field
18 By the Office of Enforcement and Compliance for the
19 US EPA. The June 18th, 1999 Federal Register by the
20 US EPA and the federal government.

21 There are several cases that have
22 been litigated, like Smithfield Foods is my best
23 example of that, Dean Dairy, there's --

24 Q. Okay.

1 A. -- several articles.

2 HEARING OFFICER HALLORAN:

3 Mr. Styzens.

4 THE WITNESS: Okay.

5 BY MR. HARSCH:

6 Q. You've recited this is the June 18th,
7 '99, Federal Register that you provided me as
8 Exhibit 4 to your deposition?

9 MR. GRANT: Can I ask where I can find
10 that?

11 MS. VILLASENOR-RODRIGUEZ: It's in
12 binder one and it's under the second tab
13 under BEN user manual, it's a Blank tab under
14 that same section about midway through.

15 MR. GRANT: Okay.

16 BY MR. HARSCH:

17 Q. This is the document I believe you
18 provided me at your deposition.

19 A. Yes.

20 Q. Can you cite where in that -- or
21 generally point to where in that document you're
22 referring to?

23 MR. GRANT: Can I ask Mr. Harsch to
24 maybe give the witness a little bit of space?

1 Thanks.

2 (Brief pause.)

3 BY THE WITNESS:

4 A. There's a few areas in here that deal
5 with the issue at hand, which is leveling the
6 financial playing field. Right on the first page of
7 this document, which is the US EPA's overview of
8 what the purpose of economic benefit analysis is,
9 again, the second paragraph starts out, a
10 cornerstone of EPA's civil penalty program is
11 recapturing the economic benefit that the violator
12 may have gained from illegal activity. Recapture
13 helps level the economic playing field by preventing
14 violators from obtaining an unfair financial
15 advantage over their competitors who made the
16 necessary expenditures for environmental compliance.
17 Penalties also serve as incentives to protect the
18 environment and public health. Finally, appropriate
19 penalties help deter future violations for both the
20 penalized entity and similarly situated regulatees.

21 So, again, that's just one example
22 of where it's talking about you have to look at the
23 competitors, you have look at the financial playing
24 field and you must level the financial playing

1 field.

2 It also references the concept of
3 financial indifference. It talks about creating an
4 atmosphere of financial indifference so that the
5 corporation will spend the money and take the time
6 to comply with environmental regulations versus
7 spending the money on other investments. So, again,
8 the whole context of economic benefit is leveling
9 the financial playing field within the industry with
10 the competitors.

11 BY MR. HARSCH:

12 Q. I understand that that's in there.
13 But the statements regarding good faith, short time
14 for compliance and the other factors that you read
15 into the example that I had you read from the BEN
16 user manual, I think that was example seven, is
17 there anything specific in that document since you
18 said you relied on that to form your opinion that
19 talks about those factors?

20 A. I would say the primary reference is
21 related to the opening background about leveling the
22 financial playing field.

23 Q. And I don't want to --

24 A. And that's -- okay. Go ahead.

1 Q. I don't want to belabor the point, but
2 the other document, again, was an exhibit that you
3 gave me. One of your documents at your deposition
4 is the one entitled Leveling the Playing Field,
5 Eliminating Economic Benefit of Violating Laws, US
6 EPA, May 2000.

7 MR. HARSCH: And it's found in the
8 binder where?

9 MS. VILLASENOR-RODRIGUEZ: This is not
10 in the binder. It was just from his
11 deposition.

12 BY MR. HARSCH:

13 Q. This is another one of the
14 documents --

15 MR. GRANT: Could I see it, please?

16 MR. HARSCH: Yeah.

17 (Brief pause.)

18 MR. HARSCH: And this will be the last
19 one that I'll do, Mr. Hearing Officer.

20 BY MR. HARSCH:

21 Q. You cited this document, as well, as
22 supporting your opinion as to where those qualifying
23 factors that you wanted to read in. Can you point
24 in that four-page document where there's any

1 information that would support that?

2 (Witness peruses
3 document.)

4 BY THE WITNESS:

5 A. Again, on that document titled by the
6 US EPA, Leveling the Playing Field, Eliminating the
7 Economic Benefit of Violating Environmental Laws,
8 the opening paragraph talks about that the courts
9 are keenly aware of its critical role in deterring
10 future violations, referring to economic benefit.
11 Penalties served to level the playing field --
12 again, economic benefit related penalties serve to
13 level the playing field and ensure that
14 non-compliers do not enjoy or gain a competitive
15 advantage over competitors who have invested time
16 and money to a chief compliance.

17 The article also goes on to talk
18 about the Dean Dairy and Smithfield Foods cases
19 which, again, are part of the support that I have
20 used over the last ten years to identify the
21 concepts of prudent business management, good
22 business practices, good-faith effort to comply.

23 So, I mean, it's a good article.
24 It gives a good overview of what you're trying to

1 achieve and gives a good overview of the some of the
2 litigation that has occurred over the years that
3 support my conclusions that what we're looking at
4 here are companies that quickly come into
5 compliance, efficiently and effectively spend their
6 precious capital on successful projects using good
7 analysis and good consultants.

8 BY MR. HARSCH:

9 Q. But the factors aren't specifically
10 set forth in this document, it's your opinion based
11 upon these general concepts?

12 A. No.

13 Q. The document will speak for itself.

14 MR. HARSCH: Mr. Hearing Officer, at
15 this point I'd like to add this as an
16 additional exhibit. I can provide you
17 copies.

18 MR. GRANT: I don't have any -- I
19 don't have a problem with that. At some
20 point I was going to ask you I don't think --
21 I mean, to the extent that you use the
22 document and you authenticate it, I don't
23 have a problem. I am not willing to
24 stipulate to the admissibility of all of

1 these unless they're -- the ones you've used
2 so far I don't have a problem with.

3 MR. HARSCH: This will be Exhibit 28
4 and I would move the acceptance of Exhibits
5 27 and 28 at this time.

6 MR. GRANT: Which one was 27?

7 HEARING OFFICER HALLORAN: That was
8 already admitted, 27.

9 MR. GRANT: Okay.

10 HEARING OFFICER HALLORAN:
11 Twenty-eight, Mr. Grant?

12 MR. GRANT: No objection.

13 HEARING OFFICER HALLORAN:
14 Respondent's Exhibit 28, no objection, so
15 admitted.

16 Are you finished with your cross,
17 Mr. Harsch?

18 MR. HARSCH: No.

19 BY MR. HARSCH:

20 Q. If a company, in general, makes an
21 investment in pollution control equipment and that
22 investment turns out not to be required or was a
23 wrong investment, does that company lose the ability
24 to have the cost of that equipment available for

1 other purposes?

2 A. Can you rephrase that?

3 Q. If a company spends a million dollars,
4 for example, for pollution control expenditures,
5 they lose the ability then to have that million
6 dollars for alternate investment; is that correct?

7 A. Only if they're using defective or
8 non-prudent approaches to investing a million
9 dollars in equipment.

10 A prudent financial company with
11 good management, when they're -- you know, a million
12 dollars in capital is a precious thing. It's not
13 something that you want to spend on equipment that
14 you're not going to use.

15 So what prudent companies do, they
16 hire consultants that either have performance bonds
17 or warranties or they back up their work or they do
18 good work so that companies spend a million dollars
19 on equipment that works. And if it doesn't work,
20 they get their money back by taking the time to
21 protect themselves from that risk.

22 Business is risky. In business,
23 if you make good business decisions and you protect
24 yourself from a loss of a million dollars in capital

1 by hiring good consultants that have good warranties
2 and good reputations and you buy performance bonds
3 or you require that the consultant to have a
4 performance bond, then if you make good business
5 decisions like that, you make money, you don't lose
6 capital.

7 If you make poor business
8 decisions, you don't hire reputable or high-quality
9 consultants and you don't get warranties and you
10 don't get performance bonding, you make poor
11 business decisions, it's going to cost you money.
12 So that's what you have here.

13 Q. Once you spent the million dollars,
14 you've spent the million dollars, haven't you?

15 A. I don't understand the question.

16 Q. Once a company spends a million
17 dollars, it no longer has that million dollars for
18 alternative investments; is that correct?

19 A. Once a company invests a million
20 dollars in their corporation, they no longer can
21 invest it a second time. But they invested it the
22 first time.

23 Q. Do you have any experience with
24 respect to performance bonds, guaranties and the

1 ability to recover on guaranties and performance
2 bonds and environmental pollution control
3 expenditures?

4 A. Yes, from the standpoint of I've been
5 an internal auditor for the State of Illinois for
6 25 years and as part of being a financial expert and
7 an internal auditor, the State of Illinois, their
8 purchasing and procurement policies and procedures
9 require performance bonding. They don't want to
10 waste the taxpayers precious tax dollars as in
11 corporations don't want to waste their corporate
12 investment dollars.

13 So, yes, it's very routine and
14 appropriate for the State of Illinois and
15 corporations to have warranties, performance bonds
16 and to protect their investments rather than, you
17 know, making poor business decisions that put those
18 investments at risk. So, yes, I'm familiar with
19 those concepts. They're routine and they're basic
20 internal controls that organizations should use to
21 protect their capital investments.

22 Q. Mr. Styzens, did you review the backup
23 information that is contained in the Navigant
24 August 2008 report regarding the issue of solvent

1 recovery?

2 A. No, I don't believe I reviewed that
3 particular section.

4 MR. GRANT: For clarification, are you
5 talking about these two binders?

6 MS. VILLASENOR-RODRIGUEZ: Yes.

7 MR. GRANT: These were provided at the
8 time that we took his deposition, so you're
9 asking whether he reviewed this afterward?
10 The deposition was November 6th. They
11 weren't provided beforehand. Is your
12 question --

13 MS. VILLASENOR-RODRIGUEZ: These were
14 August 2008.

15 MR. GRANT: They weren't provided to
16 us until November 6th.

17 BY MR. HARSCH:

18 Q. Did you review the similar information
19 that was available at the time of Mr. McGrath's
20 November 2005 first Navigant report?

21 A. I mean, in both documents I briefly
22 reviewed it just from the standpoint that I was
23 aware that the Navigant analyst was attempting to --
24 especially in this last Navigant document, was

1 attempting to identify over a million dollars in
2 costs that they wanted to have a rebate against the
3 economic benefit calculation that Navigant also came
4 up with around \$300,000 for delayed and avoided
5 expenditures.

6 I was aware in the Navigant
7 documents, both of those, that there was an attempt
8 to get a rebate for some kind of solvent-related
9 issues in those documents and to portray the case as
10 some kind of a rebate-focused negative BEN type of
11 approach. So I was aware that the Navigant
12 consultants were using that concept.

13 Q. You didn't review the backup
14 information that was contained in that report for a
15 determination of adequacy?

16 MR. GRANT: Let me just interject.

17 I'm not clear on what backup information was
18 provided. Do you have it with you? I don't
19 remember any backup information being
20 provided myself. Was it in the spreadsheet?

21 (Brief pause.)

22 BY MR. HARSCH:

23 Q. You didn't review the estimated
24 gallons of what would have been recovered and how

1 they applied the cost to that, et cetera?

2 A. No. I just basically looked at that
3 they were trying to rebate a million dollars off the
4 economic benefit for delayed and avoided
5 expenditures and try to come up with a negative
6 benefit. That's all I really looked at.

7 Q. I cannot recall if you were present at
8 the meeting we had on May 2, 2007, with Illinois
9 EPA.

10 A. I was at one meeting, but I can't
11 remember what date that was in Chicago, the
12 settlement.

13 MR. GRANT: It was a November meeting.
14 I think he's talking 2007, I think, right?

15 MR. HARSCH: Yeah.

16 BY THE WITNESS:

17 A. I can't recall.

18 BY MR. HARSCH:

19 Q. If I show you what we've marked as
20 Exhibit 7, it was a -- it will be testified to, a
21 handout that was given at that meeting. Do you
22 recall that, Mr. Styzens?

23 A. I recall the -- you know, now that you
24 mention it, I recall the meeting, but I didn't

1 really review the documents that were associated
2 with that meeting.

3 Q. And did you have -- then you didn't
4 have anything to do with the follow-up questions
5 that Illinois EPA asked Toyal to respond to and what
6 will be Exhibit 8, which was the follow-up
7 information that Toyal provided?

8 A. Correct, I don't believe I had any
9 involvement in that.

10 MR. HARSCH: No further questions.

11 HEARING OFFICER HALLORAN: Thank you,
12 Mr. Harsch. Mr. Grant, redirect?

13 MR. GRANT: Can you give me
14 one minute?

15 HEARING OFFICER HALLORAN: Sure. We
16 can go off the record.

17 (Brief pause.)

18 HEARING OFFICER HALLORAN: We're back
19 on the record.

20 DIRECT EXAMINATION

21 By Mr. Grant

22 Q. Mr. Styzens, I think you testified
23 that you didn't solely use the BEN model in coming
24 up with your estimate of economic benefit, correct?

1 A. I did not use the BEN model.

2 Q. And the reference made to the foregone
3 benefit analysis, what aspect of financial theory
4 have you relied on in your opinion that leads you to
5 believe that Toyal should not get credit for its
6 foregone benefit theory?

7 A. Well, when I looked at both of their
8 attempts at economic benefit analysis and
9 estimation, when I saw their attempt to --
10 especially on this last one, to give a
11 million-dollar rebate and then to portray the
12 economic benefit amount as a negative economic
13 benefit, then as required by economic benefit
14 analysis you have to analyze and estimate economic
15 benefits on a case-by-case basis, you have to look
16 at what's going on with that case as we did in Pan
17 Handle spell.

18 In this particular case, from
19 looking at the information I knew from -- I had some
20 depositions by a couple of Toyal's staff, I think it
21 was Malmgren was one deposition I reviewed, I
22 reviewed a deposition by Van Hoose and I also began
23 to look at was Toyal attempting to come into
24 compliance with environmental regulations using good

1 business practices, making prudent business
2 decisions.

3 I also looked -- basically, what I
4 concluded was it looked to me that Toyal's attempt
5 to come into compliance, to quickly expend money on
6 compliance-related activities, that they seemed to
7 be somewhat erratic in approaching how they're going
8 to come into compliance.

9 They took two or three years, I
10 believe in 1998, to finally come in with a permit
11 application. They had to do a two-phase approach to
12 an RCO, they looked at an RTO, they looked at a CRO.
13 They seemed to have kind of a stop-and-go and
14 erratic approach to making management decisions on
15 how to invest their capital in environmental
16 compliance it took seven or eight years.

17 So at that point I concluded, you
18 know, when you look at business risk, I made the
19 conclusion that it appeared to me that in the area
20 of quickly achieving environmental compliance by
21 making prompt and reasonable capital expenditures,
22 that they were making non-prudent business
23 decisions.

24 And it gets back to my point, in

1 business if you make good decisions, you make money,
2 you save money. In business if you make poor
3 decisions, you increase your risk and you wind up
4 losing money.

5 I also felt that any of -- because
6 of their erratic approach not only to environmental
7 compliance, but I started to look at their other
8 business practices that I was aware of from those
9 depositions and they were trying to manage -- they
10 were trying to comply with environmental regulations
11 over here, but over here I began to see information
12 that they were trying to manage their solvents,
13 manage their chemicals, they were trying to maintain
14 their equipment. There were all kinds of business
15 activities that they were performing.

16 And it appeared to me that if they
17 would have made good business decisions in 1995 and
18 1998 to quickly come into compliance with
19 environmental regulations, any additional costs
20 associated not only with environmental compliance
21 over here on how you manage your
22 environmental-related issues, but some of your other
23 business activities like how you manage your
24 solvents or your chemicals, that they could have

1 avoided certain additional costs that they may have
2 incurred on the environmental compliance side or on
3 their other business activities.

4 And the last thing that I looked
5 at was it looked to me that the decisions made
6 surrounding environmental compliance with the RCO
7 were separate and distinct from how they managed
8 their staffing, how they managed their maintenance
9 of their equipment, how they managed their
10 chemicals, that those are two different decisions.
11 And what I focused on and what I'm supposed to focus
12 on in economic benefit analysis is the delayed and
13 avoided expenditures for environmental compliance
14 and that's what I focused in on.

15 I saw no information in this case
16 that would lead me down the track that there should
17 be a rebate and that there's even anywhere close to
18 a negative BEN because my conclusion was that the
19 economic benefit was \$316,440.

20 Q. Let me ask you to -- Mr. Harsch
21 referred to this Federal Register dated August 26th,
22 2005. This mentions the deterrent value of
23 recovering economic benefit, doesn't it?

24 A. Yes.

1 Q. In your opinion, what would be the
2 effect on the deterrent value of economic benefit if
3 companies were, after the fact, allowed to offset
4 other costs saved or costs -- potential cost savings
5 from actual proved economic benefit?

6 A. Well, I tell you, this is really a
7 critical decision on my part as far as my analysis
8 of economic benefit, as it was in the Pan Handle
9 case. My main focus of economic benefit again, and
10 we've seen it in some of the literature that I rely
11 on, is we have to level the financial playing field.

12 Now, as an internal auditor, I'm
13 required to level the financial playing field down
14 to a playing field that uses prudent good business
15 practice, that requires companies to effectively
16 manage their capital investments. And the playing
17 field that Toyal -- and this is my analysis now, my
18 assessment of the playing field that Toyal is
19 playing on is one that takes eight years to come
20 into compliance with environmental regulations,
21 three years to file required permits, investment in
22 \$1.1 million worth of equipment that they never use.

23 What I'm saying here is that it
24 appears to me that the financial playing field that

1 Toyal is operating on is inefficient and defective,
 2 and so that's why as a deterrent approach if you
 3 start to give rebates to companies that are not
 4 effectively managing their capital, it no longer
 5 acts as a deterrent because companies may not take
 6 the time and the effort to quickly comply if they
 7 know that down the line if they get caught or they
 8 have to suffer a penalty, that there'll be large
 9 rebates or credits that will eliminate entirely the
 10 economic benefit. And that's the same argument we
 11 use in Pan Handle in 2001.

12 MR. GRANT: That's all I have.

13 HEARING OFFICER HALLORAN: Thank you,
 14 Mr. Grant. Recross, Mr. Harsch?

15 RECROSS EXAMINATION

16 By Mr. Harsch

17 Q. Mr. Styzens, you're not an expert on
 18 installation of environmental control equipment, are
 19 you, from an engineering and technical standpoint?

20 A. From an engineering and technical
 21 standpoint, no.

22 Q. You have no expertise to judge,
 23 therefore, the complexity of the installation of
 24 that equipment from a technical engineering

1 standpoint?

2 A. Ask the question one more time.

3 HEARING OFFICER HALLORAN: Would you
4 speak up?

5 BY MR. HARSCH:

6 Q. You don't have any expertise from a
7 technical or engineering point of view to judge the
8 complexity of what is required to install pollution
9 control capture and control equipment?

10 A. I mean, you can glean some of the
11 concepts of complexity from review of vendor
12 invoices. But from an engineering stand point, no.

13 Q. Are you aware of the numbers of fires
14 and explosions that occurred at this facility from
15 2005 forward while they were attempting to achieve
16 compliance?

17 MR. GRANT: You mean 1995 forward?

18 BY MR. HARSCH:

19 Q. 1995 forward? Excuse me.

20 A. I was aware from review of the two
21 depositions from Ray and Van Hoose. Ray -- I forget
22 Ray's last name.

23 MR. GRANT: Malmgren.

24

1 BY THE WITNESS:

2 A. From review of those two depositions,
3 I was aware that Toyal was having a lot of problems
4 with their RCO, they had a lot of down time. It was
5 very highly -- it required a lot of maintenance, a
6 lot of down time and it was very difficult to work
7 with. And that was the reason, according to those
8 depositions, why they decided to go with the CRO.

9 BY MR. HARSCH:

10 Q. The question had to do with respect to
11 fires and explosions that occurred at the facility
12 from 1995 forward.

13 A. Again, I thought that some of the
14 inference of that -- in the depositions that
15 Van Hoose and Malmgren were making that the system
16 had significant down time and problems because it
17 wasn't operating properly, the RCO system.

18 So from that standpoint, I can
19 infer that some of the problems may be related to
20 fires or improper -- improper functioning of the RCO
21 system. But specific about explosions, I remember
22 maybe it was at one of the meetings you mentioned or
23 the one that we had in Chicago, I did hear something
24 about there was some kind of explosion at one point

1 but I don't know the specifics.

2 Q. Reaching your conclusions that you've
3 testified to on redirect, you didn't take into
4 consideration then the information that Toyal
5 provided at that May 2007 meeting or the follow-up
6 information regarding those difficulties?

7 A. Only from the standpoint it was
8 another example, in my opinion, that Toyal was not
9 using, you know, good-faith, good, prudent business
10 practices to design and develop a pollution control
11 system that was effective and brought them into
12 compliance.

13 Q. Are you aware that the Illinois
14 Environmental Protection Agency granted revisions
15 and extensions of time on 22 occasions in 2002 to
16 the compliance program and testing requirement for
17 demonstrating compliance with the RTO unit based in
18 part on the fires and explosions that have occurred
19 at the facility?

20 MR. GRANT: I'm going to object at
21 this point because I don't know that that
22 statement is accurate. If you want to pose
23 it as a hypothetical?

24 HEARING OFFICER HALLORAN: Do you want

1 to try to rephrase that and Mr. Grant can
2 object again if he so chooses.

3 BY MR. HARSCH:

4 Q. Did you look at or were you aware of
5 the request in February of 2002, the additional
6 information provided in response to the requests
7 from the permit section, the revised construction
8 permit that was issued in March of 2002, the
9 additional requests for an extension, I believe,
10 dated August of 2002 and a response to the
11 additional information submitted on or about
12 October 10th, 2002, and the subsequent issued
13 revised construction permit in November of 2002?

14 MR. HARSCH: I believe those documents
15 or a majority of them are on your exhibit
16 list, Mr. Grant.

17 BY MR. HARSCH:

18 Q. Did you review those, because I
19 believe in those requests there was a detailed
20 amount of information regarding the impact that
21 Toyal had to deal with in terms of fires and
22 explosions that were occurring during that time
23 period?

24 MR. GRANT: My objection is to the

1 suggestion that, you know, canceling a stack
2 test is the same thing as agreeing to
3 noncompliance.

4 HEARING OFFICER HALLORAN: Could you
5 speak up, Mr. Grant?

6 MR. GRANT: Yeah. The reason I have a
7 problem with this line of questioning is
8 there's a suggestion here that Illinois EPA
9 granted or deferred compliance when, in fact,
10 it's our position and I think it's been
11 admitted in the facts that Toyal was in
12 noncompliance with the regulations
13 continuously from 1995 through until
14 April 30, 2003.

15 So as far as granting an -- I
16 don't know if Mr. Harsch is talking about
17 Toyal's requesting to reschedule a stack
18 test. That's fine. But I don't think that's
19 representing Illinois EPA's approval of
20 noncompliance. That's the basis of my
21 objection.

22 MR. HARSCH: I can respond. I wasn't
23 characterizing it as an approval of
24 additional noncompliance. I was trying to

1 direct the witness to documents and
2 information that was specifically provided to
3 the Agency and the Agency permit decisions
4 that ask for additional information,
5 subsequently make permit modifications based
6 on technical problems, engineering problems
7 that Toyal was suffering through as a result
8 of fires and explosions.

9 MR. GRANT: I have no objection. I
10 just wanted to clarify that.

11 HEARING OFFICER HALLORAN: If there's
12 still an objection out there, it's overruled.
13 The witness may answer.

14 BY THE WITNESS:

15 A. No.

16 MR. HARSCH: No further questions.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Harsch.

19 MR. GRANT: Nothing..

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Grant. Mr. Styzens, thank you. We'll go
22 off the record for a second.

23 (Brief pause.)

24 HEARING OFFICER HALLORAN: We're going

1 to take a lunch break now and we'll be back
2 at 12:45. Thank you.

3 (Whereupon, after a lunch
4 break was had, the
5 following proceedings
6 were held accordingly.)

7 HEARING OFFICER HALLORAN: We're back
8 on the record. We took a lunch break. It's
9 approximately 1:50. The Complainant is
10 continuing in its case in chief. I believe
11 it's ready to call its next witness.

12 MR. GRANT: Yes, Mr. Halloran. We
13 call Mr. Barry Van Hoose.

14 HEARING OFFICER HALLORAN: Thank you.
15 Before I forget, for the record, I see no
16 members of the general public in the
17 audience. And if there were, they'd be
18 allowed to make a statement at the
19 appropriate time. Thank you.

20 (Witness sworn.)

21 MR. GRANT: Mr. Hearing Officer,
22 Mr. Van Hoose is vice president of Toyal
23 America and has been with Toyal throughout
24 the period of the alleged violations. I'd

1 like to question Mr. Van Hoose as an adverse
2 witness.

3 HEARING OFFICER HALLORAN: Mr. Harsch?

4 MR. HARSCH: He was on my witness
5 list. That's fine.

6 HEARING OFFICER HALLORAN: Okay. You
7 may do so. Motion granted.

8 DIRECT EXAMINATION

9 By Mr. Grant

10 Q. Mr. Van Hoose, you heard what I just
11 said. Can you confirm your position at Toyal
12 America, Inc.?

13 A. I'm vice president of operations for
14 Toyol America. I've been vice president of
15 operations since December 2001.

16 Prior to 2001, I was vice
17 president of technology. In my job as vice
18 president of operations, I'm involved -- well, I
19 have engineering, I have production, I have
20 technical, I have quality, I have planning and I
21 have safety and health under my responsibilities.

22 That changed effective
23 November 1st where safety and health now reports to
24 the president of the company. Prior to December

1 of 2001, in my vice president of technology I was in
2 charge of research and development, technical
3 service and quality.

4 Q. And who is the president of Toyal?

5 A. Today it's Frank Loprest.

6 Q. And can you tell me who was the
7 predecessor as president?

8 A. Masa Aoki.

9 Q. And when was Mr. Aoki there?

10 A. He was there for approximately
11 two years. I believe he came in 2005 -- sorry, 2006
12 and left in 2008.

13 Q. During the period from 1995 to 2003,
14 that's actually what I'm curious about.

15 A. Up through 1996 it was -- Peter Ortleb
16 was president. From 1996 to, I believe, 2005 it was
17 Hiro Kosuge.

18 Q. And you're familiar with the subject
19 matter of this case, correct?

20 A. Yes.

21 Q. And you're aware of the requirements
22 of the pertinent regulation, which, for the record,
23 is 218 -- 35 Illinois Administrative Code 218.986A
24 and also with Subpart TT?

1 A. Yes.

2 Q. You're familiar with those?

3 A. Yes.

4 Q. And you're aware that the compliance
5 has to be demonstrated to the satisfaction of
6 Illinois EPA?

7 A. Yes.

8 Q. And I have referred to them as also --
9 I've referred to them both specifically, but also
10 you're aware that Subpart TT regulations apply to
11 Toyal's facility, correct?

12 A. Yes.

13 Q. Now Toyal currently uses a CRO device
14 to control VOM emissions. And by VOM, for the
15 record, I mean volatile organic material. But they
16 use a CRO to control those emissions, correct?

17 A. Correct.

18 Q. And that was installed in 2005,
19 correct?

20 A. Yes.

21 Q. For the installation of the CRO, from
22 permitting to beginning operation, the CRO was
23 installed and operated as the primary VOM control
24 device in less than one year; is that correct?

1 A. Excuse me?

2 Q. From the time that you -- from permit
3 application through beginning of operation of the
4 CRO, that period was less than one year, correct?

5 A. From the time permitted to the time
6 that it was installed and implemented?

7 Q. Yes.

8 A. Was about one year.

9 Q. And the CRO increases the efficiency
10 of the operations of Toyal; is that correct?

11 A. Yes.

12 Q. And it was installed to replace the
13 RCO?

14 A. That's correct.

15 Q. And the RCO was a headache for Toyal?

16 A. Yes. It was a nuisance.

17 Q. It caused outages?

18 A. Yes. In each outage, we had to report
19 to IEPA.

20 Q. And didn't it increase maintenance
21 expenses?

22 A. No, not really.

23 Q. Didn't you testify in your deposition
24 that there was additional maintenance required

1 because of the problems you had with the CRO -- or
2 the RCO?

3 A. The only maintenance required was
4 basically to restart the operation.

5 Q. So there was maintenance involved
6 in -- related to the problems that you had with the
7 RCO?

8 A. Well, yes.

9 Q. The RCO, that was the device that
10 Toyal chose to control VOM emissions in the 1990s,
11 correct?

12 A. Yes, that's correct.

13 Q. When Toyal filed its CAAPP permit
14 application, that included an admission that it was
15 not in compliance with the Subpart TT regulations;
16 isn't that correct?

17 A. That's correct.

18 Q. Now to obtain the -- strike that.

19 Prior to making a capital
20 expenditure, Toyal has an internal capital approval
21 process, doesn't it?

22 A. Yes, it does.

23 Q. And the plant personnel submitted a
24 request for approval of expenditures for the RCO in

1 1997, correct?

2 A. Yes, I believe so.

3 Q. But Toyal did not demonstrate
4 compliance with the 81 percent control regulations
5 until 2003, correct?

6 A. That's correct.

7 Q. And though Toyal was -- well, first,
8 let me ask a foundation question.

9 The regulations required Toyal to
10 come into compliance on March 15th, 1995, correct?

11 A. Yes.

12 Q. But the RCO was not installed until
13 1998, correct?

14 A. That's correct.

15 Q. And following the 1998 installation or
16 at some point in 1998 Toyal cancelled the stack test
17 that had been scheduled to demonstrate compliance
18 with Subpart TT, correct?

19 A. I believe it was December, correct.

20 Q. And Toyal canceled that because they
21 knew that they could not meet the requirements of
22 the regulations; isn't that correct?

23 A. There was a pre-visit with Kevin
24 Mattison of IEPA as recommended by ARI, the

1 consulting firm that was going to do the stack
2 testing. They recommended they come through, make
3 sure that there's everything in place before we do
4 the test.

5 Kevin Mattison came in, and based
6 off of his comments, it was decided to stop the
7 stack testing.

8 Q. Okay. And that was stopped because he
9 didn't think you could demonstrate compliance is my
10 question?

11 A. There was several issues that were put
12 into a letter and sent to IEPA, that part of the
13 documentation submitted.

14 Q. Could Toyal have demonstrated
15 compliance -- well, I mean, basically, you said that
16 they did not demonstrate compliance until
17 April 30th, 2003, correct?

18 A. That's correct. Actually, I think it
19 was beginning of May, the exact date.

20 Q. But sometime in the spring of 2003 --

21 A. Yes.

22 Q. -- was when the compliance was
23 demonstrated?

24 I think that's in the record as an

1 admitted fact --

2 A. Right.

3 Q. -- so you nor or I really have to try
4 to remember it.

5 A. Right.

6 Q. I'm going to refer you to Exhibit 17.

7 HEARING OFFICER HALLORAN: Is that
8 Complainant's Exhibit 17?

9 MR. GRANT: That's Complainant's
10 Exhibit 17.

11 THE WITNESS: November 12th, 2008?

12 BY MR. GRANT:

13 Q. Yes. That's Toyal's responses to the
14 State's request to admit facts?

15 A. Yes.

16 Q. Let me ask you to turn to fact number
17 35. This fact states that as of April 18th, 2001 --
18 or essentially states that as of April 18th, 2001,
19 Toyal's A Unit was not in compliance with the
20 81 percent control regulations, correct?

21 A. That's what it says.

22 Q. And just be a little bit patient with
23 me because it's going to be easier the way I
24 originally planned it. And, in fact, number 38

1 essentially is the same admission regarding the
2 B Unit process; do you agree?

3 A. Yes.

4 Q. And fact number 41, if you can turn to
5 it on the next page?

6 A. Yes.

7 Q. Essentially the same admission about
8 the C unit process?

9 A. Correct.

10 Q. And fact number 44 on Page 7, same
11 page --

12 A. Yes.

13 Q. -- essentially the same admission
14 about the D unit process, correct?

15 A. Yes.

16 Q. Fact number 47?

17 A. That's correct.

18 Q. Aluminum flake paste process,
19 essentially the same admission, correct?

20 A. Yes.

21 Q. Fact number 49, essentially the -- I'm
22 sorry, fact number 50, essentially the same
23 admission about the FX flake process, correct?

24 A. Yes.

1 MR. HARSCH: To speed things up, we'll
2 stipulate that it says it for all of these
3 units.

4 MR. GRANT: Fine.

5 BY MR. GRANT:

6 Q. Well, my question is this, doesn't
7 that represent most of the production equipment at
8 the Toyal facility?

9 A. That's the paste production, paste and
10 flake, yes.

11 Q. Now during the period between March --
12 between the period that we've alleged noncompliance,
13 which is March 15, 1995, and April 30th,
14 approximately, 2003, Toyal spent money on other
15 capital projects besides the RCO project?

16 A. Yes, we did.

17 Q. And during that same period Toyal
18 expanded certain portions of its production
19 capacity, correct?

20 A. We modified the paste B Unit. We had
21 six mills with B Unit. We removed the six mills,
22 old mills, replaced it with four mills and two
23 mills, two different sizes, and made those into two
24 individual units along with screens and tanks, so a

1 small amount of capacity increase.

2 Q. You're aware that Toyal is attempting
3 to offset a credit for a solvent reclamation project
4 that was -- or a solvent recovery project that was
5 not installed until 2003 and set those off against
6 claimed economic benefit; you're familiar with that?

7 A. Yes.

8 Q. And Toyal is one of a number of
9 affiliated companies? In other words, it's a
10 subsidiary of a large Japanese company?

11 A. We are -- 100 percent shares are owned
12 by Toyal Aluminium KK and Toyal Aluminium KK is
13 owned by Nippon Light Metals.

14 Q. And prior to 2003 some of the Toyal
15 companies were, in fact, recovering solvent?

16 A. Yes.

17 Q. And Toyal in Joliet actually had a
18 solvent recovery process?

19 A. We have a distillation unit, yes.

20 Q. But prior to the one that was
21 installed in 2003, you were operating a solvent
22 distillation process?

23 A. No. It's the same distillation unit.

24 Q. It's the same unit?

1 A. Yes.

2 Q. Okay. So the work that you did in
3 2003 was just an upgrade of that?

4 A. Let me explain what we did.

5 Q. Okay.

6 A. What we did, we've tied it in to the
7 RCO. That allowed us to be able to bubble air into
8 the tank, the clean tank, which was critical to
9 remove the corrosive acids that were formed because
10 of the oleic acid. And during the process with the
11 heat, it double bonds and the oleic acid break down.

12 Q. Let me stop you. I'm not talking
13 about what the -- unless you're answering my
14 question. But I'm talking about, say, in
15 1995-1996 -- 1996 specifically, because I know that
16 there was a CAAPP permit application in 1996. In
17 1996 you had a solvent recovery unit operating
18 there, correct?

19 A. The same unit.

20 Q. The same unit?

21 A. Yes.

22 Q. Okay. And the increase in the
23 effectiveness of that unit was completed in 2003,
24 that was just an upgrade to the same unit, correct?

1 A. Yes.

2 Q. But prior to or during the time, say,
3 in 1995, 1996, 1997, affiliated companies of the
4 Joliet operation, in other words, companies in
5 France and Japan were actually utilizing the system
6 that the Joliet facility installed in 2003, correct?

7 A. That's correct.

8 Q. And you were aware of that technology
9 at the time, correct?

10 A. Yes.

11 Q. And it was Toyal's decision not to
12 install that updated technology in 1995, 1996 and
13 1997, correct?

14 A. It's really not an installation of
15 updated technology. It's just a matter of a
16 different way of removing the acids.

17 The way that Toyo in Japan and
18 Toyo in France were doing it was to be able to
19 bubble air through it. And what I was trying to
20 explain before you stopped me was because of the
21 short-chain fatty acid, there's two ways of getting
22 rid of that. One is to be able to have it wash out
23 with water and the second way is to be able to
24 actually bubble air through it and it gets vaporized

1 off.

2 We chose the water route initially
3 because we obviously didn't want to have another
4 unconnected source of emissions.

5 Q. Please explain why that would be a
6 source of emissions.

7 A. Because we're actually bubbling air
8 into the tank, it's going through the solvent and
9 that's carrying up and it would go out into the
10 atmosphere.

11 Q. Is that the way that it was done in
12 the plant in France?

13 A. Yes, it is.

14 Q. Do you know when that French
15 process -- when they began that process, the air
16 bubbling process in the French plant?

17 A. I would be taking a wild guess. It's
18 been a long time.

19 Q. And do you know what sort of emissions
20 would be generated by using that process?

21 A. The amount of emissions we did not
22 calculate.

23 Q. So you're not aware of how much would
24 be emitted into the air?

1 A. No. But we figured it would be
2 substantial.

3 Q. Did you ever apply to Illinois EPA for
4 a permit to discharge of those emissions?

5 A. No.

6 Q. Now the way you've described it -- and
7 correct me if I'm wrong because I do want to let you
8 answer your questions. I just thought you
9 misunderstood my previous question.

10 A. Okay.

11 Q. But it sounds like all that was needed
12 for that operation to operate was just an outlet
13 someplace to direct the vapors; is that correct?

14 A. In essence, yes.

15 Q. And you could have installed a
16 flare -- sought a permit for just a simple flare
17 even without a control device for that, couldn't
18 you?

19 A. During the 1997 through 2003 process,
20 the last thing on our mind was trying to hook up
21 another unit or making -- putting another control
22 device in. We still had to have compliance testing.
23 We were busy working on trying to connect all the
24 different devices to the RCO at that time.

1 Q. I guess my question is you could have,
2 there was nothing that would have prevented you from
3 just installing a flare, say, in 1995 to increase
4 the efficiency of the solvent recovery; isn't that
5 true?

6 A. Hindsight, yes.

7 Q. As we've discussed, the RCO was
8 installed in 1998, that's correct, isn't it,
9 initially?

10 A. Yes.

11 Q. But you didn't hook up the solvent
12 recovery system of the RCO in 1998, did you?

13 A. No.

14 Q. And the RCO was eventually the control
15 device that you used for the upgraded solvent
16 recovery system, correct?

17 A. Yes.

18 Q. Let me show you what I've marked as
19 Complainant's Exhibit 21.

20 MR. GRANT: Mr. Halloran, that's a new
21 one. I don't have an extra copy. I can give
22 you one afterwards.

23 HEARING OFFICER HALLORAN: Sounds
24 good.

1 MR. GRANT: Thanks.

2 BY MR. GRANT:

3 Q. Mr. Van Hoose, Toyal applied for
4 what's known as a CAAPP permit in 1996, correct?

5 A. That's correct.

6 Q. Is this an accurate copy -- or is this
7 a true and accurate copy of excerpts from your CAAPP
8 application?

9 A. It's pulled out of it. It was
10 actually two large volumes.

11 Q. I remember reading them. I'm going to
12 ask you to turn to the page that's marked D1749 at
13 the bottom, Toyal D1749.

14 A. Yes, sir.

15 Q. This is the process emission unit data
16 sheet for -- as part of the CAAPP permit
17 application, correct?

18 A. That is correct.

19 Q. And this is -- and specifically where
20 it says emission unit is the solvent distillation
21 recovery unit, correct?

22 A. That's what it says, yes.

23 Q. Okay. If I can ask you to go to a few
24 pages down to D1753, please?

1 A. Yes, sir.

2 Q. Under compliance information do you
3 see where it's marked, is the emission unit in
4 compliance with all applicable requirements, and you
5 marked yes; is that correct?

6 A. Yes.

7 Q. And to your knowledge, those
8 requirements also included the Subpart TT
9 regulations, right?

10 A. Yes.

11 Q. So this was not one of the units that
12 needed to be controlled, correct?

13 A. No.

14 Q. Can I ask you to turn to D -- down a
15 little bit to D2199?

16 MR. HARSCH: What was the number?

17 MR. GRANT: D2199. It's a compliance
18 plan scheduled of compliance.

19 BY MR. GRANT:

20 Q. Have you found it?

21 A. Yes.

22 Q. Okay. And this is the compliance plan
23 schedule of compliance that was contained within the
24 CAAPP permit; is that correct?

1 A. Yes.

2 Q. And there's an exhibit referenced on
3 that page, Exhibit 293-1; do you see that?

4 A. That's correct.

5 Q. And that is in response to where --
6 the inquiry is described, the compliance status, and
7 you referred to this exhibit; is that correct?

8 A. Yes.

9 Q. If you could turn to Toyal D2203?
10 It's down a few pages.

11 A. I have it.

12 Q. Is this the Exhibit 293-1?

13 A. Yes.

14 Q. And it shows which emission units were
15 in compliance, isn't that correct, or that's the
16 purpose of this form?

17 A. Yes, I believe so.

18 Q. And if you can turn down two pages to
19 D2205, the third source down is S055, that's -- the
20 description for that is the solvent distillation
21 process, correct?

22 A. That's correct.

23 Q. And it notes down over a couple of
24 columns in that same line that subject regulation is

1 35IAC, which I take to mean Illinois Administrative
2 Code 218.301, correct?

3 A. That's what it says, yes.

4 Q. And in the next box it says that that
5 unit is in compliance, correct? Just one box over
6 on the same line.

7 A. Yes. I was looking down. Sorry.

8 Q. Also below for the same SO55 it also
9 has a subject regulation 35 Illinois Administrative
10 Code 218.986A, correct?

11 A. Correct.

12 Q. Which we've previously discussed as
13 part of the Subpart TT regulations.

14 So essentially this chart that was
15 referred to in the previous document states that
16 that unit was in compliance?

17 A. Yes.

18 Q. And you don't have any reason to
19 disagree with that at this point?

20 A. No.

21 Q. If you can turn to Toyal D2207, this
22 is the compliance certification portion of the form,
23 correct?

24 A. That's correct.

1 Q. And down under source compliance
2 information, Paragraph 6, it states that the
3 signatory certifies that the source is in compliance
4 with all applicable requirements, correct?

5 MR. HARSCH: The document speaks for
6 itself.

7 BY THE WITNESS:

8 A. Yeah. It says no.

9 BY MR. GRANT:

10 Q. I'm sorry. It says no.

11 A. Trick question.

12 Q. It was. That was -- it was an
13 improper use of a leading question. It says no.

14 On the next page in this
15 compliance certification, D2208, as far as emission
16 units it, again, makes reference to another
17 document, Exhibit 296-1, correct?

18 A. That's correct.

19 Q. And if you turn more toward the back
20 at page number D2212, that is Exhibit 296-1 that's
21 referred to in the previous page, correct?

22 A. Yes.

23 Q. And, again, if you can look down a
24 couple pages, D2214?

1 A. Yes, sir.

2 Q. Toward the top of the page, solvent
3 distillation process --

4 A. Yes.

5 Q. -- and condenser?

6 And similar to the other form,
7 this form states that it is -- that this emission
8 unit is in compliance with two regulations,
9 specifically 35 Illinois Administrative Code 218.301
10 and 35 Illinois Administrative Code 218.986A,
11 correct?

12 A. Yes.

13 Q. Go back to D2211. You signed this
14 document, correct?

15 A. Yes, I did.

16 Q. Mr. Van Hoose, you've stated that --
17 or we've stipulated to, but the noncompliance period
18 that's essentially admitted to in this case with the
19 request to admit was March 1995 through April 2003,
20 correct?

21 A. That's correct.

22 Q. Toyal never decided to stop its
23 operations because it was in noncompliance with the
24 regulation, correct?

1 A. No.

2 Q. And at no point during that period did
3 Toyal apply for a variance or adjusted standard from
4 218.986A, correct?

5 A. I don't believe so.

6 MR. GRANT: That's it.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. Grant. Mr. Harsch?

9 MR. HARSCH: I just have a couple,
10 very brief, and then I'm going to reserve the
11 right to call him as a --

12 MR. GRANT: Absolutely. I was just
13 going to say if you want to do that now, it's
14 okay. If you want to wait until later,
15 that's okay.

16 CROSS EXAMINATION

17 By Mr. Harsch

18 Q. Mr. Van Hoose, at the time you
19 submitted the CAAPP application in February of 1996,
20 was Toyal using air stripping in the solvent
21 recovery unit?

22 A. No, we were not.

23 Q. Had you been using air stripping,
24 would you have marked that unit in compliance with

1 Subpart TT regulations?

2 A. No.

3 Q. I believe you mentioned or responded
4 to a question that Toyo KK had units in Japan and
5 France that did solvent recovery with air stripping?

6 A. Yes, that's correct, both locations.

7 Q. Do you know if those units have any
8 capture and control of volatile organic materials?

9 A. No, there was not.

10 Q. In regards to the question that was
11 posed of the theoretical use of a flare to control
12 VOM emissions from the air stripping of the solvent,
13 do you have any concerns over the installation of a
14 flare at your facility?

15 A. Absolutely.

16 Q. Can you explain what those are, for
17 the record?

18 A. Aluminum pigments and powders have a
19 certain amount of inherent dangers -- and we'll be
20 talking about that later -- and that is in case an
21 aluminum powder dust cloud forms, it's highly
22 explosive.

23 One of our customers -- well, one
24 of the markets we sell to is actually in rocket

1 propellant. It is the fuel for the solid boosters
2 that you see on these missiles. That's mixed with
3 an oxidizer and that's what propels it. Without the
4 aluminum, it doesn't go anywhere.

5 It's highly explosive. It only
6 takes a small amount of energy to actually ignite a
7 dust cloud. Anywhere between two and four
8 millijoules is all you need. You wouldn't even feel
9 a spark and you can have an explosion, so we worry
10 about that.

11 Secondly, in the case of paste we
12 have another concern and that is fire. Aluminum is
13 very reactive, especially in a pure form in a finely
14 divided form. There's several -- you know, lots of
15 things that can potentially ignite it, one of which
16 is, obviously, static electricity which is a big
17 concern. We've had a number of fires related to
18 that.

19 Another concern is contamination
20 with moisture or acids and bases. Aluminum is
21 amphoteric and will react very violently with these
22 materials. And with moisture it reacts, forming
23 hydrogen gas, which is one of the problems when
24 trying to put out an aluminum fire or a metal fire.

1 If you put water on a metal fire,
2 what you have is hydrogen gas forms and then you
3 have a bigger problem. So fighting a fire is also
4 difficult.

5 So putting an open flame in our
6 plant is something we wouldn't even consider. Would
7 it meet the regulations, probably. Would it meet
8 our criteria, no.

9 Q. With regard to the installation of the
10 RCO in 2005, you responded to a question that it was
11 done in less than a year or approximately a year?

12 A. The CRO.

13 Q. The CRO, excuse me. There were no
14 modifications made to the capture system at that
15 point in time?

16 A. No. It was basically a -- to actually
17 put this installed next to the RCO and then just
18 hook it around, instead of being into the RCO, going
19 in to the CRO.

20 MR. HARSCH: No further questions.

21 HEARING OFFICER HALLORAN: Thank you,
22 Mr. Harsch. Mr. Grant?

23 MR. GRANT: Nothing.

24 HEARING OFFICER HALLORAN: Thank you,

1 Mr. Van Hoose. You may step down.

2 THE WITNESS: Thank you.

3 (Brief pause.)

4 MR. GRANT: I wanted to move
5 Complainant's Exhibit 21 into the record as
6 evidence.

7 MR. HARSCH: No objection.

8 HEARING OFFICER HALLORAN:
9 Complainant's Exhibit 21 is admitted.

10 MR. HARSCH: I'll bring Ray in, but I
11 need about two minutes.

12 HEARING OFFICER HALLORAN: All right.
13 We can go off the record.

14 (Brief pause.)

15 HEARING OFFICER HALLORAN: We're back
16 on the record. We just finished with
17 Complainant's witness, Mr. Van Hoose.
18 Mr. Grant?

19 MR. GRANT: Mr. Hearing Officer, we're
20 going to rest our case at this point.

21 HEARING OFFICER HALLORAN: Thank you
22 so much, Mr. Grant. Looks like you're on,
23 Mr. Harsch.

24 MR. HARSCH: The first witness I will

1 call is Mr. Barry Van Hoose.

2 HEARING OFFICER HALLORAN: Thank you.
3 The name sounds familiar. We can go off the
4 record for a second.

5 (Brief pause.)

6 HEARING OFFICER HALLORAN: Okay.
7 You're still under oath, Mr. Van Hoose.
8 Proceed, Mr. Harsch, please.

9 DIRECT EXAMINATION

10 By Mr. Harsch

11 Q. Mr. Van Hoose, I'm going to show you
12 what was attached to Toyal's motion to incorporate
13 narrative testimony as Exhibit B to that motion.
14 Can you state what this document -- the narrative
15 testimony of Barry Van Hoose, what the document is?

16 A. I put this together for this
17 testimony. This is my document.

18 Q. And you prepared this document?

19 A. Yes, I did.

20 Q. And it was completed on Monday of this
21 week?

22 A. Yes.

23 Q. Are the statements in that document
24 true and accurate to the best of your knowledge and

1 belief?

2 A. Yes, it is.

3 Q. If you were allowed to, that would be
4 your testimony in this -- direct testimony in this
5 proceeding?

6 A. Yes.

7 MR. HARSCH: I guess, Mr. Hearing
8 Officer, pursuant to your earlier ruling, I
9 would move this. I'm going to offer this as
10 an offer of proof. How do you want me to --
11 how would you really like me to proceed on
12 this?

13 MR. GRANT: Just for the record, we'll
14 object to its use.

15 HEARING OFFICER HALLORAN: To its use
16 for direct?

17 MR. GRANT: Yes. We'll object to it
18 being entered into evidence or being used on
19 the stand by the witness.

20 HEARING OFFICER HALLORAN: I've
21 already accepted it as an offer of proof, so
22 that part of your argument was accepted.

23 Mr. Harsch, how are you going to
24 use it?

1 MR. HARSCH: I just was laying a
2 foundation for it for the benefit of my offer
3 of proof.

4 HEARING OFFICER HALLORAN: Okay.
5 Thank you.

6 MR. HARSCH: If Counsel would be
7 willing, to avoid that on my additional
8 witnesses, I would ask the same thing.

9 MR. GRANT: Sure. Yeah. I think --
10 you know, we're happy for you put it in as an
11 offer of proof, all of them.

12 HEARING OFFICER HALLORAN: Okay. The
13 record will so reflect.

14 BY MR. HARSCH:

15 Q. Mr. Van Hoose, would you please
16 briefly describe your educational background and
17 your work experience prior to joining Toyal that you
18 covered in your earlier testimony?

19 A. Yes. I have a BA in biology from
20 Glassboro State College in New Jersey. I have
21 34 years of experience in the aluminum paste and
22 pigments and powders industry.

23 I started work for Alcan in 1974.
24 I when to a competitor in 1978 through 1983. Came

1 back to Alcan, -- this is in New Jersey -- in 19 --
2 I'm sorry, in 1983 I came back to Alcan. This is
3 all in the same industry. They're all paste and
4 powder producers.

5 When I came back in 1983, I came
6 back as the technical manager. In 1987 there was a
7 joint venture between Alcan and Toyo Aluminium KK,
8 that's T-O-Y-O, aluminium, there's an extra I in
9 there, K-K, in Japan.

10 It was an 80 percent Toyo,
11 20 percent Alcan operation. I moved up in 1987 with
12 that joint venture. In roughly 1996 Toyo purchased
13 the rest of the remainder of the stock from Alcan
14 and we've changed our name to -- from Alcan-Toyo at
15 the time of the joint venture to Toyal, T-O-Y-A-L,
16 America, Incorporated in 1996.

17 Toyo, T-O-Y-O, means oriental in
18 Japanese. Toyal is sort of an acronym of Toyo and
19 aluminum, so it's Toyal for our company. That's the
20 difference.

21 We are incorporated out of
22 Delaware and we are a stand-alone company. We
23 finance everything on our own. We have 89 employees
24 at our company at this point. We have 48 hourly,

1 these are union people, and we have 41 salary
2 people. At the beginning of the year we had roughly
3 109 people.

4 You want me to go into who works
5 for me and that sort of thing?

6 Q. I think you -- sure. Would you please
7 provide a brief description for the record who
8 reports to you presently?

9 A. In my function as vice president of
10 operations, which I became in December of 2001,
11 which I mentioned earlier, I have engineering
12 reporting to me, I have the manufacturing reporting
13 to me, I have technical, which is R&D technical
14 service, I have quality, maintenance reports to
15 engineering. Also, up until November 1st I had
16 safety and health reporting to me, as well.

17 Q. Would you describe briefly for the
18 record again what are the principal products that
19 Toyal produces at the Lockport plant?

20 A. We produce aluminum atomized powder
21 and aluminum paste and flake. Aluminum powder --
22 atomized powder, we actually take molten metal and
23 spray it and we make finely divided powder. Markets
24 that goes into can be refractory bricks, it can be

1 rocket propellant, as I mentioned earlier. It can
2 go into munitions and bombs and things like that.
3 One of our customers is the Navy.

4 Now on the aluminum paste side,
5 which is the biggest part of our business,
6 automotive is our main customer. The metallic
7 coating that you see on cars, that's aluminum
8 pigments, most of it. There's also glass flake in
9 there and some other, but it's mostly these
10 metallics are all aluminum and that's the markets
11 that we veered into.

12 We also produce aluminum paste for
13 other coatings, maintenance coatings. And there's a
14 certain amount of aluminum flake that's used in
15 powder coatings, for example, in industrial
16 applications. But our biggest customer is the
17 automotive industry.

18 Q. And is it in the flake -- excuse me,
19 the aluminum paste and flake side of your business
20 that you utilize mineral spirits to produce those
21 products?

22 A. That's correct.

23 Q. So that side of your business is the
24 side of the business that really is the subject of

1 this complaint?

2 A. That's correct.

3 Q. Do you have any competitors in the
4 United States?

5 A. Yes. Currently, we have two. We have
6 Silberline Manufacturing, we have --

7 Q. Will you spell that for the record,
8 please?

9 A. S-I-L-B-E-R-L-I-N-E Manufacturing.
10 They have plants in Pennsylvania and also in
11 Indiana.

12 And then there's Eckart America.
13 They have an aluminum paste factory -- it's
14 E-C-K-A-R-T. They have a paste factory in
15 Louisville, Kentucky.

16 There used to be two others in
17 North America, used to be owned by U.S. Bronze who
18 is U.S. Aluminum in New Jersey and also they had a
19 plant in Valley Field, Quebec called Canbro. Both
20 of those are now closed.

21 Q. If you know, can you describe the
22 relationship in size and manufacturing capacity of
23 the existing three competitors?

24 A. Comparing the three of us, Silberline

1 is the largest, Eckart is second largest and then
2 we're third.

3 Q. Does Toyo Aluminium KK have powder,
4 paste and flake operations that it owns elsewhere?

5 A. Yes. They have a -- they actually
6 have a paste plant in Japan as well as a powder
7 plant in Japan. They also own 100 percent, similar
8 to our situation, in France a paste and powder
9 producer. And in China they just opened up a paste
10 facility as a joint venture.

11 Q. Since you sell to -- your product is
12 used in the automotive industry, is the recent
13 widely publicized woes of the auto industry having
14 an impact on your operations?

15 A. Absolutely.

16 Q. Would you describe that impact?

17 A. Yes. Let me explain, first, that
18 we've had to reduce our manpower. We've had to lay
19 off both salary and hourly employees. We've dropped
20 our employment from 109 at the beginning of the year
21 to down to 89 people. We're hoping to remain there.

22 For example, December, as the year
23 went on, the auto industry has gotten worse and
24 worse. A lot of companies have -- or plants of the

1 automotive companies have shut down and they've also
2 then canceled their orders to their customers who
3 are our customers. And in these are paint plants.
4 And they have since cancelled their orders.

5 As an example, this month we are
6 going to run our paste units at about 20 percent
7 capacity and 10 percent of that capacity is just
8 orders that were left over from November that were
9 postponed. So we only have a small number of orders
10 for this month. We're going to actually shut down
11 our plant on the 19th and reopen on the 2nd of
12 January. Normally, we operate between the holidays
13 and just be off on the holidays.

14 As far as the -- in addition, on
15 the financial side, our company has been extremely
16 impacted by the economy. We're going to lose over
17 \$3 million this year.

18 Q. I'm going to show you what we've
19 previously marked as Toyal Exhibit 2.

20 MR. HARSCH: And these are all going
21 to be in the book.

22 BY MR. HARSCH:

23 Q. Are you familiar with this document?

24 A. Yes, I am.

1 MR. GRANT: I'd like to object at this
2 point on the basis of relevance. I'm not
3 sure that their current financial situation
4 is really relevant to what we're doing here.

5 HEARING OFFICER HALLORAN: Could you
6 speak up, Mr. Grant?

7 MR. GRANT: I'm objecting on the basis
8 of relevance on this line of inquiry. It's
9 gotten to the point where, you know, 1997
10 financials and this sort of thing, I just
11 wonder what relevance there has to this case.

12 MR. HARSCH: I believe you've included
13 in your exhibits one of the financial reports
14 of the parent company.

15 MR. GRANT: We're not going to enter
16 it. But I agree we did ask you to stipulate
17 to the sales of the parent company.

18 MR. HARSCH: Mr. Hearing Officer, I
19 find it incredible in an enforcement case
20 where the State is seeking a significant
21 penalty that the State is questioning the
22 admissibility of testimony on exhibits
23 concerning the current financial situation of
24 the company.

1 MR. GRANT: What's the relevance? The
2 period of violations relevant to this case is
3 1995 to 2003 and we're talking about current
4 market conditions and I'd just like to know
5 how this is relevant to this case.

6 HEARING OFFICER HALLORAN: You know,
7 I'm going to overrule the objection. I find
8 this somewhat relevant and the Board can
9 weigh it accordingly. You may proceed,
10 Mr. Harsch.

11 BY MR. HARSCH:

12 Q. Are you familiar with Exhibit 2?

13 A. Yes, I am.

14 Q. And what is that document?

15 A. It's the financial report for Toyal
16 America.

17 Q. And is that an official audited
18 financial statement?

19 A. Yes, it is.

20 Q. And is that your last audited
21 financial statement?

22 A. Yes, it is.

23 Q. Dated December 31st, 2007?

24 A. That's correct.

1 Q. And is that a true and accurate copy?

2 A. Yes.

3 Q. And that sets forth the economic
4 conditions as of the last report through the end of
5 2007, correct?

6 A. Yes.

7 Q. And I think you testified earlier that
8 this year Toyal expects to lose \$3 million?

9 A. Over three million.

10 MR. HARSCH: I'd move the admission of
11 Exhibit 2.

12 HEARING OFFICER HALLORAN: Same
13 objection, Mr. Grant?

14 MR. GRANT: No. No objection. I'll
15 withdraw it.

16 HEARING OFFICER HALLORAN: Thank you.
17 What exhibit was that, Mr. Harsch?

18 MR. HARSCH: Exhibit 2.

19 HEARING OFFICER HALLORAN: Exhibit 2
20 is so admitted, no objection.

21 BY MR. HARSCH:

22 Q. Have you done any economic forecasts
23 for next year?

24 A. We're looking at that right now. The

1 plant loading next year looks roughly about
2 60 percent of capacity, very similar to this year.

3 Q. You previously testified, did you not,
4 that there was a potential for fires and explosions
5 in your manufacturing plant?

6 A. Yes, I did.

7 Q. Do you think you adequately covered
8 that potential?

9 A. Well, actually, in the documents that
10 we've submitted there's listing of the actual
11 history of some of the fires. Also, in the
12 documents that we presented to IEPA on May 2nd,
13 2007, we also talked a little bit about the incident
14 rate.

15 Q. Are you referring to what is included
16 in Exhibit 7?

17 A. Yes. On Page 8 there's actually a
18 history of fires that was put together since 1996.

19 Q. Have there been any fires or
20 explosions since December '03?

21 A. Unfortunately, yes. In December of
22 '06 we had a fire in our CRO that we asked for a
23 provisional permit to operate. We did not operate
24 until we received it. We operated under all the

1 guidelines that were put out and we actually
2 appreciated IEPA in allowing us and also the
3 Attorney General's Office in allowing us to operate.

4 Also, we had an explosion most
5 recently in August. I believe it was August 26th we
6 had an explosion in the atomizer collection area.
7 Nobody was injured in it. That area is all
8 restricted because it's the one area in that
9 operation that we go past the lower explosion limit.
10 So we isolate that area based off on the dangers.

11 Q. Did you prepare Exhibit 7?

12 A. Yes, I did.

13 Q. And was this a document that was
14 presented to the Illinois Environmental Protection
15 Agency?

16 A. Yes, it was.

17 Q. Is it a true and accurate copy of what
18 you prepared?

19 A. Yes, it is.

20 MR. HARSCH: I would move the
21 admission of Exhibit 7.

22 MR. GRANT: No objection.

23 HEARING OFFICER HALLORAN:

24 Respondent's Exhibit 7 is admitted.

1 MR. HARSCH: Can we go off the record
2 a second?

3 HEARING OFFICER HALLORAN: Sure. Off
4 the record.

5 (Brief pause.)

6 HEARING OFFICER HALLORAN: We're back
7 on the record.

8 BY MR. HARSCH:

9 Q. I believe you previously testified
10 that you had obtained a provisional permit. If I
11 direct you to the document which has been marked as
12 Exhibit 4, which is the letter dated December 21st,
13 2006, to myself from Robert Messina at the Illinois
14 EPA, is that the provisional variance you were
15 referring to?

16 A. Yes, it is.

17 Q. Following the explosion -- the fire
18 that occurred in the new CRO unit, can you state for
19 the record what steps Toyal took in terms of its
20 paste and flake manufacturing operations?

21 A. It was immediately shut down.

22 Q. And why was that?

23 A. Because we were operating without a
24 CRO and that's not within our permit.

1 Q. And did you -- you signed and accepted
2 the terms and conditions of this provisional
3 variance?

4 A. Yes, I did.

5 Q. And did Toyal operate in complete
6 compliance with the requirements?

7 A. Yes.

8 Q. Including testing the CRO unit after
9 it was repaired?

10 A. Yes, it was.

11 Q. And you passed the test?

12 A. Yes, we did.

13 Q. At the meeting on May 2nd did the
14 Illinois Environmental Protection Agency request
15 additional information?

16 A. Yes, they did.

17 Q. If I show you what has been marked as
18 Exhibit 8, Toyal America, Inc., information
19 requested by IEPA; is that the response that you
20 submitted?

21 A. Yes, it is.

22 Q. Did you prepare that response?

23 A. Yes, I did.

24 Q. Is it true and accurate to the best of

1 your knowledge and belief?

2 A. Yes, it is.

3 Q. Does the description contained in
4 Exhibits 7 and 8 of the efforts undertaken by Toyal
5 to achieve compliance --

6 A. Yes.

7 Q. -- adequately and completely
8 describe -- strike that.

9 Do Exhibits 7 and 8 set forth a
10 summary of the efforts that Toyal undertook to
11 demonstrate compliance?

12 A. Yes, it does.

13 Q. Does Exhibits 7 and 8 also contain
14 information regarding the solvent recovery process
15 and the need to install the air stripping system?

16 A. Yes, it does.

17 Q. Has Toyal America taken any steps to
18 reduce or minimize the number of these fires and
19 explosions throughout time period we're talking
20 about?

21 A. Yes, we have. In fact, in the
22 questions by Mr. Grant he asked about additional
23 capital that the company has spent during the time
24 period also going into compliance. And one of the

1 very large areas of our expenditures during that
2 time frame was in the safety area.

3 We spent close to \$1 million
4 between fire suppression systems and alarm systems
5 for the plant. We've also improved our management
6 system. We've gone to an OHSAS, O-H-S-A-S, 18001
7 management system for safety. We are now registered
8 under that.

9 We have done similar on the
10 environmental side. We are ISO 14001. We are also
11 ISO 9001 on the quality side. We've done this so we
12 have outside orders be able to come in and verify
13 that we are improving and are getting better and
14 also are in compliance. We've made many changes in
15 that area.

16 We do quite a bit of training that
17 we do for our employees. Every year we take down
18 the plant for one week of just training for the
19 employees. So we have done quite a bit to try to
20 prevent these accidents and also to minimize
21 these -- any kind of incident as far as injuries or
22 damage.

23 Q. Have you been successful in your
24 efforts?

1 A. Partially.

2 Q. And would you define what you mean by
3 that?

4 A. Well, I'd like to be able to say we've
5 had no injuries ever or we've had no fires or
6 explosions. Unfortunately, we've recently had an
7 explosion, as I mentioned, in August. It was small.
8 The plan did what it was supposed to do. The
9 building vented, it was isolated, it was one area,
10 no further damage.

11 But these things take a lot of
12 time and effort to be able to investigate to be able
13 to put corrective actions in place and move forward.

14 Q. Can you explain the amount of effort
15 that's involved once one of these events occur?

16 A. We have a very small plant in regards
17 to other plants. You know, you can tell we have 89
18 people for the whole company, that's reasonably
19 small. When a fire explosion happens, we actually
20 pull all the resources that are -- all the
21 management, the engineering, the technical, the
22 production, the safety, health and environmental
23 people, we pull these all together as part of the
24 accident investigation team.

1 These resources are necessary to
2 determine what is the root cause of these accidents.
3 This last accident we had, we immediately started to
4 do the investigation. There was still a fire in the
5 screener. We were already going through and
6 interviewing employees. There's a certain regimen
7 you have to go through in order to get that
8 information and keep it fresh. If you wait too
9 long, it's gone. So you have to react very quickly.

10 Lots of things happen during a
11 fire or explosion. You have insurance companies
12 coming in and they spend a lot of time there, that
13 draws resources. You also have OSHA that comes in
14 and visits.

15 Based off this explosion that we
16 had, we had OSHA come in several times going through
17 the plant. That was just closed out with the other
18 day with Ray Malmgren. These things are very, very
19 time consuming and very, very expensive, as well.

20 When these happen, you need a lot
21 of outside testing done. You need a lot of outside
22 resources. We don't have a lot of inside testing
23 that we can do for these cases, so we have to count
24 on people like safety consultant engineers to do

1 some of the work and we have outside laboratories
2 like McRone that also we employ to do some of the
3 work for us, it's a part of the investigation.

4 These things are very, very
5 important to us, so we apply all the resources we
6 can to it. And we have, obviously, limited
7 engineering resources, too, for any kind of a
8 rebuild or for the corrective actions.

9 Our engineering department -- and
10 Dennis can tell you -- is Dennis Debrodt, another
11 engineer and the technician that's working for him,
12 you know, so we're fairly small staffed. We're not
13 a very large company by any means, so when we have
14 an incident like this we have to apply the resources
15 necessary.

16 Q. You have been describing the most
17 recent explosion. Would the same type of response
18 also occur in a fire in one of the paste units or
19 something like that?

20 A. We have the same type of response
21 whether it be a flash that caused no damage or a
22 major fire. You have to be able to determine what
23 the cause is to eliminate it or you're going to have
24 it happen and it's going to be bigger. You have to

1 apply those resources or it's going to continue to
2 be a problem.

3 The efforts we spent money on the
4 alarm systems and on the training and on the
5 suppression system has paid off. We've used those
6 systems effectively. But, you know, it's very time
7 consuming.

8 Q. Shifting gears here, when did Toyal
9 America first become aware of the Subpart TT
10 regulations and their potential application?

11 A. The original Subpart TT, there was
12 some discussion going back. And going back through
13 all the records, it was -- there was a question
14 initially whether or not we met the 100 tons. And
15 this goes back to an earlier permit. This is before
16 Title V. And we responded to that and they felt
17 satisfied that we were under the 100 tons.

18 Q. When you say 100 tons, are you talking
19 about the 100 tons per year maximum theoretical
20 emission of VOM?

21 A. That's correct. That's correct. And
22 during the FX permit process where we're going back
23 to renew the application or renew the permit, we
24 received a response for more information from IEPA,

1 and in that letter they referred to the change in
2 the -- you know, going from the 100 tons maximum
3 theoretical to the 25 tons potential to emit
4 effective, I believe, March 15th, 1995. It could be
5 plus or minus few days.

6 Q. Did you supply that additional
7 information and was that permit renewal ultimately
8 granted?

9 A. Yes, it was.

10 Q. Did Toyal America prepare its
11 Title application in-house?

12 A. We used a consultant to help us with
13 the application. That's far beyond our
14 capabilities.

15 Q. And what consultant did you retain?

16 A. Montgomery Watson.

17 Q. And can you describe what your
18 knowledge was and who Montgomery Watson was at the
19 time?

20 A. They had done a small project for us
21 on another environmental issue back in the middle
22 '90s, I forget exactly what it is. But we had
23 submitted bids out to do the application for us and
24 they were actually a little bigger at that time. We

1 seemed to be comfortable with them. We used them
2 for putting this together. With them there was a
3 lot of testing that had to be performed. But to be
4 honest, we were not real satisfied with their
5 responsiveness.

6 Q. Following the submittal of the Title V
7 permit application, what steps did Toyal take in
8 terms of developing a compliance program to meet the
9 Subpart TT regulations?

10 A. The first thing we did was to -- as
11 part of Title V you have to put in a compliance
12 schedule to try to come into compliance. The next
13 thing was we went out and we sought bids from
14 consultants to help us select and engineer the
15 emission controls to bring us into compliance on
16 Title V.

17 From them we selected a company
18 called Woodward-Clyde, again, someone we had some
19 dealings with. They had a pretty good reputation in
20 the industry. They're fairly large. They had an
21 office out of Chicago, an office out of St. Louis.
22 They seemed to be very knowledgeable. You know, we
23 selected them as the vendor to do that.

24 Q. And that work was to investigate

1 compliance alternatives and recommend the compliance
2 alternatives to you?

3 A. Yes.

4 Q. Did they, in fact, perform this work
5 and make a recommendation of how to proceed with the
6 required capture and control?

7 A. Yes, they did.

8 Q. And can you briefly describe what they
9 recommended?

10 A. Well, what they recommended was an
11 installation of an RCO and capture points and
12 ductwork throughout the system to pull the vapor or
13 the VOM to the RCO.

14 Q. And following the receipt of that
15 recommendation, did you accept it?

16 A. Yes, we did.

17 Q. And what was your next step?

18 A. We actually hired them to actually
19 follow through on the project to fully -- to select
20 a vendor, to purchase the equipment, select a
21 contractor and to actually install it.

22 Q. Did they assist in the preparation of
23 the necessary construction permit for the
24 installation of these improvements?

1 A. I believe so.

2 Q. And was that construction permit
3 submitted and ultimately granted by the Illinois
4 EPA?

5 A. Yes, it was.

6 Q. Do you recall the approximate date of
7 that construction permit?

8 A. I'd have to look at the file for the
9 exact date. It was -- I believe it was around June
10 of 1998.

11 (Whereupon, a discussion
12 was had off the record.)

13 BY MR. HARSCH:

14 Q. If I show you what has been marked as
15 Exhibit 3, can you tell me what this document is and
16 if this refreshes your memory?

17 A. This is actually from the files of the
18 head engineer at the time, Sam Sethi, it's actually
19 dated 6/24/1999. This is the chronological data for
20 installation of VOC unit at Toyal's facility in
21 Lockport, Illinois.

22 Q. That's a true and accurate copy from
23 the file?

24 A. Yes, it is.

1 Q. And do you rely on this type of
2 document and this document in particular in the
3 normal course of your business?

4 A. Yes.

5 Q. Does that provide the date?

6 A. Received the construction permit from
7 IEPA on June 23rd, 1998.

8 MR. HARSCH: At this point in time I'd
9 move the admission of Exhibit 3.

10 MR. GRANT: No objection.

11 HEARING OFFICER HALLORAN:

12 Respondent's Exhibit 3 admitted.

13 BY MR. HARSCH:

14 Q. Did you have to get a building permit
15 from Will County for the project?

16 A. Yes, we did.

17 Q. And did you obtain a building permit?

18 A. Yes, we did.

19 Q. Do you remember about what date or do
20 you need to look at Exhibit 3?

21 MR. HARSCH: Is that okay, Mr. Grant?

22 Is it okay if he refers to Exhibit 3 to
23 refresh his memory?

24 MR. GRANT: Yeah. I don't have any

1 problem. He can use it. We deal with
2 inspection reports all the time.

3 BY THE WITNESS:

4 A. I believe it was August of 1998.

5 BY MR. HARSCH:

6 Q. And when did construction begin on the
7 project?

8 A. September 1998.

9 Q. And when was the RCO unit actually
10 placed in operation?

11 A. December 1st, 1998, it was connected
12 and started.

13 Q. Do you recall when you received the
14 notice of violation from the Illinois EPA that gave
15 rise to Counts I and II?

16 MR. GRANT: For the record, I have no
17 problem with him reading from the exhibit,
18 but the question is do you remember or can
19 you tell me.

20 BY MR. HARSCH:

21 Q. Do you remember without referring to
22 the exhibit?

23 A. Exactly, no.

24 Q. Can you refer to the exhibit and

1 refresh your memory?

2 A. Yes.

3 Q. Please do so.

4 A. July 15th, 1998.

5 Q. This morning or after lunch you
6 testified regarding a visit to the plant by Kevin
7 Mattison as a pre-stack test visit recommended by
8 your stack testing company, ARI; is that correct?

9 A. That's correct.

10 Q. And did I understand that in response
11 to a question from Mr. Grant you indicated a letter
12 was sent to Mr. Mattison notifying them of the
13 cancellation of the test?

14 A. Yes.

15 Q. I show you what is marked as
16 Exhibit 5. Is that a copy of the letter you're
17 referring to?

18 A. Yes, it is.

19 Q. Is that a true and accurate copy of
20 your letter?

21 A. It's actually Mr. Mike Moore's letter,
22 yes.

23 Q. I mean by you, Toyal?

24 A. Yes.

1 MR. HARSCH: I would move the
2 admission of Toyal Exhibit 5.

3 MR. GRANT: Sure.

4 HEARING OFFICER HALLORAN:

5 Respondent's Exhibit No. 5 admitted.

6 BY MR. HARSCH:

7 Q. Can you summarize for the record
8 without looking at Exhibit 5 what Toyal America
9 understood to be Mr. Mattison's concerns in general
10 terms?

11 A. There was a couple major ones. One
12 was in regards to hoods and the second one was, I
13 believe, in regards to the measurement of
14 temperature across the catalytic bed.

15 Q. Why was that an important concern?

16 A. The RCO does not have a designated bed
17 to it and it was not possible to measure on both
18 sides of the catalytic bed. It's different
19 technology.

20 Q. Was Toyal surprised by the number of
21 concerns that Mr. Mattison raised during his
22 inspection?

23 A. Absolutely.

24 Q. Is surprise a mild word?

1 A. Depressed.

2 Q. What steps did Toyal America take
3 following the cancellation of the stack test?

4 A. There was a lot of rethinking going
5 on, exactly what was necessary. One of the things
6 was we eliminated -- well, we stopped dealing with
7 Woodward-Clyde, who was the consultant. We were not
8 getting any farther with them. They were not able
9 to bring us into compliance. We stopped using them
10 during this time period.

11 There was another engineering
12 consultant that came on site working with the plant
13 manager called Chemstress that he was relying on
14 fairly heavily during that period of time. They are
15 involved in it.

16 Q. Okay. Who made the recommendation to
17 Toyal to utilize the vacuum skid system?

18 A. I don't know if it was -- either it
19 was either Chemstress or our plant manager, Michael
20 Moore.

21 Q. What was the -- did you purchase that
22 system?

23 A. Yes, we did.

24 Q. And what was the approximate cost of

1 that system?

2 A. A little over a million dollars.

3 Q. Was that system ever utilized?

4 A. No.

5 Q. Did you make any changes in the
6 management at Toyal in the intervening time period
7 between the cancellation of the stack test and when
8 you ultimately demonstrated compliance?

9 A. Yes, we did.

10 Q. Can you explain those changes? I
11 think you might have in your earlier testimony.

12 A. Actually, the changes really took
13 place in December of 2001. At that time we had a
14 change in plant manager, he was no longer with us.
15 That was Michael Moore.

16 We hired Dennis Debrodtt as
17 engineering manager and brought him on. And Ray
18 Malmgren moved into the safety, health and
19 environmental position. Those were three key
20 changes. The plant manager's responsibility became
21 my responsibilities at the same time.

22 Q. Earlier had Mr. Malmgren -- had
23 Mr. Malmgren been brought in to Toyal as the
24 engineering manager?

1 A. Yes, he was.

2 Q. And that was in the --

3 A. Around 2000.

4 Q. -- summer of 2000?

5 A. I believe so.

6 Q. And do you recall if he recommended
7 the retention of a specific environmental
8 engineering firm?

9 A. Yes. He recommended Admiral. He had
10 dealings with them at a previous company.

11 Q. And when did Toyal first bring Admiral
12 out to the facility?

13 A. I believe it was in 2000.

14 Q. Can you describe the
15 recommendations -- when you say Admiral, is that
16 Mr. Steve Anderson from Admiral Engineering?

17 A. Yes, it is.

18 Q. Can you explain for the record
19 generally what recommendations Mr. Anderson made to
20 Toyal?

21 A. Actually, one of the key ones is to
22 make some changes in what we were trying to achieve
23 and then to go for a FESOP permit.

24 Q. And did those changes involve moving

1 forward with the use of a permitted total enclosure?

2 A. Yes, it did.

3 Q. Were meetings held between Illinois
4 EPA, Toyal and Admiral Engineering to discuss these?

5 A. I was not -- I was not in attendance
6 at those meetings.

7 Q. Okay. Are the additional efforts and
8 projects that Toyal undertook at Mr. Anderson's
9 recommendations set forth in Exhibits 7 and 8?
10 That's the information we provided to Illinois EPA.

11 A. I believe so.

12 Q. What is your understanding of what was
13 the last step that was necessary to be completed by
14 Toyal before it could successfully demonstrate
15 permanent total enclosure and compliance with the
16 81 percent overall control?

17 A. The last step prior to compliance
18 testing was to be able to connect the tank farm into
19 the RCO. In our process, from our filter press we
20 actually remove solvent and that solvent goes out to
21 the tank farm, which is outside.

22 That needed to be connected -- and
23 Dennis can go into that more specifically on how it
24 was done -- and then take those vapors and send it

1 to the RCO. Up to that point, it was not connected.

2 And as a last step beyond that we
3 connected the solvent distillation tank into that
4 same pot that sends it out to the RCO.

5 Q. And earlier did I understand that it
6 was at that point in time you were able to use air
7 stripping to remove the contaminants --

8 A. That's correct.

9 Q. -- from that solvent?

10 A. That's correct.

11 Q. Why did the use of that air stripping
12 system result in the ability for Toyal to continue
13 to reuse that solvent many more times? That's a
14 pretty poor question, but I think you get the idea.

15 A. Why did it work? The bubbling of the
16 air and the air stripping actually allowed the short
17 chain acids to vaporize off, removing that from the
18 solvent. Then we can use the solvent back into the
19 system over and over again.

20 In our process we use oleic acid
21 as a lubricant. And that's actually the biggest
22 portion of our business is with the oleic acid. And
23 the oleic acid, because it double bonds, is more
24 reactive and it breaks down.

1 The fact that we were trying to
2 wash it prior was just not effective enough. You
3 have to have the contact with the water and the
4 acids in order to be able to remove it. And if you
5 don't have that good dispersion, then you don't have
6 good contact, you don't have successful distillation
7 and then you either have to reuse it or you waste
8 it.

9 Q. And if you waste it, what do you have
10 to do?

11 A. We actually send it out as waste.

12 Q. And do you have to pay for that?

13 A. It's pretty close to a wash. We
14 get -- they have some value. They burn it. But we
15 get -- really, it's like break even. If there's any
16 kind of contaminants in it, we get backcharged.

17 Q. Did you provide Navigant information
18 regarding solvent usage and the cost of solvents?

19 A. Yes, I did.

20 Q. What is your understanding of the --
21 did the inability to utilize air stripping until you
22 could do so in a compliant manner have an economic
23 impact on Toyal?

24 A. Yes, it did. If you take a look at

1 the documents we've talked about and we presented to
2 IEPA, one of those documents shows the solvents sent
3 out as waste. We have to buy -- basically, for
4 every gallon sent out as waste, we have to buy
5 solvent to replace that at the initial cost and
6 that's where the big savings is by not having to
7 send it out, not because of disposal but because we
8 just don't have to buy brand new oil.

9 I sent that information to
10 Mr. McClure and they were able to do a calculation.
11 We probably lost in the neighborhood of about \$1
12 million looking back. I wish I had it to do over
13 again.

14 Q. Earlier you testified to the
15 replacement of the RTO with the catalytic
16 recuperative oxidizer and RCO unit. Do you recall
17 the approximate cost of that unit?

18 A. The CRO is about \$674,000.

19 Q. The construction permit that you
20 obtained for the installation of the CRO unit also
21 covered some modifications to some equipment on at
22 the plant, as well?

23 A. (No verbal response.)

24 Q. Who would be potentially a better

1 witness for that?

2 A. Maybe Steve Anderson can answer that
3 question.

4 Q. Okay. Are you aware of any notices of
5 violation, compliance inquiry letters or complaints
6 regarding air pollution that Toyal has received
7 since the notice of violation the Illinois
8 Environmental Protection Agency sent you in I think
9 it was June of 1998?

10 A. No.

11 MR. HARSCH: Can we go off the record
12 for just a moment?

13 HEARING OFFICER HALLORAN: Sure.
14 We're off the record.

15 (Brief pause.)

16 HEARING OFFICER HALLORAN: We're back
17 on the record. Respondent's Exhibit No. 4
18 and Respondent's Exhibit 8 are admitted, no
19 objection.

20 MR. HARSCH: That will conclude our
21 direct testimony of Mr. Van Hoose.

22 HEARING OFFICER HALLORAN: Mr. Grant,
23 do you have a lot or is everybody
24 comfortable? Do you want to take five or

1 proceed?

2 MR. GRANT: Yeah, if we can take five,
3 I'd appreciate it.

4 HEARING OFFICER HALLORAN: We're off
5 the record.

6 (Whereupon, after a short
7 break was had, the
8 following proceedings
9 were held accordingly.)

10 HEARING OFFICER HALLORAN: Back on the
11 record. We still have Mr. Van Hoose up here
12 and I think Mr. Grant is going to cross.

13 MR. GRANT: Yes.

14 CROSS EXAMINATION

15 By Mr. Grant

16 Q. Mr. Van Hoose, you stated that you're
17 a stand-alone company, although owned eventually by
18 Toyo in Japan, correct?

19 A. Correct.

20 Q. Where do you get your financing from?

21 A. We finance our own.

22 Q. Okay. When you need to make a large
23 capital expenditure, where do you get the money
24 from?

1 A. Banks.

2 Q. We talked about, if you remember, in
3 the CAAPP permit application, which is Complainant's
4 Exhibit 20, if you remember my examination, you had
5 a pre-existing solvent recovery system --

6 A. Correct.

7 Q. -- at the time this was filed,
8 correct?

9 A. Yes.

10 Q. And as reported in the CAAPP
11 application, that was actually in compliance at the
12 time it required control --

13 A. That's correct.

14 Q. -- by the regulations, correct?

15 And as I think you've previously
16 testified, this air stripping operation was in
17 existence and known to you well before you installed
18 that system at your plant, correct?

19 A. The technology, yes.

20 Q. And it was being used by other Toyal
21 entities?

22 A. Yes.

23 Q. And you never sought a permit to
24 discharge those vapors to the air of Illinois, did

1 you?

2 A. No, we did not.

3 Q. Okay. I want to ask you a few
4 questions about the updated Subpart TT that became
5 effective March 15th, 1995. I'm a little unclear.
6 You said that you learned about that in
7 communication with Illinois EPA?

8 A. Yes.

9 Q. Now before going further, I mean, it's
10 Toyal's obligation to comply with all relevant
11 environmental laws, correct?

12 A. I agree.

13 Q. And it's also Toyal's responsibility
14 to determine what regulations are going to affect
15 it, correct?

16 A. Yes.

17 Q. And also to determine, when new
18 regulations come about, that they're going to affect
19 their operations, correct?

20 A. That's correct. That is our
21 obligation.

22 Q. It's not Illinois EPA's duty to notify
23 you, whether they do or not, but it's not their duty
24 to notify you that there's a law that affects you.

1 In fact, it's Toyal's duty to determine that for
2 themselves; is that correct?

3 A. Yes. And that's a difficult thing for
4 small companies.

5 Q. You say small company, but of a much
6 longer organization, correct?

7 A. We are like a dot at the end of it.

8 Q. Of the overall Japanese organization?

9 A. Of the overall company, yes.

10 Q. And what I was confused about is you
11 said that you were notified by Illinois EPA of the
12 change and applicability of the 81 percent control
13 regulation in exchange of communication. I can't
14 remember what was said.

15 A. It was actually in a permit renewal.

16 Q. And I think you said it was for the FX
17 process?

18 A. Yes.

19 Q. If you can look to in Complainant's
20 white binder? It should be in front of you, I
21 think. Look at Exhibit 17, please.

22 A. Okay.

23 Q. In fact, number six, which we've all
24 agreed to states that on or about February 16th,

1 1992, Illinois EPA requested information from Toyal,
2 et cetera. And in the following one on fact number
3 seven Toyal reports maximum theoretical VOM
4 emissions, that sort of thing. Is that the point at
5 which you're talking about that Illinois EPA
6 notified you of the update in the TT regulations?

7 A. No. The update was with the renewal
8 of the FX permit and that was at the end of 1994.

9 Q. Okay.

10 A. This right here was questioned on the
11 100 tons.

12 Q. I think we may have had the two of
13 them in here, two different dates in there?

14 A. Yes.

15 Q. But that was when the FX permit
16 application was being --

17 A. We submitted it, I believe, December
18 of -- I'm sorry, 1994.

19 Q. So end of 1994 is when you're saying
20 that you had notice of this 81 percent control?

21 A. I believe it was February 27th, 1995.

22 Q. Okay. February 27th, 1995. Now
23 having received that information that within -- if
24 it was February 27th, within really a couple weeks

1 that you were going to have to control your VOM
2 emissions to 81 percent, what steps did you take
3 during that two-week period?

4 A. It would be -- that's an impossible
5 task to engineer and install in two weeks. It's
6 impossible. We were also going through a Title V
7 permit application at the same time and we had to do
8 additional testing for the Title V permit so, you
9 know, what we wanted to do was, A, do the testing
10 and find out, you know, where we really stand
11 because most of the calculations were based on old
12 tests that were done in previous permits.

13 Q. When was the Title V permit
14 application due?

15 A. It was submitted -- I believe we
16 submitted it February, I believe, 1996.

17 Q. Do you recall when it was due, though,
18 under the law?

19 A. In that same time frame. We were on
20 time.

21 Q. So you're saying the Title V permit
22 was submitted in a timely fashion?

23 A. Yes, it was.

24 Q. But I guess getting back to my

1 question, once you learned that -- you know, I mean,
2 regardless of when the regulation became effective,
3 I think you -- correct me if I'm wrong, but I think
4 what you stated was you didn't know about it --
5 whether or not it was in effect, you didn't know
6 about it until February of 1995, correct?

7 A. That's correct.

8 Q. What were your immediate actions to
9 come into compliance?

10 A. Well, the immediate action was to test
11 and to verify. And we determined during the Title V
12 analysis that we were out of compliance and that's
13 what we reported. We also reported a schedule and
14 to be honest with you we were hoping for feedback
15 from IEPA and we received nothing.

16 Q. What sort of feedback were you hoping
17 for?

18 A. Is our plan acceptable, do we have to
19 modify it, is there something else we need to add,
20 you know. And, unfortunately, IEPA was overwhelmed.
21 I'm not blaming them for this, I'm just saying we
22 were hoping for a little bit of feedback. I can
23 understand why we didn't get it because they
24 probably had warehouses full of these documents.

1 They were overwhelmed.

2 Q. But getting back to it, when you filed
3 your Title V permit, what we call the CAAPP permit
4 application, you knew which units were not in
5 compliance?

6 A. Yes.

7 Q. And you knew the regulation applied to
8 these units?

9 A. Yes.

10 Q. Let me go back a little bit. I'll
11 direct you to fact number nine.

12 (Whereupon, a discussion
13 was had off the record.)

14 BY MR. HARSCH:

15 Q. Fact number nine essentially states --
16 and this is agreed to and in the record as a
17 judicial admission, but it says that Toyal reported
18 to Illinois EPA in 1992 their VOM emissions to the
19 air were 28 tons in 1990 and 33.6 in 1991, correct?

20 A. Yes.

21 Q. So Toyal knew what their VOM emissions
22 were in that time frame prior to March of --

23 A. I think we were as close to the
24 estimated as we could get.

1 Q. And the regulation basically covers
2 everybody with -- one second.

3 (Whereupon, a discussion
4 was had off the record.)

5 BY MR. GRANT:

6 Q. So when the regulation was passed,
7 whenever you became aware of it, I mean, you knew
8 effectively when the regulation was passed but in
9 reality when you had this discussion with -- or this
10 exchange of information with Illinois EPA in
11 February of 1995, I mean, the regulation required
12 control for people with 25 tons or more, correct?

13 A. That's correct.

14 Q. And you reported emissions over 25
15 tons?

16 A. Yes.

17 Q. So there really was no question when
18 the regulation became effective that you were, in
19 fact, required by the law to control those
20 emissions, correct?

21 A. I would say yes.

22 Q. Environmental laws are no different
23 than any other laws, I mean, they're just as
24 effective as OSHA regulations or anything else. I

1 mean, it's not a discretionary act, you have to
2 comply with those laws, correct?

3 A. Correct.

4 Q. And let's go to Respondent's No. 3.

5 A. Yes, sir.

6 Q. Feel free to refer to this as I ask
7 you questions. But I think you stated that once you
8 did the -- once the CAAPP permit application was
9 submitted, you knew which units were noncompliant
10 and which were not, correct?

11 A. That's correct.

12 Q. That was about a year -- approximately
13 a year after the regulation had taken effect,
14 correct?

15 A. Yes, sir.

16 Q. Okay. Based on this timetable you
17 didn't retain Woodward-Clyde to work on that until
18 January 1997; is --

19 A. That's correct.

20 Q. -- that correct?

21 And it was in 1997 that you
22 actually made an internal request for approval of
23 plant projects?

24 A. Yes.

1 Q. And that was to approve authorization
2 of the capital expenditure for the RCO, correct?

3 A. Do you want to repeat that statement?

4 Q. In 1997 you sought approval for the
5 capital expenditures for the control system,
6 correct?

7 A. I believe it was sometime in 1997 for
8 the RFA, the request for capital?

9 Q. Right.

10 A. For the RCO unit, right, and for the
11 installation, yes, I believe so.

12 Q. And between March 15th and that date
13 you continued in operation at the plant, correct?

14 A. Yes.

15 Q. And I think your testimony generally
16 was you got bids and did an investigation for what
17 sort of control device that would be submitted,
18 correct?

19 A. That's correct.

20 Q. And that permit application was
21 submitted in May 19 -- the permit application for
22 the control device was submitted in May 1998,
23 correct? That, I think, is also an admitted fact.
24 Rather than have you guess, let me see if I can find

1 it.

2 A. I don't have the exact date.

3 Q. Let me see if I can find it. I see
4 what we have here is in fact number 21, that's our
5 exhibit, the white book, No. 17 on Page 4. I'll
6 wait until you get there.

7 A. No. 17?

8 Q. Exhibit No. 17.

9 A. Page 3?

10 Q. Page 4.

11 A. It's on Page 3 on this one.

12 Q. I'm looking for fact number 21 on Page
13 4, I'm sorry.

14 A. Okay.

15 Q. And this essentially states that by
16 March 13th, 1998, Toyal requested that the Illinois
17 EPA extend its deadline for submission of its
18 construction application until May 31, 1998; do you
19 see that?

20 A. Yes.

21 HEARING OFFICER HALLORAN: Could you
22 speak up, Mr. Grant?

23 BY MR. GRANT:

24 Q. So apparently you had had Illinois --

1 I mean, if you had to request an extension, I assume
2 that means that Illinois EPA had set a deadline for
3 you to submit an application for a control device;
4 is that correct?

5 A. I don't know.

6 Q. Okay. But the fact states that you
7 had requested an extension --

8 A. That's correct.

9 Q. -- until May 31st, 1998?

10 A. Yes.

11 Q. And on or about May 31st, 1998, you
12 submitted an application, correct?

13 A. That's correct.

14 Q. And as of May 31st, 1998, you were now
15 in noncompliance for approximately three years with
16 the regulation, correct, from 1995 to 1998?

17 A. Correct.

18 Q. Do you recall if in that application
19 Toyal specified the manufacturer of the RCO
20 equipment?

21 A. I do not recall that.

22 Q. I'm sorry, look at fact number 24.
23 It's at the bottom of the page on Page 24.

24 A. Okay.

1 Q. Where it states that in its
2 application for the permit referenced in request to
3 admit number 23, which was the construction
4 application for the RCO, that Toyal advised Illinois
5 EPA it had not yet chosen an RCO supplier?

6 A. Okay.

7 Q. So the evaluation that you had begun
8 engaging in once you learned that you were
9 noncompliant, you still had not picked an equipment
10 supplier by the time you submitted the RCO
11 application, correct?

12 A. That's correct.

13 Q. I believe you testified to Kevin
14 Mattison -- to correspondence with Kevin Mattison
15 and we have one exhibit in there where you were
16 explaining why you couldn't do the stack testing or
17 the compliance testing at that time, correct?

18 A. The letter from Mike Moore.

19 Q. And that was at the end of 1998,
20 correct?

21 A. That's correct.

22 Q. That wasn't the only time that you had
23 to request an extension for the stack testing,
24 correct?

1 A. That's correct.

2 Q. In 2002 -- I'm not trying to trap you.
3 If you look to Page 5, fact number 26, it also says
4 that -- it refers to another request for an
5 extension of stack testing, correct?

6 A. That's correct. And Mr. Malmgren can
7 testify to that.

8 Q. But that was about four years later,
9 correct? I mean, between --

10 A. Yes.

11 Q. -- the end of '98 and November
12 of 2002.

13 You talked about installation of
14 the tank farm to the RCO as being the final step in
15 the compliance.

16 A. Yes.

17 Q. Did the tank farm require control?

18 A. Yes.

19 Q. You also said that at that time you
20 installed or you hooked up the solvent distillation
21 system, which I think we're talking about the
22 updated solvent distillation system, not the one
23 that was originally in place, but that also being
24 hooked up, correct?

1 A. That's incorrect because we keep
2 referring to the updated solvent distillation
3 system. The solvent distillation system has not
4 changed. The only thing that changed was we were
5 now putting air through the clean oil tank, period.
6 No big changes in the solvent distillation unit
7 itself.

8 Q. Well, I guess my question was really
9 getting more to that that was the last step in
10 demonstrating compliance with the regulation?

11 A. Yes.

12 Q. Now the solvent distillation system in
13 1996 was a control, correct, that --

14 A. That's correct.

15 Q. -- did not require to be hooked up to
16 the RCO, correct?

17 A. Absolutely correct.

18 Q. And you could have hooked up all the
19 other -- of all the sources that had to be
20 controlled under the Subpart TT regulations, those
21 could have been hooked up to the RCO without the
22 solvent distillation system even existing, that's
23 correct, too, isn't it?

24 A. Except to the tank farm.

1 Q. The tank farm could not have been
2 hooked up to the RCO?

3 A. I'm sorry, rephrase the question.

4 Q. All right. We'll take some time with
5 it. A little bit of foundation. There's a whole
6 bunch of emission sources at Toyal in the various
7 units in the processes that are required to be
8 controlled at 81 percent under the Subpart TT
9 regulations, correct?

10 A. Correct.

11 Q. Those are -- the sources that are
12 required to be connected to a control device, those
13 could have been hooked up even if the solvent
14 distillation system wasn't hooked up, correct?

15 A. That's correct.

16 Q. So you could have come into compliance
17 with the Subpart TT regulations by controlling the
18 required sources, whether or not the solvent
19 distillation system even existed, right?

20 A. That's correct.

21 Q. You referred to an expenditure of
22 approximately \$1 million that was made for a
23 centralized vacuum system?

24 A. Yes, sir.

1 Q. That's a reference to the vacuum skid
2 condenser that was permitted by Illinois EPA in
3 2001, correct?

4 A. Yes.

5 Q. Can you tell us what the vacuum skid
6 condenser was meant to do?

7 A. Dennis Debrodt might be a better
8 person, but I will try to answer this. And,
9 actually, maybe even Mr. Anderson could also add
10 some testimony.

11 But the purpose was we have a
12 variety of vacuum pumps throughout the plant and
13 these all are emission sources as identified through
14 the permit process. These all had to be captured.
15 What they were doing was actually replacing all
16 these vacuum pumps with a centralized vacuum and
17 with a condenser system that would actually
18 gather -- you know, instead of having multiple
19 vacuum pumps that had to be hooked up separately,
20 have one vacuum pump centralized that could have all
21 those fumes go to that and use that vacuum and
22 condense those fumes. That would be your control
23 device.

24 Q. You're not saying -- are you saying

1 that the sources that were to be hooked up to the
2 vacuum system required control under Subpart TT; is
3 that what you're saying?

4 A. Yes.

5 (Whereupon, a discussion
6 was had off the record.)

7 MR. GRANT: May I approach?

8 HEARING OFFICER HALLORAN: Sure.

9 BY MR. GRANT:

10 Q. I have what's been marked for
11 identification as Complainant's Exhibit 22 for
12 identification. Can you identify the document?

13 A. Yes. It's a construction permit dated
14 April 18th, 2001.

15 Q. This construction permit was for
16 installation of an RTO and the vacuum condenser
17 system, correct?

18 A. I believe so, yes.

19 Q. Okay. If you look to Page 2 and Page
20 3, but specifically first on Page 2, it indicates
21 which units were to be controlled by each device,
22 correct?

23 A. I believe so, yes.

24 Q. And on Page 2 it identifies new

1 sources, correct? Let me guide you down to Page 2
2 about the middle of the page.

3 A. Yes, that's correct.

4 Q. And if you look to Page 3, under Page
5 3 it indicates modified existing sources which were
6 to be controlled?

7 A. Correct.

8 Q. Now before we go any further you may
9 have testified that you never installed the RTO,
10 correct?

11 A. That is absolutely true.

12 Q. You never bought the RTO?

13 A. That's correct.

14 Q. But you bought the skid mounted vacuum
15 condenser?

16 A. Yes.

17 Q. Although, that was never used; is that
18 accurate?

19 A. That's correct.

20 Q. If you could identify NS090, do you
21 know what that is? This is on Page 2. It's one of
22 the sources.

23 A. Which one?

24 Q. This is on Page 2. It's source number

1 NSO90.

2 A. 90?

3 Q. Yes. Do you know what NSO90 is?

4 A. No, I'm afraid not. Maybe
5 Mr. Anderson can give a more detailed analysis.

6 Q. Now for all the sources that are
7 listed on Page 2, NSO90 was the only one that was
8 going to be controlled by the vacuum skid condenser,
9 correct?

10 A. (No verbal response.)

11 Q. Do you see that each source has got
12 either two or one asterisks after it?

13 A. Yes.

14 Q. And down below, the sources that have
15 one asterisk it states controlled by a vacuum skid
16 condenser?

17 A. Yes, I see that.

18 Q. But all the other sources on that page
19 it indicates are to be controlled by the RTO?

20 MR. HARSCH: Mr. Grant. We will be
21 providing Mr. Anderson, who assisted in the
22 preparation of the construction permit
23 application that gave rise to the issuance of
24 that construction permit and he's available

1 to testify in detail regarding this. And it
2 is also listed as one of our exhibits, as
3 well.

4 MR. GRANT: Okay. Is there any reason
5 why Mr. Van Hoose doesn't have any knowledge
6 about what was --

7 MR. HARSCH: He said that Mr. Anderson
8 would be a better witness, that's all.

9 BY THE WITNESS:

10 A. During this period of time, this area
11 was handled by Michael Moore, who was the plant
12 manager. And Rick Mattison was the safety, health
13 and environmental manager at the time. Those were
14 the people that were involved in this along with
15 Mr. Malmgren and also Mr. Anderson was involved in
16 this. I was not involved in this particular
17 application.

18 BY MR. GRANT:

19 Q. The reason I'm asking these
20 questions -- and we're going to have to ask them
21 because this is going to be an issue here is
22 because --

23 HEARING OFFICER HALLORAN: Because
24 why? I'm sorry. The reason you're asking

1 these questions?

2 BY MR. GRANT:

3 Q. The reason we're asking these
4 questions is because you testified that this unit
5 was purchased for the purpose of control, to control
6 emissions?

7 A. As I said, this could be answered
8 better maybe by Mr. Malmgren or Mr. Anderson. But I
9 said I would try to answer it to the best of my
10 knowledge. And based off of the original request
11 for capital, it was in there -- in the project to
12 help us achieve compliance. That's the reason why
13 management accepted the project.

14 Q. So --

15 A. That, I did sign.

16 Q. So the question is that we're trying
17 to determine whether, in fact, it was for -- to
18 achieve compliance or whether or not the units were
19 already in compliance. Is that something that you
20 would know about?

21 A. No, I would not.

22 Q. Okay.

23 MR. GRANT: Then we can continue, as
24 long as we can get into this area --

1 MR. HARSCH: Fine with me.

2 MR. GRANT: -- with a different
3 witness?

4 MR. HARSCH: It was covered in detail
5 in the written testimony.

6 BY MR. GRANT:

7 Q. Your statement that the purchase of
8 this piece of equipment was for compliance, is that
9 just based on something that somebody told you?

10 A. No. It's actually based off of a form
11 that is submitted for approval. In our process,
12 there's a project form that must be sent around and
13 signed off and approved prior to purchases. And,
14 you know, anything above \$2,500 in our system we
15 have to have that approval form. And I'm one of
16 signatures.

17 Q. Your statement that this was for
18 required compliance or to come into compliance with
19 the regulations, is that based on your knowledge or
20 is it something that you were just told?

21 A. That's based on my knowledge of the
22 form that I signed.

23 MR. GRANT: One minute, please.

24

1 (Whereupon, a discussion
2 was had off the record.)

3 MR. GRANT: I'm going to continue with
4 this witness just because this is a statement
5 that I think we need to explore.

6 BY MR. GRANT:

7 Q. Do you have Exhibit 20? It's the
8 CAAPP permit application. Mr. Van Hoose, this is a
9 document we went through before. I'm going to open
10 it to D2221?

11 A. Yes, sir.

12 HEARING OFFICER HALLORAN: That's
13 exhibit, what, Mr. Grant?

14 MR. GRANT: It's Complainant's
15 Exhibit 20.

16 HEARING OFFICER HALLORAN: Thank you.

17 BY MR. GRANT:

18 Q. And, also, I'm going to be comparing
19 figures from -- it's Exhibit 21, I'm sorry, that he
20 has. It's the CAAPP permit application.

21 MR. GRANT: I don't think you have a
22 copy of that.

23 HEARING OFFICER HALLORAN: I still
24 don't. That's okay.

1 BY MR. GRANT:

2 Q. If you can open it to Page 3 of
3 Exhibit 22 and compare it to the chart?

4 A. Which?

5 Q. If you turn to Page 3 of Exhibit 22,
6 which is the list of sources, modified existing
7 sources?

8 A. Exhibit 22?

9 Q. Exhibit 22 is the construction permit
10 application.

11 A. Okay.

12 Q. I would like you to open it up to Page
13 3 of that document.

14 A. Yes.

15 Q. And compare it to Toyal D2212 in the
16 CAAPP permit application.

17 MR. HARSCH: Mr. Hearing Officer,
18 again, I'm going to object to this question.
19 Mr. Van Hoose has testified that he was not
20 involved in the preparation of the
21 application or this construction permit
22 project.

23 The document speaks for itself.
24 We've stipulated to the entry of these

1 documents. They are simply equipment lists.
2 We've been through testimony where he's
3 acknowledged what's stated here.

4 If he wants to provide a witness,
5 he can provide a witness or he can wait to
6 question people that were actually involved
7 with the project.

8 HEARING OFFICER HALLORAN: Mr. Grant?

9 MR. GRANT: I'll keep it simple.
10 Mr. Van Hoose testified that this purchase of
11 the skid vacuum condenser that was never
12 installed was intended for compliance. And
13 because he wasn't the one who was directly
14 involved, I'm not going to go into exhaustive
15 detail, but I do want to point out
16 inconsistency from the reports. And I would
17 point out that Exhibit Number 21, which is
18 the CAAPP permit application, was signed by
19 Mr. Van Hoose.

20 THE WITNESS: That's correct.

21 HEARING OFFICER HALLORAN: I think I'm
22 going overrule Mr. Harsch's objection at this
23 time. The witness can answer to the best of
24 his knowledge.

1 BY MR. GRANT:

2 Q. Again, on Page 3 of the 2001
3 application, Exhibit 22, I think we've talked about
4 there's a number of sources listed and by either one
5 asterisk or two asterisks it's identified which is
6 to be controlled by the vacuum?

7 MR. HARSCH: I'll object to the
8 characterization of Exhibit 22 as a permit
9 application.

10 MR. GRANT: I'm sorry. That's
11 correct. It's the permit that was issued,
12 the construction permit that was issued.

13 HEARING OFFICER HALLORAN: Sustained.

14 MR. GRANT: Let me correct that.

15 BY MR. GRANT:

16 Q. Exhibit 22 is a construction permit
17 that was issued for the RTO and the vacuum skid
18 condenser. If you can look to Page 3, do you agree
19 that it indicates which emission source is to be
20 controlled by the skid condenser and which is to be
21 controlled by the RTO?

22 A. That's what it's saying, one asterisk
23 is controlled by the vacuum skid condenser.

24 Q. And if you can look down to MSO17?

1 A. Yes, sir.

2 Q. And the permit that's issued, that is
3 identified as to be controlled by the vacuum skid
4 condenser, correct?

5 A. That's correct.

6 Q. And if you can look to the CAAPP
7 application on Page 2212?

8 A. Yes, sir.

9 Q. And if you can look down to SO17?

10 A. Yes, sir.

11 Q. And if you can look over to the right,
12 do you see where it says that it's in compliance
13 with 35 Illinois Administrative Code 218.301 and
14 underneath -- I'm sorry, it's exempt -- wait a
15 minute. I'm looking in the wrong spot. It's in
16 compliance with 301 and is exempt from 35 Illinois
17 Administrative code 218.986A; do you see that on
18 there?

19 A. Yes, I do.

20 Q. MSO17 is the modified source that
21 originally was referred to as SO17 in the CAAPP
22 permit, correct?

23 A. I believe so.

24 Q. And on Page 3 of Exhibit 22 it

1 indicates a number of other sources --

2 A. That's correct.

3 Q. -- which should be controlled by the
4 vacuum skid condenser, correct?

5 A. Yes.

6 MR. GRANT: Can I just one minute?

7 (Brief pause.)

8 MR. GRANT: That's all I have.

9 HEARING OFFICER HALLORAN: Thanks,
10 Mr. Grant. Mr. Harsch, redirect?

11 REDIRECT EXAMINATION

12 By Mr. Harsch

13 Q. In response to a question from
14 Mr. Grant you mentioned that you could have hooked
15 up the solvent tank farm to the RTO?

16 A. That's correct.

17 Q. You still would have had to have been
18 able to demonstrate permanent total enclosure to be
19 able to satisfy the stack test requirements; is that
20 correct?

21 A. That's correct.

22 Q. The existing vacuum systems that were
23 located, five or six, whatever they are, throughout
24 the plant were hooked up -- the exhaust from those

1 vacuum systems were initially directed to the RCO
2 unit, correct?

3 A. Initially, it was actually into the
4 air and what they were planning to do was to replace
5 those with a centralized vacuum system.

6 Q. And Mr. Anderson would be the best to
7 discuss that?

8 A. I believe so, yes.

9 Q. Did the engineering assumptions that
10 went into -- if you know, into the Title V
11 application prepared by Montgomery Watson change
12 over time as additional testing was performed and
13 additional work done by Woodward-Clyde?

14 A. I believe they continued with testing
15 done by a company called ARI.

16 Q. And they changed, also, did they not,
17 with respect to the additional work done by Steve
18 Anderson and Admiral?

19 A. Yes.

20 MR. HARSCH: No further questions.

21 HEARING OFFICER HALLORAN: Thank you,
22 Mr. Harsch. Mr. Grant, any recross?

23 MR. GRANT: Just a quick question.

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RECROSS EXAMINATION

By Mr. Grant

Q. As I understand it, you got a construction permit for the RTO, but it was never purchased?

A. That's correct.

Q. You also got -- you purchased a skid mounted condenser but never used it; is that correct?

A. That's correct.

Q. Would you say the purchase of the skid mounted condenser was a mistake?

A. Absolutely.

MR. GRANT: That's it.

HEARING OFFICER HALLORAN: Thank you.
Anything further?

MR. HARSCH: (Shaking head.)

HEARING OFFICER HALLORAN: Thank you.
You may step down, sir. Thank you so much.
Have a great day. We can go off the record for a second.

(Whereupon, a discussion
was had off the record.)

HEARING OFFICER HALLORAN: Back on the

1 record. Mr. Harsch is going to call his
2 second witness.

3 MR. GRANT: I was wondering if I could
4 move Complainant's Exhibit 22, which is the
5 April '01 application, into evidence.

6 MR. HARSCH: Sure. It's also one of
7 our exhibits. I have no problem.

8 HEARING OFFICER HALLORAN: At this
9 point, the Complainant's Exhibit No. 22 is
10 admitted without objection.

11 (Witness sworn.)

12 WHEREUPON:

13 RAY MALMGREN
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Harsch

18 Q. Mr. Malmgren, would you state your
19 name and address for the record?

20 A. My name is Raymond J. Malmgren. I'm
21 currently residing at 61 Victorian Drive in New
22 Lenox, Illinois.

23 Q. When did you join Toyal America?

24 A. July of 2000.

1 Q. What capacity?

2 A. I was brought in as the engineering
3 manager.

4 Q. And could you briefly describe what
5 your educational background is?

6 A. I have a degree in chemical
7 engineering, a degree in environmental science. I
8 also have several certifications, including a
9 certified 40-hour HAZWOPER, H-A-Z-W-O-P-E-R. I also
10 have certification in wastewater operations,
11 certified drinking water technician and that's about
12 it.

13 Q. Where did you work prior to coming to
14 the Lockport facility?

15 A. Sun Chemical Corporation.

16 Q. And can you briefly describe what your
17 duties were at Sun Chemical and your prior work
18 experience?

19 A. At Sun Chemical I was the operations
20 manager for the fluorescence plant, that's part of
21 pigments operation. Prior to that I worked --

22 HEARING OFFICER HALLORAN: I'm sorry,
23 part of the what? You have to annunciate
24 into the microphone.

1 BY THE WITNESS:

2 A. I worked at Sun Chemical as operations
3 manager for their fluorescence pigment plant in
4 Skokie, Illinois.

5 Prior to that I was in a variety
6 of engineering, engineering management and
7 operations management for Sherwin Williams Company
8 for a number of years and for Akzo Pharmaceuticals,
9 Diosynth.

10 BY MR. HARSCH:

11 Q. When you originally came to Toyal in
12 2000, what was your position?

13 A. I'm sorry, what was the question?

14 Q. When you came to work for Toyal, what
15 passion was it?

16 A. Engineering manager.

17 Q. As part of your responsibilities as
18 engineering manager at Toyal, at that time did you
19 make an effort to understand what efforts Toyal had
20 made and was making to achieve compliance?

21 A. Yes.

22 Q. When did you shift to the
23 environmental health and safety manager?

24 A. Shortly after the -- there was a

1 change in management across the board and shortly
2 after the then SHE manager had left, they needed to
3 fill that position and I volunteered to move into
4 that position.

5 Q. And as the environmental health and
6 safety manager, have you become familiar with all
7 the efforts Toyal has made to achieve compliance
8 with the VOM regulations?

9 A. Yes.

10 Q. Are you familiar with the letter that
11 Mr. Moore sent to Mr. Mattison on December 30th,
12 1999?

13 A. Yes, I am familiar with that.

14 Q. What is your understanding -- do you
15 have an understanding regarding what Mr. Mattison's
16 concerns were regarding Toyal's ability to
17 demonstrate compliance?

18 A. Yes, I do. And it's outlined very
19 well in that letter. The primary concern at the
20 time we all thought was IEPA's dislike of the RCO
21 type of equipment for capture and restructure of the
22 air contaminants.

23 Q. In fact, did Toyal management at that
24 time have a belief that obtaining such an operating

1 permit ultimately would be impossible?

2 A. Yes.

3 Q. Did you have subsequent dealings with
4 Mr. Mattison where you were able to change that
5 management position at Toyal?

6 A. Yes.

7 Q. Can you explain those?

8 A. Prior to our compliance testing under
9 the FESOP, we brought in Mr. Mattison or invited him
10 in for a pretest get-together and discuss, you know,
11 his concerns and went through with him all of the
12 engineering changes that we had made and felt
13 comfortable and that we would achieve compliance and
14 demonstrated to him all of the different equipment.

15 During that period of time I had
16 brought to Mr. Mattison's attention the comment that
17 I had heard earlier from the then plant manager,
18 Mr. Moore, regarding the concerns on the part of
19 Toyal that they would not be able to ever get a
20 permit because of the dislike for that type of RCO,
21 that type of equipment for capture and restructure.

22 Mr. Mattison then alluded that to
23 me at that time and corrected the feeling. He said
24 that we, indeed, have several of these units

1 operating in the state of Illinois and they are
2 permitted. Mr. Moore's understanding was wrong,
3 that indeed we don't like functionally the way this
4 equipment operates because of its intermittent going
5 back and forth from the catalyst bed and emitting
6 non-controlled emissions.

7 But he said that we don't have a
8 real problem with permitting this, it's the
9 associated equipment feeding it that needed to be
10 taken care of and engineered. And so we struck down
11 that feeling that there was a problem on the part of
12 the IEPA with accepting that type of control device.

13 Q. And by the time that he made the
14 second visit that you're referring to, Toyal had
15 installed the second CEMS system, C-E-M-S,
16 continuous emission monitoring system, consisting of
17 a flame ionization detector, or FID on the inlet as
18 well as the outlet?

19 A. Correct.

20 HEARING OFFICER HALLORAN: I'm sorry,
21 Mr. Harsch, could you repeat that?

22 BY MR. HARSCH:

23 Q. At the time of Mr. Mattison's second
24 visit, Toyal had completed the installation of a

1 CEMS system, continuous emission monitoring system,
2 that employed an F-I-D, FID, flame ionization
3 detector, under both the inlet and the outlet of the
4 RTO unit; is that correct?

5 A. That's correct.

6 HEARING OFFICER HALLORAN: Thank you.

7 MR. GRANT: Is it possible to get a
8 time frame so I understand when this is? I
9 mean, I know Mr. Mattison was involved for
10 years here. Is this --

11 HEARING OFFICER HALLORAN: Can you
12 speak up, sir?

13 MR. GRANT: I'm just asking if we can
14 get -- if we can make it more definite what
15 time period we're talking about because I
16 know Mr. Mattison was involved in the '90s
17 and 2001, 2002, 2003.

18 BY MR. HARSCH:

19 Q. Do you have --

20 A. This occurred just prior to us
21 bringing Clean Air in to do the compliance testing.
22 This was a pre-compliance meeting that we had with
23 Mr. Mattison. The actual timing on that, it would
24 be -- I don't remember offhand.

1 Q. Would it have been a project that
2 Dennis did in 2002 on the inlet?

3 A. Yes.

4 MR. GRANT: Thanks.

5 BY MR. HARSCH:

6 Q. And the device was originally equipped
7 with a CEMS system on the outlet of the RTO unit
8 when it was originally installed; is that correct?

9 A. That is correct.

10 Q. Did you recommend that Toyal
11 retain Admiral Engineering?

12 A. That's correct.

13 Q. And when did that occur,
14 approximately?

15 A. September of 2000, I believe.

16 Q. And was the consultant engineer
17 Mr. Anderson -- Mr. Steve Anderson that you used
18 from Admiral Engineering?

19 A. That's correct.

20 Q. Based on your review of the -- you're
21 familiar that Toyal had previously used
22 Woodward-Clyde Consultants, Inc.?

23 A. Yes. Before I came onboard, yes.

24 Q. Are you familiar with that firm

1 generally and their reputation?

2 A. Personally, no.

3 Q. Is it your understanding that -- what
4 is your understanding that the purpose was to be
5 served by this vacuum system that was purchased by
6 Toyal and not installed?

7 A. We had several points within the
8 operation that needed to -- that required
9 containment, PTE, permanent total enclosure or some
10 other means of taking care of fugitive emissions.

11 It was my understanding that this
12 unit was purchased to aid in controlling some of
13 those emission points.

14 Q. Did Mr. Anderson make recommendations
15 to Toyal as to how to proceed to be able to satisfy
16 Illinois EPA through a stack test and demonstrate
17 compliance?

18 A. Yes.

19 Q. And can you generally characterize
20 what Mr. Anderson recommended?

21 A. That's correct.

22 Q. Can you generally characterize what he
23 recommended?

24 A. I'm sorry. One of the things that we

1 discussed and he recommended was that we pursue a
2 FESOP, a Federally Enforceable State Operating
3 Permit, and not pursue -- continue to pursue our
4 Title V, which I believe was withdrawn prior to
5 that. But we -- he had agreed with that.

6 He aided us in putting together
7 the requirements. He educated us on permanent and
8 total enclosure, what was going to be necessary for
9 us to achieve FESOP compliance and that's about what
10 I remember.

11 Q. And the permanent total enclosure
12 concept, was it your understanding that that would
13 address Mr. Mattison's concerns regarding how you
14 would show capture efficiency?

15 A. Yes.

16 Q. With Mr. Anderson's assistance, did
17 Toyal submit a construction permit application for
18 additional improvements in the capture and control
19 system, the installation of -- the replacement of
20 the RCO unit with a regenerative thermal oxidizer or
21 RTO and the actual installation of the vacuum
22 chiller system in January of 2001?

23 A. I don't believe that Steve had
24 anything to do with the decision of installing the

1 vacuum system.

2 Q. But did the construction permit
3 application that he assisted you in filing in
4 January of 2001 cover the installation, if you
5 remember?

6 A. I don't remember. I'm sorry.

7 Q. You did submit a construction permit
8 application that included the replacement of the RCO
9 with the RTO unit in January of 2001?

10 A. That is correct.

11 Q. Was that permit ultimately granted by
12 Illinois EPA?

13 A. I believe that we withdrew that
14 construction permit.

15 Q. Was it subsequently re-submitted and
16 approved by Illinois EPA?

17 A. Yes.

18 Q. Following the issuance of that
19 construction permit in approximately May of 2001,
20 did Toyal continue its efforts at capturing
21 additional sources and installing permanent total
22 enclosure on other sources?

23 A. Yes.

24 Q. Approximately how many sources are at

1 Toyal, of VOM?

2 A. Approximately 120.

3 Q. As part of the construction permit
4 related activities at Toyal, did you have a number
5 of discussions with Mr. Eric Jones of the Illinois
6 EPA?

7 A. Yes.

8 Q. Who is Mr. Jones?

9 A. Mr. Jones is the permit review -- at
10 the time, he was the gentleman that reviewed the
11 permit applications for the IEPA.

12 Q. As Toyal proceeded to implement
13 additional capture and control and make other
14 refinements, did the original engineering estimates
15 that were used in the Title V application and then
16 in the application that gave rise to the May 2001
17 construction permit change?

18 A. Yes.

19 Q. And was that based on the refinement
20 of emissions data based on testing and other work
21 that was done?

22 A. Yes.

23 Q. Did Toyal find it necessary to seek
24 extensions of the time specified in the construction

1 permit --

2 A. Yes.

3 Q. -- for a variety of reasons?

4 A. Yes.

5 Q. And did you have discussions with
6 Mr. Jones regarding those extensions?

7 A. That's correct.

8 Q. And drawing your attention to what's
9 been marked as Exhibit 9, which is a letter to
10 Mr. Jones dated February 19, 2002 -- it's a letter
11 to Mr. Sutton with a copy to Mr. Jones. Did you
12 prepare that letter?

13 A. Yes.

14 Q. And can you briefly summarize what the
15 basis -- what the problems were that Toyal was
16 facing and the basis for the extension without
17 referring -- without reading the letter or do you
18 need to read the letter to refresh your memory?

19 A. I need to take a look at it to refresh
20 my memory. But I believe this one here was sent
21 because of a problem that we had, number one, with
22 an explosion and a fire, delaying the construction
23 of some pertinent equipment that would be needed to
24 determine control and efficiency of the operation

1 and secure a permit.

2 Q. And did you have discussions with
3 Mr. Jones after his receipt of that letter?

4 A. Yes.

5 Q. And what did Mr. Jones do, if
6 anything?

7 A. He requested additional information.

8 Q. And did you provide that additional
9 information?

10 A. Yes, we did.

11 Q. If I draw your attention to what has
12 been marked as Exhibit 10, a letter to Mr. Sutton,
13 copying Mr. Jones, dated February 26th, 2002; is
14 that the additional information?

15 A. Yes.

16 Q. And what essentially did you provide?

17 A. He just wanted us to outline
18 specifically what it was that we had done and what
19 we were doing in installing pollution control
20 equipment relative to securing the permit.

21 Q. And is the information contained in
22 both of those letters accurate to the best of your
23 knowledge and belief?

24 A. Yes.

1 Q. Did the Illinois EPA grant your
2 requested extension?

3 A. Yes, they did.

4 Q. May I draw your attention to what has
5 been marked as Exhibit 11? It's a construction
6 permit with a date of issuance, March 8th, 2002. Is
7 that the requested revised construction permit?

8 A. Yes, it is.

9 MR. GRANT: Which exhibit are you on?

10 MR. HARSCH: Eleven.

11 BY MR. HARSCH:

12 Q. And that's a true and accurate copy
13 from your records?

14 A. Yes.

15 MR. HARSCH: At this point in time I'd
16 move the admission of Exhibits 10, 11 and 12.

17 MR. GRANT: No objection.

18 MS. VILLASENOR-RODRIGUEZ: And 9.

19 MR. HARSCH: Excuse me, 9, 10 and 11.

20 MR. GRANT: All right.

21 HEARING OFFICER HALLORAN: No
22 objection, Mr. Grant?

23 MR. GRANT: No objection.

24 HEARING OFFICER HALLORAN: Okay.

1 Respondent's Exhibits 9, 10 and 11 admitted.

2 BY MR. HARSCH:

3 Q. Following the revision of that
4 construction permit did Toyal find it necessary to
5 again seek further extensions?

6 A. Yes, it did.

7 Q. And why?

8 A. The remaining part of our expansion
9 was behind schedule and in order for us to achieve a
10 permit we needed to have all of the units operating.

11 It didn't make sense to go ahead
12 and get a permit and then wait around and go for
13 another permit. So we needed to get all of the
14 units operational and feeding the RCO so that we
15 could indeed secure a permit that covered the entire
16 operation.

17 Q. And that was a project that
18 Mr. Anderson was involved on, as well?

19 A. That is correct.

20 Q. Did you and Mr. Anderson have
21 discussions with Mr. Jones, if you know?

22 A. Yes, we did.

23 Q. And as a result of those discussions
24 did you submit a request to modify the permit?

1 A. Yes.

2 Q. And showing you what's been marked as
3 Exhibit 12, a letter dated August 19, 2002, to
4 Mr. Sutton with a copy to Mr. Jones; is that a copy
5 of your extension request?

6 A. Yes.

7 Q. A true and accurate copy?

8 A. Yes.

9 Q. And the statements contained therein
10 are true and accurate to the best of your knowledge?

11 A. Correct.

12 Q. Following the receipt of that letter
13 by Mr. Jones did you have additional discussions
14 with Mr. Jones?

15 A. Yes, we did. Mr. Sutton had requested
16 some additional information.

17 Q. I show you what is marked as Exhibit
18 13. Is that a copy of your letter to Mr. Sutton
19 with a CC to Mr. Jones providing that additional
20 information?

21 A. Yes, it is.

22 Q. And did the Illinois EPA actually
23 grant that extension?

24 A. Yes.

1 Q. I show you what has been marked as
2 Exhibit 14, construction permit dated November 18,
3 2003; is that the --

4 A. 2002.

5 Q. I'm sorry, I can't read. 2002. Is
6 that the construction permit?

7 A. Yes, it is.

8 MR. HARSCH: At this point I'd move
9 for admission of Exhibits 12, 13 and 14.

10 MR. GRANT: No objection.

11 HEARING OFFICER HALLORAN:
12 Respondent's Exhibits 12, 13 and 14 are
13 admitted, no objection.

14 BY MR. HARSCH:

15 Q. When were the last --

16 THE WITNESS: Excuse me, just a
17 second.

18 (Brief pause.)

19 BY MR. HARSCH:

20 Q. When were the last modifications or
21 improvements made to the Toyal system that allowed
22 you to schedule a stack test?

23 A. We had so many additions and changes
24 that we had made, I would say probably tying in the

1 exhaust from the tank farm.

2 Q. And would that have been in the
3 April 2003 time frame?

4 A. Yes.

5 Q. Who did Toyal use for stack testing
6 consulting for that stack test?

7 A. It was Clean Air.

8 Q. And did you invite representatives of
9 Illinois EPA in for a prestack test meeting?

10 A. Yes, we did.

11 Q. And you previously testified it was
12 Mr. Mattison and someone else?

13 A. Right. Anju Matia (phonetic).

14 Q. What were the results of the stack
15 testing you performed?

16 A. We achieved compliance.

17 Q. And following achieving compliance did
18 Toyal submit the FESOP permit application?

19 A. Yes.

20 Q. And was that permit actually granted?

21 A. Yes, it was.

22 Q. I show you what has been marked as
23 Exhibit 18, it's entitled federally enforceable
24 state operating permit, issuance date of

1 November 25, 2003; is that a copy of the issued
2 FESOP permit?

3 A. Yes, it is.

4 Q. Can you briefly summarize why Toyal
5 proceeded to replace the RCO unit with a CRO unit?

6 A. The original plan to move onto an RTO
7 unit was due to our perception that the IEPA had
8 difficulties accepting the existing RCO.

9 Subsequently, in making the
10 modifications and doing the engineering, we
11 recognized that the RCO was usable if we properly
12 controlled the emissions rates. In other words, the
13 RCO is acting as a big vacuum cleaner and it was
14 sucking -- literally sucking fumes up into it. And
15 once we started to control those emissions at the
16 sources, we began to realize that the RCO was
17 totally usable.

18 Unfortunately, the RCO had some
19 operational difficulties. Because of its constant
20 switching back and forth and because of intermittent
21 loading to the RCO that it could not handle, it was
22 shutting down at a pretty regular frequency and it
23 required that I would notify the State on a regular
24 basis and we were sending a lot of letters to the

1 State indicating we had shutdowns.

2 And it showed us at that point
3 that that unit was definitely not advisable to keep
4 long-term should we decide to expand our operations
5 in the future.

6 So we suffered from two problems,
7 one, the unit was causing maintenance and breakdown
8 issues and the unit was not big enough for any kind
9 of future expansions.

10 Q. Apart from your original notice of
11 violation that Toyal received in July of 1998, has
12 Toyal received any other notice of violation,
13 compliance inquiry letters, complaints regarding air
14 issues?

15 A. No.

16 Q. Did you assist in the request of the
17 provisional variance in December of 2006 following
18 the fire in the new RCO unit?

19 A. Yes, I did.

20 Q. What steps did Toyal take immediately
21 following the fire on the aluminum paste and flake
22 side of the business?

23 A. We shut the operation down.

24 Q. And why did you shut it down?

1 A. It was a requirement of our FESOP
2 operating permit that we were not able to run the
3 RCO -- I'm sorry, the CRO. We needed to shut it
4 down. We shut down our operation until we received
5 permission on a variance.

6 Q. And you operated in conformance with
7 that variance?

8 A. Yes, we did.

9 Q. Including retesting the unit once it
10 was built?

11 A. That is correct.

12 Q. Can you -- there were a lot of
13 projects. Can you describe what efforts Toyal had
14 to go through for just one of the representative
15 capture modifications to control a source of
16 emissions and direct them to the RCO unit?

17 A. The process at Toyal for manufacturing
18 over 400 unique products made from two key raw
19 materials required -- we manufacture over 400 unique
20 products from two key raw materials, which is
21 aluminum and mineral spirits. That means that you
22 have different unit operations within the operation
23 of the plant.

24 One of the operations that we have

1 is a screening of the slurry that we manufacture and
2 that's the aluminum and the mineral spirits. And
3 one of the areas of permanent total enclosure that
4 Mr. Mattison was very, very adamant about
5 controlling was the large amount of screeners that
6 we had.

7 There was no
8 commercially-available equipment to provide for a
9 permanent and total enclosure to the top of the
10 screening unit as we were using it.

11 We had to engineer and test and
12 eventually manufacture our own design and it
13 eventually provided us with adequate permanent total
14 enclosure that met Mr. Mattison's requirements.

15 Q. Was this a small undertaking, medium
16 size or large undertaking by Toyal?

17 A. It was a large undertaking because we
18 really had no engineering -- not background but we
19 really had no institutional references that we could
20 utilize. This was something that we had to just
21 develop in-house and to test and it required
22 multiple testing.

23 We had to make our own units. We
24 had a local manufacturer actually manufacture these

1 units for us and continue to do so when required.

2 Q. And this would have been -- that's a
3 representative type project of the efforts that you
4 were undertaking following Mr. Mattison's visit and
5 the canceled stack test at the end of '99?

6 A. That's correct.

7 Q. Can you briefly describe the physical
8 setting the Toyal plant is located in?

9 A. The Toyal facility is located in the
10 Des Plaines Valley Area. We have the Des Plaines
11 River to the east of us.

12 To the north of us we have
13 property that is owned by the Water Reclamation
14 District of Greater Chicago and a wetlands area.

15 Directly to the west of us we have
16 an IDOT facility, Stateville Penitentiary land.

17 About a half a mile west of the
18 plant on Caton Farm Road is a trailer park that is
19 utilized by the guards from Stateville.

20 Directly to the south of us is a
21 publically-owned treatment works that is operated by
22 the Village of Crest Hill.

23 Q. What was the former -- what was
24 located initially on the site, if you know, prior to

1 Toyal's predecessors starting up operations?

2 A. The site was originally -- originally,
3 a long time ago, a manufacturer gas plant.

4 Q. And you still utilize some of the same
5 building?

6 A. That's correct.

7 MR. HARSCH: That completes my direct.

8 HEARING OFFICER HALLORAN: I'm sorry,
9 Mr. Harsch?

10 MR. HARSCH: That completes my direct.

11 HEARING OFFICER HALLORAN: Okay.

12 Thank you. I wanted to try to get out of
13 here by 4:00 today. Is everybody fine with
14 that? Mr. Grant, I know your cross may take
15 longer.

16 MR. GRANT: I was going to suggest
17 maybe that we'll do cross tomorrow morning.
18 I hate to have Mr. Malmgren come again just
19 for that, but we'll get him out quick.

20 But we'd like to have a few
21 minutes to review it and I think it will take
22 a little bit of time.

23 MR. HARSCH: I'm fine with that. I
24 just wanted to get a good start on tomorrow.

1 HEARING OFFICER HALLORAN: Do you
2 think we should start at 8:30? Well,
3 everybody get here, you know, and we'll see
4 where we are. I know it's kind of hard for
5 some people, but I'll be here so it's just a
6 thought.

7 MR. HARSCH: We'll endeavor to try to
8 be here early. Do we need Mr. Van Hoose
9 tomorrow?

10 MR. GRANT: No. I'm not going to call
11 him again.

12 HEARING OFFICER HALLORAN: All right.
13 Thank you. We'll continue this hearing on
14 record tomorrow morning at 9:00 a.m. or
15 possibly a little earlier. Thank you so
16 much. Have a safe trip.

17 (Which were all the
18 proceedings had in the
19 above-entitled cause
20 on this date.)

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1 STATE OF ILLINOIS)
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 2 COUNTY OF WILL) SS.
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I, Tamara Manganiello, CSR, RPR, do hereby
 certify that I reported in shorthand the proceedings
 held in the foregoing cause, and that the foregoing
 is a true, complete and correct transcript of the
 proceedings as appears from my stenographic notes so
 taken and transcribed under my personal direction.

Tamara Manganiello
 TAMARA MANGANIELLO, CSR, RPR
 License No. 084-004560