

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

- - -
CLEAN AIR COUNCIL :
: :
vs. :
: :
COMMONWEALTH OF PENNSYLVANIA: :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO :
PARTNERS MARKETING & :
TERMINALS, L.P., :EHB Docket No.
Permittee :2016-073-L

- - -
May 7, 2018

- - -
Hearing in the above matter held
before Judge Bernard A. Labuskes, Jr., taken
pursuant to notice at Department of Environmental
Protection, Two East Main Street, Fourth Floor,
Norristown, Pennsylvania, commencing at 10:31 a.m.,
before Susan A. Hurrey, Registered Professional
Reporter and Notary Public.

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1 THE COURT: Any preliminaries before we

2 --

3 MR. RAPHAEL: We do, Your Honor. We'd
4 like to put an offer of proof on the record if we
5 could, relative to the ruling that you had on May
6 3rd.

7 THE COURT: Right. Right. Right.
8 Anything other than what we have talked about at
9 the prehearing conference? We did have a
10 prehearing conference and we talked about a number
11 of things, some motions. I think there was an open
12 issue about consolidating the cases, but I haven't
13 heard, so I assume that there's still not agreement
14 on that point from the Department and Sunoco. So
15 if there's no agreement, I'm not going to do it.

16 MR. WHITE: There's no agreement, Your
17 Honor. You're correct.

18 MR. RAPHAEL: There is not, Your Honor.
19 And we have yet to enter our appearance.

20 THE COURT: Okay. But there didn't
21 seem like there was any agreement on staying it for
22 the time being. There wasn't any disagreement
23 about staying it for the time being?

24 MR. RAPHAEL: No, Your Honor, we do not

1 disagree with that. Subject to our entry, we have
2 no problem with staying it, Your Honor.

3 THE COURT: Okay. Well, get back to me
4 on that if you wouldn't mind because otherwise,
5 time, dates are ticking.

6 MR. RAPHAEL: Understood. And I'll try
7 to confirm either during a break today or this
8 evening.

9 THE COURT: Okay. Then we can address
10 what you said, Mr. Raphael. We had one ruling on
11 motion in limine. We ruled that we would not
12 permit any evidence from Sunoco on the improper
13 authorization issue, whether Clean Air Council has
14 properly authorized this litigation. And I granted
15 that motion, but indicated that I will allow Sunoco
16 to put on an offer of proof, and then Mr. Raphael
17 at the prehearing conference indicated that he
18 would like to do that at the beginning and get that
19 out of the way so we don't break up the Clean Air
20 Council's case. So you're on.

21 MR. RAPHAEL: Very good. Thank you,
22 Your Honor. Thank you for the opportunity to do
23 so.

24 Your Honor, we believe that the issue

1 is jurisdictional and that Russ Allen as president
2 of the board of directors for the Clean Air
3 Council, that his testimony during his deposition
4 conflicted directly with an affidavit that he
5 signed thereafter. And we believe that's important
6 for really for two reasons. First, under the
7 non-corporation law, which the Clean Air Council,
8 as a nonprofit corporation, is bound by, if there
9 isn't a vote of the board of directors, you can
10 alternately confirm an action such as litigation by
11 unanimous written consent. We deposed Mr. Allen
12 and his sworn testimony was that there, in fact,
13 was not a vote of the board of directors. That
14 there was an exchange of e-mails, but starkly four
15 of the board of directors did not vote. So we
16 believe under the nonprofit corporation law and
17 also under CAC's own bylaws that there was no vote
18 during the 30-day appeal period. And that's
19 significant because, Your Honor, there is
20 Pennsylvania case law, Superior Court case law that
21 says if, in fact, there is an appeal period and it
22 runs, that we then have an affirmative defense in
23 the fact that there is no jurisdiction before the
24 hearing board. Of course the hearing board is a

1 creature of statute and there's a 30-day appeal
2 period where an appellant can bring an appeal.
3 Afterwards, after that 30-day, even on the 31st
4 day, the board is without jurisdiction to hear such
5 an appeal. And without belaboring too much and
6 there are some documents I want to enter, Your
7 Honor, but there is one exchange that I would like
8 to put on the record and then enter some documents
9 as well. And this may be found in Mr. Allen's
10 deposition transcript starting at page 55.

11 Question: And again, the only vote
12 taken regarding the approval of -- strike that.
13 The only vote taken regarding CAC's authorization
14 of the AHB appeal that is the appeal subject of
15 this deposition, is memorialized in your e-mail of
16 Friday, April 22, 2016 at 7:55 p.m.?

17 Answer: Correct.

18 Question: Mr. Allen has taken -- has
19 CAC taken any action since the filing of its appeal
20 on April 29, 2016 relative to its authorization --

21 THE COURT: Well, I wasn't anticipating
22 you would put on your whole case. I just wanted
23 you to say what you would have put on if you would
24 have been given the authority. What you're saying

1 is you would have been -- given the opportunity,
2 you would have put on a case that it was not
3 properly authorized, that there was not a timely
4 vote before the 30 days ran. I don't need actual
5 deposition testimony.

6 MR. RAPHAEL: Thank you, Your Honor.
7 And if I could, I'd like to enter the exhibits.

8 THE COURT: Yeah. I mean, you can move
9 for --

10 MR. RAPHAEL: Sure.

11 THE COURT: And I'll deny it and then
12 -- at least they'll be out there on the record.

13 MR. RAPHAEL: I would like to enter as
14 part of my offer of proof, Your Honor, if that's
15 okay.

16 THE COURT: Right. That's fine.

17 MR. RAPHAEL: Very good. So we would
18 like to enter the deposition transcript of Mr.
19 Allen. Let me give you our list here.

20 Your Honor, as part of our offer of
21 proof, we would move for the entry again for the
22 offer of proof of Exhibit-36, that's CAC's bylaws
23 as amended September 30, 2015; Exhibit-37, CAC's
24 articles of incorporation dated August 30, 1967;

1 Exhibit-38, the amendment to CAC's articles of
2 incorporation dated December 26, 2007; Exhibit-39,
3 the PA bulletin notice of issuance of plan approval
4 E; Exhibit-40, the e-mail exchange among Clean Air
5 Council and board members beginning April 18, 2016;
6 Exhibit-41, the notice of appeal dated April 29,
7 2016; Exhibit-42, the minutes of June 22, 2016
8 meeting of the CAC board of directors; Exhibit-43,
9 the letter from SPMT counsel to CAC seeking
10 discovery materials dated August 19, 2016;
11 Exhibit-44, CAC letter and supplemental production
12 of SPMT dated September 1, 2016; Exhibit-45, the
13 Ruston notice of deposition where he was the
14 corporate designee of CAC dated May 11, 2017;
15 Exhibit-46 the Russ Allen deposition transcript
16 dated May 23, 2017; and Exhibit-47, the Russ Allen
17 affidavit.

18 And just to put a cap on it, Your
19 Honor, we intended to confront Mr. Allen with his
20 sworn deposition testimony relative to the direct
21 contradictions in his after-the-fact affidavit and
22 then also the minutes to CAC's board meeting that
23 were not disclosed in discovery, notwithstanding
24 requests and interrogatories and document requests

1 that were appended to that affidavit and also
2 conflicted directly with his sworn deposition
3 testimony. And that would be it for SPMT on that
4 matter, Your Honor. Thank you.

5 THE COURT: I'll deny admission because
6 for the reasons previously discussed for everything
7 except 41, which is nothing more than a notice of
8 appeal? 41 is just the notice of appeal?

9 MR. RAPHAEL: It is, Your Honor.

10 THE COURT: Yes.

11 MR. RAPHAEL: And just to be clear
12 again, Your Honor. These are exhibits to our offer
13 of proof, not to be admitted into the case or
14 generally, but as an appendix to an offer of proof
15 to avoid me reading into the record all of these
16 portions of the deposition transcript.

17 THE COURT: Correct. Which is fine.
18 My only point is that 41 is a notice of appeal, so
19 that doesn't need to be admitted. It is admitted
20 for all purposes.

21 MR. RAPHAEL: Very good. Thank you,
22 Your Honor.

23 THE COURT: Just wanted to be clear
24 that the notice of appeal itself was different.

1 All right.

2 Opening statements, Mr. Bomstein?

3 MR. BOMSTEIN: Yes, Your Honor. I do
4 have a brief about five-minute opening statement.
5 Thank you.

6 May it please the Board, my name is
7 Alex Bomstein, along with my co-counsel,
8 Christopher Ahlers. I represent Clean Air Council
9 in this challenge to plan approval for a project
10 involving the construction of a natural gas liquids
11 processing facility at Marcus Hook. This case is
12 largely about Sunoco's circumvention of state and
13 federal air quality permitting requirements. Your
14 Honor, we intend to show that Sunoco has evaded
15 more protective regulations under the new source
16 review program through staging of the application
17 it has submitted. Under this program, certain new
18 or modified facilities are required to evaluate
19 whether their emissions increases require a new
20 source review permits. In general terms, a
21 facility must subtract its baseline emissions from
22 projected future emissions and evaluate whether the
23 increases are greater than a significant level. If
24 they are above that level, certain additional

1 requirements have to be met. The objections in the
2 council's notice of appeal fall broadly into two
3 categories. First, the Council alleges a number of
4 errors with respect to the calculations of
5 emissions increases and consideration of emissions
6 units. For example, we intend to show that Sunoco
7 did not properly calculate its baseline actual
8 emissions. This made it appear that its baseline
9 was higher than it actually was, which consequently
10 makes it seem that the emissions increases were
11 lower than they really were.

12 Second, we intend to prove that Sunoco
13 has circumvented the new source review program by
14 characterizing what is one integrated project as a
15 series of smaller projects. While the project
16 being appealed was identified as 23-0119E, or what
17 we're going to call Project E, the true project
18 consists of project one, that's the first plan
19 approval, A, B, C, D, E, F, H and I, which is still
20 in the works, as well as two smaller projects that
21 did not rise to the level of needing an approval
22 which were viewed in isolation.

23 In a nutshell, the integrated project
24 that we're talking about here is a construction of

1 a facility to store, process and distribute the
2 chemicals arriving at Marcus Hook through the
3 Mariner pipelines. Now, the Council's claim of
4 circumvention is not based merely on the fact that
5 these projects share a common index number of
6 23-0119. The test for circumvention is set forth
7 in Your Honor's decision in United Refining versus
8 DEP 2008 EHB 434. There are four significant
9 factors. The first, the relationship of the
10 various tasks when measured in space and time.
11 Second, the task operational, technical and
12 economic interdependence. Third, whether the tasks
13 are geared toward achieving a shared objective.
14 Fourth, whether the tasks were convened originally
15 as part of a common plan. And there's also a fifth
16 catchall for other relevant considerations.

17 It's not necessary for Your Honor to
18 find that Sunoco broke this project into pieces
19 with an intent to circumvent, but you will hear
20 evidence of a shared objective and common plan.
21 The law on circumvention only requires that you
22 find that the way the project was staged avoided
23 the regulations that would otherwise apply and that
24 is indeed the case here. The result is that the

1 Department never reviewed an application that
2 accurately describes the project as a whole. It
3 cannot be said precisely what such an application
4 would look at because much depends on how Sunoco
5 decides to develop that application. However, the
6 evidence and the math establish that certain new
7 source for review regulatory thresholds would be
8 exceeded. Under those programs Sunoco will need to
9 provide additional analysis on the air quality
10 impacts of its project as a whole and meet
11 technology-based requirements as well. The
12 strength of the new source review program hinges on
13 the applicant and the agency going through this
14 process. The program ensures that the reviewing
15 agency has the information needed to properly
16 evaluate major sources like these which have a
17 greater potential to cause air pollution, harming
18 human health and the environment. Where in
19 violation of the law, a permit applicant does not
20 supply the required information for the Department
21 to evaluate the application the board has in the
22 past rescinded the permit. An example of this is
23 in the case Tinicum Township and Eco Inc. versus
24 DEP 1997 EHB 1119. Council submits that under the

1 United Refining tests, Sunoco must go back and
2 properly redefine the project, properly calculate
3 the net emissions increases and properly follow the
4 requirements for new source review.

5 Sustaining the Council's appeal will
6 not stop the Mariner East project or the
7 development of Marcus Hook. That's not the point
8 of this appeal. The Council only wants Sunoco and
9 DEP to follow the law. Sunoco may submit a new
10 application for the project as a whole correcting
11 the errors that affect plan approval 23-0119E.
12 Clean Air Council simply asks that the Board ensure
13 that the laws protecting the air we breathe are
14 upheld. Thank you very much.

15 THE COURT: Thank you, Mr. Bomstein.
16 Mr. Raphael, you indicated the Clean
17 Air Council would like to reserve until your case?

18 MR. RAPHAEL: Correct, Your Honor.
19 SPMT would like to reserve its opening to begin its
20 case in chief.

21 THE COURT: The Department I don't
22 remember saying one way or the other.

23 MS. HUNT: The Department would also
24 like to reserve its opening remarks for its case in

1 chief.

2 THE COURT: Okay. Go ahead. First
3 witness.

4 MR. BOMSTEIN: Thank you, Your Honor.
5 Clean Air Council would like to call Mr. Colin
6 McGroarty to the stand.

7 - - -

8 COLIN MCGROARTY, after having been
9 first duly sworn, was examined and testified as
10 follows:

11 - - -

12 BY MR. BOMSTEIN:

13 Q. Mr. McGroarty, thank you for coming in today
14 to testify.

15 A. Thank you.

16 Q. Please state your full name and business
17 address for the record.

18 A. Sure. My name is Colin McGroarty and I work
19 at 75 Valley Stream Parkway, Suite 200, in Malvern,
20 Pennsylvania 19355.

21 Q. Thank you. And what company do you work
22 for?

23 A. Environmental Resources Management.

24 Q. Did you act as a consultant for the

1 permittee in this case, Sunoco Partners Marketing &
2 Terminals, LP?

3 A. Yes, I did.

4 Q. Without going into any confidential
5 discussions between you and your lawyers, please
6 tell me what you did to prepare for today's
7 hearing.

8 A. Met with counsel and with SPMT to discuss
9 the case.

10 Q. Did you bring any documents with you to the
11 hearing today?

12 A. Yes, I did.

13 Q. What documents are those?

14 A. Just exhibits for this case.

15 Q. Do you have any with you on the stand?

16 A. No, I do not.

17 Q. Okay. You have a chemical engineering
18 degree from Penn State University, correct?

19 A. Correct.

20 Q. And it's from 2005?

21 A. Correct.

22 Q. What's your role with -- can I call it ERM
23 for short?

24 A. Absolutely.

1 Q. What's your role with ERM?

2 A. I am a principal consultant with ERM.

3 Q. What does that involve?

4 A. I am more of a senior consultant leading
5 project teams on client projects.

6 Q. What do you consult on?

7 A. Environmental permitting.

8 Q. When did you start with ERM?

9 A. I started with ERM in September of 2010.

10 Q. Thank you. Have you worked on applications
11 for plan approvals?

12 A. Yes, I have.

13 Q. What's a plan approval?

14 A. Plan approval is a set of documents outlined
15 by the Pennsylvania Department of Environmental
16 Protection that allow for the installation or
17 construction of emission sources.

18 Q. Have you heard of the term RFD before?

19 A. Yes.

20 Q. What does that stand for?

21 A. That is a request for determination.

22 Q. Have you worked on RFDs also?

23 A. Yes, I have.

24 Q. Did you work on air quality plan approvals

1 and RFDs for the Sunoco Marcus Hook facility?

2 A. Yes, I have.

3 Q. Did you work on the application for what
4 became plan approval 23-0119?

5 A. Yes.

6 Q. If I call that Project 1, will you
7 understand what I'm talking about?

8 A. Yes.

9 Q. Okay. Great. Did you also work on the
10 application for 23-0119A?

11 A. Yes.

12 Q. And can we call that Project A?

13 A. Yes.

14 Q. And just for convenience and to shorten the
15 transcript, there are a bunch of letters as well
16 and we'll just call those projects and the letters,
17 is that okay?

18 A. Yes.

19 Q. Great. And that goes up through -- there's
20 an outstanding application for Project I right now,
21 correct?

22 A. Yes, that's correct.

23 Q. Okay. Did you prepare all of those
24 applications on behalf of Sunoco?

1 A. I did as part of a team, yes.

2 Q. There are also several RFDs associated with
3 Marcus Hook, correct?

4 A. Yes.

5 Q. Is RFD 5597 one of them?

6 A. Yes.

7 Q. Is RFD 5236 another?

8 A. Yes.

9 Q. And did you prepare those on behalf of
10 Sunoco as well?

11 A. I did as part of the team, yes.

12 Q. And as part of the team you were hands on to
13 some degree with the preparation of those, correct?

14 A. Yes.

15 Q. Please turn to exhibits A-6 through A-17.
16 So those are in the -- yeah, you got it.

17 MR. RAPHAEL: Counsel, just give us a
18 moment to catch up.

19 MR. BOMSTEIN: Sure.

20 (Pause.)

21 MR. BOMSTEIN: Are we all ready?

22 BY MR. BOMSTEIN:

23 Q. I'm just going to ask you to look first at
24 A-6. Could you please tell me what this document

1 is?

2 A. This is the original plan approval
3 application for SXL Project Mariner.

4 Q. Thank you. Could you turn to A-7, please.
5 To not hide the ball, I'm going to, one by one, ask
6 you what these are.

7 A. Fair enough.

8 Q. Please tell me what A-7 is.

9 A. This is the plan approval application for
10 SXL Project Mariner Deethanizer.

11 Q. Thank you. Is that also known as Project A?

12 A. Yes.

13 Q. Could you please turn to A-8.

14 A. (Witness complies.)

15 Q. Could you please identify this document?

16 A. This is the plan approval application for
17 SXL natural gasoline project.

18 Q. Thank you. That's Project B?

19 A. Yes.

20 Q. Please turn to A-9.

21 A. (Witness complies.)

22 Q. What is A-9?

23 A. This is the plan approval application for
24 the cooling tower associated with Project Mariner.

1 Q. Is that Project C?

2 A. Yes.

3 Q. Thank you. Could you please turn to A-10.

4 A. (Witness complies.)

5 Q. Could you please explain what this is?

6 A. This is the plan approval application for
7 the SPMT new tanks project.

8 Q. That's Project D?

9 A. Correct.

10 Q. Please turn to A-11.

11 A. (Witness complies.)

12 Q. Can you please identify this document?

13 A. This is the plan approval application for
14 ETP Project Revolution and SXL Depropanizer
15 Project.

16 Q. Is that the one under appeal here, Project
17 E?

18 A. Yes, it is.

19 Q. Thank you. Please turn to A-12.

20 MR. RAPHAEL: Counsel, if we could just
21 go back to plan approval -- it's exhibit A-9. I
22 was noticing at the back of that, that doesn't
23 appear to be a signed plan approval.

24 MR. BOMSTEIN: A-9?

1 MR. RAPHAEL: In our binder, which is
2 page seven of seven, that doesn't appear to be a --
3 it's SUN 00926.

4 MR. BOMSTEIN: Yes. Do you have any
5 question?

6 MR. RAPHAEL: Normally, you know, when
7 you're submitting, we're usually talking about
8 executed plan approval signed documents. If you're
9 going to discuss this with Mr. McGroarty, we want
10 to be sure that this is the final version for these
11 documents.

12 MR. BOMSTEIN: So if you could turn to
13 page Sun 000967, please. You see this was signed
14 and delivered for the notice and this was produced
15 to us by Sunoco.

16 Are you raising an issue of
17 authenticity?

18 THE COURT: I don't think he's
19 objected, so I'd just keep moving on.

20 MR. RAPHAEL: I just wanted to note for
21 the record this isn't a signed copy.

22 THE COURT: You can do it when it's
23 your turn. Go ahead, Mr. Bomstein.

24 MR. BOMSTEIN: Thank you, Your Honor.

1 BY MR. BOMSTEIN:

2 Q. I believe we were at A-12. Could you please
3 identify A-12?

4 A. This is the plan approval application for
5 the storage tank update.

6 Q. And what project is that?

7 A. That would be Project F.

8 Q. Thank you.

9 THE COURT: F?

10 THE WITNESS: F.

11 BY MR. BOMSTEIN:

12 Q. Please turn to A-13.

13 A. (Witness complies.)

14 MR. RAPHAEL: Counsel, if you could
15 just slow down just a bit because I guess we're not
16 as skillful in turning these notebooks as you are.

17 MR. BOMSTEIN: Let me know.

18 MR. RAPHAEL: You appear to be one
19 exhibit ahead of us.

20 (Pause.)

21 MR. BOMSTEIN: A-13.

22 MR. RAPHAEL: Thank you.

23 BY MR. BOMSTEIN:

24 Q. Could you please identify this?

1 A. This is the plan approval application for
2 the crude storage plan approval.

3 Q. Is that Project G?

4 A. Yes.

5 Q. Thank you. Could you turn to A-14, please.

6 A. (Witness complies.)

7 Q. Could you please identify this document?

8 A. This is the plan approval application for
9 the SPMT flare replacement project.

10 Q. Is that Project H?

11 A. Yes.

12 Q. Thank you. Could you please turn to A-15.

13 A. (Witness complies.)

14 Q. Could you please identify this?

15 A. This is the plan approval application for
16 the ME2X project.

17 Q. Is that Project I?

18 A. Yes, it is.

19 Q. Thank you. Almost there. Could you please
20 turn to A-16.

21 A. (Witness complies.)

22 Q. Could you please identify this?

23 A. This is the RFD 5597 application and
24 approval.

1 Q. Thank you. And could you please turn to
2 A-17.

3 MR. RAPHAEL: Mr. Bomstein, again, I
4 think we need to switch notebooks here.

5 MR. BOMSTEIN: Sure.

6 MR. RAPHAEL: Thanks for your
7 indulgence.

8 (Pause.)

9 BY MR. BOMSTEIN:

10 Q. Could you please identify A-17?

11 A. This is the RFD 5236 approval.

12 Q. Thank you.

13 MR. BOMSTEIN: At this time I'd move
14 for the admission into evidence of A-6 through
15 A-17.

16 THE COURT: Any objection?

17 MR. RAPHAEL: Sure, Your Honor. It
18 appears the exhibit that I referenced previously
19 was not a signed copy and certainly we want to
20 ensure that what is being put before Mr. McGroarty
21 is the final version of that. One foolproof way to
22 do that is to have a signed copy or a certified
23 copy placed into the record and then also the RFDs,
24 two of them don't appear to be signed either. So

1 again, same objection, Your Honor. Want to ensure
2 that these are the final copies that they're going
3 to be relied on throughout the testimony of Mr.
4 McGroarty.

5 THE COURT: Any objection from the
6 Department?

7 MS. HUNT: The Department also objects
8 to exhibits 12 through 16 as those occurred after
9 plan approval E was issued, and the Department does
10 not think that they are relevant for purposes of
11 the Department's determination of plan approval E.

12 MR. RAPHAEL: Your Honor, we would join
13 in that objection as well.

14 THE COURT: Objection is overruled and
15 A-1 through 16 are admitted.

16 I should put on the record I have sort
17 of an operating rule that since Sunoco and the
18 Department are both on the same side of the
19 caption, I'll assume that you both are joining in
20 each other's objections, motions and that sort of
21 thing.

22 MR. RAPHAEL: Unless we say otherwise,
23 Your Honor.

24 THE COURT: Unless you say on the

1 record otherwise. So it usually can move things
2 along a little more quickly.

3 MR. RAPHAEL: Thank you, Your Honor.

4 MR. BOMSTEIN: Thank you, Your Honor.

5 And just for clarity sake, does that include A-17?

6 THE COURT: Did I not say 17? If I
7 didn't say --

8 MR. BOMSTEIN: I didn't hear it, so I
9 apologize if I misheard.

10 THE COURT: Yes, 17 is also admitted.

11 MR. BOMSTEIN: Thank you, Your Honor.

12 BY MR. BOMSTEIN:

13 Q. Mr. McGroarty, taking a step back, the
14 Marcus Hook industrial complex used to operate as a
15 refinery, correct?

16 A. In the past, yes.

17 Q. At some point that was closed down?

18 A. Yes.

19 Q. And after the refinery closed, there were
20 changes in the way some of the equipment operated,
21 correct?

22 MR. RAPHAEL: Object. Compound
23 question, Your Honor.

24 THE WITNESS: Some of the equipment --

1 THE COURT: Overruled.

2 MR. RAPHAEL: Mr. McGroarty, I just
3 want to caution you, if there's an objection please
4 allow the judge to rule before you respond.

5 THE WITNESS: I apologize.

6 BY MR. BOMSTEIN:

7 Q. You can proceed.

8 A. Some of the sources that were in refinery
9 operations were shut down.

10 Q. So it's true that there were changes in the
11 way some of the equipment operated, correct?

12 A. Correct.

13 Q. For example, the boilers, they stopped
14 burning refinery fuel gas after it was no longer a
15 refinery, correct?

16 A. Correct.

17 Q. At the moment, Marcus Hook industrial
18 complex is operating as a natural gas liquids
19 fractionation facility. Would you agree?

20 A. Yes.

21 Q. And so let's walk through some of those
22 changes to the facility. In November 2012, ERM,
23 your company, submitted on behalf of Sunoco an
24 application for Project 1, correct?

1 A. Correct.

2 Q. And that was for the storage of a liquefied
3 ethane and propane products received through an
4 existing pipeline, correct?

5 A. Correct.

6 Q. This is called project -- or SXL Project
7 Mariner?

8 A. Correct.

9 Q. Does SXL refer to Sunoco?

10 A. It's an acronym for Sunoco Logistics. Was
11 an acronym for Sunoco Logistics.

12 Q. Is that related to the permitting in this
13 case Sunoco Partners Marketing & Terminals?

14 A. I believe it was, yes.

15 Q. Please turn to exhibit A-29.

16 A. (Witness complies.)

17 Q. And when you get there, please identify what
18 this document is.

19 A. This is a department-issued plan approval
20 for 23-0119.

21 Q. Thank you. And when was this issued?

22 A. February 5, 2013.

23 Q. ERM submitted the next Marcus Hook
24 application one month after the issuance of this

1 plan approval, correct?

2 A. That's correct.

3 Q. And that application was for a project for a
4 deethanizer designed to process 80,000 barrels per
5 day of total feed consisting of a liquefied blend
6 of hydrocarbons consisting primarily of ethane and
7 propane, correct?

8 A. That's correct.

9 Q. And that was called the SXL Project Mariner
10 Deethanizer?

11 A. Correct.

12 Q. Please turn to A-30.

13 A. (Witness complies.)

14 Q. And when you get there, please identify what
15 this document is?

16 A. This is the department-issued plan approval
17 for 23-0119A.

18 Q. Thank you. When was this one issued?

19 A. September 5, 2013.

20 Q. And that same month Sunoco submitted an
21 application for a project to receive, store, and
22 fractionate natural gasoline, as well as store and
23 transfer the two fractionation products, pentane
24 and light naphtha at the Marcus Hook facility,

1 correct?

2 A. That's correct.

3 Q. That was called the SXL Natural Gasoline
4 Project?

5 A. Correct.

6 Q. And to be clear, natural gasoline is
7 sometimes known as C5+, correct?

8 A. Yes.

9 Q. So among other things, Project U involves
10 the separation of pentane, which is C5, from
11 natural gasoline, which is C5+, which leaves light
12 naphtha which is C6+, correct?

13 MR. RAPHAEL: Your Honor, I'm going to
14 object. We're going to start to edge into this
15 throughout this hearing and that is Mr. McGroarty
16 is a fact witness, and I think we're already edging
17 into expert testimony about chemical compounds,
18 scientific things that are beyond a fact witness.
19 Mr. McGroarty is here to testify about what he did,
20 not about science or chemistry.

21 THE COURT: Overruled.

22 BY MR. BOMSTEIN:

23 Q. Mr. McGroarty, please turn to exhibit A-31.
24 Actually I don't know if I got an answer to that.

1 A. You did not.

2 Q. Let me read the question again. Project B
3 involves the separation of pentane, which is C5
4 from natural gasoline which is C5+ plus, which
5 leaves light naphtha, also known as C6+, correct?

6 MR. RAPHAEL: Object again, Your Honor.
7 That answer requires expert testimony.

8 THE COURT: Overruled.

9 THE WITNESS: I believe so, yes.

10 BY MR. BOMSTEIN:

11 Q. And now please take a look at A-31 and
12 identify what this document is.

13 A. This is the Department-issue plan approval
14 23-0119B.

15 Q. Thank you. When was this issued?

16 A. January 30, 2014.

17 Q. Afterwards, in April of 2014, Sunoco
18 submitted an application for a project to construct
19 a new cooling tower designed to process 30,000
20 gallons per minute of cooling water required for
21 the separation of ethane and propane at the
22 deethanizer unit, correct?

23 A. That's correct.

24 Q. The deethanizer unit in question is the one

1 that was installed as part of Project A, which was
2 issued seven months before, correct?

3 A. Correct.

4 Q. So this new project was called SXL Project
5 Mariner Cooling Tower, correct?

6 A. Yes.

7 Q. Up to this point Projects 1, A and C were
8 all grouped together as Project Mariner, correct?

9 A. Correct.

10 Q. And as part of what you did at ERM, ERM
11 evaluated whether that aggregated project would
12 trigger the regulatory thresholds of the prevention
13 of significant deterioration program and
14 non-attainment resource review program, correct?

15 A. Correct.

16 Q. Please turn to A-32.

17 A. (Witness complies.)

18 Q. Please identify what this document is.

19 A. This is the Department-issued plan approval
20 number 23-0119C.

21 Q. Thank you. When was this issued?

22 A. November 19, 2014.

23 Q. Less than two months before the Department
24 issued that plan approval in September 2014, Sunoco

1 submitted another application, correct?

2 A. Correct.

3 Q. This was for a project for the storage of
4 liquefied ethane, butane and propane products
5 received through an existing pipeline, correct?

6 A. Correct.

7 Q. And in that project, the product would
8 either be transported as butane, propane or a mix
9 of ethane/propane?

10 A. I believe that to be correct.

11 Q. This was called the new tanks project?

12 A. That's correct.

13 Q. Also known as Project D?

14 A. Correct.

15 Q. And that added storage facilities for C2,
16 C3, C4 and associated equipment, including a new
17 cooling tower, correct?

18 A. That's correct.

19 Q. It also repurposed a fractionation tower
20 permitted in plan approval A?

21 A. That's correct.

22 Q. Project D was a revision to the scope of
23 Project Mariner, correct?

24 A. That's correct.

1 Q. That revision was made to increase the
2 capacity of Project Mariner?

3 A. That's correct.

4 Q. And the need for that increase is because of
5 the new Mariner's 2 pipelines which would add to
6 the capacity of the existing Mariner's East
7 pipeline, correct?

8 MR. RAPHAEL: I'm going object as to a
9 compound question, Your Honor, and also calls for
10 speculation.

11 THE COURT: Overruled.

12 THE WITNESS: In my understanding, that
13 was the purpose of the application.

14 BY MR. BOMSTEIN:

15 Q. So projects 1, A, C and D were of a similar
16 nature, would you agree?

17 A. That was ERM's position, yes.

18 Q. And projects 1, A, C and D were also similar
19 processes, correct?

20 A. That's correct.

21 Q. And that's why you considered Project D to
22 be an expanded scope of the earlier projects,
23 right?

24 A. Correct.

1 Q. Sunoco, in its application, also aggregated
2 Project D with projects 1, A and C, correct?

3 A. That's correct.

4 Q. I'm going to ask you to jump ahead in a
5 different binder to Exhibit-84, please.

6 A. 84?

7 Q. 84, yes. When you have gotten to it, could
8 you please identify it.

9 A. This is the Department-issued plan approval
10 number -- excuse me. This does not have a
11 signature on it. This appears to be a version of
12 the Department's plan approval 23-0119D.

13 Q. Thank you. What do you mean by version?

14 A. The front page is not signed, so I can't be
15 certain that it is the issued version.

16 Q. Have you seen this document before?

17 A. I believe that I have, yes.

18 Q. Okay. In what context?

19 A. We routinely help SPMT comply with their
20 plan approvals.

21 Q. Do you have any reason to believe this is a
22 draft?

23 MR. RAPHAEL: I'm going to object, Your
24 Honor. That calls for speculation. It's an

1 unsigned document and it's not a document of Mr.
2 McGroarty or his company. It's a DEP document.

3 THE COURT: Overruled.

4 THE WITNESS: It appears to be final.

5 BY MR. BOMSTEIN:

6 Q. Thank you. When was this issued?

7 A. February 26, 2015.

8 Q. Could you please turn to A-17, Mr.

9 McGroarty. Sorry, making you switch back and forth
10 between binders here.

11 A. (Witness complies.)

12 Q. So ERM submitted RFD 5236 to the Department
13 on August 6, 2015, am I correct?

14 A. From this exhibit it says August 13, 2015.

15 Q. Okay. Thank you. And that RFD involved the
16 installation of new spherical storage tanks for for
17 propane and butane at Marcus Hook, correct?

18 A. That's correct.

19 Q. And the Department approved this on August
20 13, 2015?

21 A. That's correct.

22 Q. Next month, September of 2015 ERM submitted
23 on behalf of Sunoco an application for a project
24 for the separation of transmix or deethanized

1 natural gas liquid into export-grade propane, mixed
2 butane and natural gasoline, correct?

3 MR. RAPHAEL: I'm going to object, Your
4 Honor, as a compound question.

5 THE COURT: Overruled.

6 THE WITNESS: That's correct.

7 BY MR. BOMSTEIN:

8 Q. When it mentions transmix here, am I correct
9 that that's when there's two products that get
10 mixed together a little bit?

11 MR. RAPHAEL: Your Honor, and again --

12 THE COURT: Expert testimony?

13 MR. RAPHAEL: I'm going to object as
14 expert testimony.

15 THE COURT: I got it. I got it.
16 Overruled.

17 THE WITNESS: I believe that to be
18 correct, yes.

19 BY MR. BOMSTEIN:

20 Q. And deethanized natural gas liquids is
21 sometimes known as C3+?

22 MR. RAPHAEL: Again, same objection,
23 Your Honor. Purely expert testimony. He has no
24 firsthand knowledge of that. He is a lay witness.

1 THE COURT: I got it. Overruled.

2 THE WITNESS: I believe that to be
3 correct, yes.

4 BY MR. BOMSTEIN:

5 Q. So Project E involves the separation of
6 propane, which is C3, and butane, which is C4, from
7 C3+, correct?

8 MR. RAPHAEL: Again, Your Honor, same
9 objection. Again, we are asking for expert
10 testimony and in your order of May 3rd, clearly you
11 stated, Your Honor, that expert testimony would not
12 be permitted in this appeal. What is the factual
13 basis for Mr. McGroarty's testimony? What did he
14 see, hear, smell or taste?

15 THE COURT: Overruled.

16 THE WITNESS: I think it would help if
17 I could see the plan approval application.

18 BY MR. BOMSTEIN:

19 Q. Absolutely. So if you want to turn to A-11,
20 that contains it. And if it helps, I would direct
21 your attention to figure 2-1, which is on the
22 fourth page of the application, also known as Sun
23 000046.

24 A. Thank you. Would you mind repeating your

1 question?

2 Q. Of course. So Project E involves the
3 separation of propane, which is C3, and butane,
4 which is C4 from C3+, correct?

5 MR. RAPHAEL: Object as a compound
6 question, Your Honor. And again, a question that
7 requires expert opinion testimony.

8 THE COURT: Overruled.

9 THE WITNESS: That's correct.

10 BY MR. BOMSTEIN:

11 Q. And what's left is C5+, which is natural
12 gasoline, correct?

13 MR. RAPHAEL: Again, same objection,
14 Your Honor. A question that is trying to elicit
15 expert testimony.

16 THE COURT: Overruled.

17 THE WITNESS: That's correct.

18 BY MR. BOMSTEIN:

19 Q. Project E involved three fractionation
20 towers, correct?

21 A. Yes.

22 Q. At one point in time Sunoco considered a
23 repurposing for Project E the fractionation tower
24 that was permitted in plan approval A and later

1 renamed in plan approval D, correct?

2 A. A hypothetical scenario was presented, yes.

3 Q. Please turn to exhibit A-48.

4 MR. RAPHAEL: Give us a second,
5 Counsel, to catch up.

6 MR. BOMSTEIN: Absolutely.

7 (Pause.)

8 BY MR. BOMSTEIN:

9 Q. Starting towards the bottom of the first
10 page. Is this an e-mail you sent to Sunoco
11 regarding what became Project E?

12 MR. RAPHAEL: Sorry, Counsel. We're
13 just not quite as quick as you.

14 MR. BOMSTEIN: Just let me know.

15 (Pause.)

16 BY MR. BOMSTEIN:

17 Q. Starting toward the bottom of the first
18 page. Do you see an e-mail that you sent regarding
19 what became Project E?

20 A. Yes.

21 Q. Ultimately the Project A fractionation tower
22 was not repurposed for Project E, correct?

23 A. That's correct.

24 Q. But thinking through that option, Sunoco was

1 concerned with the threat that DEP would aggregate
2 Project Mariner with Project E, correct?

3 MR. RAPHAEL: Your Honor, I'm going to
4 object as to relevance. So now we're going into
5 hypotheticals that didn't happen relative to what
6 was submitted to the Department. Nothing. How is
7 that relevant?

8 THE COURT: Overruled.

9 THE WITNESS: Could you repeat the
10 question?

11 BY MR. BOMSTEIN:

12 Q. Of course. Thinking through the option that
13 we just discussed, Sunoco was concerned with the
14 threat that DEP would aggregate Project Mariner
15 with Project E, correct?

16 MR. RAPHAEL: Object, calling for
17 speculation, Your Honor. What DEP would know or
18 not know --

19 THE COURT: Why don't you just object,
20 Mr. Raphael.

21 MR. RAPHAEL: I'm sorry, I did object.

22 THE COURT: You can't have him re-ask
23 the same question and add another objection. You
24 already made your objections. You're overruled.

1 So he can answer the question.

2 THE WITNESS: ERM was asked to evaluate
3 the permitting risks.

4 BY MR. BOMSTEIN:

5 Q. Is it correct that Sunoco was concerned with
6 the threat that DEP would aggregate Project Mariner
7 with Project E?

8 MR. RAPHAEL: Object again. Calling
9 for speculation, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I believe it was, but
12 it's what we evaluated.

13 BY MR. BOMSTEIN:

14 Q. DEP might have done that because the
15 reliance on the earlier-built tower might have been
16 a factor in showing that the operations were not
17 fully independent, correct?

18 MR. RAPHAEL: I'm going to object, Your
19 Honor, as a compound question. I think there are
20 three mights in there. Calling for speculation as
21 well.

22 THE COURT: Rephrase, Mr. Bomstein.

23 MR. BOMSTEIN: Sure.

24 BY MR. BOMSTEIN:

1 Q. In discussing the scenario that we're
2 talking about here, the concern centered on the
3 fact that reliance on the earlier-built tower could
4 be a consideration when evaluating -- when DEP
5 evaluates whether or not the projects are
6 independent, correct?

7 MR. RAPHAEL: Object. It's a compound
8 question, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: That's correct.

11 BY MR. BOMSTEIN:

12 Q. And if DEP aggregated the projects, it was
13 your opinion that DEP would revise and reissue and
14 re-notice the earlier plan approvals, correct?

15 MR. RAPHAEL: Objection. Compound
16 question, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: It was our opinion, yes.

19 BY MR. BOMSTEIN:

20 Q. And that threatened project schedules,
21 correct?

22 A. It had the potential to.

23 Q. Project E involves the use of auxiliary
24 boilers, correct?

1 A. Correct.

2 Q. And it also involved a flare?

3 A. It added some emissions to an existing
4 flare.

5 Q. Did it also involve cooling tower 15-2B?

6 A. Yes.

7 Q. Cooling tower 15-2B is also used in Project
8 B, correct?

9 A. Correct.

10 Q. Please turn to exhibits 33 and 34.

11 A. (Witness complies.)

12 Q. These exhibits are somewhat of a collective
13 item. Could you please describe what they are?

14 A. They look like the Department-issued plan
15 approval number 23-0119E.

16 Q. Thank you. When was this issued?

17 A. April 1, 2016.

18 MR. BOMSTEIN: Your Honor, at this time
19 I'd move for the admission into evidence of
20 exhibits A-29, A-30, A-31, A-32, A-33, A-34, A-48
21 and A-84.

22 THE COURT: What was after 34?

23 MR. BOMSTEIN: I'm sorry, after 34 it
24 was A-48 and A-84.

1 THE COURT: Any objection?

2 MR. RAPHAEL: Your Honor, to the extent
3 that the documents that Clean Air Council's are
4 offering are unsigned versions of applications and
5 plan approvals, we would object, Your Honor,
6 because certainly signed or certified copies of
7 those would normally be what is submitted to the
8 board and certainly made part of the record in this
9 case. We would object to those. The e-mail string
10 that he asked Mr. McGroarty about contains hearsay,
11 double hearsay and triple hearsay. And we would
12 object on those grounds as well, Your Honor.

13 THE COURT: That's 48?

14 MR. BOMSTEIN: That is 48, Your Honor.

15 THE COURT: What hearsay are you
16 referring to?

17 MR. RAPHAEL: Sure, Your Honor. So the
18 e-mail is not simply what Mr. Bomstein went over.
19 If you look above it there's an e-mail string or
20 chain starting with Mr. Werner, then Ms. Styles,
21 those -- and those are folks that are not on the
22 witness stand. Those are certainly out-of-court
23 statements being offered for the truth of the
24 matter asserted and there is not even reference to

1 those. So you don't get to put a string of e-mails
2 in as one slice of it and then admit a whole
3 document, Your Honor. I believe that that would
4 all be hearsay, Your Honor.

5 THE COURT: Who are those people?

6 MR. BOMSTEIN: Your Honor, Mr. Werner
7 is an individual who will be a witness later today.

8 THE COURT: Who is he?

9 MR. BOMSTEIN: He is a Sunoco
10 individual who works at -- whose work involves the
11 Marcus Hook facility.

12 THE COURT: Okay. How about Styles?

13 MR. BOMSTEIN: She is also a Sunoco, or
14 at least at this time was a Sunoco employee, whose
15 work involves also this facility but also beyond
16 Marcus Hook.

17 MR. RAPHAEL: Ms. Styles is not listed
18 as a witness for the Clean Air Council and is not
19 expected to testify. And this e-mail is
20 intertwined with those intermissions. So we would
21 object to the clear hearsay involved in this e-mail
22 string.

23 THE COURT: Sounds likes party
24 admissions to me.

1 MR. RAPHAEL: I guess you need to
2 authenticate those first, I believe, Your Honor.

3 THE COURT: Are you saying that these
4 people did not work for Sunoco?

5 MR. RAPHAEL: Your Honor, I think the
6 appropriate way to do that --

7 THE COURT: I'm asking you the
8 question. Are you saying that they do not work for
9 Sunoco.

10 MR. RAPHAEL: I'm not, Your Honor.
11 And, again, we need to be careful on what terms we
12 use as far as Sunoco because there are a variety of
13 Sunoco entities. The party in this case is SPMT.

14 THE COURT: Do they work for SPMT?

15 MR. RAPHAEL: As we sit here today,
16 Your Honor, I can tell you that Colin McGroarty is
17 a consultant for SPMT. I don't know, at the time
18 of these e-mails, who the employer of Ms. Styles or
19 Mr. Werner was, Your Honor. I do not. So if they
20 are not parties, it is not an admission.

21 THE COURT: Any objection from the
22 Department on any of these?

23 MS. HUNT: No, Your Honor.

24 THE COURT: Okay. They're admitted.

1 29, 30, 31, 32, 33, 34, 48 and 84.

2 MR. RAPHAEL: Thank you, Your Honor.

3 MR. BOMSTEIN: Thank you, Your Honor.

4 BY MR. BOMSTEIN:

5 Q. Mr. McGroarty, let's step back in time to
6 the fall of 2015. At that time the application for
7 plan approval E was pending, correct?

8 A. That's correct.

9 Q. And at that time Sunoco was also planning to
10 purchase new pumps for cooling tower 15-2B,
11 correct?

12 MR. RAPHAEL: Object, Your Honor. He's
13 calling for speculation.

14 THE COURT: Sunoco is planning on --

15 MR. BOMSTEIN: On purchasing new pumps
16 for cooling tower 15-2B.

17 MR. RAPHAEL: No foundation, Your
18 Honor. How would Mr. McGroarty know that?

19 THE COURT: Let's see if he has any
20 personal knowledge about that.

21 MR. BOMSTEIN: Absolutely.

22 BY MR. BOMSTEIN:

23 Q. Mr. McGroarty, are you familiar with the
24 discussion that -- let me rephrase it. Were you

1 involved in a discussion that centered around
2 purchasing new pumps for that cooling tower?

3 A. We were made aware of the project that would
4 require an RFD to install those new pumps.

5 Q. And you were aware that at that time there
6 was a project to install those new pumps, correct?

7 A. Correct.

8 Q. Ultimately this request was submitted to the
9 Department in an RFD with a number of 5597,
10 correct?

11 A. That's correct.

12 Q. Did you draft that application?

13 A. Yes, I did.

14 Q. The purpose of the RFD was to expand a
15 physical capacity of the 15-2B cooling tower with
16 the new pumps, correct?

17 A. It expanded the cooling water throughput.

18 THE COURT: The what?

19 THE WITNESS: The cooling water
20 throughput.

21 BY MR. BOMSTEIN:

22 Q. And when you say cooling water throughput,
23 what do you mean by that?

24 A. It's the design capacity of cooling water in

1 the tower.

2 Q. Okay. And that's a matter of what the
3 cooling tower can actually do when you use it to
4 its maximum, correct?

5 MR. RAPHAEL: Your Honor, I'm going to
6 object as a compound question.

7 THE COURT: Overruled.

8 THE WITNESS: I believe that's correct.

9 BY MR. BOMSTEIN:

10 Q. You stated in the -- actually strike that.
11 Speaking of capacity, before this RFD, there was a
12 permit limit that was 25,000 gallons of water per
13 minute to the cooling tower, correct?

14 A. Correct.

15 Q. But the actual physical limit for the tower
16 was 27,000 gallons per minute, correct?

17 A. I believe that to be correct, yes.

18 Q. And you stated in the RFD that the expansion
19 was to make room on the cooling tower for the
20 cooling load from other equipment called the
21 instrument air compressors, correct?

22 A. Correct.

23 Q. And your request said that the cooling load
24 from the instrument air compressors was 3,500

1 gallons per minute, correct?

2 A. Correct.

3 Q. In fact, the cooling load for the instrument
4 air compressors was 1,500 gallons of cooling water,
5 correct? Gallons per minute. Sorry.

6 MR. RAPHAEL: I'm going to object, Your
7 Honor, as a compound question.

8 THE COURT: Overruled.

9 THE WITNESS: That's correct.

10 BY MR. BOMSTEIN:

11 Q. You listed it as 3,500 gallons per minute in
12 order to raise the permitted capacity at the
13 cooling tower by that increment, correct?

14 MR. RAPHAEL: Your Honor, can we have
15 that read back?

16 - - -

17 (The requested portion was read back by
18 the reporter.)

19 - - -

20 MR. RAPHAEL: Thank you.

21 THE WITNESS: Correct. It was to
22 reconcile the difference between the design
23 capacities.

24 BY MR. BOMSTEIN:

1 Q. The 1,500 gallon per minute instrument air
2 compressor load could have been added to the 15-2B
3 cooling tower simply by raising the permit limit up
4 to the 27,000 gallons per minute, right?

5 MR. RAPHAEL: Your Honor, here we go.
6 Here we go again. Could have, right. So not what
7 happened. That's for -- what happened is for a
8 fact witness. He's saying could have, which is
9 asking for something that didn't happen and that
10 would require eliciting expert testimony --

11 THE COURT: Response to the objection,
12 Mr. Bomstein?

13 MR. BOMSTEIN: Maybe I can rephrase.
14 BY MR. BOMSTEIN:

15 Q. Were you, Mr. McGroarty, involved in
16 discussions in how to put together the RFD?

17 A. Yes.

18 Q. So you figured out what was needed to be
19 done to put together the RFD, correct?

20 A. Yes.

21 Q. One of the possibilities, tell me if I'm
22 wrong, was to simply raise the permit limit from
23 25,000 gallons per minute to 27,000 gallons per
24 minute, correct?

1 MR. RAPHAEL: Your Honor, again, I'm
2 going to object. It's about what happened. He's a
3 fact witness. If we're going to ask hypotheticals,
4 which is exactly what Mr. Bomstein asked, that is
5 appropriate for an expert witness. But again, as
6 you ruled on me the third, Mr. McGroarty, he's a
7 fact witness.

8 THE COURT: You're just asking him if
9 this is one of the things that they considered in
10 the process?

11 MR. BOMSTEIN: Yes, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: It most likely was, but
14 ultimately we take direction from the client.

15 MR. BOMSTEIN: Okay. Thank you.

16 BY MR. BOMSTEIN:

17 Q. Sometimes in your practice, Mr. McGroarty,
18 do you use something called a design margin?

19 A. Yes.

20 Q. When you put a design margin in something,
21 what does that mean?

22 A. Typically for the air permitting process, it
23 can take a long time and we are usually trying to
24 permit different projects well ahead of engineering

1 design. So to be conservative in our analysis, we
2 typically use design margins for that issue.

3 Q. Thank you. We talked a second about
4 instrument air compressors. Do you know based on
5 your work what an instrument air compressor is?

6 A. In a basic sense, yeah.

7 Q. What is it?

8 A. It's a unit, a source that would provide
9 compressed air to various portions of the facility.

10 Q. Is it a type of utility?

11 A. It is.

12 Q. These instrument air compressors provide
13 instrument air to the whole industrial complex,
14 correct?

15 A. That's correct.

16 Q. And that includes equipment that is built or
17 being built for Project E?

18 A. I believe so, yes.

19 Q. Changing footing for a second. So the
20 timing. ERM submitted RFD 5597 on behalf of Sunoco
21 on April 11, 2016, correct?

22 A. Correct.

23 Q. That's 10 days after the issuance of plan
24 approval E?

1 A. That sounds correct, yes.

2 Q. Sunoco deliberately waited for plan approval
3 E to be issued before submitting RFD 5597, correct?

4 MR. RAPHAEL: Your Honor, I'm going to
5 object.

6 THE COURT: Personal knowledge? Lack
7 of personal knowledge? Is that your objection?

8 MR. RAPHAEL: It is, Your Honor.

9 THE COURT: Okay. We need to establish
10 personal knowledge for that.

11 MR. BOMSTEIN: Sure. I'll lay some
12 foundation, Your Honor.

13 BY MR. BOMSTEIN:

14 Q. Mr. McGroarty, were you involved in the
15 timing of the submission of RFD 5597?

16 A. We had discussed it as part of the team,
17 yes.

18 Q. And were you the person who ultimately
19 submitted it?

20 A. I ultimately submitted it to SPMT. They
21 ultimately submitted it to the Department.

22 Q. And do you have personal knowledge on why
23 the RFD 5597 was submitted at the time it was?

24 A. Yes.

1 Q. So why was or am I correct in that RFD 5597
2 was deliberately submitted after plan approval E
3 was issued?

4 A. I believe there was discussion amongst the
5 project team on SPMT's side to wait.

6 Q. And am I correct in that the ultimate
7 decision was to wait until after plan approval E
8 was issued?

9 A. That's correct.

10 Q. Why?

11 A. If I am recalling correctly, the project
12 team did not want to cause confusion on the
13 Department's part.

14 Q. Both RFD 5597 and plan approval 23-0119 E
15 involved physical changes to the 15-2B cooling
16 tower, correct?

17 MR. RAPHAEL: Could you read that back.

18 - - -

19 (The requested portion was read back by
20 the reporter.)

21 - - -

22 THE WITNESS: No. The plan approval
23 23-0019 E did not involve any physical changes.

24 BY MR. BOMSTEIN:

1 Q. Do you agree RFD 5597 does?

2 A. It does.

3 Q. Why do you believe that plan approval
4 23-0119 E does not involve physical changes?

5 A. Project E only required additional cooling
6 water demand on that cooling tower. Did not
7 involve any physical changes or modifications to
8 the cooling water system.

9 Q. Are you not aware of any changes to the
10 cooling water lines?

11 A. I am not aware of cooling water lines.

12 Q. Thank you. In December of 2015 Sunoco
13 submitted another plan approval application,
14 correct?

15 A. I believe that to be correct, but refresh my
16 memory which one that was.

17 Q. Absolutely. Would you please turn to
18 exhibit A-12.

19 MR. RAPHAEL: Counsel, can you just
20 give us a moment to catch up?

21 MR. BOMSTEIN: Of course.

22 (Pause.)

23 BY MR. BOMSTEIN:

24 Q. In December of 2015, am I correct that

1 Sunoco submitted another plan approval application?

2 MR. RAPHAEL: Thanks so much, counsel.

3 If you could just give us a moment to catch up.

4 (Pause.)

5 MR. BOMSTEIN: Are you caught up?

6 MR. RAPHAEL: Yes, Counsel. Thank you.

7 THE WITNESS: Yes, that's correct.

8 BY MR. BOMSTEIN:

9 Q. Plan approval F had to do with updating
10 storage tank emissions limits to allow for the
11 intended operation of equipment permitted as part
12 of plan approval B, correct?

13 A. In part.

14 Q. And am I correct that there were a few tanks
15 that didn't have to do with plan approval B and
16 plan approval F?

17 A. That's correct.

18 Q. Please turn to exhibit A-35.

19 A. (Witness complies.)

20 Q. Could you please tell me what this is?

21 A. This is the Department-issued plan approval
22 number 23-0119 F.

23 Q. Thank you. When was this issued?

24 A. August 15, 2016.

1 Q. You also prepared an application for the
2 replacement of the flare known as the ethylene
3 complex flare, correct?

4 A. That's correct.

5 Q. Could you please turn to A-14.

6 A. (Witness complies.)

7 Q. Could you please identify what A-14 is?

8 A. This is the plan approval application for
9 the SPMT flare replacement project.

10 Q. Thank you. Is that Project H?

11 A. Yes.

12 Q. Am I correct that in November 2017, you
13 submitted this version which is a revision of the
14 original to the Department?

15 A. That's correct.

16 Q. But this had been in the works for some
17 time, correct?

18 A. The overall project has been in the works
19 for an extended period of time, yes.

20 Q. Thank you for that clarification. Please
21 turn to A-38. This is arm day today, right?

22 A. (Witness complies.)

23 Q. What is this document?

24 A. This is a permit application for the SPMT

1 flare replacement project.

2 Q. Did this application go to Pennsylvania
3 Department of Environmental Protection?

4 A. Not directly, no.

5 Q. Was this submitted to the Delaware agency
6 instead?

7 A. Yes, it was submitted to Delaware Department
8 of Natural Resources and Environmental Control.

9 Q. And when was this submitted to DNREC?

10 A. November of 2015.

11 MR. RAPHAEL: Your Honor, I'm going to,
12 I guess, really ask for an offer of proof as to
13 where we're going here. You know, we're before the
14 hearing board about an action involving PA DP and
15 now we're in traveling down to Delaware. Perhaps
16 counsel could enlighten us.

17 THE COURT: Are you objecting?

18 MR. RAPHAEL: I'm asking for an offer
19 of proof actually, Your Honor. I'm just not sure
20 where we're going.

21 THE COURT: That's up to you.

22 MR. BOMSTEIN: Your Honor, I am putting
23 this in front of the witness simply to establish a
24 matter of timing and what happened. I don't intend

1 to delve into the contents of this document.

2 THE COURT: Okay.

3 BY MR. BOMSTEIN:

4 Q. Mr. McGroarty, this project eventually moved
5 from Delaware to Pennsylvania, correct?

6 A. That's correct.

7 Q. And, in fact, plan approval H was recently
8 issued, correct?

9 A. Correct.

10 Q. And there's a document here that I would ask
11 that you look at in Sunoco's binders. It's Sun-18.
12 What is Sun-18 or SPMT 18 as it's marked here?

13 A. This is the Department-issued plan approval
14 number 23-0119 H.

15 Q. Thank you. If you turn in to the contents
16 of the document, at some point does it also contain
17 a review memo from the Department?

18 A. Yes, it does.

19 Q. Thank you.

20 MR. BOMSTEIN: Your Honor, I move for
21 the admission of exhibits A-35, A-38 and SPMT-18
22 into evidence.

23 THE COURT: Any objections?

24 MR. RAPHAEL: We're just going back,

1 Your Honor, we have been in a furious pace. So we
2 just want to make sure that we're understanding the
3 linkage between the exhibit number and the actual
4 exhibits.

5 Could you repeat those again, please?

6 MR. BOMSTEIN: A-35, A-38 and Sun -- or
7 SPMT-18.

8 MR. RAPHAEL: Your Honor, we're going
9 to object to the plan that comes after plan
10 approval E on the grounds of irrelevance. And
11 we're also going to object to the document from
12 Delaware which has not been authenticated, and we
13 also think contains probably pages and pages of
14 hearsay of which there will be no witness to
15 testify to from DNREC. Those are our objections,
16 Your Honor, irrelevance and authenticity and
17 hearsay.

18 MS. HUNT: The Department has no
19 additional objections, Your Honor.

20 THE COURT: Thank you. Overruled. My
21 understanding on 38, it was -- you weren't planning
22 on getting into anything of the substance of it,
23 correct?

24 MR. BOMSTEIN: That's correct, Your

1 Honor.

2 MR. RAPHAEL: What is it being offered
3 for, Your Honor?

4 THE COURT: I thought it was for
5 timing, the timing of it.

6 MR. BOMSTEIN: Yes, Your Honor. Timing
7 and just a context of this project at this time was
8 in Delaware, it moved to Pennsylvania in a later
9 application and the other applications also here.

10 THE COURT: They're admitted.

11 MR. BOMSTEIN: Thank you, Your Honor.

12 BY MR. BOMSTEIN:

13 Q. Mr. McGroarty, are you aware that ERM
14 submitted a plan approval application on behalf of
15 the Marcus Hook facility in December 2017?

16 A. That's correct.

17 Q. Was that something you worked on as well?

18 A. Yes.

19 Q. Please turn to exhibit A-15.

20 A. (Witness complies.)

21 MR. RAPHAEL: Counsel, if you can just
22 give us a moment to catch up.

23 (Pause.)

24 MR. RAPHAEL: Thank you, Counsel.

1 MR. BOMSTEIN: Thank you.

2 BY MR. BOMSTEIN:

3 Q. Is this an application, Mr. McGroarty?

4 A. Yes, it is.

5 Q. Sunoco calls it the ME2X project, correct?

6 A. That's correct.

7 Q. This is associated with the expansion of the
8 Mariner Pipeline system known as Mariner's 2X,
9 correct?

10 MR. RAPHAEL: I'm going to object, Your
11 Honor. Calling for speculation.

12 THE COURT: Establish personal
13 knowledge first.

14 BY MR. BOMSTEIN:

15 Q. Mr. McGroarty, are you familiar with the
16 existence of a Mariner's 2X pipeline project?

17 A. Yes, I am.

18 Q. And you're familiar with this ME2X project
19 which is Project I, correct?

20 A. Correct.

21 Q. And the two are associated, correct?

22 A. I believe them to be, yes.

23 Q. The ME2X project at Marcus Hook handles
24 additional volumes of natural gas liquids received

1 at Marcus Hook, correct?

2 A. Specifically ethane, yes.

3 THE COURT: I couldn't hear the end of
4 that.

5 THE WITNESS: Specifically ethane, yes.

6 THE COURT: Ethane?

7 THE WITNESS: Yes, sir.

8 BY MR. BOMSTEIN:

9 Q. And those additional volumes are associated
10 with the additional pipeline -- the pipeline
11 expansion, correct?

12 A. I believe that to be correct, yes.

13 Q. Similarly, Project D handled additional
14 volume of natural gas liquids received at Marcus
15 Hook and was associated with the pipeline
16 expansion, correct?

17 MR. RAPHAEL: I'm going object to the
18 compound nature, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: Can I have that one more
21 time?

22 BY MR. BOMSTEIN:

23 Q. Absolutely. And just for clarity I'll break
24 it down. Project D handled additional volumes of

1 natural gas liquids received at Marcus Hook,
2 correct?

3 A. That's correct.

4 Q. And Project D was also associated with an
5 expansion of the Mariner pipeline system, correct?

6 A. Correct.

7 Q. I'm going to change topics, Mr. McGroarty.
8 Let's talk about baselines. So in your experience
9 putting together applications for plan approvals,
10 do you work with the New Source for Review program?

11 A. Yes, I do.

12 Q. And do you have to deal with calculations of
13 baseline actual emissions?

14 A. Yes, I do.

15 Q. What are baseline actual emissions in that
16 context?

17 MR. RAPHAEL: Your Honor, again, I
18 mean, Mr. McGroarty is a fact witness. So it's
19 perfectly appropriate to ask him what he did
20 relative to plan approvals. But to get into highly
21 technical expert testimony with, again, a fact
22 witness, we would object to that, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: I'm sorry, can I have the

1 question?

2 MR. BOMSTEIN: No problem.

3 BY MR. BOMSTEIN:

4 Q. So in the context of when you're going
5 through a New Source Review analysis and you're
6 working with baseline actual emissions, what are
7 baseline actual emissions?

8 A. Baseline actual emissions are typically a
9 two-year average of historical source emission
10 notes.

11 Q. Do you deal also with projected actual
12 emissions?

13 A. Yes, I do.

14 Q. What are those?

15 MR. RAPHAEL: Your Honor, I'm going to
16 again object. He is being called as a fact witness
17 and being asked expert testimony.

18 THE COURT: Overruled.

19 THE WITNESS: Project the actual
20 emissions are the expected emission rates of the
21 project post-construction.

22 BY MR. BOMSTEIN:

23 Q. For Project E, did you put together -- let
24 me strike that. For Project E, did you choose --

1 need to choose a baseline period at some point in
2 time?

3 A. Not directly, no.

4 Q. So it's your testimony that you never --
5 well, okay let me clarify. What do you mean not
6 directly?

7 A. For permitting of resources you follow the
8 same process of choosing a baseline and evaluating
9 projected actuals and that difference. For new
10 sources they have no baseline, so that baseline is
11 zero.

12 Q. Are you familiar with the Department of
13 Environmental Protection's technical review memos
14 for Project E?

15 A. Yes, I am.

16 Q. Are you aware that in the technical review
17 memo that the Department put out when plan approval
18 E was issued, there was a representation of what
19 baseline years were for the project?

20 A. Yes.

21 Q. Do you have any idea of how the Department
22 came up with those baseline years?

23 MR. RAPHAEL: Your Honor, a perfectly
24 and appropriate question for the Department, but

1 pure speculation for Mr. McGroarty.

2 THE COURT: Well, he asked if he knew.

3 So the question as pending is if he knows.

4 Do you know how the Department came up
5 with its number?

6 THE WITNESS: The baseline years were
7 requested by SPMT.

8 BY MR. BOMSTEIN:

9 Q. Were you involved in that request?

10 A. Yes.

11 Q. So when I asked you earlier about how you
12 know, if there was any choice of baseline years and
13 -- what distinction were you making?

14 A. The baseline years were not established with
15 E. They were established with plan approval B.

16 Q. Were those baseline years used in plan
17 approval E?

18 A. Not directly, no.

19 Q. At no point in time?

20 A. No.

21 Q. So going back to the Department's technical
22 review memo, which years were listed in that review
23 memo? In the one -- to be clear -- that was issued
24 concurrently with the issuance of plan approval E?

1 A. I would like to be accurate. Do you mind if
2 we look at it?

3 Q. Not at all. Give me a second to find the
4 appropriate reference. Could you please turn to
5 exhibit A-23.

6 MR. RAPHAEL: Give us a moment,
7 counsel.

8 (Pause.)

9 BY MR. BOMSTEIN:

10 Q. Direct your attention to page five of that
11 document.

12 A. (Witness complies.)

13 Q. Do you see a line right in the middle of
14 that page under the heading step one referring to
15 baseline period?

16 A. Yes.

17 Q. Could you please read that first sentence?

18 A. The baseline period for all existing sources
19 is calendar years 2009 and 2010.

20 Q. Was the Department wrong?

21 MR. RAPHAEL: Your Honor, I'm going to
22 object. I bet you can guess why. Because he's
23 asking for an expert opinion from Mr. McGroarty.

24 THE COURT: Correct. That's your first

1 valid objection, Mr. Raphael. Sustained.

2 MR. RAPHAEL: Amen, Your Honor.

3 THE COURT: On that issue I should say.

4 BY MR. BOMSTEIN:

5 Q. Let me ask you a different question then,
6 Mr. McGroarty. How did those numbers end up in
7 this document, if you know?

8 A. I believe them to be relevant to the
9 axillary boilers.

10 Q. What's their relevance?

11 A. That we have established those years as the
12 baseline for the boilers.

13 Q. Are those years also considered the baseline
14 for any other equipment?

15 A. Not in relation to plan E.

16 Q. Are you aware of whether there are any
17 baseline years chosen for any other equipment for
18 plan approval E?

19 A. If I recall correctly, there were new
20 sources and existing non-modified sources. Those
21 non-modified sources do not require the
22 establishment of baseline emissions.

23 Q. Were you involved in coming up with the
24 years 2009 and 2010 rather than other years?

1 A. Only specifically for the boilers.

2 Q. So you did have some involvement in
3 selecting baseline years for Project E, correct?

4 A. No. Those baseline years were established
5 with Project B.

6 MR. RAPHAEL: Your Honor, I believe
7 it's been asked and answered now. Objection.
8 Asked and answered.

9 THE COURT: It's already answered?

10 MR. RAPHAEL: Correct.

11 MR. BOMSTEIN: Your Honor, maybe it's
12 my confusion here, but I'm trying to figure out
13 what happened -- what Mr. McGroarty's involvement
14 was in selecting baseline years. And maybe it's
15 just to my ears, but it sounds like I'm getting
16 contradictory answers. But I'll pursue this but
17 make sure I'm covering new ground as I do.

18 BY MR. BOMSTEIN:

19 Q. Mr. McGroarty, do you know why baseline
20 years set with plan approval B had any relevance to
21 plan approval E?

22 MR. RAPHAEL: Your Honor, to the extent
23 that is not a factual question but asking for
24 expert opinion, we would object.

1 THE COURT: Overruled.

2 THE WITNESS: I'm sorry, can you ask me
3 one more time?

4 MR. BOMSTEIN: No problem. Can you
5 repeat back the question, please.

6 - - -

7 (The requested portion was read back by
8 the reporter.)

9 - - -

10 THE WITNESS: I believe in the 23 0119
11 E or Project E application, there was a table for
12 the axillary boilers that also showed the baseline
13 years.

14 BY MR. BOMSTEIN:

15 Q. In your understanding, is that the only
16 reason why there's any reference to baseline years
17 in the technical review memo that we have been
18 looking at?

19 A. That is my understanding, yes.

20 Q. Are you aware of whether the Department,
21 during their review of plan approval E, made any
22 new determination about what baseline years are
23 appropriate?

24 A. I do not. You would have to ask the

1 Department.

2 Q. Did you have any discussions with the
3 Department during the submission and review of plan
4 approval application E concerning what baseline
5 years would or would not be appropriate?

6 MR. RAPHAEL: Objection. Compound
7 question.

8 THE COURT: Overruled.

9 THE WITNESS: Not that I recall.

10 BY MR. BOMSTEIN:

11 Q. Do you know why the 2009/2010 years were
12 chosen as the baseline in connection with Project
13 B?

14 A. In my recollection, it was determined as a
15 more representative baseline to the boilers.

16 Q. Why was it more representative, in your
17 opinion?

18 MR. RAPHAEL: Object, Your Honor.

19 THE COURT: Why did you decide in the
20 context of the application process that it was more
21 relevant?

22 MR. BOMSTEIN: I misphrased that.

23 MR. RAPHAEL: I'm sorry, I just want to
24 put my full objection. Objection. That requires

1 expert testimony. Thank you.

2 THE WITNESS: Could you repeat the
3 question?

4 MR. BOMSTEIN: I can rephrase that.

5 BY MR. BOMSTEIN:

6 Q. Were you involved in that determination for
7 Project B, the baseline years?

8 A. Yes, I was.

9 Q. And when you were involved in that
10 determination, why did you put forth as more
11 representative the years 2009 and 2010?

12 A. That time period was during which the
13 boilers were operated closer to their capacity.

14 Q. When you say closer to their capacity, what
15 do you mean by that?

16 A. They were producing more steam.

17 Q. And am I correct that in 2009 or 2010, that
18 was during the time when Marcus Hook was operating
19 as a refinery?

20 A. That's correct?

21 Q. Turning to the 15-2B cooling tower again.
22 Do you recall that shortly after plan approval E
23 was issued, you had a discussion with department
24 engineer George Eckert about the cooling tower and

1 the flare?

2 A. I believe so, yes.

3 Q. Could you please turn to exhibit A-52?

4 A. (Witness complies.)

5 Q. Does this e-mail thread include that
6 discussion?

7 A. Can I just read through it one second?

8 Q. Take your time.

9 (Pause.)

10 A. Yes, it does.

11 Q. And did you receive these e-mails?

12 A. Yes, I did.

13 Q. Am I correct in that you were made aware
14 that there was a preexisting cooling load on the 15
15 cooling B tower amounting to over 19,000 gallons
16 per minute?

17 A. I believe that 19,000 gallons per minute was
18 the activity that was represented in the emissions
19 inventories.

20 Q. And do you know if that activity represented
21 in the emissions inventories represented an actual
22 use of the cooling tower?

23 A. I do not.

24 Q. Are you involved in -- scratch that. Where

1 did you get the information that it was from the
2 emissions inventories?

3 A. From SPMT.

4 Q. Do you have any reason to believe that those
5 emissions inventories are inaccurate?

6 A. No, I do not. I do not. I was not involved
7 in them.

8 Q. Are you familiar with emissions inventories?

9 A. Yes.

10 Q. Do you need to look to emissions inventories
11 when calculating emissions increases for projects
12 that you have worked on?

13 MR. RAPHAEL: Your Honor, again, we're
14 nudging into expert testimony. What he did or
15 didn't do is perfect for a fact witness. Mr.
16 McGroarty is not an expert witness. Objection.

17 THE COURT: Can you answer it with
18 respect to this particular project? What you did
19 on this particular project?

20 THE WITNESS: For Project E we
21 evaluated cooling water impact based on the cooling
22 tower design.

23 BY MR. BOMSTEIN:

24 Q. Did you not look to emissions inventories at

1 all?

2 A. We may have to evaluate the total dissolve
3 solids of the cooling tower makeup water.

4 Q. Were you involved in that?

5 A. Yes.

6 Q. Is it correct that you were comfortable that
7 those emissions inventories were accurate enough
8 for use in putting together applications for
9 Project E?

10 A. Yes.

11 Q. And emissions inventories -- the emissions
12 inventories that you looked at represented actual
13 emissions from equipment at the Marcus Hook
14 facility, correct?

15 A. In my understanding, yes.

16 Q. So if there's an emissions -- so there was
17 an emissions inventory that stated that the cooling
18 tower was being used at a level of 19,000 some
19 gallons per minute, correct?

20 A. I believe so, yes.

21 Q. So you were aware that there was some
22 equipment requiring that amount of cooling water at
23 Marcus Hook, correct?

24 A. Well, that I could not be certain of.

1 Q. Why would you not have any lack of certainty
2 about that?

3 A. Well, generally I don't -- I'm not a part of
4 generating the emission inventory. So I'm not
5 aware of where all the activity factors come from.

6 Q. So you don't know whether the 19,000 gallons
7 per minute is representing real equipment use or is
8 a phantom number?

9 A. I do not.

10 Q. Did you investigate that?

11 A. No.

12 Q. And Mr. Eckert brought that to your
13 attention, correct?

14 A. That's correct.

15 Q. Did the cooling tower -- the 15-2B cooling
16 towers permitted capacity at that time had just
17 been increased to 28,500 gallons per minute,
18 correct?

19 A. I believe so. I can't remember exactly when
20 the RFD was approved.

21 Q. Could you turn to A-16, please.

22 A. (Witness complies.)

23 Q. Does that refresh your recollection?

24 MR. RAPHAEL: Just give us a moment, if

1 you could. We need to again switch notebooks.

2 Thanks.

3 (Pause.)

4 BY MR. BOMSTEIN:

5 Q. Does that refresh your recollection?

6 A. It does.

7 Q. So am I correct in that the cooling tower's
8 permitted capacity at that time had just been
9 increased to 28,500 gallons per minute?

10 A. That's correct.

11 Q. Is any cooling tower besides 15-2B involved
12 in Project E?

13 A. Nope.

14 Q. Is it correct that you don't know what
15 happened to that 19,000-plus gallons per minute
16 load that Mr. Eckert brought to your attention?

17 A. I do not.

18 Q. And you don't know what equipment, if any,
19 that 19,000-plus gallons per minute of cooling
20 water was supporting, do you?

21 A. I do not.

22 Q. And that level of demand for the cooling
23 tower, do you know what happened to that level of
24 demand?

1 A. I do not.

2 Q. You wrote to the Department that the
3 calculated load -- cooling load from Project B and
4 E together on the cooling tower was just less than
5 25,000 gallons per minute, correct?

6 A. Correct.

7 Q. And 25,000 gallons per minute was the
8 permitted limit before the RFD 5597 was issued,
9 correct?

10 A. Correct.

11 Q. Do you understand that Sunoco's engineers
12 calculated the normal load from projects B and E to
13 be above 25,000 gallons per minute?

14 A. No.

15 MR. BOMSTEIN: Just one second, Your
16 Honor.

17 (Pause.)

18 BY MR. BOMSTEIN:

19 Q. Could I ask you to turn to A-40, please once
20 you have had a moment.

21 A. 40?

22 Q. Yes, 40.

23 MR. RAPHAEL: Counsel, if you can just
24 give us a moment. We're going to be switching out

1 our notebooks again.

2 MR. BOMSTEIN: Sure.

3 (Pause.)

4 BY MR. BOMSTEIN:

5 Q. Now, what is this document, Mr. McGroarty?

6 A. This is the record of my deposition on July
7 10, 2017.

8 Q. Thank you. Could you turn to page 174 of
9 that document, please.

10 A. (Witness complies.)

11 MR. RAPHAEL: Your Honor, and just
12 before -- I guess I'd like an offer if he's going
13 to confront the witness with his deposition because
14 I noticed at the back that there's no -- that there
15 doesn't appear to be the errata sheet that would go
16 along with that deposition. After a deposition,
17 what occurs is the witness is given the opportunity
18 --

19 THE COURT: I would really prefer if
20 you would stop with the speeches. Do you have an
21 objection?

22 MR. RAPHAEL: I do, Your Honor. If
23 he's going to use this to try to impeach the
24 witness, it needs to be complete. That's my

1 objection, Your Honor. And the final version of
2 the deposition transcript, which includes the
3 errata sheet.

4 THE COURT: Response?

5 MR. BOMSTEIN: Yes. So we have the
6 errata sheets. We can -- you know, we'll hand them
7 out. This is the final version but there was an
8 errata sheet and we're happy to circulate that so
9 there's no question. So why don't we do that now.

10 MR. RAPHAEL: It's not in my binder,
11 Your Honor.

12 THE COURT: I'm sorry?

13 MR. RAPHAEL: It just wasn't in my
14 binder of the deposition transcript provided by
15 counsel.

16 MR. BOMSTEIN: No, that's right.
17 That's right. We have them separately.

18 (Pause.)

19 MR. BOMSTEIN: May I proceed?

20 THE COURT: Of course.

21 MR. BOMSTEIN: Thank you.

22 BY MR. BOMSTEIN:

23 Q. Mr. McGroarty, are you on page 174?

24 A. Yes.

1 Q. Okay. Great. Does this discussion that we
2 had at your deposition refresh your recollection as
3 to the calculated cooling water load on the 15-2B
4 tower?

5 A. Yes, I now recall the e-mail.

6 Q. And did you learn anything after this
7 discussion that would lead you to believe that the
8 calculation that the normal load was above 25,000
9 gallons per minute was incorrect?

10 A. I don't believe we learned anything new.
11 But we used the calculated cooling water design
12 capacities as provided to us.

13 Q. What do you mean you used the capacities as
14 provided to you?

15 A. In the application as well as in the review
16 memo there are tables of the calculated cooling
17 water demand for each user and we used that to
18 estimate emissions from the 15-2B cooling tower.

19 Q. Thank you.

20 MR. BOMSTEIN: Your Honor, I move to
21 admit exhibit A-52 into evidence.

22 MR. RAPHAEL: Your Honor, we're just
23 locating that in the binders before we determine if
24 we're going to render an objection.

1 (Pause.)

2 MR. RAPHAEL: Your Honor, we're having
3 the same problem we had with the earlier, which is
4 it's not a single e-mail, it's an e-mail string and
5 contains hearsay information from folks, including
6 Mr. Werner. So, again, it would be more
7 appropriate to admit a segment of something that
8 has been authenticated by Mr. McGroarty rather than
9 a string of e-mails that contains information from
10 witnesses who haven't testified. Clearly it would
11 be a hearsay and authenticity series of objections,
12 Your Honor.

13 THE COURT: 52 is admitted.

14 MR. BOMSTEIN: Thank you, Your Honor.
15 At this time we have no more questions for Mr.
16 McGroarty.

17 THE COURT: Is Sunoco going to ask
18 questions at this time of this witness?

19 MR. RAPHAEL: Your Honor, we're going
20 to defer our questioning to our case in chief. We
21 don't have any questions for Mr. McGroarty at this
22 time.

23 THE COURT: Department?

24 MS. HUNT: No questions, Your Honor.

1 THE COURT: Thank you for your
2 testimony.

3 THE WITNESS: Thank you, Your Honor.

4 MR. BOMSTEIN: Thank you, Mr.
5 McGroarty.

6 At this time, Clean Air Council would
7 like to call Mr. Jed Werner to the stand.

8 MR. RAPHAEL: Before we -- could we
9 take just a five-minute bathroom break?

10 THE COURT: Okay.

11 - - -

12 (A break was taken.)

13 - - -

14 MR. BOMSTEIN: Your Honor, if I may
15 just as a streamlining proposal, we have the errata
16 sheets for the other witnesses whose depositions
17 are in exhibit binders, and I propose if everybody
18 is okay with it just handing those out now.

19 THE COURT: Sure.

20 MR. RAPHAEL: Thank you, Counsel.

21 MR. BOMSTEIN: And a set here for the
22 witness.

23 So I would call Mr. Jed Werner to the
24 stand, please.

1 - - -

2 JED WERNER, after having been
3 first duly sworn, was examined and testified as
4 follows:

5 - - -

6 BY MR. BOMSTEIN:

7 Q. Mr. Werner, thank you for coming in today to
8 testify. Can you please state your full name and
9 business address?

10 A. Jed Alan Werner, 525 Fritztown Road, Sinking
11 Springs, PA.

12 Q. Thank you. What company do you work for?

13 A. I work for Energy Transfer Partners.

14 Q. Is Sunoco Partners Marketing & Terminals an
15 Energy Transfer company?

16 A. Yes, it is.

17 Q. Do you sometimes do work on behalf of Sunoco
18 Partners Marketing & Terminals?

19 A. Yes, I do.

20 Q. Do you recall that Sunoco selected you as a
21 corporate designee for a deposition in this case?

22 A. Yes.

23 Q. Without going into any confidential
24 discussions between you and your lawyers, please

1 tell me what you did to prepare for today.

2 A. I reviewed with -- reviewed my deposition.

3 I reviewed with counsel.

4 Q. Did you bring any documents with you?

5 A. I did not.

6 Q. What is your current job title?

7 A. I'm currently an air permitting manager for
8 Energy Transfer Partners.

9 Q. Does that include managing air permitting
10 associated with the Marcus Hook facility?

11 A. I do not manage air permitted for Marcus
12 Hook. I will help the facility environmental
13 compliance personnel with their air permitting for
14 compliance and also for new projects I would assist
15 and aid with that.

16 Q. Did you have involvement in your role, your
17 work role with plan approvals A? Or maybe I could
18 clarify it. Were you involved at all in preparing
19 the application for plan approval 23-0119 A?

20 A. I was not involved in preparing the
21 application.

22 Q. Were you involved in that permitting process
23 at all?

24 A. No, I was not.

1 Q. Were you involved in the process for
2 permitting plan approval 23-0119 B?

3 A. I was not involved in preparing the
4 application.

5 Q. Were you involved in the process of applying
6 for that plan approval at all?

7 A. No, I was not.

8 Q. Were you involved in the process of applying
9 for any of the plan approvals that we have
10 discussed today?

11 A. I was involved in preparing for plan
12 approval E, plan approval H and plan approval I.

13 Q. Could you please turn to exhibit A-49.

14 A. (Witness complies.)

15 Q. Could you please identify what this document
16 is?

17 A. This is an e-mail chain from George Eckert
18 to myself, Christine Essick and Colin McGroarty,
19 regarding the SXL depropanizer and ETP Project
20 Revolution.

21 Q. Thank you. Who is Ms. Essick?

22 A. Ms. Essick works for ERM.

23 Q. What is XSL Depropanizer and ETP Project
24 Revolution?

1 A. That is the subject that's referred to as
2 plan approval 230119 E. The project referred to as
3 plan approval 230119 E, or Project E, I guess we're
4 calling it.

5 Q. Thank you. Are you familiar with the
6 natural gasoline project?

7 A. Familiar, yes. But I don't have any
8 intimate knowledge of the project.

9 Q. That's fair. Are you familiar that the
10 natural gasoline project is the project that was
11 approved with plan approval 23-0119 B?

12 A. Yes, that is what that project was called.

13 Q. And the natural gasoline associated with
14 Project E is to be stored in the storage tanks that
15 were part of the natural gasoline project, correct?

16 MR. RAPHAEL: Can you read that back?

17 - - -

18 (The requested portion was read back by
19 the reporter.)

20 - - -

21 THE WITNESS: Natural gas that you
22 reference -- I don't understand what you're
23 referencing, natural gas for project E.

24 BY MR. BOMSTEIN:

1 Q. Could you please take a look at the first
2 e-mail in exhibit A-49 that starts with you
3 addressing George. Do you see that?

4 A. Yes. Let me read the e-mail.

5 Q. Could you read the second sentence in that
6 e-mail, please.

7 A. The part of the e-mail that starts with
8 George? Is that the section you're referring to?

9 Q. Yes. Do you see that there's two sentences
10 in that first paragraph there?

11 A. Yes.

12 Q. Could you please read the second one of
13 those?

14 A. The natural gasoline will be stored in the
15 storage tanks that were part of the natural
16 gasoline project 607, 609, 610 and 611.

17 Q. What were you referring to there?

18 A. I'm reviewing the question that George asked
19 me originally.

20 Q. And when you referenced the natural
21 gasoline, what natural gasoline are you
22 referencing?

23 A. In the question that was asked by George
24 Eckert, he asked about the storage of propane,

1 butane and C5+. So my answer would be that the C5+
2 would be stored in those tanks.

3 Q. And Mr. Eckert was referring to natural
4 gasoline in the C5+ associated with Project E,
5 correct?

6 MR. RAPHAEL: I'm going to object.
7 Wouldn't it be appropriate to ask Mr. Eckert that?
8 He's asking for speculation from Mr. Werner.

9 MR. BOMSTEIN: I'm asking what his
10 understanding of what Mr. Eckert's e-mail was when
11 he responded to it.

12 THE COURT: Okay. Overruled, with that
13 understanding.

14 THE WITNESS: George Eckert asked were
15 those products -- where those products would be
16 stored and if we would be submitting subsequent GB2
17 or are they actually existing tanks. And I -- my
18 response was that they would be the existing tanks,
19 607, 609, 610 and 611.

20 BY MR. BOMSTEIN:

21 Q. Was it your understanding that Mr. Eckert
22 was referring to the storage of natural gasoline
23 associated with project E?

24 MR. RAPHAEL: Your Honor, again, same

1 objection. He just gave his answer. It's been
2 asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: George asked the question
5 of where the natural gasoline -- natural gasoline
6 would be stored in an existing facility with
7 atmospheric tanks. He was referring to gasoline as
8 part of Project E. And I indicated that the
9 natural gasoline at the facility is stored in those
10 tanks that is permitted for, 607, 609, 610, 611.

11 BY MR. BOMSTEIN:

12 Q. So is it your testimony that all natural
13 gasoline stored at the Marcus Hook facility is
14 stored in the tanks that were part of the natural
15 gasoline project?

16 MR. RAPHAEL: I'm going to object, Your
17 Honor. He's asking for speculation.

18 THE COURT: Overruled.

19 THE WITNESS: I do not know -- I don't
20 know the exact permitted location for all natural
21 gas tankage at Marcus Hook. I don't know the
22 answer to that question.

23 BY MR. BOMSTEIN:

24 Q. But at least as to the natural gasoline

1 associated with Project E, that would be stored as
2 part of the natural gasoline project tankage,
3 correct?

4 MR. RAPHAEL: Object again. Asking for
5 speculation. There's no foundation for personal
6 knowledge, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: The question was asked by
9 George Eckert where we would be storing the natural
10 gasoline as part of that project and I indicated
11 that they would not be new tanks. We would be
12 storing them in the existing tanks, 607, 609, 610,
13 611 for project E.

14 BY MR. BOMSTEIN:

15 Q. Thank you. Is it also the case that the
16 ethane, butane and propane storage associated with
17 Project E is to be stored in tanks built under
18 earlier plan approvals?

19 MR. RAPHAEL: Objection. Your Honor,
20 calling for speculation. Zero foundation.

21 THE COURT: Overruled.

22 THE WITNESS: The ethane -- can you ask
23 the question again?

24 BY MR. BOMSTEIN:

1 Q. Absolutely. The ethane, butane and propane
2 associated with -- let me restart. Do you see the
3 -- the first sentence under George comma in the
4 e-mail that we have been looking at.

5 A. Yes.

6 Q. Could you read that, please.

7 A. The referenced storage tanks for ethane,
8 butane and propane storage are the new cryogenics
9 tanks being constructed under the ME1 and ME2
10 permits.

11 Q. Thank you. What is the ME1 permit that
12 you're referring to there?

13 A. That would have been what we referred to as
14 Project 1, 0119.

15 Q. Thank you. And what is the ME2 permit that
16 you're referring to there?

17 A. That would be the cryogenic tanks that were
18 permitted as 230119 D.

19 Q. Thank you. And the referenced storage tanks
20 for ethane, butane and propane storage, what are
21 you referring to there?

22 A. There was a question that George Eckert
23 asked in the e-mail in section two, project
24 overview. You indicated that existing caverns and

1 planned storage tanks for ethane, butane and
2 propane will be used. So I was responding to that
3 question.

4 Q. And is that question, again, in reference to
5 Project E?

6 A. Yes.

7 Q. So is it the case that the ethane, butane
8 and propane storage associated with Project E is
9 going to be put into the new cryogenic tanks
10 associated with Project 1 and D?

11 MR. RAPHAEL: Again, I'm going to
12 object because I think he's already testified that
13 that wasn't the complete -- it wasn't his complete
14 knowledge regarding the Marcus Hook industrial
15 complex. That question has been asked and
16 answered, so I would object.

17 THE COURT: Overruled.

18 THE WITNESS: Can you ask the question
19 again so I can verify?

20 MR. BOMSTEIN: Sure. Can you please
21 repeat it? Thank you.

22 - - -

23 (The requested portion was read back by
24 the reporter.)

1 - - -

2 THE WITNESS: In the question that was
3 asked of George, the specific question was, you
4 indicate that existing caverns and plan storage
5 tanks for ethane, butane and propane will be used.
6 The cryogenic tanks that were being constructed
7 under one and D would be used to store the chill
8 components, but my understanding is they could also
9 use the caverns for propane and butane storage, the
10 existing caverns. And George -- again, that's the
11 question that George asked. Existing caverns would
12 be used for propane and butane storage potentially
13 or we could also use the cryogenic tanks for
14 ethane, butane and propane storage.

15 BY MR. BOMSTEIN:

16 Q. So am I correct that at least in part, the
17 ethane, propane and butane storage for Project E
18 will use the cryogenic tanks associated with
19 Project 1 and Project D?

20 A. Yes, that my understanding.

21 Q. Thank you.

22 MR. BOMSTEIN: I'd like to move to
23 admit into evidence A-49.

24 THE COURT: Any objection?

1 MR. RAPHAEL: Give me a second here.

2 (Pause.)

3 MR. RAPHAEL: Your Honor, we certainly
4 -- we would not object to the portion that Mr.
5 Werner just went over. The e-mail string itself
6 containing hearsay we would object to, Your Honor.

7 THE COURT: On what basis?

8 MR. RAPHAEL: It's hearsay, Your Honor.

9 THE COURT: Hearsay because why? Why
10 is it not part of the admissions?

11 MR. RAPHAEL: You would need to
12 authenticate the portion from Mr. Eckert, which Mr.
13 Werner isn't capable of doing.

14 THE COURT: That's a different
15 objection. I want to address your hearsay
16 objection. What is your basis for a hearsay
17 objection if George Eckert is the person who is
18 saying these things? Is it --

19 MR. RAPHAEL: Well, if, in fact -- Your
20 Honor, I guess if, in fact, that's authenticated
21 through Mr. Eckert then I would agree with you.
22 But it hasn't been authenticated yet.

23 THE COURT: You're basically making an
24 objection that you don't think this is an authentic

1 document. That's the objection you're making?

2 MR. RAPHAEL: I am making a record in
3 the case, Your Honor, because I don't believe it's
4 an appropriate way to enter this as an exhibit. He
5 could certainly offer to link it up subject to the
6 authentication of Mr. Eckert, which would normally
7 be done with a document like this. But Mr. Werner
8 has testified to that component of the e-mail and
9 we have no objection. It's an e-mail string. More
10 appropriately would be the response through Mr.
11 Werner and then through Mr. Eckert when he takes
12 the stand.

13 THE COURT: The basis for your
14 objection is that this could only come in if Mr.
15 Eckert testifies?

16 MR. RAPHAEL: If he authenticates his
17 piece of it. The piece that Mr. Werner has
18 authenticated, we have no objection to, that's
19 correct.

20 THE COURT: Do you have any basis for
21 suspecting that this is not an authentic e-mail
22 from Mr. Eckert?

23 MR. RAPHAEL: I do not, Your Honor.
24 It's process, Your Honor. It's judicial process

1 for documents like this.

2 THE COURT: I'm sorry?

3 MR. RAPHAEL: It's just a process that
4 I'm familiar with, Your Honor, for documents like
5 this that contain, you know -- if it is not
6 authenticated, it would be hearsay. If it is, then
7 it would be admission, Your Honor. I agree with
8 you, Your Honor. We're just making a record in the
9 case. We have no objection to the portion of the
10 e-mail that Mr. Werner sent to Mr. Eckert. No
11 objection, Your Honor. It's been authenticated and
12 he has confirmed what he said. He's on the witness
13 stand. No objection. It's an e-mail string. It
14 is not just one document. It's a series. So the
15 first component of that exhibit we have no problem
16 with, Your Honor. It's the other piece which is
17 from Mr. Eckert that we're not sure yet. It can be
18 linked up when Mr. Eckert takes the stand, which I
19 expect is going to happen.

20 THE COURT: Wait a minute. Your
21 position on this is that the witness has to be on
22 the stand before this can be admitted? Mr. Eckert
23 has to be on the stand before it can be admitted?
24 Because otherwise this might be a fabrication?

1 MR. RAPHAEL: Again, Your Honor, we
2 have no reason to believe -- it's just simply the
3 process that's normally done. I'm not sure why
4 we're doing a string of e-mails, as opposed to
5 doing this with the individual witnesses.

6 THE COURT: Yeah, but you're objecting
7 to it being admitted into evidence. So I need to
8 understand -- I mean, you have some view of the way
9 a process should go. If you have an objection it's
10 because there's a violation of a rule of evidence.

11 MR. RAPHAEL: Sure, Your Honor.

12 THE COURT: Tell me what the -- cite me
13 a rule of evidence that's being violated here.

14 MR. RAPHAEL: Sure, Your Honor. So Mr.
15 Werner's component of the e-mail --

16 THE COURT: Cite me the rule and then
17 you can go from there.

18 MR. RAPHAEL: Sure. It would be
19 authentication, Your Honor, for Mr. Eckert. I'm
20 not sure that Mr. Werner is in a position to
21 authenticate what Mr. Eckert sent to him, except
22 what he received and believed to be from Mr.
23 Eckert. Mr. Eckert can certainly do that.

24 THE COURT: What rule would that be?

1 MR. RAPHAEL: It would be the rule of
2 authentication, Your Honor.

3 THE COURT: Can you refer me to the
4 number so we can all look at it so I can fully
5 understand the basis for your objection?

6 MR. RAPHAEL: Sure.

7 (Pause.)

8 MR. RAPHAEL: We're just digging
9 through our rules, Your Honor. I'll be happy to do
10 so.

11 (Pause.)

12 THE COURT: Well, it's approximately
13 1:00. So I'll give you an opportunity to provide
14 the legal background for your objection and we can
15 -- over lunch and then we --

16 MR. RAPHAEL: Happy to do so, Your
17 Honor.

18 THE COURT: I have got 1:00. So we'll
19 be back at 2:00. Is that okay with everybody?

20 MR. RAPHAEL: Very good. Thank you,
21 Your Honor.

22 THE COURT: And I'm going to -- a
23 typical standing instruction that no counsel should
24 speak to any witness that is in the midst of being

1 examined on the stand during the break.

2 MR. RAPHAEL: Very good. Your Honor,
3 relative to this case, right? We can have lunch?

4 THE COURT: Yeah. Yeah. Just no
5 discussions regarding this case.

6 MR. RAPHAEL: Thank you, Your Honor.

7 (Lunch break.)

8 THE COURT: Back on the record. Mr.
9 Raphael?

10 MR. RAPHAEL: Sure, Your Honor. And I
11 deferred with counsel of the Department during the
12 break and they assured me that George Eckert did,
13 in fact, send that original e-mail, which
14 authenticates it for our purposes and we would make
15 the admission. So we withdraw that objection. You
16 had asked, Your Honor, for the rule.
17 Authentication rule is Rule 901.

18 THE COURT: Objection withdrawn.
19 Exhibit-49 is admitted.

20 MR. BOMSTEIN: Thank you, Your Honor.

21 BY MR. BOMSTEIN:

22 Q. Mr. Werner, do you recall the time when plan
23 approval -- the application for plan approval
24 29-0119 E was pending with the Department?

1 A. Yes.

2 Q. Okay. Thank you. Do you recall during that
3 time there was a slide show that Sunoco prepared
4 for the Department regarding that plan approval
5 application?

6 A. After the application was submitted?

7 Q. Yes.

8 A. Offhand I don't recall.

9 Q. Do you recall if there was one Sunoco
10 presented for the Department pre-submission but
11 regarding that same project?

12 A. For Project E we had a multi-media
13 pre-application meeting with the Department that we
14 presented a short slide show.

15 Q. Thank you. And do you recall what was --
16 what was your involvement with that slide show?

17 A. I didn't -- I don't recall having any direct
18 involvement with the slide show. I reviewed it
19 prior to the presentation, but I was not involved
20 in preparing it.

21 Q. Okay. And I'll just ask to refer to your
22 review of the slide show then rather than other
23 types of involvement. Do you recall that that
24 slide show represented to the Department that

1 Project E is part of the ongoing process of
2 rebuilding the complex into the Marcus Hook
3 industrial complex?

4 MR. RAPHAEL: Your Honor, I'm going to
5 object. The best evidence of that is the document
6 itself.

7 THE COURT: So your objection is best
8 evidence rule?

9 MR. RAPHAEL: Your Honor, he's asking
10 -- he's asking to speculate what it is. If he put
11 it in front of him, I withdraw it.

12 THE COURT: I just want to understand
13 your objection. Best evidence rule? Could you
14 cite me the rule for that so I can take a look and
15 see? I have never had that done, so I need to
16 check that out.

17 MR. RAPHAEL: Sure. Sure, Your Honor.
18 The best evidence rule is PA rule of evidence 1002
19 objection. This evidence is not the best evidence
20 of written contact between the parties --

21 THE COURT: Wait a minute. I'm not
22 understanding you. Slow down a little bit.

23 MR. RAPHAEL: Sure. The original
24 writing has not been accounted for. So if he wants

1 to confront him with a PowerPoint, he should show
2 it to him and lay a foundation for it before asking
3 him about his involvement in it.

4 THE COURT: So he's not allowed -- your
5 view is under the rules of evidence, he's not
6 allowed to ask him any questions about the
7 PowerPoint presentation unless he is first showing
8 him a copy of that PowerPoint presentation?

9 MR. RAPHAEL: The substance of it, Your
10 Honor.

11 THE COURT: But that's not the best
12 evidence rule. The best evidence rule is between
13 the original of a document and a copy of a
14 document, isn't it? It talks about the requirement
15 of the original. I mean are you insisting at this
16 point that they produce the original version of
17 that?

18 MR. RAPHAEL: Your Honor, I'm simply
19 trying to move this along. Mr. --

20 THE COURT: Wait. Wait. I just want
21 to make sure what you just said. You're trying to
22 move this along?

23 MR. RAPHAEL: That's what I said, Your
24 Honor. Yes, sir.

1 THE COURT: Okay. I just want to make
2 sure I heard that. Go ahead. Go ahead. Finish
3 what you were going to say.

4 MR. RAPHAEL: Your Honor, I believe Mr.
5 Werner testified that he had reviewed it. He
6 wasn't involved in it. So why don't we --

7 THE COURT: Your objection is the best
8 evidence. So I want to make sure that I'm getting
9 it right. I understand your objection. So best
10 evidence and that's your basis for your objection?
11 And the best evidence is because we don't have the
12 original?

13 MR. RAPHAEL: I don't know what we
14 have, Your Honor.

15 THE COURT: Okay. Overruled.

16 MR. BOMSTEIN: Could you repeat back
17 the question, please.

18 - - -
19 (The requested portion was read back by
20 the reporter.)

21 - - -
22 THE WITNESS: My recollection probably
23 said that in the slide show presentation, yes.

24 BY MR. BOMSTEIN:

1 Q. And Mr. Werner, do you have an understanding
2 of how Project E fits into the process of
3 rebuilding the Marcus Hook industrial complex?

4 A. Just in the fact that it's another project
5 that is occurring at the Marcus Hook industrial
6 complex. It started as basically nothing when we
7 bought it and as projects come along from BD, we
8 continue to move forward with the next project.

9 Q. You said as projects come along from, and
10 then I think you might have said a shorthand for
11 something. What was that?

12 A. Business development.

13 Q. Thank you. Just one second, please.

14 (Pause.)

15 MR. BOMSTEIN: That's all the questions
16 we have for this witness. Thank you.

17 THE COURT: Mr. Raphael?

18 MR. RAPHAEL: No questions.

19 MS. HUNT: No questions, Your Honor.

20 THE COURT: Thank you.

21 MR. BOMSTEIN: We would like to call
22 Mr. Joseph Becker to the stand, please.

23

24

1 - - -

2 JOSEPH BECKER, after having been
3 first duly sworn, was examined and testified as
4 follows:

5 - - -

6 BY MR. BOMSTEIN:

7 Q. Mr. Becker, thank you for traveling here
8 today for this. Can you please state your full
9 name and business address for the record.

10 A. Joseph Paul Becker, 100 Green Street, Marcus
11 Hook, Pennsylvania 19061.

12 Q. Thank you. What company do you work for?

13 A. Energy Transfer Partners.

14 Q. Within Energy Transfer Partners, do you do
15 work for Sunoco Partners Marketing & Terminals?

16 A. Yes.

17 Q. Do you recall that Sunoco selected you as a
18 corporate designee for a deposition?

19 A. Yes.

20 Q. And that was in this case?

21 A. Yes.

22 Q. Without going into confidential discussions
23 between you and your lawyers, please tell me what
24 you did to prepare for today's deposition. I'm

1 sorry, today's hearing.

2 A. I reviewed the deposition and had some
3 meetings with counsel.

4 Q. Thank you. Did you bring any documents with
5 you today?

6 A. Not that I have up here, no.

7 Q. Okay. Thank you. Mr. Becker, you have a
8 bachelor's of science, correct?

9 A. Correct.

10 Q. Was this in chemical engineering?

11 A. Yes.

12 Q. Where is that from?

13 A. Clarkson University.

14 Q. When did you graduate?

15 A. 1981.

16 Q. What's your current job position?

17 A. Senior director of terminal engineering and
18 construction.

19 Q. What does that entail?

20 A. It has the broad responsibility of
21 development and implementation, construction of
22 projects.

23 Q. When you say projects, what kinds of things
24 are you talking about?

1 A. It could be anywhere from a business
2 development project for a new business opportunity.
3 It could be an infrastructure project. It could be
4 related to improving operations within the current
5 operation.

6 Q. And Mr. Becker, have you had a chance to
7 hear some of the testimony so far today?

8 A. Yes.

9 Q. Some of the projects that have been talked
10 about today, have you been involved with those
11 projects?

12 A. I have been involved in some of them to
13 varying degrees, yes.

14 Q. The Marcus Hook facility used to refine
15 crude oil, correct?

16 A. Yes.

17 Q. No longer does that, right?

18 A. Correct.

19 Q. And crude oil, just to get the terminology
20 straight, we're talking about liquids here, right?

21 A. Yes.

22 Q. And currently the Marcus Hook facility takes
23 in natural gas liquids, correct?

24 A. Among other things, yes.

1 Q. And natural gas liquids aren't all liquid at
2 room temperature, in your experience, correct?

3 MR. RAPHAEL: I'm going to object, Your
4 Honor. Again we're now getting into clearly
5 chemistry and scientific testimony that would
6 require expert. Objection. He is a fact witness.

7 THE COURT: Response?

8 MR. BOMSTEIN: So I'm simply asking, he
9 is part of the engineering of what goes on in
10 Marcus Hook and he needs to engineer things to
11 handle -- maybe I could add foundation, but he
12 needs to engineer things to handle liquids or
13 gases. And I'm asking in his experience with the
14 projects currently operating at Marcus Hook, some
15 of these things are gases.

16 THE COURT: You're just asking if some
17 of the things that are there are gases?

18 MR. BOMSTEIN: Yeah, the natural gas
19 liquids are gases in the normal course of the
20 operation.

21 THE COURT: That's a pretty basic
22 question. Overruled.

23 MR. RAPHAEL: Your Honor, it was a
24 different question he put on the record to the

1 witness.

2 THE COURT: Overruled as revised.

3 THE WITNESS: So the majority of the
4 processing done now is done in liquid form now.
5 Natural gas, the L in NGL is liquids. Natural gas
6 liquids. At room temperature, ambient conditions,
7 some of them would be in gaseous form.

8 BY MR. BOMSTEIN:

9 Q. Thank you. And part of -- were you at
10 Marcus Hook when it was a crude oil refinery?

11 A. Yes, for the last one or two years of that
12 era, yes.

13 Q. And did you need to get an understanding of
14 -- were you involved in any projects regarding the
15 operations of the refinery?

16 A. Yes.

17 Q. Can you give me an example?

18 A. At that time it was primarily small
19 infrastructure, maintenance infrastructure
20 projects.

21 Q. Did you do any maintenance infrastructure
22 projects regarding fractionation of crude oil?

23 A. No, I don't recall any.

24 Q. Okay. Are you familiar with what

1 fractionation of crude oil is?

2 A. In general terms, yes.

3 Q. What is that?

4 A. This is separating the various components of
5 crude oil.

6 Q. Okay. And currently at Marcus Hook there is
7 fractionation of natural gas liquids, correct?

8 A. Yes.

9 Q. In some of those instances when you're
10 fractionating natural gas liquids at Marcus Hook,
11 currently the product of those -- of that
12 fractionation process goes into storage tanks,
13 correct?

14 A. Yes.

15 Q. Is it also sometimes the case currently at
16 Marcus Hook that the fractionation product -- I'll
17 just call them the fractions -- go directly into
18 another fractionator?

19 A. In some situations that is the case.

20 Q. And is that also the case with Project E?

21 A. Yes.

22 Q. Thank you. The Marcus Hook refinery shut
23 down in 2011, correct?

24 A. I believe it was 2011, yes.

1 Q. And the facility -- I got at this a little
2 bit before, but the facility now receives natural
3 gas liquids from outside sources, correct?

4 A. Yes.

5 Q. And it also stores them?

6 A. Yes.

7 Q. It processes them?

8 A. Yes.

9 Q. It fractionates them?

10 A. Yes.

11 Q. And it distributes them?

12 A. Yes.

13 Q. At the time Sunoco purchased the Marcus Hook
14 facility, Sunoco knew that business opportunities
15 like natural gas liquids processing might exist
16 there, right?

17 A. Not in the business end of our organization.
18 But naturally in buying that facility, Sunoco
19 logistics felt that there were business
20 opportunities.

21 Q. And those business opportunities included
22 natural gas liquids fractionation?

23 A. I don't know if that was one of those
24 specifically thought of at that time.

1 Q. When did you personally first start working
2 on projects to allow Marcus Hook to handle incoming
3 natural gas liquids?

4 A. When I joined Sunoco Logistics in the middle
5 of 2012 or shortly thereafter, some of the projects
6 were involving natural gas liquids.

7 Q. Am I correct that's before Sunoco Logistics
8 bought the Marcus Hook facility?

9 A. I honestly don't know the date of the
10 transaction. It was in that general time frame.

11 Q. But at least at that time frame, Sunoco knew
12 that there were opportunities to develop natural
13 gas liquid projects at Marcus Hook, correct?

14 A. I think they believed that to be the case,
15 yes.

16 Q. And in fact, they tasked you with working
17 with some of those, correct?

18 A. Yes.

19 Q. Please turn to exhibit A-45.

20 MR. RAPHAEL: Counsel, just give us a
21 moment to catch up.

22 (Pause.)

23 BY MR. BOMSTEIN:

24 Q. Can you please describe what this document

1 is?

2 A. The document is an aerial photograph
3 denoting -- with footnotes and locations of various
4 equipment within the Marcus Hook industrial
5 complex.

6 Q. Thank you. Is there additional material
7 besides the aerial photo?

8 A. Yes, the key describing --

9 Q. Mr. Becker, are you familiar with this
10 document?

11 A. Yes.

12 Q. And how are you familiar with it?

13 A. I was personally involved in developing it.

14 Q. Is there anything in your knowledge that
15 would need to be corrected or updated on this
16 document to ensure its accuracy? And you can take
17 a second and take a look at it.

18 (Pause.)

19 A. I don't see anything in particular that
20 needs to be updated or corrected.

21 Q. Thank you for taking the time to take a look
22 at that.

23 MR. BOMSTEIN: I would move for the
24 admission of this document A-45 into evidence.

1 THE COURT: Any objection?

2 MR. RAPHAEL: No, Your Honor.

3 THE COURT: Admitted.

4 MR. WHITE: No, Your Honor. No
5 objection, Your Honor.

6 THE COURT: Okay. Admitted.

7 MR. BOMSTEIN: Thank you, Your Honor.

8 At this time we are going to put up demonstrative
9 exhibits to try to see if we can situate them so
10 that everybody can see and it's not blocking
11 anybody. So the first thing that we have put up is
12 a copy of this map, except that there is a little
13 bit of printing error, so the identification
14 numbers are offset a little bit from -- about an
15 inch maybe from where they are but otherwise it's
16 -- I'm not sure how that happened, but it's a copy
17 of that map on the first page. And the second
18 document -- the second demonstrative is a chart
19 that I'll walk through during the course of the
20 testimony. And if I may approach the witness, I
21 have another document for the witness, which is
22 just a blown-up version for your own reference so
23 that it's easier to work with of A-45. And if
24 anybody wants to see it, they certainly can.

1 MR. RAPHAEL: Can I just see that
2 before you hand it to him?

3 MR. BOMSTEIN: Absolutely.

4 MR. RAPHAEL: Thanks.

5 (Pause.)

6 BY MR. BOMSTEIN:

7 Q. Mr. Becker, I'm going to walk you through
8 some of the projects that we have talked about
9 today and also ask you to identify on the map or
10 you can stay seated and I you can point to things
11 and you can tell me if I'm right or wrong about
12 where equipment is that we have been talking about.
13 Does that work for you?

14 A. Sure.

15 Q. Thank you. And I also have this separate
16 demonstrative I'm going to call the storage and
17 processing chart, and as we go through your
18 testimony I may draw things on it.

19 So, Mr. Becker, could you please take a
20 look at exhibit A-6.

21 A. (Witness complies.)

22 Q. Thank you. Is this the application for plan
23 approval 23-0119 which we have been calling 1 so
24 far?

1 A. Yes.

2 Q. Thank you. Within Marcus Hook was this also
3 called the Mariner's 1 Project?

4 A. Yes.

5 Q. And the Mariner's 1 project involved
6 building equipment at the facility to receive,
7 handle and store propane and ethane from the
8 Mariner's 1 pipeline, correct?

9 A. Not necessarily just from the pipeline. It
10 could handle it from other sources as well. But
11 that included material from the pipeline.

12 Q. Okay. Thank you. And that included certain
13 storage tanks, correct?

14 A. Yes.

15 Q. So are those storage tanks for this project
16 at roughly one and two on this map?

17 A. Yes.

18 Q. Thank you. And so I'm going to, on this
19 other demonstrative here, fill in a one for storage
20 of ethane and propane to indicate that ethane and
21 propane are indeed stored as part of this project.
22 Is that fair?

23 A. (Witness nodded.)

24 Q. And is there also piping associated with

1 this project?

2 A. Yes.

3 Q. And cooling equipment as well?

4 A. Yes.

5 Q. Please turn to A-7.

6 A. (Witness complies.)

7 Q. Is this the application for plan approval A?

8 A. Yes.

9 Q. This is to install a deethanizer amine
10 treatment system and dehydrator?

11 A. Yes.

12 Q. The deethanizer, the point of that is to
13 fractionate natural gas liquids, correct?

14 MR. RAPHAEL: I'm going to object, Your
15 Honor, again. We're getting into expert testimony.
16 It's about what Mr. Becker did as a fact witness.
17 How the ethanizer works is clearly expert
18 testimony. Mr. Becker is a fact witness.

19 THE COURT: Overruled.

20 THE WITNESS: So the deethanizer
21 separates primarily the ethane and propane stream
22 entering the facility.

23 BY MR. BOMSTEIN:

24 Q. Thank you. So I will put a one also here

1 for the deethanization, and here for the record is
2 in the processing column of this demonstrative in
3 the ethane row. I'm sorry, this is an A, because
4 it's Project A.

5 Why did Sunoco want to install a
6 deethanizer, to the extent you know?

7 A. It was really driven based on the business
8 case behind the project. The original plan
9 approval was submitted at a time when the plan was
10 to batch the products, and upon further development
11 of the project, both internally and with customers,
12 it was determined a better path was to have a
13 blended stream transported and to separate in a
14 deethanizer.

15 Q. So just for clarity of the record, when you
16 say batch the product, what do you mean?

17 A. Meaning the two products would be
18 transported on a pipeline or otherwise, in this
19 case on a pipeline, as separate products in
20 batches.

21 Q. Thank you. Is blending and in contrast to
22 that when mixing the products together?

23 A. Yes.

24 Q. Thank you. Part of this is -- part of

1 Project A is for the installation of an amine
2 treatment system. I think we just went over that a
3 second ago. What does the amine treatment center
4 do here?

5 A. It can remove various contaminants from the
6 stream.

7 Q. Is it fair to say that it then purifies or
8 makes sure the final product is up to the
9 appropriate specifications?

10 MR. RAPHAEL: You're Honor, I'm going
11 to object again. That would require expert
12 testimony. Mr. Becker is a fact witness.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, it would be to
15 remove potential contaminants for the purposes of
16 meeting quality specification.

17 BY MR. BOMSTEIN:

18 Q. Is part of the amine treatment system that
19 was installed as part of Project A an amine
20 contactor?

21 A. Yes.

22 Q. That's the part that does the actual removal
23 of the impurities, correct?

24 MR. RAPHAEL: Your Honor, I'm going

1 object again. Again, that would require expert
2 testimony. Mr. Becker is a fact witness.

3 THE COURT: Overruled.

4 THE WITNESS: That's where the amine
5 solution is in contact with the product stream and
6 some of that -- the reaction occurs in that stream.

7 BY MR. BOMSTEIN:

8 Q. Is there as part of Project A also an amine
9 regeneration system?

10 A. Yes.

11 Q. And that, just as a factual matter,
12 processes the amine, correct?

13 MR. RAPHAEL: Your Honor --

14 THE WITNESS: Was that a question?

15 MR. RAPHAEL: To the extent he's trying
16 to extract an expert opinion by using the word
17 fact, I would object. He's asking for an expert
18 opinion. Mr. Becker is a fact witness.

19 THE COURT: Overruled.

20 THE WITNESS: The amine regeneration
21 regenerates the amine solution that's circulated in
22 the contactor and back to the regeneration.

23 BY MR. BOMSTEIN:

24 Q. The amine regeneration unit that's part of

1 Project A was built with more capacity than needed
2 for just Project A, correct?

3 A. I don't know the capacities exactly. We
4 certainly built it to satisfy Project A. And at
5 times, some degree of design allowance is designed
6 in above and beyond that.

7 Q. Do you happen to know if there was a design
8 allowance built in here?

9 A. As I said, in almost any situation there's
10 some amount of design allowance built in.

11 Q. Okay. And a dehydrator was installed here
12 as well as part of Project A, correct?

13 A. Yes.

14 Q. In this instance a dehydrator was built to
15 remove water from the ethane stream, correct?

16 MR. RAPHAEL: Again, I'm going to
17 object, Your Honor. Mr. Becker is a fact witness.
18 That requires expert testimony.

19 THE COURT: Overruled.

20 THE WITNESS: No, the dehydrator is
21 designed to remove it from the blended stream.

22 BY MR. BOMSTEIN:

23 Q. Okay. So not the ethane as a purity product
24 but the blended stream before it's fractionated,

1 correct?

2 A. Correct.

3 Q. Thank you. When did Sunoco become aware of
4 the need to install an amine treatment center and
5 dehydrator?

6 A. I don't know the specific dates. Sometime
7 during the development, business development and
8 engineering progress development process it was
9 determined that they were needed.

10 Q. Do you know why that wasn't part of the
11 first project, Project 1?

12 A. At the time of Project 1, the plan was to
13 batch the products which would have precluded the
14 need for a deethanizer.

15 Q. Would it have precluded a need for a
16 dehydrator?

17 A. Not necessarily. The need for the
18 dehydrator goes hand in hand with the amine
19 treatment. I think that was determined in the
20 development, in the interaction with customers on
21 the products and product specifications.

22 Q. So is it your testimony, just to be clear,
23 that at the time of Project 1 it wasn't yet known
24 what the customer's product specifications would

1 be?

2 A. I'd say that the specifics of that were
3 still on development.

4 Q. And is Project A part of the further
5 development of that?

6 A. Yes.

7 Q. And these additional types of equipment I
8 have been talking about, are they roughly at three,
9 four and five on this map?

10 A. Yes.

11 Q. Thank you. Please turn to exhibit A-8.

12 A. (Witness complies.)

13 Q. Is this the application for the plan
14 approval for Project B?

15 A. Yes.

16 Q. This is to install a truck loading facility
17 and convert existing storage tanks and a
18 fractionator to fractionate natural gasoline and
19 store both the feedstock and the resulting
20 fractions?

21 A. Yes.

22 Q. So the natural gasoline, as part of this
23 project, is to be stored in tanks, correct?

24 A. Yes.

1 Q. So the fractionator here takes C5+ and
2 splits it into C5 and C6+, correct?

3 MR. RAPHAEL: I'm going to object.
4 That would require expert testimony. Mr. Becker is
5 a fact witness.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MR. BOMSTEIN:

9 Q. So I'm going to put a B for Project B in the
10 pentane or depentanized row in the processing
11 column.

12 MR. WHITE: Your Honor, may the
13 Department ask at this time if Clean Air Council
14 intends to offer that demonstrative he's writing on
15 into as evidence or not?

16 MR. BOMSTEIN: The intention for this
17 demonstrative was to demonstrate to the Board, you
18 know, the things I'm writing on it now. At this
19 time we don't have an intention to have the
20 demonstrative in evidence itself.

21 MR. WHITE: Thank you.

22 BY MR. BOMSTEIN:

23 Q. And speaking of continuing on Project B.
24 The equipment for Project B is located at, in part,

1 six on this map, correct?

2 A. Yes.

3 Q. Also seven, correct? And also eight,
4 correct?

5 A. Yes.

6 Q. Thank you. And also 21 also has equipment
7 for Project B, correct?

8 A. Yes.

9 Q. Thank you. Please turn to A-9.

10 A. (Witness complies.)

11 Q. Is this an application for plan approval for
12 Project C?

13 A. Let me take a look at it.

14 (Pause.)

15 A. Yes.

16 Q. This is to install a cooling water tower to
17 service Project Mariner, correct?

18 A. Yes.

19 Q. The cooling water tower as part of Project C
20 generates cold water to cool other parts of this
21 Project Mariner, correct?

22 A. Yes.

23 Q. And am I correct in understanding that the
24 reason for this new project is because Sunoco

1 decided that it wanted to use water cooling for
2 that equipment rather than air cooling?

3 A. Yes.

4 Q. And the cooling tower here as part of
5 Project C is at nine on this map, correct?

6 A. Yes.

7 Q. Please turn to A-10.

8 A. (Witness complies.)

9 MR. RAPHAEL: Just give us a minute
10 here. Here we're having a technical difficulty
11 with the notebook, which I'm very confident we can
12 cure.

13 (Pause.)

14 MR. RAPHAEL: Thank you.

15 BY MR. BOMSTEIN:

16 Q. Is this the application for plan approval D?

17 A. Yes.

18 Q. Part of Project D is the installation of new
19 storage tanks for ethane, propane and butane,
20 correct?

21 A. Yes.

22 Q. So I'm going to put up on this chart D under
23 ethane, propane and butane. Some of this new
24 ethane, propane and butane would come on the

1 Mariner's 2 Pipeline, correct?

2 A. Some would, yes.

3 Q. Product D also involves installing a new
4 dehydration system, correct?

5 A. Yes.

6 Q. And what's the Project D dehydration system
7 act on? What product stream?

8 A. On the propane and butane streams coming
9 into the facility.

10 Q. Does it act on them as a blended stream or
11 individually?

12 A. Individually.

13 Q. Is that a similar process to the dehydration
14 system installed as part of Project A?

15 A. General process is similar. In the case of
16 A it dehydrates the blended stream prior to the
17 deethanizer splitting the products.

18 Q. Project D also involves a new cooling tower,
19 correct?

20 A. Yes.

21 Q. At the facility this is called the Mariner's
22 2 cooling tower?

23 A. That's what it's known as at the facility,
24 yes.

1 Q. And project D also involves installing a new
2 flare to burn off some of these products if there's
3 an emergency?

4 A. Yes.

5 Q. And Project D also uses the deethanizer
6 installed as part of Project A, correct?

7 A. It's the same piece of equipment but it is
8 repurposed, redesigned as a deethanizer.

9 Q. How did the redesign process affect the
10 tower?

11 A. It's a different separation. So the
12 internals of the tower need to be redesigned and
13 then rebuilt.

14 Q. And pardon me if you said this and I missed
15 it, but what does it now separate, that
16 fractionation tower?

17 A. Removes methane from the ethane stream.

18 Q. Okay. So I'll put a D in the demethanized
19 place here on this chart.

20 Is there anything else that the
21 deethanizer that was turned into a demethanizer as
22 part of Project D can currently -- is built to be
23 able to currently fractionate?

24 A. So to be clear, you're asking about the

1 current deethanizer?

2 Q. The same -- yes, the same fractionation
3 tower that was built as a deethanizer and then
4 redesigned as a demethanizer.

5 MR. RAPHAEL: Object as a compound
6 question, Your Honor.

7 THE COURT: Do you want to break it
8 down or...

9 MR. BOMSTEIN: Sure. Sure. I think
10 maybe there's a -- getting a little strayed from
11 the original question here.

12 BY MR. BOMSTEIN:

13 Q. I'm referring specifically to this same
14 piece of equipment that was built as a deethanizer
15 as part of Project A and then was redesigned to be
16 able to take methane out of ethane. Are we on the
17 same page?

18 A. So if you're referring to that piece of
19 equipment, I get it.

20 Q. Okay. Great. So can that piece of
21 equipment fractionate other things besides taking
22 methane out of ethane?

23 A. I'll need some clarification. Are you
24 talking about that particular vessel, if you wanted

1 to redesign it, could it be used for other products
2 or as it was?

3 Q. Sure. As it is now, can it be used to
4 fractionate other products?

5 A. So as it is now, which is still as a
6 deethanizer.

7 Q. Okay. So I think I was missing something.
8 So is the part of Project D to take the deethanizer
9 and convert it into a demethanizer, has that not
10 been accomplished yet?

11 A. That has not been done yet.

12 Q. Thank you. Is it still used as a
13 deethanizer now?

14 A. Yes.

15 Q. After it is turned into a demethanizer, will
16 it be able to fractionate other -- remove other
17 natural gas liquid fractions?

18 MR. RAPHAEL: Object to that, Your
19 Honor. That would require expert testimony. Mr.
20 Becker is a fact witness.

21 THE COURT: Overruled.

22 THE WITNESS: I would say no. It's
23 designed -- in any fractionation you design it for
24 the specific product that you need it to remove.

1 MR. BOMSTEIN: All right. Thank you.

2 BY MR. BOMSTEIN:

3 Q. Okay. Thank you. Was any new amine
4 treatment equipment installed as part of Project D?

5 A. As part of what?

6 Q. Part of Project D.

7 A. D. I don't believe there was any.

8 Q. Does Project D use the amine treatment
9 system installed as part of Project A?

10 A. Yes.

11 Q. Project D was an expansion of Projects 1, A
12 and C, correct?

13 A. I'm not sure what you mean by expansion. It
14 was additional product capacities that were part of
15 that business project and that's the design -- the
16 design was to satisfy that additional demand.

17 Q. By additional demand, you mean there's
18 additional volumes of these natural gas liquids,
19 correct?

20 A. Yes.

21 Q. Could you turn to Exhibit-41, please?

22 MR. RAPHAEL: Could you please give us
23 a second to catch up.

24 (Pause.)

1 BY MR. BOMSTEIN:

2 Q. Mr. Becker, please tell me if you recognize
3 this document.

4 A. I do.

5 Q. What is this?

6 A. It is the transcript of the deposition of
7 this hearing.

8 Q. Thank you. To be clear, the deposition of
9 yourself?

10 A. Of myself.

11 Q. Now please turn to page 60, please.

12 A. (Witness complies.)

13 Q. Do you see towards the bottom when I asked
14 you about plan approvals 1, A and C?

15 A. Yes.

16 Q. And then if you'll flip the page over to 61.
17 Do you see where I ask and is this Project 23-0119D
18 connected to those projects?

19 A. Yes.

20 Q. Could you say what your answer was?

21 A. It says I will restate that I viewed it as
22 an expansion generally on those projects.

23 Q. Thank you. The additional volume that we're
24 talking about here was expected at Marcus Hook

1 because of the expansion of the Mariner's pipeline
2 project, correct?

3 A. The expansion was due to the potential for
4 added volumes coming into the facility, some of
5 which could come from the Mariner's 2 pipeline.

6 Q. I'm going to go back to this map. Project D
7 has equipment at point 10 on this map, correct?

8 A. I'm sorry, repeat that.

9 Q. Sure. Sure. So Project D involves
10 equipment that is, in part, located at 10 on this
11 map, is that correct?

12 A. Yes.

13 Q. And also 11?

14 A. Yes.

15 Q. And 12?

16 A. Yes.

17 Q. And 13?

18 A. Yes.

19 Q. And 14?

20 A. Yes.

21 Q. And 15?

22 A. Yes.

23 Q. And 16, correct?

24 A. Yes.

1 Q. And it's also repurposing, as you discussed,
2 the deethanizer which is at five, correct?

3 A. Correct.

4 Q. Thank you. Please turn to A-11.

5 A. (Witness complies.)

6 Q. Is this the application for the plan
7 approval that's under appeal here, Project E?

8 A. Yes.

9 Q. Part of this project was the installation of
10 two depropanizers, correct?

11 A. Yes.

12 Q. Okay. So I'm going to put an E up here in
13 the depropanized block. These depropanizers
14 separate propane out from a C3+ stream, correct?

15 A. Yes.

16 Q. What remains in Project E after separating
17 that out is C4+, correct?

18 A. Correct.

19 Q. And the project also involves the
20 installation of debutanizer, correct?

21 A. Yes.

22 Q. So I'm going to put an E here also for
23 debutanize here on this chart.

24 And the debutanizer separates the

1 butane out of the C4+ stream, correct?

2 MR. RAPHAEL: Your Honor, I'm going to
3 object. That would require expert testimony and
4 Mr. Becker is a fact witness.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MR. BOMSTEIN:

8 Q. The depropanizers and debutanizer are
9 located at 17 and 18 of this map, correct?

10 A. Yes.

11 Q. Thank you. And the propane and butane may
12 be stored in the new tanks built as part of Project
13 D, correct?

14 A. The propane and butane from the depropanizer
15 and the debutanizer go to a number of locations,
16 including several existing locations within the
17 facility, as well as the tankage as part of the
18 previous Mariner plan approval.

19 Q. Does that include the tankage as part of
20 Project D?

21 A. Yes. Oh, wait. Can you ask that again?
22 I'm not sure about that.

23 Q. Sure. Does that include the tankage built
24 as part of Project D?

1 A. Yes.

2 Q. Okay. Thank you. And speaking of new
3 tanks, Sunoco sought an RFD to build spherical
4 storage tanks to store C3+, correct?

5 A. We built additional -- the RFD was for
6 additional spheres which are capable of handling a
7 number of products, propane, butane, C3+.

8 Q. Can you please turn to A-17.

9 A. (Witness complies.)

10 Q. Thank you. Is this the RFD that allows the
11 building of those new storage spheres?

12 A. Yes.

13 Q. Thank you. And that's part of Project E,
14 correct?

15 A. No, that was done separately.

16 Q. Can you please turn to exhibit A-41 again,
17 your transcript, deposition transcript. Please
18 turn to page 72 of that.

19 A. (Witness complies.)

20 Q. Do you see at the top my question, do you
21 know why these spheres were installed?

22 A. Yes.

23 Q. Can you please read your answer?

24 A. They were installed as part of Project

1 Revolution to receive C3+ stream.

2 Q. What is Project Revolution?

3 A. Project Revolution is Project E, but it was
4 not part of -- when you said Project E, I took that
5 to mean plan approval E. It was not part of that
6 plan approval. It was done separate from the plan
7 approval.

8 Q. Those new spheres, could you please point
9 out where those are on this map, roughly speaking?

10 A. I believe they're -- they're actually not
11 numbered there. So if you go to the right of
12 number eight.

13 Q. Over in this direction?

14 A. Yes.

15 Q. Okay.

16 A. Three light colored tanks directly to the
17 right. Just below that and slightly to the right
18 you'll see two darker colored spheres.

19 Q. Okay. Thank you. Project E produces as
20 part of the fractionation process natural gasoline,
21 correct?

22 A. Produces a C5+ stream once you remove the --
23 once you remove the butane. A term for it, a very
24 general term would be natural gasoline, yes.

1 Q. And this natural gasoline is stored in the
2 natural gasoline storage tanks for project B,
3 correct?

4 A. They are stored in the same storage tanks.

5 Q. And project B in turn takes the pentane out
6 of that natural gasoline, correct?

7 A. Project B has the capability of removing
8 pentane from a natural gas stream, that's correct.

9 Q. And the feedstock for that is the natural
10 gasoline that we're talking about here?

11 A. The feedstock for that can be a number of
12 sources. As was originally designed, we can bring
13 material in and do regularly in rail car and in
14 trucks to provide that feedstock, natural gasoline
15 feedstock.

16 Q. And it goes into those natural gasoline
17 storage tanks from which Project B draws its
18 feedstock, correct?

19 A. They do, yes.

20 Q. Now the end result of having plan approvals
21 one through E is that at Marcus Hook, Marcus Hook
22 will be able to have all the equipment it needs to
23 store and fractionate a stream of C3+, correct?

24 MR. RAPHAEL: Your Honor, I'm going to

1 object to that to the extent that goes beyond the
2 personal knowledge of Joe Becker. Again, Mr.
3 Becker is not an expert witness. He is a fact
4 witness.

5 THE COURT: Response?

6 MR. BOMSTEIN: So I'm asking Mr. Becker
7 about his personal knowledge of the equipment at
8 Marcus Hook and its design and capability. I am
9 not asking about his opinion on some technical
10 topic. Just what's there and what is that
11 currently designed to do.

12 THE COURT: Overruled.

13 THE WITNESS: Can you repeat the
14 question, please?

15 BY MR. BOMSTEIN:

16 Q. Sure. I'll even take a step back here. So
17 at some -- as part of Project D there will be --
18 once the fractionation tower is reconfigured there
19 will be removal of methane from ethane, correct?

20 A. Yes.

21 Q. And that methane, where does that go?

22 A. That methane goes to the facility's fuel gas
23 system.

24 Q. Okay. I'm going to put a D here. There's

1 no storage precisely of the methane. That's why
2 there's a little flame going here. It goes to the
3 fuel. And Project B involves storage for pentane,
4 correct?

5 A. Yes.

6 Q. And it involves storage of light naphtha
7 which is produced after the fractionation, correct?

8 A. Yes.

9 Q. So I'm going to put B here and here also.

10 So at Marcus Hook once all these
11 projects are finished being built, you'll have the
12 ability to store, fractionate and distribute all
13 the products from a stream of C3+, correct?

14 A. Yes.

15 Q. And, Mr. Becker, are you aware that Sunoco
16 had marketed Marcus Hook to potential shippers as
17 an operation that's able to receive ethane,
18 propane, butane, C3+, natural gasoline, or
19 condensate or any combination of such products?

20 A. I'm not directly familiar with how that's
21 been marketed.

22 Q. Are you indirectly familiar with how it's
23 been marketed?

24 A. I would expect some similar communication to

1 the industry in that regard, certainly on the
2 condensate.

3 Q. At least besides the condensate, this is
4 what Marcus Hook will be able to do, correct?

5 A. Yes.

6 Q. What's the origin of your uncertainty about
7 the condensate?

8 A. I'm just a lot less familiar with it. We
9 have not had any condensate processing projects.

10 Q. Okay. And there are, in fact, from an
11 engineering standpoint -- let me withdraw that.

12 So I want to go back to this map.
13 Projects E and B use the same auxiliary boilers to
14 operate, correct?

15 A. Yes.

16 Q. And are those located at 19 here?

17 A. Yes.

18 Q. And they rely on the same ethylene complex
19 flare that will be replaced at some point, correct?

20 A. Yes.

21 Q. And will that be replaced at 24 here?

22 A. Yes.

23 Q. And then use the same 15-2B cooling tower,
24 correct?

1 A. Yes.

2 Q. And that's located at 20 here?

3 A. Yes.

4 Q. Part of Project E was the enhancement of the
5 cooling tower, correct?

6 A. No.

7 Q. Can you please turn to page 87 of exhibit
8 A-41.

9 A. (Witness complies.)

10 Q. Could you read your testimony beginning on
11 line 15?

12 A. Yes. 119E included the enhancement. I
13 believe part of that application included the
14 enhancement of that same cooling tower. They're
15 independently driven for independently different
16 products and reasons.

17 Q. So why do you now think there was no
18 enhancement of the cooling tower as part of Project
19 E?

20 A. So the enhancement of the cooling -- the
21 cooling tower had the capacity for E as shown in
22 the breakdown in the plan approval, it had the
23 capacity to satisfy Project E and the only
24 enhancement really is in the cooling water

1 circulation loop throughout -- in the facility,
2 whether it's changing a piping segment or a nozzle
3 tie-in. But the capacity of the cooling tower was
4 available for plan approval E.

5 Q. So there's no enhancement of the capacity of
6 the cooling tower?

7 A. Not for plan approval E.

8 Q. Okay. Could you please look at the top of
9 page 88 and read your testimony there.

10 A. I don't recall offhand. I believe we
11 enhanced the capacity of the cooling tower to meet
12 the demand of the -- yeah, increase the cooling
13 tower demand by 19,500 gallons per minute.

14 Q. So, Mr. Becker, were you wrong there when
15 you said I believe we enhanced the capacity of the
16 cooling tower?

17 MR. RAPHAEL: I'm going to object
18 because I think his answer starts with I don't
19 recall offhand.

20 THE COURT: Overruled.

21 THE WITNESS: Correct, I didn't recall
22 offhand and upon reviewing our capacity at the time
23 going into plan approval E, we had the capacity
24 available. So it was not enhanced for plan

1 approval E.

2 BY MR. BOMSTEIN:

3 Q. You mentioned a tie-in. What's a tie-in on
4 a cooling tower?

5 A. A tie-in is simply a connection to a pipe.

6 Q. So are there new pipes connected to the
7 cooling tower as part of Project E?

8 A. From my perspective, from an engineering
9 perspective I view the cooling tower as the cooling
10 tower and that has a certain capacity for
11 processing cooling water. You separately have a
12 pumping system that distributes that cooling water
13 throughout the facility. And throughout the
14 facility you can have piping tie-ins and take-offs
15 to the various -- it's a utility. Piping tie-ins
16 to various pieces of equipment throughout the
17 facility.

18 Q. So was there a tie-in for 15-2B as part of
19 Project E?

20 A. I don't know the specifics in the piping
21 schematics. I do know that there was piping
22 tie-ins, some amount of minor piping in the
23 circulation loop required.

24 Q. So is it your testimony that you don't know

1 what was physically changed as part of Project E
2 for 15-2B cooling tower?

3 A. I know that the cooling tower was not
4 modified. No enhancement in the capacity in the
5 cooling tower. We made piping tie-ins or tie-ins
6 to the circulating network.

7 Q. What do you mean by was not modified?

8 A. We did not -- we did not change the capacity
9 of the cooling tower for plan approval E.

10 Q. So was it modified in any way besides
11 changing its capacity?

12 A. The cooling tower?

13 Q. Yes.

14 A. No.

15 Q. In your view where does the cooling tower
16 stop and start as a physical piece of equipment?

17 A. Cooling tower is a standing unit. It has
18 fans and a contact area down to a basin from which
19 the product is pumped.

20 Q. And how does the cooling water get to the
21 equipment it needs to cool?

22 A. It recirculates using pumps from that --
23 from that cooling tower. Circulates it through the
24 facility and back to the cooling tower.

1 Q. How does it circulate it through the
2 facility, just as a physical matter?

3 A. From pumps.

4 Q. And are there pipes?

5 A. And pipes.

6 Q. Are those pipes connected to the cooling
7 tower?

8 A. They're connected to the pumps which have
9 material -- water comes from the cooling tower.

10 Q. So is there any way to -- I guess what I'm
11 trying to get at is, is there a continuous line of
12 material between the cooling water lines and the
13 physical cooling tower?

14 A. I'm not clear on what you're asking.

15 Q. Okay. I'll try to be clear. Maybe I can
16 use the map. So the 15-2B cooling tower is over in
17 this complex here?

18 A. Correct.

19 Q. And is some of the equipment it cools
20 physically removed from the tower?

21 A. Yes.

22 Q. And cooling water exists within the cooling
23 tower, correct?

24 A. Yes.

1 Q. And at some point that water flows out of
2 the tower, correct?

3 A. Yes.

4 Q. What does it do to flow out of the tower?
5 What does it go through?

6 A. There are pumps off to the side of the
7 cooling tower that take the material from the
8 cooling tower, the water, cooled water and pump it,
9 provide pressure through pipelines through the
10 facility and back.

11 Q. Okay. So you said the pumps are offset from
12 the tower itself, correct?

13 A. At times are offset. In this particular
14 case I'm not sure if they're offset or part of the
15 basin. It can be either.

16 Q. Okay. So let's go back to A-17, if you
17 would. I'm sorry, I meant A-16.

18 A. A-16?

19 Q. Yes, please. Do you recognize this
20 document?

21 A. Yes.

22 Q. What piece of equipment was Sunoco asking to
23 be modified in RFD?

24 A. The 15-2B cooling tower.

1 Q. And this asks for the installation of two
2 new pumps, correct?

3 A. Yes.

4 Q. Okay. So the installation of two new pumps
5 modifies the cooling tower, would you agree?

6 A. It modified the piping -- the pump
7 capability from that cooling tower, yes.

8 Q. And so those pumps are part of the cooling
9 tower even if they're offset, correct?

10 A. Part of the cooling water system.

11 Q. Do you see page two of the application for
12 the RFD?

13 A. Yes.

14 Q. Do you see where it says three lines down,
15 this will require the installation of two new pumps
16 and will increase the overall 15-2B cooling tower
17 capacity to 28,500 GPM?

18 A. Yes.

19 Q. Earlier you talked about increasing the
20 cooling tower as modifying it, correct?

21 A. Yes.

22 Q. So would you agree with me that adding
23 equipment that's not physically part of the cooling
24 tower itself can still be a modification of the

1 cooling tower?

2 A. Yeah, the pumps can be if the rest of the
3 tower in its design is capable of handling that
4 flow.

5 Q. And that's because that's all part of an
6 integrated system, correct?

7 MR. RAPHAEL: Objection. Your Honor,
8 that asks for speculation.

9 THE COURT: Speculation? Overruled.

10 THE WITNESS: In this case it's
11 designed as part of a cooling tower.

12 BY MR. BOMSTEIN:

13 Q. Why is something, in your mind, part of or
14 not part of the cooling tower?

15 A. As an example, by adding connections on the
16 circulating loop, you're not changing the cooling
17 tower at all, nor changing the cooling water
18 capacity, nor changing the cooling water emissions
19 potential.

20 Q. I want to get back to something I was
21 talking about earlier which was the tie-in. Are
22 there new cooling lines that are part of Project E?

23 A. I don't know the specific piping that was
24 done. I know at least tie-ins and minor piping was

1 required in the circulating loop.

2 Q. You don't know whether that was on the tower
3 itself?

4 A. I don't believe that was on the tower
5 itself.

6 Q. Do you know?

7 A. I'm saying it was not.

8 Q. Okay.

9 MR. RAPHAEL: Your Honor, while Mr.
10 Bomstein is on his next segment, can we just take
11 five minutes for a bathroom break?

12 MR. BOMSTEIN: Sure.

13 THE COURT: Okay.

14 - - -

15 (A break was taken.)

16 - - -

17 BY MR. BOMSTEIN:

18 Q. Mr. Becker, are you ready?

19 A. Yes.

20 Q. Great. Thank you. So, Mr. Becker, are you
21 aware that as part of Sunoco's prehearing memo in
22 this case they wrote that as part of the plan
23 approval E project, SPMT will make additions in
24 piping to the 15-2B cooling tower in order to

1 accommodate the increased demand for cooling water
2 that other aspects of the project will place on it?

3 A. I wasn't aware of that specific language,
4 no.

5 Q. Do you think that's inaccurate?

6 A. It's a matter of how that's read. As I
7 said, there was piping work done on the cooling
8 water recirculation loop as part of what we call
9 project E.

10 Q. Could you please turn to exhibit A-12.

11 A. (Witness complies.)

12 Q. Can you please identify this document?

13 A. Not previously familiar with it. I see that
14 it was a letter from Mr. Werner to the Department
15 of Environmental Protection regarding the
16 correction of VOC emissions at our existing
17 facility.

18 Q. If you turn the page, is there more to this
19 document?

20 A. Plan approval application, what's known as a
21 tank update. As I said, correcting -- as I read
22 here -- I was not involved in it, but I read that
23 it was correcting some emission calculation from
24 tankage.

1 Q. Was that for plan approval F?

2 A. I believe this is what's designated as plan
3 approval F.

4 Q. Thank you. Did you say you weren't involved
5 in plan approval F?

6 A. I was not involved in this.

7 Q. Okay. Thank you. Could you please turn to
8 A-14.

9 A. (Witness complies.)

10 Q. Is this a letter along with the application
11 for plan approval H?

12 A. Yes.

13 Q. Am I correct that this is to replace the
14 ethylene complex flare?

15 A. The maintenance replacement of the ethylene
16 complex flare, yes.

17 Q. And the replace flare would be built
18 physically closer to the equipment that's being
19 installed as part of these projects that we have
20 talked about today, correct?

21 A. It happens to be closer, yes.

22 Q. Is it just coincidence?

23 A. I will say that it wasn't specific to that
24 reason. It wasn't specifically chosen because of

1 location to any particular existing operations or
2 process.

3 Q. Am I correct in that it takes physical
4 material and expense to run connections between the
5 flare and the equipment it services, correct?

6 MR. RAPHAEL: I'm going to object, Your
7 Honor. That sounds an awful lot like questions for
8 an expert to me. Mr. Becker is a fact witness.

9 THE COURT: Response?

10 MR. BOMSTEIN: Sure. So maybe I should
11 rephrase.

12 BY MR. BOMSTEIN:

13 Q. Mr. Becker, are you familiar with the
14 structure of the existing ethylene complex flare?

15 A. Generally so, yes.

16 Q. Am I correct in that there's a flare tower?

17 A. Yes.

18 Q. And am I correct in that there are pipelines
19 of sorts that take material to that flare tower?

20 A. Yes.

21 Q. Have you been involved in the engineering of
22 the replacement flare?

23 A. Yes.

24 Q. Are you aware that there is piping that

1 connects to the replacement flare?

2 A. Yes.

3 Q. Am I correct in that you can use less or
4 that you do use less material to connect the
5 replacement flare than the preexisting ethylene
6 complex flare?

7 MR. RAPHAEL: Your Honor, object as a
8 compound question.

9 THE COURT: Overruled.

10 THE WITNESS: It more depends on
11 specifically looking at the given situation. So in
12 this case there is existing flare and an existing
13 flare header, existing flare network. So if the
14 existing flare header was such that it could result
15 in the same or less piping, yet be further away if
16 that existing piping exists -- went to that same
17 location. So it depends really on the situation
18 and what you have as existing pipe.

19 BY MR. BOMSTEIN:

20 Q. Here, in this current situation, less piping
21 is needed, correct?

22 A. In this case somewhat less piping was needed
23 and certainly less of what we'll call a pipe rack
24 rebuild was required in the Pennsylvania flare

1 location.

2 Q. And why did you choose that flare location?

3 A. In part for that reason, that when we looked
4 at the work that would be required for the pipe
5 rack for some of the new flare header piping it
6 would have -- it would have been more extensive had
7 we stayed in the original location.

8 Q. Can you please turn to A-15.

9 A. (Witness complies.)

10 Q. Is this a cover letter and application for
11 project 23-0119I?

12 A. Yes.

13 Q. Am I correct in that this is for additional
14 ethane storage, fractionation and distribution?

15 A. Yes.

16 Q. I'm going to put some things up here for I
17 as well on this demonstrative chart for ethane
18 storage.

19 MR. WHITE: Your Honor, at this time
20 the Department is going to object to continuing
21 questions about Project I. First of all, it's well
22 after Project E which is at issue here at hearing.
23 Second of all, it hasn't even been built yet.
24 Third of all, it hasn't been issued yet. This is a

1 pending application that came well after the plan
2 approval with no connection or relevance to the
3 plans at issue in this case.

4 THE COURT: This was a subject one in
5 motion in limine?

6 MR. WHITE: It might have been motion
7 in limine on the issue, but this is an objection
8 based on relevance. It's not related to a de novo
9 review. It's issues of relevance of this testimony
10 to this hearing.

11 THE COURT: Okay. Response?

12 MR. BOMSTEIN: Your Honor, this indeed
13 was the subject of motion in limine trying to
14 restrict the materials that we could discuss today
15 to nothing beyond Project E and you already ruled
16 on it. I would say that there's clear relevance
17 because there's nothing -- because this is an
18 additional project at Marcus Hook. This has to do
19 with the -- well, the testimony we intend to elicit
20 has to -- goes to similarities of the processes
21 with previous processes, the similarity of the
22 locations of the equipment and indeed, that this is
23 merely an expansion of the existing projects.

24 THE COURT: I'm going to allow the

1 evidence, but I'll look forward to everybody's
2 discussion at issue in their post-hearing briefs.
3 But for the time being I think it's best to get the
4 evidence on the record and go from there. So
5 overruled.

6 MR. WHITE: Okay.

7 THE COURT: Subject to further
8 briefing.

9 BY MR. BOMSTEIN:

10 Q. Mr. Becker, the fractionation that would
11 occur as part of Project I is demethanization,
12 correct?

13 A. Yes.

14 Q. So I'm going to mark the demethanized column
15 of this demonstrative with a letter I.

16 Do you know where on this map the
17 demethanizer would go?

18 A. That hasn't been finalized, but in general
19 it would be some of the areas we have considered.

20 MR. RAPHAEL: Your Honor, with that
21 response I would put the objection on the record
22 that if it hasn't been finalized the objection
23 would be relevance. If it can be multiple
24 locations what benefit can that be to this court at

1 this time relative to plan approval E when it's a
2 pending application without a location for it?

3 THE COURT: Same ruling.

4 THE WITNESS: So as it's under
5 consideration we're looking at an area to the
6 right. I guess on the map, call it east of seven.

7 BY MR. BOMSTEIN:

8 Q. This general area, sir?

9 A. Further to the east.

10 Q. Would it be closer to the river than the two
11 storage spheres that we talked about earlier?

12 A. Yes.

13 Q. But in that general orientation?

14 A. In that general area.

15 Q. Okay.

16 A. From there down towards the tracks, if you
17 can see the railroad tracks.

18 Q. Yes, these are the railroad tracks that are
19 a little farther away from the river than the area
20 with the ethane and propane storage tanks, correct?

21 A. Yes.

22 Q. Thank you. This Project I is for Marcus
23 Hook to get ready to receive additional volume of
24 natural gas liquids, correct?

1 A. Ethane specifically.

2 Q. But otherwise correct?

3 A. Yes.

4 Q. Thank you. And would this additional ethane
5 come in by pipeline?

6 A. Yes.

7 Q. Project I is called the ME2X project,
8 correct?

9 A. Yes.

10 Q. There's also an ME2X pipeline, correct?

11 A. Yes.

12 Q. Is it fair to say that Project I is designed
13 to accommodate the new volumes of natural gas
14 liquids coming to Marcus Hook due to the ME2X
15 pipeline?

16 MR. RAPHAEL: I'm going object as to
17 relevance. We're talking about the Marcus Hook
18 industrial complex. Now we're drifting into not
19 only proposed projects but proposed connections to
20 pipelines outside the scope of this appeal.

21 THE COURT: Overruled.

22 THE WITNESS: Can you repeat the
23 question, please?

24 BY MR. BOMSTEIN:

1 Q. Sure. Is it fair to say that Project I is
2 designed to accommodate the new volume of natural
3 gas liquids, specifically ethane, coming to Marcus
4 Hook because of the ME2X pipeline?

5 A. Might not state because of, but certainly
6 one of the shorter-term plans is to take material
7 from the ME2X pipeline that would be the ME2X
8 process at Marcus Hook.

9 Q. A new cold flare called the ME2X cold flare
10 would be installed as part of Project I, correct?

11 A. Yes.

12 Q. Has the location of that been determined
13 yet?

14 A. No, not exactly. It would be within that
15 same footprint we spoke about moments ago.

16 Q. Will this use equipment from the amine
17 treatment system built as part of Project A?

18 A. That's something that we would have to
19 evaluate from an engineering standpoint whether
20 there was any available capacity in portions of
21 that unit.

22 Q. Can you please turn to page six of the
23 current exhibit, A-15.

24 A. (Witness complies.)

1 Q. And direct your attention section 2.1 and
2 the first paragraph thereof. Do you see a line in
3 the middle beginning with lean amine?

4 A. Yes.

5 Q. Could you please read that in the next
6 sentence?

7 A. Lean amine for the contactor and rich amine
8 regeneration will be provided from excess capacity
9 of the existing amine regeneration process.

10 That's what I was referring to in the
11 engineering evaluation, if that proves to be
12 capable of doing that, that's how it will proceed.

13 Q. So is it possible that Sunoco's incorrect in
14 its application here?

15 A. No. I'm suggesting that is our plan and the
16 preliminary evaluation indicated that. And if it
17 bears out, that's how we will be proceeding.

18 Q. So am I getting your testimony correct that
19 at least the current plan is for the amine system
20 -- amine treatment system that was built as part of
21 Project A to be used for Project I?

22 A. A portion of it. The regeneration.

23 Q. Okay. And could you read the sentence
24 following the one you just read.

1 A. No modifications to the existing amine
2 regeneration are required to treat the proposed
3 ethane feedstock.

4 As I said, that is our current plan.

5 Q. That's your current plan.

6 THE COURT: You have to verbalize your
7 answer there. I think you just nodded, right?

8 THE WITNESS: Yes, that is our current
9 plan.

10 BY MR. BOMSTEIN:

11 Q. Thank you. And the ME2X project may also
12 use tanks installed as part of Projects 1 and D,
13 correct?

14 A. Yes.

15 MR. BOMSTEIN: We have no further
16 questions for Mr. Becker. Thank you, Mr. Becker.

17 THE COURT: Mr. Raphael?

18 MR. RAPHAEL: Nothing for Mr. Becker
19 now.

20 MR. WHITE: Nothing from the
21 Department, Your Honor.

22 THE COURT: Thank you for your
23 testimony, sir.

24 MR. BOMSTEIN: Clear Air Council calls

1 Mr. Jonathan Hunt.

2 - - -

3 JONATHAN HUNT, after having been
4 first duly sworn, was examined and testified as
5 follows:

6 - - -

7 BY MR. BOMSTEIN:

8 Q. Mr. Hunt, thank you for being here to
9 testify. Thank you also for showing us around at
10 that site visit.

11 A. You're welcome.

12 Q. Please state your full name and business
13 address.

14 A. Jonathan A. Hunt. Business address is 100
15 Green Street, Marcus Hook, Pennsylvania.

16 Q. What company do you work for, Mr. Hunt?

17 A. I work for Energy Transfer Partners.

18 Q. Do you also work for Sunoco Partners
19 Marketing & Terminals within Energy Transfer?

20 A. Yes.

21 Q. Do you recall that Sunoco selected you as a
22 corporate designee for a deposition in this case?

23 A. I do.

24 Q. Without going into any confidential

1 discussions that you may have had between you and
2 your lawyers, please tell me what you did to
3 prepare for today's hearing?

4 A. Briefly reviewed some of the plan approvals
5 and deposition testimony.

6 Q. Thank you. Did you bring anything with you
7 to the stand today?

8 A. I did not.

9 Q. Thank you. What's your current title at
10 Energy Transfer?

11 A. My current title is vice president of
12 terminal operations.

13 Q. Does that include managing the operations of
14 the Marcus Hook facility?

15 A. It does.

16 Q. After the Marcus Hook refinery closed, what
17 were the -- immediately after the closure, what
18 were the primary operations of the facility?

19 A. Immediately following the shutdown of the
20 refinery?

21 Q. Yes, sir.

22 A. Yeah, we utilized some of the storage and
23 logistics assets to provide terminal services to
24 some regional customers.

1 Q. What kinds of products were you providing
2 terminal services for?

3 A. We stored propane and butane. We stored
4 some refined products at that time, I believe.

5 Q. When you say refined products, can you give
6 us a brief sense of what you mean by that?

7 A. Yeah. When I say refined products I'm
8 typically referring to things like gasoline and
9 diesel fuel and heating oil, you know, those type
10 of products.

11 Q. Thank you. Are you familiar with a study
12 that Delaware County prepared on potential reuses
13 for the facility that was published in 2012?

14 A. I'm aware of it.

15 Q. Can you please turn to exhibit A-1.

16 A. (Witness complies.)

17 Q. Is this that study, sir?

18 A. It appears to be, yes.

19 Q. Could you turn to page four.

20 A. (Witness complies.)

21 Q. Just to be clear, page four is a few more
22 pages in there. There are some unnumbered pages.

23 MR. RAPHAEL: Counsel, you can just
24 give us a moment. We need to catch up. Our

1 notebooks have been unhinged.

2 (Pause.)

3 MR. RAPHAEL: We're with you.

4 THE WITNESS: Got it.

5 BY MR. BOMSTEIN:

6 Q. Thank you. Do you see that the study
7 determined that the best options for redevelopment
8 would be as a natural gas liquids processing and
9 fractionation facility?

10 A. You're talking about the enumerated number
11 one in the box there on the page?

12 Q. Yes, sir.

13 A. Yes, I see that.

14 Q. Does what Marcus Hook facility is doing now
15 fit within that description?

16 MR. RAPHAEL: Read that back. Could
17 you read the last two back actually.

18 - - -

19 (The requested portion was read back by
20 the reporter.)

21 - - -

22 MR. RAPHAEL: Your Honor, I'll object
23 to the extent that he's asking for something more
24 than does it say that. Mr. Hunt is a fact witness,

1 not an expert witness. It sounds like we're trying
2 to elicit another expert opinion from another
3 witness.

4 THE COURT: Does the facility process
5 and fractionate natural gas liquids. You're saying
6 that's an expert witness question?

7 MR. RAPHAEL: If he's asking him to --
8 just ask him factual -- unless he's asking for an
9 expert opinion.

10 THE COURT: I thought the question was
11 is what Marcus Hook doing now is what it says in
12 that box in number one.

13 MR. BOMSTEIN: Yes, that's what that
14 is.

15 MR. RAPHAEL: I was trying to follow
16 it. If that's the question, I'm fine with that,
17 Your Honor.

18 THE WITNESS: Okay. Could you repeat
19 the question, please.

20 BY MR. BOMSTEIN:

21 Q. Of course. Does what the Marcus Hook
22 facility is doing now fit within that description?

23 A. A portion of the business that occurs at
24 Marcus Hook would fit that description.

1 Q. What beyond that description does Marcus
2 Hook also do?

3 A. Marcus Hook provides storage for products.
4 Marcus Hook provides storage for crude oil. Marcus
5 Hook provides distribution services for, you know,
6 those products. We provide distribution services
7 for NGLs, you know, that extend beyond processing
8 infractionation. So there's many more tentacles to
9 the services that are provided at the Marcus Hook
10 facility than just what's described there in level
11 one.

12 Q. Okay. Thank you. You mentioned
13 distribution facilities, correct?

14 A. Yes.

15 Q. Distribution is needed to be able to serve
16 the markets that Marcus Hook wants to serve,
17 correct?

18 A. Yes.

19 Q. Could you look at page five of the study,
20 please. And in particular, number one right at the
21 top.

22 A. Okay.

23 Q. Thank you. Do you see a reference to
24 serving local and potential export markets?

1 A. Yes.

2 Q. And that's part of the bullet on site for
3 natural gas liquids processing and fractionation?

4 A. According to whoever prepared this study,
5 yes.

6 Q. And distribution is necessary to serve the
7 local and potential export markets, correct?

8 MR. RAPHAEL: Object. Your Honor, if
9 he's asking him that -- he's obviously soliciting
10 expert testimony because he has no personal
11 knowledge of the study. What else could it be?

12 THE COURT: I think there were a couple
13 different components there to that objection. I
14 mean, this is a study prepared by somebody else
15 that's not here, right? Why are we asking him
16 about this study?

17 MR. BOMSTEIN: I want to use it, Your
18 Honor, as a reference point for a discussion of
19 what Marcus Hook does.

20 THE COURT: I think he can ask those
21 questions without reference to the study though.

22 MR. BOMSTEIN: Sure. I'll do that.
23 Thank you, Your Honor.

24 BY MR. BOMSTEIN:

1 Q. So, Mr. Hunt, is the use of the operation of
2 Marcus Hook's distribution facilities and equipment
3 in order to be able to serve the local and export
4 markets?

5 A. The use of our distribution capabilities is
6 in service of our customers. So our customers, we
7 provide services and that includes storing material
8 and then distributing those materials to the
9 endusers that they choose. So we provide
10 distribution services for our customers.

11 Q. And am I correct that the customers are part
12 of a market in which Marcus Hook participates?

13 A. Marcus Hook, you know, handles the materials
14 that are sold into markets and those markets are
15 local, they're regional, they're international.

16 Q. And your distribution facilities are
17 necessary in order to participate in those markets,
18 correct?

19 A. Yes. I mean, depending on what markets you
20 want to get to, yes.

21 Q. And Marcus Hook is a natural place to want
22 to build the sort of assets associated with an NGL
23 processing and fractionation facility, correct?

24 MR. RAPHAEL: Object, Your Honor. That

1 sounds an awful lot like asking for an expert
2 opinion, as opposed to Mr. Hunt is a fact witness.
3 Objection.

4 THE COURT: Sustained.

5 MR. BOMSTEIN: Let me rephrase, Your
6 Honor.

7 BY MR. BOMSTEIN:

8 Q. The sorts of assets that we have discussed,
9 distribution, storage, and fractionation, in your
10 -- when did you -- let me withdraw.

11 Mr. Hunt, when did you start working at
12 Marcus Hook?

13 A. Came to Marcus Hook in the beginning of
14 2011.

15 Q. And at that time the facility was still a
16 refinery, correct?

17 A. Correct.

18 Q. At some point it started -- the Marcus Hook
19 facility started to do processing and storage and
20 fractionation of natural gas liquids, correct?

21 A. Yes. Although some of those same types of
22 things were occurring under the former refinery
23 operation as well.

24 Q. Which of those things?

1 A. Fractionation, storage.

2 Q. Of natural gas liquids?

3 A. Yes.

4 Q. What natural gas liquids did the refinery
5 fractionate?

6 A. Propane, butane.

7 Q. From what?

8 A. From the byproducts of the refining
9 operation.

10 Q. So please walk me through this. What
11 feedstock went into the fractionation facility at
12 the refinery that resulted in the isolation of
13 propane?

14 A. A refinery is fed crude oil, but as you
15 process crude oil in a refinery you begin to
16 separate that into other materials, which includes
17 gases like ethane and propane and butane and other
18 materials like gasoline that eventually become
19 gasoline. So all of those separation processes
20 existing in some form under the refinery operation
21 as well.

22 Q. Did the Marcus Hook facility take in natural
23 gas liquids when it was a refinery, mixed natural
24 gas liquids?

1 A. How would you define mixed natural gas
2 liquids?

3 Q. Well, let me rephrase it this way. Did the
4 Marcus Hook refinery take in byproducts from
5 natural gas extraction?

6 A. From natural gas extraction for the
7 production of natural gas?

8 Q. Yes, sir.

9 A. No, I don't believe so.

10 Q. Okay. And did it --

11 A. You know, I'm going to -- can I take that
12 back?

13 Q. Yes. Yes, please clarify.

14 A. The Marcus Hook facility at times would
15 bring in butane and propane from multiple sources.
16 It's possible that some of those sources included
17 natural gas processing or that some of the
18 materials that were mixed in those batches of
19 products that came to Marcus Hook and were stored
20 in caverns, for example, could have come from
21 natural gas processing. So I can't be certain of
22 that.

23 Q. Okay. Thank you for the clarification.

24 Because Marcus Hook as a refinery had fractionators

1 existing that could separate out propane and
2 separate out butane, those fractionators were able
3 to be repurposed for natural gas liquids, correct?

4 A. There were some assets, former refinery
5 assets that were able to be repurposed for similar
6 types of service, yes.

7 Q. And the site as a whole had open space after
8 the refinery shut down, correct?

9 A. Yes. Ultimately after the demolition of
10 some of those assets, yes.

11 Q. And the site as a whole also had docks for
12 ships to dock at, correct?

13 A. Yes.

14 Q. And the site as a whole also had auxiliary
15 boilers, correct?

16 A. Yes.

17 Q. And it also had cooling towers, correct?

18 A. Yes.

19 Q. And many of these and other types of
20 utilities and infrastructure were able to be reused
21 for natural gas liquids processing and
22 fractionation, correct?

23 A. Yes.

24 Q. And do Marcus Hook's customers sometimes

1 want natural gas liquids as purity products?

2 A. When you say want, you know, our customers
3 tend to be producers. So I'm not sure what you
4 mean by want.

5 Q. Yeah. Let me make that clear. Is it a
6 service that Marcus Hook offers to fractionate
7 products to produce what we would call purity
8 products that aren't mixed with other products?

9 A. Yes, I think under the deethanizer component
10 of the current operation that's part of what we do
11 is separate ethane and propane into purity
12 products.

13 Q. Are you personally familiar with why these
14 customers want the product separated rather than
15 mixed?

16 A. I think generally those products are more
17 valuable in that state.

18 Q. When Sunoco was considering buying the site
19 from Sunoco, Inc., the separate entity Sunoco,
20 Inc., it contemplated developing the terminal
21 services and natural gas liquids fractionation,
22 correct?

23 A. You confused me with the entities there.
24 Can you go back?

1 Q. Absolutely. So who did Sunoco Partners
2 Marketing & Terminals buy the refinery site from?

3 A. Okay. So it was Sunoco, Inc., the refining
4 enterprise ultimately sold the Marcus Hook site to
5 Sunoco Logistics, you know, and SPMT was a unit of
6 Sunoco Logistics at that time.

7 Q. Okay.

8 A. Okay. So that -- so your question in that
9 context, please repeat it.

10 Q. Absolutely. So at that time when Sunoco
11 Logistics or Sunoco Partners Marketing & Terminals
12 bought the site from Sunoco, Inc. the buyer, Sunoco
13 Partners Marketing & Terminals was contemplating
14 developing terminal services and natural gas
15 liquids fractionation, correct?

16 MR. RAPHAEL: Your Honor, I have to
17 object. First, I think the question is factually
18 incorrect and secondly, it's a compound question.

19 THE COURT: That's for the witness to
20 say whether it's factually incorrect or not.

21 Overruled.

22 THE WITNESS: Could you repeat it?

23 MR. BOMSTEIN: Absolutely. And if you
24 think I'm getting anything wrong please let me know

1 because we want to make sure we get the truth here.

2 THE WITNESS: Sure.

3 BY MR. BOMSTEIN:

4 Q. Let me break it down maybe. Who bought the
5 Marcus Hook refinery site?

6 A. Sunoco Logistics.

7 Q. And who sold Sunoco Logistics the refinery
8 site?

9 A. At the time it was Sunoco, Inc.

10 Q. And when did that happen?

11 A. I always get the dates wrong. But I think
12 it was in the spring of 2013, I think.

13 Q. At that time Sunoco Logistics was
14 contemplating developing the terminal services and
15 natural gas liquids fractionation at the site,
16 correct?

17 A. I think we were contemplating providing
18 services for customers. Whether or not that
19 included fractionation or not, it would have been
20 up to our customers and what they were seeking, the
21 services they were seeking.

22 Q. So do you not know whether that was being
23 contemplated at the time?

24 A. I'm not sure about the fractionation piece

1 of that at that time.

2 Q. Okay. Could you turn to A-7, please.

3 A. (Witness complies.)

4 MR. RAPHAEL: Give me one second,
5 Counsel. Almost there.

6 (Pause.)

7 MR. RAPHAEL: Thank you.

8 BY MR. BOMSTEIN:

9 Q. This is an application for a project to
10 install a deethanizer, correct?

11 A. Yes.

12 Q. And the deethanizer would be installed in
13 order to be able to fractionate ethane and propane,
14 correct?

15 A. Yes, that's ultimately what we ended up
16 doing there.

17 Q. And the application is dated March 2013.

18 A. Yes, that's what it says.

19 Q. So before -- am I correct then in that
20 before Sunoco Logistics bought the site, it was
21 contemplating developing the terminal services and
22 natural gas liquids fractionation?

23 A. In this context, yes.

24 Q. Is there another context in which that is

1 not the case?

2 A. I'm not sure. I'm not sure of the timing
3 of, you know, the various projects that we have
4 been talking about here today. I just don't have
5 the timeline in front of me.

6 Q. Okay.

7 MR. BOMSTEIN: Your Honor, in taking a
8 step back, I'd like to move to admit into evidence
9 A-1, exhibit A-1.

10 THE COURT: Objection?

11 MR. RAPHAEL: I want to just take a
12 peek at that, Your Honor.

13 MR. WHITE: While Sunoco is taking a
14 peek at it, Your Honor, the Department is going to
15 lodge its objection as to hearsay. This is a --
16 looks like a study drafted by someone who's not
17 here, not on anyone's witness list, not anyone we
18 can cross-examine.

19 THE COURT: Sustained.

20 MR. BOMSTEIN: Your Honor, I would
21 offer -- and I know you just ruled, but I believe
22 this falls into the hearsay exemption because it's
23 not being -- it's not hearsay because it's not
24 being offered for the truth of the matter asserted,

1 but instead is simply being offered that these are
2 representations made at the time in 2012.

3 THE COURT: Representations made by an
4 independent consultant working for the Delaware
5 County --

6 MR. BOMSTEIN: That's correct, Your
7 Honor.

8 THE COURT: My ruling stands.

9 MR. BOMSTEIN: Thank you, Your Honor.

10 BY MR. BOMSTEIN:

11 Q. So, Mr. Hunt, before the purchase of the
12 facility, Sunoco was also contemplating building
13 the Mariner 2 Pipeline, correct?

14 A. I don't know about the timing of that. I'm
15 not sure. You said the Mariner East 2 Pipeline?

16 Q. Yes, sir.

17 A. Yeah, I'm not sure when in time we first
18 started, to use your word, contemplating that.

19 Q. Could you turn to exhibit A-42, please?

20 A. (Witness complies.)

21 Q. Once you're there, please turn to page 40.

22 A. 40 you said?

23 Q. Yes.

24 (Pause.)

1 A. Okay.

2 Q. Do you see a reference to the Mariner 2 open
3 season?

4 A. Yes. At the top of the page?

5 Q. Yes, sir.

6 A. Yes.

7 Q. Do you have an understanding of what an open
8 season is?

9 A. I do.

10 Q. What's an open season?

11 A. Open season is a process where capacity on a
12 pipeline is offered through a standard regulated
13 process to third parties who would express interest
14 in utilizing that capacity.

15 Q. So is it fair to say that it's part of the
16 process of seeing if there are customers for a
17 project?

18 A. Yes.

19 Q. And do you see a date in this transcript
20 that you testified to as to the Mariner's 2 open
21 season?

22 A. Yes. In my deposition testimony here I
23 think I read off of a timeline and offered that
24 date.

1 Q. What was that date?

2 A. September 26, 2012.

3 Q. Okay. And then do you see below that I ask
4 you, so would you agree with me that before Sunoco
5 Logistics bought the Marcus Hook facility it was
6 contemplating as well additional open season for
7 Mariner's services which would include processing
8 at Marcus Hook?

9 A. Yes.

10 Q. What was your answer to that?

11 A. Contemplating, yes. Far from certain at
12 that point.

13 Q. Okay. So now would you agree with me that
14 before Sunoco finished purchasing the Mariner --
15 I'm sorry, the Marcus Hook facility, it was
16 contemplating building the Mariner's 2 Pipeline?

17 A. Yes.

18 Q. Thank you. So let's get into some of the
19 projects here. Project B, the natural gasoline
20 project involved, in part, installing a
21 fractionator that can separate pentanes from
22 natural gasoline, correct?

23 A. Yes.

24 Q. And that natural gasoline would arrive at

1 the facility in part through a truck route?

2 A. Yes.

3 Q. Natural gasoline would also be a fraction of
4 the C3+, so it would arrive at the facility
5 separately, correct?

6 MR. RAPHAEL: I'm going object to that,
7 Your Honor, to the extent that requires expert
8 testimony. I think we need foundation there.

9 THE COURT: Overruled.

10 THE WITNESS: Could you repeat the
11 question?

12 MR. BOMSTEIN: Sure. Can you please
13 read it back? Thank you.

14 - - -

15 (The requested portion was read back by
16 the reporter.)

17 - - -

18 MR. BOMSTEIN: I'm sorry, I think there
19 was perhaps a slight error in the transcription. I
20 think I said that would arrive at the facility
21 separately. Or at least I intended to.

22 MR. RAPHAEL: Your Honor, same
23 objection if that's a new question.

24 THE COURT: You can answer.

1 THE WITNESS: So is what you're asking
2 is the C3+, was that contemplated as part of the
3 the natural gasoline project? Is that what you're
4 asking?

5 BY MR. BOMSTEIN:

6 Q. No, sir. Let me be clear and maybe take a
7 step back here. So you're familiar with Project E?

8 A. E?

9 Q. Yes.

10 A. Yes, sir.

11 Q. And is it the case that Project E takes in
12 C3+?

13 A. Yes.

14 Q. Okay. And that C3+ as part of the Project E
15 is fractionated, correct?

16 A. Yes.

17 Q. And one of the fractions that results from
18 the fractionation process is natural gasoline,
19 correct?

20 A. Yes.

21 Q. Okay. Sorry. Sorry. And maybe I didn't --
22 I think I phrased the question a little confusingly
23 there. That C3+ plus that comes in is arriving on
24 Mariner's 2, correct?

1 A. Yes, that's what's intended.

2 Q. Okay. And in the future there will be some
3 services provided for natural gasoline, some of
4 which may come in on the Mariner's 2 line into
5 Marcus Hook, correct?

6 A. It's possible, but it's not necessarily what
7 will happen.

8 Q. Which part is the question in your mind?
9 What of that is uncertain rather than certain?

10 A. The natural gasoline project which was
11 conceived of, you know, far before Project E,
12 relies on feedstock source to the site by, as you
13 pointed out, truck and some extent rail and is in
14 operation today or when it runs it's in operation.
15 It runs well below its capacity because the market
16 for pentane is quite small. So to the extent
17 there's incremental C3+ that would arrive at Marcus
18 Hook via the ME2 pipeline as you mentioned, it's
19 not at all clear that the natural gasoline would be
20 fed to the C5+ splitter because of, you know, just
21 a lack of market demand for the pentane.

22 Q. So is what you're saying that sometimes
23 Project B, the natural gasoline project is not --
24 for economic or market reasons does not run?

1 A. That's correct.

2 Q. And so sometimes in the future when C3+ is
3 arriving at Marcus Hook, it may still be the case
4 that Project B won't be operating, correct?

5 A. Correct. Or even if it was operating, it's
6 already full, if you will, to the limit of the
7 pentane market. If that makes sense.

8 Q. Sure. So sometimes it just -- the market
9 won't accept more pentane, correct?

10 A. Exactly. Exactly.

11 Q. Okay. But some of the services that are
12 provided when Project B is operating would be for
13 fractionating natural gas liquids coming through
14 Mariner's 2, correct?

15 A. Again, that's possible, but not certain.

16 Q. And the only uncertainty there is that
17 sometimes the project doesn't run at all, correct?

18 A. Correct.

19 Q. But when it does run some of the services
20 provided for the natural gasoline will be operating
21 on feedstock coming from Mariner's 2, correct?

22 A. Not necessarily, no. Even when it operates
23 it could be fed on feedstock sourced from other
24 sources other than the Mariner's pipeline as it is

1 today. So incremental feedstock that would come
2 off the Mariner's East Pipeline might not go there
3 because there might not be a home -- there might
4 not be an economic justification to do that
5 fractionation.

6 Q. But it also might use project feed?

7 A. It's possible.

8 Q. And just to be clear, if Project B isn't
9 running for feedstock coming in through Mariner's 2
10 because of market conditions, those market
11 conditions would also preclude Project B from
12 running for feedstock sourced from other sources,
13 correct?

14 A. No.

15 Q. Why not?

16 A. Depends on the price. So different sources
17 of feedstock are procured at different prices
18 depending on, you know, the circumstances. So
19 yeah, it's more complicated than that. So yeah,
20 there could be differences. You could have some
21 source material that makes economic sense to
22 provide those services and other source material
23 where it doesn't make economic sense to provide
24 those services.

1 Q. It just depends?

2 A. It depends.

3 Q. Okay. Thank you. And moving on to Project
4 D, the new tanks project, that was designed to
5 handle ethane, propane and butane at Marcus Hook,
6 correct?

7 A. You said project --

8 Q. D. Sorry, D. New tanks. Yes.

9 A. Yes.

10 Q. Those were expected to arrive mostly over
11 the Mariner's 2 Pipeline, correct?

12 A. Mostly.

13 Q. And in that pipeline as part of -- you know,
14 as part of the design for project D, there would be
15 some transmix created between propane and butane,
16 correct?

17 A. Correct.

18 Q. Now, initially with Project D Sunoco was
19 planning on blending that transmix, that is the mix
20 between the propane and butane, back into either
21 the propane or the butane, correct?

22 A. Correct.

23 Q. And that's consistent with the application
24 for Project D, which didn't call for a new

1 depropanizer to separate the transmix, correct?

2 A. Correct.

3 Q. Afterwards Sunoco realized that with the
4 volumes of transmix involved it would have been
5 difficult to consistently meet the propane or
6 butane product specifications, correct?

7 A. Yes. But that also goes back to the C3+
8 component that came into the picture at that time
9 as well.

10 Q. So what do you mean by that?

11 A. The revolution project introduced a third
12 product on the line, right? Which when -- you have
13 a batched pipeline that was starting that with two
14 products and now you expand that to three products.
15 The effect of that is you have more batches and you
16 create more interfaces which creates more transmix.
17 So all of those factors contributed to that.

18 Q. And so Project E is designed with three
19 fractionators, correct?

20 A. Yes, that's what I understand.

21 Q. Two of those fractionators are associated
22 with Project Revolution, correct?

23 A. Yes, I believe so.

24 Q. And those are a depropanizer and a

1 debutanizer?

2 A. Yes.

3 Q. Those are designed to handle the C3+ from
4 Project Revolution, correct?

5 A. Yes.

6 Q. Separately there's an additional
7 depropanizer, correct?

8 A. Yes.

9 Q. That's known as the SXL depropanizer?

10 A. Yes, I believe so.

11 Q. SXL is short for Sunoco Logistics?

12 A. Yes.

13 Q. So what was the point of that depropanizer?

14 A. Again, the engineering evolution there in
15 terms of how we got to that, that's not clear to
16 me. Again, those are some of the details that I'm
17 not necessarily participating in discussions. But
18 it's not clear to me exactly what sort of pushed
19 this over the edge in terms of being able to blend
20 the transmix into the products versus the need for
21 additional fractionation. So that's the part that
22 I'm -- I honestly I can't tell you at what point we
23 got pushed into that requirement.

24 Q. Okay. Part of what Project D does is

1 repurpose the deethanizer installed as part of plan
2 approval A, correct?

3 A. Yes, that's what I understand.

4 Q. After that repurposing -- first of all, is
5 it correct that hasn't occurred yet, the
6 repurposing, correct?

7 A. Correct.

8 Q. And after that repurposing occurs that
9 fractionation tower which was a deethanizer will be
10 able to separate out methane from ethane, correct?

11 A. Yes.

12 Q. Do you know if the fractionation tower will
13 be able to be used for also continued
14 deethanization?

15 A. I'm not sure. Following it's conversion?

16 Q. Yes, sir.

17 A. I don't know.

18 Q. Okay. Could you turn to your transcript,
19 A-42 and page 113 in particular, please.

20 A. okay.

21 MR. RAPHAEL: Counsel, just give me a
22 second just to catch up.

23 (Pause.)

24 BY MR. BOMSTEIN:

1 Q. Do you see on line three where I ask in
2 section 1.1 that you were looking at a second ago,
3 could you read the last bullet point, please,
4 that's on page two? Do you see that, sir?

5 A. I see that question, yes.

6 Q. And that's referring to the application for
7 plan approval D, correct?

8 A. I don't have that in front of me so I -- it
9 says section 1.1. I don't know section 1.1 of
10 what. I don't know.

11 Q. Could you turn back a couple pages then to
12 -- just one second.

13 (Pause.)

14 Q. Do you see on page -- could you turn to page
15 103, please?

16 A. (Witness complies.)

17 Q. Do you see the line on page six starting on
18 -- I'm sorry, on line six that sentence referring
19 to the application for 23-0119D?

20 A. Yes.

21 Q. As you page through the next few pages would
22 you agree that you're continuing to talk about that
23 application when we get to page 113?

24 A. Yeah, it appears to be associated with 109D.

1 Q. Okay. Thank you. So could you please read
2 your testimony starting on line six of 113?

3 A. Yes. And I was reading this at the time,
4 for the record. Line six. Allow the use of the
5 previously-proposed deethanizer tower further
6 referred to as the distillation tower for
7 separation of commingled materials.

8 Q. Thank you. Could you skip down to line 13
9 and you see where I say and do you know what the
10 commingled materials are in question here?

11 A. Uh-huh.

12 Q. What was your answer?

13 A. Could be ethane and propane. Could also
14 include methane.

15 Q. You see I asked do you know how it's
16 currently being used?

17 A. Yes.

18 Q. And what's your answer?

19 A. It's currently being used to separate ethane
20 and propane.

21 Q. Do you see the question that follows that?

22 A. Yes.

23 Q. I ask is it also being used to separate
24 methane from ethane?

1 A. Uh-huh.

2 Q. And --

3 THE COURT: You might have to say yes
4 or no to that.

5 THE WITNESS: Yes.

6 BY MR. BOMSTEIN:

7 Q. Thank you. You respond -- and I think this
8 is a typo in here, but I would ask you since you're
9 the witness. It says there was some ethane removal
10 to that as well.

11 My interpretation of that is that there
12 was confusion in the some and the ethane and where
13 the words are split. I believe you meant to say
14 some methane removal to that as well, is that
15 correct?

16 MR. RAPHAEL: I'm going to object to
17 the compound and confusing question, Your Honor.

18 THE COURT: Do you understand it?

19 THE WITNESS: I believe so. And I
20 believe you're correct. I think what I said there
21 on line one of page 114 was there was some methane
22 removal to that as well, I believe is what I said.

23 BY MR. BOMSTEIN:

24 Q. Thank you. And is it still your

1 understanding that there's some methane removal as
2 well?

3 A. There's a small amount of methane that is --
4 that comes off the top on the deethanizer, you
5 know, as part of the production of the ethane
6 product as the system is operated today.

7 Q. Is the methane there separated from the
8 ethane as part of that process?

9 A. Well, you're making a purified ethane
10 product. The methane that's removed is not pure
11 methane.

12 Q. I think I'm being confusing. What I mean to
13 ask is when some of that methane comes off the top
14 does that get fed to the fuel system at Marcus
15 Hook?

16 A. Most of the time, yes.

17 Q. Okay. So is it fair to say that that's a --
18 there's demethanization going on there?

19 A. Yeah, at some level. Yeah.

20 Q. Okay.

21 A. It's sort of secondary. The primary purpose
22 of that machine is to separate the ethane from the
23 propane. But a secondary effect of that is that
24 demethanization.

1 Q. Okay. Thank you.

2 THE COURT: Mr. Bomstein, I'm getting
3 to the point where I can't almost understand or
4 listen anymore. So I think I'm going to have to
5 break for the day. This is pretty dense material.
6 Plus, let the record reflect it's 120 degrees in
7 here and I assume there's nothing we can do about
8 that?

9 MR. WHITE: We'll do our best, Your
10 Honor. We'll do our best with the building manager
11 to get it cooler tomorrow, Your Honor.

12 MS. HUNT: We may be able to get fans,
13 but I'm not sure with the noise how loud they are.

14 THE COURT: I mean, am I the only one
15 -- it's really hot. Let's call it a day, if that's
16 okay.

17 MR. BOMSTEIN: Absolutely, Your Honor.

18 THE COURT: I said 9:00, but I'm
19 thinking now 9:30, if that's okay with everybody.

20 MR. BOMSTEIN: Actually, Your Honor, I
21 apologize. I would like to do just one more thing,
22 which is in following up on the clarification for
23 Mr. Hunt, I would like to go to the demonstrative
24 and add a D to the deethanization on the chart if

1 it's -- if Mr. Hunt agrees that after Project D
2 there will be both deethanization and some level of
3 demethanization.

4 THE WITNESS: You mean after the
5 conversion of the deethanizer? Is that what you're
6 saying?

7 MR. BOMSTEIN: Yes.

8 THE WITNESS: Yes, I would say that's
9 true.

10 MR. BOMSTEIN: Thank you. So I'll do
11 that now and that's a good place to stop.

12 THE COURT: Okay.

13 MR. RAPHAEL: Your Honor, just for the
14 record, we are checking on the inquiry regarding
15 the stay. I did check at lunch with our client,
16 trying to reach our client regarding the request
17 for the stay. I hope to have an answer on that
18 tomorrow.

19 THE COURT: Okay.

20 THE WITNESS: Mr. Bomstein, can I back
21 up on what I just said? I thought about that for a
22 minute more. I probably should have taken more
23 care of thinking through my answer. So what you're
24 saying is after the conversion that there would be

1 deethanization occurring. It's not strictly true.
2 Following the conversion what will be happening is
3 demethanization. You'll have ethane and then
4 removal of methane from the ethane. We would refer
5 to that as demethanization, not deethanization. So
6 using your definition in your demonstrative, I
7 would not include the letter D there next to
8 deethanize.

9 MR. BOMSTEIN: If I may follow up.

10 THE COURT: Yeah.

11 BY MR. BOMSTEIN:

12 Q. You said that's not strictly truly. Is
13 there a sense in which there would still be
14 deethanization at that point?

15 A. No.

16 Q. Okay. Thank you. I will cross that out.

17 MR. BOMSTEIN: Thank you.

18 THE COURT: At this point let's recess
19 for the day and resume tomorrow at 9:30. Thank you
20 everybody.

21 - - -

22 (Hearing recessed 4:28 p.m.)

23 - - -

24

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

2
3 I hereby certify that the
4 proceedings, evidence and objections noted, are
5 contained fully and accurately in the notes taken
6 by me on the hearing of this matter, and that this
7 copy is a correct transcript of the same.

8
9
10
11 _____
12 SUSAN A. HURREY, R.P.R.
13 NOTARY PUBLIC

14
15
16
17
18 (The foregoing certification of
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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL :
 :
vs. : EHB DOCKET NO.
 : 2016-073-L
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PARTNERS :
MARKETING & TERMINALS, LP :
Permittee :

- - -
Norristown, Pennsylvania
Tuesday, May 8, 2018
- - -

Hearing in the above matter held before
Judge Bernard A. Labuskes, Jr., taken pursuant to
notice at Department of Environmental Protection, 2
East Main Street, Fourth Floor, Norristown,
Pennsylvania 19401 commencing at 9:39 a.m., before
Angela M. King, RPR, Court Reporter - Notary Public
there being present.

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1 - - -

2 JONATHAN HUNT, having already been
3 previously sworn, continued to be examined and
4 testified as follows:

5 - - -

6 EXAMINATION

7 - - -

8 BY MR. BOMSTEIN:

9 Q. Morning, Mr. Hunt.

10 A. Morning.

11 Q. I would like to return to a topic we were talking
12 about yesterday, which is the application for Plan
13 Approval D.

14 A. Okay.

15 Q. I would ask that you turn to Exhibit A-10, please.

16 MR. RAPHAEL: Counsel, if you can just
17 give me a minute to catch up.

18 BY MR. BOMSTEIN:

19 Q. Within Exhibit A-10, please take a look at the
20 first substantive page which is Bates stamped
21 SUN001042. Within that page, there is a Section 1.0.

22 Do you see the middle paragraph of that section?

23 A. I do.

24 Q. Could you please read it?

1 A. "Note that this plan approval application fully
2 incorporates all the sources and emission increases
3 associated with SXL Project Mariner, Plan Approval
4 23-0119, SXL Project Mariner deethanizer, Plan Approval
5 23-0119 A and SXL Project Mariner cooling tower, Plan
6 Approval 23-0119 C."

7 Q. Thank you. In making that statement, Sunoco was
8 making it clear that those projects all go together
9 from an emissions standpoint, correct?

10 A. That's my understanding.

11 Q. And the basic functions that the ethane and propane
12 processes at project -- in Project D are the same as
13 those that Project Mariner performs, correct?

14 MR. RAPHAEL: Could you read that back?

15 THE STENOGRAPHER: "QUESTION: And the
16 basic functions that the ethane and propane
17 processes at project -- in Project D are the
18 same as those that Project Mariner performs,
19 correct"?

20 MR. RAPHAEL: Object to the compound
21 question, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah. I guess it depends
24 what you mean by basic function. Both projects

1 provide storage for NGLs. So in that sense, I
2 would say, yes, they are similar.

3 BY MR. BOMSTEIN:

4 Q. And beyond even the storage, they also perform
5 certain steps in the handling and processing of ethane
6 and propane, correct?

7 MR. RAPHAEL: I am going to object again
8 for the record. Mr. Hunt is a fact witness.
9 He's a business man. And now without foundation
10 on his knowledge, we are asking for opinion
11 testimony.

12 THE COURT: Overruled.

13 THE WITNESS: Can you repeat, please?

14 MR. BOMSTEIN: Could you please read
15 back the question?

16 THE STENOGRAPHER: "QUESTION: And
17 beyond even the storage, they also perform
18 certain steps in the handling and processing of
19 ethane and propane, correct?"

20 THE WITNESS: Yes. But as I understand
21 it, the steps are different because the nature
22 of the contracts and the customer requirements
23 are somewhat different.

24

1 BY MR. BOMSTEIN:

2 Q. What's your understanding of the differences?

3 A. Under Project Mariner, there is ethane and propane
4 separation that occurs in the deethanizer. Again,
5 which was a function of the contracts and the
6 commitments that were associated with that project.
7 With Project D, those requirements are changing because
8 the products that are being shipped to us are changing
9 in their form. So again, it gets back to sort of
10 different customer requirements are driving some of
11 those differences.

12 Q. Mr. Hunt, both Project Mariner and Project D
13 involve separation of ethane and propane, correct?

14 MR. RAPHAEL: Your Honor, I object --

15 THE COURT: Expert testimony?

16 MR. RAPHAEL: Yes, Your Honor.

17 THE COURT: Okay. That's all you have
18 to say and we can keep it moving.

19 MR. RAPHAEL: Thank you.

20 THE COURT: Overruled.

21 THE WITNESS: Could you repeat the
22 question, please?

23 BY MR. BOMSTEIN:

24 Q. Isn't it true that both Project Mariner and Project

1 D, the New Tanks Project, involve separation of ethane
2 and propane?

3 A. No.

4 Q. I would ask you to turn to page 3 of A-10. Do you
5 see Figure 2-1?

6 A. I do.

7 Q. Do you understand that that is a diagram of the
8 processing of ethane/propane mixture as part of the New
9 Tanks Project?

10 A. Yes, I see the diagram.

11 Q. And do you understand that that is what the diagram
12 is? The process involving ethane and propane mixture
13 being separated as part of this project?

14 MR. RAPHAEL: Objection, Your Honor.
15 Expert testimony.

16 THE COURT: Overruled.

17 THE WITNESS: Yeah. I mean, the way
18 that deethanizer operates today, ethane and
19 propane is separated in the deethanizer. We
20 spoke yesterday about the conversion of that
21 piece of equipment to a demethanizer. Once that
22 conversion occurs, as I understand, there won't
23 be propane separation occurring in that piece of
24 equipment any longer.

1 BY MR. BOMSTEIN:

2 Q. So, is this an inaccurate representation of what's
3 going to happen as part of the New Tanks Project?

4 A. I think this gives you sort of a range of
5 operability. As I understand it, the way it will be
6 operated, it would not be separating propane once that
7 conversion occurs.

8 Q. This is not going to happen, correct?

9 A. It's happening today.

10 Q. But it won't at some point?

11 MR. RAPHAEL: Objection: Expert
12 testimony.

13 THE COURT: Overruled.

14 THE WITNESS: Once the conversion
15 occurs, as I understand it and for that expected
16 operation, there would not be ethane/propane
17 separation at that time.

18 BY MR. BOMSTEIN:

19 Q. So, there is already ethane/propane separation as
20 part of Project A, correct?

21 A. Correct.

22 Q. And is part of Project D the continuation of
23 Project A?

24 A. Project D came about as a result of new and

1 different contracts that brought incremental or will
2 bring incremental volumes of NGLs to Marcus Hook. So
3 they are similar functions, but Project D doesn't
4 happen outside of new and different contracts that were
5 entered into some time later with different customers.

6 Q. And is Project D operational today?

7 A. Partially.

8 Q. What parts operational?

9 A. The tanks are in service, but really awaiting the
10 completion of the pipeline.

11 Q. So the -- when will the deethanization trends
12 transform into demethanization. When will that?

13 MR. RAPHAEL: Objection: Expert
14 testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I think that's still being
17 evaluated, the exact timing of when that will
18 occur.

19 BY MR. BOMSTEIN:

20 Q. Is that in connection with the completion of the
21 pipeline?

22 A. That is part of the factors that are going into
23 that decision.

24 Q. So am I correct in that the use of the distillation

1 towers as part of Project D is not yet operational?

2 A. The conversion of the deethanizer to demethanizer
3 has not yet been completed.

4 Q. Well, is -- I guess my question is, is the
5 distillation tower being used as part of Project D?

6 A. No.

7 Q. Okay. So is the -- is it going to first be turned
8 into a demethanizer before it is used as part of
9 Project D?

10 A. I would say yes.

11 Q. Okay. So am I correct, then, that the separation
12 of ethane and propane as represented in this
13 application for Project D is not actually part of
14 Project D?

15 MR. RAPHAEL: Objection. Expert
16 testimony.

17 THE COURT: How is that expert
18 testimony?

19 MR. RAPHAEL: Could you read that back?

20 THE STENOGRAPHER: "QUESTION: Okay. So
21 am I correct, then, that the separation of
22 ethane and propane as represented in this
23 application for Project D is not actually part
24 of Project D?"

1 MR. RAPHAEL: That would require expert
2 testimony, Your Honor.

3 THE COURT: Why does that require expert
4 testimony?

5 MR. RAPHAEL: Foundation about his
6 personal knowledge.

7 THE COURT: Well, he has personal
8 knowledge of what is encompassed in Project D.

9 MR. RAPHAEL: He is asking about
10 chemical compounds, Your Honor. That is not lay
11 person information. That is our position, Your
12 Honor.

13 THE COURT: Objection overruled.

14 THE WITNESS: Can you repeat the
15 question?

16 MR. BOMSTEIN: Can you please read it
17 back?

18 THE COURT: If feels like it's very
19 obstructionist, Mr. Raphael. I don't know how
20 to deal with this. This transcript seems like
21 it's going to be twice as long as it needs to
22 be. Maybe it's like a continuing objection
23 thing that if you are going to object to every
24 single question.

1 MR. RAPHAEL: Your Honor, I don't -- I
2 plan to object when expert testimony is trying
3 to be elicited from the witness. If it's a
4 factual question about what's going on, I have
5 not been objecting on the record. And I think
6 the record will reflect that.

7 THE COURT: All right.

8 THE STENOGRAPHER: "QUESTION: Okay. So
9 am I correct, then, that the separation of
10 ethane and propane as represented in this
11 application for Project D is not actually part
12 of Project D?"

13 THE WITNESS: No, I wouldn't say that.
14 I mean, as I understand it, I think this diagram
15 was intended to show a range of possible
16 operating flexibility, you know, some upper
17 range of operational flexibility that would be
18 provided to our customer.

19 And as it turns out, our expectation is
20 once we make that conversion of the deethanizer
21 to a demethanizer, that tower will be fed with
22 ethane and with methane removal, not propane.

23 BY MR. BOMSTEIN:

24 Q. Just to make sure I understand you, is it your

1 position, then, that circumstances have changed since
2 the application was submitted? And at this time, there
3 are no plans for separation of ethane and propane as
4 part of the New Tanks Project?

5 A. No. I think the way I think about it is, we offer
6 a range of services to our customers. And I think what
7 this application was trying to do was trying to
8 describe a range of services which varies from time to
9 time based on customer and market demand.

10 Q. So at some point in the future, the fractionation
11 tower here may be used for separation of ethane and
12 propane, correct?

13 MR. RAPHAEL: Objection: Speculation.

14 THE WITNESS: I think it's possible.

15 It's not what would occur in the planning, but I
16 think it's possible.

17 BY MR. BOMSTEIN:

18 Q. And that's as part of your offering a range of
19 services to your customers, correct?

20 A. Yes.

21 Q. Okay. So, I am going to go back up to this chart
22 here and put D question mark in the deethanize box
23 because it may be used as a deethanizer.

24 Mr. Hunt, if it is used as a deethanizer as part of

1 offering flexible services for your customers, then
2 that process involving deethanization, cooling, amine
3 treatment and dehydration as part of the New Tanks
4 Project is essentially the same process as part of
5 Project A, correct?

6 MR. RAPHAEL: Objection, Your Honor.

7 Expert testimony and a compound question.

8 THE COURT: Overruled.

9 THE WITNESS: Depends. Again, it would
10 depend on customer commitments and what the
11 customer requirements were for the product.

12 BY MR. BOMSTEIN:

13 Q. Explain what you mean by that?

14 A. Every contract is different. So, some customers
15 have different specifications that require, you know,
16 different types or amounts of processing and treatment.
17 So again, it depends.

18 Q. But you would agree with me that in both cases, you
19 would have an ethane/propane mix arrive at the
20 facility, correct?

21 A. In both cases of what -- what case are we talking
22 about?

23 Q. Project A and Project D as configured for meeting
24 the customers needs for separation of ethane and

1 propane.

2 A. Okay.

3 Q. You agree?

4 MR. RAPHAEL: I am going to object. If
5 he's asking for something he doesn't know, Your
6 Honor, it's expert testimony.

7 THE COURT: If he's asking him something
8 he doesn't know --

9 MR. RAPHAEL: He's asking for him to
10 assume things. That's purely expert testimony,
11 Your Honor. He's asking him to assume things,
12 that is what you do with an expert. Fact
13 witnesses, you ask them what they know and what
14 they did.

15 THE COURT: Overruled.

16 THE WITNESS: Did you finish the
17 question? I thought you were still in the
18 middle of that.

19 MR. BOMSTEIN: Yes.

20 THE WITNESS: Can you read it back for
21 me please.

22 THE STENOGRAPHER: "QUESTION: Project A
23 and Project D as configured for meeting the
24 customers needs for separation of ethane and

1 propane."

2 BY MR. BOMSTEIN:

3 Q. Perhaps I didn't. I apologize.

4 So in that configuration that you are offering to
5 your customers, there is amine treatment for both,
6 correct?

7 A. Not necessarily. Again, it would depend upon what
8 contaminant removal was necessary.

9 Q. But sometimes there is, correct?

10 A. As it stands today, we have customers that require
11 some contaminant removal that would require the use of
12 amine treatment. In the future, that may or may not be
13 true.

14 Q. But that's offered to your customers, correct?

15 A. It's part of the capabilities that we have here.

16 Q. For both Project A and Project D?

17 A. I'm not sure what's different. It's beyond my
18 knowledge of what Project D is adding or changing that
19 is associated with the treating, the front end
20 treatment. The answer to that from my perspective is,
21 I don't know.

22 Q. Adding or changing as compared to what? From what
23 baseline?

24 A. From A and D -- one in A and then Project D is

1 building or associated with product treating. Again,
2 that -- I don't know the distinction technically
3 between those two things.

4 Q. Just to be clear, you're not sure the difference
5 between Project A and Project D?

6 A. Correct.

7 Q. Mr. Hunt, when -- why don't we talk about Project

8 E. So, there are three fractionation towers that are
9 installed as part of Project E or will be installed as
10 part of Project E, correct?

11 A. That's what I understand.

12 Q. We saw two of them on the site visit?

13 A. Yes.

14 Q. Those were which out of the three?

15 A. If I recall, it was the -- can we turn to the Plan
16 Approval or --

17 Q. Yes.

18 A. I don't have that in front of me.

19 Q. That would be Exhibit A-11.

20 A. Yeah. I believe what we viewed on the site view
21 was the 15 -- what's noted as the 15-2B depropanizer
22 and the 15-2B debutanizer.

23 Q. Thank you. The 15-2B depropanizer, is there
24 another depropanizer as part of Project E?

1 A. Yes.

2 Q. Is that -- does that depropanizer have a particular
3 name?

4 A. Yes. It's referred to here both as the SXL
5 depropanizer or, more specifically, the 15-2S
6 depropanizer.

7 Q. Okay. Thank you.

8 If it's okay with the Board and Mr. Hunt, I would
9 ask that Mr. Hunt come up to the map here, this
10 demonstrative map, and point to where the -- where we
11 drove around on the site visit?

12 A. The route we took on the site visit?

13 Q. Yes, sir.

14 A. (Witness approaches board as instructed.)

15 We came in -- make sure I get this correct. We
16 came down this road here, drove down to here, and then
17 through across here.

18 Q. Thank you, sir.

19 So, is it fair to say when we drove down initially
20 entering the facility, to our right were the numbers on
21 the map roughly speaking marked 8, 7, 17, 18, 20 and
22 24?

23 A. Yes.

24 Q. Okay. Thank you. And then we turned left and went

1 down through a variety of numbers clustered closer to
2 the river?

3 A. Yes.

4 Q. Okay. Thank you.

5 A. (Witness goes back to the witness seat.)

6 Q. And the SXL depropanizer, is that also referred to
7 as the transmix depropanizer?

8 A. Yeah. I don't know if it's specifically called
9 that or not. That's part of what it does.

10 Q. And meaning part of what it does is separate
11 propane and butane out that had been mixed together,
12 correct?

13 MR. RAPHAEL: Your Honor, objection.
14 Expert testimony.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MR. BOMSTEIN:

18 Q. Thank you. And the purpose of that goes back to
19 the most efficient way to deal with the transmix at the
20 facility, correct?

21 A. Yeah. Most efficient.

22 THE COURT: That's expert testimony.

23 MR. BOMSTEIN: I will rephrase.

24

1 BY MR. BOMSTEIN:

2 Q. Mr. Hunt --

3 MR. RAPHAEL: Your Honor, let me just
4 object. I think we may be up to the standing
5 objection. Anything that goes beyond his
6 personal knowledge I will take a standing
7 objection as expert testimony to try to keep
8 this moving.

9 THE COURT: Thank you.

10 MR. RAPHAEL: Thank you, Your Honor.

11 THE COURT: If I hear something that I
12 think is clearly expert testimony, I will point
13 it out, as well.

14 MR. RAPHAEL: Thank you, Your Honor.

15 MR. BOMSTEIN: Thank you, Your Honor.

16 BY MR. BOMSTEIN:

17 Q. Is the transmix to be dealt with at the
18 depropanizer that has yet to be built associated with
19 Project D?

20 A. Yesterday I testified that it was not clear to me,
21 and it is not clear to me what the threshold was for
22 this SXL depropanizer relative to the C-3 plus barrels
23 that would be shipped on the pipeline.

24 So, my answer to your question is I don't know.

1 Q. Could you turn to Exhibit A-42, please. Could you
2 turn to page 132 of the transcript.

3 MR. RAPHAEL: Just give me a second,
4 Counsel.

5 BY MR. BOMSTEIN:

6 Q. Do you see where you are discussing Project E on
7 that page?

8 A. On 132?

9 Q. Yes, sir.

10 A. Yes.

11 Q. Okay. Can you please turn over to page 133.

12 Do you see my question where I ask: Was this the
13 propane/butane transmix that we were talking about in
14 connection with Project D?

15 A. Uh-huh.

16 Q. What's your answer?

17 A. Line 13?

18 Q. Yes, sir.

19 A. Yeah. "Could partially have been associated with
20 the volumes that led to 119D."

21 However, on the previous page on Line 20 of 132, I
22 said in my testimony: "The SXL piece of that was
23 later, as I understand it. Again, this is sort of
24 getting into a technical detail. It's a little beyond

1 my depth, but I think it goes back to the most
2 efficient way to deal with transmix."

3 So in other words, I'm reiterating that this is a
4 little beyond my depth on the technical detail.

5 Q. So, are you saying that when you answered in the
6 deposition, you were speculating?

7 A. I prefaced my comments in the deposition with the
8 fact that I was unsure of the technical details.

9 Q. Well then, let me ask you a different question.
10 Project D creates propane/butane transmix, correct?

11 A. It does.

12 Q. And that propane/butane transmix is able to be
13 separated by equipment that's part of Project E,
14 correct?

15 A. Yes.

16 Q. And is that a service that you are offering to your
17 customers?

18 A. Yes. The distinction is to what extent. The
19 original plan on D, as I said, I think in my testimony
20 yesterday was to blend the transmix into the product.
21 And that works, you know, some of the time depending on
22 the volumes and the number of batched changes and the
23 customer requirements on the product mix. The C3-plus
24 component, when that product was added to the pipeline

1 batching through a different set of contracts, that
2 drove some changes in what was required from -- in
3 terms of processing not only that material and
4 transmix.

5 And as I said, what's not clear to me is what
6 pushes you over the edge in needing that second
7 depropanizer. That's the part that I don't have the
8 answer to.

9 Q. Okay. Besides the fractionation towers, Project E
10 also involved the 15-2B cooling tower, correct?

11 A. I'm not sure.

12 Q. Could you turn to Exhibit A-11, please?

13 A. A-11 you said?

14 Q. Yes, sir.

15 MR. RAPHAEL: Give us a second, Counsel.

16 We are struggling with one of the rings
17 in our three ring.

18 BY MR. BOMSTEIN:

19 Q. Could you please turn to page 7, which is Bates
20 stamped SUN000049. Does this refresh your
21 recollection?

22 A. Yes.

23 Q. Okay. Thank you. And as part of Project E, the
24 cooling tower was modified, correct?

1 A. No. That's not my understanding.

2 Q. Not your understanding. Okay.

3 Could you turn back to your transcript please,

4 A-42. Could you please turn to page 182 within that.

5 MR. RAPHAEL: Let us catch up, Counsel.

6 Thanks.

7 MR. BOMSTEIN: Sure.

8 MR. RAPHAEL: Thank you, Counsel.

9 BY MR. BOMSTEIN:

10 Q. Could you read your answer, your testimony at Line
11 8, please.

12 A. "Project Revolution was, as captured in the permit
13 app, was managing the modification to the cooling
14 tower."

15 Q. Do you see where I then ask you what were those
16 modifications?

17 A. Yes.

18 Q. And what's your answer?

19 A. I'm not sure.

20 Q. And then do you see where I ask you: "Well, do you
21 know if the cooling tower 15-2B has been under
22 construction?"

23 A. Yes.

24 Q. And what's your answer?

1 A. "The 15-2B cooling tower, there were some
2 modifications to it that were needed as part of E.
3 Honestly, I'm not exactly sure what those were, but it
4 was something to address the capacity."

5 Q. And then, do you see where I ask if those
6 modifications had been completed yet?

7 A. Yes.

8 Q. And what is your answer?

9 A. I believe -- "I believe the modifications have been
10 completed."

11 Q. So, does that refresh your recollection as to
12 whether there were modifications to the cooling tower
13 as part of Project E?

14 A. I have only a rudimentary understanding of what was
15 going on for that cooling tower. So at the time,
16 that's what I believe and that's what I stated.

17 Q. Has your understanding been updated since?

18 A. Yeah. I think as I understand it today, the
19 cooling tower itself was not modified.

20 Q. Was the cooling tower under construction?

21 A. If it wasn't modified, then there wasn't any
22 construction. My understanding is the cooling tower
23 itself was not modified.

24 Q. So, what distinction are you drawing there?

1 A. The system, the cooling tower cools the water in a
2 cooling water system. So as I understand it, the tower
3 itself didn't need to be modified. It had sufficient
4 capacity. What was necessary was increase in the
5 circulating water for the additional equipment that
6 would be connected to that system. That's probably the
7 best way that I know to explain it.

8 Q. And when was there construction to accomplish that?

9 A. I don't know.

10 Q. Well, do you believe that it was completed?

11 A. Yes. I believe it's been completed. I don't know
12 when it was completed.

13 Q. Was it completed as of the date of the deposition?

14 A. That's what I stated. I don't have any reason to
15 think that's not true.

16 Q. So what exactly -- if it's not the cooling tower
17 itself, what pieces were worked on?

18 A. Again, as I understand it, was -- there was either
19 some additional or modifications to pumps to be able to
20 circulate more water.

21 Q. That was part of Project D?

22 A. I don't know if that was part of Project D.

23 Q. Well then, what were you referring to when you were
24 referring to modifications to the cooling tower that

1 were needed as part of Project E?

2 A. I'm not sure. I think we were also talking about
3 in this context a project for moving some cooling tower
4 load from another cooling tower over to 15-2B. So,
5 it's not clear to me, you know, which part goes with
6 which frankly.

7 Q. You believe you are mistaken or you may have been
8 mistaken when you said that was needed as part of E?

9 A. I may have been mistaken there. But honestly, I'm
10 not sure.

11 Q. Please turn to Exhibit A-50.

12 A. I don't see 50. Here it is. I'm sorry, 50.

13 Q. Yes, sir.

14 A. Okay. Sorry.

15 Q. No problem. So, what is this document?

16 A. It's an email thread that seems to be discussing
17 some of the decision processes around the cooling
18 tower.

19 Q. And you received this, correct?

20 A. It appears I was copied on it.

21 Q. Can you take a look at the first page of the email
22 thread, the second email down. And I will ask you to
23 just read that -- those two sentences?

24 MR. WHITE: Objection, Your Honor.

1 Hearsay. This email thread is chock full of
2 people that were neither witnesses nor parties.

3 THE COURT: Response to hearsay
4 objection?

5 MR. BOMSTEIN: This is a -- first of
6 all, this is party admission. This is a thread
7 with Sunoco and its agents making various
8 statements. So, it's exception to the hearsay
9 doctrine.

10 THE COURT: I don't know who these
11 people are.

12 MR. BOMSTEIN: Well, maybe I can have
13 Mr. Hunt identify them.

14 THE COURT: Well, that would -- that's a
15 start. Let's see if that solves the problem.

16 MR. BOMSTEIN: Okay.

17 THE COURT: I will withhold ruling until
18 that happens.

19 MR. BOMSTEIN: Thank you, Your Honor.

20 BY MR. BOMSTEIN:

21 Q. Mr. Hunt, who is sending you the email that I just
22 directed you to?

23 A. Which one exactly?

24 Q. The second one down from the top on the first page.

1 A. On the first page?

2 Q. Yes, sir.

3 A. I'm sorry. The first page, the second one down is
4 Andrew Needham.

5 Q. And who does he work for?

6 A. Andrew works for ETP.

7 Q. That's your company?

8 A. It is now. At this time, I believe was prior to
9 the merger.

10 Q. And at this time, the two were affiliates and they
11 were preparing a project jointly, correct?

12 A. Yeah. I mean, it was being run by ETP, you know,
13 kind of separately. But we were affiliates at the
14 time.

15 Q. And Project E is a joint project with Sunoco and
16 ETP, correct?

17 A. Yes.

18 THE COURT: I'm not sure I have enough
19 there to say it's a party.

20 MR. BOMSTEIN: I can develop it further,
21 Your Honor. Just one second.

22 MR. RAPHAEL: Your Honor, just to keep
23 record, they were separate entities at the time
24 of this email. That has now changed. But when

1 the email was sent, they were.

2 THE COURT: Wait, you're testifying.

3 So, I understand the objection.

4 MR. RAPHAEL: Very good, Your Honor.

5 BY MR. BOMSTEIN:

6 Q. Mr. Hunt, who received this email?

7 A. Would you like me to read the names?

8 Q. Yes. And can you say who they worked for?

9 A. There is a number of names on here that I don't
10 recognize and I don't know who they worked for.

11 Q. Could you say the ones you do recognize, and who
12 those individuals work for?

13 A. Ed Human worked for at the time SXL.

14 Q. And to be clear, SXL is Sunoco Logistics?

15 A. Yes.

16 Q. And SXL is the parent entity of Sunoco Partners
17 Marketing and Terminals?

18 A. Yes. Stuart Gantt and Christopher Bakey are the
19 only other two names there that I recognize.

20 Q. Who are they?

21 A. They also worked for SXL.

22 Q. Okay. Just one second, please.

23 Why don't I start with the back most email, the
24 farthest down in the thread, which is SUN 010381.

1 Starts in that and goes onto SUN 010382. There is
2 various statements in this document made by different
3 individuals.

4 Can you please identify who is sending the email at
5 the very bottom of SUN 010381?

6 A. Yes. Ed Human.

7 Q. And he works for the same company you work for,
8 correct?

9 A. Yes.

10 Q. Could you please read his email?

11 MR. WHITE: Objection, Your Honor. A,
12 again it's hearsay. This email was not sent to
13 Jonathan Hunt. He has no knowledge of it. And
14 B, it's not from anyone on the witness list. It
15 still qualifies as hearsay.

16 MR. BOMSTEIN: Your Honor, this is an
17 email thread that Mr. Hunt received and has read
18 and is familiar with.

19 THE COURT: I --

20 THE WITNESS: I would object to that.

21 THE COURT: You object?

22 MR. RAPHAEL: Your Honor, just to keep
23 the record clear, the email he is referring to
24 was not sent to Mr. Hunt. It clearly says it

1 was sent to Chris P-L-O-E-T-Z. That's the only
2 recipient of that email.

3 MR. BOMSTEIN: And at some point in
4 time, Your Honor, Mr. Hunt received this as part
5 of the thread that he was on.

6 THE COURT: Well, whether it's hearsay
7 or not doesn't depend on whether somebody is on
8 a witness list. The question is whether it's
9 party admission. I am trying to find that rule
10 here quickly.

11 Mr. White, do you know what the citation
12 is for that?

13 MR. WHITE: I think it's 802-20
14 something, Your Honor.

15 MR. BOMSTEIN: I believe it's 25.

16 THE COURT: Zero eighty-two doesn't
17 have --

18 MR. WHITE: Sorry.

19 MR. BOMSTEIN: Your Honor, it is 803-25.

20 MR. WHITE: I was close.

21 THE COURT: What is Mr. Human -- what is
22 Mr. Human's position?

23 THE WITNESS: He -- at this time, he is
24 currently the operations manager/director over

1 the Marcus Hook facility. At the time this
2 email was written, he may have been in a role
3 that was associated with some other project work
4 at the site. But I'm not sure.

5 MR. RAPHAEL: Your Honor, I would just
6 add to the record this email from Sunoco
7 Logistics. The party to this matter is SPMT,
8 separate Sunoco entity but not the party to this
9 matter.

10 THE COURT: I will overrule the
11 objection with regard to just that last -- very
12 last email that's in 50. It starts on page
13 10381 and goes to 10382. Not ruling on the rest
14 of the string yet.

15 MR. BOMSTEIN: Thank you, Your Honor.
16 And I would also -- okay.

17 BY MR. BOMSTEIN:

18 Q. So, Mr. Hunt, please read that email?

19 A. The very last one in the thread here?

20 Q. Yes, sir.

21 A. "Chris, have you a your team arrived at the final
22 answer for duty required on 15-2B cooling tower. We
23 are looking to add air compressors back into the design
24 if we have capacity available in 15-2B cooling tower.

1 Please forward the most recent H&MB material balance
2 data for both revolution and SXL deprop systems, as
3 well."

4 Q. Thank you. What is H&MB?

5 A. HMB stands for heating and material balance.

6 Q. Do you know what he is referring to there?

7 A. It's data. It's engineering data associated with
8 the project.

9 Q. Okay. Thank you. Do you know who Chris, is it,
10 Ploetz is?

11 A. Yeah. I don't recognize that name.

12 Q. Do you know who Burns and McDonnell is?

13 A. Yeah. They are an engineering contract that's done
14 work for us.

15 Q. In this context, Burns and McDonnell was an agent
16 of Sunoco doing work for it on this project, correct?

17 A. I believe so. I don't know if they were directly
18 our agent, or if they were working for -- through
19 another third party. But --

20 Q. Were they doing work at your facility?

21 A. Yes, as I understand.

22 Q. On your behalf?

23 A. Yes.

24 Q. Do you see the next email up the chain from

1 Mr. Ploetz?

2 A. I do.

3 Q. Do you see where it says "our normal load is
4 25,000" --

5 MR. WHITE: Objection, Your Honor. If
6 he is going to start reading this into evidence.
7 The witness already testified he doesn't know
8 who Chris Ploetz is and neither do we.

9 It's hearsay.

10 THE COURT: I don't believe we have
11 enough foundation to support a party admission.

12 MR. BOMSTEIN: I will establish a little
13 more, Your Honor.

14 THE COURT: Okay.

15 BY MR. BOMSTEIN:

16 Q. Do you see -- do you have an understanding that
17 Mr. Ploetz is an engineer at Burns and McDonnell?

18 A. That's what I see here in the document.

19 Q. If -- do you have any reason to believe that
20 Mr. Ploetz was falsifying his title or role at Burns
21 and McDonnell?

22 A. I would have no reason to believe that, no.

23 Q. Mr. Ploetz had access to Sunoco Logistics
24 engineering information as demonstrated in this email

1 thread, correct?

2 A. I haven't read the whole thread here.

3 Q. Well, this demonstrated in this email itself.

4 MR. WHITE: Objection, Your Honor. He's
5 eliciting testimony from a hearsay document.

6 THE COURT: Even if he knows that he
7 worked for that consulting company, it doesn't
8 establish that this person had the authority to
9 make a representation on behalf of Sunoco.

10 MR. BOMSTEIN: Your Honor, I would
11 direct you to 803-25 Sub D. Which states that
12 the statement is offered against an opposing
13 party and -- here is where D starts -- was made
14 by the party's agent or employee on a matter
15 within the scope of that relationship and while
16 it existed.

17 I would offer that this is an agent of
18 the party within the scope of that relationship
19 and while it existed.

20 MR. RAPHAEL: Your Honor, I --

21 THE COURT: I will ask you if I need a
22 response.

23 MR. RAPHAEL: Thank you, Your Honor.

24 THE COURT: I don't feel comfortable

1 extending that to consultant doing work as
2 independent consultant.

3 So, I will sustain Mr. White's objection
4 on that.

5 MR. BOMSTEIN: Just one minute, Your
6 Honor.

7 BY MR. BOMSTEIN:

8 Q. Mr. Hunt, can you please turn to the page with the
9 Bates stamp SUN010379?

10 A. Okay.

11 Q. Who is Mr. Stuart Gantt?

12 A. Stuart works for SXL.

13 Q. Mr. Gantt is part of your company?

14 A. He is.

15 Q. And he was at the time this email was written?

16 A. Yes.

17 Q. Could you read the two sentences he writes under
18 where it says Chris P, comma?

19 MR. WHITE: Objection, your Honor.

20 Again, calling for hearsay. This is Sunoco
21 Logistics. This is not a party. SPMT is a
22 party here.

23 THE COURT: I am not going to narrowly
24 define the party at least for purposes of that

1 objection. But it does concern me that this is
2 referring to somebody else's comments.

3 MR. WHITE: We don't know who Ken -- I
4 am assuming Ken in the email refers to a Ken
5 Benjamin perhaps or Benjamin Kettler, I don't
6 know. It's basically hearsay hiding in a
7 hearsay document, which may qualify as a hearsay
8 exception.

9 THE COURT: I think that's what I just
10 said or tried to say less articulately.

11 What's your response to that,
12 Mr. Bomstein?

13 MR. BOMSTEIN: Your Honor --

14 THE COURT: The first sentence is
15 talking about somebody else's comment.

16 MR. BOMSTEIN: Yeah. I will set that
17 sentence aside and go onto later. I do want to
18 address the contention that Sunoco Logistics is
19 different than Sunoco Partners Marketing and
20 Terminals. I can elicit that through Mr. Hunt
21 because I believe that's not true.

22 THE COURT: Okay.

23 BY MR. BOMSTEIN:

24 Q. Mr. Hunt, let's talk a little bit about the

1 corporate structure of Sunoco here.

2 Does Sunoco Partner Marketing and Terminals have
3 employees who are not employees of Sunoco Logistics?

4 A. No.

5 Q. So, is it fair to characterize Sunoco Partners
6 Marketing and Terminals as run by wholly Sunoco
7 Logistics?

8 A. Yes.

9 Q. Okay. Thank you.

10 MR. BOMSTEIN: Your Honor, there is no
11 distinction between these companies. The fact
12 that it says Sunoco Logistics is Sunoco Partners
13 Marketing and Terminal, it's essentially a
14 brand.

15 THE COURT: Right. Which is what I
16 already ruled basically. I am still concerned
17 about the hearsay within the hearsay, whether
18 this has any meaning without referring to other
19 hearsay.

20 MR. BOMSTEIN: Well, Your Honor --

21 THE COURT: Just read this one email.

22 MR. BOMSTEIN: Sure.

23 And, Your Honor, I would set aside the
24 thing referring to Ken and just focusing on the

1 statement wholly for Mr. Gantt in the following
2 sentence starting with "the only remaining
3 aspect."

4 THE COURT: Okay.

5 BY MR. BOMSTEIN:

6 Q. Mr. Hunt, could you please read after that first
7 sentence, just the second sentence?

8 A. Could you help me -- where are we?

9 Q. I'm sorry. On page SUN 010379.

10 A. Okay.

11 Q. About two-thirds of the way to the top of that
12 page. And the sentence beginning "the only remaining
13 aspect."

14 MR. WHITE: Your Honor, going to
15 continue to object. Because even though the
16 second sentence doesn't include to say "Ken's
17 feedback" it's fairly clear it's still
18 describing hearsay from whomever Ken is.

19 MR. RAPHAEL: We would concur, Your
20 Honor.

21 MR. BOMSTEIN: Your Honor, I would
22 disagree with that statement.

23 THE COURT: Overruled as to that part of
24 that email.

1 BY MR. BOMSTEIN:

2 Q. Mr. Hunt, would you please read that sentence?

3 A. The second sentence?

4 Q. Yes, sir.

5 A. "The only remaining aspect that is of concern is
6 making sure the exchanger two velocities are adequate,
7 and that the piping configuration when tying into the
8 15-2B CT is sized properly to prevent too much flow
9 from going that direction."

10 Q. Do you have an understanding as to what CT refers
11 to here?

12 A. Cooling tower.

13 Q. Thank you. And do you have an understanding as to
14 what tying into the cooling tower means?

15 A. I don't really know the context here. I am reading
16 one sentence, so you know.

17 Q. I will ask you to take a step back from the email
18 for a second. And just in your understanding from
19 working at Marcus Hook, do you have an understanding as
20 to what tying into a cooling tower means?

21 A. Yeah. What that means to me is tying into the
22 piping where -- for the water supply that goes to and
23 from a cooling tower.

24 Q. Tying what into the piping?

1 A. Another piece of pipe.

2 Q. Okay. Is it your experience at Marcus Hook that
3 when you are talking about the cooling tower, it's
4 often referring to the cooling water system?

5 A. It could depending on the context. It could.

6 Q. Just one second, please. I would like to move on
7 from this document at this point.

8 Can you please turn to Exhibit A-5.

9 A. Okay.

10 Q. Are you familiar with this study, sir?

11 A. I am aware of it.

12 Q. What is it?

13 A. It's a third-party's assessment of the potential
14 economic impacts of the Mariner East Pipelines, the
15 Revolution Project Fractionation Facility and associate
16 movements at the Marcus Hook Industrial Compact.

17 Q. Your company commissioned this, correct?

18 A. I'm not -- I'm not sure who commissioned this.

19 Q. Could you turn to the cover page, please?

20 A. I see it.

21 Q. Do you see the logo of your company there?

22 A. I do.

23 Q. And do you see where it says reports submitted to
24 Energy Transfer Partners?

1 A. I do.

2 Q. So, do you have any knowledge about whether your
3 company had involvement with this study?

4 A. I didn't personally have any knowledge in this
5 study or its commissioning. So, I honestly don't know
6 if we commissioned it or not. We may have based on
7 what you pointed out there.

8 Q. Did you have any involvement in providing
9 information to the author of the report?

10 A. Not personally, no.

11 Q. Did your team?

12 A. I'm not sure.

13 Q. Do you know whether anybody at Energy Transfer
14 Partner -- Partners provided information for this
15 study?

16 A. I don't know firsthand. I would imagine that's
17 true. But I don't know that from firsthand.

18 Q. What leads you to imagine that's true?

19 A. Fairly specific topic, you know, around our
20 facility in Marcus Hook. So presumably, there was
21 information that was provided from our company. But
22 again, I wasn't involved in any of that directly.

23 Q. Okay. Do you know of anybody who was?

24 A. You know I don't. I don't know who in our

1 organization initiated this.

2 Q. Okay. Can I ask you to turn to page 20, please?

3 A. Okay.

4 Q. Mr. Hunt, do you see discussion of operations and
5 operating budget?

6 A. I do.

7 Q. Do you know whether the operating costs listed
8 there are roughly accurate based on your, you know,
9 personal knowledge as being involved in operations at
10 Marcus Hook?

11 MR. WHITE: Objection: Hearsay, Your
12 Honor. This witness has established no personal
13 knowledge, no awareness if this is commissioned
14 or who was involved. The author isn't here.
15 He's not a party. Constitutes hearsay.

16 THE COURT: Response?

17 MR. BOMSTEIN: I'm not asking to get the
18 statement here into evidence. I am asking him
19 to refer to the document and tell me if what he
20 sees is accurate in his understanding based on
21 his personal knowledge.

22 THE COURT: I think he can ask the
23 question without referring to the document.

24 MR. BOMSTEIN: Okay. Will do, Your

1 Honor.

2 BY MR. BOMSTEIN:

3 Q. Mr. Hunt, the expanded ongoing operations at Marcus
4 Hook, did they require a budget by 2020 of between 98
5 and 147 million dollars?

6 A. Expand -- what does expanded mean? I don't know
7 what that encompasses.

8 Q. Expanded as compared to what was previously secured
9 at Marcus Hook?

10 MR. RAPHAEL: I am going to have to
11 object. There is no firsthand knowledge.

12 THE COURT: You don't have to refer to
13 the document in answering the question. In
14 fact, probably better that you don't.

15 THE WITNESS: Can you repeat the
16 question?

17 MR. BOMSTEIN: Could you please repeat
18 it?

19 THE STENOGRAPHER: "QUESTION: Mr. Hunt,
20 the expanded ongoing operations at Marcus Hook,
21 did they require a budget by 2020 of between 98
22 and 147 million dollars?"

23 THE WITNESS: In order to answer that
24 question, I would need to know, what's included

1 in expanded and what's included in the baseline
2 in order to establish a differential there. And
3 even now, I'm not sure I can answer whether or
4 not it would fit in that range off the top of my
5 head.

6 BY MR. BOMSTEIN:

7 Q. The Revolution Fractionation Facility of Marcus
8 Hook, what's the budget for that?

9 A. I don't know.

10 Q. Do you have a rough understanding of it?

11 MR. RAPHAEL: I am going to object as to
12 relevance, Your Honor. Where are we going?

13 THE COURT: Relevance?

14 MR. BOMSTEIN: Your Honor, the relevance
15 here is that the fractionation facility is part
16 of a larger project. And I am trying to
17 understand, based on knowledge that we have from
18 other information, which other sources which we
19 will elicit later, if the budgeting for the
20 facility is part of an independent pool of money
21 or part of a larger budget that encompasses the
22 entire project which goes back to the common
23 plan for development of the facility.

24 MR. RAPHAEL: The numbers are absolutely

1 irrelevant, Your Honor, to this matter.

2 MR. BOMSTEIN: And, Your Honor, there is
3 no issue of confidentiality as this was provided
4 to the public.

5 THE COURT: Does the Department have a
6 position on this?

7 MR. WHITE: We do not believe the budget
8 is relevant to the decisions the Department made
9 in issuing Plan Approval E, Your Honor.
10 Especially not talking about 2020, which is
11 several years after the Department made the
12 decision which is before this Court.

13 THE COURT: Budget seems --

14 MR. BOMSTEIN: Your Honor, if I may, I
15 can establish some foundation.

16 THE COURT: All right. My reaction
17 is -- my initial reaction is the budget seems to
18 be getting too far afield. But go ahead and --
19 if you want to ask some foundational questions.

20 MR. BOMSTEIN: Thank you, Your Honor.

21 BY MR. BOMSTEIN:

22 Q. Mr. Hunt, what is the process for projecting budget
23 for expansion of operations and facilities at Marcus
24 Hook?

1 A. The process?

2 Q. Yes, sir.

3 A. When a project is developed, that project -- there
4 is commercial agreement, typically, that are associated
5 with the project which sort of establishes the business
6 foundation for, you know, any given project. There are
7 capital costs if there are construction that has to
8 occur to enable that project. So, that has to be
9 estimated. And then generally, there is operating
10 expenses that have to be estimated that all go into the
11 financial evaluation of whether or not a project is
12 viable or not.

13 So typically, as part of that project of
14 establishing and approving and funding a project is the
15 establishment of an estimate of the operating expenses
16 that would be associated with that.

17 Q. Thank you. How far out is the budget projected for
18 capital expenditures?

19 A. It's generally only -- generally speaking, the
20 op-ex is sort of generated on an annual basis. It's
21 really just one year worth of op-ex.

22 Q. So, does Sunoco not have an operating budget that
23 is projected out to 2020 at this point?

24 A. No. We have, basically, an annual budget process.

1 Q. So, wouldn't be the case that there is an operating
2 budget for 2020 even a preliminary one at this time,
3 correct?

4 MR. WHITE: Your Honor, relevance
5 objection is still here. He has not laid any
6 foundation to connect this budget process to the
7 Plan Approval E.

8 MR. RAPHAEL: We concur, Your Honor.

9 MR. BOMSTEIN: Your Honor, I am in the
10 midst of developing an argument. I can preview
11 where that's going if that would be helpful.

12 THE COURT: That would be helpful.

13 MR. BOMSTEIN: Okay. Thank you, Your
14 Honor. What I am trying to establish is that in
15 2012 when the first of these applications was
16 put together, there was projection for the
17 development of the facility out much farther
18 than has been admitted so far.

19 And you know, I would like to do that
20 with reference to this document because it has
21 statements concerning budget projected far into
22 the future. I am trying to develop this
23 testimony on projections of future operations
24 with Mr. Hunt.

1 MR. RAPHAEL: Your Honor, what document
2 is he referring to?

3 THE COURT: That sounds like that goes
4 to common plan.

5 MR. BOMSTEIN: Yes, sir.

6 THE COURT: Common plan is one of the
7 elements of whether there has been
8 circumvention.

9 MR. BOMSTEIN: Yes, sir.

10 THE COURT: Why is that not relevant?

11 MR. WHITE: Your Honor, the -- when the
12 Department considers whether or not
13 regulation -- whether the regulations have been
14 circumvented or not, how much money is spent,
15 when it is spent and how it is spent and where
16 it comes from has absolutely nothing to do with
17 the Department's determination, nor is it
18 included in any regulations.

19 It's irrelevant to the decision of
20 what's before you as to whether the Department
21 uses discretion in determining certain --

22 THE COURT: How are you supposed to
23 determine whether there is a plan?

24 MR. WHITE: Sorry?

1 THE COURT: How are you supposed to
2 determine whether there is a plan? Wouldn't a
3 budget be evidence if there is a plan?

4 MR. WHITE: No, Your Honor. The
5 Department views each project as it comes in,
6 the technical applications, the emissions, the
7 effect. The Department does not receive any
8 information about budget money or spending, nor
9 does it ask for any. It looks at the emissions,
10 the environment, what happened, how is it
11 connected, how did it link, is it part of the
12 same project.

13 How people fund it is completely
14 irrelevant under regs or environmental issue.

15 THE COURT: Well, it's almost break time
16 anyway. Let's take a break, and I will ponder
17 this for a second.

18 MR. BOMSTEIN: Thank you.

19 MR. RAPHAEL: Thank you, Your Honor.

20 - - -

21 (At this time, a brief break was taken.)

22 - - -

23 THE COURT: Back on the record. It
24 occurred to me during the break, I am doing all

1 this thinking. And then I just wondered to what
2 extent, Mr. Hunt, are you involved in the
3 budgeting process?

4 THE WITNESS: I am very much involved in
5 the budgeting process. It's for the facilities
6 and the assets that report up to me.

7 THE COURT: I think it might be relevant
8 in terms if we can narrow it down to just more
9 very general questions about the project. But
10 if it somehow involves the actual equipment
11 that's at issue in Project E, then I think it
12 has some relevance in terms of the common plan.

13 So, overrule the objection to that
14 extent.

15 MR. BOMSTEIN: Sounds good, Your Honor.

16 BY MR. BOMSTEIN:

17 Q. Mr. Hunt, in -- were you involved in budgeting for
18 the redevelopment of the Marcus Hook facility in 2012?

19 A. The only thing I would have been involved in
20 budgeting for in 2012 would have been 2012 and maybe
21 2013.

22 Q. And did that involve Project 1?

23 MR. WHITE: Objection, Your Honor. As I
24 understood your ruling, it was that if it's

1 limited or restricted somehow to Project E, and
2 now he's back to Project 1. I just want to
3 understand your ruling for going on about this
4 budget issue.

5 THE COURT: Response?

6 MR. BOMSTEIN: Your Honor, the question
7 of circumvention necessarily requires eliciting
8 of testimony on the connections including the
9 budgetary connections between these projects.
10 It's Clean Air Council's position that Project 1
11 and Project E are part of the same project. If
12 there is budgeting for Project 1 at the time,
13 that would impact if it's separate then the
14 budgeting for Project E or not.

15 THE COURT: Can you start with Project E
16 and we can go from there?

17 MR. BOMSTEIN: Yes, sir. Absolutely,
18 Your Honor.

19 BY MR. BOMSTEIN:

20 Q. Mr. Hunt, were you involved in the budgeting for
21 Project E?

22 A. The project, as I said when you approve a project,
23 there is op-ex that is estimated as part of that
24 project.

1 Q. By op-ex, are you referring to operational
2 expenditures?

3 A. Yes, operating expenses. So, that's part of the
4 process of evaluating a project and the potential
5 returns for that project. Separate from that on an
6 annual basis, we go through a budget process like most
7 companies did. And we establish the budget for the
8 following year. I am -- I have not seen nor am I aware
9 of any other budget that extends beyond one year.

10 Q. Were you involved in the budgeting for Project E?

11 A. People that report to me are the ones that would
12 really be involved in putting those budgets together in
13 the context I just described.

14 Q. Did you review their work?

15 A. I reviewed the budget as part of our annual budget
16 review process.

17 Q. So as part of that annual budget review process, is
18 it correct that you have reviewed the budget for
19 Project E?

20 A. I reviewed the budget up through this current year,
21 so 2018. So, to the extent we expected assets
22 associated with Project E to begin incurring expenses
23 in 2018, then that would have been included in that.

24 Q. Was that?

1 A. I believe so. I believe there were some expenses
2 that would have been included in the 2018 budget that
3 are associated with assets in the project.

4 Q. And were there also expenditures associated with
5 Project E in the 2017 budget?

6 A. I don't know.

7 Q. Do you know whether there were expenditures
8 associated with Project E in the 2016 budget?

9 A. I don't know.

10 Q. Do you know when the plan approval for E was
11 issued?

12 A. No, not off the top of my head.

13 Q. Going to ask you to turn to Exhibit A-11 please --
14 sorry. Strike that.

15 Please turn instead to A-34.

16 MR. RAPHAEL: Counsel, give us a moment
17 to catch up.

18 BY MR. BOMSTEIN:

19 Q. Mr. Hunt, does this refresh your recollection as to
20 when Plan Approval E was issued?

21 A. Yes.

22 Q. And when was that?

23 A. April 1, 2016.

24 Q. So, is it your testimony that you are not aware if

1 there were any expenses for work associated with
2 Project E until 2018?

3 A. Op-ex. So, cap-ex/op-ex, two different things.
4 Capital expenditures, those are budgeted as part of the
5 project. And that's generally not handled by me and my
6 organization.

7 Q. So when I've been asking questions about budget,
8 have you been only referring to operational
9 expenditures?

10 A. I've been thinking about your line of questioning
11 around operational expenses.

12 Q. Okay. Then let me switch gears for a second and
13 let's talk about capital expenditures.

14 Were there any capital expenditures ear marked for
15 Project E in the 2016 budget?

16 A. The -- when you talk about budget years, our cap-ex
17 budgeting isn't so much focused on years or time. It's
18 focused on projects. So --

19 Q. Go ahead. Are you familiar with the capital
20 expenditure budget for Project E?

21 A. Not -- no. I haven't looked at it recently. I
22 don't recall what those numbers are.

23 Q. Have you looked at it at some point?

24 A. I have may have seen it at some point.

1 Q. What is your knowledge about it?

2 A. In terms of what the specific dollars are?

3 Q. No, sir. What is your knowledge -- first of all,
4 do you know when it was prepared?

5 A. No.

6 Q. Do you have any sense of that?

7 A. When a project -- when we approve a project, there
8 is a budget that's part of that approval process.

9 Q. When did Sunoco approve Project E?

10 A. I don't know off the top of my head.

11 Q. Could you turn to Exhibit A-45, please?

12 A. A-45 you said?

13 Q. Correct.

14 A. Yes.

15 Q. Do you recognize this document?

16 A. Yes. It's the plot land with the numbers on it.

17 Q. Yes. And if you will please turn to page -- to the
18 page that says Plan Approval Summary.

19 A. I don't have that in my binder. In 45, I just have
20 the one page.

21 MR. BOMSTEIN: May I approach the
22 witness?

23 THE COURT: Yes.

24 MR. BOMSTEIN: I apologize. I'm not

1 sure what the error is there. If I may, I will
2 approach the witness with my copy.

3 Does everybody else have a full set?

4 THE COURT: Yes.

5 (Counsels nod heads.)

6 MR. BOMSTEIN: Sorry about that.

7 BY MR. BOMSTEIN:

8 Q. Sorry, Mr. Hunt.

9 A. Okay.

10 Q. Does this refresh your recollection as to when Plan
11 Approval -- or when Project E was approved within
12 Sunoco?

13 A. Yes.

14 Q. And when was that?

15 A. Looks like it was in June of 2015.

16 Q. And do you know, roughly, how much the capital
17 expenditure budget was for Project E?

18 A. No. Honestly, I don't recall. Capital
19 expenditures?

20 Q. Yes, sir.

21 A. I don't recall.

22 Q. Do you know, Mr. Hunt, whether there was a separate
23 capital expenditure budget for RFD-5236?

24 A. You will have to refresh my memory on what 5236 is.

1 Q. Please look in the Plan Approval Summary under the
2 section for Project E.

3 A. Can you direct me to what tab that is?

4 Q. Same exhibit.

5 A. Oh, I'm sorry. Can you restate the question,
6 please?

7 Q. Sure. The question was, do you know if there's a
8 separate capital expenditure budget for RFD-5236, the
9 construction of the spherical storage tanks?

10 A. Yeah. I'm sure there was a separate budget for
11 that.

12 Q. What's the basis for your knowledge of that?

13 A. I'm not sure I understand your question.

14 Q. What makes you sure?

15 A. Nothing gets built without a budget. That's what
16 I'm -- that's all I'm saying.

17 Q. My question is, is the budget for the spherical
18 storage tank separate from the budget for Project E?

19 A. Oh, I see. That, I don't know.

20 Q. Okay. And going back to operational budgets for
21 just one minute, then, just to be clear, there is only
22 at the moment an operational budget for 2018 that takes
23 into account Project E. There is no operational
24 budgets for 2019 or 2020 that exist, correct?

1 A. That's correct.

2 Q. Okay. All right. Okay.

3 MR. BOMSTEIN: We have no more questions
4 for Mr. Hunt at this time?

5 THE COURT: Questions?

6 MR. RAPHAEL: We do not, Your Honor.

7 MR. WHITE: We do not either, Your
8 Honor.

9 THE COURT: Thank you, sir. Thanks for
10 the help on site view.

11 THE WITNESS: You're very welcome.

12 (Witness Hung leaves Witness Stand.)

13 MR. BOMSTEIN: Clean Air Council calls
14 Mr. Hank Alexander.

15 MR. RAPHAEL: Counsel, could we have a
16 moment. We need to switch out our binders.

17 - - -

18 (HARRY ALEXANDER, having been first duly
19 sworn, was examined and testified as follows:)

20 - - -

21 EXAMINATION

22 - - -

23 BY MR. BOMSTEIN:

24 Q. Good morning, Mr. Alexander.

1 A. Good morning.

2 Q. Thank you for coming in to testify.

3 Please, state your full name and business address
4 for the record.

5 A. Harry Alexander, 3807 West Chester Pike, Newtown
6 Square, Pennsylvania 19073.

7 Q. Thank you. What company do you work for?

8 A. Energy Transfer Partners.

9 Q. Without going into any confidential discussions
10 between you and your lawyers, what did you do to
11 prepare for today's hearing?

12 A. I read my deposition transcript.

13 Q. Did you bring any documents with you today?

14 A. No.

15 Q. Okay. What's your current title?

16 A. Senior Vice President of Business Development.

17 Q. And does that include developing business for the
18 Marcus Hook Industrial Complex?

19 A. Not specifically, no. I focus primarily on
20 pipeline business development projects for natural gas
21 leaks.

22 Q. When you said not specifically, what do you mean
23 not specifically?

24 A. My focus is pipeline business development and

1 pipeline asset management and commercial management.

2 The Marcus Hook Industrial Complex is a destination
3 facility off of Sunoco pipeline.

4 Q. Do you pitch to client or to customers or potential
5 customers the abilities of the Marcus Hook Industrial
6 Complex?

7 A. I would say I cheerlead. I don't necessarily pitch
8 projects at the Marcus Hook Industrial Complex. My
9 focus has been pipeline business development.

10 Q. To use your terminology, do you cheerlead for the
11 Marcus Hook Industrial Complex?

12 A. I do.

13 Q. I would like to talk with you about open seasons
14 for a few minutes.

15 Am I right in that an open season is an advertising
16 period for a subscription for capacity on a pipeline
17 project to take a commitment on a pipeline project?

18 A. That's essentially correct.

19 Q. And your team has led open seasons, correct?

20 A. Correct.

21 Q. Open seasons on the Mariner East Pipelines?

22 A. Correct.

23 Q. And specifically, that includes the open season for
24 the Mariner East One Pipeline Project, correct?

1 A. That is correct.

2 Q. That was a successful open season?

3 A. Yes.

4 Q. And Sunoco put out a press release announcing its
5 success, correct?

6 A. I believe so, yes.

7 Q. Could you please turn to Exhibit A-2.

8 A. Okay.

9 Q. Thank you. Is this that press release?

10 A. It appears to be.

11 Q. Do you understand that Sunoco at this time in 2012
12 was committing to redevelop the facility with new
13 facilities to process, store, chill and distribute
14 propane and ethane?

15 A. Sorry. Could you repeat?

16 Q. Sure. Do you understand that Sunoco at this time
17 in 2012 was committing to redevelop the facility with
18 new facilities to process, store, chill and distribute
19 propane and ethane?

20 A. I don't know that I necessarily knew Sunoco was
21 committing to do that. Sunoco -- let me ask a question
22 if it's okay.

23 When you refer to Sunoco, are you referring to
24 Sunoco, Inc?

1 Q. No. Maybe let me make that clear. Today, unless I
2 specify otherwise, when I'm referring to Sunoco, I will
3 be referring to Sunoco Logistics or its brand Sunoco
4 Partners Marketing and Terminals?

5 A. It's brand?

6 Q. It's division, whatever you want to call it.

7 MR. RAPHAEL: Just to keep it on the
8 record, I don't believe it's a brand, Counsel.

9 MR. BOMSTEIN: How would you
10 characterize it?

11 MR. RAPHAEL: I will let you do that,
12 Counsel. I don't believe it's a brand.

13 BY MR. BOMSTEIN:

14 Q. Well, let me just rephrase.

15 Today when I refer to Sunoco, I will be referring
16 to Sunoco Logistic or Sunoco Partners Marketing and
17 Terminals?

18 A. Okay. To clarify, Sunoco Logistics is no longer
19 officially an entity I don't believe. I'm not certain,
20 but I believe Sunoco Partners Marketing and Terminals
21 is. I think Sunoco Logistics purchased Energy Transfer
22 Partners last year and renamed -- the corporate entity
23 was renamed Energy Transfer Partners.

24 Q. Thank you for the clarification.

1 So, this is a complicated area of corporate
2 structure.

3 A. It is.

4 Q. But maybe the better way to put it is when
5 referring to Sunoco, I am referring to what is
6 currently Energy Transfer Partners.

7 A. Okay.

8 Q. And also its predecessor and interest Sunoco
9 Logistics.

10 A. Okay.

11 Q. And also Sunoco Partners Marketing and Terminals.

12 Is that fair?

13 A. Okay. Other than Sunoco Partners Marketing and
14 Terminals is a business group of energy transfer,
15 formally a business unit of Sunoco Logistics.

16 Q. Okay. Thank you. But if it gets confusing at any
17 point, and it could, please just ask. And I would be
18 happy to clarify.

19 A. Okay. Thank you.

20 Q. Thank you.

21 So with that said, did you understand that Sunoco
22 at this time in 2012 was committing to redevelop the
23 facility with new facilities to process, store, chill
24 and distribute propane and ethane?

1 A. I don't know that I understand that.

2 Q. Well, I would ask you to look to page 2 of this
3 press release. And do you see where it says -- can you
4 read the first full sentence in the top paragraph?

5 MR. WHITE: Objection, Your Honor. I
6 believe this document is both not relevant to
7 this appeal. And it also contains hearsay from
8 six different people who are neither party
9 opponents, parties to this here or on the
10 witness list. This appears to be a press
11 release for a pipeline project four years before
12 the plan approval was issued in this case.

13 Not relevant.

14 THE COURT: Who are you saying is not --

15 MR. WHITE: There are quotations in here
16 from Tom Corbett, Pat Toomey, Pat Mayham, people
17 for Mayor. This document is chock full of
18 quotations and statements from non-parties who
19 are not here. In addition, it's also not
20 relevant this entire document.

21 THE COURT: Well, the -- you are just
22 asking him to read one sentence at this point
23 that's not referring to any of those other
24 statements of.

1 It's overruled for that one statement.

2 THE WITNESS: I'm sorry. Could you
3 repeat the question?

4 MR. BOMSTEIN: Sure.

5 BY MR. BOMSTEIN:

6 Q. Could you please read the first full sentence on
7 the second page of this press release at A-2?

8 A. Okay. This is beginning with the "natural gas
9 liquids will then be transported"?

10 Q. Yes, sir.

11 A. "the natural gas liquid will then be transported to
12 Marcus Hook, Pennsylvania where Sunoco Logistics will
13 construct new facilities to process, store, chill and
14 distribute propane and ethane to local, regional and
15 international markets."

16 Q. And would you agree, sir, that at this time in
17 2012, that was Sunoco Logistic's plan?

18 A. With respect to Project Phase One, to construct
19 those facilities at Marcus Hook, yes.

20 Q. Okay. I would ask you to take a look at --
21 actually, excuse me just one second, please.

22 Do you see your reference to Mr. Brian P. McDonald
23 on this page?

24 A. I do.

1 Q. Do you know Mr. McDonald?

2 A. Vaguely. I know of Mr. McDonald. I don't know him
3 personally.

4 Q. Do you know who he is?

5 A. He was the Chief Executive Officer for Sunoco, Inc.

6 Q. Was he also the Chairman of Sunoco Logistics?

7 A. I'm not certain. At a brief time, he may have
8 been. Yes.

9 Q. Okay.

10 A. But I'm not certain.

11 Q. Could you look on that page and see if that
12 refreshes your recollection midway through the page.

13 A. Yes. It says that. Okay.

14 Q. So, is it your personal understanding that there
15 was common control of Sunoco, Inc. and Sunoco Logistics
16 in 2012?

17 A. I don't know what you mean by control. Brian
18 MacDonald was Chairman and Chief Executive Officer for
19 Sunoco and also Chairman of Sunoco Logistics board, I
20 believe. So if that -- in that fact, I agree.

21 Q. Were you working for Sunoco Logistics in 2012?

22 A. I was.

23 Q. And do you know based on your experience at the
24 time whether there was leadership decisions coming

1 commonly from Sunoco, Inc. and Sunoco Logistics at that
2 time?

3 A. I do not.

4 Q. Who did you report to in 2012?

5 A. In 2012, I reported to the Vice President of
6 Business Development for Sunoco Logistics.

7 Q. Who was that individual?

8 A. I believe at the time it was Michael Hennigan.

9 Q. Okay. Thank you. Is Mr. Hennigan's name, does
10 that appear in the press release, as well?

11 A. And I apologize. I'm not certain of exactly what
12 Mr. Hennigan's title changes were and when they
13 occurred. So, I don't recall exactly when he was
14 promoted to president and chief operating officer of
15 Sunoco Logistics.

16 Q. That's fine, sir. So at this time at least,
17 though, Mr. MacDonald was Chairman of Sunoco Logistics,
18 correct?

19 A. Chairman of the Board, yes.

20 Q. Okay. Thank you.

21 Do you see a statement, the last statement in
22 Mr. MacDonald's quote here?

23 A. "Mariner East also represents a significant" --

24 MR. WHITE: Objection, Your Honor. I

1 still object to the relevance of this.
2 Unless -- he did not allege that Project E
3 should be linked with a pipeline project. That
4 Issue is not for the Board. This document
5 discusses the pipeline project. It's not
6 relevant.

7 THE COURT: Overruled.

8 THE WITNESS: Could you repeat the
9 question?

10 BY MR. BOMSTEIN:

11 Q. Could you please read that sentence?

12 A. "Mariner East also represents a significant step in
13 repurposing the former Marcus Hook refinery site and
14 creating a world class facility with a promising future
15 based on natural gas liquids."

16 Q. Thank you. And based on your personal knowledge,
17 do you know at the time whether that was indeed
18 Sunoco's plan?

19 A. I don't know for sure what Sunoco's plan was at
20 that time with Marcus Hook -- with respect to Marcus
21 Hook.

22 Q. What were you doing regarding Marcus Hook at that
23 time?

24 A. I wasn't specifically doing much regarding Marcus

1 Hook. I was developing the pipeline project, which
2 Marcus Hook was a destination terminal. At the time,
3 Marcus Hook was owned by Sunoco. At some point still
4 operating as a refinery or in the process of being shut
5 down as a refinery.

6 Q. And in 2012 when you were working on developing the
7 pipelines, were you also cheerleading for Marcus Hook
8 as a destination for products on those pipelines?

9 A. We had multiple destination options for the Mariner
10 East Pipeline. Marcus Hook was one of them that was
11 attractive.

12 Q. Were you cheerleading for Marcus Hook in particular
13 at that time?

14 A. It became clear towards the end of the project
15 development of that phase, that Marcus Hook made a lot
16 of sense because of its infrastructure. So, yes.

17 Q. And did you describe Marcus Hook to customers as a
18 facility that would become a world class facility for
19 natural gas liquids?

20 A. Generally speaking, I think we described the
21 destination facilities that we had options to deliver
22 products to as world class destination facilities.

23 Q. So, is every destination on the Mariner East
24 Pipeline a world class natural gas liquids facility?

1 A. At the time, we had a number of them. Marcus Hook
2 became the first terminus of the project.

3 Q. Is it fair to say the most important terminus of
4 the project?

5 A. At that point in time, it was the most important
6 terminus.

7 Q. And Sunoco was thinking at the time of offering a
8 second open season for Mariner East service, correct?
9 At the time being the time this press release was
10 issued?

11 A. I think there was interest from producers for
12 additional expansion phases of the pipeline.

13 Q. And so as a result of that, Sunoco was evaluating
14 whether to do a second Mariner East open season?

15 A. It was being contemplated. That's correct.

16 Q. Ask you to turn to page -- sorry, to Exhibit A-3,
17 please?

18 A. Okay.

19 Q. Mr. Alexander, what is this document?

20 A. It appears to be an announcement for a binding open
21 season for Project Mariner East 2.

22 Q. And are you familiar with this?

23 A. I am generally familiar.

24 Q. Does Mr -- do you see a name of Rich Billman on

1 here?

2 A. I do.

3 Q. Who is Mr. Billman?

4 A. Mr. Billman is a business development
5 representative.

6 Q. Does he work on your -- is he part of your team?

7 A. He is.

8 Q. And did Mr. Billman put together this open season
9 notice?

10 A. I'm not certain if he specifically put it together
11 or if others were involved.

12 Q. Was it put together by your team?

13 A. It was -- I believe Rich was involved.

14 Q. Okay.

15 A. I wouldn't say he specifically put it together by
16 himself.

17 Q. Sure. Do you see a statement at the -- in the
18 middle that's a quotation from Mr. Michael J. Hennigan?

19 A. I do.

20 Q. And at this -- at this -- what's the date on this
21 document, please?

22 A. December 4, 2013.

23 Q. Thank you. What was Mr. Hennigan's role within
24 Sunoco Logistics at that time?

1 A. It says President and Chief Executive Officer.

2 Q. Do you believe that's correct?

3 A. I have no reason to not believe that's correct.

4 Q. Okay. Thank you. So do you -- can you please read
5 the last two sentences within Mr. Hennigan's quote
6 there?

7 A. "We are bullish on the production growth from the
8 Marcellus and Utica shales. We are proceeding with the
9 open season as we have received considerable market
10 interest to develop this project to provide producers
11 with several marketing options for their expanding
12 production."

13 Q. Okay. Thank you. And actually, do you see the end
14 of the paragraph, the final two sentences in that
15 paragraph?

16 A. I'm sorry. Yes, I do.

17 Q. Could you please read those?

18 A. "We will continue to add storage and expand our
19 Marcus Hook complex to be a world class NGL facility on
20 the east coast. In addition, the 800acre Marcus Hook
21 site is well positioned for further NGL processing."

22 Q. Thank you.

23 Sunoco, in fact, did carry out those plans to
24 expand the facility, correct?

1 A. With respect to Phase 2, it's being carried out.

2 Q. Okay. Thank you. Excuse me. Is Sunoco also
3 carrying out the plans to have further NGL processing
4 at the site?

5 A. I believe as related to some other projects, there
6 is additional processing going on at the site. Based
7 on my personal knowledge of processing as what was
8 envisioned with respect to Mariner East 2, there were
9 specific projects being evaluated at the time to my
10 knowledge. And those were additional manufacturing
11 options such as PDH, propane dehydrogenation.

12 Q. Do you know whether there was additional
13 fractionation being contemplated at the time at Marcus
14 Hook?

15 A. To my knowledge, there was not. But I don't know
16 for sure.

17 Q. Okay. Okay. Can you please turn to A-4.

18 A. Okay.

19 Q. Thank you. Are you familiar with this document?

20 A. I am not.

21 Q. Let me take a step back. Are you familiar with the
22 Mariner East 2 Expansion Project?

23 A. I am.

24 Q. What is that?

1 A. It's an expansion phase of Project Mariner East 2.

2 Q. And were you -- was your team responsible for
3 developing an open season for the Mariner East 2
4 Expansion Project?

5 A. Yes.

6 Q. Was Mr. Billman involved in that, as well?

7 A. Yes.

8 Q. And at some point, did your team put out a notice
9 of open season?

10 A. I believe so.

11 Q. Does this appear to be that notice? And I
12 apologize for the small size of this.

13 A. Yeah. I just want to take a second and read it.

14 Q. Of course.

15 A. Is there a date on this notice? I don't see one,
16 which is what I was looking for.

17 Q. I do not believe there is a date on this notice.
18 Except that if you look in the upper right-hand corner,
19 you will see as part of the screenshot from this what I
20 believe to be a ticker, stock ticker.

21 A. Okay.

22 Q. What's the date on that?

23 A. I see it now. September 14, 2015.

24 Q. Does that accord with your understanding of whether

1 there was a Mariner East 2 Expansion Project open
2 season around that time?

3 A. Generally, yes.

4 Q. Okay. Thank you. So, does this appear to be
5 notice of open season for Mariner East 2 Expansion
6 Project?

7 A. It does.

8 Q. Okay. Thank you.

9 A. I apologize. I saw the survey note up top. It
10 confused me a little bit.

11 Q. Yeah. I believe that's part of some add or
12 something. It's also on the website?

13 A. Okay.

14 Q. So, is it the case that as part of that project,
15 Sunoco offered to shippers in this open season the
16 ability to ship on the Mariner East Pipeline system
17 ethane, propane, butane, C3-plus, natural gasoline, or
18 condensate or any combination of such products?

19 A. It appears, yes.

20 Q. And is it that consistent with your understanding
21 of what's being offered to your customers?

22 A. Of what was being offered at the time, yes.

23 Q. Did you receive binding commitments?

24 A. I believe so.

1 Q. Do you know what condensate is?

2 A. I am familiar.

3 Q. What is it just generally speaking?

4 A. It is a field grade liquids mixture commonly
5 referred to as natural gas liquids condensates. It's,
6 essentially, a raw mixture of liquids associated with
7 well -- drilling, natural gas liquids drilling.

8 Q. Okay. Thank you. Do you recall when this open
9 season closed?

10 A. Off the top of my head, I believe it to be summer
11 of 2017.

12 Q. Okay.

13 A. But I'm not certain.

14 Q. And if it's -- are you pretty confident it's at
15 least close to that time?

16 A. Somewhere in that area.

17 Q. Okay. Thank you. And did you consider it a
18 successful open season?

19 A. I don't know that that is a fair statement. And I
20 don't know that there have been any releases
21 associated -- public releases associated with that.

22 Q. Okay. Well, let me ask you a different question
23 then. Did it result in the development of a new
24 pipeline?

1 A. I believe it did.

2 Q. Is that sometimes called the Mariner East 2x
3 Pipeline?

4 A. Yes.

5 MR. BOMSTEIN: At this time, I move to
6 enter into evidence A-2, A-3 and A-4. And I
7 will -- specific as to A-2, I will state that I
8 am not moving it -- at least with the caveat
9 that we are not asking that the statements made
10 by the various politicians in the document be
11 admitted for the proof of the matter asserted.

12 THE COURT: Any objections?

13 MR. WHITE: The Department would
14 continue its objection to A-2, Your Honor. I
15 he's already read in the two sentences that you
16 allowed over my previous and pursuant to your
17 previous order of my objection. I think it's a
18 cleaner way of going into the record.

19 MR. RAPHAEL: I would agree, Your Honor.
20 Or he would offer for what he wants it in for as
21 opposed to what he doesn't want in.

22 THE COURT: Three and four?

23 MR. WHITE: No objections from the
24 Department, Your Honor.

1 MR. RAPHAEL: We don't either, Your
2 Honor.

3 THE COURT: Three and 4 are admitted. 2
4 is admitted but not including the statements of
5 the various politicians for any purpose.

6 MR. BOMSTEIN: Thank you, Your Honor.

7 (At this time, Exhibit A-2, 3 and 4 were
8 admitted into the record.)

9 BY MR. BOMSTEIN:

10 Q. Mr. Alexander, when marketing the Mariner East
11 Pipeline Project, you've argued that Marcus Hook is the
12 best option for shippers due to its infrastructure and
13 proximity to the origin of natural gas liquids,
14 correct?

15 A. At the time, it was the best option of all that we
16 had looked at. Yes.

17 Q. And that's something that you told shippers,
18 correct?

19 A. Yes.

20 Q. And customers of yours have also requested storage
21 capabilities at the Marcus Hook facility, correct?

22 MR. WHITE: Objection to both hearsay
23 and relevances to what the customer said or
24 asked for in this case.

1 THE COURT: Overruled.

2 THE WITNESS: To be honest, my customers
3 are interested in marketing channels and
4 distribution avenues. Storage was not
5 necessarily a priority for them. It was
6 destination facilities and remarketing efforts.

7 BY MR. BOMSTEIN:

8 Q. Regardless of whether it was a priority or not,
9 that was still something that they wanted you to
10 provide, correct?

11 A. In general, they were looking for enhanced
12 distribution avenues. And if storage was required to
13 get them there, that was something that they were --
14 they that were certainly okay with. I don't know that
15 they openly requested storage. Storage is necessary.

16 Q. Is it fair to say that you don't have to have
17 storage, but customers certainly prefer it?

18 A. I think they feel comfortable, as do I, as a
19 pipeline operator to have storage for redistribution.
20 It makes pipeline operations more efficient.

21 Q. And do you also offer storage to customers to
22 manage market volatility?

23 A. I don't know that I would characterize it quite
24 that way. Storage is needed for distribution to

1 railcars and trucks and marine vessels. My team
2 developing projects in the pipeline, customers are
3 interested. And I am sure at some point some customers
4 love all the flexibility they can have including
5 storage. But we did not develop the project
6 specifically with respect to storage for market
7 volatility. I think it's helpful as a -- maybe an
8 unintended consequence of having it. I think it's
9 helpful and it adds -- certainly adds to the value to
10 have storage.

11 Q. Okay. At this point, the Marcus Hook facility has
12 natural gas liquids storage distribution and
13 fractionation capabilities, correct?

14 A. When you say "at this point," you mean today
15 currently?

16 Q. Yes, sir.

17 A. I can't speak to fractionation. I would
18 certainly -- I am aware of storage and distribution. I
19 can't speak to fractionation in the historical sense of
20 the word. I can certainly speak to deethenization.

21 And I qualify that as slightly different from
22 fractionation in my understanding of the business.

23 Q. Okay. Well, let me also just again make sure we
24 are on the same page in terminology. I recognize there

1 is a lot of different terminology that's used, and not
2 everybody uses it in the same way.

3 So today in this discussion, I am going to use the
4 term fractionation to include any of demethanization,
5 deethanization, depropanization, debutinization or
6 depectinization; is that fair?

7 A. That's not how I would characterize it. But that's
8 how you want to characterize it, that's okay.

9 Q. Thank you. Sorry. Just as -- is there any other
10 term you would use to shorthand for all that?

11 A. For me, in my line of business dealing with
12 producers in the basin, deethinization is the
13 separation of ethane from the rest of the stream.
14 Deethinization at Marcus Hook is the separation of
15 ethane and propane because they are traveling in a
16 mixed treatment.

17 Fractionation is commonly referred to as C3-plus
18 fractionation. Separating the propane, the butane and
19 higher.

20 Q. Okay. That's fair. And deethanization in your
21 line of business for Mariner East occurs, for the most
22 part upstream, correct?

23 A. I'm sorry. Upstream?

24 Q. So, it occurs at the origin points at or before the

1 origin points of the Mariner East Pipelines rather than
2 at the destination points; is that correct?

3 MR. RAPHAEL: Your Honor, object.

4 Expert. I will take a continuing so we don't
5 have to do this over and over again.

6 THE COURT: Overruled.

7 THE WITNESS: I think it's fair to say
8 based on my personal knowledge of my customers
9 business, that they deethanize ahead of the
10 origin of the Mariner East Pipelines. They
11 deethanize in the basin. And then are able to
12 move a purely ethane stream.

13 BY MR. BOMSTEIN:

14 Q. Okay. Thank you. Would you say that Marcus Hook
15 is a northeast NGL hub today?

16 A. Certainly appears that way.

17 Q. And is that possible because of the Mariner East
18 Pipeline Projects?

19 A. I think it's possible because of the infrastructure
20 that it has inherent to it that lends itself toward
21 natural gas liquids handling storage and distribution.

22 I think the Mariner East Pipeline Project enhances that
23 because it can deliver products in the pipeline.

24 Q. Do you think it's fair to characterize it that, you

1 know, all of it is possible because of the Mariner East
2 Pipeline Projects?

3 A. I don't know that I would say that.

4 MR. BOMSTEIN: Have an exhibit that
5 would like to use Mr. Alexander for impeachment
6 purposes that I can hand out.

7 THE COURT: Thank you.

8 BY MR. BOMSTEIN:

9 Q. Have you seen this before, Mr. Alexander?

10 A. I have not.

11 Q. Do you know who produced this?

12 A. It appears to be Energy -- Sunoco Pipeline and
13 Energy Transfer partnership.

14 Q. Do you see a name at the bottom?

15 A. Matt Ramsey.

16 Q. Do you know who that is?

17 A. President and COO.

18 Q. Of Sunoco Pipeline or of Energy Transfer?

19 A. Energy Transfer.

20 Q. Energy Transfer. Okay. Thank you.

21 Can you -- do you see the third paragraph from the
22 top beginning "it should also"?

23 A. "It should also not be ignored"?

24 Q. Yes. Can you read that paragraph, please.

1 MR. RAPHAEL: Object, Your Honor.

2 MR. WHITE: Objection.

3 MR. RAPHAEL: Objection, I mean. He
4 wants to use this for impeachment purposes. I
5 believe Mr. Alexander said he has never seen it
6 before. What is he impeaching with?

7 THE COURT: I am surprised you wouldn't
8 want this in. Okay.

9 Response to the objection.

10 MR. BOMSTEIN: Yes, Your Honor. So,
11 this contains information that I believe
12 contradicts what Mr. Alexander stated. It is
13 directly from the company and has a signature
14 from the President and COO of the company here.

15 That's the intent. It was published on
16 Friday. And thereafter, came to our attention.
17 So, and that's the purpose.

18 THE COURT: Objection is overruled.

19 MR. RAPHAEL: Your Honor, if I can just
20 put -- finish my objection on the record just to
21 make sure it's clear. Traditionally,
22 impeachment is done with the statement of the
23 individual. This is not a statement from
24 Mr. Alexander. Thank you.

1 BY MR. BOMSTEIN:

2 Q. Can you please read that paragraph.

3 A. "It should also not be ignored that the pipeline
4 will bring economic revitalization and job restoration
5 to Southeastern Pennsylvania, where the pipeline will
6 feed into the Marcus Hook facility in Delaware County.
7 The facility that was once a major refining hub was
8 closed but has reopened for business as a site for the
9 distribution, storing and processing of natural gas
10 liquids such as propane, butane and ethane from the
11 Marcellus Shale. This is all possible because of the
12 Mariner Pipeline Projects. These products are used in
13 our everyday lives not only as fuel, but to make the
14 plastics that we use and the clothes that we wear."

15 Q. Thank you, sir. So, would you agree indeed that
16 the reopening for business of the Marcus Hook
17 Industrial Complex was all possible because of the
18 Mariner Pipeline Projects?

19 A. I think it certainly helped. I don't know that I
20 would state that it wouldn't have been possible. I
21 think that -- again, I don't work at the Marcus Hook
22 facility. But I also know that the Marcus Hook
23 facility is able to receive via rail and truck, et
24 cetera.

1 That's why my statement -- I understand the
2 statement behind this from the marketing standpoint or
3 from a general education standpoint, it certainly
4 enhances it. But to say that it wouldn't be possible
5 at all I think is a technical mischaracterization.

6 Q. Thank you. Going back to the open season process,
7 was that something that Sunoco Partners Marketing and
8 Terminals, LP conducted?

9 A. The open season process?

10 Q. Yes, sir.

11 A. Sorry. Could you repeat that one more time? Who
12 conducted it?

13 Q. Yes. Was the open season process for the Mariner
14 East Pipeline something that Sunoco Partners Marketing
15 and Terminals, LP conducted?

16 A. No.

17 Q. The end result of the open season process is -- has
18 been signed commitments with shippers to ship product
19 over the pipeline, correct? Or pipelines, correct?

20 A. Correct.

21 Q. Is it the case if there is also additional pipeline
22 capacity that remains open for shippers who haven't
23 signed open season contracts?

24 A. Could you repeat that one more time?

1 Q. Sure. I apologize. Is it the case that after the
2 open season process, there is still additional capacity
3 on the Mariner East Pipelines beyond that that was
4 committed to as part of the process?

5 A. I would say -- I would characterize it slightly
6 differently. I would state that as a rule, by the
7 pipeline's regulatory governing bodies, there must
8 remain a certain percentage of open capacity on the
9 pipeline. The open season process secures commitments
10 for firm capacity or priority service shipping on the
11 pipeline. But the governing body of those pipelines
12 requires -- the governing bodies require that there be
13 a level of open capacity for uncommitted shippers, if
14 you will.

15 Q. Okay. Did Sunoco Partners Marketing and Terminals
16 use those pipeline shipper commitments that Sunoco
17 Pipelines secured as a basis to determine what
18 equipment it would build at Marcus Hook?

19 MR. WHITE: Your Honor, I will object.
20 There is no time frame. Be useful to know
21 what -- the years he is talking about.

22 THE COURT: Overruled.

23 THE WITNESS: Actually, I was going to
24 ask what commitments and what phase of the

1 project you are referring to.

2 BY MR. BOMSTEIN:

3 Q. I will break it down. So referring specifically
4 first to the Mariner East 1 phase. At that time, did
5 Sunoco Partners Marketing and Terminals use the
6 transportation service agreements, the commitments that
7 came out of that open season process as a basis to
8 determine what equipment it would build at Marcus Hook?

9 A. I don't know that I would state that that -- that
10 Sunoco Partners Marketing and Terminals used pipeline
11 commitments to determine what they would build in the
12 terminal. I think, rather, there were separate
13 commitments made to the terminal.

14 You can say they were related, but --

15 Q. Okay.

16 A. I just want to be technically correct based on what
17 I know.

18 Q. I appreciate that. Does SPMT, Sunoco Partners
19 Marketing and Terminals, are its customers terminal
20 services customers?

21 A. Yes.

22 Q. And are Sunoco Pipelines customers shippers on the
23 pipelines?

24 A. They are shippers on the pipelines, correct.

1 Q. Were Sunoco Pipelines Mariner East customers also
2 SPMT's Marcus Hook customers?

3 A. I think it's fair to say they could be, but didn't
4 have to be. They are two separate entities with two
5 separate sets of contracts.

6 Q. Are the two tied in the sense that you -- for at
7 least pipeline business, you're not going to have
8 pipe -- or that you didn't have pipeline shippers that
9 didn't have any -- you know, the sentence is getting
10 too complicated. Let me strike that and restart.

11 Do you know if there were any pipeline shippers
12 over Mariner East who didn't also have agreements for
13 terminal services at Marcus Hook but delivered to
14 Marcus Hook?

15 MR. RAPHAEL: Objection, Your Honor.
16 Compound question.

17 THE COURT: Overruled.

18 THE WITNESS: Just want to make sure I
19 understand it correctly.

20 BY MR. BOMSTEIN:

21 Q. Sure.

22 A. Could you repeat your question one more time?

23 Q. Absolutely. And I think I can do it even simpler
24 this time.

1 Were there any -- for Mariner East 1, any shippers
2 over the Mariner East 1 pipeline who intended to
3 deliver at Marcus Hook who didn't also have business
4 arrangement for services, terminal services, at Marcus
5 Hook?

6 A. I will say generally, that all pipeline customers
7 have some sort of an arrangement with Marcus Hook. But
8 I'm not privy to all of the arrangements. So, I can't
9 speak to exactly who and how they terminal their
10 products through the Marcus Hook Industrial Complex.

11 Q. That's fair.

12 Is it fair to say at least that knowing that there
13 were contracts for shipment services over Mariner East
14 was enough to know that they would also need to be
15 terminal services at Marcus Hook around Mariner East 1?

16 A. Phase one?

17 Q. Yes, sir.

18 A. I believe that to be correct.

19 Q. Okay. Thank you. Is that also the case for
20 Mariner East 2?

21 A. Not necessarily.

22 Q. Why not?

23 A. Some Mariner East 2 customers of the pipeline
24 prefer to only be pipeline customers because they have

1 arrangements with other terminals not Marcus Hook.

2 Q. Okay. And referring specifically just to the
3 shippers over Mariner East 2 who would ship to or who
4 do ship to or -- let me restart.

5 Referring specifically to the Mariner East 2
6 customers who have contracts to ship to the Marcus Hook
7 facility, are there any of those that do not also have
8 arrangements for terminal services at Marcus Hook?

9 MR. RAPHAEL: Going to object, Your
10 Honor. Just think it's going beyond his
11 personal knowledge. If he has personal
12 knowledge, I am fine with the question.

13 THE COURT: Well, if he has personal
14 knowledge.

15 THE WITNESS: I don't know that I know
16 everything associated with all of the Mariner
17 East 2 contracts at Marcus Hook. Because I do
18 believe there to be some complicated
19 arrangements with third party marketers who do
20 terminal -- who perform terminal services, take
21 title to products, liquids that do not have
22 contracts in the pipeline. And I don't know all
23 of the intricacies of those contracts.

24

1 BY MR. BOMSTEIN:

2 Q. That's fair. Is it fair to say, though, that once
3 contracts were secured for shippers over Mariner East 2
4 to deliver product to the Marcus Hook facility, that
5 Sunoco Partners Marketing and Terminals knew it would
6 have some level of business for terminal services due
7 to that?

8 MR. RAPHAEL: Again, same objection.

9 It's got to be based on personal knowledge, Your
10 Honor.

11 THE COURT: Overruled.

12 THE WITNESS: In general terms, I
13 believe so. But I can't speak to the specifics
14 of exactly what terms of those contract state.

15 MR. BOMSTEIN: Sure.

16 BY MR. BOMSTEIN:

17 Q. I am not going to ask you for specifics of the
18 terms of the contract. That's fair.

19 Are you personally familiar with the Energy
20 Transfer Partners, Project Revolution?

21 A. Vaguely.

22 Q. What's your understanding?

23 A. It's a project that was developed by the Energy
24 Transfer Company previous to the merger between Energy

1 Transfer or during or after. I'm not even certain when
2 it was developed. But it's a project developed by
3 Energy Transfer to gather and process liquids in the
4 basis with stream services, if you will, and then
5 transport those liquids and then fractionate those
6 liquids.

7 Q. Do you know whether Project Revolution feeds
8 liquids into the Mariner East Pipeline system?

9 A. I believe that is an option.

10 Q. Are you familiar with the project, the plan
11 approval under appeal here, Plan Approval 23-0119E?

12 A. I am not.

13 Q. Are you familiar with the project at Marcus Hook
14 that -- excuse me, for just one second. That is titled
15 ETP Project Revolution and SXL Depropanizer Project?

16 A. I am not entirely familiar, no.

17 Q. What is your level of familiarity with that
18 project?

19 A. My level of familiarity with the project is a -- I
20 will call it a higher level familiarity because my team
21 didn't develop the project. My level of familiarity
22 involves part of the transmix handling equipment at
23 Marcus Hook that is needed or may be needed to process
24 and repurify transmix or interface from the pipeline

1 into its purity components again.

2 That's my only involvement and familiarization with
3 the project. In that it's my understanding that as
4 part of that project, the team developed fractionation
5 or C3-plus products. And there were -- there was some
6 level of overlap with the transmix handling that the
7 pipeline -- that would potentially benefit the pipeline
8 if it could not blend all of the transmix or interface
9 from the pipeline. And the C3-plus depropanization
10 that was being concurrently developed by another team.
11 That's my familiarity with the project.

12 Q. And the other team that you are referring to is the
13 other team within Energy Transfer responsible for
14 Project Revolution?

15 A. A separate team, yes.

16 Q. Okay. Am I correct in understanding that there is
17 some uncertainty as to whether Project Revolution will
18 feed into the Mariner East Pipeline system?

19 A. There -- I believe it is planned at some point, but
20 not required.

21 Q. Okay. Are you aware that two of the towers for --
22 one for depropanization and one for debutanization at
23 the Marcus Hook facility that are associated with
24 Project Revolution have already been built?

1 A. I don't know for sure what state -- I understand
2 that they were being constructed. I do not know what
3 state of construction they are in.

4 Q. Okay. And do you know what their purpose is if the
5 Project Revolution does not put natural gas liquids in
6 the Mariner East Pipelines?

7 A. I believe they could still process that liquid.

8 Q. Okay.

9 A. Just doesn't have to come off the pipeline.

10 Q. Sure. We were talking about open seasons a minute
11 ago. Was the Project Revolution volume of natural gas
12 liquids committed to in any particular open season?

13 A. No.

14 Q. Would this -- is -- does that then mean that
15 assuming that when Project Revolution comes online, it
16 will use the additional capacity in the Mariner East
17 Pipelines?

18 A. It may.

19 Q. Energy Transfer Project Revolution is now run by
20 the same company that you worked for, correct?

21 A. Correct.

22 Q. And whether Project Revolution comes online or not
23 is something that Sunoco Partners Marketing and
24 Terminals has as much knowledge of as anybody because

1 it's part of Energy Transfer, correct?

2 MR. RAPHAEL: Going to object, Your
3 Honor. It's a compound question. Also calling
4 for speculation.

5 THE WITNESS: I couldn't --

6 THE COURT: Overruled.

7 THE WITNESS: Sorry.

8 THE COURT: Go ahead.

9 THE WITNESS: I wouldn't be able to
10 speculate because I'm not that close to it.

11 BY MR. BOMSTEIN:

12 Q. Okay. Well, let me ask a different question then.
13 So, Project Revolution may come online and feed into
14 the Mariner East Pipeline, correct?

15 A. It may come online and may feed into the Mariner
16 East Pipelines at some point.

17 Q. Okay. And Marcus Hook is being built for equipment
18 to process that volume of natural gas liquids, correct?

19 A. I'm not as familiar -- well, I'm sorry. Could you
20 repeat that?

21 Q. Sure.

22 MR. BOMSTEIN: Would you mind repeating
23 it back, please?

24 THE STENOGRAPHER: "QUESTION: And

1 Marcus Hook is being built for equipment to
2 process that volume of natural gas liquids,
3 correct?"

4 THE WITNESS: I don't know that I would
5 say that Marcus Hook is being built. I would
6 say that -- I would characterize it as equipment
7 is -- it's my understanding that equipment is
8 being built or fabricated or repurposed to some
9 extent based on my limited knowledge of what
10 Project Revolution is at Marcus Hook. That that
11 equipment is being completed or built at Marcus
12 Hook to handle streams of that product.

13 BY MR. BOMSTEIN:

14 Q. And the streams of that product are at least
15 planned to be coming from Project Revolution, correct?

16 A. I believe so. But I'm not --

17 Q. Okay.

18 A. I didn't develop Project Revolution nor did my
19 team. So, I can't really opine.

20 Q. That's fair. Going back to the discussion we had
21 on knowing whether terminal services are associated
22 with pipeline shipping services, in this instance for
23 Project Revolution, it's the case that there is a
24 commonality between the shipping services and the

1 terminal services because it's the same -- the same
2 company Energy Transfer that's contracting for both,
3 correct?

4 MR. RAPHAEL: Object. It's a compound
5 question.

6 THE WITNESS: I'm not sure I follow.

7 BY MR. BOMSTEIN:

8 Q. Yes. Let me rephrase. I apologize. That was
9 needlessly complicated. I want to first go back in
10 time to few minutes ago when we were talking about the
11 relationship between pipeline services contracts and
12 terminal services.

13 Do you recall that discussion that we had?

14 A. Yes.

15 Q. Okay. And here, for here being referring to
16 Project Revolution, Energy Transfer is securing both
17 pipeline services and terminal services, correct?

18 A. I'm being confused by the Energy Transfer part.
19 I'm sorry. Sunoco Pipeline secures commitments on the
20 pipeline. It's a division of part of Energy Transfer,
21 but a separate company for pipeline transportation
22 services.

23 Sunoco Partners Marketing and Terminals operates
24 the Marcus Hook Industrial Complex and a host of

1 tenants and folks. There are contracts there for
2 services. I am not familiar with any services related
3 to Revolution either on the pipe or in the terminal.
4 I'm not familiar with contracts associated with
5 Revolution on the pipe or in the terminal.

6 Q. Are you involved in managing new business on the
7 Mariner East Pipelines?

8 A. Yes.

9 Q. At some point, were you made aware that this
10 capacity -- there is plan to -- for Project Revolution
11 to use some capacity on the Mariner East Pipelines?

12 A. I was made aware that there is contemplation to
13 use -- to potentially utilize capacity on the pipeline.

14 Q. Is it part of your job to make sure that there is
15 capacity if there are plans for using that capacity?

16 A. If someone is willing to commit to capacity, it is
17 certainly part of my job. If someone is willing to
18 ship on uncommitted capacity that has to exist, I would
19 say it's my job to ensure that I am committing capacity
20 does exist because that's the law.

21 Q. Here have you ensured that uncommitted capacity
22 exists when the Project Revolution volumes will flow
23 through the Mariner East Pipelines?

24 A. I have ensured that there will be the requisite

1 uncommitted capacity on the pipeline when it comes in
2 service. Whether or not the Revolution volumes lower
3 or not, that's the shipper's decision, not my decision.

4 Q. Okay. And the shipper in this instance is your
5 company, though, correct?

6 A. I'm not certain.

7 Q. So, do you not know whether Project Revolution --
8 whether Energy Transfers development of Project
9 Revolution includes shipping product?

10 A. I don't know who the shipper would be.

11 Q. Okay. So, it may not be Energy Transfer itself?

12 A. It may not.

13 Q. Okay. I think I was unclear about that.

14 But at least some of the shipper commitments are
15 Energy Transfer -- the Energy transfer is the shipper,
16 correct?

17 MR. RAPHAEL: Objection: Compound
18 question.

19 THE COURT: Overruled.

20 THE WITNESS: Sorry. Could you repeat
21 the question one more time.

22 BY MR. BOMSTEIN:

23 Q. Sure. For at least some commitment on the Mariner
24 East Pipelines Energy Transfer is the shipper, correct?

1 A. For at least some commitment on the Mariner East
2 Pipelines, Energy Transfer is the shipper. I don't --
3 I don't know that.

4 Q. Okay. Could I ask you to turn to A-18, please?

5 A. A-18?

6 Q. Yes, sir.

7 A. Okay.

8 Q. Do you see -- first of all, do you know what this
9 document is?

10 A. No.

11 Q. Okay. Let's see. Separate from this document, do
12 you know if it's the case that Sunoco Logistics entered
13 into an agreement to purchase ethane and propane which
14 would be separated and stored in the Pittsburgh area?

15 A. I do not know.

16 Q. Okay. Are you familiar with any arrangement that
17 Sunoco Logistics made to ship as itself the shipper,
18 ethane and propane over Mariner East Pipelines?

19 A. I am not aware.

20 Q. Are you aware of any instance in which Sunoco
21 contracted with the shipper to ship its own product
22 that Sunoco Logistics owned over the Mariner East
23 Pipelines?

24 A. Could you repeat that one more time? Sorry.

1 Q. Sure. Are you familiar with any arrangement
2 whereby Sunoco Logistics purchased natural gas liquids
3 and made arrangements for those liquids that it
4 purchased to be shipped over the Mariner East
5 Pipelines?

6 A. No, I'm not. I'm not familiar. Immediately
7 familiar.

8 Q. Okay. That's fair. Mr. Alexander, do you recall
9 the discussion -- first of all, were you here to hear
10 the testimony of Mr. Hunt earlier today?

11 A. Yes.

12 Q. Okay. Do you recall a discussion about a study
13 produced by Econsult Solutions?

14 A. Vaguely.

15 Q. Okay. Are you familiar with a study produced by
16 Econsult Solutions?

17 A. Not very. Vaguely.

18 Q. What's your familiarity with that?

19 A. I heard about it today.

20 Q. Did you have any familiarity with that otherwise?

21 A. No.

22 Q. So, have you heard of any studies commissioned by
23 Energy Transfer Partners regarding the economic impacts
24 of Mariner East projects?

1 A. No.

2 Q. Mr. Alexander, were you at the supersedeas hearing
3 in the Environmental Hearing Board proceeding in
4 2017-009?

5 A. No.

6 Q. Are you familiar with a Mr. Peter Angeletes?

7 A. No.

8 Q. Okay. Are you familiar with Mr. Steven Mullin?

9 A. I heard the name.

10 Q. Were you on a panel that he moderated a few years
11 ago, if you recall?

12 A. No, I don't recall.

13 Q. Okay.

14 MR. RAPHAEL: Your Honor, I am just
15 going to throw in an objection to relevance
16 regarding where we are going.

17 THE COURT: No question pending.

18 Ask your next question.

19 BY MR. BOMSTEIN:

20 Q. Mr. Alexander, do you have any understanding at all
21 of whether Sunoco Logistics or Energy Transfer has
22 produced or commissioned studies regarding the
23 economics of the Mariner East projects?

24 A. I do not.

1 Q. Okay.

2 MR. BOMSTEIN: Could we take five at
3 this time?

4 THE COURT: Sure.

5 MR. BOMSTEIN: Thank you.

6 (At this time, a brief break was taken.)

7 BY MR. BOMSTEIN:

8 Q. Mr. Alexander, earlier in your testimony you spoke
9 of talking to -- you were talking with potential
10 customers about the Marcus Hook facility.

11 Do you recall that?

12 A. Yes.

13 Q. Okay. Do you know -- do you recall when you first
14 started discussing Marcus Hook as a facility for
15 customers in the Mariner East Pipelines?

16 A. First discussions as in Mariner East 1 phase one?

17 Q. Yes, sir.

18 A. Early discussions. As I mentioned, it was one of
19 the destination facilities we explored. It probably
20 would have occurred -- those discussions would have
21 occurred 2011/2012 time period.

22 Q. Okay. Thank you.

23 A. In general.

24 Q. Sure. Were you involved in the preparation of

1 materials to be submitted to the Federal Energy
2 Regulatory Commission in connection with the first
3 phase of the Mariner East project?

4 A. I believe generally involved.

5 Q. And do you recall Sunoco stated to the Federal
6 Energy Regulatory Commission that there would be at
7 least one non-affiliated shipper that would use the
8 Mariner East 2 Project?

9 A. I don't recall that specifically, sir.

10 Q. Okay.

11 A. But if that's what was stated.

12 Q. Do you believe that to be the case?

13 A. That at least one non-affiliated shipper planned to
14 use the Mariner East 2 Pipeline?

15 Q. Yes, sir.

16 A. Yes.

17 Q. Do you know whether or not they are affiliated
18 shippers that plan to use the Mariner East Pipelines?

19 A. I believe it is possible.

20 Q. You don't know either way?

21 A. Planned to use? I would --

22 MR. RAPHAEL: Could you read that back
23 the last question?

24 THE STENOGRAPHER: "QUESTION: Do you

1 know whether or not they are affiliated shippers
2 that plan to use the Mariner East Pipelines?

3 "ANSWER: I believe it is possible.

4 "QUESTION: You don't know either way?"

5 MR. RAPHAEL: Objection. Asked and
6 answered, Your Honor.

7 THE COURT: Response? Or, I mean,
8 overruled.

9 THE WITNESS: Sorry. Could we repeat
10 the final question?

11 MR. BOMSTEIN: Maybe it's best to
12 repeat --

13 THE WITNESS: The last question.

14 BY MR. BOMSTEIN:

15 Q. Do you know either way whether there will be
16 affiliated shippers shipping over the Mariner East
17 Pipelines?

18 A. I don't know for certain.

19 Q. Okay. Were you involved with putting together
20 transportation service agreements for shippers in the
21 Mariner East Pipelines?

22 A. I was.

23 Q. But you don't recall if there were any affiliated
24 shippers, correct?

1 A. As far as affiliated shippers, I do believe that --
2 I have to think about this. I do believe there may be
3 transportation service agreements with affiliated
4 shippers to ship or pay to ship products. Not a
5 requirement to ship.

6 Q. And so at least for those arrangements, the Marcus
7 Hook facility knows that those materials are going to
8 be -- let me restart.

9 Do you know whether those arrangements include
10 shipping to the Marcus Hook facility?

11 A. I believe it is an option, not a requirement.

12 Q. And because those shipper or shippers are
13 affiliated, Energy Transfer Partners doesn't need to
14 wait to find out whether Marcus Hook will receive those
15 products until last minute, correct?

16 MR. RAPHAEL: Your Honor, I am going to
17 object this. One, requiring expert testimony.
18 Two, asking for speculation. Three, as a
19 compound question.

20 THE COURT: Can you answer it?

21 THE WITNESS: Could you repeat, please?

22 I apologize.

23 BY MR. BOMSTEIN:

24 Q. Maybe I will rephrase to make sure it's as clear as

1 possible. When -- in your understanding based on your
2 personal knowledge of arrangements with shippers over
3 the Mariner East Pipeline, there are, as we established
4 a minute ago, at least one or more which are affiliated
5 with Energy Transfer Partners, correct?

6 A. I apologize. But I thought one of the previous
7 questions was that there would be at least one
8 non-affiliated shipper.

9 Q. That was a question.

10 A. Okay.

11 Q. Yes. But it's also correct that there is at least
12 one that is affiliated, correct?

13 A. Correct.

14 Q. Okay. And so, because that is affiliated with
15 Energy Transfer Partners, Energy Transfer Partners is
16 controlling both the affiliate and the Marcus Hook
17 Terminal, correct?

18 A. I guess to some extent that's correct. Okay.

19 Q. And so in that instance, Marcus -- the Marcus Hook
20 Terminal knows what products it's going to need to
21 receive when the shipper, which is the same company,
22 which is an affiliated company, decides to ship,
23 correct?

24 MR. RAPHAEL: Objection, Your Honor.

1 Compound question. Then also, if it's beyond
2 his personal knowledge, that would require an
3 expert opinion.

4 THE COURT: Are you able to answer that
5 question?

6 THE WITNESS: I don't know that I am.

7 BY MR. BOMSTEIN:

8 Q. Could I ask why not?

9 A. I don't know that I fully understand your question.

10 Q. Okay. I will take a step back. I apologize. I
11 will try to be clear.

12 THE COURT: Just tell me why this is
13 relevant to your case?

14 MR. BOMSTEIN: Yes, Your Honor.

15 So what I am trying to get at is that
16 there is a discussion about -- part of Sunoco's
17 argument here is that it only develops a project
18 once it gets business. And it doesn't know
19 before it gets signed contracts what is going to
20 need to be built at the Marcus Hook facility.
21 So, I am trying to establish is that it does
22 know before it gets signed contracts because
23 sometimes it is the customer.

24 MR. WHITE: Your Honor, the Department

1 fails to see the connection of what he just said
2 to anything of his notice of appeal or relevant
3 to this case.

4 MR. BOMSTEIN: Your Honor, this is in
5 response to a defense of Sunoco.

6 THE COURT: Right.

7 Did you hear what he said? Is his
8 statement accurate or --

9 THE WITNESS: I don't know that I fully
10 understand it. And I apologize. I am just
11 trying to make sure I fully understand in order
12 to give an informed answer based on my personal
13 knowledge.

14 MR. BOMSTEIN: Sure. Maybe I can do
15 this by reference to Sunoco's prehearing
16 memorandum and some of the statements made in
17 defense to the notice of appeal in this case. I
18 don't have a copy of Sunoco's prehearing
19 memorandum for everybody. But if anybody has a
20 question about that, please let me know.

21 MR. RAPHAEL: If you can just track the
22 page, we have a copy of our pre-memorandum.
23 Just tell us what page you are heading to.

24 MR. BOMSTEIN: Sure. I am headed to at

1 first page 12.

2 MR. RAPHAEL: Counsel for the
3 Department, are you able to track that, as well.

4 MR. WHITE: We are on page 12. Thank
5 you.

6 MR. BOMSTEIN: There is a statement
7 about the open season in connection with Plan
8 Approval 1 starting at Paragraph 43. And before
9 that in Paragraph 42, there is a statement:
10 SPMT developed the projects at the MHIC in
11 response to evolving business opportunities,
12 engineering factors and market conditions
13 without a "master plan" in hand.

14 On the following page 13, there is a
15 statement at Paragraph 46 -- actually, before
16 that, Paragraph 45: At the time the MHIC was
17 owned by Sunoco, Inc., a legal entity that is
18 separate from SPMT. After that, new paragraph:
19 If the open season proved to be successful,
20 i.e., if there were sufficient customer
21 subscriptions to make the proposed shipping and
22 venture profitable, SPMT planned to build tanks
23 at the MHIC. Customers could use to store the
24 ethane and propane after shipping it there.

1 And down on Paragraph 49 and 50: As a
2 result of this subscription process, SPMT was
3 able to determine the size, number and capacity
4 of the ethane and propane storage tanks that it
5 would build at MHIC. And 50: Without the
6 contracts in place, SPMT would not have invested
7 in many millions of dollars that it took to
8 construct the storage tanks.

9 And I will represent that there are
10 similar statements for other projects later on
11 in the Sunoco prehearing memo.

12 BY MR. BOMSTEIN:

13 Q. So, does that help contextualize my questions for
14 you, Mr. Alexander?

15 A. I think so. But what specific products are you
16 referring to when you say storage tanks and
17 infrastructure?

18 Q. Well, in this question, it was with regard to Plan
19 Approval 1, which was in response or connected to
20 Mariner East 1. So in that instance, it would be
21 ethane and propane for the storage tanks.

22 A. Okay.

23 Q. But you know, I believe there are similar
24 statements later on. And I could certainly read those

1 for you if you wanted regarding later pipelines.

2 A. Okay. I'm sorry.

3 MR. RAPHAEL: Your Honor, is there a
4 question, I mean, for the witness?

5 THE COURT: Yeah. What's the question?

6 MR. BOMSTEIN: Okay.

7 BY MR. BOMSTEIN:

8 Q. So, Mr. Alexander, with that context, my question
9 is, isn't it, in fact, the case that even before all
10 the contracts were signed with shippers, Sunoco still
11 did know it had business at the Marcus Hook Terminal?

12 A. Before all the contracts were signed with shippers
13 on the pipeline, Sunoco didn't know that it had
14 business at the terminal. I think it's fair to say for
15 the projects that I have developed on the pipeline, any
16 infrastructure that was built at the terminal was
17 specifically associated with the contract to terminal
18 those products through the terminal.

19 Q. And isn't it the case, though, that there is at
20 least one arrangement with an affiliated company? An
21 Energy Transfer company?

22 A. Yes.

23 Q. So at least in that instance, Energy Transfer
24 didn't need to wait until the ink was try to determine

1 there would be business at Marcus Hook, correct?

2 A. I don't believe that to be correct.

3 Q. Why not?

4 A. Because even if Energy Transfer plans -- if an
5 affiliate plans to ship on the pipe and takes a
6 commitment for that and takes a further commitment
7 downstream at a terminal or this particular terminal,
8 there has to be a commitment to ship or pay to ship
9 those products.

10 So the -- I guess from a specific reference, what I
11 was referring to for purposes of the Mariner East 1 and
12 2 open season, the products that were contracted are
13 what justify the infrastructure build on the pipe and,
14 I assume, in the terminal, as well. That's a fair
15 statement.

16 Q. So, it's your understanding that if your colleagues
17 over in another part of Energy Transfer wanted to ship
18 on the Mariner East Pipelines, then at the Marcus Hook
19 end of things, Marcus Hook is not going to make any
20 plans until the ink is dried on that arrangement,
21 correct?

22 A. On an arrangement with -- for said particular
23 products to move through said particular piece of
24 infrastructure. I think that's a fair statement.

1 Q. Okay.

2 A. I think.

3 Q. Do you know why Energy Transfer doesn't have that
4 communication within its own company about plans that
5 Marcus Hook versus plans for shipment?

6 MR. RAPHAEL: Objection: Relevance.

7 THE WITNESS: I don't know that they
8 don't.

9 MR. RAPHAEL: I think that's for the
10 Judge to decide.

11 THE COURT: He answered it.

12 Overruled. Allow the answer.

13 THE WITNESS: Could you repeat that one
14 more time?

15 MR. BOMSTEIN: Can you please repeat the
16 question?

17 THE STENOGRAPHER: "QUESTION: Do you
18 know why Energy Transfer doesn't have that
19 communication within its own company about plans
20 that Marcus Hook versus plans for shipment?"

21 MR. RAPHAEL: Just renew my objection as
22 to relevance.

23 THE WITNESS: I don't know that they
24 don't.

1 THE COURT: Response?

2 MR. BOMSTEIN: Your Honor, this is, in
3 my opinion, very relevant because it rebuts the
4 statement made in the Sunoco's prehearing memo
5 that, in fact, there was just a need to wait
6 until third parties made decisions in order to
7 figure out what to build. In fact, we believe
8 that there has been long term knowledge and
9 plans to do a lot of this building driven by
10 Energy Transfer's own entities.

11 And so in fact, there was common plan
12 here, not a process relying wholly on third
13 parties.

14 THE COURT: Okay. Overruled.

15 THE WITNESS: It's my understanding that
16 there are contracts for whatever services need
17 to be provided with third party customers. My
18 contracts on the pipelines specifically deal
19 with shippers who want to use the pipeline to
20 move products to Marcus Hook and other
21 distribution facilities, other destination
22 terminals on the pipeline. So I can't speak to
23 what contracts may or may not be in place with
24 other entities of the organization.

1 BY MR. BOMSTEIN:

2 Q. I'm not asking about what contracts are in place
3 with other entities within the organization.

4 MR. BOMSTEIN: Can you please read back
5 my question?

6 THE STENOGRAPHER: "QUESTION: Do you
7 know why Energy Transfer doesn't have that
8 communication within its own company about plans
9 that Marcus Hook versus plans for shipment?"

10 THE WITNESS: I don't.

11 BY MR. BOMSTEIN:

12 Q. Okay. Thank you.

13 MR. BOMSTEIN: I have no further
14 questions for this witness.

15 THE COURT: And no exhibits?

16 MR. BOMSTEIN: Sorry?

17 THE COURT: No exhibits?

18 MR. BOMSTEIN: No. So -- well, let me
19 check back because I agree it would be better to
20 do it all at once then separately. I think we
21 already got through A-2, 3 and 4. And besides
22 that, I do have a topic to discuss, not
23 necessarily with this witness, but related.

24 Which is that the document that's A-5,

1 which is the Econsult study, there was
2 discussion -- I won't go into all the details,
3 but discussion with opposing counsel regarding
4 witnesses to testify to A-5. And as where the
5 conversation ended up is we didn't require the
6 Econsult preparers to come in to testify as to
7 the document. That was with the understanding
8 we had at the time. I believe given the -- what
9 we view as contradictions of some of the facts
10 in that study for Mr. Hunt, we would at this
11 time seek to renew the subpoena we had issued
12 but had withdrawn to the Econsult company and
13 the individuals therein to testify as to that
14 document.

15 MR. RAPHAEL: You know, I have got a
16 very limited understanding of -- maybe
17 Mr. Bomstein could give a little more detail on
18 what he is talking about.

19 MR. BOMSTEIN: I would be happy to if
20 Your Honor would like. So, the --

21 MR. RAPHAEL: Before we do, could we and
22 Mr. Alexander -- does this involve Mr.
23 Alexander --

24 MR. BOMSTEIN: From my perspective --

1 MR. RAPHAEL: -- on the witness stand?

2 MR. BOMSTEIN: From my perspective, it
3 does not.

4 MR. RAPHAEL: We have no questions for
5 Mr. Alexander at this time, Your Honor.

6 MR. WHITE: We have no questions, Your
7 Honor.

8 THE COURT: Thank you very much.

9 (Harry Alexander is excused from the
10 Witness Stand.)

11 THE COURT: You are free to subpoena
12 them if you want, if you want the short answer.

13 MR. BOMSTEIN: Yes. And in case it
14 results in dispute, I wanted to raise the topic
15 now with Your Honor and all parties and see if
16 they had immediate reactions which we could
17 resolve. However, if not, we don't have to do
18 that at this time. I just wanted to see if that
19 would streamline anything.

20 MR. RAPHAEL: Your Honor, perhaps an
21 off-the-record discussion. I need a little more
22 context. I'm not certain this is appropriate
23 for an on-the-record discussion, frankly.

24 THE COURT: You want to talk about it

1 over lunch? It's one clock. Come back at two.

2 MR. RAPHAEL: Yes, Your Honor.

3 MR. BOMSTEIN: Thank you.

4 (At this time, a lunch recess was
5 taken.)

6 - - -

7 MR. BOMSTEIN: Clear Air Council calls
8 Mr. George Eckert to the stand.

9 - - -

10 (GEORGE ECKERT, having been first duly
11 sworn, was examined and testified as follows:)

12 - - -

13 MS. HUNT: Your Honor, before the
14 questions begin, I would like to put on the
15 record that Mr. Eckert has a physical/medical
16 condition which makes it uncomfortable to sit.
17 So, he may move in his chair and he may need
18 breaks, but he's otherwise able to testify
19 today.

20 THE COURT: Okay.

21 - - -

22 EXAMINATION

23 - - -

24

1 BY MR. BOMSTEIN:

2 Q. Mr. Eckert, thank you for coming in to testify
3 today. Please state your full name and business
4 address for the record?

5 A. George Andrew Eckert, 2 East Main Street,
6 Norristown, Pennsylvania.

7 Q. Thank you. You work for the Pennsylvania
8 Department of Environmental Protection?

9 A. Yes, I do.

10 Q. Without going into any confidential discussions
11 between you and your lawyers, please, tell me what you
12 did to prepare for today's hearing?

13 A. I read over some of plan approvals and discussed
14 things with my attorneys.

15 Q. Did you bring any documents with you up to the
16 stand?

17 A. No, I didn't.

18 Q. What's your title at -- I will call it DEP or the
19 Department for short.

20 A. I'm an air pollutions control engineer three.

21 Q. Do you have a -- what's your undergraduate degree
22 in?

23 A. I have a bachelor's in mechanical engineering.

24 Q. When was that from?

1 A. 1982.

2 Q. And when did you start working at DEP?

3 A. Correct that, I think that was 1981.

4 Q. Sure.

5 A. I started at the DEP in 1994.

6 Q. What have your responsibilities -- within the last
7 decade or so, what have your responsibilities at DEP
8 been?

9 A. I reviewed applications for plan approvals, plan
10 approval extensions, Title 5 permits, state only
11 permits, modifications, renewals, request for
12 determinations.

13 Q. A request for determination, can you explain what
14 that is?

15 A. That is a request by the company to determine
16 whether an operating or a plan -- operating department
17 or plan approval is needed for that particular project.

18 Q. If the Department grants their request for a
19 determination, does that mean that no operating permit
20 or plan approval is needed?

21 A. It could.

22 Q. What else could it mean?

23 A. Well, it could mean one or the other, or it could
24 mean both.

1 Q. Okay. Does anyone within DEP report to you?

2 A. No.

3 Q. Who do you report to?

4 A. Janine Tulloch-Reid.

5 Q. Does she or anyone else review your issuance of
6 requests for determination, which I must just call RFDs
7 for short?

8 A. No, they do not.

9 Q. Does Ms. Tulloch-Reid review the rest of your work?

10 A. Yes.

11 Q. When you started at DEP in 1994, did you shortly
12 thereafter start working on Marcus Hook related air
13 permitting?

14 A. I do not remember when I started on working Marcus
15 Hook permitting.

16 Q. Do you recall if it was, at the very least, in the
17 mid '90s?

18 A. I believe so.

19 Q. Were you the reviewer for the application for Plan
20 Approval 23-0119?

21 A. Yes.

22 Q. Is it okay if I call that Plan Approval 1?

23 A. Yes.

24 Q. Thank you. Did you also every one of the plan

1 arrivals applications 23-0119A through 23-0119I?

2 A. Yes.

3 Q. Can I call those "A through I" for short?

4 A. Yes.

5 Q. Thank you. Did you review the application for

6 RFD5236?

7 A. I don't recall what that application was for.

8 Q. Please turn to C-15, that's the Department's

9 exhibit.

10 A. You said C-15?

11 Q. Yes, sir.

12 A. Okay.

13 Q. Do you recognize this document?

14 A. Yes, I do.

15 Q. What is this?

16 A. This is a request for determination for the

17 installation of two spheres.

18 Q. Do you see an application ID listed in the bottom

19 corner?

20 A. Yes, I do.

21 Q. What number is that?

22 A. It's RFD Application ID 5236.

23 Q. Thank you. And did you review this application?

24 A. Yes, I did.

1 Q. Could you turn to C-17, please?

2 A. Okay.

3 Q. Do you recognize this document, as well?

4 A. Yes, I do.

5 Q. What is this?

6 A. This is for an expansion of the 15-2B cooling
7 tower.

8 Q. Does this have an RFD application number, as well?

9 A. Yes, it does.

10 Q. What is that number?

11 A. Number 5597.

12 Q. Did you review this application, as well?

13 A. Yes, I did.

14 Q. Okay. Thank you. Is it fair to say that you are
15 the person at DEP who is most involved with the air
16 quality permitting of Marcus Hook?

17 A. Yes.

18 Q. Speaking of RFDs, the Department can only approve
19 an RFD for the purpose specified in the application,
20 correct?

21 A. Correct.

22 Q. Likewise, the Department can only issue a plan
23 approval for the purpose specified in the application,
24 correct?

1 A. Yes.

2 Q. Let's talk about circumvention here.

3 Have you in the course of your work at DEP dealt
4 with the concept of circumvention of the New Source
5 Review Program?

6 A. Yes, I have.

7 Q. In determining whether there may be circumvention
8 of air permitting requirements, do you consider
9 dependency of projects on each other?

10 A. Yes, I do.

11 Q. Do you also consider their installation over short
12 periods of time?

13 A. Yes.

14 Q. And do you ever use the term "staging" in the
15 circumvention context?

16 A. That's a term used in one of our regulations, yes.

17 Q. What's your understanding of staging?

18 A. Staging is the process of installing sources in
19 the -- for the purpose of escaping or over a period of
20 time.

21 Q. Just to be clear, the process of installing
22 projects over the course of time?

23 A. Yes.

24 Q. Thank you. Does that have anything to do with the

1 new source review lookback period?

2 A. I believe there are two different things. But it
3 is a part of the new source review process.

4 Q. Okay. Are those two things connected in the way
5 you review projects?

6 A. Yes.

7 Q. How so?

8 A. As part of the new source review process, we are
9 required to do a five-year and a ten-year lookback. At
10 this point, we look at the projects over that time
11 periods.

12 Q. How does that relate to staging?

13 A. As we look at the projects over that time period,
14 we also look to see how they're interrelated.

15 Q. Is there any other connection between staging and
16 the lookback period?

17 A. Not that I can think of now.

18 Q. Okay. In your time working at DEP, have you ever
19 spoken with a permit applicant about a concern that its
20 application or applications might violate certain --
21 the anti-circumvention laws?

22 A. Yes.

23 Q. In what instances?

24 A. In this particular case with SPMT, we are

1 encouraged to have pre-application meetings. During
2 those meetings, we not only talk about the project that
3 they will be submitting, we talk about past projects,
4 how it's related, how this one has come about as well
5 as any future projects they might have.

6 Q. So for Plan Approval E, in the application for Plan
7 Approval E, did you have such a discussion regarding
8 whether there might be concern about circumvention with
9 Sunoco?

10 A. Yes.

11 Q. And was that the pre-application meeting?

12 A. Yes.

13 Q. What did you express at that meeting?

14 A. It was more questions from the Department and
15 responses from SPMT.

16 Q. What questions did you ask?

17 A. As I said, how does this project relate to previous
18 projects. And what projects do you have looking
19 forward that may be related to this project.

20 Q. Did you have any follow-up questions after that?

21 A. No.

22 Q. Were you assured that there was no relation?

23 A. Correct.

24 Q. Did you have conversations with Sunoco about the

1 question of circumvention in -- during or before their
2 review of other plan approval applications for Marcus
3 Hook?

4 A. Could you ask that again, please?

5 Q. Sure. Did you have conversations with Sunoco
6 during or before the plan approval applications for
7 other projects at Marcus Hook regarding circumvention?

8 A. Yes.

9 Q. For which projects?

10 A. I believe we had them for every project.

11 Q. Is that something you normally do?

12 A. For large facilities, yes.

13 Q. Could you turn please to Exhibit A-44. Is this the
14 transcript of your deposition, Mr. Eckert?

15 A. Yes, it is.

16 Q. And in those conversations that you have regarding
17 circumvention with Sunoco, did you ever express a
18 concern that the anti-circumvention laws might be
19 violated?

20 A. I'm not sure what you mean by anti-circumvention
21 laws.

22 Q. Well, I will clarify.

23 Had you ever had a conversation with Sunoco
24 about -- have you ever expressed a concern to Sunoco

1 that they might be crossing over the threshold to
2 actually circumvent new source review?

3 A. Yes.

4 Q. In what circumstances?

5 A. I can't pick a specific project. I can't say
6 exactly which ones. I know we discussed them.

7 Q. Could you please turn to page 30 of this Exhibit
8 A-44. Do you see at the bottom of page 30 my question:
9 "Have you in your time working at DEP ever spoken with
10 permit applicant about a concern that his application
11 or applications might violate circumvention provision?"

12 A. Yes.

13 Q. What was your response?

14 A. "I don't recall."

15 Q. Do you know what jogged your memory between the
16 deposition and today about that topic?

17 A. I did not prepare for the deposition. I did
18 prepare for the trial.

19 Q. So you -- how did you prepare that you remember
20 this now?

21 A. As I said, when you asked what did I do to prepare
22 for it, I said I reviewed the projects and the plan
23 approval applications, and I reviewed my note.

24 Q. Okay. You hadn't done that before the deposition?

1 A. Correct.

2 Q. Do you recall other people who worked with -- who
3 you worked with at DEP having conversations with Sunoco
4 about circumvention?

5 A. Yes.

6 Q. Who else has had those conversations?

7 A. I discussed them with my supervisor Janine
8 Tulloch-Reid.

9 Q. Is there anyone else?

10 A. It's possible, but I don't know for sure.

11 Q. Okay. When you've -- sorry.

12 MR. BOMSTEIN: Can you please read back
13 the last question and answer?

14 THE STENOGRAPHER: "QUESTION: Who else
15 has had those conversations?

16 "ANSWER: I discussed them with my
17 supervisor Janine Tulloch-Reid."

18 MR. BOMSTEIN: Thank you.

19 BY MR. BOMSTEIN:

20 Q. Do you recall when that discussion was with
21 Ms. Tulloch-Reid?

22 A. No.

23 Q. Do you recall if it was during or in connection
24 with the application for Plan Approval E?

1 A. No, I do not.

2 Q. Do you know if it happened within the last ten
3 years?

4 A. Yes.

5 Q. Can you give me a better sense of when in the last
6 ten years that happened?

7 A. It was most likely several times over the course of
8 the SPMT plan approval applications.

9 Q. Thank you. And do you recall the contents of any
10 of those discussions that you had with her?

11 A. We looked at the regulations. We looked at the
12 applicability and some of the definitions. We had
13 determined that these sources were not circumventing
14 the regulations.

15 Q. Okay. Thank you. Talking about the projects in
16 particular now. In response to the application for
17 Plan Approval 1, you prepared a review memo, correct?

18 A. Correct.

19 Q. Could you please go to DEP's binder, which we
20 brought up recently, and turn to Exhibit C-2.

21 A. Okay.

22 Q. Is this the memo that you prepared?

23 A. Yes, it is.

24 Q. What's the date on this?

1 A. Date is February 4, 2013.

2 Q. Thank you. Referring to the project in the
3 preexisting refinery facility, do you see where you
4 wrote: "Note that even though this operation will be
5 co-located at an existing site, neither operation will
6 support the other."

7 MR. RAPHAEL: Counsel, where are you?

8 MR. BOMSTEIN: Oh, yeah. Sorry about
9 that. This is on the first page at the bottom.

10 THE WITNESS: Yes, I do see that.

11 BY MR. BOMSTEIN:

12 Q. What significance does it have if neither
13 operations supports the other?

14 A. At the time, there was some concern about
15 aggregating several different facilities for PSD and
16 NSR purposes as support facilities to each other.

17 Q. So am I correct in understanding that this was to
18 clarify that the refinery site and the cryogenic ethane
19 and propane storage facility do not support each other?

20 A. Correct.

21 Q. Project 1 does use the existing Cavern No. 5 built
22 for their refinery, though, correct?

23 A. Correct.

24 Q. And it also builds on the existing loading docks

1 that existed when it was a refinery, correct?

2 A. Yes, it does.

3 Q. And it may use the existing flare that was built
4 for the refinery located in Delaware, correct?

5 A. Correct.

6 Q. So, why did you write that neither operation will
7 support the other?

8 A. Those sources -- the cavern, the flare, the loading
9 docks -- were owned by SPMT, no longer owned by Sunoco.

10 Q. Why does that mean that neither operation will
11 support the other?

12 A. There are -- since the two facilities were located
13 contiguous and adjacent, there is always an -- they
14 were both doing some work with refinery related
15 products. There is always a question that they could
16 be supporting each other.

17 Q. So, is it the case that they may support each other
18 here?

19 A. No.

20 Q. So, what did you mean by there is always the case
21 that they might support each other?

22 A. There is always a chance that they could support
23 each other.

24 Q. So, was there a chance here that the refinery

1 facility would be supporting Project 1?

2 A. That is -- that was the determination that we made
3 that it does not support the SPMT facility.

4 Q. Well, if there are pieces of the refinery facility
5 that are being used as part of the SPMT facility, then
6 how is it not support?

7 A. As I stated before, these pieces were part of the
8 refinery facility that were purchased by SPMT.

9 Q. So, maybe we are getting to something here. So, is
10 it the case that you are saying that they were no
11 longer part of the refinery facility because they are
12 now part of the cryogenic ethane and propane storage
13 facility?

14 A. Correct.

15 Q. Do you know whether the auxiliary boilers are part
16 of the old refinery facility?

17 A. Yes, they were.

18 Q. And are you familiar if whether the auxiliary
19 boilers support the Sunoco Marketing or Sunoco SPMT?

20 A. Could you repeat that, please?

21 Q. Sure. Do you know whether the auxiliary boilers
22 support the further projects built at the SPMT site?

23 A. Yes, they do.

24 Q. So for those projects, the refinery site does

1 support them, correct?

2 A. No.

3 Q. Why not?

4 A. The boilers were purchased by SPMT.

5 Q. I thought you said they were part of the refinery
6 site?

7 A. You said they were part of the refinery site. I
8 disagreed with that.

9 MR. BOMSTEIN: Could you please read
10 back the previous question and answer?

11 THE STENOGRAPHER: "QUESTION: So for
12 those projects, the refinery site does support
13 them, correct?"

14 "ANSWER: No."

15 MR. BOMSTEIN: Can you go one question
16 before that?

17 THE STENOGRAPHER: "QUESTION: Sure. Do
18 you know whether the auxiliary boilers support
19 the further projects built at the SPMT site?"

20 "ANSWER: Yes, they do."

21 BY MR. BOMSTEIN:

22 Q. And the auxiliary boilers are part of the refinery
23 site, correct?

24 A. I'm not sure exactly what you are calling a

1 refinery site.

2 Q. Please look at the first page of Exhibit C-2.

3 A. Okay.

4 Q. Do you see a reference to an existing Title V site?

5 In the same paragraph we were looking at before.

6 A. Yes, in the second line.

7 Q. You see where it says, formerly, the Sunoco Markets
8 and Refinery?

9 A. Yes.

10 Q. I'm talking about that existing Title V site.

11 A. Okay. "The Sunoco Markets Refinery sold most of
12 their equipment off to SPMT. They kept some sources
13 for themselves. They are both co-located at the same
14 site, same facility but the boilers were sold to SPMT."

15 Q. Okay. So, they are not part of the existing Title
16 V site then, correct?

17 A. Well, you said the site includes the whole thing.
18 Yes, they are at the site. It's a matter of ownership
19 and operation.

20 Q. I am going to try to avoid testifying here. I am
21 just referring to an existing Title V site as written
22 in your review memo. I am not saying what that site is
23 or isn't. I am just talking about what you are
24 referring to.

1 Within the scope of what you are referring to in
2 this review memo, are the auxillary boilers within that
3 existing Title V site?

4 A. Yes.

5 Q. And they are supporting some of the projects at
6 Marcus Hook that come after Project 1, correct?

7 A. Correct.

8 Q. So in that sense, the auxiliary boilers at the
9 existing Title V site support those projects, correct?

10 A. Yes. They support the SPMT projects.

11 Q. Okay. Thank you. Did you consider aggregation of
12 the existing Title V site with those projects due to
13 the fact that there is support from one to the others?

14 A. No.

15 Q. Why not?

16 A. Because they don't -- they do not meet the
17 guidelines established by the EPA on support
18 facilities.

19 Q. So, is it irrelevant that neither operations
20 supports the other here for Project 1?

21 A. Could you repeat that please?

22 Q. Sure. You wrote in this review memo for Project 1:
23 Note that even though this operation will be co-located
24 at this existing site, neither operation will support

1 the other.

2 Then I asked you what the point of that is. You
3 said that that was because of discussion regarding
4 aggregation. But as I understand it now, regardless of
5 whether the operations support each other, it's your
6 position that they can't be aggregated, correct?

7 A. Correct.

8 Q. Okay. Thank you.

9 In response to application for project -- Plan
10 Approval A, you also prepared a review memo, correct?

11 A. Yes, I did.

12 Q. Can you please turn to A-18, that's Clean Air
13 Council's exhibits.

14 A. Okay.

15 Q. Thank you. Is this the review memo that you
16 prepared for Project A?

17 A. Yes, it is.

18 Q. Can you look at page 2 of the review memo, please.

19 A. Okay.

20 Q. Thank you. Could you read the first sentence
21 there -- the first full sentence, please?

22 A. "Due to aggregation and support facilities, this
23 project is being defined as a modification to an
24 existing NSR and PSD facilities for auxiliary boilers

1 as the new fuel will be added H2S from the treatment
2 system and a new steam loader will be added, the
3 deethanizer."

4 Do you want me to read the whole sentence, keep
5 going?

6 Q. Yes, please?

7 A. "As well as installation and operation of a new
8 deethanizer system that will be used to separate the
9 liquid ethane from the propane that is to be piped
10 across the Commonwealth."

11 Q. Thank you. What's the relevance of the new steam
12 load that you mentioned here?

13 A. At the time when I wrote this, I was under the
14 impression or the understanding that adding a new steam
15 load would, in effect, be a modification to an existing
16 source.

17 Q. What was the basis of that impression or
18 understanding?

19 A. That it would be a change in operation or a change
20 in method of operation.

21 Q. When did you come to a new understanding on that?

22 A. Not sure.

23 Q. Do you know if it was after this appeal was filed?

24 A. It's a possibility.

1 Q. Did the Department do an aggregation analysis on
2 Project 1 and Project A?

3 A. Yes, it did.

4 Q. Where can we find that analysis here?

5 A. That would be on pages 3, 4, 5 and 6 of this
6 document.

7 Q. Could you point us specifically to what you are
8 looking at?

9 A. On page 3 at the bottom in Table 1, we list the
10 potential emissions from the fugitive emissions. And
11 Table 2 and 3, we list some other potential emissions.
12 And then on page -- the bottom of page 4 and 5, we
13 discuss the different steps of the NSR regulations.

14 Q. Where does aggregation come into that?

15 A. Aggregation is in the five-year and the ten-year
16 lookback periods.

17 Q. Is there a discussion of circumvention in this
18 document?

19 A. No, I don't believe there is.

20 Q. Did you have conversations about circumvention in
21 connection with Project A?

22 A. I don't recall specifically.

23 Q. Do you know whether Project A and Project 1 are
24 technically and economically linked?

1 A. I did not link them, no.

2 Q. Why not?

3 A. Because at the time when they applied for A -- let
4 me go back. At the time they applied for 1, there was
5 no need for a deethanizer.

6 Q. Is there any other reason?

7 A. No.

8 Q. What is the purpose of the deethanizer in Plan
9 Approval A as you understand it?

10 A. Deethanizer takes the ethane/propane mixture that
11 came through the pipeline and separates it into two
12 more pure products.

13 Q. Does that have any connection in your understanding
14 with Project 1?

15 A. At the time of -- plan approval application and
16 plan approval issuance, it did not have any relevance
17 at the site.

18 Q. Did that change?

19 A. No.

20 Q. So sitting here today, do you believe that the two
21 projects are unconnected?

22 A. Correct.

23 Q. Just one second, please.

24 Could you please turn to Exhibit A-7. Please turn

1 to page 1, which is the SUN 000482.

2 A. Okay.

3 Q. Do you see the line in the middle paragraphs that
4 reads: "All the sources and associated emissions from
5 the cryogenic storage facility from Plan Approval
6 Number 23-0119 are fully included in this project"?

7 A. Yes.

8 Q. Do you know what that means?

9 A. I took that to mean that those sources in 0119 will
10 be used by this project.

11 Q. So, does that change your understanding at all of
12 whether the two projects are connected?

13 A. No.

14 Q. Why not?

15 A. Storage tanks can be used for multiple purposes.
16 As far as the Department is concerned, we are governed
17 by regulations. If it meets those regulations, they
18 can pretty much store whatever they want in whichever
19 tanks.

20 Q. I thought you told me a few minutes ago that a plan
21 approval can only be issued for the purpose specified?

22 A. Correct.

23 Q. So, the purpose specified for Project 1 is set
24 forth in that application, correct?

1 A. Correct.

2 Q. So, Sunoco can't just change the purpose of those
3 tanks by itself without going back to the Department,
4 correct?

5 A. In this case, you're correct.

6 Q. Okay. So if that's the purpose of Project 1 and
7 Sunoco is including all those sources and associated
8 emissions into Project A, why are those not connected?

9 A. Right above where you had me read on the second
10 paragraph of page 1 it states: "A plan approval
11 application for the cryogenic storage facility
12 submitted in November 2012 assumed a liquified ethane
13 and propane would not be blended before entering the
14 pipeline. Due to changes in operational capabilities,
15 product availability and market demand, SXL is
16 determined that a deethanizer unit capable of
17 separating this blend is delivered to the pipeline as
18 necessary."

19 Q. So why, then, are they not linked?

20 A. At the time when the -- when Plan Approval 1 was
21 applied for, the deethanizer wasn't needed because of
22 the customer request or the customer specifications.
23 Plan Approval A apparently had different customer
24 specifications.

1 Q. It was the same customers, though, correct?

2 A. That, I do not know.

3 Q. Well, we are talking about the same ethane and
4 propane, correct?

5 A. I don't know.

6 Q. Could you turn to page 3 of this same A-7 document?

7 A. Okay.

8 Q. Do you see a figure that is labeled Figure 2-1?

9 A. Yes.

10 Q. And do you see storage tanks labeled ethane storage
11 and propane storage there?

12 A. Yes.

13 Q. And do you also see a notation on the opposite side
14 of that figure that says liquified hydrocarbons?

15 A. Yes.

16 Q. Is it your understanding that those liquified
17 hydrocarbons and ethane and propane storage were part
18 of Project 1?

19 A. It could be.

20 Q. You don't know?

21 A. No.

22 Q. Did you inquire?

23 A. I believe them to be part of Project 1.

24 Q. Okay. And do you see the deethanizer unit in

1 between those two parts of Figure 2-1?

2 A. Yes, I do.

3 Q. And that's part of Project A, correct?

4 A. Yes.

5 Q. So, would you agree with me that Project A and
6 Project 1 are part of the same process?

7 A. Yes. They are part of the same process.

8 Q. But it's your view that they're not linked,
9 correct?

10 A. Correct.

11 Q. In response to application 23-0119B, you prepared a
12 review memo, correct?

13 A. Correct.

14 Q. Please turn to A-19. Is this that review memo?

15 A. Is that?

16 Q. Sorry. Is this the review memo that you prepared
17 for Project B?

18 A. Yes.

19 Q. Can you turn to the third page of that, please?

20 A. Okay.

21 Q. Can you read the first sentence on that page right
22 at the top?

23 A. "There will be a change in the operation of these
24 four auxiliary boilers Sources 31, 32, 33 and 34 as a

1 steam load fractionation tower will be placed back into
2 service."

3 Q. Does this statement of yours go back to that
4 discussion that we had a few minutes ago about what you
5 thought a steam load did in terms of effecting a
6 modification?

7 A. Yes.

8 Q. Okay. Thank you. So, that was still the case for
9 Project B you would agree, correct?

10 A. Correct.

11 Q. Can you look at the next page on page 4. And do
12 you see a heading New Source Review there?

13 A. Yes, I do.

14 Q. Could you please read the first sentence below
15 that?

16 A. "This project is being defined as installation of a
17 new source loading rack and controls, and the
18 modification of existing major NSR facility as a new
19 steam load will be added to fractionation tower."

20 Q. Thank you. And do you see back on page 3 at the
21 bottom, a paragraph beginning "Table 1"?

22 A. Yes.

23 Q. And do you see the second sentence there beginning
24 "as piping"?

1 A. Yes.

2 Q. Could you please read that sentence?

3 A. "As piping components in this chemical plant can be
4 used in conjunction with other systems, some of the
5 emissions from these components have already been
6 counted toward previous projects and Plan Approval
7 Numbers 23-0119 and 23-011A and are not to be double
8 counted."

9 Q. Am I correct in understanding that there is an
10 overlap in piping components with Projects 1, A and B?

11 A. What do you mean by "overlap"?

12 Q. Well, are -- do Projects 1, A and B use some of the
13 same piping components?

14 A. Yes, they do.

15 Q. Did the Department do a circumvention analysis on
16 Project B in connection with the two earlier Projects 1
17 and A?

18 A. Yes, they did.

19 Q. Can any of that analysis be found in this review
20 memo?

21 A. No.

22 Q. What do you recall of that analysis?

23 A. It's a matter of looking at the dependency on the
24 project at hand with earlier projects. And whether it

1 was part of a common goal as well as being submitted
2 over a short period of time.

3 Q. How did those factors -- how did you use those
4 factors in analyzing circumvention with respect to
5 Project B?

6 A. They were definitely submitted over a short period
7 of time. They were definitely being used at a
8 continuous and adjacent facility. They were not part
9 of transporting ethane and propane through a pipeline.
10 The loading racks, the truck loading racks were being
11 installed as new sources. There was enough differences
12 between the sources that were being installed and the
13 earlier projects, that they were not considered to be
14 part of circumvention.

15 Q. That's despite the fact that there was use of
16 common equipment, correct?

17 A. Correct.

18 Q. And did you -- do you have an understanding that
19 truck racks are the only way that the product that
20 Project B deals with is coming into Marcus Hook?

21 A. That, I don't recall exactly.

22 Q. Were you around to hear any of the testimony today
23 or yesterday discussing natural gasoline coming in
24 through or as part of a product coming in through

1 pipelines to Marcus Hook?

2 A. I was around for the discussion yesterday and
3 today.

4 Q. And do you recall whether, you know, you learned
5 anything about how natural gasoline arrives at the
6 Marcus Hook facility?

7 A. I do not recall the specific questions and answers
8 over the last two days.

9 Q. Do you have any knowledge about whether natural
10 gasoline arrives at Marcus Hook besides through a truck
11 rack?

12 A. Not without looking it up on the documents.

13 Q. What documents would you look at?

14 A. I would look around the plan approval application,
15 maybe in the plan approval review memo.

16 Q. We have the plan approval review memo in front of
17 you. Can you take a second, please, to look and see if
18 it says anything about that in here?

19 A. It does not specifically state how it will be
20 unloaded.

21 Q. Could you take a moment to look at the application
22 which I believe is at Exhibit A-8?

23 A. Okay.

24 Q. Do you see anything there saying the truck rack is

1 the only way natural gasoline is coming into the
2 facility?

3 A. On page 1 of that document, it says this project
4 will include receipt of feed stock via a truck rack.

5 Q. Has it been your understanding that feed stock for
6 the natural gasoline project is only through the truck
7 rack?

8 A. That's correct.

9 Q. Is there anything else that you use in your
10 analysis, any other information that you used in your
11 analysis of circumvention for Project B that you found
12 relevant?

13 A. Not that I recall.

14 Q. Okay. Thank you.

15 MR. BOMSTEIN: At this time, I would
16 like to move into evidence or move to admit into
17 evidence Exhibits A-18, A-19, C-2, C-15 and
18 C-17?

19 THE COURT: Any objections?

20 MS. HUNT: No objections, Your Honor.

21 MR. RAPHAEL: Just doublecheck, Your
22 Honor. I don't think we will either.

23 Can you just read those off one more
24 time, Counsel.

1 MR. BOMSTEIN: Sure. A-18, A-19, C-2,
2 C-15, and C-17.

3 MR. RAPHAEL: No objections, Your Honor.

4 THE COURT: Admitted.

5 MR. BOMSTEIN: Thank you, Your Honor.

6 (At this time, Exhibit A-18, A-19, C-2,
7 C-15 and C-17 were admitted for the record.)

8 BY MR. BOMSTEIN:

9 Q. Mr. Eckert, can you please turn to Exhibit A-29?

10 A. Okay.

11 Q. Are you familiar with this document?

12 A. Yes.

13 MR. RAPHAEL: Just one second to catch
14 up here. Thank you.

15 BY MR. BOMSTEIN:

16 Q. What is this document?

17 A. It's a Final Issue Plan Approval Number 23-0119.

18 Q. Do you see that the -- what's the date on this
19 document?

20 A. Which date?

21 Q. Good question. The issuance date, please, issue
22 date.

23 A. Issue date is February 5, 2013.

24 Q. Thank you. Now I'd ask you just turn one tab over

1 to A-30, please. What is this document?

2 A. This document appears to be the corresponding
3 letter going along with the issuance of that plan
4 approval.

5 Q. Is the plan approval attached if you turn the
6 following page?

7 A. I'm sorry. It's not for that plan approval. It's
8 for Plan Approval 23-0119A.

9 Q. Thank you. And that final issued plan approval is
10 also within this document, correct?

11 A. Correct.

12 Q. And what's the issue date on Plan Approval A?

13 A. September 5, 2013.

14 Q. Thank you. Please turn ahead to Exhibit A-46.

15 Do you recognize this document, Mr. Eckert?

16 A. Yes, I do.

17 Q. What is this?

18 A. This is an email as well as some comments -- sorry.
19 It's an email to and from Gerallyn Duke of the EPA as
20 well as some comments that the Department received back
21 from the draft of Plan Approval Number 23-0119B.

22 Q. Thank you. And the "TO" in front was also to and
23 from yourself, as well, depending on which email you
24 look at, correct?

1 A. Correct.

2 Q. Do you see that there's an attachment that's
3 connected with this document?

4 A. Yes.

5 Q. What is that?

6 A. Those are the comments from the EPA based on their
7 review of the draft plan approval.

8 Q. And those comments went to you in this email
9 exchange?

10 A. Yes, they did.

11 Q. Thank you. Do you recall discussing this with me
12 in your deposition, Mr. Eckert?

13 A. No.

14 Q. Okay. Do you see a line in the middle of the first
15 page of the comments starting with "in 2013"?

16 MS. HUNT: Objection, Your Honor. Calls
17 for hearsay. This document was attached to an
18 email from EPA from Ms. Gerallyn Duke who -- EPA
19 is not a party, and she is not a witness in this
20 case.

21 THE COURT: I am going to allow the EPA
22 comments. Overruled.

23 BY MR. BOMSTEIN:

24 Q. Mr. Eckert, do you see that line beginning with "in

1 2013"?

2 A. I see a line. Are you talking about the footnotes
3 at the bottom of the page?

4 Q. No, sir. I am talking about in the middle of the
5 page, a sentence beginning with "in 2013"?

6 A. Okay. There is no line on this one of what I have.

7 Q. There is no line?

8 A. There is no line. I think I found the paragraph
9 you're talking about.

10 MR. RAPHAEL: Counsel, maybe a page
11 would be helpful.

12 BY MR. BOMSTEIN:

13 Q. The first page of the EPA comments. I think maybe
14 there is some confusion. I don't mean like a physical
15 drawn line. I mean a sentence, a written sentence.

16 A. There is break -- there is a sentence saying: In
17 2013 PADEP issued?

18 Q. Yes, that's the one. Can you please read that
19 line?

20 A. "In 2013, PADEP issued two plan approvals to SXL
21 for activities that are to be aggregated with this plan
22 approval for NSR purposes. Whereas, SXL has not
23 received an initial Title V permit, facility's
24 aggregated with Sunoco, R&M and brass cam for Title V

1 purposes."

2 Q. Thank you, sir. So, the only two plan approvals
3 that PADEP issued to SXL in 2013 were the ones we just
4 looked at Projects I and A, correct?

5 A. No.

6 THE COURT: Not I.

7 MR. BOMSTEIN: I'm sorry.

8 BY MR. BOMSTEIN:

9 Q. I misspoke, 1 and A?

10 A. Correct.

11 Q. Thank you. So, was it your understanding that at
12 that time, PADEP was to aggregate Plan Approval B with
13 Plan Approvals 1 and A?

14 A. Yes.

15 Q. Did that ultimately happen?

16 A. They happened for the purposes of NSR
17 applicability.

18 Q. How so?

19 A. As I stated earlier, it's -- we're required to do a
20 five-year and/or a ten-year lookback at major
21 facilities.

22 Q. That is always the case, correct?

23 A. Correct.

24 Q. Why would -- do you have an understanding as to why

1 EPA specified that those two plan approvals are to be
2 aggregated with Plan Approval B for NSR purposes if
3 that's just always the NSR process?

4 A. I don't know why she wrote that. This is something
5 that's four years ago or so.

6 Q. Is it your testimony that that had nothing to do
7 with circumvention?

8 A. Her comment had nothing to do with circumvention?

9 Q. Yes, sir.

10 A. I believe she's making sure that we looked at the
11 aggregation of which circumvention is a part of, but I
12 do not know for sure.

13 Q. Do you recall having discussions with EPA regarding
14 circumvention and Project B?

15 A. Project?

16 Q. B?

17 A. B? No, I don't recall.

18 Q. Do you recall having discussions about
19 circumvention with Project B with anyone outside of
20 DEP?

21 A. I know at some point I did have a conversation with
22 Gerallyn Duke or the EPA, but I do not recall when.

23 Q. Regarding circumvention?

24 A. Correct.

1 Q. Do you know if it was before or after Plan Approval
2 B was issued?

3 A. No, I don't know.

4 Q. Do you recall any of the nature of that discussion?

5 A. I think it was just a general discussion as a
6 reminder you need to make sure you're looking at these.

7 Q. But that discussion regarding circumvention in your
8 testimony doesn't have anything to do with Ms. Duke's
9 comments about aggregation of the two previous plan
10 approvals, correct?

11 A. Could you repeat that?

12 MR. BOMSTEIN: Please, repeat it back.

13 THE STENOGRAPHER: "QUESTION: But that
14 discussion regarding circumvention in your
15 testimony doesn't have anything to do with
16 Ms. Duke's comments about aggregation of the two
17 previous plan approvals, correct?"

18 THE WITNESS: It could. Because as I
19 said, I don't know when I had that conversation.

20 BY MR. BOMSTEIN:

21 Q. Okay. So going back to the line in this set of EPA
22 comments about in 2013, PADEP issued two plan approvals
23 to SXL for activities that are to be aggregated for
24 this plan approval for NSR purposes, you're saying that

1 that could have something to do with circumvention,
2 correct?

3 A. Correct.

4 Q. Do you know why these ultimately were not
5 aggregated for circumvention purposes?

6 A. We do the five and the ten-year lookbacks, that
7 would trigger the project itself -- I'm sorry. That
8 would trigger the NSR regulations if they were to be
9 circumvented.

10 Q. Could you explain what you mean by that?

11 A. As part of the lookback or as part of the NSR
12 regulations, we sum the emissions from the project are
13 attributable from the project with the emissions from
14 the earlier projects during those lookback periods.

15 Q. So, what does that have to do with whether these
16 projects were grouped together for purposes of
17 circumvention rather than lookback periods?

18 A. As it turned out for these projects, for Projects 1
19 and A, they were below the thresholds for triggering
20 NSR applicability. And circumvention wouldn't have
21 come into play because they weren't escaping any
22 regulations.

23 When Plan Approval B was submitted and its
24 circumvention, as I stated earlier, was -- I determined

1 it was entirely different project. NSR was then looked
2 at for the five and the ten-year lookback periods.

3 Q. So, what input from EPA's comments regarding
4 aggregation did you take for Project B?

5 A. I don't recall.

6 Q. Do you know if there was any?

7 A. I don't recall.

8 Q. Okay. In response to the application for Plan
9 Approval 23-0119C, you prepared a review memo, correct?

10 A. Correct.

11 Q. Please turn to Exhibit A-20.

12 MR. RAPHAEL: Give us a second to catch
13 up, Counsel. Thank you.

14 BY MR. BOMSTEIN:

15 Q. Mr. Eckert, what is the document at A-20?

16 A. That is a final technical review memo for Plan
17 Approval Application 23-00119C.

18 Q. Thank you. Can you look at the second page of this
19 document, please? Do you see a heading titled Process
20 Description?

21 A. Correct.

22 Q. Do you see a sentence in the middle of that
23 paragraph beginning with "the size of"?

24 A. Yes.

1 Q. Could you please read that?

2 A. "The size of this cooling tower was chosen such
3 that in the future it will also be used to cool or
4 condense possible future projects at this site."

5 Q. Thank you. Do you know what future projects that
6 is referring to?

7 A. No.

8 Q. Where did you get that information?

9 A. I believe I got it from the application.

10 Q. Did you try to find out what future projects this
11 equipment might be used for?

12 A. No, I did not.

13 Q. Have you inquired about that in later discussions
14 with Sunoco about later plan approval applications?

15 A. No, I did not.

16 Q. Did the Department do an aggregation -- a
17 circumvention aggregation analysis on Project C and the
18 earlier projects?

19 A. Yes, they did.

20 Q. Is that analysis visible anywhere in this review
21 memo?

22 A. There is some information on page 1 that gives a
23 timeline of earlier projects. And then there is some
24 information on page 4 under emission reduction credits.

1 Q. Thank you. And on page 1, do you see where it is
2 described as a modification of an earlier approved plan
3 approval, and then in parenthesis 23-0119?

4 A. Yes.

5 Q. Is that part of -- is that one of the conclusions
6 of yours?

7 A. Yes, it is.

8 Q. And on page 4 under the New Source Review heading,
9 do you see a sentence beginning with "however"?

10 A. Yes.

11 Q. Please read that sentence.

12 MR. RAPHAEL: Counsel, just to catch up,
13 where are you?

14 MR. BOMSTEIN: Page 4 under New Source
15 Review.

16 THE WITNESS: "However, as this
17 modification is technically and economically
18 linked to an earlier project, the Department
19 must return to the previous project 23-0119
20 issued on February 5, 2013 to see if NSR is
21 triggered for VOC and PM 2.5."

22 BY MR. BOMSTEIN:

23 Q. Thank you. How did you come to the conclusion it
24 was technically and economically linked to Project 1?

1 A. Their application stated so.

2 Q. Could you point to me to where that application --
3 and I will maybe direct you to a document here. I
4 believe A-9 is that application.

5 A. Okay.

6 Q. Could you please point us to where in the
7 application Sunoco states or indicates that the project
8 is technically and economically linked to Project 1?

9 A. No, I cannot.

10 Q. Does it say so somewhere in here?

11 A. No, it does not.

12 Q. Okay. So, how did you come to that conclusion?

13 A. The Plan Approval Application 23-0119C in the
14 introduction on page 1 states that the cooling tower
15 will be -- will provide cooling water to the plan
16 deethanizer unit, source 106 of Plan Approval Number
17 23-0119A.

18 Q. So, is that the basis of your concluding that it's
19 technically and economically linked?

20 A. Yes, it is. But I had a typo in it, and I carried
21 it through the rest of my review memo.

22 Q. What was that typo?

23 A. The typo was that I economically linked it to Plan
24 Approval 1 rather than Plan Approval A.

1 Q. Is it the case that you meant to link Plan Approval
2 C with Plan Approval A, but had a typo and linked it to
3 Plan Approval 1 instead?

4 A. Correct.

5 Q. Can you please take a look back at A-20 in your
6 review memo at Table 2.

7 A. Which review memo are we looking at?

8 Q. The review memo for Project C at Exhibit A-20.

9 A. Okay.

10 Q. Specifically, page 4.

11 A. Okay.

12 Q. You see Table 2 there?

13 A. Yes.

14 Q. Could you explain what's going on in Table 2,
15 please?

16 A. Table 2 is a listing of the emissions from the
17 cooling tower and Plan Approval C linking it or adding
18 it to the emission increases from Plan Approvals 1 and
19 Plan Approvals A.

20 Q. So, is it the case that you actually linked Plan
21 Approval C to Plan Approvals 1 and A?

22 A. Since Plan Approval B reset the VOC emissions for
23 netting for NSR purposes, we are required to go back.

24 And since it was linked to the earlier project and that

1 netting process, we are required to look at the
2 increases in how that would affect the earlier
3 projects, not just 1 or A.

4 Q. This is not a lookback table, is it?

5 A. Not necessarily, no.

6 Q. In fact, Table 3 is a lookback table, correct?

7 A. No.

8 Q. Could you please look at the bottom of Table 3, the
9 bottom four rows.

10 A. Yes.

11 Q. Do you see where it says "five-year lookback"?

12 A. Correct. It also says in parenthesis Table 4
13 referring you where to get the lookback information
14 from.

15 Q. Okay. So, please turn the page over to Table 4,
16 page 7. And then this is a lookback table, correct?

17 A. Correct.

18 Q. So going back to Table 2 on page 4, that's not a
19 lookback table, correct?

20 A. Correct.

21 Q. Okay. So in there, am I correct in that this table
22 is determining whether what the potential to emit is
23 for Project C?

24 A. Which table?

1 Q. Table 2.

2 A. Could you repeat that again, please.

3 Q. Yes. Is Table 2 where you add together and
4 determine the potential to emit for Project C?

5 A. No, it's not.

6 Q. What is it?

7 A. It is a total of emissions from Plan Approvals 1,
8 A & C.

9 Q. Is there anywhere in here that you're determining
10 emissions from C?

11 A. Yes.

12 Q. Where is that?

13 A. Table 1.

14 Q. Okay. What is the purpose of Table 2?

15 A. Table 2 is linking the emission increase from Plan
16 Approval C with the earlier projects since the netting
17 was -- since the NSR netting was taking place in
18 between the projects.

19 Q. So, am I correct in that the statement regarding
20 technically and economically linked is right above
21 Table 2?

22 A. It's a couple lines above Table 2, yes.

23 Q. Is it a coincidence that those two are next to each
24 other?

1 A. No.

2 Q. So, why are they next to each other?

3 A. They follow the information that's in the verbiage.

4 The table follows the information that's in the

5 verbiage.

6 Q. So, the technical and economic links between

7 Project C and one or more earlier projects, led you to

8 add up those emissions, correct?

9 A. Correct.

10 Q. Did you do that in plan -- in the review memo for

11 Plan Approval A, which is at A-18?

12 A. Yes, I did.

13 Q. Where did you do that?

14 A. I did that in Table 3 on page 4.

15 Q. Why did you add them here in Table 3?

16 A. I'm not sure why I added them in Table 3 because

17 they are also included in Table 5 on page 6. That

18 table does contain a typo, though.

19 Q. What's the typo?

20 A. The last project -- sorry, the second to last

21 project, there is two projects listed as 23-0119A. The

22 first one for the cryogenic propane and ethane storage

23 should not have an A.

24 Q. Thank you. So if you added them together in their

1 review memo for Project A and you added them together
2 in the review memo for Project C, then it doesn't have
3 anything to do with the netting that occurred as part
4 of Project B, correct?

5 A. Correct.

6 Q. Okay. So, do you know what you were referring to
7 when you said that earlier?

8 A. Since the project was economically and technically
9 linked to an earlier project that occurred before the
10 NSR netting, we were required to go back and see if
11 that project -- if the new project or the linked
12 project triggered NSR. In this case, it did not.

13 It -- I take it back. It did -- the emission increase
14 from the project triggered NSR and needed VOCs --
15 sorry. Needed VOC and ERC, emission reduction credits.

16 So, it was a source of fugitive emission that meant
17 LAER.

18 Q. I'm not sure how that answers my question, sir. Do
19 you recall what I asked?

20 A. No, I do not.

21 MR. BOMSTEIN: Could you, please, repeat
22 my question?

23 THE STENOGRAPHER: "QUESTION: So if you
24 added them together in their review memo for

1 Project A and you added them together in the
2 review memo for Project C, then it doesn't have
3 anything to do with the netting that occurred as
4 part of Project B, correct?

5 "ANSWER: Correct.

6 "QUESTION: So, do you know what you
7 were referring to when you said that earlier?"

8 THE WITNESS: I guess I'm not sure
9 exactly what you're asking.

10 BY MR. BOMSTEIN:

11 Q. I am trying to understand -- maybe I am not asking
12 it the right way. But I am trying to understand --
13 you're saying that Project C is linked to Project A,
14 correct?

15 A. Correct.

16 Q. And there is a typo in here that says it's linked
17 instead to Project 1, correct?

18 A. Correct.

19 Q. And then in the table right below that discussion
20 of technical and economic links, you add together the
21 emissions of 1, A and C, correct?

22 A. Correct.

23 Q. You're saying that that is not because you're
24 considered -- well, am I correct in you're saying that

1 that is not because you're considering all those
2 emissions to be part of the same project?

3 A. Had the cooling tower been applied for as part of
4 Plan Approval A, it would have been involved in the NSR
5 analysis in Plan Approval A and also been involved in
6 the analysis of Plan Approval Application B. Since it
7 wasn't submitted at that earlier time period and we
8 linked it to Plan Approval A, we had to go back and
9 address NSR for those emission increases from that
10 cooling tower.

11 Q. What are the consequences for your review that you
12 determined that Plan Approvals A and C are technically
13 and economically linked?

14 A. The consequences was it was a new source. It was
15 subject to LAER, which as I stated for fugitive
16 emissions, approval of an LDAR program is appropriate.
17 And it needed ERCs for VOCs.

18 Q. And if these weren't linked, it wouldn't have
19 needed LAER or ERCs?

20 A. It would have needed them, but not necessarily for
21 that specific source.

22 Q. So, which is the source that needs them because
23 it's technically and economically linked but wouldn't
24 otherwise?

1 A. That would be the cooling tower.

2 Q. Can you point me to where you spell any of that out
3 in this review memo, please?

4 A. Could you direct me to the right tab again, please?

5 Q. Oh, I'm sorry. A-20, please.

6 A. A-20. Thank you. The discussion for this begins
7 on page 4 under New Source Review, continues to the
8 emission reduction credits at the bottom of that page.

9 Q. Where do you look at what the potential emissions
10 for this project are in that New Source Review
11 analysis?

12 A. Potential emissions for this project are on Table 1
13 on page 3.

14 Q. Where do you -- do you discuss those potential
15 emissions at all in the New Source Review context?

16 A. Yes, I do.

17 Q. Where?

18 A. Under New Source Review in the third paragraph.
19 Looks like the third to last sentence.

20 Q. Would you please read that?

21 A. "The new projects, the BAE is zero and the PTE can
22 be seen in Table 1 above."

23 Q. Okay. Thank you. You're just looking at the
24 potential emissions from C itself, correct?

1 A. Correct.

2 Q. You're not looking at the potential emissions also
3 from the project it's technically and economically
4 linked to, correct?

5 A. Yes, at this time.

6 Q. Do you do it later?

7 A. That is listed in Table 2.

8 Q. Where do you apply New Source Review to the
9 emissions from the linked projects?

10 A. Could you repeat that please?

11 Q. Sure. Where in this review memo do you apply New
12 Source Review to the emissions from the linked
13 projects?

14 A. I do not see it specifically spelled out. However,
15 near the bottom of page 3, it discusses sources that
16 were shut down from the refinery shut down and later
17 2011. And I believe we used some of those VOCs from
18 that shutdown as offsets for this 5.52 tons of VOCs in
19 the cooling tunnel.

20 Q. Well, offsets is a separate matter from considering
21 whether the emissions increase is significant, correct?

22 A. Correct.

23 Q. And there is nowhere in this review memo where you
24 determine whether the emissions increased from the

1 linked projects are significant, is there?

2 A. That is correct.

3 Q. Do you know if you ever did that analysis?

4 A. No, I did not. Because that analysis was not
5 necessary.

6 Q. Why is it not necessary?

7 A. Because the netting was already reset back to zero
8 for VOCs under Plan Approval B.

9 Q. How does that make determining whether the
10 emissions increase is significant, not necessary?

11 A. Since it was significant under B and they got to
12 ERCs that they needed for the -- those Projects 1, A
13 and B, that was the significance. They didn't need to
14 redo that analysis and put it with it because they
15 already purchased or used the ERCs for those earlier
16 projects.

17 Q. ERC is for what?

18 A. VOC emissions.

19 Q. Are VOC emissions the only emissions from Projects
20 1 or A?

21 A. No, there were other ones.

22 Q. So, you never determined whether the aggregated
23 emissions from the linked projects or the aggregated
24 emissions increased from the linked projects met the

1 significance or significant under New Source Review,
2 did you?

3 A. For the linked projects?

4 Q. Correct.

5 A. That's correct.

6 Q. Okay. Please turn to A-47.

7 MR. RAPHAEL: Your Honor, before we move
8 onto the next section, could we just take a
9 short bathroom break.

10 THE COURT: Okay.

11 (At this time, a brief break was taken.)

12 BY MR. BOMSTEIN:

13 Q. Mr. Eckert, can you please turn to A-47.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Yes, I do.

17 Q. What is this document?

18 A. This is an email from Gerallyn Duke to myself and
19 several other people concerning EPA's comments on the
20 proposed Plan Approval C.

21 Q. Thank you. And is that the Ms. Duke that you spoke
22 of earlier from the Environmental Protection Agency?

23 A. Yes.

24 Q. And did these comments come in with that email?

1 A. Yes. There was attached comments.

2 Q. And are those attached comments the ones that are
3 after that email in Exhibit 47, A-47?

4 A. Yes, they are.

5 Q. Do you see bullet point No. 2 in the EPA comments?

6 MS. HUNT: Objection, Your Honor. This
7 is hearsay. It was sent from EPA to the
8 Department. The EPA is not a party to this
9 case. And they will not be testifying for this
10 hearing.

11 THE COURT: The Department considered
12 these comments in the course of its review,
13 correct?

14 THE WITNESS: Yes, they did.

15 THE COURT: I will accept them on that
16 basis. It's not independent evidence.

17 BY MR. BOMSTEIN:

18 Q. Mr. Eckert, can you please read the first two
19 sentences in that bullet point two?

20 A. "We understand that PADEP attempted to aggregate
21 all plan approvals described in the review memos as one
22 project as they are related. We agree that this is a
23 proper approach but some key details are not clear in
24 the review memo."

1 Q. Did you have a discussion with Ms. Duke about the
2 aggregation of plan approvals in connection with
3 Project C?

4 A. I believe I did.

5 Q. And then did that discussion include aggregation in
6 the sense of the circumvention meaning of the term?

7 A. At this point in time, I could not tell you exactly
8 what it talked about. Just looking at the size or the
9 length of the comments, I am assuming we discussed it.

10 Q. And do you know if the reference to aggregation in
11 bullet point 2 is, in the sense, of aggregation for
12 circumvention purposes?

13 A. No, I do not.

14 Q. You don't know one way or another?

15 A. I couldn't guess exactly what she wrote four years
16 ago.

17 Q. I'm not asking you to guess. I am asking you based
18 on your discussions with her, do you have any
19 understanding of what aggregate meant in this context?

20 A. I believe I did.

21 Q. And what is that understanding?

22 A. That was the connecting this plan approval with the
23 previous plan approvals for NSR purposes.

24 Q. For the purposes of determining whether there was

1 circumvention?

2 A. I believe it was for NSR.

3 Q. If -- has the -- okay. So in the context of
4 Project C, you did determine that it was linked with at
5 least one previous plan approval, correct?

6 A. Correct.

7 Q. And so, to -- am I correct in that to avoid this
8 being circumvention of New Source Review, you intended
9 to aggregate the emissions from those projects,
10 correct?

11 A. Not sure what you mean by aggregate the emissions
12 from the projects. Which projects are we talking
13 about?

14 Q. Sure. So, maybe it's helpful for me to take a step
15 back. If you determine that multiple plan approval
16 applications concern one singular project, what do you
17 do?

18 A. We would go back and we would look at the projects
19 as a whole.

20 For example, in this case, we would look at the
21 two -- the two storage tanks. We would look at the
22 deethanizer. We would look at all the projects in B
23 and the projects in C assuming that was the case here.
24 And we would determine whether they met or triggered

1 NSR. And if so, we would act accordingly with the
2 regulations.

3 Q. Okay. That process involves NSR, correct?

4 A. Correct.

5 Q. Is that what you mean when you referenced
6 aggregation as being for NSR purposes?

7 A. I believe that's what she means, yes.

8 Q. Okay. So, that relates to determining whether the
9 separate projects are, in fact, one project, correct?

10 A. No. That determines whether the projects as a
11 collection would trigger New Source Review.

12 Q. Am I correct in that before you undertake that
13 analysis, you first determined whether the projects
14 are, in fact, one project, correct?

15 A. Correct.

16 Q. Okay. So in this context, when Ms. Duke wrote you
17 the set of comments and she was discussing aggregation
18 of all plan approvals, is she referring to based on
19 your understanding -- do you have an understanding that
20 she is referring to these multiple plan approvals being
21 one project?

22 A. Yes.

23 Q. Okay. And the reason -- do you have an
24 understanding as to why if she came to that conclusion?

1 A. Not without reading through everything she wrote
2 and analyzing it.

3 Q. I believe it's about a page. So if you wouldn't
4 mind, taking a second to do that, we can wait.

5 A. (Witness reviews as instructed.)

6 I believe she's talking about two different types
7 of aggregation here.

8 Q. What are the two types you believe she's talking
9 about?

10 A. The one is aggregating multiple plan approvals for
11 NSR purposes. And the other is for aggregating
12 separate facilities into one facility as they may
13 support each other.

14 Q. Okay. And what are those separate facilities?

15 A. She has listed SXL Sunoco, Sunoco R&M, and Brass
16 Count. She also states possibly next era and solvate.

17 Q. That is separate from the type of circumvention,
18 the other type of circumvention -- sorry.

19 Based on your understanding that's -- she's talking
20 about both that type of aggregation and the aggregation
21 of the multiple plan approvals into one project,
22 correct?

23 A. If by when you mean "that aggregation," you're
24 talking about the total different facilities.

1 Q. Am I correct in that she is also describing the
2 aggregation of the earlier plan approvals as one
3 project?

4 A. I believe so, yes.

5 Q. Okay. Thank you. And those earlier plan approvals
6 include Projects 1, A and B, correct?

7 A. Yes.

8 Q. Okay. Thank you. DEP didn't ultimately do that,
9 did it?

10 A. We reviewed it. We didn't necessarily aggregate
11 it.

12 Q. Okay. But you did aggregate A and C, correct?

13 A. Correct.

14 Q. But even after aggregating them, you didn't
15 consider their collective emissions and determine
16 whether under non-attainment new source review and
17 prevention for significant deterioration programs, the
18 emissions increase was significant, correct?

19 A. In this case, the PSD regulations did not apply.
20 But we did include the aggregate emissions towards NSR
21 for VOC emissions.

22 Q. Well, we just before the break discussed the fact
23 that, I believe, that in their review memo, there is no
24 place where you determine whether the aggregate

1 emissions are significant, correct?

2 The aggregate emissions increase are significant,
3 correct?

4 A. Plan Approval C did not do an aggregation of Plan
5 Approvals 1, A and B. It only linked C to an earlier
6 project. All we had to do in that project was not
7 aggregate but to see what was needed as far as VOCs and
8 possibly other NSR requirements.

9 Q. And the first step in doing that process is
10 determining whether there is a significant emissions
11 increase, correct?

12 A. Not in this case.

13 Q. Under what instances does the Department not
14 determine whether there is a significant emissions
15 increase for New Source Review?

16 A. In this case, it wasn't necessary because the
17 facility had already netted out for VOCs, which was a
18 pollutant concern in the project.

19 Q. But you understand there are pollutants besides
20 VOCs, correct?

21 A. There was PM 2.5, correct.

22 Q. And there was no netting for that, was there?

23 A. There never is any netting for PM 2.5.

24 Q. So -- but still, the Department did not do a

1 determination of whether there is a significant
2 emissions increase for New Source Review purposes,
3 correct?

4 A. Not for C, correct.

5 Q. Okay. You also prepared a review memo in response
6 to Application 23-0119D, correct?

7 A. Correct.

8 Q. Please turn to A-21. Is this that review memo?

9 MR. RAPHAEL: Just let us catch up,
10 Counsel, if you could.

11 BY MR. BOMSTEIN:

12 Q. Is this that review memo, Mr. Eckert?

13 A. Yes, it is.

14 Q. Did the Department do an aggregation analysis, a
15 circumvention aggregation analysis, on Project D in the
16 earlier projects?

17 A. Yes, I did.

18 Q. Is that anywhere in this review memo?

19 A. No, it is not.

20 Q. Please describe what your analysis was.

21 A. As I stated earlier, circumvention is submittal of
22 project over a short time period, whether the projects
23 are related, and whether it was part of the common
24 plan. Those are items we discussed during the plan

1 approval pre-application meeting.

2 Q. And how do they -- how do those factors relate to
3 Project D?

4 A. They were submitted over a short period of time.
5 It is on a contiguous and adjacent property, but it was
6 not part of the common plan.

7 Q. Were the projects technically linked?

8 A. I don't believe so.

9 Q. Why don't you believe so?

10 A. Because I don't consider the use of certain process
11 equipment to be dedicated only for that particular
12 project.

13 Q. What do you mean by that?

14 A. Well, for example, you install a boiler. The
15 boiler produces steam that can be used for many
16 different projects. But they only apply for the boiler
17 on one project, but they use it in the next five
18 projects. I wouldn't be -- I wouldn't be using that
19 boiler as something to say that it was a common -- it
20 was common and should be linked back to the first
21 project.

22 Q. Is a boiler a utility?

23 A. It produces steam, yes.

24 Q. Does that make it a utility?

1 A. It makes it a source. The steam is the utility.

2 Q. Okay. So, is the boiler part of a system that is a
3 utility system?

4 A. Yes.

5 Q. Is a propane or butane dehydrator a utility?

6 A. No, it's a process.

7 Q. Are storage tanks utilities?

8 A. No.

9 Q. Is a distillation tower a utility?

10 A. No.

11 Q. If there is common use -- well, in Project D, was
12 the distillation tower built as part of Project A
13 reused?

14 A. Could you repeat that, please?

15 Q. Sure. In Project D, is the distillation tower that
16 was built as part of Project A reused?

17 A. Yes, it is.

18 Q. Is the amine treatment and dehydration reused or
19 created new?

20 A. They are used or reused.

21 Q. Is the use of this existing equipment that was
22 built recently for an earlier plan approval a factor
23 for you in your analysis of whether there was
24 circumventions for Project D?

1 A. Yes, it is.

2 Q. And did you -- how did you weight that in your
3 analysis?

4 A. If they are using an underutilized source because
5 they now have new customers that require the use of
6 that source, but they have already accounted for all
7 the emissions in an earlier project, I do not consider
8 that linked or aggregated with a previous project.

9 Q. Was it your understanding that the earlier
10 equipment built here was underutilized?

11 A. That, I cannot answer.

12 Q. So, when you said that if they are using an
13 underutilized source, did that relate to Project D?

14 A. Yes.

15 Q. How so?

16 A. The boilers, they were underutilized to provide the
17 steam for the deethanizer.

18 Q. Anything else?

19 A. There may have been, but I can't think of it right
20 now.

21 Q. Okay. Besides the boilers, how did you determine
22 whether the other common equipment between Project D
23 and the earlier projects would lead Project D to need
24 to be aggregated with the earlier projects?

1 A. Are you talking aggregation for NSR purposes?

2 Q. Just to be clear, this whole conversation, unless I
3 indicate otherwise when talking about aggregation, I am
4 talk about for circumvention purposes.

5 A. Okay.

6 Q. Aggregate to determine whether the multiple
7 projects are one project for circumvention purposes.

8 A. Okay.

9 Q. With that understanding, what's your answer?

10 A. Could you repeat that question, please.

11 Q. Sure.

12 MR. BOMSTEIN: Can you, please, repeat
13 it back?

14 THE STENOGRAPHER: "QUESTION: Besides
15 the boilers, how did you determine whether the
16 other common equipment between Project D and the
17 earlier projects would lead Project D to need to
18 be aggregated with the earlier projects?"

19 THE WITNESS: In reviewing the
20 application for this project, it was stated that
21 some of these sources if not all the sources
22 will be utilized in Project D. But it also
23 stated that this project was because of new
24 customer requests. That, I do not consider part

1 of a continuing business plan as they required
2 new customers with new product requests.

3 BY MR. BOMSTEIN:

4 Q. So am I correct in stating that so far in our
5 discussion of your circumvention analysis, the factor
6 that tilted it over the edge towards not needing to
7 aggregate the projects is Sunoco's identification of
8 new customers, correct?

9 A. Correct.

10 Q. Did DEP do anything to verify whether that
11 statement is true?

12 A. Other than asking the -- during our pre-application
13 meetings and receive a response, no.

14 Q. So if -- is it correct that if -- as long as Sunoco
15 writes that this is as a result of new customers, you
16 will consider it not needing to aggregate with the
17 previous projects?

18 A. I consider everything in the application as it's
19 signed by the company to be true and correct.

20 Q. Is that a yes?

21 A. Yes.

22 Q. Thank you. Was there any other considerations that
23 you used in your circumvention analysis for Project D
24 that we haven't covered so far?

1 A. I don't think so.

2 Q. Okay. Please turn to DEP's Exhibit C-15. I think
3 we looked at this briefly before. But this is
4 application for RFD-5236, correct?

5 A. Yes, it is.

6 Q. Can you find the date on this application, please?
7 I believe it's the second to last page.

8 A. The date of the application is August 6. I believe
9 that's the application date, August 6 of 2015.

10 Q. Thank you. Is there any reason you would believe
11 otherwise?

12 A. It just has a date. There is nothing indicating
13 what that date is.

14 Q. This is a DEP form, correct?

15 A. I apologize. I'm looking at different place than I
16 think you are. I was looking at the top of each page.

17 Q. Oh, okay. Sorry about that.

18 Could you please direct your attention to the
19 Section G on the second to last page, which is numbered
20 page 4.

21 A. I see the date of August 6, 2015.

22 Q. Is that the date that this application was
23 submitted?

24 A. Not necessarily.

1 Q. Is there a date anywhere on this that indicates
2 when this was submitted?

3 A. Not on the RFD application, no.

4 Q. Can you please turn to the next page or the next
5 document which is A -- C-16.

6 A. Okay.

7 Q. Is there a date here that indicates when this
8 was -- when the application of 5236 was submitted?

9 A. There is a date indicating when it was received.

10 Q. What's that date?

11 A. August 13, 2015.

12 Q. Okay. Do you believe that's correct?

13 A. Yes.

14 Q. Okay. Thank you. You approved that the same day?

15 A. Correct.

16 Q. Could you please look at the section in this one
17 approval document titled Remarks. And please, read the
18 first two sentences.

19 A. "The following is based on the information
20 submitted in this RFD on August 6, 2015. In accordance
21 with 25 PA Code, Section 12714 A-8, Item 31, the
22 Department's air quality permit exemption list dated
23 August 10, 2013, the Department exempts the
24 installation of these two 50,000 barrel spheres for the

1 storage of propane and butane from the requirements to
2 obtain the plan approval."

3 Q. Thank you. Were you aware at the time you approved
4 this RFD that the installation of those storage spheres
5 was part of what Energy Transfer called Project
6 Revolution?

7 A. No, I was not.

8 Q. Did the Department do a circumvention aggregation
9 analysis on this RFD in the earlier projects?

10 A. No, it did not.

11 Q. Let's move onto Project E.

12 A. Uh --

13 Q. Sorry. Did you have something else to say?

14 A. I would like to correct that. I'm not sure if I
15 did or not at the time.

16 Q. So, are you saying you may have done a
17 circumvention analysis here?

18 A. Correct.

19 Q. Did -- was that written anywhere?

20 A. No. That would not be written anywhere.

21 Q. Would you have discussed it with anybody?

22 A. Just myself.

23 Q. Okay. But you don't recall if you did do such an
24 analysis, what the analysis was, do you?

1 A. No, I do not.

2 Q. Okay. Please turn to A-22. Is this a draft review
3 memo you prepared in response to the application for
4 Plan Approval 23-0119E?

5 A. Yes, it is.

6 Q. What's the date on that?

7 A. The date is December 10, 2015.

8 Q. Thank you. Now, please turn to the next tab A-23.

9 A. Okay.

10 Q. Is this a final version of that review memo that
11 you prepared on March 31, 2016?

12 A. This is the review memo that corresponds with the
13 issuance of that plan approval.

14 Q. Is it a revision of the review memo at A-22?

15 A. I would not call it a revision.

16 Q. Did you start with an entirely new document and
17 come up with it as of -- as if for the first time when
18 you created this?

19 A. No, I did not.

20 Q. Did you work with an existing document and revise
21 it to create this?

22 A. Yes, I did.

23 Q. So, is it fair if I call it a revision?

24 A. Yes.

1 Q. Okay. Thank you.

2 Did you also prepare comment response document
3 responding to comments that came in from the public for
4 Project E?

5 A. I believe I did.

6 Q. Please turn to A-64.

7 A. Okay.

8 Q. Is this that Comment Response Document?

9 A. Looks like it is.

10 Q. And are the -- is this something you wrote?

11 A. Yes.

12 Q. And was the -- were the responses to the comments
13 in here based on your best understanding of the facts
14 in the analysis at the time you wrote it?

15 A. Yes, they were.

16 Q. Can you please turn to A-24.

17 A. Okay.

18 Q. Is this a later version of the review memo that you
19 prepared that we just looked at that was dated
20 March 31?

21 A. Yes. This is a revision of Plan Approval E that we
22 just looked at.

23 Q. And what's the date on this one?

24 A. November 14, 2016.

1 Q. That was during the course of this appeal, correct?

2 A. Correct.

3 Q. Do you normally revise technical review memos after
4 the plan approval was issued?

5 A. No, we don't.

6 Q. You worked at the Department for nearly 24 years,
7 correct?

8 A. At that time?

9 Q. As of today.

10 A. Closer to 23 years.

11 Q. Okay. Close to 23 years. Can you think of any
12 instance in which yourself or anybody else at DEP
13 revised the technical review memo?

14 A. I don't know. I can only answer for myself. I
15 have no idea if anybody else at the DEP has done
16 something like that.

17 Q. Okay. Have you?

18 A. No, I have not.

19 Q. You came up with the idea of putting together a
20 revised technical review memo here, correct?

21 A. Correct.

22 Q. And you did so in response to this appeal?

23 A. Yes.

24 Q. We will return to those documents. But for the

1 moment, I would like to catch up on admission into
2 evidence of exhibits because there are a few that are
3 outstanding.

4 MR. BOMSTEIN: I would like to move to
5 admit into evidence A-20, A-21, C-16, A-22,
6 A-23, A-24, A-46, A-47 and A-64?

7 MR. RAPHAEL: Counsel, just give me a
8 minute to go back. I want to go back and check
9 those documents. I have A-20, A-21, 22, 23, 24,
10 A-46, A-47, and A-64.

11 MR. BOMSTEIN: Yes. And also C-16.

12 MR. RAPHAEL: We have no objection to
13 A-20.

14 THE COURT: Any objection?

15 MS. HUNT: No, Your Honor.

16 MR. RAPHAEL: We have no objection to
17 A-21.

18 MS. HUNT: No objection here for the
19 Department either.

20 MR. RAPHAEL: No objection to A-22.

21 MS. HUNT: No objection from the
22 Department either.

23 MR. RAPHAEL: No objection to A-23.

24 MS. HUNT: No objection either.

1 MR. RAPHAEL: No objection to A-24.

2 MS. HUNT: No objection.

3 MR. RAPHAEL: With respect to Exhibit
4 46, Your Honor, we have no objection to the
5 email from George Eckert to Ms. Gerallyn Duke at
6 the Environmental Protection Agency. First page
7 of that is, which is December 6, 2013; nor, do
8 we have an objection to the responding email
9 which I think was authenticated by Mr. Eckert,
10 as well.

11 We would object to the hearsay contained
12 in the comments. We are not certain what
13 followed this document. And there is hearsay.
14 I believe you said, Your Honor, you're accepting
15 it for the notice to Mr. Eckert. We have no
16 problem with that. If it's being accepted for
17 the truth of the matter asserted, we would
18 object to it, Your Honor. That's A-46.

19 MS. HUNT: The Department also concurs
20 with that objection.

21 THE COURT: Forty-seven, 64, C-16?

22 MR. RAPHAEL: I wasn't sure if you
23 wanted to rule on them individually, Your Honor,
24 or just continue through the list.

1 THE COURT: At the end.

2 MR. RAPHAEL: With respect to Exhibit
3 47, the email from Gerallyn Duke of the
4 Environmental Protection Agency to Mr. Eckert,
5 dated October 28, 2014 at 1:02 p.m., we don't
6 object to that email. The attached comments we
7 object as being hearsay.

8 Again, we don't know what followed this.
9 If it's for notice to Mr. Eckert, we have no
10 objection. If it's for the truth of the matter
11 asserted, we would also object to Exhibit 47.

12 MS. HUNT: The Department also maintains
13 that Exhibit 47 is hearsay and should not be
14 admitted for the truth of the matter asserted in
15 Exhibit 47.

16 The Department has no objection to
17 Exhibit 64.

18 MR. RAPHAEL: We do not either, Your
19 Honor. We just have one more, which is C-16.

20 MS. HUNT: The Department has no
21 objection to C-16.

22 MR. RAPHAEL: We have no objection to
23 C-16 either, Your Honor.

24 THE COURT: The documents are all

1 admitted, 46 and 47, the EPA comments is part of
2 the record. The Department considered them, but
3 they are what they are. They are not going to
4 form the basis of any adjudication.

5 MR. BOMSTEIN: Thank you, Your Honor.

6 MR. RAPHAEL: Thank you, Your Honor.

7 (At this time, Exhibit A-20, 21, 22, 23,
8 24, 46, 46 and 64 and C-16 were admitted into
9 the record.)

10 BY MR. BOMSTEIN:

11 Q. Mr. Eckert, please turn to C-17. This is the
12 application for RFD-5597 that we looked at briefly
13 earlier, correct?

14 A. Correct.

15 Q. And you reviewed this application?

16 A. Yes, I did.

17 Q. And you approved it, as well?

18 A. Yes, I did.

19 Q. Please turn to C-18.

20 A. Okay.

21 Q. Is this that approval?

22 A. Yes, it is.

23 Q. This was a determination that no plan was needed
24 for Sunoco to transfer cooling load for instrument air

1 compressors from the 15-6 cooling tower to the 15-2B
2 cooling tower, correct?

3 A. Could you repeat that again, please?

4 Q. Sure. This was a determination that no plan
5 approval was needed for Sunoco to transfer the cooling
6 load for instrument air compressors from the 15-6
7 cooling tower to the 15-2B cooling tower, correct?

8 A. Correct.

9 Q. And you understood that this process would require
10 the installation of two new pumps and would increase
11 the overall 15-2B permanent cooling tower capacity to
12 28,500 gallons per minute, correct?

13 A. Correct.

14 Q. When you approved this RFD, it was your
15 understanding that 3,500 gallons per minute of cooling
16 water was needed from the 15-2B cooling tower to handle
17 the cooling needs of the instrument air compressors,
18 correct?

19 A. Yes.

20 Q. The application for RFD-5597 came in ten days after
21 the Department issued Plan Approval E, correct?

22 A. That, I do not know.

23 Q. What time was the RFD approved? I'm sorry, what
24 date was the RFD approved?

1 A. The date was April 11, 2016.

2 Q. And do you recall offhand when Plan Approval E was
3 issued?

4 A. No, I do not.

5 Q. Okay. Could you please turn to C-11 within the
6 same document?

7 A. Okay.

8 Q. Does that refresh your recollection as to when Plan
9 Approval E was issued?

10 A. Plan Approval E was issued April 1 of 2016.

11 Q. So, am I correct that the application for RFD-5597
12 came in ten days after the Department issued Plan
13 Approval E?

14 A. I'm not sure if it actually came in ten days after
15 because there is two different dates on here.

16 Q. What are the two different dates?

17 A. On -- I went back to Exhibit C-17 under Section G
18 where it has a date of April 7. I'm not sure what --
19 which of these dates actually mean what. I think the
20 date received in C-18 is the date that I assigned it to
21 myself. It's not necessarily the same date as the
22 Department approved it.

23 Q. Okay.

24 A. Or the Department received it.

1 Q. Thank you.

2 A. But in all essence, it was within ten days.

3 Q. Okay. Thank you.

4 In your experience in the process of reviewing a
5 plan approval application for a facility, sometimes
6 another application for the same facility comes in,
7 correct?

8 A. Correct.

9 Q. That's happened with the Marcus Hook facility in
10 your experience, correct?

11 A. Yes.

12 Q. If the projects are related, they may have a
13 bearing on each other and need to be aggregated for
14 circumvention purposes, correct?

15 A. Correct.

16 Q. Do you recall an instance of receiving an
17 application for a facility while another one is pending
18 having interfered with your review for the first
19 application?

20 A. I can recall it confusing matters. I don't know if
21 that would be interfering.

22 Q. How does it confuse matters?

23 A. Well, when you work on multiple projects, whether
24 they are for different companies or they are for the

1 same company, it's easy to stick one memo in another
2 folder for instance.

3 Q. And so, has that confused you before?

4 A. Well, I have found missing documents in wrong
5 places before, yes.

6 Q. And has that interfered with your ability to review
7 the applications?

8 A. Not once I located them.

9 Q. Okay. So, ultimately, receiving an application
10 while another one is pending hasn't interfered with
11 your review of the applications, has it?

12 A. Did you say it has or it hasn't?

13 Q. Has not.

14 A. Ultimately, you're correct.

15 Q. Okay. Thank you.

16 Did the Department do a circumvention analysis on
17 this RFD and the earlier projects at Marcus Hook?

18 A. I considered it. Which -- you can call it
19 analysis.

20 Q. What was your consideration?

21 A. Consideration of how does this project tie in with
22 other projects. We have already established it's all
23 the same facility, and it's all very short time frame.

24 Q. What was your consideration of it in this instance?

1 A. Since they were adding a cooling load that was not
2 in VOC service, shifting a load from and taking the old
3 cooling tower out of service, I felt it was not linked
4 to any other project.

5 Q. Is the linking to a project a question of whether
6 the projects are the same or what the result of the new
7 service review analysis would be?

8 A. I use the term linking going back to what we talked
9 earlier about linking Plan Approval C with Plan
10 Approval A, which is different. I did not -- the
11 circumvention is more in the aggregation for NSR
12 purposes. I may have misspoke in my last answer. I
13 did consider the linking on the aggregation for NSR
14 purposes.

15 Q. Did you consider whether this is part of any of the
16 earlier projects?

17 A. Yes.

18 Q. What did you conclude?

19 A. I concluded that it was not.

20 Q. What was the basis of that conclusion?

21 A. Because it was merely shifting a load from one
22 cooling tower to another cooling tower.

23 Q. Are you aware that Project E also involved changing
24 the loads on the same cooling tower?

1 A. Correct.

2 Q. And did you consider that fact in your
3 circumvention analysis?

4 A. Yes.

5 Q. And what was your analysis of that fact?

6 A. They were not -- they should not have been
7 aggregated into the same project.

8 Q. Why did you conclude that?

9 A. Because the shifting of a load does not increase
10 any emissions. It is not a modification to a source.
11 There is not a change in operation. It's not a change
12 in the method of operation.

13 Q. So, you're saying there is no modification to any
14 source as part of RFD-5597?

15 A. That would be correct.

16 Q. Are you aware that Sunoco added new pumps to the
17 15-2B cooling tower as part of that RFD?

18 A. Yes, I am.

19 Q. Is that not a modification?

20 A. No, it's not.

21 Q. Why?

22 A. Because the cooling tower is the air pollution
23 device, not the pumps, not the cooling lines.

24 Q. Am I correct in that you did add whatever pumps you

1 want to the cooling tower, and there's no
2 modifications?

3 A. As long as they didn't exceed any permitted limits,
4 that would be correct.

5 Q. Well, in here they are requesting an increase to
6 the permitted limit, correct?

7 A. That's correct.

8 Q. In connection with installing new pumps, correct?

9 A. Correct.

10 Q. So I guess what I am missing is, if you're
11 increasing the permit limit and you're doing work on
12 the equipment, what else do you need for there to be
13 modification?

14 A. You're correct.

15 Q. Okay.

16 A. I misspoke.

17 Q. So, there was a modification in connection of the
18 cooling tower in connection with 5597, correct?

19 A. Yes.

20 Q. And that involved an increase in the cooling load
21 on the tower, correct?

22 A. Correct.

23 Q. There is also an increase in the cooling load on
24 the 15-2B tower for Project E, correct?

1 A. Yes, there was.

2 Q. And this was done pretty close to simultaneously,
3 correct, in terms of applications?

4 A. I don't know when the application for Plan Approval
5 E arrived. Just because it was issued approximately
6 ten days before the RFD arrived, I don't know when it
7 was received.

8 Q. Okay. That's fair.

9 So, given that there was a modification here, the
10 15-2B cooling tower which was involved in Project E,
11 how did your circumvention analysis account for that?

12 A. Since there was no increase in VOC emissions for
13 that cooling tower, it was just an increase in PM
14 emissions, it was also offset by more a greater
15 reduction of particulate matter emissions from the
16 cooling tower that was taken out of service.

17 Q. Well, that was not part of the -- that offsetting
18 was not part of the application, correct?

19 A. It was part of the RFP application.

20 Q. I would ask that you turn to C-17, please.

21 A. Yes.

22 Q. And in particular, page 2 of that RFD application.

23 A. Yes.

24 Q. Can you read the second to the last sentence of

1 the -- on page 2?

2 A. "For this RFD, SPMT has conservatively estimated
3 the PM, PM 10, and PM 2.5 emissions as incremental
4 increases from the 15-2B cooling tower without a
5 accounting for the reductions from the 15-6 cooling
6 tower."

7 Q. Does that refresh your recollection as to whether
8 this RFD involved taking offsets?

9 A. No.

10 Q. Is it your understanding -- can you please point me
11 to where there is any discussion of offsets in this
12 application?

13 A. I don't see any discussions of offsets. Several
14 sentences above that -- looks like six lines from the
15 bottom it says: "Note that due to the transfer of the
16 cooling load from the 15-6 cooling tower, the 15-2B
17 cooling tower, this project will result in emission
18 reductions of PM, PM 10, PM 2.5 because the" PM --
19 "because the 15-2B cooling tower has better performing
20 drift eliminators".

21 Q. So, Mr. Eckert, is it your understanding that
22 Sunoco was requesting an RFD with zero net emission
23 increases?

24 A. Correct.

1 Q. Could you turn to the third page of the
2 application, please. And do you see columns for
3 emissions in tons per hour and tons per year?

4 A. Correct.

5 Q. That's for emissions increase, correct?

6 A. That is for emission increases based solely on the
7 15-2B cooling tower.

8 Q. Where do you see that?

9 A. Directly above where it says pollutant. It says
10 source description, 15-2B cooling tower.

11 Q. Isn't it the case, Mr. Eckert, it was Sunoco's
12 choice to conservatively assume no emission decreases.
13 And in fact, request approval of this RFD based on the
14 emissions increases considered in the column on page 3?

15 A. I don't believe so.

16 Q. What's the basis for your understanding of that?

17 A. Based on the verbiage that they supplied that I
18 read to you.

19 Q. Do you recall the verbiage that you just read
20 before that, that SPMT has conservatively estimated the
21 PM, PM 10 and PM 2.5 emissions as incremental increases
22 from the 15-2B cooling tower without accounting for the
23 reductions from the 15-6 cooling tower?

24 A. Yes. I remember reading that.

1 Q. And are you disregarding that?

2 A. No.

3 Q. How are you taking that into account here?

4 A. The department makes it own determination, which
5 isn't necessarily the same thing as what the company
6 applies for. Sometimes we get more information than we
7 need. Sometimes we get less information than we need.
8 We make our own independent determination.

9 Q. In this case, are you saying that Sunoco took a
10 more conservative approach and didn't account for
11 emissions decreases? But the Department took the
12 approach that it would instead take into account those
13 contemporaneous emissions decreases and determine that
14 there are no increases of particulate matter associated
15 with this RFD?

16 A. I don't agree with your choice of the word
17 conservative. Depends on what side you're on.

18 Q. Sunoco used the word conservatively, correct?

19 A. Okay. I see that. But in speaking, I wasn't sure
20 if you were using it as conservative for the Department
21 or conservative for Sunoco. In this text, yes. Sunoco
22 used the higher PM emissions where they did not count
23 the reductions.

24 The Department felt that they were while small,

1 they were still allowable reductions and particulate
2 matter.

3 Q. Where did you find the amount of emissions
4 reductions associated with taking the 15-6 cooling
5 tower out of service?

6 A. I do not have it listed anywhere.

7 Q. Did you look for that information?

8 A. I don't believe it was reported specifically for
9 that tower.

10 Q. So, do you know how much emission reductions are
11 associated with the 15-6 cooling tower going offline?

12 A. No.

13 Q. Assumed that it was enough to offset those PM
14 emissions, correct?

15 A. No.

16 Q. Then what did you do?

17 A. I did not assume it. Based on the verbiage that
18 they supplied or where they stated that the -- increase
19 will be less than the decrease as they transferred the
20 load.

21 Q. And based on that, you determined that there would
22 be no change if you included RFD-5597 in the New Source
23 Review analysis along with Project E, correct?

24 A. Correct.

1 Q. Did you make any analysis of whether the projects,
2 regardless of the calculations, were actually the same
3 project?

4 A. Which project?

5 Q. RFD-5597 and Project E?

6 A. I made the determination that they were -- while
7 the same cooling tower, they were different projects.

8 Q. What did you base that determination on?

9 A. As I stated before, one was shifting the load from
10 the instrument air coolers on a different cooling tower
11 to this one.

12 Q. How does that make it a different project?

13 A. It had nothing to do with a load that's required by
14 Plan Approval E.

15 Q. That's based on your understanding that the
16 increased in the permitted limit for the 15-2B cooling
17 tower is based on the instrument air compressors,
18 correct?

19 A. There is -- I don't believe there was an emission
20 limit from the 15-6 cooling tower just for the
21 instrument air compressors.

22 MR. BOMSTEIN: Could you please read
23 back my question.

24 THE STENOGRAPHER: "QUESTION: That's

1 based on your understanding that the increased
2 in the permitted limit for the 15-2B cooling
3 tower is based on the instrument air
4 compressors, correct?"

5 THE WITNESS: Since the 15-2B cooling
6 tower after the increase in flow capacity from
7 the instrument air compressors do not change the
8 VOC limit, which was the only limit on that
9 source, it had nothing to do with the project.

10 BY MR. BOMSTEIN:

11 Q. Mr. Eckert, I apologize. But I don't think you're
12 answering my question?

13 MR. BOMSTEIN: Would you mind repeating
14 it back again, please?

15 THE STENOGRAPHER: "QUESTION: That's
16 based on your understanding that the increased
17 in the permitted limit for the 15-2B cooling
18 tower is based on the instrument air
19 compressors, correct?"

20 MS. HUNT: Objection, Your Honor. Asked
21 and answer a couple times.

22 THE COURT: Overruled.

23 THE WITNESS: Could you rephrase the
24 question?

1 BY MR. BOMSTEIN:

2 Q. Can you answer it as asked?

3 A. Could you repeat it one more time, please?

4 THE STENOGRAPHER: "QUESTION: That's
5 based on your understanding that the increased
6 in the permitted limit for the 15-2B cooling
7 tower is based on the instrument air
8 compressors, correct?"

9 THE WITNESS: No, it is not.

10 BY MR. BOMSTEIN:

11 Q. What is it based off of then?

12 A. Let me retract that. The permitted -- there is two
13 permitted limits for the 15-2B cooling tower. One is
14 VOC emissions. That did not change. The other limit
15 is the gallons per minute flow capacity of the 15-2B
16 cooling tower. With the additional 3500 gallons from
17 the instrument air compressor, that limit had or will
18 be changed the next time the plan approval or the
19 permit is issued.

20 Q. And it's your testimony that there is no connection
21 between that and Project E because the increase of 3500
22 gallons per minute to the 15-2B cooling tower as part
23 of the RFD, is solely for the instrument air
24 compressor, correct?

1 A. That's correct.

2 Q. Thank you. In response to the application for Plan
3 Approval 23-0119F, you prepared a review memo, correct?

4 A. Yes.

5 Q. Could you please turn to A-25. Is this that review
6 memo?

7 MR. RAPHAEL: Your Honor, just before we
8 get to another, I guess, segment of CEC's case,
9 how late do you wish to go this evening?

10 THE COURT: It's up to Mr. Bomstein.
11 How far do you want to go?

12 MR. BOMSTEIN: I am flexible, Your
13 Honor. I think at this pace, we are not going
14 to finish with this witness today. So, I can
15 pause whenever you determine.

16 THE COURT: It's your examination, so I
17 will leave it to you.

18 MR. BOMSTEIN: I don't want to keep
19 anybody. And I am fine pausing at any time. So
20 perhaps after this line of questioning regarding
21 this project, we can change as long as that
22 is -- as long as Mr. Eckert is available
23 tomorrow and also the two other DEP witnesses
24 that we have.

1 THE COURT: Yup.

2 THE WITNESS: That's fine.

3 MR. BOMSTEIN: Thank you.

4 MR. WHITE: Check my witnesses for just
5 a second, Your Honor?

6 THE COURT: Well, one or the other,
7 they're going to be available, right?

8 MR. WHITE: The agreement was to have
9 available today. And I am making sure they are
10 available for tomorrow, and they are. It's no
11 problem, Your Honor.

12 MR. BOMSTEIN: Thank you.

13 BY MR. BOMSTEIN:

14 Q. Mr. Eckert, looking at this project, Project F, did
15 the Department do an aggregation for circumvention
16 purposes analysis on Project F and the earlier
17 projects?

18 A. Yes, it did.

19 Q. Is that analysis available in this review memo?

20 A. No, it is not.

21 Q. Do you know what time the Department did that
22 analysis?

23 A. We did it at the pre-application meeting if we held
24 one. And I do it as part of the review of the plan

1 approval application itself.

2 Q. Okay. Thank you.

3 Could you turn to page 8 of this review memo,
4 please. Do you see a list of comments made by the
5 public here or public or EPA?

6 A. Yes, I do.

7 Q. Do you see a bullet number one?

8 A. Yes, I do.

9 Q. Could you read that, please?

10 A. "Sunoco has circumvented NSR by artificially
11 dividing one large single project into many smaller
12 projects."

13 Q. And that's a comment from Clean Air Council in this
14 case, right?

15 A. Correct.

16 Q. What was -- could you please read the Department's
17 response?

18 A. "The Department has revisited the NSR review as it
19 pertains to Plan Approval Number 23-0119B. Three of
20 the tanks in this plan approval application are
21 considered part of that former Plan Approval Number
22 23-0119B." VOC ERCs in the amount of 17.17 tons --

23 THE COURT: 17.77 tons?

24 THE WITNESS: Correct. Thank you, Your

1 Honor -- "13.67 times the multiplier of 1.3 are
2 required as outliers on pages 3 and 7 above."

3 BY MR. BOMSTEIN:

4 Q. Thank you. What's your recollection of the
5 circumvention analysis in this case for Project F?

6 A. We felt that three of those tanks were directly
7 used for the purposes of Plan Approval B. And
8 therefore, the emissions -- the emission increases from
9 these three tanks needed to be accounted for at that
10 time of Plan Approval B.

11 Q. How did you do that after Plan Approval B had
12 already been issued?

13 A. This goes back to what I termed as linking, where
14 we looked at the economic and the technical support
15 between this project and an earlier project. The
16 earlier project, I believe, used a lower or anticipated
17 vapor pressure. Which once they put this into
18 operation, the Plan Approval B, they found out that the
19 vapor pressure was actually higher.

20 Q. What did that change about the Department's new
21 search review analysis for Project F?

22 A. We required 17.77 tons of ERCs.

23 Q. Where can we find that in that discussion of the
24 aggregation in the body of the review memo?

1 A. On the top of page 3, first paragraph is where we
2 discuss these three tanks.

3 Q. Do you see in -- on page 3, a sentence beginning
4 with "the previous project VOC" towards the middle of
5 the page?

6 A. Yes, I do.

7 Q. Can you please read that paragraph?

8 A. "The previous project VOC increase of 10,19 tons
9 combined with" 13.7 ton increase -- sorry, "13.67 ton
10 increase from this project equals an aggregate VOC
11 increase of 22.386 tons."

12 Q. Could you please read the next sentence, as well?

13 A. "This value remains below the significance
14 threshold of 25 tons per VOC emissions. Therefore, NSR
15 continues to not have been triggered in step one of the
16 analysis performed in the earlier project."

17 Q. Thank you. Earlier when we were looking at Project
18 C, there was no analysis such as this in that review
19 memo was there?

20 A. I don't believe so.

21 Q. But you concluded that it makes sense to have this
22 sort of analysis in the Project F for the review memo,
23 correct?

24 A. Correct.

1 Q. Why?

2 A. The source in Plan Approval C was a brand new
3 source. There were no baseline emissions. It was
4 purely potential emissions. In this case, there were
5 existing baseline emissions and there were future
6 potential emissions. There needed to be some
7 discussion on how we arrived at the 13.67 tons of
8 increase in VOC emissions from the tanks.

9 Q. The 13.67 tons of VOCs increases solely in
10 application for Project F, correct?

11 A. Correct.

12 Q. So, do you mean that there needs to be discussion
13 of how you can reach the 23.86 ton figure?

14 A. It's not clear looking at this when I read that
15 first sentence. It says the previous project VOC
16 emission increase of 10.19 tons. It doesn't indicate
17 where that came from.

18 Q. Can you look earlier up on -- higher up on this
19 page, the second sentence. Can you please read that?

20 A. The second sentence?

21 Q. Yes, sir.

22 A. Okay. "This earlier plan approval triggered NSR
23 for de minimis VOC emission increase as the project
24 increase was 10.19 tons and the de minimis total

1 amounted to 26.65."

2 Q. What is the de minimis total amount to 26.65 tons
3 mean here?

4 A. I believe that that is referring to the VOC
5 increase from Plan Approval Applications 1, A, and B.

6 Q. And why were those considered together?

7 A. Because plan approval -- these tanks, these three
8 tanks are in Plan Approval B. And Plan Approval B
9 triggered new source review as de minimis emission
10 increase.

11 Q. But why are you adding up the tonnage from 1, A and
12 B earlier?

13 A. I wanted to indicate that the aggregation of the
14 sources in 1, A and B triggered NSR for de minimis
15 emission increase. And the D submission from Plan
16 Approval F should have been added. Had we known what
17 we knew now, had we known then that 13.67 tons would
18 have been added to that total.

19 Q. And when you add 13.67 tons to 26.65 tons, that's
20 not a calculation that you did in this review memo, is
21 it?

22 A. Correct.

23 Q. Why?

24 A. Because it wasn't necessary.

1 Q. Why wasn't it necessary?

2 A. They had already triggered NSR as a de minimis
3 emission increase.

4 Q. What's the consequence of that?

5 A. I believe that only requires ERCs. I would have to
6 look at the regulation to know.

7 Q. What do you mean that only requires ERCs? I'm not
8 following. I apologize.

9 A. The increases from the smaller projects would only
10 be required to obtain emission reduction credits.

11 Q. When you say "only," does that mean that's the only
12 consequence of the New Source Review analysis?

13 A. I believe in that case, yes.

14 Q. And so, why does that lead to you not including
15 that aggregate emissions increase together with the
16 13.67 tons in Project F?

17 A. Because that would have also been a de minimis
18 emission increase. I believe what the paragraph you
19 had me read, the second paragraph after Table 1A
20 beginning with the previous project, I believe the
21 10.19 tons are coming from Plan Approval B. So
22 therefore, those two values of -- the values from B and
23 E for VOC emission increase did not trigger New Source
24 Review by themselves.

1 Q. Is the 26.65 ton calculations, does that have to do
2 with the lookback period?

3 A. I believe so.

4 Q. Okay. So is the -- the generation of that number
5 when you do the lookback and you determine what all the
6 emissions increases recently at the facility have been?

7 A. Depending on the type of lookback, it could be
8 increases. It could be increases and decreases.

9 Q. But is this calculation that resulted in 26.65
10 tons, is that due to the lookback analysis?

11 A. I believe so.

12 Q. Okay. Thank you.

13 So in the sentence starting with the previous
14 project, you're not doing a lookback analysis there,
15 are you?

16 A. Correct, I'm not.

17 Q. Okay. So simply looking at that, are you doing
18 step one of non-attainment New Source Review there?

19 A. In that paragraph, no.

20 Q. So, what is the reference: "Therefore NSR
21 continues not to have been triggered in step one of the
22 analysis performed in the earlier project" mean?

23 A. That is actually a typo there. Technically, there
24 is no step one in New Source Review analysis for

1 Southeast air basin or the five county Philadelphia
2 area.

3 Q. So, what was that intended to mean?

4 A. I believe that was intended to show that the VOC
5 emission increases from Project B, plus the VOC
6 emission increases from Project F did not trigger New
7 Source Review. I'm sorry, that they were below the
8 significant emission increase level for VOCs.

9 Q. And is that analysis not part of a step of
10 non-attainment New Source Review?

11 A. Normally, yes.

12 Q. Yes, it is not?

13 A. Normally, it is part of an NSR review.

14 Q. Okay.

15 A. Sorry about that.

16 Q. Thank you. And is that the first step that you
17 take when performing that analysis?

18 A. It is the first part of the step that we take.

19 Q. Okay. And later on in page 3, do you see a
20 sentence beginning "each plan approval"?

21 A. Correct.

22 Q. Please read that.

23 A. "Each plan approval application at a major facility
24 is required to perform a step one and step two analysis

1 for NRS pollutants."

2 Q. Is that a typo, also?

3 A. It's an incorrect statement.

4 Q. What is the correct way to perform an NSR analysis
5 for a plan approval application at a major facility?

6 A. The first part is you look at the project itself
7 and you combine the emissions from the project, the
8 emission increases from the project with emission
9 increases over the last five calendar years. The
10 second step of the project is you take the emissions
11 from the project and add those to any increases and
12 decreases over the previous ten-year period.

13 Q. Did you do that here in connection with the
14 aggregate of Projects B and F?

15 A. No.

16 Q. Why not?

17 A. Because I summarized in the third paragraph on page
18 3 that they were below the increase when we added the
19 two projects together. Since they had already
20 triggered NSR as an earlier project, we are required to
21 just add those emissions into it. Same as what I said
22 when we did Plan Approval C with Plan Approval A.

23 Q. What's the basis of your understanding that that's
24 what you're required to do?

1 A. After speaking with people inside the Department.

2 Q. Who did you speak with?

3 A. I spoke with Janine Tulloch-Reid. And I believe we
4 spoke with some people in our central office.

5 Q. Do you recall who those were?

6 A. Not for sure.

7 Q. And when did you have this discussion?

8 A. We had the discussion when I first came up with
9 Plan Approval C.

10 Q. And did you speak with Ms. Tulloch-Reid about what
11 the appropriate step would be to take at that point?

12 A. Correct.

13 Q. Had you encountered that situation before?

14 A. Not to my knowledge.

15 Q. And after that discussion with Ms. Tulloch-Reid in
16 connection with Project C, you still didn't do that
17 analysis for Project C, correct?

18 A. Correct.

19 MR. RAPHAEL: Counsel, just curious, I
20 know we are working on 5:15 now. Are you close?
21 If not, I would ask for a bathroom break rather
22 than keep going.

23 MR. BOMSTEIN: I am very close on this
24 line of questioning. Thank you.

1 THE COURT: You want to take a quick
2 break?

3 MR. RAPHAEL: I wouldn't mind, Your
4 Honor.

5 THE COURT: Go ahead.

6 MR. BOMSTEIN: That's fine.

7 (At this time, a brief break was taken.)

8 BY MR. BOMSTEIN:

9 Q. Mr. Eckert, was there anything else that the
10 Department considered, any other factors that the
11 Department considered in the aggregation of Project
12 F -- part of Project F of Project B?

13 A. I don't believe so.

14 Q. Did you consider whether this change was in
15 connection at all with customer requirements?

16 A. Yes.

17 Q. What was your -- describe to me your consideration
18 of that, please?

19 A. As customers drove a lot of these projects, it was
20 always a concern. In this case, it was not.

21 Q. And is it correct that in this case with Project F,
22 Sunoco made a late determination after the issuance of
23 Project B that, in fact, those tanks in connection with
24 Project B would not have the emissions that were

1 expected?

2 MR. RAPHAEL: Take that as a compound
3 question, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: Sorry. I was reading
6 through this a little bit while you were
7 talking. Could you repeat that.

8 MR. BOMSTEIN: Sure.

9 BY MR. BOMSTEIN:

10 Q. Is it the case for Project F that Sunoco looked at
11 the tanks in connection with Project B. And after the
12 issuance of Plan Approval B, determined that they would
13 have higher than expected emissions?

14 A. Yes.

15 Q. And is it similarly the case with Project A that
16 Sunoco determined after the issuance of Project 1, that
17 it would need a deethanizer which it had not realized
18 it would need before?

19 A. No.

20 Q. Tell me what's wrong about that statement please.

21 A. When -- the best of my recollection, when Plan
22 Approval 1 was being submitted, we had our meeting, the
23 topic of a deethanizer came up. The Department was
24 told that a deethanizer was going to be installed at

1 the opposite end of Mariner Pipeline.

2 Q. Do you know whether that happened?

3 A. I don't believe it did, and that was the purpose
4 for Plan Approval A.

5 Q. Did you hear Mr. Alexander' testimony earlier
6 concerning deethanization in the basin?

7 A. In the -- what was the last word, sir?

8 Q. Basin.

9 A. I do not remember that.

10 Q. Okay. Did you learn at any point that, in fact,
11 deethanization would be occurring before some of the
12 product went into the Mariner East Pipelines?

13 A. I don't know that.

14 Q. Okay. And at some point, though, Mr. Eckert, after
15 the issuance of Plan Approval 1, Sunoco had determined
16 that it did need a deethanizer at Marcus Hook, correct?

17 A. Correct.

18 Q. And similarly for Project C, after Plan Approval A
19 issued at later point, Sunoco determined that it wanted
20 to do water cooling rather than air cooling, correct?

21 A. Correct.

22 Q. Okay. These are all, would you agree, similar
23 determinations after the issuance of one plan approval
24 that something needs to be changed about the earlier

1 plan approval, correct?

2 A. I don't think they had to be -- the original plan
3 approvals needed to be changed. The plan approvals
4 were issued for certain sources.

5 Q. But the projects needed to be changed, correct?

6 A. I believe the projects were changed by Sunoco
7 because of different customer demand in some of those
8 cases.

9 Q. Was there a different customer demand in Project C?

10 A. No.

11 Q. Is there a different customer demand in Project F?

12 A. No.

13 Q. Was there a different customer demand in Project A?

14 A. Yes.

15 Q. Okay. Is that the distinction that you are drawing
16 here?

17 A. Yes.

18 Q. And did you take that into consideration in the
19 circumvention analysis you did for Project F?

20 A. I'm not sure if I can answer that the way you said
21 it.

22 MR. RAPHAEL: Your Honor, I apologize.

23 But I -- I think we said 5:00, it is 5:20 now.

24 We have to meet with our witnesses and get out

1 by 6:00. Last night the Sheriff had to that let
2 me into the garage because the gate actually
3 locks at six o'clock.

4 MR. BOMSTEIN: I would ask that I be
5 allowed to finish this question. And as long as
6 I get a clear answer, then I have no further
7 questions.

8 THE COURT: Sure.

9 MR. BOMSTEIN: Thank you.

10 BY MR. BOMSTEIN:

11 Q. Mr. Eckert, your answer was that you can't answer
12 that precisely that way. Is that your answer?

13 A. Yeah. I did not understand your question.

14 Q. Okay. My question was the issue of changing
15 customer demands, did you take that into account in
16 your circumvention analysis for Plan Approval F?

17 A. Yes.

18 Q. Okay.

19 MR. BOMSTEIN: Thank you.

20 MR. RAPHAEL: Thank you.

21 MR. BOMSTEIN: No further questions on
22 this point, and I will continue with Mr. Eckert
23 tomorrow.

24 THE COURT: Okay.

1 MR. RAPHAEL: Thank you, Counsel.

2 THE COURT: We will recess until 9:30
3 tomorrow morning.

4 (At this time, the Hearing adjourned at
5 5:24 p.m.)

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

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

ANGELA M. KING, RPR,
Court Reporter, Notary Public

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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL :
 :
vs. : EHB DOCKET NO.
 : 2016-073-L
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PARTNERS :
MARKETING & TERMINALS, LP :
Permittee :

- - -
Norristown, Pennsylvania
Wednesday, May 9, 2018
- - -

Hearing in the above matter held before
Judge Bernard A. Labuskes, Jr, taken pursuant to notice
at Department of Environmental Protection, 2 East Main
Street, Fourth Floor, Norristown, Pennsylvania 19401
commencing at 9:30 a.m., before Angela M. King, RPR,
Court Reporter - Notary Public there being present.

- - -
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1 - - -

2 THE COURT: Ready, Mr. Bomstein?

3 MR. BOMSTEIN: Thank you, yes.

4 Mr. Eckert, can you please take the
5 stand again.

6 - - -

7 (GEORGE ECKERT, having been previously
8 sworn, was examined and continued testifying as
9 follows:)

10 - - -

11 EXAMINATION

12 - - -

13 BY MR. BOMSTEIN:

14 Q. Thank you and good morning.

15 A. Good morning.

16 Q. Do you recall from yesterday when you testified
17 regarding whether a modification occurred on the 15-2B
18 cooling tower as part of the RFD which installed new
19 pumps for the cooling tower?

20 A. Yes, I do.

21 Q. When you're asking whether the source has been
22 modified, do you need to figure out what is part of the
23 source and what is not part of the source?

24 A. We try to draw a circle around what is the project

1 or, in this case, the source since there were only one.

2 Yes.

3 Q. And when the source is equipment that is connected
4 to other equipment, isn't it the case that the source
5 encompasses everything that is connected to something
6 that is not being permitted?

7 A. Not necessarily.

8 Q. No?

9 A. No.

10 Q. With the cooling tower is that the case?

11 A. That's the RFD that we were talking about, yes.

12 Q. And even if they are in the example of Project E,
13 at one point in time you concluded that there is a
14 modification as part of Project E to the cooling tower,
15 correct?

16 A. Correct.

17 Q. And in that instance in defining the emissions
18 unit, is it the case that the source or the emissions
19 unit here encompasses everything that is connected to
20 something that is not being permitted?

21 MR. RAPHAEL: Object as a compound
22 question, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: The cooling lines are not

1 the air pollution source. Cooling tower is. So
2 in that case, it would not include the cooling
3 lines.

4 BY MR. BOMSTEIN:

5 Q. The cooling lines are piping, correct?

6 A. Correct.

7 Q. Could you would please turn to A-44?

8 A. Okay.

9 Q. Once you're at A-44, please turn to page 20.

10 A. All right.

11 Q. Starting at Line 17, do you see where I ask: So
12 how do you divide -- how do you draw the line between
13 one piece of equipment that may be connected to another
14 piece of equipment in defining a source?"

15 What's your answer?

16 A. "In this particular case, the source would
17 encompass everything that connects to something that's
18 not being permitted, which would include the piping and
19 would include whatever is being carried in the piping,
20 the valves and the connections."

21 Q. Mr. Eckert, were you wrong there?

22 A. I would have to read an awful lot of this
23 deposition to know exactly what we were talking about
24 in this particular case.

1 Q. Well, maybe I can help you with that. First of
2 all, Mr. Eckert, did you review this deposition
3 transcript before today?

4 A. No, I did not.

5 Q. You did fill out an errata sheet, correct?

6 A. Yes, I did.

7 Q. So at some point in time, you did review this
8 before today?

9 A. You are correct. Thank you.

10 Q. And please take a moment to read a page or two
11 before this and see if there is any context that you're
12 missing from this statement that would help your
13 understanding of what you meant here.

14 A. (Witness does as instructed.)

15 I don't see any reference to any particular source
16 in the previous couple pages to know exactly what we
17 are talking about with the question and answer that I
18 read.

19 Q. Well, you do understand, though, that this has to
20 do with equipment at the Marcus Hook Industrial
21 Complex, correct?

22 A. Yes, I do see that. And on page 16, line 10, I see
23 we are referring to 23-0119E application.

24 Q. And in fact, there are at least three pieces --

1 there are at least three things that one could
2 characterize as emissions units which have associated
3 piping that are all to Project E, correct?

4 A. Yes.

5 Q. So, the cooling towers is one of them, correct?

6 A. Correct.

7 Q. Boilers are another?

8 A. Yes.

9 Q. And the flare is, correct?

10 A. Flare header is another.

11 Q. Flare header is another. So in the context of the
12 Marcus Hook Industrial Complex, would you disagree with
13 your statement in this deposition about any of those
14 emissions units?

15 A. I would say that sometimes that is true and
16 sometimes it is not.

17 Q. Where do you draw the distinction?

18 A. The distinction is what is the actual source.

19 Q. And that was my question in this deposition,
20 correct? What is the actual source?

21 A. Yes, it is.

22 Q. So please explain to me what the distinction is
23 that you're drawing here?

24 A. With the boiler lines and the cooling water lines

1 from the cooling tower, those do not emit air
2 pollution. The flare header does. So, the flare
3 header is actually a source. Whereas, the connecting
4 lines for steam and condensing water and the cooler
5 water are not considered sources.

6 Q. Okay. Under that logic, because those lines are
7 not considered sources and they are connected to be --
8 connected to something that is being permitted, those
9 are part of the emissions unit, correct?

10 A. For which ones?

11 Q. The -- besides the flare, the piping for the
12 boilers and the cooling tower?

13 A. They could be sources of air emissions that are
14 connected to it. They could not be.

15 Q. Well, we are talking about the Marcus Hook
16 Industrial Complex here.

17 A. I understand.

18 Q. In those specific pieces of equipment, those piping
19 component, those lines are part of the emissions units
20 that are the cooling tower and the boilers, correct?

21 MR. RAPHAEL: I am going to object.

22 It's a compound question, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: They are connected to

1 transfer the heat and the cooling capability of
2 those air emission sources.

3 BY MR. BOMSTEIN:

4 Q. So, I don't understand how that is consistent with
5 your statement that in this particular case, the source
6 would encompass everything that connects to something
7 that is not being permitted, which would include the
8 piping?

9 A. Well, for the deposition I didn't prepare for. And
10 that would explain the discrepancy between when we did
11 the deposition and today.

12 Q. So, you're saying your statements in the deposition
13 may or may not be correct?

14 A. In this case, yes.

15 Q. Did the Department do a circumvention aggregation
16 analysis for Project E?

17 A. Yes, we did.

18 Q. Is that memorialized somewhere?

19 A. I do not believe so.

20 Q. When did you first do that analysis?

21 A. As I stated yesterday, when we meet for the
22 pre-application meeting, that's an item that is
23 discussed. As I -- after we receive the application as
24 part of my review to look through and check for those

1 things.

2 Q. And is that what happened here for Project E?

3 A. Yes.

4 Q. What was the content of that analysis that you did?

5 A. I did not feel that the sources in Application E
6 were solely there and met the definition or the
7 requirements for circumvention.

8 Q. Why?

9 A. Their application stated that these sources were
10 being installed as part of new customer demand.

11 Q. Was there any other reason besides that?

12 A. I also felt that sources -- storage tanks, they
13 could be used for multiple different projects storing
14 the same products or even different products.

15 Q. And the Project E application had a specific
16 purpose for those storage tanks, correct?

17 A. Yes, they did.

18 Q. And you can only issue a plan approval for the
19 purpose listed in the application, correct?

20 A. We issued a plan approval for those sources based
21 on information in the application. May or may not be
22 specifically to -- in this case, the storage tanks, to
23 store the exact item depending on what the regulations
24 say.

1 Q. So, it might be okay in some instances for an
2 applicant to submit an application asking for equipment
3 to be billed for one purpose and then use it for a
4 different purpose?

5 A. In the case of a storage tank, yes.

6 Q. Is that the case with other things, as well?

7 A. It's possible.

8 Q. Where does the Department draw the line?

9 A. It's based on the regulatory basis.

10 Q. What regulations are you referring to?

11 A. For storage tanks.

12 Q. For any.

13 A. I am giving you example.

14 Q. Please, please.

15 A. Storage tank regulations are based on the type of
16 tank it is, whether it's a fixed-roof tank or a
17 floating-roof tank. And the type of product that's
18 allowed to be stored in there is based on a vapor
19 pressure regulations. So as long as they are storing
20 something under or below that vapor pressure that's
21 allowed by the regulations, for the most part the
22 Department really doesn't care what goes in.

23 Q. Okay. So is it also the case that with Project E,
24 if there are storage tanks -- well, first of all, are

1 there storage tanks being built as part of Project E?

2 A. Yes.

3 Q. So, if Sunoco uses those storage tanks built as
4 part of Project E for an earlier project, is that
5 acceptable to you?

6 A. It would depend on why they were putting those in.
7 I know you said as part of the earlier project, but it
8 may also be for additional storage capacity. Not just
9 for the earlier project, but additional customers in
10 the new project.

11 Q. Is that something you inquire about?

12 A. Yes.

13 Q. Did you inquire about that here?

14 A. Yes, I did.

15 Q. What about the storage tanks?

16 A. Yes.

17 Q. What did you find out?

18 A. I found out as I stated earlier that this project
19 was due to acquisitions of new customers.

20 Q. Do you know whether the storage tanks built as part
21 of Project E would be used for purposes besides those
22 described in Project E?

23 A. No, I do not.

24 Q. So, you don't know whether they will use those

1 storage tanks for purposes of previous projects,
2 correct?

3 A. That's correct.

4 Q. Does that matter to you?

5 A. It could, as we talked about with circumvention.

6 Q. Did you ask about the use of the fractionation
7 towers installed as part of Project E?

8 A. We discussed it, yes.

9 Q. Did you ask about whether those would be used for
10 the purposes of earlier projects?

11 A. Yes.

12 Q. What did you find out?

13 A. They were not.

14 Q. Did you determine at any point whether any of the
15 depropanizers would be used to handle volumes of
16 liquids associated with Project D?

17 A. I don't recall that.

18 Q. So, you don't know one way or another whether that
19 is the case?

20 A. Correct.

21 Q. Is there anything else you looked at in your
22 circumvention analysis?

23 A. As we discussed earlier, when we previously agreed
24 that it's a contiguously adjacent property and we look

1 at the business plan, what is this project, why is this
2 project going in.

3 Q. Earlier you've been talking about -- earlier being
4 yesterday, testifying about how this affects New Source
5 Review, correct?

6 A. Correct.

7 Q. And by New Source Review, just to be clear, are you
8 talking about non-attainment New Source Review or the
9 New Source Review that encompasses both non-attainment
10 New Source Review and the prevention of significant
11 deterioration programs?

12 A. Pennsylvania's regulations do not have a
13 non-attainment source review, it's just New Source
14 Review. That is what I was talking about.

15 Q. Do Pennsylvania regulations have a prevention of
16 significant deterioration program?

17 A. We reference and incorporate the PSD regulations.

18 Q. And Pennsylvania's New Source Review Program
19 handles or deals with non-attainment pollutants,
20 correct?

21 A. Correct.

22 Q. Okay. So the equivalent at the federal level is
23 the non-attainment New Source Review Program, correct?

24 A. Could you repeat that?

1 Q. Sure. So, do you understand that sometimes at the
2 federal level, non-attainment New Source Review
3 contrasts with the prevention of significant
4 deterioration program?

5 A. I don't understand exactly what you're meaning by
6 that.

7 Q. Okay. Prevention of significant deterioration
8 program, is it your understanding that that may apply
9 when you're looking at pollutants that the region is in
10 attainment for?

11 A. Correct.

12 Q. And also at federal level, non-attainment New
13 Source Review Program may apply when you're looking at
14 pollutants for which the region is not in attainment,
15 correct?

16 A. Yes.

17 Q. But the equivalent at the state level is where you
18 have pollutants for which you're not in attainment is
19 what you just called the New Source Review Program,
20 correct?

21 A. Correct.

22 Q. Okay. Thank you.

23 So yesterday when you were talking about that, you
24 were referring to analysis of non-attainment

1 pollutants, correct?

2 A. Correct.

3 Q. Okay. Did you apply the prevention of significant
4 deterioration program at all in conjunction with your
5 aggregation analysis?

6 A. Yes, I did.

7 Q. In which projects?

8 A. I believe it was for most if not all the projects.

9 Q. Did you do that for Project C?

10 A. I don't recall.

11 Q. Okay. Is it only done when you have attainment --
12 when you have pollutants for which the region is in
13 attainment?

14 A. The PSD analysis?

15 Q. Yes, sir.

16 A. Yes.

17 Q. Okay. For example, in Project B, that includes
18 pollutants such as carbon monoxide, correct?

19 A. Correct.

20 Q. Could you please turn to A-19.

21 A. Okay.

22 Q. Could you turn to page 9 within that, please.

23 A. All right.

24 Q. Is this your prevention of significant

1 deterioration analysis?

2 A. On the top of page 9, yes.

3 Q. Okay. Thank you.

4 And later on as we discussed, there was some level
5 of aggregation that you did between Projects F and B,
6 correct?

7 A. Correct.

8 Q. So, please turn to A-25.

9 A. Okay.

10 Q. Do you see where there is a -- on page 7, do you
11 see that analysis for prevention of significant
12 deterioration?

13 A. Yes.

14 Q. Can you read that analysis, please?

15 A. "This project is not emit any PSD regulated
16 pollutant. Therefore, this regulation is not
17 considered for applicability."

18 Q. Thank you. And am I correct in recalling that you
19 testified that the -- at least the -- three of the
20 tanks associated with Project F were aggregated with
21 Project B?

22 A. I believe that's correct.

23 Q. And Project B includes PSD regulated pollutants,
24 correct?

1 A. Correct.

2 Q. So when you're referring in Project F to this
3 project, are you setting aside Project B?

4 A. Yes.

5 Q. Why?

6 A. Because Project B in itself is a project. It was
7 linked to Plan Approval B specifically because it
8 increases in emissions. Since it did not add any PSD
9 pollutants from these tanks, the PSD analysis did not
10 need to go any further.

11 Q. Are you saying that Project B and Project F are
12 separate?

13 A. In itself, yes.

14 Q. So, what is your understanding of what the rules
15 against circumvention are trying to achieve?

16 A. That the staging or delaying or phasing of projects
17 over a period of time is going to escape any
18 regulations.

19 Q. Is it your understanding that those are still
20 separate projects that are staged or delayed?

21 A. While the projects are related because the sources
22 are the same in each, the applications came in
23 different types. The only thing that relates B to F is
24 those three particular tanks as pertains to New Source

1 Review.

2 Q. So, is it your understanding that the only thing
3 that the Department needs to do when you conclude that
4 you need to aggregate because of the circumvention
5 rules is see if there are any additional amounts of
6 pollution, and handle those additional amounts of
7 pollution?

8 A. No.

9 Q. What else do you need to do?

10 A. You do need to look at in the case of New Source
11 Review, since there was no PSD pollutants in F, you do
12 need to look at how the increase in pollutants for New
13 Source Review would be affected by combining two
14 projects as one.

15 Q. Is there anything else besides that?

16 A. That would be the first step.

17 Q. What's the next step?

18 A. Depending on the result of the step one or that
19 first step, you would need to address New Source Review
20 regulations.

21 Q. Do you need to do anything else?

22 A. In this case, yes. We needed ERCs.

23 Q. Do you need to do anything besides the New Source
24 Review analysis?

1 A. Not that I can think of.

2 Q. Do you recall -- were you here for Mr. McGroarty's
3 testimony earlier?

4 A. Yes.

5 Q. Do you recall there was some testimony that he had
6 over a concern that Sunoco had that the Department
7 would aggregate projects?

8 A. Vaguely.

9 Q. And do you recall that he testified that
10 specifically there is a concern that DEP would need to
11 revoke and reissue plan approvals?

12 A. I don't recall that specifically.

13 Q. Okay. Is that something that Department ever does
14 in response to circumvention concerns?

15 A. I am not aware of that.

16 Q. In your understanding, the only thing that needs to
17 be done is look at New Source Review for the additional
18 increments of pollutions, correct?

19 A. No. As I stated, it's the increments of the other
20 project combined with the first project.

21 Q. And the kind of then performing the New Source
22 Review step, correct?

23 A. Correct.

24 Q. Okay. Are you familiar with the concept of

1 circumvention in the prevention of significant
2 deterioration context?

3 A. No.

4 Q. Do you know that the prevention of significant
5 deteriorations define what a project is?

6 A. I believe they define it.

7 Q. Are you familiar with the concept that the
8 definition of project in the PSD regulations is tied to
9 the concept of circumvention in those regulations?

10 A. I don't believe the word circumvention is used in
11 any PSD regulations.

12 Q. You may be correct. So not talking about the
13 terminology, but I am talking about the concept of
14 correctly defining a project.

15 Are you familiar with that concept in the PSD
16 context?

17 A. Yes.

18 Q. Okay. Have you ever adjusted a PSD analysis of
19 yours based on circumvention concerns?

20 A. No, I have not.

21 Q. Do you recall yesterday we had a discussion also
22 about a new steam load on the boilers, meaning the
23 boilers are modified or at least that concept?

24 A. A conversation with me?

1 Q. Yes, sir.

2 A. No, I don't recall that.

3 Q. Okay. Well, do you recall that in Project A there
4 was a new steam load associated with the new
5 fractionation count?

6 A. Yes.

7 Q. Okay. And do you recall that because of that new
8 steam load, you concluded that there was a modification
9 to the boilers?

10 A. I believe you're correct.

11 Q. Okay. So, that's the concept I am talking about.

12 And do you recall that you stated that at some
13 point in time, you came to a different understanding
14 about whether that constitutes a modification?

15 A. Yes.

16 Q. Please turn to A-64.

17 A. Okay.

18 Q. Please turn to page 10 of that. This is the
19 Comment Response Document we looked at yesterday,
20 correct?

21 A. Yes, we did.

22 Q. Do you see your response to the comment with the
23 number ten?

24 MR. RAPHAEL: Counsel, what page are you

1 on?

2 MR. BOMSTEIN: Page 10.

3 MR. RAPHAEL: Thank you.

4 THE WITNESS: Yes, I do.

5 BY MR. BOMSTEIN:

6 Q. And you say while the Department has determined
7 that this project is considered to be a modification to
8 the existing boilers and cooling tower as it does
9 result in an increase of air emissions, LAER does not
10 apply as noted in 25 PA Code Section 127.205 Sub 1.

11 Do you see that?

12 A. Correct.

13 Q. Okay. So the modification to the existing boilers,
14 is it fair to say at least at the point of the time of
15 this Comment Response Document, you still have the
16 understanding that an increase in the steam load
17 constituted a modification to the boilers?

18 A. Yes.

19 Q. Okay. Thank you.

20 And we also had a discussion yesterday in the
21 context of aggregation of emissions from different
22 projects. I believe you referred to Project C being in
23 a different position from Project A because in the
24 intervening time between the two, there was a netting

1 of emissions done and emission reduction credits
2 required, correct?

3 A. Correct.

4 Q. The regulatory process you're eluding to there is
5 what's known as de minimis emissions increase, correct?

6 A. Not sure exactly what you mean with that question
7 eluded to.

8 Q. Sure. I mean, the netting and the generation of
9 emissions reduction credits, that occurs as part of the
10 de minimis emissions increase calculation, correct?

11 A. Yes.

12 Q. And that involves looking back to recent projects
13 and adding together both emissions increases and
14 decreases in the context where a project does not
15 surpass the New Source Review significant emissions
16 threshold, correct?

17 A. No.

18 Q. Okay. Please help me out here. What am I wrong
19 about there?

20 A. You said as it includes the addition and
21 subtraction. That's not necessarily so.

22 Q. So, when would it and when would it not?

23 A. The addition in the five-year lookback period is
24 additional increases only. Ten-year lookback includes

1 increases and decreases.

2 Q. Okay. Thank you for the clarification there. This
3 is a process that there is internal DEP guidance on,
4 correct?

5 A. Yes.

6 Q. And when you're referring to aggregation for New
7 Source Review Programs, were you referring to this de
8 minimis emissions increase calculations?

9 A. I believe so.

10 Q. Okay. That's a separate question from whether
11 separate projects are, in fact, really one project,
12 correct?

13 A. Correct.

14 Q. And before you get to the de minimis emissions
15 increase calculation step, you first need to determine
16 whether the emissions increase for the project is
17 significant, correct?

18 A. I don't believe that's correct.

19 Q. Please correct me.

20 A. You look at the emissions from the project itself.
21 The project itself in our regulations does not trigger
22 New Source Review. It's in conjunction with the five
23 and/or the ten-year lookback period.

24 Q. At the second stage of this analysis, correct?

1 A. As I stated yesterday, there is really only one
2 step. There is two parts to the same step. It's the
3 project plus five years, previous five years and/or the
4 project plus or minus the previous ten years.

5 Q. Do you separately at all analyze whether the
6 project by itself exceeds significant -- the
7 significance threshold?

8 A. Yes.

9 Q. I thought you just said that you only do that in
10 conjunction with the lookback periods?

11 A. I said that's what the regulation stated. I didn't
12 say we didn't analyze for it. As you do your math, you
13 come up with a lot of different answers.

14 Q. Do you do calculations for this that are not
15 following what the regulation specifies?

16 A. No.

17 Q. Just one second, please. Moving onto another
18 topic.

19 At some point the Department issued a plan approval
20 for 23-0119G, correct?

21 A. Correct.

22 Q. And you reviewed a -- you reviewed that
23 application?

24 A. Yes, I did.

1 Q. And you prepared a review memo?

2 A. Yes, I did.

3 Q. Please turn to Exhibit A-26.

4 MR. WHITE: Just a moment, Alex. I'm
5 sorry. We are knocking these off our tables
6 over here.

7 MR. BOMSTEIN: I understand. There are
8 a lot of binders.

9 MR. WHITE: Okay.

10 MR. BOMSTEIN: Thank you.

11 BY MR. BOMSTEIN:

12 Q. Is this that review memo?

13 A. It is a review memo from Plan Approval G. I do not
14 know if it is the final one or not. Might have been a
15 draft.

16 Q. Okay then. Let me direct your attention instead to
17 a different document. Did, ultimately, you issue --
18 did the Department ultimately issue Plan Approval G?

19 A. Yes.

20 Q. And did you do a circumvention analysis?

21 A. Yes.

22 Q. What was the content of that analysis?

23 A. We believe that the sources in Plan Approval G did
24 not have any effect or were not linked to any other

1 project.

2 Q. Were there any other factors you looked at?

3 A. I don't believe so.

4 Q. In response to Application 23-0119H, you prepared a
5 review memo, as well, correct?

6 A. Yes.

7 Q. And is the document at Exhibit A-27 a draft of that
8 review memo?

9 A. Yes, it is.

10 Q. And can you turn to Exhibit SPMT-18? This is in
11 Sunoco's binder, please.

12 A. Okay.

13 Q. About halfway into -- first of all, what's the
14 first part of this document?

15 A. First part of the document is a signed plan
16 approval. The Plan Approval Number 23-0119H.

17 Q. Thank you. And if you turn about halfway through
18 the document, do you see where another document begins?

19 A. Yes, I do.

20 Q. And what is that?

21 A. It looks to be a final plan approval review memo
22 corresponding with H.

23 Q. Thank you. Did you do a circumvention analysis for
24 Project H and earlier projects?

1 A. Yes.

2 Q. Is that analysis memorialized here?

3 A. I do not believe so.

4 Q. What was the content of your analysis?

5 A. That this -- the installation of this West Warm
6 Flare was considered a like-kind replacement for the
7 ethylene complex flare that was located in Delaware due
8 to the flare being at the end of its useful life.

9 Q. What is your understanding of what "replacement in
10 kind" means?

11 A. The installation of a source with approximately the
12 same characteristics as the original source.

13 Q. Does this replacement flare have the same
14 characteristics of the flare it replaces?

15 A. Based on the information I received, it had roughly
16 the same height, diameter and flow capabilities, yes.

17 Q. Was it put in a different -- is it planned to be
18 put in a different location?

19 A. Yes, it was.

20 Q. Does it have different control technology?

21 A. That, I could not say for sure. I would suspect it
22 does simply because the old flare was built in 1961.

23 Q. And besides the characterization of this as a
24 replacement in kind, what else went into your

1 circumvention analysis?

2 A. Whether it was linked to other projects.

3 Q. What did you use to decide whether it was linked to
4 other projects?

5 A. Since it was simply replacing flare with compatible
6 size flare, we felt it wasn't being rebuilt solely
7 because of any new projects or any future projects.

8 Q. Do you think that the timing of these new projects
9 and the timing of the flare replacement for a flare
10 that's over 50 years old is a factor that you looked
11 at?

12 MS. HUNT: Objection, Your Honor.

13 Assumes facts not in evidence.

14 THE COURT: What facts does it assume?

15 MS. HUNT: It assumes that the flare is
16 50 years old.

17 THE COURT: I thought he said it was
18 from 1961.

19 THE WITNESS: That was when it was
20 installed, Your Honor.

21 MS. HUNT: All right, Your Honor.

22 Withdrawn.

23 THE WITNESS: Could you repeat the
24 question, please?

1 MR. BOMSTEIN: Sure. Sure.

2 BY MR. BOMSTEIN:

3 Q. Was the timing of the replacement of a flare that's
4 over 50 years old at this time when there is a lot of
5 new development at the Marcus Hook Terminal, a factor
6 in your consideration of whether this project is
7 related to the other projects?

8 A. No.

9 Q. Why not?

10 A. Because as I stated, it wasn't related to any
11 previous projects other than replacing a current
12 functioning and operating flare.

13 Q. Didn't you testify earlier that projects being
14 developed over a short period of time is something you
15 look at through staging?

16 A. It is. That is one part of it.

17 Q. But you didn't look at that here?

18 A. I didn't have to, correct.

19 Q. Why didn't you have to?

20 A. Because this flare is not dependent, and those
21 sources are not dependent on the installation of a new
22 flare.

23 Q. Were there any other factors that you looked at?

24 A. No.

1 Q. In response to the application for 23-0119I, you
2 prepared a draft for review?

3 A. Correct.

4 Q. Please turn to A-28.

5 MR. RAPHAEL: Give us a second to catch
6 up, Counsel.

7 THE WITNESS: Okay.

8 BY MR. BOMSTEIN:

9 Q. Is this the draft review memo that you prepared for
10 Project I?

11 A. Yes, it is.

12 Q. Is there a final yet?

13 A. No, there is not.

14 Q. You recommended issuance of the plan approval,
15 correct?

16 A. Yes, I did.

17 Q. Could you look at the second page of this draft
18 review memo, please?

19 A. Yes.

20 Q. Specifically under Process Description. Do you see
21 a sentence beginning "while other equipment"?

22 A. Yes.

23 Q. Please read that and the following sentence.

24 A. "While other equipment associated with the past

1 projects processed, chill and store ethane, the ME2x
2 Project involves a specific process design for the plan
3 of ethane feed stock. The project will additionally
4 utilize available capacity of existing utilities at the
5 site including electricity, steam, west warm flare
6 header system, amine treatment, water, instrument air,
7 nitrogen and natural gas."

8 Q. Thank you. I am going to focus on the first
9 sentence for a minute. To be clear, does Project I
10 process, chill and store ethane?

11 A. Yes.

12 Q. Is there no specific process design for the planned
13 ethane feed stock in previous projects?

14 A. I believe there was.

15 MR. RAPHAEL: Your Honor, I am going
16 just object to this line of questioning. I
17 thought the agreement was that whatever the plan
18 approval was, was relevant to this appeal. Of
19 course, Plan Approval I has not been issued yet,
20 so there is no final action of the Department.
21 Therefore, jurisdiction of the Board relative to
22 the action which hasn't occurred yet, has yet to
23 attached.

24 To the extent we want to describe what's

1 part of Plan Approval I, I think your ruling was
2 that that's relevant. To the extent we are
3 getting into a determination yet to be made by
4 Department based on hearsay information in a
5 draft tech review memo, I would submit that that
6 would not be relevant.

7 THE COURT: Overruled.

8 MR. BOMSTEIN: Can you please repeat the
9 question?

10 THE STENOGRAPHER: "QUESTION: Is there
11 no specific process design for the planned
12 ethane feed stock in previous projects?"

13 MR. BOMSTEIN: Okay. Thank you.

14 BY MR. BOMSTEIN:

15 Q. So Mr. Eckert, why do you state in this review memo
16 that while other equipment associated with past
17 projects process, chill and store ethane, the ME2x
18 Project involves a specific process designed for the
19 planned ethane feed stock?

20 A. That information was obtained from the plan
21 approval application.

22 Q. What is the distinction that you're drawing here
23 between past projects and this project?

24 A. As it was explained to us with the Department

1 during our pre-application meeting, each of these
2 projects is based on customer requests, certain
3 specifications to be made, certain products, certain
4 period. And Plan Approval I meets additional customer
5 requests.

6 Q. So is there any distinction is there any
7 distinction besides the fact that this is additional
8 requests between the past processes for ethane and the
9 Project I process for ethane?

10 A. Yes. I believe there is differences.

11 Q. What are those differences?

12 A. As I stated, each additional process or application
13 dealt with different customer requests. If new
14 customers were willing to accept the older projects,
15 the purity, the composition, then these new projects
16 would need to be submitted.

17 Q. This Project ME2x is designed to receive an
18 additional 70,000 barrels per day of ethane, correct?

19 A. Correct.

20 Q. If there are additional volumes, even if the old
21 equipment is capable of handling this ethane at a lower
22 volume, you still need to install more equipment to
23 handle it at a higher volume, correct?

24 A. Not necessarily.

1 Q. That's true. You're right. If the old equipment
2 is built large enough to handle future amounts, then
3 you don't need to install new equipment. Is that what
4 you're getting at Mr. Eckert?

5 A. Correct.

6 Q. Okay. Thank you. However, if the old equipment is
7 not big enough to handle new volumes, you need to
8 expand the existing processes to handle the new
9 volumes, correct?

10 A. Either expand the existing process or install new
11 processes.

12 Q. And in this instance, we have the same type of
13 processing ethane but more equipment to handle it,
14 correct?

15 A. More equipment to handle the new customer requests.

16 Q. Which is for an additional 70,000 barrels per day
17 of ethane, correct?

18 A. Correct.

19 Q. Now going onto the next sentence that you read.
20 The west warm flare, that's the flare that Sunoco would
21 build as part of Project H, correct?

22 A. Yes.

23 Q. And the steam that is referenced there comes from
24 the same auxiliary boilers that are used in Project E,

1 correct?

2 A. Yes.

3 Q. And the instrument air would be supplied by the
4 compressors that are served through RFD-5597, correct?

5 A. I can't answer that for sure.

6 Q. You don't know one way or another?

7 A. I don't know which instrument air compressors would
8 necessarily be used in this project, because I don't
9 know how many they have.

10 Q. Was that relevant to your review?

11 A. No.

12 Q. The natural gas -- do you know whether the natural
13 gas will come in part from the methane that is removed
14 as part of the demethanization from Project D?

15 A. I do not know that.

16 Q. The amine treatment -- well, there is an amine
17 regeneration system that was installed as part of
18 Project A, correct?

19 A. I believe so.

20 Q. And Project I will use that amine regeneration
21 system, correct?

22 A. Yes.

23 Q. Did you do a circumvention analysis on Project I?

24 A. No, I did not.

1 Q. Why not?

2 A. As I stated, this project was designed based on new
3 customer requests.

4 Q. So, was that all you needed to know?

5 A. Yes.

6 MR. BOMSTEIN: At this time, I move to
7 admit into evidence C-18, A-25, A-26, A-27,
8 A-28, SPMT-18 and A-37.

9 MR. RAPHAEL: Counsel, so we have the
10 list, we can kind of tick back: C-18, A-25,
11 A-26, A-27, A-28, SPMT-18 and A-37.

12 Do I have that right?

13 MR. BOMSTEIN: Yes, sir.

14 MR. RAPHAEL: No objection to C-18.

15 MS. HUNT: No objection to C-18.

16 MR. RAPHAEL: No objection to A-25.

17 MS. HUNT: No objection to A-25.

18 MR. RAPHAEL: I will let the Department
19 go first. Since A-26 is unsigned, I will let
20 the Department go first. They have more
21 firsthand knowledge than I would on A-26.

22 MS. HUNT: Department has no objection
23 to A-26.

24 MR. RAPHAEL: In that case, we have no

1 objection either, Your Honor.

2 The Department go first on A-27, as
3 well. It's a draft.

4 MS. HUNT: The Department has no
5 objection to A-27.

6 MR. RAPHAEL: We have no objection, as
7 well, Your Honor. And A-28 also a draft.

8 MS. HUNT: The Department objects to
9 A-28 since the action that accompanies this
10 draft technological review memo has not been
11 issued yet. The review memo may change since it
12 has not been final Department action.

13 So, the Department objects to A-28.

14 MR. RAPHAEL: Your Honor, and we
15 would -- I mean, relative to the application at
16 that submitted is final, we think that would be
17 the most appropriate information relative to
18 what is in Plan Approval I. We concur on the
19 objection. Add the objection of relevance as to
20 A-28.

21 We believe, Your Honor -- I guess,
22 Counsel, correct me if I'm wrong -- SPMT-18 has
23 already been admitted as part of the record
24 already. We wouldn't object to that. And then

1 there is A-37, I guess the final one we need to
2 take a peek at.

3 MR. BOMSTEIN: Mr. Raphael may be
4 correct. It's possible we got it in earlier and
5 I didn't catch that.

6 MR. RAPHAEL: No objection to A-37, Your
7 Honor.

8 MS. HUNT: No objection to A-37.

9 THE COURT: C-18, A-25, 26, 27, 28, 37
10 and SPMT-18 are admitted.

11 (AT this time, Exhibit C-18, A-25, 26,
12 27, 28, 37 and SPMT-18 admitted for the record.)

13 MR. BOMSTEIN: Thank you, Your Honor.

14 MR. RAPHAEL: Thank you, Your Honor.

15 BY MR. BOMSTEIN:

16 Q. Mr. Eckert, do you use the term baseline actual
17 emissions sometimes?

18 A. Yes.

19 Q. Please tell the Board what your -- what you mean
20 when you use that term?

21 A. The baseline actual emissions are actual emissions
22 during any 24-consecutive month period as allowed by
23 our regulations.

24 Q. Thank you. In your experience, baseline actual

1 emissions come into play when calculating emissions
2 increases from modified emission sources, correct?

3 A. Yes.

4 Q. And am I generally -- generally speaking, am I
5 correct that an applicant chooses a period of two years
6 within the previous five years to establish a baseline?

7 A. Correct.

8 Q. And that emissions increases then is calculated
9 from that baseline projected forward, correct?

10 A. Correct.

11 Q. And is it the case that sometimes the Department
12 approves the use of an earlier period of 24 months
13 within the previous ten years?

14 A. Yes. Our regulations allow that.

15 Q. And that's only if the Department makes a written
16 determination that the earlier years are more
17 representative of normal source operation, correct?

18 A. The company requests it, the Department approves
19 it. Yes.

20 Q. And the Department only approves it when it makes a
21 written determination that the earlier years are more
22 representative of normal source operation, correct?

23 A. Correct.

24 Q. At the time that the Department issued Plan

1 Approval E, it determined that some equipment involved
2 in the project was modified, correct?

3 A. Correct.

4 Q. So at that time, it needed to evaluate Sunoco's
5 choice of baseline years, correct?

6 A. Correct.

7 Q. What years were those?

8 A. The -- which years were what?

9 Q. Which years were the baseline years that Sunoco
10 offered?

11 A. Sunoco offered the 2009/2010 baseline period.

12 Q. Was that for the entire facility or just the
13 boilers?

14 A. It was for the entire facility.

15 Q. Was that newly determined as part of Project E?

16 A. I don't believe so.

17 Q. When did the choice of those two years originate?

18 A. It was during an earlier plan approval application.

19 Q. Was that for the Plan Approval B?

20 A. I do not know.

21 Q. Do you recall Mr. McGroarty testifying about that
22 at all?

23 A. No, I do not.

24 Q. Do you know why the determination or the choice of

1 baseline years from an earlier project was carried
2 forward to Project E?

3 A. I believe it was based on what they saw as projects
4 that were needed by B. Did you say B?

5 Q. Yes, sir.

6 A. Okay. And looking at what they were using and what
7 was representative of normal operation for that boiler
8 or boilers.

9 Q. Is it your position that the Department does not
10 need to make an independent determination when a new
11 plan approval application is submitted?

12 A. A new determination of what?

13 Q. Baseline years.

14 A. If the company provides a baseline years to be used
15 in an application, Department always approves or
16 disapproves of it.

17 Q. Have you ever disapproved a choice of baseline
18 years?

19 A. I believe I have.

20 Q. Can you please turn to Exhibit A-44.

21 A. Okay.

22 Q. Please turn to page 204?

23 A. You said 204?

24 Q. Correct.

1 MR. RAPHAEL: Bear with this, Counsel.

2 We need to navigate this binder.

3 BY MR. BOMSTEIN:

4 Q. Do you see --

5 MR. RAPHAEL: Counsel, let me catch up.

6 I'm close. Thank you.

7 BY MR. BOMSTEIN:

8 Q. Do you see at starting at line 9, I ask: "Does
9 sometimes the applicant choose a set of years without
10 the Department approving that it's more
11 representative?"

12 A. Yes.

13 Q. What was your answer?

14 A. "I don't know."

15 Q. Do you now recall something that you didn't recall
16 then?

17 A. The Department's required to approve of the choice
18 of the baseline years.

19 Q. So, Mr. Eckert, do you recall something now that
20 you didn't recall during the deposition?

21 A. Yes.

22 Q. And what is it that you recall now?

23 A. While the Department -- while -- as I said, while
24 the applicant chooses the years or chooses the 24-month

1 period, the Department has an obligation under the
2 regulations to approve or disapprove of that period.

3 Q. So, Mr. Eckert, what instance of the Department
4 disapproving do you now remember that you didn't
5 approve -- didn't remember during the deposition?

6 A. As I said earlier, I believe I disproved some of
7 the choices for baseline years of projects over the
8 years. But I do not remember off the top of my head.

9 Q. So, you can't remember any specific examples?

10 A. That's correct.

11 Q. Do you recall the circumstances of any of those
12 disapprovals?

13 A. Not specifically.

14 Q. Generally?

15 A. No.

16 Q. Okay. Going back to the origin of the choice of
17 baseline years, in -- I want to understand, did you
18 make a new determination as part of your review of
19 Project E of what were the correct baseline years?

20 A. As I stated, each application that uses a baseline,
21 the Department makes a new determination.

22 Q. Didn't you say that this -- baseline years were set
23 from a previous project application?

24 A. I said I believe they were used for previous

1 application.

2 Q. So, is it your testimony that you didn't carry that
3 decision forward?

4 A. I may have. But I still review it again.

5 Q. Okay. So in your experience with the Department's
6 evaluation of baseline years, generally speaking
7 outside of exceptional circumstances, is it the case
8 that the largest emissions are generally considered
9 normal operation?

10 MR. RAPHAEL: Could you read that back?

11 THE STENOGRAPHER: "QUESTION: So in
12 your experience with the Department's evaluation
13 of baseline years, generally speaking outside of
14 exceptional circumstances, is it the case that
15 the largest emissions are generally considered
16 normal operation?"

17 MR. RAPHAEL: Object as a compound
18 question, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: The regulations benefit
21 the company to use the largest baseline years as
22 long as it's representative of normal operation.

23 BY MR. BOMSTEIN:

24 Q. Mr. Eckert, can you answer my question with a yes

1 or a no?

2 A. As long as it meets the normal operation
3 requirement, yes.

4 Q. And I'm asking about the requirement.

5 MR. BOMSTEIN: Can you please repeat the
6 question?

7 THE STENOGRAPHER: "QUESTION: So in
8 your experience with the Department's evaluation
9 of baseline years, generally speaking outside of
10 exceptional circumstances, is it the case that
11 the largest emissions are generally considered
12 normal operation?"

13 THE WITNESS: Yes.

14 BY MR. BOMSTEIN:

15 Q. And in your experience, applicants generally want
16 to choose years with the largest emissions, correct?

17 A. Correct.

18 Q. And that's because that minimizes the calculated
19 emissions increase, correct?

20 A. Correct.

21 Q. Let's talk about the application of baseline actual
22 emissions besides the choice of baseline years.

23 To determine what baseline actual emissions are for
24 an emissions unit, am I correct in that you look at

1 reports in a database known as the Area Information
2 Management System?

3 A. Yes.

4 Q. Is that sometimes called AIMS for short?

5 A. Yes.

6 Q. And the Department produced several of those in
7 similar documents in discovery. I am going to walk
8 through a few of those.

9 Please turn to A-53.

10 A. Okay.

11 Q. What is this document?

12 A. This is a best control detail by source report.

13 Q. Is this from that AIMS system that we were just
14 talking about?

15 A. It is one of the forms of reports that AIMS will
16 print out, yes.

17 Q. And does this summarize emissions from the Marcus
18 Hook Refinery in this case?

19 A. I do not know if it summarizes the emissions from
20 the entire facility or not.

21 Q. How would you tell?

22 A. I believe in this particular report or in any
23 report, there would be a summary at the end of the
24 individual --

1 Q. Okay. So let me clarify my question. Looking at
2 this document, can you determine what the emissions are
3 from the Marcus Hook Refinery for emission year 2009?

4 A. Yes.

5 Q. And is this a document that you did look at to
6 determine actual emissions from equipment at the Marcus
7 Hook Refinery in 2009?

8 A. Not this particular version.

9 Q. And did you look at another version similar to
10 this?

11 A. Yes.

12 Q. What was distinct about that version?

13 A. That version did not print out the different types
14 of PM 10 or the different types of VOCs.

15 Q. So, does this document contain that information but
16 a little more information?

17 A. Yes.

18 Q. Do you see, just as an example on the first page, a
19 listing for auxiliary boiler 1?

20 A. Yes.

21 Q. And do you see a number to the left of that?

22 A. Yes.

23 Q. What does that number refer to?

24 A. That is the AIMS number that we assign it, which is

1 also the number listed in the permit for the plan
2 approval.

3 Q. The eight in this case being the emissions unit in
4 question?

5 A. One of them.

6 Q. Okay. And the others are farther down in the
7 document, correct?

8 A. Correct.

9 Q. Please turn to A-54.

10 A. All right.

11 Q. Is this a similar document but from 2010?

12 A. Yes, it is.

13 Q. Please turn to A-55.

14 MR. RAPHAEL: Give us a second to catch
15 up. I think it's in a different binder,
16 Counselor.

17 BY MR. BOMSTEIN:

18 Q. What is this document?

19 A. I do not know.

20 Q. Have you seen things like this before?

21 A. No.

22 Q. Okay. Please turn to A-56. This is similar to the
23 one that you have seen before, correct? Another AIMS
24 report?

1 A. Correct. In the previous binder.

2 Q. Thank you. Is that the same with A-57?

3 A. Yes, it is.

4 Q. Is that the same with A-58?

5 A. Yes.

6 MR. RAPHAEL: Counsel, if you can just
7 perhaps just slow down just a touch. I am still
8 on 57.

9 Thank you.

10 BY MR. BOMSTEIN:

11 Q. Mr. Eckert, I don't recall. I apologize if I am
12 repeating myself. Is A-58 similar to the ones we have
13 been looking at?

14 A. Yes, it is.

15 Q. Thank you. Please turn to A-59.

16 Do you recognize this document?

17 A. No, I don't.

18 Q. Do you know what this kind of document is?

19 A. I believe that it is just a different version of a
20 document that's generated from our AIMS system.

21 Q. And in this instance, it's also for the Marcus Hook
22 Industrial Complex?

23 A. Yes, it is.

24 Q. With the emissions year being 2013 in this case?

1 A. Correct.

2 Q. Thank you. Please turn to A-60?

3 A. All right.

4 Q. Is this one of the first type of documents similar
5 to A-53 that we looked at?

6 A. It's a different version of the same document, I
7 believe.

8 Q. In this case, it's for the emissions year 2014 at
9 Marcus Hook, correct?

10 A. Correct.

11 Q. Okay. Please turn to A-61. This document is
12 similar to A-59, correct?

13 A. Correct.

14 Q. In this case, it's emissions year 2014 for Marcus
15 Hook, correct?

16 A. Yes.

17 Q. Please turn to A-62. This is another similar AIMS
18 report for 2015 at Marcus Hook, correct?

19 A. Yes, it is.

20 Q. And finally on this series, please turn to A-63.

21 MR. RAPHAEL: Sorry, Counselor. These
22 are quite voluminous. I'm just trying to go
23 through and see what they are.

24 THE COURT: Just keep going,

1 Mr. Bomstein.

2 BY MR. BOMSTEIN:

3 Q. Mr. Eckert, A-63, is this a report also from the
4 AIMS system similar to the one that -- two others that
5 were the second version of that report?

6 A. There are similar to items A-59 and A-61, yes.

7 Q. Okay. Thank you. This is instead for the year
8 2015?

9 A. Correct.

10 Q. All right. Thank you.

11 MR. BOMSTEIN: So besides -- besides
12 A-55, I would move to admit at this time, A-53
13 through A-63. So, that's everything but A-55.

14 THE COURT: Any objection?

15 MR. RAPHAEL: Need to take a look, Your
16 Honor. Thank you.

17 THE COURT: We just went through them.

18 MR. RAPHAEL: Your Honor, I apologize.
19 I'm not that fast with these notebooks.

20 THE COURT: You're making the whole room
21 sit here while you page through every page.
22 These were all produced in advance. All these
23 interruptions are just very unnecessary.

24 MR. RAPHAEL: I am on the last exhibit.

1 I apologize.

2 THE COURT: All right. Go ahead and
3 finish your last examination --

4 MR. RAPHAEL: Thanks very much.

5 THE COURT: -- of the last exhibit.

6 MS. HUNT: The Department does not
7 object to Exhibits 56 through 58, and 60 through
8 63. But Exhibit 59, the witness testified he'd
9 never seen before. He was not familiar with.

10 THE COURT: So, this is not a Department
11 exhibit or document?

12 MS. HUNT: It appears to be and it has
13 the Department note. But this witness had said
14 he had never seen it before.

15 THE COURT: Do you have any reason to
16 believe that this is not what it purports to be?

17 MS. HUNT: No, Your Honor.

18 THE COURT: Hearing no objection, A-53
19 through 63 with the exception of 55 are
20 admitted.

21 (At this time, Exhibit A-53, 54, 56, 57,
22 58, 59, 60, 61, 62 and 63 were admitted into the
23 record.)

24 MR. BOMSTEIN: Thank you, Your Honor.

1 MR. RAPHAEL: Thank you. I had no
2 objections as well, Your Honor.

3 Thank you.

4 BY MR. BOMSTEIN:

5 Q. Mr. Eckert, could we please turn back to A-53
6 specific.

7 A. You said A-53?

8 Q. Correct, sir.

9 A. Okay.

10 Q. As a reminder, this is emissions years 2009 at
11 Marcus Hook, correct?

12 A. Yes, it is.

13 Q. Please turn to page 8 of the document. Do you see
14 a source with the number 111 listed here?

15 A. Yes, I do.

16 Q. Is this -- what is the source in question for 111?

17 A. The cooling towers.

18 Q. Does that refer to cooling towers at the facility
19 as a group?

20 A. I believe so, yes.

21 Q. In this case, you -- in this case being for Project
22 E, you calculated baseline actual emissions from the
23 15-2B cooling tower, correct?

24 A. Correct.

1 Q. Am I correct in that you first looked at the
2 emissions listed for the cooling towers as a whole,
3 correct?

4 A. Yes.

5 Q. And then you determined that the emissions listed
6 for the cooling towers as a whole were close to the
7 limits for the cooling towers in the aggregate,
8 correct?

9 A. Correct.

10 Q. And that group of cooling towers includes cooling
11 towers that aren't involved in Project E, correct?

12 A. Correct.

13 Q. And then you figure that if the emissions from the
14 group of cooling towers was close to the permit limits,
15 the emissions from the 15-2B cooling tower, which is
16 part of that group, was also close to the permit limit,
17 correct?

18 A. Yes.

19 Q. And at that point, you just rounded up to the
20 permit limit to the 15-2B cooling tower, correct?

21 A. No.

22 Q. What did you do?

23 A. I chose 100 percent of its limit because there was
24 no way I could prove what percent it was.

1 Q. So, because you didn't know what exactly the
2 emissions were for the 15-2B cooling tower, you rounded
3 up to 100 percent of the permit limit, correct?

4 A. No.

5 Q. What is incorrect about that statement?

6 A. I did not round up.

7 Q. Well, you went from a number less than 100 percent
8 to 100 percent, correct?

9 A. Yes.

10 Q. How would you characterize that?

11 A. I chose 100 percent.

12 Q. So, you chose to increase the determined number for
13 the baseline actual emissions to 100 percent of the
14 permit limit from something that was less than that,
15 correct?

16 A. I couldn't answer that for sure.

17 Q. What are you unsure about?

18 A. I do not know for sure whether it was 100 percent
19 or whether it was some lower number.

20 Q. Okay. So may have been 100 percent. May have been
21 a lower number. You're not sure?

22 A. That's correct.

23 Q. Okay. But you just determined that the number you
24 used would be 100 percent, correct?

1 A. Correct.

2 Q. And that's how the baseline actual emissions for
3 the 15-2B cooling tower were determined for both the
4 years 2009 and 2010 correct?

5 A. Correct.

6 Q. And that if the number wasn't actually 100 percent
7 of the permit limit, then that reduced the calculated
8 emissions increase of VOC, volatile organic compounds
9 at the 15-2B cooling tower by what maybe 0.2 tons,
10 correct?

11 A. Maybe.

12 Q. Please turn to A-52. And do you see those three
13 pages here and -- actually, I am sorry. Just one
14 second, please. Okay. Actually, not the middle page.

15 First of all, please identify what this document
16 is?

17 A. It appears to be an email thread between myself.
18 Actually, there is two email threads in here, three, I
19 believe. Looks like there is several email threads. I
20 am not sure which one you're looking at.

21 Q. Can you please identify each part of this document?

22 A. The first email is titled Plan Approval
23 Modification in the subject line. The second email
24 thread has the subject line of Ethylene Complex Flare

1 Baseline Emissions. And the third email read as a
2 subject line of Plan Approval 23-0119E Questions.

3 Q. The second email starting at SUN 010834.

4 A. Yes.

5 Q. Am I correct in that actually the SPMT ethylene
6 complex flare based emission is the title of an
7 attachment to that email?

8 A. Yes.

9 Q. If you will please turn to the last page of the
10 document. This is that attachment, correct?

11 A. I cannot say for sure.

12 Q. Could you look at the title at the bottom of the
13 document, please?

14 A. Yes.

15 Q. Okay. Thank you. The title of the second email is
16 Re: Plan Approval 23-0119E Questions, correct?

17 A. Correct.

18 Q. And that email is actually attached to the first
19 email, correct?

20 A. I believe you're correct.

21 Q. Okay. Am I correct in that this document is as a
22 result of the way modern technology works, a nested
23 email in a sense? Emails within attached to emails?

24 A. I believe so.

1 Q. Okay. Thank you. And in the email that was
2 attached to the front email, that is a conversation
3 between you and Mr. McGroarty, correct?

4 A. Correct.

5 MR. RAPHAEL: Counsel, I am sorry.

6 Where are you?

7 MR. BOMSTEIN: I am on page SUN 010834.

8 And then that email flows for two more pages.

9 MR. RAPHAEL: Thank you, Counsel.

10 BY MR. BOMSTEIN:

11 Q. Mr. Eckert, you raised with Mr. McGroarty an issue
12 about the fact that the 15-2B cooling tower was already
13 being used for other purposes before Project E was to
14 come online, correct?

15 A. Correct.

16 Q. You pointed out that if you add on Project E, the
17 cooling load associated with Project E to the cooling
18 tower, the total cooling requirements would exceed the
19 capacity of the tower, correct?

20 A. Correct.

21 Q. That raised the question for you of what would
22 happen to equipment already being served by the 15-2B
23 cooling tower, correct?

24 A. Don't see that particular language in here.

1 Q. Is that the case; do you recall?

2 A. I believe you're correct.

3 Q. If some other cooling tower needs to handle that
4 equipment, that's relevant to your review of Project E,
5 correct?

6 A. No.

7 Q. To be clear, if Project E displaces from the
8 cooling tower, a cooling load that will then need to be
9 taken up by some other piece of -- some other cooling
10 tower, is that not connected to Project E?

11 A. No.

12 Q. So, is it your practice then to not look at other
13 equipment which may be effected by the project when you
14 review a plan approval application?

15 A. The cooling tower lines in question that may feed
16 the different sources are not air pollution devices.

17 Q. But the cooling towers as a system or even as a
18 standalone piece of equipment, ignoring the lines, are
19 considered as a source, correct?

20 A. The lines are not considered as a source.

21 Q. Is the cooling tower ever considered a source?

22 THE COURT: Yes. The cooling tower is
23 considered a source.

24

1 BY MR. BOMSTEIN:

2 Q. So, if a cooling tower is a source and another
3 cooling tower needs to take up the slack due to a new
4 project at the site, is it your testimony that you
5 don't consider the emissions from that other cooling
6 tower?

7 A. Since they do not pertain to the project, correct.

8 Q. Okay.

9 A. What happened in this case was -- I believe, it's
10 the fourth or the fifth line down, the 19,648 gallons
11 per minute of previous usage for that cooling tower was
12 caused by several reasons. One, they run the cooling
13 towers in the winter to keep them from freezing. And
14 two, it's easier on the equipment to continue operating
15 those cooling towers even when nothing is in service.

16 Q. So, your testimony is that the cooling load here
17 that the usage of 15-2B cooling tower, was due to
18 running the equipment. And that usage would go away
19 when it was in service for Project E?

20 A. Since it wasn't performing any cooling function, I
21 don't know if it -- I wouldn't consider that going
22 away.

23 Q. Okay. But I guess what I'm asking is, is it your
24 understanding that that cooling -- that usage of the

1 cooling tower is not going to continue in the future
2 because there will be no idle time left for the cooling
3 tower?

4 A. Based on the potential usage for the projects for
5 this cooling tower, you're correct.

6 Q. Okay. When did you find that out?

7 A. After this email.

8 Q. And was it also after the deposition that we had in
9 this case?

10 A. I believe so.

11 Q. Who did you find that out from?

12 A. After speaking with the Jed Werner -- I'm sorry,
13 not Jed Werner. Evan Smith at the Marcus Hook
14 facility.

15 Q. It was he who alerted you of this news?

16 A. Correct.

17 Q. Okay. Do you recall explaining to me at your
18 deposition about something that you called a wrench
19 test?

20 A. Vaguely.

21 Q. Okay. Well, do you have an understanding of what
22 the wrench test is?

23 A. That's part of an example that the EPA uses to
24 determine what is a modification.

1 Q. Do you also use that test?

2 A. Yes.

3 Q. And am I correct in that then the Department
4 determines whether there has been a physical change in
5 equipment such that there is modification by seeing
6 whether the applicant needs to, so to speak, pick up a
7 wrench to do work on the equipment?

8 A. To do -- work on the source.

9 Q. Sure, the source.

10 A. Yes.

11 Q. Okay. Thank you.

12 And still on the topic of the cooling tower then,
13 at the time the Department issued Plan Approval E, you
14 believe that Project E involved adding cooling lines to
15 the 15-2B cooling tower, correct?

16 A. Correct.

17 Q. And based on that information, you concluded that
18 the 15-2B cooling tower would therefore be a modified
19 emissions unit, correct?

20 A. Correct. Because of the addition of the cooling
21 lines.

22 Q. Similarly, at the time the Department issued Plan
23 Approval E, you believe that Project E involved added
24 steam lines to the auxiliary boilers, correct?

1 A. Correct.

2 Q. And based on that information, you concluded that
3 the auxiliary boilers would be modified emissions unit,
4 correct?

5 A. Correct.

6 Q. That's because the steam lines are part of the
7 boiler system, correct?

8 A. Yes.

9 Q. If you're changing the boiler system, that's a
10 modification?

11 A. Not necessarily.

12 Q. Why was it here, in your opinion?

13 A. It was at the time. I have since come to realize
14 that that is not correct because the source is not the
15 steam line. The source is a boiler itself. Just like
16 the source is the cooling tower and not the cooling
17 tower lines. Neither of those lines emit air
18 pollution. They just transfer a utility back and
19 forth.

20 Q. Up until this appeal, it was your belief that
21 changing those lines constituted a modification,
22 correct?

23 A. Correct.

24 Q. And after the appeal was filed in November 2016,

1 you prepared a revised review memo, correct?

2 A. Yes.

3 Q. Please turn to A-24.

4 THE COURT: I think we better take a
5 short break here.

6 MR. BOMSTEIN: Absolutely, Your Honor.

7 MR. RAPHAEL: Thank you, Your Honor.

8 (At this time, a brief break was taken.)

9 THE COURT: Whenever you're ready,
10 Mr. Bomstein.

11 MR. BOMSTEIN: Thank you, Your Honor.

12 BY MR. BOMSTEIN:

13 Q. Mr. Eckert, do you still have A-24 in front of you
14 or maybe you hadn't turned to it quite yet.

15 Please turn to A-24.

16 A. Okay.

17 Q. This is the revised review memo for Project E as of
18 November 2016, correct?

19 A. Correct.

20 Q. Now please turn to, in the document, after the
21 pages are no longer numbered. And the first page after
22 that, which is the first page after page 11, please.

23 A. Okay.

24 Q. Do you see where you wrote up top that: "The

1 original review memo incorrectly stated that new piping
2 was added to the boiler and cooling tower systems - the
3 sources and associated piping for the systems have not
4 been touched"?

5 A. Yes.

6 Q. Where did you get that new information?

7 A. After speaking with SPMT and/or their consultant
8 and reviewing the application again, I realized that it
9 did not say that any new piping for the boiler or the
10 cooling towers systems were added.

11 Q. So from that, did you conclude that the sources and
12 associated piping for those systems have not been
13 touched?

14 A. Correct.

15 Q. Is that correct?

16 A. I recently learned that cooling lines were added to
17 the cooling tower.

18 Q. So, am I correct in that originally you thought
19 cooling lines were added to the cooling tower. Then
20 you thought cooling lines were not added to the cooling
21 tower. And now again, you think that cooling lines
22 have been added?

23 A. Yes.

24 Q. Is the Department planning on putting together

1 another revised review memo?

2 MR. RAPHAEL: Object as argumentative,

3 Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: No, we are not.

6 BY MR. BOMSTEIN:

7 Q. Mr. Eckert, we talked about the prevention of
8 significant deterioration regulations, correct?

9 A. Yes, we did.

10 Q. And this discussion, maybe just for short, we can
11 call it PSD.

12 A. Okay.

13 Q. When was it that you last reviewed a project that,
14 in your determination, triggered the emissions
15 significance thresholds such that the PSD regulations
16 had to be applied?

17 A. I never have.

18 Q. As part of its application for Plan Approval E,
19 Sunoco did a PSD analysis, correct?

20 A. Correct.

21 Q. And am I correct in that both Sunoco and the
22 Department concluded that PSD significance thresholds
23 were not triggered?

24 A. Correct.

1 Q. And as a result, you didn't require what a PSD
2 permit would require, correct?

3 A. Correct.

4 Q. So for example, you didn't require air quality
5 modeling to be done for Plan Approval E, correct?

6 A. Yes.

7 Q. You didn't require a source impact analysis to be
8 done, correct?

9 A. Correct.

10 Q. There has been no analysis of the air quality
11 impacts projected for the area as a result of growth
12 associated with the facility, correct?

13 A. Not that I'm aware of.

14 Q. And that's not something that you required for
15 Project E, correct?

16 A. Correct.

17 Q. And besides these examples, there is nothing else
18 in the PSD regulations above and beyond the things in
19 every plan approval application that you asked of
20 Sunoco, is there?

21 A. Correct.

22 Q. Can you take a look earlier in A-24, excuse me,
23 page -- at page 9, please.

24 Do you see a section where you discuss prevention

1 of significant deterioration?

2 A. Yes.

3 Q. So, could you read the last short paragraph on page
4 9, please?

5 A. "SPMT is a major PSD facility. According to the
6 regulations governing PSD, if a facility is major for
7 any PSD pollutants, then applicability analysis must be
8 performed for all PSD pollutants including greenhouse
9 gases and ozone."

10 Q. Thank you. What does it mean that SPMT is a major
11 PSD facility?

12 A. They have potentials to emit greater than certain
13 levels.

14 Q. And what pollutants does Project E emit that are
15 PSD pollutants?

16 A. They emit No₂, SO₂, CO, PM, PM 10, I believe
17 sulphuric acid mist and CO₂E.

18 Q. And CO₂E is carbo dioxide equivalent, correct?

19 A. Yes.

20 Q. Thank you. Do you see the table that's labeled
21 Table H on this same page 9?

22 A. Yes.

23 Q. Does that have listings for emissions of pollutants
24 from -- PSD pollutants from other projects at Marcus

1 Hook?

2 A. Some of them, yes.

3 Q. So for example, some of them do not have PSD
4 pollutants, but some do?

5 A. Correct.

6 Q. And here in the circumvention analysis of Project
7 E, when you have Project E which emits PSD pollutants,
8 you have to consider whether if you're aggregating E
9 with other projects collectively, the PSD pollutants
10 exceeded emissions threshold, correct?

11 MR. RAPHAEL: Objection, Your Honor.

12 Compound question.

13 THE COURT: Overruled.

14 THE WITNESS: I believe your -- the
15 answer to your question is no.

16 BY MR. BOMSTEIN:

17 Q. Okay. Why?

18 A. Because I don't really understand your question.

19 Q. Okay. So, is there any particular part that you
20 don't understand that I could help clarify?

21 A. Could you just repeat the question.

22 Q. I will try to break it down, and maybe that will
23 make it more digestible?

24 A. Okay.

1 Q. So, you did a circumvention analysis for Project E
2 as you testified earlier, correct?

3 A. Correct.

4 Q. And part of that analysis is looking at whether
5 it's connected with earlier projects at Marcus Hook,
6 correct?

7 A. Correct.

8 Q. And Project E emits PSD pollutants, correct?

9 A. Correct.

10 Q. Some of those earlier projects do, as well,
11 correct?

12 A. Correct.

13 Q. So in aggregating the projects, circumvention
14 aggregation, you add together the emissions of the PSD
15 pollutants from the earlier projects or whatever
16 earlier projects you determined are connected together
17 with the emissions of those pollutants from Project E,
18 correct?

19 A. Correct.

20 Q. Okay. So in this instance here, Project B has, for
21 example, carbon monoxide emission of 99.4, correct?

22 A. Correct.

23 Q. Project E has carbon monoxide emissions of 1.2,
24 correct?

1 A. Correct.

2 Q. Together those exceed the significance threshold
3 for carbon monoxide, correct?

4 A. Correct.

5 Q. And that's in your -- those numbers are based on,
6 at least, the latest version of the review memo,
7 correct?

8 A. Yes. The November 2016 version.

9 Q. Okay. Did you undertake that analysis for Project
10 E?

11 A. Yes.

12 Q. What did you determine when you did that analysis?

13 A. The step one analysis for PSD did not trigger the
14 significant emission threshold --

15 Q. And did --

16 A. -- for any PSD pollutants.

17 Q. Sorry. Did you do that analysis aggregating it
18 with any of the earlier projects?

19 A. No.

20 Q. Okay. But aggregating these two requires a PSD
21 permit, correct?

22 A. Not necessarily.

23 Q. Why would it not?

24 A. PSD is a two-step process. You have only done step

1 one in your -- what you have been asking me.

2 Q. What is step two?

3 A. Step two is to combine the project itself with
4 increases and decreases over the past ten years for
5 that particular PSD pollutant that triggered it in step
6 one.

7 Q. Is it all decreases?

8 A. As I said, all increases and decreases over the
9 past ten years.

10 Q. Isn't that the case that only creditable decreases
11 are considered?

12 A. Yes.

13 Q. Do you know whether any of the decreases listed in
14 this table are creditable?

15 A. Yes, I do.

16 Q. What's your knowledge of that?

17 A. We received information from the applicant that the
18 shutdown of these sources were approved as creditable
19 decreases from the State of Delaware.

20 Q. Why are decreases in the State of Delaware
21 considered in the State of Pennsylvania?

22 A. Because for PSD purposes, the Delaware facility is
23 technically and economically linked to the SPMT
24 facility in Pennsylvania. It is one contiguous

1 property.

2 Q. So, is it the case that the Department considers
3 everything that's going on in Delaware equal as it goes
4 on in Pennsylvania?

5 A. As far as PSD and NSR analysis, yes.

6 Q. Where does it consider them different?

7 A. Any sources that are located outside of either of
8 those two states is not regulated by the opposite
9 state.

10 Q. Is there any part of Marcus Hook that is located
11 outside of the two states of Pennsylvania and Delaware?

12 A. I don't believe so.

13 Q. Okay. So, is there ever an instance in which the
14 Department does not consider the Delaware part of the
15 facility to be part of the facility for its analysis of
16 plan approval applications?

17 A. As it pertains to PSD and NSR, no.

18 Q. As it pertains to anything else?

19 A. As I said, no.

20 Q. Okay. Thank you.

21 So, could you please turn to Exhibit A-44. Within
22 A-44, please turn to page 87. You recall earlier today
23 we were talking about what's normal operation, correct?

24 A. Correct.

1 Q. And do you see my question on line 9 where I ask
2 you: "Did you consider what the normal operation would
3 be for the flare?"

4 A. Yes.

5 Q. What's your answer?

6 A. "No, I did not."

7 Q. And then you see where I ask: "And why not?"

8 A. Yes.

9 Q. What's your answer?

10 A. "Because it's located in a different state."

11 Q. And then I ask is the flare aggregated with -- what
12 state is it located in. What's your answer?

13 A. It is located in the State of Delaware.

14 Q. And then I ask: "Is the portion of the Marcus Hook
15 facility in Delaware aggregated with the portion in
16 Pennsylvania?"

17 And what's your answer?

18 A. "Yes, it is."

19 Q. And then I asked: "So, why is it relevant whether
20 it's in Delaware or Pennsylvania?"

21 And what did you answer?

22 A. "We have no jurisdiction for permitting outside the
23 Commonwealth of Pennsylvania. We only need to know if
24 it's aggregated for NSR/PSD purposes. We don't deal

1 with the operation or the flow or the emissions or
2 anything else with it."

3 Q. So, at least in the context of determining baseline
4 actual years for calculating emissions increases, you
5 didn't consider operations in Delaware, correct?

6 A. Correct.

7 Q. So, why did you omit that?

8 A. Since the flare was an existing unmodified source,
9 baseline emissions did not come into play in the
10 calculation.

11 Q. But your answer -- that wasn't your answer here,
12 was it?

13 A. My answer in what?

14 Q. In the deposition.

15 A. The flare -- the flare as part of the source that's
16 in Delaware is counted for emissions increases and
17 decreases for NSR and PSD purposes in Pennsylvania.

18 Q. But your answer to my question of why you didn't
19 consider normal operation for the flare was that it
20 was -- because it's located in Delaware, correct?

21 A. Yes. That was my answer.

22 Q. Do you stand by that answer?

23 A. Yes.

24 Q. And so, why is that?

1 A. Normal operation for establishing the baseline
2 years is based on all the affected sources, not just
3 one. NSR requires you to use the same baseline period
4 for all sources and all pollutants.

5 Q. And when you were looking to what the baseline
6 years should be for Project E, you didn't consider the
7 flare, though, did you?

8 A. I did not consider the flare.

9 Q. And is it relevant that it was in Delaware?

10 A. No.

11 Q. So, why did you answer that way in the deposition?

12 A. I don't recall.

13 Q. We were talking a minute ago about the second step
14 in the PSD analysis. And you said there's a netting.

15 Did you do a netting analysis for carbon monoxide
16 in this case?

17 A. No, I did not.

18 Q. I thought you said a minute ago that you did an
19 analysis of PSD when aggregating in this case?

20 A. No. I said we did a step one analysis.

21 Q. Okay. So, you didn't do a step two analysis?

22 A. Correct.

23 Q. Step two is the netting step, correct?

24 A. Correct.

1 Q. You got to the first step of determining that it
2 was -- it reached the significance level for carbon
3 monoxide under PSD, but then you didn't then go on to
4 see whether step two would take it below that, did you?

5 A. Could you repeat that question?

6 MR. BOMSTEIN: Please repeat it.

7 THE STENOGRAPHER: "QUESTION: You got
8 to the first step of determining that it was --
9 it reached the significance level for carbon
10 monoxide under PSD, but then you didn't then go
11 on to see whether step two would take it below
12 that, did you?"

13 THE WITNESS: That would be incorrect.

14 BY MR. BOMSTEIN:

15 Q. What's incorrect about that?

16 A. Step one looks at the project itself. It does not
17 look at past projects, does not aggregate projects
18 together unless the Department has determined that
19 those projects should be aggregated.

20 Q. Are you talking about New Source Review or PSD?

21 A. We are talking about PSD.

22 Q. I thought what I asked was about whether you had
23 looked at what the emissions numbers would be if you
24 aggregated the projects for PSD pollutants.

1 A. We did not aggregate them.

2 Q. Yes. But I asked, did you do that analysis? So my
3 question is, did you do that analysis?

4 A. No.

5 Q. Okay.

6 MR. BOMSTEIN: Your Honor, if it's okay,
7 I would like just a two-minutes here just to --
8 we have very little left for this witness.

9 THE COURT: Sure.

10 MR. BOMSTEIN: Thank you.

11 Actually, Your Honor, if it's okay, we
12 would propose a five-minute break.

13 THE COURT: Okay.

14 MR. BOMSTEIN: Thank you.

15 (At this time, a brief break was taken.)

16 BY MR. BOMSTEIN:

17 Q. Mr. Eckert, a minute ago you said that the State of
18 Delaware said that the emissions decreases listed in
19 Table H are creditable, correct?

20 A. Could you direct me where you're at? I closed up
21 my binders.

22 Q. Sorry. I am at A-24 on page 9.

23 A. Now, could you repeat the question on where we are
24 at?

1 Q. Sure. So, am I correct in that you said that the
2 State of Delaware told the Department that the
3 emissions decreases on this chart in Table H are
4 creditable?

5 A. I don't think they came directly from Delaware to
6 Pennsylvania. I believe they came from Delaware
7 through a letter to Sunoco to the Department.

8 Q. Do you know when that letter was written?

9 A. No, I do not.

10 Q. Have you seen that letter before?

11 A. Yes.

12 Q. Do you have that letter somewhere?

13 A. That, I'm not sure of.

14 Q. And which emissions decreases are you referring to
15 on Table H?

16 A. The last set of rows under SPMT Delaware lists five
17 different shutdown sources.

18 Q. So, you're not referring to any other emissions
19 decreases on this table except for the last five rows?

20 A. As it pertain to the creditable emissions from the
21 State of Delaware.

22 Q. Do you know whether any other emissions decreases
23 on this chart are creditable?

24 A. Yes.

1 Q. What do you know about that?

2 A. Well, plan approval, the first set of columns, the
3 first set of rows, the last item is 23-0119AD. They do
4 have a creditable emission reduction of 1.27 tons of
5 CO.

6 Q. Why do you believe that's creditable?

7 A. They were -- those sources were required to
8 install, I believe, oxidation catalyst for the
9 reduction CO.

10 Q. And what was their requirement for that?

11 A. I believe it was for non-emergency engines subject
12 to the NESHAP Part 63, Subpart 4V.

13 Q. What is your basis for believing that that is
14 creditable.

15 A. Based on stack test result.

16 Q. Does that make it creditable?

17 A. They install the control devices they were required
18 by the regulation. And the stack test results proved
19 what the new emissions are. Yes.

20 Q. So, that is what makes it creditable?

21 A. Yes.

22 Q. What's your understanding of the law and what
23 emissions decreases are creditable?

24 A. I would have to look that up.

1 Q. Okay. That's fair.

2 Do you know when the shutdown related decreases in
3 Delaware were from?

4 A. They were from the shutdown of the refinery in
5 2011.

6 Q. Do you know whether they were all shut down in
7 2011?

8 A. According to information I received from personnel
9 at the facility, the Delaware sources -- these Delaware
10 sources listed in this table were all shut down when
11 the rest of refinery was shut down at the end of 2011.

12 Q. Are you familiar with the ethylene complex part of
13 the refinery?

14 A. No.

15 Q. Do you know what part of the refinery is in
16 Delaware?

17 A. No, I do not.

18 Q. Do you know at least that the ethylene complex
19 flare is in Delaware?

20 A. Yes.

21 Q. Do you have an understanding that that's part of
22 the ethylene complex?

23 A. Yes.

24 Q. Do you have an understanding of whether the

1 ethylene complex was shut down at the same time as the
2 rest of the refinery?

3 A. I personally do not know.

4 Q. Do you see that there's a cooling tower in the last
5 five rows listed as the ethylene cooling tower?

6 A. Yes.

7 Q. Do you have an understanding as to whether that
8 unit was part of the ethylene complex?

9 A. I believe it is because that data was supplied by
10 the facility.

11 Q. That it was part of the ethylene complex?

12 A. Yes.

13 Q. But you don't know whether the ethylene complex was
14 shut down at the same time as the rest of the refinery,
15 do you?

16 A. I base that information on what I received from the
17 facility. I do not have firsthand knowledge of what
18 any of the sources were actually shut down.

19 Q. If I were to represent to you that the ethylene
20 complex was shut down earlier than the rest of the
21 refinery, would that change your analysis of the
22 emissions decreases?

23 A. It could.

24 Q. How so?

1 A. Well, depending on what part of the ethylene
2 complex shut down, that may or may not be any sources
3 listed in the table.

4 Q. Does when these things happen matter in terms of
5 the netting analysis under PSD?

6 A. I'm sorry. Could you repeat that?

7 Q. Sure. Does when the decrease occurs matter for the
8 netting analysis under PSD?

9 A. Yes, it does.

10 Q. How so?

11 A. PSD requires you to do a ten-year lookback analysis
12 in their step two manual.

13 MR. BOMSTEIN: That is all the questions
14 I have for this witness. Thank you, Mr. Eckert.

15 THE COURT: No further exhibits?

16 MR. BOMSTEIN: Not for this witness.

17 THE COURT: Questions, Mr. Raphael?

18 MR. RAPHAEL: We don't, Your Honor.

19 Thank you.

20 THE COURT: Questions?

21 MS. HUNT: No questions, Your Honor.

22 THE COURT: Thank you, Mr. Eckert.

23 You want to at least get started on the
24 next witness?

1 MR. BOMSTEIN: Yes. Actually, I believe
2 we should be able -- we don't have much for
3 either. I think it's very likely we will get
4 through both before lunch.

5 THE COURT: Oh, okay.

6 MR. BOMSTEIN: So, Clean Air Council
7 requests that Ms. Tulloch-Reid come to the
8 stand, please.

9 - - -

10 (JANINE TULLOCH-REID, having been first
11 duly sworn, was examined and testified as
12 follows:)

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. BOMSTEIN:

17 Q. Thank you, Ms. Tulloch-Reid, for coming to testify
18 today.

19 A. You're welcome.

20 Q. Please state your full name and business address.

21 A. Janine Tulloch-Reid, 2 East Main Street, Norristown
22 PA, 19401.

23 Q. Thank you. Without going into any confidential
24 discussions that you may have had with your lawyers,

1 please tell me what you did to prepare for today's
2 hearing?

3 A. I reviewed a few of the plan approval and plan
4 approval applications and spoke with my lawyers.

5 Q. Thank you. Did you bring any documents with you up
6 to the stand?

7 A. No, I did not.

8 Q. How long have you worked at DEP?

9 A. Twenty years. This December going on 20 years.

10 Q. What's your title?

11 A. Environmental engineer manager.

12 Q. What are your responsibilities in that role?

13 A. I supervise eight other engineers, eight engineers
14 total. And I assign work for them according to
15 applications that we receive, which are anything from
16 the plan approval application, a general permit
17 application, renewals or new Title V or state only
18 applications to them, as well.

19 And as they assign them, they conduct their
20 technical review. And I do review those. And I
21 disapprove or approve for issuance.

22 Q. Is Mr. Eckert one of the eight individuals that you
23 supervise?

24 A. Yes, he is.

1 Q. And do you review his work from time to time on
2 Marcus Hook related permitting?

3 A. Yes, I do.

4 Q. And is there somebody who you report to?

5 A. Yes, I do.

6 Q. Who is that?

7 A. James Rebarchak.

8 Q. Does he review your work from time to time?

9 A. Yes, he does.

10 Q. Have you had the chance to listen to the testimony
11 of Mr. Eckert?

12 A. Yes, I did.

13 Q. What was your involvement in the Department's
14 review of the application for Plan Approval 23-0119E?

15 A. And what do you mean by involvement?

16 Q. What work did you do on that?

17 A. When the application is in, I assigned it to my
18 engineer. After he has completed his administrative
19 review or technical review, it is now in the draft. It
20 comes to my desk for me to look at to review
21 calculations and all the supporting documentations that
22 he has to -- if he -- as he recommended for issuance.

23 Q. And is that what happened here with Project E?

24 A. Yes.

1 Q. So the -- do you recall earlier there was a
2 discussion of a draft review memo for Project E?

3 A. No, I don't remember that.

4 Q. Okay. Going to ask you to please take a look at
5 A-22. When you get there, please let me know if you
6 recognize the document.

7 A. Yes, I am here. And I do recognize the document.

8 Q. What is this document?

9 A. This is a review memo for Application Number
10 23-0119E.

11 Q. And is this a draft version?

12 A. I don't know.

13 Q. What's the date on this?

14 A. December 10, 2015.

15 Q. Can you please turn to the second to last page. Do
16 you see blank spaces next to numbers for Comment and
17 Response?

18 A. Yes.

19 Q. Does that indicate that this is a draft review
20 memo?

21 A. It could be.

22 Q. Is there anything else it could be?

23 A. Could be just in transition, you know, stopped in
24 and made a revision after that. I don't know.

1 Q. Is this a final review memo?

2 A. No, it's not.

3 Q. Okay. Is this a document that you looked at?

4 A. I hope I did.

5 Q. Do you have a recollection of doing so?

6 A. I do review the technical review memos.

7 Q. It's fair to say that if you reviewed this through

8 the normal process that you review things, that you

9 reviewed this document, correct?

10 A. Yes.

11 Q. Okay. Do you recall whether you suggested any

12 changes to this document?

13 A. That, I do not recall.

14 Q. Okay. Please turn to the next half which is A-23.

15 Please tell the Board what this document is?

16 A. This is a review memo, plan approval review memo

17 for Application Number 23-0119E.

18 Q. Thank you. Is this the version that existed when

19 the plan approval was issued?

20 A. I don't know.

21 Q. Is there any way for you to tell based on this

22 document?

23 A. I would have to see the plan approval when -- the

24 issue plan approval.

1 Q. Okay. Please turn to the Department's Exhibit
2 Binder C-11. Thank you.

3 Does this refresh your recollection as to when the
4 Plan Approval E was issued?

5 A. Yes.

6 Q. Okay. So going back to A-23, is that review memo
7 there the one that was produced in conjunction with the
8 issuance of the plan approval?

9 A. Yes, it is.

10 Q. Okay. Thank you.

11 Do you recall looking at this document before?

12 A. Yes, I do.

13 Q. Do you recall if you suggested any changes to
14 Mr. Eckert?

15 A. That, I do not recall.

16 Q. Okay. Do you recall having discussions with Mr.
17 Eckert about either of these review memos?

18 A. I probably did.

19 Q. Do you recall any of the specifics of those
20 discussions?

21 A. No, I do not.

22 Q. Okay. Please turn to Exhibit A-24. Do you
23 recognize this document?

24 A. Yes.

1 Q. What is this?

2 A. This is a plan approval review memo for application
3 Number 23-0119E.

4 Q. Is this a revised version of the document at Tab
5 A-23?

6 A. Yes, it is. Because it says "revised" on it.

7 Q. Okay. Do you recall how this document was
8 produced?

9 A. No, I do not.

10 Q. Do you recall looking at this before?

11 A. Yes.

12 Q. Did you discuss this with Mr. Eckert?

13 A. Yes, I did.

14 Q. Do you remember the contents of your discussion
15 with him?

16 A. Not in details.

17 Q. What do you remember?

18 A. Looking at the review memo discussion -- discussing
19 the calculations and clarifying things in the review
20 memo.

21 Q. And what did you need to clarify in the review
22 memo?

23 A. Just what sources were considered modified and
24 existing modified sources, and difference between that

1 and existing and unmodified sources.

2 Q. Do you remember Mr. Eckert testifying that at some
3 point he came to the understanding that what he had
4 considered modified sources were not modified?

5 A. Yes.

6 Q. Did you have that discussion with him?

7 A. I probably did.

8 Q. Was it you who told him that, in fact, those
9 sources are not modified?

10 A. No.

11 Q. Do you know who did?

12 A. After we had discussion, we probably came to the
13 same conclusion. But no.

14 Q. Do you know how you reached that conclusion?

15 A. Probably reviewing the application again, looking
16 at the regulation again, and just making sure that our
17 judgment call is correct.

18 Q. So, Mr. Eckert's understanding of what constitutes
19 a modification, he had that understanding before
20 Project E, as I believe he testified.

21 Do you recall having discussions with him about
22 that understanding of what's modification before
23 Project E?

24 A. Could you repeat that question, please?

1 Q. I will try to simplify it.

2 Do you recall discussing with Mr. Eckert before the
3 review of Project E what constitutes a modification of
4 an emissions unit or source?

5 A. Yes.

6 Q. Do you know what changed Mr. Eckert's understanding
7 of that when this new review memo came around?

8 A. So for the modification, we went back and looked at
9 the definitions for modification according to the
10 regulations. And we made sure to make all the
11 checkpoints.

12 Is there a physical change? Is there a change in
13 the operation on was there increase in the operation?
14 Was modification due to maintenance or routine repair
15 or was there any omission?

16 We also went further and looked at what the federal
17 definition is. And that also had another additional
18 checkpoint to look at increases in -- or rates that do
19 not exceed their limits in their existing permit. We
20 looked at all of those. Then because we went back and
21 evaluated all those points, and then we made our
22 determination that some of the sources were existing on
23 modified sources.

24 Q. Had you done that analysis before Project E?

1 A. I don't think we looked as detailed into it in the
2 first go around. You know, not pulling the federal
3 regulation into the definition. We probably looked at
4 the state.

5 Q. Okay. So, is it fair to state that this Department
6 now has a new interpretation of the regulations?

7 A. No. It's not a new interpretation. Just a more --
8 using both.

9 Q. Both what?

10 A. Both the federal definition and the state
11 definition.

12 Q. Okay. And before this, the Department just used
13 the state definition?

14 A. Yes.

15 Q. Okay. Why did you decide to now look to the
16 federal definition, as well?

17 A. Because that's where our regulation stems from, so
18 we went back to the root.

19 Q. Okay. Do you remember anything else that you
20 discussed with Mr. Eckert around the time that this
21 revised review memo is put together?

22 A. Please be specific.

23 Q. Sure. So, please turn to page -- the last -- page
24 11. And then there is unnumbered pages after that.

1 Please turn to the first unnumbered page after that.

2 A. In this exhibit?

3 Q. Yes, in A-24. And also, just as a little
4 clarification, you're referring to the federal
5 definition, the state definition and their particular
6 parts of the regulations that you're referring to?

7 A. For what?

8 Q. You talked about what a modification is and you
9 looked at both the state and the federal. Are there
10 specific parts of the state and federal regulations
11 that you look to?

12 A. The state regulation is the 25 PA Code. That's our
13 state regulation. The federal regulation that I looked
14 at was the 40 CFR Part 52 that addresses the same
15 regulation that attains to the prevention of
16 significant deterioration.

17 Q. Okay. Do you normally look to the Federal PSD
18 regulations when interpreting the state law?

19 A. When we are doing PSD applicability determination,
20 that is our guide. That's adopted by the state
21 regulation.

22 Q. And is determining whether equipment is modified
23 part of a PSD analysis?

24 A. Could you repeat that again?

1 Q. Sure. Do you need to do a PSD analysis to
2 determine whether equipment is modified?

3 A. No.

4 Q. Okay. But you did here look to the PSD
5 regulations, correct?

6 A. To do what?

7 Q. To determine what is a modification.

8 A. I looked at the regulation to look at a definition
9 of what a modification is. Not to -- not PSD
10 regulation to do -- to determine if the source is
11 modified. I didn't do that.

12 Q. And what PSD regulations, if you recall, did you
13 look at that led you to this interpretation?

14 A. What PSD regulation did I look at to --

15 Q. Yes, ma'am.

16 A. To do what?

17 Q. When you were re-looking at the federal regulations
18 around the time of producing this revised review memo
19 for Plan Approval E.

20 A. The 40 CFR Part 52.

21 Q. Do you recall anything more specific? That's a
22 broad section there.

23 A. There is a section that is for definition.

24 Q. The definition section?

1 A. Uh-huh, yes.

2 Q. Okay. Thank you.

3 Going back to the page of A-24 that we are looking
4 at. You talked about what is a modification. And I
5 see that under page -- under the listing page 1 on this
6 page, there is a discussion of modifications.

7 Do you recall having a discussion also about what
8 physically was or was not done to the emissions units
9 in Project E?

10 A. I got lost. What page number did you want me to
11 look at? First you said 11, and then you said 1.

12 Q. So, sorry about that. So, do you see page 11 in
13 A-24?

14 A. Yes.

15 Q. And do you see if there is a page following that?

16 A. Yes.

17 Q. That page has no numbers, correct?

18 A. Yes.

19 Q. But it does have a listing that says page 1, 2, et
20 cetera, correct?

21 A. Okay.

22 Q. Sorry. There is a little confusion just the way
23 this is written. And do you see under the listing of
24 page 1, that --

1 A. Yes.

2 Q. -- there is reference to whether the piping for
3 certain systems has been touched?

4 A. Yes.

5 Q. Do you recall having any discussion about that?

6 A. I probably did.

7 Q. Do you remember any specifics of it?

8 A. No, I do not.

9 Q. Okay. Down in the listing on the same page but
10 that says page 3, do you see a clarification related to
11 the flare?

12 A. Yes, I do.

13 Q. Do you recall having any discussions about that?

14 A. I probably did.

15 Q. Do you remember any of the specifics of this?

16 A. No, I do not.

17 Q. I would ask that you read through, not necessarily
18 out loud, but just read through the remainder of this
19 page and tell me where the first part is that you
20 recall having discussions about?

21 Do you recall the specifics of any discussions
22 about?

23 A. I really couldn't go into detail on any of those.

24 Q. Okay. Could you please flip the page over, and I

1 would ask you to do the same exercise for the back of
2 that page?

3 A. (Witness reviews as instructed.)

4 The same on this page.

5 Q. Okay. Thank you.

6 Do you recall any discussions with Mr. Eckert about
7 circumvention in connection with any of the projects at
8 Marcus Hook?

9 A. With all my engineers, we talk about circumvention
10 all the time. That's required to when they are looking
11 at the project.

12 Q. Do you remember the specifics of any discussions
13 that you had with Mr. Eckert surrounding the Marcus
14 Hook facility and circumvention?

15 A. It's always a reminder, you know, looking at the
16 timing, the applications. To make sure that we -- that
17 each project, make sure we look at the independency or
18 interaction of any project with the other. Does it
19 affect it economically. Meaning that if this project
20 did not exist, would it affect their profits or change
21 anything.

22 Also make sure if -- was there any change in their
23 productivity due to this project or changes along the
24 way. So, that will make it technically connected. But

1 as a reminder, something that they do on a regular
2 basis, they do that. That's part of their review.

3 Q. And did you ensure that Mr. Eckert applied all
4 those factors that you just discussed for the Marcus
5 Hook facility circumvention analysis?

6 A. Yes. And we always tried to make that up front
7 discussion with our applicants. It helps making the
8 application process more smoothly. If they did not
9 address it at the pre-application meeting, we ask them
10 to address that. You know, bring up our concerns at
11 that point. And that is when they have time to go
12 back, look at their application and address these
13 things.

14 Q. Do you have any recollection of how those factors
15 were applied here at Marcus Hook?

16 A. For what?

17 Q. Sorry. For circumvention?

18 A. On which one?

19 Q. Any of them for Marcus Hook?

20 A. It is done each time when the application is given.
21 So, there were some that were linked and some that were
22 not linked.

23 Q. Do you recall anything about that and how that
24 applied here?

1 A. I don't recall every single one, you know, which
2 one was linked with that. this is not the only
3 applications that I review. And so, I'm not --

4 Q. Of course.

5 A. Can't tell you this one is linked with exactly that
6 one, no. I can't tell you like that, no.

7 Q. Okay. Is there anything else that you can think of
8 regarding discussions you had within DEP about
9 circumvention and Marcus Hook?

10 A. Not that I can recall right now. If there is
11 something specific, I would let you know.

12 Q. Okay. And do you recall any discussions -- do you
13 recall anything about any discussions with anybody else
14 outside of DEP about circumvention at Marcus Hook?

15 A. I -- we talk with applicant. We talk with the
16 consultant on the regular -- you know, every time there
17 is applications coming in, even before the application
18 comes in. You know, they thinking about the project
19 or, you know, we have meetings all the time or even
20 sometimes we get phone calls. That happens.

21 Q. Do you remember anything specifically for Marcus
22 Hook, though, in particular?

23 A. I always -- the same thing I point out to other
24 facilities. You know, what's the -- this is the

1 project at hand. How does it affect your other sources
2 that you have at the facility? Are there any changes
3 that are occurring at those other sources. Is it
4 interdependent on each other? Do you have any other
5 future plans? Do you need to make those known up
6 front, you know, so we can address those and look at
7 the emission on whole.

8 Q. And do you recall how that discussion went for
9 Marcus Hook?

10 A. They take notes, I guess. I hope they do and
11 follow instructions in the application accordingly.

12 Q. Are you speaking generally or you speaking
13 specifically with discussions about Marcus Hook here?

14 A. Both. Generally/specifically. This is a
15 conversation that I have with applicants when they do
16 come in. And not just because it's Marcus Hook
17 Refinery. It doesn't matter. Because they are a major
18 facility, I have this with minor facilities, as well.

19 Q. Just to be clear, there is no other specifics you
20 can remember about these discussions around
21 circumvention with Marcus Hook, correct?

22 A. Right.

23 Q. Thank you. Could you take a look at Exhibit A-55,
24 please. Do you recognize this document?

1 A. It says this is SUN Company Incorporated, Marcus
2 Hook Refinery in 2010. Yes.

3 Q. Okay. Thank you. Could you describe what it is?

4 A. It's AIMS inventory for the year 2010 for SUN
5 Company Inc.

6 Q. Okay. Thank you.

7 MR. BOMSTEIN: I move to admit A-55 into
8 evidence.

9 THE COURT: Any objection?

10 MR. WHITE: Not from the Department,
11 Your Honor.

12 MR. RAPHAEL: No, Your Honor.

13 THE COURT: Fifty-five is admitted.

14 (At this time, Exhibit A-55 was admitted
15 for the record.)

16 MR. BOMSTEIN: Thank you, Your Honor.

17 That's all the questions that we have
18 for this witness. Thank you, Ms. Tulloch-Reid.

19 THE WITNESS: You're welcome.

20 THE COURT: Any questions, Mr. Raphael?

21 MR. RAPHAEL: I am going to defer to the
22 Department first, Your Honor.

23 MR. WHITE: I have very few clarifying
24 questions I would like to ask, Your Honor.

1 THE COURT: Sure.

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. WHITE:

6 Q. Ms. Tulloch-Reid, were you involved in the
7 reviewing of the plan approvals issued SPMT at Marcus
8 Hook from the first one all the way through H?

9 A. Yes, I was.

10 Q. When you reviewed Plan Approval E before it was
11 issued, did you do a circumvention analysis?

12 A. Yes.

13 Q. What did you determine?

14 A. That the sources were not linked to any other
15 projects, ongoing projects at the facility.

16 Q. Before you issued Plan Approval F, did you do a
17 circumvention analysis?

18 A. Yes.

19 Q. What did you determine?

20 A. That it was linked to another plan approval.

21 Q. Do you remember which one?

22 A. Not off the top of my head.

23 Q. When you -- before you issued Plan Approval H --
24 back up a second. Was Plan Approval F linked with Plan

1 Approval E?

2 A. No, it was not.

3 Q. Before you issued Plan Approval F, did you do a
4 circumvention analysis?

5 A. Yes.

6 Q. What did you determine?

7 Did I just say F? I withdraw that question. I
8 think I repeated myself.

9 A. I was going to say.

10 Q. I'm sorry. Before you issued Plan Approval G --

11 A. Yes.

12 Q. -- did you do a circumvention analysis?

13 A. Yes.

14 Q. What did you determine?

15 A. It was not linked to any of the previous projects.

16 Q. Before you issue Plan Approval H, did you do a
17 circumvention analysis?

18 A. Yes.

19 Q. What did you determine?

20 A. That it wasn't linked to any other projects.

21 MR. WHITE: That's all I had, Your
22 Honor.

23 THE COURT: Mr. Raphael?

24 MR. RAPHAEL: Yes. Thanks, Counsel --

1 thank you, Your Honor.

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. RAPHAEL:

6 Q. Just so the record is clear, whenever your
7 aggregation/circumvention determinations were, would
8 they be reflected in the final plan approval that was
9 issued by the Department?

10 A. Would it be reflected? If they triggered any of
11 the regulations, then yes that would be reflected. If
12 we did one and it triggered PSD or it triggered one and
13 if there was -- and it triggered New Source Review,
14 then you have those regulations according to those in
15 the -- reflected in the permit itself.

16 Q. If, for example, Plan Approval F -- if you
17 aggregate that with Plan Approval B, would that be
18 reflected in your plan approval that you approved?

19 A. Yes.

20 Q. And I believe that counsel for Department asked you
21 whether Plan Approval F had been linked with Plan
22 Approval E. Was that, in fact, linked with Plan
23 Approval E, Plan Approval F?

24 A. I don't think Plan Approval F and E were linked.

1 Not from my recollection, no.

2 Q. Plan Approval G, was Plan Approval G linked to Plan
3 Approval E?

4 A. To E?

5 Q. Yes.

6 A. Not from my recollection, no.

7 Q. And that, again, would have been reflected in the
8 issued plan approval by the Department?

9 A. Yes.

10 Q. The same question for Plan Approval H. Was Plan
11 Approval H linked with Plan Approval E?

12 A. No.

13 Q. Would that have been reflected in the plan approval
14 issue by the Department?

15 A. Yes.

16 MR. RAPHAEL: That's all I have, Your
17 Honor. Thank you.

18 THE COURT: Reexamination.

19 MR. BOMSTEIN: Sorry, Your Honor?

20 THE COURT: Any reexamination?

21 MR. BOMSTEIN: Just one question.

22 THE COURT: It's not really redirect.

23 MR. BOMSTEIN: Have one question, Your
24 Honor, unless there are follow ups.

1 - - -

2 EXAMINATION

3 - - -

4 BY MR. BOMSTEIN:

5 Q. Ms. Tulloch-Reid, could you please turn to in DEP's
6 exhibit binder -- sorry, it's not in DEP's exhibit
7 binder. Just one second, please.

8 Okay. Could you please turn to A-35 in Clean Air
9 Council's exhibit binders. What is this document?

10 A. This is plan approval that was issued on August 15,
11 2016. Has an effective date for August 16, 2016 and
12 expires February 16, 2018. And it's for Plan Approval
13 Number 23-0119F.

14 Q. Thank you. And could you point me to where in this
15 plan approval for F it's reflected that there was
16 aggregation with Plan Approval B or with Project B?

17 A. Right on page 2 in the plan approval description.

18 Q. Okay. And is that the sentence: "This project has
19 been economically and technically linked to Plan
20 Approval Number 23-0119B"?

21 A. Yes.

22 Q. Okay. Thank you. And if -- is it the case that if
23 the Department has linked the projects that shows up in
24 the plan approval description?

1 A. Yes. That will show up here or show up in Section
2 G of the permit.

3 Q. What is Section G?

4 A. Towards the back of the permit. Will show in one
5 or the other.

6 Q. Okay. And Section G is miscellaneous?

7 A. Right.

8 MR. BOMSTEIN: Thank you. Nothing
9 further.

10 THE COURT: Anything further.

11 MR. WHITE: No, Your Honor.

12 MR. RAPHAEL: No, Your Honor. Thank
13 you.

14 THE COURT: Thank you.

15 MR. BOMSTEIN: Clean Air Council calls
16 James Rebarchak. I think it's possible, as a
17 time check, we may be done before one. It's
18 possible we won't. I don't know what the
19 temperature is on how to split that up. We are
20 fine either way.

21 THE COURT: Any preferences?

22 MR. RAPHAEL: If this is going to go
23 beyond one, we prefer a break, Your Honor.

24 THE COURT: Okay. So, 1:45.

1 MR. BOMSTEIN: Thank you.

2 (Recess for lunch taken at 12:46 p.m.)

3 - - -

4 (Hearings resumed.)

5 THE COURT: Mr. Bomstein.

6 MR. BOMSTEIN: Yes. Clean Air Council
7 calls Mr. James Rebarchak to the stand.

8 - - -

9 (JAMES REBARCHAK, having been first duly
10 sworn, was examined and testified as follows:)

11 - - -

12 EXAMINATION

13 - - -

14 BY MR. BOMSTEIN:

15 Q. Thank you, Mr. Rebarchak, for testifying today.

16 Please state your full name and business address?

17 A. James D. Rebarchak, 2 East Main Street, Norristown
18 19401.

19 Q. Without going into confidential discussions that
20 you may have had with your attorneys, please tell us
21 what you did to prepare for the hearing today?

22 A. I reviewed the technical review memo for Plan
23 Approval E as well as the Plan Approval 23-0119E.

24 Q. Thank you. Anything else?

1 A. No.

2 Q. Did you bring any documents with you up to the
3 stand?

4 A. No, I did not.

5 Q. How long have you worked for DEP?

6 A. Twenty seven and a half years.

7 Q. What's your title now?

8 A. I am the Air Quality Program Manager.

9 Q. And what are your responsibilities in that role?

10 A. I direct through subordinate managers and
11 supervisors all aspects of permitting inspection and
12 enforcement actions in the southeast region, which
13 encompasses all of Bucks, Chester, Delaware and
14 Montgomery Counties. I ensure that those activities
15 comply with all state and federal requirement as well
16 as all Commonwealth and Departmental policies and
17 procedures.

18 I ensure that the staff are properly trained in
19 conducting those activities. And that we have job
20 standards and conduct regular performance evaluations
21 for those staff, so that they are doing their jobs
22 correctly. We will also perform outreach activities,
23 be present for testimony at hearings when necessary and
24 the like.

1 Q. Okay. Thank you.

2 Do you, in the course of your duties for the
3 Department, review Mr. Eckert's work?

4 A. The final draft of his work I would review.

5 Q. Does that include final drafts of review memos?

6 A. Yes.

7 Q. Does that include final versions of plan approvals
8 that are ultimately issued?

9 A. Yes.

10 Q. Do you review Ms. Tulloch-Reid's work?

11 A. Yes, I would.

12 Q. And have you reviewed Mr. Eckert's work
13 specifically on Marcus Hook related permitting?

14 A. Again, as I mentioned when a draft plan approval is
15 finalized as well as the review memo, it goes through
16 Ms. Reid before it comes to my desk. And I will just
17 review it to ensure that the necessary review has taken
18 place.

19 Have all fees been paid? Have all administrative
20 aspects of the plan approval process been complied
21 with? Does it appear that all of the regulatory
22 requirements and regulations been followed in their
23 review.

24 And if I have any questions or comments regarding

1 either the plan approval or the review memo, I would
2 discuss that with Ms. Reid and/or the permit review
3 person Mr. Eckert.

4 Q. Okay. Is there somebody who you report to?

5 A. Yes.

6 Q. Who is that?

7 A. That would be Patrick Patterson, our Regional
8 Director.

9 Q. Do you discuss with Mr. Patterson the permitting at
10 Marcus Hook?

11 A. Only in the aspects of making him aware of any high
12 priority projects that may be taking place in high
13 profile cases.

14 Q. And have you had such discussions for this appeal?

15 A. I probably have.

16 Q. Do you recall any details from any of those that
17 may have happened?

18 A. Not the specifics, no.

19 Q. Okay. Have you had a chance to listen to the
20 testimony of Mr. Eckert and Ms. Reid?

21 A. Yes, I have.

22 Q. Specifically, did you have any involvement in the
23 Department's review of Project 23-0119E besides looking
24 at the final versions of the review memo and plan

1 approval?

2 A. Not that I recall.

3 Q. Did you sign the plan approval for Project C, Plan
4 Approval 23-0119C?

5 A. I would want to look at that just to verify. I
6 probably did.

7 Q. Of course. Sorry. Go ahead.

8 A. Where would I find that just to --

9 Q. Absolutely. Please turn to C-7, which is in the
10 Department's binder.

11 A. Let's see. Yes. I did sign off on that plan
12 approval.

13 Q. Okay. Thank you.

14 Please take a look at the plan approval
15 description. Could you please read the first sentence
16 of that?

17 A. "Plan approval for the installation and operation
18 of a 30,000 gallon permitting cooling tower to be used
19 in conjunction with Plan Approval 23-0119, which was
20 for the construction of cryogenic storage tanks for
21 propane and ethane and using air cooling as a
22 condenser."

23 Q. Do you know if that is a typo and that is supposed
24 to be 23-0119A?

1 A. I do not believe so, but I would have to look to
2 see what 119A covers versus what 119 covers.

3 Q. Do you recall Mr. Eckert's testimony about the
4 review memo for Project C in which he said that there
5 was a typo. And what was listed as 23-0119 was meant
6 to be 23-0119A?

7 A. I believe I recall him saying something like that,
8 but I don't recall specifically.

9 Q. Okay. Could you please read the last sentence in
10 the plan approval description?

11 A. "Due to the economic and technical dependency
12 between these two projects 23-0119 and 23-0119C, the
13 Department is linking them."

14 Q. Do you have knowledge about whether that is correct
15 as written or is a typo?

16 A. I believe that is a typo. I believe we linked Plan
17 Approval C and Plan Approval A.

18 Q. Do you see how it's saying "these two projects"?

19 A. Yes.

20 Q. So, does that clarify your understanding at all as
21 to whether it's also a typo earlier in the plan
22 approval description?

23 A. I would assume that is also a typo.

24 Q. Okay. And could you please turn to C-2 in the same

1 binder. Is this the plan approval review memo for
2 Application No. 23-0119?

3 A. Yes.

4 Q. And did you initial this?

5 A. Yes, I did.

6 Q. Does that indicate that you reviewed it?

7 A. Yes, it does.

8 Q. Am I correct that this is a project for the
9 construction and operation of a cryogenic ethane and
10 propane storage facility? Specifically, I'm looking
11 under Process Description.

12 A. I would say it's for the construction of the
13 cryogenic propane storage tank and ethane storage tank.

14 Q. Okay. And could you turn back to A-7, please?

15 A. Sure.

16 MR. WHITE: Alex, did you mean A-7 or
17 C-7?

18 MR. BOMSTEIN: I'm so sorry. I did mean
19 C-7.

20 MR. WHITE: Thank you.

21 BY MR. BOMSTEIN:

22 Q. Mr. Rebarchak, would you agree that that
23 description in C-7 in plan approval description in the
24 first sentence is indeed a description of the Plan

1 Approval 23-0119?

2 A. I can't be certain because I didn't see what was
3 covered in 119A, as well. So, I would want to review
4 that application as well and review memo just to be
5 certain.

6 Q. Can you please turn to C-4. Is this that review
7 memo?

8 A. That is the review memo for 23-0119A.

9 Q. And am I correct in that this concerns the
10 installation of a deethanizer at the Marcus Hook
11 facility?

12 A. Yes.

13 Q. So in light of that, going back to C-7, would you
14 agree that the description indeed conforms to what Plan
15 Approval 23-0119 is?

16 A. I am sorry. Can you repeat the question. I was
17 reading the plan approval description.

18 Q. Of course. Sure.

19 So, would you agree with me that the sentence up
20 top saying plan approval for the installation and
21 operation of a 30,000 gallon per minute cooling tower
22 to be used in conjunction with Plan Approval 23-0119,
23 which was for the construction of cryogenic storage
24 tanks for propane and ethane and using air cooling as a

1 condenser, that the latter half there describing Plan
2 Approval 23-0119 indeed describes Plan Approval 23-0119
3 and not Plan Approval 23-0119A?

4 A. Correct.

5 Q. Do you have any knowledge of why throughout this
6 documentation it refers to the linking of 23-0119C and
7 23-0119 rather than 23-0119A?

8 A. I can only assume that there was a typo in the
9 final sentence, that it should indicate that it's
10 23-0119A.

11 Q. And is there a typo in the first sentence which
12 describes what 23-0119 is?

13 A. Again, I believe the statement up above is correct.
14 But the statement down below does not appear to be
15 correct where we are linking the two plan approvals.

16 Q. Okay. Do you have any more knowledge about why
17 that is written this way?

18 A. Today, no.

19 Q. Okay. Mr. Rebarchak, did you in the course of this
20 case from time to time perhaps review discovery
21 responses with counsel?

22 A. Could you explain to mean what you mean by
23 discovery responses?

24 Q. Yes, sorry. Sometimes I forget to put off my

1 lawyer hat.

2 From time to time, did your counsel -- and I am not
3 going to ask for discussions that you had with your
4 counsel. But did your counsel come to you and ask that
5 you look at documents that they would need to send to
6 us and Sunoco for the process of exchanging information
7 over the course of this appeal?

8 A. I probably did have those conversations. But
9 nothing that I can recall specifically.

10 Q. Okay. Could you please take a look at Exhibit --
11 going to the Clean Air Council exhibit binders, Exhibit
12 A-65. Yes, A-65.

13 Do you know if you've seen this document before?

14 A. I would say that I probably have.

15 Q. Okay. Do you know if you -- again, without going
16 into the content of any discussions that you had with
17 counsel, do you know if you contributed your input on
18 material for this?

19 A. I may have, but I can't recall specifically.

20 Mr. Eckert and Ms. Reid are more directly involved with
21 the permitting, whereas, I'm just reviewing. So, I
22 would assume they have more of a role in this response.

23 Q. Okay. That's fair.

24 Do you recall having any discussions with either

1 Ms. Reid or Mr. Eckert regarding circumvention for
2 project 23-0119E?

3 A. I don't recall any specific conversations with
4 either of them.

5 Q. Do you recall working at all with them on revising
6 the technical review memo for this project?

7 A. No. I do not recall working with either of them on
8 revising the technical review memo. I do know that it
9 was being done to clarify some inconsistencies and try
10 to clean it up so that it was a little bit more
11 understandable as to what we placed into the plan
12 approval.

13 Q. Okay. Did you supervise that process?

14 A. Only in that I reviewed the final -- the final
15 revised review memo.

16 Q. Do you recall the content of that memo?

17 A. I would have to review the memo.

18 Q. Okay. Do you know whether you suggested any
19 changes to the review memo in its November 2016 form?

20 A. Not that I recall.

21 Q. And do you recall whether you suggested or directed
22 any changes to earlier versions of that review memo?

23 A. I may have. I often will review technical review
24 memos. Sometimes find typos or issues that can be

1 better explained. And will ask the -- either Ms. Reid
2 or the reviewer to make some changes prior to
3 finalizing review memos.

4 Q. Do you know if you did that in the case of Project
5 E?

6 A. Again, I look at a lot of review memos. So, I
7 can't recall specifically if I did.

8 Q. That's fair. Did you have a discussion with
9 anybody in the Department about the way in which the
10 Department decides whether there is a modification of a
11 source?

12 A. No. I do not recall having any conversation about
13 that.

14 Q. Okay. Did you have any conversation or contact
15 with individuals from Sunoco or their agents concerning
16 Project E?

17 A. Not that I recall, no.

18 Q. Okay. One more question on circumvention. Did you
19 have any discussions with Ms. Reid or Mr. Eckert that
20 you can recall besides in connection with Marcus Hook
21 about how circumvention regulations and laws work?

22 A. Can you repeat the question, please.

23 Q. Yeah. Maybe I can simplify it.

24 Do you recall having any discussions, whether or

1 not they specifically had to do with Marcus Hook, with
2 Mr. Eckert or with Ms. Reid, excuse me, concerning how
3 to apply the circumvention rules?

4 A. No.

5 Q. Okay. Thank you.

6 MR. BOMSTEIN: That's all the questions
7 I have.

8 MR. WHITE: No questions from the
9 Department, Your Honor.

10 THE COURT: Mr. Raphael?

11 MR. RAPHAEL: No questions, Your Honor.
12 Thank you.

13 THE COURT: Thank you, sir.

14 Any additional witness, Mr. Bomstein?

15 MR. BOMSTEIN: I don't. I would like to
16 move to admit Exhibit A-65.

17 THE COURT: Sixty-five is a request for
18 admissions. Any responses.

19 MR. BOMSTEIN: Yeah. This is responses
20 from the Department.

21 THE COURT: Any objection?

22 MR. WHITE: I would say Your Honor it
23 was George Eckert that verified those answers
24 not James Rebarchak, who would have been a

1 better witness to move them in. So, we would
2 object to it.

3 THE COURT: Sixty-five is admitted.

4 MR. BOMSTEIN: Thank you, Your Honor.

5 (At this time, Exhibit A-65 was marked
6 into evidence.)

7 MR. BOMSTEIN: And nothing further from
8 us. We are -- I'm not sure who is --

9 THE COURT: You rest? Clean Air Council
10 rests?

11 MR. BOMSTEIN: Yes.

12 THE COURT: Who goes next?

13 MR. RAPHAEL: We do, Your Honor. We
14 have a few motions we would like to make to the
15 court. Could we just have a very brief break to
16 prepare those?

17 THE COURT: Sure.

18 (At this time, a brief break was taken.)

19 THE COURT: When you're ready.

20 MR. RAPHAEL: Thank you, Your Honor.

21 In the Notice of Appeal from the Clean
22 Air Council, there were a number of objections.
23 And if I could, Your Honor, turn your attention
24 to Objection No. 4. Objection No. 4 states that

1 the Department miscalculated fugitive emission
2 increased from new piping components by using
3 the actual projected and actual tests rather
4 than the actual potential tests in violation of
5 25 PA Code Section 127, 203A(a)(1)(i)B.

6 Your Honor, SPMT would contend that CEC
7 has the burden of proof in the matter. It is
8 their burden to carry the stone up the hill.
9 And yet, there was no prime fascia case put
10 before the Board for Objection No. 4. And we
11 would ask that it be dismissed.

12 MR. WHITE: Your Honor, the Department
13 joins in Sunoco's motion.

14 THE COURT: Response?

15 MR. BOMSTEIN: Your Honor, we would
16 oppose this motion. This is -- a few seconds
17 ago is the first time I've heard this issue
18 being raised. And to get a full response, we
19 would need to put our heads together. But I
20 would say that we believe that the methodology
21 that the Department used for calculating
22 emissions increase was indeed flawed. And
23 that's demonstrated by a lot of the evidence
24 that we have put together. And we believe we

1 can demonstrate that and do oppose the dismissal
2 of that objection.

3 THE COURT: You understand, Mr. Raphael,
4 I don't even have the authority to do that just
5 by myself sitting here to dispose of ruling.
6 Has to be a majority of the Board. But, you
7 made the motion. It's on the record. And you
8 can include it in your brief.

9 MR. RAPHAEL: Certainly, Your Honor.
10 And we do have a few more to make, as well, Your
11 Honor.

12 THE COURT: Okay.

13 MR. RAPHAEL: With respect to Objection
14 No. 5, in Council's Notice of Appeal, the
15 allegations for Department miscalculated the
16 fugitive emissions in both new and existing pipe
17 components by failing to take into account the
18 higher than anticipated read vapor compression
19 of the product feed stock that would move
20 through the piping as acknowledged by Sunoco in
21 it's application for plan approval 23-0119F.

22 Again, Your Honor, same argument. CEC,
23 we would argue, Your Honor, has failed to meet
24 it's prima facie case to sustain Objection No. 5

1 in this appeal.

2 MR. WHITE: Department also joins this
3 motion, Your Honor.

4 THE COURT: Response?

5 MR. BOMSTEIN: We would ask that we be
6 given an opportunity in the post-hearing
7 briefing to address this.

8 THE COURT: Which is what I have to do
9 anyway. But you made the motion. It's on the
10 record.

11 MR. RAPHAEL: Thank you, Your Honor.

12 With respect to Objection 6, Clean Air
13 Council's Notice of Appeal, the allegation is
14 that the Department accepted Sunoco's design
15 values for emissions calculations without
16 requiring manufacturer specifications or other
17 documentation of the values leaving the
18 resulting projected emissions numbers
19 unverified.

20 Again, Your Honor, same argument. CEC
21 has failed to put forth a prima facie case to
22 sustain Objection 6 in its Notice of Appeal.

23 MR. WHITE: On this particular one, Your
24 Honor, the Department has a slightly different

1 approach. In that notice -- this issue of
2 appeal was never mentioned in the prehearing
3 memorandum. And therefore, was waived before
4 they put on their case in chief.

5 THE COURT: You want to put anything on
6 the record at this point?

7 MR. BOMSTEIN: Not at this point, Your
8 Honor.

9 THE COURT: You reserve your response
10 for the briefing?

11 MR. BOMSTEIN: Yes.

12 THE COURT: Reserve resolution for
13 adjudication, as well, because all the judges
14 have to rule on this.

15 MR. RAPHAEL: Thank you, Your Honor.

16 With respect to the Doctrine of
17 Administrative Finality, Your Honor, under the
18 Doctrine of Administrative Finality, one who
19 fails to exhaust his statutory remedies may not,
20 thereafter, raise an issue which could have and
21 should have been raised in the proceeding
22 afforded by his statutory remedy.

23 This is particularly true of special
24 statutory appeals from the action of

1 administrative bodies. And I cite there, Your
2 Honor, DER v. Wheeling-Pittsburgh Steel Corp,
3 348 82nd 765, 767 PA Commonwealth, 1975. Which
4 was affirmed by our Pennsylvania Supreme Court
5 at 375 82nd 320 PA, 1977. That is legal
6 principal that stood the test of time in this
7 Commonwealth from our Pennsylvania Supreme
8 court.

9 And we heard testimony, Your Honor, at
10 the end of CEC's case in chief from the staff of
11 the Air Program, from Ms. Janine Tulloch who
12 explained that an aggregation analysis was done
13 for Plan Approvals F and G, and the
14 circumvention analysis was done for both those
15 plan approvals. For Plan Approval F, Plan
16 Approval F was then aggregated by the Department
17 with Plan Approval B. Then a plan approval was
18 issued. That plan approval was never appealed
19 by the Clean Air Council.

20 In the analysis that was done, the
21 Department had the opportunity to aggregate that
22 plan approval, Plan Approval F with Plan
23 Approval E. The Department chose not to do so
24 and took the final action of issuing a plan

1 approval. Thereafter, CEC had 30 days to appeal
2 that plan approval. CEC did you did not appeal
3 that plan approval. We would argue under the
4 Doctrine of Administrative Finality, that CEC
5 cannot now argue that Plan Approval E should be
6 combined with Plan Approval F, Your Honor.

7 MR. WHITE: The Department joins that
8 motion, Your Honor.

9 THE COURT: I guess I'm not
10 understanding why that is a motion for nonsuit.
11 Is that --

12 MR. WHITE: I think, Your Honor, the
13 Department may take a chance to explain.

14 Obviously, they appealed the argument
15 should be we circumvented. There should be a
16 link to prior plan approvals. When we issue F,
17 the Department also considered all prior plan
18 approvals including E. Did not link any of them
19 together. That was a decision by the Department
20 that E and all of the plan approvals should not
21 be linked with F or each other, which is now a
22 final decision of the Department that can't be
23 challenge.

24 Once you have done that, you can't

1 not -- can't continue to challenge that E should
2 have been combined after a subsequent decision
3 when the Department decided not to link any of
4 those plan approvals, including Plan Approval E
5 of any prior one.

6 THE COURT: You're asking that the whole
7 appeal be dismissed?

8 MR. WHITE: Well, I will let Sunoco
9 explain.

10 MR. RAPHAEL: Sure. I am just doing
11 this one step a time. There are other pieces.
12 But the next piece we have would be our argument
13 is that Plan Approval E, the assertion is that
14 Plan Approval E should be combined with Plan
15 Approval F.

16 Our argument, Your Honor, is that the
17 time to appeal that has passed. The Clean Air
18 Council didn't appeal Plan Approval F. They had
19 an opportunity to do so. That is now final and
20 unassailable.

21 THE COURT: I understand the substance
22 of the motion. I am trying to understand why
23 you're making it in this context. The only
24 motions that are -- can be made at this point

1 are motion for nonsuit because they didn't meet
2 their prima facie case. Beyond that --

3 MR. RAPHAEL: We would submit they did
4 not because there is no viable evidence that can
5 be put on when the Board doesn't have
6 jurisdiction to hear it. The Environmental
7 Hearing Board does not have jurisdiction on the
8 31st day after an appeal isn't taken.

9 They didn't take an appeal. This Board
10 is without jurisdiction to hear combination of
11 Plan Approval F. That is our position.

12 THE COURT: Okay. I'll reserve ruling
13 on deliberation and adjudication.

14 MR. RAPHAEL: Thank you, Your Honor.
15 And for Plan Approval C, we heard the same time
16 from the Department's witness that, in fact,
17 Plan Approval F was reviewed for circumvention
18 and aggregation analysis and was not combined
19 with any other plan approval. Plan Approval G
20 was not combined with Plan Approval E, nor was
21 it appealed during that 30-day appeal period.
22 Again, under the well settled Doctrine of
23 Administrative Finality, there is no evidence to
24 put on before the Board because the Board simply

1 is without jurisdiction to hear that appeal.

2 THE COURT: Okay. You preserved that
3 ruling.

4 MR. RAPHAEL: Now, Your Honor, with
5 respect to one of the RFD, which is RFD-5597.
6 As you may recall, that is the one involving the
7 cooling water, it was issued by the Department
8 on 4/11/2016. And our position, Your Honor, is
9 that an RFD is final action of the party.

10 And I would point you to a decision that
11 you authored in Borough of Glendon 2014. And in
12 that opinion you referenced a line of cases.
13 And there you said, the second line of cases
14 involves instances where the Department has
15 formalized in a communication a decision to
16 grant an individual a particular exemption or
17 exception from regulatory requirements.

18 You go on to cite a number of cases in
19 that opinion, including the Board v -- excuse
20 me -- Winner v DEP, which is EHB decision from
21 March 13, 2014. And also the Walker v. DEP
22 case, 2007 EHB at 117.

23 In this instance, we have an RFD-5597
24 that was issue by the Department through its

1 formal process. In fact, there's an online
2 system where you can submit RFDs. That was
3 issue by the Department. It was not appealed
4 within 30 days. That RFD, again, would be final
5 and unassailable. In other words, on the 31st
6 day, this Board is without jurisdiction to
7 entertain an appeal for 5597. That is our
8 contention under, again, the well-settled
9 principal of the Doctrine of Administrative
10 Finality, Pennsylvania Supreme Court Case.

11 THE COURT: Reserve the ruling on that.

12 MR. RAPHAEL: Your Honor, as you well
13 know, there's been no expert testimony in the
14 case, which is quite surprising given the highly
15 technical nature of this matter. The only
16 testimony this Board has allowed pursuant to
17 your May 3, 2016 order is lay testimony.

18 The Clean Air Council has failed to link
19 any of the plan approvals to Plan Approval E
20 with expert testimony. We would argue, Your
21 Honor, that that is a fatal flaw. And that is
22 extremely true with respect to Plan Approval B,
23 the natural gasoline plan approval which
24 involves truck racks. Without expert testimony,

1 Your Honor, it is impossible for this Board to
2 link a plan approval involving trucks to other
3 plan approvals which CEC is now alleging involve
4 pipelines. You would need engineering expert
5 testimony to do that. You would need chemical
6 engineering expert testimony to do that. You
7 would need chemistry to do that. None of which
8 is in the record.

9 There is simply insufficient evidence
10 before this Board to carry the claim forward
11 that Plan Approval E and Plan Approval B should
12 be linked together.

13 Thank you, Your Honor.

14 THE COURT: Again, because I don't have
15 the authority sitting here as the Administrative
16 Law Judge, if you will. I don't have the
17 authority granting those. We will reserve
18 ruling on all those and move forward to the
19 parties briefing now. And we will reserve
20 ruling till adjudication as we have to.

21 Would you like to make your opening
22 statement or who is going first?

23 MR. RAPHAEL: May I have just a short
24 break now? I wasn't sure what those rulings

1 were going to be just to reestablish ourselves
2 and talk to our witnesses about order of
3 witnesses to move forward.

4 THE COURT: Okay.

5 MR. RAPHAEL: Thank you.

6 (At this time, a brief break was taken.)

7 THE COURT: Mr. Raphael.

8 MR. RAPHAEL: Thank you, Your Honor.

9 Thank you for the opportunity to reconfigure my
10 opening.

11 Your Honor, we have heard the case in
12 chief of the Clean Air Council. And I want to
13 just hit a few highlights, and I will brief.
14 One of the core components of their case in
15 chief involved an attempt to daisy-chain
16 together the plan approval starting with Plan
17 Approval 1 then A, then B, then C, then D, then
18 E, F, G, H and I.

19 One of the difficulties I eluded to in
20 the motions I just put before the court, Your
21 Honor, is the Doctrine of Administrative
22 Finality. In other words, in this instance,
23 Plan Approval 1 was never appealed with the
24 Clean Air Council. It is final and

1 unassailable. Plan Approval A was never
2 appealed by the Clean Air Council and is final
3 and unassailable. The same is true for B and
4 C and D.

5 The approach of attempting to
6 daisy-chain together plan approvals, we will
7 show, Your Honor, and we will in our briefing
8 that that is not an appropriate way to do this.
9 Notwithstanding the fact they appealed Plan
10 Approval E, there needs to be strong connections
11 made to that plan approval. That simply wasn't
12 done to their case in chief. And you will here
13 more of that as we move forward with ours, Your
14 Honor.

15 As we heard as well, Plan Approvals G --
16 excuse me, F and G, the Department made
17 determinations regarding aggregation. Those
18 also were not appealed. Plan Approval H, and
19 you're going to hear testimony on this, is a
20 maintenance replacement of a flare. A flare
21 that has existed in Marcus Hook Industrial
22 Complex for many, many years. And is used this
23 utility for a variety of different projects. To
24 say that that is a separate project, there

1 simply is not evidence of that. You're going to
2 hear some more of that during our testimony and
3 our case in chief.

4 Then onto Plan Approval I. That plan
5 approval has not even been issued yet by the
6 Department. And we believe it's not before the
7 Board except for the purpose of what it
8 contains. Relative to a plan going back to
9 2012, the evidence put before the Court is quite
10 sparse. And that, you're going to hear through
11 our testimony, is for good reason. These
12 projects are not driven by contemplations or
13 concepts. They are driven by contracts because
14 these projects are expensive. And they require
15 investors and investment.

16 So whether or not a concept was thought
17 of, is very different than the execution of
18 commercial agreements. And you will hear
19 testimony from our witness, including Mr. Hunt
20 shortly to explain how that process works. It's
21 a logical process. And it follows along with
22 these commercial contracts. And I think that
23 will certainly be helpful to the Board.

24 And then finally, as I eluded to in the

1 motions we just made for the Court, this is a
2 case that requires expert testimony. It
3 requires linkages to be made that involve the
4 Hearing Board. As Your Honor noted in his
5 summary judgment opinion, the Environmental
6 Hearing Board is not an expert on natural gas
7 liquid facilities or refineries. That means the
8 evidence must be placed in the record by experts
9 for you to evaluate. That bucket is empty, Your
10 Honor. It is empty of expert testimony. There
11 is nothing for you to draw upon to link these
12 projects together.

13 And for that reason, we believe Clean
14 Air Council did not carry their stone up the
15 hill. It's not even close, Your Honor.

16 That is all I have before we open our
17 case. Thank you.

18 THE COURT: Thank you.

19 Ready to call your first witness.

20 MR. RAPHAEL: Sure. SPMT calls
21 Mr. Jonathan Hunt.

22 - - -

23 (JONATHAN HUNT returns to the Witness
24 Stand.)

1 - - -

2 THE COURT: Mr. Hunt, you've already
3 been sworn and you're still under oath.

4 Do you understand that?

5 THE WITNESS: I do.

6 - - -

7 EXAMINATION

8 - - -

9 BY MR. RAPHAEL:

10 Q. Good afternoon, Mr. Hunt.

11 A. Good afternoon.

12 Q. Could you state your full name and spell your last
13 name for the record?

14 A. Yes. Jonathan A. Hunt, H-U-N-T.

15 Q. Mr. Hunt, by whom are you presently employed?

16 A. Energy Transfer Partners.

17 Q. And what is your current position with Energy
18 Transfer Partners?

19 A. My current title is Vice President of Terminal
20 Operations.

21 Q. And could you tell the Board what that entails,
22 what you do in that position?

23 A. I have operational responsibility for majority of
24 our terminals business. That takes several forms. The

1 Marcus Hook Industrial Complex is one of those
2 facilities. I also have -- it's really broken up into
3 four business units. When you add up all the
4 terminals, it's roughly 50 locations that are spread
5 out across thirteen states with, you know, about 500
6 employees.

7 Q. Mr. Hunt, where is your office physically located?

8 A. My home base is at the Marcus Hook Industrial
9 Complex. I also spend time at various other locations.
10 Including not any significant amount of time at our
11 near terminal at the Gulf Coast.

12 Q. How long have you been working with ETP and its
13 predecessor companies?

14 A. I first joined Sunoco back in 2009. And so yeah,
15 from 2009 -- from late 2009 to the present, you know,
16 Sunoco and then subsequent affiliates including now
17 ETP.

18 Q. What was your first position with Sunoco when you
19 arrived?

20 A. When I first hired in with Sunoco, I hired in a
21 corporate role as Manager of Operational Excellence.
22 That was part of refining business at that time.

23 Q. And what did do you in that capacity?

24 A. I worked with -- I worked with a team of people in

1 a corporate group that helps support the refinery
2 operations in developing, you know, improved work
3 processes and improved systems and programs for
4 refinery operations at that time.

5 Q. How long did you hold that position?

6 A. I was in that job until it was right about the
7 beginning of 2011.

8 Q. What was your next position with the company?

9 A. At that time, that's when I first moved to Marcus
10 Hook. And I took over the operating responsibility for
11 the Marcus Hook facility. The Marcus Hook Refinery at
12 that time.

13 Q. Again, what year is that, Mr. Hunt?

14 A. That was in early 2011.

15 Q. And in early 2000, what was your first
16 responsibilities in that new role?

17 A. I was the Refinery Operations Manager. So, all the
18 operating organization for the refinery reported up to
19 me.

20 Q. Mr. Hunt, in preparation for this matter, did you
21 have the opportunity to collaborate on a summary of
22 these plan approvals?

23 A. I did.

24 Q. If you wouldn't mind turning to what has been

1 marked as SPMT-53. Believe it to be one of the
2 notebooks in front of you?

3 A. You got a tab number?

4 Q. SPMT-53.

5 A. Okay.

6 Q. I think it's black binder.

7 A. Oh, sorry.

8 MR. WHITE: Might be on the floor.

9 THE WITNESS: Always the last one. Let
10 me pack this up a little bit here.

11 MR. RAPHAEL: Your Honor, may I
12 approach?

13 THE COURT: Sure.

14 MR. RAPHAEL: We are just going to move
15 some of these.

16 THE WITNESS: Got it. Thank you.

17 BY MR. RAPHAEL:

18 Q. Mr. Hunt, do you recognize this document?

19 A. I do.

20 Q. What is it?

21 A. It's a summary of the plan approvals and the
22 activities that led up to their implementation.

23 Q. If we could turn to the first of those plan
24 approvals, what is marked on here as 0119. I think

1 what has been referred to as Plan Approval 1 throughout
2 this hearing. Here it's in quotes the Tank Project.

3 Do you see that project?

4 A. I do.

5 Q. What is that project in a high level?

6 A. This was the, you know, the first project which
7 included the construction of a propane and ethane tank
8 as well as some of the related facilities that support
9 that.

10 Q. And when did the business development period begin
11 for that first project 0119?

12 A. That first project, the work that's sort of
13 started, you know, the whole process there for a
14 commercial standpoint started back in 2010. And it ran
15 up until about September of 2012.

16 Q. Now, if I say the words open season to you, do you
17 know what they mean?

18 A. Yes.

19 Q. What do they mean?

20 A. The open season is the process whereby common
21 carrier pipelines offer their services to the general
22 public in a public way. And it's governed by -- for
23 various regulations.

24 Q. Was there an open season related to this project?

1 A. There was an open season related to the Mariner
2 East Pipeline, which would in this case provide ethane
3 and propane that would be stored in the tanks that were
4 constructed as part of 0119.

5 Q. Mr. Hunt, if you could, just looking underneath
6 that, there is something called a deethanizer on that
7 same sheet. Do you see that?

8 A. I do.

9 Q. Do you know what that is?

10 A. Yes. As part 119A, as we described, the original
11 plan for 0119 was to batch ethane and propane on the
12 pipeline. Through the course of that development
13 process, we had the customers that were asking for the
14 services, you know, and changes in product mix and
15 market demand. We came to the conclusion -- company
16 came to the conclusion that we would need a deethanizer
17 to separate the ethane, mix ethane and propane off the
18 pipeline rather than batch off the pipeline.

19 Q. Just going back to 0119, so we're clear for the
20 record, was the deethanizer initially a part of that
21 first project?

22 A. Initially, no.

23 Q. Why not?

24 A. At that time, the commercial requirements didn't

1 dictate. You know, in other words, when we developed
2 these projects, it all starts with customer
3 conversations. And the original conversations with
4 customers and the original sort of range of ethane and
5 propane movements that we were contemplating at that
6 time didn't require that because, you know, it was a
7 more narrow range of options that were required.

8 As time went on, and again these are iterative
9 processes where we talk to customers over long periods
10 of time. Takes months or sometimes years to put these
11 things together because of the significant commitments
12 that customers have to make in order to provide the
13 financial surety for us to move forward with these
14 types of projects. But through the course of those
15 discussions, that evolved to the point, you know, those
16 customer requirements evolved to the point where it
17 became apparent to us that we were going to need to
18 blend the products in the pipeline and then separate
19 them using the deethanizer.

20 Q. Mr. Hunt, I am looking at two columns here. There
21 is one titled BD,period; BD Engineering; and BD APP a
22 little squiggle and then an L.

23 What is that first BD, period, BD Engineering
24 period? What does that mean to you?

1 A. The BD period column represents the span of time
2 where we were interfacing with customers or our
3 business development was interfacing with customers,
4 and understanding their requirements. Going back and
5 forth with the customers on what those requirements
6 are, what type of services we can provide. And
7 generally, those periods culminate with the execution
8 of signed contracts.

9 And these contracts are generally long term
10 contracts. You know, they are usually in the range of
11 10 to 15-year commitments. And by commitments, I mean
12 those are contracts whereby the customers commit to
13 paying us fees for a minimum volume of shipped
14 products, regardless of whether or not they actually
15 ship the products. In other words, they have to make a
16 commitment to ship a minimum volume commitment. Again,
17 whether they ship it or not, they still have to pay us
18 those fees.

19 And again, that gives us the financial certainty
20 that is necessary for us to move forward with a project
21 in these cases where it's hundreds of millions of
22 dollars, potentially billions of dollars of capital
23 that are required to build the assets that are
24 necessary to provide those services.

1 Q. Mr. Hunt, when I look at the second column, just to
2 keep the record clear, the BD APP with the little
3 squiggle and the L next to it, what does that mean?

4 A. That stands for BD approval. That is, in our
5 parlance, refers to sort of the funding process that is
6 associated with that internally for us in terms of how
7 do we improve funding moving forward. And you see in
8 this particular case, you see several dates there.

9 And you know, the way these things work is, as I
10 said, it all starts with customers. We start with
11 customer conversations. And then as we get, you know,
12 some understanding and what it is our customers are
13 asking for, then, typically, we have to do some
14 engineering because we have to try to figure out, okay,
15 what would it take for us to provide what the customer
16 is asking for. So that takes -- that takes some money.

17 So generally up front, we approve relatively small
18 amounts of money to go do engineering. And then we do
19 some engineering. Through the course of that, again it
20 tends to be an iterative process. And we go back and
21 forth with customers. And then eventually, you know,
22 you get to the point where you have enough engineering
23 that you have a good understanding of what the cost of
24 the project would be.

1 And then once you understand the cost, now you have
2 an opportunity from a business standpoint to say, okay,
3 I understand the cost. I understand what the fee
4 structure would look like for this. And now you can
5 calculate a return. And that is sort of the, you know,
6 key point for the company to make a business decision
7 that -- whether or not a project is viable or not.
8 Whether or not it makes sense to move forward.

9 Q. Just to keep the record clear, Mr. Hunt, these
10 customers for the terminal or talking about customers
11 for the pipeline?

12 A. They are two separate sets of contract. And
13 there -- and they are -- sometimes customers are the
14 same, sometimes they are not. But yeah, separate
15 contracts for both the pipeline. And in this case,
16 what we are referring to on this chart, is the
17 customers for the terminal.

18 Q. If you can turn your attention to the next heading
19 that's the engineering heading for, again, let's go
20 first to 0119.

21 A. I see that.

22 Q. What does that mean?

23 A. So as said earlier, that's sort of the period of
24 time where engineering, you know, takes place to start

1 to development, you know, what are the assets that
2 would be required to perform those services, and then
3 ultimately what that would cost. And then after the
4 final funding approval is obtained by the company, then
5 to complete the engineering up to a sufficient, you
6 know, degree in order to be able to submit a plan
7 approval. And then ultimately, complete the
8 engineering and construction for a project. You know,
9 it's approved to move forward.

10 Q. What was the engineering period for 0119 or Plan
11 Approval 1?

12 A. Yeah. Looks like we worked on the engineering on
13 that from about August of 2011 up through October of
14 2014. And it looks like it was -- the notation here is
15 95 percent. So, we were -- roughly, we felt at the
16 time about 95 percent complete on the engineering as of
17 2014.

18 Q. And if we could for the next one for 0119A, the
19 deethanizer project, what is the engineering period for
20 that?

21 A. For that one it was similar. Looks like September
22 of 2011 up again through October of 2014.

23 Q. Mr. Hunt, if we could, just kind of moving down the
24 document to the next Plan Approval 0119B, the National

1 Gasoline Project. What was the business development
2 period for that project?

3 A. The business development period for 0119B ran from
4 about February of 2013 through May of 2013.

5 Q. And what is that project, the Natural Gasoline
6 Project?

7 A. This is a project whereby we constructed some
8 assets that would enable us to bring in natural
9 gasoline. And it was conceived of by truck and, to
10 some extent, by rail into the facility to be run
11 through C5 split or to remove the penting from the
12 natural gasoline and provide upgrade product value.

13 Q. Mr. Hunt, is that project now built and in service?

14 A. It is.

15 Q. And I am going to come back. We are going to keep
16 working across. I want to take a quick jump. I know
17 we heard about Plan Approval E earlier today, 0119E.

18 Which is down, looks here on the chart, that is marked
19 as propanizer. Are you familiar with that project?

20 A. 0119E?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Is that project in service now?

24 A. No.

1 Q. So, is Plan Approval B in full service now without
2 Plan Approval E?

3 A. Yes. And has been for some time.

4 Q. And when you say some time, is that days? Months?
5 Years?

6 A. Years. I believe the assets associated with 0119B
7 were started up in August of 2014.

8 Q. If we could, just going back to Plan Approval B and
9 working across here. When was the final business
10 development approval for the Natural Gasoline Project?

11 A. It looks like the final approval was in November of
12 2013.

13 Q. And when was the engineering complete for that
14 project?

15 A. The engineering looks like ran through December of
16 2013.

17 Q. Mr. Hunt, if we could, just kind of moving down
18 this document here to Plan Approval 0119C, the cooling
19 tower. Do you see that?

20 A. I do.

21 Q. Are you familiar with that project?

22 A. I am.

23 Q. What is it?

24 A. This project was, as I testified earlier, was

1 really more of a design optimization that came about
2 through the process of the engineering for 0119A.

3 Q. And I see here there is an NA for the BD period and
4 then the final BD approval. What does that mean?

5 A. It means this project wasn't driven by any business
6 development. You know, this project came about, as I
7 said, as a result of our engineers coming to the
8 conclusion that it made more sense and was more
9 efficient and effective utilizing a cooling tower to
10 provide the necessary cooling rather than a very large
11 bank of airofane coolers that I think was the original
12 plan for the deethanizer.

13 Q. Mr. Hunt, I guess to keep the record clear, what
14 was the engineering period for the cooling towers --
15 excuse me, for the cooling tower?

16 A. Yeah. It -- the chart here indicates that it ran
17 parallel with the engineering period for the
18 deethanizer.

19 Q. Working down your chart to new tanks ME2x it says
20 here. What are the new tanks that are referenced here
21 under 0119D, that plan approval?

22 A. Yes. This was separate project that came about
23 later, which was -- includes the construction of an
24 ethane, butane and propane tanks.

1 Q. And what was the business development period for
2 this New Tanks Project?

3 A. This New Tanks Project, the business development
4 discussions range from March of 2013 through about
5 December of 2014. Which then, you know, sort of
6 ultimately ran forward into the open season period, as
7 well.

8 Q. And when you say the open season period, what open
9 season period are you referring to?

10 A. This was the open season period for the Mariner
11 East 2 Pipeline which would carry a large portion of
12 the volumes that would be associated with this New
13 Tanks Project.

14 Q. And under that, I guess the next column, the final
15 business development approval. When did that occur for
16 0119D, that plan approval?

17 A. The final business approval to move forward there
18 which is December of 2014.

19 Q. And how about the engineering for the 0119D
20 project?

21 A. Yes. The engineering, it looks like ran from about
22 September of 2013 through November of 2016.

23 Q. Mr. Hunt, if you could just again, working down
24 this document, plan approval for 0119E, the

1 Depropanizer Revolution frat Project. Are you familiar
2 with that project?

3 A. Yes.

4 Q. What is it?

5 A. So the 0119E was a little bit different in that at
6 the time, our affiliate company ETP, at the time the
7 plan approval was submitted was prior to the merger we
8 talked about earlier. SXLs was the owner and operator
9 of the Marcus Hook site at the time. But our affiliate
10 parent company, Energy Transfer Partners, was
11 developing projects for gas processing out of the
12 basin.

13 Q. Mr. Hunt, I want to stop you there. When you say
14 affiliate company, were those two separate publicly
15 traded companies?

16 A. Those were two separate publicly traded companies,
17 correct.

18 Q. Please continue.

19 A. So yeah, the business development organization for
20 ETP at that time, you know, again, a separate group,
21 part of a separate company, they entered into -- were
22 same similar process. They were having conversations
23 with customers, with developing a project to do gas
24 process out of the basin. As part of that, they

1 developed commitments to handle a C3-plus product from
2 that gas processer. And then as part of that, they
3 made the decisions as our parent affiliate to construct
4 the assets that are associated with 119E to provide
5 amines to fractionate that C3-plus product, you know,
6 at the Marcus Hook site.

7 Q. What was the business development period for that
8 project initially?

9 A. That ran, I'm told, from about December of 2014
10 through May of 2015. And again, culminated in specific
11 contracts, you know, to provide those services.

12 Q. Mr. Hunt, the next project appears to be the 0119F,
13 the storage tank update project. Are you familiar with
14 that project?

15 A. Yes.

16 Q. What is it?

17 A. This project after the startup of the assets
18 associated with the 0119B as our commercial group was
19 going out into the market and procuring natural
20 gasoline, again, by truck and by rail, they came to the
21 conclusion that some of the feed stock that was
22 available, you know, that could be processed by that --
23 by those assets, had a higher vapor pressure than the
24 tanks would allow for storage, you know, based on the

1 permit associated with the tanks. So as I understand
2 it, 0119F was to raise the vapor pressure limit on
3 those tanks and account for the emissions associated
4 with those increases.

5 Q. And what was the business development period for
6 that project?

7 A. You know, this one doesn't really have a business
8 development period, per se. It was really, you know,
9 based on earlier project. But I think it was, again,
10 just a response to sort of market demand and
11 availability of product.

12 Q. How about Plan Approval 0119G, the Crude Storage
13 Project. Are you familiar with that project?

14 A. Yes.

15 Q. What is it?

16 A. Similar to 0119F, we have services that are
17 provided at the Marcus Hook site for a local refinery
18 customer is the storage of crude oil. So we have -- we
19 had an existing contract to provide crude oil storage
20 and logistic services. And our customer came to us and
21 asked whether or not it would be possible to store some
22 higher vapor pressure crude oils. And we couldn't do
23 that immediately because of the permit restrictions on
24 the tanks. But the project associated with the 0119G

1 is what accounted for those vapor pressure emission
2 increases that would in enable us to provide the
3 services that our customer was asking for.

4 Q. And although not on this list here, Mr. Hunt, are
5 you familiar with Plan Approval 0119H that's been
6 referred to during this hearing?

7 A. Yes.

8 Q. What is it?

9 A. 0119H is, you know, like some of those other things
10 was not a business driven process at all. 0119H is
11 associated with a maintenance replacement of what has
12 been for many years, you know, one the main flare
13 stacks at the site.

14 Q. And where is that flare located now, Mr. Hunt?

15 A. Physically located?

16 Q. Yes.

17 A. It's physically located in the small portion of the
18 property that's in the State of Delaware.

19 Q. Now, I want you to return to Plan Approval E, if
20 you could. Is there a flare associated with Plan
21 Approval E?

22 MR. RAPHAEL: You know what, may I
23 approach, Your Honor? I am going to put the
24 Plan Approval E in front of Mr. Hunt, if that's

1 okay?

2 THE COURT: Sure.

3 MR. RAPHAEL: Little bit easier.

4 MR. BOMSTEIN: Mr. Raphael, is there a
5 specific document you're referring to?

6 MR. RAPHAEL: Plan Approval E?

7 MR. BOMSTEIN: Yes.

8 MR. RAPHAEL: Yeah. It's one of our
9 exhibits. It's SPMT-15 for the record.

10 BY MR. RAPHAEL:

11 Q. If you can, just page through that document,

12 Mr. Hunt.

13 A. No. It doesn't appear to be there is a flare
14 associated with this.

15 Q. Let me get the application for you. Think we have
16 the plan approval itself there.

17 A. Yes. This doesn't really describe the --

18 MR. RAPHAEL: For the record, this is
19 Plan Approval E. The application for that --
20 and that is, I believe it's Exhibit 6 for us.
21 SPMT-6.

22 BY MR. RAPHAEL:

23 Q. More information. Please take a look at the Plan
24 Approval E application, Mr. Hunt.

1 A. The only reference to a flare here is, you know, a
2 connection to what's referred here as the subheader,
3 which would have been the flare header network that's
4 in the facility.

5 Q. Is that flare header and, I guess, the larger
6 flare, is that the same flare that's in Plan Approval
7 H?

8 A. Yes. So, this connects to the flare system, you
9 know. What is being referred to here in this plan
10 approval for 119E is connection to the flare header,
11 which then is connected to the flare in question in
12 119H.

13 Q. And when you said the maintenance replacement, is
14 it fair to say that, ultimately, that the flare in Plan
15 Approval H will replace, I guess, the flare and the
16 piece of it that is in Plan Approval E?

17 A. Yes. It was -- I'm not sure when we first started
18 thinking about this. But a couple of years ago as part
19 of normal, you know, processes, forward inspecting and
20 reviewing the condition of equipment at the site, we
21 became aware that the flare in question was in
22 deteriorated condition.

23 It turns out it's over 50 years old. So, we
24 started the study. At first, we thought we would

1 repair it. So, we started looking at different repair
2 options for the flare stack. And as we got into that,
3 you know, brought in some engineers to look at it. It
4 became apparent that in order to do the type of repair
5 work that would be necessary for the flare, we would
6 have to take it out of service.

7 So in order to do that would have required us to
8 erect a temporary flare, which is a fairly significant
9 effort in its own right. And then perform what turned
10 out to be very extensive, you know, repairs to the
11 flare. That's concrete flare stack.

12 As you -- as we looked at all that and evaluated
13 the cost of doing that, it became apparent that it was
14 going to be more cost effective to just build a new
15 flare as a replacement to the existing flare, connect
16 it to the same flare system that the existing flare is
17 connected to. And at that time, the existing flare
18 would be shut down, decommissioned and demolished.

19 Q. Mr. Hunt, was there a business development period
20 associated with this new flare?

21 A. No. It's not a business project. I mean, it's a
22 operations maintenance project, you know, that's just
23 associated with maintaining, you know, the existing
24 assets at the site.

1 Q. Very good.

2 MR. RAPHAEL: That's all I have for,
3 Mr. Hunt. Thank you.

4 THE COURT: Did you want to move any of
5 these exhibits or?

6 MR. RAPHAEL: Your Honor, I would like
7 to move SPMT Exhibit 53 into evidence.

8 THE COURT: Any objection?

9 MR. BOMSTEIN: That was SPMT-53?

10 MR. RAPHAEL: Right, the chart.

11 MR. BOMSTEIN: Are you moving it to be
12 admitted for truth of the matter asserted?

13 MR. RAPHAEL: I am, Alex.

14 MR. BOMSTEIN: We would object on that
15 basis. We think this is essentially in the
16 nature of a demonstrative exhibit that Mr. Hunt
17 testified to. He didn't testify as to all the
18 pieces of this.

19 So, we have an objection to it being
20 admitted for the truth of the matter asserted.

21 THE COURT: SPMT-3 is admitted over
22 objection.

23 (At this time, Exhibit SPMT-53 was
24 admitted for the record.)

1 THE COURT: Does the Department have any
2 questions for this witness?

3 MR. WHITE: No, Your Honor.

4 THE COURT: Cross?

5 MR. BOMSTEIN: Very small amount of
6 cross, Your Honor.

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. BOMSTEIN:

11 Q. Mr. Hunt, did you hear Mr. Raphael's statement
12 earlier before this testimony concerning Project B
13 being essentially about the receipt of natural gasoline
14 through a truck rack?

15 A. I heard his general statement here. I don't
16 know -- can you repeat the specific statement for me or
17 are you just --

18 Q. Okay. So --

19 A. I heard his statement. Not sure I heard the
20 specifics of every word.

21 Q. And I probably don't remember every word either.

22 A. Okay.

23 Q. And you testified a minute ago that Project B was
24 conceived of as for a truck and rail, correct?

1 A. Yes. I think initially it was truck. Later on
2 through some existing rail assets, we also started
3 receiving natural gasoline by rail.

4 Q. So, am I correct in that Sunoco over time
5 understood that it could use the Natural Gasoline
6 Project, Project B, to process materials besides those
7 arriving by truck?

8 A. Well, as you talking about mode of Logistics, so
9 it's -- I think it comes down to transportation. It's
10 the same materials, you know, in many cases sourced
11 from the same origin locations, just whether or not it
12 was transported by truck versus transported by rail.

13 Q. So, the mode of transport isn't material as far as
14 you're concerned, correct?

15 A. Well, certainly material commercially. And that
16 was part of what, you know, made the rail, you know,
17 attractive to us or to our commercial guys. But yeah,
18 I mean, you can transport the product different ways
19 and the project can perform its function.

20 Q. And the project can perform its function for
21 natural gasoline that arrives originally through
22 pipeline, correct -- too, correct?

23 A. It could.

24 Q. You said Project B is -- has been in operation for

1 several years; am I correct?

2 A. Yes.

3 Q. Is it operating all the time?

4 A. As in 24/7, 365?

5 Q. At its maximum capacity.

6 A. No. It does not operate all the time as its
7 maximum capacity.

8 Q. Does Project B have additional capacity to process
9 more natural gasoline then it has over the course of
10 the last couple of years?

11 A. Yes.

12 Q. Am I correct in that there is room for Project B to
13 also process natural gasoline that arrives by pipeline?

14 A. Yes.

15 Q. And in fact, isn't it the case that you anticipate
16 that the equipment associated with Project B will, in
17 fact, process natural gasoline arriving by pipeline?

18 A. That's not clear as I testified earlier. One of
19 the constraints that limits the operation of the assets
20 under 119B is the market, which is a relatively small
21 market. So, it's not clear to me at all that
22 incremental C3-plus or the C5-plus component of the
23 C3-plus will actually get processed through the natural
24 gasoline unit. Again, because there's not necessarily

1 a market for it. It's problem just as likely that the
2 natural gasoline will get sold or blended into gasoline
3 without being processed through that system.

4 Q. It may happen, it may not?

5 A. It may not. Again, would depend upon market
6 demand.

7 Q. And on Project H, you characterized that is a
8 replacement project, correct?

9 A. Yes.

10 Q. Does that involve capital expenditures?

11 A. Yes.

12 Q. And did you budget for those capital expenditures?

13 A. We -- yes. Once we understood the cost.

14 Q. Is that information on that development time frame
15 included in the Plan Approval Summary that we are
16 looking at SPMT-53?

17 A. No. I don't think that's on the list.

18 Q. Okay. And I apologize if this was asked and I
19 missed it. But when did SPMT first budget to replace
20 the flare?

21 A. You know, I'm not sure. We started looking at this
22 based upon, like I said, inspection processes at the
23 site. And again, we did engineering and, you know,
24 sort of figured out what the cost was. And eventually,

1 sort of approved the final funding. I don't think it
2 was really approved to go forward until probably -- you
3 know, might have been 2016. It's in that time frame.
4 I don't recall the exact.

5 Q. Do you recall when it was initially being studied
6 to do the replacement?

7 A. I don't recall when it started, but it was a couple
8 years before that.

9 Q. Thank you.

10 MR. BOMSTEIN: No further questions.

11 THE COURT: Anything further?

12 MR. RAPHAEL: Very briefly, Your Honor.

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. RAPHAEL:

17 Q. I want to take you back to your refinery days, if
18 we could. Was propane, ethane and butane being
19 produced in Marcus Hook Industrial Complex when it was
20 a refinery?

21 A. Yes. When you operate a refinery, you know
22 refineries are fed crude oil. But in order to turn
23 crude oil into refine products like gasoline and diesel
24 foot and heating oil, the products that, you know,

1 consumers use, you have to process that oil through a
2 number of different processes. And some of those
3 processes, you know, not to get too technical is
4 referred to as cracking process.

5 Cracking processes take big molecules and crack
6 them into smaller molecules. Part of the byproducts
7 that come off of the cracking operations in the
8 refinery are some of the same products that you
9 mentioned: Ethane, propane and butane. And of course,
10 one of the things that Marcus Hook is known for is the
11 caverns, which were built decades ago. And used to
12 store propane and butanes since the last '60s and early
13 '70s.

14 MR. RAPHAEL: That's all I have, Your
15 Honor.

16 THE COURT: Anything further from the
17 Department?

18 MR. WHITE: No, Your Honor.

19 THE COURT: Anything further?

20 MR. BOMSTEIN: No, Your Honor.

21 THE COURT: Thanks again.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness?

24 MR. RAPHAEL: SPMT calls Hank Alexander.

1 MR. BOMSTEIN: Your Honor, at this time,
2 we would ask that if there is a order of
3 witnesses that Mr. Raphael's working from, we
4 would like to know what that is. That wasn't in
5 Sunoco's prehearing memorandum.

6 THE COURT: Can you provide who the next
7 few witnesses are going to be so --

8 MR. RAPHAEL: I guess my answer to that
9 would be it depends. I think I can, Your Honor.
10 The next one will be Mr. Becker.

11 THE COURT: Who?

12 MR. RAPHAEL: Mr. Becker.

13 - - -

14 (HARRY ALEXANDER, having been previously
15 duly sworn, was examined and continued
16 testifying as follows:)

17 - - -

18 THE COURT: Mr. Alexander, you were
19 previously sworn in. You understand you're
20 still under oath?

21 THE WITNESS: I do.

22 - - -

23 EXAMINATION

24 - - -

1 BY MR. RAPHAEL:

2 Q. Mr. Alexander, can you state your full name and
3 spell your last name for the record?

4 A. Harry Joseph Alexander, A-L-E-X-A-N-D-E-R.

5 Q. By whom are you presently employed?

6 A. Energy Transfer Partners.

7 Q. And what is your position with Energy Transfer
8 Partners?

9 A. Senior Vice President of Business Development.

10 Q. Mr. Alexander, could you explain to the Board what
11 you do as the Senior Vice President of Business
12 Development for Energy Transfer Partners?

13 A. I focus on pipeline business development projects,
14 specifically focusing in the natural gas liquids area
15 both in the northeast and midwest. In the Midwest as
16 well as the Gulf Coast.

17 Q. Mr. Alexander, are your responsibilities related to
18 the Marcus Hook Industrial Complex or the pipelines?

19 A. The pipelines.

20 Q. And could you explain to the Board exactly what
21 those entail in a bit more detail? In other words,
22 what do you do?

23 A. I work. I have commercial responsibilities over
24 pipeline assets, natural gas liquids pipelines

1 specifically. And I develop business and manage
2 commercial assets of the pipelines. So, I develop new
3 business on the pipelines and I manage existing
4 business on the pipelines. My team manages that.

5 Q. Mr. Alexander, what is an open season?

6 A. An open season is a period of time where pipelines,
7 common carrier pipelines, advertise periods for
8 commitments from the shipping communities to move their
9 products using the pipelines or proposed pipelines in
10 some instances. It's basically a open solicitation to
11 the general public who may ship or choose to pay for
12 shipment of liquid products.

13 Q. Are you familiar with some of the open seasons that
14 have been discussed during this hearing?

15 A. Yes.

16 Q. Could you explain to the Judge when the second open
17 season occurred?

18 A. Second open season for the project, I assume your
19 referring to Mariner East Phase 2?

20 Q. I am.

21 A. Was launched in December of 2013 and ran through
22 May of 2014.

23 Q. And what happens during that open season?

24 A. In that open season, we publicize widely the

1 availability of pipeline transportation for movement of
2 liquids from various origins to various destinations.

3 And we work with perspective customers to develop
4 contracts for shipping on the pipeline for service
5 being offered.

6 Q. Now, Mr. Alexander, I want to make sure we keep the
7 record clear here. For the second open season, was
8 C3-plus offered during that open season?

9 A. The product specifically C3-plus was not offered
10 during that open season.

11 Q. Mr. Alexander, are there different kinds of
12 shippers that ship on these pipelines?

13 A. There are.

14 Q. What are the shippers?

15 A. Well, you have priority service shippers. You have
16 uncommitted shippers. Some shippers, as we discussed
17 in my testimony, yesterday can be affiliated shippers
18 as well as nonaffiliated shippers, which are most.

19 Q. If you don't mind, Mr. Alexander, between
20 affiliated and nonaffiliated shippers, how do those
21 folks need to be treated?

22 A. Equally.

23 Q. And why is that?

24 A. It's the law. All shippers must be treated

1 equally. All transactions must be made at arms length.

2 And shipper information must be kept confidential.

3 Q. I'm sorry. If you can turn towards the Judge, I
4 think it's a little difficulty to hear that. Can you
5 just repeat that.

6 THE COURT: Yeah, I heard it.

7 BY MR. RAPHAEL:

8 Q. So when affiliated shipper does or does not get
9 more information than unaffiliated shipper?

10 A. Cannot get any additional information other than
11 that which is being offered to all shippers. All
12 shippers must be treated equally.

13 Q. And is there any training that you all offer to
14 make sure that happens?

15 A. Yes, sir. Typical ethics training regarding
16 affiliates and non-affiliates and regulatory training
17 with respect to confidential shipper information and
18 how it must be kept as such.

19 MR. RAPHAEL: That's all I have, Your
20 Honor.

21 THE COURT: Anything from the
22 Department?

23 MR. WHITE: No, thank you, Your Honor.

24 THE COURT: Cross?

1 MR. BOMSTEIN: Your Honor, do you mind
2 if I take a 30 seconds to discuss with
3 co-counsel?

4 THE COURT: Sure.

5 MR. BOMSTEIN: Your Honor, we don't have
6 any cross.

7 THE COURT: Okay. Thank you very much.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness.

10 MR. RAPHAEL: Your Honor, SPMT calls Joe
11 Becker. Can we just take a moment, Your Honor,
12 to switch out our notebooks?

13 THE COURT: Uh-huh.

14 - - -

15 (JOSEPH BECKER, having been previously
16 duly sworn, was examined and continued
17 testifying as follows:)

18 - - -

19 THE COURT: Mr. Becker, you were
20 previously sworn. And you are still under oath.

21 Do you understand that?

22 THE WITNESS: Yes, Your Honor.

23 - - -

24 EXAMINATION

1 - - -

2 BY MR. RAPHAEL:

3 Q. Good afternoon, Mr. Becker.

4 A. Good afternoon.

5 Q. Would you state your full name and spell your last
6 name for the record.

7 A. Joseph Paul Becker, B-E-C-K-E-R.

8 Q. By whom are you presently employed, Mr. Becker?

9 A. Energy Transfer Partners.

10 Q. And what is your position with Energy Transfer
11 Partners?

12 A. Senior Director of Terminal Engineering and
13 Construction.

14 Q. And what do you do for Energy Transfer Partners.
15 What does that mean?

16 A. I have a responsibility for development engineering
17 and construction for terminal engineering projects,
18 including business projects, infrastructure and
19 providing technical or engineering support to the
20 terminal operations.

21 Q. Mr. Becker, how long have you held that position
22 with Energy Transfer Partners?

23 A. Essentially, since 2012 when I joined Sunoco
24 Logistics.

1 Q. And since 2012, have your responsibilities
2 differed?

3 A. I would say only minor changes. So essentially,
4 what I described, those responsibilities have stayed
5 the same.

6 Q. Where is your office located?

7 A. My primary home base is the Marcus Hook facility.

8 Q. Mr. Becker, are you familiar as well with the Plan
9 Approval Summary that's been produced, I believe, that
10 you worked on, as well, for this matter?

11 A. Yes, I am.

12 MR. RAPHAEL: May I approach, Your
13 Honor.

14 THE COURT: Sure.

15 MR. RAPHAEL: It's SPMT-53. It's been
16 admitted into evidence.

17 BY MR. RAPHAEL:

18 Q. Mr. Becker, if you could, let's turn your attention
19 to Plan Approval 0119E, if we could.

20 A. Okay.

21 Q. Then with your start, if you can also go, I think
22 it's SPMT Exhibit 6, the plan approval application for
23 Plan Approval E. I believe it's in one of the
24 notebooks in front of you. Take a moment to tab

1 through that.

2 A. Okay.

3 Q. Are you familiar with the term boiler header
4 system?

5 A. Yes.

6 Q. What is that?

7 A. A boiler header is essentially the piping system,
8 the main steam piping system that runs from the
9 generating source, the boiler throughout the facility
10 providing steam through other piping systems to the
11 various users throughout the facility.

12 MR. RAPHAEL: Your Honor, with your
13 indulgence, I would like to have Mr. Becker come
14 down. We are going to make a demonstrative
15 exhibit.

16 BY MR. RAPHAEL:

17 Q. Mr. Becker, if you don't mind, could you just
18 sketch out what a boiler header system might look like
19 for the Board and for Your Honor.

20 A. Sure.

21 MR. BOMSTEIN: Objection. If this is
22 what a boiler header system might look like
23 rather than does look like, concerned we are
24 getting into expert testimony.

1 THE COURT: Response?

2 MR. RAPHAEL: Sure.

3 BY MR. RAPHAEL:

4 Q. Could you sketch out what the boiler header system
5 looks like for Plan Approval E in general terms.

6 A. Yes. I will start with a very simple drawing. You
7 let me know if further details are needed.

8 (Witness draws as instructed.)

9 I will start with the concept of the boilers.

10 Boilers is, obviously, taken a fuel of some sort along
11 with water, produce steam, pressurized steam.

12 Pressurized steams exits the boilers into a piping
13 system. And this is what I would call the beginning of
14 the header system.

15 The header really is a system -- at Marcus Hook we
16 can demonstrate in aerial later. Runs some distance
17 over to the main users within the facility. And within
18 that piping system, there will be any of a number of
19 users, consumers of that steam, typically to some sort
20 of heat exchanger. And again, that systems runs
21 throughout the piping system known as the header runs
22 throughout the facility.

23 Call these users.

24 Q. Mr. Becker, using the demonstrative blow up that

1 was used by the Clean Air Council, and if you could, I
2 guess returning to your notebook to get your exhibit as
3 well so you can track along.

4 A. The table?

5 Q. Right. With the -- what I would like you to do is
6 then if you could show the Board where the boiler would
7 be.

8 A. The boiler facility within Marcus Hook is at
9 Location 19 near the river.

10 Q. And how about the boiler header system?

11 A. The boiler header system, as I said, would start at
12 that point and run throughout the facility. There is
13 pipe racks you can partially pick up on the aerial
14 steam system, steam header. Runs along that pipe rack
15 system throughout the facility. We have users at some
16 of the numbered locations and others throughout the
17 facility.

18 THE COURT: Header is just another word
19 for pipe?

20 THE WITNESS: I would call it, Your
21 Honor, the main -- a main, the steam system.
22 And off of that main there might be other
23 laterals, one might call it. Smaller pipes
24 going to the specific users.

1 BY MR. RAPHAEL:

2 Q. Mr. Becker, just to bring it home, is there an
3 analogy you can use for Your Honor to bring the
4 concepts home?

5 MR. BOMSTEIN: Objection. Clarity.

6 THE COURT: Overruled.

7 THE WITNESS: An analogy might be your
8 furnace system within your home. You have a
9 furnace typically in a basement. And it
10 provides hot air to heat your home. You know,
11 duct work. Typically, it's a larger duct coming
12 initially off of the -- off of the furnace. I
13 would call that analogy would be the header.
14 And then smaller takeoffs to various rooms
15 within your home.

16 BY MR. RAPHAEL:

17 Q. And are you familiar with, I guess, the work on the
18 header system for Plan Approval E?

19 A. Yes.

20 Q. Where did that occur?

21 A. The users for Plan Approval E are up in this
22 general area, 17 and 18. So, the steam header that
23 runs throughout the facility, we would have chosen a
24 location near there. The steam header again running

1 throughout the facility. And we would have made piping
2 tie-ins and run the appropriate piping or the required
3 piping to those users at that location.

4 Q. Thank you, Mr. Becker. You may be seated.

5 A. Thank you.

6 Q. Mr. Becker, with respect to the cooling tower, the
7 15-2B cooling tower in Plan Approval E, could you turn
8 in your, I guess, in your notebook back to SPMT Exhibit
9 6 and just take a look at that.

10 A. Okay.

11 Q. With respect to the 15-2B cooling tower,
12 Mr. Becker, under Plan Approval E, were there lines or
13 anything down to the cooling tower that you're aware
14 of?

15 A. With respect to Plan Approval E and that project,
16 for -- there was not anything done to the cooling tower
17 proper in terms of its capacity.

18 Q. Is there some sort of piping system related to the
19 cooling tower?

20 A. Yes, there is.

21 Q. And could you describe for the Board what that is?

22 A. The piping system from a cooling tower similar
23 analogy to what I described with this -- with the steam
24 system with the exception of in the cooling water

1 system, that is -- that continuously circulates. Would
2 go out to the users as described with steam, but then
3 return to the cooling tower and go through the cooling
4 process.

5 Q. Mr. Becker, I think we heard a bit of testimony
6 about deethanizer and then potentially the ability to
7 convert something like that to demethanizer.

8 Were you here for that testimony?

9 A. Yes, I was.

10 Q. Is that something that can be done quickly or
11 easily?

12 A. Converting from a deethanizer to the demethanizer?

13 Q. Yes.

14 A. It's a significant undertaking. You first have to
15 do the evaluation from an engineering standpoint on
16 that particular separation, determine what type of
17 trays and processing parameters are required. And then
18 design and, in this case, I will call it construct or
19 modify that facility.

20 Q. And for a number of these projects, I guess in
21 particular Plan Approval E, when a project is designed
22 is there -- is there any engineering, I guess, headroom
23 for lack of a better word, built into some of these
24 projects?

1 A. Yes. Normal course of engineering and any project
2 in this industry, you would have some degree of design
3 margin.

4 Q. And what I would call, I guess, head room you call
5 it as an engineering design margin. Why is that?

6 A. You're putting a lot of effort into the engineering
7 calculations. But it's certainly not uncommon that as
8 you get into the operation within a few percent of the
9 actual performance of that unit or system, it's
10 uncertain until you have run it. So, you would
11 naturally design in a degree of sign margin to ensure
12 that you can support the operation as designed to meet
13 the objectives of the operation.

14 Q. Would that have been true for the components of
15 Plan Approval E?

16 A. Yes, it would.

17 Q. Would that also have been true for the RFDs that
18 relate to the Marcus Hook Industrial Complex? And when
19 I say RFD, the projects that would have been submitted
20 to the Department that you have heard of during this
21 appeal?

22 A. Yes, it would.

23 MR. BOMSTEIN: Objection. He's asking
24 would it have been rather than was it. It's

1 unclear whether the answer is speculation or
2 what actually happened.

3 THE COURT: Want to rephrase?

4 MR. RAPHAEL: Sure. Sure.

5 BY MR. RAPHAEL:

6 Q. Were there design margins built into the components
7 of Plan Approval E to your knowledge?

8 A. Yes.

9 Q. Were there design margins built into the RFDs that
10 we have heard testimony on relative to the Marcus Hook
11 Industrial Complex?

12 A. Yes, there was.

13 Q. If I could -- and I am going to come back and take
14 my notebook back from you.

15 A. Which was one yours?

16 Q. If you can turn to the RFD for -- I will get you
17 some for that?

18 MR. BOMSTEIN: What exhibit are you
19 looking?

20 MR. RAPHAEL: Sure, Counsel. We will
21 give you -- we are going to use our number for
22 that, I think. It's Exhibit 24, I believe.
23 It's RFD 5597.

24

1 BY MR. RAPHAEL:

2 Q. Put your hands on that, Mr. Becker.

3 A. Twenty-four?

4 Q. Yes, sir.

5 A. Yes.

6 Q. Take a moment to review it?

7 A. (Witness reviews as instructed.)

8 Okay.

9 Q. Are you familiar with that RFD?

10 A. Yes.

11 Q. What is it?

12 A. It was a request for determination that we had
13 submitted to the Department for the increase of cooling
14 water capacity of cooling tower 15-2B for the purposes
15 of providing cooling water to an instrument air
16 compressor that up to that time had been supplied from
17 a different cooling tower within the facility.

18 Q. If you could for the Board, what is an instrument
19 air compressor?

20 A. An instrument air compressor is a compressor, takes
21 air, filtered air, compresses it, provides pressure and
22 provides instrument air, a header similar to those
23 utilities we discussed, throughout the facility and to
24 various users within the facility.

1 Q. And is there any -- is there any water associated
2 with that RFD?

3 A. There is cooling water associated with that RFD.
4 That cooling water is required as part of the
5 compressor operation.

6 Q. Why is that?

7 A. Compressor is a large piece of equipment.
8 Generates heat and requires cooling.

9 Q. Would there have been engineering headroom built
10 into that request for the RFD?

11 MR. BOMSTEIN: Objection: Form.

12 THE COURT: Was there.

13 MR. RAPHAEL: Sorry, Your Honor.

14 BY MR. RAPHAEL:

15 Q. Was there engineering headroom built into the
16 submission of that RFD?

17 A. Yes.

18 Q. Why is that?

19 A. As I described earlier, it's common to have some
20 degree of design margin in an overall system such that
21 you end up with the capacity, with certainty that can
22 meet the needs of the operation.

23 Q. Mr. Becker, again, staying on Project E, were
24 there, I guess what I could call, tie-ins to a flare

1 that's associated with Project E or Plan Approval E?

2 A. Yes.

3 Q. Could you explain to the Board what those are?

4 A. So in operation as described in Plan Approval E,
5 it's a fractionation system. And there are emissions
6 or potential emissions largely set up for emergency
7 relief. That when relieved, go to flare header and,
8 ultimately, to the facility flare.

9 Q. What is a flare header?

10 A. Flare header, again, similar to the analogy reviews
11 and a little bit the other direction. But it is a
12 collection pipe header that runs throughout the
13 facility to gather the flare emissions from the various
14 operations to direct them to the flare for appropriate
15 destruction.

16 Q. And relative to that flare header in the system,
17 how did that -- how does that work together? In other
18 words, how do the tie-ins work with the flare header
19 system? Is there any relative to Plan Approval E?

20 A. Can you clarify what you mean by work together?

21 Q. How -- can you go back to Plan Approval E, if you
22 could?

23 A. That number again was?

24 Q. It's the application. I think it's --

1 A. Six?

2 Q. I think it's 6.

3 A. Six. Yes.

4 Q. Let's do it this way. What's the difference
5 between the flare and the flare header?

6 A. The flare itself is a device that with a lit pilot
7 will appropriate destruction mixture to destroy the
8 emissions that are being vented, if any, from the
9 various operations through from the facility. That is
10 the flare itself.

11 The flare header is the piping that directs or
12 carries any of those materials, vent materials, from
13 the various operations through the -- throughout the
14 operation to the flare. Working backwards to those
15 operations, you would have what might be called and at
16 times is called a subheader or lateral. That is a
17 smaller line from the unit, maybe from a pressure
18 safety valve or another point in the unit that carries
19 those materials from the unit to that flare header and
20 then down the header to the flare itself.

21 Q. Was a flare header system involved in Plan Approval
22 B?

23 A. Flare subheader of the smaller piping around that
24 operation was, yes.

1 Q. Can you explain the difference between a flare
2 subheader and a flare header?

3 A. Sure. Let me start at the unit. And tell me if
4 this answers your questions.

5 At the unit, you might have -- I will use an
6 example of pressure safety valve. It's a common device
7 that is attached ultimately to the flare header. It
8 might have piping, smaller piping, appropriately sized
9 that might be called from that point to the main
10 header, which would be larger. So, that smaller piping
11 is what one might call the subheader. Others might
12 call it a lateral that takes it from the specific
13 source to the header, a larger header, that runs
14 throughout the facility and carries it to the flare
15 device itself.

16 Q. Was a flare subheader involved in Plan Approval E?

17 A. Yes.

18 Q. Was there anything else involving the flare also
19 submitted as part of Plan Approval E to your knowledge?

20 A. Take the -- I do not believe so, but I may refer
21 to --

22 Q. Please, take a moment.

23 A. No, there is not.

24 MR. RAPHAEL: That's all we have, Your

1 Honor.

2 THE COURT: And you referred to a couple
3 exhibits along the way. You want any of those
4 in?

5 MR. RAPHAEL: Your Honor, I think we
6 have it in anyway. We will move to admit what
7 is SPMT Exhibit 24, which is the RFD for 5597.

8 THE COURT: I think we already have it.
9 But any objection?

10 MR. BOMSTEIN: No objection.

11 MR. RAPHAEL: That's the one he referred
12 to, Your Honor.

13 THE COURT: Right. Admitted.

14 (At this time, Exhibit SPMT-24 was
15 admitted for the record.)

16 MR. RAPHAEL: Then we also along that
17 same spirit let's move for SPMT Exhibit 6 which
18 is the plan approval application for E.

19 MR. BOMSTEIN: No objection, Your Honor.

20 THE COURT: Admitted.

21 (At this time, Exhibit SPMT-6 was
22 admitted for the record.)

23 MR. RAPHAEL: That's it for SPMT, Your
24 Honor.

1 THE COURT: Does the Department have any
2 questions?

3 MR. WHITE: No. Your Honor.

4 THE COURT: Cross?

5 MR. BOMSTEIN: We do have some amount of
6 cross, Your Honor.

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. BOMSTEIN:

11 Q. Hello, Mr. Becker?

12 A. Good afternoon.

13 Q. I want to take you back for a second to the boiler
14 system you were describing earlier. Could you please
15 explain what exactly was physically done to the boiler
16 system with respect to Project E?

17 A. So as I described, Project E utilized and required
18 steam from the existing boilers at the facility. Those
19 boilers at the facility through the piping network that
20 we've been talking about called the steam header, runs
21 throughout the facility to various users.

22 We made tie-ins at the appropriate point quite near
23 the user point for that Project E. And ran -- may have
24 required, I don't know the specifics of piping size and

1 so forth. Run the appropriate piping size from that
2 steam header to the point of use.

3 Q. Is it accurate to state that there is some
4 additional pipe added to that header system?

5 A. From the steam header, what might be called
6 analogous to the flare header described. Piping from
7 the steam system subheader systems to the user point.

8 Q. Were added as part of Project E?

9 A. Various piping was required. I don't know the
10 specific of the lengths and the sizing. Minor piping
11 to be able to take steam from the header system to the
12 point of use.

13 Q. When you say tie-in, having trouble physically
14 visualizing that. Can you describe what that looks
15 like?

16 A. So a tie-in is essentially typing a pipe, typically
17 in this case a smaller pipe of appropriate size to an
18 existing source of supply to another pipe.

19 Q. Thank you. And how does the steam -- how does the
20 steam driven through the header system?

21 A. Simply via pressure. So the boilers that I
22 describe that generate the steam, generate that steam
23 at an elevated pressure. Simply from the temperature
24 at which it runs. And that pressure is what transports

1 that steam throughout the facility.

2 Q. Thank you. And talking about the cooling water
3 lines, how is cooling water driven through those lines
4 from cooling towers?

5 A. Cooling water is driven throughout that loop that I
6 described from pumps, cooling water pumps that provide
7 the pressure to circulate the cooling water through the
8 loop and back to the cooling tower.

9 Q. And am I correct in understanding that those pumps
10 may or may not be in the cooling tower itself?

11 A. That is really a specific design, nuance I will
12 say.

13 Q. Do you know how it is with the 15-2B cooling tower?

14 A. I don't.

15 Q. Regarding the flare header system, how are the
16 gases that make their way to the flare through that
17 header system driven to that flare?

18 A. That also is just with pressure. So the generating
19 source, whether it's the process pressure safety valve
20 valve as I described or another source, would have --
21 provide pressure from that source and flows in the path
22 of least resistance, which is to the flare which runs
23 at a relatively low pressure.

24 Q. Are you familiar with the sweep gas and purge gas?

1 A. Yes.

2 Q. What are those?

3 A. Sweep gas is the utilization of a gas. It could be
4 any of a number of gases. Typically, put in at various
5 points in the flare header. Typically, points at the
6 extremes of the flare header to keep a positive flow
7 and very slight positive pressure on the flare head.

8 Q. Is that part of what keeps the gases moving through
9 the flare system?

10 A. That's not really what transports the gases that
11 are emitted from a particular unit. That really is
12 from that unit's own pressure.

13 Q. What's purge gas?

14 A. Purge gas is gas that is injected into the base of
15 the flare. Again, to keep a positive flow. I believe
16 its primary purpose is more from a safety standpoint
17 and a positive flow direction up the stack of the flare
18 itself.

19 Q. And so you said, that sweep gas is introduced at
20 the extremes of the flare system, correct?

21 A. Typically, throughout the flare header at
22 appropriate points.

23 Q. Would you agree that the -- what's happening at the
24 edges of the flare header system is integral to the

1 operation of the flare?

2 A. Can you explain what you mean by integral to the
3 operation of the flare?

4 Q. Sure. Can you have the operation of the flare if
5 you don't have the sweep gas flow at the edges of the
6 flare header system?

7 A. You can.

8 Q. Would it be safe?

9 A. It would open up the possibility of condensation or
10 negative pressure on the flare header. It's generally
11 not recommended. I will say that.

12 Q. Is it fair to say that those extremes of the flare
13 header system are needed components of the operation of
14 the flare?

15 A. Not sure I follow your question.

16 Q. Would you -- do you run flares at Marcus Hook
17 without the introduction of sweep gases at the edges
18 the flare header system?

19 A. Typically designed in, you have sweep gas that goes
20 in at the appropriate points throughout the facility.
21 It may depend on where certain connection points from
22 different processes come into that flare header. Might
23 be part of what goes into determining exactly where you
24 want that sweep gas.

1 Q. Is it flare to say that the flare header system is
2 more than just pipe?

3 A. The flare header, as I describe it, is pipe.

4 Q. But it also involves equipment needed to introduce
5 sweep gas, correct?

6 A. Sweep gas is introduced to the flare header via
7 other small connections.

8 Q. And that's part of the flare header system?

9 A. Broadly designed, it's part of the flare header
10 system.

11 Q. And one last topic. You're talking about building
12 in engineering design margin or headroom earlier?

13 A. Yes.

14 Q. It's -- in your experience in engineering, it's
15 standard to have a design margin for almost any
16 project, correct?

17 A. It's typical.

18 Q. And how much design margin do you typically build
19 into a project?

20 A. I don't think that there is any specific number of
21 percentage. I think it very much depends on the type
22 of operation, what you're trying to do, what the cost
23 of that additional design margin might be. So, I can'
24 really answer to a specific number.

1 Q. Do you have a normal range, let's say?

2 A. It could be anywhere from, you know, a couple of
3 percent to 20 percent.

4 Q. Okay. Do you know how much design margin was built
5 into the RFD that we looked at, at Sunoco 24, SPMT-24?

6 A. I believe the resulting RFD ended up at 28,500
7 gallons a minute. I believe that the demand post
8 Project E was just under the existing capacity of
9 25,000, so we built in up to the 28,000. I believe the
10 instrument air compresses required 1500, which would
11 have resulted in a basic design of 26,500.

12 My simple math would be that that's slightly less
13 than 10 percent. 2000 gallons per minute over the
14 26,500 gallons per minute.

15 Q. That's not how you normally calculate design
16 margin, is it?

17 THE COURT: That sounds like an expert
18 question to me?

19 MR. BOMSTEIN: Okay. Well, let me
20 rephrase it.

21 BY MR. BOMSTEIN:

22 Q. Earlier you were talking about design margins of a
23 few percent to 20 percent, correct?

24 A. In very general terms, yes. There is no specific

1 guideline.

2 Q. Isn't the design margin here the difference between
3 1500 gallons per minute requirement and 3500 gallon per
4 minute permitting request?

5 A. No. That's not how I would look at it.

6 Q. Why?

7 A. Because the RFD required the redesign of the pumps
8 for the cooling tower to get to the total of 28,500.

9 Q. My understanding was that -- please, correct me if
10 I'm wrong. They were new pumps. Am I wrong about
11 that?

12 A. There were definitely -- it's new pumps as part of
13 the RFD.

14 Q. What did you mean redesign the pumps?

15 A. That's what I meant.

16 Q. Okay.

17 A. Redesign for the new pumps.

18 Q. Are you testifying that the reason that Sunoco
19 asked for 3500 gallons per minute rather than 1500
20 gallons per minute was to build in a design margin?

21 A. It can be combination of things. I wasn't
22 specifically involved in the exact number. What I
23 would tell you is that between a design margin and,
24 oftentimes, if I could take a step back when your

1 designing to a capacity, you're looking at a number you
2 know you need to achieve and then you're looking at
3 available equipment, including in this case, pumps that
4 meet that need. So, it's not uncommon that you would
5 end up with a pump choice, choice of pumps that, you
6 know, meet that.

7 If they exceed it by some amount and it's within
8 what you think is a reasonable amount of design margin,
9 that is -- that would not be an unusual approach to the
10 design.

11 Q. Am I correct, though, you don't know whether the
12 reason this is 3500 gallons per minute rather than 1500
13 gallons per minute is because of design margin?

14 A. I think design margin is one of the considerations
15 in that, yes.

16 Q. Do you know what the other considerations are?

17 A. Could be what I just mentioned. Could be the
18 specific equipment availability to match the need of
19 the design.

20 Q. Your testimony is that it could be those things.
21 Do you know whether it is those things?

22 A. I didn't do the design personally. So to say with
23 absolute certainty, no.

24 Q. Are you certain of any of the reasons for the

1 difference in the gallons per minute between the 1500
2 and the 3500 for this project?

3 A. Can you repeat that?

4 MR. BOMSTEIN: Can you please repeat the
5 question?

6 THE STENOGRAPHER: "QUESTION: Are you
7 certain of any of the reasons for the difference
8 in the gallons per minute between the 1500 and
9 the 3500 for this project?"

10 THE WITNESS: I would say that I am
11 personally I have a high degree of certainty.
12 An absolute certainty, no.

13 BY MR. BOMSTEIN:

14 Q. And the high degree of certainty is that there is
15 some design margin built in, correct?

16 A. Yes.

17 Q. But not as to what that design margin is?

18 A. We just talked about what the design margin is.

19 So, could you clarify what your question is?

20 Q. Yeah. If this is partly due to design margin you
21 think, do you have any sense of how much of this is due
22 to design margin?

23 A. Do you mean as opposed to how much might be due to
24 and other reason such as the equipment?

1 Q. Yes, sir.

2 A. I would say that in design a situation, there
3 wouldn't be any delineation necessarily in a breakdown
4 of what is a design margin versus what might be in a
5 equipment availability to fit the purpose.

6 Q. And, sir, you just testified in the conditional.
7 Do you know what actually happened here?

8 A. Again, not with absolute certainty.

9 MR. BOMSTEIN: No further questions.

10 MR. RAPHAEL: Nothing further, Your
11 Honor.

12 MR. WHITE: Nothing from the Department.

13 THE COURT: Thank you. Next witness.

14 MR. RAPHAEL: Can we go off the record
15 for a minute?

16 MR. BOMSTEIN: I just want to put on the
17 record that at some point, we would like to know
18 the order of witnesses is we expected to see in
19 prehearing memorandum but never received.

20 THE COURT: Sure. I'd appreciate if you
21 could give him a list of your next few
22 witnesses.

23 MR. RAPHAEL: Sure. Thanks, Your Honor.

24 MR. BOMSTEIN: Thank you, Your Honor.

1 (At this time, a brief break was taken.)

2 - - -

3 (JED WERNER, having been previously duly
4 sworn, was examined and continued testifying as
5 follows:)

6 - - -

7 THE COURT: You were previously sworn
8 and you're still under oath.

9 Do you understand that?

10 THE WITNESS: Yes, I do.

11 THE COURT: Thank you.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. RAPHAEL:

16 Q. Good afternoon, Mr. Werner.

17 A. Good afternoon.

18 Q. Could you state your full name and spell your last
19 name for the record?

20 A. Jed Allen Werner, W-E-R-N-E-R.

21 Q. Mr. Werner, by whom are you presently employed?

22 A. Energy Transfer Partners.

23 Q. What is your position with Energy Transfer
24 Partners?

1 A. I am currently an Air Permitting Manager.

2 Q. And what you do as the Air Permitting Manager with
3 Energy Transfer Partners?

4 A. I have in approximately a nine-state area in the
5 northeast, I help environmental compliance specialist
6 for the facilities renew their operating permits, Title
7 V permits, daily operating permits depends on the
8 state. And then also help the specialists with new
9 projects they might have at their facilities.

10 Q. How long have you held that position, Mr. Werner?

11 A. The position was new position with Energy Transfer
12 was approximately January of 2016.

13 Q. And what position did you hold with the company
14 before that?

15 A. Prior to the merger, I was a capital projects
16 permitting -- Environmental Projects Permitting
17 Manager -- an Environmental Projects and Compliance
18 Manager.

19 Q. And what were your responsibilities in that role,
20 Mr. Werner?

21 A. In that role mainly with capital projects, helping
22 obtaining any necessary environmental permits, air,
23 water, wastes, whatever needed. And also, assisting
24 with compliance personnel in the field.

1 Q. And could you explain to the Judge just how that
2 process worked working with the engineering folks, the
3 development folks on projects? How that would work?

4 A. Specifically, to Marcus Hook or in general?

5 Q. Specifically to Marcus Hook Industrial Complex?

6 A. When engineering has a funded project that they
7 would like to move forward with, we would get involved
8 to obtain any necessary permits to do that project.

9 Q. And would you retain outside consultants to assist
10 you with that?

11 A. Yes. Depends on the project. Smaller projects we
12 can do in-house. But obviously, the larger projects,
13 we would go to consultants.

14 Q. For the plan approvals that we have been discussing
15 during this hearing, is there a consulting firm that
16 was retrained for these projects?

17 A. Yes, there was.

18 Q. Mr. Werner, did you put a summary together in
19 preparation for this matter relative to those plan
20 approvals?

21 A. Yes, I did.

22 MR. RAPHAEL: May I approach, Your
23 Honor?

24 THE COURT: Yes.

1 BY MR. RAPHAEL:

2 Q. Mr. Werner, take a look at this document. Do you
3 recognize it?

4 A. Yes, I do.

5 Q. On the, I guess, the third page of this document,
6 there is some handwritten information related to
7 23-011, excuse me, 23-0119H, 23-0119I.

8 Do you see that?

9 A. Yes, I do.

10 Q. Do you recognize that handwriting?

11 A. Yes, I do.

12 Q. Whose handwriting is it?

13 A. That is my handwriting.

14 Q. Thank you, Mr. Werner.

15 A. I apologize.

16 Q. Could we turn to the first page of this document.
17 Relative to Plan Approval 23-01191, are you familiar
18 with that plan approval?

19 A. Yes, I am.

20 Q. With respect to the first line of an ERM work
21 authorization date, what is that?

22 A. The ERM work authorization date is the date that we
23 reached out to ERM to prepare the plan approval
24 application.

1 Q. What is that date for 23-0119?

2 A. August 30, 2012.

3 Q. Moving to the next Plan Approval 23-0119A. The
4 Project Mariner Deethanizer Project. What was the ERM
5 work authorization date for that project?

6 A. January 7, 2013.

7 Q. And moving to the next project, 23-0119B, the
8 Natural Gasoline Project, what was the ERM work
9 authorization date for that project?

10 A. June 28, 2013.

11 Q. If you can turn to page 2, Mr. Werner, for
12 23-0119C, the Project Mariner Cooling Tower Project,
13 what was ERM work authorization date for that?

14 A. January 24, 2014.

15 Q. And for the next project 23-0119D, the New Tanks
16 Project, what was the ERM work authorization date for
17 that?

18 A. January 9, 2014.

19 Q. And for the next project, 23-0119E Project
20 Revolution, what was the ERM work authorization date
21 for that?

22 A. July 9, 2015.

23 Q. If you can turn the page, Mr. Werner, for Project
24 23-0119F, the storage tank update, what was the ERM

1 work authorization date for that?

2 A. October 12, 2015.

3 Q. And turning to the next project, 23-0119 -- excuse
4 me, 0119G, the Crude Tanks Project, what was ERM work
5 authorization date for that?

6 A. July 28, 2016.

7 Q. And turning to the handwritten information for
8 23-0119H, West Warm Flat Project, what was the work
9 authorization date for that?

10 A. February 23, 2015.

11 Q. And for the last project, 23-0119I, the ME2x
12 ethane -- excuse me, Ethane Extension Project, what was
13 the work authorization date for that?

14 A. May 30, 2017.

15 MR. RAPHAEL: Thank you, Mr. Werner.

16 That's all we have, Your Honor.

17 THE COURT: Does the Department have any
18 questions?

19 MR. WHITE: No, Your Honor.

20 THE COURT: Cross?

21 MR. BOMSTEIN: Very short cross, Your
22 Honor.

23 - - -

24 EXAMINATION

1 - - -

2 BY MR. BOMSTEIN:

3 Q. Mr. Werner, can you please turn to SPMT-53.

4 Thank you. Can you see in the row for 0119C and
5 the column for Permit Application, what is the date
6 listed there?

7 A. 0119C, the permit application there says
8 April 2014.

9 Q. Thank you. And can you go back to the sheet you
10 were looking at a minute ago, the handout. What's the
11 application date listed there for Project C?

12 A. March 31, 2014.

13 Q. Do you know why that is discrepant?

14 A. I do not know. That's the application date that I
15 prepared was the dates that the applications are signed
16 as far as my recollection.

17 Q. Do you know if there are other discrepancies in the
18 Plan Approval Summary in SPMT-53?

19 A. I will review. I don't know offhand of any
20 discrepancies. Do you want me to review?

21 Q. You don't need to compare every date on both
22 documents. But do you have any personal knowledge
23 without needing to review of where the information on
24 the Plan Approval Summary came from?

1 MR. RAPHAEL: Your Honor, I am going to
2 have to object. I guess cross-examination is
3 usually limited to direct examination. We just
4 asked him authorization dates from a document he
5 prepared. And now he's being cross-examined
6 about a summary that he wasn't involved in.

7 I think that's beyond the scope of
8 cross-examination frankly.

9 THE COURT: Overruled.

10 THE WITNESS: I don't know offhand of
11 any other discrepancies between the two.

12 BY MR. BOMSTEIN:

13 Q. Did you have any involvement in preparing the Plan
14 Approval Summary document?

15 A. I prepared this document. I was not involved in
16 53.

17 Q. Okay. For the record --

18 A. I was not personally involved in 53.

19 Q. Okay. Thank you. For the record, this document
20 the witness was holding up, the handout that his direct
21 was concerning. Okay. Thank you.

22 MR. BOMSTEIN: No further questions.

23 MR. RAPHAEL: Nothing further, Your
24 Honor.

1 MR. WHITE: Nothing from the Department.

2 THE COURT: Thank you. This document
3 you handed, you just were using that to refresh
4 your recollection. You're not admitting it?

5 MR. RAPHAEL: We are not, Your Honor.

6 THE COURT: You want to go off the
7 record for a second?

8 MR. RAPHAEL: Yes.

9 THE COURT: Okay.

10 (At this time, a discussion was held off
11 the record.)

12 THE COURT: We will proceed tomorrow
13 morning at 9:30 a.m.

14 (At this time, the Hearing adjourned at
15 4:29 p.m.)

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

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

ANGELA M. KING, RPR,
Court Reporter, Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

A	494:12	454:19	additionally	495:22	571:12	579:2	629:10
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COMMONWEALTH OF PENNSYLVANIA

BEFORE THE ENVIRONMENTAL HEARING BOARD

- - -
CLEAN AIR COUNCIL :
: :
vs. :
: :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO :
PARTNERS MARKETING & :
TERMINALS, L.P., :EHB Docket No.
Permittee :2016-073-L

- - -
May 10, 2018

- - -
Hearing in the above matter held
before Judge Bernard A. Labuskes, Jr., taken
pursuant to notice at Department of Environmental
Protection, Two East Main Street, Fourth Floor,
Norristown, Pennsylvania, commencing at 9:32 a.m.,
before Susan A. Hurrey, Registered Professional
Reporter and Notary Public.

- - -
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I N D E X

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- - -

E X H I B I T

NO.	DESCRIPTION	ADMITTED
SPMT-3	Application for Plan Approval 23-0119B	880
SPMT-5	Application for Plan Approval 23-0119D	880
SPMT-6	Application for Plan Approval 23-0119E	880
SPMT-18	Plan Approval 23-0119H	880
SPMT-24	RFD 5597 Approval	880
SPMT-41	Notice of Appeal 4/29/16	880
SPMT-48	Title V Operating Permit	880
SPMT-53	Chart Containing Plan Approvals & Dates Approved	880
SPMT-61	Documents	880

- - -

1 THE COURT: Ready to call your next
2 witness.

3 MR. RAPHAEL: We are, Your Honor. SPMT
4 calls Mr. Colin McGroarty.

5 THE COURT: Sir, you have been
6 previously sworn and you're still under oath. Do
7 you understand that?

8 THE WITNESS: I do.

9 BY MR. RAPHAEL:

10 Q. Mr. McGroarty, could you state your full
11 name and spell your last name for the record.

12 A. Sure. My name is Colin McGroarty,
13 M-c-G-r-o-a-r-t-y.

14 Q. Mr. McGroarty, by whom are you presently
15 employed?

16 A. Environmental Resources Management.

17 Q. What is Environmental Resources Management?

18 A. Environmental consulting firm.

19 Q. Mr. McGroarty, what is your educational
20 background?

21 A. I have a bachelor's in chemical engineering
22 from Pennsylvania State University.

23 Q. How long have you been involved in
24 environmental consulting?

1 A. I have been involved in environmental
2 consulting for approximately thirteen years.

3 Q. Mr. McGroarty, did you as part of a team
4 have involvement with preparing the applications
5 starting with plan approval one and working through
6 plan approval I for the Marcus Hook Industrial
7 Complex.

8 A. I did.

9 Q. And as part of that team, were you involved
10 with the application for plan approval B?

11 A. I was.

12 Q. Could you turn to Exhibit-3, SPMT Exhibit-3,
13 which should be in one of those binders that's in
14 front of you.

15 A. (Witness complies.)

16 Q. Are you familiar with this plan approval
17 application?

18 A. Yes.

19 Q. What is plan approval B?

20 A. Plan approval B is a project in which
21 natural gasoline would be received by the facility
22 via rail car, fractionated into pentane and light
23 naphtha and ultimately exported from the facility
24 via truck.

1 Q. Mr. McGroarty, are you familiar with the
2 application for plan approval D?

3 A. Yes.

4 Q. Could you turn in that notebook to what is
5 Exhibit-5.

6 A. (Witness complies.)

7 Q. What is plan approval D, Mr. McGroarty?

8 A. Plan approval D is a project in which
9 ethane, butane and propane would be received at the
10 facility, treated, chilled, and stored on site.

11 Q. Mr. McGroarty, as part of your review with
12 your team for the submission of the application for
13 plan approval D, did you consider linking that
14 project with other plan approvals that had been
15 submitted to PADP?

16 A. Yes.

17 Q. Was one of projects you considered linking
18 plan approval D to plan approval B?

19 A. We considered it, yes.

20 Q. What did you determine relative to that
21 linkage regarding plan approval B and plan approval
22 D?

23 A. We determined that they were not linked.

24 Q. Why is that?

1 A. Plan approval B and plan approval D have
2 fundamental differences in the way that they -- in
3 the customer requirements, in the way that they
4 receive the feedstocks, the way that the feedstocks
5 are processed or treated and then how they are
6 ultimately distributed to the customers.

7 Q. Ultimately, Mr. McGroarty, what was the
8 determination by you and your team from the RM
9 regarding whether plan approval B and plan approval
10 D should be linked in that application?

11 A. They were not linked.

12 Q. Mr. McGroarty, if you could turn in your
13 binder to the application for plan approval E which
14 I believe is at tab six.

15 A. (Witness complies.)

16 Q. Mr. McGroarty, what is plan approval E, the
17 application for it?

18 A. This project was to -- the proposed
19 installation we have a facility to several
20 deethanized transmission, install three
21 fractionators and store those products on site.

22 Q. Mr. McGroarty, what's another name for a
23 deethanized transmix?

24 A. It could be natural gas liquids.

1 Q. Mr. McGroarty, relative to plan approval E,
2 what was the driver for that project? What were
3 you informed was the driver during the application
4 process?

5 A. The drivers were a new customer being ETP
6 and a new product -- sorry. Excuse me. New
7 feedstock being the deethanized transmix.

8 Q. Mr. McGroarty, if you could turn your
9 attention back to plan approval B.

10 A. (Witness complies.)

11 Q. Which, again, for the record, the
12 application for that is located at Exhibit-3.

13 A. Yes.

14 Q. What substances were involved in plan
15 approval B?

16 A. Plan approval B took the feedstock of
17 natural gasoline and fractionated it into pentane
18 and light naphtha products.

19 Q. Mr. McGroarty, in submitting with your team
20 the application for plan approval E to the
21 Department, did you and your team consider linking
22 plan approval B with plan approval E in your
23 application?

24 A. We considered it.

1 Q. Did you do so?

2 A. No.

3 Q. Why not?

4 A. Similar regards to the linkages between B
5 and D, B and E receive the feedstocks differently,
6 process or treat the feedstocks differently and
7 ultimately export the products differently.

8 Q. Mr. McGroarty, if we could just turn your
9 attention back to plan approval E, which is
10 Exhibit-6.

11 A. (Witness complies.)

12 Q. Could we talk a bit about LAER relative to
13 plan approval application E?

14 A. Yes.

15 Q. What is LAER, Mr. McGroarty?

16 A. LAER is the lowest achievable emission rate.

17 Q. Are there components of the application for
18 plan approval E that were submitted to meet a LAER
19 standard?

20 A. Yes.

21 Q. What are those components?

22 A. For Project E those components were the new
23 fugitive piping components and the new meter
24 provers.

1 Q. And why, Mr. McGroarty, was LAER used for
2 those components?

3 A. The emissions analysis and subsequent
4 non-attainment new source review analysis required
5 LAER.

6 Q. Mr. McGroarty, relative to the submission of
7 baseline years for the application for plan
8 approval E, do you recall including baseline years
9 in that application?

10 A. Plan approval E included a reference to
11 baseline years in one of the tables in the
12 application.

13 Q. Why was that included, Mr. McGroarty?

14 A. Simply for consistency and illustrative
15 purposes throughout the application submitted for
16 the Marcus Hook Industrial Complex.

17 Q. Did somebody request that that be included?

18 A. PA DEP did ask us to include a similar table
19 in the application.

20 Q. Was that in your view required to be
21 included?

22 A. No, it was not.

23 Q. Mr. McGroarty, if I use the term incremental
24 emissions relative to the application for plan

1 approval E, would you know what I'm talking about?

2 A. Yes.

3 Q. What are incremental emissions?

4 A. Incremental emissions are the emissions
5 impacts that are estimated from existing
6 non-modified sources within this project.

7 Q. Were incremental emission calculations done
8 relative to the application for plan approval E?

9 A. Yes, they were.

10 Q. For what components, Mr. McGroarty?

11 A. For plan approval E there was analysis done
12 for incremental flare emissions.

13 Q. If we could so that the board can follow
14 along, are you looking at a section in the
15 application for plan approval E?

16 A. I am.

17 Q. What section is that?

18 A. I am in section 3.3 on page 10.

19 Q. If you wouldn't mind, Mr. McGroarty, if you
20 could just walk us through in general terms what
21 that section 3.3 is saying. You don't need to read
22 it, but if you could just take a moment to give us
23 the gist of that, for the record.

24 A. Sure. To calculate the incremental flare

1 emissions we use the expected activity related to
2 the project, as well as industry-accepted emission
3 factors for that flare and calculated the
4 incremental emissions.

5 Q. Mr. McGroarty, did you use incremental
6 emissions calculations for any other components of
7 the plan approval E application?

8 A. Yes, we did.

9 Q. What would be another component?

10 A. Section 3.5 on page 11 also includes
11 incremental steam demand emissions.

12 MR. WHITE: May I interrupt just for a
13 second so the record is clear. For our exhibit,
14 table 3.5 is on page 13, not on page 10. Just like
15 the other one was on page 11, not 10. I just want
16 to make sure we're all on the same exhibit page.
17 Just so the record is clear, you're looking at
18 table 3.5.

19 THE WITNESS: I believe I said section
20 3.5.

21 MR. WHITE: Section 3.5. I'm sorry.

22 MR. RAPHAEL: I think he did, yes.

23 MR. WHITE: Okay. I'm with you now.

24 Thank you very much.

1 MR. RAPHAEL: It is confusing because
2 there are tables and sections.

3 MR. WHITE: Section 3.5, page 11.
4 Thank you.

5 MR. RAPHAEL: Right.

6 BY MR. RAPHAEL:

7 Q. Please continue, Mr. McGroarty.

8 A. Yes. For Project E we also calculated
9 incremental steam demand emissions based on the
10 expected activity. Used historical emission
11 factors and calculated the incremental steam demand
12 emissions.

13 Q. Mr. McGroarty, were there other components
14 of plan approval E application that involved
15 calculations concerning incremental emissions?

16 A. Yes.

17 Q. What would be another one of those
18 components?

19 A. The last one is in section 3.6 on page 12.
20 And those are the incremental cooling water
21 emissions.

22 Q. And could you again, in general terms, not
23 reading but summarizing what you would have done to
24 calculate those incremental emissions?

1 MR. BOMSTEIN: Objection to form.

2 THE COURT: Overruled. I think it's
3 been established that's just the way Mr. Raphael
4 asked the question.

5 THE WITNESS: Similarly with the other
6 sources, we use the expected activity from the
7 project, the emissions characteristics of the
8 source and calculated the incremental emissions
9 from cooling water.

10 BY MR. RAPHAEL:

11 Q. Mr. McGroarty, I know you do quite a bit of
12 this work, but for the benefit of the Board, what
13 are incremental emissions? What does that mean?

14 A. Incremental emissions are simply the
15 calculation of the emissions impacts from all the
16 affected sources in the project. They're not
17 necessarily modified sources and they're not new
18 sources. But they are affected by the other
19 sources that are being applied. The EPA guide
20 states that we have to include those emissions
21 impacts in the application.

22 Q. Thank you, Mr. McGroarty. As part of the
23 application for plan approval E, was there a PSD
24 analysis that was completed by you and your team?

1 A. Yes, there was.

2 Q. Before we get too deep into it, Mr.

3 McGroarty, what is PSD?

4 A. Sure. PSD is the prevention of significant
5 deterioration program implemented by the EPA. And
6 it is -- applies to major stationary sources,
7 specifically the attainment prudence associated
8 with those sources.

9 Q. Mr. McGroarty, the Marcus Hook Industrial
10 Complex, does that complex maintain a Title V
11 operating permit?

12 A. Yes, it does.

13 Q. In general terms what is a Title V operating
14 permit?

15 A. A Title V permit is a requirement of major
16 stationary sources.

17 Q. And may a Title V operating permit encompass
18 acreage or property that involves more than one
19 state or jurisdiction?

20 A. Yes, it can.

21 Q. Can a Title V facility under one Title V
22 permit exist in more than one state or
23 jurisdiction?

24 A. Yes, as long as they are part of the same

1 major stationary source.

2 Q. Thank you, Mr. McGroarty. If we could turn
3 your attention back to the application for plan
4 approval E. And perhaps for the benefit of the
5 Board, is there an actual section in that
6 application that deals with PSD?

7 A. Yes. Section 4.2 on page 15.

8 Q. And is there a table that relates to section
9 4.2 on page 15?

10 A. The table 4.4-1 is on page 16.

11 Q. Could you, again, in general terms,
12 summarize what that analysis was for plan approval
13 E in the application that you and your team
14 completed?

15 A. Yes. The PSD applicability analysis is a
16 two-step process. The step one is evaluating the
17 significant emissions increase. And for that
18 analysis you evaluate the project emissions
19 increases against the PSD significance levels.

20 Q. Please continue.

21 A. Here in this table, 4.1, the ETP project
22 revolution and SXL depropanizer project emissions
23 are shown against the PSD significant levels. And
24 as shown on the table here, all attainment

1 pollutants are below the significance levels.

2 Q. Mr. McGroarty, in this application, I guess
3 in the appendix as well, is there additional PSD
4 analysis that is performed and submitted to the
5 Department?

6 A. There was.

7 Q. Where is that located?

8 A. It's going to be farther back in this
9 application. There is an attachment D labeled
10 contemporaneous emissions tables. Specifically
11 page one of three there, or table D-1.

12 Q. If you could, just to keep the record clear,
13 could you read in the title of that so we can find
14 this in the future in the record.

15 A. Yes, sir. It is titled Evaluation of
16 Applicability of 40 CFR 5221 Facility Emission
17 Aggregation Occurring Within Five Years of
18 Application Marcus Hook Industrial Complex.

19 Q. Mr. McGroarty, what I'm going to ask you to
20 do is if you could come down to the pad here and
21 we'll get you a clean sheet. If you could kind of
22 walk through the analysis that you did, you and
23 your team did. And if it would be helpful, would
24 you like to have the application up there with you

1 as well?

2 A. That would be great.

3 Q. And how about the technical review memo from
4 the Department as well? Is it 824, I think? And
5 that was admitted yesterday. It's in evidence
6 already.

7 A. Yes.

8 Q. Mr. McGroarty, if you could, I'd like you to
9 focus on one of the components of that analysis and
10 that would be CO. And just, again, for the benefit
11 of the record, what is CO?

12 A. Carbon monoxide.

13 Q. Mr. McGroarty, could you walk through this
14 PSD analysis for the benefit of the Board.

15 A. Sure. I can do the initial analysis for CO
16 for the Project E application as presented.

17 Q. Please do.

18 A. For Project E on page -- back to table 4.1,
19 on page 16. And for simplicity and space sake, I'm
20 just going to use the letters. So Project E. Here
21 I'm going to have carbon monoxide in tons per year,
22 TPY. Project E had total carbon monoxide emissions
23 of 1.2 tons per year. Also as shown here, the PSD
24 significance level for CO is 100 tons per year. So

1 the next step in the process for PSD applicability
2 is to review the step one analysis, and in that
3 step one analysis you compare the project to the
4 PSD significance level of 100 tons and if you are
5 less than the significance level, we do not move
6 on. Your PSD review is complete.

7 Q. Mr. McGroarty, now if, in fact, you have to
8 move on to another step in the PSD process, what
9 would that other step be called?

10 A. If you were to exceed the step one
11 threshold, you are required to do a step two
12 threshold which includes the contemporaneous
13 emissions associated with the project. Those
14 contemporaneous emissions are defined as the
15 emissions in the period five years prior to
16 construction of the project up to and including the
17 commencement of operation of that project. We did
18 include those contemporaneous emissions in the
19 attachment that we referenced earlier.

20 Q. Could you walk the Board through that as
21 well.

22 A. Yes. I apologize, we're going to go back to
23 attachment D in one of three.

24 Q. And if it's easier, Mr. McGroarty, feel free

1 to turn the page if you're going to need more room
2 than that.

3 A. We can do that. If we were to do a step two
4 analysis for this project, we would use the
5 emission numbers here shown on this table.

6 Q. Could you, again, for CO please summarize
7 the numbers you would be using for that step two
8 analysis.

9 A. I can do that. So, again, project E was 1.2
10 tons per year. As shown here in the
11 contemporaneous tables, there are other carbon
12 monoxide emissions in the contemporaneous period.
13 There was contemporaneous shutdowns of sources in
14 Delaware.

15 Q. I want to stop you there, on the shutdown of
16 source in Delaware. And if you could just walk the
17 Board through how that's relevant to your step two
18 analysis.

19 MR. BOMSTEIN: Objection. Your Honor,
20 what it appears that Mr. McGroarty is starting to
21 do on the easel over there is do an analysis that
22 is not present in the application for E, which we
23 don't have an objection to as long as we can
24 similarly ask Mr. McGroarty on cross to do analyses

1 that he did not do in this application.

2 MR. RAPHAEL: Your Honor, I would
3 disagree with that. The shutdown analysis -- Mr.
4 McGroarty is walking through exactly what he did in
5 the table which is a factual piece of information.
6 In fact, the second line says shutdown of Delaware
7 sources. We're not doing anything beyond what he
8 did as a factual. So I think it's entirely
9 appropriate.

10 MR. BOMSTEIN: Your Honor, the
11 difference is there -- it looks like there's going
12 to be an addition of the Project E emissions which
13 are not present in this chart. If there's not,
14 then I withdraw my objection. But I think that's
15 where this is going.

16 MR. RAPHAEL: I think it's premature,
17 Your Honor.

18 THE COURT: If it's asked on direct,
19 you can ask on cross.

20 MR. RAPHAEL: Thank you, Your Honor.

21 BY MR. RAPHAEL:

22 Q. Mr. McGroarty, let me just ask it again so
23 we'll keep the record clean. What is the
24 significance of a shutdown of the Delaware sources

1 that's referenced on table D-1 of the application
2 for plan approval E?

3 A. They represent contemporaneous emissions
4 decreases.

5 Q. And why is that relevant to your step two
6 analysis?

7 A. Just that they are within that time period.

8 Q. And what facility do they relate to?

9 A. The Marcus Hook Industrial Complex.

10 Q. Are you allowed to account for those because
11 they're part of the Marcus Hook Industrial Complex?

12 A. We are required to account for those as part
13 of the Marcus Hook Industrial Complex.

14 Q. Please, continue.

15 A. The shutdown sources represent the negative
16 17.52 tons of CO emissions. Also included on this
17 table -- I think I skipped down one too far --
18 there are emissions decreases from an earlier plan
19 approval for carbon monoxide controls of believed
20 to be diesel engines. Those total a negative 1.27.

21 Q. And, Mr. McGroarty, for the record, why do
22 you get to include those?

23 A. Again, for the same reasons for the Delaware
24 shutdowns. They were emissions decreases in the

1 contemporaneous period at the Marcus Hook
2 Industrial Complex.

3 Q. Please continue.

4 A. Here in this table as well, project one
5 contributed a smaller amount of carbon monoxide,
6 0.09 tons. And I'll move a little quicker.
7 Project B included 99.4 tons. And Project D
8 included 0.5 tons.

9 Q. To keep the record complete, Mr. McGroarty,
10 how about Project C?

11 A. C included zero tons.

12 Q. Could you also put that up there as well?

13 A. Yes.

14 Q. And, again, for the record, what was Project
15 C?

16 A. C was the installation of a cooling tower.

17 Q. What was that number again, Mr. McGroarty?

18 A. Zero.

19 Q. Thank you.

20 A. For completeness, should I also include A?

21 Q. Please do.

22 A. Project A for the deethanizer was also zero.

23 Q. And this is why I'm a lawyer, Mr. McGroarty,
24 so I'll let you do this. What would the total of

1 those CO figures be relative to this PSD step two
2 calculation?

3 A. Without my calculator I can approximate.
4 But I believe it to be approximately 83 tons of
5 carbon monoxide.

6 Q. Is that total contained on the chart for
7 D-1?

8 A. There is a total here. The total is the
9 summation of all of these numbers except E.

10 Q. So it would be -- if you could for the
11 record, could we do that basic arithmetic for the
12 record based on this document here?

13 A. That would be a good idea. Aside from E,
14 the total numbers here as demonstrated in table D1
15 is 81.20. Adding in the 1.2 tons from Project E is
16 approximately 82.4.

17 Q. So under a step one or a step two analysis
18 for PSD for the application for plan approval E,
19 did you and your team have concerns that you were
20 going to exceed the threshold for PSD for CO?

21 A. For Project E our team only conducted the
22 step one analysis because it did not exceed the PSD
23 significance thresholds in step one. Therefore a
24 step two analysis was not required.

1 Q. But you did include the table for D1 as part
2 of the completeness of your application?

3 A. Yes, we did.

4 Q. Thank you, Mr. McGroarty. You can return to
5 your seat.

6 A. (Witness complies.)

7 MR. RAPHAEL: Mr. McGroarty, that's all
8 we have for you. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: Let me ask. What would the
11 consequences have been if they exceeded the PSD
12 limits?

13 THE WITNESS: If you were to exceed in
14 the step two analysis, you are then required to do
15 an air dispersion modelling analysis, as well as
16 apply best available control technology to all of
17 the new or modified sources.

18 THE COURT: What's the difference
19 between BACT and LAER?

20 THE WITNESS: Sure. Fundamentally
21 LAER, or L-A-E-R, is associated with the
22 non-attainment resource review program and PSD
23 requires the BACT requirement. For the BACT
24 requirement, the regulations stipulate a five-step

1 process for selecting that technology where you
2 evaluate the technological feasibility, the
3 environmental, economic and other impacts. You
4 rank the technologies and then you ultimately
5 select a BACT appropriate for your project. LAER,
6 on the other hand, because it's associated with the
7 non-attainment resource review program, is not as
8 flexible. You look at the source that you wish to
9 permit and you determine what the lowest achieved
10 emission rate has been in the country and you must
11 apply that technology.

12 THE COURT: And LAER was applied here?

13 THE WITNESS: It was for the new
14 sources, Your Honor.

15 THE COURT: So is there any way that
16 applying BACT for this would have resulted in
17 stricter standards from a practical point of view
18 than what's already required from LAER point of
19 view?

20 THE WITNESS: No, for two reasons. As
21 stated, LAER is more stringent than BACT, or
22 equivalent in some cases. Also, the resources
23 associated with this project were only VOC sources
24 subject to non-attainment resource review program.

1 This PSD analysis would have involved carbon
2 monoxide which would not have affected their
3 emission rates.

4 THE COURT: So from a practical point
5 of view, assuming I only got through the sixth
6 grade, what are the possible consequences in the
7 field of calling this a change for PSD purposes?

8 THE WITNESS: In my opinion, none, Your
9 Honor.

10 THE COURT: Department have any
11 questions?

12 MR. WHITE: No, Your Honor.

13 THE COURT: Cross?

14 MR. BOMSTEIN: Yes, Your Honor.

15 THE COURT: I mean, are there exhibits?

16 MR. RAPHAEL: You know, there are, Your
17 Honor. And we would like to admit our -- I guess
18 our copy of a plan approval B, which is SPMT-3 and
19 our copy of the application for plan approval D,
20 which is SPMT-5. We have already admitted SPMT-6,
21 which he also reviewed. And A24, which is the
22 technical review memo is already in the record. So
23 any additions would be SPMT-3 and SPMT-5.

24 THE COURT: Any objections?

1 MR. BOMSTEIN: Just one second, Your
2 Honor. I apologize.

3 (Pause.)

4 MR. BOMSTEIN: No objection.

5 THE COURT: Admitted. Cross?

6 MR. BOMSTEIN: Yes, Your Honor. Just
7 one second, please.

8 (Pause.)

9 THE COURT: I'm going to ask one more
10 question. Anybody can object if they want to. I'm
11 looking at the plan approval for E which was 15,
12 SPMT-15. It looks -- I'm not going to even try to
13 read this at this point but it looks like starting
14 on page 15.

15 THE WITNESS: SPMT-15?

16 THE COURT: Yeah.

17 MR. RAPHAEL: Are you in E, Your Honor?

18 THE COURT: Yeah SPMT-15.

19 MR. RAPHAEL: Got it.

20 THE COURT: The plan approval itself.

21 THE WITNESS: Yes, sir.

22 MR. RAPHAEL: Yes, sir.

23 THE COURT: Starting on page 15 -- I'll
24 read this in more detail at some point, but right

1 now it looks like there's page after page of
2 single-space requirements that apply to the
3 operation of this equipment. Is that true?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And these equipments are
6 coming from new source standards that apply to
7 these things?

8 THE WITNESS: Yes. What you're reading
9 here or alluding to here are the leak detection and
10 repair requirement associated with the fugitive
11 components that would have been a part of this
12 project. The LAER analysis that was completed in
13 the application indicated that the lowest
14 achievable emission rate is implementation of a
15 leak detection and repair program.

16 THE COURT: So is there anything else
17 that could have been done to this equipment if you
18 were going to put it into lower emissions?

19 THE WITNESS: Not for these fugitive
20 components, Your Honor.

21 THE COURT: What about other
22 components?

23 THE WITNESS: The only other source
24 subject to the LAER requirement were the meter

1 provers. Those pieces of equipment are also
2 subject to this LDAR program.

3 THE COURT: LDAR, L-D-A-R?

4 THE WITNESS: Yes, sir. So, no, there
5 would not be anything additional.

6 THE COURT: Thanks. Sorry, Mr.
7 Bomstein.

8 MR. BOMSTEIN: Oh, of course, Your
9 Honor.

10 BY MR. BOMSTEIN:

11 Q. Hi, Mr. McGroarty.

12 A. Hello.

13 Q. You talked a few minutes ago about DEP --
14 I'm sorry, about calculating incremental emissions
15 for emissions units involved with Project E in the
16 plan approval application that you submitted to
17 DEP, correct?

18 A. Yes.

19 Q. When DEP produced its review memo in
20 conjunction with the plan approval, did DEP adopt
21 your incremental emissions approach to calculating
22 emissions from the sources with Project E?

23 A. In the November 2016 review memo, they did.

24 Q. But in the March 31, 2016 review memo

1 produced before this appeal, DEP did not, correct?

2 A. I don't have that one in front of me.

3 Q. Okay. Well, I can get it in front of you.

4 Could you please turn to exhibit A-23.

5 A. (Witness complies.)

6 Q. Could you take a look at A-23 and please see
7 if it refreshes your recollection as to whether DEP
8 adopted your incremental emissions approach.

9 A. Reviewing this, the activity information and
10 general calculation methodology are included. But
11 without reading every word here, I don't know that
12 it says incremental.

13 Q. Well, please turn to page six of this
14 document.

15 A. (Witness complies.)

16 Q. I'll ask you to take a look at the three
17 tables, two, three and four. And I'll ask you,
18 does this series of calculations of potential to
19 emit minus baseline actual emissions accord with
20 the methodology that you used in your application
21 for Project E?

22 A. No, it does not.

23 Q. And do the numbers that I listed for
24 potential to emit for the boilers accord with those

1 that you calculated in your Project E?

2 A. The potential emissions which are also
3 equivalent to the Title V operating permitting
4 limits are represented in the application for
5 Project E. And they appear to be consistent with
6 the potential emissions listed here in the
7 Department review memo.

8 Q. So the potential emissions from the boiler.
9 And do the baseline actual emissions -- let me
10 rephrase this. Did you do determinations of what
11 the baseline actual emissions were for Project E as
12 part of your application?

13 A. No.

14 Q. But the Department did, correct?

15 MR. RAPHAEL: Your Honor, I guess I'm
16 going to object to -- I mean, I think it's -- if he
17 points to me in the document. But what the
18 Department did I would say would probably be beyond
19 the personal knowledge of Mr. McGroarty and maybe
20 more appropriate for the Department. I'm just at a
21 loss.

22 THE COURT: Overruled.

23 THE WITNESS: Can you reread your
24 question?

1 BY MR. BOMSTEIN:

2 Q. Sure. Do you have an understanding that the
3 Department made a determination at this time, March
4 31, 2016, of what the baseline actual emissions
5 were for the emissions units involved in Project E?

6 A. Table three in the Department review memo
7 does include baseline emissions for the sources.

8 Q. However, after this appeal is filed, the
9 Department conformed its methodology to what you
10 did in your application, correct?

11 A. Yes.

12 Q. You were going through earlier the different
13 types of incremental emissions that you calculated.
14 Do you recall that?

15 A. Yes.

16 Q. One of those types of incremental emissions
17 was incremental cooling water emissions, correct?

18 A. Correct.

19 Q. And I would ask you to turn back to the
20 section of exhibit SPMT-6 in which you perform that
21 calculation.

22 A. 3.6 on page 12.

23 MR. RAPHAEL: I'm sorry, Colin, we
24 couldn't hear you.

1 THE WITNESS: Section 3.6 on page 12.

2 MR. WHITE: Thank you.

3 BY MR. BOMSTEIN:

4 Q. Do you actually do the calculations earlier
5 on page eight?

6 A. Page eight is a summation of the activity
7 associated with the cooling tower.

8 Q. By activity do you mean cooling water
9 demand?

10 A. Yes.

11 Q. Is there a design margin built into that?

12 A. I believe that there was, yes.

13 Q. And did you later represent to the
14 Department what the calculated cooling water demand
15 was for this?

16 A. I believe that I did, but I do not recall
17 when.

18 Q. Okay. Did that calculated cooling water
19 demand turn out to be for both Project E and B put
20 together slightly below 25,000 gallons per minute?

21 A. Can we review that?

22 Q. Sorry?

23 A. Can we review that document?

24 Q. Yes. Just one minute.

1 (Pause.)

2 Q. Please turn to A-52.

3 A. (Witness complies.)

4 Q. Once you get to A-52, I would direct you to
5 the table that you put together on page Sun 010835.

6 Does this refresh your recollection as
7 to the calculated cooling water demand for projects
8 B and E?

9 A. Yes.

10 Q. And then am I correct that it's slightly
11 below 25,000 gallons per minute?

12 A. As stated here, yes.

13 Q. But that's not how you calculated it for the
14 application, correct?

15 A. Correct.

16 Q. Because you built in a design margin,
17 correct?

18 A. I did not build in a design margin.

19 Q. Let me rephrase that. A design margin was
20 built in, correct?

21 A. Correct.

22 Q. And that design margin is 10 percent,
23 correct?

24 MR. RAPHAEL: I'm going to object, Your

1 Honor. I think he just said he didn't build in the
2 design margin, which would mean he wouldn't have
3 personal knowledge of that.

4 THE COURT: Overruled.

5 THE WITNESS: I believe that's
6 approximately correct.

7 BY MR. BOMSTEIN:

8 Q. And with that design margin built in, the
9 assumed cooling water demand from Projects B and E
10 together is 28,000 gallons per minute, correct?

11 A. I can't verify that without being able to do
12 the math here.

13 Q. Well, I have a document, if it would help.
14 This is a document at bates numbers Sun 010358
15 through Sun 010374. And I would ask once you're
16 familiar -- well, I'll give you a chance -- first
17 of all, do you recognize what this is?

18 A. Yes.

19 Q. What is this?

20 A. This is an e-mail chain that I am a part of.

21 Q. And I would ask you to turn to pages Sun
22 010367 through Sun 010368.

23 A. (Witness complies.)

24 Q. Does this refresh your recollection as to

1 the design margin that was built in for the
2 Projects B and E on the 15-2B cooling tower?

3 A. Yes, it does.

4 Q. And what is that total demand including the
5 design margin?

6 MR. WHITE: Objection, Your Honor.
7 Refresh his recollection of the 10 percent is
8 absolutely legitimate. If he's asking for
9 additional information from this document which was
10 not in pre-hearing memorandum, we had not seen
11 before, not submitted to the Department, that would
12 not be proper and I would object to any other
13 information from this.

14 THE COURT: Overruled.

15 THE WITNESS: As listed here in the
16 table, the summation is 28,000 GPM.

17 BY MR. BOMSTEIN:

18 Q. And 28,000 gallons per minute is above what
19 was permitted before RFD 5597, correct?

20 MR. RAPHAEL: I think we need some
21 foundation, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: I'm just making sure in
24 my head the numbers are correct, but I believe that

1 to be correct.

2 BY MR. BOMSTEIN:

3 Q. Were you here yesterday for Mr. Becker's
4 testimony?

5 A. Yes.

6 Q. And did you hear him discuss design margin
7 being part of what RFD 5597 was for?

8 A. Yes. But I don't recall everything.

9 Q. That's fair. Do you have an understanding
10 as to whether design margin for Projects B and E
11 was part of what RFD 5597 was for?

12 A. I missed the last part of that question.

13 Q. Sure. Do you have an understanding as to
14 whether design margin for Projects B and E was part
15 of what RFD 5597 was for?

16 A. I'm not sure that I follow.

17 Q. I'll try to break it down. So RFD 5597
18 brought the permitted capacity -- the permitted
19 limit of the 15-2B cooling tower from 25,000
20 gallons per minute to 28,500 gallons per minute,
21 correct?

22 A. Correct.

23 Q. And without that RFD you would not be able
24 to have the Projects B and E built in with the

1 design margin on that tower, correct?

2 A. In a strictly numerical sense, yes.

3 Q. Is there any sense that I'm missing?

4 A. As Joe, I believe, went over, there's a
5 design margin added to probably all of the
6 engineering calculations. The calculated cooling
7 water demand numbers were below the capacity of the
8 tower. For permitting purposes, air permitting
9 purposes, we almost always include a margin for
10 conservatism knowing that or planning for those to
11 ultimately come down once design engineering is
12 complete.

13 Q. And when you're engineering something
14 regardless of whether it's for permitting purposes,
15 in your experience, a design margin is usually
16 included, correct?

17 A. I can only speak to the applications that I
18 have been involved with here, but yes.

19 Q. Okay. Thank you. Going back to the PSD
20 analysis that you were doing at the easel before,
21 could we walk back to table D1, I believe it was of
22 SPMT-6.

23 A. (Witness complies.)

24 MR. RAPHAEL: I'm sorry, could we just

1 take a very short bathroom break?

2 THE COURT: Yeah. Go ahead. We'll
3 just wait.

4 - - -

5 (A break was taken.)

6 - - -

7 THE COURT: Back on the record.

8 MR. BOMSTEIN: Thank you.

9 BY MR. BOMSTEIN:

10 Q. Mr. McGroarty, please take a look at that
11 table D1.

12 A. (Witness complies.)

13 Q. And I'm going to refer to the top two rows
14 of that table which on the left most column say
15 PA23-0001AD and below that ERC application. Do you
16 see those?

17 A. Yes.

18 Q. How did you determine that those should
19 appear on this chart?

20 A. For the first PA 23-00001AD, these original
21 versions of the tables were provided to ERM by the
22 client. So they were historically there.

23 Q. Did you make any determination as to whether
24 those decreases actually belonged there?

1 A. Not that I recall.

2 Q. And you discussed in response to the Board's
3 questions what the practical difference would be if
4 BACT, B-A-C-T, applied and not just LAER, correct?

5 A. Correct.

6 Q. And am I correct in recalling that you
7 didn't think as a practical matter it would be
8 different at all?

9 A. To be clear, it was the control requirements
10 would not differ.

11 Q. What would differ?

12 A. As stated, the application would still
13 require interdispersion modelling analysis for
14 carbon monoxide, as well as other air quality
15 impact analysis.

16 Q. Were those analyses done?

17 A. They were not.

18 Q. Those analyses are regulatory requirements
19 under the federal PSD regulations, correct?

20 A. Correct.

21 Q. And those two control technologies, it's
22 your view that there would be no difference in what
23 control technologies would apply, correct?

24 A. That's correct.

1 Q. How do you determine that?

2 A. How do I determine that?

3 Q. Yes, sir.

4 A. Knowledge of the sources involved and
5 experience with those technology evaluations.

6 Q. How do you do one of those technology
7 evaluations?

8 A. As I stated before, there is a -- there's a
9 five-step BACT analysis. You identify those
10 technologies through guidance review,
11 industrial-accepted technologies, Internet searches
12 and such.

13 Q. Have you done that here?

14 A. No.

15 Q. Is there any reason in practice that BACT
16 would be less stringent than LAER?

17 A. Can you say that one more time?

18 Q. Sure. Is there any reason in practice that
19 BACT would be less stringent than LAER?

20 A. Yeah.

21 Q. Give me an example, please.

22 A. For fire heaters, speaking from my
23 experience, for NO2 a typical BACT requirement,
24 depending on the size, age, condition of the fire

1 heater would be, could be somewhat less than an
2 LAER requirement for the same heater.

3 Q. Why? I'm sorry, why is that the case?

4 A. A BACT analysis let's you evaluate the
5 environmental and economic impacts of a change.

6 Q. And the economic impacts are determined by
7 the applicant?

8 A. Yes.

9 Q. Have those economic impacts been ever
10 evaluated, as far as you know?

11 A. For Project E?

12 Q. Yes.

13 A. No.

14 Q. So Sunoco would first need to do an
15 evaluation of that before a determination could be
16 made, correct?

17 A. Yes.

18 Q. Is part of the process of determining what
19 BACT is looking at the RACT, BACT, LAER
20 clearinghouse? And for the record RACT is R-A-C-T,
21 BACT is again B-A-C-T and LAER is L-A-E-R.

22 A. I'm sorry, was there was a question there?

23 Q. Yes. Is part of that evaluation of what
24 BACT is looking at that clearinghouse?

1 A. Yes.

2 Q. And did you do that here?

3 A. No.

4 Q. You spoke about leak detection and repair as
5 something done by LAER, correct?

6 A. In this scenario it is.

7 Q. And leak detection repair is sometimes
8 referred to as LDAR or L-D-A-R?

9 A. That's correct.

10 Q. And when you were walking the Board through
11 the plan approval itself, you were -- what you
12 showed the Board were the LDAR requirements for
13 piping components and meter provers, correct?

14 A. That's what we discussed, yes.

15 Q. Were there any other technology requirements
16 in the plan approval besides those? And for your
17 reference it's SPMT-15.

18 (Pause.)

19 A. No.

20 Q. There is other equipment associated with
21 Project E that emits pollution, correct?

22 A. There are other affected sources where we
23 estimate the incremental emission from, yes.

24 Q. Those include the boilers?

1 A. Yes.

2 Q. Those include the 15-2B cooling tower?

3 A. Yes.

4 Q. They includes the flare system?

5 A. Flare area system, yes.

6 Q. Are there any technology requirements in the
7 plan approval on those?

8 A. No.

9 Q. But am I correct that BACT can apply to
10 boilers?

11 A. Generally, yes.

12 Q. And it also sometimes applies to cooling
13 towers?

14 A. Generally, yes.

15 Q. And it also sometimes applies to flares?

16 A. Generally, yes.

17 Q. But there's been no analysis on what BACT
18 would be for cooling towers, boilers or flares
19 here, correct?

20 A. Correct.

21 Q. And there's certainly no requirements of
22 specific control technology for any of those?

23 A. Correct. Because they're operating within
24 their current permit limits.

1 Q. You understand that Clean Air Council has a
2 different view of that topic, correct?

3 A. Yes.

4 Q. So if Clean Air Council is right that
5 technology requirements do need to be applied to --

6 MR. RAPHAEL: Your Honor, I don't even
7 need to let him finish the question because I
8 already know it's objectionable because he's going
9 to ask for an opinion, because he's going to ask
10 him to assume something and Mr. McGroarty is not an
11 expert witness.

12 THE COURT: Overruled.

13 BY MR. BOMSTEIN:

14 Q. Mr. McGroarty, if Clean Air Council is
15 correct that control technologies need to be
16 applied to the cooling tower boilers and flare,
17 then an analysis would need to be done for those,
18 correct?

19 MR. RAPHAEL: Object as requiring
20 expert testimony, Your Honor.

21 THE COURT: I already ruled on that.

22 MR. RAPHAEL: I just wanted to renew
23 it, Your Honor. My apologies.

24 THE WITNESS: Correct.

1 BY MR. BOMSTEIN:

2 Q. Are you familiar with BACT as applied to
3 boilers?

4 A. I would say I'm more familiar with fire
5 heaters. Trying to recollect BACT for a boiler.
6 It's likely that I have.

7 Q. Okay. Do you have any recollection of what
8 you see in BACT B when applied to boilers?

9 A. It depends on the pollutant, but yes.

10 Q. What is that understanding you have?

11 A. It varies by pollutant, so we would have to
12 be more specific.

13 Q. Let's take carbon monoxide.

14 A. Generally, to my knowledge, BACT for carbon
15 monoxide is good combustion practices.

16 Q. And any other pollutants that you're
17 familiar with?

18 A. The ozone pollutants.

19 Q. And stepping back for carbon monoxide, BACT
20 is a site-specific or equipment-specific
21 evaluation, correct?

22 MR. RAPHAEL: Object to compound
23 question.

24 THE COURT: Overruled.

1 THE WITNESS: Actually both.

2 BY MR. BOMSTEIN:

3 Q. Thank you. And you haven't done or seen a
4 BACT calculation for the boilers at the Marcus Hook
5 site, have you?

6 A. Not for carbon monoxide.

7 Q. And is it also the case that as technology
8 evolves what is BACT changes?

9 A. Depending on the pollutant, it can.

10 Q. Okay. Do you know what the RACT, BACT, LAER
11 clearinghouse says about BACT for carbon monoxide
12 in 2018?

13 A. Generally, yes.

14 Q. What is that?

15 A. I don't have it in front of me, but I did a
16 review and it varies by boiler size, location and
17 other factors that are -- there are several hundred
18 rows of information. But in my recollection -- my
19 recollection, generally those were good combustion
20 practices.

21 Q. And were some good combustion practices and
22 some not?

23 A. Can't say.

24 Q. Don't know one way or another?

1 A. I do not.

2 Q. Okay. Are you familiar with BACT as applied
3 to cooling towers?

4 A. I believe that I am.

5 Q. What's your familiarity?

6 A. Historical project permitting.

7 Q. At Marcus Hook or Marcus Hook and other
8 places?

9 A. I believe at both.

10 Q. What historical permitting required you to
11 look at BACT for Marcus Hook?

12 A. There was a project that never went through.
13 It was called a propane dehydration project that
14 I believe required BACT.

15 Q. What's your recollection of that?

16 MR. RAPHAEL: Object, Your Honor. Of
17 the project that didn't happen? Objection as to
18 confidential information. Completely unrelated to
19 this matter. And we have a confidentiality
20 agreement executed by the Clean Air Council.

21 THE WITNESS: I do not recall.

22 THE COURT: What was that?

23 THE WITNESS: I'm sorry, I said I do
24 not recall.

1 THE COURT: He doesn't recall.

2 MR. BOMSTEIN: Okay.

3 BY MR. BOMSTEIN:

4 Q. Mr. McGroarty, can you please look back
5 again at the table D1 that we were looking at
6 earlier at SPMT-6.

7 A. (Witness complies.)

8 Q. Is this analysis contained in table D1
9 equivalent to an analysis of aggregating for
10 circumvention purposes Project E with earlier
11 projects?

12 A. Equivalent for aggregating for circumvention
13 purposes.

14 Q. Would it help if I broke the question down?

15 A. Yes, please.

16 Q. Okay. So do you recall the discussion we
17 had earlier about Sunoco's concerns of potentially
18 DEP aggregating plan approvals A and E for
19 circumvention purposes?

20 A. Yes.

21 MR. RAPHAEL: Your Honor, I think we're
22 going to go -- I think it's creative to try to link
23 this back. But I think we're going well beyond the
24 scope of direct examination. Cross-exam has to be

1 tied to that. So if he would like to discuss the
2 projects I discussed with the witness, I think
3 that's fair. Now I think we're wandering into
4 other projects that we didn't discuss at all with
5 Mr. McGroarty, other than what's in this table.

6 THE COURT: Overruled.

7 BY MR. BOMSTEIN:

8 Q. Mr. McGroarty, in that context, do you
9 remember the concern being that the plan approval
10 would be revoked and need to be reissued?

11 A. Yes.

12 Q. Do you have an understanding of how that
13 process works?

14 A. No, I don't.

15 Q. So do you have an understanding as to
16 whether this table represents what would happen if
17 the projects were aggregated because of
18 circumvention concerns?

19 MR. RAPHAEL: I'm going to object as
20 calling for speculation, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: I don't believe so.

23 BY MR. BOMSTEIN:

24 Q. Just to be clear, you don't believe that it

1 does reflect that?

2 A. I do not.

3 Q. Okay. Thank you. And please turn -- just
4 one second.

5 (Pause.)

6 Q. Sorry about that. Please turn to A-15.

7 A. (Witness complies.)

8 Q. Thank you. Once you have found your
9 bearings at Exhibit A-15, I would ask that you turn
10 to page 24 of that document.

11 A. (Witness complies.)

12 Q. And just for clarity, this is the
13 application for the ME2X project, correct?

14 MR. RAPHAEL: Your Honor, I'm just
15 going to object as beyond the scope of direct
16 examination. We didn't touch this project
17 whatsoever during our direct examination.

18 THE COURT: Overruled.

19 THE WITNESS: I forgot the question.

20 BY MR. BOMSTEIN:

21 Q. Sure. Of course this is the ME2X project,
22 correct?

23 A. Yes. Yes.

24 Q. Do you see on page 24 a table 4-1?

1 A. Yes.

2 Q. What is that table?

3 A. This is a PSD step-one analysis.

4 Q. Okay. Thank you. And what are the carbon
5 monoxide emissions listed here for the ME2X
6 project?

7 A. It's listed as 23.51 times.

8 Q. If you do essentially what you did with Mr.
9 Raphael earlier and add that figure on to the
10 carbon monoxide figures for table D1, what number
11 do you get?

12 MR. RAPHAEL: Your Honor, you know, I'm
13 going to put an objection on the record because now
14 we're asking without any foundation to do something
15 that we don't know that he did. And if we are,
16 that is clearly in the realm of expert testimony.

17 THE COURT: Overruled.

18 THE WITNESS: So if I'm remembering
19 correctly when I was over there at the easel, it
20 was approximately 82 tons, plus the 23 tons here is
21 105 tons.

22 BY MR. BOMSTEIN:

23 Q. Mr. McGroarty, is that more than a
24 significant threshold for PSD?

1 A. If we did the analysis that way, it would
2 be.

3 Q. Thank you. And, Mr. McGroarty, are you
4 familiar with the -- well, let me take a step back.
5 Does BACT also apply to non-attainment resource
6 review?

7 A. No, it does not.

8 Q. Okay. What does apply in terms of control
9 technology when you have a major non-attainment
10 resource for a project?

11 MR. RAPHAEL: I'm sorry, could you read
12 that back.

13 - - -

14 (The requested portion was read back by
15 the reporter.)

16 - - -

17 THE WITNESS: If required, it would be
18 the lowest achievable emission rate or LAER.

19 BY MR. BOMSTEIN:

20 Q. Am I correct in that that was not applied to
21 the boilers for Project E?

22 A. They were not modified, so it was not
23 applicable to the boilers.

24 THE COURT: I couldn't hear the answer.

1 THE WITNESS: They were not modified,
2 so it was not applicable to the boilers.

3 BY MR. BOMSTEIN:

4 Q. Are you aware that there's a dispute in this
5 appeal about whether certain pieces of equipment
6 were modified?

7 A. Yes.

8 Q. And if the boilers -- if it's determined
9 that the boilers have been modified, then does --
10 is LAER applied?

11 MR. RAPHAEL: I'm going to object
12 because the key word there is if. Something that
13 didn't happen. If McGroarty is a fact witness. So
14 if it didn't happen he can have no factual
15 knowledge. The only way he can answer that
16 question then as an expert witness. He is not
17 qualified as an expert. In fact, your May 3rd
18 order said so much.

19 THE COURT: Overruled.

20 THE WITNESS: I haven't done the
21 analysis. So I can't really answer that.

22 BY MR. BOMSTEIN:

23 Q. And are you familiar with whether anyone has
24 done the analysis?

1 A. I don't think so.

2 Q. So in order to -- how does one do that
3 analysis, in your experience?

4 A. If a source has been modified?

5 Q. Yes.

6 A. As described, I believe, in this testimony
7 before, you establish the baseline actual emissions
8 and the future projected actual emissions or
9 potential to emit depending on new or existing
10 source, and you evaluate the total project
11 increases against the non-attainment resource
12 thresholds as detected a 25 PA code 173.

13 Q. Thank you. Am I correct it's your view that
14 baseline actual emissions have not been determined
15 here?

16 A. Not for Project E, no.

17 Q. Is nox or nitroxide also an attainment
18 pollutant?

19 A. Yes, it is.

20 Q. Beside carbon monoxide, do you do an
21 analysis under major PSD for what BACT is for nox?

22 A. In general? I'm sorry, can you say the
23 question again?

24 Q. Yes, sir.

1 MR. BOMSTEIN: Could you plead repeat
2 it back.

3 - - -

4 (The requested portion was read back by
5 the reporter.)

6 - - -

7 THE WITNESS: Yes.

8 BY MR. BOMSTEIN:

9 Q. Was that analysis done here?

10 A. No. Actually, can we read back those
11 questions again one more time. Just want to make
12 sure I got that right.

13 - - -

14 (The requested portion was read back by
15 the reporter.)

16 - - -

17 THE WITNESS: I think I need to go back
18 there and say it was done here on Project E.

19 BY MR. BOMSTEIN:

20 Q. Where was that done? Can you please point
21 me to that?

22 A. Table 4-1, page 16. So, again, this is the
23 PSD step one emissions analysis for non-attainment
24 pollutants, including NO2. For Project E, the

1 emissions were less than the significant threshold,
2 therefore further PSD review is not required.

3 Q. I think I perhaps wasn't being clear. Was a
4 determination of what Control Technologies would be
5 required for nox under PSD done?

6 A. Again, in this scenario was not required, so
7 no.

8 Q. Okay. Thank you.

9 MR. BOMSTEIN: Your Honor, we don't
10 have further questions for Mr. McGroarty.

11 THE COURT: Redirect?

12 MR. RAPHAEL: We do not, Your Honor.

13 MR. WHITE: No, questions from the
14 Department, Your Honor.

15 THE COURT: Thank you very much.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Let's take a break.

18 - - -

19 (A break was taken.)

20 - - -

21 THE COURT: Back on the record.

22 MR. RAPHAEL: Your Honor, SPMT calls
23 John Hunt. May I approach, Your Honor? I just
24 want to distribute this.

1 THE COURT: Yes. Still under oath, Mr.
2 Hunt.

3 THE WITNESS: Yes. Thank you.

4 BY MR. RAPHAEL:

5 Q. Good morning, Mr. Hunt.

6 A. Good morning.

7 Q. Welcome back.

8 A. Thank you.

9 Q. Mr. Hunt, as of April 15, 2013, by whom were
10 you employed?

11 A. Let's see, that would have been, I think,
12 right after the acquisition, so I think at that
13 time it was Sunoco Logistics.

14 Q. And what was your position at that time for
15 Sunoco Logistics?

16 A. I was responsible for the Marcus Hook
17 operation. I think my title was probably director
18 of operations for Marcus Hook or something like
19 that.

20 MR. RAPHAEL: May I approach, Your
21 Honor?

22 THE COURT: Yes.

23 BY MR. RAPHAEL:

24 Q. Mr. Hunt, I'm going to show you what's been

1 marked as SPMT Exhibit-61. Please take a moment to
2 page through that document.

3 (Pause.)

4 A. Okay.

5 Q. Mr. Hunt, can you turn to the second page of
6 that document.

7 A. Yes.

8 Q. There is a signature block there that says
9 Jonathan Hunt and underneath it says director,
10 Marcus Hook Industrial Complex, and then there is
11 an actual signature. Do you recognize that
12 signature?

13 A. I do. That's my signature.

14 Q. And did you submit this document on behalf
15 of the Marcus Hook Industrial Complex along with
16 Paul Brown?

17 A. Yes.

18 Q. If you could, just follow along with me in
19 the first paragraph. Pursuant to your letter dated
20 April 2, 2013, Sunoco cancels the DNREC-issued
21 operating permit APC20030705 for the operation of
22 the sulfur recovery units at the Marcus Hook site.
23 The sulfur recovery units were shutdown in November
24 of 2011 and will not be restarted. This

1 cancellation of permit APC20030705 is in support of
2 the ERC application issued November 5, 2012.

3 Mr. Hunt, do you believe that to be a
4 correct statement?

5 A. Yes.

6 Q. Next paragraph. Pursuant to your same
7 letter dated April 2, 2013, Sunoco cancels the
8 DNREC-issued operating permit APC83035 for the
9 operation of the 17-1P, the sulfurized unit with
10 two heaters. That unit was shutdown in November of
11 2011 and will not be restarted.

12 Do you believe that to be a correct
13 statement?

14 A. Yes.

15 Q. Also attached to this letter is the
16 requested documentation for the methodology used to
17 determine the baseline emissions in the original
18 ERC application dated November 5, 2012.

19 Do you believe that to be a correct
20 statement?

21 A. Yes.

22 MR. RAPHAEL: Thank you, Mr. Hunt.
23 That's all I have. We would in response to that
24 testimony, Your Honor, move for the admission of

1 SPMT Exhibit-61.

2 THE COURT: Any objection?

3 MR. BOMSTEIN: We do object and I would
4 request that the motion be -- hold off on ruling
5 until I have a chance to cross, Mr. Hunt.

6 THE COURT: Okay.

7 MR. BOMSTEIN: Thank you, Your Honor.
8 And we also believe this -- as this is a new
9 document for us, we would like a chance to put into
10 -- if this is put into evidence, we would like to
11 put into evidence documents that respond to the
12 substance of this.

13 THE COURT: Okay. Let's see how it
14 goes.

15 MR. BOMSTEIN: Thank you, Your Honor.

16 THE COURT: Before you do any cross,
17 does the Department have any questions?

18 MR. WHITE: No. Thank you, Your Honor.

19 THE COURT: Cross.

20 BY MR. BOMSTEIN:

21 Q. Thank you. Good morning, Mr. Hunt.

22 A. Good morning.

23 Q. Could you please identify the company
24 identified in the upper right-hand corner of the

1 first page of SPMT-61?

2 A. It says Sunoco, Inc.

3 Q. And the logo at the upper left-hand corner,
4 do you know what logo that's associated with?

5 A. It's associated with Sunoco, Inc.

6 Q. Sunoco, Inc.?

7 A. Yes.

8 Q. Did you work for Sunoco, Inc.?

9 A. I worked for Sunoco, Inc. immediately
10 preceding the merger and then when -- not the
11 merger, I'm sorry. The acquisition of the Marcus
12 Hook site by Sunoco Logistics, I was the
13 responsible official both before and after that.
14 Before for Sunoco, after for Sunoco Logistics.

15 Q. Okay. So just to get the timeline clear,
16 for what years did you work for Sunoco, Inc.?

17 A. Sunoco, Inc. I joined Sunoco, Inc. in the
18 latter part of 2009 and that ran up into the point
19 in time in which Sunoco Logistics acquired the
20 facility.

21 Q. So when we were discussing the other day
22 your work for Sunoco, did you mean when you were
23 referring to things in 2013 that -- were you
24 referring to Sunoco, Inc. as opposed to the Sunoco

1 that's the party in this case?

2 MR. RAPHAEL: Your Honor, I'm going to
3 object. We're trying to, I guess, authenticate a
4 document here and now we're going into the -- I'm
5 at a loss as to why we would be doing this. Either
6 this document is what it says it is or it isn't.
7 That is what is before the Court, I believe, Your
8 Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Would you repeat the
11 question?

12 MR. BOMSTEIN: Could you kindly read it
13 back.

14 - - -

15 (The requested portion was read back by
16 the reporter.)

17 - - -

18 THE WITNESS: Well, in 2013 I worked
19 for both Sunoco for a portion of the year and then
20 Sunoco Logistics. In this particular document I
21 believe Mr. Braun, Paul Braun worked for Sunoco and
22 was cancelling the permits that were associated
23 with Sunoco's operations that were part of the
24 former refinery site.

1 BY MR. BOMSTEIN:

2 Q. When you say Sunoco here, do you mean
3 Sunoco, Inc.?

4 A. I do.

5 Q. Is it your understanding of this letter that
6 this concerns the generation of credits associated
7 with the shutdown of the facility?

8 A. It's my understanding that what this letter
9 is doing is it's cancelling permits associated with
10 operations that were part of the former refinery in
11 the portion of the site that's in Delaware. And I
12 think that laid the foundation for credits, you
13 know, later on. But again, that's a -- leave that
14 to the environmental folks. But yeah, that's my
15 understanding.

16 Q. Later on -- do you see the final sentence of
17 the first paragraph in this? Can you please read
18 that?

19 A. This cancellation of permit APC2003-0705 is
20 in support of the ERC application issued November
21 5, 2012.

22 Q. So actually Sunoco, Inc. sought emissions
23 reduction credits for this before the date of this
24 letter, correct?

1 A. I guess that's what that means.

2 Q. Well, are you familiar with this document?

3 A. I signed the document.

4 Q. So do you know what's meant in this
5 document?

6 A. What I understand this document to mean was
7 Sunoco was cancelling the permits associated with
8 those operations of the former refinery, and then
9 again, as I said, my understanding of it at a high
10 level was that was associated with captioning the
11 emission credits that were associated with shutting
12 down those assets and those plans.

13 Q. And what is the material that follows the
14 text of the letter itself?

15 A. This seems to be the emissions data that was
16 associated with those assets that were shutdown.

17 Q. Do you know that?

18 A. Yes. This is stack analyzer data which is
19 associated with the emissions from those units.

20 Q. Okay. So what does the first page indicate?

21 A. Looks like stack test data. But, again, I
22 would have -- Mr. Braun would have brought this to
23 me as the environmental engineer and, you know,
24 reviewed the contents of it and then give a

1 high-level summary of it, and then as a responsible
2 official I signed the letter. I would have relied
3 on Mr. Braun to compile the details here as part of
4 that submission.

5 Q. Sitting here today, do you have an
6 understanding of what those pages after the letter
7 mean?

8 A. Again, my understanding is that would have
9 been the emissions data that would establish the
10 basis for the emission reduction credits.

11 MR. BOMSTEIN: So my concern, I guess,
12 is that we have a witness being used to get a
13 document in and it's unclear what the vast bulk of
14 this document means. So, Your Honor, I want to put
15 on the record as part of my objection that it seems
16 Mr. Hunt understands what the letter is, but it's
17 not clear that he understands the significance of
18 what follows that letter. And sitting here today,
19 I don't understand the significance of that either.

20 THE COURT: Any other questions?

21 MR. BOMSTEIN: No, Your Honor.

22 THE COURT: All right. Objection to 61
23 response?

24 MR. RAPHAEL: Sure, Your Honor. I

1 mean, the purpose of this really is to show that,
2 in fact, we did have a retirement of these units,
3 which Mr. Hunt spoke to with firsthand knowledge.
4 The supporting documentation would have been
5 brought to him and he described the process by his
6 environmental lead. That is entirely consistent
7 with how a business would run. It would be
8 extraordinary for Mr. Hunt to run the entire
9 operation by himself. Certainly relying upon his
10 environmental agent who signed off on this
11 document, whose employment is contingent upon
12 providing accurate and complete information to Mr.
13 Hunt, is a reliable source. And then this document
14 was then submitted to the State of Delaware and
15 certainly there are implications for doing things
16 like that that aren't correct. So yes, I would say
17 that the other documents have been entered into
18 this case with much less authenticity and frankly
19 the --

20 THE COURT: I don't think he's
21 objecting to the authenticity. He's objecting that
22 there's just not enough personal knowledge here
23 from Mr. Hunt to tell what these numbers are, and
24 then the information is going to pop up in the

1 post-hearing briefing and there was no discussion
2 about all of the things that are necessary to get
3 -- I don't have any problem with the letter itself.

4 MR. RAPHAEL: Your Honor, I would say
5 consistent with the rulings we have had so far in
6 this case where there's been evidence put in the
7 record with no authentication of supporting
8 documentation, that Mr. Hunt's ability to say these
9 are stack admissions, they are what they are. And
10 counsel is free to address the weight of this
11 document, as I'm sure every document will be
12 addressed in post-hearing briefing. I see no
13 difference between this and the dozens of exhibits
14 that were admitted already in this case with less
15 authenticity.

16 THE COURT: As I said, I don't think
17 there's any question about the authenticity. I'm
18 not concerned about the authenticity. Just
19 concerned that there's been no substantive
20 description of what all these numbers mean.

21 MR. RAPHAEL: Your Honor, if you want
22 to admit -- I mean, the letter certainly speaks the
23 truth of the matter asserted and it appears there's
24 no argument on that.

1 THE COURT: So you want to revise your
2 offer then just to the letter?

3 MR. RAPHAEL: Your Honor, I would ask
4 the letter be admitted for the truth of the matter
5 asserted and that the attachment be admitted as a
6 fact that it was submitted to the State of Delaware
7 unless Mr. --

8 THE COURT: You want to admit it just
9 for the purpose of showing that this was something
10 that was submitted to the State of Delaware?

11 MR. RAPHAEL: Negative, Your Honor. I
12 want to admit the letter for the truth of the
13 matter asserted, and because the objection raised
14 by counsel the attachment would then be admitted
15 for the truth of the matter that the attachment was
16 submitted to the State of Delaware.

17 THE COURT: Just that it was submitted?

18 MR. RAPHAEL: Yes, Your Honor.

19 THE COURT: Okay. And there's no
20 argument about what these numbers mean. Is that
21 acceptable then?

22 MR. BOMSTEIN: Yes, Your Honor.

23 THE COURT: With that limited proffer,
24 then SPMT-61 is admitted on that basis.

1 MR. RAPHAEL: Thank you, Your Honor.

2 THE COURT: Redirect.

3 MR. RAPHAEL: We have nothing, Your
4 Honor.

5 THE COURT: Anything else from the
6 Department?

7 MR. WHITE: No, Your Honor.

8 THE COURT: Thanks again. Next
9 witness, Mr. Raphael.

10 MR. RAPHAEL: If we could just have a
11 five-minute break. I think we're done, but I just
12 want to check our exhibits.

13 THE COURT: Okay.

14 - - -

15 (A break was taken.)

16 - - -

17 MR. RAPHAEL: Your Honor, thank you for
18 the break. We just have one more exhibit we would
19 move to offer into evidence which is SPMT-48.
20 That's the Title V operating permit and it's in
21 your binders. And that was referenced by Mr.
22 McGroarty during his direct testimony.

23 THE COURT: Any objection?

24 MR. BOMSTEIN: No, Your Honor.

1 THE COURT: Title V. SPMT-48 is
2 admitted.

3 MR. RAPHAEL: And if we could just do a
4 housekeeping measure just to be sure we're all on
5 the same page. We believe it's been admitted, the
6 exhibits, and then we'll rest after. I just want
7 to make sure we have the exhibits in as others do.
8 So we have Exhibit-3, the plan approval application
9 for plan approval B as admitted. We have SPMT
10 Exhibit-5, the plan approval application for D,
11 plan approval D as admitted. We have SPMT
12 Exhibit-6, the plan approval application for plan
13 approval E as admitted. We have SPMT Exhibit-18,
14 which is the plan approval application for
15 Exhibit-H as admitted. And we have SPMT
16 Exhibit-24. That's the RFD 5597 as admitted. Now
17 we have SPMT Exhibit-48, the Title V operating
18 permit as admitted.

19 MR. WHITE: If you're going in order, I
20 think you skipped 41, the notice of appeal. We
21 have that as admitted.

22 MR. RAPHAEL: Thank you. SPMT-41, the
23 notice of appeal dated April 29, 2016 as admitted.
24 We have SPMT Exhibit number 53, the chart

1 containing the plan approvals and dates as
2 admitted. And finally, Your Honor, we have exhibit
3 SPMT-61, the letter admitted for the truth of the
4 matter asserted and the attachment admitted for the
5 notice that was submitted to DNREC.

6 THE COURT: DNREC.

7 MR. RAPHAEL: The Delaware State
8 Environmental Agency, Your Honor.

9 THE COURT: Seems to be consistent, but
10 I mean, the record is going to have to speak for
11 itself.

12 MR. RAPHAEL: With that, Your Honor,
13 SPMT rests.

14 THE COURT: Department.

15 MR. BOMSTEIN: Actually, Your Honor, if
16 I may, I just want to do one housekeeping thing
17 before we move to Department's case. So following
18 up on the conversation before the break around
19 SPMT-61. This is indeed new evidence to us which,
20 you know, we had not been provided with before.
21 The topic wasn't specifically covered in the
22 prehearing memo. So we would ask for the record to
23 be held open with respect to just enough to allow
24 us to get in rebuttal -- documentary rebuttal

1 evidence on the very specific point of the
2 emissions decreases that Sunoco is claiming are
3 credible.

4 THE COURT: What we got to do is we got
5 to do the Department's case in chief and then I'll
6 ask you if you want to do any rebuttal.

7 MR. BOMSTEIN: Sure.

8 THE COURT: Giving us a heads up that
9 you probably are.

10 MR. BOMSTEIN: To be clear, Your Honor,
11 today, because we just got this, we don't have
12 those documents with us. But if this continues on
13 to next week, we would be able to get those
14 documents together.

15 THE COURT: Okay. Well, if we're
16 otherwise done, it's probably not going to happen.
17 So you might want to try to figure out some way to
18 do that.

19 MR. BOMSTEIN: Thank you, Your Honor.

20 THE COURT: Try to do it. The
21 Department's turn. You reserved opening statement?

22 MS. HUNT: Yes, Your Honor. In the
23 interest of moving this hearing along, the
24 Department will not be giving an opening statement.

1 THE COURT: Okay. Are you ready to
2 call your first witness?

3 MS. HUNT: Yes, we are, Your Honor.
4 The Department calls Mr. George Eckert back to the
5 stand.

6 THE COURT: Mr. Eckert, you were
7 previously sworn and you're still under oath. Do
8 you understand that?

9 THE WITNESS: Yes, I do.

10 THE COURT: Thank you.

11 BY MS. HUNT:

12 Q. Please introduce yourself.

13 A. George Eckert. Middle name is Andrew.

14 Q. Where do you work?

15 A. I work for the Department of Environmental
16 Protection.

17 Q. How long have you worked for the Department
18 of Environmental Protection?

19 A. A little over 23 years.

20 Q. What is your current job title?

21 A. I'm an Air Pollution Control Engineer III.

22 Q. What do you do as an Air Pollution Control
23 Engineer III?

24 A. I'm sorry, can you repeat that?

1 Q. Sure. What are your job duties as an Air
2 Pollution Control Engineer III?

3 A. I review and process applications for plan
4 approvals, plan approval extension, modifications,
5 Title V permits, state-only permits, renewals. I
6 do the review memos for those items. And I also
7 assign and review requests for determinations.

8 Q. What is a Title V operating permit?

9 A. Title V operating permit is an air permit
10 for large facilities that have potential emissions
11 greater than a major source threshold.

12 Q. What is a state-only operating permit?

13 A. That would be a non-Title V facility where
14 the potential emissions are less than the title --
15 the major source threshold.

16 Q. What is a plan approval?

17 A. Plan approval is a document from the
18 Department to construct and -- through temporary --
19 temporarily operate the sources in a plan approval
20 application.

21 Q. What is the difference between a plan
22 approval and an operating permit?

23 A. Plan approval allows the construction and
24 temporary operation. The permit allows continued

1 operation.

2 Q. Do you have any certificates?

3 A. Yes, I do. I have a certificate. It's
4 called an EIT, Engineer in Training.

5 Q. When did you get your certificate?

6 A. I received that while I was still in
7 college.

8 Q. How many facilities do you currently review
9 permit applications for?

10 A. Approximately 30.

11 Q. How many of those are Title V facilities?

12 A. I would say eight to 10.

13 Q. How many applications have you reviewed in
14 your approximately 23 years working for the
15 Department?

16 A. I'd say well over a thousand.

17 Q. How many new source review applicability
18 determinations have you performed?

19 A. About 50.

20 Q. How many prevention of significant
21 deteriorations have you performed?

22 A. Same number.

23 Q. Have you ever issued a prevention of
24 significant deterioration permit in your 23 years

1 with the Department?

2 A. No, I have not.

3 Q. Why not?

4 A. I have never had an application that
5 triggered applicability to PSD regulations.

6 Q. Who are your supervisors?

7 A. I report directly to Janine Tulloch-Reid and
8 indirectly to her supervisor James Rebarchak.

9 Q. When you're assigned a new plan approval
10 application, where do you start your review?

11 A. The first thing we do is an administrative
12 of completeness. After that I redo the permit
13 application, try to understand the project a little
14 more, look at the different sources, what the
15 emissions might be, get an idea of how this project
16 relates to other projects, look at applicable and
17 non-applicable regulations.

18 Q. What do you do after that?

19 A. I then begin drafting the review memo, which
20 explains my analysis of what I just said with the
21 regulations, the emission limits, the types of
22 sources.

23 Q. Do you perform any calculations?

24 A. Sometimes.

1 Q. When do you perform calculations?

2 A. If there's any question to the emission
3 calculations that the -- were supplied in the
4 application, I will question those. Sometimes
5 there's not always a calculation method applied.

6 Q. Do you confirm the calculations submitted by
7 a company?

8 A. Yes, I do.

9 Q. Do you ever disagree with any of those
10 calculations?

11 A. Yes.

12 Q. After you draft your review memo, what do
13 you do?

14 A. Then I work on putting into the system the
15 applicable regulatory requirements pertaining to
16 those source or sources in the plan approval
17 application.

18 Q. Do you draft a plan approval?

19 A. Yes, that would -- that would be what I
20 meant.

21 Q. Does anyone review your review memo?

22 A. Yes.

23 Q. Who?

24 A. The review memo and -- or the draft review

1 memo and the draft plan approval get routed to my
2 supervisor, as well as the operations staff.

3 Q. What do you do after they're reviewed?

4 A. Once the Department is satisfied with the
5 documents, it is then sent out to the company as a
6 predraft, and the purpose for that is if it's going
7 to the EPA, the EPA wants to see a document that is
8 ready to be issued. In other words, the applicant
9 and the Department both agreed on the contents of a
10 plan approval, as well as the explanation of what's
11 in the review memo.

12 Q. In what cases do you send the review memo
13 and draft plan approval to the EPA?

14 A. For the Title V facilities.

15 Q. What do you do after the information is sent
16 to the EPA or to the company?

17 A. Well, before we send it to the EPA, as I
18 said, we do the review by the company and then we
19 send it to the EPA. The EPA is given a 45-day
20 comment period and the public are given a 30-day
21 comment period. Once those periods are over, we
22 collect the comments and address them. Sometimes
23 it's through writing. Sometimes it's through a
24 meeting. Sometimes it's via phone. Once all the

1 parties accept the final documents, we move it to
2 issuance.

3 Q. Are you familiar with the Department's air
4 quality regulations?

5 A. Yes, I am.

6 Q. Are you familiar with the regulations
7 pertaining to new source review?

8 A. Yes.

9 Q. What is new source review?

10 A. New source review is a state regulation for
11 non-attainment areas for major sources of nox, VOC
12 and PM 2.5 as it pertains to this area we're in.

13 Q. What do you mean by this area?

14 A. The five county area around Philadelphia has
15 different regulations from the rest of the
16 Commonwealth of Pennsylvania.

17 Q. What makes a facility a major facility for
18 purposes of new source review in this area?

19 A. That would be having a potential to emit 25
20 tons of nox, 25 tons of VOC or 25 tons of -- I'm
21 sorry, 10 tons of PM 2.5 and all of those are or
22 greater.

23 Q. As part of your review of plan approval
24 applications, do you perform a new source review

1 applicability determination?

2 A. Yes.

3 Q. For every plan approval application?

4 A. It's performed for all of the plan approval
5 applications that are at Title V facilities, or for
6 a minor facility that's submitting a major change.

7 Q. How do you perform your new source review
8 applicability determinations?

9 A. In accordance with Pennsylvania's
10 regulations action, you look at the increases from
11 the project and you combine those increases with
12 increases over the previous five calendar years.
13 And if necessary, you -- as a second part, you
14 combine the increases from the project with any
15 increases and decreases over the previous 10-year
16 period.

17 Q. For what sources do you look at as part of
18 your applicability determination for new source
19 review?

20 A. We look at all the sources that are affected
21 by the project. That can be new sources, that can
22 be modified sources or it could be existing
23 unmodified sources.

24 Q. Why do you need to determine which sources

1 are new, modified or unmodified by affected?

2 A. The calculation for the emissions
3 attributable to a project is different for each
4 one. For new sources it's strictly the potential
5 to emit. For modified sources it's the projected
6 actual emissions and from that you subtract the
7 baseline emissions. For existing unmodified
8 sources it's only the emission increase
9 attributable to the project.

10 Q. In what cases do you do a 10-year lookback?

11 A. If the nox or the VOC emissions during a
12 five-year lookback do not exceed the significant
13 net emission increase level, then we would do a
14 10-year lookback.

15 Q. When do you need to look at baseline actual
16 emissions?

17 A. We need to look at baseline actual emissions
18 only when the sources are being modified.

19 Q. How do you --

20 A. Or -- I'm sorry. Or for existing sources.
21 It would be existing modified sources.

22 Q. How do you determine those baseline actual
23 emissions?

24 A. Baseline actual emissions are the average

1 actual emissions over a 24-consecutive-month period
2 as supplied by the company or the applicant. The
3 Department then verifies that they actually did
4 emit and report those actual emissions.

5 Q. Would the baseline actual emissions always
6 be the highest emissions?

7 A. No.

8 Q. Can a facility choose any years as their
9 baseline years?

10 A. Baseline years are generally within the
11 previous five years, but our regulations allow to
12 go an additional five years if there's just cause
13 of not normal operation during that five-year
14 period.

15 Q. How do you determine whether something is
16 part of normal operation?

17 A. When an applicant submits their proposal or
18 their request to use certain years, I not only look
19 at the years that they submit, but I also look at a
20 few years ahead of that, as well as a few years
21 behind that. I try to find out if any of the
22 sources that are included in those emissions have
23 changed and why.

24 Q. Have you ever disagreed with a company's

1 choice of baseline years?

2 A. Yes.

3 Q. Are there any consequences for triggering
4 new source review?

5 A. Yes, there are.

6 Q. What are those consequences?

7 A. They would be subject to emission reduction
8 credits and the new and the modified sources would
9 be subject to LAER.

10 Q. What is LAER?

11 A. LAER is the lowest achievable emission rate
12 that has been demonstrated in practice.

13 Q. Is the determination of the lowest
14 achievable emission rate time sensitive?

15 A. Yes, it is.

16 Q. Why?

17 A. LAER can change. Sometimes very frequently.
18 Sometimes very slowly depending on the type of
19 sources and the type of -- the product that its
20 used is making. The EPA has the RACT, BACT, LAER
21 clearinghouse, so at the time of application
22 they'll submit what they propose to be LAER, which
23 may change between the submittal of the application
24 and when the department issues the plan approval.

1 Q. At what time does the Department look at for
2 purposes of the plan approval for determining what
3 LAER should be for those sources?

4 A. I look at it when it arrives during my
5 initial review. I also look at it near the end
6 before we're ready to issue the plan approval
7 itself.

8 Q. Are you familiar with the regulations
9 pertaining to the prevention of significant
10 deterioration?

11 A. Yes.

12 Q. What is the prevention of significant
13 deterioration?

14 A. That's a federal regulation that is used for
15 areas that are in attainment for certain
16 pollutants. These usually go in pristine areas,
17 areas that's away from industry.

18 Q. Is Delaware County an attainment for any of
19 the pollutants?

20 A. Yes, they are.

21 Q. Which pollutants are they an attainment for?

22 A. They're an attainment for NO₂, CO, I'm not
23 sure if it's SOX or SO₂, PM, PM 10, greenhouse
24 gases. I believe there's others but...

1 Q. As part of your review of plan approval
2 applications, do you perform a prevention of
3 significant deterioration applicability
4 determination?

5 A. Yes, I do.

6 Q. For every plan approval application?

7 A. No, I only do that for the major facilities,
8 the Title V companies, or any minor facility or
9 state-owned facility that's having a major
10 application.

11 Q. Has Pennsylvania adopted the facility
12 requirements for the prevention of significant
13 deterioration?

14 A. Yes, they have.

15 Q. How do you perform a prevention of
16 significant deterioration applicability
17 determination?

18 A. The PSD applicability is a two-step process.
19 The first step is looking solely at the emissions
20 attributable to the project itself. If that answer
21 for each pollutant is less than the significant
22 level for the respected pollutant, then the
23 analysis ends. If one or more of those exceeds a
24 significant level, then a step two needs to be

1 performed for those pollutants. And that takes the
2 analysis from step one and combines it with any
3 increases and decreases over the previous 10-year
4 period.

5 Q. What is the significance threshold for the
6 prevention of significant deterioration for carbon
7 monoxide?

8 A. It's 100 tons.

9 Q. Are there any consequences to a facility
10 triggering the prevention of significant
11 deterioration?

12 A. I'm sorry, could you repeat that.

13 Q. Sure. Are there any consequences for a
14 facility triggering the prevention of significant
15 deterioration?

16 A. Yes, there are.

17 Q. Could you describe them?

18 A. Having never reviewed a PSD application, I
19 know they have to address BACT and I'm sure there
20 are other items that they would have to consider in
21 their application.

22 Q. What is BACT?

23 A. BACT stands for best available control
24 technology where it would be an add-on or the best

1 way to control the emissions for a given pollutant.

2 Q. Is the determination of best available
3 control technology time sensitive?

4 A. Yes, it is.

5 Q. Why?

6 A. Same as the LAER discussion we had earlier,
7 the control technologies can change over time.

8 Q. Earlier you mentioned the lowest achievable
9 emission rate. How does the best available control
10 technology compare to the lowest achievable
11 emission rate?

12 A. The lowest achievable emission rate is the
13 most stringent regulation or limit that the
14 facility can -- would have to meet. So LAER is
15 more stringent than BACT.

16 Q. Are you familiar with Sunoco Partners
17 Marketing & Terminal, LP?

18 A. Yes, I am.

19 Q. How are you familiar with them?

20 A. I have received and reviewed each of their
21 applications for plant approvals and operating
22 permits, as well as their request for
23 determinations.

24 Q. Is SPMT's facility at Marcus Hook a major

1 facility for new source review?

2 A. Yes, they are.

3 Q. Why?

4 A. Their potential emissions of nox are greater
5 than the clarified thresholds. There may be other
6 pollutants, but if you're major for one they're a
7 Title V facility.

8 Q. Does SPMT emit over the major source
9 threshold for volatile organic compounds?

10 A. I would have to look that up, but I believe
11 they do.

12 Q. Is SPMT's facility at Marcus Hook a major
13 facility for the purposes of prevention of
14 significant deterioration?

15 A. Let me go back to your previous question.
16 Yes, they are major for VOCs. Could you repeat the
17 last question asked since I went back.

18 Q. Sure. Is SPMT's facility at Marcus Hook a
19 major facility for the purposes of prevention of
20 significant deterioration?

21 A. Yes, they are.

22 Q. Why?

23 A. Their potential emissions, NOW, CO and
24 greenhouse gases exceed the significance level.

1 Q. Did you review the application for plan
2 approval C?

3 A. C?

4 Q. Yes.

5 A. Yes, I did.

6 Q. Was the project described in plan approval C
7 linked with another project?

8 A. Yes, it was.

9 Q. Which project?

10 A. It was linked with plan approval A.

11 Q. Did you do a new source review applicability
12 determination for plan approval C?

13 A. Yes, I did.

14 Q. Can you please describe your applicable
15 determination?

16 A. As I said previously, the first step is to
17 look at the emission increases from the project,
18 which in this case was just a cooling tower and
19 combine that as part of a five and a 10-year
20 lookback period. Since plan approval B netted out
21 or effectively reset the VOC emissions to zero
22 during its NSR analysis, there was no lookback
23 period left.

24 Q. What do you mean by resetting the emissions?

1 A. Whenever a facility triggers NSR, they meet
2 LAER for applicable, this provides the offsets,
3 those emissions are reset to zero for that
4 pollutant. So in plan approval B they only
5 triggered it for VOC. The nox submissions were
6 carried through into the next previous projects.
7 But the VOC emissions, as I said, were reset to
8 zero.

9 Q. Were the VOC emissions in plan approval C
10 accounted for in your new source review
11 applicability determination?

12 A. Yes.

13 Q. How?

14 A. Because the VOC emissions from plan approval
15 C in itself is the project. And that would get
16 added to any other previous project that was not
17 meted out.

18 Q. For plan approval C, did SPMT have to obtain
19 any emission reduction credits?

20 A. Yes, they did. The reason they needed to
21 obtain those reduction credits was because plan
22 approval C was technically and economically linked
23 to plan approval A. What I did at that point was I
24 looked at the emission increases from C, combined

1 them with the emission increases from plan approval
2 one and A -- with plan approval A to see if those
3 two themselves would have triggered new source
4 review. They did not. So all they needed in this
5 case was the RC. It was a new source which did
6 make it subject to LAER, but LAER for the cooling
7 tower was operating, maintaining good operating
8 practices.

9 Q. Did you review the application for plan
10 approval F?

11 A. Yes, I did.

12 Q. Was the project described in plan approval F
13 linked with any other project?

14 A. Yes. That was linked with project B.

15 Q. Did you do a new source review applicability
16 determination for plan approval F?

17 A. Yes, I did.

18 Q. Is the applicability determination that you
19 did for plan approval F similar to the
20 applicability determination you did for Project C?

21 A. Yes, I did. Yes, it is. Sorry.

22 Q. Did you review the application for RFD 5597?

23 A. Could you clarify what that application is?

24 Q. Sure. Could you turn to Exhibit A-16.

1 A. (Witness complies.)

2 Q. Can you identify this document?

3 A. In my binder -- this is A?

4 Q. No. That's the Department's exhibits. This
5 is Clean Air Council's exhibits.

6 A. Okay. Thank you. Okay. I'm there.

7 Q. Can you identify this document?

8 A. Yes. This is an RFD number 5597 concerning
9 transferring a heat load to the 15-2B cooling
10 tower.

11 Q. Did you consider in RFD 5597 this a
12 modification to the cooling tower?

13 A. No, I did not. I'm sorry, yes, I did.

14 Q. Why did you consider it a modification?

15 A. Because it actually changed the flow through
16 the cooling tower which had a permanent limit, and
17 it also increased emissions from the cooling tower.

18 Q. Why did you approve the modification of the
19 cooling tower in our request for determination?

20 A. We determined that it was a source of minor
21 significance as well as a de minimis emission
22 increase.

23 Q. Did you review the plan approval application
24 for plan approval E?

1 A. Yes, I did.

2 Q. What was the first thing that you did when
3 you received the application for Project E?

4 A. I did an administratively completeness
5 review. That entails seeing if there's enough
6 information to begin review of the application.

7 Q. Did you determine that SPMT's application in
8 E was administratively complete?

9 A. Yes, I did.

10 Q. What did you do next?

11 A. I then went through the application, reading
12 the descriptions, looking at the verbiage, the
13 diagrams, the sources, how it -- how it was
14 designed to operate, what sources -- what previous
15 projects it would affect and then developed the
16 draft review memo as I stated previously.

17 Q. Could you please turn to Exhibit A-11.

18 A. Okay.

19 Q. Are you familiar with this document?

20 A. Yes, I am.

21 Q. What is this document?

22 A. This is a plan approval application for plan
23 approval E which SPMT has identified as ETP Project
24 Revolution and SXL depropanizer project.

1 Q. Could you please turn to page one.

2 A. Okay.

3 Q. How did SPMT describe its project for plan
4 approval E?

5 A. They described it as the installation of two
6 depropanizers, one debutanizer, new flare header
7 for the fractionation system, new piping and
8 fugitive components, utilizing steam from the
9 auxiliary boilers and utilizing cooling water from
10 an existing cooling tower.

11 Q. Did the application for Project E include
12 new storage tanks?

13 A. No, it did not. And I believe I stated
14 yesterday that it did, which was incorrect.

15 Q. Did you discuss the scope of Project E with
16 SPMT?

17 A. Yes, I did.

18 Q. When?

19 A. During a preapplication meeting and most
20 likely several times as questions arose.

21 Q. Did you agree with SPMT's description of
22 Project E in its application?

23 A. Yes, I did.

24 Q. What did you do after reading SPMT's

1 application?

2 A. I developed the draft plan of a draft review
3 memo and I developed the draft plan approval.

4 Q. What did you need to determine in order to
5 start developing your draft technical review memo?

6 A. I needed to understand the sources which
7 were new, which were modified, which were existing
8 and not modified. I needed to understand any
9 regulations that might be applicable to each of
10 those. I needed to know if anything was being
11 changed or affected by this project.

12 Q. Did you have to look at the emissions
13 calculations that were part of the application?

14 A. Absolutely.

15 Q. What did you need to do in relation to those
16 calculations?

17 A. I verified their emission calculations,
18 whether it was -- included calculation or it
19 included calculation methodologies.

20 Q. Which sources did you need to confirm the
21 emission calculations or methodologies on?

22 A. The fugitive emissions, cooling tower
23 emissions, the amount of emissions going to the
24 flare, and the meter prover, I believe.

1 Q. Did you need to confirm the emissions
2 calculations on the depropanizers?

3 A. Yes. They're listed under the fugitive
4 emissions.

5 Q. Did you need to confirm the emission
6 calculations for the boilers?

7 A. No, I did not.

8 Q. Why not?

9 A. Because the emissions from the boilers were
10 previously -- strike that. The maximum emissions
11 from the boilers were previously accounted for in
12 an earlier plan approval.

13 Q. Which plan approval was that?

14 A. It was plan approval B.

15 Q. Why did you need to determine which sources
16 were new?

17 A. Because the calculation method for those
18 emissions is different than what they would be if
19 they were existing or if they were modified.

20 Q. How would those calculations be different?

21 A. New source -- the emissions from new sources
22 are calculated strictly based on the potential
23 emission of the source. In this case there was no
24 modified sources. But for existing unmodified

1 sources it was just those calculations would be the
2 emission increases attributable to the project.

3 Q. In your review of Project E, did you
4 determine whether it should be linked to the
5 project described in the application for Project 1
6 as we have been calling it?

7 A. Yes, I did.

8 Q. What did you determine?

9 A. I determined had it was not linked. The
10 projects were different. The sources were
11 different.

12 Q. In your review of Project E, did you
13 determine whether it should be linked to the
14 project described in A?

15 A. Yes, I did.

16 Q. What did you determine?

17 A. I determined it should not be linked because
18 the processes were different.

19 Q. What do you mean by the processes were
20 different?

21 A. Project A was a deethanizer. Project E was
22 two depropanizers and one debutanizer.

23 Q. In your review of Project E, did you
24 determine whether it should be linked to the

1 project described in B?

2 A. Yes, I did.

3 Q. What did you determine?

4 A. I determined they not related.

5 Q. Why not?

6 A. The Project B dealt with a different
7 product, natural gasoline delivered by trucks and
8 rail, while Project E was products not natural
9 gasoline that were being delivered by pipeline.

10 Q. In your review of Project E, did you
11 determine whether it should be linked to the
12 project described in C?

13 A. Yes, I did.

14 Q. What did you determine?

15 A. That they should not be linked.

16 Q. Why not?

17 A. Again, they were two totally different
18 projects with totally different sources.

19 Q. In your review of Project E, did you
20 determine whether it should be linked to the
21 project described in D?

22 A. Yes, I did.

23 Q. What did you determine?

24 A. I determined that they should not be linked.

1 Q. Why not?

2 A. While Project E was using some of the
3 storage capability in plan approval D, I did not
4 feel that was -- there was enough information to
5 link them there because they could store these
6 products in different storage tanks.

7 Q. Which sources did you determine were
8 modified sources in Project E?

9 A. None of them.

10 Q. Which sources did you determine were new
11 sources in Project E?

12 A. The new sources were the meter prover, the
13 flare header and the rest of the LDAR components,
14 including the three distillation towers.

15 Q. Which sources did you determine were
16 existing unmodified sources in plan approval E?

17 A. Determined that the boiler, the cooling --
18 the boilers, the cooling tower and the flare were
19 not modified.

20 Q. Can you please look at Exhibit A-11. You
21 may already have it in front of you.

22 A. Yes, I do.

23 Q. Turning to page 12. Can you please look at
24 the top of the page where it says therefore?

1 A. Yes.

2 Q. Can you please read that sentence?

3 A. Therefore, there is no incremental steam
4 required by this project, and thus there are no
5 incremental emission increases from the auxiliary
6 boilers.

7 Q. What is your understanding as to why SPMT
8 included that sentence in their application?

9 A. They wanted to establish that these sources
10 were existing, they were not being modified and
11 that the emission increases had been previously
12 accounted for.

13 Q. Do you look at the incremental emission
14 increases for a modified source?

15 A. No.

16 Q. Do you look at the incremental emissions
17 from an existing unmodified source?

18 A. Yes, we do.

19 Q. Can you please turn to page 13.

20 A. (Witness complies.)

21 Q. Looking at table 3-6.

22 A. Yes.

23 Q. Why does SPMT refer to the emissions from
24 the flare and the cooling tower as incremental

1 emissions?

2 A. The flare and the cooling tower both
3 required additional flow based on the requirements
4 of this project. So some projects the depropanizer
5 and the debutanizers needed additional cooling that
6 was being provided. So that amount of cooling
7 water is attributable to E.

8 Q. Did SPMT consider those sources modified in
9 its application?

10 A. No.

11 Q. In table 3-6 what is the total VOC emissions
12 listed for Project E?

13 A. 18.2 tons per year.

14 Q. Can you please turn to Exhibit A-23.

15 A. (Witness complies.)

16 Q. Are you familiar with this document?

17 A. Yes, I am.

18 Q. What is this document?

19 A. This is a final issue -- or this is a final
20 review memo that corresponded with the issuance of
21 plan approval E.

22 Q. Did you write this review memo?

23 A. Yes, I did.

24 Q. Can you please turn to page eight.

1 A. Okay.

2 Q. In table five of your review memo, what did
3 you list as the VOC emissions from Project E?

4 A. 1,822 tons per year.

5 Q. Are those the same emissions that we looked
6 at in SPMT's application for project E?

7 A. Yes, they are.

8 Q. What was the total VOC emissions in your
9 five-year lookback in table H?

10 A. 43.1 tons per year.

11 Q. Can you please turn to exhibit A-33.

12 A. Okay.

13 Q. What is this document?

14 A. This is an unsigned version of plan approval
15 E.

16 Q. Can you turn to page 10.

17 A. All right.

18 Q. Under condition number 003, how many
19 volatile organic compound emission credits did SPMT
20 have to obtain for plan approval E?

21 A. They're required to obtain 56.1 tons of VOC
22 credits.

23 Q. How did you calculate those 56.1 tons?

24 A. That was equal to the five-year lookback

1 value of 43.1 tons times the offset ratio of 1.3.

2 Q. Are those the same 43.1 tons that was
3 referenced in table five of your technical review
4 memo?

5 A. Yes.

6 Q. How many final technical review memos did
7 you write for plan approval E?

8 A. I wrote two.

9 Q. Why did you write two technical review
10 memos?

11 A. I realized that the information in the
12 original review memo did not match up with what was
13 in the plan approval.

14 Q. Did your entire technical review memo
15 change?

16 A. No, it did not. There were a number of
17 changes, but there were also a number of items that
18 remained the same.

19 Q. Did table five change?

20 A. I do not believe so.

21 Q. Could you turn back to exhibit A-23.

22 A. I'm there.

23 Q. Looking at page eight?

24 A. Yes.

1 Q. Did table five change between your first
2 review memo and your second review memo?

3 A. No, it did not.

4 Q. Did the changes in the revised review memo
5 affect plan approval E?

6 A. No, they did not.

7 Q. Why not?

8 A. Plan approval E contained sources of
9 fugitive emissions, the three fractionation units.
10 It did not contain the cooling tower or the boilers
11 or the flare as those sources and those conditions
12 that are in the previous -- that are in the Title V
13 permit were not being changed.

14 Q. Which review memo was consistent with the
15 conditions in plan approval E?

16 A. The revised review memo.

17 Q. Earlier you testified that the boilers were
18 not modified in plan approval E. Why did you
19 determine that the boilers were not modified?

20 A. The boilers did not meet the Department's
21 definition of a modification. While I don't know
22 the exact wording, a modification is essentially a
23 change in operation or a change in a method of
24 operation that results in an increase in emissions

1 or the emission of a new air pollutant. That did
2 not happen in this case.

3 Q. Earlier you testified that the cooling tower
4 was not modified in plan approval E. Why did you
5 determine that the cooling towers were not
6 modified?

7 A. For the same reason. The addition of the
8 cooling lines just like the addition of what I
9 thought were boiler -- the steam lines from the
10 boiler, does not change or affect capacity of the
11 unit. It does not add new emissions.

12 Q. Earlier you testified that the flare was not
13 modified in plan approval E. Why did you determine
14 the flare was not modified?

15 A. For the same reason, it did not meet our
16 definition of a modification.

17 Q. Why does adding lines to a source not make
18 it a modification?

19 A. If it does not change the permanent -- any
20 permanent limits, whether it would be a throughput
21 capacity or an emission, it would not be a
22 modification. So if there was emission increases,
23 it would be modification. Except in -- I believe
24 our definition states increasing hours of operation

1 is not a modification.

2 Q. If there is an increase in emissions below a
3 permanent amount, does that constitute a
4 modification?

5 A. No.

6 Q. Why not?

7 A. Because the source always had the capability
8 to emit up to that level.

9 Q. As part of your review of SPMT's application
10 for plan approval E, did you perform a new source
11 review applicability determination?

12 A. Yes, I did.

13 Q. Can you please turn to A-24.

14 A. All right.

15 Q. Can you identify that document?

16 A. This is the revised plan approval review
17 memo for E.

18 Q. Can you please turn to page five.

19 A. All right.

20 Q. Is this your new source review applicability
21 determination for plan approval E?

22 A. Yes, it is.

23 Q. How did you define the project in your new
24 source review applicability determination?

1 A. It's defined as the modification of three
2 fractionation systems, additional -- installation
3 of additional piping, and the installation of a
4 meter prover system.

5 Q. Can you please walk us through how you did
6 your applicability determination for new source
7 review for plan approval E?

8 A. Look at the emissions from the projects. As
9 we discussed earlier, the calculations methods are
10 different. So the increase of the project is that
11 coupled with the five-year applicability
12 determination to see if the project plus any
13 emissions from the previous five years would exceed
14 the significant emission level. And that only
15 applies to nox and VOC.

16 Q. Can you please turn to page seven.

17 A. All right.

18 Q. Specifically looking at table G. What was
19 the total emissions increase for volatile organic
20 compounds for Project E?

21 A. 43.12. I'm sorry, that's for the total of
22 the project. The emission increases from Project E
23 is 18.2 tons of VOC.

24 Q. What was the total volatile organic compound

1 emissions in your five-year lookback for new source
2 review?

3 A. 43.12 tons.

4 Q. What were the total nitrogen oxide emissions
5 in your five-year lookback for new source review
6 for Project E?

7 A. 25.25 tons.

8 Q. Did SPMT exceed the significant and net
9 emissions threshold for new source review for
10 Project E?

11 A. Yes, they did.

12 Q. For which pollutants?

13 A. For nox and VOC.

14 Q. Were there any consequences for SPMT for
15 exceeding the new source review thresholds?

16 A. Yes, there are. Besides needing the
17 necessary emission offsets, they are required to
18 perform an alternate site analysis. LAER itself is
19 only subject to new or modified sources. And
20 they're required to certify that all other
21 facilities in Pennsylvania that are subject to SR
22 and have emission limitations are in compliance or
23 on a schedule for compliance.

24 Q. What constitutes the lowest achievable

1 emission rate for the fugitive sources?

2 A. That would be following the guidelines of an
3 approved LDAR program.

4 Q. What constitutes the lowest achievable
5 emission rate for the meter prover?

6 A. That is also an LDAR program.

7 Q. As part of your review of SPMT's application
8 for Project E, did you perform a prevention of
9 significant deterioration applicability
10 determination?

11 A. Yes, I did.

12 Q. Can you please turn to page nine of A-24.

13 A. Okay.

14 Q. Is this the prevention of significant
15 deterioration applicability determination that you
16 performed?

17 A. Yes, it is.

18 Q. How did you define the project in your
19 prevention of significant deterioration
20 applicability determination?

21 A. I defined it as the installation of several
22 new sources which is the fractionation systems, the
23 fractionation towers, additional piping or LDAR
24 components and the meter prover and incremental

1 increases from the cooling tower, the boilers and
2 the flare.

3 Q. Did you perform a step one analysis in your
4 applicability determination?

5 A. Yes.

6 Q. Can you please walk us through your step one
7 analysis?

8 A. Step one of PSD requires you to look only at
9 the emission increases after the project for those
10 affected sources. So it doesn't look at any other
11 projects. It looks only at the emission increases
12 from the project. The analysis for each of those
13 is found on page 10 in table I.

14 Q. Did you perform a step two analysis as part
15 of your applicability determination?

16 A. No, I did not.

17 Q. Why not?

18 A. The PSD regulations do not require a step
19 two analysis if step one does not -- if no
20 pollutants in step one exceed the significant
21 emissions thresholds.

22 Q. Did any pollutants in your step one analysis
23 for Project E exceed the significant emission
24 threshold?

1 A. No, they did not.

2 Q. Did SPMT surrender the necessary emission
3 reduction credits at the time they submitted their
4 application for plan approval E?

5 A. No, they didn't.

6 Q. Was plan approval E modified?

7 A. Yes, it was. It was modified to memorialize
8 those VOC and NOX emission reduction credits that
9 the plan approval required.

10 Q. Can you please turn to exhibit C-14. This
11 is in the Department's binder.

12 A. Okay.

13 Q. Are you familiar with this document?

14 A. Yes, I am.

15 Q. What is this document?

16 A. This is a modification to plan approval E.

17 Q. Is this the modification you were talking
18 about a minute ago?

19 A. Yes, it was. Yes, it is.

20 MS. HUNT: Your Honor, at this time the
21 Department would like to move exhibit C-14 into
22 evidence.

23 THE COURT: Any objection?

24 MR. BOMSTEIN: Objection on the basis

1 of relevance.

2 THE COURT: Overruled. C-14 is
3 admitted over objection.

4 BY MS. HUNT:

5 Q. Was plan approval E modified because of the
6 changes to your technical review memo?

7 A. No, it was not.

8 Q. Can SPMT construct the sources requiring the
9 ERCs in plan approval E without the modified plan
10 approval?

11 A. Yes, they can.

12 Q. Can SPMT operate the sources requiring ERCs
13 in plan approval E without the modified plan
14 approval?

15 A. No, they cannot.

16 Q. Why not?

17 A. Our regulations require the ERCs to be
18 certified or approved by the Department and placed
19 in the registry before the source can be operated.

20 Q. As you are aware, the Board is interested in
21 the effect of linking Project E with each of the
22 previous projects for purposes of the prevention of
23 significant deterioration. In preparation for the
24 hearing, did you do a prevention of significant

1 deterioration applicability determination linking
2 the projects together?

3 A. Yes, I did.

4 MS. HUNT: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MS. HUNT:

7 Q. Did you create this chart?

8 A. Yes, I did.

9 Q. Does this chart contain the analysis that
10 you performed linking the projects together for
11 purposes of the prevention of significant
12 deterioration?

13 MR. BOMSTEIN: Objection, form.
14 Unclear what the projects means here.

15 THE COURT: Want to rephrase?

16 BY MS. HUNT:

17 Q. Does this chart contain your analysis
18 linking Projects 1 through Projects E for the
19 purposes of the prevention of significant
20 deterioration?

21 A. Yes, it does.

22 Q. What are the emissions in this chart based
23 on?

24 A. These emissions are based on information

1 gathered from each of the applications, 1 through

2 E.

3 Q. Based on your analysis linking Projects 1
4 through Projects E together, was PSD triggered?

5 A. No, it was not.

6 Q. Why not?

7 A. As I stated, it's a two-step analysis.
8 Previously discussed the first step. The step two
9 then requires the lookback period of ten years for
10 any increases and decreases. When you add the
11 decreases in, the result for CO is less than the
12 significant threshold.

13 Q. Did your analysis as memorialized in this
14 chart contain RFDs?

15 A. Yes, it did.

16 Q. Which RFDs does it contain?

17 A. It contains information from RFD number
18 5597. That was for the cooling tower.

19 Q. Does it contain any other RFDs?

20 A. Yes, there's a second one. Number 5236 for
21 the new spheres project.

22 Q. What were the total emissions under your
23 step one applicability determination for carbon
24 monoxide?

1 A. That would be 101.23 tons of CO.

2 Q. What was the step two emissions total for
3 carbon monoxide?

4 A. 83.71 tons.

5 Q. Did you analyze if the prevention of
6 significant deterioration had been triggered if any
7 additional controls would be necessary?

8 A. Yes, I did.

9 Q. Would additional controls be necessary on
10 the new sources in plan approval E?

11 A. No, they would not.

12 Q. Why not?

13 A. A search through the RBLC showed emission
14 levels of CO were greater than what the actual
15 emissions of CO were if we had considered these
16 sources to be new.

17 THE COURT: First there was an acronym
18 I didn't recognize. RBLC?

19 THE WITNESS: That's RACT, BACT, LAER
20 clearinghouse. Sorry, Your Honor.

21 THE COURT: Okay. I kind of stalled at
22 that point. The clearinghouse, and what did you
23 say after that?

24 THE WITNESS: Could you ask the

1 question again?

2 BY MS. HUNT:

3 Q. Sure. Would additional controls be
4 necessary on the new sources in plan approval E?

5 MR. BOMSTEIN: Objection form. No
6 foundation for what the new sources are here.

7 THE COURT: You want to rephrase?

8 MS. HUNT: Sure, Your Honor.

9 BY MS. HUNT:

10 Q. If PSD had been triggered, would additional
11 controls be necessary for the debutanizer in plan
12 approval E?

13 A. No.

14 Q. Why not?

15 A. The debutanizer is a source of fugitive
16 emissions that's already meeting the LDAR
17 requirements found in the applicable NSPS.

18 Q. What do you mean by NSPS?

19 A. That's a federal regulation found in CFR 60.
20 I believe the regulation is subpart VV -- VVA.
21 Sorry.

22 Q. If PSD had been triggered, would additional
23 controls be necessary for the depropanizers in plan
24 approval E?

1 A. No. They are also sources of fugitive
2 emissions following the same LDAR program.

3 Q. If PSD had been triggered, would additional
4 controls be necessary for the flare header?

5 A. No.

6 Q. Why not?

7 A. That is also a source of fugitive emissions
8 following the same LDAR requirements.

9 Q. If PSD had been triggered would any
10 additional controls be necessary for the meter
11 prover in Project E?

12 A. No. For the same reasons. It's a fugitive
13 source.

14 Q. Is LDAR more stringent than the best
15 available control technology?

16 A. It could be, depending on the age of the
17 regulations. Sometimes the regulations are old and
18 BAT would be less stringent. I'm sorry. The BAT
19 would be more stringent than the older LDAR
20 regulations.

21 THE COURT: You said BAT?

22 THE WITNESS: Yes.

23 THE COURT: I thought she asked about
24 BACT.

1 THE WITNESS: I thought you said BAT.

2 MS. HUNT: No.

3 THE WITNESS: I'm sorry, could you
4 repeat that, please.

5 BY MS. HUNT:

6 Q. Sure. Is LDAR more stringent than BACT?

7 A. Okay. No.

8 Q. Why not?

9 A. LDAR can suffice for BACT, but LDAR is not a
10 -- it is a type of control technology. So --

11 Q. Does LDAR meet LAER?

12 A. LDAR could meet LAER.

13 Q. In this case for the fugitive components,
14 did LDAR meet LAER?

15 A. Yes, it did.

16 Q. Did you look at if PSD had been triggered
17 and the flare was modified, if any additional
18 controls would be necessary?

19 A. No, I did not look at that.

20 Q. Did you look at if the prevention of
21 significant deterioration had been triggered and
22 the boilers were modified if additional controls
23 would be necessary?

24 A. Yes, I did.

1 Q. Would additional controls be necessary on
2 the boilers if PSD were triggered and the boilers
3 were modified?

4 A. No, additional controls would not be
5 necessary.

6 Q. Why not?

7 A. As a search through the RBLC, the RACT,
8 BACT, LAER clearinghouse, the CO emissions on the
9 boilers that I found that were approximately the
10 same size, operating with the same types of fuel,
11 those CO emissions were higher than the
12 demonstrated emissions that these boilers currently
13 exhibit.

14 MS. HUNT: I have no further questions,
15 Your Honor.

16 THE COURT: Exhibits?

17 MS. HUNT: None in addition to the one
18 that I already moved in.

19 THE COURT: Okay. Is Sunoco going to
20 have any questions?

21 MR. RAPHAEL: We are not, Your Honor.

22 THE COURT: Okay. Then let's just take
23 a break at this point.

24

1 - - -

2 (Lunch break.)

3 - - -

4 THE COURT: Mr. Bomstein.

5 MR. BOMSTEIN: Thank you, Your Honor.

6 I'd like to hand out a document we have just
7 printed out.

8 THE COURT: Thank you.

9 BY MR. BOMSTEIN:

10 Q. Mr. Eckert, earlier before the break for
11 lunch you discussed what constitutes a modification
12 of an emissions source, correct?

13 A. Correct.

14 Q. Do I recall your testimony being that to
15 constitute a modification there needs to be an
16 increase in emissions beyond what had been
17 permitted?

18 A. I don't know if that's exactly what I said
19 or not.

20 Q. Could you please say what your view is?

21 A. I said there had to be a change in method of
22 operation or a change in operation that results in
23 an increase in emissions or the emission of a new
24 air pollutant.

1 Q. Okay. That's what a modification is?

2 A. Correct.

3 Q. Do you believe the flare is modified as part
4 of Project E?

5 A. No, I do not.

6 Q. May I ask you to take a look at the document
7 I just handed to you.

8 A. Okay.

9 Q. Are you familiar with this document?

10 MS. HUNT: Objection, Your Honor. This
11 document was not in the prehearing memorandum. The
12 Department has never seen this document before and,
13 you know, the Department would object to any
14 reference or testimony about this document.

15 THE COURT: The prehearing memo only
16 refers to documents to be used in the case in
17 chief. So overruled.

18 THE WITNESS: No, I have never seen
19 this document.

20 BY MR. BOMSTEIN:

21 Q. Do you know if, as Ms. Hunt stated, the
22 Department has never seen this document before?

23 A. I can't speak for anybody but myself.

24 Q. That's fine. Could you take a look at --

1 first of all, could you please read the title?

2 A. Conciliation order by consent, secretary's
3 order number 2018-A-01 -- I'm sorry, dash 0019.

4 Q. Thank you. Could you turn to page six of
5 this, please?

6 A. (Witness complies.)

7 Q. Please say who has signed this document.

8 A. There's two signatures on here. Which one
9 are you asking for?

10 Q. Please, both.

11 A. Both of them. Shawn M. Garvin and Matt -- I
12 believe that's Matt Ramsey.

13 Q. Is Mr. Garvin, according to this document,
14 Secretary of the Department, Delaware Department of
15 Natural Resources and Environmental Control?

16 A. It appears to be.

17 Q. And is Mr. Ramsey, according to this
18 document, President and COO of Sunoco Partners
19 Marketing & Terminals LP?

20 A. It appears to be.

21 Q. Are you familiar that the Delaware
22 Department of Natural Resources and Environmental
23 Control also regulates the Marcus Hook facility as
24 to the Delaware side?

1 A. I don't know if that name is correct, but I
2 know the State of Delaware regulates some of the
3 sources on the Delaware side of SPMT.

4 Q. Are you in contact with the regulators on
5 the Delaware side regarding Marcus Hook?

6 A. Very infrequently.

7 Q. Have you been in the last year?

8 A. Yes.

9 Q. Have you discussed with those regulators the
10 ethylene complex flare at Marcus Hook?

11 A. Yes, I did.

12 Q. What was the content of those discussions?

13 A. I was asking them if they knew when the
14 installation date of that flare was.

15 Q. Why did you ask that?

16 A. It was more of a curiosity question.

17 Q. What made you curious about it?

18 A. Since they were replacing the flare, what is
19 the useful life of the flare if one was installed.

20 Q. Were you ever made aware that the Delaware
21 Department of Natural Resources and Environmental
22 Control, which I'll just call DNREC for short,
23 which is D-N-R-E-C, issued a notice of violation to
24 Sunoco Partners Marketing & Terminals for the

1 flare?

2 A. I know they issued something for the flare.
3 I don't know exactly what it was.

4 Q. Is that not relevant to your view of
5 projects regarding the Marcus Hook complex?

6 A. Since we -- since the Department considered
7 the ethylene complex flare to be replaced by the
8 flare in plan approval H, I didn't need to know
9 anymore.

10 Q. Why?

11 A. Because we considered it a like-kind
12 replacement.

13 Q. Why does that mean you don't have to
14 consider the nature of the ethylene complex flare
15 itself?

16 A. They did not include any of the emissions
17 from that flare as a reduction.

18 Q. Please take a look at the front page of this
19 document which is under the section background. Do
20 you see where I'm speaking about?

21 A. Yes.

22 MR. RAPHAEL: Your Honor, if I can,
23 just to keep the record clear. This is -- it
24 appears to be a settlement agreement and it states

1 SPMT's facility denies any and all allegations of
2 liability or wrongdoing. DNREC agrees the
3 execution of this agreement by SPMT does not
4 constitute an admission of any fact or violation of
5 law, regulation or permit condition. So I hope
6 we're not going to try to read things into to say
7 they're admissions when this agreement explicitly
8 says they are not.

9 BY MR. BOMSTEIN:

10 Q. Mr. Eckert, looking at the section that says
11 background, please take a minute to look to read
12 that section which I think is less than a page.

13 (Pause.)

14 A. Okay.

15 Q. Does any of this information ring a bell for
16 you?

17 A. In a vague sense.

18 Q. Please describe that sense.

19 A. I knew that the SPMT or the former Sunoco
20 facility in Claymont, Delaware was considered for
21 NSR PSD purposes part of the Marcus Hook Industrial
22 Complex. I knew that they had a flare there. I do
23 not know what sources were over there. I know that
24 SPMT was in talks with Delaware to construct a new

1 flare to replace the EC flare in Delaware. I'm not
2 aware of -- and I know those talks broke off. I'm
3 not aware of exactly why.

4 Q. Does this provide any context for your
5 understanding of why those talks broke off?

6 A. Not really.

7 Q. Then I'd ask you to turn to page two,
8 please, of this.

9 A. Okay.

10 Q. And please read again just to yourself --
11 actually, let me direct you to a specific section
12 of this. Do you see the subheader DNREC's
13 allegations?

14 A. Yes.

15 Q. Do you see where it says on --

16 MR. RAPHAEL: Your Honor, I'm going to
17 object. It's super creative, but this document is
18 a settlement agreement and I absolutely feel like I
19 need to put this on the record. It says no
20 admission of noncompliance. SPMT accepts this
21 agreement in order to resolve the alleged
22 violations set forth above. The alleged violations
23 set forth above. Without admission of fact,
24 violation or liability. And in lieu of further

1 enforcement --

2 THE COURT: He doesn't have any
3 personal knowledge about this document so that's,
4 I'm wondering, why he's being asked.

5 MR. RAPHAEL: And to read it into
6 record as truth of the matter asserted, that's
7 entirely inappropriate.

8 THE COURT: This witness doesn't seem
9 to be having personal knowledge of this so --

10 MR. BOMSTEIN: Your Honor, what I'm --
11 if I could give an offer of proof.

12 THE COURT: Okay. Is this related to
13 that SPMT-61?

14 MR. BOMSTEIN: No, Your Honor. This
15 document is specifically relating to Mr. Eckert's
16 testimony that there is no modification of the
17 flare. And based on what he testified to shortly
18 before lunch, which is that there's -- if there's
19 an increase in the emissions in conjunction with
20 work done to the flare or work done to a piece of
21 equipment, that it's modified, this is meant to
22 impeach his conclusion that it was not modified
23 because we believe that this shows that, in fact,
24 there was an unpermitted increase in emissions from

1 the flare.

2 MR. RAPHAEL: Your Honor, if I may.
3 He's trying to then offer this as the truth of the
4 matter asserted, but this is a hearsay document
5 which he has no knowledge of. That's just not
6 appropriate.

7 THE COURT: Why is this not
8 inadmissible hearsay?

9 MR. BOMSTEIN: Well, I'm not trying to
10 get in -- I'm not offering this document into
11 evidence at this time. I'm using it with the
12 witness. I'm trying to establish -- I don't know
13 if he knows what's in the paragraph that I was just
14 looking at. If he doesn't know, we believe that's
15 material as well because we think it's highly
16 relevant what happened with the piece of equipment
17 that's involved in Project E, which the witness
18 does not appear to know.

19 MR. RAPHAEL: Your Honor, that's my
20 point precisely. He is taking this document as
21 fact, as truth, and he wants to confront with it.
22 This is a hearsay document. You can't do that.

23 MR. BOMSTEIN: Your Honor, also this is
24 -- this would fall into the hearsay exception for

1 regularly kept business records. This is directly
2 from the DNREC's Website. This is signed by the
3 secretary of DNREC. So we believe it's not
4 hearsay.

5 THE COURT: It's definitely an
6 out-of-court statement being offered for the truth
7 of the matter asserted.

8 MR. BOMSTEIN: Your Honor, I would
9 correct that. You're correct. I would say that it
10 falls under hearsay exception rather than not being
11 hearsay.

12 THE COURT: And then the exception to
13 business record exceptions aren't really intended
14 to -- everything that we look at in these court
15 proceedings is business records. So strikes me
16 that I haven't heard a reason why I can allow this
17 hearsay in. You can probably ask some of the same
18 questions without reference to a hearsay document.

19 MR. BOMSTEIN: I will do that, Your
20 Honor.

21 BY MR. BOMSTEIN:

22 Q. Mr. Eckert, in the course of your review of
23 Project E, did you ever examine whether the
24 equipment involved with Project E that's also

1 located in the State of Delaware, did you look into
2 anything regarding Delaware's regulation of that
3 equipment?

4 A. No, I did not.

5 Q. When you had conversations with Delaware
6 regulators regarding the ethylene complex flare, is
7 it your testimony that it never came up that there
8 was a notice of violation issued and ultimately a
9 settlement with Sunoco Partners Marketing &
10 Terminals?

11 A. That's correct.

12 Q. Is that material to your review of Project
13 E?

14 A. No.

15 Q. Why?

16 A. The flare, the EC flare in Delaware was the
17 only flare at the facility for several years. All
18 of the emissions were always going to the flare.
19 Nothing changed. All emissions were previously
20 going to the flare when it was a refinery. That
21 hasn't changed.

22 MR. BOMSTEIN: Can you please read back
23 my question.

24 - - -

1 (The requested portion was read back by
2 the reporter.)

3 - - -

4 MR. BOMSTEIN: Thank you.

5 BY MR. BOMSTEIN:

6 Q. So I don't understand your answer. Why does
7 that not make it material?

8 A. If the source has previously demonstrated
9 that it had emissions, not just the capability or
10 the capacity to have those emissions, but actually
11 did emit them, and if the source or the facility
12 had a down year and next year increased them back
13 to its normal capacity, it would not be an increase
14 in emissions.

15 Q. Okay. So am I correct in that your
16 testimony on what's a modification is now that it
17 not only needs to have an emissions increase, but
18 the emissions increase needs to be somewhat
19 unusual?

20 A. No. It -- one exception that's in the
21 Department's definition of modification is that an
22 increase in hours of operation is not to be
23 considered a modification. The Department
24 understands that that increase in hours of

1 operations could ultimately result in an increase
2 in emissions, as long as it wasn't exceeding
3 permitted levels. So if it doesn't exceed
4 permitted levels by increasing its hours of
5 operation, and it also doesn't increase above
6 permitted levels for just an increase in capacity,
7 then there would be no modification.

8 Q. And if it does increase emissions beyond
9 permitted levels, would it then be a modification?

10 A. Yes.

11 Q. So is it material if DNREC determined that
12 the flare increased emissions beyond the permitted
13 levels?

14 A. I do not know what Delaware's definition is.
15 I do not know what the permitted levels were in
16 Delaware. I can't answer that question.

17 Q. So they're irrelevant to you?

18 A. It's outside of PADEP's jurisdiction.

19 Q. I thought the flare was within PADEP's
20 jurisdiction?

21 A. As I stated, it is in the jurisdiction for
22 the purpose of NSR PSD only.

23 Q. And modification is an NSR-related question,
24 isn't it?

1 A. Yes, it is.

2 Q. So for this purpose it is within PADEP's
3 jurisdiction, correct?

4 A. Yes.

5 Q. Earlier on in your testimony this morning
6 you talked about how you determined LAER, correct?

7 A. How I determined what?

8 Q. LAER, L-A-E-R.

9 A. Yes.

10 Q. And am I correct in that the first step in
11 that is the applicant comes up with a determination
12 of LAER?

13 A. Correct.

14 Q. Does DEP ever independently determine LAER
15 without the applicant first doing so?

16 A. I can't answer that question because I don't
17 know.

18 Q. Have you ever done that?

19 A. No.

20 Q. Is it normal practice, as far as you're
21 aware?

22 A. It would be normal practice as far as
23 submitting a complete application.

24 Q. What do you mean?

1 A. Well, they have to address all the
2 applicable regulations at the time of the
3 application.

4 Q. Okay. So it would be normal practice for
5 the applicant to make a LAER determination,
6 correct?

7 A. Correct.

8 Q. But not for the Department independent of
9 the applicant doing so?

10 A. Correct.

11 Q. And then once the applicant submits their
12 evaluation of LAER, you would review that, correct?

13 A. Yes.

14 Q. Is that the same with other emissions
15 control standards such as BACT?

16 A. Yes.

17 Q. That's also the same for BAT, B-A-T?

18 A. Yes.

19 Q. And generally speaking, does the Department
20 ever conduct its own determination in the absence
21 of the applicant conducting a determination in an
22 application for a plan approval?

23 A. I would say the proper way to do that is to
24 return that back to the applicant and ask them to

1 complete it.

2 Q. Why?

3 A. Because it is their obligation to submit a
4 complete application.

5 Q. And so without a complete application, the
6 Department doesn't have anything to work with to
7 approve or not approve, correct?

8 A. You can still work on the application with
9 some missing parts. You can't complete it.

10 Q. Okay. Before you can do a complete review,
11 the missing parts need to be supplied, correct?

12 A. Correct.

13 Q. Mr. Eckert, I believe you testified that
14 what control devices or what control technology is
15 LAER can change even between the time of submission
16 of an application and the issuance of a plan
17 approval, correct?

18 A. Correct.

19 Q. So if there's a -- when a new permit
20 application comes in you still do an evaluation of
21 what is LAER at the time of the issuance of a plan
22 approval, correct?

23 A. Close to the time of issuance.

24 Q. That's fair. Shortly before?

1 A. Yes.

2 Q. Okay. Have you ever been in the position
3 where a plan approval you have issued has needed to
4 be rescinded?

5 A. No.

6 Q. Have you been in a situation where the
7 Department has withdrawn a plan approval you have
8 worked on?

9 A. No.

10 Q. Do you understand how that works?

11 A. No.

12 Q. Okay. Have you been in a situation where
13 you have a plan approval and then you need to issue
14 a new plan approval for the same project?

15 A. Yes.

16 Q. In that situation, do you look at what LAER
17 is at the time you issue the new plan approval?

18 A. It would depend on the modification that's
19 being done.

20 Q. So am I clear this is in the context of a
21 modification that that's happened?

22 A. Correct.

23 Q. Have you dealt with the situation when it's
24 not merely a modification but the issuance of a

1 whole new plan approval?

2 A. Not that I can recall.

3 Q. Okay. Can an area be both an attainment for
4 some pollutant and non-attainment for other
5 pollutants?

6 A. Yes.

7 Q. In fact, the Marcus Hook area is such an
8 area, correct?

9 A. Yes.

10 Q. So if you're in an attainment area, that
11 doesn't make the area pristine, does it?

12 A. Not for all pollutants.

13 Q. Okay. I believe you also talked earlier
14 about Marcus Hook being a major PSD facility, am I
15 correct?

16 A. Yes.

17 Q. Is that the same thing as there being a
18 major modification under PSD?

19 A. I don't believe so.

20 Q. What's your understanding of the difference?

21 A. There are different emission thresholds for
22 a major facility, I believe, than there are for
23 what's considered a major modification. I do not
24 know those though.

1 Q. Okay. Is it fair to say at least that
2 simply being a major facility under PSD does not
3 mean that the requirements when a facility
4 undergoes a PSD major modification have been met?

5 A. Could you repeat that?

6 Q. Sure. I'll try to break it down here. So
7 I'm talking about a distinction between being a
8 major facility under PSD and undergoing a PSD major
9 modification. Are you with me so far?

10 A. Well, having never done a major modification
11 or a PSD permit or reviewed an application that was
12 submit to PSD, I doubt if I'll be able to answer
13 those questions.

14 Q. Okay. Then can we at least say that when
15 you testified earlier that Marcus Hook was a PSD
16 major facility, in your understanding that doesn't
17 necessarily mean it's complied with the regulations
18 that take effect when you have a PSD major
19 modification?

20 MR. RAPHAEL: I'm going to object as a
21 compound question.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know that.

24 BY MR. BOMSTEIN:

1 Q. Okay. You don't know one way or the other,
2 correct?

3 A. Correct.

4 Q. Okay. You also, I believe, talked about
5 doing a lookback in the context of what I believe
6 you termed a reset with plan approval B. Do you
7 recall that?

8 A. Yes.

9 Q. Doing a five or 10-year lookback is not the
10 same as aggregating projects to properly define the
11 project and prevent circumvention, correct?

12 A. That would be correct.

13 Q. Thank you. So when you're talking about the
14 emissions being reset with Project B, that's not in
15 the circumvention context, that's just in the
16 lookback context, correct?

17 A. That's in the NSR context.

18 Q. And specifically set within the NSR process
19 of doing a lookback, correct?

20 A. Yes.

21 Q. Mr. Eckert, do you know what the
22 significance of air dispersion modelling is?

23 A. Yes.

24 Q. Have you ever dealt with air dispersion

1 modelling?

2 A. No.

3 Q. I believe I also remember from your
4 testimony this morning that I believe you said
5 Project E did not involve natural gasoline. Am I
6 correct in that?

7 A. I'm not sure if I said that or not.

8 Q. Okay. For some context, you were asked
9 whether you determined that Project E and several
10 other projects were linked. Do you recall that?

11 A. I remember the conversation. I don't
12 remember the specifics.

13 Q. Okay. That's fair. Do you recall -- well,
14 did you make a determination as to whether Project
15 E and Project B were linked?

16 A. Yes, I made a determination.

17 Q. What was that determination?

18 A. That they should not be linked.

19 Q. Why did you make that determination?

20 A. Because the sources were different, the
21 product was different and the process was
22 different.

23 Q. So the product was different. What is the
24 product -- what do you believe to be the product

1 for Project B?

2 A. Project B?

3 Q. Yes, sir.

4 A. It was pentane and I believe amine -- not
5 amine. The heavier compounds. The liquid natural
6 gas. Petro gasoline. Sorry.

7 Q. Okay. Does Project E involve natural
8 gasoline?

9 A. Not that I recall.

10 Q. Could you please turn to exhibit A-8.

11 A. Okay.

12 Q. Is this the plan approval application for
13 Project B?

14 A. Yes, it is.

15 Q. Could you turn to figure 2-1, please.

16 A. Okay.

17 Q. Do you see the mention of a pentane product?

18 A. Yes, I do.

19 Q. Do you see the mention of a natural gasoline
20 feed?

21 A. Yes.

22 Q. Do you see mention of a light naphtha
23 product?

24 A. Yes.

1 Q. So you understand Project B at least
2 concerns those three products?

3 A. Yes, I do.

4 Q. Okay. Now please turn to A-11.

5 A. Okay.

6 Q. Please turn to section 2.0.

7 A. Yes.

8 Q. And please read the first line.

9 A. The project will provide for the separation
10 of transmix or deethanizer.

11 Q. I'm sorry, the first sentence, please.

12 A. Continuing on, the deethanized natural gas
13 liquids into export-grade propane, mixed butane and
14 natural gasoline.

15 Q. Okay. Thank you. Does that refresh your
16 recollection as to whether Projects B and E deal
17 with the same products?

18 MR. RAPHAEL: Could you read that back.

19 - - -

20 (The requested portion was read back by
21 the reporter.)

22 - - -

23 THE WITNESS: I see that they both
24 mention natural gasoline.

1 BY MR. BOMSTEIN:

2 Q. Does that change your understanding of the
3 linkage between Projects B and E?

4 A. No.

5 Q. Well, I thought you mentioned that this was
6 a factor in your analysis?

7 A. It doesn't change my position.

8 Q. So is it not a material factor in your
9 analysis?

10 A. Correct.

11 Q. Okay. So what were the material factors in
12 your analysis for whether or not B and E are
13 linked?

14 A. In the diagram in A-8, 2-1 that you pointed
15 us to originally, they're receiving natural gas
16 feed to be broken down into pentane and light
17 naphtha. In Project E under A-11, they're
18 receiving different products and some of that will
19 be converted into natural gasoline. It's two
20 different processes. One to make natural gasoline
21 and the other one to separate it out.

22 Q. So is your view that there's no connection
23 between those two?

24 A. That's correct.

1 Q. Why is that your conclusion?

2 A. I just stated why.

3 Q. Are there any other reasons?

4 A. Not without looking through both entire
5 applications.

6 Q. Do you need to look through both entire
7 applications to determine whether they're linked?

8 A. I already made a decision that they weren't.

9 Q. And do you need to look through the entire
10 applications to make that determination?

11 A. Generally, yes.

12 Q. And when you reviewed Project E, did you
13 read through the application for all the preceding
14 projects at Marcus Hook?

15 A. I reviewed my review memos for that.

16 Q. So the answer is no?

17 A. I can't say if I looked through every single
18 project.

19 Q. In talking about the linkage or lack thereof
20 between Projects D and E, am I correct in recalling
21 that you testified that you determined that they
22 weren't linked because Marcus Hook could store
23 materials from E in tanks that weren't part of
24 Project D?

1 A. That's correct.

2 Q. Did you consider whether those tanks that
3 weren't Project D would be part of Project 1?

4 A. They could have been a part of Project 1,
5 yes.

6 Q. Could they have been related to other
7 projects as well?

8 A. They could have been related to other
9 projects.

10 Q. So is it your position that two projects
11 aren't linked as long as there's other projects
12 that they could be linked with instead?

13 A. In this situation you're talking about the
14 storage of certain products. The products can be
15 stored any number of ways. I believe it was stated
16 that some of these contracts they had did not want
17 to store the products. They would just ship it out
18 directly. The products or the different projects
19 were based on different customer specifications.
20 So it's not just the sources themselves that are
21 being used but why are they being used and exactly
22 what are they storing.

23 Q. So for you, is the important part there that
24 it's different contracts?

1 A. The important part is a little bit of
2 everything.

3 Q. Okay. And is it fair to say that if there's
4 extra storage on site that a project can use, you
5 don't believe that it's -- that the project is
6 linked with another project that involves storage?

7 A. That's correct.

8 Q. Okay. And a few minutes ago I spoke about
9 the LAER analysis. When you issue a new plan
10 approval, the new source review analysis also has
11 to be accurate as of at least shortly before the
12 date of issuance, correct?

13 A. Correct.

14 Q. You mentioned a modification of plan
15 approval E, correct?

16 A. Correct.

17 Q. Is that dated March 2017?

18 A. I do not know.

19 Q. Do you know when it occurred?

20 A. Can you direct me where to look?

21 Q. Yes. Please look to exhibit C-14.

22 A. You said C-14?

23 Q. Yes, sir.

24 A. I'm there.

1 Q. Okay. Thank you. Does that refresh your
2 recollection as to when the modification was
3 issued?

4 A. Yes. The modification was issued March 28,
5 2017.

6 Q. Thank you. I have a document that I think
7 everybody here has seen before. I'm going to hand
8 it out.

9 Mr. Eckert, please identify this
10 document.

11 A. This is a review memo pertaining to the
12 modification of plan approval application E.

13 Q. Is this the modification that we just looked
14 at?

15 A. Yes.

16 Q. Did you do any new source review analysis
17 here?

18 A. No, I did not.

19 Q. Did you do any PSD analysis here?

20 A. No, I did not.

21 Q. Why?

22 A. Because this modification application only
23 addressed the purchase and transfer and use of the
24 emission reduction of credits.

1 Q. What are the number of tons of nox emission
2 reduction credits required here?

3 A. Required in the review memo?

4 Q. Required in plan approval E. You know, I
5 can withdraw the question and make this simpler.

6 Did this modification change the number of
7 emissions reduction credits required for plan
8 approval E?

9 A. No.

10 Q. Did this modification do anything except
11 memorialize the fact that these credits were
12 transferred?

13 A. By transferred do you mean from one company
14 to the other and including retired from the USC
15 registry?

16 Q. That's probably a better way of putting it.
17 Does this plan approval modification do anything
18 besides memorializing the nox and VOC emission
19 reduction credit, transference, retirement and
20 allocation?

21 A. No.

22 Q. I believe you testified earlier that
23 emission reduction credits need to be placed in the
24 registry before the plan approval can -- before the

1 project subject to the plan approval can operate,
2 correct?

3 A. I believe that's what I said. I'm not
4 exactly sure if that's what the regulation says. I
5 would have to consult the regulations to be sure.

6 Q. When you were testifying earlier, were you
7 uncertain of what you were saying?

8 A. As I said, I believe it to be correct.

9 Q. Okay. When were the emission reduction
10 credits in question here placed in the registry?

11 A. That is not identified in this document.

12 Q. Does it at least happen before the date of
13 this document?

14 A. Yes.

15 Q. So based on your understanding of the
16 regulations, am I correct then that before the
17 modification was issued, Sunoco was legally
18 authorized to operate Project E?

19 A. Could you repeat that?

20 MR. BOMSTEIN: Please repeat back the
21 question.

22 - - -

23 (The requested portion was read back by
24 the reporter.)

1 - - -

2 THE WITNESS: That would be incorrect.

3 BY MR. BOMSTEIN:

4 Q. Why?

5 A. Because in accordance with our regulations,
6 they are not allowed to operate sources that are
7 required to have ERCs until the ERCs have been
8 registered and retired.

9 Q. Didn't you just testify that that already
10 happened before this modification was issued?

11 A. Yes. Then I must have misunderstood the
12 question.

13 Q. Okay. Let me try and ask it again with your
14 clarified understanding. Isn't it the case that
15 Sunoco was already legally able to operate Project
16 E -- actually, let me take a step back. When I
17 mean legally able to operate Project E, I'm, to be
18 clear, not waiving any of our objections that we
19 believe that this was improperly issued. However,
20 just on the question of the registration retirement
21 of the emission reduction credits, was Sunoco
22 legally able to operate Project E before this
23 modification was issued?

24 MR. RAPHAEL: Objection. Compound

1 question.

2 THE COURT: Overruled.

3 THE WITNESS: I don't believe so.

4 BY MR. BOMSTEIN:

5 Q. So why not?

6 A. I believe they have to have the legal
7 document issued, not just the transfer of the
8 credits.

9 Q. What's the basis of your understanding for
10 that?

11 A. The plan approval is the legal document.

12 Q. Okay.

13 A. So prior to the issuance of the
14 modification, they were operating under the
15 original plan approval.

16 Q. Please turn to C-11. Please turn to the
17 second page.

18 A. Okay.

19 Q. Do you see that this is a plan approval to
20 construct and operate three distillation units, two
21 depropanizers and one debutanizer to separate and
22 purify the natural gas liquids and the pipeline
23 transmix into propane, butane and C5+ products?

24 A. Yes.

1 Q. So the legal document did authorize
2 operation, correct?

3 A. That is just a plan approval description. I
4 do not believe that is a legally enforceable
5 condition of the plan approval.

6 Q. So what is the language in the plan approval
7 that gives the permittee a right to go ahead?

8 A. To go ahead and what?

9 Q. Construct, install, modify or reactivate the
10 air emissions source more fully described in the
11 site inventory list.

12 A. If you look on page 10, condition number
13 003, the last line. The above ERC shall be
14 properly generated, certified by the Department and
15 processed through the registry no later than the
16 date approved by the Department for commencement of
17 operation of the modified sources.

18 Q. Okay.

19 A. That would be the enforceable condition.

20 Q. So are you saying that there is no language
21 in this plan approval which authorizes operation?

22 MR. RAPHAEL: Your Honor, I'm going to
23 object. This is a -- it's a document. It's a plan
24 approval and it speaks for itself. It says what it

1 says.

2 THE COURT: Overruled.

3 THE WITNESS: There are conditions in
4 this operative permit in section B which is issued
5 to every single facility and every single plan
6 approval in the Commonwealth. Section B is written
7 such that it applies to all facilities, except when
8 there's more stringent conditions listed in the
9 site level or the source level conditions.

10 BY MR. BOMSTEIN:

11 Q. And as part of section B there's a condition
12 number -- there's a section number 003, correct?

13 A. Correct.

14 Q. And that says this plan approval authorizes
15 temporary operation of the source or sources
16 covered by this plan approval providing the
17 following conditions are met?

18 A. Correct.

19 Q. Is there anything in there regarding
20 emission reduction credits?

21 A. There is not. And the reason for that is
22 that these are general conditions that the
23 Department and EPA agreed to that apply to every
24 plan approval in the Commonwealth.

1 Q. And those general conditions authorize
2 temporary operation, correct?

3 A. Correct.

4 Q. And that's what happens here, correct?

5 A. Correct.

6 Q. Mr. Eckert, I'd like to turn to the exhibit
7 SPMT-61 that was first handed out this morning.

8 A. I don't know which one that is. I was not
9 here this morning.

10 Q. May I approach? Sorry about that. It looks
11 like this. Do you have something like this on
12 hand?

13 A. I have some stuff here. I don't know what
14 all it is.

15 MR. BOMSTEIN: May I use this version?
16 This may be the version for the witness. Please
17 take a look at this.

18 BY MR. BOMSTEIN:

19 Q. Mr. Eckert, do you recognize this document?

20 A. No, I do not.

21 Q. Could you turn to the chart that was handed
22 out before lunch which says PSD analysis plan
23 approvals 23-0119 through 23-0119E. Do you see a
24 row towards the bottom that says shutdown of

1 Delaware sources?

2 A. Yes.

3 Q. Where did you get the information for that?

4 A. That was provided in some document. I'm not
5 sure where it came from.

6 Q. Who provided that to you?

7 A. I believe it came from the facility.

8 Q. Did they give you documentation to support
9 that?

10 A. My recollection is that it was a document
11 from the State of Delaware to Sunoco, Inc. for
12 those emission reduction credits, approving of
13 them.

14 Q. Do you have that document?

15 A. I do not.

16 Q. When did you receive that?

17 A. I do not know.

18 Q. Do you know if it was after this appeal was
19 filed?

20 A. I do not know.

21 Q. Did you put together this chart by yourself?

22 A. Yes.

23 Q. Did anyone help you with it?

24 A. It was reviewed by my legal counsel to make

1 sure it was correct and both of us understood it.

2 Q. Without getting into discussions with your
3 legal counsel, does your legal counsel have
4 substantive knowledge of the underlying facts of
5 this chart?

6 A. I can't answer that.

7 Q. Did your legal counsel edit this document?

8 A. Yes.

9 Q. What edits were made to this?

10 A. There were corrections to which were new
11 sources, which were existing sources, combining or
12 grouping some of the different sources into a
13 common source for the LDAR, adding certain RFDs,
14 excluding certain permits.

15 Q. Which permits did you exclude?

16 A. We excluded the reduction from plan approval
17 23-0001AD.

18 Q. Do you know why?

19 A. Because that was not an item in the appeal,
20 I believe.

21 Q. What's your basis for understanding that?

22 A. Since it was a reduction and the issue
23 wasn't raised, we felt it would be better to not
24 include it and raise additional questions.

1 Q. What additional questions were you concerned
2 might be raised?

3 A. I can't answer that.

4 Q. What baseline years were used for
5 calculating these emissions numbers?

6 A. Which emissions numbers?

7 Q. Let's start at the -- first of all, is it
8 different baseline years?

9 A. We have two documents here you have me look
10 at.

11 Q. Yes. I'm looking at the chart, sir.

12 A. Okay. None of these numbers on this chart
13 are from any baseline years. These are all actual
14 projected or potential increases from each of the
15 applications.

16 Q. So increases in some instances at least
17 requires a reference with a baseline, correct?

18 A. As I said, these were taken from the
19 application.

20 Q. Okay. So could you please look at the
21 section of rows that's 23-0119B.

22 A. Yes.

23 Q. Do you see two columns for PM and PM10?

24 A. Yes.

1 Q. And you see there's a subtotal at the bottom
2 of that set of rows?

3 A. Yes.

4 Q. Do those numbers add up?

5 A. No, they do not.

6 Q. Did you check these numbers to say make sure
7 they're accurate?

8 A. I did.

9 Q. What happened so that you missed that?

10 MR. RAPHAEL: Could you read that
11 question back.

12 - - -

13 (The requested portion was read back by
14 the reporter.)

15 - - -

16 MR. RAPHAEL: Thank you.

17 THE WITNESS: I don't know what
18 happened.

19 BY MR. BOMSTEIN:

20 Q. When did you produce this chart?

21 A. I think it was originally produced about a
22 month ago.

23 Q. Did you come up with the idea for putting it
24 together?

1 A. Yes.

2 Q. Did you talk with anyone -- why did you want
3 to put it together?

4 A. I felt it was important to demonstrate that
5 in a worst case scenario had we lumped all of these
6 Projects 1 through E together and had we somehow
7 managed to consider that every source was either
8 new or modified, that PSD for all the pollutants
9 would still not be triggered.

10 Q. So you're looking at a worst case scenario?

11 A. Correct.

12 Q. And you're considering whether -- assuming
13 it's shown that there was circumvention, what the
14 analysis would be for PSD?

15 A. Yes.

16 Q. You didn't include plan approvals -- or
17 projects G, H or I, did you?

18 A. That's correct.

19 Q. Why?

20 A. Because those happened after the appeal was
21 filed.

22 Q. Do you understand that that's not Clean Air
23 Council's position about how circumvention works?

24 A. I based -- no, I'm not aware of Clean Air

1 Council's position.

2 Q. So is it fair to say that you're looking at
3 it from the perspective of the Department that you
4 only look backwards looking at circumvention?

5 A. I look backwards because those were all of
6 the items that were issued up to the time of the
7 appeal.

8 Q. Why?

9 A. Because the appeal did not include any
10 future items.

11 Q. Mr. Eckert, if the Department needs to
12 rescind this plan approval and Sunoco submits a
13 plan approval application joining together Project
14 E with other projects, at that time will you not
15 include projects that were -- plan approvals that
16 were issued after Project E?

17 MR. RAPHAEL: Objection, compound
18 question.

19 MS. HUNT: Also objection,
20 hypothetical.

21 THE COURT: Overruled.

22 THE WITNESS: I cannot answer what I
23 would do in the future. If you change one part of
24 an equation, you could come up with an entirely

1 different answer and that could affect the whole
2 outcome.

3 BY MR. BOMSTEIN:

4 Q. So if you change, for example, the numbers
5 to make sure they're correct here, that could
6 change the result of the -- your calculations in
7 this chart, correct?

8 A. That's correct.

9 Q. And if you include plan approvals that you
10 omitted here, that could also change the
11 calculations in the chart, correct?

12 MR. RAPHAEL: Can you read that back.

13 - - -

14 (The requested portion was read back by
15 the reporter.)

16 - - -

17 THE WITNESS: That would be an obvious
18 yes.

19 BY MR. BOMSTEIN:

20 Q. What is the significance of the notations to
21 the direct right of the chart that some say new
22 units, some say existing, et cetera?

23 A. That was just information, whether it was a
24 new unit, whether it was modified, whether it was

1 existing, whether it was unmodified.

2 Q. Why did you include that in the chart?

3 A. As a descriptor.

4 Q. Is that relevant to your calculations?

5 A. No. My calculations are based on emissions,
6 not verbiage.

7 MR. RAPHAEL: Your Honor, can we just
8 take a very short break for the bathroom?

9 THE COURT: Yeah. We'll just wait
10 right here.

11 - - -

12 (A break was taken.)

13 - - -

14 BY MR. BOMSTEIN:

15 Q. Mr. Eckert, please look at the set of rows
16 that's 23-0119E.

17 A. Okay.

18 Q. Do you see the SO2 column for that?

19 A. Yes, I do.

20 Q. Is there also another math error there?

21 A. It would be an error only in that there was
22 two digits under flare and three digits under the
23 subtotal E.

24 Q. So is the subtotal E the correct one?

1 A. Yes, if you wish to carry it out to three
2 decimal places.

3 Q. Is that set of rows, are you -- am I correct
4 that your numbers there are based on the
5 Department's calculations as of the revised review
6 memo rather than the earlier review memo for
7 Project E?

8 A. That's correct.

9 Q. Do you understand that Clean Air Council had
10 disputed some of those calculations?

11 A. I do not know that.

12 Q. Sir, you're not aware that there's a
13 disagreement between the calculations for Project
14 E?

15 A. That is not what you asked.

16 Q. Okay. Are you aware of whether there's a
17 disagreement about the calculations for Project E?

18 A. Yes.

19 Q. Why did you use, in your worst case
20 scenario, the Department's calculations?

21 A. I double-checked the calculations. I agreed
22 with them and I used them. Nobody has supplied me
23 with a justification of why they should be
24 something else.

1 Q. Do you recall earlier we discussed that at
2 the time that a new plan approval is issued, the
3 new source review analysis and the PSD analysis
4 need to be up-to-date, at least as of shortly
5 before that issuance?

6 A. Yes.

7 Q. And part of the calculation under those
8 programs is a lookback period, correct?

9 A. Under the PSD and the NSR programs?

10 Q. Yes, sir.

11 A. Yes.

12 Q. So if you were to evaluate a new plan
13 approval application that aggregates some of these
14 projects to prevent circumvention, you do the
15 lookback period as of that date, correct?

16 A. What do you mean by that date?

17 Q. Sure. So you do the lookback period as of
18 at least shortly before the plan approval is
19 issued, correct?

20 A. No.

21 Q. Okay. Do you do the lookback as of the date
22 of the application?

23 A. Lookback periods are based on a regulation
24 and I believe they're all different.

1 Q. Well, am I correct in that you look back
2 either five or 10 years depending on what step
3 you're in?

4 A. Correct.

5 Q. And five or 10 years from what?

6 A. From the date the regulation says the
7 lookback period begins.

8 Q. How do you determine that?

9 A. As I said, the regulation tells you that.
10 The five-year lookback period begins in the first
11 calendar year when the emissions are expected to
12 occur. That is drastically different from the
13 10-year lookback for NSR. The five-year was also
14 for NSR. Where the 10-year lookback period begins
15 on the date of receipt of a particular application.

16 Q. So let's go with the 10-year lookback for
17 the moment, just as an example here. You said
18 that's from the date of the receipt of a complete
19 application, correct?

20 A. Correct.

21 Q. So if plan approval E is rescinded and
22 Sunoco puts in a new application, then there's a
23 different lookback period, correct?

24 A. It would depend on what the new application

1 entails.

2 Q. So is it important for the Department to be
3 able to figure out what the applicability of new
4 source review and PSD are to wait to see what the
5 application says?

6 A. I didn't understand that question.

7 Q. Is it important for the Department, in order
8 to make a determination as to the applicability of
9 new source review and PSD, to wait first to see
10 what the application says?

11 A. Yes.

12 Q. And so sitting here today, you can't say
13 whether PSD would or would not be triggered until
14 you see an application from Sunoco that aggregates
15 these plan approvals, can you?

16 MR. RAPHAEL: Object as a compound
17 question which asks for speculation.

18 THE COURT: Overruled.

19 THE WITNESS: I would need to see the
20 applications, yes.

21 BY MR. BOMSTEIN:

22 Q. So the chart you put together does not
23 accomplish the goal of providing a determination of
24 whether PSD triggered -- would be triggered if

1 multiple projects were aggregated, correct?

2 A. It does achieve that.

3 Q. I thought you just said that you would need
4 to wait to see what the application said.

5 A. And I stated this table was specifically for
6 Projects 1 through E. I did not look forward --
7 and I even stated that it excluded some things that
8 were not involved in the appeal.

9 Q. But, sir, if you're just using the numbers
10 from the applications which were submitted in
11 different years, you're not properly looking at the
12 emissions in the aggregate as of the date of the
13 application, the new application, are you?

14 MR. RAPHAEL: Could you read that back.

15 - - -

16 (The requested portion was read back by
17 the reporter.)

18 - - -

19 MR. RAPHAEL: Objection. Compound
20 question.

21 THE COURT: Overruled.

22 THE WITNESS: This table is a summary
23 that's essentially effective based on the issuance
24 date of plan approval E that this appeal is based

1 on. It's not designed to look forward and include
2 any other project.

3 BY MR. BOMSTEIN:

4 Q. It also doesn't even represent what would
5 happen if plan approval E incorporated the
6 emissions of the earlier project, does it?

7 A. It does incorporate those.

8 Q. Well, but don't you need to use the lookback
9 period as of the date of the submission of plan --
10 the application for plan approval E?

11 A. As of the date of the complete application?

12 Q. Yes, sir.

13 A. Because we're still talking about the
14 10-year period.

15 Q. Yes, sir.

16 A. Yes.

17 Q. But if you look at Project 1, for example,
18 on this chart, that plan approval was issued in
19 2013, correct?

20 A. Correct.

21 Q. And in fact, the application was completed
22 in 2012, correct?

23 A. That I do not know.

24 Q. Okay. Well, at the very least, the

1 application was completed before February 5, 2013,
2 correct?

3 A. Correct.

4 Q. Okay. So the lookback period which you used
5 to calculate emissions for Project 1 is different
6 than the lookback period you used to calculate
7 emissions for Project E, correct?

8 A. Not for the purposes of this table.

9 Q. True. Not for the purposes of this table,
10 but for the purpose of aggregation to avoid
11 circumvention, am I correct?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: When did you say the
15 five-year lookback starts?

16 THE WITNESS: Five-year lookback begins
17 on the date the actual emissions are intended --
18 I'm sorry, based on the calendar year the actual
19 emissions are intended to occur. So if it's
20 today's date, if they intend to start on May 9th or
21 10th, whatever this date is, it would be 2018 would
22 be the first year looking backwards.

23 THE COURT: Okay. So the emissions
24 haven't started from Project E yet, have they?

1 THE WITNESS: I do not know that.

2 THE COURT: If they haven't started
3 yet, then we haven't reached -- we haven't even
4 reached the point yet where the lookback period
5 starts. Am I understanding that right?

6 THE WITNESS: That's possible.

7 THE COURT: Why is it only possible?

8 THE WITNESS: Well, because I don't
9 know if the emissions actually started from Project
10 D.

11 THE COURT: I'm saying let's assume
12 that they haven't.

13 THE WITNESS: Correct.

14 THE COURT: Well, let's assume they
15 start tomorrow. When does the lookback period
16 start?

17 THE WITNESS: That would start for
18 calendar year 2018.

19 THE COURT: Okay.

20 BY MR. BOMSTEIN:

21 Q. Mr. Eckert, I just want to ask you a couple
22 more questions on this and then I may or may not
23 have more questions for you after that, but I'll
24 determine that very shortly. So did you look at

1 the fuel being used by the boilers for Project E?

2 A. Project B?

3 Q. I'm sorry, Project E, 23-0119E.

4 A. Did I look at the fuel being used?

5 Q. Yes.

6 A. Yes.

7 Q. Did you make a determination as to whether
8 there is a change in the use -- and this is
9 actually independent of this chart, so I apologize
10 for that. Don't want to mislead anybody. Did you
11 look at whether there is a change in the nature of
12 the fuel used for the boilers for Project E?

13 A. Yes.

14 Q. What determination did you make on that?

15 A. That is the fuel had not changed.

16 Q. Did you do the same analysis for Project D?

17 A. D?

18 Q. Yes, sir.

19 A. Yes.

20 Q. What was your determination?

21 A. The fuel had not changed.

22 Q. Are you aware that Project D includes an
23 amine treatment process?

24 A. Yes.

1 Q. And are you aware of a gas that's created as
2 part of that process?

3 A. Yes.

4 Q. What's that gas?

5 A. I believe it's H2S.

6 Q. Where does that H2S go?

7 A. Goes up the boiler stacks.

8 Q. Does it go into the fuel used by the
9 boilers?

10 A. Yes, I believe it does.

11 Q. So is that not a change in the nature of the
12 fuel of the boilers?

13 MR. RAPHAEL: I'm going to object to
14 that because I would expect that that would require
15 expert testimony, Your Honor, and Mr. Eckert, I
16 believe, is a fact witness.

17 THE COURT: Overruled.

18 THE WITNESS: No, that would not result
19 in a change in plan approval D.

20 BY MR. BOMSTEIN:

21 Q. Why?

22 A. Because that change was accounted for in
23 plan approval B. Or I should say plan approval A
24 when it installed the first treatment system.

1 Q. Were the boilers considered modified at that
2 time?

3 A. I do not recall that.

4 Q. Do you recall whether you determined that
5 the boilers were modified at any of these plan
6 approval applications 1 through E at the very
7 least?

8 A. I don't recall that.

9 Q. Mr. Eckert, you were talking about BACT and
10 an analysis you said you did of BACT for the
11 boilers, correct?

12 A. I said I looked at the RACT, BACT
13 clearinghouse for the boilers.

14 Q. Did you do an analysis of what BACT would be
15 for the boilers?

16 A. No.

17 Q. Did you do an analysis of what BACT would be
18 for the cooling tower?

19 A. No.

20 Q. Did you do an analysis of what BACT would be
21 for the flare?

22 A. No.

23 Q. Did you do an analysis of what BACT would be
24 for any equipment on site for Project E?

1 A. No.

2 Q. Okay. Am I correct in remembering you also
3 did not do air dispersion modelling?

4 A. Correct.

5 Q. And you didn't do a source impact analysis?

6 A. Correct.

7 Q. When you looked in the RACT, BACT, LAER
8 clearinghouse regarding boilers, I believe you said
9 that you looked at boilers that were of a similar
10 size and using the same type of fuel, correct?

11 A. Correct.

12 Q. What do you mean by the same type of fuel?

13 A. The fuel coming out of a refinery or a
14 process is never exactly the same even between
15 refineries. It's different constituents. It's not
16 like natural gas where it's the same for your house
17 as it is for someone a hundred miles away. So
18 you're never going to get an exact answer when you
19 compare them.

20 Q. So is that your criteria for whether there's
21 a similar type of fuel?

22 A. Yes.

23 Q. And when you looked at whether the boilers
24 were the same size, how did you determine whether

1 they were the same size?

2 A. When you look in the RACT, BACT, LAER
3 clearinghouse, they do list the size of the sources
4 and millions of BTU in this case for the boilers.

5 Q. So how many boilers did you see that you
6 considered of the same size as the ones at Marcus
7 Hook?

8 A. I looked at approximately six or eight that
9 were entered into the RBLC at approximately that
10 time that E was issued.

11 Q. Have you looked at boilers -- have you
12 looked at entries in the database dated after plant
13 approval E was issued?

14 A. I believe so.

15 Q. Is the six to eight including those?

16 A. Yes.

17 Q. Okay. Those six to eight, are those the
18 ones you're saying you considered the same size?

19 A. Some were larger, some were smaller, but I
20 included them all.

21 Q. In what you considered close enough
22 comparable to the Marcus Hook boilers?

23 A. Yes.

24 Q. So were there any boilers that you found in

1 the clearinghouse that were comparable to the
2 Marcus Hook boilers?

3 A. What do you mean by comparable?

4 Q. That you would look to what technology they
5 used.

6 A. I felt they were close enough to size, in
7 fuel types that it was a representative sample.

8 Q. They being the six to eight you referred to?

9 A. Correct.

10 Q. Which ones were those?

11 A. I don't recall.

12 Q. Were there any documents that you referred
13 to in creating this chart besides the applications
14 for the plan approvals and RFDs listed in this
15 chart?

16 A. I only used the applications and/or the
17 review memos.

18 MR. BOMSTEIN: Just one second, Your
19 Honor.

20 (Pause.)

21 BY MR. BOMSTEIN:

22 Q. Mr. Eckert, going back to the chart for just
23 a little longer and we're almost done here.

24 THE COURT: You do understand that this

1 chart hasn't even been moved as an exhibit, right?

2 MR. BOMSTEIN: Yes, Your Honor.

3 BY MR. BOMSTEIN:

4 Q. Am I correct in that the baseline years that
5 you used -- that baseline years were chosen for
6 some of the applications listed here?

7 A. I know baseline years were submitted with
8 the application for some of these. I don't know if
9 they were used in the analysis.

10 Q. Again, regardless of the chart, but at any
11 time did you do an analysis aggregating the
12 emissions for PSD purposes of Project E and other
13 projects using different baseline years for Project
14 E?

15 A. No, I did not.

16 Q. Why?

17 A. Because the baseline years aren't used in
18 the calculations of plan approval E.

19 Q. In the review memo that you authored March
20 31, 2016 they were, correct?

21 A. Yes, they were. They were listed in the
22 review memo. They weren't used for anything.

23 Q. Could you please turn to C-12.

24 A. (Witness complies.)

1 Q. Is there a difference between the -- I'm
2 sorry, please turn to page six of that document.

3 A. Okay.

4 Q. What are the baseline actual emissions
5 listed for the cooling tower for particulate
6 matter, for PM?

7 A. You're looking at table three, correct?

8 Q. Yes, sir.

9 A. 2.79 tons.

10 Q. And what are the potential emissions listed
11 for PM for the cooling tower?

12 A. 2.16.

13 Q. Did you not calculate the difference between
14 the baseline actual emissions and the potential
15 emissions for the cooling tower there?

16 A. Yes, I did.

17 Q. Okay. So is it fair to say that you used
18 baseline actual emissions in the March 31, 2016
19 plan approval review memo?

20 A. That would be incorrect. I'm sorry, could
21 you repeat that?

22 Q. So is it fair to say that you used baseline
23 actual emissions in the March 31, 2016 plan
24 approval review memo?

1 A. I used them to list that in the table. I'm
2 not sure exactly what you're asking me other than
3 that.

4 Q. Well, didn't you also do a calculation of
5 potential to emit minus the baseline actual
6 emissions?

7 A. Yes, I did.

8 Q. And that's table four, correct?

9 A. Correct.

10 Q. So am I not correct that you used baseline
11 actual emissions to calculate emissions increase
12 here?

13 A. For the purpose of these tables, yes.

14 Q. And these tables are for the purpose of
15 analyzing the application for plan approval E,
16 correct?

17 A. As I understood it at that time.

18 Q. That's all I'm asking.

19 MR. BOMSTEIN: No further questions,
20 Your Honor.

21 THE COURT: Is there going to be --
22 should we take a break or go right into redirect?

23 MS. HUNT: I have no redirect, Your
24 Honor.

1 MR. RAPHAEL: Nor do we.

2 THE COURT: Okay. Good then. You're
3 done.

4 THE WITNESS: Thank you.

5 THE COURT: Unless you're completely
6 done, we'll take a short break.

7 MR. WHITE: Okay. We should be able to
8 finish at the end of the day, Your Honor.

9 - - -

10 (A break was taken.)

11 - - -

12 MR. WHITE: The Department calls Janine
13 Tulloch-Reid to the stand.

14 THE COURT: Do you understand that you
15 were previously sworn and you're still under oath?

16 THE WITNESS: Yes, sir. Yes, Your
17 Honor.

18 BY MR. WHITE:

19 Q. What is your name?

20 A. Janine Tulloch-Reid.

21 Q. What is your educational background?

22 A. I have a bachelor's degree of science and
23 master's degree in chemical engineering.

24 Q. And Janine, if you could make sure the court

1 reporter hears you, that would be great.

2 A. Sure.

3 Q. Where do you work?

4 A. I work for the Pennsylvania Department of
5 Environmental Protection at Two East Main Street in
6 Norristown, PA 19401.

7 Q. How long have you worked there?

8 A. I have worked here a little over 20 years.

9 Q. What is your current position?

10 A. I am the environmental engineer manager.

11 Q. How long have you held that position?

12 A. A little over 10 years.

13 Q. What were your jobs the first 10 years with
14 the Department?

15 A. I was the Air Pollution Control Engineer
16 from position one, two and three. And then I was
17 promoted to Environmental Engineer Manager.

18 Q. During that time did you receive any
19 licenses?

20 A. Yes, I did.

21 Q. What was that?

22 A. I'm a Professional Licensed Engineer.

23 Q. When did you obtain your Professional
24 Engineering license?

1 A. In 2005.

2 Q. In your role as environmental engineer
3 manager, do you oversee employees?

4 A. Yes, I do.

5 Q. How many?

6 A. Eight.

7 Q. What do they do?

8 A. They review applications that I have
9 assigned to them, anything from general operating
10 permit applications, plan approval applications,
11 operating permit applications which can be for a
12 Title V facility or a state-only facility and any
13 extent of doing administrative amendment,
14 modifications, significant modifications and a lot
15 more but that's -- that's in a summary.

16 Q. In your first 10 years as Control Engineers
17 one, two and three, what were your job
18 responsibilities and duties?

19 A. I did the same work as my engineers did in
20 that time period. You know, reviewing those types
21 of applications, general permits and operating
22 permits, plan approvals, so forth.

23 Q. How many of those applications did you
24 review in those first 10 years?

1 A. Wow. Hundreds.

2 Q. What are your job duties and
3 responsibilities in your current position as
4 environmental engineer manager?

5 A. I oversee my engineers. So all their work
6 comes to my desk for draft review, as well as
7 review before final issuance.

8 Q. Did your work both in your first 10 years
9 and the 10 years in your current position include
10 doing prevention of significant deterioration
11 applicability determinations?

12 A. Yes, it did.

13 Q. Did it involve doing new source review
14 applicability determinations?

15 A. Yes, it did.

16 Q. Approximately how many of those have you
17 done, counting the ones you did yourself and the
18 ones you reviewed in your 20 years?

19 A. Several.

20 Q. Have you reviewed the applications from SPMT
21 at the Marcus Hook facility?

22 A. Yes, I have reviewed them.

23 Q. How many of them have you reviewed?

24 A. A good number.

1 Q. Have you reviewed all of them since they
2 took control -- took ownership of the Marcus Hook
3 facility?

4 A. Yes.

5 Q. Just in terms of terminology because it's
6 been confusing today, if I say PSD do you know what
7 I'm referring to?

8 A. Yes.

9 Q. What is it?

10 A. Prevention of significant deterioration.

11 Q. And NSR would mean?

12 A. New source review.

13 Q. Are you familiar with the term project
14 aggregation?

15 A. Yes.

16 Q. What do you mean by that?

17 A. Project aggregation is when we take a look
18 at the application that comes in, that particular
19 project, and any past and future plans. We discuss
20 that with the company to see if they're dependent
21 on each other or if we need one to go to -- you
22 know, one relies on the other, or if this project
23 does not happen, does it have any economic effect
24 or impact on that project.

1 Q. Is that the process that has been described
2 here as checking for circumvention?

3 A. Yes.

4 Q. What does the term source aggregation mean
5 to you?

6 A. Source aggregation means like single source
7 determination.

8 Q. Okay. Now that we're clear with PSD and
9 NSR, have you ever issued a PSD permit?

10 A. No, I haven't issued one.

11 Q. In your 20 years?

12 A. No, I have not.

13 Q. Why is that?

14 A. Well, one, I just denied. Main reason
15 because a lot of companies do not want to trigger
16 PSD.

17 Q. Why not?

18 A. Because it involves a lot of work, a lot of
19 time and it's a detailed application.

20 Q. In your experience of 20 years, if you tell
21 a facility that their application triggers PSD,
22 what do they usually do?

23 A. They usually go back and discuss everything,
24 their business plans and so forth, and then if they

1 decide to go forward with the project then we will
2 see them again. If not --

3 Q. Do they ever change their application?

4 A. Yes.

5 Q. Why do they do that?

6 A. Because they don't want to trigger a PSD.

7 Q. Have you ever issued an NSR permit?

8 A. Yes.

9 Q. How many?

10 A. Not many, but probably about 10 or so, 10 or
11 20.

12 Q. Are you familiar with the term synthetic
13 minor?

14 A. Yes, I am.

15 Q. What is that?

16 A. That is a facility that may have the
17 potential to -- or has the potential emit but has
18 taken a limitation to stay below the top five
19 threshold.

20 Q. Is that common to do?

21 A. Yes.

22 Q. Moving to PSD. You said you have done a
23 number of PSD applicability determinations?

24 A. Yes.

1 Q. How do you do one?

2 A. For PSD applicability determination you
3 first take a look at if the facility is major, one.
4 You take a look at the project, identify the
5 project or the projects that should be aggregated.
6 Then you begin to separate out the sources in these
7 projects as if they're new, if they were existing
8 and modified and if they were unmodified according
9 to the project. The reason why because you -- when
10 you do your calculations for the emissions, the new
11 projects are looked at potentially to emit because
12 there's no baseline actual emissions that is
13 actually considered zero. And then in your
14 existing modified sources you need to look at the
15 potential emit of the sources or the potential
16 actual -- the projected actual emissions of the
17 sources, minus the baseline actual emissions. And
18 that is done over a 10-year -- for PSD that is a
19 24-month effect period that is done over for this
20 type of facility, which is SPMT, a 10-year period
21 and not a five-year period because that is for our
22 electric generating facilities. And so when you
23 look at that you totally look at all your PSD
24 pollutants. You make sure they don't exceed the

1 thresholds. In their step one if you do not exceed
2 the thresholds, then you just stop right there. If
3 you do exceed your thresholds you have to proceed
4 to step two because in step two you look at
5 increases and decreases from the project. I mean
6 over the last 10 years. I made a mistake at the
7 beginning there. But you have to -- if you exceed
8 the threshold in the step one you have to go to
9 step two. If you exceed in step two then you are
10 subject to PSD. If you do not exceed the step two,
11 then you are not subject to PSD.

12 Q. In that answer you used the word
13 modification. Let's back up a second and explain,
14 what is a modification?

15 A. Okay. So modification is defined as a
16 physical change or a change in operation which will
17 allude to an increase in emissions and there are
18 some exceptions to what modifications are in that
19 definition as well. So, for instance, like routine
20 maintenance is not considered a modification, or if
21 a source has an increase in their capacity but has
22 not exceeded what was allowed in their permit, that
23 is still not considered a modification.

24 Q. The exceptions you mentioned in the

1 definition of modification, do they include an
2 increase in hours of operation?

3 A. It's considered a modification if there was
4 an admission in their permit for the operating
5 hours. But if there is not a permit for operating
6 hours then its not considered in the modification.

7 Q. What if there is increase in operation hours
8 underneath or below the permitted limit for hours
9 of operation?

10 A. Then that is not considered a modification.

11 Q. What about an increase in production rate
12 that is within the permitted limit for the
13 production, is that a modification?

14 A. No, that's not considered a modification.

15 Q. Turning to Project E that's at issue here
16 today. Are you familiar with the plan approval E
17 that was issued?

18 A. Somewhat familiar with it.

19 Q. Did you review it before it was issued?

20 A. Yes, I did.

21 Q. Are you familiar with the sources within
22 plan approval E?

23 A. Yes, I am.

24 Q. Speaking of modifications, what sources in

1 plan approval E were modified?

2 A. From my remembrance there are no sources in
3 plan approval E that were modified.

4 Q. So was the boiler modified?

5 A. No.

6 Q. Why not?

7 A. Because the boiler was increasing the steam
8 demand, which was still below its allowable limit.

9 Q. Was the cooling tower modified?

10 A. No, it was not.

11 Q. Have you been here during most of the
12 testimony?

13 A. Yes.

14 Q. Have you heard some of the testimony about
15 whether piping was or was not added to the cooling
16 tower?

17 A. Uh-huh.

18 Q. Is that relevant to your determination that
19 the cooling tower was not modified?

20 A. Yes, it's important, but we have to look at
21 everything.

22 Q. When you look at everything what did you
23 determine?

24 A. That it's not modified because on the plan

1 approval E they were increasing their throughput
2 through the cooling tower, which was still below
3 the allowable limit that's in the permit.

4 Q. So if it's determined there were cooling
5 lines added, that doesn't change your
6 determination?

7 A. No.

8 Q. Was the flare modified?

9 A. No.

10 Q. Why not?

11 A. Yes, there were more gases that because of
12 the gas that is coming through the flare header
13 that was going to the flare, but there was no
14 physical change to the flare itself.

15 Q. Similar to the cooling tower, if lines were
16 added to the boiler, would that have made it a
17 modification in plan approval E?

18 A. Not in this scenario, no.

19 Q. Okay. After plan approval E, RFD 5597 was
20 issued. Are you familiar with that?

21 A. Yes, I am.

22 Q. Did that authorize a modification to the
23 cooling tower?

24 A. Yes.

1 Q. How so?

2 A. One, there were -- there was one cooling
3 tower that was being put out of service and the
4 flow from that, that was normally going to that
5 cooling tower was going to be redirected to cooling
6 tower B, let's call it that. And so the increase
7 of the flow to cooling tower B was going to be
8 greater than what was allowed in their permit. So
9 that -- so that would have triggered a -- that
10 would be a modification to the unit. But then the
11 second step of that is was there an increase in
12 emissions. So we have to calculate what that
13 increase in emissions were. And it was found that
14 the increase of emissions were of minor
15 significance. So a plan was not required for that
16 modification.

17 Q. Is there a term for that type of increase?

18 A. It's called a de minimus increase.

19 Q. So that is a distinction between the cooling
20 tower in plan approval E and the cooling tower RFD
21 5597 that in the RFD the permit limit was
22 increased? That's why there was a modification and
23 the other one was not?

24 A. Right. There was an increase in the

1 throughput limit that was greater than what was
2 allowed in their permit.

3 Q. Are you aware if the Department linked plan
4 approval E with any previous plan approval?

5 A. No, it did not.

6 Q. Moving to NSR. You said you have done an
7 NSR applicability determination?

8 A. Yes.

9 Q. How do you do that?

10 A. So for NSR we want to look at major new
11 sources or major modifications to existing sources.
12 And how that is done, we look at the project and
13 that is considering, you know, project aggregation
14 first and you look at -- and then you separate out
15 your sources in that project, your new, your
16 existing, modified and your unmodified ones and you
17 look at your emissions from increases and decreases
18 from the project. When it's your unmodified for
19 your -- as I said before, for your new ones, you're
20 just looking at potential to emit because your
21 baseline actual is zero. And the same existing
22 modified sources you look at your potential to emit
23 minus your baseline actuals. But, however, when
24 you come to an existing unmodified sources you just

1 want to look at the increases that has occurred for
2 that project. So in this case looking at your --
3 the cooling tower, that increases its flow rate
4 from X to Y. You want to look at how much
5 emissions were caused from going from X to Y. And
6 then after that in the same step you also want to
7 look at your increases over the last five years.
8 And if you trigger NSR from this step, then you are
9 required to do offset and you're required to
10 address LAER for the new and the existing modified
11 sources that causes an emission increase. And then
12 you -- if not, then you move to the other section
13 where you now begin to look at a 10-year lookback.
14 And if you do trigger it in that section then you
15 do offsets.

16 Q. If a project triggers new source review, do
17 you understand what it means by the calculations
18 reset to zero?

19 A. Yes.

20 Q. What does that mean?

21 A. Okay. So you had triggered new source
22 review on the one project and you have to purchase
23 offsets because you triggered new source review at
24 that project. If another project comes up, that's

1 set at zero for that specific.

2 Q. I'm sorry, what was your last sentence?

3 A. That clock is set at zero for that pollutant
4 that you triggered new resource review for.

5 Q. Could you explain what that sentence means.

6 A. Okay. So you have Project A and you
7 triggered new source for it. And the Department
8 requires you to purchase offset and in this region
9 it's on -- for each ton per year you have to
10 purchase 1.3 times the amount. And the next day we
11 trigger it for VOC. Okay. So here comes Project B
12 along and you don't go back and count those VOCs
13 from Project A again. You just count from B and
14 move forward.

15 Q. You mentioned LAER, which I assume is lowest
16 achievable emission rate?

17 A. Yes.

18 Q. What is that?

19 A. So that is applied when the project triggers
20 new source -- they are subject to new source
21 review. And you have to go back and look at this
22 project and compare it to what's out there for
23 other similar projects and what their emission
24 rates are. And you can only -- for the Department

1 we are guided or in our definition to issue a
2 permit for that limit. Nothing higher than those
3 limits that are out there.

4 Q. How does LAER compare with all other
5 technological control requirements the Department
6 has?

7 A. That is the most stringent limit.

8 Q. I believe you mentioned emission reduction
9 credits. Could you explain what those are?

10 A. Emission reduction credits is credits that a
11 facility can obtain from either shutdown of a
12 source or putting in controls and they had an
13 emission limit, but they realize that they can
14 achieve lower on that emission limit so they
15 account for the difference. And these need to be
16 quantifiable and they should be enforceable,
17 meaning that they should be a permit and surplus
18 and -- there's one more thing I'm missing. For us
19 that we're looking at when we -- when this
20 application comes in, are you -- what you are
21 accounting for, can we justify that through your
22 emissions inventory that you have been submitting
23 over the years. If you were -- it should match up.
24 It should be something that in our database there

1 should be no difference. If not, the Department
2 will call you to revise your emissions inventory
3 because that does not match our database. And then
4 we also make sure that at that time did you pay
5 emission fees for those emissions and so forth. So
6 that's when we ensure that and it's quantifiable --
7 I mean, enforceable, meaning that those should be
8 in the permit.

9 Q. Did the Department require SPMT to obtain
10 ERCs in plan approval E?

11 A. Yes.

12 Q. Can the sources in plan approval E that
13 require emission reduction credits operate before
14 they obtain the emission reduction credits?

15 A. No.

16 Q. Why not?

17 A. Our regulations state that they should
18 achieve these before the commencement of operation.

19 Q. Did Project E trigger new source review?

20 A. Yes, it did.

21 Q. Were the new sources required to obtain
22 LAER?

23 A. Yes.

24 Q. Were the three fractionation towers required

1 to install or have LAER?

2 A. Yes.

3 Q. What would qualify as LAER for those three
4 towers?

5 A. At this present time it's the LDAR, which is
6 leak detection.

7 Q. Leak detection. What is the AR? Is it and
8 repair?

9 A. There you go.

10 Q. Okay. Was the flare header required to
11 comply with LAER?

12 A. Yes.

13 Q. How did it do that?

14 A. They had to adhere to the LDAR regulations
15 as well.

16 Q. Did the meter prover have to comply with
17 LAER?

18 A. Yes, it did.

19 Q. What was LAER for that?

20 A. LDAR as well.

21 Q. If Project E triggered PSD, would that have
22 any impact on the three sources we just discussed,
23 the towers, the flare header or the meter prover?

24 THE COURT: Or the what?

1 MR. WHITE: Meter prover.

2 THE WITNESS: Those sources are
3 fugitive sources and the fugitive of concern is
4 VOCs. And under PSD that's not addressed.

5 BY MR. WHITE:

6 Q. So would it have any impact on those three
7 sources, triggered PSD?

8 A. No.

9 Q. Okay. Would you please turn to exhibit C-9.

10 A. (Witness complies.)

11 MR. WHITE: Your Honor, to speed things
12 up, this is plan approval D. This is the signed
13 version. We want to enter the signed version as
14 opposed to unsigned version as already identified.
15 So can I simply move to admit exhibit C-9?

16 THE COURT: Any objection?

17 MR. BOMSTEIN: No objection, Your
18 Honor.

19 MR. RAPHAEL: No objection, Your Honor.

20 MR. WHITE: I have no further questions
21 for Ms. Tulloch-Reid.

22 THE COURT: Anything, Mr. Raphael?

23 MR. RAPHAEL: We do not, Your Honor.

24 THE COURT: Cross.

1 MR. BOMSTEIN: I do have a small amount
2 of cross, Your Honor.

3 BY MR. BOMSTEIN:

4 Q. Ms. Reid, this Marcus Hook facility, do you
5 know whether it has been through a PSD review
6 before?

7 A. Could you repeat that again?

8 Q. Yeah. Maybe I could say it clearer. Are
9 you aware of whether the Marcus Hook facility has
10 at any point in history triggered PSD?

11 A. The Marcus Hook facility meaning as now
12 today or back as a refinery? Which one?

13 Q. At any point in time.

14 A. I cannot speak about that as a refinery, but
15 today going forth, no, it has not.

16 Q. Okay. Thank you. You spoke of exceptions
17 to what's considered a modification, correct?

18 A. Yes.

19 Q. Was one of those a mere increase of hours of
20 operation?

21 A. Yes, if those hours of operation were not
22 enforced in the permit and if it didn't exceed that
23 what's allowed in the permit.

24 Q. Thank you. Yeah. Is that exception

1 applicable for Project E?

2 A. That's applicable for any, you know,
3 facility. We don't look at just because it's
4 Marcus Hook, no.

5 Q. Did the Department apply that exception in
6 its review of Project E?

7 A. For the hours of operation?

8 Q. Yes.

9 A. Maybe. I'm not sure. What source are you
10 talking about?

11 Q. Any source.

12 A. You have to give me a source because there's
13 several sources at this facility or could you give
14 me one of them, please.

15 Q. I'm trying to understand the relevance of
16 that for this case. So for any of the emissions
17 units involved in Project E, did the Department
18 apply the exception to whether something's a
19 modification if it's just that there's an increase
20 in hours of operation?

21 A. Okay. So if you're looking at an existing
22 source and you say okay, you looked at and said
23 well, was there a physical change, was there a
24 change in the method of operation, was there an

1 increase in emissions, and you want to answer those
2 questions. Also you want to look at okay, wait,
3 they're operating this source a little bit more
4 than they normally would. You want to go back to
5 the permit and to check if there was a limit in the
6 permit. If there was none in the permit, then that
7 does not -- they are -- that does not consider that
8 a modification. But if there was one in the
9 permit, you want to see how many more hours are
10 they operating. Are they operating more than what
11 is allowed in the permit or not. That's what's
12 going to make the distinction of it being a
13 modification or not.

14 Q. And was that analysis necessary for Project
15 E?

16 A. I don't think so, but I'm not sure. I don't
17 think so.

18 Q. Okay. I think you said that the flare line
19 -- the changes to the flare head system did not
20 constitute a modification for Project E, am I
21 correct?

22 A. Yes.

23 Q. What I didn't hear you explain is why that's
24 the case. So I'll ask you. Why is that the case

1 here?

2 A. So there was a new flare header put in and
3 there's going to be more gas going to the flare.
4 But it was not more than what the flare could
5 handle or is allowed to handle. That's why it was
6 not considered a modification.

7 Q. Do you --

8 A. And there was also no physical change to
9 that flare also.

10 Q. Okay. Thank you. Do you know for sure that
11 it's not more than what was permitted for the
12 flare?

13 A. I don't know about the permitted portion of
14 that.

15 Q. Okay.

16 A. I'm not sure on that, no.

17 Q. Okay. I believe Mr. White asked you about
18 project aggregation. Do you recall that?

19 A. Yes.

20 Q. And I believe you said you determined
21 whether past and future plans are interdependent
22 with the application at hand?

23 A. Right.

24 Q. So to be clear, that includes future plans,

1 not just past plans, correct?

2 A. Yes. We ask those questions when we're in
3 the meeting. Do you have any future plans. The
4 answer can be either yes or no. If the answer is
5 yes, you know, we ask them what's that in
6 consideration. We had one company that was like
7 that. You know, they said well, they're a new
8 company and they're coming in to say we're going to
9 build this phase. We'll call it phase one. And
10 says, you know what, in a couple of years from now
11 after we finish building that we're going to build
12 a similar one. We're like well, since that's in
13 your plan, then we need to consider that as one
14 project. And then they will be allowed to, you
15 know, look at total emissions from that whole
16 thing. So that has to come through our desk.

17 Q. Thank you. Could you please turn to Clean
18 Air Council's exhibit A-18.

19 A. (Witness complies.)

20 Q. Thank you. Can you look at page two,
21 please.

22 A. The second page in the exhibit or page two
23 -- with number two at the bottom?

24 Q. Very good question. I mean the page with

1 number two at the bottom. Thank you.

2 A. Okay.

3 Q. Okay. Do you see that up top that the
4 Department considered for project A the boilers to
5 be modified?

6 A. Okay. I see that in the sentence.

7 Q. Thank you. So do you understand -- well, so
8 going back to what's modification and what's not.
9 Aggregating projects A and E, you look at the
10 project as a whole, correct?

11 A. I will have to -- I have to see what impact
12 it had on that. So in this case -- so let's say
13 for -- is a boiler being modified in the sense of
14 is it going to do anything other than what it was
15 doing before. Okay. In this case right here it's
16 saying that this boiler is for steam as I read at
17 the top of that sentence. And as I remember in
18 Project E is still for steam. So what's your
19 question?

20 Q. Sure. So my question is if two projects are
21 really one project, am I correct in that you look
22 at what changes they make as a whole as one
23 project?

24 A. And additional things.

1 Q. That's very fair. But at least that,
2 correct?

3 A. Okay.

4 Q. Would you agree?

5 A. Somewhat.

6 Q. Okay. Could you cue please tell me where
7 you disagree?

8 A. That's just a vague sentence. So could you
9 elaborate on that for me, please?

10 Q. I'd be happy to. So in the example you gave
11 a minute ago of, you know, when a company comes in
12 and it says it has phase one and phase two you said
13 you consider that as one project, correct?

14 A. Uh-huh.

15 Q. And in doing that you look at the changes
16 made as part of phase one and the changes made as
17 part of phase two, correct?

18 A. Uh-huh.

19 THE COURT: You have to verbalize a yes
20 or a no.

21 THE WITNESS: Okay. I'm just following
22 right now. That's I'm trying to follow what he's
23 saying. Go ahead.

24 BY MR. BOMSTEIN:

1 Q. Please do as the judge asked. I would ask
2 that -- I agree, would you please verbalize a yes
3 just because it's difficult for the court reporter
4 to take down other verbalizations.

5 A. Sure.

6 Q. Thank you very much.

7 A. I was just following along, but go ahead.

8 Q. I appreciate that. Absolutely. So in the
9 circumstance of phase one and phase two, am I
10 correct in that you look at the changes made to
11 equipment associated with phase one and the changes
12 made to equipment associated with phase two
13 together?

14 A. Only if the company had acknowledged that
15 they noticed that they're going to actually do
16 phase two. So as I stated before, they came in and
17 acknowledged that we are going to do this. So
18 they're acknowledging that up front. If they have
19 no idea that is coming, that's not something that
20 they can say to us. I can't take that into
21 consideration. So I don't want you to say that
22 unknowingly, you know, we don't take that in -- the
23 company has to admit that to us and say these are
24 our plans. We're planning to do these things. And

1 for instance, okay, and we will look at those
2 things.

3 Q. And if they don't admit that to you, you
4 don't consider potential future plans, correct?

5 A. That is correct.

6 Q. Okay. And in the circumstance where they do
7 admit that to you, however, am I correct in that
8 you look at changes made to equipment as part of
9 phase one and to -- as if they were one project?

10 A. Yes.

11 Q. Okay. So the boilers are involved in both
12 Project A and Project E, correct?

13 A. That is correct.

14 Q. And the Department determined in Project A
15 that the boilers were modified, correct?

16 A. Yes.

17 Q. So if these two projects are aggregated,
18 then the boilers are modified, correct?

19 A. Let me think about that. Let me look at
20 this for a minute, please.

21 Q. Take your time.

22 A. Thank you.

23 (Pause.)

24 A. I cannot say that at this time because in

1 this memo it doesn't -- I'll have to compare both
2 review memos to see what the steam demand was and
3 the steam demand is not even in this one. So that
4 -- for me to know if that would consider
5 modification.

6 Q. Why do you need to look at the steam demand?

7 A. Because there may have been no change in the
8 other one.

9 Q. No change from what to what?

10 A. So whatever was allowed in A may have been
11 just the same number that's allowed in E. But I
12 don't see that here, so I couldn't tell you.

13 Q. So are you talking about the permit limit?
14 Is that what you mean by allowed?

15 A. Yes.

16 Q. Okay. So are you saying you need to look at
17 whether there is a change in the permit limit for
18 the boilers?

19 A. Right.

20 Q. Okay. That wasn't how the modification was
21 determined in A, was it?

22 A. That is not stated here and I'm just trying
23 to glance through this quickly so that's not -- I'm
24 just glancing through this permit right now, review

1 memo right now. So that's not helping me at this
2 minute. I just need time to look at it thoroughly.

3 Q. How much time would you need? I don't want
4 to take up the rest of the day, but if it's a
5 couple more minutes, I think that might be okay.

6 MR. RAPHAEL: Could you read back that
7 last question for me, please.

8 - - -

9 (The requested portion was read back by
10 the reporter.)

11 - - -

12 MR. RAPHAEL: Thank you.

13 THE WITNESS: Okay. I went to exhibit
14 A-22 to just take a look at the review memo for
15 plan approval 23-119E. And on page three of that
16 review memo -- so that gives me a quick capability
17 of the boiler which is right under the header that
18 says boiler/steam demand and it indicates in there
19 that each boiler is capable of producing the 26,000
20 pounds of steam per hour. The total production for
21 all three boilers of 801,000 pounds an hour. And
22 the steam demands are as follows, which are listed
23 in the table. So with that number, still for the
24 facility total steam demand is still below the

1 capability of the three boilers. So even if at
2 that time if they were modified to meet that steam
3 demand under A, I wouldn't consider modification on
4 the E anyway.

5 BY MR. BOMSTEIN:

6 Q. And is that because the way you determined
7 whether there's a modification to the boilers in A
8 you no longer think is correct?

9 A. No, it's -- if you already have modified the
10 unit to make that much -- to have the capability to
11 make that much steam, if you add other projects on
12 to it and you're not exceeding your allowable
13 you're already allowed to do that. So there's no
14 need to count that again.

15 Q. Did that happen as of Project A?

16 A. In Project A that was probably --

17 Q. Maybe I can withdraw the question, if that's
18 okay.

19 A. Sure.

20 Q. So am I correct in that the boiler permit
21 limits were set in Project B?

22 A. In project what?

23 Q. B.

24 A. They probably were.

1 Q. Okay. And if you aggregate Project B and
2 Project E, then -- you would agree -- would you
3 agree with me that there's a modification of the
4 boilers as part of Project B?

5 A. Right.

6 Q. So if you're considering project B and E
7 together as one project, would you agree with me
8 that there's a modification of the boilers
9 associated with that project?

10 A. Maybe. Yeah. Maybe. That could happen.
11 If you're considered as one project, then that
12 could happen.

13 Q. Could it or would it?

14 A. It could. I would just have to go through
15 and make sure.

16 Q. What would you need to do to make sure?

17 A. Well, as I said before, if that's already
18 allowed under B, B already have one, if you bring E
19 with B right now as it stands, then the boilers
20 still reman the same. There's no change to it.

21 Q. Well, that's assuming that B already
22 happened, correct?

23 A. Right.

24 Q. Taking the project as a whole in considering

1 them as one project, so including the changes as
2 part of B in part of this singular project, there
3 is a modification to the boilers, correct?

4 MR. RAPHAEL: Your Honor, just for the
5 sake of time, I'll just take a continuing objection
6 because I think we're wandering into what happened
7 to what could happen and that would require expert
8 testimony. I believe the witness is a fact
9 witness. I'll just take a continuing objection if
10 these are going to be hypothetical questions.

11 THE COURT: Overruled.

12 THE WITNESS: I didn't understand that
13 question.

14 BY MR. BOMSTEIN:

15 Q. Okay. Let me try to break it down. So
16 going back to the example you gave during your
17 direct testimony a few minutes ago of phase one and
18 phase two, and considering that one project here,
19 considering Project B and Project E as one project,
20 you look at jointly what changes or modifications
21 are being made to emissions units, correct?

22 A. Okay. Yes.

23 Q. And so considering jointly the changes made
24 to emissions units as part of projects B and E,

1 because part of that is the modification to the
2 boilers as part of E, the joint projects include as
3 modification to the boilers, correct?

4 MR. WHITE: Objection. Asked and
5 answered twice already. She said there's no change
6 to the boilers.

7 THE COURT: Overruled.

8 THE WITNESS: Okay. At the time of the
9 submittal for Project B, if the company knew that
10 there will be a Project E, we will have asked them
11 to include all that would have pertained to that
12 Project E. And we would have already have captured
13 that at the time of Project B.

14 BY MR. BOMSTEIN:

15 Q. And then as you're describing, the joint
16 Project B and E at that time would include a
17 modification of the boilers, correct?

18 A. Because under Project B if we consider that
19 was a modification to the boilers it would have
20 already captured that Project E, which would be the
21 future project.

22 Q. So is that -- are you agreeing with my
23 statement?

24 A. At the time of the submittal of project B if

1 the company knew that there was going to be a
2 Project E, that would have been considered at the
3 time of the submittal of Project B. That's what
4 I'm agreeing to. So it would be considered
5 modification under Project B as it is right now.

6 Q. I'm not sure whether you're precisely
7 answering my question.

8 MR. BOMSTEIN: Could you please read
9 back the question?

10 - - -

11 (The requested portion was read back by
12 the reporter.)

13 - - -

14 MR. BOMSTEIN: Would it be better if I
15 rephrased it so we are all on the same page here?

16 BY MR. BOMSTEIN:

17 Q. So I'm just trying to get down this one
18 point, but if I'm being unclear please let me know
19 because I want to clarify and get it down to a
20 question that you can answer by agreeing with me or
21 not agreeing with me.

22 A. Sure.

23 Q. Thank you. So considering projects B and E
24 as one project from the start because there's a

1 modification to the boilers as part of B, would you
2 agree that the joint project contains a
3 modification to the boilers?

4 MR. WHITE: Objection. Asked and
5 answered three times.

6 THE COURT: I'm not sure it's ever been
7 answered.

8 MR. RAPHAEL: I want to throw in an
9 objection to a compound question. I think there
10 were four parts to that, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: The question is still not
13 that clear. So could you break that down, please.

14 BY MR. BOMSTEIN:

15 Q. Okay. And it would be helpful for me in
16 trying to rephrase if you would let me know which
17 part is unclear. Is there any particular part?

18 A. You're saying at that time. So be specific
19 at what time.

20 Q. Sure. Sure. So I'm saying ignore what --
21 that this is 2018 right now. We're at the start of
22 when Project B is being applied for.

23 A. Yes.

24 Q. Okay. And phase two in this case is Project

1 E.

2 A. Okay.

3 Q. Project B includes a modification of the
4 boilers. So does the joint two-phase project here
5 contain a modification of the boilers?

6 MR. RAPHAEL: Your Honor, I would just
7 object again as one, compound question; two, that's
8 not happened, so that has to be a hypothetical,
9 which would be for an expert.

10 THE COURT: Overruled.

11 THE WITNESS: Okay. If at the time
12 when the applicants submit their application for
13 Project B and if they knew in that phase two, which
14 would be your Project E, if they knew about it at
15 that time, we would already have asked them to
16 include the emissions for any of that project into
17 this project at this time, which would be Project
18 B. So it would be already accounted for. And
19 there will be one permit already issued for it and
20 they will just be constructing as they go along for
21 all those sources.

22 BY MR. BOMSTEIN:

23 Q. Can you say yes or no? Can you answer with
24 a yes or no my question?

1 A. This is the best answer that I have. I
2 cannot really say yes and no because there are
3 parts of it that was just not clear to me and I
4 want to be as accurate as I can in my answer. And
5 this is what the Department would have done.

6 Q. What part was not clear?

7 THE WITNESS: Could you please repeat
8 his question?

9 - - -

10 (The requested portion was read back by
11 the reporter.)

12 - - -

13 THE WITNESS: I don't know.

14 BY MR. BOMSTEIN:

15 Q. What do you need to know to know the answer
16 to that question?

17 A. It's just -- it's all of -- it's just -- I'm
18 not understanding that question at all.

19 Q. Is there any part that you can point to that
20 I could clarify?

21 A. In that question you're saying, you know, if
22 B and the modification of the boilers are under B
23 and if we considered C -- E, and would that be
24 considered modification -- just -- it's just not

1 clear to me. So I used the scenario that you have
2 and I applied it to how the Department will be
3 looking at it. So -- and that's the best that I
4 can give you the answer that I gave before.

5 Q. Okay. I'll move on. I believe earlier you
6 testified that the flare header was required to
7 obtain LAER in Project E, correct?

8 A. Could you repeat that again, please?

9 Q. Sure. I believe you testified earlier that
10 the flare header as part of Project E was required
11 to meet LAER, correct?

12 A. Yes.

13 Q. Was the flare itself required to meet LAER?

14 A. No.

15 Q. Was anything besides the flare header, the
16 meter provers and the piping required to meet LAER?

17 A. The three fractional distillation units.

18 Q. Thank you. And I think you testified
19 earlier that unmodified but affected sources -- for
20 unmodified but affected sources DEP looks at the
21 increases associated with the project. Am I
22 correct about that?

23 A. The incremental increase.

24 Q. So here the boilers are part of Project E,

1 correct?

2 A. Yes.

3 Q. So do you look at both the -- or do you look
4 at the increases in emissions from the boilers
5 attributable to the project?

6 A. Yes. Because of their increase of steam
7 demand because of this project.

8 Q. Okay. Mr. Eckert earlier was talking about
9 the applicability of BACT and PSD. Were you here
10 for that testimony?

11 A. Yes, I was.

12 Q. Were you involved with Mr. Eckert's review
13 of those matters?

14 A. Of what?

15 Q. Sure. He prepared a chart, correct?

16 A. Go ahead.

17 Q. I can be clearer. Are you aware that Mr.
18 Eckert prepared a chart looking at step two of PSD
19 for Project E and the projects that came before it?

20 A. Yes.

21 Q. Were you involved in that process?

22 A. I was not involved in preparing the chart,
23 no, but I knew of it.

24 Q. Did you direct him to do that?

1 A. No, I did not.

2 Q. Going back to just for a moment the issue of
3 increase in hours of operation. Is it fair to say
4 that for Project E there were no emissions units
5 that had simply -- had no more changes besides an
6 increase in hours of operation?

7 A. That I don't know specifically. I would
8 have to look.

9 Q. Okay. That's fair. Do you know whether
10 that's the case for any of the other projects at
11 Marcus Hook that begin with 23-0119?

12 A. That I wouldn't know right off the top of my
13 head, no.

14 MR. BOMSTEIN: No further questions,
15 Your Honor.

16 THE COURT: Redirect?

17 MR. WHITE: Give me just a second, Your
18 Honor. Double check my notes.

19 (Pause.)

20 MR. WHITE: No redirect, Your Honor.

21 THE COURT: Anything from you, Mr.
22 Raphael?

23 MR. RAPHAEL: We do not, Your Honor.
24 Thank you.

1 THE COURT: Thank you very much.

2 THE WITNESS: Thank you.

3 MR. BOMSTEIN: Thank you, Ms. Reid.

4 THE WITNESS: Thank you. You're
5 welcome.

6 THE COURT: Next witness?

7 MR. WHITE: At this point, Your Honor,
8 the Department rests.

9 THE COURT: Any rebuttal? Proposed
10 rebuttal I should say.

11 MR. BOMSTEIN: No, Your Honor.

12 THE COURT: Does anybody feel the need
13 to do closing argument or do you want to reserve
14 those for the post-hearing briefs?

15 MR. WHITE: The Department is fine with
16 a brief, Your Honor.

17 MR. RAPHAEL: SPMT is as well, Your
18 Honor.

19 MR. BOMSTEIN: Clean Air Council
20 concurs.

21 THE COURT: Okay. Then the only thing
22 left is a briefing schedule which doesn't kick in
23 until we get the last day of the transcript, which
24 typically takes about three weeks I think is the

1 contract. So how much time do you want, Mr.
2 Bomstein, after the three weeks?

3 MR. BOMSTEIN: Oh, after the three
4 weeks?

5 THE COURT: Yeah. And I won't issue an
6 order until I know what dates I'm talking about.

7 MR. BOMSTEIN: Your Honor, am I correct
8 in that a month is customary?

9 THE COURT: Customary. But this is a
10 tough case, so it's up to you.

11 MR. BOMSTEIN: Would you mind giving us
12 a moment to confer?

13 THE COURT: I would not mind.

14 MR. BOMSTEIN: Thank you.

15 MR. WHITE: Quick question, Your Honor.
16 Is it the date the very last party gets the last
17 transcript? Because we can't afford expedited
18 transcripts, so it might take a while for ours to
19 arrive.

20 THE COURT: We can't either. But I
21 think the contract is three weeks.

22 MR. WHITE: Okay. Thank you.

23 (Pause.)

24 MR. BOMSTEIN: Your Honor, we would

1 request two months.

2 THE COURT: 60 days?

3 MR. BOMSTEIN: Yes, sir.

4 THE COURT: Okay. Well, then the other
5 parties get 60 days and then you would only have 15
6 days to do a reply. So Clean Air Council would be
7 60 days, the Department and Sunoco 60 days after
8 that, and then the reply brief is 15 days after the
9 60-day period for the Department. 60, 60, 15.

10 MR. BOMSTEIN: Thank you, Your Honor.

11 MR. RAPHAEL: Thank you, Your Honor.

12 MR. WHITE: Thank you, Your Honor.

13 THE COURT: Anything else we should do
14 before I close the record?

15 MR. WHITE: Not that we can think of,
16 no.

17 MR. RAPHAEL: Not for SPMT, Your Honor.
18 Thank you.

19 MR. BOMSTEIN: Nothing further from
20 Clean Air Council, Your Honor.

21 THE COURT: All right. Well, thank you
22 everybody. I really appreciate it. A very
23 interesting and challenging case and I look forward
24 to your briefs.

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(Hearing concluded 4:46 p.m.)
- - -

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

2
3 I hereby certify that the
4 proceedings, evidence and objections noted, are
5 contained fully and accurately in the notes taken
6 by me on the hearing of this matter, and that this
7 copy is a correct transcript of the same.

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19 this transcript does not apply to any reproduction
20 of the same by any means unless under the direct
21 control and/or supervision of the certifying
22 reporter.)

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