

JOHN HYAK - VOLUME 1 - November 09, 2018  
CONFIDENTIAL SECTIONS REDACTED

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 VICTORIA DIVISION

3 SAN ANTONIO BAY ESTUARINE )  
4 WATERKEEPER, et al, )  
5 Plaintiffs, )  
6 VS. ) CIVIL ACTION  
7 FORMOSA PLASTICS CORP., ) NO. 6:17-cv-00047  
8 TEXAS, et al, )  
9 Defendants. )

10 -----  
11 ORAL DEPOSITION OF  
12 JOHN HYAK  
13 November 9, 2018  
14 Volume 1  
15 (CONFIDENTIAL SECTIONS REDACTED)  
16 -----

17 THE ORAL DEPOSITION OF JOHN HYAK (CONFIDENTIAL  
18 SECTIONS REDACTED), Volume 1, produced as a witness at  
19 the instance of the Plaintiffs, and duly sworn, was  
20 taken in the above-styled and numbered cause on the  
21 9th of November, 2018, from 9:03 a.m. to 3:13 p.m.,  
22 before Julie A. Jordan, CSR, RPR, in and for the  
23 State of Texas, reported by machine shorthand, at  
24 the Formosa Plastics Training and Development Center,  
25 87 Wood Street, Point Comfort, Texas 77978, pursuant to  
the Federal Rules of Civil Procedure and any provisions  
stated on the record or attached hereto.

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Ms. Diane Wilson

Mr. Bob Lindsey

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1 (Federal read-in waived)

2 JOHN HYAK,  
3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MS. GAINES:

6 Q. Okay. Good morning, Mr. Hyak.

09:03AM

7 A. Good morning.

09:03AM

8 Q. Erin. We've met before, right?

09:03AM

9 A. Yes. Hi, Erin.

09:03AM

10 Q. Good to see you.

09:03AM

11 A. Good.

09:03AM

12 Q. Have you ever been deposed before?

09:03AM

13 A. Yes.

09:03AM

14 Q. Okay. How many times?

09:03AM

15 A. Two, three.

09:03AM

16 Q. Two or three. Okay.

09:03AM

17 So you know generally what this is like?

09:03AM

18 A. Yes.

09:04AM

19 Q. Okay. When was the last time you were  
20 deposed?

09:04AM

09:04AM

21 A. Within this last year.

09:04AM

22 Q. Okay. And what was that related to?

09:04AM

23 A. It was a HR case.

09:04AM

24 Q. Okay.

09:04AM

25 A. Human resource case.

09:04AM

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1 Q. Okay. And before that?

09:04AM

2 A. Oh, God. It was a while ago. It was an  
3 environmental-related issue.

09:04AM

09:04AM

4 Q. You don't remember roughly when?

09:04AM

5 A. No, ma'am. It's been a while.

09:04AM

6 Q. Okay. So you are generally familiar with how  
7 this goes. If you need a break, you can let me know at  
8 any time.

09:04AM

09:04AM

09:04AM

9 A. Yes.

09:04AM

10 Q. And if you need clarification, if you don't  
11 understand what I'm saying, please ask.

09:04AM

09:04AM

12 A. Yes, ma'am.

09:04AM

13 Q. Okay. Also, we are supposed to talk one at a  
14 time for the court reporter. So it's natural that  
15 you'll anticipate what I'm asking and you may want to  
16 answer before I finish. Please try to wait and I'll try  
17 to wait until you're done. Okay?

09:04AM

09:04AM

09:04AM

09:04AM

09:05AM

18 A. Okay.

09:05AM

19 Q. Did you review any documents in preparation  
20 for today?

09:05AM

09:05AM

21 A. Yes.

09:05AM

22 Q. Okay. Were these -- the documents that were  
23 handed to us today some of those?

09:05AM

09:05AM

24 A. Yes.

09:05AM

25 Q. And what else did you review?

09:05AM

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1 A. The Pete Molinar (sic) report. 09:05AM  
2 Q. The expert report? 09:05AM  
3 A. Yes. Yes. 09:05AM  
4 Q. Okay. Pete Mol- -- 09:05AM  
5 MR. RAVEL: "Moleux." 09:05AM  
6 MS. GAINES: "Moleux." 09:05AM  
7 THE WITNESS: "Moleux." 09:05AM  
8 MS. GAINES: Thank you. 09:05AM  
9 MR. RAVEL: M-O-L-E-U-X. 09:05AM  
10 Q. (BY MS. GAINES) We kept saying his name 09:05AM  
11 yesterday and nobody knew how to say it. 09:05AM  
12 MR. RAVEL: "Moleux." 09:05AM  
13 Q. (BY MS. GAINES) "Moleux." Okay. 09:05AM  
14 The Pete Moleux report. Anything else? 09:05AM  
15 A. I looked at the Ganem & Kelly drainage study. 09:05AM  
16 Q. Okay. 09:05AM  
17 A. And I looked at Procedure 51. 09:05AM  
18 Q. Okay. 09:05AM  
19 A. And I looked at our stormwater opening outfall 09:05AM  
20 procedures. 09:05AM  
21 Q. Okay. And have you searched your e-mails or 09:05AM  
22 has somebody searched your e-mails as part of this case? 09:06AM  
23 A. I searched -- 09:06AM  
24 Q. When -- 09:06AM  
25 A. -- my computer. 09:06AM

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1 Q. Your computer for e-mails and documents? 09:06AM

2 A. Yes, ma'am. 09:06AM

3 Q. When did you do that? 09:06AM

4 A. Throughout this whole discovery process. 09:06AM

5 Q. Okay. Do you remember when you first did  
6 that? 09:06AM

7 A. I think the first time that we had a document  
8 request. 09:06AM

9 Q. Was that a month ago? Six months ago? 09:06AM

10 A. It's been a while. I mean, I know this has  
11 been going on for a while. 09:06AM

12 Q. Okay. How do you organize your e-mails on  
13 your computer? 09:06AM

14 A. Well, generally I organize all my documents  
15 and e-mails according to subject. 09:06AM

16 Q. Okay. Do you have a folder in your e-mails  
17 for this case? 09:06AM

18 A. Yes. 09:06AM

19 Q. Do you also have one for the stormwater  
20 outfalls? 09:06AM

21 A. Yes. 09:06AM

22 Q. What about the wastewater treatment plant? 09:06AM

23 A. Many folders. 09:07AM

24 Q. Many? 09:07AM

25 A. Yes, ma'am. 09:07AM



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1 Q. Environmental compliance? What folders do you  
2 have in your e-mail that --

09:07AM

09:07AM

3 A. Well --

09:07AM

4 Q. -- relate to this case?

09:07AM

5 A. -- for this I have a general folder I call  
6 "Pellets."

09:07AM

09:07AM

7 Q. Okay.

09:07AM

8 A. And under there is a lot of this documentation  
9 that was produced.

09:07AM

09:07AM

10 Q. Okay. So you have searched that folder and  
11 the other folders?

09:07AM

09:07AM

12 A. Yes, ma'am.

09:07AM

13 Q. Okay. Can you tell me when you first started  
14 working at Formosa?

09:07AM

09:07AM

15 A. Yes, ma'am. It was September of 1988.

09:07AM

16 Q. Okay. And what is your educational background  
17 prior to that? What -- sorry.

09:07AM

09:07AM

18 Going back, what is your educational  
19 background?

09:07AM

09:07AM

20 A. I have a BS degree in chemical engineering.

09:07AM

21 Q. From -- where is that from?

09:07AM

22 A. It's now called Texas A&M University  
23 Kingsville. When I graduated, it was Texas A&I  
24 University.

09:07AM

09:07AM

25 Q. Okay. And did you work anywhere prior to

09:08AM

09:08AM

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1 Formosa?

09:08AM

2 A. Yes. I worked for the Texas Air Control  
3 Board. It's a precursor agency to what's now called the  
4 TCEQ.

09:08AM

09:08AM

09:08AM

5 Q. Okay. And when you started working at Formosa  
6 in 1988, you said --

09:08AM

09:08AM

7 A. Yes, ma'am.

09:08AM

8 Q. -- what was your position?

09:08AM

9 A. I worked in the environmental department.

09:08AM

10 Q. What was your title?

09:08AM

11 A. Environmental engineer, environmental  
12 specialist. You can't use the word "engineer" anymore.

09:08AM

09:08AM

13 Q. Okay. What did -- what were your general  
14 responsibilities in that job?

09:08AM

09:08AM

15 A. We did primarily permitting, air permitting.

09:08AM

16 Q. Okay. And how long did you do that before  
17 switching positions?

09:08AM

09:08AM

18 A. I worked in the environmental department for  
19 14 years.

09:08AM

09:08AM

20 Q. Okay. So that roughly gets us to 2002, is  
21 that right?

09:08AM

09:08AM

22 A. Yes. Yes, ma'am.

09:08AM

23 Q. Okay. And then what was your position then?

09:08AM

24 A. I'm -- I was in the wastewater unit where I am  
25 now.

09:09AM

09:09AM

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1 Q. Okay. Is it the same position you have now? 09:09AM

2 A. Well, it's -- it's changed slightly. It's the 09:09AM  
3 water department -- what we call the water department. 09:09AM

4 Q. Okay. So what was your position title in 09:09AM  
5 2002? 09:09AM

6 A. Water department manager. 09:09AM

7 Q. Okay. Okay. And so you've been in that same 09:09AM  
8 position since -- the same position you're in now since 09:09AM  
9 2002? 09:09AM

10 A. Yes, ma'am. 09:09AM

11 Q. Okay. But the name of the department is 09:09AM  
12 different now? 09:09AM

13 A. Well, we -- what we did, we combined water 09:09AM  
14 treatment with wastewater treatment. 09:09AM

15 Q. Okay. 09:09AM

16 A. Basically water coming in to water going out. 09:09AM

17 Q. Okay. So can you tell me your position and 09:09AM  
18 title now? 09:09AM

19 A. Water department -- utility water department 09:09AM  
20 manager. 09:09AM

21 Q. Okay. And so if I was going to refer to the 09:09AM  
22 name of your department, do you call it the utility 09:09AM  
23 water department? 09:09AM

24 A. Yes, ma'am. 09:09AM

25 Q. And can you tell me broadly what that 09:10AM

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1 department cover?

2 A. Yes, ma'am. We take all the raw water coming  
3 into the plant, into the facility. We treat it. When I  
4 say "treat it," clean it. And we produce industrial  
5 grade water and what we call deionized or ultra pure  
6 water.

7 We also manage all the wastewater  
8 treatment for the facility, all the contaminated  
9 processed waste waters, cooling tower blow down, ISBL  
10 storm waters and all the external stormwater gates that  
11 we manage as part of what we call the wastewater  
12 treatment unit.

13 Q. So your department covers a lot.

14 So it's the water coming in, purifying it,  
15 and the stormwater and the wastewater going out?

16 A. Yes, ma'am.

17 Q. Okay. How many people are in your department?

18 A. We have 31 operators and, think about it, we  
19 have an assistant manager, we have several engineers,  
20 supervisors, day supervisors.

21 Q. Okay.

22 A. Roughly around 40 people.

23 Q. Okay. That you manage?

24 A. Yes, ma'am.

25 Q. Okay. And what does your average day look

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1 like?

09:11AM

2 A. Well, can you be more specific?

09:11AM

3 Q. Sure. Let's say on -- earlier this week, what  
4 do you do in a normal day? Do you -- are you walking --  
5 are you going around the plant? Are you in an office?

09:11AM

09:11AM

09:11AM

6 A. I'm in an office. I'll review process data,  
7 check on the -- on the -- on the units. When I say  
8 "units," check with the operations personnel or the  
9 operators, supervisors, how are things running, any  
10 issues, check data, review shift reports, and then  
11 complete, you know, various documentation that's --

09:11AM

09:12AM

09:12AM

09:12AM

09:12AM

09:12AM

12 Q. A lot of paperwork?

09:12AM

13 A. Yes, ma'am.

09:12AM

14 Q. Yeah. How much -- is it possible to  
15 categorize your time into the different aspects that the  
16 utility water department covers, so the water coming --  
17 the raw water coming in, the wastewater treatment plant,  
18 the stormwater outfalls? Do you have a rough estimate  
19 of how much of your time is spent on each of those?

09:12AM

09:12AM

09:12AM

09:12AM

09:12AM

09:12AM

20 A. Well, I would say a lot of it is wastewater  
21 related.

09:12AM

09:12AM

22 Q. Uh-huh. The wastewater treatment plant?

09:12AM

23 A. Yes, ma'am.

09:12AM

24 Q. Okay. And you said there was a shift in the  
25 department, that it was merged?

09:12AM

09:13AM

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1 A. Well, what we did is we just -- we combined  
2 water treatment with wastewater. That's all.

3 Q. Okay. Okay. But were the stormwater outfalls  
4 always in --

5 A. Always part of the wastewater treatment unit.

6 Q. Okay. Why are those stormwater outfalls  
7 underneath this department? Do you know?

8 A. No, I don't.

9 Q. Okay. Just generally in terms of terminology,  
10 we've been asking this a lot of a lot of different  
11 people and I've heard different terms.

12 So if I say "powder," what does that mean  
13 to you, "plastic powder"?

14 A. To me "powder" means pre-pelletized poly- --  
15 polyolefins.

16 Q. Okay. And are there other terms that if there  
17 were -- if there are floating plastics that you see on  
18 water that could be -- pellets are one thing they could  
19 be, is that correct?

20 A. Yes, ma'am.

21 Q. Powder, right? There could be floating  
22 powder?

23 A. Well, powder -- not all powder floats.

24 Q. Okay. But there's some powder that floats?

25 A. It's my understanding polyethylene powder does

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1 float.

09:14AM

2 Q. Okay. Are there other categories of plastics  
3 that float that you could see such as flakes or  
4 shavings? Is there any other terms you would use for  
5 plastics that could float?

09:14AM

09:14AM

09:14AM

09:14AM

6 A. No.

09:14AM

7 Q. No. So it's -- if you're seeing some floating  
8 plastics, it would either be pellets or powder?

09:14AM

09:14AM

9 A. I wouldn't nece- -- necessarily say that if I  
10 saw something floating, it would be plastic.

09:14AM

09:15AM

11 Q. Okay. So there's other floating debris that  
12 you could see?

09:15AM

09:15AM

13 A. Yes.

09:15AM

14 Q. Okay. But if there was plastic floating, that  
15 you saw floating in a ditch at the plant, I'm trying to  
16 understand the universe of types of plastics that could  
17 float in that water and what you would call them.

09:15AM

09:15AM

09:15AM

09:15AM

18 And is there anything other than pellets  
19 or powder that you have seen or that you know of that  
20 could float?

09:15AM

09:15AM

09:15AM

21 A. Your question is very broad.

09:15AM

22 Q. Okay. Okay. Well, we can get back to that.  
23 I've heard different people use different terminology,  
24 so that's why I was trying to ask.

09:15AM

09:15AM

09:15AM

25 Is there something specifically you don't

09:15AM

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1 understand about what I was asking?

09:16AM

2 A. No.

09:16AM

3 Q. Okay. You're just saying there's a lot of  
4 things you could see floating?

09:16AM

09:16AM

5 A. Debris.

09:16AM

6 Q. Debris?

09:16AM

7 A. I said -- I classify it as debris.

09:16AM

8 Q. Okay. Okay. All right. So I -- my  
9 understanding is there are external outfall gates for  
10 the stormwater system, is that correct?

09:16AM

09:16AM

09:16AM

11 A. Yes, ma'am.

09:16AM

12 Q. And then there are internal stormwater gates?

09:16AM

13 A. Yes, ma'am.

09:16AM

14 Q. And does your department also cover the  
15 internal stormwater gates?

09:16AM

09:16AM

16 A. No, ma'am.

09:16AM

17 Q. Okay. So those are checked by the units?

09:16AM

18 A. Let me clarify one thing. We have two -- we,  
19 wastewater, CWTP, has two internal stormwater gates as  
20 well.

09:16AM

09:16AM

09:16AM

21 Q. Okay. Is that 101 and 201 or --

09:16AM

22 A. No.

09:16AM

23 Q. Okay. Which ones are those?

09:16AM

24 A. CWTP1 and CWTP2.

09:16AM

25 Q. Okay. And do -- are -- those are stormwater

09:16AM



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1 internal gates?

09:16AM

2 A. Yes.

09:17AM

3 Q. Where do those then flow to?

09:17AM

4 A. Outfall 6 --

09:17AM

5 Q. Okay.

09:17AM

6 A. -- and Outfall 7.

09:17AM

7 Q. Okay. But all the other internal stormwater  
8 gates are operated by other departments?

09:17AM

9 A. Yes, ma'am.

09:17AM

10 Q. Okay. Do you coordinate with those  
11 departments or get any kind of reports about those  
12 internal gates?

09:17AM

09:17AM

09:17AM

13 A. Yes.

09:17AM

14 Q. What do you -- what information do you get  
15 about those?

09:17AM

09:17AM

16 A. When they sample those gates and have sample  
17 results prior to opening, we, the wastewater unit, is  
18 supposed to receive the results.

09:17AM

09:17AM

09:17AM

19 Q. So your department receives all the results  
20 from the internal gates --

09:17AM

09:17AM

21 A. Yes.

09:17AM

22 Q. -- of the sampling?

09:17AM

23 A. Yes.

09:17AM

24 Q. Okay. Do you review those?

09:17AM

25 A. No, ma'am.

09:17AM

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1 Q. Who reviews those in your department?

09:17AM

2 A. It would be the board operator and/or the  
3 shift supervisor.

09:17AM

4 Q. Okay. So do you get several of those a day?

09:18AM

5 A. I mean, we get them. I don't -- I don't look  
6 at them per se.

09:18AM

7 Q. Uh-huh. What about other logs that are kept  
8 about the internal outfalls like the vacuum truck logs,  
9 for example?

09:18AM

10 A. We do get those.

09:18AM

11 Q. And who would review those in your department?

09:18AM

12 A. I've looked at them. Our supervisors have  
13 looked at them at times.

09:18AM

14 Q. Is it your understanding that if there are  
15 floating plastics -- I'm going to call them plastics  
16 generally -- floating plastics at the internal gates,  
17 that they would be cleaned -- they would be cleaned up  
18 prior to discharge through those internal gates?

09:18AM

19 A. Any floating debris that would be in those  
20 internal gates are cleaned up prior to opening.

09:18AM

21 Q. They're always cleaned up prior to opening?

09:18AM

22 A. I would assume always.

09:18AM

23 Q. Is there -- is there any stormwater that  
24 doesn't pass through an internal gate before it gets to  
25 an external gate?

09:18AM

09:18AM

09:18AM

09:18AM

09:18AM

09:19AM

09:19AM

09:19AM

09:19AM

09:19AM

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1 A. Let me think about that a second. So any  
2 stormwater that would not be captured by a gate prior to  
3 being discharged, I would say yes.

4 Q. Can you -- do you know where that is? If I --  
5 if we look at a map, would that be helpful, of the  
6 facility?

7 A. I don't think I need to look at a map.

8 Q. Okay.

9 A. Anything that would fall in a grassy area, for  
10 example --

11 Q. Okay.

12 A. -- downstream of -- of a gate --

13 Q. Okay.

14 A. -- could potentially be discharged --

15 Q. Okay. So --

16 A. -- from the facility.

17 Q. Grassy areas.

18 What about anything --

19 A. Some roadways as well. You'd have to look at  
20 a map. You can see where the outfall structures are  
21 and --

22 Q. Uh-huh.

23 A. -- and see. I mean, any -- any area within  
24 the confines of that fence could see rainfall.

25 Q. Okay. What about any stormwater at one of the

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1 units? Does any of that not flow through an internal  
2 gate before it gets to the external stormwater gate?

09:20AM

09:20AM

3 A. That, I don't know.

09:20AM

4 Q. Okay. Okay. If we looked at a map, would  
5 that be helpful?

09:20AM

09:20AM

6 A. I still wouldn't know -- be an expert in that  
7 respect. It would just be me looking at a square box  
8 and just making an assumption.

09:20AM

09:20AM

09:20AM

9 Q. Okay. Okay. So you use the term "floating  
10 debris." I want to talk about in these questions --

09:20AM

09:20AM

11 A. Sure.

09:20AM

12 Q. -- floating plastics.

09:20AM

13 Is that a term that you understand?

09:20AM

14 A. Certainly --

09:20AM

15 Q. Okay.

09:20AM

16 A. -- I understand floating plastics.

09:20AM

17 Q. Okay. Okay. So that's what I'm going to  
18 be -- I'm going to be using the term "floating  
19 plastics."

09:21AM

09:21AM

20 And can we agree to use that terminology?

09:21AM

21 A. Well, I think in addition of floating  
22 plastics, there may be debris present as well.

09:21AM

09:21AM

23 Q. What other types of debris would you --

09:21AM

24 A. Well, there's sand.

09:21AM

25 Q. Sand?

09:21AM

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1 A. There is soil. There is windblown dust. 09:21AM

2 Q. And those are -- you have seen those as other 09:21AM  
3 types of floating debris in addition to plastics? 09:21AM

4 A. Yes. 09:21AM

5 Q. Okay. Does the -- does soil tend to float? 09:21AM

6 A. Yes, it does. 09:21AM

7 Q. And sand? 09:21AM

8 A. Yes, it does. 09:21AM

9 Q. Okay. Can you tell if you -- in your 09:21AM  
10 experience when you're looking at stormwater ditches and 09:21AM  
11 you see floating debris, can you tell what it is? 09:21AM

12 A. You mean discern between soil and plastic? 09:21AM

13 Q. Yes. 09:21AM

14 A. No. 09:21AM

15 Q. Okay. Do your operators get trained on that? 09:21AM

16 A. No. 09:22AM

17 Q. No. 09:22AM

18 So you -- when you're discussing floating 09:22AM  
19 debris, you always talk about it generally? 09:22AM

20 A. Yes, ma'am. 09:22AM

21 Q. So when -- if you're looking, you can't tell a 09:22AM  
22 difference between pellets and sand? 09:22AM

23 A. Pellets and sand I could, yes. 09:22AM

24 Q. Okay. So pellets you could tell from other 09:22AM  
25 types of floating debris? 09:22AM

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1 A. Pellets, yes.

09:22AM

2 Q. Powder -- what about powder?

09:22AM

3 A. No.

09:22AM

4 Q. Okay. Is pollen another type floating debris  
5 that you might see?

09:22AM

09:22AM

6 A. I really don't know much about pollen.

09:22AM

7 Q. Okay. So you don't know if you've seen that  
8 floating?

09:22AM

09:22AM

9 A. No, I don't.

09:22AM

10 Q. Okay. We've heard that referred to as another  
11 type of floating debris. That's why I'm asking.

09:22AM

09:22AM

12 A. I'm not familiar with pollen, I will -- I will  
13 tell you that.

09:23AM

09:23AM

14 Q. Okay. So there are, let's see, 13 stormwater  
15 outfalls, is that -- 12 stormwater outfalls, is that  
16 correct?

09:23AM

09:23AM

17 A. Yes. Six, seven, eight, nine, ten, 11, 12,  
18 13 -- I guess it's 12.

09:23AM

09:23AM

19 Q. Okay. 2 through 13?

09:23AM

20 A. Yes.

09:23AM

21 Q. Okay. And the controls at each one of the  
22 external gates are different, correct?

09:23AM

09:23AM

23 A. There's a little variation between stormwater  
24 outfalls, yes, ma'am.

09:23AM

09:23AM

25 Q. Okay. So I want to look at -- let's see, in

09:23AM

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1 your binder Tab T.

09:23AM

2 A. Yes, ma'am.

09:23AM

3 (Exhibit 56 marked)

09:24AM

4 Q. (BY MS. GAINES) This is going to be a new  
5 exhibit, Exhibit 56.

09:24AM

09:24AM

6 MS. GAINES: Oh, you're in the wrong  
7 binder. This one.

09:24AM

09:24AM

8 Q. (BY MS. GAINES) Do you recognize this  
9 presentation?

09:24AM

09:24AM

10 A. Is it a presentation?

09:24AM

11 Q. I believe it is.

09:24AM

12 A. I see -- I see the document.

09:24AM

13 Q. You can take a chance to review it. I'm going  
14 to only ask you about a page toward the end right now.

09:24AM

09:24AM

15 A. Okay.

09:24AM

16 Q. But I want to generally know if you're  
17 familiar with this presentation.

09:24AM

09:24AM

18 MR. RAVEL: Objection, form.

09:24AM

19 A. (Reviewing document.) I mean, I don't know  
20 what presentation this -- this was. I do recognize the  
21 pictures.

09:24AM

09:24AM

22 Q. (BY MS. GAINES) Okay. So you didn't create  
23 this presentation?

09:25AM

09:25AM

24 MR. RAVEL: Objection, form.

09:25AM

25 A. I don't know what presentation this is, so I

09:25AM

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1 would have to say no.

09:25AM

2 Q. (BY MS. GAINES) Okay. If you can go to the  
3 second-to-last page in what we are -- we have labeled  
4 Exhibit 56.

09:25AM

09:25AM

09:25AM

5 A. Yes, ma'am.

09:25AM

6 Q. It's a list of "Outfall Improvement" --

09:25AM

7 A. Yes. Yes.

09:25AM

8 Q. -- "Completion Dates"?

09:25AM

9 A. Yes, ma'am.

09:25AM

10 Q. Do these look familiar?

09:25AM

11 A. Yes, ma'am, they do.

09:25AM

12 Q. Do you know if you would have compiled this  
13 list?

09:25AM

09:25AM

14 A. I believe I had a hand in completing this,  
15 yes.

09:25AM

09:25AM

16 Q. Okay. So it goes through Outfalls 1, 2, 3, 4,  
17 5, 6, 7, 8, 9, 12, and then what's called Outfall 6  
18 Conveyance.

09:25AM

09:25AM

09:26AM

19 Does that look right to you?

09:26AM

20 A. Yes, ma'am.

09:26AM

21 Q. First, what does Outfall 006 Conveyance mean?

09:26AM

22 A. I'm really not sure. I don't remember putting  
23 that word on there.

09:26AM

09:26AM

24 Q. Okay. If you go back to the page before that  
25 that starts with 001 -- so 001, I'm going to talk about

09:26AM

09:26AM



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1 that later because that's the wastewater outfall,  
2 correct?

3 A. That's the -- one of them.

4 Q. One of them.

5 What are the other wastewater outfalls?

6 A. There's an Outfall 101. There's an Outfall  
7 201.

8 Q. And those are internal outfalls, is that  
9 correct?

10 A. Yes, ma'am.

11 Q. Okay. Thank you.

12 So next we have a list of different  
13 stormwater outfalls and the controls that have been put  
14 on them, is that correct?

15 A. Yes, ma'am.

16 Q. How were these controls -- let me rephrase  
17 that.

18 Who decides which controls to put in place  
19 at each of these stormwater outfalls?

20 A. I had a hand in making that decision.

21 Q. Okay. So you're familiar with why, for  
22 example, a floating boom was put at Outfall 2, 4, and  
23 different combinations of floating boom, wedge screen,  
24 or gate screens are put on different outfalls?

25 A. Yes, ma'am.

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1 Q. So how did you decide which control to use at  
2 each outfall? 09:27AM

3 A. Well, we looked at what was available. We 09:28AM  
4 reviewed OCS, Operation Clean Sweep, and in there was a 09:28AM  
5 guideline actually for best management practices. And 09:28AM  
6 I -- I remember reading about booms, screens. 09:28AM

7 And subsequently we looked and found 09:28AM  
8 floating booms and a screen and we started implementing 09:28AM  
9 those at the stormwater outfalls. 09:28AM

10 Q. Okay. So you relied on Operation Clean Sweep? 09:28AM

11 A. We also did Internet searches. 09:28AM

12 Q. For what? 09:28AM

13 A. Just pellet control. 09:28AM

14 Q. Okay. And so you came up with a list of 09:28AM  
15 different types of controls that could be used -- 09:28AM

16 A. Well -- yes. Yeah. I won't say there was a 09:29AM  
17 list per se, but we would discuss certain issues or 09:29AM  
18 certain control items. For example, the floating booms. 09:29AM

19 Q. Okay. When you're saying "we," to be clear, 09:29AM  
20 who are you referring to? 09:29AM

21 A. Well, there was myself. There was Rick 09:29AM  
22 Crabtree. There was Chad Lee, one of my coworkers. 09:29AM  
23 There was -- let me think. There was one of our day 09:29AM  
24 supervisors. There was another engineer. 09:29AM

25 Q. What is that person's name? 09:29AM

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1 A. Randy Nichols.

09:29AM

2 Q. Okay.

09:29AM

3 A. There was Kirk Zhang just, you know,  
4 brainstorming together.

09:29AM

09:29AM

5 Q. So is that a group of people that made the  
6 decisions which controls to place at each stormwater  
7 outfall?

09:29AM

09:29AM

09:30AM

8 A. I would think that as a group, yeah, we made a  
9 decision.

09:30AM

09:30AM

10 Q. Did you have regular meetings about --

09:30AM

11 A. No.

09:30AM

12 Q. -- about it?

09:30AM

13 A. No.

09:30AM

14 Q. How did you make these decisions with that  
15 group?

09:30AM

09:30AM

16 A. Well, we would review the available  
17 technologies. We went through -- I went through  
18 Operation Clean Sweep. I read it multiple times and we  
19 thought, Well, this is available. Let's give this a  
20 shot.

09:30AM

09:30AM

09:30AM

09:30AM

09:30AM

21 Q. Did do you any testing of different types of  
22 technologies at the outfalls?

09:30AM

09:30AM

23 A. Not really.

09:30AM

24 Q. Did you talk to any experts outside of  
25 Formosa?

09:30AM

09:30AM

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1 A. Experts, no.

2 Q. Did you talk to any consultants or anybody  
3 else to get their opinion outside of Formosa?

4 A. Consultants, no.

5 Q. So this was all decided by -- all decided  
6 internally?

7 A. We talked to vendors.

8 Q. Vendors. Okay.

9 So at Outfall 3, for example, there's --  
10 it says, "Floating Boom Pending - July 31st."

11 Do you know when that was installed?

12 A. Off the top of my head, I can't remember when  
13 it was actually put in.

14 Q. Okay. But on July 31st, 2017, it was still  
15 pending?

16 A. I can't remember the exact date, but that's  
17 what it says here.

18 Q. Okay. You don't have any reason to --

19 A. I know it's there now.

20 Q. Okay. Okay. There should be some record of  
21 it that we've probably gotten.

22 A. There is. I believe it was sent to y'all. I  
23 don't know where it is. It's somewhere in all this  
24 documentation, but it --

25 Q. Okay.

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1 A. -- it was --

09:31AM

2 Q. Okay.

09:31AM

3 A. -- put in.

09:31AM

4 Q. So then let's look at Outfall 5 versus  
5 Outfall 6.

09:31AM

09:31AM

6 A. Yes. Yes, ma'am.

09:31AM

7 Q. Why -- how did you decide to have one control  
8 the floating boom at Outfall 5 versus the four controls  
9 listed at Outfall 6?

09:31AM

09:32AM

09:32AM

10 A. Yes, ma'am. The location of Outfall 5 is such  
11 that it would not see a lot of pellets.

09:32AM

09:32AM

12 Q. And what is that based on?

09:32AM

13 A. It's just not located to an area that would  
14 drain a lot of the poly units.

09:32AM

09:32AM

15 Q. And had you done an analysis that showed you  
16 that there were fewer pellets getting to Outfall 5  
17 versus Outfall 6?

09:32AM

09:32AM

09:32AM

18 A. No.

09:32AM

19 Q. So that's based on your determination of which  
20 areas flow to Outfall 5?

09:32AM

09:32AM

21 A. Yes.

09:32AM

22 Q. Okay. And which areas are those? Do you know  
23 off the top of your head? Outfall 5?

09:32AM

09:32AM

24 A. What areas?

09:32AM

25 Q. Flow to Outfall 5.

09:33AM

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1 A. Yes, ma'am. Predominantly the vinyl plant. 09:33AM

2 Q. Okay. And so the decisions for each outfall 09:33AM  
3 were made based on -- how many controls to put on each 09:33AM  
4 outfall were based on which units flow to that outfall? 09:33AM

5 A. Based on the layout of the facility and, you 09:33AM  
6 know, the drainage study, we pretty much knew what -- 09:33AM  
7 what drains to what area. And so subsequently, the 09:33AM  
8 Poly 1 area drains predominantly to Outfall 6. 09:33AM

9 Q. And was that the area that you're most 09:33AM  
10 concerned about in terms of pellets and powder escaping? 09:33AM

11 MR. RAVEL: Objection, form. 09:33AM

12 A. I wouldn't say "most concerned," but I would 09:33AM  
13 say that it does see a large drainage area from the poly 09:33AM  
14 units. 09:33AM

15 Q. (BY MS. GAINES) It sees a large drainage 09:33AM  
16 area, and so what -- why do you need more controls, 09:34AM  
17 then, at external stormwater gate? 09:34AM

18 A. There's potential for more -- a possibility 09:34AM  
19 for pellets to reach Outfall 6. 09:34AM

20 Q. There's a potential, but that you hadn't seen 09:34AM  
21 that happening? 09:34AM

22 A. Seen what happening? 09:34AM

23 Q. Seen more pellets reaching Outfall 6 compared 09:34AM  
24 with some of the other gates? 09:34AM

25 A. I've seen the -- I've seen the potential for 09:34AM

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1 more pellets to reach Outfall 6, yes, I have seen that.

09:34AM

2 Q. How do you see a potential for something?

09:34AM

3 A. Well, when I'm driving around and I see the  
4 facilities whereby their drainage goes to Outfall 6,  
5 well, then there's a natural assumption there that the  
6 potential exists for any type of pellet spillage to  
7 reach Outfall 6.

09:34AM

09:34AM

09:34AM

09:34AM

09:34AM

8 Q. Okay. But you have -- have you ever seen  
9 pellets at Outfall 6?

09:34AM

09:34AM

10 A. Yes, ma'am, I have.

09:34AM

11 Q. Okay. On a regular basis?

09:34AM

12 A. Define "regular."

09:35AM

13 Q. How often do you -- have you seen pellets at  
14 Outfall 6?

09:35AM

09:35AM

15 A. I've seen -- I've been down there 16 years, so  
16 I have seen pellets at Outfall 6 as part of my normal  
17 job duty.

09:35AM

09:35AM

09:35AM

18 Q. Okay. Do you see them -- or how often do you  
19 go to each of the external outfalls?

09:35AM

09:35AM

20 A. Well, several times a week.

09:35AM

21 Q. Okay. To each outfall?

09:35AM

22 A. Not to each one.

09:35AM

23 Q. Several times a week you go to at least one  
24 outfall?

09:35AM

09:35AM

25 A. The outfalls, predominantly 6. 6 I pretty

09:35AM

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1 much see every day.

2 Q. Okay. You see 6 pretty much every day since  
3 you've been in this position?

4 A. No. I'd say within the last few years. I  
5 actually -- I'll -- coming in the gate, I drive right by  
6 it.

7 Q. Okay.

8 A. So I'll stop and look sometimes and just have  
9 a look.

10 Q. Okay. So you look at 6 almost every day?

11 A. Frequently.

12 Q. Frequently. Okay.

13 Okay. So looking at these controls at 6,  
14 how did you decide which controls to put in and in which  
15 order?

16 A. Well, we knew -- the floating boom was -- we  
17 were going -- our plan was to install those everywhere,  
18 which we -- all except 7 -- which we -- we did. And  
19 then we -- we felt we needed more control. And  
20 subsequently we put the wedge screen in. We put the  
21 gabions in. We put the catwalk screen in. There's a  
22 screen on the fence.

23 Q. So these were -- I'm seeing that the floating  
24 boom was put in earlier than the other controls listed  
25 under Outfall 6.



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1                   So you put that in in August 2016, is that  
2 correct?

3           A.     That's what it says here. I -- off the top of  
4 my head, I don't -- but that's what it says here, so I'm  
5 assuming yes. When I did my research, yes, that was the  
6 date.

7           Q.     Okay. And were you witnessing that it was not  
8 effective?

9                   MR. RAVEL: Objection, form.

10          A.     We felt that under high flow conditions, it  
11 might not capture everything.

12          Q.     (BY MS. GAINES) Had you seen that happening?

13          A.     No.

14          Q.     Had other people seen that?

15          A.     They had made comments to me under high flow  
16 conditions that water could go under it.

17          Q.     The water could go -- would go under the boom?

18          A.     Yes, ma'am.

19          Q.     Who told you that?

20          A.     Oh, I believe it might have been some of our  
21 operators.

22          Q.     Do you recall anyone in particular?

23          A.     And then I saw it. I saw it I know on one --  
24 maybe one or two occasions.

25          Q.     Can you tell me the names of any of the

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1 operators you remember telling you that?

09:38AM

2 A. No, I can't recall their names.

09:38AM

3 Q. Do you remember roughly when that was?

09:38AM

4 A. No, I don't.

09:38AM

5 Q. It would have been after you installed the  
6 floating boom, I presume?

09:38AM

7 A. Correct.

09:38AM

8 Q. And so based on -- based on what you saw at  
9 least once and what other --

09:38AM

10 A. I know I've seen it before because we had --  
11 obviously as part of my responsibility, when we  
12 implement a control, we've got to evaluate its  
13 performance, and so we did. We looked at it. We  
14 evaluated it. We would open an outfall, let's see.  
15 Well, what's happening? And you could see some  
16 turbulence right around the boom and a possibility for  
17 water to go under it.

09:38AM

09:38AM

09:38AM

09:38AM

09:38AM

09:39AM

09:39AM

09:39AM

18 Q. And so you're saying you evaluate it.

09:39AM

19 Can you tell me a little more about how  
20 you do that evaluation?

09:39AM

09:39AM

21 A. Just making a best engineering judgment based  
22 on what I can see visually.

09:39AM

09:39AM

23 Q. So you go out and you -- your evaluation is  
24 you watch it -- the control under certain conditions?

09:39AM

09:39AM

25 A. Well, under certain conditions, yes, yes.

09:39AM

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1 Q. And so was this based -- would you go out at  
2 different times and look at it, you know, when there's  
3 higher flow or lower flow?

4 A. I wouldn't say different times, but when we'd  
5 have an outfall opening, we could look at it and see how  
6 it was performing.

7 Q. Did you do that on a regular basis for a  
8 certain period of time after the control was put in  
9 place?

10 A. I wouldn't say regular, but when an outfall  
11 was opened and we could go out there and take a look at  
12 it, we would do that and look at the flow, how it was  
13 performing.

14 Q. Do you have any notes or anywhere where you  
15 would write down what you saw?

16 A. No, ma'am, I didn't.

17 Q. Okay. Who else would you go out and do that  
18 evaluation with?

19 A. I did it by myself on various occasions. I  
20 did it with my coworker, and I told you his name, I  
21 believe, Chad. Chad Lee. And as supervisors I know we  
22 would go out there and take a look at it.

23 Q. And so did you see any other problems with the  
24 floating boom?

25 A. No, none that I -- I can recall. Sometimes it

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1 would get a little cocked and -- because it floats  
2 obviously. It floats on railings and would get a little  
3 cocked every now and then.

4 Q. And you would -- so the main problem you saw  
5 is that in high flow -- high water flow situations, the  
6 water would just flow underneath the boom, you said?

7 A. Had the potential. I did see that on  
8 occasions. It didn't happen all the time.

9 Q. Have you seen that at any of the other  
10 outfalls with the floating booms?

11 A. No.

12 Q. Have you gone out and looked to those floating  
13 booms in high flow?

14 A. Yes.

15 Q. Okay. Why do you think you've seen that at  
16 Outfall 6 but not the other outfalls?

17 A. I don't know. It could be the design of the  
18 gate.

19 Q. Okay. I have a couple pictures in this same  
20 presentation, if you go a couple -- let's see -- couple  
21 of pages earlier in the same presentation.

22 A. Yes, ma'am.

23 Q. Just keep going a few more pages.

24 A. All righty.

25 Q. There's one that says, "Stormwater

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1 Outfall 006 - Wedge Screen and Floating Boom." 09:42AM  
2 A. Okay. 09:42AM  
3 Q. Is this the boom that we're talking about -- 09:42AM  
4 A. Yes. 09:42AM  
5 Q. -- this picture? 09:42AM  
6 A. Yes, ma'am, it is. 09:42AM  
7 Q. Okay. The Bates stamp at the bottom is 09:42AM  
8 FCP000826. 09:42AM  
9 Does that look right? 09:42AM  
10 A. Yes, ma'am. 09:42AM  
11 Q. And so can you tell me what happens when the 09:42AM  
12 water -- when a large amount of water is flowing through 09:42AM  
13 here? What is -- what happens to that boom? 09:43AM  
14 A. It floats. 09:43AM  
15 Q. It floats. So it goes up -- 09:43AM  
16 A. It -- 09:43AM  
17 Q. -- it raises up with the water level? 09:43AM  
18 A. Yes, ma'am. 09:43AM  
19 Q. And then what is shown behind that? Is that 09:43AM  
20 the wedge screen? 09:43AM  
21 A. I don't know. I'm not sure. When you say 09:43AM  
22 "behind," you mean there or there (indicating)? 09:43AM  
23 Q. Yeah. I think down -- downstream of where the 09:43AM  
24 water would be flowing. 09:43AM  
25 A. Okay. 09:43AM

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1 Q. The rectangular gates?

09:43AM

2 A. Now, that --

09:43AM

3 Q. Is that what's called the wedge screen?

09:43AM

4 A. Okay. I'm sorry. Yes, that's called a wedge  
5 screen.

09:43AM

09:43AM

6 Q. Okay. And how did you decide to put that into  
7 place?

09:43AM

09:43AM

8 A. We -- we discussed it internally and I thought  
9 that that might be a good design.

09:43AM

09:43AM

10 Q. What was there prior to -- before you  
11 installed the wedge screen, there was the floating boom,  
12 correct?

09:43AM

09:44AM

09:44AM

13 A. Yes.

09:44AM

14 Q. And then what was after the floating boom?

09:44AM

15 A. Didn't we put the wedge screen after? I don't  
16 remember the dates off the top of my head.

09:44AM

09:44AM

17 Q. Yes, sir. I didn't ask that very clearly.

09:44AM

18 What -- prior to the wedge screen being  
19 installed, what would the water -- was there nothing  
20 there after the floating boom?

09:44AM

09:44AM

09:44AM

21 A. I'm -- I'm -- I can't recall. It's been  
22 several years. I seem to recall -- I thought we had  
23 screens on the outfall structure itself.

09:44AM

09:44AM

09:44AM

24 Q. Okay. So the next page after this is the  
25 "Erosion Control and Filtering - Rock Baskets."

09:44AM

09:44AM

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1 Is that at a particular outfall?

09:45AM

2 A. That's 006.

09:45AM

3 Q. Okay. Are those also called gabions?

09:45AM

4 A. Gabions.

09:45AM

5 Q. Gabions.

09:45AM

6 A. Yes, ma'am.

09:45AM

7 Q. And then the last control you get to on the  
8 next page, is that what's called the catwalk with  
9 screens?

09:45AM

09:45AM

09:45AM

10 A. Yes, ma'am.

09:45AM

11 Q. And that was the last -- the most recent  
12 control that was put into place?

09:45AM

09:45AM

13 A. Yes, ma'am.

09:45AM

14 Q. What -- why did you have a -- see a need  
15 for -- what was the need that you saw for putting those  
16 screens into place?

09:45AM

09:45AM

09:45AM

17 A. The catwalk screen?

09:45AM

18 Q. The -- this last picture, the Outfall 006  
19 screens.

09:45AM

09:45AM

20 MR. RAVEL: What's Bates page are you on?

09:45AM

21 MS. GAINES: FCP000828.

09:45AM

22 A. Can you repeat the question, please?

09:45AM

23 Q. (BY MS. GAINES) Sure. I'm seeing on your  
24 chart that this was the last control that was put into  
25 place for Outfall 006.

09:46AM

09:46AM

09:46AM

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1 A. Yes.

2 Q. Why did you decide to put another control in  
3 place?

4 A. The catwalk was put in -- we felt we needed a  
5 way to actually clean these screens. So we came up with  
6 the catwalk. And then we said, As part of the catwalk,  
7 let's just put another level of screening in there which  
8 is what we did.

9 Q. So you had one level of screens already and  
10 then you added another level of screens --

11 A. Well, we had -- actually, we had the wedge  
12 screen. We had the screens on the structure. And so  
13 there was several screen -- levels of screenage up --  
14 upstream, so -- and then we had this one on the fence.  
15 So we added the catwalk in there as well, and then put  
16 the screen on there as part of that design.

17 Q. Were you having problems with this screen  
18 prior to putting this new one in the catwalk in place?

19 A. We had -- we had issues with pluggage.

20 Q. Can you tell me what that looked like,  
21 pluggage?

22 A. There was a lot of -- lot of grass that would  
23 congregate on here and actually would impede the flow.

24 Q. Did you ever see any plastics up against that  
25 screen?



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1 A. Yes, ma'am.

09:47AM

2 Q. How did they -- how did those plastics get  
3 past these other controls?

09:47AM

4 A. Well, they did.

09:47AM

5 Q. You don't know, but they did?

09:47AM

6 A. Yes, ma'am, they did.

09:47AM

7 Q. Have you seen any improvement with these new  
8 screens?

09:47AM

9 A. Most definitely.

09:47AM

10 Q. Can you describe what you've seen to me?

09:47AM

11 A. I think they're very effective in  
12 controlling -- minimizing potential for pellets being  
13 discharged off site.

09:47AM

14 Q. Have you had any blockage problems or you said  
15 pluggage, is that right?

09:47AM

16 A. Yes, ma'am, all of that.

09:48AM

17 Q. On the screen since the new ones were put in?

09:48AM

18 A. Oh, yes.

09:48AM

19 Q. How often do they get plugged?

09:48AM

20 A. Well, I mean, there's debris on there pretty  
21 much any time we open an outfall. That's why we have a  
22 pellet cleaning crew that regularly goes out and cleans  
23 these screens.

09:48AM

24 Q. And they continue to find pellets on these  
25 screens?

09:48AM

09:48AM

09:48AM

09:48AM

09:48AM

09:48AM

09:48AM

09:48AM

09:48AM

09:48AM

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1 A. There are -- there are pellets there, yes,  
2 ma'am. And subsequently, it's doing its job.

3 Q. What about other powders as we were talking  
4 about, would they get caught by this -- would they be  
5 stopped by this screen?

6 A. When there's grass and debris against these  
7 screens, yes. I have seen it actually.

8 Q. Because the water would flow over?

9 A. No. It's just acting as a barrier to prevent  
10 anything to go past it.

11 Q. Okay. So when the screens get plugged, then  
12 they stop the powder as well, is that what you're  
13 saying?

14 A. They will stop powder, yes.

15 Q. Is the -- does the water flow over the screens  
16 when it gets plugged?

17 A. I have seen it flow over the screens at times,  
18 yes, ma'am.

19 Q. And so in that case, it would not stop powder?

20 A. If there's nothing impeding it, I would say  
21 yes.

22 Q. And when they're not plugged, the powder is  
23 smaller than the screen size, is that correct?

24 A. I would say yes.

25 Q. So it would flow through?

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1 A. Yes.

09:50AM

2 Q. I want to be clear, the floating booms we were  
3 talking about, those are prior to this stormwater gate,  
4 is that correct?

09:50AM

09:50AM

09:50AM

5 A. The floating boom?

09:50AM

6 Q. Uh-huh. Yes.

09:50AM

7 A. Not at Outfall 6.

09:50AM

8 Q. I guess I'm trying to distinguish, there are  
9 booms -- are you familiar there are booms in Cox Creek  
10 as well?

09:50AM

09:50AM

09:50AM

11 A. Oh. Oh, is that what you're referring to?

09:50AM

12 Q. I'm just want to go clarify that there are  
13 different booms that are off Formosa's property and then  
14 some that are on the property.

09:50AM

09:50AM

09:50AM

15 Are you familiar with that?

09:50AM

16 A. Yes.

09:50AM

17 Q. Okay. So when we were talking about the  
18 floating booms that have been installed at Outfall 6 and  
19 5 and 3, for example, those are on Formosa's property  
20 prior to the stormwater outfalls?

09:50AM

09:50AM

09:50AM

09:50AM

21 A. There are floating booms --

09:51AM

22 Q. Okay.

09:51AM

23 A. -- installed at the outfalls --

09:51AM

24 Q. At the outfalls?

09:51AM

25 A. -- within Formosa property.

09:51AM

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1 Q. Okay.

2 A. There are floating booms external Formosa  
3 property in Cox's Creek.

4 Q. Okay. Okay. And the booms that we were  
5 talking about earlier are the ones at the outfalls on  
6 Formosa's property?

7 A. Yes, ma'am.

8 Q. Okay. And if some pellets or powder did get  
9 out past these controls at these outfalls and went into  
10 Cox's Creek, but were -- then were stopped by the  
11 floating booms in Cox's Creek, would you agree that  
12 those have been discharged from Formosa's property?

13 A. I consider a discharge to be past the fence  
14 line.

15 Q. A discharge is past the fence line.

16 So even if then it's caught by booms on  
17 the Cox's Creek, that doesn't -- let me rephrase that.  
18 I'm using too many "nots."

19 If the pellets leave the property, that is  
20 a discharge of pellets?

21 A. I consider it to be a discharge, yes, ma'am.

22 Q. Okay. Even if they're caught by the floating  
23 booms in Cox's Creek subsequently?

24 A. That's how I consider it, yes, ma'am.

25 Q. Do you know if that's how Formosa defines it?

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1 A. I -- I don't know the position of Rick on that  
2 issue.

3 Q. Okay.

4 A. I really don't.

5 Q. Okay. So it is a fairly rainy day outside  
6 today, is that right?

7 A. Yes, ma'am.

8 Q. So can you tell me on a rainy day like today,  
9 what happens at the stormwater outfalls?

10 A. Yes, ma'am. Per our procedures, what we would  
11 do is we would pre-sample the outfalls -- the stormwater  
12 outfalls.

13 Q. You pre-sample them when there' -- when you  
14 know there is rain coming or after it's already started?

15 A. When there is an imminent chance of rain. We  
16 monitor the weather. If there is an imminent chance of  
17 rain, we'll go ahead and pre-sample the outfalls.

18 Q. Okay.

19 A. And what that enables us to do is check the  
20 water quality and to ensure that it meets our permit  
21 limits.

22 And then subsequently, at the discretion  
23 of the supervisor, if it's -- rain is imminent and it's  
24 coming, then they'll go ahead and open the outfalls.  
25 And then per our permit, they have to sample within 15

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1 minutes after opening.

09:53AM

2 In addition to that, if there's any debris  
3 or anything along those lines in there, the outfalls  
4 will be cleaned prior to any opening.

09:53AM

09:53AM

09:53AM

5 Q. Okay. So can you walk me through if rain is  
6 imminent, who makes that decision or who's monitoring  
7 the rain and who makes that decision?

09:53AM

09:54AM

09:54AM

8 A. Our supervisors and our operators.

09:54AM

9 Q. Okay. And does it have to be a certain amount  
10 of rain that's coming?

09:54AM

09:54AM

11 A. No.

09:54AM

12 Q. So they're looking at the forecast and they  
13 see any rain, and so they go out and pre-sample? Is  
14 that what you're saying?

09:54AM

09:54AM

09:54AM

15 A. Yes.

09:54AM

16 Q. And who then goes out and samples? Is it the  
17 same person at each outfall?

09:54AM

09:54AM

18 A. No. It's the operators, whoever that is  
19 that's working that area that day.

09:54AM

09:54AM

20 Q. So tell me who -- how the staff is assigned  
21 each day.

09:54AM

09:54AM

22 Is there different staff for each outfall?

09:54AM

23 A. No.

09:54AM

24 Q. Okay. So who is assigned to all the  
25 stormwater outfalls?

09:54AM

09:54AM

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1 A. We allow every shift to handle it as they  
2 like.

3 Q. Okay. How many people are on during -- on  
4 duty during a shift?

5 A. We have three wastewater operators.

6 Q. And they're called wastewater operators, but  
7 they go to the stormwater outfalls?

8 A. Yes, ma'am.

9 Q. Okay. Just checking.

10 Three wastewater operators during the day  
11 or during every shift?

12 A. Every shift.

13 Q. Okay. And there are two shifts in a day?

14 A. Yes, ma'am.

15 Q. 12-hour shifts?

16 A. Yes, ma'am.

17 Q. Okay. So those three wastewater operators  
18 cover all of the stormwater outfalls?

19 A. We have one operator that's assigned to the  
20 board.

21 Q. What is the board?

22 A. The DCS.

23 Q. Okay. Is that --

24 A. The control system.

25 Q. The control system. Okay.

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1 A. Then we have two field operators.

09:55AM

2 Q. Okay. So let's start with actually a nonrainy  
3 day.

09:55AM

09:55AM

4 A. Yes, ma'am.

09:55AM

5 Q. Can you tell me what the field operators do?

09:55AM

6 What is their schedule at the external stormwater  
7 outfalls?

09:56AM

09:56AM

8 A. Well, they go and check the outfalls once a  
9 shift.

09:56AM

09:56AM

10 Q. And do they divide up the outfalls or how does  
11 that --

09:56AM

09:56AM

12 A. We allow them to do that. One operator may be  
13 very busy doing something and so he may get his fellow  
14 field operator to help him share some of those duties  
15 and responsibilities.

09:56AM

09:56AM

09:56AM

09:56AM

16 Q. Okay. And if they see the need to take  
17 samples at an outfall or if they see debris or  
18 something, who goes and takes those samples?

09:56AM

09:56AM

09:56AM

19 A. The guy that's assigned to do the stormwater  
20 outfalls will go ahead and take those samples.

09:56AM

09:56AM

21 Q. Okay. So take the samples, and then what do  
22 they do with that sample?

09:56AM

09:56AM

23 A. Well, once again, if it's -- we're going ahead  
24 and rainy day, or you said just a normal day, they'll  
25 sample the outfall to make sure the water is in spe.

09:56AM

09:57AM

09:57AM



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1 Predominantly that's pH. Make sure the pH is within  
2 6 to 9.

3 If there's any debris in there, then  
4 they'll go -- go ahead and clean it up. And if it's  
5 what we call -- we have -- as I said, we have a pellet  
6 crew that's there six days a week, a crew just  
7 designated to pellet -- what we call a pellet crew, THM  
8 at the outfalls, total housekeeping management.

9 And we also have a vac truck route where  
10 the vac truck comes through there seven days a week and  
11 his responsibility is to hit internal outfalls, those  
12 further upstream as well as our 6, 8, 9 stormwater  
13 outfalls.

14 Q. So the pellet crew, the THM crew --

15 A. Yes.

16 Q. -- is separate from the field operators?

17 A. Yes, ma'am.

18 Q. Do they come at the request of the field  
19 operators or they just come on a regular basis?

20 A. Come on a regular basis.

21 Q. To every stormwater outfall?

22 A. No.

23 Q. Which ones?

24 A. 6, 8, and 9. Predomin- -- that's what they  
25 hit first, then they'll go and check the others.

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1 Q. And same with the vacuum truck, you said 6, 8,  
2 and 9?

3 A. 6, 8, and 9 vac truck. Just 6, 8, and 9 plus  
4 internal outfalls.

5 Q. How long has this -- the THM crew been doing  
6 this?

7 A. I'm trying to think when we started, first  
8 guy. Was it late 2015 or early 2016? I want to say  
9 maybe late 2015.

10 Q. And what about the vacuum truck?

11 A. A vac truck? I think the vac truck was in  
12 2016. I don't -- off the top of my head, I can't  
13 remember. That -- that's what I seem to recall.

14 Q. And who made the decision to start the THM  
15 crew and the vacuum truck?

16 A. Well, I had a hand in it.

17 Q. Why did you -- why did you decide to have --

18 A. We needed -- we needed help. We needed help.  
19 It was too much for our field operators.

20 Q. What was too much?

21 A. I mean, maintaining outfalls as well as, you  
22 know, collecting samples. We have a wastewater  
23 treatment plant to operate on top of the stormwater  
24 outfalls, so it's a lot. And we felt we needed somebody  
25 dedicated to the stormwater outfalls.

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1 Q. Is that because the field operators were  
2 seeing lot of pellets and powder and not able to clean  
3 them all up?

4 A. I felt that we could do a better job in that  
5 area.

6 Q. Can you tell me what you mean by that?

7 A. Well, we definitely needed to dedicate -- we  
8 needed personnel to focus on the outfalls.

9 Q. Because they weren't able to clean up all of  
10 the pellets and powder?

11 A. Well, the outfalls needed better attention  
12 than they were getting. They did. I would see debris  
13 there at times. I would see screens that needed to be  
14 cleaned.

15 Q. Do you know of times where they weren't able  
16 to clean up all the plastics --

17 A. No, I don't.

18 Q. -- that were there?

19 Did they -- did they report to you that  
20 there were times they weren't able to?

21 A. No. I don't recall that. If they did, it  
22 doesn't ring a bell in my head, no.

23 Q. Then how do you know that you needed to do a  
24 better job, as you said?

25 A. Well, I would visually go check and I know

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1 they were frustrated at times. They -- they felt that,  
2 you know, I have all these other things to do on top of  
3 this, and so I felt there was a need for that.

4 Q. When you would -- you said you would go  
5 visually check.

6 What would you see?

7 A. I would see debris and pellets at times within  
8 a closed outfall.

9 Q. And do you know that there were times where  
10 the operators weren't able to clean up that debris  
11 including plastics before the outfall gate was opened?

12 A. I don't know of any specific times, no, ma'am.

13 Q. Are you saying it never happened?

14 A. I'm not saying that either.

15 Q. You're not sure?

16 A. I just don't know.

17 Q. Okay. Do the field operators -- you said that  
18 they have a lot to do also at the wastewater treatment  
19 plant?

20 A. Well, they have job responsibilities. I mean,  
21 we collect a lot of samples. We have valves to open and  
22 close, readings to take. You know, there's a multiple  
23 samples to collect.

24 Q. So what percentage --

25 A. Locking equipment out for maintenance.

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1 Q. What percentage of the field operator's time 10:02AM  
2 is spent at the wastewater treatment plant versus the 10:02AM  
3 stormwater outfalls? 10:02AM

4 A. I don't know, but I know it's -- the majority 10:02AM  
5 of it is within the confines of the wastewater unit 10:02AM  
6 itself. 10:02AM

7 Q. Okay. So can we go back to when the field 10:02AM  
8 operators are out at a stormwater outfall and they take 10:02AM  
9 a sample? Did they take the sample to a lab? 10:02AM

10 A. Yes. 10:02AM

11 Q. On-site on the facility? 10:02AM

12 A. Yes, ma'am. 10:02AM

13 Q. And then how long does it take to get those 10:02AM  
14 sample results? 10:02AM

15 A. It could take a -- it could take four to six 10:02AM  
16 hours. 10:02AM

17 Q. Four to six hours? 10:02AM

18 A. To get sample results, yes, ma'am. 10:02AM

19 Q. Do you have to wait to get those results 10:02AM  
20 before you can open the outfall gate? 10:02AM

21 A. We -- it used to be like that. We streamlined 10:02AM  
22 the process to -- to get outfalls open much sooner and 10:02AM  
23 quicker. 10:03AM

24 Q. How did you streamline it? 10:03AM

25 A. We eliminated some of the preopening 10:03AM

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1 samples -- samples. So now we just pretty much base it  
2 on pH, which we do inhouse within our lab. And  
3 subsequently, if that's good, we can open an outfall.

4 Q. And so how long does it take to get the pH  
5 sample back?

6 A. 15 minutes.

7 Q. Okay. So the operator takes the sample at one  
8 outfall at a time and then goes to the lab?

9 A. Goes -- yes. We'll do it that way, yes.  
10 Because of the way the rules are written, EPA designates  
11 pH has to be analyzed within 15 minutes of collecting a  
12 sample.

13 Q. Okay. So the operator is at an outfall gate,  
14 takes the sample, goes to the lab -- takes it to the  
15 lab?

16 A. Our internal lab --

17 Q. Internal lab. Uh-huh.

18 A. -- will do this internally now. pH is done  
19 internally.

20 Q. Takes it to the lab, waits for the pH sample?

21 A. He analyze -- he does it himself.

22 Q. He does it himself?

23 A. Right. Yes.

24 Q. And then if it's -- if the pH is --

25 A. Within 6 to 9 standard units.

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1 Q. -- 6 to 9, then what happens? 10:04AM

2 A. Well, they're good to go. They can open an 10:04AM  
3 outfall at -- when they want. 10:04AM

4 Q. Okay. So at that point -- 10:04AM

5 A. That sample, I believe, is valid for six 10:04AM  
6 hours. 10:04AM

7 Q. Okay. And they would do that for each outfall 10:04AM  
8 that needs to be opened? 10:04AM

9 A. Yes, ma'am. 10:04AM

10 Q. What other samples -- when you said it was 10:04AM  
11 streamlined, what did you -- what other samples did you 10:04AM  
12 use to take? 10:04AM

13 A. TOC, oil and grease. 10:04AM

14 Q. Okay. Anything else? 10:04AM

15 A. For Outfalls 2, 3, 4, and 5, EDC. 10:04AM

16 Q. And so you're -- you no longer take those 10:04AM  
17 samples or you no longer wait to get the results 10:04AM  
18 before -- 10:04AM

19 A. Preopening. Preopening. 10:04AM

20 Q. Can you explain to me what that means? 10:04AM

21 A. Preopening is to qualify whether or not the 10:05AM  
22 water is good or not to be discharged. 10:05AM

23 Q. So now you only need the pH results? 10:05AM

24 A. For preopening. 10:05AM

25 Q. For preopening? 10:05AM

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1 A. Yes. 10:05AM

2 Q. The other results -- the other samples you 10:05AM  
3 still get the results? 10:05AM

4 A. We have to. 10:05AM

5 Q. But after -- 10:05AM

6 A. It's a permit requirement, yes, ma'am. 10:05AM

7 Q. But those come in after the gate is open? 10:05AM

8 A. Per the permit, we have to collect a sample 10:05AM  
9 within 15 minutes after opening a stormwater outfall 10:05AM  
10 gate. 10:05AM

11 Q. Okay. When did you make that change to 10:05AM  
12 streamline the preopening? 10:05AM

13 A. Oh, God. I'm thinking 2017 sometime. 10:05AM

14 Q. Okay. 10:05AM

15 A. I think it was 2017. I can't remember. 10:05AM

16 20- -- I would have to go back and look at the notes. 10:05AM

17 Q. Okay. 10:05AM

18 A. Somewhere buried in here, I know it's in here 10:05AM  
19 somewhere. 10:05AM

20 Q. Okay. Why did you decide to make that change? 10:06AM

21 A. We had issues with flooding. We had -- had 10:06AM  
22 some issues with flooding. In addition to us doing 10:06AM  
23 this, every unit out here is doing this very similar 10:06AM  
24 sampling to get their internal outfalls opening. 10:06AM

25 So the lab was pretty much -- could be 10:06AM



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1 backed up. So we knew we had to streamline our process,  
2 which is what we did.

3 Q. So the change to the preopening procedures was  
4 made not only at the external outfalls, but also the  
5 internal outfalls?

6 A. I don't know.

7 Q. Okay. You mentioned, though, that internal  
8 outfalls were also taking these samples, but you don't  
9 know if they changed their procedures?

10 A. I don't know if they changed their procedures.

11 Q. Okay. So in a rainy -- then we were talking  
12 about a rainy today like today.

13 A. Yes, ma'am.

14 MR. RAVEL: Objection, form. Do we have  
15 to say "like today" since "today" is such a vague term?  
16 Can we just say "rainy day"? Then we're going to have  
17 to go look up the rainfall for today to make the  
18 questions -- your call.

19 MS. GAINES: Okay. Okay. On a --

20 MR. RAVEL: Objection, form. Do we have  
21 to use "like today"?

22 Q. (BY MS. GAINES) On a rainy day --

23 A. Yes, ma'am.

24 Q. -- can you tell me how the procedure is  
25 different for sampling and opening the outfalls from a

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1 nonrainy day?

10:07AM

2 A. I don't understand the question.

10:07AM

3 Q. Okay. We were talking about how you could do  
4 a pre- -- what was the term that you used?

10:07AM

10:07AM

5 A. Preopening sample.

10:07AM

6 Q. A preopening sample. But it -- on a rainy day  
7 when you're anticipating that you're going to need to  
8 open the outfall gates, is that right?

10:07AM

10:07AM

10:07AM

9 A. When there's a possibility of imminent rain --

10:07AM

10 Q. Okay.

10:07AM

11 A. -- we will go ahead and presample the outfalls  
12 so that they're ready to be opened should rain occur or  
13 we see rain coming in the distance. We have screens  
14 within our control room which allow us to monitor the  
15 weather 24/7, which is what we do.

10:07AM

10:08AM

10:08AM

10:08AM

10:08AM

16 So we will go ahead and presample, and  
17 once we have those presample results we can go ahead and  
18 open the outfall gates.

10:08AM

10:08AM

10:08AM

19 Q. And do you do that at each external outfall  
20 when there is imminent rain?

10:08AM

10:08AM

21 A. Yes, ma'am.

10:08AM

22 Q. When you're doing the presampling, does that  
23 also include the visual observation for floating debris?

10:08AM

10:08AM

24 A. Yes, ma'am, it does.

10:08AM

25 Q. And what happens if there is floating debris?

10:08AM

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1 A. We will clean it.

10:08AM

2 Q. Who cleans it?

10:09AM

3 A. Our operators will clean it. We'll get the  
4 pellet crew guys to clean it. We'll get the vac truck  
5 guys to clean it.

10:09AM

10:09AM

10:09AM

6 Q. What if -- are there times when there's  
7 imminent rain, but it hasn't started raining yet and  
8 there's no water at the external gate in a ditch?

10:09AM

10:09AM

10:09AM

9 A. There has been times, yes, ma'am.

10:09AM

10 Q. So how do you do the sampling in that case?

10:09AM

11 A. You can't if there's no water in there.

10:09AM

12 Q. Okay. So there has to be some water --

10:09AM

13 A. Yes, ma'am.

10:09AM

14 Q. -- already?

10:09AM

15 A. Yes, ma'am.

10:09AM

16 Q. Okay. So you can't do the presampling if  
17 there's no water at all in the outfall ditch?

10:09AM

10:09AM

18 A. Correct.

10:09AM

19 Q. Okay. And then if do you the presampling and  
20 the check for the visual debris, then do you just open  
21 the outfall gates before the rain comes?

10:09AM

10:09AM

10:09AM

22 A. We -- we have that option, yes. It's normally  
23 what's done. Like, for example, today I checked before  
24 I came. There were several outfalls already open.

10:09AM

10:09AM

10:10AM

25 Q. And then is there any other checks while that

10:10AM

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1 outfall is open?

10:10AM

2 A. Yeah. They will go -- they will periodically  
3 check it.

10:10AM

10:10AM

4 Q. How often is periodically?

10:10AM

5 A. Depending on -- on times, you know, how busy  
6 they are.

10:10AM

10:10AM

7 Q. So it really varies?

10:10AM

8 A. Yes, ma'am.

10:10AM

9 Q. When -- what are -- what is the minimum number  
10 of times they have to check it once it's open?

10:10AM

10:10AM

11 A. I can't recall off the top of my head. I -- I  
12 would need to go back and look at the procedure.

10:10AM

10:10AM

13 Q. Okay. Let's look at a couple outfall status  
14 sheets unless you want to take a break first?

10:10AM

10:10AM

15 MR. RAVEL: Yeah, let's take -- since  
16 you're shifting, let's take a break.

10:10AM

10:10AM

17 MS. GAINES: Yeah. Yeah. We can go off.

10:10AM

18 (Recess from 10:10 a.m. to 10:24 a.m.)

10:10AM

19 Q. (BY MS. GAINES) We're back on.

10:24AM

20 Okay. Mr. Hyak, first I want to ask you  
21 about these sheets. We got these yesterday, so I don't  
22 have any other copies of them, but we can admit them  
23 once we're done looking at it as Exhibit 57.

10:24AM

10:24AM

10:24AM

10:24AM

24 (Exhibit 57 marked)

10:24AM

25 Q. (BY MS. GAINES) Does this look familiar to

10:24AM

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1 you? It says, "Review of Discharge Monitoring Report." 10:24AM

2 A. No. 10:24AM

3 Q. No? 10:24AM

4 Are you familiar with the discharge 10:24AM  
5 monitoring reports? 10:24AM

6 A. Yes, ma'am. 10:24AM

7 Q. So does appear to be a summary of the 10:24AM  
8 discharge monitoring reports? 10:24AM

9 A. I would just speculate if I told you what I 10:25AM  
10 thought this was. 10:25AM

11 Q. Okay. You don't regularly keep any document 10:25AM  
12 like this that you know of? 10:25AM

13 A. Not like that, no, ma'am. 10:25AM

14 Q. Is there any document that you have that 10:25AM  
15 includes the flow rates for each stormwater outfall when 10:25AM  
16 it's opened? 10:25AM

17 A. Yes, ma'am. 10:25AM

18 Q. What document is that? 10:25AM

19 A. It's in the DMR folder. 10:25AM

20 Q. What do you mean by "the DMR folder"? 10:25AM

21 A. It's in the DMR. 10:25AM

22 Q. It's in the DMR. Okay. 10:25AM

23 And can you tell me how those flow rates 10:25AM  
24 are calculated? 10:25AM

25 A. Yes, ma'am. We use what's called 10:25AM

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1 Francis's Formula. It's a common engineering formula  
2 used to estimate flow through weir structures. Weir  
3 structures. And we utilize that to make our  
4 determination.

5 We have to take three level readings from  
6 the outfall structure over the course of a 24-hour  
7 period. We plug those values into Francis's Formula and  
8 it spits out a flow rate.

9 Q. When are those three levels taken?

10 A. They're taken over the course of a 24-hour  
11 period during the outfall opening.

12 Q. So is it when it's first open? When is the  
13 first one taken?

14 A. First opened, middle, and end.

15 Q. When it's closed?

16 A. Yes.

17 Q. When --

18 A. Prior to closing.

19 Q. Right.

20 A. Right before it's closed.

21 Q. What if an outfall is open for more than one  
22 day at a time?

23 A. Continuous opening we -- we -- it's all based  
24 on 24-hour period.

25 Q. So the flow would still be -- you would

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1 calculate it each 24-hour period?

10:26AM

2 A. Yes.

10:26AM

3 Q. And is -- so you take the water levels three  
4 times in a 24-hour period?

10:26AM

10:27AM

5 A. Yes, ma'am.

10:27AM

6 Q. And then the Francis Formula, I presume, is  
7 specific to each outfall?

10:27AM

10:27AM

8 A. Yes.

10:27AM

9 Q. To the size of the ditch, is that right?

10:27AM

10 A. Size of the -- of the gate valve, the  
11 rectangular opening through which the water actually  
12 flows through.

10:27AM

10:27AM

10:27AM

13 Q. Okay. Of the gate opening itself?

10:27AM

14 A. Yes, ma'am.

10:27AM

15 Q. Okay. Where are those daily calculations  
16 recorded?

10:27AM

10:27AM

17 A. It's not done daily.

10:27AM

18 Q. Each day that the outfall is open, where are  
19 those recorded?

10:27AM

10:27AM

20 A. It's recorded on the log sheets.

10:27AM

21 Q. On the outfall status sheets?

10:27AM

22 A. Yes.

10:27AM

23 Q. Okay. Let's look at --

10:27AM

24 MS. GAINES: We have to go back to that  
25 big binder.

10:27AM

10:28AM

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1 Q. (BY MS. GAINES) So we're going to look at a 10:28AM  
2 document that's already been -- 10:28AM

3 A. Let me qualify something. I haven't 10:28AM  
4 actually -- I believe they're on there. I believe 10:28AM  
5 they're on there. I just get a spreadsheet when I look 10:28AM  
6 at it and I check the formulas and I check the flow 10:28AM  
7 rates. 10:28AM

8 Q. That's fine. We -- we'll take a look and see. 10:28AM  
9 Let's -- it's Tab AM. 10:28AM

10 MS. JOHNSON: Is this a new document? 10:28AM

11 MS. GAINES: No. 10:28AM

12 MS. JOHNSON: Okay. 10:28AM

13 MS. GAINES: It was already admitted as 10:28AM  
14 Exhibit 5. 10:28AM

15 MR. RAVEL: Do you have one for him or 10:28AM  
16 should he share mine? 10:28AM

17 MS. GAINES: You can share that one. 10:28AM

18 Q. (BY MS. GAINES) Are these the -- 10:28AM

19 A. I can barely read it. 10:28AM

20 Q. Yeah. It's a copy of it. I apologize. But 10:28AM  
21 there -- these are the outfall status sheets or what do 10:29AM  
22 you call these? 10:29AM

23 A. Outfall status sheets. 10:29AM

24 Q. Outfall status sheet. Okay. 10:29AM

25 So I see in terms of what we were just 10:29AM



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1 talking about, the flow level, it has "Water Level." 10:29AM

2 Is that where -- what would be used? For, 10:29AM  
3 let's say, Outfall 6, I see "Gate Status, pH" and then 10:29AM  
4 "Water Level." 10:29AM

5 A. Where are you at? 10:29AM

6 Q. Right here (indicating). 10:29AM

7 A. Okay. 10:29AM

8 Q. It appears to have some notations in inches. 10:29AM

9 A. Yes, ma'am. 10:29AM

10 Q. And I see that for each outfall listed on 10:29AM  
11 here. 10:29AM

12 Is that what would be used for the flow 10:29AM  
13 rates? 10:29AM

14 A. What would be used -- I can point you to it. 10:29AM

15 Q. Sure. 10:30AM

16 A. That's what he checks. 10:30AM

17 THE REPORTER: I can't hear. I'm sorry. 10:30AM

18 A. That's -- see the 48 when he checks it? Okay. 10:30AM  
19 That's the level when he opens it, that's the level, the 10:30AM  
20 next level he took at the -- at his next check, and 10:30AM  
21 that's the level over there when they closed it. 10:30AM

22 Q. (BY MS. GAINES) Okay. So we're looking at? 10:30AM

23 A. So there are your three -- three -- three 10:30AM  
24 levels over the 24-hour period. 10:30AM

25 Q. Okay. So you're showing me example from 10:30AM

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1 Outfall 006 on June 26, 2018 --

10:30AM

2 A. Yes, ma'am.

10:30AM

3 Q. -- the level at change?

10:30AM

4 A. It's hard for me to see.

10:30AM

5 Q. There is a level noted at the change.

10:30AM

6 That would be the first reading for the  
7 flow?

10:30AM

10:30AM

8 A. Yes.

10:30AM

9 Q. And then the second reading would be the  
10 nighttime water level notation for that same day,  
11 June 26, 2018. And then the third reading is from  
12 June 27th, 2018, at the level at change?

10:30AM

10:30AM

10:30AM

10:31AM

13 A. When he closed it.

10:31AM

14 Q. Okay. So those are the three readings.

10:31AM

15 And then who takes that and plugs it into  
16 the Francis Formula?

10:31AM

10:31AM

17 A. We have -- we've had several people do that.  
18 An engineer will do it for us. David Sassman does it  
19 for us now.

10:31AM

10:31AM

10:31AM

20 Q. On a daily basis, weekly basis?

10:31AM

21 A. Monthly.

10:31AM

22 Q. Monthly basis.

10:31AM

23 And -- so -- but this status sheet shows  
24 you the water levels, but doesn't say what the flow  
25 rate -- what the flow was, correct?

10:31AM

10:31AM

10:31AM

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1 A. Correct.

2 Q. Okay. So are the -- on the DMRs, the month --  
3 they're monthly DMRs, right?

4 A. Yes, ma'am.

5 Q. Does that monthly average for the flow rates  
6 or the daily average? I mean, and by "daily" I mean  
7 only when the outfall gates were open.

8 A. The DMR for stormwater outfalls requires that  
9 we come up with a daily average and a daily max. The  
10 daily average will represent an average of all the  
11 openings over the course of that month.

12 Q. Okay. So where do you have -- what documents  
13 do you have all of those -- every day that it was open  
14 the flow rates that you then use to come up with that  
15 average?

16 A. It's in the DMR folder.

17 Q. In the DMR folder but not in the actual DMR  
18 that gets submitted to TCEQ?

19 A. Yes, it is in that too.

20 Q. Okay.

21 A. But it's an electronic submittal.

22 Q. Okay. It has the daily -- the flow rates for  
23 each day when the outfall gates were open?

24 A. No. When we report on the DMR, the DMR is a  
25 discharge monitoring report that's based on a month.

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1           So let's say the outfall was open ten  
2 times during the month of October. Everyone will be  
3 listed in our documentation. What actually gets  
4 submitted to the state is just the average of all those  
5 ten openings --

6           Q.    Okay. So your --

7           A.    -- plus the maximum of all -- the highest  
8 number for all those ten openings.

9           Q.    Okay. I understand that.

10                   And so you said in your documentation.

11                   What documentation do you have that has  
12 the flow rates on the 24-hour basis?

13           A.    It's in the DMR folder.

14           Q.    Okay. Do you know if those have been provided  
15 to us?

16           A.    I don't know, to be honest, but I know DMRs I  
17 did see on one of the lists.

18           Q.    Okay. And -- but this -- what we've labeled  
19 as Exhibit 57, which we received yesterday as part of  
20 documents that were provided to TCEQ I believe in early  
21 2018, this is not a normal document that you've seen  
22 that is kept?

23                   MR. RAVEL: Objection, form.

24           A.    I'm not familiar with that document.

25           Q.    (BY MS. GAINES) Okay. On the same Exhibit 5,

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1 the outfall status sheets, if you go to the next page --

10:34AM

2 A. Yes, ma'am.

10:34AM

3 Q. -- not this one, but it would actually be the  
4 third page, so the one that's for Outfall 6, 7, 8, and  
5 9, and it starts on June 18th at the top.

10:34AM

10:34AM

10:35AM

6 A. Yes, ma'am.

10:35AM

7 Q. So if you look down -- let's look at  
8 Outfall 9, for example, for this week.

10:35AM

10:35AM

9 Is this -- I see that "Gate Status" says  
10 open for every day this week. It's from June 18th,  
11 2018, to June 24th.

10:35AM

10:35AM

10:35AM

12 Is that correct, that the gate was open  
13 every day that week?

10:35AM

10:35AM

14 A. Actually, it appears that way, yes, ma'am.

10:35AM

15 Q. And is this what you would call continuous  
16 open?

10:35AM

10:35AM

17 A. Yes.

10:35AM

18 Q. And can you tell me what "continuous open"  
19 means?

10:35AM

10:35AM

20 A. It means that we -- our intent is to leave the  
21 gate open just so we can continuously drain water from  
22 that outfall.

10:35AM

10:35AM

10:35AM

23 Q. Why would you -- what are the different  
24 circumstances which you would need to do continuous  
25 open?

10:35AM

10:35AM

10:36AM

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1 A. A lot of rain.

10:36AM

2 Q. A lot of rain?

10:36AM

3 A. Yes.

10:36AM

4 Q. And so in this situation, how does the  
5 sampling work that we were discussing earlier when a  
6 gate is continuously open?

10:36AM

10:36AM

10:36AM

7 A. In this situation we -- we continued to do our  
8 permit sampling. We wouldn't necessarily have to do the  
9 preopening sample.

10:36AM

10:36AM

10:36AM

10 Our intent is just to go ahead and sample.  
11 We have to sample again before the end -- before the end  
12 of that 24-hour period because per our permit we can't  
13 be open -- you have to sample every 24 hours that the  
14 gate is open.

10:36AM

10:36AM

10:36AM

10:36AM

10:36AM

15 Q. How do you -- how do the opera- -- is -- how  
16 do the operators determine whether there is -- there are  
17 floating plastics when it's continuously open?

10:36AM

10:36AM

10:36AM

18 A. They visually inspect them.

10:36AM

19 Q. How often?

10:36AM

20 A. Well, every time they're checked.

10:36AM

21 Q. So they would go out twice a day and visually  
22 inspect during this -- when it's continuously open?

10:37AM

10:37AM

23 A. I would -- I would say that based on this --  
24 on this, what we're looking at, I would say yes.

10:37AM

10:37AM

25 Q. I'm trying to read some of these notations. I

10:37AM

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1 know it's difficult on this one.

10:37AM

2 On the June 18th under Outfall 009 at the  
3 bottom --

10:37AM

10:37AM

4 A. Yes, ma'am.

10:37AM

5 Q. -- there's under "Floating Debris" it looks to  
6 me like it's a "Y," that first -- the first box there  
7 (indicating), in the morning on June 18th.

10:37AM

10:37AM

10:38AM

8 A. Yes.

10:38AM

9 Q. So what happens when there's floating debris  
10 noted like that?

10:38AM

10:38AM

11 A. Okay. There's a note down there that actually  
12 says what happened.

10:38AM

10:38AM

13 Q. Okay. Can you read that note?

10:38AM

14 A. "Powder at gate, closed" -- and that last word  
15 is hard -- hard for me to check.

10:38AM

10:38AM

16 Q. Okay.

10:38AM

17 A. But "Powder at gate." I think it says "will  
18 close" and something. I would presume "clean."

10:38AM

10:38AM

19 Q. Okay. Do you know -- I'm not talking about  
20 this week in particular, but why, for example, 009 would  
21 be open every day, but some of the other outfalls aren't  
22 open every day?

10:38AM

10:38AM

10:39AM

23 A. Yes, I know why.

10:39AM

24 Q. Why is that?

10:39AM

25 A. Nine leaks.

10:39AM

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1 Q. What do you mean by "leaks"?

10:39AM

2 A. The gate leaks.

10:39AM

3 Q. So why is it open all the -- why does that  
4 mean it's open more often?

10:39AM

10:39AM

5 A. Per the regulations, if a gate is leaking,  
6 it's considered open.

10:39AM

10:39AM

7 Q. How long has it been leaking?

10:39AM

8 A. A while. A while. And when I say "leaking,"  
9 I mean it can be just a cup of water. It's considered  
10 leaking according to the state.

10:39AM

10:39AM

10:39AM

11 Q. So when you say "a while," a month? A year?

10:39AM

12 A. I forgot when Outfall 9 was constructed.

10:39AM

13 Q. It's been leaking since it was constructed?

10:39AM

14 A. We've had issues with it leaking, yes, ma'am,  
15 and we've gone in and attempted to fix it, and it's --  
16 it's -- it will work for a while and then leak again.

10:40AM

10:40AM

10:40AM

17 Q. Where does it actually leak through?

10:40AM

18 A. You would have to see it around the seal area.  
19 It's towards the top.

10:40AM

10:40AM

20 Q. Okay. I'm going to see if we have a picture  
21 of 009.

10:40AM

10:40AM

22 Okay. So back on Tab T, which we admitted  
23 as Exhibit 56, there's a Page 009.

10:40AM

10:40AM

24 Is this -- do one of these pictures show  
25 where it has often leaked?

10:40AM

10:40AM



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1 A. No. 10:40AM  
2 Q. No? Where is it? 10:40AM  
3 A. It's on the downstream side of this. 10:40AM  
4 Q. Downstream side of the fine mesh screens? 10:40AM  
5 A. Yes. 10:41AM  
6 Q. It -- there's a physical gate or -- 10:41AM  
7 A. Yes. 10:41AM  
8 Q. Okay. And it leaks you said at the -- where  
9 does it leak? 10:41AM  
10 A. Around the seal. 10:41AM  
11 Q. Around the seal? 10:41AM  
12 A. Yes. 10:41AM  
13 Q. Okay. So how do you -- how -- someone -- how  
14 does someone determine that it is leaking? 10:41AM  
15 A. You can see it. 10:41AM  
16 Q. You can see the water flowing through? 10:41AM  
17 A. Yes. Yes. 10:41AM  
18 Q. Okay. So that's why Outfall 009 has been  
19 listed as opening more often than many of the other  
20 outfalls? 10:41AM  
21 A. Well, I -- I don't know off the top of my head  
22 in this particular case that you're referring to if we  
23 had had a tremendous amount of rain or not. 10:41AM  
24 It appears -- I would -- if you're asking  
25 me to make an assumption, I would say yes, we were 10:41AM

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1 having a lot of rain because all the other outfalls  
2 appear to be open quite a lot during that week.

3 Q. Okay. Do you have logs of when 009 was  
4 leaking and when it was fixed?

5 A. I don't think so.

6 Q. How does it get fixed? How do you fix the  
7 leaking?

8 A. It may be referenced on here somewhere on  
9 one -- some of the log sheets that it was leaking.

10 Q. Okay. But you don't have other documentation  
11 or work orders to fix the gate, the seals?

12 A. I would -- I'm trying to recall. I -- I would  
13 presume -- I don't write the work orders, so I don't  
14 know off the top of my head, but --

15 Q. Uh-huh.

16 A. -- I do maintenance is aware of this.

17 Q. Could any floating plastics flow through the  
18 gate while it's leaking?

19 A. I don't think so. I've never seen it.

20 Q. You've never seen it, but you know for sure  
21 that they don't --

22 A. No, I don't.

23 Q. -- flow through it?

24 A. No, I don't.

25 Q. Have you heard of anyone seeing plastics

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1 floating through the gate at 009?

10:42AM

2 A. No, I haven't.

10:42AM

3 Q. Okay. Let's look at the same outfall status  
4 sheet that we were looking at under Exhibit 5 for 008 on  
5 this same week starting on June 18th. So this gate was  
6 open starting on June 19th.

10:43AM

10:43AM

10:43AM

10:43AM

7 Does that look right according to the  
8 logs?

10:43AM

10:43AM

9 A. June 19th or 18th? 18th. It appears the  
10 18th.

10:43AM

10:43AM

11 Q. And that's because you see down below under  
12 the permit the time of change?

10:43AM

10:43AM

13 A. Yes.

10:43AM

14 Q. Okay. So that gate status above is not -- is  
15 only at the time that it was checked. It doesn't mean  
16 that later in that day it wasn't opened?

10:43AM

10:43AM

10:44AM

17 A. Correct.

10:44AM

18 Q. Okay. So you look down at the change, and  
19 then it's opened on that day.

10:44AM

10:44AM

20 And then the time of change, if it's  
21 continuously open, it will say C-O-N-T, is that right?

10:44AM

10:44AM

22 A. Yes, ma'am.

10:44AM

23 Q. Until there's a final -- in this case, on  
24 June 22nd it has a time, and so that's how you know when  
25 it's closed?

10:44AM

10:44AM

10:44AM

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1 A. Yes. 10:44AM

2 Q. Okay. So how are the operators -- when they 10:44AM  
3 go out and it's continuously opening, how long are they 10:44AM  
4 stopping at each external outfall? Do you know? 10:44AM

5 A. No. 10:45AM

6 Q. So you -- there's no -- there's no protocol 10:45AM  
7 that they have to stand on outfall and look for a 10:45AM  
8 certain period of time when it's continuously open? 10:45AM

9 A. No, ma'am. 10:45AM

10 Q. Have you seen outfalls when they're 10:45AM  
11 continuously open? 10:45AM

12 A. Yes. 10:45AM

13 Q. So have you seen 006, for example, when it's 10:45AM  
14 continuously open? 10:45AM

15 A. Yes. 10:45AM

16 Q. How fast can the water be flowing? 10:45AM

17 A. I mean, "fast" is a relative term. 10:45AM

18 Q. When it is -- let's see. We were looking at 10:45AM  
19 this -- these review of DMR reports and it ranges -- 10:45AM  
20 let's see, one of the -- Outfall 8 on December 9th was 10:45AM  
21 135 million gallons per day. 10:45AM

22 That's, I presume, going to be moving 10:45AM  
23 pretty quickly through an outfall gate? 10:45AM

24 A. I'm just trying to fathom that. I -- I 10:45AM  
25 don't -- I don't look at it in gallons per day. 10:46AM

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1 Actually, for me, it's gallons per minute.

10:46AM

2 Q. Gallons per minute?

10:46AM

3 A. I don't have my calculator in front of me.

10:46AM

4 Q. Okay. Do you happen to know how fast --

10:46AM

5 what's the upper range that the water gets to in gallons  
6 per minute?

10:46AM

10:46AM

7 A. Not off the top of my head, no.

10:46AM

8 Q. Okay. We can -- all right.

10:46AM

9 MR. RAVEL: Okay. There's 24 hours in a  
10 day, right?

10:46AM

10:46AM

11 A. Just divide -- divide --

10:46AM

12 MR. RAVEL: It's 135 million.

10:46AM

13 Fortunately --

10:46AM

14 Are we off the record here?

10:46AM

15 THE REPORTER: Off the record?

10:46AM

16 MS. GAINES: Sure.

10:46AM

17 (Recess from 10:46 a.m. to 10:47 a.m.)

10:46AM

18 Q. (BY MS. GAINES) We're back on.

10:47AM

19 So what did we determine 135 million  
20 gallons per day is in gallons per minute?

10:47AM

10:47AM

21 A. I did not see him do that. I assume it's  
22 right.

10:47AM

10:47AM

23 Q. Okay. We just did some --

10:47AM

24 A. All right.

10:47AM

25 Q. -- very quick calculations?

10:47AM

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1 MR. RAVEL: Let's go through it again. 10:47AM

2 MS. GAINES: Okay. 10:47AM

3 MS. JOHNSON: Let him do it. 10:47AM

4 A. I don't know how to use this. I wish I had my 10:47AM  
5 old HP here. 10:47AM

6 Q. (BY MS. GAINES) Okay. You tell him what 10:47AM  
7 numbers to put in. 135 million -- 10:47AM

8 MR. RAVEL: Here's 135 million. Then use 10:47AM  
9 it like a fifth grade calculator. 10:47AM

10 Q. (BY MS. GAINES) Divided by -- 10:47AM

11 A. 1,440. Yes, he did it correctly. 10:47AM

12 Q. Okay. So what is the number? 10:47AM

13 A. 93,750 gallons per minute. 10:47AM

14 Q. Gallons per minute? 10:47AM

15 A. Yes. 10:47AM

16 Q. Okay. Is that pretty fast? 10:47AM

17 A. That's fast. 10:48AM

18 Q. Would it be hard to see anything floating in 10:48AM  
19 that water if that goes past at that rate? 10:48AM

20 A. I don't know. 10:48AM

21 Q. Would you be able to count pellets as they 10:48AM  
22 went past if they were floating in that water at that 10:48AM  
23 rate? 10:48AM

24 A. I don't think so. 10:48AM

25 Q. What about at a rate half that amount? 10:48AM

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1 A. I don't think so.

10:48AM

2 Q. Okay. Do you know if the operators are  
3 trained in how to count pellets as they're flowing past  
4 water -- when the gates are open and the water is  
5 flowing?

10:48AM

10:48AM

10:48AM

10:48AM

6 A. I don't -- don't know.

10:48AM

7 Q. You don't -- have you ever trained  
8 operators --

10:48AM

10:48AM

9 A. No.

10:48AM

10 Q. -- in how to do that?

10:48AM

11 A. No, I have not.

10:48AM

12 Q. Do you have any reason to believe that they  
13 are trained in that?

10:48AM

10:48AM

14 A. You're asking me to speculate. I -- I don't  
15 know.

10:48AM

10:49AM

16 Q. Are you in charge of the operators -- the  
17 field operators?

10:49AM

10:49AM

18 A. Yes.

10:49AM

19 Q. Okay. Do you train them?

10:49AM

20 A. On pellet counting?

10:49AM

21 Q. In everything. In everything.

10:49AM

22 A. Do I specifically train them? No, ma'am.

10:49AM

23 Q. Who does?

10:49AM

24 A. Well, there's a training program that we  
25 utilize here, which we're in right now in the --

10:49AM

10:49AM

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1 Q. We're in the training center? 10:49AM

2 A. -- in the training center. But in this 10:49AM  
3 particular case a lot of the training occurs on the job. 10:49AM

4 Q. Okay. But you oversee the field operators, is 10:49AM  
5 that correct? 10:49AM

6 A. Yes, ma'am. I have management stewardship 10:49AM  
7 over that area. 10:49AM

8 Q. Okay. Do you manage the content of what 10:49AM  
9 they're trained when they come to this training? 10:49AM

10 A. As far as here, no. But as far as the content 10:49AM  
11 within the wastewater unit, yes, ma'am. 10:49AM

12 Q. Okay. 10:49AM

13 A. I do know what they're trained on, yes. 10:50AM

14 Q. Okay. And I want to be clear that I 10:50AM  
15 understand what you said. 10:50AM

16 When gates are continuously open, you -- 10:50AM  
17 your testimony is you don't know how long an operator is 10:50AM  
18 going and checking each outfall gate? 10:50AM

19 A. Correct. 10:50AM

20 Q. It could be one minute? 10:50AM

21 A. I don't know. 10:50AM

22 Q. It could be -- you don't know? 10:50AM

23 A. I don't know. 10:50AM

24 Q. There's no set protocol on that? 10:50AM

25 A. No. 10:50AM



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1 Q. Okay. And they do have to go around and check  
2 12 gates, is that correct? 12 stormwater gates?

3 A. No. Our guys don't have responsibility for  
4 10, 11, or 13.

5 Q. Okay. So they do all the other stormwater  
6 gates other than 10, 11, and 13?

7 A. Yes, ma'am.

8 Q. Okay. And there are duties at the wastewater  
9 treatment plant?

10 A. Correct.

11 Q. Okay. What are the names of your -- of the  
12 current field operators in your department?

13 A. You have that information.

14 Q. We have that? Okay.

15 A. Yes.

16 MS. GAINES: Did you see that?

17 MS. JOHNSON: Somewhere, yeah.

18 Q. (BY MS. GAINES) Okay. We have and their  
19 schedules?

20 A. You have the schedule that was requested.

21 Q. Okay. Okay.

22 MS. JOHNSON: Here, I'll give it to you.  
23 There you go.

24 MS. GAINES: Thank you.

25 Q. (BY MS. GAINES) Let's look at the big binder

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1 again at Tab AN. This is the "Outfall Integrity  
2 Checklist," which was already admitted as Exhibit No. 6.

3 Are you familiar with this form?

4 A. Yes, ma'am.

5 Q. How long have you been using this form?

6 A. Oh, God. Didn't put a date on it. Let me  
7 think. A year.

8 Q. A year?

9 A. I think -- I think so. I can't remember  
10 exactly.

11 Q. Why did you start using this form?

12 A. We felt we needed oversight for the outfalls.  
13 We wanted to make the supervisors -- we need another set  
14 of eyes to make sure these items are being checked.

15 Q. When you say "another set of eyes," you mean  
16 other than the field operators?

17 A. Myself --

18 Q. So --

19 A. -- my coworkers, field operators. We need  
20 everybody out checking to make sure our control  
21 structures are in place and performing and operating  
22 properly.

23 Q. Who fills out this outfall integrity?

24 A. The shift supervisor.

25 Q. The shift supervisor.

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1                   So not the field operators that do the  
2 status sheets?

3           A.     Correct.

4           Q.     Okay.  And is it a weekly checklist?

5           A.     I don't remember how I set this up.  Yes, I  
6 believe it's every Wednesday.

7           Q.     Okay.  We have three examples, if you want to  
8 look at them, and they are from June 27th, June 20th,  
9 and June 13th.  So those would appear to be a week  
10 apart.

11          A.     Yes.

12          Q.     Or June 13th.

13                   So you created this checklist?

14          A.     I was one of one person, yes.

15          Q.     With who else?

16          A.     Chad Lee.

17          Q.     Okay.  And let's look at the June 20th, so the  
18 second on the back.  You're already looking at that.

19          A.     Yes, ma'am.

20          Q.     So this corresponds to the same -- some of the  
21 same dates, the same week we were looking at on the  
22 outfall status sheet?

23          A.     Yes, ma'am.

24          Q.     Can you read on Outfall 006 what it says under  
25 the "Fine Mesh Structure"?

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1 A. "Will wait for level to go down. All  
2 informed. 1 - missing" something "A side."

3 Q. Yeah. I read it as "1 - missing lower  
4 A side."

5 Does that mean anything to you?

6 A. Yes.

7 Q. What does that mean?

8 A. There was a -- there was a screen on --  
9 A side. I'm not sure what he means by "A side," but  
10 there was a screen that was missing on the outfall  
11 structure.

12 Q. And then under "Fine Mesh At Fence," it says,  
13 "Need to be clean. To (sic) much H2O at this time,  
14 raining" --

15 A. Yes.

16 Q. -- possibly?

17 A. Yes.

18 Q. So if there are problems noted with these  
19 controls like the ones that are noted on this log sheet,  
20 they sometimes can't fix them right away, is that right?

21 A. Well, it's not necessarily a problem, but in  
22 this case, yes, we have to -- have to get in there and  
23 clean it when the opportunity presents itself, yes,  
24 ma'am.

25 Q. And can you clean the screens when the water

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1 is flowing through it?

10:55AM

2 A. No, ma'am, it's not safe.

10:55AM

3 Q. So you have to wait until the gate is closed  
4 to clean them?

10:55AM

10:55AM

5 A. Well, a gate is closed, there's no flowing  
6 water.

10:55AM

10:55AM

7 Q. Okay. There is one more -- or who does  
8 this -- when this is filled out, who does this checklist  
9 go to?

10:55AM

10:56AM

10:56AM

10 A. We have -- you'll see here it says, "File in  
11 supervisors office."

10:56AM

10:56AM

12 Q. Is that you?

10:56AM

13 A. No.

10:56AM

14 Q. Who is the supervisor?

10:56AM

15 A. Shift supervisor's office.

10:56AM

16 Q. Shift supervisor.

10:56AM

17 And then who -- what happens with it?

10:56AM

18 A. We -- I review it. Chad reviews it. We'll  
19 check on -- check up on them every night on -- on  
20 occasion.

10:56AM

10:56AM

10:56AM

21 Q. Okay.

10:56AM

22 A. Not every day or every week, but they are  
23 checked up on.

10:56AM

10:56AM

24 Q. Okay. In your experience in the last year,  
25 how often do the screens need to be replaced?

10:56AM

10:56AM

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1 A. Not very often. We have changed them 10:56AM  
2 periodically. We -- we did change 006 within the past 10:56AM  
3 few months, the one at the fence. 10:56AM

4 Q. And by "change," what had happened to it? 10:56AM

5 A. Actually, nothing. We felt we needed to 10:57AM  
6 change it. We want to get on a more routine PM for all 10:57AM  
7 the outfall screenings. 10:57AM

8 Q. Can you tell me what "PM" is? 10:57AM

9 A. Preventive maintenance. 10:57AM

10 Q. What is -- is there a certain amount of time 10:57AM  
11 or somewhere where it lists how often you're going to be 10:57AM  
12 changing those screens? 10:57AM

13 A. We haven't come up with that frequency yet for 10:57AM  
14 these screens. 10:57AM

15 Q. Okay. But your intent is to do that? 10:57AM

16 A. Yes. 10:57AM

17 Q. And why is that? 10:57AM

18 A. We just feel that would be advantageous for us 10:57AM  
19 as part of our continuous improvement to have gates that 10:57AM  
20 we can just rotate, and that was our plan for this one. 10:57AM

21 Q. Have you ever had any screens break off or 10:57AM  
22 have big holes in them? 10:57AM

23 A. I have seen some screens that had been -- 10:57AM  
24 pieces that had been bent. 10:57AM

25 Q. Which outfalls were those at? 10:58AM

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1 A. At 6.

10:58AM

2 Q. Okay.

10:58AM

3 A. There was a little corner about that big  
4 (indicating) that was kind of bent a little bit.

10:58AM

10:58AM

5 Q. And when you say "about that big," since  
6 that's not going to get recorded --

10:58AM

10:58AM

7 A. I'm sorry (indicating).

10:58AM

8 Q. -- what size -- can you compare it to  
9 something?

10:58AM

10:58AM

10 A. Couple of handful sizes.

10:58AM

11 Q. Okay. And you -- we were discussing earlier  
12 you've seen that the -- some of the screens get plugged?

10:58AM

10:58AM

13 A. Yes, with debris.

10:58AM

14 Q. And what happens to the water when the screens  
15 are plugged?

10:58AM

10:58AM

16 A. It can back up.

10:58AM

17 Q. It can back up.

10:58AM

18 Does it then overflow those screens?

10:58AM

19 A. I have seen it overflow.

10:58AM

20 Q. At 006?

10:58AM

21 A. Yes.

10:58AM

22 Q. And any other gates?

10:58AM

23 A. I can't recall any other ones.

10:58AM

24 Q. How often in the past six months have you seen  
25 that at 006?

10:58AM

10:58AM

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1 A. Within the past six months. I can't recall  
2 seeing it within the past six months.

3 Q. Have you heard of your operators seeing it?

4 A. Yes. Yes.

5 Q. How often have they reported to you that  
6 they've seen it?

7 A. I know once. I would say once within the last  
8 six months.

9 Q. At least -- so at least once that you remember  
10 within the last --

11 A. Within the last six months, yes, ma'am.

12 Q. How often do you go to the other external  
13 outfall gates other than 006?

14 A. 8 and 9 fairly routinely. I -- once every  
15 couple of weeks.

16 Q. Once every couple of weeks you go to 8 and 9?

17 A. Yes.

18 Q. Okay. And the other gates you don't go to  
19 through --

20 A. I'll drive by.

21 Q. Okay. Let's go to one more checklist, which  
22 is Tab V in this first smaller binder.

23 A. Oh, V in the small one?

24 Q. Yeah, in the small one, this binder.

25 Actually, before we admit this one, the



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1 Outfall Integrity Checklist that we were just looking  
2 at before you put that into place, the weekly Outfall  
3 Integrity Checklist -- yeah.

4 A. Yes, ma'am.

5 Q. Prior to creating this checklist, you didn't  
6 have any system -- any regular system for documenting  
7 whether the outfall gates needed maintenance?

8 A. No.

9 Q. Or whether they were plugged or needed to be  
10 cleaned?

11 A. We have guys out there. I would check.  
12 Others would check. Operators would check. So as far  
13 as a written document, no.

14 Q. Okay. Now we can go to Tab V.

15 (Exhibit 58 marked)

16 MS. GAINES: This is going to be  
17 Exhibit 58.

18 Q. (BY MS. GAINES) Are you familiar with this?

19 A. Yes, ma'am.

20 Q. Okay. So this is labeled "Outfall 12  
21 Operation Checklist."

22 A. Yes.

23 Q. Is this a different checklist that only  
24 applies to Outfall 12?

25 A. I mean, it's specific to Outfall 12.

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1 Q. So this -- I guess what I'm asking is, is this 11:02AM  
2 checklist used -- a form of this checklist at all the 11:02AM  
3 other outfalls as well? 11:02AM

4 A. Yes. 11:02AM

5 Q. Or just Outfall 12? 11:02AM

6 A. No. All. 11:02AM

7 Q. All. 11:02AM

8 So in addition to the status sheets -- the 11:02AM  
9 outfall status sheets, this -- there's a checklist like 11:02AM  
10 this for each stormwater outfall? 11:02AM

11 A. Yes. 11:02AM

12 Q. Okay. And who fills this out? 11:02AM

13 A. Well, the originator is a control room 11:02AM  
14 operator (indicating). 11:02AM

15 Do you see it on the bottom there, the 11:02AM  
16 flow? 11:02AM

17 Q. The control room operator. 11:02AM

18 So that's not one of the field operators? 11:02AM

19 A. Well, control room operator or one of the 11:02AM  
20 field operators can fill this out. 11:03AM

21 Q. Is this based on someone going out to the 11:03AM  
22 external outfall? 11:03AM

23 A. Yes. 11:03AM

24 Q. Okay. 11:03AM

25 A. If you notice, a lot of the data on here is 11:03AM

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1 the same data on the other log sheet.

11:03AM

2 Q. So when -- is it the same operator? When they  
3 go out there, they fill out both?

11:03AM

4 A. They're supposed to.

11:03AM

5 Q. What do you mean "they're supposed to"?

11:03AM

6 A. Well, I mean, it's -- it's to take the data  
7 from the -- from the status log sheet and put it on this  
8 format.

11:03AM

9 Q. Do they --

11:03AM

10 A. Actually, I don't use this sheet that much. I  
11 don't look at it. I look at it very rarely.

11:03AM

12 Q. Does it get filled out every day?

11:03AM

13 A. I really don't look at it that much. I have  
14 seen it. I have looked at it occasionally, but I  
15 don't -- it's not something I base -- it's not something  
16 I rely on for reporting purposes.

11:03AM

17 Q. Do you know if it still gets filled out?

11:03AM

18 A. Yes. Oh, yes, it gets filled out.

11:03AM

19 Q. At -- for each outfall?

11:03AM

20 A. Yes.

11:03AM

21 Q. On a daily basis?

11:03AM

22 A. Yes. Yes.

11:04AM

23 Q. Okay. But you don't know if it's the same  
24 person who fills out the outfall status sheet who also  
25 fills out this outfall operation checklist?

11:04AM

11:04AM

11:04AM

11:04AM

11:04AM

11:04AM

11:04AM

11:04AM

11:04AM

11:04AM

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1 A. No, I don't. That's not something I really  
2 pay attention to.

3 Q. Okay. So you said this on the rout- -- the  
4 routing on the bottom and goes from the central control  
5 room operator to the shift supervisor to the utility  
6 water area supervisor?

7 A. Yes, ma'am.

8 Q. So that's who ends up having these files?

9 A. Actually, we just maintain the file in the  
10 control room.

11 Q. In the control room. Okay.

12 Why do you have these two different forms  
13 to fill out?

14 A. It's a little cleaner. It enables us to glean  
15 information on there a little easier. And they're  
16 supposed to go back and put all the data on here from  
17 the openings and we refer to it sometimes. We'll check  
18 rain. You'll notice the rain is on there. There's a  
19 little more data on here. Weather phase in effect,  
20 issues like that. We'll refer to it from time to time.

21 Q. Do you know -- are you confident that the  
22 person who's filling this out is actually going and  
23 independently reviewing these or are they just using the  
24 data on the outfall status sheet?

25 A. No. I mean, a lot of the data on this sheet

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1 comes from the outfall status log sheet. I'm not  
2 sure --

3 Q. So it's a summary --

4 A. I'm not sure of your question.

5 Q. Sure. Sure. I can ask it again.

6 Whoever is filling out this form, which  
7 you're saying is the control room operator --

8 A. Yes.

9 Q. -- are they just --

10 A. It could be the field operator at times too.

11 Q. Okay. So you're not sure who fills it out?

12 A. No. I -- I actually -- you know, on this  
13 document, I rarely if ever look at it.

14 Q. I understand you rarely look at it. I'm  
15 trying to understand for the person who fills it out,  
16 are they going and looking at whether there is floating  
17 debris at the outfall themselves or are they reporting  
18 what was on the status sheet?

19 A. I don't know.

20 Q. Okay. So there's a couple of notations on  
21 here. One under Question 6 it says, "Gate Leaking."

22 Is that similar to what we were talking  
23 about before at 009?

24 A. Yes, ma'am.

25 Q. So has Outfall 12 also had problems with gate

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1 leaking?

11:07AM

2 A. Yes, ma'am, it has.

11:07AM

3 Q. For how long?

11:07AM

4 A. Since it was built.

11:07AM

5 Q. When was that?

11:07AM

6 A. Oh, God. 12 has been around I think a couple  
7 of years.

11:07AM

11:07AM

8 Q. Okay. It's been regularly leaking at all --  
9 monthly? How often?

11:07AM

11:07AM

10 A. It -- it leaks. The same type of situation  
11 around the seal (indicating).

11:07AM

11:07AM

12 Q. Okay. And then down under 12, it says  
13 "Continuous open"?

11:07AM

11:07AM

14 A. Yes.

11:07AM

15 Q. So that would be similar to what we were  
16 talking about earlier if it's open for more than  
17 24 hours --

11:07AM

11:07AM

18 A. Yes, ma'am.

11:07AM

19 Q. -- they'll note continuous open?

11:07AM

20 A. Yes. Yes, ma'am.

11:07AM

21 Q. Okay. Back at the top when it says, How much  
22 rain is in the rain gauge, where -- what rain gauge is  
23 that?

11:07AM

11:08AM

24 A. We have a rain gauge within the unit that --  
25 that we monitor.

11:08AM

11:08AM

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1 Q. On a daily basis?

11:08AM

2 A. Once a shift.

11:08AM

3 Q. Once a shift.

11:08AM

4 Do you have records of the amount of  
5 rain --

11:08AM

11:08AM

6 A. Yes.

11:08AM

7 Q. -- in that rain gauge?

11:08AM

8 A. Yes.

11:08AM

9 Q. Do you have those records or who -- where  
10 were -- where are those?

11:08AM

11:08AM

11 A. We have those records.

11:08AM

12 Q. Do you know what they're called?

11:08AM

13 A. Stormwater outfall -- oh, God. I don't  
14 remember off the top of my head what the actual name is,  
15 but, yes, we have the records.

11:08AM

11:08AM

16 Q. Okay. Under No. 5 it says, "Weather Phase  
17 currently in effect."

11:08AM

11:08AM

18 And on this sheet it says, "None"?

11:08AM

19 A. Correct.

11:08AM

20 Q. And then there's four boxes. I see "I, II,  
21 III," and "IV."

11:08AM

11:08AM

22 Can you tell me what is the definition of  
23 those different weather phases?

11:08AM

11:08AM

24 A. I -- I don't know off the top of my head.

11:08AM

25 Q. You have that in a procedure somewhere?

11:09AM

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1 A. Yes, ma'am, we do.

11:09AM

2 Q. Do you know which procedure that would be in?

11:09AM

3 A. No. It's a safety procedure.

11:09AM

4 Q. Okay. Is Weather Phase I the lowest?

11:09AM

5 A. Yes.

11:09AM

6 Q. Would it have to be raining, do you know, to  
7 be in Weather Phase I?

11:09AM

11:09AM

8 A. I do know that the weather phases have to do  
9 with lightning too.

11:09AM

11:09AM

10 Q. Okay. Do you know if those are recorded  
11 somewhere when there are weather phases -- weather  
12 phases?

11:09AM

11:09AM

11:09AM

13 A. That, I don't know.

11:09AM

14 Q. Okay. Other than on these sheets apparently?

11:09AM

15 A. The weather phase is actually broadcast by the  
16 safety department. So we just -- it's broadcast over  
17 the intercom system.

11:09AM

11:09AM

11:09AM

18 Q. Okay. And are there certain weather phases  
19 that mean that your operators can't go out to the  
20 outfalls?

11:09AM

11:10AM

11:10AM

21 A. Actually, no.

11:10AM

22 Q. So they can go out under any weather phase?

11:10AM

23 A. Per procedure, yes.

11:10AM

24 Q. What about in practice?

11:10AM

25 A. In practice, no.

11:10AM



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1 Q. So under -- which level of weather phase in 11:10AM  
2 practice do your field operators not go out to the 11:10AM  
3 outfall? 11:10AM

4 A. If it's a severe weather phase, you can go out 11:10AM  
5 if you're accompanied, two people. But I would -- I 11:10AM  
6 would leave it to their discretion. I -- I'm not going 11:10AM  
7 to ask anybody to go out is in severe weather phase. 11:10AM  
8 It's -- I -- I am not going to ask anybody to do that. 11:10AM

9 Q. In severe phase, does that correspond to one 11:11AM  
10 of these numbers? 11:11AM

11 A. Yes. 11:11AM

12 Q. Which one? 11:11AM

13 A. I don't know off the top of my head. 11:11AM

14 Q. Okay. But one of them is called severe 11:11AM  
15 weather phase? 11:11AM

16 A. I don't think it's actually called that. It's 11:11AM  
17 called Weather Phase III or IV. 11:11AM

18 Q. Okay. So you're not sure? 11:11AM

19 A. I'm not sure. 11:11AM

20 Q. Okay. In your experience, do your field 11:11AM  
21 operators go out under what you're calling a severe 11:11AM  
22 weather phase? 11:11AM

23 A. No. 11:11AM

24 Q. So they would wait until it's over or when 11:11AM  
25 would they go out? 11:11AM

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1 A. I don't know. I don't know which weather 11:11AM  
2 phase it is when you can go back out again. You know 11:11AM  
3 what I mean, I or II. 11:11AM

4 Q. Uh-huh. When -- who instructs your field 11:11AM  
5 operators whether to go out or not during a weather 11:12AM  
6 phase? 11:12AM

7 A. It would have to be at the discretion of the 11:12AM  
8 supervisor. 11:12AM

9 Q. So they're making that decision based on the 11:12AM  
10 conditions and the safety? 11:12AM

11 A. There's procedures in place for the weather 11:12AM  
12 phase. Certain weather phases you can still go out and 11:12AM  
13 do your job. Certain weather phases it is advisable to 11:12AM  
14 shelter in place. 11:12AM

15 Q. Okay. And you're saying that that happens at 11:12AM  
16 the discretion of the supervisor and -- 11:12AM

17 A. No. 11:12AM

18 Q. -- you're not -- 11:12AM

19 A. No. I'm saying it's broadcast over the 11:12AM  
20 intercom system. There's a procedure in place which 11:12AM  
21 specifies what each weather phase is and what you can 11:12AM  
22 and cannot do outdoors in those weather phases. 11:12AM

23 Q. And then you said in practice sometimes it's 11:12AM  
24 different than what the procedure says? 11:12AM

25 A. No. What I'm saying is that the procedure 11:12AM

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1 says you could go out in a severe weather phase. 11:12AM

2 However, I would not nor would I ask a supervisor to 11:13AM  
3 instruct an operator to go out in a severe weather 11:13AM  
4 phase. 11:13AM

5 Q. So just because a procedure says you can go 11:13AM  
6 out doesn't mean the field operators do go out? 11:13AM

7 A. Correct. 11:13AM

8 Q. Okay. So it's your understanding that this 11:13AM  
9 outfall operation checklist, which we've labeled 11:13AM  
10 Exhibit 58, there's one of these for every out- -- 11:13AM  
11 outfall? 11:13AM

12 A. Yes, ma'am. 11:13AM

13 Q. Let's go to in the big binder. 11:13AM

14 A. That's this one? 11:14AM

15 Q. Yes, the big one. Yeah. Tab C. 11:14AM

16 MR. RAVEL: Does he have his own one with 11:14AM  
17 the big one or no? 11:14AM

18 MS. GAINES: No. 11:14AM

19 MR. RAVEL: I'm familiar with this. 11:14AM

20 Q. (BY MS. GAINES) Okay. So this was already 11:14AM  
21 admitted as Exhibit 3. 11:14AM

22 Are you familiar with this? It's just an 11:15AM  
23 excerpt of a presentation that was provided to us. 11:15AM

24 A. Yes, ma'am. 11:15AM

25 Q. Okay. Did you help create this presentation? 11:15AM

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1 A. I'm not sure whose presentation this -- this  
2 was.

3 Q. I believe we were told by Mr. Brogger that  
4 this was a presentation for TCEQ about the definition of  
5 trace amounts.

6 A. Yeah, I remember.

7 Q. Were you at that presentation with TCEQ?

8 A. Yes.

9 Q. Did you help present on this definition?

10 A. Yes.

11 Q. Did you help put together these calculations?

12 A. Yes.

13 Q. Are you familiar with -- let's look at the  
14 trace -- the page that says "'Trace' Determination -  
15 Stormwater Outfall 006."

16 A. Yes.

17 Q. I believe we had some questions last time  
18 about the weight that was used for -- under the  
19 "Calculation Basis" at the bottom that Mr. Brogger  
20 wasn't familiar with.

21 Do you know how that -- it says,  
22 "One pellet of polymer is about 26 milligrams per  
23 liter"?

24 A. Yes, ma'am.

25 Q. Do you know who came up with that?

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1 A. Yes. 11:16AM

2 Q. Who was that? 11:16AM

3 A. Actually, it was a lab that gave me that  
4 number. 11:16AM

5 Q. What lab was that? 11:16AM

6 A. Our lab. 11:16AM

7 Q. Your lab. 11:16AM

8 And what was that based on? 11:16AM

9 A. It was based on Grade E924 HDPE polyethylene. 11:16AM

10 Q. So is that -- that is the weight of one  
11 pellet? 11:16AM

12 A. In 1 liter of water, yes. 11:16AM

13 Q. In 1 liter of water? 11:16AM

14 A. Yes. 11:16AM

15 Q. So it's the weight? 11:16AM

16 A. Now, milligram per liter actually is  
17 concentration. 11:16AM

18 Q. Concentration. Okay. 11:16AM

19 So it's the concentration of one HDPE  
20 pellet in a liter of water? 11:17AM

21 A. Yes, ma'am. 11:17AM

22 Q. Okay. And that's then what was used to come  
23 up with the total number of pellets per day that is  
24 Formosa's definition of trace amounts from this -- from  
25 Outfall 006? 11:17AM

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1 A. That was part of the -- the data used to come  
2 up with that number.

3 Q. The -- one of the other calculations basis  
4 says, "There are approximately 22,000 pellets per  
5 pound"?

6 A. Yes, ma'am.

7 Q. Did you come up with that?

8 A. That number was provided to me.

9 Q. By who?

10 A. The lab.

11 Q. And do you know which type of pellets were  
12 used for that?

13 A. No, not on that number. No, ma'am.

14 Q. Do the pellets vary significantly, do you  
15 know, between units and their weight?

16 A. Do I know? No, I don't know.

17 Q. Are they different shapes and sizes?

18 A. There are variations in shapes, yes.

19 Q. So do you know if that average was based on a  
20 mix of different pellets? Did you weigh different  
21 pellets?

22 A. I don't know.

23 Q. Okay. Can you walk me through -- so this --  
24 the 9,626 pellets per day from this presentation for  
25 Stormwater Outfall 006 is based on a certain flow rate,

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1 is that correct?

11:19AM

2 A. Yes, ma'am.

11:19AM

3 Q. And what is that flow rate?

11:19AM

4 A. You see here we took the average flow -- daily  
5 average flow from Outfall 6 for that period of time, a  
6 million gallons per day.

11:19AM

11:19AM

11:19AM

7 Q. The 6.5 million gallons per day?

11:19AM

8 A. No, the 119.

11:19AM

9 Q. Oh, the 119. Okay.

11:19AM

10 So if the average -- if the daily flow  
11 from Outfall 006 was twice that in a certain day, then  
12 the trace definition would be twice the amount listed  
13 here?

11:19AM

11:19AM

11:19AM

11:19AM

14 A. Yes. It -- I'm trying to remember the  
15 calculation, but I don't -- I'm trying to remember if  
16 it's linear. I would presume it's linear. So yes. To  
17 answer your question, yes.

11:19AM

11:19AM

11:19AM

11:19AM

18 Q. Okay. So do you happen to know the maximum  
19 daily flow from 006?

11:19AM

11:20AM

20 A. Not off the top of my head.

11:20AM

21 Q. Do you know if it -- does it get over 200  
22 million gallons per day at times?

11:20AM

11:20AM

23 A. I don't know off the top of my head.

11:20AM

24 Q. Okay. But this 9,626 pellets per day could be  
25 doubled as the trace amount if the water flow is

11:20AM

11:20AM

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1 doubled?

11:20AM

2 A. Yes. I can't recall my specific calculation,  
3 but yes. Yes, I'm going to say yes.

11:20AM

11:20AM

4 Q. Okay. Okay. So I'm looking back at what we  
5 admitted as Exhibit 57, this "Review of Discharge  
6 Monitoring Report."

11:20AM

11:20AM

11:21AM

7 So on this report it says on  
8 December 12th, 2017, the flow for Outfall 006 was  
9 calculated as 27 million gallons per day.

11:21AM

11:21AM

11:21AM

10 Do you see that?

11:21AM

11 A. Yes, ma'am.

11:21AM

12 Q. Okay. So we might have to get out the  
13 calculator again for this one, but 27 million gallons  
14 per day is less than 119 million gallons per day, right,  
15 this average flow from 006?

11:21AM

11:21AM

11:21AM

11:21AM

16 Can you tell me off the top of your head  
17 what the trace amounts would be -- the definition for  
18 trace amounts for 006 on the day -- on this day when the  
19 flow rate is 27 million gallons per day?

11:21AM

11:21AM

11:21AM

11:21AM

20 A. Could I tell you what that number is? No,  
21 ma'am.

11:21AM

11:21AM

22 Q. Okay. Do you think your field operators could  
23 tell me what it is for that day --

11:21AM

11:21AM

24 A. No.

11:21AM

25 Q. -- at that rate?

11:21AM



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1 A. Nope. 11:21AM

2 Q. Do you think they could tell me -- let's look 11:21AM  
3 at the next day. On December 16th, 2017, average flow 11:21AM  
4 was 58 million gallons per day. 11:22AM

5 Can you tell me what trace amounts would 11:22AM  
6 be for 006 on that day? 11:22AM

7 A. No. 11:22AM

8 Q. And same for your field operators? 11:22AM

9 A. I could calculate it, but no. 11:22AM

10 Q. Okay. So the amount of pellets that you can 11:22AM  
11 release per day under Formosa's definition changes based 11:22AM  
12 on the flow rate? 11:22AM

13 A. Based on the calculations we presented here, 11:22AM  
14 it would be, yes. 11:22AM

15 Q. Okay. Do you know what kind of rainfall event 11:22AM  
16 leads to certain flows, like the average -- the daily 11:22AM  
17 average flow of 119 million gallons per day? 11:22AM

18 A. No, ma'am. 11:22AM

19 Q. What rainfall event that corresponds to? 11:22AM

20 A. No, I don't. 11:22AM

21 Q. You don't have any -- from your experience, 11:22AM  
22 certain rainfall events, you don't know what level of 11:23AM  
23 flow those tend to correspond to? 11:23AM

24 A. Not on -- no, ma'am. No, ma'am, I don't. I 11:23AM  
25 don't know what rainfall this 119.56 equated to. 11:23AM

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1 Q. Okay. How were your -- let me rephrase that. 11:23AM

2 It's Formosa's position we've heard that 11:23AM  
3 Formosa has never discharged from the stormwater 11:23AM  
4 outfalls in greater than trace amounts. 11:23AM

5 Is that your understanding as well? 11:23AM

6 A. That is -- that is my understanding. I 11:23AM  
7 believe that with all the control measures we have in 11:23AM  
8 place, all the systems that have been implemented, that 11:23AM  
9 the potential for releasing pellets in other than trace 11:23AM  
10 amounts doesn't exist. 11:23AM

11 Q. And when was this definition of "trace 11:23AM  
12 amounts" created? 11:24AM

13 A. I'm going to say I came up with this in -- 11:24AM  
14 sometime after April of 2017. 11:24AM

15 Q. You came up with this definition? 11:24AM

16 A. I came up with this spreadsheet. 11:24AM

17 Q. Who came up with the idea for this 11:24AM  
18 spreadsheet? 11:24AM

19 A. It was discussed amongst several of us. 11:24AM

20 Q. Can you tell me who those other people were? 11:24AM

21 A. Well, I know Mr. Crabtree was involved in that 11:24AM  
22 discussion. 11:24AM

23 Q. And who else? 11:24AM

24 A. Myself. 11:24AM

25 Q. And? 11:24AM

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1 A. I'm trying to remember who else was part of 11:24AM  
2 that. We felt since the agency wasn't going to give us 11:24AM  
3 a number, we needed to create a number. We needed to be 11:24AM  
4 forthright and tell the agency what we believe trace to 11:24AM  
5 be since they would not give us a definition. 11:24AM

6 Q. And that was in you said around April 2017? 11:25AM

7 A. I can't remember when we had that meeting with 11:25AM  
8 them specifically, the presentation that you alluded to 11:25AM  
9 earlier that Mr. Brogger said he attended -- 11:25AM

10 Q. Okay. 11:25AM

11 A. -- through the TCEQ. 11:25AM

12 Q. So you and the others that you just listed 11:25AM  
13 came up with this definition for that presentation? 11:25AM

14 A. We came up with a definition of trace, yes. 11:25AM  
15 Our goal was to come up with a definition that we felt 11:25AM  
16 would be somewhat consistent with what the agency allows 11:25AM  
17 us to do per our permit. 11:25AM

18 If you notice on that document, we listed 11:25AM  
19 all the contaminants we have for Outfall 001, and so our 11:25AM  
20 intent was to come up with an applicable number of 11:25AM  
21 pellets. So if the State is telling me I can discharge 11:25AM  
22 whatever -- 11,000 -- or excuse me -- what is it? So 11:25AM  
23 many pounds of BOD per day, why can't I equate that to 11:26AM  
24 so many pellets per day? 11:26AM

25 Q. That's the rationale for how you came up 11:26AM

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1 with --

11:26AM

2 A. Yes, ma'am.

11:26AM

3 Q. -- this trace definition?

11:26AM

4 A. Yes, ma'am.

11:26AM

5 Q. And did TCEQ agree with this definition?

11:26AM

6 A. They never said yes, never said no.

11:26AM

7 Q. So your understanding today is they haven't  
8 agreed with this definition?

11:26AM

9 A. They -- to my knowledge, I never heard them  
10 say one way or another.

11:26AM

11 Q. Have you seen the NOV's that TCEQ has issued --

11:26AM

12 A. Yes, ma'am, I have.

11:26AM

13 Q. -- to Formosa about discharging greater than  
14 trace amounts?

11:26AM

15 A. Yes.

11:26AM

16 Q. And do they give a definition of trace amounts  
17 like this?

11:26AM

18 A. No.

11:26AM

19 Q. Are there observations based on counting  
20 pellets in those NOV's?

11:26AM

21 A. I don't -- I don't know if she counted them or  
22 not.

11:26AM

23 Q. Okay. Was anyone from Formosa in New Jersey  
24 involved in the def- -- in coming up with this  
25 definition of trace amounts?

11:26AM

11:27AM

11:27AM

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1 A. No. 11:27AM

2 Q. Okay. So it was the people that you listed at 11:27AM  
3 Formosa -- at the Formosa site here? 11:27AM

4 A. Yes, ma'am. 11:27AM

5 Q. Okay. Prior to somewhere around April 2017, 11:27AM  
6 that meeting with TCEQ where you came up with this 11:27AM  
7 definition of trace amounts, what was Formosa's 11:27AM  
8 definition of trace amounts? 11:27AM

9 A. Okay. As long as we implemented our process 11:27AM  
10 of cleaning the outfalls prior to opening, I felt that 11:27AM  
11 that would constitute trace. 11:27AM

12 Q. That was -- that was your understanding of how 11:27AM  
13 you complied with the permit term of "trace amounts" -- 11:28AM

14 A. Yes, ma'am. 11:28AM

15 Q. -- was based on the procedure in the outfall 11:28AM  
16 status sheets of observ- -- the operators observing the 11:28AM  
17 outfall and cleaning them? 11:28AM

18 A. Yes, ma'am. It's in our procedures. 11:28AM  
19 They're -- they're supposed to clean -- our operators 11:28AM  
20 clean the outfalls prior to opening. 11:28AM

21 Q. So based on that procedure, Formosa -- your -- 11:28AM

22 A. My position is that -- 11:28AM

23 Q. Your position -- 11:28AM

24 A. -- we did not discharge any pellets or powder 11:28AM  
25 in more than trace amounts. 11:28AM

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1 Q. So why did you need to come up with this  
2 definition?

3 A. Because the State is not going to give us a  
4 number.

5 Q. But it sounds like you had a way of in your  
6 operations determining whether you were complying with  
7 the permit term prior to this?

8 A. And the State obviously did not agree with  
9 that or else we wouldn't have received an NOV.

10 Q. So it was a result of that NOV that you  
11 determined you needed to come up with a more specific  
12 definition than "trace"?

13 A. Well, I asked an inspector, What does "trace"  
14 mean? I specifically asked her.

15 Q. And what did she say?

16 A. Can't give us one.

17 Q. But she --

18 A. Doesn't know.

19 Q. Was that the inspector who then issued the  
20 NOV?

21 A. It was the inspector that went and made the  
22 observation in that NOV.

23 Q. What is that inspector's name?

24 A. I don't remember her name.

25 Q. Was it Ms. Trevino?

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1 A. I don't remember. I don't remember. 11:29AM

2 Q. Okay. So since coming up with this 11:29AM  
3 definition, how can you use this in practice -- how do 11:29AM  
4 you use it in practice to determine if you're complying 11:29AM  
5 with it? 11:29AM

6 A. My thought is that as long as we are 11:29AM  
7 implementing best management practices and as we've gone 11:30AM  
8 through -- through this process so far, all the screens, 11:30AM  
9 the floating booms, the pellet crew, the vac truck, 11:30AM  
10 within our outfalls and further upstream, that 11:30AM  
11 constitutes best management practices and subsequently 11:30AM  
12 we're not releasing pellets in other than -- in more 11:30AM  
13 than trace amounts. 11:30AM

14 Q. So your definition is based on a number of 11:30AM  
15 pellets per day, but you're saying how you know that 11:30AM  
16 you're complying with it is based on best management 11:30AM  
17 practices? 11:30AM

18 A. Yes. 11:30AM

19 Q. It's not based on counting pellets? 11:30AM

20 A. No, ma'am, it's not. 11:30AM

21 Q. It's not based on estimating pellets? 11:30AM

22 A. No, ma'am, it's not. 11:30AM

23 Q. Is it -- 11:30AM

24 A. I have talked to our operators and tried to 11:30AM  
25 give them a visual of what that number means 11:30AM

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1 (indicating), and that represents about half a sandwich  
2 baggy full.

3 Q. And when you say "that number," you're  
4 referring to this 9,626?

5 A. Yes. Approximately 10,000.

6 Q. So that -- so you've gone over what that looks  
7 like in a bag with your operators?

8 A. I believe all of them, but I -- I can't recall  
9 off the top of my head. But yes, ma'am, I've tried to  
10 explain or visualize what that means.

11 Q. What would that look like if you put it in  
12 water, that many pellets in water?

13 A. I -- it's hard for me. I don't know how --  
14 maybe this table or something along that line. I -- I  
15 don't know.

16 Q. Have you done that with the operators to look  
17 at how much -- what that looks like --

18 A. No, ma'am.

19 Q. -- on the surface of water?

20 A. No, ma'am, I -- no, ma'am, I haven't.

21 Q. What about for powder? This definition is for  
22 pellets per day. What about floating powder?

23 A. Well, I just assume it's the same. I mean,  
24 it -- I assume it's the same. When I say "pellets,"  
25 it's pellets and powder, but no, ma'am, it's not



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1 quantified for powder.

11:31AM

2 Q. And when you say "the same," you mean it would  
3 be half a sandwich bag as well or --

11:31AM

11:32AM

4 A. I've never really quantified it for powder.

11:32AM

5 Q. So you don't know what -- how much powder  
6 would constitute below trace amounts according to  
7 Formosa's definition?

11:32AM

11:32AM

11:32AM

8 A. No.

11:32AM

9 Q. And you also don't know what the amount of  
10 pellets that constitutes Formosa's definition of "trace  
11 amounts," what that lacks like on floating -- on water?

11:32AM

11:32AM

11:32AM

12 A. I haven't. I haven't done an observation  
13 where I've counted that, those -- that number.

11:32AM

11:32AM

14 Q. Have you been out to Cox's Creek in the past  
15 year?

11:32AM

11:32AM

16 A. Yes.

11:32AM

17 Q. Do you go and look at any pellets that are out  
18 there?

11:32AM

11:32AM

19 A. Yes, I did.

11:32AM

20 Q. What have you seen?

11:32AM

21 A. I have seen pellets.

11:32AM

22 Q. Where have you seen them?

11:32AM

23 A. At that spot by the bridge on the -- on the  
24 right --

11:32AM

11:33AM

25 Q. The --

11:33AM

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1 A. -- where Mr. Hamrick goes quite a lot. 11:33AM

2 Q. I think what has been called the boat ramp, is 11:33AM  
3 that correct? 11:33AM

4 A. Is that what he calls it? 11:33AM

5 Q. Just south of the bridge? 11:33AM

6 A. Is it south? Yes. 11:33AM

7 MS. WILSON: Uh-huh. 11:33AM

8 THE WITNESS: Yes? Is it? Okay. 11:33AM

9 Q. (BY MS. GAINES) When -- how many times have 11:33AM  
10 you been there? 11:33AM

11 A. I don't know. Some. I mean, I've been down 11:33AM  
12 there. I -- I don't -- I don't -- I don't know how many 11:33AM  
13 times within the past -- the last year. 11:33AM

14 Q. When -- what was the most recent time you were 11:33AM  
15 there? 11:33AM

16 A. A few weeks ago, two weeks ago, three weeks 11:33AM  
17 ago. 11:33AM

18 Q. Did you go down there with anyone else? 11:33AM

19 A. Yes, I have. 11:33AM

20 Q. Who else? 11:33AM

21 A. Chad Lee. 11:33AM

22 Q. Okay. And do you go and talk with the cleanup 11:33AM  
23 crew with Horizon? 11:33AM

24 A. I haven't talked to Horizon, no, ma'am. 11:33AM

25 Q. Do you ever go and witness their 11:33AM

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1 observation -- what they're doing to clean up the  
2 pellets?

11:33AM

11:33AM

3 A. I have seen them do it, yes, ma'am.

11:33AM

4 Q. When was that that you had seen them last?

11:34AM

5 A. I'd say within the last few months.

11:34AM

6 Q. Okay. But you don't recall exactly?

11:34AM

7 A. No, ma'am.

11:34AM

8 Q. Okay. And -- but then the most recent time  
9 you've gone down there, it wasn't to observe the  
10 cleanup. It was just to see the boat ramp area, is that  
11 right?

11:34AM

11:34AM

11:34AM

11:34AM

12 A. Correct.

11:34AM

13 Q. How many pellets would you say you saw when  
14 you went down there?

11:34AM

11:34AM

15 A. I did see pellets. Did I count them? No.

11:34AM

16 Q. Have you gone and seen any of the floating  
17 booms that have been put in place in Cox's Creek?

11:34AM

11:34AM

18 A. Yes. Yes, ma'am, I have.

11:34AM

19 Q. Have you seen any pellets or powder up against  
20 those booms?

11:34AM

11:34AM

21 A. I -- I was not close enough to see anything,  
22 no, ma'am.

11:34AM

11:34AM

23 Q. Do you get reports on the cleanup?

11:34AM

24 A. No.

11:34AM

25 Q. Do you know how many bags they clean up in a

11:34AM

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1 week, for example?

11:34AM

2 A. No.

11:34AM

3 Q. So you don't monitor any or get any briefings  
4 or reports on --

11:34AM

11:34AM

5 A. No, ma'am, I don't.

11:35AM

6 Q. -- the amount that's been cleaned up?

11:35AM

7 A. No.

11:35AM

8 Q. So that doesn't factor into your position on  
9 whether Formosa has discharged more than trace amounts?

11:35AM

11:35AM

10 A. No, it doesn't factor in.

11:35AM

11 Q. Where would the pellets be coming from that  
12 are in Cox's Creek?

11:35AM

11:35AM

13 A. Well, there are some sources further --  
14 potential sources further upstream of Cox's Creek.

11:35AM

11:35AM

15 In addition, based on our definition of  
16 trace, that plant has been operating -- our wastewater  
17 unit has been operating -- our stormwater outfalls have  
18 been operating over 25 years -- or 25 years. And  
19 subsequently, if you take into account this definition  
20 of "trace," there are -- there are pellets out there.

11:35AM

11:35AM

11:35AM

11:35AM

11:35AM

11:35AM

21 Q. So where -- when do you think the pellets were  
22 discharged that are currently in Cox's Creek?

11:35AM

11:35AM

23 A. Well, if we take this position of trace and  
24 not discharging more than trace amounts every outfall  
25 opening then has a potential for discharge of pellets in

11:36AM

11:36AM

11:36AM

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1 less than trace amounts.

11:36AM

2 Q. Have you calculated the total that could be --

11:36AM

3 A. No, ma'am, I --

11:36AM

4 Q. -- released over --

11:36AM

5 A. No, ma'am, I haven't.

11:36AM

6 Q. Okay. So it has the potential to be released  
7 in this amount.

11:36AM

11:36AM

8 And so your position is that Formosa is  
9 releasing some pellets and that's how the pellets that  
10 have gotten into the creek?

11:36AM

11:36AM

11:36AM

11 A. I'm saying that in that tra- -- based on that  
12 trace number, there could be a discharge of pellets with  
13 an outfall opening that constitute a discharge less than  
14 that trace amount.

11:36AM

11:36AM

11:36AM

11:36AM

15 No different than us discharging CBOD from  
16 Outfall 001 or TOC from Outfall 001 on a day in and day  
17 out basis, which we are permitted to do.

11:36AM

11:36AM

11:37AM

18 Q. And TCEQ has not agreed with this definition,  
19 correct?

11:37AM

11:37AM

20 A. They haven't given us a definition of "trace."

11:37AM

21 Q. But they have issued notices of violations?

11:37AM

22 A. They have issued one. I did see one, yes,  
23 ma'am.

11:37AM

11:37AM

24 Q. And a notice of enforcement?

11:37AM

25 A. I don't really understand the difference,

11:37AM

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1 but --

11:37AM

2 Q. That's fine.

11:37AM

3 A. -- there was a letter and I call it an NOV  
4 letter.

11:37AM

11:37AM

5 Q. Okay. Are you familiar with an agreed order  
6 between -- that TCEQ --

11:37AM

11:37AM

7 A. No.

11:37AM

8 Q. -- and Formosa --

11:37AM

9 A. No, I'm not.

11:37AM

10 Q. -- with penalties in it?

11:37AM

11 A. I usually don't get involved at that --

11:37AM

12 Q. Okay.

11:37AM

13 A. -- at that level.

11:37AM

14 Q. Do you know that there was a recent NOV in  
15 October, I believe, by TCEQ, October of this year?

11:37AM

11:37AM

16 A. This last month?

11:38AM

17 Q. (Nods affirmatively.)

11:38AM

18 A. I didn't see it.

11:38AM

19 Q. Are you --

11:38AM

20 A. Wait, wait. Wait a second. Wait a second. I  
21 just responded to something. It might have been that  
22 letter. I don't recall the date, but I just -- I did  
23 provide a response.

11:38AM

11:38AM

11:38AM

24 Q. A response to who?

11:38AM

25 A. To our -- our environmental department,

11:38AM

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1 Matt Brogger.

2 Q. So what -- when -- if Formosa receives an NOV,  
3 how do you hear about it?

4 A. If it's something related to my area of  
5 stewardship, then I would usually get a call or an  
6 e-mail from our environmental department.

7 Q. And then what did you have to respond to  
8 recently?

9 A. Well, I'll evaluate what's in the letter  
10 and -- and provide a response for any follow-up action  
11 done or the validity of the allegation, my opinion.

12 Q. And what is your opinion of the recent NOV by  
13 TCEQ about discharge of pellets?

14 A. There's so much in this head right now, I'd  
15 have to look at it again.

16 Q. Okay. This -- we just received this copy  
17 yesterday. So this is the only copy that I have of this  
18 NOV, but have you seen this? It's dated -- we'll admit  
19 it as --

20 A. Yes, I saw.

21 Q. -- 58.

22 THE REPORTER: 59.

23 Q. (BY MS. GAINES) -- 59 -- Exhibit 59.

24 (Exhibit 59 marked)

25 Q. (BY MS. GAINES) You've seen this --

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1 A. Yes.

11:39AM

2 Q. -- NOV from October 19th, 2018?

11:39AM

3 A. Yes, ma'am.

11:39AM

4 Q. And so you know what TCEQ cited -- here's the  
5 exhibit sticker.

11:39AM

11:40AM

6 Do you know what the violation was for  
7 related to pellets?

11:40AM

11:40AM

8 MR. RAVEL: Objection, form.

11:40AM

9 A. Can I look at it?

11:40AM

10 Q. (BY MS. GAINES) Sure. (Tendered.)

11:40AM

11 A. (Reviewing document.) I'm familiar with that.  
12 No. 2.

11:40AM

11:40AM

13 Q. No. 2, yes.

11:40AM

14 So do you have a position? Do you agree  
15 or disagree with TCEQ's finding?

11:40AM

11:40AM

16 A. We -- I'm trying to remember on --

11:40AM

17 MR. RAVEL: Objection to form.

11:40AM

18 You can go ahead.

11:40AM

19 A. Okay. I did provide a response to No. 2.

11:40AM

20 Q. (BY MS. GAINES) And when you say "response,"  
21 again, do you know if that was sent to TCEQ?

11:40AM

11:41AM

22 A. I do not.

11:41AM

23 Q. So you sent it to Mr. Brogger?

11:41AM

24 A. Yes, ma'am.

11:41AM

25 Q. And then he would be the one who corresponds

11:41AM



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1 with TCEQ about this?

11:41AM

2 A. At that level I don't know.

11:41AM

3 Q. Okay. What was your response?

11:41AM

4 A. I can't remember specifically, but I -- I do  
5 know for that item the response -- I prepared a response  
6 that highlighted best management practices.

11:41AM

11:41AM

11:41AM

7 Q. Did you agree that Formosa had violated permit  
8 condition stating there should be no discharge of  
9 floating solids in other than trace amounts?

11:41AM

11:41AM

11:41AM

10 A. Can you repeat what you just said?

11:41AM

11 Q. Sure. So the violation -- the permit  
12 condition that has been violated --

11:41AM

11:42AM

13 A. That's all right. I don't -- my position was  
14 that we did not release pellets or powder in more than  
15 trace amounts.

11:42AM

11:42AM

11:42AM

16 Q. Okay. So you disagree with TCEQ's --

11:42AM

17 A. Correct. Correct.

11:42AM

18 Q. -- finding?

11:42AM

19 Do you know how TCEQ determines that there  
20 is a violation of this permit term?

11:42AM

11:42AM

21 A. I was with the inspector not for each and  
22 every one of those. I think there were three or four  
23 dates he listed there that I was with him on some of  
24 those dates.

11:42AM

11:42AM

11:42AM

11:42AM

25 Q. And when you say "him," you mean Zack Fuqua?

11:42AM

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1 A. Yes, ma'am. 11:42AM

2 Q. Okay. You were with him when he went to the 11:42AM  
3 stormwater outfalls? 11:42AM

4 A. Yes. I was with him on -- on some of those 11:42AM  
5 and -- yes, I -- I -- I was with him. And I asked him, 11:42AM  
6 Tell me what "trace" means. They can't. They can't do 11:42AM  
7 it. 11:42AM

8 Q. But they did issue an NOV based on trace 11:43AM  
9 amounts, right? 11:43AM

10 A. Based on what you have in front of you, yes, 11:43AM  
11 ma'am. 11:43AM

12 Q. Do you know if he counted pellets as they were 11:43AM  
13 flowing through the outfall gate? 11:43AM

14 A. I don't know. 11:43AM

15 Q. Do you know if he went to Cox Creek and looked 11:43AM  
16 for pellets? 11:43AM

17 A. I was not with him. It states -- I believe it 11:43AM  
18 states it in there, but I don't know. 11:43AM

19 Q. Okay. Yeah. If you look at the last -- 11:43AM

20 A. Yeah. 11:43AM

21 Q. -- sentence in this paragraph, the top of the 11:43AM  
22 Page 2. 11:43AM

23 A. Well, he said he went there. I was not with 11:43AM  
24 him. 11:43AM

25 Q. Okay. Have you seen any of the photos that 11:43AM

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1 TCEQ has attached to this NOV or the previous NOVs from  
2 2016 with pellets -- pictures of pellets in Cox Creek?

11:43AM

11:43AM

3 A. I can't recall if I seen them. I mean, I  
4 honestly -- I don't know if I seen them or not.

11:43AM

11:43AM

5 Q. Are you familiar with the EPA 2010  
6 investigation at Formosa?

11:44AM

11:44AM

7 A. I can't remember.

11:44AM

8 Q. Okay. Were you -- you were in your same  
9 position in 2010?

11:44AM

11:44AM

10 A. Yes.

11:44AM

11 Q. Okay. Do you need a break?

11:44AM

12 MR. RAVEL: We've been going about an  
13 hour and a half.

11:44AM

11:44AM

14 MS. GAINES: Yeah.

11:44AM

15 MR. RAVEL: If you're going to shift  
16 topics --

11:44AM

11:44AM

17 MS. JOHNSON: It's almost lunch. Do you  
18 want to just take a break?

11:44AM

11:44AM

19 MS. GAINES: We can take a break.

11:45AM

20 (Recess from 11:45 a.m. to 1:17 p.m.)

11:45AM

21 Q. (BY MS. GAINES) Good afternoon. I'm going to  
22 try to get through these as quickly as we can.

01:17PM

01:17PM

23 A. Certainly. Yes, ma'am.

01:17PM

24 Q. Let me first show you this document which was  
25 brought today. We're going to label it --

01:17PM

01:17PM

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1 MR. RAVEL: I brought you three. Can I  
2 get one back? 01:17PM

3 MS. GAINES: Well, we need to give one to  
4 the court reporter, but -- 01:17PM

5 MR. RAVEL: We'll do that when we're  
6 done. 01:17PM

7 MS. GAINES: Yes. So this will be  
8 Exhibit 60. 01:17PM

9 (Exhibit 60 marked) 01:17PM

10 Q. (BY MS. GAINES) Just really quickly, on this  
11 sheet, the "2018 Vacation Shift Schedule," is this for  
12 your department? 01:17PM

13 A. Yes, for the wastewater unit. 01:17PM

14 Q. For the wastewater unit. 01:17PM

15 A. Okay. 01:17PM

16 Q. Okay. And is the "N" and "D" -- what do those  
17 refer to? 01:17PM

18 A. Nights and days. 01:18PM

19 Q. Nights and days. Okay. Just checking. 01:18PM

20 And are all of the people listed on this  
21 form field operators? 01:18PM

22 A. They're hourly operators. 01:18PM

23 Q. Hourly operators? 01:18PM

24 A. Right. 01:18PM

25 Q. So what are their jobs? 01:18PM

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1 A. I mean --

01:18PM

2 Q. What --

01:18PM

3 A. -- everything we've talked about, you know,  
4 catching samples, starting/stopping equipment, taking  
5 readings, cleaning the outfalls, taking samples at the  
6 outfalls, running the DCS board, locking out equipment,  
7 inspecting equipment. Generally, that's --

01:18PM

01:18PM

01:18PM

01:18PM

01:18PM

8 Q. Okay.

01:18PM

9 A. They operate the -- the wastewater unit.

01:18PM

10 Q. Okay. What is the difference between an  
11 hourly operator and a field operator or --

01:18PM

01:18PM

12 A. No difference.

01:18PM

13 Q. No difference. So --

01:18PM

14 A. I'd just say hourly because anybody on here  
15 could be a field operator.

01:18PM

01:19PM

16 Q. Okay. Are any of them supervisors or --

01:19PM

17 A. Nobody on this list is a supervisor.

01:19PM

18 Q. Okay. So if I'm looking at this for  
19 October 5th, 6th, 7th, and 8th, there are --

01:19PM

01:19PM

20 A. Okay.

01:19PM

21 Q. Are you with me?

01:19PM

22 A. Yes, ma'am.

01:19PM

23 Q. The -- there are three people listed at the  
24 top who are on the nightshift for --

01:19PM

01:19PM

25 A. Yes. That's what we call our A shift.

01:19PM

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1 They're broken up. A shift first three, B shift second  
2 three, C shift third three, D shift fourth three. And  
3 then the bottom two are what we call day operators.

4 They help with a lot of maintenance activities.

5 Q. What kind of maintenance activities?

6 A. Well, locking out equipment, starting -- you  
7 know what a LOTO is, lockout/tagout. It's a safety  
8 requirement. They do a lot of that. All the safe work  
9 permitting, they do a lot of that. And they will help  
10 with other issues as -- as we'll ask.

11 Q. Is the nightshift a 12-hour shift?

12 A. Yes.

13 Q. Okay. So there are three people on for each  
14 night, is that correct?

15 A. Yes.

16 Q. Okay. Thank you.

17 (Exhibit 61 marked)

18 Q. (BY MS. GAINES) This is going to be  
19 Exhibit 61.

20 Can you tell me what these tables are?

21 A. Yes. I think I didn't -- I didn't bring the  
22 letter, that request for documents, but I think y'all  
23 had asked for all the average -- average opening --  
24 outfall opening flows for every month, stormwater  
25 outfall. I think that's what y'all had asked for.

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1 Q. So this is a table that you prepared? 01:21PM

2 A. For 2018. I think that's what y'all asked 01:21PM  
3 for. 01:21PM

4 Q. Okay. So this is 2018? 01:21PM

5 A. Yes. I can't remember what y'all sent in the 01:21PM  
6 letter, but that -- this is what we put together for 01:21PM  
7 that request. 01:21PM

8 Q. Okay. So this isn't a normal document you 01:21PM  
9 would have created. This was in response to our 01:21PM  
10 request? 01:21PM

11 A. Yes. 01:21PM

12 Q. Okay. The maximum flow is just -- is that 01:21PM  
13 just based on the 24-hour period that had the highest 01:21PM  
14 flow in that month? 01:21PM

15 A. Yes. 01:21PM

16 Q. Okay. And the average flow is you only look 01:21PM  
17 at the days where they're actually -- where the gate was 01:21PM  
18 actually open, is that right? 01:22PM

19 A. Yes, ma'am. 01:22PM

20 Q. Okay. 01:22PM

21 MS. JOHNSON: Steve, can we have that one 01:22PM  
22 back? We get to keep one and y'all have one there. 01:22PM

23 MR. RAVEL: I wrote on it. I put "61" on 01:22PM  
24 there, so cover it up. 01:22PM

25 THE WITNESS: Here, you want to switch it 01:22PM

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1 around?

01:22PM

2 MS. JOHNSON: Will do. You can have that  
3 one. There we go.

01:22PM

01:22PM

4 MR. RAVEL: Okay. That's the way we did  
5 it before, so I was very confused by the system change.

01:22PM

01:22PM

6 Q. (BY MS. GAINES) Okay. Now, we already  
7 admitted this drainage study as an exhibit, Exhibit 12.

01:22PM

01:22PM

8 A. Okay.

01:22PM

9 Q. This is an excerpt from the 2013 stormwater  
10 drainage --

01:22PM

01:22PM

11 A. Ganem & Kelly --

01:22PM

12 Q. -- study. Yes.

01:22PM

13 A. -- drainage study. Yes.

01:22PM

14 Q. Yes. I -- this was provided last week, so I  
15 don't actually think it's in a binder, so I just have  
16 these two copies.

01:22PM

01:22PM

17 Have you seen this Ganem & Kelly study?

01:22PM

18 A. Yes, ma'am.

01:22PM

19 Q. When is the first time that you saw it?

01:22PM

20 A. It's -- it's been a while. I mean, whenever  
21 it was done, I -- I had a copy of it.

01:22PM

01:23PM

22 Q. Okay. So in 2013 I believe it was done.

01:23PM

23 A. I got a copy of it when -- sometime when --  
24 after it was done or sometime in the past. Well, I  
25 don't know specifically when I received it.

01:23PM

01:23PM

01:23PM



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1 Q. But it would have been fairly soon after they  
2 completed the study --

3 A. I believe so.

4 Q. -- you would have been one of the people --

5 A. Yes, ma'am.

6 Q. -- who would have received it?

7 A. Yes, ma'am.

8 Q. What is the current capacity -- water capacity  
9 in the -- for the stormwater system at Formosa?

10 A. I don't know.

11 Q. You don't know?

12 Do you know what the industry standard is?

13 A. No, ma'am.

14 Q. Okay. Have you reviewed the study recently?

15 A. Yes.

16 Q. Do you know generally what the findings in the  
17 study were?

18 A. I -- I know there's a lot there to review and  
19 I -- I know there was a page in which they presented  
20 kind of like findings or deficiencies and so forth.

21 Q. And do you know if any changes have been made  
22 at Formosa in response to the deficiencies identified in  
23 this study?

24 A. Well, I -- I do know that with respect to the  
25 wastewater unit, we -- we have made changes to try and

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1 improve our stream line, the outfall opening process, so  
2 that we would minimize any potential for flooding.

01:24PM

01:24PM

3 Q. Any other changes that were made in response  
4 to the deficiencies identified in this study?

01:24PM

01:24PM

5 A. Off the top of my head, I can't think of -- I  
6 don't know. I don't know is a better answer. I don't  
7 know.

01:25PM

01:25PM

01:25PM

8 Q. What about any changes to the capacity of the  
9 ditches, any expansion of stormwater ditches?

01:25PM

01:25PM

10 A. I don't know if any have been done.

01:25PM

11 Q. Have you seen overflow happen at the facility  
12 during rain events?

01:25PM

01:25PM

13 A. Please define "overflow."

01:25PM

14 Q. Have you seen water going outside of the  
15 ditches -- the stormwater ditches, overflowing those  
16 ditches?

01:25PM

01:25PM

01:25PM

17 A. Yes.

01:25PM

18 Q. How often do you see that?

01:25PM

19 A. I know I have seen it a couple of times. Two,  
20 three times I have seen it.

01:25PM

01:25PM

21 Q. In your whole time at Formosa or --

01:25PM

22 A. No. No. I mean, just something recently I  
23 can recollect.

01:25PM

01:25PM

24 Q. Okay. In the last year or in the last month?

01:25PM

25 A. Within the last -- oh, God, what was that

01:26PM

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1 one -- couple of years.

01:26PM

2 Q. Okay. Would the controls that we were  
3 discussing that are in place at the stormwater outfalls  
4 and at the internal gates, would those function to stop  
5 floating debris such as plastics during overflow  
6 conditions?

01:26PM

01:26PM

01:26PM

01:26PM

01:26PM

7 A. No, they would not.

01:26PM

8 Q. So do you believe flooding is a problem for  
9 the discharge -- for trying to prevent the discharge of  
10 plastics from the facility?

01:26PM

01:26PM

01:26PM

11 A. Flooding would result in bypassing control  
12 equipment that we have alluded to earlier.

01:26PM

01:26PM

13 Q. Do you -- would you consider it best  
14 management practice for a stormwater facility to have  
15 regular flooding?

01:26PM

01:26PM

01:26PM

16 A. What, now? That --

01:27PM

17 Q. You were discussing best management practices  
18 early --

01:27PM

01:27PM

19 A. Yes.

01:27PM

20 Q. -- earlier --

01:27PM

21 A. Yes.

01:27PM

22 Q. -- to comply with your permit terms --

01:27PM

23 A. Yeah.

01:27PM

24 Q. -- related to plastics.

01:27PM

25 Do you consider the stormwater system and

01:27PM

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1 the capacity that it has currently at Formosa to be in  
2 line with best management practices?

01:27PM

01:27PM

3 A. I really don't know.

01:27PM

4 Q. So when you said earlier that the system was  
5 using best management practices related to the discharge  
6 of plastics, you're now saying you don't know?

01:27PM

01:27PM

01:27PM

7 A. No. I'm -- what I'm inferring or what I do  
8 mean is that we have best management practices in place.

01:27PM

01:27PM

9 Now, what I believe you asked me --  
10 correct me if I'm wrong -- is that you're saying do -- I  
11 mean, I'm asking you to restate your --

01:27PM

01:27PM

01:27PM

12 Q. Sure.

01:27PM

13 A. Are you saying that our outfalls are designed  
14 to best management practices?

01:27PM

01:27PM

15 Q. I'm asking you -- your statement earlier about  
16 the facility uses best management practices to control  
17 the discharge of plastics from the facility.

01:27PM

01:28PM

01:28PM

18 A. I said we utilize -- I -- what I did say is I  
19 referenced some of the things that we are using, the  
20 control measures, and I consider those to be best  
21 management practices.

01:28PM

01:28PM

01:28PM

01:28PM

22 I don't think I got into anything related  
23 to drainage and volume of wastewater discharge.

01:28PM

01:28PM

24 Q. Okay. And those control measures would be  
25 bypassed, as you said, during flooding?

01:28PM

01:28PM

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1 A. I have seen where they have been bypassed  
2 during a flooding situation.

3 Q. Okay. On Page 3 of this study -- this is just  
4 an excerpt of the study and just for Outfall 6.

5 A. Yes, ma'am.

6 Q. As you probably know, that there was -- the  
7 study was done for each outfall, right?

8 A. Yes.

9 Q. Okay. So this is just one of them.

10 If you go to where it says  
11 "General Findings" at the top.

12 A. Yes.

13 Q. No. 3 under those "General Findings," it says,  
14 "Drainage facilities are underdesigned. A large  
15 percentage of the ditches and culverts within the plant  
16 are too small to handle a one- or two-year rain event."

17 Are you familiar with the terms "one- and  
18 two-year rain events"?

19 A. I believe -- not in this context, no.

20 Q. Okay. So you don't know how much rain that  
21 would be or how often those rainfall events would occur?

22 A. No.

23 Q. Would you go to just the last page in this  
24 document? "Drainage System Improvements."

25 A. Yes, ma'am. Yes. I'm sorry.

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1 Q. I was just giving you a chance to read it. 01:30PM

2 A. All right. Yes, I was -- I was looking -- 01:30PM

3 Q. Go ahead. 01:30PM

4 A. -- through it again. (Reviewing document.) 01:30PM  
5 Okay. 01:30PM

6 Q. Do you know if any improvements have been 01:30PM  
7 identified about -- that this -- the "Drainage System 01:30PM  
8 Improvements" section relates to? 01:30PM

9 A. (Reviewing document.) No. 01:30PM

10 Q. You don't know or they have not been made? 01:30PM

11 A. I don't believe anything has been -- has 01:30PM  
12 been -- I don't know if any of this has been done. 01:30PM

13 For example, I'll just -- whether or not a 01:30PM  
14 culvert has been redesigned, I don't know if that has 01:31PM  
15 been done. 01:31PM

16 Q. Okay. Or whether the storage volume of 01:31PM  
17 ditches and channels has been increased? 01:31PM

18 A. I don't know. 01:31PM

19 Q. And would you know if the stor- -- if the 01:31PM  
20 ditches going out to Outfall 6 had been expanded, for 01:31PM  
21 example, since 2013? Would you know about that? 01:31PM

22 A. I don't know. Should I know? I don't know if 01:31PM  
23 I should know. I mean, that's -- I don't -- I mean, we 01:31PM  
24 have processes in place where -- I'm -- being in the 01:31PM  
25 position I am, we should evaluate it, but I -- I 01:31PM

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1 don't -- I'm not aware of any.

01:31PM

2 Q. Okay. Who would be -- who would know or would  
3 make those decisions?

01:31PM

01:31PM

4 A. I would think Mr. Crabtree would be involved  
5 in the decision.

01:31PM

01:31PM

6 Q. Okay. The next -- the second paragraph is  
7 about a detention or retention ponds.

01:31PM

01:31PM

8 Have any of those been created since this  
9 study?

01:32PM

01:32PM

10 A. No.

01:32PM

11 Q. Okay. We're done with that one.

01:32PM

12 A. That's your copy. Yes, ma'am.

01:32PM

13 Q. Oh, yeah. Okay.

01:32PM

14 Are you familiar with the north pond  
15 project?

01:32PM

01:32PM

16 A. Yes.

01:32PM

17 Q. What -- can you tell me what it is?

01:32PM

18 A. It's a pond whereby we are going to bring in  
19 water from the LNRA and --

01:32PM

01:32PM

20 Q. Can you tell me what LNRA is?

01:32PM

21 A. Lavaca Navidad River Authority. They're our  
22 water source and have the capability to store water  
23 there. It's a holding pond.

01:32PM

01:32PM

24 Q. It's a holding pond?

01:32PM

25 A. Right. Yes, ma'am.

01:33PM

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1 Q. Why do you need a holding pond?

01:33PM

2 A. Well, it's a means to bring in -- a means to  
3 store a large volume of water is essentially what that  
4 is.

01:33PM

01:33PM

01:33PM

5 Q. What are the benefits to Formosa of holding  
6 large amounts of water?

01:33PM

01:33PM

7 A. Well, in a facility such as ours, we need --  
8 we need water to make our plant run. And subsequently,  
9 this pond will allow us to bring in more water for raw  
10 water treatment.

01:33PM

01:33PM

01:33PM

01:33PM

11 Q. Can you tell me what raw water treatment  
12 entails?

01:33PM

01:33PM

13 A. Yes, ma'am. When we first started earlier, I  
14 was telling you the water department is split into water  
15 treatment and wastewater. Water treatment is raw water  
16 treatment where we clean what we call raw water from  
17 Lake Texana. We remove solids and so forth so that we  
18 can use that water for industrial water purposes, and  
19 then we utilize industrial water to make ultra pure  
20 water, which goes into a lot of steam production and  
21 various actually processing water service.

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22 Q. So the north pond would not hold any  
23 stormwater?

01:34PM

01:34PM

24 A. It could.

01:34PM

25 Q. It could?

01:34PM



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1 A. We could -- we could collect stormwater and  
2 route it back to the north pond should we choose to do  
3 that.

01:34PM

01:34PM

01:34PM

4 Q. Is the design of it for that or is it for the  
5 LNRA water?

01:34PM

01:34PM

6 A. It's -- the design -- the whole intent of the  
7 north pond was to store water.

01:34PM

01:34PM

8 Q. What is the current status of the north pond  
9 project?

01:34PM

01:34PM

10 A. It's in construction right now.

01:34PM

11 Q. It's being constructed right now?

01:34PM

12 A. Yes, ma'am.

01:34PM

13 Q. So it has been approved as a project and the  
14 budget for it?

01:34PM

01:34PM

15 A. Yes.

01:34PM

16 Q. What was the total cost of that? Do you know?

01:34PM

17 A. That one, I don't recall. It's -- I thought  
18 it was in some document you guys have received  
19 somewhere.

01:34PM

01:35PM

20 Q. All right.

01:35PM

21 MS. JOHNSON: All right. This is --  
22 (reviewing documents).

01:35PM

01:35PM

23 Is that what you're using, 2978?

01:36PM

24 MS. GAINES: There are a lot of these  
25 that look the same.

01:36PM

01:36PM

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1 MS. JOHNSON: They -- I think some of  
2 them are the same. The signatures.

3 MS. GAINES: Okay. (Reviewing  
4 documents.)

5 Q. (BY MS. GAINES) Okay. In this binder --

6 A. Yes, ma'am.

7 Q. -- Tab W, I'm going to admit as Exhibit 62.

8 (Exhibit 62 marked)

9 MR. RAVEL: What tab?

10 THE WITNESS: V.

11 MR. RAVEL: V?

12 MS. GAINES: W. I'm sorry. W.

13 THE WITNESS: I'm sorry. W. I have a  
14 different book. I think I got your book (indicating).

15 MS. JOHNSON: It's kind of confusing.

16 Q. (BY MS. GAINES) Okay. So can you tell me --

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**JOHN HYAK - VOLUME 1 - November 09, 2018**  
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9 A. Yes.  
10 Q. Have you seen any powder in Lavaca Bay?  
11 A. No.  
12 Q. Where have you been at in Lavaca Bay and seen  
13 pellets?  
14 A. I was with Mr. Spree.  
15 Q. Is that Myron Spree?  
16 A. Yes.  
17 Q. And where did you go?  
18 A. He drove us around the discharge of the  
19 diffuser in the bay.  
20 Q. The discharge of 001?  
21 A. Yes, ma'am.  
22 Q. And who else went out with you?  
23 A. Steve Marwitz, Matt Brittain, and Chad Lee.  
24 Q. And what did you see?  
25 A. I didn't see anything floating on the surface,

JOHN HYAK - VOLUME 1 - November 09, 2018  
CONFIDENTIAL SECTIONS REDACTED

1 but we were collecting samples and several of those  
2 samples did have several pellets in them.

3 Q. So when you said "collecting samples," what  
4 were you collecting samples with?

5 A. We were utilizing a dip net and -- a dip net.

6 Q. And who took those samples?

7 A. Matt Brittain.

8 Q. And so you said you caught -- he caught some  
9 pellets with that dip net?

10 A. He caught some sediment, and then when he went  
11 through the sediment, you could -- there were several  
12 pellets in there.

13 Q. So sediment, does that mean he was at the  
14 bottom?

15 A. Well, it was scraping around trying to collect  
16 some sediment.

17 Q. Okay.

18 A. I guess debris, if you want to call it that,  
19 sand.

20 Q. Yeah. When -- what was the date that you went  
21 out on the boat?

22 A. I'm trying to remember when we went out.

23 Q. Was it sometime this year?

24 A. I want to say -- I can't remember when. It  
25 was maybe April. I don't -- I don't -- can't recall the

JOHN HYAK - VOLUME 1 - November 09, 2018  
CONFIDENTIAL SECTIONS REDACTED

1 specific time frame.

02:51PM

2 Q. Sometime in 2018?

02:51PM

3 A. I believe it was, yes, ma'am.

02:51PM

4 Q. Okay. And how did that -- how did you -- how  
5 did that come about that you went out on the boat with  
6 Mr. Spree?

02:51PM

02:51PM

02:51PM

7 A. Mr. Crabtree asked us to.

02:51PM

8 Q. Why did he ask you to?

02:51PM

9 A. I assume because I work in the wastewater  
10 unit.

02:51PM

02:52PM

11 Q. And did -- has Mr. Spree gone out there  
12 before, to your knowledge?

02:52PM

02:52PM

13 A. He said he had.

02:52PM

14 Q. And did he tell you what he had seen?

02:52PM

15 A. He said he had seen pellets and -- and he said  
16 he had seen pellets.

02:52PM

02:52PM

17 Q. Coming out of the 001 discharge pipe?

02:52PM

18 A. I can't recall him saying that, but he did  
19 bring samples.

02:52PM

02:52PM

20 Q. And where do you think the pellets that  
21 were caught when you went out on that boat trip with  
22 Mr. Spree -- where do you think they had come from?

02:52PM

02:52PM

02:52PM

23 A. I don't know.

02:52PM

24 Q. Are you aware of any pellets that have been  
25 discharged through the 001 discharge pipe from Formosa?

02:52PM

02:52PM



JOHN HYAK - VOLUME 1 - November 09, 2018  
CONFIDENTIAL SECTIONS REDACTED

1 A. I believe pellets have been discharged from  
2 Outfall 001.

3 Q. Do we know of specific instances that they  
4 were discharged?

5 A. No.

6 Q. Why do you think there have been discharges of  
7 pellets from 001?

8 A. Because when we have -- we have a filter in  
9 that discharge line and we periodically inspect that  
10 filter. We have found that the filter is broken and we  
11 have found pellets in that filter.

12 Q. And is this the cone filter?

13 A. Yes.

14 Q. Okay. And you -- so you're saying you have  
15 found pellets in that cone filter when it was still in  
16 the pipe?

17 A. Yes.

18 Q. But that also -- that cone filter has been  
19 broken?

20 A. Yes.

21 Q. Is it currently in the pipe?

22 A. Yes.

23 Q. Okay. How many pellets did -- did you find  
24 them or did someone else find them in the cone filter?

25 A. I have seen them.

JOHN HYAK - VOLUME 1 - November 09, 2018  
CONFIDENTIAL SECTIONS REDACTED

1 Q. You have seen them? 02:54PM

2 A. Yes. 02:54PM

3 Q. How many have you seen, roughly? 02:54PM

4 A. Less than trace amount. 02:54PM

5 Q. What is your understanding of the definition  
6 of "trace amounts" for Outfall 001? 02:54PM

7 A. I assume it's the same thing I've utilized for  
8 the stormwater outfalls. 02:54PM

9 Q. The same methodology of what we were going  
10 over earlier to determine? 02:54PM

11 A. Yes, ma'am. Yes, ma'am. 02:54PM

12 Q. Do you know what the number of pellets -- what  
13 that would be for the flow rate at 001? 02:54PM

14 A. Not off the top of my head, no, ma'am. 02:54PM

15 Q. Have you calculated that in the past? 02:54PM

16 A. No. 02:54PM

17 Q. Do you know if anyone else has? 02:54PM

18 A. I don't know. 02:55PM

19 Q. Okay. On Tab Y in the smaller binder, this is  
20 going to be Exhibit 69. 02:55PM

21 (Exhibit 69 marked) 02:55PM

22 Q. (BY MS. GAINES) These are some questions and  
23 answers. 02:55PM

24 Were these answers that were sent to TCEQ? 02:55PM

25 A. I -- I don't remember. I don't recall. 02:55PM

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1 Q. Have you seen these questions and answers  
2 before?

3 A. I don't recall --

4 Q. Okay.

5 A. -- this document. It's just a lot of  
6 documentation here.

7 Q. So this says, No. 2, the sump screen and the  
8 cone filter, the sump screen installed on November 8,  
9 2017, cone filter installed June 20th, 2017.

10 Do those sound right to you?

11 A. Yes, ma'am.

12 Q. And then "The cone filter in the main line was  
13 removed on April 26, 2018 has not been replaced due to  
14 two failures resulting from the water pressure in the  
15 line overwhelming the cone filter screen."

16 You're saying it has now been replaced?

17 A. Yes, it has. There has been one put back in.

18 Q. Do you know how long the cone filter was not  
19 being used after that April 2018 date?

20 A. It wasn't very long. Two, three months.

21 Q. Okay. Did you change anything so that -- to  
22 resolve the water pressure issues?

23 A. Yes. Yes.

24 Q. What did you change?

25 A. We -- we went in with a different design.

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 It's no longer a cone, but a cylinder, and we put some  
2 additional bracing on it.

3 Q. Who redesigned the cone filter?

4 A. Our mechanical maintenance group.

5 Q. And has it been working since then?

6 A. It has failed.

7 Q. It has failed again?

8 A. Yes.

9 Q. And then was put back into place?

10 A. Another one was re- -- put back in its place.

11 Q. The same design or a new design?

12 A. A different design, more -- more  
13 reinforcement.

14 Q. And how long has that one been in use?

15 A. A couple months.

16 Q. How often are the filters -- I guess now it's  
17 not a cone filter, but the new filter, how often are  
18 those cleaned?

19 A. They're backwashed every Wednesday.

20 Q. And they're backwashed, and then how does the  
21 water flow through the discharge? Isn't it a continuous  
22 discharge?

23 A. Yes. But what we can do is we can isolate  
24 that portion in the main line, backwash it, and then  
25 open it back up.

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 Q. And are there any records kept when that is  
2 cleaned?

3 A. No.

4 Q. No? Of the pellets or debris that's found in  
5 it?

6 A. No.

7 Q. Okay. Who does that cleaning?

8 A. We have our operators do it.

9 Q. And this is a picture that was attached to  
10 these questions and answered of the cone filter damage.

11 Did you see it?

12 A. Yes, ma'am.

13 Q. And so did it completely blow out?

14 A. Yes.

15 Q. So the entire screen just went out the  
16 discharge pipe?

17 A. Yes.

18 Q. Okay. How big is this cylinder, this filter,  
19 approximately?

20 A. I should know this. I think it's a 24-inch.  
21 24 inches.

22 Q. Okay.

23 A. I think it's 24.

24 Q. Okay. That's pretty big.

25 A. Yes, ma'am.

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 Q. Did the next design that you said also didn't  
2 work, did it look the same as this when it broke?

3 A. No.

4 Q. What happened to it?

5 A. Still portions remaining --

6 Q. Okay.

7 A. -- but there were holes in it.

8 Q. There were holes --

9 A. Yes, ma'am.

10 Q. -- instead of the whole thing blowing out?

11 A. Yes. Yes, ma'am.

12 Q. Are you aware of this -- the findings that  
13 TCEQ made in their recent -- the 2018 inspections and  
14 then resulting in this October 19th letter that we were  
15 looking at earlier, Exhibit 59? Are you aware of the  
16 findings that TCEQ made related to Outfall 001?

17 A. I'm familiar with the letter. I'm not sure  
18 what specifically you're referring to.

19 Q. About the floating white debris that TCEQ  
20 found in Lavaca Bay and on site at the point -- the  
21 discharge location?

22 A. I wasn't with them when they were out in the  
23 bay.

24 Q. Did you get informed that there was -- that  
25 they had found floating white debris both in Lavaca Bay

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1 and then it says on site at Formosa?

03:00PM

2 A. Yes, I was informed. I'm not -- I'm not sure.  
3 I can't recall which time I was with them when they were  
4 actually within the unit.

03:00PM

03:00PM

03:00PM

5 Q. Within the unit?

03:00PM

6 A. Yes.

03:00PM

7 Q. You were with them at least one of the  
8 times --

03:00PM

03:00PM

9 A. Yes. Yes.

03:00PM

10 Q. -- when they took a sample?

03:01PM

11 A. Yes.

03:01PM

12 Q. Okay. Did you go out with them to Lavaca Bay?

03:01PM

13 A. No.

03:01PM

14 Q. Are you aware of other instances where  
15 floating white debris or powder has been discharged  
16 through Outfall 001 into Lavaca Bay?

03:01PM

03:01PM

03:01PM

17 A. No.

03:01PM

18 Q. Have you been to the shores of Lavaca Bay  
19 recently?

03:01PM

03:01PM

20 A. Not recently, no, ma'am.

03:01PM

21 Q. Have you ever been to the shores of Lavaca Bay  
22 and seen any pellets?

03:01PM

03:01PM

23 A. No.

03:01PM

24 Q. Are you aware that Horizon, the contractor  
25 that Formosa has hired, has been cleaning in Lavaca Bay?

03:01PM

03:01PM

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1 A. Yes.

03:01PM

2 Q. And do you know anything about how many bags  
3 of pellets and other debris they have collected in  
4 Lavaca Bay?

03:01PM

03:01PM

03:01PM

5 A. I know they have collected. How many bags, I  
6 don't know off the top of my head.

03:01PM

03:01PM

7 Q. Where do you think that the pellets that are  
8 being found in Lavaca Bay are coming from?

03:01PM

03:02PM

9 A. I think there could be a lot --

03:02PM

10 MR. RAVEL: Objection, form.

03:02PM

11 You can answer.

03:02PM

12 A. It would be a speculation for me to answer.

03:02PM

13 But there could be sources such as railcars, trucks,  
14 any -- any transportation modes. There's other plastics  
15 manufacturers in Calhoun County.

03:02PM

03:02PM

03:02PM

16 Q. (BY MS. GAINES) Do you think any of the  
17 pellets that are Formosa's pellets that have been found  
18 in Lavaca Bay are coming through 001?

03:02PM

03:02PM

03:02PM

19 A. They have the potential, so yes.

03:02PM

20 Q. Are you -- do you receive the water  
21 monitoring -- the bay monitoring reports?

03:02PM

03:03PM

22 A. Yes.

03:03PM

23 Q. The annual ones?

03:03PM

24 A. Yes.

03:03PM

25 Q. Okay. Are you familiar with the 2010 report

03:03PM



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1 that noted pellets that had been found during that  
2 sampling?

3 A. I review all those reports, so...

4 Q. Would you have reviewed it in 2010?

5 A. Yes.

6 Q. And this has already been admitted as  
7 Exhibit 9 in the big binder. I can also just show it to  
8 you right here if that's easier.

9 This is an excerpt from the "Lavaca Bay  
10 Monitoring - Trip 72, Biological Data Sheet."

11 Does that look -- do you review these?

12 A. Yes, ma'am.

13 Q. These are the reports that you review?

14 A. Yes, ma'am.

15 Q. And the observations at the bottom handwritten  
16 states, "White 'pellets' coming out of diffuser, same as  
17 previous" -- I can't read what that says -- "events"?

18 A. "Encounter."

19 Q. -- "encounter, will let Formosa know."

20 Has anyone from the contractors that  
21 perform these Bay Monitoring Reports ever told you about  
22 pellets coming out of the diffuser?

23 A. Yes.

24 Q. Who was that?

25 A. Lisa Vitale.

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1 Q. Lisa Vitale.

03:04PM

2 And how many times has she told you about  
3 that?

03:04PM

03:04PM

4 A. It's been more than once.

03:04PM

5 Q. Was the last time in 2010 or is it more  
6 recently than that?

03:04PM

03:04PM

7 A. More recent.

03:04PM

8 Q. When was that?

03:04PM

9 A. Within the last year.

03:04PM

10 Q. And how did she tell you about them?

03:05PM

11 A. She communicated.

03:05PM

12 Q. Did she call you?

03:05PM

13 A. Yes, she has called me.

03:05PM

14 Q. And what did she say?

03:05PM

15 A. She said that there has been some white stuff  
16 that they have found around the -- when they were  
17 collecting doing their trawls and samples and so forth.

03:05PM

03:05PM

03:05PM

18 Q. Was that during their sampling from the --  
19 from 2018?

03:05PM

03:05PM

20 A. I don't remember. It's within this last year.

03:05PM

21 Q. And what did you do in response to that  
22 information?

03:05PM

03:05PM

23 A. I asked her if I could have a sample of this.

03:05PM

24 Q. Did she give you a sample?

03:05PM

25 A. Yes.

03:05PM

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1 Q. And what did you do with that sample? 03:05PM

2 A. We have it analyzed by our lab. 03:05PM

3 Q. What were the results? 03:05PM

4 A. The results indicated that it was some sort of  
5 plasticizer. 03:05PM

6 Q. Is that something that Formosa -- is that a  
7 product that Formosa makes or something that Formosa  
8 uses on site? 03:06PM

9 A. It is something we use. 03:06PM

10 Q. So did you determine it was Formosa -- it came  
11 from Formosa's facility? 03:06PM

12 A. No. It was not from our facility, if I  
13 remember correctly. Plasticizers are used throughout  
14 the country by multitude of plastic manufacturers. 03:06PM

15 Q. So Formosa's determination was that the sample  
16 she gave you, the plasticizers in it were not from  
17 Formosa? 03:06PM

18 A. I don't know who they were from. They weren't  
19 from us. 03:06PM

20 Q. Okay. Do you know who did that, the analysis  
21 on that sample? 03:06PM

22 A. It was our lab. 03:06PM

23 Q. Do you know who at the lab? 03:06PM

24 A. Well, I think -- I don't know if it's Steve  
25 Lee or -- 03:06PM

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1 Q. Okay. Okay. What about in 2010? Did 03:06PM  
2 Lisa Vitale call you about finding pellets? 03:07PM  
3 A. I can't remember the specific time frame. 03:07PM  
4 Q. Okay. Are there any other times other than 03:07PM  
5 the one this year and this report from 2010 -- 03:07PM  
6 A. Yes. 03:07PM  
7 Q. -- that she told you? When were those? 03:07PM  
8 A. I don't remember -- 03:07PM  
9 Q. Okay. 03:07PM  
10 A. -- the specific dates. 03:07PM  
11 Q. Okay. How many times, roughly, was it? 03:07PM  
12 A. I don't know how many, but... 03:07PM  
13 Q. Was it five times? Ten times? 03:07PM  
14 A. I don't know. 03:07PM  
15 Q. Two? 03:07PM  
16 A. I don't know how many. 03:07PM  
17 Q. Less than five? 03:07PM  
18 A. I don't know how many. 03:07PM  
19 Q. I'm trying to get a range here. 03:07PM  
20 A. She has called me on occasions indicating 03:07PM  
21 very -- very similar statements as you read here. 03:07PM  
22 Q. So you are aware of plastic pellets 03:07PM  
23 discharging through Formosa's diffuser at 001? 03:07PM  
24 A. I don't agree with this statement 03:08PM  
25 (indicating). 03:08PM

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1 Q. What don't you agree with about it?

03:08PM

2 A. I don't see how they can see it's from our  
3 diffuser if the diffuser is underwater.

03:08PM

03:08PM

4 Q. So you think if she's seeing pellets close to  
5 where the diffuser is in the bay, they could be coming  
6 from another source?

03:08PM

03:08PM

7 A. It could be coming from anywhere. Coming from  
8 another source.

03:08PM

03:08PM

9 Q. Are they likely to be coming from the  
10 diffuser?

03:08PM

03:08PM

11 A. We would have to analyze the pellets to  
12 determine whose they are.

03:08PM

03:08PM

13 Q. Have you gone out anywhere else in Cox  
14 Creek -- I know we discussed a little bit earlier.

03:08PM

03:08PM

15 Have you been to the other stormwater  
16 outfalls other than 006 on Cox Creek?

03:08PM

03:08PM

17 A. On the Cox Creek side?

03:08PM

18 Q. Uh-huh. Yes.

03:08PM

19 A. No, ma'am.

03:08PM

20 Q. So you've only gone out to 006?

03:08PM

21 A. Well, that spot that we referred to earlier.

03:09PM

22 Q. Oh, to the boat ramp?

03:09PM

23 A. Yes, ma'am.

03:09PM

24 Q. Okay. So you haven't gone up the creek and --  
25 where the outfalls discharge into -- or where they go

03:09PM

03:09PM

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 into the creek?

03:09PM

2 A. Not on the outside of the fence, no, ma'am.

03:09PM

3 Q. Okay. Have you spoken with any of Formosa's  
4 experts in this case? We referred to Peter Moleux.

03:09PM

5 MR. RAVEL: I can't say it.

03:09PM

6 MS. JOHNSON: "Moleux" is what it --

03:09PM

7 MS. GAINES: "Moleux"?

03:09PM

8 MR. RAVEL: "Moleux."

03:09PM

9 MS. JOHNSON: "Moleux" is what it would  
10 be in French.

03:09PM

11 A. Yes, I've spoken with Peter.

03:09PM

12 Q. (BY MS. GAINES) You've spoken with him?

03:09PM

13 How many times have you spoken with him?

03:09PM

14 A. I believe on two occasions.

03:09PM

15 Q. And what did you talk to him about?

03:09PM

16 A. We toured him through the wastewater plant and  
17 the stormwater outfalls.

03:09PM

18 Q. On two occasions?

03:09PM

19 A. I know one for sure. I can't remember if I  
20 spoke to him the second time. I don't believe I did.  
21 So one occasion.

03:09PM

03:09PM

22 Q. I'm going to show you one other, Tab X in this  
23 binder.

03:10PM

03:10PM

24 A. Yes, ma'am.

03:10PM

25 Q. Do you have any idea what this PP2 Pellet

03:10PM

03:10PM

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1 Recovery Project is referring to?

03:10PM

2 A. No, I'm not familiar with it.

03:10PM

3 Q. Okay. Do you know who these people are,  
4 Daniela Troncoso or Skylar Blinka?

03:10PM

03:10PM

5 A. Daniela I've spoken to on the phone.

03:10PM

6 Q. Who is she?

03:10PM

7 A. She -- she's an engineer in the PP2 unit.

03:10PM

8 Q. Okay. So you're not aware of any of this  
9 pellet recovery project, any efforts -- pellet recovery  
10 efforts at PP2?

03:10PM

03:10PM

03:11PM

11 A. No, ma'am.

03:11PM

12 Q. I'm not going to admit this. We're just --

03:11PM

13 A. Okay.

03:11PM

14 Q. Just wondering if you knew anything about it.

03:11PM

15 Did you talk to Mr. -- now I can't  
16 remember the -- Mr. --

03:11PM

03:11PM

17 MR. RAVEL: Peter.

03:11PM

18 MS. GAINES: Peter.

03:11PM

19 MR. RAVEL: Peter, the controls expert.

03:11PM

20 Q. (BY MS. GAINES) Peter. Peter, the controls  
21 expert, about any of the flooding and overflow issues  
22 we've discussed?

03:11PM

03:11PM

03:11PM

23 A. Oh, God. We talked to him about a lot of  
24 stuff. So I don't know if that particular issue came  
25 up.

03:11PM

03:11PM

03:11PM

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1 Q. Okay. Have you had any conversations with any  
2 of the plaintiffs in this case, any members of the  
3 Waterkeeper group or Diane Wilson?

4 A. I mean, specific? I've spoken --

5 Q. Yeah. Not today.

6 A. -- to Ms. Wilson many times.

7 Q. Not today.

8 Any interactions when anybody is out  
9 sampling or any --

10 A. Not -- no, not -- not them.

11 Q. Okay.

12 A. I mean, I -- I haven't spoken to them, no.

13 Q. Okay. Okay. Do you have -- before we finish,  
14 do you have any clarifications -- I know this has been a  
15 long time. I really appreciate your time.

16 Do you have any clarifications to any of  
17 the statements you've made today?

18 A. No.

19 Q. Okay. You'll get a chance to review the  
20 deposition transcript when it comes out.

21 A. Sure. Sure.

22 Q. I just wanted to give you a chance if you  
23 thought of anything.

24 A. No, I -- no, ma'am.

25 Q. Okay.



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A. Nothing.

Q. All right.

MS. GAINES: I appreciate your time.  
Thank you --

THE WITNESS: All right.

MS. GAINES: -- Mr. Hyak.

THE WITNESS: Thank y'all very much.

(Deposition concluded at 3:13 p.m.)

03:13PM  
03:13PM  
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CHANGES AND SIGNATURE

WITNESS NAME: JOHN HYAK

DATE OF DEPOSITION: NOVEMBER 9, 2018

PAGE LINE	CHANGE	REASON
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JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 I, JOHN HYAK, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.

4  
5 \_\_\_\_\_  
6 JOHN HYAK

7  
8 THE STATE OF \_\_\_\_\_ )  
9 COUNTY OF \_\_\_\_\_ )

10  
11 Before me, \_\_\_\_\_, on this day  
12 personally appeared JOHN HYAK, known to me (or proved to  
13 me under oath or through \_\_\_\_\_ )  
14 (description of identity card or other document)) to be  
15 the person whose name is subscribed to the foregoing  
16 instrument and acknowledged to me that they executed the  
17 same for the purposes and consideration therein  
18 expressed.

19 Given under my hand and seal of office this  
20 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

21  
22 \_\_\_\_\_  
23 NOTARY PUBLIC IN AND FOR  
24 THE STATE OF \_\_\_\_\_  
25 COMMISSION EXPIRES: \_\_\_\_\_

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 VICTORIA DIVISION

3 SAN ANTONIO BAY ESTUARINE )  
4 WATERKEEPER, et al, )  
5 Plaintiffs, )  
6 VS. ) CIVIL ACTION  
7 FORMOSA PLASTICS CORP., ) NO. 6:17-cv-00047  
8 TEXAS, et al, )  
9 Defendants. )

9 REPORTER'S CERTIFICATION  
10 THE CONFIDENTIAL AND ATTORNEYS' EYES ONLY  
11 ORAL DEPOSITION OF  
12 JOHN HYAK  
13 November 9, 2018  
14 Volume 1

13 I, Julie A. Jordan, Certified Shorthand Reporter in  
14 and for the State of Texas, hereby certify to the  
15 following:

16 That the witness, JOHN HYAK, was duly sworn by the  
17 officer and that the transcript of the oral deposition  
18 is a true record of the testimony given by the witness;

19 That the original deposition was delivered to  
20 Ms. Erin L. Gaines, attorney for the Plaintiffs;

21 That a copy of this certificate was served on all  
22 parties and/or the witness shown herein on \_\_\_\_\_.

23 That the amount of time used by each party at the  
24 deposition is as follows:

25 Ms. Erin L. Gaines - 04 HOUR(S):30 MINUTE(S)

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 Ms. Amy Johnson - None

2 Mr. J. Stephen Ravel - NONE

3  
4 I further certify that pursuant to FRCP Rule 30 (f)  
5 (1) that the signature of the deponent:

6 XXXXX was requested by the deponent or a party  
7 before the completion of the deposition and that the  
8 signature is to be before any notary public and returned  
9 within 30 days from date of receipt of the transcript.  
10 If returned, the attached Changes and Signature Pages  
11 contain any changes and reasons therefore:

12 \_\_\_\_\_ was not requested by the deponent or a party  
13 before the completion of the deposition.

14 I further certify that I am neither counsel for,  
15 related to, nor employed by any of the parties or  
16 attorneys in the action in which this proceeding was  
17 taken, and further that I am not financially or  
18 otherwise interested in the outcome of the action.

19  
20  
21  
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25

JOHN HYAK - VOLUME 1 - November 09, 2018  
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1 Certified to by me this 21st of December, 2018.

2 *Julie A. Jordan*  
3

4 Julie A. Jordan, Texas CSR 3203  
5 Expiration Date: 12/31/19  
6 Firm Registration No. 280  
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1 COUNTY OF TRAVIS )

2 STATE OF TEXAS )

3

4 I hereby certify that the witness was notified on  
5 \_\_\_\_\_ that the witness has 30 days  
6 (or \_\_\_\_\_ days per agreement of counsel) after being  
7 notified by the officer that the transcript is available  
8 for review by the witness and if there are changes in  
9 the form or substance to be made, then the witness shall  
10 sign a statement reciting such changes and the reasons  
11 given by the witness for making them;

12 That the witness' signature was/was not returned as  
13 of \_\_\_\_\_.

14 Subscribed and sworn to on this \_\_\_\_\_ day of  
15 \_\_\_\_\_, \_\_\_\_\_.

16

17

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22

23

24

25

Julie A. Jordan, Texas CSR 3203  
Expiration Date: 12/31/19  
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