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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

No. PCB 99-191

PANHANDLE EASTERN PIPE LINE COMPANY,

Respondent.

Proceedings held on September 18, 2000, at 9:45 a.m., at
the offices of the Illinois Pollution Control Board, 600 South
Second Street, Suite 403, Springfield, Illinois, before John C.
Knittle, Chief Hearing Officer.

VOLUME I

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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SEYFARTH SHAW

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DUKE ENERGY

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Houston, Texas 77251
On behalf of Panhandle Eastern Pipe Line
Company, Inc.

Also present:
Board Member Marili McFawn

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1 P R O C E E D I N G S

2 (September 18, 2000; 9:45 a.m.)

3 HEARING OFFICER KNITTLE: My name is John Knittle. I am
4 the Chief Hearing Officer for the Illinois Pollution Control
5 Board and also the assigned Hearing Officer in the matter before
6 us here today entitled, People of the State of Illinois versus
7 Panhandle Eastern Pipe Line Company, Pollution Control Board
8 Docket Number 1999-191. Today's date is September the 18th of
9 the year 2000. It is approximately 9:45 a.m. We are here at the
10 Board's offices in Springfield, Illinois.

11 And just for the record, this hearing was noticed publicly
12 pursuant to Board regulations and the Environmental Protection
13 Act and will be run in accordance with Sections 103.202 and
14 103.203 of the Board's regulations.

15 I want to note that we have Board Member Marili McFawn
16 present here today. She is the assigned Board Member for this
17 case.

18 BOARD MEMBER McFAWN: Good morning.

19 HEARING OFFICER KNITTLE: Also from the Pollution Control
20 Board is Hearing Officer Brad Halloran. He is also present here
21 today.

22 I note for the record that there are no members of the
23 public present to this point not affiliated with one of the
24 parties. Is that correct? Not hearing anything, I am assuming

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1 that is correct. So currently we have no members of the public
2 present. I want it noted that if, in fact, we do have members of
3 the public showing up from time to time throughout the hearing, I
4 will inform them that the Board is eager to hear public comment,
5 and we will be willing to make accommodations for them to provide
6 public comments, although the time for public comment period is
7 after both cases-in-chief have closed.

8 I also want it reflected on the record that -- and I am
9 sure that most of you know this. I do not make the ultimate
10 decision on this matter. That is made by the Illinois Pollution
11 Control Board, comprised of seven members throughout the State of
12 Illinois. My job is to rule on evidentiary matters and present
13 the Board with a concise and hopefully clear record for them to
14 base their decision upon.

15 We have talked off the record about a number of preliminary
16 matters, but before we get involved with that, I want the parties
17 to introduce themselves, starting with the complainant.

18 MS. CARTER: I am Sally Carter for the People of the State
19 of Illinois. Sitting at the counsel table with me I have Special
20 Assistant Attorney General, Robb Layman, to my right. And to my
21 left I have Assistant Counsel Dennis Brown from the Illinois EPA.

22 HEARING OFFICER KNITTLE: Thank you.

23 MR. BOYD: Good morning. I am Eric Boyd with the law firm

24 of Seyfarth Shaw. With me today are my colleagues Susannah

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1 Smetana and Phil Deisch with Duke Energy.

2 HEARING OFFICER KNITTLE: Thank you, Mr. Boyd. That takes
3 us to preliminary matters. We had a bunch of issues that we
4 discussed before we started this up off the record. The first
5 thing I want to note is that Mr. Layman -- Ms. Carter has filed
6 today an appearance before the Board; is that correct?

7 MS. CARTER: That's correct.

8 HEARING OFFICER KNITTLE: I have the original and nine
9 copies in front of me?

10 MS. CARTER: Yes, you do.

11 HEARING OFFICER KNITTLE: Mr. Boyd?

12 MR. BOYD: No objections.

13 HEARING OFFICER KNITTLE: All right. We will accept this
14 appearance. Mr. Layman, you are more than welcome to appear and
15 participate before the Illinois Pollution Control Board in this
16 matter.

17 We also have a motion to supplement the economic benefits.
18 Let's take these one at a time. There were two different motions
19 that we have to address.

20 Ms. Carter, what is the first one?

21 MS. CARTER: The first motion that is before the Board is
22 the motion to supplement the economic benefit calculations of our
23 witnesses, Mr. Styzens and Dr. Nosari. And they simply pertain

24 to a calculation that slightly revises an earlier estimate to

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1 account for a partial year estimate, and also simply employs a
2 different time period for the calculations as well.

3 HEARING OFFICER KNITTLE: All right. That was filed on
4 September 14th?

5 MS. CARTER: Yes, Mr. Hearing Officer.

6 HEARING OFFICER KNITTLE: Along with a motion for leave to
7 file that I forgot to include.

8 Mr. Boyd, do you have any objection to this motion?

9 MR. BOYD: No objection. But we did have discussions with
10 Counsel for the complainant to make clear that of the six
11 versions of an economic benefit calculation that were provided
12 with that motion the State intends to rely on three of the six.

13 MS. CARTER: That's correct.

14 HEARING OFFICER KNITTLE: Is that correct, Ms. Carter?

15 MS. CARTER: That's correct.

16 HEARING OFFICER KNITTLE: All right. Mr. Boyd, anything
17 further?

18 MR. BOYD: Well, I would like to identify which ones, for
19 the record. I am not quite sure how to identify them.

20 MS. CARTER: I can go through those for the record right
21 now. The three additional ones that we will be relying upon are
22 a document of the original revised, and the three documents that

23 are associated therewith. The next one is for the time period of
24 February 1988 through August of 1999, and is identified as

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1 weighted average cost of capital and the three documents
2 therewith. And the third one is for the same time period but is
3 for the prime rate and the three documents that are associated
4 therewith. Is that clear?

5 MR. BOYD: That's clear for me.

6 HEARING OFFICER KNITTLE: Okay. Based on that
7 representation, Mr. Boyd, do you have any objection to this
8 September 14th motion?

9 MR. BOYD: No, I don't.

10 HEARING OFFICER KNITTLE: Okay. The motion is granted.
11 That will be allowed.

12 The next motion, Ms. Carter, you filed on Friday, the 16th;
13 is that correct?

14 MS. CARTER: Yes, Mr. Hearing Officer.

15 HEARING OFFICER KNITTLE: And I don't have a copy of that
16 before me. Could you explain that one to us?

17 MS. CARTER: That motion pertains to some additional
18 calculations that Counsel for the complainant just recently
19 discovered that were performed by an inspector for the Illinois
20 EPA. I can go into further detail if the Hearing Officer --

21 HEARING OFFICER KNITTLE: Let's find out if it is
22 necessary.

23 Mr. Boyd, do you have any objection to this motion?

24 MR. BOYD: No. I think while in some circumstances I would

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1 object to such a late filing, I think the State has laid out in
2 their own motion the reason for the lateness. And given that, we
3 have no objection.

4 HEARING OFFICER KNITTLE: Okay. This motion is granted as
5 well. I do want it noted for the record that there was a third
6 motion filed by Panhandle. Actually, it was their first motion.
7 It was filed on August 25th. Respondent's motion for leave to
8 file supplement to the report of economic benefit expert. We
9 discussed that at our final prehearing conference. I granted
10 that motion. I just want that noted for the record. So that
11 motion was granted as well.

12 We do have a number of stipulations, the first being a
13 stipulation of hearing exhibits. Is that correct, Ms. Carter?

14 MS. CARTER: Yes, that's correct.

15 HEARING OFFICER KNITTLE: Let's go over what those are. I
16 don't think we have to go over every one at this point. As I
17 recall from our off-the-record discussion we were going to
18 reference them as they become needed; is that correct?

19 MS. CARTER: That's correct.

20 HEARING OFFICER KNITTLE: Could you identify the title of
21 the document and also the number of exhibits that we are

22 stipulating to.

23 MS. CARTER: It is entitled, Stipulated Hearing Exhibits
24 and there are 24 documents or references included therein. There

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1 may be more documents in here, but it is identified as 24
2 exhibits.

3 HEARING OFFICER KNITTLE: Mr. Boyd, you agree that that is
4 what we are stipulating to, with the Stipulated Hearing Exhibits?

5 MR. BOYD: Yes, we do, with the one caveat that Stipulated
6 Exhibit Number 11, which is the 1994 annual emissions report, we
7 believe is incomplete and we have another document which we
8 purport to be a complete emissions report, and it is going to be
9 the 14th exhibit that we will introduce that the State has also
10 agreed to stipulate to the admissibility of.

11 HEARING OFFICER KNITTLE: Ms. Carter, do you agree with
12 that statement, that Stipulated Exhibit Number 11 is not complete
13 and that we are going to --

14 MS. CARTER: No, the State disagrees with that statement.
15 The State maintains that group exhibit -- Stipulated Group
16 Exhibit Number 11 is complete. However, we have no objection to
17 stipulating to the admissibility of their Exhibit Number 14, is
18 that correct, separate and apart from the stipulated hearing
19 exhibits.

20 HEARING OFFICER KNITTLE: So we are going to have a
21 stipulate exhibit -- a Stipulated Hearing Exhibit Number 11,

22 which is substantially the same as the Respondent's Exhibit
23 Number 14, and you are not objecting to Respondent's Exhibit
24 Number 14?

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1 MS. CARTER: Not to the admissability thereof, no.

2 HEARING OFFICER KNITTLE: Okay.

3 MR. LAYMAN: Just to the placement thereof.

4 MR. BOYD: If I may, there is a disagreement as to whether
5 a sheet which lists emissions was included in the annual report
6 or not. So to the extent that the stipulation is that the 1994
7 emissions report is complete, then we do not agree that the
8 Stipulated Exhibit Number 11 is the complete annual emissions
9 report.

10 HEARING OFFICER KNITTLE: All right. We are agreeing on
11 the admissibility, though, correct?

12 MR. BOYD: Yes.

13 HEARING OFFICER KNITTLE: Okay.

14 MR. BOYD: On the admissibility of those pages including
15 only.

16 HEARING OFFICER KNITTLE: Okay. That is noted for the
17 record. I also want it noted that we have copies of the
18 Stipulated Hearing Exhibits both for the witness and myself as
19 well as each member of Counsel, correct?

20 MS. CARTER: That's correct.

21 HEARING OFFICER KNITTLE: Okay. I will, based on the
22 stipulation, accept these exhibits and admit them into evidence.

23 All right. So Stipulated Exhibits 1 through 24 are
24 admitted into evidence.

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1 (Whereupon said documents were duly marked for purposes of
2 identification as Stipulated Hearing Exhibits 1 through 24
3 and admitted into evidence as of this date.)

4 HEARING OFFICER KNITTLE: Which takes us to prior
5 incorporation of testimony, correct?

6 MR. LAYMAN: That's correct.

7 HEARING OFFICER KNITTLE: Ms. Carter, what do we have on
8 this?

9 MS. CARTER: On that we have hearing transcripts from the
10 previous permit appeal proceeding that it is my understanding
11 have been agreed to for both parties for two witnesses, Mr. Mike
12 Davidson and Mr. Chris Romaine. It is only portions of their
13 testimony that is included therein. There are four copies for
14 the Board to incorporate those from the prior proceedings into
15 this proceeding.

16 HEARING OFFICER KNITTLE: Mr. Boyd?

17 MR. BOYD: No objections.

18 HEARING OFFICER KNITTLE: Any comment before I get started
19 on my --

20 MR. BOYD: No comments.

21 HEARING OFFICER KNITTLE: -- comments? Incorporation of
22 prior proceedings is governed, of course, by Section 101.106 of
23 the Board's regulations which states that upon the separate
24 written request of any person or on its own initiative the Board

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1 or Hearing Officer may incorporate materials from the record of
2 another Board docket into any proceeding. There has been no
3 written request, but I want it noted that on my own record I am
4 incorporating these, then, into this proceeding.

5 Now, we do have the original and -- actually, we have four
6 copies of the material to be incorporated, Ms. Carter?

7 MS. CARTER: Yes. Actually, right now you have three
8 before you. Counsel for the respondent has the other one. We
9 will give that to you at the end of the day if that is
10 acceptable. It is simply so Counsel for respondent can rely upon
11 it during the --

12 HEARING OFFICER KNITTLE: That is perfectly acceptable.
13 The rules do state that the material must be relevant to the
14 proceeding. I think based on the representations by both Counsel
15 I have found it relevant to the proceeding, and we will go
16 forward from there. These are accepted as well and incorporated
17 into this proceeding.

18 Do we need to go over these page by page -- not page by
19 page, but page to page, Ms. Carter, or just let them stand here?

20 MS. CARTER: I don't think that is necessary unless Counsel
21 for respondent does.

22 HEARING OFFICER KNITTLE: Mr. Boyd?

23 MR. BOYD: No, I don't think so.

24 HEARING OFFICER KNITTLE: Okay. We will just let them

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1 stand, then. These are accepted. Which takes us to -- well,
2 that's all I have for preliminary matters. Is there anything I
3 am missing? Ms. Carter?

4 MS. CARTER: I don't believe so.

5 HEARING OFFICER KNITTLE: Mr. Boyd?

6 MR. BOYD: Not at this time.

7 HEARING OFFICER KNITTLE: All right. Let's move forward
8 with opening statements.

9 Ms. Carter, you may proceed.

10 MS. CARTER: The People of the State of Illinois are before
11 the Illinois Pollution Control Board due to respondent, Panhandle
12 Eastern Pipe Line Company's significant net emissions increase in
13 nitrogen oxide, or NOx emissions, from the existing source. The
14 State will present three witnesses pertaining to the following
15 information.

16 One, Panhandle's replacement of an existing source resulted
17 in a net nitrogen oxide emission increase in excess of 39.9 tons
18 per year.

19 Secondly, Panhandle's operation of this new source and

20 engines numbered 1116 through 1119 and the ensuing nitrogen oxide
21 emissions was in excess of the 461.3 tons per year limit
22 contained within the respondent's operation permit.

23 And, three, Panhandle has failed to address the applicable
24 federal Prevention of Significant Deterioration, or PSD,

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1 requirements.

2 In addition to these three witnesses, the People will offer
3 testimony from two witnesses who will discuss their range of
4 calculations relative to Panhandle's economic benefit that
5 resulted from the respondent's delayed cost of installing the
6 necessary pollution control equipment. The State will address
7 the gravity component of an appropriate penalty, that should be
8 assessed by the Board, in the State's brief.

9 Based on the facts that will be presented in this hearing,
10 the People of the State of Illinois respectfully request that the
11 Illinois Pollution Control Board find the respondent, Panhandle
12 Eastern Pipe Line Company, in violation of the Clean Air Act, the
13 Illinois Environmental Protection Act, and its operational
14 permits.

15 In addition, the complainant requests that the Board assess
16 a penalty that includes the respondent's economic benefit due to
17 its delayed cost of installing the necessary pollution control
18 equipment, and additionally includes a gravity component, as

19 presented by the People of the State of Illinois. Thank you.

20 HEARING OFFICER KNITTLE: Thank you, Ms. Carter.

21 Mr. Boyd, do you have an opening statement?

22 MR. BOYD: Yes. Thank you. There is no question that NOx
23 emissions from engines 1116 through 1119 exceeded the 461.3 ton
24 per year limit. The emissions from the engines exceeded that

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1 level in 1989, the first full year of operation, and in every
2 year since then. Panhandle provided information to that effect,
3 upon the Agency's request, as part of the 1997 permit proceeding.
4 Panhandle admitted that fact in its answer to the complaint in
5 this case.

6 So if that's the case, then why are we here? What this
7 case really involves is the significance of exceeding the 461.3
8 ton per year NOx limit and what relief may be appropriate as a
9 result of those exceedances.

10 Panhandle has asserted five affirmative defenses. The
11 first two affirmative defenses relate to the 461.3 ton per year
12 NOx limit itself, the manner in which it was determined and how
13 it was written. The fact is, no one at Panhandle understood that
14 the blanket emissions limit would require drastic restrictions on
15 the manner in which the four new engines could operate. You will
16 hear Panhandle witnesses say that if they had understood that to
17 be the case, then they could not have agreed to the limit. They
18 would have instead installed controls on all four new engines

19 when they were installed. It was not until Mr. Youngblut's
20 inspection in August of 1996 that anyone realized that the 461.3
21 ton per year NOx limit, in fact, severely restricted the hours
22 the four engines could operate.

23 Panhandle's third, fourth, and fifth affirmative defenses
24 all relate to the fact that so much time passed before the State

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1 took enforcement action in this matter. Why is that important?
2 The State has argued that the length of noncompliance is long,
3 suggesting that both the gravity and economic benefit portions of
4 the penalty should be increased as a result. Panhandle will show
5 not only did it not understand that the 461.3 ton per year NOx
6 limit required it to limit operations of those four engines but
7 also that the Agency had ample opportunity, by its review of
8 permit applications, through its receipt of annual emissions
9 reports, and as a result of annual inspections, to discover that
10 the 461.3 ton per year limit was being exceeded much sooner than
11 August of 1996. Those facts reinforce the fact that Panhandle
12 was not knowingly exceeding the 461.3 ton per year limit.

13 This is also not a case where the respondent has failed to
14 take action once an alleged violation was noted. As soon as Mr.
15 Youngblut's inspection in August of 1996, Panhandle
16 representatives attempted to meet with the Agency to discuss the
17 situation. They were told, however, probably as a result of the

18 newness of Section 31(a) of the Act, that any meetings or
19 discussions would have to wait until after the IEPA decided
20 whether to issue a violation notice.

21 As soon as they were able, Panhandle told the Agency that
22 they wanted to install clean burn controls on engines 1116 and
23 1117, the two engines installed in 1988, that had not already
24 been equipped with clean burn technology. Although its 1997

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1 permit application was denied, Panhandle pursued its legally
2 available means to challenge what it considered an inappropriate
3 action by the Agency. Even before those challenges were
4 completed, Panhandle, in August of 1999, submitted a new permit
5 application to the Agency, on which the Agency has not yet taken
6 action.

7 By far the biggest issue for the State, however, is that
8 Panhandle allegedly incurred an economic benefit as a result of
9 the alleged noncompliance. While economic benefit is certainly a
10 factor for the Board to consider, Panhandle sees the economic
11 benefit issue much differently than the State. The State
12 believes that it is appropriate to estimate an economic benefit
13 using information provided by Panhandle regarding the cost to add
14 clean burn controls to engines 1116 and 1117.

15 Panhandle's expert, Jasbinder Singh, J-A-S-B-I-N-D-E-R and
16 Singh is S-I-N-G-H, will testify that the State's approach to
17 determining economic benefit fails to take into account that

18 Panhandle is regulated -- is operating in a regulated market and
19 regulated by the Federal Energy Regulatory Commission, or FERC,
20 F-E-R-C. In addition, Mr. Singh believes that there are a number
21 of issues regarding how the State's experts have calculated
22 economic benefit, including, but not limited to the fact that the
23 State's experts do not take into account how much Panhandle has
24 agreed to spend today to install clean burn controls on those

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1 engines. The fact is the costs today are much more expensive
2 than the costs would have been in 1988, if they had installed
3 controls then.

4 We believe that based on the evidence that Panhandle -- it
5 will be proven that Panhandle incurred no economic benefit as a
6 result of the alleged noncompliance. So where does that leave
7 us? Clearly, we are in the hands of the Board. We don't plan to
8 relive the 1998 permit appeal proceeding before the Board during
9 this hearing, and have worked with the State regarding the
10 limited number of stipulations to make sure that they don't
11 either. Panhandle has said for a long time that these issues
12 should be resolved in the enforcement context and not the
13 permitting context. We believe that the Board will look at all
14 of the factors and the acts that are appropriate for considering
15 in an enforcement case and in the end issue an order in
16 Panhandle's favor. Thank you.

17 HEARING OFFICER KNITTLE: All right. Thank you, Mr. Boyd.

18 All right. Ms. Carter, do you want to call your first
19 witness.

20 MS. CARTER: Yes. The People call Steve Youngblut.

21 HEARING OFFICER KNITTLE: Mr. Youngblut, if you could come
22 up and have a seat next to the court reporter.

23 Would you swear him in, please.

24 (Whereupon the witness was sworn by the Notary Public.)

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1 HEARING OFFICER KNITTLE: Ms. Carter.

2 S T E V E N Y O U N G B L U T ,

3 having been first duly sworn by the Notary Public, saith as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. CARTER:

7 Q. Please state your name for the record.

8 A. Steven Youngblut.

9 Q. Could you spell your last name for us, please.

10 A. Y-O-U-N-G-B-L-U-T.

11 Q. Thank you. Could you tell me a little bit about your
12 undergraduate education?

13 A. I received an undergraduate degree in engineering from
14 Purdue University in 1976. It was a degree in environmental
15 engineering.

16 Q. What type of course work did you undertake to attain

17 your a degree in environmental engineering?

18 A. Most of the course work dealt with civil engineering,
19 such as waste water treatment facilities, designs. There was
20 some course work in air pollution control and internal combustion
21 engines.

22 Q. Okay. Did you eventually attain a graduate degree?

23 A. Yes.

24 Q. When did you attain that?

21

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1 A. I attained a graduate degree in 1982.

2 Q. What did you attain your graduate degree in?

3 A. In environmental and thermal engineering.

4 Q. Where did you attain that degree from?

5 A. Southern Illinois University at Carbondale.

6 Q. Can you tell me a little bit about the course work that
7 you took to attain your degree in thermal and environmental
8 engineering?

9 A. Most of the course work dealt, once again, with
10 wastewater treatment design also public water supply design.
11 There was some course work in combustion fuels, and some air
12 pollution control.

13 Q. Who are you currently employed by?

14 A. The Illinois Environmental Protection Agency in the
15 Division of Air Pollution Control.

16 Q. How long have you been employed by the Illinois EPA?

17 A. I have been employed by the Illinois EPA since 1978.

18 Q. Can you please tell me a little bit about your duties,
19 when you first became employed by the Illinois EPA?

20 A. When I began, I was hired as a district engineer out of
21 the Springfield Regional Office. Shortly thereafter the
22 Springfield Regional Office for Air Pollution Control was
23 downgraded to a district office. I became the only inspector in
24 the Springfield district office responsible for air pollution

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1 inspections in 13 counties in Central Illinois, and Sangamon
2 County was one of those counties.

3 Q. How long did your duties involve inspections for 13
4 counties with the Illinois EPA?

5 A. My duties involved inspections in those 13 counties up
6 until the time in early 1992 when Laurie Brinkmann, an additional
7 inspector, was hired.

8 Q. Okay. In 1992 can you please describe your duties for
9 the Illinois EPA?

10 A. In 1992, the Agency hired one additional inspector for
11 the Springfield District Office, which was Laurie Brinkmann. At
12 that time we, with the help of the regional manager, assigned the
13 inspections at air pollution sources in those 13 counties. We
14 split up those assignments.

15 Q. Prior to 1992, can you tell me approximately how many

16 inspections you were conducting per year?

17 A. I was probably inspecting in the neighborhood of about
18 200 facilities -- or performing about 200 inspections per year.

19 Q. During that time period, approximately how many
20 facilities were you responsible for inspecting?

21 A. I believe the work plan had approximately 130 facilities
22 on it. So the additional inspections were follow-up inspections
23 and other types of inspections.

24 Q. When you reference a work plan, can you please tell me

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1 what a work plan is?

2 A. Each year the management at the Bureau of Air Pollution
3 put together a work plan, and this was based on the inspection
4 priorities or possibly on upcoming regulations, air pollution
5 regulations. The management put together this list of inspection
6 assignments for each inspector for each district. These then
7 became the work plan for that district engineer.

8 Q. Were you involved in the development of a work plan when
9 you first began with the Illinois EPA?

10 A. No.

11 Q. During the course of your inspections what were you
12 seeking to determine? Strike that.

13 During your inspections that you typically conducted in the
14 early 1980s, what were you typically seeking to determine?

15 A. During those inspections, I was making observations and
16 seeking to determine compliance of the facilities on the work
17 plan.

18 Q. Okay. In 1992 you mentioned that your duties changed
19 with the addition of Ms. Brinkmann. Can you please again
20 describe how your duties changed when Ms. Brinkmann arrived with
21 the Illinois EPA?

22 A. When Ms. Brinkmann arrived, we split up the facilities
23 that had been the work plan in the district. And she then became
24 responsible for some of the facilities and I became responsible

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1 for some of the facilities. We both individually answered to the
2 regional manager in Peoria.

3 Q. Since 1992, have your duties changed again with the
4 Illinois EPA?

5 A. Yes.

6 Q. When did they change?

7 A. My duties changed approximately in 1995, when the Bureau
8 decided to establish two districts in the Springfield District
9 Office, one district for Laurie Brinkmann and one district for
10 me. Laurie Brinkmann's was designated district 207 and my
11 district was then 204. And then I was assigned supervisory
12 responsibility for Laurie Brinkmann.

13 Q. Did district 204 include Sangamon County?

14 A. Yes.

15 Q. Have your duties within the Illinois EPA changed since
16 1995?

17 A. Yes.

18 Q. When did they change?

19 A. My duties changed in January of 1999, when I was -- when
20 the Agency hired one additional inspector for the Springfield
21 regional office, to make a total of three.

22 Q. How did your duties then change in 1999 with the
23 addition of that third inspector within the Springfield office?

24 A. I became also responsible for supervision of the new

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1 inspector. That inspector eventually took over most all of my
2 district, district 204, and I maintained responsibility for one
3 county, that is Adams County, and also several other sources in
4 the 204 district.

5 Q. In the course of your duties as an Illinois EPA
6 inspector, have you ever been assigned a specific facility due
7 your specialized expertise in a certain area?

8 A. Each inspector is responsible for inspections of the
9 work plan facilities that are assigned to them. If that involves
10 a district, then that inspector is responsible for the
11 inspections in that district. Recently when district 204 was
12 assigned to the third new inspector, I was asked to maintain
13 responsibility for one facility in Sangamon County, and that's

14 Borden Chemical Company. But otherwise it is not routine for one
15 individual to be responsible for a specific type of facility
16 inspection or source throughout the State of Illinois.

17 Q. Okay. Prior to becoming employed with the Illinois EPA
18 in 1978, did you have any positions prior thereto?

19 A. Yes.

20 Q. Where were you employed prior to 1978?

21 A. I was employed by Fairbanks Morris Corporation in
22 Beloit, Wisconsin.

23 Q. What type of corporation is Fairbanks Morris?

24 A. Fairbanks Morris is a manufacturer. They manufacturer

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1 pumps, engines, a variety of valves, and a variety of different
2 types of equipment.

3 Q. What were your duties during the course of your
4 employment for Fairbanks Morris?

5 A. My job involved designing and costing out municipal
6 waste water treatment and handling systems and also systems for
7 on board ships.

8 Q. Okay. Since you have become employed with the Illinois
9 EPA, have you participated in any additional training?

10 A. Yes.

11 Q. Has the training related to your duties relevant to your
12 job at the Illinois EPA?

13 A. Yes.

14 Q. Can you please tell me a little bit about the training
15 that you have undertaken since you have been employed with the
16 Illinois EPA?

17 A. When I began with the Agency, the U.S. EPA had a program
18 of training courses with a schedule throughout the United States.
19 At that time I attended several of the U.S. EPA sponsored
20 training courses.

21 Q. Do you recall what those training courses pertained to?

22 A. Things like control of particulates and control of
23 gaseous emissions. One course was in operating or performing a
24 stack test on a source.

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1 Q. Have you been involved in any training sponsored by the
2 Illinois EPA?

3 A. There has been some training since I began with the
4 agency.

5 Q. Do you recall what any of those trainings may have
6 pertained to?

7 A. Most of the training involved working with our computer
8 emission inventory systems as they have changed, also maybe
9 internal training on new regulations, such as the Clean Air Act
10 Amendments of 1990.

11 Q. Okay. Are you familiar the Panhandle facility located
12 in Glenarm, Illinois?

13 A. Yes.

14 Q. How so?

15 A. I performed inspections there several times.

16 Q. In what county is Glenarm, Illinois?

17 A. Sangamon County.

18 Q. Okay. Do you know approximately how many times you have
19 been to the Glenarm facility?

20 A. Approximately 14 times.

21 Q. Do you recall the first time that you went to the
22 Glenarm station?

23 A. Yes.

24 Q. When what was that, sir?

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1 A. In 1980.

2 Q. Do you know what type of role the Glenarm station plays
3 within the operation of Panhandle Eastern Pipe Line Company?

4 A. I understand that it is a natural gas pumping station
5 that is on the pipeline and it compresses natural gas and sends
6 it down the pipeline.

7 Q. During the course of your inspections of the Glenarm
8 station have you determined that the facility is a source of
9 nitrogen oxide emissions?

10 A. Yes.

11 Q. Can you describe for me what nitrogen oxide is?

12 A. Nitrogen oxide is a group of air contaminants generated

13 when you burn fuel in the presence of air, air being about 78
14 percent nitrogen. So when you burn fuel in air, you generally
15 get nitrogen oxide emissions.

16 Q. How is the amount of nitrogen oxide emissions from a
17 source typically determined?

18 A. Typically, the amount is determined using standard
19 emission factors, either submitted -- excuse me. Standard
20 emission factors presented by U.S. EPA.

21 Q. When you refer to -- strike that. What are standard
22 emission factors?

23 A. The U.S. EPA has published a compilation of emission
24 factors. It is known as the AP-42. In that book, that book

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1 covers most all of the different types of manufacturing
2 operations that would generate air pollution emissions. Those
3 factors are revised from time to time.

4 Q. Could you please tell me how you would calculate the NOx
5 emissions from a facility utilizing the AP-42 factors?

6 A. The AP-42 factor would have units on it, such as in the
7 case of pounds per million BTU. In order to perform the
8 calculation, you need to -- some knowledge about the operation of
9 the air pollution source. And in the case if it would be pounds
10 per million BTU, you would need to know how much fuel was burned
11 by that source and then convert that to BTUs and then apply the

12 emission factor.

13 Q. Okay. Is there any alternative method in which to
14 calculate the amount of NOx emissions from a source?

15 A. You can calculate emissions based on emission factors or
16 operating information that a facility might generate as a result
17 of maybe operations of the source at another location or other
18 types of experience with a similar source.

19 Q. Okay. In this instance, pertaining to the Glenarm
20 station, what unit of measurement did you become accustomed to
21 using for assessing compliance at the facility?

22 A. I used the AP-42 factors that had the units of pounds
23 per million BTU.

24 Q. Why did you use these AP-42 factors?

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1 A. When the original construction permit application was
2 received, the permit section had reviewed that application and
3 used the pounds per million BTU emission factor to set the
4 baseline of nitrogen oxide emissions. So I continued to use the
5 same type of emission factor to calculate nitrogen oxide
6 emissions.

7 Q. Okay. Did you conduct an inspection of the Glenarm
8 station in 1987?

9 A. Yes.

10 Q. Do you have sitting before you the Stipulated Hearing
11 Exhibits, sir?

12 A. Yes.

13 Q. If I could direct your attention to Stipulated Group
14 Number 7. While I don't have these numbered, it is approximately
15 page seven contained therein?

16 A. Yes.

17 Q. Are you on page seven within Stipulated Group Exhibit
18 Number 7? I guess it is page eight. I am sorry.

19 A. Yes.

20 Q. Have you seen this document before?

21 A. Yes. This is a summary of my observations during an
22 inspection on July 1st of 1987.

23 Q. When you are referring to July 1st of 1987, where is
24 that located on the page?

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1 A. The upper right-hand corner.

2 Q. Okay. Is the date on the inspection memoranda -- what
3 is the date on the inspection memoranda?

4 A. July 6th of 1987.

5 Q. Do you typically generate an inspection memo immediately
6 following your inspection?

7 A. Yes.

8 Q. Why so?

9 A. I have a large number of facilities that I have to do
10 inspections on. I try to do the paperwork and do the inspection

11 write-ups soon after I do the inspections.

12 Q. Okay. Can you please describe the Glenarm station as it
13 existed on July 1st of 1987?

14 A. On July 1st of 1987 the station had ten Cooper
15 horizontal type engines. It had two Clark type engines, and it
16 had three other Cooper engines.

17 Q. Okay.

18 A. For a total of 15 engines.

19 Q. Do you recall the numbers of the existing engines at the
20 Glenarm station that you just described?

21 A. Yes.

22 Q. What were those numbers?

23 A. There were ten originally horizontal Cooper engines, and
24 then there were two Clark engines in the same building and then

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1 there were three engines, three 4,000 horsepower Cooper engines
2 in another building.

3 Q. Okay. Perhaps my question was not specific enough. I
4 apologize. Can you tell me what these engines were -- excuse me.

5 Can you tell me the numbers that these engines were
6 specifically referred to as?

7 A. These engines were specifically referred to as 1101
8 through 1115. It is 1115. Excuse me.

9 Q. What did you discover during your July 1st of 1987
10 inspection?

11 A. I was told that the company was intending to remove the
12 1,000 horsepower Cooper engines and the two Clark engines and
13 replace them with new engines.

14 Q. Again, when you refer to the Cooper engines and the
15 Clark engines, what numbers were those referred to?

16 A. Those were 1101 through 1112.

17 Q. Do you recall who you learned this from?

18 A. The plant contact, Mr. James Hurst.

19 Q. Did you make any inspection findings on July 1st of
20 1987?

21 A. I did not observe any violations during my inspection.

22 Q. Did you provide a copy of the inspection report to the
23 company?

24 A. No, not that I remember.

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1 Q. Do you routinely supply a copy of the inspection reports
2 to companies?

3 A. No.

4 Q. Do you recall telling the contact person on site -

5 MS. SMETANA: I am going to object to leading the witness.

6 HEARING OFFICER KNITTLE: Ms. Carter?

7 MS. CARTER: I am sorry. I didn't hear her.

8 MS. SMETANA: Object to the leading.

9 MS. CARTER: Which question?

10 MS. SMETANA: The line of the last two questions and the
11 third one you are about to begin.

12 MS. CARTER: He already answered those questions.

13 MS. SMETANA: Right. So I am objecting to the third
14 question.

15 HEARING OFFICER KNITTLE: Ms. Carter?

16 MS. CARTER: I can rephrase it.

17 Q. (By Ms. Carter) Do you recall having a conversation on
18 site with the contact person that day?

19 A. Yes.

20 Q. You do recall having a conversation on site with the
21 contact person?

22 A. Yes.

23 Q. Okay. What did that pertain to?

24 A. It pertained to the operation of the engines.

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1 Q. Do you recall any other conversation with the contact
2 person on site that day?

3 A. No.

4 Q. Do you recall the contact person making any inquiries
5 from you that day?

6 A. No.

7 Q. Did you conduct an inspection of the Glenarm station in
8 1988?

9 A. Yes.

10 Q. If I could direct your attention to the next page of the
11 Stipulated Hearing Exhibits. Have you seen that document before?

12 A. Yes.

13 Q. Can you please identify that document?

14 A. This document is an inspection report I generated as a
15 result of my observations, and it is a summary of my observations
16 on July 6th of 1988.

17 Q. Do you recall whether you met with anybody at the
18 facility that day?

19 A. Mr. James Hurst.

20 Q. Did you make any observations while you were on site?

21 A. Yes.

22 Q. What were those observations, sir?

23 A. I made observations that two of the engines, 1116 and
24 1117, were going through a startup phase. They were being

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1 tested. And two engines, 1118 and 1119 were under construction.

2 Q. Did you receive any information from Panhandle while you
3 were on site that day?

4 A. Yes.

5 Q. What was that?

6 A. The information I received was that two of the engines
7 1118 and 1119 had been specially modified by removing parts of
8 the engines so as not to exceed limits in the operating permit.

9 Q. What relevance is this to you?

10 A. It is relevant because it says that the engines have
11 been modified so that they cannot exceed limits in the operating
12 permit for nitrogen oxides.

13 Q. Did the company provide you with any fuel usage for that
14 year at the time of your inspection?

15 A. No.

16 Q. Did the company provide you with any hours of operation
17 at the time of the inspection?

18 MS. SMETANA: I am going to object as to leading the
19 witness.

20 HEARING OFFICER KNITTLE: Ms. Carter?

21 MS. CARTER: I can rephrase.

22 Q. (By Ms. Carter) Did the company provide you with any
23 additional information at the time of your inspection?

24 A. Not that I recall.

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1 Q. Okay. Did you document any inspection findings that
2 day?

3 A. Yes.

4 Q. What were those?

5 A. I did not observe any violations during my inspection.

6 Q. Did you provide a copy of the inspection report to the
7 facility?

8 A. Not that I recall.

9 Q. Do you recall any additional conversations with the
10 contact person on site that day?

11 MS. SMETANA: I will object as already asked and answered.

12 HEARING OFFICER KNITTLE: Ms. Carter?

13 MS. CARTER: He originally indicated what his conversation
14 was. I am just trying to see if there was any additional
15 information that he gathered from the contact person while he was
16 on site.

17 HEARING OFFICER KNITTLE: Overruled.

18 MS. SMETANA: His testimony as to what the contact person
19 said or may have said, any kind of testimony would be hearsay
20 based on what the contact person may or may not have said.

21 MS. CARTER: It is not hearsay, Mr. Hearing Officer,
22 because it is an admission by an employee of Panhandle Eastern
23 Pipe Line Company.

24 HEARING OFFICER KNITTLE: I am going to overrule the

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1 objection.

2 Do you remember the question, Mr. Youngblut?

3 THE WITNESS: No.

4 MS. CARTER: I will reask it.

5 Q. (By Ms. Carter) Did you have any additional
6 conversations with the contact person while you were on site that
7 day?

8 A. Yes.

9 Q. Do you recall what it pertained to?

10 A. To the engines -- the old engines, engine 1101 through
11 1112 would be demolished when the new engines were brought up on
12 line.

13 Q. Did you conduct an inspection of the Glenarm facility in
14 1989?

15 A. No.

16 Q. I am sorry?

17 A. No.

18 Q. Okay. Do you know why an inspection was not conducted
19 in 1989?

20 A. No.

21 Q. Did you conduct an inspection of the Glenarm facility in
22 1990?

23 A. Yes.

24 Q. Can I direct your attention to the next page within

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1 Stipulated Hearing Exhibit Number 7. Have you seen that document
2 before?

3 A. Yes. This document is a summary of my observations
4 during an inspection of Panhandle Eastern Pipe Line, Glenarm
5 facility, May 14th of 1990.

6 Q. What is the date on this memorandum?

7 A. May 18th of 1990.

8 Q. Did you make any observations while you were on site?

9 A. Yes.

10 Q. What were those observations?

11 A. That the company replaced the old engines with -- had
12 replaced the twelve old engines with four new engines and kept
13 three of the existing engines.

14 Q. Okay. Can you please describe, then, the Glenarm
15 station as it existed at the time of your 1990 visit?

16 A. The Glenarm station then comprised seven engines,
17 engines 1113 through 1119.

18 Q. Okay. Can you please describe for me engines 1116
19 through 1119?

20 A. Engine 1116 was a 4,000 horsepower Cooper. Engine
21 1117 was a 4,000 horsepower Cooper. Engine 1118 was a 2,070
22 horsepower Cooper and 1119 was a 2,070 horsepower Cooper engine.

23 Q. Was there any indication to you that engines 1116 and
24 1117 had ceased operations during that year?

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1 A. No.

2 Q. Did you make any inspection findings while you were on
3 site?

4 A. Yes.

5 Q. What were those inspection findings?

6 A. Those inspection findings were that I did not observe a

7 violation.

8 Q. Did you make any informational request from the facility
9 at the time of your inspection?

10 A. Yes.

11 Q. What did you request from the facility?

12 A. Operating hours and fuel emission information on the
13 engines.

14 Q. Did you obtain this information at the time of your
15 inspection?

16 A. I don't recall.

17 Q. What was your general approach in requesting fuel
18 consumption data from the company during your inspections?

19 A. During my inspection, we would request a turnaround
20 document or an emission inventory document that would list all of
21 the sources that were permitted at the facility. I would take
22 that document with me to the inspection, review that with a
23 contact person, and then ask for updated information on hours of
24 operation and fuel consumption for the sources.

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1 Q. Was the fuel consumption data typically available at the
2 time of your inspection?

3 A. No.

4 Q. Do you know why?

5 A. No.

6 Q. Did you conduct an inspection of the Glenarm station in

7 1991, sir?

8 A. Yes.

9 Q. If I could direct your attention to the following page
10 in Stipulated Hearing Exhibit Number 7. Have you seen that
11 document before?

12 A. Yes.

13 Q. Can you identify that document for me?

14 A. This document is a summary of my observations during the
15 inspection of the facility on March 27th of 1991.

16 Q. What observations did you make that day?

17 A. I observed that the facility had three lube oil tanks
18 that were not covered by the operating permit and that those
19 tanks were not exempt from the permit regulations and that the
20 company was operating those three tanks and apparently in
21 violation of the permit regulations.

22 Q. Did you obtain from the company the fuel usage
23 information for 1990 during your site visit?

24 A. No.

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1 Q. Did you request that information during your site visit?

2 A. Yes.

3 Q. Do you know why it was not available to you at that
4 time?

5 A. No.

6 Q. Do you recall the next time, sir, that you conducted an
7 inspection of the Glenarm station?

8 A. In 1996.

9 Q. During this time, from March of 1991 to 1996, did anyone
10 else from the Illinois EPA conduct an inspection of the Glenarm
11 station?

12 A. Yes.

13 Q. Who?

14 A. Laurie Brinkmann.

15 Q. Do you know why Ms. Brinkmann conducted an inspection of
16 the facility rather than you?

17 A. My understanding was that when Laurie Brinkmann started
18 working and the population of facilities on the work plan was
19 split up between the two of us, that she was assigned the
20 responsibility for inspections at the Panhandle facility at
21 Glenarm.

22 Q. Do you recall the exact date of your inspection in 1996?

23 A. I believe it was August of 1996.

24 Q. Okay. If I could direct your attention to Stipulated

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1 Group Exhibit Number 17. The tabs are along the side. Have you
2 seen this document before?

3 A. Yes.

4 Q. Does it indicate the exact date of the inspection?

5 A. August 19th of 1996.

6 Q. Do you know what the circumstances were that led you to
7 conduct this inspection rather than Ms. Brinkmann?

8 A. Prior to this inspection, the population of facilities
9 or counties was split up into two districts out of the
10 Springfield District Office, district 204 and district 207. I
11 then, again, became responsible for all inspections in Sangamon
12 County, and this facility is in Sangamon County.

13 Q. What type of inspection was conducted in 1996?

14 A. This is known as tier 3 inspection.

15 Q. What is a tier 3 inspection?

16 A. It is a comprehensive inspection that covers the
17 facility and it involves information from not only the FOS
18 section, which is what I worked out of, the Field Operations
19 Section, but also from the permit section and any information
20 from the unit that processes the annual emission reports.

21 Q. Did this inspection differ from your previous
22 inspections, sir?

23 A. Yes.

24 Q. How so?

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1 A. Well, once again, it was a very comprehensive
2 inspection. We were supposed to look at all of the emission
3 sources at the facility and review each one for compliance with
4 the regulations.

5 Q. Okay.

6 A. And document that in the report.

7 Q. Okay. Does this inspection report differ in appearance
8 from the earlier inspection reports that we looked at?

9 A. Yes.

10 Q. How so?

11 A. The report itself, most of it has to do in this case
12 with the write-up of the report, the assembly of all of the
13 information that is available to the field inspector and then
14 documenting it in the report.

15 Q. Do you know why there was a change in the write-up of
16 the inspection at that time?

17 A. Panhandle had filed for a Title 5 permit application, so
18 then they became one of the facilities that was required to do a
19 tier 3 inspection on.

20 Q. What is a Title 5 permit application?

21 A. It is a permit application required by the Clean Air Act
22 Amendments of 1990.

23 Q. In the course of your 1996 inspection, did you review
24 any permits for the facility?

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1 A. Yes.

2 Q. What permits?

3 A. The original construction permit and subsequent
4 operating permits.

5 Q. How did you attain a copy of these permits?

6 A. Generally the field offices, field operation section
7 offices or district offices receive a copy of the permits when
8 they are issued.

9 Q. Okay. Does this include the Springfield District
10 Office?

11 A. Yes.

12 Q. I would like to direct your attention to Stipulated
13 Hearing Exhibit Number 1. Have you seen this document before,
14 Hearing Exhibit Number 1, sir?

15 A. Yes.

16 Q. What is that document?

17 A. It is a copy of the construction permit that was issued
18 by the Agency on February 10th of 1988.

19 Q. Is this one of the permits that you reviewed?

20 A. Yes.

21 Q. If I could direct your attention to Stipulated Hearing
22 Exhibit Number 5. Have you seen that document before?

23 A. Yes.

24 Q. What is it?

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1 A. A copy of the operating permit issued by the Agency on
2 July 26th of 1991.

3 Q. Is this one of the permits that you reviewed?

4 A. Yes.

5 Q. Did you review any other permits?

6 A. Yes.

7 Q. Do you recall what those were?

8 A. There were subsequent renewals of the permit.

9 Q. When you refer to the permit, what are you referring to,
10 sir?

11 A. The operating permit.

12 Q. Okay. If I could direct your attention to Stipulated
13 Hearing Exhibit Number 2. Have you seen that before?

14 A. Yes.

15 Q. What is it?

16 A. It is a copy of the operating permit issued by the
17 Agency on August 30th of 1988.

18 Q. Is this one of the permits that you reviewed?

19 A. Yes.

20 Q. Can I direct your attention to Stipulated Hearing
21 Exhibit Number 3. Have you seen this before?

22 A. Yes.

23 Q. What is it, sir?

24 A. It is a copy of the operating permit issued by the

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1 Agency on September 14th of 1989.

2 Q. Did you review this permit, sir?

3 A. Yes.

4 Q. Can I direct your attention to Stipulated Hearing
5 Exhibit Number 4. Have you seen that, sir, Number 4?
6 A. Yes.
7 Q. What is that document, sir?
8 A. It is a copy of the operating permit issued by the
9 Agency on June 5th of 1990.
10 Q. Did you review this permit?
11 A. Yes.
12 Q. Do you recall whether there were any limitations set
13 forth within the permits?
14 A. Yes.
15 Q. What limitations were there?
16 A. There were annual limitations on the amount of nitrogen
17 oxide emissions that the four new engines could produce.
18 Q. Do you recall what that limit was?
19 A. I believe it was 461.3 tons per year.
20 Q. And when you previously referred to the engines, what
21 engines were you referring to, sir?
22 A. Engines 1116, 1117, 1118, and 1119.
23 Q. Are you familiar with why the limit was set forth within
24 the construction permit?

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1 A. My understanding is that the limit was set forth to
2 prevent the engines from becoming major modifications and,

3 therefore, subject to the PSD regulations for nitrogen oxide
4 emissions.

5 Q. Did the limit change in the course of any subsequent
6 operational permits?

7 A. No.

8 Q. If I could just direct your attention back to Stipulated
9 Hearing Exhibit Number 17. It is the inspection memoranda for
10 August 20th of 1996. Did you meet anyone on site that day?

11 A. Yes.

12 Q. Do you recall who?

13 A. Mr. Dave Hagemann.

14 Q. Who is that?

15 A. He was the company contact with Panhandle Eastern Pipe
16 Line Company.

17 Q. Did you make any observations on site that day?

18 A. Yes.

19 Q. What observations did you make?

20 A. I made opacity observations of the operation of the
21 engines.

22 Q. When you refer to opacity, what do you mean by that?

23 A. Well, opacity is the opaqueness of the emissions as they
24 come out of the stack. I didn't do VE readings, or visual

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1 emission readings, but I just did simple observations.

2 Q. Did you make any other observations on site that day,

3 sir?

4 A. Yes.

5 Q. What observations were those?

6 A. That all seven engines were operating.

7 Q. Are these the same seven engines that you previously
8 described?

9 A. Yes.

10 Q. During the inspection, or immediately subsequent thereto
11 did you receive any information from Panhandle?

12 A. Yes.

13 Q. What was that, sir?

14 A. That was records on the hours of operation and the fuel
15 usage on the engines.

16 Q. Do you recall for what year this information pertained
17 to?

18 A. The previous year, 1995.

19 Q. What did you do once you received this information?

20 A. I performed calculations on those figures using the
21 standard U.S. EPA AP-42 emission factors and compared those
22 nitrogen oxide emissions against the limits in the permit.

23 Q. Okay. Were any of these calculations attached to your
24 inspection report?

1 A. Yes.

2 Q. Do you typically attach calculations to your inspection
3 reports?

4 A. No.

5 Q. Why did you do so in this instance?

6 A. This is an unusual situation where the permit was issued
7 with an annual limit on it. That is that the annual limit was
8 461.3 tons per year rather than a pounds per hour limit. And
9 when I performed the inspection report, I wanted to the make sure
10 that anybody reading that report understood that this facility
11 had an annual limit for nitrogen oxide versus a pound per hour
12 limit.

13 Q. Perhaps you already answered this, and I apologize if
14 you did. In making your calculations, did you choose a specific
15 time period in which to compare emissions for, NOx emissions for?

16 A. I compared the NOx emissions that I calculated for the
17 1995 fuel use against the original emissions that were calculated
18 in the construction permit.

19 Q. Why did you chose those time periods?

20 A. The original construction permit set the baseline for
21 the conditions in the operating permit. I was comparing the
22 emissions, the nitrogen oxide emissions that I was calculating
23 against the baseline emissions in the construction permit.

24 Q. Okay. Can you, sir, please explain the calculations

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1 that you conducted pertaining to the NOx emissions for the

2 facility in 1995?

3 Let me back up for a second. Let me strike that question.
4 Can you first describe for me the calculations that you completed
5 pertaining to NOx emissions for 1987?

6 A. I performed the calculations that were similar to the
7 calculations that the permit section had performed. The permit
8 section in the original permit had used an emission factor of 3.4
9 pounds per million BTU for nitrogen oxide emissions. And I had
10 used the more recent AP-42 factor of the 3.2 pounds per million
11 BTU.

12 Q. When you refer to the more recent AP-42 factor, what are
13 you referring to, sir?

14 A. During that period of time, the U.S. EPA had revised the
15 emission factors in AP-42. And I believe that I was using the
16 factors that were revised as of 1995.

17 Q. Okay. How did you employ the AP-42 factors in your
18 calculation of NOx emissions for 1987?

19 A. I used the emission factor of 3.2 pounds per million BTU
20 and using the fuel usage, I compared -- did a calculation and
21 compared the nitrogen oxide emissions that were generated as a
22 result of the fuel usage. I believe it was 1987 in the
23 construction permit application versus the fuel usage in 1995,
24 using the same AP-42 factor.

1 Q. Did you compare the results of your calculations once
2 you had completed them?

3 A. I compared the results of the calculations and I also
4 calculated the emission of nitrogen oxides from the four new
5 engines in my inspection report.

6 Q. In your comparison of the NOx emissions did you make any
7 determination?

8 A. Yes.

9 Q. What was your determination?

10 A. Based on my calculation, that on the four new engines,
11 that is 1116, 1117, 1118, and 1119, that nitrogen oxide emissions
12 in 1995 were exceeding the limits in the operating permit.

13 MS. CARTER: Can you please read back his answer.

14 HEARING OFFICER KNITTLE: In the future, though, Ms.
15 Carter, could you ask me and then I will ask the court reporter
16 and we will try to get it done if we can.

17 MS. CARTER: I apologize, Mr. Hearing Officer.

18 HEARING OFFICER KNITTLE: Not a problem.

19 (Whereupon the requested portion of the record was read
20 back by the Reporter.)

21 MS. CARTER: Thank you.

22 (Ms. Carter and Mr. Layman confer briefly.)

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

24 (Discussion off the record.)

1 HEARING OFFICER KNITTLE: We will take a short break.
2 (Whereupon a short recess was taken.)
3 HEARING OFFICER KNITTLE: We are back on the record after a
4 short break.
5 Mr. Youngblut, let me remind you that you are still under
6 oath.
7 THE WITNESS: Yes.
8 HEARING OFFICER KNITTLE: Ms. Carter, you may continue with
9 your direct examination.
10 MS. CARTER: Mr. Knittle, may I ask you to have the answer
11 read back one more time.
12 HEARING OFFICER KNITTLE: Yes.
13 MS. CARTER: Thank you.
14 HEARING OFFICER KNITTLE: Darlene, please.
15 (Whereupon the requested portion of the record was read
16 back by the Reporter.)
17 Q. (By Ms. Carter) Are you aware of what significance this
18 exceedance had with respect to the company's compliance with
19 Prevention of Significant Deterioration?
20 MS. SMETANA: I am going to object. That calls for the
21 witness to make a legal conclusion.
22 HEARING OFFICER KNITTLE: Ms. Carter?
23 (Ms. Carter and Mr. Layman confer briefly.)
24 MS. CARTER: Mr. Hearing Officer, my response would be that

1 it does not call for a legal conclusion because in terms of the
2 inspector's duties, his obligation is to determine compliance
3 with the permits, all applicable permits, during the course of
4 his inspection. I am simply asking him what determinations he
5 made during the course of his inspection.

6 HEARING OFFICER KNITTLE: Anything further, Ms. Smetana?

7 MS. SMETANA: Whether or not it is his determination,
8 whether or not it is a violation of PSD calls for a legal
9 conclusion.

10 HEARING OFFICER KNITTLE: The objection is overruled. Sir,
11 you can answer the question.

12 MS. CARTER: Do you need me to repeat the question?

13 THE WITNESS: Yes, please repeat the question.

14 MS. CARTER: Okay.

15 HEARING OFFICER KNITTLE: Do you need the court reporter
16 to read it back?

17 MS. CARTER: I can repeat it.

18 Q. (By Ms. Carter) Are you aware of what significance this
19 exceedance had with respect to the Glenarm station's compliance
20 with Prevention of Significant Deterioration?

21 A. My conclusion was that there was a possibility that the
22 emissions generated by the four newer engines in 1995 could be
23 exceeding the limits in the PSD regulations.

24 Q. Okay. Did you perform any calculations to establish

1 Panhandle's NOx emissions for 1995 based upon emission factors
2 from the original construction permit?

3 A. Not that I recall.

4 Q. How would that calculation compare with the calculation
5 that you performed at the time of your inspection?

6 A. I used the most recent AP-42 factors, the 1995 version,
7 which sets a limit of 3.2 pounds per million BTU for four stroke
8 engines and 2.7 pounds per million BTU four two stroke engines.
9 The emission factor that the permit section used to calculate the
10 baseline for the construction permit was a much higher number,
11 3.4 pounds per million BTU. Therefore, I can only conclude that
12 by using the higher emission factor the level of NOx emissions
13 would have also been higher.

14 Q. Okay. Based on your findings during your 1996
15 inspection, did you make any conclusions or recommendations, sir?

16 A. Yes.

17 Q. What were those?

18 A. I concluded that there was a possibility that operation
19 of the engines was exceeding limits in the operating permit and
20 that the Agency should send a letter to notify the company that
21 they may be exceeding limits in the operating permit.

22 Q. When you refer to a letter, what are you referring to?

23 A. The letter was or is a -- the letter is a violation
24 letter. It can take one of two forms, one being a noncompliance

1 advisory letter or a violation notice. Subsequent to my
2 inspection I recommended the noncompliance advisory letter be
3 sent to the company notifying them that there may be an
4 exceedance of the conditions in the operating permit.

5 Q. Okay. Once you calculated the 1995 NOx emissions, did
6 you consider any other emissions information that had been
7 previously provided by Panhandle to the Illinois EPA?

8 A. Yes.

9 Q. What information was this, sir?

10 A. Information submitted in the annual emissions reports
11 and information submitted in the Title 5 permit application.

12 Q. Where did you attain copies of the annual emission
13 reports?

14 A. The reports were available at headquarters at Illinois
15 EPA.

16 Q. Were they available at the Springfield Regional Office?

17 A. No.

18 Q. Did you have to make a request from anybody at the
19 Illinois EPA to attain --

20 A. Yes.

21 Q. -- the annual emission reports?

22 A. Yes.

23 Q. Who did you make that request from?

24 A. I believe it was Ron Miller.

1 Q. Who is Mr. Miller?

2 A. He was one of the employees in the section of people
3 that process the annual emission reports that came in from
4 sources in the State of Illinois.

5 Q. From what year did you request a copy of the annual
6 emission report?

7 A. I believe it was the previous year, 1995.

8 Q. Were emission reports available to the field inspectors
9 prior to 1996?

10 A. Yes.

11 Q. How so?

12 A. Through special requests at the Agency headquarters.

13 Q. Is that the same process that you just described for me?

14 A. Yes.

15 Q. Okay. Why did you request the annual emission reports
16 for Panhandle for 1995?

17 A. As part of the tier 3 inspection write up it requires
18 that you review the annual emissions reports, the most recent
19 annual emissions reports. Also, when I had calculated nitrogen
20 oxide emissions, I wanted to see what information the company was
21 submitting relevant to the level of nitrogen oxide emissions.

22 Q. What did the annual emission report indicate to you
23 pertaining to the level of nitrogen oxide emissions for the
24 facility?

1 A. It indicated that the level that the company -- of
2 nitrogen oxides that the company was submitting in their annual
3 emission reports was at least as high as what I was calculating
4 for 1995.

5 Q. From the 1995 annual emission report, could you discern
6 the annual emission for each engine, annual NOx emission for each
7 engine?

8 A. No.

9 Q. Okay. Before I believe you indicated, sir, that you
10 made a request for two things, an annual emission report and what
11 else?

12 A. The copy of the Title 5 permit application.

13 Q. Who did you request this from?

14 A. From the permit section at headquarters.

15 Q. Did you have to go through the same process to attain
16 the Title 5 permit application that you had to to attain the
17 annual emission reports?

18 A. Yes.

19 Q. Do you know why you did not conclude at a date prior to
20 1996 why the annual NOx emissions were in exceedance of the 461.3
21 tons per year?

22 A. Based on information I had I did not have any reason to
23 believe that the engines were exceeding the limits in the
24 operating permit.

1 Q. Okay. Prior to this time, did anyone from the company
2 contact you relative to the limits set forth within the
3 construction permit?

4 A. No.

5 Q. Did anyone from the company contact you to determine
6 compliance with the limits set forth within the construction
7 permit?

8 A. No.

9 Q. I believe earlier you referenced a letter that you
10 recommended to be sent to the company subsequent to your 1996
11 inspection. Are you aware of whether such a letter was, in fact,
12 mailed to the company?

13 A. Yes.

14 Q. Okay. What type of letter was sent to the company?

15 A. A violation notice was sent to the company.

16 Q. If I could direct your attention to Stipulated Hearing
17 Exhibit Number 20, have you seen this document before?

18 A. Yes.

19 Q. What is it?

20 A. This is a copy of the violation notice that was sent to
21 Panhandle Eastern Pipe Line Company on March 20th of 1997.

22 Q. Did you have a role in the preparation of this document?

23 A. Yes.

24 Q. What was your role in the preparation of this document?

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1 A. My role was originally to draft the letter and draft the
2 attachment to the letter.

3 Q. What did the violation notice letter itself indicate?

4 A. The letter indicated that operation of the engines may
5 be exceeding limits in the operating permit and limits in the PSD
6 regulations.

7 Q. I am sorry. Were you referring to the letter or the
8 attachment?

9 A. I was referring to the attachment.

10 Q. Okay. Thank you. Do you know what the letter itself,
11 the violation notice letter, indicated?

12 MS. SMETANA: I am going to object. I think the letter
13 speaks for itself.

14 HEARING OFFICER KNITTLE: Ms. Carter?

15 MS. CARTER: He did prepare this document, as he indicated.
16 However, it does speak for itself, so that is fine. We can just
17 continue on.

18 HEARING OFFICER KNITTLE: Are you withdrawing your
19 objection?

20 MS. SMETANA: Yes.

21 MS. CARTER: That's fine. I will withdraw that question.
22 However, I would like to specifically ask a question relevant to
23 the letter.

24 HEARING OFFICER KNITTLE: Proceed.

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1 Q. (By Ms. Carter) Did the letter indicate whether or not
2 the company should respond to the violation notice letter?

3 A. Yes.

4 Q. Did the letter indicate --

5 MS. SMETANA: I am going to --

6 Q. (By Ms. Carter) -- whether -- strike that.

7 Did the letter indicate if the company had any questions
8 pertaining to the letter that they should contact you?

9 A. Yes.

10 MS. SMETANA: I am going to object to the form of that
11 question.

12 HEARING OFFICER KNITTLE: How so?

13 MS. SMETANA: It is leading.

14 HEARING OFFICER KNITTLE: Ms. Carter?

15 MS. CARTER: I don't think it is a leading question. I
16 simply asked him whether or not it indicated something. The
17 witness has the prerogative to answer yes or no. I can ask
18 again, but I don't think it was leading.

19 HEARING OFFICER KNITTLE: I agree that it is a leading
20 question. I am going to overrule the objection just so that we
21 can get to the answer of the question. I don't think it is an
22 invalid question. I just think the form of the question was --
23 could you rephrase it, Ms. Carter?

24 MS. CARTER: Yes.

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1 HEARING OFFICER KNITTLE: Why don't we do that. So I will
2 sustain the objection.

3 Q. (By Ms. Carter) Does the letter -- does the letter
4 indicate -- just a moment.

5 Do you know whether the letter indicates that any questions
6 by the facility should be directed to you?

7 A. Yes.

8 Q. Do you recall the company contacting you with any
9 questions?

10 A. I don't recall.

11 Q. Okay. Are you aware of whether the company provided a
12 response to this document to the Illinois EPA?

13 A. Yes.

14 Q. Do you recall any -- were there any meetings held
15 subsequent to the issuance of the violation notice letter between
16 Panhandle and the Illinois EPA?

17 A. Yes.

18 Q. Do you have any independent recollection of any meetings
19 held between Panhandle and the Illinois EPA?

20 A. No.

21 Q. Do you have any independent recollection of specifically
22 who participated in any meetings?

23 A. No.

24 Q. Do you have any independent recollection of anything

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1 that was discussed in any meetings between Panhandle and the
2 Illinois EPA?

3 A. No.

4 Q. Do you recall when the defendant responded to this
5 violation notice letter?

6 A. No.

7 MR. BOYD: I am just going to object to the use of the term
8 "defendant."

9 MS. CARTER: I apologize to the respondent. I am just
10 getting my forms out of wack here.

11 HEARING OFFICER KNITTLE: Okay.

12 Q. (By Ms. Carter) If I could direct your attention to
13 Stipulated Hearing Exhibit Number 2. Have you seen this document
14 before?

15 A. Yes.

16 Q. Can you identify that document, please?

17 A. This document is a copy of the proposed compliance
18 commitment agreement that Panhandle Eastern sent to the Agency as
19 a result of the violation notice.

20 Q. Okay. Sir, how would you characterize your role in this
21 matter after the submittal of the compliance commitment agreement
22 by Panhandle to the Illinois EPA?

23 A. After the compliance commitment agreement came in, the

24 field engineers, such as me, generally get a copy of the

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1 compliance commitment agreement and have an opportunity to
2 comment on the compliance commitment agreement. Generally,
3 the -- what happens next occurs at headquarters, with the
4 management people at headquarters.

5 Q. Did you conduct an inspection in 1997?

6 A. Yes.

7 Q. If I could direct your attention, please, to Stipulated
8 Group Exhibit Number 18. Have you seen that document before?

9 A. Yes.

10 Q. Can you please identify that document?

11 A. This document is a tier 3 inspection report that I wrote
12 as a result of an inspection on August 26th of 1997, and it is a
13 summary of my observations.

14 Q. What observations did you make while you were on site?

15 A. I believe all of the engines, with the exception of the
16 one engine, were not -- were operating.

17 Q. Did you make any other observations, sir?

18 A. Yes.

19 Q. What were those observations?

20 A. Observations were that the engines had continued to
21 operate and that controls had not been installed at that time to
22 reduce the nitrogen oxide emissions.

23 Q. Did the company provide you with any information during

24 your inspection?

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1 A. Yes.

2 Q. What information was that?

3 A. Operating information on the engines.

4 Q. For what time period?

5 A. For 1996.

6 Q. Did they provide you with any other information?

7 A. (The witness reviewing document.) Well, according to my
8 inspection, the company wanted to disqualify the emissions from
9 the three existing engines 1113 through 1115, and they wanted to
10 install modifications to engines 1116 and 1117 to reduce nitrogen
11 oxide emission.

12 Q. Do you recall making a calculation at the time of your
13 1997 inspection?

14 A. No.

15 Q. Would you have typically performed such calculations in
16 conjunction with an inspection?

17 A. Yes.

18 Q. Would your approach to calculating NOx emissions in 1997
19 differ from your approach to calculating NOx emissions in 1996?

20 A. No.

21 Q. Okay. Was an inspection conducted in 1998?

22 A. No.

23 Q. Okay. Do you know why an inspection was not conducted
24 in 1998?

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1 A. No.

2 Q. Was an inspection conducted in 1999?

3 A. Yes.

4 Q. If I could direct your attention to Stipulated Group
5 Exhibit Number 19. Have you seen that before, sir?

6 A. Yes.

7 Q. Do you recall making any observations during this
8 inspection?

9 A. Yes.

10 Q. What were those?

11 A. One engine, engine 1113 was operating. Engines 1114,
12 1116, 1118, and 1119 were not operating and 1115 was not
13 operating as well as 1117. Excuse me. 1117 was running.

14 Q. During your inspection did Panhandle provide you with
15 any information?

16 A. Yes.

17 Q. What was that information?

18 A. Operating information on the engines.

19 Q. For what time period, sir?

20 A. For the two previous years.

21 Q. What were those?

22 A. I believe it was 1998 and 1997.

23 Q. Do you recall making any calculations at the time of
24 your inspection?

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1 A. No.

2 Q. Would you typically have performed such calculations in
3 conjunction with an inspection?

4 A. Yes.

5 Q. How would your approach to calculating NOx emissions in
6 1999 differ from your approach to calculating NOx emissions in
7 1996?

8 A. There would be no difference.

9 Q. Did you subsequently perform any calculations of NOx
10 emissions for the period of 1996 through 1998?

11 A. Yes.

12 Q. When was this?

13 A. Recently, since my deposition.

14 Q. Did you perform calculations for NOx emissions in 1996?

15 A. Not to my recollection.

16 Q. Let me rephrase that. Did you perform NOx emissions for
17 the facility for 1996?

18 A. Yes.

19 Q. Okay. How did you perform this calculation of NOx
20 emissions for 1996?

21 A. I used engine operating data that the company had

22 submitted for 1996 and applied the U.S. EPA AP-42 emission
23 factor.

24 Q. Were the NOx emissions for 1996 in excess of 461.3 tons

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1 per year?

2 A. Yes.

3 Q. How would that calculation that you performed compare
4 with the calculation employing the emission factors used in 1987?

5 A. That calculation used a factor of 3.2 pounds per million
6 BTU for four stroke engines, and I believe it was 2.7 for two
7 stroke engines. The original permit review calculations used a
8 factor of 3.4. The factors I used were lower than the emission
9 factor used in the construction permit application --
10 construction permit review -- excuse me. And, therefore, the
11 emissions that I calculated for that year would have been lower
12 than if I had used the same emission factor that the permit
13 section used for the 1987 review, permit review.

14 Q. Okay. Did you perform calculations for NOx emissions
15 for 1997?

16 A. Yes.

17 Q. Okay. How did you perform these calculations for NOx
18 emissions for 1997?

19 A. I used the same emission factors that were in the 1995
20 AP-42, and I used the factor of 3.2 pounds for the four stroke
21 engines and 2.7 for the two stroke engines.

22 Q. Were the NOx emission for 1997 in excess of 461.3 tons
23 per year?

24 A. Yes.

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1 Q. How would that calculation compare with the calculation
2 using the emission factors employed in 1987?

3 A. It was lower.

4 Q. Okay. Did you perform a calculation for NOx emissions
5 for 1998?

6 A. Yes.

7 Q. How did you perform this calculation for NOx emission
8 for 1998?

9 A. I used the 1998 engine operating data and applied the
10 1995 AP-42 emission factors.

11 Q. Were the NOx emissions for 1998 in excess of 461.3 tons
12 per year?

13 A. No.

14 Q. How would that calculation compare with the calculation
15 using the emission factors employed in 1987?

16 A. I presume that since the 1987 emission factor used by
17 the permit section was higher, that the emissions would have also
18 been higher.

19 Q. Did you generate any notes that document your
20 calculations?

21 A. Yes.

22 Q. Were these notes generated by you in the course of your
23 duties as an inspector with the Illinois EPA?

24 A. Yes.

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1 Q. Are these calculation notes regularly generated by you
2 in the course of your inspections with the Illinois EPA?

3 MS. SMETANA: I am going to object. I think that was asked
4 and answered already, that he did not perform the calculations at
5 the time of the inspections.

6 MS. CARTER: That was not my question.

7 HEARING OFFICER KNITTLE: Right.

8 MS. CARTER: I don't mean to interrupt you.

9 HEARING OFFICER KNITTLE: Go ahead, Ms. Carter.

10 MS. CARTER: My question was whether or not he typically
11 documents calculations in the forms of notes for, you know, the
12 course of his duties, in the course of his duties.

13 MS. SMETANA: I will withdraw my objection.

14 THE WITNESS: No.

15 Q. (By Ms. Carter) Do you typically perform calculations in
16 the course of your inspections?

17 A. Yes.

18 Q. Do you typically document them in the forms of notes?

19 A. No.

20 Q. Why is that?

21 A. A lot of times the calculations are simply performed on
22 a calculator and, therefore, I don't keep records of every
23 calculation I do as a result of an inspection. If they are
24 relatively simple calculations easily performed on a calculator,

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1 I don't write those calculations down.

2 (Whereupon a document was duly marked for purposes of
3 identification as People's Exhibit 1 as of this date.)

4 MS. CARTER: May I approach, Mr. Hearing Officer?

5 HEARING OFFICER KNITTLE: Yes.

6 MS. CARTER: Thank you. May the record reflect that I just
7 provided a copy of People's Exhibit Number 1 to Counsel for the
8 respondent and the witness.

9 Q. (By Ms. Carter) Have you seen this document before?

10 A. Yes.

11 Q. What is this document?

12 A. The document is a summary of operating data that
13 Panhandle Eastern Pipe Line has submitted to either me at the
14 field office or to the Agency through a compliance commitment
15 agreement or through their Title 5 permit application. This
16 information involves hours of operation of the engines and also
17 the fuel usage of the engines. This information also includes a
18 table that I had assembled using different emission factors that
19 had been submitted either to the Agency through the compliance

20 commitment agreement or they would be emission factors in the
21 AP-42. And by using the information that Panhandle had submitted
22 in applying emission factors, I created a table of emissions,
23 nitrogen oxide emissions, on each engine.

24 Q. When did you create the table?

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1 A. My recollection is that I created the table shortly
2 after my deposition.

3 Q. Okay. Did you perform the calculations that were
4 included within this table?

5 A. Yes.

6 Q. Did you document those calculations at that time?

7 A. No.

8 Q. Did you subsequently document those calculations?

9 A. Yes.

10 Q. When did you do that?

11 A. Recently.

12 Q. Do you know approximately when?

13 A. Maybe approximately a week ago.

14 Q. Okay. Are those calculations attached to this sheet?

15 A. Yes.

16 Q. Was this document generated in the course of your duties
17 as an inspector with the Illinois EPA?

18 A. Yes.

19 MS. SMETANA: I am going to object to that, because he has

20 already said that he did not generate these notes during his
21 inspections.

22 MS. CARTER: That was not my question. I was not asking
23 whether he generated them during the inspection. I am asking him
24 whether or not he generated these in the course of his duties as

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1 an Illinois EPA inspector.

2 HEARING OFFICER KNITTLE: Overruled.

3 THE WITNESS: Yes.

4 Q. (By Ms. Carter) Can you please identify for me where
5 your calculations are pertaining to NOx emissions for 1996?

6 A. I believe it is the seventh page.

7 Q. Is it identified by any numbers, sir, any page numbers?

8 A. I have a number one circled at the top right-hand
9 corner.

10 Q. Okay. What did you calculate for 1996 NOx emissions?

11 A. Well, for engine number 1113 it was 311.3 tons. Engine
12 1114 is 342.3 tons. 1115 is 298 tons. 1116, 281.2 tons. Then
13 engine --

14 Q. Mr. Youngblut, if I could just interrupt you to possibly
15 expedite this.

16 A. Yes.

17 Q. What was the total NOx emissions for engines 1113
18 through 1119 that you calculated?

19 A. 1,797.6 tons.

20 Q. What was the total calculated NOx emissions for engines
21 1116 through 1119 that you calculated?

22 A. 846 tons.

23 Q. Okay. Did you summarize the calculations that you
24 conducted pertaining to your -- pertaining to the 1997 NOx

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1 emissions for the facility?

2 A. Yes.

3 Q. Are they contained within this document?

4 A. Yes.

5 Q. What pages are they contained therein?

6 A. Page number five.

7 Q. Did you document a total for NOx emissions for 1997 for
8 engines 1113 through 1119?

9 A. Yes.

10 Q. What was that total?

11 A. 1,548 tons.

12 Q. Did you document a total for NOx emissions for engines
13 1116 through 1119?

14 A. Yes.

15 Q. What was that total?

16 A. 680 tons.

17 Q. Okay. Did you document your calculations pertaining to
18 NOx emissions from the facility for 1998?

19 A. Yes.
20 Q. Are those calculations contained within this document?
21 A. Yes.
22 Q. What pages are they contained therein?
23 A. Page number seven.
24 Q. Did you document a total for NOx emissions for engines

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1 1113 through 1119?
2 A. Yes.
3 Q. What was that total, sir?
4 A. 1,100.1 tons.
5 Q. Did you document a total for the NOx emissions for the
6 facility for 1998 for engines 1116 through 1119?
7 A. Yes.
8 Q. What was that total, sir?
9 A. 457.2 tons.
10 Q. Sir, if I could have you turn the page within this
11 document, of People's Exhibit Number 1. Do you recognize this
12 document?
13 A. Yes.
14 Q. What is it captioned?
15 A. Panhandle Eastern Pipe Line Company, 1995 fuel usage per
16 month by engine, Glenarm, Illinois.
17 Q. When did you receive this document?

18 A. My recollection was during my 1996 inspection.

19 Q. All right. Sir, I see numbers handwritten at the
20 bottom of the page. Can you identify those for me?

21 A. Those are totals of the columns for each engine that I
22 manually perform those calculations or additions and wrote those
23 numbers at the bottom.

24 Q. Okay. If I could direct your attention to the following

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1 page. Have you seen this document before?

2 A. Yes.

3 Q. Can you tell me what it is captioned?

4 A. Panhandle Eastern Pipe Line Company, 1996 fuel usage per
5 month by engine, Glenarm, Illinois.

6 Q. Do you recall when you received this document?

7 A. I believe it was during my August 26th of 1997
8 inspection.

9 Q. Again, I see some handwritten notes around the computer
10 generated portion. Did you generate these handwritten notes?

11 A. Yes.

12 Q. Can you tell me what they document?

13 A. They are totals of the columns for each engine and that
14 is of the fuel usage.

15 Q. Okay. If I could direct your attention to the next
16 page, sir. Have you seen this document before?

17 A. Yes.

18 Q. When did you receive this document?
19 A. I believe it was during my 1998 inspection.
20 Q. Can you --
21 A. Excuse me. The 1999 inspection.
22 Q. Can you read to me what is captioned?
23 A. Panhandle Eastern Pipe Line Company, 1997 fuel usage per
24 month by engine, Glenarm, Illinois.

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1 Q. If I could direct your attention to the following page.
2 Have you seen this document before?
3 A. Yes.
4 Q. What is this document, sir? What is it captioned first?
5 I apologize. Are you on the last page, sir?
6 A. Okay. Panhandle Eastern Pipe Line Company, 1998 fuel
7 usage per month by engine, Glenarm, Illinois.
8 Q. Do you recall when you attained this document?
9 A. I believe it was during my 1999 inspection.
10 Q. I see one handwritten note on this document. Did you
11 generate that?
12 A. Yes.
13 Q. What does that detail?
14 A. It just explains that the unit of fuel -- MCF means
15 1,000 cubic feet.
16 Q. Okay.

17 MS. CARTER: At this time, Mr. Hearing Officer, the People
18 move for admission of people's Exhibit Number 1 into evidence.

19 HEARING OFFICER KNITTLE: Respondents?

20 MS. SMETANA: We are going to object to that on several
21 grounds. First, the information in these notes that Mr.
22 Youngblut said he has provided, a lot of it is based on
23 information that was provided by Panhandle during discovery.
24 These notes were not generated until substantially after the

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1 close of discovery and after his deposition. Panhandle has not
2 had an opportunity to review these notes or to cross-examine the
3 witness previously on his notes during his deposition.

4 Furthermore, the State was not able to subpoena our
5 witness, Sabino Gomez, to appear and at the last minute we
6 believe generated -- Mr. Youngblut generated these notes before
7 this hearing. Furthermore, these calculations or notes are
8 beyond the scope of what the complainant's answers to
9 Interrogatory Numbers 12 and 13 said what the scope of Mr.
10 Youngblut's testimony would be.

11 So we would object to the admission of the notes portion of
12 this exhibit.

13 HEARING OFFICER KNITTLE: Ms. Carter?

14 MS. CARTER: If I could have just a moment, Mr. Hearing
15 Officer.

16 HEARING OFFICER KNITTLE: Let's go off.

17 (Discussion off the record.)

18 HEARING OFFICER KNITTLE: We are back on the record. Did
19 you have a request of Mr. Boyd?

20 MR. LAYMAN: Yes. Could we have the objection read back to
21 us on the record.

22 (Whereupon the requested portion of the record was read
23 back by the Reporter.)

24 HEARING OFFICER KNITTLE: I am going to streamline this a

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1 little bit. I am going to rule on part of it now.

2 MR. LAYMAN: Okay.

3 HEARING OFFICER KNITTLE: I want you to address whether or
4 not it is beyond the scope of what you have provided in
5 discovery, specifically Interrogatories 12 and 13, was it?

6 MS. SMETANA: Yes.

7 HEARING OFFICER KNITTLE: I would overrule the other parts
8 of the objection. I think cross-examination issues can be
9 handled now. This witness is on the stand and can be
10 cross-examination. And I am not concerned with the late
11 generation. They can generate things whenever they want as long
12 as they disclose it, as they are supposed to, via discovery.

13 MS. CARTER: May I respond?

14 HEARING OFFICER KNITTLE: You can definitely respond.

15 MS. CARTER: Thank you. In terms of interrogatories Number

16 12 and 13, the State indicated that Mr. Youngblut would provide
17 testimony relative to his observations during the period of 1987
18 through the present. Mr. Youngblut has testified --

19 MS. SMETANA: If you are reading out of here, you should
20 read --

21 MS. CARTER: I will read the whole thing. I will read the
22 whole thing.

23 HEARING OFFICER KNITTLE: Okay. Please address any
24 arguments towards me, if you will.

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1 MS. CARTER: Mr. Steven Youngblut will offer testimony
2 relative to observations by the Illinois EPA during inspections
3 of Panhandle during the period of 1987 through present relative
4 to NOx emissions generated during the operation of engines
5 numbered 1101 through 1119. That NOx emissions generated during
6 the operations of engines numbered 1116 through 1119 trigger
7 federal PSD regulations. Panhandle failed to comply with federal
8 PSD regulations relative to the construction of engines numbered
9 1116 through 1119 and discussions with representatives of
10 Panhandle with regard to matters above. And then we go on to
11 indicate additional documentation.

12 HEARING OFFICER KNITTLE: Okay.

13 MS. CARTER: Now --

14 HEARING OFFICER KNITTLE: Do you have a further response,
15 Ms. Carter?

16 MS. CARTER: I do have a further response, Mr. Hearing
17 Officer. In terms of Mr. Youngblut's testimony, he is testifying
18 to his observations that he made during inspections on site. He
19 already indicated in his testimony that he typically conducts
20 calculations during an inspection or immediately thereafter.
21 However, in this instance he simply did not document those
22 calculations until a later date. It is not outside of the scope
23 of what we have indicated that he would be testifying to and it
24 actually falls within. It is simply the documentation that has

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1 occurred at a later date.

2 HEARING OFFICER KNITTLE: Ms. Smetana?

3 MS. SMETANA: I would like to respond that the witness
4 testified that these notes were prepared based on information
5 that was provided in the compliance commitment agreement by
6 Panhandle, not information that he collected during his
7 inspections, and that the scope of his testimony, as set forth in
8 response to the interrogatories, is relative to observations by
9 the IEPA during inspections of Panhandle.

10 MS. CARTER: May I respond?

11 HEARING OFFICER KNITTLE: You may, but can I have the
12 interrogatories in question?

13 MS. CARTER: Yes.

14 HEARING OFFICER KNITTLE: All right, Ms. Carter.

15 MS. CARTER: Mr. Youngblut did not testify that he received
16 this emissions data in response -- you know, in terms of the
17 compliance commitment agreement. His testimony indicated that he
18 received this emissions data, you know, during inspections while
19 he was on site. He did not reference the compliance commitment
20 agreement in terms of where he attained this emissions data.

21 HEARING OFFICER KNITTLE: This data is not obtained from
22 the compliance commitment agreement?

23 MS. CARTER: This data was not -- this data that he
24 attained, Mr. Hearing Officer, was as a result of his

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1 inspections. He did not indicate that he attained that through
2 the compliance commitment agreement submitted by Panhandle.

3 HEARING OFFICER KNITTLE: Yes, Ms. Smetana?

4 MS. SMETANA: If we could read back his testimony, this
5 portion of it, I believe the witness did testify that this
6 information that is in these charts were based on information
7 provided in the compliance commitment agreement.

8 HEARING OFFICER KNITTLE: Okay. Just give me one second,
9 please.

10 MS. CARTER: Mr. Hearing Officer?

11 HEARING OFFICER KNITTLE: Could you give me one second,
12 please.

13 MS. CARTER: Yes.

14 HEARING OFFICER KNITTLE: I am ready to make a ruling

15 unless you feel compelled to provide further argument.

16 MS. CARTER: I do have one more argument, Mr. Hearing
17 Officer.

18 HEARING OFFICER KNITTLE: Okay. Please do.

19 MS. CARTER: If you look to four lines down, in terms of
20 our disclosure, where it indicates -- where it says that NOx
21 emissions generated during the operation of engines numbered 1116
22 through 1119 triggered federal PSD regulations, in there it does
23 not require even that he attained them through his inspections.

24 HEARING OFFICER KNITTLE: All right. Anything further, Ms.

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1 Smetana? Am I saying your name correctly?

2 MS. SMETANA: Smetana.

3 HEARING OFFICER KNITTLE: Smetana. Please correct me if I
4 am saying it wrong in the future, everybody.

5 MS. SMETANA: I think that it is -- I am reading the
6 response to interrogatories that is relative to observations made
7 during inspections, and I have already stated my point on that.

8 HEARING OFFICER KNITTLE: Right. I am going to overrule
9 the objections. I think it is relative to the observations, and
10 most of the information seems to be garnered from documents
11 provided at various inspection reports, and I do concur with Ms.
12 Carter's observation about engines 1116 through 1119. So the
13 objection is overruled. I will admit this into evidence.

14 MS. CARTER: Thank you, Your Honor.

15 HEARING OFFICER KNITTLE: Oh, I wish I were Your Honor, but
16 I am not.

17 MS. CARTER: Mr. Hearing Officer. I am getting my forms
18 mixed up.

19 HEARING OFFICER KNITTLE: So this is admitted.

20 (Whereupon said document was duly admitted into evidence as
21 People's Exhibit 1 as of this date.)

22 HEARING OFFICER KNITTLE: Ms. Carter, anything further with
23 this witness?

24 MS. CARTER: No, Mr. Hearing Officer.

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1 HEARING OFFICER KNITTLE: All right. Does the respondent
2 need a couple of minutes before cross, or do you want to head
3 into it?

4 MS. SMETANA: We can go ahead.

5 HEARING OFFICER KNITTLE: Okay. Let's proceed with the
6 cross-examination. Which one of you will be conducting
7 cross-examination?

8 MS. SMETANA: I am.

9 HEARING OFFICER KNITTLE: Okay. Your witness.

10 CROSS EXAMINATION

11 BY MS. SMETANA:

12 Q. Mr. Youngblut, as an inspector, it is your role to look
13 at a facility and to determine whether it is in compliance; isn't

14 that correct?

15 A. Yes.

16 Q. These inspections that you discussed previously in your
17 testimony are often conducted annually; is that correct?

18 A. Yes.

19 Q. 1996 was not the first time that you inspected the
20 Glenarm station; isn't that true?

21 A. Yes.

22 Q. Prior to 1996 you inspected the Glenarm station,
23 correct?

24 A. Yes.

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1 Q. In fact, as early as the 1980s you inspected the Glenarm
2 station?

3 A. Yes.

4 Q. Isn't it true that prior to 1996 your inspections to the
5 Glenarm station found no violation of the NOx emissions limit?

6 A. Yes.

7 Q. Isn't it also true that prior to 1996 there were no IEPA
8 inspections at the Glenarm station that found no violation of the
9 NOx emissions limit?

10 A. Yes.

11 Q. Before 1996, you were aware of the permit issued to
12 Panhandle in February of 1998; is that correct? 1988. Excuse

13 me.

14 A. Yes.

15 Q. Also before 1996 you were aware of the 461.3 tons per
16 year NOx limit in that permit, correct?

17 A. Yes.

18 Q. In fact, in 1988 you were aware of the 461.3 tons per
19 year limit; is that correct?

20 A. Yes.

21 Q. The 1988 construction permit and the subsequent
22 operating permits do not specify how to determine compliance with
23 that 461.3 permit limit, do they?

24 A. Could you repeat the question?

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1 MS. SMETANA: Could you read back the question? Could I
2 have the question read back?

3 HEARING OFFICER KNITTLE: Please.

4 (Whereupon the requested portion of the record was read
5 back by the Reporter.)

6 THE WITNESS: No.

7 Q. (By Ms. Smetana) The permit does not require emission
8 testing, does it?

9 A. No.

10 Q. The permit requires that Panhandle keep records of fuel
11 usage; is that correct?

12 A. Yes.

13 Q. The permit also requires that Panhandle keeps records of
14 hours of operation for each of the compressor engines covered by
15 the permit; is that correct?

16 A. Yes.

17 Q. Is it correct that compliance with the 461.3 ton per
18 year limit can be determined using emissions factors to calculate
19 annual emissions?

20 A. Yes.

21 Q. Is it true that there are emission factors based on fuel
22 usage that may be used to calculate NOx emissions for compressor
23 engines?

24 A. Yes.

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1 Q. You were aware of these emission factors in 1988, right?

2 A. Yes.

3 Q. In fact, in your 1989 -- as part of your inspection
4 report, you were aware that you could use fuel usage records to
5 determine compliance; is that correct?

6 A. Yes.

7 Q. Is it true that there are emission factors based on
8 hours of operation that maybe used to calculate NOx emissions
9 from compressor engines?

10 A. Yes.

11 Q. You were aware of these emission factors as early as

12 1988, right?

13 A. I don't recall.

14 MS. SMETANA: Just one second.

15 HEARING OFFICER KNITTLE: Take as much time as you need.

16 MS. SMETANA: I am going to show the witness what has been
17 marked as Panhandle Exhibit Number 15.

18 (Whereupon said document was duly marked for purposes of
19 identification as Panhandle Exhibit 15 as of this date.)

20 Q. (By Ms. Smetana) Mr. Youngblut, if you could take a
21 look at this document. Do you recognize this document as your
22 notes?

23 A. Yes.

24 Q. And these notes were generated in 1980, correct?

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1 A. Yes.

2 Q. And if you look at the bottom of page one of this
3 Exhibit Number 15, the first -- where it says NOx emission
4 calculations, is that not an emissions factor based on hours of
5 operation?

6 A. Yes.

7 Q. Okay. So you knew as early as 1980 that there were
8 emissions factors based on hours of operations; is that correct?

9 A. Yes.

10 Q. So compliance with the -- that's all for that exhibit.
11 Compliance with the 461.3 ton per year limit can be determined by

12 calculating emissions using either fuel usage or hours of
13 operations, depending on the emission factor, correct?

14 A. I don't know.

15 Q. Did you -- you just testified that there were emissions
16 factors based on hours of operations; is that correct?

17 A. Yes.

18 Q. And you also just testified that Panhandle was required
19 to maintain records of hours of operation; is that correct?

20 A. Yes.

21 Q. You also just testified that there were emissions
22 factors based on fuel usage, correct?

23 A. Yes.

24 Q. And Panhandle under its permit was required to maintain

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1 records of fuel usage; is that correct?

2 A. Yes.

3 Q. So compliance with the 461.3 tons per year limit can be
4 determined by calculating emissions using either fuel usage or
5 hours of operation, depending on the emission factor; is that
6 correct?

7 A. I don't know.

8 Q. Okay. Isn't it true as part of your inspection you
9 request records of fuel usage and hours of operation?

10 A. Yes.

11 Q. It was not until 1996 that you calculated emissions for
12 the Glenarm station using the available fuel usage and hours of
13 operation records; is that true?

14 A. Yes.

15 Q. Records of fuel usage for the Glenarm station were
16 available to the Agency before 1996; correct?

17 A. Yes.

18 Q. Records of hours of operation for the Glenarm station
19 were available to the Agency before 1996, correct?

20 A. Yes.

21 Q. Other than records of fuel usage or hours of operation,
22 there would be no other information needed to determine NOx
23 emissions based on a standard emission factor, would there?

24 A. No.

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1 Q. Isn't it true that prior to 1996 you had enough
2 information to calculate the NOx emissions at the Glenarm station
3 to determine compliance with the 461.3 limit?

4 A. Yes.

5 Q. If you had considered the fuel usage or hours of
6 operation records as early as 1989, you would have discovered
7 that emissions for engines 1116 through 1119 exceeded the 461.3
8 limit; is that true?

9 A. No.

10 Q. You concluded in your August of 1996 inspection report

11 that Panhandle was not in compliance with the 461.3 limit based
12 on your calculation of NOx emissions; is that correct?

13 A. Yes.

14 Q. You also concluded in your 1996 report that Panhandle
15 may be exceeding the limit for PSD; is that correct?

16 A. Yes.

17 Q. As an inspector you have access to annual emissions
18 reports; is that right?

19 A. Yes.

20 Q. Is it true that the annual emission reports are
21 available from the compliance and systems management section?

22 A. Yes.

23 Q. Is it true that as early as 1988 you had access to the
24 annual emissions reports filed by Panhandle for its Glenarm

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1 station?

2 A. Yes.

3 Q. The annual emission reports contain information on
4 allowable emissions; is that right?

5 THE WITNESS: Could you repeat the question, please.

6 Sorry. Sir, could --

7 HEARING OFFICER KNITTLE: Do you want me to ask her if she
8 will repeat the question?

9 THE WITNESS: Yes, would you please.

10 HEARING OFFICER KNITTLE: Darlene, could you repeat it,
11 please.

12 (Whereupon the requested portion of the record was read
13 back by the Reporter.)

14 THE WITNESS: Most recent annual emission reports do
15 contain that information.

16 Q. (By Ms. Smetana) As early as 1992 annual emissions
17 reports for Panhandle contained information on allowable
18 emissions; is that true?

19 A. Yes.

20 Q. The annual emission reports for Panhandle also contain
21 information on total actual NOx emissions; is that true?

22 A. Yes.

23 Q. When looking at an annual emissions report, if the
24 actual emissions are greater than the allowable emissions, would

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1 that raise an issue as to whether a facility is in compliance
2 with the limit?

3 A. Yes.

4 Q. It was not until 1996 that you got a copy of and
5 reviewed the annual emission report for Panhandle's Glenarm
6 station; is that correct?

7 A. Yes.

8 MR. BOYD: One minute, please.

9 MS. SMETANA: I have no further questions for the witness.

10 HEARING OFFICER KNITTLE: All right. Thank you.

11 Ms. Carter, do you have a redirect?

12 MS. CARTER: I do. Just a moment. Could you give me just
13 a moment, please, Mr. Hearing Officer?

14 HEARING OFFICER KNITTLE: Sure. Let's go off.

15 (Discussion off the record.)

16 HEARING OFFICER KNITTLE: All right. Back on the record.

17 Redirect.

18 REDIRECT EXAMINATION

19 BY MS. CARTER:

20 Q. Can you explain why you would not have been able to
21 determine NOx emissions from Panhandle's facility prior to 1996
22 based upon either fuel usage or hours of operation?

23 A. The limit that is in the operating permit, both limits
24 are based on annual emissions. Those are annual limits. So in

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1 previous inspections, as I recall, I needed a year's worth of
2 operating data in order to calculate the nitrogen oxide emission,
3 so that I could compare that against the annual limits. And
4 several of those years prior to 1996 I did not perform the
5 inspections of the facility.

6 Q. Do you know how allowable emissions are determined in an
7 annual emission report?

8 A. That information originally came from the emission

9 inventory system, and that information was placed in the emission
10 inventory system by the permit engineer that reviewed the
11 permits.

12 Q. Did you have any role in determining the allowable
13 emissions in the annual emission report?

14 A. No.

15 Q. Okay. Do you know how Panhandle was reporting annual
16 emissions in its annual emissions reports?

17 A. No.

18 Q. Were the emissions that Panhandle was reporting in its
19 annual emission reports the total for all emission units?

20 A. Yes.

21 Q. Could you discern from the information available in an
22 annual emission report the annual emission for each engine?

23 A. No.

24 MS. CARTER: Thank you. No further questions.

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1 HEARING OFFICER KNITTLE: Thank you. Is there a recross,
2 Ms. Smetana?

3 MS. SMETANA: I just have a few questions.

4 RECROSS EXAMINATION

5 BY MS. SMETANA:

6 Q. Mr. Youngblut, you testified that for several of the
7 years prior to 1996 you did not perform the inspections at
8 Panhandle; is that correct?

9 A. Yes.

10 Q. You testified earlier that Laurie Brinkmann performed
11 the inspection in 1994; is that correct?

12 A. No.

13 Q. Do you still have the group exhibits in front of you,
14 the booklet of Stipulated Group Exhibits?

15 A. Yes.

16 Q. If you could turn to tab seven, please.

17 A. Yes.

18 Q. Please turn to page -- the second to the last page of
19 that section. Is it correct that Laurie Brinkmann performed the
20 1994 inspection?

21 A. Yes.

22 Q. You reviewed Ms. Brinkmann's reports; is that correct?

23 A. Yes.

24 Q. At the lower right-hand corner of this 1994 report those

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1 are your initials; is that correct?

2 A. Yes.

3 Q. And that was on January 20th of 1993 that you reviewed
4 this report; is that correct?

5 A. Yes.

6 Q. Okay.

7 A. Excuse me.

8 Q. It must be 1994.
9 A. 1994.
10 Q. It says 1993.
11 A. January 20th of 1994.
12 Q. If you could turn the page. Is it correct that Laurie
13 Brinkmann inspected the facility in 1995?
14 A. Yes.
15 Q. You reviewed Ms. Brinkmann's 1995 report; is that
16 correct?
17 A. Yes.
18 Q. At the lower right-hand corner those are your initials,
19 SSY; is that correct?
20 A. Yes.
21 Q. That indicates that you reviewed this report on May 16th
22 of 1995; is that correct?
23 A. Yes.
24 MS. SMETANA: We have no further questions.

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1 HEARING OFFICER KNITTLE: Re-redirect, Ms. Carter?
2 MS. CARTER: No, Mr. Hearing Officer.
3 HEARING OFFICER KNITTLE: Thank you, sir. You may step
4 down.
5 (The witness left the stand.)
6 HEARING OFFICER KNITTLE: Let's take a break.
7 (Whereupon a lunch recess was taken from approximately

8 12:20 p.m. to 1:30 p.m.)
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1 A F T E R N O O N S E S S I O N

2 (September 18, 2000; 1:30 p.m.)

3 HEARING OFFICER KNITTLE: We are back on the record after a
4 lunch recess. It is approximately 1:30 p.m. We are continuing
5 with the hearing in PCB Docket Number 1999-191.

6 Ms. Carter, call your next witness, please.

7 MS. CARTER: The questioning of the witness will be done by
8 Mr. Robb Layman. The witness is Mr. Mike Davidson.

9 HEARING OFFICER KNITTLE: Okay. Mr. Davidson, if you could
10 come up and have a seat. Would you swear him in, please.

11 (Whereupon the witness was sworn by the Notary Public.)

12 HEARING OFFICER KNITTLE: Ms. Carter. Excuse me. Mr.
13 Layman.

14 M I C H A E L E. D A V I D S O N,
15 having been first duly sworn by the Notary Public, saith as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. LAYMAN:

19 Q. Would you state your full name for the record, please.

20 A. Michael E. Davidson.

21 Q. Mr. Davidson, do you recall testifying in an earlier
22 permit appeal proceeding involving Panhandle about your
23 participation in the review of violation notice letters that were
24 sent to Panhandle?

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1 A. Yes, I do.

2 Q. Do you recall who initiated the violation notice review?

3 A. I believe it was the field, Steve Youngblut.

4 Q. Do you recall what the circumstances were surrounding
5 it?

6 A. I think in the course of his inspection of the facility

7 he determined, based upon fuel usage numbers that were provided
8 to him by the facility operators, that there may have been a
9 possible violation.

10 Q. Did you know at that time how the field engineer had
11 determined that Panhandle had exceeded its permitted NOx
12 limitation in the permit?

13 A. I believe he used the most recent AP-42 emission factors
14 that were available.

15 Q. Did you at that time perform any calculations of your
16 own?

17 A. No, I left that to the field.

18 Q. Were you aware at that time of any calculations or
19 estimate of NOx emissions that had been performed by Panhandle
20 and made available to the Agency?

21 A. No, I wasn't.

22 Q. Okay. Do you recall testifying in the earlier permit
23 appeal proceeding involving Panhandle about your familiarity with
24 the construction permit that was issued to Panhandle in February

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1 of 1988?

2 A. Yes, I do.

3 Q. Did you participate in the review of the permit
4 application for that construction permit?

5 A. No, I wasn't a reviewee for that permit.

6 Q. Did you review any files pertaining to the review of
7 that construction permit?

8 A. Subsequent to the field's notification of a possible
9 violation, and at the request of the compliance section, I did
10 review those files to provide input from the permit section.

11 Q. Do you recall what documents in particular that you
12 looked at relative to the 1988 construction permit?

13 A. I reviewed the permit and the subsequent review notes
14 prepared by the permit analyst and also I reviewed some of the
15 submittals made by the company.

16 Q. By submittals do you mean correspondence?

17 A. Correspondence, there was a request that -- a letter
18 submitted by the company, and it indicated that we had asked for
19 fuel usage data and that was provided. And then a subsequent
20 analysis by the company regarding BTU horsepower and why the
21 factors that they proposed to use was more representative than
22 other factors.

23 Q. Was there anything else in terms of correspondence?

24 A. Not that I recall.

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1 Q. How did the construction permit that was issued in
2 February of 1988 regulate Panhandle's NOx emissions for the
3 project?

4 A. They set an overall total emissions limit for the four
5 engines, 461 tons, approximately. That was based upon a baseline

6 established by the emissions data that based on the review notes
7 the analyst calculated emissions and then add an increase of 39.9
8 tons, and then the total was approximately 461 tons.

9 Q. Do you recall whether or not the -- strike that.

10 You indicated that there were -- I am sorry. Strike that.

11 You had indicated that there was an annual limit --

12 A. That's correct.

13 Q. -- of the NOx emissions from the Panhandle facility?

14 A. Yes.

15 Q. Do you recall whether there were any other limits
16 identified in the construction permit?

17 A. No, there wasn't.

18 Q. Do you know what baseline period was used to determine
19 historical NOx emissions from the retired engines?

20 A. I think it was 1987.

21 Q. How do you know that?

22 A. Based upon the letter that was submitted by the company
23 and the review notes.

24 Q. What in the letter that was submitted by the company

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1 made you believe that 1987 was the basis for the emission
2 baseline?

3 A. It was a short letter that basically said something
4 that -- to the effect that pursuant to your request here is the

5 emission -- or the fuel usage numbers for 1987.

6 Q. Do you know what emission factors were used in the
7 original construction permit to establish the NOx emission limit?

8 A. Based on the analysis notes, it indicated he used an
9 AP-42 emission factor, and since the date was around 1988, that
10 was AP-42 probably from 1985, I believe.

11 Q. Do you recall what specific type of emission factor was
12 used?

13 A. It was based upon BTU horsepower hour or pounds per BTU.

14 Q. Do you know what emission factors would have been
15 reflected in that limit in a subsequent operating permit?

16 A. I am not clear.

17 Q. I will restate the question. Do you know what emission
18 factors were reflected in the limit that accompanied the
19 subsequent operating permit?

20 MS. SMETANA: I will object to the form of the question as
21 leading the witness.

22 HEARING OFFICER KNITTLE: Mr. Layman?

23 MR. LAYMAN: I will go about it a little differently.

24 Q. (By Mr. Layman) Do you recall, Mr. Davidson, becoming

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1 familiar with any operating permits that were issued to the
2 facility after the original construction permit in 1988?

3 A. I don't believe there was any.

4 Q. Do you recall how the limit in those operating permits

5 reflected or compared with the limit that was contained in the
6 original February of 1988 construction permit?

7 A. The construction permit was transferred to an operating
8 permit and reflected the same limits that were established in the
9 construction permit, of 461 tons.

10 Q. Okay. Can you tell us how the permit addressed the
11 matter in which Panhandle demonstrated compliance with the NOx
12 limit?

13 A. Basically it indicated in the permit that the company
14 was required to keep fuel usage and hours of operation.

15 Q. Have you seen that type of record keeping requirement
16 for an annual emission limit before?

17 A. Yes.

18 Q. And can you describe the circumstances in which you
19 generally have seen that?

20 A. Basically for the older permits that were issued around
21 that time, they established only an annual type of limit and that
22 these limits established only records for annual usage and annual
23 hours of operation.

24 Q. Okay. In your experience can you tell us how a

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1 permittee would determine compliance with an annual emission
2 limit through that type of record keeping?

3 A. They would have to determine compliance at least once

4 per year, a single annual determination of compliance, based on
5 however the data was presented in the application.

6 Q. And can you tell us generally what kind of record
7 keeping requirements accompanied the subsequent operating permits
8 that were issued?

9 A. They had the exact same limitations and conditions.

10 Q. Okay. Do you recall testifying in the earlier permit
11 appeal proceeding about your initial role as the Title 5 permit
12 analyst for Panhandle?

13 A. Yes, I do.

14 Q. Did you review all or any portion of the Title 5 permit
15 application submitted by Panhandle?

16 A. Only a cursory review. I looked at the company's
17 emission calculations and some of the permit application forms.

18 Q. Okay. Let me find a document real quick that I would
19 like to call the attention of the witness to.

20 I would like to call the witness' attention to Exhibit 22
21 of the Stipulated Hearing Exhibits. Mr. Davidson, it should be
22 there in front of you. Can you identify this document?

23 A. It is the proposed compliance commitment agreement
24 submitted by the company subsequent to their receiving a

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1 violation notice.

2 Q. Can you identify attachment number nine to the
3 compliance commitment agreement.

4 A. What page?

5 Q. I am showing a page 209, but I would like you to confirm
6 that.

7 A. Attachment nine, page 209 of the document is titled
8 Title 5 compliance certification.

9 Q. Turning the page and looking at page 210 from the old
10 permit appeal proceeding, can you tell us what that page is
11 identified as?

12 A. It is the compliance certification form. At the bottom
13 it is 296 CAAPP form on page 210.

14 Q. Can you tell us if this was the initial or is it a
15 revision to something that the company had submitted to the
16 Agency before?

17 A. This is a revision. I believe it was to be added to
18 their pending application at that time.

19 Q. Is it dated on the face of the document?

20 A. At the top right corner it shows revision number one,
21 dated May 7th of 1997.

22 Q. Can you tell us generally, Mr. Davidson, what the
23 document states with respect to the compliance status of engines
24 1116 through 1119?

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1 A. Item six on the form, page one, or page 210 of the
2 document, says does the signatory of this form hereby certify

3 that the source is in compliance with all applicable
4 requirements, and no is checked.

5 Q. Okay.

6 A. And then in a subsequent explanation, the operating
7 schedules of the four reciprocating engines identified in section
8 9B following are such that the NOx emissions exceed the limits
9 prescribed in the special condition two of permit numbers
10 167801AAA.

11 Q. Okay. Thank you. I would like to direct your attention
12 to two pages beyond that, specifically 212 of the old permit
13 appeal proceeding and, again, specifically to the body of
14 information that is identified as compliance information.

15 A. Okay.

16 Q. Can you describe to us the testing methods that
17 Panhandle has used to demonstrate compliance?

18 A. Item ten of the form on page 212 indicates summary of
19 methods used to determine compliance, and it shows source
20 emission factors were used to determine compliance.

21 Q. Can you tell us what the document identifies as the
22 monitoring procedures used by Panhandle to demonstrate
23 compliance?

24 A. That's the only thing that is indicated on this page.

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1 Q. Okay.

2 A. Emission factors were the --

3 Q. Is there anything in subsequent pages regarding the
4 monitoring procedures?

5 A. On page 213, description of record keeping used to
6 demonstrate compliance. It is item C. It shows maintain
7 operating records for fuel used and operating hours.

8 Q. Okay. Thank you. What does the document identify as
9 the record keeping requirements used by Panhandle to demonstrate
10 compliance?

11 A. On page 214, item 10D, description of reporting used to
12 demonstrate compliance, annual emissions report is used to
13 demonstrate compliance is indicated.

14 Q. Okay. Thank you. Mr. Davidson, do you recall
15 testifying in a permit appeal proceeding about Panhandle's
16 reference to historical emissions data in the compliance
17 commitment agreement letter that was submitted?

18 A. Yes, I do.

19 Q. Can you identify where any references to emission data
20 were made in that compliance commitment agreement?

21 A. I am not sure where --

22 Q. I think we are still on the same document, Exhibit
23 Number 22.

24 A. On page 186. At the top it is titled attachment two,

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1 netting demonstration, and it indicates the years 1983 through

2 1987.

3 Q. Okay. I believe what I was hoping to refer the witness'
4 attention to was identified in the narrative portion of the CCA,
5 specifically page eight of the violation -- I am sorry -- of the
6 compliance commitment agreement. It is identified as page 182 of
7 the Board's record from the earlier permit appeal proceeding.

8 A. Post construction emissions on page 182?

9 Q. That's correct. Can you tell us what that is, Mr.
10 Davidson?

11 A. It provides an emissions data for the years 1989 through
12 1987 and total emissions for the four engines.

13 Q. Can you tell us how Panhandle calculated that emissions
14 data that is shown on that page?

15 A. Directly below the table there is a methodology used to
16 determine compliance -- to determine emissions. It was the use
17 of AP-42 output factor of 11 grams per horsepower hour. Then it
18 subsequently says in 1985 Panhandle requested NOx emission
19 factors from manufacturers in preparation of the Title 5
20 application, and from that point forward Panhandle has used the
21 manufactured supplied emission factor of 15 grams horsepower
22 hours for units 1116 and 1117, and six grams horsepower hour for
23 unit 1118, and 1119.

24 Q. Okay. Thank you. Can you tell us for the years 1989

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1 through 1994 what the total NOx emissions compare with in regards

2 to the limit in the construction permit?

3 A. It indicates that the emissions exceeded the emission
4 limit that was established in the operating permit. The totals
5 indicated range from between 620.8 tons to approximately 753
6 tons.

7 Q. Can you describe for us how the totals compare for the
8 period of 1995 through 1997 with the original construction permit
9 limit?

10 A. The limits are -- the numbers indicated well exceed the
11 permitted limit. They indicate for 1995, 1,025.7 tons, and for
12 1996, 1,148.6 tons.

13 Q. Okay. Thank you. Mr. Davidson, do you recall
14 testifying in the earlier permit appeal proceeding involving
15 Panhandle about your role in preparing a notice of incompleteness
16 letter?

17 A. Yes, I do.

18 MR. LAYMAN: Excuse me just a moment.

19 (Whereupon a document was duly marked for purposes of
20 identification as People's Exhibit 2 as of this date.)

21 Q. (By Mr. Layman) Mr. Davidson, can you identify that
22 document, which was been marked as People's Exhibit Number 2?

23 A. This is a notice of incompleteness that I prepared, with
24 the help of Chris Romaine, regarding the permit application that

1 was submitted by the company.

2 Q. Can you tell us just real quickly or briefly, if you
3 will, when you prepared this?

4 A. It was around the date indicated of June of 1997.

5 Q. I would like to call your attention to special condition
6 2A. Would you read that for the hearing audience?

7 A. Specifically the letter indicates that information was
8 required in order for the application to be considered complete.
9 2A indicates the detailed data for annual emission for NOx from
10 the new engines, i.e., engines one 1116, 1117, 1118 and 1119,
11 following additional control as proposed demonstrating that the
12 engines will no longer represent a major modification.

13 Information in the proposed compliance commitment agreement
14 indicates that the construction and historic operation of the
15 four engines, 1116 through 1119, represent a major modification
16 subject to PSD.

17 Q. Can you tell us who made the determination regarding the
18 last sentence in condition 2A?

19 A. I believe it was between Chris Romaine and myself.

20 Q. Okay. Can you tell us whether or not the -- this notice
21 of incompleteness letter was, in fact, sent from the Agency to
22 Panhandle?

23 A. Yes, it was. It was sent certified, as indicated by the
24 upper right corner, the certified mail.

1 Q. Okay. Thank you.

2 MR. LAYMAN: At this time the State will move for the
3 admission of People's Exhibit Number 2 into evidence.

4 HEARING OFFICER KNITTLE: Which one of you is handling this
5 witness?

6 MS. SMETANA: I am. We have no objections.

7 HEARING OFFICER KNITTLE: All right. This is admitted.

8 (Whereupon said document was duly admitted into evidence as
9 People's Exhibit 2 as of this date.)

10 Q. (By Mr. Layman) I would like to direct your attention to
11 another subject matter area, Mr. Davidson. Do you recall
12 testifying in an earlier permit appeal proceeding about
13 historical emission data presented by Panhandle in a September of
14 1997 permit application?

15 A. Yes.

16 MR. LAYMAN: Just a moment again, please.

17 (Whereupon a document was duly marked for purposes of
18 identification as People's Exhibit 3 as of this date.)

19 Q. (By Mr. Layman) Mr. Davidson, would you kindly identify
20 this document?

21 A. This was the submittal that was sent to the Agency by
22 the company subsequent to the notice of incompleteness that was
23 sent to the company.

24 Q. And just briefly, how are you familiar with this

1 document?

2 A. I reviewed this in the context of being the permit
3 analyst for the project and in regards to issuing this whether or
4 not we could issue a construction permit for the addition of new
5 controls.

6 Q. When did Panhandle submit the document to the IEPA?

7 A. Well, I can't see the exact but, it is October of 1997.

8 Q. Okay. Can you identify for us, Mr. Davidson, the pages
9 from this submittal that make reference to historical emissions
10 data? For the convenience of the witness, I would call his
11 attention to attachment seven in the submittal.

12 HEARING OFFICER KNITTLE: Do you have a page number, Mr.
13 Layman, at the bottom from the previous Board --

14 MR. LAYMAN: It is from the old Board record, page 89.

15 HEARING OFFICER KNITTLE: That might help the witness.

16 THE WITNESS: Attachment seven is titled post construction
17 emissions.

18 Q. (By Mr. Layman) Okay. Can you tell us what portion of
19 this attachment identifies an analysis for NOx emission?

20 A. On page -- starting on page 90 and --

21 MR. LAYMAN: May I approach the witness?

22 HEARING OFFICER KNITTLE: Yes. Mr. Layman, these pages we
23 are referring to are pages from the Board's record in the permit
24 appeal in this matter?

1 MR. LAYMAN: That's correct.

2 HEARING OFFICER KNITTLE: If we are going to refer to any
3 other page numbers we will notify the Board and myself?

4 MR. LAYMAN: Yes. I believe this will be the only page
5 that we will be referring to from that document.

6 If I may have a moment to figure out which one of these is
7 the one we are looking at.

8 HEARING OFFICER KNITTLE: Sure. Let's go off.

9 (Discussion off the record.)

10 HEARING OFFICER KNITTLE: All right. We are back on the
11 record.

12 Q. (By Mr. Layman) Mr. Davidson, can you identify the blown
13 up chart that has been placed here in front of you?

14 A. This is the analysis of the NOx emissions from the
15 facility for the years between 1989 through 1996.

16 Q. Is that document identical to what is identified in
17 People's Exhibit Number 3?

18 A. It appears to be.

19 Q. Apart from the smudges?

20 A. (Nodded head up and down.)

21 Q. Okay. Can you tell us what portion or part of this
22 document identifies NOx emissions for the engines 1116 through
23 1119?

24 A. They are indicated in various columns or rows towards

1 the bottom, and it indicates the various emission factors that we
2 used. NOx emissions for AP-42 from July 1993 and January of 1995
3 are indicated.

4 Q. And that's here in the middle?

5 A. In the middle of the page.

6 Q. Okay.

7 A. Following that NOx emissions are shown for AP-42 of
8 September of 1985, and then at the bottom of the page it
9 indicates NOx emissions that are the original manufacturer's
10 estimates.

11 Q. Okay. With respect to the emissions data that was
12 calculated by use of the AP-42 emission factor from 1993 as well
13 as 1995, can you tell us generally what those numbers compare
14 with when matched against the construction permit limit?

15 A. For each of the years shown they exceed the limit of 461
16 tons.

17 Q. Okay. And how about with respect to the emission data
18 calculated on the basis of the 1985 version of AP-42?

19 A. For each of the years shown they exceed the limit of 461
20 tons.

21 Q. Okay. Thank you.

22 MR. LAYMAN: The State will move for the admission of
23 People's Exhibit Number 3.

24 I would, at this point, like to ask a clarifying question

1 with respect to identifying the chart, to the extent that it is
2 identical, as we identified, or is the same as People's Exhibit
3 Number 3.

4 MR. BOYD: For illustrative purposes only.

5 MR. LAYMAN: I am sorry?

6 MS. SMETANA: Well, I think that if we have already agreed
7 to this, this is really sufficient. This is just for
8 illustrative purposes, for purposes of the hearing.

9 MR. LAYMAN: Right. You have agreed to --

10 MS. SMETANA: Well, we have agreed -- well, not yet, but we
11 will agree to the admissibility --

12 MR. LAYMAN: Okay. I guess that is what I would like to --

13 MS. SMETANA: -- of People's Exhibit Number 3.

14 HEARING OFFICER KNITTLE: Is there an objection to People's
15 Exhibit Number 3?

16 MS. SMETANA: No, there is no objection to People's Exhibit
17 Number 3.

18 HEARING OFFICER KNITTLE: All right. People's Exhibit
19 Number 3 will be admitted.

20 (Whereupon said document was duly admitted into evidence as
21 People's Exhibit 3 as of this date.)

22 HEARING OFFICER KNITTLE: Okay. Now, about the chart, Mr.
23 Layman, what are you --

24 MR. LAYMAN: It is the identical document only it is blown

1 up. Is it the preference of the Hearing Officer that we identify
2 that likewise as People's Exhibit Number 3, for demonstrative
3 purposes only?

4 HEARING OFFICER KNITTLE: Are you planning on submitting
5 the blown up version of People's Exhibit Number 3 into evidence
6 with me to take back to the Board?

7 MR. LAYMAN: Yes.

8 HEARING OFFICER KNITTLE: Okay. So let's offer it as a
9 separate exhibit, then, and call it People's Exhibit 3A.

10 MR. LAYMAN: That's fine, if we can identify it.

11 HEARING OFFICER KNITTLE: Now, are you now moving the
12 admission of People's Exhibit 3A?

13 MR. LAYMAN: I am sorry. Could you say that again?

14 HEARING OFFICER KNITTLE: That's okay. I am wondering if
15 you are moving the admission of the blown up exhibit as well?

16 MR. LAYMAN: Yes.

17 HEARING OFFICER KNITTLE: Okay. Ms. Smetana, do you have
18 an objection to People's Exhibit 3A?

19 MS. SMETANA: We have no objection.

20 HEARING OFFICER KNITTLE: All right. People's Exhibit 3A
21 will be admitted as well.

22 (Whereupon said document was duly marked as People's
23 Exhibit 3A and admitted into evidence as of this date.)

24 MR. BOYD: Where is our copy, Robb?

1 (Laughter.)

2 MR. LAYMAN: Sorry about that.

3 (Laughter.)

4 Q. (By Mr. Layman) Mr. Davidson, I really have one
5 additional matter to ask you about for today's hearing. Can you
6 tell us during your period of permitting review, did the Illinois
7 EPA seek any guidance from the U.S. EPA about the applicable PSD
8 requirements for Panhandle?

9 A. Yes, we did. I think it was based upon after subsequent
10 conversations with the company we were at an impasse regarding
11 our determination and what the company viewed was a proper
12 course, and we offered to present whatever the company would like
13 to the U.S. EPA, along with our comments and any additional
14 information that we thought was relevant, and the company
15 subsequently presented us with a submittal and we drafted a
16 letter and added additional information and sent that to the U.S.
17 EPA and subsequently they sent us a response.

18 Q. Okay. You indicated that the IEPA had sent the U.S. EPA
19 a letter seeking guidance; is that correct?

20 A. That's correct.

21 (Whereupon said document was duly marked for purposes of
22 identification as People's Exhibit 4 as of this date.)

23 Q. (By Mr. Layman) I will ask you, Mr. Davidson, if you can
24 identify this document, People's Exhibit Number 4?

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1 A. This was a letter that I drafted, with the help of Chris
2 Romaine, in regards to the submittal that was going to be sent to
3 the U.S. EPA.

4 Q. Does the copy of the letter represent an accurate
5 depiction of the letter that was sent to the U.S. EPA?

6 A. Yes, it does.

7 Q. Were there any attachments that accompanied the letter?

8 A. I believe it is the last page, there is a listing of
9 attachments that were sent to the company -- or to the U.S. EPA.
10 They indicated the construction permit, dated February 10th of
11 1988, the supplemental information provided by the company, and
12 the supplemental information that was also provided by the
13 company from May 4th of 1998.

14 Q. Okay. All of those were attached to the letter that was
15 sent to the U.S. EPA then?

16 A. That's correct.

17 Q. Can you tell us whether or not it is at all common for
18 the IEPA to seek guidance from the U.S. EPA with respect to the
19 PSD program?

20 A. We frequently seek guidance.

21 Q. And is the type of letter -- strike that. How do you
22 routinely conduct that sort of request, if you will?

23 A. We do it -- either we will contact the U.S. EPA directly
24 or we would write this type of letter to the U.S. EPA for

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1 comments.

2 Q. Okay. You indicated that the Illinois EPA received a
3 response from the U.S. EPA?

4 A. That's correct.

5 (Whereupon said document was duly marked for purposes of
6 identification as People's Exhibit 5 as of this date.

7 Q. (By Mr. Layman) Mr. Davidson, I will again ask you to
8 identify the document marked as People's Exhibit Number 5?

9 A. This looks to be a copy of the letter that was sent by
10 the U.S. EPA to the Agency after their review of our letter to
11 them.

12 Q. Who -- can you tell who signed the letter?

13 A. It is signed Andrew Anderson, acting chief of permits
14 and grants section, on page three of the letter.

15 Q. Do you know when the Agency received the letter?

16 A. This copy does not seem to be date stamped. The letter
17 seems to be mailed out around August of 1998.

18 Q. And who was the letter sent to at the IEP?

19 A. Donald Sutton, the manager of the permit section.

20 Q. Do you recall being provided a copy of that
21 correspondence?

22 A. It was included as part of the permit record.

23 Q. So you subsequently reviewed it?

24 A. We reviewed it as part of our -- I believe after we

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1 received it, this information, we reviewed it.

2 Q. Does this copy of the letter represent an accurate
3 depiction, you think, of the U.S. EPA's letter received by the
4 Agency?

5 A. Yes, it does.

6 MR. LAYMAN: At this time I would move for the admission of
7 People's Exhibit Number 4 and 5 into evidence.

8 HEARING OFFICER KNITTLE: Okay. We will take them
9 separately. On People's Exhibit Number 4, any objection?

10 MS. SMETANA: On People's Exhibit Number 4 we have no
11 objections.

12 HEARING OFFICER KNITTLE: All right. People's Exhibit
13 Number 4 is admitted.

14 (Whereupon said document was duly admitted into evidence as
15 People's Exhibit 4 as of this date.)

16 HEARING OFFICER KNITTLE: Okay. How about People's Exhibit
17 Number 5?

18 MS. SMETANA: We do object to the admission of People's
19 Exhibit Number 5 on several grounds. First, we don't believe a
20 proper foundation has been laid for the admission of this
21 document. Neither the author or the recipient is here, nor will
22 they be called as witnesses. The contents in the letter, to the
23 extent that this witness was providing testimony on it, would be
24 purely hearsay.

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1 In addition, the contents of the letter goes to legal
2 conclusions and policy and guidance and is inconsistent with
3 other existing U.S. EPA guidance and policy and is more
4 appropriate to be addressed in the arguments in a brief and not
5 to have testimony elicited here.

6 HEARING OFFICER KNITTLE: Mr. -- I am sorry.

7 MS. SMETANA: And so we object to the admission of Exhibit
8 Number 5.

9 HEARING OFFICER KNITTLE: I tried to cut you off. I
10 apologize. Anything further?

11 MS. SMETANA: No.

12 HEARING OFFICER KNITTLE: Mr. Layman?

13 MR. LAYMAN: I don't have any intention of asking the
14 witness or any other witness to describe or detail the contents
15 of the letter. I think assuming that the letter is going to be
16 admitted into evidence the document will speak for itself. In
17 that regard, I have no problem with arguing in the brief one way
18 or the other about the meaning or the subject matter of the
19 letter.

20 With respect to whether or not proper foundation has been
21 laid and that the contents of it constitute hearsay, I guess I
22 would respond to that by saying that I think the witness has
23 identified sufficient facts in his testimony that would support

24 recognizing the document as a business record exception. He

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1 identified that it is a common practice, if you will, for the
2 Agency to seek guidance of the U.S. EPA through either this type
3 of formal communication or through a phone conversation.

4 Notwithstanding the fact that the witness did not directly
5 receive the letter from the U.S. EPA, I guess my response to that
6 is that the business record exception requirement under Illinois
7 law does not require that the attesting witness be the person who
8 actually received it. I don't know what else to say in regards
9 to the admissibility of the document.

10 HEARING OFFICER KNITTLE: Anything on business records, Ms.
11 Smetana?

12 MS. SMETANA: Well, specifically, it appears to be the only
13 reason that the State is moving to admit this exhibit into
14 evidence is as EPA guidance, and that is pure hearsay.
15 Furthermore, there was no action taken by the IEPA subsequent to
16 receiving this letter.

17 HEARING OFFICER KNITTLE: I am going to deny this exhibit.
18 I don't think foundation has been laid to show that this letter
19 should be admitted here before the Board. I don't see any reason
20 to admit it without having the person who wrote the letter and
21 signed the letter here for cross-examination. It is denied.

22 (Whereupon said document, People's Exhibit 5, was denied by
23 the Hearing Officer.)

24 MR. LAYMAN: In that case, I would request the Hearing

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1 Officer, if I may, to have that portion of the witness'
2 testimony, with respect to the letter from the U.S. EPA,
3 identified as an offer of proof on the part of the State.

4 HEARING OFFICER KNITTLE: Ms. Smetana?

5 MS. SMETANA: The testimony alone?

6 HEARING OFFICER KNITTLE: Right.

7 MS. SMETANA: That's fine.

8 HEARING OFFICER KNITTLE: Are you offering the letter
9 itself as an offer of proof?

10 MR. LAYMAN: Yes, as a bulk offer, if you will.

11 HEARING OFFICER KNITTLE: Okay. As a bulk offer of proof.
12 Any objection, Ms. Smetana? I am going to allow the offer of
13 proof, but I would allow you to comment if --

14 MS. SMETANA: As an offer of proof, we have no objection.

15 HEARING OFFICER KNITTLE: Okay. Mr. Layman, I take it that
16 this will be an offer of proof and also the testimony, or do you
17 want to question the witness briefly on this letter as your offer
18 of proof? I didn't understand.

19 MR. LAYMAN: I don't know what else I would gain in terms
20 of getting the admissability of the document through Mr. --

21 HEARING OFFICER KNITTLE: So his existing testimony?

22 MR. LAYMAN: I am sorry?

23 HEARING OFFICER KNITTLE: So you meant his existing
24 testimony that you have already elicited?

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1 MR. LAYMAN: That's correct, what he has already provided.

2 HEARING OFFICER KNITTLE: Okay.

3 MR. LAYMAN: And so in that respect at any point in which
4 his testimony in the last few minutes has identified the U.S.
5 EPA's letter, that part therein would be the State's offer of
6 proof.

7 HEARING OFFICER KNITTLE: Understood.

8 MR. LAYMAN: I have nothing further in the way of
9 questioning for Mr. Davidson.

10 HEARING OFFICER KNITTLE: All right. Thank you, Mr.
11 Layman.

12 Cross-examination? Ms. Smetana, do you need some time?

13 MS. SMETANA: Can we have just three minutes?

14 HEARING OFFICER KNITTLE: Three minutes. Let's go off the
15 record.

16 (Whereupon a short recess was taken.)

17 HEARING OFFICER KNITTLE: We are back on the record after
18 a short recess. I just want to note for the record that the
19 Board Attorney Assistant of Ms. McFawn is here. His name is Bobb
20 Beauchamp. He will be joining us at the front table.

21 You can proceed with cross-examination.

22

CROSS EXAMINATION

23

BY MS. SMETANA:

24

Q. Mr. Davidson, I just have a few questions for you on

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1 cross. First, during your testimony you had testified to
2 attachment nine under tab 22?

3 A. Yes.

4 Q. Or in Group Exhibit 22, attachment nine. If you could
5 turn to page 218 from the prior hearing record.

6 A. Okay.

7 Q. In the middle of that page under, it looks like item 9B,
8 it states that compliance for engines 1116 through 1119 prior to
9 the time of the CAAPP permit issuance, that it will be achieved
10 prior to the time of the CAAPP issuance; is that correct?

11 A. That's correct. That's what it states.

12 Q. It also states that the source needs to revise the terms
13 of its minor source construction permit relating to the NOx
14 emissions limitation; is that correct?

15 MR. LAYMAN: Excuse me. Can Counsel identify the page
16 number?

17 MS. SMETANA: It is page 218 from the prior.

18 MR. LAYMAN: Okay.

19 THE WITNESS: That's correct. That's what it states.

20 Q. (By Ms. Smetana) Thank you. That's all for that
21 exhibit. You had testified before that you were -- that you

22 became involved around the time of the issuance of the notice of
23 violation; is that correct?

24 A. I think a little bit before that.

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1 Q. But you were involved at the time of the notice of
2 violation?

3 A. Yes, that's correct.

4 Q. Isn't it true that after the violation notice was
5 issued, that Panhandle wrote to the Agency indicating its belief
6 that the 461.3 limit should be revised?

7 A. I believe there is a letter in the record, the permit
8 record, that indicates that. That was subsequent to a letter
9 that was --

10 Q. That's all.

11 A. Okay.

12 Q. Just answer the question. Thank you. In April of 1997
13 there was a meeting held between Panhandle and the IEPA; is that
14 correct?

15 A. I believe that's correct.

16 Q. And were you at that meeting?

17 A. Yes.

18 Q. At that meeting Panhandle explained why revising the
19 461.3 limit was appropriate. Do you recall that?

20 A. I believe they outlined why that would be appropriate
21 and their belief on why it would be appropriate.

22 Q. And during that meeting the IEPA indicated that revision
23 of the of 461.3 limit might be possible, didn't it?

24 A. I believe that we indicated to the company that they

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1 could make a submittal that presented their side of the issue
2 regarding why that would be possible, and we would make a formal
3 determination after the submittal was sent to the EPA.

4 Q. And at that time, during that meeting, the Agency did
5 not tell Panhandle that it had to only obtain a PSD permit; is
6 that correct?

7 A. I think that's correct. That we indicated that -- they
8 had made a presentation, and we were still willing to listen to
9 the company in regards to why that PSD permit would not
10 necessarily be required.

11 Q. And then in September of 1997, Panhandle submitted a
12 permit application that did not request a PSD permit; is that
13 right?

14 A. As part of their compliance commitment agreement there
15 was an attached permit application.

16 Q. That attached permit application was not requesting a
17 PSD permit, correct?

18 A. That's correct.

19 Q. The Agency denied that application, right?

20 A. I believe we sent a notice of incompleteness.

21 Q. Panhandle submitted a permit application in September of
22 1997; is that right?

23 A. I believe that was submitted -- I think you are correct.
24 That was submitted as part of their response to our notice of

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1 incompleteness.

2 Q. The September of 1997 submittal was subsequent to the
3 notice of incompleteness; is that correct?

4 A. That's correct.

5 Q. The Agency denied that September of 1997 application; is
6 that correct?

7 A. That's correct.

8 Q. One of the grounds for the Agency's denial was the
9 application did not include a BACT analysis; is that correct?

10 A. That's correct.

11 Q. And BACT is a part of the PSD process; is that right?

12 A. Yes.

13 Q. After that permit denial, Panhandle again met with the
14 Agency; is that right?

15 A. That's correct.

16 Q. Were you involved in that meeting?

17 A. Yes.

18 Q. At that meeting the Agency indicated that revision of
19 the 461.3 limit might still be possible; is that right?

20 A. I think what we indicated was that the Agency's position

21 was that it was not possible, but we still left open that the
22 company could --

23 Q. Submit additional information?

24 A. Submit additional information that we would present to

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1 the U.S. EPA. And if they said that it was possible then we
2 would follow whatever the U.S. EPA's guidance was.

3 Q. In fact, after that time, the IEPA -- you testified that
4 the IEPA actually wrote the U.S. EPA seeking guidance?

5 A. Right. We waited for additional information to be
6 submitted by the company and then we wrote the U.S. EPA.

7 Q. And People's Exhibit Number 4 is the letter, correct?

8 A. That's correct.

9 Q. And you helped draft that letter to the U.S. EPA; is
10 that correct?

11 A. Yes.

12 Q. And Mr. Romaine helped you draft that letter?

13 A. Yes.

14 Q. In that letter the IEPA states that it is prepared to
15 accept the contention that 1987 was an abnormally low year for
16 engine utilization; is that right?

17 A. Yes.

18 Q. In that letter the IEPA also states that it is prepared
19 to use a more representative period of 1985 and 1986 for purposes

20 of PSD netting; is that right?

21 A. Yes.

22 Q. So as of June 10th of 1998, the IEPA accepted the use of
23 1985 and 1986 as representative periods reflecting the emissions
24 baseline for purposes of PSD netting; is that right?

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1 A. I believe that is what is indicated in the letter.

2 Q. Also as of the date of this letter isn't it true that
3 the IEPA was not opposed to the use of emission factors supplied
4 by the vendor instead of factors by -- AP-42 factors?

5 A. Yes.

6 Q. The letter also indicates that the IEPA was not opposed
7 to allowing a modified permit limit based on the vendor's
8 emission factors; is that right?

9 A. I think on page two it indicates that based on the
10 exceedance we had a discussion on --

11 Q. I will read to you from the letter.

12 A. Okay.

13 Q. On the second full paragraph on page two it says, the
14 Illinois EPA is not opposed to allowing a modification to
15 permitted limits based on Panhandle's proposed revisions to the
16 emission factors. Does it not say that?

17 A. That's true.

18 MS. SMETANA: Okay. We have no further questions for this
19 witness.

20 HEARING OFFICER KNITTLE: All right. Mr. Layman, do you
21 have redirect?

22 MR. LAYMAN: Yes. If I may have just a moment or two.

23 HEARING OFFICER KNITTLE: Yes. We will go off the record.

24 (Discussion off the record.)

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1 HEARING OFFICER KNITTLE: Back on the record. Mr. Layman,
2 redirect examination, please.

3 MR. LAYMAN: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. LAYMAN:

6 Q. Mr. Davidson, with respect to what was marked as
7 People's Exhibit Number 5 --

8 MS. SMETANA: I am going to object to any question with
9 respect to People's Exhibit Number 5. That is beyond the scope
10 of what our cross-examination was and is inappropriate for
11 redirect.

12 MR. LAYMAN: For purposes of -- well, first of all, while
13 Panhandle's Counsel did not specifically identify People's
14 Exhibit Number 5 in their cross-examination, it nonetheless begs
15 for the -- I think it begs for an answer with respect to U.S.
16 EPA's document, given its emphasis on the contents of the letter
17 to the IEPA. And it leaves open the question of how those issues
18 that were presented in the IEPA's letter were resolved.

19 What I would like to do and what I would propose to do is
20 ask a couple of more follow-up questions with respect to the
21 foundation to establish the admissibility of the document. Given
22 the objection, I am perfectly willing to do that as part of the
23 existing offer of proof. So once again, we could just bracket
24 off his testimony from the remaining evidence that has been

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1 admitted thus far. But once I do that, I am going to again renew
2 my objection and seek the admissibility of People's Exhibit
3 Number 5 on a couple of more grounds. So if we --

4 HEARING OFFICER KNITTLE: I want to hear what Ms. Smetana
5 has to say and then I have a couple of things I want to say. Do
6 you have a response?

7 MS. SMETANA: Yes. I am going to object because the
8 Hearing Officer has already ruled on the evidentiary issue and
9 has ruled that the foundation has not been established and,
10 again, this scope of cross-examine was very narrow to People's
11 Exhibit Number 4, and any testimony or questioning on People's
12 Exhibit Number 5 is beyond the scope of cross and inappropriate
13 for redirect.

14 HEARING OFFICER KNITTLE: What are you intending to elicit
15 from this?

16 MR. LAYMAN: I am intending to elicit from the witness the
17 statement that it was the U.S. EPA's normal practice, if you
18 will, of doing business with the Agency. The normal practice is

19 providing guidance to the Agency in the form of communications
20 from senior staff at the U.S. EPA to senior staff at the IEPA.
21 If there was one area missed in terms of the offer of proof with
22 respect to the foundation of the document, it may or may not be
23 that particular aspect of it.

24 HEARING OFFICER KNITTLE: Right. And you are attempting to

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1 submit this document as a business record and --

2 MR. LAYMAN: Well, what I am attempting to do --

3 HEARING OFFICER KNITTLE: -- that is the foundation you are
4 attempting to repair?

5 HEARING OFFICER KNITTLE: That's correct. Again, within
6 the offer of proof.

7 HEARING OFFICER KNITTLE: Ms. Smetana, anything further?

8 MS. SMETANA: Our objection stands.

9 HEARING OFFICER KNITTLE: All right. I am going to allow
10 it as an offer of proof. I will state that I still think it
11 falls shy of any foundation for this particular document. I am
12 going to allow you to make it so that the Board will have all of
13 the information before it if, in fact, you appeal my decision,
14 which it sounds like you might.

15 I just want it noted for the record that my -- I don't
16 think it qualifies as a business record. I think you can qualify
17 it as a letter. I don't think you can qualify it as a letter,

18 because the person who wrote it is not here and the person who
19 wrote it is not a party. You know, if it was another party who
20 had written the letter to you then I think it would qualify as a
21 letter, because then, of course, you can waive the hearsay
22 requirement as a party admission. But that being not the case, I
23 will allow you to make the offer of proof. I can tell you that
24 that is not going to make me change my mind. So let's just do

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1 this as an offer of proof right now.

2 MR. LAYMAN: That's fine.

3 HEARING OFFICER KNITTLE: Then we can start up with your
4 redirect examination.

5 MS. SMETANA: We just want to object. I mean, I think what
6 Mr. Layman described as what he wants to bring out as an offer of
7 proof has already been brought out before, and the witness has
8 testified to that previously. And it is really nothing new. It
9 is just another chance to try it again.

10 HEARING OFFICER KNITTLE: I understand your objection and I
11 will note it for the record, but I will allow him to make a
12 limited offer of proof along those lines.

13 MR. LAYMAN: Thank you.

14 OFFER OF PROOF EXAMINATION

15 BY MR. LAYMAN:

16 Q. Mr. Davidson, can tell us with we respect to the IEPA's
17 practice of communicating with the U.S. EPA and seeking guidance

18 on PSD related issues, can you tell us what the normal mode of
19 communication was with respect to the U.S. EPA getting back to
20 the IEPA?

21 A. Generally letters or telephone conversations.

22 Q. Can you tell us if the letters -- strike that. If the
23 U.S. EPA were in the normal course to provide correspondence to
24 the Agency, can you tell us who would normally be the recipient

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1 at the IEPA for those letters?

2 A. The permit analyst who is handling the project. It
3 would be either the construction permit or a revision to an
4 operating permit.

5 Q. Can you tell us -- strike that. Who was -- the letter
6 that was sent from the IEPA to the U.S. EPA, who was that sent
7 from?

8 A. Who was the letter sent from the U.S. EPA?

9 Q. Let me rephrase that for you. When the IEPA wrote for
10 guidance to the U.S. EPA in this matter, who was the letter
11 directed to?

12 A. Cheryl Newton.

13 Q. And who signs the IEPA's letter?

14 A. Donald Sutton.

15 Q. Can you tell us -- strike that. Can you offer us a
16 reason as to why the U.S. EPA's letter that they sent back to us

17 was sent to Mr. Don Sutton?

18 A. I believe that the majority of correspondence that is
19 submitted to the Agency with regards to the permit section is
20 addressed to Donald Sutton.

21 MR. LAYMAN: Okay. I think that's all I have with respect
22 to the offer of proof.

23 (This concludes the offer of proof examination.)

24 MR. LAYMAN: For whatever it is worth, again, I would like

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1 to renew the objection on simply one ground. That is that as far
2 as the admissibility of a business record exception to hearsay is
3 concerned, I think most authorities in this state recognize that
4 the lack of personal knowledge by the entrant or the maker of the
5 document is irrelevant and to the extent that it is at all
6 relevant, it is shown only to affect the weight and not to its
7 admissibility.

8 I would also ask that the Board's Hearing Officer in this
9 instance, and you don't necessarily have to consider it now, but
10 perhaps it is an issue that we can raise at the completion of the
11 hearing having given you time to consult state authorities on the
12 business records exception. But with respect to -- I would refer
13 the Board Hearing Officer to Section 103.204 of the Board's rules
14 regarding admissible evidence and the standards thereof.

15 As far as the admissability of this particular document
16 hinges on the scope of the business records exception in Illinois

17 and as governed by the Board, I would refer to 103.204(b), when
18 the admissability of evidence depends upon the arguable
19 interpretation of substance involved the Hearing Officer shall
20 admit such evidence.

21 Again, for whatever it is worth, you can consider that now.
22 You can consider that later. If you would rather the State
23 present a motion for the introduction and renew its request for
24 the admissability of People's Exhibit Number 5 at the end or

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1 towards the end of our presentation of the case-in-chief, we will
2 be glad to do it, and that is your preference.

3 HEARING OFFICER KNITTLE: Okay. I am going to stand by my
4 ruling.

5 MR. LAYMAN: Okay.

6 HEARING OFFICER KNITTLE: I don't think it meets the
7 business records exception. I think -- and then, Ms. Smetana, I
8 will let you speak if you want to. I don't mean to cut you off.
9 I think we have gone over your position at this point in time.

10 MS. SMETANA: We have nothing further.

11 HEARING OFFICER KNITTLE: I understand 103.204, admissable
12 evidence under the Board's regulation and evidence which is
13 material and relevant and would be relied upon by a reasonably
14 prudent person in the conduct of serious affairs. And the reason
15 I find that it is not such evidence is because I don't think it

16 makes the business records rule and I think it is hearsay. So I
17 don't find it to be evidence that would be relied upon by a
18 person in the pursuit of serious affairs. I do take note of
19 Section 103.204. I am not so sure that we have an arguable
20 interpretation of substantive law here. I will take that under
21 advisement. We have a week. Maybe I will change my mind, but
22 there is very little possibility. At this point I don't see that
23 as being the case.

24 As to what you have to do at the end of the case-in-chief

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1 you said or at the end of the week, I would suggest in your post
2 hearing brief or in a separate document, just a motion to appeal
3 Hearing Officer decision. I can't recall the exact terminology.

4 MR. LAYMAN: Together with perhaps a memorandum of law
5 supporting the motion.

6 HEARING OFFICER KNITTLE: As you see fit, of course. I
7 can't tell you how to approach that, but the best approach unless
8 I see the light between now and Friday, and that could happen,
9 Rob. Excuse me. Mr. Layman.

10 MR. LAYMAN: That's fine.

11 HEARING OFFICER KNITTLE: I would suggest going directly to
12 the Board on that.

13 MR. LAYMAN: Okay. I have nothing further on redirect with
14 respect to Mr. Davidson.

15 HEARING OFFICER KNITTLE: Do we have a recross?

16 MS. SMETANA: No, we have nothing further.

17 HEARING OFFICER KNITTLE: Thank you, sir. You may step
18 down.

19 (The witness left the stand.)

20 MR. LAYMAN: May I have just a moment with Counsel?

21 HEARING OFFICER KNITTLE: Yes. We will go off the record.

22 (Discussion off the record.)

23 HEARING OFFICER KNITTLE: All right. We are back on the
24 record.

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1 MR. LAYMAN: The State calls Mr. Chris Romaine.

2 HEARING OFFICER KNITTLE: Would you swear him in, please.

3 (Whereupon the witness was sworn by the Notary Public.)

4 HEARING OFFICER KNITTLE: All right, Mr. Layman.

5 C H R I S T O P H E R R O M A I N E,

6 having been first duly sworn by the Notary Public, saith as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. LAYMAN:

10 Q. Would you state your full name for the record, please.

11 A. Christopher Pelton Romaine.

12 Q. Mr. Romaine, do you recall testifying on October 28th,
13 1998, in a permit appeal proceeding involving Panhandle Eastern
14 Pipe Line Company?

15 A. Yes, I generally recall testifying in that proceeding.

16 Q. Do you recall testifying about the nature of the NOx
17 emissions limit that was established by the Illinois EPA in the
18 February 1988 construction permit?

19 A. Yes, I do. I have refreshed my recollection by
20 reviewing the transcript of the proceeding.

21 Q. Can you tell us generally how the construction permit
22 that had been issued to Panhandle limited NOx emissions?

23 A. The permit establishes an annual emission limit for NOx
24 emissions and I believe the number is 461 something tons per

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1 year. The permit also includes some provisions requiring record
2 keeping for hours of operation and usage of natural gas by the
3 new engines.

4 Q. Can you tell us how that construction permit -- strike
5 that.

6 Did the permit, to your recollection, contain any
7 additional limits or -- well, just limits?

8 A. No, I don't recall any other limits in the permit.

9 Q. Can you tell us how the construction permit for
10 Panhandle compared with other permits that would have been issued
11 during that same time period?

12 A. I believe that --

13 MR. BOYD: I am sorry. I would just object to the extent
14 that you are going over things that are already admitted into the

15 record from the past permit proceeding, Rob, and he has gone
16 through this before, and that's why we stipulated to this. I
17 would just object that you are going over things that are already
18 in the other transcript.

19 MR. LAYMAN: I don't think I will dispute that. I know Mr.
20 Romaine had indicated in his prior testimony pertaining to the
21 nature of the construction permit and how it compared to other
22 permits. So I will withdraw the question.

23 HEARING OFFICER KNITTLE: Mr. Boyd and Ms. Smetana, which
24 one of you is handling this witness?

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1 MR. BOYD: I am.

2 HEARING OFFICER KNITTLE: Okay.

3 Q. (By Mr. Layman) Can you tell us, Mr. Romaine, how did
4 the construction permit require Panhandle to demonstrate
5 compliance with the permit?

6 A. The permit was silent in terms of establishing any
7 specific methodology or procedures that should be followed for
8 the purpose of demonstrating compliance. It simply established
9 an emission limitation and basically left it to the discretion of
10 the permittee to develop the methodology that we used to
11 demonstrate compliance.

12 Q. Can you tell us why that practice was -- well, I will
13 strike that.

14 Can you tell us why that practice existed at that time?

15 A. I guess I would simply say in general that was the way
16 that the permits were issued in that time period. We believe
17 that annual emission limits were sufficient to limit potential
18 emissions for purposes of applicability of Prevention of
19 Significant Deterioration rules, and we didn't believe it was
20 necessary to establish more detailed limitations or more detailed
21 compliance procedures with those limitations.

22 Q. Would a company be able to practically assess its
23 compliance with simply an annual limit?

24 A. I believe so, yes. There are several ways to calculate

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1 annual emissions. Particularly in this case when you are dealing
2 with engines you can calculate emissions based on fuel usage or
3 hours of operation, both of which were requested or instructed to
4 be kept as records pursuant to the permit. Using that data you
5 can use other representative emission factors or representative
6 hourly emission rates to calculate annual emissions.

7 More generally, over the last ten years since we have
8 gotten more rigorous in setting more detailed limitations, people
9 routinely tell us that they have no problem calculating annual
10 emissions and they don't need all the additional provisions that
11 the current guidance requires that we place in permits.

12 Q. Okay. To your knowledge, were there companies during
13 that time period that were able to practically assess their

14 compliance with an annual limit only?

15 MR. BOYD: Again, I am just going to object to this line of
16 questioning. It was covered in the 1997 -- the 1998 permit
17 proceeding, and we are going over the same stuff that is already
18 in the record. It is repetitive.

19 HEARING OFFICER KNITTLE: Mr. Layman?

20 MR. LAYMAN: I don't know that this particular line of
21 testimony is repetitive with respect to what Mr. Romaine
22 testified at earlier. Based on the hearing transcript that has
23 been presented, it is clear that he spoke about the nature of the
24 annual NOx emissions limits in the permit. I don't think he

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1 spoke to the issue of how easy or how hard it was for a company
2 to assess their compliance based on certain record keeping
3 requirements with that limit. I think it is directly relevant in
4 this particular instance, because of some of the issues that we
5 anticipate Panhandle bringing to the forefront in its
6 case-in-chief with respect to emission factors and with respect
7 primarily to the affirmative defenses that they have identified,
8 I believe, as affirmative defense number two, the practical
9 enforceability of the permit.

10 HEARING OFFICER KNITTLE: Anything further, Mr. Boyd?

11 MR. BOYD: Nothing further.

12 HEARING OFFICER KNITTLE: The objection is overruled. Mr.

13 Layman, you can continue.

14 MR. LAYMAN: Shall I restate the question or do you recall
15 it?

16 MR. BOYD: May I ask that it be read back?

17 MR. LAYMAN: That's fine.

18 HEARING OFFICER KNITTLE: Yes.

19 (Whereupon the requested portion of the record was read
20 back by the Reporter.)

21 THE WITNESS: I believe that to be the case, but I can't
22 specifically give a concrete example of a facility that I could
23 point to that rigorously demonstrated compliance with an annual
24 limit. But, certainly, we were relying upon annual emission

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1 limits at that time as sufficient to address applicability of
2 Prevention of Significant Deterioration.

3 Q. (By Mr. Layman) Okay. Mr. Romaine, can you tell us that
4 if a company were reporting its annual emissions to the Illinois
5 EPA through an annual emission report, would you expect a company
6 to be any more or less capable of assessing its compliance with
7 an annual emission limit?

8 MR. BOYD: Objection to the form and foundation.

9 HEARING OFFICER KNITTLE: Mr. Layman?

10 MR. LAYMAN: Well, I can cure the foundation. I am not
11 sure what the basis to the objection is as to form.

12 HEARING OFFICER KNITTLE: Can you explain the form

13 objection?

14 MR. BOYD: Well, I found it to be a little leading.

15 HEARING OFFICER KNITTLE: That's your objection, leading?

16 MR. BOYD: (Nodded head up and down.)

17 HEARING OFFICER KNITTLE: Mr. Layman?

18 MR. LAYMAN: I will lead the witness through a rephrased
19 question, if I may.

20 Q. (By Mr. Layman) Mr. Romaine, are you familiar with the
21 annual emission reporting system that the Illinois EPA has had in
22 place for some time?

23 A. Yes, I am.

24 Q. What can you tell us about it generally?

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1 A. Well, as part of the Clean Air Act Amendments of 1990 we
2 were required to enhance their annual emission reporting process.
3 It requires major sources of emissions to provide detailed annual
4 emission reports on an annual basis providing emission data. For
5 major sources it requires sources review of the information that
6 we have in our inventory records for the source and to update
7 that information with operating information from the previous
8 year or changes in emission factors to accurately provide an
9 estimate of the previous years emissions.

10 Q. Okay. Can you tell us when companies began reporting
11 what is generally known as AERs, or annual emission reports, to

12 the Agency?

13 A. I don't recall the exact date, which year that program
14 took place. It was some time after the 1990 Clean Air Act
15 Amendments.

16 Q. Are you familiar with the nature of the reporting that
17 is provided to the Agency?

18 A. Yes, I am.

19 Q. Okay. If a company were reporting its annual emissions
20 to the Illinois EPA through that annual emission reporting
21 system, are you aware of any difficulty the company would have in
22 assessing its compliance with an annual emission report?

23 MR. BOYD: I object again to the form. He is asking about
24 a company in general. So, again, what this witness would know

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1 about Panhandle in particular, there is no foundation. If he is
2 asking about companies in general it is just not relevant to this
3 proceeding.

4 HEARING OFFICER KNITTLE: Mr. Layman?

5 MR. LAYMAN: I think a general practice is somewhat
6 relevant to the proceedings. Even if Mr. Romaine is not aware of
7 what Panhandle was doing with respect to the annual emission
8 reporting or its ability to assess compliance with an annual
9 emission report and the annual limit in the permit, he can still
10 provide some insight, I think, into how hard or how easy, either
11 one, it would be for a company to assess its compliance with an

12 annual emission limit given its obligations to report annual
13 emission reports on an annual basis.

14 HEARING OFFICER KNITTLE: Based on that explanation, I will
15 overrule the objection. However, I do agree that what other
16 companies have to and have to not do is not relevant. I don't
17 want to get too far into it. From his perspective from the
18 Agency as to what they need to do I will allow it for a little
19 while.

20 MR. LAYMAN: Okay. Can you address the question on the
21 table?

22 THE WITNESS: I believe that the annual emission report
23 process certainly facilitates a determination of annual
24 emissions, because it requires a source to report that

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1 information to the Agency. To the extent that a source is also
2 subject to an annual emission limitation, the fact that they have
3 to calculate or determine an annual emission rate for the purpose
4 of annual emission report, should make it easier for them to
5 determine whether they are complying with the annual emission
6 limitation that they might have in their permit.

7 MR. LAYMAN: Okay. Thank you. If I may have just a
8 moment.

9 HEARING OFFICER KNITTLE: We will go off the record.

10 (Discussion off the record.)

11 MR. LAYMAN: I have nothing further with respect to Mr.
12 Romaine.

13 HEARING OFFICER KNITTLE: All right. Mr. Boyd, do you have
14 cross-examination?

15 MR. BOYD: I do. Give me one minute.

16 HEARING OFFICER KNITTLE: Would you like us to go off the
17 record, Mr. Boyd? Did you say no? I couldn't hear you.

18 MR. BOYD: No.

19 CROSS EXAMINATION

20 BY MR. BOYD:

21 Q. Mr. Romaine, would you agree that actual tests of
22 engines or similar engines is the best way to determine emissions
23 from the engines?

24 A. I think there are a couple of points I need to make in

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1 response to that. Obviously, you cannot --

2 Q. Sir, I asked you a yes or no question. Would you agree,
3 yes or no, that actual tests of engines or similar engines is the
4 best way to determine emissions from the engines?

5 A. No.

6 Q. Okay. Would you agree that -- well, let me go back.
7 Have you seen the construction permit issued to Panhandle in 1988
8 in this case?

9 A. Yes, I have.

10 Q. Okay. That permit does not require Panhandle to test

11 NOx emissions from the engines, does it?

12 A. No, it does not.

13 Q. Okay. The permit does not require Panhandle to comply
14 with a specific hours limitation, does it?

15 A. No, it does not.

16 Q. It does not require Panhandle to comply with a specific
17 natural gas fuel usage limitation, does it?

18 A. No, it does not.

19 Q. Okay. Let me ask you one more time, then, sir.

20 Regarding the testing of engines, isn't testing engines the best
21 way to determine emissions from the engines?

22 A. No.

23 MR. LAYMAN: Objection. Asked and answered.

24 Q. (By Mr. Boyd) All right. Well, sir, do you remember

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1 being -- giving testimony in --

2 HEARING OFFICER KNITTLE: I would sustain that.

3 Q. (By Mr. Boyd) Do you remember giving testimony in this
4 case in the permit appeal proceeding?

5 A. Yes, I do. If you would allow me to explain --

6 Q. Well, let me ask you the question, sir. Do you recall
7 being asked this question at that time. I say, do you agree --

8 MR. LAYMAN: Objection.

9 MR. BOYD: I am sorry. I am laying my foundation.

10 HEARING OFFICER KNITTLE: He can object, Mr. Boyd. Hold
11 on, please.

12 MR. BOYD: Well, I want to --

13 HEARING OFFICER KNITTLE: Mr. Boyd. Go ahead, Mr. Layman.

14 MR. LAYMAN: The basis of my objection doesn't go to
15 foundation. The basis of my objection goes to the fact that Mr.
16 Romaine has already testified in the earlier permit appeal
17 proceeding. Evidently that's part of the transcript from the
18 earlier proceeding that Mr. Boyd is going to read from. So I
19 guess I would ask the question aren't we being redundant here by
20 having him address similar issues that were previously testified
21 to by Mr. Romaine in the permit appeal proceeding.

22 HEARING OFFICER KNITTLE: Mr. Boyd, is this part of the
23 prior incorporation of testimony?

24 MR. BOYD: Well, sir, I am trying to establish something

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1 through the prior testimony that --

2 HEARING OFFICER KNITTLE: It this --

3 MR. BOYD: -- impeaches him on what he just said right now.
4 That's what I was laying the foundation for.

5 HEARING OFFICER KNITTLE: Did you answer my question? Is
6 this part of the prior testimony that has been incorporated?

7 MR. BOYD: Yes, it is.

8 HEARING OFFICER KNITTLE: Okay. You can proceed.

9 MR. BOYD: Okay.

10 Q. (By Mr. Boyd) Do you remember me asking you on October
11 22nd of 1998, and for reference, it is on page 383 of the
12 transcript. "You agree, don't you, that actual tests of engines
13 or similar engines is the best way to determine actual
14 emissions?" Your response was, "that was the general
15 understanding. I would qualify that with obviously they must be
16 representative tests properly conducted."

17 Do you recall being asked that question and giving that
18 response?

19 A. I certainly do.

20 Q. All right.

21 A. Let me continue, however --

22 Q. Well, sir, I will let your Counsel ask you questions on
23 follow-up if they want to. But if I ask you a question and you
24 give me a response, then I will move on to another line of

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1 questioning.

2 Mr. Hearing Officer, I would ask you to instruct the
3 witness to answer my questions and then I will move on.

4 HEARING OFFICER KNITTLE: Mr. Romaine, I would agree that
5 you are to answer the questions as put to you by Counsel, and
6 your Counsel can rehabilitate you on re-examination if they so
7 desire.

8 THE WITNESS: Thank you.

9 HEARING OFFICER KNITTLE: Okay.

10 Q. (By Mr. Boyd) Mr. Romaine, you also just said a few
11 minutes ago that the facility like Panhandle could determine
12 emissions from the engines by using emissions factor and
13 information on hours of operation; is that correct?

14 A. That's correct.

15 Q. And a facility like Panhandle could determine emissions
16 by using --

17 A. Well, let me correct. I am sorry. I didn't say that.
18 I thought I said hours of operation and an hourly emission rate.
19 I did not use the word emission factor linked with hours of
20 operation.

21 MR. BOYD: Could you read back his answer please. I am
22 sorry. Mr. Hearing Officer, could we have it read back.

23 HEARING OFFICER KNITTLE: Yes, please read it back.

24 (Whereupon the requested portion of the record was read

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1 back by the Reporter.)

2 Q. (By Mr. Boyd) The permit that was issued to Panhandle in
3 1988 did not have an hourly emissions rate limit, did it?

4 A. No, it did not.

5 Q. And the operating permits that were issued to Panhandle
6 thereafter did not include an hourly emissions rate limit, did
7 it?

8 A. I do not recall the operating permits thereafter.

9 Q. Okay. Now, is it also true that you said that a
10 facility could determine emissions by the type of engines and the
11 amount of fuel that was being used?

12 A. No.

13 Q. Could they determine emissions from using the hours
14 of -- I am sorry -- the amount of fuel used in the engines and a
15 fuel based emissions factor?

16 A. Yes.

17 Q. Okay. Now, isn't it also true that those fuel based
18 emission factors were available in the 1980s?

19 A. Yes.

20 Q. Isn't it true that emission factors for engines based on
21 hours of operation were available in the 1980s as well?

22 A. Emission rates based on hours -- reflecting emissions on
23 an hourly basis were certainly available in the 1980s.

24 Q. Were you aware of any emissions factors that were

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1 available from AP-42 based on hours of operation?

2 A. No, I am not.

3 Q. If they had been available then a facility could
4 determine emissions based on the emissions factor based on hours
5 of operation and the hours the engines operated; is that correct?

6 A. Yes.

7 Q. And, likewise, an Agency inspector could determine

8 emissions using that same information; isn't that correct?

9 MR. LAYMAN: I am going to object to that particular
10 question on the grounds that Mr. Romaine is not an Agency
11 inspector. He is a permit analyst and has been for a number of
12 years. I don't know if his qualifications extend to the area of
13 field operations and what they would normally encounter in the
14 field.

15 HEARING OFFICER KNITTLE: Mr. Boyd?

16 MR. BOYD: I don't know how to respond to that. If he is
17 saying that a facility can calculate it one way and that the
18 Agency cannot, then I would be intrigued by that response.

19 HEARING OFFICER KNITTLE: I am going to allow the question.
20 The objection is overruled.

21 Do you need it read back to you, sir?

22 THE WITNESS: Yes.

23 HEARING OFFICER KNITTLE: Darlene, could you read it back,
24 please.

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1 (Whereupon the requested portion of the record was read
2 back by the Reporter.)

3 THE WITNESS: I think the answer is simply yes. Certainly,
4 Agency inspectors have access to AP-42 and the emission data
5 contained therein.

6 MR. BOYD: Okay. That's all of the questions I have.
7 Thank you.

8 HEARING OFFICER KNITTLE: Mr. Layman, do you have a
9 redirect examination?

10 MR. LAYMAN: Yes, I have one or two matters, if I may.

11 REDIRECT EXAMINATION

12 BY MR. LAYMAN:

13 Q. Mr. Romaine, can tell us what, if any, reservations you
14 have with respect to the proposition that emissions testing is
15 the best way to measure actual emissions?

16 A. Emission testing simply gives you a snapshot on time.
17 As asked in this context, the question appeared to be a question
18 about annual emissions. Clearly, people do not go out and
19 conduct annual emissions testing, operating with emission testing
20 8,760 hours per year. So for the purpose of determining annual
21 emissions, you can't use a test by itself. A test is a
22 worthwhile technique for coming up with an emission factor or a
23 representative hourly emission rate, assuming its conducted in
24 representative conditions that reflect the typical operation of

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1 the engine. But all it gives you is that representative emission
2 rate or that emission factor. It is not by itself a means to
3 determine annual emissions.

4 Q. Okay. Thank you.

5 MR. LAYMAN: If I may have just one additional moment,
6 please.

7 HEARING OFFICER KNITTLE: Certainly.

8 MR. LAYMAN: I think that's all I have.

9 MR. BOYD: I just have a couple quick follow-ups.

10 RE CROSS EXAMINATION

11 BY MR. BOYD:

12 Q. Isn't it true, Mr. Romaine, that AP-42 emissions factors
13 are also based on emissions test information?

14 A. That's generally the case, I believe, yes.

15 Q. So if they are, then to that extent those factors are
16 also based on time periods less than a full year?

17 A. That's correct, yes.

18 MR. BOYD: Okay. That's all I have.

19 HEARING OFFICER KNITTLE: Any re-redirect, Mr. Layman?

20 MR. LAYMAN: Nothing further, no.

21 HEARING OFFICER KNITTLE: Thank you, sir. You may step
22 down.

23 (The witness left the stand.)

24 HEARING OFFICER KNITTLE: All right. Let's go off the

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1 record.

2 (Discussion off the record.)

3 HEARING OFFICER KNITTLE: We will take a recess while we
4 wait for the next witness.

5 (Whereupon a short recess was taken.)

6 HEARING OFFICER KNITTLE: We are back on the record. We

7 are continuing with the case-in-chief of the complainant's.

8 Ms. Carter, your next witness is sitting down already. His
9 name, please?

10 MS. CARTER: Gary Styzens.

11 HEARING OFFICER KNITTLE: Thank you. Could you swear him
12 in, please.

13 (Whereupon the witness was sworn by the Notary Public.)

14 HEARING OFFICER KNITTLE: Ms. Carter, your witness.

15 MS. CARTER: Thank you.

16 G A R Y S T Y Z E N S,

17 having been first duly sworn by the Notary Public, saith as
18 follows:

19 DIRECT EXAMINATION

20 BY MS. CARTER:

21 Q. Please state your name.

22 A. Gary Styzens.

23 Q. Please tell me a little bit about your undergraduate
24 degree.

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1 A. I began at Southern Illinois University, Carbondale, in
2 1976, and received a bachelor's of science degree in 1980 in
3 forestry and environmental sciences.

4 Q. Can you please tell me a little bit about the course
5 work that you undertook to attain your degree in 1980?

6 A. Well, there is a variety of science-related courses,
7 chemistry, botany, environmental biology, and things of that
8 nature. Then it included courses such as economics, business
9 related to the forestry industry, some accounting, statistics,
10 calculus, things of that nature.

11 Q. Once you graduated from SIU, did you continue on with
12 your education?

13 A. Yes, I did.

14 Q. What was the next step in your educational process?

15 A. Throughout my undergrad degree I was thinking about
16 transitioning into an MBA program to get a master's in business
17 administration. So what I did was take some business core
18 courses for a year and a half to prepare myself to get into the
19 MBA program at SIU Carbondale.

20 Q. What was some of the course work that you undertook
21 during your transition into the MBA?

22 A. Basically that year and a half consisted of courses,
23 usually like 300 level courses to 400 level courses, which would
24 be equivalent to like junior and senior year type business

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1 courses, related to all areas of business, economics, finance,
2 cost accounting, management accounting, marketing, organizational
3 behavior. Basically a whole series of business related courses
4 that prepare you to go into the master's in business
5 administration program.

6 Q. From what time period were you undertaking course work
7 to transition into the MBA?

8 A. Basically from 1980 to midyear 1982, something like
9 that.

10 Q. Did you ultimately attend graduate school?

11 A. Yes.

12 Q. Where?

13 A. At Southern Illinois University, Carbondale.

14 Q. What did you attain your degree in?

15 A. I have a master's in business administration.

16 Q. Okay. What year did you attain your MBA?

17 A. In 1983.

18 Q. In attaining your MBA, did you specialize in a certain
19 area or not?

20 A. I took business, just general business administration.

21 Q. Can you please discuss the course work that you took to
22 attain your MBA?

23 A. Again, it basically covered all areas of business
24 management, which would include accounting, finance, marketing,

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1 things of that nature.

2 Q. Okay. Since you attained your MBA, have you attained
3 any professional designations?

4 A. Yes. In 1988 I received a Certified Internal Auditor

5 designation.

6 Q. What is a Certified Internal Auditor designation?

7 A. It is similar to what accountants get, the CPA, the
8 Certified Public Accounting type of designation except it is
9 geared towards internal auditing.

10 Q. Can you just describe for me the field of internal
11 auditing, please?

12 A. In general what internal auditing is?

13 Q. Yes, sir. Thank you.

14 A. Well, what internal auditing consists of basically is
15 you work for an organization and you are part of the organization
16 and you are there to give independent objective evaluations of
17 internal control systems or systems of internal accounting and
18 administrative controls. Like in my case, I report right to the
19 Director of the Agency, an independent objective evaluation
20 function in the Agency where I provide management with
21 independent objective assessments of their internal control
22 systems, which cover items such as controls to safeguard assets,
23 to ensure the accomplishment of program goals and objectives, the
24 reliability and integrity of data.

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1 Q. Okay.

2 A. Another big area is the efficiency and effectiveness of
3 operations, you know, if they are using the money wisely and
4 achieving the goals of the programs and things of that nature.

5 Q. Okay. If we could just back up for a moment, then. You
6 were previously discussing the Certified Internal Auditor
7 designation?

8 A. Right.

9 Q. Did you attain that designation?

10 A. Yes, in 1988.

11 Q. Did you have to take an exam to obtain that designation?

12 A. Yes. First you basically have to go through preparation
13 for studying for the exam. You basically study for about six
14 months using a Gliem Certified Internal Auditor Preparation
15 Textbooks.

16 Q. What is Gliem?

17 A. Gliem is the author.

18 Q. Can you spell that?

19 A. G-L-I-E-M, I believe.

20 Q. Okay. Thank you.

21 A. And basically you use those to prepare for the exam and
22 then there is a two-day exam that covers areas related to
23 internal auditing in general, very detailed on financial business
24 concepts, things of that nature, internal controls.

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1 Q. Were there any other topics that were included within
2 the exam?

3 A. Well, besides your business concepts like finance and

4 economics, and they include general topics on internal auditing
5 statistics, topics covering everything from capital management to
6 how you evaluate EDP, computer system controls, things of that
7 nature.

8 Q. Are you required to do anything to maintain this
9 professional designation?

10 A. Yes. The State of Illinois passed the Fiscal Control
11 and Internal Auditing Act and --

12 Q. What is that?

13 A. That was passed about ten years ago, and that is a state
14 law that covers agencies operating under the Governor's office.
15 And it describes what programs of internal auditing at state
16 governments what types of requirements that internal auditing
17 shops must have. For example, we have to have a two year audit
18 plan. We have to audit certain types of systems of internal
19 controls. It also has a requirement that you maintain a rolling
20 100 training hours over a three-year rolling period. So we have
21 to have basically, you know, a little over 30 hours a year in
22 training and keep our designation up-to-date and to maintain a
23 high level of internal auditing expertise.

24 Q. Are there certain courses that you are required to take

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1 that fall within that training?

2 A. Well, basically what I have done over the last 15 years
3 that I have worked for the state as an auditor, I have joined the

4 Institute of Internal Auditors, which is the professional --
5 actually, the international organization that sponsors and
6 maintains the Certified Internal Auditor program and the
7 designation.

8 Q. Okay.

9 A. As a part of that chapter in Springfield, we have --
10 about ten months out of the year we have once a month, we have
11 training seminars or classes, and that's pretty much how I obtain
12 a large portion of my training.

13 Q. Okay. I apologize if you already answered this
14 question, but can you give me an example of some of the courses
15 that are included within that training that you just discussed?

16 A. Basically a lot of it centers around how to better
17 analyze internal control systems to recognize things such as
18 fraud or identify waste, how to be a better internal auditor by
19 writing better more concise report. You get into like auditing
20 EDP, computer related topics. It really covers a wide range of
21 topics related to internal auditing.

22 Q. After you attained your MBA can you tell me the first
23 job that you had pertaining to that degree?

24 A. Yes. Back in 1985 I became an internal auditor trainee

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1 at the Department of Public Aid.

2 Q. What were your duties as an internal auditor trainee for

3 the Department of Public Aid?

4 A. Well, you are entry level auditor, and you begin to
5 learn the skills and the whole general area of how to perform
6 internal audits on programs and topics related to Public Aid
7 activities.

8 Q. Were there certain types of internal audits that you
9 performed?

10 A. At that point you kind of get a general overview of the
11 different types of audits. For example, there is compliance
12 auditing, where you are examining whether the entity or its
13 programs are complying with rules and regulations. There is
14 operational or program audits where you evaluate if the program
15 is meeting its objectives and the efficiency and effectiveness of
16 the programs. There is EDP related audits where you examine
17 computer controls.

18 Q. What is EDP?

19 A. Electronic data processing.

20 Q. Okay. Thank you.

21 A. And one of the bigger areas is the internal control
22 reviews, which is where you assess the various internal controls
23 that exist in an organization and you ensure that they are
24 adequate to prevent any kind of fraud or abuse or waste, those

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1 types of things.

2 Q. Okay. Can you explain to me just in generalized terms

3 the process that is typically undertaken when you conduct an
4 audit?

5 A. Yes. As I said, you usually have a two year audit plan.
6 And in that you usually audit a series of audits that you are
7 going to perform during the next year or two. And you also have
8 a section usually, as we do now, in our audit plan that accepts
9 management requests where management may make a special request
10 because they are having a certain problem or need some certain
11 assistance and they will request an audit and we will go in and
12 perform that. Basically after you select an audit assignment,
13 your first step after initially meeting with management and
14 letting them know you are going to be performing this audit is to
15 perform what we call a preliminary survey.

16 Q. Can you explain what a preliminary survey is, please?

17 A. That's where the auditor begins the process of learning
18 and studying in more detail the topic that they are going to
19 audit. Because the audit standards require us to be proficient
20 to a certain level when we are performing audits on a topic. So
21 you have to read about the laws related to that topic. You have
22 to meet with managers and interview them to discuss all types of
23 topics dealing with a particular audit project. And the purpose
24 of this is to gather information and then you develop what we

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1 call an audit plan where we decide how we are going to go about

2 auditing that particular function.

3 Q. Okay. How long did you hold the auditor trainee
4 position with the Department of Public Aid?

5 A. Probably like two years, a year and a half, something
6 like that.

7 Q. What was your next position?

8 A. It was just what we call a line auditor, which at that
9 point they called it an auditor one.

10 Q. Was this, again, within the Department of Public Aid?

11 A. Yes.

12 Q. And I apologize, what did you call that again?

13 A. An auditor one.

14 Q. What is an auditor one?

15 A. It is just the next level above a trainee. About a
16 year, year and a half you are trainee and then you can be
17 promoted to a one, which is --

18 Q. Did your duties differ any from when you were an auditor
19 trainee?

20 A. You get a little more independence and more complex
21 audit projects than you did when you were a trainee, work a
22 little bit more on your own.

23 Q. Were there different types of audits that you performed
24 in this position?

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1 A. No, basically the same thing, just a little more

2 complexity and little more independence.

3 Q. How long did you hold this position?

4 A. About another year and a half.

5 Q. What was your next position?

6 A. Auditor two.

7 Q. Okay.

8 A. Again, that is -- that would be equivalent to like a
9 team leader where now you are maybe in charge of the audit and
10 you have some trainees working for you. You are still not a
11 supervisor, per se, but you are a team leader at that point.

12 Q. Okay. How long did you hold the position of auditor
13 two?

14 A. A couple of years.

15 Q. After that what was your next position?

16 A. Audit supervisor.

17 Q. Again, was this within the Department of Public Aid?

18 A. Yes.

19 Q. Did your duties change any as an audit supervisor?

20 A. Yes. I was in charge of the section that performed
21 operational and program audits.

22 Q. Okay. How long did you hold this position?

23 A. Until I left in 1991.

24 Q. Where did you go in 1991?

1 A. The Illinois Environmental Protection Agency.

2 Q. Prior to arriving to the Illinois Environmental
3 Protection Agency, had you been exposed in your background to the
4 concept of the time value of money?

5 A. Yes. In general -- are you talking about at Public Aid?

6 Q. Either at Public Aid or in your educational background
7 had you been exposed to the concept of the time value of money?

8 A. Yes.

9 Q. Where, sir?

10 A. Well, initially your exposure to basic financial
11 concepts like time value of money, it would be, of course, both
12 in my undergrad degree to some extent and then my transition
13 degree into the MBA program and then the MBA program itself.

14 Q. Perhaps I need to back up for just a moment. When I am
15 referring to the concept of time value of money, what does that
16 mean to you?

17 A. Basically it is just an examination of the value of
18 money over time. It deals with that concept that a dollar today
19 is worth more than in the future because you can earn a certain
20 level of income or interest by investing that dollar. And talks
21 about the net present value of money where you move money through
22 time based on the value of money, which is usually indicated by
23 some type of investment rate.

24 Q. Okay. I know you just indicated that in your

1 educational background you had been exposed to that concept. Can
2 you tell me specifically where in your educational background you
3 were exposed to the concept?

4 A. Numerous times because it is basically just a financial
5 concept that is widely taught and used in business, and a lot of
6 times in your finance -- your finance and accounting courses you
7 are exposed to that type of concept.

8 Q. Were you exposed to that concept during your employment
9 with the Department of Public Aid?

10 A. To some extent. When you are looking at doing like cost
11 benefit analysis on cost, you touch on time value of money, but I
12 would think that I had more exposure at EPA than I did over
13 there.

14 Q. Okay. Prior to arriving at the Illinois EPA, had you
15 been exposed to the concept of economic benefit?

16 A. In general, the financial concepts that are made up in
17 economic benefit analysis I had wide exposure to, which would be
18 the time value of money in dealing with concepts such as
19 determining the value of -- you know, the cost of raising
20 capital. You get into topics such as taxes and depreciation, and
21 things of that nature.

22 Q. Can you please define for me what that term means to
23 you, the economic benefit term that I previously referred to?

24 A. In general, economic benefit, what you are examining is

1 how an organization may have benefited by delaying or avoiding
2 capital outlays. You examine to what extent they avoided initial
3 capital outlays or capital outlays over time and you examine
4 using the time value of money and the value of money over time
5 how much an organization benefited over let's say their
6 competitors.

7 Q. Okay. When you arrived at the Illinois EPA, what was
8 your position?

9 A. I was an audit supervisor.

10 Q. Is this your current position?

11 A. Yes.

12 Q. Can you please describe for me your duties when you
13 initially arrived at the Illinois EPA as an audit supervisor?

14 A. Well, at the EPA we have a small audit shop, smaller
15 than -- much smaller than at the Department of Public Aid, which
16 was a multi-billion dollar organization with 8,000 offices. And
17 it was a good training ground at Public Aid because it was
18 working for like a multi-billion dollar firm. But at the EPA it
19 is a little bit smaller of an Agency. So I work a lot closer
20 with the chief auditor in developing the annual audit plan and
21 scheduling audits and then, of course, I have some staff that I
22 give audit projects to and I work with covering all facets of
23 auditing at the Illinois EPA.

24 Q. What type of audits do you conduct at the Illinois EPA?

1 A. There is a variety of types that I have discussed
2 before, you know, the internal control reviews, the EDP, computer
3 related audits, the compliance auditing, and I have gotten more
4 heavily into auditing related to economic benefit and ability to
5 pay analysis. About five years ago that started, when I received
6 some audit assignments from our division of legal counsel.

7 Q. Is it fair to say, then, that the course of your duties
8 have changed since you have been at the Illinois EPA?

9 A. Yes, yes. Over Public Aid?

10 Q. Have your duties since you have been at the Illinois EPA
11 changed over time?

12 A. Yes. The major change would be that about five years
13 ago I became more involved in audits relating to economic benefit
14 and ability to pay analysis.

15 Q. Okay. How do you conduct an internal audit on an
16 entity's ability to pay?

17 A. Well, the first step is basically to do a preliminary
18 survey where you refresh and update your knowledge about the
19 topic, economic benefit, you read the literature and you examine
20 the recent Federal Register changes, let's say. You talk to
21 management a little bit about, you know, what particular capital
22 outlays we are going to examine related to economic benefit and
23 things of that nature.

24 MR. BOYD: I move to strike as nonresponsive since she was

1 asking, I think, about ability to pay.

2 HEARING OFFICER KNITTLE: Ms. Carter?

3 MS. CARTER: Could you please have that answer read back.

4 HEARING OFFICER KNITTLE: Darlene, could you please read
5 back both the question and the answer.

6 (Whereupon the requested portion of the record was read
7 back by the Reporter.)

8 HEARING OFFICER KNITTLE: I am going to overrule the
9 objection. I think it is responsive. He answered the question.

10 MS. CARTER: Yes. I am just thinking for just a moment,
11 please.

12 HEARING OFFICER KNITTLE: Okay.

13 Q. (By Ms. Carter) Once you have undertaken that review, is
14 there any other analysis that you perform pertaining to any other
15 audit? Let me back up. Strike that.

16 Is there any other analysis that you may perform on an
17 entity's ability to pay?

18 A. Well, you get into two issues in those type of audits,
19 not only the economic benefit, but as I was going to proceed, you
20 also again start to look at the ability to pay issues that may
21 arise, too, during the topic under review. I have noticed over
22 the last five years that a large portion of the internal audits
23 that I performed on economic benefit and/or ability to pay, there
24 seems to be a frequent amount of instances where the violator and

1 the Agency agree on a level of penalty associated with economic
2 benefit.

3 But where we are brought in on internal audits sometimes is
4 after an agreement is reached in the negotiation process on a
5 reasonable penalty amount based on economic benefit, quite
6 frequently the violator makes statements that they cannot pay
7 that certain level, they don't have the ability to pay a certain
8 level of penalty because it will cause excessive financial
9 hardship on that company. So we examine those issues as well as
10 touch on the economic benefit.

11 Q. Okay. Thank you. During your work with the Illinois
12 EPA, have you employed the concept of the time value of money?

13 A. Yes.

14 Q. In what area of your duties have you employed this
15 concept?

16 A. Mostly dealing with internal audit projects relating to
17 our division of legal counsel. Some examples would be in the
18 past they have received settlement agreements that span different
19 amounts of time. For example, I had one last year that the
20 settlement agreement had three or four different amounts covering
21 different time periods, so I had to do time value of money
22 analysis to determine what the present value were of those
23 different settlement offers in order to try to select the best
24 offer that would meet the needs of the Agency.

1 Q. Okay.

2 A. That's one example. As far as time value of money,
3 there is instances where an organization may be required to pay
4 penalties, but they are late on paying penalties. And I have had
5 special requests to determine the time value of money, and it is
6 almost like a mini economic benefit analysis, where you figure
7 out -- let's say the corporation was late six months on paying
8 \$50,000.00. You have to assign a time value of money amount to
9 that on a reasonable cost of money, like the prime interest rate
10 or something like that.

11 Q. Okay. In addition to the answers that you have
12 previously provided, are there any other areas in which you have
13 employed the concept of economic benefit at the Illinois EPA?

14 A. Primarily, again, starting about five years ago, we
15 began to get special request audits from our chief legal counsel
16 on internal audits relating to economic benefit. So I have been
17 working with that concept on those special request audits for
18 about the last five years.

19 Q. Since you have become employed with the Illinois EPA,
20 have you read any literature relative to the concept of economic
21 benefit?

22 A. Yes. Because during the settlement negotiation process
23 that our division of legal counsel uses, they quite frequently
24 use a federal economic benefit model, called the BEN Model. So

1 over the last five years, you know, I have touched on reading the
2 BEN Manual, and have I seen -- of course, I have seen the BEN
3 printouts that give you the results of the benefit analysis. I
4 have read some Federal Registers because dealing with the BEN
5 Model, and basically when you talk about economic benefit, again,
6 I mean, you touch on those basic financial concepts time in and
7 time out during your training, during various audits you will
8 touch on the time value of money and things of that nature.

9 Q. Okay. Thank you. Do you have an understanding of the
10 role that economic benefit plays in developing a civil penalty
11 amount?

12 MR. BOYD: Objection as to lack of foundation.

13 HEARING OFFICER KNITTLE: Ms. Carter?

14 MS. CARTER: I think that we have just adequately gone
15 through in terms of, you know, his involvement with the Illinois
16 EPA in determining an economic benefit amount and his employment
17 and that, you know, obviously through his duties at the Illinois
18 EPA and his work with other entities within the Illinois EPA. I
19 do -- I think that we have provided adequate foundation for that
20 question.

21 HEARING OFFICER KNITTLE: Anything further, Mr. Boyd?

22 MR. BOYD: She has not laid any foundation regarding the
23 way in which economic benefit plays into the overall penalty
24 calculations. I would object to this witness providing that

1 testimony unless they can provide a further foundation.

2 HEARING OFFICER KNITTLE: Go ahead, Ms. Carter.

3 MS. CARTER: He has indicated, you know, what his
4 experiences are within the Illinois EPA in terms of assisting
5 them in determining penalties and things of that sort. So I
6 think it is only appropriate that he should be able to answer
7 what his understanding is in developing a civil penalty amount.

8 (Ms. Carter and Mr. Layman confer briefly.)

9 HEARING OFFICER KNITTLE: Is there anything further?

10 MS. CARTER: No.

11 HEARING OFFICER KNITTLE: I am going to overrule the
12 objection. Ms. Carter, you can continue.

13 Q. (By Ms. Carter) Okay. Do you need me to repeat the
14 question?

15 A. Yes, I do.

16 Q. What is your understanding of the role that economic
17 benefit plays in developing a civil penalty amount?

18 A. What economic benefit is designed to do is to examine
19 the initial capital outlays that an organization may have avoided
20 at the beginning of let's say a noncompliance period, and then
21 the annual operating costs that may have occurred, those costs
22 that they avoided and determining if the entity has any benefit,
23 economic benefit or financial benefit over its competitors.

24 The goal of economic benefit is to make the management of a

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1 corporation indifferent -- financially indifferent between making
2 the decision to comply and not comply. That's the ultimate goal,
3 is to eliminate any benefit from the decision that they may make
4 not to comply. So you want to even out the decision-making
5 process, make them indifferent so that they will chose to spend
6 the capital money to comply. That's the goal of economic benefit
7 analysis.

8 Q. Okay. Mr. Styzens, have you prepared a resume that
9 documents the background information that we have just discussed?

10 A. Yes, I have.

11 MS. CARTER: Excuse me just a moment, please, Mr. Hearing
12 Officer.

13 (Whereupon said document was duly marked for purposes of
14 identification as People's Exhibit 6 as of this date.)

15 Q. (By Ms. Carter) Mr. Styzens, have you seen this
16 document before?

17 A. Yes, that's a resume that I had prepared myself.

18 MS. CARTER: The record should reflect that I handed to Mr.
19 Styzens a copy of People's Exhibit Number 6. At this time we
20 move for its admission into evidence.

21 HEARING OFFICER KNITTLE: Mr. Boyd?

22 MR. BOYD: No objections.

23 HEARING OFFICER KNITTLE: It is admitted.

24 (Whereupon said document was duly admitted into evidence as

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1 People's Exhibit 6 as of this date.)

2 Q. (By Ms. Carter) Are you familiar with the name Panhandle
3 Eastern Pipe Line Company?

4 A. Yes, I am.

5 Q. How so?

6 A. Back in the beginning of September of 1999, my chief
7 auditor, my boss, Stu Gresham, received a memo from Joe Sabota,
8 who is the chief legal counsel of the EPA, requesting that we
9 audit assistants -- a special request for audit assistance
10 related to an internal audit of the economic benefit associated
11 with Panhandle Eastern Pipe Line Company.

12 Q. What in your educational background and your employment
13 history did you rely upon in generating an economic benefit
14 analysis for this case?

15 A. Well, again, economic benefit is made up of basic
16 financial concepts that you are taught throughout your college
17 career in business and, of course, over the last five years I
18 became more and more involved in ability to pay and economic
19 benefit analysis. So, you know, that has been primarily my
20 exposure. The financial concepts of time value of money and
21 capital pricing and things of that nature, I have had experience
22 through my education and in my internal audit experience at the
23 EPA.

24 Q. Did you use the BEN Model that you previously referenced

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1 to determine economic benefit in this case?

2 A. No.

3 Q. Okay. Just a moment. In developing the economic
4 benefit for this case, did you follow the protocol that you
5 previously described pertaining to how an internal audit is
6 conducted?

7 A. Yes.

8 Q. How so?

9 A. Basically the preliminary survey consists of studying
10 in-depth economic benefit related issues, maybe re-examining some
11 of your old internal audit reports and in addition, as part of
12 the preliminary survey I also decided to request the assistance
13 of a Dr. Nosari to help me perform portions of the audit.

14 Q. Who is Dr. Nosari?

15 A. Dr. Nosari is a member of the Springfield Chapter of the
16 Institute of Internal Auditors that I had mentioned earlier, and
17 I have known Dr. Nosari through the Institute of Internal
18 Auditors over the last eight or ten years.

19 Q. Can you tell me a little bit more specifically why you
20 contacted Dr. Nosari for assistance in developing an economic
21 benefit analysis for this case?

22 A. Well, when you are an internal auditor, your goal is to
23 get the most accurate and precise evaluation of the topic that

24 you are auditing. So for this economic benefit audit, I did not

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1 have anybody else that was qualified in the Agency, within the
2 Agency to support me with this audit. It is common practice when
3 you are performing an audit that you have team members that
4 assist you in gathering information and analyzing facts and
5 reaching conclusions and writing audit reports and working with
6 management to implement recommendations and those sorts of
7 things. I had -- because of the topic of economic benefit, I had
8 to seek an outside expert to assist me in kind of being a team
9 player in this particular internal audit.

10 Q. When you initially approached Dr. Nosari, did you
11 discuss with him the best way to approach an economic benefit
12 analysis?

13 A. Yes, in general. Again, as part of the preliminary
14 survey where you are becoming as knowledgeable as possible about
15 the topic that you are going to audit, because you are going to
16 present the results of your audit before management and you are
17 going to make recommendations to management on how to improve --
18 or on your conclusions. So it was important that I brought John
19 Nosari in to kind of discuss the approach that we were going to
20 take in determining the economic benefit in this particular case.

21 Q. Was there any component of the economic benefit analysis
22 that you relied more heavily upon Dr. Nosari?

23 A. Yes.

24 Q. What component?

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1 A. He provided -- most of his assistance was in helping to
2 gather the financial data for the weighted average cost of
3 capital calculations.

4 Q. Okay. When you refer to the weighted average cost of
5 capital, what does that term mean?

6 A. That's one of those basic financial concepts that I had
7 mentioned that you learn in college, and that was very heavily
8 covered in the certified internal auditor exam. Basically it is
9 an examination -- a specific examination of how an organization
10 goes about raising funds to fund their raising assets like
11 building and plant and materials. It is an examination of how
12 the organization goes about raising capital money through let's
13 say lending institutions or by selling stock let's say through
14 equity, the equity portion of capital.

15 Q. I just want to make sure I am clear on this. Are there
16 certain components that make up the weighted average cost of
17 capital?

18 A. Yes. When you think about weighted average cost of
19 capital, what you are trying to do is come up with the most
20 reasonable and precise cost of raising funds or of costing out
21 funds over time. I mean, to simplify it, you could have had an
22 organization that just funded their assets using debt. Well,

23 then you could quickly examine that and let's say that the cost
24 of debt would be somewhere around the prime lending rate, so that

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1 would be your cost of capital. But frequently, instead of just
2 using debt, many companies raise capital by not only debt but
3 also equity or stock, per se.

4 Q. Okay. In the development of the weighted average cost
5 of capital, did you decide that specific financial information
6 needed to be taken into account?

7 A. Yes. Basically you have to examine the entity's
8 financial statements, the income statements and balance sheets,
9 things of that nature to identify their long-term debt, their
10 interest expense, their dividend yields, their growth in stock
11 over time, things of that nature.

12 Q. What company's financial information did you look to in
13 your analysis?

14 A. In my discussions early on with Dr. Nosari we decided to
15 use the financial information of a company called Pan Energy or
16 Panhandle Eastern. They went by both names over certain periods
17 of time.

18 Q. Okay. Why did you select this company?

19 A. They are the parent company of Panhandle Eastern Pipe
20 Line Company, who is a wholly-owned subsidiary, and from my
21 discussions with Dr. Nosari we felt that Pan Energy was so
22 involved in the raising of debt and equity for the subsidiary

23 that we would get an accurate and true reasonable picture of what
24 the costs of raising capital was for Panhandle Eastern Pipe Line

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1 Company.

2 Q. Are there certain financial documents that you and Dr.
3 Nosari employed to determine the weighted average cost of
4 capital?

5 A. Yes.

6 Q. What are those documents?

7 A. What we did is we went about -- I went to the Security
8 and Exchange Commission's web site, the SEC web site, and was
9 able to identify what they call 10-K filings, which are certain
10 filings that corporations are required to file with the Security
11 and Exchange Commission. In those filings are obtained --
12 include financial data and financial statements from companies.
13 I was able to get, I believe, like 1994 through 1997 off the SEC
14 database.

15 Q. Were other financial documents of Pan Energy employed in
16 developing the weighted average cost of capital?

17 A. Yes. For the earlier years that we used, for 1988
18 forward, we obtained -- Dr. Nosari assisted me in obtaining
19 annual reports from the University of Illinois Library, the
20 University of Illinois Springfield Library. So we also used Pan
21 Energy annual reports for the period of like 1987 through 1994,

22 that period there that was not covered by the SEC filings.

23 Q. Okay. Thank you?

24 MS. CARTER: I just need one moment.

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1 (Ms. Carter and Mr. Layman confer briefly.)

2 HEARING OFFICER KNITTLE: Let's go off the record.

3 (Discussion off the record.)

4 HEARING OFFICER KNITTLE: Okay. We will go back on the
5 record. Go ahead, Ms. Carter.

6 MS. CARTER: Thank you.

7 (Whereupon a document was duly marked for purposes of
8 identification as People's Exhibit 7 as of this date.)

9 Q. (By Ms. Carter) Mr. Styzens, I have handed you what is
10 marked as People's Exhibit Number 7. Have you seen this document
11 before?

12 A. Yes.

13 Q. What is this document?

14 A. This is the spread sheet that Dr. Nosari worked on.
15 After we had gathered the financial data from the financial
16 statements contained in the SEC filings and the annual reports
17 for Pan Energy, Dr. Nosari assisted me on pulling out those
18 numbers to develop a weighted average -- a company specific
19 weighted average cost of capital. That's what this document is,
20 is those numbers being pulled off the financial statements.

21 Q. Again, did Dr. Nosari generate this document?

22 A. Yes, he primarily generated this document.
23 Q. Have you reviewed this document?
24 A. Yes.

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1 Q. Did you make a determination upon your review of this
2 document?

3 MR. BOYD: Objection to lack of foundation as to what kind
4 of determination she is asking about.

5 HEARING OFFICER KNITTLE: Sustained. Can you lay some
6 foundation, Ms. Carter?

7 MS. CARTER: Yes. Just a moment.

8 Q. (By Ms. Carter) Can you please explain for me your
9 review of this document?

10 A. Basically before this document was prepared Dr. Nosari
11 and I agreed on an approach to developing the weighted average
12 cost of capital as far as going in and developing a cost of debt
13 and a cost of equity for this company and then weighting it as to
14 each year of the noncompliance period to eventually on line 42,
15 the cost of capital for a year, that was the ultimate goal of
16 this spreadsheet. So I made sure that his approach met the
17 foundation or the criteria that we had set up at the very
18 beginning of the preliminary survey on how we were going to
19 compute the weighted average cost of capital. Then I performed
20 some reasonableness tests on his results of his spreadsheet,

21 which is contained on line 42.

22 Q. When you refer to a reasonableness test, what are you
23 referring to?

24 A. That's a term frequently used in internal auditing. No

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1 matter what type of internal audit that you are performing, when
2 you perform analysis you have to -- when you reach conclusions,
3 you have to perform what we call a reasonableness test. Do the
4 results of the analysis appear to be reasonable? The way you go
5 about doing that, you have to have certain standards or criteria
6 to measure against. Any internal audit finding or issue that we
7 write for the Agency contains a section called criteria. And
8 what that is, is that is usually the laws, the rules, the
9 regulations, the industry standards, those type of things that
10 you have to measure against so that you can help ensure that your
11 conclusions are reasonable. And as in any internal audit, I
12 applied a reasonableness test to the cost of capital figures that
13 Dr. Nosari developed on line 42.

14 Q. Okay. You just mentioned that you employed certain
15 criteria in which you measured the weighted average cost of
16 capital against?

17 A. Right.

18 Q. Can you please tell me what those criteria were that you
19 measured this weighted average cost of capital against?

20 A. Sure. One example of a reasonable test for this time

21 period that we examined, which was 1987 through 1996, a simple --
22 a simple approach was to look at the prime lending rate, the bank
23 prime loan lending rate that the banks charge during that time
24 period. For example, the Federal Reserve Board has some input in

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1 developing what they call the prime rate, which is a rate charged
2 by banks to their best customers, the ones that are most
3 financially sound. I knew from my examination during this time
4 period that the prime lending rate was around 8.2 percent average
5 for the time period. So what I did, is I can use that as a
6 measure of reasonableness. So when I look at some of the figures
7 of 8.5 percent, 8.3, 9.2, I know that since these figures contain
8 a combination of debt and equity, that you would expect them to
9 be slightly higher than the prime rate, you know, one to two
10 percentage points or a little bit higher maybe than the prime
11 lending rate. So that met my criteria, so I had a feel for the
12 reasonableness of these calculations.

13 Q. Were there other criteria that you employed to determine
14 whether or not the weighted average cost of capital was, as you
15 called it, reasonable?

16 A. Yes. Another simple example of a reasonableness test is
17 I knew that the BEN analysis that was performed by the division
18 of legal counsel early on in this, that the model used 10.4 to
19 10.6 weighted average cost of capital. Again, just to apply a

20 common sense reasonableness test, I could see that, for example,
21 if Dr. Nosari would have come back with a weighted average cost
22 of capital for 1991 of 25 percent, I could immediately -- I would
23 immediately have questioned Dr. Nosari saying, well, you know,
24 the prime rate was about 8 or 9 percent during that period. The

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1 BEN Model uses 10.4 to 10.6, so it does not appear, Dr. Nosari,
2 reasonable that 25 percent is the weighted average cost of
3 capital. Hopefully we would have discussed it and found that
4 there was some kind of error. So that's the second
5 reasonableness test that I used.

6 Q. Were there any other tests that you employed in
7 determining whether or not the weighted average cost of capital
8 was reasonable?

9 A. Well, there is one other area that I had been exposed to
10 over the last few years. It is called the Uniform Penalty and
11 Interest Act. It is an Illinois law. And what that -- the
12 purpose of that law is, if a state agency has penalty amounts
13 that they assess to corporations, let's say, and the corporation
14 is making late payments on those penalties, by law the State of
15 Illinois has to charge a certain interest rate for basically the
16 time value of money or the time that you are basically making a
17 loan to this entity. I have had historical information in the
18 past. It is based on an IRS, Internal Revenue Service, rate that
19 is updated twice a year by the State of Illinois under that act

20 that I had just mentioned. I had noted that throughout this
21 noncompliance time period that we examined, the 1987 through
22 1996, that that rate appeared, again, to be nine, ten percent.
23 Again, by examining Dr. Nosari's figures, I can, again, get a
24 reasonableness test on that.

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1 Q. Okay. Thank you. Once --

2 MR. BOYD: Can I -- I would actually like at this point, if
3 you are done with that line of questioning, just to move to
4 restrict the entire line of questioning on the basis that the
5 witness was asked questions about this document during his
6 deposition and revealed none of this information. I would be
7 happy to refer to the testimony in the deposition that I am
8 speaking of at this point in time.

9 HEARING OFFICER KNITTLE: Ms. Carter?

10 MS. CARTER: I don't know specifically what he is referring
11 to without looking to the deposition.

12 MR. BOYD: Well, I will refer you to page 76 from the
13 deposition.

14 MS. CARTER: If you could just hold on just a moment.

15 MR. BOYD: Sure, sure. It is the May 16th deposition. We
16 were referring, at the bottom of page 76, to Styzens Exhibit
17 Number 14.

18 MS. CARTER: Will you hold on for just a second, please.

19 MR. BOYD: Oh, I am sorry.
20 MS. CARTER: Okay. What pages was he referring to?
21 MR. BOYD: It is page 76 and page 77.
22 MS. CARTER: If I could have just a moment, Mr. Hearing
23 Officer.
24 HEARING OFFICER KNITTLE: Sure. Let's go off the record

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1 for a second.
2 MS. CARTER: Thank you.
3 (Discussion off the record.)
4 HEARING OFFICER KNITTLE: All right. Are you ready to go
5 back on the record?
6 MS. CARTER: Yes, I would like to.
7 HEARING OFFICER KNITTLE: Okay.
8 MS. CARTER: If I could ask for a clarification, Mr.
9 Hearing Officer, in terms of specifically what portions Counsel
10 for respondent is referring to.
11 HEARING OFFICER KNITTLE: Okay. Let's hear Mr. Boyd's
12 argument here.
13 MR. BOYD: Mr. Nosari was deposed twice in this matter, the
14 second time on May 16th of 2000.
15 MS. CARTER: Excuse me. Do you --
16 HEARING OFFICER KNITTLE: Do you mean Mr. Styzens?
17 MR. BOYD: Mr. Styzens. I am sorry. Thank you. At the
18 second deposition we had just been provided this weighted average

19 cost of capital document. In the second deposition --

20 HEARING OFFICER KNITTLE: And you are referring to, Mr.
21 Boyd, People's Exhibit Number 7?

22 MR. BOYD: That's exactly right, yes. It was marked as
23 Styzens Exhibit Number 14 in the deposition. I asked Mr. Styzens
24 about the document, knowing that Mr. Nosari was going to be

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1 deposited next. I said -- this is at the bottom of page 76:

2 "Question: Can you describe this page in general for us?
3 Again, we are talking about the last page of Styzens Exhibit
4 Number 14.

5 And he answers: "No. I could go into some detail
6 describing this exhibit, but I prefer not to, because I really
7 believe that Mr. Nosari would be better to answer those
8 questions. Again, the most I would like to go into would be the
9 general approach, looking at the long-term debt, preferred stock
10 and common stock. I really think John Nosari is the best to talk
11 about this document.

12 Question: Okay. That's what I was asking. Now, if he
13 comes back and tells me it is Gary Styzens' document --

14 Answer: He won't say that.

15 Question: Let me just ask you while we are sitting here.
16 What is your understanding looking at this page of the input on
17 this page that came specifically from the Panhandle documents?

18 Answer: Again, I really -- I could give some information
19 about that, but it would be incomplete, so I think Mr. Nosari is
20 the best one to answer those questions."

21 So, again, there was no further follow-up at the time of
22 the deposition because it was made clear to us that Mr. Styzens
23 accepted Mr. Nosari's analysis of the weighted average cost of
24 capital.

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1 MS. CARTER: May I respond, Mr. Hearing Officer?

2 HEARING OFFICER KNITTLE: Yes.

3 MS. CARTER: Thank you. What Counsel for respondent was
4 inquiring into, at least it appears from the deposition of Gary
5 Styzens, is specifically the calculations that were employed in
6 the weighted average cost of capital. That is not what I am
7 getting into with the witness here today. What I am getting into
8 is simply his review of that document and how he determined
9 whether or not that document that was generated was reasonable.
10 He has not gotten into, in terms of the specifics, the number by
11 number crunching of this document. And I think that's exactly
12 what Mr. Boyd was trying to get to in the deposition. He can't
13 now question the fact that, you know, it was at least reviewed by
14 Mr. Styzens in the analysis that he performed on the generalized
15 review of this. Simply because it is outside of, you know, the
16 scope of what he thought to question, does not mean it is
17 necessarily outside of the scope of these proceedings.

18 MR. BOYD: Well, again, I don't think it is beyond what I
19 asked him at the deposition. I think he made clear from his
20 statements that I should ask my questions about this document to
21 Mr. Nosari.

22 Also on page 73 of the transcript, if you turn to that --

23 MS. CARTER: May I --

24 HEARING OFFICER KNITTLE: Let Mr. Boyd finish his response

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1 and I will get back to you, Ms. Carter.

2 MR. BOYD: I was just trying to find a good quote. But it
3 is just clear from the deposition transcript that he relied on
4 Mr. Nosari in preparing the document. That's really the point.

5 MS. CARTER: That is no different than actually what the
6 State is presenting here today. The State will follow-up with
7 Dr. Nosari, who will provide his analysis of the weighted average
8 cost of capital and the details of the calculations of which he
9 conducted to generate that.

10 I am not asking Mr. Styzens here today for an analysis of
11 the calculations line by line. What I am asking for is simply
12 about his review of this document. It has been no secret that
13 the two gentlemen have been working together reviewing each
14 others documents. I don't think anything I am presenting to Mr.
15 Styzens at this time is coming unbeknownst to Counsel for
16 respondent.

17 MR. BOYD: If I may, I mean, it is unbeknownst to us. It
18 was made clear in this deposition that Mr. Styzens relied on Mr.
19 Nosari's analysis to determine the weighted average cost of
20 capital. There was no discussion during the deposition that he
21 did a reasonableness test of the three different criteria that he
22 just went through in this testimony. That was not explained at
23 all during that deposition, and it was not because I didn't ask.

24 HEARING OFFICER KNITTLE: Ms. Carter, could I see the

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1 deposition transcript again?

2 MS. CARTER: Yes.

3 HEARING OFFICER KNITTLE: Will you show me where we talked
4 about this. It is at page 76 and 77?

5 MR. BOYD: Yes, 76 and 77.

6 HEARING OFFICER KNITTLE: Okay. Point out to me why this
7 is not beyond the scope of what happened at the deposition.

8 MS. CARTER: Okay. If I could just see it for just a
9 moment.

10 HEARING OFFICER KNITTLE: Yes.

11 MS. CARTER: The question at the bottom of line 76 where it
12 indicates, can you describe this page in general for us, again,
13 we are talking about the last page. No, I could go into some
14 detail describing the exhibit, but I prefer not to. He was
15 simply indicating there that he would not prefer to go into the
16 specific calculations. He did not -- Mr. Boyd did not ask in any

17 of those questions pertaining to his review of that analysis for
18 the weighted average cost of capital.

19 Let me see. And then again on page 77 Mr. Boyd asked, what
20 is your understanding looking at this page of the input of
21 this -- what is your understanding at this page of the input on
22 this page that came specifically from the Panhandle financial
23 documents. He is asking again where did this information come
24 from, the specifics of the weighted average cost of capital

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1 sheet. And, again, Mr. Styzens is not here today testifying to
2 that.

3 HEARING OFFICER KNITTLE: Okay. I am going to overrule the
4 objection. Here is why, Mr. Boyd.

5 MR. BOYD: Just one second.

6 HEARING OFFICER KNITTLE: What is going on back there? I
7 can see he is talking with somebody.

8 MR. DEISCH: He is our economic benefit expert.

9 MR. BOYD: I am sorry. Go ahead.

10 HEARING OFFICER KNITTLE: I am -- thank you very much, Mr.
11 Boyd. I am going to overrule your objection, because I don't
12 think there is any material prejudice here. It is hard for me to
13 tell from what went on that -- the exact context of your
14 questions in the deposition without going back three or four
15 pages. It looks like it could have been of the nuts and bolts of

16 the exact calculations and not just the review process and the
17 reasonable process.

18 The reason I don't think there is any prejudice here for
19 you, I don't have an interrogatory or a request to produce
20 documents for something stating what his opinion would be that
21 was not -- that this was not specifically included in, and both
22 witnesses will be here for your cross-examination. So that being
23 said, I am overruling your objection.

24 MS. CARTER: Okay. Is it possible to have the last

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1 question read back?

2 HEARING OFFICER KNITTLE: It is always possible. Could you
3 read it back.

4 (Whereupon the requested portion of the record was read
5 back by the Reporter.)

6 Q. (By Ms. Carter) Once the weighted average cost of
7 capital analysis was performed, Mr. Styzens, what was the next
8 step that you undertook in your economic benefit analysis?

9 A. Once I determined that the weighted average cost of
10 capital developed by Dr. Nosari was reasonable, I then began to
11 go through the economic benefit analysis component of the
12 internal audit.

13 Q. Did you discuss the components of the economic benefit
14 analysis with Dr. Nosari?

15 A. I initially, you know, in -- as the lead auditor, I

16 developed an approach in my mind of how I was going to develop
17 the economic benefit. Then, again, I was using Dr. Nosari kind
18 of to bounce things off of, because I had no one else in the
19 Agency that could help me with this. So it was in that context
20 that I discussed with Dr. Nosari how I was going to go about
21 developing an economic benefit.

22 Q. Okay. In generalized terms, in conducting your economic
23 benefit analysis did you look to certain factors?

24 A. Yes.

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1 Q. Or --

2 A. Go ahead.

3 Q. Did you look to certain components when developing your
4 economic benefit analysis?

5 A. Yes.

6 Q. Can you tell me what those components were?

7 A. Basically economic benefit analysis contains a few major
8 components. First you have to identify the initial capital
9 investment amount that was not made by an institution. Then you
10 also have to come up with a figure for the annual operating or
11 maintenance costs that were not spent by a corporation. Once you
12 have some information on the voided capital outlays, then you
13 have to identify a reasonable cost to weight those over time.

14 Again, when I talked about reasonable, you could use a

15 prime rate as a reasonable amount to weight cost over time. But
16 as I had said, Dr. Nosari and I decided to use the weighted
17 average cost of capital because we believed that that would be
18 the most accurate and precise figure to use to bring those
19 avoided capital expenditures through time. You get into
20 information that you need also dealing with tax issues,
21 depreciation issues, inflation related issues, things of that
22 nature that have to go into an economic benefit analysis.

23 Q. If I could direct your attention to People's Exhibit
24 Number 3, specifically page 115 that is contained therein?

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1 A. Okay.

2 Q. Have you seen that page before?

3 A. Yes, I have.

4 Q. What is your understanding of that page?

5 A. At the beginning of the audit project in September,
6 October, of 1999, we were provided this information by the
7 division of legal counsel.

8 Q. Okay. I am sorry?

9 A. Did you want me to explain what it is?

10 Q. I was just asking you, sir, what was your understanding
11 of this page that I provided to you.

12 A. Okay. Fine. That was given to us by the division of
13 legal counsel. What it was represented was the -- we were to --
14 in our economic benefit analysis, we were to use the -- obtain

15 the total avoided capital costs at the beginning of the
16 noncompliance period from this document and also we were to
17 obtain the recurring operating and maintenance costs, annual
18 costs from this document.

19 Q. Okay. Thank you.

20 MS. CARTER: Before we get into too much detail, Mr.
21 Knittle, if I could just ask you, how long you wanted to go today
22 in terms of this --

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

24 (Discussion off the record.)

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1 HEARING OFFICER KNITTLE: All right. Let's take a short
2 break.

3 (Whereupon a short recess was taken.)

4 HEARING OFFICER KNITTLE: All right. We are back on the
5 record.

6 Mr. Styzens, I will remind you that you are still under
7 oath.

8 THE WITNESS: Yes.

9 MS. CARTER: I am organizing three exhibits here, People's
10 Exhibit Numbers 8, 9 and 10, which are going to be used somewhat
11 in conjunction with one another.

12 HEARING OFFICER KNITTLE: Okay.

13 (Whereupon said documents were duly marked for purposes of

14 identification as People's Exhibits 8, 9 and 10 as of this
15 date.)

16 MS. CARTER: Could you please have the last question and
17 the response read back for me, please.

18 HEARING OFFICER KNITTLE: Sure.

19 (Whereupon the requested portion of the record was read
20 back by the Reporter.)

21 MS. CARTER: Thank you.

22 Q. (By Ms. Carter) Could you please identify People's
23 Exhibit Number 8? Have you seen People's Exhibit Number 8
24 before?

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1 A. Yes.

2 Q. What is that document?

3 A. That is my analysis using the initial avoided capital
4 outlay during the noncompliance period. That's my economic
5 benefit analysis using that avoided capital outlay.

6 Q. Okay. When you are referring to avoided capital outlay,
7 what are you referring to specifically on page 115 of People's
8 Exhibit Number 3?

9 A. Yes, on the 115, it would be the dollar figure marked
10 total capital costs, TCC, of \$986,781.00, and since that is per
11 engine, you multiply that by two and then you get the initial
12 capital outlay figure that we used for this particular economic
13 benefit analysis.

14 Q. Is it fair to say that you then employed the total
15 capital cost number in your economic benefit analysis?

16 A. Yes.

17 Q. Okay. Does that number, 986,781, appear in your
18 economic benefit analysis?

19 A. On the bottom of column D of Exhibit 8, the last number
20 is that figure 986,781 times two equals 1,973,582, I believe.

21 Q. Okay. This document numbered People's Exhibit 8A, have
22 you seen this before?

23 A. Yes, that's the table that I have in front of me here.

24 Q. Yes. Is that consistent with People's Exhibit Number 8?

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1 A. Yes.

2 Q. Okay. Thank you. As need be, Mr. Styzens, as we are
3 going through this, if it would be easier for you to utilize the
4 marker that I just handed to you and the board, that's why I gave
5 it to you, obviously. Just wait for a question. I just wanted
6 to put that out there for you.

7 A. Okay.

8 Q. Thank you. Now, once you began with the total capital
9 cost -- well, let me back up for a second. This People's Exhibit
10 Number 8A, can you just tell me in generalized terms what you did
11 on this document?

12 A. What we are doing is taking the initial capital outlay

13 number that was contained on 115 here, the 1,973,582, and we are
14 then doing some general economic benefit calculations starting
15 with that number. Basically we are making adjustments for
16 inflation back through time. We are then using the weighted
17 average cost of capital to apply the time value of the cost of
18 money over the noncompliance period. And then we are making some
19 adjustments for taking into account tax savings on depreciation
20 that would have been associated with these capital outlays. And
21 you finally come up with a tax benefit from depreciation and you
22 come up with a net benefit after you have taken into a net
23 economic benefit year by year after you have taken into account
24 tax savings of depreciation.

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1 Q. Okay. Previously you discussed the weighted average
2 cost of capital that was generated and reviewed by you. Do those
3 numbers appear on this initial investment sheet?

4 A. Yes, in column E, labeled WACC at the top.

5 Q. Okay. And where were those numbers taken off of the
6 weighted average cost of capital sheet which was previously
7 marked as People's Exhibit Number 7?

8 A. Yes. The sheet that Dr. Nosari put together, the table.

9 Q. Okay. Specifically, though, where on People's Exhibit
10 Number 7 are the weighted average cost of capital that were
11 employed in the initial investment sheet?

12 A. Specifically, they are contained on line 42 of People's

13 Exhibit Number 7.

14 Q. Thank you. Once you utilized the total capital costs
15 number set forth within People's Exhibit Number 3 on page 115,
16 what did you do with that number specifically?

17 A. The total capital cost number?

18 Q. Yes, sir.

19 A. Again, specifically, we used that total capital cost
20 figure and we performed an economic benefit analysis on that
21 number.

22 Q. Did you adjust it for anything?

23 A. Yes, we adjusted it for inflation going back to the
24 beginning of the noncompliance period using an inflation index.

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1 Q. Okay. Can you refer specifically on People's Exhibit
2 Number 8A where you are referring to in terms of this adjustment?

3 A. Yes. It deals with the Chemical Engineering Magazine
4 plant cost index here in column A.

5 Q. Okay. And what is the plant cost index that you
6 referred to?

7 A. Well, a lot of people are familiar with the -- I am
8 trying to think of the -- not the plant cost index but the -- it
9 is alluding me right now.

10 Q. Okay.

11 A. Anyway, the plant cost index is basically a measurement

12 of inflation involving a basket of industrial goods. What I was
13 trying to think of before is a lot of people have heard of the
14 consumer price index, and the CPI is basically inflation related
15 to a basket of consumer goods. Well, John Nosari and I, in our
16 discussions, we felt that you wouldn't want to use an index
17 related to consumer goods. But we felt that the plant cost index
18 was a better measurement of inflation that is associated with
19 pollution control equipment.

20 Q. Okay. So can you show me where on the initial
21 investment sheet, though, the calculations are for the adjustment
22 of inflation of the initial capital outlay?

23 A. Yes. It is an annual index, so what you do is you
24 examine the difference between the years between the index to see

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1 if they are increasing or decreasing. Then that difference
2 between the two years of index results in a percentage.

3 Q. What columns are you referring to?

4 A. Column A is the plant cost index, and then if you
5 examine, for example, in column A, line three, in 1988 the plant
6 cost index was 342.6, I believe. And then the next year, in
7 1989, the plant cost index is 365.4 or 355.4.

8 Q. Okay.

9 A. Then you, in column B, you have an interest -- I am
10 sorry -- a percentage calculation, which is just a difference
11 between the indexes, how the index increases by a certain

12 percentage from year-to-year. So you just go down column A and
13 examine the differences on each side of the plant cost index and
14 get a feel for if inflation is going up or down.

15 Q. Okay. I am sorry. Did I interrupt you?

16 A. No, that is fine.

17 Q. Okay. In terms of column D, beginning at the bottom,
18 where it indicates 1,973,562, can you explain -- can you explain
19 how the plant cost index affected that number?

20 A. Yes. You are taking the percentages that are contained
21 in column B and you are multiplying those by the initial capital
22 investment and you come out with an annual inflation amount in
23 dollars, which is contained in line C.

24 Q. Okay.

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1 A. Annual inflation. Then you are reducing through time
2 going back from the 1,973,562, on the bottom of column D, you are
3 bringing that back towards 1987, and making adjustments for
4 inflation over time based on that PCI annual index in column B,
5 the percentage.

6 Q. Okay. Once you have ingested the original number for
7 inflation, what was the next step that you employed in your
8 determination of economic benefit?

9 A. Well, the number you could see at the bottom of column
10 D, the 1.9 million, adjusted back through time and accounting for

11 inflation then becomes a smaller number, contained in line D2, of
12 1,654,137.

13 Q. Okay.

14 A. So that's your starting point for then examining the
15 cost of money over time at that point.

16 Q. Okay. What did you use to analyze the cost of money
17 over time at that point?

18 A. The weighted average cost of capital that was taken off
19 of Dr. Nosari's spreadsheet.

20 Q. How did you employ the weighted average cost of capital,
21 then, to the deflated initial investment?

22 A. You simply take the percentages in column E and multiply
23 them against the inflation adjusted capital investments in column
24 D, to come out with an economic benefit before depreciation and

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1 taxes, which is contained in column F.

2 Q. Okay. Once you have determined the economic benefit
3 before depreciation and taxes, what is the next step that you
4 employ?

5 A. Throughout our calculation of the economic benefit, I
6 was trying to be as reasonable and conservative as possible. So
7 what I did was I wanted to make some adjustments for tax savings
8 resulting from depreciation. So what I did is I used the
9 depreciation that is called the double declining balance method.
10 It is an accelerated form of depreciation. What that will do is

11 to be as conservative and as reasonable as possible, by
12 accelerating the depreciation the tax savings that will result
13 for the company are sped up and they get the bigger tax breaks up
14 front.

15 So in columns G, H, and I, that is handling the
16 depreciation calculations where you come out eventually with an
17 amount of depreciation that you now have to multiply, which in
18 column H is the amount of depreciation --

19 Q. Okay. Thank you.

20 A. -- using an accelerated approach.

21 Q. Okay. Once you have determined the depreciation using
22 an accelerated approach, what number do you get?

23 A. You get the numbers -- the depreciation in column H, and
24 then you have to multiply by the tax amount for that year, the

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1 tax rate, which is contained in column J.

2 Q. Where does the tax rate for that year come from?

3 A. That, again, was taken off of Dr. Nosari's weighted
4 average cost of capital analysis sheet, and he pulled those out
5 of Pan Energy's annual reports and the SEC filings that contained
6 their financial data.

7 Q. Okay. Once you then determined what marginal income
8 rate that you were going to employ, what was the next step that
9 you followed?

10 A. Then you simply take the income tax rate and multiply it
11 by the depreciation base and you get an amount of depreciation
12 and the tax savings associated with that.

13 Q. What columns are you referring to, please?

14 A. Let's see. Column H is the amount of depreciation.

15 Q. Okay.

16 A. Multiplied by the income tax rate in column J will give
17 you a tax benefit in column K from depreciation.

18 Q. Okay. Then once you have determined the tax benefit
19 from depreciation that is set forth within column K, what is the
20 next step that you employed in determining the economic benefit?

21 A. You simply take column F figures, which is the benefit
22 before taking into account the tax savings and depreciation and
23 you subtract off column K, which is the tax benefit, and the
24 resulting is the net economic benefit each year, which is

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1 contained in column L.

2 Q. Okay. Just a moment, sir. When you say it is the net
3 economic benefit in column L, what does the net -- what does that
4 pertain to? What is it that -- strike all of that.

5 What does the net economic benefit pertain to in column L
6 on People's Exhibit 8 and 8A?

7 A. Column L, the net benefit, is the final figure where you
8 are adjusting the capital outlays that have occurred throughout
9 the time period. In column D you are adjusting those for

10 inflation, you are using the weighted average cost of capital as
11 a reasonable cost of money over time, and then you are making
12 adjustments for taxes. So all of that is taken into account to
13 give you a net benefit, which is in column L.

14 Q. Okay. Is it a net benefit for -- what type of -- what
15 type of net benefit is it? What type of investment is the net
16 benefit for? Is it -- do you understand my question?

17 A. No, I don't.

18 Q. Okay. Let me rephrase. Does the net benefit, that is
19 set forth within column L, pertain to the initial investment cost
20 or the operational and maintenance cost or what?

21 MR. BOYD: Objection to the form. It is compound and
22 leading.

23 HEARING OFFICER KNITTLE: Ms. Carter, could you --

24 MS. CARTER: I understand.

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1 HEARING OFFICER KNITTLE: I don't quite understand the
2 question either.

3 MS. CARTER: Okay.

4 Q. (By Ms. Carter) What does the net benefit pertain to in
5 column L?

6 A. That represents the annual benefit for the initial
7 capital outlays that were avoided throughout the noncompliance
8 period.

9 Q. Okay. Thank you. If I could direct your attention to
10 People's Exhibit 9 and 9A. Have you seen these documents before?

11 A. Yes.

12 Q. Does Exhibit 9A contain the same information that is
13 contained in Exhibit 9?

14 A. Yes.

15 Q. Can you tell me, sir, in general terms, what you are
16 referring to in Exhibit 9 or what this document is?

17 A. Yes. That's my examination of the economic benefit that
18 is associated with the avoided annual operating and maintenance
19 costs that we are dealing with the figures that I have taken off
20 of the page 115 that we mentioned earlier.

21 Q. Okay. And can you tell me exactly where you are
22 referring to on page 115 of People's Exhibit Number 3?

23 A. Yes. It is the line called -- the last line of that
24 page where it says total annual costs per engine, 233,871.

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1 Again, since that is for one engine, we multiplied that by two.

2 Q. Okay. Where does that number appear on People's Exhibit
3 Number 9?

4 A. It appears as the last number in column D, which is
5 467,742, which is two times the 233,871.

6 Q. Okay. Once you included the total annual costs for the
7 two engines on schedule A, what was the next step that you
8 employed in determining the economic benefit?

9 A. You went through similar calculations like the initial
10 investment where, again, you adjust those numbers for inflation.
11 You take into account tax implications and you move the dollar
12 amounts through time at the weighted average cost of capital.

13 Q. Okay. Can you specifically take me through one
14 calculation, please, for recurring costs?

15 A. Yes, let's deal with 1988, the full year. The bottom of
16 column D, the 467,742, you are moving that number back through
17 time, like I explained on the initial capital investment, using
18 the plant cost index debt in column A, which is from Chemical
19 Engineering Magazine.

20 Q. Okay?

21 A. You are adjusting the recurring costs and bringing them
22 back in time and taking into consideration inflation. For
23 example, the recurring cost amount for 1988 was reduced by
24 15,701, which is --

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1 Q. What column are you referring to?

2 A. Column C.

3 Q. What row?

4 A. C3.

5 Q. Thank you.

6 A. The annual inflation figure in C3 of 15,701, is used to
7 adjust back in 1988 the recurring cost that is contained in

8 column D.

9 Q. Okay. Once you have adjusted again for -- just a
10 moment. Strike that.

11 Once you have adjusted for inflation, then, what was the
12 next step that you employed?

13 A. Then what the resulting numbers you start with after
14 inflation are contained in column D, which are the inflation
15 adjusted recurring cost figures all the way down column D.

16 Q. Okay.

17 A. Now you have to take into account the tax implications
18 because environmental expenditures, a company does not pay taxes
19 on those amounts.

20 Q. Okay. What --

21 A. So what you do then is you are adjusting -- in column E
22 you are adjusting the figures in column D by the marginal tax
23 rates that are contained in column E.

24 Q. Where were the marginal tax rates in column E attained

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1 from?

2 A. From Dr. Nosari's spreadsheet on the weighted average
3 cost of capital. Those are coming again from Pan Energy's
4 financial statements and their SEC filings and their annual
5 reports.

6 Q. Okay. Thank you. Okay. So once you have adjusted for
7 the tax implications, what was the next step that you employed in

8 your calculation?

9 A. You are -- your column F is the tax amount that you are
10 going to adjust the recurring cost by that are contained in
11 column D. So the result of that, then, would be the column D,
12 the recurring costs minus the tax savings in column F and will
13 then give you a net after tax cash flow which is contained in
14 column G.

15 Q. Okay. If I could direct your attention to People's
16 Exhibit Number 10 and 10A. Have you seen that document before?

17 A. Yes, I have.

18 Q. In what context?

19 A. That is our economic benefit analysis associated with
20 the recurring costs where we are examining the cost of capital
21 over time, and we are using the weighted average cost of capital
22 as basically the cost of money over time to arrive at a total
23 economic benefit for recurring costs over the noncompliance
24 period.

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1 Q. Can you tell me the relationship between People's
2 Exhibit 9 and People's Exhibit 10? Is there a relationship?

3 A. Yes.

4 Q. Can you tell me what that is?

5 A. We simply took -- the starting point is on People's
6 Exhibit Number 9, column G, those are the net after tax cash

7 flows and those are the figures that we transfer from column G to
8 column A of this document, Panhandle Eastern 10A, People's
9 Exhibit --

10 Q. Okay. So when you are referring to -- let me just
11 interrupt for a second just to make sure it is clear for the
12 record. When you are referring to column G, are you referring to
13 People's Exhibit 9?

14 A. Yes, net after tax cash flow.

15 Q. Okay. I apologize for interrupting you. Then where did
16 you take column G of People's Exhibit Number 9?

17 A. We transfer those numbers to column A, which is also net
18 after tax cash flow.

19 Q. Okay. Just a moment, please. Once you have determined
20 the net after cash -- once you have determined the net after tax
21 cash flow, what was the next step that you utilized?

22 A. Then we are going across the noncompliance period that
23 we were using and we are loading up the net after tax cash flow
24 with the cost of money over time at the weighted average cost of

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1 capital.

2 Q. If I could just interrupt you for a second. In terms of
3 column B, the weighted average cost of capital, again, where did
4 those numbers come from?

5 A. Again, those came from Dr. Nosari's calculations that we
6 had worked on for the weighted average cost of capital.

7 Q. Okay. Thank you. So my question was -- just in case it
8 is forgotten, once you determine the net after tax cash flow,
9 what was the next step you employed?

10 A. Again, we are using the weighted average cost of capital
11 and we are bringing the net after tax cash flow over time at the
12 cost of capital to account for the time value of money. For
13 example, in 1988, the first column, line two, the net after tax
14 cash flow was 265,852, and then you would use the 1988 weighted
15 average cost of capital, which is contained on B2, and that would
16 give you a figure of the interest adjusted tax cash flow that is
17 contained in line B2, of 285,687.

18 Q. Okay. Once that was employed for all of the years, what
19 was the next step that you did?

20 A. Well, for example, in 1988, line two, you are simply
21 continuing across from left to the right on line two, D, E, F, G,
22 H, I, and you are continuously dropping down to the next year's
23 cost of capitals that are contained in line B. For example, in
24 1989 you would drop down to cost of capital, 3B, and you would

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1 work your way continuously across line number two, and you would
2 eventually arrive at a weighted cost of capital for that
3 particular year, the total economic benefit for that particular
4 year of the avoided annual operating costs for this particular
5 time period.

6 Q. Okay.

7 A. So, for example, line 2A, the net after tax cash flow of
8 265,852, as you go across line two and you use the weighted
9 average cost of capital, you come up with a net benefit of I
10 think that's line 2N, which I think is -- let me look at my sheet
11 here. I think it is 687,109.

12 Q. Okay. Once you have determined the recurring costs for
13 a specific year, what was the next step that you did?

14 A. You simply go back to column N and you add those figures
15 together to arrive at a total economic benefit over the
16 noncompliance period for the recurring operating costs.

17 Q. Okay. Thank you. You may sit down, Mr. Nosari. I am
18 sorry. Mr. Styzens.

19 A. Why is everybody calling me Nosari?

20 Q. I apologize. It is the end of the day. Once you have
21 calculated the economic benefit for the initial capital outlays
22 and the annual recurring costs, what was the next step that you
23 employed in your economic benefit analysis?

24 A. We then use the documents that we were just talking

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1 about and we take the economic benefit associated with the
2 initial capital outlay, which is contained in People's Exhibit
3 Number 9, the bottom of column H, and we add that to the -- oh, I
4 am sorry. Let me get these straight here real quick.

5 Okay. What you are doing, then, is you are adding the

6 economic benefit total associated with the recurring costs to the
7 economic benefit total associated with the initial capital
8 investment that was avoided. So what you would do, then, is you
9 would take, on your People's Exhibit Number 9, you would take the
10 bottom of column H, which is 5,674,783, and you would add that to
11 the bottom of People's Exhibit Number 8, column L, 1,387,670 to
12 arrive at a total economic benefit associated with the capital
13 costs that were avoided during the noncompliance period.

14 Q. You know the next question probably. What number did
15 you come up with?

16 A. Would you like me to add those up?

17 Q. I would like you to add those up, please.

18 A. Can I put them on paper and add them up? Is that --

19 Q. That is acceptable.

20 A. Okay. Let me try this again.

21 HEARING OFFICER KNITTLE: Do you need a calculator?

22 THE WITNESS: No. I will get it here. I just didn't write
23 them very neatly.

24 MR. BOYD: Can we just stipulate that it is one big number?

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1 HEARING OFFICER KNITTLE: Do you just want to stipulate to
2 that.

3 MS. CARTER: I would rather have him put the number out
4 there for us.

5 HEARING OFFICER KNITTLE: Okay.

6 THE WITNESS: I am coming up with 7,052,453.

7 MS. CARTER: Okay. Thank you. Mr. Hearing Officer, if I
8 could request that we stop at this time.

9 HEARING OFFICER KNITTLE: Okay.

10 MR. BOYD: I would like to ask your intention with respect
11 to these three Exhibits 8, 9 and 10. Are you going to move for
12 these to be admitted? I would assume not.

13 MR. LAYMAN: Not at this time.

14 MS. CARTER: Not at this time.

15 MR. BOYD: Well, I would object to them being admitted at
16 any time, given the fact that they were not part of his report.

17 MS. CARTER: Well, I --

18 HEARING OFFICER KNITTLE: It is a little premature at this
19 point, though, until they actually move them into admission. I
20 don't want to --

21 MR. BOYD: I understand. I just don't want the Member of
22 the Board present or the Hearing Officer and others to think that
23 this is something that we agreed to just because I didn't have
24 any objections during the examination.

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1 HEARING OFFICER KNITTLE: Okay. I don't have them admitted
2 on my exhibit list yet.

3 MR. BOYD: All right.

4 HEARING OFFICER KNITTLE: So we can take them up if and

5 when Ms. Carter or Mr. Layman would choose to move them.

6 Other than that, Mr. Boyd, do you want to stop now? Do you
7 have any objection to that, stopping now?

8 MR. BOYD: Not at all.

9 HEARING OFFICER KNITTLE: Okay. Let's call it a day then.

10 (Hearing Exhibits retained by Hearing
11 Officer Knittle.)

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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

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I, DARLENE M. NIEMEYER, a Notary Public in and for the County of Montgomery, State of Illinois, DO HEREBY CERTIFY that the foregoing 216 pages comprise a true, complete and correct transcript of the proceedings held on the 18th of September A.D., 2000, at 600 South Second Street, Springfield, Illinois, in the matter of People of the State of Illinois v. Panhandle Eastern Pipe Line Company, in proceedings held before John C. Knittle, Chief Hearing Officer, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 9th day of October A.D., 2000.

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

CSR License No. 084-003677
My Commission Expires: 03-02-2003

October 9, 2000

John C. Knittle
Chief Hearing Officer
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601

RE: People of the State of Illinois vs. Panhandle Eastern Pipe
Line Company PCB No. 99-191

Dear Mr. Knittle:

Enclosed please find the transcript of the hearing taken on
September 18, 2000, in reference to the above-styled cause.

I will be forwarding the rest of the hearing transcript within a
week. If you have any questions, please feel free to call me at
the above number.

Sincerely,

Darlene M. Niemeyer, CSR, RPR

DN

cc: Sally Carter, Esq.
Eric Boyd, Esq.
Susannah Smetana, Esq.